UNITED STATES OF AMERICA

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS
SECOND SESSION

VOLUME 152—PART 1

JANUARY 3, 2006 TO FEBRUARY 13, 2006
(PAGES 1 TO 1523)

UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 2006

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of America

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PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, SECOND SESSION

HOUSE OF REPRESENTATIVES—*Tuesday, January 3, 2006*

The House met at noon and was called to order by the Speaker pro tempore (Mr. WOLF).

The SPEAKER pro tempore. This being the day fixed pursuant to the 20th amendment to the Constitution of the United States for the assembly of the Second Session of the 109th Congress, the House will be in order.

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
January 3, 2006.

I hereby appoint the Honorable FRANK R. WOLF to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord God, foundation of faith and provident guide of our Nation's history, we implore You to guide, protect, and strengthen the United States House of Representatives during this Second Session of the 109th Congress.

Help these duly elected Representatives of the people be about the work of the people. Make this democratic Republic strong, that it may be Your fit instrument to unite the natural and human resources of this Nation, that Your people may live ordered lives under the law and in harmony with others and so be a beacon of hope for the world.

In You and from You we draw our inspiration and creativity. In You and from You, Lord, we find lasting peace and universal justice both now and forever. Amen.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Michigan (Mr. KILDEE) come forward and lead the House in the Pledge of Allegiance.

Mr. KILDEE led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to section 2 of House Resolution 619, 109th Congress, as amended by section 2 of House Resolution 640, 109th Congress, organizational and legislative business is dispensed with on this day.

The House will follow the practice announced by the Speaker at the convening of the Second Session of the 106th Congress under a similar order. Bills and resolutions introduced today will be numbered today but will not be noted in the RECORD or referred by the Speaker until January 31, 2006. Executive communications, petitions, and memorials will not be numbered or referred until January 31, 2006.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 4 of rule I, Speaker pro tempore TOM DAVIS of Virginia signed the following enrolled bills on Friday, December 30, 2005:

H.R. 972, to authorize appropriations for fiscal years 2006 and 2007 for the Trafficking Victims Protection Act of 2000, and for other purposes;

H.R. 1815, to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes;

H.R. 2017, to amend the Torture Victims Relief Act of 1998 to authorize appropriations to provide assistance for domestic and foreign programs and centers for the treatment of victims of torture, and for other purposes;

H.R. 3179, to reauthorize and amend the Junior Duck Stamp Conservation and Design Program Act of 1994;

H.R. 3402, to authorize appropriations for the Department of Justice for fiscal years 2006 through 2009, and for other purposes;

H.R. 4501, to amend the Passport Act of June 4, 1920, to authorize the Secretary of State to establish and collect a surcharge to cover the costs of meeting the increased demand for passports as a result of actions taken to comply with section 7209(b) of the Intelligence Reform and Terrorism Prevention Act of 2004;

H.R. 4637, to make certain technical corrections in amendments made by the Energy Policy Act of 2005.

ENROLLED BILLS SIGNED AFTER SINE DIE ADJOURNMENT

Mrs. Haas, Clerk of the House, after sine die adjournment of the first session, 109th Congress, reported and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker pro tempore, Mr. TOM DAVIS of Virginia, on December 30, 2005:

H.R. 972. An act to authorize appropriations for fiscal years 2006 and 2007 for the Trafficking Victims Protection Act of 2000, and for other purposes.

H.R. 1815. An act to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

H.R. 2017. An act to amend the Torture Victims Relief Act of 1998 to authorize appropriations to provide assistance for domestic and foreign programs and centers for the treatment of victims of torture, and for other purposes.

H.R. 3179. An act to reauthorize and amend the Junior Duck Stamp Conservation and Design Program Act of 1994.

H.R. 3402. An act to authorize appropriations for the Department of Justice for fiscal years 2006 through 2009, and for other purposes.

H.R. 4501. An act to amend the Passport Act of June 4, 1920, to authorize the Secretary of State to establish and collect a surcharge to cover the costs of meeting the increased demand for passports as a result of actions taken to comply with section 7209(b) of the Intelligence Reform and Terrorism Prevention Act of 2004.

H.R. 4637. An act to make certain technical corrections in amendments made by the Energy Policy Act of 2005.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

BILLS PRESENTED TO THE PRESIDENT

Karen L. Haas, Clerk of the House reports that on January 3, 2006, she presented to the President of the United States, for his approval, the following bills.

H.R. 972. To authorize appropriations for fiscal years 2006 and 2007 for the Trafficking Victims Protection Act of 2000, and for other purposes.

H.R. 1815. To authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year.

H.R. 2017. To amend the Torture Victims Relief Act of 1998 to authorize appropriations to provide assistance for domestic and foreign programs and centers for the treatment of victims of torture, and for other purposes.

H.R. 3179. To reauthorize and amend the Junior Duck Stamp Conservation and Design Program Act of 1994.

H.R. 3402. To authorize appropriations for the Department of Justice for fiscal years 2006 through 2009, and for other purposes.

H.R. 4340. To implement the United States-Bahrain Free Trade Agreement

H.R. 4501. To amend the Passport Act of June 4, 1920, to authorize the Secretary of State to establish and collect a surcharge to cover the costs of meeting the increased demand for passports as a result of actions taken to comply with section 7209(b) of the Intelligence Reform and Terrorism Prevention Act of 2004.

H.R. 4637. To make certain technical corrections in amendments made by the Energy Policy Act of 2005.

ADJOURNMENT

Mr. KILDEE. Mr. Speaker, pursuant to House Concurrent Resolution 326, 109th Congress, I move that the House do now adjourn.

The motion was agreed to.

The SPEAKER pro tempore. Pursuant to House Concurrent Resolution 326, 109th Congress, the House stands adjourned until noon on Tuesday, January 31, 2006.

Thereupon (at 12 o'clock and 5 minutes p.m.), pursuant to House Concurrent Resolution 326, the House adjourned until Tuesday, January 31, 2006, at noon.

TIME LIMITATION OF REFERRED BILL

[The following action occurred on Dec. 31, 2005]

Pursuant to clause 2 of rule XII, the following action was taken by the Speaker:

H.R. 921. Referral to the Committee on Education and the Workforce extended for a period ending not later than February 3, 2006.

H.R. 1631. Referral to the Committee on Ways and Means extended for a period ending not later than February 3, 2006.

H.R. 2829. Referral to the Committees on the Judiciary, Energy and Commerce, Education and the Workforce and the Permanent Select Committee on Intelligence extended for a period ending not later than February 3, 2006.

H.R. 3699. Referral to the Committees on Resources and Energy and Commerce extended for a period ending not later than February 3, 2006.

SENATE—*Tuesday, January 3, 2006*

The 3d day of January being prescribed by the Constitution of the United States for the annual meeting of the Congress, the 2d session of the 109th Congress commenced this day at 12 noon.

The Senate assembled in its Chamber at the Capitol.

The Senate was called to order by the Honorable ROBERT F. BENNETT, a Senator from the State of Utah.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will read a communication to the Senate from the President pro tempore [Mr. STEVENS].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, January 3, 2006.

To the Senate:

Under the provisions of rule 1, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROBERT F. BENNETT, a Senator from the State of Utah, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. BENNETT thereupon assumed the chair as Acting President pro tempore.

ADJOURNMENT UNTIL 10 A.M., WEDNESDAY, JANUARY 18, 2006

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate stands adjourned until 10 a.m. on Wednesday, January 18, 2006.

Thereupon, the Senate, at 12:00 and 45 seconds p.m., adjourned until Wednesday, January 18, 2006, at 10 a.m.

EXTENSIONS OF REMARKS

CONGRATULATING THE UNIVERSITY OF MARYLAND MEN'S SOCCER TEAM ON WINNING THE 2005 NCAA CHAMPIONSHIP

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 3, 2006

Mr. HOYER. Mr. Speaker, today I rise to congratulate the University of Maryland Men's Soccer Team, the 2005 National Collegiate Athletic Association Champions. The Maryland Terrapins claimed the 2005 NCAA Championship, 1–0, over the University of New Mexico Lobos at SAS Complex in Cary, North Carolina, on December 11, 2005.

The University of Maryland Men's Soccer Team has had a very successful season of which we can all be proud. In addition to the National Collegiate Athletic Association Championship, the Terrapins won the 2005 Atlantic Coast Conference Regular Season Championship and had an overall record of 19–4–2. They also set a school record of 66 goals. Additionally, the Maryland Terrapins are the first team since 1992 to win the tournament as the number one seed.

The Terrapins' Men's Soccer Program has a history of successes. In just the past four seasons, the Terps have amassed 76 wins, the most in the NCAA during the 4-year span. In addition, the Terrapins won their first national soccer title in 1968, when it shared the title with Michigan State.

The coaches who have led the Terrapins to victory are Head Coach Sasho Cirovsky, Assistant Coach Russell Payne, and Assistant Coach Rob Vartughian. Also assisting the team were Associate Athletics Director Shawn Flynn, Trainer Terry Gee, and Adam Zundell with Sports Information. University of Maryland Athletics Director Debbie Yow was also essential to their success.

The gifted athletes include the following University of Maryland students: Spencer Allen, Matt Beckman, Kenney Bertz, Marc Burch, Robbie C'deBaca, Kwame Darko, A.J. Delagarza, Michael Dello-Russo, Maurice Edu, Jason Garey, David Glaudemans, A.J. Godbolt, Aki Kadotani, Stephen King, Chris Lancos, Michael Marchiano, Kevin Reiman, Doug Rodkey, Robbie Rogers, Craig Salvati, Chris Seitz, Kevin Tangney, Michael Vallie, Pat Wilson, and Graham Zusi.

Mr. Speaker, in addition to promoting discipline and health, collegiate athletics provide a wonderful training ground for future leaders and I expect that we will see great things come from these young men in the future. I applaud the University of Maryland's 2005 Men's Soccer Team on its success.

SAGO MINE COAL MINING ACCIDENT

HON. NICK J. RAHALL II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 3, 2006

Mr. RAHALL. Mr. Speaker, on behalf of all West Virginians, our hearts and prayers are with the families and loved ones of those who are trapped in the Sago Mine in Upshur County, West Virginia. We extend our hope that families will be reunited and lives will be saved.

Once again, when it mattered most, West Virginians have risen to the occasion. The men and women who are tirelessly dedicating their efforts to recovering our fellow Americans are to be commended and applauded. The community that is extending their support to the families and friends who are patiently waiting at this critical time are also helping in this difficult and tenuous time.

Though we are all anxiously anticipating their safe return, I urge everyone to take a moment and ask our Creator for his full support in these efforts. As a West Virginian, I am proud of the way both our state leaders and residents have responded to this disaster.

* * *

30 YEARS OF JOURNALISTIC LEADERSHIP

HON. ROBERT A. BRADY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 3, 2006

Mr. BRADY of Pennsylvania. Mr. Speaker, on behalf of myself and my colleagues, the gentlewoman from Wisconsin, Ms. BALDWIN, and the gentleman from Massachusetts, Mr. FRANK, I submit these remarks commemorating a very important anniversary in the historic struggle of lesbian, gay, bisexual and transgender people for equal treatment under the law.

Thirty years ago, in 1976, the notion of organized activity to combat discrimination based on sexual orientation and gender identity was an extremely controversial one. Nowhere in America did lesbian, gay or bisexual people have any legal protections against being dismissed or otherwise disadvantaged in the job market. Eleven years before that, when Congress passed what was generally considered to be a liberalization of U.S. immigration law, that law included on the recommendation of Democratic Presidents and adopted without dissent in a Democratic Congress a tightening on the prohibition against gay or lesbian people even being tourists in the United States. Here in the Congress, no serious effort was underway to deal with the severe legal and other handicaps that were imposed on our fellow gay, lesbian, bisexual and transgender citizens.

But the stirrings of change were apparent for those who look closely. One of the most important examples of this was an event little noticed at the time, but which has turned out to be of great significance in the ongoing battle against homophobia. On January 26, 1976, a courageous, thoughtful, committed young gay man named Mark Segal presided over the publication of the first issue of the Philadelphia Gay News.

PGN is now widely known for its leadership role in one of the great fights for social justice that has marked recent American history. It was started in a rundown building at 13th and Locust Streets in Philadelphia, a building which lacked plumbing and electricity. What it did not lack was heart and brains. From the outset, under the leadership of Mark Segal, PGN has been a strong force for fairness in our society.

It was under PGN's auspices that the first mayoral forum was held in Philadelphia where all of the candidates for that office spoke to the issues facing the LGBT community. Later PGN organized the first AIDS awareness day in the city, and it has grown both in size and influence throughout its history.

Mark Segal deserves congratulations for his role as the sole owner and publisher of PGN for 30 uninterrupted years—a longevity record for LGBT newspapers, and an admirable record for any media outlet in these days of increasing corporatization and the diminution of journalistic independence.

The work of Mark Segal and PGN has been honored by a wide range of organizations, including LGBT advocacy groups, and professional journalistic associations. They include the Gay and Lesbian Alliance Against Defamation; the Pennsylvania Newspaper Association; The Society for News Design; and The Society for Professional Journalists.

Emblematic of Mark Segal's refusal to accept anything less than equality for himself and members of the LGBT community is the fact that he now sits on the Board of the Pennsylvania Newspaper Association, which for 15 years had refused to allow PGN even to join. Mr. Speaker, as the Member of the House in whose district PGN is published, I speak from personal experience of its importance as a respected and invaluable source of information, much of which would otherwise go unpublished. And I know that my colleagues from Wisconsin and Massachusetts share my high opinion of the extraordinary important role that PGN plays in our fight against prejudice.

Mr. Speaker, for 30 years, in the face of a good deal of initial hostility and subsequent indifference at best, Mark Segal and PGN have shone the light on sexual orientation and gender identity prejudice not just in the United States but in the world, and have helped to diminish it—although we obviously have a long

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

way to go. I am very proud to be able to salute this important pioneer in the fight for social justice, and to express my confidence, and that of my colleagues from Wisconsin and Massachusetts, that as long as there is a need to combat homophobia, we will be able to count on PGN's leadership role.

CONGRATULATING THE UNIVERSITY OF MARYLAND WOMEN'S FIELD HOCKEY TEAM ON WINNING THE 2005 NCAA CHAMPIONSHIP

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 3, 2006

Mr. HOYER. Mr. Speaker, I rise today to pay tribute to the outstanding 2005 National Championship Women's Field Hockey team at the University of Maryland. On Sunday, November 20 in Louisville, Kentucky, the Terrapins defeated Duke University 1–0 to capture the 2005 National Collegiate Athletic Association Championship crown. This year marks the Terrapins' fourth NCAA title overall and their first NCAA title in 6 years.

The University of Maryland Women's Field Hockey Program has achieved several significant honors this year. The Terps earned a No. 1 final ranking by the National Field Hockey Coaches Association. Five Terrapins were named All-Americans, while three were also named All–ACC. Nine team members were named to the Mid-Atlantic All-Region team. The Terrapin defense was ranked second in the Nation and the offense was among the top 15. Finally, the University of Maryland ended the season with a 23–2 record, the most wins since 1999, and recorded its fifth 20-win season in program history.

The coaches who have led the Field Hockey team to victory are Head Coach Missy Meharg, Assistant Coach Tjerk (T.J) van Herwaarden, Assistant Coach Marybeth Freeman, Assistant Coach Clemens Arnold, Trainer Sandy Worth, Assistant Trainer Joey Sierzega, and Strength & Conditioning Coach Barry Kagan. Also deserving recognition are Jim Knight with Equipment, Natalia Ciccone with Media, and Supervisor Troy Tucker.

These talented young athletes include the following University of Maryland students: Emily Beach, Kendall Beveridge, Jackie Ciconte, Kristina Edmonds, Megan Fox, Alica Grater, Paula Infante, Linzi Jones, Danielle Keeley, Meredith Long, Tiffany Marsh, Kathryn Masson, Katie Mockus, Ellen Ott, Louisa Powell, Lauren Powley, Christina Restivo, Susie Rowe, Sarah Scholl, Emily Trycinski, Janneke van Leeuwen, and Kim Ziegler. University of Maryland Athletics Director Debbie Yow was also essential to their success.

Mr. Speaker, collegiate athletics promote camaraderie, leadership, responsibility, and good health. They are a vibrant and essential component of American culture. I commend the University of Maryland's 2005 Field Hockey team and wish each of its members great success.

WEST VIRGINIA UNIVERSITY SUGAR BOWL VICTORY

HON. NICK J. RAHALL II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 3, 2006

Mr. RAHALL. Mr. Speaker, I want to take this time to personally congratulate West Virginia University on their victory last night in the 2006 Sugar Bowl. All of us in West Virginia are proud of the players and the coaches for their tremendous effort put forth on behalf of the Mountain State. I would like to personally congratulate Coach Rodriguez, his players and his coaching team on such a "sweet" victory. Thanks for making us proud to be Mountaineers.

HONORING THE CITY OF MIDDLETON, WI ON ITS SESQUICENTENNIAL

HON. TAMMY BALDWIN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 3, 2006

Ms. BALDWIN. Mr. Speaker, I rise today to celebrate the sesquicentennial of the city of Middleton, WI.

While first inhabited by Native Americans, then home to French fur traders and, later, English and German settlers, the area we now call Middleton marks its official birth with the arrival of the railroad there in 1856.

The history of this vibrant community is well-documented. We know of the fur-trading post opened in 1832 by the area's first carpenter, Michael St. Cyr. Records tell us of Orson Cook, the first permanent settler in the East Middleton area in 1841. The name, Middleton, we are told, was chosen by the first postmaster, Harry Barnes, after a town in Vermont.

The settlements of Pheasant Branch, East Middleton, Middleton Station and others coalesced when the train depot became a hub around which local businesses prospered.

One hundred fifty years after the first trains arrived, Middleton's downtown is thriving. New businesses are rising in the footprints of the old. The people of this 21st century community are still guided by the "good neighbor" practices of those who came before.

The current residents of Middleton treasure historic structures of the past: the Old Stamm House, once a station on the "underground railroad"; the Blacksmith Shop on Branch Street; Arneson's Café on Parmenter Street where folks could collect mail on one side and buy stationery and sweets on the other, to name just a few.

But they are also looking to the future, supporting a superb public library, a dynamic senior center, a community pool, and a performing arts center. Though barely miles from the State capital, the people of Middleton cede no civic pride or responsibility. Volunteers sustain and support emergency services and community functions.

On its sesquicentennial, I salute the city of Middleton and its people and wish them many more years of prosperity.

IN MEMORY OF SGT REGINA REALI

HON. JIM COSTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 3, 2006

Mr. COSTA. Mr. Speaker, I rise today to honor and remember the memory of SGT Regina Reali who lost her life defending our nation in support of Operation Iraqi Freedom.

Sergeant Reali, 25, was born in Denair, California, then relocated to the central San Joaquin Valley. She was a 1999 graduate of Fresno High School and enlisted to serve in the U.S. Army in 2000. Ms. Reali's military career includes graduation from basic training at Fort Jackson, South Carolina and advanced individual training as a civil affairs specialist at the John F. Kennedy Special Warfare School and Center at Fort Bragg, North Carolina. Ms. Reali's dedication led her to receive various awards, including the: National Defense Service Medal, Armed Forces Reserve Medal with "M" Device, Army Service Ribbon and the Expert Marksmanship Qualification Badge. Upon completion of training, Ms. Reali reported to her first assignment as a civil affairs specialist with the Army Reserve's 351st Civil Affairs Command, based at Mountain View. Shortly after her deployment to protect our country, Ms. Reali's leadership efforts were recognized and she was promoted to sergeant.

Unfortunately, Regina Reali's tour in Baghdad, Iraq ended when an improvised explosive device detonated near her military vehicle on the 23rd day of December 2005. In recognition of Sergeant Reali's dedication and sacrifice, she has been recommended to posthumously receive several awards that portray her strength of character, such as the: Bronze Star, Army Commendation Medal, Army Good Conduct Medal, Army Reserve Components Achievement Medal, Global War on Terrorism Service Medal, Iraq Campaign Medal and the Combat Action Badge. Finally, Sergeant Reali was recommended to receive the Purple Heart, the oldest military decoration in the world, awarded to members of the Armed Forces who are wounded in the line of action.

Regina Reali is survived by her father Richard of Atwater and her brother and his wife Paul and Pricilla of San Diego.

I would like to extend my heartfelt sympathy and most sincere condolences to Sergeant Reali's family.

It is my belief that SGT Regina Reali's loss symbolizes the ultimate sacrifice one can make for her country. Her humble service to our Nation demonstrates her valor, strength, courage and pride. Americans all across the Nation are indebted to Sergeant Reali for her sacrifice and her efforts to uphold the principals of democracy, which will serve as an example to all of us for generations to come.

TRIBUTE TO TODD PATKIN, YOUNG LEADER AND PHILANTHROPIST

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 3, 2006

Mr. LANTOS. Mr. Speaker, I invite my colleagues to join me in paying tribute a young man who is part of the new generation of philanthropic leaders—Todd Patkin of Massachusetts. Todd is an impressive young man, and although he has just turned 40, he has been remarkably successful in the business world and is now devoting his life to helping others.

Todd grew up in the Boston area, where he graduated from Tufts University. He married, had a family, and worked in the family auto parts business for the next 18 years. Using his amazing organizational and business talents, the company became remarkably successful, expanding from 18 to 62 stores in the New England and New York area. His business acumen was recognized in 2004 by Auto International Associate when he was named "Young Executive of the Year."

Mr. Speaker, Todd recently sold his regional business operations to the second largest retailer in the country, giving him the financial freedom to pursue his passion to help others.

One of his major philanthropic initiatives has been to assist his friend, Gary Marino, to help Americans children and adults with problems of obesity and poor nutrition. Todd is funding the making of a major motion picture which focuses on Gary's life story and on his "Million Calorie March" from Florida to Boston in which took place in 2005.

Working with opera star Andrea Delgudice, Todd also founded the Todd G. Patkin Opportunity Performing Art Center. It brings the highest quality vocal, dance and acting instruction to its students, many of whom are from the less-advantages areas of Brockton, Massachusetts, and are receiving full scholarships because of their economic need.

Todd recently made a substantial contribution to the Boston Medical Center for its Todd and Yadira Patkin Sickle Cell Anemia Clinic. He has also provided significant financial support to the Boston chapter of the Anti-Defamation League, where he and Andrew Tarsy will be managing a new initiative to combat bigotry and intolerance in greater Boston.

Todd has had a positive impact internationally as well, Mr. Speaker. He supports two charities in the State of Israel—the Jewish National Fund, which is chaired by Ronald Lauder, and the Yemin Orde Youth Village headed by Chaim Peri. The village is perhaps the most advanced orphanage in Israel and the world. It focuses on helping children, who frequently have been orphaned under devastating circumstances, to become happy and productive members of society. Today over two-thirds of the 300 children in the village are Jews of Ethiopian descent.

Todd was the first philanthropist in September of this year to provide one million dollars to the Jewish National Fund to help it deal with some 2,500 displaced people who left the Gaza when the Israeli government left that area. The Israeli government was unable to assist them since these families failed to provide information to the government about their assistance needs.

Mr. Speaker, Todd Patkin is a remarkable man, whose philanthropic efforts give me great hope for the next generation of leaders in our country who are now emerging. I invite my colleagues to join me in paying tribute to him. Todd has set a remarkable example that I hope many other young leaders will follow.

SENATE—*Wednesday, January 18, 2006*

The Senate met at 10 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal and ever blessed God, whose name is love, put Your love in our hearts. Teach us to love so that our primary aim in life will be to please You. Teach us to love so that our passion for You will provide the foundation of our obedience. Teach us to love so that worship will not be a duty but a delight. Teach us to love so that our greatest fear will be to disappoint You.

Teach our lawmakers to love so that they will always be quick to help and to forgive. Teach all of us to love so that hatred and bitterness will disappear from our hearts as we seek to be Your true followers.

We pray in Your loving Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Ms. MURKOWSKI. Mr. President, we will be in session for a very brief period this morning. In a few minutes, the President pro tempore will administer the oath of office to Senator-designate MENENDEZ. Following that swearing in, we will have a couple of housekeeping matters. Then we will adjourn for the day.

On behalf of the leader, I will have more to say on the schedule over the next week in the closing remarks.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The minority leader is recognized.

ORDER OF BUSINESS

Mr. REID. Mr. President, we have announced on this side that there will be no morning business, no speeches, other than Senator LAUTENBERG and Senator MENENDEZ to speak about this important day in soon-to-be Senator MENENDEZ's life. That is an agreement I have with Senator FRIST. Members desiring to speak on other issues will not be able to do that today.

I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. MURKOWSKI. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF PROCEDURE

Ms. MURKOWSKI. Mr. President, we will proceed at 10:30 with the swearing in of Senator-designate MENENDEZ, but we do have housekeeping matters to take up.

I ask unanimous consent when the Senate completes its business today, it adjourn until 10 a.m. on Friday, January 20, for a pro forma session only and that Senators be permitted to introduce bills on that day until the hour of 11 a.m. I further ask consent that the Senate adjourn until Tuesday, January 24, at 10 a.m. for a pro forma session and that committees be permitted to file legislative and executive items until 5 p.m. that day.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Ms. MURKOWSKI. Mr. President, I ask consent following the pro forma session on Tuesday, the Senate stand in adjournment until 9:30 a.m. on Wednesday, January 25. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then proceed to a period of morning business with Senators permitted to speak for up to 10 minutes.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Ms. MURKOWSKI. Under the order just entered, the Senate will return for regular business on Wednesday, January 25. On Tuesday, the Judiciary Committee should report the nomination of Samuel Alito to be an Associate Justice of the Supreme Court of the United States. The leader has announced we will proceed to consider the nomination when it is available for floor debate and that will be on Wednesday. We will remain on the Alito nomination until we are able to vote on the confirmation. We hope to have an organized debate to allow all Members to speak. We will try to line up an order next week when we begin. The majority leader reiterates that Senators should be ready next week for this historic debate and that everyone should keep a flexible schedule so we can vote at the first available time.

Mr. REID. If the distinguished Senator will yield.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, I have received calls from a significant number of Senators. Senator FRIST is right, we will have a dignified debate. It will be organized. We will do whatever is appropriate according to who wants to speak. Most all Democratic Senators will want an opportunity to speak in regard to the nomination of Samuel Alito. We look forward to that sometime next week.

I also ask that following the swearing in of Congressman MENENDEZ, the only two speakers allowed in the Senate on this day are Senator MENENDEZ and Senator LAUTENBERG, the two Senators from New Jersey. This is in keeping with the agreement I have with Senator FRIST. I ask consent that be the case.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Ms. MURKOWSKI. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. MURKOWSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, so ordered.

LETTER OF RESIGNATION

The PRESIDENT pro tempore. The Chair lays before the Senate the letter of resignation of Senator Jon Corzine of New Jersey.

Without objection, the letter is deemed read and spread upon the Journal.

The letter follows.

U.S. SENATE,
Washington, DC, January 13, 2006.

Hon. RICHARD B. CHENEY,
President of the U.S. Senate, U.S. Senate, The Capitol, Washington, DC.

DEAR MR. PRESIDENT: I hereby give notice of my resignation of the office of the United States Senator from the State of New Jersey, effective 11:59 a.m. on January 17, 2006.

Sincerely,

JON S. CORZINE.

CERTIFICATE OF APPOINTMENT

The PRESIDENT pro tempore. The Chair now lays before the Senate the certificate of appointment of Senator-designate ROBERT MENENDEZ of the State of New Jersey.

Without objection, it will be placed on file and the certificate of appointment will be deemed to have been read.

The certificate follows.

STATE OF NEW JERSEY,
OFFICE OF THE GOVERNOR,
Trenton, NJ, January 17, 2006.

CERTIFICATE OF APPOINTMENT

To: The President of the Senate of the United States

This is to certify that, pursuant to the power vested in me by the Constitution of the United States and the laws of the State of New Jersey, I, Jon S. Corzine, the governor of said State, do hereby appoint Robert Menendez a Senator from said State to represent said State in the Senate of the United States until the vacancy therein caused by my resignation from the Senate is filled by election as provided by law.

Witness: His excellency our governor, Jon S. Corzine, and our seal hereto affixed at Trenton this 17th day of January, in the year of our Lord 2006.

By the governor:

JON S. CORZINE,
Governor.

ADMINISTRATION OF OATH OF OFFICE

The PRESIDENT pro tempore. The Senator-designate will present himself at the desk and the Chair will administer the oath of office as required by the Constitution and prescribed by law.

The Senator-designate, ROBERT MENENDEZ, escorted by Mr. LAUTENBERG, advanced to the desk of the Vice President; the oath prescribed by law was administered to him by the President pro tempore, and he subscribed to the oath in the Official Oath Book.

The PRESIDENT pro tempore. Congratulations.

(Applause, Senators rising.)

MAKING MINORITY PARTY ASSIGNMENTS TO COMMITTEES FOR THE 109TH CONGRESS

Mr. REID. Mr. President, I have a resolution at the desk. I ask for its consideration.

The PRESIDING OFFICER (Mr. COBURN). The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 348) making minority party assignments to certain Senate committees for the 109th Congress.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the resolution be agreed to, the motion to reconsider be laid on the table, and there be no intervening action.

The PRESIDING OFFICER. Without objection, so ordered.

The resolution (S. Res. 348) was agreed to as follows:

S. RES. 348

Resolved, that notwithstanding the provisions of Rule XXV, the following shall constitute the minority party's membership on the following standing committees for the 109th Congress, or until their successors are chosen:

Committee on Banking, Housing and Urban Affairs: Mr. Sarbanes (Ranking Member), Mr. Dodd, Mr. Johnson, Mr. Reed, Mr. Schumer, Mr. Bayh, Mr. Carper, Ms. Stabenow, and Mr. Menendez.

Committee on Energy and Natural Resources: Mr. Bingaman (Ranking Member), Mr. Akaka, Mr. Dorgan, Mr. Wyden, Mr. Johnson, Ms. Landrieu, Mrs. Feinstein, Ms. Cantwell, Mr. Salazar, and Mr. Menendez.

Special Committee on Aging: Mr. Kohl (Ranking Member), Mr. Jeffords, Mr. Wyden, Mrs. Lincoln, Mr. Bayh, Mr. Carper, Mr. Nelson of Florida, Mrs. Clinton, and Mr. Salazar.

Committee on the Budget: Mr. Conrad (Ranking Member), Mr. Sarbanes, Mrs. Murray, Mr. Wyden, Mr. Feingold, Mr. Johnson, Mr. Byrd, Mr. Nelson of Florida, Ms. Stabenow, and Mr. Menendez.

Select Committee on Ethics: Mr. Johnson (Vice Chairman), Mr. Pryor and Mr. Salazar.

Select Committee on Intelligence: Mr. Rockefeller (Vice Chairman), Mr. Levin, Mrs. Feinstein, Mr. Wyden, Mr. Bayh, Ms. Mikulski, and Mr. Feingold.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Ms. MURKOWSKI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATOR ROBERT MENENDEZ

Mr. LAUTENBERG. Mr. President, I thank the leadership for according me an opportunity to present my new colleague. All of us are going to be missing Jon Corzine, a dear friend and former colleague who served this body very well but responded to the call of duty when things in New Jersey needed a leading hand. Jon Corzine responded and took up the assignment.

In Senator Corzine's place, we are fortunate to be able to have a candidate of the skill and knowledge that Senator ROBERT MENENDEZ has.

BOB MENENDEZ is a typical American story. He was born in America of parents who had immigrated from Cuba. He has worked his way through the system very well. As a very young man—high school age—he challenged the mayor and the leadership of the community in which he lived in New Jersey and fought his way to making certain they were going to be cleaning up some of their bad habits in Union City, such that he had to at times wear a bulletproof vest when he was 17 years old. He, thusly, had a place in the political mainstream as a very young man.

He became mayor of Union City, NJ, and then served in our general assembly from 1987 until 1991 and in the New Jersey Senate—he has been through all of the steps to leadership—from 1991 to 1993. He then came to the U.S. Congress and was soon appointed—he worked hard to get it. I should strike the word "appointed" and say he worked his way so that he became the third most powerful member on the Democratic side in the House of Representatives.

I look forward to working with BOB. BOB comes from Hudson County, one of our most populated counties in the most densely populated State in the country. He worked on the issues of transportation, and education is a particular interest of his. It can be reflected in the fact that his daughter, Alicia Menendez, was the commencement speaker at her graduation from Harvard.

I was very impressed at the leadership provided by her family, by her father's interest in public speaking, and in Government. She had to prepare her address in a competition to see who would be the student commencement speaker. Alicia won that competition with a very lengthy speech. She then, contrary to our habits here, was told to put aside her notes, take a microphone, and make the speech verbally to the graduating class of Harvard. I think it was 2 years ago. And she did it wonderfully—again, a reflection of the leadership that BOB MENENDEZ provided to the family.

His son Robert is at a university in North Carolina and is also a very accomplished young man.

Mr. MENENDEZ and I will be working together on lots of issues that we worked on in the past, I as a Senator and he as a Congressman, particularly, again, focused on transportation, environment, and security.

BOB MENENDEZ's county had the biggest loss of those who perished on 9/11—over 700 people from New Jersey. BOB MENENDEZ was there to help provide some warmth, friendship, and leadership to the problems that followed the loss of those loved ones and the impairment that it brought to those families.

I am so pleased to have someone who understands New Jersey fully, who has lived the traditional dream from very modest working class parents who escaped Cuba in those very dark days and lifted himself up by his bootstraps. We are going to be working together on issues such as transportation, education, security, and some of the problems we now see with Medicare.

My State of New Jersey now has spent $15 million in the last couple of weeks trying to help people get their prescription drugs as a result of the enormous change that took place starting in 2006. They could not get the product, and the State of New Jersey jumped in, as I would gather almost every State in this country has done, and that is to fill in where Medicare dropped off.

I look forward to working with BOB MENENDEZ on that issue, and I hope it will be high on the list—on an urgent list—of matters to which we have to attend.

Meanwhile, I once again say that BOB MENENDEZ represents not only New Jersey, but he represents the contribution that Latino Americans make to this country. BOB MENENDEZ will be the third person to join this Senate with a Hispanic background—Senator MARTINEZ, Senator SALAZAR, and now Senator MENENDEZ. It is so appropriate when such a large portion of our population has that cultural background. They are wonderful contributing citizens in our State. We have a very large Latino population, and they are all very proud of Senator MENENDEZ.

It is a historic day for the State of New Jersey and for the country that one of our terrific colleagues is now the Governor of the State of New Jersey. I predict he will be looking in the mirror one of these days and questioning the change he decided to make. He has a tough job. There is a lot of debt. We had some unfortunate mistakes in governance over the past few years. We are desperately in need of support for transportation and other programs. I think Jon Corzine, with his leadership training, having been the chairman and CEO of Goldman Sachs, will make a difference. He left here to take on what he considered a more important, immediate test. We are so pleased that he is replaced by someone such as ROBERT MENENDEZ, Senator MENENDEZ, who just walked in.

I remember the days—my colleague from Virginia is on the floor. We have been around here a long time. So very often the issues of wonderment disappear. We are into the nitty-gritty of issues and we forget sometimes about the excitement of being able to serve in this body. The Presiding Officer knows exactly what I am talking about, having been here only a short time, but also having come from the House of Representatives, and note that change.

When I spoke to BOB MENENDEZ and described to him the seat that he would have, which is the furthest away that one can get, he said to me that he is happy to have a seat anywhere in this Chamber. Sometimes we forget that in our daily toil.

I wound up sitting right near where the Senator from Virginia is, and I was talking to Scoop Jackson. I said: Nice seat. He said: Don't get used to it, you're not going to keep it. In the next couple of days, I wound up over in the freshman seats.

BOB MENENDEZ is a freshman, skilled, able, knowledgeable. We are very excited about him being here. He is going to be a wonderful Member of the Senate.

I thank the Chair and thank the leadership for granting me the opportunity to speak today.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, first I commend my good friend, the good Senator from the State of New Jersey, for his remarks this morning on behalf of his colleague. I was privileged to attend what is known here as a reenactment in the Old Chamber just now and had the chance to wish him well. We do wish him well.

I certainly say to my distinguished colleague, the new Governor of New Jersey, our former colleague whom we all hold in high esteem, we wish him well in his responsibilities. The Senator mentioned that, of course, he departed to take on this authority. You know, there is a precedent in your State for recycling back here. It seems to me the distinguished senior Senator is here on his second term.

I thank my colleague.

CAMBODIA

Mr. FRIST. Mr. President, today, I would like to address a troubling series of events that has recently transpired in Cambodia. In the past year, the government of Prime Minister Hun Sen has engaged in a widespread campaign to silence his critics, stifle dissent, and enfeeble his political opposition.

The result of these actions has been a very disturbing erosion of Cambodia's commitment to democratic principles, the rule of law, and the protection of human rights.

Nearly a year ago, in February 2005, Cambodia's National Assembly voted to revoke the parliamentary immunity from prosecution of opposition leader Mr. Sam Rainsy and two of his colleagues. The alleged offense was defaming the Prime Minister.

Just after this vote, Mr. Rainsy and one of his colleagues, Chea Poch, managed to escape Cambodia to avoid arrest. However, the other opposition parliamentarian and an ally of Mr. Rainsy, Cheam Channy, was arrested.

Several months later, in August 2005, Cheam Channy was sentenced to 7 years in prison for allegedly forming "a secret army to overthrow the government." And, in December 2005, Sam Rainsy was sentenced in absentia to 18 months in prison for defaming the Prime Minister and the President of the National Assembly.

The Cambodian Government's assault on its political opposition is only the tip of the iceberg. The Prime Minister has also carried out a campaign against human rights activists in Cambodia.

In a period of 5 days, just before and after the new year, three of Cambodia's top human rights activists were arrested. These included Mr. Kern Sokha, president of the Cambodian Center for Human Rights; Mr. Yeng Virak, director of the Community Legal Education Center; and Pa Nguon Teang, a journalist and the acting leader of Mr. Kern Sokha's human rights organization.

Again, these activists and critics of the Government were detained on trumped-up defamation charges.

These arrests and detentions are just the latest in a series of actions aimed at silencing the critics of the Cambodian Government. In addition to members of the political opposition, Cambodia's Government has also targeted prominent individuals in the media, trade unions, and civil society.

The United States has rightly condemned these actions, and I applaud Ambassador Mussomeli and his staff at the U.S. Embassy in Phnom Penh for raising this troubling issue with senior officials in the Cambodian Government.

I am also encouraged that the international community is responding to Cambodia's recent transgressions. In particular, the World Bank has issued a stark warning that Cambodia's actions are jeopardizing the millions of dollars in international financial assistance that it receives each year.

I call upon Prime Minister Hun Sen and the Cambodian Government to end this troubling series of events. Although the Cambodian Government has released Mr. Kern Sokha, Mr. Yeng Virak, Pa Nguon Teang, and other high-profile political prisoners on bail, the charges have not been dropped and other dissidents remain in custody. The Cambodian Government needs to release all political prisoners and drop the spurious charges being levied against them. These actions point to the obvious conclusion that democracy, the rule of law, and the protection of human rights are no longer priorities or principles of the Cambodian Government.

I also urge the international community to increase pressure on Cambodia to reverse its recent actions and to demonstrate to the world its commitment to freedom and to allowing its citizens to express their political opinions without fear and intimidation.

ADDITIONAL STATEMENTS

WELCOMING ROBERT MENENDEZ TO THE SENATE

• Mr. DURBIN. Mr. President, I join my colleagues in welcoming our newest colleague, Senator ROBERT MENENDEZ of New Jersey.

I also want to welcome Senator MENENDEZ's family, who I know are justifiably proud of his great achievements.

And I want to thank our former colleague, New Jersey Governor Jon

Corzine, for appointing an outstanding successor to finish his term. The people of New Jersey elected a top-notch Governor in Jon Corzine, and they will have another top-notch Senator in the bargain.

With FRANK LAUTENBERG and BOB MENENDEZ in the Senate, the people of New Jersey can be assured that they have two outstanding Senators in their corner, protecting their interests in Washington.

I have known BOB MENENDEZ for more than a decade. We served together for 4 years in the House of Representatives. It was during those years that Congress passed the historic 1993 budget agreement. That agreement—which passed by the thinnest of margins, just one vote in both the House and the Senate, without a single Republican vote—put the Federal budget back on the course of fiscal responsibility after 12 straight years of ever larger deficits. It also made smart, targeted investments in America's greatest resource: our people—to enable more Americans to realize the American dream.

That dream is no slogan to BOB MENENDEZ: it is the story of his life.

Like my mother, Senator MENENDEZ's parents came to America from a nation that had lost its freedom. In my mother's case, it was Lithuania. In his parents' case, the land was Cuba.

Like so many first-generation Americans throughout our history, Senator MENENDEZ inherited from his parents a deep appreciation for American freedom and opportunity, as well as a deep sense of personal responsibility to help preserve and expand those blessings for all Americans.

Senator MENENDEZ entered public service at the age of 19, when he launched a successful petition drive to reform his local school board, and he has been fighting for education and opportunities for working families ever since. He has been a mayor, State legislator, House Member, and now, U.S. Senator.

He has never backed away from a fight—even to the point of wearing a bullet-proof vest when he challenged the political establishment in his hometown of Union City and led a coalition of reformers in cleaning it up.

He is the highest ranking Hispanic in the history of the House, and a proven leader. And I am proud today to call him "my fellow Senator."

Welcome to the U.S. Senate, Senator MENENDEZ.●

MASS EVACUATION EXERCISE ASSISTANCE ACT

● Mr. DURBIN. Mr. President, I have introduced the Mass Evacuation Exercise Assistance Act, S. 2043. As we witnessed in the wake of recent natural disasters, our cities face special challenges and vulnerabilities when disaster strikes.

Part of disaster preparation at any level of government includes having well prepared and practiced evacuation plans. Otherwise, citizens can easily become trapped without food or water in a devastated area or along an escape route. To help cities prepare for future emergencies and evacuations, this bill will authorize a new 5-year grant program that will endow local governments with the funds to develop comprehensive evacuation plans, stage drills and exercises to perfect evacuation procedures, and stockpile materials to supply evacuation staging areas and evacuation routes. This legislation will serve to supplement existing grant programs rather than compete for already scarce homeland security grant funding.

I hope that my colleagues will join me in this effort that will simply provide cities and States with the proper planning, preparation, and resources to ensure that their citizens will be evacuated quickly and safely should a natural disaster or terrorist attack occur. Our citizens deserve no less.●

HONORING OUR ARMED FORCES

CORPORAL BRETT LEE LUNDSTROM

● Mr. JOHNSON. Mr. President, today I pay tribute to CPL Brett Lundstrom and his heroic service to our country. As a member of the 2nd Marine Expeditionary Force based in North Carolina, Corporal Lundstrom was killed in action near Fallujah on January 7, 2006 while serving in support of Operation Iraqi Freedom.

Brett was born in Vermillion, SD, and he was a member of the Oglala Sioux Tribe. Brett, who was also the proud son of a marine who served his country for 20 years, chose to follow in his father Ed Lundstrom's footsteps. By enlisting in the Marine Corps following the September 11th terrorist attacks, Brett firmly believed he could make a difference.

Doyla Lundstrom, Brett's mother, remembers her son as someone who "loved people, and people loved Brett." Brett's friendly personality was infectious and "he lit up a room when he walked in." A true soldier, Ed recalled that Brett believed in his mission. Without question, he was an exemplary soldier and an example for all those with whom he served.

Brett's goodwill and service touched the lives of many people. Although his life was cut short, he continues to inspire all those who knew him. Our Nation owes him a debt of gratitude, and the best way to honor his life is to emulate his commitment to our country.

Mr. President, I join with all South Dakotans in expressing my deepest sympathy to the family of CPL Brett Lundstrom. He will be missed, but his service to our Nation will never be forgotten.●

PRIVATE JONATHAN R. PFENDER

● Mr. BAYH. Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave young man from Evansville. Jonathan Pfender, 22 years old, died on December 30 when an improvised explosive device detonated near his vehicle during a patrol in Bayji, Iraq. With his entire life before him, Jonathan risked everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

A 2001 graduate of North Posey High School, Jonathan decided to leave his job at the Evansville Pizza Hut to pursue a career in the Army. According to his mother, Jonathan was not satisfied with the direction his life was taking and decided to change course by joining the military, an idea he had contemplated since junior high school. Remembered as a likeable, fun-loving and passionate young man who loved serving in the Army, Jonathan was the pride of his family and headed to Iraq with their full support. His mother recounted to a local newspaper, "[His coworkers] were crazy about him. Everyone was, you couldn't not fall in love with him."

Jonathan was killed while serving his country in Operation Iraqi Freedom. He was a member of the 1st Battalion, 187th Infantry Regiment, 3rd Combat Team of the 101st Airborne Division based at Fort Campbell, KY. This brave young soldier leaves behind his mother and stepfather, Peggy Jo and Jeff Hammond; his father and stepmother, Randy and Jackie Pfender; a 26-year-old brother; a 1-year-old half brother; stepsiblings and other relatives.

Today, I join Jonathan's family and friends in mourning his death. While we struggle to bear our sorrow over this loss, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is his courage and strength of character that people will remember when they think of Jonathan, a memory that will burn brightly during these continuing days of conflict and grief.

Jonathan was known for his dedication to his family and his love of country. Today and always, Jonathan will be remembered by family members, friends and fellow Hoosiers as a true American hero and we honor the sacrifice he made while dutifully serving his country.

As I search for words to do justice in honoring Jonathan's sacrifice, I am reminded of President Lincoln's remarks as he addressed the families of the fallen soldiers in Gettysburg: "We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here." This statement is just as true today as it was nearly 150 years ago, as I am certain that the impact of Jonathan's actions will live on far longer that any record of these words.

It is my sad duty to enter the name of Jonathan Pfender in the official record of the United States Senate for his service to this country and for his profound commitment to freedom, democracy and peace. When I think about this just cause in which we are engaged, and the unfortunate pain that comes with the loss of our heroes, I hope that families like Jonathan's can find comfort in the words of the prophet Isaiah who said, "He will swallow up death in victory; and the Lord God will wipe away tears from off all faces."

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Jonathan.●

THE CONFIRMATION OF GREG VAN TATENHOVE

● Mr. BUNNING. Mr. President, I am so happy the U.S. Senate confirmed Greg Van Tatenhove to sit on the Federal judicial bench.

By sending his nomination to the U.S. Senate, President Bush has presented the American people with a top-notch candidate for our Federal bench in the Eastern District of Kentucky.

Greg has great experience and strong qualifications. Although he is not originally from Kentucky, he made a smart decision by making a permanent move to our Commonwealth. Greg also received a great education from both Kentucky's Asbury College and the University of Kentucky College of Law. I am proud to call Greg a fellow Kentuckian.

Greg has worked two stints for members of Kentucky's Federal congressional delegation Senator McCONNELL and Representative RON LEWIS. Greg also served as a judicial law clerk in U.S. District Court, and he served in the U.S. Department of Justice's Civil Division as a trial attorney. Over the last 4 years Greg has served admirably as a U.S. Attorney for the Eastern District of Kentucky.

His time on Capitol Hill, in the Department of Justice, and within our judicial system has given Greg a wealth of knowledge and experience which can only make him a better judge. Clearly, Greg possesses the wisdom, temperament, and character to be a Federal judge. President George W. Bush and the U.S. Senate have done well working together to ensure Greg's nomination and confirmation for service as a Federal judge.

I am proud to support Greg's elevation for this Federal judgeship, and I am thankful to Chairman SPECTER and Ranking Member LEAHY, too, for their leadership on the U.S. Senate's Judiciary Committee to ensure the swift approval of Greg's confirmation. The United States and Kentucky are better off with Greg serving their citizens.●

OREGON'S DEATH WITH DIGNITY ACT

● Mr. WYDEN. Mr. President, consistent with my practice of announcing publicly my intent to object to unanimous consent requests, I am asking to have printed in the RECORD a letter to Senator REID dated January 18, 2006. It explains that I will use every legislative and procedural tool at my disposal as a U.S. Senator to block any attempt to affect in any way Oregon's Death With Dignity Act, which the Supreme Court upheld yesterday.

The letter follows.

U.S. SENATE,
Washington, DC, January 18, 2006.

Hon. HARRY REID,
Minority Leader,
The Capitol, Washington, DC.

DEAR LEADER REID: I am writing to inform you of my intent to object to any unanimous consent request to consider any measure or matter that might affect end of life care generally and Oregon's Death With Dignity Act in particular.

As you know, the U.S. Supreme Court yesterday upheld Oregon's unique Death with Dignity Act, and I intend to use every legislative and procedural tool at my disposal as a United States Senator to block any attempt to overturn, invalidate or otherwise affect Oregon's law in any way.

Consistent with my practice of publicly announcing my intent to place a "hold" on a measure or matter, I will ask that this letter be printed in the Congressional Record. If your staff has any questions, please feel free to contact my Legislative and Policy Director, Carole Grunberg, or my Senior Health Policy Advisor, Stephanie Kennan at 224-5244.

Sincerely,

RON WYDEN,
U.S. Senator.●

BILL O'NEILL

● Mr. LEAHY. Mr. President, I wish today to acknowledge the good work of Bill O'Neill, a document checker at the Burlington International Airport in Vermont.

I routinely fly between Burlington and Washington, and it is always a pleasure to see Bill at the ID checking stand. He and I have been friends for decades.

I was pleased to see an article about Bill in the December 27, 2005, Burlington Free Press. I ask that a copy of the article be printed in the RECORD. I know that once they read it, my colleagues will look forward to traveling through the Burlington airport as much as I do.

The article follows.

[From the Burlington Free Press, Dec. 27, 2005]

SECURITY WITH A SMILE. AIRPORT SCREENER BILL O'NEILL HELPS TAKE STRESS OUT OF FLYING

(By Emily Guziak)

SOUTH BURLINGTON.—Bill O'Neill's job does not require that he fawn over babies.

Nor does it require that he greet everyone he meets by name with a heartfelt good morning, put their various airline receipts in order, hold cups of coffee, or provide tips on how to switch planes at the next destination.

O'Neill, a document checker for PrimeFlight Aviation Services at Burlington International Airport, is simply required to check departing passengers' identification, boarding passes and number and size of carry-on items.

For frequent travelers, the document checker is often the nameless, faceless, overly efficient person hurrying passengers into inevitable security lines. For bleary-eyed, often-harried early morning travelers in Burlington, O'Neill's station at Gate One is an oasis in the rush of processing passengers through ticket check-in and Transportation Security Administration security clearance.

"He's brilliant; he's great," said business traveler J.P. Tardy, of Charlotte, N.C., queuing up in the security line for United Airline's 7:48 a.m. flight to Chicago on a recent weekday morning. "He absolutely makes this airport."

O'Neill, 72, is the document checker for United Airlines and US Airways passengers, from 4:30 a.m. to 12:30 p.m. Thursdays, Fridays and Saturdays. His upbeat, helpful manner never wavers, those working around him say.

"He's very people-oriented; people like him," said Mark Salisbury, supervisor, transportation security officer, for TSA at Burlington International Airport. Salisbury supervises the security checkpoint near O'Neill's station. "He's worked in the business for a long time, so I'm sure he's seen it all. He's just a very nice guy. And he's very helpful, especially for older folks."

"You feel like you're being greeted, rather than just being moved into the line by a security person," said Deedee O'Brien of Shelburne, en route to Los Angeles on the Chicago flight. "I think he was here when we traveled six months ago. He's such a nice person."

O'Neill's performance should be catching the attention of all those marketing gurus out there trying to sell the quintessential New England hometown atmosphere. At 6:30 a.m., as passengers went through O'Neill's station, the mood of some travelers changed from tense to relaxed.

"He provides the best service I've ever had," said Dan Grant, of Seattle, a weekly business traveler. "If you fly a lot and go through the larger airports, you can get kind of beaten down. You're lucky if you can get a word out of people in his job."

He is in command at his post. "You can put that ID away: you won't need it anymore today and your boarding pass to Philly is right here," O'Neill quietly and calmly told one of the people in the steady stream of departing passengers. "I thank you, and you have a good day."

"He takes the hassle out of what travel has become," said Andy Tomlinson of South Burlington, on her way "to go home and do the Santa thing" with family in California. "He's great."

A United Airlines employee for 32 years, O'Neill retired in 1998 and returned to work in March for extra income. He is employed by PrimeFlight Aviation of Nashville, Tenn. The company has 4,000 employees in 50 airports in the United States providing a variety of services. In Burlington, United Airlines and US Airways contract with PrimeFlight to provide five document checkers.

O'Neill also has the task of informing passengers when they have been randomly selected by the airlines for an additional search, and must proceed to the line to their right, rather than left. "People can resent it, especially if they're in a hurry," O'Neill said.

"I tell them, I 'fly free because I have a golden pass, and every time I fly the computer randomly selects me because it reads my ticket as cash, one-way and automatically makes me a selectee. I tell them their special search is no different than mine and it often makes them feel better.;"

"He is just fantastic," said Thane Butt, of Shelburne, flying to Chicago with her husband, Peter. Butt jokingly asked the bushy-eyebrowed O'Neill if he was Andy Rooney.

"I've been asked that a few times," said the unflappable O'Neill.

"He makes you feel like you're not just another person," said Dr. Alan Segal of South Burlington. "And he's got one of those faces; he looks like everyone's grandfather."•

PILOT KNOB ELEMENTARY SCHOOL, EAGAN, MINNESOTA

• Mr. DAYTON. Mr. President, today I wish to honor Pilot Knob Elementary School in Eagan, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

Pilot Knob Elementary School, which serves a diverse population of 375 children in kindergarten through grade four, is truly a model of educational success. The school boasts a 96 percent attendance rate; test scores are well above average for most students; and many of the teachers are leaders in their fields. Pilot Knob Elementary has also devised an innovative approach to address bullying in school. Through its "Take Time To Be Kind" program, nine fourth graders donate their recess time to spread goodwill in the hallways, creating a safe and kind learning environment for all students.

In addition to its students, Pilot Knob Elementary is also committed to its community. Recently, students raised $1,700 for UNICEF, to help victims of the tsunami in South Asia, and a similarly successful fundraising effort benefited a local shelter for homeless families. The school regularly opens its doors to the citizens of Eagan, welcoming not only staff and students but also parents, siblings, and neighbors to special school activities. Pilot Knob hosts a wide range of community events: from musical concerts to art and book fairs, to science experiment demonstrations, to ice cream socials.

Much of the credit for Pilot Knob's success belongs to its principal, Byron Schwab, who was Minnesota's Principal of the Year in 2001. Principal Schwab and the dedicated faculty at Pilot Knob Elementary understand that, in order to be successful, a school must go beyond achieving academic success; it must also create a nurturing environment, where students learn the importance of respecting one another and the value of their community. All of the faculty, staff, and students at Pilot Knob Elementary should be very proud of their accomplishments.

I congratulate Pilot Knob Elementary School in Eagan for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.•

AWARD FOR EXCELLENCE IN EDUCATION PRESENTED TO EDINA PUBLIC SCHOOLS, EDINA, MINNESOTA

• Mr. DAYTON. Mr. President, I wish to also honor the Edina Public School District, serving Edina, MN, which recently earned an Award for Excellence in Education for its exceptional achievements in educating children.

The Edina Public School District is committed to instilling in its students not only knowledge, but also a sense of self-worth, creativity, and strong ethical values. To achieve these goals, Edina Public Schools offer a wide array of educational opportunities tailored to the diverse needs of its students. Students with limited English proficiency benefit from an exceptionally fine English as a Second Language program; more advanced learners are given new challenges through the district's Gifted Education Program; and students with special needs receive additional help through an outstanding Special Education program.

Edina Public Schools also challenge students outside of the classroom. The district's top-notch athletic programs and team sports help students learn the value of both cooperation and competition. Student musicians, actors, and artists benefit from highly acclaimed musical, theatrical, and artistic cocurricular programs. Over 90 percent of Edina Public Schools' student body participate in cocurricular activities.

The Edina Public School District recognizes that it must constantly adapt and improve its curricula to meet the ever-changing needs of its students. The district's superintendent, Dr. Kenneth Dragseth, and the dedicated faculty are always willing to incorporate new techniques and approaches to teaching. As a result, 95 percent of Edina High School's graduates who attend college report being well prepared for their college experience.

All of the faculty, staff, and students at Edina Public Schools should be very proud of their accomplishments. I congratulate the Edina Public School District for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.•

COMMUNITY LEARNING CENTER OF AUSTIN, MINNESOTA

• Mr. DAYTON. Mr. President, I further wish to honor the Community Learning Center in Austin, MN, which has earned an Award for Excellence in Education, for its outstanding commitment to lifelong learning. The Community Learning Center provides educational opportunities for students of all ages and skill levels—from infants to senior citizens.

The Community Learning Center offers programs tailored to every type of learner, including, early childhood family education for parents and their young children; early childhood special education for students with special needs; adult basic education and family literacy for adults with limited reading and English skills; and community education, which offers ongoing education for all community members.

The Community Learning Center is committed not only to lifelong learning but also to the empowerment and better quality of life that education makes possible. The center's learning programs help students to break the cycle of poverty, imparting skills that expand their opportunities for employment and that illuminate the value of education for children. The center is a model of quality education and community outreach and has enriched the lives of thousands of students. All of the center's faculty, staff, and students should be very proud of their accomplishments.

I congratulate the Community Learning Center in Austin for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.•

LINTON POLICE DEPARTMENT

• Mr. BAYH. Mr. President, today I wish to pay tribute to the Linton Police Department and their Chief of Police, Keith McDonald. I also want to take a moment to recognize Linton's Drug Task Force Officer Joshua Goodman.

Under the leadership of Chief McDonald, the Linton Police Department has increased its drug arrests by nearly 500 percent over the past 5 years. Most recently, the department executed a drug bust that resulted in the seizure of approximately $250,000 worth of methamphetamine—one of the largest drug busts in the western part of the State.

Methamphetamine is currently one of the fastest-growing drug threats in the Nation, and the problem is particularly acute in the Midwest and Indiana. In Indiana, the number of meth labs has increased 750 percent over the last 5 years and the meth industry costs the State at least $100 million a year.

Indiana's epidemic of meth use destroys families, places undue burdens on taxpayers, and exhausts child service resources. Hoosier families depend on local law enforcement officers to protect their children and keep their communities strong. In the face of the growing meth epidemic and despite an increasing number of homeland security responsibilities, the Linton Police

Department and other police departments across the State have risen to the challenge. With the help of tougher State meth laws, these local police forces have succeeded in reducing the number of meth labs across Indiana.

But they need more support from the Federal Government. Local police forces, like Linton's, are already stretched thin as they respond to a growing number of homeland security challenges. Nothing short of a national commitment with tough, innovative laws will stop the spread of this terrible drug that is threatening our communities. For this reason, I coponsored the Combat Meth Act in 2004 to provide a nationwide approach that gives police officers the tools they need to fend off the creation of new meth labs and helps families rebuild their lives. I am hopeful that this legislation will help Linton and other towns continue to succeed in their fight against the meth scourge.

I wanted to take the time to recognize the Linton Police Department today, because as our Nation faces increasingly uncertain times, including the escalation of the meth epidemic, it is our first responders who are our primary line of defense. In all areas, but especially the fight against meth, Linton's Police Department has gone well beyond the call of duty.

On behalf of the State of Indiana, I thank the Linton Police Department for helping keep Greene County's streets safe and its community strong and meth-free. It is my honor to enter this tribute in the official record of the United States Senate in recognition of the Linton Police Department's extraordinary commitment to the citizens of Greene County.•

TOURETTE SYNDROME OUTREACH AND RESEARCH

• Mr. SMITH. Mr. President, I applaud Congress for including $1.8 million for Tourette Syndrome research in H.R. 3010, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 2006.

Tourette Syndrome is an inherited neurobiological disorder that manifests itself in rapid, repeated, and involuntary movements and sounds. The disorder affects approximately 200,000 adults and children across America. While there is no cure for Tourette Syndrome, some individuals benefit from education and other clinical treatment.

To further develop educational outreach and research programs, Congress established the Tourette Syndrome Education and Research Program within the Centers for Disease Control and Prevention in 2000. Today, this program provides education about Tourette Syndrome for the public, physicians, allied healthcare workers and teachers. Additionally, the program's intensive training initiatives aim to increase recognition and diagnosis of Tourette Syndrome and to decrease the associated stigma.

Over the past 2 years, the Tourette Syndrome Association, the only national nonprofit membership organization dedicated to finding the cause, finding a cure, and controlling the effects of Tourette Syndrome, has acted in partnership with the CDC to expand educational outreach. In its first year working with the CDC, the Tourette Syndrome Association offered 25 expert medical education programs, as well as five major education allied professional programs. In 2006, the association plans to expand upon these efforts and to offer training for neurologists in both English and Spanish.

Mr. President, I encourage the CDC to continue its partnership with the Tourette Syndrome Association as the agency plans its research and education strategy for fiscal year 2006. By building and expanding on past collaborative efforts, the CDC and the Tourette Syndrome Association can bring hope to families affected by the disorder.•

COMMEMORATING DR. MARTIN LUTHER KING, JR. DAY

• Mr. PRYOR. Mr. President, Dr. King was a light for America. At times, he was a searching, probing light in the dark, seeking to find the truth and expose it to all humanity. He spoke plainly and eloquently of the great injustices that were occurring during his time. He focused his spotlight on places like Selma, Atlanta, Birmingham, and Little Rock, places that were in such need of healing at that time. And he was often a stark, blinding light for many in this country who were unwilling to come to terms with the great evil represented in segregation, discrimination, and humiliation, all of which were fueled by hatred and ignorance.

For so many people of his generation, Dr. King was the first light of the morning, awakening them from their naive slumber to confront great moral questions. He and all the champions of the civil rights movement are responsible for forcing America to look inward and recognize the sickness that plagued our Nation's soul. Supreme Court Justice Louis Brandeis once said that "sunlight is the best disinfectant." Dr. King fully recognized the meaning of these words as he exposed our culture's illness to the light of day, eventually helping America begin to heal.

He was also a guiding light, navigating the civil rights movement through largely uncharted waters, and helping a great many minority Americans come to the realization that they were all in the same boat. They were no longer alone in their struggle against oppression. Indeed, there were many at the time who cautioned against "rocking the boat" too much. But King's leadership proved to a weary and discouraged people that there was a great Promised Land at the end of their journey. The path he illuminated required the strongest of wills, and for that guiding light, we are all thankful.

Since Dr. King's time, the American people have made great strides toward racial equality and the elimination of poverty, yet there still remains much to be accomplished. And in the spirit of Dr. King's life, our Nation must continue to turn the light inward and expose injustice. Dr. King's purpose in life did not end in his death, nor did it end in the court cases and legislation that have further expanded freedom and opportunity in America since that time. Dr. Martin Luther King's legacy is an undying light that serves as a constant reminder of the noblest cause to protect and promote liberty that our Nation began with its founding. His undying light also calls on us never to forget our humanity. Even a country founded on the highest moral principles can retreat into oppression and injustice in periods of darkness. For helping lead us out of the darkness, we honor Dr. King on this day, and we pledge to always remember the struggle that marches on.•

• Mr. KYL. Mr. President, earlier this week, our Nation celebrated Martin Luther King Day. The Reverend Dr. Martin Luther King, Jr., would have been 77 years old on January 16. It was a day to reflect on the life of a man admired for the dream he dreamed for America, and for his words and deeds in pursuit of it.

He dreamed, as he famously said, "that one day this nation will rise up and live out the true meaning of its creed: 'We hold these truths to be self-evident: that all men are created equal.'" Dr. King argued, in words that stir the heart, that racial segregation must end in the South and that Black Americans must be granted their citizenship rights throughout the land and throughout our institutions: in education, in employment, in housing, and in the voting booth.

His role in the push for full voting rights for African Americans is well known but bears repeating. In the spring of 1965, a national television audience was shocked by broadcasts of State troopers and sheriff's deputies brutally repulsing voting rights protesters in Selma, AL. Hours later, Dr. King declared: "No American is without responsibility." He went to Alabama and led a march, under Federal protection, from Selma to the State capital. The event garnered national support and provided momentum for congressional passage of the Voting Rights Act later that year.

Dr. King appreciated the blessings of freedom; he wanted them for his people, and for all people. We remember this Protestant minister's eloquence and also his sense of spiritual mission—he was an ecumenical religious leader who brought people of all faiths, all races, together in mutual respect for one another.

As Taylor Branch, his biographer, put it: "His oratory fused the political promise of equal votes with the spiritual doctrine of equal souls."

His belief in nonviolent protest convinced those who listened to him that here was the high road to vindicating the rights of Black people in this country. It is a bitter fact that he lost his life to violence—he was only 39 when an assassin's bullet cut him down in Memphis—and it makes us understand his great courage in taking on the burden of leadership.

In officially celebrating the life of Dr. King, we celebrate the end of legal segregation and the many inroads we have made against racism and discrimination. Of course, there is more we must do to make sure all Americans enjoy the blessings of freedom. He would tell us that, if he were here. He would also insist that we continue on in his way: with passion and with civility, calling on our fellow human beings to act on their best instincts, not their worst.

Dr. King, who won the Nobel Peace Prize in 1964, is a model here and around the world—from China, and the 1989 antigovernment protests in Tiananmen Square, to South Africa, where apartheid rule gave way in 1990 without provoking the civil war many had feared. In encouraging the holding of free elections and the formation of institutions of civil society in faraway places today, we promote the idea that Martin Luther King put forward so well: that the nonviolent settling of differences among men is the bedrock of democracy.

Let us all take inspiration from the King legacy this week, Mr. President, and every week.•

REFOCUSING ON GUN SAFETY

• Mr. LEVIN. Mr. President, nearly 100,000 children and teenagers have been killed by firearms since 1979. This figure underscores the inadequacy of Congress' efforts to address the issue of gun violence over this period and the continuing need for common sense gun safety legislation.

An analysis of firearm violence data by the Children's Defense Fund found that guns kill more children between the ages of 10 and 19 than any other cause except car accidents. In 2002, the most recent data available, guns killed 2,867 children under 19 years old. Tragically, that means an average of nearly 8 children are killed by guns each day. Additionally, the CDF estimates that at least four times as many children are injured in non-fatal shootings.

The number of firearms deaths among American children is greater than any other nation in the world. In fact, the Children's Defense Fund states in its 2005 annual report that the rate of deaths among children under 15 years old is higher in the United States than in 25 other industrialized nations combined. While the gun violence epidemic in this country cannot simply be legislated away, Congress must do more to address the problem.

The Children's Defense Fund makes a number of recommendations to protect children from gun violence. Among other things, the CDF suggests removing guns from homes, providing nonviolent conflict resolution courses for all students, and creating positive community activities for children to reduce the influence of gangs and drugs on children and teenagers. Congress can take an active role in these efforts by taking up and passing common sense gun safety legislation, supporting federal funding for law enforcement and community programs, and focusing the media and public attention on the causes and consequences of gun violence.

During recent sessions of Congress, very little has been done to reduce the prevalence of gun violence. In 2004, inaction by President Bush and the Republican leadership in Congress led to the expiration of the 1994 Assault Weapons Ban. In 2005, Congress passed, and the President signed, National Rifle Association-sponsored legislation that provided blanket immunity from liability to reckless and negligent gun dealers and manufacturers. While doing so, Congress repeatedly cut Federal funding for proven local law enforcement programs and failed to close the gun show loophole.

As we begin the second session of the 109th Congress, I am hopeful greater attention will be paid to finding solutions to the gun violence problems that plague our communities. We owe it to the thousands of families who have already been impacted by firearms tragedies to help prevent such things from happening to others.•

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a withdrawal which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE DURING ADJOURNMENT

ENROLLED BILLS SIGNED

Under authority of the order of the Senate of January 4, 2005, the Secretary of the Senate, on December 28, 2005, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker pro tempore (Mr. DAVIS, of Virginia) has signed the following enrolled bills:

S. 2167. An act to amend the USA PATRIOT ACT to extend the sunset of certain provisions of that Act and the lone wolf provision of the Intelligence Reform and Terrorism Prevention Act of 2004 to July 1, 2006.

H.R. 2863. An act making appropriations for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes.

H.R. 3010. An act making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2006, and for other purposes.

H.R. 4525. An act to temporarily extend the programs under the Higher Education Act of 1965, and for other purposes.

H.R. 4579. An act to amend title I of the Employee Retirement Income Security Act of 1974, title XXVII of the Public Health Service Act, and the Internal Revenue Code of 1986 to extend by one year provisions requiring parity in the application of certain limits to mental health benefits.

H.R. 4635. An act to reauthorize the Temporary Assistance for Needy Families block grant program through March 31, 2006, and for other purposes.

Under the authority of the order of December 22, 2005, the enrolled bills were signed by the Acting President pro tempore (Mr. ALLEN) during the adjournment of the Senate, on December 28, 2005.

ENROLLED BILLS SIGNED

Under authority of the order of the Senate of January 4, 2005, the Secretary of the Senate, on December 30, 2005, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker pro tempore (Mr. DAVIS, of Virginia) has signed the following enrolled bills:

H.R. 972. An act to authorize appropriations for fiscal years 2006 and 2007 for the Trafficking Victims Protection Act of 2000, and for other purposes.

H.R. 1815. An act to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

H.R. 2017. An act to amend the Torture Victims Relief Act of 1998 to authorize appropriations to provide assistance for domestic and foreign programs and centers for the treatment of victims of torture, and for other purposes.

H.R. 3179. An act to reauthorize and amend the Junior Duck Stamp Conservation and Design Program Act of 1994.

H.R. 3402. An act to authorize appropriations for the Department of Justice for fiscal years 2006 through 2009, and for other purposes.

H.R. 4501. An act to amend the Passport Act of June 4, 1920, to authorize the Secretary of State to establish and collect a surcharge to cover the costs of meeting the increased demand for passports as a result of actions taken to comply with section 7209(b) of the Intelligence Reform and Terrorism Prevention Act of 2004.

H.R. 4637. An act to make certain technical corrections in amendments made by the Energy Policy Act of 2005.

Under the authority of the order of December 22, 2005, the enrolled bills were signed by the Acting President pro tempore (Mr. ALLEN) during the adjournment of the Senate, on December 30, 2005.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, December 22, 2005, she had presented to the President of the United States the following enrolled bills:

S. 205. An act to authorize the American Battle Monuments Commission to establish in the State of Louisiana a memorial to honor the Buffalo Soldiers.

S. 652. An act to provide financial assistance for the rehabilitation of the Benjamin Franklin National Memorial in Philadelphia, Pennsylvania, and the development of an exhibit to commemorate the 300th anniversary of the birth of Benjamin Franklin.

S. 1238. An act to amend the Public Lands Corps Act of 1993 to provide for the conduct of projects that protect forests, and for other purposes.

S. 1310. An act to authorize the Secretary of the Interior to allow the Columbia Gas Transmission Corporation to increase the diameter of a natural gas pipeline located in the Delaware Water Gap National Recreation Area, to allow certain commercial vehicles to continue to use Route 209 within the Delaware Water Gap National Recreation Area, and to extend the termination date of the National Park System Advisory Board to January 1, 2007.

S. 1481. An act to amend the Indian Land Consolidation Act to provide for probate reform.

S. 1892. An act to amend Public Law 107–153 to modify a certain date.

S. 1988. An act to authorize the transfer of items in the War Reserves Stockpile for Allies, Korea.

The Secretary of the Senate reported that on today, December 23, 2005, she had presented to the President of the United States the following enrolled bill:

S. 1281. An act to authorize the programs of the National Aeronautics and Space Administration.

The Secretary of the Senate reported that on today, December 28, 2005, she had presented to the President of the United States the following enrolled bill:

S. 2167. An act to amend the USA PATRIOT Act to extend the sunset of certain provisions of that Act and the lone wolf provision of the Intelligence Reform and Terrorism Prevention Act of 2004 to July 1, 2006.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5120. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, the Annual Report on Civil Works Activities for Fiscal Year 2004; to the Committee on Environment and Public Works.

EC–5121. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Requirements for 2006" (FRL No. 8017–1) received on January 3, 2006; to the Committee on Environment and Public Works.

EC–5122. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Protection of Stratospheric Ozone: Extension of Global Laboratory and Analytical Use Exemption for Essential Class I Ozone Depleting Substances" (FRL No. 8016–7) received on January 3, 2006; to the Committee on Environment and Public Works.

EC–5123. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of the Evansville Area to Attainment of the 8-Hour Ozone Standard" (FRL No. 8015–7) received on January 3, 2006; to the Committee on Environment and Public Works.

EC–5124. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Protection of Stratospheric Ozone: Adjusting Allowances for Class I Substances for Export to Article 5 Countries" (FRL No. 8017–2) received on January 3, 2006; to the Committee on Environment and Public Works.

EC–5125. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)" (FRL No. 7749–4) received on January 3, 2006; to the Committee on Environment and Public Works.

EC–5126. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Emergency Episode Avoidance Plan; Direct Final Rule" (FRL No. 8012–8) received on January 3, 2006; to the Committee on Environment and Public Works.

EC–5127. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Air Quality Implementation Plans; Virginia; Redesignation of the City of Fredericksburg, Spotsylvania County, and Stafford County Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan" (FRL No. 8012–2) received on January 3, 2006; to the Committee on Environment and Public Works.

EC–5128. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Air Quality Implementation Plans; Virginia; Redesignation of the Shenandoah National Park Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan" (FRL No. 8012–3) received on January 3, 2006; to the Committee on Environment and Public Works.

EC–5129. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; Alabama; Nitrogen Oxide Budget and Allowance Trading Program, Phase II" (FRL No. 8014–9) received on January 3, 2006; to the Committee on Environment and Public Works.

EC–5130. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; Tennessee and Nashville-Davidson County; Approval of Revisions to the State Implementation Plan" (FRL No. 8014–6) received on January 3, 2006; to the Committee on Environment and Public Works.

EC–5131. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; Tennessee; Nitrogen Oxides Budget and Allowance Trading Program, Phase II" (FRL No. 8015–2) received on January 3, 2006; to the Committee on Environment and Public Works.

EC–5132. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion" (FRL No. 8012–4) received on January 3, 2006; to the Committee on Environment and Public Works.

EC–5133. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration" (FRL No. 8011–5) received on January 3, 2006; to the Committee on Environment and Public Works.

EC–5134. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing" (FRL No. 8011–6) received on January 3, 2006; to the Committee on Environment and Public Works.

EC–5135. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment Rule" (FRL No. 8013–1) received on January 3, 2006; to the Committee on Environment and Public Works.

EC–5136. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule" (FRL No. 8012–1) received on January 3, 2006; to the Committee on Environment and Public Works.

EC–5137. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Regulation of Fuel and Fuel Additives: Extension of California Enforcement Exemptions for Reformulated Gasoline to California Phase 3 Gasoline" (FRL No. 8011–4) received on January 3, 2006; to the Committee on Environment and Public Works.

EC–5138. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of the Vigo County Nonattainment Area to Attainment of the 8-Hour Ozone Standard" (FRL No. 8019–5) received on January 4, 2006; to the Committee on Environment and Public Works .

EC–5139. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Emission Durability Procedures for New Light-Duty Vehicles, Light-Duty Trucks and Heavy-Duty Vehicles" (FRL No. 8019–2) received on January 4, 2006; to the Committee on Environment and Public Works.

EC–5140. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans" (FRL No. 8018–9) received on January 4, 2006; to the Committee on Environment and Public Works.

EC–5141. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Protection of Stratospheric Ozone: Extension of Global Laboratory and Analytical Use Exemption for Essential Class I Ozone Depleting Substances" (FRL No. 8016–7) received on January 4, 2006; to the Committee on Environment and Public Works.

EC–5142. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Requirements for 2006" (FRL No . 8017–1) received on January 4, 2006; to the Committee on Environment and Public Works.

EC–5143. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of the Evansville Area to Attainment of the 8-Hour Ozone Standard" (FRL No. 8015–7) received on January 4, 2006; to the Committee on Environment and Public Works.

EC–5144. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Protection of Stratospheric Ozone: Adjusting Allowances for Class I Substances for Export to Article 5 Countries" (FRL No. 8017–2) received on January 4, 2006; to the Committee on Environment and Public Works.

EC–5145. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Allotment Formula for Clean Water Act (CWA) Section 106 Funds; Amendment" (FRL No. 8017–9) received on January 4, 2006; to the Committee on Environment and Public Works.

EC–5146. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Revisions to the California State Implementation Plan, South Coast Air Quality Management District" (FRL No. 8010–7) received on January 4, 2006; to the Committee on Environment and Public Works.

EC–5147. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Revisions to the California State Implementation Plan, San Diego County Air Pollution Control District" (FRL No. 8007–6) received on January 4, 2006; to the Committee on Environment and Public Works.

EC–5148. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Tennessee; Redesignation of the Montgomery County, Tennessee Portion of the Clarksville-Hopkinsville 8-Hour Ozone Nonattainment Area to Attainment; Correction " (FRL No. 8014–3) received on January 4, 2006; to the Committee on Environment and Public Works.

EC–5149. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Delegation of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants for States of Arizona, California, Hawaii, and Nevada" (FRL No. 8013–4) received on January 4, 2006; to the Committee on Environment and Public Works.

EC–5150. A communication from the Assistant Administrator, Office of Administration and Resources Management, Environmental Protection Agency, transmitting, pursuant to law, the Agency's Buy American Act Report for Fiscal Year 2004; to the Committee on Environment and Public Works.

EC–5151. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Revision to the Privacy Act Regulations" (FRL No. 8017–7) received on January 4, 2006; to the Committee on Environment and Public Works.

EC–5152. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report relative to improvements to the Inland waterway navigation projects on the Ohio River at John T. Myers Locks and Dam, Indiana and Kentucky, and Greenup Locks and Dam, Ohio and Kentucky; to the Committee on Environment and Public Works.

EC–5153. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report relative to the construction of an ecosystem restoration project for the Stillaguamish River Basin, Snohomish County, Washington; to the Committee on Environment and Public Works.

EC–5154. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report relative to the construction of the ecosystem restoration project for the Green/Duwamish River Basin, King County, Washington; to the Committee on Environment and Public Works.

EC–5155. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the Office of Personnel Management's annual report on competitive sourcing; to the Committee on Homeland Security and Governmental Affairs.

EC–5156. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the Office of Personnel Management's Annual Report to Congress on Veterans' Employment in the Federal Government—Fiscal Year 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–5157. A communication from the Acting Chief Financial Officer, Federal Trade Commission, transmitting, pursuant to law, the Commission's Fiscal Year 2005 Performance and Accountability Report; to the Committee on Homeland Security and Governmental Affairs.

EC–5158. A communication from the Director, U.S. Trade and Development Agency, transmitting, pursuant to law, the Agency's report on competitive sourcing efforts for fiscal year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5159. A communication from the Director of the Peace Corps , transmitting, pursuant to law, the semi-annual report of the Peace Corps Inspector General covering the period from April 1, 2005, through September 30, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5160. A communication from the Public Printer, Government Printing Office, transmitting, pursuant to law, the Office's Annual Report for Fiscal Year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5161. A communication from the Chief Executive Officer, Corporation for National and Community Service, transmitting, pursuant to law, the Inspector General's Semi-Annual Report and the Corporation's Report on Final Action; to the Committee on Homeland Security and Governmental Affairs.

EC–5162. A communication from the Secretary of Education, transmitting, pursuant to law, the Semiannual Report to Congress on Audit Follow-Up, covering the period April 1, 2005 through September 30, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5163. A communication from the Chairman, National Endowment for the Arts, transmitting, pursuant to law, the Art Endowment's report on competitive sourcing efforts for fiscal years 2003, 2004, 2005 and plans for fiscal year 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5164. A communication from the President, James Madison Memorial Fellowship Foundation, transmitting, pursuant to law, the Foundation's 2005 consolidated annual report; to the Committee on Homeland Security and Governmental Affairs.

EC–5165. A communication from the Acting Administrator, General Services Administration, transmitting, the report of a draft bill to amend the Trible Amendment entitled "The Federal Childcare Enhancement Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5166. A communication from the Acting Administrator, General Services Administration, transmitting, pursuant to law, the Administration's fiscal year 2005 report on competitive sourcing efforts; to the Committee on Homeland Security and Governmental Affairs.

EC–5167. A communication from the Director of the Peace Corps , transmitting, pursuant to law, the Peace Corps' Performance and Accountability Report for Fiscal Year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5168. A communication from the Federal Co-Chair, Appalachian Regional Commission, transmitting, pursuant to law, the semiannual report of the Inspector General for the period April 1, 2005 through September 30, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5169. A communication from the General Counsel, Office of Government Ethics, transmitting, pursuant to law, the fiscal year 2005 annual report regarding the adequacy and effectiveness of the Office's management control systems; to the Committee on Homeland Security and Governmental Affairs.

EC–5170. A communication from the Deputy Director for Administration and Information Management, Office of Government Ethics, transmitting, pursuant to law, a report relative to competitions completed or initiated in fiscal year 2005 and plans for competitions for fiscal year 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5171. A communication from the Independent Counsel, Office of Independent Counsel, transmitting, pursuant to law, a report entitled "Annual Report (Year 2005) for the Office of Independent Counsel"; to the Committee on Homeland Security and Governmental Affairs.

EC–5172. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, a report relative to the Administration's internal accounting and administrative controls for fiscal year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5173. A communication from the Secretary, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled "Revisions to Accelerated Filer Definition and Accelerated Deadlines for Filing Periodic Reports" (RIN3235–AJ29) received on January 3, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5174. A communication from the Director, Insurance Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled "Suspension of Enrollment in the Federal Employees Health Benefits (FEHB) Program for Peace Corps Volunteers" (RIN3203–AK90) received on January 3, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5175. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report relative to adding a class of certain workers of the National Bureau of Standards to the Special Exposure Cohort; to the Committee on Health, Education, Labor, and Pensions.

EC–5176. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report relative to adding a class of certain workers of the Linde Ceramics Plant in Niagara Falls, New York, to the Special Exposure Cohort; to the Committee on Health, Education, Labor, and Pensions.

EC–5177. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled "Second Interim Report on the Informatics for Diabetes Education and Telemedicine (IDEATel) Demonstration: Final Report on Phase I"; to the Committee on Health, Education, Labor, and Pensions.

EC–5178. A communication from the Inspector General, Department of Labor, transmitting, pursuant to law, the Department's fiscal year 2005 competitive sourcing report; to the Committee on Health, Education, Labor, and Pensions.

EC–5179. A communication from the Secretary to the Board, Railroad Retirement Board, transmitting, pursuant to law, the Board's fiscal year 2005 competitive sourcing report; to the Committee on Health, Education, Labor, and Pensions.

EC–5180. A communication from the Secretary of Education, transmitting, pursuant to law, the Annual Report of the National Advisory Committee on Institutional Quality and Integrity for Fiscal Year 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–5181. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Investigational New Drugs: Export Requirements for Unapproved New Drug Products" ((RIN0910–AA61)(Docket No. 2000N–1663)) received on January 3, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5182. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Biological Products; Bacterial Vaccines and Toxoids; Implementation of Efficacy Review" (Docket No. 1980N–0208) received on January 3, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5183. A communication from the Regulations Coordinator, Health Resources and Services Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Simplification of the Grant Appeals Process" (RIN0906–AA69) received on January 4, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5184. A communication from the Regulations Coordinator, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000" received on January 4, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5185. A communication from the Acting Director, Directorate of Standards and Guidance, Occupational Safety and Health Administration, transmitting, pursuant to law, the report of a rule entitled "Roll-Over Protective Structures" (RIN1218–AC15) received on January 6, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5186. A communication from the Chairman, Federal Energy Regulatory Commission, transmitting, pursuant to law, a report entitled "The Commission's Response to the California Electricity Crisis and Timeline for Distribution of Refunds"; to the Committee on Energy and Natural Resources.

EC–5187. A communication from the Assistant Secretary, Land and Minerals Management, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Oil and Gas and Sulphur Operations on the Outer Continental Shelf (OCS)—Suspension of Operations (SOO) for Ultra-deep Drilling" (RIN–1010–AD09) received on January 3, 2006; to the Committee on Energy and Natural Resources.

EC–5188. A communication from Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Virginia Regulatory Program" (VA–122–FOR) received on January 6, 2006; to the Committee on Energy and Natural Resources.

EC–5189. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to the United Kingdom; to the Committee on Foreign Relations.

EC–5190. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Taiwan; to the Committee on Foreign Relations.

EC–5191. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to the Netherlands; to the Committee on Foreign Relations.

EC–5192. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to the United Kingdom; to the Committee on Foreign Relations.

EC–5193. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–5194. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to the Republic of Korea; to the Committee on Foreign Relations.

EC–5195. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Switzerland; to the Committee on Foreign Relations.

EC–5196. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–5197. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–5198. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–5199. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $50,000,000 or more to Russia; to the Committee on Foreign Relations.

EC–5200. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad involving the export to the United Kingdom of technical data, defense services and hardware for the manufacture of the Bowman Communication System for end-use by the Royal Netherlands Navy (Marine Corps); to the Committee on Foreign Relations.

EC–5201. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, a certification regarding the proposed transfer of major defense equipment valued at $14,000,000 or more to L–3 MAS, a Canadian private entity, from the Government of Australia; to the Committee on Foreign Relations.

EC–5202. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to the proposed signing by the President of a determination waiving section 620A of the Foreign Assistance Act of 1961, as amended, for two years, and section 507 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005; to the Committee on Foreign Relations.

EC–5203. A communication from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, the report of Presidential Determination 2006–5 relative to the suspension of limitations under the Jerusalem Embassy Act; to the Committee on Foreign Relations.

EC–5204. A communication from the U.S. Global AIDS Coordinator, Department of State, transmitting, pursuant to law, a report on the President's Emergency Plan for AIDS Relief: Fiscal Year 2005 Report on the Global Fund to Fight AIDS, Tuberculosis and Malaria; to the Committee on Foreign Relations.

EC–5205. A communication from the Secretary General, Inter-Parliamentary Union, transmitting, a report entitled "Revisiting Free and Fair Elections"; to the Committee on Foreign Relations.

EC–5206. A communication from the Assistant Attorney General, Department of Justice, transmitting, pursuant to law, the Report of the Attorney General relative to the Foreign Agents Registration Act for the six-month period ending December 31, 2004; to the Committee on Foreign Relations.

EC–5207. A communication from the Assistant Attorney General, Department of Justice, transmitting, pursuant to law, the Report of the Attorney General relative to the Foreign Agents Registration Act for the six-month period ending June 30, 2004; to the Committee on Foreign Relations.

EC–5208. A communication from the President, Inter-Parliamentary Union, transmitting, a report entitled "Second World Conference of Speakers of Parliaments"; to the Committee on Foreign Relations.

EC–5209. A communication from the Assistant Secretary of Defense (International Security Policy), transmitting, pursuant to law, a report relative to the Cooperative Threat Reduction Program with respect to the Russian Federation and Albania; to the Committee on Armed Services.

EC–5210. A communication from the Under Secretary of Defense, Comptroller, Department of Defense, transmitting, pursuant to law, the quarterly report entitled "Acceptance of Contributions for Defense Programs, Projects, and Activities; Defense Cooperation Account (as of September 30, 2005)"; to the Committee on Armed Services.

EC–5211. A communication from the Secretary of the Air Force, transmitting, pursuant to law, the report of a Program Acquisition Unit Cost (PAUC) breach relative to the Global Hawk Program; to the Committee on Armed Services.

EC–5212. A communication from the Director of Defense Research and Engineering, Department of Defense, transmitting, pursuant to law, a report relative to funding the Foreign Comparative Testing (FCT) Program for Fiscal Year 2006; to the Committee on Armed Services.

EC–5213. A communication from the Under Secretary of Defense for Personnel and Readiness, transmitting, authorization of Major General Gary D. Speer, United States Army, to wear the insignia of the grade of lieutenant general in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

EC–5214. A communication from the Under Secretary of Defense for Personnel and Readiness, transmitting, authorization of Colonel John D. Johnson, United States Army, to wear the insignia of the grade of brigadier general in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

EC–5215. A communication from the Assistant Attorney General for Administration, Justice Management Division, Department of Justice, transmitting, pursuant to law, the report of a rule entitled "Exemption of Privacy Act System of Records for the Justice Management Division: 'Federal Bureau of Investigation Whistleblower Case Files, JUSTICE/JMD–023'" (AAG/A Order No. 019–2005) received on January 6, 2006; to the Committee on the Judiciary.

EC–5216. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Dichlormid; Extension of Time-Limited Pesticide Tolerance" (FRL No. 7753–9) received on January 4, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5217. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Revision of Fees for the Fresh Fruit and Vegetable Terminal Market Inspection Services" ((RIN0581–AC46)(Docket No. FV–04–310)) received on January 4, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5218. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Fresh Bartlett Pears Grown in Oregon and Washington; Termination of Marketing Order No. 931" (Docket No. FV05–931–1 FR) received on January 4, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5219. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "USDA Farmers Market Operating Procedures" ((RIN0581–AC39)(Docket No. TM–04–09)) received on January 4, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5220. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Dried Prunes Produced in California; Decreased Assessment Rate" (Docket No. FV05–993–5 FIR) received on January 4, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DURBIN:

S. 2177. A bill to make the sale or fraudulent transfer of telephone records a criminal offense; to the Committee on the Judiciary.

By Mr. SCHUMER (for himself, Mr. SPECTER, Mr. NELSON of Florida, Mr. BURNS, Mr. CORNYN, and Mr. REID):

S. 2178. A bill to make the stealing and selling of telephone records a criminal offense; to the Committee on the Judiciary.

By Mr. OBAMA:

S. 2179. A bill to require openness in conference committee deliberations and full disclosure of the contents of conference reports and all other legislation; to the Committee on Rules and Administration.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. REID:

S. Res. 348. A resolution making minority party appointments to certain Senate committees for the 109th Congress; considered and agreed to.

ADDITIONAL COSPONSORS—DECEMBER 22, 2005

S. 2109

At the request of Mrs. CLINTON, her name was added as a cosponsor of S. 2109, a bill to provide national innovation initiative.

ADDITIONAL COSPONSORS

S. 150

At the request of Mr. JEFFORDS, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 150, a bill to amend the Clean Air Act to reduce emissions from electric powerplants, and for other purposes.

S. 409

At the request of Mr. COLEMAN, the names of the Senator from Florida (Mr. NELSON) and the Senator from Texas (Mr. CORNYN) were added as cosponsors of S. 409, a bill to establish a Federal Youth Development Council to improve the administration and coordination of Federal programs serving youth, and for other purposes.

S. 440

At the request of Mr. BUNNING, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 440, a bill to amend title XIX of the Social Security Act to include podiatrists as physicians for purposes of covering physicians services under the medicaid program.

S. 445

At the request of Ms. STABENOW, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 445, a resolution to amend part D of title XVIII of the Social Security Act, as added by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, to provide for negotiation of fair prices for Medicare prescription drugs.

S. 484

At the request of Mr. WARNER, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 484, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 1085

At the request of Mr. KENNEDY, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 1085, a bill to provide for paid sick leave to ensure that Americans can address their own health needs and the health needs of their families.

S. 1112

At the request of Mr. GRASSLEY, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 1112, a bill to make permanent the enhanced educational savings provisions for qualified tuition programs enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001.

S. 1351

At the request of Mrs. CLINTON, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1351, a bill to amend title 10, United States Code, to provide for the award of a military service medal to members of the Armed Forces who served honorably during the Cold War era.

S. 1438

At the request of Mr. ALLARD, his name was added as a cosponsor of S. 1438, a bill to provide for immigration reform.

S. 1779

At the request of Mr. AKAKA, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 1779, a bill to amend the Humane Methods of Livestock Slaughter Act of 1958 to ensure the humane slaughter of nonambulatory livestock, and for other purposes.

S. 2083

At the request of Mrs. CLINTON, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 2083, a bill to prohibit the Assistant Secretary of Homeland Security (Transportation Security Administration) from removing any item from the current list of items prohibited from being carried aboard a passenger aircraft.

S. 2128

At the request of Mr. MCCAIN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2128, a bill to provide greater transparency with respect to lobbying activities, and for other purposes.

S. 2154

At the request of Mr. OBAMA, the names of the Senator from Connecticut (Mr. DODD), the Senator from Delaware (Mr. BIDEN), the Senator from Wyoming (Mr. THOMAS) and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of S. 2154, a bill to provide for the issuance of a commemorative postage stamp in honor of Rosa Parks.

S. 2155

At the request of Mr. KERRY, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2155, a bill to provide meaningful civil remedies for victims of the sexual exploitation of children.

S. CON. RES. 68

At the request of Mr. NELSON of Florida, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. Con. Res. 68, a resolution designating May 20, 2006, as "Negro Leaguers Recognition Day.".

S. CON. RES. 73

At the request of Mr. SPECTER, the names of the Senator from Michigan (Mr. LEVIN), the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from Minnesota (Mr. COLEMAN) were added as cosponsors of S. Con. Res. 73, a concurrent resolution urging the President to issue a proclamation for the observance of an American Jewish History Month.

S. RES. 320

At the request of Mr. DURBIN, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. Res. 320, a resolution calling the President to ensure that the foreign policy of the United States reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian Genocide.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURBIN:

S. 2177. A bill to make the sale or fraudulent transfer of telephone records a criminal offense; to the Committee on the Judiciary.

Mr. DURBIN. Mr. President, today, I am introducing The Phone Records Protection Act of 2006. This important legislation would prohibit the sale or fraudulent transfer or use of telephone records and provide tough criminal penalties for violating phone users' privacy.

The Chicago Sun Times and other news sources have recently reported that online brokers are illegally obtaining cell phone records and selling them without customers' knowledge. Telephone companies receive many legitimate requests from consumers and law enforcement officials for access to personal records and the requests are handled expeditiously. However, online brokers have taken advantage of the system and begun selling cell phone records to anyone who requests them.

Although current law addresses fraud and identity theft using the Internet, the law does not specifically prohibit the sale of personal information obtained illegally or without the consent of cell phone customers. Consumer and privacy groups have expressed concerns about the access and availability of personal information. Regardless of how a bad actor obtains the telephone records of innocent and unsuspecting customers, the sale of such information should be prohibited.

The Phone Records Protection Act of 2006 would deter online brokers by prohibiting the sale or fraudulent transfer or use of telephone records. The sale of this information is a violation of individual privacy and also creates the possibility of identity theft. Moreover, the sale of telephone records of law enforcement personnel and public officials could endanger public safety, as criminals and terrorists would be eager to have such information.

I encourage my colleagues to support this important legislative effort and cosponsor this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2177

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Phone Records Protection Act of 2006".

SEC. 2. PROHIBITION ON SALE OR TRANSFER OF TELEPHONE RECORDS.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 123 the following new chapter:

"CHAPTER 124—TELEPHONE RECORDS

"Sec

"2801. Prohibition on sale or transfer of telephone records

"§ 2801. Prohibition on sale or transfer of telephone records

"(a) CRIMINAL VIOLATION.—Whoever knowingly and intentionally sells or fraudulently transfers or uses, or attempts to sell or fraudulently transfer or use, the records of a customer of a telephone service provider shall be fined in accordance with this title, imprisoned for not more than 10 years, or both.

"(b) NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES.—Subsection (a) shall not prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain the records of a customer of a telephone service provider in connection with the performance of the official duties of the agency.

"(c) EXCEPTION FOR LAW ENFORCEMENT REQUESTS.—A telephone service provider, or any employee thereof, shall not be in violation of subsection (a) if such provider, upon request, transfers or otherwise provides to a law enforcement agency, or any officer, employee, or agent of such agency the records of a customer of such provider.

"(d) DEFINITIONS.—In this section:

"(1) RECORDS OF A CUSTOMER.—The term 'records of a customer' means any data or information associated with an individual contained in a database, networked or integrated databases, or other data system of a telephone service provider.

"(2) TELEPHONE SERVICE.—The term 'telephone service'—

"(A) has the same meaning given the term 'telecommunications service' in section 3 of the Communications Act of 1934 (47 U.S.C. 153); and

"(B) includes any form of wireless telephone service, including—

"(i) cellular telephone service;

"(ii) broadband Personal Communication Service ('PCS') telephone service;

"(iii) Covered Specialized Mobile Radio ('SMR') service; and

"(iv) any successor service to such service (including so-called next generation or third generation service).

"(3) TELEPHONE SERVICE PROVIDER.—The term 'telephone service provider' has the same meaning given the term 'telecommunications carrier' in section 3 of the Communications Act of 1934 (47 U.S.C. 153).".

(b) AMENDMENT TO PART ANALYSIS.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 123 the following new item:

"124. Prohibition on sale of telephone records .... **2801**".

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 348—MAKING MINORITY PARTY APPOINTMENTS TO CERTAIN SENATE COMMITTEES FOR THE 109TH CONGRESS

Mr. REID submitted the following resolution; which was considered and agreed to:

S. RES. 348

Resolved, that notwithstanding the provisions of Rule XXV, the following shall constitute the minority party's membership on the following standing committees for the 109th Congress, or until their successors are chosen:

Committee on Banking, Housing and Urban Affairs: Mr. Sarbanes (Ranking Member), Mr. Dodd, Mr. Johnson, Mr. Reed, Mr. Schumer, Mr. Bayh, Mr. Carper, Ms. Stabenow, and Mr. Menendez.

Committee on Energy and Natural Resources: Mr. Bingaman (Ranking Member), Mr. Akaka, Mr. Dorgan, Mr. Wyden, Mr. Johnson, Ms. Landrieu, Mrs. Feinstein, Ms. Cantwell, Mr. Salazar, and Mr. Menendez.

Special Committee on Aging: Mr. Kohl (Ranking Member), Mr. Jeffords, Mr. Wyden, Mrs. Lincoln, Mr. Bayh, Mr. Carper, Mr. Nelson of Florida, Mrs. Clinton and Mr. Salazar.

Committee on the Budget: Mr. Conrad (Ranking Member), Mr. Sarbanes, Mrs. Murray, Mr. Wyden, Mr. Feingold, Mr. Johnson, Mr. Byrd, Mr. Nelson of Florida, Ms. Stabenow, and Mr. Menendez.

Select Committee on Ethics: Mr. Johnson (Vice Chairman), Mr. Pryor and Mr. Salazar.

Select Committee on Intelligence: Mr. Rockefeller (Vice Chairman), Mr. Levin, Mrs. Feinstein, Mr. Wyden, Mr. Bayh, Ms. Mikulski, and Mr. Feingold.

NOTICE: REGISTRATION OF MASS MAILINGS

The filing date for 2005 fourth quarter mass mailings is Wednesday, January 25, 2006. If your office did no mass mailings during this period, please submit a form that states "none."

Mass mailing registrations, or negative reports, should be submitted to the Senate Office of Public Records, 232 Hart Building, Washington, DC 20510-7116.

The Public Records office will be open from 9 a.m. to 5:30 p.m. on the filing date to accept these filings. For further information, please contact the Public Records office at (202) 224-0322.

ORDER FOR RECORD TO REMAIN OPEN

Mr. WARNER. Mr. President, I ask unanimous consent that Senators be permitted to introduce bills and submit statements for the RECORD until 12 noon today.

The PRESIDING OFFICER. Without objection, it is so ordered.

INAUGURATION OF GOVERNOR TIMOTHY KAINE

Mr. WARNER. Mr. President, we had a historic moment in the Commonwealth of Virginia this past weekend. I was privileged, along with Senator ALLEN, to attend the inauguration of our new Governor. We have an unusual situation in the Commonwealth of Virginia where our Governors are elected in what we call the off year for elections in America, but it was a very significant occasion for the people of the Commonwealth of Virginia.

An interesting footnote in history: our capitol building in Richmond is under renovation at this time. Consequently, very wisely, Governor Kaine selected Williamsburg, VA, for the purposes of his inauguration. As I said, it was a rainy day, but we all enjoyed it.

On behalf of the Congressional delegation and the people of Virginia, I am privileged to place into the CONGRESSIONAL RECORD the inaugural address given by Governor Timothy Kaine, Virginia's 70th Governor on January 14, 2006. Due to the extensive renovation of Virginia's Capitol in Richmond, Saturday's inauguration was held at the Colonial Capital of Williamsburg for only the third time in the Commonwealth's history and the first since that of Thomas Jefferson in 1779.

Williamsburg, Virginia was home to the first Capitol building in America and served as the home of the House of Burgesses. It is fitting that this inauguration took place in Williamsburg as Virginia and Nation prepares to celebrate the 400th anniversary of the founding of the Jamestown settlement in 2007.

We in Virginia are proud of our longstanding spirit of cooperation and bipartisanship among the various branches of government in the Commonwealth and with the members of our congressional delegation serving in Washington. I look forward to working with Governor Kaine as he is the eighth Governor to serve Virginia during my service in the United States

Senate. It is in this spirit of bipartisanship that I ask unanimous consent that Governor Kaine's inaugural address to the Commonwealth of Virginia be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Colonial Capitol, Williamsburg, Virginia, Jan. 14, 2006]

Inaugural Address of Tim Kaine—70th Governor of the Commonwealth of Virginia

Mr. Speaker, Mr. President, Mr. President Pro Tem, Members of the General Assembly, Mr. Chief Justice, Members of the Supreme Court, Mr. Attorney General, ladies and gentlemen:

I am humbled by the trust you have placed in me. With the support of God and my family, I pledge my energy and enthusiasm to the mission of serving this Commonwealth.

I salute with great respect our dear friend Governor Mark Warner, and I ask that all Virginians join me in showing their public appreciation for his outstanding leadership.

I congratulate Lieutenant Governor Bolling, Attorney General McDonnell and all the members of the General Assembly who have stepped forward to offer their talents to advance our common good.

This is a glorious day—the weather is to remind us not to take ourselves too seriously. And how far Virginia has come since we last gathered for an inauguration in Williamsburg!

Patrick Henry was sworn in here as the newly-formed Commonwealth's first Governor in 1776 and, three years later, Thomas Jefferson followed in his footsteps. Henry and Jefferson stood here in the midst of a war raging on our country's soil, a war that threatened the very existence of Virginia and our young nation.

They stood here at a time, just as today, when Virginians serving freedom's cause sacrificed their lives so that democracy could prevail over tyranny. They stood here proclaiming the Promise of Virginia, when the world around them doubted that the land of their vision would survive.

Could Henry or Jefferson have imagined the powerful success of their democratic experiment, their beloved Virginia, as it appears today? As a people, we have come through storm after storm, working out the meaning of our own destiny and coming closer and closer to the Virginia ideal of equality that Jefferson articulated in America's Declaration of Independence.

As we stand here now, our hearts should be filled with the magnitude of the debt we owe to the generations of leaders—the celebrated and the unknown—who fought and worked to create our Commonwealth. The Promise of Virginia is bright today because of their efforts, and it is up to us to carry the work forward for future generations.

Today's ceremony honors and renews that experiment, and continues the promise that Virginia—which has so often led our nation through the past four centuries—will continue to lead our nation in the 21st century. And we will lead, we will keep the Promise of Virginia bright, if we stay true to the best values that have guided our first 400 years.

First, we reaffirm the necessity of courage. This is the defining trait of those who came to Virginia aboard the Discovery, Godspeed and Susan Constant, landing just a few miles from this place at Jamestown Island in 1607. They knew that earlier efforts, by the Spanish and English, to establish settlements in this region had ended in disaster. But they crossed treacherous seas to arrive at a new world because they understood the need to do and to dare. Their survival and success depended upon bold leadership. We must be equally bold to tackle the challenges of our day.

Second, we acknowledge that individual opportunity is the most powerful engine of progress. The first English settlers came as part of a commercial venture, the Virginia Company, seeking economic riches in the New World. Others came seeking the opportunity to worship as they pleased or to trade away an aristocracy of birth for an aristocracy of merit. When individuals have the opportunity to set their own purpose, and determine the bar for their own achievements, they are able to harness their God-given talents and ensure our economic and social success.

And third, we recognize that our destiny is a shared destiny and that our commitment to community is a condition of our advancement. Our Virginia might not exist today were it not for the generosity extended to those first settlers by the native Virginia tribes living in this region. Without the hospitality of Chief Powhatan or the compassion of Pocahontas, those in Jamestown would have perished. Throughout Virginia's history, we have succeeded only when we have welcomed all to the table of Thanksgiving.

That same sense of community is required of us today. We must include all Virginians in our efforts. We should continue to welcome newcomers to this Commonwealth and nation, just as Chief Powhatan did 400 years ago.

Hemos venido hoy día, a este lugar para recordar la promesa de nuestros antepasados. Como gobernador, seré justo e incluyente de todas las comunidades, con la certeza que juntos lograremos construir un mejor futuro para Virginia. [We have come here today to remember the promise made by our forefathers. As Governor, I will be fair and inclusive of all communities with the certainty that together we can achieve a better future in Virginia.]

And, we should use this historic time to help those who first helped us by working with the federal government to see that Virginia's native Indian tribes are finally recognized.

Our challenges today are different than those faced by the Jamestown settlers, or the first Virginia governors. But they require fidelity to the same values. We may not have new geographic worlds to discover, but there are still worlds of research and knowledge, of information and creativity, of commerce and service, of reconciliation and brotherhood, that await our exploration.

To keep the Promise of Virginia, to succeed, we will embrace our best, historic values and we will work together. Ours will be a non-partisan, Virginia agenda that includes all. At the heart of what I pledge to you today is the desire to keep Virginia moving forward.

To the people of Virginia: I pledge an administration that will keep the Promise of Virginia strong. An administration guided by the Virginia values of courage, opportunity and community. We will lead boldly and manage wisely; we will protect the liberties endowed by our Creator; we will affirm that family and faith is our bedrock, hard work our way and education our path to progress. When we are true to that promise, we will succeed and truly honor the legacy we inherit.

To the parents of Virginia: I pledge that our top priority will be raising the focus of our public education system from competence to excellence.

Thomas Jefferson wrote that progress depends on the broadest possible diffusion of knowledge among the entire population. More than ever, we are now in a position to provide all children with the opportunity to learn and fulfill their God-given potential. And we acknowledge that lifelong learning—from the expansion of early childhood education to world-class higher education, and beyond—is our Commonwealth's top priority.

To the taxpayers of Virginia: I pledge that we will always remember that what government spends is not its money. It's your money. We will place a premium on accountability; ensuring that your dollars are used responsibly in meeting the priorities that we share.

To those who commute and travel in Virginia: I pledge that my administration will begin immediately and work urgently to address the transportation dilemma that complicates our lives and threatens our prosperity. Together, let us find answers through a dialogue that is shaped not simply in terms of dollars and cents, but also by new solutions and common sense. A lack of coordination and planning has us stuck where we are today. Let it not be fear and politics that leaves us stranded here.

To the working families of Virginia and those that employ them: I pledge an administration focused on fostering opportunity and encouraging the entrepreneurial spirit; an administration focused on ensuring that every hard-working Virginian—no matter where they live—has access to a good paying job to provide for their family.

We will also work with you to find solutions to the problem of accessible, affordable health care; a burden that is overwhelming working families, small businesses and government budgets.

To those who protect us, our guardsmen, law enforcement officers, firefighters and EMTs: I pledge an administration that will work to ensure you have the resources and the support you need to keep our families and neighborhoods safe. The work you do is dangerous and essential. And we salute your dedication.

To those who serve in local governments: I pledge an administration that is a good partner with a focus on cooperation and collaboration. The people we serve are the same people you serve. When we work together, we serve them better.

To those who love Virginia's natural beauty: I pledge an administration that will be a good steward of Virginia's blessings of natural beauty. Our natural resources are essential to both our way of life and our ability to make a living. The streams we fish, the trails we hike, the fields that we harvest and the hills that we hunt with our children today must be protected for them and their children tomorrow.

And to the children of Virginia: I pledge an administration that will do its all to leave you with a Commonwealth greater than the one we found: filled with opportunities, greater than those of our dreams; a Commonwealth where the Promise of Virginia rings true for every son and daughter.

I seek the help of all Virginians—regardless of party or region, race or religion—in keeping the promise of Virginia.

Let us rise to the leadership example of Virginia's first four hundred years. Let us affirm and carry forward our values of courage, opportunity and community.

Let us remember that civility is not a sign of weakness—that cooperation and compromise are necessary for progress and for the sensible solutions we can all embrace to keep the promise of Virginia strong. Under God's hand, we have thrived. If we stay faithful to our history, we will succeed.

Let us work together.

Let us begin.

ADJOURNMENT UNTIL FRIDAY, JANUARY 20, 2006, AT 10 A.M.

Mr. WARNER. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 10:52 a.m., adjourned until Friday, January 20, 2006, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate January 18, 2006:

DEPARTMENT OF AGRICULTURE

GALE A. BUCHANAN, OF GEORGIA, TO BE UNDER SECRETARY OF AGRICULTURE FOR RESEARCH, EDUCATION, AND ECONOMICS, VICE JOSEPH J. JEN, RESIGNED.

DEPARTMENT OF DEFENSE

PRESTON M. GEREN, OF TEXAS, TO BE UNDER SECRETARY OF THE ARMY, VICE R. L. BROWNLEE, RESIGNED.

DEPARTMENT OF TRANSPORTATION

JAMES S. SIMPSON, OF NEW YORK, TO BE FEDERAL TRANSIT ADMINISTRATOR, VICE JENNIFER L. DORN.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ROBERT M. COUCH, OF ALABAMA, TO BE PRESIDENT, GOVERNMENT NATIONAL MORTGAGE ASSOCIATION, VICE RONALD ROSENFELD.

DEPARTMENT OF TRANSPORTATION

ROGER SHANE KARR, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY OF TRANSPORTATION, VICE NICOLE R. NASON.

TYLER D. DUVALL, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF TRANSPORTATION, VICE EMIL H. FRANKEL.

DAVID C. SANBORN, OF VIRGINIA, TO BE ADMINISTRATOR OF THE MARITIME ADMINISTRATION, VICE WILLIAM SCHUBERT.

NICOLE R. NASON, OF VIRGINIA, TO BE ADMINISTRATOR OF THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, VICE JEFFREY WILLIAM RUNGE.

ENVIRONMENTAL PROTECTION AGENCY

JAMES B. GULLIFORD, OF MISSOURI, TO BE ASSISTANT ADMINISTRATOR FOR TOXIC SUBSTANCES OF THE ENVIRONMENTAL PROTECTION AGENCY, VICE STEPHEN L. JOHNSON, RESIGNED.

DEPARTMENT OF STATE

RICHARD A. BOUCHER, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE ASSISTANT SECRETARY OF STATE FOR SOUTH ASIAN AFFAIRS, VICE CHRISTINA B. ROCCA.

MARK D. WALLACE, OF FLORIDA, TO BE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS FOR U.N. MANAGEMENT AND REFORM, WITH THE RANK OF AMBASSADOR, VICE PATRICK FRANCIS KENNEDY.

MARK D. WALLACE, OF FLORIDA, TO BE ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE SESSIONS OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS, DURING HIS TENURE OF SERVICE AS REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS FOR U.N. MANAGEMENT AND REFORM.

JACKIE WOLCOTT SANDERS, OF VIRGINIA, TO BE ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA FOR SPECIAL POLITICAL AFFAIRS IN THE UNITED NATIONS, WITH THE RANK OF AMBASSADOR.

JACKIE WOLCOTT SANDERS, OF VIRGINIA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE SESSIONS OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS DURING HER TENURE OF SERVICE AS ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA FOR SPECIAL POLITICAL AFFAIRS IN THE UNITED NATIONS.

PATRICIA A. BUTENIS, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE PEOPLE'S REPUBLIC OF BANGLADESH.

DONALD T. BLISS, OF MARYLAND, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS REPRESENTATIVE OF THE UNITED STATES OF AMERICA ON THE COUNCIL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION.

INTERNATIONAL MONETARY FUND

BEN S. BERNANKE, OF NEW JERSEY, TO BE UNITED STATES ALTERNATE GOVERNOR OF THE INTERNATIONAL MONETARY FUND FOR A TERM OF FIVE YEARS, VICE ALAN GREENSPAN.

OVERSEAS PRIVATE INVESTMENT CORPORATION

JOHN A. SIMON, OF MARYLAND, TO BE EXECUTIVE VICE PRESIDENT OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION, VICE ROSS J. CONNELLY, RESIGNED.

DEPARTMENT OF HOMELAND SECURITY

DAVID L. NORQUIST, OF VIRGINIA, TO BE CHIEF FINANCIAL OFFICER, DEPARTMENT OF HOMELAND SECURITY, VICE ANDREW B. MANER.

WITHDRAWAL

Executive Message transmitted by the President to the Senate on January 18, 2006 withdrawing from further Senate consideration the following nomination:

EUGENE HICKOK, OF PENNSYLVANIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR THE REMAINDER OF THE TERM EXPIRING JANUARY 26, 2008, WHICH WAS SENT TO THE SENATE ON OCTOBER 17, 2005.

SENATE—*Friday, January 20, 2006*

The Senate met at 10 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. REID (for himself, Mr. DURBIN, Ms. STABENOW, Mr. SCHUMER, Mr. AKAKA, Mr. BAUCUS, Mr. BAYH, Mr. BIDEN, Mr. BINGAMAN, Mrs. BOXER, Mr. CARPER, Mrs. CLINTON, Mr. CONRAD, Mr. DAYTON, Mr. DORGAN, Mr. FEINGOLD, Mr. HARKIN, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. MENENDEZ, Ms. MIKULSKI, Mrs. MURRAY, Mr. OBAMA, Mr. REED, Mr. ROCKEFELLER, Mr. SALAZAR, Mr. WYDEN, and Mr. INOUYE):

S. 2180. A bill to provide more rigorous requirements with respect to disclosure and enforcement of ethics and lobbying laws and regulations, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. LAUTENBERG (for himself, Ms. SNOWE, Mr. SCHUMER, Mr. COLEMAN, Mrs. FEINSTEIN, Mr. PRYOR, Mr. DEWINE, Mrs. BOXER, Mr. MENENDEZ, Ms. COLLINS, Mr. DAYTON, Mr. REED, Mr. JEFFORDS, Mrs. LINCOLN, Mr. LEAHY, Mr. WYDEN, Ms. STABENOW, Mr. JOHNSON, Mr. KENNEDY, Mr. DORGAN, Mr. LIEBERMAN, Mrs. CLINTON, Mr. CHAFEE, and Mr. DODD):

S. 2181. A bill to amend title XIX of the Social Security Act to provide for an offset from the Medicaid clawback for State prescription drug expenditures for covered part D drugs for Medicare beneficiaries; to the Committee on Finance.

By Mr. ISAKSON:

S. 2182. A bill to terminate the Internal Revenue Code of 1986, and for other purposes; to the Committee on Finance.

By Mr. ROCKEFELLER (for himself, Mr. REID, Mrs. MURRAY, Mr. BINGAMAN, Mrs. LINCOLN, Mr. KENNEDY, Mrs. CLINTON, Mr. LAUTENBERG, Ms. STABENOW, Mr. DURBIN, Mr. KERRY, Mr. SCHUMER, Mr. PRYOR, Mr. LEAHY, Mr. DAYTON, Mr. JEFFORDS, Mr. HARKIN, Ms. MIKULSKI, Mr. JOHNSON, Ms. CANTWELL, Mr. AKAKA, Mr. LIEBERMAN, Mr. KOHL, Ms. LANDRIEU, Mr. SARBANES, and Mrs. BOXER):

S. 2183. A bill to provide for necessary beneficiary protections in order to ensure access to coverage under the Medicare part D prescription drug program; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SANTORUM (for himself and Mr. KYL):

S. Res. 349. A resolution condemning the Government of Iran for violating the terms of the 2004 Paris Agreement, and expressing support for efforts to refer Iran to the United Nations Security Council for its noncompliance with International Atomic Energy Agency obligations; to the Committee on Foreign Relations.

By Mr. LEAHY (for himself and Mr. KENNEDY):

S. Res. 350. A resolution expressing the sense of the Senate that Senate Joint Resolution 23 (107th Congress), as adopted by the Senate on September 14, 2001, and subsequently enacted as the Authorization for Use of Military Force does not authorize warrantless domestic surveillance of United States citizens; to the Committee on the Judiciary.

By Mr. BAYH:

S. Res. 351. A resolution responding to the threat posed by Iran's nuclear program; to the Committee on Foreign Relations.

By Mr. COLEMAN (for himself, Mr. SCHUMER, Mr. LAUTENBERG, Mr. ALLEN, Mr. DEWINE, Mr. BROWNBACK, Mr. NELSON of Nebraska, Mr. NELSON of Florida, and Mrs. FEINSTEIN):

S. Con. Res. 76. A concurrent resolution condemning the Government of Iran for its flagrant violations of its obligations under the Nuclear Non-Proliferation Treaty, and calling for certain actions in response to such violations; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REID (for himself, Mr. DURBIN, Ms. STABENOW, Mr. SCHUMER, Mr. AKAKA, Mr. BAUCUS, Mr. BAYH, Mr. BIDEN, Mr. BINGAMAN, Mrs. BOXER, Mr. CARPER, Mrs. CLINTON, Mr. CONRAD, Mr. DAYTON, Mr. DORGAN, Mr. FEINGOLD, Mr. HARKIN, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. MENENDEZ, Ms. MIKULSKI, Mrs. MURRAY, Mr. OBAMA, Mr. REED, Mr. ROCKEFELLER, Mr. SALAZAR, Mr. WYDEN, and Mr. INOUYE:

S. 2180. A bill to provide more rigorous requirements with respect to disclosure and enforcement of ethics and lobbying laws and regulations, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. REID. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2180

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Honest Leadership and Open Government Act of 2006".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—CLOSING THE REVOLVING DOOR

Sec. 101. Extension of lobbying ban for former Members and employees of Congress and executive branch officials.
Sec. 102. Elimination of floor privileges for former Member lobbyists.
Sec. 103. Disclosure by Members of Congress and senior congressional staff of employment negotiations.
Sec. 104. Ethics review of employment negotiations by executive branch officials.
Sec. 105. Wrongfully influencing a private entity's employment decisions or practices.

TITLE II—FULL PUBLIC DISCLOSURE OF LOBBYING

Sec. 201. Quarterly filing of lobbying disclosure reports.
Sec. 202. Electronic filing of lobbying disclosure reports.
Sec. 203. Additional lobbying disclosure requirements.
Sec. 204. Disclosure of paid efforts to stimulate grassroots lobbying.
Sec. 205. Disclosure of lobbying activities by certain coalitions and associations.
Sec. 206. Disclosure by registered lobbyists of past executive and congressional employment.
Sec. 207. Creation of a comprehensive public database of lobbying disclosure information.
Sec. 208. Conforming amendment.

TITLE III—RESTRICTING CONGRESSIONAL TRAVEL AND GIFTS

Sec. 301. Ban on gifts from lobbyists.
Sec. 302. Prohibition on privately funded travel.
Sec. 303. Prohibiting lobbyist organization and participation in congressional travel.
Sec. 304. Disclosure of noncommercial air travel.
Sec. 305. Per diem expenses for congressional travel.

TITLE IV—ENFORCEMENT OF LOBBYING RESTRICTIONS

Sec. 401. Senate Office of Public Integrity.
Sec. 402. Increased civil and criminal penalties for failure to comply with lobbying disclosure requirements.
Sec. 403. Penalty for false certification in connection with congressional travel.
Sec. 404. Mandatory annual ethics training for congressional employees.

TITLE V—OPEN GOVERNMENT

Sec. 501. Sense of the Senate on conference committee protocols.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Sec. 502. Actual voting required in conference committee meetings.

Sec. 503. Availability of conference reports on the internet.

TITLE I—CLOSING THE REVOLVING DOOR

SEC. 101. EXTENSION OF LOBBYING BAN FOR FORMER MEMBERS AND EMPLOYEES OF CONGRESS AND EXECUTIVE BRANCH OFFICIALS.

Section 207 of title 18, United States Code, is amended—

(1) in subsection (c)—

(A) in the subsection heading, by striking "One-year" and inserting "Two-year";

(B) in paragraph (1), by striking "1 year" and inserting "2 years" in both places it appears; and

(C) in paragraph (2)(B), by striking "1-year period" and inserting "2-year period:"

(2) in subsection (d)—

(A) in paragraph (1), by striking "1 year" and inserting "2 years"; and

(B) in paragraph (2)(A), by striking "1 year" and inserting "2 years"; and

(3) in subsection (e)—

(A) in paragraph (1)(A), by striking "1 year" and inserting "2 years";

(B) in paragraph (2)(A), by striking "1 year" and inserting "2 years";

(C) in paragraph (3), by striking "1 year" and inserting "2 years";

(D) in paragraph (4), by striking "1 year" and inserting "2 years";

(E) in paragraph (5)(A), by striking "1 year" and inserting "2 years"; and

(F) in paragraph (6), by striking "1-year period" and inserting "2-year period".

SEC. 102. ELIMINATION OF FLOOR PRIVILEGES FOR FORMER MEMBER LOBBYISTS.

Rule XXIII of the Standing Rules of the Senate is amended by inserting after "Ex-Senators and Senators elect" the following: ", except for any ex-Senator or Senator elect who is a registered lobbyist".

SEC. 103. DISCLOSURE BY MEMBERS OF CONGRESS AND SENIOR CONGRESSIONAL STAFF OF EMPLOYMENT NEGOTIATIONS.

(a) SENATE.—Rule XXXVII of the Standing Rules of the Senate is amended by adding at the end the following:

"13. (a) A Member of the Senate or an employee of the Senate earning in excess of 75 percent of the salary paid to a Senator shall notify the Committee on Ethics that he or she is negotiating or has any arrangement concerning prospective private employment if a conflict of interest or the appearance of a conflict of interest may exist.

"(b) The disclosure and notification under subparagraph (a) shall be made within 3 business days after the commencement of such negotiation or arrangement.

"(c) A Member or employee to whom this rule applies shall recuse himself or herself from any matter in which there is a conflict of interest for that Member or employee under this rule and notify the Select Committee on Ethics of such recusal.

"(d)(1) The Select Committee on Ethics shall develop guidelines concerning conduct which is covered by this paragraph.

"(2) The Select Committee on Ethics shall maintain a current public record of all notifications received under subparagraph (a) and of all recusals under subparagraph (c).".

SEC. 104. ETHICS REVIEW OF EMPLOYMENT NEGOTIATIONS BY EXECUTIVE BRANCH OFFICIALS.

Section 208 of title 18, United States Code, is amended—

(1) in subsection (b)(1)—

(A) by inserting after "the Government official responsible for appointment to his or her position" the following: "and the Office of Government Ethics"; and

(B) by striking "a written determination made by such official" and inserting "a written determination made by the Office of Government Ethics, after consultation with such official,"; and

(2) in subsection (b)(3), by striking "the official responsible for the employee's appointment, after review of" and inserting "the Office of Government Ethics, after consultation with the official responsible for the employee's appointment and after review of"; and

(3) in subsection (d)(1)—

(A) by striking "Upon request" and all that follows through "Ethics in Government Act of 1978." and inserting "In each case in which the Office of Government Ethics makes a determination granting an exemption under subsection (b)(1) or (b)(3) to a person, the Office shall, not later than 3 business days after making such determination, make available to the public pursuant to the procedures set forth in section 105 of the Ethics in Government Act of 1978, and publish in the Federal Register, such determination and the materials submitted by such person in requesting such exemption."; and

(B) by striking "the agency may withhold" and inserting "the Office of Government Ethics may withhold".

SEC. 105. WRONGFULLY INFLUENCING A PRIVATE ENTITY'S EMPLOYMENT DECISIONS OR PRACTICES.

(a) IN GENERAL.—Chapter 11 of title 18, United States Code, is amended by adding at the end the following:

"§ 226. Wrongfully influencing a private entity's employment decisions by a Member of Congress

"Whoever, being a Senator or Representative in, or a Delegate or Resident Commissioner to, the Congress or an employee of either House of Congress, with the intent to influence on the basis of partisan political affiliation an employment decision or employment practice of any private entity—

"(1) takes or withholds, or offers or threatens to take or withhold, an official act; or

"(2) influences, or offers or threatens to influence, the official act of another;

shall be fined under this title or imprisoned for not more than 15 years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.".

(b) NO INFERENCE.—Nothing in section 226 of title 18, United States Code, as added by this section, shall be construed to create any inference with respect to whether the activity described in section 226 of title 18, United States Code, was already a criminal or civil offense prior to the enactment of this Act, including sections 201(b), 201(c), and 216 of title 18, United States Code.

(c) CHAPTER ANALYSIS.—The chapter analysis for chapter 11 of title 18, United States Code, is amended by adding at the end the following:

"226. Wrongfully influencing a private entity's employment decisions by a Member of Congress.".

(d) SENATE RULES.—Rule XLIII of the Standing Rules of the Senate is amended by adding at the end the following:

"6. No Member shall, with the intent to influence on the basis of partisan political affiliation an employment decision or employment practice of any private entity—

"(1) take or withhold, or offer or threaten to take or withhold, an official act; or

"(2) influence, or offer or threaten to influence, the official act of another.".

TITLE II—FULL PUBLIC DISCLOSURE OF LOBBYING

SEC. 201. QUARTERLY FILING OF LOBBYING DISCLOSURE REPORTS.

(a) QUARTERLY FILING REQUIRED.—Section 5 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604) is amended—

(1) in subsection (a)—

(A) by striking "Semiannual" and inserting "Quarterly";

(B) by striking "the semiannual period" and all that follows through "July of each year" and insert "the quarterly period beginning on the first days of January, April, July, and October of each year"; and

(C) by striking "such semiannual period" and insert "such quarterly period"; and

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking "semiannual report" and inserting "quarterly report";

(B) in paragraph (2), by striking "semiannual filing period" and inserting "quarterly period";

(C) in paragraph (3), by striking "semiannual period" and inserting "quarterly period"; and

(D) in paragraph (4), by striking "semiannual filing period" and inserting "quarterly period".

(b) CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 3(10) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602) is amended by striking "six month period" and inserting "three-month period".

(2) REGISTRATION.—Section 4 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603) is amended—

(A) in subsection (a)(3)(A), by striking "semiannual period" and inserting "quarterly period"; and

(B) in subsection (b)(3)(A), by striking "semiannual period" and inserting "quarterly period".

(3) ENFORCEMENT.—Section 6 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1605) is amended in paragraph (6) by striking "semiannual period" and inserting "quarterly period".

(4) ESTIMATES.—Section 15 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1610) is amended—

(A) in subsection (a)(1), by striking "semiannual period" and inserting "quarterly period"; and

(B) in subsection (b)(1), by striking "semiannual period" and inserting "quarterly period".

(5) DOLLAR AMOUNTS.—

(A) Section 4 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603) is amended—

(i) in subsection (a)(3)(A)(i), by striking "$5,000" and inserting "$2,500";

(ii) in subsection (a)(3)(A)(ii), by striking "$20,000" and inserting "$10,000";

(iii) in subsection (b)(3)(A), by striking "$10,000" and inserting "$5,000"; and

(iv) in subsection (b)(4), by striking "$10,000" and inserting "$5,000".

(B) Section 5 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604) is amended—

(i) in subsection (c)(1), by striking "$10,000" and "$20,000" and inserting "$5,000" and "$10,000", respectively; and

(ii) in subsection (c)(2), by striking "$10,000" both places such term appears and inserting "$5,000".

SEC. 202. ELECTRONIC FILING OF LOBBYING DISCLOSURE REPORTS.

Section 5 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604) is amended by adding at the end the following:

"(d) ELECTRONIC FILING REQUIRED.—A report required to be filed under this section shall be filed in electronic form, in addition to any other form that may be required by the Secretary of the Senate or the Clerk of the House of Representatives. The Secretary of the Senate and the Clerk of the House of Representatives shall provide for public access to such reports on the Internet.".

SEC. 203. ADDITIONAL LOBBYING DISCLOSURE REQUIREMENTS.

(a) Disclosure of Contributions and Payments.—Section 5(b) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604(b)) is amended—

(1) in paragraph (5), as added by section 204(c), by striking the period and inserting a semicolon; and

(2) by adding at the end the following:

"(6) for each registrant (and for any political committee, as defined in section 301(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(4)), affiliated with such registrant) and for each employee listed as a lobbyist by a registrant under paragraph 2(C), the name of each Federal candidate or officeholder, leadership PAC, or political party committee, to whom a contribution was made, and the amount of such contribution; and

"(7) a certification that the lobbying firm or registrant has not provided, requested, or directed a gift, including travel, to a Member or employee of Congress in violation of rule XXXV of the Standing Rules of the Senate.".

(b) Leadership PAC.—Section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602) is amended by adding at the end the following:

"(17) Leadership PAC.—The term 'leadership PAC' means an unauthorized multicandidate political committee that is established, financed, maintained, and controlled by an individual who is a Federal officeholder or a candidate for Federal office.".

(c) Full and Detailed Accounting.—Section 5(c)(1) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604(c)(1)) is amended by striking "shall be rounded to the nearest $20,000" and inserting "shall be rounded to the nearest $1,000".

SEC. 204. DISCLOSURE OF PAID EFFORTS TO STIMULATE GRASSROOTS LOBBYING.

(a) Disclosure of Paid Efforts to Stimulate Grassroots Lobbying.—Section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602) is amended—

(1) in paragraph (7), by adding at the end the following: "Lobbying activities include paid efforts to stimulate grassroots lobbying, but do not include grassroots lobbying."; and

(2) by adding at the end the following:

"(18) Grassroots lobbying.—The term 'grassroots lobbying' means the voluntary efforts of members of the general public to communicate their own views on an issue to Federal officials or to encourage other members of the general public to do the same.

"(19) Paid efforts to stimulate grassroots lobbying.—The term 'paid efforts to stimulate grassroots lobbying'—

"(A) means any paid attempt to influence the general public, or segments thereof, to engage in grassroots lobbying or lobbying contacts; and

"(B) does not include any attempt described in subparagraph (A) by a person or entity directed to its members, employees, officers or shareholders, unless such attempt is financed with funds directly or indirectly received from or arranged by a lobbyist or other registrant under this Act retained by another person or entity.

"(20) Grassroots lobbying firm.—The term 'grassroots lobbying firm' means a person or entity that—

"(A) is retained by 1 or more clients to engage in paid efforts to stimulate grassroots lobbying on behalf of such clients; and

"(B) receives income of, or spends or agrees to spend, an aggregate of $50,000 or more for such efforts in any quarterly period.".

(b) Registration.—Section 4(a) of the Act (2 U.S.C. 1603(a)) is amended—

(1) in paragraph (1), by striking "45" and inserting "20";

(2) in the flush matter at the end of paragraph (3)(A)—

(A) by striking "as estimated" and inserting "as included"; and

(B) by adding at the end the following: "For purposes of clauses (i) and (ii) the term 'lobbying activities' shall not include paid efforts to stimulate grassroots lobbying.";

(3) by redesignating paragraph (3) as paragraph (4); and

(4) by inserting after paragraph (2) the following:

"(3) Grassroots lobbying firms.—Not later than 20 days after a grassroots lobbying firm first is retained by a client to engage in paid efforts to stimulate grassroots lobbying, such grassroots lobbying firm shall register with the Secretary of the Senate and the Clerk of the House of Representatives.".

(c) Separate Itemization of Paid Efforts To Stimulate Grassroots Lobbying.—Section 5(b) of the Act (2 U.S.C. 1604(b)) is amended—

(1) in paragraph (3), by—

(A) inserting after "total amount of all income" the following: "(including a separate good faith estimate of the total amount relating specifically to paid efforts to stimulate grassroots lobbying and, within that amount, a good faith estimate of the total amount specifically relating to paid advertising)"; and

(B) striking "and" after the semicolon;

(2) in paragraph (4), by—

(A) inserting after "total expenses" the following: "(including a good faith estimate of the total amount relating specifically to paid efforts to stimulate grassroots lobbying and, within that total amount, a good faith estimate of the total amount specifically relating to paid advertising)"; and

(B) striking the period and inserting a semicolon;

(3) by adding at the end the following:

"(5) in the case of a grassroots lobbying firm, for each client—

"(A) a good faith estimate of the total disbursements made for grassroots lobbying activities, and a subtotal for disbursements made for grassroots lobbying through paid advertising;

"(B) identification of each person or entity other than an employee who received a disbursement of funds for grassroots lobbying activities of $10,000 or more during the period and the total amount each person or entity received; and

"(C) if such disbursements are made through a person or entity who serves as an intermediary or conduit, identification of each such intermediary or conduit, identification of the person or entity who receives the funds, and the total amount each such person or entity received."; and

(4) by adding at the end the following:

"Subparagraphs (B) and (C) of paragraph (2) shall not apply with respect to reports relating to paid efforts to stimulate grassroots lobbying activities.".

(d) Large Grassroots Expenditure.—Section 5(a) of the Act (2 U.S.C. 1604(a)) is amended—

(1) by striking "No later" and inserting:

"(1) In general.—Except as provided in paragraph (2), not later"; and

(2) by adding at the end the following:

"(2) Large grassroots expenditure.—A registrant that is a grassroots lobbying firm and that receives income of, or spends or agrees to spend, an aggregate amount of $250,000 or more on paid efforts to stimulate grassroots lobbying for a client, or for a group of clients for a joint effort, shall file—

"(A) a report under this section not later than 20 days after receiving, spending, or agreeing to spend that amount; and

"(B) an additional report not later than 20 days after each time such registrant receives income of, or spends or agrees to spend, an aggregate amount of $250,000 or more on paid efforts to stimulate grassroots lobbying for a client, or for a group of clients for a joint effort.".

SEC. 205. DISCLOSURE OF LOBBYING ACTIVITIES BY CERTAIN COALITIONS AND ASSOCIATIONS.

(a) In General.—Section 4(b)(3)(B) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603(b)(3)(B)) is amended to read as follows:

"(B) participates in the planning, supervision or control of such lobbying activities;".

(b) No Donor or Membership List Disclosure.—Section 4(b) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603(b)) is amended by adding at the end the following:

"No disclosure is required under paragraph (3)(B) if it is publicly available knowledge that the organization that would be identified is affiliated with the client or has been publicly disclosed to have provided funding to the client, unless the organization in whole or in major part plans, supervises or controls such lobbying activities. Nothing in paragraph (3)(B) shall be construed to require the disclosure of any information about individuals who are members of, or donors to, an entity treated as a client by this Act or an organization identified under that paragraph.".

SEC. 206. DISCLOSURE BY REGISTERED LOBBYISTS OF PAST EXECUTIVE AND CONGRESSIONAL EMPLOYMENT.

Section 4(b)(6) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603(b)(6)) is amended by striking "or a covered legislative branch official" and all that follows through "as a lobbyist on behalf of the client," and inserting "or a covered legislative branch official,".

SEC. 207. CREATION OF A COMPREHENSIVE PUBLIC DATABASE OF LOBBYING DISCLOSURE INFORMATION.

(a) Database Required.—Section 6 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1605) is amended—

(1) in paragraph (7), by striking "and" at the end;

(2) in paragraph (8), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(9) maintain, and make available to the public over the Internet, without a fee or other access charge, in a searchable and downloadable manner, an electronic database that includes the information contained in registrations and reports filed under this Act.".

(b) Availability of Reports.—Section 6(4) of the Lobbying Disclosure Act of 1995 is amended by inserting before the semicolon at the end the following: "and, in the case of a report filed in electronic form pursuant to section 5(d), shall make such report available for public inspection over the Internet not more than 48 hours after the report is so filed".

(c) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out section 6(9) of the Lobbying Disclosure Act of 1995, as added by subsection (a).

SEC. 208. CONFORMING AMENDMENT.

The requirements of this Act shall not apply to the activities of any political committee described in section 301(4) of the Federal Election Campaign Act of 1971.

TITLE III—RESTRICTING CONGRESSIONAL TRAVEL AND GIFTS

SEC. 301. BAN ON GIFTS FROM LOBBYISTS.

(a) IN GENERAL.—Paragraph 1(a)(2) of rule XXXV of the Standing Rules of the Senate is amended by adding at the end the following: "This clause shall not apply to a gift from a lobbyist.".

(b) RULES COMMITTEE REVIEW.—The Committee on Rules and Administration shall review the present exceptions to the Senate gift rule and make recommendations to the Senate not later than 3 months after the date of enactment of this Act on eliminating all but those which are absolutely necessary to effectuate the purpose of the rule.

SEC. 302. PROHIBITION ON PRIVATELY FUNDED TRAVEL.

Paragraph 2(a)(1) of rule XXXV of the Standing Rules of the Senate is amended by striking "an individual" and inserting "an organization recognized under section 501(c)(3) of the Internal Revenue Code of 1986 that is not affiliated with any group that lobbies before Congress".

SEC. 303. PROHIBITING LOBBYIST ORGANIZATION AND PARTICIPATION IN CONGRESSIONAL TRAVEL.

(a) IN GENERAL.—Paragraph 2 of rule XXXV of the Standing Rules of the Senate is amended by adding at the end the following:

"(g) A Member, officer, or employee may not accept transportation or lodging on any trip sponsored by an organization recognized under section 501(c)(3) of the Internal Revenue Code of 1986 covered by this paragraph that is planned, organized, requested, arranged, or financed in whole, or in part by a lobbyist or foreign agent, or in which a lobbyist participates.

"(h) Before a Member, officer, or employee may accept transportation or lodging otherwise permissible under this paragraph from any person, such Member, officer, or employee shall obtain a written certification from such person (and provide a copy of such certification to the Select Committee on Ethics) that—

"(1) the trip was not planned, organized, requested, arranged, or financed in whole, or in part by a registered lobbyist or foreign agent and was not organized at the request of a registered lobbyist or foreign agent;

"(2) registered lobbyists will not participate in or attend the trip; and

"(3) the person did not accept, from any source, funds specifically earmarked for the purpose of financing the travel expenses.

The Select Committee on Ethics shall make public information received under this subparagraph as soon as possible after it is received.".

(b) CONFORMING AMENDMENTS.—Paragraph 2(c) of rule XXXV of the Standing Rules of the Senate is amended—

(1) by striking "of expenses reimbursed or to be reimbursed";

(2) in clause (5), by striking "and" after the semicolon;

(3) in clause (6), by striking the period and inserting "; and"; and

(4) by adding at the end the following:

"(7) a description of meetings and events attended during such travel, except when disclosure of such information is deemed by the Member or supervisor under whose direct supervision the employee works to jeopardize the safety of an individual or otherwise interfere with the official duties of the Member, officer, or employee.".

(c) PUBLIC AVAILABILITY.—Paragraph 2(e) of rule XXXV is amended to read as follows:

"(e) The Secretary of the Senate shall make available to the public all advance authorizations, certifications, and disclosures filed pursuant to subparagraphs (a) and (h) as soon as possible after they are received.".

SEC. 304. DISCLOSURE OF NONCOMMERCIAL AIR TRAVEL.

A Member, officer, or employee of the Senate shall—

(1) disclose a flight on an aircraft that is not licensed by the Federal Aviation Administration to operate for compensation or hire, taken in connection with the duties of the Member, officer, or employee as an officeholder or Senate officer or employee; and

(2) with respect to the flight, file a report with the Secretary of the Senate, including the date, destination, and owner or lessee of the aircraft and the purpose of the trip.

SEC. 305. PER DIEM EXPENSES FOR CONGRESSIONAL TRAVEL.

(a) SENATE.—Rule XXXV of the Standing Rules of the Senate is amended by adding at the end the following:

"7. Not later than 90 days after the date of adoption of this paragraph and at annual intervals thereafter, the Committee on Rules and Administration shall develop and revise, as necessary, guidelines on what constitutes 'reasonable expenses' or 'reasonable expenditures' for purposes of this rule. In developing and revising the guidelines, the committee shall take into account the maximum per diem rates for official Government travel published annually by the General Services Administration, the Department of State, and the Department of Defense.".

TITLE IV—ENFORCEMENT OF LOBBYING RESTRICTIONS

SEC. 401. SENATE OFFICE OF PUBLIC INTEGRITY.

(a) ESTABLISHMENT.—There is established in the Senate an office to be known as the "Senate Office of Public Integrity" (referred to in this section as the "Office"), which shall be headed by a Senate Director of Public Integrity (hereinafter referred to as the "Director").

(b) OFFICE.—The Office shall receive lobbyists' disclosures on behalf of the Senate under the Lobbying Disclosure Act of 1995 and conduct such audits and investigations as are necessary to ensure compliance with the Act.

(c) REFERRAL AUTHORITY.—The Office shall have authority to refer violations of the Lobbying Disclosure Act of 1995 to the Select Committee on Ethics and the Department of Justice for disciplinary action.

(d) DIRECTOR.—

(1) IN GENERAL.—The Director shall be appointed by the President pro tempore of the Senate from among recommendations submitted by the majority and minority leaders of the Senate. Any appointment made under this subsection shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. Any person appointed as Director shall be learned in the law, a member of the bar of a State or the District of Columbia, and shall not engage in any other business, vocation, or employment during the term of such appointment.

(2) OVERSIGHT.—The Director shall report to a joint leadership group consisting of the President pro tempore, the Majority Leader, and the Minority Leader.

(3) TERMS OF SERVICE.—Any appointment made under paragraph (1) shall become effective upon approval by resolution of the Senate. The Director shall be appointed for a term of service which shall expire at the end of the Congress following the Congress during which the Director is appointed except that the Senate may, by resolution, remove Director prior to the termination of any term of service. The Director may be reappointed at the termination of any term of service.

(4) COMPENSATION.—The Director shall receive compensation at a rate equal to the annual rate of basic pay for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(5) STAFF.—The Director shall hire such additional staff as are required to carry out this section, including investigators and accountants.

(e) AUDITS AND INVESTIGATIONS.—

(1) IN GENERAL.—The Office shall audit lobbying registrations and reports filed pursuant to the Lobbying Disclosure Act of 1995 to determine the extent of compliance or noncompliance with the requirements of such Act by lobbyists and their clients.

(2) EVIDENCE OF NON-COMPLIANCE.—If in the course an audit conducted pursuant to the requirements of paragraph (1), the Office obtains information indicating that a person or entity may be in non-compliance with the requirements of the Lobbying Disclosure Act of 1995, the Office shall refer the matter to the Select Committee on Ethics or the United States Attorney for the District of Columbia, as appropriate.

(f) TRANSFER OF RECORDS.—On the date that is 90 days after the date of enactment of this Act, the Office of Public Records of the Senate shall transfer all authority and records of that office to the Senate Office of Public Integrity.

(g) CONFORMING AMENDMENTS.—

(1) NEW OFFICE.—Section 6 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1605) is amended by striking "Secretary of the Senate" and inserting "Senate Office of Public Integrity".

(2) AUDIT AUTHORITY.—Section 8 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1607) is amended by striking subsection (c).

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated in a separate account such sums as are necessary to carry out this section.

SEC. 402. INCREASED CIVIL AND CRIMINAL PENALTIES FOR FAILURE TO COMPLY WITH LOBBYING DISCLOSURE REQUIREMENTS.

Section 7 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1606) is amended—

(1) by inserting "(a) CIVIL PENALTY.—" before "Whoever";

(2) by striking "$50,000" and inserting "$100,000"; and

(3) by adding at the end the following:

"(b) CRIMINAL PENALTY.—

"(1) IN GENERAL.—Whoever knowingly and wilfully fails to comply with any provision of this section shall be imprisoned for not more than 5 years, or fined under title 18, United States Code, or both.

"(2) CORRUPTLY.—Whoever knowingly, wilfully, and corruptly fails to comply with any provision of this section shall be imprisoned for not more than 10 years, or fined under title 18, United States Code, or both.".

SEC. 403. PENALTY FOR FALSE CERTIFICATION IN CONNECTION WITH CONGRESSIONAL TRAVEL.

(a) CIVIL FINE.—

(1) IN GENERAL.—Whoever makes a false certification in connection with the travel of

a Member, officer, or employee of either House of Congress (within the meaning given those terms in section 207 of title 18, United States Code), under paragraph 2(h) of rule XXXV of the Standing Rules of the Senate, shall, upon proof of such offense by a preponderance of the evidence, be subject to a civil fine depending on the extent and gravity of the violation.

(2) MAXIMUM FINE.—The maximum fine per offense under this section depends on the number of separate trips in connection with which the person committed an offense under this subsection, as follows:

(A) FIRST TRIP.—For each offense committed in connection with the first such trip, the amount of the fine shall be not more than $100,000 per offense.

(B) SECOND TRIP.—For each offense committed in connection with the second such trip, the amount of the fine shall be not more than $300,000 per offense.

(C) ANY OTHER TRIPS.—For each offense committed in connection with any such trip after the second, the amount of the fine shall be not more than $500,000 per offense.

(3) ENFORCEMENT.—The Attorney General may bring an action in United States district court to enforce this subsection.

(b) CRIMINAL PENALTY.—

(1) IN GENERAL.—Whoever knowingly and wilfully fails to comply with any provision of this section shall be imprisoned for not more than 5 years, or fined under title 18, United States Code, or both.

(2) CORRUPTLY.—Whoever knowingly, wilfully, and corruptly fails to comply with any provision of this section shall be imprisoned for not more than 10 years, or fined under title 18, United States Code, or both.

SEC. 404. MANDATORY ANNUAL ETHICS TRAINING FOR CONGRESSIONAL EMPLOYEES.

(a) ETHICS TRAINING.—

(1) IN GENERAL.—The Committee on Ethics shall provide annual ethics training to each employee of the Senate which shall include knowledge of the Official Code of Conduct and related Senate rules.

(2) SECRETARY OF THE SENATE.—The Secretary of the Senate shall assist the Committee on Ethics in providing training required by this subsection.

(3) NEW EMPLOYEES.—A new employee of the Senate shall receive training under this section not later than 60 days after beginning service to the Senate.

(b) CERTIFICATION.—Not later than January 31 of each year, each employee of the Senate shall file a certification with the Committee on Ethics that the employee attended ethics training in the last year as established by this section.

TITLE V—OPEN GOVERNMENT

SEC. 501. SENSE OF THE SENATE ON CONFERENCE COMMITTEE PROTOCOLS.

It is the sense of Senate that—

(1) conference committees should hold regular, formal meetings of all conferees that are open to the public;

(2) all conferees should be given adequate notice of the time and place of all such meetings;

(3) all conferees should be afforded an opportunity to participate in full and complete debates of the matters that such conference committees may recommend to their respective Houses;

(4) all matters before a conference committee should be resolved in conference by votes on the public record; and

(5) existing rules should be enforced and new rules adopted in the Senate to shine the light on special interest legislation that is enacted in the dead of night.

SEC. 502. ACTUAL VOTING REQUIRED IN CONFERENCE COMMITTEE MEETINGS.

Rule XXVIII of the Standing Rules of the Senate is amended by adding at the end the following:

"8. Each Senate member of a conference committee shall be afforded an opportunity at an open meeting of the conference to vote on the full text of the proposed report of the conference.".

SEC. 503. AVAILABILITY OF CONFERENCE REPORTS ON THE INTERNET.

Rule XXVIII of all the Standing Rules of the Senate is amended by adding at the end the following:

"9. It shall not be in order in the Senate to consider a conference report unless such report is available to all Members and made available to the general public by means of the Internet for at least 24 hours before its consideration.".

By Mr. LAUTENBERG (for himself, Ms. SNOWE, Mr. SCHUMER, Mr. COLEMAN, Mrs. FEINSTEIN, Mr. PRYOR, Mr. DEWINE, Mrs. BOXER, Mr. MENENDEZ, Ms. COLLINS, Mr. DAYTON, Mr. REED, Mr. JEFFORDS, Mrs. LINCOLN, Mr. LEAHY, Mr. WYDEN, Ms. STABENOW, Mr. JOHNSON, Mr. KENNEDY, Mr. DORGAN, Mr. LIEBERMAN, Mrs. CLINTON, Mr. CHAFEE, and Mr. DODD):

S. 2181. A bill to amend title XIX of the Social Security Act to provide for an offset from the Medicaid clawback for State prescription drug expenditures for covered part D drugs for Medicare beneficiaries; to the Committee on Finance.

Mr. LAUTENBERG. Mr. President, I rise to introduce the Medicare State Reimbursement Act along with my colleagues, Senators SNOWE, SCHUMER, COLEMAN, FEINSTEIN, PRYOR, DEWINE, BOXER, MENENDEZ, COLLINS, DAYTON, REED, JEFFORDS, LINCOLN, LEAHY, WYDEN, STABENOW, JOHNSON, KENNEDY, DORGAN, LIEBERMAN, CLINTON, CHAFEE and DODD.

There have been many difficulties surrounding implementation of the Medicare prescription drug benefit, however, few have experienced the severity of the problems that those who are dually eligible for both Medicare and Medicaid have faced.

"Dual Eligibles" are the Nation's poorest seniors and the disabled. Many suffer from multiple, chronic, debilitating conditions and on average take between five and ten medications per day. Missing even one dose of medication could result in a life threatening situation.

Across America, countless beneficiaries who tried to have their prescriptions filled for the first time under the new system were told that their enrollment could not be verified, their drugs were not covered, or they would be charged larger co-payments or deductibles than they could afford. As a result, many were at risk of not receiving lifesaving prescription drugs.

Regardless of how Senators voted on the Medicare Drug bill, I think all Senators can agree on one thing: the flaws in the startup of this program are unacceptable.

Fortunately, a number of States including New Jersey have taken actions to help those who have experienced problems with access to medications under the new prescription drug benefit. As of Wednesday this week, New Jersey had already spent $16.6 million dollars.

Congress has been asking the Centers for Medicare and Medicaid Services whether New Jersey and other States will be paid back for its expenditures. The answers we have gotten so far are not satisfactory.

That is why we need to legislate on this issue. It must be crystal clear to the Federal Government that it needs to repay these States that are bailing them out.

Accordingly, I am introducing emergency legislation today that will reimburse States for the cost they have incurred for filling this unanticipated gap in coverage.

Specifically, this legislation would: require the Federal Government to reimburse the states for the cost of prescriptions for low income seniors and people with disabilities ("dual eligibles") who were eligible for coverage under Medicare Part D, but were improperly denied Federal coverage.

Reimburse states through an equivalent reduction in funds owed by each state under the "claw back" provision of the new Medicare law.

Reimbursement will be at a rate equal to 100 percent of all State costs plus an interest rate equal to the market rate on 3-month Treasury Securities plus 0.1 percent.

Directs the Secretary of HHS to recover overpayments by states to private prescription drug plans and return that money to the Medicare Trust Fund.

This is not just about access to the Federal entitlement program—it's about life and death.

I urge my colleagues on both sides of the aisle to support this legislation and move for its immediate passage.

I ask unanimous consent that the text of the bill be printed in the RECORD.

S. 2181

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicare State Reimbursement Act of 2006".

SEC. 2. FEDERAL RESPONSIBILITY FOR STATE PRESCRIPTION DRUG EXPENDITURES FOR COVERED PART D DRUGS FOR MEDICARE BENEFICIARIES.

Section 1935(c) of the Social Security Act (42 U.S.C. 1396v(c)) is amended—

(1) in paragraph (1)(A), by striking "Each of the 50 States" and inserting "Subject to paragraph (7), each of the 50 States"; and

(2) by adding at the end the following new paragraph:

"(7) OFFSET FOR STATE PRESCRIPTION DRUG EXPENDITURES FOR COVERED PART D DRUGS FOR MEDICARE BENEFICIARIES.—

"(A) IN GENERAL.—The amount of payment for a month (beginning with January 2006) under paragraph (1) shall be reduced by an amount equal to the sum of—

"(i) the amount (as documented by the State) that the State expended during the month for payment for covered part D drugs for part D eligible individuals who are enrolled in a prescription drug plan under part D of title XVIII but were unable to access on a timely basis prescription drug benefits to which they were entitled under such plan; and

"(ii) interest on such amount (for the period beginning on the day after the date on which an expenditure described in subparagraph (A) is made and ending on the date on which payment is made under paragraph (1)) at a rate equal to the weighted average of interest on 3-month marketable Treasury securities determined for such period, increased by 0.1 percentage point.

"(B) RECOVERY OF REDUCED PAYMENT FROM PRESCRIPTION DRUG PLANS.—The Secretary shall provide for recovery of payment reductions made under subparagraph (A) from those prescription drug plans under part D of title XVIII or MA-PD plans under part C of such title that would otherwise be responsible for the expenditures described in subparagraph (A)(i). Any such amounts recovered shall be deposited into the Medicare Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund.".

Ms. SNOWE. Mr. President, I am pleased to join with Senator LAUTENBERG today to introduce urgent legislation to assist the many States which have stepped forward to provide an essential safety net to our Medicare Part D beneficiaries. Our States have acted as "payers of last resort"—as beneficiaries faced unaffordable costs when errors in implementing their coverage denied them access to vital medications. The Medicare State Reimbursement Act will reimburse our States for their costs in assuring that millions receive their medications. So many of our colleagues have recognized the crisis which was averted—Senators COLEMAN, SCHUMER, DEWINE, FEINSTEIN, COLLINS, JEFFORDS and many more have joined us in this bipartisan effort to support the States in the vital role they have played in countering a deficit of action by the Federal bureaucracy.

The introduction of the prescription drug benefit is a landmark step in the progress of Medicare. This benefit will save the average senior about $1,000 per year. This is the relief that millions have needed for so long. It must eliminate the terrible choices so many have had to make between vital medications and the other essentials of life—not create new dilemmas.

As we worked to ensure a prescription drug benefit, many of us worked hard to assure special help to those with the most limited resources. We enacted a benefit which provided additional help for those on limited incomes, including millions who rely on both Medicare and Medicaid—our "dual eligibles". It was essential that these individuals would see uninterrupted coverage of their essential medications. So we needed to ensure each would be enrolled in a drug plan. To do this, the Centers for Medicare and Medicaid Services, CMS, randomly assigned each of them to a plan. In a program based on competition—based on choices—plans are going to differ. To find the best plan, one must make an educated choice, not a random assignment.

So the result of random assignment was predictable. Many beneficiaries wound up in plans which did not cover their drugs. My State of Maine immediately stepped forward to work to assure that every beneficiary was matched with the plan which best met their needs. As plans were reviewed, my State found a third of those reviewed—15,000 beneficiaries—were not enrolled in the most appropriate drug plan. Getting each into the plan that met their medication requirements was essential to meeting their needs.

Despite these best efforts to improve the situation, some beneficiaries were not in a plan at all, while others were in plans which seemed not to understand that every beneficiary was to be allowed a refill of their existing medications. So as beneficiaries came to their local pharmacies to get prescription refills, many faced great obstacles in getting the drugs they needed. We had heard of some problems in validating enrollment eligibility, but at year end, these just became worse, and we found beneficiaries were not properly enrolled, plans were not giving the proper transition refills, and co-payments charged were often excessive. As individual faced co-payments of $100 or more—instead of the $5 or less they should have been charged—many simply couldn't afford their medications. Thankfully, our States have stepped in to make sure low income seniors received their medications. In Maine alone, approximately $5 million in assistance has been given to ensure medications are dispensed.

This drug benefit must increase access, not make it more difficult. I am appalled, that with all the technology we have, so many have faced such difficulties in the implementation of this benefit. I salute the forbearance of our pharmacies, as they strived to meet essential needs, and the efforts of my State and others which have assured that these most vulnerable Americans not suffer from the failures of either the Federal bureaucracy or the plan administrators.

So what this legislation does is simple. It authorizes CMS to reimburse the States their costs which they paid for providing medications to those who did not receive the benefits to which they were entitled. It does this by a simple mechanism: an adjustment in the "claw back" payments which States make as their contribution for their dual eligibles. Accordingly, CMS is authorized to collect those funds from those who were obligated to serve our beneficiaries—the drug plans and managed care plans which deliver the drug benefit.

It has been confirmed that CMS does not presently have this authority, and it simply is not acceptable to propose that CMS will simply help the States collect from the plans. It was CMS which approved the plans, and it is CMS which administers Part D. They are in the best position to assure plan compliance.

I look forward to prompt consideration of this legislation, and look forward to continuing work with my colleagues to assure that the Medicare drug benefit meets the needs of all our beneficiaries, and that none of our most vulnerable citizens should suffer from such administrative failures as we have seen here.

I call on my colleagues to join us in assuring our States are justly compensated.

Mrs. FEINSTEIN. Mr. President, I am pleased to join with Senators LAUTENBERG, SNOWE, SCHUMER, COLEMAN and many others to introduce legislation to reimburse States for prescription drug expenses they have incurred for their residents who are dually eligible for Medicare and Medicaid. States have had no other option but to step in and ensure seniors can still get their drugs because the implementation of the new Medicare drug benefit has been so poorly handled by the Bush administration.

The faulty implementation of the new drug benefit has caused a major health emergency in California and States across the country, particularly for seniors with chronic and debilitating diseases who rely on multiple medications every day to keep them alive.

It is incomprehensible to me that with all the money and time given to the Centers for Medicare and Medicaid Services, CMS, to implement this new drug benefit, stories emerge every day of seniors and disabled individuals being hospitalized because they are being told they have to pay hundreds of dollars for their medications which they cannot afford and thus don't take.

Because of severe glitches in the database run by CMS, these individuals are leaving pharmacies without their medications or are making undue sacrifices to pay for costs they should not have incurred in the first place.

So far, more than 24 States and the District of Columbia have stepped in to say they will cover the cost of prescription drugs for their residents who are dually eligible for Medicare and Medicaid and who cannot access lifesaving and life sustaining drugs as a result of Federal incompetence.

Earlier this week, the Governor of California and California's State legislative leaders announced a plan to make $150 million available for 30 days to cover drug costs for dual eligible individuals who have fallen through the system. In California, these individuals account for more than 1 million of the State's 4 million total Medicare recipients.

Problems with the Bush administration's implementation of the drug benefit have cost California $5.5 million to fill 63,000 prescriptions, as of January 18. I have no doubt these costs are just the beginning.

Unless these significant implementation errors are fixed immediately, the new drug benefit amounts to a massive unfunded mandate. The Bush administration must reimburse States, in full, for the drug costs they have absorbed as a result of major implementation errors that occurred on their watch.

The legislation I am introducing today with Senators LAUTENBERG, SNOWE, SCHUMER and COLEMAN will ensure that States are repaid in full by the Federal Government for all costs associated with prescription drugs for dual eligible individuals. The States did not create the crisis felt by our Nation's poorest and most vulnerable seniors and disabled and the States should not be responsible for costs associated with a Federal program that was intended to provide these individuals with comprehensive prescription drug coverage at little or no cost.

It is simply unacceptable for the Bush administration to tell States and the Congress not to worry because the private health insurance plans will reimburse States for the costs they've incurred. States should not be made to wait to be reimbursed because of implementation foul-ups caused by CMS.

I urge my colleagues to support this legislation.

By Mr. ROCKEFELLER (for himself, Mr. REID) Mrs. MURRAY, Mr. BINGAMAN, Mrs. LINCOLN, Mr. KENNEDY, Mrs. CLINTON, Mr. LAUTENBERG, Ms. STABENOW, Mr. DURBIN, Mr. KERRY, Mr. SCHUMER, Mr. PRYOR, Mr. LEAHY, Mr. DAYTON, Mr. JEFFORDS, Mr. HARKIN, Ms. MIKULSKI, Mr. JOHNSON, Ms. CANTWELL, Mr. AKAKA, Mr. LIEBERMAN, Mr. KOHL, Ms. LANDRIEU, Mr. SARBANES, and Mrs. BOXER):

S. 2183. A bill to provide for necessary beneficiary protections in order to ensure access to coverage under the Medicare part D prescription drug program; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2183

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Requiring Emergency Pharmaceutical Access for Individual Relief (REPAIR) Act of 2006".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Transition requirements.
Sec. 3. Federal fallback for full-benefit dual eligible individuals for 2006.
Sec. 4. Identifying full-benefit dual eligible individuals in data records.
Sec. 5. Prohibition on conditioning Medicaid eligibility for individuals enrolled in certain creditable prescription drug coverage on enrollment in the Medicare part D drug program.
Sec. 6. Ensuring that full-benefit dual eligible individuals are not overcharged.
Sec. 7. Reimbursement of States for 2006 transition costs.
Sec. 8. Facilitation of identification and enrollment through pharmacies of full-benefit dual eligible individuals in the Medicare part D drug program.
Sec. 9. State health insurance program assistance regarding the new Medicare prescription drug benefit.
Sec. 10. Additional Medicare part D informational resources.
Sec. 11. GAO study and report on the imposition of co-payments under part D for full-benefit dual eligible individuals residing in a long-term care facility.
Sec. 12. State coverage of non-formulary prescription drugs for full-benefit dual eligible individuals during 2006.
Sec. 13. Protection for full-benefit dual eligible individuals from plan termination prior to receiving functioning access in a new part D plan.

SEC. 2. TRANSITION REQUIREMENTS.

(a) REQUIREMENT.—

(1) IN GENERAL.—Section 1860D-4(b) of the Social Security Act (42 U.S.C. 1395w-104(b)) is amended by adding at the end the following new paragraph:

"(4) FORMULARY TRANSITION.—The sponsor of a prescription drug plan is required to provide at least a 30-day supply of any drug that a new enrollee in the plan was taking prior to enrolling in such plan. For individuals residing in a long-term care setting, the sponsor of a prescription drug plan is required to provide at least a 90-day supply of any drug such individual was taking prior to enrolling in such plan. A formulary transition supply provided under this section shall be made by the sponsor of a prescription drug plan without imposing any prior authorization requirements or other access restrictions for individuals stabilized on a course of treatment and at the dosage previously prescribed by a physician or recommended by a physician going forward.

"(5) CUSTOMER SERVICE.—The sponsor of a prescription drug plan is required to provide—

"(A) accessible and trained customer service representatives available for full business hours from coast to coast to provide knowledgeable assistance to individuals seeking help with Medicare Part D including, but not limited to, beneficiaries, caseworkers, SHIP counselors, pharmacists, doctors, and caregivers;

"(B) at least one dedicated phone line for pharmacists with sufficient staff to reduce wait times for pharmacists seeking Medicare Part D assistance to no more than 20 minutes; and

"(C) sufficient staff to reduce wait times for all Medicare Part D-related calls to plan phone lines to no more than 20 minutes.".

(2) APPLICATION.—The requirements under paragraphs (4) and (5) of section 1860D-4(b) of the Social Security Act (42 U.S.C. 1395w-104(b)), as added by subsection (a), shall apply to the plan serving as the national point of sale contractor under part D of title XVIII of such Act.

(b) EFFECTIVE DATE AND ENFORCEMENT.—

(1) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

(2) ENFORCEMENT.—The Secretary may impose a civil monetary penalty in an amount not to exceed $15,000 for conduct that a sponsor of a prescription drug plan or an organization offering an MA-PD plan knows or should know is a violation of the provisions of paragraph (4) or (5) of section 1860D-4(b) of the Social Security Act (42 U.S.C. 1395w-104(b)), as added by subsection (a). The provisions of section 1128A of the Social Security Act (42 U.S.C. a-7a), other than subsections (a) and (b) and the second sentence of subsection (f), shall apply to a civil monetary penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under subsection (a) of such section 1128A(a).

SEC. 3. FEDERAL FALLBACK FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS FOR 2006.

(a) IN GENERAL.—

(1) IN GENERAL.—If a full-benefit dual eligible individual (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396u-5(c)(6))), or an individual who is presumed to be such an individual pursuant to subsection (b), presents a prescription for a covered part D drug (as defined in section 1860D-2(e) of such Act (42 U.S.C. 1395w-102(e))) at a pharmacy in 2006 and the pharmacy is unable to locate or verify the individual's enrollment through a reasonable effort, including the use of the pharmacy billing system or by calling an official Medicare hotline, or to bill for the prescription through the plan serving as the national point of sale contractor, the pharmacy may provide a 30-day supply of the drug to the individual.

(2) REFILL.—The pharmacy may provide an additional 30-day supply of a drug if the pharmacy continues to be unable to locate the individual's enrollment through such reasonable efforts or to bill for the prescription through the plan serving as the national point of sale contractor when a prescription is presented on or after the date that a prescription refill is appropriate, but in no case after December 31, 2006.

(3) COST-SHARING.—The cost-sharing for a prescription filled pursuant to this subsection shall be cost-sharing provided for under section 1860D-14(a) of the Social Security Act (42 U.S.C. 1395w-114(a)).

(b) PRESUMPTIVE ELIGIBILITY.—An individual shall be presumed to be a full-benefit dual eligible individual (as so defined) if the individual presents at the pharmacy with—

(1) a government issued picture identification card;

(2) reliable evidence of Medicaid enrollment, such as a Medicaid card, recent history of Medicaid billing in the pharmacy patient profile, or a copy of a current Medicaid award letter; and

(3) reliable evidence of Medicare enrollment, such as a Medicare identification card, a Medicare enrollment approval letter, a Medicare Summary Notice, or confirmation from an official Medicare hotline.

(c) Payments to Pharmacists.—

(1) In general.—The Secretary of Health and Human Services shall reimburse pharmacists, to the extent that such pharmacists are not otherwise reimbursed by States or plans, for the costs incurred in complying with the requirements under subsection (a), including acquisition costs, dispensing costs, and other overhead costs. Such payments shall be made in a timely manner from the Medicare Prescription Drug Account under section 1860D-16 of the Social Security Act (42 U.S.C. 1395w–116) and shall be deemed to be payments from such Account under subsection (b) of such section.

(2) Retroactive application to beginning of 2006.—The costs incurred by a pharmacy which may be reimbursed under paragraph (1) shall include costs incurred during the period beginning on January 1, 2006, and before the date of enactment of this Act.

(d) Recovery of Costs From Plans by Secretary Not Pharmacies.—The Secretary of Health and Human Services shall establish a process for recovering the costs described in subsection (c)(1) from prescription drug plans (as defined in section 1860D-1(a)(3)(C) of the Social Security Act (42 U.S.C. 1394w–101(a)(3)(C))) and MA-PD plans (as defined in section 1860D–41(a)(14) of such Act (42 U.S.C. 1395w–151(a)(14))) if the Secretary determines that such plans should have incurred such costs. Amounts recovered pursuant to the preceding sentence shall be deposited in the Medicare Prescription Drug Account described in subsection (c)(1).

SEC. 4. IDENTIFYING FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS IN DATA RECORDS.

(a) In General.—The Secretary of Health and Human Services and a prescription drug plan or an MA-PD plan shall clearly identify all full-benefit dual eligible individuals (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396u-5(c)(6))) and reflect the low-income subsidy status of such individual for each calender year (beginning with 2006) in every data record file used to enroll or adjudicate claims for such individuals.

(b) Enrollment.—For each calendar year (beginning with 2006) and for each Medicaid beneficiary who is a full-benefit dual eligible individual (as so defined), the Secretary of Health and Human Services shall—

(1) identify in the Medicare enrollment database that such individual has dual eligible status that has been verified with a State or the District of Columbia; and

(2) ensure that such dual eligible status is reflected in each data file necessary to ensure that such status is transmitted to a prescription drug plan or an MA–PD plan when the Secretary certifies the enrollment of such an individual in a plan.

(c) Definition of MA–PD Plan and Prescription Drug Plan.—For purposes of this section, the terms "MA–PD plan" and "prescription drug plan" have the meaning given such terms in sections 1860D–1(a)(3)(C) and 1860D-41(a)(14) of the Social Security Act (42 U.S.C. 1395w–101(a)(3)(C); 1395w–151(a)(14)), respectively.

SEC. 5. PROHIBITION ON CONDITIONING MEDICAID ELIGIBILITY FOR INDIVIDUALS ENROLLED IN CERTAIN CREDITABLE PRESCRIPTION DRUG COVERAGE ON ENROLLMENT IN THE MEDICARE PART D DRUG PROGRAM.

(a) In General.—Section 1935 of the Social Security Act (42 U.S.C. 1396v) is amended by adding at the end the following:

"(f) Prohibition on Conditioning Eligibility for Medical Assistance for Individuals Enrolled in Certain Creditable Prescription Drug Coverage on Enrollment in Medicare Prescription Drug Benefit.—

"(1) In general.—A State shall not condition eligibility for medical assistance under the State plan for a part D eligible individual (as defined in section 1860D–1(a)(3)(A)) who is enrolled in creditable prescription drug coverage described in any of subparagraphs (C) through (H) of section 1860D-13(b)(4) on the individual's enrollment in a prescription drug plan under part D of title XVIII or an MA–PD plan under part C of such title.

"(2) Coordination of benefits with part D for other individuals.—Nothing in this subsection shall be construed as prohibiting a State from coordinating medical assistance under the State plan with benefits under part D of title XVIII for individuals not described in paragraph (1).".

(b) Nullification of State Plan Amendments, Redetermination of Eligibility.—In the case of a State that, as of the date of enactment of this Act, has an approved amendment to its State plan under title XIX of the Social Security Act with a provision that conflicts with section 1935(f) of such Act (as added by subsection (a)), such provision is, as of such date of enactment, null and void. The State shall redetermine any applications for medical assistance that have been denied solely on the basis of the application of such a State plan amendment not later than 90 days after the date of enactment of this Act.

SEC. 6. ENSURING THAT FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS ARE NOT OVERCHARGED.

(a) In General.—Section 1860D–14 of the Social Security Act (42 U.S.C. 1395w–114) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

"(d) Ensuring Full-Benefit Dual Eligible Individuals Are Not Overcharged.—

"(1) In general.—The Secretary shall, as soon a possible after the date of enactment of this subsection, establish processes for the following:

"(A) Tracking inappropriate payments.—The Secretary shall track full-benefit dual eligible individuals enrolled in a prescription drug plan or an MA-PD plan to determine whether such individuals were inappropriately subject under the plan to a deductible or cost-sharing that is greater than is required under section 1860D-14.

"(B) Reduction in payments to plans and refunds to individuals.—If the Secretary determines under subparagraph (A) that an individual was overcharged, the Secretary shall—

"(i) reduce payments to the sponsor of the prescription drug plan under section 1860D-15 or to the organization offering the MA–PD plan under section 1853 that inappropriately charged the individual by an amount equal to the inappropriate charges; and

"(ii) refund such amount to the individual within 60 days of the determination that the individual was inappropriately charged.

If the Secretary does not provide for the refund under clause (i) within the 60 days provided for under such clause, interest at the rate established under section 6621(a)(1) of the Internal Revenue Code of 1986 shall be payable from the end of such 60-day period until the date of the refund.

"(2) Requirement.—The processes established under paragraph (1) shall provide for the ability of an individual to notify the Secretary if the individual believes that they were inappropriately subject under the plan to a deductible or cost-sharing that is greater than is required under section 1860D-14.".

(b) Report to Congress.—Not later than January 1, 2007, the Secretary of Health and Human Services shall submit a report to Congress on the implementation of the processes established under subsection (d) of section 1860D-14 of the Social Security Act (42 U.S.C. 1395w-114), as added by subsection (a).

SEC. 7. REIMBURSEMENT OF STATES FOR 2006 TRANSITION COSTS.

(a) Reimbursement.—

(1) In general.—Notwithstanding section 1935(d) of the Social Security Act (42 U.S.C. 1396u-5(d) or any other provision of law, the Secretary of Health and Human Services shall reimburse States for 100 percent of the costs incurred by the State during 2006 for covered part D drugs (as defined in section 1860D-2(e) of such Act (42 U.S.C. 1395w–102(e))) for part D eligible individuals (as defined in section 1860D–1(a)(3)(A) of the Social Security Act (42 U.S.C. 1394w–101(a)(3)(A))) which the State reasonably expected would have been covered under such part but were not because the individual was unable to access on a timely basis prescription drug benefits to which they were entitled under such part. Such payments shall be made from the Medicare Prescription Drug Account under section 1860D–16 of the Social Security Act (42 U.S.C. 1395w-116) and shall be deemed to be payments from such Account under subsection (b) of such section.

(2) Retroactive application to beginning of 2006.—The costs incurred by a State which may be reimbursed under paragraph (1) shall include costs incurred during the period beginning on January 1, 2006, and before the date of enactment of this Act.

(b) Recovery of Costs From Plans by Secretary Not States.—The Secretary of Health and Human Services shall establish a process for recovering the costs described in subsection (a)(1) from prescription drug plans (as defined in section 1860D-1(a)(3)(C) of the Social Security Act (42 U.S.C. 1394w–101(a)(3)(C))) and MA–PD plans (as defined in section 1860D–41(a)(14) of such Act (42 U.S.C. 1395w-151(a)(14))) if the Secretary determines that such plans should have incurred such costs. Amounts recovered pursuant to the preceding sentence shall be deposited in the Medicare Prescription Drug Account described in subsection (a)(1).

(c) State.—For purposes of this section, the term "State" includes the District of Columbia.

SEC. 8. FACILITATION OF IDENTIFICATION AND ENROLLMENT THROUGH PHARMACIES OF FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS IN THE MEDICARE PART D DRUG PROGRAM.

(a) In General.—The Secretary of Health and Human Services shall provide for outreach and education to every pharmacy that has participated in the Medicaid program under title XIV of the Social Security Act, particularly independent pharmacies, on the following:

(1) The needs of full-benefit dual eligible individuals and the challenges of meeting those needs.

(2) The processes for the transition from Medicaid prescription drug coverage to coverage under such part D for such individuals.

(3) The processes established by the Secretary to facilitate, at point of sale, identification of drug plan assignment of such population or enrollment of previously unidentified or new full-benefit dual eligible individuals into Medicare part D prescription drug coverage, including how pharmacies can use such processes to help ensure that such population makes a successful transition to Medicare part D without a lapse in prescription drug coverage.

(b) Holding Pharmacies Harmless for Certain Costs.—

(1) In general.—The Secretary of Health and Human Services shall provide for such payments to pharmacies as may be necessary to reimburse pharmacies fully for—

(A) transaction fees associated with the point-of-sale facilitated identification and enrollment processes referred to in subsection (a)(3); and

(B) costs associated with technology or software upgrades necessary to make any identification and enrollment inquiries as part of the processes under subsection (a)(3).

(2) Time.—Payments under paragraph (1) shall be made with respect to fees and costs incurred during the period beginning on December 1, 2005, and ending on June 1, 2006.

(3) Payments from account.—Payments under paragraph (1) shall be made from the Medicare Prescription Drug Account under section 1860D–16 of the Social Security Act (42 U.S.C. 1395w–116) and shall be deemed to be payments from such Account under subsection (b) of such section.

SEC. 9. STATE HEALTH INSURANCE PROGRAM ASSISTANCE REGARDING THE NEW MEDICARE PRESCRIPTION DRUG BENEFIT.

During the period beginning on the date that is 7 days after the date of enactment of this Act and ending on May 15, 2006 (or a later date if determined appropriate by the Secretary of Health and Human Services), the Secretary shall ensure that an employee of the Centers for Medicare & Medicaid Services is stationed at each State health insurance counseling program (receiving funding under section 4360 of the Omnibus Budget Reconciliation Act of 1990) in order to—

(1) assist Medicare beneficiaries and counselors under such program in better understanding the Medicare prescription drug benefit under part D of title XVIII of the Social Security Act; and

(2) act as a liaison to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services regarding issues related to oversight and enforcement of provisions under the Medicare prescription drug benefit.

SEC. 10. ADDITIONAL MEDICARE PART D INFORMATIONAL RESOURCES.

(a) 1–800–MEDICARE.—The Secretary of Health and Human Services shall increase the number of trained employees staffing the toll-free telephone number 1–800–MEDICARE in order to ensure that the average wait time for a caller does not exceed 20 minutes.

(b) Pharmacy Hotline.—The Secretary of Health and Human Services shall—

(1) establish a toll-free telephone number that is dedicated to providing information regarding the Medicare prescription drug benefit under title XVIII of the Social Security Act to pharmacists; and

(2) staff such telephone number in order to ensure that the average wait time for a caller does not exceed 20 minutes.

(c) State Health Insurance Program Hotline.—The Secretary of Health and Human Services shall—

(1) establish a toll-free telephone number that is dedicated to providing information regarding the Medicare prescription drug benefit under title XVIII of the Social Security Act to counselors working in State health insurance counseling programs (receiving funding under section 4360 of the Omnibus Budget Reconciliation Act of 1990); and

(2) staff such telephone number in order to ensure that the average wait time for a caller does not exceed 20 minutes.

SEC. 11. GAO STUDY AND REPORT ON THE IMPOSITION OF CO-PAYMENTS UNDER PART D FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS RESIDING IN A LONG-TERM CARE FACILITY.

(a) Study.—The Comptroller General of the United States shall conduct a study on how mental health patients who are full-benefit dual eligible individuals (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396u–5(c)(6))) and who reside in long-term care facilities, including licensed assisted living facilities, will be affected by the imposition of co-payments for covered part D drugs under part D of title XVIII of such Act. Such study shall include a review of issues that relate to the potential harm of displacement due to an inability to access needed medications because of such co-payments.

(b) Report.—Not later than 6 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress on the study conducted under subsection (a) together with recommendations for such legislation as the Comptroller General determines is appropriate.

SEC. 12. STATE COVERAGE OF NON-FORMULARY PRESCRIPTION DRUGS FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS DURING 2006.

(a) State Coverage of Non-Formulary Prescription Drugs for Full-Benefit Dual Eligible Individuals During 2006.—For prescriptions filled during 2006, notwithstanding section 1935(d) of the Social Security Act (42 U.S.C. 1396v(d)), a State (as defined for purposes of title XIX of such Act) may provide (and receive Federal financial participation for) medical assistance under such title with respect to prescription drugs provided to a full-benefit dual eligible individual (as defined in section 1935(c)(6) of such Act (42 U.S.C. 1396v(c)(6)) that are not on the formulary of the prescription drug plan under part D or the MA–PD plan under part C of title XVIII of such Act in which such individual is enrolled.

(b) Application.—

(1) Medicare as primary payer.—Nothing in subsection (a) shall be construed as changing or affecting the primary payer status of a prescription drug plan under part D or an MA–PD plan under part C of title XVIII of the Social Security Act with respect to prescription drugs furnished to any full-benefit dual eligible individual (as defined in section 1935(c)(6) of such Act (42 U.S.C. 1396v(c)(6)) during 2006.

(2) Third party liability.—Nothing in subsection (a) shall be construed as limiting the authority or responsibility of a State under section 1902(a)(25) of the Social Security Act (42 U.S.C. 1396a(a)(25)) to seek reimbursement from a prescription drug plan, an MA–PD plan, or any other third party, of the costs incurred by the State in providing prescription drug coverage during 2006.

SEC. 13. PROTECTION FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS FROM PLAN TERMINATION PRIOR TO RECEIVING FUNCTIONING ACCESS IN A NEW PART D PLAN.

(a) In General.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall not terminate coverage of a full-benefit dual eligible individual (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396v(c)(6)) unless such individual has functioning access to a prescription drug plan under part D or an MA–PD plan under part C of title XVIII of such Act. Such access shall include entry of the individual into the computer system of such plan and an acknowledgment by the plan that the individual is eligible for a full premium subsidy under section 1860D–14 of such Act (42 U.S.C. 1395w–114).

(b) Effective Date.—This section shall take effect on the date of enactment of this Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 349—CONDEMNING THE GOVERNMENT OF IRAN FOR VIOLATING THE TERMS OF THE 2004 PARIS AGREEMENT, AND EXPRESSING SUPPORT FOR EFFORTS TO REFER IRAN TO THE UNITED NATIONS SECURITY COUNCIL FOR ITS NONCOMPLIANCE WITH INTERNATIONAL ATOMIC ENERGY AGENCY OBLIGATIONS

Mr. SANTORUM (for himself and Mr. Kyl) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. Res. 349

Whereas the International Atomic Energy Agency (IAEA) reported in November 2003 that Iran had been developing an undeclared nuclear enrichment program for 18 years and had covertly imported nuclear material and equipment, carried out over 110 unreported experiments to produce uranium metal, separated plutonium, and concealed many other aspects of its nuclear facilities;

Whereas, in November 2004, the Governments of the United Kingdom, France, and Germany entered into an agreement with Iran on Iran's nuclear program (commonly known as the "Paris Agreement"), successfully securing a commitment from the Government of Iran to voluntarily suspend uranium enrichment operations in exchange for discussions on economic, technological, political, and security issues;

Whereas Article XII.C of the Statute of the IAEA requires the IAEA Board of Governors to report the noncompliance of any member of the IAEA with its IAEA obligations to all members and to the Security Council and General Assembly of the United Nations;

Whereas Article III.B–4 of the Statute of the IAEA specifies that "if in connection with the activities of the Agency there should arise questions that are within the competence of the Security Council, the Agency shall notify the Security Council, as the organ bearing the main responsibility for the maintenance of international peace and security";

Whereas, in September 2005, the IAEA Board of Governors adopted a resolution declaring that Iran's many failures and breaches constitute noncompliance in the context of Article XII.C of the Statute of the IAEA;

Whereas, on January 3, 2006, the Government of Iran announced that it planned to restart its nuclear research efforts in direct violation of the Paris Agreement;

Whereas, in January 2006, Iranian officials, in the presence of IAEA inspectors, began to remove United Nations seals from the enrichment facility in Natanz, Iran;

Whereas Foreign Secretary of the United Kingdom Jack Straw warned Iranian officials that they were "pushing their luck" by removing the United Nations seals that were placed on the Natanz facility by the IAEA 2 years earlier;

Whereas President of France Jacques Chirac said that the Governments of Iran and North Korea risk making a "serious error" by pursuing nuclear activities in defiance of international agreements;

Whereas Foreign Minister of Germany Frank-Walter Steinmeier said that the Government of Iran had "crossed lines which it knew would not remain without consequences";

Whereas Secretary of State Condoleezza Rice stated, "It is obvious that if Iran cannot be brought to live up to its international obligations, in fact, the IAEA Statute would indicate that Iran would have to be referred to the U.N. Security Council.";

Whereas President of Iran Mahmoud Ahmadinejad stated, "The Iranian government and nation has no fear of the Western ballyhoo and will continue its nuclear programs with decisiveness and wisdom.";

Whereas the United States has joined with the Governments of Britain, France, and Germany in calling for a meeting of the IAEA to discuss Iran's non-compliance with its IAEA obligations;

Whereas President Ahmadinejad has stated that Israel should be "wiped off the map"; and

Whereas the international community is in agreement that the Government of Iran should not seek the development of nuclear weapons:

Now, therefore, be it

Resolved, That the Senate—

(1) condemns the decisions of the Government of Iran to remove United Nations seals from its uranium enrichment facilities and to resume nuclear research efforts;

(2) commends the Governments of Britain, France, and Germany for their efforts to secure the 2004 Paris Agreement, which resulted in the brief suspension in Iran of nuclear enrichment activities;

(3) supports the referral of Iran to the United Nations Security Council under Article XII.C and Article III.B-4 of the Statute of the IAEA for violating the Paris Agreement; and

(4) condemns actions by the Government of Iran to develop, produce, or acquire nuclear weapons.

SENATE RESOLUTION 350—EXPRESSING THE SENSE OF THE SENATE THAT SENATE JOINT RESOLUTION 23 (107TH CONGRESS), AS ADOPTED BY THE SENATE ON SEPTEMBER 14, 2001, AND SUBSEQUENTLY ENACTED AS THE AUTHORIZATION FOR USE OF MILITARY FORCE DOES NOT AUTHORIZE WARRANTLESS DOMESTIC SURVEILLANCE OF UNITED STATES CITIZENS

Mr. LEAHY (for himself and Mr. KENNEDY) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 350

Whereas the Bill of Rights to the United States Constitution was ratified 214 years ago;

Whereas the Fourth Amendment to the United States Constitution guarantees to the American people the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures";

Whereas the Fourth Amendment provides that courts shall issue "warrants" to authorize searches and seizures, based upon probable cause;

Whereas the United States Supreme Court has consistently held for nearly 40 years that the monitoring and recording of private conversations constitutes a "search and seizure" within the meaning of the Fourth Amendment;

Whereas Congress was concerned about the United States Government unconstitutionally spying on Americans in the 1960s and 1970s;

Whereas Congress enacted the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), commonly referred to as "FISA", to provide a legal mechanism for the United States Government to engage in searches of Americans in connection with intelligence gathering and counterintelligence;

Whereas Congress expressly enacted the Foreign Intelligence Surveillance Act of 1978, and specified provisions of the Federal criminal code (including those governing wiretaps for criminal investigations), as the "exclusive means by which domestic electronic surveillance . . . may be conducted" pursuant to law (18 U.S.C. 2511(2)(f));

Whereas the Foreign Intelligence Surveillance Act of 1978 establishes the Foreign Intelligence Surveillance Court (commonly referred to as the "FISA court"), and the procedures by which the United States Government may obtain a court order authorizing electronic surveillance (commonly referred to as a "FISA warrant") for foreign intelligence collection in the United States;

Whereas Congress created the FISA court to review wiretapping applications for domestic electronic surveillance to be conducted by any Federal agency;

Whereas the Foreign Intelligence Surveillance Act of 1978 provides specific exceptions that allow the President to authorize warrantless electronic surveillance for foreign intelligence purposes (1) in emergency situations, provided an application for judicial approval from a FISA court is made within 72 hours; and (2) within 15 calendar days following a declaration of war by Congress;

Whereas the Foreign Intelligence Surveillance Act of 1978 makes criminal any electronic surveillance not authorized by statute;

Whereas the Foreign Intelligence Surveillance Act of 1978 has been amended over time by Congress since the September 11, 2001, attacks on the United States;

Whereas President George W. Bush has confirmed that his administration engages in warrantless electronic surveillance of Americans inside the United States and that he has authorized such warrantless surveillance more than 30 times since September 11, 2001; and

Whereas Senate Joint Resolution 23 (107th Congress), as adopted by the Senate on September 14, 2001, and House Joint Resolution 64 (107th Congress), as adopted by the House of Representatives on September 14, 2001, together enacted as the Authorization for Use of Military Force (Public Law 107–40), to authorize military action against those responsible for the attacks on September 11, 2001, do not contain legal authorization nor approve of domestic electronic surveillance, including domestic electronic surveillance of United States citizens, without a judicially approved warrant: Now, therefore, be it

Resolved, That Senate Joint Resolution 23 (107th Congress), as adopted by the Senate on September 14, 2001, and subsequently enacted as the Authorization for Use of Military Force (Public Law 107-40) does not authorize warrantless domestic surveillance of United States citizens.

Mr. LEAHY. Mr. President, today I am submitting this resolution expressing the sense of the Senate that the Authorization for Use of Military Force, which Congress passed to authorize military action against those responsible for the attacks on September 11, 2001, did not authorize warrantless eavesdropping on American citizens.

As Justice O'Connor underscored recently, even war "is not a blank check for the President when it comes to the rights of the Nation's citizens."

Now that the illegal spying of Americans has become public and the President has acknowledged the 4-year-old program, the Bush administration's lawyers are contending that Congress authorized it. The September 2001 Authorization to Use Military Force did no such thing. Republican Senators also know it and a few have said so publicly. We all know it. The liberties and rights that define us as Americans and the system of checks and balances that serve to preserve them should not be sacrificed to threats of terrorism or to the expanding power of the government. In the days immediately following those attacks, I said, and I continue to believe, that the terrorists win if they frighten us into sacrificing our freedoms and what defines us as Americans.

I well remember the days immediately after the 9/11 attacks. I helped open the Senate to business the next day. I said then, on September 12, 2001:

> "If we abandon our democracy to battle them, they win. . . . We will maintain our democracy, and with justice, we will use our strength. We will not lose our commitment to the rule of law, no matter how much the provocation, because that rule of law has protected us throughout the centuries. It has created our democracy. It has made us what we are in history. We are a just and good Nation."

I joined with others, Republican and Democrats, and we engaged in round-the-clock efforts over the next months in connection with what came to be the USA PATRIOT Act. During those days the Bush administration never asked us for this surveillance authority or to amend the Foreign Intelligence Surveillance Act to accommodate such a program.

Just as we cannot allow ourselves to be lulled into a sense of false comfort when it comes to our national security, we cannot allow ourselves to be lulled into a blind trust regarding our freedoms and rights. The Framers built checks and balances into our system specifically to counter such abuses and undue assertions of power. We must remain vigilant on all fronts or we stand to lose these rights forever. Once lost or eroded, liberty is difficult if not impossible to restore. The Bush administration's after-the-fact claims about the breadth of the Authorization to Use Military Force—as recently as this week, in a document prepared at the White House's behest by the Department of Justice—are the latest in a long line of manipulations of the law. We have also seen this type of overreaching in that same Justice Department office's twisted interpretation of the torture statute, an analysis that had to be withdrawn; with the detention of suspects without charges and denial of access to counsel; and with the misapplication of the material witness statute as a sort of general preventive detention law. Such abuses serve to harm our national security as well as our civil liberties.

In addition, the press reports that the Pentagon maintains secret databases containing information on a wide cross-section of ordinary Americans, and that the FBI is monitoring law-abiding citizens in the exercise of their First Amendment freedoms. When I worked with Senator WYDEN and others in 2003 to stop Admiral Poindexter's Total Information Awareness program, an effort designed to datamine information on Americans—and we meant it. And when I added a reporting requirement on Carnivore, the FBI's e-mail monitoring program, to the Department of Justice Authorizations law in 2002, we meant it. We demanded that Congress be kept informed and that any such program not proceed without congressional authorization.

The New York Times reported that after September 11, 2001, when former Attorney General John Ashcroft loosened restrictions on the FBI to permit it to monitor Web sites, mosques, and other public entities, "the FBI has used that authority to investigate not only groups with suspected ties to foreign terrorists, but also protest groups suspected of having links to violent or disruptive activities." When I learned of such efforts and that they reportedly included monitoring Quakers in Florida and possibly Vermont, I wrote to the Secretary of Defense demanding an answer. That was a month ago. So far he has refused to provide that answer.

Now we have learned that President Bush has, for more than four years, secretly allowed the warrantless wiretapping of Americans inside the United States. And we read in the press that sources at the FBI say that much of what was forwarded to them to investigate was worthless and led to dead ends. That is a dangerous diversion of our investigative resources away from those who pose real threats, while precious time and effort is devoted to looking into the lives of law-abiding Americans.

The United States Supreme Court has consistently held for nearly 40 years, since its landmark decision in Katz v. United States, that the monitoring and recording of private conversations constitutes a "search and seizure" within the meaning of the Fourth Amendment. Congress enacted the Foreign Intelligence Surveillance Act of 1978, FISA, to provide a legal mechanism for the government to engage in electronic surveillance of Americans in connection with intelligence gathering. The Foreign Intelligence Surveillance Act, along with the criminal wiretap authority in title 18 of the United States Code, together provide the exclusive means by which the Government may intercept domestic electronic communications pursuant to the rule of law.

The Foreign Intelligence Surveillance Act has been amended over time, and it has been adjusted several times since the 9/11 attacks. Indeed, much of the PATRIOT Act was devoted to modifying FISA to make it easier to obtain FISA warrants. But the PATRIOT Act did not amend FISA to give the Government the authority to conduct warrantless surveillance of American citizens.

If the Bush administration believed that the law was inadequate to deal with the threat of terrorism within our boundaries, it should have come to Congress and sought to change the law. It did not. Indeed, Attorney General Gonzales admitted at a press conference on December 19, 2005, that the Administration did not seek to amend FISA to authorize the NSA spying program because it was advised that "it was not something we could likely get."

I chaired the Senate Judiciary Committee in 2001 and 2002, when the President's secret eavesdropping program apparently began. I was not informed of the program. I learned about it for the first time in the press last month. I thank heaven and the Constitution that we still have a free press.

The Bush administration is now arguing that when Congress authorized the use of force in September 2001 to attack al Qaeda in Afghanistan, it authorized warrantless searches and eavesdropping on American citizens. I voted for that authorization, and I know that Congress did not sign a blank check. The notion that Congress authorized warrantless surveillance in the AUMF is utterly inconsistent with the Attorney General's admission that Congress was not asked for such authorization because it was assumed that Congress would say no.

Former Senate Majority Leader Tom Daschle, who helped negotiate the use of force resolution with the White House, has confirmed that the subject of warrantless wiretaps of American citizens never came up, that he did not and never would have supported giving authority to the President for such wiretaps, and that he is "confident that the 98 senators who voted in favor of authorization of force against al Qaeda did not believe that they were also voting for warrantless domestic surveillance."

Senator Daschle also noted that the Bush administration sought to add language to the resolution that would have explicitly authorized the use of force "in the United States," but Congress refused to grant the President such sweeping power. Maybe that was this Administration's covert way to seek the authority to spy on Americans, but Congress did not grant any such authority.

Spying on Americans without first obtaining the requisite warrants is illegal, unnecessary and wrong. No President can simply declare when he wishes to follow the law and when he chooses not to, especially when it comes to the hard-won rights of the American people.

The resolution I submit today is intended to help set the record straight. It is an important first step toward restoring checks and balances between the co-equal branches of government. I urge all Senators to support it.

Mr. KENNEDY. Mr. President, what is past is prologue. Today, we see history repeating itself. In 1978, President Carter signed into law the "Foreign Intelligence Surveillance Act," successfully concluding years of debate on the power of the President to conduct national security wiretapping.

As a result of lengthy hearings and consultation, Congress enacted that law with broad bipartisan support. Its purpose was clear—to put a check on the power of the President to use wiretaps in the name of national security. One of the clear purposes of that law was to require the government to obtain a judicial warrant for all electronic surveillance in the United States in which communications of U.S. citizens might be intercepted. The Act established a secret court, the Foreign Intelligence Surveillance Court, to review wiretapping applications and guarantee that any such electronic surveillance followed the rule of law. Since 1979, the special court has approved nearly 19,000 applications and denied only 4. Last year, the Administration reached an all-time-high with the number of applications granted.

In the Foreign Intelligence Surveillance Act, Congress established the exclusive means by which electronic surveillance could be conducted in the United States for national security purposes. One of the principal goals of the legislation was to ensure that information obtained from illegal wiretaps could not be used to obtain a warrant from the Foreign Intelligence Surveillance Court. We even made sure that there would be criminal penalties for anyone who failed to comply with these rules.

The PATRIOT Act did not give the President the authority to spy on anyone without impartial judicial review—and neither did the Joint Resolution, enacted in 2001, authorizing the use of force against those responsible for the attacks of September 11th.

The President seemed to agree. In 2004, in Buffalo he stated categorically that "any time that you hear the United States talking about a wiretap, it requires a court order." He said that "Nothing had changed—when we're talking about chasing down terrorists, we're talking about getting a court order before we do so."

Now, however, the President and the administration claim they do not have to comply with the law. Just yesterday, the administration again asserted its constitutional authority to eavesdrop on any person within the United States—without judicial or legislative oversight and it claims that the Congress implicitly granted such power in the Joint Resolution of 2001.

But that Joint Resolution says nothing about domestic electronic surveillance. As Justice O'Connor has said, "A state of war is not a blank check for the president when it comes to the rights of the nation's citizens."

The bipartisan 9/11 Commission made clear that the Executive Branch has the burden of proof to justify why a particular governmental power should be retained—and Congress has the responsibility to see that adequate guidelines and oversight are made available.

The Executive Branch has failed to meet the 9/11 Commissioners' burden of proof. The American people are not convinced that these surveillance methods achieve the right balance between our national security and protection of our civil liberties.

These issues go to the heart of what it means to have a free society. If President Bush can make his own rules for domestic surveillance, Big Brother has run amok. If the President believes that winning the war on terror requires new surveillance capabilities, he has a responsibility to work with Congress to make appropriate changes in existing law. He is not above the law.

Congress and the American people deserve full and honest answers about the Administration's domestic electronic surveillance activities. On December 22, 2005, I asked the President to provide us with answers before the Senate Judiciary Committee began hearings on Judge Alito's nomination to the Supreme Court. We got no response. The Senate Judiciary Committee is scheduled to begin separate hearings on February 6 on the President's actions. Instead of providing us with the documents the Administration relied upon, the Justice Department continues to circulate summaries and "white papers" on the legal authorities it purports to have to ignore the law. It now appears that the President did so on at least thirty occasions after September 11. There is no legitimate purpose in denying access by Members of Congress to all of the legal thought and analysis that the President relied upon when he authorized these activities.

Every 45 days, the President ordered these activities to be reviewed by the Attorney General, the White House Counsel and the Inspector General of the National Security Agency. That's not good enough. These are all executive branch appointees who report directly to the President.

Congress spent seven years considering and enacting the Foreign Intelligence Surveillance Act. It was not a hastily conceived idea. We had broad agreement that both Congressional oversight and judicial oversight were fundamental—even during emergencies or times of war, which is why we established a secret court to expedite the review of sensitive applications from the government.

Now, the administration has made a unilateral decision that Congressional and judicial oversight can be discarded, in spite of what the law obviously requires. We need a thorough investigation of these activities. Congress and the American people deserve answers, and they deserve answers now.

SENATE RESOLUTION 351—RESPONDING TO THE THREAT POSED BY IRAN'S NUCLEAR PROGRAM

Mr. BAYH submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 351

Whereas Iran is precipitating a grave nuclear crisis with the international community that directly impacts the national security of the United States and the efficacy of the International Atomic Energy Agency (IAEA) and the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (commonly referred to as the "Nuclear Non-Proliferation Treaty");

Whereas the United States welcomes a diplomatic solution to the nuclear crisis, but the Government of Iran continues to reject a peaceful resolution to the matter;

Whereas, although the Government of Iran agreed to suspend uranium enrichment activities and to sign and ratify the IAEA's Additional Protocol on expansive, intrusive no-notice inspections in 2003, it has repeatedly failed to live up to its obligations under this agreement;

Whereas the Government of Iran broke IAEA seals on some centrifuges in September 2004, converted uranium to a gas needed for enrichment in May 2005, limited IAEA inspectors to a few sites, and said it would restart uranium conversion activities;

Whereas the Board of Governors of the IAEA declared in September 2005 that Iran was in non-compliance of its Nuclear Non-Proliferation Treaty obligations;

Whereas Iran announced on January 3, 2006, that it would resume uranium "research" activities at Natanz and invited IAEA to witness the breaking of IAEA seals at the facility;

Whereas the Government of Iran has acknowledged deceiving the IAEA for the past 18 years for not disclosing an uranium enrichment facility in Natanz and a heavy water production plant in Arak;

Whereas the Government of Iran's human rights practices and strict limits on democracy have been consistently criticized by United Nations reports;

Whereas the Department of State stated in its most recent Country Reports on Human Rights Practices that Iran's already poor human rights record "worsened" during the previous year and deemed Iran a country "of particular concern" in its most recent International Religious Freedom Report;

Whereas the Government of Iran funds terror and rejectionist groups in Gaza and the West Bank, Lebanon, Iraq, and Afghanistan and is providing material support to groups directly involved in the killing of United States citizens;

Whereas Iran has been designated by the United States as a state sponsor of terrorism since 1984, and the Department of State said in its most recent Country Reports on Terrorism that Iran "remained the most active state sponsor of terrorism in 2004";

Whereas President of Iran Mahmoud Ahmadinejad has made repeated anti-American and anti-semitic statements, including denying the occurrence of the Holocaust and Israel's right to exist, and called on people to imagine a world without the United States;

Whereas Iran's recent acquisition of new anti-ship capabilities to block the Strait of Hormuz at the entrance to the Persian Gulf and the decision by the Government of Russia to sell the Government of Iran $1,000,000,000 in weapons, mostly for 29 anti-aircraft missile systems, is most regrettable and should dampen United States-Russian relations;

Whereas the behavior of the Government of Iran does not reflect that country's rich history and the democratic aspirations of most people in Iran;

Whereas the people of the United States stand with the people of Iran in support of democracy, the rule of law, religious freedom, and regional and global stability;

Whereas, although Iran is subject to a range of unilateral sanctions and some third country and foreign entities sanctions, these sanctions have not been fully implemented;

Whereas Iran remains vulnerable to international sanctions, especially with respect to financial services and foreign investment in its petroleum sector and oil sales, few foreign nations have joined the United States in attempting to isolate the regime in Iran and compel compliance with Iran's international obligations;

Whereas, although Iran may be one of the world's largest exporters of oil, it does not have the refining capacity to make the gasoline necessary to make its economy run and currently imports 40 percent of its refined gasoline from abroad;

Whereas more complete implementation of United States sanctions laws and the adoption of additional statutes would improve the chances of a diplomatic solution to the nuclear crisis with Iran;

Whereas President George W. Bush has for 4 years given too little attention to the growing nuclear problem in Iran beyond rhetorical sound bites and has carried out an Iran policy consisting of loud denunciations followed by minimal action and ultimate deference of managing the crisis to Europe, a policy that has been riddled with contradiction and inconsistency and damaging to United States national security;

Whereas, had President Bush effectively marshaled world opinion in 2002 and not wasted valuable time, diverted resources, and ignored the problem in Iran, the United States would not be faced with the full extent of the current nuclear crisis in Iran;

Whereas action now is imperative and time is of the essence; and

Whereas the opportunity the United States has to avoid the choice between military action and a nuclear Iran may be measured only in months: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the United States should cut assistance to countries whose companies are investing in Iran's energy sector, including pipelines to export Iranian crude;

(2) supplies of refined gasoline to Iran should be cut off;

(3) there should be a worldwide, comprehensive ban on sales of weapons to Iran, including from Russia and China;

(4) the United Nations Security Council should impose an intrusive IAEA-led weapons of mass destruction inspection regime on Iran similar to that imposed on Iraq after the 1991 Persian Gulf war;

(5) the United Nations Security Council should adopt reductions in diplomatic exchanges with Iran, limit travel by some Iranian officials, and limit or ban sports or cultural exchanges with Iran;

(6) the President should more faithfully implement the Iran and Libya Sanctions Act of 1996 (50 U.S.C. 1701 note) (commonly known as "ILSA"), and Congress should—

(A) increase the requirements on the President to justify waiving ILSA-related sanctions;

(B) repeal the sunset provision of ILSA;

(C) set a 90-day time limit for the President to determine whether an investment constitutes a violation of ILSA; and

(D) make exports to Iran of technology related to weapons of mass destruction sanctionable under ILSA;

(7) the United States should withdraw its support for Iran's accession to the WTO until Iran meets weapons of mass destruction, human rights, terrorism, and regional stability standards; and

(8) the United States must make the Government of Iran understand that if its nuclear activity continues it will be treated as a pariah state.

SENATE CONCURRENT RESOLUTION 76—CONDEMNING THE GOVERNMENT OF IRAN FOR ITS FLAGRANT VIOLATIONS OF ITS OBLIGATIONS UNDER THE NUCLEAR NON-PROLIFERATION TREATY, AND CALLING FOR CERTAIN ACTIONS IN RESPONSE TO SUCH VIOLATIONS

Mr. COLEMAN (for himself, Mr. SCHUMER, Mr. LAUTENBERG, Mr. ALLEN, Mr. DEWINE, Mr. BROWNBACK, Mr. NELSON of Nebraska, Mr. NELSON of Florida, and Mrs. FEINSTEIN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 76

Whereas the Government of Iran concealed a nuclear program from the International Atomic Energy Agency (IAEA) and the international community for nearly two decades until it was revealed in 2002;

Whereas the Government of Iran has repeatedly deceived the IAEA about a variety of nuclear-related activities, including uranium enrichment and laboratory-scale separation of plutonium;

Whereas the Government of Iran recently removed IAEA seals from a uranium enrichment facility at Natanz and announced the resumption of "research" on nuclear fuel in a brazen affront to the international community;

Whereas members of the international community have agreed that the pursuit of uranium enrichment capabilities comprises a "red line" for United Nations Security Council referral that has now been unequivocally crossed by Iran;

Whereas this provocation represents only the latest action by the Government of Iran in a long pattern of intransigence relating to its nuclear program, including its violation of an October 2003 agreement with the United Kingdom, Germany, and France (the "EU-3") only months after the agreement was signed, its unilateral violation of the 2004 agreement with the EU-3 to suspend its enrichment program (commonly known as the "Paris Agreement"), its failure to provide IAEA inspectors access to various nuclear sites, and its refusal to answer outstanding questions related to its nuclear program;

Whereas the regime in Iran has made clear the nefarious intentions behind its nuclear program in a series of inflammatory and reprehensible statements, including calling for Israel to be "wiped off the map" at a conference titled "A World without Zionism" and asserting that the Holocaust was a "myth" and that Israel should be transferred to Europe;

Whereas previous activities of the regime, including the sponsorship of terrorist groups such as Hezbollah, Hamas, and Islamic Jihad through the provision of funding, training, weapons, and safe haven and the destabilization of neighboring countries such as Iraq, Israel, and Lebanon, indicate that a nuclear-armed Iran would pose an unprecedented threat to the national security of the United States;

Whereas the Director General of the IAEA, Mohamed El Baradei, has publicly stated that once the Government of Iran perfects its capability to produce nuclear material and completes a parallel weaponization program, it would be only months away from building a nuclear bomb;

Whereas the Institute for Science and International Security, a Washington, D.C., nonproliferation advocacy group, released a January 2, 2006, satellite photograph showing extensive new construction at the Natanz facility;

Whereas the IAEA Board of Governors passed a resolution on September 24, 2005, indicating that Iran's noncompliance with its IAEA obligations would result in the referral of Iran to the United Nations Security Council under Article XII.C of the Statute of the IAEA;

Whereas each member of the EU-3, the leading partner of the United States in diplomatic efforts regarding Iran's nuclear program, has publicly stated its intention to refer Iran to the United Nations Security Council and called for an "extraordinary meeting" of the IAEA Board of Governors on February 2, 2006;

Whereas the Governments of China and Russia have expressed agreement with the United States and the EU-3 that the Government of Iran has violated its commitments to the IAEA;

Whereas China and Russia sit on the United Nations Security Council, and their cooperation would be required to enact any substantive Security Council measures against the Government of Iran; and

Whereas the Government of Iran has demonstrated no interest in Russia's offer to enrich Iran's uranium feedstock into power plant fuel on Russian territory, further demonstrating its aversion to compromise:

Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) categorically condemns the Government of Iran for its flagrant violations of its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (commonly referred to as the "Nuclear Non-Proliferation Treaty");

(2) calls for the immediate suspension of all uranium enrichment activities of the Government of Iran;

(3) supports calls for an emergency meeting of the Board of Governors of the IAEA for the purpose of immediately referring Iran to the United Nations Security Council;

(4) calls on all nuclear suppliers to cease immediately cooperation with Iran on nuclear materials, equipment, and technology; and

(5) calls on the Governments of Russia and China to demonstrate that they are responsible stakeholders in the international community by supporting efforts to refer Iran to the United Nations Security Council and by taking appropriate measures in response to Iran's violations of its commitments under the Nuclear Non-Proliferation Treaty.

ADJOURNMENT UNTIL 10 A.M., TUESDAY, JANUARY 24, 2006

The PRESIDENT pro tempore. Under the previous order, the Senate will stand in adjournment until 10 a.m. on Tuesday, January 24, 2006.

Thereupon, the Senate, at 10 o'clock and 10 seconds a.m., adjourned until Tuesday, January 24, 2006 at 10 a.m.

SENATE—*Tuesday, January 24, 2006*

The Senate met at 10 and 3 seconds a.m. and was called to order by the Honorable ROBERT F. BENNETT, a Senator from the State of Utah.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, January 24, 2006.

To the Senate:

Under the provisions of Rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROBERT F. BENNETT, a Senator from the State of Utah, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. BENNETT thereupon assumed the chair as Acting President pro tempore.

REPORTS OF COMMITTEES

Under the authority of the order of the Senate of January 18, 2006, the following reports of committees were submitted on January 24, 2006:

By Mr. McCAIN, from the Committee on Indian Affairs, without amendment:

S. 1219. A bill to authorize certain tribes in the State of Montana to enter into a lease or other temporary conveyance of water rights to meet the water needs of the Dry Prairie Rural Water Association, Inc. (Rept. No. 109–213).

EXECUTIVE REPORT OF COMMITTEE RECEIVED DURING ADJOURNMENT

Under the authority of the order of the Senate of January 18, 2006, the following executive report of committee was submitted on January 24, 2006:

By Mr. SPECTER for the Committee on the Judiciary.

Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

ADJOURNMENT UNTIL 9:30 A.M., WEDNESDAY, JANUARY 25, 2006

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will stand adjourned until 9:30 a.m. on Wednesday, January 25, 2006.

Thereupon, the Senate, at 10 and 26 seconds a.m., adjourned until Wednesday, January 25, 2006, at 9:30 a.m.

SENATE—*Wednesday, January 25, 2006*

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty and merciful God, who has given us grace in times past and hope for the years to come, strengthen us to continue to grow in grace and in our knowledge of You. Quicken our hearts with warmer affection for You and Your creation. Stir up the talents in each of us and give us a desire to serve You and humanity.

Bless the Members of this body and the staffs that serve them. Increase their faith as You increase their years. Give them the moral fitness to live lives of integrity and faithfulness. May they not falter under the burdens they are asked to carry in these uncertain days. Bless them with clear minds and open eyes that they will not seek to solve tomorrow's problems with yesterday's solutions.

We thank You for our new Senate page class. Inspire our pages to trust You passionately so that You will direct their steps. We pray in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business with Senators permitted to speak therein for up to 10 minutes each.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. President, I welcome everyone back to begin this second session of the 109th Congress.

In a few moments we will begin another historic debate in the Senate Chamber as we consider the nomination of Samuel Alito to be Associate Justice of the Supreme Court of the United States.

We will lock in a debate structure in a few moments so we will be able to alternate hours back and forth between the two sides of the aisle. This will help facilitate the schedule so Members will have a better understanding of when they will have the opportunity to come to the floor to give their statements and to participate in that debate.

We will remain in session all day today and into the night this week to accommodate Senators who wish to make statements. As I mentioned, every Senator will have the opportunity to speak, but it is my hope we will be able to lock in a time certain for a vote on this qualified nominee as soon as possible in order that our fellow Senators will know when that confirmation vote will occur. I would like to be able to do that shortly. I have been in discussion with the Democratic leader, and we will continue that discussion on that particular matter.

EXECUTIVE SESSION

NOMINATION OF SAMUEL A. ALITO, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

Mr. FRIST. Mr. President, at this point, I ask unanimous consent that the Senate proceed to executive session for the consideration of Calendar No. 490, the nomination of Samuel Alito to be an Associate Justice of the Supreme Court of the United States.

The PRESIDENT pro tempore. Is there an objection?

Without objection, it is so ordered.

The Senate will proceed to executive session, and the clerk will report.

The legislative clerk read the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States.

Mr. McCAIN. Mr. President, will the majority leader yield to me for 1 minute while I bring up an issue that we were discussing yesterday?

Mr. FRIST. Mr. President, I will be happy to yield.

The PRESIDENT pro tempore. The Senator from Arizona.

LOBBYING REFORM

Mr. McCAIN. Mr. President, I thank the majority leader for his efforts to move the issue of lobbying reform forward. We had a good meeting yesterday amongst other Members, and Senator LIEBERMAN and I and others also, as the majority leader knows, have introduced legislation. There has been input made by other Members, and I know the majority leader joins me in saying we need to put together a bipartisan coalition to address this issue as quickly as possible. We need to sit down with Members of both sides of the aisle in whatever format the majority leader and the Democratic leader decide so we can get to work right away and get legislation done to curb the lobbying excesses that have been brought to light that need to be fixed.

At another time I would like to talk with the majority leader about the issue of earmarks, but I thank the majority leader for urging rapid action on this issue. We do have a basis for negotiation, and I hope we will be able to immediately sit down with Members from the other side of the aisle, come to conclusions and agreements—since it is pretty obvious the majority of the fixes that need to be made—and move forward. I thank the majority leader and the Democratic leader for urging rapid action in addressing this issue which is causing us, our image and our reputation to be hurt very badly in the eyes of the American people.

I thank the majority leader.

Mr. FRIST. Mr. President, just a very short comment. I have been in discussion with the Democratic leader on this issue as well. As our distinguished colleague from Arizona has just said, we on the Republican side have put together a working group in terms of how to address this very important issue. It has to be done in a bipartisan way. America is looking at this body to respond to abuses that we have all seen in our Government today. I think we all need to be committed to address this in a bipartisan way.

We have a great structure to build upon in the legislation that has been introduced in a bipartisan way with Senators McCAIN and LIEBERMAN. I look forward to working with both sides of the aisle in developing an appropriate response over the coming days.

Mr. President, I now ask unanimous consent that the time from 10 a.m. until 8 p.m. tonight be divided, with the time from 10 to 11 under the control of the majority leader or his designee, the time from 11 to noon under the control of the Democratic leader or his designee, with each hour rotating back and forth in that same manner. I further ask unanimous consent that on

Thursday this same division occur, with the first hour from 10 to 11 under the control of the Democratic leader or his designee.

The PRESIDENT pro tempore. Is there an objection?

Without objection, it is so ordered.

Mr. FRIST. Mr. President, today, I am honored to open debate on the nomination of Judge Sam Alito to be the 110th Associate Justice of the Supreme Court of the United States.

I enthusiastically support his confirmation.

Judge Alito deserves to become Justice Alito. Those who oppose him are smearing a decent and honorable man and imposing an unfair political standard on all judicial nominees.

I support Judge Alito because he is exceptionally qualified to be a Supreme Court Justice. I support Judge Alito because he is a man of integrity and modest judicial temperament. I support Judge Alito because he has a record that demonstrates a respect for judicial restraint, an aversion to political agendas on the bench, and a commitment to the rule of law and the Constitution.

There is no question that Judge Alito is exceptionally well qualified. He is measured, brilliant, deeply versed in and respectful of the law, and a man of character and integrity. But there is another reason I support Judge Alito. I support Judge Alito because denying him a seat on the Supreme Court could have devastating long-term consequences for our judicial nomination process. Let me address these issues one at a time.

Exceptional qualifications: From the moment President Bush nominated him last October, Judge Alito's exceptional qualifications had a "wow" factor that impressed Senators of both parties. In every respect, Judge Alito is a nominee who meets the highest standards of excellence.

He is a graduate of Princeton and Yale Law School. He has dedicated his 30-year legal career to public service as a Federal prosecutor and assistant to the Solicitor General, where he argued 12 cases before the Supreme Court, and for the last 15 years as a Federal judge on the Third Circuit in New Jersey. He has been unanimously confirmed by this body not once but twice. On the Federal bench, he has participated in more than 3,500 cases and has written more than 300 opinions. The American Bar Association gave Judge Alito its highest rating, unanimously "well qualified." He is a man of integrity and modest judicial temperament.

Exceptional qualifications only begin to reveal why Sam Alito should be confirmed to the Supreme Court. Throughout his career as a prosecutor and a judge, Sam Alito earned a reputation as a man of integrity who was fair-minded and evenhanded. He earned the trust and respect of his colleagues, Republicans, Democrats, and Independents. That is one reason seven Federal judges endorsed his nomination and testified on his behalf.

Through the Judiciary Committee hearings, we saw a clear picture emerge of Judge Alito's modest judicial temperament. Despite enduring relentless questioning of his credibility, integrity, and personal and political views, Judge Alito remained unflappable, never once raising his voice or becoming confrontational, focusing clearly and articulately on the facts, the law, and the constitutional questions presented to him. He understands the limited role of a judge—judicial restraint, impartiality, and a commitment to the rule of law.

In addition to all of his exceptional qualifications, integrity, and temperament, Judge Alito deserves confirmation because he understands the limited role of a judge to interpret the law and not legislate from the bench. He practices judicial restraint and refuses to prejudge cases or apply a personal political agenda on the bench. In his hearing before the Judiciary Committee, this philosophy was clear. He said:

> A judge can't have an agenda. A judge can't have any preferred outcome in any particular case. . . . The judge's only obligation—and it's a solemn obligation—is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires.

In his 15 years on the bench, Judge Alito has done exactly that. Just listen to the words of one of Judge Alito's former law clerks, a registered Democrat who, by the way, still has a "Kerry for President" bumper sticker on his car. His words:

> Until I read [Judge Alito's] 1985 Reagan job application, I could not tell you what his politics were . . . When we worked on cases, we reached the same result about 95 percent of the time . . . It was my experience that Judge Alito was (and is) capable of setting aside any personal biases he may have when he judges. He is the consummate professional.

Long-term consequences for the judicial nominations process: Perhaps the most important reason to support Judge Alito has less to do with Judge Alito himself and more to do with our judicial nominations process. Regardless of their political views, Senators should treat judicial nominees with dignity, respect, and fairness, not just because it is the right thing to do but because a process that politicizes and degrades judicial nominees will drive our very best and our brightest away from the bench. I am profoundly disappointed in the unfair and unseemly treatment of Judge Alito during this process. His judicial record has been distorted and mischaracterized. He has been labeled as nonresponsive during his hearings, despite providing candid and articulate answers to more than 650 questions and over 18 hours of testimony—far more than many, perhaps any Supreme Court nominee in the past—and most sadly, he has been the victim of a calculated but unsuccessful campaign to smear his character, his integrity, and his credibility.

In an editorial in support of Judge Alito, published on January 15, the Washington Post expressed this concern, even though they would have chosen a different nominee than Judge Alito:

> He would not have been our pick for the high court. Yet Judge Alito should be confirmed, both because of his positive qualities as an appellate judge and because of the dangerous precedent his rejection would set . . . Supreme Court confirmations have never been free of politics, but neither has their history generally been one of party-line votes or of ideology as the determinative factor. To go down that road is to believe that there exists a Democratic law and a Republican law—which is repugnant to the ideal of the rule of law. However one reasonably defines "mainstream" of contemporary jurisprudence, Judge Alito's work lies within it. While we harbor some anxiety about the direction he may push the court, we would be more alarmed at the long-term implications of denying him a seat. No President should be denied the prerogative of putting a person as qualified as Judge Alito on the Supreme Court.

I ask unanimous consent that the full text of the Washington Post editorial of January 15 entitled "Confirm Samuel Alito on the Supreme Court" be printed in the RECORD at the conclusion of my remarks.

The PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. FRIST. Thirteen years ago, a Republican minority in the Senate voted to confirm the qualified nominee of a Democratic President by an overwhelming vote of 96 to 3. Despite a well-documented liberal record, Justice Ruth Bader Ginsburg sits on the Supreme Court today because Republican Senators chose to focus on her qualifications and not to obstruct her nomination based merely on her judicial philosophy or ideology. I urge my colleagues to vote to confirm Judge Alito by applying that same fair standard. As we debate this week, I hope we can put aside partisan rhetoric and the politics of personal destruction and stand on principle. Qualified judicial nominees such as Judge Alito deserve respectful debate and a fair up-or-down vote on the Senate floor. As Senators, it is our fundamental constitutional duty and responsibility.

EXHIBIT 1

[From the Washington Post, Jan. 15, 2006]

CONFIRM SAMUEL ALITO

The Senate's decision concerning the confirmation of Samuel A. Alito Jr. is harder than the case last year of now-Chief Justice John G. Roberts Jr. Judge Alito's record raises concerns across a range of areas. His replacement of Justice Sandra Day O'Connor could alter—for the worse, from our point of view—the Supreme Court's delicate balance in important areas of constitutional law. He would not have been our pick for the high court. Yet Judge Alito should be confirmed, both because of his positive qualities as an appellate judge and because of the dangerous precedent his rejection would set.

Though some attacks on him by Democratic senators and liberal interest groups have misrepresented his jurisprudence, Judge Alito's record is troubling in areas. His generally laudable tendency to defer to elected representatives at the state and federal levels sometimes goes too far—giving rise to concerns that he will prove too tolerant of claims of executive power in the war on terror. He has tended at times to read civil rights statutes and precedents too narrowly. He has shown excessive tolerance for aggressive police and prosecutorial tactics. There is reason to worry that he would curtail abortion rights. And his approach to the balance of power between the federal government and the states, while murky, seems unpromising. Judge Alito's record is complicated, and one can therefore argue against imputing to him any of these tendencies. Yet he is undeniably a conservative whose presence on the Supreme Court is likely to produce more conservative results than we would like to see.

Which is, of course, just what President Bush promised concerning his judicial appointments. A Supreme Court nomination isn't a forum to refight a presidential election. The president's choice is due deference—the same deference that Democratic senators would expect a Republican Senate to accord the well-qualified nominee of a Democratic president.

And Judge Alito is superbly qualified. His record on the bench is that of a thoughtful conservative, not a raging ideologue. He pays careful attention to the record and doesn't reach for the political outcomes he desires. His colleagues of all stripes speak highly of him. His integrity, notwithstanding efforts to smear him, remains unimpeached.

Humility is called for when predicting how a Supreme Court nominee will vote on key issues, or even what those issues will be, given how people and issues evolve. But it's fair to guess that Judge Alito will favor a judiciary that exercises restraint and does not substitute its judgment for that of the political branches in areas of their competence. That's not all bad. The Supreme Court sports a great range of ideological diversity but less disagreement about the scope of proper judicial power. The institutional self-discipline and modesty that both Judge Alito and Chief Justice Roberts profess could do the court good if taken seriously and applied apolitically.

Supreme Court confirmations have never been free of politics, but neither has their history generally been one of party-line votes or of ideology as the determinative factor. To go down that road is to believe that there exists a Democratic law and a Republican law—which is repugnant to the ideal to the rule of law. However one reasonably defines the "mainstream" of contemporary jurisprudence, Judge Alito's work lies within it. While we harbor some anxiety about the direction he may push the court, we would be more alarmed at the long-term implications of denying him a seat. No president should be denied the prerogative of putting a person as qualified as Judge Alito on the Supreme Court.

Mr. FRIST. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CORNYN). Without objection, it is so ordered.

JUDICIARY COMMMITTEE AGENDA

Mr. SPECTER. Mr. President, before proceeding to the nomination of Judge Alito to the Supreme Court of the United States, I think it worthwhile to comment very briefly on some of the scheduling items for the Judiciary Committee.

As we all know, the PATRIOT Act was extended from December 31 until February 3. I circulated a letter today among our colleagues, and I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SPECTER. It outlines the alternatives which we face at the present time. One is to let the act expire on February 3, which I think no one would like. Second would be to extend the current bill for a period of time. We will be discussing a 4-year extension. Or, third, to have cloture imposed on the filibuster which is in effect and then vote to utilize the conference report and pass the act. It is always possible to take another course of action if there is unanimous consent.

The conference is technically discharged at this point, and the House of Representatives has made it emphatically clear that they have gone as far as they think it reasonable to go on the compromises.

There have been very substantial compromises worked out. At one juncture, there were three additional requests which we took to the House and got all of them, the most important of which was the sunset provision changed from 7 years to 4 years. Then additional changes were requested, and they could not be accommodated.

That is where we stand at the present time. I know there are discussions underway to try to get some additional changes made. My own view is those prospects are somewhere between bleak and nonexistent.

Mr. LEAHY. Mr. President, will the Senator yield on that point for a moment?

Mr. SPECTER. Certainly.

Mr. LEAHY. Mr. President, the distinguished senior Senator from Pennsylvania has worked as hard on this issue as anybody here. As the distinguished Presiding Officer knows, the original PATRIOT Act was written by myself, the distinguished Senator from Pennsylvania, and others. It was the distinguished Republican leader from Texas, Dick Armey, and I who put in the sunset provisions so we would be forced to come back and look at different parts of it. Much of the PATRIOT Act is permanent law, but we should look at certain parts. Those are the parts that are now most in contention because they will expire.

The distinguished Senator from Pennsylvania and I were at the White House on another matter recently and talked briefly about this with the President. I know the distinguished Senator from New Hampshire, Mr. SUNUNU, has been working very hard with us. I think the changes that still need to be made are relatively minor. I urge parties, especially all of us who helped write the original PATRIOT Act, to make that one last effort. That would include, of course, the White House and the other body to do it.

The chairman of the Judiciary Committee has worked extraordinarily hard on this legislation. I, like so many others, am willing to continue to work with him. I think with a little nudge from the White House—that nudge may have to be a quiet one among the principals in both bodies—that can be done. I commend the Senator from New Hampshire for the work he is doing on this issue.

I thank the chairman of the Judiciary Committee for yielding, even though it is on his time.

Mr. SPECTER. Mr. President, I thank the Senator from Vermont for his comments. I thank him for the hard work he has done in the past year on the Judiciary Committee on many matters, including the PATRIOT Act. I think we have set a tone and have been able to agree on almost all matters. If there can be some modifications made, agreeable on all sides, before February 3, I would be more than willing to be a party to that.

My preference is the bill which passed the Senate, but we have a bicameral system, and the House has its own point of view, and I think they have been reasonable. We have a good bill, certainly a bill in the conference report which is vastly improved with respect to civil rights over the current bill. But I am not in favor of having short-term extensions. If we have another short-term extension, it will beget another short-term extension. I want to fish or cut bait before February 3 on that issue.

The Judiciary Committee, on the second item, is scheduled to hold a hearing on the wartime Executive power and NSA's surveillance authority on February 6. I think my colleagues will be interested in a letter which I have written to the Attorney General dated January 24, yesterday, outlining a series of some 15 questions to be addressed in advance of the hearing or at the time of the Attorney General's opening statement—at least that request—to try to set the parameters and issues of that hearing. I ask unanimous consent that the letter to Attorney

General Gonzalez be printed in the RECORD at the conclusion of my statement today.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. SPECTER. A third item of Judiciary Committee scheduling involves the asbestos reform bill. The leader has stated his intention to bring it up on February 6. As we customarily do, we meet in the afternoon. I intend to absent myself from the Judiciary Committee hearing on NSA to come make an opening statement. Then we will proceed on that bill.

Senator LEAHY and I sent a letter yesterday to our colleagues asking that, if there are amendments to be offered, and I am sure there will be, that they be provided to the managers in advance so we can organize proceeding on the bill and seek time agreements. That has been a very difficult and contentious issue, but it was passed out of the committee last year after numerous executive sessions marking up the bill and extended debate on a variety of amendments. Many were accepted, some were rejected.

The Supreme Court of the United States has called upon Congress to address this issue. It does not lend itself to a solution in the courts on class actions. There are thousands of people who are suffering from the injuries of asbestos—mesothelioma, which is deadly, and asbestosis, and others—who cannot recover because their employers are bankrupt. Over 75 companies have gone bankrupt, and more are threatened with bankruptcy.

The bill which we have reported to the floor is the product of enormous effort and enormous analysis by the Judiciary Committee and beyond. It was voted out of committee 13 to 5. Senator LEAHY and I have convened meetings, along with the assistance of Judge Becker, a senior Federal judge—he had been Chief Judge of the Court of Appeals for the Third Circuit—where we have brought in the so-called stakeholders: the insurers, the trial lawyers, the AFL/CIO, and the manufacturers. They worked through that bill which has festered in the Congress for more than two decades. I first saw it when Gary Hart, then-Senator from Colorado, brought in Johns Manville, which was a key constituent of his, which was having a problem. I believe it is clear that if we are not able to act now, it will be decades before this kind of an effort can be mustered again.

I have one additional comment on the scope of the work. After it was passed out of committee in late July of 2003, I asked Judge Becker to assist as a mediator. We had meetings in his chambers in Philadelphia—two full days in August. We have had about 50 meetings since, attended by sometimes more than 40 or 50 people.

We are still open for business to consider modifications. We know the legislative process is one where, when it comes to the floor, there are amendments. There are more ideas. But this is an issue which is of tremendous urgency. The President has spoken about it. The President wants it enacted. The majority leader is firmly behind legislation by the Senate. The Speaker of the House of Representatives has spoken about it. But candidly and openly, we face very powerful interests who are opposed to any action.

There are very substantial dollars involved. There is very substantial pain and suffering involved. Those of us who have worked on the bill—led by the distinguished Senator from Vermont and myself and others—have gone to the well and gone to the wall. We still are open for business and invite comments. But anybody who has amendments, we would like to hear from you as early as possible so we can consider them, try to work out time agreements, and try to move the bill ahead in a managers' context.

I am glad to yield to Senator LEAHY.

Mr. LEAHY. Mr. President, again I agree with what the distinguished Senator from Pennsylvania has said. This is a bipartisan bill. In fact, to emphasize it, he and I have sent a letter to all of our colleagues, signed jointly, asking them, if they have amendments which they plan to offer, to let us know.

It should be emphasized that not only did we have hours upon hours of hearings, but we had many open meetings in the office of the Senator from Pennsylvania, in my office, and the offices of others. We made sure that the stakeholders, all the stakeholders were able to come to those meetings. We also made sure that the office of every Senator—everybody who expressed any interest, Republican or Democrat—was invited to those meetings. They were wide open. In fact, almost all of the Senators on both sides of the aisle either attended those meetings or had staff attend those meetings.

At these meetings that we had, again, every single stakeholder was involved. It was open. It was bipartisan. That was made clear by the Senator from Pennsylvania from the beginning, that they would have to be open and bipartisan. He, as would be expected, kept his commitment all the way through.

I would highlight two things the Senator from Pennsylvania just said that were of concern to me. One, if we do not do it now, we lose the opportunity. I believe it will be decades before anybody would put together the kind of coalition that it has been possible to put together. The other thing he said was that it is not just some of the powerful financial stakes involved, but it is a powerful amount of suffering that is going on by the people who are suffering from asbestos poisoning in all the different forms. They are the ones who are held in limbo throughout all this time. We can bring some relief to them now; not the possibility of relief 10 years from now after a series of lawsuits go through, but now.

We have had members of the Supreme Court, ranging from the late Chief Justice William Rehnquist to Justice Ruth Bader Ginsburg—certainly two differing philosophies—who have called upon the Congress to bring about a legislative solution because our courts are unable to handle all the cases that might come up. Let's be clear about that. There are some who say we are litigating forever on this, but the fact is our courts are unable to handle it. It cries out for a legislative solution.

I urge people to come to this with an open mind, vote it up or down, vote the amendments up or down. I have heard some opponents quoted as being prepared to demagog this bipartisan bill. This bill did not just suddenly spring out of nowhere; it was worked on in such a way that it is a bipartisan bill. And I might say there is pain in it for everybody. Everybody has had to give something in this. The Senator from Pennsylvania did not get everything he wanted. I did not get everything I wanted. The stakeholders who came to the table, virtually all of them openly and honestly, they gave up a lot on it. But the people who are suffering from asbestos poisoning in whatever form are the ones waiting for us to act.

The time is right to act. We can pass a bipartisan bill. I believe the other body would be glad to see such a bill. The President has stated publicly and he certainly stated privately to both Senator SPECTER and myself that he is behind taking action. Everybody cries out for some bipartisan action around here. This is one of those cases where Republicans and Democrats could come together, where the Congress and the White House could work together, and actually those who benefit will be the people suffering. We ought to get on with it.

EXHIBIT 1

U.S. SENATE,
Washington, DC, January 25, 2006.

DEAR COLLEAGUE: The Patriot Act is due to expire on February 3, 2006 after being extended from its prior expiration date of December 31, 2005.

The Senate is faced with three options:

1. Invoke cloture on the Conference Report and pass the Conference Report as the House of Representatives has already done;
2. Extend the present Act for a period of time. The current discussion with the House is to extend it for four years; or
3. Let the Act expire.

To my knowledge, no one wants to let the Act expire.

Technically, the House/Senate Conference has been discharged with the filing of the Conference Report. While it is always possible to take another course of action such as changing the Conference Report if there is unanimous agreement, the House has taken the emphatic position that there will be no more concessions from the Conference Report and the House is very firm in this position.

Everyone, including those who are urging further House concessions, agrees that the Conference Report is much more protective of civil rights than the current Patriot Act. I am enclosing a side-by-side comparison. While I would have preferred the Senate bill, we do have a Bicameral System and the Conference Report was hammered out after extensive negotiations with significant concessions by the House. Senate proponents for further House concessions had, at one point, stated their willingness to sign the Conference Report if three conditions were met including a change in the sunset date from seven to four years. Those conditions were met and then there was insistence on further concessions.

I urge the Senate to invoke cloture and pass the Conference Report as the best of the available alternatives.

Sincerely,

ARLEN SPECTER.

SIDE-BY-SIDE COMPARISON

Conference report (2006)	Current law (PATRIOT Act 2001)
Requests for Business Records ("Library Provision") Section 215	
Application to the FISA Court for an order under Section 215 requires a statement of facts	No requirement of any factual showing.
Records can be obtained only if the FISA Judge finds that the statement of facts shows "reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation".	Records can be obtained if the FBI merely "specif[ies] that . . . they are sought for an authorized investigation."
May not be used for threat assessments	May be used for threat assessments.
Encourages the FBI to demonstrate a connection to terrorism or espionage by providing a presumption of relevance if the records sought pertain to: (a) a foreign power or an agent of a foreign power; (b) the activities of a suspected agent of a foreign power who is the subject of the investigation; or (c) an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of the investigation.	No analogous incentive for the FBI to demonstrate a connection to terrorism or espionage.
Requires the use of minimization procedures that will limit "the retention, and prohibit the dissemination" of information concerning U.S. persons.	No requirement that minimization procedures be used.
Explicit right of recipients of Section 215 requests to consult legal counsel	No explicit right of recipients of Section 215 requests to consult legal counsel.
Explicit right of recipients of Section 215 requests to challenge their legality in court	No explicit right of recipients of Section 215 requests to challenge their legality in court.
Requirement that the FBI Director, Deputy Directer, or Executive Assistant Director personally approve requests for certain sensitive documents, including library records, medical records, educational records, and gun records.	No special requirements for sensitive documents such as library records.
Limits the scope of Section 215 requests to materials that could be obtained via grand jury subpoena or a similar court order for the production of records.	No specified limitation on the scope of Section 215 requests.
Adds the Senate Judiciary Committee as a recipient of the "fully inform[ed]" reports	"Fully inform[ed]" reports given only to House and Senate Intelligence Committees.
Reporting to Congress on the number of orders granted, modified, or denied for the production of certain records from libraries and bookstores, firearms sales records, tax return records, educational records, and certain medical records.	No reporting to Congress on Section 215 requests for sensitive documents.
Public reporting on the total number of applications under Section 215 and the total number of such orders granted, modified, or denied.	No public reporting.
Two comprehensive audits by the Justice Department's Inspector General regarding the use, including any improper or illegal use, of Section 215. The first report will examine the use of Section 215 in 2002–04; the second report will examine the use of Section 215 in 2005–06. The reports will examine "each instance" in which the government submitted an application under Section 215, and the Conference Report provides detailed specifications of what the investigation should cover.	No requirement that the Justice Department's Inspector General audit the use of Section 215.
Four-year sunset.	
Delayed-Notice Searches ("Sneak and Peek" Searches) Section 213	
Notice to the target of the search must be given "within a reasonable period not to exceed 30 days after the date of its execution," or on a later date certain if the facts justify it.	Notice to the target of the search may be given within a "reasonable" time; no limitation on the maximum period of delay.
Extensions on the period of delay only upon "an updated showing of the need for further delay"	Extensions on the period of delay may be granted upon mere "good cause shown".
Extensions are limited to 90 days or less, unless the facts of the case justify a longer period	No maximum period of extension.
Notice may not be delayed if the only reason for doing so is that the court finds reasonable cause to believe that immediate notification may result in unduly delaying a trial.	Notice may be delayed if the court finds reasonable cause to believe that immediate notification may result in unduly delaying a trial.
Public reporting on the number of applications for delayed-notice warrants and extensions; and the number of such warrants and extensions granted or denied; the duration of delays in giving notice.	No reporting to Congress or the public.
Roving Wiretaps Section 206	
Application requires "the identity, if known, or a description of the specific target" of the surveillance	Application requires "the identity, if known, or a description of the target" of the surveillance.
FISA Court's orders must specify "the identity, if known, of the specific target" of the surveillance	FISA Court's orders must specify "the identity; if known, or a description of the target" of the surveillance.
For so-called John Doe roving wiretaps, requires the FISA Court to "find[], based upon specific facts provided in the application, that the actions of the target of the application may have the effect of thwarting the identification of a specified person".	For so-called John Doe roving wiretaps, requires the FISA Court to "find that the actions of the target of the application may have the effect of thwarting the identification of a specified person".
Requires that within ten days of beginning of surveillance at any new facility or place, the FBI notify the FISA Court of "facts and circumstances" justifying FBI's belief that each new phone is being used or is about to be used by the target.	No requirement that FBI notify the FISA Court when surveillance begins at any new facility or place.
Requires "fully inform[ed]" reporting to Senate Judiciary Committee	No requirement to report to Senate Judiciary Committee.
Existing reports expanded to include the total number of applications for orders and extensions of orders approving electronic surveillance where the nature and location of the facility at which the surveillance will be directed is unknown.	Attorney General to inform the Congress twice per year of all roving wiretaps under 206.
Four-year sunset.	
National Security Letters ("NSLs")	
Explicit right of recipients to consult legal counsel	No explicit right of recipients to consult legal counsel.
Explicit right of recipients to challenge NSL in court and have it set aside if the court finds that compliance would be "unreasonable, oppressive, or otherwise unlawful".	No explicit right of recipients to challenge NSL in court.
Detailed mechanism for recipients to challenge the nondisclosure requirement in court; provision for subsequent challenges in the event that initial challenges are unsuccessful.	No explicit right of recipient to challenge the nondisclosure requirement in court.
Two comprehensive audits by the Justice Department's Inspector General regarding the use, including any improper or illegal use, of NSLs. The first report will examine the use of NSLs in 2003–04; the second report will examine the use of NSLs in 2005–06. The Conference Report provides detailed specifications of what the investigation should cover.	No requirement that the Justice Department's Inspector General audit the use of NSLs.
Report to Congress by the Attorney General and the Director of National Intelligence regarding the feasibility of applying minimization procedures in the context of NSLs.	No requirements with respect to the use of minimization procedures in the context of NSLs.
Annual public reporting on the total number of each type of NSL	No public reporting.
Additional Protections	
Reporting to Congress on the total number of emergency employments of electronic surveillance and the total number of subsequent orders approving or denying such electronic surveillance.	No such reporting.
Adds the Senate Judiciary Committee as a recipient of these reports	Reporting to the House and Senate Intelligence Committees of all physical searches conducted pursuant to FISA.
Reporting to Congress on the total number of emergency physical searches authorized by the Attorney General and the total number of subsequent orders approving or denying such physical searches.	No such reporting.
Reporting to Congress on the total number of emergency pen registers and trap and trace devices authorized by the Attorney General and the total number of subsequent orders approving or denying the installation and use of the same.	No such reporting.
Disclosure of the rules of the FISA Court to the Senate and House Committees on Intelligence and the Judiciary	No provision requiring disclosure of the rules of the FISA Court to Congress.
Reporting to the House and Senate Judiciary Committees on good-faith emergency disclosures under Section 212 of the PATRIOT Act.	No such reporting.
Report to Congress on the Justice Department's use of data mining	No specific provisions concerning data mining.

EXHIBIT 2

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, January 24, 2006.

Hon. ALBERTO R. GONZALES,
Attorney General, U.S. Department of Justice,
Washington, DC.

DEAR ATTORNEY GENERAL GONZALES: I write to let you know some of the subjects which I would like you to address in your opening statement on the Judiciary Committee hearing scheduled for February 6, 2006, on "Wartime Executive Power and the NSA's Surveillance Authority."

(1) In interpreting whether Congress intended to amend the Foreign Intelligence Surveillance Act (FISA) by the September 14, 2001 Resolution (Resolution), would it be relevant on the issue of Congressional intent that the Administration did not specifically ask for an expansion for Executive powers under FISA? Was it because you thought you couldn't get such an expansion as when you said: "That was not something that we could likely get?"

(2) If Congress had intended to amend FISA by the Resolution, wouldn't Congress have specifically acted to as Congress did in passing the Patriot Act giving the Executive expanded powers and greater flexibility in using "roving" wiretaps?

(3) In interpreting statutory construction on whether Congress intended to amend FISA by the Resolution, what is the impact of the rule of statutory construction that repeals or changes by implication are disfavored?

(4) In interpreting statutory construction on whether Congress intended to amend FISA by the Resolution, what would be the impact of the rule of statutory construction that specific statutory language, like that in FISA, trumps or takes precedence over more general pronouncements like those of the Resolution?

(5) Why did the Executive not ask for the authority to conduct electronic surveillance when Congress passed the Patriot Act and was predisposed, to the maximum extent likely, to grant the Executive additional powers which the Executive thought necessary?

(6) Wasn't President Carter's signature on FISA in 1978, together with his signing statement, an explicit renunciation of any claim to inherent Executive authority under Article II of the Constitution to conduct warrantless domestic surveillance when the Act provided the exclusive procedures for such surveillance?

(7) Why didn't the President seek a warrant from the Foreign Intelligence Surveillance Court authorizing in advance the electronic surveillance in issue? (The FISA Court has the experience and authority to issue such a warrant. The FISA Court has a record establishing its reliability for nondisclosure or leaking contrasted with concerns that disclosures to many members of Congress involved a high risk of disclosure or leaking. The FISA Court is a least as reliable, if not more so, that the Executive Branch on avoiding disclosure or leaks.)

(8) Why did the Executive Branch not seek after-the-fact authorization from the FISA Court within the 72 hours as provided by the Act? At a minimum, shouldn't the Executive have sought authorization from the FISA Court for law enforcement individuals to listen to a reduced number of conversations which were selected out from a large number of conversations from the mechanical surveillance?

(9) Was consideration given to the dichotomy between conversations by mechanical surveillance from conservations listened to by law enforcement personnel with the contention that the former was non-invasive and only the latter was invasive? Would this distinction have made it practical to obtain Court approval before the conservations were subject to human surveillance or after-the-fact approval within 72 hours.

(10) Would you consider seeking approval from the FISA Court at this time for the ongoing surveillance program at issue?

(11) How can the Executive justify disclosure to only the so-called "Gang of Eight" instead of the full intelligence committees when Title V of the National Security Act of 1947 provides:

Sec. 501. [50 U.S.C. 413] (a)(1) The President shall ensure that the congressional intelligence committees are kept fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activity as required by this title. (Emphasis added)

(2)(e) Nothing in this Act shall be construed as authority to withhold information from the congressional intelligence *committees* on the grounds that providing the information to the congressional intelligence committees would constitute the unauthorized disclosure of classified information or information relating to intelligence sources and methods. (Emphasis added)

(12) To the extent that it can be disclosed in a public hearing (or to be provided in a closed executive session), what are the facts upon which the Executive relies to assert Article II wartime authority over Congress' Article I authority to establish public policy on these issues especially where legislation is approved by the President as contrasted to being enacted over a Presidential veto as was the case with the War Powers Act?

(13) What case law does the Executive rely upon in asserting Article II powers to conduct the electronic surveillance at issue?

(14) What academic or export opinions does the Executive rely upon in asserting Article II powers to conduct the electronic surveillance at issue?

(15) When foreign calls (whether between the caller and the recipient both being on foreign soil or one of the callers or recipients being on foreign soil and the other in the U.S.) were routed through switches which were physically located on U.S. soil, would that constitute a violation of law or regulation restricting NSA from conducting surveillance inside the United States, absent a claim of unconstitutionality on encroaching on Executive powers under Article II?

This letter will further confirm our staffs' discussions that the Committee will require, at a minimum, the full day on February 6th for your testimony.

Sincerely,

ARLEN SPECTER.

Mr. SPECTER. Mr. President, I thank my distinguished colleague for those comments.

There is no doubt about the suffering of those who are afflicted with mesothelioma and asbestosis and other ailments. There is also no doubt about the tremendous impact it has on the economy of the United States. It has been estimated that there could be a bigger boost than any kind of tax cuts you could have or any sort of economic recovery program you could have to be able to deal with the more than 75 companies that have gone into bankruptcy and others where bankruptcy is threatened.

The amount of work that the Senator from Vermont has specified has been gigantic. It has been 3 years in process. Senator HATCH took the lead with the trust fund concept where the manufacturers and the insurers have agreed to put up some $140 billion into the trust fund with no government payments and not coming out of the pockets of the taxpayers.

The meetings which have been held and the efforts and the momentum which we have had can't be recaptured. I think it is fair to say, certainly during my tenure here of 25 years, that I have never seen legislation worked on to the extent this legislation has been, with the complexity of the problem and the involvement of Senators and staff and so-called stakeholders. If it is not now, it is never.

Mr. President, I support the nomination by President Bush of Circuit Court Judge Samuel A. Alito, Jr., to the Supreme Court of the United States because he is qualified.

In coming to my conclusion, my staff and I have undertaken an extensive review of Judge Alito's record and of his some 361 opinions in total. We have categorized 238 of those as major decisions while serving on the Third Circuit Court of Appeals. We have reviewed 49 of the cases that Judge Alito handled during his tenure as U.S. attorney. We have made an analysis of 43 speeches and articles Judge Alito authorized and evaluations of 38 formal opinions, petitions, and Supreme Court briefs which Judge Alito wrote while serving in the Department of Justice.

Additionally, the Judiciary Committee heard testimony of some 30 hours and 20 minutes where we had 17 hours and 45 minutes of questioning of Judge Alito and testimony from 33 outside witnesses.

It is on the basis of that voluminous record that it is my personal view that Judge Alito ought to be confirmed.

He has a background from a father who was an immigrant from Italy, not born with a silver spoon in his mouth, came up the hard way, had the extraordinary academic record at Princeton and the Yale Law School, worked as an Assistant U.S. Attorney, then was U.S. Attorney and worked in the Department of Justice, and for 15 years has been on the Court of Appeals for the Third Circuit.

I think he answered questions put to him more extensively than any other nominee in recent times.

I ask unanimous consent that the full text of the prepared statement be printed in the RECORD at the conclusion of my remarks, which specifies the details of the questions asked and provides analysis of many of his cases.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1).

Mr. SPECTER. Mr. President, Judge Alito came under very extensive questioning on the issue of a woman's right to choose because of his work on a brief on the Thornburgh case where he advocated not reversal of Roe v. Wade but cut back on some of the provisions, and because of a statement which he had made in 1985 when applying for a position with the Federal Government where he expressed the view that the Constitution did not protect the right to an abortion. Judge Alito testified at length that he has an open mind on this subject.

I think it is fair to say that when a comment is made by a lawyer in an advocacy capacity that it represents the view of a client on a position taken and not a personal view. With respect to the statement that he made about his view of the Constitution in 1985, he has since gone to great lengths to analyze the Supreme Court's decisions on the issue of a woman's right to choose and has made assurances that he has an open mind on the subject.

He was questioned extensively on this issue. I led off with it for 20 minutes on my first round of questioning. And Judge Alito expressed his regard for stare decisis, the Latin expression for let the decision stand.

He commented that he agrees with the position of Chief Justice Rehnquist on the Miranda case involving suspects' rights on statements and confessions. Chief Justice Rehnquist, earlier in his career, had been against Miranda and later changed his view to support Miranda once, as the Chief Justice put it, it became embedded in the culture of police practices. And Judge Alito stated that he thought there was weight to be accorded to cultural changes.

I think it is fair to have that statement of principle apply on a woman's right to choose.

Judge Alito later testified that he agreed with Justice Harlan's dissent in the case of Poe v. Ullman, that the constitution is a living document: and that agreed with Justice Carodza in Palko v. Connecticut that it reflects the changing values and mores of our society.

He is not an originalist. He does not look only original intent. He does not look only to the static black letter, but he understands the importance of evolving values and of evolving reliance.

I questioned him at length about the reliance factor in Casey v. Planned Parenthood. I think Judge Alito went as far as he could go on the assurances of maintaining an open mind on this important subject.

When it came to the issue as to whether he reviewed it and regarded it as settled law, his testimony was virtually identical to the testimony of Chief Justice Roberts, who testified that it was settled. As Chief Justice Roberts put it in his confirmation hearings, it is settled beyond that. Chief Justice Roberts left open the unquestionable right and duty of the Court to review all cases on the merits when they are presented and to afford appropriate weight to stare decisis and to precedents, but not to take the position that precedents can never be overturned.

I think a fair reading of the record is that Judge Alito went about as far as he could go without answering the question as to how he would rule on a specific case, which would be beyond the purview of what a nominee ought to do.

In taking up questions of Executive power, Judge Alito could not answer questions posed about the President's authority to go to war with Iran. How could a nominee answer a question of that magnitude in a nomination proceeding without knowing a lot more about the circumstances? And judges make decisions after they have a case and controversy, when they have briefs admitted, when they have arguments prepared, when they have discussions with their colleagues, and they reflect on a matter and come to conclusion, not sitting at a witness table in a Judiciary Committee hearing. Judge Alito answered the questions as to the considerations which would be involved. Again, he went about as far as he could go.

On the question of congressional power, I questioned him at length on concerns I have about what the Supreme Court has had to say about declaring acts of Congress unconstitutional because the Supreme Court disagrees with our "method of reasoning." The columns of the Senate building are lined up exactly with those of the Supreme Court, situated across the green. An interesting historical note, in an early draft of the Constitution, the Senate was to nominate Supreme Court Justices. That would be an interesting process, given the political complexion of the Senate today.

Back to the point. What superior wisdom and what superior method of reasoning comes when a person crosses the green to the Supreme Court of the United States? Our method of reasoning may not be too good, but it is our method of reasoning. To have the Court say that they declare acts unconstitutional because they do not like our method of reasoning is, candidly stated, highly insulting. Judge Alito said the obvious: Our method of reasoning was as good as the Court's.

Then in the decision on the Americans with Disabilities Act, where the Supreme Court has imposed a test of what is proportionate, taking it out of thin air in a 1997 decision, what is "congruent and proportionate" is a test which cannot be applied with any consistency. It lends itself to legislation from the bench. Justice Scalia characterized it accurately, calling it "a flabby test," where the Court was functioning as the taskmaster of Congress to see that we had done our homework. Judge Alito's answers showed an appropriate respect for separation of powers and congressional authority.

The decisions of the Supreme Court questioning the constitutionality of statutes has led a number of Senators on the committee to prepare legislation which would give the Congress standing to go to the Supreme Court to argue to uphold our legislation. We thought initially about having a Judiciary Committee observe what the Court had done and from that, thought about seeking to intervene as amicus curiae, as a friend of the court, and took it the final step: Why not go to the Court and argue our cases ourselves, through counsel, which is an appropriate way. Congress has the authority to grant standing. We can grant standing to ourselves to see to it that our views are appropriately presented to the Court.

We respect the Court as the final arbiter of the Constitution. That is our system. But the arguments and the considerations and the record which Congress amasses ought to be considered by the Court. Now the constitutionality of statutes is upheld by the Solicitor General. But in cases where there is a conflict between what the Congress has to say and what the President has to say, we ought to be in a position to make our own submissions to the Court.

The issue of Executive authority and the current surveillance practices came up for discussion in Judge Alito's confirmation hearings. Again, he could not say how he would rule on the case if it came before him. He would have to read the briefs, hear the arguments, consider it. But he responded by giving us the factors and items which he would consider.

Many issues were discussed. Judge Alito approached them with an open mind. One subject of particular concern to this Senator is the issue of televising the Court, which I think ought to be done. The Supreme Court of the United States today makes the final decisions on so many of the cutting-edge questions of our time. The American people ought to know what is going on. A number of the Justices appear on television programs. There is no reason why the Court proceedings should not be televised. Senator BIDEN and I made that specific request on the case of Bush vs. Gore and got a response from Chief Justice Rehnquist denying it; however, they released an oral transcript of the proceedings at the end of the day and the Court is doing more of that, which is a step forward.

The Congress has the authority to make decisions on the administration of the Court. For example, the Congress decides how many Supreme Court Justices there will be. We established the number at nine. Remember, in the Roosevelt era there was an effort to pack the Court and increase the number to 15. That is a congressional judgment. We decide when the Court starts to function: The third Monday in October. We decide what is a quorum of the Court: Six. We legislate on speedy trial rules. It is within the purview of the Congress to legislate, to call for the televising of their proceedings. I recognize the ultimate decision would rest with the Court if they decided to declare our act unconstitutional. Under separation of powers, that is their prerogative. I respect it. We ought to speak to the subject.

On the subject of television, again, Judge Alito did not give the answer I liked to hear—that he is for television in the Court—but he said he had an open mind and would consider it. Again, that is about as far as he could go.

One panel of particularly impressive witnesses was seven judges from the Court of Appeals from the Third Circuit who had worked with Judge Alito. There is precedence for judges testifying. Retired Chief Justice Warren Burger came in to testify in the nomination proceedings for Judge Bork. That is something for which there is precedent. These judges have unique knowledge of Judge Alito because they have worked with him in many cases.

Judge Becker, for example, former Chief Judge of the Third Circuit, now on senior status, sat with Judge Alito on more than 1,000 cases. Judge Becker has a national reputation as an outstanding jurist. Recently, he received the award as the outstanding Federal judge in the country. He testified about Judge Alito not having an agenda, not being an ideologue and having an open mind.

Judge Becker is regarded very much as a judge's judge, a centrist judge, and pointed out he and Judge Alito have disagreed very few times—about 25 times—during the course of considering more than 1,000 cases.

After the arguments are concluded, the three judges who sit on the panel retire and discuss the case among themselves: no clerks present, no secretaries present, just a candid discussion about what went on. That is where the judges really let their hair down and talk about the cases and get to know what a judge thinks. It is a high testimonial to Judge Alito that these judges sang his praises, in terms of openness and in terms of studiousness and in terms of not having an agenda.

One of the witnesses, former Judge Tim Lewis of the Third Circuit, an African American, testified about his own dedication to choice for a woman's right to choose, his own dedication to civil rights, civil liberties, and testified very forcefully on Judge Alito's behalf. He said very bluntly he would not be there if he did not have total confidence in Judge Alito.

One further comment: That is on the party-line vote which we seem to be coming to. He was voted out of committee, 10 to 8; 10 Republicans voting for Judge Alito; 8 Democrats voting against Judge Alito. It is unfortunate our Senate is so polarized today. I believe this Senate and this body would benefit greatly by more independence in the Senate.

I have not voted in favor of Judge Alito as a matter of party loyalty. If I thought he was not qualified, I would vote no, as I have in the past on nominees of my own party from Presidents of my own party.

But we need to move away from the kind of partisanship, which has ripped this body in recent times. I think it is important the American people have confidence in what the Senate does on the merits and that we avoid projecting the appearance of rank politics.

I believe it is important for Judge Alito to have supporters who favor a woman's right to choose so he does not feel in any way beholden to or confirmed by people who have one or another idea on some of these questions. Without naming names and identifying people, we have more than six Republicans who are pro-choice, who support a woman's right to choose. So the balance of power will be, if confirmed, not only on one side of that issue or another.

But I think we would do well to reexamine the procedures which we utilize in the confirmation process to try to move away from partisanship and towards getting an idea of the judge's temperament, his background, his jurisprudence, where he stands, without pressing him to the wall as to how he stands on any particular issue.

When we had the nomination of White House Counsel Harriet Miers, she was opposed by some because, as one person put it, there was no guarantee she would vote to overturn Roe. Well, you cannot get guarantees from Supreme Court nominees. I have said before, and I think it is worth repeating, guarantees are for used cars and washing machines. They are not for nominees to the Supreme Court of the United States.

I think, when we examine temperament and background, including jurisprudence, those are the appropriate tests. No one knows with certainty how Judge Alito is going to vote. The cases are full of surprises. Justice Sandra Day O'Connor was very much opposed to abortion rights before she came to the Court. And she has been one of the foremost proponents of a woman's right to choose, subject to some limitations. Justice Anthony Kennedy spoke very disparagingly about abortion rights before coming to the Court, and he has supported Roe v. Wade. Justice David Souter, as attorney general for New Hampshire, opposed repealing New Hampshire's law banning abortions, even after it had been declared unconstitutional by the Supreme Court of the United States. The National Organization for Women had a rally on Capitol Hill when David Souter was up for confirmation in 1991—I remember it well: I was there—with big placards "Stop Souter or Women Will Die." Justice Souter, too, has supported Roe v. Wade.

So no one knows what will happen. President Truman was disappointed by his nominees in the famous steel seizure case. Again and again and again, there have been surprises. The rule is, there is no rule. So on the committee and in the Senate we are left to our best judgment as to qualifications without guarantees. The separation of powers entrusts to the President the role of making the nominations. It is up to the Senate to make an evaluation and then to confirm or not confirm. After that, it is up to the Justices to make the decisions on the Court. The separation of powers has served us well.

Those are the facts which have led me to vote Judge Alito out of committee affirmatively. And my vote will be cast when the roll is called later in this floor debate.

EXHIBIT 1

ALITO FLOOR STATEMENT

Mr. President, today the Senate begins the debate on the confirmation of Judge Samuel A. Alito to be an Associate Justice of the United States Supreme Court.

It has been 86 days, nearly three months, since President Bush announced his choice of Judge Samuel Alito to fill the seat being vacated by Justice Sandra Day O'Connor. During this time, my staff and I have undertaken an extensive review of Judge Alito's record, including an examination of his 238 major decisions while serving on the Third Circuit Court of Appeals, a review of 49 of the cases Judge Alito handled during his tenure as a United States Attorney, analyses of 43 speeches and articles Judge Alito authored, and evaluations of the 38 formal opinions, petitions, and Supreme Court briefs which Judge Alito wrote while serving in the Department of Justice. Additionally, the Judiciary Committee held 30 hours and 20 minutes of hearings, which included 17 hours and 45 minutes of questioning of Judge Alito and testimony from 33 outside witnesses.

Based on my thorough review of his record, I intend to vote to confirm Judge Alito as the 110th Justice of the United States Supreme Court. I did not reach this decision lightly. As I have said before, except for a declaration of war or its virtual equivalent, a resolution for the use of force, no Senate vote is as important as the confirmation of a Supreme Court justice. And this vote is one that requires Senators to free themselves from the straight-jacket of party loyalty and exercise independent judgment. Under separation of powers, Senators are separate from the executive branch and have a full, independent role in staffing the Third Branch of government. I have long adhered to this view, which led me to vote against Judge Bork's confirmation, even though he was nominated by a President of my own party. If I thought Judge Alito should not be confirmed, I would vote no again.

Judge Alito has sterling academic credentials, having excelled at Princeton University and the Yale Law School. Judge Alito began his lifetime commitment to public service with a prestigious clerkship for Judge Leon I. Garth of the United States Court of Appeals of the Third Circuit. For the next thirteen years, Judge Alito served his country as an Assistant to the U.S. Solicitor General, a Deputy Assistant Attorney General in the Office of Legal Counsel, and as both the United States Attorney for New Jersey and an assistant United States Attorney in that same office. When Judge Alito was appointed to his current position on the Third Circuit Court of Appeals, the ABA unanimously voted to award Judge Alito its highest possible rating, and Judge Alito enjoyed broad bipartisan support, as reflected by the fact that he was confirmed by unanimous consent.

Judge Alito's achievements are all the more impressive when one realizes that Judge Alito was not born with a silver spoon in his mouth. Judge Alito's father was brought to this country from Italy as an infant and grew up in poverty. Although his father graduated at the top of his high school class, he had no money for college, and he was set to work in a factory. It was only because at the last minute, a kind person arranged for him to receive a $50 scholarship, that he was able to attend college. Despite the discrimination he faced as an Italian immigrant in 1935, Judge Alito's father eventually became a teacher, served in the Pacific during World War II, and held a nonpartisan position for the New Jersey Legislature. Judge Alito put it best when he said:

> "my parents taught me through the stories of their lives . . . and it is the story, as far as I can see it, about the opportunities that our country offers and also about the need for fairness and about hard work and perseverance and the power of a small good deed."

I have participated in the confirmation hearings for the past eleven nominees to the Supreme Court. Although judgments may differ, I think that Judge Alito went farther in answering questions than most Justices in the past. Indeed, Senator BIDEN commented, "you have been very gracious. I appreciate you being responsive." By one reckoning, Judge Alito was asked 677 questions and answered some 659—97%. That is far more than Justice Ginsburg, who answered only 307 out of 384 questions, or 80%, or Justice Breyer, who answered only 291 out of 355 questions, or 82%. Judge Alito did not refuse to respond because a similar case might come before the Court. He ultimately stopped short of making commitments as to how he would vote, as he should. But for each topic that was raised, Judge Alito discussed the relevant constitutional considerations and his judicial philosophy.

For example, on the topic of a woman's right to choose, Judge Alito agreed that the Constitution creates a right to privacy. I asked Judge Alito whether he agreed with the Supreme Court's holding in Eisenstadt, which established that unmarried women have a constitutional right to contraception and was an underpinning of the Supreme Court's decision in Roe v. Wade. Judge Alito replied directly, "I do agree with the result in Eisenstadt." When Senator FEINSTEIN asked Judge Alito whether the Constitution guarantees a right to privacy, Judge Alito responded: "The 14th Amendment protects liberty. The Fifth Amendment protects liberty. And I think it is well accepted that this has a substantive component, and that that component includes aspects of privacy that have constitutional protection."

Judge Alito also discussed whether Roe v. Wade is so well established that it should not be overturned. Judge Alito stated: "I agree that in every case in which there is a prior precedent, the first issue is the issue of stare decisis, and the presumption is that the Court will follow its prior precedents. There needs to be a special justification for overruling a prior precedent."

Some Members of the Judiciary Committee have argued that Judge Alito was less forthcoming on this issue than Chief Justice Roberts was during his Supreme Court confirmation hearing, when he called Roe v. Wade "settled law." Comparing the testimony of the two nominees, I cannot see a dime's worth of difference between their responses. I asked Chief Justice Roberts what he meant when, as a nominee for the circuit court, he said Roe was settled law. Specifically, I asked him if he meant it was settled for him as a circuit court judge, or if it was settled beyond that, even as a Supreme Court Justice. He answered: "beyond that, it's settled as a precedent of the Court, entitled to respect under principles of stare decisis."

Similarly, Judge Alito testified that "Roe v. Wade is an important precedent of the Supreme Court" and that the Court's reaffirmation of that case "strengthens its value as stare decisis." Moreover, both Chief Justice Roberts and Judge Samuel Alito testified that they agreed with the result in Eisenstadt, that unmarried people may not be denied contraception, and with the foundational case of Griswold v. Connecticut, which guaranteed that same right to married couples. Both Chief Justice Roberts and Judge Samuel Alito agreed that with the view that the Constitution's Due Process Clause includes a substantive protection of privacy—the legal view underpinning Roe v. Wade. And both Chief Justice Roberts and Judge Samuel Alito refused to make commitments on how they would vote in abortion cases, including how they would rule if Roe came before the Court again. This is as it should be: no nominee for the Supreme Court or any other Court should be required to commit to how they would rule on a potential case before them.

I was pleased to hear Judge Alito confirm that he does view the Constitution as a living document. Judge Alito stated, "I think the Constitution is a living thing in the sense that matters, and that is . . . it sets up a framework of Government and a protection of fundamental rights that we have lived under very successfully for 200 years, and the genius of it is that it is not terribly specific on certain things. It sets out some things are very specific, but it sets out some general principles, and then leaves it for each generation to apply those to the particular factual situations that come up. . . . As times change, new factual situations come up, and the principles have to be applied to those situations. The principles don't change. The Constitution itself doesn't change, but the factual situations change, and as new situations come up, the principles and the rights have to be applied to them."

Judge Alito's record confirms that he is not an ideologue on a crusade to curtail Roe v. Wade. He has upheld a woman's right to choose even when he had the discretion to limit abortion rights. For example, in the 1995 case of Elizabeth Blackwell Medical Center for Women v. Knoll, Judge Alito struck down two abortion restrictions by the State of Pennsylvania. The first provided that a woman who became pregnant due to rape or incest could not obtain Medicaid funding for her abortion unless she reported the crime to the police. The second provided that if a woman needed an abortion to save her life, she had to obtain a second opinion from a doctor who had no financial interest in the abortion. The question was whether these laws conflicted with a federal regulation issued by the Secretary of Health and Human Services. The case did not involve a question of constitutional law. There was no binding Supreme Court precedent on point. Judge Alito easily could have upheld the abortion restrictions if he wished to. Indeed, another Third Circuit judge appointed by President Reagan voted to do just that. But Judge Alito voted to strike down both laws in favor of a woman's right to choose. This is not the behavior of someone bent on chipping away at Roe v. Wade. This is the behavior of a moderate jurist who understands the importance of precedent.

The fact is that, notwithstanding Senators' concerted efforts, it is not possible to predict how Judge Alito will rule on the issue of abortion. If there is a rule on expectations, it is probably one of surprise. Two or three decades ago, no one would have predicted that Justices O'Connor, Kennedy, or Souter would have voted to uphold a woman's right to choose. At her confirmation hearing, Justice O'Connor testified that she personally viewed abortion with "abhorrence" and stated, "my own view in the area of abortion is that I am opposed to it as a matter of birth control or otherwise." Yet, roughly 10 years later, she voted to uphold Roe v. Wade and has done so ever since. Justice Kennedy explained that he "was brought up to think of abortion as a great evil. He once denounced the Roe decision as the Dred Scott of our time, a reference to the infamous 1857 ruling that sanctioned slavery and helped spark the Civil War." Yet, in 1992, Justice Kennedy cast the deciding vote in Casey v. Planned Parenthood to uphold Roe v. Wade. When he was New Hampshire Attorney General, Justice Souter filed a brief arguing that tax payer dollars should not be used to fund "the killing of unborn children" and defended abortion laws that had already been undermined by Roe v. Wade. During his confirmation hearing, the National Organization for Women organized a rally against his confirmation entitled "Do or Die Day" and distributed flyers proclaiming "Stop Souter or women will die." Yet, on the Supreme Court, Justice Souter has consistently voted to uphold a woman's right to choose.

Similarly, there have been dire predictions about Judge Samuel Alito. The National Organization for Women has released another flyer—this one declaring "Save Women's Lives. Vote No on Alito." The rule is that there is no rule.

Judge Alito was also questioned extensively on Executive power and whether the resolution for the authorization of use of force gave the President authority to engage in electronic surveillance. When I asked Judge Alito whether he agreed with Justice O'Connor's statement in Hamdi that "We have long since made clear that a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens," Judge Alito responded, "Absolutely. That's a very important principle. Our Constitution applies in times of peace and in times of war, and it protects the rights of Americans under all circumstances." Judge Alito went somewhat beyond the usual practice of answering just as many questions as he needed to in order to be confirmed. While he would not commit to giving answers to hypothetical situations which may come before the Court, he fully explained his methods of reasoning. For example, when questioned by me and other Senators about how he would decide questions dealing with the limits of executive power, he responded that he would apply Justice Jackson's framework from the Youngstown Steel case:

"[A]s I said, the President has to follow the Constitution and the laws and, in fact, one of the most solemn responsibilities of the President—and it is set out expressly in the Constitution—is that the President is to take care that the laws are faithfully executed, and that means the Constitution, it means statutes, it means treaties, it means all of the laws of the United States.

"But what I am saying is that sometimes issues of Executive power arise and they have to be analyzed under the framework that Justice Jackson set out. And you do get cases that are in this twilight zone and it is—they have to be decided when they come up based on the specifics of the situation."

When Judge Alito was similarly questioned about the President's power to control the executive branch, he responded by explaining in full:

"[A]s to the agencies that are headed by commissions, the members of which are appointed for terms, and there are limitations placed on removal, the precedents—the leading precedent is Humphrey's Executor and that is reinforced, and I would say very dramatically reinforced, by the decision in Morrison, which did not involve such an agency. It involved an officer who was carrying out what I think everyone would agree is a core function of the executive branch, which is the enforcement of the law, taking care that the laws are faithfully executed. . . .

"[W]hat I have tried to say is that I regard this as a line of precedent that is very well developed and I have no quarrel with it and it culminates in Morrison, in which the Supreme Court said that even as to an inferior officer who is carrying out the core executive function of taking care that the laws are faithfully executed, it is permissible for Congress to place restrictions on the ability of the President to remove such an officer, provided that in doing so, there is no interference with the President's authority, and they found no interference with that authority there. That is an expression of the Supreme Court's view on an issue where the claim for—where the claim that there should be no removal restrictions imposed is far stronger than it is with respect to an independent agency like the one involved in Humphrey's Executor."

I have expressed my concern, for some time now, about the case of United States v. Morrison, where the Supreme Court declared part of the Violence Against Women Act unconstitutional. The majority opinion in that case dismissed lengthy Congressional findings because five justices disagreed with our "method of reasoning." The inference was that they believed the Court has a superior method of reasoning to the Congress. I believe that the Constitutional separation of powers rejects that kind of view and I know that many of my colleagues share this concern.

I asked Chief Justice Roberts about this during his confirmation hearings and I raised it again with Judge Alito. Judge Alito said that: "I would never suggest that judges have superior reasoning power than does Congress . . . I think that Congress' ability to reason is fully equal to that of the judiciary."

The Judiciary Committee had the rare, but not unprecedented, opportunity to hear from seven of Judge Alito's current and former colleagues on the Third Circuit. These men and women, Democrat and Republican appointees, know his record best. They have heard cases with him and sat in conference with him, they have worked to craft opinions with him. The process that appellate judges go through in rendering decisions is not familiar to many people and it was very instructive to have the insight of these judges.

Judge Edward Becker, the former Chief Judge of the Third Circuit is one of the most acclaimed jurists of our time. He recently won the coveted Devitt Award as the Outstanding Federal Jurist of the year. I know Judge Becker very well since our college and law school days, so, I take his views seriously.

Judge Becker has sat on over a thousand cases with Judge Alito and, as he testified, they only disagreed 27 times. In each of those cases, Judge Becker testified, Judge Alito's "position was closely reasoned and supportable either by the record or by his interpretation of the law, or both." Judge Becker testified that he knows Judge Alito approaches judging with no agenda and was not an ideologue. He said, "The Sam Alito that I have sat with for 15 years is not an ideologue. He is not a movement person. He is a real judge deciding each case on the facts and the law, not on his personal views, whatever they may be. He scrupulously adheres to precedent. I have never seen him exhibit a bias against any class of litigation or litigants."

The current Chief Judge of the Third Circuit, Judge Anthony Scirica, confirmed this view of Judge Alito, as did Judge Maryanne Trump Barry, and all the other current and retired judges who testified.

I thought that the testimony of Judge Timothy Lewis was particularly influential, given his background. He is an African American who described himself at the hearing as "unapologetically pro-choice" and as "a committed human rights and civil rights activist." He joked that it was no coincidence that he happened to be sitting at the "far left" end of the panel of judges.

Still, based on his personal knowledge of the kind of judge Judge Alito is, Judge Lewis spoke enthusiastically in his favor. He said: "having worked with him, I came to respect what I think are the most important qualities for anyone who puts on a robe, no matter what court they will serve on, but in particular the United States Supreme Court, and first and foremost among these is intellectual honesty."

He testified that "I cannot recall one instance during conference or during any other experience that I had with Judge Alito, but in particular during conference, when he exhibited anything remotely resembling an ideological bent. That does not mean that I agreed with him, but he did not come to conference or come to any decision that he made during the time that I worked with him based on what I perceived to be an ideological bent or a result-oriented demeanor or approach. He was intellectually honest, and I would say rigorously so, even with respect to those areas that he and I did not agree."

In the area of civil rights, Judge Alito has a strong record. In his tenure as the U.S Attorney for New Jersey, he took steps to diversify the office—hiring and promoting women and minorities. Since taking the bench, he has continued to demonstrate a commitment to civil rights. Of course, when a judge has decided over 4,800 cases, as Judge Alito has, it is possible to select a few of his cases to place him at any and every position on the judicial spectrum. But, on balance, Judge Alito's record in this area is more than satisfactory.

Again, Judge Lewis's testimony is instructive. He told the Committee that "[I]f I believed that Sam Alito might be hostile to civil rights as a member of the United States Supreme Court, I can guarantee you that I would not be sitting here today." Coming from some one with an unquestioned commitment to civil rights who has worked closely with Judge Alito, that testimony is entitled to considerable weight.

Judge Lewis' testimony supported my view of Judge Alito from examining his cases. Indeed, I have found many cases where he has defended civil rights and the interests of African Americans. For example:

In U.S. v. Kithcart, Judge Alito held that the Fourth Amendment does not allow police to target drivers because of the color of their skin. After a police officer received a report that two black men in a black sports car had committed three robberies, she pulled over the first black man in a black sports car she saw. Judge Alito ruled that this violated the Constitution.

In Brinson v. Vaughn, Judge Alito ruled that the Constitution does not allow prosecutors to exclude African Americans from juries. In that case, the prosecutor had used 13 of his 14 "strikes" to exclude African-Americans from the jury, but argued that this was not a problem, because he allowed 3 African-Americans onto the jury. Judge Alito explained that the prosecutor could not get around the Constitution by allowing a handful of African-Americans onto the jury.

In Zubi v. AT&T Corp., Judge Alito authored a lone dissent, opposing the establishment of a stringent limitations period in which civil-rights plaintiffs would have to file a claim. The Supreme Court unanimously vindicated Judge Alito's position four years later.

In Reynolds v. USX Corporation, Judge Alito ruled in favor of Deborah Reynolds, an African-American woman who was subjected to racial and sexual harassment at work. Her employer claimed that the company shouldn't be liable because the harassment came from her coworkers, rather than supervisors. Alito concluded that her supervisors were aware of the harassment and the company had a duty to end it.

During Judge Alito's time on the bench he has also demonstrated great sensitivity to the unique challenges faced by people with disabilities. He understands that people with disabilities are still subject to discrimination in our society and that they are entitled to full civil rights. As he testified at his hearing: "When I have a case involving someone who's been subjected to discrimination because of disability, I have to think of people who I've known and admired very greatly who had disabilities and I've watched them struggle to overcome the barriers that society puts up, often just because it doesn't think of what it's doing, the barriers that it puts up to them."

He has issued several important decisions vindicating the rights of people with disabilities. Thomas v. Commissioner of Social Security, which Judge Alito discussed at his hearing, is a good example of this. It is also one of the few cases where Judge Alito was reversed by the Supreme Court—in this instance unanimously—because the Court thought that Judge Alito went too far to protect the "little guy."

In that case, Judge Alito ruled in favor of a woman with disabilities who sought social security benefits. The Social Security Administration concluded that the plaintiff was not entitled to benefits because she could still perform her former job as an elevator operator—even though such jobs no longer exist. Judge Alito thought that such a rigid application of the law "sets up an artificial roadblock" to people seeking disability benefits. He saw "no plausible reason why Congress might have wanted to deny benefits to an otherwise qualified person simply because that person, although unable to perform any job that actually exists in the national economy, could perform a previous job that no longer exists."

Thomas is only one example of Judge Alito's strong record on disability rights. He has ruled in favor of numerous workers, students, customers, and disability advocacy groups on disability-related claims. Often times, he has reversed the rulings of lower courts to do so. Other examples include:

Shapiro v. Township of Lakewood, where Judge Alito authored the majority opinion in favor of an EMT technician who became disabled on the job and was denied an interdepartmental transfer to a position as a police dispatcher.

Fiscus v. Wal-Mart Stores, Inc., where Judge Alito ruled in favor of a victim of disability discrimination who suffered from end-stage renal disease and sought permission from her employer to self-administer dialysis every four to six hours during the workday. Judge Alito voted to reverse the lower courts ruling that kidney failure was not covered by the Americans with Disabilities Act.

Mondzelweski v. Pathmark Stores Inc., where Judge Alito ruled in favor of a meat cutter who became injured on the job and could no longer lift heavy objects. He overturned the judgment of a lower court that refused to consider his disability in light of his low education and skill level. Judge Alito believe that the impact of a disability had an individual's inability to work must take into account his particular background and skills.

Shore Regional High School Board of Education v. P.S., where Judge Alito again reversed a lower court to find in favor of a plaintiff with disabilities. The plaintiff in that case was a child with disabilities who had suffered severe harassment from bullies at his school. Because an Administrative Law Judge had found that the student could not get an appropriate education in this environment, Judge Alito ruled that the students' parents should be reimbursed for tuition at a neighboring public high school.

Pennsylvania Protection & Advocacy, Inc. v. Houstoun, where Judge Alito sided with a group advocating for the rights of the mentally ill and ordered a state hospital to release internal reports on the death of a patient who attempted suicide and later died under hospital care. He rejected the state of Pennsylvania's arguments that these documents were protected from release under state law.

Judge Alito has authored a number of other important, progressive, opinions, vindicating the rights of the so-called "little guy". For example, in Fatin v. INS, Judge Alito held that an Iranian woman could establish a basis for asylum if she showed that compliance with Iran's gender specific laws would be deeply abhorrent to her or that the Iranian government would persecute her because of her gender. This is a landmark case that established gender-based discrimination as possible grounds for asylum.

In Alexander v. University of Pittsburgh Medical Center System, Judge Alito dissented from the court's ruling in favor of a hospital in a medical malpractice case. A young woman had been hospitalized for a rare illness of the liver. Based on advice from several doctors, her parents waited for one and one-half months before ordering a liver transplant. The young girl died, and the parents sued. The jury ruled for the parents and awarded substantial damages. The majority of the Third Circuit reversed the jury's verdict against the doctors, explaining that the trial court judge should have instructed the jurors to consider whether the parents were partly responsible for the young girl's death. Judge Alito dissented, concluding that the fault for any poor decision rested with the defendant doctors, not the parents. Judge Alito wrote: "Except perhaps in truly extreme cases, it is not negligent for a patient such as Alyssa or her parents to follow the advice of primary care physicians."

In Cort v. Director, Judge Alito wrote an opinion ruling for and awarding benefits to a former coal miner under the Black Lung Benefits Act. An Administrative Law Judge had denied the worker's claim, finding that since he was able to obtain work as a wire cutter, he wasn't disabled. Judge Alito found that the statute and associated regulations established a presumption of total disability due to Black Lung when a claimant worked for more than 10 years as a miner and met one of four medical requirements—which the plaintiff satisfied. He reasoned that the statue focused on the source of disability, not its degree.

These cases are just a few examples from Judge Alito's lengthy record. My staff has identified and analyzed scores of cases where Judge Alito has ruled for minorities, immigrants, people with disabilities, prisoners, and other disadvantaged plaintiffs. It is this record that has won him the enthusiastic support of his fellow judges on the Third Circuit.

Judge Alito is anything but a "stealth" candidate. Those who opposed Chief Justice Roberts' nomination asked for a nominee with a deeper record to analyze. In Judge Alito, they have such a person. The Committee had the opportunity to review literally thousands of decisions and some 461 written opinions. It also had the opportunity to hear directly from Judge Alito as he gave lengthy testimony. In three days of intense questioning in which he spent over 18 hours in the witness chair, Judge Alito was asked roughly 677 questions. By comparison, Justice Ginsburg was asked 384 questions and Justice Breyer was asked only 355 questions. Clearly, Judge Alito's record has been vetted as thoroughly as any nominee's possibly could be.

It is on the basis of this record that I reached my conclusion to vote aye on the nomination of Judge Alito to be an Associate Justice of the United States Supreme Court.

I thank the Chair and I now yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank Senator SPECTER for his excellent leadership of the Judiciary Committee during both the Roberts and Alito hearings. He squarely addressed the tough issues in the first questioning. He made sure every member of the committee had full and ample opportunity to ask any question they wanted. We had 30-minute rounds. We had opening statements. We had the opportunity to have multiple rounds. Basically, I think the people could have asked questioned theses nominees for as long as they wanted.

Of course, both Roberts and Alito were magnificent in their testimony, superb in their knowledge of the Constitution and the role of a judge in every possible way. That is why they have been favorably received by the American public which is why Chief Justice Roberts was confirmed, and why Alito will be confirmed.

We have the greatest legal system in the world. It is the foundation of our liberties. It is the foundation of our economic prosperity. But the focus and the key ingredient of our legal system is an independent judge who makes decisions every day based on the law and the facts, not on their personal, political, religious, moral or social views. If we descend to that level, if we allow those social, political views to affect or infect the decision-making process, justice has been eroded. That is contrary to every ideal of the American rule of law.

What is important today is Judge Alito's legal philosophy. It is not his political philosophy that is important. What is his legal philosophy? The core of his beliefs as a judge is that a judge should be careful, fair, restrained, and honest in analyzing the facts of the case and applying the relevant law to those facts. For what purpose? To decide that dispute, that discrete issue that is before the Court at that time and not to indulge, as he indicated, in great theories. That is not what a judge is about.

So this is what American judges must do for our entire legal system to work. That is why I am so proud that President Bush has given us two nominees who can explain, articulate that role of a judge in a way every American can understand, relate to, and affirm.

My colleagues, I am afraid, lack a proper understanding of this concept. It goes to the core of our differences over judges. They want judges, I am afraid, who will impose their own views, their personal views, on political issues in the guise of deciding discrete cases before them. Oftentimes, these are views that cannot be passed in the political, legislative process but can only be imposed by a judge who simply redefines or reinterprets the meaning of words in our Constitution, and they declare that the Constitution says that same-sex marriage must be the law of the land. They just declare that to be so. It only takes five unelected, lifetime appointed judges to set that kind of new standard for America.

Is there any wonder people are worried about that? It erodes democracy at its most fundamental level when political decisions are being set by judges with lifetime appointments, unaccountable to the public.

So that is what we are worried about in so many different ways. There has been a trend in that regard, no doubt about it, by our courts. I think they have abused their authority by taking an extremely hostile view toward the expression of religious conviction in public life.

They have struck down Christmas displays. Our courts have declared our Pledge of Allegiance to the Government unconstitutional because it has "under God" in it. By the way, for those of you who can see the words over this door, "In God We Trust," it is part of our heritage, written right on the wall of this Chamber.

This is an extreme interpretation of the separation of church and state. It is not consistent with our classical understanding of law in America. We had the Supreme Court, in this past year, redefining the takings clause. The takings clause says you can take private property for public use.

It does not say you can take it for any purpose, like a private mall. They redefined the meaning because they thought that was smarter, better policy. But we don't appoint judges to set policy. As legislators, we have that responsibility. We are the people who will be voted out of office if we set bad policy. We are the ones meeting people every day and campaigning, trying to understand what the American people care about. That is not what judges do, at 80 years old, sitting over there reading briefs every day.

This is an important issue. They declared that illegal aliens, despite State laws to the contrary, are entitled to benefits. They struck down every partial-birth abortion law. They have declared that morality—this is hard to believe but true in recent years—cannot be a basis for congressional legislation. Yet they contend that they may decide opinions and redefine the meaning of words and the understanding of words over hundreds of years based on what they declare to be evolving standards of decency.

Is that a standard or is that just a license for a judge to do whatever they feel like doing at a given time? Evolving standards of decency, who can define that? Do they have hearings on what these standards are?

These are important issues. The American people are concerned about it. President Bush was concerned about it. He promised he would appoint judges who show restraint, judges of great ability and integrity but who would show restraint and be more modest in the way they handle these cases. That is a fair standard. It is a legitimate issue for the American people to decide. He talked about it in almost every speech he made. That is what he promised to do, and that is what he has done.

If we were to name judges, there is a legitimate concern that we would appoint judges who would promote some conservative agenda. I don't favor that; I oppose that. We don't want a judge to promote a liberal or a conservative agenda, although the plain fact is, if anybody looks at it squarely, they will see that the Court has actually been promoting a more liberal agenda. But we are not asking that a conservative agenda be promoted. We are asking that the courts maintain their role as a neutral umpire to decide cases based on the law passed by the legislative branch or State legislatures or passed by the people through the adoption of the U.S. Constitution.

I don't understand the opposition to Judge Alito. He is such a fabulous nominee. It does appear, according to the New York Times last week, the 19th of January, that our Democratic leader, Senator HARRY REID, has urged his colleagues to vote no so they can, for political reasons, make it a political issue. We need to be careful about that. I am afraid there has been an attempt to change the ground rules of confirmations, to set standards we have never set before for nominees. That knife cuts both ways. If this is affirmed, then there will be more difficulty in the future for Democratic Presidents to have their nominees confirmed.

Judge Alito has a remarkable record. He is the son of immigrants in New Jersey. His father was an immigrant to this country. He goes off to Princeton, gets his degree with honors, declines to accept an invitation to join an eating club that excludes women and others. I guess that was beneath the members of that club. He decided while he was there that he would just dine with everybody else, the scruff and the scrum that you find at Princeton. Then he went to Yale Law School where he finished at the top of his class, served as editor of the Yale Law Journal, participated in the ROTC at a time when that was not an easy thing to do, served in the Army Reserve for 8 years, and was offended that Princeton would kick the ROTC from their campus. I am sure he was not pleased when the rioters bombed the ROTC building at Princeton.

He is an American. He believes in his country. He was prepared to serve his country, go where he was asked to go, if called upon in that fashion.

He was chosen to clerk for the Third Circuit after he graduated, the court on which he now sits with Judge Garth. That is quite an honor. For 3 years he served as assistant U.S. attorney in that great large New Jersey law office for the U.S. attorney where he argued appellate cases. He did the appellate work. That is what he will be as a Supreme Court judge, an appellate judge, not a trial judge. That is what he did when he started out his practice. Then he went to the Solicitor General's Office of the Department of Justice, which is often referred to as the greatest job for an attorney in the world, to be able to stand up in the courts of the United States of America, particularly the Supreme Court, and to represent the United States in that court. He argued 12 cases before the Supreme Court. Not one-half of 1 percent of the lawyers in America have probably argued any case before the Supreme Court. He argued 12. That is a reflection of his strength and capability.

Then he became U.S. attorney in New Jersey, which is one of the largest U.S. attorney offices in America, where he prosecuted the Mafia and drug organizations and was highly successful in that office and won great plaudits for his performance. He then was placed, 15 years ago, on the Third Circuit Court of Appeals. He has served as a circuit judge in the Third Circuit Court of Appeals for 15 years, writing some 350 opinions and participating in many others.

He has had his record exposed to the world. What does it look like? Without question, it is a record of fairness and decency. Some of us on the conservative side have questioned the bar association. They are pro-abortion in their positions. They take liberal positions on a lot of issues, and some people have criticized them for that. They declare their ratings of judges are not based on that. But sometimes they have been accused of allowing their personal views to infect that rating process.

How did the American Bar Association rate Judge Alito? They gave him their highest possible rating. They found that he was well qualified, unanimously, by the 15-member committee that meets to decide that issue. They interviewed 300 people, people who have litigated against Judge Alito as a private lawyer, people who have been his supervisors, people who have worked for him, people who had their cases decided by him.

They go out and talk to these people. They will share with the American Bar Association privately what they might not say publicly. So they interviewed 300 people, and contacted over 2,000. They concluded that Judge Alito has established a record of both proper judicial conduct and evenhanded application in seeking to do what is fundamentally fair.

They declare that Judge Alito was held "in incredibly high regard." That was said by attorney John Payton, an African American who argued the University of Michigan quota case before the U.S. Supreme Court, not a right-winger. He said they found the people they interviewed held Judge Alito in incredibly high regard. I asked him if he chose that word carefully. He said: I did; yes, sir.

Judge Alito represents that neutral magistrate that we look for in our judges in America. His academic record is superb. His proven intelligence is unsurpassed. The experience he brings to the U.S. Supreme Court is extraordinary, including 15 years as an appellate judge doing in a lower court basically the same thing one would do at the Supreme Court level.

This is what he said at the hearing:

The PRESIDING OFFICER (Mr. GRAHAM). The majority's time has expired.

Mr. SESSIONS. Mr. President, I ask unanimous consent for 30 seconds to wrap up.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. I understand our side will also get an additional 30 seconds.

Mr. SESSIONS. This is what he said:

> I had the good fortune to begin my legal career as a law clerk for a judge who really epitomized openmindedness and fairness. He read the record in detail in every single case. He insisted on following precedent, both the precedents of the Supreme Court and the decisions of his own court. He taught all of his law clerks that every case had to be decided on an individual basis. He really didn't have much use for grand theories.

That is what we need on the bench today. I think it would restore the public confidence. I am proud to support this nomination.

Mr. President, I respect Senator LEAHY. He is an excellent advocate for the Democratic side. I was pleased he supported Judge Roberts, and I am not as thrilled he is not supporting Judge Alito. It was a process that was a bit rough at times, but fundamentally I think the judge was able to have his day in court.

I yield the floor.

Mr. LEAHY. Mr. President, I ask unanimous consent that we may go a couple of minutes beyond 12 o'clock.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I appreciate the compliment of the Senator from Alabama. I have spent 31 years in the Senate. I take my role in the Senate very seriously. I believe we should be the conscience of the Nation. As I have said many times, only 18 people get to publicly ask questions of the Supreme Court nominees. They are the 18 Members of the Senate Judiciary Committee. We are asking those questions on behalf of almost 300 million Americans, and then 100 of us get a chance to vote on it.

While the Senator from Alabama is still on the floor, I note that there seem to be talking points going around that the Democratic leader, Senator REID, has been lobbying to make this a party-line vote. I don't know where those talking points came from. I have heard them in different places. The Democratic leader was asked about that yesterday by the press in open session. He said it is absolutely not so. I am the ranking member of the Senate Judiciary Committee. Just as nobody from leadership has lobbied me on now-Chief Justice Roberts when I voted for him, nobody has lobbied me on Judge Alito; nor have I lobbied anybody else, and nor have I heard of anybody who has been lobbied.

What the distinguished senior Senator from Nevada, the Democratic leader, has said over and over again is that this is a vote of conscience. Every Senator has to search his or her own conscience. In fact, I was also concerned when the distinguished Republican leader opened the debate on this nomination by complaining that those opposing Judge Alito are smearing a decent and honorable man. Mr. President, again, out of almost 300 million Americans, only 100 of us get a chance to say whether this man will go on the Supreme Court, where he can sit there for years, decades even, and where he is supposed to be the ultimate check and balance and guardian of our rights. To say that by opposing him is smearing him, that is not so.

Senator SPECTER and I held a fair and open hearing on him. Democrats had substantive and probing questions to try to learn more about Judge Alito, and some Republicans did the same. These complaints about the treatment of Judge Alito ring hollow after President Bush was forced by an extreme faction of his own Republican Party to withdraw his first choice for the vacancy, Harriet Miers. It was a humiliation of the President by an extreme faction in his party. Within hours of the time he nominated her, many groups on the far right criticized the nomination, and a number of Republican Senators raised serious concerns calling for a thorough hearing and a probing inquiry in light of their concerns about her record.

The same groups on the right immediately embraced Samuel Alito after they had forced Harriet Miers to be withdrawn. The same Republican Senators who said they needed to learn more about Harriet Miers' judicial philosophy before they could vote to confirm her are now doing an about face and criticizing Democrats for saying they want to do the same type of inquiry for Judge Alito. President Bush buckled to pressure and withdrew the nomination for Harriet Miers because she didn't pass the litmus test and because there were those who said they were not sure how they would vote.

The third nomination—Judge Alito's—people applauded, implying that here we have somebody who we know how he will vote, so he is fine.

Democratic Senators are taking their constitutional duties seriously. We have a single fundamental question: Will the Senate serve its constitutional role and preserve the Supreme Court as a constitutional check on the expansion of presidential power?

A nominee's views on Executive power and the checks and balances built by the Founders into our constitutional framework should always weigh heavily in hearings for those nominated to the Supreme Court. Executive power issues were the first issues I raised with Chief Justice Roberts at his confirmation hearing, and they were the first issues I raised with Judge Alito.

The reason presidential power issues have come to dominate this confirmation process is that we have clearly arrived now at a crucial juncture in our Nation, and on our highest court, over the question of whether a President of the United States is above the law. The Framers knew that unchecked power leads to abuses and corruption, and the Supreme Court is the ultimate check and balance in our system. Vibrant checks and balances are instruments in protecting both the security and the liberty of the American people.

This is a nomination that I fear threatens the fundamental rights and liberties of all Americans, now and for generations to come. One need only look to the White House to see the practical effects of such an erosion of those rights and liberties. This President is prone to unilateralism and assertions of Executive power that extend all the way to illegal spying on Americans.

This President is in the midst of a radical realignment of the powers of the Government and its intrusiveness into the private lives of all Americans, Republicans and Democrats. Frankly, this nomination is part of that plan for the intrusion into our private lives. I am concerned that if we confirm this nominee, it will further erode checks and balances that have protected our constitutional rights for more than 200 years. It is not overstating the case to say this is a critical nomination. It is one that can tip the balance on the Supreme Court radically away from the constitutional checks and balances and the protection of Americans' fundamental rights.

This past week, I introduced a resolution to clarify what we all know, that the congressional authorization for the use of military force against Osama bin Laden did not authorize warrantless spying on Americans, as the administration has now claimed. I thought—we all thought—that when we as Democrats joined in the bipartisan authorization of military action against Osama bin Laden more than 4 years ago, our action would have been more effective and that we would have by now succeeded in ridding the world of that terrorist leader. We gave the President all the authority he needed to go after Osama bin Laden, and we thought with the great power of this country he would have gone out and caught him. He didn't. They averted our special forces out of Afghanistan and into Iraq before we even announced we were going to go to war against Iraq. We lost the opportunity to catch Osama bin Laden, the man who did order the attacks on America.

Now we find the administration, instead of saying sorry we didn't catch Osama bin Laden, even though you gave us the authority, we now want to use that authority as legal justification for a covert, illegal spying program on Americans.

As Justice O'Connor underscored very recently, even war "is not a blank check for the President when it comes to the rights of the Nation's citizens."

Now that the illegal spying on Americans has become public, the Bush administration's lawyers are contending that Congress authorized it. The September 2001 authorization to use military force did no such thing. It did not authorize illegal spying on Americans. Republican Senators know it, and some have been courageous to say so publicly. The fact is, we all know it. The liberties and rights that define us as Americans and the system of checks and balances that serve to preserve them should not be sacrificed to threats of terrorism or to the expanding power of the Government. Security and liberty are not mutually exclusive values in America. We should have both, and we can have both, so long as we have adequate checks and balances and with the extra effort it takes to chart the right course to preserve our liberties as we preserve our security.

We are constantly reminded of what Benjamin Franklin said: People who give up their liberties for security deserve neither. The terrorists win if they frighten us into sacrificing our freedoms—something I said in the days following 9/11, and I believe it just as strongly today.

Just after 9/11, I joined with Republicans and Democrats—I was at that time chairman of the Judiciary Committee, in round-the-clock efforts to update and adapt our law enforcement powers, and we did. The law became known as the USA PATRIOT Act. It is obvious they missed a lot of the signals that were out there. It is obvious they had ignored the evidence that was before them that might have stopped the terrorists from striking us, but we didn't make those accusations, we didn't say then—let's find out all the things you did wrong that allowed us to be hit on your watch. Instead, during those days, we asked the Bush administration, what do you need, tell us what you need so it doesn't happen again, whether it is on your watch or anybody else's.

In answering that question, they never asked us to amend the Foreign Intelligence Surveillance Act to accommodate spying on Americans they now say they will undertake, even though the law doesn't allow it. The law does contain an expressed reservation for the 15 days following a declaration of war. But neither Attorney General Ashcroft nor anyone else in the Bush administration at that time or any time afterward sought congressional authorization for this illegal NSA spying program.

Actually, Attorney General Gonzales admitted in a recent press conference that the Bush administration did not seek legal authorization for this kind of spying on Americans because "it was not something we could likely get." We don't know; he never asked. But consider that damning admission. It is utterly inconsistent with the Bush administration's current argument that Congress authorized warrantless spying on Americans, when they now are saying they didn't ask for it because they couldn't get it. They can't have it both ways, although Lord knows they are trying as hard as they can to have it both ways.

The Bush administration's after-the-fact claims about the breadth of that 2001 resolution are the latest in a long line of manipulations and another affront to the rule of law, American values, and traditions. We have also seen such overreaching in the Justice Department's twisted interpretation of the torture statute, in the detention of suspects without charges, the denial of access to counsel, and in the misapplication of the material witness statute as a sort of general preventive detention law. Such abuses serve to harm our national security as well as our civil liberties. In fact, sources at the FBI reportedly say that much of what was forwarded to them to investigate from the NSA spying program was worthless and led to dead ends. That is a dangerous diversion of our investigative resources.

When they talk about thousands of al-Qaida conversations they have to monitor going to Americans—thousands? Interesting. So how many people have been arrested because of those thousands? Two thousand people? Fifteen hundred people? One thousand? Five hundred? Four hundred? Three hundred? Thirteen? Seven? Five, three, four, two, one? Or none?

A central question, therefore, during the hearings of this nomination was whether Judge Alito would serve as an effective constitutional check on the Presidency. Preventing Government intrusions into the personal privacy and freedoms of Americans is one of the hallmarks of the Supreme Court. They are not supposed to be in the pocket of any administration. After all, this Senate, when it was overwhelmingly Democrat, under Democratic control—one of the most popular Democrats in my lifetime was President Franklin Roosevelt. When he wanted to pack the Supreme Court, when he wanted to manipulate the Court, it was the Democrats who stood up and said no because they felt the Court should be a check and balance. Here there is no assurance that Judge Alito will serve as an effective check and balance on Government intrusions into the lives of Americans. In fact, his record suggests otherwise.

We know that Samuel Alito sought to justify absolute immunity for President Nixon's Attorney General John Mitchell from lawsuits for wiretapping Americans, among other violations of their privacy. He was asking for immunity even if the Attorney General acted willfully to violate people's rights. This is the man who is going to be a check and balance on our rights?

We know that as a judge, Samuel Alito was willing to go further than even Michael Chertoff, the former head of the Ashcroft Justice Department's Criminal Division and the current Secretary of the Department of Homeland Security, in excusing Government agents for searches not authorized by judicial warrants. This is the man who is going to be a check and balance?

We know Judge Alito would have excused a strip search of a 10-year-old girl, even though the search warrant did not authorize this. This is a man who is going to be a check and balance?

In both Doe v. Groody and Baker v. Monroe Township, Judge Alito dissented and would have allowed invasive searches beyond the scope of warrants. This is a man who is going to be there as a check and balance?

I was a prosecutor for eight years, and I am keenly aware of the difficulties faced by police officers in the course of their duties. I support vigorous law enforcement tools. But I am also mindful of the careful balance that must be struck in order to preserve our individual liberties. One of the most important Fourth Amendment protections we have for our privacy is the requirement that a judicial officer ensure that the Government's intrusion on citizens' privacy is based on probable cause and that it is reasonable. It is the judge who determines whether to authorize the search and the extent of the search to be permitted. The officer's affidavit and the warrant are not mirror images of each other. The magistrate is not a rubber stamp. The role of the magistrate in issuing warrants, a role Judge Alito has too easily cast aside on the bench, is a crucial check in maintaining the right balance so that all Americans can have both security and liberty.

It is worth taking a few moments to recount the facts of these cases, because I am concerned that Judge Alito has too little regard for the consequences arising from allowing these kinds of invasive searches beyond those authorized by warrants.

In the Doe case, the 10-year-old girl and her mother were subjected to what the Third Circuit termed an "intrusive" strip search, even though they were not suspected of nor charged with any wrongdoing. The warrant that the Government agents had obtained from a judicial officer authorized a search for a man living at a certain address. Yet when they arrived at the address they encountered only the 10-year-old and her mother and proceeded to strip search them. There was no contention that they posed a risk to the agents.

Similarly, in Baker v. Monroe Township, a mother and her three teen-aged children were detained and searched as they arrived at the home of the mother's adult son. The woman and her teen-aged children did not live at the house, were not suspected of any wrongdoing, were not named in the warrant, and were not even inside the premises when the officers arrived on the scene. They were nevertheless all ordered at gunpoint to lie on the ground. They were subsequently handcuffed, taken into the house, further detained, and their property and persons were searched.

In both cases, the Third Circuit held that the Government agents had acted inappropriately and had violated the Fourth Amendment when they conducted these invasive searches of innocent persons who were not named in the search warrants. When I asked him why he, in contrast, looked beyond the "four corners" of the warrant that was actually signed by the magistrate in Doe, Judge Alito replied that the issue was a "technical" one. Repeatedly when pressed about this case, Judge Alito insisted that the issue was merely "technical."

The illegal strip search was not "technical" for the 10-year-old girl. Then-Judge Chertoff understood that this issue is far from technical, but, rather, embedded in the core protections of our individual privacy and dignity from governmental intrusion. In the court's opinion, rejecting the rationale of Judge Alito's dissent, Judge Chertoff wrote: "This is not an arcane or legalistic distinction, but a difference that goes to the heart of the constitutional requirement that judges, and not police, authorize warrants."

Judge Alito tried to find "technical" ways to excuse the illegality. Judge Alito's dissent relied on the affidavit accompanying the warrant. To the extent the affidavit had requested a search of "all occupants" of the home, it did so based on a concern about concealment of drugs by "frequent visitors that purchase [drugs]" or by "persons who do not actually reside or own/rent the premises"—not by a 10-year-old girl living in the home. Judge Alito ignored this language in the affidavit, in order to misconstrue the affidavit more broadly and to then substitute it for the magistrate's warrant.

Judge Alito's rationale was that because the officers' initial request was broad, it could be assumed that the magistrate intended to grant broader search authority than that set forth in the warrant. The Supreme Court had specifically rejected this type of reasoning in the case of Ramirez v. Groh, which was decided a month before Judge Alito dissented in Doe. In Groh, the Supreme Court held a search warrant invalid, citing the sharp distinction the law draws between what is authorized in a warrant, and what was requested. Judge Alito went to great lengths in a futile and hyper-technical attempt to distinguish the Supreme Court's decision in Groh.

Similarly, in Baker v. Monroe Township, Judge Alito saw the facts in the light most favorable to the Government, rather than to the mother and her children. That is directly contrary to the standard that should be used when reviewing an order granting summary judgment against a party. In his dissent, Judge Alito found that although the warrant in question did not describe any persons to be searched, it nevertheless was appropriate for officers to search and handcuff a mother and her three teen-aged children as they approached a relative's home. Judge Alito stated in his dissent that even though the mother and her three children were not named in the warrant and there was no reason to suspect them of any wrongdoing, "to [his] mind" the warrant had been intended to authorize a search of "any persons found on the premises." Judge Alito went so far as to excuse the officers' failure to request or obtain a warrant permitting the search of persons on the premises as sloppiness.

The Third Circuit disagreed with Judge Alito, holding that because the search warrant did not authorize the search, it was unlawful and in violation of the Fourth Amendment. The other judges hearing the case found fault with Judge Alito's willingness to look beyond the warrant to excuse the unauthorized and unlawful searches. In Baker, Judge Alito inserted himself into the case in an active attempt to excuse misconduct when the warrant did not authorize the Government intrusion.

Unfortunately, Doe and Baker are not outliers in Judge Alito's record. As troubling as his dissents are in those two cases, they are only part of a broader pattern of deference to the Government that shows far too little concern for individual liberties and rights, which find their ultimate protection in the Supreme Court.

Judge Alito's record on the use of excessive force is also troubling. It goes back at least as far as his time in the Meese Justice Department. I find particularly troubling a 1984 memorandum he wrote to the Solicitor General regarding a case called Tennessee & Memphis Police Department v. Garner. In a long memo in which he repeatedly wrote in the first person proclaiming his own beliefs, Samuel Alito argued that there were no constitutional problems with a police officer shooting and killing an unarmed teenager who was fleeing after apparently stealing $10 from a home. A year later, the Supreme Court ruled 6–3 against Judge Alito's position in that case and reiterated the law against use of "deadly force" if a suspect presents no danger. In contrast to Justice O'Connor's dissent on federalism grounds, Samuel Alito's memo makes no mention of the human tragedy of the events nor did he think the Constitution even applied since he argued that the unjustified shooting was not technically a "seizure." Most troubling is Judge Alito's statement in his legal memo endorsing "the general principle that the state is justified in using whatever force is necessary to enforce its laws." I fear that this deference to the Government, which he has continued on the bench, makes him ill-suited to be an effective check on the Government or protector of individual liberties and rights.

The Supreme Court is the ultimate check and balance in our system. The independence of the Court and its members is crucial to our democracy and way of life. The Senate should never be allowed to become a rubberstamp, and neither should the Supreme Court.

And so we owe it to the American people of today, and the Americans of generations to come, to ask and answer several essential questions: Can this President, or any President, order illegal spying on Americans? Can this President, or any President, authorize torture, in defiance of our criminal statutes and our international agreements? Can this President, or any President, defy our laws and Constitution to hold American citizens in custody indefinitely without any court review? Can this President, or any President, choose which laws he will follow and which he will not, by quietly writing a side statement when he signs a bill into law? These are some of the most vital questions of our era, and these are among the most vital questions that confront the Senate in considering this nomination to our highest court. Judge Alito's record, and his responses—and his failure to adequately answer questions about these issues—are deeply troubling.

No President should be allowed to pack the courts, and especially the Supreme Court, with nominees selected to enshrine presidential claims of government power. Our system was designed to ensure a balance and to protect against overreaching by any branch.

A Democratic Senate stood up to one of the most popular and powerful Democratic Presidents of all time when it rejected President Franklin Roosevelt's court packing scheme. The Senate should not be a rubber stamp to this President's effort to pack the court with those who would give him unfettered leeway. I will not lend my support to an effort by this President to move the Supreme Court and the law radically to the right and to remove the final check within our democracy.

I voted for President Reagan's nomination of Justice Sandra Day O'Connor, for President Reagan's nomination of Justice Anthony Kennedy, for President Bush's nomination of Justice Souter, and for this President's recent nomination of Chief Justice Roberts. I cannot vote for this nomination.

At a time when the President is seizing unprecedented power, the Supreme Court needs to act as a check and to provide balance. Based on the hearing and his record, I have no confidence that Judge Alito would provide that crucial check and balance.

I see the distinguished senior Senator from Massachusetts in the Chamber. I am prepared at this point to yield to the distinguished Senator and former chairman of the Judiciary Committee and one whose protection of the civil liberties of all of us is unparalleled in the history of this body.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank my friend and colleague, the Senator from Vermont. Again, we do many important things in the Judiciary Committee, but none are more important than the selection of our Supreme Court Justices. I again thank the Senator from Vermont for his leadership in ensuring we're going to have a fair, open, appropriate, and a prodding, probing hearing and for the leadership he provides for our committee on so many different matters of importance to the American people.

The stakes in this nomination could not be higher. This is the vote of a generation. If confirmed, Judge Alito will have enormous impact on our basic rights and liberties for decades to come. After all, the Supreme Court is the guardian of our most cherished rights and freedoms, and they are symbolized in the four eloquent words inscribed above the entrance of the Supreme Court of the United States: "Equal justice under law."

Those words are meant to guarantee our courts will be an independent check on abuses of power by the other two branches of Government. They are a commitment that our courts will always be a place where the poor and the powerless can stand on equal footing with the wealthy and the privileged. Each of us in the Senate has a constitutional duty to ensure that anyone confirmed to the Court will uphold that clear ideal.

Contrary to what a number of my Republican colleagues have argued, the Senate's role is not limited to ensuring that the nominee is ethical and possesses a certain level of legal skill and professional experience. To end the inquiry there would be a shameful abdication of our historic responsibility. The selection of a Supreme Court Justice is of great importance to every man and woman in America because the decisions rendered by the Court affect their lives every day. Because of the enormous authority a successful nominee to the High Court will have for decades to come, it is the responsibility of the Senate to determine what constitutional values the nominee holds before he or she is confirmed.

Has the nominee learned the great lessons of our Nation's history? Will the nominee be fair and openminded or will his judgments be tainted by rigid ideology? Is he genuinely committed to the principles of equal justice under law?

The American people will have no second chance to decide whether this person should be trusted with such awesome responsibility. As their representatives, it is our responsibility to ask the tough questions and demand meaningful answers.

For the Senate to become a rubberstamp for the judicial nominees of any President would be a betrayal of our sworn duty to the American people. Taking our responsibility seriously and doing the job we were sent here to do is not being partisan, as some Republicans have charged. In fact, it is those Republicans who are being partisan by defending a nominee's right to remain silent when Senators ask him highly relevant questions about his constitutional values. To ask a nominee for a candid statement of his current belief about what a provision of the Constitution means is not asking for a guarantee of how he will rule in the future. It is every bit as appropriate as reading a Law Review article or a case he wrote last year or a speech he gave as a judge.

Unfortunately, on issue after issue, instead of answering candidly, Judge Alito merely recited the existing law but never disclosed his view of major constitutional issues. That is a disservice to the American people, and Senators on both sides of the aisle should find his evasiveness unacceptable. The confirmation process should not be reduced to a game of hide the ball. The stakes for our country are too high.

One of the most important of all responsibilities of the Supreme Court is to enforce constitutional limitations on Presidential power. A Justice must have the courage and the wisdom to speak truth to power, to tell even the President he has gone too far. Chief Justice John Marshall was that kind of Justice when he told President Jefferson he had exceeded his war-making powers under the Constitution. Justice Robert Jackson was that kind of Justice when he told President Truman he could not misuse the Korean war as an excuse to take over the Nation's steel mills. Chief Justice Warren Burger was that kind of Justice when he told President Nixon to turn over the White House tapes on Watergate. Justice Sandra Day O'Connor was that kind of Justice when she told President Bush that "a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens."

We need that kind of Justice on the Court more than ever. It is our duty to ensure that only that kind of Justice is confirmed.

Today, we have a President who believes torture can be an acceptable practice despite laws and treaties that explicitly prohibit it. We have a President who claims the power to arrest American citizens on American soil and jail them for years without access to counsel or the courts. We have a President who claims he has the authority to spy on Americans without the court order required by law.

The record demonstrates we cannot count on Judge Alito to blow the whistle when the President is out of bounds. He is a longstanding advocate of expanding Executive power even at the expense of core individual liberties.

One thing is clear: Judge Alito's view of the balance of powers is inconsistent with the Supreme Court's historic role of enforcing constitutional limits on Presidential power.

His consistent advocacy of what he calls the gospel of the unitary executive is troubling. As Steven Calabresi, one of the originators of the unitary executive theory, has said, "The practical consequence of this theory is dramatic: It renders unconstitutional independent agencies and counsels to the extent that they exercise discretionary executive power."

But this bizarre theory goes much further. Its supporters concede that without the unitary executive as a foundation, the Bush administration cannot even hope to justify its constitutional abuses in the name of fighting terrorism.

Judge Alito refused to discuss his current view of the constitutional limits on Presidential power. But in a speech Judge Alito gave in 2004 to the Federalist Society, he stated that he believed "the theory of the unitary executive best captures the meaning of the Constitution's text and structure." Under this radical view, all current independent agencies would be subject to the President's control. This would destroy the independence of agencies such as the Federal Election Commission, the Securities and Exchange Commission, the Consumer Product Safety Commission, and the Federal Reserve Board.

He strongly criticized the Supreme Court's ruling rejecting the theory of unitary executive and outlined a strategy for bypassing it.

When Judge Alito made that speech, he had already been serving as appellate judge for 10 years, and he was describing his own view of the Constitution.

Similarly, Judge Alito had written earlier that "the President's understanding of a bill should be just as important as that of Congress," and that

Presidents should issue signing statements announcing their own legal interpretations in the hope of influencing the way the courts would construe the law.

On Executive power. "Protective of the Executive Branch, the issuance of interpretative signing statements would have two chief advantages. First, it would increase the power of the executive to shape the law."

This is his view. But as Justice Hugo Black wrote in the steel seizure case, "the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad."

This is not just a theoretical case. As we all now know, President Bush issued such signing statements on a bill that contained Senator McCAIN's ban on torture. In that statement, the President reserved the right to ignore the McCain requirements and even asserted that in certain circumstances his actions are beyond the reach of the courts.

I think many of us remember that meeting Senator McCAIN had with the President down in the White House, and the Senator from Arizona thanked the President for working out the language that would be included in the Defense appropriations bill and the President thanked him for his help and assistance in working that out. They both shook hands. This picture was on all three networks that night.

Four or five days later, the President signed the bill, and he issued an executive signing statement that said he continued to retain all of his constitutional power, and that he was effectively taking any question of his Executive power out of the hands of any courts in this country. That is a complete reversal to what was agreed to, a complete reversal to what was said, a complete reversal to the understanding of the Senator from Arizona. The Senator from Arizona has spoken about it. That is Executive power.

We learned in high school there are two branches of Government, the House and the Senate. They pass the law, the President signs it. It is the law. If he vetoes it, it is not the law. That is not Judge Alito's view. He believes the President, by signing it, has an independent voice and that voice is a voice that should be listened to and heard, a very bizarre view of Executive authority and Executive power.

In cases involving claims of privacy and freedom from unjustified searches and seizures under the Bill of Rights, Judge Alito has consistently deferred to the Government at the expense of core individual rights. In the Doe v. Groody case, Judge Alito issued a dissent defending the strip search of a 10-year-old girl without authorization from a warrant. In his majority opinion, Michael Chertoff, former head of the criminal division in the Department of Justice, who is now President Bush's Secretary for Homeland Security, sharply criticized Judge Alito's view as threatening to turn the requirement of a search warrant into little more than a rubberstamp. This is not Democrats saying this; this is President Bush's Secretary of Homeland Security saying this. He was a judge on that circuit, criticizing this kind of action, extension of a search warrant, because of the inclusion of some kind of other document into the search warrant. We understand what Michael Chertoff was saying, and Judge Alito issued the dissent.

In Mellott v. Heemer, Judge Alito reported it was reasonable for marshals to pump a sawed-off shotgun at a family sitting in their living room. The family committed no crime. Seven marshals had detained and terrorized a family and friends, ransacked their home while carrying out an unresisted civil eviction. Yet Judge Alito's decision meant the family never got a trial before a jury of their peers.

Judge Alito's record in cases involving civil and individual rights shows a judge who repeatedly rules against individuals seeking justices for wrongs by the powerful. In Bray v. Marriott Hotels, a hotel worker claimed she was denied a promotion because she was an African American. The Third Circuit held she was entitled to a trial because the employer falsely stated she was unqualified and had evaluated her qualifications differently compared to White applicants. Judge Alito would have denied her the chance to prove her case. His colleagues on the court—not the Democrats on the committee—his colleagues on the court wrote that his dissent would have eviscerated key provisions of the landmark Civil Rights Act of 1964.

His record in other areas of civil rights is also troubling. In the case in which a disabled person sought physical access to a medical school under the Rehabilitation Act of 1973, the court's majority wrote that few, if any, Rehabilitation Act cases would survive if Judge Alito's view prevailed. That is the majority, not Members of the Democratic Party. That is the majority of the court members, looking at his view.

There it is—issues on race, issues on disability, individual rights and liberties, those individuals, farmers, and others in a home involving a civil action, who committed no crime, where marshals used gestapo-like tactics. They were denied an opportunity for a court to give a hearing. Judge Alito said no. That is why many Members wonder what kind of an opportunity the average American is going to have.

Does Judge Alito tip more to the powerful and the entrenched interests and the Executive authority? Does he give those individuals—women, minorities, disabled workers—a fair shake?

Judge Alito said, let's look at the record. We have looked at the record. We looked at primarily the dissents, as pointed out in the previous discussions.

Ruth Bader Ginsburg, who is considered to be a more progressive figure on the Court, Judge Bork, a conservative figure who was proposed for the court, agreed 91 percent of the time. It is in the dissent that we understand whether an individual and individual rights are protected. Those are the indicators. As we have seen from studies—not just from the members of the Judiciary Committee but by independent sources—Knight Ridder, Yale Law School Study Group, even the Washington Post, Cass Sunstein, a distinguished authority and thoughtful individual about constitutional law—all have reached a very similar conclusion that I have outlined here. We will hear on the other side: Well, they are only finding a few cases. We have suggested and included in the record of the Judiciary Committee this happens to be the prevailing position of the nominee.

In another case, a jury ruled a woman had provided enough evidence to show that she had wrongly lost her job because of sex discrimination. Ten members of the Third Circuit who heard the case on appeal agreed. Only Judge Alito argued that she had not provided adequate proof of discrimination. Who is out of step? Who is out of step? Who is out of the mainstream?

In the Riley v. Taylor case, Judge Alito dissented from a ruling prohibiting the removal of African-American jurors because of their race. It is unbelievable in today's America, in a case involving a minority defendant, that he was willing to ignore the overwhelming evidence that the Government insisted on an all-White jury for a Black defendant. He found no problem with that and with their inclusion for the death penalty. Eventually, that case was overturned, as it should have been. What was going on in the mind? We talk of equal justice under law. We see what has happened to individuals. We see what has happened in this extremely important judicial proceeding.

Many of Judge Alito's other decisions demonstrate a similar tendency against the individual. In Rouse v. Plantier, a group of diabetic inmates sued prison officials for being deliberately insensitive to medical needs. The trial court held there was enough evidence for the jury to decide whether the inmates' constitutional rights had been violated. Judge Alito refused to allow the jury to decide whether the Government was responsible for a broad systematic failure to provide the necessary medical group. These inmates had diabetes. We know the dangers of diabetes. One out of four of our Medicare dollars is spent on diabetes.

One out of 10 of all health dollars is spent on diabetes. It can be devastating, leading to blindness, or the losing of a limb, more often the leg. They need attention and treatment.

This is a serious problem that is increasing in our society. There was a systematic failure in terms of providing for that. They thought it should go to the jury. Was it or was it not a factual issue? The lower court said they ought to be able to go, but not Judge Alito. He reached a different conclusion.

In case after case, Judge Alito's decisions demonstrate a systematic tilt toward powerful institutions and against individuals attempting to vindicate their rights. He cites instances where he has decided for the little guy, but they are few and far between. We have an independent duty to evaluate Supreme Court nominees to determine whether their confirmation is in the best interests of our Nation. That is the test. It is a test with which Judge Alito himself seems to agree. He said we should look at his record and decide whether he should be confirmed. I have done so. I have compared the challenges the Court will face in the future with Judge Alito's record and I cannot support his nomination.

In this new century, the Court will undoubtedly consider sweeping new claims to expand Executive power at the expense of core individual rights, including detention of Americans on American soil without access to counsel or the court, and eavesdropping on Americans in violation of Federal law.

The Court will decide new issues in America's struggle against prejudice and discrimination. It must remain a fair and impartial decisionmaker for ordinary Americans seeking justice.

Justice Alito's record shows he should not be entrusted with these vital decisions facing our Nation's Court, and I urge my colleagues to join me in opposing Judge Alito's nomination.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Thank you, Mr. President. I thank my colleague from the Commonwealth of Massachusetts for his statement.

Those who are following this debate—my colleagues and those in the audience—should know this is a historic moment in the Senate. It is rare that Members of the Senate are given an opportunity to review a Justice to the Supreme Court. It has been 11 years. Recently, we have had two. Chief Justice John Roberts came before the Senate, and today we consider the nomination of Judge Sam Alito to fill the vacancy of Sandra Day O'Connor on the Supreme Court.

I take this very seriously. As Senator KENNEDY said yesterday in another meeting: Next to a vote on war, there is nothing more serious than this decision. The man or woman whom we choose to serve on the Supreme Court is there for the rest of their natural life. For 10, 20, or 30 years, that person will be making critical decisions on the highest Court in the land, the Court which is the refuge for our freedoms and our liberties.

That Court, across the street from this Capitol Building, has made momentous and historic decisions which have literally changed America. In the 1950s, nine members of the Supreme Court made the decision that we would no longer have segregated public education in America. It was not the leadership of a President or the Congress, but it was the Court.

Similarly, that same Court, in the 1960s, established a new right under our Constitution, a word which you cannot find within the confines of that document, the right of privacy. That Court—nine Justices across the street—said that when it came to the most personal and basic decisions in our lives, they were reserved to us as individuals, not to the Government. That was not a finding by a President. It was not a law passed by Congress. It was a decision of the Supreme Court.

And time and again, whether we are speaking of the rights of minorities in America, women in America, those who are disabled, that Court and the nine Justices who sit on the bench make decisions which change America for generations to come. That is why the selection of a nominee to the Supreme Court is so important and so historic. It is made even more so by the fact that the vacancy we are filling on the Supreme Court is not another run-of-the-mill vacancy, it is the vacancy of Sandra Day O'Connor, the first woman ever appointed to the U.S. Supreme Court.

As important as her gender is, the fact is, she brought unique leadership to the Court. You see, over the last 10 years, there have been 193 decisions in that Court that were decided 5 to 4. One Justice's vote made the difference. If one Justice had voted the other way, the decision would have been the opposite—193 times in 10 years. And in 148 of 193 cases, Justice Sandra Day O'Connor was the deciding vote.

So we are not only faced with a historic and constitutional challenge in filling this vacancy, we have a special responsibility because the vacancy that is being filled is a vacancy that will tip the scales of justice in America one way or the other way.

What kind of cases did Sandra Day O'Connor provide the decisive vote on? Cases which safeguarded Americans' right to privacy in the area of reproductive freedom, the rights of women; cases that required courtrooms to be accessible to people with disabilities, decided 5 to 4; preserving the rights of universities to use affirmative action programs, decided 5 to 4; affirming the right of State legislatures to protect the voting rights of minorities in America, decided 5 to 4; upholding State laws giving individuals the right to a second doctor's opinion if their HMO denied them treatment, decided 5 to 4; reaffirming the Federal Government's authority to protect the environment that we live in, a 5-to-4 case; and reaffirming America's time-honored principle of the separation of church and State, 5 to 4.

In every single case, the fifth vote was Sandra Day O'Connor. And now she leaves, after many years of service to America, with an extraordinary record of public service. Many of us are listening, watching, and reading to make certain the person replacing her can rise to the challenge, and not only the challenge of serving in the Court but the challenge of fighting for the same values she fought for. Sandra Day O'Connor came to the Supreme Court with the support of Barry Goldwater, the preeminent conservative in American politics in the 1960s and beyond. Many expected her to be of the same stripe, that she would follow his basic philosophy. In many ways, she did because if you measure Barry Goldwater's contribution to American politics, you will find him starting in a very conservative position and, over the years, moving to a more libertarian position, a position that valued personal freedom more.

The same thing happened to Sandra Day O'Connor. Starting as a conservative, over the years she moved toward a more libertarian position, a position which, in many instances, was critical for protecting our basic rights.

It has been said she was the most important woman in America. And it is easy to see why. Time and again, Sandra Day O'Connor was the crucial fifth vote on civil rights, human rights, women's rights, and workers' rights. That is why we have looked so closely and so carefully at Judge Sam Alito.

And there is more. His was not the first name to be suggested by the President for this vacancy. The first name was the President's personal attorney in the White House, Harriet Miers, a person he obviously respects very much. Do you recall what happened to her nomination? Her name was brought forward, and there was a firestorm of criticism about Harriet Miers' nomination. Did it come from the Democrats? Did it come from liberals? No. It came from the other side. Time and again, the most rightwing on the American political scene said Harriet Miers was not acceptable, and they raised questions about whether she could be trusted to be on the Supreme Court to advance their rightwing agenda.

Their opposition to her nomination grew to a level and reached a point people did not think would happen. President Bush withdrew Harriet Miers' name as a nominee. In the wake of withdrawing Harriet Miers' name, in sailed Judge Sam Alito—not the best circumstance for someone who is coming to this position arguing they have no political agenda.

Well, we looked carefully to see what the same rightwing organizations would say about Sam Alito. They had rejected Harriet Miers. They gave Harriet Miers the back of a hand. They gave Sam Alito their blessing. They said: He is fine. We support him. He is the right person for the job.

Now, does that raise a question in your mind as to whether Judge Alito will come to this position without an agenda, without professing some allegiance to extreme views these organizations hold? Will it raise the question in the minds of many of us?

And then, during the course of his nomination, there emerged a document, a document he had personally written. In 1985, Sam Alito wrote a document to the Justice Department of the Reagan administration, then headed by Attorney General Ed Meese, looking for a job. In the course of that document he was supposed to lay out why he, Sam Alito, was in step with the Reagan administration's thinking and philosophy. And, in 1985, that memo was explicit. It went through page after page of the things he felt qualified him to serve in that administration.

Some have said: Wait a minute, that was 20 years ago. People change. And it is true. I have changed my positions on some issues. It is well known and documented. It happens. But to say it was a document given without conviction overlooks the obvious. Sam Alito, at that moment in 1985, was 10 years out of Yale Law School. He had served in the military. He served a year as a clerk to a Federal judge. He had served 4 years as an assistant U.S. attorney, prosecuting cases, and 4 years as an assistant to the Solicitor General of the United States.

So rather than suggesting that document reflected the casual observations of someone looking for a job at a very early age, I think that document told us much more.

What it told us was that he questioned some very fundamental things about law in America. In his essay, he wrote that "the Constitution does not protect a right to an abortion." He said he was proud of his work in the Justice Department, fighting abortion rights and affirmative action. He wrote that he was skeptical of Warren court decisions which embraced the principle of "one person, one vote" and the separation of church and state. And he pointed with pride to his membership in two very conservative organizations: The Federalist Society and the Concerned Alumni of Princeton.

His listing of the Concerned Alumni of Princeton, of which he was a graduate, was troubling because that organization was once dedicated to establishing a quota at Princeton that each year they would accept no fewer than 800 men, and the Concerned Alumni of Princeton wanted to stop what they considered to be the infiltration of the Princeton student body by women and minorities. Some of the things they wrote and said were outrageous. In fairness, Judge Alito at the hearing said he would not associate himself with their remarks, but it is interesting that he would identify this organization as one of his memberships that would qualify him to serve in the Justice Department.

As an examination of Judge Alito's 15-year track record on the U.S. Court of Appeals evidences, there are other elements that suggest a very conservative judge. University of Chicago law professor Cass Sunstein examined his dissenting opinions over 15 years and concluded:

> When they touch on issues that split people along political lines, Alito's dissents show a remarkable pattern: They are almost uniformly conservative.

People say to me: If he was found "well qualified" by the American Bar Association, what is wrong with that? Why don't you just go ahead and approve the man? The bar association is an important part of this process, but they only look to three main things. They look to whether he has legal skills. That is important. They look to whether he is an honest person. That is equally important. And they look to his temperament. They said he is well qualified by those three standards. But the American Bar Association doesn't look to his values. It doesn't look to his philosophy, how he is likely to rule in critical cases for America.

I wanted to ask Judge Alito at the hearing: Where is your heart? What do you feel about the power you will have as a Supreme Court Justice? I asked him an obvious question in the lead-up to my inquiry: I asked if he was a fan of Bruce Springsteen. You might wonder why that would come up in this case. Judge Alito is from New Jersey, as is Bruce Springsteen. He said to me in his answer:

> I am—to some degree.

That is a qualified answer, but I took it and went on. The reason I raised it was this: Many people have asked Bruce Springsteen, Where do you come up with the stories in your songs? How do you talk about all these people who are struggling in America? He answered:

> I have a familiarity with the crushing hand of fate.

The reason I asked that question was to go to some specific cases Judge Alito had decided and ask him about the crushing hand of fate. Senator KENNEDY just mentioned one of them.

An African American, charged with murder, facing the possibility of the death penalty, argues on appeal that his verdict was unfair because the prosecutor went out of his way to exclude every African American from the jury so that it was an all-White jury judging a Black man. He presented his evidence that in three other murder trials, one involving an African American, the other two White defendants, the prosecutor had done the same thing—kept the Blacks off the jury systematically. The Third Circuit Court on which Judge Alito served said that defendant was right; that is not something we accept in America; we are going to send this case back to be retried by a jury of this defendant's peers. They saw the importance of a justice system that is blind to race.

But not Judge Alito. He said establishing the fact that four murder trials came before the same prosecutor with all White juries is like establishing that five out of six of the last Presidents were left handed. I thought that was a rather casual dismissal of an important case and an important principle. When I asked Judge Alito about it, he seemed more committed to the principles of statistics than the principles of racial justice which the majority in his court applied.

Another case involved an individual who was the subject of harassment in the workplace. This person had been assaulted by fellow employees. He was a mentally retarded individual. He was so brutally assaulted in a physical manner that I did not read into the record of the hearing, nor will I today, the details. Trust me, they are gruesome and grisly. His case was dismissed by a trial court, and it came before Judge Alito to decide whether to give him a chance to take his case to a jury. Judge Alito said no, the man should not have a day in court. Why? Not because he didn't have a case to argue, but Judge Alito believed that his attorney had written a poorly prepared legal document before his court. Was there justice in that decision? Did the crushing hand of fate come down on an individual who was looking for a day in court who happened to have an attorney without the appropriate skills?

When it came to health and safety questions involving coal mines, a topic we see in the news every day, Judge Alito was the sole dissenter in a case as to whether a coal mining operation would be subject to Federal mine and safety inspection. He argued in the committee hearing that he just read the law a little differently.

What we find in all these cases is a consistent pattern. Time and again, it is the poor person, the dispossessed person, the one who is powerless who has finally made it to his court, who is shown the door. That troubles me. It troubles me because what we are looking for in a Justice is wisdom.

If you are a student of the Bible—and I am not—you know this: The person who embodies the virtue of wisdom was a man named Solomon. In the Bible, the Lord came to Solomon and said: I will give you a gift. What gift would you have? And Solomon said: I want a caring heart. He didn't ask for riches or knowledge; he asked for a caring heart. This wise man wanted that as part of who he was.

That is what I looked for with Judge Alito. Sadly, in case after case, I couldn't find it. I worry that if Judge Alito goes to the Highest Court in the land for a lifetime appointment, he will tip the balance of the scales of justice. He will tip the balance against protecting our basic privacy and personal freedoms. He will tip the balance in favor of Presidential power, even when it violates the law. He will tip the balance when it comes to recognizing the rights of the powerful over the powerless. He will tip the balance on workers' rights and civil rights and human rights and women's rights and protecting the environment. That is why I cannot support his nomination.

I call on the President to send to us a conservative like Sandra Day O'Connor. She was a woman who demonstrated, in a lifetime of service, that she understands the values of this country and committed her life to protecting them. I am sorry that Judge Sam Alito does not live up to her standard.

I yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Texas.

Mr. CORNYN. Madam President, before I make the remarks I have prepared about Judge Alito, I extend my gratitude to members of my staff who, as a member of the Judiciary Committee, have been so instrumental in my ability to prepare for this confirmation process.

In particular, I note the contribution of Brian Fitzpatrick, who has been a member of my staff and worked on both the Roberts and Alito Supreme Court nominations. He is leaving next week after Judge Alito is confirmed to the U.S. Supreme Court, as he will be, to go teach at NYU, New York University. NYU's gain is our loss. I certainly wish Brian well in his new career. I put him on notice that the next vacancy that President Bush gets to the U.S. Supreme Court, I am going to be calling him and asking him to come back for another gig.

Madam President, I rise today to explain why I intend to vote to confirm Judge Alito to the U.S. Supreme Court. Those who were just listening to the eloquent words of the distinguished Democratic whip might wonder how in the world anybody could ever vote for this nominee; how Judge Alito survived for the last 15 years serving as a member of the circuit court of appeals in Philadelphia without getting impeached; how in the world his former law clerks, the people who have worked most closely with the judge, and who happened to be Democrats and have a different political view, a different world view, a different agenda, could come in as they did before the Senate Judiciary Committee and extol the qualifications and temperament of this fine public servant and this fine human being; or how, possibly, in listening to the criticisms we have heard of this nominee and of the President for having the temerity to nominate him, you can reconcile that impression with the fact that we heard on the Senate Judiciary Committee virtually all of the current and former members of the Third Circuit Court of Appeals who have worked closely with Judge Alito day in and day out, who to a person came in and said this is exactly the kind of judge we would want and we think the American people would have a right to expect, and urged us to favorably vote on his confirmation.

It is clear to me, though, during the course of the confirmation process, that the reason I support Judge Alito his philosophy of judicial restraint is exactly the reason his detractors oppose his nomination. The sad fact is that there are some in this country who don't want judges who respect the legislative choices made by the American people. Rather, they want judges who will substitute their own personal ideological or political agenda for those choices made in the Halls of Congress by the elected representatives of the American people.

There are some in this country who have views that are so out of the mainstream that they don't have any chance to persuade the American people to accept them. For example, there are some who want to end traditional marriage between one man and one woman. There are some who want to continue the barbaric practice of partial-birth abortion. Some even want to abolish the Pledge of Allegiance. But they know if they brought some of those issues to the floor of the Senate and to the floor of the U.S. House of Representatives, these are not the views that would be expressed through the elected representatives of the American people because the American people themselves don't agree with these far left, out-of-the-mainstream views.

For these advocates of these out-of-the-mainstream views, the only way they will ever see their views enacted into law is to circumvent the American people and pack the courts with judges who will impose their agenda on the American people. They believe in judicial activism because judicial activism is all they have.

Of course, Judge Alito's detractors will never say they believe in judicial activism. They know the American people don't favor it. They know the American people believe fervently in democracy and self-determination, and they don't want unelected judges making the laws of this country. So Judge Alito's detractors are forced to oppose his nomination on the basis of certain pretexts. They are forced to grasp for any means they can to try to defeat his nomination. As one of Judge Alito's detractors put it, "you name it, we will do it" to defeat Judge Alito.

One of their favorite pretexts—and we have heard some of it this morning—is that Judge Alito embraces this view of an omnipotent executive branch; that he believes the President's powers are without limitation. This pretext is a complete canard. It is based on the claim that Judge Alito once endorsed an academic theory called the unitary executive. But a unitary executive is not the same as an all-powerful executive. It is, after all, a theory that says there are three coequal branches of Government—executive, legislative, and judicial. And each official within that each branch is accountable to the people for the power they exercise and is delegated to them by the Constitution and laws of the country.

But to show how misplaced this criticism is, according to Judge Alito's opponents, the father of the unitary executive theory is Justice Scalia on the U.S. Supreme Court. The problem they have is that the facts show that Justice Scalia does not favor an all-powerful President. No one does. We know this in particular from the decision he wrote in the Hamdi case 2 years ago. This was a case where the detention status of some of the terrorists who are kept at Guantanamo Bay was being reviewed by the Supreme Court. In that case, in the opinion written by Justice Sandra Day O'Connor, the Supreme Court held that the President had the power as Commander in Chief, during a time of war, to indefinitely detain even American citizens who were suspected of terrorism without filing criminal charges against them. Justice Scalia, perhaps one of the most conservative members of the Court, dissented from that, saying the President had no such power; that it was unconstitutional for him to do so. His views did not carry the day, but indeed of all of the Justices, Justice Scalia, the father of this unitary executive theory, was least deferential to the powers of the President. Judge Alito doesn't believe the President's powers are unlimited any more than Justice Scalia does.

Now, one of the witnesses we had during the course of the hearing—I mentioned several former and current members of the Third Circuit Court of Appeals. One of them who testified interestingly and relevant to the point was Judge John Gibbons who has since left the judiciary and has a law practice where he represents the detainees at Guantanamo Bay. He said:

> The committee members should not think for a moment that I support Judge Alito's

> nomination because I am a dedicated defender of the Bush administration. On the contrary, I and my firm have been litigating with that administration over its treatment of detainees held at Guantanamo Bay.

He said:

> I am confident that as an able legal scholar and a fair-minded justice, Judge Alito will give the arguments, legal and factual, that may be presented on behalf of our clients careful and thoughtful consideration, without any predisposition in favor of the position of the executive branch.

That is another example of how those who know this man best simply believe that he will be a fair-minded judge and he will not be unduly deferential to the President, the executive branch, or anyone else for that matter, and that he will faithfully discharge his responsibilities under the Constitution and laws.

Another favorite pretext of the opponents of this nomination is that as a replacement for Justice O'Connor, this nominee, Judge Alito, will shift the Supreme Court radically to the right. But in order to believe this or support this supposed theory, they have to radically rewrite history. It requires them to paint Justice O'Connor as some sort of liberal.

But the truth is far different. For example, according to the Harvard Law Review, over the last decade, the Justice on the Court with whom Justice O'Connor agreed most frequently—over 80 percent of the time—was former Chief Justice William Rehnquist.

I think we will all acknowledge that Chief Justice Rehnquist was no liberal. Yet Sandra Day O'Connor and Chief Justice William Rehnquist agreed with each other more than 80 percent of the time.

Indeed, in subject matter after subject matter, Justice O'Connor sees eye to eye with what Judge Alito has demonstrated on the bench and said how he will approach his job on the Supreme Court. Both believe in federalism, that Congress is not above the law and its powers are not unlimited but, rather, they are, under the Constitution, limited and enumerated, and that some powers are still reserved to the States and the people.

That is not an out-of-the-mainstream view. Justice O'Connor shares that view. The Founders of this country shared that view, and I believe the American people believe that the people have retained some rights and the States have retained some rights against an all-powerful Federal Government. Judge Alito happens to believe that as well.

Justice O'Connor and Judge Alito both struck down some affirmative action programs that resulted in reverse discrimination based on strict numerical quotas. And yes, both have even criticized Roe v. Wade. The truth is that if Justice O'Connor were the nominee today, she would meet with just as much opposition as Judge Alito has. The confirmation process has simply become a no-win situation.

Another favorite pretext of the opponents of this nominee is that he is somehow biased against the mythical little guy. That he always rules against the little guy in favor of the big guy. The basis for this pretext is a litany of cases his opponents cite where Judge Alito has sided against a sympathetic plaintiff. This pretext suffers from a number of flaws.

The first flaw is a selective reading of Judge Alito's record. Judge Alito has been a judge for 15 years. He has decided plenty of cases in favor of consumers, medical malpractice victims, employment discrimination victims, and other plaintiffs. In other words, he has decided plenty of cases for the little guy. But his opponents ignore all of these cases and focus only on the cases where he has decided against a sympathetic plaintiff. Anyone who has looked at his entire record has found the claim of bias to be completely without merit, indeed, including the Washington Post. The Washington Post did an analysis of Judge Alito's entire record and found he is no more likely than the average appeals court judge to rule for businesses, for example, over individuals. And, yes, I said the Washington Post and not the Wall Street Journal.

Moreover, any notion that Judge Alito has a special bias against victims of racial discrimination is as false as it is demeaning. The people who know Judge Alito best testified at length that he applies the law in a fair and evenhanded manner without fear or favor. Indeed, perhaps most instructive is the evidence from the late Judge Leon Higginbotham. He has passed on, but his comments are part of the record.

Judge Higginbotham was something of a civil rights hero, as many people know. He was president of the Philadelphia chapter of the NAACP, was awarded the Presidential Medal of Freedom, and was appointed to the U.S. Civil Rights Commission by President Clinton. This is what he had to say about Judge Alito:

> Sam Alito is my favorite judge to sit with on this court. He is a wonderful judge and a terrific human being. Sam Alito is my kind of conservative. He is intellectually honest. He doesn't have an agenda. He is not an ideologue.

Judge Higginbotham, a hero to the civil rights movement in this country, would never have made such glowing remarks if he believed for an instant that Sam Alito was guilty of some of the false charges being made against him.

More fundamentally, however, the claims that Judge Alito is biased against the little guy are based on a misconception of how judges are supposed to behave. Judges are not supposed to decide cases on sympathy. Just as we ask jurors when they come into our courtrooms all across this great country to put aside their sympathies, biases, and prejudices and decide the cases based on the evidence they hear in court and the law as given to them by the judges—and they do it, day in and day out, faithfully and to really an exceptional degree—of course, we expect judges not to decide cases on sympathy. The kind of arguments we are hearing suggest that judges ought to pick out the party they like best, the most sympathetic, and rule in their favor without regard to the facts and without regard to the law.

One would not know by listening to some of Judge Alito's opponents that he is a fairminded judge. In the America of his opponents, no plaintiff ever loses a case; no entrepreneur ever wins no matter how frivolous the claim of employment discrimination; police departments never win a case no matter how desperate the claim of a criminal defendant; Government agencies, including the Environmental Protection Agency and the Social Security Administration, could never win a case no matter how outlandish the request for Government benefits. In their utopia, the economy is wrecked by frivolous litigation, criminals run free on technicalities, and the public Treasury is plundered.

This admittedly, and thankfully, is not Judge Alito's America. He believes that no one is above the law—not the President, not the Congress, not even the little guy. That is why Lady Justice has always been blindfolded.

America is a nation of laws, not of men and women, not of little guys, not of big guys, but a nation of laws. It should not matter who you are, how you pronounce your last name, what your country of origin is, your race, or any other extraneous consideration when you enter the halls of justice. We are all guaranteed, under the words that are etched over the marble leading into the Supreme Court, "equal justice under the law."

Everything in his record shows that these extraneous considerations don't matter to Judge Alito. This is why people of good faith from all across the political spectrum have testified and given testimonials in support of his work as a judge and on behalf of his nomination to the Supreme Court. This is also why I believe he will be confirmed by the Senate.

Madam President, I could not be happier to throw my support behind this good man, this good judge, and this public servant.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Madam President, I rise to echo and add to the remarks of the Senator from Texas, Mr. CORNYN. On this first day of debate, I rise to express my strong support for the confirmation of Judge Samuel Alito to be a Justice on the Supreme Court of the United States of America.

There has been much discussion, advertising on the radio, in newspapers, and on television. There has been commentary about Judge Alito, and that is fine. That is the way it should be. Federal judges are appointed for life. This is the only time that the people's representatives—those of us in the Senate—have an opportunity to scrutinize an individual who has been nominated for the Federal bench in a lifetime appointment. So that scrutiny is appropriate. I am hopeful that this scrutiny and this discussion will be of a civil nature. Sometimes it has not been, over the last several years in this body.

I do believe, though, that all nominees who are reported out of a committee, whether the Judiciary Committee—for that matter, any committee—Foreign Relations, or other committees, ought to be accorded the fairness of an up-or-down vote at the end of this gauntlet. If you are going to make someone go through all of this, have all these slings and arrows, some relevant, some tangential, and some completely irrelevant. If they are going to go through all of this, they ought to be accorded the fairness of an up-or-down vote.

I believe if the approaches taken over the last several years for certain nominees continue, as a threat or as an actual practical impediment to someone receiving a vote, it will make it much more difficult for any President to be able to recruit from the private sector qualified men and women who have the experience, the personality, the insight, the leadership, and the ability to serve our Government. That might be in a variety of different fields. That is why I think it is important that we as Senators change and stop this practice of holding up nominees and not according them the fairness of an up-or-down vote.

With John Roberts to be Chief Justice of the Supreme Court, we allowed a lot of commentary and a vote. I hope the same will occur for Judge Alito.

There have been indications from those on the other side of the aisle that they are reserving the right to filibuster, or require a 60-vote majority to have a vote on the confirmation of Judge Alito. My reaction is if they move forward with such a filibuster, "make my day." We will enjoy pulling the constitutional trigger to allow Judge Alito a fair or up-or-down vote.

I don't think it is too much to ask Senators to come here when the nomination is called forth to get off these cushy seats, stand up straight, and vote yes or vote no. That is a matter of fairness. It is also our constitutional responsibility in advise and consent.

When analyzing or determining whether I am going to support a particular judicial nominee, what matters most to me for these lifetime appointments is trying to discern that nominee's judicial philosophy. Trying to determine whether they believe what they are saying as to what they think the proper role of a judge will be.

We have seen through the years that certain individuals get appointed for a lifetime appointment, and they end up being completely different than what they have said in the hearings, in interviews with the President, or interviews with the Senators. Past performance is, in my view, usually a reliable indicator of future action.

In my view, regarding this particular nomination of Judge Alito, the best way to determine what kind of Justice Samuel Alito will be on the Supreme Court is to look at his 15 years of services as a circuit court judge. In his years on the bench, he has embodied the philosophy I like to see in judges. I believe the proper role of a judge is to apply the law, not invent the law. Judges are to uphold the Constitution, not amend it by judicial decree.

The proper role of a judge is to protect and indeed defend our God-given rights, not to create or deny rights out of thin air. They are not to act as a legislator.

In Judge Alito's case, no matter the issue, whether or not they are politically charged issues in the realm of electoral politics, he seems, from my reading and review, to have followed a consistent, thoughtful, deliberative process to decide cases.

This is what judges are supposed to do. They are not supposed to be issuing cases based on predetermined ideology, or an eye toward future confirmation hearings. They should faithfully apply the law. They ought to apply the evidence before the court to the law in that particular case before the court.

As he stated in his opening statement before the Judiciary Committee, Judge Alito recognized a judge's only obligation is to the rule of law. And in every single case, the judge has to do what the law requires. In my opinion, that is the essence of the fair adjudication of disputes. There is credibility, there is reliability, and there is integrity in that approach. Judge Alito has exemplary, scholarly, and experienced qualifications—and especially the proper judicial philosophy—to serve honorably as a Justice on the Supreme Court of the United States.

In Judge Alito's 15 years on the Third Circuit Court of Appeals, he has demonstrated his understanding of the proper role of a judge in our constitutional system of Government, and will apply the law fairly and equally.

Judge Alito, in my view, genuinely respects the rule of law in our representative democracy. In recognition of Judge Alito's outstanding service on the Federal bench, the American Bar Association has given him their highest rating of well qualified. The American Bar Association's criteria for their evaluation are integrity, professionalism, competence, and judicial temperament.

Let me share with my colleagues what Stephen Tober, the chairman of the American Bar Association Standing Committee, had to say.

He said:

> On The Federal Judiciary: "Needless to say, to merit an evaluation of well-qualified, the nominee must possess professional qualifications and achievements of the highest standing. . . . We are ultimately persuaded that Judge Alito has, throughout his 15 years on the Federal Bench, established a record of both proper judicial conduct and even-handed application in seeking to do what is fundamentally fair. . . . His integrity, his professional competence and his judicial temperament are, indeed, found to be of the highest standard."

That came from Chairman Tober on January 12 of this year.

Judge Alito also provided to all of us an indication of his temperament and qualifications during his confirmation hearings, which went on for several days and many hours of hearings. He answered over 700 questions, explaining his thought processes, judicial philosophy, and I think very credibly dispelling some of the misstatements about his record of service.

Judge Alito was even forced to defend the statements of others when he was questioned about the Concerned Alumni of Princeton. That is a group that apparently Judge Alito joined when he was a member of the Armed Services because he didn't agree with the way the military was treated on the Princeton campus. As a result, some of the Democratic Senators tried to diminish Judge Alito. The Wall Street Journal had an editorial on January 12 of this year where they said they are trying to find him guilty by "ancient association." Let me quote from the Wall Street Journal editorial page of that date.

> They can't touch him on credentials or his mastery of jurisprudence, so they're trying to get him on guilt by ancient association. Senators TED KENNEDY and CHUCK SCHUMER did their best yesterday to imply that Judge Alito was racist and sexist by linking the nominee with the views of some members of Concerned Alumni of Princeton, which back in the 1970s and 1980s took issue with university policies on coeducation and affirmative action.

Of course, Judge Alito said he didn't agree with any of that. He was concerned about fair access for our military recruiters on campus.

The closing lines in the Wall Street Journal editorial stated:

> As for Judge Alito's prospects, if this irrelevant arcania is the most his opponents have, he can start measuring his new judicial robes.

Another comment made by some members of the Judiciary Committee is they don't have the assurance that the judge firmly believes in precedent. They criticize him for apparently having an open mind.

What some Senators choose to do is not recognize that there are times where precedent should be overturned such as the Court overruling Plessy v. Ferguson and Korematsu v. United States.

Also, as time changes and our country develops, the case law that comes before the Supreme Court also changes, to recognize the advances in technology and science.

In Roe v. Wade, Justice Blackmun recognized that advancements in medical science will impact the trimester standard for when the State's interest in life begins.

As constitutional jurisprudence moves forward, Judge Alito, with his understanding that stare decisis is not an "inexorable command," makes a great deal of sense. We have seen that throughout the history of our country.

There were some comments made during his confirmation process by the groups objecting to the nomination of Judge Alito that they disagree with the conclusion he reached after an independent review of the facts of a particular case. While these groups, and all Americans, have an important role in a free society and deserve to state their view, they also in some cases are distorting the proper role of a judge. On the bench, Judge Alito has not been a partisan activist. To the contrary, there have been no substantive claims that any litigant before Judge Alito did not have a fair and impartial hearing of their case. Factors whether a President should be overturned, or modified—there are many factors, such as the nature of the original decision, whether that precedent has been changed, or there is a desire on the part of the people who are the owners of the Government to change it. Another factor could be whether the precedent has been undermined by subsequent decisions or new facts or new laws.

Court decisions have been changed over the years because they have proven to be unworkable. The Court has overruled many decisions. Of course, Brown v. Board of Education overruling Plessy v. Ferguson is probably the prime example and illustrates that no precedent is untouchable. The Court should not be required to stick to bad law—in that case, separate but equal.

Judges do not run for office. They cannot and should not make campaign promises that are, in fact, prohibited. They are prohibited from doing so by the Code of Judicial Conduct of the American Bar Association. They also should not be judged on the basis of statements they made when working for elected public servants in the legislative or executive branches of Government. They should be judged by their record of service.

Again, with Judge Alito, we see a person with 15 years of judicial experience. We have seen, in too many cases, with the lifetime-appointed Federal judges, a complete disregard for the will of the people and their elected representatives who are supposed to be making the laws reflecting the will and the values of the people in particular States or maybe the Nation in our representative democracy.

People wonder: Why do we care about the activist judges? Why does judicial philosophy matter? I will go through recent decisions by activist judges who forget their role is to apply the law, not invent the law.

In California, certain counties thought it was a good idea to have children in schools say the Pledge of Allegiance. When I was Governor of Virginia, we passed such a law. But someone out there in the Ninth Circuit thought, no, we cannot have the Pledge of Allegiance in public schools in California because of the words "under God." That is an example of judges completely ignoring the will of the people in those regions of California and striking down the Pledge of Allegiance because of the words "under God." This is a ludicrous decision.

We also see judges ignoring the will of the people in a variety of other ways. They struck down some laws in Virginia within the last 2 years because of international standards. Friends, colleagues, we make the laws. We represent the people of this country. It is our Constitution. It is not the U.N. constitution or various conglomerations or what confederations of other countries may think our laws should be. The laws are made by the people of this country.

A continuing debate has to do with parental notification. People in Virginia, when I was Governor, and other States thought, if an unwed minor daughter is going through the surgery, the trauma of an abortion, and is 17 years old or younger, a parent ought to be involved. After all, if a child is going to get a tattoo or their ears pierced, they need parental consent. So the laws are passed by various States, there is one in contention dealing with New Hampshire. Federal judges, ignoring the will of the people in various States, strike down and allow those laws to be overturned.

Last year, in the summer, the Supreme Court got involved in a case that created a great deal of concern because the city of New London, CT, the city council, acting akin to commissars, decided they were going to take people's homes, the American dream, and condemn those homes, take them not for a school, not for a road or any such public purpose, but rather they wanted to derive more tax revenue off of that property. This is part of the Bill of Rights, the fifth amendment. The Supreme Court, in a very narrow decision, allowed New London, CT, in the Kelo case, to take away people's homes. This is an example of Supreme Court Justices, Federal judges, selected and serving for life, amending our Bill of Rights, the Constitution—the Bill of Rights is the most important part of all the Constitution—by judicial decree. That is wrong. This is why it is important we have men and women serving on the Federal bench that understand their role is to apply the law and not take away our God-given rights enshrined in the Bill of Rights and in our Constitution.

I met with Judge Alito in my office and discussed with him my concerns about this troubling trend of judges who ignore the will of the people and start inventing laws themselves. I was actually very encouraged by his scholarship, his knowledge, and what I feel was a very genuine, sincere understanding that we need a respectful, restrained judiciary. And also his ability to cite examples from his very distinguished career of cases where he was presented with decisions where he put aside his personal view and followed the law.

I asked: What do you do if you do not like a law? He said: You have to apply the law, but it may be appropriate after the decision is made, for a judge or panel of judges to communicate with the legislature and advise them they may wish to revisit a certain issue. However, when it came to issuing a decision, he felt very strongly that judges would follow their duty and should incorporate the law as written.

Another quality of Judge Alito is his deep knowledge of the law and his sincere and deep commitment of being a student of our Constitution. When I asked Judge Alito about his role, his view of the role of the State to pass laws, he gave a thoughtful answer. He had a considered analysis of the dormant commerce clause. It was similar to being back in law school, learning some of these things again. His answer shows most importantly a deep understanding not only of the Constitution but also a commitment to the fundamental principles upon which this country was founded, that Government power should remain closest to the people.

In our system of government, it is essential the people in the States be free to experiment in public policy and that Washington, the Federal Government, should not dictate policy through the use of Federal funds in areas reserved to the States or to the people.

Opponents of this nomination have referenced half a dozen cases out of the more than 1,500 he has been involved in while serving on the Third Circuit Court of Appeals. The fact is, no matter how Judge Alito answered the questions posed to him, his detractors would continue to oppose his nomination. On the particularly important charge that he favors an expansive view of the Executive power, Judge Alito reiterated his view that no branch of Government has more power and that no person in this country, no matter how high or powerful, is above the law; no person in this country is beneath the law.

Aside from this very unambiguous answer, one can point to a litany of cases where Judge Alito came down against the authority of the Government, or for the little guy as some people like to call it.

Another criticism of this nomination has been that Judge Alito, if confirmed, will replace a moderate on the Court, retiring Justice Sandra Day O'Connor. Sandra Day O'Connor by the way, in Kelo v. New London, CT, "commissar taking of homes" case, ruled on the side of the Constitution, so there will be no change there. We will need to get another Justice if the States are not able to rein in such takings of homes.

Justice O'Connor is a person for whom I have a great deal of respect. She served with great distinction on the Court for many years and has a compelling, interesting life story. The fact that President Reagan appointed her as the first woman on the Supreme Court of the United States as a pioneer in so many ways has been an inspiration to many young people, regardless of gender. Particularly many young women who think, There is a future for me in the law. We have seen a great increase in the number of young women interested in studying in our law schools.

They will say that we have to have someone who has the exact same philosophy as whoever was being replaced. We ought to remember the Founders, in drafting article III of the Constitution that creates the Supreme Court, provides no requirement there must be an ideological balance on the Court. For over 200 years, the Senate has respected the prerogative of the President and performed their advice-and-consent function and ultimately voted for qualified judges, despite their political orientation.

So, therefore, let me conclude in this statement to my colleagues that if you look at Judge Alito's 15 years of exemplary judicial experience, his incredible, well-reasoned answers in the confirmation hearings. If you look at this individual, who has the qualifications, the judicial philosophy, the knowledge of the law, the respect for the law and, indeed, the respect for the people, the owners of this Government, and those of us in the Senate and the House of Representatives, and other bodies, Judge Alito is a perfect person to be an Associate Justice on the Supreme Court of the United States. I respectfully urge my colleagues to vote affirmatively for Judge Alito to serve this country on the Supreme Court.

I thank you for your attention, Madam President. I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. MARTINEZ. Madam President, I also rise today to express my support for the confirmation of Judge Samuel Alito as an Associate Justice of the U.S. Supreme Court.

The Constitution demands that the President's nominees to the Supreme Court receive the advice and consent of a majority of Senators. The standard to be used is not spelled out in the Constitution, but 200 years of tradition offers a guide. That guide, that standard, applied to nominees throughout our history, is the very same standard we should apply today to Judge Samuel Alito. By that standard, Judge Alito is well qualified.

Since graduating from Yale Law School in 1975, Judge Alito has had an exemplary legal career, serving as U.S. attorney, Assistant U.S. Solicitor General, and 15 years as a member of the Third Circuit Court of Appeals. During that lengthy tenure in court, we have had the benefit of seeing Judge Alito's commitment to the rule of law and his commitment to an impartial review of the law and the facts of any given case.

As Alexander Hamilton noted in Federalist No. 78, if the courts are to be truly independent, judges cannot substitute their own preferences to the "constitutional intentions of the [legislative branch]."

Judge Alito clearly expressed during his confirmation hearings, and his judicial career attests to the fact, that he would not impose his personal views over the demands of the law and precedent. I find that refreshing, I find that encouraging, and I find that a strong reason for supporting the nomination of Judge Alito.

I take great comfort in the fact that Judge Alito has received the unanimous approval of the American Bar Association's committee that reviews judicial candidates. This is a committee that is greatly respected by the legal profession, as well as the general public, for their impartiality and demand and insistence on and careful watch over a quality judiciary. The American Bar Association's committee that reviews judicial candidates is interested and committed to a quality judiciary.

Judge Alito not only received their unanimous approval, but he received their most qualified rating. That means each and every one of the members of that committee gave Judge Alito their highest, most qualified rating. This should weigh heavily in favor of the confirmation of Judge Alito.

What we know—after the confirmation hearings, after extensive interaction with Members of the Senate, after 3 days of testimony before the Judiciary Committee, and responses to a wide range of written questions by Senators after the hearings—is that Judge Alito is a humble and dispassionate judge, with a deep understanding and modest view of his judicial role in the governance of our Nation and respect for the limitations of precedent.

He has an awareness of the dangers of looking to foreign jurisdictions for guidance in shaping the laws of our land and a commitment to respecting the proper role of the courts in the interpretation of the law.

I am persuaded that Judge Alito will look to establish precedents, be respectful of the doctrine of stare decisis, and will use the Constitution and the law as his guideposts as opposed to any personal whim or political agenda.

There are those who would say they are troubled by what they perceive, that Judge Alito would not side with the "little guy" when deciding cases. Let my tell you, I am someone who, for 25 years, took clients' matters to court, more often than not representing the little guy. But even with that experience, I am more committed than ever to the belief I had when I took a client to court, whether a little guy or a big guy. My hope, my prayer, was that my client would find an impartial judge.

It is unthinkable to me to suggest this standard today should be that we should look for whether a judge will purposely lean in favor of one side of the litigation or another before selecting who our judges ought to be. Our judges must be impartial. Our judges must not be there for the little guy or for the big guy. Judges need to take the facts and the law, interpret them and utilize them to reach a fair and just verdict, as dictated by the laws of our Nation, not because they favor a little guy, not because they favor a big guy. If the law and the facts happen to be on the side of the little guy, the little guy should prevail. If the law and the facts happen to be on the side of the big guy, then our system of justice demands that the big guy should prevail.

I love the analogy that Chief Justice Roberts used during the course of his confirmation. In selecting a Justice to the Supreme Court, he said we are looking for an umpire. We are not looking for a pitcher. We are not looking for a batter. We are looking for the umpire—the guy who will call the balls and the strikes fairly and impartially to all litigants before the Court.

Our long-held traditions in our system of justice demand fairness, demand integrity, demand judicial temperament. Judge Alito fulfills all of those requirements amply, and I am satisfied he will make an exceptional Justice of the Supreme Court.

Judge Alito has made it abundantly clear that his personal views have absolutely no place in performing his judicial role in our constitutional structure. Rather, the Constitution, statutes, and controlling prior decisions, as applied to the facts of the case at hand, are the sole basis for his judicial determinations. I find that, as it should be, the correct standard to apply to a judicial nominee for determining his fitness for this high office.

At the end of the day, we know that elections have consequences. The fact that the voters have placed President Bush in the office of President now for a second term has also been an indication that President Bush deserves and should be allowed to have his pick for the Court.

It is our tradition that Presidents nominate, select, and fill vacancies to the Court, while the Senate's role is one of advice and consent. We simply do not have the prerogative of deciding who it is we would prefer to see on the Court or who it is we might find more philosophically suitable to us or more to our liking. Our role as Senators is to provide the President with the advice and consent on the qualifications of those he seeks to put in this high office.

I see an evolving new standard before us. I heard from the members of the Judiciary Committee who did not support this nominee the setting of a brand new standard, and it is no longer qualifications, but it is now whether they philosophically will judge this person to be the kind of person they would want based on their political philosophy. That, I would suggest, is wrong. It has never been the standard applied or utilized by our Nation as we have sought to confirm Justices to our Court for over 200 years. I would say it is absolutely wrong to begin that new standard and leave it unchallenged as we seek the confirmation of one more Justice to the Supreme Court.

My advice and consent is that Judge Alito is one of the select few Hamilton had in mind as having the character, intelligence, and temperament to guard the liberties secured by our Constitution. I strongly urge my colleagues to support his nomination to the Supreme Court.

Thank you, Madam President. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

COAL MINING TRAGEDIES IN WEST VIRGINIA

Mr. BYRD. Madam President, while the Senate was in recess, the State of West Virginia lost 14 proud sons.

On January 2, 13 hard-working, God-fearing men were simply earning their daily bread at the Sago coal mine in Upshur County, WV, when an explosion killed 1 man and trapped 12 others 260 feet below its surface. For 41 long hours, these men waited for help. They waited, they waited, they waited, and they prayed. They wrote farewell messages to their loved ones. How gripping. They waited as the air they breathed gave out and their lungs filled with toxic gases.

Above the ground, we all prayed for a miracle such as we had enjoyed with the nine miners who had been trapped at the mine at Quecreek, PA, in 2002 and were found alive. But this time, there was only one miracle. My wife Erma and I, like many others in my great State of West Virginia, continue to pray for the recovery of the sole survivor of the Sago explosion, Mr. Randal McCloy, Jr. But tragically, there were no miracles for Tom Anderson, Alva Bennett, Jim Bennett, Jerry Groves, George "Junior" Hammer, Terry Helms, Jesse Jones, David Lewis, Martin Toler, Jr., Fred Ware, Jr., Jackie Weaver, and Marshall Winans. Once again, a small coal-mining town in West Virginia went into deep mourning, and an entire State wept with them.

And then, incredibly, 17 days later, a mine fire broke out on a conveyor belt at the Aracoma Alma Mine No. 1 in Logan County, WV, trapping two miners underground. In shock and disbelief, the State once again fell to its knees and prayed and pleaded for a miracle. Forty hours later, we learned that two more miners—Don Bragg and Ellery Hatfield—had perished. Another small coal-mining town in West Virginia went into deep mourning, and again an entire State wept with them.

Once again, the national media rushed in to report the disaster to the world. Once again, editorials filled newspapers across the country decrying the dangers of mining coal, denouncing the callousness of coal companies, and questioning the commitment of State and Federal officials to mine safety.

Madam President, as a child of the Appalachian coalfields, as the son of a West Virginia coal miner, as a U.S. Senator representing one of the most important coal-producing States in the Nation, let me say I have seen it all before. Yes, I have seen it all before.

First, the disaster. Then the weeping. Then the outrage. And we are all too familiar with what comes next. After a few weeks, when the cameras are gone, when the ink on the editorials has dried, everything returns to business as usual. The health and the safety of America's coal miners, the men and women upon whom the Nation depends so much, is once again forgotten until the next disaster. But not this time. Let me say that this U.S. Senator and the West Virginia delegation in the House and in the Senate will do all that we can to prevent that. There is blame to be assessed in the wake of these tragedies and plenty of it to go around.

Let us begin with the coal company that operated the Sago mine, which had been issued 276 safety and health violations in 2004 and 2005. Let me try to put that into perspective. Could any automobile driver or any truckdriver rack up 276 tickets for reckless driving and still keep a license? What if someone had 276 mistakes on a tax return? One can bet that taxpayer would be looking at serious penalties and possibly time in a Federal prison. But here was a coal company with 276 Federal mine safety violations still operating. While some of these were minor transgressions, too many of them were "significant and substantial" or, simply put, very serious, and yet business went on as usual. It is quite possible that not one of these specific violations contributed to the explosion at Sago. But 276 violations is certainly indicative of a company's sloppy attention toward the well-being of its employees. That should be obvious on its face.

What about the agency that is responsible for making sure that coal operators comply with the spirit and the letter of the law—the Mine Safety and Health Administration. Let me be clear that I have nothing but praise for the brave rescue teams that went into the Sago and Alma mines. Anybody who has been around a mine explosion knows the dangers that still lurk not just hours but days after such an accident. To go into a mine after a disaster, after an explosion, and to risk one's own life in an effort to save other lives, as these rescuers do, takes guts. It takes a love for one's fellow man.

Coal miners are a special breed. I have seen these miners go into a mine after an explosion, risking their own lives, realizing that another explosion might occur and another tragedy would follow in the wake of the first tragedy.

Yes, MSHA is filled with good, well-intentioned, and dedicated professionals, but something is terribly wrong with the leadership at MSHA.

Consider that for 4 straight years, President Bush has proposed to cut the budget for coal safety enforcement below the level enacted by Congress the previous year, and for 4 straight years the Congress has had to struggle to partially restore those cuts. Some 190 coal enforcement personnel have been lost over the last 4 years through attrition, and they have not been replaced. The priorities reflected by the Bush administration through MSHA's budget certainly are not indicative of a proper concern for the health and safety of miners.

On the day of the Sago disaster, 2 hours went by—2 hours, with 60 golden minutes each, went by—before MSHA even knew about the explosion. It took another 2 hours before MSHA personnel arrived at the scene. It took 1½ hours before the rescue teams arrived. Another 5 hours passed before the first team entered the mine. The Mine Act requires that rescue teams be available to mines in the event of an emergency, and yet it took 10½ hours before the first rescue team began its effort at Sago.

A short 2 weeks later, similar horrors emerged from a second tragedy at the

Aracoma Alma mine and, again, MSHA did not know of the incident for 2½ hours. Something is incredibly wrong. It is obvious something is very, very wrong at MSHA. The rescue procedures for miners are woefully inadequate.

The Sago mine had been cited for 276 violations over the past 2 years, and yet the mine operator never paid a fine larger than $440 and often only paid a minimal $60 fine. Few people realize that even when a fine is assessed, the coal operator can negotiate the fine to a piddling amount.

Congress recognized a long time ago that mine safety and health depends on financial penalties that "make it more economical for an operator to comply" with the law "than it is to pay the penalties assessed and continue to operate while not in compliance." Clearly, the 276 penalties assessed—whatever the amount of the fine—weren't enough to convince this company to take a hard look at safety for its employees.

The Sago mine was a habitual violator—a habitual violator. It was being assessed only the minimum penalties allowed by the law. The maximum penalty could be $220,000 or $1 million, but it makes no difference unless MSHA is willing to impose and collect that maximum amount. Habitual violators must be brought to a state of fearing the consequences of a heavy fine to be paid when assessed. We have to get tough about enforcing the law.

At MSHA, complacent attitudes and arrogance rule at the top. At the Senate Appropriations Labor-HHS Subcommittee hearing on Monday, Acting MSHA Secretary David Dye was asked directly about the issue of communications technology: Why are the miners trapped underground not able to communicate with the rescue teams, and can rescue teams better locate trapped miners? Dye was asked directly if technology exists to correct these problems, and he stated for the record that such technology did not exist.

Now get that. Let me say that again. At this hearing, conducted by one of the finest Senators on either side of the aisle here, Republican Senator SPECTER of Pennsylvania, at that record hearing, Acting MSHA Secretary David Dye was asked directly about the issue of communications technology: Why are the miners trapped underground not able to communicate with the rescue teams, and can rescue teams better locate trapped miners? Dye was asked directly if technology exists to correct these problems, and he stated for the record that such technology did not exist.

How about that. That statement proved to be utterly, utterly, utterly false. Minutes later, after Dye was asked if such technology existed, the subcommittee heard from a former MSHA Secretary, Davitt McAteer, who verified that such communications technology certainly does exist, and Mr. McAteer put tracking and communications devices on the table—on the table—right in front of the subcommittee.

What does that say about the people leading this agency when they don't even know about the existence of lifesaving technology that ought to be in the mines? What does that say? Shame, shame on them. I am talking about the people leading the agency when they testified that they don't even know about the existence of lifesaving technology that ought to be in the mines. Why is the Acting Administrator of MSHA, charged with protecting the health and safety of coal miners, so abysmally ignorant of these technologies? The families of these miners and the Members of this Congress are owed an explanation.

In this day and age of cell phones, BlackBerrys, and text messaging, it is absolutely unacceptable that safe telecommunications technology was not available to the Sago and Alma miners. These weaknesses in mine emergency preparedness are unacceptable. Where is MSHA? Repeating the first question that was ever asked in the history of mankind when God sought Adam in the Garden of Eden in the cool of the day. God said: Adam, where art thou? Well, where was MSHA? Where was MSHA? What is that agency waiting for?

Ask the leadership at MSHA. At Sago and Alma, we have seen the disastrous results of complacent attitudes at the top—at the top. A quick look at the list of rules approved and scuttled at MSHA in recent years—from regulations governing mine rescue teams to the use of belt entries for ventilation to inspection procedures to emergency breathing equipment to escape routes, any one of which might figure into the deaths and disasters at the Sago and Alma mines—suggest that something, something, something is terribly wrong. Something is terribly, terribly, terribly wrong, and it ought to be fixed.

In 1995, labor and industry jointly proposed a number of initiatives on mine emergency preparedness to improve mine rescue technology and communications. Perhaps one of the most important was to address the dwindling number of mine rescue teams. MSHA has ignored the report and its recommendations. In 2003, the General Accountability Office made a list of recommendations to the Secretary of Labor to help MSHA protect the safety and health of the miners. What happened? MSHA ignored the recommendation. Shame, shame.

Our Nation's coal miners are vital to our national economy. During World War I, coal miners put in long, brutal hours to make sure that the Nation had coal to heat our homes, power our factories, and fuel our battleships. In World War II, American coal miners again provided the energy to replace the oil that was lost with the outbreak of that global conflict. During the oil boycott-induced energy crisis of the 1970s, our Nation once again called upon—yes, our Nation once again turned, yes, to the coal miners to bail the Nation out of trouble, and the coal miners did.

Coal produces over half of the electricity we use every day in these United States. Here is an example of it all around the ceiling here, the lights that are burning making it bright as day right here in this Chamber. That is coal. That is energy that comes from coal, burning coal—coal that is produced by hard, backbreaking labor in the dangerous mines. Coal is dug out, scratched out by the coal miner.

So today America's coal miners provide the electricity—the electricity right here—the electricity that lights the streets of Washington, New York City, Sacramento, and all over this country, and it heats our homes in winter, lights our homes in summer.

Those coal miners could provide the key to our Nation's future energy security. You can bet on those coal miners—and they are of a different breed, a special breed. If we made better use of this abundant natural resource, coal, we could reduce our country's dangerous dependency on foreign oil.

We could make ourselves less dependent on the rule of despots, and less of a target for the fanatics and the terrorists of the Middle East.

God blessed our country. Yes, the Almighty who was there at the beginning blessed our Nation, especially West Virginia with an abundance of coal, and God provided us with the good, the brave, the hard-working coal miners to dig that coal and bring it from the Earth, the bowels, the dark, the black, the darkness. The coal miners have never failed our Nation.

I know. I grew up in a coal miner's home. I married a coal miner's daughter. Her brother-in-law died from black lung. His father was killed under a slate fall.

We have lived—my family has lived—with coal miners. We have coal miners in our families. We have lost loved ones.

The test of a great country such as ours is how serious we are about protecting those among us who are most at risk, whether it be innocent children who need guarding from hunger and disease or our elderly and sick who cannot afford medication. Those men and women who bravely labor in such dangerous occupations as coal mining to provide our country with critical energy should be protected from exploitation by private companies with callous attitudes about health and safety. That is why MSHA exists. That is why we created MSHA. That is why I was here when that agency was created. But MSHA is just a paper tiger without aggressive leadership. If we are truly a moral nation, and I believe that we should be, moral values must be reflected in government agencies that are charged with protecting the lives of our citizens. The last thing that we need is ho hum, arrogant attitudes from this administration and its officials. Such calumny abuses the public trust and results in the kind of loss of life that so grieves families today in Upshur and Logan Counties and all across my home State of West Virginia.

Madam President, in memory of the Sago and Alma Miners, and all those who labor and have labored in our nation's coal mines, I ask unanimous consent that the eulogy of Homer Hickam, from the Sago Memorial Service on January 15, 2006, be printed in the Congressional Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

Families of the Sago miners, Governor Manchin, Mrs. Manchin, Senator Byrd, Senator Rockefeller, West Virginians, friends, neighbors, all who have come here today to remember those brave men who have gone on before us, who ventured into the darkness but instead showed us the light, a light that shines on all West Virginians and the nation today:

It is a great honor to be here. I am accompanied by three men I grew up with, the rocket boys of Coalwood: Roy Lee Cooke, Jimmie O'Dell Carroll, and Billy Rose. My wife Linda, an Alabama girl, is here with me as well.

As this tragedy unfolded, the national media kept asking me: Who are these men? And why are they coal miners? And what kind of men would still mine the deep coal?

One answer came early after the miners were recovered. It was revealed that, as his life dwindled, Martin Toler had written this: It wasn't bad. I just went to sleep. Tell all I'll see them on the other side. I love you.

In all the books I have written, I have never captured in so few words a message so powerful or eloquent: It wasn't bad. I just went to sleep. Tell all I'll see them on the other side. I love you.

I believe Mr. Toler was writing for all of the men who were with him that day. These were obviously not ordinary men.

But what made these men so extraordinary? And how did they become the men they were? Men of honor. Men you could trust. Men who practiced a dangerous profession. Men who dug coal from beneath a jealous mountain.

Part of the answer is where they lived. Look around you. This is a place where many lessons are learned, of true things that shape people as surely as rivers carve valleys, or rain melts mountains, or currents push apart the sea. Here, miners still walk with a trudging grace to and from vast, deep mines. And in the schools, the children still learn and the teachers teach, and, in snowy white churches built on hillside cuts, the preachers still preach, and God, who we have no doubt is also a West Virginian, still does his work, too. The people endure here as they always have for they understand that God has determined that there is no joy greater than hard work, and that there is no water holier than the sweat off a man's brow.

In such a place as this, a dozen men may die, but death can never destroy how they lived their lives, or why.

As I watched the events of this tragedy unfold, I kept being reminded of Coalwood, the mining town where I grew up. Back then, I thought life in that little town was pretty ordinary, even though nearly all the men who lived there worked in the mine and, all too often, some of them died or was hurt. My grandfather lost both his legs in the Coalwood mine and lived in pain until the day he died. My father lost the sight in an eye while trying to rescue trapped miners. After that he worked in the mine for fifteen more years. He died of black lung.

When I began to write my books about growing up in West Virginia, I was surprised to discover, upon reflection, that maybe it wasn't such an ordinary place at all. I realized that in a place where maybe everybody should be afraid after all, every day the men went off to work in a deep, dark, and dangerous coal mine instead they had adopted a philosophy of life that consisted of these basic attitudes:

We are proud of who we are. We stand up for what we believe. We keep our families together. We trust in God but rely on ourselves.

By adhering to these simple approaches to life, they became a people who were not afraid to do what had to be done, to mine the deep coal, and to do it with integrity and honor.

The first time my dad ever took me in the mine was when I was in high school. He wanted to show me where he worked, what he did for a living. I have to confess I was pretty impressed. But what I recall most of all was what he said to me while we were down there. He put his spot of light in my face and explained to me what mining meant to him. He said, "Every day, I ride the mantrip down the main line, get out and walk back into the gob and feel the air pressure on my face. I know the mine like I know a man, can sense things about it that aren't right even when everything on paper says it is. Every day there's something that needs to be done, because men will be hurt if it isn't done, or the coal the company's promised to load won't get loaded. Coal is the life blood of this country. If we fail, the country fails."

And then he said, "There's no men in the world like miners, Sonny. They're good men, strong men. The best there is. I think no matter what you do with your life, no matter where you go or who you know, you will never know such good and strong men."

Over time, though I would meet many famous people from astronauts to actors to Presidents, I came to realize my father was right. There are no better men than coal miners. And he was right about something else, too:

If coal fails, our country fails.

The American economy rests on the back of the coal miner. We could not prosper without him. God in His wisdom provided this country with an abundance of coal, and he also gave us the American coal miner who glories in his work. A television interviewer asked me to describe work in a coal mine and I called it "beautiful." He was astonished that I would say such a thing so I went on to explain that, yes, it's hard work but, when it all comes together, it's like watching and listening to a great symphony: the continuous mining machines, the shuttle cars, the roof bolters, the ventilation brattices, the conveyor belts, all in concert, all accomplishing their great task. Yes, it is a beautiful thing to see.

There is a beauty in anything well done, and that goes for a life well lived.

How and why these men died will be studied now and in the future. Many lessons will be learned. And many other miners will live because of what is learned. This is right and proper.

But how and why these men lived, that is perhaps the more important thing to be studied. We know this much for certain: They were men who loved their families. They were men who worked hard. They were men of integrity, and honor. And they were also men who laughed and knew how to tell a good story. Of course they could. They were West Virginians!

And so we come together on this day to recall these men, and to glory in their presence among us, if only for a little while. We also come in hope that this service will help the families with their great loss and to know the honor we wish to accord them.

No matter what else might be said or done concerning these events, let us forever be reminded of who these men really were and what they believed, and who their families are, and who West Virginians are, and what we believe, too.

There are those now in the world who would turn our nation into a land of fear and the frightened. It's laughable, really. How little they understand who we are, that we are still the home of the brave. They need look no further than right here in this state for proof.

For in this place, this old place, this ancient place, this glorious and beautiful and sometimes fearsome place of mountains and mines, there still lives a people like the miners of Sago and their families, people who yet believe in the old ways, the old virtues, the old truths; who still lift their heads from the darkness to the light, and say for the nation and all the world to hear:

We are proud of who we are.
We stand up for what we believe.
We keep our families together.
We trust in God.
We do what needs to be done.
We are not afraid.

Mr. BYRD. Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. Thune). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BUNNING. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. Vitter). Without objection, it is so ordered.

Mr. KERRY. Mr. President, could we have an agreement on the time? I apologize. I was supposed to have the time between 1:30 and 2. Since the Senator from Kentucky is waiting—I wanted, obviously, to be able to complete my statement—we have agreed to switch times. He will speak for 15 minutes, with the agreement that I would then speak after.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERRY. I thank the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. BUNNING. Mr. President, I rise to speak in support of Samuel Alito's nomination to the United States Supreme Court.

Judge Alito is supremely qualified.

He has a record of fairness and judicial restraint. He will do a fine job on the Supreme Court.

I will vote for his nomination and any procedural measures necessary to confirm him on the Senate floor.

Confirmation of a Supreme Court Justice is one of the most import jobs we have as Senators.

This will be the second Supreme Court nominee I will have considered since coming to the Senate.

I take this responsibility very seriously.

I have spent time with Judge Alito and I have studied his background and record.

I closely followed his confirmation hearings in the Judiciary Committee. I can say without question that he should be confirmed.

I don't find myself agreeing with the Washington Post or the Louisville Courier-Journal newspapers very often.

But even those papers agree that Judge Alito should be confirmed.

I first met Judge Alito this past fall.

I did not know much about him when his nomination was announced by President Bush.

I reserved judgment about his nomination until I had a chance to meet with him.

From that meeting it became clear that I could support his nomination.

And his performance at his confirmation hearing further solidified my support for his nomination.

We are all familiar with the basics of Judge Alito's background.

He has been on the Third Circuit Court of Appeals for 15 years.

He has participated in several thousand cases and written several hundred opinions.

He attended top schools for both college and law school—Princeton and Yale.

I gather all of my colleagues would agree that those things are important and impressive—but they do not alone qualify him for the job.

There is a lot more to being qualified for the Supreme Court than pedigree and judicial experience.

Judicial philosophy and one's approach to judging and the law are most important.

All these factors and more must be looked at and weighed before deciding if a nominee is qualified.

I have done so and it is clear to me that Judge Alito should be confirmed.

A good place to begin is with Judge Alito's record on the Third Circuit Court of Appeals.

He has participated in over 3,000 cases and written over 300 opinions.

His record in those cases shows that he is fair and impartial. And that he understands the law and the judicial process.

His opinions are written clearly and provide clear guidance to the lower courts.

Clarity is something we certainly need on the Supreme Court.

The clarity and fairness of Judge Alito's opinions speak well to his qualifications.

But what speaks volumes is that his critics have been unable to find a single case he participated in to show that he is unqualified as a judge.

That is not to say that his critics have not tried. But to use any case against him—critics have had to distort the record or confuse the issue.

Judge Alito's opponents are trying to stop his nomination.

They are concerned he will be a vote for the rule of law and the Constitution. And not a judicial activist to their liking on the Supreme Court.

The framers of the Constitution created a system of government where the peoples' voices are to be expressed through their elected representatives.

All Senators and Representatives stand for election and are responsible to the people of their States or districts.

The President is accountable to the entire Nation and must face the people in every State.

The Justices of the Supreme Court never have to face voters.

That is why the framers gave the legislative powers to the Congress.

And that is why they gave the administrative powers to the President.

We—who make policy decisions—are accountable to the voters.

The Justices of the Supreme Court are not.

At its simplest—that is what is meant by the rule of law. We are a Nation of laws—starting with the most basic law, the Constitution.

The Constitution spells out the roles of the branches of Government.

It sets out the role to the courts—which is to settle legal disputes between parties, and not to set national policy.

The Supreme Court is also to be a last check on the legislative and executive branches when they clearly violate the Constitution—but not to override policy decisions when the Constitution is silent.

Judge Alito has a demonstrated record of respecting the rule of law and the will of the people through their elected representatives.

That disturbs some who belong to this body.

It bothers them to know that if Judge Alito and others like him are on the Supreme Court—then the steady advance of courts acting as a policy-making branch of government will be halted.

Judge Alito has shown respect for the rule of law throughout his career on the bench—and even before that when serving in the Reagan Administration.

He understands that each branch of government has a unique role to play.

And he understands that only two are accountable to the people.

I take great comfort in Judge Alito's understanding that there is a place in our system of government for policy making—and that the place is not the courts.

Many of Judge Alito's opponents view the courts as just another policy making branch of government.

In other countries that may be true. But in the United States it is not.

Our judges are insulated from public pressure.

It is this way so that they can make impartial and fair judgments on cases—no matter how popular or unpopular the result.

They are also insulated from the political process to prevent undue influence from Congress or the President.

Does anyone here actually believe the framers of our Constitution insulated judges so they could enact policies without any political consequence?

In fact, the framers rejected proposals to give the courts any policy-making powers.

But that is not good enough for some who oppose Judge Alito.

They want judges who will make broad policy decrees from the bench.

They want liberal judges who will rule by dictating policies that fail at the ballot box.

They want activist judges. And Judge Alito is not an activist judge.

Judge Alito will stand up to the activists on the Supreme Court and help make sure the Court follows its proper and vital role.

The confidence of the citizens in the courts is harmed when the courts overstep their bounds.

Like Chief Justice Roberts, I am confident Judge Alito will only act within the Supreme Court's proper role.

And I am confident he will help restore the American people's faith in our court system.

I press upon my colleagues to support this nomination.

I will vote for Judge Alito and whatever measures and procedures necessary to ensure he gets a final vote up or down.

I am proud to support him.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. HUTCHISON. Mr. President, I rise today to support Judge Samuel Alito's confirmation to the Supreme Court of the United States. Judge Alito's 15 years of experience on the Third Circuit Court of Appeals and his 15 years serving the Justice Department, including his position as U.S. attorney for the District of New Jersey, make him well prepared to be an Associate Justice on our Highest Court.

One of the best insights into Judge Alito's judicial ability is gained from listening to his colleagues on the Third Circuit. Colleagues from both sides of the political aisle praise him for his judicial excellence. Judge Aldisert, a nominee of President Lyndon Johnson, stated before the committee:

> We who have heard his probing questions during oral argument, we who have been privy to his wise and insightful comments in our private decisional conferences, we who have observed first hand his approach to decision-making and his thoughtful judicial temperament and know his carefully crafted opinions, we who are his colleagues are convinced that he will also be a great Justice.

Moreover, after an exhaustive investigation, Mr. Steve Tober, chairman of the ABA Standing Committee on the Federal Judiciary, declared that Judge Alito's "integrity, his professional competence and his judicial temperament are indeed found to be of the highest standard."

Mr. President, I have to say that anyone who watched Judge Alito at his Senate hearing would agree that his professional competence and judicial temperament were certainly on display. I believe that showed very well why he will be confirmed as a Supreme Court Justice.

The American Bar Association gave Judge Alito its highest rating. Most important, Judge Alito has a firm belief in the rule of law upon which our country is based. As he stated on the first day of his hearings, "No person in this country, no matter how high or how powerful, is above the law, and no person is beneath the law." Judge Alito recognizes that, in our system, judges interpret the law, but should not create policy. They should not decide what they would like to have the law be; rather, they simply should determine what the law states.

He said on his second day of hearings:

> . . . it is not our job to try to produce particular results. We are not policymakers and we shouldn't be implementing any sort of policy agenda or policy preferences that we have.

During the 2004 Presidential campaign, President Bush made clear that he planned to nominate to the bench judges who would respect the rule of law, judges who would interpret but not legislate. In particular, he drew attention to his desire to nominate people who would strictly interpret the Constitution. Knowing Supreme Court nominations were on the horizon and knowing the President's views, the American people re-elected President Bush.

With the previous nomination of Chief Justice John Roberts and now with the nomination of Judge Alito, the President is fulfilling his promise to the American people. Now it is time for the Senate to play its constitutional role in the nomination process to ensure the President's nominee meets the high standards we set for members of the Supreme Court of our land. Judge Alito is extremely capable, he is highly qualified, and he deserves the support of this body.

I wish to also rebut one statement that was made earlier today. I believe Judge Alito was unfairly criticized for his opinion in Pirolli v. World Flavors, Inc. This was a case involving a mentally disabled man who claimed he was sexually harassed at work. They have alleged that by ruling against the plaintiff in the appellate court, Judge Alito showed he is "results-oriented." Their criticisms are unfair and misleading. Judge Alito was not even able to form an opinion on the merits of the case because the plaintiff's lawyer presented an incomplete brief.

Judge Alito made clear in his dissent that had the plaintiff's lawyer raised the argument in a minimally adequate fashion, he might well agree and join the majority in voting to reverse. He continued to say:

> I would overlook many technical violations of the Federal Rules of Appellate Procedure and our local rules, but I do not think it is too much to insist that Pirolli's brief at least state the ground on which reversal is sought.

It is very important to understand that an appellate judge cannot create the facts. The appellate judge cannot argue the lawyer's case when he is not equipped with the facts or the reason for the request for a reversal. So I believe it is important that we set the record straight on that.

Judge Alito has shown by his manner during the hearing and his 15 years on the bench that he is fully qualified under the constitutional requirements and from every neutral observer with whom I have talked for this position. I hope there will not be further delay.

I am so hopeful that the people who would vote against him would at least let us have the vote. He has been thoroughly vetted. He has been thoroughly questioned. The Senate has fulfilled its constitutional responsibility, and I think by the end of this week we should allow Judge Alito to be able to start preparing for the very important cases that are going to come before the Court right away. Let him have the chance to be fully prepared and do the job we are asking him to do. It is the least we should expect of the Senate. It is the responsible approach for the U.S. Senate. The Supreme Court and the people of America deserve no less.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. McCAIN. Mr. President, I thank the Senator from Texas for her remarks and her strong support of this very decent American and the continued leadership she exercises in our party and in our caucus.

We know that elections have consequences. When President Bush ran for reelection, he stated plainly and often that if given the opportunity, he would nominate judges to the U.S. Supreme Court who strictly interpret the Constitution of the United States. True to his promise, the President nominated John Roberts to become the 18th Chief Justice of the United States. Just as true to his promise, he nominated Samuel Alito to serve as Associate Justice of the Supreme Court.

I was pleased that President Bush nominated Judge Alito, as were many other Members of this body. I reserved final judgment, as most of us did, until we saw the confirmation process proceed. I don't take the Senate's advice and consent role lightly. I didn't want to encourage a rush to judgment.

The hearings have occurred, and I believe Judge Alito has performed admirably. There were 18 hours and 700 questions, and there probably would have been a lot more questions if there had not been the length of the questions, sometimes lasting as long as a half hour.

Anyway, I believe he is worthy of our support. As has been stated time after time on the floor, he earned the highest ratings of the American Bar Association.

Let me tell you what impresses me, Mr. President, probably as much as anything else. It is the strong endorsement Judge Alito got from the people who used to work for him. There is nobody who knows people better than those who work for you. There is a very impressive list of former law clerks of Judge Alito writing to urge the Senate to confirm him. As they state in their letter:

> Our party affiliations and views on policy matters span the political spectrum. We have worked for Members of Congress on both sides of the aisle and have actively supported and worked on behalf of Democratic, Republican, and Independent candidates.

And they go on to say in their letter:

> What unites us is our strong support for Judge Alito and our deep belief that he will be an outstanding Supreme Court Justice.

That impresses me, when the clerks, the people who work alongside these judges every single day—and it is a very long list; it looks to me like there are 60 to 75 names on there—are all supporting him. As they state, they are of all beliefs and party affiliations. There is no person or persons who know a judge better than those who clerked for him.

Finally, they go on to say:

> It never once appeared to us that Judge Alito had prejudged a case or ruled based on political ideology. To the contrary, Judge Alito meticulously and diligently applied controlling legal authority to the facts of each case after a full and careful consideration of all relevant legal arguments. It is our uniform experience that Judge Alito was guided by his profound respect for the Constitution and the limited role of the judicial branch.

That is what Judge Alito is all about from the people who know him best, other than his family. Frankly, that has a significant effect on my view of him.

I will make one other comment. We are dragging out this process for no good reason. We all know what the outcome of the vote is going to be. We have other pressing business, including lobbying reform, which needs to be taken up by this body. We have pending the issue of the PATRIOT Act. There are many issues we should be addressing and at least beginning to work on, rather than dragging out this process. I wish my colleagues on the other side of the aisle would see fit to bring this process tc a close and let us vote on Judge Alito and move on to other pressing issues.

The fact that there will probably be a large number of votes on that side of the aisle against Judge Alito doesn't upset me as much as it saddens me. I didn't agree with the judicial philosophy of Justice Breyer or Justice Ginsburg. I knew that Justice Ginsburg worked for the ACLU and held liberal views. But I also believe that elections have consequences. The President of the United States—at that time, President Clinton—nominated them as his selection. There were very few—a handful of votes against either Justice Breyer or Justice Ginsburg.

When there is a large number of votes against this highly qualified individual, it is a symptom of the rather bitter partisanship that exists in this body today, and I regret that very much. There are pressing issues, such as Iran and their rapid acquisition of nuclear weapons, which spring to mind. We have to sit down in an atmosphere of mutual trust and respect and work on these things. I will be very sad when I see this large vote against this good and decent American, but, more importantly, I will be upset because we continue to engage in the kind of partisanship which has even been ratcheted up lately on lobbying reform, when we should be working out a common approach and a common cure for a significant illness that afflicts this body and the Capitol today.

I hope we can finish this debate as soon as possible, vote on Judge Alito, and then move forward.

I thank my colleagues, and I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. GRAHAM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CHAFEE). Without objection, it is so ordered.

Mr. GRAHAM. Mr. President, I would like to pick up where Senator MCCAIN left off about the Alito nomination and what has changed between the Clinton administration and the President Bush 2 administration regarding judges.

The question I ask the body and really the country is, have the qualifications changed or are the people President Bush has chosen to nominate for the Supreme Court more inferior in terms of qualifications, temperament, and character than the people President Clinton nominated? As individuals, is there a major difference in their legal experience? Are there any character flaws with these two nominees that did not exist with President Clinton's nominees? If you can find an answer to the question other than no, I would like to hear about it. I would like someone to come to the floor and talk about how Justice Roberts and Judge Alito are not in the ball park as to qualifications, character, and disposition with Justice Breyer and Justice Ginsburg.

It is clear to me that President Bush picked two very well qualified people to serve on the Supreme Court when it came his time to choose a Supreme Court nominee. You don't have to take my word for it. Seven judges testified before the committee who served on the Third Circuit with Judge Alito. They were nominated by Lyndon Johnson, Richard Nixon, Ronald Reagan, George H.W. Bush, and Bill Clinton, really a hodgepodge of nominees in terms of their source. These judges had a universal belief regarding Judge Alito, and that belief was that he is a great colleague, a good man, a judge's judge. They came before our committee to his defense.

I ask unanimous consent to print in the RECORD excerpts of these judges' comments.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LOG JUDGES TESTIMONY TALKERS

Five sitting and two former judges from the U.S. Court of Appeals for the 3rd Circuit testified on behalf of Judge Samuel Alito's nomination to the Supreme Court.

The judges included nominees of Presidents Lyndon Johnson, Richard Nixon, Ronald Reagan, George H.W. Bush, and Bill Clinton. Collectively they have served with Judge Alito for more than 75 years, watching him work and evaluating his intellect, character, independence, and judgment.

Judge Becker on working with Judge Alito up close: "There is an aspect of appellate judging that no one gets to see—no one but the judges themselves: how they behave in conference after oral argument, at which point the case is decided, and which, I submit, is the most critically important phase of the appellate judicial process. In hundreds of conferences, I had never once heard Sam raise his voice, express anger or sarcasm, or even try to proselytize. Rather, he expresses his views in measured and temperate tones."

Judge Becker on Judge Alito's intellect and open-mindedness: "Judge Alito's intellect is of a very high order. He's brilliant, he's highly analytical and meticulous and careful in his comments and his written work. He's a wonderful partner in dialogue. He will think of things that his colleagues have missed. He's not doctrinaire, but rather is open to differing views and will often change his mind in light of the views of a colleague."

Judge Becker on whether Judge Alito is an ideologue: "The Sam Alito that I have sat with for 15 years is not an ideologue. He's not a movement person. He's a real judge deciding each case on the facts and the law, not on his personal views, whatever they may be. He scrupulously adheres to precedent. I have never seen him exhibit a bias against any class of litigation or litigants. . . . His credo has always been fairness."

Chief Judge Scirica on Judge Alito's personal character: "Despite his extraordinary talents and accomplishments, Judge Alito is modest and unassuming. His thoughtful and inquiring mind, so evident in his opinions, is equally evident in his personal relationships. He is concerned and interested in the lives of those around him. He has an impeccable work ethic, but he takes the time to be a thoughtful friend to his colleagues. He treats everyone on our court, and everyone on our court staff, with respect, with dignity, and with compassion. He is committed to his country and to his profession. But he is equally committed to his family, his friends, and his community. He is an I admirable judge and an admirable person."

Chief Judge Scirica on Judge Alito's open-mindedness: "Like a good judge, he considers and deliberates before drawing a conclusion. I have never seen signs of a predetermined outcome or view, nor have I seen him express impatience with litigants or with colleagues with whom he may ultimately disagree. He is attentive and respectful of all views and is keenly aware that judicial decisions are not academic exercises but have far-reaching consequences on people's lives."

Judge Barry on Judge Alito's service as U.S. Attorney: "The tone of a United States Attorney's Office comes from the top. The standard of excellence is set at the top. Samuel Alito set a standard of excellence that was contagious—his commitment to doing the right thing, never playing fast and loose with the record, never taking a shortcut, his emphasis on first-rate work, his fundamental decency."

Judge Aldisert on Judge Alito's judicial independence: "Judicial independence is simply incompatible with political loyalties, and Judge Alito's judicial record on our court bears witness to this fundamental truth."

Judge Aldisert on working with Judge Alito for 15 years: We who have heard his probing questions during oral argument, we who have been privy to his wise and insightful comments in our private decisional conferences, we who have observed at first hand his impartial approach to decision-making and his thoughtful judicial temperament and know his carefully crafted opinions, we who are his colleagues are convinced that he will also be a great Justice.

Judge Garth on Judge Alito's lack of an agenda: "I can tell you with confidence that at no time during the 15 years that Judge Alito has served with me and with our colleagues on the court and the countless number of times that we have sat together in private conference after hearing oral argument, has he ever expressed anything that could be described as an agenda. Nor has he ever expressed any personal predilections about a case or an issue or a principle that would affect his decisions."

Judge Garth on Judge Alito's personality: "Sam is and always has been reserved, soft spoken and thoughtful. He is also modest, and I would even say self-effacing. And these are the characteristics I think of when I think of Sam's personality. It is rare to find humility such as his in someone of such extraordinary ability."

Judge Gibbons on Judge Alito's independence from the executive: "The committee members should not think for a moment that I support Judge Alito' s nomination because I'm a dedicated defender of [the Bush] administration. On the contrary, I and my firm have been litigating with that administration for a number of years over its treatment of detainees held at Guantanamo Bay, Cuba, and elsewhere. And we are certainly chagrined at the position that is being taken by the administration with respect to those detainees.

"It seems not unlikely that one or more of the detainee cases that we are handling will be before the Supreme Court again. I do not know the views of Judge Alito respecting the issues that may be presented in those cases. I would not ask him. And if I did, he would not tell me. I'm confident, however, that, as an able legal scholar and a fair-minded Justice, he will give the arguments—legal and factual—that may be presented on behalf of our clients careful and thoughtful consideration, without any predisposition in favor of the position of the executive branch."

Judge Lewis on his own liberal politics: "I am openly and unapologetically pro-choice and always have been. I am openly—and it's very well known—a committed human rights and civil rights activist and am actively engaged in that process as my time permits. . . . I am very, very much involved in a number of endeavors that one who is familiar with Judge Alito's background and experience may wonder—'Well, why are you here today saying positive things about his prospects as a Justice on the Supreme Court?' And the reason is that having worked with him, I came to respect what I think are the most important qualities for anyone who puts on a robe, no matter what court they will serve on, but in particular, the United States Supreme Court."

Judge Lewis on Judge Alito's honesty and integrity: "As Judge Becker and others have alluded to, it is in conference, after we have heard oral argument and are not propped up by law clerks—we are alone as judges, discussing the cases—that one really gets to know, gets a sense of the thinking of our colleagues. And I cannot recall one instance during conference or during any other experience that I had with Judge Alito, but in particular during conference, when he exhibited anything remotely resembling an ideological bent."

Judge Lewis on Judge Alito and civil rights: "If I believed that Sam Alito might be hostile to civil rights as a member of the United States Supreme Court, I guarantee you that I would not be sitting here today. . . . My sense of civil rights matters and how courts should approach them jurisprudentially might be a little different. I believe in being a little more aggressive in these areas. But I cannot argue with a more restrained approach. As long as my argument is going to be heard and respected, I know that I have a chance. And I believe that Sam Alito will be the type of Justice who will listen with an open mind and will not have any agenda-driven or result-oriented approach."

Judge Lewis on why he endorses Judge Alito: "I am here as a matter of principle and as a matter of my own commitment to justice, to fairness, and my sense that Sam Alito is uniformly qualified in all important respects to serve as a Justice on the United States Supreme Court."

Mr. GRAHAM. Mr. President, I have limited time, so I am not going to read them all. But I ask each Member of the body to look, if they can, at these short quotes, or if they want to listen to the whole testimony, they can certainly retrieve it and ask the question of themselves: Why would these judges from a variety of different philosophies be coming before our committee and testifying on behalf of Judge Alito if he truly was an ideologue or out of the mainstream, if he held positions on abortion or any other line of cases that were extreme in nature or outside the judicial mainstream of what a judge should do?

Why would the American Bar Association, after looking at hundreds of opinions and thousands of cases in which Judge Alito participated, come to the conclusion that he is a judge's judge, that he has the temperament, the disposition, and that there is no bias when you look at all the cases where he favors one class of Americans over another? Why would so many law clerks, as Senator MCCAIN mentioned, come to the judge's aid if he was a person who exhibited a hard heart, for lack of a better way of saying it, a person who took the law and applied it to individuals in this country coming before him in a statistical manner, not a human manner?

I would argue that of all the records that have ever been amassed for a nominee Judge Alito's record is on par with Ginsburg, Breyer, and anyone else who has ever been nominated, in terms of being highly qualified—15 years on the bench and a good person.

Those who know him best, those who work with him when the cameras are not on and when nobody else is around all have the same view of Judge Alito: He is a good person who takes his job seriously. He follows the law, and he is conservative, but he is mainstream in terms of what we expect a judge to be.

Who is in the mainstream in America when it comes to judging? And who is to determine what the mainstream is? If you would ask me to judge a Democratic nominee as to whether they were in the mainstream of legal thought I would try to give you an honest answer. But if you wanted to ask someone other than me—I am a Republican—I would probably understand why you want to ask somebody other than me.

How do we determine if a person is in the mainstream of being a judge? Rather than asking a politician, maybe we should go to a source outside the political moment, outside a political body, who believes that this is a hugely important decision not only for the country but has political consequences.

The reason this is an important political decision is because special interest groups are watching our every move. Millions of dollars have been spent on advertising for and against Judge Alito. There are groups out there that have made it their reason for existing to deny this man a vote or to defeat him. There are groups out there that are bent on supporting him.

What do nonpolitical people say? What do people who have no political ax to grind say? What do the people who have sat with him a decade plus say, his fellow judges, African-American judges? They say he is not an ideologue, that he is a good judge.

What does the American Bar Association say? That he has a temperament—over 2,000 people were interviewed, I think it was; some amazing amount of interviews conducted—a temperament beyond question; that he approaches each case without a bias, but he tries to find the best he can, looking through his philosophy of judging, to get the right answer. Those who worked with him as a prosecutor, who have been his clerks, all have nothing but admiration for this man.

So why will he get, at best, five or six Democratic votes? Why did Justice Ginsburg get 96 votes? I would argue she deserved 96 votes, but she was no better qualified than Judge Alito. The same things that were said about Justice Ginsburg, in terms of her temperament and her legal abilities, are being said about Judge Alito.

Politics has changed. Some members of our committee openly said things are different now than they were then. This is replacing Justice O'Connor. The country is more divided. All I can say is, don't start down a road that you will regret because Justice Ginsburg replaced Justice White, and if we are going to base our vote on Roe v. Wade, what somebody might do, then a pro-life Senator would have a very difficult time casting a vote for Justice Ginsburg because she openly embraced a constitutional right to abortion and supported public funding of abortion. That is a view held by many Americans. It is a legitimate view to have. But from a pro-life point of view, it was clear that she was going to probably be different than Justice White because Justice White dissented in Roe v. Wade.

If that is the only reason you were voting for Justice Ginsburg, you knew with a high degree of certainty the balance of power on the Court would change when it came to that one issue.

Somehow back then people of a pro-life persuasion set that aside and looked at her qualifications. She was never attacked, that I can find in the RECORD, for being the general counsel for the American Civil Liberties Union, a left of center organization, from a conservative's point of view, that embraces many causes with which I personally disagree. But people understood there was a difference between lawyering and judging.

I would argue forcefully that the unpopular cause needs the best lawyer. Instead of holding it against her for representing politically unpopular causes, causes with which I completely disagree, I would give her credit as a lawyer because the unpopular cause needs the best lawyers in the country. The more popular it is, the worse lawyer you can have because you are likely to win.

Something has changed, and I would argue that change is being driven by the political moment, not by the record, and it has huge consequences for this country.

The Presidency is a political office. To become President, you have to go through a lot—a lot of commercials are run and a lot of scrutiny. To become a Senator, you have to go through a lot—a lot of commercials are run against you, and you go through a lot of scrutiny. We sign up for the process knowing what we are getting into.

Traditionally, judges who come before the Senate, recommended by the President to the body, do not have to mount political campaigns and have traditionally not been subject to political campaigns. The reason being there has to be one place in America where politics is parked at the door. How many people want their case decided by a political judge? I don't; even if they agree with me I don't because that is dangerous. We are running with warp speed toward a day when the judiciary is politics in another form. There is plenty of blame to go around. I am not saying the Republican Party is blameless, but when it comes to evaluating Supreme Court nominees, I would argue there has been a change from President Clinton's term to the current time and that the model that Senator HATCH used with Justices Breyer and Ginsburg would be a good model for your vote on qualifications and where you do not take dissents and political attacks as the way to try to undermine the nominee.

I honestly challenge anyone in this body to say that in terms of legal ability, legal experience, and personal character, there is a dime's worth of difference between Roberts, Alito, Ginsburg, and Breyer. There is not. The record in Judge Alito's case and in Judge Roberts' case shows beyond any doubt they are well-qualified lawyers who have practiced before the Supreme Court, who have the admiration of their colleagues, their associates, and those they have opposed in court, and that they are without any doubt historically well-qualified nominees.

You can take a record and make it what you want to make it for political reasons. You can take anyone's life and snip and cut and cut and paste and make that life anything you want it to be in a 30-second commercial. It can happen to me, it can happen to you, Mr. President. It can happen to any American because if you have been involved in the law as long as Judge Alito, you can cut and paste his life as a lawyer, as a judge, and as a person. I just ask that we reject the politics of cut and paste and we look at the entire record and the complete person.

If we look at the complete person, we find a good father, a good husband, a good man who comes from a humble background and who has ascended to the highest levels of the law known in our country. If we look at his time as a judge, we will find someone respected by his colleagues who is serious as a judge, who is analytical in his thought process, who is, by no means, an ideologue. If we step back, we see in Judge Alito one of the most qualified conservative judges in the land.

I end with this thought. Elections do matter. President Clinton earned the right from the American people to make two selections. He picked people of known liberal philosophy and inclination to be on the Court. These are legitimate philosophies to embrace and to have. He picked extremely well-qualified people to be on the Court. They are on the Court now with an overwhelming vote.

President Bush and his nominees have been treated differently. I worry more about the future of the judiciary than I worry about President Bush because his time will come and it will go. He may have another pick. But what we are doing on his watch is going to forever change the way the Senate relates to the judicial confirmation process if we don't watch it.

For someone such as Judge Alito to be rejected by 80 percent of the Democratic caucus is not healthy for the country because, quite frankly, he has earned a better showing than that. He has lived his life well.

He has been a good judge. He is a good man. His record, his colleagues, his associates, and everything he has done as a lawyer, judge, and person needs to be considered in its entirety—not for political ends for the moment.

This vote we are about to take in the next few days is going to change the way the Senate works for a long time to come. My belief is it is going to change it for the worse.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Mr. President, on behalf of the Democratic leader, I ask unanimous consent that the hour of Democratic time be controlled as follows: MIKULSKI, CLINTON, and KERRY up to 20 minutes each, and Senator NELSON of Florida up to 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. MIKULSKI. Mr. President, I rise to voice my opinion on the nomination of Judge Alito. I view this process with enormous seriousness. It is not like a political campaign because the Supreme Court is a lifetime appointment. Senators are called upon to make two decisions that are irrevocable and irretrievable. One is the decision to go to war and put our troops in harm's way. A very serious decision. You can't say the next day, Whoops, I made a mistake. The other is the confirmation of a Justice of the Supreme Court. When that person goes on the Court, he or she is there for a lifetime unless they commit an impeachable offense.

This vote will have an immense impact on future generations. Judge Alito is 55 years old. We can presume that he will be blessed with good health and will serve if confirmed for at least another 20 years. He will rule on thousands of cases, which themselves will be around for decades after he has left the court. His decisions will affect the lives of virtually all Americans for generations.

This vote will have an immense impact because of who the judge is replacing, Justice Sandra Day O'Connor, the very first female ever appointed to the Supreme Court. Wow. She has been a terrific Justice of the Supreme Court, a historical figure indeed. She broke the glass ceiling of the highest Court in our land to become the first female justice on the United States Supreme Court. She has been a true pioneer in helping to pave the way for women in the legal profession. Justice O'Connor's impact on women in America reached beyond being a mentor and a role model. Because it is not only what she did for women—it was the outstanding Justice she was. She brought new perspectives to the Court, a great intellectual ability, and she brought a strong sense of independence. That is why I think she was picked by Ronald Reagan. She has been squarely in the mainstream, and often a critical swing vote, which determined which way a key case was decided. She brought the "i" word to the Court—not ego but intellectual rigor and integrity and independence. That is why she was such a key vote, and often her vote determined whether fundamental rights were protected or not often depended on Justice O'Connor's vote.

When we pick the nominee to replace Justice Sandra Day O'Connor, I hoped the President would have picked another woman. When he nominated Harriet Miers, I was shocked, stunned, and even repulsed by the vitriolic, vicious attack on Harriet Miers.

After Harriet Miers was withdrawn, who did they give us? Certainly, I think in all of the United States of America there was a qualified woman who could have been nominated to serve on the Court. It would have been nice if we had taken the time to find one, but I don't know if they were really looking because if you seek you shall find.

Who did the President nominate? Judge Alito.

I want to be very clear at the outset: I am going to vote to oppose the confirmation of Judge Alito, and I do so for a variety of reasons.

One, I don't know who the real Judge Alito is. Is he the Judge Alito who, when he applied for a job at the Reagan Justice Department, pandered to every right-wing cliche, message-driven focus group identified cause, attack affirmative action, one person, one vote, and all of that? Is that the Judge Alito we will have serving on the Supreme Court? He says, No, I wrote that because I was applying for a job. Hey, what is he doing here right now in the confirmation process? He is applying for a job.

The process has occurred in the public and transparent arena.

But who is he? Is he a so-called new, moderate, mainstream, "Gee, I have always been in the middle" kind of guy or is he the person who applied to work at Reagan Justice Department whose writings validate his pattern of thinking?

Judge Alito failed to answer too many questions during the confirmation hearing. Judge Alito refused to clarify his views and his philosophy. He has written many, many decisions as a Circuit Court Judge which are clearly out of the mainstream. He failed to clarify his positions on the constitutional right to privacy, other fundamental rights and settled law. It is also unclear if he will be able to keep his strong personal views from influencing his decisions on the highest court of the land. In the end, Judge Alito failed to answer too many questions; he appears to be out of the mainstream.

Let me tell you my criteria for deciding on a Justice—actually on any judge.

First, is the nominee competent? Judge Alito is competent. He has the highest rating of the American Bar Association. I listen to them very carefully because we consider them an important advisory group that weighs in to the Senate. I hope that same standard of looking to the American Bar is applied to other nominees in the future.

Second, does he have the highest personal and professional integrity? Personal integrity: I would say yes. By all accounts, he is an honest man. He pays his bills. His wife is devoted to him. He seems to have wonderful children.

Professional integrity: I have some flashing yellow lights here. One is the concern about how he says he is this fairminded person, always open, doesn't believe in discrimination.

I am troubled by his past membership in that very conservative Concerned Alumni for Princeton which Senator FRIST and other prominent Princeton alumni repudiated. But Alito didn't. He boasted about his membership when he applied with the Reagan administration. That was the same group that didn't want women in Princeton; women weren't their kind. There are a lot of other decisions he ruled on as a judge against people who "just weren't our kind." He claims he doesn't remember that he was a member of this group, but he used it to get a job. Now he doesn't want to use it to get this job.

The third criterion I have is will the nominee protect core constitutional values and guarantees that are central to our system of government?

Based on his own statements and testimony at the hearings, I have serious doubts about safeguarding civil rights, the right to privacy, and equal protection of the law for all Americans. That is the bedrock of our democracy. We are left to wonder if he will protect fundamental rights—the right to be free from unnecessary Government intrusion. In the hearings, he had many opportunities to let us know whether he would secure those rights.

Then he didn't clear up uncertainties. He didn't clarify his record. He didn't candidly and completely answer the key questions that would tell the American people where he stands on critical issues. With the hearings over I am still asking who is the real Judge Alito?

First, let's take the issue of civil rights. One of the most important civil rights is the right to vote. Yet Alito left me with serious doubts on what his true views are. When applying for a job in the Reagan administration, Alito said he strongly disagreed with the Warren Court on legislative reapportionment which became the bedrock principle of one person, one vote. That Supreme Court decision changed the face of America. It changed the face of how districts were drawn up, and made sure, therefore, that people truly could be represented in legislative bodies.

He later said in the judiciary hearings that the one person, one vote doctrine is settled law. But he couldn't explain why he wrote the other statement on his job application or why his opposition to the Warren Court's decisions inspired him to go to law school.

Another fundamental principle is the ability for an individual to go to court when his or her rights are violated. An open courthouse door is fundamental to our democracy. Yet Judge Alito's record is troubling. In one case involving race discrimination, a woman sued her employer for racial discrimination. Yet Judge Alito argued that the woman shouldn't be allowed to present her case to the jury. The majority disagreed with Alito and allowed the woman to have her trial. In fact, the majority stated if they had applied Alito's analysis Title VII of the Civil Rights Act would have been eviscerated.

There are many other cases in the area of civil rights and race relations I find troubling, that show Judge Alito is not a moderate or a mainstream judge as he seem to suggest he was at the hearings.

Then there is this issue of unchecked Executive power. The Supreme Court is the critical check on the other branches of government by making sure that the checks and balances in the Constitution are maintained. Increasing Presidential power has been a hallmark of this administration—not just the recent discovery about spying on Americans without warrants but also secret meetings with energy company CEOs, preventing disclosure of how executive decisions are made and so on.

When asked about whether or not this President could ignore laws passed by Congress, Alito would only say no one is above the law. That was not an answer—that is an empty slogan. We want to know how he would interpret the scope of executive branch power.

During his time on the bench, Judge Alito has been very deferential to the executive branch. His answers suggest he will continue to be. We need a member of the Supreme Court who is part of the Court and not part of the executive branch. We can't afford to have the Supreme Court duck its responsibility to check the executive branch.

So I am troubled about his position. We are at a benchmark in our society and this is the time when we have to be very clear on the executive powers and prerogatives.

Then there is the right to privacy. In the area of the constitutionally protected right of privacy, it is unclear what Judge Alito believes the Constitution protects. Again, I go back to the statements he made when he applied to work in the Reagan administration. He was 35 years old, so he wasn't some kid who wasn't sure about himself. He was exploring big theories and big ideas. He was 35 years old. He was applying for a job at the Justice Department. You have to be a pretty experienced professional to even think you are qualified to apply for a job at the Justice Department. He was seasoned, and he was experienced, but he also wrote in that application that he was proud he would have argued that the Constitution does not protect the right to an abortion.

Let me say these are his words, not Senator MIKULSKI's. Not only did he take the position to eliminate the rights in Roe v. Wade, he thought it was important that he emphasized it in his job application.

Now at the hearings he presents a different view. The key question for Judge Alito on the constitutionally protected right to privacy was whether he considered Roe to be settled law.

Judge Roberts at his confirmation hearing said he believed Roe was settled law. Repeatedly, Alito was also asked at the hearings if he considered Roe to be settled law and if he agreed with Judge Roberts. Alito refused to say. He repeatedly refused to answer how he would protect the fundamental and explicit right of privacy—implicit right of privacy—in our Constitution. He himself refused to clarify his previous dismissal of Roe v. Wade.

He refused to clarify also his position on why a woman should have to notify her husband in order to get an abortion, a requirement Justice O'Connor ruled was clearly unconstitutional. Nor would he elaborate on what the right of privacy actually includes over and above reproductive rights.

What does it mean in general? Our Constitution is a living and breathing document. Twenty years ago when we talked about the rights of privacy, we didn't know about the Internet, we didn't know about data mining, we didn't know about the fact that we would have to have a national debate on national security and the right to privacy. Was it overreaching? When does the U.S. Government become the Grim Reaper, or what do they need to do to protect us? These are real issues. They require real debate. They require independence in the judiciary to help set the boundaries and the parameters on what other branches of government can and can't do.

Don't you as a citizen want to be protected, when going to a library to borrow a book, from somebody snooping on you? If a citizen checks out a paper or a book because you want to know what the enemies of the United States think about our way of life or philosophy, for example, you check out books like "Mein Kampf" or "Das Kapital" because you want to know what our enemies thought, so you could be prepared to refute them with your own ideas on democracy, you don't want the government spying on you. Yet, what happens if something gets triggered and something is sent over to the peepers at a Government agency about what you are reading.

Sure, we have to look out for terrorists, but should every book checked out of a library trigger the government spying on you? Do you want them listening while you talk to your girlfriend? Do you want them monitoring you and what church you go to?

These are big questions we are facing as a nation. We need to have mindful judges who help set the appropriate parameters to protect citizens against the predators in our society, to be sure our Government itself does not become a predator on the ordinary citizen's privacy. These are big issues.

So we are left to ask, Where was Alito on the right to privacy? We do not know. His answers and non-answers clearly suggest that he will not protect this fundamental right. Issue after issue leaves me with great concern.

One last area of concern I want to talk about is Judge Alito's apparent predisposition to rule against ordinary Americans. I look at the seat Judge Alito has been nominated to replace. It is a seat of moderation. Justice O'Connor represented mainstream America. She understood as a justice for the highest court in the land that her decisions impacted real people and their lives. Her decisions were not made in the abstract. Judge Alito has stated he looks at the facts of each case. Yet time and time again his decisions show support for big business, for the executive branch but not so much for everyday Americans. A justice of the Supreme Court must be able see through abstractions and understand the role of the law in the lives of all Americans not just the powerful and influential. A justice must make the marble motto over the Supreme Court "Equal Justice Under the Law" a reality for all Americans. That is also an important role for every Supreme Court justice. Judge Alito's opinions, writings and answers suggest to me that he does not understand this role either.

I have given careful consideration to this nomination. I have carefully watched the Judiciary Committee hearings. I may not be a member of the Judiciary Committee, but I have paid close attention to the hearings and watched them on C-SPAN. I went over his past writings, his decisions as a judge and the testimony of others.

In the end, I have too many doubts about what Judge Alito will mean on the Supreme Court, what he will mean for civil rights, our civil liberties, checks and balances on executive power, caused by what he said—and even more by what he refused to say. I am concerned he is out of the mainstream, that he is willing to say what he needs to say to get a job, that he is an ideologue and that his personal views will influence his decisions. It is not acceptable that Judge Alito has explained that he either forgot why he wrote something or that his early writings were simply for a job application. What he believes is what he is. It will shape the Supreme Court for the next 20 years.

After careful review of the record before the Senate, I have too many doubts, too many unanswered questions. Doubts about his commitment to providing access to courts for Americans, ensuring appropriate checks and balances among the three branches of government and the fundamental right to privacy. The Supreme Court nomination is too important a decision to roll the dice; I am afraid I will come up with snake eyes. Therefore, when my name is called in the United States Senate for his nomination, I will vote no.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. CLINTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. CLINTON. Mr. President, I associate myself with the eloquent remarks of the Senator from Maryland. Once again, she evidences the rare combination of high intellect, quick wit, and a savvy understanding of what is important to the people she represents.

The nomination of Judge Samuel A. Alito, Jr., to the Supreme Court of the United States is a matter of great, even monumental, importance to all—to our children and to future generations of Americans.

I have spent a lot of time in my State over the last 2 weeks. I have traveled from one end of it to the other, from Long Island to Buffalo. I have to say, Judge Alito's name is not on the lips of most of my constituents. They want to talk to me about the complex and confusing Medicare prescription drug benefit. They want to ask about the culture of corruption that seems to have taken over Washington under the Republican leadership. They have questions about their health care which is at risk, even if you are employed, or the pensions which seem to disappear with regularity these days. They are concerned about the day-to-day, bread-and-butter, table-top issues that we all live with.

I say this vote we are going to take in the Senate will end up having a great deal to do with how they live their lives, with the balance of power within our country, with the quality of life and liberty and pursuit of happiness available to Americans.

The Constitution commands the Senate provide the President with meaningful advice and consent on judicial nominations. I take this constitutional charge very seriously. I have carefully reviewed the committee's hearings and Judge Alito's extensive record. I have met with the judge. I have spoken with people who have strong opinions on both sides of this nomination. I have concluded I cannot give my consent to his nomination to the Supreme Court.

The way I read American history is that the key to American progress has been the ever-expanding circle of freedom and opportunity. That has been the common thread through all periods of our history—greater rights and greater responsibilities of citizenship and equality.

Each time we have made strides forward, there have been vocal voices of opposition. There have been those who have wanted to go back. At those moments of profound importance to our country, the Federal courts have been the guardians of our liberties, have stood on the side of greater freedom and opportunity.

We all know the famous cases cited as representing this forward march of progress: Brown v. Board of Education, which struck down the notion of separate but equal; Baker v. Carr, which invalidated discriminatory State voting apportionment schemes and paved the way for the concept of one man, one vote; Griswold v. Connecticut, which recognized a right to privacy in the Constitution; Roe v. Wade, which established that women have a right to choose.

We need judges who will maintain that forward progress. Despite his distinguished academic credentials, Judge Alito has not shown himself to be that kind of judge. He does not have the dedication to civil rights or women's rights or the right to privacy that I believe we need in the next Supreme Court Justice.

Time and again, when given the choice, he has voted to narrow the circle, to restrict the rights Americans hold dear. Now is not the time to go backward.

Without the progress we have made in the past 230 years, without that expansion of the circle of equality and freedom and opportunity, I certainly would not be standing here, nor would a number of my colleagues. There would be no opportunities for women in public life.

But mine is hardly the only example. Voting rights would be restricted. Equal opportunities in education and in the workplace would not exist. And none of us would have a constitutional right to privacy. Simply put, our Nation would not be what it is today.

Our greatest strength has always been our commitment, generation after generation, with some fits and starts, to enlarging the circle of rights and equality. That great American commitment has made us a beacon of freedom around the world. This nomination could well be the tipping point against constitutionally based freedoms and protections we cherish as individuals and as a nation. I fear Judge Alito will roll back decades of progress and roll over when confronted with an administration too willing to flaunt the rules and looking for a rubberstamp. The stakes could not be higher.

To be sure, Roe v. Wade is at risk, the privacy of Americans is at risk, environmental safeguards, laws that protect workers from abuse or negligence, laws even that keep machine guns off the streets—all these and many others are in peril.

I don't believe millions of Americans are aware of that yet. This debate is carried on in Washington. It is at a high level of legalisms and debates about jurisprudence and the meaning of the Constitution. But I am confident the Supreme Court will have a dramatic effect on our Nation and on what we believe America stands for.

When I ran for the Senate, I told New Yorkers that I would only vote for judges who would affirm constitutional precedents, such as Roe and Brown and other landmark achievements and expanding rights and the reach of equality for all Americans. This is about more than rhetoric. This is very real. The American people are counting on us not to be a rubberstamp but counting on us to make sure the President's nominee will not take us backward.

I also view this nomination through the prism of the Justice that Judge Alito will replace. I have not always agreed with Justice Sandra Day O'Connor. But she has shown, throughout her career of distinguished service to the Court that one Justice makes a big difference. One Justice can protect our constitutional rights. Justice O'Connor is a true conservative, a mainstream jurist. She appreciated the advancements we have made as a society because she lived them. Anyone who has ever read her autobiography about this little cowgirl growing up on a ranch in Arizona, going off to school, eventually going to Stanford Law School, graduating near the top of her class and being unable to find a job simply because she was a woman does not only intellectually understand why our history is about moving forward and removing the obstacles to God-given human potential, she feels it. She understands it.

Time and time again, she showed she appreciated the advancements we have made as a society. She has fought to ensure they continue. Her vote was often the defining vote on which key civil liberties and rights rested. She exercised it with care and independent judgment.

Any fair reading, in my view, of Judge Alito's record does not demonstrate that same independence of judgment, nor does it illustrate a grasp, either intellectual or emotional, of the day-to-day struggles that tens of millions of Americans face. On the contrary, Judge Alito proudly announced his personal opposition to a woman's right to choose early in his career in the now infamous 1985 job application for a position in the Reagan administration. Although he has tried to distance himself from the comments he made in that document, his time on the bench shows an unapologetic effort to undermine the right to privacy and a woman's right to choose.

I believe, and I have said so for many years, abortion should be safe, it should be rare, but it should be legal. I understand it is a difficult and even tragic choice for many women. It is a decision of conscience. Therefore, it should be a constitutionally protected decision made not by the Government, not by the majority—whoever the majority might be—but between a woman, her doctor, and her faith in God.

Judge Alito does not share this view. And I think we can be certain that, freed from the constraints of Supreme Court precedent, he will intensify his campaign to roll back these important privacy rights.

The extreme rightwing of the Republican Party was up in arms when President Bush nominated Harriet Miers to the Court to replace Justice O'Connor. It was quite a spectacle to see this good woman, who had risen to the top of her profession in Texas—not, I would imagine, an easy place to be the president of a State bar and be the managing partner of a large law firm, but had done so by dint of hard work and intelligence—be turned on by members of her own party because they could not be sure she would agree with them no matter what the facts or circumstances. Their reaction to Judge Alito's nomination, in contrast, has been enthusiastic, effusive, even ecstatic. Why? Because they know exactly what they are getting.

Judge Alito's constrained views have not been limited to issues of privacy. While on the Third Circuit, he has rarely sided with individuals seeking relief from discrimination on the basis of race, age, gender, or disability. In fact, in the vast majority of civil rights cases, Judge Alito has sided with those who would infringe on the civil rights of Americans. For example, in several dissents, he has called for curtailing what is called title VII of the Civil Rights Act of 1964, the landmark statute prohibiting discrimination against women and minorities in the workplace.

These individual views, as manifested by his writings, his work in the Government, and his opinions on the bench, are even more troubling because he seems to favor Executive power so much over the other branches of Government. So I also fear he will not respect the system of checks and balances that our Founders so carefully set out in the Constitution. No one who has read the Federalist Papers or the debate that our Founders had when constructing the Constitution or who understands the historical context in which our Declaration of Independence and our Revolution occurred could underestimate the importance they placed on having three truly independent and equal branches of Government.

The Founders understood human nature. They got it. They knew that unchecked power would lead to abuses. And we have seen some of that right here in Washington over the last 5 years. They realized that we had to check and balance against power centers in order to bring out the better "angels" of our nature, but also to keep a watch on each other.

I do not believe, after reviewing Judge Alito's record, he understands or respects this central principle to the way America is set up. He has sought to expand the power and purview of the executive branch at nearly every turn, while simultaneously stripping Congress of its authority and curtailing the rights enjoyed by private citizens. For example, while working for the Reagan administration, he made the argument that Cabinet officials who are charged with authorizing illegal wiretaps of Americans in this country should be entitled to absolute immunity. At a time when this President and his political party stand accused of political overreaching and abuse of power, we must demand from our judiciary a respect for the proper role of each of our three branches of Government. But Judge Alito's excessive deference to Presidential authority, coupled with his restrictive view of congressional authority, tells me he does not have the proper reverence for separation of powers.

What is worse is that in supporting the expansion of the reach of Presidential power, Judge Alito also holds a harshly limited view of what the Government can or should do to help ordinary Americans. Judge Alito said it all in 1986, when he was a young lawyer with the Reagan administration. He wrote that in his estimation, it is not the role of the Federal Government to protect the "health, safety and welfare" of the American people. Well, I guess that explains the inept, slow, and dangerous response to Hurricane Katrina. If you are not responsible to protect the health, safety, and welfare, why should you be held accountable when people suffer, when their Government leaves them neglected without any help?

Judge Alito has long advocated a limited congressional authority view. Now, if that were adhered to, it would undermine a whole host of civil rights protections, health and safety regulations, standards for protecting our air and water, food and drug quality regulations, laws regulating firearms as well as vital programs such as Social Security, Medicare, and Medicaid.

Since his appointment to the Third Circuit, Judge Alito has aggressively sought to promote this theory of limited congressional power. In 1996, he voted to invalidate parts of our Federal gun laws, arguing there was no evidence in the record to determine that Congress had the power under the Constitution's commerce clause to enact legislation that regulated the sale of machine guns. In another case, Judge Alito wrote an opinion striking down Congress's right to make a State agency comply with the Family and Medical Leave Act. And just 3 years later, the Supreme Court, with a similar set of facts, reached precisely the opposite conclusion.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. CLINTON. Mr. President, I ask unanimous consent for 5 more minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mrs. CLINTON. In several criminal cases, Judge Alito has shown blatant disregard for a defendant's fundamental right to be tried by an impartial jury—what any one of us would want if we or a loved one were ever in this position—chosen free of racial or gender prejudice. He has also narrowly construed other constitutional criminal procedure protections, arguing often in favor of granting law enforcement officials the greatest of latitude to conduct unauthorized searches and seizures.

Judge Alito's opinions on these and many other topics remind us that judicial activism comes in many guises. Adopting an unnecessarily narrow view of the Constitution or of our laws to reach a desired outcome is a form of judicial activism that is no less offensive than subscribing to an overboard interpretation of the law in order to reach a specific result.

Judge Alito, if confirmed, may hold a seat on the Supreme Court for a generation—long after this President has left office. Perhaps through 8 to 10 Presidential elections, decades of progress would fall prey to his radical ideology, jeopardizing not only civil rights, civil liberties, health and safety and environmental protections, but also fundamental rights such as the right to privacy. Our Federal Government could be transformed into one where Congress is largely irrelevant and the President is permitted to make up the rules as he goes. I do not believe Judge Alito's vision of that America is what our Founders intended for us. He would take us backward, when it has never been more important to move forward together.

I sincerely hope my concerns about Judge Alito are unfounded, but I suspect they are not, and our children and grandchildren will pay the price. He has not demonstrated a proper respect for the rule of law, our Constitution, and the principles, freedoms, rights, and privileges that Americans hold most dear. I, therefore, cannot give my consent to his confirmation.

Mr. President, I ask unanimous consent that letters written to Senators SPECTER and LEAHY opposing this nomination be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL ORGANIZATION FOR WOMEN,
Washington, DC, December 13, 2005.

DEAR SENATOR, NOW is strongly opposed to the elevation of Judge Samuel Alito to the Supreme Court of the United States, and with every passing day more information appears that reconfirms our opposition. We urge you to review his record, writings and judicial philosophy and join us in opposing his nomination.

Not only is NOW disappointed that President Bush has proposed to replace Justice Sandra Day O'Connor with yet another white male ultra-conservative, but we are deeply disturbed by the twenty-year track record that places Judge Alito on the far right of the judicial spectrum, especially when it comes to women's and civil rights. If Samuel Alito is confirmed by the U.S. Senate, many of our fundamental rights will be at great risk and could well be lost entirely.

A bedrock principle for NOW is full Constitutional rights for women and at the heart of that equality is self determination for women when they deal with their reproductive health care and childbearing decisions. When applying for a position in the Reagan administration in 1985, Alito stated he was "particularly proud" of his work on cases arguing "that the Constitution does not protect a right to an abortion." A memo released later shows that Alito told his boss that two pending cases provided an "opportunity to advance the goals of overruling Roe v. Wade and, in the meantime, of mitigating its effects." These are not the actions of someone simply trying to please his boss, but proud convictions that we have no reason to believe have altered in the past two decades.

Also troubling is his proud touting of his membership in a conservative Princeton alumni group that complained about the admission of women and the number of minority students on the elite college campus. How will Judge Alito deal with educational opportunity and Title IX? How will Judge Alito deal with pay equity and workplace policies as well as affirmative action and job benefit issues that disproportionately affect women? How will Judge Alito deal with challenges to federal legislation guaranteeing disability rights, lesbian and gay rights, and freedom from domestic and sexual violence? We believe he will rule on the side of narrowing our freedoms and barring our redress in court.

Please consider all of these issues as you review Samuel Alito's fitness to serve on our highest court in the land. Based on his record, he will not come down on the side of fairness and equality for all. We ask that you vote against his nomination.

Sincerely,

KIM GANDY,
President.

LEGAL MOMENTUM,
Washington, DC, January 10, 2006.

Senator ARLEN SPECTER,
Chairman, Committee on the Judiciary,
U.S. Senate
Senator PATRICK LEAHY,
Ranking Member, Committee on the Judiciary,
U.S. Senate

CHAIRMAN SPECTER AND SENATOR LEAHY: Legal Momentum, the nation's oldest women's legal rights organization, opposes the confirmation of Judge Samuel Alito as Associate Justice to the Supreme Court of the United States. Throughout his career he has pursued legal approaches that raise questions about his ability to respect the balance of power between the three branches of government. Judge Alito defers to agency decisions in many settings, while showing skepticism toward individual litigants' claims, appears to support a narrow view of civil rights, prisoners' rights, and workers' rights, appears willing to uphold legislative restrictions on the right to privacy and is willing to limit congressional power while showing excessive deference to the executive branch. This agenda poses a danger to an inclusive society, and a representative democracy with constitutionally required checks and balances that serves the needs of the whole electorate. The legacy of conservative centrist, Justice Sandra Day O'Connor, deserves a replacement that does not rule based on political considerations, but can fairly and justly interpret the laws and Constitution of the United States.

Judge Alito's available record reveals a judicial philosophy that would undermine critical civil and privacy rights and protections. In his public statements, he speaks about the restrained role of judges. Put into practice, however, these views translate into higher burdens for plaintiffs seeking to vindicate their rights, deference to states or institutional defendants and employers, and limits on the ability of Congress to require certain conduct from states. For example, Judge Alito often favors a restrictive reading of the law, which results in the narrowest interpretation of civil rights. Thus, individuals may be unable to enjoy the full reach of these protections at crucial times. Stressing the need for judicial restraint and discouraging judges from legislating from the bench, he has used these themes as a means to limit access to the ability of individuals to have their day in court. And, he frequently argues to constrain the power of the courts and the power of Congress, with regard to binding states. The end result is that individuals, courts, and Congress have less ability to hold states accountable to ensure compliance with the law and remedy legal violations.

Judge Alito has taken a very restrictive approach in employment discrimination cases, resulting in few successes for plaintiffs. In Bray v. Marriott, he would have let stand an employer's decision not to promote an African American female employee even though there was considerable evidence of irregularities in the hiring and interview process. Judge Alito argued in dissent that the employer's failure to follow its own rules was not sufficient to prove discrimination against the plaintiff. For him, the employer's argument that the plaintiff was not the best qualified should have been accepted at face value. In contrast, the majority concluded there were enough questions about the employer's motives and conduct to allow the plaintiff her day in court. Moreover, the majority chided Judge Alito's analysis for effectively eviscerating the antidiscrimination purposes of the law, by accepting the employer's reasoning without adequate review to determine whether racial bias influenced the hiring decision. They stressed that what mattered was not whether the company was seeking the "best" candidate, but "whether a reasonable factfinder could conclude that Bray was not deemed the best because she is Black." In his fifteen years on the bench, Judge Alito has almost never ruled for African-American plaintiffs in employment discrimination cases. The Supreme Court deserves a Justice that is willing to consider the full circumstances of the case at hand, not deny plaintiffs their right to be heard.

While Congress has made efforts to protect workers who need time off work to care for a sick family member or to heal from a long-term illness, Judge Alito would make it harder for workers to challenge state employers for violating the Family & Medical Leave Act. In Chittister v. Department of Community and Economic Development, Judge Alito wrote for a Third Circuit panel that the state of Pennsylvania was immune from lawsuits by state workers alleging violations of the FMLA's medical leave provisions. The decision effectively insulated the state from FMLA, claims, and undermined the ability of workers to access medical leave when needed. Meanwhile, Justice O'Connor, who Judge Alito would replace, voted to uphold a key provision of the Family and Medical Leave Act. If the Supreme Court adopted Judge Alito's views, millions of workers could lose their ability to vindicate their rights under the Family & Medical Leave Act.

Judge Alito's record strongly indicates that he would question the constitutional right to privacy and undermine existing Court precedent on the issue. In a 1985 job application, he touted his work on Reagan Administration-era cases which argued that the Constitution does not protect a right to an abortion—a position with which he indicated he personally agreed. In a memorandum discussing the strategy for the government's amicus brief in a pending case involving a Pennsylvania abortion regulation, he stressed the importance of finding a way to give states maximum latitude to adopt abortion restrictions to undermine, if not overrule, Roe v. Wade. After leaving the Administration and becoming a judge on the Third Circuit, he wrote a dissent in Planned Parenthood of Southeastern Pennsylvania v. Casey, arguing to uphold burdensome restrictions and hurdles aimed at women seeking an abortion. The Supreme Court ultimately rejected his position, but he once again underscored a desire to place new limits on a woman's ability to make her own reproductive health decisions.

Judge Samuel Alito's rulings on Americans' privacy rights extend even further his support for increased power for the executive branch. As a lawyer in the Solicitor General's Office in 1984, Alito wrote a memo supporting absolute immunity from civil liability for cabinet officials who authorized illegal wiretaps of Americans due to national security concerns. Later, he co-authored a brief to the Supreme Court in which the government argued for absolute immunity—an argument rejected by the Supreme Court. In contrast, Justice O'Connor, writing for an 8–1 majority in the case of American-born detainee Yaser Esam Hamdi (Hamdi v. Rumsfeld), in which the court ruled that an American citizen seized overseas as an "enemy combatant" must be allowed to challenge the factual basis of his or her detention, said the Court has "made clear that a state of war is not a blank check for the president when it comes to the rights of the nation's citizens."

After becoming a judge, Alito wrote in several opinions that would have extended the reach of search warrants for the executive branch. In a dissenting opinion in Doe v. Groody, he argued that police officers did not violate the Constitution when they strip-searched a mother and her ten year-old daughter, despite the fact that neither was named in the search warrant. The majority opinion, written by now-Homeland Security Secretary Michael Chertoff, asserted that Judge Alito's position would effectively nullify the Fourth Amendment's warrant requirement and "transform the judicial officer into little more than the cliché rubber stamp." In another dissent, in Baker v. Monroe Twp., Judge Alito voted to keep a jury from hearing whether a police supervisor unlawfully allowed his officers to handcuff, hold at gunpoint and search a woman and her teenage children who happened to stop by to visit the home of a relative in the midst of a search.

Alito's stance on executive branch powers is further revealed in a Feb. 5, 1986 draft memo where he argued that the White House should issue "interpretive signing statements" when signing a bill into a law, and that courts might be persuaded to consider this 'executive intent' equally with legislative intent. The balance of power between the three branches is imperiled when White House interpretation is accorded equal weight with congressional support.

In conclusion, Judge Alito has consistently articulated legal opinions that are outside the mainstream, that undermine legal protections against employment discrimination, that distorts the law in favor of extending power to the executive branch, and that resorts to judicial activism, blatantly ignoring the clear intention of the legislature to push his arch-conservative political agenda. Therefore, we urge you to oppose his nomination to the U.S. Supreme Court.

If you have any further questions, please contact Lisalyn Jacobs at Legal Momentum, (202) 326-0040.

Sincerely,

LISALYN R. JACOBS,
Vice President for Government Relations.

ELIMINATING RACISM
EMPOWERING WOMEN,
Washington DC, January 10, 2006.

Hon. ARLEN SPECTER,
Chairman,
Hon. PATRICK J. LEAHY,
Ranking Member, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN SPECTER AND RANKING MEMBER LEAHY: On behalf of the YWCA USA, representing over 2 million women and girls with 300 associations nationwide, I am writing to write to express our opposition to the confirmation of Judge Samuel A. Alito, Jr. to the Supreme Court of the United States. His views are not consistent with the value of equality that our country holds dear, nor are they consistent with the YWCA USA mission of eliminating racism and empowering women. Over the past 50 years the Supreme Court's jurisprudence has often served to protect the fundamental constitutional rights of all Americans. After closely examining his record, the YWCA USA has concluded that if Judge Alito were to replace Justice O'Connor on the Court, this protection would likely halt and in fact reverse with regard to individual rights. Judge Alito's record reveals a history of troubling decisions in the areas of civil rights, civil liberties, and fundamental freedoms. The YWCA USA is extremely concerned that the confirmation of Judge Alito to the Supreme Court would be harmful for women and people of color.

If Judge Alito were confirmed, he has the potential to change the direction of the court and devastate the rights of women. For example, in the landmark case Planned Parenthood of Southeastern Pennsylvania v. Casey, Judge Alito concluded that it was not an "undue burden" for a married woman seeking an abortion to have to notify her husband, a position that the Supreme Court later struck down. This case raises key questions about whether, if confirmed to a seat on the Supreme Court, Alito would vote to overturn Roe v. Wade. Furthering the YWCA USA's concerns, about whether Judge Alito would seek to strip away women's reproductive freedoms, are his own words. As a lawyer in the Reagan administration, Samuel Alito wrote, that he "personally believed" that "the Constitution does not protect a right to an abortion." In addition, during his tenure with the Solicitor General's Office he was one of the chief engineers of a multi-tiered, strategy to reverse Roe v. Wade. Alito wrote that an amicus brief in Thornburgh v. American College of Obstetricians and Gynecologists was an "opportunity to advance the goals of bringing about the eventual overruling of Roe v. Wade and, in the meantime of mitigating its effects." While it is impossible to know for certain how Alito would rule in a particular case before the Supreme Court, these statements along with Judge Alito's past opinions make it difficult to believe that he would effectively uphold the fundamental freedoms of women. The rights, health, and safety of women are too important to the YWCA USA to justify this risk.

The YWCA USA is also concerned with Judge Alito's record on civil rights and affirmative action. It is quite troubling that Samuel Alito touts his work as a lawyer in the Reagan administration opposing certain affirmative action programs as something he Was "particularly proud" of. One example of Alito's work against affirmative action during the Reagan administration is the case of Local 28 of the Sheet Metal Workers' International Association v. EEOC. Alito and the Solicitor General's office argued that it was illegal for courts to order remedies including affirmative action even in cases of intentional, on-going and "egregious racial discrimination." Alito signed a brief arguing the extraordinary theory that relief in Title VII cases could be granted only to "identifiable victims of discrimination," contradicting an earlier view of the Equal Employment Opportunity Council (EEOC) itself. The Supreme Court rejected Alito's argument, stating that affirmative action relief "may be ordered by a court as a remedy for past discrimination even though the beneficiaries may be non-victims." Furthermore, in the 1970s and 1980s Alito was a member of Concerned Alumni of Princeton (CAP), an organization that actively sought to limit the number of women and minorities accepted to the university. In contrast, Justice O'Connor cast the decisive vote in Grutter v. Bollinger, upholding affirmative action in higher education. If Judge Alito's views on affirmative action were to replace Justice O'Connor's on the Supreme Court, institutes throughout the country would be harmed. Eliminating this important tool for promoting diversity would deny universities, workplaces and other organizations the enlightenment provided by a greater variety of backgrounds.

In addition to a restrictive approach towards affirmative action, Judge Alito's record strongly questions the legitimacy of employment discrimination claims, and in a number of instances, Judge Alito issued opinions that made it far more difficult for victims of discrimination to get to court and prove their cases. Again, this is an area where Justice O'Connor has often been the swing vote in protecting and advancing civil rights. In contrast, Alito has ruled against three of every four people who claimed to have been victims of discrimination.

In one such gender discrimination case, Sheridan v. E.I. Dupont de Nemours, Alito was the sole dissenter in a 10–1 decision; arguing that he would require victims of discrimination to present much more evidence before they would be entitled to take their case to trial. Were this position adopted more broadly, it would make it much more difficult for victims of discrimination to have their day in court and remedy these actions of prejudice. In another employment discrimination case, this one dealing with race, Alito went even further than upping the level of evidence needed for a trial stating that even if discrimination occurred it may not be against the law. In Bray v. Marriott Hotels, Ms. Bray, an African-American woman, applied for a promotion but a white woman was hired for the job instead. Her employer, Marriott, did not follow its own guidelines for hiring and several of the key employees involved in the process gave conflicting statements about how the decision to hire the white woman was ultimately made. Judge Alito argued in his dissent that it might not be illegal for an employer to overlook a qualified person of color even if the employer's belief that it had selected the 'best' candidate was the result of conscious racial bias." The majority opinion responds to this analysis by noting that Title VII would be eviscerated if the analysis were to halt where the dissent suggests. In addition to the troubling interpretation of Title VII, Alito's dissent demonstrates skepticism about the legitimacy of discrimination claims. He closed his dissent with the disturbing pronouncement that a percentage of discrimination cases are manufactured by disgruntled employees, rather than victims of discrimination. This shows a lack of sensitivity about the on-going national problem of discrimination in the workplace. In contrast to Judge Alito, 70% of Americans believe racism is a problem in the workplace today. This again illustrates that Samuel Alito is out of step with mainstream America in the area of discrimination.

Finally, it is important to look at the make-up of the court. Given the role that Justice O'Connor plays on the court, it is necessary to review Judge Alito not only on his merits but also in the context of whom he will be replacing on the bench. Justice O'Connor has added an important, independent and unique voice to the Supreme Court. As the first women to sit on the nation's highest court, she has broken barriers for women not only by blazing a trail but also by providing a voice and a vote on the Court for all women. Indeed, time and again on those issues that affect civil rights, and women's rights, including reproductive freedoms, Justice O'Connor is the deciding fifth vote. Numerous laws have been shaped and upheld by this 5 to 4 margin. Thus it is important to evaluate not only if Judge Alito is qualified to sit on the Supreme Court, but also if he will protect and honor the legal and social legacy of the woman he would be replacing.

The concern that Alito would overturn well-established legal principles and social achievement in the areas of women's rights and civil rights, that the YWCA has worked to protect for almost 150 years, is too great to ignore. That is what his record indicates and furthermore, during his confirmation hearing he stated, "If I'm confirmed . . . I'll be the same person I was on the Court of Appeals." For these reasons, the YWCA USA feels that Judge Alito's confirmation to the Supreme Court would negatively impact the lives of women and people of color and therefore is urging you to reject the nomination of Judge Samuel Alito to the United States Supreme Court. Senators must stand up and protect the rights of the people they represent by voting against Alito's lifetime appointment to the Supreme Court. The nation has come too far in the fight for equality and worked too hard to protect the rights of all individuals.

Sincerely,

PEGGY SANCHEZ MILLS,
YWCA USA CEO.

AMERICAN ASSOCIATION OF
UNIVERSITY WOMEN,
Washington, DC, January 9, 2006.
Hon. ARLEN SPECTER,
Chair, Senate Judiciary Committee, Dirksen Senate Office Building, Washington, DC.
Hon. PATRICK LEAHY,
Ranking Member, Senate Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

DEAR SENATORS: On behalf of the more than 100,000 bipartisan members of the American Association of University Women (AAUW), we write to express our opposition to the confirmation of Third Circuit Court of Appeals Judge Samuel A. Alito, Jr. to be associate justice of the United States Supreme Court. As the Senate Judiciary Committee opens its confirmation hearings today, you will be faced with critical questions and, ultimately, a critical decision that will affect the balance of the nation's highest court—which will in turn impact the everyday lives of generations to come.

After a careful review of Judge Alito's record, including 15 years of appellate opinions, AAUW finds him to be a troubling choice with red flags in areas critical to our mission and membership, including workplace discrimination, reproductive choice, and affirmative action. Judge Alito's appellate judgments provide little reassurance that he would apply the law in ways that would uphold fundamental civil and women's rights precedents should he ascend to the highest court in the land. Indeed, taken as a whole, his publicly available record—both from his government service and his tenure on the Third Circuit—illustrate a judicial philosophy at odds with AAUW's Public Policy Program. For all these reasons, AAUW has opposed the confirmation of Judge Alito to the U.S. Supreme Court.

AAUW believes it is more important than ever to ensure the moderate balance of the U.S. Supreme Court by confirming a justice who reflects mainstream America. Decades of progress for women and girls hang in the balance. Further, given that Judge Alito has been nominated to replace the often-deciding vote of Justice Sandra Day O'Connor, this nomination has much at stake. AAUW is concerned that the confirmation of a potentially extremist justice would turn back the clock on decades of progress for women and girls. Two key areas in particular have led to AAUW's opposition to Judge Alito's confirmation:

Equal opportunity and legal protections against discrimination: Judge Alito has a troubling record on a range of civil rights issues, revealing a philosophy that would weaken workplace protections that are central to addressing discrimination against women. A number of Judge Alito's opinions would make it harder for employees to win their suits or even get their case to trial. Judge Alito has also demonstrated opposition towards affirmative action, dismissed constitutional protections against sexual harassment in schools, and aggressively sought to curb congressional authority to legislate on issues such as family and medical leave. In several of these cases, U.S. Supreme Court decisions have later espoused views opposite to those put forward by Judge Alito, showing him to be far outside the mainstream.

Reproductive rights and approach to precedent: Judge Alito has actively rejected a woman's constitutional right to choose, supported limits on abortion, and consistently upheld limits to this fundamental right. While Judge Alito has been careful to stress the importance of stare decisis, his recognition of the importance of precedent is not a predictor that he would follow the principle if confirmed. As a member of the nation's highest court, the obligation to follow settled law is different. Since Judge Alito helped develop the strategy for undermining women's reproductive rights, it stands to reason that Roe v. Wade and related cases maintaining the right to privacy could fall within the exceptions Judge Alito has set for himself regarding adherence to stare decisis.

As you know, the Senate has few constitutional duties more significant than that of advising on and consenting to U.S. Supreme Court nominations. AAUW believes you should confirm only a nominee that exhibits the impartiality and independence that are so critical to this third, co-equal branch of our government.

No nominee is presumptively entitled to confirmation. After a thoughtful review of his well-established judicial philosophy, AAUW cannot conclude that Judge Samuel A. Alito, Jr. is the appropriate choice for a lifetime position on the U.S. Supreme Court. AAUW urges senators to reject Alito's nomination and let their votes be a true measure of their commitment to equity for women and girls.

Sincerely,

LISA M. MAATZ,
Director, Public Policy and Government Relations.

NATIONAL COUNCIL OF
WOMEN'S ORGANIZATIONS,
Washington, DC, January 11, 2006.

Senator ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate.
Senator PATRICK LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate.

CHAIRMAN SPECTER AND SENATOR LEAHY: The National Council of Women's Organizations, the oldest and largest coalition of the nation's women's groups, urges the Senate to reject the nomination of Samuel Alito to the United States Supreme Court. Judge Alito's extreme position on a range of issues, including reproductive rights, workplace discrimination and violence against women, make him the wrong choice to replace retiring Justice Sandra Day O'Connor.

In nominating Samuel Alito after Harriet Myers withdrew from consideration, President Bush chose to put political expediency ahead of the rights and well-being of this nation's women and girls. Mr. Bush's right-wing base clamored for rejection of Ms. Myers because, as conservative as she is, they felt she was not 100 percent pure on their issues. Samuel Alito, however, is apparently their man.

Judge Alito has a long record demonstrating hostility to women's reproductive rights. In the 1980's, he repeatedly advocated the overturning of Roe v. Wade. In the 1990's, as an appellate judge, he argued to uphold a Pennsylvania statute requiring women to notify their husbands before having an abortion—a position rejected by Justice O'Connor's 5-4 opinion in Planned Parenthood v. Casey. Nowhere in his writings, however, does he express any concern that the days of back-alley abortions could return if women do not have safe, legal means to terminate unwanted pregnancies. Nor have we been able to find any statement of concern, in any of his writings, for women's fundamental right to be in control of their own reproductive health decisions.

Indeed, Judge Alito has even expressed hostility to contraception. In 1985, as a Justice Department attorney, he wrote that some forms of birth control are "abortifacients," and saw no constitutional problem with a state law restricting women's access to them. Extreme anti-abortion organizations have long argued that the IUD and some birth control pills are "abortifacients"—subject to the same kinds of restrictions that may be placed on women's access to abortion—because they may prevent a fertilized egg from becoming implanted on the uterine wall. This view runs counter to accepted medical understanding, which is that pregnancy does not begin until after implantation. Yet it is the view embraced by Samuel Alito.

Judge Alito's opinions demonstrate an abiding deference to the powerful at the expense of ordinary people. He has argued, in cases such as Sheridan v. DuPont and Bray v. Marriott Hotels, for erecting higher and higher procedural hurdles that would prevent victims of employment discrimination from being able to present their case to a jury. He argued, in Doe v. Groody, to uphold a police strip search of a woman and her ten-year-old daughter even though they were not named in the search warrant and were simply at home when the house was searched. He ruled, on all but one issue, against a female police officer who was subjected to two years of pervasive sexual harassment in Robinson v. City of Pittsburgh. He has repeatedly criticized affirmative action policies, and struck down a school district's affirmative action plan in Taxman v. Board of Education. He ruled, in Chittister v. Dept. of Community and Economic Development, that state governments did not have to comply with provisions of the Family and Medical Leave Act. Women have fought hard over the last four decades, against resistance, skepticism and backlash, to win fundamental rights. If confirmed, Judge Alito will be in a position to undermine our gains for generations to come. We urge you to stand firm for women's rights and reject this nomination.

Sincerely,

SUSAN SCANLAN,
Chair
TERRY O'NEIL,
Executive Director.

NATIONAL WOMEN'S LAW CENTER
Washington, DC, January 9, 2006.

Hon. ARLEN SPECTER, Chair,
Hon. PATRICK J. LEAHY, Ranking Member,
Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN SPECTER AND SENATOR LEAHY: On behalf of the National Women's Law Center, an organization that has worked since 1972 to advance and protect women's legal rights, we write to reiterate the Center's opposition to the nomination of Samuel A. Alito, Jr. to the United States Supreme Court. As a result of its extensive review of Judge Alito's record, the Center has concluded that the confirmation of Judge Alito to the Supreme Court would endanger core legal rights for women, with profound and harmful consequences for women across the country and for decades to come. This letter summarizes the basis for the Center's conclusions, which are set forth more fully in the Center's December 8, 2005 letter and detailed report.

Judge Alito has worked to limit a woman's right to choose. While in the Solicitor General's office, Alito urged the government to file an amicus brief in Thornburgh v. American College of Obstetricians and Gynecologists in order to "advance the goals of bringing about the eventual overruling of Roe v. Wade and, in the meantime, of mitigating its effects." His memo argued in favor of upholding even the most burdensome and dangerous barriers to abortion. Alito then volunteered to work on the government's Thornburgh brief, and researched and wrote key portions. The Court rejected the brief's extreme positions—it struck down dangerous burdens on the right to choose the brief had argued to uphold, and it refused to overturn Roe v. Wade as the brief had urged. In plain reference to his role in the Thornburgh case, Alito later wrote: "I am particularly proud of my contributions in recent cases in which the government has argued in the Supreme Court . . . that the Constitution does not protect a right to an abortion." He wrote this in an application for a promotion a few months after the Thornburgh brief was filed.

Judge Alito's record on the Third Circuit reinforces the concerns about his approach to the right to choose. In Planned Parenthood v. Casey, he not only would have upheld a law requiring married women to notify their husbands before having an abortion, but took an approach to the law that would eviscerate Roe v. Wade by upholding many dangerous barriers to the right to choose. For example, he failed to focus on women who would be hurt by the restrictions (such as victims of domestic abuse), and would have given husbands the same kind of control over their wives' most personal decisions that parents have over their children. A majority of the Supreme Court, in an opinion co-authored by Justice O'Connor, soundly rejected his analysis.

Judge Alito has ruled to limit Congress's authority to protect public safety and welfare. Judge Alito would have struck down a federal law prohibiting the transfer and possession of machine guns, arguing in a dissenting opinion in United States v. Rybar that Congress did not have the authority to enact the statute under the Commerce Clause of the Constitution. Judge Alito's Third Circuit colleagues, and eight other circuit courts to date, have disagreed with him. In another case, Chittister v. Department of Community and Economic Development, Judge Alito wrote an opinion that barred state employees from suing for damages when their employers violate their right to take medical leave under the Family and Medical Leave Act (FMLA). A 6-3 majority of the Supreme Court, including even Justice Rehnquist, subsequently upheld another provision of the FMLA against a similar challenge on the ground that the FMLA was enacted to address sex discrimination in the workplace. Judge Alito gave short shrift to this argument.

Judge Alito has ruled to make it more difficult for plaintiffs to prove discrimination. Judge Alito's opinions in employment discrimination cases raise significant concerns. For example, he dissented from Sheridan v. E.I. DuPont De Nemours and Company, a sex discrimination case in which all 10 of the other members of the Third Circuit joined in reversing the trial court's rejection of a jury verdict for the plaintiff. Judge Alito ignored applicable legal standards to urge overturning the jury verdict, inappropriately credited the employer's explanations for its actions, and, standing in for the jury, downplayed the plaintiff's evidence. Alito also dissented in Bray v. Marriott Hotels, a race discrimination case, and again would have prevented the plaintiff from bringing her case before a jury by giving the employer the benefit of the doubt. The majority said that under his approach to the evidence, "Title VII [of the Civil Rights Act of 1964] would be eviscerated."

Judge Alito's publicly available record does not reveal his views on the constitutional protection against sex discrimination under the Equal Protection Clause of the Fourteenth Amendment. But in his 1985 job application he expressed support for at least some of the central legal tenets of the Reagan Administration, and the Justice Department under Attorney General Ed Meese favored the "originalist" approach to constitutional interpretation advocated by Robert Bork, which would permit almost any gender-based distinctions in law or government policy. Judge Alito's views in this area must be carefully explored at his confirmation hearing.

Throughout his career, Judge Alito has taken positions and issued rulings detrimental to women in other areas of the law, including through his membership in an organization that was openly hostile to the admission of women and minorities to his alma mater, Princeton; his participation in cases where the Solicitor General argued against affirmative action policies; his vote to uphold a strip search of a woman and her ten-year-old daughter, even though they were not named in a search warrant, in Doe v. Groody, his opinion in Sabree v. Richman strongly suggesting that if he were to join the Supreme Court, he would change the law to limit, and potentially preclude, the ability of individuals to enforce federal rights such as rights to Medicaid, public housing, child support enforcement, and public assistance; and his denial of an asylum claim by an Iranian woman who asserted that if she returned to Iran she would be persecuted for her feminist beliefs.

This is a watershed moment for women's legal rights. In recent years, the Supreme Court has decided cases affecting women's legal rights by narrow margins. Justice Sandra Day O'Connor, the first woman on the Supreme Court, often has cast the decisive vote in these cases. With the retirement of Justice O'Connor, the Court will lose not only its first female Justice, but also the Justice whose vote often has been pivotal on issues critical to women. Judge Alito's record demonstrates that if he is confirmed to the Supreme Court, he is likely to eviscerate core rights that American women rely upon, and shift the Court in a dangerous and harmful direction. Based on the information available at this time, as summarized above, we conclude that Judge Alito should not be confirmed to the Supreme Court.

Sincerely,

NANCY DUFF CAMPBELL,
MARCIA D. GREENBERGER,
Co-President.

Mrs. CLINTON. Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Massachusetts.

Mr. KERRY. Mr. President, obviously, today we face one of the most important choices we make as Senators. This is a choice, as colleagues have said, that is going to affect the country for the next several decades.

To replace Justice Sandra Day O'Connor, the President has nominated a man who has consistently deferred to Government action regardless of how egregious that action may be. He has nominated a man whose pattern of decisions erects rather than breaks down barriers in the area of civil rights; a man who, to this day, has never retreated from his declaration that the Constitution does not protect a woman's right to privacy; a man who has demonstrated a persistent insensitivity to the history of racial discrimination in this country and was even, at the Government's request, willing to ignore overwhelming evidence that African Americans were intentionally stricken from an all-White jury in a Black defendant's capital case.

Judge Alito has been nominated to fill the seat, as we know, of an individual who has been the Court's swing vote; a woman who has upheld affirmative action programs; a woman who upheld the right to choose; a woman who upheld State employees' rights to the protections of the Family Medical Leave Act; a woman who recognizes that a declaration of war is not a blank check for the President's actions; a woman who decides each case narrowly on the facts presented, keenly aware of the greater impact that her decisions have.

So this is the contrast. We are being asked to confirm a nominee who will shift the ideological balance of the Court dramatically to the right. And many people are cheering for that.

We are being asked to confirm a nominee whose views will undermine a balance of power that I believe, and many others believe, literally keeps our country strong, a balance of power that helps to bring people together rather than divide them, that helps to apply the Constitution to people in all walks of life, not simply those with power and privilege.

For the reasons of this track record: the of his writings in the Justice Department, the questions unanswered in the hearings, the cases he has decided, where studies have shown a pattern of willingness to ignore our Constitutional rights and deny people access to our court system, for all of these and for other compelling reasons, I oppose this nomination.

In the past, in the 22 years I have been here, like many of my colleagues, I have voted for Federal court nominees despite the fact I disagreed with them ideologically. I have voted, I am confident, literally hundreds of times. In fact, I voted for Justice Scalia because despite our ideological differences, in the confirmation process he promised to be openmindedness that we have not seen in the Court.

So we have learned the hard way. The words of the confirmation hearings simply do not erase ideology, they do not erase a track record. And that ideology cannot be overlooked because a Justice's decisions can and will have a profound impact on the rights that we otherwise take for granted.

So something more is needed. A Supreme Court Justice needs to understand and have a record of respecting the constitutional rights and liberties which we confirm them to uphold. He or she needs to recognize the importance of precedent and the limited situations in which overruling is acceptable.

He or she needs to appreciate the significant struggles that our Nation has endured in the context of racial, sexual, and disability discrimination and to be aware of the road still to be traveled. And that awareness of the road still to be traveled has to be evidenced in the decisions and writings of that nominee. In short, ideology does matter. The Supreme Court's ideologically driven decisions have been the most regrettable in our Nation's history, decisions such as Korematsu, Dred Scott, and Plessy v. Ferguson.

In fact, ideology matters more in this nomination than it would in many others. We are replacing Sandra Day O'Connor, President Reagan's nominee to the Supreme Court, the person who has occupied the center of balance on the Court. She has been the deciding vote in critical cases involving and defining our constitutional rights and liberties. As we contemplate ripping that center out from under the Court, we have to understand what the impact of that action will be.

Given how high the stakes are, our decision simply cannot be based on whether Judge Alito is a smart man or whether he is a nice man or whether he is an accomplished man or even whether he is well respected in legal circles. He is all of those things. But what we need to consider is the impact that a Justice Alito will have on the Court and whether that impact is good for our country, good for our Constitution, and good for the American people.

I believe, based on his track record, the decisions already made, the writings already expressed, the questions that went un-answered, that the he will have a detrimental effect. President Bush had the opportunity to nominate someone who would have united the country. He could have nominated somebody who would have received 100 votes or 98 votes. He chose not to do this, which is his right. We all understand. We have heard the argument about the consequence of elections. The fact is, he chose not to do that.

The way in which this nomination came to us in the Senate tells us a huge amount what this nomination really means. The President was under fire from his conservative base for nominating Harriet Miers, a woman whose judicial philosophy was unmercifully attacked. President Bush, in the end, broke to those extreme rightwing demands. This was an ideological coup. Miers was removed and Alito was installed. The President didn't consult with the Senate, as required by the Constitution. He gave more thought to what the political needs were than to what the country's needs were. Indeed, he made this nomination about his political base. He made it about an ideological shift in the Court. He made it about unassailable conservative credentials and an unimpeachable conservative judicial philosophy.

If you want proof of that, all you have to do is look at the comments of people such as Ms. Ann Coulter. We all know Ms. Coulter is capable of being as inflammatory and conservative as anyone in the country, often engaging in character assassination. She denounced the nomination of John Roberts. She attacked the nomination of Harriet Miers, calling her completely unqualified and lamenting that President Bush had "thrown away a Supreme Court seat." Yet she celebrated the nomination of Sam Alito, stating that Bush gave the Democrats a "right hook" with this "stunningly qualified" nominee. This from a woman who said that the Republicans need to nominate a person who "wake[s] up every morning . . . chortling about how much his latest opinion will tick off the left."

Failed Supreme Court nominee Robert Bork had a similar reaction. He denounced the Miers nomination as "taking the heart out of a rising generation" of conservative constitutional scholars and "widen[ing] the fissures within the conservative movement." Yet he praised Alito's nomination as "substantially narrowing" that rift. In fact, he called the nomination something to "rejoice" because if Alito were confirmed, it would only take "one more Justice of the Roberts-Scalia-Thomas-Alito stripe to return the Court to so-called jurisprudential respectability."

Let's not forget conservative stalwart Pat Buchanan who denounced the Miers nomination as revealing the President's lack of desire "to engage the Senate in fierce combat to carry out his now suspect commitment to remake the Court in the image of Scalia and Thomas." Apparently, Mr. Buchanan believes that the Alito nomination demonstrates the President's change of heart. He heralded the nomination as one that would unite and rally the base, a nomination for the base, not the country.

They say you can tell a lot by somebody's friends. These three individuals are consistently on the furthest edge of the ideological spectrum. Their positions rarely advance the interests of average working folk in America. So perhaps it should come as no surprise that these folks have jumped to support Judge Alito.

After reviewing more than 400 of Judge Alito's opinions, law school professors at Yale concluded:

> In the area of civil rights law, Judge Alito consistently has used procedural and evidentiary standards to rule against female, minority, age, and disability claimants. . . . Judge Alito seems relatively willing to defer to the claims of employers and the government over those of advancing civil rights claims.

Similarly, a Knight Ridder review of Judge Alito's opinions concluded that Judge Alito "has worked quietly but resolutely to weave a conservative legal agenda into the fabric of the Nation's laws" and that he "seldom sided with a criminal defendant, a foreign national facing deportation, an employee alleging discrimination, or consumers suing big business."

After reviewing 221 of Judge Alito's opinions in divided cases, the Washington Post concluded that Judge Alito is "clearly tough minded . . . having very little sympathy for those asserting rights against the government." The pattern is clear, and I think it is unacceptable.

I don't think you should put somebody on the Court who makes access to justice in the United States harder and more elusive for people who already face incredible obstacles when trying to have their voices heard in court. I don't think we should put somebody on the Court who will fail to serve as an effective check on excessive Executive power.

If this pattern is not enough, as has been described by others, then all we to have to do is look at some individual cases. In Sheridan v. E.I. duPont De Nemours and Company, Judge Alito wrote a lone dissent opposed by all of the other judges on the court, eight of whom were Republicans. His opinion would have made it more difficult for victims of discrimination to sue their employers.

Applying a similarly high standard of proof, one that the majority believed would eviscerate the protections of title VII, Judge Alito dissented from a decision to allow a racial discrimination claim to go to trial in Bray v. Marriott Hotels.

These are all cases where people were trying to have their rights adjudicated, and disagreeing with his colleagues, including Republican-appointed judges, Judge Alito said no.

What is the practical impact of these decisions? Simple: They keep victims of discrimination from having their day in court.

If it is not enough to see this kind of insensitivity toward the victims of discrimination evidenced in those judicial opinions, in his 1985 job application to President Reagan's Justice Department, Judge Alito wrote that his interest in constitutional law was driven in part by a disagreement with Warren Court decisions on reapportionment, decisions which established the principle of one person, one vote. And he said that he was "particularly proud" of his work to end affirmative action programs.

Judge Alito's hostility to individual rights isn't limited to civil rights. He consistently excuses government intrusions into personal privacy, regardless of how egregious or excessive they are. In Doe v. Groody, for example, he dissented from an opinion written by then-Judge Michael Chertoff because he believed that the strip search of a 10-year-old was reasonable. He also thought the Government should not be held accountable for shooting an unarmed boy who was trying to escape with a stolen purse or even for forcibly evicting farmers from their land in a civil bankruptcy proceeding where there was no show of resistance from those farmers. He believed a show of force from the enforcers was reasonable.

This pattern of deference to power is reinforced by a speech he gave as a sitting judge to the Federalist Society just 5 years ago.

In that speech, Judge Alito "preached the gospel" of the Reagan administration's Justice Department, the theory of a unitary executive. And though in the hearings Judge Alito attempted to downplay the significance of this theory by saying it didn't address the scope of the power of the executive branch but, rather, addressed the question of who controls the executive branch, don't be fooled. The unitary executive theory has everything to do with the scope of Executive power.

In fact, even Stephen Calabresi, one of the fathers of the theory, has stated that "[t]he practical consequences of the theory are dramatic. It renders unconstitutional independent agencies and councils." That means that Congress would lose the power to protect public safety by creating agencies like the Consumer Products Commission, which ensures the safety of products on the marketplace, or the Securities and Exchange Commission which protects Americans from corporations such as Enron. And who would gain the power? The Executive, the President.

Carried to its logical end, the theory goes much further than simply invalidating independent agencies. The Bush administration has already used this theory to justify its illegal domestic spying program and its ability to torture detainees. The administration seems to view this theory as a blank check for Executive overreaching.

Judge Alito's endorsement of the unitary executive theory is not the only cause for concern. In 1986, while working at the Justice Department, he endorsed the idea that Presidential signing statements could be used to influence judicial interpretation of legislation. His premise was that the President's understanding of legislation is just as important in determining legislative intent as Congress's, which is absolutely startling when you look at the history of legislative intent and of the legislative branch itself. President Bush has taken the practice of issuing signing statements to an extraordinarily new level. Most recently, he used a signing statement to reserve the right to ignore the ban on torture that Congress overwhelmingly passed. He also used signing statements to attempt to apply the law restricting habeas corpus review of enemy combatants retroactively, despite our understanding in Congress that it would not affect cases pending before the Supreme Court at the time of passage.

The signing statements have been used to specifically negate or make an end run around very specific congressional intent. The implication of President Bush's signing statements are absolutely astounding. His administration is reserving the right to ignore those laws it doesn't like. Only one thing can hold this President accountable, and it is called the Supreme Court. Given Judge Alito's endorsement of the unitary executive and his consistent deference to government power, I don't think Judge Alito is prepared to be the kind of check we need. Reining in excessive government power matters more today to the average American than perhaps at any recent time in our memory, as we work to try to provide a balance between protecting our rights and our safety. As Justice O'Connor said: The war on terror is not a blank slate for government action. We can and must fight that in a manner consistent with our Constitution.

Last but certainly not least, I have grave concerns about Judge Alito's ability and willingness to protect a woman's right to choose. In his 1985 job application, Judge Alito wrote that he was "particularly proud" of his work arguing before the Supreme Court that "the Constitution does not protect a right to abortion." Now, all of us know this is an extraordinarily complicated issue. I don't know anybody here who is pro-abortion. But we are in favor of the right of people individually to make that choice for themselves rather than having the Government make that choice for them. And, the fact is that the Constitution protects that right.

Yet, in 1985, Judge Alito wrote a memo outlining a strategy for chipping away at Roe v. Wade, an approach he believed would be more successful than asking for an outright reversal. In his hearings, Judge Alito stated these statements were accurate reflections of his views in 1985. But what is more disturbing is what he refused to say. He refused to say his views have changed, that he accepted Roe v. Wade as settled law, which even Chief Justice Roberts did during his confirmation hearings. In other words, Judge Alito refused to give any assurances that his concept of the Constitution's protected liberty is consistent with mainstream America's.

I realize Judge Alito has promised he is going to keep an open mind, but I don't think any of us can be reassured by those words. We heard those very same words before. Justice Thomas repeatedly told the Judiciary Committee he would keep an open mind on this issue. But we all know that once safely on the Supreme Court, Justice Thomas voted to overturn Roe v. Wade months later, writing a dissent in Casey that likened abortion to polygamy, sodomy, incest, and suicide. Given Justice Thomas's success, you can almost imagine Karl Rove whispering to Judge Alito: Just say you have an open mind; say whatever it takes.

We cannot rely on these empty platitudes, and we obviously cannot rely on any promises of open-mindedness given to the Judiciary Committee, particularly when they are absent an acknowledgment of what is or what is not a settled law, particularly when the nominee's entire professional history suggests something very different, and particularly when the past promises of that very nominee have already been rendered meaningless by his actions once safely on the bench. In Judge Alito's 1990 Judiciary Committee hearings, he promised that he would recuse himself in any cases involving the Vanguard Company given his ownership of Vanguard mutual funds. In his Supreme Court hearings, he admitted he could not remember having put Vanguard on his permanent recusal list. We know it did not appear on his 1993, 1994, 1995, or 1996 list. So how do we know he kept his word to the Judiciary Committee? We don't. How can we trust him now? We can't.

I am deeply concerned about where we are heading with this ideological choice for the Court. I am deeply concerned about maintaining the integrity of our constitutional rights and liberties. I fear that the most disadvantaged in our society be locked out of our system of justice, a system that is already becoming increasingly harder for them to access. I fear that the President's powers will grow beyond what the Framers intended them to be, and I fear that Congress's hands will be tied even further and we will be unable to do the work of the American people.

Therefore, I cannot and will not vote to confirm a nominee who will shift the Court in this ideological way. I believe that Judge Alito had the burden of proving not just to me, but to the American people, that he would not be a Justice who would move the Court far to the right, that he would understand what was settled law and what was not. I believe he failed to carry that burden. I believe if he moves the Court in the direction that I think he will—I hope I am proven wrong, but if he moves it far to the right, then I think that those rights and values which we cherish so deeply will be set back and the country will move backwards with them.

Mr. President, I ask unanimous consent that letters to Senator LEAHY and Senator SPECTER in opposition to this nomination from the Women's Caucus, Black Caucus, and Hispanic Caucus all be printed in the RECORD at this time.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESS OF THE UNITED STATES,
Washington, DC, January 9, 2006.

Hon. ARLEN SPECTER,
Chairman, Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

Hon. PATRICK J. LEAHY,
Ranking Member, Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN SPECTER AND RANKING MEMBER LEAHY: As women Members of Congress who work hard to enact legislation and promote policies that protect women and ensure equality within our society, we fear our work, and the contributions of our colleagues who served before us, will be dismantled with the confirmation of Judge Samuel Alito to the U.S. Supreme Court.

We believe that Judge Alito poses a direct threat to the rights of women in America. As the attached memorandum details, Judge Alito has a long record of extreme views on women's reproductive health, sexual and workplace discrimination, the Family Medical Leave Act and civil rights. He has worked to thwart established precedent and has affiliated himself with radical organizations that have actively sought to keep women and minorities from advancing educationally and economically.

Under the scrutiny of the nomination process, it is not surprising that Judge Alito now disavows his positions on issues important to women and families in order to secure confirmation votes. But his record speaks to his true views and it speaks loudly. Rather than offering a balanced successor to the moderate views of Justice Sandra Day O'Connor and the majority of this nation, Judge Alito's nomination radically tips the scales of justice against women.

As guardians of the Constitution, Supreme Court Justices play a key role in protecting and ensuring our liberties. They are given life tenures and are expected to stay above the political fray so their decisions will be fair and unbiased. They must judge cases with impartiality and open mindedness, and they must respect settled law.

You have a responsibility to ensure that the highest court is not stacked against the hard fought rights that protect women across the country. When you consider the nomination of Judge Alito to the U.S. Supreme Court, we hope you will reflect on the milestones in women's rights and determine that America cannot afford to abandon these fundamental protections. We encourage you to review the attached memorandum which details many of the disturbing examples of Judge Alito's extreme views of women's rights in law. We urge you to consider that this lifetime appointment will have detrimental consequences for American women, and oppose the confirmation of Judge Alito as the next U.S. Supreme Court Justice.

Sincerely,

Louise M. Slaughter, Tammy Baldwin, Lois Capps, Jane Harman, Barbara Lee, Doris O. Matsui, Juanita Millender-McDonald, Hilda L. Solis, Corrine Brown, Rosa L. DeLauro, Eddie Bernice Johnson, Carolyn B. Maloney, Betty McCollum, Gwen S. Moore, Grace F. Napolitano, Linda T. Sánchez, Ellen O. Tauscher, Diane E. Watson, Jan

Schakowsky, Debbie Wasserman Schultz, Nydia Velázquez, Lynn Woolsey.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 6, 2006.
Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Hart Senate Office Building, Washington, DC.
Hon. PATRICK LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR CHAIRMAN SPECTER AND RANKING MEMBER LEAHY: As you examine the nomination of Judge Samuel Alito to the United States Supreme Court, we ask that you consider the particular implications that Judge Alito's confirmation would have on the Latino community.

We are deeply disappointed that President Bush did not take this third opportunity to nominate a qualified Latino to the Supreme Court. Given the size of the Hispanic community in the United States, the under-representation of Hispanics in the judiciary and the abundance of Hispanics qualified for appointment, it is difficult to comprehend the President's decision other than in the harsh light of political factors trumping all other considerations.

We do not need to stress to you the importance of this nomination and the impact that the Court has on the lives of our citizens. We are equally confident that you understand the critical role that the Supreme Court has played in safeguarding the rights of minorities. Oftentimes it is the Court to which minorities must turn for protection from discriminatory laws and practices. It is therefore important that nominees are sensitive to the experiences and struggles that minorities have faced in securing their constitutional rights.

While Judge Alito's background and record on the bench have been largely discussed in the public forum his opportunity to explain his opinions and philosophy will come during the confirmation hearings. Like all Americans, we deserve and expect clear answers on his record both on and off the bench, as many of his opinions and writings give us reason to be concerned. In order to better gauge his current attitudes, we respectfully request that you consider asking Judge Alito the attached questions or questions similar to these during the confirmation hearings in the Senate Judiciary Committee.

While we should not expect any Supreme Court justice to consistently rule in a manner that we agree with, we hope that the successor to Justice Sandra Day O'Connor will share her tradition of being fair, open-minded and unbiased towards any specific group.

Thank you for taking these views into consideration as you proceed with fulfilling your constitutional duty to provide advice and consent on Judge Alito's nomination.

Sincerely,
GRACE F. NAPOLITANO,
Chair, Congressional Hispanic Caucus.
CHARLES A. GONZALEZ,
Chair, CHC Civil Rights Task Force.

CONGRESSIONAL HISPANIC CAUCUS QUESTIONS TO SUPREME COURT JUSTICE NOMINEE JUDGE SAMUEL A. ALITO, JR.

A. RACIAL (ETHNIC) DISCRIMINATION: PEMBERTHY V. BEYER, 19 F.3d 857 (3D CIR. 1994)

Facts: Alito wrote majority opinion allowing "peremptory challenges" by the prosecution of bilingual prospective jurors because of concerns that ability to understand Spanish would jeopardize jurors' acceptance of official translations of tape recorded conversations.

Question: This holding would provide a vehicle for striking jurors based on ethnicity (i.e., Latinos more likely to speak Spanish) under the guise of "language concerns". Why isn't this unconstitutional as it relates to the prospective juror being struck (deprivation of right to serve on jury, participate in government)? Why isn't this unconstitutional as to the defendant per Batson precedent?

B. VOTING RIGHTS ACT: JENKINS V. MANNING, 116 F.3d 685 (3D CIR. 1997)

Facts: The issue was the "at-large" election of school board members. After reversing and remanding the District Court's ruling that no violation of the VRA took place, the District Court considered additional evidence and again found no violation. Judge Alito appears to have joined the majority in affirming the District Court's ruling. Judge Rosen's dissent is insightful and a good example of a judge's exercise of discretion in viewing the same evidence and reaching a decision that gives meaning to the VRA.

Question: The "Senate Factors" (after finding Gingles factors present) were additional and necessary considerations and consisted of (1) the extent to which minority group members had been elected to public office in the jurisdiction and (2) the extent to which voting in the elections of the political subdivision is racially polarized. Judge Alito found that the Senate Factors were met when historically only 3 of 10 black candidates over a 10 year period were successful (one in a never-repeated plurality win and one by a black candidate defeating another black candidate). Would Judge Alito please elaborate on his "judicial philosophy" when it comes to VRA and "at-large" voting districts?

C. IMMIGRANT RIGHTS: 1986 DEPUTY ATTORNEY GENERAL ALITO MEMO TO FBI DIRECTOR WILLIAM WEBSTER

Facts: The memo reflects Judge Alito's legal analysis that ". . . illegal aliens have no claim to nondiscrimination with respect to non-fundamental rights."

Question: In light of *Plyler* v. *Doe*, 457 U.S. 67 (1982), how does he reconcile his conclusions that appear to be based on the 1976 case of *Matthews* v. *Diaz*, 426 U.S. 67 (1976), obviously a case decided PRIOR to Plyler? Does he follow precedent only when convenient? If he is not willing to follow existing precedent (is there any other kind?), then it would appear that if he is able to establish "precedent" (that's what the Supreme Court does), he will do it readily and easily.

CONGRESSIONAL BLACK CAUCUS,
RAYBURN BUILDING
Washington, DC, January 17, 2006.
Hon. PATRICK LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: On December 8, 2005, the Congressional Black Caucus (CBC) announced its opposition to the confirmation of Judge Samuel Alito to the United States Supreme Court. We announced this decision prior to the Senate Judiciary Committee's confirmation hearings after making an extensive review of his record as a judge and as a high-level government official and after Judge Alito and the Administration failed to respond to our request for a meeting with the nominee. Unfortunately, nothing transpired at the hearings before the Judiciary Committee to change our view that Judge Alito should not be confirmed.

If the Senate values its own work on federal statutes in many areas of American life, it will find unacceptable Judge Alito's record as a frequent dissenter in commerce clause and other cases involving of long established congressional authority to enact laws benefiting Americans of every background. For example, his dissent in United States v. Rybar, in which he unsuccessfully sought to restrict congressional authority to regulate machine guns, is an example of a dangerous retrenchment that could have far-reaching consequences for many kinds of federal legislation that have long been considered well within congressional power.

However, the CBC is most especially concerned that Judge Alito's record on matters of race reflects a consistent pattern of hostility to race discrimination cases and remedies. This pattern places at extreme risk important work of the Supreme Court and the Congress to eliminate discrimination in voting, employment and other critical areas in which Judge Alito's dissents have left little doubt about his views. If he is promoted to the Supreme Court, where stare decisis is less constraining and where his views are no longer subject to reversal, his dissents can be expected to become the law of the land. In that case, we have no doubt that racial progress would be reversed, especially in light of the delicate 5-4 balance that has existed on the Court. We, therefore, believe that a vote for Judge Alito would radically change the Court and lead to an erosion of 50 years of jurisprudence on matters of race and equality. Our country moves in that direction at its peril.

We find extremely troubling the consistency and predictability of Judge Alito's hard-right views in an area that has been so critical to African Americans and where his views could become the decisive vote. The best evidence that Judge Alito is a judge of extreme views is the often strongly critical written opinions of his judicial colleagues. Faced with Supreme Court precedents upholding remedies for discrimination, Judge Alito has sought instead to close the Federal courts to job discrimination claims by using unprecedented technical evidentiary standards long rejected by the Supreme Court. For 40 years in an unbroken record of thousands of job discrimination cases, the Supreme Court and every federal circuit have left no doubt that discrimination claims must not be prematurely destroyed by requiring significant upfront evidence before trial. Consequently, all the Third Circuit judges in an en banc review in Sheridan v. E.I. DuPont de Nemours and Company criticized Judge Alito, the only dissenter, for seeking to elevate the standard necessary for a woman, who alleged her employer failed to promote her, to even get access to the Federal courts to attempt to prove discrimination. Undeterred, the next year in Bray v. Marriott Hotels, Judge Alito was similarly admonished by the Circuit's majority in a racial discrimination case in which a hotel employee was denied a promotion. In sharply criticizing Judge Alito, the majority said that if they followed his lead, "Title VII [the basic job discrimination statute] would be eviscerated."

Habitually attempting to use procedural technicalities to get around precedents, Judge Alito has been a virtually automatic vote to deny discrimination claims in 14 of the 18 job discrimination cases he has considered. In one of the cases, he favored white civil rights complainants, Pittsburgh police officers who sued alleging reverse discrimination, and in another he ruled in favor of a mentally disabled employee. Alito's hostility to discrimination cases could not be more systematic, carrying over to claims against the disabled as well, where the Third Circuit criticized his dissent that would allow "few if any" Rehabilitation Act plaintiffs access to the courts (Nathanson v. Medical College of Pennsylvania).

Considering the distance the Nation has come on race and the distance still to go, in our view the confirmation of Judge Alito would mark a dangerous step backwards. In our view, no one who reads his opinions can believe that he has the open mind required of a Supreme Court justice. Judge Alito moved from his days in the Reagan Justice Department, where he sought unsuccessfully to get the Supreme Court to restrict discrimination remedies, to the Third Circuit, where he has compiled a striking record as a dissenter, rather than follow employment discrimination precedents.

The evidence is too clear to leave any doubt about where Judge Alito would stand, for example, on fragile 5-4 rulings in which Justice O'Connor has been the deciding vote. Among these cases are the University of Michigan case upholding affirmative action in law school admissions (Grutter v. Bollinger) and other cases where the Court has allowed race to be considered as a factor to rectify discrimination. As we approach reauthorization of the Voting Rights Act in 2007, the Congressional Black Caucus cannot afford to forget that the 5-4 cases also include redistricting cases such as Hunt v. Cromartie.

A critical election year of accountability for the Congress must begin with how members of the Senate vote on this nominee. All that we have fought for in order to secure rights long denied African Americans is put at risk by this nomination. For African Americans, the stakes don't get any higher. Therefore, the members of the CBC are asking you and all of your colleagues to vote against the confirmation of Judge Alito.

Sincerely,

MELVIN L. WATT,
Chair, CBC.
ELEANOR HOLMES NORTON,
CBC Judicial Nominations Chair.

Mr. KERRY. I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SANTORUM. Mr. President, I rise today to give my full support to Judge Alito to be an Associate Justice of the Supreme Court. I am sure that will be no great surprise to those who have followed my career.

I want to lay out in brief why I believe Judge Alito is exactly the kind of Justice this country needs at this time and, candidly, is exactly the kind of Justice this country, for the most part, has had, in keeping with its constitutional traditions over the last 200-plus years.

Judge Alito is not from Pennsylvania, although he claims to be a Phillie fan, which is fine by me. I somewhat prefer the Pirates, being from Pittsburgh. I certainly respect him. He comes from the Third Circuit, which includes the Commonwealth of Pennsylvania. I have had an opportunity to talk to many of his colleagues on the court, Republicans and Democrats. Both Republicans and Democrats—everyone I have spoken to, and I have spoken to several—have praised him in the highest terms possible. Colleagues of his have stepped forward and have used terms of respect you don't often hear. Unfortunately, you don't often hear it around this body—certainly not lately—but you certainly heard it from them both privately and publicly, saying how much integrity the man has, how much his legal acumen is right on, as are his demeanor, jurisprudence, and humility—all of the things one would want to see out of a judge, and they speak in glowing terms about him. So that was my introduction to him.

I had never met Judge Alito prior to his nomination. When he was nominated, one of the first things I did was call some of his colleagues. I did it to get a sense of the kind of man he was. The response I received was overwhelming.

One of the things I want to cover is how I believe that his view of the role of a judge is very similar to John Roberts' view of the role of a judge. In fact, his record, in my opinion, and the way he approaches the law is remarkably similar to the judge who is now a Justice confirmed here in the Senate by 70-plus votes. I am somewhat at a loss to see why Judge Alito is not receiving similar support, because their records and their approach to the law are remarkably similar, in my mind. He is a judge who, when I met him, used very much the same terms as Justice Roberts—terms such as humility and modesty in dealing with the matters before them; that he was not to be a judge who was to impose his views on the case before him.

Many have tried to claim that somehow or another he is ideological. I don't think there is anything in the RECORD that would indicate Judge Alito applies his own personal viewpoints to the case at hand. He looks at the law, looks at the facts of the case and does his best on the narrowest grounds possible to decide the cases before him. That is what a judge is supposed to do—not say, gee, here is my opportunity to change the law, my opportunity to right a wrong that I think Americans or a particular State or the Government has done that I disagree with; here is my opportunity to change the law by using the force of the Constitution to impose my values. That is not what he does. Again, what he also doesn't do—and it strikes me as a very odd discussion when it comes to analyzing a judge's rulings on who he rules for, does he rule for the little guy or the big guy, as if little guys are always right and big guys are always wrong, or vice versa, for that matter. It is the idea that you don't decide the case before you based on the law and the facts but based on whether you like the plaintiff, or you like the defendant, or what is a sympathetic figure on one side or the other—that is about the worst kind of justice you can possibly acknowledge.

My colleagues who say he rules for the big guys or the big corporations, or whoever it is, are you saying every action that comes before the Court where a little guy is in a case, he automatically should win? Is that what it is? If you are not a judge who rules for the little guy all the time, is it true that somehow you don't have a proper view of the law? This is a remarkable discussion I keep hearing. I heard over and over again in the Judiciary Committee about the result of these cases and who he sides with. Is that somehow a point which is legitimate when it comes to a judge? The question is, is he an appellate jurist who was following the law? Was he properly applying the law to the case? It is not who won or lost the case. I find it very disturbing that we are reducing this confirmation process to whose side he ruled on and whether ideologically he fits a particular Senator's view of a particular issue or particular issues. That is not how we have ever viewed Justices in the Senate. We do not keep scorecards of whether you side with the little guy or big guy or how you came down on cases. We certainly have not had ideological litmus tests in the past on judicial nominations.

Those two things, I have to tell you, that have been some of the more frequent criticisms of Judge Alito trouble me as to how we are morphing the judicial process or the selection, approval, and confirmation process into sort of a campaign process, into a process of how we elect legislators and Presidents. We are not electing a legislator or a President, someone who we have a right to know their ideology or what side they are going to come down on.

We are electing someone whose job it is to play it right down the middle, whose job it is to be blind justice, who is going to weigh the facts in the law and do what it dictates, not do what they believe, in their ideological viewpoint, is right.

I am disturbed by the criticism, but I am very encouraged by Judge Alito and the way he has conducted himself and the way he answered the questions and how he has, in fact, laid out a very concise and well-reasoned approach to his making decisions on the Court in the past.

He obviously has impeccable credentials. The Senator from Utah is in the Chamber right now, and I heard him say over and over that no one has the credentials this man has and the experience he brings to the Supreme Court.

No one, in my view, has been more personally decent, humble, and modest dealing with a rather rancorous hearing process. He came off, at least from my view, as exactly the kind of temperament we would want of a Supreme Court Justice—of any judge. He is obviously highly intelligent, battling wits with some of the best minds in the Senate. During this process, both privately and publicly, he has been gracious. He is, again, someone I am very proud to support.

If I can, for a moment, talk again about where we are in the context of the role of the judiciary in our democratic process. We often talk about the tyranny of the judiciary—many on our side of the aisle do—how the judiciary has run amok in its ever-unceasing quest to take responsibilities and decisions away from the elected democratic bodies of our country and hoist it onto the backs of the Supreme Court or the courts in our country. That is a very dangerous precedent we have seen over the last 30 and 40 years in our courts, that increasingly decisions are being made by the judicial system and, in so doing, barring the House, the Senate, and the President from regulating or legislating in that area in the future, in a sense making these substantive decisions as to how we should live our lives, how our economy will function, how our laws will be written across the street in an unelected body as opposed to how the democratic process works—to have the people's collective will reflected in their laws.

One of the reasons I think these nominations are so important and maybe so contentious is because we are at a point right now where there has been a movement for many years to bypass the democratic process, bypass the people's Houses and go to the courts to get an extreme agenda passed and into law in this country.

The voices we have heard over the past couple of months during this nomination and which we heard somewhat more muted during the Roberts nomination were of those trying to hold onto power by holding onto a majority on the Supreme Court of the United States to continue to promulgate a far-left-of-center agenda on a variety of issues, using the Court as the place to silence the people in their collective judgments.

One of the reasons that I think is vitally important for putting a Judge Alito on this Court, and hopefully future Judge Alitos as other vacancies occur, is that we will have an opportunity to return a balance of power in this country away from nine unelected people across the street from the Senate to the halls of the people's bodies, to the living rooms of America, for them to be able to make these decisions that are important to the future of our country and not have those decisions taken from them by radical judges on our courts.

So this is an important step. Do I believe that we are going to see, as a result of Judge Alito's confirmation, which appears to be all but certain, a dramatic change in the precedents of the U.S. Supreme Court? I sort of doubt that we will see dramatic change, certainly not any time soon. But I think what we will see is a more modest approach to dealing with the problems with which the Supreme Court is confronted. We will not see cases where the Court could decide a case on a narrow issue and settle the dispute at hand and instead of doing so take the opportunity, "while we are at it," to overturn a variety of precedents they don't need to overturn and create new legislation, if you will, through their judicial opinions. We see that happen time and again. It threatens the very foundation of our country.

Thomas Jefferson understood that. Jefferson in 1821—this was after he was President, 5 years before he died, obviously a great student of our Constitution, obviously a great student of the powers of the Congress and the judiciary and obviously of the Presidency—he said, in reflecting on this very delicate system and the balance of power among the executive, the judicial, and the legislative branch:

> The germ of destruction of our Nation is in the power of the judiciary, an irresponsible body working like gravity by night and by day, gaining a little today and a little tomorrow and advancing its noiseless step like a thief over the field of jurisdiction until all shall render powerless the checks of one branch over the other and will become as venal and oppressive as the government from which we separated.

He saw the power of an immodest, a brash, a bold judiciary in its ability by using the ultimate law of the land, the Constitution, in grabbing power by day and by night quietly—drip, drip, drip—taking the power away from the people and ceding it to itself so that, to paraphrase Jefferson, they would be like the monarchs we left, ruling from their kings' benches.

This is a true threat, in my opinion, to the democracy in America today. Jefferson, as he did with many issues, had it right here too. There have been times in American history where the pendulum has swung in favor of one branch of Government to the other. I think this is such a time when we have seen that pendulum swing to the Supreme Court, and it is incumbent upon all of us to make sure that equilibrium is restored.

I know there are a lot of folks who are listening who say: I like the decisions the Supreme Court has made; that is why I am out here arguing, to make sure we can preserve that. I can say what is good for the goose is good for the gander. There may, indeed, come a day—although I hope it will not come—there may, indeed, come a day when this Court decides, since we have power to make laws in favor of those who like the recent decisions of the courts or decisions over the last 30, 40 years, there may come a time when they take that same authority and make a whole host of decisions that you don't like.

Whether I am in the Senate or somewhere else at that point in time, I hope I will have the integrity and the ability to stand up and criticize that Court such as I am criticizing the courts over the last 30 years for their activities. There is no place for the Court imposing its will and making laws. There is no place for that in our Constitution. That is not their role.

I am very pleased the President understands that and that he has put forth judges who I believe understand that point of view as a member of the judiciary. I am hopeful that we will confirm Judge Alito and that we will continue this process of creating a better balance of powers among the Congress, the executive branch, and the judiciary. This is a very important, in my opinion, second step in that process.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I enjoyed my colleague's remarks. We are in the final stretch of considering the nomination of Samuel Alito to the Supreme Court of the United States, and by any reasonable objective or traditional standard, Judge Alito deserves overwhelming confirmation, without question.

The first reason Judge Alito should be confirmed is that he is highly qualified to serve on the Supreme Court. It amazes me that some parties to this debate practically ignore his qualifications altogether. They are so intent on manufacturing a case against this nominee that they brush aside this seemingly minor detail of his qualifications as if it were just an annoyance.

After serving in the Department of Justice and as a highly regarded Federal prosecutor, Judge Alito has served on the U.S. Court of Appeals for the Third Circuit since 1990, has participated in nearly 5,000 cases, and has written more than 360 opinions. He has more judicial experience than any Supreme Court nominee in the last three-quarters of a century.

The American Bar Association, which conducts perhaps the most comprehensive and exhaustive evaluation of Supreme Court nominees, interviewed more than 300 people who know and have worked with Judge Alito. The American Bar Association, after all those interviews, unanimously gave Judge Alito its highest well-qualified rating. Here, too, it is amazing how some Senators and leftwing interest groups brush aside this ABA rating as if they were dusting the mantel.

While the ABA's role in the judicial appointment process has been controversial at times, certainly no one has ever charged it with a conservative bias—no one. It was my Democratic colleagues and their leftwing interest groups that once lauded the ABA rating as the veritable gold standard for evaluating judicial nominees.

The criteria for the ABA's highest well-qualified rating includes Judge Alito's compassion, openmindedness, freedom from bias and commitment to equal justice under the law. Judge Samuel Alito is eminently qualified to serve on the Supreme Court of the United States.

The second reason Judge Alito should be confirmed is that he is a man of character and integrity. Anybody watching those proceedings would have to conclude that. I have been struck, throughout this process, at the level of respect and praise for Judge Alito's character and integrity, how it is directly related to how well people know him, how closely they have worked with him. Without exception, those sounding the most dire warnings, creating the most negative caricatures, and painting the scariest picture of Judge Alito are those who know him the least or who do not know him at all.

We have heard from those who worked with him at the Department of Justice and in the U.S. Attorney's Office in New Jersey. We have heard from Judge Alito's law clerks and fellow judges, and there were dozens of those law clerks from all across the ideological spectrum who were supportive of Judge Alito.

Make no mistake, this is not a bunch of rightwing clones but a diverse group of men and women, liberals and conservatives of different religions and backgrounds. They do not agree with him on every issue or, in some cases, they don't agree with him on virtually any issue at all, but they all praise Judge Alito as a man of character and integrity. Judge Samuel Alito possesses the character and integrity necessary to serve on the Supreme Court of the United States.

The third reason Judge Alito should be confirmed is that he understands and is committed to the appropriately limited role of the judiciary. America's Founders established a system of limited Government containing three branches, each with its category of power and ability to check the others. The judicial branch is as much a part of this system of Government and must remain as limited as the legislative and executive branches.

The fight over judicial appointments is a fight over whether we should stick with the system America's Founders established.

Some want to change that system because, frankly, it does not give them everything they want.

Self-government, after all, can be a little messy and sometimes very frustrating.

Letting the people and their elected representatives make the law and define the culture means that, on any given day, certain political interests win and others lose.

Some who lose in the political process pick themselves up and try again another day.

Others leave the political process behind and go to the courts, trying to persuade judges to impose upon the American people policies and priorities the people would not choose for themselves, or they could never get through the elected representatives of the people.

The fight over judicial appointments is whether we should have judges willing to take such political bait.

It is fashionable in some circles to put the Supreme Court on a pedestal, pretending that a few unelected judges are supposed to lead us to some kind of promised land.

During the debates about Chief Justice John Roberts' nomination last fall and Judge Alito's nomination now, we have heard all sorts of grand descriptions of the judiciary's role and purpose.

The judiciary, we are told, is the engine of social progress, the protector of all our rights and liberties, even the savior of the environment.

Yesterday, in the Judiciary Committee's businss meeting, the ranking Democratic member said that the very reason the Supreme Court exists is to be "a constitutional check on the expansion of presidential power."

The Senator from Massachusetts, Senator KENNEDY, said the very same thing yesterday, that the Supreme Court's historic role is "enforcing constitutional limits on presidential power."

These grand descriptions give the impression that the Supreme Court alone polices our system of separated power, hands down decrees about issues, opines on abstract theories, and decides how best to order the universe.

It does no such thing. The last time I checked, most of the Supreme Court's cases have nothing whatsoever to do with issues such as presidential power, abortion, religion, or the environment.

The Supreme Court does not exist to run the country, right all wrongs, and usher in peace and domestic tranquility.

The judiciary is part of our system of limited government; it is not a system unto itself. It is that whole system of government, not anyone part of it, that protects our rights and liberties, checks excessive government power, provides for social progress, and all the rest.

As a part of that system, judges who exceed their proper role and power are no less a threat to liberty than legislators or the president who do so.

In the famous case of Marbury v. Madison, Chief Justice John Marshall wrote that the Constitution was designed for the government of courts as much as of legislatures.

As Chief Justice Roberts put it last fall, judges are not politicians.

The tendency of some in this debate simply to look at the results judges deliver is, therefore, misguided because it suggests that judges, as politicians, are free to take whatever side they choose and the only thing that matters is whose side judges are on.

This politicized approach misleads our fellow citizens about the judiciary and its proper place in our system of government.

America's founders had a very different view and, I am glad to say, Judge Alito sides with them.

As the Constitution puts it, judges exercise judicial power in the context of cases and controversies. Judges do not make the law they apply. Judges are neither school boards nor inspectors general. Judges are neither legislative oversight commissions nor political provocateurs. Instead, judges settle legal disputes by applying already established law to cases that come before them.

Because that is what they do, it is impossible to properly evaluate judges or judicial nominees the way we evaluate politicians, by the results they can be expected to deliver.

Yet that is exactly what we see in this judicial confirmation process.

To hear some of my Democratic colleagues and their left-wing interest group friends talk, there is absolutely nothing that is not the judiciary's job. That is ridiculous.

To hear some of them talk, everything is fair game for judges and the only thing that matters is who wins that game.

America's founders rejected that view, and Judge Alito should be confirmed because he rejects that view.

I hope we find more qualified men and women who believe there is something, anything, that is not a judge's job and appoint them to the judiciary right away.

While scorecards are familiar in the political process, they have no place in the judicial process.

Again, I quote Judge Alito: "I don't think a judge should be keeping a scorecard about how many times the judge votes for one category of litigant versus another in particular types of cases. That would be wrong. We are supposed to do justice on an individual basis in the cases that come before us."

Who can disagree with that? Yet, they seem to on the other side.

I hope that my fellow citizens are watching this debate, either live right now or when it is replayed later.

I ask my fellow citizens, do you agree with Judge Alito? Do your expect judges to do justice on an individual basis, to take each case on its own facts and its own merits, and to decide it solely according to the law? Or do you expect a judge to look at a case not as a legal dispute between real parties, but as a political issue, deciding it based on his opinion of the issue, practically before the case even comes before him?

Judge Alito rejects scorecards and tallies, he rejects percentages and patterns, and looks at each case based on its own facts and the law that applies.

I might add that at one time in the proceedings one of the Democratic Senators said he never ruled in favor of labor. We immediately showed a number of cases where he did. You can find rulings by Judge Alito across the spectrum with respect to people who should have won those cases.

Let me describe another revolutionary idea. Let me read it.

At his hearing, Judge Alito said that "although the judiciary has a very important role to play, it's a limited role. . . . Judges don't have the authority to change the Constitution. . . . The Constitution is an enduring document and the Constitution doesn't change."

Let me speak again to my fellow citizens out there who may be watching.

The first three words of the Constitution are "we the people."

The Constitution belongs to the people.

It does not belong to judges.

The Constitution, your Constitution—I am speaking to the people out there—already has a specific process for changing it, and the only branch of government involved in that process is this one, the legislative branch, the one you directly elect.

If America's founders explicitly excluded the judiciary from the process of changing the Constitution, do you think instead that judges should now be able to change the Constitution?

Do you believe that the Constitution, your Constitution, is whatever judges say it is?

It is the Constitution that ultimately protects our rights and liberties.

If the Constitution means whatever judges say it means, then our rights and liberties are whatever judges say they are. They are not elected. They are nominated, appointed and confirmed for life.

If that is what my Democratic colleagues and their left-wing interest group allies mean when they say the judiciary protects us, then do not sign me up for that protection package.

Our rights and liberties, and particularly the rights and liberties of the minority, are secure only when the constitution is solid.

Judge Alito is precisely the kind of judge who will protect our rights and liberties because he does not believe that he defines them.

So the case for Judge Alito's confirmation is overwhelming. He is highly qualified, he is a man of character and integrity, and he understands and is committed to the properly limited role of judges in our system of government.

In the past, this would have been enough for confirmation by a wide bipartisan margin.

Perhaps because this case for confirmation is so strong, Judge Alito's opponents have tried a host of attacks that not only have failed but have degraded this process along the way.

One is the familiar guilt-by-association tactic, trying to smear Judge Alito by attacking a group of conservative Princeton alumni to which he once belonged. Membership in this group, mind you, was nothing more than a magazine subscription. Imagine if someone tried to attribute to each of you everything published in every magazine or newsletter you receive.

Some Democratic Senators used this very illegitimate tactic on Judge Alito, selecting the most salacious or controversial articles which Judge Alito never read. One Senator even tried to pass a parody of such outrageous views off as the real thing. That is how denigrating this process became.

Our staff spent hours pouring through boxes of documents related to this group and the name Samuel Alito never appeared on a single scrap of paper—not one.

The disinformation was even worse in the media.

The group in question, or at least some of its members, wanted to preserve Princeton's all-male tradition and opposed affirmative action—in other words, affirmative action.

On January 6, a well-known pundit claimed on the FOX News Channel that Judge Alito himself was personally "trying to keep women and minorities out of Princeton."

I have been around for a long time, and I have seen a lot of bad journalism, but this goes beyond the pale. This goes beyond spin, beyond any reasonable characterization of the facts. In fact, it is ridiculous.

When I asked what the media characterizes as a softball question, sarcastically asking it, are you really against having women or minorities in colleges, anybody listening to that had to conclude I was being sarcastic. He said, Of course not.

When I said I thought that is what he thinks, I couldn't have been more sarcastic. But apparently I am so serious on most matters that people thought I was serious on that. But it is ridiculous, this guilt by association that went on, even in the committee, in something as important as the Judiciary Committee of the Senate.

Let me address a few of the other arguments by Judge Alito's opponents. Yesterday, at the Judiciary Committee markup, the Senator from New York, Mr. SCHUMER, tried once again to paint Judge Alito as an out-of-control judge, wantonly disregarding and seeking to disrupt his own court's past decisions. The political rhetorical value of the tactic is obvious. If Judge Alito played fast and loose with his present court's precedence, the story goes he would certainly do so on the Supreme Court.

The problem is that this claim, this picture of Judge Alito as an activist judge out to remake precedent in his own image is patently wrong. It bears no relationship to reality.

At Judge Alito's hearing, the Senator from New York cited a few cases in which colleagues disagreed with how Judge Alito treated the court's prior decisions. The Senator from New York made no attempt whatever to determine whether Judge Alito's position in those cases was right or wrong. He simply grabbed quotes supporting his preconceived point of view.

With all due respect to the judges who disagreed with Judge Alito in those cases, they could very well be the ones who misread or misapplied the Third Circuit's prior decisions.

What the Senator from New York never said was that Judge Alito has dissented in just 79 of the more than 5,000 cases in which he participated. That is a rate below the average for appeal court judges around the country.

Something else the Senator from New York has not revealed is Judge Alito has voted to overturn his own court's precedence just four times in his whole 15 years on the bench. In each of those cases in which all the judges of the circuit participated, Judge Alito was in the majority, and two of them were unanimous in each of those cases. He was in the majority, and two of them had a unanimous majority.

My colleagues will remember that seven of Judge Alito's current and former judicial colleagues appeared before the Judiciary Committee. Who better to give the Senate real insight of Judge Alito's approach to cases, his attitude toward litigants, and his perspective on the law? Better yet, what a unique opportunity to hear from those fellow judges about how Judge Alito handled precedent.

I might add that earlier in the hearing, for example, the Senator from New York quoted a passage critical of Judge Alito from the majority opinion in Dia v. Ashcroft. Chief Judge Anthony Scirica joined that opinion. Chief Judge Scirica was sitting right there in front of the committee.

The Senator from New York also quoted a passage critical of Judge Alito from Judge Leonard Garth's dissent in Bray v. Marriott Hotels. Judge Garth visited with us via teleconference from Arizona. That would have been a great opportunity to question the very judges on the side of the Senator from New York of evidence of Judge Alito's activism and disregard for precedent. Hearing it from them could be more meaningful than cutting and pasting a few selected quotes from poster board. Yet the Senator from New York did not ask those judges questions about this issue. In fact, he did not ask any questions at all because he did not attend that portion of the hearing. That was his right.

I asked him about it. I referred to the claims by the Senator from New York and asked the judges whether Judge Alito disregards precedent, whether he has an agenda to disrupt the court's prior decisions. Judge Edward Becker, former Chief Judge of the Third Circuit Court of Appeals, participated with Judge Alito in more than 1,000 cases. Judge Becker said he never saw Judge Alito disregard or ignore precedent. Judge Alito followed precedent unless he believed the precedent was distinguishable or was what judges called dicta—in other words, not binding language in a particular case.

Another judge on that distinguished panel was Judge Ruggero Aldisert, appointed nearly 40 years ago by President Lyndon Johnson, and still serving on the court. In addition to his many years of service in both the State and Federal courts, Judge Aldisert has written a well-known textbook on the judicial process. Judge Aldisert was a Democrat. I know him very well. I tried one of my first jury trials in front of Judge Aldisert in the common pleas court in the highest trial court in Pennsylvania. I got tears in my eyes when he appeared. But he, too, a Democrat, defended as sound Judge Alito's treatment of precedent.

I might add, chatting with Judge Aldisert afterwards, he had had a number of health problems. He risked his life to come back to right this wrong that had been done to one of his colleagues on the Third Circuit Court of Appeals. Judge Aldisert, when I knew him, and I have known him all these years, but when I knew him as a young trial lawyer in Pittsburgh, Judge Aldisert was the national president of the Italian Sons and Daughters of America. And proudly so. I was very proud of him when he went to the Third Circuit Court of Appeals and have been very proud of him since and proud of the scholarship he has written. He knows the difference between a good judge and a bad judge, and he has had a world of experience. I got very emotional when I saw him once again.

As I mentioned earlier, some of my Democrat colleagues are particularly fond of scorecards and tallies, thinking that tells anything useful about a judge's approach to the law. Perhaps they can create something like a confirmation rate card listing the percentage of cases in different categories that one side or the other is supposed to win. Plaintiffs should win this percentage of employment discrimination, the prosecution is allowed to win this percentage of criminal cases, and so on. Perhaps it can be a list titled “Whose Side Are You Supposed To Be On” as a judge. That is about the way it comes off. Before anyone dismisses this as ridiculous or farfetched, this is exactly what some of my Democrat colleagues and many of their leftwing interest group friends have done to Judge Alito.

In his opening statement on January 9, the Senator from Massachusetts, Mr. KENNEDY, cited a so-called study by University of Chicago law professor Cass Sunstein claiming that Judge Alito voted against the individual in 84 percent of his dissents. The Senator from Massachusetts did not quote from Professor Sunstein's letter that such statistics must be taken with “many grains of salt and with appropriate qualifications,” or Professor Sunstein's own admission that his analysis was done under what he called considerable time pressure, rendering his conclusions only tentative and preliminary. And, of course, the Senator from Massachusetts did not examine any of the dissents on the merits. He let the calculator do the talking. Remember, these are appeals. Most of the appeals are upheld on appeal.

Actually, the Senator from Massachusetts went much further than that. On the basis of this one tentative and preliminary statistic from this one study, he claimed that “average Americans have had a hard time getting a fair shake in [Judge Alito's] courtroom.” That is an outrageous claim, one that would not be at all justified even if the supposed evidence behind it were more legitimate.

Let us be honest about this. Saying a pattern of past decisions shows an entire group of litigants will have a hard time getting a fair shake in the future is to accuse Judge Alito of bias.

Before the Senator from Massachusetts or anyone else using this tactic gets indignant, throws up his hand and claims he never accused Judge Alito of bias, there is simply no other meaning to what was said.

I again call into contention the testimony of those seven judges, all circuit court of appeals Federal judges from all across the spectrum, who said Judge Alito has never demonstrated any bias toward anybody. I would much rather have their confirmation than any law professors in this country, especially any liberal law professor in this country, or conservative law professor. What else could the words “average Americans have a hard time getting a fair shake” actually mean?

Another example last week, Thursday, the Senator from Massachusetts claimed that while on the appeals court Judge Alito literally bent over backwards to “help the powerful.”

He said:

> The record is clear that the average person has a hard time getting a fair shake in Judge Alito's courtroom.

These are his words, not mine. Saying that Judge Alito bends over backwards to help the powerful means only one thing. Saying that a category of litigants will have a hard time getting a fair shake before Judge Alito means only one thing. If Senators wish to accuse Judge Alito of bias, they should do so up front, not through innuendo or hiding behind statistics.

Evaluating judges with a calculator is wrong, misguided, and misleads our fellow citizens about what judges do and the role they play in our system of government. Again, I call attention to the judges who appeared, all of whom spoke in favor of Judge Alito. In all honesty, let me choose the most liberal of those judges. He has some very interesting things to say. That was Judge Lewis who is retired now. He said:

> I am openly and unapologetically pro-choice and always have been. I am openly—and it's very well known—a committed human rights and civil rights activist and actively engaged in that process as my time permits. . . .
>
> I am very, very much involved in a number of endeavors that one who is familiar with Judge Alito's background and experience may wonder—“Well, why are you here today saying positive things about his prospects as a justice on the Supreme Court?”
>
> And the reason is that having worked with him, I came to respect what I think are the most important qualities for anyone who puts on a robe, no matter what court they will serve on, but in particular the United States Supreme Court.

He went on to say:

> As Judge Becker and others have alluded to, it is in conference, after we have had oral argument and are not propped up by law clerks—we are alone as judges discussing the case—that one really gets to know, gets a sense of the thinking of our colleagues. I cannot recall one instance during conference or doing any other experience that I had with Judge Alito, but in particular during conference, when he exhibited anything remotely resembling an ideological bent.

He endorsed Judge Alito in no uncertain terms.

Let me close by noting a few things I find encouraging. First, I am encouraged the attacks, distortions, and misleading claims about Judge Alito have not persuaded the American people. The leftwing interest groups have thrown everything they have against this nominee. It is shameful the way they act. One of their leaders said at the beginning of this campaign: You name it, we will do it. That is the type of opposition this man has had to endure.

They did it. We have seen millions of dollars spent week after week on petition drives, television ads, rallies, phone banks, and grassroots lobbying. The net result of that barrage of propaganda has been that support for Judge Alito's nomination among the American people has steadily increased—not a very good return on their investment.

In early November, Newsweek found that 40 percent of Americans thought Judge Alito should be confirmed. In

December, even polls conducted for liberal groups found that support had risen to nearly 50 percent. And this month, polls by CNN, FOX News, and Reuters find support even higher with Americans backing the nomination by a ratio of more than 2 to 1. A new Gallup poll conducted after Judge Alito's hearing last week shows support has risen by about 10 percent since early December. This is particularly significant because Judge Alito's opponents have issued all sorts of apocalyptic warnings and predictions. They have cast Judge Alito as a radical extremist, a threat to the environment and individual rights.

The Senator from Vermont has repeatedly said that all by himself, Judge Alito is a threat to the rights and liberties of all Americans literally for generations to come. The critics have said that Judge Alito would give the executive branch a blank check to invade your privacy, strip search children, and tap your phones.

According to the critics, if Judge Alito has his way, machine guns will flood our streets, big business will pollute the air and water, and the poor and down trodden will be unable to find justice.

I am pleased to say despite all of this propaganda, as CBS News found, the percentage of Americans having a favorable impression of Judge Alito has risen 50 percent since the end of October. I am also encouraged that not all Democrat leaders have abandoned reasonable, traditional, judicial confirmation standards.

Pennsylvania governor Ed Rendell, a past general chairman of the Democratic National Committee, yesterday described a confirmation standard that I hope his fellow Democrats would once again embrace.

He said that if a nominee is qualified and passes the test of integrity, elections matter and disagreement with some of nominee's positions or decisions are not enough to deny the President his appointment.

That was the standard that allowed President Clinton to appoint two liberal justices with minimal opposition.

I wish my Democratic colleagues would follow Governor Rendell's lead.

Finally, Mr. President, I am encouraged that Judge Alito will indeed be confirmed.

A highly qualified judge, a man of character and integrity, and someone who understands and is committed to the judiciary's properly limited role, will soon join the Supreme Court of the United States.

When Judge Samuel Alito becomes Justice Samuel Alito, our system of limited government under the rule of law will be stronger and the freedoms that system makes possible will be more secure.

I urge my colleagues to vote to confirm Judge Samuel Alito to the Supreme Court.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, we have Senators who wish to speak.

On several occasions, but publicly and privately, I have asked the distinguished senior Senator from Utah if he purports to quote me, to try to at least get within the ballpark of accuracy. I realize that is probably a failing and useless request after hearing him misquote me again the last few minutes, but I renew the request, and I hope that he would do that.

Mr. HATCH. Will the Senator yield?

Mr. LEAHY. To suggest that I have said—I would like to find the quote where I said that Judge Alito, all by himself, would do away with all the liberties of Americans.

I see the distinguished senior Senator from Florida, and I yield to the Senator.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, some things can get hot here, particularly when we get into personalities. Well, the senior Senator from Florida came here not to speak about personalities but to talk about the substance of the issue in front of us.

In the Good Book, the Gospel promises all of us impartiality at judgment. And I would suggest impartiality—or justice for all—is a principle embedded deep in our constitutional democracy.

I believe in an America where courts address injustice and correct it. I believe in an America where our judges serve the people by interpreting the Constitution, without agenda. I may have no greater responsibility in the Senate than to be charged by our Constitution with advising the President on his picks for the U.S. Supreme Court. And in assuming this awesome responsibility, I rise to oppose Judge Alito's confirmation to the Supreme Court.

Soon, the Supreme Court likely will hear cases about protecting our personal privacy from Government and corporate intrusion and about the sharing of power between Congress and the President. These decisions will have an important effect on each of our lives and on the future of our Nation.

In the break we had over the holidays, I had numerous townhall meetings all over my State of Florida. The residents shared with me their thoughts about Judge Alito. So I took all of that information, and that is why, then, I carefully studied his record over the past 15 years as a judge on the Third Circuit Court of Appeals.

During his time on the bench, Judge Alito ruled on cases ranging from the rights of individuals to the stewardship of the environment. After his testimony before the Judiciary Committee, and after studying his judicial record, I am concerned that he, more often than not, ruled in favor of big Government and big corporations over the ordinary American, putting trust in an authoritarian type of institution. That is a concern.

Following the hearings, I had the pleasure of personally meeting with Judge Alito to discuss my concerns. It was a very amiable and friendly conversation. He seems to be a very nice gentleman. But I explained to him some of my concerns. I explained how a recent Supreme Court decision has frightened many of our constituents who fear their homes can now be seized by the Government to make way for a private developer's project.

While he expressed sympathy for the parties whose homes had been seized, in this personal meeting with him, he offered no misgivings about the legal reasoning that led to that outcome.

I am concerned about his rulings in other cases pitting the Government against individuals, in the area of the environment, workers' rights, and racial discrimination.

In Public Interest Research Group of New Jersey v. Magnesium Elektron, he, Judge Alito, established high barriers to prevent individuals from being able to sue polluters for violations of the Clean Water Act. The U.S. Supreme Court later rejected this reasoning by a vote of 7 to 2.

In Chittister v. Department of Community and Economic Development, he ruled that State employees could not sue for damages to enforce their rights under the Federal Family and Medical Leave Act. The Supreme Court later reversed this ruling by a vote of 6 to 3. I might say that both of those acts under consideration by the Court I had the privilege of voting for when I was a Member of the House of Representatives.

And then in Riley v. Taylor, he ruled there was no basis for appeal in a death penalty case in which prosecutors had used their preemptory challenges to exclude Black jurors from the jury pool. The full Third Circuit later heard the case and overturned Judge Alito's ruling.

These cases highlight the broader concerns I have with Judge Alito's record.

During my years in the Senate, I have voted for almost all of President Bush's judicial nominees. All told, I have voted for 216 of the President's 226 judicial picks, including Chief Justice John Roberts. That is 96 percent.

I greeted Judge Alito's nomination with an open mind. But his many legal writings, his judicial opinions and evasive answers, both at his hearing and in my private meeting with him, convinced me that he would tilt the scales of justice ever so slightly against the average Joe. I do not want that outcome.

And because he is not the voice I believe this Nation needs to replace the retiring Justice Sandra Day O'Connor, who fiercely defended the rights and liberties of all Americans—because of this—I am going to vote no on his confirmation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, before I comment on the nomination, I would like to recognize and thank several people who have been very helpful in preparing my comments: Kara Stein, Justin Florence, and Sharon Rapport.

Mr. President, I also ask unanimous consent to have printed in the Record a series of letters from national organizations with respect to issues of church and state separation and the nomination of Judge Alito.

There being no objection, the material was ordered to be printed in the Record, as follows:

Americans United for Separation
of Church and State,
Washington, DC, January 10, 2006.

Hon. Arlen Specter,
Chairman, Committee on the Judiciary, U.S. Senate, Hart Office Building, Washington, DC.

Hon. Patrick Leahy,
Ranking Member, Committee on the Judiciary, U.S. Senate, Russell Office Building, Washington, DC.

Dear Chairman Specter and Ranking Member Leahy: Americans United for Separation of Church and State urges you to oppose the confirmation of Judge Samuel A. Alito, Jr. to be Associate Justice of the Supreme Court of the United States. Americans United for Separation of Church and State represents more than 75,000 individual members and 9,500 clergy nationwide, as well as cooperating houses of worship and other religious bodies committed to the preservation of religious liberty. We oppose the confirmation of Judge Alito to the Supreme Court because his record demonstrates that he would fundamentally alter First Amendment law and immediately put at risk many of the crucial protections for religious minorities that the Supreme Court has recognized and consistently enforced over the past sixty years.

Legal scholars have understood the First Amendment's religion clauses as striking a balance between the religious and political rights of individuals and groups within our society. There is a necessary tension between the Free Exercise Clause and the Establishment Clause, which serves to balance the sometimes competing interests of individuals' freedom of conscience against the requirement that the state be neutral with respect to religious viewpoints. Justice O'Connor has been successful in ensuring that public expression did not turn into government favoritism or state coercion of religious beliefs.

During his fifteen year tenure on the United States Court of Appeals for the Third Circuit, however, Judge Alito has shown himself to have a view of the First Amendment, particularly of the Establishment Clause, that differs dramatically from both Justice O'Connor's judicial philosophy and the settled understanding of fundamental Establishment Clause principles that has guided the Supreme Court's decisions for at least six decades. Indeed, early on, Judge Alito acknowledged his disagreement with the Supreme Court on its Establishment Clause jurisprudence. When applying for a position in the Reagan Administration Department of Justice, Judge Alito declared that his "deep interest in constitutional law [was] motivated in large part by disagreement with the Warren Court decisions, particularly in areas [such as] the Establishment Clause. . . ." As evidenced by his longstanding appeals court record, we remain concerned that such a motivation taints his view today.

There is much at stake for the future of religious liberty as a result of Justice O'Connor's retirement and Judge Alito's nomination to take her place on the Supreme Court. As Justice O'Connor has recognized, it is vital that our longstanding Establishment Clause protections remain in place:

"At a time when we see around the world the violent consequences of the assumption of religious authority by government, Americans may count themselves fortunate: Our regard for constitutional boundaries has protected us from similar travails, while allowing private religious exercise to flourish. . . Those who would renegotiate the boundaries between church and state must therefore answer a difficult question: Why would we trade a system that has served us so well for one that has served others so poorly?" (McCreary County, Kentucky v. ACLU of Kentucky, 125 S. Ct. 2722, 2746 (O'Connor, J., concurring)).

In the Establishment Clause area, replacing Justice O'Connor with Judge Alito likely would have a profound effect on the religious freedoms that our dual constitutional commitments to free exercise and separation of church and state have long ensured. Both the straightforward holdings and the underlying tenor of Judge Alito's decisions in Establishment Clause cases contrast sharply with Justice O'Connor's views. Throughout her career on the Court, Justice O'Connor has been keenly attuned to the plight of religious minorities in society as a whole, and most especially in the public schools. But Judge Alito's focus has been elsewhere: on religious majorities' ability to express their views through governmental instrumentalities, at government owned facilities, and in government-organized enterprises like the public schools. Judge Alito has given broad license to religious majorities to use the public schools and other official settings to broadcast their religious messages without regard for the competing rights and interests of religious minorities.

Because Judge Alito has not extended the same protections to all Americans that he has granted to politically powerful religious majorities, the Senate should decline to confirm his appointment as an associate justice of the U.S. Supreme Court.

If you have any questions on Americans United's position on this nomination, please contact Aaron D. Schuham, Legislative Director.

Sincerely,
Reverend Barry W. Lynn,
Executive Director.

B'nai B'rith International,
Washington, DC, January 6, 2006.

Hon. Patrick Leahy,
U.S. Senate,
Washington, DC.

Dear Senator Leahy: On behalf of B'nai B'rith International and our more than 110,000 members and supporters, we write to ask that the confirmation hearings of Judge Samuel Alito deeply probe the nominee's judicial philosophy with regard to issues of great concern to our organization. Founded in 1843, B'nai B'rith is America's pioneer Jewish agency, with a wide range of domestic and international public policy priorities. Included in our agenda are several issues that we would like to ask the Judiciary Committee to raise with Judge Alito:

(1) Church-State Relations. We hope the Committee will ask Judge Alito which judicial test should be applied to determine whether a particular government action violates the First Amendment's Establishment Clause. It might be helpful to ask if the nominee feels it is permissible for public school officials to lead students in prayer or scriptural readings, or whether he believes that public funds and public property may be used for religious displays. We also would be interested to learn whether Judge Alito believes that a statute or ordinance requiring schools to give "equal time" to instruction in creationism or intelligent design would violate constitutional principles.

(2) Asylum. B'nai B'rith hopes the Committee will ask the nominee what standard should be applied to asylum claims by individuals facing persecution in their homelands. We would be interested to know what threshold of harm, or risk of harm, a person fleeing a repressive society must demonstrate before receiving asylum in the United States.

(3) Workplace Discrimination. B'nai B'rith would like to hear Judge Alito's views on the standard that should be applied to cases of age, disability, or sexual discrimination in the workplace. It would be useful to know the nominee's position on the burden of proof an older worker must meet to demonstrate that he or she has been passed over for promotion, denied accommodation, or unfairly rejected as a job applicant because of his or her age or disability.

Thank you for your attention and consideration. B'nai B'rith looks forward to remaining in communication with you about this and other matters of mutual interest in the months to come.

Respectfully,
Joel S. Kaplan,
President.
Daniel S. Mariaschin,
Executive Vice President.

Unitarian Universalist Association of Congregations,
Washington, DC, December 15, 2005.

UNITARIAN UNIVERSALIST ASSOCIATION OF CONGREGATIONS URGES OPPOSITION TO THE CONFIRMATION OF JUDGE SAMUEL ALITO JR. TO THE UNITED STATE SUPREME COURT

Dear Senator: On behalf of the over 1,000 congregations that make up the Unitarian Universalist Association, I urge you to oppose the confirmation of Judge Samuel Alito Jr., to the United States Supreme Court. After a careful review of his decisions, and in particular dissents, we have concluded that Judge Alito does not show sufficient respect for civil liberties. His deciding vote on the court could undermine fundamental rights for decades.

The decision to take a position on a judicial nominee is not one the UUA takes up lightly—or frequently. Indeed, it was only in 2004 that our highest policy-making body approved language explicitly stating that the Association would oppose nominees whose records demonstrated insensitivity to civil liberties. We did not take a position on the confirmation of either Judge John Roberts or Harriet Myers.

The nomination of Judge Samuel Alito Jr. is significantly different, in that he has an extensive judicial record—more than 15 years on the 3rd Circuit Court of Appeals—that clearly reveals his judicial philosophy on a wide range of issues. After extensive research, Unitarian Universalist Association staff agreed that Judge Alito's rulings demonstrate a pattern of views that were outside the mainstream and hostile to established precedent favoring civil liberties. In case after case, Judge Alito found against the rights of individuals in relation to government or corporations. In at least six cases, the Supreme Court voted to overturn decisions of the Third Circuit or Alito's dissent in Third Circuit cases. Several notable cases and patterns are mentioned below.

Police Power: In the case of Doe v. Groody, Judge Alito dissented from a Third Circuit ruling that police officers had violated clearly established constitutional rights. Police had strip-searched a mother and her ten-year-old daughter while executing a search warrant authorizing only the search of her husband and their home. Then-Third Circuit Judge Michael Chertoff, now Secretary of Homeland Security, held that the unauthorized search violated "clearly established" rights. Alito disagreed, arguing that even if the warrant did not authorize the search, an officer still could have read the warrant as allowing it.

Religious Liberty: In the case of ACLU-NJ v. Schundler, Judge Alito held that religious symbols displayed on government property during the holiday season (in this case a crèche and menorah) were not unconstitutional when "secular" decorations such as Frosty the Snowman and Santa Claus were subsequently added to the display. While Justice O'Connor has voted to allow secular holiday displays, she has rejected efforts for religious symbols, including the Ten Commandments, to stand alone in public display.

In ACLU of New Jersey v. BlackHorse Pike Regional Board of Education, Judge Alito joined a dissent from the Third Circuit's ruling which struck down a public school board policy allowing high school seniors to vote on whether to include student-led prayer at their school-sponsored graduation ceremonies. In a subsequent case (Santa Fe Independent School District v. Doe), the Supreme Court, with Justice O'Connor in the majority, struck down a public school board policy allowing students to vote on whether to include student-led prayer at high school football games.

Limiting Access to the Courts: Among the most troubling pattern is Judge Alito's consistent finding that plaintiffs in discrimination cases did not have enough evidence to bring their cases to trial. By denying even the opportunity for judicial remedies, Judge Alito's philosophy undermines one of the most fundamental checks and balances in our system of government. For example:

Judge Alito has strongly disagreed with Third Circuit rulings protecting the civil rights of African Americans. In Bray v. Marriot Hotels, Alito disputed a ruling by Theodore McKee—the Circuit's only African American judge—allowing a race discrimination case to go to trial. McKee said that Alito's position would "immunize an employer from the reach of Title VII if the employer's belief that it had selected the 'best' candidate, was the result of conscious racial bias."

Judge Alito has narrowly construed statutes in gender discrimination cases. In Sheridan v. E.I. DuPont de Nemours and Co., Alito was the only judge to dissent from a ruling clarifying the nature of evidence permitting a jury to find an employer engaged in discrimination. Alito's position would have denied the plaintiff the opportunity to go to trial despite significant evidence of discrimination.

Judge Alito's dissents would have made it harder for victims of discrimination based on disability to prove their cases. In Nathanson v. Medical College of Pennsylvania, the majority lamented that under Alito's restrictive standard for proving discrimination based on disability under the Rehabilitation Act of 1973, "few if any Rehabilitation Act cases would survive summary judgment."

Reproductive Freedom: Dissenting in Planned Parenthood v. Casey, Judge Alito wrote that the right to reproductive freedom does not prevent states from requiring women to notify their spouses, except in limited circumstances, before getting an abortion. Justice O'Connor cast the deciding vote rejecting Judge Alito's position. Joined by Justices Kennedy and Souter, O'Connor held that the provision Alito supported harkened back to the days when "a woman had no legal existence separate from her husband" and created an undue burden on a woman's ability to obtain an abortion.

WE ARE NOT ALONE

When the Unitarian Universalist Association makes a decision to adopt a particular stance, we generally find ourselves in the company of other religious organizations with similar views. This holds true for our opposition to the confirmation of Judge Alito.

In late November, the biennial convention of the Union for Reform Judaism—the largest branch of Judaism in North America—voted overwhelmingly to oppose Judge Alito's confirmation, saying that it "would threaten protection of the most fundamental rights" that the Reform Movement supports. "On choice, women's rights, civil rights and the scope of federal power," Alito would "shift the ideological balance of the Supreme Court on matters of core concern to the Reform Movement," according to the resolution adopted by the more than 2,000 voting delegates from more than 500 congregations in all 50 states.

Both our denominations reviewed Judge Alito's rulings and found that his record did not support our stated values. The Unitarian Universalist Association of Congregations criteria and supporting materials are available at http://www.uua.org/. Materials from the Union for Reform Judaism can be found at http://urj.org.

Liberty is at the core of our Unitarian Universalist faith. Civil liberties are at the heart of our American experiment in democracy. Those civil liberties guaranteed by the Bill of Rights are as fundamental to our practice of democracy as freedom of conscience is to our religion. We believe that Judge Alito's philosophy does not sufficiently respect these fundamental rights, and we urge you to oppose his confirmation.

In Faith,

ROBERT C. KEITHAN,
Director.

WOMEN OF REFORM JUDAISM,
New York, NY, January 9, 2006.

Hon. PATRICK J. LEAHY,
Ranking Member, Senate Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: Recognizing the profound significance of the Judiciary Committee hearings on the nomination of Judge Samuel Alito, Jr. to the United States Supreme Court for the future of jurisprudence in the United States, Women of Reform Judaism, comprised of 75,000 members in 550 affiliates in North America urges you to oppose his confirmation.

Women of Reform Judaism rarely opposes judicial nominations. Its resolution "Judicial and Executive Branch Nominations" adopted in 2004, however, emphasizes the need for balance of legal and social perspectives on the federal bench. This resolution also enables Women of Reform Judaism to oppose judicial candidates whose record demonstrates opposition to the core values, rights and principles supported by our organization.

In his years in the Reagan Administration and on the Third Circuit Court of Appeals, Judge Alito has been a strong and consistent voice for restricting women's rights, extending police powers and destroying the wall separating church and state in schools and in community religious displays. Judge Alito has also taken anti-affirmative action positions and has supported stringent barriers in discrimination cases. Judge Alito's vote could be a crucial one on the court in all these areas and more, replacing the balance provided by Justice Sandra Day O'Connor with a marked shift that would endanger the civil liberties and civil rights of the people of the United States.

Committed to the precepts of our tradition and adhering to the words of Deuteronomy, which tell us to pursue justice (Deuteronomy 16:20), we look to the Supreme Court to protect the civil liberties and civil rights of all Americans. Based on his record, we are concerned that Judge Alito will be unable to put aside his private views to dispense equal justice for all and oppose his confirmation.

Respectfully,

SHELLEY LINDAUER,
ROSANNE M. SOLFON.

RELIGIOUS ACTION CENTER
OF REFORM JUDAISM,
Washington, DC, January 11, 2006.

Hon. ARLEN SPECTER,
U.S. Senate, Hart Senate Office Building, Washington, DC.

Hon. PATRICK J. LEAHY,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATORS SPECTER AND LEAHY: As you consider the nomination of Judge Samuel Alito Jr. to the Supreme Court of the United States, we write on behalf of the Union for Reform Judaism, encompassing 1.5 million Reform Jews in 900 congregations across' North America, to express our opposition to Judge Alito's nomination.

Our decision to oppose Judge Alito's nomination was not taken lightly. During the debate on the nomination at our recent Biennial General Assembly Reform Jews old enough to remember the significant role the Supreme Court played in extending basic human and civil rights to all Americans cautioned the delegates about the danger of a Court whose members have records in opposition to defending those rights. Our Movement's youth spoke of cherished constitutional rights that, with but one Supreme Court justice's vote changing the balance of the court, could be undone, altering their lives and those of the generations to follow. The older members did not want to leave this legacy, and the youth did not want to inherit it.

In 2002, the Union for Reform Judaism adopted a resolution that established our criteria for considering nominees to the federal courts. Under these criteria, which are not limited to issues of character or professional competence, we will oppose a nominee in those rare cases in which after consideration of what the nominee has said and written, and his or her record, a compelling case can be made that the appointment would threaten protection of the most fundamental rights which our Movement supports. Based on these criteria, in November of 2005 we resolved to oppose the nomination of Judge Samuel Alito Jr. to the Supreme Court of the United States believing that:

Judge Alito's elevation to the Supreme Court would threaten protection of the most fundamental rights which our Movement supports including, but not limited to, reproductive freedom, the separation between church and state, protection of civil rights and civil liberties, and protection of the environment;

On choice, women's rights, civil rights, and the scope of federal power (particularly as it relates to civil rights and environmental protection), Judge Alito's nomination has sparked a national debate on one or more issues of core concern to the Reform Movement so that the outcome of the nomination is likely to be perceived as a referendum on that issue and will have significant implications beyond the individual nomination;

Many of his rulings have been contrary to our core values and differed from the views of Justice Sandra Day O'Connor (who was so often the moderate "swing vote" on a closely divided Supreme Court), and, consequently, Judge Alito's elevation would shift the ideological balance of the Supreme Court on matters of paramount concern to the Reform Movement; and

Judge Alito's elevation to the Supreme Court would likely contribute significantly to reshaping American jurisprudence in a direction that would jeopardize our core values.

Judge Alito's government service, and especially his fifteen-year record on the 3rd Circuit Court of Appeals, provide clear insight into his judicial philosophy and understanding of the Constitution. His rulings from the bench in many areas of great import to the Reform Movement, and the views he expressed while working at the Department of Justice, demonstrate to us that he should not be confirmed.

As a religious minority, our community has historically been committed to maintaining a strong wall of separation between church and state. We see nothing in Judge Alito's background to suggest he shares our commitment. In fact, in his 1985 job application to the Reagan Justice Department, Judge Alito wrote that one of the very reasons he became interested in constitutional law was his "disagreement" with the Warren Court's decisions regarding the Establishment Clause. His opinions as a sitting judge have been consistent with this claim. In ACLU-NJ v. Schundler, Judge Alito said it was constitutional to have a holiday display consisting of a crèche (a representation of the infant Jesus in the manger), a menorah, a Christmas tree, and other "secular holiday" displays in front of the entrance to the main city government building. Again evidencing his lack of commitment to Establishment Clause values, in ACLU of New Jersey v. Black Horse Pike Regional Board of Education, Judge Alito's dissenting opinion argued that it was constitutional for a public school district to allow prayer at graduation ceremonies. Later, in a similar case involving school prayer the Supreme Court disagreed. The statements in Judge Alito's 1985 job application and the aforementioned cases illustrate his indifference (at best) to the constitutional protections separating church and state; safeguards that have been the linchpin protesting religious liberty for all Americans.

A longtime advocate for women's rights and reproductive choice, the Reform Movement is also deeply concerned by Judge Alito's views on reproductive rights. During his time as an attorney in the Solicitor General's office, Judge Alito helped author the Reagan Administration's amicus brief in Thornburgh v. American College of Obstetricians and Gynecologists which argued for overturning the Roe v. Wade decision. Judge Alito also authored a 17-page memo to the Solicitor General on how to "advance the goals of bringing about the eventual overturning of Roe v. Wade . . ." Further, in his 1985 job application to the Reagan Justice Department he wrote of his work in the Solicitor General's office saying, "it has been a source of personal satisfaction to me . . . to help advance legal positions in which I personally believe very strongly. I am particularly proud of my contributions to recent cases in which the government has argued in the Supreme Court that . . . the Constitution does not protect a right to an abortion." This dedication to the "advancement" of reversing Roe is also clearly illustrated by his dissenting opinion in Casey v. Planned Parenthood (1991). Judge Alito would have upheld a provision of Pennsylvania's restrictive anti-abortion law requiring a woman to notify her husband before obtaining an abortion. His colleagues on the Third Circuit disagreed and the Supreme Court overturned the Pennsylvania provision (with Justice O'Connor casting the deciding vote). The Court's majority opinion found that the provision Judge Alito would have upheld reverted back to the days when "a woman had no legal existence separate from her husband."

So often our nation's courts ensure civil rights and civil liberties that are otherwise unprotected by flawed systems and discriminatory actions. In order to continue administering justice and equality for all, individuals with grievances must have access to the courtroom. Here, too, the record suggests that Judge Alito does not share our commitment to this fundamental principle. In split decisions on the merits of claims alleging violations of the civil rights of racial minorities, women, seniors, and people with disabilities, Judge Alito has consistently ruled with the defendants. In 16 of 24 such cases, Judge Alito has voted to deny litigants the right to even bring their suit before the court. For example, in Bray v. Marriott Hotels, involving claims of race discrimination, the Court majority sharply criticized Judge Alito's dissent, stating that his "position would immunize an employer from the reach of Title VII" in certain circumstances. In Public Interest Research Group v. Magnesium Elektron, another case involving access to the courtroom, Judge Alito again voted to make it harder for citizens to establish standing to sue, this time concerning toxic emissions that violate the Clean Water Act.

Judges, especially those selected to serve on the highest court in our land, must be committed to upholding our foundational principles of liberty and equality. Judge Alito's record leaves us with serious doubts as to his ability to safeguard these rights that we as a Movement, and a nation, hold so dear. Here, with the stakes so high—a lifetime appointment to the nation's highest court, replacing a pivotal Justice who was often the "swing vote" in key areas—we cannot afford such doubts.

We, therefore, urge you to oppose the nomination of Judge Samuel Alito Jr. to the Supreme Court of the United States, and we stand ready to discuss our concerns with you or your staff in greater detail.

Respectfully,

RABBI DAVID SAPERSTEIN,
Director, Religious Action Center of Reform Judaism.
JANE WISHNER,
Chair, Commission on Social Action of Reform Judaism.

NATIONAL COUNCIL
OF JEWISH WOMEN,
November 29, 2005.

Hon. ARLEN SPECTER,
Chairman, Senate Judiciary Committee, Hart Senate Office Building, Washington, DC.

DEAR CHAIRMAN SPECTER: I am writing to you on behalf of 90,000 members and supporters of the National Council of Jewish Women (NCJW) to express our strong opposition to the nomination of Judge Samuel A. Alito, Jr. to fill the seat of Justice Sandra Day O'Connor on the U.S. Supreme Court. We have decided to oppose Judge Alito for many reasons, most notably because of his record concerning the right to privacy, his views on civil rights and women's equality, and his support for weakening the wall of separation between religion and state. In light of this record, NCJW believes that Judge Alito should not be confirmed for a lifetime position on the Supreme Court.

When Justice Sandra Day O'Connor announced her intention to retire from the Supreme Court, NCJW called upon President Bush to seek a mainstream consensus nominee that would unite and not divide the nation. Instead, he has selected a nominee who is deeply ideological with a demonstrated commitment to pulling the court to the far right.

Judge Alito is clearly not a nominee in the tradition of Justice O'Connor, who sought to balance competing interests and adopted a pragmatic approach to the law. Rather, over the course of his career, Judge Alito has ruled to severely restrict a woman's constitutional right to abortion and against civil rights protections for both women and minorities. He has shown a cramped view of the power of Congress to legislate, ruling, for example, that Congress lacked authority to ban fully automatic machine guns and that Congress overstepped its bounds in passing the Family and Medical Leave Act.

With the withdrawal of the nomination of Harriet Miers to the Supreme Court, it became clear that the extreme right wing was determined to see a justice confirmed who would implement their agenda from the bench. Judging from his record, Samuel Alito appears to be just such a nominee. We are extremely disappointed that the President chose this path and gave in to those forces demanding a nominee dedicated to rolling back fundamental constitutional rights, rather than protecting them. We urge the Senate to reject Judge Alito's nomination.

We applaud your intention to hold hearings that will thoroughly explore Judge Alito's views and judicial philosophy. While we hope that he will be candid in his answers, the hearing is only part of the record that senators must take into consideration as they determine whether or not a nominee is fit to be confirmed to be an Associate Justice of the Supreme Court. With the stakes so high, it is all the more critical that the Senate take into account Alito's entire record—not just his brief appearance before the Judiciary Committee. President Bush must immediately turn over all of the records requested by the senators. And Judge Alito must now be forthcoming regarding his judicial philosophy and views on settled legal questions.

NCJW believes that the most basic qualification for a lifetime seat on the federal bench is a commitment to fundamental rights and freedoms. What we know of Judge Alito's record raises sufficient doubt that he meets that essential qualification and therefore we urge the Committee to reject his confirmation.

Sincerely,

PHYLLIS SNYDER,
NCJW President.

Mr. REED. Mr. President, nearly two centuries ago, Alexis de Tocqueville observed that "there is hardly a political question in the United States which does not sooner or later turn into a judicial one."

As was the nomination of John Roberts to replace Chief Justice Rehnquist, the nomination of Samuel Alito to replace Associate Justice Sandra Day O'Connor, upon her retirement, is an extremely important moment for our Nation.

The Constitution makes the Senate an active partner, along with the President, in the confirmation of a Supreme Court nominee. Article II, section 2, clause 2 of the Constitution states that nominees to the Supreme Court shall only be confirmed "by and with the Advice and Consent of the Senate." The Senate's role in the confirmation process places an important democratic check on America's judiciary.

As a result, this body's consent is both a constitutional requirement and a democratic obligation. It is in upholding our constitutional duty as Senators to give the President advice and consent on his nominations to Federal courts that I believe we have our greatest opportunity and responsibility to support and defend the Constitution of the United States.

In our consideration of the nomination of Chief Justice Roberts last fall, I stated my test for a nominee to the Supreme Court. It is a simple test, one drawn from the text, the history, and the principles of the Constitution. As I said then, a nominee's intellectual gifts, experience, judgment, maturity, and temperament are all important. But these alone are not enough.

In addition, a nominee to the Supreme Court must live up to the spirit of the Constitution. A nominee must not only commit to enforcing the laws, but to doing justice. A nominee must give life and meaning to the great principles of the Constitution: equality before the law, due process, freedom of conscience, individual responsibility, and the expansion of opportunity.

It is these principles that ensure full and equal participation in the civic and social life of America for all Americans. A nominee to the Supreme Court must make these constitutional principles resonate in a rapidly changing world.

In my view, Judge Alito has not met this test. In his personal writings from his time in the Reagan Department of Justice, he has outlined a view of the Constitution that is narrow, restrictive, and backward-looking on issue after issue. He has pursued this vision through both the clients he has chosen to represent and the causes he has chosen to advocate.

In addition, his opinions on the Third Circuit Court of Appeals have shown the impact of his personal philosophy on his role as a judge. Too many times he has read constitutional clauses and statutes in a narrow and cramped way to protect the Government or big corporations instead of ordinary Americans. In case after case, and in his testimony before the Judiciary Committee, Judge Alito has failed to show a commitment to protecting the spirit of the Constitution.

Indeed, during his hearings, he had a chance to answer questions about his prior writings and rulings in a clear manner. Instead, Judge Alito opted to speak in broad platitudes and failed to answer key questions in a manner that would qualify or put in adequate context his prior writings and rulings.

Part of the genius of the Constitution that our Founding Fathers drafted is that it fulfills two functions at once. It is a blueprint for our Nation to govern itself through a system of checks and balances. It is also a charter of the rights and liberties of the American people. I am deeply concerned about Judge Alito's views in both of these areas. Judge Alito's record on the Third Circuit shows he has joined or agrees with a movement to undermine the ability of Congress to protect the American people through restrictive interpretations of the Commerce Clause and the 14th amendment. The Supreme Court, in recent years, has struck down more acts of Congress than ever before. By narrow 5-to-4 margins, in cases such as United States v. Lopez and United States v. Morrison, the Court has drifted from longstanding Supreme Court precedents to invalidate portions of the Gun-Free School Zones and the Violence Against Women Acts.

Judge Alito would go even further. In his dissent in the case of United States v. Rybar, he advocated striking down Congress's ban on the transfer and possession of machineguns. Alito's opinion diverged not just from the majority in his own Third Circuit but also from five other courts of appeals that had already found the law to be a constitutional expression of Congress's authority.

Yet Judge Alito argued that he was not convinced by Congress's findings on the impact of machineguns on interstate commerce. He substituted his own policy preferences in a way that the Third Circuit majority found was, in their words, "counter to the deference that the judiciary owes to its two coordinate branches of government." Every other circuit has since disagreed with Judge Alito's views on this case, and the Supreme Court has concurred in these circuit court decisions.

Judge Alito's divergence from mainstream constitutional views on this issue is particularly disturbing because it echoes personal views on congressional authority he has expressed in other contexts. For example, while working in the Reagan administration, he argued in a memo that the Truth in Mileage Act of 1986 "violates the principles of freedom" and should be vetoed by the President. This Federal law requires a seller to disclose the vehicle's mileage on the title when ownership is transferred. Congress enacted this law to prohibit odometer tampering and to protect consumers from mileage fraud. Samuel Alito argued that it was the States, and "not the federal government," that should protect American citizens.

Not only does Judge Alito have an unusually narrow view of the Commerce Clause, it also appears that he would restrict Congress's ability to pass laws under section 5 of the 14th amendment. This clause states that "Congress shall have power to enforce, by appropriate legislation, the provisions of this article." Those provisions include some of our most fundamental constitutional principles, including due process and the equal protection of the law.

Congress has acted under the authority of this clause to protect the rights of women and minorities, to ensure religious freedom, and to guarantee civil rights for the elderly and the disabled. But based upon his writings and rulings, Judge Alito would severely limit the meaning of this clause. In Chissiter v. Department of Community and Economic Development, he found the sick leave provisions of the Family and Medical Leave Act to be unconstitutional because he believed that 12 weeks of leave was "out of proportion" to the gender discrimination that Congress wished to remedy. Here again, Judge Alito relied on his own policy preferences to strike down the measured judgment of Congress.

In the case of Nevada Department of Human Resources v. Hibbs, the Supreme Court explicitly upheld the family leave provisions of the act by a 6-to-3 vote. Where Alito had questioned the judgments of Congress, the Hibbs majority, including Justices Rehnquist and O'Connor, found that, in their words:

> The [Family Medical Leave Act] is narrowly targeted at the fault line between work and family—precisely where sex-based overgeneralization has been and remains strongest.

The possible consequences of this tendency by Judge Alito to second-guess the policy judgments of Congress and to replace them with his own policy preferences are profound. They go beyond any single act of Congress or any single area of policy. As just one example, this year the Supreme Court will consider a pair of cases on the constitutionality of the Clean Water Act. These cases challenge whether Congress can protect wetlands and tributaries through its commerce clause power. If the Supreme Court, with a recently confirmed Judge Alito, adopts a more restrictive view of the commerce clause and the 14th amendment, it could limit our ability to protect our country's wetlands, let alone our national interests in area after area.

At the same time that Judge Alito has advocated for a narrower vision of Congress's constitutional authority, he has argued that the powers of the executive branch should be nearly unlimited. In a 2001 speech to the Federalist Society, Judge Alito stated that since the 1980s, he had believed in the "theory of the unitary executive." In the Judiciary Committee hearings, Judge Alito denied any connection between the unitary executive theory and the scope of Executive power. But scholars and judges have drawn from this theory to advance expansive views of the executive.

For example, in Hamdi v. Rumsfeld, the Supreme Court reviewed the President's claim that he could indefinitely detain an American citizen without bringing charges or giving him a day in court to challenge the detention. Eight of the nine Supreme Court Justices rejected the President's claim, and Justice O'Connor wrote in her plurality opinion that "a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens."

In a lone dissenting opinion, Justice Thomas deployed the unitary executive theory to support broad Presidential powers. He wrote that congressional or judicial interference in foreign affairs or national security "destroys the purpose of vesting the primary responsibility in a unitary Executive."

In view of the long scope of American constitutional history, the unitary executive theory is a relatively recent invention. It was a creation of the Reagan Justice Department in the 1980s. And according to his speeches, Judge Alito has subscribed to it since working there. While he worked in the Reagan administration, Judge Alito proposed a particular idea to, in his words, "increase the power of the Executive to shape the law."

In a 1986 memorandum, Alito argued that the President should issue statements when signing a bill because the President's "understanding of the bill should be just as important as that of Congress." The administration has followed Judge Alito's 1986 advice. For example, just recently, the President issued a signing statement regarding the McCain amendment which prohibits torture. In that statement, the President wrote that he would construe the McCain amendment "in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch."

The practice Judge Alito first advocated in the mid-1980s arguably helps the executive to thwart the will of Congress when it passes a law. While the current Supreme Court has not given weight to these signing statements interpreting the meanings of acts of Congress, I worry how a possible Justice Alito would view these Presidential statements should they come before him on the Supreme Court.

I think Judge Alito's view of the unitary executive is wrong and violates the text and the spirit of the Constitution. In Federalist Paper No. 47, James Madison explained how the Constitution deliberately divided power among the branches of Government. Rather than create a unitary executive, the Framers created a careful and thoughtful system of checks and balances between all three branches of Government. They were very weary of concentrating too much power in any one branch of Government. As the McCain amendment demonstrates, Congress plays a vital role in placing limitations on Executive power, but so do and must the courts.

In the near future, the Supreme Court will hear further cases in this area. Perhaps the President's claimed authority to conduct warrantless surveillance of Americans in violation of congressional statutes will come before the Court. In this time of crisis in particular, we need to have Supreme Court Justices committed to the balance and separation of powers between the three branches of Government. Despite Judge Alito's statements that no one is above or beneath the law, Judge Alito's record and views on the unitary executive give me pause. If Judge Alito believes that under the Constitution the President can determine what laws apply to him and how they apply, then he is essentially giving away the power of the Supreme Court as well as the power of Congress.

Ever since Marbury v. Madison, it has been "emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each." That settled doctrine, Marbury v. Madison, clashes with this notion of a unitary executive who can declare the law for himself and thus make himself exempt from the law.

Judge Alito's support for a powerful and unitary executive is exacerbated by his 15-year circuit court record of repeatedly deferring to government officials when American's civil rights and liberties lie in the balance. As I mentioned earlier, this is the other function the Founding Fathers created for the Constitution. The Framers included the fourth amendment in the Bill of Rights to protect Americans against unreasonable government searches and seizures. It was a response to the abuses of the British in the years leading up to the American Revolution. Yet time and again, Judge Alito has deferred to police, prosecutors, and other governmental agents instead of ordinary Americans.

Judge Alito wrote in his now famous 1985 job application essay that he disagreed with the Warren Court's criminal procedures decisions. These include famous cases in the development of American liberties—for example, Miranda v. Arizona, which sets forth rights for the accused; or Katz v. the United States, which prohibited warrantless electronic surveillance; or Gideon v. Wainwright, which guaranteed every American the right to a lawyer. There is little doubt that Judge Alito's personal views in this area have carried over to his time on the bench.

As Professor Goodwin Liu testified before the Judiciary Committee, in fourth amendment cases, Judge Alito has not one time taken a position more protective of individual rights than his colleagues on the Third Circuit. These include cases where there were defective warrants, where agents conducted warrantless electronic surveillance, or where police used excessive force against unarmed individuals. Indeed, the Washington Post found that Judge Alito had sided with the government in these cases over 90 percent of the time, whereas other appeals court justices nationwide only sided with the government 54 percent of the time. In the face of government officials, the dignity, autonomy, and rights of individual Americans have carried less weight for Judge Alito.

As just one example, his dissent in the 2004 case of Doe v. Groody would have upheld the strip search of a mother and her 10-year-old daughter even though they were not named in the search warrant for the house. Judge Michael Chertoff, who wrote the majority opinion in the case and who is now the Secretary of Homeland Security, said that Judge Alito's opinion of the case, if adopted, could "transform the judicial officer into little more than the cliche 'rubber stamp.'"

Judge Chertoff's quote is an apt summation of my concern over the nomination of Judge Alito. American courts cannot become a rubberstamp blotting out the constitutional rights of our citizens. But from women's rights to workers' rights and reproductive freedom to religious freedom, Judge Alito's writings and rulings reveal insensitivity to the judiciary's role in protecting the charter of freedoms enshrined in our Constitution.

The first amendment protects Americans' religious liberties through two clauses that work in tandem: the free exercise clause and the establishment clause. I worry that if confirmed, Judge Alito would upset the careful balance the Founders sought in constructing the first amendment. In fact, Judge Alito seems to interpret the establishment clause as a rarely applicable part of the first amendment. He applies the free exercise clause on a much broader basis, often interpreting establishment clause cases as free exercise cases. He seems to see a plaintiff's complaint of establishment clause violations as attempts to block the free exercise of religion.

Judge Alito's views appear to have been developed well over 20 years ago on these issues. In his 1985 job application essay, Judge Alito wrote that he disagreed with the Warren Court's establishment clause decisions. These rulings prohibited government-sponsored prayer in public schools, protected students who are members of minority religious faiths, and prevented State interference with and entanglement in America's religious liberty.

Judge Alito's record on the bench supports a troubling view of the establishment clause. For example, he joined a dissenting opinion in the case of ACLU of New Jersey v. Black Horse Pike Regional Board of Education, supporting student-led prayer at official, school-sponsored high school graduation ceremonies. The Supreme Court, in an opinion joined by Justice O'Connor, has since explicitly rejected this approach in Santa Fe Independent School District v. Doe and as recently as last year has sought a careful balance in establishment clause cases such as ACLU v. McCreary County.

In summary, in ACLU of New Jersey v. Black Horse Pike Regional Board of Education, the Third Circuit majority determined that a student-led prayer at a graduation ceremony violated the establishment clause.

Judge Alito joined the dissent in arguing that the establishment clause does not prohibit a high school graduation prayer. The school board involved had decided to allow graduating students to vote whether they wished to have a prayer, a moment of silence, or neither at their graduation ceremony. The students voted for prayer. Citing Wallace v. Jaffree and Board of Education v. Barnette, the Third Circuit majority said:

> An impermissible practice cannot be transformed into a constitutionally acceptable one by putting a democratic process to an improper use.

Judge Alito joined the dissenting opinion written by Judge Mansmann, stating that "the establishment clause should not be read to prohibit activity which the free exercise clause protects." The dissent argued that the Supreme Court in Lee had not decided any broad constitutional precedents against prayer at graduation ceremonies, stating the facts in the case were wholly different, as the graduates, not the principal, maintained control over the ceremony, thereby avoiding the appearance of a state actor. The dissenters wrote:

> The establishment clause should not be used for imposing content-based restrictions on religious speech in a public forum under the appropriate scrutiny analysis.

The dissent further criticized the Lemon test established in Lemon v. Kurtzman, pointing to a "division" existing on the Supreme Court "as to whether the establishment clause precludes the government from conveying a message that endorses or encourages religion in a generic sense, or especially acknowledges or accommodates the broad Judeo-Christian heritage of our civil and social order." It also concluded:

> [A]n absolute prohibition on ceremonial prayer at graduation would . . . violate the Free Exercise Clause by unduly inhibiting the practice of religion, and would also implicate the free speech guarantees of the First Amendment.

In another case, Child Evangelism Fellowship of New Jersey v. Stafford Township School District, Judge Alito wrote an opinion requiring a school to distribute a proselytizing religious group's literature to elementary school students under the Equal Access Act. Judge Alito dismissed the school district's concerns that students would perceive distribution of the religious fliers as endorsement of religion. Again, Judge Alito's view in this area of the law differed from that of the Supreme Court. Justice O'Connor's opinion in Board of Education v. Mergens, for example, carefully distinguished between requiring access to school facilities—which was acceptable under the Equal Access Act—and requiring the active involvement of school officials and teachers, which could have an inappropriately coercive effect.

Although I could discuss more cases, the basic point I want to make here is that I believe Judge Alito would upset the careful balance between the Free Exercise and Establishment Clauses of the First Amendment, allowing majority religious views to prevail over minority views, and leading to an inappropriate Government coercive effect on religious practice.

As Justice O'Connor states in McCreary:

> At a time when we see around the world the violent consequences of the assumption of religious authority by government, Americans may count themselves fortunate: Our regard for the constitutional boundaries has protected us from similar travails, while allowing private religious exercise to flourish . . . Those who would renegotiate the boundaries between church and state must therefore answer a difficult question: Why would we trade a system that has served us so well for one that has served others so poorly?

I believe Judge Alito would make that trade.

Consider another area. The Federal Courts play an important role in enforcing American workers' access to fair and safe working conditions, while protecting their right to organize, and providing a forum for remedying wrongful discrimination. Yet, as a judge, Alito has consistently tried to limit the reach of Congress' workplace statutes, and to make it more difficult for plaintiffs to bring legal claims. For example, in RNS Services v. Secretary of Labor, the Third Circuit majority found that the Mine Safety and Health Review Commission had jurisdiction over the work and safety conditions of employees at coal processing sites. But Judge Alito disagreed, siding with the employer by interpreting the statute and case law restrictively. One academic study has found that Judge Alito has sided with the employee or union in only 5 out of 35 labor opinions he has written. These are decisions that have real world effects on working people, as the recent mining accidents in West Virginia demonstrate all too clearly.

As far as a woman's right-to-choose is concerned, in his 1985 job application, Samuel Alito wrote that he was proud of his work in the Reagan administration advancing a "legal position" that he "personally believe[d] very strongly." Namely, that "the Constitution does not protect the right to an abortion." Let me make clear, he did not say that he thought abortion was wrong; he wrote that the Constitution did not protect a woman's right to choose. This is a view that he advanced as a lawyer and then a circuit judge, and that he did nothing to dispel in his Judiciary Committee hearings.

In his work for the Reagan Justice Department, Alito wrote a memo with a strategy for "bringing about the eventual overruling of Roe v. Wade" by chipping away gradually at privacy and reproductive rights. In the case of Planned Parenthood of Southeastern Pennsylvania v. Casey, Judge Alito used his dissent to argue for a constitutional interpretation that would do just that, chip away at the protections for the freedom to choose. The Supreme Court explicitly rejected Alito's opinion, with Justice O'Connor writing that the State "may not give to a man the kind of dominion over his wife" that Judge Alito would have accepted. Judge Alito's record in this area is long and clear, and I am disappointed that rather than openly answer the questions of Senators on the Judiciary Committee, he responded with obfuscating statements about the judicial process.

The Supreme Court has been a leader in safeguarding all kinds of civil rights, through momentous cases like *Brown* v. *Board of Education*, and through its application of historic laws of Congress like the Civil Rights Act of 1964. Victims of racial, gender, age, or disability discrimination can find remedies in the Federal Courts. But from my reading of his record, Judge Alito has repeatedly used procedural and evidentiary requirements to make it more difficult for plaintiffs to vindicate their civil rights claims. One study of discrimination cases heard by Judge Alito in which the panel was divided concluded that he sided against civil rights protections 85 percent of the time, more than any other judge on the Third Circuit.

For example, in the case of Bray v. Marriott Hotels, the Third Circuit said that an African-American woman denied a promotion in favor of a white woman, when the company had not followed its policy, should have a chance to present her case before a jury. Judge Alito disagreed, saying that this would "allow disgruntled employees to impose the costs of trials on employers." As the majority in the case noted, under Judge Alito's view Title VII "would be eviscerated."

I know Judge Alito spoke in the hearings about his own family's history as immigrants to the United States. America's courts have played a crucial role in reviewing the immigration, deportation, and asylum decisions of the Federal Government and the Board of Immigration Appeals (BIA). As the noted conservative Judge Posner recently wrote, his appellate court reversed the Board of Immigration Appeals 40 percent of the time last year, mitigating the at-times harsh, unequal, and unfair application of our immigration laws. In the hearings, Judge Alito said he agreed that the way BIA cases are handled "leaves an enormous amount to be desired." Yet immigrants who have appealed these decisions have found no place of refuge in Judge Alito's courtroom. According to one academic study, Judge Alito sided with the BIA in 7 out of 9 opinions he has written on asylum, and in 7 out of 8 other immigration opinions he has authored. I believe that the spirit of our laws and the history of our country require that immigrants to our shores are assured fair and full hearings.

In his application to the Reagan Justice Department in 1985, Samuel Alito wrote that his interest in constitutional law had been "motivated in large part by disagreement with Warren Court decisions" about voting rights. These landmark decisions, in cases like Baker v. Carr and Reynolds v. Sims, have enshrined the bedrock principle of "one person, one vote" into our Constitution. They have protected the right of all Americans to have an equal share in our democracy, regardless of the color of their skin or the location of their home.

While Judge Alito backed away from these strong statements in his confirmation hearings, his opinion in a voting rights case he heard on the Third Circuit calls that statement into question. In the case of Jenkins v. Manning, Judge Alito joined an opinion rejecting the African-American plaintiffs' challenge to the voting system for the local school board. The dissenting judge in the case wrote that Judge Alito's side had "overlooked the broad sweep of the Voting Rights Act of 1965 and its 1982 amendments" which that judge noted "is widely considered to be the most successful piece of civil rights legislation ever enacted by Congress." The Supreme Court continues to regularly hear cases about the ability of Americans to participate fairly and equally in our democracy, and I believe a nominee to the Supreme Court should clearly and emphatically treasure and respect the Court's role in safeguarding voting rights, rather than minimizing it.

At the hearings before the Judiciary Committee, Judge Alito attempted to distance himself from his record and the constitutional views he has advocated throughout his career. An attorney must vigorously serve the interests of his client, but in the case of Judge Alito, he chose his clients—political offices in Republican Justice Departments—precisely because of the constitutional agenda it allowed him to advance. So, I do not accept Judge Alito's plea that we should not evaluate him based on the constitutional values he advanced through political positions.

I also have not been convinced by Judge Alito's vague rhetoric during the hearings about following the judicial process, or his begrudging acknowledgment that important Supreme Court cases were indeed "precedents of the Court." While judges on the Federal circuit courts are circumscribed by Supreme Court precedent, there is no higher court to bind the Justices of the United States Supreme Court. Decisions of the Supreme Court are binding on all lower courts, so even if a circuit judge disagrees with well-established precedent about the rule of law, he or she must follow that law. But this is not true of the Supreme Court.

As Justice Frankfurter once wrote:

> It is because the Supreme Court wields the power that it wields that appointment to the Court is a matter of general public concern and not merely a question for the profession. In truth, the Supreme Court is the Constitution.

It goes without saying that the constitutional views of the Justices determine the rulings of the Supreme Court. In response to questioning during the hearings, Judge Alito pledged to put aside his personal views. But in his writings and speeches, including his 1985 job application, Judge Alito didn't just record his personal political views; he wrote down his views about what the Constitution means—about what rights it contains, and what limits it places on Government. To be clear, this is exactly what it means to serve on the Supreme Court and interpret the Constitution.

America's courtrooms are staffed with judges, not machines, because justice requires human judgments. This is particularly so on the Supreme Court. Of all the hundreds of thousands of cases filed in American Federal Courts each year, only about 80 reach the Supreme Court. These are the hardest of cases, cases that have divided the country's lower courts. These are cases where one constitutional clause may be in conflict with another; where one statute may influence the interpretation of another; and where one core national value may interfere with another. These cases often divide the Justices of the Court by close margins. Surely the Justices on both sides of a 5 to 4 case can claim to be following the judicial process and respecting the precedents of the Court. What divides their opinions is the set of constitutional values that they bring to the case. Judge Alito's testimony before the Judiciary Committee suggests a failure either to understand or to acknowledge the impact of his own constitutional views on the outcome. of cases that he hears.

Given his lengthy record and his extensive statements about what the Constitution means, the burden was on Judge Alito to convince the Senate that he would be a judicious and balanced member of the Supreme Court. The questions he was asked by members of the Judiciary Committee gave him numerous opportunities to do so. Judge Alito did not meet this burden. He failed to inform this body of his views on important constitutional issues, he evaded fair and important questions instead of offering honest and insightful answers, and he in no way demonstrated that he would uphold not just the letter of the law, but also its spirit.

As a result, I cannot support his lifetime nomination to the highest court in America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, I rise this evening to discuss my vote on the confirmation of Judge Samuel Alito, Jr., to the U.S. Supreme Court. After meeting with Judge Alito and studying his record and comparing his answers to my criteria for judicial nominees, I have decided to vote against confirming Judge Samuel Alito, Jr., as an Associate Justice of the U.S. Supreme Court.

The next Justice will have the power to change the Court, change the country, and change our rights for generations. Judge Alito has a very troubling record. In his hearing and in our private meeting he did not show that he will be an independent judge who will uphold the rights and liberties of all Americans. With our rights and freedoms on the line, I will not take a chance on Judge Alito because I have serious questions about his independence and his commitment to protecting our rights and our liberties.

As with past nominees, I have evaluated this nominee based on my longstanding criteria, which ask: Is the nominee qualified, ethical, and honest? Will the nominee be fair, evenhanded, and independent? And will the nominee uphold the rights and liberties of all Americans?

Personally, I got involved in politics because of another Supreme Court nomination, that of Clarence Thomas. At the time, I was frustrated that average Americans didn't have a voice in the process that affects them so much. I have worked to be the voice of working families in my State, and I have asked the questions they would ask. I am voting to protect their interests.

I recognize the significance of a seat on the U.S. Supreme Court. The Constitution directs Senators to provide advice and consent on all judicial nominees, and the people of my home State of Washington have trusted me to be their advocate to safeguard their rights as I vote on judicial nominees.

I take that responsibility very seriously. That is why I have reviewed Judge Alito's past writings, studied his answers to the Senate Judiciary Committee, and asked to meet with him in my office.

A lifetime appointment to the Supreme Court is a tremendous grant of unchecked power. If the Supreme Court rules incorrectly, there is no option for appeal. There is no backstop. Any seat on the Supreme Court can affect our rights for generations. But there are three factors involved in this particular nomination that make it even more significant. Those factors are the times, the seat, and the process.

First, I am well aware that we are living in historic times. Each day, it seems that the rights of the individuals and the power of government are being tested. We are at war overseas, we face threats from terrorism here at home, and the current administration is pushing the bounds of governmental power in remarkable ways.

The Bush administration has arrested U.S. citizens and held them without access to the courts. It has run secret prisons around the world. It has expressed views on torture that put our own troops at risk. As we recently learned, the administration has been spying on American citizens without prior approval from a court. These are grave issues which will likely come before the Supreme Court. How that Court rules will affect the rights of our citizens, the balance of power between the branches of our Government, and the balance of power between our citizens and Government.

So as I make my decision on this nominee, I am very mindful of the historic times we are living in and the serious questions this Supreme Court will address in the coming years.

Secondly, I am very mindful of the seat that is open on the Supreme Court and its significance. Justice Sandra Day O'Connor was a pioneer in the field of law, and her decisions will shape the lives of the American people for generations to come.

As I said when she announced her resignation, we live in a better America due to her 24 years of service on the Court. Justice O'Connor was often a swing vote on those critical decisions. Her successor could easily change the balance of power on the Court, which could dramatically shift the Court's ruling on so many issues. Because this is a swing seat that could tip the Court's balance of power, we need to make sure that the person we confirm is someone who will protect our rights and liberties.

Some have suggested that I should just go along and support the President's nominee. That is not the way I make decisions. I have criteria that I use to evaluate all judicial nominees, and Judge Alito is no different.

Third, I am also well aware of how Judge Alito came to be the President's nominee. The President, as we all remember, had nominated his counsel, Harriet Miers, to the High Court, but Ms. Miers was not acceptable to the rightwing of the President's party. I found it very interesting that before her nomination, Republicans were demanding an up-or-down vote on the Senate floor for anyone the President nominated. But when President Bush nominated Ms. Miers, suddenly we stopped hearing that urgent call for an up-or-down vote. In fact, Ms. Miers' nomination was killed by the President's own party, apparently because she did not meet the ideological test of the extreme right.

I recount this history tonight not to diminish Judge Alito but to point out that his nomination comes before the Senate in the context of an ideological battle that has been created by the rightwing. When the President nominated Judge Alito, the rightwing cheered, confident that he would vote their way. That reaction gives me pause as to whether this nominee can keep an open mind on the issues that come before him. If the rightwing is so confident that he is going to vote their way, how can all of us be confident that he will put our country's needs first? That alone does not suggest that Judge Alito cannot be fair, but it did lead me to explore those questions diligently.

Given the importance of the Supreme Court and the background of the times and the seat and the process, I began to evaluate how Judge Alito measured up to my standards for judicial nominees. Judge Alito's record contains some disturbing statements, rulings, and pronouncements that require detailed explanations. Does he still hold some of those views? In many cases, we don't know. I wish Judge Alito had been more forthcoming during his hearing. At the same time, many of the things he said and refused to say spoke volumes.

As I noted earlier, my standards are simple: Is the nominee qualified, ethical, and honest? Will the nominee be fair and evenhanded and independent? And will the nominee uphold the rights and liberties of all Americans?

I am very comfortable that Judge Alito is qualified, he is honest, and he is ethical. But whether he will be fair and evenhanded is another question. And, as was discussed at his hearing, he does have a troubling record for fighting for the government and corporations and against individuals. He seems to favor the entrenched power over the little guy. His record does not give me the confidence that everyone who comes before the Court will be treated fairly.

I am also deeply concerned about Judge Alito's independence. We rely on our courts as a critical check and balance against government abuse. That independent check helps to protect our rights. This is especially important today because of the growing questions of the expansion of Executive power.

The Supreme Court will need to evaluate whether recent Executive actions are constitutional. Here Judge Alito's unbalanced minority view of the scope of Executive power tells me he does not have the independence to be an adequate check on the Government's abuse of our rights.

Finally, I have serious doubts that Judge Alito will uphold our rights and liberties. One example is his hostility to the right of privacy. In the hearings, he refused to say that Roe v. Wade is settled law, and he did not adequately explain his 1985 statement that the Constitution does not protect a right to an abortion.

Last year, when I voted to confirm, yes, Chief Justice John Roberts, I said I was choosing hope instead of fear and that Judge Roberts, through his answers, inspired such hope. Judge Alito, through his writings, his rulings, and his nonanswers, does not inspire confidence in me that he will protect all our rights. Because so much is on the line, because I do not believe he will be sufficiently independent or will uphold our rights and liberties, I will respectfully vote against his confirmation to the U.S. Supreme Court.

Mr. President, I ask unanimous consent to print in the RECORD a letter from teachers around the country who have opposed this nomination.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SOCIETY OF AMERICAN LAW TEACHERS,
January 9, 2006.

Re The Society of American Law Teachers' Opposition to the Nomination of Judge Samuel Alito to the United States Supreme Court.

Hon. ARLEN SPECTER,
Chair, Committee on the Judiciary, U.S. Senate, Washington, DC.

Hon. PATRICK LEAHY,
Ranking Minority Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATORS SPECTER AND LEAHY: The Society of American Law Teachers (SALT) opposes—and urges all members of the Senate Judiciary Committee to vote against—the nomination of Judge Samuel Alito to the United States Supreme Court. SALT is the largest organization of law professors in the United States, representing more than 900 professors at more than 160 law schools. SALT has taken a position opposing only a very few judicial nominations. It did not oppose the nomination of Justice Roberts or Harriet Meirs. However, it is deeply committed to civil rights, individual rights and liberties, and an interpretation of federalism that retains a robust role for Congress in protecting these rights. Judge Alito's work in the United States Department of Justice and fifteen year record on the United States Court of Appeals for the Third Circuit evidence his disregard for all three. Replacing Justice Sandra Day O'Connor with Judge Alito will result in the Court shifting profoundly to the right.

A Knight-Ridder comprehensive review of published opinions written by Judge Alito concluded that Alito has worked quietly but resolutely to weave a conservative legal agenda into the fabric of the nation's laws . . . [His] record reveals decisions so consistent that it appears results do matter to him . . . [He] rarely supports individual rights claims. . . [and] often goes out of his way to narrow the scope of individual rights.

While Judge Alito's opinions are devoid of explosive language and appear to reflect a dispassionate application of law to facts, he has used legal craftsmanship and existing precedent in the service of predetermined results. As Professor Lawrence Tribe has stated, "I simply make a plea to quit pretending that law, life and an individual's assumptions about both can be entirely separated. . . ." A judge's values, beliefs and experiences do matter. Judge Alito has undermined the protections of civil rights laws, devalued individual rights, overturned or weakened federal statutes, and narrowly reinterpreted precedent in the name of dispassionate application of the law.

UNDERMINING CIVIL RIGHTS PROTECTIONS

EMPLOYMENT DISCRIMINATION

Judge Alito has engaged in an effort to eviscerate the laws that seek to remedy violations of federal civil rights. This effort can be seen in particular in an evaluation of his opinions in the area of employment discrimination. Judge Alito has written opinions in eighteen employment discrimination cases and has sided with the plaintiff only four times, which includes one case in which he sided with white police officers challenging an affirmative action policy. He has evinced deep skepticism about the legitimacy of most discrimination claims and an unwarranted belief that discrimination is rare in our society.

In three cases in which Judge Alito would have dismissed claims of harassment, he displayed a lack of understanding of the dynamics of harassment and hostile environment discrimination and their impact on a victim's workplace environment and psychological well-being. In one case, writing for the court, he upheld the exclusion of a report showing the harasser had previously harassed another woman because "the report in no way put the City on notice that Dickerson was harassing Robinson."

In another case, Pirolli v. World Flavors, Inc., there was an undisputed evidence that an employee with mental disabilities had suffered sexually motivated, physically abusive workplace harassment. The trial court dismissed Pirolli's claim, calling the quite horrifying harassment mere macho horseplay. In a 2–1 decision, the Third Circuit reversed and sent the case back for trial. Judge Alito dissented, not because Pirolli had failed to meet the legal standard for sexual harassment, but because his brief never explicitly asserted that he suffered from a work environment that a reasonable person without mental retardation would find hostile or abusive, even though all the necessary facts had been alleged. In other words, Judge Alito would have dismissed the case for sloppy brief writing. Additionally, he would have held Pirolli to a higher standard of reasonableness than the law requires. Judge Alito would have compared Pirolli to a reasonable person without mental retardation. The Supreme Court had previously emphasized in Oncale v. Sundowner Offshore Services, Inc., Justice Scalia writing for the majority, that the severity of the harassment is to be judged from the perspective of a reasonable person in the plaintiff's position—in this case, a reasonable person with a mental disability.

Lastly, in a dissenting opinion, Judge Alito would have excluded evidence crucial to the victim's discrimination case in Glass v. Philadelphia Electric Co. Mr. Glass had worked for Philadelphia Electric for twenty-three years and received only one job evaluation less than satisfactory. He applied for and was denied many promotions. The employer explanation was based part in on the one sub-par evaluation Glass had received. Glass tried to present evidence that during that time period he was assigned to a position where he was subject to racial harassment and a hostile work environment. Amazingly, Judge Alito's dissent argued that allowing Glass to tell his side of the story might cause "substantial unfair prejudice" and, failing to do so was, in any case, harmless error.

In several cases, Judge Alito would have granted summary judgment depriving plaintiffs of their right to trial by setting the evidentiary bar so high that it would be almost impossible for a plaintiff to survive summary judgment. In Sheridan v. E.I. de Nemours and Co., a hotel employee brought suit for sex discrimination in the failure to promote her. The District Court granted the employer summary judgment, and the case was appealed to the Third Circuit. The issue was how much evidence a victim of discrimination must present to get her case to trial. In an en banc 10–1 decision in which Judge Alito was the only dissenter, the majority overturned the grant of summary judgment and sent the case back for trial. The majority held that a plaintiff would survive summary judgment if she made her prima facie case and presented evidence of pretext to rebut the employer's evidence. Judge Alito would have disregarded the evidence in plaintiff's prima facie case if the employer presented evidence of a non-discriminatory reason for its action and would have required additional evidence of discrimination. Judge Alito's approach misinterpreted a Supreme Court case, St. Mary's Honor Society v. Hicks, regarding litigants' shifting evidentiary burdens in Title VII cases. The majority's interpretation of Hicks was reaffirmed by the Supreme Court in Reeves v. Sanderson Plumbing Products, Inc. Although the dispute in Sheridan appears to be highly technical, it is central to whether victims of discrimination will have their day in court.

In another discrimination case in which Judge Alito dissented from the reversal of a grant of summary judgment, the majority said, "Title VII would be eviscerated if our analysis were to halt where the dissent suggests." An African American woman was denied promotion and alleged race discrimination. The issue was whether the employer's evaluation that a white woman was the best candidate was the result of discrimination. In spite of conflicting evidence, Judge Alito would have simply accepted the employer's judgment of who was the best candidate. The majority accused Judge Alito of overstepping his judicial role and acting as a fact finder in resolving the conflicting evidence in favor of the employer. Judge Alito's hostility toward some employment discrimination cases was reflected in his dissent:

"I have no doubt that in the future we are going to get many more cases where an employer is choosing between competing candidates of roughly equal qualifications and the candidate who is not hired or promoted claims discrimination. I also have little doubt that most plaintiffs will be able to use the discovery process to find minor inconsistencies in terms of the employer's having failed to follow its internal procedures to the letter. We are allowing disgruntled employees to impose the costs of trial on employers who, although they have not acted with the intent to discriminate, may have treated their employees unfairly."

Taken together, these cases reflect a palpable hostility toward plaintiffs in employment discrimination cases.

DISCRIMINATION IN JURY SELECTION

Judge Alito has written troubling opinions in two death penalty cases where the defendants challenged jury selection as reflecting discrimination. The cases are troubling for three reasons. First, they reflect a general hostility toward civil rights. Second, they suggest that Judge Alito is among the most conservative judges when it comes to the death penalty (whereas Justice O'Connor was frequently the swing vote in capital cases). Third, one of the cases reflects Judge Alito's hostility to the use of statistics to prove discrimination. This hostility is most troubling because statistics have been an important element of proof in creating an inference of discrimination or a discriminatory impact.

While picking a grand jury in Ramseur v. Beyer, the judge announced that he was not randomly selecting jurors because he was trying to pick a cross section of the community, instead asking some prospective jurors, including at least two African Americans, to sit separately in the body of the courtroom. An en banc divided Third Circuit ruled against Ramseur's claim of an equal protection violation. Judge Alito wrote a separate concurrence, making the astounding assertion that defendants have no constitutional basis to challenge a grand jury when certain racial groups were treated differently in order to get a cross section jury. Equally dismayingly, he suggested that defendants may not be able to assert rights of jurors who are the victims of discrimination with respect to grand jury jurors (although the right is clearly established for challenges to regular jurors). Judge Alito reached well beyond what was necessary to decide the case in order to present radical ideas in dicta.

In Riley v. Taylor, the defendant was convicted of felony murder and sentenced to death. Eventually he filed a motion in federal court challenging his conviction on numerous grounds, including that peremptory challenges were used impermissibly to strike jurors based on race. The full Court reversed his conviction, in part based on a violation of his constitutional rights with respect to peremptory challenges. Judge Alito filed a dissenting opinion. Ramsey presented evidence that all three of the potential Black jurors were struck in his trial and that prosecutors struck every potential Black juror in all four murder trials held the same year in Delaware County. Judge Alito completely discounted the statistical evidence, writing that inferring discrimination was no more reasonable than attempting to explain why a disproportionate number of recent presidents were left handed. As the majority noted, the analogy ignored the underlying constitutional right and "minimize[d] the history of discrimination against prospective black jurors and black defendants." Because of this history of discrimination, courts have consistently held that, barring another explanation by the defendant, statistics can aid in proving discrimination. Judge Alito's approach would completely discount reliance on statistics to help prove discrimination and would fly in the face of years of judicial decisions in discrimination cases.

ENDANGERING CORE LEGAL RIGHTS FOR WOMEN

In cases raising issues of gender discrimination, Judge Alito has written troubling decisions in which he appears to accept traditional notions of the subservient role of women in society and to deny the separate rights of women to control their own destiny.

Judge Alito's record, both prior to and subsequent to joining the bench, reflects clearly that he does not support the constitutional right to choose and that his elevation to the Supreme Court would endanger this fundamental right. In 1985, while in the Solicitor General's office, he wrote a memo offering his own strategy for using the government's brief in Thornburgh v. American College of Obstetricians and Gynecologists to (1) advance the goal of bringing about an eventual overruling of Roe v. Wade, and (2) in the meantime to mitigate its effects by upholding even the most burdensome barriers to abortion. In the same year, Judge Alito submitted an application for a Justice Department promotion, wherein he wrote that he was particularly proud of his contributions in cases in which the government has argued to the Supreme Court that the Constitution does not protect the right to an abortion.

Judge Alito's record in the Third Circuit demonstrates that he has sought to implement his earlier views. In a concurring opinion rejected by the majority and subsequently rejected by the Supreme Court in Planned Parenthood v. Casey, Judge Alito would have upheld a requirement that a woman notify her husband before having an abortion. He discounted the liberty and bodily integrity of the woman while showing great concern for the husband's rights. Judge Alito's view that the spousal notification provision in the law caused no undue burden to women suggests that he believes a woman loses her autonomy rights when she marries. Even in two cases concerning abortion rights protections which had previously been struck down by the Supreme Court and in which Judge Alito was compelled to follow precedent, he wrote narrow concurring opinions to insure that there was no language that might support the upholding of Roe or inhibit the ability to further narrow the right to choose.

Just as Judge Alito has denied the liberty rights of women to control their bodies, his decision striking down the Family and Medical Leave Act demonstrates that he has no understanding of the distinctive burdens women face in juggling work and family. Likewise, his opinions have demonstrated a lack of understanding of the dynamics of sexual harassment and its detrimental impact on victims of harassment. Even in cases involving fathers of unborn children, Judge Alito's solicitude seems to apply only to married couples. He has shown a lack of sympathy for protection of people and couples who are unmarried. In an immigration case, Judge Alito held that it was justifiable to permit a husband, but not a fiance to contest a woman's deportation to China where she fears coerced abortion of the couple's unborn child. In another asylum case, Judge Alito denied asylum to an Iranian woman who asserted she would be persecuted for refusal to wear the traditional veil and for her feminist beliefs if she returned to Iran. While acknowledging that an asylum claim can be based on gender-based persecution, Judge Alito was not convinced that she would be willing to actually defy the authorities and therefore suffer the severe consequences alleged. In other words, a woman must show her willingness to become a martyr in order to prevail in the typical gender-based asylum case.

AN EXPANSIVE VIEW OF THE POLICE POWER AT THE EXPENSE OF INDIVIDUAL RIGHTS

Judge Alito has advanced an expansive view of the police power. His 1985 application to the Justice Department expressed his disagreement with Warren Court decisions concerning criminal procedure. Since ascending to the Third Circuit, he has in criminal cases consistently deferred to state courts, police, and prosecutors. In particular, he has written a series of decisions narrowing the Fourth Amendment protection against unreasonable search and seizure. Judge Alito has sat on at least twelve panels in which judges agreed regarding a citizen's Fourth Amendment rights. In each case, Judge Alito adopted the view most supportive of the government's position.

One of the most troubling examples of Judge Alito's expansive view of law enforcement authority is his dissent in Doe v. Groody, where he voted to approve the strip search of a mother and her ten-year-old daughter, even though the search warrant obtained by the police did not name or refer to either of them. As then Judge Michael Chertoff wrote, Judge Alito's position threatened to turn the Constitution's search warrant requirement into little more than a "rubber stamp."

Other dissenting decisions of Judge Alito suggest that he views individual and other constitutional rights as stopping at the prison door. He would have upheld a Pennsylvania law prohibiting certain inmates from having newspapers, magazines, and photos of their family and friends. In a death penalty case, Judge Alito wrote an opinion for the court rejecting a claim of denial of the right to effective counsel. In the sentencing phase of the trial, the attorney had failed to look at materials he knew would be relied on by the prosecutor, materials that would have revealed a range of mitigation leads. The Supreme Court overturned Alito in a 5–4 decision with Justice O'Connor in the majority.

EXTREME VIEW OF FEDERALISM AND SEPARATION OF POWERS THAT WOULD LIMIT THE ROLE OF CONGRESS IN PROTECTING THE HEALTH, SAFETY AND WELFARE OF ITS CITIZENS AND GIVE UNWARRANTED POWER TO THE EXECUTIVE BRANCH

LIMITING THE ROLE OF CONGRESS

Judge Alito has written two opinions that reflect an extreme view of the limits of congressional power to pass legislation. He voted to invalidate the federal prohibition on machine gun possession and part of the federal Family and Medical Leave Act. His decisions are consistent with his 1985 application to be Deputy Assistant Attorney General, in which he wrote that he "believe[s] very strongly in . . . federalism.

In United States v. Rybar, Judge Alito argued in dissent that the federal ban on machine gun possession, which had been on the books in some form since 1934 is unconstitutional Commerce Clause legislation. The Commerce Clause undergirds many of the most important civil rights, consumer protection, worker protection and environmental protection laws. Judge Alito argued that the majority's theory would lead to the conclusion that Congress may ban purely intrastate possession of just about anything. He rationalized his decision in part by claiming that there were no congressional findings or statutory bases for the law, thus imposing a new stringent fact-finding requirement for Congressional justification of its laws. He ignored common sense—the facts involved a licensed gun dealer selling machine guns at a gun show—transactions which involved interstate commerce. Additionally, he ignored references in conference reports and on the floor of Congress concerning the effect of the ban on interstate commerce. Judge Alito's colleagues accused him of institutional disrespect by requiring the "coordinate branches of government" to "play" show and tell with the federal courts at the peril of invalidating congressional statutes. All of the other appellate courts which had considered the law in the wake of United States v. Lopez agreed with Judge Alito's colleagues, and all but one court to have looked at the law since then has done the same. The Supreme Court rejected Judge Alito's restrictive view of Congress' lawmaking authority in Gonzales v. Raich.

In another case concerning Congress' lawmaking authority, Judge Alito again advocated an extremely narrow view of congressional power. Chittister v. Department of Community and Economic Development involved a state employee who sued for damages under the Family Medical Leave Act (FMLA) when his sick leave was revoked and he was terminated. Congress claimed the authority to pass the FMLA under section 5 of the Fourteenth Amendment on the grounds that the Act attempted to remedy sex discrimination by allowing women to take leave without sacrificing their jobs. Judge Alito held that Congress does not have the authority to give state employees the right to sue their employers for damages for violating the FMLA. He rejected the justification that the FMLA remedied sex discrimination and claimed that Congress had failed to make any findings that state statutes had discriminated against women. The preamble to the statute explicitly states that the purpose of the Act is to remedy sex discrimination. There is of course, a long history of litigation striking down state statutes disadvantaging women in the workplace.

Nevertheless, Judge Alito would require Congress to engage in fact finding specifically directed at the FMLA. In a similar challenge, Nevada Department of Human Resources v. Hibbs the Supreme Court later held that state employees can enforce their right to damages pursuant to a violation of another provision of the FMLA.

ADVOCATING AN EXPANSIVE SCOPE OF EXECUTIVE POWER

Since the Nixon Administration, the country has witnessed a legal battle concerning the scope of presidential authority under our Constitution. The present administration advances an extreme, expansionist theory of the scope of presidential power, both foreign and domestic. The theoretical underpinnings for the concept of the "imperial presidency" have been developed by writings of the Federalist Society. Judge Alito's 1985 application to serve as Deputy Assistant Attorney General in the Office of Legal Counsel (OLC) boasts of his regular participation in the Federalist Society, an involvement which continues to this day. OLC, during his tenure, was the source of extreme thinking about expansive presidential power. For example, OLC opined that the executive branch could ignore congressionally authorized procedures for federal procurement and determined that the President had constitutionally unfettered authority to determine when to tell Congress of his covert initiative with regard to Iranian arms sales—even though the power to regulate foreign trade is an express congressional authority.

In other memoranda which Judge Alito wrote during his time at the Justice Department, he argued in favor of expanded government authority to intercept computer messages and broader authority for government agents to set up shell companies to help with undercover operations. He also told the FBI that it was not bound by two district court decisions restricting the Bureau's power to investigate employees whose jobs were not critical to national security.

During his years on the bench, Judge Alito has been extremely deferential to assertions of executive authority, particularly in the area of criminal law, and has gone out of his way to place limitations on Congress's legislative powers. It is this line of thinking that has spawned (1) unprecedented claims of executive privilege, (2) claims of authority to engage in torture, (3) claims to hold U.S. citizens indefinitely as enemy combatants and foreign nationals as enemy combatants in Guantanamo Bay without any right of review of that designation, and now (4) an apparent pattern of flagrant violations of the Foreign Intelligence Surveillance Act by sanctioning domestic wiretapping without obtaining a warrant.

CONCLUSION

With the retirement of Justice O'Connor, the direction of the Court stands in the balance. Judge Alito's record demonstrates that he would shift the court radically rightward. His vision of federalism and separation of powers would dangerously expand the power of the executive and the states; shrink the power of Congress to protect the health, safety and welfare of this nation's citizens; and diminish the role of the courts in guarding against discrimination and undue government intrusion into individual rights. Justice Alito's opinions show an alarming detachment from real life and real people. His opinions are a historical and reflect a lack of empathy for or appreciation of the human condition and the role of courts in protection the rights of minorities.

We urge you to reject the nomination of Judge Alito to the Supreme Court.

Sincerely,

EILEEN KAUFMAN,
Co-President.
TAYYAB MAHMUD,
Co-President.

Mrs. MURRAY. Mr. President, I yield the floor.

Mr. HATCH. Mr. President, today on this floor the distinguished Senator from Vermont, Mr. LEAHY, accused me of misrepresenting him when I earlier characterized comments he has made about the nomination of Samuel Alito to the Supreme Court. He would not yield to me at that time, and I want to set the record straight.

This is how I characterized the Senator from Vermont's previous comments: "The Senator from Vermont, Senator LEAHY, has repeatedly said that, all by himself, Judge Alito is a threat to the rights and liberties of all Americans literally for generations to come."

The Senator from Vermont reacted by saying that I was not even "within the ballpark of accuracy."

This reaction was particularly perplexing because the latest example of the Senator from Vermont making such a statement had occurred just hours before.

This time, I will be careful to quote, rather than characterize, what he said. In his opening remarks today on the Alito nomination, the Senator from Vermont said: "This is a nomination that I fear threatens the fundamental rights and liberties of all Americans, now and for generations to come." That language is simply cut and pasted from the statement as it appears on the Senator from Vermont's Web site.

The Senator from Vermont made the exact statement yesterday, during the Judiciary Committee's business meeting at which we considered the Alito nomination. He said: "This is a nomination that I fear threatens the fundamental rights and liberties of all Americans now and in generations to come."

I was not only in the ball park, I was standing on homeplate.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. ALLARD. Mr. President, my time to speak is not until 6:15. Since there is nobody else in the Chamber, I will proceed to speak on the nomination of Judge Samuel Alito to the U.S. Supreme Court.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLARD. Mr. President, I rise today in support of Judge Samuel Alito, President Bush's nominee as Associate Justice to the U.S. Supreme Court.

Judge Alito has the experience, intellect, temperament, and integrity required of a Supreme Court Justice.

He has more judicial experience than any Supreme Court nominee in 70 years. In his 15 years on the U.S. Court of Appeals for the Third Circuit, Judge Alito participated in over 1,500 cases and authored more than 350 opinions.

Prior to becoming a Federal appellate judge, Judge Alito established a record as a tough Federal prosecutor while serving as the U.S. attorney for the District of New Jersey.

As the State's top Federal law enforcement official, Judge Alito oversaw the prosecutions of drug traffickers, terrorists, and organized crime figures. He also cracked down on perpetrators of environmental crimes, creating a new position of Environmental Crimes Coordinator.

Prior to being unanimously confirmed twice by the U.S. Senate, Judge Alito proved himself to be an effective advocate on behalf of the United States while serving in the Office of the Solicitor General. There, Judge Alito participated in more than 250 cases, arguing 12 before the Supreme Court.

In sum, Judge Alito has served as a judge on one of the Nation's highest courts, as the top Federal prosecutor in one of the Nation's largest Federal districts, and as an advocate for the United States in the Office of the Solicitor General. His 30 years of public service spans the full breadth of the law.

Judge Alito is unarguably a highly qualified nominee. However, I told the citizens of Colorado that I would also evaluate judicial nominees on their judicial philosophy and commitment to the rule of law.

Specifically, I pledged to support judges who rule on the law and facts before them—not judges who attempt to legislate from the bench. Judge Alito's judicial philosophy corresponds with that promise.

Judge Alito recognizes the limited role of the Federal judiciary, having observed that "although the judiciary has a very important role to play, it's a limited role. . . . It should always be asking itself whether it is straying over the bounds, whether it's invading the authority of the legislature, for example, whether it is making policy judgments rather than interpreting the law."

Like his view of the limited role of the judicial branch, Judge Alito also recognizes the limits on the powers of the executive branch. Speaking on his understanding of the "unitary Executive," Judge Alito explained, "the idea of the unitary Executive is that the President should be able to control the executive branch. . . . [I]t goes just to the question of control. It doesn't go to the question of scope."

Further, Judge Alito recognizes that "[n]o person in this country, no matter how high or powerful, is above the law, and no person in this country is beneath the law." This statement reflects his commitment to a principle so fundamental to justice in this country that it is carved in stone over the entrance to the Supreme Court: "Equal justice under law."

Consistent with the principle of equal justice under law, Judge Alito does not allow his personal opinion to decide the outcome of a case. He says "[a] judge can't have any agenda. . . . The judge's only obligation—and it's a solemn obligation—is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires."

I believe that each of my colleagues would agree that judges should be held to this standard. Yet, at the same time, some criticize Judge Alito's record for living up to it.

For example, in Doe v. Groody Judge Alito argued in dissent that a search warrant authorized law enforcement officials to search everyone inside a drug dealer's house, including the wife and daughter. Even though he personally "share[d] the majority's visceral dislike of the intrusive search," Judge Alito's unwavering commitment to the rule of law led him to do what he believed the law required, despite his personal beliefs on the outcome.

In sum, Judge Alito will serve as an effective steward of the law and Constitution. His record evidences a deep respect for the separation of powers and other fundamental principles envisioned by our Founding Fathers. I have no reason to believe Judge Alito will be deferential to anyone or anything other than the law and the facts before him.

As a representative of Colorado, I also appreciate the uniqueness of the issues important to our State and the West. The departure of Justice O'Connor and Chief Justice Rehnquist marks the loss of a Western presence on the Supreme Court.

Earlier this year, I asked President Bush to nominate a judge who could capably decide issues important to Colorado and the West, such as water and resource law.

When I asked Judge Alito about his understanding of Western resource and water law, I was pleased to learn that he grew to appreciate the importance and complexity of these issues while working in the U.S. Solicitor General's Office. He assured me that he understands the uniqueness to the West of such issues as water rights, the environment, and public lands.

In conversing with Judge Alito, I couldn't help but be reminded of my meeting with now Chief Justice Roberts. Judge Alito is a man of great restraint, delivering thoughtful, careful, and thorough responses to my many questions—a further reflection of his view of the limited role of a judge.

Although America was already aware of Judge Alito's distinguished record, the Judiciary Committee hearings were helpful in shedding additional light on his character, temperament, and integrity, particularly in trying circumstances.

During the nearly 18 hours of questioning, Judge Alito was both open and candid. He answered 97 percent of the nearly 700 questions that were asked of him, declining to answer only 3 percent. By comparison, Justice Ginsburg declined to answer 20 percent of questions. Justice Ginsburg received 96 votes in favor of her confirmation.

Throughout the course of the demanding process, Judge Alito demonstrated great patience, humility, and respect—all attributes of a temperament desirable for a Supreme Court justice.

The hearings were also an opportunity for Judge Alito to set the record straight on scurrilous attempts to impugn his integrity. Laid to rest is the claim that he acted improperly by participating in a case involving Vanguard, his mutual fund company. Shares in Vanguard mutual funds are not an ownership interest in the Vanguard company, and Judge Alito had no legal or ethical obligation to recuse himself. His ultimate decision to do so—beyond what the law requires—should be praised, not attacked.

These and other attacks are nothing but thinly veiled attempts to distract from the impeccable record of a highly qualified nominee.

Judge Alito's jurisprudence and integrity have been praised by major newspapers, legal scholars, former law clerks, and colleagues from both sides of the aisle.

The American Bar Association unanimously awarded Judge Alito its highest rating of "well qualified." The ABA's stated criteria for evaluating nominees are "integrity, professional competence and judicial temperament."

The judges with whom he has served on the Third Circuit offer their praise. Judge Tim Lewis, a former Clinton appointee, commended Judge Alito for his role in discrimination cases. Judge Lewis, testifying in support of Judge Alito, said that "if I believed that Sam Alito might be hostile to civil rights as a member of the United States Supreme Court, I guarantee you that I would not be sitting here today."

Major newspapers across the State of Colorado, including both the Rocky Mountain News and the Denver Post, offer their praise for Judge Alito.

The Rocky Mountain News says that Judge Alito "personifies judicial restraint" and "deserves confirmation. . . . He has refused to elevate his ideology above the rule of law while showing deference to the crucial but limited role the Founders envisioned for federal judges."

Commenting on the temptation for Democratic Senators to cave to the demands of "left-wing interest groups [who] portray Alito as someone who should be under house arrest, rather than an accomplished nominee with a distinguished resume," the Rocky Mountain News points out that "Senate Democrats have an opportunity to rise above the muck" concluding that "Samuel Alito should be confirmed."

I ask unanimous consent to have the January 9, 2006 Rocky Mountain News editorial printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the Rocky Mountain News, Jan. 9, 2006]

ALITO PERSONIFIES JUDICIAL RESTRAINT

No one seriously questions the qualifications of federal appeals court Judge Samuel Alito to sit on the Supreme Court: U.S. attorney, assistant to the solicitor general and the attorney general, and a 15-year tenure on the 3rd U.S. Circuit Court of Appeals.

Former colleagues, including Democrats, who worked with Alito the prosecutor laud his insistence on defending the law rather than pursuing a political agenda. Keep that in mind as confirmation hearings open in Washington today. Liberal interest groups and some partisan Democrats are up in arms because Alito has served as a model of restraint.

And that's why the Senate should confirm Judge Alito to succeed Sandra Day O'Connor. He has refused to elevate his ideology above the rule of law while showing deference to the crucial but limited rule the Founders envisioned for federal judges.

On principle, the Senate should give the president substantial leeway to appoint federal officials who share his views. And while candidates for life-tenured positions on the Supreme Court deserve thorough scrutiny, we are confident that the hearings will let Alito earn the nation's trust.

On the bench, Alito has championed a government with limited, defined powers. He has defended the First Amendment's guarantee of religious liberty, ruling against governments that denied Muslims and Indians their ability to freely express their faiths.

In United States v. Rybar, he seconded the view articulated by the Supreme Court in United States v. Lopez that the Constitution's Commerce Clause does not give Congress unlimited power to regulate private actions. And though in Planned Parenthood v. Casey Alito wrote in favor of a spousal-notification requirement for abortions that the Supreme Court later rejected, his law clerk at the time, self-described Democrat Jim Goneia, told the Las Vegas Sun that he "never had any clue what (Alito's) personal opinion might be."

His measured approach has not slowed the partisan spinmeisters from lobbing scurrilous allegations—charging everything from misogyny to racism. The left-wing interest groups portray Alito as someone who should be under house arrest, rather than an accomplished nominee with a distinguished réums.

But Senate Democrats have an opportunity to rise above the muck. We applaud their plan to focus on Alito's views of the proper balance of power between the president and Congress. Concerns about executive authority deserve special attention, particularly as the Bush administration prosecutes the war on terror.

Barring any stunning surprises, Samuel Alito should be confirmed. While we will surely disagree with some of his decisions, we're confident that they will be soundly reasoned and reflect respect for both the Constitution and the law.

Mr. ALLARD. Mr. President, Colorado's other major newspaper, the Denver Post, proclaims that there is "no reason to block [the] Senate's Alito vote . . ." On the threat of a Democrat filibuster, the Denver Post says "we don't believe the arguments against Alito merit a filibuster. . . . Alito has served capably on the 3rd U.S. Circuit Court of Appeals for 15 years, and his confirmation should rise or fall on a majority vote."

I ask unanimous consent that the January 17, 2006, Denver Post editorial be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Denver Post, Jan. 17, 2006]

NO REASON TO BLOCK SENATE'S ALITO VOTE

Judge Samuel Alito managed to navigate his way through last week's Senate Judiciary Committee hearings without upsetting supporters' high hopes or relieving opponents' high anxiety.

Though his testimony to the committee was never too revealing, Alito demonstrated his qualifications for the high court, and he's likely to be confirmed. We wish we could be enthusiastic, but Alito's record is troubling in such areas as reproductive rights, privacy and executive power. If he rises to the Supreme Court, we hope Alito will follow the letter of the law and not the call of ideology or the urging of special interests. Associates who have worked with Alito over the years offer welcome assurances that he can be an impartial figure and not a clone of Clarence Thomas on the far right side of the bench.

We tend to agree with Sen. Dianne Feinstein, D–Calif., who said on Sunday, "This is a man I might disagree with. That doesn't mean he shouldn't be on the court." Like Feinstein, we don't believe the arguments against Alito merit a filibuster.

Alito needs a simple majority to win confirmation unless opponents try to extend debate indefinitely; then 60 senators must agree to a vote. Republicans have 55 senators, and many are willing to ban judiciary filibusters if that's what it takes.

In the end, Republicans will probably support Alito en masse and most Democratic senators will vote no, reflecting both parties' expectation of his future role. Much attention is being paid to the "Gang of 14," the coalition (including Colorado Sen. Ken Salazar) that vowed to avoid filibusters except under extraordinary circumstances. This isn't one of them; Alito has served capably on the 3rd U.S. Circuit Court of Appeals for 15 years, and his confirmation should rise or fall on a majority vote.

We hope Alito will moderate his views if voted to the court of last resort. His statements about Roe vs. Wade suggest he opposes abortion-rights, which we favor, while his support for the "unitary executive" theory, which exaggerates the powers of the president, is chilling given the current debate on domestic surveillance and the balance of powers among the branches of government. Some of Alito's dissents on the 3rd Circuit inspire disbelief, such as his defense of a police officer who strip-searched a 10-year-old girl whose father was wanted on drug charges.

We urged President Bush to choose a centrist to succeed retiring Justice Sandra Day O'Connor, but once his first choice, Harriet Miers, was blocked, it was inevitable that he would seek out a nominee with proven conservative credentials. That's Alito, to be sure. Wherever he serves, we hope Alito exercises his approach to the law in a way that affords Americans all the protections due under law and the Constitution.

Mr. ALLARD. Mr. President, I am pleased to see that these Colorado publications join me in recognizing that Judge Alito is the type of judge that Coloradans—and all Americans—deserve.

In conclusion, Judge Alito is one of the most qualified judicial nominees ever. He is deeply committed to the rule of law, he recognizes the limited role of the judiciary, and he has the judicial temperament fitting of a Supreme Court justice.

The Senate debate should reflect that the job of a judge is to review cases impartially, not to advocate issues. Judges should be evaluated on their qualifications, judicial philosophy, and respect for the rule of law.

It would be unfortunate and irresponsible for any of my Senate colleagues to continue to politicize the judicial confirmation process. Judge Alito is eminently qualified, and he deserves a swift up-or-down vote.

I intend to vote in favor of Judge Samuel Alito's confirmation as the 110th Justice to the United States Supreme Court and I strongly urge my colleagues to do the same.

I believe that Judge Alito will not be an activist judge and supports limits on the judiciary.

I ask unanimous consent to have printed in the RECORD a letter from attorney William Banta in which he discusses judicial independence, judicial activism, and judicial usurpation, now referred to by many of us as just judicial activism.

There being no objection, the material was ordered to be printed in the RECORD as follows:

Englewood, CO, September 6, 2005.

Re: A Lawyer's Duty—Judicial Independence, Judicial Activism, and Judicial Usurpation.

Hon. WAYNE ALLARD,
U.S. Senate, Dirksen Senate Building, Washington, DC.

DEAR SENATOR ALLARD: Recently there has been an outcry from the established bar in defense of judicial independence. However, very little has been said against judicial activism, which used to be referred to as "judicial usurpation". Because of the present tension between them, it behooves us as lawyers to understand the relationship between judicial activism and judicial independence. Marbury v. Madison is a good place to begin.

While Marbury is typically used to justify a court's prerogative to say what the law is, there is a discipline to the case that is either overlooked or not discussed in polite legal company. Chief Justice Marshall bases the Marbury decision upon the American people's original right to establish a constitution, the principles of which are "fundamental" and which are to be "permanent". The case itself involved three issues: (1) whether Mr. Marbury had a right to his commission as justice of the peace; (2) if so, whether there was a remedy available to him to secure his commission; and (3) whether the remedy was a writ of mandamus from the Supreme Court of the United States. Marshall said "yes" to the first two issues and "no" to the third issue.

The Chief Justice held that the Supreme Court lacked the power to issue a writ of mandamus for Mr. Marbury's commission because the Constitution did not provide for the exercise of such original jurisdiction even though an Act of Congress (the Judiciary Act of 1789) did. In ruling against the Supreme Court's having jurisdiction, John Marshall declared the obedience of courts to the Constitution, the Constitution being "a rule for the government of courts, as well as of the legislature."

To paraphrase Chief Justice Marshall, judges are subject to the Constitution; the Constitution is not subject to judges. The force behind the Marbury decision is the restraint and responsibility required of the judicial branch.

Now I have a couple of questions regarding what some see as attacks upon judicial independence. Does anyone think that the public is criticizing courts because the judges on those courts are thought to be following the Constitution? Or, are courts being criticized because some judges are seen as expounding politics instead of a constitution? It would certainly be independent of any court to contradict the Constitution, but it would also be unscrupulous and, to use John Marshall's word, "immoral" of them.

Roger J. Miner wrote an admonition to us lawyers that I ran across about seventeen (17) years ago: "Should Lawyers Be More Critical of Courts?" Judge Miner's reproof was more recently reprinted in The Colorado Lawyer: "Judges" Corner—Criticizing the Courts: a Lawyer's Duty." To his dismay, what Judge Miner had noticed was lawyers' "reluctance to criticize judge-made law, specific judicial decisions, or the qualifications of individual judges". He quoted Justice Robert H. Jackson to the effect that the public rightfully looks to lawyers (as the only group that knows how well judicial work is being done) "to be the first to condemn practices or tendencies that they see departing from the best judicial traditions". Does anyone think, as Judge Miner would, that the public has reason to be disappointed in us lawyers for not being properly critical of judges who deviate from their oaths to support the Constitution that governs them?

As lawyers, we need to understand what is going on here. To its credit, the established bar does not directly dispute the right of Americans to criticize their judiciary. However, only a very few lawyers have spoken out in defense of Chief Justice Marshall's insistence on judicial scruples—the established bar is more apt to rationalize, excuse, or even defend in the name of "judicial independence" the conduct of judges who act contrary to the language of the Constitution. It is almost as if Supreme Court decisions were infallible so that it would be irreverent of lawyers to challenge them very much.

Not only Chief Justice Marshall but Chief Justice Harlan F. Stone would not have it. Chief Justice Stone said, "I have no patience with the complaint that criticism of judicial action involves any lack of respect for the courts. When the courts deal, as ours do, with the great public questions, the only protection against unwise decisions, and even judicial usurpation, is careful scrutiny of their action and fearless comment upon it.

The point is this: when a court takes it upon itself to engage in politics, social experimentation, or baseless lawmaking contrary to the Constitution, the American people, if not the established bar, tend to hold that court accountable. In holding judicial feet to constitutional fire, critics are not threatening judicial independence; they are reprehending those judges, those public servants, who overstep their roles and thereby become "activist".

The purpose of the Constitution's Article III lifetime tenure and undiminished compensation for Federal judges and the purpose of Colorado's constitutional and statutory provisions for judicial nominations, appointments, and retentions are to insulate judges from political pressures as much as practical . . . providing them with a measure of independence to decide cases with restraint and impartiality. Yet, if a judge commandeers the law, usurps the jurisdiction of the other governmental branches, or overpowers the rights of the people, is he not frustrating the purpose of judicial independence?

That brings me to my last question: isn't the real threat to judicial independence judicial activism itself? We needn't have come to this pass had we, as lawyers and judges, insisted on judges remaining faithful to "the best judicial traditions". Too often we justified baseless decisions on the unsteady promise of political results or indulged the sentiment that the Constitution is whatever a court says it is. Incidentally, to that utterance of Charles Evans Hughes, Theodore Roosevelt rejoined that the Constitution belonged to the American people and not to the judges.

By not remarking the wrong of judicial activism all along, the established bar must now be careful not to excuse judicial activism in an ambiguous effort to preserve judicial independence. The risk of confusing judicial activism with judicial independence could compound our problem so that the public comes to see the whole thing as a mess of our own making. If that happened, the American people could demand direct political control over those who had Wayne Allard lost the self-control upon which Chief Justice Marshall insisted, those who became unaccountable to the law they had taken an oath to support.

To avoid such a misfortune, it might be a good idea to revisit the instruction manual. Perhaps we could think about whether the Constitution is our bedrock foundation or more like a nomad's tent pitched on shifting sands. We might ask ourselves whether we ought to dismiss the Constitution as an outdated 18th century document or recognize that it was designed in light of human experience and human nature to endure for all time. And we can mull over whether our Constitution should really be an adventure in judicial dead reckoning or whether, instead, the written Constitution provides a reliable compass, trusty sextant, and inspired chart for the American people.

My impression is that commentators and many in the public are way ahead of us lawyers and judges on these concerns. Nonetheless, I hope that we are able to help out here so that, as Judge Miner would prefer, "the judiciary is strengthened, the rule of law is reinforced, and the public duty of the bar is performed."

Very truly yours,

WILLIAM M. BANTA,
Attorney at Law.

Mr. ALLARD. Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I ask unanimous consent to have an item printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SENATE REPUBLICAN POLICY COMMITTEE: FELLOW JUDGES TESTIFY IN SUPPORT OF ALITO NOMINATION

On January 12, 2006, five sitting and two former judges from the U.S. Court of Appeals for the 3rd Circuit testified on behalf of Judge Samuel Alito's nomination to the Supreme Court. The judges included nominees of Presidents Lyndon Johnson, Richard Nixon, Ronald Reagan, George H.W. Bush, and Bill Clinton. Collectively they have served with Judge Alito for more than 75 years, watching him work and evaluating his intellect, character, independence, and judgment. Their collective endorsement should be taken seriously by Senators considering this nomination.

The judges included the following individuals. Judge Edward Becker, appointed by President Ronald Reagan in 1981, is a Senior Judge on the 3rd Circuit and formerly its Chief Judge. (Note: a Senior Judge continues to serve on the court and hear cases on a limited basis; he is not retired.) Judge Anthony Scirica, appointed by President Ronald Reagan in 1984, is the Chief Judge of the 3rd Circuit. Judge Maryanne Trump Barry has served on the 3rd Circuit since President Bill Clinton appointed her in 1999. Judge Barry also worked in the U.S. Attorney's office with Judge Alito in the late 1970s. Judge Ruggero Aldisert, appointed by President Lyndon Johnson in 1967, is a Senior Judge on the 3rd Circuit and formerly its Chief Judge. Former Judge John Gibbons, appointed by President Richard Nixon in 1970, served on the 3rd Circuit until 1990 when he retired to become a professor of law at Seton Hall. As a federal prosecutor, Judge Alito had argued cases before Judge Gibbons, and Judge Gibbons has stated that he has followed Judge Alito's work since 1990. Judge Leonard Garth, appointed by President Richard Nixon in 1973, is a Senior Judge on the 3rd Circuit. Judge Alito served as his law clerk in 1976–1977. Former Judge Tim Lewis, appointed by President George H.W. Bush in 1992, served on the 3rd Circuit for seven years before retiring to enter private practice, where he does significant work in civil rights and human rights law. Excerpts from their testimony follow.

Judge Becker on working with Judge Alito up close . . . "There is an aspect of appellate judging that no one gets to see—no one but the judges themselves: how they behave in conference after oral argument, at which point the case is decided, and which, I submit, is the most critically important phase of the appellate judicial process. In hundreds of conferences, I had never once heard Sam raise his voice, express anger or sarcasm, or even try to proselytize. Rather, he expresses his views in measured and temperate tones."

Judge Becker on Judge Alito's intellect and open-mindedness . . . "Judge Alito's intellect is of a very high order. He's brilliant, he's highly analytical and meticulous and careful in his comments and his written work. He's a wonderful partner in dialogue. He will think of things that his colleagues have missed. He's not doctrinaire, but rather is open to differing views and will often change his mind in light of the views of a colleague."

Judge Becker on whether Judge Alito is an ideologue . . . "The Sam Alito that I have sat with for 15 years is not an ideologue. He's not a movement person. He's a real judge deciding each case on the facts and the law, not on his personal views, whatever they may be. He scrupulously adheres to precedent. I have never seen him exhibit a bias against any class of litigation or litigants. . . . His credo has always been fairness."

Chief Judge Scirica on Judge Alito's personal character . . . "Despite his extraordinary talents and accomplishments, Judge Alito is modest and unassuming. His thoughtful and inquiring mind, so evident in his opinions, is equally evident in his personal relationships. He is concerned and interested in the lives of those around him. He has an impeccable work ethic, but he takes the time to be a thoughtful friend to his colleagues. He treats everyone on our court, and everyone on our court staff, with respect, with dignity, and with compassion. He is committed to his country and to his profession. But he is equally committed to his family, his friends, and his community. He is an admirable judge and an admirable person."

Chief Judge Scirica on Judge Alito's open-mindedness . . . "Like a good judge, he considers and deliberates before drawing a conclusion. I have never seen signs of a predetermined outcome or view, nor have I seen him express impatience with litigants or with colleagues with whom he may ultimately disagree. He is attentive and respectful of all views and is keenly aware that judicial decisions are not academic exercises but have far-reaching consequences on people's lives."

Judge Barry on Judge Alito's service as U.S. Attorney . . . "The tone of a United States Attorney's Office comes from the top. The standard of excellence is set at the top. Samuel Alito set a standard of excellence that was contagious—his commitment to doing the right thing, never playing fast and loose with the record, never taking a shortcut, his emphasis on first-rate work, his fundamental decency."

Judge Aldisert on Judge Alito's judicial independence . . . "Judicial independence is simply incompatible with political loyalties, and Judge Alito's judicial record on our court bears witness to this fundamental truth."

Judge Aldisert on working with Judge Alito for 15 years . . . "We who have heard his probing questions during oral argument, we who have been privy to his wise and insightful comments in our private decisional conferences, we who have observed at first hand his impartial approach to decisionmaking and his thoughtful judicial temperament and know his carefully crafted opinions, we who are his colleagues are convinced that he will also be a great justice."

Judge Garth on Judge Alito's lack of an agenda . . . "I can tell you with confidence that at no time during the 15 years that Judge Alito has served with me and with our colleagues on the court and the countless number of times that we have sat together in private conference after hearing oral argument, has he ever expressed anything that could be described as an agenda. Nor has he ever expressed any personal predilections about a case or an issue or a principle that would affect his decisions."

Judge Garth on Judge Alito's personality . . . "Sam is and always has been reserved, soft spoken and thoughtful. He is also modest, and I would even say self-effacing. And these are the characteristics I think of when I think of Sam's personality. It is rare to find humility such as his in someone of such extraordinary ability."

Judge Gibbons on Judge Alito's independence from the executive . . . "The committee members should not think for a moment that I support Judge Alito's nomination because I'm a dedicated defender of [the Bush] administration. On the contrary, I and my firm have been litigating with that administration for a number of years over its treatment of detainees held at Guantanamo Bay, Cuba, and elsewhere. And we are certainly chagrined at the position that is being taken by the administration with respect to those detainees.

"It seems not unlikely that one or more of the detainee cases that we are handling will be before the Supreme Court again. I do not know the views of Judge Alito respecting the issues that may be presented in those cases. I would not ask him. And if I did, he would not tell me. I'm confident, however, that, as an able legal scholar and a fair-minded justice, he will give the arguments—legal and factual—that may be presented on behalf of our clients careful and thoughtful consideration, without any predisposition in favor of the position of the executive branch."

Judge Lewis on his own liberal politics . . . "I am openly and unapologetically pro-choice and always have been. I am openly—and it's very well known—a committed human rights and civil rights activist and am actively engaged in that process as my time permits. . . .

"I am very, very much involved in a number of endeavors that one who is familiar with Judge Alito's background and experience may wonder—'Well, why are you here today saying positive things about his prospects as a justice on the Supreme Court?'

"And the reason is that having worked with him, I came to respect what I think are the most important qualities for anyone who puts on a robe, no matter what court they will serve on, but in particular, the United States Supreme Court."

Judge Lewis on Judge Alito's honesty and integrity . . . "As Judge Becker and others have alluded to, it is in conference, after we have heard oral argument and are not propped up by law clerks—we are alone as judges, discussing the cases—that one really gets to know, gets a sense of the thinking of our colleagues. And I cannot recall one instance during conference or during any other experience that I had with Judge Alito, but in particular during conference, when he exhibited anything remotely resembling an ideological bent."

Judge Lewis on Judge Alito and civil rights . . . "If I believed that Sam Alito might be hostile to civil rights as a member of the United States Supreme Court, I guarantee you that I would not be sitting here today. . . . My sense of civil rights matters and how courts should approach them jurisprudentially might be a little different. I believe in being a little more aggressive in these areas. But I cannot argue with a more restrained approach. As long as my argument is going to be heard and respected, I know that I have a chance. And I believe that Sam Alito will be the type of justice who will listen with an open mind and will not have any agenda-driven or result-oriented approach."

Judge Lewis on why he endorses Judge Alito . . . "I am here as a matter of principle and as a matter of my own commitment to justice, to fairness, and my sense that Sam Alito is uniformly qualified in all important respects to serve as a justice on the United States Supreme Court."

Mr. KYL. Mr. President, I ask unanimous consent that the attached editorial by the Arizona Republic, dated January 24, be printed in the RECORD of this debate on the confirmation of Judge Samuel Alito to the U.S. Supreme Court. The editors' support for Judge Alito is welcome, and their statement that "Judge Alito is a superior candidate for the high court regardless of his political leanings" is absolutely true.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Arizona Republic, Jan. 24, 2006]

ALITO: WISE IN THE WAYS OF "WHYS"

If America is not on pins and needles over today's Senate Judiciary Committee vote on Samuel Alito for the U.S. Supreme Court, perhaps this Web site headline on Monday helps provide an explanation:

"Feingold unsure of Alito"—WSAW-TV, Wausau, Wis.

If one of the Senate's most solidly liberal members, Sen. Russ Feingold, D-Wis., remains uncertain about President Bush's nominee one day prior to his scheduled Judiciary vote, prospects for derailing the nomination in the full Senate would seem dim.

We'll see how the votes pan out. Still, it is worth wondering: Where did the drama go?

The most obvious answer among many is that Alito is a superior candidate for the high court regardless of his political leanings. After 15 years on the bench, Alito has established a lengthy track record as a fair jurist who has struck a proper balance between his own constitutional interpretations and those of other courts.

Even his obvious discomfort at the beginning of his Judiciary hearings worked to Alito's favor. The candidate is bookish and uncomfortable in the limelight? All the better for a position on the nation's most deliberative, most cerebral panel.

Many commentators have noted that the even-keeled Alito presents himself far differently from Robert Bork, the famously rejected conservative nominee of 1987.

Well, yes. Alito was not combative in the face of relentless grilling, as Bork was. And he wears no wicked-looking beard.

But it would seem that Alito's imminent success is less a matter of televised theatrics, facial adornment or even judicial philosophy than it is a reflection of the public's expectations of a jurist.

Unquestionably, the public wants jurists to be fair, and it seems to believe that Alito will live up to that standard. The public wants a jurist who respects the judgment of other courts, but it also wants one who understands that Job 1 is to interpret the Constitution.

Sometimes, Supreme Court judges have found those two directives in conflict. The public, and most of the senators who represent it, seems to believe Alito will find his way through those conflicts fairly and intelligently.

But most of all, Alito appears to have won over converts because he has demonstrated the trait that increasingly seems to distinguish great jurists from mediocre-to-good ones: He can explain why.

We all wish to know why. With all due respect to President Bush's previous nominee, Harriet Miers, it was not enough that—wink, wink—her vote on the "right" issues was ensured. Indeed, that constituted the most damning argument against her.

Alito, by contrast, has won support because senators believe that his decisions will be grounded and argued in the facts of the law, not in some predisposed political prejudice that is unsupported by the case before him.

And that is a powerful argument for Alito all by itself.

Mr. KYL. Mr. President, I rise in support of Judge Alito's nomination to the Supreme Court and urge my colleagues to quickly confirm him.

I begin by observing that the party-line vote in the Judiciary Committee yesterday raises a troubling question for the full Senate, and it is basic to our deliberations. What is the proper test for determining whether to confirm a nominee to the Supreme Court? Until very recently, the Senate has evaluated whether the nominee was qualified—that is, whether he or she possessed the requisite experience, integrity, and temperament to serve. But a new test has been proposed by Judiciary Committee Democrats: will the nominee provide assurances that he or she will rule a particular way on cases sure to come before the Court?

Before I discuss the ramifications of that troubling question, though, I would like to apply the traditional test—the proper test—to the nominee before us.

A Supreme Court Justice should be an experienced judge. Samuel Alito has more Federal judicial experience than all but one nominee in U.S. history, Horace Lurton, who was nominated by President Taft. In 15 years of service, Judge Alito has authored more than 360 opinions and participated in more than 4,800 decisions. It is an extensive record.

A Supreme Court Justice should be deeply familiar with American constitutional law. Judge Alito has spent his entire professional life grappling with constitutional jurisprudence—serving as a Federal prosecutor at both the trial and appellate level, as the government's lawyer before the Supreme Court, and as a constitutional lawyer in the Justice Department before becoming a judge. Nobody who watched Judge Alito's testimony would deny that he is a brilliant legal thinker with a deep and textured understanding of our Nation's jurisprudence.

A Supreme Court Justice should have unassailable integrity. Here, I look to those who know him best.

First, the American Bar Association, in finding him unanimously "well-qualified" to serve, conducted more than 300 interviews with people who know Judge Alito on a professional and personal basis. They have reported that the high praise for Judge Alito's integrity was "consistent and virtually unanimous." I repeat, it was "unanimous."

Second, let's look at what the judges of the U.S. Court of Appeals for the Third Circuit had to say. Seven current and former judges testified on Judge Alito's behalf—judges who were nominated by Presidents Johnson, Nixon, Reagan, the first President Bush, and Clinton. Collectively, they have served with Judge Alito for more than 75 years. They praised his fairness, his integrity, his open-mindedness, his temperament, his intellect, and his devotion to the rule of law.

Finally, a Supreme Court Justice must know the difference between the judicial role and the legislative or executive function. This qualification is sometimes difficult to decipher, but there are several clues that can guide us.

First, a long judicial record helps, and Judge Alito gives us that. There is not a trace of judicial activism in his record.

Second, a judge cannot have a policy agenda. He or she must defer to the political branches on policy questions. Judge Alito agreed, testifying, "We [judges] are not policymakers and we shouldn't be implementing any sort of policy agenda or policy preferences that we have." Judge Alito's colleagues on the Third Circuit appeals court confirmed this. For example, Judge Aldisert testified that "at no time during the 15 years that Judge Alito has served with me and with our colleagues on the court, and the countless number of times that we have sat together in private conference after hearing oral argument, has he ever expressed anything that could be described as an agenda."

Third, a judge must not twist statutes or constitutional provisions to reach a result he favors. As Judge Alito testified, "Judges don't have the authority to change the Constitution. The whole theory of judicial review . . . is contrary to that notion." In other words, a judge must accept that the Constitution will sometimes require him to make rulings that he might disagree with. Politicians are free to vote their convictions; judges must put their personal views aside. I will have more to say about this issue in a few moments.

Fourth, the judge must have the right understanding of the "living Constitution." Our Constitution must always remain alive to new situations that the Founders did not contemplate. But the judge must apply the constitutional provisions in the way that most closely approximates the meaning of the text and the underlying principles as understood when drafted. The Constitution is not infinitely malleable. It is not a blank slate for the judicial branch to draw upon. It has no "trajectory" or "evolutionary theme." It is a text—words with meanings. If the Constitution can be twisted to mean anything, then it ultimately means nothing, and then we live under the rule of judges, not the rule of law.

Judge Alito respects the proper divisions within American constitutional government. As he explained in his testimony, the judiciary "should always be asking itself whether it is straying over the bounds, whether it's invading the authority of the legislature [or] making policy judgments other than interpreting the law." He emphasized that judges have a duty to police themselves through what he called the "constant process of re-examination on the part of the judges." If all judges engaged in this process of re-examination, the quality of justice in this Nation would improve dramatically.

Judge Samuel Alito is not going to legislate from the bench or bend the Constitution to suit any political preferences that he might have. He is not going to rely on foreign law, but will look to our American traditions. He is not going to apply the Constitution as he wishes it might be, but as it is written. In exercising this judicial restraint, Judge Alito will protect the people's ability to govern themselves—and that is ultimately what is at stake.

That is why I support Judge Alito. Here is a man who is the son of an immigrant, comes from a modest background, and has a keen sense of patriotic duty. He is highly intelligent, undeniably experienced, and imbued with character and personal integrity. He has a low-key, patient, and respectful personality—the model of what we have come to call the "judicial temperament." He believes in judicial restraint and has proven it for the past 15 years. He deserves my vote and I will proudly give it to him.

This is the analysis we have applied in the past, and its application has resulted in confirmation for most nominees. It was certainly the analysis used to evaluate President Clinton's nominees to the Supreme Court. So it is in this context that I want to discuss what is evolving as a new test—a "results-oriented" test.

The minority members of the Judiciary Committee did not question Judge Alito's qualifications. Rather, they tried to get him to commit to certain results in cases that are sure to come before the courts. They want to see certain policy goals enacted into law. Now, we all want our policy goals to become law, but our aim should be enacting constitutional legislation, not relying on the courts to enact our policy preferences.

In my September statement supporting Judge Roberts, I explained that this same dynamic had played itself out during his hearings. It is apparent that there is now a fundamental difference between the majority and the minority parties on this matter. We believe the courts should not try to impose policy results in their decisions; they should just decide the questions of statutory interpretation and constitutional meaning.

For the Supreme Court, the results are—or should be—simply a function of the proper application of the Constitution and law to the facts of each case.

To the minority, however, that's not enough. As many minority Senators have expressed, they are not going to vote for a nominee who will not assure them that he will vote the way they want in future cases. I submit that that is wrong. As Judge Alito testified, "Results-oriented jurisprudence is never justified because it is not our job to produce particular results."

Yesterday's meeting of the Judiciary Committee illustrates that many Senators have adopted this results-oriented approach to the confirmation process. The wrong questions are being asked, and the wrong answers are being demanded. The right question is how the nominee will do his job, not what the nominee will decide. This fundamental point is getting more and more lost with each passing confirmation battle.

Let me give a few examples. Yesterday a Senator said that it was necessary to vote against Judge Alito because that Senator believes in a right to abortion and there is no guarantee that Judge Alito will agree with that position in a future case dealing with abortion regulations.

That Senator took the same approach when discussing the just-decided case of Gonzales v. Oregon, which dealt with the Attorney General's promulgation of regulations in response to a state physician-assisted suicide statute. The Attorney General had said that, despite the Oregon statute, physicians could not use Federally regulated drugs to kill patients.

The case, therefore, did not turn on the Court's views on physician-assisted suicide, but, rather, on the interpretation of the underlying statute. The majority made this clear in the first paragraph. Justice Kennedy explained:

> The dispute before us is in part a product of this political and moral debate, but its resolution requires an inquiry familiar to the courts: interpreting a federal statute to determine whether Executive action is authorized by, or otherwise consistent with, the enactment.

The Supreme Court had not ruled on the wisdom or appropriateness or constitutionality of physician-assisted suicide, but the Senator was critical of Chief Justice Roberts because he had not voted to uphold assisted suicide, and the Senator didn't think Sam Alito would either. One could fervently agree with the Senator on the policy issue, yet interpret the statute in a way that requires a different result. But, it appears, results are all that matter.

As another example from yesterday's committee meeting, a Senator said that protecting wetlands was very important, and wanted to make sure that Judge Alito would allow the Federal Government to protect them under the Clean Water Act. The Senator acknowledged that the underlying constitutional question was the extent of Congress's power to regulate non-navigable waterways which, arguably, are not in interstate commerce. That is a thorny constitutional question. But, rather than acknowledging that Congress might have gone too far in exercising its power to regulate interstate commerce, the Senator was troubled that Judge Alito's future votes on protecting wetlands could not be predicted.

Now, I don't mean to single out any one Senator, because the same thing happened throughout the committee meeting. Senator after Senator would bring up the results of decisions by Judge Alito without any regard as to why he reached a certain result, such as their procedural disposition, the proper standard of review, the governing case law of the Supreme Court or the Third Circuit, or the legal reasoning that Judge Alito used. It was all about results.

As a final example, another Senator wanted Judge Alito to tell him that it was unconstitutional for the President to take major military action against Iran or Syria absent prior congressional authorization. He was exasperated that Judge Alito wouldn't just prejudge the question, which the Senator called "basic," and say that the President could not do so. But Judge Alito gave the judge's answer. It was anything but "basic." Judge Alito explained that he needed to consider the political question doctrine first, then to analyze the scope of the President's Article II War Powers, the history of the use of force absent congressional authorization—it's a very complicated history—and then apply it to the facts before him. The Senator wanted a politician's answer, a policymaker's answer. In other words, he wanted to know how that case would turn out, before it was briefed and argued. But all we should be asking, is how he would approach the question. What principles would Sam Alito apply, not what kind of results Sam Alito will deliver.

Abortion, executive power in a time of war, congressional power, State sovereign immunity, the 4th amendment, wetlands regulation, the death penalty—many Senators have constructed a confirmation standard that revolves completely around predictions about how cases related to issues such as these will come out. We cannot allow our public policy aspirations to cloud our view of the judicial function.

If our process evolves into results-oriented voting, votes will inevitably become partisan. Indeed, it appears that it has already become partisan. The confirmations of Ruth Bader Ginsburg and Stephen Breyer speak volumes about how this results-oriented approach is, in fact, a problem centered within the democratic caucus. Both of these nominees had a long history of liberalism. Both were Democrats with ties to the political left. Ginsburg was the former general counsel to the ACLU who had advocated taxpayer funding of abortion, and Breyer had been Senator KENNEDY's chief counsel and an academic promoter of an expansive regulatory state. Yet both received unanimous support from the Judiciary Committee. Justice Ginsburg received 96 votes on the floor, and Justice Breyer received 87 votes. They have served for more than a decade on the left side of the Supreme Court, exactly as Republicans suspected that they would when they voted to confirm them. But Republicans evaluated their judicial qualifications favorably, trusted their commitments to approach cases with an open mind, and gave deference to the President's choice. After all, he had won the election.

We haven fallen a long way since Justice Breyer was confirmed in 1994. The Republicans who put aside their policy goals and supported liberal Democratic nominees have been rewarded with unprecedented filibusters of qualified nominees to the lower courts and the adoption of a results-oriented confirmation standard for the Supreme Court.

I say to my Democrat colleagues—is this really the path you want to put us on? You have already dramatically increased the chance of future filibusters. Do we really want Senators to vote against any nominee who will not prejudge cases and guarantee results? I know that the most ideological activists on both sides of the spectrum would prefer that path, but do you? Does the Senate? Does the Nation?

As I said, for now this is a Democrat problem. But it is naive to think that, someday, Republicans won't decide that what is good for the goose is good for the gander. And while your "no" votes on Judge Alito will not keep him from the Supreme Court, I say to my Democratic friends—what if President Bush had lost the 2004 election but there were 55 Republicans in the Senate? If Republicans today were applying your results-oriented, litmus-test-based standard to a Democrat President's nominees, would it be possible to confirm anybody even vaguely as liberal as Ginsburg or Breyer. If we followed your path, the answer would clearly be "no." This is a terribly dangerous road to travel.

We all know that the Supreme Court confirmation process has taken on political campaign-like elements, with television advertisements and grass roots activism. That development, plus this results-oriented approach to confirmation, represents the subtle rejection of the very idea of a non-political, independent judiciary. What else can we conclude when Senators won't vote for a nominee who even they say is qualified and has high integrity, just because they want to guarantee certain results out of the Court? That's not law. That's politics. It is the antithesis of the rule of law and constitutional government. Do we really just want policy makers in robes? I remember when President Clinton's former White House Counsel, Lloyd Cutler, testified before the Judiciary Committee. His answer was a resounding "No."

In conclusion, I remind the Senate of something Justice O'Connor said last September: the rule of law is "hard to create and easier than most people imagine to destroy." That warning speaks directly to what we face today. If a partisan block of Senators continue down this path of politicization, it cannot be expected to apply to only one party. The ultimate loser will not be Republicans or Democrats, but the rule of law itself.

"Hard to create, and easier than most people imagine to destroy." My friends, please—take a step back. The man is qualified. He has high integrity. He is fair. He deserves your vote.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. ENSIGN. Mr. President, I rise today in support of the nomination of Judge Samuel Alito, Jr., to the U.S. Supreme Court.

One of the greatest honors and responsibilities of a Senator is a vote we cast to confirm judges. Our role is not one that I take lightly. It is with deep respect for the laws of this Nation and for the highest Court in our land that I stand before the Senate today.

As Senators, we are tasked with the specific duty in the checks and balances system of our Government. It is with our advice and consent that a President's nominee is confirmed or rejected. This is how it has worked since the Constitution was adopted. Our forefathers, with great brilliance and foresight, wanted to ensure that no one person wielded excessive power. However, at the same time, it is the President who selects a nominee. He earns that power as the elected leader of the United States. President Bush nominated Judge Alito. We are here to consider that nomination.

I had the opportunity to meet Judge Alito and I find he is extremely qualified to join the highest Court in this land. His experience, his temperament, his understanding of the role of the Court and his respect for the law make him an admirable candidate who I believe will serve this Nation well.

The single most important factor that went into my decision of whether to support Judge Alito has to do with the Justices' role on the Court. The job of the judiciary is to apply and interpret the Constitution and the laws of the land. Unfortunately, not everyone sees it that way. That is why judicial activism has become so rampant in this country. In no way is it the judiciary's purview to make laws. That is clearly the job of legislators. Legislators are to make the laws and judges apply them. Judge Alito understands this principle and has demonstrated so throughout his esteemed career.

In his testimony before the Senate Judiciary Committee he spoke about the limited role of the judiciary. Judge Alito stated it should always be asking itself whether it has strayed over the bounds, whether it is invading the authority of the legislature, for example, whether it is making policy judgments rather than interpreting the law. That has to be a constant process of reexamination of the judges.

During Judge Alito's confirmation hearing, Democrats tried to make the case that judicial precedent is more important than the Constitution itself. Most Americans believe the words of the Constitution should have real meaning. A strict constructionist approach to interpreting the Constitution is necessary for the consistent application of our laws. How can we as the legislative branch do our jobs effectively when the judicial branch is free to provide an expansive reading of the Constitution at any moment? I don't believe we can.

For this reason, we need judges who value the Constitution first. Precedent is a necessary tool to ensure consistent application of the laws, but precedent should not be held so high that we prohibit judges from revisiting bad precedent. The history of the Supreme Court supports this idea. If bad precedent could not be overturned, Plessy v. Ferguson would still stand and racial segregation would still be legal in this country. That thought is truly reprehensible. The Supreme Court, in fact, has overturned its own precedent at least 225 times. That is nearly once per year.

I support Judge Alito's nomination because his testimony demonstrates his understanding of the principle that the Constitution, and not precedent, is preeminent.

In addition to his clear and committed approach to interpreting laws and not being a judicial activist, I think the testimony and support of his colleagues speaks volumes about what we can expect from Justice Alito.

Judge Maryanne Trump Barry has served on the Third Circuit with Judge Alito since President Bill Clinton appointed her in 1999. She also worked in the U.S. Attorney's Office with Judge Alito in the late 1970s. About his service as U.S. attorney, she stated:

> Samuel Alito set a standard of excellence that was contagious—his commitment to doing the right thing, never playing fast and loose with the record, never taking a short-cut, his emphasis on first-rate work, his fundamental decency.

Judge Aldisert of the Third Circuit, appointed by President Johnson, has worked with Judge Alito for 15 years. He testified about the experience of those who have served with Judge Alito. Because of Judge Alito's work on the bench, he stated:

> . . . we who are his colleagues are convinced that he will also be a great justice.

The character, the qualifications, and the commitment of Judge Alito are not in question by anybody in this room. His long history of public service has proven that. He has served our judicial system and our Nation with the utmost honor, and we can expect him to continue that legacy from our Supreme Court.

I urge all of my colleagues in the Senate to consider their vote and to avoid partisanship. Consider Judge Alito's qualifications. Consider his respect for the Constitution. Senator KYL from Arizona preceded me on the floor. He talked about the dangerous precedent that would be set if this body were to depart from the standard of judging nominees based on their experience in favor of a partisan approach. Republicans, back in the 1990s, voted for two people they knew would be liberal. The basis on which Judge Alito's confirmation is based will likely determine the basis by which all future nominees will be judged.

What I think is important to consider is not how someone will rule but rather on their judicial approach with respect to the words of the Constitution, at the writing of the Founders, at the principles on which America was founded. That is the judicial approach I want somebody to have on the Highest Court in the land. And that is the judicial approach I believe—no one knows for sure, but I believe—Samuel Alito has and how he will make judgments as an Associate Justice of the U.S. Supreme Court.

So I urge all my colleagues to support his nomination. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COLEMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COLEMAN. Mr. President, I have come to the Senate floor to discuss the nomination of Judge Samuel Alito. My purpose is to share with my colleagues and the people of Minnesota my decision to vote to confirm Judge Alito and the reasons for it.

This is one of the most solemn and important events in the life of the Senate. From Minnesota, I watched and listened to the hearings closely. Judge Alito's intellect and character are nothing short of remarkable.

On day four of the hearings, January 12, 2006, four sitting and two former judges of the U.S. Court of Appeals for the Third Circuit testified on behalf of Judge Sam Alito's nomination to the Supreme Court. They spoke about his independence, judgment, intellect, and character.

I remember listening to Judge Timothy Lewis tell us that Judge Alito will be the type of Justice who will listen with an open mind and will not have any agenda-driven or result-oriented approach. I think that is what we want in a judge.

What is interesting is that Judge Lewis is a Clinton appointee. He stated:

> I am openly and unapologetically pro-choice and always have been.

Judge Lewis went on to state:

> I am openly—and it's very well known—a committed human rights and civil rights activist and am actively engaged in that process as my time permits. . . .
>
> I am very, very much involved in a number of endeavors that one who is familiar with Judge Alito's background and experience may wonder—"Well, why are you here today saying positive things about his prospects as a justice on the Supreme Court?"
>
> And the reason is that having worked with him, I came to respect what I think are the most important qualities for anyone who puts on a robe, no matter what court they will serve on, but in particular, the United States Supreme Court.

It has been said that the most important decision in Government is "who decides?" With magnificent simplicity, article II, section 2 of the Constitution lays out the process for placing members on our Highest Court. It says:

> . . . he [the President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint [justices] of the Supreme Court. . . .

For us, elected officials, the process of determining who will lead is long, drawn out, expensive, and sometimes very noisy. But for the selection of Justices, the Founders wanted the process to reflect the dignity of the office.

Unfortunately, we have witnessed a deterioration of the dignity and solemnity of that process in the last few years. Despite Chairman SPECTER's best efforts, the hearing before the Judiciary Committee seemed, at times, to me, at least in some ways, an exercise in futility.

I would like to know the breakdown between the amount of time Senators on the committee spent making speeches for the witness to hear and how much time they spent listening to him. The "advice and consent" process became "lobby and confront."

The Senate should examine the nominee, not dissect him or her.

I have read he was asked more than 700 questions. The Presiding Officer should know: he was there. He sat through part of that process. I believe he brought, and others try to bring, a sense of asking the nominee about the process that he would employ in making decisions. It was clear that what Judge Alito brought to the table was not one that says here is what I believe and as a result this is what I will do but, rather, what you would want a judge to do: What do the facts say, what does the law say, what does the Constitution say.

In being asked 700 questions, I think that is something like 500 more than Justice Ginsburg was asked. Senators on the committee who had previously counseled nominees not to answer specific questions on issues that will come before them on the Court on this occasion abused the nominee for not doing so. The American people know what this process is supposed to be about. The President nominates and the Senate confirms. The President, who was elected by all the people, did his job. Now it is time for us to do ours.

When we approach issues of greatest magnitude, the Senate should be at its very best. I like Stephen Covey's advice to leaders when he wrote:

> The Main Thing is to keep the Main Thing the Main Thing.

Despite all the distractions and attempted detours, there is a main thing to be focused on. This main thing is not a particular issue or political agenda. This main thing should not vary based on whether your party is in the White House. I hope that in my time in the Senate, if there is a President of a different party, I will bring the same approach that I have tried to bring to the judges that President Bush has nominated. My consistent standard throughout my time in the Senate will be this: Is the nominee qualified by relevant experience, proper judicial temperament, and ethical standards which are beyond reproach? Does he bring a perspective that says a judge is to be a judge or referee, not to bring his or her personal opinions to the table to create law as he or she sees it but, rather, does what Judge Alito does, looks at the facts, looks at the law, the Constitution.

I would submit that a quick search for the votes and record of judicial nominations over the last 200 years would indicate this is the historical standard almost all Senators have taken. The current circumstance of microscopic examination, politicizing, and threats of filibusters is a major historical aberration. For the sake of the judiciary and the whole constitutional system, I hope we find our way back to the way things have been for over the last 200 years plus, rather than the last 5 years.

In my view, Judge Samuel Alito is extremely well qualified to serve on the Supreme Court. He has an extraordinary legal mind. There is no doubt about it. He has demonstrated in his years on the bench and in hundreds of cases that he views the judicial role as following the Constitution and interpreting the law, not making the law.

Judge Alito told us in his own words that "no person in this country, no matter how high or powerful, is above the law, and no person in this country is beneath the law." He also told us that "our Constitution applies in times of peace and in times of war, and it protects the rights of Americans under all circumstances."

On results-oriented jurisprudence, Judge Alito stated:

> Results-oriented jurisprudence is never justified because it is not our job to try to produce particular results. We are not policymakers. We shouldn't be implementing any sort of policy agenda or policy preferences we have.

In effect, this was the same standard that Judge Roberts applied. I recall he was asked a question whether he was ruling on behalf of the little guy. And the comment was, if the Constitution says the little guy deserves to win, he will. And if it says that he doesn't deserve to win, then he won't. That is what judges should do. That is the way they should operate.

Advice and consent was never intended as a rehash of the previous Presidential election. It was never intended as a means for the Senate to impose its policy agenda on a future court. I worry that we are walking down a dangerous path when Senators start looking at judges and in effect requiring them to say, yes, I will rule a certain way or otherwise you will not get my vote.

Advice and consent was never intended as a means to grandstand or placate interest groups. I will proudly vote to support Judge Alito's nomination. His career, his writings, and his class during this less-than-ideal confirmation process are proof that he will be an outstanding member of the highest Court. The President has done his job admirably. He has nominated an outstanding judge. The Senate has examined his qualifications. Now it is time for us to do our job and confirm Samuel Alito as an Associate Justice of the U.S. Supreme Court.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, pending before the U.S. Senate is the nomination of Judge Sam Alito from the Third Circuit to the U.S. Supreme Court. As I mentioned earlier in the day, it is a historic moment seldom seen on the floor of the Senate when we discuss the possible elevation of an individual to a lifetime appointment to the highest Court in the land.

The Supreme Court is the last refuge for America's rights and freedoms. It is an important institution for our values and our future. That is why during the course of the day many Members of the Senate have come to the floor to express their feelings about Judge Alito. It is largely broken down on partisan lines. Those on the other side of the aisle—the Republican side—are virtually all in support of Judge Alito. Most on the Democratic side oppose him.

I have listened to what many of the Republican Senators who have come to the floor have said. Almost every Republican Senator who has come to the floor today has made the argument that we should all vote for Judge Alito because in 1993, some 13 years ago, Justice Ruth Bader Ginsburg, a Supreme Court nominee of President Clinton, was confirmed overwhelmingly by the Senate. That appears to be talking point No. 1 that the White House generated not only in conversation today on the floor, but also at the hearing concluded recently in the Senate Judiciary Committee. There are some fundamental flaws in their reasoning and I will point out three:

First, as I mentioned this morning, Justice Sandra Day O'Connor, whose vacancy is being filled, has been the fifth and decisive vote on many issues central to our democracy. The Justice who takes her place is truly in the position to tip the scales of justice in America. In the last 10 years, 193 cases have been decided in the Supreme Court by the closest of votes, 5 to 4; and of the 193 cases, Justice Sandra Day O'Connor has been the deciding vote in 148; 77 percent of these closely divided decisions were decided by Justice Sandra Day O'Connor. Now, the Justice whom Ruth Bader Ginsburg replaced in 1993, Byron White, didn't play the same pivotal role Justice O'Connor has played as the decisive vote on so many important issues.

Second, President Clinton selected Justice Ginsburg after a real, authentic consultation with Republicans in the Senate. This morning, I saw Senator HATCH early in the day and I said his book sales must be up because everybody is quoting him. It is a book he wrote entitled "Square Peg: Confessions of a Citizen Senator." In that book, Senator Orrin Hatch of Utah described how in 1993, as the top Republican on the Judiciary Committee, he received a telephone call from President Clinton to discuss possible Supreme Court nominees. Senator HATCH recounted in his book—and still stands by it—that he warned President Clinton away from a nominee whose confirmation Senator HATCH believed "would not be easy," in his words. He wrote in his book that he suggested the names of Ruth Bader Ginsburg, whom President Clinton had never heard of, according to Senator HATCH, and Stephen Breyer. Senator HATCH wrote that he assured President Clinton that Ginsburg and Breyer "would be confirmed easily."

What a contrast to the situation we face today. President Bush sends the names of nominees to the Senate without previous consultation. In fact, I may be mistaken on this particular nominee, Judge Alito, but I do recall

Senator SPECTER saying he learned of Harriet Miers' nomination when the news media announced it—or only shortly before. I think he said he was called within an hour or so before the news announcement. That is much different than the consultation that took place with Senator HATCH and President Clinton, where President Clinton went to the ranking Republican—not even the Chair at that moment—and asked him for advice and consultation on the next Supreme Court nomination.

Judge Alito was nominated not as a product of bipartisan consultation with the Senate but, rather, as a payoff—or at least a satisfaction to the radical right who had turned their back on Harriet Miers' nomination.

There is another crucial difference between Judge Alito and Judge Ginsburg. Despite some Republican Senators' efforts to rewrite history, Judge Ginsburg was viewed at the time of her nomination as a moderate and centrist judge based on her dozen years of service on the Federal bench. In a National Public Radio news story dated June 18, 1993, a reporter named Nina Totenberg said as follows:

> Why did the Republicans feel so comfortable with Judge Ginsburg? The answer is that her judicial record shows her to be the most conservative Carter-appointed judge on the U.S. Court of Appeals here in the District of Columbia.

She's considered a centrist, a swing vote. And in fact, a statistical analysis done in 1987 of that Court's voting pattern shows Judge Ginsburg voting substantially more often with the court's conservative Republican bloc of judges, led by then-Judge Robert Bork, than with the liberal Democrat judges.

Judge Alito, by contrast, has never been called a centrist judge. At least those who looked at his record have not called him that. He is not a judge who votes more often with his Democratic colleagues than his Republican colleagues. Far from it. Judge Alito is a staunch conservative and the most frequent dissenter on his court. When he dissents, it is almost always in a rightward and more conservative direction.

I spoke earlier about Judge Alito's track record on civil rights. I talked about some of the cases in which he showed a particular insensitivity to those who came before his court without the trappings of power. In fact, Judge Alito, in many of those cases, was the sole dissenting judge. Because Justice O'Connor was the fifth and deciding vote on so many cases involving civil rights and racial justice, Judge Alito will tip the scales of justice on those issues if he is confirmed.

At this point, I ask unanimous consent to have printed in the RECORD a letter of January 6, 2006, from the Leadership Conference on Civil Rights that has been submitted in opposition to the nomination of Judge Alito, signed by Dr. Dorothy Height, chairperson, and Wade Henderson, executive director.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LEADERSHIP CONFERENCE
ON CIVIL RIGHTS,
Washington, DC, January 6, 2006.

Hon. ARLEN SPECTER, Chairman,
Hon. PATRICK J. LEAHY, Ranking Member,
Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR CHAIRMAN SPECTER AND RANKING MEMBER LEAHY: On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, we write to express our opposition to the confirmation of Judge Samuel A. Alito, Jr. as Associate Justice of the Supreme Court of the United States. The Supreme Court's jurisprudence over the past 50 years has often served to protect the fundamental constitutional rights of all Americans. Judge Alito's decisions, however, often stand in direct contrast to that jurisprudence and embrace a much more limited and narrow view of constitutional rights and civil rights guarantees. A careful examination of Judge Alito's record reveals a history of troubling decisions in the areas of civil rights, civil liberties, and fundamental freedoms, decisions that undermine the power of the Constitution and of Congress to, protect the civil and human rights of all Americans. LCCR believes that Judge Alito's record does not demonstrate an adequate commitment to protecting fundamental rights and, therefore, urges the Senate to reject his nomination.

The Supreme Court is the final arbiter of our laws, and its rulings can drastically impact the lives, liberties, and rights of all Americans. As such, LCCR believes that no individual should be confirmed to the Supreme Court unless he or she has clearly shown a strong commitment to the protection of civil rights and liberties, human rights, privacy, and religious freedom. The evidence reviewed to date shows that Judge Alito's record in these areas is highly troubling. His overall record reveals a jurist whose views are clearly to the right of where most Americans stand on a number of issues, including the reach of civil rights laws, the constitutional safeguards afforded those within our criminal justice system, and the power of Congress to protect Americans in the workplace and elsewhere.

In addition, LCCR is very troubled by the statements Judge Alito made in his 1985 application to be the Reagan administration's Deputy Assistant Attorney General in the Office of Legal Counsel. In particular, Judge Alito cited his disagreement with key rulings by the Supreme Court on legislative reapportionment, criminal justice and religious liberties, and added that he was "particularly proud" of his work to restrict affirmative action and limit remedies in racial discrimination cases. Although he now claims that these were just mere words on an application, his record as a jurist reveals something different. The ideological views taken in the application and during his time in the Reagan administration are exemplified throughout his judicial decision making, where he routinely favors a reading of statutory and constitutional law that limits the rights of individuals and the power of Congress to protect those individuals. The following is a summary of the reasons for LCCR's opposition:

JUDGE ALITO'S "DISAGREEMENT" WITH SUPREME COURT RULINGS ON REAPPORTIONMENT

In an essay attached to a 1985 application for a position within the Department of Justice, Judge Alito wrote that he had been motivated by his opposition to, among other things, the Warren Court's rulings on legislative reapportionment. Because those rulings first articulated the fundamental civil rights principle of "one person, one vote," and paved the way for major strides in the effort to secure equal voting rights for all Americans, his stated opposition to them is extremely troubling. It is vital to understand the context in which these cases were decided.

Prior to the 1960s, as urban areas throughout the country experienced rapid population growth, many state and federal legislative districts were not redrawn, often leaving rural voters with far more representation per capita—and thus far more political power—than urban residents. In Florida, for example, just 12 percent of the population could elect a majority of the state senate. While unequal districts affected all voters, their impact was especially harsh in the South, where, along with discriminatory requirements like poll taxes and literacy tests, malapportionment virtually guaranteed the exclusion of racial minorities from the democratic process. Until 1962, the federal courts generally refused to intervene, dismissing such matters as "political questions."

The Supreme Court's ruling in Baker v. Carr broke new ground when the Court declared, for the first time, that the federal courts had a role to play in making sure that all Americans have a constitutional right to equal representation. In Wesberry v. Sanders, the Court examined Congressional districts in the State of Georgia, which had drawn its legislative map so that 823,680 people in the Atlanta are were all represented by one Congressman, while a rural Congressman represented only 272,154 people. The Court held that these disparities violated the Equal Protection Clause of the 14th Amendment, and ordered that the districts be redrawn more evenly. In Reynolds v. Sims, the Court applied the principle of "one person, one vote" to state legislatures, which, in many cases, had even more drastic malapportionment than Congressional districts. For example, the Reynolds case itself challenged Alabama's legislative districts, in which one county with more than 600,000 people had only one senator, while another county with only 15,417 people also had its own senator.

In articulating the concept of "one person, one vote," the so-called "Reapportionment Revolution" cases equalized political power between urban and rural voters, and ensured that every citizen would have an equal voice in the legislative process. Along with the passage of the Voting Rights Act of 1965 and its subsequent amendments, the decisions also paved the way to far greater representation of racial and ethnic minorities, at both the state and federal levels of government. They also helped open the door for legal challenges to the "at-large" and "multimember" districts that many Southern states established in an effort to circumvent the Baker rulings and continue excluding African-American voters from the political process.

The Warren Court decisions that established the constitutional principle of "one person, one vote" were a catalyst for tremendous progress in our nation's efforts to secure equal voting rights for all Americans, and quickly became so accepted as a matter of constitutional law that they could fairly be described as "superprecedent." Yet two decades later, long after most of the nation had come to embrace this progress, Judge Alito still boasted of his opposition to it. The fact that he would use his opposition as a "selling tactic" for a job in 1985 is disconcerting, and raises suspicions about his overall legal philosophy that deserve extensive scrutiny.

JUDGE ALITO'S NARROW READING OF ANTI-DISCRIMINATION AND OTHER WORKER PROTECTION LAWS

Judge Alito's record also raises concerns about whether he would be a strong enforcer of our nation's civil rights and labor laws. His decisions thus far in such cases show a pattern of narrow interpretations of the laws, placing greater burdens on civil rights plaintiffs to prove discrimination and making it harder for the government to protect workers.

In a number of cases involving race, gender, disability, and age discrimination, Judge Alito was clearly to the right of his colleagues on the Third Circuit. In Bray v. Mariott Hotels, for example, the Third Circuit ruled that an African-American plaintiff who had been denied a promotion had shown that racial discrimination might have been a factor, and that she was therefore entitled to take her case to trial. But Judge Alito dissented, writing an opinion that prompted the majority to charge that "Title VII would be eviscerated if our analysis were to halt where the dissent suggests." In Sheridan v. E.I DuPont de Nemours and Co., a gender discrimination plaintiff sued after being denied a promotion. A jury ruled in her favor, but the trial judge threw out the verdict. The Third Circuit found that she had presented enough evidence to persuade the jury that discrimination was a factor, but Judge Alito was the lone dissenter in the en banc decision. Judge Alito acknowledged that additional evidence of discrimination, beyond proof that an employer's explanation for an adverse decision was pretextual, should not usually be required for a plaintiff to get to a jury, but he maintained that summary judgment might still be appropriate in some cases. The result Judge Alito would have reached in the Sheridan case, however—reversing a jury finding of sex discrimination that every other judge on the Third Circuit would have upheld—undermines the neutral standard he articulated. To reach this result, Judge Alito not only gave the employer the benefit of the doubt but failed to consider some of the most important evidence brought by Sheridan. Finally, in Nathanson v. Medical College of Pennsylvania, a prospective medical student filed suit under the Rehabilitation Act of 1973, claiming that the school failed to provide accommodations for a back injury. The trial court granted summary judgment in favor of the school, but a Third Circuit panel reversed on the Rehabilitation Act claim because there were different factual assertions that necessitated a jury trial. Judge Alito dissented, prompting his colleagues to write that under his standards, "few if any Rehabilitation Act cases would survive summary judgment.

Judge Alito's record on anti-discrimination cases becomes more troubling when considered in light of his record prior to serving on the Third Circuit. As Assistant to the Solicitor General during the Reagan administration, Judge Alito co-authored several *amicus curiae* briefs that sought to eliminate affirmative action policies that were put in place to remedy past discrimination, discrimination which, in one case, persisted in contravention of at least three court orders over an eight-year period. In his 1985 application for a promotion within the Justice Department, Judge Alito later mischaracterized these cases as involving nothing more than challenges to "racial and ethnic quotas." Judge Alito's involvement in the Reagan Justice Department's zealous campaign to undermine affirmative action remedies suggests that he adheres to an ideology that goes beyond mere conservatism on civil rights matters.

In cases involving other worker protections that deal with such matters as salary, pensions and job safety, Judge Alito has also demonstrated a clear and unmistakable tendency to rule narrowly and against working people. Given a choice between reading a statute broadly, consistent with Congress' intent to provide workers with basic protections, or reading a statute in the narrowest way possible, he again shows a disturbing tendency to come down against workers. In Reich v. Gateway Press, for example, Judge Alito dissented from a ruling in which the Third Circuit found that employees of a group of related community newspapers were protected by the overtime rules of the Fair Labor Standards Act. The majority reasoned that while the law may not have covered each individual newspaper, which were small in size and circulation, the papers and all employment decisions were managed by one company and thus amounted to an "enterprise" that was subject to the overtime law. Judge Alito dissented, however, and would have denied this coverage, claiming that neither the statute nor the legislative history could support the majority's conclusion. In Belcufine v. Aloe, on the other hand, Judge Alito took a more expansive reading of the law, but in this case it was in order to benefit corporate officers at the expense of workers. Belcufine involved a state law that held corporate officers personally liable for unpaid wages and benefits. Judge Alito ruled, in a split decision, that the law could no longer be applicable, as a matter of policy, once a corporation has filed a bankruptcy petition. The dissenting opinion pointed out that nothing in the statute in question "even remotely can be read to excuse the agents and officers" from liability once a company files for bankruptcy.

JUDGE ALITO'S WILLINGNESS TO UNDERCUT FUNDAMENTAL PRIVACY AND DUE PROCESS RIGHTS

In cases involving criminal justice matters such as the Fourth Amendment, habeas corpus, and the right to effective assistance of counsel, Judge Alito has shown an excessive tendency to defer to police and prosecutors. This deference frequently comes at the expense of the constitutional rights and civil liberties of individual Americans, and it raises concerns about whether Judge Alito would help enable governmental abuses of power.

In Doe v. Groody, Judge Alito argued in dissent that police officers who conducted strip searches without a warrant could still be entitled to qualified immunity. The majority concluded, in a decision authored by Judge Chertoff, that strip searches of the suspect's wife and ten-year-old daughter went well beyond the police's warrant to search the home of a suspected drug dealer, and that the officers were therefore not entitled to claim qualified immunity as a defense to a subsequent lawsuit. As Judge Chertoff noted, holding otherwise would "transform the judicial officer into little more than the cliche 'rubber stamp.'" Judge Alito, in criticizing the majority for what he called a "technical and legalistic" ruling in favor of the plaintiffs, would have granted authority to the police to decide who could be searched and therefore, would have given the officers immunity for invading the privacy rights of the wife and daughter. In United States v. Lee, Judge Alito upheld the warrantless video surveillance by the FBI of a suspect's hotel suite. He justified his ruling on the ground that the FBI only turned on the surveillance equipment when an informant was present in the suite and could "consent" to the surveillance, but this ruling disregarded the fact that the equipment was capable of being used at any time and thus enabled the FBI to invade the suspect's privacy at any time. And in Baker v. Monroe Township, a woman and her children were searched as they were entering premises that were the subject of a search wacrant. The search warrant specified a location but there were no names included on the warrant, which led the majority to conclude that the warrant was deficient under the requirements of the Fourth Amendment. Judge Alito dissented, however, arguing that the lack of particularity in the warrant allowed the officers more leeway to search anyone on the premises.

Judge Alito's overly deferential attitude toward law enforcement at the expense of privacy rights was also evident before his appointment to the Third Circuit. In a 1984 memorandum, Judge Alito—then an attorney with the Justice Department—opined that the Attorney General and other government officials should have absolute immunity from civil liability for wiretapping the phones of Americans without a warrant. He urged the administration not to pursue such an argument in a pending Supreme Court case, but only on purely strategic grounds. The Supreme Court, in Mitchell v. Forsyth, went on to rule that absolute immunity did not apply in such situations, rejecting the broad, troubling view expressed in Judge Alito's memorandum.

Judge Alito's record is equally troubling in other areas of criminal justice, and shows the same excessive deference to law enforcement that can open the door to abuses. In another 1984 memorandum, Judge Alito argued in defense of a state law that had authorized Tennessee police to use deadly force against any fleeing felon suspect whom police have probable cause to believe had committed a violent crime or was armed or dangerous. In the case of Tennessee v. Garner, that law was invoked after police shot and killed an unarmed, 15-year-old, 5′4″ burglary suspect while he was climbing a fence. While Judge Alito did not recommend filing an amicus curiae brief in support of the police in the case, he still found the shooting to be constitutionally defensible. When given a choice between killing a possibly nonviolent suspect and allowing a possibly violent suspect to escape, Judge Alito argued that "[r]easonable people might choose differently in this situation." The Supreme Court disagreed with Alito's farfetched analysis, finding the statute unconstitutional by a 6-3 margin.

Judge Alito's record also reveals a distressing tendency to deny habeas corpus claims of those in the criminal justice system. In Rompilla v. Horn, Judge Alito held that in the sentencing phase of a capital murder case, the failure of a defense attorney to investigate and present mitigating evidence, including the defendant's traumatic childhood, alcoholism, mental retardation, cognitive impairment and organic brain damage, did not amount to ineffective assistance of counsel in violation of the Sixth Amendment. His ruling was decried as "inexplicable" by the dissent and was overturned by the Supreme Court, which noted that some of the mitigating evidence was publicly available in the very courthouse in which the defendant was tried. Justice O'Connor concurred in reversing Judge Alito's ruling, describing the defense attorney's performance as "unreasonable." In another case, Smith v. Horn, Judge Alito's dissent would have denied the habeas claims of a death row inmate. Judge Alito concluded that a jury instruction regarding the defendant's guilt, which the majority found the jury could have reasonable misunderstood, did not amount to a constitutional violation.

Finally, the case of Riley v. Taylor shows Judge Alito's reluctance to question prosecutors even where racism is alleged in the jury selection process. In that case, Judge Alito did not find a constitutional violation in the prosecution's apparent use of peremptory challenges to exclude black jurors from a death penalty case involving an African-American defendant. His dissent in the case illustrated a disregard for the impact of racially motivated peremptory jury strikes on African-American defendants. The majority had relied, in part, on statistical data to conclude that black jurors had been excluded, but Judge Alito took issue with the use of statistics, questioning the exclusion of black jurors as a statistical oddity and comparing it to the fact that five of the last six U.S. Presidents had been left-handed. His comments drew a sharp rebuke from the majority, who said that "[t]o suggest any comparability to the striking of jurors based on their race is to minimize the history of discrimination against prospective black jurors and black defendants.

JUDGE ALITO'S TROUBLING RECORD ON IMMIGRATION LAW

Judge Alito's record in appeals of asylum and deportation orders reveals an abnormally strong tendency to let adverse Board of Immigration Appeals (BIA) and lower court rulings stand. For example, an analysis by The Washington Post found that Judge Alito has sided with immigrants in only one out of every eight cases he has handled, which, according to the Post, sets him apart even from most Republican-appointed judges. Judge Alito's record is more problematic in light of the recently growing criticism, by many other federal judges from both parties, of asylum rulings by the BIA and administrative immigration judges.

In asylum cases, Judge Alito has a strong tendency to rule against individuals who are seeking protection in the United States, even where evidence shows that they have been or would have been persecuted in their own countries. In Chang v. INS, Judge Alito dissented from the court's grant of asylum for a Chinese engineer who claimed he would face persecution if returned to his own country. Judge Alito found no reason to reverse the INS denial of asylum despite the fact that Chang had presented evidence that his wife and son already faced persecution and he was threatened with jail if he returned to China. Similarly, in Dia v. Ashcroft, Judge Alito dissented from a majority opinion granting asylum to an immigrant from the Republic of Guinea whose house had been burnt down and whose wife had been raped in retaliation for his opposition to the government. The majority noted that the immigration judge seemed to be searching for ways to deny asylum and find fault with the credibility of Dia. Judge Alito's dissent pushed for a higher standard. The majority criticized Judge Alito's dissent, noting that his proposed standard would "gut the statutory standard" and "ignore our precedent."

Judge Alito's excessive tendency to defer to the BIA is also evident from his record in deportation cases. In Lee v. Ashcroft, Judge Alita dissented when the court ruled that a false tax return is not an "aggravated felony," an immigration law term that triggers mandatory deportation and bars most forms of humanitarian waivers. The court reasoned that Congress only intended for tax evasion to trigger mandatory deportation, but Judge Alito disagreed and pushed for a more expansive reading of the law. The majority noted that ambiguity in the law should be resolved in favor of the immigrant and that Judge Alita's interpretation was grounded in "speculation." In Sandoval v. Reno, Judge Alito's dissent would have construed the Antiterrorism and Effective Death Penalty Act of 1996 to strip the federal courts of their ability to hear habeas corpus claims from aliens in custody challenging deportation orders. The Supreme Court ultimately rejected Judge Alito's reading of the law, in INS v. St. Cyr, because such an interpretation would raise serious constitutional questions.

Also troubling is a 1986 letter Judge Alito wrote, in his capacity as Deputy Assistant Attorney General, to former FBI Director William Webster in which he suggested, inter alia, that "illegal aliens have no claim to nondiscrimination with respect to nonfundamental rights," and that the Constitution "grants only fundamental rights to illegal aliens within the United States." Judge Alito uses a strained reading of the 1976 Supreme Court ruling in Mathews v. Diaz to support this assertion, but oddly, he makes no mention of the 1982 ruling in Plyler v. Doe, which squarely ruled that a state could not discriminate against undocumented children in public education, even though education is not considered a fundamental constitutional right. As such, Judge Alito's letter raises questions about whether he would be willing to adequately protect undocumented immigrants from unconstitutional forms of discrimination.

JUDGE ALITO'S RESTRICTIVE VIEW OF THE ESTABLISHMENT CLAUSE

Judge Alito's record shows that he takes an overly narrow view of the First Amendment's Establishment Clause, a view that sets him apart from Justice O'Connor and the majority of her colleagues to serve on the Supreme Court. His record—along with his acknowledged disagreement with the Supreme Court's most noteworthy rulings in this area—raises concerns that he would not do enough to protect the religious liberties of an increasingly diverse America.

For example, in ACLU of New Jersey v. Black Horse Pike Regional Board of Education, Judge Alito voted—against an en banc majority of his colleagues on the Third Circuit—to uphold a public school policy that allowed high school seniors to vote on whether to include prayer during a graduation ceremony. By allowing a popular majority of public school students to waive the rights of a minority, Judge Alito's view—had it not also been subsequently rejected by the Supreme Court in a later case—would have essentially defeated the purpose of the Establishment Clause.

Judge Alito's ruling in ACLU of New Jersey v. Schundler (Schundler II) is equally troubling. In Schundler, the municipality of Jersey City, New Jersey had placed a crèche and menorah outside of City Hall. After a district court ruled that the display violated the Establishment Clause, the city added additional figures to the following year's display, including those of Santa Claus, Frosty the Snowman, a red sled, and Kwanzaa symbols. The district court eventually found that this modified display was also unconstitutional. Judge Alito reversed this decision, however, and upheld the modified display. In doing so, he minimized the fact that the display had only been modified in response to litigation and that the city had been attempting to promote religion through its holiday displays for decades—even though the Supreme Court considers such history to be highly relevant when determining whether a practice or policy violates the Establishment Clause.

JUDGE ALITO'S EFFORTS TO LIMIT CONGRESSIONAL AUTHORITY IN FAVOR OF "STATES' RIGHTS"

Judge Alito's record demonstrates a troubling tendency to favor "states' rights" over the rights of ordinary Americans. During his tenure on the Third Circuit, he has engaged in an excessively narrow reading of the Commerce Clause and an excessively broad reading of state sovereign immunity under the 11th Amendment. In fact, his decisions show that he would go even further than the current Supreme Court in undercutting Congress' ability to protect Americans.

In United States v. Rybar, the Third Circuit upheld the conviction of a firearms dealer for the sale of outlawed machine guns, joining six other circuits in finding the federal law banning the transfer or possession of machine guns to be a valid exercise of Congressional authority under its power to regulate interstate commerce. But Judge Alito dissented, arguing that the Supreme Court's recent decision in United States v. Lopez, which invalidated Congress' gun-free school zone ban, made clear that Congress did not have such power. The majority distinguished Lopez because it dealt with a small geographic area—school zones—whereas the law at issue in Rybar applied nationwide. Judge Alito would have taken Lopez a step beyond to place further restrictions on Congress' power to use its Commerce Clause authority to protect Americans from machine gun violence. Judge Alito's extraordinarily narrow perspective of Congressional power expressed in his Rybar dissent raises serious concerns about whether he will uphold major and historically effective pieces of civil rights infrastructure such as the ban on discrimination in places of employment or public accommodation in the Civil Rights Act of 1964, and whether he will hold a restrictive view of Congress' power to move the country forward with additional civil rights laws such as hate crimes and non-discrimination legislation.

In Chittister v. Department of Community and Economic Development, Judge Alito's majority opinion would have denied a state employee the benefits of the Family and Medical Leave Act of 1993 ("FMLA"). In this case, a state employee had sued after being fired for taking medical leave that had been approved pursuant to FMLA. A jury ruled in Chittister's favor, but the trial court reversed the verdict on the ground that the state was immune from suit under the 11th Amendment. On appeal, Judge Alito affirmed the ruling, claiming that Congress had not abrogated state sovereign immunity. The Supreme Court later reached an opposite conclusion from Judge Alito's holding in its 2003 decision in Nevada Department of Human Resources v. Hibbs. The Court held that state employees could in fact sue their employers under the FMLA, a decision that has subsequently been read by some courts to validate the constitutionality of the entire law.

JUDGE ALITO'S MEMBERSHIP IN "CONCERNED ALUMNI OF PRINCETON"

In the same job application essay described above, Judge Alito also stated that he was "a member of the Concerned Alumni of Princeton University, a conservative alumni group" ("CAP"). Throughout its existence, CAP was notorious for its outspoken, inflammatory rhetoric opposing Princeton's decision to enroll female students. Indeed, CAP reportedly advocated limiting the percentage of women admitted to the school. CAP also derided Princeton's efforts to increase the number of minority students; the group argued that children of alumni were more deserving of admission. In the group's magazine, Prospect, one of the organization's founders fondly recalled that Princeton had once been "a body of men, relatively homogenous in interests and backgrounds," but that he now worried about the future of the University "with an undergraduate student body of approximately 40% women and minorities, such as the Administration has proposed." In 1975, an alumni panel reviewed admission issues and condemned CAP's characterization of Princeton's policies. The panel, which included current Senate Majority leader Bill Frist, determined that CAP "presented a distorted, narrow and hostile view of the university that cannot help but have misinformed and even alarmed many alumni." It is unclear when Judge Alito joined the group or what role he played in its activities. But his membership in the organization is troubling, given the group's outspoken hostility towards the inclusion of women and minorities at Princeton University, and it raises serious questions about the level of his commitment to gender and racial equality.

Also troubling is Judge Alito's current effort, following his nomination to the Supreme Court, to now deny he ever had any affiliation with the group. In a questionnaire he recently submitted to the Senate Committee on the Judiciary, Judge Alito stated that "[a] document I recently reviewed reflects that I was a member of the group [Concerned Alumni of Princeton] in the 1980s. Apart from that document, I have no recollection of being a member, of attending meetings, or otherwise participating in the activities of the group." This supposed lack of any recollection of being a member of CAP seems difficult, at best, to reconcile with the statement he made in his 1985 job application essay—a statement in which he not only cited his membership in CAP, but deliberately used this claim of membership in an effort to bolster his conservative credentials.

CONCLUSION

The stakes could not be higher. The Supreme Court is closely divided on cases involving many of our most basic rights and freedoms. Judge Alito has been nominated to fill the seat of retiring Justice Sandra Day O'Connor, who was the crucial deciding vote in so many of those cases. The American people want and deserve to know that any new Supreme Court justice will be committed to protecting individual rights, and will put our freedoms ahead of any political agenda. Unfortunately, Judge Alito's record not only fails to show such a commitment, but also raises serious doubts.

In addition, we also have doubts about whether Judge Alito will, at his confirmation hearings, address the above concerns in a fully open and candid manner. For instance, Judge Alito has given numerous shifting and conflicting reasons for why he did not, as he promised to Senators before being confirmed to the Third Circuit, recuse himself from cases involving the Vanguard companies, in which he had financial holdings. Furthermore, Judge Alito has also recently tried to dismiss a number of troubling statements in his 1985 job application, such as his disagreement with the Warren Court's reapportionment cases, by suggesting that his statements should not be taken seriously because he was simply applying for a job. Finally, as discussed above, Judge Alito has also attempted to deny any affiliation with the radical group Concerned Alumni of Princeton, even though he himself proudly claimed to be a member in 1985. These incidents raise doubts about whether Judge Alito's responses to tough questions about his record and his legal philosophy can be completely believed when his confirmation hearings begin next week.

For the above reasons, we must oppose his confirmation as Associate Justice. We appreciate your consideration of our views. If you have any questions, please feel free to contact LCCR Deputy Director Nancy Zirkin at (202) 263-2880 or LCCR Counsel Rob Randhava at (202) 466-6058. We look forward to working with you.

Sincerely,

DR. DOROTHY I. HEIGHT,
Chairperson.
WADE HENDERSON,
Executive Director.

Mr. DURBIN. Mr. President, there is another aspect of Judge Alito's record that is equally troubling, and that is his failure to show that he will protect the average American from the overreaching hand of government.

I question whether he is dedicated to protecting the privacy rights of individuals from government officials in many critical areas of our lives. For example, I share the concern of many of my colleagues about Judge Alito's decision to allow a police officer to conduct a strip search of an innocent 10-year-old girl. The police officer, who did not have a valid search warrant in the opinion of a majority of the judges on Judge Alito's court, took the 10-year-old girl and her mother into a bathroom, ordered them to empty their pockets, and then ordered the young girl and the mother to lift their shirts and drop their pants—a 10-year-old girl. A majority of the judges on Judge Alito's court said that went too far; the search warrant did not authorize it. Judge Alito saw it differently. He was the only judge on the court to say that the Constitution permitted this search.

The majority opinion in this case, incidentally, was written by Michael Chertoff. If the name is familiar, it is because then-Judge Chertoff, a conservative Republican, today is in the President's Cabinet as the head of our Department of Homeland Security. Judge Chertoff, writing the majority opinion, said that what was done was wrong, and Judge Alito's decision was wrong.

In the context of reproductive freedom, I am troubled about whether Judge Alito accepts some of the basic rights of personal privacy. One of the cases which we should not forget was decided some 41 years ago by the Supreme Court. The case was Griswold v. Connecticut.

As hard as it may be to believe, there was a law in the State of Connecticut and in many other States, including my home State of Illinois, at that time which made it a crime for a married couple to buy birth control devices or for a doctor to prescribe them or for a pharmacist to fill the prescription. It was a crime for married couples to engage in family planning by buying any type of birth control device. It is hard to believe. That was America in the 1960s.

The Supreme Court took a look at this case and said that is wrong. There is built into our rights as a citizen the right of privacy, and that privacy goes to those intimate, personal decisions made by individuals—in this case, husbands and wives—in the State of Connecticut. They struck down the Connecticut statute.

I asked Judge Alito what he thought about this Griswold decision and this right of privacy. He was willing to say that Griswold is settled law. But, of course, Griswold v. Connecticut and the right of privacy was the basis of a decision made a few years later in Roe v. Wade. In that particular case, the Supreme Court built on this concept of a right of privacy and said that for a woman making the most important and personal decision of her life, in terms of the continuing of a pregnancy, she had a protected status in certain stages of the pregnancy. That was a decision which was handed down over 30 years ago—33, as a matter of fact.

So we asked Judge Alito if he accepted that Griswold v. Connecticut, which established the right to privacy, was settled law in America, and did he also accept that Roe v. Wade, which followed, was settled law? He repeatedly refused to provide us with that assurance about this landmark decision.

What a contrast to John Roberts, who, just a few months before when he was nominated for the Chief Justice position on the Supreme Court and was asked the same question, said that he believed Roe v. Wade was settled precedent in America. That is a defining difference between these two nominees and an important one.

If Judge Alito is confirmed, there are very serious questions about what will happen with the right of privacy in America, not just for the women who could be affected by these decisions but for everyone.

It wasn't that long ago, a little over a year ago, that the Congress was embroiled in a controversy over something that many families face every day in America. You will remember the Terri Schiavo case, a sad situation where some chemical imbalance led to Terri Schiavo going into a coma. Her life was sustained by extraordinary means for 15 years while her husband argued that she never wanted it that way. She had made it clear not to take extraordinary measures to keep her alive.

There was a battle within the family. Her parents saw it differently, and they went to court regularly to fight this out. Time and again, the Florida courts reached the decision that what Terri Schiavo's husband said would be controlling and that her wishes would be honored and that extraordinary measures to keep her alive would be discontinued, and then the case would be appealed.

Finally, the day came when all appeals had been resolved, and it was apparent a decision would finally be made to remove the life support she was receiving. It was at that moment when a group—a political group—inspired some Members of Congress to get involved. They started arguing it was the time, at that moment, for the Federal courts to step into the hospital room and for the Federal judges to make decisions overriding the State courts, overriding the stated wishes of Terri Schiavo, overriding the wishes of her husband.

There is hardly a person in the Senate who hasn't faced a similar family decision when someone you love is near the end of their life and the doctor comes in and says there are several things we can do. I know in my family, my mother made it very clear to me she didn't want any of that life support, extraordinary effort made. I was determined to honor her wishes. She passed away very quickly with a heart attack, and we never had to face that decision, but we knew what she wanted. Her sons said they would stand by her wishes. Most people feel the same way. Do you know why, Mr. President? Because it is an extremely private, personal, and family issue. But in the case of Terri Schiavo, there were those in the U.S. Congress, particularly in the House of Representatives, who wanted the Federal Government to step in at that moment.

So when we talk about diminishing the right of privacy in America, it goes far beyond the contentious issue of abortion. It goes to issues involving the last wishes of a person who is dying. It goes to issues involving protecting our privacy and our records, our computers, our medical records, our financial records, and our credit history. The right of privacy has become a large part of American life, and I am concerned when Judge Alito has drawn distinctions in saying there are some elements of this right of privacy that he still is not certain are settled law in America.

Another fear I have about Judge Alito is that he will not be respectful of the time-honored system of checks and balances in this country when it comes to Presidential power. If confirmed, Judge Alito will have to decide what limits, if any, the Constitution places on the President's authority over all of us.

Based on his record, I am concerned that Judge Alito will not be willing to stand up to a President who is determined to seize too much power over our personal lives. In speeches to the ultraconservative Federalist Society which Judge Alito bragged about belonging to in the 1980s, Judge Alito has said he is a "strong proponent" of the so-called "unitary Executive theory," another phrase you won't find in the Constitution. He even criticized the Supreme Court, specifically Chief Justice Rehnquist, for failing to defer to this theory. During his hearings, Judge Alito said he still supports key elements of the theory today and indicated he will follow it, to some degree, in making his decisions.

The same unitary executive theory has been the basis for many claims by the Bush administration that they had the Executive power to make some of the most controversial decisions of their Presidency, including the war on terrorism, the use of torture, and the power to eavesdrop on our phone conversations without court approval, as required by law.

Based on the unitary executive theory, the Bush administration has claimed the right to seize American citizens and imprison them indefinitely without charge. In the Hamdi case, the Supreme Court, in an opinion written by Justice Sandra Day O'Connor, rejected this policy. Only one Justice voted to uphold the administration's decision. That Justice, Clarence Thomas, based his dissent on the unitary executive theory, the same general theory to which Judge Alito says he subscribes.

It appears that if Judge Alito is approved for the Court, he will join Justice Thomas and Justice Scalia as only the third Supreme Court Justice who has announced public support for this fringe theory called the unitary executive theory which gives more and more power to the President and less restraint of law on his activities.

The Supreme Court is supposed to be a check on the power of the President. The Court's role is to interpret the Constitution, not to advance some marginal theory of the Federalist Society or any other special interest group. During his hearings, Judge Alito did attempt to distinguish his position on the unitary executive theory from the Bush administration's, but he refused to say whether he disagreed with Justice Thomas' dissent in Hamdi, and he repeatedly refused to say whether this President or any President has the right to disregard a law passed by Congress.

Several Senators asked Judge Alito about this directly, and several times he gave the same carefully worded response—and I quote it:

> The President must take care that the statutes of the United States that are consistent with the Constitution are complied with.

Here is what we don't know about that statement: If the President claims that a law is not consistent with the Constitution, can he ignore the law with impunity? And if Judge Alito is on the Supreme Court, is that how he would rule? That certainly is the way he answered the question.

Presidents often issue formal statements when they sign a law. When Judge Alito was an attorney in President Reagan's Justice Department, he advocated the use of Presidential signing statements to, in his own words, "increase the power of the Executive to shape the law." In this way, Sam Alito argued "the President will get in the last word on questions of interpretation."

The Framers of our Constitution didn't see it the same as Judge Alito. They said Congress was to have the last word.

The Bush administration has adopted Judge Alito's proposal. In more than 100 Presidential signing statements, the Bush administration has cited unitary executive theory and pledged to uphold the law if it doesn't conflict with this theory.

Just 3 weeks ago, we saw a good illustration. The White House issued a Presidential signing statement claiming that the President could set aside the McCain torture amendment which Congress passed overwhelmingly in December. Under what rationale could a President ignore a law that passed in this Chamber 90 to 9? The White House claimed the President has the power under the "unitary Executive theory." So hold on to your seats, America. If Judge Alito goes onto the Court pushing this theory that was inspired by the Federalist Society saying this President has extraordinary powers no President has ever had, it will consolidate more power in the executive branch than our Founding Fathers ever imagined.

Does any President have the power to ignore the McCain torture amendment or FISA, the law that requires court approval to wiretap American citizens? Based on his record, I am fearful that Judge Alito, facing these questions, is more likely to defer to the President's power than defend our fundamental constitutional rights.

I will speak more to this issue about wiretaps in a moment.

I also fear that Judge Alito, if confirmed, would blur the traditional line between church and state. In his 1985 job application essay, he indicated his disapproval of the Warren Court decisions on the establishment clause of the Constitution.

What is the establishment clause? In the first amendment, the Constitution makes clear that we have the freedom of religious belief. Of course, that means each of us has the right under the law, under our Constitution, to believe any religious belief or to hold to no religious belief. That is our basic freedom. It says:

> Congress shall make no law respecting an establishment of religion. . . .

This was an understandable part of our Constitution because many of our Founding Fathers hailed from England, which had an official national church. They wanted to make it clear that there would be a separation, a clear wall of separation between church and state, as Thomas Jefferson said in the early 1800s.

The Warren Court, led by Earl Warren, as Chief Justice, struck down government-sponsored prayer and government-sponsored devotional Bible reading in public schools, arguing that it violated the establishment clause. The decisions by the Warren Court were nearly unanimous. They stood for the proposition, as the Constitution said, that our government must be neutral toward religion in order to maintain this healthy separation of church and state. This concept of government neutrality is the bedrock of today's mainstream establishment clause thinking, and it is led by none other than Justice Sandra Day O'Connor. Yet from a review of Judge Alito's 15 years on the Federal bench, it is clear that Judge Alito has serious reservations about whether government should be neutral toward religion, as our Constitution requires.

I think we ought to reflect on this long and hard. We live in a country of diverse religious belief. We try to show respect for each person's religious belief, and we make it clear that our government won't pick favorites among religions. We can only look overseas to other countries that are torn with strife over religious divisions to understand the wisdom of our Founding Fathers, a wisdom that should be honored by our Supreme Court.

The rulings of Judge Sam Alito on the Third Circuit raise questions as to whether he will continue to protect the separation of church and state that has served America so well.

Let me speak for a moment about a timely issue which is not only in the headlines but really relates directly to this confirmation consideration of Judge Alito. Like many Americans, I am deeply concerned about recent revelations that sometime in 2001, President Bush authorized the National Security Agency to begin spying on Americans in the United States without court approval. This is an apparent violation of law.

Let me say at the outset, this is not about whether we should wiretap terrorists. Of course, we should. We should use every legal tool available to put an end to Osama bin Laden's deadly franchise.

Under a law called the Foreign Intelligence Surveillance Act, or FISA, the President has broad authority to wiretap suspected terrorists. The FISA Court has been virtually a rubberstamp for Presidents asking for wiretap orders. In fact, over 19,000 requests have been made of this court to wiretap suspected terrorists, and the administration has been denied only 4 times. 19,000 requests, 4 denials.

Within the FISA law there is an emergency exception so if there is a suspicion that a conversation about to take place needs to be wiretapped to protect America, the Government can move quickly, without court approval, so long as they go through the regular process within 72 hours. So the Government can act if they suspect that a conversation would lead to terrorism and endanger Americans.

So the President has authority, under this Foreign Intelligence Surveillance Act, to engage in the activities he has described to the American people: time-sensitive electronic surveillance on suspected terrorists.

What this debate really is about is the President's constitutional obligation to follow the laws of the land. Legal scholars, former Government officials from both political parties, and the nonpartisan Congressional Research Service have all concluded that the NSA program appears to violate the law.

Even President Bush has recognized it is improper to wiretap Americans in the United States without court approval. Listen to what President Bush said in a speech to the American people on April 20, 2004. I quote it verbatim:

> Now, by the way, any time you hear the U.S. Government talking about wiretapping, it requires—a wiretap requires a court order. Nothing has changed, by the way. When we are talking about chasing down terrorists we are talking about getting a court order before we do so.

That is the end of the quote, April 20, 2004, after the President had initiated this NSA wiretapping that is not approved by law and does not use a court order.

When President Bush concluded over 4 years ago that he wanted to eavesdrop on Americans without the court approval required by law, he had an obligation to come to Congress and ask us to change the law.

Congress has always been a willing partner when the President has requested additional authority to fight terrorism. I can recall the President, within days of 9/11, asking for an authorization for the use of force by this Congress to go after Osama bin Laden and al-Qaida, which I readily voted for. There was unanimous support for a bipartisan resolution which passed the Senate.

Shortly thereafter, the President came to Congress and asked us to pass the PATRIOT Act. It was an act that gave the Government more authority, more tools, more legal ways to go after terrorism in the United States. It was overwhelmingly approved with only one dissenting vote in the Senate. Within the PATRIOT Act, the President asked for some changes in this FISA law to make it easier to wiretap terrorists.

So the administration at this point seems to concede the point that they were bound by this law and were looking for changes so they could use it, in their words, more effectively. We tried to accommodate them as much as we possibly could. When the White House asked Congress to pass this bill, we cooperated with them. Members of Congress from both sides of the aisle were happy to work with the President to keep America safe.

That is not what the President has done here. Instead, we have learned that the President has not followed even the law that he asked us to change. He claims the power to eavesdrop on the phone conversations of Americans and e-mails without any court approval, without any legal authority.

That raises fundamental questions. Is this President or any President above the law? Does the President have the authority to disregard laws passed by Congress, whether it is the question of torture or eavesdropping? Can Congress place any limits on the President's power over our lives?

Today I joined the distinguished minority leader, Senator HARRY REID, and my colleagues, Senators KENNEDY and FEINGOLD, and sent a letter to President Bush. We have urgently requested that the President notify us immediately of the changes in the law that he believes are necessary to permit effective surveillance of suspected terrorists and why the changes are needed.

I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, January 25, 2006.

President GEORGE W. BUSH,
The White House,
Washington, DC.

DEAR PRESIDENT BUSH: We strongly support efforts to do everything possible, within the limits of the law, to combat terrorism. We are therefore gravely concerned that sometime in 2001, in apparent violation of federal law, you authorized the National Security Agency (NSA) to eavesdrop on Americans in the United States without court approval.

When you concluded over four years ago that existing law did not provide you sufficient authority to conduct this program, you had an obligation to propose changes in the law to Congress. Rather than doing so, you have apparently chosen to ignore the law. We urgently request that you notify us immediately what changes in the law you believe are necessary to permit effective surveillance of suspected terrorists, and why these changes are needed.

The Foreign Intelligence Surveillance Act (FISA) gives the government broad authority to wiretap suspected terrorists. Federal law provides that FISA and the criminal wiretap statute "shall be the exclusive means by which electronic surveillance . . . and the interception of domestic wire, oral, and electronic communications may be conducted." 18 U.S.C. §2511(2)(f). FISA makes it a crime, punishable by up to five years in prison, to conduct electronic surveillance except as permitted by statute. 50 U.S.C. §1809.

In fact, you have recognized that it is improper to subject Americans in the United States to warrantless wiretapping. In a speech on April 20, 2004, you said: "Now, by the way, any time you hear the United States government talking about wiretap, it requires—a wiretap requires a court order. Nothing has changed, by the way. When we're talking about chasing down terrorists, we're talking about getting a court order before we do so."

You and officials in your administration have repeatedly asserted that FISA does not provide adequate authority to monitor suspected terrorists. However, FISA authorizes monitoring suspected terrorists, who are the purported targets of NSA's warrantless wiretaps. Moreover, FISA includes an emergency exception for situations where there is insufficient time to obtain judicial approval before beginning a wiretap. This exception allows the government to commence electronic surveillance immediately, as long as it seeks a court order within 72 hours. 50 U.S.C. §1805(f). During the course of its existence, the FISA court has approved over 19,000 wiretap applications from the government while disapproving only four.

It therefore appears that your administration has sufficient authority under FISA to engage in the activities you have described—time-sensitive electronic surveillance of suspected terrorists.

Officials in your administration have asserted that the government's internal process for preparing and authorizing a FISA application is too burdensome and slow to monitor suspected terrorists effectively. To be clear, your administration's bureaucratic and paperwork delays are not an excuse for violating the law. As the nonpartisan Congressional Research Service (CRS) concluded: "To the extent that a lack of speed and agility is a function of internal Department of Justice procedures and practices under FISA, it may be argued that the President and the Attorney General could review these procedures and practices in order to introduce more streamlined procedures to address such needs." CRS Memorandum, Presidential Authority to Conduct Warrantless Electronic Surveillance to Gather Foreign Intelligence Information, by Elizabeth A. Bazan & Jennifer K. Elsea.

If you or officials in your administration believe that FISA, or any law, does not give you enough authority to combat terrorism, you should propose changes in the law to Congress. You may not simply disregard the law.

In your December 19, 2005 press conference, you called FISA "a very important tool." FISA is more than a tool; it is a law, and we are a nation of laws. Under Article 1 of the Constitution, Congress has the power to make laws. Under Article 2 of the Constitution, you must take care that the laws are faithfully executed.

In order to win the war on terrorism, we must maintain the high ground by respecting the rule of law as embodied in our Constitution. To do otherwise makes us weaker as a nation and harms our national security. The Supreme Court long ago rejected the notion that there is a wartime exception to the Constitution's separation of powers. As the Court concluded in the historic Youngstown Steel case: "The Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. . . . The Founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times." 343 U.S. 579, 587–89 (1952).

In light of the very serious nature of this matter, we request that you respond to this letter as soon as possible, and, in any case, no later than February 1, 2006.

Sincerely,

HARRY REID,
U.S. Senator.
EDWARD M. KENNEDY,
U.S. Senator.
RICHARD J. DURBIN,
U.S. Senator.
RUSSELL D. FEINGOLD,
U.S. Senator.

Mr. DURBIN. The President cannot continue to simply disregard the law.

At a press conference on December 19, 2005, President Bush called FISA "a very important tool." I would say to the President, FISA is more than a tool. It is a law, and we are a nation of laws.

Our Constitution separates powers between different branches of Government. Under article I of the Constitution, Congress has the power to make laws. Under article 2 of the Constitution, the President must take care that the laws are faithfully executed.

The Supreme Court has faced questions like this in the past, questions regarding the powers of the President in the midst of a war. During the Korean war, President Harry Truman violated the law by seizing America's steel mills to aid the war effort. In the historic Youngstown Steel case, the Court rejected President Truman's actions and concluded:

> The Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. . . . The Founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times.

In order to win the war on terrorism, we must maintain the high ground by respecting our Constitution and respecting the laws of the land. To do otherwise makes us weaker as a nation and harms our national security.

And that is what is at stake with this Supreme Court nomination. Judge Sam Alito, from his early days in the Reagan administration, through the rulings in his court and his testimony before the Judiciary Committee, time and again seems to defer to the Executive's assertions of power. At this moment in history, like none other in recent times, that is a critical and timely issue. We have to ask the question, would this judge on the Court protect our basic privacy and personal freedom or would he give to this President power to ignore the law?

Last week Attorney General Gonzales issued a long memo supporting the administration's position on the NSA spying program. That memo went so far as to suggest that this administration is not even bound by the PATRIOT Act. It suggests that the President can use the powers authorized by the PATRIOT Act without even the limited checks and balances contained in the PATRIOT Act, regardless of what Congress says.

So what has happened is the administration has gone from the question of torture to this whole question of eavesdropping, and now has suggested that this President has the authority to do whatever he cares to do in the name of his power as Commander in Chief.

The Supreme Court in the past has not agreed with Presidents who have tried to seize that much power. President Truman learned that the hard way. I am hopeful this Supreme Court will respect the Constitution and respect the laws of the land and restrain this President or any President who tries to move that far and that fast.

So it comes down to this with the Alito nomination. I am afraid as we look carefully at his record it is clear that he would allow the Government to go too far, to intrude on our personal privacy and our freedoms. I am afraid that he would take the country in the wrong direction when it comes to women's rights and civil rights. I am afraid that his record, as I mentioned earlier on the floor today, is evidence that when he is given a choice between ruling in court for an established institution—whether it is a business or a government—or standing with a consumer or an individual, he consistently rules for the established institution. I am afraid that the 1985 memo, which became a large part of his recent hearing, still guides Judge Alito in many respects in his heart of hearts.

I think the fact that Harriet Miers was rejected by so many conservative groups and the President had to withdraw her nomination has to be taken into consideration here. Judge Sam Alito came as her successor, as the nominee. The same groups that had rejected her accepted Sam Alito. They know or believe they know what I have spoken of this evening, that his is a philosophy that is outside the mainstream, that is not consistent with the values of this country and not consistent with the fine record written by Justice Sandra Day O'Connor.

Mrs. BOXER. Mr. President, yesterday in Burbank, CA, I gave a major address before my constituents announcing my opposition to the nomination of Samuel Alito to the Supreme Court of the United States.

Today I am announcing my opposition to the nomination of Samuel Alito to the Supreme Court of the United States.

According to article II of the Constitution, Justices of the Supreme Court may not be appointed by the

President without the advice and consent of the Senate. So it is our solemn duty to consider each nomination carefully, keeping in mind the interests of the American people.

This nomination is particularly crucial because the stakes have rarely been so high.

First, consider the context in which this nomination comes before us. The seat that Judge Alito has been nominated for is now held by Justice Sandra Day O'Connor, who came to the Court in 1981.

For years, Justice O'Connor has provided the tie-breaking vote and a commonsense voice of reason in some of the most important cases to come before the Court, including a woman's right to choose, civil rights, and freedom of religion.

Second, consider the tumultuous political climate in our Nation. President Bush understood that in 2000 when he promised to govern from the center, and be "a uniter, not a divider." Sadly, this nomination shows that he has forgotten that promise because it is not from the center and it is not uniting the Nation.

The right thing to do would have been to give us a justice in the mold of Justice O'Connor, and that is what the President should have done.

Let me be clear: I do not deny Judge Alito's judicial qualifications. He has been a government lawyer and judge for more than 20 years and the American Bar Association rated him well qualified. He is an intelligent and capable person. His family should be proud of him and all Americans should be proud that the American dream was there for the Alito family.

But after reviewing the hearing record and the record of his statements, writings and rulings over the past 24 years, I am convinced that Judge Alito is the wrong person for this job.

I am deeply concerned about how Justice Alito will impact the ability of other families to live the American dream to be assured of privacy in their homes and their personal lives, to be secure in their neighborhoods, to have fair treatment in the workplace, and to have confidence that the power of the executive branch will be checked.

As I reviewed Judge Alito's record, I asked whether he will vote to preserve fundamental American liberties and values.

Will Justice Alito vote to uphold Congress's constitutional power to pass laws to protect Americans' health, safety, and welfare? Judge Alito's record says no.

In the 1996 Rybar case, Judge Alito voted to strike down the Federal ban on the transfer or possession of machine guns because he believed it exceeded Congress's power under the Commerce Clause. His Third Circuit colleagues sharply criticized his dissent and said that it ran counter to "a basic tenet of the constitutional separation of powers." And Judge Alito's extremist view has been rejected by six other circuit courts and the Supreme Court. Judge Alito stood alone and failed to protect our families.

In a case concerning worker protection, Judge Alito was again in the minority when he said that Federal mine health and safety standards did not apply to a coal processing site. He tried to explain it as just a "technical issue of interpretation." I fear for the safety of our workers if Judge Alito's narrow, technical reading of the law should ever prevail.

Will Justice Alito vote to protect the right to privacy, especially a woman's reproductive freedom? Judge Alito's record says no.

We have all heard about Judge Alito's 1985 job application, in which he wrote that the Constitution does not protect the right of a woman to choose. He was given the chance to disavow that position during the hearings and he refused to do so. He had the chance to say, as Judge Roberts did, that Roe v. Wade is settled law, and he refused.

He had the chance to explain his dissent in the Casey decision, in which he argued that the Pennsylvania spousal notification requirement was not an undue burden on a woman seeking an abortion because it would affect only a small number of women, but he refused to back away from his position. The Supreme Court, by a 5 to 4 vote, found the provision to be unconstitutional, and Justice O'Connor, co-writing for the Court, criticized the faulty analysis supported by Judge Alito, saying that "the analysis does not end with the one percent of women" affected . . . "it begins there."

To my mind, Judge Alito's ominous statements and narrow-minded reasoning clearly signal a hostility to women's rights, and portend a move back toward the dark days when abortion was illegal in many states, and many women died as a result. In the 21st century, it is astounding that a Supreme Court nominee would not view Roe v. Wade as settled law when its fundamental principle a woman's right to choose—has been reaffirmed many times since it was decided.

Will Justice Alito vote to protect Americans from unconstitutional searches? Judge Alito's record says no.

In Doe v. Groody in 2004, he said a police strip search of a 10-year-old girl was lawful, even though their search warrant didn't name her. Judge Alito said that even if the warrant did not actually authorize the search of the girl, "a reasonable police officer could certainly have read the warrant as doing so. . . ." This casual attitude toward one of our most basic constitutional guarantees—the fourth amendment right against unreasonable searches—is almost shocking. As Judge Alito's own Third Circuit Court said regarding warrants, "a particular description is the touchstone of the Fourth Amendment." We certainly do not need Supreme Court Justices who do not understand this fundamental constitutional protection.

Will Justice Alito vote to let citizens stop companies from polluting their communities? Judge Alito's record says no.

In the Magnesium Elektron case, Judge Alito voted to make it harder for citizens to sue for toxic emissions that violate the Clean Water Act. Fortunately, in another case several years later, the Supreme Court rejected the Third Circuit and Alito's narrow reading of the law. Judge Alito doesn't seem to care about a landmark environmental law.

Will Justice Alito vote to let working women and men have their day in court against employers who discriminate against them? Judge Alito's record says no.

In 1997, in the Bray case, Judge Alito was the only judge on the Third Circuit to say that a hotel employee claiming racial discrimination could not take her case to a jury.

In the Sheridan case, a female employee sued for discrimination, alleging that after she complained about incidents of sexual harassment, she was demoted and marginalized to the point that she was forced to quit. By a vote of 10 to 1, the Third Circuit found for the plaintiff.

Guess who was the one? Only Judge Alito thought the employee should have to show that discrimination was the "determinative cause" of the employer's action. Using his standard would make it almost impossible for a woman claiming discrimination in the workplace to get to trial.

Finally, will Justice Alito be independent from the executive branch that appointed him, and be a vote against power grabs by the president? Judge Alito's record says no.

As a lawyer in the Reagan Justice Department, he authored a memo suggesting a new way for the President to encroach on Congress's lawmaking powers. He said that when the President signs a law, he should make a statement about the law, giving it his own interpretation, whether it was consistent with what Congress had written or not. He wrote that this would "get in the last word on questions of interpretation" of the law. In the hearings, Judge Alito refused to back away from this memo.

When asked whether he believed the President could invade another country, in the absence of an imminent threat, without first getting the approval of the American people, of Congress, Judge Alito refused to rule it out.

When asked if the President had the power to authorize someone to engage in torture, Alito refused to answer.

The administration is now asserting vast powers, including spying on American citizens without seeking warrants—in clear violation of the Foreign Intelligence Surveillance Act—violating international treaties, and ignoring laws that ban torture. We need Justices who will put a check on such overreaching by the executive, not rubberstamp it. Judge Alito's record and his answers at the hearings raise very serious doubts about his commitment to being a strong check on an 'imperial President.'

In addition to these substantive matters, I remain concerned about Judge Alito's answers regarding his membership in the Concerned Alumni of Princeton and his failure to recuse himself from the Vanguard case, which he had promised to do.

During the hearings, we all felt great compassion for Mrs. Alito when she became emotional in reaction to the tough questions her husband faced in the Judiciary Committee. Everyone in politics knows how hard it is for families when a loved one is asked tough questions. It is part of a difficult process, and whoever said politics is not for the faint of heart was right.

Emotions have run high during this process. That is understandable. But I wish the press had focused more on the tears of those who will be affected if Judge Alito becomes Justice Alito and his out-of-the-mainstream views prevail.

I worry about the tears of a worker who, having failed to get a promotion because of discrimination, is denied the opportunity to pursue her claim in court.

I worry about the tears of a mentally ill woman who is forced by law to tell her husband that she wants to terminate her pregnancy and is afraid that he will leave her or stop supporting her.

I worry about the tears of a young girl who is strip searched in her own home by police who have no valid warrant.

I worry about the tears of a mentally retarded man, who has been brutally assaulted in his workplace, when his claim of workplace harassment is dismissed by the court simply because his lawyer failed to file a well-written brief on his behalf.

These are real cases in which Judge Alito has spoken. Fortunately, he did not prevail in these cases. But if he goes to the Supreme Court, he will have a much more powerful voice—a radical voice that will replace a voice of moderation and balance.

Perhaps the most important statement Judge Alito made during the entire hearing process was when he told the Judiciary Committee that he expects to be the same kind of Justice on the Supreme Court as he has been a judge on the Circuit Court.

That is precisely the problem. As a judge, Samuel Alito seemed to approach his cases with an analytical coldness that reflected no concern for the human consequences of his reasoning.

Listen to what he said about a case involving an African-American man convicted of murder by an all-White jury in a courtroom where the prosecutors had eliminated all African-American jurors in many previous murder trials as well.

Judge Alito dismissed this evidence of racial bias and said that the jury makeup was no more relevant than the fact that left-handers have won five of the last six Presidential elections. When asked about this analogy during the hearings, he said it "went to the issue of statistics . . . (which) is a branch of mathematics, and there are ways to analyze statistics so that you draw sound conclusions from them. . . ."

That response would have been appropriate for a college math professor, but it is deeply troubling from a potential Supreme Court Justice.

As the great jurist and Supreme Court Justice Oliver Wendell Holmes, Jr. wrote in 1881, "The life of the law has not been logic; it has been experience . . . The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics."

What Holmes meant is that the law is a living thing, that those who interpret it must do so with wisdom and humanity, and with an understanding of the consequences of their judgments for the lives of the people they affect.

It is with deep regret that I conclude that Judge Alito's judicial philosophy lacks this wisdom, humanity and moderation. He is simply too far out of the mainstream in his thinking. His opinions demonstrate neither the independence of mind nor the depth of heart that I believe we need in our Supreme Court Justices, particularly at this crucial time in our Nation's history.

That is why I will oppose this nomination.

MORNING BUSINESS

Mr. THUNE. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

GSRI HEALTHY LIVING STUDY—THE NEW NORMAL? WHAT GIRLS SAY ABOUT HEALTHY LIVING

Mr. FRIST. Mr. President, America is confronting a childhood obesity crisis, and over the past 25 years, the percentage of overweight girls has more than doubled—to 16 percent of girls ages 6 to 19, up from 6 percent in 1974.

To support the search for a solution, the Girl Scout Research Institute asked girls directly how they define health and what motivates them to lead a healthier lifestyle. The results are captured in a new report, titled The New Normal? What Girls Say About Healthy Living.

This new report brings the voice of girls to the forefront of the conversation on childhood obesity for the first time and finds that girls are in many ways ahead of the curve, using a varied, complex set of norms to define health.

Today's girls are defining "health" on their own terms, placing the same value on emotional well-being and self-esteem as they do on diet and exercise. For girls, being healthy is more than just eating right and exercising; it is also about feeling good about oneself and being supported by family and peers.

Girls say that efforts to reduce childhood and adolescent obesity that focus solely on nutrition or physical activity miss the mark.

The study lays out four key findings:

One, girls aspire to be "normal healthy," a concept they often associate with appearing normal and being supported by peers and family. Girls tended to view any diet or lifestyle choice as healthy as long as it doesn't harm their appearance or their relationships with friends and family. Overall, 65 percent of girls say their lifestyle is "healthy enough for my age," while just 16 percent describe their lifestyle as "very healthy." Although about two-thirds, 65 percent, correctly identify themselves as being either normal weight or overweight, one in three girls has a distorted idea about her weight. Older girls also tended to be less satisfied with their weight than younger girls.

Two, girls have a holistic view of health and describe emotional health as important as physical health. Virtually all girls agree that emotional health is as important as physical health—and 88 percent of 11- to 17-year-old girls believe that feeling good about yourself is more important than how you look. More than a third of girls ages 11–17 reported eating more when they are "stressed out" and overweight girls are more than twice as likely as girls who are not overweight to report eating more in times of stress.

Three, girls already know what is healthy, but many don't use the information they have to make healthy choices. Obstacles at home include a decline in the frequency of family meals and increased television watching and computer use as girls get older. A third of girls experience sit down to a family meal no more than twice a week. More than 60 percent of teenage girls skip breakfast at least once a week and nearly 20 percent skip it every day.

Obstacles at school include reliance on vending machines, poor taste and quality of school lunches, optional physical education classes, and a lack of access to more informal physical activities are all barriers. Many girls ages 11-17 say they do not play sports because they do not feel skilled or competent, 40 percent, or because they do not think their bodies look good, 23 percent.

Four, girls cite their mothers not only as role models but also as leading sources of nutritional information and emotional reinforcement. Mothers exert tremendous influence. Girls tend to mirror their mothers' activity levels, weight and body image. And given the increasingly poor diet and sedentary lifestyle of today's adults, it is clear that efforts to improve the health of girls must also target parents—especially mothers.

Continuing a 93-year tradition begun by founder Juliette Gordon Low, Girl Scouts offers an array of successful initiatives and age-appropriate curricula in health, nutrition, and fitness—including more than 60 badges and awards related to healthy living. And the findings of The New Normal? What Girls Say About Healthy Living, will continue this tradition in helping inform GSUSA's ongoing program and policy work.

To turn this research into action today, Girl Scouts is encouraging all girls and their families to engage in advocacy at the local level. Advocacy is a critical component in educating and influencing key policy and decision makers as well as the general public about what girls need to lead healthy lives. To bring girls' voices to the discussion about health in their communities, Girl Scouts is calling on all girls to become involved in the development and implementation of their local School Wellness Policy.

Ninety-five percent of schools must establish a school wellness program consisting of nutrition and physical activity goals by the first day of the 2006–2007 school year. We want girls to take action through advocacy on this timely and important issue so that as schools address the wellness of our Nation's children and youth, the unique girl-perspective is fully considered.

IN MEMORY OF JOHN ROBERT MURREN, M.D.

Mr. REID. Mr. President, I rise today to remember Dr. John Robert Murren, a renowned oncologist, cancer researcher, and a beloved husband, father and son.

I first met Dr. Murren 3½ years ago. He visited me in my Capitol office with his brother and sister-in-law, Jim and Heather Murren. In this meeting, they shared with me their vision for a new world-class cancer research facility in Nevada.

Like so many Americans, the Murrens had been touched by cancer. They had witnessed first-hand the devastation caused by cancer and were motivated to do something to lessen the toll of this horrible illness. As such, the Murrens resolved to combine Heather and Jim's business skills and extensive network with John's medical expertise to create a cutting-edge comprehensive cancer institute in Nevada. In 2002, they founded the Nevada Cancer Institute and built a 142,000 square foot facility in Las Vegas that is dedicated to researching, preventing, detecting, and curing cancer. Dr. John Murren served on the institute's board of directors as well as an adjunct faculty member. Dr. Murren's death will inspire those he left behind to make the Nevada Cancer Institute even better. John would want this.

Dr. John Murren's vision for the Nevada Cancer Institute was based on an impressive medical foundation. He earned his B.A. in chemistry and history from Duke University cum laude followed by his M.D. in 1984 from the Loyola-Stritch School of Medicine in Chicago. He completed his internship and residency in Internal Medicine at St. Vincent's Hospital in New York where he was chief resident. In 1988, Dr. Murren accepted a postdoctoral fellowship in medical oncology at the Yale-New Haven Hospital where he was an attending physician as well as an associate professor of medicine. Since 1992, he had been awarded grant funding to study cancer drug therapies yielding invaluable contributions to the understanding of the effectiveness of cancer drug therapies, particularly chemotherapy.

Dr. Murren was the chief of the Yale Medical Oncology Outpatient Clinic and director of the Lung Cancer Unit at the Yale Cancer Center in New Haven, Connecticut. At Yale, Dr. Murren had the largest clinical practice at the Cancer Center and treated thousands of patients and their families over a distinguished career. His clinical research widely published. He sat on several peer-review boards and was sought out worldwide for his expertise. He was also a member of the board of trustees of the Frisbee Foundation.

In addition to his clinical, educational, and research endeavors, Dr. Murren served on the Clinical Research Subcommittee of the American Association of Cancer Research and the American College of Surgeons Cancer Committee. He also served as cochair of Novel Therapeutics for the American Association of Cancer Research National Meeting in 2001. He was a member of the Research Grants Council in Hong Kong and was an active lecturer and writer.

The loss of Dr. Murren will be felt beyond medical and scientific circles. Dr Murren is survived by Nancy, his wife; John, his son; Jean Perkins Murren, his mother; Jim and Michael, his brothers and Kathie, his sister as well as sisters-in-law: Heather Hay Murren and Mary Kay Murren and brothers-in-law George Koether as well as Jeff and Bill Hughes and wives, family and mother-in-law, Doris Hughes, as well as several nieces and nephews.

Dr. Murren will be missed by his community in Fairfield, CT, where he led an active life. He was a parishioner of St. Thomas Roman Catholic church there, and he enjoyed reading, skiing, tennis, and watching his son, John, play ice hockey.

No one is immune to cancer not even those individuals who, like Dr. Murren, dedicate their life's work to cancer research and treating individuals suffering from cancer. If we in Congress want to honor the life of Dr. Murren and the 1 million Americans who will be diagnosed with cancer this year, then we must invest more Federal money into cancer research. Otherwise, we will continue to lose too many of our family members and friends to this devastating illness.

In closing, I extend to his family, friends, and associates, my sympathy on the passing of a good American, Dr. John Murren. It is my wish that his legacy will be a country that defeats the dreaded disease we call cancer.

HONORING OUR ARMED FORCES

SERGEANT TOBIAS MEISTER

Mr. GRASSLEY. Mr. President, I rise today to honor an heroic American who has fallen while serving his country in Operation Enduring Freedom in Afghanistan. First Sergeant Tobias Meister died December 28, 2005, when a bomb was detonated near his humvee just south of Asadabad, Afghanistan. First Sergeant Meister was part of the Sand Springs based 486th Civil Affairs Battalion and was assigned to the Army Reserve's 321st Civil Affairs Brigade based in San Antonio, TX. My deepest sympathies go out to his wife Alicia, his 1 year old son Will, his parents David and Judy, his brother and many more family and friends.

First Sergeant Meister was born in Kingsley, IA and graduated from Remsen-Union High School in 1994. He was employed by Horizon Natural Resources, an oil and gas firm, after he had successfully completed a business administration degree with a concentration in international business from the University of Texas at San Antonio.

Tobias Meister joined the Iowa National Guard in 1992 and served as an infantryman before transferring to the U.S. Army Reserve in 1998. He was named Drill Sergeant of the Year in 2002, the award for the Nation's top Army Reserve drill sergeant. He will be remembered for his patriotism, his love for his country and his fellow soldiers. As written by comrades on his website.

he had "so much passion for what he was doing, so much patriotism it was a privilege and an honor to work with him." I urge all of my colleagues here and all Americans to extend their prayers to the family of a truly heroic American, First Sergeant Tobias Meister.

ROLAND CARROLL BARVELS

Mr. JOHNSON. Mr. President, I rise today to pay tribute to Roland Carroll Barvels who died in Iraq on January 18, 2006. Roland was employed with DynCorp International and was assigned to the Civilian Police Advisory Training Team in Iraq. He was helping to train and equip a 350,000-member Iraqi security force. Sadly, he was killed when a roadside bomb struck his convoy near Basra.

Prior to joining DynCorp in November 2005, Barvels answered his Nation's call to duty to protect and defend this great country. After serving for 12 years in the military, he became a police officer. Beginning his career in Minnesota, Barvels eventually served in law enforcement for nearly 20 years including his most recent position with the Aberdeen Police Department.

Friends and former co-workers at the Aberdeen Police Department remember Roland with deep admiration. One colleague remarked, "During his time at the police department, he diligently patrolled the streets of our city providing safety and security to the citizens in our community. Roland possessed an incredible ability to talk to people and [to] make anyone he talked to feel at ease."

Roland Barvels bravely served our country in so many ways. His wife and children are in the thoughts and prayers of my family during this difficult time. It is my sincere hope that they will take comfort knowing Ronald's long and distinguished career of protecting those most in need is truly admirable, and his dedication to helping others is an inspiration to us all.

I join with all South Dakotans in expressing my deepest sympathy to the family and friends of Roland Barvels. He will be missed, but his service to our Nation will never be forgotten.

SPECIALIST MATTHEW C. FRANTZ

Mr. BAYH. Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave young man from Lafayette. Matthew Frantz, 23 years old, died on January 20 when an improvised explosive device detonated near his vehicle during a patrol near Al Huwijah in Iraq. With his entire life before him, Matthew risked everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

Following in the family tradition of service, Matthew had been committed to joining the military since he was in the second grade. A 2001 graduate of Lafayette Jefferson High School, his teachers recalled how eager he was to join the service, as well as what a decent and friendly student he was. One of his teachers told a local news outlet, "Matt was very excited about being part of the military. It was what he wanted to do. He was just a young man that wanted to serve his country." Matthew had been in the military for nearly 2 years, but this was his first deployment to Iraq. He arrived there only 4 months ago as a counterintelligence specialist.

Matthew was killed while serving his country in Operation Iraqi Freedom. He was a member of the 1st Special Troops Battalion in the 101st Airborne Division based at Fort Campbell, KT. This brave young soldier leaves behind his father and mother, James and Marilyn Frantz; his brothers, Chris and Eric, who also serve in the military; and his fiance, Amalia Cerbin.

Today, I join Matthew's family and friends in mourning his death. While we struggle to bear our sorrow over this loss, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is his courage and strength of character that people will remember when they think of Matthew, a memory that will burn brightly during these continuing days of conflict and grief.

Matthew was known for his dedication to his family and his love of country. Today and always, Matthew will be remembered by family members, friends, and fellow Hoosiers as a true American hero, and we honor the sacrifice he made while dutifully serving his country.

As I search for words to do justice in honoring Matthew's sacrifice, I am reminded of President Lincoln's remarks as he addressed the families of the fallen soldiers in Gettysburg: "We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here." This statement is just as true today as it was nearly 150 years ago, as I am certain that the impact of Matthew's actions will live on far longer that any record of these words.

It is my sad duty to enter the name of Matthew C. Frantz in the official record of the U.S. Senate for his service to this country and for his profound commitment to freedom, democracy, and peace. When I think about this just cause in which we are engaged and the unfortunate pain that comes with the loss of our heroes, I hope that families like Matthew's can find comfort in the words of the prophet Isaiah who said, "He will swallow up death in victory; and the Lord God will wipe away tears from off all faces."

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Matthew.

SERGEANT CLIFTON YAZZIE

Mr. BINGAMAN. Mr. President, I humbly rise today to pay tribute to SGT Clifton Yazzie. Sadly, this outstanding and brave young man was killed in Hawijah, Iraq, on January 20, 2006.

As a cross-country runner and basketball player in high school, SGT Yazzie was not known for his innate athletic ability. Instead, his coaches and teammates remember him as a consummate team player who worked to improve his skills in every practice and every game. He enlisted after the terrible attacks of September 11, 2001, fully knowing that his country would soon be going to war abroad. His quiet demeanor and steadfast service is at the core of what the American military service is about: honor, duty, humility, and loyalty.

His wife Michelle, children Chaynitta and Cayden, and parents Clifford and Jeanette will be in all of our thoughts. He and Michelle, who met at a high school dance, had been planning to renew their vows this spring.

He was on his second tour of duty as an infantryman in the 1st Brigade Combat Team, 101st Airborne Division. We can never fully express our gratitude for our veterans' service; I ask that we stop now to honor Sergeant Yazzie and acknowledge his sacrifice, and that of his family and friends, for our Nation.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

On October 4, 2002, Gwen Araujo was killed by three men in Hayward, CA. Araujo was beaten up, tied, and then strangled. The apparent motivation for this crime was that Araujo was a transgendered teen.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that are born out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

MEDICARE PRESCRIPTION DRUG BENEFIT IMPLEMENTATION

Mr. FEINGOLD. Mr. President, on January 1, 2006, the administration launched the Medicare prescription drug benefit, a program long touted by President Bush as the vehicle that would provide affordable, easily accessed prescription drugs for seniors. The program has fallen far short of that goal so far. The outcries that I have heard from pharmacists, beneficiaries, and health care providers over the past few weeks make clear that the implementation of the program has been a disaster. This program has not provided either affordable or easily accessed drugs to many Medicare beneficiaries. Instead, it has presented many seniors and the disabled with frustration, confusion, expensive medications, and sometimes no medications at all. It is unacceptable for individuals to go without lifesaving medications, yet this is what has been happening across the country since this program commenced. This situation is an emergency, and Congress needs to address it right away.

Since the beginning of January, I have received panicked phone calls from people in my State saying that they were unable to receive drugs that they have been routinely getting at their pharmacy every other month. Many calls were from people who could not receive essential drugs such as insulin, antipsychotics, or immunosuppressants for transplant patients. At the same time as I was hearing from people suffering from pain because they did not receive their pain medications, I received press releases from the Centers for Medicare and Medicaid that expressed satisfaction with the launch of the program and boasted of the millions of participants in the program. There may be millions participating in the program, but too many of them cannot receive their drugs, and too many pharmacists are unable to comply with the complicated regulations in the program. CMS should be focusing its efforts on addressing this emergency rather than disseminating public relations messages.

All anyone needs to do is visit their local pharmacy in order to see the problems with the benefit firsthand. There, they are likely to see harried pharmacists on the phone with Medicare or private drug plans. Chances are high that they are on hold. There are often long waiting lines of people in need of medications, sometimes in desperate need, and there are customers being charged incorrectly for their prescriptions. Sometimes they are charged so much that they cannot afford it because the costs exceed what they have in the bank or what their credit limits will allow. Tragically, many of the most vulnerable beneficiaries have been forced to walk out of the pharmacies without their drugs.

It is clear that, in many respects, the plan and the contingency plans for implementation have failed. For instance, the drug plan automatically enrolled millions of individuals eligible for both Medicare and Medicaid into drug plans, and although these individuals were supposed to be notified of this, many were not. Imagine the surprise when these people visited the pharmacy this month thinking that they would receive their medications for the same price they paid in December. Some of these dually eligible individuals were victims of data glitches that resulted in the pharmacists being unable to verify enrollment in any insurance, and they were told to pay for the full costs of their drugs. Some were charged the wrong amount even though their insurance was verified. These bills reached into the thousands of dollars at times. I was disheartened to learn that some of the beneficiaries paid for the drugs on their credit cards, their only other option being to go without their medications. Those with little income will be paying for these drugs for months, with interest, and this is a sad burden for the Federal Government to place on the neediest in society.

While my office did its utmost to help those who called, I wonder how many Wisconsinites did not call my office, did not have relatives to help them, or were unable to get through to the help lines that had waiting times of up to 5 days. How many people are being forced into emergency rooms in order to get their medications? How many people are being injured because of lack of medications? Have any deaths occurred as a result of the extraordinary bureaucratic hurdles in this program? The Centers for Medicare and Medicaid Services needs to find answers to these questions and address this crisis immediately.

Fortunately, many State governments, including Wisconsin's, came to the aid of the public when the Federal Government would not by enacting emergency provisions. Now, these States are depending on the Federal Government to return the favor and reimburse them for funds that were spent out of tight State budgets. To date, the administration has refused to compensate States. I will work to try to make sure that Congress quickly addresses this problem, passes legislation, and reimburses the States.

The health of our Nation's citizens is not a partisan issue, and we all must join together to assist the most needy. I voted against this program in 2003 and have since made numerous attempts to try to improve the program. Since mid-December, I have sent three letters to the administration, urging that the most pressing problems with the Medicare drug benefit be addressed. While these efforts were not supported by Republicans, I want to make new efforts that I hope the other side of the aisle will support. We cannot sustain a great nation if we do not care for the elderly, the sick, the disabled, and the homebound. These are the populations that this drug plan is supposed to be serving, and I fear that they have been dismally let down the past few weeks. Let us not wait any longer. Congress is in session, we are in a position to come to their aid, and I hope that we will do the right thing and quickly bring relief to the suffering.

SALMON RECOVERY

Mr. CRAIG. Mr. President, today, as you may know, Jim Connaughton, chairman of the White House Council on Environmental Quality, called for a comprehensive and collaborative approach to salmon recovery in the Pacific Northwest. While I may not agree completely with Chairman Connaughton's statement, we must stop ignoring what is going on. It is about time that someone speaks out about the reality of the situation in the Northwest in regards to salmon recovery. He proposed to end outdated hatchery programs and to stop harvest levels and practices that impede recovery of salmon listed under the Endangered Species Act, ESA. He also outlined a comprehensive collaborative process to promote a shared goal and responsibility of salmon recovery. As early as next week, the National Oceanic and Atmospheric Administration's fisheries service, NOAA Fisheries, will launch a collaborative review of how harvest and hatcheries are affecting the recovery of ESA-listed salmon and steelhead.

There has been no clear direction in the past, and CEQ is taking the first step to provide a meaningful direction. We have sat back and idly watched while the region moved from injunction to injunction and lawsuit to lawsuit. In fact, over the past 2 years, two injunctions have been ordered and more lawsuits are being filed. This situation just fosters mistrust and the inability to meet common goals and objectives.

Our past practices have focused on keeping the fish in the river and in abundant numbers so that we can have our cake and eat it, too. In no other place in the world do we treat an ESA-listed species this way. We don't raise bald eagles only to use their feathers for our clothes, so why do we spend hundreds of millions of dollars—each year—to recover the species, and then allow a majority of them to be killed through harvesting? The people who pay for these absurd practices are the Northwest ratepayers.

Here are some facts that the region should know. The total cost of fish mitigation in the Northwest from 1978 to 2005 has been approximately $7 billion. Fish costs now make up to 30 percent of the Bonneville Power Administration's power rates, 30 cents of every dollar paid for BPA-managed power. Snake River Fall Chinook are the most impacted ESA-listed species in the Columbia River system. These fish drive

BPA's fish and wildlife program. Approximately 40 percent to 60 percent of this species is harvested.

Last summer, Judge Redden ordered a change in river operations that resulted in an approximately $75 million dollar hit to the region's ratepayers. This means that depending on how many fish survive, summer spill costs between $225,000 and $3 million per fish, and consequently, ratepayers are left with the bill. Even at $225,000 per fish, that is a lot of money. Judge Redden, once again, second-guessed the region's fish managers and made the decision to increase spill this spring and summer. This will result in another cost to the ratepayers of approximately $60 million dollars.

Management of the river by the courts is not management at all. I would like to help the management agencies—the appropriate managers of the river system—to succeed in their efforts to manage the river, in partnership with local, State, and tribal governments.

Why not trust the experts who have the scientific knowledge to make those decisions and help empower the region to work together instead of giving up and having the court systems make management decisions? How are we to succeed in the future if we keep allowing others to make our decisions for us?

When will this silliness stop? When will the region take ownership and responsibility for the river? And when will we work together as a region and get serious about salmon recovery? CEQ made the first step today.

I will work with other Members of Congress to finally face these challenges and to help provide direction and be more accountable to the public and to recovery of the species. If we are serious about recovery, we need to start acting serious and not avoid the tough questions.

I would like to challenge my colleagues to come together in a bipartisan way to help the region get back on track.

TRIBUTE TO WILLIAM B. BONVILLIAN

Mr. LIEBERMAN. Mr. President, I rise today to express my profound gratitude and heartfelt best wishes to a dear friend and dedicated American, William B. Bonvillian, who has served as my legislative director and chief counsel since I first took office in the U.S. Senate in January 1989. It is truly a bittersweet occasion to bid farewell this week to an outstanding and valued staff member with whom I have worked for 17 years in this hallowed institution that we both dearly cherish and respect. I can only say that, as Bill embarks on his new venture as director of federal relations for the Massachusetts Institute of Technology, MIT, my loss is most surely MIT's gain.

Bill came to my Senate office as an accomplished and respected attorney who had previously served in the executive branch from 1977–1980 as Deputy Assistant Secretary of the U.S. Department of Transportation, where he was involved in major legislation relating to transportation deregulation and funding issues. However, our long association actually goes back much further than that, to the early 1970s. Bill was my first intern when I was elected to the State Senate; we rode from New Haven to the State Capitol in Hartford in my old copper-colored Pinto several times a week after his classes at Yale Divinity School. Later, I hired him for a summer position with our State Senate committee investigating State construction issues. After I was elected to my first term here in the U.S. Senate, I sought to rehire Bill, who was by then a partner at a national law firm working on corporate, real estate, transportation, and administrative law matters. I was beyond delighted when Bill agreed to leave his partnership to reenter public service.

Bill's record of service in the U.S. Senate has been one of enormous distinction. When I look back with pride on the many legislative initiatives I undertook with Bill's advice and assistance, I recall with great admiration his determination, tenacity, and passionate involvement in crafting legislation. He built a stellar reputation on both sides of the aisle for his skill in nurturing innovative ideas and negotiating and advancing measures through an often complex legislative process. Bill's intuitive skills and strong leadership abilities have helped result in the successful passage of many crucial policy initiatives for which I have fought. Bill has played a key role in formulating and enacting vitally important legislative policy in the areas of science and technology; economic growth; innovation, research, and development in the fields of defense, manufacturing, health, and bioterrorism protection programs; and ensuring America's global competitiveness.

In addition, Bill's extensive and tireless work has resulted in many other significant legislative victories in our years together, including those pertaining to environmental and wilderness protection; energy security; defense and foreign policy; health and social welfare; campaign finance reform; media safeguards for children; education; and transportation and our Nation's infrastructure. Bill also had a firm hand in the landmark law that led to the creation of the U.S. Department of Homeland Security and new intelligence reform initiatives to ensure the protection of our citizens. His ability to forge a consensus on these and countless other complex issues is unequaled. Bill's influence has been felt throughout the halls of Congress, and he has left a great legacy here.

I would like to highlight key legislation, grouped by subject area, on which Bill and his legislative team have assisted me over the years. I note that many of these bills or parts of them have gone on to become laws:

Economic Growth—National Innovation Act, S. 2109 (2005); National Nanotechnology R&D Act, P.L. 108–153 (2003); R&D Doubling Act, S. 2046 (2000) and predecessor bill, S. 1305 (1997); Individual Development Accounts, S. 2023 (2000); Enterprise Zone Act, S. 1032 (1991)

Defense, Homeland Security, and Foreign Policy—Rebuild the Army (increasing Army end-strength), S. 1397 (2005); Intelligence Reform Act, P.L. 108–458 (2004); 9/11 Commission Act, P.L. 107–306; Homeland Security Department Authorization, S. 2452 (2002); Establishment of the Quadrennial Defense Review, S. Amdt. 4156 to S. 1745 (1996); Bosnia Intervention, S.J. Res. 44 (1995); Gulf War Resolution, H.R. 2100 (1991)

Environment, Conservation, and Energy Security—Vehicle and Fuel Choices for America Act, S. 2025 (2005); Climate Change Act, S. 1151 (2005) and prior climate bills dating back to 1991; Clean Air Act of 1990, S. 1630 (1990); Conte Connecticut River National Fish and Wildlife Refuge Act, S. 821 (1991); Weir Farm National Historic Site, S. 2059 (1990)

Health and Social Programs—American Center for Cures, S. 2104 (2005); Bioshield II, S. 975 (2005)

Education—Technology Talent, S. 1549 (2001); 3R Act (No Child Left Behind), S. 303 (2001); Federal Charter School Assistance, S. 1513 (1994)

Media and Values—Parental Choice in Television Act (V-Chip), S. 632 (1995)

Government Reform—e-Government Act, S. 803 (2001); Congressional Accountability Act, S. 2071 (1994)

Transportation—Intermodal Surface Transportation Efficiency Act (ISTEA), P.L. 102–240 (1992).

We have been extremely fortunate to work with a person of Bill's character and caliber. He has graciously shared his wealth of knowledge and wise counsel with legislative aides, fellows, and other staff members. He helped us form our innovative Legislative Fellows Program, in particular, which has helped us build a strong, substantive, policy- and idea-oriented office. Under Bill's leadership as legislative director, I have consistently had a professional staff of which I am very proud. I think it is the equal of any on Capitol Hill.

Somehow, despite the long hours his work has involved, Bill finds the time to nurture his abiding interest in an array of subjects, from art to history, and this is part of what makes Bill so very interesting to be around. On many occasions, Bill led our new staffers and fellows on unique, memorable tours of the Capitol, where he regaled us with his vast knowledge of the Capitol's architecture, art collections, and historical vignettes of Congress and our democracy.

And now to add to these many accomplishments, Bill has an exciting opportunity to focus his efforts on science and technology innovation and policy, issues of deep concern to him and of critical importance to our Nation and the world. I have no doubt that Bill will distinguish himself in this endeavor just as he has throughout his Senate career.

I sincerely thank Bill's wife, Janis Ann Sposato, for her understanding of the long hours and enormously demanding schedule so often posed by the Senate legislative calendar, even as they juggled the demands of parenting and their public service careers. It has been a pleasure to see Janis and Bill's sons, Raphael and Marcus, grow from childhood into the fine young men they are today.

It has been a memorable journey. Through it all, Bill has maintained his clear vision of a better future for all, a sense of humor, and calm demeanor in the eye of any approaching storm. In all of his interactions with staff, visiting constituents, and other parties with whom he has come in contact, he has always given generously of his time and talent. I could not have made a better choice for my legislative director than I did in 1989 when I asked Bill to take on the challenges we have faced together.

I am proud to call Bill a trusted adviser and lifelong friend. The office will be a different place without him. My staff and I will miss him a great deal, but we wish him success, health, and happiness always. I sincerely thank and congratulate Bill Bonvillian on his outstanding, loyal, and dedicated service to the U.S. Senate.

TRIBUTE TO ROGER WILLIAMS

Mr. HATCH. Mr. President, I rise today to pay special tribute to America's pre-eminent, piano-playing patriot, Mr. Roger Williams. Roger is to American music what the Grand Canyon is to the American landscape.

Roger has enjoyed decades of success and the title "Pianist to the Presidents," because he has had the honor to perform for eight of our Nation's Commanders In Chief. In 2004, Roger celebrated his birthday alongside Jimmy Carter because the two share the exact same birth date.

Despite his advancing years, Roger's ivory-tickling fingers continue to thrill audiences. In November, he broke his own record for marathon piano-playing with a 14-hour performance at Steinway Hall in New York City. The marathon was to raise awareness of the importance of music education and to commemorate the 50th anniversary of his classic, "Autumn Leaves." This song is the only piano instrumental that has ever reached No. 1 on the Billboard singles charts.

According to Billboard Magazine, Roger is the greatest-selling pianist of all time, with 18 Gold and Platinum albums to his credit. He is the first pianist to receive a star on the Hollywood Walk of Fame, and is—so far—the only recipient of the Steinway Lifetime Achievement Award. Williams has played the music for soundtracks to films of three generations and in 2004 he released his 116th album. His records "Born Free," "The Impossible Dream," "Almost Paradise," and the theme from "Somewhere in Time" are only some of his hits, which span 4 decades.

Not only a virtuoso, Roger is also a man of great virtue. He is a champion of music education in all schools and California Governor Arnold Schwarzenegger named him "Champion for Youth 2004." Roger regularly donates his time and talent to charitable efforts and non-profit organizations, including spots on the televised "Hour of Power" ministry since 1974.

I am grateful that I had the privilege of friendship with Roger Williams. He is a great man, a superlative musician, and a true American. As a musician myself, albeit one who is fairly low on the pecking order, I commend Roger for his talent, hard work, and dedication to his craft. His music will continue to bless the lives of literally millions for generations.

TRIBUTE TO PAUL MICHAEL WARNER

Mr. HATCH. Mr. President, I rise today to pay tribute to a wonderful man, brilliant lawyer, and dedicated public servant—Mr. Paul Michael Warner. Paul has been serving as the United States Attorney for the District of Utah for almost 8 years, and will be stepping down this week to continue his work in other capacities within the legal system. As he embarks on a new chapter of life, I wanted to take this opportunity to honor him for the leadership he has provided, and commend him for his dedication to our country's legal system.

Paul was nominated by President Bill Clinton on July 29, 1998 to be the United States Attorney for Utah. He was unanimously confirmed by the United States Senate just one month later and by the end of August he had assumed the full duties of this important position. After President George W. Bush took office, he recognized the tremendous leadership Mr. Warner was providing and reappointed him to this position. He was then reconfirmed once again by the United States Senate and has continued to serve with strength and honor.

Prior to being appointed United States Attorney, Paul first joined this office in 1989 and has served in various positions including: First Assistant United States Attorney, interim U.S. Attorney, Violent and Hate Crimes Coordinator, and the Chief of the Criminal Division. For 7 years before joining the U.S. Attorney's Office, he worked in the Utah Attorney General's Office as the Chief of the Litigation Division and as an Associate Chief Deputy to the Attorney General.

Throughout his many years of service within the criminal justice system, Paul has established himself as an effective leader in the fight against crime. He has always greatly valued cohesive working relationships with Federal, State, and local law enforcement personnel. I believe that without exception, he has become a highly respected and trusted prosecutor and able administrator.

While serving in the Bush Administration, Paul was appointed the Chairman of U.S. Attorney General John Ashcroft's Advisory Committee of U.S. Attorneys. He also previously chaired the Subcommittee on Terrorism for this Committee, and continues as an ex-officio member of the Committee to this day.

Paul's legal career began when he graduated with the first class of the J. Reuben Clark Law School at Brigham Young University—BYU—in 1976. He later went on to receive a masters' degree in public administration from the Marriott School of Management at BYU.

Following graduation from law school, Paul served 6 years as a trial lawyer in the Judge Advocate General Corps of the United States Navy. In 1983, he enlisted with the Utah Army National Guard, Judge Advocate Branch, where he rose to the rank of Colonel. He is currently serving as the State Staff Judge Advocate, supervising a staff of 17 attorneys. He is also the past president of the Utah National Guard Association. The leadership and work he has provided to the military has been invaluable as he has worked on cases not only important to our Nation, but to the men and women who fight to preserve our freedoms.

Paul has also been involved in many professional organizations including serving as a Master of the Bench in the American Inns of Court, and Chairman of the Board of Visitors for the BYU Law School. He has also been honored by numerous military and civilian organizations with awards including: the United States Army's Meritorious Service Medal with two oak leaf clusters, the 2004 Honored Alumni of the Year for the BYU Law School, the Utah State Bar's 2004 Dorothy Merrill Brothers Award for the Advancement of Women in the Legal Profession, the Federal Bar Association's Distinguished Service Award for 2003, and the NAACP's 2002 Community Relations Award for Civil Rights.

Throughout my years of working with Paul I have always been impressed with his utmost integrity and honesty. He has a strong desire to do what is right. He has garnered the respect and admiration of the staff he has led, and has served as a mentor and friend to many future leaders in Utah's legal community. He diligently strives to treat all parties with dignity and fairness, and his work has been an example of his commitment to individual rights and the rule of law.

His work within the legal community has been lauded, but perhaps his most important accomplishments have occurred within his family and neighborhood. Paul is a devoted husband to Linda, and wonderful father to four children. He has been a friend to many from all walks of life, and all persuasions. His work has been an outstanding example of someone who has dedicated his life to helping others while upholding the principles and ideals embodied in the foundation of our country the Constitution.

I am grateful for the service Paul Warner has rendered throughout his years of public service—but most importantly as the United States Attorney for Utah. He is a truly dedicated public servant, strong leader, and special friend. I want to wish him well as he travels new pathways in life. I know that he will continue to guide and enrich the lives of those who have the privilege of working with him; and will remain steadfast in his commitment to enhancing and furthering the important work of our judicial system.

TRIBUTE TO W. CLEON SKOUSEN

Mr. HATCH. Mr. President, I rise today to pay special tribute to a man I deeply admire, W. Cleon Skousen. Cleon was a giant of a man. He was an exceptionally bright scholar; a wonderful husband, father, and grandfather; a special friend; and a true patriot in every sense of the word.

Sadly, Cleon recently passed away leaving a tremendous void in the lives of all who knew him. Cleon played a significant role in the political and governmental arena throughout Utah, our Nation, and even the world. I can state without any equivocation today that Cleon loved America. He truly loved our country and its citizens. He deeply respected our Founding Fathers, and he had the utmost reverence for the document that is the basis of all of our freedoms—our Constitution.

When I first met Cleon, I was a young, enthusiastic, go-getter who wanted to make a difference in our Nation's Capitol. Shortly before I announced that I would be running for the U.S. Senate in 1976 as a political novice and virtually unknown candidate—Cleon was one of the first people of political significance and substance who agreed to meet with me and discuss my candidacy.

A few short years before this time, Cleon had organized a nonprofit educational foundation named "The Freemen Institute," to foster "constitutionalist" principles including a drastic reduction in the size and scope of the Federal Government, and a reverence for the true, unchanging nature of our Constitution. I knew that he had strongly held beliefs and I was very interested in what he had to say.

We found in each other at that first meeting many areas of common ground and a shared love for the principles that make America the strongest bastion of freedom on Earth. Cleon quickly agreed to help, and throughout the coming months he became a true champion of my candidacy. He sent a letter to 8,000 of his "friends" stating that I was running for the Senate "for the express purpose of waging a fight to restore constitutional principles in this country." I was humbled by his support, and I felt a true need to fulfill his expectations of me and to never let him down.

From that first campaign, to every day I have served in the U.S. Senate—Cleon has been there for me, through highs and lows—buoying me up, giving suggestions, discussing principles and issues, and above all else being a true, supportive friend. I can never overstate what his support has meant to me throughout my years of service.

A natural outgrowth of the successful Freemen Institute was the founding of the National Center for Constitutional Studies which Cleon started to further the study of our Founding Fathers and the U.S. Constitution. He traveled the globe and spoke to literally hundreds of thousands of people each year for many years to promote the ideals of this center.

The mission of the center was so aptly described by our Nation's first President, George Washington, when he said: "A primary object . . . should be the education of our youth in the science of government. In a republic, what species of knowledge can be equally important? And what duty more pressing than communicating it to those who are to be the future guardians of the liberties of the country?"

Cleon took this mission very seriously and spent many hours each week educating and imparting his knowledge of his years of study to people throughout our Nation, and even the world. He cultivated friendships far and wide and became to many the "Master Teacher."

As we all know, Cleon was a prolific author and writer. His books, "The First 2000 Years, The Making of America," and "The Five Thousand Year Leap" have been used by foundations, and in forums across America for many years. His writings and words leave an indelible legacy of knowledge and beliefs that have touched many people and will continue to inspire and educate generations to come.

Many have yearned for even a morsel of his years of study. He was learning, studying and writing until the end. I loved an account I recently read in the Deseret News from the Rev. Donald Sills, a Baptist minister who became close friends over many years with Cleon. He spoke of his knowledge and study and recalled a time when he found Cleon sitting on the steps of the Jefferson Memorial in Washington, DC. When he asked Cleon what he was doing just sitting there, Cleon's fitting response was, "I'm talking to Tom Jefferson."

Cleon had a strong desire for good government, and a true love for our Savior Jesus Christ and our Heavenly Father. He believed that our country was founded on pure principles and that our Heavenly Father had a hand in guiding our historic and profound beginnings. He firmly believed, as many believe, that God governs the affairs of men. He was not shy about sharing this belief with all who would listen. The words he shared on this subject were not unlike the words spoken by Benjamin Franklin as he arose on the floor to speak at a particularly trying time during the Constitutional Convention. He pled with his peers to call upon the Father of them all for wisdom and guidance as they continued to contemplate and draft this most important document.

His words remind me so richly of Cleon when Mr. Franklin stated: "I have lived, Sir, a long time; and the longer I live, the more convincing proofs I see of this truth, that God governs in the affairs of men. And if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid? We have been assured, Sir, in the sacred writings that 'except the Lord build the house, they labor in vain that build it,' I firmly believe this. . ."

And Cleon firmly believed it. He had a true testimony of our Savior's works and our Father's infinite wisdom and love. He wrote of it. He testified of it. And he lived a life following their teachings.

The wonderful, strong leader General George S. Patton once said: "It is foolish and wrong to mourn the men who died. Rather we should thank God that such men lived."

I don't believe it is foolish to mourn the loss of this great man—but I do thank my Heavenly Father that W. Cleon Skousen lived, and that he touched my life in so many ways. His example, passionate beliefs, and wonderful mind will never be forgotten. His journey was full and brought rich rewards to people throughout the world.

I am grateful that I had the privilege of knowing W. Cleon Skousen and working with him. He is a great man, and true American. His life's work has touched literally thousands, and his memory will live on through the wonderful words and teachings he leaves behind.

Mr. President, I would like to close with a poem that I wrote for him:

W. CLEON SKOUSEN

His life seemed like 2000 years
By those who feared the truth.
To us who've loved him through our tears
And even from our youth,
This quiet, simple, gentle man,
Who taught us sacred things,
He helped us all to understand
The memories of a thousand springs.

Within this caring, pleasant soul
God's glory was refined,
Experiences had made him whole
For he had peace of mind.
So many lives he touched each day
Explaining holy things,
In writings left along the way
A treasure fit for kings.

He loved the prophets of the Lord,
The Founding Fathers too,
And Israel's most sacred word,
God's children whom he knew,
His precious Jewell, of greatest worth,
He'll love eternally.
He loved his family here on earth
In loving majesty.

So many others one by one,
This giant among men,
He leaves us now, his work now done,
We know we'll meet him once again.

FIFTIETH ANNIVERSARY OF THE FOUNDING OF L-3'S COMMUNICATION SYSTEMS-WEST

Mr. HATCH. Mr. President, today it is an honor and a privilege to rise and congratulate the men and women of L-3's Communication Systems-West on the 50th anniversary of that company's arrival in Utah.

I realize that many outside of the state of Utah might not have heard of L-3's Communication Systems-West, but no one can dispute the strategic advantages that this company has provided to our Nation's men and women in uniform. Much of the work that Communication Systems-West performs is of a highly classified nature. However, I can say that the real-time, world-wide dissemination of images and information gathered by the U-2 and our new unmanned aerial vehicles, such as Global Hawk and the Predator, is only possible because of the hard work by the people at Communication Systems-West. For example in 2001, Communication Systems-West was awarded the Collier Award for producing the airborne integrated communications system for the Global Hawk. As my colleagues may know, the Collier Trophy is the National Aeronautic Associations' highest honor for that year's greatest American aeronautical achievement.

Other examples of Communication Systems-West outstanding work can be found in the SATCOM Tri-Band Satellite Earth Terminals and the ROVER III Remote Operations Video Enhanced Receiver system that are deployed with our forces today. As a stalwart division for L-3, the employees of Communication Systems-West were honored in 2005 to receive the L-3 Chairman's Award for Best Operating Performance.

It is not an exaggeration to say that the technologies created and built by Communication Systems-West have won battles for the United States and, equally as important, saved countless American lives.

However, the leadership of Communication Systems-West's 2,300 employees, including 1,000 engineers, is not limited to the battlefield. It is also found in their dedication to their community. Communication Systems-West partners with Utah's universities to assist in placing new graduates in promising and creative careers. The company is an active member of the Mathematics, Engineering, and Science Achievement, or MESA, consortium. MESA, of course, provides resources to aid minority and female students entering technological fields of study. As a contributor to the Ames and Challenger advanced education programs for high school students interested in technology sciences, Communication Systems-West continues to bring a bright future to the next generation of students.

Finally, Communication Systems-West also supports it home-town National Guardsmen and Reservists by fully paying the salaries of its employees who have been activated to fight the War on Terrorism.

Communication Systems-West and its employees have been an integral part of Utah for a half-century, and we all are immensely proud of the contributions they have made to our country and our State. I congratulate them and wish them 50 more years of success and prosperity in the great State of Utah.

CONCEPT2

Mr. LEAHY. Mr. President, like most Americans, I start off the year with my new year's resolution to work harder at getting in shape. As always, my first stop is the Concept2 rowing machine in the Senate gym. I have used it for years, and always think of Vermont when I do.

The rowing machines are made in Vermont, and last fall the Burlington Free Press had an excellent article about the company and its founders. I ask that a copy of the article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Free Press, Oct. 14, 2005]

WHAT A CONCEPT

(By Matt Crawford)

MORRISVILLE.—Peter and Dick Dreissigacker will be on Boston's Charles River next weekend, rowing their way toward the finish line in the annual Head of the Charles regatta.

The Dreissigacker brothers are two members of an eight-man team called the Motley Rowing Club—a team that captured third place in its division during last year's race. If the Motley team is beaten again, part of the blame can be placed squarely on the broad shoulders of the Dreissigackers.

What Nike is to running, what Orvis is to fly-fishing, what Burton is to snowboarding, Concept2 is to rowing. Concept2 is a Morrisville-based company that employs 55 people, and it is run and owned by Misters Peter and Dick Dreissigacker. The company leads the world in producing oars used by crews and sculling teams and controls a significant portion of the global indoor rowing machine market, too. "Their products are found around the world," said Alex Machi, director of rowing at Middlebury College. "They easily dominate the oar manufacturing business."

How two Connecticut brothers maneuvered their internationally successful company into the center of the rowing universe from a small town in northern Vermont is a remarkable tale, one that continues to evolve on rivers and ponds and indoor gyms around the world . . .

"The challenge," said Peter, "is trying to continue to improve on what we've got."

Dick Dreissigacker, now 58, was a member of the 1972 U.S. Olympic Rowing Team and a Brown University product. He drifted out to California to take a rowing coaching position at Stanford, a school Peter, who's four years younger, was attending.

Dick was looking for a "secret weapon" after the 1972 Olympics and began to explore ways to improve oars, which had been crafted out of wood pretty much since humans started rowing boats through water. "There were quite a few companies making composite boats," said Peter, "but nobody was making oars."

By 1976, the Dreissigackers had built a prototype of a composite oar and began making them in the back of a bread truck. They looked at places around the country and decided to buy an old barn in Morrisville, partly because they were from the Northeast, and started producing oars. By the 1980 Olympics, composite oars—made of carbon fiber and epoxies and glues—were standard, thanks to the work of the Dreissigacker boys.

The company makes "sweep" oars, oars for sculling and oars for a small niche of rowers who specialize in trans-Atlantic crossings. Oars range in price from about $200 to more than $400 each, and there are custom orders, blade and shaft repairs and stylized custom painting jobs that keep the company's employees busy. Dick says there are two other companies that are viewed as competitors with the Dreissigackers, but Concept2 controls about two-thirds of the world's competitive oar market.

In 1991, the Dreissigackers struck again, changing the shape of the oar blades to a bigger, "hatchet" style, a change that exploded through the rowing scene. At the 1992 Olympics in Barcelona, Spain, said Peter, "boats were on the water, changing their blades to our style." There was some discussion of banning the bigger blade, which was more efficient and more effective, but the style quickly became the sport's standard. Two Middlebury teams and a University of Vermont women's team will be using Concept2 oars when they compete at the Head of the Charles next weekend. "If 75 or 80 percent of the teams at the Head of the

Charles are using our oars," said Dick, "then almost 100 percent of those teams will have trained on our indoor trainers. They're pretty much the standard."

The Dreissigackers started making the indoor machines in the mid-1980s, the first versions little more than bike wheels and chains. Now the machines—their fourth version—come equipped with computers to monitor an athlete's performance and sell for $850. There are hundreds of them in the Morrisville factory, stacked up and awaiting the start of the Christmas buying season.

The first indoor rowing machines were called rowing ergometers, or "Ergs," for short, and the Dreissigackers even developed a formula that allows the machines to measure rowing ability—a number that the rowing world now refers to as "Erg scores." "It's kind of like an athletic SAT score," said Dick, who attributes Peter's higher Erg score to the fact that he's four years younger, even though Dick rows almost every day of the summer on a lake at his cottage in Albany. There's a gym for Concept2 employees at the company's headquarters, and yes, it is filled with rowing machines. No longer in the barn, the company moved in 1984 to a more industrial location, not far from the center of Morrisville. The factory today is more than 45,000 square feet.

Sarah Tousignant, a senior at the University of Vermont and president of the school's women's rowing team, knows how important Concept2's Erg machines are. The Catamounts train six days a week on the Lamoille River using Dreissigacker oars. They'll soon move inside for the winter and shift onto Ergs. "We just ordered 12 new Ergs from them," she said.

Most of the Head of the Charles athletes will be using Dreissigacker oars, and nearly all will have trained and honed their skills on Dreissigacker indoor machines. So even if the Motley crew team gets beaten to the finish line on the Charles River next weekend, the Dreissigackers still win. With the Boston Red Sox out of baseball's playoffs, the eyes of the sporting world turn to Boston this month for one thing: The Head of the Charles Regatta.

A stretch? Consider that more than 7,000 athletes from around the globe will compete in 24 race events in the 41st annual Head of the Charles on Oct. 22–23. It is the world's largest two-day rowing event. Rowing teams from the University of Vermont and Middlebury College will be among the competitors, as will brothers Dick and Pete Dreissigacker from Morrisville.

The Dreissigackers, both former Olympics rowers, have been competing in the Head of the Charles since 1978. In a way, they'll be in the majority of boats on the river, given that most of the competitors will be using oars made by the Dreissigackers' Concept2 company. "It's pretty much the most prestigious fall race," said Sarah Tousignant, women's team president of UVM rowing. "It's the race that everybody looks forward to and holds in high regard." The Head of the Charles was first held Oct. 16, 1965. As many as 300,000 spectators are expected to be on hand for the weekend.

ADDITIONAL STATEMENTS

CHINESE LUNAR NEW YEAR

• Mrs. BOXER. Mr. President, I take this opportunity to recognize the Chinese Lunar New Year. 2006 is the Year of the Dog.

The Chinese calendar is based on the cycles of the sun and the moon, and the Chinese Lunar New Year is the most important of Chinese festivals. Celebration begins on the first day of the first moon of the lunar calendar and ends on the full moon 15 days later, with the Lantern Festival. In order to prepare for the new year, families perform several rituals to cleanse the home and the spirit, to sweep away misfortune and to welcome in the new year with good luck, health, happiness and prosperity.

The Chinese lunar calendar is associated with a 12-year animal zodiac. According to ancient Chinese legend, Buddha asked all the animals to meet him on the Chinese Lunar New Year. Twelve animals came, and Buddha rewarded each animal by naming a year after each one. The 12 animals—Rat, Ox, Tiger, Rabbit, Dragon, Snake, Horse, Sheep, Monkey, Rooster, Dog and Pig—represent a cyclical concept of time. He told each animal that the people born in their year would inherit some of the personality traits of that animal. It is said that those born in the Year of the Dog tend to be loyal, kind, and generous.

America is rich with the cultural traditions of many countries. In California, the Chinese-American community plays a vibrant and important part of our State's history. Celebrating the Chinese Lunar New Year allows us to embrace this significant and most important cultural festival of the Chinese calendar.

I hope that the Chinese Lunar New Year brings good health, happiness, peace and prosperity to all. I give my very best wishes for an auspicious New Year.•

TRIBUTE TO THE NORTHERN KENTUCKY UNIVERSITY CHEERLEADERS

• Mr. BUNNING. Mr. President, I pay tribute to the Northern Kentucky University cheerleaders. The squad was named the national champions in the Universal Cheerleaders Association-sponsored competition earlier this year.

The Northern Kentucky University cheerleading squad was awarded their first national title. The title was in the small unit coed category of NCAA Division II competition. They captured this championship at Walt Disney World in Orlando, FL on January 14, 2006.

The citizens of northern Kentucky are proud to have these national cheerleading champs living and learning in their community. Their example of hard work and determination should be followed by all in the Commonwealth.

I congratulate the members of the squad for their success. I also want to congratulate their coaches, along with their peers, faculty, administrators, and parents for their support and sacrifices they have made to help them meet their achievements and dreams. They all represent Kentucky honorably.•

CATHEDRAL CHOIR SCHOOL OF DELAWARE

• Mr. CARPER. Mr. President, today I rise to honor an outstanding group of young choir members who have brought joy and musical harmony to countless people in Delaware and around the world.

The Cathedral Choir School of Delaware has been chosen to perform on January 25, 2006, for an audience at the White House that will include First Lady Laura Bush. They will also be presented with the Coming Up Taller Award. This award is the Nation's highest honor for afterschool and out-of-school programs that use arts and humanities to enrich the lives of children. Created in 1998, this awards program is a project of the President's Committee on the Arts and the Humanities in partnership with Institute of Museum and Library Services, the National Endowment for the Arts and the National Endowment for the Humanities.

Cathedral Choir School has had an enormous positive impact on the lives of the students who pass through its halls. The more than 50 students, ranging in age from 7 to 17, who attend the school are encouraged to learn the enduring values of discipline, responsibility, leadership and teamwork.

With more than 800 alumni since its inception in 1883, the Cathedral choir school has had a positive impact on both the lives of the students who have had the privilege of participating in this choir school and the lives of those around them. By training Delaware's young people in life skills and community involvement, the Cathedral Choir School has consistently enhanced the lives of all that it touches.

I would like to acknowledge the hard work and dedication that the paid staff and volunteers of the Cathedral Choir School have demonstrated over the years. Under the direction today of Dr. Darryl Roland, these dedicated men and women have helped the lives of countless children. During his time of overseeing the Cathedral Choir School, Dr. Roland has served as a shining example of what is possible when good and caring adults decide to make a positive difference in the lives of children.

I would especially like to acknowledge the commitment and enthusiasm that the individual members of the choir have shown during their time with the choir. These outstanding young people have made a personal commitment to themselves and to their communities to challenge themselves and try their best to live up to the high standards of the Cathedral Choir School. The rehearsals and afterschool music training are done with a sense of love for artistic expression. It takes a special type of person to share that gift with the rest of us.

The faculty and students of the Cathedral Choir School are to be commended and applauded for their extraordinary efforts. Their dedication and love of music continues to serve as an example of what is possible when young people are given the opportunity to follow their dreams. All of Delaware is proud of them.•

HONORING THE LIFE OF MAURICE GUERRY

• Mr. CRAPO. Mr. President, this past December Idaho unexpectedly lost a generous and gracious man who will be missed terribly by all who had the pleasure of experiencing his welcoming spirit and warm heart.

Maurice was a sheep rancher from Three Creek, ID, who was known for his ready smile, charm and unequivocal love for his wife, family and the land on which he made his livelihood. I had the distinct privilege of working with him a number of times on collaborative land management endeavors and remember well that he made an extraordinary effort to get those who thought themselves at odds to find common ground and work together. He saw the wisdom and value of this approach and was respected for it.

With his sheep dog keeping a sharp eye from the back of his truck, Maurice diligently cared for his land and was known to carry candy with him to share in case he met someone on one of the remote roads near his ranch. He and his wife, Marlene, would put together a dinner party for dozens at the drop of a hat, welcoming strangers with open arms. He was especially close to his fellow Basque friends.

Maurice had a soul of generosity, gentleness, and wisdom and knew the value of hard, honest work. This legacy is his gift and it lives on in his family and friends. My prayers are with them during this difficult time.•

TRIBUTE TO DOUGLAS W. BOOK

• Mr. GRASSLEY. Mr. President, I was saddened to learn of the sudden passing of Forest City Chief of Police Douglas "Doug" Book on January 13. Doug leaves behind a remarkable career in law enforcement that spans over three decades. He has had an immense impact not only in his community of Forest City but throughout the entire State of Iowa.

Doug Book began his career as a full-time patrolman in 1968 and quickly rose amongst the ranks of his department until he was appointed chief of police in 1973. He served faithfully in this capacity until his passing. In addition to his dedicated service to his community, Doug also served Iowa as the head of the North Central Iowa Narcotics Task Force for the past 10 years. Doug also served as chairman of the Iowa Law Enforcement Academy Board and as president of the Iowa Association of Chiefs of Police and Peace Officers.

Doug's constant support and guidance for his fellow officers did not stop at Iowa's borders but spilled over to other departments in New York City. Chief Book joined a group of Iowa police officers as part of a critical incident stress management team that helped New York City police officers cope with the aftermath of the September 11 terrorist attacks.

One of Doug's colleagues described him simply as a "good guy, a good cop, and a good friend." His friends and family should be very proud of what he has done for so many people. Chief Book's devotion, hard work, and dedication to duty will be sorely missed.•

40 YEARS OF EXEMPLARY FEDERAL SERVICE

• Mr. INOUYE. Mr. President, on February 3, 2006, Mr. Ray H. Jyo, Deputy District Engineer for Programs and Project Management/Chief, Programs and Project Management Division, Honolulu Engineer District, HED, U.S. Army Corps of Engineers, will retire from the Government following nearly 40 years of exemplary service to Hawaii, the Pacific Region, the military and the Nation.

Born and raised in Hawaii, Mr. Jyo is a registered professional engineer and a member of the American Society of Military Engineers, who served in numerous engineering and executive management positions in the U.S. Army. He holds a bachelor's of science degree in civil engineering from the University of Minnesota. He has attended the Senior Officials in National Security Program, the John F. Kennedy School of Government, Harvard University and the Emerging Issues in Public Management Training at the Brookings Institute.

Over the course of his 40-year career, Mr. Jyo has served with pride and distinction. I have witnessed his steadfast dedication and hard work to improve and safeguard the lives of our citizens and servicemembers.

Mr. Jyo has demonstrated the highest values and ideals in his many accomplishments throughout his distinguished Federal service. Upon retirement, he will have served the Federal Government for 39 years, 11 months and 13 days. He has succeeded at every job position in his career, which covers every facet of the design/construction/management continuum of the construction industry. He has used his considerable leadership and management skills on behalf of the Army Corps and the Nation to achieve much success.

As the chief of the Far East Surveillance Branch from 1982 to 1986, Mr. Jyo pioneered the regionalization concept at the Pacific Ocean Division, POD. His program managers monitored engineering, design and construction efforts at the Japan and Far East Districts with the focus of providing valued-added service to the districts and our regional partners with the Army and Air Force. Mr. Jyo's branch became the "strike" arm of POD's rapid deployment force which led and provided hands-on project management and technical assistance to the districts. His teams would deploy to the districts to support them during times of peak workload or during crisis situations making them invaluable to District operations. He also had the responsibility of keeping U.S. Army, Pacific and Pacific Air Forces informed and involved in our large construction program overseas. Many of the principles and policies he pioneered are still being followed at POD today. During this timeframe, Mr. Jyo led by example when he deployed to Ft. Drum for 2 months to lead the planning and programming efforts to provide quality facilities for the 10th Mountain Division.

During his tenure as the chief, Technical Engineering Division, 1986 to 1987, Mr. Jyo provided quality technical services to all the districts in POD. In addition, he instituted the concept of life-cycle technical services by sending his technical reviewers to the field to assist the construction offices in coming up with viable solutions to sticky construction problems. This formed the basis of the latter consolidation of the technical review and quality assurance staffs at POD. Responsive to the customer, Mr. Jyo has consistently strived to provide high-quality technical services and products in a responsive manner.

As the chief of Military Division, Mr. Jyo led the planning, engineering, and construction of the military program POD-wide. Through his leadership and experience, POD has become the proven leader in project execution and accomplishment.

As the acting director of Engineering and Construction Directorate, Mr. Jyo forged a solid link between engineering, design, and construction quality. He brought all of POD's technical assets together to work toward common goals to provide responsive service and engineering and construction excellence to POD. The Engineering and Construction Directorate was the largest directorate at POD and included the operational elements of design, construction, engineering services, environmental, cost engineering as well as design and construction quality assurance. Mr. Jyo maintained technical excellence by pioneering innovative design and procurement tools, such as the construction indefinite delivery-indefinite quantity contracting for Tripler Army Medical Center, later to be applied across the division programs, and such technical tools as the Computer Aided Drafting and Design, CADD, and Geographical Information Systems (GIS). By combining the technical elements of design, engineering and construction quality assurance into one division, he unified the quality function and created "life cycle" accountability for a design/construction continuum. Mr. Jyo truly was an innovator and made POD a better organization.

Since 1997, Mr. Jyo has been the deputy district engineer for programs and project management for the Honolulu District. He has continued to utilize his leadership skills to accomplish considerable successes on their behalf. He has executed programs and projects in a team-oriented matrixed organization. He has led the effort to incorporate a quality management system into the district along with International Organization for Standardization 9001 certification. He has instituted a learning organization with a system of After Action Reviews and Lessons-Learned. He is successfully leading the district through its biggest construction program with highly visible programs such as the Stryker Brigade Combat Team and C–17 implementation in Hawaii. Under his leadership, the Honolulu District has achieved the highest customer satisfaction rating in its history.

Mr. Jyo is a recognized representative of the Corps in the Pacific Region. He has established lasting relationships with the Hawaii Congressional Delegation as well as the Governors of Guam and the Commonwealth of the Northern Marianas Islands. Mr. Jyo's efforts have made lasting impacts on the abilities of our service men and women to fight the global war on terror, bolster the region's economy while ardently protecting the environment.

Mr. Jyo played an instrumental role in expanding the civil works and capital improvement programs to Guam, American Samoa, Kwajalein, and the Commonwealth of the Northern Mariana Islands. In addition, Mr. Jyo oversaw the construction of the Alenaio Stream Flood Control project in Hilo, HI, which was completed in 1997 at a cost of $16 million. During the storm of November 2000, the improvements prevented approximately $13 million in damages and remains fully functional today.

Prominent projects on the island of Oahu include the construction and renovation of military housing and improving facilities at Hickam AFB, Wheeler, Schofield, Aliamanu, and Fort Shafter. In 1989, HED began the design of the $110 million Hale Koa—Phase 2 recreational hotel at Fort DeRussy in Waikiki. Upon its completion in 1994, the Fort DeRussy area was transformed into a visually pleasing enhancement of Waikiki for the benefit of the military and civilian communities.

His lifelong contributions and achievements to the Army are considerable. His recognized leadership and ability to forge lasting relationships and his clear vision describes an outstanding individual who has dedicated his life to public service. Ray Jyo's distinguished career may be coming to an end, but his loyalty to the goals of the Army and the Nation will carry on. On behalf of a grateful Nation, thank you for your service and for a job well done.•

TRIBUTE TO PAMELA ALTMEYER-ALVEY

• Mr. LUGAR. Mr. President, I rise today to congratulate a distinguished Hoosier, Mrs. Pamela Altmeyer of Indianapolis, IN, who this year celebrates 25 years of leadership at Gleaners Food Bank of Central Indiana.

Mrs. Altmeyer is a 1964 graduate of Ben Davis High School in Indianapolis and studied at Vincennes University, the University of Indianapolis, and the University of Wisconsin at Madison. She has 35 years of experience in managing nonprofit organizations and is a valuable contributor as a member of numerous boards of important community associations.

Gleaners Food Bank was formed in 1980 in a garage in Indianapolis and, under the leadership of Mrs. Altmeyer and other dedicated individuals, has grown into the largest nonprofit provider of assistance to needy families in our State. Over the last 12 months, Gleaners has distributed nearly 11 million pounds of food and other critical grocery products to 400 hunger relief charities in 29 central Indiana counties. Since inception Gleaners has distributed over 173 million pounds of product to Hoosiers in their time of need.

I have had the joy of working closely with Mrs. Altmeyer and Gleaners Food Bank in procuring resources for needy Hoosiers. I believe that, both as a Nation and as individuals, we can do more to improve the lives of those in need. I am deeply grateful for Mrs. Altmeyer's important service and leadership as well as for the remarkable work done by her colleagues at Gleaners Food Bank of Central Indiana.•

BIRTH OF KATHERINE RILEY LUGAR

• Mr. LUGAR. Mr. President, I am pleased to share the news of the birth of Katherine Riley Lugar on December 28, 2005, at Sibley Memorial Hospital in Washington, DC. Katherine was a healthy 8 pounds, 1 ounce at birth. Her parents are David Riley Lugar, son of Richard and Charlene Lugar; and his wife, Katherine Graham Lugar, daughter of Lawrence and Jane Graham. Katherine was born at 4:20 p.m. and in the next few hours was joined in the hospital delivery room by Jane Graham, Richard and Charlene Lugar, and David's brother, John Lugar with his wife, Kelly. We shared together a wonderful experience. On the next day, Katherine met her sister, Elizabeth Merrell Lugar, who was born at Sibley Memorial Hospital on May 25, 2004. The two girls and their parents are now safe and healthy in their McLean, VA, residence.

Katherine and David were married on June 3, 2000, in St. David's Episcopal Church in Austin, TX. Katherine, a graduate of the University of Colorado, is Vice President of Federal Government Relations for St. Paul Travelers. David Lugar, who came with us to Washington, along with his three brothers, 29 years ago, graduated from Langley High School in McLean, VA, and Indiana University. He is a partner of Quinn Gillespie & Associates. Both Katherine and David are well known to many of our colleagues and their staff members. We know that you will understand our excitement and our joy that they and we have been given this divine blessing and responsibility for a glorious new chapter in our lives.•

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5221. A communication from the Commissioner, Social Security Administration, transmitting, pursuant to law, the Administration's Report on Fiscal Year 2005 Competitive Sourcing Efforts; to the Committee on Finance.

EC–5222. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the semi-annual report on the continued compliance of Azerbaijan, Kazakhstan, Moldova, the Russian Federation, Tajikistan, Ukraine and Uzbekistan with the 1974 Trade Act's freedom of emigration provisions, as required under the Jackson-Vanik Amendment; to the Committee on Finance.

EC–5223. A communication from the President of the United States of America, transmitting, pursuant to law, a report relative to entering a free trade agreement with the Republic of Peru; to the Committee on Finance.

EC–5224. A communication from the Inspector General, Department of the Treasury, transmitting, the report of a draft bill entitled "Enhanced Protection of the Internal Revenue Service and Its Employees Act of 2005"; to the Committee on Finance.

EC–5225. A communication from the Secretary of Labor, transmitting, pursuant to law, a report relative to the impact of the Andean Trade Preference Act on U.S. trade and employment from 2003 to 2004; to the Committee on Finance.

EC–5226. A communication from the Regulations Officer, Office of Disability and Income Security Programs, Social Security Administration, transmitting, pursuant to law, the report of a rule entitled "Medicare Part D Subsidies" (RIN0960–AG03) received on January 4, 2006; to the Committee on Finance.

EC–5227. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Annual Cumulative List of Changes in Plan Qualification Requirements" (Notice 2005–101) received on January 4, 2006; to the Committee on Finance.

EC–5228. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Consent Procedures for Changes Under Simplified Service Cost and Simplified Production Methods" (Rev. Proc. 2006–11) received on January 4, 2006; to the Committee on Finance.

EC–5229. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Annual Update of No-Rule Rev. Proc." (Rev. Proc. 20006–3) received on January 4, 2006; to the Committee on Finance.

EC–5230. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Bureau of Labor Statistics Price Indexes for Department Stores—October 2005" (Rev. Rul. 2005–79) received on January 4, 2006; to the Committee on Finance.

EC–5231. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "RIC Commodity Swaps" (Rev. Rul. 2006–1) received on January 4, 2006; to the Committee on Finance.

EC–5232. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Applicable Federal Rates—January 2006" (Rev. Rul. 2006–4) received on January 4, 2006; to the Committee on Finance.

EC–5233. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Revocation of Rev. Rul. 74–503" (Rev. Rul. 2006–2) received on January 4, 2006; to the Committee on Finance.

EC–5234. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Japanese YKs" (Rev. Rul. 2006–3) received on January 4, 2006; to the Committee on Finance.

EC–5235. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "TD: Refunding Regulations under Section 141" ((RIN1545–AU98) (TD9234)) received on January 4, 2006; to the Committee on Finance.

EC–5236. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Section 1374 Effective Dates" ((RIN1545–BD95) (TD9236)) received on January 4, 2006; to the Committee on Finance.

EC–5237. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Guidance under Sec. 7874 for Determining Ownership by Former Shareholders or Partners of Domestic Entities" ((RIN1545–BE94) (TD9238)) received on January 4, 2006; to the Committee on Finance.

EC–5238. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Acceptance Agent Revenue Procedure" (Rev. Proc. 2006–10) received on January 4, 2006; to the Committee on Finance.

EC–5239. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Internal Revenue Code section 482: Allocation of Income and Deductions Among Taxpayers" (Rev. Proc. 2006–9) received on January 4, 2006; to the Committee on Finance.

EC–5240. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Reporting Requirements under Temporary Income Tax Regulations on Conversions to Roth IRAs" (Rev. Proc. 2006–13) received on January 4, 2006; to the Committee on Finance.

EC–5241. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Automatic Accounting Method Change Procedures for Intangibles" (Rev. Proc. 2006–12) received on January 4, 2006; to the Committee on Finance.

EC–5242. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Updating Rev. Proc. 2006–7 and 2005–1" (Rev. Proc. 2006–7) received on January 4, 2006; to the Committee on Finance.

EC–5243. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Extension of Transition Relief for Certain Partnerships and Other Pass-Thru Entities under section 470" (Notice 2006–2) received on January 4, 2006; to the Committee on Finance.

EC–5244. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Information Reporting for Distributions with Respect to Securities Issued by Foreign Corporations" (Notice 2006–3) received on January 4, 2006; to the Committee on Finance.

EC–5245. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Weighted Average Interest Rate Update Notice—Pension Funding Equity Act of 2004" (Notice 2005–96) received on January 4, 2006; to the Committee on Finance.

EC–5246. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Cash or Deferred Arrangements under section 401(k) and Matching Contributions section 401(m)" ((RIN1545–BE05) (TD9237)) received on January 6, 2006; to the Committee on Finance.

EC–5247. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Time for Filing Employment Tax Returns and Modifications to the Deposit Rules" ((RIN1545–BE00) (TD9239)) received on January 6, 2006; to the Committee on Finance.

EC–5248. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Republication of Rev. Proc. 2005–6" (Rev. Proc. 2006–6) received on January 6, 2006; to the Committee on Finance.

EC–5249. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Republication of Rev. Proc. 2005–8" (Rev. Proc. 2006–8) received on January 6, 2006; to the Committee on Finance.

EC–5250. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Republication of Rev. Proc. 2005–5" (Rev. Proc. 2006–5) received on January 6, 2006; to the Committee on Finance.

EC–5251. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Republication of Rev. Proc. 2005–4" (Rev. Proc. 2006–4) received on January 6, 2006; to the Committee on Finance.

EC–5252. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Heavy Equipment Dealers Use of Replacement Cost Method to Value Heavy Equipment Parts Inventory" (Rev. Proc. 2006–14) received on January 16, 2006; to the Committee on Finance.

EC–5253. A communication from the Regulations Officer, Social Security Administration, transmitting, pursuant to law, the report of a rule entitled "Representation of Parties; Recognition, Disqualification, and Reinstatement of Representative" (RIN0960–AG15) received on January 16, 2006; to the Committee on Finance.

EC-5254. A communication from the Assistant Bureau Chief, Enforcement Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Review of the Emergency Alert System" ((EB Docket No. 04-296) (FCC05-191)) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5255. A communication from the Legal Advisor/Chief, Wireless Telecommunications Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, et. al.—Order on Reconsideration and Report and Order" (FCC05–202) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5256. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Grand Portage, Minnesota)" (MB Docket No. 04–339) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5257. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Fruit Cove and St. Augustine, Florida)" (MB Docket No. 05-244) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5258. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Victoria, George West, and Three Rivers, Texas)" (MB Docket No. 03-56) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5259. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Caseville, Pigeon, Harbor Beach, and Lexington, Michigan)" (NM Docket Nos. 01–229 and 01-231) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5260. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Greenville, LaGrange and Waverly Hall, Georgia)" (MB Docket No. 04-339) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5261. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Holdenville and Pauls Valley, Oklahoma)" (NM Docket No. 01–180, RM–10200 and RM–11018) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5262. A communication from the Trial Attorney, Federal Railroad Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Revision of Method for Calculating Monetary Threshold for Reporting Rail Equipment Accidents/Incidents; Announcement of Reporting Threshold for Calendar Year 2006" (RIN2130–AB65) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5263. A communication from the Trial Attorney, Federal Railroad Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Track Safety Standards; Inspection of Joints in Continuous Welded Rail " (RIN2130–AB71) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5264. A communication from the Attorney, Federal Railroad Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Technical Amendments to Standards for Development and Use of Processor-Based Signal and Train Control Systems; Correction" (RIN2130–AA94) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5265. A communication from the Paralegal, Federal Transit Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Organizations, Functions, and Procedures" (RIN2132-AA79) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5266. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 737-600, 700, 700C, and 800 Series Airplanes" ((RIN2120-AA64) (2005-0573)) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5267. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Learjet Model 45 Airplanes" ((RIN2120–AA64) (2005–0572)) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5268. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: BAE Systems Limited Model BAe 146 and Model Avro 146-RJ Airplanes" ((RIN2120-AA64) (2005-0571)) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5269. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class E Airspace: Wellington Municipal Airport, KS" ((RIN2120-AA66) (2005-0261)) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5270. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class E Airspace: Sheldon Municipal Airport, IA" ((RIN2120–AA66) (2005-0260)) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5271. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Revision of Jet Routes J–8, J–18, J–19, J–58, J–104, and J-244; and VOR Federal Airways V-60, V-190, V-263, and V-611; Las Vegas, NM" ((RIN2120-AA66) (2005–0262)) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5272. A communication from the Attorney-Advisor, United States Coast Guard, Department of Homeland Security, transmitting , pursuant to law, the report of a rule entitled "Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes; Electronic Submission" (RIN1625–AA93) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5273. A communication from the Attorney, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Marine Casualties and Investigations; Chemical Testing Following Serious Marine Incidents" ((RIN1625–AA27) (Formerly RIN2115–AG07) (USCG–2001-8773)) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5274. A communication from the Attorney-Advisor, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Reporting Marine Casualties" ((RIN1625–AA04) (USCG–2000–6927)) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5275. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Security Zones: Oahu, Maui, Hawaii, and Kauai, HI" (RIN1625-AA87) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5276. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Regulated Navigation Area; East Rockaway Inlet to Atlantic Beach Bridge, Nassau County, Long Island, New York" (RIN1625–AA11) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5277. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; Chicago New Year's Celebration, Lake Michigan, Chicago, IL" (RIN1625–AA00) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5278. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Anchorage Regulations; Mississippi River Below Baton Rouge, LA, Including South and Southwest Passes" (RIN1625-AA01) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5279. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Operation Regulations (including 2 regulations): [CGD01–00–228], [CGD13–05–023]" (RIN1625-AA09) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5280. A communication from the Chief, Regulations and Administrative Law, United

States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Operation Regulations (including 2 regulations): [CGD01–05–110], [CGD11–05–035]" (RIN1625–AA09) received on January 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5281. A communication from the Assistant Secretary for Legislative Affairs, Department of Homeland Security, transmitting, pursuant to law, a report stating that the Coast Guard implemented no new rules in 2005 concerning the Edible Oil Regulatory Reform Act; to the Committee on Commerce, Science, and Transportation.

EC–5282. A communication from the Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries, Quota Transfer" (I.D. 112305D) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5283. A communication from the Acting Deputy Assistant Administrator, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Sea Turtle Mitigation Measures" ((RIN0648–AQ91)(I.D. 072105B)) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5284. A communication from the Acting Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Inseason Adjustments" (I.D. 112305B) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5285. A communication from the Acting Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area" (I.D. 112105A) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5286. A communication from the Acting Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Atlantic Herring Fishery; Closure of Directed Fishery for Management Area 1A" (I.D. 112505B) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5287. A communication from the Acting Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Temporary Rule: Quota Transfer (Summer Flounder Commercial Quota Transfer Between NC and VA)" (I.D. 112905B) received on January 4, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5288. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Supplemental Oxygen" (RIN2120–AI65) received on January 6, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5289. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "FAA Accident and Incident Data System Records Expunction Policy" (RIN2120–ZZ77) received on January 6, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5290. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Revocation of Class E Airspace; Eagle, CO" ((RIN2120–AA66) (2005–0258)) received on January 6, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5291. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Establishment and Revision of Area Navigation Routes; Western United States; Correction" ((RIN2120–AA66) (2005–0257)) received on January 6, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5292. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class D and Class E Airspace; Salina Municipal Airport, KS; Correction" ((RIN2120–AA66) (2005–0256)) received on January 6, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5293. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Miscellaneous Amendments (119)" ((RIN2120–AA65) (2005–003)) received on January 6, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5294. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Miscellaneous Amendments (38)" ((RIN2120–AA65) (2005–0034)) received on January 6, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5295. A communication from the Deputy Secretary, Department of the Interior, transmitting, pursuant to law, the Department's Competitive Sourcing Report for Fiscal Year 2005; to the Committee on Energy and Natural Resources.

EC–5296. A communication from the Principal Deputy Assistant Secretary, Bureau of Indian Affairs, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Reindeer in Alaska" (RIN1076–AE37) received on January 6, 2006; to the Committee on Indian Affairs.

EC–5297. A communication from the Administrator, Food and Nutrition Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Child and Adult Care Food Program: Age Limits for Children Receiving Meals in Emergency Shelters" (RIN0584–AD56) received on January 6, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5298. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to the Case-Zablocki Act, 1 U.S.C. 112b, as amended, the report of the texts and background statements of international agreements, other than treaties (List 05–318—05–332); to the Committee on Foreign Relations.

EC–5299. A communication from the Director, Office of Regulation Policy and Management, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled "Reservists' Education: Revision of Eligibility Requirements for the Montgomery GI Bill—Selected Reserve" (RIN2900–AL69) received on January 6, 2006; to the Committee on Veterans' Affairs.

EC–5300. A communication from the Chairman and President (Acting), Export-Import Bank of the United States, transmitting, pursuant to law, a report relative to transactions involving U.S. exports to the Kingdom of the Netherlands; to the Committee on Banking, Housing, and Urban Affairs.

EC–5301. A communication from the Federal Register Certifying Officer, Financial Management Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Withholding of District of Columbia, State, City and County Income or Employment Taxes by Federal Agencies" (RIN1510–AB06) received on January 6, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5302. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, the six-month periodic report on the national emergency with respect to the proliferation of weapons of mass destruction that was declared in Executive Order 12938 of November 14, 1994; to the Committee on Banking, Housing, and Urban Affairs.

EC–5303. A communication from the Acting Director, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, a report that funding for the State of Georgia as a result of the emergency conditions resulting from the influx of evacuees from areas struck by Hurricane Katrina beginning on August 29, 2005, and continuing, has exceeded $5,000,000; to the Committee on Banking, Housing, and Urban Affairs.

EC–5304. A communication from the President of the United States of America, transmitting, pursuant to law, a report relative to the continuation of the emergency with respect to the Government of Cuba's destruction of two unarmed U.S.-registered civilian aircraft; to the Committee on Banking, Housing, and Urban Affairs.

EC–5305. A communication from the Secretary of Commerce, transmitting, pursuant to law, a six-month report prepared by the Department of Commerce's Bureau of Industry and Security on the national emergency declared by Executive Order 13222 of August 17, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–5306. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency with respect to terrorists who threaten to disrupt the Middle East peace process that was declared in Executive Order 12947 of January 23, 1995; to the Committee on Banking, Housing, and Urban Affairs.

EC–5307. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the six-month periodic report on the national emergency with respect to the risk of nuclear proliferation created by the accumulation of weapons-usable fissile material in the territory of the Russian Federation that was declared in Executive Order

13159 of June 21, 2000; to the Committee on Banking, Housing, and Urban Affairs.

EC–5308. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the six-month periodic report on the national emergency with respect to the Western Balkans that was declared in Executive Order 13219 of June 26, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–5309. A communication from the Assistant to the Board, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the report of a rule entitled "Home Mortgage Disclosure Act" (Docket No. 1245) received on January 3, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5310. A communication from the Associate General Counsel for Legislation and Regulations, Office of the Secretary, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled "Electronic Submission of Applications for Grants and Other HUD Financial Assistance" ((RIN2501–AD02)(FR–4875–F–02)) received on January 3, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5311. A communication from the Associate General Counsel for Legislation and Regulations, Office of the Secretary, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled "Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937" ((RIN2501–AD19)(FR–5036–F–01)) received on January 3, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5312. A communication from the Director, Financial Crimes Enforcement Network, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Anti-Money Laundering Programs—Special Due Diligence Programs for Certain Foreign Accounts" (RIN1506–AA29) received on January 4, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5313. A communication from the General Counsel, National Credit Union Administration, transmitting, pursuant to law, the report of a rule entitled "Requirements for Insurance; Purchase of Assets and Assumption of Liabilities" (RIN3133–AD14) received on January 8, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5314. A communication from the General Counsel, National Credit Union Administration, transmitting, pursuant to law, the report of a rule entitled "Fidelity Bond and Insurance Coverage for Federal Credit Unions" (12 CFR Parts 713 and 741) received on January 8, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5315. A communication from the General Counsel, National Credit Union Administration, transmitting, pursuant to law, the report of a rule entitled "Audit Requirements for Credit Union Service Organizations" (12 CFR Part 712) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5316. A communication from the General Counsel, National Credit Union Administration, transmitting, pursuant to law, the report of a rule entitled "Security Program and Appendix B—Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice" (12 CFR Part 748) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5317. A communication from the Assistant to the Board, Federal Reserve Board, transmitting, pursuant to law, the report of a rule entitled "Regulation E—Electronic Fund Transfers" (Docket No. R–1247) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5318. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Changes in Flood Elevation Determinations" ((Doc. No. FEMA–B–7455)(44 CFR Part 65)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5319. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Suspension of Community Eligibility" ((Doc. No. FEMA–7899)(44 CFR Part 64)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5320. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "List of Communities Eligible for the Sale of Flood Insurance" ((Doc. No. FEMA–7782)(44 CFR Part 64)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5321. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Suspension of Community Eligibility" ((Doc. No. FEMA–7905)(44 CFR Part 64)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5322. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Suspension of Community Eligibility" ((Doc. No. FEMA–7897)(44 CFR Part 64)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5323. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Suspension of Community Eligibility" ((Doc. No. FEMA–7895)(44 CFR Part 64)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5324. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Final Flood Elevation Determinations" ((70 FR 55031)(44 CFR Part 67)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5325. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Final Flood Elevation Determinations" ((70 FR 57791)(44 CFR Part 67)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5326. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Changes in Flood Elevation Determinations" ((Doc. No. FEMA–D–7579)(44 CFR Part 65)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5327. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Changes in Flood Elevation Determinations" ((Doc. No. FEMA–P–7646)(44 CFR Part 65)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5328. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Changes in Flood Elevation Determinations" ((70 FR 57788)(44 CFR Part 65)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5329. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Changes in Flood Elevation Determinations" ((70 FR 55029)(44 CFR Part 65)) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5330. A communication from the Counsel for Legislation and Regulations, Office of Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled "Eligibility of Adjustable Rate Mortgages" ((RIN2502–AI26)(FR–4946–F–02)) received on January 18, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5331. A communication from the Assistant to the Board, Federal Reserve Board, transmitting, pursuant to law, the report of a rule entitled "Regulation E—Electronic Fund Transfers" (Dockets R–1210 and R–1234) received on January 16, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5332. A communication from the Secretary of Labor, transmitting, the report of a draft bill which would amend the Mine Safety and Health Administration's ("MSHA") civil money penalty system by permitting MSHA to levy a maximum civil penalty of $220,000 for certain violations (termed "flagrant" violations) that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury; to the Committee on Health, Education, Labor, and Pensions.

EC–5333. A communication from the Deputy Executive Director, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled "Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits" (29 CFR Parts 4022 and 4044) received on January 8, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5334. A communication from the Deputy Executive Director, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled "Valuations of Benefits: Mortality Assumptions" (RIN1212–AA55) received on January 8, 2006; to the Committee on Health, Education, Labor, and Pensions.

REPORTS OF COMMITTEES

Under the authority of the order of the Senate of January 18, 2006, the following reports of committees were submitted on January 24, 2006.

By Mr. MCCAIN, from the Committee on Indian Affairs, without amendment.

S. 1219. A bill to authorize certain tribes in the State of Montana to enter into a lease or other temporary conveyance of water rights to meet the water needs of the Dry Prairie Rural Water Association, Inc. (Rept. No. 109–213).

EXECUTIVE REPORT OF COMMITTEE RECEIVED DURING ADJOURNMENT

Under the authority of the order of the Senate of January 18, 2006, the following executive report of committee was submitted on January 24, 2006:

By Mr. SPECTER for the Committee on the Judiciary.

Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

Under authority of the order of the Senate of January 18, 2006, the following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. REID (for himself, Mr. DURBIN, Ms. STABENOW, Mr. SCHUMER, Mr. AKAKA, Mr. BAUCUS, Mr. BAYH, Mr. BIDEN, Mr. BINGAMAN, Mrs. BOXER, Mr. CARPER, Mrs. CLINTON, Mr. CONRAD, Mr. DAYTON, Mr. DORGAN, Mr. FEINGOLD, Mr. HARKIN, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. MENENDEZ, Ms. MIKULSKI, Mrs. MURRAY, Mr. OBAMA, Mr. REED, Mr. ROCKEFELLER, Mr. SALAZAR, and Mr. WYDEN):

S. 2180. A bill to provide more rigorous requirements with respect to disclosure and enforcement of ethics and lobbying laws and regulations, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. LAUTENBERG (for himself, Ms. SNOWE, Mr. SCHUMER, Mr. COLEMAN, Mrs. FEINSTEIN, Mr. PRYOR, Mr. DEWINE, Mrs. BOXER, Mr. MENENDEZ, Ms. COLLINS, Mr. DAYTON, Mr. REED, Mr. JEFFORDS, Mrs. LINCOLN, Mr. LEAHY, Mr. WYDEN, Ms. STABENOW, Mr. JOHNSON, Mr. KENNEDY, Mr. DORGAN, Mr. LIEBERMAN, Mrs. CLINTON, Mr. CHAFEE, and Mr. DODD):

S. 2181. A bill to amend title XIX of the Social Security Act to provide for an offset from the Medicaid clawback for State prescription drug expenditures for covered part D drugs for Medicare beneficiaries; to the Committee on Finance.

By Mr. ISAKSON:

S. 2182. A bill to terminate the Internal Revenue Code of 1986, and for other purposes; to the Committee on Finance.

By Mr. ROCKEFELLER (for himself, Mr. REID, Mrs. MURRAY, Mr. BINGAMAN, Mrs. LINCOLN, Mr. KENNEDY, Mrs. CLINTON, Mr. LAUTENBERG, Ms. STABENOW, Mr. DURBIN, Mr. KERRY, Mr. SCHUMER, Mr. PRYOR, Mr. LEAHY, Mr. DAYTON, Mr. JEFFORDS, Mr. HARKIN, Ms. MIKULSKI, Mr. JOHNSON, Ms. CANTWELL, Mr. AKAKA, Mr. LIEBERMAN, Mr. KOHL, Ms. LANDRIEU, Mr. SARBANES, and Mrs. BOXER):

S. 2183. A bill to provide for necessary beneficiary protections in order to ensure access to coverage under the Medicare part D prescription drug program; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

Under authority of the order of the Senate of January 18, 2006, the following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SANTORUM (for himself and Mr. KYL):

S. Res. 349. A resolution condemning the Government of Iran for violating the terms of the 2004 Paris Agreement, and expressing support for efforts to refer Iran to the United Nations Security Council for its noncompliance with International Atomic Energy Agency obligations; to the Committee on Foreign Relations.

By Mr. LEAHY (for himself and Mr. KENNEDY):

S. Res. 350. A resolution expressing the sense of the Senate that Senate Joint Resolution 23 (107th Congress), as adopted by the Senate on September 14, 2001, and subsequently enacted as the Authorization for Use of Military Force does not authorize warrantless domestic surveillance of United States citizens; to the Committee on the Judiciary.

By Mr. BAYH:

S. Res. 351. A resolution responding to the threat posed by Iran's nuclear program; to the Committee on Foreign Relations.

By Mr. COLEMAN (for himself, Mr. SCHUMER, Mr. LAUTENBERG, Mr. ALLEN, Mr. DEWINE, Mr. BROWNBACK, Mr. NELSON of Nebraska, Mr. NELSON of Florida, and Mrs. FEINSTEIN):

S. Con. Res. 76. A concurrent resolution condemning the Government of Iran for its flagrant violations of its obligations under the Nuclear Non-Proliferation Treaty, and calling for certain actions in response to such violations; to the Committee on Foreign Relations.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. SCHUMER:

S. 2184. A bill to amend title XVIII of the Social Security Act to provide residents of long-term care facilities with assistance with respect to prescription drug coverage under part D of such title for the resident; to the Committee on Finance.

By Mr. HAGEL (for himself, Mr. HARKIN, Mr. JEFFORDS, Mr. ROBERTS, Mr. SCHUMER, Mr. LIEBERMAN, Mr. WARNER, Mr. DAYTON, Mr. KERRY, Mr. CHAFEE, Mr. KENNEDY, Ms. MIKULSKI, Ms. SNOWE, Mr. DODD, Mr. REED, Ms. COLLINS, Mrs. MURRAY, Mr. BINGAMAN, Mr. COLEMAN, and Mr. JOHNSON):

S. 2185. A bill to amend part B of the Individuals with Disabilities Education Act to provide full Federal funding of such part; to the Committee on Health, Education, Labor, and Pensions.

By Mr. COLEMAN (for himself, Mr. NELSON of Nebraska, Mr. ALLARD, Mr. ENZI, Mr. BURNS, Mr. COBURN, and Mr. THOMAS):

S. 2186. A bill to establish a commission to strengthen confidence in Congress; to the Committee on Rules and Administration.

By Mr. ISAKSON:

S. 2187. A bill to amend the International Revenue Code of 1986 to provide economic incentives for the preservation of open space and conservation of natural resources, and for other purposes; to the Committee on Finance.

By Mr. SANTORUM:

S. 2188. A bill to suspend temporarily the duty on hydrazine hydrate; to the Committee on Finance.

By Mr. SANTORUM:

S. 2189. A bill to suspend temporarily the duty on certain fungicides containing zinc dimethyldithiocarbamate; to the Committee on Finance.

By Mr. SANTORUM:

S. 2190. A bill to extend the temporary suspension of duty on 11-aminoundecanoic acid (monomer 11); to the Committee on Finance.

By Mr. SANTORUM:

S. 2191. A bill to extend the temporary suspension of duty on thiophanate-methyl; to the Committee on Finance.

By Mr. SANTORUM:

S. 2192. A bill to extend the temporary suspension of duty on thiophanate-methyl fungicide 70% wettable powder; to the Committee on Finance.

By Mrs. HUTCHISON:

S. 2193. A bill to amend the Internal Revenue Code of 1986 to establish fairness in the treatment of certain pension plans maintained by churches, and for other purposes; to the Committee on Finance.

By Mr. STEVENS:

S. 2194. A bill for the relief of Nadezda Shestakova; to the Committee on the Judiciary.

By Mr. STEVENS:

S. 2195. A bill for the relief of Ilya Shestakov; to the Committee on the Judiciary.

By Mrs. CLINTON (for herself, Mr. REID, and Mr. BINGAMAN):

S. 2196. A bill to authorize the Secretary of Energy to establish the position of Assistant Secretary for Advanced Energy Research, Technology Development, and Deployment to implement an innovative energy research, technology development, and deployment program; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mrs. HUTCHISON (for herself and Mr. CORNYN):

S. Res. 352. A resolution commending the University of Texas at Austin Longhorns football team for winning the 2005 Bowl Championship Series national championship; considered and agreed to.

By Mr. FRIST (for himself, Mr. REID, Mr. MCCONNELL, Mr. MCCAIN, Mr. COLEMAN, and Mr. LUGAR):

S. Res. 353. A resolution expressing concern with the deliberate undermining of democratic freedoms and justice in Cambodia by Prime Minister Hun Sen and the

Government of Cambodia; considered and agreed to.

By Mr. FRIST (for himself and Mr. REID):

S. Con. Res. 77. A concurrent resolution to provide for a joint session of Congress to receive a message from the President on the State of the Union; considered and agreed to.

ADDITIONAL COSPONSORS

S. 58

At the request of Mr. INOUYE, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 58, a bill to amend title 10, United States Code, to permit former members of the Armed Forces who have a service-connected disability rated as total to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft.

S. 382

At the request of Mr. ENSIGN, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 382, a bill to amend title 18, United States Code, to strengthen prohibitions against animal fighting, and for other purposes.

S. 484

At the request of Mr. WARNER, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 484, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 756

At the request of Mr. BENNETT, the names of the Senator from Connecticut (Mr. DODD) and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of S. 756, a bill to amend the Public Health Service Act to enhance public and health professional awareness and understanding of lupus and to strengthen the Nation's research efforts to identify the causes and cure of lupus.

S. 832

At the request of Mr. BINGAMAN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 832, a bill to amend the Internal Revenue Code of 1986 to provide taxpayer protection and assistance, and for other purposes.

S. 908

At the request of Mr. MCCONNELL, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 908, a bill to allow Congress, State legislatures, and regulatory agencies to determine appropriate laws, rules, and regulations to address the problems of weight gain, obesity, and health conditions associated with weight gain or obesity.

S. 914

At the request of Mr. ALLARD, the names of the Senator from Iowa (Mr. HARKIN) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of S. 914, a bill to amend the Public Health Service Act to establish a competitive grant program to build capacity in veterinary medical education and expand the workforce of veterinarians engaged in public health practice and biomedical research.

S. 932

At the request of Mr. KENNEDY, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 932, a bill to provide for paid sick leave to ensure that Americans can address their own health needs and the health needs of their families.

S. 941

At the request of Ms. COLLINS, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 941, a bill to amend the Cooperative Forestry Assistance Act of 1978 to establish a program to provide assistance to States and nonprofit organizations to preserve suburban forest land and open space and contain suburban sprawl.

S. 960

At the request of Mr. ENZI, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 960, a bill to amend the Packers and Stockyards Act, 1921, to prohibit the use of certain anti-competitive forward contracts.

S. 983

At the request of Mr. DEMINT, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 983, a bill to amend the National Labor Relations Act to protect employer rights.

S. 1060

At the request of Mr. COLEMAN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1060, a bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for the purchase of hearing aids.

S. 1112

At the request of Mr. BAUCUS, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1112, a bill to make permanent the enhanced educational savings provisions for qualified tuition programs enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001.

S. 1139

At the request of Mr. SANTORUM, the names of the Senator from Washington (Ms. CANTWELL) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. 1139, a bill to amend the Animal Welfare Act to strengthen the ability of the Secretary of Agriculture to regulate the pet industry.

S. 1167

At the request of Mr. VOINOVICH, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 1167, a bill to provide that certain wire rods shall not be subject to any antidumping duty or countervailing duty order.

S. 1173

At the request of Mr. DEMINT, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 1173, a bill to amend the National Labor Relations Act to ensure the right of employees to a secret-ballot election conducted by the National Labor Relations Board.

S. 1263

At the request of Mr. BOND, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 1263, a bill to amend the Small Business Act to establish eligibility requirements for business concerns to receive awards under the Small Business Innovation Research Program.

S. 1294

At the request of Mr. LAUTENBERG, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 1294, a bill to amend the Telecommunications Act of 1996 to preserve and protect the ability of local governments to provide broadband capability and services.

S. 1353

At the request of Mr. REID, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1353, a bill to amend the Public Health Service Act to provide for the establishment of an Amyotrophic Lateral Sclerosis Registry.

S. 1354

At the request of Mr. FEINGOLD, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 1354, a bill to establish commissions to review the facts and circumstances surrounding injustices suffered by European Americans, European Latin Americans, and Jewish refugees during World War II.

S. 1357

At the request of Mr. HARKIN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1357, a bill to protect public health by clarifying the authority of the Secretary of Agriculture to prescribe performance standards for the reduction of pathogens in meat, meat products, poultry, and poultry products processed by establishments receiving inspection services and to enforce the Hazard Analysis and Critical Control Point (HACCP) System requirements, sanitation requirements, and the performance standards.

S. 1449

At the request of Mr. SMITH, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1449, a bill to amend the Internal Revenue Code of 1986 with respect to the eligibility of veterans for mortgage bond financing, and for other purposes.

S. 1495

At the request of Mr. McCain, the name of the Senator from Arizona (Mr. Kyl) was added as a cosponsor of S. 1495, a bill to prohibit Federal agencies from obligating funds for appropriations earmarks included only in congressional reports, and for other purposes.

S. 1516

At the request of Mr. Lott, the name of the Senator from North Dakota (Mr. Dorgan) was added as a cosponsor of S. 1516, a bill to reauthorize Amtrak, and for other purposes.

S. 1524

At the request of Mr. Crapo, the name of the Senator from New Hampshire (Mr. Sununu) was added as a cosponsor of S. 1524, a bill to repeal the sunset on the reduction of capital gains rates for individuals and on the taxation of dividends of individuals at capital gain rates.

S. 1723

At the request of Ms. Collins, the name of the Senator from Rhode Island (Mr. Reed) was added as a cosponsor of S. 1723, a bill to amend the Magnuson-Stevens Fishery Conservation and Management Act to establish a grant program to ensure waterfront access for commercial fisherman, and for other purposes.

S. 1791

At the request of Mr. Smith, the name of the Senator from Maine (Ms. Snowe) was added as a cosponsor of S. 1791, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for qualified timber gains.

S. 1800

At the request of Ms. Snowe, the name of the Senator from Alaska (Mr. Stevens) was added as a cosponsor of S. 1800, a bill to amend the Internal Revenue Code of 1986 to extend the new markets tax credit.

S. 1807

At the request of Ms. Snowe, the name of the Senator from Arkansas (Mr. Pryor) was added as a cosponsor of S. 1807, a bill to provide assistance for small businesses damaged by Hurricane Katrina or Hurricane Rita, and for other purposes.

S. 1821

At the request of Mr. Reid, the name of the Senator from Delaware (Mr. Biden) was added as a cosponsor of S. 1821, a bill to amend the Public Health Service Act with respect to preparation for an influenza pandemic, including an avian influenza pandemic, and for other purposes.

S. 1841

At the request of Mr. Nelson of Florida, the names of the Senator from Nebraska (Mr. Nelson), the Senator from Colorado (Mr. Salazar) and the Senator from Indiana (Mr. Bayh) were added as cosponsors of S. 1841, a bill to amend title XVIII of the Social Security Act to provide extended and additional protection to Medicare beneficiaries who enroll for the Medicare prescription drug benefit during 2006.

S. 1864

At the request of Mr. Burns, his name was added as a cosponsor of S. 1864, a bill to amend the Internal Revenue Code of 1986 to treat certain farming business machinery and equipment as 5-year property for purposes of depreciation.

S. 1900

At the request of Ms. Stabenow, the name of the Senator from Maryland (Ms. Mikulski) was added as a cosponsor of S. 1900, a bill to amend title XVIII of the Social Security Act to stabilize the amount of the medicare part B premium.

S. 1907

At the request of Mr. Johnson, the name of the Senator from Arkansas (Mr. Pryor) was added as a cosponsor of S. 1907, a bill to promote the development of Native American small business concerns, and for other purposes.

S. 1915

At the request of Mr. Ensign, the names of the Senator from Michigan (Ms. Stabenow), the Senator from Massachusetts (Mr. Kerry), the Senator from Connecticut (Mr. Dodd) and the Senator from New Jersey (Mr. Menendez) were added as cosponsors of S. 1915, a bill to amend the Horse Protection Act to prohibit the shipping, transporting, moving, delivering, receiving, possessing, purchasing, selling, or donation of horses and other equines to be slaughtered for human consumption, and for other purposes.

S. 1930

At the request of Mr. Reid, the name of the Senator from Illinois (Mr. Durbin) was added as a cosponsor of S. 1930, a bill to expand the research, prevention, and awareness activities of the National Institute of Diabetes and Digestive and Kidney Diseases and the Centers for Disease Control and Prevention with respect to inflammatory bowel disease.

S. 1934

At the request of Mr. Specter, the name of the Senator from California (Mrs. Feinstein) was added as a cosponsor of S. 1934, a bill to reauthorize the grant program of the Department of Justice for reentry of offenders into the community, to establish a task force on Federal programs and activities relating to the reentry of offenders into the community, and for other purposes.

S. 1956

At the request of Mr. Brownback, the name of the Senator from Virginia (Mr. Allen) was added as a cosponsor of S. 1956, a bill to amend the Federal Food, Drug, and Cosmetic Act to create a new three-tiered approval system for drugs, biological products, and devices that is responsive to the needs of seriously ill patients, and for other purposes.

S. 1966

At the request of Mrs. Dole, the name of the Senator from Pennsylvania (Mr. Santorum) was added as a cosponsor of S. 1966, a bill to establish a pilot program to provide grants to encourage eligible institutions of higher education to establish and operate pregnant and parenting student services offices for pregnant students, parenting students, prospective parenting students who are anticipating a birth or adoption, and students who are placing or have placed a child for adoption.

S. 2084

At the request of Mr. Nelson of Florida, the name of the Senator from Washington (Ms. Cantwell) was added as a cosponsor of S. 2084, a bill to direct the Consumer Product Safety Commission to issue regulations concerning the safety and labeling of portable generators.

S. 2123

At the request of Mr. Allard, the name of the Senator from North Carolina (Mrs. Dole) was added as a cosponsor of S. 2123, a bill to modernize the manufactured housing loan insurance program under title I of the National Housing Act.

S. 2128

At the request of Mr. McCain, the names of the Senator from Maine (Ms. Snowe), the Senator from Minnesota (Mr. Coleman), the Senator from Florida (Mr. Nelson) and the Senator from Arizona (Mr. Kyl) were added as cosponsors of S. 2128, a bill to provide greater transparency with respect to lobbying activities, and for other purposes.

S. 2154

At the request of Mr. Obama, the names of the Senator from Indiana (Mr. Lugar), the Senator from Minnesota (Mr. Coleman), the Senator from New York (Mr. Schumer) and the Senator from Pennsylvania (Mr. Santorum) were added as cosponsors of S. 2154, a bill to provide for the issuance of a commemorative postage stamp in honor of Rosa Parks.

At the request of Mr. Hagel, his name was added as a cosponsor of S. 2154, supra.

S. 2158

At the request of Ms. Collins, the name of the Senator from Ohio (Mr. DeWine) was added as a cosponsor of S. 2158, a bill to establish a National Homeland Security Academy within the Department of Homeland Security.

S. 2170

At the request of Mr. Frist, the name of the Senator from Illinois (Mr. Durbin) was added as a cosponsor of S. 2170, a bill to provide for global pathogen surveillance and response.

S. 2178

At the request of Mr. Schumer, the names of the Senator from Maine (Ms.

SNOWE), the Senator from North Dakota (Mr. DORGAN), the Senator from Washington (Ms. CANTWELL), the Senator from Indiana (Mr. BAYH) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 2178, a bill to make the stealing and selling of telephone records a criminal offense.

S. 2179

At the request of Mr. OBAMA, the names of the Senator from New York (Mrs. CLINTON), the Senator from Colorado (Mr. SALAZAR), the Senator from Florida (Mr. NELSON) and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of S. 2179, a bill to require openness in conference committee deliberations and full disclosure of the contents of conference reports and all other legislation.

S. 2180

At the request of Mr. REID, the names of the Senator from California (Mrs. FEINSTEIN) and the Senator from Washington (Ms. CANTWELL) were added as cosponsors of S. 2180, a bill to provide more rigorous requirements with respect to disclosure and enforcement of ethics and lobbying laws and regulations, and for other purposes.

At the request of Mr. JEFFORDS, his name was added as a cosponsor of S. 2180, supra.

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 2180, supra.

At the request of Mr. SARBANES, his name was added as a cosponsor of S. 2180, supra.

S. 2183

At the request of Mr. ROCKEFELLER, the names of the Senator from Illinois (Mr. OBAMA), the Senator from California (Mrs. FEINSTEIN) and the Senator from New Jersey (Mr. MENENDEZ) were added as cosponsors of S. 2183, a bill to provide for necessary beneficiary protections in order to ensure access to coverage under the Medicare part D prescription drug program.

S. CON. RES. 69

At the request of Mr. ISAKSON, the names of the Senator from Georgia (Mr. CHAMBLISS) and the Senator from Minnesota (Mr. COLEMAN) were added as cosponsors of S. Con. Res. 69, a concurrent resolution supporting the goals and ideals of a Day of Hearts, Congenital Heart Defect Day in order to increase awareness about congenital heart defects, and for other purposes.

S. RES. 182

At the request of Mr. COLEMAN, the names of the Senator from Maryland (Mr. SARBANES), the Senator from Delaware (Mr. CARPER) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. Res. 182, a resolution supporting efforts to increase childhood cancer awareness, treatment, and research.

S. RES. 236

At the request of Mr. COLEMAN, the names of the Senator from North Carolina (Mr. BURR) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. Res. 236, a resolution recognizing the need to pursue research into the causes, a treatment, and an eventual cure for idiopathic pulmonary fibrosis, supporting the goals and ideals of National Idiopathic Pulmonary Fibrosis Awareness Week, and for other purposes.

S. RES. 320

At the request of Mr. ENSIGN, the names of the Senator from Maine (Ms. COLLINS) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. Res. 320, a resolution calling the President to ensure that the foreign policy of the United States reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian Genocide.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REID (for himself, Mr. DURBIN, Ms. STABENOW, Mr. SCHUMER, Mr. AKAKA, Mr. BAUCUS, Mr. BAYH, Mr. BIDEN, Mr. BINGAMAN, Mrs. BOXER, Mr. CARPER, Mrs. CLINTON, Mr. CONRAD, Mr. DAYTON, Mr. DORGAN, Mr. FEINGOLD, Mr. HARKIN, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. MENENDEZ, Ms. MIKULSKI, Mrs. MURRAY, Mr. OBAMA, Mr. REED, Mr. ROCKEFELLER, Mr. SALAZAR, Mr. WYDEN, and Mr. INOUYE):

S. 2180. A bill to provide more rigorous requirements with respect to disclosure and enforcement of ethics and lobbying laws and regulations, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

• Mr. REID. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.•

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2180

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Honest Leadership and Open Government Act of 2006".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—CLOSING THE REVOLVING DOOR

Sec. 101. Extension of lobbying ban for former Members and employees of Congress and executive branch officials.
Sec. 102. Elimination of floor privileges for former Member lobbyists.
Sec. 103. Disclosure by Members of Congress and senior congressional staff of employment negotiations.
Sec. 104. Ethics review of employment negotiations by executive branch officials.
Sec. 105. Wrongfully influencing a private entity's employment decisions or practices.

TITLE II—FULL PUBLIC DISCLOSURE OF LOBBYING

Sec. 201. Quarterly filing of lobbying disclosure reports.
Sec. 202. Electronic filing of lobbying disclosure reports.
Sec. 203. Additional lobbying disclosure requirements.
Sec. 204. Disclosure of paid efforts to stimulate grassroots lobbying.
Sec. 205. Disclosure of lobbying activities by certain coalitions and associations.
Sec. 206. Disclosure by registered lobbyists of past executive and congressional employment.
Sec. 207. Creation of a comprehensive public database of lobbying disclosure information.
Sec. 208. Conforming amendment.

TITLE III—RESTRICTING CONGRESSIONAL TRAVEL AND GIFTS

Sec. 301. Ban on gifts from lobbyists.
Sec. 302. Prohibition on privately funded travel.
Sec. 303. Prohibiting lobbyist organization and participation in congressional travel.
Sec. 304. Disclosure of noncommercial air travel.
Sec. 305. Per diem expenses for congressional travel.

TITLE IV—ENFORCEMENT OF LOBBYING RESTRICTIONS

Sec. 401. Senate Office of Public Integrity.
Sec. 402. Increased civil and criminal penalties for failure to comply with lobbying disclosure requirements.
Sec. 403. Penalty for false certification in connection with congressional travel.
Sec. 404. Mandatory annual ethics training for congressional employees.

TITLE V—OPEN GOVERNMENT

Sec. 501. Sense of the Senate on conference committee protocols.
Sec. 502. Actual voting required in conference committee meetings.
Sec. 503. Availability of conference reports on the internet.

TITLE I—CLOSING THE REVOLVING DOOR

SEC. 101. EXTENSION OF LOBBYING BAN FOR FORMER MEMBERS AND EMPLOYEES OF CONGRESS AND EXECUTIVE BRANCH OFFICIALS.

Section 207 of title 18, United States Code, is amended—

(1) in subsection (c)—

(A) in the subsection heading, by striking "One-year" and inserting "Two-year";

(B) in paragraph (1), by striking "1 year" and inserting "2 years" in both places it appears; and

(C) in paragraph (2)(B), by striking "1-year period" and inserting "2-year period;"

(2) in subsection (d)—

(A) in paragraph (1), by striking "1 year" and inserting "2 years"; and

(B) in paragraph (2)(A), by striking "1 year" and inserting "2 years"; and

(3) in subsection (e)—

(A) in paragraph (1)(A), by striking "1 year" and inserting "2 years";

(B) in paragraph (2)(A), by striking "1 year" and inserting "2 years";

(C) in paragraph (3), by striking "1 year" and inserting "2 years";

(D) in paragraph (4), by striking "1 year" and inserting "2 years";

(E) in paragraph (5)(A), by striking "1 year" and inserting "2 years"; and

(F) in paragraph (6), by striking "1-year period" and inserting "2-year period".

SEC. 102. ELIMINATION OF FLOOR PRIVILEGES FOR FORMER MEMBER LOBBYISTS.

Rule XXIII of the Standing Rules of the Senate is amended by inserting after "Ex-Senators and Senators elect" the following: ", except for any ex-Senator or Senator elect who is a registered lobbyist".

SEC. 103. DISCLOSURE BY MEMBERS OF CONGRESS AND SENIOR CONGRESSIONAL STAFF OF EMPLOYMENT NEGOTIATIONS.

(a) SENATE.—Rule XXXVII of the Standing Rules of the Senate is amended by adding at the end the following:

"13. (a) A Member of the Senate or an employee of the Senate earning in excess of 75 percent of the salary paid to a Senator shall notify the Committee on Ethics that he or she is negotiating or has any arrangement concerning prospective private employment if a conflict of interest or the appearance of a conflict of interest may exist.

"(b) The disclosure and notification under subparagraph (a) shall be made within 3 business days after the commencement of such negotiation or arrangement.

"(c) A Member or employee to whom this rule applies shall recuse himself or herself from any matter in which there is a conflict of interest for that Member or employee under this rule and notify the Select Committee on Ethics of such recusal.

"(d)(1) The Select Committee on Ethics shall develop guidelines concerning conduct which is covered by this paragraph.

"(2) The Select Committee on Ethics shall maintain a current public record of all notifications received under subparagraph (a) and of all recusals under subparagraph (c).".

SEC. 104. ETHICS REVIEW OF EMPLOYMENT NEGOTIATIONS BY EXECUTIVE BRANCH OFFICIALS.

Section 208 of title 18, United States Code, is amended—

(1) in subsection (b)(1)—

(A) by inserting after "the Government official responsible for appointment to his or her position" the following: "and the Office of Government Ethics"; and

(B) by striking "a written determination made by such official" and inserting "a written determination made by the Office of Government Ethics, after consultation with such official,"; and

(2) in subsection (b)(3), by striking "the official responsible for the employee's appointment, after review of" and inserting "the Office of Government Ethics, after consultation with the official responsible for the employee's appointment and after review of"; and

(3) in subsection (d)(1)—

(A) by striking "Upon request" and all that follows through "Ethics in Government Act of 1978." and inserting "In each case in which the Office of Government Ethics makes a determination granting an exemption under subsection (b)(1) or (b)(3) to a person, the Office shall, not later than 3 business days after making such determination, make available to the public pursuant to the procedures set forth in section 105 of the Ethics in Government Act of 1978, and publish in the Federal Register, such determination and the materials submitted by such person in requesting such exemption."; and

(B) by striking "the agency may withhold" and inserting "the Office of Government Ethics may withhold".

SEC. 105. WRONGFULLY INFLUENCING A PRIVATE ENTITY'S EMPLOYMENT DECISIONS OR PRACTICES.

(a) IN GENERAL.—Chapter 11 of title 18, United States Code, is amended by adding at the end the following:

"§ 226. Wrongfully influencing a private entity's employment decisions by a Member of Congress

"Whoever, being a Senator or Representative in, or a Delegate or Resident Commissioner to, the Congress or an employee of either House of Congress, with the intent to influence on the basis of partisan political affiliation an employment decision or employment practice of any private entity—

"(1) takes or withholds, or offers or threatens to take or withhold, an official act; or

"(2) influences, or offers or threatens to influence, the official act of another;

shall be fined under this title or imprisoned for not more than 15 years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.".

(b) NO INFERENCE.—Nothing in section 226 of title 18, United States Code, as added by this section, shall be construed to create any inference with respect to whether the activity described in section 226 of title 18, United States Code, was already a criminal or civil offense prior to the enactment of this Act, including sections 201(b), 201(c), and 216 of title 18, United States Code.

(c) CHAPTER ANALYSIS.—The chapter analysis for chapter 11 of title 18, United States Code, is amended by adding at the end the following:

"226. Wrongfully influencing a private entity's employment decisions by a Member of Congress.".

(d) SENATE RULES.—Rule XLIII of the Standing Rules of the Senate is amended by adding at the end the following:

"6. No Member shall, with the intent to influence on the basis of partisan political affiliation an employment decision or employment practice of any private entity—

"(1) take or withhold, or offer or threaten to take or withhold, an official act; or

"(2) influence, or offer or threaten to influence, the official act of another.".

TITLE II—FULL PUBLIC DISCLOSURE OF LOBBYING

SEC. 201. QUARTERLY FILING OF LOBBYING DISCLOSURE REPORTS.

(a) QUARTERLY FILING REQUIRED.—Section 5 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604) is amended—

(1) in subsection (a)—

(A) by striking "Semiannual" and inserting "Quarterly";

(B) by striking "the semiannual period" and all that follows through "July of each year" and insert "the quarterly period beginning on the first days of January, April, July, and October of each year"; and

(C) by striking "such semiannual period" and insert "such quarterly period"; and

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking "semiannual report" and inserting "quarterly report";

(B) in paragraph (2), by striking "semiannual filing period" and inserting "quarterly period";

(C) in paragraph (3), by striking "semiannual period" and inserting "quarterly period"; and

(D) in paragraph (4), by striking "semiannual filing period" and inserting "quarterly period".

(b) CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 3(10) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602) is amended by striking "six month period" and inserting "three-month period".

(2) REGISTRATION.—Section 4 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603) is amended—

(A) in subsection (a)(3)(A), by striking "semiannual period" and inserting "quarterly period"; and

(B) in subsection (b)(3)(A), by striking "semiannual period" and inserting "quarterly period".

(3) ENFORCEMENT.—Section 6 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1605) is amended in paragraph (6) by striking "semiannual period" and inserting "quarterly period".

(4) ESTIMATES.—Section 15 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1610) is amended—

(A) in subsection (a)(1), by striking "semiannual period" and inserting "quarterly period"; and

(B) in subsection (b)(1), by striking "semiannual period" and inserting "quarterly period".

(5) DOLLAR AMOUNTS.—

(A) Section 4 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603) is amended—

(i) in subsection (a)(3)(A)(i), by striking "$5,000" and inserting "$2,500";

(ii) in subsection (a)(3)(A)(ii), by striking "$20,000" and inserting "$10,000";

(iii) in subsection (b)(3)(A), by striking "$10,000" and inserting "$5,000"; and

(iv) in subsection (b)(4), by striking "$10,000" and inserting "$5,000".

(B) Section 5 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604) is amended—

(i) in subsection (c)(1), by striking "$10,000" and "$20,000" and inserting "$5,000" and "$10,000", respectively; and

(ii) in subsection (c)(2), by striking "$10,000" both places such term appears and inserting "$5,000".

SEC. 202. ELECTRONIC FILING OF LOBBYING DISCLOSURE REPORTS.

Section 5 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604) is amended by adding at the end the following:

"(d) ELECTRONIC FILING REQUIRED.—A report required to be filed under this section shall be filed in electronic form, in addition to any other form that may be required by the Secretary of the Senate or the Clerk of the House of Representatives. The Secretary of the Senate and the Clerk of the House of Representatives shall provide for public access to such reports on the Internet.".

SEC. 203. ADDITIONAL LOBBYING DISCLOSURE REQUIREMENTS.

(a) DISCLOSURE OF CONTRIBUTIONS AND PAYMENTS.—Section 5(b) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604(b)) is amended—

(1) in paragraph (5), as added by section 204(c), by striking the period and inserting a semicolon; and

(2) by adding at the end the following:

"(6) for each registrant (and for any political committee, as defined in section 301(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(4)), affiliated with such registrant) and for each employee listed as a lobbyist by a registrant under paragraph 2(C), the name of each Federal candidate or officeholder, leadership PAC, or political party committee, to whom a contribution was made, and the amount of such contribution; and

"(7) a certification that the lobbying firm or registrant has not provided, requested, or directed a gift, including travel, to a Member or employee of Congress in violation of rule XXXV of the Standing Rules of the Senate.".

(b) Leadership PAC.—Section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602) is amended by adding at the end the following:

"(17) Leadership PAC.—The term 'leadership PAC' means an unauthorized multicandidate political committee that is established, financed, maintained, and controlled by an individual who is a Federal officeholder or a candidate for Federal office.".

(c) Full and Detailed Accounting.—Section 5(c)(1) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604(c)(1)) is amended by striking "shall be rounded to the nearest $20,000" and inserting "shall be rounded to the nearest $1,000".

SEC. 204. DISCLOSURE OF PAID EFFORTS TO STIMULATE GRASSROOTS LOBBYING.

(a) Disclosure of Paid Efforts to Stimulate Grassroots Lobbying.—Section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602) is amended—

(1) in paragraph (7), by adding at the end the following: "Lobbying activities include paid efforts to stimulate grassroots lobbying, but do not include grassroots lobbying."; and

(2) by adding at the end the following:

"(18) Grassroots lobbying.—The term 'grassroots lobbying' means the voluntary efforts of members of the general public to communicate their own views on an issue to Federal officials or to encourage other members of the general public to do the same.

"(19) Paid efforts to stimulate grassroots lobbying.—The term 'paid efforts to stimulate grassroots lobbying'—

"(A) means any paid attempt to influence the general public, or segments thereof, to engage in grassroots lobbying or lobbying contacts; and

"(B) does not include any attempt described in subparagraph (A) by a person or entity directed to its members, employees, officers or shareholders, unless such attempt is financed with funds directly or indirectly received from or arranged by a lobbyist or other registrant under this Act retained by another person or entity.

"(20) Grassroots lobbying firm.—The term 'grassroots lobbying firm' means a person or entity that—

"(A) is retained by 1 or more clients to engage in paid efforts to stimulate grassroots lobbying on behalf of such clients; and

"(B) receives income of, or spends or agrees to spend, an aggregate of $50,000 or more for such efforts in any quarterly period.".

(b) Registration.—Section 4(a) of the Act (2 U.S.C. 1603(a)) is amended—

(1) in paragraph (1), by striking "45" and inserting "20";

(2) in the flush matter at the end of paragraph (3)(A)—

(A) by striking "as estimated" and inserting "as included"; and

(B) by adding at the end the following: "For purposes of clauses (i) and (ii) the term 'lobbying activities' shall not include paid efforts to stimulate grassroots lobbying.";

(3) by redesignating paragraph (3) as paragraph (4); and

(4) by inserting after paragraph (2) the following:

"(3) Grassroots lobbying firms.—Not later than 20 days after a grassroots lobbying firm first is retained by a client to engage in paid efforts to stimulate grassroots lobbying, such grassroots lobbying firm shall register with the Secretary of the Senate and the Clerk of the House of Representatives.".

(c) Separate Itemization of Paid Efforts To Stimulate Grassroots Lobbying.—Section 5(b) of the Act (2 U.S.C. 1604(b)) is amended—

(1) in paragraph (3), by—

(A) inserting after "total amount of all income" the following: "(including a separate good faith estimate of the total amount relating specifically to paid efforts to stimulate grassroots lobbying and, within that amount, a good faith estimate of the total amount specifically relating to paid advertising)"; and

(B) striking "and" after the semicolon;

(2) in paragraph (4), by—

(A) inserting after "total expenses" the following: "(including a good faith estimate of the total amount relating specifically to paid efforts to stimulate grassroots lobbying and, within that total amount, a good faith estimate of the total amount specifically relating to paid advertising)"; and

(B) striking the period and inserting a semicolon;

(3) by adding at the end the following:

"(5) in the case of a grassroots lobbying firm, for each client—

"(A) a good faith estimate of the total disbursements made for grassroots lobbying activities, and a subtotal for disbursements made for grassroots lobbying through paid advertising;

"(B) identification of each person or entity other than an employee who received a disbursement of funds for grassroots lobbying activities of $10,000 or more during the period and the total amount each person or entity received; and

"(C) if such disbursements are made through a person or entity who serves as an intermediary or conduit, identification of each such intermediary or conduit, identification of the person or entity who receives the funds, and the total amount each such person or entity received."; and

(4) by adding at the end the following:

"Subparagraphs (B) and (C) of paragraph (2) shall not apply with respect to reports relating to paid efforts to stimulate grassroots lobbying activities.".

(d) Large Grassroots Expenditure.—Section 5(a) of the Act (2 U.S.C. 1604(a)) is amended—

(1) by striking "No later" and inserting:

"(1) In general.—Except as provided in paragraph (2), not later"; and

(2) by adding at the end the following:

"(2) Large grassroots expenditure.—A registrant that is a grassroots lobbying firm and that receives income of, or spends or agrees to spend, an aggregate amount of $250,000 or more on paid efforts to stimulate grassroots lobbying for a client, or for a group of clients for a joint effort, shall file—

"(A) a report under this section not later than 20 days after receiving, spending, or agreeing to spend that amount; and

"(B) an additional report not later than 20 days after each time such registrant receives income of, or spends or agrees to spend, an aggregate amount of $250,000 or more on paid efforts to stimulate grassroots lobbying for a client, or for a group of clients for a joint effort.".

SEC. 205. DISCLOSURE OF LOBBYING ACTIVITIES BY CERTAIN COALITIONS AND ASSOCIATIONS.

(a) In General.—Section 4(b)(3)(B) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603(b)(3)(B)) is amended to read as follows:

"(B) participates in the planning, supervision or control of such lobbying activities;".

(b) No Donor or Membership List Disclosure.—Section 4(b) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603(b)) is amended by adding at the end the following:

"No disclosure is required under paragraph (3)(B) if it is publicly available knowledge that the organization that would be identified is affiliated with the client or has been publicly disclosed to have provided funding to the client, unless the organization in whole or in major part plans, supervises or controls such lobbying activities. Nothing in paragraph (3)(B) shall be construed to require the disclosure of any information about individuals who are members of, or donors to, an entity treated as a client by this Act or an organization identified under that paragraph.".

SEC. 206. DISCLOSURE BY REGISTERED LOBBYISTS OF PAST EXECUTIVE AND CONGRESSIONAL EMPLOYMENT.

Section 4(b)(6) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603(b)(6)) is amended by striking "or a covered legislative branch official" and all that follows through "as a lobbyist on behalf of the client," and inserting "or a covered legislative branch official,".

SEC. 207. CREATION OF A COMPREHENSIVE PUBLIC DATABASE OF LOBBYING DISCLOSURE INFORMATION.

(a) Database Required.—Section 6 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1605) is amended—

(1) in paragraph (7), by striking "and" at the end;

(2) in paragraph (8), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(9) maintain, and make available to the public over the Internet, without a fee or other access charge, in a searchable and downloadable manner, an electronic database that includes the information contained in registrations and reports filed under this Act.".

(b) Availability of Reports.—Section 6(4) of the Lobbying Disclosure Act of 1995 is amended by inserting before the semicolon at the end the following: "and, in the case of a report filed in electronic form pursuant to section 5(d), shall make such report available for public inspection over the Internet not more than 48 hours after the report is so filed".

(c) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out section 6(9) of the Lobbying Disclosure Act of 1995, as added by subsection (a).

SEC. 208. CONFORMING AMENDMENT.

The requirements of this Act shall not apply to the activities of any political committee described in section 301(4) of the Federal Election Campaign Act of 1971.

TITLE III—RESTRICTING CONGRESSIONAL TRAVEL AND GIFTS

SEC. 301. BAN ON GIFTS FROM LOBBYISTS.

(a) In General.—Paragraph 1(a)(2) of rule XXXV of the Standing Rules of the Senate is amended by adding at the end the following: "This clause shall not apply to a gift from a lobbyist.".

(b) Rules Committee Review.—The Committee on Rules and Administration shall review the present exceptions to the Senate gift rule and make recommendations to the Senate not later than 3 months after the date of enactment of this Act on eliminating all but those which are absolutely necessary to effectuate the purpose of the rule.

SEC. 302. PROHIBITION ON PRIVATELY FUNDED TRAVEL.

Paragraph 2(a)(1) of rule XXXV of the Standing Rules of the Senate is amended by striking "an individual" and inserting "an organization recognized under section 501(c)(3) of the Internal Revenue Code of 1986 that is not affiliated with any group that lobbies before Congress".

SEC. 303. PROHIBITING LOBBYIST ORGANIZATION AND PARTICIPATION IN CONGRESSIONAL TRAVEL.

(a) IN GENERAL.—Paragraph 2 of rule XXXV of the Standing Rules of the Senate is amended by adding at the end the following:

"(g) A Member, officer, or employee may not accept transportation or lodging on any trip sponsored by an organization recognized under section 501(c)(3) of the Internal Revenue Code of 1986 covered by this paragraph that is planned, organized, requested, arranged, or financed in whole, or in part by a lobbyist or foreign agent, or in which a lobbyist participates.

"(h) Before a Member, officer, or employee may accept transportation or lodging otherwise permissible under this paragraph from any person, such Member, officer, or employee shall obtain a written certification from such person (and provide a copy of such certification to the Select Committee on Ethics) that—

"(1) the trip was not planned, organized, requested, arranged, or financed in whole, or in part by a registered lobbyist or foreign agent and was not organized at the request of a registered lobbyist or foreign agent;

"(2) registered lobbyists will not participate in or attend the trip; and

"(3) the person did not accept, from any source, funds specifically earmarked for the purpose of financing the travel expenses.

The Select Committee on Ethics shall make public information received under this subparagraph as soon as possible after it is received.".

(b) CONFORMING AMENDMENTS.—Paragraph 2(c) of rule XXXV of the Standing Rules of the Senate is amended—

(1) by striking "of expenses reimbursed or to be reimbursed";

(2) in clause (5), by striking "and" after the semicolon;

(3) in clause (6), by striking the period and inserting "; and"; and

(4) by adding at the end the following:

"(7) a description of meetings and events attended during such travel, except when disclosure of such information is deemed by the Member or supervisor under whose direct supervision the employee works to jeopardize the safety of an individual or otherwise interfere with the official duties of the Member, officer, or employee.".

(c) PUBLIC AVAILABILITY.—Paragraph 2(e) of rule XXXV is amended to read as follows:

"(e) The Secretary of the Senate shall make available to the public all advance authorizations, certifications, and disclosures filed pursuant to subparagraphs (a) and (h) as soon as possible after they are received.".

SEC. 304. DISCLOSURE OF NONCOMMERCIAL AIR TRAVEL.

A Member, officer, or employee of the Senate shall—

(1) disclose a flight on an aircraft that is not licensed by the Federal Aviation Administration to operate for compensation or hire, taken in connection with the duties of the Member, officer, or employee as an officeholder or Senate officer or employee; and

(2) with respect to the flight, file a report with the Secretary of the Senate, including the date, destination, and owner or lessee of the aircraft and the purpose of the trip.

SEC. 305. PER DIEM EXPENSES FOR CONGRESSIONAL TRAVEL.

(a) SENATE.—Rule XXXV of the Standing Rules of the Senate is amended by adding at the end the following:

"7. Not later than 90 days after the date of adoption of this paragraph and at annual intervals thereafter, the Committee on Rules and Administration shall develop and revise, as necessary, guidelines on what constitutes 'reasonable expenses' or 'reasonable expenditures' for purposes of this rule. In developing and revising the guidelines, the committee shall take into account the maximum per diem rates for official Government travel published annually by the General Services Administration, the Department of State, and the Department of Defense.".

TITLE IV—ENFORCEMENT OF LOBBYING RESTRICTIONS

SEC. 401. SENATE OFFICE OF PUBLIC INTEGRITY.

(a) ESTABLISHMENT.—There is established in the Senate an office to be known as the "Senate Office of Public Integrity" (referred to in this section as the "Office"), which shall be headed by a Senate Director of Public Integrity (hereinafter referred to as the "Director").

(b) OFFICE.—The Office shall receive lobbyists' disclosures on behalf of the Senate under the Lobbying Disclosure Act of 1995 and conduct such audits and investigations as are necessary to ensure compliance with the Act.

(c) REFERRAL AUTHORITY.—The Office shall have authority to refer violations of the Lobbying Disclosure Act of 1995 to the Select Committee on Ethics and the Department of Justice for disciplinary action.

(d) DIRECTOR.—

(1) IN GENERAL.—The Director shall be appointed by the President pro tempore of the Senate from among recommendations submitted by the majority and minority leaders of the Senate. Any appointment made under this subsection shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. Any person appointed as Director shall be learned in the law, a member of the bar of a State or the District of Columbia, and shall not engage in any other business, vocation, or employment during the term of such appointment.

(2) OVERSIGHT.—The Director shall report to a joint leadership group consisting of the President pro tempore, the Majority Leader, and the Minority Leader.

(3) TERMS OF SERVICE.—Any appointment made under paragraph (1) shall become effective upon approval by resolution of the Senate. The Director shall be appointed for a term of service which shall expire at the end of the Congress following the Congress during which the Director is appointed except that the Senate may, by resolution, remove Director prior to the termination of any term of service. The Director may be reappointed at the termination of any term of service.

(4) COMPENSATION.—The Director shall receive compensation at a rate equal to the annual rate of basic pay for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(5) STAFF.—The Director shall hire such additional staff as are required to carry out this section, including investigators and accountants.

(e) AUDITS AND INVESTIGATIONS.—

(1) IN GENERAL.—The Office shall audit lobbying registrations and reports filed pursuant to the Lobbying Disclosure Act of 1995 to determine the extent of compliance or noncompliance with the requirements of such Act by lobbyists and their clients.

(2) EVIDENCE OF NON-COMPLIANCE.—If in the course an audit conducted pursuant to the requirements of paragraph (1), the Office obtains information indicating that a person or entity may be in non-compliance with the requirements of the Lobbying Disclosure Act of 1995, the Office shall refer the matter to the Select Committee on Ethics or the United States Attorney for the District of Columbia, as appropriate.

(f) TRANSFER OF RECORDS.—On the date that is 90 days after the date of enactment of this Act, the Office of Public Records of the Senate shall transfer all authority and records of that office to the Senate Office of Public Integrity.

(g) CONFORMING AMENDMENTS.—

(1) NEW OFFICE.—Section 6 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1605) is amended by striking "Secretary of the Senate" and inserting "Senate Office of Public Integrity".

(2) AUDIT AUTHORITY.—Section 8 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1607) is amended by striking subsection (c).

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated in a separate account such sums as are necessary to carry out this section.

SEC. 402. INCREASED CIVIL AND CRIMINAL PENALTIES FOR FAILURE TO COMPLY WITH LOBBYING DISCLOSURE REQUIREMENTS.

Section 7 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1606) is amended—

(1) by inserting " (a) CIVIL PENALTY.—" before "Whoever";

(2) by striking "$50,000" and inserting "$100,000"; and

(3) by adding at the end the following:

"(b) CRIMINAL PENALTY.—

"(1) IN GENERAL.—Whoever knowingly and wilfully fails to comply with any provision of this section shall be imprisoned for not more than 5 years, or fined under title 18, United States Code, or both.

"(2) CORRUPTLY.—Whoever knowingly, wilfully, and corruptly fails to comply with any provision of this section shall be imprisoned for not more than 10 years, or fined under title 18, United States Code, or both.".

SEC. 403. PENALTY FOR FALSE CERTIFICATION IN CONNECTION WITH CONGRESSIONAL TRAVEL.

(a) CIVIL FINE.—

(1) IN GENERAL.—Whoever makes a false certification in connection with the travel of a Member, officer, or employee of either House of Congress (within the meaning given those terms in section 207 of title 18, United States Code), under paragraph 2(h) of rule XXXV of the Standing Rules of the Senate, shall, upon proof of such offense by a preponderance of the evidence, be subject to a civil fine depending on the extent and gravity of the violation.

(2) MAXIMUM FINE.—The maximum fine per offense under this section depends on the number of separate trips in connection with which the person committed an offense under this subsection, as follows:

(A) FIRST TRIP.—For each offense committed in connection with the first such trip, the amount of the fine shall be not more than $100,000 per offense.

(B) SECOND TRIP.—For each offense committed in connection with the second such trip, the amount of the fine shall be not more than $300,000 per offense.

(C) ANY OTHER TRIPS.—For each offense committed in connection with any such trip after the second, the amount of the fine shall be not more than $500,000 per offense.

(3) Enforcement.—The Attorney General may bring an action in United States district court to enforce this subsection.

(b) Criminal Penalty.—

(1) In general.—Whoever knowingly and wilfully fails to comply with any provision of this section shall be imprisoned for not more than 5 years, or fined under title 18, United States Code, or both.

(2) Corruptly.—Whoever knowingly, wilfully, and corruptly fails to comply with any provision of this section shall be imprisoned for not more than 10 years, or fined under title 18, United States Code, or both.

SEC. 404. MANDATORY ANNUAL ETHICS TRAINING FOR CONGRESSIONAL EMPLOYEES.

(a) Ethics Training.—

(1) In general.—The Committee on Ethics shall provide annual ethics training to each employee of the Senate which shall include knowledge of the Official Code of Conduct and related Senate rules.

(2) Secretary of the senate.—The Secretary of the Senate shall assist the Committee on Ethics in providing training required by this subsection.

(3) New employees.—A new employee of the Senate shall receive training under this section not later than 60 days after beginning service to the Senate.

(b) Certification.—Not later than January 31 of each year, each employee of the Senate shall file a certification with the Committee on Ethics that the employee attended ethics training in the last year as established by this section.

TITLE V—OPEN GOVERNMENT

SEC. 501. SENSE OF THE SENATE ON CONFERENCE COMMITTEE PROTOCOLS.

It is the sense of Senate that—

(1) conference committees should hold regular, formal meetings of all conferees that are open to the public;

(2) all conferees should be given adequate notice of the time and place of all such meetings;

(3) all conferees should be afforded an opportunity to participate in full and complete debates of the matters that such conference committees may recommend to their respective Houses;

(4) all matters before a conference committee should be resolved in conference by votes on the public record; and

(5) existing rules should be enforced and new rules adopted in the Senate to shine the light on special interest legislation that is enacted in the dead of night.

SEC. 502. ACTUAL VOTING REQUIRED IN CONFERENCE COMMITTEE MEETINGS.

Rule XXVIII of the Standing Rules of the Senate is amended by adding at the end the following:

"8. Each Senate member of a conference committee shall be afforded an opportunity at an open meeting of the conference to vote on the full text of the proposed report of the conference.".

SEC. 503. AVAILABILITY OF CONFERENCE REPORTS ON THE INTERNET.

Rule XXVIII of all the Standing Rules of the Senate is amended by adding at the end the following:

"9. It shall not be in order in the Senate to consider a conference report unless such report is available to all Members and made available to the general public by means of the Internet for at least 24 hours before its consideration.".

By Mr. LAUTENBERG (for himself, Ms. Snowe, Mr. Schumer, Mr. Coleman, Mrs. Feinstein, Mr. Pryor, Mr. DeWine, Mrs. Boxer, Mr. Menendez, Ms. Collins, Mr. Dayton, Mr. Reed, Mr. Jeffords, Mrs. Lincoln, Mr. Leahy, Mr. Wyden, Ms. Stabenow, Mr. Johnson, Mr. Kennedy, Mr. Dorgan, Mr. Lieberman, Mrs. Clinton, Mr. Chafee, and Mr. Dodd):

S. 2181. A bill to amend title XIX of the Social Security Act to provide for an offset from the Medicaid clawback for State prescription drug expenditures for covered part D drugs for Medicare beneficiaries; to the Committee on Finance.

● Mr. LAUTENBERG. Mr. President, I rise to introduce the Medicare State Reimbursement Act along with my colleagues, Senators Snowe, Schumer, Coleman, Feinstein, Pryor, DeWine, Boxer, Menendez, Collins, Dayton, Reed, Jeffords, Lincoln, Leahy, Wyden, Stabenow, Johnson, Kennedy, Dorgan, Lieberman, Clinton, Chafee and Dodd.

There have been many difficulties surrounding implementation of the Medicare prescription drug benefit, however, few have experienced the severity of the problems that those who are dually eligible for both Medicare and Medicaid have faced.

"Dual Eligibles" are the Nation's poorest seniors and the disabled. Many suffer from multiple, chronic, debilitating conditions and on average take between five and ten medications per day. Missing even one dose of medication could result in a life threatening situation.

Across America, countless beneficiaries who tried to have their prescriptions filled for the first time under the new system were told that their enrollment could not be verified, their drugs were not covered, or they would be charged larger co-payments or deductibles than they could afford. As a result, many were at risk of not receiving lifesaving prescription drugs.

Regardless of how Senators voted on the Medicare Drug bill, I think all Senators can agree on one thing: the flaws in the startup of this program are unacceptable.

Fortunately, a number of States including New Jersey have taken actions to help those who have experienced problems with access to medications under the new prescription drug benefit. As of Wednesday this week, New Jersey had already spent $16.6 million dollars.

Congress has been asking the Centers for Medicare and Medicaid Services whether New Jersey and other States will be paid back for its expenditures. The answers we have gotten so far are not satisfactory.

That is why we need to legislate on this issue. It must be crystal clear to the Federal Government that it needs to repay these States that are bailing them out.

Accordingly, I am introducing emergency legislation today that will reimburse States for the cost they have incurred for filling this unanticipated gap in coverage.

Specifically, this legislation would: require the Federal Government to reimburse the states for the cost of prescriptions for low income seniors and people with disabilities ("dual eligibles") who were eligible for coverage under Medicare Part D, but were improperly denied Federal coverage.

Reimburse states through an equivalent reduction in funds owed by each state under the "claw back" provision of the new Medicare law.

Reimbursement will be at a rate equal to 100 percent of all State costs plus an interest rate equal to the market rate on 3-month Treasury Securities plus 0.1 percent.

Directs the Secretary of HHS to recover overpayments by states to private prescription drug plans and return that money to the Medicare Trust Fund.

This is not just about access to the Federal entitlement program—it's about life and death.

I urge my colleagues on both sides of the aisle to support this legislation and move for its immediate passage.

I ask unanimous consent that the text of the bill be printed in the Record.●

There being no objection the bill was ordered to be printed in the Record, as follows:

S. 2181

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicare State Reimbursement Act of 2006".

SEC. 2. FEDERAL RESPONSIBILITY FOR STATE PRESCRIPTION DRUG EXPENDITURES FOR COVERED PART D DRUGS FOR MEDICARE BENEFICIARIES.

Section 1935(c) of the Social Security Act (42 U.S.C. 1396v(c)) is amended—

(1) in paragraph (1)(A), by striking "Each of the 50 States" and inserting "Subject to paragraph (7), each of the 50 States"; and

(2) by adding at the end the following new paragraph:

"(7) Offset for state prescription drug expenditures for covered part D drugs for medicare beneficiaries.—

"(A) In general.—The amount of payment for a month (beginning with January 2006) under paragraph (1) shall be reduced by an amount equal to the sum of—

"(i) the amount (as documented by the State) that the State expended during the month for payment for covered part D drugs for part D eligible individuals who are enrolled in a prescription drug plan under part D of title XVIII but were unable to access on a timely basis prescription drug benefits to which they were entitled under such plan; and

"(ii) interest on such amount (for the period beginning on the day after the date on which an expenditure described in subparagraph (A) is made and ending on the date on which payment is made under paragraph (1)) at a rate equal to the weighted average of interest on 3-month marketable Treasury securities determined for such period, increased by 0.1 percentage point.

"(B) RECOVERY OF REDUCED PAYMENT FROM PRESCRIPTION DRUG PLANS.—The Secretary shall provide for recovery of payment reductions made under subparagraph (A) from those prescription drug plans under part D of title XVIII or MA-PD plans under part C of such title that would otherwise be responsible for the expenditures described in subparagraph (A)(i). Any such amounts recovered shall be deposited into the Medicare Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund.".

• Ms. SNOWE. Mr. President, I am pleased to join with Senator LAUTENBERG today to introduce urgent legislation to assist the many States which have stepped forward to provide an essential safety net to our Medicare Part D beneficiaries. Our States have acted as "payers of last resort"—as beneficiaries faced unaffordable costs when errors in implementing their coverage denied them access to vital medications. The Medicare State Reimbursement Act will reimburse our States for their costs in assuring that millions receive their medications. So many of our colleagues have recognized the crisis which was averted—Senators COLEMAN, SCHUMER, DEWINE, FEINSTEIN, COLLINS, JEFFORDS and many more have joined us in this bipartisan effort to support the States in the vital role they have played in countering a deficit of action by the Federal bureaucracy.

The introduction of the prescription drug benefit is a landmark step in the progress of Medicare. This benefit will save the average senior about $1,000 per year. This is the relief that millions have needed for so long. It must eliminate the terrible choices so many have had to make between vital medications and the other essentials of life—not create new dilemmas.

As we worked to ensure a prescription drug benefit, many of us worked hard to assure special help to those with the most limited resources. We enacted a benefit which provided additional help for those on limited incomes, including millions who rely on both Medicare and Medicaid—our "dual eligibles". It was essential that these individuals would see uninterrupted coverage of their essential medications. So we needed to ensure each would be enrolled in a drug plan. To do this, the Centers for Medicare and Medicaid Services, CMS, randomly assigned each of them to a plan. In a program based on competition—based on choices—plans are going to differ. To find the best plan, one must make an educated choice, not a random assignment.

So the result of random assignment was predictable. Many beneficiaries wound up in plans which did not cover their drugs. My State of Maine immediately stepped forward to work to assure that every beneficiary was matched with the plan which best met their needs. As plans were reviewed, my State found a third of those reviewed—15,000 beneficiaries—were not enrolled in the most appropriate drug plan. Getting each into the plan that met their medication requirements was essential to meeting their needs.

Despite these best efforts to improve the situation, some beneficiaries were not in a plan at all, while others were in plans which seemed not to understand that every beneficiary was to be allowed a refill of their existing medications. So as beneficiaries came to their local pharmacies to get prescription refills, many faced great obstacles in getting the drugs they needed. We had heard of some problems in validating enrollment eligibility, but at year end, these just became worse, and we found beneficiaries were not properly enrolled, plans were not giving the proper transition refills, and co-payments charged were often excessive. As individual faced co-payments of $100 or more—instead of the $5 or less they should have been charged—many simply couldn't afford their medications. Thankfully, our States have stepped in to make sure low income seniors received their medications. In Maine alone, approximately $5 million in assistance has been given to ensure medications are dispensed.

This drug benefit must increase access, not make it more difficult. I am appalled, that with all the technology we have, so many have faced such difficulties in the implementation of this benefit. I salute the forbearance of our pharmacies, as they strived to meet essential needs, and the efforts of my State and others which have assured that these most vulnerable Americans not suffer from the failures of either the Federal bureaucracy or the plan administrators.

So what this legislation does is simple. It authorizes CMS to reimburse the States their costs which they paid for providing medications to those who did not receive the benefits to which they were entitled. It does this by a simple mechanism: an adjustment in the "claw back" payments which States make as their contribution for their dual eligibles. Accordingly, CMS is authorized to collect those funds from those who were obligated to serve our beneficiaries—the drug plans and managed care plans which deliver the drug benefit.

It has been confirmed that CMS does not presently have this authority, and it simply is not acceptable to propose that CMS will simply help the States collect from the plans. It was CMS which approved the plans, and it is CMS which administers Part D. They are in the best position to assure plan compliance.

I look forward to prompt consideration of this legislation, and look forward to continuing work with my colleagues to assure that the Medicare drug benefit meets the needs of all our beneficiaries, and that none of our most vulnerable citizens should suffer from such administrative failures as we have seen here.

I call on my colleagues to join us in assuring our States are justly compensated.•

• Mrs. FEINSTEIN. Mr. President, I am pleased to join with Senators LAUTENBERG, SNOWE, SCHUMER, COLEMAN and many others to introduce legislation to reimburse States for prescription drug expenses they have incurred for their residents who are dually eligible for Medicare and Medicaid. States have had no other option but to step in and ensure seniors can still get their drugs because the implementation of the new Medicare drug benefit has been so poorly handled by the Bush administration.

The faulty implementation of the new drug benefit has caused a major health emergency in California and States across the country, particularly for seniors with chronic and debilitating diseases who rely on multiple medications every day to keep them alive.

It is incomprehensible to me that with all the money and time given to the Centers for Medicare and Medicaid Services, CMS, to implement this new drug benefit, stories emerge every day of seniors and disabled individuals being hospitalized because they are being told they have to pay hundreds of dollars for their medications which they cannot afford and thus don't take.

Because of severe glitches in the database run by CMS, these individuals are leaving pharmacies without their medications or are making undue sacrifices to pay for costs they should not have incurred in the first place.

So far, more than 24 States and the District of Columbia have stepped in to say they will cover the cost of prescription drugs for their residents who are dually eligible for Medicare and Medicaid and who cannot access lifesaving and life sustaining drugs as a result of Federal incompetence.

Earlier this week, the Governor of California and California's State legislative leaders announced a plan to make $150 million available for 30 days to cover drug costs for dual eligible individuals who have fallen through the system. In California, these individuals account for more than 1 million of the State's 4 million total Medicare recipients.

Problems with the Bush administration's implementation of the drug benefit have cost California $5.5 million to fill 63,000 prescriptions, as of January 18. I have no doubt these costs are just the beginning.

Unless these significant implementation errors are fixed immediately, the new drug benefit amounts to a massive unfunded mandate. The Bush administration must reimburse States, in full, for the drug costs they have absorbed as a result of major implementation errors that occurred on their watch.

The legislation I am introducing today with Senators LAUTENBERG, SNOWE, SCHUMER and COLEMAN will ensure that States are repaid in full by the Federal Government for all costs associated with prescription drugs for dual eligible individuals. The States did not create the crisis felt by our Nation's poorest and most vulnerable seniors and disabled and the States should not be responsible for costs associated with a Federal program that was intended to provide these individuals with comprehensive prescription drug coverage at little or no cost.

It is simply unacceptable for the Bush administration to tell States and the Congress not to worry because the private health insurance plans will reimburse States for the costs they've incurred. States should not be made to wait to be reimbursed because of implementation foul-ups caused by CMS.

I urge my colleagues to support this legislation.●

By Mr. ROCKEFELLER (for himself, Mr. REID, Mrs. MURRAY, Mr. BINGAMAN, Mrs. LINCOLN, Mr. KENNEDY, Mrs. CLINTON, Mr. LAUTENBERG, Ms. STABENOW, Mr. DURBIN, Mr. KERRY, Mr. SCHUMER, Mr. PRYOR, Mr. LEAHY, Mr. DAYTON, Mr. JEFFORDS, Mr. HARKIN, Ms. MIKULSKI, Mr. JOHNSON, Ms. CANTWELL, Mr. AKAKA, Mr. LIEBERMAN, Mr. KOHL, Ms. LANDRIEU, Mr. SARBANES, and Mrs. BOXER):

S. 2183. A bill to provide for necessary beneficiary protections in order to ensure access to coverage under the Medicare part D prescription drug program; to the Committee on Finance.

● Mr. ROCKEFELLER. Mr. President. I ask unanimous consent that the text of the bill be printed in the RECORD.●

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2183

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Requiring Emergency Pharmaceutical Access for Individual Relief (REPAIR) Act of 2006".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Transition requirements.
Sec. 3. Federal fallback for full-benefit dual eligible individuals for 2006.
Sec. 4. Identifying full-benefit dual eligible individuals in data records.
Sec. 5. Prohibition on conditioning Medicaid eligibility for individuals enrolled in certain creditable prescription drug coverage on enrollment in the Medicare part D drug program.
Sec. 6. Ensuring that full-benefit dual eligible individuals are not overcharged.
Sec. 7. Reimbursement of States for 2006 transition costs.
Sec. 8. Facilitation of identification and enrollment through pharmacies of full-benefit dual eligible individuals in the Medicare part D drug program.
Sec. 9. State health insurance program assistance regarding the new Medicare prescription drug benefit.
Sec. 10. Additional Medicare part D informational resources.
Sec. 11. GAO study and report on the imposition of co-payments under part D for full-benefit dual eligible individuals residing in a long-term care facility.
Sec. 12. State coverage of non-formulary prescription drugs for full-benefit dual eligible individuals during 2006.
Sec. 13. Protection for full-benefit dual eligible individuals from plan termination prior to receiving functioning access in a new part D plan.

SEC. 2. TRANSITION REQUIREMENTS.

(a) REQUIREMENT.—

(1) IN GENERAL.—Section 1860D-4(b) of the Social Security Act (42 U.S.C. 1395w–104(b)) is amended by adding at the end the following new paragraph:

"(4) FORMULARY TRANSITION.—The sponsor of a prescription drug plan is required to provide at least a 30-day supply of any drug that a new enrollee in the plan was taking prior to enrolling in such plan. For individuals residing in a long-term care setting, the sponsor of a prescription drug plan is required to provide at least a 90-day supply of any drug such individual was taking prior to enrolling in such plan. A formulary transition supply provided under this section shall be made by the sponsor of a prescription drug plan without imposing any prior authorization requirements or other access restrictions for individuals stabilized on a course of treatment and at the dosage previously prescribed by a physician or recommended by a physician going forward.

"(5) CUSTOMER SERVICE.—The sponsor of a prescription drug plan is required to provide—

"(A) accessible and trained customer service representatives available for full business hours from coast to coast to provide knowledgeable assistance to individuals seeking help with Medicare Part D including, but not limited to, beneficiaries, caseworkers, SHIP counselors, pharmacists, doctors, and caregivers;

"(B) at least one dedicated phone line for pharmacists with sufficient staff to reduce wait times for pharmacists seeking Medicare Part D assistance to no more than 20 minutes; and

"(C) sufficient staff to reduce wait times for all Medicare Part D-related calls to plan phone lines to no more than 20 minutes.".

(2) APPLICATION.—The requirements under paragraphs (4) and (5) of section 1860D-4(b) of the Social Security Act (42 U.S.C. 1395w–104(b)), as added by subsection (a), shall apply to the plan serving as the national point of sale contractor under part D of title XVIII of such Act.

(b) EFFECTIVE DATE AND ENFORCEMENT.—

(1) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

(2) ENFORCEMENT.—The Secretary may impose a civil monetary penalty in an amount not to exceed $15,000 for conduct that a sponsor of a prescription drug plan or an organization offering an MA–PD plan knows or should know is a violation of the provisions of paragraph (4) or (5) of section 1860D–4(b) of the Social Security Act (42 U.S.C. 1395w–104(b)), as added by subsection (a). The provisions of section 1128A of the Social Security Act (42 U.S.C. a-7a), other than subsections (a) and (b) and the second sentence of subsection (f), shall apply to a civil monetary penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under subsection (a) of such section 1128A(a).

SEC. 3. FEDERAL FALLBACK FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS FOR 2006.

(a) IN GENERAL.—

(1) IN GENERAL.—If a full-benefit dual eligible individual (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396u–5(c)(6))), or an individual who is presumed to be such an individual pursuant to subsection (b), presents a prescription for a covered part D drug (as defined in section 1860D–2(e) of such Act (42 U.S.C. 1395w–102(e))) at a pharmacy in 2006 and the pharmacy is unable to locate or verify the individual's enrollment through a reasonable effort, including the use of the pharmacy billing system or by calling an official Medicare hotline, or to bill for the prescription through the plan serving as the national point of sale contractor, the pharmacy may provide a 30-day supply of the drug to the individual.

(2) REFILL.—The pharmacy may provide an additional 30-day supply of a drug if the pharmacy continues to be unable to locate the individual's enrollment through such reasonable efforts or to bill for the prescription through the plan serving as the national point of sale contractor when a prescription is presented on or after the date that a prescription refill is appropriate, but in no case after December 31, 2006.

(3) COST-SHARING.—The cost-sharing for a prescription filled pursuant to this subsection shall be cost-sharing provided for under section 1860D-14(a) of the Social Security Act (42 U.S.C. 1395w–114(a)).

(b) PRESUMPTIVE ELIGIBILITY.—An individual shall be presumed to be a full-benefit dual eligible individual (as so defined) if the individual presents at the pharmacy with—

(1) a government issued picture identification card;

(2) reliable evidence of Medicaid enrollment, such as a Medicaid card, recent history of Medicaid billing in the pharmacy patient profile, or a copy of a current Medicaid award letter; and

(3) reliable evidence of Medicare enrollment, such as a Medicare identification card, a Medicare enrollment approval letter, a Medicare Summary Notice, or confirmation from an official Medicare hotline.

(c) PAYMENTS TO PHARMACISTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall reimburse pharmacists, to the extent that such pharmacists are not otherwise reimbursed by States or plans, for the costs incurred in complying with the requirements under subsection (a), including acquisition costs, dispensing costs, and other overhead costs. Such payments shall be made in a timely manner from the Medicare Prescription Drug Account under section 1860D–16 of the Social Security Act (42 U.S.C. 1395w–116) and shall be deemed to be payments from such Account under subsection (b) of such section.

(2) RETROACTIVE APPLICATION TO BEGINNING OF 2006.—The costs incurred by a pharmacy which may be reimbursed under paragraph (1) shall include costs incurred during the period beginning on January 1, 2006, and before the date of enactment of this Act.

(d) RECOVERY OF COSTS FROM PLANS BY SECRETARY NOT PHARMACIES.—The Secretary of Health and Human Services shall establish a process for recovering the costs described in subsection (c)(1) from prescription drug plans (as defined in section 1860D–1(a)(3)(C) of the Social Security Act (42 U.S.C. 1394w-101(a)(3)(C))) and MA–PD plans (as defined in section 1860D–41(a)(14) of such Act (42 U.S.C. 1395w-151(a)(14))) if the Secretary determines that such plans should have incurred such costs. Amounts recovered pursuant to the preceding sentence shall be deposited in the Medicare Prescription Drug Account described in subsection (c)(1).

SEC. 4. IDENTIFYING FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS IN DATA RECORDS.

(a) IN GENERAL.—The Secretary of Health and Human Services and a prescription drug plan or an MA–PD plan shall clearly identify all full-benefit dual eligible individuals (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396u–5(c)(6))) and reflect the low-income subsidy status of such individual for each calender year (beginning with 2006) in every data record file used to enroll or adjudicate claims for such individuals.

(b) ENROLLMENT.—For each calendar year (beginning with 2006) and for each Medicaid beneficiary who is a full-benefit dual eligible individual (as so defined), the Secretary of Health and Human Services shall—

(1) identify in the Medicare enrollment database that such individual has dual eligible status that has been verified with a State or the District of Columbia; and

(2) ensure that such dual eligible status is reflected in each data file necessary to ensure that such status is transmitted to a prescription drug plan or an MA–PD plan when the Secretary certifies the enrollment of such an individual in a plan.

(c) DEFINITION OF MA–PD PLAN AND PRESCRIPTION DRUG PLAN.—For purposes of this section, the terms "MA–PD plan" and "prescription drug plan" have the meaning given such terms in sections 1860D-1(a)(3)(C) and 1860D–41(a)(14) of the Social Security Act (42 U.S.C. 1395w-101(a)(3)(C); 1395w-151(a)(14)), respectively.

SEC. 5. PROHIBITION ON CONDITIONING MEDICAID ELIGIBILITY FOR INDIVIDUALS ENROLLED IN CERTAIN CREDITABLE PRESCRIPTION DRUG COVERAGE ON ENROLLMENT IN THE MEDICARE PART D DRUG PROGRAM.

(a) IN GENERAL.—Section 1935 of the Social Security Act (42 U.S.C. 1396v) is amended by adding at the end the following:

"(f) PROHIBITION ON CONDITIONING ELIGIBILITY FOR MEDICAL ASSISTANCE FOR INDIVIDUALS ENROLLED IN CERTAIN CREDITABLE PRESCRIPTION DRUG COVERAGE ON ENROLLMENT IN MEDICARE PRESCRIPTION DRUG BENEFIT.—

"(1) IN GENERAL.—A State shall not condition eligibility for medical assistance under the State plan for a part D eligible individual (as defined in section 1860D-1(a)(3)(A)) who is enrolled in creditable prescription drug coverage described in any of subparagraphs (C) through (H) of section 1860D-13(b)(4) on the individual's enrollment in a prescription drug plan under part D of title XVIII or an MA–PD plan under part C of such title.

"(2) COORDINATION OF BENEFITS WITH PART D FOR OTHER INDIVIDUALS.—Nothing in this subsection shall be construed as prohibiting a State from coordinating medical assistance under the State plan with benefits under part D of title XVIII for individuals not described in paragraph (1).".

(b) NULLIFICATION OF STATE PLAN AMENDMENTS, REDETERMINATION OF ELIGIBILITY.—In the case of a State that, as of the date of enactment of this Act, has an approved amendment to its State plan under title XIX of the Social Security Act with a provision that conflicts with section 1935(f) of such Act (as added by subsection (a)), such provision is, as of such date of enactment, null and void. The State shall redetermine any applications for medical assistance that have been denied solely on the basis of the application of such a State plan amendment not later than 90 days after the date of enactment of this Act.

SEC. 6. ENSURING THAT FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS ARE NOT OVERCHARGED.

(a) IN GENERAL.—Section 1860D-14 of the Social Security Act (42 U.S.C. 1395w–114) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

"(d) ENSURING FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS ARE NOT OVERCHARGED.—

"(1) IN GENERAL.—The Secretary shall, as soon a possible after the date of enactment of this subsection, establish processes for the following:

"(A) TRACKING INAPPROPRIATE PAYMENTS.—The Secretary shall track full-benefit dual eligible individuals enrolled in a prescription drug plan or an MA–PD plan to determine whether such individuals were inappropriately subject under the plan to a deductible or cost-sharing that is greater than is required under section 1860D–14.

"(B) REDUCTION IN PAYMENTS TO PLANS AND REFUNDS TO INDIVIDUALS.—If the Secretary determines under subparagraph (A) that an individual was overcharged, the Secretary shall—

"(i) reduce payments to the sponsor of the prescription drug plan under section 1860D–15 or to the organization offering the MA-PD plan under section 1853 that inappropriately charged the individual by an amount equal to the inappropriate charges; and

"(ii) refund such amount to the individual within 60 days of the determination that the individual was inappropriately charged.

If the Secretary does not provide for the refund under clause (i) within the 60 days provided for under such clause, interest at the rate established under section 6621(a)(1) of the Internal Revenue Code of 1986 shall be payable from the end of such 60-day period until the date of the refund.

"(2) REQUIREMENT.—The processes established under paragraph (1) shall provide for the ability of an individual to notify the Secretary if the individual believes that they were inappropriately subject under the plan to a deductible or cost-sharing that is greater than is required under section 1860D–14.".

(b) REPORT TO CONGRESS.—Not later than January 1, 2007, the Secretary of Health and Human Services shall submit a report to Congress on the implementation of the processes established under subsection (d) of section 1860D–14 of the Social Security Act (42 U.S.C. 1395w-114), as added by subsection (a).

SEC. 7. REIMBURSEMENT OF STATES FOR 2006 TRANSITION COSTS.

(a) REIMBURSEMENT.—

(1) IN GENERAL.—Notwithstanding section 1935(d) of the Social Security Act (42 U.S.C. 1396u–5(d) or any other provision of law, the Secretary of Health and Human Services shall reimburse States for 100 percent of the costs incurred by the State during 2006 for covered part D drugs (as defined in section 1860D-2(e) of such Act (42 U.S.C. 1395w-102(e))) for part D eligible individuals (as defined in section 1860D-1(a)(3)(A) of the Social Security Act (42 U.S.C. 1394w–101(a)(3)(A))) which the State reasonably expected would have been covered under such part but were not because the individual was unable to access on a timely basis prescription drug benefits to which they were entitled under such part. Such payments shall be made from the Medicare Prescription Drug Account under section 1860D–16 of the Social Security Act (42 U.S.C. 1395w-116) and shall be deemed to be payments from such Account under subsection (b) of such section.

(2) RETROACTIVE APPLICATION TO BEGINNING OF 2006.—The costs incurred by a State which may be reimbursed under paragraph (1) shall include costs incurred during the period beginning on January 1, 2006, and before the date of enactment of this Act.

(b) RECOVERY OF COSTS FROM PLANS BY SECRETARY NOT STATES.—The Secretary of Health and Human Services shall establish a process for recovering the costs described in subsection (a)(1) from prescription drug plans (as defined in section 1860D-1(a)(3)(C) of the Social Security Act (42 U.S.C. 1394w-101(a)(3)(C))) and MA–PD plans (as defined in section 1860D–41(a)(14) of such Act (42 U.S.C. 1395w-151(a)(14))) if the Secretary determines that such plans should have incurred such costs. Amounts recovered pursuant to the preceding sentence shall be deposited in the Medicare Prescription Drug Account described in subsection (a)(1).

(c) STATE.—For purposes of this section, the term "State" includes the District of Columbia.

SEC. 8. FACILITATION OF IDENTIFICATION AND ENROLLMENT THROUGH PHARMACIES OF FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS IN THE MEDICARE PART D DRUG PROGRAM.

(a) IN GENERAL.—The Secretary of Health and Human Services shall provide for outreach and education to every pharmacy that has participated in the Medicaid program under title XIV of the Social Security Act, particularly independent pharmacies, on the following:

(1) The needs of full-benefit dual eligible individuals and the challenges of meeting those needs.

(2) The processes for the transition from Medicaid prescription drug coverage to coverage under such part D for such individuals.

(3) The processes established by the Secretary to facilitate, at point of sale, identification of drug plan assignment of such population or enrollment of previously unidentified or new full-benefit dual eligible individuals into Medicare part D prescription drug coverage, including how pharmacies can use such processes to help ensure that such population makes a successful transition to Medicare part D without a lapse in prescription drug coverage.

(b) HOLDING PHARMACIES HARMLESS FOR CERTAIN COSTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall provide for such payments to pharmacies as may be necessary to reimburse pharmacies fully for—

(A) transaction fees associated with the point-of-sale facilitated identification and enrollment processes referred to in subsection (a)(3); and

(B) costs associated with technology or software upgrades necessary to make any identification and enrollment inquiries as part of the processes under subsection (a)(3).

(2) TIME.—Payments under paragraph (1) shall be made with respect to fees and costs incurred during the period beginning on December 1, 2005, and ending on June 1, 2006.

(3) PAYMENTS FROM ACCOUNT.—Payments under paragraph (1) shall be made from the Medicare Prescription Drug Account under section 1860D–16 of the Social Security Act (42 U.S.C. 1395w–116) and shall be deemed to be payments from such Account under subsection (b) of such section.

SEC. 9. STATE HEALTH INSURANCE PROGRAM ASSISTANCE REGARDING THE NEW MEDICARE PRESCRIPTION DRUG BENEFIT.

During the period beginning on the date that is 7 days after the date of enactment of this Act and ending on May 15, 2006 (or a later date if determined appropriate by the Secretary of Health and Human Services), the Secretary shall ensure that an employee of the Centers for Medicare & Medicaid Services is stationed at each State health insurance counseling program (receiving funding under section 4360 of the Omnibus Budget Reconciliation Act of 1990) in order to—

(1) assist Medicare beneficiaries and counselors under such program in better understanding the Medicare prescription drug benefit under part D of title XVIII of the Social Security Act; and

(2) act as a liaison to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services regarding issues related to oversight and enforcement of provisions under the Medicare prescription drug benefit.

SEC. 10. ADDITIONAL MEDICARE PART D INFORMATIONAL RESOURCES.

(a) 1–800–MEDICARE.—The Secretary of Health and Human Services shall increase the number of trained employees staffing the toll-free telephone number 1–800–MEDICARE in order to ensure that the average wait time for a caller does not exceed 20 minutes.

(b) PHARMACY HOTLINE.—The Secretary of Health and Human Services shall—

(1) establish a toll-free telephone number that is dedicated to providing information regarding the Medicare prescription drug benefit under title XVIII of the Social Security Act to pharmacists; and

(2) staff such telephone number in order to ensure that the average wait time for a caller does not exceed 20 minutes.

(c) STATE HEALTH INSURANCE PROGRAM HOTLINE.—The Secretary of Health and Human Services shall—

(1) establish a toll-free telephone number that is dedicated to providing information regarding the Medicare prescription drug benefit under title XVIII of the Social Security Act to counselors working in State health insurance counseling programs (receiving funding under section 4360 of the Omnibus Budget Reconciliation Act of 1990); and

(2) staff such telephone number in order to ensure that the average wait time for a caller does not exceed 20 minutes.

SEC. 11. GAO STUDY AND REPORT ON THE IMPOSITION OF CO-PAYMENTS UNDER PART D FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS RESIDING IN A LONG-TERM CARE FACILITY.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on how mental health patients who are full-benefit dual eligible individuals (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396u–5(c)(6))) and who reside in long-term care facilities, including licensed assisted living facilities, will be affected by the imposition of co-payments for covered part D drugs under part D of title XVIII of such Act. Such study shall include a review of issues that relate to the potential harm of displacement due to an inability to access needed medications because of such co-payments.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress on the study conducted under subsection (a) together with recommendations for such legislation as the Comptroller General determines is appropriate.

SEC. 12. STATE COVERAGE OF NON-FORMULARY PRESCRIPTION DRUGS FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS DURING 2006.

(a) STATE COVERAGE OF NON-FORMULARY PRESCRIPTION DRUGS FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS DURING 2006.—For prescriptions filled during 2006, notwithstanding section 1935(d) of the Social Security Act (42 U.S.C. 1396v(d)), a State (as defined for purposes of title XIX of such Act) may provide (and receive Federal financial participation for) medical assistance under such title with respect to prescription drugs provided to a full-benefit dual eligible individual (as defined in section 1935(c)(6) of such Act (42 U.S.C. 1396v(c)(6)) that are not on the formulary of the prescription drug plan under part D or the MA–PD plan under part C of title XVIII of such Act in which such individual is enrolled.

(b) APPLICATION.—

(1) MEDICARE AS PRIMARY PAYER.—Nothing in subsection (a) shall be construed as changing or affecting the primary payer status of a prescription drug plan under part D or an MA–PD plan under part C of title XVIII of the Social Security Act with respect to prescription drugs furnished to any full-benefit dual eligible individual (as defined in section 1935(c)(6) of such Act (42 U.S.C. 1396v(c)(6)) during 2006.

(2) THIRD PARTY LIABILITY.—Nothing in subsection (a) shall be construed as limiting the authority or responsibility of a State under section 1902(a)(25) of the Social Security Act (42 U.S.C. 1396a(a)(25)) to seek reimbursement from a prescription drug plan, an MA–PD plan, or any other third party, of the costs incurred by the State in providing prescription drug coverage during 2006.

SEC. 13. PROTECTION FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS FROM PLAN TERMINATION PRIOR TO RECEIVING FUNCTIONING ACCESS IN A NEW PART D PLAN.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall not terminate coverage of a full-benefit dual eligible individual (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396v(c)(6)) unless such individual has functioning access to a prescription drug plan under part D or an MA–PD plan under part C of title XVIII of such Act. Such access shall include entry of the individual into the computer system of such plan and an acknowledgment by the plan that the individual is eligible for a full premium subsidy under section 1860D–14 of such Act (42 U.S.C. 1395w–114).

(b) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COLEMAN (for himself, Mr. NELSON of Nebraska, Mr. ALLARD, Mr. ENZI, Mr. BURNS, Mr. COBURN, and Mr. THOMAS):

S. 2186. A bill to establish a commission to strengthen confidence in Congress; to the Committee on Rules and Administration.

Mr. COLEMAN. Mr. President, I ask unanimous consent that the text of the bill to establish a commission to strengthen confidence in Congress be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2186

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Commission to Strengthen Confidence in Congress Act of 2006".

SEC. 2. ESTABLISHMENT OF COMMISSION.

There is established in the legislative branch a commission to be known as the "Commission to Strengthen Confidence in Congress" (in this Act referred to as the "Commission").

SEC. 3. PURPOSES.

The purposes of the Commission are to—

(1) evaluate and report the effectiveness of current congressional ethics requirements, if penalties are enforced and sufficient, and make recommendations for new penalties;

(2) weigh the need for improved ethical conduct with the need for lawmakers to have access to expertise on public policy issues;

(3) determine and report minimum standards relating to official travel for Members of Congress and staff;

(4) evaluate the range of gifts given to Members of Congress and staff, determine and report the effects on public policy, and make recommendations for limits on gifts;

(5) evaluate and report the effectiveness and transparency of congressional disclosure laws and recommendations for improvements;

(6) assess and report the effectiveness of the ban on Member of Congress and staff from lobbying their former office for 1 year and make recommendations for altering the time frame;

(7) make recommendations to improve the process whereby Members of Congress can earmark priorities in appropriations Acts, while still preserving congressional power of the purse;

(8) evaluate the use of public and privately funded travel by Members of Congress and staff, violations of Congressional rules governing travel, and make recommendations on limiting travel; and

(9) investigate and report to Congress on its findings, conclusions, and recommendations for reform.

SEC. 4. COMPOSITION OF COMMISSION.

(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(1) the chair and vice chair shall be selected by agreement of the majority leader and minority leader of the House of Representatives and the majority leader and minority leader of the Senate;

(2) 2 members shall be appointed by the senior member of the Senate leadership of the Republican Party, 1 of which is a former member of the Senate;

(3) 2 members shall be appointed by the senior member of the Senate leadership of the Democratic Party, 1 of which is a former member of the Senate;

(4) 2 members shall be appointed by the senior member of the leadership of the House

of Representatives of the Republican Party, 1 of which is a former member of the House of Representatives; and

(5) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Democratic Party, 1 of which is a former member of the House of Representatives.

(b) Qualifications; Initial Meeting.—

(1) Political party affiliation.—Five members of the Commission shall be Democrats and 5 Republicans.

(2) Nongovernmental appointees.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(3) Other qualifications.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in professions such as governmental service, government consulting, government contracting, the law, higher education, historian, business, public relations, and fundraising.

(4) Deadline for appointment.—All members of the Commission shall be appointed on a date 3 months after the date of enactment of this Act.

(5) Initial meeting.—The Commission shall meet and begin the operations of the Commission as soon as practicable.

(c) Quorum; Vacancies.—After its initial meeting, the Commission shall meet upon the call of the chairman or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

SEC. 5. FUNCTIONS OF COMMISSION.

The functions of the Commission are to submit to Congress a report required by this Act containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules and regulations—

(1) related to section 3; or

(2) related to any other areas the commission unanimously votes to be relevant to its mandate to recommend reforms to strengthen ethical safeguards in Congress.

SEC. 6. POWERS OF COMMISSION.

(a) Hearings and Evidence.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this Act—

(1) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(2) subject to subsection (b), require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(b) Subpoenas.—

(1) In general.—A subpoena may be issued under this subsection only—

(A) by the agreement of the chair and the vice chair; or

(B) by the affirmative vote of 6 members of the Commission.

(2) Signature.—Subject to paragraph (1), subpoenas issued under this subsection may be issued under the signature of the chairman or any member designated by a majority of the Commission, and may be served by any person designated by the chairman or by a member designated by a majority of the Commission.

(c) Obtaining Information.—Upon request of the Commission, the head of any agency or instrumentality of the Federal Government shall furnish information deemed necessary by the panel to enable it to carry out its duties.

SEC. 7. ADMINISTRATION.

(a) Compensation.—Except as provided in subsection (b), members of the Commission shall receive no additional pay, allowances, or benefits by reason of their service on the Commission.

(b) Travel Expenses and Per Diem.—Each member of the Commission shall receive travel expenses and per diem in lieu of subsistence in accordance with sections 5702 and 5703 of title 5, United States Code.

(c) Staff and Support Services.—

(1) Staff director.—

(A) Appointment.—The Chair (or Co-Chairs) in accordance with the rules agreed upon by the Commission shall appoint a staff director for the Commission.

(B) Compensation.—The staff director shall be paid at a rate not to exceed the rate established for level V of the Executive Schedule under section 5315 of title 5, United States Code.

(2) Staff.—The Chair (or Co-Chairs) in accordance with the rules agreed upon by the Commission shall appoint such additional personnel as the Commission determines to be necessary.

(3) Applicability of civil service laws.—The staff director and other members of the staff of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(4) Experts and consultants.—With the approval of the Commission, the staff director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(d) Physical Facilities.—The Architect of the Capitol, in consultation with the appropriate entities in the legislative branch, shall locate and provide suitable office space for the operation of the Commission on a nonreimbursable basis. The facilities shall serve as the headquarters of the Commission and shall include all necessary equipment and incidentals required for the proper functioning of the Commission.

(e) Administrative Support Services and Other Assistance.—

(1) In general.—Upon the request of the Commission, the Architect of the Capitol and the Administrator of General Services shall provide to the Commission on a nonreimbursable basis such administrative support services as the Commission may request.

(2) Additional support.—In addition to the assistance set forth in paragraph (1), departments and agencies of the United States may provide the Commission such services, funds, facilities, staff, and other support services as the Commission may deem advisable and as may be authorized by law.

(f) Use of Mails.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies and shall, for purposes of the frank, be considered a commission of Congress as described in section 3215 of title 39, United States Code.

(g) Printing.—For purposes of costs relating to printing and binding, including the cost of personnel detailed from the Government Printing Office, the Commission shall be deemed to be a committee of the Congress.

SEC. 8. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

The appropriate Federal agencies or departments shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances to the extent possible pursuant to existing procedures and requirements, except that no person shall be provided with access to classified information under this Act without the appropriate security clearances.

SEC. 9. COMMISSION REPORTS; TERMINATION.

(a) Annual Reports.—The Commission shall submit—

(1) an initial report to Congress not later than July 1, 2006; and

(2) annual reports to Congress after the report required by paragraph (1);

containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) Administrative Activities.—During the 60-day period beginning on the date of submission of each annual report and the final report under this section, the Commission shall—

(1) be available to provide testimony to committees of Congress concerning such reports; and

(2) take action to appropriately disseminate such reports.

(c) Termination of Commission.—

(1) Final report.—At such time as a majority of the members of the Commission determines that the reasons for the establishment of the Commission no longer exist, the Commission shall submit to Congress a final report containing information described in subsection (a).

(2) Termination.—The Commission, and all the authorities of this Act, shall terminate 60 days after the date on which the final report is submitted under paragraph (1), and the Commission may use such 60-day period for the purpose of concluding its activities.

SEC. 10. FUNDING.

There are authorized such sums as necessary to carry out this Act.

By Mrs. HUTCHISON:

S. 2193. A bill to amend the Internal Revenue Code of 1986 to establish fairness in the treatment of certain pension plans maintained by churches, and for other purposes; to the Committee on Finance.

Mrs. HUTCHISON. Mr. President, I rise today to introduce a bill to fix an unfortunate application of our current pension rules on church pension beneficiaries.

Church pensions are critically important compensation plans that help support over a million clergy members across the country in their retirement, particularly those who dedicated their careers to serving in economically disadvantaged congregations.

Some of these plans date back to the 18th Century, and they are designed to ensure that our pastors and lay staff who are often paid lower salaries have adequate resources during their retirement years.

Unfortunately, the Internal Revenue Code impedes the ability of church pensions to recognize these valuable contributions to society with provisions that negatively impact church plans while exempting other equally important plans.

For example, Section 415(b)(1)(B) of the Code limits benefits for a retired church employee to 100 percent of the participant's average compensation for his or her highest three years.

This limitation penalizes church employees because some church plans allow lower-paid employees to accrue benefits based on median salaries rather than their own, individual, lower compensation.

While the Code allows exceptions to this general limitation for governmental and multiemployer plans, it does not allow one for church plans.

The rationale for allowing an exception for governmental plans but not church plans cannot be reconciled when one acknowledges the situation in which most ministers find themselves when they retire.

For example, ministers often live in parsonages throughout their careers; and they are faced with acquiring housing for the first time when they retire.

Not having a significant asset in retirement, such as a house—an asset which could be used as collateral and security in time of need. leaves ministers vulnerable in their retirement years and justifies the need for including church pension beneficiaries in an exception to the general limitation.

The Code further punishes church pensions by requiring church plans to pay unrelated business income taxes on investments in leveraged real estate, while exempting the vast majority of retirement plans from this very same tax.

This unequal treatment is simply unfair, and it is time we correct it.

The legislation I am introducing today would rectify this unequal treatment by exempting church plans from the 415(b)(1)(B) limit and the unrelated business income tax.

I ask my colleagues to join me today in establishing parity for the beneficiaries of church pensions by supporting this necessary, long over-due fix to the Internal Revenue Code.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2193

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENDING WAIVER OF DEFINED BENEFIT COMPENSATION LIMIT TO PARTICIPANTS IN CHURCH PLANS WHO ARE NOT HIGHLY COMPENSATED EMPLOYEES.

(a) IN GENERAL.—Paragraph (11) of section 415(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following: "Subparagraph (B) of paragraph (1) shall not apply to a plan maintained by an organization described in section 3121(w)(3) except with respect to highly compensated benefits. For purposes of this paragraph, the term 'highly compensated benefits' means any benefits accrued for an employee in any year on or after the first year in which such employee is a highly compensated employee (as defined in section 414(q)) of the organization described in section 3121(w)(3). For purposes of applying paragraph (1)(B) to highly compensated benefits, all benefits of the employee otherwise taken into account (without regard to this paragraph) shall be taken into account.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

SEC. 2. EQUALIZING TREATMENT OF RETIREMENT INCOME ACCOUNTS PROVIDED BY CHURCHES WITH RESPECT TO ACQUISITION INDEBTEDNESS.

(a) IN GENERAL.—Section 514(c)(9)(C) of the Internal Revenue Code of 1986 (defining qualified organization) is amended by striking "or" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting "; or" , and by adding at the end the following:

"(iv) a retirement income account (as defined in section 403(b)(9)(B)).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

By Mr. STEVENS:

S. 2194. A bill for the relief of Nadezda Shestakova; to the Committee on the Judiciary.

By Mr. STEVENS:

S. 2195. A bill for the relief of Ilya Shestakov; to the Committee on the Judiciary.

Mr. STEVENS. Mr. President, I offer today two private relief bills to provide lawful permanent resident status to Nadezda Shestakova and her son, Ilya Shestakov.

The Shestakov family has lived and worked in Anchorage, Alaska for more than ten years. Nadezda has now returned to Russia. and Ilya is attending high school in Canada, in order to avoid further immigration problems, and to demonstrate that they intend to be good citizens who live within the letter of the law.

Nadezda's husband, Michail, is a legal immigrant working for Aleut Enterprise Corporation (AEC), an Alaska native corporation, and their youngest son is a United States citizen. Both remain in Anchorage awaiting the reunion of their family.

During their time in Alaska, Michail has been an exemplary employee of the Aleut Corporation. As a matter of fact, it was the Aleut Corporation who first brought this issue to my attention, as they wish to support the Shestakov family in any way possible.

The children have excelled in school, and Nadezda has remained an at-home mother, pursuant to the terms of her original visa.

The Shestakov family's problems began when they overstayed their visa due to an error by their attorney, who did not file the extension paperwork on their behalf, as requested.

These are upstanding members of the Alaska community, and they should not be punished due to an error by their former attorney. I would like to see this family reunited in Alaska, so that they can continue to contribute positively to our community.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 349—CONDEMNING THE GOVERNMENT OF IRAN FOR VIOLATING THE TERMS OF THE 2004 PARIS AGREEMENT, AND EXPRESSING SUPPORT FOR EFFORTS TO REFER IRAN TO THE UNITED NATIONS SECURITY COUNCIL FOR ITS NONCOMPLIANCE WITH INTERNATIONAL ATOMIC ENERGY AGENCY OBLIGATIONS

Mr. SANTORUM (for himself and Mr. KYL) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 349

Whereas the International Atomic Energy Agency (IAEA) reported in November 2003 that Iran had been developing an undeclared nuclear enrichment program for 18 years and had covertly imported nuclear material and equipment, carried out over 110 unreported experiments to produce uranium metal, separated plutonium, and concealed many other aspects of its nuclear facilities;

Whereas, in November 2004, the Governments of the United Kingdom, France, and Germany entered into an agreement with Iran on Iran's nuclear program (commonly known as the "Paris Agreement"), successfully securing a commitment from the Government of Iran to voluntarily suspend uranium enrichment operations in exchange for discussions on economic, technological, political, and security issues;

Whereas Article XII.C of the Statute of the IAEA requires the IAEA Board of Governors to report the noncompliance of any member of the IAEA with its IAEA obligations to all members and to the Security Council and General Assembly of the United Nations;

Whereas Article III.B–4 of the Statute of the IAEA specifies that "if in connection with the activities of the Agency there should arise questions that are within the competence of the Security Council, the Agency shall notify the Security Council, as the organ bearing the main responsibility for the maintenance of international peace and security";

Whereas, in September 2005, the IAEA Board of Governors adopted a resolution declaring that Iran's many failures and breaches constitute noncompliance in the context of Article XII.C of the Statute of the IAEA;

Whereas, on January 3, 2006, the Government of Iran announced that it planned to restart its nuclear research efforts in direct violation of the Paris Agreement;

Whereas, in January 2006, Iranian officials, in the presence of IAEA inspectors, began to remove United Nations seals from the enrichment facility in Natanz, Iran;

Whereas Foreign Secretary of the United Kingdom Jack Straw warned Iranian officials that they were "pushing their luck" by removing the United Nations seals that were placed on the Natanz facility by the IAEA 2 years earlier;

Whereas President of France Jacques Chirac said that the Governments of Iran and North Korea risk making a "serious error" by pursuing nuclear activities in defiance of international agreements;

Whereas Foreign Minister of Germany Frank-Walter Steinmeier said that the Government of Iran had "crossed lines which it knew would not remain without consequences";

Whereas Secretary of State Condoleezza Rice stated, "It is obvious that if Iran cannot be brought to live up to its international obligations, in fact, the IAEA Statute would indicate that Iran would have to be referred to the U.N. Security Council.";

Whereas President of Iran Mahmoud Ahmadinejad stated, "The Iranian government and nation has no fear of the Western ballyhoo and will continue its nuclear programs with decisiveness and wisdom.";

Whereas the United States has joined with the Governments of Britain, France, and Germany in calling for a meeting of the IAEA to discuss Iran's non-compliance with its IAEA obligations;

Whereas President Ahmadinejad has stated that Israel should be "wiped off the map"; and

Whereas the international community is in agreement that the Government of Iran should not seek the development of nuclear weapons:

Now, therefore, be it

Resolved, That the Senate—

(1) condemns the decisions of the Government of Iran to remove United Nations seals from its uranium enrichment facilities and to resume nuclear research efforts;

(2) commends the Governments of Britain, France, and Germany for their efforts to secure the 2004 Paris Agreement, which resulted in the brief suspension in Iran of nuclear enrichment activities;

(3) supports the referral of Iran to the United Nations Security Council under Article XII.C and Article III.B-4 of the Statute of the IAEA for violating the Paris Agreement; and

(4) condemns actions by the Government of Iran to develop, produce, or acquire nuclear weapons.

SENATE RESOLUTION 350—EXPRESSING THE SENSE OF THE SENATE THAT SENATE JOINT RESOLUTION 23 (107TH CONGRESS), AS ADOPTED BY THE SENATE ON SEPTEMBER 14, 2001, AND SUBSEQUENTLY ENACTED AS THE AUTHORIZATION FOR USE OF MILITARY FORCE DOES NOT AUTHORIZE WARRANTLESS DOMESTIC SURVEILLANCE OF UNITED STATES CITIZENS

Mr. LEAHY (for himself and Mr. KENNEDY) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. Res. 350

Whereas the Bill of Rights to the United States Constitution was ratified 214 years ago;

Whereas the Fourth Amendment to the United States Constitution guarantees to the American people the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures";

Whereas the Fourth Amendment provides that courts shall issue "warrants" to authorize searches and seizures, based upon probable cause;

Whereas the United States Supreme Court has consistently held for nearly 40 years that the monitoring and recording of private conversations constitutes a "search and seizure" within the meaning of the Fourth Amendment;

Whereas Congress was concerned about the United States Government unconstitutionally spying on Americans in the 1960s and 1970s;

Whereas Congress enacted the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), commonly referred to as "FISA", to provide a legal mechanism for the United States Government to engage in searches of Americans in connection with intelligence gathering and counterintelligence;

Whereas Congress expressly enacted the Foreign Intelligence Surveillance Act of 1978, and specified provisions of the Federal criminal code (including those governing wiretaps for criminal investigations), as the "exclusive means by which domestic electronic surveillance . . . may be conducted" pursuant to law (18 U.S.C. 2511(2)(f));

Whereas the Foreign Intelligence Surveillance Act of 1978 establishes the Foreign Intelligence Surveillance Court (commonly referred to as the "FISA court"), and the procedures by which the United States Government may obtain a court order authorizing electronic surveillance (commonly referred to as a "FISA warrant") for foreign intelligence collection in the United States;

Whereas Congress created the FISA court to review wiretapping applications for domestic electronic surveillance to be conducted by any Federal agency;

Whereas the Foreign Intelligence Surveillance Act of 1978 provides specific exceptions that allow the President to authorize warrantless electronic surveillance for foreign intelligence purposes (1) in emergency situations, provided an application for judicial approval from a FISA court is made within 72 hours; and (2) within 15 calendar days following a declaration of war by Congress;

Whereas the Foreign Intelligence Surveillance Act of 1978 makes criminal any electronic surveillance not authorized by statute;

Whereas the Foreign Intelligence Surveillance Act of 1978 has been amended over time by Congress since the September 11, 2001, attacks on the United States;

Whereas President George W. Bush has confirmed that his administration engages in warrantless electronic surveillance of Americans inside the United States and that he has authorized such warrantless surveillance more than 30 times since September 11, 2001; and

Whereas Senate Joint Resolution 23 (107th Congress), as adopted by the Senate on September 14, 2001, and House Joint Resolution 64 (107th Congress), as adopted by the House of Representatives on September 14, 2001, together enacted as the Authorization for Use of Military Force (Public Law 107–40), to authorize military action against those responsible for the attacks on September 11, 2001, do not contain legal authorization nor approve of domestic electronic surveillance, including domestic electronic surveillance of United States citizens, without a judicially approved warrant: Now, therefore, be it

Resolved, That Senate Joint Resolution 23 (107th Congress), as adopted by the Senate on September 14, 2001, and subsequently enacted as the Authorization for Use of Military Force (Public Law 107–40) does not authorize warrantless domestic surveillance of United States citizens.

● Mr. LEAHY. Mr. President, today I am submitting this resolution expressing the sense of the Senate that the Authorization for Use of Military Force, which Congress passed to authorize military action against those responsible for the attacks on September 11, 2001, did not authorize warrantless eavesdropping on American citizens.

As Justice O'Connor underscored recently, even war "is not a blank check for the President when it comes to the rights of the Nation's citizens."

Now that the illegal spying of Americans has become public and the President has acknowledged the 4-year-old program, the Bush administration's lawyers are contending that Congress authorized it. The September 2001 Authorization to Use Military Force did no such thing. Republican Senators also know it and a few have said so publicly. We all know it. The liberties and rights that define us as Americans and the system of checks and balances that serve to preserve them should not be sacrificed to threats of terrorism or to the expanding power of the government. In the days immediately following those attacks, I said, and I continue to believe, that the terrorists win if they frighten us into sacrificing our freedoms and what defines us as Americans.

I well remember the days immediately after the 9/11 attacks. I helped open the Senate to business the next day. I said then, on September 12, 2001:

> "If we abandon our democracy to battle them, they win. . . . We will maintain our democracy, and with justice, we will use our strength. We will not lose our commitment to the rule of law, no matter how much the provocation, because that rule of law has protected us throughout the centuries. It has created our democracy. It has made us what we are in history. We are a just and good Nation."

I joined with others, Republican and Democrats, and we engaged in round-the-clock efforts over the next months in connection with what came to be the USA PATRIOT Act. During those days the Bush administration never asked us for this surveillance authority or to amend the Foreign Intelligence Surveillance Act to accommodate such a program.

Just as we cannot allow ourselves to be lulled into a sense of false comfort when it comes to our national security, we cannot allow ourselves to be lulled into a blind trust regarding our freedoms and rights. The Framers built checks and balances into our system specifically to counter such abuses and undue assertions of power. We must remain vigilant on all fronts or we stand to lose these rights forever. Once lost or eroded, liberty is difficult if not impossible to restore. The Bush administration's after-the-fact claims about the breadth of the Authorization to Use Military Force—as recently as this week, in a document prepared at the White House's behest by the Department of Justice—are the latest in a long line of manipulations of the law. We have also seen this type of overreaching in that same Justice Department office's twisted interpretation of the torture statute, an analysis that had to be withdrawn; with the detention of suspects without charges and denial of access to counsel; and with the misapplication of the material witness statute as a sort of general preventive detention law. Such abuses serve to harm our national security as well as our civil liberties.

In addition, the press reports that the Pentagon maintains secret databases containing information on a wide cross-section of ordinary Americans, and that the FBI is monitoring law-abiding citizens in the exercise of their First Amendment freedoms. When I worked with Senator WYDEN and others in 2003 to stop Admiral Poindexter's Total Information Awareness program, an effort designed to datamine information on Americans—and we meant it. And when I added a reporting requirement on Carnivore, the FBI's e-mail monitoring program, to the Department of Justice Authorizations law in 2002, we meant it. We demanded that Congress be kept informed and that any such program not proceed without congressional authorization.

The New York Times reported that after September 11, 2001, when former Attorney General John Ashcroft loosened restrictions on the FBI to permit it to monitor Web sites, mosques, and other public entities, "the FBI has used that authority to investigate not only groups with suspected ties to foreign terrorists, but also protest groups suspected of having links to violent or disruptive activities." When I learned of such efforts and that they reportedly included monitoring Quakers in Florida and possibly Vermont, I wrote to the Secretary of Defense demanding an answer. That was a month ago. So far he has refused to provide that answer.

Now we have learned that President Bush has, for more than four years, secretly allowed the warrantless wiretapping of Americans inside the United States. And we read in the press that sources at the FBI say that much of what was forwarded to them to investigate was worthless and led to dead ends. That is a dangerous diversion of our investigative resources away from those who pose real threats, while precious time and effort is devoted to looking into the lives of law-abiding Americans.

The United States Supreme Court has consistently held for nearly 40 years, since its landmark decision in Katz v. United States, that the monitoring and recording of private conversations constitutes a "search and seizure" within the meaning of the Fourth Amendment. Congress enacted the Foreign Intelligence Surveillance Act of 1978, FISA, to provide a legal mechanism for the government to engage in electronic surveillance of Americans in connection with intelligence gathering. The Foreign Intelligence Surveillance Act, along with the criminal wiretap authority in title 18 of the United States Code, together provide the exclusive means by which the Government may intercept domestic electronic communications pursuant to the rule of law.

The Foreign Intelligence Surveillance Act has been amended over time, and it has been adjusted several times since the 9/11 attacks. Indeed, much of the PATRIOT Act was devoted to modifying FISA to make it easier to obtain FISA warrants. But the PATRIOT Act did not amend FISA to give the Government the authority to conduct warrantless surveillance of American citizens.

If the Bush administration believed that the law was inadequate to deal with the threat of terrorism within our boundaries, it should have come to Congress and sought to change the law. It did not. Indeed, Attorney General Gonzales admitted at a press conference on December 19, 2005, that the Administration did not seek to amend FISA to authorize the NSA spying program because it was advised that "it was not something we could likely get."

I chaired the Senate Judiciary Committee in 2001 and 2002, when the President's secret eavesdropping program apparently began. I was not informed of the program. I learned about it for the first time in the press last month. I thank heaven and the Constitution that we still have a free press.

The Bush administration is now arguing that when Congress authorized the use of force in September 2001 to attack al Qaeda in Afghanistan, it authorized warrantless searches and eavesdropping on American citizens. I voted for that authorization, and I know that Congress did not sign a blank check. The notion that Congress authorized warrantless surveillance in the AUMF is utterly inconsistent with the Attorney General's admission that Congress was not asked for such authorization because it was assumed that Congress would say no.

Former Senate Majority Leader Tom Daschle, who helped negotiate the use of force resolution with the White House, has confirmed that the subject of warrantless wiretaps of American citizens never came up, that he did not and never would have supported giving authority to the President for such wiretaps, and that he is "confident that the 98 senators who voted in favor of authorization of force against al Qaeda did not believe that they were also voting for warrantless domestic surveillance."

Senator Daschle also noted that the Bush administration sought to add language to the resolution that would have explicitly authorized the use of force "in the United States," but Congress refused to grant the President such sweeping power. Maybe that was this Administration's covert way to seek the authority to spy on Americans, but Congress did not grant any such authority.

Spying on Americans without first obtaining the requisite warrants is illegal, unnecessary and wrong. No President can simply declare when he wishes to follow the law and when he chooses not to, especially when it comes to the hard-won rights of the American people.

The resolution I submit today is intended to help set the record straight. It is an important first step toward restoring checks and balances between the co-equal branches of government. I urge all Senators to support it.

Mr. KENNEDY. Mr. President, what is past is prologue. Today, we see history repeating itself. In 1978, President Carter signed into law the "Foreign Intelligence Surveillance Act," successfully concluding years of debate on the power of the President to conduct national security wiretapping.

As a result of lengthy hearings and consultation, Congress enacted that law with broad bipartisan support. Its purpose was clear—to put a check on the power of the President to use wiretaps in the name of national security. One of the clear purposes of that law was to require the government to obtain a judicial warrant for all electronic surveillance in the United States in which communications of U.S. citizens might be intercepted. The Act established a secret court, the Foreign Intelligence Surveillance Court, to review wiretapping applications and guarantee that any such electronic surveillance followed the rule of law. Since 1979, the special court has approved nearly 19,000 applications and denied only 4. Last year, the Administration reached an all-time-high with the number of applications granted.

In the Foreign Intelligence Surveillance Act, Congress established the exclusive means by which electronic surveillance could be conducted in the United States for national security purposes. One of the principal goals of the legislation was to ensure that information obtained from illegal wiretaps could not be used to obtain a warrant from the Foreign Intelligence Surveillance Court. We even made sure that there would be criminal penalties for anyone who failed to comply with these rules.

The PATRIOT Act did not give the President the authority to spy on anyone without impartial judicial review—and neither did the Joint Resolution, enacted in 2001, authorizing the use of force against those responsible for the attacks of September 11th.

The President seemed to agree. In 2004, in Buffalo he stated categorically that "any time that you hear the United States talking about a wiretap, it requires a court order." He said that "Nothing had changed—when we're talking about chasing down terrorists, we're talking about getting a court order before we do so."

Now, however, the President and the administration claim they do not have to comply with the law. Just yesterday, the administration again asserted its constitutional authority to eavesdrop on any person within the United States—without judicial or legislative oversight and it claims that the Congress implicitly granted such power in the Joint Resolution of 2001.

But that Joint Resolution says nothing about domestic electronic surveillance. As Justice O'Connor has said, "A state of war is not a blank check for the president when it comes to the rights of the nation's citizens."

The bipartisan 9/11 Commission made clear that the Executive Branch has the burden of proof to justify why a particular governmental power should be retained—and Congress has the responsibility to see that adequate guidelines and oversight are made available.

The Executive Branch has failed to meet the 9/11 Commissioners' burden of proof. The American people are not convinced that these surveillance methods achieve the right balance between our national security and protection of our civil liberties.

These issues go to the heart of what it means to have a free society. If President Bush can make his own rules for domestic surveillance, Big Brother has run amok. If the President believes that winning the war on terror requires new surveillance capabilities, he has a responsibility to work with Congress to make appropriate changes in existing law. He is not above the law.

Congress and the American people deserve full and honest answers about the Administration's domestic electronic surveillance activities. On December 22, 2005, I asked the President to provide us with answers before the Senate Judiciary Committee began hearings on Judge Alito's nomination to the Supreme Court. We got no response. The Senate Judiciary Committee is scheduled to begin separate hearings on February 6 on the President's actions. Instead of providing us with the documents the Administration relied upon, the Justice Department continues to circulate summaries and "white papers" on the legal authorities it purports to have to ignore the law. It now appears that the President did so on at least thirty occasions after September 11. There is no legitimate purpose in denying access by Members of Congress to all of the legal thought and analysis that the President relied upon when he authorized these activities.

Every 45 days, the President ordered these activities to be reviewed by the Attorney General, the White House Counsel and the Inspector General of the National Security Agency. That's not good enough. These are all executive branch appointees who report directly to the President.

Congress spent seven years considering and enacting the Foreign Intelligence Surveillance Act. It was not a hastily conceived idea. We had broad agreement that both Congressional oversight and judicial oversight were fundamental—even during emergencies or times of war, which is why we established a secret court to expedite the review of sensitive applications from the government.

Now, the administration has made a unilateral decision that Congressional and judicial oversight can be discarded, in spite of what the law obviously requires. We need a thorough investigation of these activities. Congress and the American people deserve answers, and they deserve answers now.●

SENATE RESOLUTION 351—RESPONDING TO THE THREAT POSED BY IRAN'S NUCLEAR PROGRAM

Mr. BAYH submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. Res. 351

Whereas Iran is precipitating a grave nuclear crisis with the international community that directly impacts the national security of the United States and the efficacy of the International Atomic Energy Agency (IAEA) and the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (commonly referred to as the "Nuclear Non-Proliferation Treaty");

Whereas the United States welcomes a diplomatic solution to the nuclear crisis, but the Government of Iran continues to reject a peaceful resolution to the matter;

Whereas, although the Government of Iran agreed to suspend uranium enrichment activities and to sign and ratify the IAEA's Additional Protocol on expansive, intrusive no-notice inspections in 2003, it has repeatedly failed to live up to its obligations under this agreement;

Whereas the Government of Iran broke IAEA seals on some centrifuges in September 2004, converted uranium to a gas needed for enrichment in May 2005, limited IAEA inspectors to a few sites, and said it would restart uranium conversion activities;

Whereas the Board of Governors of the IAEA declared in September 2005 that Iran was in non-compliance of its Nuclear Non-Proliferation Treaty obligations;

Whereas Iran announced on January 3, 2006, that it would resume uranium "research" activities at Natanz and invited IAEA to witness the breaking of IAEA seals at the facility;

Whereas the Government of Iran has acknowledged deceiving the IAEA for the past 18 years for not disclosing an uranium enrichment facility in Natanz and a heavy water production plant in Arak;

Whereas the Government of Iran's human rights practices and strict limits on democracy have been consistently criticized by United Nations reports;

Whereas the Department of State stated in its most recent Country Reports on Human Rights Practices that Iran's already poor human rights record "worsened" during the previous year and deemed Iran a country "of particular concern" in its most recent International Religious Freedom Report;

Whereas the Government of Iran funds terror and rejectionist groups in Gaza and the West Bank, Lebanon, Iraq, and Afghanistan and is providing material support to groups directly involved in the killing of United States citizens;

Whereas Iran has been designated by the United States as a state sponsor of terrorism since 1984, and the Department of State said in its most recent Country Reports on Terrorism that Iran "remained the most active state sponsor of terrorism in 2004";

Whereas President of Iran Mahmoud Ahmadinejad has made repeated anti-American and anti-semitic statements, including denying the occurrence of the Holocaust and Israel's right to exist, and called on people to imagine a world without the United States;

Whereas Iran's recent acquisition of new anti-ship capabilities to block the Strait of Hormuz at the entrance to the Persian Gulf and the decision by the Government of Russia to sell the Government of Iran $1,000,000,000 in weapons, mostly for 29 anti-aircraft missile systems, is most regrettable and should dampen United States-Russian relations;

Whereas the behavior of the Government of Iran does not reflect that country's rich history and the democratic aspirations of most people in Iran;

Whereas the people of the United States stand with the people of Iran in support of democracy, the rule of law, religious freedom, and regional and global stability;

Whereas, although Iran is subject to a range of unilateral sanctions and some third country and foreign entities sanctions, these sanctions have not been fully implemented;

Whereas Iran remains vulnerable to international sanctions, especially with respect to financial services and foreign investment in its petroleum sector and oil sales, few foreign nations have joined the United States in attempting to isolate the regime in Iran and compel compliance with Iran's international obligations;

Whereas, although Iran may be one of the world's largest exporters of oil, it does not have the refining capacity to make the gasoline necessary to make its economy run and currently imports 40 percent of its refined gasoline from abroad;

Whereas more complete implementation of United States sanctions laws and the adoption of additional statutes would improve the chances of a diplomatic solution to the nuclear crisis with Iran;

Whereas President George W. Bush has for 4 years given too little attention to the growing nuclear problem in Iran beyond rhetorical sound bites and has carried out an Iran policy consisting of loud denunciations followed by minimal action and ultimate deference of managing the crisis to Europe, a policy that has been riddled with contradiction and inconsistency and damaging to United States national security;

Whereas, had President Bush effectively marshaled world opinion in 2002 and not wasted valuable time, diverted resources, and ignored the problem in Iran, the United States would not be faced with the full extent of the current nuclear crisis in Iran;

Whereas action now is imperative and time is of the essence; and

Whereas the opportunity the United States has to avoid the choice between military action and a nuclear Iran may be measured only in months: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the United States should cut assistance to countries whose companies are investing in Iran's energy sector, including pipelines to export Iranian crude;

(2) supplies of refined gasoline to Iran should be cut off;

(3) there should be a worldwide, comprehensive ban on sales of weapons to Iran, including from Russia and China;

(4) the United Nations Security Council should impose an intrusive IAEA-led weapons of mass destruction inspection regime on Iran similar to that imposed on Iraq after the 1991 Persian Gulf war;

(5) the United Nations Security Council should adopt reductions in diplomatic exchanges with Iran, limit travel by some Iranian officials, and limit or ban sports or cultural exchanges with Iran;

(6) the President should more faithfully implement the Iran and Libya Sanctions Act of 1996 (50 U.S.C. 1701 note) (commonly known as "ILSA"), and Congress should—

(A) increase the requirements on the President to justify waiving ILSA-related sanctions;

(B) repeal the sunset provision of ILSA;

(C) set a 90-day time limit for the President to determine whether an investment constitutes a violation of ILSA; and

(D) make exports to Iran of technology related to weapons of mass destruction sanctionable under ILSA;

(7) the United States should withdraw its support for Iran's accession to the WTO until Iran meets weapons of mass destruction, human rights, terrorism, and regional stability standards; and

(8) the United States must make the Government of Iran understand that if its nuclear activity continues it will be treated as a pariah state.

SENATE CONCURRENT RESOLUTION 76—CONDEMNING THE GOVERNMENT OF IRAN FOR ITS FLAGRANT VIOLATIONS OF ITS OBLIGATIONS UNDER THE NUCLEAR NON-PROLIFERATION TREATY, AND CALLING FOR CERTAIN ACTIONS IN RESPONSE TO SUCH VIOLATIONS

Mr. COLEMAN (for himself, Mr. SCHUMER, Mr. LAUTENBERG, Mr. ALLEN, Mr. DEWINE, Mr. BROWNBACK, Mr. NELSON of Nebraska, Mr. NELSON of Florida, and Mrs. FEINSTEIN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 76

Whereas the Government of Iran concealed a nuclear program from the International Atomic Energy Agency (IAEA) and the international community for nearly two decades until it was revealed in 2002;

Whereas the Government of Iran has repeatedly deceived the IAEA about a variety of nuclear-related activities, including uranium enrichment and laboratory-scale separation of plutonium;

Whereas the Government of Iran recently removed IAEA seals from a uranium enrichment facility at Natanz and announced the resumption of "research" on nuclear fuel in a brazen affront to the international community;

Whereas members of the international community have agreed that the pursuit of uranium enrichment capabilities comprises a "red line" for United Nations Security Council referral that has now been unequivocally crossed by Iran;

Whereas this provocation represents only the latest action by the Government of Iran in a long pattern of intransigence relating to its nuclear program, including its violation of an October 2003 agreement with the United Kingdom, Germany, and France (the "EU-3") only months after the agreement was signed, its unilateral violation of the 2004 agreement with the EU-3 to suspend its enrichment program (commonly known as the "Paris Agreement"), its failure to provide IAEA inspectors access to various nuclear sites, and its refusal to answer outstanding questions related to its nuclear program;

Whereas the regime in Iran has made clear the nefarious intentions behind its nuclear program in a series of inflammatory and reprehensible statements, including calling for Israel to be "wiped off the map" at a conference titled "A World without Zionism" and asserting that the Holocaust was a "myth" and that Israel should be transferred to Europe;

Whereas previous activities of the regime, including the sponsorship of terrorist groups such as Hezbollah, Hamas, and Islamic Jihad through the provision of funding, training, weapons, and safe haven and the destabilization of neighboring countries such as Iraq, Israel, and Lebanon, indicate that a nuclear-armed Iran would pose an unprecedented threat to the national security of the United States;

Whereas the Director General of the IAEA, Mohamed El Baradei, has publicly stated that once the Government of Iran perfects its capability to produce nuclear material and completes a parallel weaponization program, it would be only months away from building a nuclear bomb;

Whereas the Institute for Science and International Security, a Washington, D.C., nonproliferation advocacy group, released a January 2, 2006, satellite photograph showing extensive new construction at the Natanz facility;

Whereas the IAEA Board of Governors passed a resolution on September 24, 2005, indicating that Iran's noncompliance with its IAEA obligations would result in the referral of Iran to the United Nations Security Council under Article XII.C of the Statute of the IAEA;

Whereas each member of the EU-3, the leading partner of the United States in diplomatic efforts regarding Iran's nuclear program, has publicly stated its intention to refer Iran to the United Nations Security Council and called for an "extraordinary meeting" of the IAEA Board of Governors on February 2, 2006;

Whereas the Governments of China and Russia have expressed agreement with the United States and the EU-3 that the Government of Iran has violated its commitments to the IAEA;

Whereas China and Russia sit on the United Nations Security Council, and their cooperation would be required to enact any substantive Security Council measures against the Government of Iran; and

Whereas the Government of Iran has demonstrated no interest in Russia's offer to enrich Iran's uranium feedstock into power plant fuel on Russian territory, further demonstrating its aversion to compromise:

Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) categorically condemns the Government of Iran for its flagrant violations of its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (commonly referred to as the "Nuclear Non-Proliferation Treaty");

(2) calls for the immediate suspension of all uranium enrichment activities of the Government of Iran;

(3) supports calls for an emergency meeting of the Board of Governors of the IAEA for the purpose of immediately referring Iran to the United Nations Security Council;

(4) calls on all nuclear suppliers to cease immediately cooperation with Iran on nuclear materials, equipment, and technology; and

(5) calls on the Governments of Russia and China to demonstrate that they are responsible stakeholders in the international community by supporting efforts to refer Iran to the United Nations Security Council and by taking appropriate measures in response to Iran's violations of its commitments under the Nuclear Non-Proliferation Treaty.

SENATE RESOLUTION 352—COMMENDING THE UNIVERSITY OF TEXAS AT AUSTIN LONGHORNS FOOTBALL TEAM FOR WINNING THE 2005 BOWL CHAMPIONSHIP SERIES NATIONAL CHAMPIONSHIP

Mrs. HUTCHISON (for herself and Mr. CORNYN) submitted the following resolution; which was considered and agreed to:

S. RES. 352

Whereas the Longhorns won the BCS national championship game, defeating the University of Southern California by a score of 41–38 at the Rose Bowl in Pasadena, California on January 4, 2006;

Whereas the Longhorns have now won four football national titles;

Whereas this historic victory—the 800th win in school history—marks the culmination of an undefeated, 13–0 season;

Whereas, by scoring 652 points during their undefeated season, the Longhorns set an NCAA record for points scored in a single season;

Whereas the University of Texas now owns the longest-active winning streak in the Nation at 20 games;

Whereas, under the leadership of Coach Mack Brown, the Longhorns claimed the Big 12 Conference South Division title, won the Big 12 Conference championship, and earned their eighth consecutive bowl game berth;

Whereas the Longhorns boast seven All-Americans, including Will Allen, Justin

Blalock, Aaron Harris, Michael Huff, Jonathan Scott, Rodrigue Wright, and Vince Young;

Whereas quarterback Vince Young—a Heisman Trophy finalist, recipient of the Davey O'Brien National Quarterback Award, and the Maxwell Award winner—was named the Most Valuable Player of the Rose Bowl;

Whereas, Vince Young scored three touchdowns and gained 467 total yards in the championship game, and he became the first player in NCAA history to rush for more than 1,000 yards and pass for more than 3,000 in the same season;

Whereas the Longhorns were captained by Ahmard Hall, David Thomas, Rodrique Wright, and Vince Young at the Rose Bowl;

Whereas Ahmard Hall, the male 2005 Big 12 Sportsperson of the Year, served his country as a Sergeant in the United States Marine Corps for four years—serving tours in Kosovo and Operation Enduring Freedom in Afghanistan—prior to joining the team as a walk-on in 2003 and ultimately rising to the position of starting fullback and team captain;

Whereas the entire Longhorns team should be commended for its inspirational work, determination, and success;

Whereas the University of Texas at Austin has a long tradition of athletic and academic excellence; and

Whereas the Longhorns have brought great honor to themselves, their university, and the great State of Texas: Now, therefore, be it

Resolved, That the Senate—

(1) commends the University of Texas at Austin Longhorns football team for winning the 2005 Bowl Championship Series national championship;

(2) congratulates the team for completing an undefeated, 13–0 season; and

(3) directs the Secretary of the Senate to make available to the University of Texas at Austin an enrolled copy of this resolution for appropriate display.

SENATE RESOLUTION 353—EXPRESSING CONCERN WITH THE DELIBERATE UNDERMINING OF DEMOCRATIC FREEDOMS AND JUSTICE IN CAMBODIA BY PRIME MINISTER HUN SEN AND THE GOVERNMENT OF CAMBODIA

Mr. FRIST (for himself, Mr. REID, Mr. MCCONNELL, Mr. MCCAIN, Mr. COLEMAN, and Mr. LUGAR) submitted the following resolution; which was considered and agreed to:

S. RES. 353

Whereas the United States affirms its support and respect for the welfare, human rights and dignity of the people of Cambodia;

Whereas, under the leadership of Prime Minister Hun Sen, the Government of Cambodia has engaged in a systematic campaign to undermine the democratic opposition, stifle critics of the Government, and silence and intimidate civil society in Cambodia;

Whereas, despite constitutional guarantees of freedom of expression and association in Cambodia, Prime Minister Hun Sen and the Government of Cambodia have consistently and blatantly violated basic democratic principles, the rule of law, and human rights in Cambodia;

Whereas the United States, the United Nations, and other international donors have publicly expressed concern with Prime Minister Hun Sen's authoritarian conduct (including inappropriate influence and control over the judiciary) and the official corruption and climate of impunity that exist in Cambodia today;

Whereas evidence of the campaign to undermine the democratic opposition in Cambodia is found in the revocation of parliamentary immunity of opposition leaders Sam Rainsy, Chea Poch, and Cheam Channy, and the 7-year prison sentence of Cheam Channy for allegedly forming "a secret army to overthrow the government" and 18-month sentence in absentia of Sam Rainsy on charges of allegedly defaming Prime Minister Hun Sen;

Whereas evidence of the campaign to stifle critics of the Government of Cambodia is found in the detention and charges of criminal defamation of radio journalist Mom Sonando and Rong Chhum, president of the Cambodian Independent Teachers Association;

Whereas the decision by Prime Minister Hun Sen and the Government of Cambodia on January 25, 2006, to drop all charges against Mom Sonando, Rong Chhum, Kem Sokha, and Pa Nguon is a welcome step, but does little to alleviate the underlying climate of intimidation in Cambodia;

Whereas evidence of the campaign to silence and intimidate civil society is found in the arrest and detention of human rights activist Kem Sokha, Yeng Virak, and Pa Nguon on charges of criminal defamation;

Whereas other champions of democracy in Cambodia, including former parliamentarian Om Radsady and labor leader Chea Vichea, were brutally murdered in Cambodia, and no one has been brought to justice for committing these heinous crimes;

Whereas Cambodia is a donor dependant country, and more than $2,000,000,000 has been invested by donors in the democratic development of that country; and

Whereas the current atmosphere of intimidation and fear calls into question the viability of the Khmer Rouge Tribunal: Now, therefore, be it

Resolved, That the Senate—

(1) affirms the support and respect of the United States for the welfare, human rights, and dignity of the people of Cambodia;

(2) calls on Prime Minister Hun Sen and the Government of Cambodia to immediately cease and desist from its systematic campaign to undermine democracy, the rule of law, and human rights in Cambodia;

(3) calls on Prime Minister Hun Sen and the Government of Cambodia to immediately release all political prisoners and drop all politically motivated charges against opponents of the government;

(4) calls on Prime Minister Hun Sen and the Government of Cambodia to demonstrate through words and deed the government's commitment to democracy, the rule of law, and human rights in Cambodia;

(5) calls upon the King of Cambodia to play a more active and constructive role in protecting the constitutional rights of all Cambodian citizens; and

(6) urges international donors and multilateral organizations, including the World Bank, the Asian Development Bank, and the United Nations, to hold Prime Minister Hun Sen and the Government of Cambodia fully accountable for actions that undermine the investment of international donors in the democratic and economic development of Cambodia.

SENATE CONCURRENT RESOLUTION 77—TO PROVIDE FOR A JOINT SESSION OF CONGRESS TO RECEIVE A MESSAGE FROM THE PRESIDENT ON THE STATE OF THE UNION

Mr. FRIST (for himself and Mr. REID) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 77

Resolved by the Senate (the House of Representatives concurring), That the two Houses of Congress assemble in the Hall of the House of Representatives on Tuesday, January 31, 2006, at 9 p.m., for the purpose of receiving such communication as the President of the United States shall be pleased to make to them.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. MARTINEZ. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, January 25, 2006, at 3:30 P.m., in closed session, to receive an operations and intelligence briefing on Iraq.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. MARTINEZ. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on January 25, 2006, at 10 a.m., to conduct a hearing on "Proposals To Reform the National Flood Insurance Program."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. MARTINEZ. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, January 25, 2006, at 9:30 a.m., to hold a hearing on nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. MARTINEZ. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, January 25, 2006, at 2:30 p.m., to hold a hearing on nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. MARTINEZ. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, January 25, 2006, at 4:30 p.m., to hold a hearing on nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. MARTINEZ. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Wednesday, January 25, 2006, at 9:30 a.m., for a hearing titled, "Lobbying Reform: Proposals and Issues."

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. CORNYN. Madam President, I ask unanimous consent that the privilege of the floor be granted for the remainder of the 109th Congress to Reed O'Connor, a detailee from the Department of Justice who works on my Subcommittee on Immigration, Border Security, and Citizenship.

The PRESIDING OFFICER. Without objection, it is so ordered.

JOINT SESSION OF THE TWO HOUSES TO RECEIVE A MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

Mr. THUNE. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Con. Res. 77 which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 77) to provide for a joint session of Congress to receive a message from the President on the State of the Union.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. THUNE. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 77) was agreed to, as follows:

S. CON. RES. 77

Resolved by the Senate (the House of Representatives concurring), That the two Houses of Congress assemble in the Hall of the House of Representatives on Tuesday, January 31, 2006, at 9 p.m., for the purpose of receiving such communication as the President of the United States shall be pleased to make to them.

APPOINTMENT OF COMMITTEE TO ESCORT THE PRESIDENT OF THE UNITED STATES

Mr. THUNE. Mr. President, I ask unanimous consent the Presiding Officer of the Senate be authorized to appoint a committee on the part of the Senate to join with the like committee on the part of the House of Representatives to escort the President of the United States into the House Chamber for the joint session to be held at 9 p.m. on Tuesday, January 31, 2006.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONGRATULATING UNIVERSITY OF TEXAS LONGHORNS

Mr. THUNE. Mr. President, I ask unanimous consent the Senate now proceed to the consideration of S. Res. 352 which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 352) commending the University of Texas at Austin Longhorns football team for winning the 2005 Bowl Championship Series national championship.

There being no objection, the Senate proceeded to consider the resolution.

Mr. THUNE. Mr. President, I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 352) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 352

Whereas the Longhorns won the BCS national championship game, defeating the University of Southern California by a score of 41–38 at the Rose Bowl in Pasadena, California on January 4, 2006;

Whereas the Longhorns have now won four football national titles;

Whereas this historic victory—the 800th win in school history—marks the culmination of an undefeated, 13–0 season;

Whereas, by scoring 652 points during their undefeated season, the Longhorns set an NCAA record for points scored in a single season;

Whereas the University of Texas now owns the longest-active winning streak in the Nation at 20 games;

Whereas, under the leadership of Coach Mack Brown, the Longhorns claimed the Big 12 Conference South Division title, won the Big 12 Conference championship, and earned their eighth consecutive bowl game berth;

Whereas the Longhorns boast seven All-Americans, including Will Allen, Justin Blalock, Aaron Harris, Michael Huff, Jonathan Scott, Rodrigue Wright, and Vince Young;

Whereas quarterback Vince Young—a Heisman Trophy finalist, recipient of the Davey O'Brien National Quarterback Award, and the Maxwell Award winner—was named the Most Valuable Player of the Rose Bowl;

Whereas, Vince Young scored three touchdowns and gained 467 total yards in the championship game, and he became the first player in NCAA history to rush for more than 1,000 yards and pass for more than 3,000 in the same season;

Whereas the Longhorns were captained by Ahmard Hall, David Thomas, Rodrique Wright, and Vince Young at the Rose Bowl;

Whereas Ahmard Hall, the male 2005 Big 12 Sportsperson of the Year, served his country as a Sergeant in the United States Marine Corps for four years—serving tours in Kosovo and Operation Enduring Freedom in Afghanistan—prior to joining the team as a walk-on in 2003 and ultimately rising to the position of starting fullback and team captain;

Whereas the entire Longhorns team should be commended for its inspirational work, determination, and success;

Whereas the University of Texas at Austin has a long tradition of athletic and academic excellence; and

Whereas the Longhorns have brought great honor to themselves, their university, and the great State of Texas: Now, therefore, be it

Resolved, That the Senate—

(1) commends the University of Texas at Austin Longhorns football team for winning the 2005 Bowl Championship Series national championship;

(2) congratulates the team for completing an undefeated, 13–0 season; and

(3) directs the Secretary of the Senate to make available to the University of Texas at Austin an enrolled copy of this resolution for appropriate display.

CONCERN FOR JUSTICE IN CAMBODIA

Mr. THUNE. Mr. President, I ask unanimous consent the Senate now proceed to the consideration of Senate Resolution 353, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

The resolution (S. Res. 353) expressing concern with the deliberate undermining of democratic freedoms and justice in Cambodia by Prime Minister Hun Sen and the Government of Cambodia.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Today, the Prime Minister of Cambodia dropped the criminal defamation lawsuits against five government critics and human rights advocates.

Along with the administration, I welcome the Prime Minister's decision and applaud his efforts to recognize the right of free political exchange. I am hopeful that today's action represents progress and a greater commitment to human rights and civil society on the part of the ruling authority.

In recent months, we have had cause for alarm that the Government of Cambodia is engaged in a campaign of political persecution and intimidation. Prime Minister Hun Sen and his apparatus have consistently and blatantly violated basic democratic principles, the rule of law, and human rights as enshrined in the Cambodian Constitution.

Tonight, the Senate stands unified in calling upon Prime Minister Sen and the government of Cambodia: To immediately cease and desist from its systematic campaign to undermine democracy, the rule of law, and human rights; to immediately release all political prisoners and drop all politically motivated charges against opponents of the government; and to demonstrate through word and deed the government's commitment to democracy, the rule of law, and human rights;

We also call upon the King of Cambodia to play a more active and constructive role in protecting the constitutional rights of Cambodian citizens. And we urge international donors and multilateral organizations, including the World Bank, the Asian Development Bank, and the United Nations, to hold the Prime Minister and his government fully accountable for actions that undermine the investment of international donors in the democratic and economic development of Cambodia.

I would like to thank Senator McCONNELL and Senator McCAIN for their leadership and commitment to the people of Cambodia. They deserve special recognition for their unflagging support.

Let me close with a report today in the International Herald Tribune. At a recent gathering of 800 impoverished farmers and townspeople in a village south of the capitol of Phnom Penh, an elderly Cambodian woman asked:

> I have a question for government. You talk about democracy, but how much right do the people of Cambodia have to speak out? If we speak out, will we be arrested like Kem Sokha?

I put that question to Prime Minister Hun Sen. Will the people be allowed to speak out as free citizens in an open and just democracy? The people of Cambodia want to know. And on their behalf, the U.S. Senate demands an answer.

Mr. THUNE. Mr. President, I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 353) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 353

Whereas the United States affirms its support and respect for the welfare, human rights and dignity of the people of Cambodia;

Whereas, under the leadership of Prime Minister Hun Sen, the Government of Cambodia has engaged in a systematic campaign to undermine the democratic opposition, stifle critics of the Government, and silence and intimidate civil society in Cambodia;

Whereas, despite constitutional guarantees of freedom of expression and association in Cambodia, Prime Minister Hun Sen and the Government of Cambodia have consistently and blatantly violated basic democratic principles, the rule of law, and human rights in Cambodia;

Whereas the United States, the United Nations, and other international donors have publicly expressed concern with Prime Minister Hun Sen's authoritarian conduct (including inappropriate influence and control over the judiciary) and the official corruption and climate of impunity that exist in Cambodia today;

Whereas evidence of the campaign to undermine the democratic opposition in Cambodia is found in the revocation of parliamentary immunity of opposition leaders Sam Rainsy, Chea Poch, and Cheam Channy, and the 7-year prison sentence of Cheam Channy for allegedly forming "a secret army to overthrow the government" and 18-month sentence in absentia of Sam Rainsy on charges of allegedly defaming Prime Minister Hun Sen;

Whereas evidence of the campaign to stifle critics of the Government of Cambodia is found in the detention and charges of criminal defamation of radio journalist Mom Sonando and Rong Chhum, president of the Cambodian Independent Teachers Association;

Whereas the decision by Prime Minister Hun Sen and the Government of Cambodia on January 25, 2006, to drop all charges against Mom Sonando, Rong Chhum, Kem Sokha, and Pa Nguon is a welcome step, but does little to alleviate the underlying climate of intimidation in Cambodia;

Whereas evidence of the campaign to silence and intimidate civil society is found in the arrest and detention of human rights activist Kem Sokha, Yeng Virak, and Pa Nguon on charges of criminal defamation;

Whereas other champions of democracy in Cambodia, including former parliamentarian Om Radsady and labor leader Chea Vichea, were brutally murdered in Cambodia, and no one has been brought to justice for committing these heinous crimes;

Whereas Cambodia is a donor dependant country, and more than $2,000,000,000 has been invested by donors in the democratic development of that country; and

Whereas the current atmosphere of intimidation and fear calls into question the viability of the Khmer Rouge Tribunal: Now, therefore, be it

Resolved, That the Senate—

(1) affirms the support and respect of the United States for the welfare, human rights, and dignity of the people of Cambodia;

(2) calls on Prime Minister Hun Sen and the Government of Cambodia to immediately cease and desist from its systematic campaign to undermine democracy, the rule of law, and human rights in Cambodia;

(3) calls on Prime Minister Hun Sen and the Government of Cambodia to immediately release all political prisoners and drop all politically motivated charges against opponents of the government;

(4) calls on Prime Minister Hun Sen and the Government of Cambodia to demonstrate through words and deed the government's commitment to democracy, the rule of law, and human rights in Cambodia;

(5) calls upon the King of Cambodia to play a more active and constructive role in protecting the constitutional rights of all Cambodian citizens; and

(6) urges international donors and multilateral organizations, including the World Bank, the Asian Development Bank, and the United Nations, to hold Prime Minister Hun Sen and the Government of Cambodia fully accountable for actions that undermine the investment of international donors in the democratic and economic development of Cambodia.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 10 U.S.C. 4355(a)(1) and 4355(a)(2), appoints the following Senators to the Board of Visitors of the U.S. Military Academy: the Senator from Maine, Ms COLLINS, designated by the Chairman of the Committee on Armed Services; the Senator from Texas, Mrs. HUTCHISON, from the Committee on Appropriations; the Senator from Rhode Island, Mr. REED, At Large; and the Senator from Louisiana, Ms. LANDRIEU, from the Committee on Appropriations.

The Chair, on behalf of the Vice President, pursuant to 10 U.S.C. 6968(a)(1) and 6968(a)(2), appoints the following Senators to the Board of Visitors of the U.S. Naval Academy: The Senator from Arizona, Mr. McCAIN, designated by the Chairman of the Committee on Armed Services; the Senator from Mississippi, Mr. COCHRAN, from the Committee on Appropriations; the Senator from Maryland, Mr. SARBANES, At Large; and the Senator from Maryland, Ms. MIKULSKI, from the Committee on Appropriations.

The Chair, on behalf of the Vice President, pursuant to 10 U.S.C. 9355(a)(1) and 9355(a)(2), appoints the following Senators to the Board of Visitors of the U.S. Air Force Academy: the Senator from Colorado, Mr. ALLARD, designated by the Chairman of the Committee on Armed Services; the Senator from Idaho, Mr. CRAIG, from the Committee on Appropriations; the Senator from Arkansas, Mr. PRYOR, At Large; and the Senator from South Dakota, Mr. JOHNSON, from the Committee on Appropriations.

ORDERS FOR THURSDAY, JANUARY 26, 2006

Mr. THUNE. Mr. President, I ask unanimous consent when the Senate completes its business today, it stand in adjournment until 9:45 p.m. on Thursday, January 26; I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then proceed to executive session and resume consideration of the nomination of Samuel Alito to be an Associate Justice of the Supreme Court of the United States as under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. THUNE. Mr. President, today we have had a full day of debate on the nomination of Judge Alito for the Supreme Court. This all-important debate will continue tomorrow and the balance of the week. Tomorrow, we will again be alternating hour time blocks for Members to speak, with the Democratic side speaking from 10 until 11 and the majority from 11 to 12 and alternating back and forth throughout the day. Members are encouraged to use this time to make their statements. As the majority leader announced earlier today, we are hoping we can work toward a time certain for a vote on the Alito nomination and will notify Members so they can plan their schedules accordingly.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

Mr. THUNE. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:06 p.m., adjourned until Thursday, January 26, 2006, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate January 25, 2006:

DEPARTMENT OF TRANSPORTATION

THOMAS J. BARRETT, OF ALASKA, TO BE ADMINISTRATOR OF THE PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION. (NEW POSITION)

THE JUDICIARY

BRETT M. KAVANAUGH, OF MARYLAND, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT, VICE LAURENCE H. SILBERMAN, RETIRED.

MICHAEL A. CHAGARES, OF NEW JERSEY, TO BE UNITED STATES CIRCUIT JUDGE FOR THE THIRD CIRCUIT, VICE MICHAEL CHERTOFF, RESIGNED.

VANESSA LYNNE BRYANT, OF CONNECTICUT, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT, VICE DOMINIC J. SQUARTRITO, RETIRED.

RENEE MARIE BUMB, OF NEW JERSEY, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, VICE WILLIAM H. WALLS, RETIRED.

BRIAN M. COGAN, OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK, VICE FREDERIC BLOCK, RETIRED.

THOMAS M. GOLDEN, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA, VICE FRANKLIN VAN ANTWERPEN, ELEVATED.

ANDREW J. GUILFORD, OF CALIFORNIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA, VICE DICKRAN M. TEVRIZIAN, JR., RETIRED.

NOEL LAWRENCE HILLMAN, OF NEW JERSEY, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, VICE WILLIAM G. BASSLER, RETIRED.

GRAY HAMPTON MILLER, OF TEXAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS, VICE EWING WERLEIN, JR., RETIRED.

SUSAN DAVIS WIGENTON, OF NEW JERSEY, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, VICE JOHN W. BISSELL, RETIRED.

S. PAMELA GRAY, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF FIFTEEN YEARS, VICE SUSAN REBECCA HOLMES, RETIRED.

DEPARTMENT OF JUSTICE

STEVEN G. BRADBURY, OF MARYLAND, TO BE AN ASSISTANT ATTORNEY GENERAL, VICE JACK LANDMAN GOLDSMITH III, RESIGNED.

DEPARTMENT OF STATE

RAJKUMAR CHELLARAJ, OF TEXAS, TO BE AN ASSISTANT SECRETARY OF STATE (ADMINISTRATION), VICE WILLIAM A. EATON, RESIGNED.

RICHARD T. MILLER, OF TEXAS, TO BE REPRESENTATIVE OF THE UNITED STATES OF AMERICA ON THE ECONOMIC AND SOCIAL COUNCIL OF THE UNITED NATIONS, WITH THE RANK OF AMBASSADOR.

RICHARD T. MILLER, OF TEXAS, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE SESSIONS OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS DURING HIS TENURE OF SERVICE AS REPRESENTATIVE OF THE UNITED STATES OF AMERICA ON THE ECONOMIC AND SOCIAL COUNCIL OF THE UNITED NATIONS.

IN THE COAST GUARD

THE FOLLOWING NAMED INDIVIDUAL FOR APPOINTMENT AS COMMANDANT OF THE UNITED STATES COAST GUARD AND TO THE GRADE INDICATED UNDER TITLE 14, U.S.C., SECTION 44:

To be admiral

VICE ADM. THAD W. ALLEN, 4359

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE RANK INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. THOMAS F. METZ, 5686

EXTENSIONS OF REMARKS

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, January 26, 2006 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

JANUARY 30

2 p.m.
Homeland Security and Governmental Affairs
To resume hearings to examine Hurricane Katrina response issues, focusing on urban search and rescue during a catastrophe.
SD-342

JANUARY 31

10 a.m.
Health, Education, Labor, and Pensions
To hold hearings to examine the nominations of Edwin G. Foulke, Jr., of South Carolina, to be an Assistant Secretary of Labor, and Richard Stickler, of West Virginia, to be Assistant Secretary of Labor for Mine Safety and Health.
SD-106

Homeland Security and Governmental Affairs
To hold hearings to examine challenges in a catastrophe, focusing on evacuating New Orleans in advance of Hurricane Katrina.
SD-342

FEBRUARY 1

9:30 a.m.
Indian Affairs
To hold oversight hearings to examine off-reservation gaming issues, focusing on the process for considering gaming applications.
SR-485

Judiciary
To hold hearings to examine consolidation in the energy industry.
SD-226

10 a.m.
Homeland Security and Governmental Affairs
To hold hearings to examine Hurricane Katrina, focusing on managing the crisis and evacuating New Orleans.
SD-342

2 p.m.
Judiciary
Constitution, Civil Rights and Property Rights Subcommittee
To hold hearings to examine the death penalty in the United States.
SD-226

FEBRUARY 2

9:30 a.m.
Judiciary
Business meeting to consider pending calendar business.
SD-226

10:30 a.m.
Veterans' Affairs
To hold hearings to examine "The Jobs for Veterans Act Three Years Later: Are VETS' Employment Programs Working for Veterans?".
SR-418

FEBRUARY 6

9:30 a.m.
Judiciary
To hold hearings to examine wartime executive power and the NSA's surveillance authority.
Room to be announced

FEBRUARY 7

9:30 a.m.
Armed Services
To hold hearings to examine the defense authorization request for fiscal year 2007 and the future years defense program.
SD-106

FEBRUARY 9

10 a.m.
Commerce, Science, and Transportation
To hold an oversight hearing to examine commercial aviation security, focusing on Transportation Security Administration's aviation passenger screening programs, Secure Flight and Registered Traveler, to discuss issues that have prevented these programs from being launched, and to determine their future.
SD-562

Energy and Natural Resources
To hold hearings to examine the President's proposed budget request for fiscal year 2007 for the Department of Energy.
SD-366

2:30 p.m.
Energy and Natural Resources
To hold hearings to examine the Energy Information Administration's 2006 annual energy outlook on trends and issues affecting the United States' energy market.
SD-366

FEBRUARY 14

10 a.m.
Veterans' Affairs
To hold hearings to examine the President's proposed budget request for fiscal year 2007 for the Department of Veterans Affairs.
SR-418

FEBRUARY 15

11 a.m.
Energy and Natural Resources
Business meeting to consider the President's views and estimates to be submitted to the Committee on the Budget.
SD-366

2:30 p.m.
Energy and Natural Resources
Public Lands and Forests Subcommittee
To hold hearings to review the progress made on the development of interim and long-term plans for use of fire retardant aircraft in Federal wildfire suppression operations.
SD-366

FEBRUARY 28

2 p.m.
Veterans' Affairs
To hold hearings to examine legislative presentation of the Disabled American Veterans.
SD-106

POSTPONEMENTS

FEBRUARY 9

2:30 p.m.
Commerce, Science, and Transportation
To continue oversight hearings to examine commercial aviation security, focusing on physical screening of airline passengers, including issues pertaining to Transportation Security Administration's Federal passenger screener force, TSA procurement policy, air cargo screening, and the deployment of explosive detection technology.
SD-562

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

SENATE—*Thursday, January 26, 2006*

The Senate met at 9:45 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Lord God, the fountain of truth and wisdom, thank You for the yearning You have placed in our hearts for You.

Today, equip our Senators for the tasks before them. Help them strive to make the rough places of our world smooth and the crooked places straight. As they debate the Judge Samuel Alito nomination to the Supreme Court, give them the wisdom to be guided by conscience and not contention. Empower them to disagree without being disagreeable. Guide their hands, hearts, and minds to those undertakings that please You. May they never swerve from the straight and narrow path of Your unfolding providence.

Help us all to live for Your honor so that even our enemies will be at peace with us. Bless our military men and women who sacrifice each day to keep us free. We pray in Your righteous Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF SAMUEL A. ALITO, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session and resume consideration of Calendar No. 490, which the clerk will report.

The legislative clerk read the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States.

The PRESIDENT pro tempore. Under the previous order, the time from 10 a.m. to 11 a.m. shall be under the control of the Democratic leader or his designee.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. DEMINT. Mr. President, today, we resume consideration of the nomination of Judge Alito to be an Associate Justice of the Supreme Court. The order from yesterday allows the Democrat side to begin debate this morning at 10 o'clock and speak for up to 1 hour. Then the majority will have the hour from 11 to 12, and we will continue alternating 1-hour blocks of time between the two sides throughout the day. Members should plan their schedules accordingly to use the allocated time to make their statements. We will continue to work toward a final time for a vote on the nomination.

Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The Chair will state that the time from 11 a.m. to 12 p.m. shall be under the control of the majority leader or his designee, with each hour rotating back and forth in the same manner after that time.

The Senator is recognized.

Mr. LEAHY. I thank the distinguished President pro tempore, my friend of over 30 years. The debate has worked out well by going back and forth, showing the usual comity here in the Senate.

I began my discussion of Judge Alito's nomination for a lifetime appointment to the Nation's highest Court with the same issue I began my questions to Judge Alito and, before that, to now Chief Justice Roberts: That is the issue of checks and balances on Government power. Obviously, the answers given by Chief Justice Roberts I found satisfactory. I voted for him. The answers by Judge Alito, as I will explain further, I did not find satisfactory.

It is important because we are at a pivotal point in our Nation's history. This is a time of unprecedented governmental intrusion into the lives of ordinary Americans. The President has attempted to justify secret warrantless wiretapping of Americans, the evasion of legal bans against torture, and the detention of American citizens without due process of law. The Bush administration is making extraordinary claims of essentially unlimited power. There are troubling signs that this nomination is part of that effort by the President and Vice President to uphold Presidential claims of unchecked power and to upset the careful balance of our system of government, a system of government that was so carefully crafted by the Framers in our national charter, the Constitution. I have said I do not believe that Judge Alito would be that kind of a careful check and balance against Presidential overreaching. Because of that, I said I would not support his nomination.

I don't take this position lightly. There are nine members of the Supreme Court, seven of them nominated by Republican Presidents. I have voted for eight of those nine, but I will not for this one. I feel that the judge's record, his missed opportunities during the hearings to answer concerns about his record, leaves me to wonder whether he appreciates the role of the Supreme Court as a protector of Americans' fundamental rights and liberties. It is a test he failed. The Supreme Court has to be a source of justice. It has to be an institution where the Bill of Rights and human dignity are honored. It must be an institution dedicated to the mission embodied in the words etched in Vermont marble above the entrance to the Court where it says "equal justice under the law." It must be an institution which carries on the spirit enshrined in our Constitution, refined following the Civil War, and realized further over the course of landmark decisions in Brown v. Board of Education and Baker v. Carr. Judge Alito's record and testimony demonstrate that he does not understand the vital role of the courts in implementing the constitutional guarantees of equal protection and equal dignity for all Americans.

A stark example of his failing the test took place during his confirmation hearing when I asked him a question Senator SPECTER had asked then Justice Rehnquist at his hearing to become the Chief Justice. I know; I was at the hearing. The question was a basic one: whether the Supreme Court can be stripped of jurisdiction to protect fundamental constitutional rights. I asked Judge Alito whether the Supreme Court could be stripped of jurisdiction to hear first amendment cases involving freedom of the press or freedom of religion or freedom of speech.

The First Amendment is probably the greatest part of our Bill of Rights. I told him Senator SPECTER had previously insisted on an answer from Justice Rehnquist and that Justice Rehnquist had answered that it would not be constitutional to strip the Court of its jurisdiction. its vital function to protect fundamental rights. Unlike the late Chief Justice, Judge Alito responded as though it were merely an academic question. He said that there are scholars on both sides. He refused to state his view. This is a basic and fundamental issue for anybody aspiring to be a member of the Supreme Court. Justice Rehnquist got it right. For that matter, Judge Bork got it right. Judge Alito got it wrong.

When he failed to respond to my question. Senator SPECTER revisited it. but Judge Alito still failed the straightforward test. I asked the same question with respect to the fourth amendment, the fifth amendment, and the sixth amendment. Again, there was no answer. These are the constitutional amendments that guarantee our privacy rights, our protection against unreasonable searches and seizures, our right to due process. our right against self-incrimination, our protection against Government takings, and our right to public trial and to counsel. These are basic American rights that help to define us as a free people. They control the intrusiveness of Government power.

Judge Alito has shown through his answers that he does not appreciate the constitutional role of the Supreme Court as the protector of America's fundamental rights. In fact, in our system of checks and balances, the Supreme Court has to be the ultimate defender of Americans' constitutional rights. Judge Alito's refusal to acknowledge that in his answers is more than deeply troubling; it is stunning. It is stunning that anybody up for a lifetime appointment to the Supreme Court of the United States would not answer such basic questions. Suppose if by legislative act we could remove the constitutional right to freedom of religion or free speech how quickly we could remove our freedoms as Americans. Again. Justice Rehnquist and Judge Bork had it right. Judge Alito had it wrong.

I even gave him a concrete example. I asked whether in the early 1950s, Congress could have stripped the courts. including the Supreme Court, of jurisdiction to hear cases involving racial segregation in schools. This historical hypothetical raised the question whether the Supreme Court could have been prevented from deciding Brown v. Board of Education and enforcing the equal protection clause of the Constitution and calling for an end to unconstitutional racial segregation. His answer was no better. He was clearly stumped.

No Senator who truly cares about civil rights, equal rights, freedom of religion and speech and the press can have any confidence that Judge Alito understands the critical role of the Supreme Court in protecting those rights.

I ask unanimous consent that letters from civil rights organizations in opposition to Judge Alito's nomination be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
Washington, January 9, 2006.

Re NAACP urges thorough review of Judge Samuel Alito's troubling record on civil rights & civil liberties during Judiciary Committee hearing

MEMBERS,
U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR: As you are aware from earlier correspondence, the NAACP is opposed to the nomination of Judge Samuel Alito to the United States Supreme Court based on our thorough review of his dismal record on upholding civil rights and civil liberties protections. As such, we would urge you, as a member of the Senate Judiciary Committee, to use your position and your Constitutionally-mandated responsibility to thoroughly review Judge Alito's record on civil rights and civil liberties and to try to determine the extent to which Judge Alito is likely to preserve the civil rights of Americans if he is confirmed to our Nation's highest court.

The Supreme Court is, in many cases, the last opportunity for many Americans to assert their rights and ensure the protection of their liberties. Many of the civil rights gains that have been made over the past 50 years are a result of Supreme Court rulings. Thus, the NAACP feels that it is of the utmost importance that any nominee to the Court is clear about his or her intentions to protect the civil rights gains that have been made over the past 5 decades and have always been promised to us by the US Constitution.

Of specific concern to us from Judge Alito's past history is:

In a 1985 job application for a position with the Reagan Administration, Judge Alito disagreed in writing with the Warren Court's reapportionment decisions now known as "one man, one vote", which are among the Court's most widely accepted decisions on civil rights and equal representation. The "one man, one vote" theory is also one of the basic tenets of Voting Rights that the NAACP has fought for;

In the 1993 case Grant v. Shalala Judge Alito ruled against a class action alleging racial and other bias by an Administrative Law Judge when determining Social Security benefits, arguing that the Court of Appeals lacked the authority to conduct a trial and make independent findings on actions taken by an Administrative Law Judge for the Social Security Agency. In a strongly worded dissent to the Alito ruling, Judge Leon Higginbotham said that the decisions is ". . . effectively have courts take a back seat to bureaucratic agencies in protecting constitutional liberties. This . . . is a radical and unwise redefinition of the relationship between federal courts and federal agencies."

In the 1997 case Bray v. Marriot Hotels, Judge Alito strongly dissented from a Third Circuit ruling and made it clear that he supports impossibly high barriers for victims of discrimination to have their cases heard;

In a separate 1997 case, Riley v. Taylor, Judge Alito held that a prosecutor was not motivated by race in striking all African Americans from the jury of a death-penalty case involving an African American defendant. When the defendant produced statistical evidence showing the prosecution repeatedly striking African Americans from juries, Judge Alito contended that this was irrelevant and likened it to a study showing that a disproportionate number of recent Presidents have been left-handed.

In a 2004 case, Doe v. Grady, Judge Alito dissented from a ruling against police officers who had strip-searched a woman and her 10-year-old daughter while executing a search warrant authorizing the search of her husband and their home.

In short, during the course of the NAACP's investigation into Judge Alito's past we became convinced that he is unfit to sit on the United States Supreme Court because race and gender are still a real problem in the United States; a fact he appears to neither recognize nor appreciate.

Accordingly, as I said earlier, I hope you will ask tough questions, and demand thorough answers, during the hearings that begin today on Judge Alito to try to determine even further the extent to which he is, or is not, committed to upholding and protecting the civil rights and civil liberties of all Americans. On behalf of the NAACP, I would also like to further express our strong opposition to the nomination and our hope that you urge your Senate colleagues to oppose and defeat Judge Samuel Alito's nomination. Please contact me, or my Bureau Counsel, Crispian Kirk, at (202) 463-2940 soon to let me know your position on this matter, and to let me know what I can do to work with you to ensure that President Bush nominates, and the Senate confirms, moderate, not extremist, judicial candidates to the federal bench.

Sincerely,

HILARY O. SHELTON,
Director.

NATIONAL URBAN LEAGUE,
January 10, 2006.

SENATE COMMITTEE ON THE JUDICIARY,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATORS: As you know, the National Urban League, Inc. ("Urban League") is the oldest community-based civil rights organization in the country. Through our 102 professionally-staffed affiliates, located in 34 states and in the District of Columbia, the Urban League works to ensure, in a non-partisan way, economic and social parity and full civil rights for African-Americans and other people of color.

Nominations to the United States Supreme Court are of particular concern to the Urban League Movement because of the high Court's tremendous power and impact on the issues relevant to our mission of securing civil rights and economic empowerment for African Americans. Since the President nominated Judge Samuel Alito, Jr. to be an Associate Justice of the United States Supreme Court, the National Urban League has carefully and exhaustively reviewed his judicial record, judicial philosophy, and professional qualifications. Our study found that Judge Alito has a long and unambiguous history of opposition to critical and established voting rights protections, civil rights remedies and social justice guarantees. Our examination also established that Judge Alito frequently injects this philosophy into his judicial decision-making, often in direct contravention of well-settled law. A copy of our report is attached.

Based upon this review, it is our conclusion that Judge Alito's stated opposition to reasonable and established civil rights remedies and voting rights protections, and his consistent record of injecting these views into his decision-making to the degree that it undermines basic civil rights protections make him unsuitable for a seat on our nation's highest court.

Therefore, we urge the Senate Judiciary Committee to reject the nomination of Judge Alito to be a Supreme Court Justice and look forward to working with you to ensure the nomination and confirmation of judges who will uphold fundamental civil rights protections.

Respectfully,

MARC H. MORIAL,
President and CEO.

NAACP LEGAL DEFENSE FUND OPPOSES ALITO NOMINATION

REPORT DETAILS HOSTILITY TO CIVIL RIGHTS AND WARNS OF TIPPED BALANCE ON HIGH COURT

On December 15, 2005, the NAACP Legal Defense and Educational Fund, Inc. (LDF) announced opposition to the nomination of Samuel Alito, Jr. to the U.S. Supreme Court, citing his hostility to strong enforcement of civil rights laws. LDF warned that confirmation of Judge Alito would threaten to shift significantly the Supreme Court's jurisprudence relating to affirmative action, voting rights, employment and criminal justice issues.

At a press conference in Washington, D.C., LDF released a 10-page report detailing what it called an "extreme" judicial approach by Judge Alito that would demonstrably impact important future decisions of the High Court. The LDF report cites cases in which Alito has attacked congressional legislative authority in a manner that his colleagues viewed as extreme. As a Justice Department lawyer, he argued to uphold police use of deadly force and undermine the rights of criminal defendants. In the area of affirmative action, LDF highlighted "troubling signals" that Alito would tip the delicate Court balance to unravel policies "at the epicenter of the modern struggle for racial equality."

"We can predict with substantial certainty that Judge Alito will very likely vote in a manner that, given the current composition of the Court, will cause a substantial shift in the Court's civil rights jurisprudence with devastating effects," the LDF report cautioned.

Judge Alito is scheduled to appear before the Senate Judiciary Committee in early January for confirmation hearings.

LDF Director-Counsel and President Theodore M. Shaw stressed that the organization does not relish opposing a nomination to the Supreme Court and does so only when the nominee's record is contrary to the goals of equal justice that are the hallmark of LDF's work.

With the announcement of Justice Sandra Day O'Connor's retirement last summer, LDF called upon President Bush to nominate a successor who is not ideologically rigid and predictable, but who is fair and open-minded, and committed to protecting advances in civil rights. LDF emphasized that Justice O'Connor's successor should not be a mission-driven ideologue but, even if a conservative, should maintain the balance on the Court with respect to civil rights issues.

To analyze Alito's record, LDF reviewed published and unpublished opinions in cases decided by Judge Alito as well as documents released by the White House and the National Archives. Appointed by President George H.W. Bush to the U.S. Court of Appeals for the Third Circuit in 1990, Alito spent his entire legal career at the Department of Justice.

LDF's report also reveals:

Unquestionably, Justice O'Connor cast pivotal votes in civil rights cases coming before the Supreme Court. While Justice O'Connor did rule against civil rights litigants, at least her vote on important issues such as affirmative action was "always in play." In contrast, a review of Samuel Alito's tenure at the Justice Department reveals that he was directly involved in the Reagan Administration's frontal attacks on affirmative action, arguing against affirmative action in three significant cases before the Court. In his 15 years on the bench, he has ruled against African Americans on this issue.

Judge Alito's record should be extremely troubling to minority workers, women and others who depend on equal opportunity protections in the workplace. Although he has heard dozens of cases, Judge Alito has almost never ruled in favor of an African-American plaintiff in an employment discrimination case; he has never authored even one opinion favoring an African-American plaintiff on the merits in such a case.

Judge Alito's criticism of the Warren Court's reapportionment decisions is extremely troubling. These cases "set into motion a process that led to the dismantling of a political system infected both by prejudice and other forms of patent electoral manipulation." In his only opportunity on the bench to interpret the Voting Rights Act, Alito voted to uphold an at-large system of electing members to a Delaware school district, perpetuating an electoral system that diluted the voting strength of racial minorities.

In the criminal justice area, Judge Alito has repeatedly parted ways with his colleagues and failed to heed Supreme Court precedent in important cases regarding race discrimination in jury selection, the right to effective assistance of counsel, and search and seizure issues.

LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW,
WASHINGTON, DC, JANUARY 5, 2006.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.
Hon. PATRICK J. LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR CHAIRMAN SPECTER AND RANKING MEMBER LEAHY: As the Co-Chairs of the Lawyers' Committee for Civil Rights Under Law, we submit the enclosed "Statement of Board Members Opposing the Nomination of Judge Samuel A. Alito as an Associate Justice of the Supreme Court of the United States" on behalf of the 114 individual members of the Board of Directors and Trustees who subscribe to the Statement.

These members of our Board oppose Judge Alito because the record demonstrates that his views are in direct conflict with the core civil rights principles to which the Lawyers' Committee is dedicated, and that as a member of the Supreme Court, Judge Alito would cast votes and write opinions that would set back the cause of civil rights in our country and impede our progress toward the goal of equal justice for all. It is worth noting that in the Lawyers' Committee's 42-year history, its Directors and Trustees have opposed a Supreme Court nominee on only two previous occasions.

We also enclose a Final Report that analyzes Judge Alito's legal philosophy pertaining to civil rights and constitutional interpretation. This in-depth Report serves as the basis for the conclusions contained in the Statement and provides extensive analysis of Judge Alito's background. If Judge Alito's testimony during confirmation hearings or other evidence justifies a change in the conclusions we have drawn, we will so inform you.

We hope the Statement and Report are of assistance to you and your staff. For the reasons noted in them, we strongly urge the Judiciary Committee to vote not to confirm this nominee.

Respectfully,

MARJORIE PRESS
LINDBLOM,
Co-Chair.
ROBERT E. HARRINGTON,
Co-Chair.

AMERICAN ASSOCIATION
FOR AFFIRMATIVE ACTION,
Washington, DC, January 11, 2006.

Re Nomination of Judge Samuel A. Alito, Jr., as Associate Justice of the Supreme Court of the United States

Hon. ARLEN SPECTER,
Chair,
Hon. PATRICK J. LEAHY,
Ranking Member, Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN SPECTER AND SENATOR LEAHY: The American Association for Affirmative Action (AAAA), an association of equal employment opportunity (EEO), diversity and affirmative action professionals founded in 1974, respectfully urges you to oppose the nomination of Judge Samuel Alito, nominated to serve as Associate Justice of the U.S. Supreme Court.

AAAA has reached this conclusion based on Judge Alito's very troubling record on equal employment opportunity and affirmative action. In his 1985 application to be the Reagan Administration's Deputy Assistant Attorney General in the Office of Legal Counsel, Samuel Alito expressed his support of the "same philosophical views" that he believed were central to the Administration. In this application, Alito highlighted his work as Assistant Solicitor General on affirmative action and reportedly wrote that he was "particularly proud" of his "contributions in recent cases in which the government has argued in the Supreme Court that racial and ethnic quotas should not be allowed. . . ." To use Judge Alito's "Hank Aaron" analogy, affirmative action requires not moving the fence in but opening the gate. After that, it is up to the player to demonstrate his or her abilities. Whoever selected Hank Aaron, Secretary Rice or Justice O'Connor understood that the essence of affirmative action is opportunity, not favoritism or quotas.

Judge Alito's application described the efforts of the Reagan Justice Department to restrict affirmative action and court-awarded remedies for discrimination as "quota" litigation. In one such case, Alito signed a brief arguing for restricting affirmative action remedies, even in cases where discrimination was intentional, egregious, and long-standing. In Local 28 of the Sheet Metal Workers' International Ass'n v. EEOC, the Solicitor General's brief advanced the extraordinary theory that relief in Title VII cases could be granted only to "identifiable victims of discrimination," contradicting an earlier view of the EEOC itself. The Supreme Court rejected this argument.

In Local Number 93, International Association of Firefighters, AFL–CIO v. City of Cleveland, Alito signed on to an amicus brief seeking to reverse a consent decree that included numerical goals for the promotion of black firemen. By a 6–3 vote, the Supreme Court again rejected the Solicitor General's argument and upheld the affirmative action plan.

In the months before Alito applied for a job with Attorney General Edwin Meese, Meese waged a fierce campaign to have President Reagan abolish Executive Order 11246, signed by President Lyndon Johnson in 1965. The Order requires that federal contractors not discriminate in employment and that they use affirmative action. Ultimately, two-thirds of the Reagan cabinet repudiated the extreme views of the Justice Department and a coalition of corporations, members of Congress and civil rights organizations successfully defeated Meese's campaign against affirmative action.

There is nothing subsequent to Mr. Alito's tenure in the Reagan Administration or his testimony before the Senate Judiciary Committee to suggest persuasively that he has moderated his views on equal opportunity law enforcement. In civil rights cases he has often argued for higher barriers that victims of employment discrimination would have to overcome to secure remedies for such discrimination. For example, in Bray v. Marriott Hotels, Judge Alito's colleagues said Title VII of the Civil Rights Act of 1964 "would be eviscerated" if Judge Alito's approach were followed. In Nathanson v. Medical College of Pennsylvania, Judge Alito dissented in a disability rights case where the majority said: "Few if any Rehabilitation Act cases would survive" if Judge Alito's view were the law." And in Sheridan v. DuPont, he was the only one of 11 judges on the court who would apply a higher standard of proof in a sex discrimination case.

According to a report of the NAACP Legal Defense and Educational Fund, Inc., Judge Alito has almost never ruled for an African-American plaintiff in employment discrimination cases and has never written a majority opinion for the Third Circuit in favor of an African-American plaintiff on the merits of a claim of race discrimination in employment. In each majority opinion authored by Judge Alito and addressing such a claim, he has ruled against the African-American plaintiff.

This is not the time for the Judiciary, a longstanding refuge for victims of discrimination, to reverse fifty years of progress. The record emerging suggests that Judge Samuel Alito is not prepared to interpret the laws on behalf of all Americans.

Sincerely,

SHIRLEY J. WILCHER,
Interim Executive Director.

Mr. LEAHY. Judge Alito missed opportunities during the hearings on a number of issues. I am left with a deep and abiding concern about Judge Alito's understanding of the role of the courts and their responsibility to protect the constitutional rights of individuals, especially the less powerful and especially where the political system has failed to do so.

Despite Judge Alito's attempts to retreat from several of the more outrageous statements in his 1985 job application for a political position in Edwin Meese's Justice Department, his testimony at the hearing has done little to dispel my concerns. The consequences for all Americans of Judge Alito putting the beliefs he expressed in that job application into practice on the Supreme Court are too great.

In his job application, Samuel Alito wrote, as a 35-year-old, practicing lawyer, that:

> In college, I developed a deep interest in constitutional law, motivated in large part by disagreement with Warren Court decisions, particularly in the area[] of . . . reapportionment.

This was a startling statement to make in 1985, just two decades ago. He was 35 years old and had been practicing law for almost a decade when he wrote that statement about his disagreement with Warren Court decisions on reapportionment. Even after being asked about this statement several times at the hearing, Judge Alito failed to adequately answer why he would seek to highlight a disagreement with the landmark equal protection cases by which the Supreme Court made elections fairer for all Americans and established the principle of "one person, one vote."

The Warren Court's reapportionment decisions were among the central achievements of the civil rights era. They ensured that voting districts which had been grossly mal-apportioned, often to the detriment of minority voters, would be fairly revised so that everyone's vote was weighed equally. It is clear from looking at the Republicans' partisan redistricting in Texas that these cases did not solve all the problems. However, reapportionment cases like Baker v. Carr, 1962, and Reynolds v. Sims, 1964, are landmarks because they established that courts have a responsibility to make certain that voting districts meet constitutional standards.

It was Justice William Brennan of New Jersey who wrote the Court's opinion in Baker. Two years later, in Reynolds, the Court established the "one person, one vote" standard because, as stated by Chief Justice Warren in his opinion in that case:

> As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.

At his hearing, Judge Alito was in retreat and had to concede that the concept of one person, one vote is well-settled and should not be reexamined. It was equally well-settled in 1985 when he made the statement in his job application. More importantly, Judge Alito's testimony calls into question whether he truly understands that the courts have a responsibility in our constitutional system to intervene to ensure that constitutional guarantees of equal access to the political system are met. This is important in situations where the political system is corrupt or where the political branches lack the will to fight against entrenched power or to reform themselves.

In response to a question from Senator KOHL, Judge Alito sought to retreat from the unqualified disagreement with the reapportionment cases expressed in his 1985 application. He told the Committee that his disagreement was based only on certain details of later Warren Court decisions like the 1969 case, Kirkpatrick v. Preisler. Not only is this narrow objection to certain Warren Court decisions not a credible explanation for why he made his sweeping assertions of disagreement in 1985, but Judge Alito also contradicted it later in his testimony when he suggested that his disagreement with the Warren Court's reapportionment decisions was based on Alexander Bickel's ideas about judicial self-restraint. Professor Bickel was not concerned merely with later applications of one person, one vote. Rather, his theory was critical of the courts having any role at all in helping to guarantee that access to the political system is fair and equal.

In fact, one of the justices whom Judge Alito described as among his favorites, Justice Harlan, applied Bickel's theories in dissenting from every landmark Warren Court reapportionment case establishing one person, one vote, starting with Baker v. Carr. In Justice Harlan's dissenting opinion in Reynolds v. Sims, as in all of Justice Harlan's reapportionment dissents, he argued that there is no constitutional basis for one person, one vote and that courts should restrain themselves from "usurping" the state legislatures' self-serving apportionment decisions. In his dissent in Reynolds, Justice Harlan wrote: "It is difficult to imagine a more intolerable and inappropriate interference by the judiciary with the independent legislatures of the States," and "[w]hat is done today deepens my conviction that judicial entry into this realm is profoundly ill-advised and constitutionally impermissible." This dissent, described as one of Judge Alito's favorites, hardly sounds like a disagreement only with certain aspects of later reapportionment decisions.

The effects of the Court's decisions to intervene were dramatic. Were the Supreme Court to have followed the dissents of Justice Harlan or the theories of Alexander Bickel that Judge Alito embraced in 1985, the massive disparities in the size of voting districts would not have been corrected in the 1960s. Nor would the underrepresentation of voters from urban areas, minority voters, have been corrected. Had the Court not acted we might still have poll taxes and other barriers to the ability of minorities to vote.

At the hearing we heard testimony from pioneering civil rights attorney

Fred Gray, who spent a lifetime fighting for those who were denied the rights to equal protection and equal dignity under the law guaranteed by our Constitution. After he graduated from law school, Mr. Gray immediately went to work defending Rosa Parks and Dr. Martin Luther King, Jr., in the Montgomery bus boycott. He has a real-life appreciation for the role of courts as providing a check to protect individual rights and liberties. In the late 1950s, after the Alabama legislature changed the city limits of Tuskegee, excluding all but three or four African Americans who were registered to vote in the city, Mr. Gray brought before the Supreme Court the case of Gomillion v. Lightfoot. This unanimous decision securing the right to vote for African Americans laid the foundation for Baker v. Carr and the cases establishing one person, one vote.

I asked Mr. Gray what the consequences would have been had the courts followed the lead of Justice Harlan and Alexander Bickel, views with which Samuel Alito apparently agreed, and not involved itself in reapportionment. He testified:

> The difference is then, prior to these decisions, and even prior to Brown v. Board of Education, and prior to Gomillion v. Lightfoot and Browder v. Gayle, the case that desegregated the buses, we had very few African Americans and other minorities registered. We had little or no African Americans in public office. For example, in my state, in 1957 we had none. Now my State has approximately the same number of persons in our State legislature. It mirrors the population. We now have thousands of African Americans and other minorities who are holding public office, and an additional thousand that those public office holders have appointed to elected office.

Judge Alito did not adequately explain his disagreement with the Warren Court reapportionment decisions. He refused to say that he changed his views. He did not repeat what he had suggested in some private meetings—that he was merely saying what he thought people in the Reagan White House wanted to hear and that it was just a job application. Candidly, his testimony on this critical point makes no sense. This is too fundamental a matter to be left without a solid, credible explanation. The equal protection rights and voting rights of all Americans are the fulcrum for realizing the promises of our democratic republic.

Judge Alito's sweeping disagreement with the Warren Court's reapportionment decisions is not the only part of his 1985 job application which has caused me to doubt his understanding of the responsibility for the courts to intervene where the political process is broken down, corrupt or entrenched. Judge Alito also stated in that application that he believes in "the supremacy of the elected branches of government." In the hearing, Judge Alito tried to retreat from this statement, describing it as "inapt" and "very misleading and incorrect." However, he refused to disavow it, telling Senator KENNEDY: "I haven't changed my mind."

The Supreme Court's decisions to intervene in the reapportionment cases in the 1960s had a tremendous effect on the ability of millions of Americans to participate in the political process. Yet I am concerned that his 1985 written statement reveals that he will be too deferential to the President as "supreme" even when needed to be a check on the Government.

The elected branches have no claim to being legitimate, let alone "supreme," if they are controlled by entrenched political corruption. After listening to several days of his testimony, I am left with serious questions and concerns about Judge Alito's appreciation for this critical role of the courts. These concerns are heightened by his apparent adherence to the so-called doctrine of the "Unitary Executive."

Judge Alito has failed to grasp the importance of the courts in providing a venue for all Americans to assert their rights. One of the clearest examples of this is Judge Alito's distressing record in cases in which individuals allege discrimination based on race, gender, or disability. Judge Alito has consistently found ways to keep the "little guy" from having a day in court. For example, he has held individuals trying to prove discrimination to an excessively high standard of proof, rendering their cases almost un-winnable. From the bench, he has favored the government and big companies accused of discrimination. He seems to view these cases not as examples of regular Americans struggling for equal treatment but, instead, as technical legal exercises.

Judge Alito's supporters—and many on the other side of the aisle were lined up to support him well before the hearings—have cherry picked individual cases to try to show that Judge Alito was fair to average Americans. Judge Alito told us to look at his whole record and we did. In fact, a study of Judge Alito's decisions by Knight Ridder newspapers found that Judge Alito was consistently skeptical of discrimination plaintiffs, generally setting high standards of proof and finding that the plaintiffs before him did not meet those standards. The study found that he was similarly dismissive of criminal defendants alleging discrimination by the government and of immigrants fighting deportation. Noted law professors Cass Sunstein and Goodwin Liu studied the cases where Judge Alito dissented from his colleagues and reached the same conclusion.

In several cases, the Third Circuit criticized Judge Alito for taking positions which would make it almost impossible for people to prove discrimination. In Bray v. Marriott Hotels, Judge Alito would have denied an African-American worker the chance to show that her employers denied her a promotion based on race. The majority criticized Judge Alito's dissent saying that a key discrimination statute "would be eviscerated if our analysis were to halt where the dissent suggests."

The case of Pirolli v. World Flavors, Inc., is a particularly poignant example of the kind of case that gives me great concern about whether Judge Alito would uphold the rights of ordinary Americans seeking equal treatment. In that case, Kenneth Pirolli, a mentally retarded employee, brought a claim for hostile work environment based on sex and disability, alleging a pattern of sexual abuse and harassment that can only be described as disgusting. Judge Alito dissented from the Third Circuit's decision that Mr. Pirolli's case should go to a jury, not based on the merits of the claim, but essentially because he thought Mr. Pirolli's lawyer's legal brief was poorly drafted. Senator DURBIN asked Judge Alito about this matter and gave him every opportunity to explain. It remains another example of Judge Alito focusing on technical details rather than on the rights of real people.

As a former prosecutor, I am sensitive to the need for a fair process and a fair jury in all criminal cases, particularly the most serious ones. I am troubled that in Riley v. Taylor, Judge Alito dissented from an en banc decision in a capital case in which the Third Circuit granted a new trial because the prosecutor had improperly dismissed Black jurors. Judge Alito denigrated the defendant's use of statistical evidence to show improper exclusion of Black jurors, comparing it to a statistical analysis of the disproportionate number of recent left-handed U.S. Presidents. The majority criticized Judge Alito's inappropriate analogy, writing, "To suggest any comparability to the striking of jurors based on their race is to minimize the history of discrimination against prospective Black jurors and Black defendants".

In response to the many cases in Judge Alito's record in which he has ruled against victims of discrimination, victims of government intrusion, and immigrants, Judge Alito's Republican supporters searched hard to find a small set of cases to show Judge Alito has not always ruled against the "little guy." What is notable about these efforts is that even in the cases they have trumpeted, Judge Alito often denied any meaningful relief to the average American.

Several Republicans have raised the case of United States v. Kithcart. They incorrectly suggest that in Kithcart, Judge Alito ruled in favor of an African American in a racial profiling case. Mr. Kithcart was pulled over by the police because he was African American and searched and arrested. When the case came before Judge Alito, he sent it back to the trial court to give the government a second chance to prove that the stop and search of an African American were constitutional and were not motivated by race. Judge McKee dissented from the remand saying, "just as this record fails to establish that Officer Nelson had probable cause to arrest any Black male who happened to drive by in a black sports car, it fails to establish reasonable suspicion to justify stopping any and all such cars that happened to contain a Black male." When the case came back to Judge Alito on appeal, Judge Alito upheld the search and affirmed the conviction. So while he remanded the case back to the trial court, he then upheld the search and conviction in his final decision and afforded Mr. Kithcart no relief.

Judge Alito's supporters have pointed to Fatin v. INS as an example of a case in which Judge Alito sided with powerless immigrants and did not defer to the Government. This is another bad example because he ultimately ruled against the immigrant, Parastoo Fatin, and she was deported.

Ms. Fatin was an Iranian woman whose family had opposed the Ayatollah Khomeini and who had come to the United States as a student. She was fighting deportation and requested asylum, arguing that she would be subjected to harsh treatment as a former opponent of Iranian regime, as someone who did not practice a strict form of Islam, and as a woman—who would have to wear a veil and live under great restrictions in Iran. As his supporters have noted, Judge Alito ruled in the case that gender-based persecution could be a basis for asylum. But Judge Alito went on to rule against Ms. Fatin anyway. So he denied her petition for review and sent her on to be deported.

Judge Alito and Republican Senators seeking to bolster Judge Alito's record cited Leveto v. Lapina as an example of a case in which he protected the rights of individuals against government intrusion. It is telling about Judge Alito's record in the area of individual rights protection that in a case he trumpeted for his protection of the rights of individuals, he threw the Levetos out of court and denied them any remedy.

The facts of this case are egregious. In the course of an IRS tax fraud investigation of the Levetos, armed agents "rushed" Dr. Leveto at the veterinary hospital where he worked when he arrived at 6:30 a.m., patted him down, and then held him in a small room for over an hour, not allowing him to speak to anyone or make any calls. They then accompanied Dr. Leveto to his home where they patted down Mrs. Leveto, who was still in her nightgown, and then detained and interrogated her for 6 hours.

Meanwhile, other agents took Dr. Leveto back to the hospital where they held him in a closed room for 6 more hours. During this 6 hours, he was not permitted external communications, was accompanied on bathroom breaks, and was interrogated without Miranda warnings, while other agents searched the hospital. During the course of the search IRS agents sent hospital employees home and turned away clients in the parking lot, informing them that the hospital was closed until further notice.

Despite acknowledging numerous violations, Judge Alito dismissed the Levetos' appeal and their case based on "uncertainty" in the case law, and threw them out of court.

Supporters of Judge Alito have cited the case of Brinson v. Vaughn as an example of a case in which Judge Alito sided with a victim of discrimination, reversing a conviction because Black jurors had been improperly excluded from the jury pool. This was an easy case given the extraordinary facts involved. In Brinson, the prosecutor dismissed 13 of 14 prospective Black jurors and had previously made a training video in which he urged prosecutors to dismiss Black prospective jurors from the jury pool. This does not reassure me about my concern that Judge Alito will only give credence to claims of discrimination in extreme cases. Indeed, in Riley v. Taylor, when an en banc majority of the Third Circuit found that Black jurors had been improperly dismissed from the jury pool, Judge Alito disagreed and denigrated the defendant's use of statistical evidence to show improper exclusion of Black jurors, comparing it, as has been previously noted, to a statistical analysis of the disproportionate number of recent left-handed U.S. Presidents.

The role of courts should be to protect and make sure there is a fair forum for the powerless and even the unpopular. This is the reason the courts are the one undemocratic branch. I am concerned that rather than demonstrating an understanding of the effect of the law on the lives of real Americans as Justice O'Connor has shown, Judge Alito would close the courthouse doors to those Americans most in need of the courts to protect their rights.

In the next few years, the Supreme Court will hear many challenges to political entrenchment. Critical provisions of the Voting Rights Act, VRA, Congress's part in guaranteeing equal access to voting, the fundamental machinery of democracy, were upheld by the Warren Court in South Carolina v. Katzenbach, 1966, by an 8 to 1 vote. The VRA will need to be reauthorized before it expires in 2007. Subsequent court challenges will be critical to fairness to minority voters.

The Supreme Court will soon hear a challenge to Texas Republicans' partisan mid-Census redrawing of congressional districts. There are questions before the Supreme Court this term about campaign finance laws. We are seeing exposed in the news every day a culture of corruption through money and access that has taken root in Washington, by which one political party has sought to entrench itself as a permanent majority.

The cost to Americans is high if we in the Senate get it wrong. I go back to the central question I asked at the outset of Judge Alito's hearing: Will this nominee serve to protect the fundamental rights and liberties of all Americans? Based on Judge Alito's record, I have no confidence that he will provide a check against either an overreaching President or entrenched political power, nor that he will serve to protect Americans' fundamental rights and liberties.

I thank the distinguished Presiding Officer.

I yield to the distinguished Senator from California.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from California.

Mrs. FEINSTEIN. I thank the ranking member of the Judiciary Committee and I thank the Chair.

I come to the floor to offer my reasons for opposing Judge Alito. Let me begin with this: If the Supreme Court's decisions were simply mathematical computations of legal points, our job would be easy and all of the Court's decisions would be 9 to 0. But the legal philosophy and views of each individual Justice do play a role in decisionmaking on the Court. Perhaps not the majority of the time, when the question before the Court is not controversial; but certainly when the question is controversial and divisive, legal views and philosophies do play a role.

We just had a recent example. Last week the Supreme Court upheld Oregon's Death with Dignity Act by a 6-to-3 decision in a case called Gonzales v. Oregon. When then-Judge Roberts came before the Senate, I and others questioned him on his end-of-life views. He then replied that the Government should not enter the arena. When discussing my point that he would not want the Government telling him what to do, he said:

> The basic understanding that it's a free country and the right to be left alone is one of our basic rights.

He gave us the impression that he believed there was, in fact, a right to die. However, just last week, Chief Justice Roberts joined the two most conservative members of the Court, Justices Scalia and Thomas, in an opinion that, if it had carried the day, would have allowed the administration to invalidate the end-of-life initiative twice supported by Oregon voters in State elections, once when it was enacted and once when it was reaffirmed.

Secondly, history reveals that legal views and philosophies have been the rationale for the rejection of at least 12 Presidential nominees for the Supreme Court. Members on the other side of the aisle often say these legal views and philosophies are not a bona fide consideration. But what I say is these have been used as the rationale for the rejection of at least a dozen Presidential nominees in history.

Let me mention a few of them. It began with President George Washington when he nominated John Rutledge in 1795. Rutledge was rejected by a vote of 10 to 14 because he made a speech denouncing the Jay Treaty between the United States and Great Britain.

Fifteen years later, President James Madison's nomination of Alexander Wolcott was rejected by the Senate by a vote of 9 to 24, in part, based of his policies while a U.S. collector of customs and his actions strongly enforcing controversial embargoes.

President Andrew Jackson, in 1835, nominated Roger Taney to the Supreme Court. He had served as the Secretary of Treasury, and he removed the Government's deposits from the Bank of the United States. Senators who were opposed to that move offered a motion postponing his nomination indefinitely, which passed 24 to 21.

President James Polk, nominated George Woodward in 1845, and allegations arose that as a delegate to the 1837 Constitutional Convention, he introduced an amendment that would have prohibited any foreigners who came to Pennsylvania after 1841 from voting or holding office.

President Ulysses S. Grant nominated Ebenezer Hoar in 1869, who had served as Attorney General. Senators were upset by the fact that he recommended nominees to the circuit courts without taking into consideration Senators' preferences. His nomination was defeated 24 to 33.

The same thing happened in 1881, when President Rutherford Hayes nominated Stanley Mathews. He was defeated because of his close ties to railroad and financial interests.

President Warren Harding, in 1922, nominated Pierce Butler. His nomination was blocked from consideration on the Senate floor because of an alleged procorporation bias and his previous advocacy for railroad issues that were coming before the Court.

In 1930, President Herbert Hoover's choice of John Parker was rejected because he made statements opposing the participation of African Americans in politics and because of his labor record while chief judge of the U.S. Fourth Circuit Court of Appeals.

Marshall Harlan II was nominated by Dwight Eisenhower in 1954. The nomination was never reported out of committee because some members felt he was "ultraliberal" and hostile to the South and dedicated to reforming the Constitution by "judicial fiat."

In 1968, President Lyndon Johnson nominated Abe Fortas to be elevated to Chief Justice of the Supreme Court. His nomination was defeated after the Senate failed to invoke cloture 45 to 43. One Senator is reported as saying that Fortas' "judicial philosophy disqualifies him for this high office."

It went on for two of President Nixon's nominees. Clement F. Haynsworth, Jr. was rejected in 1969 by a vote of 45-55. At that time, five senators issued a joint statement that expressed "doubts about his record on the appellate bench," and one senator opposed the nomination on the basis of his record on civil rights issues.

The other, G. Harrold Carswell, was rejected by a vote of 45-51, in part based on his judicial philosophy. A statement issued by four senators at the time stated they opposed his nomination because his "decisions and his courtroom demeanor had been openly hostile to the black, the poor and the unpopular."

And, of course, one of President Ronald Reagan's nominees, Judge Robert Bork, whose views and legal philosophy were of great concern. Judge Bork believed Americans had no constitutional right to use contraception. He argued that in guaranteeing one man, one vote, the Court "stepped beyond its boundaries as an original matter." And he had a broad view of Executive power. He once asserted that a law requiring the President to obtain a court order before conducting surveillance in the United States, and against U.S. citizens was "a thoroughly bad idea and almost certainly unconstitutional."

Most recently, White House Counsel Harriet Miers was withdrawn even before consideration by the Judiciary Committee due to the rightwing's objections.

So it is abundantly clear that judicial philosophy and legal views have been evaluated by senators from both sides of the aisle throughout history, and they are valid reasons to reject a nominee for the U.S. Supreme Court.

To now argue that evaluating one's judicial philosophy is setting a new precedent is simply turning a blind eye to history. So while none of us can predict how any person will act in the future, we do have to thoroughly consider information available that provides insights into a nominee's judicial philosophy and legal reasoning. I want to make clear.

Secondly, many of my colleagues on the Judiciary Committee have argued that the nomination of Justices Ginsburg and Breyer have set a precedent for how Supreme Court nominations should be handled, that no one questioned their judicial philosophy, and that they swept through by large votes. I want to take a moment to answer that.

The fact of the matter is that there was real advice and consent in the nominations of Justices Ginsburg and Breyer. Senator HATCH, in his book "Square Peg: Confessions of a Citizen Senator," who was then the ranking member of the Judiciary Committee, gave the following account of the Ginsburg nomination:

> It was not a surprise when the President called to talk about the appointment and what he was thinking of doing.

So President Clinton told Senator HATCH what he was thinking of doing. Senator HATCH goes on:

> President Clinton indicated he was leaning toward Bruce Babbitt . . . Clinton asked for my reaction.
>
> I told him the confirmation would not be easy. I explained to the President that although he might prevail in the end, he should consider whether he wanted a tough, political battle over his first appointment to the Court. I asked whether he had considered Judge Stephen Breyer of the First Circuit Court of Appeals or Judge Ruth Bader Ginsburg of the District of Columbia Court of Appeals.

Both were confirmed with relative ease. So since the ranking member of the Judiciary Committee—the minority ranking member—had recommended these nominees, it is not surprising that they moved through the confirmation process relatively easy. I am confident that if President Bush had decided to nominate any of the candidates suggested by the current ranking member of the committee, Senator LEAHY, the process could have been smooth this time as well. But he didn't. With that said, I also believe that today is a very different day than the time when Justice Ginsburg and Justice Breyer were before the Senate. Let me point out some of the differences. There was not the polarization that there is within America today. There was not the clear effort to upset the current balance of the Court and move it far to the right.

When Justices Ginsburg and Breyer were before the Senate, it had been more than 50 years since any statute had been struck down by the Supreme Court on commerce clause grounds.

It wasn't actually until April 26, 1995, after both Justices had been confirmed, that the Supreme Court began to revisit an area that had been well settled since the New Deal in the mid-1930s in its decision on a case known as Lopez. In U.S. v. Lopez, the Court struck down the Gun-Free School Zones Act that had been passed by the Congress, which essentially prohibited the possession of a firearm within a thousand feet of a school. It was this decision that signaled the beginning of the Rehnquist Court's federalism "revolution." In the next decade, from 1995 to 2005, the Rehnquist Court struck down all or portions of 30 congressionally enacted laws, 10 of them on federalism grounds. Here they are on this chart. I will point out some of them to you:

The Indian Gaming Regulatory Act, the Federal Election Campaign Act, the Cable Television Consumer Protection and Competition Act, the Religious Freedom Restoration Act, the Communications Decency Act, the Brady Handgun Violence Prevention Act, the Water Resources Development Act, the Coal Industry Retiree Health Benefit Act, section 316 of the Communications Act, the Fair Labor Standards Act, the Age Discrimination in Employment Act, the Violence Against Women Act, the Telecommunications Act, the Americans with Disabilities Act, section 2511 of the Omnibus Crime Control and Safe Streets Act, the FDA Modernization Act, the Child Pornography Act, the Bipartisan Campaign Reform Act, the Child Online Protection Act and on and on and on, using various sections of the Constitution to hold impermissible congressional actions in these areas.

Now, this is a major thrust of the Court, and it is a serious thrust. It is one that this body and the other body ought to understand because, with these actions, the Court was essentially declaring that the Congress cannot legislate in many important areas, areas that are very important to me and to my constituents.

When Justice Ginsburg and Justice Breyer were before the Senate, we were not in the midst of a war with Iraq, nor was our country faced with a war on terror that could last for our lifetime and, for all we know, for our children's lifetime. Few would have predicted that the President would authorize the use of torture in defiance of the Geneva Convention and the Convention Against Torture and Military Law: that the President would argue that he had inherent plenary authority to detain Americans without due process: and that the President would authorize the electronic surveillance of Americans in direct violation of the law, a law passed by this body, the other body, and signed by President Carter in 1978.

In addition, when Justices Ginsburg and Breyer were before the Senate, Planned Parenthood v. Casey had just recently been decided. Casey made it clear that Roe v. Wade remained controlling precedent; it affirmed a woman's constitutional right to privacy; it clarified that States have an interest to protect viable unborn life; and it held that many State laws relating to abortion were valid.

With the Casey decision, there was a general acceptance that a woman's right to choose was secure. There had been a clear and direct challenge to Roe—as a matter of fact, it has been challenged at least three dozen times—and the Court had affirmed in Casey Roe's central holding.

Finally, as I noted when discussing Senator HATCH's book "Square Peg," at the time Justices Ginsburg and Breyer were before the Senate, we didn't have an administration that was bent on moving the Court dramatically in one direction. Yet today, when we are evaluating a nominee to replace Justice Sandra Day O'Connor—a pivotal Justice, a Justice who was the fifth vote in 148 out of 193 decisions—the President continues to assert that he will only nominate those who view the Constitution through a lens of strict constructionism and originalism.

I think we must remember what these terms mean. I want to take a moment to do so. It is widely accepted among legal scholars that strict constructionists and originalists look to evaluate the Constitution based on what the words say as written and what the Framers intended those words to mean at the time they were written.

If we examine what these terms could mean when applied to actual constitutional questions today, it becomes clear why most legal scholars view the Constitution as a living document, able to adjust to the differences of the country today. Remember, in colonial times, there were 13 colonies and around 3 million people. Today we are close to 300 million people and we are 50 States.

Justice Brennan wrote in 1986 about this, and I quote him:

> During colonial times, pillorying, flogging, branding, and cropping and nailing of the ears were practiced in this country. Thus, if we were to turn blindly to history for answers to troubling constitutional questions, we would have to conclude that these practices would withstand challenge under the cruel and unusual clause of the eighth amendment.

He wrote that in the Harvard Law Review in December of 1986.

If an originalist analysis were applied to the 14th amendment, women would not be provided equal protection under the Constitution, interracial marriages could be outlawed, schools could still be segregated, and the principle of one man, one vote would not govern the way we elect our representatives.

My concerns about confirming a strict constructionist or originalist to the Court are best demonstrated by what this legal reasoning could mean in three important areas: congressional authority to enact legislation, checks on Presidential powers, and individual liberty and privacy interests. I want to talk about these for a minute in the context of Judge Alito.

It is my conclusion that Judge Alito would most likely join Justices Thomas and Scalia in the originalist and strict constructionist interpretations of the Constitution. And those are the interpretations that have been used by the Rehnquist Court in the past decade to overthrow all or portions of the 30 laws to which I just referred. I have come to this conclusion based on Judge Alito's record in the Reagan administration and on the bench.

In 1986, Congress passed what seemed to me a pretty simple law. It was called the Truth in Mileage Act. It basically forbid anyone from tampering with odometers in automobiles. As a deputy at the Office of Legal Counsel, Judge Alito recommended that President Reagan veto this bill because it violated principles of federalism.

Judge Alito also drafted a statement for President Reagan to make when he vetoed the bill, asserting "it is the States and not the Federal Government that are charged with protecting the health, safety, and welfare of their citizens."

It is the States, not the Federal Government. The implication is the Federal Government does not have a role in protecting the health, safety, and welfare of our citizens.

Judge Alito's restricted views of congressional authority later surfaced in his decisions while on the Third Circuit. For me, a prime example is the case of U.S. v. Rybar. This case is significant because it was a case where Congress clearly had the authority to enact legislation, and yet Judge Alito wrote a separate opinion, a dissent, to argue against the law. He was the sole dissenter, and he was outvoted.

In his opinion, he used a legal technicality that would have thrown out the conviction of a man who had illegally possessed and sold fully automatic machine guns in the State of Pennsylvania.

In reaching his conclusion, he seemed to ignore past precedents, clearly establishing congressional authority to regulate firearms, such as the Miller case of 1939.

He also dismissed previous statutes that had already outlined the obvious impact guns have on interstate commerce, even when sold within a State. To me, that was a major indication of his thinking.

The facts in this case make this point even more obvious: one gun was from China, the other was a military M3 submachine gun made during World War II by General Motors. Clearly, both guns had traveled through interstate commerce before reaching Pennsylvania where the arrest took place.

Judge Alito's views on congressional power could also limit Congress's ability to protect the environment. In the next few years, the Supreme Court is likely to hear a number of cases challenging Congress's authority to pass laws protecting the environment, such as the Clean Water Act and the Endangered Species Act. In fact, later this term, the Supreme Court will hear two cases. One is Carabell v. Army Corps of Engineers, and the other Rapanos v. U.S.

The issue in both is whether the Congress has the authority to regulate nonnavigable waterways under the Clean Water Act. Both are brought to the Court on the basis that Congress could not regulate environmental control in nonnavigable waterways. If the Supreme Court were to strike down this provision, the Federal Government would lose its primary tool to protect wetlands.

If confirmed, Judge Alito could be the decisive vote in these environmental cases, and his record on the environment, in this regard, is not reassuring. Let me give an example.

In the case Public Interest Research Group v. Magnesium Elektron, it was undisputed that a chemical company had committed 150 different violations of the Clean Water Act by illegally dumping chemicals into a river. The plaintiffs in the case were members of an environmental group and had stopped using the river because of the pollution.

Judge Alito voted in a 2-to-1 decision to throw the case out. He adopted a narrow reading of both the Clean Water Act and the legal concept of standing. In doing so, his conclusion would have gutted the provision that allows individual citizens to enforce the law.

Three years later, the Supreme Court in a 7-to-2 decision in Friends of the Earth v. Laidlaw rejected Judge Alito's expansive view of the standing requirement, making it easier for individuals to sue to stop violations of the Clean Water Act.

So this is a serious concern—Clean Water Act, Clean Air Act, Endangered Species Act. Our ability to legislate in these areas is very much at stake with this judge.

Judge Alito's views on the scope of Presidential powers are deeply concerning to me at this point in American history. The Constitution gives both the President and the Congress critical roles in the defense of our Nation. The Constitution specifically provides in article I, section 8:

> The Congress shall have Power To . . . provide for the common Defense and general Welfare of the United States . . .
>
> To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;
>
> To raise and support Armies . . .
>
> To provide and maintain a Navy;
>
> To make Rules for the Government and Regulation of the Land and Naval Forces . . .
>
> To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;
>
> To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Services of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress . . . and
>
> To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers. . . .

In other words, we are responsible to give the powers to the President for him to execute in these areas. That is a very important article, and it is the heart of congressional authority and the balance of power at a time of crisis.

Our national security and constitutional liberties suffer when either branch oversteps its bounds. Today our Nation is in a very different place than it was 10 years ago. We face new challenges to our constitutional framework of checks and balances.

This President has asserted unprecedented authority in many areas which has raised profound constitutional questions. They include:

May the President authorize torture?

Does the Constitution permit the President to order the arrest and detention of individuals inside the United States without due process or access to counsel?

Does the Constitution allow the President to violate laws based on inherent plenary power?

Is it constitutionally permissible for the President to authorize electronic surveillance of Americans without a warrant in violation of Federal law?

Given the critical importance of these questions to both our national security and our constitutional democracy, I asked Judge Alito a variety of questions to get a sense of his vision of the balance of power between the President, the Congress, and the courts.

Rather than engage in a productive discussion about the issues, he simply repeated obvious truisms, such as "nobody is above or below the law," or agreed to the unsurprising proposition that the Constitution and the laws of the Nation are supreme. He did not answer whether the President had to follow these laws.

His answers were inadequate, so I was left to evaluate his views based on his prior record.

At the Department of Justice, Judge Alito was part of the effort to press for expanded Presidential power, and there is no doubt about that.

While serving in the Department of Justice, he wrote a memo on Presidential signing statements, and here is what he argued:

> From the perspective of the executive branch, the issuance of interpretive signing statements would . . . increase the power of the Executive to shape the law.

"The power of the Executive to shape the law." Do we believe this is correct, or do we believe that the ability to make and shape the law rests with the Congress, and the President can sign it or veto and indicate his reasons for so doing, but not shape the law to his specific demand? Then when speaking before the Federalist Society in November of 2000, Judge Alito expressed his support for the unitary executive theory. In 1988, this unitary executive theory was rejected by the Supreme Court in a decision called Morrison v. Olson. It was rejected overwhelmingly. The majority was 7 to 1. The opinion was offered by Justice Rehnquist. The Court rejected Justice Scalia's argument that the independent counsel must be under the executive branch and report to the President. That took care of what is called the theory of the unitary executive.

Yet more than a decade later, Judge Alito declared:

> I still think that this theory best captures the meaning of the Constitution's text and structure.

Clearly, this is a statement for expanded Presidential authority and for the unitary executive.

Judge Alito's vague answers at the hearing, coupled with the specific statements made a few years ago, lead me to conclude that he is a strong proponent of expanded Presidential authority and that he is not committed to a proper system of checks and balances, which brings me to my third point.

If one is pro-choice in this day and age, with the balance of the Court at stake, one cannot vote to confirm Judge Alito. I, for one, really believe there comes a time when you just have to stand up, particularly when you know the majority of people stand as you do. And I don't make that statement simply based on my gut instincts. It is reflected in the polls we see.

A Gallup poll released earlier this week, January 24, stated that 63 percent of Americans do not want to see Roe overturned. And that is backed up by other polls.

A CNN/USA Today/Gallup poll released earlier this month, January 9, said a majority of Americans, 56 percent, do not believe Judge Alito should be confirmed if his confirmation hearings reveal he would vote to overturn a woman's right to have an abortion.

Around here when it comes to the issue of abortion the tail wags the dog. The minority is the dominant voice, while the majority of people out there feel very differently on the question. A majority of people, it is clear, in the United States of America believe that a woman should have certain rights of privacy—privacy that is limited by the State's interest to protect potential life, but a certain right to privacy. If you know this nominee is not going to respect those rights but holds differing views, then you have to stand up.

I am very concerned about the impact Judge Alito could have on women's rights, including a woman's right to make certain reproductive choices as limited by State regulation.

When the issues of Roe and precedent came up during the hearings for Chief Justice Roberts, he engaged in a conversation with me and other Senators. He acknowledged that Roe is well settled. He discussed the different factors the Court considered when Casey affirmed the central holding of Roe. In fact, during Judge Alito's hearings, I read part of the Roberts transcript to him and I gave him an opportunity to review it. I then asked him to tell me where he differed from Chief Justice Roberts and if he, too, believed Roe is well settled. He responded this way:

> I think that depends on what one means by the term well settled.

That was after reading an explicit and full description of what the now Chief Justice had said before us. His response clearly indicated, at least in my view, that he didn't regard precedent that highly.

I next tried to talk to him about his legal views and what he meant when he said "precedent is not an inexorable command." I specifically stated:

> Those are the words that Justice Rehnquist used arguing for the overturning of Roe. So my question is did you mean it that way?

The most Judge Alito would say is this:

> The statement that precedent is not an inexorable command is a statement that has been in the Supreme Court case law for a long period of time. And sitting here, I can't remember what the origin of it is. . . .

In providing nothing more than this for an explanation, Judge Alito spoke volumes about his view on Roe. I listened carefully to the testimony of many legal scholars, including professors in constitutional law. One I want to quote, and I quoted it in the committee as well because it meant a great deal to me, is a professor of constitutional law at Harvard, Professor Larry Tribe. He said that, with the addition of Judge Alito:

> The Court will cut back on Roe v. Wade, step by step, not just to the point where, as the moderate American center has it, abortion is cautiously restricted, but to the point where the fundamental underlying right to liberty becomes a hollow shell.

It is important to remember that Roe, as modified by Casey, is in fact a moderate compromise that considers both sides of the question. Together, Roe and Casey protect women's privacy interest but also allow States to pass regulations to restrict that interest postviability.

If you look carefully at Judge Alito's decisions in three cases—Planned Parenthood v. Casey, Blackwell v. Knoll, and Planned Parenthood v. Farmer—you will see in his writing where serious questions of his views arise. While sustaining Roe in these cases, Judge Alito's opinions also raised serious questions indicating if Judge Alito was not bound by precedent, or there was a gray area, he would weaken Roe by narrowly interpreting what constitutes an undue burden. Since in his dissent in Casey, Judge Alito argued that spousal notification was not an undue burden—a position rejected by the Supreme Court.

Judge Alito may have a different interpretation of when life begins that could dramatically alter the Court's rulings and impact women's access to contraception. This concern was highlighted when in Alexander v. Whitman, Judge Alito wrote a separate opinion to clarify that he disagreed with the Court's "suggestion that there could be 'human beings' who are not 'constitutional persons.' "

Judge Alito may not agree with the Supreme Court's holding in Roe that a woman's health must be protected for a law to be constitutional. This issue was raised in Planned Parenthood v. Farmer where Judge Alito agreed with the decision of the Court to strike down a New Jersey abortion law. However, he asserted that the Court's opinion, including the discussion about the lack of a health exception, was "never necessary."

In addition, I was deeply troubled by Judge Alito's 1985 job application. Let me tell you where he was in 1985. He was not a youngster. Senator DURBIN pointed this out in the Judiciary Committee. He had already clerked at a New Jersey law firm. He had already clerked for a Federal court of appeals judge. He had spent 4 years as an assistant U.S. attorney, and he had spent 4 years as Assistant to the Solicitor General in the Department of Justice, and he had argued 12 cases on behalf of the Federal Government before the Supreme Court and numerous other cases before the Federal courts of appeals. So this was not some naive ingenue coming down the pike, trying to get a job in the administration. He filled out the job application and gratuitously added these words, that he believed "the Constitution does not protect a right to an abortion." He was not asked the question; he simply added those words. Why would you do that if you have argued 12 cases before the Supreme Court, if you spent 4 years as an assistant U.S. attorney, if you have argued before Federal circuit courts, you have clerked for judges—why would you do it unless it was a deeply held view of yours that you wanted to express?

I asked him about this privately in my office and he said that he was attempting to get a political appointment. But he also told me that the application speaks for itself and he did not disavow what he wrote. That spoke volumes about where he is today. It is pretty clear to me that, given a chance, he would vote to overthrow Roe.

He also wrote in that same application:

> In college, I developed a deep interest in constitutional law, motivated in large part by disagreement with Warren Court decisions, particularly in the areas of criminal procedure, the Establishment Clause, and reapportionment.

The Warren Court's reapportionment decisions established the principle of one man, one vote, and they stopped the abhorrent practice of diluting votes by making some voting districts larger than others. For example, prior to these decisions some voting districts in the same State were 41 times the size of others.

As an attorney with the Solicitor General's Office of the Department of Justice, Judge Alito argued three affirmative action cases, each time urging the Supreme Court to strike down affirmative action programs. The arguments he made in these cases are contrary to the Supreme Court's subsequent decision in Grutter v. Bollinger, another 5-4 decision where Sandra Day O'Connor was the decisive fifth vote. In Grutter, the Court held that the University of Michigan and other colleges and universities receiving Government funding could consider race, ethnicity, and gender in school admissions policies in order to encourage a diverse student body.

Judge Alito encouraged the Senate to judge him on his 15-year record on the Third Circuit. An examination of this record reveals a judge who tends to rule against civil rights more often than his colleagues. A review of Judge Alito's opinions by Yale Law School professors concluded that in the area of civil rights law, he consistently used procedural and evidentiary standards to rule against female, minority, age, and disability claimants. Similarly, a review of 311 published opinions by Knight-Ridder found that, although his opinions were rarely written with obvious ideology, he seldom sided with an employee alleging discrimination.

Here again, there is a case, Riley v. Taylor, that is particularly troubling. This case took place in Delaware, where prosecutors had excluded every African-American juror in all four of its first-degree murder trials that had taken place in a Delaware county that year. A majority of the Third Circuit, sitting en banc, concluded that excluding every Black juror in four State murder trials was evidence of race-based discrimination. I would conclude that, too. The Court noted that it is not "necessary to have a sophisticated analysis by a statistician to conclude that there is little chance of randomly selecting four consecutive all white juries."

Judge Alito dissented. In contrast, he argued that "there is little chance of randomly selecting left-handers in five out of six Presidential elections. But does it follow that the voters cast their ballots based on whether a candidate was right- or left-handed?"

This dissent demonstrates a failure to grasp the critical point. Left-handed individuals have not suffered the long history of discrimination in this country the way African Americans have. I think to use that, as a Federal appellate court judge, as a bona fide argument to say that you can have four consecutive murder trials in a county and exclude every African American from the jury shows you have a mode of thinking that is not in the mainstream of American legal thinking.

So, bottom line, based on all of the information before me, I have decided to vote against Judge Alito's confirmation. Mine is a vote that is made with the belief that a person's legal reasoning and judicial philosophy, especially at a time of crisis, at times of conflict, and at times of controversy, do mean a great deal. It is my belief that this nominee's legal philosophy and views will essentially swing the Court far out of the mainstream, toward legal philosophy and views that do not reflect the majority views of this country. I will vote no. I urge my colleagues to vote no.

I ask unanimous consent to have printed in the RECORD a list of California organizations that oppose Judge Alito's confirmation and a set of letters from pro-choice organizations following my full remarks, and I yield the floor.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CALIFORNIA ORGANIZATIONS THAT OPPOSE JUDGE ALITO'S NOMINATION

ACLU of Northern California; ACLU of Southern California; AFSCME California; Alliance for Justice; Asian Pacific Law Caucus; Asian Pacific American Legal Center of Southern California; California Church Impact; California National Organization for Women; California Nurses Association; California State Conference of NAACP Branches; Coalition for Economic Equity; California Women's Agenda; Committee for Judicial Independence; Disability Rights Education and Defense Fund; Ella Baker Center; Equal Justice Society; Equal Rights Advocates; Greenlining Institute.

Lawyers Committee for Civil Rights of the San Francisco Bay Area; Mexican American Legal Defense and Educational Fund; MoveOn.org; NARAL Pro-Choice California; NAACP Legal Defense and Educational Fund; National Council of Jewish Women California; National Health Law Program; People For the American Way West; Planned Parenthood Affiliates of California; Planned Parenthood Golden Gate; National Lawyers Guild California; Planned Parenthood Los Angeles; Progressive Jewish Alliance; Public Advocates Inc.; Rainbow Push California; SEIU California State Council; Sierra Club; Women's Employment Rights Clinic; and Women's Leadership Alliance.

CATHOLICS FOR A FREE CHOICE,
Washington, DC, January 11, 2006.

Senator ARLEN SPECTER,
Chairman,
Senator PATRICK LEAHY,
Ranking Member, U.S. Senate Committee on the Judiciary.

DEAR CHAIRMAN SPECTER, RANKING MEMBER LEAHY AND MEMBERS OF THE JUDICIARY COMMITTEE: I write to you today as president of Catholics for a Free Choice, an organization that shapes and advances sexual and reproductive ethics that are based on justice and reflect a commitment to women's well being, to express our opposition to the nomination of Judge Samuel A. Alito Jr. to the Supreme Court of the United States.

Our decision to ask the U.S. Senate Committee on the Judiciary to reject this nomination and not to send this nominee for an up-or-down vote by the entire Senate is not one that we take lightly. Indeed, Catholics for a Free Choice, after examining his record an carefully following Chief Justice John Roberts' confirmation hearing did not oppose his nomination.

Based on public documents released by relevant government agencies and from published interviews and statements with and from the nominee himself during the first days of the confirmation hearing, it is evident that Judge Alito is a vastly different nominee from Chief Justice John Roberts. These differences, however are not only manifested in judicial philosophy, but sadly in critical aspects of his character and integrity.

Our reasons for oppose this nomination go far beyond Judge Alito's personal and legal opposition to reproductive health services including abortion—but center on the underlying principles of the qualifications necessary to serve on the Supreme Court.

In our view, serving on the highest court in the land takes a fundamental commitment to the individual rights enshrined in the Constitution. These include the rights of women to make decisions about their bodies; the rights of employees to seek judicial relief when they feel they have been discriminated against based on race or gender; a belief in the "one person, one vote" doctrine that has been a pillar of American democracy; and an understanding that all citizens of the United States have equal standing under the law regardless of which religious tradition they identify with, if any. Throughout his time on the federal bench, Judge Alito has not shown an allegiance to these principles and has in fact, in many cases, shown hostility to them.

Equally important is the integrity and character of the mail or woman being nominated. This integrity includes a consistent view of the law and a guarantee that the principle espoused by the nominee are based on sound legal reasoning and conscience—and not based upon which political appointment or job they are applying for at the time. Judge Alito has an unfortunate mate and well-documented history of changing his positions on key personal rights based upon which position in government he is being considered for. To us, this suggests a nominee whose values in public service are not grounded in principles, integrity and respect for individual rights, but in the politics and personal ideology of the moment.

Judge Alito has also demonstrated through his words and his actions that what he pledges during confirmation hearings does not necessarily reflect his actions once confirmed and behind the bench. During his 1990 confirmation hearings for the U.S. Court of Appeals for the Third Circuit, Alito promised to rescue himself from any cases involving Vanguard Group Inc. and Smith Barney Inc., companies which have handled some of his personal investments. Despite this promise, Alito ruled on a case involving Smith Barney in 1996 and Vanguard Group in 2002. When pressed about this major lapse, Alito responded that the 1990 promise applied only to his first few years on the bench. This is a clearly troubling example of either a major ethical lapse on the part of Judge Alito or yet another example of the nominee saying one thing to get the job, and then playing by different rules when he wins confirmation.

Of critical importance to Catholics for a Free Choice is the outright hostility to and the politicization of reproductive rights by this nominee. Unlike Chief Justice Roberts who was well known to be personally opposed to abortion before he was confirmed to the Court, but pledged to separate those views and respect the law of the land nominee Alito has made both his personal and legal views on this subject a hallmark of his career advancement.

Throughout his career, Judge Alito has shown that he believes—both personally and legally—that the right to choose, to make decisions about the most private and profound aspect of a woman's life, i.e. when and whether to have children, is not protected under the Constitution. There are several examples of this, including his 1985 application letter to then-Attorney General Edwin Meese III in which Alito wrote that he was, "particularly proud" of his personal contributions to legal views endorsed by the administration including "that the Constitution does not protect a right to an abortion," and his integral role as an attorney in the Reagan Justice Department where he sought "opportunity to advance the goals of overruling Roe v. Wade and, in the meantime, of mitigating its effects.

We were not convinced by his claim during his confirmation hearings that he has an open mind on the right to choose as embodied in Roe. Given his belief that the Constitution does not protect a right to an abortion and his personal view that abortion is morally untenable, it would be foolhardy to accept his claim of open mindedness.

During opening statements of the Alito hearings, Senator Edward Kennedy asked the defining questions for the entire hearings. He began, "So the question before us in these hearings is this: Does Judge Alito's record hold true to the letter and the spirit of equal justice? Is he committed to the core values of our Constitution that are at the heart of our nation's progress? And can he truly be evenhanded and fair in his decisions?"

Through his words, his legal actions and his incontrovertible actions to date, the simple answer is no. Judge Alito cannot be counted on to issue rulings and to write opinions based upon sound legal philosophy and the proper consideration of past landmark rulings by the Court. Judge Alito cannot be counted on to protect the individual rights and freedoms of Americans who count on the federal judiciary to protect them from undue burdens imposed by ideologically driven governments and administration officials. And lastly, Judge Alito cannot be counted on to deliver justice in a manner that does not commingle previously stated strongly held personal and legal viewpoints that will be of serious detriment to members of our society.

I urge you to vote no on this nomination and by doing so to save the rights to privacy and the individual freedoms and choice to which all Americans—regardless of race, gender, religion or sexual orientation—are entitled.

Sincerely,

FRANCES KISSLING,
President.

NARAL PRO-CHOICE AMERICA,
January 11, 2006.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: On behalf of NARAL Pro-Choice America, I am writing to express our opposition to the confirmation of Samuel Alito to the U.S. Supreme Court. During his career, Alito has consistently demonstrated hostility toward fundamental reproductive rights. If he is confirmed as an Associate Justice on the Supreme Court, women will likely lose critical protections that Roe v. Wade established.

At the Department of Justice in the 1980s, Alito actively worked to limit and ultimately overturn Roe v. Wade. As an assistant to the Solicitor General, he wrote a lengthy, detailed strategy memorandum in which he recommended that the Reagan administration intervene in a significant abortion-related case before the Supreme Court in order to advance the administration's anti-choice agenda. In the memo, Alito detailed his legal strategy to dismantle the protections of Roe v. Wade, while pushing toward the ultimate goal of overturning the landmark decision altogether. He supported even the most intrusive and unreasonable restrictions on reproductive freedom. Perhaps most disturbingly, he saw nothing wrong with the government forcing doctors to tell patients that their use of birth control may cause abortion—an utterly inaccurate statement that defies scientific definitions endorsed by the medical community and the federal government.

Far from claims to the contrary, Alito's work at the Department of Justice was hardly that of a government functionary. According to a then-colleague in the Solicitor General's office, Alito sought out the opportunity to work on the administration's friend-of-the-court brief in the case, the colleague has explained that Alito was instrumental in crafting the brief, providing "the research, the thinking, as well as the legal research and analysis." In application for another job in the Department of Justice, Alito later boasted that he was "particularly proud" of his contribution in the case "in which the government has argued in the Supreme Court that. . .the Constitution does not protect a right to an abortion." He emphasized that this was a "legal position" in which he personally believed "very strongly."

It was my hope that, during his Senate hearings, Alito would explain further these writings and share with senators and the American public whether he still holds these legal opinions about a woman's right to choose. Unfortunately, thus far, he has failed to do so. Alito admitted that his 1985 statement accurately reflects his views at the time, but then flatly, repeatedly, refused to answer whether he continues to believe that "the Constitution does not protect the right to an abortion." Especially given his willingness to state his legal views in other areas, we have no choice but to conclude that he in fact continues to hold this extremely troubling view of women's fundamental freedom, and that he will vote to dismantle and ultimately overturn Roe v. Wade should he be confirmed.

Again, turning back to Alito's career: After his appointment to U.S. Court of Appeals for the Third Circuit, Alito tried, in the single case before him affording an opportunity to shape the contours of reproductive-rights law, to allow states the greatest latitude for restricting women's's right to choose. As a member of the three-judge panel that heard Planned Parenthood of Southeastern Pennsylvania v. Casey before the case went to the Supreme Court, he wrote a dissent in which he voted to uphold every restriction on the right to choose at issue in the case. He argued in favor of a statute that would have forced married women to notify their husbands before seeking abortion care, even though the statute would endanger and coerce women who may fear abuse if forced to notify their husbands. Just a year later, Justice Sandra Day O'Connor cast the decisive vote to strike down the law. Justice O'Connor, along with her coauthors, wrote, "Women do not lose their constitutionally protected liberty when they marry."

Alito and his defenders sometimes cite other: abortion-related decisions he has issued as claimed evidence that his legal philosophy does not predispose him against a woman's right to choose. But the claim is baseless. Planned Parenthood of Central New Jersey v. Farmer was squarely controlled by a Supreme Court case that dealt with a virtually identical statute. Elizabeth Blackwell Health Center for Women v. Knoll was decided on administrative law grounds and tells us nothing about how Alito will rule on a woman's constitutional right to privacy and choice. Regrettably, pro-choice Americans can take no comfort in these decisions. At every meaningful opportunity Alito has sought to restrict our constitutional freedom of choice.

Because Samuel Alito's record is rife with hostility toward women's reproductive freedom, NARAL Pro-Choice America must oppose his confirmation to the Supreme Court. I urge you to vote "no" on this nomination.

Thank you for your consideration.

My best,

NANCY KEENAN,
President.

PLANNED PARENTHOOD, FEDERATION OF AMERICA, INC. AND ACTION FUND, INC.
Washington, DC, January 10, 2006.

Senator ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate.

Senator PATRICK LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate.

DEAR CHAIRMAN SPECTER AND SENATOR LEAHY: On behalf of the Planned Parenthood, the world's largest and most trusted voluntary reproductive health care provider, we urge you to oppose the nomination of Judge Samuel Alito to be Associate Justice of the United States Supreme Court. Planned Parenthood has a long-standing history of working to ensure the protection of reproductive rights, as well as working to advance the social, economic, and political rights of women. Because the United States Supreme Court wields the ultimate and unreviewable power to define the contours of women's rights, the right to privacy, reproductive freedoms, and other basic civil rights, Planned Parenthood believes that justices appointed to this Court must demonstrate an affirmative commitment to safeguarding these fundamental rights and freedoms.

We believe that not only has Samuel Alito, Judge for the Third Circuit Court of Appeals, failed to demonstrate a commitment to protecting these rights, he has revealed himself to be actively hostile toward them. Indeed, his record is one of open antagonism toward constitutional protections for reproductive rights and freedoms. Therefore, PPFA strongly opposes his nomination to the United States Supreme Court.

Alito has made clear on repeated occasions his hostility toward the right to choose. In 1985, while serving as an Assistant to the Solicitor General in the Department of Justice, Alito devised and promoted a legal strategy to bring about the eventual overruling of Roe v. Wade, and, in the meantime, to "mitigate its effects." In an application he submitted to become a Deputy Assistant U.S. Attorney General, he wrote that he was "particularly proud" of his work on cases where the government argued that "the Constitution does not protect a right to an abortion."

His hostility continued as an appellate judge. Indeed, Judge Alito's judicial record reflects and advanced the very legal strategy he laid out years earlier to undermine the right to choose. Judge Alito was the lone dissenter in Planned Parenthood of Southeastern Pennsylvania v. Casey when the case was before the Third Circuit. Writing separately from his colleagues, Alito voted to uphold a state law that forced married women to notify their husbands prior to obtaining an abortion. On review, a majority of the Supreme Court—including Justice O'Connor—emphatically rejected Alito's interpretation as one based on outdated notions of women's role in marriage and society and held the husband notification provision unconstitutional.

Judge Alito's record demonstrates hostility to women's equality in general and reproductive rights specifically. Judge Alito has been nominated to replace Justice Sandra Day O'Connor, who has for over a decade played a crucial role in protecting these fundamental rights. If permitted to take Justice O'Connor's seat on the High Court, Judge Alito would have the power to advance his "closely held" personal view that Roe should be overturned, to work to unravel settled law and to influence adversely the course of the Constitution's basic protections for access to reproductive health care for more than a generation. Judge Alito's record suggests that, if confirmed, he would do just that.

On behalf of the millions of women and men who count on us to protect their reproductive health, we urge you to oppose the nomination of Judge Samuel Alito to Associate Justice and protect the right to choose.

Sincerely,

KAREN PEARL,
Interim President.

[Jan. 11, 2006]

RMC OPPOSES JUDGE ALITO FOR SUPREME COURT

The Republican Majority for Choice (RMC) regrettably announces its opposition to the nomination of Judge Samuel Alito to the Supreme Court.

RMC is an organization whose core mission is to protect the right to choose as outlined in Roe v. Wade and to represent the millions of Republicans who strongly support this right. After much research and analysis of Mr. Alito's own record and statements on this issue of individual freedom it is clear that he is an advocate for further restricting this right.

Judge Alito seems by all measures to be an experienced and capable jurist, but one who is out of step with mainstream Americans on the issue of abortion and maintaining the legal right to choose.

There is no crystal ball to predict how a Justice Alito would rule in future cases; therefore we have closely monitored the confirmation hearings with the hope that Judge Alito would offer some clarifying statements that would allay our concerns about his record. Instead, he side-stepped the issue of whether or not the right to privacy in the Constitution extends to reproductive choice. He avoided answering whether Roe was settled law and existing precedent required a health exception to statutes limiting a woman's access to abortion.

Without such assurances, we can only calculate his judicial philosophy on reproductive rights through the prism of his past actions and statements. As the replacement for the architect of the "undue burden" standard, the stakes are too high for RMC to support an appointee who outlined a blueprint to dismantle that very standard.

The reality is that Judge Alito would not have to vote to overrule Roe in order to be the architect of the denial of a woman's right to choose. He could give lip service to respecting Roe while upholding the numerous legislative efforts to chip away at reproductive freedom. The cumulative result is that Roe v. Wade and its progeny are rendered meaningless.

But Judge Alito's position on choice, however, is not the only disappointment surrounding his nomination. The selection of Judge Alito sends a very clear message from the Bush Administration and the Republican leadership in Congress that they are willing to continue steering the party into a marginalized corner that puts it at odds with most voters.

Sadly, we have come to a point at which average Republicans are beginning to abandon the GOP policy and candidates. We have seen this in the public outcry concerning President Bush's opposition to stem cell research; we saw it last November in the Virginia gubernatorial race, and we will see it again this year if Republican candidates continue to promote extremist views. We pledge to continue our mission to promote common sense solutions to help lessen the incidence of abortion while ensuring that women and families maintain the safe and legal right to choose. We will no longer stand by while women's rights are used as a political soapbox for either party.

NATIONAL ABORTION FEDERATION,
Washington, DC, January 9, 2006.

Senator ARLEN SPECTER,
Chairman, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

Senator PATRICK LEAHY,
Ranking Minority Member, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN SPECTER AND SENATOR LEAHY: On behalf of the National Abortion Federation and our members, I am writing to express our opposition to the nomination of Judge Samuel A. Alito to the United States Supreme Court. If confirmed, Alito would shift the Court to the right and would be a vote to overturn Roe v. Wade, thereby jeopardizing women's lives and health.

Alito has made no secret of his opposition to abortion and a woman's constitutional right to privacy. Alito has argued that the "Constitution does not protect abortion," and has touted his work to overturn Roe v. Wade as an early highlight of his career. Although some have tried to downplay these statements as evidence only of an advocate applying for a job, Alito was not merely expressing his personal views or advocating for a client. Instead, Alito was offering his own legal philosophy and legal opinion that the Constitution does not protect the right to choose.

Additionally, Alito has actively volunteered to work on cases arguing for a reversal of Roe v. Wade. For example, Alito volunteered to draft the legal strategy and framework for the government's brief in Thornburgh v. American College of Obstetricians and Gynecologists. In that case, the government's brief sought to mitigate the effects of Roe for the short term while launching a "back-door assault" on Roe for the long term. Alito's work on the brief was deemed "instrumental" by one of his colleagues and central to the drafting of the brief.

Judge Alito's hostility to Roe v. Wade is not only evident from his tenure as a government lawyer, but also from his work as a judge on the U.S. Court of Appeals for the Third Circuit. While serving on that court, Judge Alito supported restricting access to abortion and limiting the right to privacy in Planned Parenthood v. Casey. His opinion on spousal notification was ultimately rejected by the Supreme Court. In the 2000 case, Planned Parenthood of Central New Jersey v. Farmer, Alito refused to join the majority opinion in striking down a ban on abortion because it lacked an exception to protect women's health. Instead, he wrote his own opinion making clear he joined the decision only because he was required to follow the Supreme Court precedent of Stenberg v. Carhart, a case he no longer would be required to follow as a Supreme Court justice.

Rather than nominating a moderate, consensus candidate to the Supreme Court, President Bush chose to bow to the pressures and demands of his far-right base and nominate Samuel Alito, a jurist whose judicial philosophy is clearly out of the mainstream. The fact that the President chose such an extreme candidate to replace Justice O'Connor, who cast the swing vote in many reproductive rights cases, is unacceptable. For these reasons, the National Abortion Federation calls on the United States Senate to defeat the nomination of Samuel Alito to the United States Supreme Court.

Sincerely,

VICKI A. SAPORTA,
President and CEO.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from Alaska is recognized.

Ms. MURKOWSKI. Mr. President, I rise this morning in support of the nomination of Samuel Alito to the position of Associate Justice of the U.S. Supreme Court. I have had an opportunity over the past couple of days, and certainly in this past hour, sitting in the chair as you are, Mr. President, to listen to the discussions on both sides of the aisle about the nominee before us, Judge Alito. I have been listening very carefully to the comments that have been made and the discussion of certain issues. But when it comes to the issue of Judge Alito's credentials, I do not hear a debate about them. I do not hear a hue and cry that this is a man who does not have the credentials to serve in the U.S. Supreme Court. I believe, and I believe many of my colleagues would agree, that Judge Alito's credentials are exemplary. No President should be denied the prerogative of appointing a person who is as qualified as Judge Alito to the Court.

Judge Alito, after 3 very long days of responding to over 700 questions, emerged from these nomination hearings the same person who many of us who met with him understood him to be—quite simply, a seasoned jurist who has the intellect, the temperament, and the reverence for the law which is required for service on the Nation's highest Court. So it is not surprising that Judge Alito has received the American Bar Association's highest rating for any nominee. It was a unanimous "well qualified" rating.

For those who are not familiar with how the American Bar Association scores or does the rating of the judges, the criteria that are looked to are criteria such as the judicial qualifications—the resume, the credentials; whether or not the individuals have presented themselves or conducted themselves free from bias, operating in a fair and impartial manner as a fair and impartial decisionmaker; and also looking to judicial temperament.

The bar association, through its rating process, couldn't keep a scorecard as to whether the individual has ruled more times in favor of the big guy over the little guy. It is a process where truly judicial temperament, the qualification, the credentials, and the free-from-bias and fair decision-making, is the criteria that is looked at.

We have heard over the course of days and in the committee hearings about Samuel Alito's background. He has a very moving and a very American personal story. Born to immigrant parents, Judge Alito is probably the first one to say that the person he admires most is his father—his father who battled barriers of prejudice until he became both a teacher and the first director of the New Jersey Office of Legislative Services.

Judge Alito excelled at his studies. He received degrees from two Ivy League institutions. But I sense—I certainly picked this up in my meeting with him—that Judge Alito is not one to forget where he came from or forget his modest roots.

His testimony in the hearings was unassuming, unpretentious. He thoughtfully listened, and I believe sincerely responded, to the committee's questions, recognizing that there are certain limitations in terms of predicting outcomes or sticking to the issues that might be before the Court should he be confirmed.

By all accounts, including those of many Democrats who have served with him, Judge Alito scrupulously lets the facts and the law—the facts and the law, not the politics—dictate his decisions.

What struck me during the nomination process in the hearing was the testimony of so many of his colleagues—and not just Republican colleagues but a wide range of individuals, self-professed liberals, and conservatives—who all spoke very highly of and who acclaimed Judge Alito.

I would like to mention a couple of the comments that were made in the course of the testimony. The testimony of the Third Circuit Court's senior judge, Judge Aldisert, had this about Judge Alito:

> We who have heard his probing questions during oral arguments, of being privy to his wise insightful comments in our private conferences; we who have observed at firsthand his impartial approach to decision-making and his thoughtful judicial temperament and know his carefully crafted opinions; we—who are his colleagues—are convinced that he will also be a great Justice.

Here is another statement from one of his colleagues, from Judge Edward Becker, who serves on the Third Circuit, and who sat with Judge Alito on over 1,000 cases. He described the judge as:

> Brilliant . . . highly analytical, and meticulous and careful . . . The Sam Alito that I

> have sat with for fifteen years is not an ideologue. He is not a movement person. He is a real judge, deciding each case on the facts and the law, not on his personal views whatever they may be. He scrupulously adheres to precedent.

Still another colleague, Judge Leonard Garth, described him as "an intellectually gifted and morally principled judge . . . he will always vote in accordance with the Constitution and laws as enacted by Congress."

I believe these qualities are critical; for when Judge Alito is confirmed, as I believe he will be, he will have giant shoes to fill. The legacy that Justice Sandra Day O'Connor will leave is one of fair-mindedness, open-mindedness, and lack of an ideological agenda. Justice O'Connor once described her approach to cases in this way:

> It cannot be too often stated that the greatest threats our constitutional freedom comes in times of crisis . . . The only way for judges to mediate these conflicting impulses is to do what they should do anyway: stay close to the record in each case that appears before them, and make their judgments based on that alone.

Based on my conversations with Judge Alito, his testimony before the committee, and the statements of so many of his colleagues who know his work best, I am confident that Judge Alito will have that open- and fair-mindedness. He told the Judiciary Committee:

> Good judges are always open to the possibility of changing their minds . . . Result-oriented jurisprudence is never justified because it is not our job as judges to try to produce particular results.

In his opening statement, Judge Alito recalled the oath that he made at the time he was sworn as a judge of the court of appeals. He stated that he would "administer justice equally, both to the rich and the poor" and that he would "carry out the laws and the Constitution" to the best of his ability.

I believe Samuel Alito has done that for nearly two decades as a Federal judge. I will certainly look to him to do that in his new role—again, without agenda, without prejudgment, without bias.

I join many of my colleagues on the Senate floor this morning in supporting the nomination of Judge Samuel Alito to the U.S. Supreme Court.

I yield the floor.

Mr. HAGEL. Mr. President, I rise to announce my intention to vote in favor of Judge Samuel A. Alito's nomination to be an Associate Justice of the Supreme Court of the United States.

The Senate Judiciary Committee and others have thoroughly scrutinized his background and credentials. Hundreds of documents and memos he produced as a lawyer have been reviewed, along with hundreds of judicial opinions he authored or participated in during his 15 years as a Federal court of appeals judge. Those documents have revealed a strong intelligence and a deep respect for the law and the Constitution.

Earlier this month, the Judiciary Committee held several days of hearings on Judge Alito's nomination. Everything in those hearings reinforced my impressions of Judge Alito from my meeting with him in November. He was forthcoming during the committee members' questioning, candidly answering hundreds of questions regarding specific cases, the law, and his judicial philosophy. His judicious temperament during the hearings was apparent.

During the hearings, I was also impressed by the comments of seven current and former Third Circuit Court of Appeals judges. They testified in support of Judge Alito's nomination to the Supreme Court. This support by the individuals most familiar with Judge Alito's skills and judgments carries great weight.

Finally, last month, the American Bar Association unanimously rated Judge Samuel Alito as "well qualified" for his appointment as Associate Justice of the Supreme Court. This is the highest rating that can be given to a judicial nominee. Given Judge Alito's performance at the hearings and the strong support for his nomination, no one should be surprised by this top ABA rating.

I enthusiastically endorse and support Judge Alito's nomination. I believe he will bring a solid base of legal and judicial experience to the Court. The President has chosen wisely, and I encourage my Senate colleagues to join me in voting for this exceptional nominee.

Mr. VOINOVICH. Mr. President, I rise today to urge my colleagues to vote to confirm Judge Samuel A. Alito, Jr., as an Associate Justice of the U.S. Supreme Court.

Before I discuss my reasons for supporting Judge Alito, I would like to make a few remarks about the judicial confirmation process. Judge Alito is the second nominee to the Supreme Court since I was elected to the Senate. I have been pleased with how his nomination has been handled by both the White House and the Judiciary Committee.

I wish to compliment Senator SPECTER and Senator LEAHY for the excellent job they have done in handling the confirmation hearings for Judge Alito. The hearings were fair and orderly. These hearings gave the country an important opportunity to see what type of person Judge Alito is: one with a long history of service to his country and with a true love of the law. As was the case with the confirmation hearings for Chief Justice Roberts, the "advice and consent" process gave the country a valuable lesson in constitutional law, showing that each branch of Government plays a valuable role in our democracy.

The President has nominated another fine candidate to the Supreme Court. History will look back on the nomination of Judge Alito, combined with President Bush's nomination of Chief Justice Roberts, as one of the most important legacies of the Bush administration.

A Supreme Court nominee must have two qualities. First, a nominee must have an exceptional intellect. Second, a nominee must be committed to the rule of law. I am very pleased to say that based on everything I have seen and heard, Judge Alito has demonstrated both of these qualities.

It is difficult to see how Judge Alito could have more impressive professional credentials. From his academic record to his almost 30 years in government service, including 15 years on the U.S. Court of Appeals for the Third Circuit, Judge Alito has accumulated a remarkable record of achievement.

As my colleagues have previously noted, Judge Alito graduated from Princeton University, was elected to Phi Beta Kappa, and was selected as a Scholar of the Woodrow Wilson School of Public and International Affairs. Judge Alito then attended Yale Law School where he served as an editor of the Yale Law Journal.

Since his start as a young lawyer, Judge Alito has shown a commitment to public service in the Jeffersonian ideal of the citizen-lawyer. Judge Alito served as a law clerk to Judge Leonard Garth of the U.S. Court of Appeals for the Third Circuit. After completing his clerkship, Judge Alito began his legal career as an Assistant U.S. Attorney briefing and arguing cases before the Third Circuit. I hope that Judge Alito's commitment to public service is noted by law students and young lawyers around the country as they think about their career choices. Judge Alito's experience stands as a model of public service and has led him to the opportunity to obtain one of the highest honors a lawyer can hope to achieve, a chance to serve his country as an Associate Justice of the U.S. Supreme Court.

In 1987, Judge Alito was nominated and approved by unanimous consent as the U.S. attorney for the District of New Jersey. As U.S. attorney, Judge Alito prosecuted a wide variety of cases, including those involving white collar and environmental crimes, drug trafficking, organized crime, and violations of civil rights. Judge Alito's extensive experience as a Federal prosecutor will add a unique perspective to the Court's decisionmaking process.

In 1990, Judge Alito was unanimously confirmed by the Senate to serve on the U.S. Court of Appeals for the Third Circuit. Throughout his 15 years as a judge on the Third Circuit, Judge Alito has developed a reputation as a methodical, gracious, even-tempered jurist with a history of fairness for all who appear before him. Judge Alito is also known for producing well-written and well-reasoned opinions. His 15 years on the Third Circuit give Judge Alito a unique and seasoned perspective on, and appreciation for, the courts.

His impressive educational and professional background makes Judge Alito well prepared to be an Associate Justice of the Supreme Court. As he displayed during his confirmation hearings, he has an encyclopedic knowledge of the Supreme Court and of constitutional law. Yet he also has diverse, real-world experience in government and in how law interacts with the actual day-to-day operation of government. Judge Alito has the ideal balance of academic and practical experience.

Given his professional achievements, it is not surprising that the American Bar Association has given Judge Alito its highest rating. Mr. Stephen L. Tober, the chairman of the American Bar Association's Standing Committee on the Federal Judiciary, noted in his statement, the ABA unanimously concluded that Judge Alito is "well qualified" to serve as Associate Justice on the U.S. Supreme Court. The ABA noted that "[Judge Alito's] integrity, professional competence, and judicial temperament are indeed found to be of the highest standing. Judge Alito is an individual who, we believe, sees majesty in the law, respects it, and remains a dedicated student of it to this day."

Judge Alito has shown a commitment to the rule of law. Now, no two people will agree on how to interpret every provision of the Constitution or of every statute. Nevertheless, Judge Alito's statement that "there is nothing that is more important for our republic than the rule of law" is an important testament to his commitment to ensuring that the rule of law, and not individual preferences of Justices, remains supreme. It is essential that any nominee displays a conscious commitment to deciding cases based on the law, rather than on his or her own personal views.

During Judge Alito's confirmation hearings, I was struck by how dedicated he is to the law and to correctly applying the law as a judge. As Judge Alito noted, "The judiciary has to protect rights, and it should be vigorous in doing that, and it should be vigorous in enforcing the law and in interpreting the law . . . in accordance with what it really means and enforcing the law even if that's unpopular." He went on to state, "A judge can't have any agenda. A judge can't have any preferred outcome in any particular case. And a judge certainly doesn't have a client. The judge's only obligation—and it's a solemn obligation—is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires."

I observed Judge Alito's demeanor and conduct during this confirmation process, as he refused to abandon his judicial independence for the sake of political expediency. As Judge Alito noted, "We shouldn't decide those questions, even in our own minds, without going through the whole process. If we announce—if a judge or a judicial nominee announced before even reading the briefs or getting the case or hearing the argument what he or she thought about the ultimate legal issue, all of that would be rendered meaningless, and people would lose all their respect for the judicial system, and with justification, because that is not the way in which members of the judiciary are supposed to go about the work of deciding cases."

Accordingly, I have every confidence that parties who appear before Judge Alito will encounter a judge who is committed to viewing each case without bias and to reaching a decision that is dictated by the rule of law alone.

Finally, I want to offer some personal observations about Judge Alito. Too often we view executive and judicial nominees through political or ideological glasses and not as human beings. Nominees quickly get labeled as being a "Republican nominee" or a "Democratic Nominee" or as belonging to a particular school of thought or being a follower of a particular thinker or politician. This is unfortunate as each nominee's character gets overlooked and we fail to see this important aspect of each nominee. It is, however, a nominee's character that can have the biggest impact on his or her work.

In Judge Alito, I believe the Senate has before it not only a nominee who has the capability to be a great Associate Justice but also a nominee who is simply a wonderful person.

I share Judge Alito's appreciation of the great and wonderful opportunities for all Americans. I was moved by Judge Alito's sentiments about his father, as he recalled how a "small good deed" from a local Trenton area person allowed his father the chance to attend college and how this act of kindness eventually led to Judge Alito's presence before the U.S. Senate. I can relate to the story of Judge Alito's father because my own father was strongly influenced by his high school principal and a history teacher to stay in school rather than take a laborer's job. With the strong encouragement from these two individuals, my father completed high school and attended Carnegie Tech on a Kroger's Scholarship. Such stories are familiar to many descendants of immigrants and they show that the American Dream is still alive and well.

During my meeting with Judge Alito, he displayed a gracious manner and humble attitude. He is clearly very smart and engaging, and it was a pleasure to hear him explain his view of the Supreme Court and the rule of law. But he is also a very openminded person who listens to others with sincerity and a willingness to hear their views. For such a brilliant and successful person, I did not detect a hint of arrogance. He is a dedicated family man with a good sense of humor whom I believe all Americans will be able to respect and admire.

I have also been pleased to hear that my impressions of Judge Alito have been echoed by so many others during the hearings. I point particularly to the testimony of Professor Nora Demleitner, a self-professed "left-leaning Democrat," who served as a law clerk with Judge Alito after graduating from Yale Law School. Professor Demleitner described Judge Alito as "a man of great integrity, decency and character." Professor Demleitner also noted that Judge Alito is one of her role models and that he has one of the most brilliant legal minds of our generation.

In short, Judge Alito displays the openmindedness, humility and commitment to serving the public interest that should serve as the paradigm of judicial temperament for members of our highest Court.

In reviewing Judge Alito's academic and professional record, his firm commitment to the rule of law, and his strong character, it is clear that Judge Alito is eminently qualified to serve on the Supreme Court. It would be truly unfortunate if we allow this nomination to fall victim to the partisanship that has been growing in the Senate.

I, therefore, urge my colleagues to support the nomination of Judge Alito to be the next Associate Justice of the Supreme Court.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. COBURN. Mr. President, as a member of the majority and sitting as the President of the Senate yesterday, I was able to hear several hours of debate on the nomination of Judge Sam Alito, Jr.

I heard time and again dire predictions that Judge Alito is going to give the executive branch complete authority over our Government, including himself on the Supreme Court. Those who oppose him never mentioned one single case where Judge Alito ruled in favor of the President or expanded Executive power—not once. They think if they just keep repeating the same far-left smear—one dreamt up by far-left groups such as Ralph Neas' People for the American Way and Nan Aron's Alliance for Justice—the American people will fall for it.

It is disturbing to me that those who oppose Sam Alito are taking their cues from people such as Nan Aron and the Alliance for Justice who, even before the hearings began, before we had any hearings whatsoever, bragged, "You name it, we'll do it," to sink Judge Alito.

I think the American people and their elected representatives would rather base their views on the lawyers and judges from across the political spectrum who had actually known Judge Alito.

Former Third Circuit Judge Gibbons explained his faith in Judge Alito's ability to fairly judge cases in which the government is asserting its executive power. He said: "The committee members should not think for a moment that I support Judge Alito's nomination because I am a dedicated defender of that administration. On the contrary, I and my firm have been litigating with that administration for a number of years over its treatment of detainees held at Guantanamo Bay, Cuba, and elsewhere, and we are certainly chagrined at the position that is being taken by the administration with respect to those detainees. I am confident, however, that as an able legal scholar and a fair-minded justice, he will give the arguments, legal and factual, that may be presented on behalf of our clients careful and thoughtful consideration without any predisposition in favor of the position of the executive branch."

Defense lawyers who litigated against Judge Alito confirm that when Judge Alito was part of the executive branch, he had a modest view of its power.

The New York Times reported that one defense attorney, Dan Ruhnke, said that Judge Alito lacked the "cop mentality" of many career prosecutors and was "never a cheerleader for law enforcement."

Another defense attorney, Drew Barry, said that Judge Alito was "not a bloodthirsty United States attorney," and that he was "a vigorous prosecutor who went after a wide variety of bad guys, but his reputation was not someone who would ask for the heaviest sentences."

As a member of the Judiciary Committee and in my time in the Senate, this is a sorrowful time for me.

The politics of personal destruction were all too evident in the Senate hearing and continue on the floor of this body.

The "guilt by association" standard of those who oppose Sam Alito would disqualify anybody who would be nominated no matter who the President is.

The idea that politics guides the Supreme Court nominations process in the Senate is new. The idea of the "results only in my eyes qualification" proves that those who challenge the integrity of Sam Alito require standards that they themselves could never live up to.

To be critical is fair to the process of confirmation, but destruction and absolute mischaracterization of one's record the way we have seen reaffirms the lack of fairness and conscience of those who carry out such tactics.

As a member of the Judiciary Committee, I spent 4 days listening, questioning, and watching—not only Sam Alito but all those who came to testify for him and those who came to testify against him.

Here is what I observed—not as a lawyer, not as a Senator, but as a physician trained in the art of observation and the art of listening.

Sam Alito is a man of high moral character. You do not hear the direct words challenging that, but you hear everything indirectly.

He is also a man of intellectual brilliance, impressing everyone who comes in contact with him.

He is a man of dedication to the law, to equal justice under the law.

He is a man who has shown dedicated commitment to the things that are important in our country.

He is a man who is completely sold out to one thing, and one thing only: His record and his life has demonstrated equal justice under the law.

What I also observed was a great diversity of political background of those who support him, those who know him, those who have worked with him for the last 15 years, regardless of their political views, either liberal or conservative, regardless of their gender or their color, regardless of their view on abortion.

Those who know him uniformly support him as a great jurist, a man of integrity and conscience, and one who is completely sold out to the idea that everyone in this country has equality under the law.

Those who know him, those who testified, of all stripes, of all political persuasions, would and are challenging what we have been hearing on the floor by those who oppose him—the mischaracterization of his rulings, the mischaracterization of his beliefs, the mischaracterization of his actions.

What I also observed, which concerns me even more, was that those who don't know him but have a political agenda to keep the Court activist and beyond its constitutional bounds oppose him. They do not know him. But what they do know is judicial activism, making law where none exits, which they put before a judiciary committed to equal justice under the law.

That is why he is being opposed. Their greatest fear is the Court will return to a place where the Constitution, the statutes, and treaties are interpreted, but personal political agendas are left at the door.

They fear the battles lost in the legislatures will no longer be carried out by judicial fiat. The former Soviet Union is the great example. They had a constitution but there was not equal justice under that constitution.

During Chief Justice Roberts' opening statement to the Judiciary Committee, he referenced the fact that the most powerful entity in the world, the U.S. Government, deferred to the rule of law when the Court was convinced that a private client was right on the law and the Government was not. He referenced President Reagan's speeches about the Soviet Constitution and how it purported to grant wonderful rights of all sorts to people, but those rights were empty promises because that system did not have an independent judiciary to uphold the rule of law and enforce those rights. Roberts concluded:

> We do, because of the wisdom of our founders and the sacrifices of our heroes over the generations to make their vision a reality.

Under our law, the mighty can be defeated by the meager.

We heard yesterday the philosophy of those who oppose this great jurist. Let me quote it exactly because it is very dangerous. This quote is from the Senator from Rhode Island:

> . . . in truth the Supreme Court is the Constitution.

If that is so, we are no longer a nation of laws but rather a nation of judges. That is not America. That is not freedom. That creates nine kings, the exact opposite of what our Founders intended. That is the very thing the American people rejected in the election of 2004. It was about judges.

Finally, let's talk about the real issue that will cause most people to oppose him. They fear he may truly believe in liberty for all. That is their fear. Let me explain. Senator KENNEDY had a very eloquent quote during the hearing. I would like to repeat it:

> America is noblest when it is just to all of its citizens in equal measure. America is freest when the rights and liberties of all are respected. America is strongest when we can all share fairly in its prosperity. And we need a court that will hold us true to these guiding principles today and into the future.

But he did not mean "all," he meant all those except the truly innocent and truly weak, the preborn child. Behind me are two pictures, one of a 26-week-old preterm infant in a neonatal IC unit, smaller than your hand; and the other picture is of a 26-week preborn child's face seen by ultrasound.

The Declaration of Independence states:

> We hold these truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness . . .

So, America, ask yourself, how did we get to the point that the accidental killing of a 26-week unborn infant is a felony but taking of that same life by abortionists is legal? It is schizophrenic. Why should your liberty be based on your location inside the womb or out?

The Court's jurisprudence on liberty and privacy interests is fundamentally flawed. They fear a correction in that flaw.

To quote Robbie George of Princeton University:

> On what constitutional basis can we say that abortion is protected by "due process" but a right to assisted suicide . . . is not? Why is sodomy protected and prostitution unprotected? Why does the right to privacy not extend to polygamy or the use of recreational drugs?

That is the kind of justice you have when you are a nation of judges and not law. Hopefully, someone of Sam Alito's character can steer the ship back to liberty for all, including the weakest and most innocent of all. Sam Alito was sold out to this document, the U.S. Constitution. He sold out to equal justice under the law. We need to speak truthfully about the opposition to him. We need to speak truthfully about the problems that have been created by an activist Court, and about the opposition to bring back and steer the ship to where the judges make judgment based on the Constitution, laws, and the treaties of this country, not their political philosophies.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TALENT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TALENT. Mr. President, it is a privilege for me to spend a few minutes visiting with the Senate about Judge Alito. Based on my study of his record and my discussions with him, I believe, if confirmed, he will turn out to be one of our best Supreme Court Justices.

I do not know that anybody on the floor has contested his professional qualifications. He is certainly exceptionally qualified, at least based on that, to serve on the Nation's highest Court. He has the experience, the temperament, and integrity that America expects in a Supreme Court Justice.

Judge Alito has more prior judicial experience than any Supreme Court nominee in more than 70 years. He has served for 15 years as a judge on the Court of Appeals for the Third Circuit. He participated in the decisions of more than 1,500 Federal appeals. He wrote more than 350 opinions. I think his clerks probably have to work pretty hard, he has been so busy. This is why I wonder why some people say they do not know enough about what he might do. I do not know how any judge, how any candidate could qualify on that basis, if Judge Alito does not.

He served as the top Federal prosecutor in one of the Nation's largest Federal districts. He was an appellate advocate for the United States in the Office of Solicitor General. He was a Deputy Assistant Attorney General in the Office of Legal Counsel. He received his bachelor's degree from Princeton. I would not hold that against him. He was elected Phi Beta Kappa at the time. He went to Yale Law School, where he served as an editor on the Yale Law Journal. That is quite a record.

During last week's hearing, Judge Alito answered over 700 questions for more than 18 hours. He was thoughtful and thorough in answering the tough questions. He was humble throughout the process, which is something I personally look for when considering anybody who is seeking a life appointment and particularly a judicial appointment. I think a big dose of "humble" is important if you want to be a judge because you are in the position, as a judge, to be rude to people and they cannot be rude back to you. I think you ought to have a temperament where you are not tempted to do that.

What does the record and the process reveal about this nominee? Simply that he is one of the finest nominees ever to come before the Senate. We learned a lot about him as a person during this process as well. He is certainly brilliant and hard working. He went before the Judiciary Committee without a note. He is a man of integrity. He is honest. He is devoted to his family. These are all qualities we want in the men and women who serve our Nation on the high Court. These are the kinds of qualities that will move America forward and move the judicial branch forward.

He has proven beyond any doubt that he has the qualifications, the temperament, the knowledge, and the understanding of the Constitution to serve on the United States Supreme Court. I do not know how you can prove it, if he has not proven it. I would imagine even those who are going to oppose his nomination for other reasons would agree he has the right kind of temperament and qualifications. He wants to be on the Court, because he loves the law. And he is a judge because he wants to serve the United States. Those are the right reasons to want to be on the Supreme Court.

I made a point on other occasions about judicial nominations that I think is relevant here. It is, in a way, misleading to talk about a judicial nominee being in or out of the mainstream of American jurisprudence because the truth is there is more than one mainstream. Lawyers are divided over which jurisprudential theory ought to guide judges in interpreting the statutes and in interpreting the Constitution. Just as we in the Senate disagree, legitimately, about political philosophy, lawyers also disagree about jurisprudential philosophy.

Oftentimes, there is not any one completely correct answer when you are interpreting a vague provision of the Constitution, but that does not mean there are no incorrect answers. Because reasonable people looking at the history and the text of the document might disagree as to what is exactly the right answer in a given case does not mean there are no wrong answers. And a wrong answer, as Judge Alito said so clearly in his introductory remarks before the Judiciary Committee and throughout his testimony, is an answer that does not respect the rule of law.

Here is what Judge Alito said:

> The judge's only obligation—and it's a solemn obligation—is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires.

A wrong answer is one that is based on an idea of the judicial role that allows the judge to do whatever he or she thinks they would want to do if they were in control of the policy involved in an issue. Whatever their theory of interpreting the Constitution is, they should be consistent in applying it. Judges should not work for a particular outcome or agenda.

Here is what Judge Alito said on this issue:

> Results-oriented jurisprudence is never justified because it is not our job to try to produce particular results. We are not policy makers and we shouldn't be implementing any sort of policy agenda or policy preferences that we have.

As Chief Justice Roberts said when he was testifying before the Judiciary Committee: Judges are umpires. They are not the rule-makers. The people are the rulemakers, through their representatives, in their laws and in their Constitution.

In another statement Judge Alito said:

> I don't think a judge should be keeping a scorecard about how many times the judge votes for one category of litigant versus another in particular types of cases. That would be wrong. We are supposed to do justice on an individual basis in the cases that come before us. But I think that if anybody . . . looks at the cases that I have voted on in any of the categories of cases that have been cited, they will see that there are decisions on both sides.

He went on to say:

> In every type of employment discrimination case, for example, there are decisions on both sides.

Because of this respect for the rule of law, the individuals who know Judge Alito best—and that includes Republicans and Democrats, his colleagues on the bar and on the bench—have overwhelmingly supported his elevation to the Supreme Court. I think it is important, when you look at nominees, to make certain they have support from people from all parts of the political spectrum and all parts of the jurisprudential spectrum.

Let me quote a couple people.

Nora Demleitner is the vice dean for academic affairs and professor of law at Hofstra University School of Law. And to this point I have not cited anybody from Missouri supporting Judge Alito, but I am going to vote for him anyway. She said:

> Now, since the very early days of my clerkship, I must admit that Judge Alito has really become my role model. I do think he is

one of the most brilliant legal minds of our generation, or of his generation, and he is a man of great decency, integrity and character. And I say all of this as what I would consider to be a left-leaning Democrat; a woman, obviously; a member of the ACLU; and an immigrant.

This is Dean Demleitner speaking.

In addition, Judge Aldisert, who has served with Judge Alito on the Third Circuit, had the following to say:

> In May 1960, I campaigned with John F. Kennedy in the critical Presidential primaries of West Virginia. The next year, I ran for judge . . . and I was on the Democratic ticket, and I served eight years as a State trial judge. As the Chairman indicated, Senator Joseph Clark of Pennsylvania was my chief sponsor when President Lyndon Johnson nominated me to the Court of Appeals, and Senator Robert F. Kennedy from New York was one of my key supporters. Now, why do I say this? I make this as a point that political loyalties become irrelevant when I became a judge. The same has been true in the case of Judge Alito, who served honorably in two Republican administrations before he was appointed to our court. Judicial independence is simply incompatible with political loyalties, and Judge Alito's judicial record on our court bears witness to this fundamental truth.

I could go on with other quotes. I am not going to. I suppose everything really has been said about Judge Alito in the Senate, although not everybody said it, so the debate is going to go on for a while. But I do think the first and most basic right we all have as political actors—in the sense that every person who lives in this country shares in running the Government—the first and most basic right we have is the right to govern ourselves through the processes set up in our Constitution. It is not out of a desire to avoid difficult decisions but out of a respect for that right that Judge Alito talked about the rule of law.

I want to say this. Whether your views about social policy are on the right side of the political spectrum or whether they are on the left side of the political spectrum, I believe we can all rest easily in leaving the development of our culture and our society to the wisdom and the decency of the American people. The center in this country has held in the past, and it will hold in the future.

As President Franklin Roosevelt said: This Nation will endure as it has endured, and not because of the courts, not because of the Congress, not because of the President but because of the people. They will move us in an orderly and decent direction, as they have for 200 years. We do not need to be governed by guardians or dictators, whether they are in the form of judges or anybody else. That is what Judge Alito meant when he was talking about the rule of law.

I have said from the beginning of this debate—and I withheld my decision about the judge until I had a chance to meet him and watch the hearings and get a feel for who he is—he deserved a fair and respectful confirmation process, ending in a timely up-or-down vote on the Senate floor. I hope he will receive that. I believe, if confirmed, he will respect the Constitution, he will apply a consistent jurisprudence, without imposing his personal views on the law. For that reason, I am pleased to vote to confirm Judge Alito. I am hopeful the full Senate will give this highly qualified nominee a fair up-or-down vote and then send him to service on the U.S. Supreme Court.

I thank the Chair and yield back whatever remains of my time.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. VITTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. VITTER. Mr. President, I rise in support of the nomination of Judge Samuel A. Alito to be an Associate Justice of the U.S. Supreme Court. I am supporting Judge Alito's nomination because he is, No. 1, superbly qualified to sit on the Supreme Court, and, No. 2, and as important, he possesses the right view of the role of a judge, the right judicial philosophy, which I think is essential in terms of taking a seat on that high Court.

The appointments clause, article II, section 2, clause 2, of the Constitution gives the President the plenary power to nominate certain high-level officials and, as important, bestows on the Senate a crucial role, a crucial constitutional role, of advice and consent.

Like, I hope, every Member of this body, I take that constitutional duty of advice and consent very seriously. I owe it as high as any duty to the Louisiana people I represent. In line with that, I will neither provide a rubberstamp of approval for all of President Bush's nominees nor will I automatically disapprove any Democratic President's nominees for the Supreme Court or any other Federal court.

I think I have shown my seriousness of purpose in that regard in my short time in the Senate. I have studied the qualifications and legal writings of all nominees to see whether they possess a consistent and well-grounded judicial philosophy and have the right credentials and qualifications.

I was very upfront about being mindful of that responsibility when Harriet Miers was nominated. I looked very carefully at her qualifications and her judicial philosophy and, quite frankly, I expressed some real reservations about that.

That is why, after Judge Alito was nominated, I focused on those qualifications and that judicial philosophy just as hard. I met him personally. I watched his confirmation hearings. I read his record. That is the process I used to reach this conclusion, that, No. 1, he is eminently qualified in terms of credentials and background, and, No. 2, he has the right judicial philosophy, the right view of the role of a judge in our society.

Let's talk, first, about those basic legal qualifications. Again, Judge Alito is superbly qualified. His academic achievements and his distinguished career make that clear.

He has a bachelor's degree from Princeton University and a J.D. from Yale Law School. After graduating from law school, Judge Alito began his career in public service as a clerk for Judge Leonard Garth on the Third Circuit Court of Appeals and is now a colleague of his on that court. He served as an assistant U.S. attorney, Assistant to the U.S. Solicitor General, Deputy Assistant Attorney General, and U.S. attorney for the District of New Jersey. He has argued specifically before the U.S. Supreme Court 12 cases, at least two dozen court of appeals cases; direct, relevant and impressive experience in terms of that sort of high-level litigation.

In 1990, President George H.W. Bush nominated Judge Alito for the Third Circuit Court of Appeals, and he was confirmed by unanimous consent in this body because of his strong credentials and clear and overwhelming qualifications. Of course, today those qualifications are even greater because he has served as a judge on that circuit court for the past 15 years.

After being nominated to the U.S. Supreme Court, the ABA rated Judge Alito as "well qualified." That is the highest rating possible. Everyone recognizes the ABA is not some conservative political group by any stretch of the imagination. If its membership has a slant, it is probably to the left. That is the gold standard, that rating of judicial qualifications and credentials. Again, Judge Alito received the highest rating.

Then he had his confirmation hearings. Despite some ugly questioning, frankly, and some smear tactics, in my opinion, he had an impressive performance. He demonstrated clear humility and indepth understanding of legal matters. And perhaps most impressive in terms of what he faced from the minority side, he maintained his composure in an unfortunately partisan atmosphere.

As I said at the beginning, those credentials and qualifications, that legal background is the first important matter I look to. But it is not the only matter. The second equally important matter I look to is a person's judicial philosophy. Do they understand the correct role of a judge in society? I have thought a lot about that regarding all nominees who have come before this body. I thought Judge Roberts expressed that role precisely right when he talked about being an umpire and not a pitcher or a batter. Judge Alito has that same view of the appropriate role of a judge.

Throughout the debate over judicial nominees, this notion of whether a nominee possesses the right judicial philosophy has been asked a lot. Some may ask what this term means and why it is important. Again, it is important because it goes to the heart of the role of a judge and how this democracy works. I believe what it means is a commitment to the rule of law, a commitment to the Constitution as written, and a commitment not to let one's personal political views or personal political leanings or prejudices enter into any of those important decisions on the Court. It requires a judge to be openminded, to analyze the law carefully, to analyze the facts of each case based on the Constitution and the law. It requires a judge not to do what can be tempting—intoxicating in terms of the power a judge can hold—not to make new law based on personal opinion, not to play legislator but to follow the law as enacted by the Congress or the State legislature.

Judge Alito has demonstrated that right judicial philosophy. He has demonstrated his unwillingness to change the law to fit his personal beliefs. He stated clearly:

> There is nothing that is more important for our Republic than the rule of law. No person in this country, no matter how high or powerful, is above the law, and no person in this country is beneath the law.

What is vital and embedded in the concept of the rule of law is the application of the law as written, not judges becoming kings or legislators and imposing their views and legislating from the bench. I believe this is the second and crucial matter we must look to in the confirmation of judges, particularly those who would be Justices of the U.S. Supreme Court. I have great confidence in Judge Alito's correct understanding of the role of a judge.

It has troubled me that throughout this confirmation process, some of my colleagues and many outside interest groups, many members of the press, have demonstrated a different view of the role of a judge. One way they have demonstrated that is by treating Judge Alito more akin to a candidate for political office than a nominee for the highest Court. They have talked about judges taking sides, being on this side versus that side, taking the side of labor versus management, taking the side of environmentalists versus business groups, taking the side of the little guy versus the big guy. In talking in those terms, many Members of this body and many liberal interest groups and many members of the press have demonstrated a completely different view of the role of a judge which is inappropriate. Other than the fact that many of their characterizations of Judge Alito in these terms are false—for instance, he has decided in favor of employment discrimination plaintiffs in 22 percent of the cases, whereas the national average is 13 percent—it troubles me that the public is being led to believe that we should think of judges as legislators, that it should be a results-oriented discussion.

This goes to the heart of the confirmation process. The role of the judiciary is to interpret the law and to apply it to the facts of each case. It is not to elect legislators, politicians to go on the bench and vote certain interests or certain political philosophies.

I believe Judge Alito has the correct view, the opposite view, quite frankly, as has been demonstrated by some Members of this body and certainly by the liberal press and liberal interest groups. In his confirmation hearing, the judge made this clear. He described his disagreement with keeping a scorecard of how many times a judge rules for or against a particular party. He stated:

> I don't think a judge should be keeping a scorecard about how many times that judge votes for one category of litigant versus another in particular types of cases. That would be wrong. We are supposed to do justice on an individual basis in the cases that come before us.

I wish to touch on one other specific type of case because I believe Judge Alito has been smeared in this category, and that is with regard to his strong record and experience in the area of civil rights. I have been disappointed that some of my Democratic colleagues have chosen to paint Judge Alito as having anything less than the stellar record on civil rights that he has. In doing so, they don't really cite any evidence for this accusation. They think if they just keep repeating this smear, one dreamt up by far-left groups such as Ralph Neas' People for the American Way and the Alliance for Justice, if they keep repeating the lie over and over, the American people will fall for it. The American people are smarter than that. The American people are listening to some distinguished people, including distinguished African Americans, with whom Judge Alito has served.

To cite a couple of examples, the late Judge Leon Higginbotham, the first African American to serve on the Federal District Court for the Eastern District of Pennsylvania and whom the L.A. Times called "a legendary liberal and scholar of U.S. racial history," had said of Judge Alito:

> Sam Alito is my favorite judge to sit with on this court. He is a wonderful judge and a terrific human being. Sam Alito is my kind of conservative. He is intellectually honest. He doesn't have an agenda. He is not an ideologue.

Former Third Circuit Judge Timothy K. Lewis, an African American, testified in support of Judge Alito. He joked that it was no coincidence he was sitting on "the far left" of the panel. He said:

> I was then—as I am now—a committed and active Democrat. I learned in my year with Judge Alito that his approach to judging is not about personal ideology or ambition. He is not result oriented. He is an honest conservative judge who believes in judicial restraint and judicial deference.

And Judge Lewis emphasized:

> If I sensed that Sam Alito during the time that I served with him or since then was hostile to civil rights as a justice of the United States Supreme Court, I absolutely would not be here today.

I hope the smear tactics will end, particularly on an issue as important and sensitive as civil rights. I am confident the American people are hearing from those sound voices, including African-American voices, who have served directly with Judge Alito, many of them are politically liberal. Many of them are Democrats who say Judge Alito is fair. He is impartial. He is not results oriented.

That returns me to the central factor I have focused on in this process: Does Judge Alito have the right view of the role of a judge? Does he have the right judicial philosophy? Is he committed to the Constitution as written, to the rule of law as it is written not by him but by legislatures and the Congress? Is he committed to that and is he committed to not legislating from the bench? I believe his record and testimony and all of the evidence supports a firm conclusion that he is committed to that proper role of a judge. For that reason, I am proud to be supporting the nomination of Judge Samuel Alito. I am confident he will serve as a very distinguished member of the Supreme Court.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. COBURN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INOUYE. Mr. President, at this moment in our history, our country faces a spectrum of challenges broader than any we have ever faced before, both at home and abroad. However great the storm we face today, I am confident that our Nation, founded on the architecture of our Constitution, will prevail. The checks and balances established among the Congress, the President, and the courts are the true arsenal of freedom. In the end, these checks and balances in the hands of the American people will prove greater than any assault on the precious freedoms and liberties our forefathers fought to establish.

For the officials of our Federal Government, the protection of the institutions of our American democracy is a duty that both transcends and supersedes all others, especially for members of the Supreme Court who must interpret the Constitution of our Nation as a living foundation for the freedom and liberty of our people.

From confiding the power of the Federal Government in three co-equal but separate branches of government, to guaranteeing the civil liberties that bless our Nation, the Constitution enshrines principles that are as relevant today as they were when it was first penned centuries ago.

These cherished principles are the backbone of our Nation, and they comprise the final yardstick for taking the mettle of any man or woman who would aspire to our Nation's highest Court. I have studied the full record of President Bush's nominee, Samuel A. Alito, Jr., and carefully measured it against the sworn duties of the Supreme Court. Regretfully, I conclude that Judge Alito falls short.

From his writings on the Third Circuit Court of Appeals to his public speeches, I discern a man who would fundamentally rewrite the interpretation of our Constitution and leave in doubt the legacy of freedom it was meant to preserve.

For many, this will mean his record on civil rights, reproductive choice, or the death penalty. Let there be no mistake. I share these concerns, and I have spent my life fighting for these rights.

For me, however, the greatest area of doubt lies in Judge Alito's consistent preference for expanding the power of the President by relaxing the checks and balances the Constitution places on the executive branch of Government.

In 1989 and 2000, Judge Alito gave speeches to the Federalist Society in which he embraced an obscure legal doctrine called the "unitary executive theory." This so-called "unitary executive theory" places the President almost above the law.

Under this theory, independent counsel appointed to investigate Presidential misdeeds would be unconstitutional. Similarly, the theory holds that enforcement agencies independent of the President, such as the Securities Exchange Commission, the Federal Communications Commission, and the National Labor Relations Board, would also be unconstitutional because they are not under the President's control.

The theory also justifies a President who would overstep Acts of Congress and the Constitution when acting as Commander in Chief.

How Judge Alito might actually apply this "unitary executive theory" on the Supreme Court is, of course, an open question.

Separated by a span of 11 years, however, his own speeches in 1989 and 2000 suggest that Judge Alito's views on the powers of the President are long-held and strong.

A memo he generated early in his career with the Reagan administration amplifies this impression. In that memo, Judge Alito wrote on a President's authority to modify an act of Congress by making a *"signing statement"*—a written document issued by a President on signing an act of Congress into law.

In the memo, Judge Alito wrote, that "the President's understanding of the bill should be just as important as that of Congress." This statement suggests that Judge Alito believes the President has a role in the legislative process not contemplated under the Constitution's exclusive grant of legislative power to the Congress.

Judge Alito's writings and speeches show how he personally believes that the Congress should have less power to check and balance the President.

His judicial opinions, issued in his official capacity as a judge on the Third Circuit, demonstrate a parallel conviction that the Congress should have less authority in general.

In United States v. Rybar, Judge Alito wrote a minority opinion asserting that the Congress had no authority to pass laws to regulate machine guns. The majority opinion criticized Judge Alito's narrow and restrictive view of Congressional authority.

In Chittister v. Department of Community and Economic Development, Judge Alito ruled that the Congress had no authority to allow State employees to sue for damages under the Family Medical Leave Act. Judge Alito's restrictive view on Congress's authority was later invalidated by the Supreme Court when it considered the same issue in a later case.

Our Supreme Court shoulders the solemn task of discovering how the Constitution applies to the unique problems of the day. Through dialog, study, and diligent inquiry, the Justices bring to bear the collected experiences of the Nation, and forge justice from the Constitution by tempering its words with human compassion, wisdom, and integrity.

Judge Alito's record suggests that he holds his personal beliefs on expanding the President's power so strongly that they might come before the call of justice. Accordingly, I have concluded that I must oppose his nomination.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the Asian American Justice Center, dated January 10, 2006, and a letter from the Japanese American Citizens League, dated January 8, 2006. Both letters refer to the nomination of Judge Alito.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ASIAN AMERICAN JUSTICE CENTER,
Washington, DC, January 10, 2006.

Hon. ARLEN SPECTER,
Chairman,
Hon. PATRICK J. LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR CHAIRMAN SPECTER AND RANKING MEMBER LEAHY: On behalf of the Asian American Justice Center (formerly National Asian Pacific American Legal Consortium), a national civil rights organization dedicated to advancing and defending the civil rights of Asian Americans, we are writing to express our concern opposition to the nomination of Judge Samuel Alito to be Associate Justice of the Supreme Court of the United States. Judge Alito's record demonstrates hostility and poses grave risks to constitutional and legal rights and protections that are core to the advancement of the communities we represent.

Supreme Court decisions continue to have an immense impact on the lives of Asian Americans, ranging from Gong Lum v. Rice (1927), an unsuccessful challenge to school segregation that would later be overturned by Brown v. Board of Education in 1954, to United States v. Korematsu (1944), where the Court upheld the internment of Japanese Americans. Often, cases where the rights and liberties of minorities are at question are decided by a very narrow 5-4 margin. Based upon materials produced by Judge Alito as well as his judicial record, we believe that he would fail to demonstrate a clear understanding of key issues important to the civil rights communities.

In 1986 Alito wrote a letter in his capacity as Deputy Assistant Attorney General to former FBI Director William Webster in which he suggested that "illegal, aliens have no claim to nondiscrimination with respect to nonfundamental rights," and that the Constitution "grants only fundamental rights to illegal aliens within the United States." Alito makes no mention of Plyer v Doe in this letter, which ruled that a state could not discriminate against undocumented children in public education, even though education is not considered a fundamental constitutional right. This raises questions about whether he would adequately protect undocumented immigrants from unconstitutional forms of discrimination.

Judge Alito's opinions in cases involving racial discrimination and voting rights lead us to believe that he will fail to champion civil rights in a manner that would ensure that all communities will be full participants in the rights and liberties that our constitution promises. For example, in Bray v. Marriot Hotels, a racial discrimination case, the majority concluded that Alito's dissenting view would protect employers from suit even where the employer's belief that it had selected the best candidate "was the result of a conscious racial bias." As majority pointed out, "Title VII would be eviscerated if out analysis were to halt where the dissent suggest." In his 1985 application to the Department of Justice's Office of Legal Counsel, Judge Alito raised opposition to the Supreme Court decisions that first articulated the fundamental civil rights principle of "one person, one vote." Those decisions later paved the way for major strides in the effort to secure equal voting rights for all Americans and greater representation of racial and ethnic minorities at all levels of government.

Of great concern to us is Judge Alito's record on immigration law. In asylum cases, it appears that Judge Alito has a tendency to rule against individuals who are seeking protection in the United States, even where evidence show that they have been or would have been persecuted in their own countries. In Chang v. INS, Judge Alito disagreed with the court's decision to grant asylum despite the fact that Chang had presented evidence that his wife and son already faced persecution and he was threatened with prison if he returned to China. In Dia v. Ashcroft, Judge Alto dissented from a majority opinion granting asylum to an immigrant from the Republic of Guinea whose house was burned down and wife raped in retaliation for his opposition to the government.

For the above reasons, we must oppose his confirmation as Associate Justice. We appreciate your consideration of our views. If you have any questions, please feel free to contact AAJC Deputy Director Vincent A. Eng at (202) 296–2300, x121 or AAJC Director of Programs Aimee J. Baldillo at (202) 296–2300, x112. We look forward to working with you.

Sincerely,

KAREN K. NARASAKI,
President and Executive Director.

JAPANESE AMERICAN CITIZENS LEAGUE,
San Francisco, CA, January 8, 2006.

Hon. PATRICK J. LEAHY,
U.S. Senate, Ranking Minority Member, Senate Judiciary Committee, Washington, DC.

DEAR SENATOR LEAHY: The Japanese American Citizens League (JACL), the nation's oldest and largest Asian American civil rights organization, wishes to express our strong opposition to the nomination of Judge Samuel Alito to the United States Supreme Court.

Judge Alito's legal opinions and writings over the past several years have left a clear record of an individual whose legal views could have serious negative impact on the nation's Asian American communities. As a civil rights organization, we are not only troubled by Judge Alito's ideological brand of conservatism, but also by his judicial leanings that would make tenuous the constitutional protections of American citizens.

The record shows that Judge Alito once stated proudly his opposition to affirmative action: as a lawyer for the government, he has argued that immigrants can be denied basic protections and rights guaranteed by the Constitution: he has shown little regard for individuals who have sought sanctuary in the U.S. through the political asylum appeal process; he has expressed a legal opinion that would support racial discrimination in employment cases; he has written an opinion that would have denied a gender discrimination case to be heard by the court; he has raised serious concerns about the "one person one vote" concept of democracy; he has shown a proclivity to undermine due process and privacy protections.

The Supreme Court is in many instances the final arbiter in protecting the rights of Americans and therefore should not be a vehicle for those who would push for a political agenda, be it from the left or the right of the political spectrum. Given the early pronouncements in his career and his legal opinions either as a government attorney or from the bench, we are not convinced that Judge Alito can serve the interests of the people as a member of the highest court of the land.

The Japanese American Citizens League urges you, as a member of the Senate Judiciary Committee, to vigorously question Judge Alito on his past record and to carefully examine his current legal positions. The JACL strongly opposes Judge Alito's nomination and does not believe that his confirmation as an Associate Justice of the Supreme Court serves the best interest of all the people of this great nation.

Yours truly,

JOHN TATEISHI,
National Executive Director.

Mr. INOUYE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, soon the Senate will vote on the nomination of Samuel Alito to replace Justice O'Connor on the U.S. Supreme Court. Of all of the issues we consider in the Senate, perhaps no issue raises such deep and fundamental questions as the nomination of a Supreme Court Justice.

The issues that come before the Supreme Court are not abstract legal concepts; rather, they involve the very values that define who we are as a nation. They ask us to think about what kind of society we want to be. I believe strongly that we want to be a society which strives for justice, protects the powerless, provides meaningful protections to workers, and allows those who have suffered discrimination to seek recourse and affirm their rights in Federal court.

I believe that a nominee to the Supreme Court needs more than just excellent legal qualifications. He or she must possess a true passion for justice, an understanding that the law cannot be viewed with cool, analytical dispassion, but with the acknowledgement of its role in molding a fairer and more just society. He or she must understand and believe in the critical role the Federal courts play in protecting the civil rights of all Americans, including the 54 million Americans who live every day with a disability. A thorough review of Judge Alito's record and of the Senate Judiciary Committee hearing has convinced me that he falls far short of that measure and, as a result, I oppose his nomination.

One of the things I found most troubling about Judge Alito was his statement that one of the factors that motivated him to study constitutional law was his disagreements with the Warren Court decisions in the areas of criminal procedures and voting rights. Frankly, I find this to be a stunning admission. I know there are many who often decry the decisions of the Warren Court as inappropriate liberal judicial activism.

I strongly disagree with that characterization. So many of the decisions of the Warren Court, beginning with the 1954 unanimous decision in Brown v. Board of Education—that decision that separate is not equal—are not just liberal values, they are American values—American values that each person's vote should have the same weight; that legislative districts should contain equal population; that the freedom to marry a person of another race is a fundamental civil right; the decision that broadcasters are required to provide programming that serves the public interest and to provide for a diversity of viewpoints; the decision that illegally seized evidence cannot be used in a trial; the decision that poor people are entitled to have lawyers in criminal cases; the decision that the wearing of symbols of protest is protected speech; the decision that suspects have the right to remain silent; the decision that you have a right to an attorney; the decision that you have the right to be informed of these protections and the charges against you.

These were all Warren Court decisions, and these decisions, far from evidencing an extreme view of the Constitution, are decisions that the vast majority in this country believe are fair and correct and give meaning to our Constitution's promise of individual liberty and dignity.

Yet Judge Alito chose to cite his disagreement with these very decisions as his motivation for studying law. He chose to cite his disagreements with these decisions as his reason for working to narrow or overturn the rulings in the Reagan Justice Department.

I find this very troubling. I cannot help but wonder what other laws Justice Alito might seek to narrow if he is granted lifetime tenure on the Supreme Court.

Another law that gives meaning to our Constitution's promise of liberty and dignity is the Americans with Disabilities Act. Fifteen years ago—now approaching 16—I championed the ADA, as it is now known, because I had seen discrimination against the disabled firsthand, growing up with my brother Frank who was deaf. Throughout his life, Frank experienced active discrimination at the hands of both private individuals and the government, and this served to limit the choices before him.

Frank's experience was by no means unusual, as Congress documented extensively prior to enacting the Americans with Disabilities Act. As part of the writing of that bill, we gathered a massive record of blatant discrimination against those with disabilities.

We had 25 years of testimony and reports on disability discrimination. Fourteen congressional hearings and 63 field hearings by a special congressional task force were held in the 3 years prior to the passage of the Americans with Disabilities Act. We received boxes loaded with thousands of letters and pieces of testimony gathered in hearings and townhall meetings across the country from people whose lives had been damaged or destroyed by discrimination against people with disabilities. We had markups in five different committees. We had over 300 examples of discrimination by States—by States—against people with disabilities.

I know this. I was there. I was the chairman of the Disability Policy Subcommittee and the lead sponsor of the bill.

Yet since enactment of the ADA, the Court has repeatedly questioned—or I should say a minority of the Court has repeatedly questioned—whether Congress had the authority to require States to comply with the ADA and, amazingly, whether Congress adequately documented discrimination. For example, in 2001, the Court narrowly held that an experienced nurse at a university hospital, who was demoted after being diagnosed with breast cancer because her supervisor did not like being around sick people, was not covered by the ADA because she had the misfortune to work for a State hospital. If she had worked for a private hospital, she would have been covered, according to the Supreme Court.

In contrast, in 2004, again by a narrow margin, 5 to 4, with Justice O'Connor in the majority, the Court held that Congress did have the authority to require States to make courthouses accessible.

Over the next few years, the Court will likely look at whether other State and locally owned facilities are required to be accessible. And in case anyone doubts that accessibility is still a day-to-day issue for the disabled in this country, I want to point out two stories recently in the Des Moines Register in the last week.

First, the fire alarm went off in the State capitol, and there was no way for people in wheelchairs, including a State legislator who was recently injured in a farming accident, to exit the building.

Another example is before that, a woman in a wheelchair had no way to get onto the stage to speak at a Martin Luther King, Jr., Day tribute.

But there is no guarantee that the Court will continue to require that facilities be made accessible. Instead, we could end up with a crazy patchwork where courthouses are accessible but maybe libraries are not; prisons are accessible but maybe employment offices are not.

When we passed the ADA, we in Congress did not forbid employment discrimination against the disabled unless they work for the State. We didn't say some services must be accessible. But that is what the Court has been saying. Talk about judicial activism.

To put a fine point on it, the ADA is at the mercy of the Supreme Court and of the nominee who assumes this seat. Based on his record, I am gravely concerned that Judge Alito does not believe that Congress has the authority to protect the fundamental rights of all Americans. Instead, his record is one that values the rights of the State over the rights of people.

In the two instances where Judge Alito has been required to interpret recent Supreme Court cases limiting the power of Congress to pass national legislation under the 14th amendment or under the commerce clause, he has gone further than the Court itself.

First, consider a case involving the Family and Medical Leave Act, the law that allows Americans to take unpaid leave from work to care for a newborn child, a sick child, or an ailing parent. Over 50 million Americans have taken unpaid family and medical leave since its passage, including 5 million State workers. Yet confronted with a case challenging whether State and local employers were required to grant unpaid family and medical leave, Judge Alito held in Chittister v. Department of Community and Economic Development that Congress lacked the authority to order State and local employers to abide by the law.

Imagine that. Judge Alito on the Third Circuit said that we didn't have the authority to pass the family and medical leave bill. He was opposed to it.

Fortunately, that holding was affirmatively rejected by the Supreme Court in 2004 when the Supreme Court ruled 6 to 3 in favor of the FMLA. Chief Justice Rehnquist was the author of that opinion. He was joined by Justice O'Connor.

Think about this. Would that case have been decided the same way if Chief Justice Roberts had been there in place of Chief Justice Rehnquist? And if Justice Alito had been there instead of Justice O'Connor? I am afraid it would not.

Secondly, again in 2004, the Supreme Court issued a 5-to-4 decision that held similarly that Congress could order State courthouses to abide by the Americans with Disabilities Act. Justice O'Connor was in the majority, a 5-to-4 decision, Lane v. Tennessee. This is where a person with a disability had been cited for speeding and was given a ticket. He used a wheelchair. He showed up at the courthouse, and guess what. The court was on the second floor. There was no elevator. So they said: OK, we will carry you up. The first time he appeared in court they carried him up into the courtroom. Then the case was put over to another day. The second time Lane showed up, they said: We will carry you up again.

He said: I'm not going to be carried up. I have too much dignity for that.

They said: OK, you are going to have to crawl. Get out of your wheelchair and crawl up the steps or, of course, the court will fine you because you did not appear in the courtroom.

This is a real case. This really happened. It went to the Supreme Court. A 5-to-4 decision held that courthouses must be accessible under the ADA.

If Justice Alito had been there instead of Justice O'Connor, given his limited view of congressional authority, it would be foolish to think that we would have had the same outcome, and Mr. Lane would, indeed, have to crawl up the steps of the courthouse or be carried up.

I want to digress here a moment. There may be those who say maybe it was an old courthouse and they couldn't put in an elevator. The ADA does not require that. It says that services must be accessible. The judge can hold court wherever he wants. The judge could have gotten out of that second floor room and gone down to a room on the first floor and held court there, and Mr. Lane could have wheeled his wheelchair into that room.

Services must be accessible, and that is what we said in the ADA. But Mr. Alito does not see it that way. His failure to recognize the role of the Federal courts in protecting victims of discrimination can be seen even more directly.

In 1995, the Third Circuit, on which Mr. Alito sat, ruled that people with disabilities should be allowed to live in the community, not warehoused in institutions, whenever it was possible. The Third Circuit's opinion was consistent with Justice Thurgood Marshall's opinion in the Cleburne case. Justice Marshall wrote that persons with disabilities, and I quote Justice Thurgood Marshall:

> . . . have been subject to a "lengthy and tragic history" of segregation and discrimination that can only be called grotesque. [In the early 20th Century] a regime of state-mandated segregation and degradation emerged that in its virulence and bigotry rivaled, and indeed paralleled, the worst excesses of Jim Crow. . . .[L]engthy and continuing isolation of the retarded has perpetuated the ignorance, irrational fears, and stereotyping that long have plagued them.

The Third Circuit agreed that people should not be warehoused. They should be allowed to live in the community whenever possible. Yet after three judges on the circuit court ruled that such institutionalization was a form of discrimination under the ADA, Judge Alito argued that the Third Circuit should reconsider the opinion.

When asked about this issue at his Judiciary Committee hearing, Judge Alito suggested that his desire to rehear the case did not suggest he had a disagreement with the outcome. Frankly, I find this response difficult to believe. I think most lawyers would agree that judges do not vote to rehear cases unless they disagree with the outcome or unless other factors, factors that were not present here, require such a rehearing.

Fortunately, Judge Alito's desire to reconsider the Helen L. case was denied. The Supreme Court shortly after that held, in the landmark Olmstead decision, that unnecessary institutionalization is, in fact, a form of discrimination. Once again, Justice O'Connor sided with the majority in the Olmstead decision. Given Judge Alito's judicial record, we can safely assume that he would have come down on the opposite side of this landmark ruling and might even have steered the Court in a different direction, and years of progress toward equal rights for the disabled might have been erased.

In case after case on the Third Circuit, Judge Alito seems to have been immune to the real-life struggles of the people in the cases before him. It is like: This is the legal theory. Don't bother me with the facts. Don't bother me with what is actually happening. There is some legal theory out there that I believe in, and somehow this legal theory trumps, overcomes the real-life travails of ordinary people. As I said—immune to the real-life struggles. The fact that the police strip-searched a 10-year-old girl, the fact that a mentally disabled worker was sexually assaulted, the fact that a farm family was threatened at gunpoint by U.S. Marshals without any resistance during an eviction process—all of this failed to sway him that these ordinary Americans even deserve to be able to present their cases against the Government. It failed to persuade the judge that they should even be allowed to present their cases against the Government. This is real life, real people, and real situations. But, no, Judge Alito had some other philosophy, some other theory that overcame this.

In the past few days, I have heard a number of my colleagues on the other side of the aisle express alarm or dismay that so many Democratic Senators have expressed their opposition to this nominee. In light of the record that I just outlined, I find it alarming that more Senators on the Republican side have not expressed their opposition to this nominee. I thought it was my friends on the other side who so loudly proclaimed individual liberty, individual dignity of the person. Yet Judge Alito dismisses this under some rubric of a judicial philosophy or some theory that he has.

I must say, my alarm becomes more pronounced when I consider Judge Alito's record on Executive power. At a time when the President of the United States is illegally spying on American citizens, at a time when the President believes that he can ignore the clear intent of Congress—including a vote of 90 Senators—and continue the use of torture in the interrogation of criminal suspects, at a time when the President believes he can indefinitely detain American suspects without charges and without access to a lawyer, it is more important than ever that Justices on the Supreme Court recognize the need to protect and preserve the balance of power envisioned by our Founding Fathers.

Judge Alito is not that Justice. He is, instead, an adherent of a legal theory that Presidential powers should be wholly unchecked. In fact, he is the author of the very strategy used by President Bush earlier this month when he essentially said to 90 Senators: I signed the amendment that says no torture but I hereby declare that I can ignore it if I feel like it.

After reviewing Judge Alito's record, it is not difficult to wonder, if Judge Alito had been on the Supreme Court during its consideration of Marbury v. Madison, would he have voted the other way? Would we have an imperial President today and not a Court that has the role as final arbiter? That strikes at the very heart of our Democratic form of government and our checks and balances.

But don't take my word for it. Consider the words of the Justice whom Judge Alito seeks to replace, Justice O'Connor, who wrote in the Supreme Court's recent decision in Hamdi v. Rumsfeld that it is:

> . . . clear that a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens.

I agree with Justice O'Connor. It is clear under the Constitution of the United States that our President does not have unfettered powers. It is clear that the Supreme Court has the authority, the duty to serve as a check on that power. And it is clear to me that Judge Alito is not committed to providing that check.

As recently as 2000, in a speech before the Federalist Society, Judge Alito said in his speech:

> . . . the President has not just some executive powers, but the executive power—the whole thing.

What does that mean?

> . . . the President has not just some executive powers, but the executive power—the whole thing.

What does Judge Alito mean by that? I find this to be a frightening theory, in someone getting life tenure on the Supreme Court.

In closing, the new Supreme Court Justice will have a tremendous impact on our society. The decisions before the Court will determine whether we are true to our fundamental national values of fairness and justice and dignity for all. In Judge Alito, we have a nominee whose history, record, and testimony make clear that he holds an unduly restrictive view of the power of Congress to enact laws to protect workers, to protect public safety, to protect victims of discrimination, and that he holds a dangerous view of the Court's proper role in providing a necessary check on Executive powers. Indeed, if Judge Alito is confirmed, I fear that many of the core protections provided to people with disabilities under the Americans With Disabilities Act and other laws simply disappear. For these reasons, I strongly oppose his nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I rise today to state my intention to vote against the nomination of Judge Alito to be the next Associate Justice of the Supreme Court. Let me start by saying I certainly do not doubt Judge Alito's qualifications, his integrity, his temperament. He has served on the Federal bench for over 15 years, and he has demonstrated during that time that he is, indeed, a very capable jurist. Nonetheless, after carefully looking at his judicial record and listening to his answers to the Senate Judiciary Committee, it is also clear to me that if confirmed, Judge Alito will move the Court in what I believe is the wrong direction for our country.

Judge Alito has been nominated to replace Justice Sandra Day O'Connor. She is a moderate who has been a critical fifth vote in cases impacting privacy rights, disability rights, civil rights, the environment, consumer protections, discrimination laws, access to the courts and campaign finance reforms, among others. It has taken us years to enact legislation aimed at protecting the rights of all Americans in these areas I have mentioned. Other Justices on the Court, particularly Justices Scalia and Thomas, have pressed to reverse many of the advances the Congress has made in these areas. They have pressed to limit congressional power under the commerce clause and the ability of Congress to enact Federal civil rights legislation. I fear that Judge Alito will join Justices Scalia and Thomas in this regard.

Justice O'Connor's vote has also been instrumental in ensuring that we do not surrender our civil liberties in times of war. Justice O'Connor's statement in the Hamdi decision was just quoted by my colleague from Iowa. It was a resounding reaffirmation that the President could not indefinitely detain a U.S. citizen without providing adequate due process. The quote which was just made, and has been made by many of my colleagues, is that:

> We have long since made clear that a state of war is not a blank check for a President when it comes to the rights of our Nation's citizens.

At a time when the President has asserted expansive powers with regard to imprisoning U.S. prisoners without charges, with regard to wiretapping without warrants, with regard to using interrogation techniques that amount to torture, it is essential that we have Justices on the Supreme Court who are willing to provide a check on the authority of the executive branch. Judge Alito's record indicates that he may not be the right person to provide this important check.

For example, he stated his support in varying degrees for this so-called unitary executive theory. This relatively obscure legal theory has very little support in the mainstream legal community, but it has profound implications for our understanding of the Constitution.

Just recently, Congress passed a law reiterating the prohibition on the use of torture. In signing the legislation, the President issued a statement reserving the right to take whatever action he deems necessary as Commander in Chief—in effect reserving the right to ignore the very law which he was at that time signing. The President cited this unitary executive theory as the legal basis for his power to disregard the plain text of the legislation.

We need to have a Supreme Court that is prepared to provide the necessary checks and balances crucial to our democratic system of government. I believe Justice O'Connor charted a moderate course in terms of the authority of Congress to enact legislation aimed at protecting the welfare of Americans and with regard to upholding the rights of citizens vis-a-vis their own government, and I believe it is important to maintain that same course.

This is not to say that I have agreed with all of Justice O'Connor's decisions. But her swing vote has helped to maintain a balance on the Court that has kept many decisions within the mainstream, and I believe Judge Alito's confirmation will sway the existing balance on the Court in a manner that will jeopardize many of the protections afforded to the American public, many of which have been the result of many years of struggle. For this reason, I am not able to support his nomination.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. LINCOLN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. LINCOLN. Mr. President, I rise today to state my opposition to the nomination of Samuel Alito to the United States Supreme Court.

After thoroughly reviewing Judge Alito's record during his time on the Federal bench, I am left with grave and serious concerns about his views on the power and scope of executive branch authority, the lack of discrimination against parents in the workplace, his general disposition toward cases involving civil rights, and his views on the scope of voter rights.

Because of these concerns, I cannot in good conscience support his nomination to the Supreme Court to replace Sandra Day O'Connor, the highest Court in the land with tremendous ability to exercise judgment over the people of this Nation.

Over the course of Judge Samuel Alito's career and his tenure on the Federal bench, he has compiled a troubling record of personal statements and court decisions that signal his willingness to defer authority to the executive branch when questions of presidential powers are deliberated before the Supreme Court.

I strongly believe that our Constitution calls for an independent and coequal judicial branch that provides a check on the government's power to encroach upon our individual rights of Americans.

At a time when many Arkansans have expressed concerns over the President's legal authority to eavesdrop on Americans without court supervision and detain U.S. citizens without judicial review or due process, I cannot support a Supreme Court nominee who has repeatedly failed to uphold reasonable limits of presidential authority at the expense of constitutional liberties.

This issue is especially significant because Judge Alito would replace Justice Sandra Day O'Connor, who recently ruled in a 2004 case on executive authority that "a state of war is not a blank check for the President when it comes to the rights of the nation's citizens."

While the legislative and executive branches of government are, by their very nature, political, we demand our judicial branch be above that.

When one party controls both of the political branches, the independence of the judiciary is especially important.

It is not just important to keep in check but also to maintain the confidence of the American people that their government is balanced and that it is there to serve them and not the politicians.

Our Founders created our country and its government with the memories of tyranny still fresh in their minds.

The judicial branch was given exceptional authority for the specific reason that it provides a critical check on the two political branches of our government.

This is not to say that the judicial branch is charged with correcting the perceived wrongs of the party in power. It is simply charged with upholding the Constitution and the rights guaranteed to citizens under it. Upholding this requirement is the most important duty the court is given.

If a potential nominee to the Supreme Court cannot or will not uphold either part of this solemn duty, his or her appointment will serve to undermine the fundamental system of checks and balances on which our government depends.

Of equal concern is Judge Alito's record on the issue of discrimination in the workplace.

In Chittister v. Department of Community and Economic Development, Judge Alito's statement that the Family Medical Leave Act was a "disproportionate solution" to the problem of workplace discrimination is deeply troubling.

In an opinion rejecting the position of Judge Alito, Chief Justice Rehnquist explicitly noted that common workplace practices had been discriminatory toward both men and women by reinforcing the role of women as the sole domestic caregiver.

I fear that Judge Alito' s inability to recognize this type of discrimination threatens dire consequences for rights hard won by women over the last few decades.

The majority of our Nation's families depend on income from both parents just to get by. The future and strength of our Nation depends on the strength of the fabric that our families are made of.

I cannot in good conscience vote to allow any of the gains that have allowed women to become an integral part of our Nation's workforce while remaining exceptional mothers to their children to be rolled back.

As his record points out, Judge Alito has consistently set an unfairly high burden of proof in discrimination cases leading him to rule consistently against Americans who are merely attempting to assert their basic constitutional rights.

Judge Alito's philosophy of deferring to the government and those in positions of authority threatens to undermine many of the laws established by Congress to ensure that discrimination does not prevent anyone from realizing his or her full potential—not just as an American, but as a human being.

Also of concern are Judge Alito's comments on voter rights. He has stated his interest in constitutional law was motivated largely by his disagreements with the Supreme Court reapportionment decision that established the principle of "one person, one vote."

This landmark case became a cornerstone of our democracy by ensuring that everyone's vote would be weighted equally, regardless of an individual's economic background, their address, or the color of their skin.

If an individual is prevented from seeking a fair remedy at the ballot box by denial of his basic right to vote, the only avenue he has left is our judicial system.

Judge Alito's skepticism of established principles of voter rights coupled with his skepticism of claims relating to discrimination is a dangerous combination that threatens to exclude many Americans from full and equal participation in their government and society.

I remind my colleagues that the strength of our Nation comes from the input of the diversity of individuals who make up this great land. We cannot diminish that.

Equal access to the ballot box is a right guaranteed to every American that is the very foundation of democracy.

These rights came after much work and incredible sacrifice and to me they are too important to put at risk.

As I stated during the debate on Chief Justice Robert's nomination, considering a Supreme Court nomination is one of the most important duties we are called upon as Senators to fulfill.

I did not come to my decision on Judge Alito' s nomination lightly.

Ultimately, I supported the nomination of Chief Justice Roberts because I sincerely believed he cared more about the rule of law and our Nation's judicial system than he did about ideology or political parties.

I sincerely regret I cannot draw the same conclusion about Judge Alito.

For me, this nomination is not about a single issue or controversy. It is much more important than that.

This nomination is about the rights and freedoms we cherish as Americans.

It is about the future course of our Nation and the impact the decisions of the Supreme court will have on the citizens of this great land.

I feel government has a commitment to those amongst us who face incredible challenges to ensure that the values we all hold dear as Americans apply equally to them.

I have real doubts about Judge Alito's views on the role of government in protecting those rights. I respect the opinions of my constituents and colleagues on both sides of this issue. But in the end, after great prayer and research—and certainly after listening to all the principles I learned growing up as a farmer's daughter in east Arkansas in the rural part of this Nation—I made the decision that I believe is in the best interests of my State and of my country.

I appreciate the time attention of my colleagues. I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, do I have 30 minutes?

The PRESIDING OFFICER. The Senator may use as much of the next hour as he pleases.

Mr. GRASSLEY. Thank you.

Mr. President, I support the nomination of Samuel Alito. President Bush has made a very excellent choice in picking Alito. He has the intellect, judicial temperament, and integrity to be an excellent Justice.

He seems to have a very clear understanding of the proper role of the judiciary in our government. That came out very clearly in the hearings.

He commands the respect of his colleagues on the Third Circuit, as their testimony before our committee demonstrated.

He also has the respect of the lawyers who practice before him and the employees who have worked with him. That was demonstrated in testimony before our committee as well.

But we can't always accurately predict how an individual ultimately will make decisions once he or she gets on the bench. But we do have a constitutional process in place, and we have to use our judgment within that process and trust the confirmation process.

I would say the 225-year history of our country succeeding as it has is an affirmation that the process has worked well.

We have confirmed many outstanding individuals to the Supreme Court, and the process has worked well thus far and will continue to work well with Judge Alito.

Judge Alito was very impressive in the hearings. He did an excellent job under a great deal of fire. He was thorough, he was candid, and he was forthright with all 18 of us on the committee, and demonstrated a deep understanding of the law and a deep understanding of the law and our Constitution.

Contrary to the claims of some of my colleagues from whom we have been hearing this morning and yesterday, Judge Alito's testimony was very substantive, and he was responsive.

Let me quantify that. Judge Alito answered more than 650 questions during nearly 18 hours of testimony. Compared to the performances of Justice Ginsburg who answered 307 questions at her hearing, and Justice Breyer, who answered 291 questions, one can hardly swallow what we hear on the other side—that Judge Alito was not forthcoming with the Committee.

I easily conclude, as I think the public concludes, that he has been one of the most forthcoming nominees to come before the Judiciary committee.

The Constitution provides the President with the power to nominate Supreme Court Justices. And it provides the Senate with advise and consent duties, presumably ending up in an up-or-down vote.

In Federalist No. 66, Alexander Hamilton wrote:

> It will be the office of the President to nominate, and, with the advice and consent of the Senate, to appoint. There will, of course, be no exertion of choice on the part of the Senate. They may defeat one choice of the executive, and oblige him to make another; but they cannot themselves choose—they can only ratify or reject the choice he may have made.

That is Alexander Hamilton commenting on the role of the President and the Senate in the judicial confirmation process. I have been on the Judiciary Committee for more than 25 years. I take this constitutional responsibility very seriously. Our work in committee allows us to evaluate whether a nominee has the requisite judicial temperament, intellect, and integrity. We also evaluate throughout that process whether the nominee understands the proper role of a Justice in our democratic system of government; mainly, but not limited to, respect for the rule of law and respect for the Constitution, all over any personal agenda the nominee might have. A Justice, to do justice, cannot have a personal agenda.

Specifically, a Supreme Court nominee should clearly understand that the role of a judge under the Constitution is a limited role, to say what the law is, rather than make the law.

I quote Alexander Hamilton, Federalist Paper No. 78:

> The courts must declare the sense of the law, and if they should be disposed to exercise will instead of judgment, the consequences would equally be the substitution of their pleasure to that of the legislative body.

In fact, most Americans want judges who will confine their job to interpreting the law and the Constitution, rather than making policy and societal choices from the bench. But what we have seen lately is a trend where the courts have expanded the role of the judiciary far beyond what was originally intended in the Constitution and by the Framers. The courts have taken on a role that is much more akin to what we do in Congress, the legislative branch, making law, which is to make policy choices and to craft laws based on those choices.

As a consequence of this power grab by the courts, the judicial confirmation process also, unfortunately, has become extremely politicized. That is because when judges improperly assume the role of deciding essentially political questions rather than legal questions, the judicial confirmation process also devolves into one focused less on whether a nominee can impartially and appropriately implement the law. Instead, the process devolves into one focused on whether a nominee will implement a desired political outcome from the bench, regardless of what the law says, regardless of what the Constitution requires.

But Judge Alito understands the proper role of a judge. Judge Alito understands the judicial branch plays a limited role in our system of government—but not surprisingly so because that is what the Constitution intended. Judge Alito testified:

> The judiciary has to protect rights, and it should be vigorous in doing that, and it should be vigorous in enforcing the law and

> interpreting the law . . . in accordance with what it really means and enforcing the laws even if that's unpopular.

He continues:

> But although the judiciary has a very important role to play, it is a limited role. . . . It should always be asking itself whether it is straying over the bounds, where it is invading the authority of the legislature, for example, and whether it is making policy judgments rather than interpreting the law. And that has to be a constant process of reexamination on the part of the judges.

Judge Alito's record is clear that he will not make law, but rather he will strictly interpret the law we write. His record is clear that he will do his very best to remain faithful to the actual meaning of the Constitution, rather than mold it into what he would like that Constitution to say.

Judge Alito said, along that line:

> Judges do not have the authority to change the Constitution. The whole theory of judicial review we have, I think, is contrary to that notion. The Constitution is an enduring document and the Constitution does not change. It does contain some important general principles that have to be applied to new factual situations that come up. But in doing that, the judiciary has to be very careful not to inject its own views into the matter. It has to apply the principles that are in the Constitution to the situations that come before the judiciary.

Judge Alito possesses a knowledge of and respect for the Constitution that is necessary for all Supreme Court Justices. Judge Alito, in his testimony, demonstrates an understanding of the proper role of a Justice. He understands and respects the separate functions of the judicial branch as opposed to the functions of the legislative branch and the executive branch, the political branches of government.

Judge Alito explained that a judge's role is not one of an advocate. He testified:

> The role of a practicing attorney is to achieve a desired result for the client in a particular case at hand, but a judge cannot think that way. A judge can't have any agenda. A judge can't have any preferred outcome in a particular case. And a judge certainly does not have a client. The judge's only obligation, and it's a solemn obligation, is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires.

For all of his opponents, when we hear things such as that and they fit in with what the Constitution's writers intended for the judiciary to do, how can we find fault with Judge Alito's approach? Why would we fear him at all?

Judge Alito also believes in justice for all, as afforded by the laws and the Constitution of our great nation. He told the 18 members of the Judiciary Commitee:

> No person in this country, no matter how high or powerful, is above the law, and no person in this country is beneath the law.

He said:

> Our Constitution applies in times of peace and in times of war, and it protects the rights of Americans under all circumstances.

Another very important position Judge Alito takes:

> Results-oriented jurisprudence is never justified because it is not our job to try to produce particular results. We are not policy makers and we shouldn't be implementing any sort of policy agenda or policy preference that we have.

Contrary to the claims of his opponents, Judge Alito understands the Judiciary has an important role in our system of checks and balances. He understands the importance of the independence of the judicial branch. Judge Alito will not shirk from that responsibility and he will see that the Judiciary is an effective check on abuses of power, both by the executive and the legislative branches of government. In fact, as Judge Aldisert, who served with Judge Alito on the Third Circuit testified:

> Judicial independence is simply incompatible with political loyalties, and Judge Alito's judicial record on our court bears witness to this fundamental truth.

Let me quote former Judge Gibbons, who also served with Judge Alito and who now is litigating with the Bush administration over the treatment of detainees held at Guantanamo. He believes Judge Alito will not shy away from checking Government abuses. He does not believe Judge Alito will rubberstamp any administration's policies if they run counter to the law and the Constitution. And he certainly did not have any concern about Judge Alito's judicial independence.

Judge Gibbons testified:

> It seems not unlikely that one or more of the detainee cases that we are handling will be before the Supreme Court again. I do not know the views of Judge Alito respecting the issues that may be presented in those cases. . . . I'm confident, however, that as an able legal scholar and a fairminded justice, he will give arguments, legal and factual, that may be presented on behalf of our clients careful and thoughtful consideration, without any predisposition in favor of the position of the executive branch.

I agree. I believe Judge Alito will be that independent judge who will apply the law and the Constitution, not just to Congress, but to every branch of government, and every person, because Judge Alito knows no one, including the President, is above the law.

Not only is Judge Alito an intelligent and experienced jurist, he is also an openminded and fair judge. I am telling everyone that, but anyone that saw the hearing knows that, from the 18 hours he testified before the Judiciary Committee 2 weeks ago. He is an openminded and fair judge. He told the committee:

> Good judges develop certain habits of mind. One . . . is the habit of delaying reaching conclusions until everything has been considered. Good judges are always open to the possibility of changing their minds based on the next brief that they read or the next argument that is made by an attorney who is appearing before them, or a comment that is made by a colleague when the judges privately discuss the case.

How much more appropriate is that approach to the law than just yesterday the Supreme Court decided to hear an execution case of a person in Florida when they got the decision made and the word down as they were strapping him in to inject the lethal chemical into him: Wait, don't make a decision until all the facts are in. So that person did not die last night.

In fact, Judge Alito acknowledged he has changed his opinion in the middle of the judicial process because he is waiting for all the facts, those motions, those debates, to be done before he finally concludes. He testified:

> There have been numerous cases in which I've . . . been given the job of writing an opinion . . . and in the process of writing the opinion, I see that the position that I had previously was wrong. I changed my mind. And then I will write to the other members of the panel and I will say, I have thought this through and this is what I discovered and now I think we should do the opposite of what we agreed, and sometimes they'll agree with me and sometimes they won't.

Now, what do you hear from the people opposed to Judge Alito? His critics have tried to paint him out to be an extremist. An activist judge with some agenda hostile to individual rights and to what his critics have called the "average American."

We were presented with analyses on how outside the mainstream Judge Alito's opinions were. But that is not what we heard from the American Bar Association. This group of men and women unanimously voted to award Judge Alito its highest possible rating: "well qualified." We have heard from the Democrats that this ABA rating is the "gold standard" about how to make any judgment about who is qualified to serve on the judiciary.

But that is also not what we heard from the panel of four sitting and two former Third Circuit judges who have worked with Judge Alito for more than 15 years. They did not think Judge Alito was out of the mainstream, as certain people on the floor are trying to claim, or an extremist, as you have heard often argued by the other side. We heard quite to the contrary.

I have to say the committee received absolutely extraordinary testimony from these appellate judges, which included nominees from—just think, these different Presidents nominated these people who testified before us, who said Judge Alito will make a great Justice—President Lyndon Johnson, President Richard Nixon, President Ronald Reagan, President George H.W. Bush, and President Bill Clinton, these Presidents appointed the people who came to us and said Samuel Alito will make a good Justice.

There is disagreement on the floor of the Senate as to whether he will be a good Justice. These are individuals we have heard from who have had the opportunity to witness the interworkings of Samuel Alito as a judge during their private conferences, on a daily basis, behind closed doors, when all the hair is let down. They saw his deliberative process. They know the "real deal" Sam Alito. And these witnesses—all respected and accomplished judges in their own right—each of them only had glowing comments about Judge Alito. Their support was unqualified.

As Judge Aldisert told the committee:

> We who have heard his probing questions during oral argument, we who have been privy to his wise and insightful comments in our private decisional conferences, we who have observed at first hand his impartial approach to decision-making and his thoughtful judicial temperament and know his carefully crafted opinions, we who are his colleagues are convinced that he will also be a great justice.

Let's go to Judge Becker:

> The Sam Alito that I have sat with for 15 years is not an ideologue. He's not a movement person. He's a real judge deciding each case on the facts and the law, not on his personal views, whatever they may be. He scrupulously adheres to precedent.

Judge Becker said:

> I have never seen him exhibit a bias against any class of litigation or litigants. . . . His credo has always been fairness.

Chief Judge Scirica said:

> Despite his extraordinary talents and accomplishments, Judge Alito is modest and unassuming. His thoughtful and inquiring mind, so evident in his opinions, is equally evident in his personal relationships. He is concerned and interested in the lives of those around him. He has an impeccable work ethic, but he takes the time to be a thoughtful friend to his colleagues. He treats everyone on our court, and everyone on our court staff, with respect, with dignity, and with compassion. He is committed to his country and his profession. But he is equally committed to his family, his friends, and his community. He is an admirable judge and an admirable person.

Judge Barry said:

> Samuel Alito set a standard of excellence that was contagious—his commitment to doing the right thing, never playing fast and loose with the record, never taking a shortcut, his emphasis on first-rate work, his fundamental decency.

So contrary to what his misguided critics have alleged, Judge Alito is fair and open-minded, and will approach cases without any bias and without a personal agenda.

Unfortunately, Judge Alito's record—as you have heard for the last 2 days and as you heard 2 weeks ago in the hearing—has been wildly distorted. Contrary to these critics' claims, Judge Alito has ruled for plaintiffs as well as defendants in civil rights, ADA, and employment discrimination cases. I think a statistical analysis of how many times a certain kind of plaintiff wins or loses is not the best way to judge a judge's record. It is wrong to think there should be a scorecard on how often plaintiffs or defendants should win, like some basketball game. Who should win depends upon the facts presented in the case and what the law says, just as it should be in a country based on the rule of law.

What is important to Judge Alito is that he rules on the specific facts in the case and the issue before his court, in accordance with the law and the Constitution. Judge Alito does not have a predisposed outcome in a case. He does not bow to special interests, but sticks to the law regardless of whether the results are popular or not.

Similar to Chief Justice Roberts, Judge Alito rules for the "big guy" when the law and the Constitution say the "big guy" should win. He rules for the "little guy" when the law and the Constitution say the "little guy" should win. That is precisely what good judging is all about, and that is precisely the kind of Justices who ought to be on the Supreme Court and, for most of the time in our history, have been on the Supreme Court—I think it will be 110 of them when Alito gets there.

The claims that Judge Alito is somehow hostile to civil rights, minorities, women, and the disabled are really off the mark, and those arguments are intellectually dishonest. It is easy to cherry-pick cases and claim that a judge is out of the mainstream. His fellow colleagues on the Third Circuit, though, give you a completely different picture of Judge Alito than what you have seen painted here in the last 2 days. Fellow colleagues on the Third Circuit testified about Judge Alito's fairness and impartiality with respect to all plaintiffs.

For example, Judge Garth testified:

> I can tell you with confidence that at no time during the 15 years that Judge Alito has served with me and with our colleagues on the court and the countless number of times that we have sat together in private conference after hearing oral argument, has he ever expressed anything that could be described as an agenda. Nor has he ever expressed any personal predilections about a case or an issue or a principle that would affect his decisions.

Judge Higgenbotham, Jr., a liberal judge, said:

> Sam Alito is my favorite judge to sit with on this court. He is a wonderful judge and a terrific human being. Sam Alito is my kind of conservative. He is intellectually honest. He doesn't have an agenda.

Kate Pringle, a former Alito law clerk and Democrat who has known the judge since 1994, testified that:

> [Judge Alito] was not, in my personal experience, an ideologue. He pays attention to the facts of cases and applies the law in a careful way. He is conservative in that sense. His opinions don't demonstrate an ideological slant.

I found Judge Lewis's testimony to be particularly compelling. Judge Lewis described himself to the committee this way. These are his words: "openly and unapologetically pro-choice" and "a committed human rights and civil rights activist." That is how he described himself, Judge Lewis.

He testified about Judge Alito:

> [I]t is in conference, after we have heard oral argument and are not propped up by law clerks—we are alone as judges, discussing the cases—that one really gets to know, gets a sense of the thinking of our colleagues.

Judge Lewis continued:

> And I cannot recall one instance during conference or during any other experience that I had with Judge Alito, but in particular during conference, when he exhibited anything remotely resembling an ideological bent.

Judge Lewis further said:

> If I believed that Sam Alito might be hostile to civil rights as a member of the United States Supreme Court, I guarantee you that I would not be sitting here today. . . . My sense of civil rights matters and how courts should approach them jurisprudentially might be a little different. . . . But I cannot argue with a more restrained approach. As long as my argument is going to be heard and respected, I know that I have a chance. And I believe that Sam Alito will be the type of justice who will listen with an open mind and will not have any agenda-driven or result-oriented approach.

Judge Lewis concluded:

> I am here as a matter of principle and as a matter of my own commitment to justice, to fairness, and my sense that Sam Alito is uniformly qualified in all important respects to serve as a justice on the United States Supreme Court.

So who do you believe has accurately depicted Judge Alito's qualifications and record? The speeches of opponents today and yesterday? Or the people who have worked with the judge, day in and day out for years, who know him personally, and who have seen him up close and in the trenches? I will pick those people who have worked with Judge Alito for 15 years, particularly because they come from different political backgrounds and different approaches to the law and the Constitution, as opposed to the partisan, liberal outside interest groups that have probably never even met Judge Alito. I, then, know whom I believe.

Not only that. If one wipes away the distorted and deceptive characterizations, as well as the false insinuations and calculated smears, Judge Alito's record plainly shows that he is a dedicated public servant who practices what he preaches: integrity, modesty, judicial restraint, devotion to the law, and devotion to the Constitution.

Let me briefly address this issue which has been brought up that somehow Judge Alito's appointment is going to upset the balance of the Court. As I said before, history will take care of the proper "balance" on the Court. But some of my colleagues—or maybe speaking for their outside liberal interest groups—have taken the position that Judge Alito has to share Justice O'Connor's judicial philosophy and voting record in order to take her seat on the Court. They argue that Judge Alito should not be confirmed, regardless of whether he is qualified or not, because he does not appear to be Justice O'Connor's judicial philosophy "soul-mate", and he would change the ideological balance of the Court.

Well, the last time I checked, the Supreme Court does not have seats that are reserved for a conservative or a liberal or a moderate or a Catholic or a Jew or a Protestant, one philosophy or another philosophy—no! The Senate has never taken the position, moreover, that like-minded individuals should replace like-minded Justices leaving the Court. And until just recently, I never heard the argument from the other side of the aisle. That kind of reasoning is completely antithetical to the proper role of the judiciary in our system of government.

The reality is that the Senate has historically confirmed individuals to the Supreme Court who are determined to be well qualified to interpret and apply the law. It has not been the Senate's tradition to confirm individuals to promote special interests or represent certain causes. That is not what the Constitution says for the Senate to do. In fact, the Court's composition has changed with the elected branches over the years. Almost half of the Supreme Court Justices have been replaced by individuals appointed by a President of a different political party.

The truth is that the Senate has not ever understood its role as maintaining any perceived ideological balance on the Court. In fact, the Senate outright rejected that kind of thinking when Ruth Bader Ginsburg came before us. She was a known liberal, a former general counsel for the ACLU, and she was overwhelmingly approved by the Senate by a vote of 96 to 3. She replaced whom? A conservative justice. Justice Byron White. Yet there were not any arguments from the other side of the aisle or from this side of the aisle that she would upset the balance of the Court. And she did—change the balance of the Court, radically swinging it to the left.

I certainly did not agree with Justice Ginsburg's liberal judicial philosophy, but I voted for her. The fact is that the Senate confirmed Justice Ginsburg because President Clinton won the election. He made a promise in that election who he was going to appoint to the Supreme Court. He had a right to nominate who he wanted based upon the results of that election—the same thing for George Bush in the 2000 election and the 2004 election. Moreover, and more importantly, though, Justice Ginsburg had the requisite qualifications to serve on the Court, and she was not a political hack. So she was confirmed.

This was the same for Justice Breyer. I knew that Breyer was a liberal and that I probably would not agree with his judicial philosophy, but he was qualified. So I voted for him. The Senate confirmed Justice Breyer by a vote of 87 to 9. The President had made his choice. The Senate found him to be qualified, and we confirmed him. Republicans certainly did not put up any roadblocks to the Ginsburg and Breyer nominations. I would say that Judge Alito is no more out of the mainstream than Justices Breyer and Ginsburg.

The Democrats and liberal outside interest groups are intent on changing the rules of the game because they did not win at the ballot box in 2000 and 2004, or maybe over the last 10 years. The way the Democrats want to operate now is not the way we have operated in the past. But the truth is, by politicizing and degrading the nominations process, and the nominees themselves, we will end up driving away our best and brightest minds from volunteering for public service. It is disappointing to me to see a decent man and his family have to endure hurtful allegations and insinuations which are just plain false and, moreover, mean-spirited.

It is disappointing to me that so many of my colleagues are going down this path, creating a standard that can only harm the independence of the judiciary, and severely distort our system of government.

Before I conclude my remarks, I want to quote from a letter I received from an Iowa constituent. I will only quote it in part, but I will include it for the RECORD. Her name is Joan Watson-Nelson, and she wrote about her very personal impressions of Judge Alito when they attended high school together in the late 1960s in New Jersey. I don't know exactly how she got to Iowa. But she is there and she wanted me to know how she remembered Sam Alito.

She wrote:

> I remembered [Samuel Alito] because he stood out in his class and in the school. He was one of the leaders of the school. . . . I remembered him being very bright, well prepared, and brilliant. He appeared to be an individual with vision. . . . . He stood out as a young man with a great deal of integrity. Many of his teachers from high school are gone now. But I know if they were here and could write letters on his behalf, they would have many stories to tell about the kind of student he was both inside and outside the classroom.

The letter continues:

> I am not a very political person. I have some issues that I believe in deeply and others that I do not have a deep commitment about. I am sure that Sam and I do not agree on all the issues that will be placed before him. The abortion issue is likely to be one of those, as I understand from the media that he may be against abortion. However, I do strongly believe that he will listen to the arguments placed before him, research the law, and decide honorably.

She concludes her letter this way:

> It has been nearly 40 years since he graduated from high school.

I think the implication is she hasn't even talked to him in the last 40 years. She says:

> And although I have a good memory for details, the specific details of my involvement with Sam are not as clear as I would like to have them be in my endorsement for him. What is left, however, is the internalized memory of Sam. That memory tells me that he will make an excellent Supreme Court justice. I hope that with your hearings on his appointment, you and the others will be able to make that clear to any who may wish to try to discredit him for political reasons. What I learned about the Supreme Court branch of government—

Talking about when she was in school—

> is that this part of the "checks" in our system is to be devoid of politics. I believe that Sam has what it takes to fulfill that role.

I think this is a very nice testimonial about the man we are going to vote on and hopefully confirm to become the next member of the Supreme Court. I appreciate Ms. Watson-Nelson's letter letting us know about her personal experience with Sam Alito. She hit the nail on the head. The Supreme Court needs to get out of the business of politics, and we need to stop discrediting good nominees for political reasons. She, like most Americans, knows what is going on.

So, it is clear to me, the people who know Judge Alito personally believe, without any reservation, that he is a judge who follows the law and the Constitution without preset outcomes in mind. They believe he is a man of great intellect and insight. They believe he is a fair and open-minded judge committed to doing what is right, rather than committed to implementing a political agenda or a personal agenda. They believe he is a man of integrity, modesty, and restraint.

I am pleased to support Judge Alito's nomination. Judge Alito will be a great Justice, not a politician on the bench. He won't impose his personal views or be a judicial activist, but will make decisions as they should be decided—in an impartial manner, with the appropriate restraint, in accordance with the laws and the Constitution. Judge Alito will carry out the responsibilities of a Justice in a principled, fair, and effective manner. I am proud to cast my vote in support of this decent and honorable man.

I wish this story would end with qualifications, integrity, and judicial restraint, because only those considerations should matter. But it looks as though the most partisan and political among us won't let that happen. There may be some who will vote against Judge Alito's confirmation, not because of qualifications or integrity, and not even because they want somebody to legislate from the bench or treat the Constitution as a blank slate that judges can freely draw upon.

No, it appears some Senators will vote against this nominee because they think doing so is a good political issue. Instead of applying the same standard we Republicans applied when the Senate overwhelmingly confirmed Justice

Ginsburg, the most liberal Justice on the Court, these partisans will change the rules in the middle of the game once again. They will vote against Judge Alito with an eye toward the next election and the demands of their most extreme and activist supporters.

The Washington Post had it right when it editorialized on January 15:

> A Supreme Court nomination isn't a forum to refight a presidential election.

I would go a step further than that editorial. A Supreme Court nomination is not a forum to fight any election. It is the time to perform one of our most important constitutional duties and decide whether a nominee is qualified to serve on the Nation's highest court.

I hope my colleagues will cast their vote based on Judge Alito's outstanding qualifications, rather than on the distorted claims of liberal outside-interest groups. I urge my colleagues to rise above partisan politics and support this worthy nominee, Samuel Alito. Samuel Alito deserves our overwhelming vote of approval, and it would be a great shame if he doesn't get it.

I ask unanimous consent to print in the Record the letter from which I quoted.

There being no objection, the material was ordered to be printed in the Record, as follows:

Dear Senator Grassley: I spoke with you briefly at the Iowa Farm Bureau annual meeting on November 30th regarding Sam Alito. You requested that I follow up our discussion with a letter about how I felt about him.

He graduated from Steinert High School (AKA Hamilton High School-East) in 1968 and I graduated from Steinert in 1969. I remember well that he was one of 4 Valedictorians that year, a first for the school. There were 2 men and 2 women. I knew one of the women well and I remembered him because he stood out in his class and in the school. He was one of the leaders of the school. He was student council president at Steinert his senior year, and I think he was also student council president at Reynolds Jr. High as well. I had worked with him on the school newspaper staff my Junior year, the year he was the editor of the paper.

I remember him as being very bright, well prepared, and brilliant. He appeared to be an individual with vision. His high school "crowd" of kids were the leaders of the school and his class. I knew some of his crowd well during my high school years. He stood out as a young man with a great deal of integrity.

Many of his teachers from high school are gone now. But I know if they were here and could write letters on his behalf, they would have many stories to tell about the kind of student he was both inside and outside the classroom. The teachers at Steinert at the time Sam and I were in high school were a family and they viewed the student body as part of that family. His first principal at Steinert was my father, Richard F. Watson. When we discussed that Sam was up for the Supreme Justice opening, he remembered him and hoped that he would be approved.

I am not a very political person. I have some issues that I believe in deeply and others that I do not have a deep commitment about. I am sure that Sam and I do not agree on all of the issues that will be placed before him. The abortion issue is likely to be one of those, as I understand from the media that he may be against abortion. However, I do strongly believe that he will listen to the arguments placed before him, research the law, and decide honorably.

The best summary of the type of person that I believe Sam to be is that I believe that he has many of the same qualities that I have observed in you, Senator, over the years that you have been our State senator. Those qualities and values are the reason that I continue to vote for you and support you. I think that this is the best endorsement that I can give to Sam. It has been nearly 40 years since he graduated from high school. And although I have a good memory for details, the specific details of my involvement with Sam are not as clear as I would like them to be in my endorsement for him. What is left, however, is the internalized memory of Sam. That memory tells me that he will make an excellent Supreme Court Justice.

I hope that with your hearings on his appointment, you and the others will be able to make that clear to any who may wish to try to discredit him for political reasons. What I learned about the Supreme Court branch of our government is that this part of the "checks" in our system that is to be devoid of politics. I believe that Sam has what it takes to fulfill that role.

Sincerely,

Joan Watson-Nelson.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Mississippi.

Mr. LOTT. Mr. President, parliamentary inquiry before I begin: I know we have a balance, going back and forth in this debate. Have any prior arrangements been made with regard to others proceeding, or may I go at this time?

The PRESIDING OFFICER. The Senator may proceed until 2.

Mr. LOTT. Mr. President, I rise today to speak in favor of the nomination of Judge Samuel Alito for Associate Justice of the U.S. Supreme Court.

Before I proceed to my discussion of my views of Judge Alito, I take a moment to thank Senator ARLEN SPECTER for the good work he has done on the Judiciary Committee over the last few months. He has had a loaded calendar, a lot of important legislation, important hearings, and the process of confirming two Supreme Court Justices. It has been a while since any chairman of the Judiciary Committee or any committee has had this kind of workload over just a few months. Senator SPECTER has done an excellent job in the way he has handled it.

I also recognize Senator GRASSLEY and his participation on the committee and the statement he just gave. It is obvious he has done his homework. He handled himself well in the hearings, and he has even developed what seems to be a personal affinity for Judge Alito. That will affect a lot of other Senators' thinking about this, and a lot of the American people.

I commend those on the committee who have treated this process with the dignity and respect it certainly deserves. The Chair will note, I said to "those," meaning not necessarily all of the members of the committee.

There is not a lot I can say here today that others won't say about his record or about this issue. But I believe this is one of the most important functions we have in the Senate; that is, our advice and consent, the confirmation process for our Federal judiciary. There is no question that it was intended we have three equal branches of Government: the judiciary, the executive, and the legislative. We all have responsibilities under the Constitution and under the law, and those have evolved over the years. Separation of power should not mean we become the body or the part of Government that becomes obstructionist or is always looking for a way to take on the executive or the judiciary. This is an important responsibility, and it is important every Senator have a chance to express his or her views on this topic.

This is such an important issue that it is good for the country, anytime we have a debate about the judiciary and what is the role of the Congress, the executive branch, the judiciary, the whole process: How should judges be selected and how should the hearings be held and what should they do when they get on the Court. This is good for the country, and we should look at it that way.

I do know that it has been a constant topic of discussion in much of the country since last summer with the process that led to the confirmation of Chief Justice Roberts and now the discussion about Judge Alito. I had a call from a constituent in Jackson, MS. She expressed her support for the fact that the Judiciary Committee reported out this nomination and thought we were going to vote today, which we should be voting today on his confirmation as an Associate Justice. It said to me, once again, this is not a person involved in the judiciary, but people are paying attention to what we say and what we do. We should not trivialize in any way this important process.

Over the years I have asked myself, what should I do in analyzing Federal judicial nominations, particularly the Supreme Court, since they clearly can have a long-term effect. When we confirm these men and women for life terms, it is serious. We need to always be thinking about it. When I first came to the Senate after years in the House, I asked my senior colleague from Mississippi, a respected member and now chairman of the Appropriations Committee, to talk with me about what should be the criteria in debates for confirming judges. He gave me good advice, and it was pretty simple. He basically said that under our advice and consent responsibility, we should look to see if the nominee is qualified by character, education, experience, and temperament. Then if the nominee meets the basic criteria or qualifications in those areas, he or she should be confirmed. End of discussion. Not a ruling on a particular case, not a personal view on any subject, not one based on religious faith or any number of other issues. Are they qualified by character, which means do they have good integrity and ethics, are they educated for the job, do they have good experience, and do they have the right temperament to serve. That is the way it should be.

When I have looked at the issue, I am absolutely satisfied we have one of the most qualified nominees for the Supreme Court, probably one of the most qualified in at least 70 years, when we look at all he has done. I have applied this principle during Democratic administrations and Republican. Have I occasionally voted against nominees? Yes, for good and valid reasons. I voted against one because I thought he had a conflict of interest. I voted against one because I thought he had been a recess appointment inappropriately. I don't think Federal judges should, generally get recess appointments, although it has been done in one case where I clearly felt it was fair. But it is not something I would want us to make a practice of.

I voted for Justice Ginsburg. A lot of people in my State said: Why? I voted for other so-called liberal judges I philosophically had problems with, but in the case of Justice Ginsburg, I thought she was qualified by character, education, experience, and by her temperament. I am sure I don't agree with an awful lot of the decisions she has made on the Supreme Court, but she is qualified.

There is one other thing. It is called elections. When we elect a President, we should know what is going to be their position on appointing people to the Federal judiciary. This President, George W. Bush, made it clear he was going to be looking for strict constructionists, men and women of good character who would not write the laws but would interpret the laws. He talked about it. Nobody in America should be surprised that he would nominate a candidate such as Judge Alito. He certainly is experienced. He is a strict constructionist. He is qualified.

Some people are offended that the President would suggest what appears to be a conservative for the Supreme Court. Why? What did they expect? That is why I voted for Justice Ginsburg and a lot of President Clinton's nominees for the Federal judiciary, because he won the election. These were his choices. While I might disagree with him philosophically, I couldn't disagree with him as far as their qualifications. Even the very active Democratic Governor of Pennsylvania, Mr. Rendell, has talked about elections and their meaning in this process. This President has selected this nominee and he is entitled to that and, basically, this judge should be confirmed. That was an interesting comment for a former chairman of the Democratic National Committee. But he took the right position, and I appreciate the fact that he would do that.

When you look at Judge Alito's background, it becomes clear he is highly qualified. He is a graduate of Princeton and Yale Law School. Some people might try to use that against him. I guess he couldn't get into Vanderbilt or the University of Mississippi, but Princeton and Yale are not bad institutions.

He was a member of Phi Beta Kappa. He was an editor of the Yale Law Review. He clerked for Judge Leonard Garth of the Third Circuit. He was an assistant U.S. attorney for the District of New Jersey. He was Assistant to the Solicitor General of the United States beginning in 1981 where he argued 12 cases before the Supreme Court on behalf of the Federal Government. After serving as Deputy Assistant Attorney General in the Office of Legal Counsel, he was nominated for U.S. attorney for the District of New Jersey. He was unanimously confirmed by the Senate. Then, of course, he was nominated by President George H.W. Bush in 1990 to the Third Circuit Court of Appeals.

So he has good character. I think most people would agree to that. He is clearly well educated. It is hard to disagree with that. He clearly is brilliant. Maybe sometimes he is too smart for a lot of us; he knows the law, and he can talk about cases by name without reference to notes. He clerked and has worked as a Federal judge in the Third Circuit. He was on the prosecution side as assistant U.S. attorney and as U.S. attorney. So these are all good qualifications.

Then he went on the Third Circuit, a very important and active circuit, where he has served 15 years. He cast approximately 5,000 votes, and he participated in the decisions of more than 1,500 Federal appeals and has written more than 350 opinions—a lot of work and a lot of good work.

If there was a problem with this judge and his opinions, do you really think the Judiciary Committee could not have found some cases or more phrases when he participated in all of these votes and wrote 350 opinions? I have been very impressed by the willingness of his colleagues, but not just from New Jersey, not just those who served with him in previous administrations, but six current and former Federal judges with all kinds of backgrounds and philosophies—people who admit, I am a Democrat, a liberal, but I know this man, his demeanor, how he handles himself when we were in conference—where judges come out with these mystical decisions they develop in those quarters. That is where you see the real man. When you have people who have spoken up and made it clear about the quality of this nominee, I think that is very important.

The "holy grail," the American Bar Association, has rated him well qualified. There again, a lot of people used to say that is the most important thing of all. Well, he got their top rating. Surely, that would affect us. Regardless of ideological, philosophy, or positioning, the people who know him best have spoken up very aggressively in his support. That is very convincing to me.

I thought during the hearings he handled himself quite well. He answered over 600—maybe 700 questions, when he was given a chance. The statements and questions were a lot longer than the answers were allowed to be. I thought his responses were good and studied. He met the so-called Ginsburg standard. He would not say how he might rule on a particular case. How can you do that? You have to know the facts and you have to look at precedents and you have to go through all these hoops that lawyers enjoy wrestling with and judges have to comply with. I watched it. My wife thought I was strange for sitting there watching these committee hearings, but I felt it was part of my responsibility. I wanted to see what the Senators asked him and how he responded. I thought he handled himself well on his answers and how he responded on substance.

I was upset, quite frankly, when it turned from substance to what got close to character assassination, smear. It really got personal and ugly. I was embarrassed about that. I was ashamed, quite frankly. I realize that sometimes our spouses have to put up with a lot for those of us who are in government and politics and on the judiciary. But I thought it was a defining moment when the judge's wife was driven to tears.

I have appreciation for the fact that one of the Senators was saying, We are sorry that you had to put up with this. We know you are a man of character and integrity. I don't think it needs to go that far.

Do we get carried away around here sometimes on both sides of the aisle? Sure. It is a tough, political, and partisan political place. But how much is enough? How low will we sink? Every year I have been in the Senate we have drifted further and further down in how we deal with these Federal judicial appointments. Hopefully, we will finally reach the bottom and we will go back up.

There is no good reason to vote against this good man to be on the Supreme Court, even if you might disagree with him on some of his decisions. But he will be careful and studied and he will pay attention to the precedents—more so than I probably would like him to. But it is time to begin to try to go back and approach these nominations differently. Again, I am not absolving any of us for having misbehaved sometimes in the way we handle these issues.

The American people are watching, and they have to feel for this man. They were unhappy with what they saw from a lot of Senators on the Judiciary Committee. They felt that he went through more than he should have, in terms of personal attacks. They would like for us not to go quite so far.

I was encouraged, frankly, when we had the vote on Judge Roberts, to be the Chief Justice. I was pleased that it was as bipartisan as it was, and he received 78 votes. But now I see that slipping away in this case.

Some say: Wait a minute, this is extraordinarily important because this may tip the balance, and that Justice Sandra Day O'Connor became somewhat of a swing vote and probably would be interpreted by some people as being a moderate in some respect.

Well, it may tip the balance. From my standpoint, I sure hope so. But I was not paying any attention to balance when I voted for Justice Ginsburg. I was voting on the merits of that particular individual.

I don't think it is fair to Judge Alito to oppose him because he is conservative and may tilt the balance of the Supreme Court. These things swing back and forth. The pendulum has been way over there in the Supreme Court for a long time and, finally, it has become more moderate. Maybe it will become more conservative.

I think I have told the story in the Senate before about how I was talking to a personal friend, now a Federal judge. He was inquiring in bemusement, and incredulously:

> Why is it that the Federal judiciary is held in such low regard?

I could not believe he even asked. I said:

> Your Honor, it is because of the dumb decisions that you all quite often make.

The people are outraged with decisions such as the Kelo v. City of New London case, dealing with eminent domain.

Time and time again, people see what is happening in Supreme Court rulings. They get in here when they should not and don't get in there when they should. In many instances, they interpret the law wrongly or start to try to make laws. And it is not just the Supreme Court. I think over the years—recently, at least—if you look at the Supreme Court, they have been pretty good. But the eminent domain decision just absolutely floored me. We have to correct that mistake. When you get down to the rest of the Federal judiciary, they are into all kinds of stuff all the time—social engineering, intervention when they have no business intervening, and they have lost a lot of respect from the American people.

That said, I want the Federal judiciary and the Congress and the President to be respected for the special institutions they are. So this is an important decision.

I am pleased the President nominated Judge Alito. I think that his experience over these years has clearly qualified him for it. He has 30 years of experience, and he went though 18 hours of questioning. He is a good man with a great background, with an American dream story, a first generation American from another country. He is everything I thought we should be looking for. So I am pleased and honored to be able to come and speak on behalf of his nomination and urge his confirmation, and I will vote for him.

In conclusion, let me say again that there are some who say we may still have a filibuster. We should not do that. We cannot do that. That is not fair to the process, not fair to this nominee, not fair to the President. I hope our colleagues will not impose a filibuster here and force action by the Senate to stop that sort of thing from happening.

I also want to say again that I think we have sort of lost our grip on how we treat these nominees. We need to find a way to pull back. It has gotten too ugly, too personal, and I think it undermines the credibility of the judiciary and those of us who sit in judgment on these men and women. I repeat again that we have all been a party to this, including me—I don't deny it—over the years. But at some point there comes a time when you say to each other, regardless of philosophy or region or party, let's see if we cannot do a better job, with more dignity and decorum, and that is more focused on the qualifications and character of the men and women and not on politics, partisanship, or ideology. I would like to be a part of making that happen.

Every now and then, I have colleagues say: What can we do about the atmosphere? Well, it begins with us. It begins with making up our minds that we are going to be more communicative and we are not going to be quite so partisan. I have been as partisan as anybody around here. I served in the House, and it tends to make you a partisan warrior when you have been in the minority. Some people say maybe you get to be kind of arrogant and mean when you get to be in the majority. We can make a difference. I hope we find a way to do it, and do it soon.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, it is my understanding at this time that there is an allocation of time reserved for the Senator from Virginia, and I shall proceed, although we are slightly off schedule. I don't wish to encroach on others, but I will proceed and watch the floor very carefully.

The PRESIDING OFFICER. The Senator will suspend for a moment. I have been advised there are only 2 minutes left of the majority time for this allocation.

Mr. WARNER. Then I will proceed, if I may, and ask unanimous consent to speak for not to exceed 5 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Reserving the right to object, Mr. President, we certainly hope there will be no objection. My friend and colleague from Connecticut is roughly scheduled on the hour, but that seems to be a reasonable request. We could add the other 5 minutes at the end of the hour if that would be agreeable to the Senator from Virginia.

Mr. WARNER. Mr. President, I think that would work out. Perhaps the intervening hour will be such that we won't need that additional 5 minutes because I think the managers and leadership have tried to carefully manage the time. I am just able to get started now because my colleagues gave very good speeches, and we all enjoyed it.

The PRESIDING OFFICER. Without objection, the Senator from Virginia is recognized for 5 minutes.

Mr. WARNER. Mr. President, article II, section 2 of the U.S. Constitution explicitly provides for the responsibilities of the executive branch and Government and the Senate with respect to judicial nominations. The Constitution reads in part that the President "shall nominate and, by and with the advice and consent of the Senate, shall appoint judges of the Supreme Court and all of the officers of the United States." Thus, the Constitution provides the President of the United States with the responsibility of nominating individuals to serve on our Federal bench.

The Constitution provides the Senate with the responsibility of providing advice to the President on those nominations and with the responsibility of providing and withholding consent on those nominations. In this respect, article II, section 2 of our Constitution places our Federal judiciary in a unique posture with respect to the other two coequal branches of our Federal Government.

Unlike the executive branch and unlike the Congress, the Constitution places the composition and continuity of our Federal judiciary entirely within the coordinated exercise and responsibilities of the other two branches of the Government. Only if the President and the Senate fairly and objectively and, if I may say, in a timely manner exercise their respective constitutional powers can the judicial branch of Government be composed and maintained so that our courts can function and serve the American people.

For this reason, in my view, a Senator has no higher duty than his or her constitutional responsibilities under article II, section 2—the advise and consent clause.

With respect to the Senate's advice responsibilities under article II, section 2, I believe our Founding Fathers explicitly used the word "advice" in our Constitution for a reason. This was to ensure consultation between a President and the Senate prior to the forwarding of a nominee to the Senate for consideration. Adequate consultation prior to the forwarding of a nominee is of utmost importance. And, I compliment our distinguished President for recognizing that in the case of now, Justice John Roberts, and with respect to this nomination.

But, let's not forget that while the Constitution calls for the Senate to provide advice to a President on whom he should nominate, the decision of whom to nominate solely rests with the President of the United States.

Alexander Hamilton made this point crystal clear in the Federalist Paper No. 66 when he wrote:

> It will be the office of the President to nominate, and, with the advice and consent of the Senate, to appoint. There will, of course, be no exertion of choice on the part of the Senate. They may defeat one choice of the Executive, and oblige him to make another; but they cannot themselves choose—they can only ratify or reject the choice of the President.

That is precisely why we are here in these closing days of a very prolonged procedure with regard to Judge Alito.

I am privileged to indicate that I shall strongly support him at the time the vote is taken and cast my vote for him.

With respect to the issue of consent, I believe it is imperative that when a Senator considers whether to grant or withhold consent, he or she should recognize article II, section 2 and Alexander Hamilton's statement in Federalist No. 66. Accordingly, during the course of my 28 years in the Senate, I have always tried to fairly and objectively review a judicial nominee's credentials prior to deciding whether I will vote to provide consent on a nomination. I look at a wide range of factors, primarily: character, professional career, experience, integrity, and temperament for lifetime service on our courts. While I certainly recognize political considerations, it is my practice not to be bound by them.

These same fair and objective factors that I have used during my 28 years in the Senate have guided my consideration of Judge Alito's nomination.

When Judge Alito's nomination was first announced, I wasn't overly familiar with the nominee. But over the past few months, I have reviewed his record thoroughly. I met with the nominee twice—the first time prior to his confirmation hearings before the Senate Judiciary Committee and the second time after the hearings. Each time I asked him a number of indepth questions. I have also reviewed a number of his judicial opinions and followed the confirmation hearings before the Judiciary Committee. In addition, many people have written, emailed, called my office, or spoken to me personally about this nominee, and I have respectfully considered their views.

Having now completed my review of Judge Alito's nomination, I can say, without equivocation, that of the numerous judicial nominees I have reviewed during my nearly three decades in the Senate, Judge Alito's credentials and qualifications place him as very well qualified.

Judge Alito has an impressive record of legal accomplishments.

He received his bachelor's degree from Princeton University and attended Yale Law School. While at Yale, he served as an editor on the Yale Law Journal. Following graduation from law school, he worked as a law clerk for a Federal circuit court judge, Judge Leonard Garth of the U.S. Court of Appeals for the Third Circuit.

Subsequent to his clerkship, Samuel Alito worked as an assistant U.S. attorney, as an assistant to the Solicitor General of the United States, and in the Office of Legal Counsel in the U.S. Department of Justice. In 1987, Mr. Alito was unanimously confirmed by the Senate to serve as the U.S. attorney for the District of New Jersey. Three years later he was nominated and unanimously confirmed by voice vote to serve as a judge on the U.S. Court of Appeals for the Third Circuit, and he has served on this court for the last 15 years.

Without a doubt, Judge Alito has the requisite legal and professional experience to serve on the Supreme Court. Indeed, the American Bar Association, whose rating system of Federal judges is often referred to as the gold standard in the Senate, recently awarded Judge Alito a rating of well qualified—its highest rating.

But in addition to his impressive record of legal accomplishments, Judge Alito has also demonstrated—during his confirmation hearings and over the past 15 years on the Federal bench—a deep respect for legal precedent and for the constitutional responsibility of the legislative branch to write our laws. These qualities of Judge Alito were confirmed by the remarkable testimony before the Judiciary Committee of several current and retired Federal judges, appointed by both Republican and Democratic Presidents, who worked closely with Judge Alito on the Federal bench.

In my view, Judge Alito's strong record and experience, coupled with his appearance before the Judiciary Committee, eliminate any question of the existence of "extraordinary circumstances" that would justify denying him an up-or-down vote.

Judge Alito is an outstanding judicial nominee who I am proud to support for confirmation. I believe he will serve on the U.S. Supreme Court with distinction, and I commend our President on making such a fine nomination.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ISAKSON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LIEBERMAN. Mr. President, pursuant to the understanding between the Senator from Virginia and the Senator from Massachusetts, I now ask unanimous consent that there be an extra 5 minutes added at the end of this hour for this side of the aisle.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I rise to discuss the nomination of Samuel Alito to be Associate Justice of the Supreme Court. This is the sixth opportunity I have had as a Senator to consider a President's nominee to the High Court. It is surely one of the most awesome and important responsibilities of Members of this body because of the uniquely powerful and autonomous role the Supreme Court has in our governmental system and because, once confirmed, Supreme Court Justices serve for life, with accountability only to the Constitution, as they read it.

Similar to most of my colleagues, I judge the nominees based on four factors: their intellect and ability, their experience, their character, and their judicial philosophy.

On the first three factors—intellect, experience, and character—I conclude that Judge Alito more than passes the test. But on the fourth factor, judicial philosophy, I am left with too many doubts to vote to confirm this nominee for a lifetime of service on the U.S. Supreme Court.

Let me now go over these four areas of consideration.

First, intellect and ability. From the meeting I had with Judge Alito, the legal quality of his opinions, over 15 years as a judge, and his testimony before the Judiciary Committee, I believe Judge Alito has shown that he is a person of considerable intellect and ability.

Second, experience. Judge Alito's curriculum vitae itself depicts his excellent and relevant experience as a law clerk, a Federal Government attorney, a U.S. attorney, and an appellate judge on the Third Circuit.

Third, his character. Judge Alito, I know, was questioned aggressively at the Judiciary Committee's confirmation hearings and elsewhere with regard to his character, but I thought he emerged with his integrity and honor intact. The ABA standing committee confirmed that judgment when it concluded that "he is an individual of excellent integrity," and that was based on more than 300 interviews with professional colleagues.

Fourth is judicial philosophy, and here is where, for me, the problems with this nomination begin and, in some sense, ends. Judge Alito brings to this nomination process a more lengthy record of judicial opinions than any of the previous five nominees to the U.S. Supreme Court whom I have had the privilege to consider. In his 15 years on the Third Circuit Court, Judge Alito has written more than 350 opinions. Together, these opinions leave me with profound doubts about whether Judge Alito would protect and advance the special role the Constitution gives the Supreme Court as the single institution in our Government that our Founders freed forever from popular political passions so that it could protect the rights our founding documents gave to every American.

Personal freedom and equal opportunity are America's core ideals, and our courts have been and must be the great advancers and protectors of those ideals. To me, that work defines the vital mainstream of American jurisprudence.

Based on his personal statements during the 1980s when he was a Government attorney, and particularly on his 15 years of judicial opinions, I am left with profound concerns that Judge Alito would diminish the Supreme Court's role as the ultimate guarantor of individual liberty in our country.

This is not about a single issue but about an accumulation of his opinions that leads me to a preponderance of doubts. For example, in civil rights cases, Judge Alito has repeatedly established a very high bar, an unusually high bar for entrance to our courts for people who believe they have been denied equal opportunity and fair treatment based on race or gender.

In one case, Bray v. Marriott Hotels, the majority of his colleagues on the court said:

> Title VII of the Civil Rights Act would be eviscerated if our analysis were to halt where the dissent of Judge Alito suggests.

Judge Alito's narrow reading of the commerce clause, as exemplified by his dissent in the case of United States v. Rybar, casts a shadow on Federal legislation passed to protect the rights of individual Americans which has been and will be based on the commerce clause. When asked at his confirmation hearings about the question of personal privacy, Judge Alito accepted the 1965 decision of Griswold v. Connecticut as settled law. But when asked over and over, he refused to say the same about the 1973 decision in Roe v. Wade.

On that most divisive and difficult question of abortion, I personally believe that Roe achieved a just balance of rights and reflected a societal consensus that has continued and deepened in our country for more than three decades. I was left with serious concerns that Judge Alito would not uphold the basic tenets of Roe, and that is a very troubling conclusion.

Every time I have voted to confirm a nominee to the U.S. Supreme Court, as I have with Justices Souter, Breyer, Ginsburg, and Roberts—two appointed by Republican Presidents and two appointed by a Democratic President—I did so knowing, as we all do, that I was taking a risk because I could never know exactly how the particular Justice would rule on the many cases that would come before him or her in a lifetime on the bench. But I ultimately concluded, based on their records and their testimony, that those four Justices would more likely than not uphold the unique responsibility the Supreme Court has as the most important guardian of freedom, opportunity, and privacy for every single American.

Unfortunately, I have not been able to reach the same conclusion about Judge Alito, and so I will respectfully vote "no" on his nomination.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank the Senator from Connecticut for his excellent statement.

I spoke on this issue yesterday. I wish to include in the RECORD some letters that I have received from the representatives of the working community. I will include them in the RECORD. The first letter I am going to include in the RECORD is a letter I received from the AFL–CIO. Included in the comments are these words:

> As the enclosed memorandum explains more fully, Judge Alito's decisions and dissents show a disturbing tendency to take an extremely narrow and restrictive view of laws passed by Congress to protect workers' rights, resulting in workers being deprived of wage and hour, health and safety, anti-discrimination, pension, and other important protections. On a number of occasions, Judge Alito's colleagues on the Third Circuit have criticized his opinions for their excessively narrow view of worker protection and civil rights statutes. Judge Alito holds federal agencies to an unrealistically high standard when they seek to enforce worker protection laws, often reversing them on hypertechnical grounds and depriving workers of important protections as result.

It continues:

> Working families are struggling mightily against an assault on our hard-won gains in the legislative arena and at the bargaining table. Wages are being cut, pensions and health benefits are being drastically reduced or eliminated, and job security is vanishing. Now more than ever, workers need the protections offered to them under the laws passed by Congress to protect their pay, benefits, retirement security, and health. Working families need and deserve Supreme Court Justices who understand and respect the importance of hard-fought rights and protections, not Justices who take an unduly narrow view of the law, and of our rights. Judge Alito's judicial philosophy is one that appears at odds with workers' interests. Given the current composition of the Supreme Court, and the absence of even a single Justice with a worker advocacy background, we cannot afford to have the Court further skewed against working families' interests.
>
> In recent years, many cases have been decided in the Supreme Court by a one-vote margin. The Supreme Court, decided, by one-vote margins, two cases involving the question of whether certain groups of workers were protected under the National Labor Relations Act. Millions of state employees were deprived of their ability to seek relief in court under the Fair Labor Standards Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act because of decisions decided by a one-vote margin. The Court issued a decision restricting States in their ability to adopt their own workplace safety laws, again by a one-vote margin. By a one-vote margin, the Supreme Court excused employers from having to pay backpay when they are found to have discriminated against union supporters who happen to be undocumented workers. The importance of this nomination to the rights and protections of working families is clear.

There is an excellent letter I received from AFSME. It points out:

> As a judge on the 3rd Circuit Court of Appeals in Philadelphia, Lilts's extreme views can be seen in his rulings where he consistently limits Congress' authority to enact laws that protect the rights of workers and individuals. . . .

Then it says:

> In one such case, Alito denied a female police officer's sexual harassment claims despite overwhelming evidence that she had indeed been victimized.
>
> Public employees also have not been spared under Judge Alito. He wrote an opinion in a Pennsylvania case where he stated that the Family and Medical Leave Act did not apply to state employees. Rightfully so, the Supreme Court ruled in disagreement with Alito, upholding the family care provision of the FMLA. Several courts since then, including the very conservative Fourth Circuit Court of Appeals, have concluded that state employees shall have access to the entire range of protections under the FMLA, thus rejecting Alito's earlier ruling.
>
> Perhaps most disturbing about Judge Alito's judicial philosophy is his narrow reading of our civil rights laws, notably Title VII of the Civil Rights Act of 1964. . . .

It continues:

> While Alito's 15 years as a Judge raises major concerns, the time he spent as Presidential appointee in the Reagan White House is equally disturbing. When Alito was a Justice Department lawyer in the 1980s he urged President Reagan to veto legislation that would have protected consumers from crooked car dealers. . . .
>
> Alito wrote that protecting Americans is not the federal government's job. He said in his memo, "After all, it is the states, and not the federal government, that are charged

with protecting the health, safety and welfare of their citizens. This philosophy is extremely harmful to state employees who deserve to have federal worker protections apply to them as well.

That is a letter from Mr. Gerald W. McEntee.

There is a similar letter from the United Auto Workers.

I ask unanimous consent those letters be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. KENNEDY. Whoever is confirmed to succeed Justice Sandra Day O'Connor will have enormous power to affect Americans' daily lives. We have a constitutional duty to ensure Justice O'Connor's successor has demonstrated a core commitment to upholding the fundamental rights and freedoms on which our Nation was founded.

Our decision whether to confirm a Supreme Court nominee affects the rights and freedoms not only of our generation, but those of our children and grandchildren as well.

The Court's decisions affect whether employees' rights will be protected in the workplace. I have just referred to three letters that I have received. I have received many others that have been quite specific, pointing out the different areas where the judge has basically turned his back on the employees' rights and workers' rights.

They will affect the ability of Americans to be secure in their homes from unwarranted searches and seizures. They affect whether families will be able to obtain needed medical care under their health insurance policies. And they affect whether people will actually receive the retirement benefits they were promised. They affect whether people will be free from discrimination in their daily lives. They affect whether Americans' most private medical decisions will remain a family matter or will be subject to government interference. And they affect whether students will be given fair consideration when they apply to college. They affect whether persons with disabilities will have access to public facilities and programs. They affect whether we will have reasonable environmental laws that keep our air and water clean.

There they are. These are the issues which the Supreme Court has ruled on very recently. We wonder about the Supreme Court Justices, what judgments and decisions are they making that are so important to the average family. Why should an average family in America who is watching this debate think this nominee and his decisions are going to affect them? That is a reasonable question.

Here you are. Employees, if you are a worker, you may question whether employees' rights will be protected in the workplace. I have just outlined several examples where there have been Supreme Court Justices who have denied workers fair consideration.

The ability of Americans to be secure in their own homes from unwarranted searches and seizures, we went through the Groody case, Justice Alito permitting the strip-searching of a 10-year-old girl who was clearly not included in the warrant that was approved by the judge. He was criticized, not by those of us who have expressed reservations about the nominee, but criticized by a judge on the Third Circuit, talking about how Judge Alito's actions were out of order.

They affect whether families will be able to obtain medical care under their health insurance policies. Remember the debates we had on the Patients' Bill of Rights? We had legislation that passed here, passed the House. We came very close to getting legislation—doesn't each HMO have to provide the types of coverage they have committed themselves to or do they not? Does that violate ERISA or doesn't it violate ERISA? These are important judgments. But it comes down to whether individuals are going to get the health care coverage they thought they were going to get. That is going to be decided by the Supreme Court of the United States.

They affect whether people will actually receive the retirement benefits they were promised. The retirement pensions are in free fall in the United States of America at the present time; absolutely free fall. They say for retirement you need to have your savings—that is part of it—you need the Social Security and Medicare, and you need to have your retirement. Those are the three legs on the stool for a dignified retirement.

These are the issues involving pensions. We have now seen 700 pension funds collapse over the period of the last 4 years, and $8 billion that workers had put aside has effectively been lost. These issues will come up. What are the obligations of companies in order to pay back workers? Those issues eventually come before the Supreme Court—whole lifeline savings. Those issues come up before the Supreme Court.

Mr. President, I see my friend from West Virginia who had been scheduled during this time. I have had an opportunity to speak previously. There are some additional comments I would like to make, but certainly the Senate looks forward to the words of the Senator from West Virginia. I yield at this time.

EXHIBIT 1

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, DC, December 14, 2005.

DEAR SENATOR: The AFL–CIO, a federation of 53 national and international unions representing over nine million working women and men, has reviewed Judge Samuel Alito's record on the U.S. Court of Appeals for the Third Circuit in cases of importance to working families. Based on this review, we are compelled to oppose his nomination to be an Associate Justice on the United States Supreme Court.

As the enclosed memorandum explains more fully, Judge Alito's decisions and dissents show a disturbing tendency to take an extremely narrow and restrictive view of laws passed by Congress to protect workers' rights, resulting in workers being deprived of wage and hour, health and safety, anti-discrimination, pension, and other important protections. On a number of occasions, Judge Alito's colleagues on the Third Circuit have criticized his opinions for their excessively narrow view of worker protection and civil rights statutes. Judge Alito holds federal agencies to an unrealistically high standard when they seek to enforce worker protection laws, often reversing them on hypertechnical grounds and depriving workers of important protections as a result.

We are also very concerned about Judge Alito's views on the scope of Congressional power, given some of his rulings in this area, and his views about voting rights, given his criticism of the Warren Court and its reapportionment decisions. It is critical that Senators explore these and other areas thoroughly at Judge Alito's upcoming confirmation hearings in order to understand his views and his judicial philosophy on these important issues.

Working families are struggling mightily against an assault on our hard-won gains in the legislative arena and at the bargaining table. Wages are being cut, pensions and health benefits are being drastically reduced or eliminated and job security is vanishing. Now more than ever, workers need the protections offered to them under the laws passed by Congress to protect their pay, benefits, retirement security, and health. Working families need and deserve Supreme Court justices who understand and respect the importance of our hard-fought rights and protections, not justices who take an unduly narrow view of the law, and of our rights. Judge Alito's judicial philosophy is one that appears to be at odds with workers' interests. Given the current composition of the Supreme Court, and the absence of even a single justice with a worker advocacy background, we cannot afford to have the Court further skewed against working families' interests.

In recent years, many cases have been decided in the Supreme Court by a one-vote margin. The Supreme Court decided, by one-vote margins, two cases involving the question of whether certain groups of workers were protected under the National Labor Relations Act. Millions of state employees were deprived of their ability to seek relief in court under the Fair Labor Standards Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act because of decisions decided by a one-vote margin. The Court issued a decision restricting states in their ability to adopt their own workplace safety laws, again by a one-vote margin. By a one-vote margin, the Supreme Court excused employers from having to pay back pay when they are found to have discriminated against union supporters who happen to be undocumented workers. The importance of this nomination to the rights and protections of working families is clear.

The AFL–CIO urges you to oppose Judge Alito's nomination and to insist on a more moderate nominee with a record demonstrating greater respect for workers' rights.

Sincerely,

JOHN J. SWEENEY,
President.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW,
Washington, DC, December 19, 2005.

DEAR SENATOR: Next month the Senate is expected to consider the nomination of Judge Samuel Alito to be an Associate Justice on the U.S. Supreme Court. Based on our review of his past writings and judicial decisions, the UAW opposes his confirmation.

While serving on the Third Circuit Court of Appeals, Judge Alito's opinions have consistently reflected a narrow, constricted interpretation of statutes protecting worker rights. In particular, his opinions have excluded state employees from coverage under the Family and Medical Leave Act, denied overtime to newspaper reporters, vacated OSHA citations, absolved corporate officers from liability for unpaid wages, and exempted a company from having to notify workers about an impending plant closing. He even issued a solitary dissenting opinion that would have criminalized "no docking" rules that have been a common industrial practice.

In addition, Judge Alito's opinions in race and gender employment discrimination cases have reflected a restrictive interpretation of civil rights laws that would make it much more difficult for women and minorities to obtain remedies when they are the victims of discrimiation. We are especially troubled by Judge Alito's statement in a 1985 job application that he was "particularly proud" of his work in the Reagan Administration to restrict affirmative action and limit remedies for racial discrimination. We are also disturbed by his 1985 writings disagreeing with the concept of "one man, one vote".

The UAW believes that nominees to the Supreme Court must demonstrate that they hold views that are within the judicial mainstream, and are committed to supporting the rights of workers, minorities and women. Unfortunately, we believe that Judge Alito fails to meet this essential test. Accordingly, the UAW urges you to oppose his nomination to the Supreme Court.

Thank you for considering our views on this important issue.

Sincerely,

ALAN REUTHER,
Legislative Director.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO,
Washington, DC, December 19, 2005.

DEAR SENATOR: On behalf of the 1.7 million members of the American Federation of State, County and Municipal Employees (AFSCME), I am writing to announce our opposition to the nomination of Judge Samuel Alito to be an Associate Justice on the U.S. Supreme Court. We have reviewed his record and determined that his views are far too extreme and out of the mainstream of judicial philosophy. His presence on the Supreme Court therefore would further divide the country and disenfranchise even more average citizens and working Americans.

We believe that working people who are already seeing their rights and protections under attack would not fare well if Judge Alito was elevated to the Supreme Court. Judge Alito has authored a number of decisions and dissenting opinions contrary to the rights of employees and individuals. Of particular concern to our members is Judge Alito's established practice of "closing the court-room door" to victims of civil rights violations by substantially increasing the burden of proof placed on plaintiffs prior to their cases ever getting to a jury of his or her peers. In evaluating plaintiffs' discrimination claims, he has also repeatedly taken a high-handed approach in dismissing the merit and weight of their evidence and has been chastised by his colleagues on the Third Circuit for doing so.

As a judge on the 3rd Circuit Court of Appeals in Philadelphia, Alito's extreme views can be seen in his rulings where he consistently limits Congress' authority to enact laws that protect the rights of workers and individuals, including the Americans with Disabilities Act (ADA) and the National Labor Relations Act. And, although the majority of his fellow judges disagreed with him, Alito set a standard so high that victims of sex discrimination would find it virtually impossible to prove their case. In one such case, Alito denied a female police officer's sexual harassment claims despite overwhelming evidence that she had indeed been victimized.

Public employees also have not been spared under Judge Alito. He wrote an opinion in a Pennsylvania case where he stated that the Family and Medical Leave Act (FMLA) did not apply to state employees. Rightfully so, the Supreme Court ruled in disagreement with Alito, upholding the family care provision of the FMLA. Several courts since then, including the very conservative Fourth Circuit Court of Appeals, have concluded that state employees should have access to the entire range or protections under the FMLA, thus rejecting Alito's earlier ruling.

Perhaps most disturbing about Judge Alito's judicial philosophy is his narrow reading of our civil rights laws, notably Title VII of the Civil Right Act of 1964, which bars various forms of discrimination in employment. Even when plaintiffs in these cases come forward with substantial evidence of title VII violation, Judge Alito voted—often in dissent—to deny relief without even letting juries decide whether discrimination occurred. In addition, in reviewing a plaintiff's evidence, he has on several occasions improperly assumed the role of jury or trial judge by casting judgment on the weight and merits of the evidence and the credibility of a witness' testimony.

As U.S. citizens, we are concerned on several other fronts as well. Alito consistently ruled against victims of discrimination based on a disability. His philosophy would restrict Congress' power to enact disability rights laws and few if any such cases would survive under Judge Alito. Also, he ruled to significantly reduce the ability of citizens to bring suit against polluters under the Clean Air Act.

While Alito's 15 years as a Judge raises major concerns, the time he spent as a Presidential appointee in the Reagan White House is equally disturbing. When Alito was a Justice Department lawyer in the 1980s he urged President Reagan to veto legislation that would have protected consumers from crooked car dealers by making odometer fraud more difficult. Alito wrote that protecting Americans is not the federal government's job. He said in his memo, "After all, it is the states, and not the federal government, that are charged with protecting the health, safety, and welfare of their citizens." This philosophy is extremely harmful to state employees who deserve to have federal worker protections apply to them as well.'

Judge Alito clearly is a staunch advocate of the federalism movement which poses a tremendous threat to employees of state governments. State and local governments, like private sector companies and non-profit organizations, are also employers. And, as employers they should be required to adhere to the same laws and regulations that all other employers are subject to. Unfortunately, Judge Alito and the federalism movement seek to limit the power of the federal government to protect individuals who happen to be employees of state governments, in effect, making state employees second class citizens.

We strongly urge the Senate to insist that all of the relevant information about Judge Alito be released, particularly the Solicitor General and the Office of Legal Counsel memoranda. We believe that there are underlying reasons why the Administration continues to resist releasing this vital information.

Judge Alito's record is extremely troubling to AFSCME and the workers we represent. He is one of the most extreme federal judges in the whole country. If confirmed, Alito would tilt the court further to the right and place in jeopardy decades of progress protecting individual rights and freedoms.

For the forgoing reasons, AFSCME strongly urges the Senate to reject Judge Alito's nomination. President Bush should nominate an individual that does not pose such an enormous threat to the rights and freedoms of working men and women.

Sincerely,

GERALD W. MCENTEE,
International President.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I thank my colleague from Massachusetts, my colleague and my friend, Senator KENNEDY.

Mr. President, how much time do I have?

The PRESIDING OFFICER. The time of the minority is open until 5 minutes after 4 p.m. The Senator has 41 minutes.

Mr. BYRD. Mr. President, I take this opportunity to offer a few observations on the manner in which the Senate has conducted its inquiry into the qualifications of Judge Samuel A. Alito, Jr., to serve on the U.S. Supreme Court.

Regardless of any Senator's particular view of Judge Alito, I think we can all agree that there is room for improvement in the way in which the Senate and, indeed, the Nation have undertaken the examination of this nominee. Let me be clear. I mean no criticism of the chairman of the Senate Judiciary Committee or any particular member of that committee.

I feel compelled to address this issue, not to point fingers, not to scold, not to assign blame, but only to address specific, sincere, heartfelt concerns that have been brought to my attention, by the people of West Virginia in particular. Many people, including foremost, as I say, the people of West

Virginia, in no uncertain terms were, frankly, appalled by the Alito hearings. I don't want to say it, but I must. They were appalled.

In the reams of correspondence that I received during the Alito hearings, West Virginians—the people I represent—West Virginians who wrote to criticize the way in which the hearings were conducted used the same two words. People with no connection to one another, people of different faiths, different views, different opinions, independently and respectively, used the same two words to describe the hearings. They called them an "outrage" and a "disgrace."

These were not form letters, ginned up by special interest groups on either the right or the left. These were handwritten, contemplative, old-fashioned letters written on lined paper and personal stationery. They were the sort of letters that people write while watching television, in the comfort of their living rooms, or sitting at the kitchen table.

It is especially telling that many who objected to the way in which the Alito hearings were conducted do not support Judge Alito. In fact, it is sorely apparent that even many who opposed Judge Alito's nomination also opposed the seemingly "made for TV" antics that accompanied the hearings.

It is not just the Senate as an institution which is to blame. The virulence of some outside groups from both sides of the political spectrum added fuel to the fire. Multimillion-dollar advertising campaigns either to proclaim or to denigrate Judge Alito's fitness for the position raged across the airwaves.

A solemn constitutional responsibility is not helped when it takes on such a tone.

And then there were the media and the media's contribution to the deterioration of this very important constitutional process.

Was it necessary to subject Mrs. Alito to the harsh glare of the television klieg lights as she fled the hearing room in tears, fighting to maintain her dignity in response to others with precious little of their own? Have we finally come to the point where our Nation's assessment of its Supreme Court nominee turns more on a simple-minded sound bite or an exploitive snapshot than on the answers provided or withheld by the nominees?

Obviously, something is wrong with our judicial nomination process, and we in the Senate have the power to fix it.

The Framers of such a great document presumably had something better in mind when they vested the Senate with the authority to confirm Justices of the Supreme Court. In fact, we know they did. In 1789, Roger Sherman of Connecticut defended the role of the Senate in confirming Presidential appointments. He wrote: It appears to me that the Senate is the most important branch in the government . . . The Executive magistrate is to execute the laws. The Senate, being a branch of the legislature, will naturally incline to have them duly executed and, therefore, will advise to such appointments as will best attain the end.

Alexander Hamilton also had high hopes for the Senate's ability to render its advice and consent function. He proclaimed: It is not easy to conceive a plan better calculated than this to promote a judicious choice of men for filling the offices of the Union.

Exactly what did the Framers mean when they gave the Senate the power to "consent" to the confirmation of the judicial nominees?

Historically, a majority of the Framers anticipated that the Senate's confirmation or rejection of a judicial nominee would be based on the fitness of the nominee, not on partisan politics or extraneous matters.

Based on these assumptions, the Framers presumably did not expect the Senate to spend its allotted time on a nominee staging partisan warfare instead of examining his or her qualifications.

Yet the Framers probably also would never have expected that a Senator of a nominee's own party would refuse to ask the candidate meaningful questions. They certainly did not intend for Senators of the nominee's own party to sit silently in quiet adulation, refusing to seek the truth, while smiling indulgently; thus, accomplishing nothing.

The Framers expected the Senate to be a serious check—a serious check—on the power of the President. The Framers clearly thought that the Senate's confirmation process ought to be fair, ought to be impartial, ought to be thorough, and ought to exhibit appropriate respect for solemn duty and the dignity of both the process and the nominee.

I regret that we have come to a place in our history when both political parties—both political parties—exhibit such a "take no prisoners" attitude. All sides seek to use the debate over a Supreme Court nominee to air their particular wish list for or against abortion, euthanasia, Executive authority, freedom of the press, freedom of speech, wiretapping, the death penalty, workers' rights, gun control, corporate greed, and dozens of other subjects. All of these issues should be debated, but the battle lines should not be drawn on the judiciary. They should be debated by the people's representatives in the legislative branch.

However, too many Americans apparently believe that if they cannot get Congress to address an issue, then they must take it to the Court. As the saying goes, "If you can't change the law, change the judge."

This kind of thinking represents a gross misinterpretation of the separation of powers. It is the role of the Congress—the role of the legislative branch—to make and change the laws. Supreme Court Justices exist to interpret laws and be sure that they square with the Constitution and with settled law.

A better understanding of the Court's role would do much to diminish the "hype" that now accompanies the judicial nomination process. The role of the Senate in the Alito debate is not to push legislation or to score points for those who either support or oppose specific legislative proposals. The purpose of the current debate is to evaluate the fitness of Judge Samuel Alito to sit on the highest Court of our land, which includes his temperament, his intellectual ability, and his record.

In a perfect world, this heavy constitutional responsibility of the Senate would have little to do with party affiliation.

Unfortunately, during the first administration of George Washington, as far back as 1795, a bruising confirmation battle over the nomination of John Rutledge to be the Chief Justice of the Supreme Court established that the same Senators would consider not merely the qualifications but also the political views of a nominee in deciding whether to support or reject his nomination.

I am a Senator who takes this Constitution seriously. I refuse simply to toe the party line when it comes to Supreme Court Justices. And I will make up my own mind after careful contemplation. The President of the United States said partly in jest that he wanted to call me to lobby me on the nomination. I said: Mr. President, I don't lobby very easily. I take my Constitutional duties seriously. I will listen to what anybody has to say, and then, Mr. President, I will make up my own mind.

I am a registered Democrat. Everybody knows that. But when it comes to judges, I hale from a conservative State. Similar to a majority of my constituents, I prefer conservative judges. I have been saying that for years and years. That is, judges who do not try to make the law.

I was once approached by President Richard Nixon to inquire about my interest in being a U.S. Supreme Court Justice. I was proud to be considered. Whether I would have been nominated, I have no way of knowing. But as I said to my wife: I don't think I would like that position. I would not like that kind of cloistered life. I like the rough-and-tumble of the legislative branch. She said: Then you had better let the President know that.

I said the same thing to Senator John Pastore, and he responded in the same way. He said: You had better let the President know that.

I declined so that I might continue to serve the people of West Virginia, regardless of what the President may have in his heart and in his mind. This is not to say that I would vote for any judge just because he is a conservative. No. No, sir. If I think a conservative judge is unqualified, I will not vote for him, nor would any other Senator vote for a nominee in that situation.

I have voted against judges on both sides of the political spectrum, who leaned too heavily on their political views rather than on existing law, precedents and on the Constitution and who seemed to have a political agenda.

Much has been made of the fact that Judge Alito has expressed support of the concept of the "unitary executive." Many are afraid his support for this concept means that he favors a broad expansion of Presidential power. And I shared some of that concern. Judge Alito, however, has stated repeatedly that his support for the concept of the unitary executive does not refer to broadening the scope of the power of the President.

Instead, Judge Alito says that this theory refers to the way in which the President utilizes his existing power to faithfully execute the law as it applies to administrative agencies within the executive branch. In describing the unitary executive in his speech before the Federalist Society, Judge Alito stated article II, section 3 of the Constitution provides that the President "shall take care that the laws be faithfully executed." "Thus," he said, "the President has the power and the duty to supervise the way in which the subordinate executive branch officials exercise the President's power of carrying Federal law into execution."

Before the Judiciary Committee, Judge Alito was asked point blank whether he thought the concept of the unitary executive refers to expanding the scope of Presidential power, or instead to the President's control over the executive branch. As I understood it, Judge Alito confirmed he was speaking of the latter.

Judge Alito was also asked whether he would support an expansion of the scope of Presidential power. Specifically, he was asked if he thought the President should have more power than he is expressly given under the Constitution and by law. Judge Alito stated several times that he would not support that point of view, and he noted, again, that the "scope" of the power of the President has nothing to do with the unitary executive.

I met with Judge Samuel Alito. I spent close to 2 hours with him. I asked him what he thought about the establishment clause and the free exercise clause and the power of the purse and the congressional power over the purse. I told him that I believed the Supreme Court has gone too far in prohibiting the free exercise of religion in this country. He listened respectfully and said that he understood. He did not pledge to overrule precedent, but he made it clear that he understood and respected my viewpoint.

I also advised him of my view that the executive branch is continually and improperly seeking to grab power, more power and more power, and that the separation of powers requires the judiciary to be ever vigilant in stopping the abuse of power by the President and in protecting the powers of the other two branches.

I urged Judge Alito, as I urged Judge Roberts before him, to recognize the importance of maintaining the equality of the three branches of our Government, protected by our Constitution. I stressed that he ought to be a Justice who will not forget the people's branch, the legislative branch, the first branch, the primary branch mentioned in the Constitution under article I; the executive is mentioned later on in article II.

I requested he not rule in a way that would expand the authority of an already expansionist executive. I reiterated that the Framers did not place the greatest power in the executive but, instead, the Framers put the greatest power in the people—the people, like you and me. The first three words in the preamble of the Constitution are, we all know, "We, the People." The Framers ensured that the people, through us, their elected representatives in the Congress, would have the greatest power in our Government. In response, Judge Alito told me he respected the separation of powers and would not rule in support of a power-hungry President. I liked that answer. I liked Judge Alito. He struck me as a man of his word, and I intend to vote for him.

I believe strongly that the Senate has a responsibility to provide its advice and consent with respect to a particular nominee based on the merits or demerits of that nominee, not on focus groups, celebrity endorsements, binders filled with innuendo and slanted analysis or White House photo opportunities.

In truth, there is absolutely no way of knowing what any nominee for our Nation's highest Court will do after that nominee is confirmed. One could cite many examples of Justices who surprised the President who nominated them, as well as the Members of the Senate who supported or opposed their confirmation. Once a man or woman has achieved the high honor of a lifetime appointment to our Nation's highest Court, a transformation may occur. The awesome responsibility of protecting our Constitution and preserving the checks and balances for succeeding generations of Americans must elevate and sharpen one's judicial temperament in profound ways. The duty to preserve the freedom of our citizens as enshrined in our magnificent Bill of Rights must ennoble even an already noble mind and character.

In the end, the heavy duty borne by Members of the Senate to evaluate and reject or approve the President's nominees for the High Court should come down to each Senator's personal judgment of the man or woman before us, augmented, of course, by such judicial records and writings as may exist. I may not know exactly what kind of Justice Samuel Alito will be. No one does. No one does. My considered judgment, from his record, from his answers to my own questions, from his obvious intelligence, and from his obvious sincerity, leads me to believe him to be an honorable man, a man who loves his country, loves the Constitution, and a man who will give of his best. Can we really ask for more?

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Mr. President, I rise today to explain why I will vote against Judge Samuel Alito's nomination for Associate Justice to the U.S. Supreme Court.

After reviewing his record, I believe Judge Alito will move the Supreme Court too far to the conservative side of American jurisprudence. I believe Judge Alito's judicial philosophy will also dangerously increase Executive power, injuring the checks and balances built into our Constitution that protect all of us. Judge Alito's confirmation may roll back important civil rights protections, protections which were achieved in our country through the sacrifices of many and are crucial to the future of the United States.

I hope, if Judge Alito is confirmed, history will prove my concerns wrong. But given his record, including his extensive written record, I cannot in good conscience support him.

I thank the Senate Judiciary Committee. It held fair, serious, and dignified hearings. Chairman SPECTER, Ranking Member LEAHY, the members of the committee, and the majority and minority staff have again earned our gratitude.

Judge Alito's confirmation vote is particularly important for our country because this seat on our Supreme Court has been held by a champion of justice and mainstream America for a quarter century: Justice Sandra Day O'Connor. Our Nation owes Justice O'Connor a great debt of gratitude. Justice O'Connor served as an exemplary role model for all of us, including women succeeding at the very highest level of our National Government.

Unfortunately, this nomination signals an undesirable retreat from diversity on the U.S. Supreme Court. Women make up more than half of the people of our country. Yet women have been represented in the Supreme Court in our entire history for more than two centuries by only two female Justices—Justice O'Connor and Justice

Ginsburg. Now Justice Ginsburg is left to be the only role model on the Court for the hopes and aspirations of women and for all of us in America who believe that all men and all women are truly created equal.

I regret that result, especially after it was the radical right of America that derailed the nomination of Harriet Miers. We all know there are thousands of highly qualified women lawyers and judges across America, and they could have provided exceptional service to the United States on the Supreme Court. Regardless of the merits or demerits of Judge Alito, I am saddened, at the daybreak of the 21st century, that the United States has retreated from a cause that rightfully embraces the inevitability of the equality of women in our society.

Beyond the principle of gender diversity, Justice O'Connor consistently defined the center of the Supreme Court on many issues. She used her wisdom and her judgment to advance reasonable, commonsense, and mainstream legal doctrines that affect the lives of all Americans. That is why the choice of the replacement for Justice O'Connor is so important for our collective future.

The confirmation of a Supreme Court Justice is a solemn task. It is among the most important constitutional duties of the Senate. I have evaluated Judge Alito's qualifications using the same criteria I used to evaluate Chief Justice John Roberts for whom I voted. I have reviewed Judge Alito's record for evidence of his fairness, impartiality, and his proven record of upholding the law. However, I have decided that my concerns require that I vote against him.

My concerns with Judge Alito start with the 1985 memorandum he included with his job application to the White House. Judge Alito was then 35 years old. To me, this document is a very powerful document. It is evidence of how Judge Alito the man views the law and the Supreme Court. The document is very carefully written. It is packed full of Judge Alito's political and jurisprudential ideas which he has adhered to over the years. In that memorandum, Judge Alito declared he strongly disagreed with the opinions of the Warren Court. Those opinions are now and then widely accepted. They encompass important constitutional protections such as opinions on reapportionment in Baker v. Carr, the case that established the principle of one person, one vote. They concern well-established rules about the relationship between church and state. I find Judge Alito's views to be outside the mainstream of legal thought in 1985.

Since that time, based upon his decisions as an appellate judge and in his other writings, Judge Alito has ruled consistently with the legal philosophy he described in 1985. I believe that legal philosophy is wrong for our Nation. Specifically, I believe Judge Alito's legal philosophy about the structure of our government under our Constitution will harm our country if ultimately adopted by the Supreme Court.

The Framers of our Constitution were geniuses. They created a legal structure for our country that has endured and prospered for more than two centuries. The Framers were not successful because they were abstract thinkers; they were successful because they were practical thinkers, practical Americans. The Framers knew human nature. Their view of human nature focused on the common frailties of people placed in positions of great power, human desires to gather more power, human tendencies to credit one particular view of the world above all others, and a very human unwillingness to understand the perspectives of others.

Out of their genius, the Framers created a system of checks and balances. The Framers made rules which require that the power must be shared. They created a system with three coequal branches. They then distributed the powers of Government among and within the three branches. They created a system with explicit and implicit limits for the power of each branch. They created a system where the people who govern the United States are in constant tension with and against each other, always limiting and checking excesses that are all too human.

Judge Alito's judicial philosophy will diminish our system of checks and balances. He will expand the powers of the executive branch to an extent that is dangerous to us all. I believe Judge Alito would grant the Executive power to overwhelm the congressional and judicial branches.

Let me cite a few examples from his record.

First, I am troubled by Judge Alito's 1984 brief in the Mitchell case in which he asserted absolute immunity for high Government officials accused of illegal wiretapping.

I am troubled by his support in 1986 for the idea that Presidential signing statements—a President's remarks accompanying the signing of a bill—can change the intent of Congress, which debated and passed the bill into law. A President executes the law; a President does not rewrite or alter the law.

I am troubled by Judge Alito's firm belief in a unitary executive—in an unwillingness to acknowledge checks and balances that exist within the executive branch itself.

I am troubled by Judge Alito's pattern of great deference to the executive branch. Judge Alito's judicial philosophy in this area is particularly striking against the backdrop of current events. The current administration has adopted a widespread, concerted legal strategy to increase Executive power under our Constitution. It is wrongly pushing beyond the well-established edges of Executive power in many cases, based on a carefully calculated position that the current concentration of political power allows the executive branch to transcend the rule of law. This is not a "strict construction" of our Constitution; it is the opposite. It is an activist legal strategy to expand beyond reason our constitutional law that has served our country very well for more than 200 years.

Let me be clear. My concerns are not based exclusively on my view of the current President or my ideas about how he would or would not wield dominant Executive power. We are talking about changes in the Court that could affect our Government for decades, as Presidents of both parties take office and govern.

Dominant Executive power is not a "safe bet" for anyone, regardless of one's views of the current President. When considering a potential Supreme Court Justice, we must look beyond the politics of our time and we must protect the basic structure, the system of checks and balances among coequal branches. Administrations of varied ideology and vision must recognize that system of checks and balances.

I briefly want to turn to civil rights.

When I rose on this floor on September 27 of last year to speak on behalf of Chief Justice Roberts, I spoke of the "age of diversity" in this country. I spoke of this country's long history of slavery and our lengthy struggles—including our own Civil War—to put behind us the unequal treatment of our citizens.

I talked about Brown v. Board of Education and the central role our Supreme Court played to guide our country on to the path of equality and equal treatment for all. I spoke of the growing diversity of people in our country, and of the need to foster all the powerful strengths our diversity brings to our Nation—a richness of cultures and spirit, a wealth of ideas, and a widely varied community bound together by the common values of truth, honesty, and fair dealing among ourselves.

My life experiences and my years of public service convince me that recognizing and encouraging the strengths of diversity is the true constitutional path for our country. I also believe in the very practical wisdom of this approach. In fact, I believe it is the only way our country will thrive and prosper over the long run. I will vote against Judge Alito because I am convinced he is unlikely to support these principles of diversity.

Here is only a small part of the evidence that Judge Alito will lead our Nation in the wrong direction on issues of equal opportunity and diversity:

In Riley v. Taylor, Judge Alito was overturned by the entire Third Circuit when he, alone, concluded it was proper to exclude all Black jurors from sitting in judgment of a Black man.

In Sheridan v. E.I. DuPont de Nemours, Judge Alito registered the lone dissent among 13 judges, voting to prevent a woman who had presented evidence of employment gender discrimination from going to trial.

In PIRG of New Jersey, Judge Alito again denied access to the courts for a group of environmental plaintiffs who had won below.

In Doe v. Groody, Judge Alito would have upheld the strip search of a 10-year-old girl, denying her access to relief in the courts.

And in Chittester, Judge Alito would have precluded State employees from seeking damages in court under the Federal Medical Leave Act.

Analyses discussed during the Judiciary Committee hearing show Judge Alito almost never ruled for African Americans in employment discrimination cases. Analyses also show Judge Alito rarely sided with individuals in their cases against large and powerful institutions and corporate interests.

I believe Judge Alito will continue to rule that way on the U.S. Supreme Court. I think that is wrong because it will usher in an era of insensitivity to the weakest and the poorest among us. I hope and I pray I am wrong.

In conclusion, I believe Judge Alito will move the Supreme Court too far to the conservative side of American legal jurisprudence. Judge Alito's judicial philosophy will dangerously increase Executive power, injuring the checks and balances built into our Constitution to protect us all.

And Judge Alito's confirmation will roll back important civil rights protections—protections that were achieved in our country through the sacrifices of many and which are critical to our Nation's future.

I, therefore, will vote against this nomination.

Mr. President, I ask unanimous consent that two letters be printed in the Record concerning Judge Alito. One is a letter from the League of United Latin American Citizens, and the other is a letter from the Colorado Hispanic Bar Association, in which they raise their opposition to the confirmation of Judge Alito.

There being no objection, the material was ordered to be printed in the Record, as follows:

League of United
Latin American Citizens,
Washington, DC, January 13, 2006.

Re Nomination of Samuel A. Alito to the United States Supreme Court

Hon. Arlen Specter,
Chairman, Committee on the Judiciary,
Dirksen Senate Office Building, Washington, DC.

Hon. Patrick Leahy,
Ranking Member, Committee on the Judiciary,
Dirksen Senate Office Building, Washington, DC.

Dear Senators: We write to you as representatives of the millions of American members of the immigrant, Latino, and faith communities who are extraordinarily concerned about the nomination of Judge Samuel Alito to the Supreme Court. We believe that all Americans should be able to count on the Supreme Court to uphold their rights, opportunities, and legal protections, and we are worried that Judge Alito's record demonstrates that millions of Americans would not be able to count on him or the Court if he were confirmed.

While we have many concerns about Judge Alito's record, we are especially troubled by recent reports that Judge Alito, during his time in the Reagan administration, contended that undocumented immigrants and nonresident aliens from other countries have limited or "no due process rights" under the Constitution. Judge Alito advocated this view in a memo he wrote in 1986 regarding FBI activities. In a Nov. 29 Washington Post article that focused on this 1986 document, even the very conservative constitutional analyst Bruce Fein, who served with Judge Alito in the Reagan administration, seemed surprised by how extreme Judge Alito's position was. "He seems to be saying that there is no constitutional constraints [sic] placed on U.S. officials in their treatment of nonresident aliens or illegal aliens," Fein told the Post. "Could you shoot them? Could you torture them? . . . It's a very aggressive reading of cases that addressed much narrower issues."

This is part of a deeply disturbing pattern of rulings and memos from Judge Alito's record indicating that he gives great deference to the government's police powers and shows little concern for protecting the rights of individuals. He has tried to make it harder for people who believe they have faced discrimination on the job to even have their case heard in court. He has seen no problem in some cases with racial discrimination on juries—or with keeping Spanish speakers off juries in a case where some evidence was in Spanish. He has also tried to undermine the Family and Medical Leave Act, which allows people to keep their jobs and take care of family members in need.

Three times, President Bush has passed up the opportunity to nominate a Latino to the Supreme Court. At the very least, we had hoped he would avoid nominating someone hostile to the basic interests of our communities, but it appears Judge Alito may be such a nominee. That Judge Alito has actually expressed views so extreme that they would deprive many immigrants of basic human rights is extremely troublesome. Such views are legally wrong, and they run counter to our basic moral values.

Our rights are too important to entrust to someone who has seemingly indicated he thinks they don't exist. We urge you to hold Judge Alito responsible for his views, and to take our strong concerns into account when you vote on whether to confirm him to the Supreme Court.

Sincerely,

Center for New Community.

Hispanic Association of Colleges and Universities.

Hispanic Federation.

The PRLDEF Institute for Puerto Rican Policy.

Latino Caucus in Official Relations with the American Public Health Association.

Labor Council for Latin American Advancement.

League of United Latin American Citizens.

National Farm Workers Ministries.

National Hispanic Environmental Council.

National Latina Institute for Reproductive Health.

National Latina-o Law Students Association.

National Network for Immigrant and Refugee Rights.

National Day Laborers Organizing Network.

SisterSong Women of Color.

Reproductive Health Collective.

United Farm Workers of America.

CHBA, Colorado Hispanic Bar
Association,
January 10, 2006.

Senator Ken Salazar,
Hart Senate Office Building,
Washington, DC.

Dear Senator Salazar: The Colorado Hispanic Bar Association (CHBA), expresses its opposition to the confirmation of Samuel Alito as Associate Justice of the United States Supreme Court. After review of his opinions written during his tenure on the United States Court of Appeals for the Third Circuit, the CHBA is concerned that Judge Alito has not displayed sufficient respect for two fundamental legal principles: (1) the role of the jury to resolve disputed questions of fact; and (2) the restraints that stare decisis imposes upon a judge's decision-making. Both of these principles recognize the important—but limited—role that an individual judge plays in our justice system. Judge Alito's resistance to these tenets is troubling and counsels against his confirmation to the highest court in the land. Although a detailed discussion of Judge Alito's writings is beyond, thee scope of this message, the CHBA offers a few examples to illustrate its concerns.

In a 1996 case brought under Title VII of the Civil Rights Act of 1964, an employee alleged that her employer had discriminated against her on the basis of sex. *Sheridan* v. *E.I. DuPont de Nemours & Co.*, 100 F.3d 1061 (3rd Cir. 1996). At issue was the minimum evidentiary showing the plaintiff must make in order to permit the jury to decide her case. All of the reviewing judges agreed that the plaintiff had presented both a prima facie case of illegal discrimination and enough evidence to permit the jury to disbelieve the employer's proffered nondiscriminatory reason (for the adverse employment action) as merely a pretext. In an en banc proceeding, the Third Circuit held, by an 11-to-1 vote, that the plaintiff presented sufficient evidence to permit the jury's verdict in her favor to stand. The court emphasized that "determining whether the inference of discrimination is warranted must remain within the province of the jury . . . not the court." Id. at 1071–72. Alone among the 12 judges, Judge Alito dissented and expressed an extreme view of the plaintiff's evidentiary burden, requiring something akin to the largely discredited "pretext-plus" requirement. Id. at 1070, 1078–88. Rather than defer to the jury's role as factfinder, Judge Alito would have thrown out the jury's verdict and granted judgment as a matter of law to the employer.

In another Title VII case, Judge Alito, again in dissent, showed similar disregard for the jury's role, voting to keep the case from the jury. *Bray* v. *Marriott Hotels*, 110 F.3d 986 (3rd Cir. 1997). Referring to Judge Alito's analysis of the evidence, the majority of the court explained that a "factfinder may well agree with that interpretation, but that is not for us to decide." Id. at 992. His fellow judges also found that "Title VII would be eviscerated" under Judge Alito's analysis of the law. Id. at 993.

Moreover, Judge Alito has displayed a tendency to disregard stare decisis (adherence to the rule announced in prior cases).

For example, in a death penalty case, the en banc Third Circuit granted the defendant a writ of habeas corpus because the prosecution had violated the Equal Protection Clause by striking black jurors on account of their race. *Riley* v. *Taylor*, 277 F.3d 261 (3rd Cir. 2001). The court noted that its analysis was guided by several prior opinions. See id. at 290. Judge Alito dissented again. According to his colleagues, Judge Alito, rather than following precedent, "accord[ed] little weight to these authorities." Id. The court also took issue with Judge Alito's attempt to analogize the statistical evidence of the use of peremptory challenges to strike black jurors to the percent of left-handed presidents. Id. at 292. The Third Circuit found that Judge Alito had "overlooked the obvious fact that there is no provision in the Constitution that protects persons from discrimination based on whether they are right-handed or left-handed." Id. Further, his fellow judges found that Judge Alito had "minimize[d] the history of discrimination against prospective black jurors and black defendants which was the raison d'etre of the [U.S. Supreme Court decision barring the use of peremptory challenges on the basis of race]." Id.

These are but a few examples of Judge Alito's seeming reluctance to recognize the limits of stare decisis and his willingness to invade the jury's province. Judge Alito's opinions reveal a consistent and discomforting inclination to arrogate undue authority to individual judges such as himself. Judge Alito' s activist streak stands in sharp contrast to the cautious pragmatism of Justice Sandra Day O'Connor, whom he would replace on the Court.

The CHBA is particularly troubled by the addition of Judge Alito's unrestrained view of judicial authority to a Supreme Court on which Hispanics are not represented. Given that the Hispanic community has no direct voice on the Court, Hispanics should be very concerned if the Court were to embark on an era in which it feels free to upset settled law and to assume new powers within our justice system. Hispanics expect this institution to operate within the well-recognized limits on its authority. Accordingly, unless and until Judge Alito sufficiently addresses the concerns outlined herein, the CHBA opposes his elevation to the United States Supreme Court.

Thank you for your kind consideration of our message as you perform the Senate's constitutional duty to evaluate carefully the nominees to the Court.

Sincerely,

VICTORIA LOVATO,
President.

Mr. FEINGOLD. Mr. President, making a decision on a Supreme Court nomination is truly among the most important responsibilities of the Senate. I have given the nominations the President has sent to us in the past 6 months serious and careful consideration.

The scrutiny to be applied to a President's nominee to the Supreme Court is the highest of any nomination. I have voted for executive branch appointees, and even for court of appeals nominees, whom I would not necessarily vote to put on the Supreme Court.

The Supreme Court, alone among our courts, has the power to revisit and reverse its precedents, and so I believe that anyone who sits on that Court must not have a preset agenda to reverse precedents with which he or she disagrees and must recognize and appreciate the awesome power and responsibility of the Court to do justice when other branches of Government infringe on or ignore the freedoms and rights of all citizens.

This is not a new standard. It is the same standard I applied to the nomination of Chief Justice Roberts. In that case, after careful consideration, I decided to vote in favor of the nomination. In the case of Judge Samuel Alito, after the same careful consideration, I must vote no.

Judge Alito has an impressive background and a very capable legal mind, but I have grave concerns about how he would rule on cases involving the application of the Bill of Rights in a time of war. Some of the most important cases that the Supreme Court will consider in the coming years will involve the Government's conduct of the fight against terrorism. It is critical that we have a strong and independent Supreme Court to evaluate these issues and to safeguard the rights and freedoms of Americans in the face of enormous pressures.

Confronted with an executive branch that has jealously claimed every possible authority that it can, and then some, the Supreme Court must continue to assert its constitutional role as a critical check on Executive power. Just how "critical" that check is has been made clear over the past few weeks, as Americans have learned that the President thinks his Executive power permits him to violate explicit criminal statutes by spying on Americans without a court order.

With the executive and the legislature at loggerheads, we may well need the Supreme Court to have the final word in this matter. In times of constitutional crisis, the Supreme Court can tell the executive it has gone too far, and require it to obey the law. Yet Judge Alito's record and testimony strongly suggest that he would do what he has done for much of his 15 years on the bench: defer to the executive branch in case after case at the expense of individual rights.

Although he has not decided cases dealing with the Bill of Rights in wartime, he has a very long record on the bench of ruling in favor of the government and against individuals in a variety of contexts. Indeed, this is an important distinction between Judge Alito and Chief Justice Roberts. Our new Chief Justice had a very limited judicial record before his nomination. Judge Alito has an extensive record. There is no better evidence of what kind of Justice he will be on the Supreme Court than his record as a court of appeals judge. He told us that himself.

A whole series of analyses by law professors and news organizations has shown that Judge Alito is very deferential toward the government, and one detailed analysis by the Washington Post concluded that he is more deferential than his Third Circuit colleagues and even than Republican-appointed appeals judges nationwide. This vividly demonstrates the concern I have about this nomination. Judge Alito is not simply a conservative judge appointed by a conservative President. His record is that of a jurist with a clear inclination to rule in favor of the government and against individual rights.

In particular, Judge Alito's record in fourth amendment cases shows a recurring pattern. In almost every fourth amendment case in which Judge Alito wrote an opinion, he either found no constitutional violation or argued that the violation should not prevent the illegally obtained evidence from being used. In more than a dozen dissents in criminal or fourth amendment cases, not once did Judge Alito argue for greater protection of individual rights than the majority.

In one case that he was asked about on several occasions at his hearing, Judge Alito, in dissent, argued that the strip search of a 10-year-old girl and her mother passed constitutional muster, even though they were not suspected of any crime or specifically mentioned in the search warrant. Judge Alito's answers to questions at the hearing about this case only reinforced concerns identified by outside scholars that he seems to ignore the serious interests of privacy and personal dignity protected by the fourth amendment and instead relies on technical readings of warrants so that he can authorize the government action.

Cases challenging government power comprise nearly half of the current Supreme Court's docket. A Supreme Court Justice should protect individual freedoms against government intrusion where justified, and, specifically, should appreciate that the fourth amendment serves to limit government power. As Yale Law School Professor Ronald Sullivan testified:

> In the United States, perhaps no right is more sacred—more worthy of vigilant protection—than the right of each and every individual to be free from government interference without the "unquestionable" authority of the law. Judge Alito . . . shows an inadequate consideration for the important values that underwrite these norms of individual liberty—the very norms upon which this constitutional democracy relies for its sustenance. . . . [T]his Senate's decision on whether to consent to Judge Alito's nomination will profoundly impact how liberty is realized in the United States.

At the hearing, I and many other Senators repeatedly asked Judge Alito whether the President can violate a clear statutory prohibition, such as the Foreign Intelligence Surveillance Act and the ban on torture. He never answered the question. He returned again and again to a formulaic response that told us nothing at all: he said that the President must follow the Constitution and must follow the laws that are consistent with the Constitution. Any first-year law student could tell you that. That kind of stock phrase, which Judge Alito repeated over and over, tells us absolutely nothing about his view of whether the President can, consistent with the Constitution, violate a criminal law.

Judge Alito did point to Justice Jackson's three-part analysis in Youngstown. That is an appropriate framework, but merely citing Youngstown doesn't tell you anything about how he would apply that framework. Even when presented with the alarming hypothetical of whether a President can authorize a murder in the United States, Judge Alito would say no more.

These practiced and opaque responses gave me no reassurance about Judge Alito's views on these issues. What troubled me even more was that he repeatedly, and in some cases gratuitously, raised issues of justiciability and the political question doctrine—that is, he seemed to question whether the courts can even weigh in on these serious legal battles between the legislature and the executive. Although he said he thought the courts could address questions involving individual rights, Judge Alito's instinct in discussing these historic issues was to focus on whether the courts even had a role to play. It wasn't to talk about the gravity of the issues at stake for our system of government, but to question whether he as a judge could even participate in the resolution of such critical constitutional conflicts.

I found that very disturbing, and it has played a significant role in my decision to vote against him. Judge Alito's record and his testimony have led me to conclude that his impulse to defer to the executive branch would make him a dangerous addition to the Supreme Court at a time when cases involving executive overreaching in the name of fighting terrorism are likely to be such an important part of the Court's work.

I am also concerned about Judge Alito's record and testimony on cases involving the death penalty. The Supreme Court plays a crucial role in death penalty cases. Judge Alito participated in five death penalty cases that resulted in split panels, and in every single one of those he voted against the death row inmate. A Washington Post analysis found that he ruled against defendants and for the government in death penalty cases significantly more often than other judges. And his testimony gave me no reason to believe that he will approach these cases any differently as a Supreme Court Justice.

To be blunt, I found Judge Alito's answers to questions about the death penalty to be chilling. He focused almost entirely on procedures and deference to state courts, and didn't appear to recognize the extremely weighty constitutional and legal rights involved in any case where a person's life is at stake.

I was particularly troubled by his refusal to say that an individual who went through a procedurally perfect trial, but was later proven innocent, had a constitutional right not to be executed. The Constitution states that no one in this country will be deprived of life without due process of law. It is hard to even imagine how any process that would allow the execution of someone who is known to be innocent could satisfy that requirement of our Bill of Rights. I pressed Judge Alito on this topic but rather than answering the question directly or acknowledging how horrific the idea of executing an innocent person is, or even pointing to the House v. Bell case currently pending in the Supreme Court on a related issue, Judge Alito mechanically laid out the procedures a person would have to follow in State and Federal court to raise an innocence claim, and the procedural barriers the person would have to surmount.

Judge Alito's record and response suggest that he analyzes death penalty appeals as a series of procedural hurdles that inmates must overcome, rather than as a critical backstop to prevent grave miscarriages of justice. The Supreme Court plays a very unique role in death penalty cases, and Judge Alito left me with no assurance that he would be able to review these cases without a weight on the scale in favor of the government.

One important question that I had about Judge Alito was his view on the role of precedent and stare decisis in our legal system. At his hearing, while restating the doctrine of stare decisis, Judge Alito repeatedly qualified his answers with the comment that stare decisis is not an "inexorable command." While this is most certainly true, his insistence on qualifying his answers with this formulation was troubling. Combined with a judicial record in which fellow judges have criticized his application of precedent in several cases, Judge Alito's record and testimony do not give me the same comfort I had with Chief Justice Roberts that he has the respect for and deference to precedent that I would like to see in a Supreme Court Justice.

With respect to reproductive rights, Judge Alito said that he would look at any case with an "open mind." That promise, however, is not reassuring given his prior denunciations of Roe, his legal work to undermine Roe, and his failure to disavow the strong legal views he had expressed in the 1980s when given the opportunity at his hearing. In his 1985 Justice Department job application, Judge Alito wrote that he believed that the Constitution does not protect a right to abortion, and, as an Assistant to the Solicitor General, he wrote a memo advocating a strategy for the Reagan administration to chip away at Roe v. Wade, with the ultimate goal of overturning that decision. Since he refused to say that he changed his mind, despite numerous chances, one can only think that he still believes what he said in 1985. And his opinions as a Third Circuit judge raise a legitimate concern that he will, if given the opportunity, be inclined to narrow reproductive rights.

I want also to say a brief word about ethics. The Vanguard case could have been disposed of fairly easily if Judge Alito had only admitted his mistake up front. Under questioning, Judge Alito finally admitted that there is no evidence that he followed through on his 1990 promise to the Judiciary Committee to recuse himself from any cases involving Vanguard. He also said that some of the explanations that he and his supporters gave for his failure to recuse from the Vanguard case in 2002—such as a "computer glitch" or the fact that his promise to the committee was somehow time-limited—were not in fact the true reasons that he failed to recuse himself from the 2002 case.

While I am not basing my vote on this matter, it continues to trouble me. First, it is not clear to me that Judge Alito took his 1990 promise to the Judiciary Committee seriously. Second, Judge Alito failed to clear up the inconsistent explanations before or at the outset of his hearing, even after documents revealed that those explanations were implausible and even though he knew that they were not the real reasons that he failed to recuse himself in 2002.

The concept of recusal, which recognizes that from time to time the public might reasonably believe that judges' biases or interests may cast doubt on the integrity of a judicial decision, is part of ensuring due process and protecting the public's confidence in the integrity of our system of justice. Despite numerous other reports of Judge Alito's honesty and integrity, I am not satisfied that he appreciates the importance of recusal.

His written answer to my question about how he would analyze recusal motions related to the Third Circuit judges who testified on his behalf raises concerns about his approach to conflicts of interest. Judge Alito wrote that he thinks Supreme Court Justices have "less latitude to err on the side of recusal" than other judges, because recusal could lead to evenly divided decisions. But when Congress amended the Federal recusal law in 1974, it specifically removed any so-called "duty to sit" in favor of a general standard requiring recusal if there is a reasonable basis for doubting the judge's impartiality. The purpose of that change was to enhance public confidence in the impartiality and fairness of the judicial system. In my view, Supreme Court Justices should have no more latitude in interpreting ethics rules than other judges; indeed, the recusal statute specifically applies to Supreme Court Justices.

I would argue that treating recusal issues seriously is even more important for Supreme Court Justices since they are solely responsible for their recusal decisions. There is no judicial review of their decisions, no formal procedure for the full Court review of such decisions, and, when a Justice improperly participates, a tainted constitutional decision cannot be undone. That is why it is so important to have Justices who adhere to the highest ethical standards. Judge Alito repeatedly told us that he seeks to carry out his duties in accordance with both the letter and spirit of all applicable rules of ethics and canons of conduct. He wrote in a letter to the chairman of the Judiciary Committee: "[M]y personal practice is to recuse myself when any possible question might arise." Unfortunately, his description of how he would handle recusal motions as a Supreme Court Justice does not seem consistent with those statements.

It gives me no pleasure or satisfaction to vote against a nominee to the Supreme Court. If confirmed, he may well serve for over 20 years. I would very much like to have confidence that this new Justice, who plainly has a keen legal mind, would be the kind of impartial, objective, and wise Justice that our Nation needs. But I do not, so I will vote no.

Mr. JEFFORDS. Mr. President, there is no higher legal authority in the United States than the U.S. Supreme Court. It is the final arbiter on the meaning of laws and the U.S. Constitution. The Supreme Court gives meaning to the scope of the right of privacy; whether Vermont's limits on campaign contributions and spending are constitutional; what is an unreasonable search and seizure; how expansive the power of the President can be; and whether Congress exceeded its power in passing a law.

A Supreme Court Justice could serve for the life of the nominee, thus the consequences of confirming a Supreme Court justice last well beyond the term of the President who makes the nomination, a Senator's term, and maybe even the Senator's own life. Therefore, one of the most important votes a Senator takes is the confirmation of a U.S. Supreme Court Justice.

I have carefully considered the appointment of Judge Samuel Alito to the Supreme Court and have concluded I cannot support his nomination.

My first step in evaluating a nominee is to consider whether the nominee is appropriately qualified and capable of handling the position for which he or she has been nominated. Looking over Judge Alito's qualifications, it is clear this minimum standard has been met. Judge Alito has served in the U.S. Department of Justice, has been a U.S. Attorney, and for the last 15 years has been a judge on the Third Circuit Court of Appeals. However, while I use this minimum standard in my evaluation of executive branch nominees, there are additional factors to be considered in my evaluation of a judicial nominee.

The Framers of our Constitution recognized the limits of democracy and created three coequal branches of government. They realized that passion and whim could cause the elected representatives to enact legislation on the cause of the day, which treads near or on constitutional rights. In addition, while the diversity of Congress can stop most of these ideas before they are adopted, no such check exists on the executive branch of our government. Thus, the third branch of government, the judiciary, was created. This branch was to be independent, unaffected by the public's whim and opinion, and serving the law and the public.

The Framers split the responsibility of filling the judiciary between the executive and legislative branches. The President nominates an individual to be a judge, while the Senate has the duty to advise and consent on each nominee. This framework was established to ensure that the executive branch could not exercise so much control over the nominating process that the judiciary would lose its independence and become ideologically driven.

While the Senate's duty is to evaluate a nominee, the Constitution provides no guidance as to what exactly Senators should take into account. This decision is up to each individual Senator. I have already touched on one factor I consider, "qualified and capable of handling the duties of the position."

An additional consideration is the judicial philosophy of the nominee. Many of my colleagues argue that this factor should have no part in the Senate's consideration of a nominee to the Supreme Court. However, if judicial philosophy is the determining factor in the choice the President makes from a list of many qualified candidates, the Senate should also be allowed to consider this factor when deciding whether to approve or disapprove the nominee. Not allowing the Senate to consider this factor would shift the careful balance the Framers put in our Constitution away from equal partners toward giving the executive branch an unfair advantage.

In addition to considering the individual's judicial philosophy as a standalone matter, we must also consider the cumulative effect our approving a nominee will have on the Supreme Court. In the recent past, Republican Presidents have made 15 of the last 17 nominations to the Supreme Court. The Republican stamp on the current Court is undeniable. Consider the prospects for the Court in the coming years based on the ages of the sitting Justices and their years of service:

Justice	Date of birth	Current age	Years on court	Appointment age
Stevens	April 20, 1920	85	30	55
Ginsburg	March 15, 1933	72	12	60
Scalia	March 11, 1936	69	19	50
Kennedy	July 23, 1936	69	17	52
Breyer	Aug. 15, 1938	67	11	56
Souter	Sept. 17, 1939	66	15	51
Thomas	June 28, 1948	57	14	43
Roberts	Jan. 27, 1955	50	<1	50

This information clearly shows that the prospects of the Court becoming more moderate in the near future are unlikely, as the more liberal to moderate members are the more likely to be replaced.

The table also clearly lays out a concern about the shift in the balance of the court by replacing Justice O'Connor with a younger, more conservative Justice.

This concern is also made clear by looking at some important cases where Justice O'Connor provided the critical fifth vote for a moderate, common sense position. These cases include:

Alaska Department of Environmental Conservation v. EPA (2004): The Court held that the Environmental Protection Agency can enforce the Clean Air Act and overrule a State decision to allow a major pollutant emitting facility to build a power generator when the State agency is not doing an adequate job of enforcement.

Stenberg v. Carhart (2000): The Court upheld the principles that, before viability, women can choose to have an abortion, and that any restriction on the right to an abortion must have an exception for the mother's health.

Tennessee v. Lane (2004): The Court held that as part of its enforcement power under the 14th amendment, Congress has the right under the Americans with Disabilities Act to force States to provide physical access to the courts.

McConnell v. Federal Election Commission (2003): The Court upheld as a valid exercise of congressional power the soft money and electioneering communications restrictions enacted by Congress as part of the Bipartisan Campaign Reform Act of 2002.

Upon this backdrop, I have evaluated the decisions and writings of Judge Alito, closely watched the nomination hearing in the Senate Judiciary Committee, and listened to the statements of many colleagues on his nomination. I am concerned that Judge Alito did not provide complete answers on many important topics such as: Is Roe settled law, or what are the limits of the executive branch's power? On the other hand, Chief Justice Roberts did provide answers to these questions during his nomination hearing and I voted for Justice Roberts. Given the importance of a Supreme Court Justice replacing Sandra Day O'Connor, we should expect even more complete answers than we received from Judge Alito.

After careful deliberation, I have concluded that the addition of Judge Alito to the Supreme Court would unacceptably shift the balance of the Court on many critical questions facing our county: Are there limits on the power of the presidency? Can the Congress regulate the activities of the States? How expansive is the right to privacy? What deference should be given to legislative acts of the Congress? While many of my colleagues will disagree with my assessment of Judge Alito, this will be a lifetime appointment and a lifetime is too long to be wrong.

Mr. JOHNSON. Mr, President, there are few decisions of more lasting and profound consequence that a U.S. Senator must make than the decision whether to vote to confirm a nominee to a lifetime appointment to the U.S. Supreme Court. Accordingly, I have reviewed the record and the commentary relative to the Samuel Alito nomination with great care and deliberation. The decision on the Alito nomination is more difficult than was the case for now Chief Justice John G. Roberts inasmuch as Judge Alito's long record raises concerns across a broad range of areas. Clearly, he would not have been my pick for the Supreme Court.

Nonetheless, I must conclude that Judge Alito possesses a high level of legal skill, is a man of solid personal integrity, and that his views fall within the mainstream of contemporary conservative jurisprudential thinking. At the conclusion of Senate floor debate, I will oppose any effort to filibuster his nomination, and I will vote to confirm Judge Alito's nomination to the Supreme Court.

While it is not the role of the Senate to "rubberstamp" any President's judicial nominations, it is also true that any President's choice deserves due deference. Judge Alito deserves the same deference that Republican Senators accorded the Supreme Court nominees of President Clinton. I am mindful that Justice Ginsberg, a former counsel to the ACLU, was confirmed with 96 Senate votes in her favor.

I do not believe that simple political ideology ought to be a deciding factor so long as the nominee's views are not significantly outside the mainstream of American legal thinking. I also believe that the judicial nomination and confirmation process in recent years has become overly politicized to the detriment of the rule of law.

I am troubled by Judge Alito's apparent views on matters such as Executive power, his past opposition to the principle of one person, one vote, and his narrow interpretation of certain civil rights laws. Even so, I cannot accept an argument that his views are so radical that the Senate is justified in denying his confirmation.

The PRESIDING OFFICER (Mr. ENSIGN). The minority's time has now expired.

Who yields time?

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I have been asked by the majority leader to come to the floor, as manager of the proceedings, in my capacity as chairman of the Judiciary Committee, to see if we can have a vote on Judge Alito. We have informed the Democrats of our interest in having a unanimous consent, but we will not ask for one until their leader is here. He is on his way, and I will await his arrival. In the interim, the acting leader, Senator SALAZAR, is on the floor, so he can always protect their interests. But I shall not move in a way precipitously until Senator REID arrives.

I am advised we do not have any speakers for the Democrats tomorrow. We are now in the second full day of our discussion. The rules of the Senate require either that we speak or we vote. If there are no further speakers for the proceedings, then it would be my inclination we ought to follow regular order, we ought to vote. Either we speak or we vote. So long as there is somebody to speak, there is the right of unlimited debate, as we all know, and we respect that.

This is a lifetime appointment, and it is a controversial appointment. There is no doubt about that. But if we are not going to have debate, then, in my capacity as manager, as chairman of the Judiciary Committee, it seems to me we ought to vote. We have a lot of other pressing business for the Senate.

I have just left the conference of the Republican Party where there had been a plan, months ago, to be out of town so we could make plans for the second session of this Congress. Because the nomination of Judge Alito is on the floor, we have altered those plans. I might say at considerable financial loss since reservations had been made. But our duty is to be here, and we are not complaining about that. We are here to move the business of the Senate along.

There are a number of pressing matters which we could take up tomorrow or yet today, such as the issue of appropriations of some $2 billion for LIHEAP. That is a matter for assistance for fuel in a cold winter. It is a cold day out there today. It is cold in Pennsylvania. It is colder in Vermont. It is colder yet in Maine. We need to resolve that issue.

We also have the PATRIOT Act, which is due to expire on February 3, a week from tomorrow. That is a very important matter both for security in our law enforcement fight against terrorism and also for a balance on civil rights. And we now have a motion to reconsider the cloture vote pending before the U.S. Senate.

There have been discussions about what to do. It is my hope that we would yet approve the conference report. We face the alternative of having the PATRIOT Act expire, which no one wants. We have the suggestion made for a 4-year extension of the current PATRIOT Act which, in my view, is much less desirable than having the conference report enacted. The conference report on a new PATRIOT Act gives much more for civil rights than does the existing act. It is not as good as the Senate bill, the bill that came out unanimously from the Judiciary Committee and was passed by unanimous consent, but the conference report is a lot better than the current bill. So there are other important matters that we could address.

UNANIMOUS CONSENT REQUEST

Now that the distinguished Democratic leader is on the floor, on behalf of the majority leader, I ask unanimous consent that at 5:30 on Monday, January 30, the Senate proceed to a vote on the confirmation of the pending nomination of Samuel Alito.

And before the Chair rules, I would reiterate that we are prepared to debate the nomination through the weekend if Senators have additional comments or have not yet delivered their statements.

Now, Mr. President, I am glad to yield to my distinguished colleague, Senator REID.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, reserving the right to object, we have seven speakers lined up this afternoon. We hope they will all show up. I am confident they will.

LIHEAP is something the distinguished majority leader and I have spoken of several times. We know it is an important issue. We have made commitments to the Senator from Maine, Senator SNOWE, and the Senator from Rhode Island, Senator REED. It is something we need to do as soon as we can.

In regard to the PATRIOT Act, I had a number of conversations, again, with the distinguished majority leader. Also, I spoke yesterday afternoon to Senator SUNUNU, who indicated he has been in conversations with the White House and is confident he is not far away from working out that matter with the other interested parties, one of whom is, of course, the chairman of the Judiciary Committee.

I also have had a number of conversations with the distinguished majority leader as to how we should move forward on the matter relating to Judge Alito, and there are a number of possibilities. I think we are at a point now where we may well enter into a unanimous consent later today. I would hope so.

Based on that, and based on the fact I have not spoken to Senator FRIST yet today—we spoke several times yesterday—I object.

The PRESIDING OFFICER. Objection is heard. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, may I inquire of the distinguished Democratic leader whether there will be speakers on his side of the aisle to speak tomorrow, Friday, or Saturday, or Sunday, or Monday, if we are to remain in session without voting on this nomination?

Mr. REID. Mr. President, I am happy to respond to my friend. We will have speakers tomorrow. The weekend will be another item. We will talk about that later, whether that is necessary.

Mr. SPECTER. Mr. President, may I further inquire of the distinguished Democratic leader when his side of the aisle would be prepared to vote on the nomination?

Mr. REID. As I indicated, I have spoken to the distinguished majority leader on several occasions—not today. Yesterday we had a number of conversations, in fact into the evening last night, and I think it would be best for Senator FRIST and me to talk about this rather than now.

Mr. SPECTER. I thank the Democratic leader for those comments. But Senator FRIST, the majority leader, has asked me to come to the floor. He is engaged now in the Republican conference and has asked me to raise these issues so we can give some idea to our colleagues. We have a lot of Senators who are standing by as to what is going to happen. We have a lot of Senators who are not standing by. Quite a few of them are overseas. Quite a few Senators are always overseas. We have more Senators overseas customarily than in the Chamber. I think that is certainly true now. We only have five Senators in the Chamber. I know we have a lot more Senators overseas. So a lot of Senators are trying to make their plans.

I came to make the point, and I made the point.

I thank the Senator.

Mr. REID. Mr. President, I appreciate the Senator from Pennsylvania. I enjoy my relationship with him. But the only thing I would do is defend the Senate a little bit. I know he was being facetious. Senators are here in Washington. There are a few Senators attending a very important economic conference in Switzerland, but that is a handful of Senators, three or four, as I understand it. I am glad they are there. I am confident that if any votes are required in the near future—they have been advised and have agreed to come back in a few hours' notice.

As I said, I know the Senator was being facetious, but we do not have more Senators overseas than we have here ready to work.

Mr. SPECTER. Well, Mr. President, I did not say we had more Senators overseas than Senators prepared to work. I said we have more Senators overseas than we have in the Chamber. I counted five, and now a sixth has joined on the floor.

Well, as I said earlier, I came to make the point, and I have made the point. The point is that we either debate or we ought to vote. Debate or vote, that is what we do. When the debate is over, we vote. If the debate continues, we do not vote. If the debate continues, we may have to go to cloture. We have rules to accommodate us there. There have been counts made that when you have the number of Senators who have stated their intention to vote for cloture, plus the number of Senators who have stated their intention to vote for Judge Alito, you come to 60 or more.

We are ready to do the business of the Senate. I know Senator FRIST is watching these proceedings because our conference, at a little after 3 o'clock in the afternoon, reaches a little low point, a little low on blood sugar, things get a little sleepy. So I am sure they turned on the television to watch this. It would be my hope that the Republican leader and the Democratic leader will be on the floor today, and we will come to some sort of a schedule so we all know what to do.

Mr. REID. I am not sure our conversation would wake them up, though.

Mr. SPECTER. It is all comparative. If I may direct this comment to Senator REID, you haven't been to a Republican conference. No matter how dull it is, let me tell you, it is lively here. It is exciting here by comparison to what goes on in our Republican conference. I speak with authority because I just came from there.

I thank my distinguished colleague and the Chair and yield the floor for some serious business because we have some speakers.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BURR. Mr. President, I think it is safe to say that Chairman SPECTER has committed more time to the nomination of Samuel Alito than any single person in this body and in this country, with the exception of one, and that would be Judge Alito.

I rise today in support of the nomination of Samuel Alito to be Associate Justice of the U.S. Supreme Court. Voting on the nomination of a Supreme Court Justice is a rare event in the Senate, but this year this body has now considered two nominations in only a few short months. To cast this vote is a privilege, and it is one this Member takes seriously. Most Americans did not know Sam Alito 6 months ago, but now millions of citizens have seen him in the news. They have heard him answer countless questions during his confirmation hearing. We have learned a great deal about Judge Alito.

We have seen his family. We have listened to his stories about his childhood. We have heard about his educational background, and we have learned of his service on the bench. We have learned that his temperament and his character, are in fact solid. I personally have had the opportunity to sit with him, and I believe he respects the U.S. Supreme Court and the seat for which he has been nominated.

Americans have probably also heard the Senate debate Judge Alito's nomination. I would guess by now most Americans understand that there is no substantive debate over Judge Alito's qualifications for the Supreme Court. Clearly, Judge Alito has the legal qualifications to be an Associate Justice. He has remarkable academic credentials, extensive experience, not only on the bench but in trying cases as an attorney, and he was given a unanimous "well qualified" rating by the American Bar Association. He has argued cases before the Supreme Court, and he served on the bench of the Third Circuit Court of Appeals for the past 15 years.

It is my assessment that those who oppose Judge Alito's nomination do it for purely political purposes. They believe he might take positions contrary to their own political ideologies. Therefore, they believe he should be disqualified. He should not be considered for a slot on the Supreme Court.

Let me take a moment to provide an example of how critics have severely distorted the facts about Judge Alito's record. Quite honestly, if those same critics chose to rely upon the facts rather than the political sound bites, they might be quite surprised.

Judge Alito has been viciously attacked by critics over his record on civil rights. As we all know, Judge Alito serves on the Third Circuit Court of Appeals. This appellate court in New Jersey has been described by the Associated Press as one of the most liberal courts in the Nation. My guess is it is probably only second, within that categorization, to the Ninth Circuit Court. It seems that opponents of Judge Alito have become so fixated on criticizing his record that they disregard the actual facts of his record.

When analyzing Judge Alito's civil rights record based on the more than 4,800 cases he has decided, the facts are these: Judge Alito has agreed with the other members of his "liberal" Third Circuit judicial panel 94 percent of the time on civil rights issues. Judge Alito has agreed with judges appointed by President Clinton on that bench 95 percent of the time on civil rights issues. Judge Alito has agreed with judges appointed by Jimmy Carter on the Third Circuit Court 96 percent of the time on civil rights issues. Finally, when Judge Alito sat on a three-judge panel where both other judges were appointed by Democratic Presidents, the decision handed down in those cases was unanimous 100 percent of the time on the civil rights cases. These are the facts. Those are the numbers.

Clearly, by the standards some in this body have chosen to apply to Judge Alito, no judge on the Third Circuit Court would therefore qualify to be considered for the Supreme Court. The statistics are one example of the distortion of Judge Alito's record by some. I could stand here on the floor for hours to discuss other misrepresentations of Judge Alito's record on individual issues, but I believe it is important to speak on why this Supreme Court confirmation should matter to the American people.

When I say I am going to speak about why this confirmation matters, I don't mean that I am going to talk about why the debate matters in the daily battles inside the beltway in Washington, DC. I want to speak about why it matters to the American people. It has become clear to me and to the 8½ million people in North Carolina that I represent, that Washington, DC, is overshadowed by partisan bickering and is arguably more polarized now than ever before.

As I discussed in this Chamber and in front of this body when considering the nomination of Chief Justice Roberts a few months ago, my constituents in North Carolina care about civil liberties. They have questions about life and death, property rights, basic freedoms, as well as their own economic prosperity and personal security.

That is why this vote is important today. The Supreme Court affects every aspect of our daily lives. But more importantly, the decisions being made on the High Court today will affect the lives of our children and future generations yet to come. I am a father and I am a husband first; I am a Senator second. I believe while it is part of my job to vote on Supreme Court confirmations, I think of this vote in terms of how it will affect my family as well as the rest of the families in North Carolina and across the country. When my sons are my age, how will this decision, my vote on Sam Alito, affect them or eventually affect their children? That is what we are here to debate.

As we all know, public opinion frequently changes with time as opposed to the Constitution which changes rarely. While the legislative bodies across the country are intended to be flexible branches of our government institution, charged with addressing the needs of the people by making new laws, the judiciary is intended to be the equitable and impartial check, charged with preserving and protecting our Nation's basic fundamental principles.

I believe a nominee's judicial philosophy should translate to their legal interpretations, not their political positions. The legislature makes the law and the judiciary interprets it. Both branches serve an equally legitimate and important function, but they are very different. My constituents want justices who apply the law, not judges who make the law.

Opponents of Judge Alito continuously cite political reasons to vote against his nomination. Unfortunately, this sounds all too much like your typical Washington, DC, partisan battle. But I assure my colleagues, the American people outside of the beltway of this town don't care to hear us bicker about partisan political issues when it comes to the future of the Supreme Court. This should be a thorough debate on an individual's legal qualifications and judicial philosophy.

This debate is much bigger than Republicans and Democrats. This debate is about our children's future. For me, it is about doing what is right, and about doing what is right as a father and a husband. It demands that this body, the Senate, come together. Stop the character assassination, the distortion of a nominee's record, and support this nominee because of his expertise and his accomplishments.

After meeting Judge Alito, having the opportunity to review his questions in front of the Judiciary Committee, having an opportunity to ask him questions personally, I am confident that he does, in fact, have a sound judicial philosophy and that he will administer justice according to the strict interpretation of our Constitution. I am confident that he will preserve our Nation's longstanding principles and that he will interpret the law, not make it.

I am also convinced that Sam Alito is a man of character and honesty. Judge Alito is not only a good nominee, he is a good man. He deserves the support of every Member of the Senate. I will vote in favor of Judge Alito's nomination to be an Associate Justice to the Supreme Court. I urge my colleagues in this body to join me and to come together to stop the character assassinations and to speak up for the American people and the future of our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. Mr. President, at the outset, I thank Mike Quiello and Nick Pearson of my staff for the research and preparation they gave me in my deliberation and consideration of Samuel Alito, Jr., and his appointment to the Supreme Court. Further, as a second generation American, the grandson of a Swedish immigrant who came to this country about 11 years prior to Samuel Alito, Sr.'s coming to this country from Italy, I am pleased that in the next few days I will have the chance to cast my vote to confirm Judge Alito as a Justice of the Supreme Court and reaffirm the promise that is the American dream of those who have come here from backgrounds that are diverse and far away to be a part of a great nation and have pledged their allegiance to all it stands for.

I have thought a lot about what I would say in confirming my vote on behalf of Judge Alito, and I decided, after listening to the speeches over the last couple of days, that I would try to draw a distinction that, to me, has been apparent in this debate but also is clearly the reason that I support Judge Alito. As we have heard today from a number of my colleagues, he has been criticized for being narrow and restrictive. It is important that we understand what the opposite of narrow and restrictive is to understand where those who oppose him are coming from.

The opposite of narrow and restrictive is broad and unlimited. The last thing the United States of America needs, or our Founding Fathers intended, is to have a Supreme Court that is unrestricted and broad in its interpretation of the Constitution and the laws the legislative branch passes under its authority. Therein lies the philosophical difference in this debate.

It has saddened me that through innuendo and reference in some of the previous speeches over the last couple of days, Judge Alito has been cast as being exactly the opposite of what Judge Alito really is. For example, in the recent aftermath of the tragedies in West Virginia, one speaker referred to Judge Alito's dissenting opinion in the case of RNS Services v. Department of Labor as exemplifying the fact that Judge Alito was against the little man and the worker.

That was a case where a ruling was made on the application of a rule on mine safety. But if you read the rule, Judge Alito did what you would hope a judge would do: He ruled on the application of the rule given the circumstances of the case. He didn't rule against the little man, nor did he rule for the big guy; he ruled based on the laws and the regulations promulgated by the agency this Congress appointed to be over mine safety. That is precisely what we need—a Court that will show us direction, but a Court that will never direct the laws we have passed in the wrong direction.

Secondly, there have been those who have talked about his commitment to civil rights, or really his lack of commitment to civil rights in terms of the claims of a few. I went to do some research on that issue because everything I saw in Judge Alito when he and I talked was the opposite of what those allegations would imply. I went to the testimony of Jack White, an attorney from San Francisco, CA, an African American, a member of the American Civil Liberties Union who came to Washington, DC, and testified before the Judiciary Committee on behalf of Samuel Alito. Rather than me trying to paraphrase what Jack White said, I would like to read it verbatim and then ask anyone who hears this speech the question whether Samuel Alito is a man who is not for the civil rights of all and the individual rights and liberties of every American:

> Now, as I clerked for Judge Alito, I saw a deep sense of duty, diligence, humanity, and respect for his role as a Federal appellate judge. . . .
>
> . . . He uniformly applied the relevant law to the specific facts of every case. Judge Alito recognized that every case was the most important case to the parties and attorneys with something at stake.

See, Judge Alito doesn't judge people by their color; he judges everybody individually in the cases he calls, as the cases are, understanding that every party has an equal interest.

I further quote Jack White:

> I never witnessed an occasion when personal or ideological beliefs motivated a specific outcome in a case.
>
> . . . I left New Jersey without knowing Judge Alito's personal beliefs on any of them. Now, the reason I didn't know his personal beliefs on all these issues was that the jurist's ideology was never an issue in a case that Judge Alito heard.

You see, Jack White, who was an African-American law clerk for Judge Alito, said that when he left, he never saw the ideological beliefs of the judge interfere with his judgment of the law and his ruling in a case.

I end my quote by reading simply what he said:

> Without fail, I saw Judge Alito treat everyone, every individual, with dignity and respect.

I will take the word of Jack White, who worked for Sam Alito, any day over any of us who, through innuendo or what we may have heard, want to castigate this nominee on his commitment to civil rights. Jack White's word, and his experience, is good enough for me. And Jack White knows what I know about Sam Alito—that he is committed to equity and fairness in the treatment of all Americans.

There has been something made of the fact that he is replacing Sandra Day O'Connor. I wish to talk about that for a minute.

Sandra Day O'Connor is one of my favorite Justices. I am not a lawyer. I came to the Senate from the House, but prior to my years in the House, I ran a small business. I am a businessman, and that is the interest I know and that which I know the best. Judge O'Connor was, without question, during her period on the bench the very best Justice in dealing with the complex issues of business that came before the U.S. Supreme Court. When I had the chance to meet with Judge Alito, I made that point to him and I asked him questions about American business, free enterprise, and the law. In every case, I became convinced that he had the same commitment Sandra Day O'Connor had.

To that end, and with regard to "narrow and restrictive" and with regard to the little guy, I wish to conclude my remarks on behalf of Samuel Alito by taking a second to talk about the Kelo v. New London case, the dissenting opinion which Sandra Day O'Connor wrote, and the answers to questions Judge Alito gave before our Judiciary Committee because they completely contravene any comment anybody has made about his commitment to the little guy or the benefit, or lack thereof, of narrow and restrictive ideology.

Justice O'Connor was one of the four dissenting Justices in the Kelo case. They didn't believe in the broadening of eminent domain to take property just because somebody could pay more taxes and would benefit more from it, and I concur with that. I think they made the right ruling. She said:

> For who among us can say she already makes the most productive or attractive possible use of her property? The specter of condemnation hangs over all property—

She is speaking within the context of the ruling in the majority.

> Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory.

What more brilliant statement can be made on behalf of the little guy, the average American, or the small homeowner than Sandra Day O'Connor's? What better affirmation of someone's capacity to replace that distinguished Justice could you possibly make than by reading the last sentence of Judge Alito's answer to that question before the Judiciary Committee when he was asked about the Kelo case? He said:

> I would imagine that when someone's home is being taken away, a modest home, for the purpose of building a very expensive commercial structure, that is particularly galling [to me].

Sandra Day O'Connor was a great Justice and did a great service to America. She broke the glass ceiling in being the first woman appointed to the U.S. Supreme Court. I believe Justice Alito will serve our people on this Court every bit in same way Justice O'Connor did. The criticisms of Judge Alito of being narrow and restrictive may, in fact, be, if you look at them in the perspective I have given, a great compliment to his ability and that which all of us seek, and that is a jurist who will rule based on the law, not legislate based on the position. A jurist understands the value and the strength and the power of the Constitution of the United States of America.

Mr. President, I look forward to casting my vote in favor of the nomination of Samuel Alito, Jr., to the U.S. Supreme Court.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I met with Judge Alito on the day after his nomination. I was very impressed with him from the start. After spending an hour or so with him, I could tell that he is a modest, honest, and fair man, a person with a solid understanding of the proper role of a judge. At the time, however, I said I would not make a final decision about his nomination at that point.

I started my career as a county prosecuting attorney, and I believe in trials before verdicts. We just had the trial, and during that trial, the hearing, this is what I saw: I saw a man who is forthright and honest. Over the course of 3 days before the Judiciary Committee, Judge Alito was asked 677 questions on issues ranging from abortion to executive power to Vanguard. He answered at least 659 of them, or 97.3 percent of the questions.

To give you some perspective on these numbers, Chief Justice Roberts, when he was in front of our committee, was asked only 574 questions and answered 89 percent of them. Justice Ginsburg was asked just 384 questions, answering only 80 percent of them. Justice Breyer was asked 355 questions, answering 82 percent. Judge Alito was asked more questions and gave more answers than any recent nominee to the U.S. Supreme Court.

At that hearing, I saw a man of character and integrity. Judges do not shed their values when they don their robes. Our Founders themselves recognized this important point. In Federalist No. 78, for instance, Alexander Hamilton said that only a few individuals would really have the expertise in the law to become a Supreme Court Justice. But fewer still would have the "integrity" and the "dignity" befitting the office. In my opinion, Judge Alito has the integrity, the character, and the dignity befitting the office of Associate Justice of the Supreme Court.

The best evidence on this point is the testimony of those who know Judge Alito best—his colleagues on the Third Circuit, people he has worked with day in and day out. Judge Edward Becker described Judge Alito as "modest and self-effacing." Judge Becker continued:

> I have never seen a chink in the armor of his integrity, which I view as total.

Judge Leonard Garth, his first boss, called him a "morally principled judge." Even former Judge Tim Lewis, a man who said he occasionally disagreed with Judge Alito, endorsed his elevation to the High Court.

To me, all of this testimony carries substantial weight. We can judge a man by his record, we can judge him by his judicial philosophy, certainly, but there is no better judge of a man than those who know him best.

Unfortunately, some who hardly know Judge Alito have tried to smear his reputation by raising his recusal in the so-called Vanguard case. This case got a lot of play during the hearing. In my opinion, this attack is clearly frivolous. I wish to talk for a moment about it.

This so-called Vanguard case arose out of a financial dispute between two people. The plaintiff won a suit against a woman by the name of Monga, requiring her to turn over about $170,000 that she had in some Vanguard accounts. Ms. Monga then went to court to prevent Vanguard from turning over the money. So while Vanguard was technically a defendant in the case, in the classic sense of the term, it really was not accused of any wrongdoing. It didn't stand to lose anything. The only question was whether Vanguard would transfer the funds it held for Ms. Monga to another person. They just held the money. Nothing about this case could realistically have affected Vanguard as a company, nor Judge Alito. The judge did not own Vanguard; he held mutual funds that were managed by Vanguard.

Mr. President, that is why everyone who has looked into that matter has concluded that the allegations against Judge Alito are absurd. The ABA looked into this allegation and unanimously concluded that Judge Alito was entitled to its highest rating, a rating which explicitly considers ethics and integrity. Five legal experts concluded that Judge Alito did nothing wrong. Judge Becker, the former Chief Judge of the Third Circuit, said he was "baffled" by these allegations. The Washington Post wrote in a January 13 editorial that Judge Alito's own testimony "revealed the frivolousness of the charge."

Before these hearings began, one of Judge Alito's opponents, Nan Aron, president of the Alliance for Justice, said, "you name it, we'll do it" to defeat Judge Alito.

With Vanguard, Judge Alito's opponents resorted to an outrageous attack on him in an effort to undermine his integrity. This attack clearly failed. Although some waged a full-scale war against Judge Alito, what Judge Becker said at the hearing remains true today: There is simply "not one chink in the armor of his integrity."

At the hearing, I saw an experienced judge with a brilliant legal mind. Judge Alito came to the Judiciary Committee with a lengthy and distinguished legal career. He served for several years as a Federal prosecutor, taking on the mob, drug dealers, and white-collar criminals. He argued 12 cases himself before the U.S. Supreme Court. And for more than 15 years, he has served as a judge on the Third Circuit, deciding thousands of cases and authoring hundreds of opinions with his own pen. This background certainly attests to his extraordinary competence and shows why he received a unanimously well-qualified rating from the ABA.

His judicial opinions attest to his competence as well. He writes crisply and clearly without any kind of overstatement. For the most part, he decides only the issues before him and has proven himself capable of tackling complex areas of the law with clear and yet simple language.

In my mind, however, the way Judge Alito answered our questions is perhaps the best example of his extraordinary legal talent. During our hearings, he demonstrated a mastery of constitutional law and his own voluminous jurisprudence. Over the course of 3 days, he spoke clearly and succinctly without using notes. It was an amazing performance. He provided us with detailed information about how he thinks, how he reasons, how he comes to his conclusions. I found his testimony thorough, forthcoming, and informative, and I believe the American people felt the same way.

At the hearing, I also saw a man who is openminded and fair, a man who is compassionate. During our hearings, some complained that Judge Alito has a bias toward Government or big business. But that is not what was said by those who, again, know him best. Take, for example, the testimony of Judge Alito's former law clerks.

Kate Pringle, a self-described "committed and active Democrat," said that Judge Alito "approached each case without a predisposition toward one party or the other." She said he treated all litigants "in a fair and openminded way."

Jack White, a member of the NAACP and the ACLU, said that Judge Alito had an "abiding loyalty to a fair judicial process," not "an enslaved inclination toward a political or personal ideology." In fact, Mr. White "never witnessed an occasion when personal or ideological beliefs motivated a specific outcome in a case."

Finally, Professor Nora Demleitner, who described herself as "a left-leaning Democrat, a member of the ACLU, a woman, and an immigrant," also had praise for Judge Alito:

> In the years I have known the judge, he has never decided a case based on a larger legal theory about the Constitution or conservative worldview, but instead has looked at the merits of each individual case.

Judge Alito also understands that judicial opinions are more than ink in the Federal Reporter. He understands that they are decisions that affect real people and have real consequences. The judge himself put it best:

> [W]hen a case comes before me involving, let's say, someone who is an immigrant . . . I can't help but think of my own ancestors because it wasn't that long ago when they were in that position. . . .[W]hen I look at those cases, I have to say to myself, and I do say to myself, this could be your grandfather. This could be your grandmother. They were not citizens at one time, and they were people who came to this country. When I have cases involving children, I can't help but think of my own children and think about my children being treated in the case that's before me. . . .When I get a case about discrimination, I have to think about people in my own family who suffered discrimination because of their ethnic background or because of religion or because of gender, and I do take that into account. When I have a case involving someone who has been subjected to discrimination because of disability, I have to think of people whom I've known and admired very greatly who had disabilities, and I've watched them struggle to overcome the barriers that society puts up[.]

To me, this testimony accurately reflects Judge Alito's record while on the bench. No matter who comes before him and no matter what the case, Judge Alito approaches each case with an open mind and a real-world sense of the consequences of his actions. To me, that is truly the approach of a fair, openminded, and compassionate judge.

Finally, I saw a man who understands the proper role of a judge. I believe judges play a limited, but obviously important, role in our constitutional system. Judges are not Members of Congress, State legislators, Governors, or Presidents. Their job is not to pass laws or make policy. Instead, it is the job of a judge—to use the words of Justice Byron White—simply "to decide cases." Nothing more.

Judge Alito seems to embody this thinking as well. Several years ago at a ceremony honoring one of his Third Circuit colleagues, Judge Alito reminded his colleagues about the attributes of a good judge. Always remember, he said, to "act like a judge."

He went on to say:

> Do what good judges do, what they have done for a long time. Decide the cases that come before you, decide them as best you can. . . .Speak straightforwardly on the matters that are properly before you. Exercise the important powers that are rightfully yours, but keep in mind that you are a judge.

On the first day that I met Judge Alito, I was impressed with him, but I am even more impressed today. He is a good, decent, and honest man. He has extraordinary legal talent, and he approaches each case with an open mind and understanding heart.

In spite of some of the frivolous attacks on his reputation and character, Judge Alito has conducted himself with dignity, patience, and, yes, poise. He is an excellent judge and, in my opinion, will make an outstanding addition to the Supreme Court. I am proud to support his confirmation.

I conclude by noting that when Judge Roberts was sworn in as our Nation's 17th Chief Justice, he reminded us of a "bedrock principle." And that is that "judging is different from politics." Similar to John Roberts, Samuel Alito understands the difference, and when he takes a seat on the Supreme Court, as I expect he will, I know he will remember that. When tough cases come up, he will, in fact, I am sure, act like a judge.

I thank the Chair, and I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURR). THE CLERK WILL CALL THE ROLL.

The legislative clerk proceeded to call the roll.

Mr. OBAMA. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. OBAMA. Mr. President, it is my understanding that the hour is dedicated to the Democrats speaking with respect to the Alito nomination. I request 5 minutes of that time.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. OBAMA Mr. President, first let me congratulate Senators SPECTER and LEAHY for moving yet another confirmation process along with a civility that speaks well of the Senate.

As we all know, there has been a lot of discussion in the country about how the Senate should approach this confirmation process. There are some who believe that the President, having won the election, should have complete authority to appoint his nominee and the Senate should only examine whether the Justice is intellectually capable and an all-around good guy: that once you get beyond intellect and personal character, there should be no further question as to whether the judge should be confirmed.

I disagree with this view. I believe firmly that the Constitution calls for the Senate to advise and consent. I believe it calls for meaningful advice and consent and that includes an examination of a judge's philosophy, ideology, and record. When I examine the philosophy, ideology, and record of Samuel Alito, I am deeply troubled.

I have no doubt Judge Alito has the training and qualifications necessary to serve. As has been already stated, he has received the highest rating from the ABA. He is an intelligent man and an accomplished jurist. There is no indication that he is not a man of fine character.

But when you look at his record, when it comes to his understanding of the Constitution, I found that in almost every case he consistently sides on behalf of the powerful against the powerless: on behalf of a strong government or corporation against upholding Americans' individual rights and liberties.

If there is a case involving an employer and employee and the Supreme Court has not given clear direction, Judge Alito will rule in favor of the employer. If there is a claim between prosecutors and defendants, if the Supreme Court has not provided a clear rule of decision, then he will rule in favor of the State. He has rejected countless claims of employer discrimination, even refusing to give some plaintiffs a hearing for their case. He has refused to hold corporations accountable numerous times for dumping toxic chemicals into water supplies, even against the decisions of the EPA. He has overturned a jury verdict that found a company liable for being a monopoly when it had over 90 percent of the market share in that industry at the time.

It is not just his decisions in individual cases that give me pause, though; it is that decisions like these are the rule for Samuel Alito rather than the exception.

When it comes to how checks and balances in our system are supposed to operate, the balance of power between the executive branch, Congress, and the judiciary, Judge Alito consistently sides with the notion that a President should not be constrained by either congressional acts or the check of the judiciary. He believes in the overarching power of the President to engage in whatever policies the President deems to be appropriate.

As a consequence of this, I am extraordinarily worried about how Judge Alito might approach the numerous issues that are going to arise as a consequence of the challenges we face with terrorism. There are issues such as wiretapping, monitoring of e-mails, other privacy concerns that we have seen surface over the last several months.

The Supreme Court may be called to judge as to whether the President can label an individual U.S. citizen an enemy combatant and thereby lock them up without the benefit of trial or due process. There may be consideration with respect to how the President can prosecute the war in Iraq and issues related to torture. In all of these cases, we believe the President deserves our respect as Commander in Chief, but we also want to make sure the President is bound by the law, that he remains accountable to the people who put him there, that we respect the office and not just the man, and that that office is bounded and constrained by our Constitution and our laws. I don't have confidence that Judge Alito shares that vision of our Constitution.

In sum, I have seen an extraordinarily consistent attitude on the part of Judge Alito that does not, I believe, uphold the traditional role of the Supreme Court as a bastion of equality and justice for U.S. citizens. Should he be confirmed, I hope he proves me wrong. I hope he shows the independence that I think is absolutely necessary in order for us to protect and preserve our liberties and our freedoms as citizens. But at this juncture, based on a careful review of his record, I do not have that confidence, and for that reason I will vote no and urge my colleagues to vote no on this confirmation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. CARPER. Mr. President, of the three branches of our Federal Government, the Supreme Court seems the most removed from the American people. There are, as we know, only nine members of the Supreme Court. None of them, in the end, is accountable to the public. They certainly do not have to face groups of angry voters as you and I do from time to time, at townhall meetings or local potluck dinners, and they are probably thankful for that.

However, their actions can have a tremendous and lasting effect on the lives of every American, probably more so than any Senator or Governor, or perhaps even more than many Presidents. For, in the end, the Supreme Court exists as the last bastion of protection for the rights and freedoms we enjoy as Americans. That is why I take so seriously, as I know you do, our obligation as Senators to provide advice and consent to our Presidents, as required by our Constitution, to determine whether their nominees truly merit a lifetime appointment to serve on our Nation's highest Court.

When I voted for Judge John Roberts' nomination to become Chief Justice of the Supreme Court last fall, I said standing here that it was a close call, at least for me. Ultimately, though, I chose to take what I described then as a leap of faith. As someone whose political and legal opinions are perhaps somewhat more conservative than mine, I knew Chief Justice Roberts would sometimes render decisions with which I may not be comfortable or entirely agree. But after carefully reviewing his testimony, and discussing that testimony with Democratic and Republican members of the Senate Judiciary Committee, meeting with him and other interested parties, and talking to his colleagues, colleagues of his who had known and worked with him in the past, I concluded John Roberts was a worthy successor to Chief Justice Rehnquist and was not likely to shift the balance of the Court in any significant way.

Obviously, more than three-fourths of our colleagues agreed with that decision. When the time had come to cast my vote, I concluded that Chief Justice Roberts' decisions would not be guided by ideology alone, but also by legal precedent and the combination of his life's experiences as a judge, as an attorney, as an academic, as a father, and as a husband. In short, by supporting John Roberts' nomination I voted my hopes and not my fears.

After we confirmed Chief Justice Roberts and turned to face yet another impending Supreme Court vacancy, I urged President Bush to send us a nominee similar to the person he or she would replace—Justice Sandra Day O'Connor. I noted that his next choice could divide this Congress and our country even further, or it could serve to bring us closer together. In my view, we needed that type of consensus candidate to replace Justice O'Connor and her legacy on the Court.

For more than 20 years, Justice O'Connor has been a voice of moderation during often difficult and tumultuous times. As we all know, her decisions oftentimes determined the direction of the Court. Not infrequently, the opinions she wrote reflected the prevailing sentiment of our country and its citizens, too. In my view, she was the right Justice at the right time.

Unfortunately, and with some regret, I rise today not fully convinced that Judge Samuel Alito is the right person to replace Justice O'Connor on the Supreme Court. Unlike a few months ago, when I rose to support the nomination of John Roberts, I will not be supporting Judge Alito's nomination to the Supreme Court. In sharing that decision today, though, let me be clear on several points. I will not be voting against his confirmation because I don't believe he has the legal qualifications, the intellect, or the experience necessary to sit on the Supreme Court. I do. He is clearly very bright and demonstrates an excellent grasp of the law.

I will not be voting against him because I don't like him or respect him. I do. He is described by a number of his colleagues as collegial, as hard working, and as a devoted father and husband. I believe Samuel Alito is an honorable person and that he has lived an honorable life.

Having said that, though, I don't believe we should vote for Supreme Court Justices based solely on their qualifications and likeability. We must also consider their judgment, their legal opinions, their judicial philosophies, and what they said or did not say during the confirmation hearings, in order to determine whether we are truly comfortable with the direction a particular nominee will take our Nation's highest Court. After all, these are lifetime appointments that will have consequences for decades into the future.

In the end, I found myself asking one simple question. Here it is: Is Judge Samuel Alito the right person for this vacancy, not just for now but for decades to come? For me, the answer to that question is, regrettably, no. Let me take a few minutes to explain why.

As we all know, our Constitution provides for three separate but equal branches of Government—the legislative branch, that is us, the Congress; the executive branch, the Presidency and his or her administration; and the judicial branch, the courts. The Framers of our Constitution believed no branch of our Federal Government was superior to another, so our Founding Fathers established an intricate system of checks and balances to ensure that each branch kept a watchful eye on the others.

For instance, it is Congress's job to represent the people and write the laws of our land, but the President can refuse to sign a bill the Congress has passed if he or she disagrees with our conclusions. Congress can then come back and override a President's objections, if we can muster the necessary votes. Meanwhile, the Supreme Court can rule that a law is, in part or in whole, unconstitutional, providing yet another important check on the power vested in the Congress and in the Presidency.

Admittedly, it is not the most harmonious or quickest form of Government, but it has served our country well for over 200 years. Perhaps it was Churchill who said it best when he described democracy as the worst form of government devised by wit of man, but for all the rest.

I am concerned that, if confirmed, Judge Alito, during the decades he is likely to serve may well take the Court in a new direction that serves to undermine our system of checks and balances, threatening the rights and freedoms many of us hold dear.

Let me elaborate, if I may. In the past, Judge Alito has advocated for what is known as the "unitary executive theory."

Until a couple of months ago, I had not heard of that. If you are like me, Mr. President, and you didn't go to law school, you are probably wondering what that means. Let me put it simply. It basically means that Judge Alito feels that the President should largely be allowed to act without having to worry much about Congress or the Supreme Court stepping in and saying: With all due respect, you are out of line.

This line of thinking deeply concerns me and, I believe, many of my colleagues and the people we represent. And it should. Remember, our Nation declared her independence from Britain because we no longer wanted to be ruled by a king, or, frankly, by anyone with king-like powers. Our Founders wanted power to be invested in the people and shared equally by the three branches of Government.

To say then that there are times when a President's power should go largely unchecked except in very rare instances, in my opinion, goes against what our Founders intended. Moreover, unfettered Presidential power could have dangerous consequences, given how a particular President—either now or in the future—chooses to exercise that kind of unchecked power.

Let me give you a recent real-world example. Over the past few months, the Bush administration has been embroiled in several controversies, as we know, over its policies concerning the torture of detainees, as well as its decision to spy on or intercept phone calls and e-mails apparently of thousands of people living in the United States who are suspected of being agents of foreign countries or entities. In both cases, the administration asserted that it should be able to act without the consent of Congress or the courts.

I disagree. I believe that our courts have an obligation under our laws to monitor an administration's actions concerning foreign prisoners and criminal suspects, and I believe administrations should have to justify, within reasonable periods of time, their decision to spy on Americans. I will be the first to acknowledge that there are times when the President—this one or another President—needs the ability to conduct secret wiretaps. And I think most of us agree on that point.

The issue, however, is do Presidents have a constitutional right to conduct secret wiretaps without court authorization, without some other branch of Government making sure that that administration isn't breaking the law?

Again, the fundamental issue for me is the issue of checks and balances.

In these instances, Congress and the courts provide a needed and important backstop to make sure that the administration doesn't became overzealous and abuse the rights of innocent people.

Americans may not understand why these issues are such a big deal. They may even agree with the reasons the Bush administration give, for instance, for circumventing the law—a law that has been in place since 1978 which we modified I think about 4 years ago.

But it is not a stretch to understand how a President—maybe not this one but one in the future—could overstep his or her authority and thereby infringe on the civil rights of innocent Americans.

For that reason alone, we should all have grave concerns about an unchecked Presidency—or a Supreme Court Justice who has routinely sided and ruled in favor of unchecked Executive powers.

Jeffrey Stone, a law professor at the University of Chicago, is a supporter of the Roberts nomination—and initially a supporter of the Alito nomination—wrote recently:

> Given the times in which we live, we need and deserve a Supreme Court willing to examine independently these extraordinary assertions of Executive authority. We can fight and win the war on terrorism without inflicting upon ourselves and our posterity another regrettable episode like the Red Scare and the Japanese internment—

Of the 1950s and 1940s, two shameful episodes in the history of our country where our Government seriously infringed on the rights of average Americans under the guise and excuse of national security.

But as Professor Stone went on to say, we will only avoid such terrible excesses of governmental power "if the Justices of the Supreme Court are willing to fulfill their essential role in our constitutional system."

Based on his history and his opinions—in his own words—I fear that Judge Alito may well change the Court's approach and rule in favor of expanded Presidential power—not just at the expense of Congress and the courts but ultimately at the expense of the American people. We cannot and should not play witness to an unchecked Presidency, regardless of political party, regardless of whether the President is a Democrat or a Republican.

We need in this country for the courts and the Congress to ensure that this administration and future administrations abide by the laws of this land and the principles we hold dear.

Just as I am concerned about Judge Alito's views on expanded Presidential power, I am also concerned about Judge Alito's opinion on the role and powers of Congress.

Traditionally, Congress has enjoyed broad authority, as a coequal branch of Government, to debate and adopt laws that we believe protect the interests of the American people, such as keeping our water clean and our air clean and ensuring that fair labor laws and employment standards across the country are fair.

Back in the 1990s, Congress used that authority to pass a bill that banned the possession or sale of machineguns across State lines among everyday Americans. To me, that ban wasn't about whether people had the right to own guns for recreation or self-protection. Those rights are forever enshrined in our Constitution, as they should be. This was about whether people had the right to own, to buy, or to sell across State lines Army-style machineguns, which I think reasonable people can agree have little, if anything, to do with protecting our homes or going hunting.

Nevertheless, the constitutionality of the law was challenged in the courts. All nine Federal appeals courts that heard the subsequent challenges upheld the validity of the original law.

Judge Alito, as a member of the Federal appeals court that covers Delaware and our surrounding region in the Delaware Valley, heard one of those challenges. He ended up disagreeing with his own court's decision and that of eight other Federal appeals courts which ruled that Congress does indeed have the authority under our Constitution to ban the sale of machineguns across State lines.

My primary concern is that if Judge Alito thinks Congress shouldn't have the right to pass laws that arguably keep Americans safer, then what other laws might he believe Congress does not have the authority to adopt under the commerce clause of our Constitution? Laws that protect the air we breathe or the water we drink? Laws that allow men and women to take unpaid leave from their jobs to care for members of their family during times of crisis? I don't know, and that uncertainty—at least for me—is a cause of real concern.

A third concern I hold about Judge Alito relates to his views on other rights and freedoms we enjoy as Americans, particularly a woman's right to end a pregnancy prior to fetal viability. My own opinion about abortion is we have far too many of them, and we need to put a lot more effort into reducing the number of abortions that still take place in America. I am sure on that point Judge Alito and I agree.

But I am not certain Judge Alito agrees with me that we should not go back in time to a place where almost all abortion laws were illegal, where women who wanted to end a pregnancy were in too many instances forced into unhealthy behavior that often put their lives and their reproductive futures at risk. That is why, during his confirmation hearing, I was disappointed that Judge Alito, unlike Judge Roberts, declined to acknowledge that the Supreme Court decision that granted women the right to end an early term pregnancy is "settled law."

Justice O'Connor, whom Judge Alito has been nominated to replace, has been the deciding vote on numerous cases that challenged this precedent. That is why I believe replacing Justice O'Connor with Judge Alito—given his rulings and statements on this subject—may well be putting this precedent in jeopardy.

Let me explain why. In the historic Planned Parenthood v. Casey case, Judge Alito voted to uphold a Pennsylvania law requiring married women to notify husbands before obtaining an abortion even during the early stages of pregnancy. That case eventually went to the Supreme Court, which ruled against Judge Alito's position, as we know.

Justice O'Connor, who cast the deciding vote in the Supreme Court overturning the Pennsylvania law and Judge Alito's position, wrote that women do not leave their Constitutional protection at the altar. Married women are entitled to the same protections as single women. I believe she is right.

I had the opportunity to talk with Judge Alito at length recently. I asked him—a conversation that I very much enjoyed—why he ruled the way he did in this instance. He told me he did not think the requirement placed an undue burden on married women. I asked him if he felt the same way today, especially in light of the Supreme Court ruling in opposition to his view. He told me he basically thought the same way. While I respect that honesty, I respectfully disagree and question what other undue burdens he may decide to place on women in the future.

Let me close by saying that this is not an easy vote for me. I know it is not an easy one for a lot of our colleagues. As a former Governor, I believe strongly that this administration or any other administration has the right to nominate judges of the same mind and philosophy. There are consequences in elections. If you win, you have the chance, if you are a Governor or a President, to nominate candidates of your choice for the bench. And I believe Senators should not automatically reject judges outright because of political affiliation or beliefs.

However, politicians of both stripes must take a stand and reject nominees that we believe will take the courts too far to the extreme right or to the extreme left. Wisely, in my State, Delaware's constitution requires overall political balance in our State's courts.

For every Democrat who is appointed to serve as a judge, Delaware Governors have to nominate a Republican. The result has been an absence of political infighting and a balanced, exceptionally and highly regarded State judiciary that we are enormously proud of in our State.

Our Federal Constitution, regrettably, does not require similar political balance when it comes to the judiciary, but political balance should be one of our goals. The Founders of the U.S. Constitution tasked the Senate with finding that balance.

I fear, in the end, that Judge Alito may well upset the balance that exists on the Supreme Court for the better part of my lifetime and move the Court in a direction that will not be best for many of the people of this country.

So this time, unlike my vote for the nomination of John Roberts a few months ago, I will be voting my fears—not my hopes. Having said that, I sincerely wish Judge Alito well.

I hope, if he is confirmed—and I believe that he will be—that he proves my concerns wrong and unfounded. I hope he remembers that our Constitution—that our entire democracy—is both an everlasting and ever-changing experiment. Our Constitution is not something to be strictly interpreted, nor is it something to be recklessly abandoned.

Success in life is often measured not just by the stances we take but by the results we achieve. I believe that is one of the reasons why Justice O'Connor is so revered. It is not because she was always predictable or that she advocated an intractable world view. It is that she found the right balance, even in the most difficult, controversial, and emotional cases of our times.

My fear is that too often Judge Alito may not do so, and thus I will not be supporting his nomination.

My hope, though, is that once he is confirmed to the Supreme Court he will balance the scales of justice and not tip them too far in either direction.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, for the second time, this Congress we are considering the nomination to the Supreme Court. Having confirmed Judge John Roberts as Chief Justice in September, a decision in which I joined, we are now debating the nomination of Judge Samuel Alito to the position of Associate Justice. Positions on the Supreme Court are hugely significant given their lifetime tenures, the balance on the Court, and the importance of the Court's decisions on the lives of Americans. These votes are among the most important and difficult that we cast.

Article II, section 2 of the Constitution simply provides that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the Supreme Court. . . ."

The Constitution gives us no guidance on the factors the Senate should consider while we carry out this constitutional duty. In the end, each Senator must determine what qualities he or she thinks a good Supreme Court Justice should have and what scope of inquiry is necessary to determine if the prospective nominee has these qualities.

This will be the 11th Supreme Court nomination on which I will have voted. With each nomination I have done my best to fairly determine if the nominee satisfies fundamental requirements of qualification and temperament, if the nominee is likely to bring to the Court an ideology that distorts his or her judgment, and brings into question his or her open mindedness and whether any of the nominee's policy values are inconsistent with fundamental principles of our Constitution.

Like Judge Roberts before him, Judge Alito has an impressive background and command of the law. He easily meets the educational and professional requirements of the position. Judge Alito has worked for the Justice Department, as the U.S attorney for the District of New Jersey, and for nearly 16 years as a judge on the Third Circuit Court of Appeals. He is respected by his peers as a very decent person and is a person of high caliber and integrity.

That Judge Alito has a keen intellect and understands the nuances of the law is indisputable. That is not enough to warrant confirmation if his discernible views on key issues are at variance with fundamental principles of our constitutional system. Because I am not convinced he will adequately protect the constitutional checks and balances that are the bedrock of our liberty, I cannot support his confirmation.

I have concerns about Judge Alito's views in a number of areas. One in which I have the greatest doubts relates to his undue deference to Executive power. In recent years, constitutional issues on the authority of the executive branch have multiplied. These include executive actions in areas of government eavesdropping, other government intrusions on personal privacy, including library records, medical records, and Internet search records, and the detention and treatment of American citizens whom the President designates as "enemy combatants." Our system of checks and balances requires the Supreme Court to enforce limits on Executive power, and the nominee's views on executive authority under the Constitution are extremely important.

Judge Alito's record, however, is one of undue deference to Executive power and raises significant doubts as to whether he would adequately apply the checks and balances that the Founders enshrined in the Constitution to protect, in part, against an overreaching Executive.

For example, while serving as Deputy Assistant Attorney General in 1986, Judge Alito recommended the President use bill signing statements to influence the Court's interpretation of legislative history. He argued that "the President's understanding of the bill should be just as important as that of Congress," and that his signing statement proposal would "increase the power of the executive to shape the law."

This issue took on renewed urgency when President Bush recently declared in a signing statement that he would ignore the ban on torture by executive branch personnel, a ban passed overwhelmingly by Congress in the very bill he was signing, if the ban hampered his actions as Commander in Chief. In a written question, I asked Judge Alito about the possible legal relevancy of Presidential signing statements. His response was erudite, as always, suggesting they might be relevant if the President participated in the crafting of the legislation.

In the case of the torture ban language, the President strongly and repeatedly opposed the language and unsuccessfully sought, at a minimum, to obtain a Presidential waiver. Yet when asked at his Judiciary Committee hearing whether a signing statement could have relevancy in that context where the President strongly opposed the language and was not involved in its crafting, Judge Alito responded:

> The role of signing statements and the interpretation of statutes is, I think, a territory that's been unexplored by the Supreme Court.

That statement of fact was not responsive to a question about his views. Judge Alito, thereby, missed the chance to show that his views on this issue have evolved since 1986. His words in 1986 that signing statements can help achieve the goal of "increasing the power of the Executive to shape the law" should give us all pause.

If Judge Alito were on the Supreme Court and voted to give constitutional weight to signing statements such as President Bush made when he signed the torture ban legislation, he would be creating a new and radical expansion of Executive power.

In 1988, the Supreme Court addressed the question of executive authority in Morrison v. Olson, the decision which upheld the Independent Counsel Act. The government had argued that the act was unconstitutional because it restricts the Attorney General's power to remove an independent counsel and interfered with executive branch prerogatives, thereby disrupting the proper balance between the branches of Government.

Chief Justice Rehnquist rejected those arguments when he wrote for a 7-1 majority:

> As we stated Buckley v. Valeo, the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as "a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other."
>
> Nonetheless, just a year later, in remarks to the Federalist Society in 1989, Judge Alito, then the U.S. attorney for the District of New Jersey, called the Morrison v. Olson decision "stunning," and described congressional checks on broad Presidential power as "pilfering." He said:
>
> . . . the Supreme Court [in Morrison] hit the doctrine of separation of powers about as hard as heavy weight champ Mike Tyson usually hits his opponents.

Yet in the setting of the Judiciary Committee hearings, when asked whether the views he expressed to the Federalist Society were still his views, Judge Alito would only say:

> Morrison is a settled precedent—it is a precedent of the court. It was an 8-1 decision (sic). It's entitled to respect under stare decisis. It concerns the Independent Counsel Act, which is no longer in force.

He gave no indication that he has modified his earlier extreme view over time, but, again, he simply made a statement of obvious fact: that Morrison is a precedent of the Supreme Court and entitled to respect as such.

Although he has been hesitant to check Presidential power, Judge Alito has been more than willing to check congressional power. In United States v. Rybar, the Third Circuit upheld a conviction under the Federal law prohibiting the possession of machine guns. In his dissent, Judge Alito said there was insufficient evidence in the RECORD to determine that Congress had the power under the commerce clause to enact that legislation. Not only did the majority strongly criticize his view of congressional power, and not only did the Supreme Court decline to review the majority's ruling, thereby suggesting the majority's view was the correct view, but the Second, Third, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits have also all found the congressional machinegun ban to be constitutional.

Undue restriction of legislative branch authority such as reflected in Judge Alito's dissent in Rybar could lead to further unwise extension of executive branch powers. For instance, Congress has voted to require the executive branch to seek a warrant to eavesdrop on American citizens. We granted broad powers to tap phone lines where there is probable cause that a person is, or is linked to, a terrorist or a spy. We allow the executive branch to go ahead and tap a phone when there is no time to seek a warrant, first, as long as it subsequently seeks a warrant within 3 days. But Congress added an explicit prohibition on the executive branch tapping phones of U.S. citizens except as provided for in that law. This was an explicit prohibition. You must follow the requirements of this law or else you must not tap American citizens' phones.

Can a President ignore that prohibition, that check on his power? The Supreme Court ruled on the issue of executive authority in the seminal Youngstown case. As Justice Robert Jackson wrote in his renowned opinion:

> When the President takes measures incompatible with the expressed will of Congress, his power is at its lowest ebb.

Three times at his hearing, however, Judge Alito characterized that circumstance where the President acts contrary to the explicit congressional prohibition as a "zone of twilight." Justice Jackson reserved that zone of twilight, that zone of ambiguity, for the circumstance where "the President acts in absence of either a congressional grant or denial of authority."

Again, where the President acts in defiance of a congressional prohibition, Presidential power, according to Jackson, is at its lowest ebb, not in a twilight zone of uncertainty.

More specifically, Judge Alito—referring to the congressional prohibition on executive wiretapping under the Foreign Intelligence Surveillance Act, FISA, the prohibition on executive wiretapping, except as provided for in that act, spoke as follows at his hearing:

> Where the President is exercising executive power in the face of a contrary expression of congressional will through a statute or even an implicit expression of congressional will, you'd be in what Justice Jackson called the twilight zone, where the President's power is at its lowest point.

And Judge Alito said:

> What I'm saying is that sometimes issues of executive power arise and they have to be analyzed under the framework that Justice Jackson set out. And you do get cases that are in this twilight zone.

Again, referring to the hypothetical presented to him where there was a specific congressional prohibition on wiretapping. Again, calling that a case that is in the twilight zone.

Later, Judge Alito said:

> When you say regardless of what laws Congress passes, I think that puts us in that third category that Justice Jackson outlined, the twilight zone, where, according to Justice Jackson, the President has whatever constitutional powers he possesses under Article II minus what is taken away by whatever Congress has done by an implicit expression of opposition or the enactment of a statute.

By repeated characterizations of Presidential action in the face of a prohibition on that action, as falling into a twilight zone of uncertainty rather than a zone of dubious constitutionality, Judge Alito, unwittingly or otherwise, reflected what I fear his real view is. The twilight zone that he referenced is entered, according to the Youngstown test, when the President acts without congressional authorization, not when Congress has explicitly prohibited his actions. Again, for instance, where Congress has prohibited domestic wiretapping in the absence of seeking a warrant, Presidential power is at its lowest ebb.

In the 1981 case of Dames and Moore v. Regan, Justice Rehnquist reaffirmed the same test, writing that the zone of twilight is entered "when the President acts in the absence of congressional authorization," and reaffirming Justice Jackson's opinion. Justice Rehnquist found that "when the President acts in contravention of the will of Congress 'his power is at its lowest ebb and the Court can sustain his actions [Justice Rehnquist said] 'only by disabling the Congress from action on the subject.'"

If Judge Alito had described the status of Presidential action in contradiction of congressional prohibition only one time, it could be argued that he slipped or made a mistake. But since he repeatedly made the statement, it is more likely to represent his true feeling, particularly since Senator LEAHY pointed out this mischaracterization of Justice Jackson in the Youngstown case and Judge Alito did not correct himself.

Justice Jackson is a longtime and lifelong hero of mine. He was President Truman's Attorney General when Truman nominated him to the Supreme Court. But when President Truman seized the steel mills under his claim of constitutional authority as Commander in Chief, Justice Jackson ruled against his old friend, now Commander in Chief, and wrote:

> What is at stake is the equilibrium established by our constitutional system.

Similarly, Justice O'Connor recently cast the deciding vote in Hamdi v. Rumsfeld, which made clear that the President's powers during wartime are not unchecked under our Constitution. Justice O'Connor wrote:

> A state of war is not a blank check for the President when it comes to the rights of the Nation's citizens.

The liberties of our people are in the hands of the Supreme Court. The willingness of this President and a number of Presidents before him to ignore the Constitution's limits on their power needs to be checked by the Supreme Court. While I am hopeful Judge Alito will join the long and revered list of Supreme Court Justices who have protected our Constitution's checks and balances, I have too many doubts to be confident he will do so and that he will stand up to excessive exercises of Executive power, as Justice Jackson and Justice O'Connor and other Justices have done.

Judge Alito is a personable, decent man, a man of great integrity and extraordinary intellect. His associates vouch for his collegiality and his congeniality. But I am not confident Judge Alito will help provide the essential check on executive excess that has proven throughout our history to be the bedrock of our liberty.

During his hearings, he stated time and time again that the President is "not above the law," but in the end I am not persuaded there is real conviction behind that mantra.

I wish I could ignore my fears and vote my hopes. But the doubts are too nagging and the stakes are too high for me to consent to Judge Alito's nomination to the Supreme Court.

I thank the Chair, yield the floor, and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CRAIG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAIG. Mr. President, I am here today to discuss the nomination of Judge Samuel A. Alito, Jr. to be an Associate Justice of the Supreme Court.

Over 200 years ago, the Framers of the United States Constitution had a similar discussion. On the topic of judicial nominations, they emphasized the need for qualified judges—those who possess virtue, honor, requisite integrity, competent knowledge of the laws, fit character, and those who have the ability to conduct the job with utility and dignity.

They also talked about the courts that these judges sit on and warned against them exercising will instead of judgment, the consequence of which would be the substitution of the courts' pleasure to that of the legislative body.

These principles have stood the test of time—have been a constant standard that has guided the Senate's constitutional obligation of advice and consent and—today, over two centuries later, we see these principles embodied in Judge Samuel Alito.

You can tell this by Judge Alito's record.

Judge Alito has served as a judge on the Third Circuit Court of Appeals for 15 years. He was confirmed unanimously by a voice vote and since his appointment, he has participated in more than 1,500 Federal appeals and written more than 350 opinions.

From 1987 to 1990, he was the U.S. attorney for the District of New Jersey—the chief Federal law enforcement officer in the State. As a Federal prosecutor, he oversaw the prosecutions of numerous organized crime figures, white-collar criminals, environmental polluters, drug traffickers, terrorists, and other Federal defendants.

Judge Alito also served as an Assistant to the Solicitor General from 1981–1985, arguing 12 cases before the Supreme Court and writing briefs or petitions in more than 250 cases.

He was a Deputy Assistant Attorney General in the Office of Legal Counsel, which is the highest authority within the executive branch for answering legal questions and advising the federal government on complex statutory and constitutional questions.

He is also a distinguished student and scholar. He earned his bachelor's degree from Princeton University and his law degree from Yale Law School, where he served as editor of the Yale Law Journal.

You can also tell his qualifications by the kind of human being he is—and by the kind that others know him to be.

Judge Edward Becker, Senior Court of Appeals Judge for the Third Circuit, who served with Judge Alito for 15 years, called him a wonderful human being, gentle, kind, considerate, patient, self-effacing, brilliant, highly analytical and meticulous, a soul of honor, with no chinks in the armor of his integrity.

Judge Leonard Garth, who has known Judge Alito since he clerked for him in 1976 and served with him on the Third Circuit for the 15 years of Judge Alito's tenure there, called him thoughtful, modest, and self-effacing, and that it is rare to find humility such as his in someone of such extraordinary ability.

And Edna Axelrod, a former colleague and lifelong Democrat, called him a man of unquestionable ability and integrity, one who approaches each case in an openminded way, seeking to apply the law fairly.

You can also tell his qualifications from his judicial philosophy—and the way he judges.

Judge Becker testified that Judge Alito scrupulously adheres to precedent.

A former colleague and friend of 20 years likewise said that those who know him know that he is not an ideologue, he does not use his position to pursue personal agendas, and he has a profound respect for the law and precedent.

Judge Alito himself testified that he makes decisions knowing a judge can't have any agenda, a judge can't have any preferred outcome in any particular case, and a judge certainly doesn't have a client. The judge's only obligation—and it is a solemn obligation—is to the rule of law. And that means in every single case, the judge has to do what the law requires.

All of these things—his record, character, and judicial integrity—don't simply make him qualified to be an Associate Justice of the Supreme Court—they make him well qualified, according to the American Bar Association.

After interviewing more than 300 people and analyzing nearly 350 published opinions, a panel at the ABA concluded that Judge Alito's integrity, his professional competence, and his judicial temperament are of the highest standard—and his time on the bench established a record of both proper judicial conduct and even-handed application in seeking to do what is fundamentally fair.

Some of those now opposing the nomination of Judge Alito used to agree.

When Judge Alito was in the process of being confirmed to the Third Circuit, one Senator said that Judge Alito "obviously had a very distinguished record" and commended him for his "long service in the public interest."

Another, referring generally to the nominations process, said "we need to get away from rhetoric and litmus tests, and focus on rebuilding a constructive relationship between Congress and the courts . . . we do not need nominees put on hold for years . . . while we screen them for their Republican sympathies and associations."

And the Senate did this some years ago. I recall when the nomination of Ruth Bader Ginsburg to the Supreme Court came before the Senate in 1993, I was confronted with a nominee whose past revealed that she had a vastly different political ideology than my own. My constituents from Idaho made clear just how different and how far out of the Idaho mainstream that ideology was.

However, Justice Ginsburg was a judge of great ability, character, intellect, and temperament. Her record was replete with evidence of these qualities. And although at one time she had been a vocal advocate for particular political issues, she had a sharp understanding of the limited character of the judiciary and her role within it as a neutral arbiter, not an advocate.

I voted for Ruth Bader Ginsburg. Not because she had the same ideology as I do, but because there was a lack of convincing evidence that she believed the Supreme Court was a place for judicial activism rather than restraint.

Judge Alito's record reflects the same belief, perhaps even more so than Justice Ginsburg's. But now we have the same senators who supported him the first time around suddenly calling his record "ominous" and uniting their opposition on the basis of his alleged "extreme views of executive power."

In a recent hearing, Judge Alito acknowledged that "the President, like everybody else, is bound by statutes that are enacted by Congress" and that there is "no question about that whatsoever." He also testified that "as a judge, he would have no authority and certainly would not try to implement any policy ideas about federalism." There is nothing in Judge Alito's record to suggest otherwise.

What his record does show is a man of character, competence, and integrity who can apply the laws, regardless of his own views.

It is hard to argue against that.

Let us vote to confirm Judge Samuel Alito as an Associate Justice of the Supreme Court.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I understand the leader may be coming. If he does, I will suspend my remarks to allow him to speak, then I will resume. Are we in morning business?

The PRESIDING OFFICER. We are in executive session on the nomination of Judge Alito.

Mr. ALEXANDER. I rise to make a few remarks on Judge Alito. The Presiding Officer is from the next State over. North Carolina and Tennessee have the same mountains, and he may be familiar with a story we tell at home about the old Tennessee judge.

It is told in one of our mountain counties that the lawyers showed up one morning in the courthouse, all prepared for a 3-day or 4-day trial. They had their litigants and their witnesses and their books. They had done the research. The judge came in, sat down behind the bench, and said: Fellows, we can save a lot of time. I had a phone call last night, and I pretty well know the facts. Just give me a little bit on the law.

The lawyers were pretty disappointed because it was obvious to them that the judge already had pretty well made up his mind about what to do about that case. That is not what they expected. They thought they were coming before a judge—at least one side did—who was impartial and they wouldn't know whose side the judge was on.

When Judge Alito is sworn in, he will take two oaths. The first is the constitutional oath that we Senators took. The second is the judicial oath, which makes a pretty good job description of a Justice on the Supreme Court: I—and he will say his name—do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as Associate Justice of the Supreme Court under the Constitution and laws of the United States. So help me God.

Judge Alito's statements before the Judiciary Committee suggest to me that he understands very well his duty of impartiality under these oaths. He said he will uphold the Constitution. These are his words:

> The court should make its decision based on the Constitution and the law. It should not sway in the wind of public opinion at any time.

Judge Alito has said that the Constitution applies to everyone:

> No person in this country is above the law. That includes the President and it includes the Supreme Court.

He said he won't allow his personal views to compromise his impartiality. He also said:

> I would approach the question with an open mind and I would listen to the arguments that were made.

The other side has taken an unusual position. They keep asking, Whose side is he on? Is he on the side of the rich or of the poor, the big or the little, the Black or the White, business or labor? Is he on the side of the easterner or the westerner? For us to know whose side he is on would violate his oath. He can't tell us that. The American people know that.

I had the privilege of being Governor of my home State. In that process, I appointed 50 judges. I never asked a single one of them whose side they were on. I appointed Democrats and Republicans. I appointed the first African American judges, and the first women to be circuit court judges. I didn't ask them where they stood on abortion or the death penalty. I tried to find out about their character, about their intelligence, about how they would treat people before them, about their respect for law and their understanding of our country. I have been proud of those 50 appointees.

I am disappointed that some in this Chamber would keep asking of Judge Alito and other nominees of the President, Whose side is he on? Is he on the side of the rich or the poor, of the big, of the little? He must take an oath of office that says he will not be on anybody's side and that when the lawyers come before him to argue a case, they don't know where he is going to come down except that he is going to come down according to his oath, according to the law.

Americans have shown that they know better. I had the privilege of being elected to the Senate in 2002. That was an issue in my election: Did the people of Tennessee want to confirm President Bush's judicial nominees, people who would interpret the law, not make it up as they go along? The people of Tennessee don't want a judge who takes sides before the case is argued.

I said a few months after I arrived here that I would not participate in a filibuster of any President's nominee. I might vote against them for one reason or another, but I wouldn't participate in a filibuster. Each one of them deserves an up-or-down vote. I am looking forward to casting this vote.

I would like to express my great respect for the woman Judge Alito will succeed. Sandra Day O'Connor was appointed by President Ronald Reagan. She was the first woman appointed to the Supreme Court. She has distinguished herself there by her intelligence, her independence, and scholarship. She has been a wonderful representative for our country. She is a great symbol for other men and women, reminding us that American history is a work in progress and that we had a long way to go when she was appointed, as we still do.

She tells a wonderful story of how, when she graduated from Stanford Law School, she applied for a job with a Los Angeles firm. Even though she graduated near the top of her class, she was told they only had places for women as secretaries. A few years later, a partner in the same firm was the Attorney General of the United States, and he called her and asked her to fly to Washington from Arizona so that he could talk with her about being President Reagan's appointee to the Supreme Court. She has come a long way, and she has helped our country come a long way. As we consider Judge Alito, we certainly salute Justice O'Connor.

I look forward to casting my vote for the confirmation of Judge Alito. His resume reads like a resume any of us who were once in law school dreamed we could have: his degree from Yale, his work as an Assistant U.S. Attorney, as Assistant to the Solicitor General, as U.S. Attorney, nearly 16 years of service on the Third Circuit Court of Appeals, and receiving a unanimous "well qualified" rating from the American Bar Association, which is the highest possible rating. He has based his opinions and dissents on sound legal arguments. He appears to be unswayed by the particular details of the case that are irrelevant to the legal issues at stake. He seems to understand that he is not to be on anybody's side, that he is supposed to enforce the law impartially and respect the Constitution. In short, Samuel Alito has demonstrated judicial temperament suitable for a nominee.

I believe he will serve with distinction. I am pleased to support his confirmation as Associate Justice of the U.S. Supreme Court.

I thank the Chair.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CHAFEE). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. Mr. President, I understand that earlier today, the distinguished chairman of the Judiciary Committee was on the Senate floor—actually, several times. During his last discussion on the Senate floor, he asked unanimous consent for an up-or-down vote on this distinguished nominee to the Supreme Court. As all of our colleagues know, it is very important from our standpoint that this nominee be given a vote that is up or down, which reflects the advice and consent of this body.

It has been reported to me over the course of the afternoon that there are Members from the other side of the aisle who have expressed their intent to filibuster this nominee. As I have said at the outset, it is important to me to make sure that this nominee be given plenty of time in terms of advice and consent on the floor of this body, and, indeed, he has had just that. It is time to establish an end point for that up-or-down vote. Although we have attempted to set a time certain to have that vote in the future, we have not been able to receive that from the other side of the aisle.

Again, this is a nominee who is well qualified, has the highest ABA rating. We heard seven of his circuit court fellow judges testify on his behalf. Now is the time to bring his vote to the floor of the Senate. There is objection to that, and it has been now 87 days. I believe this is the 87th day since he was initially nominated. We wanted to have hearings in November and December, and there was objection, so we pushed those off until January. In those hearings, Judge Alito testified and was present for 18 hours and answered over 650 questions. We have had debate today and yesterday, and the debate will continue tomorrow and possibly Saturday and Monday—however long it takes for people to be adequately heard. But it is time to set that vote.

Even after we came out of committee, there was yet another delay in terms of bringing Judge Alito's nomination to the floor of this body. I was disappointed that he came out of committee on a party-line vote. That at least raises the specter that this becomes too partisan, and so I am very concerned. All that is behind us now, and it is time to move toward that up-or-down vote.

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion to the desk at this point.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The bill clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Samuel A. Alito, Jr., of New Jersey to be an Associate Justice of the Supreme Court of the United States.

> Bill Frist, Elizabeth Dole, Michael B. Enzi, Jim DeMint, Wayne Allard, Kit Bond, John Ensign, Arlen Specter, Rick Santorum, Kay Bailey Hutchison, Pete Domenici, Judd Gregg, Lisa Murkowski, Norm Coleman, George Allen, Mitch McConnell.

Mr. FRIST. Mr. President, I ask unanimous consent that the vote on cloture occur at 4:30 p.m. on Monday, January 30, with the mandatory quorum waived. I further ask consent that if cloture is invoked, notwithstanding the provisions of rule XXII, the Senate proceed to a vote on the confirmation of the nomination at 11 a.m. on Tuesday, January 31. Finally, I ask unanimous consent that all debate time on Tuesday prior to 11 a.m. be equally divided between the two leaders or their designees, and that cloture vote may be vitiated by the agreement of the two leaders.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Democratic leader is recognized.

Mr. REID. Mr. President, I wish to express the appreciation on our side for giving us adequate time to talk about this most important nomination. The distinguished majority leader could have filed cloture last night because I told him I didn't have it cleared yet for a time-certain vote. There has been adequate time for people to debate. No one can complain in this matter that there hasn't been sufficient time to talk about Judge Alito, pro or con. We have had a dignified debate. We have gone back and forth, and I hope this matter will be resolved without too much more talking. But everybody has a right to talk.

Again, I express my appreciation to the distinguished majority leader for making sure everybody had ample time to talk on behalf of Samuel Alito or against him.

Mr. FRIST. Mr. President, just to summarize, we will be here tonight for as long as people want to speak. We will be here tomorrow, and we will announce what time we will be in tomorrow. We will be available as long as people would like to speak. If Saturday is necessary, we will provide that time as well. The cloture vote will be at 4:30 on Monday. Once cloture is invoked, we would have a vote at 11 a.m. on Tuesday, January 31.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mrs. DOLE. Mr. President, it is my great privilege to support Judge Samuel A. Alito, Jr., an outstanding choice for Associate Justice of the United States Supreme Court.

Judge Alito is indeed one of the most qualified nominees to ever come before the Senate. He has excelled at every level—high school valedictorian—Phi Beta Kappa from Princeton—Yale Law School—Editor of the Yale Law Journal—Federal prosecutor—distinguished and esteemed judge. His judicial experience and record are vast. During his 15 years on the bench, Judge Alito has participated in more than 1,500 decisions. He has written more than 350 opinions on issues across the legal spectrum. Of the 109 men and women who have been chosen to serve this country on the Supreme Court, Judge Alito has spent more time on the Federal bench than all but four. And no nominee to the high court has come before this body in the last 70 years with as much Federal judicial experience. Judge Alito is precisely the type of person America needs on the Supreme Court.

Yet, despite Judge Alito's obvious qualifications for this important post, some members of the other party have resorted to personal attacks in an effort to deny this good and honorable public servant confirmation by the Senate. They have questioned his integrity, questioned his commitment to equal rights, and mischaracterized his rulings from the bench.

But in reality, the hostility towards Judge Alito has nothing to do with his integrity, his commitment to fairness, or even his view of executive power. Rather, these attacks are simply a pretext upon which to oppose Judge Alito's nomination. His critics' real fear is that he will refuse to rubber-stamp the agenda advanced by liberal interest groups. Make no mistake, they want Judge Alito—and the Supreme Court—to undermine marriage, religious expression, and protection of the unborn.

I do not know how Judge Alito will ultimately rule when confronted with difficult questions of law—and neither do my colleagues—because Judge Alito has rightly refused to prejudge cases that may come before him. But we can all take comfort in the principles that will guide his approach—respect for the Constitution and the rule of law, a commitment to hear all sides of an argument with an open-mind, impartiality and fairness to all parties, big or small, powerful or powerless.

Judge Alito's judicial record and Senate testimony demonstrate an unwavering dedication to these principles. His colleagues on the bench and in the Justice Department, his clerks, and so many others who know him well, have testified that Samuel Alito is a man who will approach his job without bias. Like John Roberts, Samuel Alito understands that a Supreme Court justice should apply the law without regard to his personal views. I am confident that Judge Alito will bring this approach to the Court.

Mr. President, there is no question that confirmation hearings can be long, stressful, and exhausting—not only for the nominees but for their families and friends as well. But in earlier days, a nominee with Samuel Alito's intellect, qualifications, and integrity would have been confirmed with overwhelming support. Indeed, the other side has not publicly ruled out the possibility of an attempted filibuster. I fear that this precedent will have a chilling effect—keeping our best and brightest from entering public service.

The responsibility of the United States Senate to give advice and consent to a Supreme Court nominee is among the most significant given to us. It is vital to our Government's constitutional structure that the Senate discharge its duty by giving a Supreme Court nominee an up or down vote. And each Senator has ample resources upon which to make such a decision here.

Judge Alito has a judicial record far surpassing that which has customarily been available to us when considering a nominee for the highest court in the land. He also has answered more questions during the course of his hearing than any Supreme Court nominee in recent memory. If any question existed about Samuel Alito's integrity, judicial temperament, or qualifications for the Supreme Court, it was put to rest before the Judiciary Committee. I ask that my fellow Senators therefore vote to confirm Samuel Alito as Associate Justice of the United States Supreme Court.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. DEMINT. Mr. President, on January 4, 2005, I was privileged to take the oath of office as a U.S. Senator. I raised my right hand and, along with my colleagues, Republican and Democrat, pledged to support and defend the Constitution of the United States.

Now, as this distinguished body considers the nomination of Judge Samuel Alito, I am reminded again of what that obligation means. The legal experts have had their say, so today I wish to speak not as a legal scholar but as a commonsense American citizen.

When our Founding Fathers framed our Constitution, they gave us an incredible gift: a democracy with checks and balances. We will always be indebted to those visionary leaders who understood that we would need a constant, fixed star by which to navigate the unpredictable and changing seas that we would encounter as a nation.

Today, over 200 years later, the wisdom of our Founders is clear as our Constitution continues to serve as a protector of liberty and individual freedom. But as this confirmation process continues to unfold, I fear that we have strayed far from where the Founders intended us to be.

I am afraid we have done a grave disservice not only to Judge Alito but to other qualified public servants who will certainly think twice before subjecting themselves to the dehumanizing process this has become. As I watched Judge Alito's hearings before the Judiciary Committee, I was struck by the harsh attacks some leveled against him. I was proud of my fellow Senator from South Carolina, Mr. LINDSEY GRAHAM, who expressed the outrage of the American people and apologized to Judge Alito and his family for the behavior of those on the committee, who seemed more intent on slandering him than fairly examining his long, distinguished legal career.

Sadly, partisanship prevailed, and Democrats chose to vote in lockstep against this committed public servant. Every Democrat on the Judiciary Committee voted against this well-qualified judge.

Now, as this nomination comes before the full Senate, the unfair rhetoric continues. I find it sad that yesterday my colleague from Massachusetts, Senator KERRY, took to the floor of this Chamber to insinuate that he could, as he said, "almost imagine Karl Rove right now whispering to Judge Alito, 'just say that you have an open mind, say whatever it takes.'" This accusation is insulting not only to Judge Alito—a man who, by all reports, is a fair and honest public servant—but to the intelligence of every American who shares Judge Alito's understanding that the proper role of a judge is to interpret the law, not make it.

These types of slanderous accusations also fly in the face of diverse and numerous independent groups that have stepped forward to defend Judge Alito's character and qualifications. Many of his former colleagues, including several judges who have served with him, testified under oath that he is fair and independent.

The American Bar Association, hardly known as a bastion of the rightwing, unanimously agreed to give Judge Alito their highest ranking of "well qualified" for his "integrity, professional competence, and judicial temperament."

A bipartisan group of 51 former Judge Alito clerks wrote that the judge was "guided by his profound respect for the Constitution and the limited role of the judicial branch," that he "applied precedent faithfully and fairly." Where Congress had spoken, "he gave the statute its commonsense reading," avoiding both "rigid interpretations that undermined the statute's clear purpose," and attempts to "distort the statute's plain language to advance policy goals not adopted by Congress."

Their conclusion:

> In short, the only result that Judge Alito ever tried to reach was the result dictated by the applicable law and the relevant facts.

Mr. President, I ask you, under our Constitution, what more could anyone—any Republican or Democrat—ask of a judge?

Judge Alito's hearings did serve a useful purpose. We now see a new litmus test being used by the Democrats as their standard for nominees. They have decided that the judiciary should be used to advance their own liberal policies. They are looking for a court that will act as a superlegislature, enabling them to reform laws in a way that Americans have rejected at the polls through the democratic process.

The Democrats lecture us that we must restore constitutional checks on the expansion of Presidential power, while in the same breath assigning to the judiciary a constitutional prerogative reserved solely for Congress. I am having a hard time reconciling these two ideas, and I suspect the American people are, too.

True to their strategy in recent years, the Democrats will say anything but do nothing except block what should be done.

Theirs is the philosophy of judicial activism that has led to decisions to ban the Pledge of Allegiance in our schools and allow local governments to take an American's home just to increase tax revenue. Increasingly, judges have legislated precedents that have little basis in written statute or the Constitution but instead are based on their own personal opinions.

This point was vividly made when Senator KOHL called for "an expansive and imaginative" interpretation of the Constitution, and further stated that the approach of a judge "just applying the law, is very often inadequate to ensure social progress [and] right historic wrongs. . . ."

Judge Alito eloquently addressed this flawed argument when he stated that while previous court decisions are deserving of our respect, if a decision is not supported by the text of the Constitution and the laws passed by Congress, then it should be overturned.

Furthermore, he correctly pointed out that it was exactly this process, not an "imaginative interpretation," that capably righted historic wrongs in the landmark civil rights case Brown v. Board of Education. To quote Judge Alito:

> When Brown was finally decided, that was not an instance of the court changing the meaning of the equal protection clause; it was an instance of a court writing an incorrect interpretation that had prevailed for a long period of time.

It is clear that we are facing the grave danger of the slippery slope in which bad precedent—by which I mean precedent not clearly derived from the Constitution or a law passed by Congress—builds upon bad precedent. Before you know it, the original meaning of the law or phrase in question is lost to history.

The Democrats are simply on the wrong side of this important debate. The Constitution is not a list of suggestions. It is the constant fixed star that should guide every action we take.

The issue before us today reaches far beyond the confirmation of Judge Alito. He has more judicial experience than any Supreme Court nominee in the last 75 years. There is no question that he is eminently qualified to sit on the Nation's highest Court.

Today we are debating which of these two diametrically opposed philosophies will prevail in the confirmation of future judges—the philosophy in which unelected judges create new law or the philosophy that returns a runaway judiciary to acting within the bounds of the checks and balances established by the Constitution.

In my travels in South Carolina, time and again, South Carolinians have asked me to fight for judges who will place the rule of law above their personal opinions. I support Judge Alito because he has shown that he will do just that. The consistent winner in his court has not been a person of business, a branch of Government, or political ideology. It has been the Constitution and our democracy.

When the speeches are done and the vote is called, I hope there will be those on the other side of the aisle who will put aside partisan politics. I pray that we can join together in affirming the rule of law by voting yes to confirm Judge Samuel Alito as the next Associate Justice of the Supreme Court of the United States. The American people deserve no less.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SARBANES. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. Mr. President, for the second time in 4 months, the Senate is being called upon to carry out one of its most important constitutional responsibilities, which is to give its advice and consent to a nominee to be a Justice on the Supreme Court of the United States. We have many serious responsibilities in this body, but I must say I think this one ranks at or near the very top of any of the decisions we will be called upon to make. That is because it falls uniquely to the nine Justices of the Supreme Court to expound and interpret the Constitution and the laws passed pursuant to it. The installation of two new Justices within a short time period has the potential to alter fundamentally the constitutional framework that protects the rights and liberties of the people of this Nation.

Once again we see the argument being made that the President is entitled to his nominee, and that the Senate's role in the appointment process is limited to confirming the President's choice, barring some serious disqualification with the nominee. In effect, the presumption—a very heavy presumption—it is argued, is with the nominee and his confirmation.

In my view, this is not what the Constitution provides in requiring the Senate's advice and consent to a nominee to the Federal bench, which is, after all, a third, separate, independent branch of our national Government.

From a historical perspective, it is worth noting that over the course of our history, roughly one in every four nominations to the Court has not been confirmed by the Senate. There have been 158 nominations to the Supreme Court in the course of the history of the Republic, of which 114 were confirmed. Not all of the others were rejected. Some were rejected on votes taken in this body, some withdrew, and some were never acted upon. But the notion of this heavy presumption runs contrary to historical practice in the Senate. Almost one out of every four—actually a little more than one out of every four—nominations has not been confirmed by the Senate.

As Michael Gerhardt, distinguished professor of constitutional law at the University of North Carolina Law School, testified recently before the Judiciary Committee:

> Neither the plain language of the Appointments Clause nor the structure of the Constitution requires Senators to simply defer to a President's Supreme Court nomination.

Let me repeat that quote:

> Neither the plain language of the Appointments Clause nor the structure of the Constitution requires Senators to simply defer to a President's Supreme Court nomination.

In my view, the Senate's duty to advise and consent on nominations is an integral part of the Constitution's system of checks and balances among our institutions of government. A nomination alone does not constitute an entitlement to hold the office.

Furthermore, some have said when considering a nominee that we look only to their experience, their qualifications, their character. These are all obviously very important criteria. But, in my view, the nominee's judicial philosophy also must be given very serious consideration. We are facing a decision to place someone on the Supreme Court for life tenure. It could be 20, 30, or 35 years. Judge Alito is in his fifties, so we are talking about someone who is going to shape the interpretation of our Constitution over decades. You view that when you consider a nominee to the Supreme Court.

The nominee's judicial philosophy should be given very serious consideration, as well put by former Chief Justice Rehnquist. Writing in 1959, long before he went on the Court, the late Chief Justice Rehnquist wrote that the Senate should follow the "practice of thoroughly informing itself on the judicial philosophy of a Supreme Court nominee before voting to confirm him."

In considering Judge Alito's nomination to be an Associate Justice of the Supreme Court, in my view, the question of his judicial philosophy is not only a legitimate question but indeed an essential question. Inquiring into a nominee's judicial philosophy does not mean discovering how he or she would decide specific future cases.

We are always being warned about that, and there is no effort here to predetermine that. Rather, it seeks to ascertain the nominee's fundamental perspectives on the Constitution, how it protects our individual liberties, ensures equal protection of the law, maintains the separation of powers and the checks and balances encompassed within our Constitution.

Judge Alito has served on the U.S. Court of Appeals for the Third Circuit since 1990, during which time he has written hundreds of published opinions, and earlier he served 6 years in the U.S. Department of Justice. So there is much to consider in his record and many lessons to be drawn from it.

Of the issues the Court is likely to face, perhaps none is more basic than the proper reach and exercise of executive power. We are particularly focused on this issue now, but it is an issue that has recurred constantly throughout our history as we seek to maintain the careful balance the Founding Fathers placed in the Constitution.

They, in fact, established in the Constitution a complex system of democratic governance with three separate, equal branches of the Government. At the center of this system lies not any one of the three branches but rather a delicate balance amongst the three branches.

Looking at Judge Alito's record, one sees a clear and constant deference to the executive, which, in my view, would significantly tip that delicate balance with respect to our constitutional system.

The Constitution grants the legislative power expressly to Congress. It gives the President power to only approve or veto legislation. The veto power, of course, gives the President very significant authority with respect to legislation. But if a bill becomes the law, with or without the President's approval, it then becomes his or her responsibility as the Chief Executive to see that the law is carried out, to see that the law is properly executed.

Judge Alito's record demonstrates he would seek to extend the President's power to allow for modification of law by the executive alone. As one example, while he was an official in the Department of Justice, he was instrumental in advancing a policy of so-called Presidential statements, to create a platform from which the President could seek to alter the underlying purpose of legislation passed by the Congress without the concurrence of the Congress.

Such a deference to executive power, I think, is of deep concern, especially as we see on occasion now when Presidents, rather than following constitutional process by seeking legislative change through the Congress, instead refuse to carry out statutes that the Executive finds not to his liking.

Furthermore, under our constitutional system, the courts are the ultimate guarantors of individuals' rights and the defenders of our liberties. On this issue, too, Judge Alito has been quite clear and consistent.

Professor Goodwin Liu of Boalt Hall School of Law at the University of California at Berkeley summed up Judge Alito's work in his testimony to the Judiciary Committee:

> Throughout his career, with few exceptions, Judge Alito has sided with the police, prosecutors, immigration officials, and other government agents while taking a minimalist approach to recognizing official error and abuse.

In an editorial on January 12, the New York Times made the same point in somewhat different terms:

> [Judge Alito] time and again, as a lawyer and a judge, . . . has taken the side of the big corporations against the 'little guy,' supported employers against employees, and routinely rejected the claims of women, racial minorities and the disabled.

In a memorandum that he submitted when applying for a political position in the Justice Department in 1985, Judge Alito made a series of very sweeping statements about his understanding of the Constitution. He wrote that he was inspired to apply to law school by his opposition to certain decisions of the Warren Court—the Court headed by Chief Justice Earl Warren—decisions which are now considered bedrock provisions of constitutional law, decisions involving criminal procedure, the Establishment clause of the Constitution, and reapportionment.

In that very same memo, he also took strong positions in opposition to Court decisions on affirmative action and the right to choose. When asked about the memo during his confirmation hearings, Judge Alito explained that the 1985 memo reflected his views of the Constitution at that time. He did not, however, explicitly disavow those views, and nothing in the hearing record demonstrates they have changed. In fact, his decisions as a judge on the Third Circuit reflect that these are the views he has continued to hold and to espouse.

The Baltimore Sun concluded in an editorial that:

> Despite Judge Alito's periodic assurances of having an open mind, the disturbing impression from the hearings is that on critical issues such as abortion, civil rights and the limits of executive power, he does not.

That is a very perceptive observation with respect to Judge Alito's testimony before the Judiciary Committee.

I am not persuaded that Judge Alito recognizes either the critically important role the Supreme Court must play in preserving the constitutional balance of power among the three branches of our Government, that delicate balance to which I made reference earlier which was so much a part of the thinking of that distinguished assemblage which gathered in Philadelphia in the summer of 1787 to frame our Constitution.

I have this concern about his view of the role the Court must play in preserving the constitutional balance of power among the three branches of Government and whether he recognizes the role of the Court as the ultimate guarantor of every individual's constitutional rights and liberties.

For the ordinary citizens all across our country, the rulings of the Supreme Court can be of immense importance in terms of providing for their rights and liberties.

Because I am not persuaded in this regard about the appropriateness of Judge Alito's nomination, when the time comes to vote, I will vote against his nomination to become an Associate Justice on the Supreme Court of the United States.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. INHOFE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. Mr. President, I have just learned that two of our distinguished Senators, both from Massachusetts, have made the statement that they are trying to drum up support for a filibuster. This is not going to happen. I know that people get desperate. They get desperate because they are afraid something might happen to their liberal agenda. But the Constitution is very clear.

We have discussed this, we have debated this, and there is not going to be a problem there. But I think it is worth bringing to the attention of the American people that this is actually taking place right now. Nowhere did our Founding Fathers say that to confirm a judge, you had to have a supermajority, and I do not believe this is going to happen.

Let me share a couple thoughts with you. First of all, I am not a lawyer. I am not a member of the Judiciary Committee. In a way, that puts me in a position, perhaps, that is a little better than a lot of my colleagues who are. In fact, most of the people who have spoken are members of the Judiciary Committee. But, by now, we have heard so much about Judge Samuel Alito's resume, about the type of person he is. I would have to say, yes, he is guilty, he is guilty of being a strict constructionist, of being a strict interpreter of the Constitution, and he will rule according to settled law. I do not think anyone has any doubt in their mind that he would.

The problem is that some of the Democrats have made it clear they are going to make this a partisan fight, now even talking about perhaps even a filibuster. They have a litmus test. They do not confirm any nominee of any President unless that nominee makes some type of a commitment and passes a litmus test for their far-left liberal agenda, whether that is gay marriage or whether it is abortion on demand or any of the rest of it. That is really what it is about. We do not talk about this. They kind of dance around this issue, but that is the real reason they do not like this guy, because he is not going to line up and give a litmus test to some liberal agenda.

One of the things that bothers me about this is, this is all new. This did not happen in the past. I can remember when Judge Scalia was up for confirmation. People talk about Judges Scalia and Alito not just because their names sound similar, but their temperament is the same and their background is the same, their writings are the same—very similar. We went through a very long process with Judge Scalia during his confirmation, and he ended up being confirmed by a unanimous vote—a unanimous vote.

If you will remember, that is when William Rehnquist was taken from the Court and made the Chief Justice, which created the vacancy. A lot of people did not want to have someone who was a strict constructionist, but they realized he was qualified, and they realized he was appointed by a President who was a Republican, Ronald Reagan, and they went ahead and confirmed him. It was unanimous. Now this is something that is really changing now because there is no way in the world Judge Alito is going to be unanimously confirmed.

Back in the Clinton administration, I remember so well when President Clinton nominated Judge Ginsburg and then Breyer. And keep in mind, we Republicans were not real excited about that. They did not have a very conservative background, and yet they were overwhelmingly confirmed.

That is the change I see happening. It is not like it used to be. Ginsburg was 96 to 3. Breyer was 87 to 9. They were overwhelmingly confirmed.

Not too long ago, just the other day, JEFF SESSIONS, who is our colleague from Alabama, made a statement. He said if we really get into this thing where we are looking at it philosophically, then you are going to have to remember—and the way he worded it was—"the knife cuts both ways." He said if this new standard is affirmed, then it will be more difficult for future Democrat Presidents to have their nominees confirmed. I agree with this. If a Democrat President comes up and makes a nomination, we would change, the same way they are changing during this. Maybe the litmus test would be discussed at that time.

On the plane coming up here just a few minutes ago—we just landed, after this recess—my wife and I were talking about this, and I told her about the comments of Senator SESSIONS. I said: What I think I will do in my speech on the floor tonight on the confirmation of Judge Alito is make the statement that if they adhere to this litmus test, that if I am around—I do not think there is going to be a Democrat President, but if there is and I am still in the U.S. Senate, I am going to do the same thing. I am going to hold them to a litmus test. My wife said: No, don't do that. Don't stoop to that just because they are doing it. So I am not doing it. I learned a long time ago that—my wife and I have been married 46 years—I do what I am told.

So anyway, this is something that is a change that we have observed, and I think it warrants our consideration.

Now, the Democrats are also making outrageous accusations, trying to justify partisan votes. I believe in my heart that they do not believe these accusations they are making, but what they do want to do is have some excuse so they can go home and say, "I voted against this guy," but not tell them the real reasons. Let's go over some of these accusations that are made.

I start out with Senator KENNEDY, who inaccurately stated that Alito opposes the one-person, one-vote principle. I will go ahead and give the quote. Senator KENNEDY, on January 9 said:

> It expresses outright hostility to the basic principle of one person, one vote, affirmed by the Supreme Court as essential to ensuring that all Americans have a voice in their government.

Now, the fact is, Judge Alito has stated that the principle of one person, one vote is a bedrock principle of American constitutional law. He has never taken issue with that principle. And to quote him, he said:

> [T]he principle of one person, one vote is a fundamental part of our constitutional law. . . . [and] I do not see any reason why it should be reexamined. And I do not know that anybody is asking for that to be done. . . . I think that is [a] very well settled [principle] now in the constitutional law of our country.

I would adhere to that. Well, he could not be more emphatic than that. Again, Senator KENNEDY—what he said is not true. I know he wants it to be true. He wishes it were true, but it is not.

Then along came Senator SCHUMER from New York. In attacking Judge Alito's jurisprudence, Senator SCHUMER tried to paint Alito as someone who is "too conservative." His statement was:

> Judge Alito, in case after case, you give the impression of applying careful legal reasoning, but, too many times, you happen to reach the most conservative result.

Well, the fact is, Senator SCHUMER's characterization of Alito overlooks the bulk of Alito's record of nearly 5,000 votes as a court of appeals judge reached on the law and the facts, which are inconsistent with Senator SCHUMER's picture of Alito.

Now, if you question this, the statement that was made by Senator SCHUMER, if you believe there might be some merit to it, let's stop. The easiest way to refute that is to read an editorial that was in the Washington Post. There is not a person who belongs to this body or anyone within earshot of what I am saying right now who is going to say the Washington Post is a conservative publication or a Republican publication. It is not. Yet what they said about Alito was:

> [J]udge Alito's dissents are not the work of an unblinking ideologue. . . .[T]hey are the work of a serious and scholarly judge whose arguments deserve respect—a respect evident among his colleagues even when their positions differ.

And that is not the Washington Times; this is the Washington Post making this statement. So I would say, like Senator KENNEDY, that Senator SCHUMER, what he said is just flat not true. I am sure he wishes it were true, but it is not.

Here is another statement made by Senator KENNEDY. He is trying to make a position that Judge Alito wants, through the Presidential signing statements—Presidential signing statements are statements that are made by the President when a new law is passed—to say: This is my interpretation of it. Well, he likes to imply that Alito supports giving the President absolute power. Senator KENNEDY said:

> You argued that the Attorney General should have the absolute immunity, even for actions that he knows to be unlawful or unconstitutional; suggested that the court should give a President's Signing Statement great deference in determining the meaning and the intent of the law; and argued, as a matter of your own political and judicial philosophy, for an almost all-powerful presidency.

Well, the fact is, the President's bill-signing statement is a device developed long before Alito came along.

They try to imply that he had something to do with this. This has been embraced by Democratic and Republican Presidents for years and years, all the way back to Presidents Monroe and Jackson. The suggestion that Alito somehow invented this notion is patently absurd. So, again, Senator KENNEDY is wrong. His statement is not true.

He further cites false and inaccurate Knight Ridder analysis. This is rather interesting. Senator KENNEDY made more outrageous statements this time about Alito's view of government searches. Senator KENNEDY, on January 10:

> Mr. Chairman, at this point, I'd like to include in the appropriate place in the RECORD the Knight Ridder studies that concluded that Judge Alito never found a government search unconstitutional.

Knight Ridder's writers, Stephen Henderson and Howard Mintz, have repeatedly been accused of biased reporting on Alito's record. The National Journal's Stuart Taylor wrote:

> I focus here not . . . on such egregious factual errors as the assertion on C-SPAN, by Stephen Henderson of Knight Ridder newspapers, that in a study of Alito's more than 300 judicial opinions, "we didn't find a single case in which Judge Alito sided with African-Americans . . . [who were] alleging racial bias.

He went on to say:

> What is remarkable is that any reporter could have overlooked [case after case after case] in which Alito has sided with African-Americans alleging racial bias.

In a few minutes, I am going to be specific on some of these, but there would be too many to cite for the amount of time we have. Senator KENNEDY's statements are inaccurate and untrue. I know he wishes they were true, but they are not. These guys are grasping at straws.

Then Senator BIDEN came in with inaccurate statements on Presidential treatment toward the State. Senator BIDEN charged Alito with ruling in favor of the State against the individual. This is what he said:

> But as I've tried diligently to look at your record, you seem to come down more often and give the benefit of the doubt to the outfit against whom discrimination is being alleged. You seem to lean—in close cases, you lean to the state versus the individual.

The facts belie that. The fact is, Alito's record shows he consistently approaches each case based on the law and the facts. He rules for plaintiffs and for defendants when the law supports him. He rules for the corporation or the State when the law supports their position. This is the appropriate approach for a Federal judge. It is clear that Alito understands the importance of the independence of the judiciary and has a healthy respect for its role as the bullwark against executive overreaching.

Alito often cites Alexander Hamilton. I think Alito has quoted Alexander Hamilton more than anyone else, at least it seems that way to me. He said:

> [A]s Alexander Hamilton aptly put it in Federalist 78, the courts should carry out [the judicial power] with "firmness and independence." "Without this," he observed, "all the reservations of particular rights or privileges [in the Constitution] would amount to nothing."

Alito continued:

> When a constitutional or statutory violation [by other governmental institutions] is proven, a court should not hesitate to impose a strong and lawful remedy if that is what is needed to provide full redress. Some of the finest chapters in the history of the Federal Courts have been written when federal judges, despite resistance, have steadfastly enforced remedies for deeply rooted constitutional violations.

During his 15 years on the bench, Judge Alito has repeatedly ruled to restrain executive authority, reflecting his understanding of the role of the judiciary to protect the constitutional rights, separation of powers, and so forth. What Senator BIDEN said is not true. I know he wishes it were.

Next we had Senator FEINSTEIN. She was approaching something to which I am particularly sensitive. I chair the committee called Environment and Public Works. The Presiding Officer is a member of that committee. We deal with environmental issues. Senator FEINSTEIN mischaracterized Alito's environmental record.

Let me say this for anyone who might be listening: If there is nothing better going on right now, these Senators I am very critical of, I love them dearly. That is possible. It doesn't happen in the other body, seeing a Senator here who also served in the House at the time that I was there. We can love our friends, our Senators, with whom we serve, and we can detest their philosophy and their agenda. I learned this the hard way.

I will share this story. Back in 1994, I came from the House to the Senate. And operating as I had always operated in the House, there happened to be a Senator on the floor named Wendell Ford from Kentucky. He was known as the junkyard dog of the Senate. I disagreed with him. I came down here. That was the opening day, the first day I was elected and confirmed in a special election. I went down and I took him on. It was mean. It was wicked. And we are yelling and screaming. Afterwards I felt pretty good. I went to go back to the Russell Building, went down the elevator and ran into none other than Senator BOB BYRD.

BOB BYRD said: Ride along with me. He said: Young man, I appreciate your spunk.

I liked that because that happened to be November 17, 1994. It was my 60th birthday.

He said: Young man, I appreciate your spunk, but this isn't the way we do it in the Senate. He explained to me the history of the Senate, how it must have been divinely inspired, so that there is a genuine love for your fellow Senators, something that doesn't exist in the other body. I don't know why I said all that.

But Senator FEINSTEIN accused Alito of ruling against the Clean Water Act. She said:

> In Public Interest Research Group of New Jersey v. Magnesium Electron, a citizens environmental group sued a chemical manufacturer under the Clean Water Act for polluting a river used by members of the group . . . your decision, as I understand it, was based upon your conclusion that the environmental group did not have standing to sue under the Clean Water Act because even though members of the environmental group had stopped using the river due to the pollution, they did not prove any injury to the environment. The decision, if broadly applied, would have gutted the Citizen Lawsuit Provision of the Clean Water Act . . . so you see where the concern comes with respect to overthrowing something on a technicality that can have enormous implications.

That is what Senator FEINSTEIN said. Keep in mind what Alito's vote was. He did not write the opinion. He voted in this case. It was a straightforward application of the Supreme Court's controlling precedent in Lujan v. Defenders of Wildlife. Most of us remember Manuel Lujan who later became Secretary of Interior. This decision was a 1992 decision in which the Supreme Court required that in order to file suit, a plaintiff must allege the actual injury, not just have this great concern over activities such as pollution.

What we are saying here is that Senator FEINSTEIN should have read this. He was interpreting a law he may have agreed on or may not have, but this was sent down. This was settled law, established by the U.S. Supreme Court. Alito's vote, which he didn't write, was one based in law. I think what Senator FEINSTEIN said was not true. It needs to be answered. That is the answer.

Another one that Senator KENNEDY researched. Senator KENNEDY charged that Alito rarely votes for the little guy. Senator KENNEDY charged Alito with false accusations saying that he was biased toward the rich and powerful. This is Senator KENNEDY talking about the rich and powerful. He was biased toward the rich and powerful and against the little man. I will use the quote that he used. He said:

> And on the cases he decided, in case after case after case, we see legal contortions and inconsistent reasoning to bend over backwards to help the powerful.

This is on January 12, stated by Senator KENNEDY. Time after time during his hearings, Alito and other Senators have repeated instances in which Alito did rule for the little guy. In cases involving criminal law, employment and labor law, immigration law, and others, Judge Alito has consistently ruled for plaintiffs or defendants as the facts and the law demanded.

I will give some examples. In Zubi v. AT&T Corporation, in 2000, Alito dissented from a case foreclosing a plaintiff's opportunity to advance his claim of race discrimination. Alito would have applied a longer statute of limitations to let the claim go forward. That is just the opposite of what was asserted by Senator KENNEDY.

In another case, Caruso v. Blockbuster-Sony Music Entertainment Center at the Waterfront, writing for the unanimous panel, Judge Alito reversed in part the district court's grant of summary judgment for Blockbuster-Sony "E-Centre"—this is a big corporation—and against a disabled patron. The plaintiff was William Caruso. He was a disabled veteran of Vietnam who used a wheelchair, brought suit against E-Centre under the Americans with Disabilities Act claiming that the wheelchair areas in the pavilion do not provide wheelchair users with lines of sight over standing spectators. The lawn area is not wheelchair accessible.

Judge Alito explained that even though the Department of Justice's standards do not require that wheelchair users must be able to see the stage when other patrons stand, the E-Centre must make assembly areas like the lawn accessible to people in wheelchairs. He concluded:

> We reject the argument that assembly areas without fixed seating need not provide access to people in wheelchairs.

Again, Alito's stellar record proves that Senator KENNEDY's statement is false.

The next one I will mention was Senator KENNEDY's statement on racial discrimination. Senator KENNEDY wrongly stated that Alito had never written an opinion related to race discrimination, implying that he could be a racist. Senator KENNEDY said:

> Judge Alito has not written one single opinion on the merits in favor of a person of color alleging race discrimination on the job: in 15 years on the bench, not one.

He said that on January 9. The facts are that Alito has repeatedly ruled in favor of minorities making allegations of racial discrimination in employment. One such case is Smith v. Davis, 2001, in which Alito voted to reverse a grant of summary judgment against an African-American man's claim that he had been discriminated against in employment on the basis of race. Another one is Zubi v. Johnson & Johnson Medical, Inc. Alito voted to reverse a district court's grant of summary judgment against the plaintiff.

Judge Alito and his colleagues concluded that the female African-American plaintiff had introduced sufficient evidence to question whether the employer had, in fact, given her lower quality assignments due to her "objective" scores on certain evaluations, as the employer maintained. There are many more cases.

I ask unanimous consent to print in the RECORD the other cases.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

> In Collins v. Sload (2004), Alito joined a per curiam opinion reversing the District Court's dismissal of a Pro Se Title VII complaint alleging racial discrimination. The District Court had dismissed the complaint for failure to exhaust administrative remedies. The panel concluded that the question could not be resolved on the record and remanded for further proceedings.
>
> In Pope v. AT&T (2001), Alito joined a per curiam opinion reversing the District Court's grant of summary judgment against an African American man alleging race discrimination under Section 1981. The panel concluded that the plaintiff had submitted significant evidence that AT&T's stated reason was pretextual, and remanded for trial.

Mr. INHOFE. The facts, as we have demonstrated, speak for themselves. Samuel Alito is not a racist, not a rightwing extremist who believes in an executive branch with sole authority and rules only in favor of the powerful but a thoughtful, mainstream, fair, experienced interpreter of the Constitution. He is a good guy. I have heard many people say that he is probably one of the most qualified persons ever to be nominated for this High Court. Those liberal Senators who are desperately grasping at any straw to find justification to vote against Judge Alito, they have their litmus test. In order to be confirmed to the U.S. Supreme Court, a judge must embrace all of the leftwing's extremist agenda, an agenda that is so unpopular in America that the American people reject it, and it must be legislated from the bench. That is the problem they have.

When my service in the Senate is over, one of the greatest honors I will have had, for the sake of America and for the sake of my 20 kids and grandkids, is to vote to confirm Samuel Alito to the U.S. Supreme Court.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, I rise to voice my strong support for the nomination of Judge Samuel Alito to be Associate Justice of the Supreme Court. Judge Alito has demonstrated and dedicated his life to public service, from serving in the Army Reserve to working as a prosecutor for the Federal Government.

For the past 15 years, Judge Alito has been a model jurist on the court of appeals, and his record reflects a deference to the political branches of our Government that is all too often lacking among some on the bench.

The guiding question for each of us in determining a nominee's fitness for this post should be whether the person is dedicated to applying the Constitution to every case considered by the Court and not adding to or changing the Constitution's text to suit his or her own personal policy preferences.

Judge Alito has clearly shown that he will approach every case with an open mind and apply the law as it is, rather than what he thinks it should be.

As Judge Alito has said, a judge cannot have an agenda and cannot have a preferred outcome in any particular case. I am convinced that he will not be an activist on the court and will conscientiously exercise restraint in his role as a justice.

Judge Alito has risen to his station in life from relatively humble beginnings. As he stated in his introductory remarks before the Judiciary Committee, his parents instilled in him a love of learning and, through their example, the importance of persistence and hard work.

I had the opportunity to meet with Judge Alito after he was nominated last fall. During this meeting, we discussed the role of the judiciary and some of the broad principles set forth in our Constitution. I was impressed by Judge Alito's quiet answers and thoughtful demeanor during that meeting.

Judge Alito is the kind of person who would fit in very well with my constituents in South Dakota. He is the kind of guy you would see at the local hardware store or at a school activity. Judge Alito would meet what I call the "Murdo" test. Murdo is my hometown. About 600 people live there. They are pretty plain spoken people. They use common sense to solve problems. They believe in the rule of law. And they have an inherent sense of fairness when it comes to making sure that the law applies fairly to all. If you listen to anyone who has served on the court with or worked with Judge Alito, those are the attributes they ascribe to him. He has tremendous respect from those who know him best.

Unassuming and unpretentious, Judge Alito is the kind of individual with whom I believe the people in my hometown and in my State would feel comfortable. And not just South Dakotans but Americans everywhere, at least the silent majority of Americans. The character attacks on Judge Alito by the loud left have backfired because the majority of the American people have figured it out. They don't need the Senator from Massachusetts or the Senator from New York to tell them what they need to know. Judge Alito told them everything they needed to know in the hearings, and the more the political left attacks and delays and demonstrates, the more partisan they appear to the American public and the more their true agenda is exposed.

Judge Alito's quiet and thoughtful demeanor was clearly on display during his confirmation hearings. During these hearings, Judge Alito was extremely forthcoming and candid in his responses to questions, all 650 questions. For over 18 hours he responded thoroughly and thoughtfully to the full spectrum of questions and questioners, both those who were sincere and those who were sarcastic.

All of these things have convinced me that Judge Alito has the ability and temperament necessary to be an outstanding justice on the Supreme Court.

It is unfortunate that some on the other side have decided to make the nomination process about politics rather than about qualifications. Sadly, it seems the other side is engaging in an effort to ensure a large opposition vote to score political points, rather than giving a well-qualified nominee like Judge Alito the strong vote he deserves.

When Justice Ginsburg, a former general counsel for the American Civil Liberties Union, was nominated by President Clinton, she received nearly unanimous support—96 votes—despite the fact that many Republican Senators strongly disagreed with her views. She replaced the much more conservative Judge White. Yet no one was complaining about her shifting the Court dramatically to the left. Senators voted for her based on her qualifications.

When Justice Breyer, a former staffer for Senator KENNEDY, was nominated by President Clinton, he received 87 votes, and again many of those who voted in his favor strongly disagreed with his views.

Justice Ginsburg and Justice Breyer received strong support because of their qualifications and because Senators put aside politics in the interest of a dignified confirmation process.

Judge Alito is also well qualified. He unanimously received the highest rating from the American Bar Association, the benchmark that used to be considered the gold standard for evaluating nominees to the Federal Courts. Judge Alito is clearly a man of high integrity and intellect. No one disputes that. He deserves a large vote in the U.S. Senate, just as Justice Breyer and Justice Ginsburg received. I call upon my colleagues on the other side of the aisle to summon their better angels, put aside their desire to score political points, and instead work to ensure a dignified confirmation process.

The Supreme Court gets the last word on some of the most challenging and divisive issues of our day. That is why those on the Court must be dedicated to the rule of law and the principle of judicial restraint. Throughout his career in public service, Judge Alito has shown the qualifications and temperament essential to serving on the Supreme Court.

I ran for the United States Senate for the opportunity to cast votes like the one I will cast on this nomination. When I asked South Dakotans for their vote, I assured them that I would do my best to see that the courts are populated with smart, qualified, and principled people who understand that the appropriate role of the judiciary in our Constitutional Republic is not to make laws but to apply them fairly to all.

Judge Alito is eminently fit and qualified to serve as an associate justice on the Supreme Court. That is why I will vote in favor of his confirmation, and I urge my colleagues to do the same.

I yield to the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank our colleague, Senator THUNE, for his excellent remarks. I know he cares deeply about the judiciary. I know that he talked about it a lot in his campaign. He is such a talented new Member of the Senate. There are many reasons he is here today, and I suggest that one of the reasons is because the individual he ran against—the former Democratic leader, Tom Daschle—led an obstruction of highly qualified judicial nominees. We are seeing that again today.

Now this Democratic leader, Mr. REID, has urged his colleagues to vote "no" in the party conference. Some have tried to say that is not so. But when the Democratic leader goes before his colleagues and urges them to vote "no," it has an impact. It sets this as a political vote rather than allowing and encouraging each individual Member to vote their own conscience. It is going to reduce the number of votes that Judge Alito will receive because people try to follow their leaders when they can. But it is not right.

This is a fabulous nomination. Judge Sam Alito is one of the finest nominees to ever come down the pike. He and Chief Justice Roberts were fabulous as witnesses, with incredible academic backgrounds and experience and a proven record of support from Democrats, liberals and conservatives, and a professional record and resume in both cases that are superb. But they do have a little difference of opinion, apparently, from some in the Senate. Senator THUNE made reference to it. Judge Alito and Judge Roberts believe it is their duty to follow the law. It is their responsibility as judges to be neutral umpires, to not allow their personal, political, social, or religious views to impact their interpretation of the laws before them.

That is what a judge is all about in the American legal system, for heaven's sake. What kind of threat is that when you have a judge who believes in that philosophy?

Judge Alito's whole judicial approach to life and to his work is that a judge should put aside personal views and be a neutral, fair umpire, deciding the discrete case before the court, based on a fair and honest finding of the facts and an honest application of the law to those facts. That is what a judge is supposed to do.

We have Members on the other side insisting that a judge's ideology ought to play a part in the judge's decisionmaking process. That goes squarely in the face of what our American legal system is all about. Why do we give our judges, let me ask, a lifetime appointment to the Federal bench? Why? Because we wanted them to be free from pressure and do their duty day after day, fairly and honestly finding the facts truly in the case and applying the law to those facts—not as Judge Alito said, to engage in implementing "grand theories." I thought that was a good phrase. That is the kind of judge President Bush promised, and that is the kind of judge Senator THUNE promised to support when he ran. That is the kind of judge I have believed in, in my career. I practiced for 15 years, for a long time, before Federal judges. I respect them. We had some magnificent Federal judges that I practiced before. I lost some cases and I won some cases, and every good lawyer does. But we all know one thing—that as long as that judge does his best, day after day, to honestly find the facts and apply the law, we can live with that. Your clients can live with that, too, even though they may be disappointed about the case. If we feel the judge is going to redefine marriage because he didn't like the way the State of Massachusetts defined marriage, and he is just going to say the Constitution somehow made reference to marriage, and a marriage now is no longer between just a man and a woman, but between two men or two women—this is going to be somehow found in the Constitution? And he is going to impose this on the people? What kind of power is that? Would five unelected judges, with lifetime appointments, who are utterly unaccountable to the American people, say that the phrase "under God" in the Pledge of Allegiance is not constitutional? Next, I suppose they will come in here with a chisel and right up there on the wall in this Chamber they will want to take out those big letters saying "In God We Trust." I suppose that will be the next thing we have.

Well, that is not called for in the Constitution. The Constitution simply says Congress shall make no law establishing a religion or prohibiting the free exercise of your religion. So this is a recent phenomenon to see such a hostile approach to public expressions of religious faith in America. That is not our heritage, not the way the people understood the Constitution; that is not what the Constitution says.

But our colleagues don't like that. Is almost amusing, as we have gone through the committee process, to see them grasp in desperation to find something to complain about with Judge Alito. None of them could agree on what they didn't like. They bounced all over the place mostly. It sounded like they didn't like President Bush. They were having grievances about Abu Ghraib prison, which President Bush had nothing to do with. It was not the policy of the administration or the Army, and the people who abused those prisons are serving jail time today.

(Mr. ALLEN assumed the chair.)

Mr. SESSIONS. Mr. President, they want to say this has something to do with that. They have been hankering for Harriet Miers, which is rather odd, I think. They have suggested somehow that some rightwing cabal caused President Bush to withdraw her nomination. She didn't have a lot of constitutional experience. I am not aware she has ever argued a case before the Supreme Court. Very few lawyers have, although Judge Alito has argued 12 cases before the U.S. Supreme Court. She has not served as a judge. He has served 15 years as a Federal appellate judge.

At any rate, she is a wonderful person who has many fine qualities. I am not at all sure that she would be any more restrained or any more liberal in her interpretation of judicial decisions than Judge Alito. I don't know what her philosophy would be. But I do know this: They have complained steadfastly that Judge Alito somehow is a tool of President Bush to defend his national security policy and his war on terrorism and that Judge Alito is going to be a part of his efforts to arrogate powers to the executive branch.

Who has been at President Bush's right arm for 5 years? It is Harriet Miers. She is the counsel to the President of the United States. She is his personal lawyer. She sits right by him. She has been involved in every one of these decisions about executive branch powers, National Security Agency wiretaps of al-Qaida telephone conversations. She has been part of all of that. You think they would have let her come through here? They say: Oh, we think she would be a fine nominee. What would they have done to her? Those in this Chamber who think she would have gotten a pass on those issues, raise your hand. And she knew that. That is why she withdrew herself. She wrote the President a letter and said: It has been insisted that if I come before the committee, I have to divulge my private conversations with you, the President of the United States, my advice to you on all these issues. It would violate attorney-client privilege. That is something I cannot do and will not do. I am in an untenable position. I am honored to serve you. I would like to continue to serve as your chief counsel, which she does today. But I ask you to withdraw my nomination.

That is all that was about. Goodness. It indicates how desperate they have gotten to find complaints about this fine judge.

By the way, Judge Alito has not been a part of any of this national security, Washington, inside-the-beltway stuff. Judge Alito has been sitting on a Federal bench in the Third Circuit—living in New Jersey—outside Washington, DC. He has not had a single case I am aware of dealing with any of these national security or Presidential wartime powers issues. He comes at it as a skilled scholar, a person with a demonstrable record of fairness, and great intellectual capacity. I think when these cases come before him, as some may, he will decide them fairly. That is what everybody who knows him says.

Another deal they keep talking about is the unitary executive. Have you heard that phrase? They say: Oh, he is terrible; he believes in a unitary executive. It is almost amusing. Senator KENNEDY and others have used this phrase more than once: He believes in an all-powerful Executive. Now, you know no judge believes in an all-powerful Executive. You have to watch judges. They can strike down anything they want to. They are not going to give the President unlimited power. They are not going to give Congress unlimited power. But a good judge will follow the Constitution and will contain the executive if it goes too far and will contain the legislative branch if it goes too far. He or she will show personal constraint and not go too far as a member of the court. I think some need to remember that. Some have gone too far, in my opinion.

This has not been about Judge Alito. It has been about an opportunity to attack President Bush. That is what everything seems to come down to here. That is why it is so political.

They said he recommended, in defending a former Attorney General of the United States who had been sued personally for monetary damages, that they not defend the case on the basis that the Attorney General had absolute immunity from suit, but suggested he argue that he had a qualified immunity.

The former Attorney General of the United States believed he had absolute immunity, and Judge Alito then, as a young lawyer in the appellate section of the Department of Justice, was obliged to make the argument, if it was defensible in any way, for absolute immunity, and he made it.

That didn't mean he believed the Attorney General can never be sued. But I am going to tell you, the Presiding Officer has been a Governor of Virginia. People will sue for anything. If every Governor, if every Senator, if every attorney general can be hauled into court and be sued because they voted on some bill or did something and they have to pay out of pocket these judgments or lawyers to defend themselves, you can shut down the Government. We do have some cases where a Government official has absolute immunity and sometimes they have qualified immunity.

I was Attorney General of Alabama. I had to defend the Governor and other officials in various lawsuits, some of them as bogus as $3 bills, but you have to go down there and defend it. Are you going to try the case for 6 months or, if he has immunity, do you assert the immunity and get the case dismissed in the beginning? You get the case dismissed. That is what any good attorney for the Department of Justice would do.

He has never, in any way, supported an all-powerful Executive or an all-powerful executive branch that is "unchecked by the other two branches of Government." Where did they come up with those kinds of ideas?

This is what he said in a speech at law school about the case of ex parte Milligan: It expressed that "the Constitution applies even in extreme emergency." The Constitution does apply in the case of extreme emergency. That is what Judge Alito wrote some time ago.

He also said at the hearings:

> The Bill of Rights applies at all times, and it is particularly important that we adhere to the Bill of Rights in times of war and in times of national crisis.

That is what he told us under oath in committee. He also said:

> No person in this court is above the law, and that includes the President and that includes the Supreme Court. Everybody has to follow the law, and that means the Constitution of the United States, and it means the laws that are enacted under the Constitution of the United States.

He also said this:

> Neither the President nor anyone else, I think, can authorize someone to . . . override a statute that is constitutional. . . . The President has to follow the Constitution and the laws, and it is up to Congress to exercise its legislative power. . . . The President has to comply with the fourth amendment, and the President has to comply with the statutes that are passed.

So it is clear that Judge Alito and his opponents are not talking about the same thing when they talk about the unitary executive theory.

According to Judge Alito, the "unitary executive theory" is not a theory that supports "inherent authority to wiretap American citizens without a warrant, to ignore congressional acts at will, or to take any other action he saw fit under his inherent powers."

Those items have to do with the scope of Executive power, which is an entirely different matter from this theory of a unitary executive. They have tried to take this theory of a unitary executive, which has been around a long time, and twist it to say it has something to do with whether the President has the power to wiretap you.

Judge Alito clearly explained that the unitary executive theory has nothing to do with the scope of Executive power, the separation of powers doctrine, Presidential signing statements, or the constitutionality of independent agencies. As he stated during the hearings:

> The unitary executive doesn't have to do with the scope of executive power . . . I don't see any connection between the concept of a unitary Executive and the weight that should be given to signing statements in interpreting statutes.

That is so correct and so weird that it even has to be clarified. Do we have any lawyers in this body?

He goes on to say:

> I don't think I've ever challenged the constitutionality of independent agencies.

Instead, this is what Judge Alito said about the unitary executive theory—this is what he said:

> [I]t is the concept that the President is the head of the executive branch. The Constitution says that the President is given the Executive power.

Does anybody dispute that? I am quoting him.

> And the idea of the unitary Executive is that the President should be able to control the executive branch, however big it is or however small it is . . . It has to do with control of whatever the executive is doing. It doesn't have to do with the scope of Executive power. It does not have to do with whether the Executive power that the President is given includes a lot of unnamed powers or what is often called inherent power.

Isn't that a good statement? We have heard a lot of discussion for some time now about this problem of the President, and he is supposed to head the executive branch. We have all these agencies that act like independent nations. When the FBI and DEA get together and reach an agreement, they enter into memorandums of understanding, like a treaty. The agencies are both under the executive branch, under the President's authority, but they get so big for their britches that they think they have their own independence. There is a concern that the President is put in charge of the entire executive branch and is supposed to supervise all kinds of different federal agencies—the Immigration and Customs Enforcement Bureau, the Corps of Engineers, the Drug Enforcement Agency, the FBI, all of them. And then the Congress takes all the management of power and gives it to all the individual executive branch people so that the President can't even run the agencies, and then they blame him when things go wrong. That is the way we do things around here.

I asked Charles Fried, who was a former Solicitor General of the United States—the person who argues cases on behalf of the United States before the U.S. Supreme Court—and had been a professor at Harvard Law School before that teaching judicial philosophy: Mr. Fried, you have been around a good while. You have heard this talk about the unitary executive. What is it? What does it mean to you?

Boy, he just hit it right on. I was surprised. He even rebuked the members of the committee for misinterpreting the theory, he said this:

> I think what has been said about the unitary Executive in these hearings is very misleading. The unitary Executive says nothing about whether the President must obey the law. Of course he must obey the law. It talks about the President's power to control the executive branch.
>
> [It] is not an invention of the Reagan Justice Department, it was propounded in the first administration of Franklin Delano Roosevelt who objected to the powers of the Comptroller General who tried to fire a Federal Trade Commissioner, and who referred to himself [this Comptroller] as the general manager of the executive branch. That is the origin of the notion, the FDR administration.

Some Comptroller General declared he was the general manager of the executive branch and Roosevelt didn't like it and he talked about that and said the executive branch is headed by the President. Here, America, the Government, is one. It cannot sue itself.

Judge Edward Becker was aware of all these things. He is one of the most distinguished Federal appellate judges in America. He appeared at the committee with a group of his colleagues from the Third Circuit. They have served with Judge Alito, many of them for his full 15-year career—most of them at least 7 or more years—during his tenure on the Third Circuit Court of Appeals.

For those who may not fully understand it, an appellate judge on the court of appeals handles the appeals from the trial courts where juries and witnesses testify. Everything that is said in those trials is written down. If somebody is unhappy with the result and thinks they did not get fair treatment, they will appeal to the court of appeals and the court of appeals will review the record, listen to the arguments, consider the law, and determine what the facts are in the case and rule whether they got a fair trial.

If you are not happy with the court of appeals' decision, then you appeal to the Supreme Court and the Supreme Court does basically the same thing, it reviews the transcript and the record and considers the decision of the court of appeals that decided it.

That is what Judge Alito has been doing for 15 years. That is what his life has been. He goes to work and reads transcripts. He is not listening to people's phone calls. He is not approving search warrants, such as State county judges, and magistrates judges, and city judges can do. Judge Alito has been up here doing the very same kind of work he would be doing on the Supreme Court.

What do they say about how he performed in that role? This is what Judge Becker said about Judge Alito's temperament. Sam Alito:

> is gentle, considerate, unfailingly polite, decent, kind, patient and generous. . . . I have never once heard Sam raise his voice, express anger or sarcasm, or even try to proselytize . . . he expresses his views in measured and tempered tones.

Pretty good job description of what you would want in a Supreme Court Justice, wouldn't you think?

What about the question of integrity? What did Judge Becker, one of the great judges in the United States today, say about his integrity?

> Sam Alito is the soul of honor. . . .I have never seen a chink in the armor of his integrity, which I view as total.

Judge Becker, on Sam Alito's intellect:

> He is brilliant, he is highly analytical, and meticulous and careful in his comments and his written work. . . . He is not doctrinaire, but rather open to differing views and will often change his mind in light of the views of a colleague.

Isn't that a fine statement of what you would want in a judge?

What about his approach to the law? They say he has views and he is going to let his views impact his decision-making process. What does Judge Becker, who served with him for 15 years and watched him and sat right beside him on that same court of appeals, say?

> He scrupulously adheres to precedent. I have never seen him exhibit bias against any class of litigation or litigants. . . . His credo has always been fairness.

Judge Anthony Scirica, Chief Judge of that Third Circuit, has been on the bench for 20 years. This is what Judge Anthony Scirica said about him. Alito:

> is a thoughtful, careful, principled judge who is guided by a deep and abiding respect for the rule of law.

He goes on to say Alito "is intellectually honest."

Let me insert here a parenthetical. I am telling you, those of us who tried a lot of cases before judges, want a judge who is honest intellectually and does not play games, does not twist facts, does not twist the law so he can justify a decision, and most people know which judges do that.

Judge Scirica said that Alito:

> is intellectually honest, he is fair, he is ethical. He has the intellect, the integrity, the compassion and the judicial temperament that are the hallmarks of an outstanding judge.

He goes on to say:

> His personal views, whatever they may be, do not jeopardize the independence of his legal reasoning or his capacity to approach each issue with an open mind.

All of us have some beliefs, unless we are a potted plant or already beneath the soil. But the question is, when you put a robe on somebody with a lifetime appointment, are they going to allow some personal belief they may have to not give the litigants before the Court a fair shake and allow their personal bias, their disagreement with the law, or their personal concern, to override what their duty is? Alito is absolutely not this kind of a judge.

So what else does he say about him?

> Judge Alito is modest and unassuming.

We had one of our Senators, remarkably, make this statement. It takes your breath away, really.

> If there is a case involving an employer and employee and the Supreme Court has not given clear direction, Judge Alito will rule in favor of the employer.

Then he goes on to say if it is a prosecutor or defendant, "he will rule for the prosecutor."

That is not what these people who know him say. That is not what his record says and demonstrates. That is not the opinion of anybody who knows the man.

Judge Maryanne Trump Barry, who was appointed to the court in 1999 by President Clinton, had previously worked with Alito in the U.S. Attorneys Office in New Jersey in the 1970s. This is what Judge Maryanne Trump Barry said about him.

> In the Attorney General's office, Samuel Alito set a standard of excellence that was contagious, his commitment to doing the right thing, never playing fast and loose with the record, never taking a shortcut, his emphasis on first-rate work, his fundamental decency [were clear].

She goes on to say:

> Judge Alito is a man of remarkable intellectual gifts. He is a man with impeccable legal credentials. He is a fair-minded man, a modest man, a humble man, and he reveres the rule of law.

This is not a man who is going to get on the Supreme Court and rule against every defendant. As a matter of fact, there is a host of cases in which he ruled for the defendant, sometimes in dissent. He is certainly not going to rule for the employer if the employee has been wronged. Judge Ruggero Aldisert, appointed by President Lyndon Johnson, a Senior Judge who has written a number of books, who campaigned for John F. Kennedy and ran for office as a Democrat, said this about Alito. He is a remarkable man, I must say.

> Judicial independence is simply incompatible with political loyalties and Judge Alito's judicial record on our court bears witness to this fundamental truth.

Judge Leonard Garth has been on the bench since 1973. Judge Alito, right out of law school in 1976, clerked for Judge Garth. Judge Garth found him to be:

> fiercely intelligent, deeply motivated, and extremely capable.

While Alito was Judge Garth's law clerk, Judge Garth:

> developed . . . a deep respect for Sam's analytical ability, his legal acumen, his judgment, his institutional values, and, yes, even his sense of humor. . . .

He said Alito:

> is an intellectually gifted and morally principled judge.

Some may not like it. They are going to think there is something wrong with that. Judge Garth said he was a "morally principled judge."

> He is a sound jurist, always respectful of the institution and the precepts that led to decisions in cases under review.

He goes on to say:

> His fairness, his judicial demeanor and actions, and his commitment to the law, all of those qualities which my colleagues and I agree he has, do not permit him to be influenced by individual preferences or any personal predilections.

Judge Garth did say he was very careful about those words. He knew some were suggesting that Judge Alito, who served for a time in the Reagan Department of Justice and had been unanimously confirmed by this Senate to the court of appeals, after being appointed by former President Bush—some were somehow saying that he might allow his views, whatever they are—and I have not seen any evidence that he has particularly strong political views—that he might allow them to influence him.

He said that:

> . . . his commitment to the law, which my colleagues and I agree he has, do not permit him to be influenced by individual preferences or any personal predilections.

If you served on a bench a long time with a judge, you will know whether that is true. This is a Democratic individual.

Judge John Gibbons said this about it. He said that he was now representing some prisoners in Guantanamo, his law firm was, and he was not happy with the way they had been treated. But he said:

> I am confident, however, that as an able and legal scholar and a fair-minded Justice, he will give the arguments . . . careful and thoughtful consideration without any predisposition in favor of the position of the executive branch.

So this Judge Gibbons had been on the bench and is now retired from the bench. He is now in private practice. His law firm, for reasons of which I am not aware, was representing prisoners in Guantanamo. He thinks they are entitled to trials, I suppose. But he said absolutely he trusted Judge Alito to give him a fair trial.

He went on to add:

> Alito is a careful, thoughtful, intelligent, fair-minded jurist who will add to the Court's reputation as the necessary expositor of constitutional limits on the political branches of the government.

Judge Tim Lewis, African American, served on the Third Circuit Court of Appeals for 7 years before going into private practice focusing on civil rights and human rights law. Judge Tim Lewis joked about sitting on the leftwing of the panel. Judge Lewis claimed he is:

> openly and unapologetically pro-choice and always has been.

He said that:

> Judge Alito never had an ideological bent or a result-oriented demeanor or approach.

He is:

> intellectually honest.

Then he went on to add this, he emphasized it:

> If I believed that Sam Alito might be hostile to civil rights as a member of the United States Supreme Court, I can guarantee you that I would not be sitting here today. That is the first thing I want to make clear.

He said Alito "will not have any agenda-driven or result-oriented approach."

That was one of the more remarkable panels we have ever had. Judge Alito has served with Republicans and Democrats—experienced judges, extraordinarily wise, very interesting to listen to, and their respect for him was remarkable.

Indeed, the ABA panel member—an African American who represented the University of Michigan in the affirmative action admissions case which went before the Supreme Court—said that Judge Alito was "held in incredibly high regard" by the ABA.

I will share a few words from Judge Alito himself before I wrap up.

In his testimony, he was asked about cases that may come before him. I have to say nobody would dispute that in recent years he was more forthcoming than any nominee we have had in discussing openly how he would analyze a case, without going too far and prejudging it in any way. He said these words, which I think reflect good judgment and wisdom of judgment.

By the way, we have a transcript, but all of this was without notes. He spoke so beautifully. He looked right at us.

This is what he said:

> Good judges develop certain habits in mind. One of those habits in mind is to have a delay in reaching a conclusion until everything has been considered. Good judges are always open to the possibility of changing their minds based on the next brief that they read, or the next argument that is made by an attorney who is appearing before them, or a comment that is made by a colleague during the conference on the case when the judges privately fully discuss the case.

That is what we want in a judge. We want a judge who comes in with a philosophy and a demonstrated record of not rushing to judgment, not allowing any personal views he may have to influence him. He analyzes a case, but has a record that has won the respect of colleagues, liberals and conservatives, Republicans and Democrats, the bar, and his colleagues on the bench.

He is an extraordinary nominee. I could not be more proud of him. He did a magnificent job in testifying. I never thought that anyone would testify to the level of John Roberts because he is such a skilled attorney and advocate. But this judge in his own way was every bit as good. He made us all proud, and President Bush should be very proud for submitting his nomination.

I am pleased to support him. I will be voting for him, and I hope my colleagues will do the same.

I thank the Chair. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESOLUTION ON CAMBODIA

Mr. McCONNELL. Mr. President, I commend the majority leader for offering an important resolution on Cambodia yesterday that expressed concern with the systematic campaign by Prime Minister Hun Sen and the Government of Cambodia to undermine democracy and the rule of law in that country.

Scholars can argue when this campaign was initiated—after U.N.-sponsored elections in 1993 or before the coup d'etat in 1997—but no one disputes that it culminated early this year in the arrest of human rights leader Kem Sokha and other reformers in Phnom Penh on charges of defaming the Prime Minister.

As the resolution points out, no sector in Cambodia has been spared in this campaign.

Opposition leader Sam Rainsy was stripped of his parliamentary immunity last year and sentenced to 18 months in absentia for defaming the Prime Minister.

Radio journalist Mom Sonando was arrested for criminal defamation.

Even Rong Chhum, president of the Cambodian Independent Teachers Association, was similarly charged.

To be sure, other champions of freedom in Cambodia have suffered worse fates. Former parliamentarian Om Radsady and labor leader Chea Vichea were brutally murdered by unknown assailants. Justice remains similarly elusive for a grenade attack against a conference hosted by the Buddhist Liberal Democratic Party in 1995 and a more brutal attack against a peaceful rally organized by the Khmer Nation Party—headed by Sam Rainsy—in 1997.

The immediate and strong condemnation of the arrest of Sokha and his colleagues by international donors and multilateral organizations, including the United Nations and the World Bank, is certainly welcomed. U.S. Ambassador Joe Mussomeli and Deputy Chief of Mission Mark Storella deserve praise for standing by Sokha throughout the crisis. Assistant Secretary of State Christopher Hill's trip to the region succeeded in freeing Sokha from prison, and I know he cringes at Hun Sen's characterization of Sokha's release as a "gift". This may have been simply a poor choice of words, but it serves to affirm the world's perception of Hun Sen as a Southeast Asian dictator.

The news that Hun Sen will drop charges against Sokha and other civil society reformers is not a cause for celebration. History shows that Hun Sen is a habitual offender, and we can expect continued harassment and intimidation against those championing freedom and the rule of law.

The international community must now turn its attention to the plight of Sam Rainsy, Cheam Channy and other political prisoners. It is time for His Majesty King Sihamoni to derail Hun Sen's campaign by immediately pardoning Rainsy, Channy, and all other political prisoners. Only then will democracy have a chance to get back on track in Cambodia.

The challenge for Cambodia's many donors is straightforward: hold Hun Sen and his government accountable for their actions. While this may require some soul searching by U.S. allies, particularly France, Germany, and Japan, the status quo in Cambodia serves only the interests of Hun Sen and the ruling Cambodian People's Party. With a donor's conference approaching in March 2006, the international community must demand a return on the significant assistance provided to Cambodia.

As over $2 billion has been invested in the democratic development of that country since the 1991 Paris Peace Accords, it is not too much for the international community to demand that the Prime Minister and his government conduct themselves in a manner that respects the constitutional rights and dignity of the people of the Cambodia.

LISTENING TO TEENS ABOUT GUN VIOLENCE

Mr. LEVIN. Mr. President, the 2005 Teen Gun Survey conducted by the Uhlich Children's Advantage Network, also known as UCAN, produced some very interesting and troubling results. UCAN conducts this survey each year as a way of measuring teens' attitudes about gun violence. For 2005, the sample included nearly 1,000 teenagers from around the country who responded to a variety of questions about their exposure to gun violence and its impact on their lives.

The UCAN survey makes clear that far too many teens are exposed to gun violence. According to the survey, nearly half of the respondents personally know someone who has been shot, and more than a third know another teenager who has threatened to kill someone with a gun. Almost one out of every five teenagers who responded said they heard gunshots in their neighborhood at least once a month, and 38 percent believe they could get a handgun if they wanted to. Disturbingly, 39 percent of the respondents fear they will be shot someday.

The results of the survey also raise significant concerns about the perceived safety of our schools. More than a third of respondents said that they are afraid gun violence might take place in their school, and 21 percent feel that they are safer away from school than when they are in school.

These results should be taken seriously. Many teens who are exposed to gun violence may turn to violence later in life. A study completed last year by a University of Michigan researcher found that adolescents who were exposed to gun violence were more than twice as likely to carry out violent acts within the following 2 years. Fifty-six percent of the teens surveyed by UCAN said that they believe violent teenagers learn their behavior from their parents. We must do more to break this cycle.

Unfortunately, most of those who responded to the UCAN survey believe that the Government doesn't understand the realities of gun violence for teenagers and would not care if they were a victim of gun violence. In addition, 41 percent of the teens surveyed said they would benefit from more violence prevention programs and resources.

We should listen to what teenagers around the country are saying about guns. Their responses to the UCAN survey show that Congress is not doing enough to protect young people from the threat of gun violence. I urge the Senate to do more to help ensure our teenagers do not have to fear guns in their schools and communities by passing commonsense gun safety legislation and by supporting violence reduction programs.

HONORING OUR ARMED FORCES

MAJOR STUART ANDERSON

Mr. GRASSLEY. Mr. President, I speak today with deep sorrow, for we have lost a truly brave American and soldier. MAJ Stuart Anderson died on January 7, 2006, when the Blackhawk helicopter he was in crashed just outside Tal Afar in northern Iraq. His helicopter was part of a two helicopter team providing support for the 101st Airborne Division. Major Anderson was assigned to the 3rd Corps Support Command, Army National Guard. My condolences go out to his wife, Tori; his two daughters, Keely 15, and Kirsten 10; his parents, Claremont and Nancy Anderson; and many other family and friends.

Major Anderson grew up in Hoffman, MN, and then graduated from Benson High School in Benson, MN. He attended North Dakota State University. Maj. Anderson had been living in Dubuque, IA, for the past 5 years and was scheduled to return home this fall. He was a supply and service support representative for his Des Moines based unit; he made sure combat troops in some of Iraq's most dangerous areas had the proper supplies.

Major Anderson joined the Army Reserve in 1984, became an officer in 1989, and was serving in his second tour of duty in Iraq. Many of Major Anderson's colleagues define him as a trusted and humble leader. LTC Thomas Nielsen wrote that "Major Anderson was one of the finest officers I have known in my 28-year career." Major Anderson's father said that "he was very proud of being in the military . . . he just loved it." He was known to sprinkle in humor with his training and with his annual Christmas cards. His humor will be missed by all who knew him. I ask my colleagues in the Senate and every American to remember the sacrifice that Major Anderson gave for our freedom.

UNI-CAPITOL WASHINGTON INTERNSHIP PROGRAM

Ms. STABENOW. Mr. President, each year congressional offices host American college students as interns, to help our future leaders learn about public service and see how their Government works firsthand.

Today, I would like to let you know about a program that gives Australian students the opportunity to experience our democratic and legislative process. It's called the Uni-Capitol Washington Internship Program.

My office is taking part in it right now, along with others in Congress. Twelve of Australia's brightest are here, pursuing knowledge and understanding. In so doing, we are all finding new reasons to like an old friend.

The Uni-Capitol was born of the efforts of Eric Federing. Eric worked for more than a decade in the House and the Senate as a senior adviser. While doing this job, he lectured across Australia on American Government, politics, and news media. In an effort to forge ties across the Pacific and for the betterment of both societies, Eric put together this idea in Washington in 1999.

The selection process for the students is competitive and intellectually rigorous, ensuring the highest quality applicant. All participating students are comprehensively matched with a congressional office and corresponding position. They come from a wide range of academic disciplines and bring as much knowledge and understanding to our offices as they take away.

For the past 7 years, Mr. Federing's students have approached this opportunity with vim and vigor. I am pleased to have Douglas Ferguson from the University of Canberra working in my office this year. I would also like to submit into the RECORD the names of other Australian interns participating in this year's program:

Andrew Brookes, from Melbourne University, is in Senator CHRISTOPHER DODD's office. Ryan Conroy, from Deakin University, is in Representative SAM FARR's office. Jenna Davey-Burns, from Melbourne University, is in Representative LOUIS SLAUGHTER's office. Sarah Dillon, from Deakin University, is in Representative ALCEE HASTINGS's office. Jessica Gurevich, from Melbourne University, is in Representative MIKE CASTLE's office. Scott Ivey, from the University of Western Australia, is in Representative LORETTA SANCHEZ's office. Saul Lazar, from Deakin University, is in Senator CHUCK HAGEL's office. Abbie McPhie, from Melbourne University, is in Representative JERROLD NADLER's office. Linda Nelson, from the University of Wollongong, is with the House Science Committee's majority staff. Marianna O'Gorman, from the University of Queensland, is in Delegate ENI FALEOMAVAEGA's office. Rachel Thomson, from the University of Western Australia, is with the Joint Economic Committee's minority staff.

Australia continues to be one of America's strongest allies. Our greatest gift is the friendship born of shared values. I thank the Uni-Capitol Program and these Australian interns for their hard work, and I wish the program continued success.

ATTACK ON CHASIDIC SYNAGOGUE IN MOSCOW

Mr. BROWNBACK. Mr. President, on January 11 of this year, at the Moscow Headquarters and Synagogue of Agudas Chasidei Chabad of the Former Soviet Union, a so-called "skinhead" attacked worshippers with a knife and wounded eight persons. I know that all Members of this body deplore this terrible crime and send our prayers and best wishes to all those injured during the assault.

The victims of this senseless violence include Rabbi Isaac Kogan, who testified before an April 6 Helsinki Commission hearing I convened last year concerning Chabad's ongoing efforts to retrieve the Schneerson Collection of sacred Jewish texts from Moscow. The Rabbi is a noted refusenik who was appointed by the Lubavitcher Rebbe, Rabbi Menachem M. Schneerson, to be part of Agudas Chasidei Chabad of the Former Soviet Union. In addition to nurturing Judaism throughout the former USSR, that organization has fought tirelessly to win the return of the Schneerson Collection to its rightful owners in the United States. The entire U.S. Senate has twice petitioned the Russian leadership to release those holy texts.

As chairman of the Helsinki Commission, I have followed closely the issue of anti-Semitism and extremism around the world. Unfortunately, the brutal attack at the Agudas Chasidei Chabad synagogue fits what appears to be a rising trend of attacks on ethic and religious minorities in Russia.

Let me present one disturbing statistic. According to an article in the Moscow News last year, the Moscow Human Rights Center reports that Russia has up to 50,000 skinheads with active groups in 85 cities. This, as opposed to an estimated 70,000 skinhead activists throughout the rest of the world.

To make matters worse, there are indications that the police themselves are sometimes involved in racist attacks. Earlier this month, a Russian newspaper carried a story about the Moscow police assault of a passerby who happened to be from the North Caucasus. According to persons from the North Caucasus, such beatings are a common occurance.

What was uncommon was the fact that the gentleman in question is a colonel in the Russian Army and an internationally known cosmonaut.

Let me be clear. Anti-Semitism, bigotry, extremist attacks and police brutality are not found only in Russia. Our own country has not been immune to these challenges to rule of law and human dignity.

Nevertheless, as Russia accedes to the chairmanship of the G–8 and the Council of Europe, there will be increased scrutiny of its commitment to internationally recognized standards of human rights practices. I urge the authorities in Russia to do everything in their power to combat ethnic and religious intolerance and safeguard the religious freedom and physical safety of all it citizens.

TRIBUTE TO MATTHEW HOLT

Mr. LEAHY. Mr. President, I rise today to speak about Matt Holt, who has served the Senate with distinction for 25 years. As a benefits and retirement counselor and deputy for employee benefits and financial services in the Senate Disbursing Office, Matt Holt has committed his talents and energy to serving Senators and staff for over two decades.

His career here in the Senate has been exemplary. He is not only hardworking and dedicated but also friendly, helpful, and patient. He always takes the time to fully answer our questions, and he has become a tremendous resource for the Senate Disbursing Office.

Matt is truly an asset to the Senate, and all of us here in the Senate community are grateful for his outstanding dedication and hard work. An avid outdoorsman, Matt is looking forward to spending time fishing, camping, and hiking with his wife Jeanne and his children Jessica and Ben. He leaves with our appreciation and best wishes for a happy and relaxing retirement. He certainly has earned it.

BOY SCOUT TROOP 89

Mr. OBAMA. Mr. President, I rise today to say a few words about a special group of constituents. This April marks the 50th anniversary of Boy Scout Troop 89 of Downers Grove, IL. Teenagers move a mile a minute. Something that is "cool" in the morning may be forgotten by the afternoon. But Scouting is one institution that has maintained a central role in the lives of many young people in Illinois and around America.

Boy Scouts learn about and enjoy the outdoors, build friendships for life, and strengthen values such as teamwork, honesty, and respect for others. Downers Grove is a quiet residential village west of Chicago and a good place to instill these lessons. Some troops last longer than others, but Troop 89 has served the boys of Downers Grove since before I was born. That is a singular achievement, and I am pleased to have this opportunity to recognize it. To the Boy Scouts, parents, and friends of Troop 89, my heartiest congratulations on your 50th anniversary.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5335. A communication from the Office of Regulation Policy and Management, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled "Use of Diagnostic Code Numbers; Schedule of Ratings—Neurological Conditions and Convulsive Disorders" (RIN2900–AM32) received on January 16, 2006; to the Committee on Veterans' Affairs.

EC–5336. A communication from the Director, Regulations Management, Office of Regulation Policy and Management, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled "Elimination of Copayment for Smoking Cessation Counseling" (RIN2900–AM11) received on January 16, 2006; to the Committee on Veterans' Affairs.

EC–5337. A communication from the Director, Regulations Management, Office of Regulation Policy and Management, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled "Traumatic Injury Protection Rider to Servicemembers' Group Life Insurance" (RIN2900–AM36) received on January 16, 2006; to the Committee on Veterans' Affairs.

EC–5338. A communication from the Acting Under Secretary of Defense (Comptroller), transmitting, pursuant to law, the Department of the Navy Report of Violation of Administrative Control of Appropriation Regulations Case 04–01; to the Committee on Appropriations.

EC–5339. A communication from the Under Secretary of Defense (Comptroller), transmitting, pursuant to law, a report of a violation of the Antideficiency Act by the Department of the Army, case number 02–06; to the Committee on Appropriations.

EC–5340. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled "Health, United States, 2005"; to the Committee on Health, Education, Labor, and Pensions.

EC–5341. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, reports entitled "The National Healthcare Quality Report 2005" and "The National Healthcare Disparities Report 2005"; to the Committee on Health, Education, Labor, and Pensions.

EC–5342. A communication from the Assistant Secretary for Administration and Management, transmitting, pursuant to law, the Department's Fiscal Year 2005 Report on Competitive Sourcing; to the Committee on Health, Education, Labor, and Pensions.

EC–5343. A communication from the Assistant Secretary for Administration and Management, Competitive Sourcing Official, Department of Labor, transmitting, pursuant to law, the Department's Fiscal Year 2005 Competitive Sourcing Report; to the Committee on Health, Education, Labor, and Pensions.

EC–5344. A communication from the Assistant Secretary, Employee Benefits Security Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled "Annual Funding Notice for Multiemployer Defined Benefit Pension Plans" (RIN1210–AB00) received on January 16, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5345. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Food Additives Permitted for Direct Addition to Food for Human Consumption; Synthetic Fatty Alcohols" (Docket No. 1994F–0153) received on January 16, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5346. A communication from the Acting Deputy Assistant Administrator, Office of Diversion Control, Department of Justice, transmitting, pursuant to law, the report of a rule entitled "Implementation of the Anabolic Steroid Control Act of 2004" (RIN1117–AA95) received on January 16, 2006; to the Committee on the Judiciary.

EC–5347. A communication from the Clerk of Court, United States Court of Federal Claims, transmitting, pursuant to law, the annual report of the United States Court of Federal Claims for the year ended September 30, 2005; to the Committee on the Judiciary.

EC–5348. A communication from the Administrator, Energy Information Administration, Department of Energy, transmitting, pursuant to law, a report entitled "Annual Energy Outlook 2006"; to the Committee on Energy and Natural Resources.

EC–5349. A communication from the Director, Strategic Human Resources Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled "Locality-based Comparability Payments" (RIN3206–AK78) received on January 16, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5350. A communication from the Chief, Border Security Regulations Branch, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Extension of Port Limits of Rockford, Illinois" (CBP Dec. 05–38) received on January 26, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5351. A communication from the General Counsel, Office of Government Ethics, transmitting, pursuant to law, a report relative to conflict of interest laws relating to executive branch employment; to the Committee on Homeland Security and Governmental Affairs.

EC–5352. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, the Administration's Performance and Accountability Report for Fiscal Year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5353. A communication from the Assistant Secretary for Legislative Affairs, Department of Homeland Security, transmitting, pursuant to law, a report entitled "Report on the Threat of Terrorism to U.S. Ports and Vessels"; to the Committee on Homeland Security and Governmental Affairs.

EC–5354. A communication from the Secretary of Energy, transmitting, pursuant to law, the Department of Energy's Fiscal Year 2005 Performance and Accountability Report; to the Committee on Homeland Security and Governmental Affairs.

EC–5355. A communication from the General Counsel, Government Accountability Office, transmitting, pursuant to law, a report relative to bid protest decided in fiscal year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5356. A communication from the Director, National Gallery of Art, transmitting, pursuant to law, a report relative to competitive sourcing for fiscal years 2003, 2004, and 2005, and planned competitions for fiscal year 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5357. A communication from the Chairman, National Mediation Board, transmitting, pursuant to law, a report relative to competitive sourcing for fiscal years 2003, 2004, and 2005, and planned competitions for fiscal year 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5358. A communication from the President and Chief Executive Officer, Inter-American Foundation, transmitting, pursuant to law, the Foundation's Fiscal Year 2005 Competitive Sourcing Report; to the Committee on Homeland Security and Governmental Affairs.

EC–5359. A communication from the Administrator, Environmental Protection Agency, transmitting, pursuant to law, the Agency's Office of Inspector General Semiannual Report for the period from April 1, 2005 to September 30, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5360. A communication from the Secretary, Department of Housing and Urban Development, transmitting, pursuant to law, the Department's Office of Inspector General Semiannual Report for the period from April 1, 2005 to September 30, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5361. A communication from the Secretary of Commerce, transmitting, pursuant to law, the Department of Commerce's Office of Inspector General Semiannual Report for the period from March 31, 2005 through September 30, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5362. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-214, "Old Morgan School Place Designation Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5363. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-215, "Full Service Grocery Store Alcohol License Exception Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5364. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-216, "Walt Whitman Way Designation Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5365. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-217, "Producer Summary Suspension Amendment Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5366. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-218, "Adams Morgan Business Improvement District Amendment Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5367. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-219, "Water Pollution Control Amendment Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5368. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-220, "Human Rights Clarification Amendment Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5369. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-221, "Domestic Partner Health Care Benefits Tax Exemption Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5370. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-222, "National Community Reinvestment Coalition Real Property Tax Exemption Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5371. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-223, "Real Property Disposition Economic Analysis Temporary Amendment Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5372. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-224, "Estate and Inheritance Tax Clarification Temporary Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5373. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-225, "Public Assistance Confidentiality of Information Temporary Amendment Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5374. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-226, "Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Temporary Amendment Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5375. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-227, "Criminal Background Checks for the Protection of Children Clarification Temporary Amendment Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5376. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-228, "Highway Trust Fund and District Department of Transportation Temporary Amendment Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5377. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-229, "Karyn Barquin Adult Protective Services Self-Neglect Expansion Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5378. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-230, "Stevie Sellows Intermediate Care Facility for the Mentally Retarded Quality Improvement Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5379. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-231, "Grandparent Caregivers Pilot Program Establishment Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5380. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-232, "Dedication of Portions of the Alley System in Square 5252, S.O. 03-1707, Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5381. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-233, "District of Columbia Health Professional Recruitment Program Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5382. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16-248, "Vending Licensing Moratorium Amendment Act of 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5383. A communication from the Publications Control Officer, Department of the Army, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Obtaining Information From Financial Institutions" (RIN0702-AA49) received on January 16, 2005; to the Committee on Armed Services.

EC–5384. A communication from the Acting Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Contract Financing" (DFARS Case 2003-D043) received on January 18, 2006; to the Committee on Armed Services.

EC–5385. A communication from the Under Secretary of Defense for Personnel and Readiness, transmitting, a report on the approved retirement of General Lance W. Lord, United States Air Force, and his advancement to the grade of general on the retired list; to the Committee on Armed Services.

EC–5386. A communication from the Under Secretary of Defense for Acquisition, Technology and Logistics, transmitting, pursuant to law, a report entitled "LHA(R) Program Live Fire Test and Evaluation Management Plan"; to the Committee on Armed Services.

EC–5387. A communication from the Assistant Secretary of the Navy (Installations and

Environment), Department of Defense, transmitting, pursuant to law, a report relative to the intent to conduct an analysis of "Bulk Fuel Storage and Distribution" at Marine Corps Air Station Miramar, CA; to the Committee on Armed Services.

EC–5388. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report entitled "Statement, Justification and Plan Included in Presidential Waiver for Calendar Year 2006 Under Section 1303 of the National Defense Authorization Act for Fiscal Year 2005"; to the Committee on Armed Services.

EC–5389. A communication from the Under Secretary of Defense for Acquisition, Technology and Logistics, transmitting, pursuant to law, a report entitled "Alternative Live Fire Test and Evaluation Strategy for USMC Heavy Lift Replacement Helicopter"; to the Committee on Armed Services.

EC–5390. A communication from the Under Secretary of Defense for Acquisition, Technology and Logistics, transmitting, pursuant to law, a report entitled "DD(X) Program Live Fire Test and Evaluation Management Plan"; to the Committee on Armed Services.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INHOFE, from the Committee on Environment and Public Works, without amendment:

S. 1708. A bill to modify requirements relating to the authority of the Administrator of General Services to enter into emergency leases during major disasters and other emergencies (Rept. No. 109–214).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DOMENICI (for himself, Mr. Bingaman, Mr. Alexander, Ms. Mikulski, Mr. Lugar, Mr. Dodd, Mr. Hatch, Mr. Obama, Mr. Warner, Mr. Lieberman, Mr. Bond, Mrs. Murray, Mr. Burns, Mr. Bayh, Mr. Craig, Ms. Cantwell, Mrs. Hutchison, Mr. Menendez, Mr. DeWine, Mr. Kohl, Mr. Thomas, Mr. Kerry, Mr. Smith, Mr. Nelson of Florida, Mr. Voinovich, Mr. Leahy, Mr. Allen, Mr. Akaka, Mr. Talent, Mrs. Clinton, Mr. Chambliss, Ms. Stabenow, Mr. Cornyn, Mr. Dayton, Mr. Coleman, Mr. Salazar, Mr. Martinez, Mr. Inouye, Mr. Stevens, Mr. Biden, Mr. Cochran, Mr. Hagel, Ms. Murkowski, Mr. Pryor, Ms. Collins, Mr. Vitter, and Ms. Landrieu):

S. 2197. A bill to improve the global competitiveness of the United States in science and energy technology, to strengthen basic research programs at the Department of Energy, and to provide support for mathematics and science education at all levels through the resources available through the Department of Energy, including at the National Laboratories; to the Committee on Energy and Natural Resources.

By Mr. DOMENICI (for himself, Mr. Bingaman, Mr. Alexander, Ms. Mikulski, Mr. Lugar, Mr. Dodd, Mr. Obama, Mr. Warner, Mr. Lieberman, Mr. Bond, Mrs. Murray, Mr. Burns, Mr. Bayh, Mr. Craig, Ms. Cantwell, Mrs. Hutchison, Mr. Menendez, Mr. DeWine, Mr. Kohl, Mr. Thomas, Mr. Kerry, Mr. Smith, Mr. Nelson of Florida, Mr. Voinovich, Mr. Leahy, Mr. Allen, Mr. Akaka, Mr. Talent, Mr. Chambliss, Mr. Cornyn, Mr. Dayton, Mr. Coleman, Mr. Salazar, Mr. Martinez, Mr. Inouye, Mr. Stevens, Mr. Biden, Mr. Cochran, Mr. Hagel, Ms. Murkowski, Mr. Pryor, Mr. Enzi, Ms. Collins, Mr. Vitter, and Ms. Landrieu):

S. 2198. A bill to ensure the United States successfully competes in the 21st century global economy; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DOMENICI (for himself, Mr. Bingaman, Mr. Alexander, Ms. Mikulski, Mr. Lugar, Mr. Dodd, Mr. Warner, Mr. Obama, Mr. Bond, Mr. Lieberman, Mr. Burns, Mrs. Murray, Mr. Craig, Mr. Bayh, Mrs. Hutchison, Ms. Cantwell, Mr. DeWine, Mr. Menendez, Mr. Thomas, Mr. Kohl, Mr. Smith, Mr. Kerry, Mr. Voinovich, Mr. Nelson of Florida, Mr. Allen, Mr. Leahy, Mr. Talent, Mr. Akaka, Mr. Chambliss, Mrs. Clinton, Mr. Cornyn, Ms. Stabenow, Mr. Coleman, Mr. Dayton, Mr. Martinez, Mr. Salazar, Mr. Inouye, Mr. Stevens, Mr. Biden, Mr. Cochran, Mr. Hagel, Ms. Murkowski, Mr. Pryor, Ms. Collins, Mr. Vitter, and Ms. Landrieu):

S. 2199. A bill to amend the Internal Revenue Code of 1986 to provide tax incentives to promote research and development, innovation, and continuing education; to the Committee on Finance.

By Mr. LUGAR:

S. 2200. A bill to establish a United States-Poland parliamentary youth exchange program, and for other purposes; to the Committee on Foreign Relations.

By Mr. OBAMA (for himself, Mr. Inouye, Mrs. Murray, and Mr. Lautenberg):

S. 2201. A bill to amend title 49, United States Code, to modify the mediation and implementation requirements of section 40122 regarding changes in the Federal Aviation Administration personnel management system, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. LEAHY (for himself, Mr. Kerry, and Mr. Feingold):

S. 2202. A bill to provide for ethics reform of the Federal judiciary and to instill greater public confidence in the Federal courts; to the Committee on the Judiciary.

By Mrs. CLINTON (for herself and Mr. Nelson of Florida):

S. 2203. A bill to amend title XVIII of the Social Security Act to eliminate cost-sharing under part D of such title for certain full-benefit dual eligible individuals; to the Committee on Finance.

By Mr. ENSIGN (for himself and Mr. Reid):

S. 2204. A bill to validate certain conveyances made by the Union Pacific Railroad Company of lands located in Reno, Nevada, that were originally conveyed by the United States to facilitate construction of transcontinental railroads, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. THUNE:

S. 2205. A bill to direct the Secretary of the Interior to convey certain parcels of land acquired for the Blunt Reservoir and Pierre Canal features of the initial stage of the Oahe Unit, James Division, South Dakota, to the Commission of Schools and Public Lands and the Department of Game, Fish, and Parks of the State of South Dakota for the purpose of mitigating lost wildlife habitat, on the condition that the current preferential leaseholders shall have an option to purchase the parcels from the Commission, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. VITTER:

S. Res. 354. A resolution honoring the valuable contributions of Catholic schools in the United States; to the Committee on Health, Education, Labor, and Pensions.

By Mr. NELSON of Nebraska (for himself, Mr. Graham, Mr. Allen, Mr. Talent, Mrs. Dole, Mr. DeWine, Ms. Murkowski, Ms. Snowe, Mr. Thune, Mr. Isakson, Ms. Landrieu, Mr. Nelson of Florida, Mr. Harkin, Mr. Dorgan, Mr. Lautenberg, Mr. Bingaman, Mr. Akaka, Mr. Baucus, Mrs. Clinton, Mr. Kohl, Ms. Mikulski, Mr. Bayh, Ms. Cantwell, Mr. Pryor, Mr. Salazar, Mr. Lieberman, Mr. Biden, Mr. Conrad, Mr. Kennedy, Mr. Feingold, Mr. Menendez, Mr. Johnson, and Mr. Durbin):

S. Res. 355. A resolution honoring the service of the National Guard and requesting consultation by the Department of Defense with Congress and the chief executive officers of the States prior to offering proposals to change the National Guard force structure; to the Committee on Armed Services.

ADDITIONAL COSPONSORS

S. 409

At the request of Mr. Coleman, the name of the Senator from South Dakota (Mr. Johnson) was added as a cosponsor of S. 409, a bill to establish a Federal Youth Development Council to improve the administration and coordination of Federal programs serving youth, and for other purposes.

S. 787

At the request of Mr. Schumer, the name of the Senator from New Jersey (Mr. Menendez) was added as a cosponsor of S. 787, a bill to amend the Internal Revenue Code of 1986 to equalize the exclusion from gross income of parking and transportation fringe benefits and to provide for a common cost-of-living adjustment, and for other purposes.

S. 843

At the request of Mr. Santorum, the name of the Senator from Hawaii (Mr. Inouye) was added as a cosponsor of S. 843, a bill to amend the Public Health Service Act to combat autism through research, screening, intervention and education.

S. 1035

At the request of Mr. Inhofe, the names of the Senator from Oregon (Mr.

Wyden) and the Senator from Utah (Mr. Bennett) were added as cosponsors of S. 1035, a bill to authorize the presentation of commemorative medals on behalf of Congress to Native Americans who served as Code Talkers during foreign conflicts in which the United States was involved during the 20th century in recognition of the service of those Native Americans to the United States.

S. 1604

At the request of Mr. Craig, the name of the Senator from New Mexico (Mr. Bingaman) was added as a cosponsor of S. 1604, a bill to restore to the judiciary the power to decide all trademark and trade name cases arising under the laws and treaties of the United States, and for other purposes.

S. 1774

At the request of Mr. Cornyn, the name of the Senator from Maine (Ms. Snowe) was added as a cosponsor of S. 1774, a bill to amend the Public Health Service Act to provide for the expansion, intensification, and coordination of the activities of the National Heart, Lung, and Blood Institute with respect to research on pulmonary hypertension.

S. 1841

At the request of Mr. Nelson of Florida, the names of the Senator from Massachusetts (Mr. Kennedy) and the Senator from Arkansas (Mrs. Lincoln) were added as cosponsors of S. 1841, a bill to amend title XVIII of the Social Security Act to provide extended and additional protection to Medicare beneficiaries who enroll for the Medicare prescription drug benefit during 2006.

S. 1923

At the request of Ms. Snowe, the name of the Senator from Georgia (Mr. Isakson) was added as a cosponsor of S. 1923, a bill to address small business investment companies licensed to issue participating debentures, and for other purposes.

S. 1963

At the request of Mr. Baucus, the name of the Senator from Minnesota (Mr. Coleman) was added as a cosponsor of S. 1963, a bill to make miscellaneous improvements to trade adjustment assistance.

S. 2081

At the request of Mr. Coleman, the name of the Senator from Georgia (Mr. Isakson) was added as a cosponsor of S. 2081, a bill to improve the safety of all-terrain vehicles in the United States, and for other purposes.

S. 2131

At the request of Mr. Grassley, the names of the Senator from Wisconsin (Mr. Kohl) and the Senator from South Dakota (Mr. Johnson) were added as cosponsors of S. 2131, a bill to amend title 9, United States Code, to provide for greater fairness in the arbitration process relating to livestock and poultry contracts.

S. 2154

At the request of Mr. Obama, the name of the Senator from Georgia (Mr. Isakson) was added as a cosponsor of S. 2154, a bill to provide for the issuance of a commemorative postage stamp in honor of Rosa Parks.

S. 2172

At the request of Ms. Landrieu, the name of the Senator from Louisiana (Mr. Vitter) was added as a cosponsor of S. 2172, a bill to provide for response to Hurricane Katrina by establishing a Louisiana Recovery Corporation, providing for housing and community rebuilding, and for other purposes.

S. 2179

At the request of Mr. Obama, the name of the Senator from Indiana (Mr. Bayh) was added as a cosponsor of S. 2179, a bill to require openness in conference committee deliberations and full disclosure of the contents of conference reports and all other legislation.

S. 2185

At the request of Mr. Hagel, the names of the Senator from Nevada (Mr. Reid), the Senator from Michigan (Ms. Stabenow) and the Senator from New Jersey (Mr. Menendez) were added as cosponsors of S. 2185, a bill to amend part B of the Individuals with Disabilities Education Act to provide full Federal funding of such part.

S. 2196

At the request of Mrs. Clinton, the name of the Senator from Washington (Ms. Cantwell) was added as a cosponsor of S. 2196, a bill to authorize the Secretary of Energy to establish the position of Assistant Secretary for Advanced Energy Research, Technology Development, and Deployment to implement an innovative energy research, technology development, and deployment program.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMENICI (for himself, Mr. Bingaman, Mr. Alexander, Ms. Mikulski, Mr. Lugar, Mr. Dodd, Mr. Hatch, Mr. Obama, Mr. Warner, Mr. Lieberman, Mr. Bond, Mrs. Murray, Mr. Burns, Mr. Bayh, Mr. Craig, Ms. Cantwell, Mrs. Hutchison, Mr. Menendez, Mr. DeWine, Mr. Kohl, Mr. Thomas, Mr. Kerry, Mr. Smith, Mr. Nelson of Florida, Mr. Voinovich, Mr. Leahy, Mr. Allen, Mr. Akaka, Mr. Talent, Mrs. Clinton, Mr. Chambliss, Ms. Stabenow, Mr. Cornyn, Mr. Dayton, Mr. Coleman, Mr. Salazar, Mr. Martinez, Mr. Inouye, Mr. Stevens, Mr. Biden, Mr. Cochran, Mr. Hagel, Ms. Murkowski, Mr. Pryor, Ms. Collins, Mr. Vitter, and Ms. Landrieu):

S. 2197. A bill to improve the global competitiveness of the United States in science and energy technology, to strengthen basic research programs at the Department of Energy, and to provide support for mathematics and science education at all levels through the resources available through the Department of Energy, including at the National Laboratories; to the Committee on Energy and Natural Resources.

By Mr. DOMENICI (for himself, Mr. Bingaman, Mr. Alexander, Ms. Mikulski, Mr. Lugar, Mr. Dodd, Mr. Obama, Mr. Warner, Mr. Lieberman, Mr. Bond, Mrs. Murray, Mr. Burns, Mr. Bayh, Mr. Craig, Ms. Cantwell, Mrs. Hutchison, Mr. Menendez, Mr. DeWine, Mr. Kohl, Mr. Thomas, Mr. Kerry, Mr. Smith, Mr. Nelson of Florida, Mr. Voinovich, Mr. Leahy, Mr. Allen, Mr. Akaka, Mr. Talent, Mr. Chambliss, Mr. Cornyn, Mr. Dayton, Mr. Coleman, Mr. Salazar, Mr. Martinez, Mr. Inouye, Mr. Stevens, Mr. Biden, Mr. Cochran, Mr. Hagel, Ms. Murkowski, Mr. Pryor, Ms. Collins, Mr. Vitter, and Ms. Landrieu):

S. 2198. A bill to ensure the United States successfully competes in the 21st century global economy; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DOMENICI (for himself, Mr. Bingaman, Mr. Alexander, Ms. Mikulski, Mr. Lugar, Mr. Dodd, Mr. Warner, Mr. Obama, Mr. Bond, Mr. Lieberman, Mr. Burns, Mrs. Murray, Mr. Craig, Mr. Bayh, Mrs. Hutchison, Ms. Cantwell, Mr. DeWine, Mr. Menendez, Mr. Thomas, Mr. Kohl, Mr. Smith, Mr. Kerry, Mr. Voinovich, Mr. Nelson of Florida, Mr. Allen, Mr. Leahy, Mr. Talent, Mr. Akaka, Mr. Chambliss, Mrs. Clinton, Mr. Cornyn, Ms. Stabenow, Mr. Coleman, Mr. Dayton, Mr. Martinez, Mr. Salazar, Mr. Inouye, Mr. Stevens, Mr. Biden, Mr. Cochran, Mr. Hagel, Ms. Murkowski, Mr. Pryor, Ms. Collins, Mr. Vitter, and Ms. Landrieu):

S. 2199. A bill to amend the Internal Revenue Code of 1986 to provide tax incentives to promote research and development, innovation, and continuing education; to the Committee on Finance.

Mr. DOMENICI. Mr. President, I rise today to introduce a legislative package which we refer to as the "Protecting America's Competitive Edge Act of 2006" or the "PACE" Act. This legislation ensures that the United States continues to set the pace in science, and in the development of new technologies.

I know my colleagues Senator BINGAMAN, Senator ALEXANDER, and Senator MIKULSKI share my conviction that this legislation addresses one of the most pressing challenges before us today. There are troubling signs that the United States is becoming less competitive in scientific and high-technology fields. Today, the United States is a net importer of high technology products. The U.S. share of global high-technology exports has fallen over the last two decades from 30 percent to only 17 percent.

The PACE legislation closely follows the recommendations made in a recent National Academy of Sciences report entitled "Rising Above the Gathering Storm." The metaphorical storm is the challenge to our global competitiveness in science and technology. I want to congratulate Norm Augustine, who chaired the National Academy committee, and the members of his committee for producing such a comprehensive, ground-breaking report on this important issue.

The Augustine report makes 20 recommendations for U.S. schools, universities, research and economic policy. Our legislation will enact each of the recommendations. For example, our legislation doubles authorizations for basic research in the physical sciences by over the next 7 years. It also requires that at least 8 percent of Federal research budgets are allocated to high-risk, potentially high pay-off research. It will strengthen the skills of thousands of math and science teachers by establishing training and education programs at summer institutes hosted at the National Laboratories.

We need to take U.S. competitiveness seriously. We need to take action to support our standard of living, and ensure we continue to grow and prosper. If we do not, we can expect other nations to rival our global competitiveness—and one day to surpass us.

I ask unanimous consent that the text of all three bills in the following order, the PACE-Energy Act, the PACE-Education Act, and the PACE-Finance Act, be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2197

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protecting America's Competitive Edge Through Energy Act of 2006" or the "PACE-Energy Act".

SEC. 2. MATHEMATICS, SCIENCE, AND ENGINEERING EDUCATION AT THE DEPARTMENT OF ENERGY.

(a) SCIENCE EDUCATION PROGRAMS.—Section 3164 of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381a) is amended—

(1) by redesignating subsections (b) through (d) as subsections (c) through (e), respectively;

(2) by inserting after subsection (a) the following:

"(b) ORGANIZATION OF MATHEMATICS, SCIENCE, AND ENGINEERING EDUCATION PROGRAMS.—

"(1) DIRECTOR OF MATHEMATICS, SCIENCE AND ENGINEERING EDUCATION.—The Secretary, acting through the Under Secretary for Science (referred to in this subsection as the 'Under Secretary'), shall appoint a Director of Mathematics, Science, and Engineering Education (referred to in this subsection as the 'Director') with the principal responsibility for administering mathematics, science, and engineering education programs of the Department.

"(2) QUALIFICATIONS.—The Director shall be an individual, who by reason of professional background and experience, is specially qualified to advise the Under Secretary on all matters pertaining to mathematics, science, and engineering education at the Department.

"(3) DUTIES.—The Director shall—

"(A) oversee all mathematics, science, and engineering education programs of the Department;

"(B) represent the Department as the principal interagency liaison for all mathematics, science, and engineering education programs, unless otherwise represented by the Secretary or the Under Secretary;

"(C) prepare the annual budget and advise the Under Secretary on all budgetary issues for mathematics, science, and engineering education programs of the Department; and

"(D) perform other such matters related to mathematics, science, and engineering education as are required by the Secretary or the Under Secretary.

"(4) STAFF AND OTHER RESOURCES.—The Secretary shall assign to the Director such personnel and other resources as the Secretary considers necessary to permit the Director to carry out the duties of the Director.

"(5) ASSESSMENT.—The Secretary shall offer to enter into a contract with the National Academy of Sciences under which the National Academy, not later than 5 years after, and not later than 10 years after, the date of enactment of this paragraph, shall assess the performance of the mathematics, science, and engineering education programs of the Department.

"(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection."; and

(3) by striking subsection (d) (as redesignated by paragraph (1)) and inserting the following:

"(d) MATHEMATICS, SCIENCE, AND ENGINEERING EDUCATION FUND.—The Secretary shall establish a Mathematics, Science, and Engineering Education Fund, using not less than 0.3 percent of the amount made available to the Department for research, development, demonstration, and commercial application for each fiscal year, to carry out sections 3165, 3166, and 3167.".

(b) DEFINITION.—Section 3168 of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381d) is amended by adding at the end the following:

"(5) NATIONAL LABORATORY.—The term 'National Laboratory' has the meaning given the term in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801).".

(c) MATHEMATICS, SCIENCE, AND ENGINEERING EDUCATION PROGRAMS.—The Department of Energy Science Education Enhancement Act (42 U.S.C. 7381 et seq.) is amended—

(1) by inserting after section 3162 the following:

"Subpart A—Science Education Enhancement";

(2) in section 3169, by striking "part" and inserting "subpart"; and

(3) by adding at the end the following:

"Subpart B—Mathematics, Science, and Engineering Education Programs

"SEC. 3170. DEFINITIONS.

"In this subpart:

"(1) DIRECTOR.—The term 'Director' means the Director of Mathematics, Science, and Engineering Education.

"(2) NATIONAL LABORATORY.—The term 'National Laboratory' has the meaning given the term in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801).

"CHAPTER 1—ASSISTANCE FOR SPECIALTY SCHOOLS FOR MATHEMATICS AND SCIENCE

"SEC. 3171. ASSISTANCE FOR SPECIALTY SCHOOLS FOR MATHEMATICS AND SCIENCE.

"(a) IN GENERAL.—Consistent with sections 3165 and 3166, the Director shall make available necessary funds for a program using scientific and engineering staff of the National Laboratories, in which the staff—

"(1) assists teaching courses at statewide specialty secondary schools that provide comprehensive mathematics and science (including engineering) education; and

"(2) uses National Laboratory scientific equipment in the teaching of the courses.

"(b) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of the Protecting America's Competitive Edge Through Energy Act of 2006, the Director shall submit a report to the appropriate committees of Congress detailing the impact of the activities assisted with funds made available under this section.

"CHAPTER 2—EXPERIENTIAL-BASED LEARNING OPPORTUNITIES

"SEC. 3175. EXPERIENTIAL-BASED LEARNING OPPORTUNITIES.

"(a) INTERNSHIPS AUTHORIZED.—From the amounts authorized under subsection (d), the Secretary, acting through the Director, shall establish a summer internship program for middle school and secondary school students that shall—

"(1) provide the students with internships at the National Laboratories; and

"(2) promote experiential, hands-on learning in mathematics or science.

"(b) ELIGIBILITY CRITERIA.—The Director shall establish criteria to determine the sufficient level of academic preparedness necessary for a student to be eligible for an internship under this section.

"(c) PRIORITY.—

"(1) IN GENERAL.—The Director shall give priority for an internship under this section to a student who meets the eligibility criteria described in subsection (b) and who attends a school—

"(A)(i) in which not less than 40 percent of the children enrolled in the school are from low-income families; or

"(ii) that is designated with a school locale code of 7 or 8, as determined by the Secretary of Education; and

"(B) for which there is—

"(i) a high percentage of teachers who are not teaching in the academic subject areas or grade levels in which the teachers were trained to teach;

"(ii) a high teacher turnover rate; or

"(iii) a high percentage of teachers with emergency, provisional, or temporary certification or licenses.

"(2) COORDINATION.—The Director shall consult with the Secretary of Education in order to determine whether a student meets the priority requirements of this subsection.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $50,000,000 for each of the fiscal years 2007 through 2013.

"CHAPTER 3—NATIONAL LABORATORIES CENTERS OF EXCELLENCE IN MATHEMATICS AND SCIENCE EDUCATION

"SEC. 3181. NATIONAL LABORATORIES CENTERS OF EXCELLENCE IN MATHEMATICS AND SCIENCE EDUCATION.

"(a) IN GENERAL.—The Secretary shall establish at each of the National Laboratories a program to support a Center of Excellence in Mathematics and Science at 1 public secondary school located in the region of the National Laboratory to provide assistance in accordance with subsection (c).

"(b) GOALS.—The Secretary shall establish goals and performance assessments for each Center of Excellence authorized under subsection (a).

"(c) ASSISTANCE.—Consistent with sections 3165 and 3166, the Director shall make available necessary funds for a program using scientific and engineering staff of the National Laboratories, during which the staff—

"(1) assists teaching courses at the Centers of Excellence in Mathematics and Science; and

"(2) uses National Laboratory scientific equipment in the teaching of the courses.

"(d) EVALUATION.—The Secretary shall consider the results of the performance assessments required under subsection (b) in any performance review of a National Laboratories management and operations contractor.

"CHAPTER 4—SUMMER INSTITUTES

"SEC. 3185. SUMMER INSTITUTES.

"(a) DEFINITION OF SUMMER INSTITUTE.—In this section, the term 'summer institute' means an institute at a National Laboratory, conducted during the summer, that—

"(1) is conducted for a period of not less than 2 weeks;

"(2) includes, as a component, a program that provides direct interaction between students and faculty; and

"(3) provides for follow-up training during the academic year.

"(b) SUMMER INSTITUTE PROGRAMS AUTHORIZED.—The Secretary, acting through the Director, shall establish or expand program of summer institutes at each of the National Laboratories to provide additional training to strengthen the mathematics and science teaching skills of teachers employed at public schools in kindergarten through grade 12 education, with a particular focus on teachers of kindergarten through grade 8.

"CHAPTER 5—DISTINGUISHED SCIENTIST PROGRAM

"SEC. 3191. DISTINGUISHED SCIENTIST PROGRAM.

"(a) PURPOSE.—The purpose of this section is to promote scientific and academic excellence at National Laboratories.

"(b) ESTABLISHMENT.—The Secretary, acting through the Director and in consultation with the Director of the Office of Science, shall establish a program to support the appointment of distinguished scientists by National Laboratories.

"(c) QUALIFICATIONS.—Successful candidates under this section shall be persons who, by reason of professional background and experience, are able to bring international recognition to the appointing National Laboratory in their field of scientific endeavor.

"(d) SELECTION.—A distinguished scientist appointed under this section shall be selected through an open peer review process.

"(e) APPOINTMENT.—An appointment by a National Laboratory under this section shall be at the rank of the highest grade of distinguished scientist or technical staff of the National Laboratory.

"(f) DURATION.—An appointment under this section shall be for 6 years, consisting of 2 3-year funding allotments.

"(g) USE OF FUNDS.—Funds made available under this section may be used for—

"(1) the salary of the distinguished scientist and support staff;

"(2) undergraduate, graduate, and postdoctoral appointments;

"(3) research-related equipment;

"(4) professional travel; and

"(5) such other requirements as the Director determines are necessary to carry out the purpose of the program.

"(h) REVIEW.—

"(1) IN GENERAL.—The appointment of a distinguished scientist under this section shall be reviewed at the end of the first 3-year allotment for the distinguished scientist through an open peer review process to determine if the appointment is meeting the purpose of this section under subsection (a).

"(2) FUNDING.—Funding of the appointment of the distinguished scientist for the second 3-year allotment shall be determined based on the review conducted under paragraph (1).".

SEC. 3. DEPARTMENT OF ENERGY EARLY-CAREER RESEARCH GRANTS.

(a) PURPOSE.—It is the purpose of this section to authorize research grants in the Department of Energy for early-career scientists and engineers for purposes of pursuing independent research.

(b) DEFINITION OF ELIGIBLE EARLY-CAREER RESEARCHER.—In this section, the term "eligible early-career researcher" means an individual who—

(1) completed a doctorate or other terminal degree not more than 10 years before the date of enactment of this Act and has demonstrated promise in the field of science, technology, engineering, or mathematics; or

(2) has an equivalent professional qualification in the field of science, technology, engineering, or mathematics.

(c) GRANT PROGRAM AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Energy, through the Director of the Office of Science of the Department of Energy, shall award not less than 65 grants per year to outstanding eligible early-career researchers to support the work of such researchers in the Department, particularly the National Laboratories, or other federally-funded research and development centers.

(2) APPLICATION.—An eligible early-career researcher who desires to receive a grant under this section shall submit to the Secretary of Energy an application at such time, in such manner, and accompanied by such information as the Secretary may require.

(3) SPECIAL CONSIDERATION.—In awarding grants under this section, the Secretary of Energy shall give special consideration to eligible early-career researchers who have followed alternative career paths such as working part-time or in non-academic settings, or who have taken a significant career break or other leave of absence.

(4) DURATION AND AMOUNT.—A grant under this section shall be 5 years in duration. An eligible early career-researcher who receives a grant under this section shall receive $100,000 for each year of the grant period.

(5) USE OF FUNDS.—An eligible early career-researcher who receives a grant under this section shall use the grant funds for basic research in natural sciences, engineering, mathematics, or computer sciences at the Department of Energy, particularly the National Laboratories, or other federally-funded research and development center.

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(A) $6,500,000 for fiscal year 2007;

(B) $13,000,000 for fiscal year 2008;

(C) $19,500,000 for fiscal year 2009;

(D) $26,000,000 for fiscal year 2010; and

(E) $32,500,000 for fiscal year 2011.

SEC. 4. ADVANCED RESEARCH PROJECTS AUTHORITY-ENERGY.

(a) DEFINITIONS.—In this section:

(1) ARPA-E.—The term "ARPA-E" means the Advanced Research Projects Authority-Energy established under subsection (b).

(2) FUND.—The term "Fund" means the Acceleration Fund for Research and Development of Energy Technologies established under subsection (c).

(3) SECRETARY.—The term "Secretary" means the Secretary of Energy.

(4) UNDER SECRETARY.—The term "Under Secretary" means the position of Under Secretary for Science established under section 202(b) of the Department of Energy Organization Act (42 U.S.C. 7132(b)).

(b) ARPA-E.—

(1) ESTABLISHMENT.—There is established the Advanced Research Projects Authority-Energy.

(2) DIRECTOR.—ARPA-E shall be headed by a Director, who shall be appointed by the Secretary and report to the Under Secretary.

(3) RESPONSIBILITIES.—The Director shall use the Fund to award competitive, merit-based grants, cooperative agreements, and contracts to public or private entities (including businesses, federally funded research and development centers, and institutions of higher education) to—

(A) support basic and applied energy research to promote revolutionary changes in technologies that would promote the missions of the Department of Energy;

(B) advance the development, testing, evaluation, and deployment of critical energy technologies; and

(C) accelerate prototyping and development of technologies that would address national energy priorities.

(4) TARGETED COMPETITIONS.—The Director may solicit proposals to address areas of national need in science and energy technology, as identified by the Director.

(5) COORDINATION.—The Director—

(A) shall ensure that the activities of ARPA-E are coordinated with activities of other appropriate research agencies; and

(B) may carry out projects under this section jointly with other agencies.

(6) PERSONNEL.—

(A) IN GENERAL.—In hiring personnel for ARPA-E, the Secretary shall have the hiring and management authorities described in section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 5 U.S.C. 3104 note).

(B) TERM.—The term of appointments for an employee under subparagraph (A) may not exceed 5 years, except that the Secretary may renew the term of appointment of the employee for an additional term of 5 years.

(7) DEMONSTRATIONS.—The Director shall periodically hold energy technology demonstrations to improve contact among technology developers, vendors, and acquisition personnel.

(c) FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a revolving fund, to be known as the "Acceleration Fund for Research and Development of Energy Technologies", consisting of—

(A) such amounts as are appropriated to the Fund under paragraph (5); and

(B) any interest earned on investment of amounts in the Fund under paragraph (3).

(2) EXPENDITURES FROM FUND.—

(A) IN GENERAL.—Subject to subparagraph (B), on request by the Director, the Secretary of the Treasury shall transfer from the Fund to the Director such amounts as the Director determines are necessary to carry out this section.

(B) ADMINISTRATIVE EXPENSES.—An amount not exceeding 5 percent of the amounts in the Fund shall be available for each fiscal year to pay the administrative expenses necessary to carry out this section.

(3) INVESTMENT OF AMOUNTS.—

(A) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals.

(B) INTEREST-BEARING OBLIGATIONS.—Investments may be made only in interest-bearing obligations of the United States.

(C) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under subparagraph (A), obligations may be acquired—

(i) on original issue at the issue price; or

(ii) by purchase of outstanding obligations at the market price.

(D) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

(E) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.

(4) TRANSFERS OF AMOUNTS.—

(A) IN GENERAL.—The amounts required to be transferred to the Fund under this subsection shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

(B) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund—

(A) $300,000,000 for fiscal year 2007;

(B) $500,000,000 for fiscal year 2008;

(C) $700,000,000 for fiscal year 2009;

(D) $900,000,000 for fiscal year 2010; and

(E) $1,000,000,000 for fiscal year 2011.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS FOR THE DEPARTMENT OF ENERGY FOR BASIC RESEARCH.

Section 971(b) of the Energy Policy Act of 2005 (42 U.S.C. 16311(b)) is amended—

(1) in paragraph (2), by striking "and" at the end;

(2) in paragraph (3), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(4) $5,320,000,000 for fiscal year 2010;

"(5) $5,851,000,000 for fiscal year 2011;

"(6) $6,436,000,000 for fiscal year 2012; and

"(7) $7,080,000,000 for fiscal year 2013.".

S. 2198

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the "Protecting America's Competitive Edge Through Education and Research Act of 2006" or the "PACE-Education Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title.

TITLE I—10,000 TEACHERS, 10,000,000 MINDS K-12 MATHEMATICS AND SCIENCE EDUCATION

Subtitle A—Education

Sec. 111. Definitions.

CHAPTER 1—MATH AND SCIENCE TEACHERS

Sec. 121. Baccalaureate degrees in mathematics and science with teacher certification.
Sec. 122. Master's degrees in mathematics and science education for teachers.

CHAPTER 2—NATIONAL SCIENCE FOUNDATION SCHOLARSHIPS AND FELLOWSHIPS

SUBCHAPTER A—NATIONAL SCIENCE FOUNDATION SCHOLARSHIPS FOR MATHEMATICS AND SCIENCE TEACHERS

Sec. 131. Purpose.
Sec. 132. Recruiting and training new mathematics and science teachers.

SUBCHAPTER B—NATIONAL SCIENCE FOUNDATION FELLOWSHIPS FOR MATHEMATICS AND SCIENCE TEACHERS

Sec. 141. National Science Foundation fellowships for mathematics and science teachers.

CHAPTER 3—ADVANCED PLACEMENT AND INTERNATIONAL BACCALAUREATE PROGRAMS

Sec. 151. Advanced Placement and International Baccalaureate Programs.

CHAPTER 4—NATIONAL CLEARINGHOUSE ON MATHEMATICS AND SCIENCE TEACHING MATERIALS

Sec. 161. National clearinghouse on mathematics and science teaching materials.

CHAPTER 5—FUTURE AMERICAN-SCIENTIST SCHOLARSHIPS

Sec. 171. Future American-Scientist Scholarships.

CHAPTER 6—GRADUATE RESEARCH FELLOWSHIPS

Sec. 181. Graduate Research Fellowships in scientific areas of national need.

Subtitle B—National Science Foundation Early-Career Research Grants

Sec. 191. National Science Foundation early-career research grants.

TITLE II—SOWING THE SEEDS THROUGH SCIENCE AND ENGINEERING RESEARCH

Subtitle A—Office of Science and Technology Policy Matters

Sec. 211. Coordination of science, mathematics, and engineering education programs.
Sec. 212. National Coordination Office for Advanced Research Instrumentation and Facilities.
Sec. 213. High-risk, high-payoff research.
Sec. 214. President's Innovation Award.

Subtitle B—National Aeronautics and Space Administration Matters

Sec. 221. National Aeronautics and Space Administration early-career research grants.
Sec. 222. Authorization of appropriations for the National Aeronautics and Space Administration for basic sciences.

Subtitle C—Communications Matters

Sec. 231. Sense of Senate on policies to accelerate deployment of access to broadband Internet.

Subtitle D—Science Parks

Sec. 241. Development of science parks.

Subtitle E—Authorization of Appropriations for the National Science Foundation for Research and Related Activities

Sec. 251. Authorization of appropriations for the National Science Foundation for research and related activities.

TITLE III—ENSURING THE BEST AND BRIGHTEST REMAIN IN THE UNITED STATES

Subtitle A—Visas for Doctorate Students in Mathematics, Engineering, Technology, or the Physical Sciences

Sec. 311. Findings.
Sec. 312. Sense of the Senate.
Sec. 313. Visas for doctorate students in mathematics, engineering, technology, or the physical sciences.
Sec. 314. Aliens not subject to numerical limitations on employment-based immigrants.

Subtitle B—Patent Reform

Sec. 321. Patent reform.

TITLE IV—REFORMING DEEMED EXPORTS

Sec. 401. Sense of Senate on exemption of certain uses of technology from treatment as exports.

TITLE V—STRENGTHENING BASIC RESEARCH AT THE DEPARTMENT OF DEFENSE

Sec. 501. Department of Defense early-career research grants.
Sec. 502. Authorization of appropriations for the Department of Defense for basic research.

TITLE I—10,000 TEACHERS, 10,000,000 MINDS K-12 MATHEMATICS AND SCIENCE EDUCATION

Subtitle A—Education

SEC. 111. DEFINITIONS.

Unless otherwise specified in this subtitle, the terms used in this subtitle have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

CHAPTER 1—MATH AND SCIENCE TEACHERS

SEC. 121. BACCALAUREATE DEGREES IN MATHEMATICS AND SCIENCE WITH TEACHER CERTIFICATION.

(a) GRANTS AUTHORIZED.—From the amounts authorized under subsection (g), the Secretary shall award grants to eligible recipients to enable the eligible recipients to provide integrated courses of study in mathematics, science, or engineering and teacher education, that lead to a baccalaureate degree in mathematics, science, or engineering with concurrent teacher certification.

(b) DEFINITION OF ELIGIBLE RECIPIENT.—In this section, the term "eligible recipient" means any department of mathematics, science, or engineering of an institution of higher education.

(c) AWARD AND DURATION.—

(1) AWARD.—The Secretary shall award a grant under this section to each eligible recipient that collaborates with a teacher

preparation program at an institution of higher education to develop undergraduate degrees in mathematics, science, or engineering with pedagogy education and teacher certification.

(2) DURATION.—The Secretary shall award a grant under this section to each eligible recipient in an amount that is not more than $1,000,000 per year for a period of 5 years.

(d) MATCHING REQUIREMENT.—Each eligible recipient receiving a grant under this section shall provide, from non-Federal sources (provided in cash or in kind), to carry out the activities supported by the grant, an amount that is not less than 25 percent of the amount of the grant for the first year of the grant, not less than 35 percent of the amount of the grant for the second year of the grant, and not less than 50 percent of the amount of the grant for each succeeding fiscal year of the grant.

(e) APPLICATION.—

(1) IN GENERAL.—Each eligible recipient desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall include—

(A) a description of how the eligible recipient will use grant funds to develop and administer undergraduate degrees in mathematics, science, or engineering with pedagogy education and teacher certification, including a description of proposed high-quality research and laboratory experiences that will be available to students;

(B) a description of how the mathematics, science, or engineering departments will coordinate with a teacher preparation program to carry out the activities authorized under this section;

(C) a resource assessment that describes the resources available to the eligible recipient, the intended use of the grant funds, and the commitment of the resources of the eligible recipient to the activities assisted under this section, including financial support, faculty participation, time commitments, and continuation of the activities assisted under the grant when the grant period ends;

(D) an evaluation plan, including measurable objectives and benchmarks for—

(i) improving student retention;

(ii) increasing the percentage of highly qualified mathematics and science teachers; and

(iii) improving kindergarten through grade 12 student academic performance in mathematics and science;

(E) a description of the activities the eligible recipient will conduct to ensure graduates of the program keep informed of the latest developments in the respective fields;

(F) a description of how the eligible recipient will work with local educational agencies in the area in which the eligible recipient is located and, to the extent practicable, with local educational agencies where graduates of the program authorized under this section are employed, to ensure that the activities required under subsection (f)(3) are carried out; and

(G) a description of efforts to encourage applications to the program from underrepresented groups, including women and minority groups.

(f) AUTHORIZED ACTIVITIES.—An eligible recipient shall use the funds received under this section—

(1) to develop and administer teacher education and certification programs with in-depth content education and subject-specific education in pedagogy, leading to baccalaureate degrees in mathematics, science, or engineering with concurrent teacher certification;

(2) to offer high-quality research experiences and training in the use of educational technology; and

(3) to work with local educational agencies in the area in which the eligible recipient is located and, to the extent practicable, with local educational agencies where graduates of the program authorized under this section are employed, to support the new teachers during the initial years of teaching, which may include—

(A) promoting effective teaching skills;

(B) development of skills in educational interventions based on scientifically-based research;

(C) providing opportunities for high-quality teacher mentoring;

(D) providing opportunities for regular professional development;

(E) interdisciplinary collaboration among exemplary teachers, faculty, researchers, and other staff who prepare new teachers; and

(F) allowing time for joint lesson planning and other constructive collaborative activities.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $30,000,000 for fiscal year 2007;

(2) $90,000,000 for fiscal year 2008;

(3) $190,000,000 for fiscal year 2009;

(4) $290,000,000 for fiscal year 2010;

(5) $390,000,000 for fiscal year 2011;

(6) $500,000,000 for fiscal year 2012; and

(7) $500,000,000 for fiscal year 2013.

SEC. 122. MASTER'S DEGREES IN MATHEMATICS AND SCIENCE EDUCATION FOR TEACHERS.

(a) PURPOSES.—The purpose of this section is provide competitive institutional grants for eligible recipients to develop part-time, 3-year master's degree programs in mathematics and science education for teachers in order to enhance the content knowledge and pedagogical skills of teachers.

(b) DEFINITION OF ELIGIBLE RECIPIENT.—In this section, the term "eligible recipient" means a mathematics, science, or engineering department of an institution of higher education.

(c) GRANTS AUTHORIZED.—

(1) GRANTS TO ELIGIBLE RECIPIENTS.—From the amounts authorized under subsection (i), the Secretary is authorized to award grants of not more than $1,000,000, on a competitive basis, to eligible recipients to enable the eligible recipients to carry out the authorized activities described in subsection (f).

(2) QUALIFICATION.—In order to qualify for a grant under this section, an eligible recipient shall collaborate with a teacher preparation program of an institution of higher education.

(d) APPLICATION.—To be eligible to receive a grant under this section, an eligible recipient shall submit an application to the Secretary that—

(1) meets the requirements of this section;

(2) includes a description of how the eligible recipient intends to use the grant funds provided under this section;

(3) contains such information and assurances as the Secretary may require;

(4) describes how the eligible recipient will prepare teachers to become more effective mathematics or science teachers;

(5) describes how the eligible recipient will coordinate with a teacher preparation program, and how the activities of the eligible recipient will be consistent with State, local, and other education reform activities that promote student achievement;

(6) describes the resources available to the eligible recipient, the intended use of the grant funds, and the commitment of resources of the eligible recipient to the activities assisted under this section, including financial support, faculty participation, time commitments, and continuation of the activities when the grant period ends;

(7) provides an evaluation plan pursuant to subsection (g);

(8) describes how the eligible recipient will align the proposed master's degree program with challenging student academic achievement standards, and challenging academic content standards, established by the State in which the eligible recipient is located;

(9) describes the activities the eligible recipient will undertake to ensure that local educational agencies in the geographic areas served by the eligible recipient are provided information about the activities carried out with grant funds under this section; and

(10) describes how the eligible recipient will encourage applications to the program from underrepresented groups, including women and minority groups.

(e) PRIORITY.—The Secretary may give priority consideration to applications that demonstrate that the eligible recipient shall—

(1) consult with local educational agencies in developing and administering master's degree programs;

(2) use online technology to allow for flexibility in the pace at which candidates complete the master's degree programs; and

(3) develop innovative efforts aimed at reducing the shortage of master's degree level mathematics or science teachers in low-income urban or rural areas.

(f) AUTHORIZED ACTIVITIES.—An eligible recipient shall use the grant funds received under this section to develop part-time, 3-year master's degree programs in mathematics and science education for teachers, conducted over 3 full-time summer sessions, and alternate weekends during the academic year, as appropriate, which shall include—

(1) developing courses that—

(A) are based on rigorous mathematics and science content and aligned with challenging State academic content standards;

(B) promote effective teaching skills; and

(C) promote understanding of effective instructional strategies for students with special needs, including students with disabilities, students who are limited English proficient, and students who are gifted and talented;

(2) hiring and training professional staff to administer the program;

(3) purchasing equipment for computer and teaching aids;

(4) providing educational instruction for not fewer than 20 teachers per year;

(5) providing stipends to help support the participants in the form of tuition reimbursement and travel expenses; and

(6) creating opportunities for clinical experience and training for teachers through participation with professionals in business, research, and work environments relating to mathematics, science, or engineering, including opportunities for using laboratory equipment.

(g) ANNUAL EVALUATION.—Each eligible recipient shall establish and include in the application submitted pursuant to section (d) an evaluation plan that includes strong performance objectives. The plan shall include objectives and measures for increasing—

(1) the percentage of master's degree level mathematics or science teachers hired by the State in which the eligible recipient is located;

(2) teacher retention;

(3) the percentage of master's degree level mathematics or science teachers serving in high-need schools;

(4) the percentage of master's degree level mathematics or science teachers among underrepresented groups; and

(5) the competencies of program graduates in their respective fields of mathematics or science.

(h) GRADUATE FELLOWSHIPS.—An individual who has received a master's degree in mathematics or science education under a program developed pursuant to this section and who meets the requirements of section 141(b)(2) shall be eligible for a fellowship authorized under such section 141(b)(2).

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $200,000,000 for fiscal year 2007;

(2) $500,000,000 for fiscal year 2008;

(3) $500,000,000 for fiscal year 2009;

(4) $500,000,000 for fiscal year 2010;

(5) $500,000,000 for fiscal year 2011;

(6) $500,000,000 for fiscal year 2012; and

(7) $500,000,000 for fiscal year 2013.

CHAPTER 2—NATIONAL SCIENCE FOUNDATION SCHOLARSHIPS AND FELLOWSHIPS

Subchapter A—National Science Foundation Scholarships for Mathematics and Science Teachers

SEC. 131. PURPOSE.

The purpose of this subchapter is to annually recruit and train 10,000 new mathematics and science teachers by providing scholarships for undergraduate courses of study leading to baccalaureate degrees in mathematics, science, or engineering, with concurrent teacher certification.

SEC. 132. RECRUITING AND TRAINING NEW MATHEMATICS AND SCIENCE TEACHERS.

(a) GRANTS AUTHORIZED.—From the amounts authorized under subsection (g), the Director of the National Science Foundation (referred to in this section as the "Director") shall award merit-based undergraduate scholarships to eligible students to assist the eligible students in paying their college education expenses, which shall include tuition, fees, books, supplies, and equipment required for courses of instruction.

(b) DEFINITION OF ELIGIBLE STUDENT.—In this section, the term "eligible student" means a student who—

(1) attends an institution of higher education;

(2) is majoring in mathematics, science, or engineering;

(3) is pursuing concurrent certification in teaching; and

(4) demonstrates continued academic achievement and progress, as determined by the Director, toward completion of a baccalaureate degree in mathematics, science, or engineering with concurrent certification in teaching.

(c) AWARDS.—The Director shall award a scholarship under this section to an eligible student in an amount that is not greater than $20,000 per academic year for not more than 4 years of undergraduate study. The amount awarded for each academic year shall not exceed the student's cost of attendance for the academic year.

(d) SERVICE REQUIREMENTS.—

(1) SERVICE REQUIREMENT.—An individual who is awarded a scholarship under this section shall enter into an agreement with the Director under which the individual agrees to be employed for not less than 5 academic years as a full-time mathematics, science, or elementary school teacher in a public elementary school or secondary school, or 4 academic years as a full-time mathematics, science, or elementary school teacher in a public elementary school or secondary school—

(A)(i) in which not less than 40 percent of the children enrolled in the school are from low-income families; or

(ii) designated with a school locale code of 7 or 8, or otherwise designated as a rural school, as determined by the Secretary; and

(B)(i) in which there is a higher percentage of teachers not teaching in the academic subject areas or grade levels in which the teachers were trained to teach; or

(ii) in which there is a high teacher turnover rate or a high percentage of teachers with emergency, provisional, or temporary certification or licenses.

(2) COORDINATION WITH THE SECRETARY OF EDUCATION.—The Director shall coordinate with the Secretary to determine whether an individual who receives a scholarship award under this section is employed as a full-time mathematics, science, or elementary school teacher in accordance with paragraphs (1), (3), and (4).

(3) FAILURE TO COMPLY.—If an individual who receives a scholarship award under this section fails to comply with the agreement entered into pursuant to paragraph (1), the Director shall take 1 or more of the following actions:

(A) Require the individual to repay all or the applicable portion of the total scholarship amount awarded to the individual under this section.

(B) Impose a fine or penalty in an amount to be determined by the Director.

(4) REGULATIONS.—The Director shall promulgate regulations setting forth the terms of repayment and the criteria to be considered in granting a waiver for the service requirements. Such criteria shall include whether compliance with the service requirements is inequitable and represents undue hardship.

(e) COORDINATION WITH THE SECRETARY OF DEFENSE.—The Director shall coordinate with the Secretary of Defense to ensure members of the Armed Forces are aware of the educational opportunity under this section, particularly members of the Armed Forces who have training in engineering.

(f) FELLOWSHIPS.—An individual shall be eligible for a fellowship under section 141(b)(1) if the individual—

(1) has received a baccalaureate degree in mathematics, science, or engineering, and concurrent certification in teaching;

(2) has received a scholarship award under this section; and

(3) meets the requirements of section 141(b)(1).

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $50,000,000 for fiscal year 2007;

(2) $100,000,000 for fiscal year 2008;

(3) $150,000,000 for fiscal year 2009;

(4) $170,000,000 for fiscal year 2010;

(5) $170,000,000 for fiscal year 2011;

(6) $170,000,000 for fiscal year 2012; and

(7) $170,000,000 for fiscal year 2013.

Subchapter B—National Science Foundation Fellowships for Mathematics and Science Teachers

SEC. 141. NATIONAL SCIENCE FOUNDATION FELLOWSHIPS FOR MATHEMATICS AND SCIENCE TEACHERS.

(a) FELLOWSHIP AUTHORIZED.—The Director of the National Science Foundation (referred to in this section as the "Director") is authorized to award fellowships to individuals, as described in subsection (b), a portion of which shall be used for continuing education and professional development activities.

(b) FELLOWSHIP AWARDS.—The Director shall award the following fellowships:

(1) The Director shall award $10,000 annually for 4 academic years to an individual who meets the following criteria:

(A) The individual has received a baccalaureate degree in mathematics, science, or engineering, and concurrent certification in teaching.

(B) The individual received a scholarship award under section 132.

(C) The individual is employed as a full-time mathematics, science, or elementary school teacher in a public elementary school or secondary school—

(i)(I) in which not less than 40 percent of the children enrolled in the school are from low-income families; or

(II) designated with a school locale code of 7 or 8, or otherwise designated as a rural school, as determined by the Secretary; and

(ii)(I) in which there is a high percentage of teachers not teaching in the academic subject areas or grade levels in which the teachers were trained to teach; or

(II) in which there is a high teacher turnover rate or a high percentage of teachers with emergency, provisional, or temporary certification or licenses.

(2) The Director shall award $10,000 annually for 5 academic years to an individual who has received a master's degree in mathematics or science education under a program developed pursuant to section 122 and who undertakes increased responsibilities, such as teacher mentoring and other leadership activities.

(c) APPLICATION.—An individual desiring a fellowship under this section shall submit an application to the Director at such time, in such manner, and accompanied by such information as the Director may require. Each application shall include assurances that the individual meets the requirements of the fellowship for which the individual is applying.

(d) COORDINATION.—The Director shall coordinate with the Secretary to determine whether an individual who receives a fellowship under this section meets the requirements of this section.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

(1) to carry out subsection (b)(1)—

(A) $5,000,000 for fiscal year 2008;

(B) $15,000,000 for fiscal year 2009;

(C) $30,000,000 for fiscal year 2010;

(D) $45,000,000 for fiscal year 2011;

(E) $45,000,000 for fiscal year 2012; and

(F) $45,000,000 for fiscal year 2013; and

(2) to carry out subsection (b)(2)—

(A) $100,000,000 for fiscal year 2010;

(B) $200,000,000 for fiscal year 2011;

(C) $300,000,000 for fiscal year 2012; and

(D) $400,000,000 for fiscal year 2013.

CHAPTER 3—ADVANCED PLACEMENT AND INTERNATIONAL BACCALAUREATE PROGRAMS

SEC. 151. ADVANCED PLACEMENT AND INTERNATIONAL BACCALAUREATE PROGRAMS.

(a) PURPOSE.—The purposes of this section are—

(1) to educate an additional 70,000 Advanced Placement (AP) or International Baccalaureate (IB) and 80,000 pre-AP or pre-IB teachers of mathematics and science over the 5 year period beginning with 2007; and

(2) to triple to 1,500,000 the number of students who take AP and IB mathematics and science examinations.

(b) GRANTS AUTHORIZED.—

(1) IN GENERAL.—From the amounts authorized under subsection (i), the Secretary shall award grants, on a competitive basis, to eligible recipients to enable the eligible recipients to carry out the activities authorized in subsection (f).

(2) LIMITATION.—An eligible recipient may not receive more than 1 grant at a time under this section to undertake authorized activities within the same State.

(c) DEFINITIONS.—In this section:

(1) ELIGIBLE RECIPIENT.—The term "eligible recipient" means a nonprofit educational entity with expertise in Advanced Placement or International Baccalaureate services.

(2) MASTER TEACHER.—The term "master teacher" means a teacher—

(A) with an advanced degree or an advanced certification;

(B) who uses the most effective teaching methods in the teacher's disciplines; and

(C) who has shown demonstrable results of higher student achievement in mathematics or science.

(d) APPLICATION.—

(1) IN GENERAL.—Each eligible recipient desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall—

(A) describe the need for increased access to Advanced Placement or International Baccalaureate programs in mathematics and science;

(B) provide for the involvement of business and community organizations in the activities to be assisted;

(C) describe the availability of matching funds from non-Federal sources to assist in the activities authorized; and

(D) demonstrate an intent to carry out activities that target local educational agencies—

(i) that serve not fewer than 10,000 children from low-income families;

(ii) for which not less than 20 percent of the children served by the local educational agency are children from low-income families; or

(iii) with a total of less than 600 students in average daily attendance at the schools that are served by the local educational agency and all of those schools are designated with a school locale code of 7 or 8, or otherwise designated as a rural school, as determined by the Secretary.

(e) PRIORITY CONSIDERATION.—The Secretary shall give priority to eligible recipients that submit an application under subsection (d) that demonstrates a pervasive need to expand or develop Advanced Placement or International Baccalaureate programs in mathematics and science.

(f) AUTHORIZED ACTIVITIES.—An eligible recipient shall use the grant funds provided under this section for the following activities:

(1) To identify and work with local educational agencies to expand or develop Advanced Placement or International Baccalaureate and pre-Advanced Placement or pre-International Baccalaureate programs in mathematics and science in schools served by the local educational agencies.

(2) To work with the local educational agencies to establish Advanced Placement or International Baccalaureate coordinators in each secondary school served by the local educational agencies.

(3) To ensure master teachers provide training to prepare teachers to teach Advanced Placement or International Baccalaureate courses in mathematics and science, which shall include at a minimum—

(A) week-long summer institutes; and

(B) 2-day seminars in the teachers' disciplines each year for 4 years.

(4) To ensure master teachers provide training to prepare teachers to teach pre-Advanced Placement or pre-International Baccalaureate courses in mathematics and science, which shall include at a minimum—

(A) a 4-day summer institute; and

(B) 4 days on campus each year for 4 years.

(5) To provide stipends to teachers who satisfactorily complete the Advanced Placement or International Baccalaureate or pre-Advanced Placement or pre-International Baccalaureate training.

(6) To provide a bonus to a teacher who has satisfactorily completed the Advanced Placement or International Baccalaureate or pre-Advanced Placement or pre-International Baccalaureate training for each student of the teacher who passes an Advanced Placement or International Baccalaureate examination in mathematics and science.

(7) To provide test preparation sessions for students taking Advanced Placement or International Baccalaureate examinations in mathematics and science.

(8) To reimburse students half of the cost of the Advanced Placement or International Baccalaureate mathematics and science examination fees.

(9) To provide scholarships to students who pass the Advanced Placement or International Baccalaureate mathematics and science examinations.

(g) EVALUATION AND ACCOUNTABILITY PLAN.—

(1) IN GENERAL.—Each eligible recipient receiving a grant under this section shall develop an evaluation and accountability plan for activities assisted under this section that includes rigorous objectives that measure the impact of activities assisted under this section.

(2) CONTENTS.—The plan developed pursuant to paragraph (1) shall include—

(A) the number of students served by the eligible recipient who are taking pre-Advanced Placement or pre-International Baccalaureate courses in mathematics and science;

(B) the number of students served by the eligible recipient who are taking Advanced Placement or International Baccalaureate courses in mathematics and science;

(C) the number of students served by the eligible recipient who take Advanced Placement or International Baccalaureate mathematics and science examinations;

(D) the number of students served by the eligible recipients who pass Advanced Placement or International Baccalaureate mathematics and science examinations; and

(E) the number of teachers trained in Advanced Placement or International Baccalaureate and pre-Advanced Placement or pre-International Baccalaureate mathematics and science programs.

(h) MATCHING REQUIREMENTS FOR GRANTS.—Each eligible recipient receiving a grant under this section shall provide, from non-Federal sources (in cash or in kind), an amount equal to 100 percent of the amount of the grant for each year of the grant, of which not less than 25 percent shall come from State sources.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $241,000,000 for fiscal year 2007;

(2) $341,000,000 for fiscal year 2008;

(3) $453,000,000 for fiscal year 2009;

(4) $596,000,000 for fiscal year 2010; and

(5) $731,000,000 for fiscal year 2011.

CHAPTER 4—NATIONAL CLEARINGHOUSE ON MATHEMATICS AND SCIENCE TEACHING MATERIALS

SEC. 161. NATIONAL CLEARINGHOUSE ON MATHEMATICS AND SCIENCE TEACHING MATERIALS.

(a) PURPOSE.—The purpose of the this section is to strengthen the skills of mathematics and science teachers by establishing a national clearinghouse of proven effective kindergarten through grade 12 mathematics and science teaching materials.

(b) EFFECTIVE MATHEMATICS AND SCIENCE TEACHING MATERIALS.—The Secretary is authorized to convene, not later than 1 year after the date of enactment of this Act, a national panel to collect proven effective kindergarten through grade 12 mathematics and science teaching materials, or to support the development of new materials where no effective models exist.

(c) COMPOSITION OF NATIONAL PANEL.—

(1) CONSULTATION.—The Secretary shall appoint members to the panel after consultation with the National Academy of Sciences of the National Academies.

(2) SELECTION.—The Secretary shall ensure that the panel broadly represents scientists, practitioners, educators, representatives from entities with expertise in education, mathematics, and science, and parents. The Secretary shall ensure that the panel includes the following:

(A) A majority representation of educators and parents directly involved in the kindergarten through grade 12 education process.

(B) Proportionate representation of educators and parents from all demographic areas, including urban, suburban and rural schools.

(C) Proportionate representation of educators and parents from public and private schools.

(3) QUALIFICATIONS OF MEMBERS.—The members of the panel shall be individuals who have substantial knowledge or experience relating to—

(A) education, mathematics, or science policy or programs; or

(B) education, mathematics, or science curricula content development.

(d) AUTHORIZED ACTIVITIES OF NATIONAL PANEL.—The panel shall—

(1) identify proven effective kindergarten through grade 12 mathematics and science teaching materials;

(2) identify the need for new mathematics and science teaching materials, and support the development of such new materials through contracts and cooperative agreements; and

(3) establish a national clearinghouse of information on effective kindergarten through grade 12 mathematics and science teaching materials.

(e) DISSEMINATION.—The Secretary shall disseminate information related to the clearinghouse to State educational agencies, and otherwise make available and accessible to local educational agencies and schools the teaching materials collected by the panel in the form of a searchable online database or Internet web site.

(f) Mathematics and Science Teaching Materials.—

(1) Reliability and measurement.—The kindergarten through grade 12 mathematics and science teaching materials collected under this section shall be—

(A) reliable, valid, and grounded in scientific theory and research in existence as of the date of the collection of materials;

(B) reviewed regularly to assess effectiveness; and

(C) developed in careful consideration of State academic assessments and student academic achievement standards.

(2) Students with diverse learning needs.—The teaching materials shall include relevant materials for students with diverse learning needs, particularly for students with disabilities and students with limited English proficiency.

(g) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section $20,000,000 for fiscal year 2007 and $20,000,000 for each of the fiscal years 2008 through 2011.

CHAPTER 5—FUTURE AMERICAN-SCIENTIST SCHOLARSHIPS

SEC. 171. FUTURE AMERICAN-SCIENTIST SCHOLARSHIPS.

(a) Purpose.—The purpose of this section is to increase the number and percentage of citizens of the United States who earn baccalaureate degrees in mathematics or science (including engineering) by providing 25,000 new competitive merit-based undergraduate scholarships to students who are citizens of the United States, for the purpose of enabling each such student to obtain a baccalaureate degree in mathematics or science at a 4-year institution of higher education.

(b) Scholarships.—

(1) In general.—From the amounts authorized under subsection (e), the Secretary shall award the scholarships to eligible students that shall be used by the eligible students to pay for qualifying expenses at the 4-year institution of higher education of the eligible students' choosing.

(2) Future American-scientist scholarships.—A scholarship awarded under this section shall be called a "Future American-Scientist Scholarship".

(c) Amount; Duration.—

(1) Amount.—A scholarship award under this section shall be in an amount of not more than $20,000 per year.

(2) Duration of scholarship.—A scholarship awarded to an eligible student under this section shall be for the number of years necessary for the eligible student to earn a baccalaureate degree in mathematics or science, except that no scholarship under this section shall be awarded for a period of more than 4 years.

(d) Definitions.—In this section:

(1) Eligible student.—The term "eligible student" means a student who—

(A) is a citizen of the United States;

(B) is attending a 4-year institution of higher education;

(C) is enrolled, or will be enrolled at the start of the next academic year, in a course of study at an institution of higher education that leads to a baccalaureate degree in mathematics or science;

(D) demonstrates aptitude, as determined by the Secretary, in mathematics or science; or

(E) for each year of a scholarship under this section, demonstrates continued academic achievement and progress, as determined by the Secretary, toward completion of a baccalaureate degree in mathematics or science.

(2) Institution of higher education.—The term "institution of higher education" has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(3) Qualified expenses.—The term "qualified expenses" means the tuition, books, fees, supplies, and equipment required for a course of instruction leading to a baccalaureate degree in mathematics or science at a 4-year institution of higher education of the eligible student's choosing.

(4) Secretary.—The term "Secretary" means the Secretary of Energy.

(e) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section—

(1) $375,000,000 for fiscal year 2007;

(2) $750,000,000 for fiscal year 2008;

(3) $1,125,000,000 for fiscal year 2009; and

(4) $1,500,000,000 for each of the fiscal years 2010 through 2013.

CHAPTER 6—GRADUATE RESEARCH FELLOWSHIPS

SEC. 181. GRADUATE RESEARCH FELLOWSHIPS IN SCIENTIFIC AREAS OF NATIONAL NEED.

(a) Fellowships Authorized.—From the amounts appropriated under subsection (e), the Secretary shall establish a fellowship program to provide tuition and financial support for eligible students pursuing master's and doctoral degrees in mathematics or science (including engineering) or other areas of national need.

(b) Areas of National Need.—The Secretary may establish, on an annual basis, areas of national need important to the mission of the Department of Energy, and may use the areas of national need in determining the specific fields of study to be supported by fellowship awards under this section. In establishing the areas of national need, the Secretary shall consider the results of the survey conducted under section 1101 of the Energy Policy Act of 2005 (42 U.S.C. 16411).

(c) Use and Amount of Awards.—A fellowship award under this section shall be—

(1) in an amount that is commensurate with the amount of similar graduate research fellowships awarded by the National Science Foundation; and

(2) used by the eligible student to cover educational expenses and to provide additional financial support.

(d) Definitions.—In this section:

(1) Eligible student.—The term "eligible student" means a student who is enrolled in a master's or doctoral degree program in mathematics or science (including engineering) or other areas of national need at an institution of higher education (as defined in section 171).

(2) Secretary.—The term "Secretary" means the Secretary of Energy.

(e) Authorization of Appropriations.—There are authorized to be appropriated under this section—

(1) $225,000,000 for fiscal year 2007;

(2) $450,000,000 for fiscal year 2008; and

(3) $675,000,000 for each of the fiscal years 2009 through 2013.

Subtitle B—National Science Foundation Early-Career Research Grants

SEC. 191. NATIONAL SCIENCE FOUNDATION EARLY-CAREER RESEARCH GRANTS.

(a) Purpose.—It is the purpose of this section to authorize research grants in the National Science Foundation, for early-career scientists and engineers for purposes of pursuing independent research.

(b) Definition of Eligible Early-Career Researcher.—In this section, the term "eligible early-career researcher" means an individual who—

(1) completed a doctorate or other terminal degree not more than 10 years before the date of enactment of this Act and has demonstrated promise in the field of science, technology, engineering, or mathematics; or

(2) has an equivalent professional qualification in the field of science, technology, engineering, or mathematics.

(c) Grant Program Authorized.—

(1) In general.—The Director of the National Science Foundation shall award not less than 65 grants per year to outstanding eligible early-career researchers to support the work of such researchers in universities, private industry, or federally-funded research and development centers.

(2) Application.—An eligible early-career researcher who desires to receive a grant under this section shall submit to the Director of the National Science Foundation an application at such time, in such manner, and accompanied by such information as the Director may require.

(3) Special consideration.—In awarding grants under this section, the Director of the National Science Foundation shall give special consideration to eligible early-career researchers who have followed alternative career paths such as working part-time or in non-academic settings, or who have taken a significant career break or other leave of absence.

(4) Duration and amount.—A grant under this section shall be 5 years in duration. An eligible early career-researcher who receives a grant under this section shall receive $100,000 for each year of the grant period.

(5) Use of funds.—An eligible early career-researcher who receives a grant under this section shall use the grant funds for basic research in natural sciences, engineering, mathematics, or computer sciences at a university, private industry, or federally-funded research and development center.

(6) Authorization of appropriations.—There are authorized to be appropriated to carry out this section—

(A) $6,500,000 for fiscal year 2007;

(B) $13,000,000 for fiscal year 2008;

(C) $19,500,000 for fiscal year 2009;

(D) $26,000,000 for fiscal year 2010; and

(E) $32,500,000 for fiscal year 2011.

TITLE II—SOWING THE SEEDS THROUGH SCIENCE AND ENGINEERING RESEARCH

Subtitle A—Office of Science and Technology Policy Matters

SEC. 211. COORDINATION OF SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION PROGRAMS.

(a) National Goals.—

(1) Body for establishment of goals.—The Director of the Office of Science and Technology Policy shall establish within the President's Committee of Advisors on Science and Technology a standing subcommittee on education in mathematics, science, and engineering in the Federal Government.

(2) Responsibility.—The subcommittee established under this subsection shall—

(A) develop national goals for the support by the Federal Government of education in mathematics, science, and engineering; and

(B) periodically review and update any goals so developed.

(3) Public comment.—The Director shall enter into an agreement with the National Academy of Sciences or other appropriate scientific organization to seek public comment on the national goals developed under this subsection.

(b) Deputy Assistant Director for Science, Mathematics, and Engineering Education Programs.—

(1) IN GENERAL.—There shall be in the Office of Science and Technology Policy a Deputy Assistant Director of the Office of Science and Technology Policy for Science, Mathematics, and Engineering Education Programs who shall be appointed by the Director of the Office of Science and Technology Policy, acting through the Associate Director for Science of the Office of Science and Technology Policy, from among individuals having the qualifications specified in paragraph (2).

(2) QUALIFICATIONS FOR APPOINTMENT.—The qualifications of an individual for appointment as Deputy Assistant Director shall include such professional experience and expertise, and such other qualifications, as the Director of the Office of Science and Technology Policy considers appropriate to permit such individual to advise the Director on all matters relating to the education programs of the Executive Branch on mathematics, science, and technology.

(c) RESPONSIBILITY.—The Deputy Assistant Director of the Office of Science and Technology Policy for Science, Mathematics, and Engineering Educations Programs shall ensure effective coordination among the departments, agencies, and elements of the Federal Government in the discharge of the education programs of the Executive Branch on mathematics, science, and technology.

(d) PLAN FOR COORDINATION OF PROGRAMS.—

(1) IN GENERAL.—In carrying out the responsibility described in subsection (c), the Deputy Assistant Director of the Office of Science and Technology Policy for Science, Mathematics, and Engineering Educations Programs shall develop each year a plan for the coordination of the education programs of the Executive Branch on mathematics, science, and technology during the five fiscal years beginning in the year of such plan.

(2) ELEMENTS.—Each plan developed under this subsection shall include—

(A) mechanisms for the coordination of the education programs of the Executive Branch on mathematics, science, and technology during the five fiscal years beginning in the year of such plan; and

(B) recommendations on funding, by agency, of such education programs during each such fiscal year.

(3) CONSISTENCY WITH NATIONAL GOALS.—Each plan developed under this subsection shall be consistent with the most current national goals for the support by the Federal Government of education in mathematics, science, and engineering developed under subsection (a).

(4) AVAILABILITY TO PUBLIC.—The Director of the Office of Science and Technology Policy shall take appropriate actions to ensure that each plan developed under this subsection is available to the public.

(e) STAFFING AND OTHER RESOURCES.—The Director of the Office of Science and Technology Policy shall assign the Deputy Assistant Director of the Office of Science and Technology Policy for Science, Mathematics, and Engineering Educations Programs such personnel and other resources as the Director considers appropriate in order to permit the Deputy Assistant Director to carry out the duties of the Deputy Assistant Director under this section.

(f) DEADLINES FOR CERTAIN ACTIONS.—

(1) ESTABLISHMENT OF SUBCOMMITTEE.—The Director of the Office of Science and Technology Policy shall establish the subcommittee required by subsection (a)(1) not later than 30 days after the date of the enactment of this Act.

(2) APPOINTMENT OF DEPUTY ASSISTANT DIRECTOR.—The Director of the Office of Science and Technology Policy, acting through the Associate Director for Science of the Office of Science and Technology Policy, shall make the first appointment to the position of Deputy Assistant Director of the Office of Science and Technology Policy for Science, Mathematics, and Engineering Education Programs under subsection (b)(1) not later than 60 days after the date of the enactment of this Act.

SEC. 212. NATIONAL COORDINATION OFFICE FOR ADVANCED RESEARCH INSTRUMENTATION AND FACILITIES.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Director of the Office of Science and Technology Policy shall establish within the Office of Science and Technology Policy an office to be known as the "National Coordination Office for Advanced Research Instrumentation and Facilities".

(2) HEAD OF OFFICE.—The head of the National Coordination Office for Advanced Research Instrumentation and Facilities shall be the Director of the National Coordination Office for Advanced Research Instrumentation and Facilities, who shall be appointed by the Director of the Office of Science and Technology Policy.

(3) STAFF AND OTHER RESOURCES.—The Director of the Office of Science and Technology Policy shall assign to the National Coordination Office for Advanced Research Instrumentation and Facilities such personnel and other resources as the Director of the Office of Science and Technology Policy considers appropriate in order to permit the National Coordination Office for Advanced Research Instrumentation and Facilities to carry out its duties under this section.

(4) DEADLINE FOR ESTABLISHMENT.—The National Coordination Office for Advanced Research Instrumentation and Facilities shall be established not later than 30 days after the date of the enactment of this Act.

(b) DUTIES.—

(1) IN GENERAL.—The National Coordination Office for Advanced Research Instrumentation and Facilities shall coordinate the award by the departments, agencies, and other elements of the Federal Government of grants for advanced research instrumentation and facilities.

(2) ADVANCED RESEARCH INSTRUMENTATION AND FACILITIES.—

(A) IN GENERAL.—For purposes of this section, advanced research instrumentation and facilities are specially designed and developed instruments or tools (whether of a physical or nonphysical nature) that are available commercially but are overly expensive for design and development under a single research grant.

(B) EXAMPLES.—Examples of advanced research instrumentation and facilities for purposes of this section include the following:

(i) Single, stand-alone instruments or instrument suites.

(ii) Networks.

(iii) Computational modeling applications.

(iv) Computer databases.

(v) Sensor systems.

(vi) Facilities that house ensembles of interrelated instruments.

(vii) Instruments assembled from components.

(3) DISCHARGE OF DUTIES.—The Office shall coordinate the award of grants for advanced research instrumentation and facilities under this section in accordance with the strategic implementation plan developed under subsection (c).

(c) STRATEGIC IMPLEMENTATION PLAN.—

(1) PLAN REQUIRED.—Not later than one year after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall, in consultation with the Director of the Office of Management and Budget, develop a plan for the award by the departments, agencies, and other elements of the Federal Government of grants for advanced research instrumentation and facilities during the five-year period beginning on the date of the issuance of the plan.

(2) ELEMENTS.—The plan required by paragraph (1) shall include the following:

(A) Criteria applicable to the award of grants for advanced research instrumentation and facilities, including criteria applicable to—

(i) scientific and technical merit;

(ii) the identification of the strategic requirements of the departments, agencies, and other elements of the Federal Government; and

(iii) national science and technology needs.

(B) An assessment of the current and anticipated needs of the departments, agencies, and other elements of the Federal Government for advanced research instrumentation and facilities.

(C) A report to Congress on the proposed allocation of funds, including amounts authorized to be appropriated by subsection (f), by the departments, agencies, and other elements of the Federal Government for grants for advanced research instrumentation and facilities.

(3) PUBLIC COMMENT.—In developing the plan required by paragraph (1), the Director of the Office of Science and Technology Policy shall enter into an agreement with the National Academy of Sciences, or other similar entity, to secure public comments on the plan.

(d) RECOMMENDATIONS ON AGENCY FUNDING.—

(1) IN GENERAL.—The Director of the Office of Science and Technology Policy shall, in consultation with the Director of the National Coordination Office for Advanced Research Instrumentation and Facilities, make recommendations each year to the Director of the Office of Management and Budget on the amount of funds to be requested for the departments, agencies, and other elements of the Federal Government for the fiscal year beginning in such year for the award of grants for advanced research instrumentation and facilities.

(2) PURPOSE.—The purpose of the recommendations under paragraph (1) shall be to advise the Director of the Office of Management and Budget on the amounts to be requested in the budget of the President (as submitted to Congress under section 1105 of title 31, United States Code) for each fiscal year for the award of grants for advanced research instrumentation and facilities.

(e) USE OF GRANT AMOUNTS.—Amounts under grants awarded by departments, agencies, and other elements of the Federal Government for advanced research instrumentation and facilities may be used for purposes as follows:

(1) The purchase and installation of instruments.

(2) The commissioning of equipment.

(3) The calibration of instruments.

(4) The acquisition of parts and materials for construction of instruments.

(5) Personnel costs of personnel engaged in the development of instruments.

(6) The operation and maintenance of instruments.

(7) Such other purposes as the Director of the National Coordination Office for Advanced Research Instrumentation and Facilities considers appropriate.

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—In addition to amounts appropriated under Federal law other than this Act, there is authorized to be appropriated for each of fiscal years 2008 through 2012, to carry out this section (including the plan specified in subsection (c))—

(A) $1,000,000 to the Office of Science and Technology Policy;

(B) $150,000,000 to the National Science Foundation;

(C) $87,000,000 to the Department of Defense;

(D) $152,000,000 to the Office of Science of the Department of Energy; and

(E) $117,000,000 to the National Aeronautics and Space Administration.

(2) AVAILABILITY.—The amount authorized to be appropriated by this subsection shall remain available until expended.

SEC. 213. HIGH-RISK, HIGH-PAYOFF RESEARCH.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall, in consultation with the Director of the Office of Management and Budget, establish guidelines to ensure that each Federal research agency allocates not less than 8 percent of the funds available to such agency each fiscal year for basic research for high-risk, high-payoff research.

(b) HIGH-RISK, HIGH-PAYOFF RESEARCH.—For purposes of this section, high-risk, high-payoff research is research that—

(1) has the potential for yielding results with far-ranging or wide-ranging implications; but

(2) is too novel or spans too diverse a range of disciplines to fare well in the traditional peer review process.

(c) GUIDELINE ELEMENTS.—The guidelines required by subsection (a) shall include provisions on the following:

(1) Expedited procedures for the approval of the use of funds for high-risk, high-payoff research.

(2) Annual reports by Federal research agencies on activities relating to high-risk, high-payoff research.

(3) Criteria to establish the duration of funding for high-risk, high-payoff research projects.

(4) Objectives for high-risk, high-payoff research projects.

(5) Such other criteria, objectives, or other matters as the Director of the Office of Science and Technology Policy considers appropriate.

(d) PUBLIC COMMENT.—The Director of the Office of Science and Technology Policy shall enter into an agreement with the National Academy of Sciences, or similar entity, to solicit public comment, through a broad media solicitation, on the guidelines required by subsection (a) before the final issuance of such guidelines.

(e) REVIEW.—The President's Committee of Advisors on Science and Technology shall, not less often than once every two years, conduct a review to determine whether or not Federal research agencies are allocating basic research funds in accordance with the guidelines required by subsection (a).

(f) ANNUAL REPORTS TO CONGRESS.—

(1) REPORTS REQUIRED.—The Director of the Office of Management and Budget shall, in consultation with the Director of the Office of Science and Technology Policy, submit to Congress each year a report on the use by Federal research agencies of basic research funds for high-risk, high-payoff research during the preceding fiscal year.

(2) TIME FOR SUBMITTAL.—The Director of the Office of Management and Budget shall submit the report required by paragraph (1) for a year together with the budget of the President for the fiscal year beginning in such year (as submitted to Congress under section 1105 of title 31, United States Code).

(g) DEFINITIONS.—In this section:

(1) FEDERAL RESEARCH AGENCY.—The term "Federal research agency" means a major organizational component of a department or agency of the Federal Government, or other establishment of the Federal Government operating with appropriated funds, that has as its primary purpose the performance of scientific research.

(2) MAJOR ORGANIZATIONAL COMPONENT.—The term "major organizational component", with respect to a department, agency, or other establishment of the Federal Government, means a component of the department, agency, or other establishment that is administered by an individual whose rate of basic pay is not less than the rate of basic pay payable under level V of the Executive Schedule under section 5316 of title 5, United States Code.

SEC. 214. PRESIDENT'S INNOVATION AWARD.

(a) AUTHORITY TO AWARD.—

(1) IN GENERAL.—The Director of the Office of Science and Technology Policy shall, subject to the approval of the President, award each year to one or more individuals an award that recognizes recent innovations in science and engineering in the United States.

(2) DESIGNATION.—The award made under this section shall be known as the "President's Innovation Award".

(3) PRESENTATION.—The presentation of awards made under this section shall be made by the President.

(b) SELECTION OF RECIPIENTS.—

(1) IN GENERAL.—The Director of the Office of Science and Technology Policy shall identify recipients of the award under this section from among individuals whose achievements are recognized in the most recent document entitled "Interagency Research and Development Priorities" published by the Director of the Office of Management and Budget and the Director of the Office of Science and Technology Policy.

(2) SOLICITATION OF RECOMMENDATIONS.—In identifying potential recipients of the award under this section, the Director of the Office of Science and Technology Policy shall solicit recommendations from the heads of Federal agencies and the general public.

(c) NATURE OF AWARD.—The award made under this section shall consist of the following:

(1) A medal, of such design as the Director of the Office of Science and Technology Policy shall determine (subject to the approval of the President).

(2) A certificate of recognition.

(3) A cash prize, in such amount as the Director considers appropriate.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Office of Science and Technology Policy each fiscal year $1,000,000 for the making of awards under this section.

Subtitle B—National Aeronautics and Space Administration Matters

SEC. 221. NATIONAL AERONAUTICS AND SPACE ADMINISTRATION EARLY-CAREER RESEARCH GRANTS.

(a) PURPOSE.—It is the purpose of this section to authorize research grants in the National Aeronautics and Space Administration for early-career scientists and engineers for purposes of pursuing independent research.

(b) DEFINITION OF ELIGIBLE EARLY-CAREER RESEARCHER.—In this section, the term "eligible early-career researcher" means an individual who—

(1) completed a doctorate or other terminal degree not more than 10 years before the date of enactment of this Act and has demonstrated promise in the field of science, technology, engineering, or mathematics; or

(2) has an equivalent professional qualification in the field of science, technology, engineering, or mathematics.

(c) GRANT PROGRAM AUTHORIZED.—

(1) IN GENERAL.—The Administrator of the National Aeronautics and Space Administration shall award not less than 45 grants per year to outstanding eligible early-career researchers to support the work of such researchers in universities, private industry, or federally-funded research and development centers.

(2) APPLICATION.—An eligible early-career researcher who desires to receive a grant under this section shall submit to the Administrator of the National Aeronautics and Space Administration an application at such time, in such manner, and accompanied by such information as the Administrator may require.

(3) SPECIAL CONSIDERATION.—In awarding grants under this section, the Administrator of the National Aeronautics and Space Administration shall give special consideration to eligible early-career researchers who have followed alternative career paths such as working part-time or in non-academic settings, or who have taken a significant career break or other leave of absence.

(4) DURATION AND AMOUNT.—A grant under this section shall be 5 years in duration. An eligible early career-researcher who receives a grant under this section shall receive $100,000 for each year of the grant period.

(5) USE OF FUNDS.—An eligible early career-researcher who receives a grant under this section shall use the grant funds for basic research in natural sciences, engineering, mathematics, or computer sciences at a university, private industry, or federally-funded research and development center.

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(A) $4,500,000 for fiscal year 2007;

(B) $9,000,000 for fiscal year 2008;

(C) $13,500,000 for fiscal year 2009;

(D) $18,000,000 for fiscal year 2010; and

(E) $22,500,000 for fiscal year 2011.

SEC. 222. AUTHORIZATION OF APPROPRIATIONS FOR THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION FOR BASIC SCIENCES.

(a) IN GENERAL.—There is hereby authorized to be appropriated for the National Aeronautics and Space Administration for basic sciences for research specified in subsection (b), amounts as follows:

(1) $2,768,000,000 for fiscal year 2007.

(2) $3,044,000,000 for fiscal year 2008.

(3) $3,349,000,000 for fiscal year 2009.

(4) $3,684,000,000 for fiscal year 2010.

(5) $4,052,000,000 for fiscal year 2011.

(6) $4,457,000,000 for fiscal year 2012.

(7) $4,903,000,000 for fiscal year 2013.

(b) COVERED RESEARCH.—The research specified in this subsection is research under programs as follows:

(1) The Solar System Exploration Research Program.

(2) The Mars Exploration Research Program.

(3) The Astronomical Search for Origins Research Program.

(4) The Structure and Evolution of the Universe Research Program.

(5) The Earth–Sun Connection Research Program.

(6) The Earth Systems Science Research Program.

(7) The Earth Science Applications Research Program.

(8) The Biological Sciences Research Program.

(9) The Physical Sciences Research Program.

(10) The Aeronautics Program.

(11) Such other basic research programs as the Administrator of the National Aeronautics and Space Administration may determine to be appropriate, after notifying the appropriate committees of Congress of the Administrator's intent to make the determination.

Subtitle C—Communications Matters

SEC. 231. SENSE OF SENATE ON POLICIES TO ACCELERATE DEPLOYMENT OF ACCESS TO BROADBAND INTERNET.

It is the sense of the Senate that Congress and the Federal Communications Commission should work together to ensure the implementation of regulatory policies that facilitate and accelerate the deployment of access to broadband Internet to order to provide broadband Internet service to as many residences, businesses, and schools as possible in both urban areas and rural areas.

Subtitle D—Science Parks

SEC. 241. DEVELOPMENT OF SCIENCE PARKS.

(a) FINDING.—Section 2 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701) is amended by adding at the end the following new paragraph:

"(12) It is in the best interests of the Nation to encourage the formation of science parks to promote the clustering of innovation through high technology activities.".

(b) DEFINITION.—Section 4 of such Act (15 U.S.C. 3703) is amended by adding at the end the following new paragraphs:

"(14) 'Science park' means a group of interrelated companies and institutions, including suppliers, service providers, institutions of higher education, start-up incubators, and trade associations that cooperate and compete and are located in a specific area whose administration promotes real estate development, technology transfer, and partnerships between such companies and institutions, and does not mean a business or industrial park.

"(15) 'Business or industrial park' means primarily a for-profit real estate venture of businesses or industries which do not necessarily reinforce each other through supply chain or technology transfer mechanisms.

"(16) 'Science park infrastructure' means facilities that support the daily economic activity of a science park.".

(c) PROMOTION OF DEVELOPMENT OF SCIENCE PARKS.—Section 5(c) of such Act (15 U.S.C. 3704(c)) is amended—

(1) in paragraph (14), by striking "and" at the end;

(2) in paragraph (15), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(16) promote the formation of science parks.".

(d) SCIENCE PARKS.—Such Act is further amended by adding at the end the following new section:

"SEC. 24. SCIENCE PARKS.

"(a) DEVELOPMENT OF PLANS FOR CONSTRUCTION OF SCIENCE PARKS.—

"(1) IN GENERAL.—The Secretary shall award grants for the development of feasibility studies and plans for the construction of new or expansion of existing science parks.

"(2) LIMITATION ON AMOUNT OF GRANTS.—The amount of a grant awarded under this subsection may not exceed $750,000.

"(3) AWARD.—

"(A) COMPETITION REQUIRED.—The Secretary shall award any grant under this subsection pursuant to a full and open competition.

"(B) ADVERTISING.—The Secretary shall advertise any competition under this paragraph in the Commerce Business Daily.

"(C) SELECTION CRITERIA.—The Secretary shall publish the criteria to be utilized in any competition under this paragraph for the selection of recipients of grants under this subsection. Such criteria shall include requirements relating to—

"(i) the number of jobs to be created at the science park each year for a period of 5 years;

"(ii) the funding to be required to construct or expand the science park over the first 5 years;

"(iii) the amount and type of cost matching by the applicant;

"(iv) the types of businesses and research entities expected in the science park and surrounding community;

"(v) letters of intent by businesses and research entities to locate in the science park;

"(vi) the capacity of the science park for expansion over a period of 25 years;

"(vii) the quality of life at the science park for employees at the science park;

"(viii) the capability to attract a well trained workforce to the science park;

"(ix) the management of the science park;

"(x) expected risks in the construction and operation of the science park;

"(xi) risk mitigation;

"(xii) transportation and logistics;

"(xiii) physical infrastructure, including telecommunications; and

"(xiv) ability to collaborate with other science parks throughout the world.

"(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each of fiscal years 2007 through 2012, $7,500,000 to carry out this subsection.

"(b) REVOLVING LOAN PROGRAM FOR DEVELOPMENT OF SCIENCE PARK INFRASTRUCTURE.—

"(1) IN GENERAL.—The Secretary shall make grants to six regional centers for the development of existing science park infrastructure through the operation of revolving loan funds by such centers.

"(2) SELECTION OF CENTERS.—

"(A) IN GENERAL.—The Secretary shall select the regional centers to be awarded grants under this subsection utilizing such criteria as the Secretary shall prescribe.

"(B) CRITERIA.—The criteria prescribed by the Secretary under this paragraph shall include criteria relating to revolving loan funds and revolving loan fund operators under paragraph (4), including—

"(i) the qualifications of principal officers;

"(ii) non-Federal cost matching requirements; and

"(iii) conditions for the termination of loan funds.

"(3) LIMITATION ON LOAN AMOUNT.—The amount of any loan for the development of existing science park infrastructure that is funded under this subsection may not exceed $3,000,000.

"(4) REVOLVING LOAN FUNDS.—

"(A) IN GENERAL.—A regional center receiving a grant under this subsection shall fund the development of existing science park infrastructure through the utilization of a revolving loan fund.

"(B) OPERATION AND INTEGRITY.—The Secretary shall prescribe regulations to maintain the proper operation and financial integrity of revolving loan funds under this paragraph.

"(C) EFFICIENT ADMINISTRATION.—The Secretary may—

"(i) at the request of a grantee, amend and consolidate grant agreements governing revolving loan funds to provide flexibility with respect to lending areas and borrower criteria;

"(ii) assign or transfer assets of a revolving loan fund to a third party for the purpose of liquidation, and a third party may retain assets of the fund to defray costs related to liquidation; and

"(iii) take such actions as are appropriate to enable revolving loan fund operators to sell or securitize loans (except that the actions may not include issuance of a Federal guaranty by the Secretary).

"(D) TREATMENT OF ACTIONS.—An action taken by the Secretary under this paragraph with respect to a revolving loan fund shall not constitute a new obligation if all grant funds associated with the original grant award have been disbursed to the recipient.

"(E) PRESERVATION OF SECURITIES LAWS.—

"(i) NOT TREATED AS EXEMPTED SECURITIES.—No securities issued pursuant to subparagraph (C)(iii) shall be treated as exempted securities for purposes of the Securities Act of 1933 or the Securities Exchange Act of 1934, unless exempted by rule or regulation of the Securities and Exchange Commission.

"(ii) PRESERVATION.—Except as provided in clause (i), no provision of this paragraph or any regulation issued by the Secretary under this paragraph shall supersede or otherwise affect the application of the securities laws (as such term is defined in section 2(a)(47) of the Securities Exchange Act of 1934) or the rules, regulations, or orders of the Securities and Exchange Commission or a self-regulatory organization thereunder.

"(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each of fiscal years 2007 through 2012, $60,000,000 to carry out this subsection.

"(c) LOAN GUARANTEES FOR SCIENCE PARK INFRASTRUCTURE.—

"(1) IN GENERAL.—The Secretary shall guarantee up to 80 percent of the loan amount for loans exceeding $10,000,000 for projects for the construction of science park infrastructure.

"(2) LIMITATIONS ON GUARANTEE AMOUNTS.—The maximum amount of loan principal guaranteed under this subsection may not exceed—

"(A) $50,000,000 with respect to any single project; and

"(B) $500,000,000 with respect to all projects.

"(3) SELECTION OF GUARANTEE RECIPIENTS.—The Secretary shall select recipients of loan guarantees under this subsection based upon the ability of the recipient to collateralize the loan amount through bonds, equity, property, and other such criteria as the Secretary shall prescribe.

"(4) TERMS AND CONDITIONS FOR LOAN GUARANTEES.—For purposes of this section, the loans guaranteed shall be subject to such terms and conditions as the Secretary may prescribe, except that—

"(A) the final maturity of such loans made or guaranteed shall not exceed (as determined by the Secretary) the lesser of—

"(i) 30 years and 32 days; or

"(ii) 90 percent of the useful life of any physical asset to be financed by such loan;

"(B) no loan made or guaranteed may be subordinated to another debt contracted by the borrower or to any other claims against the borrowers in the case of default;

"(C) no loan may be guaranteed unless the Secretary determines that the lender is responsible and that adequate provision is made for servicing the loan on reasonable terms and protecting the financial interest of the United States;

"(D) no loan may be guaranteed if the income from such loan is excluded from gross income for purposes of chapter 1 of the Internal Revenue Code of 1986, or if the guarantee provides significant collateral or security, as determined by the Secretary, for other obligations the income from which is so excluded;

"(E) any guarantee shall be conclusive evidence that said guarantee has been properly obtained, that the underlying loan qualified for such guarantee, and that, but for fraud or material misrepresentation by the holder, such guarantee shall be presumed to be valid, legal, and enforceable;

"(F) the Secretary shall prescribe explicit standards for use in periodically assessing the credit risk of new and existing direct loans or guaranteed loans;

"(G) the Secretary must find that there is a reasonable assurance of repayment before extending credit assistance; and

"(H) new loan guarantees may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required in section 504 of the Federal Credit Reform Act of 1990.

"(5) PAYMENT OF LOSSES.—For purposes of this section—

"(A) IN GENERAL.—If, as a result of a default by a borrower under a guaranteed loan, after the holder thereof has made such further collection efforts and instituted such enforcement proceedings as the Secretary may require, the Secretary determines that the holder has suffered a loss, the Secretary shall pay to such holder the percentage of such loss (not more than 80 percent) specified in the guarantee contract. Upon making any such payment, the Secretary shall be subrogated to all the rights of the recipient of the payment. The Secretary shall be entitled to recover from the borrower the amount of any payments made pursuant to any guarantee entered into under this section.

"(B) ENFORCEMENT OF RIGHTS.—The Attorney General shall take such action as may be appropriate to enforce any right accruing to the United States as a result of the issuance of any guarantee under this section.

"(C) FORBEARANCE.—Nothing in this section may be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the guaranteed loan and approved by the Secretary, if budget authority for any resulting subsidy costs (as defined under the Federal Credit Reform Act of 1990) is available.

"(D) MANAGEMENT OF PROPERTY.—Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Secretary shall have the right in the Secretary's discretion to complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell any property acquired by the Secretary pursuant to the provisions of this section.

"(6) REVIEW.—The Comptroller General of the United States shall, within 2 years of the date of enactment of this section, conduct a review of the subsidy estimates for the loan guarantees under this subsection, and shall submit to Congress a report on the review conducted under this paragraph.

"(7) TERMINATION.—No loan may be guaranteed under this subsection after September 30, 2012.

"(8) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated—

"(A) $35,000,000 for the cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990, of guaranteeing $500,000,000 of loans under this subsection; and

"(B) $6,000,000 for administrative expenses for fiscal year 2007 and such sums as necessary thereafter for administrative expenses in subsequent years.

"(d) NATIONAL ACADEMY OF SCIENCES EVALUATION.—

"(1) IN GENERAL.—The Secretary shall enter into an agreement with the National Academy of Sciences under which the Academy shall evaluate, on a tri-annual basis, the activities under this section.

"(2) TRI-ANNUAL REPORT.—Under the agreement under paragraph (1), the Academy shall submit to the Secretary a report on its evaluation of science park development under that paragraph. Each report may include such recommendations as the Academy considers appropriate for additional activities to promote and facilitate the development of science parks in the United States.

"(e) TRI-ANNUAL REPORT.—Not later than March 31 of every third year, the Secretary shall submit to Congress a report on the activities under this section during the preceding 3 years, including any recommendations made by the National Academy of Sciences under subsection (d)(2) during such period. Each report may include such recommendations for legislative or administrative action as the Secretary considers appropriate to further promote and facilitate the development of science parks in the United States.

"(f) REGULATIONS.—

"(1) REGULATIONS.—Consistent with Office of Management and Budget Circular A-129, 'Policies for Federal Credit Programs and Non-Tax Receivables', the Secretary shall prescribe regulations to carry out this section.

"(2) DEADLINE.—The Secretary shall prescribe such regulations not later than one year after the date of enactment of this section.".

Subtitle E—Authorization of Appropriations for the National Science Foundation for Research and Related Activities

SEC. 251. AUTHORIZATION OF APPROPRIATIONS FOR THE NATIONAL SCIENCE FOUNDATION FOR RESEARCH AND RELATED ACTIVITIES.

(a) IN GENERAL.—There is hereby authorized to be appropriated for the National Science Foundation for Research and Related Activities, amounts as follows:

(1) $4,195,000,000 for fiscal year 2007.
(2) $4,614,000,000 for fiscal year 2008.
(3) $5,076,000,000 for fiscal year 2009
(4) $5,584,000,000 for fiscal year 2010.
(5) $6,143,000,000 for fiscal year 2011.
(6) $6,757,000,000 for fiscal year 2012.
(7) $7,432,000,000 for fiscal year 2013.

(b) LIMITATION ON AVAILABILITY.—Amounts authorized to be appropriated for the National Science Foundation by subsection (a) shall not be available for the United States Solar Program and Integrative Activities of the Foundation.

TITLE III—ENSURING THE BEST AND BRIGHTEST REMAIN IN THE UNITED STATES

Subtitle A—Visas for Doctorate Students in Mathematics, Engineering, Technology, or the Physical Sciences

SEC. 311. FINDINGS.

Congress finds the following:

(1) The National Academies, in their congressionally requested report entitled "Rising Above the Gathering Storm: Energizing and Employing America for a Brighter Economic Future", recommended that Congress—

(A) continue to improve visa processing for international students and scholars by providing less complex procedures and continuing to make improvements on issues such as visa categories and duration, travel for scientific meetings, the technology-alert list, reciprocity agreements, and changes in status;

(B) provide a 1-year automatic visa extension to international students who receive doctorates or the equivalent in science, technology, engineering, mathematics, or other fields of national need at qualified United States institutions to remain in the United States to seek employment;

(C) provide such students with automatic work permits and expedited residence status if they are offered jobs by employers based in the United States and pass a security screening test;

(D) institute a new skills-based, preferential immigration option that gives applicants with doctorate-level education and science and engineering skills priority in obtaining United States citizenship; and

(E) increase the number of H–1B visas by 10,000, which should be allocated for applicants with doctorate degrees in science, or engineering from a United States university; and

(2) Since the publication of the report by the National Academies, the Senate has passed the Deficit Reduction Act of 2005, which authorizes an additional 30,000 H-1B visas per year.

SEC. 312. SENSE OF THE SENATE.

It is the sense of the Senate that—

(1) the Department of State and the Department of Homeland Security have made significant improvements since 2002 in the efficiency with which visas are processed for—

(A) students at colleges and universities in the United States; and

(B) foreign researchers to engage in appropriate scientific research in the United States;

(2) particular improvements have been made to the MANTIS clearance process, which—

(A) reduce wait times from more than 70 days to less than 15 days; and

(B) extend the duration of the MANTIS clearance process up to 4 years, as appropriate, to cover the duration of study for foreign students in the United States;

(3) both departments and related supporting agencies should further improve efficiency and convenience in the granting of visas to foreign students and researchers while protecting national security;

(4) the departments should extend MANTIS clearance for foreign researchers for the duration of a specified scientific research program while balancing security concerns; and

(5) other such improvements should include—

(A) review of the technology-alert list; and

(B) efforts to better facilitate travel for scientific conferences.

SEC. 313. VISAS FOR DOCTORATE STUDENTS IN MATHEMATICS, ENGINEERING, TECHNOLOGY, OR THE PHYSICAL SCIENCES.

(a) CREATION OF NEW VISA CATEGORY.—Section 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)) is amended—

(1) in clause (i)—

(A) by inserting "(except for a graduate program described in clause (iv))" after "full course of study";

(B) by striking "214(*l*)" and inserting "214(m)"; and

(C) by striking the comma at the end and inserting a semicolon;

(2) in clause (ii)—

(A) by inserting "or clause (iv)" after "clause (i)"; and

(B) by striking ", and" and inserting a semicolon;

(3) in clause (iii), by inserting "and" at the end; and

(4) by adding at the end the following:

"(iv) an alien described in clause (i) who has been accepted and plans to attend an accredited graduate program in mathematics, engineering, technology, or the physical sciences in the United States for the purpose of obtaining a doctorate degree;".

(b) REQUIREMENTS FOR OBTAINING AN F-4 VISA.—Section 214(m) of the Immigration and Nationality Act (8 U.S.C. 1184(m)) is amended—

(1) by striking the matter preceding paragraph (1) and inserting the following:

"(m) NONIMMIGRANT ELEMENTARY, SECONDARY, AND POST-SECONDARY SCHOOL STUDENTS.—"; and

(2) by adding at the end the following:

"(3)(A) An alien who obtains the status of a nonimmigrant under section 101(a)(15)(F)(iv) shall demonstrate an intent to—

"(i) return to the country of residence of such alien immediately after the completion or termination of the graduate program qualifying such alien for such status; or

"(ii) find employment in the United States related to the field of study of such alien and become a permanent resident of the United States upon the completion of the graduate program, which was the basis for such nonimmigrant status.

"(B) A visa issued to an alien under section 101(a)(15)(F)(iv) shall be valid—

"(i) during the intended period of study in a graduate program described in such section;

"(ii) for an additional period, not to exceed 1 year beyond the completion of the graduate program, if the alien is actively pursuing an offer of employment related to the knowledge and skills obtained through the graduate program; and

"(iii) for an additional period, not to exceed 6 months, while the alien's application for adjustment of status under section 245(i)(4) is pending.

"(C) An alien shall qualify for adjustment of status to that of a person admitted for permanent residence if the alien—

"(i) has the status of a nonimmigrant under section 101(a)(15)(F)(iv);

"(ii) has successfully earned a doctorate degree in mathematics, engineering, technology or the physical sciences at an accredited college or university in the United States; and

"(iii) is employed full-time in the United States in a position related to the knowledge and skills gained while pursuing such degree.".

(c) ADJUSTMENT OF STATUS.—Section 245(i) of the Immigration and Nationality Act (8 U.S.C. 1255(i)) is amended by adding at the end the following:

"(4) The Secretary of Homeland Security may adjust the status of an alien who meets the requirements under section 214(m)(3) to that of an alien lawfully admitted for permanent residence if the alien—

"(A) makes an application for such adjustment;

"(B) is eligible to receive an immigrant visa;

"(C) is admissible to the United States for permanent residence; and

"(D) remits a fee of $1,000 to the Secretary.".

(d) USE OF FEES.—

(1) JOB TRAINING; SCHOLARSHIPS.—Section 286(s)(1) of the Immigration and Nationality Act (8 U.S.C. 1356(s)(1)) is amended by inserting "and 80 percent of the fees collected under section 245(i)(4)" before the period at the end.

(2) FRAUD PREVENTION AND DETECTION.—Section 286(v)(1) of the Immigration and Nationality Act (8 U.S.C. 1356(v)(1)) is amended by inserting "and 20 percent of the fees collected under section 245(i)(4)" before the period at the end.

SEC. 314. ALIENS NOT SUBJECT TO NUMERICAL LIMITATIONS ON EMPLOYMENT-BASED IMMIGRANTS.

(a) IN GENERAL.—Section 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)) is amended by adding at the end the following:

"(F) Aliens who have earned an advanced degree in science, technology, engineering, or math and have been working in a related field in the United States under a nonimmigrant visa during the 3-year period preceding their application for an immigrant visa under section 203(b).

"(G) Aliens described in subparagraph (A) or (B) of section 203(b)(1)(A) or who have received a national interest waiver under section 203(b)(2)(B).

"(H) The immediate relatives of an alien who is admitted as an employment-based immigrant under section 203(b).".

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply to any visa application pending on the date of enactment of this Act and any visa application filed on or after such date of enactment.

Subtitle B—Patent Reform

SEC. 321. PATENT REFORM.

It is the sense of the Senate that—

(1) the United States Patent and Trademark Office should be provided with sufficient resources to make intellectual property protection more timely, predictable, and effective;

(2) the resources described under paragraph (1) should include a 20 percent increase in overall funding to hire and train additional examiners and implement more capable electronic processing; and

(3) Congress should implement comprehensive patent reform that—

(A) establishes a first-inventor-to-file system;

(B) institutes an open review process following the grant of a patent;

(C) encourages research uses of patented inventions by shielding researchers from infringement liability; and

(D) reduces barriers to innovation in specific industries with specialized patent needs.

TITLE IV—REFORMING DEEMED EXPORTS

SEC. 401. SENSE OF SENATE ON EXEMPTION OF CERTAIN USES OF TECHNOLOGY FROM TREATMENT AS EXPORTS.

(a) SENSE OF SENATE.—It is the sense of the Senate that the use of technology by an institution of higher education in the United States should not be treated as an export of such technology for purposes of section 5 of the Export Administration Act of 1979 (50 U.S.C. App. 2404) and any regulations prescribed thereunder, as currently in effect pursuant to the provisions of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), or any other provision of law, if such technology is so used by such institution for fundamental research.

(b) DEFINITIONS.—In this section:

(1) FUNDAMENTAL RESEARCH.—The term "fundamental research" has the meaning given that term in National Security Decision Directive 189, entitled "National Policy on Transfer of Scientific, Technical, and Engineering Information" and dated September 21, 1985.

(2) INSTITUTION OF HIGHER EDUCATION.—The term "institution of higher education" has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a).

TITLE V—STRENGTHENING BASIC RESEARCH AT THE DEPARTMENT OF DEFENSE

SEC. 501. DEPARTMENT OF DEFENSE EARLY-CAREER RESEARCH GRANTS.

(a) PURPOSE.—It is the purpose of this section to authorize research grants in the Department of Defense for early-career scientists and engineers for purposes of pursuing independent research.

(b) DEFINITION OF ELIGIBLE EARLY-CAREER RESEARCHER.—In this section, the term "eligible early-career researcher" means an individual who—

(1) completed a doctorate or other terminal degree not more than 10 years before the date of enactment of this Act and has demonstrated promise in the field of science, technology, engineering, or mathematics; or

(2) has an equivalent professional qualification in the field of science, technology, engineering, or mathematics.

(c) GRANT PROGRAM AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Defense shall award not less than 25 grants per year to outstanding eligible early-career researchers to support the work of such researchers in universities, private industry, or federally-funded research and development centers.

(2) APPLICATION.—An eligible early-career researcher who desires to receive a grant under this section shall submit to the Secretary of Defense an application at such time, in such manner, and accompanied by such information as the Secretary may require.

(3) SPECIAL CONSIDERATION.—In awarding grants under this section, the Secretary of Defense shall give special consideration to eligible early-career researchers who have followed alternative career paths such as working part-time or in non-academic settings, or who have taken a significant career break or other leave of absence.

(4) DURATION AND AMOUNT.—A grant under this section shall be 5 years in duration. An eligible early career-researcher who receives a grant under this section shall receive $100,000 for each year of the grant period.

(5) USE OF FUNDS.—An eligible early career-researcher who receives a grant under this section shall use the grant funds for basic research in natural sciences, engineering, mathematics, or computer sciences at a university, private industry, or federally-funded research and development center.

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(A) $2.500,000 for fiscal year 2007;

(B) $5,000,000 for fiscal year 2008;

(C) $7,500,000 for fiscal year 2009;

(D) $10,000,000 for fiscal year 2010; and

(E) $12,500,000 for fiscal year 2011.

SEC. 502. AUTHORIZATION OF APPROPRIATIONS FOR THE DEPARTMENT OF DEFENSE FOR BASIC RESEARCH.

There is hereby authorized to be appropriated for the Department of Defense for basic (6.1) research, amounts for the research, development, test, and evaluation accounts of the Department, and for other accounts of the Department providing funding for such research, in the aggregate as follows:

(1) $1,616,000,000 for fiscal year 2007.

(2) $1,778,000,000 for fiscal year 2008.

(3) $1,995,000,000 for fiscal year 2009.

(4) $2,151,000,000 for fiscal year 2010.

(5) $2,364,000,000 for fiscal year 2011.

(6) $2,602,000,000 for fiscal year 2012.

(7) $2,862,000,000 for fiscal year 2013.

S. 2199

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protecting America's Competitive Edge Through Tax Incentives Act of 2006" or the "PACE-Finance Act".

SEC. 2. EXPANSION OF CREDIT FOR RESEARCH AND DEVELOPMENT.

(a) Credit Made Permanent.—

(1) In general.—Section 41 of the Internal Revenue Code of 1986 (relating to credit for increasing research activities) is amended by striking subsection (h).

(2) Conforming amendment.—Paragraph (1) of section 45C(b) of such Code is amended by striking subparagraph (D).

(3) Effective date.—The amendments made by this subsection shall apply to amounts paid or incurred after the date of the enactment of this Act, in taxable years ending after such date.

(b) Credit Rate Doubled.—Paragraphs (1) and (2) of section 41(a) of the Internal Revenue Code of 1986 is are each amended by striking "20 percent" and inserting "40 percent".

(c) New Regulations and Guidelines Authorized.—The Secretary of the Treasury shall issue such regulations or guidelines as are necessary—

(1) to provide uniform conduct of tax audits relating to the credit under section 41 of the Internal Revenue Code of 1986, and

(2) to reflect the changing impact of technology on the character of research and development, such as use of databases provided by external parties and the conduct of research and development through joint ventures.

(d) Expansion of Credit to Expenses of General Collaborative Research Consortia.—Section 41 of the Internal Revenue Code of 1986 is amended—

(1) by striking "an energy research consortium" in subsections (a)(3) and (b)(3)(C)(i) and inserting "a research consortium",

(2) by striking "energy" each place it appears in subsection (f)(6)(A),

(3) by inserting "or 501(c)(6)" after "section 501(c)(3)" in subsection (f)(6)(A)(i)(I), and

(4) by striking "Energy research" in the heading for subsection (f)(6)(A) and inserting "Research" .

(e) Study of Further Expansion of Credit.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall study and make recommendations in a report to the President, the Committee on Finance of the Senate, and the Committee on Ways and Means of the House of Representatives on the following possible methods of expanding the scope of the credit under section 41 of the Internal Revenue Code of 1986:

(1) Modification of the credit to remove the incremental approach of measuring creditable research and development expenditures for taxpayers with significant and consistent annual research and development expenditures.

(2) Expansion of qualifying research and development expenditures to include—

(A) certain employee benefit costs related to qualifying wages,

(B) 100 percent of contract research costs,

(C) all expenditures which would qualify for treatment under section 174 of such Code,

(D) any other costs determined appropriate by the Secretary.

(3) Reduction or elimination of limitation of credit under section 280C(c) of such Code.

(f) Effective Date.—Except as otherwise provided, the amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 3. UNITED STATES-BASED INNOVATION INCENTIVES STUDY.

(a) Study.—The Secretary of the Treasury, in consultation with the Director of the Office of Management and Budget, shall conduct an analysis of the United States tax system and its effect on this country as a location for innovation investment and related activities. The analysis shall include a comparison of the tax policies of other nations relating to long-term innovation investment and an examination of various features of the United States tax system, including—

(1) the treatment of capital gains, including the appropriate rate for very long-term investments or the appropriate allowance for loss write-offs,

(2) the overall corporate tax rate, and

(3) incentives for high-tech manufacturing and research equipment through tax credits and accelerated depreciation.

(b) Report.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall report on the study and analysis described in subsection (a) to the President, the Committee on Finance of the Senate, and the Committee on Ways and Means of the House of Representatives.

SEC. 4. EMPLOYEE CONTINUING EDUCATION TAX CREDIT.

(a) In General.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following new section:

"SEC. 45N. EMPLOYEE CONTINUING EDUCATION CREDIT.

"(a) Amount of Credit.—

"(1) In general.—For purposes of section 38, the employee continuing education credit determined under this section with respect to any employer for any taxable year is the applicable percentage of qualified continuing education costs paid or incurred by the employer during the calendar year ending with or within such taxable year.

"(2) Applicable percentage.—For purposes of this section, the applicable percentage is the percentage determined by the Secretary such that the amount of the credit allowable under this section for any calendar year does not exceed $500,000,000.

"(b) Qualified Continuing Education Costs.—For purposes of this section, the term 'qualified continuing education costs' means costs paid or incurred by an employer for education to maintain or improve knowledge or skills in science or engineering of an employee whose employment requires knowledge or skills in science or engineering.

"(c) Regulations.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations establishing standards for educational courses and programs to which this section applies.".

(b) Credit Made Part of General Business Credit.—Section 38(b) of the Internal Revenue Code of 1986 is amended by striking "and" at the end of paragraph (25), by striking the period at the end of paragraph (26) and inserting ", and", and by adding at the end the following new paragraph:

"(27) the employee continuing education credit determined under section 45N(a).".

(c) Denial of Double Benefit.—Section 280C of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(e) Employee Continuing Education Credit.—No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined under section 45N(a).".

(d) Clerical Amendment.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 45N. Employee continuing education credit.".

(e) Effective Date.—The amendments made by this section shall apply to costs paid or incurred in taxable years beginning after December 31, 2005.

Mr. BINGAMAN. Mr. President, I rise today to introduce the Protecting America's Competitive Edge (PACE) Act that will enable us to build on our existing strengths to help secure America's continued economic prosperity in the twenty-first century.

I want to gratefully acknowledge at the outset that I am introducing this legislation with Senator Domenici, Senator Alexander, Senator Mikulski, and others. This measure is the product of our combined best efforts from both sides of the aisle, and our sole focus has been only on what is in the best interests of the Nation as a whole.

For the last 200 years, our investments in science and technology, both public and private, have driven our economic growth and improved the quality of life in America. They have generated new knowledge and new industries, created new jobs, ensured economic and national security, reduced pollution and increased energy efficiency, provided better and safer transportation, improved medical care, and increased living standards for the American people.

America's scientists and engineers through their unmatched vitality, creativity, and curiosity have helped us not only imagine but invent the future. In large measure, their contributions have made this new century before us so full of promise—molded by science, shaped by technology, and powered by knowledge.

One of the bedrock policies of our Nation's economic security must be to sustain our investments in science and technology. Today there is no dispute that science, and the technology that flows from it, is duly recognized as the piston that drives the economic engine that enriches the quality of our lives.

Yet today our preeminence is precarious.

Numerous thoughtful leaders in government, industry, and academia who are concerned about sustaining U.S. leadership across the frontiers of scientific knowledge are expressing growing uneasiness over troubling trends regarding the Nation's future prosperity. They warn we are slipping in our world leadership role in science and engineering, and losing sight of the importance of long-term investments in creating the conditions of prosperity.

Other nations are coming up fast behind us on the scientific track and are pouring resources into their scientific and technological infrastructure. There is the distinct possibility that U.S. competitiveness in key high-tech areas will fall behind the major Pacific Rim countries of India, China, Taiwan, and South Korea.

Moreover, the focus of our fundamental R&D has shifted away from the physical sciences, mathematics, and engineering—the critical areas of R&D most closely correlated with innovation and economic growth.

Many of our foremost research programs that have been curtailed or cut back in recent years have been the cornerstone for much of our economic progress and spurred the creation of high paying jobs. Budget increases have been disproportionately concentrated primarily in two departments—Defense and Homeland Security—leaving other vital R&D agencies with very modest increases, or with an increase for some agencies offset by flat funding, or cuts in others.

In the name of national security, we have been building a swaying tower of insecurity.

We are on the brink of a new industrial and commercial world order. The reality of the twenty-first century global economy is that China, India, and other nations once considered economic backwaters have discovered how to build strong economies around very sophisticated technology.

On the Pacific Rim, China has increased spending on colleges and universities almost tenfold in the last decade, and is doubling the proportion of GDP invested in that same period on R&D to promote competitiveness and growth. India is raising its funding of science agencies by 27 percent, and Japan is increasing its investments in life science by 32 percent, while South Korea is upgrading research spending by 8.5 percent.

As our share of the world's technical graduate workforce slips, European and Asian universities are churning out ever greater numbers of workers in scientific fields. And while young Americans may shy away from technical careers because they perceive better opportunities in other high-level occupations, there are still sufficient rewards to attract ever-increasing numbers of foreign graduate students eager to pursue science and engineering degrees.

All of these signs, granted, are a cause for concern. Yet none of them, however, is a cause for panic. To state the facts frankly is not to despair about the future, nor is it to indict the past. Our task today is not to fix the blame for yesterday, but to set the proper and prudent course for tomorrow.

These revolutionary changes in the global marketplace for highly skilled technical workers are dislodging the long-standing dominance of the U.S. scientific enterprise.

That is causing our comparative advantage in high tech production to suffer and, despite the extraordinary power and resilience of our economy, signals a lengthy and difficult period of adjustment for American industry, its workforce, and ultimately our strong middle class standard of living which makes this country great.

It also flags a pivotal moment in American history—a time of national peril, as well as a time of national opportunity.

What should we do about these international challenges? We have absolutely no choice but to emphasize what we do best in this coming rivalry. Our most important strengths have always been education and innovation. Our can-do spirit of commercializing technological innovation has always been America's core competence. We do it far better than anyone else—we have done it before, and we can continue to excel at it.

Last May, Senator LAMAR ALEXANDER and I asked the National Academy of Sciences to conduct a study to identify "specific steps our government should take to ensure the preeminence of America's scientific and technological enterprise to enable us to successfully compete, prosper, and be secure in the global community of the 21st century."

The Academy assembled an extraordinarily distinguished panel of America's best scientific minds, including three Nobel Prize winners, business executives, and university leaders and reported their findings back to us in October in a sobering report entitled, Rising Above the Gathering Storm.

The National Academy's report proposes four broad recommendations: 1. Increase America's talent pool by vastly improving K-12 science and mathematics education; 2. sustain and strengthen the Nation's traditional commitment to long-term basic research; 3. make the United States the most attractive setting in which to study and perform research; and 4. ensure that the United States is the premier place in the world to innovate.

First and foremost, we need to fix our math and science education system from kindergarten through high school. We should establish a merit-based, 4 year undergraduate scholarship program to annually recruit 10,000 students per year to careers teaching math and science who then commit to working for at least 4 years in K–12 public schools.

Using incentives and scholarships, our aim should be to quadruple the number of America students enrolled in advanced math and science courses to four and a half million by 2010.

A U.S. high school student has about a 70 percent chance of being taught English by a teacher with an English degree, but only a 40 percent chance of being taught chemistry by a teacher with a degree in chemistry. And the situation is worse for middle school students: 70 percent of them are taught math by a teacher lacking a certificate or major in math.

It takes many years to educate a citizen. There are no short term solutions to this problem, and workforce issues rarely respond to quick fixes and often span generations.

That is why there is such a sense of urgency to recruit thousands of new math and science teachers in the years ahead through the award of competitive scholarships. Additionally, we must strengthen 250,000 current teachers' math and science teaching skills with enhanced training and education by leveraging the expertise of the world's best physicists, mathematicians, and engineers to help provide that training.

This legislation will also provide greater opportunities for students to take advanced math and science classes by increasing the number of students who enroll in Advanced Placement and International Baccalaureate science and math courses.

Second, we must steadily increase our investment by 10 percent each year for the next 7 years in long-term basic research, with special attention devoted to the physical sciences, engineering, mathematics, and information sciences.

The Federal Government supports a majority of the Nation's basic research and nearly 60 percent of the R&D is performed in U.S. universities. At the same time, this investment at universities and colleges plays a key role in educating the next generation of scientists and engineers and a technically skilled workforce. We ought to provide 200 new research grants annually—worth $500,000 each payable over 5 years—to the Nation's most outstanding early-career researchers.

Additionally, we should consider creating a revolutionary agency in the Energy Department modeled on the highly successful Defense Advanced Research Projects Agency to sponsor research to meet the Nation's long-term energy challenges that industry by itself cannot or will not support.

Just as Olympic-caliber athletes need the finest equipment and training protocols to triumph in their events, so do scientists, engineers and their students need the most modern research instruments and facilities with the best capabilities, the farthest reach, and the finest accuracy and resolution. To enable us to push beyond the frontiers of our current knowledge, we should create a centralized research infrastructure fund of $500 million annually over the next 5 years to ensure we have the equipment necessary for breakthrough scientific discoveries.

Third, we must increase the number of U.S. citizens earning science, engineering, and math degrees. We must redouble our efforts to encourage gifted young American men and women to pursue these high tech disciplines which require so much from them and which have so much to offer all of our people. We can do so by providing annually 25,000 competitive undergraduate scholarships in physical sciences, engineering, and mathematics, and fund 5,000 new portable graduate fellowships in those fields.

Equally important, we need a global recruitment strategy to attract the best and brightest to learn and live in America as part of our high tech workforce. Our visa, immigration and export control policies desperately need reform. Delays and difficulties in obtaining visas to the U.S. are contributing to a declining in-flow of scientific talent.

We need to ensure the best and brightest come here, stay here, and obtain legal residency after college to contribute to our national economy instead of being forced back to their home countries to compete against us.

Finally, we need to be able to assure investors that the U.S. is the preferred site for investments in new or expanded businesses that create the best jobs and provide the best services.

To spur U.S.-based research and experimentation to meet global competition, we need to modernize the patent system, realign our tax policies to encourage long-term investments in innovation, and ensure the Nation meets the goal of affordable broadband Internet access by 2007.

Our patent laws must also be reformed by moving to a first-to-file instead of a first-to-invent, thus bringing us into line with the rest of the world while reducing expensive litigation. Infrastructure planning grants and loan guarantees could also ensure that U.S. science parks are competitive with those throughout Asia.

Additionally, we should eliminate uncertainty by doubling the R&D tax credit and making it permanent. Studies document that this tax credit encourages as much R&D spending as it costs in foregone revenue—and perhaps even twice that amount over the long haul.

We face a competitive challenge of historic proportions today due to several new factors: The growing number of countries with advanced skills, multinational corporations placing their R&D centers, fueled by high education and low labor costs, wherever the profits are the greatest, and virtually every service being electronically communicable.

It will be difficult to ever match our populous economic competitors in the quantity of their scientists and engineers. Ours is an even tougher task: to stay far ahead in the quality of our research and to keep pioneering scientific fields so cutting edge that others, for the most part, cannot duplicate them.

We can readily meet this challenge and enjoy a prosperous future, even though these investments in education and research require incurring costs now for benefits later.

The PACE Act will sustain our vibrant science and technology sector and with it our well-being, health, environment, and security.

It will encourage education at home and attract talented scientists and engineers from abroad, as well as nurture a business environment that transforms new knowledge into new opportunities for creating high quality jobs and reaching shared goals.

The passage of this farsighted public investment program will ensure that the United States is stronger, smarter, and leads the world in scientific and technological innovation in the twenty-first century.

Mr. ALEXANDER. Mr. President, today I join with Senators DOMENICI, BINGAMAN, MIKULSKI, and more than 25 other senators, in introducing the Protecting America's Competitive Edge (PACE) Act—a package of three bills to enhance American brainpower.

America is now playing in a tougher league. China and India are competing for our jobs. The best way to keep those jobs in America is to maintain our brainpower edge in science and technology.

The story of this bill really began last May, when Senator JEFF BINGAMAN and I, with the encouragement of Senate Energy Committee Chairman PETE DOMENICI, asked the National Academies this question: "What are the ten top actions, in priority order, that Federal policy makers could take over the next decade to help the United States keep our advantage in science and technology?"

To answer the question, the Academies assembled a distinguished panel of business, government, and university leaders headed by Norm Augustine, former CEO of Lockheed Martin, that included three Nobel Prize winners. They took our question seriously. We asked them for 10 recommendations; they gave us 20 when they released their report in October.

In October, the Energy Committee held a hearing to learn more about those recommendations from Mr. Augustine and the Academies. It was the first opportunity Congress had to hear the Academies' answer to our question.

Following those hearings, Chairman DOMENICI, Senator BINGAMAN, and I convened a series of "homework sessions" with members of the Academies, outside experts, and some officials in the Administration. These off-the-record sessions allowed Senators and Administration officials to grapple with the Academies' recommendations and consider how best to implement them.

Last November, Norm Augustine led a dinner discussion hosted by Senator FRIST with about 30 Senators on the report's recommendations right here in the Capitol. And then, in December, Senators DOMENICI, BINGAMAN, and I met with President Bush where he graciously listened to our ideas. The President was very engaged and knew these issues well.

Now, as the Senate begins its session for the year, we are introducing this legislation to implement the recommendations of the Augustine Report. Next week, when the President addresses the nation in his State of the Union address, it is my hope that he will make this a focus of the address and his remaining three years in office.

This bill is all about brainpower and the relationship of brainpower to good American jobs.

The United States produces more than 25 percent of all the wealth in the world (in terms of GDP)—but has only 5 percent of the world's population. We are a fortunate country indeed. The Academies explain this phenomenon in this way: ". . . as much as 85 percent of measured growth in U.S. income per capita is due to technological change."

This technological change is the result, in the report's words, of an outpouring "of well trained people and the steady stream of scientific and technological innovations they produce."

Most of this good fortune comes from the American advantage in brainpower: an educated workforce, and our technological innovation. The United States has the finest system of colleges and universities on earth, attracting more than 500,000 of the brightest foreign students. No country has national research laboratories to match ours. Americans have won the most Nobel prizes in science and registered the most patents. We have invented electricity, the computer chip, and the internet.

As one scientist noted, we don't have science and technology because we're rich. We're rich because we have science and technology.

Yet we worry that America may be losing its brainpower advantage. American experts who travel to China, India, Finland, Singapore, Ireland, and elsewhere come home saying, "Watch out."

The Augustine Report found that we are right to be worried: Only 6 percent of American college-age students earn degrees in the natural sciences or engineering, trailing students in China and India and a dozen other countries, many of which have doubled or tripled their degree output over the last decade. For the cost of one chemist or engineer in the United States, a company can hire five chemists in China or 11 engineers in India. China is spending billions to recruit the best Chinese scientists from American universities to return home to build up Chinese universities.

The report also found signs that we are not keeping up: U.S. 12th graders performed below the average of 21 countries on tests of general knowledge in math. In 2003 only three American companies ranked among the top 10 recipients of new U.S. patents. Of 120 new chemical plants being built around the world with price tags of $1 billion or more, one is in the United States and 50 are in China.

To maintain America's global leadership in research and development, the Augustine Report made twenty wide-ranging and urgent recommendations for U.S. schools, universities, research, and economic policy that include: Recruit 10,000 new science and math teachers with 4-year scholarships and train 250,000 current teachers in summer institutes. Create a new coordinating office to manage a centralized research infrastructure fund of at least $500 million per year. Provide 30,000 scholarships and graduate fellowships for scientists. Increase federal funding for basic research in the physical sciences by 10 percent a year for 7 years. Give American companies a bigger research and development tax credit so they will keep their good jobs here instead of move them offshore. Create a new agency in the Department of Energy modeled on the Defense Advanced Research Projects Agency to conduct breakthrough R&D, that will lessen our dependence on foreign sources of energy.

Some may wince at the price tag—$9 billion in the first year, and then it edges upward over the full seven year period. I believe the cost is low, relative to the benefits. Maintaining America's brainpower advantage will not come on the cheap.

This year, one third of State and local budgets go to fund education. More than 50 percent of American students have a Federal grant or loan to help pay for college. The Federal Government spends nearly $30 billion per year on research at universities and another $34 billion to fund 36 national research laboratories.

Just last year, Congress spent $85 billion to fight the war in Iraq, $71 billion for hurricane recovery, and $352 billion to finance the national debt. If we fail to invest the funds necessary to keep our brainpower advantage, we'll not have an economy capable of producing enough money to pay the bills for war, social security, hurricanes, Medicaid, and debt.

The legislation we are introducing today has strong bipartisan support. It is our hope President Bush will make it a focus of his State of the Union Address and of his remaining 3 years in office—and that future candidates for president will make it the center of their campaigns. Aside from our national security, there is no greater challenge than maintaining our brainpower advantage so we can keep our good paying jobs and strengthen our economy. That is the surest way to keep America on top.

I hope my colleagues will join us in this critical effort to protect America's competitive edge.

Ms. MIKULSKI. Mr. President, I'd like to thank my colleagues: Senator PETE DOMENICI, Senator JEFF BINGAMAN and Senator LAMAR ALEXANDER for their effort in moving this issue. I am so proud of our great bipartisan team. I can't say enough about the appreciation that many of us in the Senate feel about their initiation of the report, "Rising Above the Gathering Storm," which is the basis for our legislation, the PACE Act.

America must remain an innovation economy. This legislation creates the building blocks that we need for a smarter America. Our Nation is in an amazing race—the race for discovery and new knowledge. The race to remain competitive and to foster an innovation society, to create new ideas that lead to new breakthroughs, new products and new jobs. The innovations that have the power to save lives, create prosperity and protect the homeland. The innovation to make America safer, stronger and smarter.

Our legislation is called "Protecting America's Competitive Edge" Act or PACE. It is divided into 3 sections: Energy, Education and Tax. It calls for: getting new ideas by doubling Federal funding for basic research in the Department of Energy with special attention going to physical sciences, engineering, math and information sciences; getting the best minds with scholarships for future math and science teachers including $20,000 scholarships from the National Science Foundation (NSF) for undergraduate students majoring in math or science along with teacher certification; visa reform for foreign science and math students so the best and brightest can stay here, creating a new student visa for doctoral students studying math and science so they can stay in the U.S. longer; and an extension of the R & D tax credit, doubling the current R & D credit, from 20 percent to 40 percent, expanding the credit to cover all research—since current law only allows credit for energy research.

Why is this so important? Because a country that doesn't innovate, stagnates. The whole foundation of American culture and economy is based on the concept of discovery and innovation. That's part of our culture. When you look at what has made America a superpower, it's our innovation and our technology. We have to look at where the new ideas are going to come from that are going to generate the new products for the 21st century.

I want America to win the Nobel prizes and the markets. This legislation will help to set the framework. It will make sure that we're helping our young people with scholarships and new visas, and helping our science teachers and those working in science with funding and research opportunities. We also are forming partnerships with the private sector, and building an innovation-friendly government.

This is so important to me and I'm going to use my committee responsibility and my work and expertise in the United States Senate to make it happen. Whether it's my position on the HELP Committee, working to pass the education piece, or in my seat as an appropriator and Vice Chair on the subcommittee that funds Science. I will work to make sure that there is money in the federal checkbook to support these important proposals.

By Mr. LUGAR:

S. 2200. A bill to establish a United States-Poland parliamentary youth exchange program, and for other purposes; to the Committee on Foreign Relations.

Mr. LUGAR. Mr. President, I rise today to offer legislation urging the Administration to develop a United States—Poland Parliamentary Youth Exchange Program.

The purpose of this exchange program is to demonstrate to the youth of the United States and Poland the benefits of friendly cooperation between the U.S. and Poland based on common political and cultural values. I have long been an active supporter of the Congress-Bundestag Exchange program and am hopeful that this new endeavor will make similarly important lasting contributions to the U.S.-Polish relationship.

As a Rhodes Scholar, I had the opportunity to discover international education at Pembroke College—my first trip outside of the United States. The parameters of my imagination expanded enormously during this time, as I gained a sense of how large the world was, how many talented people there were, and how many opportunities one could embrace. Student exchange programs do more than benefit individual scholars and advance human knowledge. Such programs expand ties between nations, improve international commerce, encourage cooperative solutions to global problems, prevent war, and give participants a chance to develop a sense of global service and responsibility.

Funding a great foreign exchange program is a sign of both national pride and national humility. Implicit in such a program is the view that people from other nations view one's country and educational system as a beacon of knowledge—as a place where international scholars would want to study and live. But it is also an admission that a nation does not have all the answers—that our national understanding of the world is incomplete. It is an admission that we are just a part of a much larger world that has intellectual, scientific, and moral wisdom that we need to learn.

The United States and Poland have enjoyed close bilateral relations since the end of the Cold War. Most recently, Poland has been a strong supporter of efforts led by the United States to combat global terrorism, and has contributed troops to and led coalitions in both Afghanistan and Iraq. Poland also cooperates closely with the United States on such issues as democratization, human rights, regional cooperation in Eastern Europe, and reform of the United Nations. As a member of the North Atlantic Treaty Organization, NATO, and the European Union, EU, Poland has demonstrated its commitment to democratic values and is a role model in its region.

I believe that it is important to invest in the youth of the United States and Poland in order to strengthen long-lasting ties between both societies. After receiving for many years international and U.S. financial assistance, Poland is now determined to invest its own resources toward funding a U.S.-Poland exchange program. To this end, the Polish Foreign Minister unambiguously stated that Poland welcomed the opportunity to be an equal partner in funding important efforts.

I ask my colleagues to support this legislation.

By Mr. OBAMA (for himself, Mr. INOUYE, Mrs. MURRAY, and Mr. LAUTENBERG):

S. 2201. A bill to amend title 49, United States Code, to modify the mediation and implementation requirements of section 40122 regarding changes in the Federal Aviation Administration personnel management system, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. OBAMA. Mr. President, in the hours after the terrorist attacks on 9/11, America's air traffic controllers rose to meet the tremendous challenges of that day.

After halting all takeoffs, controllers began clearing the skies over America. Under unprecedented conditions, controllers guided 4,500 planes carrying 350,000 passengers to safe landings. They also rerouted more than 1,100 of the 4,500 flights within the first 15 minutes of the landing order—about one every second—and cleared the skies over America within 2½ hours.

That kind of performance was wholly dependent on the caliber and training of the world's finest air traffic controllers. And as I come to the floor of the Senate today, there are hundreds of pilots flying commercial airplanes under an air traffic controller's guidance. Each and every day, the lives of thousands of people are in the hands of each and every air traffic controller.

Because what they do is vital to our safety, I became very concerned by a letter I received from Illinois air traffic controller Michael Hannigan last December. He wrote that "the air traffic controllers, who work aircraft everyday, often six days a week, are not being allowed to negotiate in good faith with the Federal Aviation Administration." And he asked for me to help "the hard working Federal employees that want the protections as a labor union that they should have a right to bargain for."

What was clear in Michael's plea was the sense that he and his colleagues felt that they were being treated unfairly. I looked into it and came to the conclusion that if we did not restore a fair negotiation procedure, it would threaten agency morale and effectiveness.

The problem is this: lower courts have determined that the FAA Administrator currently has the extraordinary authority to impose wages and working conditions on her workers without arbitration. In order to do that, she merely has to declare an impasse in negotiations and if Congress does not set everything else aside and stop her from imposing her terms and conditions within 60 days, the Administrator can go ahead and act unilaterally. That authority denies air traffic controllers and all other FAA employees the opportunity to engage in and conclude negotiations in good faith.

To diffuse the management-labor tension at the agency and bring the FAA together, I am introducing "The FAA Fair Labor Management Dispute Resolution Act of 2006". I am also proud to say that Senator INOUYE, the co-chair of the Senate Commerce, Science and Transportation Committees; Senator MURRAY, the ranking member on the Transportation Appropriations Subcommittee; and Senator LAUTENBERG, a member on the Commerce Committee Subcommittee on Transportation, are joining me in this effort.

The FAA Fair Labor Management Dispute Resolution Act replaces the FAA Administrator's arbitrary authority with neutral binding arbitration in the case of an impasse in labor-management negotiations. In arbitration, both labor and management would have to make concessions, and both would be able to accept the outcome as fair.

We need this legislation now because the FAA Administrator is engaged in contract negotiations with the agency's two largest groups of workers—the National Air Traffic Controllers Association (NATCA) and Professional Airways Systems Specialists (PASS). In both cases, negotiations have been contentious. And the FAA's workers fear that the Administrator is not intent on reaching fair, voluntary agreements given her previous negotiations. Indeed, the Administrator has already used her authority to impose wages and working conditions without arbitration or agreement on NATCA's 11 non-air traffic controller bargaining units, and she stands at impasse with four of PASS's five bargaining units.

The Administrator has made three arguments in defense of her actions: 1. the FAA needs the authority "to operate more like a business"; 2. air traffic controller pay is "inappropriate given the financial circumstances of the airline industry the system serves"; and 3. changing the law to send an impasse to binding arbitration would essentially "change the rules of the game during halftime."

But the agency's employees point out that the agency is not a business driven to cut costs in pursuit of profit, it is a public agency with no margin for error. They also argue that the nation's air safety should not depend on how well or poorly the airlines are doing financially. And, if the rules are unfair, the employees argue they should be changed before negotiations conclude.

Regardless of the merits of each side's positions, if the Administrator is able to impose her chosen conditions on air traffic controllers, it will have two negative effects on the agency: 1. it will lead to an erosion of talent at the agency with vital, retirement-eligible air traffic controllers interpreting such agency action as an invitation to retire; and 2. it will make recruiting needed replacement employees that much more difficult.

I recognize that negotiations between the Administrator and the air traffic controllers are difficult. However, it is in the best interest of the agency and public safety to have management and labor cooperate in contract negotiations and if that is impossible, then no one side should be able to impose its views on the other. Only neutral arbitration can produce a fair outcome that the entire organization can accept.

More than 2.900 air traffic controllers will be eligible to retire this year, and 7.100 controllers could leave the agency within the next nine years. Meeting this management challenge will require cooperation between labor and management. Moreover, rising tension between the FAA Administrator and FAA employees threatens this vital agency's effectiveness at every level and, as a result, threatens the safety of passengers.

Again, the legislation we are introducing today would encourage both sides in all FAA labor-management negotiations to reach a voluntary agreement and in the case of impasse, it would allow the FAA to move forward after binding arbitration, bring its workers together, and focus on other challenges because no one side will have had arbitrary authority.

The FAA's employees are dedicated, hard working public servants responsible for helping ensure the safety of the flying public. It is stressful, important work. We must value that work and treat them fairly.

By Mr. LEAHY (for himself, Mr. KERRY, and Mr. FEINGOLD):

S. 2202. A bill to provide for ethics reform of the Federal judiciary and to instill greater public confidence in the Federal courts; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, I am pleased to introduce the Fair and Independent Judiciary Act of 2006 because ensuring a fair and independent judiciary is critical to the system of checks and balances established in our Constitution. This legislation seeks to preserve the public confidence that our Federal courts enjoy, and that our courts need to adequately fulfill their constitutional role in our system. Revelations that judges and justices are receiving gifts from parties that may appear before them or have a financial interest in a litigating party undermine the public's trust.

For the past 4 years, editorial boards across the country have called our attention to the appearance of impropriety that occurs when Federal judges accept gifts and attend lavish private seminars sponsored by well-heeled corporations. I have proposed similar legislation in previous Congresses to address the problem of private judicial seminars. Last year, despite my ongoing concerns about reports of judicial activities that undermine public confidence, I withheld these provisions from a judicial pay raise bill. I had hoped that the Federal judiciary would engage in self-regulation on these timely and substantive ethical issues. Unfortunately, recent press reports show continued appearances of impropriety, even by a member of the Supreme Court. This legislation does not prohibit judges and justices from attending educational seminars. Instead, it simply requires them to learn and disclose the private sponsors of the seminars and make that information public. Then, they would be allowed to attend the seminars, but at the court's expense, instead of having special interests pick up their tabs.

Another issue that threatens to undermine confidence in our judicial impartiality was highlighted at the recent hearings for Judge Alito. Some judges fail to monitor their financial holdings so that they can properly recuse themselves from cases where there may be a conflict of interest. One way to be sure that the recusal laws Congress enacted are being followed by all Federal judges is to allow more transparency of a judge's financial conflicts. This legislation contains a provision to improve the public's access to the recusal lists that all judges keep within their chambers or clerks' offices.

Because the public's trust is at stake, it is important to require that private seminar providers fully disclose the litigation interests of their sponsors and to improve access to judicial conflicts. The American people deserve a Federal judiciary that is beyond reproach—in appearance, and otherwise. The Fair and Independent Judiciary Act seeks to ensure continued public confidence in our Federal courts. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows.

S. 2202

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Judiciary Ethics Reform Act of 2006".

SEC. 2. JUDICIAL EDUCATION FUND.

(a) ESTABLISHMENT.—Chapter 42 of title 28, United States Code, is amended by adding at the end the following:

"§ 630. Judicial Education Fund

"(a) In this section, the term—

"(1) 'institution of higher education' has the meaning given under section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a));

"(2) 'private judicial seminar'—

"(A) means a seminar, symposia, panel discussion, course, or a similar event that provides continuing legal education to judges; and

"(B) does not include—

"(i) seminars that last 1 day or less and are conducted by, and on the campus of, an institute of higher education;

"(ii) seminars that last 1 day or less and are conducted by national bar associations or State or local bar associations for the benefit of the bar association membership; or

"(iii) seminars of any length conducted by, and on the campus of an institute of higher education or by national bar associations or State or local bar associations, where a judge is a presenter and at which judges constitute less than 25 percent of the participants;

"(3) 'national bar association' means a national organization that is open to general membership to all members of the bar; and

"(4) 'State or local bar association' means a State or local organization that is open to general membership to all members of the bar in the specified geographic region.

"(b) There is established within the United States Treasury a fund to be known as the 'Judicial Education Fund' (in this section referred to as the 'Fund').

"(c) Amounts in the Fund may be made available for the payment of necessary expenses, including reasonable expenditures for transportation, food, lodging, private judicial seminar fees and materials, incurred by a judge or justice in attending a private judicial seminar approved by the Board of the Federal Judicial Center. Necessary expenses shall not include expenditures for recreational activities or entertainment other than that provided to all attendees as an integral part of the private judicial seminar. Any payment from the Fund shall be approved by the Board.

"(d) The Board may approve a private judicial seminar after submission of information by the sponsor of that private judicial seminar that includes—

"(1) the content of the private judicial seminar (including a list of presenters, topics, and course materials); and

"(2) the litigation activities of the sponsor and the presenters at the private judicial seminar (including the litigation activities of the employer of each presenter) on the topic related to those addressed at the private judicial seminar.

"(e) If the Board approves a private judicial seminar, the Board shall make the information submitted under subsection (d) relating to the private judicial seminar available to judges and the public by posting the information on the Internet.

"(f) The Judicial Conference shall promulgate guidelines to ensure that the Board only approves private judicial seminars that are conducted in a manner so as to maintain the public's confidence in an unbiased and fair-minded judiciary.

"(g) There are authorized to be appropriated for deposit in the Fund $2,000,000 for each of fiscal years 2006, 2007, and 2008, to remain available until expended.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 42 of title 28, United States Code, is amended by adding at the end the following:

"630. Judicial Education Fund".

SEC. 3. PRIVATE JUDICIAL SEMINAR GIFTS PROHIBITED.

(a) DEFINITIONS.—In this section, the term—

(1) "institution of higher education" has the meaning given under section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a));

(2) "private judicial seminar"—

(A) means a seminar, symposia, panel discussion, course, or a similar event that provides continuing legal education to judges; and

(B) does not include—

(i) seminars that last 1 day or less and are conducted by, and on the campus of, an institute of higher education;

(ii) seminars that last 1 day or less and are conducted by national bar associations or State or local bar associations for the benefit of the bar association membership; or

(iii) seminars of any length conducted by, and on the campus of an institute of higher education or by national bar associations or State or local bar associations, where a judge is a presenter and at which judges constitute less than 25 percent of the participants.

(3) "national bar association" means a national organization that is open to general membership to all members of the bar; and

(4) "State or local bar association" means a State or local organization that is open to general membership to all members of the bar in the specified geographic region.

(b) IN GENERAL.—Not later than 240 days after the date of enactment of this Act, the Judicial Conference of the United States shall promulgate regulations to apply section 7353(a) of title 5, United States Code, to prohibit the solicitation or acceptance of anything of value in connection with a private judicial seminar.

(c) EXCEPTION.—The prohibition under the regulations promulgated under subsection (b) shall not apply if—

(1) the judge participates in a private judicial seminar as a speaker, panel participant, or otherwise presents information;

(2) Federal judges are not the primary audience at the private judicial seminar; and

(3) the thing of value accepted is—

(A) reimbursement from the private judicial seminar sponsor of reasonable transportation, food, or lodging expenses on any day on which the judge speaks, participates, or presents information, as applicable;

(B) attendance at the private judicial seminar on any day on which the judge speaks, participates, or presents information, as applicable; or

(C) anything excluded from the definition of a gift under regulations of the Judicial Conference of the United States under sections 7351 and 7353 of title 5, United States Code, as in effect on the date of enactment of this Act.

SEC. 4. RECUSAL LISTS.

Section 455 of title 28, United States Code, is amended by adding at the end the following:

"(g)(1) Each justice, judge, and magistrate of the United States shall maintain a list of all financial interests that would require disqualification under subsection (b)(4).

"(2) Each list maintained under paragraph (1) shall be made available to the public at the office of the clerk for the court at which a justice, judge, or magistrate is assigned."

By Mrs. CLINTON (for herself and Mr. NELSON of Florida):

S. 2203. A bill to amend title XVIII of the Social Security Act to eliminate cost-sharing under part D of such title for certain full-benefit dual eligible individuals; to the Committee on Finance.

Mrs. CLINTON. Mr. President, today I rise to introduce legislation to address yet another serious flaw in the Medicare prescription drug benefit that has come to light.

On January 1, the new Medicare prescription drug benefit went into effect. Overnight, millions of seniors and disabled Americans found themselves thrown into a confusing and complex transition.

Some of our poorest and most vulnerable beneficiaries, those in assisted living facilities, have found themselves suddenly forced to produce copayments to get the medications they need.

These are beneficiaries with serious mental illnesses who have been stabilized on medications, and people with developmental and physical disabilities who have little or no incomes and no way to afford the medicines that they depend on.

The bill I am introducing will fix this problem by waiving copayments for this group of vulnerable beneficiaries and reimbursing them for any copayments they have already been forced to shoulder.

This is just one of so many problems we have seen plaguing this program. The first 26 days of this program have been a disaster for far too many seniors and disabled across New York and across the country.

We have heard reports from our poorest seniors, who were being charged hundreds of dollars for drugs. We have heard reports of disabled individuals asked to provide doctor's notes certifying a need for their medications and of beneficiaries leaving pharmacies without the drugs they depend on to keep them healthy.

As a result of problems with computer systems, phone lines, and the inability of Medicare and private plans to provide correct information to those on the front lines of care, millions of people around the country have faced problems receiving this new benefit.

I am working on all fronts to help Medicare beneficiaries weather this transition. Before this program went into effect, it was clear that those dually eligible for Medicare and Medicaid, our poorest and most vulnerable seniors and disabled, would have a particular challenge navigating this transition. I was very concerned that many these Medicare recipients would walk up to their pharmacy counters on January 1 and be unable to get their prescriptions filled.

In anticipation of these problems, I introduced legislation in December to keep these Medicare recipients from falling through the cracks by stepping up outreach and education to pharmacists and providing reimbursement to pharmacists who are charged a transaction fee to access beneficiary information through Medicare. I also cosponsored legislation to give Medicare beneficiaries more time to enroll in the new program.

And I issued a resource guide, now available in both English and Spanish, to help New Yorkers navigate this new program. To date more than 75,000 copies of the guide have been distributed.

Since the new program went into effect, I have repeatedly urged the Bush administration to address the problems plaguing this program. And last week, I introduced comprehensive legislation along with several of my Senate colleagues, that includes my bill to help pharmacists help their customers, and makes the other fixes I have been calling for: provisions to improve outreach and education, fix problems with drug plans transition programs, protect the benefits of seniors who also have coverage from a retiree drug plan, and make sure that States and low income beneficiaries are reimbursed for excessive costs they have been forced to shoulder by the inept implementation of the new benefit.

We owe it to our seniors and disabled Americans to get this right. And I will keep fighting to ensure that we do.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 354—HONORING THE VALUABLE CONTRIBUTIONS OF CATHOLIC SCHOOLS IN THE UNITED STATES

Mr. VITTER submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 354

Whereas Catholic schools in the United States have received international acclaim for academic excellence while providing students with lessons that extend far beyond the classroom;

Whereas Catholic schools present a broad curriculum that emphasizes the lifelong development of moral, intellectual, physical, and social values in the young people of the United States;

Whereas Catholic schools in the United States today educate 2,420,590 students and maintain a student-to-teacher ratio of 15 to 1;

Whereas the faculty members of Catholic schools teach a highly diverse body of students;

Whereas more than 27.1 percent of school children enrolled in Catholic schools are minorities, and more than 13.6 percent are non-Catholics;

Whereas Catholic schools saved the United States $19,000,000,000 in educational funding during fiscal year 2005;

Whereas Catholic schools produce students strongly dedicated to their faith, values, families, and communities by providing an intellectually stimulating environment rich in spiritual, character, and moral development; and

Whereas in the 1972 pastoral message concerning Catholic education, the National Conference of Catholic Bishops stated, "Education is one of the most important ways by which the Church fulfills its commitment to the dignity of the person and building of community. Community is central to education ministry, both as a necessary condition and an ardently desired goal. The educational efforts of the Church, therefore, must be directed to forming persons-in-community; for the education of the individual Christian is important not only to his solitary destiny, but also the destinies of the many communities in which he lives.": Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals of Catholic Schools Week, an event cosponsored by the National Catholic Educational Association and the United States Conference of Catholic Bishops that recognizes the vital contributions of thousands of Catholic elementary and secondary schools in the United States; and

(2) congratulates Catholic schools, students, parents, and teachers across the

United States for their ongoing contributions to education, and for the vital role they play in promoting and ensuring a brighter, stronger future for this Nation.

SENATE RESOLUTION 355—HONORING THE SERVICE OF THE NATIONAL GUARD AND REQUESTING CONSULTATION BY THE DEPARTMENT OF DEFENSE WITH CONGRESS AND THE CHIEF EXECUTIVE OFFICERS OF THE STATES PRIOR TO OFFERING PROPOSALS TO CHANGE THE NATIONAL GUARD FORCE STRUCTURE

Mr. NELSON of Nebraska (for himself, Mr. GRAHAM, Mr. ALLEN, Mr. TALENT, Mrs. DOLE, Mr. DEWINE, Ms. MURKOWSKI, Ms. SNOWE, Mr. THUNE, Mr. ISAKSON, Ms. LANDRIEU, Mr. NELSON of Florida, Mr. HARKIN, Mr. DORGAN, Mr. LAUTENBERG, Mr. BINGAMAN, Mr. AKAKA, Mr. BAUCUS, Mrs. CLINTON, Mr. KOHL, Ms. MIKULSKI, Mr. BAYH, Ms. CANTWELL, Mr. PRYOR, Mr. SALAZAR, Mr. LIEBERMAN, Mr. BIDEN, Mr. CONRAD, Mr. KENNEDY, Mr. FEINGOLD, Mr. MENENDEZ, Mr. JOHNSON, and Mr. DURBIN) submitted the following resolution; which was referred to the Committees on Armed Services:

S. RES. 355

Whereas the Army National Guard and Air National Guard of the United States, representing all 50 States, Guam, Puerto Rico, the United States Virgin Islands, and the District of Columbia, have played an indispensable role in the defense of our country;

Whereas during one phase of the Global War on Terrorism, Army National Guard soldiers comprised nearly half of the United States combat forces in Iraq;

Whereas National Guard personnel are currently deployed in Afghanistan, Bosnia, Kosovo, and more than 40 other countries around the world;

Whereas 90 percent of the troops on the ground in Louisiana and Mississippi responding to Hurricane Katrina were members of the National Guard;

Whereas while performing these critical missions, the National Guard continues to experience significant equipment shortages, especially vehicle and radio shortages;

Whereas members of the National Guard are not "weekend warriors", but citizen-soldiers and airmen who serve full-time when their country needs them to do so;

Whereas the National Guard is a resource shared by the chief executive officers of the States and the President;

Whereas the National Guard is America's militia;

Whereas deployment to fight terrorism on two fronts overseas, while protecting our homeland, has stretched the National Guard thin;

Whereas the future of the National Guard could be determined by the Quadrennial Defense Review (QDR) currently underway;

Whereas the Army and Air Force could recommend changes in the force structure of the National Guard;

Whereas reductions in force structure could impact numerous Army National Guard armories and Air National Guard wings;

Whereas reductions in force structure combined with the lack of adequate equipment for the National Guard threaten its capacity to discharge its missions and its ability to respond in emergencies;

Whereas homeland defense is the most important mission of the Department of Defense; and

Whereas the National Guard is the force best suited to defend the homeland and therefore the element from which resources should not be cut: Now, therefore, be it

Resolved, That the Senate—

(1) supports the vital Federal and State missions of the Army National Guard of the United States and the Air National Guard of the United States, including support of ongoing missions in Iraq and Afghanistan and homeland defense and disaster assistance and relief efforts;

(2) recommends that the Department of Defense propose fully funding the equipment needs of the National Guard;

(3) believes that the Department of Defense should, as soon as possible, consult with the chief executive officers of the States, as well as Congress, on any proposed changes to the National Guard force structure;

(4) requests that any plan of the Department of Defense regarding the National Guard force structure take into account the role of the National Guard role in homeland defense and other State missions as defined by the chief executive officers of the States;

(5) requests that the Department of Defense prepare budget projections that detail cost savings from any changes in National Guard force structure, as well as projected costs in the event large personnel increases are necessary to respond to a national emergency; and

(6) requests that the Department of Defense assure Congress and the chief executive officers of the States that potential changes in the National Guard force structure will not impact the safety and security of the United States people.

Mr. NELSON of Nebraska. Mr. President, I rise today to speak on behalf of a resolution I am submitting with Senator GRAHAM and 31 other senators, many of whom are members of the National Guard Caucus like me and Senator GRAHAM. I am also very proud to note that the National Guard Association of the United States has endorsed our resolution.

This resolution honors the service of the National Guard and requests consultation by the Department of Defense with the Congress and our Nation's Governors prior to offering proposals that could change the force structure of the Guard. In my opinion, it could not be timelier or more important.

We all know the tremendous sacrifices the National Guard is making around the globe today. The Army National Guard and the Air National Guard represent 50 states, Guam, Puerto Rico, the U.S. Virgin Islands and the District of Columbia and they are currently hard at work in Iraq, Afghanistan, Bosnia, Kosovo and over 40 other countries around the world.

Long gone is the phrase "weekend warrior". The Guard is made up of citizen-soldiers and airmen who serve full-time when their country calls on them. Since September 11, they have responded and represented America's militia with great honor.

Currently, the Nebraska National Guard has 364 personnel in Iraq. Their units are the 1-167th Cavalry which provides combat support to the Marines, the 67 Area Support Group which is responsible for command and control and the 189th Truck Company which handles convoy operations. In Afghanistan, there are 65 National Guard members of the 2nd Battalion at the Regional Training Institute helping to train the Afghan National Army. Their Adjutant General, Major General Roger L. Lempke, leads the Nebraska National Guard with great pride and distinction. He is a credit to the National Guard, Nebraska and the Nation he represents.

The Guard is unique in that it's a shared resource between the Governors and the President. The National Guard is the first to respond to domestic emergencies which range from natural disasters to homeland defense. Ninety percent of the troops on the ground in Louisiana and Mississippi responding to Hurricane Katrina were members of the National Guard.

Most Nebraskans will recall the blizzard that roared out of Colorado in October 1997 and slammed into Nebraska causing extensive damage that would take weeks to clean up. It was fall and most trees still had their leaves. Branches snapped under the weight of more than a foot of heavy, wet snow and ice. The resulting power outages left 125,000 Nebraskans without electricity for days and even weeks.

As governor of Nebraska then, it was the responsibility of my office to declare a state of emergency which activated the National Guard to help in clean up and rescue operations. The Guard responded with troops and equipment that made the effort proceed smoothly and efficiently.

The Guard handles State missions like this every year and every season while experiencing critical equipment shortages, especially vehicle and radio shortages. Congress added $1 billion dollars for new equipment for the Guard last December, but that's only a small portion of what is needed to fully fund the equipment needs of the Guard. And deployments, especially to Iraq and Afghanistan, have stretched the Guard thin.

It's in this environment that the Department of Defense will release the Quadrennial Defense Review next month. The QDR review could impact the future of the Guard. The Army and the Air Force may recommend changes in the force structure which will impact Army National Guard armories and Air National Guard wings throughout the country.

Reductions in the force structure combined with a lack of adequate equipment for the National Guard threaten its missions and ability to respond in an emergency. Homeland defense is the most important mission of the Department of Defense and the National Guard is the force best suited to defend the homeland. It's the very last place resources should be cut from.

Unfortunately, media reports indicate that to pay for modernization programs, the Department of Defense will propose changing the Guard's force structure. In an effort to begin a dialogue with DOD we are offering this resolution which honors the National Guard and recommends that DOD: Fully funding the equipment needs of the National Guard; requests that the Department of Defense should, as soon as possible, consult with Governors, as well as Congress, on any proposed changes to the National Guard force structure; requests that any plan of the Department of Defense regarding the National Guard force structure take into account the role of the National Guard in homeland defense and other state mission defined by Governors; requests the Department of Defense provide budget projections that detail cost savings from any changes in National Guard force structure, as well as projected costs in the event large personnel increases are necessary to respond to a national emergency; and requests the Department of Defense assure Congress, and Governors, that potential force structure changes will not impact the safety and security of the American people.

Every debate about the defense budget should be held in the context of long-term national security goals. I look forward to engaging with the Department on their QDR proposals for the future of America's militia, the National Guard, and I urge adoption of this resolution by the full Senate.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources to consider the President's Proposed Budget for Fiscal Year 2007 for the Department of Energy.

The hearing will be held on Thursday, February 9 at 10 a.m. in Room SD–366 of the Dirksen Senate Office Building.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Elizabeth Abrams.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will be held on Thursday, February 9, 2006 at 2:30 p.m. in Room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to discuss the Energy Information Administration's 2006 Annual Energy Outlook on trends and issues affecting the United States' energy market.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

For further information, please contact Lisa Epifani or Shannon Ewan.

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. CRAIG. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Public Lands and Forests.

The hearing will be held on Wednesday, February 15, 2006, at 2:30 p.m. in Room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to review the progress made on the development of interim and long-term plans for use of fire retardant aircraft in Federal wildfire suppression operations.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony, to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

For further information, please contact Frank Gladics or Kristina Rolph of the Committee staff.

COMMITTEE ON INDIAN AFFAIRS

Mr. McCAIN. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Wednesday, February 1, 2006, at 9:30 a.m. in Room 485 of the Russell Senate Office Building to conduct an Oversight Hearing on Off-Reservation Gaming: The Process for Considering Gaming Applications lands eligible for gaming pursuant to the Indian Gaming Regulatory Act.

Those wishing additional information may contact the Indian Affairs Committee.

AUTHORITIES FOR COMMITTEES TO MEET

SELECT COMMITTEE ON INTELLIGENCE

Mr. TALENT [illegible] President, I ask unanimou[illegible]sent that the Select Comm[illegible] on Intelligence be authorized to meet during the session of the Senate on January 26, 2005 at 2:30 p.m. to hold a closed briefing.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. HARKIN. Mr. President, I ask unanimous consent that Yoni Cohen of my staff be granted floor privileges for the duration of today's session.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that on Tuesday, January 31, at a time to be determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to executive session and the consideration en bloc of calendar Nos. 440 and 441, the nomination of Ben Bernanke to be a member and Chairman of the Federal Reserve; further, that there be 30 minutes under the control of Senator BUNNING and 60 minutes equally divided between the chairman and ranking member of the Banking Committee.

I further ask unanimous consent that following the use or yielding back of time, the Senate proceed to consecutive votes on the confirmation of calendar Nos. 440 and 411, and that following the votes the President be immediately notified of the Senate's action, and then the Senate resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

ALITO NOMINATION

Mr. FRIST. Mr. President, earlier today I filed a cloture motion on Judge Alito's nomination in order to bring to close in the not too distant future this outstanding nominee's confirmation process.

The cloture vote is scheduled, as my colleagues know, for 4:30 in the afternoon on Monday. If cloture is invoked—which I believe it will be—we will have a final up-or-down vote on confirmation on Tuesday at 11 o'clock in the morning.

While I believe the Senate has a responsibility to have a thorough debate, a robust debate on every judicial nomination, I am disappointed and it is time to end the delay tactics which we have seen play out over the last several weeks, delay tactics my colleagues on the other side of the aisle are using to obstruct this nominee. Thus, that is why I filed cloture to say enough is enough.

It has been 87 days since the President announced Judge Alito's nomination. I should say, by the way, that it took an average of 63 days from announcement to confirmation of both of President Clinton's nominees.

When Judge Alito was nominated on October 31, or shortly after that—maybe even that day—Chairman SPECTER and I worked in good faith with Senator REID and Senator LEAHY for a timeline on confirmation projecting out where we would be. We agreed to give Judge Alito a fair up-or-down vote after plenty of time for hearings and preparations for the hearings on January 20. We agreed to consider the nomination—it wasn't our preference—after the holidays. We also agreed—again it wasn't our preference—to the Democratic schedules not to begin hearings the week we preferred, January 2.

All of these accommodations were made with the expectation that Democrats on the Judiciary Committee, once they had plenty of time for their hearings themselves, would not delay the vote coming out of the committee, which would set back the schedule yet a week later, which indeed is what happened. Judge Alito was responsive. He was forthcoming. He answered more than 650 questions. Again, when people hear these numbers, what is the perspective? That is more than double the number of questions that Justice Ginsburg or Justice Breyer answered during their entire confirmation hearings.

But still, the Democrats delayed Judge Alito's vote coming out of committee. Yes, it is within the rules. All of this is within the rules. But we have seen this steady delay, postponement, obstruction. Luckily, the process continues forward. That is where we are today.

We are now scheduled to have a vote on January 31. That is the agreement the Democrat leader and I agreed to in representing our caucuses earlier today. That means we will have had a total of 5 days of floor activity. It is 8 o'clock tonight. We have had speech and debate over the course of the day, and we will have debate tomorrow. As everyone is well aware, we are given plenty of time in the Senate. We could stay here later tonight, tomorrow, tomorrow night. I said we will plow through Saturday until we get this done. It will end up being 5 days in terms of floor action.

Just to put that in perspective, for all of the sitting members on the Supreme Court today, only one other had 5 days of floor debate on a nominee. Again, we are pushing the limits once again. That is why we came forward to file cloture, to bring closure to this process.

Throughout the entire process I have been very consistent: These judicial nominees deserve, in terms of just dignity, but also it is our responsibility, they deserve a fair up-or-down vote. I should add, also, a recent poll shows that a majority of Americans believe Judge Alito should be confirmed. So, tonight, I can say not with absolute certainty but with as much certainty you can get around this place that on Tuesday Judge Alito will get that fair up-or-down vote.

I mentioned the recent poll. That is the general sense people get as we go back to our communities talking about the hearing process and the confirmation process. They broadly support this highly qualified individual. The list goes on and on in terms of his qualifications, his 15 years on the Federal courts, his highest rating with the ABA, the testimony from some of his colleagues in the hearing, now 2 weeks ago, all of which underline his modest judicial temperament, his integrity, his character. The polls show that the American people have spoken in a fairly dramatic way to us as we go back to our States.

I agree with the American people. Next Tuesday, a bipartisan majority will vote to confirm Judge Alito as Justice Alito.

ORDERS FOR FRIDAY, JANUARY 27, 2006

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 noon on Friday, January 27; I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then proceed to executive session and resume consideration of the nomination of Samuel Alito to be an Associate Justice of the Supreme Court of the United States.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. To reiterate, today we filed a cloture motion on the nomination of Judge Alito. The cloture vote will be 4:30 on Monday. We will have some more debate time on Monday. I believe we have provided plenty of time for debate on the nomination. I hope and expect cloture will be invoked and that we will proceed to a vote on the confirmation of Samuel Alito on Tuesday at 11 a.m.

ADJOURNMENT UNTIL TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:05 p.m., adjourned until Friday, January 27, 2006, at 12 noon.

SENATE—*Friday, January 27, 2006*

The Senate met at 12 noon and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty God, the center of our joy, prepare our spirits, clarify our minds, and stir our hearts for Your movements among us. Help us to feel Your presence in our opportunities to touch hurting lives. May Your whispers prompt us to deliver captives and bring healing to the bruised.

Abide in the hearts and minds of our Senators. Guide them with Your counsel that they may not stumble in darkness. May their hands touch Your Hand and find the leading that illuminates the road to peace.

Bless our families and our homes. Protect our loved ones from the perils of these uncertain times. We commit ourselves today to the One who came to give us salvation. We pray in His Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF SAMUEL A. ALITO, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session and resume consideration of calendar No. 490, which the clerk will report.

The assistant legislative clerk read the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. SESSIONS. Mr. President, today the Senate will continue to debate the nomination of Samuel Alito to the Supreme Court. Yesterday, the majority leader, Senator BILL FRIST, was forced to file a cloture motion to stop a filibuster from Senators on the other side of the aisle. That cloture vote will occur at 4:30 p.m. on Monday. It is our expectation that cloture will be invoked and that the Senate will then proceed to a vote, a final up-or-down vote, on the confirmation of Judge Alito on Tuesday at 11 a.m.

I have some remarks I wish to make on the Alito nomination, but before I do, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, it is very distressing and disappointing that we are now looking at a filibuster of the nomination of Samuel Alito to be a member of the U.S. Supreme Court. He has served as a Federal appellate judge—outside of Washington, DC, not involved in any of the political issues here—for 15 years and during that time has assembled an incredibly strong group of admirers who have testified on his behalf to a degree that exceeds almost anything I have had the pleasure to see as a member of the Senate Judiciary Committee where we had hearings on this matter.

The American Bar Association interviewed 300 of his colleagues—lawyers who have litigated against him; lawyers who have worked with him; judges who have heard him, whom he practiced before; and his colleagues on the bench.

An African-American member of that ABA team—who represented the University of Michigan in defending their admissions policy that some called a quota policy—that individual said, quote: He was held in incredibly high regard. In fact, I am not aware of anyone who was interviewed that said anything bad about this nominee.

He was at the top of his class at Princeton, and the top of his class at Yale Law School where he served on the Law Review. He argued 12 cases before the U.S. Supreme Court. There is not more than a handful of lawyers in this country who have argued even a single case before the Supreme Court, much less 12.

Then he was U.S. attorney, prosecuting criminal cases for the United States of America in New Jersey, where he prosecuted Mafia groups and drug dealers and people such as that. He has spent 15 years on the bench, demonstrating day after day the judgment, the intellectual integrity, and honesty it takes to be an outstanding judge.

He is a remarkable nominee. His father was an immigrant from Italy. He grew up in New Jersey, and has had the great honor to be one of those sons of immigrants who got to go to the great University of Princeton. He in every way represents the best there is in American law. And more than that, he understands what a judge's role is. He has expressed this in so many good ways. Without notes, he talked to us in that committee from his heart.

He summed up, time and again, question after question, his view that a judge has a responsibility to decide the case that is before them, not to set grand policy for America, but to try the case of the litigants that are before them. Somebody has a complaint, and they are complaining that the law or the Constitution has not been properly followed, and they are asking for relief. The judge decides each case based on the facts.

First, a judge must, with intellectual honesty, find out what the facts are, and, then, after the facts are determined, apply the established law to that fact situation and render a decision without regard to any personal or political views—whether he is a Republican or a Democrat, a liberal or a conservative—without regard to any personal, social, religious, or other views he may have. Then he renders that opinion.

As Alito said, he learned as a judge you should delay making up your mind. It is a habit of mind a judge learns. He hears those facts, he thinks about those facts, and considers those facts and makes up his mind—only after the full matter has been brought before him and has reached its full, ripe point to make a decision. I thought that was a very insightful and wise comment he made.

We had a unanimous highest possible rating from the American Bar Association. As I read last night, one can easily see the tremendous admiration and respect his colleagues on the Third Circuit Court of Appeals have for him. They were so impressive in the committee. Several of these judges were senior judges. Most of them had served the full 15 years with him on the bench. They have known him. They have seen him in private conferences. They said he is a man of intellectual honesty. He is a man who is fair, unbiased. He never raised his voice, never proselytized for his view, but is a man with incredible analytical ability to get to the heart of a matter and make a just decision.

What more could you ask for on the bench? Many of these judges were Democratic appointees. The Third Circuit is not a conservative circuit. It is probably one of the more liberal circuits. It sits in Philadelphia. And to say this man is extreme, outside the mainstream, unworthy of serving on the Supreme Court is in itself an extreme statement. It is not justified.

The President made a simple promise in this last election that he repeated at every stop he made: I want a judge who will show restraint, who will follow the law and not make law, who does not see it in their bailiwick to reset the social policy of America. And we have been seeing that type of judgement time and time again. Our colleagues who like what these judges are doing, our Democratic colleagues, apparently, are not happy with Alito's philosophy of judicial restraint.

Now let me tell you, President Bush—this Senator does not believe we should put a conservative activist on the bench, a judge who will utilize his opportunity on the bench to promote a conservative agenda. That is politics. That is what we do here in the legislative branch. That is what we are supposed to fight out in this Chamber. The American people have a role to play in it because they can vote us out of office. But if a judge on the Supreme Court of the United States uses that power to interpret the meaning of words in the Constitution to undermine the plain meaning of those words, undermine the meaning that the ratifiers and drafters had in mind, to make it say something they want it to say, then they are legislating, they are in this branch.

It is more dangerous than that because they do not legislate like we do. If we legislate, the next Congress can come in and change it. We can be voted out of office, and they can reverse it by 51 votes out of the 100 Senators. But what if a Supreme Court judge declares that no longer can States define marriage as a union between a man and a woman, that we are going to declare that any association of people can call themselves a marriage and say the Constitution says it? They have a lifetime appointment. They never have to answer to the public. They can stay on that bench as long as they desire.

What recourse do the American people have for that? Only a constitutional amendment, and that takes a two-thirds vote in the House of Representatives and the Senate and three-fourths of the State legislatures to overturn it—an incredibly huge task.

So it is critically important we have judges who are not activists on the bench, that we have judges who will faithfully apply the law according to the way the constitutional drafters and ratifiers intended it, and to follow faithfully the laws of the Congress, and respect those laws as long as the laws passed by the Congress or the States do not conflict with the Constitution, and show some respect to the States.

We have had so many of these activities that have gone on in our Court that show a lack of discipline. I pointed out last night that we are at the point where one of the courts of appeals that represents 20 percent of the people in the United States, the Ninth Circuit, has ruled that the Pledge we recited which says "under God" in it is unconstitutional. The U.S. Supreme Court did not reverse it. The U.S. Supreme Court simply said that the father who brought that case did not have standing because he did not have custody of the child. Now he has gone back and found somebody else and apparently has a plaintiff who does have standing. I am not sure what the Supreme Court is going to rule.

Will they next come in here with a chisel and take those words right up there on this wall—"In God We Trust"—off the wall of the Senate? It is not such an impossible suggestion. Our Presiding Officer came here shortly after Senator BYRD—but he was here in the Congress. I believe, as a Member of the House when we put "under God" in the Pledge. And we ratified that again, when this case first came out, in the Senate that we intend that remain the law. But the Court has the ability—just like that—to strike it down.

That is what this issue is about. We talk about the takings case, the Kelo case, where they redefined the meaning of words that a property can only be taken for a public use. Now they say it can be taken for a public purpose—a big change. It is one thing for the government to take your land to build a dam, or a highway or a public park, but to take your land to build a private shopping center was not what the Founding Fathers had in mind. But this is what the Supreme Court ruled, apparently believing that was too restrictive. It would be better if you could take land for private purposes as long as it had a public benefit and they approved that. Not good.

Regardless of what you think of the merits of that takings issue, it represented a lack of discipline, an activist trend on the Court by which the judges declared that their personal views would allow them to actually bend the plain meaning of the Constitution to have it say what they wanted it to say, not what it actually did say, not what was meant from the beginning.

I am disappointed that we have an objection, any objection to this fabulous nominee. President Bush in his campaign promised a judge who would show restraint, that he would be highly qualified and a man or woman of integrity. That is what he submitted. But now we are looking at a filibuster. I am not kidding. I thought we had settled that issue. But now we are facing a filibuster. They have put it in their news releases, Democratic Senators. Apparently, the former Presidential candidate for the Democratic Party in the last election, who obviously did not win, called back from Davos, Switzerland, to say that they ought to filibuster. Count him in. He urged a filibuster. The assistant Democratic leader in the Senate, Senator DURBIN, apparently is supporting a filibuster of this nomination. It is not right. This is a solid, mainstream judge who was rated, unanimously, the highest rating the American Bar Association gives. He has the unanimous support of his fellow judges on the Third Circuit, Democrats and Republicans. He has an extraordinary record and resume in every respect. They want to filibuster this nomination. I know the People for the American Way want it. I know the National Abortion Federation and other abortion groups want it.

We are Senators. We have to ask ourselves: Is this where we are heading? Is this what we are about, that we are now going to take nominees with the kind of respect Judge Alito has and subject them to a filibuster? It was discussed in this past election. The American people, I am convinced, strongly support the kind of judge Judge Alito will be. They don't want an activist judge setting social policy. They absolutely understand this issue.

I had the pleasure to follow one of our most outstanding young Senators last night, Mr. JOHN THUNE of South Dakota. He made a remarkable speech. He concluded it by saying he campaigned on this issue in South Dakota. He promised to vote for this kind of judge. I am thinking, whom did he beat? He beat the former Democratic leader of the Senate, the former majority leader for a short time, Senator Tom Daschle, who was leading filibusters to obstruct up-and-down votes on highly qualified nominees. I submit to the Members of this body that the people of South Dakota were not happy with that. In large part, Senator THUNE is here today because of the obstruction of the Democrats over the last several years of highly qualified nominees who simply believe a Federal judge should show restraint and follow the law. That is all we want. That is all the American people want. That is what we have a right to expect in Federal judges.

What kind of filibuster is this we are seeing? It is almost amusing. Where are the Senators? I was here last night. I followed three Republicans talking. We were supposed to be in session until 8. Nobody from the other side of the aisle showed up to talk. I am not sure there are any around today to complain. They are supposed to be telling us why this man should not be on the bench. We have been here for 2 days, and fewer than 25 Democratic Senators have come to the Senate floor. It has been a pretty vacant situation. Republicans shut down the Senate each night. Nobody seems to want to come and raise the issues and debate them. If they want to filibuster, if they have serious concerns, I suggest they come down and express it. Let's talk about it.

My colleague, Senator SPECTER, during the Judiciary Committee hearings gave the Democratic Senators every opportunity they desired to raise, for as long as they wanted to, any issues they had with Judge Alito. He allowed them to call a whole host of witnesses who would be critical. The truth is, I don't think any of them knew Judge Alito. Most of them had axes to grind one way or the other from some political agenda they had. Even out of that group, I don't think but one or two actually said they were against him. Laurence Tribe raised some concerns, but he never said he was against the nominee or that he should not be confirmed. He is a professor himself, and he knows the legal expertise Judge Alito brings to the court.

If you have something to filibuster about, come on down. Why put us through this? Senator JOHN CORNYN has called this effort needless and strange. That is a good definition. Other words come to mind: pointless, political.

The Democratic leader, Senator HARRY REID, went before the Democratic caucus, according to the New York Times, just last week and urged his colleagues to vote against this nomination. They made it a political agenda item to block this nomination. Is it Presidential politics or politics in general? I submit both. Senator REID's spokesperson, when asked, said: Well, they want to get as many votes as they can against him to make it an issue in the election—for politics, not a question of whether the judge is ready, qualified, and able to serve.

Maybe this is some sort of theory that, We can reward our base—the National Abortion Rights Action League, the People for the American Way, the Alliance for Justice, some of those left-wing groups that have been driving the process for years. Maybe it will keep them happy. Maybe they will keep sending money. Maybe they will keep attacking George Bush and saying he is appointing extremists to the bench. Maybe that is what they are trying to do.

There is no basis to object to this nominee. There is absolutely no justification for denying him an up-or-down vote, which is what the filibuster attempts to do. We can all agree, I suppose, that it is an international filibuster because it was apparently hatched in Davos, Switzerland, where Senator KERRY now is with those masters of the universe trying to figure out the world economy. Maybe they ought to spend more time trying to get gasoline prices down than worrying about conjuring up a filibuster of a judge as able as Judge Alito. They are not here in the Chamber, and that is what we have every right to expect.

Maybe, since they are abroad, they are worried about Judge Alito's position on foreign law. We have seen a trend with members of the U.S. Supreme Court. Recently, Justice Ruth Bader Ginsburg went to New York and made a speech in some great detail—shocking, to me; I have recently read the speech—in which she defended the citation and consideration of foreign law to determine how to interpret American law. This is contrary to our American legal system. A judge's duty is to apply the plain meaning of the words, if there is some dispute about it, to look to the legislative history or maybe the background of the bill from an American perspective, not a European perspective.

For example, in Roper v. Simmons in 2005, the case held that the execution of individuals who were under the age of 18 at the time they committee a capital crime violates the 8th and 14th amendments, overruling a previous precedent of the Supreme Court. Our liberal colleagues have been very strong in claiming that we should stick to precedent, particularly when they talk about abortion. But in that case, the court reversed Stanford v. Kentucky.

The majority of the Supreme Court, trying to interpret the Constitution of the United States, spent almost 20 percent of its legal analysis discussing the laws of Britain, Saudi Arabia, Yemen, Iran, Nigeria, and China.

We have a lot of complaints. People are not happy with rulings of the Court. Many times, those rulings are justified and we are simply unhappy with the result. We are concerned about it. Maybe it is not justified. But I believe the American people understand that this is a dangerous trend by the Court that they would seek to interpret American law by looking to Nigeria and China—red China, last I heard—Yemen, where there are terrorists, and Iran, a pariah to the international community. They are quoting them, discussing what their views of our Constitution are relative to cruel and unusual punishment. Regardless of what one believes about the merits of the case, legislatures absolutely should discuss the age at which an execution should occur, but what does the Constitution say about it? That is what the Supreme Court is supposed to be deciding, not what they think ought to be done.

In Grutter v. Bollinger in 2003, Justice Ginsburg looked outside the Constitution to make her decision, noting with approval that the International Convention on the Elimination of All Forms of Racial Discrimination allowed for such discriminatory practices or "maintenance of unequal or separate rights for different racial groups."

This is a question under our Constitution which says that every American, whether they are of minority or majority ancestry or background, is entitled to equal protection of the law. That raises some questions about quotas and matters of that nature. So in her decision, did Justice Ginsburg look at our Constitution, which guarantees every citizen, regardless of their race, equal protection of the law? What did she look at? She considered the International Convention on the Elimination of All Forms of Racial Discrimination. That is not a basis for an American Justice to lay an opinion. We have seen a lot of that.

Let me briefly cite what Judge Roberts said about that:

> If we're relying on a decision from a German judge about what our Constitution means, no President accountable to the people appointed that judge and no Senate accountable to the people confirmed that judge, and yet he's playing a role in shaping a law that binds the people in this country. I think that's a concern that has to be addressed.

Absolutely, he is correct. He goes on to say:

> In foreign law, you can find anything you want. If you don't find it in the decisions of France or Italy, it's in the decisions of Somalia or Japan or Indonesia or wherever. As somebody said in another context, looking at foreign law for support is like looking out over a crowd and picking out your friends. You can find them, they're there. And that actually expands the discretion of the judge. It allows the judge to incorporate his or her own personal preferences, cloak them with the authority of precedent because they're finding precedent in foreign law, and use that to determine the meaning of the Constitution. I think that's a misuse of precedent, not a correct use of precedent.

I say to the President pro tempore that if he chooses to speak at this time, I would be glad to yield if he would like.

The PRESIDENT pro tempore. The Chair is happy to accept that offer.

Mr. SESSIONS. Before I yield, I have been making humor here about Senator KERRY over in Davos, Switzerland, calling for a filibuster back here. One of the issues we have with regard to the confirmation of judges is that judges show restraint and be faithful to our law, not "foreign law." There is no doubt that Judge Alito and Justice Roberts do not agree that we ought to be quoting foreign law to justify legal opinions in the United States. Judge Alito said this:

> I don't think we should look to foreign law to interpret our own Constitution.

Amen to that.

He said this:

> Our Constitution does two basic things. It sets out the structure of our Government

> and it protects fundamental rights. The structure of our Government is unique to our country, and so I don't think that looking to decisions of supreme courts of other countries or constitutional courts in other countries is very helpful in deciding questions relating to the structure of our Government.

Amen to that.

He went on to say:

> As for the protection of individual rights, I think we should look to our own Constitution and our own precedents. . . . Our country has been the leader in protecting individual rights.

Are we going to look to China, Yemen, or Iran on that issue? He goes on to say:

> I don't think that it's appropriate or useful to look to foreign law in interpreting the provisions of our Constitution. . . . I think the Framers would be stunned by the idea that the Bill of Rights is to be interpreted by taking a poll of the countries of the world.

That is the kind of judge we need on the bench. That is the kind of judge President Bush promised to nominate. That is the kind of judge he sent up here, and he deserves confirmation.

Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ISAKSON). Without objection, so ordered.

Mr. LEAHY. Mr. President, I have spoken before, of course, on this nomination. I want to emphasize some of the points I have made.

The Constitution, as we know, gives the Senate a central role in the confirmation of a Supreme Court Justice. Nothing in our makeup, nothing in the history of this country assumes that the Senate would be a rubber stamp for the President's nominees. After all, it was the Senate that turned down some nominees of George Washington—the most popular President and the greatest President in this country's history—because it would not be a rubber stamp. It was an overwhelmingly Democratically controlled Senate at the time of Franklin Roosevelt, and it was that Senate that said to Franklin Roosevelt: You cannot pack the Supreme Court.

I have said, also, many times that the Senate should be the conscience of the Nation. After all, we are the only 100 people in this country of 295 million Americans who get a chance to vote on lifetime positions to the Supreme Court—people who will affect our personal rights for decades to come.

Now, I have voted on every one of the current nine members of the U.S. Supreme Court. I actually voted on some who are no longer there. I approach each one the same way. Is this going to be a Supreme Court Justice for all Americans? That is what I asked about Judge Alito.

He came before our Senate Judiciary Committee with a record he has created over the last 30 years. As a judge, and before that as a high-ranking Government official appointed to a succession of posts by Republican Presidents, Judge Alito seemed consistently to defer to Executive power and to show little empathy for the plight of ordinary Americans. His record also suggested a pattern of saying what he needed to say to get to the next job. Certainly, nothing in his record, nothing in his job application indicated he felt very strongly about checks and balances and the three branches of Government.

Now, in the course of this nomination and the hearings, he sought to retreat from his own words; but even trying to retreat, he did not. The hearing provided him with an opportunity to explain his record. It was an opportunity he chose to squander. The President's supporters and many Republican Senators on the committee urged him not to be forthcoming. My gracious, the 18 members of that committee are the only ones who get to ask him questions on behalf of all 295 million Americans, and some urged him not to answer questions. He had the chance to answer some of the troubling questions that his past words and actions raised. He had the opportunity to demonstrate that his replacement of Harriet Miers was not what it appeared to be—the President selecting somebody whom he knew he could count on to support Government power and the expansive doctrine of the "unitary Executive," and someone the extreme faction in the President's party felt assured would march with Justices Scalia and Thomas in their culture war.

So it was an opportunity to answer questions—an opportunity he did not take. The hearings and the whole confirmation process left us with more questions and greater concerns than we had before. I have discussed his failure to assure us that he would be an effective check and balance on Executive power. He failed to show me or the American people that when he recited platitudes such as "nobody is above the law," he was not telling us what he thought he needed to say to get one more promotion.

When I voted for John Roberts as Chief Justice, a conservative Republican nominated by a conservative Republican, I voted for him because I looked at him and I thought, "Would George Bush or PATRICK LEAHY, or George Smith or Patrick Jones, get fair treatment? And would we be heard on what the facts and the law would be?" I believed we would. But I don't have that same confidence with Judge Alito.

One question for the Senate is whether Judge Alito takes seriously his promises to the Senate and his obligations to avoid the appearance of impropriety. He had an opportunity to talk about his numerous failures to recuse himself from cases during the nomination period, and he didn't accept that opportunity.

In 1990, Mr. President, Judge Alito came before the Senate. I was here at that time. He was seeking confirmation to the Third Circuit Court of Appeals. He made a pledge—and they are made under oath—that he would recuse himself from five categories of cases: cases involving three different financial companies with whom he had dealings, cases in which his sister's law firm represented a party, and cases he had overseen as the U.S. Attorney in New Jersey. Someone in that circumstance who would not make such a pledge might not have been confirmed. But I was disappointed to discover that, despite making this explicit promise to disqualify himself in these cases, he failed to disqualify himself in at least four of the five categories from which he had sworn he would disqualify himself. In fact, he apparently failed to put several of the companies on the so-called recusal list. These were companies from which he said he would recuse himself if matters involving them came up before the Third Circuit. He did not even give their names to the clerk to make sure that happened.

I don't suggest that he in any way got any financial benefit from this. I doubt that he did. But, again, he was making promises to get promoted to the next job. Once he got promoted, the promises were forgotten.

One case we have heard a lot about involving the Vanguard funds, in which he had invested hundreds of thousands of dollars, and which he expressly included in his 1990 pledge to the Senate, is particularly troubling—not just because of his involvement but for the various reasons he gave, shifting reasons, for why he did not recuse himself. First, he said he didn't realize it was a case involving Vanguard. The word "Vanguard" appears in the case name three times and in the case papers many more times. He said the clerk had moved to a computerized recusal system, so there was a computer glitch, and that may have been why he was assigned the case. Well, he would have seen Vanguard in the case name three times. He said: Well, I didn't benefit from it. We were getting a little bit into "the dog ate my homework." Why not just say, "I screwed up?"

After significant investigatory work and pressing for answers, we found that Vanguard was not on his computerized list to identify conflicts, so a computer glitch could not have occurred. He finally acknowledged—and I give him credit for this—having stated for weeks and weeks that there was a computer glitch, he finally acknowledged that there was not. Why not say, "I screwed up" and accept the responsibility? He acted like the Bush Administration most often does when it errs, by blaming others: his surrogates attacked those raising questions, while he proffered numerous conflicting excuses.

For example, one of his many explanations was contained in a letter he wrote to Chairman SPECTER. He contended that the 1990 promise he had made to the Judiciary Committee in order to become a Circuit judge only applied to his "initial service" and that he later, apparently secretly and unilaterally, decided that his promise to this Committee had been "unduly restrictive" and that he need not follow it anymore. He did not so inform the Judiciary Committee or the Senate of these determinations at any time before his 2005 nomination to the Supreme Court. Moreover, it is wholly inconsistent with his finally adding the Vanguard companies to his recusal list in December 2003. This letter seems more like self-serving, after-the-fact rationalizing than it does a truthful explanation for what had happened in 2003. As we discovered through due diligence, Vanguard and Smith Barney were not on the judge's automatic recusal list even in 1993. There is no reason to think they were on there before that. It certainly does not seem that Judge Alito tried to live up to his sworn commitment to the Senate even during what he would have to concede was his "initial service" period as a Circuit judge.

Moreover, the "initial service" excuse makes no more sense with respect to his Vanguard investments than it would with respect to his sister. She did not cease being his sister after some "initial service" period of his on the bench. In fact, his Vanguard investments significantly increased over the period of his service on the bench. The "initial service" concept in the Judiciary Committee's approach to recusal applies to transition from a law practice to the bench. Thus, for example, once the cases on which he had been involved while the U.S. Attorney in New Jersey had run their course, he was not prohibited for all time from hearing cases from that office. Eventually, even he had to acknowledge at the hearing that this "initial service" argument was not the real reason he failed to recuse from the Vanguard case, even though that had been the argument he made in a written response to our Committee's chairman.

To the end, Judge Alito has failed to take responsibility for his action. Instead, the best he can do is to admit at his hearing that he "just didn't focus on the issue of recusal" and that "no light went off." There was no remorse, no apology, and no embarrassment for the string of conflicting and inaccurate explanations he gave during the course of this nomination. Accordingly there is no reason to think that if he becomes a Supreme Court Justice he will focus any better on conflict of interest and appearance of conflict issues, in a system without accountability. I voted against the nomination of Justice Rehnquist to become Chief Justice in large measure because of his involvement in a case in which he should not have been. I take these matters very seriously. It is apparent that this nominee does not.

In his 1985 job application for a job in the Reagan administration—one that he said he was careful in doing—he very proudly included his membership in the Concerned Alumni of Princeton, or CAP, which he termed "a conservative alumni group." Actually, he named only two groups he had been associated with, that one and the Federalist Society. He was also a member at the time of the Princeton Club in Washington. He didn't include that. He didn't include anything else. The reason I mention this is that he knew exactly what memberships to what clubs would appeal to those in the Meese Justice Department. Some would say that is being wise. But why emphasize membership in a group such as the Concerned Alumni of Princeton? Nobody would suggest that in his hiring practices or in the way he lives Judge Alito is biased against women or minorities, but the Concerned Alumni of Princeton received national attention for resisting the admission of women and minorities—African Americans and others—into Princeton. Why brag about being part of such an organization?

These same people only a generation earlier surely would have resisted the admission of people from Italian immigrant families. I take that rather personally. My mother's family were Italian immigrants. I still have relatives in Italy today, uncles, aunts, and cousins, who talk about how proud they are of their sons and daughters who have gone to America.

I also think of a different era when my Irish father, as a teenager, had to face signs: "No Irish need apply" or "No Catholics need apply." As a result, we grew up in a family where we learned that all discrimination was wrong.

Why brag about even a loose affiliation with a group that advocated any kind of discrimination?

Because it had been in the press, I thought I would help the judge out. I asked him about this. I figured it would be a simple explanation: that he would make it very clear that he was opposed to them. Instead, he said: I don't really remember that group. We alerted him ahead of time that he was going to be asked that question. He said: "I don't remember that," even though it was on his application.

Then he said: Well, I think it was because of the concern that ROTC was not being allowed on the Princeton campus. Good explanation, except, of course, by 1985 ROTC was back on the Princeton campus. Neither CAP's own materials nor media accounts suggest that ROTC was a primary focus for CAP at the time. And of course, that was not an answer to my question. My question was why he touted his membership in 1985. He never answered my question.

Those little facts, inconvenient facts, that come in. They were not inconvenient at the time he was applying for a job with Edwin Meese. Then it was something of which to be proud. Now applying for a job on the U.S. Supreme Court it is: I don't remember why I did it.

I will give him the benefit of the doubt. I will accept he was not very active in the group. But then that goes all the more to why he emphasized it in his job application especially to that administration, to the Meese Justice Department. That was the most ideological and partisan administration we had seen until the present time. So it is logical to think that he proudly proclaimed his membership in CAP and the Federalist Society, as well as his support of Republican candidates and conservative causes and his recent submission of articles to the American Spectator, to establish his right-wing credentials to help win that coveted promotion. It seems apparent that he said all this in 1985 to show those making promotion decisions that he was not just a traditional conservative, but a "movement conservative," and that the activists in control of political promotions at the Meese Justice Department and the White House could rely on him.

I am concerned he tried too hard back then to fit in with those in power, and it makes me wonder, when he was being screened for this job, when he met in that private closed-door meeting with Vice President CHENEY, Karl Rove, and Scooter Libby, what he said to them. In this time of Executive overreaching, illegal spying, and expanding Government power, what the American people need is a Supreme Court that is willing to stand up for the liberties and rights of all Americans, not someone who curries favor with the powerful.

I am especially interested in these circumstances because, as you know, Mr. President, Judge Alito was the third person President Bush nominated for this particular seat. The second one, Harriet Miers, he nominated and then got a firestorm of criticism from Republicans, not from Democrats, but from Republicans, from some within the Republican Party who made it very clear to the President: You can't nominate her because we are not sure how she will vote. We are not sure that she will vote the way we want her to.

Finally, the President—in a humiliation for him—was forced to withdraw her name. He came forth with Judge Alito, and those same people said: He is great. We are confident about how he will vote. We are fine with him.

I am concerned, as well, about his failure to be forthcoming in answer to my questions about CAP. I would have been more willing to give Judge Alito the benefit of the doubt if he had taken the opportunity the hearings provided to come clean about all this. He gave me no adequate answers. When Senator SCHUMER raised the matter of his inclusion of CAP on his job application again, on another day, later in the hearing he hinted at what he had done in 1985 but still would not own up. He said:

> [Y]ou have to look at the question that I was responding to and the form that I was filling out. I was applying for a position in the Reagan Administration, and my answers were truthful statements, but what I was trying to outline were the things that were relevant to obtaining a political position.

But he stopped far short of answering because he had gotten himself into another box by his previously saying to us that he had no recollection of CAP. He concluded with the following:

> Well, Senator, since I don't remember this organization, I can't answer your question specifically, but I think that the answer to the question lies in the nature of the form that I was filling out and the things that I put.

Regrettably, when he had been asked by ABA representatives about his putting CAP in his 1985 job application and whether he was "pandering," he failed to take that opportunity to reflect on what he had done and own up to the matter, as well. Instead, according to Marna Tucker's testimony, he answered that he put CAP on that application because "it would be improper to not tell the truth on an application" and "that he was a member of that organization." That answer says a lot.

He is right that it is "improper to not tell the truth on an application," but that does not explain why he chose to list CAP. The form does not call for him to list all clubs and affiliations. The form used to seek political advancement during the Reagan Administration asked for something else, a demonstration of partisan, political commitment. It said: "Please provide any information that you regard as pertinent to your philosophical commitment to the policies of this administration," and asked applicants whether "you ever served on a political committee or been identified in a public way with a particular political organization, candidate or issue." That is why he included CAP, an organization that in the mid-1980's was a place that activists like Dinesh D'Souza and other rising stars in the conservative movement favored.

Regrettably, at his hearing, and under oath, Judge Alito evaded. He could not remember, tried to say the right things about discrimination, stood by while his supporters attacked the question and then watched as his supporters pushed so hard that they made his wife break down in tears. I do not think that the Republican Senator who pressed that awkward line of defense intentionally meant to upset Mrs. Alito, but Republican partisans have turned that moment that they created into a partisan weapon.

Like the matters of recusal, the CAP issue is another that Judge Alito could have put to rest by being more forthcoming at the outset. He has never answered the question of why he touted his membership in CAP in 1985. To me the true answer seems obvious. Indeed, in a news account that appeared on the last day of the hearings, his mentor at the Department of Justice in those days admitted what was really going on in that 1985 application. Charles Cooper, who was the Assistant Attorney General for the Office of Legal Counsel and Samuel Alito's supervisor, said:

> The only purpose of that essay was to satisfy the Office of Presidential Personnel that he was simpatico with the Reagan Administration's legal policy agenda. He went on to call Samuel Alito's 1985 statement "his essay of his political bona fides."

Judge Alito's 1985 job application is an ideological manifesto that goes a long way to explain why the same people on the far right who shot down the President's nomination of Harriet Miers, because they were not assured how she would rule, rushed to support Judge Alito when his nomination was announced.

I looked at his job applications. He wrote:

> [I]t has been an honor and source of personal satisfaction for me . . . to help advance legal positions in which I personally believe very strongly. I am particularly proud of my contributions in recent cases in which the government has argued in the Supreme Court that racial and ethnic quotas should not be allowed and that the Constitution does not protect the right to an abortion.

These are his words. He was eager to highlight his work in the Solicitor General's Office, which should be a place where lawyers honor working in a nonpartisan and professional manner, rather than seek to twist it to partisan political ends.

We have seen a few of the documents he produced in that office, but the Bush administration's regime of secrecy has prevented the Judiciary Committee and, of course, the Senate, and, of course, the American people from reviewing most of his work from his time there. This was work done during a Republican administration that litigated and lost the famous Bob Jones University case about tax breaks for institutions that discriminate; that lied to Congress about the EPA and Iran-Contra; that sought to overrule Roe v. Wade; and that sought to roll the clock back on fundamental rights to equal protection.

The hearing gave Judge Alito an opportunity to do either of two things. He could have embraced his statement from 1985 and his record as a judge and set out to explain why his deferential view of presidential power and his restrictive view of individual rights are appropriate for a justice who is supposed to be there for all 290 million Americans. We could have had the great ideological debate that so many on the far right seemed to want to have when the President's nominee was Harriet Miers. Or he could have disavowed the 1985 job application and much of his record as a judge and told us that he would in fact be a check on the President and protect the fundamental constitutional rights of all Americans. He did neither. Instead he refused to share his views and tried to finesse his statements in the 1985 application and limit them "technically." He was so unresponsive that commentators from across the political spectrum have called for an end to Supreme Court confirmation hearings since they reveal so little about the nominee's thinking.

For example, he said that his statements about privacy represented his views at the time, but that he would view the issue with an "open mind" as a justice with the authority to cut back, or overrule the rights expressly recognized in Roe v. Wade. Judge Alito never disavowed his 1985 statement that in his legal view the Constitution does not protect a woman's right to choose. In fact, he responded to Chairman SPECTER that his statement in 1985 was a "true reflection of [his] views at the time" and "the position that [he] held at the time."

We also have his multi-page memorandum on the Thornburgh case from his days in the Solicitor General's office—one of the handful that slips through the veil of secrecy that the Bush Administration sought to construct—in which he asserts his legal view that Roe was wrongly decided and should be overruled, but that tactically the better approach would be to incrementally undermine its legal authority.

This one memo is enough to demonstrate why such material should have been produced rather than hidden by this Administration so that the Senate and the American people would have the nominee's views and record. The Bush Administration refuses to produce Samuel Alito's work at the Solicitor General's office and at the Office of Legal Counsel. Who can tell what those other writings would reveal about the nominee's legal views? The Washington Post recently reported that Charles Cooper has now indicated that Samuel Alito worked on defending the Reagan Administration in connection with the Iran-Contra crimes by working on legal theories so that they would not have to inform the Congress which was investigating in its oversight capacity. What else did Samuel Alito work on that is being hidden from the Senate and the American people?

On the issue of a woman's right to choose, we also have Judge Alito's opinion in Casey in which he follows the script he laid out in his memorandum to the Solicitor General and finds no state regulation an undue burden on a woman's right to choose. Of course, the Supreme Court, including Justice O'Connor herself, were in place then to hold the line in Casey, reaffirm Roe and reject Judge Alito's position.

He would not testify what his legal view is today. He made it very clear he continues to believe that Roe v. Wade was wrongly decided. In describing how to decide a case where there is a precedent, he left out a step. He left out the step where the Justice, knowing there is a controlling precedent, decides whether the precedent was correctly or incorrectly decided. If a Justice believes the preceding case was correctly decided, he has no reason to go on to make the other calculations about weight and reliance and all the other factors that a Justice is to consider when deciding whether to overrule past precedent. He did not mention that step, though. In other words, Judge Alito's testimony presupposes that he continues to believe now what he believed in 1985, that Roe v. Wade was wrongly decided. Otherwise his answers make no sense. A justice does not waste time worrying about factors and weight and reliance when he considers the precedent correctly decided; that happens only when he is considering whether to overrule or limit that precedent.

I mention this as just one more case. Much has been said about Roe. But for this Senator, it goes way beyond the question of Roe. It goes to the question of, to what extent would you allow a President to step aside from checks and balances? All his writings indicate a President should be able to do that. He is one of the strongest proponents I have heard in my life speaking about the so-called "unitary Executive."

What does that mean in real life? It means this President, more than all Presidents in history—all Presidents in history—has used the Alito theory to say: Even though I signed a law, even though I signed something into law, I don't have to follow it because I am the President.

There are only two Presidents I have heard say that something is not illegal if the President does it: One is Richard Nixon, and the other is George W. Bush, and President Bush has used the Alito theory to make this argument 103 times.

That means he can sign a law saying the United States must obey our own laws, our treaties on torture, and then quietly write a separate page saying: However, as President, I will decide when we will follow that law.

Judge Alito's contradictory testimony at the hearing about his view were revealing. He went to great lengths to distance himself from his public endorsement of Judge Bork's unsuccessful nomination to the Supreme Court. He had called Judge Bork one of the most qualified nominee of the last century and was effusive in his praise—until asked about it at the hearing. There he sought to backtrack. He sought to excuse his comments as those of a political appointee supporting his employer's nominee, but had to concede that was not an accurate explanation for his comments. Only when pressed did he concede that he indeed thinks highly of Robert Bork's candidacy.

And when Senator KOHL asked him for his views of whether the Supreme Court should have taken the case of Bush v. Gore, his evasiveness reminded me of when I asked Clarence Thomas whether he had ever discussed Roe v. Wade with anyone. Senator KOHL was not even asking his views on the holding of that case.

We are in a pivotal constitutional moment in our history with a single fundamental question: Will the Senate serve its constitutional role and preserve the Supreme Court as a constitutional check on the expansion of Presidential power?

The reason Presidential power issues have come to dominate this confirmation is because we clearly have arrived at this crucial juncture in our Nation and at our highest Court over one simple question: Is the President of the United States above the law? I feel very strongly none of us are. You, Mr. President, are not, I am not, the President of the United States is not, the other 98 Senators are not, judges are not.

The Framers knew that unchecked power leads to abuses and corruption, and the Supreme Court has to be the ultimate check and balance in our system. Vibrant checks and balances are instruments in protecting both the security and the liberty of the American people.

This great, wonderful country of ours has existed for well over 200 years because we have those checks and balances and because we protect the liberties of individual Americans—all Americans, not just those who fit into one narrow political ideology, but all Americans, all Americans, all Americans, from any part of this country: Americans who express popular ideas or unpopular ideas, a free press, free observation of religion, a free people. We have to have the Supreme Court as the ultimate check and balance, and the independence of the Court is crucial to our democracy and way of life.

The Senate, as I said before, should never be allowed to become a rubber stamp and neither should the Supreme Court. We owe it to the American people today and Americans in generations to come to ask several essential questions:

Can this President, or any President, order illegal spying on Americans?

Can this President, or any President, authorize torture in defiance of our criminal statutes and our international agreements?

Can this President, or any President, defy our laws and Constitution to hold American citizens in custody indefinitely without any court review?

Can this President, or any President, choose which laws he will follow and which he will not, by quietly writing a side statement when he signs a bill into law?

These are some of the most vital questions of our time, and they are among the most vital questions that confront the Senate in considering this nomination to our highest Court. Judge Alito's record, and his responses—and his failure to adequately answer questions about these issues—are deeply troubling.

Regrettably, Judge Alito approached the question of a lifetime appointment to succeed Sandra Day O'Connor on the U.S. Supreme Court as a job application process that resembled a political campaign with two distinct parts. First, he had to get the nomination, which he sought as a committed arch-conservative and as a reliable vote in favor of Government power. That mission was accomplished when he was named to replace the nomination of Harriet Miers with the support of the President's most extreme supporters. That was his primary campaign. The Senate confirmation process is more the equivalent of a general election in which he strives to appear as middle-of-the-road as possible. Unfortunately, what he did not do successfully was to reconcile the two roles.

I will vote against this nominee. I believe the President picked him for his demonstrated legal views which are a stark contrast to the image the White House and the handlers and supporters have attempted to create.

Mr. President, I see the distinguished senior Senator from Alaska. I appreciate his courtesy and yield the floor.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I first want to comment about the chairman of the Judiciary Committee, Senator ARLEN SPECTER. Knowing the health challenges he has faced in the past, witnessing this Senator's strenuous schedule in the last few months has been something to watch, to have the opportunity to witness his commitment to the Senate and to his role as chairman of the Judiciary Committee.

I commend him very much for his dedication to his job and to his function as chairman of the Judiciary Committee. He has come through some very serious medical periods in his life, but he has distinguished himself in recent months in demonstrating his total commitment to the work of the Senate. I honor him for the job he has done in conducting these hearings.

Mr. LEAHY. Mr. President, will the Senator yield on that one point? I totally agree with what he said about Senator SPECTER, who has been an example not just to the other 99 Senators but to the whole country.

I am going to be honored to present him with an award, Tracy's Kids, awarding him for, among other things, primarily the example he has set for the rest of the country that somebody can face a very serious crisis and handle it with courage, dignity, and stalwartness. To all the people who suffer various forms of cancer—the distinguished Senator knows personally, and I know a dear member of my family—this kind of inspiration helps a great deal.

I cannot thank the Senator from Alaska enough for the words he just said.

Mr. STEVENS. Mr. President, I thank the Senator who serves with the chairman with great dignity on the Judiciary Committee. I cannot appear here without recognizing the serious illnesses that Senator SPECTER has gone through and survived and the energy he has shown despite those illnesses.

To me, there is no doubt that Judge Samuel Alito is well qualified to serve on the Supreme Court. He has served as Assistant to the Solicitor General and as U.S. attorney for the District of New Jersey. He was unanimously confirmed by this Senate to serve on the U.S. Court of Appeals for the Third Circuit, and he has argued some 12 cases before the Supreme Court. He is well respected by our Nation's legal community. Seven of his current and former colleagues on the U.S. Court of Appeals for the Third Circuit testified in support of his nomination, and one of the former circuit judges who testified supporting his nomination was the former judge John Gibbons, who was a classmate of mine at law school and is a man whose judgment I respect very much.

Judge Alito also received a unanimous "well-qualified" rating from the American Bar Association, and our majority colleagues on the Judiciary Committee have reported his nomination to the Senate favorably on a unanimous basis.

In my some 38 years now in the Senate, I have voted to confirm 16 nominees to the Supreme Court and 2 to the position of Chief Justice. In each instance, I have followed the advice of the Judiciary Committee on these votes, and I have always voted for a nominee based upon his or her qualifications. I have not been influenced by a Justice's personal political beliefs or the party affiliation of the President who sent the nomination to the Senate.

For me, the decision to vote for Judge Alito is not a simple one. I am proud to come from a family with a long line of very strong pro-choice women, and I have reflected their judgment here in the Senate. I am from a different generation. I remember well when a woman's right to choose to have an abortion was not recognized by our law. The reversal of Roe v. Wade would be destabilizing for our country and for our Federal system. It could and probably would lead to a battle to amend the Constitution to reassure American women of their rights, their constitutional rights. Such a battle is unnecessary as long as the Justices of the Supreme Court honor the doctrine of stare decisis.

I asked Chairman SPECTER to give me some of the pertinent portions of the testimony before the Judiciary Committee, and over the past few days I have spent much time reviewing Judge Alito's answers to the questions posed to him by members of the Judiciary Committee. Those answers reflect a deep respect for precedent and for the doctrine of stare decisis.

On the third day of his confirmation hearing, Judge Alito told the Judiciary Committee this:

> Roe v. Wade is an important precedent of the Supreme Court. It was decided in 1973, so it has been on the books for a long time. It has been challenged on a number of occasions . . . and the Supreme Court has reaffirmed the decision; sometimes on the merits; sometimes—in Casey—based on stare decisis.
>
> And I think that when a decision is challenged and it is reaffirmed, that strengthens its value as stare decisis for at least two reasons.
>
> First of all, the more often a decision is reaffirmed, the more people tend to rely on it. Secondly, I think stare decisis reflects the view that there is wisdom embedded in decisions that have been made by prior justices who take the same oath and are scholars and are conscientious. And when they examine a question and they reach a conclusion, I think it's entitled to considerable respect. And, of course, the more times that happens, the more respect the decision is entitled to.

Another portion of Judge Alito's testimony also influenced my thoughts on this vote. On the second day of the hearings, Judge Alito told the Judiciary Committee that if a case involving abortion comes before the Supreme Court while he serves on that Court:

> The first question that would have to be addressed is the question of stare decisis . . . and then, if I were to get beyond that, if the Court were to get beyond the issue of stare decisis, then I would have to go through the whole judicial decision-making process before reaching a conclusion.

This quote reflects the process Judge Alito stated he will follow to evaluate the cases that come before him if he serves on the Supreme Court. I understand his comments to mean he will seek consensus among his colleagues on the Supreme Court regarding the issues involving stare decisis. While serving on the Third Circuit Court of Appeals, Judge Alito ruled on three cases related to abortion. In each of these cases, he demonstrated a respect for and a deference to established rules of law. He did what he believed the law required; he did not seek to enact a personal political agenda. In fact, he told Senator SESSIONS during the confirmation hearings, in answer to a question of Senator SESSIONS:

> If I had been out to implement some sort of agenda to uphold any abortion regulation that came along, then I would not have voted the way I did in that Elizabeth Blackwell case.

Based on his past rulings and his testimony before the Judiciary Committee, I believe Judge Alito would respect stare decisis on the issue of Roe v. Wade or on any issue that comes before the Court where that should be respected. And as I vote to confirm his nomination, I do so on the assumption that Judge Alito will uphold this commitment, which he stated on the record, to stare decisis, a process he outlined for reviewing cases involving stare decisis.

I yield the floor.

Mr. ENZI. Thank you, Mr. President. I rise today in support of the nomination of Judge Samuel A. Alito, Jr., to be an Associate Justice on the U.S. Supreme Court. As a Senator, I have enjoyed the rare privilege of serving while the Senate considered two nominations to the U.S. Supreme Court in a short period. However, I am saddened to lose the knowledge and expertise of two experienced jurists from the Nation's High Court.

The nominations of Chief Justice Roberts and Judge Alito have given us an opportunity to reevaluate the current relationship between the three branches of Government in comparison with the intentions of the Constitution. The evaluation shows that we have shifted into an era of judges who legislate. We must return to the elementary doctrines that recognize the important and distinct roles of each branch. Congress is elected by the public to represent them as legislators. Through voting, the public may reaffirm or replace office holders. There is no such check on federal judges. They are not elected by the public and they should not use their positions to legislate.

In Judge Alito, President Bush has nominated a judge who recognizes the difference between his role and the congressional role. During his nomination hearings before the Senate Judiciary Committee, Judge Alito shared his thoughts on the judicial role:

"The judiciary has to protect rights, and it should be vigorous in doing that, and it should be vigorous in enforcing the law and in interpreting the law . . . in accordance with what it really means and enforcing the law even if that's unpopular. But although the judiciary has a very important role to play, it's a limited role. . . . It should always be asking itself whether it is straying over the bounds, whether it's invading the authority of the legislature, for example, whether it is making policy judgments rather than interpreting the law. And that has to be a constant process of re-examination on the part of the judges."

I have carefully reviewed Judge Alito's qualifications and watched the recently completed Senate confirmation hearing. The testimony provided by Judge Alito and the other witnesses underscore his commitment to the rule of law and a fair and impartial judiciary that interprets the law rather than legislates from the bench.

Judge Alito has an excellent judicial reputation as being highly intelligent and fairminded. He was unanimously confirmed by the U.S. Senate to serve as U.S. attorney for the District of New Jersey. In that capacity, Judge Alito argued 12 Supreme Court cases and at least 2 dozen court of appeals cases and handled at least 50 others. In 1990, President George H. Bush nominated Judge Alito to the U.S. Court of Appeals for the Third Circuit, and he was again confirmed unanimously by the U.S. Senate.

I believe Judge Alito knows the difference between benches and bills, Courts and Congress. His appointment will move the Court back closer to the brand of justice the Framers of our Constitution intended, and I intend to support him.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. DAYTON. Mr. President, the most momentous votes I have cast during my years in this Senate were on two war resolutions, one against al-Qaida and the Taliban, which I supported, and the other against Iraq, which I opposed.

After those life-and-death decisions, I cannot recall another vote of more long-lasting importance than on the two nominees for the United States Supreme Court: Chief Justice Roberts and now Judge Alito. The statements of my colleagues which I have witnessed have evidenced the utmost seriousness with which we have undertaken this grave responsibility.

The Constitution does not prescribe any criteria which a President must consider in choosing his nominees for the Supreme Court. Neither does the Constitution prescribe any criteria by which Senators must consider those nominees and decide whether to vote for or against their confirmations. We must each establish our own measures, search our own consciences, and make our own individual decisions.

Most of this process has been appropriately dignified and respectful, as it was with Chief Justice Roberts. I myself was not troubled by the detailed questioning of either nominee during their Judiciary Committee hearings. That is the one and only opportunity for any Senators to question a nominee in a public forum, before all Senators must decide whether or not to confirm that person to be one of nine Supreme Court Justices for the rest of his or her life. No other public office in this country offers such longevity and almost irrevocable security as Federal judiciary.

I want to commend the members of the Judiciary Committee. I certainly want to associate myself with the remarks of Senator STEVENS regarding the distinguished chairman, Senator SPECTER, whose personal courage and integrity are examples for us all, and the ranking member, Senator LEAHY, who also holds himself to those high standards. I have read the transcripts from their confirmation hearings. Their questions, and the extensive research which informed them, brought, I believe, great credit upon them and their committee.

Judge Alito's answers were also illuminating about him, although not in the same way as committee members' questions. A New York Times headline best summarized for me Judge Alito's responses: It said, "700 Answers; Few Glimmers." Again and again, his answers were evasive. Some were simply not believable.

I would find it difficult to support Judge Alito's confirmation, given his past opinions, as expressed during his 15 years as a Federal Circuit Court Judge and also prior to that time as an official in the Reagan administration. I find it impossible to support him, given his recent lack of candor and credibility before the Judiciary Committee.

Let me give some examples. On the critical question of whether he continues to believe, as he stated in 1985, that the Constitution does not provide a woman with the right to make her own reproductive decisions, regardless of how they affect her life or her health, Judge Alito would not give an answer. Nineteen times he was asked whether he believed Roe v. Wade was "settled law," as Chief Justice Roberts affirmed during his Judiciary Committee hearings, as "super precedent" as the distinguished committee chairman suggested, or simply whether he had changed his 1985 position. He rejected the first two and refused to answer the third. My colleague, Senator SCHUMER, tried seven times to get a straight answer to a very straightforward question:

> In 1985 you stated—you stated it proudly, unequivocally, without exception—that the Constitution does not protect a right to an abortion. Do you believe that now?

Judge Alito's replies included:

> I would address that issue in accordance with the judicial process as I understand it and I have practiced it. . . .

and:

> Senator, I would make up my mind on that question if I got to it. . . .

The most Judge Alito would say about Roe v. Wade or the subsequent Casey Supreme Court decisions was that they were precedents. As my sons used to say, "Well, duh." Everyone knows that every prior Supreme Court decision constitutes a precedent. Again and again—and again—Judge Alito invoked this platitude about respect for stare decisis, even though, as Senator COBURN pointed out, precedents have been overturned by the Supreme Court more than 170 times involving some 225 cases.

Senator COBURN had the candor to state clearly that he wants Roe v. Wade to be overturned, so I can only assume that his pointed historical references were intended to reassure all with similar views that they could continue to rely on Judge Alito to help form a Supreme Court majority which would reverse Roe v. Wade.

Judge Alito is certainly entitled to his personal views and constitutional interpretations. The American people are entitled to know what they are before he is placed on their Supreme Court for the rest of his life, because his views and interpretations will profoundly affect their lives and the lives of future Americans.

Unfortunately, Judge Alito denied most of us those answers. It is noteworthy, however, that the Senators who feel most strongly about overturning Roe v. Wade all support Judge Alito and seem comfortable with his nonanswers. I can't imagine such equanimity without other, private assurances that the nominee's bland platitudes belie a bedrock anti-Roe predisposition, as he stated candidly in 1985.

Certainly, the country's anti-abortion activists get it. The thousands of them who marched on the Capitol last Tuesday reportedly cheered every time Judge Alito's name was mentioned. Quoting parts of the New York Times and Washington Post reports:

> We must support the confirmation of Judge Alito and other jurists who will support a strict-constructionist view of the law and make it possible once and for all to end Roe v. Wade," Rep. Mike Pence (R-Ind.), a leading House conservative, thundered.
>
> While Mr. Bush made no explicit mention of his nomination of Judge Samuel A. Alito Jr. to the Supreme Court, the expectation that the judge would soon win Senate approval and join a majority in overturning Roe was clearly the overarching message of the rally. . . .

Most chillingly:

> Nellie Gray, the president of March for Life, the group that organized the rally, said reversing Roe was this year's theme. Speaking to the crowd in fiery tones, Ms. Gray predicted that the United States would hold the equivalent of Nuremberg trials for "feminist abortionists," calling support for a woman's right to choose "crimes against humanity."

Let me turn to other subjects. I agree with my colleague from Oklahoma, who told Judge Alito on the third day of the Judiciary Committee hearings:

> Integrity, I think, is the No. 1 issue.

I always feel uncomfortable to stand in judgment of another person's integrity—or other matters of personal character—especially someone whom I do not know personally. No one is perfect. I like to say that there are no saints in politics—only shades of sinners.

Yet I agree with Senator COBURN about the importance of integrity in a candidate for such a high public office as the United States Supreme Court or the U.S. Senate.

So, I am very troubled by Judge Alito's answers to the Senate Judiciary Committee about two incidents: his membership in the Concerned Alumni of Princeton University and his initial failure to recuse himself from the case involving the Vanguard Group.

Judge Alito acknowledged to the committee that he himself listed his membership in the Concerned Alumni of Princeton University in his 1985 application for appointment by then-President Reagan to an important position in the U.S. Department of Justice. Presumably, he considered his membership to be a positive reason for his favorable consideration. Yet he repeatedly professed total ignorance of the organization's repeatedly expressed, very extreme prejudices against the admission of women and minorities to his alma mater. His only acknowledged glimmer of recollection was that he was concerned about the status of ROTC on the Princeton campus, even though, the committee research found ROTC had been readmitted by Princeton way back in 1973, and the only reference to it found in the Concerned Alumni's publication, Prospect, was in 1985, "ROTC is popular again."

I find it not believable that Judge Alito would have no recollection of the extreme and extremely controversial views of the Concerned Alumni at the time he joined the organization or listed it as one of his credentials for the Reagan administration 20 years ago. He is too intelligent. His mind is too sharp. He recalls in great detail his judicial decisions and writings during the past 15 years and their precedents from the previous 200 years. He remembers the details of decisions in 1969 about "one person—one vote." He remembers the context for other controversial statements in his 1985 application and subsequently. Yet he professes to be unable to remember why he joined the Concerned Alumni of Princeton University, why the president of Princeton wrote to all Princeton alumni in 1984, calling the organization's extremist views "callous and outrageous," or why he thought his membership would enhance his appeal to the Reagan administration. I find it absolutely unbelievable.

I am also troubled by many of Judge Alito's answers to questions about his initial failure to recuse himself from a case involving the Vanguard Group, in which he had a financial interest that preceded his appointment to the Third Circuit Court in 1990. During those confirmation hearings before the Senate Judiciary Committee, Judge Alito promised, in writing:

> I would disqualify myself from any cases involving the Vanguard Companies. . . .

I could accept—with reluctance, but I could accept—Judge Alito's admission that his failure to recuse himself was an "oversight" for which he accepted responsibility, after he and the White House initially tried to pass it off as a computer glitch. As Senator FEINGOLD established, there is no evidence that Judge Alito ever registered his promise to the committee on the Court's recusal form in 1993, 1994, 1995, 1996, or any time before he failed to recuse himself in 2002.

Then, however, Judge Alito reached for the escape hatch that Senator HATCH offered him, i.e., that his 1990 promise applied only to "conflicts of interest during your initial service in the position to which you have been nominated."

In the committee transcript, Chairman SPECTER said:

> You, in response to Senator HATCH, did not believe that you are bound by the promise, because you said in your mind that you felt that it was just for the initial aspects of it.

Senator KENNEDY said:

> That's another issue, because initially was meant to include the investments that you had at that particular time. You might have those investments and then discard an investment and, therefore, no longer have a conflict. That is what the asker of the question had intended. But you've added another wrinkle to it. You've just indicated that when you made a pledge to the committee that you were going to recuse yourself, that you thought that at sometime you were going to be released. . . .

Judge Alito responded:

> Senator, as I said, I can't tell you 15 years later exactly what I thought when I read that question. It refers to the initial period of service. And looking at it now, it doesn't seem to me that 12 years later is the initial period of service.

I know from my own experience—as Judge Alito should also know—that a financial conflict of interest lasts for as long as the financial interest. It is not in any way limited or mitigated by time. That is a matter of integrity, not interpretation.

In other areas, I am deeply troubled by Judge Alito's well-documented biases against individual Americans and in favor of large and powerful corporations and government organizations. The Knight Ridder Newspapers, which publishes two of Minnesota's three largest newspapers, did an excellent analysis of Judge Alito's judicial record. I would like to quote excerpts from it.

It begins:

> A Knight Ridder review of Alito's 311 published opinions on the 3rd Circuit Court of Appeals—each of singular legal or public policy importance—found a clear pattern. Although Alito's opinions are rarely written with obvious ideology, he's seldom sided with a criminal defendant, a foreign national facing deportation, an employee alleging discrimination or consumers suing big businesses.
>
> A review of Alito' s work on dozens of cases that raised important social issues found that he rarely supports individual rights claims. The primary exception has been his opinions about First Amendment protections. Alito has been a near freespeech absolutist in his writings, and he's been equally strong on protecting religious freedoms.
>
> But even some of his First Amendment opinions underscore the bent in the rest of his work. He hasn't strictly enforced church-state separation, and his love of the First Amendment seems to stop at the prison walls. He has written opinions that would deny prisoners access to reading materials and curtail their rights to practice their religious beliefs.
>
> In other areas, Alito often goes out of his way to narrow the scope of individual rights, sometimes reaching out to undo lower-court rulings that affirmed those rights.
>
> Alito has been particularly rigid in employment discrimination cases.
>
> Many conservative jurists set a high bar for plaintiffs who allege racial, gender or age bias in the workplace, but Alito has seldom found merit in a bias claim. In most of the employment discrimination cases, Alito succeeded in applying a standard higher than the Supreme Court requires to plaintiffs' claims, often forcing them to prove that bias was the motivation behind their misfortunes. In two cases, Alito dissented from 3rd Circuit rulings that allowed discrimination claims to proceed. In one, a racial discrimination case involving a black hotel maid, Alito agreed that the woman had been treated unfairly, but he said that the employer had produced enough evidence to show that the unfair treatment didn't amount to illegal discrimination.
>
> Although Alito is the son of Italian immigrants, his record in immigration cases is similar to his perspective in criminal cases. He's demonstrated an inclination to defer to the judgment of the immigration courts, which are under the Justice Department's umbrella. As a result, a noncitizen fighting deportation is paddling upstream with Alito.
>
> Legal scholars, and some of Alito's supporters, have pointed to his decision in the case of Parastoo Fatin, a young Iranian woman who was fighting deportation in the early 1990s, as evidence of his scholarship and his impact on immigration law. Alito ruled in Fatin's case that gender-based persecution could be grounds for asylum. But the ruling was a hollow victory for Fatin. She lost her case when Alito found that she hadn't shown enough factual evidence to prove that she'd be persecuted if she were sent back to Iran. It was typical Alito—an impeccably crafted decision that denied relief to an individual.

Finally, I am very concerned with Judge Alito's view of executive power which reigns supreme over Congress and the judiciary. That radical view threatens the checks and balances the Constitution created among the three coequal branches of government to protect our democracy and the rights of all American citizens.

All Senators—not just those on my side of the aisle—should be deeply troubled about Judge Alito's position on

Executive power. He believes the President has the right to interpret laws as he wishes, rather than as they are written.

As one illustration, while he served as Deputy Assistant Attorney General in the Reagan administration, Judge Alito recommended the use of interpretive presidential "signing statements"—statements issued by the President when signing a bill not only to explain why the President signed it into law but also to provide his view of how the law should be interpreted.

The apparent purpose of such statements is to encourage the courts to pay as much attention to the President's interpretation of a law as they do to the legislative branch and give the President the "last word on questions of interpretation." Judge Alito explained that such statements would "increase the power of the Executive to shape the law."

He also wrote in that memo: A "President's understanding of a bill should be just as important as that of Congress." As a recent Los Angeles Times editorial stated, "On its face, the assertion threatens to undermine the fundamental constitutional principle that it is for Congress to write the laws and for the executive to well execute them."

President Bush has issued over 100 signing statements since 2001. The most notable was his signing statement a couple days after he signed into law H.R. 2863, the Department of Defense emergency supplemental appropriations, which contained Senator McCAIN's amendment banning inhumane treatment of detainees by U.S. personnel. The President, in his signing statement, basically asserted he could ignore parts of the law he had just signed under his constitutional authority.

Nowhere in the Constitution does it say a President can ignore the parts of a law he doesn't like.

Nowhere in the Constitution is there mention of "signing statements." The Constitution makes it very clear under article I, section 7 what the President can do with legislation that Congress has enacted. He can sign it into law as it is written by Congress or he can veto it. There is no other option.

For almost 190 years, our country's first 39 Presidents followed this very clear language of the Constitution. However, then-Deputy Assistant Attorney General Alito in 1985 decided that he could ignore all those precedents and try to fabricate this ill-considered power for the President.

As yet, the Supreme Court has not been called upon to decide whether this unprecedented exaggeration of Presidential power is Constitutional. Can there be any doubt, however, how Judge Alito would vote in such a case?

In closing, some critics are blaming the Senators who oppose Judge Alito for the absence of bipartisan unanimity in support of the President's nominee. Their blame is misplaced. The way to get broad, bipartisan consensus for a Supreme Court nominee is for the President to nominate someone from near the middle of the judicial mainstream, a nominee who promises to be a Justice for all of the American people, not just for those on one side of the social spectrum.

President Bush initially proposed someone who might have offered that possibility: Harriet Miers. In addition to her moderately conservative views, she would have maintained the Court's gender imbalance at two women and seven men. By contrast, if Judge Alito is confirmed, that appalling under-representation of America's women will become even worse. Our nation's highest court, the ultimate arbiter of the rights and protections for all citizens, will be comprised of eight men and only one woman, of eight Caucasians and only one minority.

Unfortunately, the activist extremists on the country's political right erupted against Ms. Miers. Their vicious denunciations of the nominee and threats of political reprisals against her supporters prevailed, before her capabilities could be reasonably considered.

Now some of that nominee's destroyers are sanctimoniously bemoaning the absence of unanimous support for this nominee.

Unfortunately, their sound and fury, as Shakespeare said, signify nothing. Sadly, their winning this confirmation will not be a victory for this country because, tragically, they profoundly misunderstand the essential reason for the Supreme Court, which is to protect each one of us from all the rest of us, to protect the "life, liberty, and pursuit of happiness" of a minority of Americans from the potential domination by the majority.

The nine men and women on the Supreme Court must protect everyone by belonging to no one. The goal of "taking over" the Supreme Court is shortsighted, narrow-minded, and wrong. Their success is America's peril. For our great Nation to continue to succeed, any and every such effort must fail. That failure is America's victory.

The PRESIDING OFFICER (Mr. ALLEN). The Senator from Massachusetts is recognized.

Mr. KERRY. I thank the Chair.

Mr. President, let me begin by congratulating the Senator from Minnesota for an absolutely superb presentation of the arguments that are at stake in this choice which the Senate faces. I think he has done a terrific job of summarizing a great many of those issues in the broad scope of those issues, and I particularly appreciate the last comments he made about the absence of unanimity and the divisions in the Senate over their vote.

None of us should forget the debate Harriet Miers met with a storm of criticism—not from this side but from the other, from the rightwing. In fact, she became more unacceptable to the Republicans because she did not make clear which ideological direction she would take the Court, rather than for the very broad-based appeal she would pose to the country.

The reason we are here with this decision is not because of a choice we have made. It is because of a choice the President has made. It is because that is the direction the President wants to move in. We have had countless opportunities in the Senate where we have had votes on nominees which have garnered 100 votes, 98 votes, 95, 90. Anyone who is watching understands that the Senate is divided on this nominee. At this pivotal moment in our country's history with the issues we face, that is not the way to tip the balance of the Court or to move the Court in an ideological direction.

The critical question here is, Why are we so compelled to accept in such a rush a nominee who has so clearly been chosen for political and ideological reasons? That is the real question. Our job is to advise and consent. No one understands better than I do the consequences of an election and what happens when a President wins. I have heard colleagues say: Well, the President won. He has a right to make his choice.

Yes, he does. And the choice he has made is an ideological choice to take the Court in a certain direction. That is his choice.

Our choice depends on our rights as Senators and depends on what the Constitution tells us we should do in terms of giving advice and consent. My question to the Senate is, What is our advice with respect to the rights of a young person to be strip-searched or with respect to people in their homes or with respect to a whole series of other critical things that define this country? What is the advice of the Senate in this year?

These are not small issues to be expedited away by some kind of a symbolic timetable, a State of the Union Message. Our advice and consent ought to be weighed just as carefully and as importantly as the impact this choice is going to have on the Court for years to come. This is not just the vote of Monday afternoon. This is a vote of history.

Deciding on whether to confirm Judge Sam Alito to be an Associate Justice is one of the most important votes I will cast in the time I have been in the Senate because of what it means to the Court and to these critical choices. Confirming Judge Alito to a lifetime appointment on the Supreme Court would have irreversible consequences that are already defined if Senators will take the time to measure them.

In my judgment, it will take the country backward on critical issues. I will not talk about them all now: we do not have time. I know there is a preagreement. I understand that, and I respect that.

I am proud to join my friend, the senior Senator from Massachusetts, in taking a stand against this nomination. I know it is an uphill battle. I have heard many of my colleagues. I hear the arguments: Reserve your gunpowder for the future. What is the future if it changes so dramatically at this moment in time? What happens to those people who count on us to stand up and protect them now, not later, not at some future time?

This is the choice for the Court now. I reject those notions that there ought to somehow be some political calculus about the future. This impact is going to be now. This choice is now. This ideological direction is defined now.

This fight is not a fight for the short term. This is a fight over two very fundamentally different views about what defines us, what is appropriate in the relationship between government and citizen, and the right of our citizens to be free from unlawful government action. These are not just words. This is not something we just casually throw out there. "Unlawful government action" is part of what motivated people to come here in the first place and to fight for what we love and cherish.

I used to be a prosecutor, and I worked closely with police. I loved my work with the police. I respect the police. They do unbelievably dangerous work on behalf of our country every single day. They may walk into a home, into a dark corner, not knowing who is there or what evil awaits. I understand that. I also understand when you assume that responsibility, you assume a responsibility to uphold the law, to uphold the Constitution, and to help protect people. That is part of the risk, part of what you take on.

What about the right to equal justice under the law? I heard one Senator the other day come to the Senate and say it isn't the job of a Supreme Court Justice to protect the downtrodden or the disenfranchised, it is their job to interpret the law. On countless occasions we all know the weight that comes to bear in that decision-making process between powerful interests and those who do not have a voice. That is also part of what defines us. What makes America different from every country on the face of the Earth is that the average citizen can go into a courthouse in America and hold the most powerful corporation to account for their safety, for their livelihood, for their welfare. These are rights that Americans care about deeply.

The importance of this choice is highlighted by focusing on the seat that this nominee has been chosen to replace. Look at Justice Sandra Day O'Connor, a deciding vote, a vote that will likely be lost if Judge Alito takes her place. Look at the case of Grutter v. Bollinger, which held that State colleges and universities have the right to use affirmative action in their admission policies to increase educational opportunities for minorities and promote racial diversity on campuses.

What about Tennessee v. Lane, which upheld the constitutionality of title II of the Americans with Disabilities Act that required that courtrooms be physically accessible to the disabled. Or Rush Prudential HMO v. Moran, which upheld State laws giving people the right to a second doctor's opinion if their HMO tries to deny them treatment. That is a classic example of power against the powerless. It happens every day in America. An HMO decides, no; an individual citizen wants the coverage they think they got. Will they have the right to have the access on that?

Hunt v. Cromartie, affirming the right of State legislatures to take race into account to secure minority voting rights and redistricting—we all know what has happened in this country, the challenge to the rights of minorities to vote. We still see it. As recently as in the last election we saw minorities denied opportunities to register, opportunities to have equal numbers of voting machines in their district. These are the things that define us.

Brown v. Legal Foundation of Washington, which maintained the key source of funding for legal assistance for the poor; Alaska Department of Environmental Conservation v. EPA, which allowed the EPA to step in and take action to reduce air pollution under the Clean Air Act when a State conservation agency fails to act—there is not an American that doesn't understand we are going backwards with respect to air quality. What are the rights of the EPA going to be where Justice Sandra Day O'Connor was the swing vote, 5–4, the only one who held the line on the right of the EPA to do that?

Stenburg v. Carhart, which overturned a State law that would have banned abortion as early as the 12th week of pregnancy without providing an exception to a woman's health—the list goes on. These are the issues which are at stake.

Throughout his legal career—these are not things that are made up. These are defined by the writings, by the decisions, by the memoranda, by the speeches that Judge Alito has made. In each of those, in all of those, there is a startling lack of skepticism that is healthy in judges towards government power that infringes on individual rights and liberties. Professor Goodwin Liu of the University of Berkeley Law School concluded after analyzing those:

> Judge Alito "is less concerned about the government overreaching than Federal appeals judges nationwide, less concerned than Republican-appointed appeals judges nationwide, and less concerned than his Republican-appointed colleagues on the Third Circuit."

Aren't we going to be concerned that he is less concerned than those of the same stripe? Not only is his record outside the mainstream of the judicial spectrum, but "it is at odds with the Supreme Court's vital role in protecting privacy, freedom, and due process of law." That is Professor Liu.

In 1984, for example, Judge Alito wrote a Justice Department memorandum concluding that the use of deadly force against a fleeing unarmed suspect did not violate the fourth amendment. The victim was a 15-year-old African American. He was 5 foot 4. He weighed 100 to 110 pounds. This unarmed eighth grader was attempting to jump a fence with a stolen purse containing $10 when he was shot in the back of the head in order to prevent escape. The Sixth Circuit Court of Appeals found the shooting unconstitutional because deadly force can only be used when there is "probable cause that the suspect poses a threat to the safety of the officers or a danger to the community if left at large." That is what we teach law enforcement officials.

But Judge Alito disagreed. Judge Alito said: No, he believed the shooting was reasonable because "the State is justified in using whatever force is necessary to enforce its laws"—even deadly force. That is his conclusion. That is the standard that is going to go to the Supreme Court if ratified. It is OK to shoot a 15-year-old, 110 pounds, a 5-foot-4-inch kid who is trying to get over a fence with a purse, shoot him in the back of the head.

Otherwise, Judge Alito believed that any suspect could evade arrest by making the State choose between killing them or letting them escape. That is the conclusion. Think about that. Judge Alito believed that the State could use whatever force was necessary to enforce its laws regardless of whether the suspect was armed or dangerous. Does the Chair believe that? Do the other Senators believe that? I don't think so. Do mainstream Americans believe that?

Lucky for us, we did not have to answer that question. Why? Because in 1985, Justice White rejected Judge Alito's position, and the court held that deadly force is not justified "where the suspect poses no immediate threat to the officer and no threat to others". The court stated unequivocally, "a police officer may not seize an unarmed, nondangerous suspect by shooting him dead."

So Judge Alito is out of touch with mainstream juris prudence with respect to the use of force in America. Becoming a Federal judge did not make Judge Alito any more protective of an American's personal privacy and freedoms when it comes to government intrusion. That ought to concern every conservative in this Nation. Every conservative in America ought to care about the government's power to just walk into your home, to intrude on the rights of individual Americans.

In Baker v. Monroe Township, over a dozen local and Federal narcotics agents raided the apartment of Clement Griffin, just as his mother and her three children were arriving for a family dinner. Officers forced the family down to the ground, pointed guns at them, handcuffed and searched them. Two Reagan appointees to the court held that a jury should decide whether excessive force was used, but Judge Alito disagreed. He agreed that the search was "terrifying" and "most unfortunate". But he did not believe that the family had a right to make their case to a jury in court. He would have denied those American citizens, terrified as they were, their day in court.

Judge Alito, I regret to say, often goes out of his way to justify excessive government actions. Many have talked in the Senate about Doe v. Groody, where Judge Alito, dissenting in an opinion by our current head of the Department of Homeland Security, then-Judge Michael Chertoff, concluded that the strip-search of a 10-year-old girl was unreasonable. That was the conclusion of Judge Chertoff. Judge Alito concluded that the strip-search of a 10-year-old girl was reasonable. He reached this astonishing conclusion on a technicality. Rather than relying on the search warrant to determine whether the strip search of a child was authorized, Judge Alito argued that the court ought to look to the police officer's supporting affidavits.

As a rule, however—now, I can say this as a former prosecutor because we used to labor over those warrants very carefully, knowing they were going to be scrutinized—affidavits are not part of the search warrants unless the trial judge decides they are. That "goes to the heart of the constitutional requirement that judges, not the police, authorize the warrants. But Judge Alito said: No, no, no, no, it is OK to go look behind what they were intending, and decided they must have intended to include the search of the entire family, including a 10-year-old child. Is that the standard we want on the Court?

Judge Alito's minimalist view of the fourth amendment's right to privacy is not limited to claims of excessive force. In United States v. Lee, he upheld the FBI's installation of a video and audio surveillance device in a hotel room in order to record conversations between the target of a bribery sting and a police informant. The FBI conducted the surveillance without a warrant, arguing, first, that the target had no expectation of privacy in a hotel room, and, second, that the device was turned on only when the informant was in the room. Judge Alito accepted the FBI's argument, and found no constitutional violation.

His eagerness to buy the FBI's arguments, particularly in light of the Supreme Court decisions to the contrary, raises serious questions about how he would approach serious constitutional violations to the National Security Agency's program of domestic eavesdropping. Americans across the board are concerned about the violation of the law with respect to what we passed in the Congress overwhelmingly. After all, with the eavesdropping in Lee and the eavesdropping being conducted now, we see some startling similarity. Both are defended on the basis of Executive discretion and self-restraint.

The fourth amendment is not defined that way. It is defined by judicial restraint itself, not the Executive restraint, and by judicial review.

We also should never forget, as we think about this issue, the words of an eminent Justice, Justice Brandeis, who said:

> Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. . . . The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

I believe that is what we need to protect ourselves against. That is what the Framers created the judiciary to do. And that is what I fear the record shows Judge Alito has not been willing to do.

Now, if his judicial opinions and legal memoranda do not convince you of these things, you can take a look at the speech he gave to the Federalist Society in which, as a sitting judge, he "preached the gospel" of the Reagan Justice Department nearly 15 years after he left it; a speech in which he announced his support of the "unitary executive theory" on the grounds that it "best captures the meaning of the Constitution's text and structure."

As Beth Nolan, former White House counsel to President Clinton, describes it:

> "Unitary executive" is a small phrase with almost limitless import: At the very least, it embodies the concept of Presidential control over all Executive functions, including those that have traditionally been exercised by "independent" agencies and other actors not subject to the President's direct control. Under this meaning, Congress may not, by statute, insulate the Federal Reserve or the Federal Election Commission . . . from Presidential control.

Judge Alito believes you can.

> The phrase is also used to embrace expansive interpretations of the President's substantive powers, and strong limits on the Legislative and Judicial branches. This is the apparent meaning of the phrase in many of this Administration's signing statements.

Now, most recently, one of those signing statements was used to preserve the President's right to just outright ignore the ban on torture that was passed overwhelmingly by the Congress. We had a long fight on this floor. I believe the vote was somewhere in the 90s, if I recall correctly. Ninety-something said this is the intent of Congress: to ban torture. But the President immediately turned around and did a signing in which he suggested an alternative interpretation. And Judge Alito has indicated his support for that Executive power.

During the hearings, Judge Alito attempted to convince the committee that the unitary executive theory is not about the scope of Presidential power. But that is just flat wrong. Not only does the theory read Executive power very broadly, but, by necessity, it reads congressional power very narrowly. In other words, as the President gains exclusive power over a matter, the Constitution withholds Congress's authority to regulate in that field. That is not, by any originalist interpretation, what the Founding Fathers intended.

Let me give you a real-life example, as described again by Beth Nolan:

> [W]hen the Reagan Administration undertook the covert arms-for-hostages operation that eventually grew into the Iran-Contra scandal, it triggered the requirement of the National Security Act that the Administration provide Congress "timely notification" of the covert operation.

Reading the phrase "timely notification" against the background of the unitary executive theory, the Justice Department stated, "The President's authority to act in the field of international relations is plenary, exclusive, and subject to no legal limitations save those derived from the applicable provisions of the Constitution itself."

According to Justice, under that interpretation, Congress's role in this matter was limited because its only constitutional powers in the area of foreign affairs were those that directly involved the exercise of legal authority over American citizens. Justice even qualified this statement, saying that by "American citizens" it meant "the private citizenry" and not the President or other executive officials.

According to Ms. Nolan:

> [I]f such claims are taken seriously, then the President is largely impervious to statutory law in the areas of foreign affairs, national security, and war, and Congress is effectively powerless to act as a constraint against presidential aggrandizement in these areas.

Does that sound familiar? It ought to sound familiar. The Bush administration's legal opinion on torture, the administration's response to the McCain antitorture amendment, and the justifications given for the NSA's domestic spying program have all been based, in large part, on this exact same theory of the unitary executive.

Given Judge Alito's history in the Reagan Justice Department, given his writings on the Third Circuit, given the year 2000 speech to the Federalist Society, a central question is whether you can trust that he, in fact, is going to protect the rights of the Congress and the legislative branch as well as those personal freedoms of individual Americans from those governmental intrusions?

I believe the record says "no."

Now, as I mentioned earlier, I know this is flying against some of the sort of political punditry of Washington. I understand that. But this is a fight worth making because it is a fight for a lifetime appointment on the Supreme Court of the United States, with a series of decisions that suggest a view—however brilliant a legal mind—he has a brilliant legal mind. I met with him. He is a nice fellow—we all understand that—well regarded by some people in the judicial system. He was looked at by the ABA. And they make a judgment based on sort of just legal decisions, not necessarily the ideological impact, the larger implication, all the other conditions that we need to consider as we give advice and consent.

Perhaps Professor Liu of the Berkeley Law School put it best when he wrote this. He said:

> Judge Alito's record envisions an America where police may shoot and kill an unarmed boy to stop him from running away with a stolen purse; where federal agents may point guns at ordinary citizens during a raid, even after no sign of resistance; where the FBI may install a camera where you sleep on the promise that they won't turn it on unless an informant is in the room; where a black man may be sentenced to death by an all-white jury for killing a white man, absent a multiple regression analysis showing discrimination; and where police may search what a warrant permits, and then some.

He says:

> [T]his is not the America we know. Nor is it the America we aspire to be.

So these are the reasons we need to take a hard look at what we are doing, even if it means swimming upstream. There are consequences to this nomination that I do not believe all the American people got out of the hearings because the hearings did not answer questions. And when you pose some of these choices to Americans, they come down on the side that I have described: being protected, not making those kinds of choices about a young kid, making sure that our privacy is protected.

So for those reasons, and others I will discuss starting on Monday, I oppose Judge Alito's nomination. And I hope that colleagues, others, will join in that effort in the end.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will please call the roll.

The legislative clerk proceeded to call the roll.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. COCHRAN. Mr. President, I ask unanimous consent that there be a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

HONORING OUR ARMED FORCES

SERGEANT NATHAN R. FIELD

Mr. GRASSLEY. Mr. President. Today, I wish to honor an heroic Iowan who has given the ultimate sacrifice for his country in Operation Iraqi Freedom. SGT Nathan R. Field died January 7, 2006, in Umm Qasr, Iraq due to injuries sustained when his Humvee was hit by a civilian vehicle. Sgt. Field was assigned to the 4249th Port Security Company, U.S. Army Reserve out of Pocahontas, IA, but was temporarily assigned with the 414th Military Police of Joplin, MO. I want to extend my condolences to his parents Bill and Mary, his brother Eli, his fiancée Connie, and his many family members and friends.

Sergeant Field graduated from South East Webster High School in 2000 where he was a member of the student council, senior class president, captain of the wrestling team, and was a three year member of the football team and manager of the football team his senior year. SGT Field enlisted in the Army Reserve while still in high school and after the terrorist attacks of September 11, 2001. His unit was called to active duty where he accompanied ships to Belgium, France and Germany. In September of 2005, he volunteered for duty in Iraq, something that he felt compelled to do for the freedom of our country.

Nathan Field will be remembered for his loyalty to friends and for his love of life. As his father said, "If Nathan liked you, there wasn't anything he wouldn't do for you." I call on my colleagues in the Senate and every American to pay tribute to this brave American and to give thanks to this courageous soldier who gave the ultimate sacrifice in defending our freedom.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 2099. An act to establish the Arabia Mountain National Heritage Area, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 2329. An act to permit eligibility in certain circumstances for an officer or employee of a foreign government to receive a reward under the Department of State Rewards Program; to the Committee on Foreign Relations.

H.R. 3351. An act to make technical corrections to laws relating to Native Americans, and for other purposes; to the Committee on Indian Affairs.

H.R. 3508. An act to authorize improvements in the operation of the government of the District of Columbia, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

H.R. 3827. An act to preserve certain immigration benefits for victims of Hurricane Katrina, and for other purposes; to the Committee on the Judiciary.

H.R. 4000. An act to authorize the Secretary of the Interior to revise certain repayment contracts with the Bostwick Irrigation District in Nebraska, the Kansas Bostwick Irrigation District No. 2, the Frenchman-Cambridge Irrigation District, and the Webster Irrigation District No. 4, all a part of the Pick-Sloan Missouri Basin Program, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 4108. An act to designate the facility of the United States Postal Service located at 3000 Homewood Avenue in Baltimore, Maryland, as the "State Senator Verda Welcome and Dr. Henry Welcome Post Office Building"; to the Committee on Homeland Security and Governmental Affairs.

H.R. 4109. An act to designate the facility of the United States Postal Service located at 6101 Liberty Road in Baltimore, Maryland, as the "United States Representative Parren J. Mitchell Post Office"; to the Committee on Homeland Security and Governmental Affairs.

H.R. 4246. An act to designate the facility of the United States Postal Service located at 8135 Forest Lane in Dallas, Texas, as the "Dr. Robert E. Price Post Office Building"; to the Committee on Homeland Security and Governmental Affairs.

H.R. 4311. An act to amend section 105(b)(3) of the Ethics in Government Act of 1978 (5 U.S.C. App); to the Committee on Homeland Security and Governmental Affairs.

H.R. 4337. An act to amend the Internal Revenue Code of 1986 to provide for Gulf tax credit bonds and advance refundings of certain tax-exempt bonds, and to provide a Federal guarantee of certain State bonds; to the Committee on Finance.

H.R. 4437. An act to amend the Immigration and Nationality Act to strengthen enforcement of the immigration laws, to enhance border security, and for other purposes; to the Committee on the Judiciary.

H.R. 4510. An act to direct the Joint Committee on the Library to accept the donation of a bust depicting Sojourner Truth and to display the bust in a suitable location in the Capitol; to the Committee on Rules and Administration.

H.R. 4519. An act to amend the Public Health Service Act to extend funding for the operation of State high risk health insurance pools; to the Committee on Health, Education, Labor, and Pensions.

H.R. 4568. An act to improve proficiency testing of clinical laboratories; to the Committee on Health, Education, Labor, and Pensions.

H.R. 4647. An act to amend the USA PATRIOT Act to extend the sunset of certain provisions of such Act; to the Committee on the Judiciary.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 238. Concurrent resolution honoring the victims of the Cambodian genocide that took place from April 1975 to January 1979; to the Committee on Foreign Relations.

H. Con. Res. 252. Concurrent resolution expressing the sense of Congress that the Government of the United States should support democracy, the rule of law, and human rights in the Republic of Nicaragua and work cooperatively with regional and international organizations to bolster Nicaraguan efforts to establish the requisite presidential and legislative elections in 2006; to the Committee on Foreign Relations.

H. Con. Res. 275. Concurrent resolution expressing the sense of Congress regarding the education curriculum in the Kingdom of Saudi Arabia; to the Committee on Foreign Relations.

H. Con. Res. 281. Concurrent resolution congratulating the Chicago White Sox on winning the 2005 World Series; to the Committee on Commerce, Science, and Transportation.

H. Con. Res. 284. Concurrent resolution expressing the sense of Congress with respect to the 2005 presidential and parliamentary elections in Egypt; to the Committee on Foreign Relations.

H. Con. Res. 294. Concurrent resolution calling on the international community to condemn the Laogai, the system of forced labor prison camps in the People's Republic of China, as a tool for suppression maintained by the Chinese Government; to the Committee on Foreign Relations.

H. Con. Res. 312. Concurrent resolution urging the Government of the Russian Federation to withdraw the first draft of the proposed legislation as passed in its first reading in the State Duma that would have the effect of severely restricting the establishment, operations, and activities of domestic, international, and foreign nongovernmental organizations in the Russian Federation, or to modify the proposed legislation to entirely remove these restrictions; to the Committee on Foreign Relations.

H. Con. Res. 315. Concurrent resolution urging the President to issue a proclamation for the observance of an American Jewish History Month; to the Committee on the Judiciary.

MEASURES PLACED ON THE CALENDAR

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2830. An act to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes.

H.R. 4473. An act to reauthorize and amend the Commodity Exchange Act to promote legal certainty, enhance competition, and reduce systemic risk in markets for futures and over-the-counter derivatives, and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. VITTER (for himself, Mr. SANTORUM, and Mr. DEMINT):

S. 2206. A bill to amend title X of the Public Health Service Act to prohibit family planning grants from being awarded to any entity that performs abortions; to the Committee on Health, Education, Labor, and Pensions.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Ms. MIKULSKI (for herself, Mr. LUGAR, Mr. SARBANES, Mr. BIDEN, and Mr. HARKIN):

S. Res. 356. A resolution urging a commitment by the United States and the international community to continue relief efforts in response to the earthquake in South Asia and to help rebuild critical infrastructure in the affected areas; considered and agreed to.

By Mr. MCCAIN (for himself, Mr. KENNEDY, Mrs. DOLE, Mr. AKAKA, Mr. DEWINE, Mr. BAUCUS, Mr. COCHRAN, Mrs. CLINTON, Mr. DAYTON, Mr. DURBIN, Mr. LAUTENBERG, Mr. LEVIN, Mrs. FEINSTEIN, Mr. CARPER, Mr. FEINGOLD, Ms. MURKOWSKI, Ms. LANDRIEU, Mr. GRASSLEY, Mr. KERRY, Mr. NELSON of Florida, Mr. JOHNSON, Mr. ALLEN, Mrs. BOXER, Ms. CANTWELL, Mr. LUGAR, Mr. TALENT, and Mr. DODD):

S. Res. 357. A resolution designating January 2006 as "National Mentoring Month"; to the Committee on the Judiciary.

By Mr. FRIST (for himself, Mr. REID, Mr. ALLARD, Mr. ALLEN, Mr. BIDEN, Mr. BROWNBACK, Mr. BURR, Mrs. CLINTON, Mr. COLEMAN, Mr. CRAPO, Mr. ENSIGN, Mrs. FEINSTEIN, Mr. GRAHAM, Mr. HAGEL, Mr. KYL, Mr. LIEBERMAN, Mr. LUGAR, Ms. MIKULSKI, Mr. NELSON of Florida, Mr. SANTORUM, Mr. SCHUMER, Mr. TALENT, Mr. WARNER, Mr. MCCAIN, Mr. VOINOVICH, Mr. DODD, Ms. CANTWELL, Mrs. BOXER, Mr. FEINGOLD, Mr. KERRY, and Mr. MENENDEZ):

S. Con. Res. 78. A concurrent resolution condemning the Government of Iran for violating its international nuclear nonproliferation obligations and expressing support for efforts to report Iran to the United Nations Security Counsel; considered and agreed to.

ADDITIONAL COSPONSORS

S. 267

At the request of Mr. CRAIG, the names of the Senator from Texas (Mrs. HUTCHISON) and the Senator from Mississippi (Mr. LOTT) were added as cosponsors of S. 267, a bill to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000, and for other purposes.

S. 1779

At the request of Mr. AKAKA, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 1779, a bill to amend the Humane Methods of Livestock Slaughter Act of 1958 to ensure the humane slaughter of nonambulatory livestock, and for other purposes.

S. 1979

At the request of Mr. KOHL, the names of the Senator from Vermont (Mr. JEFFORDS) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. 1979, a bill to provide for the establishment of a strategic refinery reserve, and for other purposes.

S. 2071

At the request of Ms. SNOWE, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 2071, a bill to amend title XVIII of the Social Security Act to clarify congressional intent regarding the counting of residents in the nonhospital setting under the medicare program.

S. 2086

At the request of Mr. SMITH, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 2086, a bill to amend the Internal Revenue code of 1986 to modify the definition of compensation for purposes of determining the limits on contributions to individual retirement accounts and annuities, and for other purposes.

S. 2179

At the request of Mr. OBAMA, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2179, a bill to require openness in conference committee deliberations and full disclosure of the contents of conference reports and all other legislation.

S. 2182

At the request of Mr. ISAKSON, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 2182, a bill to terminate the Internal Revenue Code of 1986, and for other purposes.

S. 2201

At the request of Mr. OBAMA, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2201, a bill to amend title 49, United States Code, to modify the mediation and implementation requirements of section 40122 regarding changes in the Federal Aviation Administration personnel management system, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. VITTER (for himself, Mr. SANTORUM, and Mr. DEMINT):

S. 2206. A bill to amend title X of the Public Health Service Act to prohibit family planning grants from being awarded to any entity that performs abortions; to the Committee on Health, Education, Labor, and Pensions.

Mr. VITTER. Mr. President, I would like to offer my comments in support of The Title X Family Planning Act, which I introduced today. I am very pleased to have Senator SANTORUM and Senator DEMINT join me as original cosponsors of this very important legislation. The Title X Family Planning Act prohibits the distribution of taxpayer dollars, through Title X family planning funds, to those that provide abortions. I believe that this important legislation is very timely, because this week thousands of pro-life advocates gathered in our Nation's capital for the March for Life, some of which came all the way from my home State of Louisiana.

In 1970, Congress enacted Title X of the Public Health Service Act, which is a program designed to make contraceptive supplies and family planning services available to those unable to afford them without government assistance. Originally, family planning services were not allowed to include abortions, and currently, Federal dollars cannot directly fund abortions.

Current law prohibits the use of Title X family planning funds "in programs where abortion is a method of family planning"; and current regulations require some form of separation between federally-funded family planning services and abortions. 42 U.S.C. 300a-6 (1970). However, the current regulations do not contain a descriptive standard of what constitutes "separation." 42 CFR part 59 (2000). It only requires that these activities be separated by something more than mere bookkeeping.

This level of separation—separation of accounting records and separation of facilities within the same building—is not enough. When Title X money goes to clinics that perform abortions, even though the money cannot directly fund abortions it is being used to indirectly facilitate abortions. For example, abortion providers are using Title X funding to offset operational costs, which, therefore, frees them to use monies that would otherwise be allocated to operational costs, towards funding abortion.

The Title X Family Planning Act would restore the original intent of Title X by prohibiting the distribution of Title X family planning money to grantees that perform abortions and to grantees whose subgrantees perform abortions, unless a physician certifies that the abortion is necessary to save the life of the mother. The bill specifically exempts hospitals. In order to ensure that grantees who provide abortions do not obtain funding, the bill also requires the Secretary of Health and Human Services to give to Congress a list of grantees that provided abortions in the preceding fiscal year. Grantees that appear on the list would not be eligible to receive Title X family planning funds, unless the grantee submits a certification to the Secretary of Health and Human Services that neither the grantee nor its subgrantees perform abortions.

The rationale behind this prohibition is simple: when abortion is so divisive an issue, when so many Americans have grave moral reservations about it, why should we sustain and underwrite private abortion providers with taxpayer funds?

The Title X Family Planning Act denies no one family planning services. In every locality where a private abortion provider is receiving Title X funds, there are alternative sources for family planning services, inducing both public agencies and private agencies that do not offer abortions.

The Title X Family Planning Act does not cut one penny from family planning funds. It only ensures that those funds are used for actual family planning services.

The Title X Family Planning Act does not infringe upon the right to free speech. In fact, it does not contain language regarding counseling, advocacy, information or expression.

The Title X Family Planning Act does prevent our Federal tax dollars from going to abortion providers. It will save the lives of millions of unborn children. I ask my colleagues to join Senator SANTORUM, Senator DEMINT, and myself in supporting this bill, because the U.S Government should not force taxpayers, many of whom are anti-abortion, to fund abortion.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 356—URGING A COMMITMENT BY THE UNITED STATES AND THE INTERNATIONAL COMMUNITY TO CONTINUE RELIEF EFFORTS IN RESPONSE TO THE EARTHQUAKE IN SOUTH ASIA AND TO HELP REBUILD CRITICAL INFRASTRUCTURE IN THE AFFECTED AREAS

Ms. MIKULSKI (for herself, Mr. LUGAR, Mr. SARBANES, Mr. BIDEN, and Mr. HARKIN) submitted the following resolution; which was considered and agreed to:

S. RES. 356

Whereas on October 8, 2005, a magnitude 7.6 earthquake struck Pakistan, India, and Afghanistan;

Whereas the epicenter of the earthquake was located near Muzaffarabad, approximately 60 miles north-northeast of Islamabad, with aftershocks and landslides continuing to affect the area;

Whereas more than 75,000 people have died, including approximately 17,000 children, nearly 70,000 people are injured and approximately 3,000,000 people are homeless as a result of the earthquake;

Whereas the United States has pledged a total of $510,000,000 in assistance to the affected areas, including $300,000,000 for relief and reconstruction, $110,000,000 to support Department of Defense relief operations, and at least $100,000,000 in anticipated contributions from private entities in the United States;

Whereas, as of January 25, 2006, the total amount of humanitarian assistance provided to Pakistan by the United States Agency for International Development is more than $66,500,000;

Whereas the Department of Defense has deployed approximately 875 members of the Armed Forces and 31 helicopters to aid in the earthquake relief efforts;

Whereas since October 8, 2005, United States helicopters have flown more than 3,200 missions, evacuated approximately 3,800 people, and delivered nearly 15,000,000 pounds of supplies;

Whereas the cost of rebuilding the affected areas could be more than $5,000,000,000;

Whereas Secretary of State Condoleezza Rice, during her October 12, 2005 visit to Pakistan, said the United States would support the efforts of the Government of Pakistan over the long-term to provide assistance to the victims of the earthquake and rebuild areas of the country devastated by the earthquake;

Whereas the robust humanitarian response of the Government of the United States to the earthquake disaster has made an impact on the Government and people of Pakistan and demonstrates the United States commitment to Pakistan and the well-being of its residents;

Whereas the United States humanitarian mission in Pakistan may impact positively on the way Americans are viewed, especially in areas where the population may oppose United States counterterrorism policies and where radical groups and affiliates of known terrorist organizations are conducting high-profile relief efforts; and

Whereas the results of a poll taken by the nonprofit organization Terror Free Tomorrow show that, at the end of November 2005, more than 46 percent of Pakistanis had a favorable view of the United States, double the percentage of Pakistanis that held that view in May 2005: Now, therefore, be it

Resolved, That the Senate—

(1) commends the members of the United States Armed Forces and civilian employees of the Department of State and the United States Agency for International Development for their swift and sustained efforts to assist the victims of the earthquake in South Asia that occurred on October 8, 2005;

(2) commends the Governments of Pakistan and India for working together to save lives and provide humanitarian relief in the affected areas and encourages them to continue in this spirit of cooperation;

(3) commends the international community, including nongovernmental organizations, private corporations, and individual citizens, for responding swiftly and generously to the relief and recovery effort;

(4) urges continued attention by international donors and relief agencies to the needs of vulnerable populations in the stricken areas, particularly the thousands of children who have been left parentless and homeless by the disaster; and

(5) urges the Government of the United States to take the lead in encouraging the international community to commit to continue relief efforts in response to the earthquake in South Asia and to help rebuild critical infrastructure in the affected areas.

SENATE RESOLUTION 357—DESIGNATING JANUARY 2006 AS "NATIONAL MENTORING MONTH"

Mr. MCCAIN (for himself, Mr. KENNEDY, Mrs. DOLE, Mr. AKAKA, Mr.

DeWine, Mr. Baucus, Mr. Cochran, Mrs. Clinton, Mr. Dayton, Mr. Durbin, Mr. Lautenberg, Mr. Levin, Mrs. Feinstein, Mr. Carper, Mr. Feingold, Ms. Murkowski, Ms. Landrieu, Mr. Grassley, Mr. Kerry, Mr. Nelson of Florida, Mr. Johnson, Mr. Allen, Mrs. Boxer, Ms. Cantwell, Mr. Lugar, Mr. Talent, and Mr. Dodd) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. Res. 357

Whereas youth mentoring is a centuries-old concept, through which an adult provides guidance, support, and encouragement to help a young person become a responsible and productive adult;

Whereas mentoring, when done well, helps young people stay in school and improve academically, boosts self-esteem and communication skills, and improves the chances of going on to higher education;

Whereas there are thousands of mentoring programs in communities of all sizes across the United States, focused on building strong and effective relationships between caring adults and young people who need positive adult role models;

Whereas in spite of the great benefits mentoring provides, the United States has a serious mentoring gap, with more than 15,000,000 young people currently in need of caring adult role models;

Whereas the demand for mentoring far exceeds the current capacity of local mentoring programs and the number of adults who currently volunteer as mentors;

Whereas recent research conducted as part of the National Conversation on Mentoring—Take II points to the need to generate significantly larger numbers of volunteer mentors as one of the most critical issues facing mentoring;

Whereas the designation of January 2006 as National Mentoring Month will focus the Nation's attention on the essential role mentoring plays in the lives of young people;

Whereas the month-long celebration of mentoring will encourage more organizations, including schools, businesses, nonprofit organizations, faith institutions, foundations, and individuals to become engaged in mentoring; and

Whereas National Mentoring Month will, most importantly, build awareness of mentoring and recruit more individuals to become mentors, helping close the Nation's mentoring gap: Now, therefore, be it

Resolved, That the Senate—

(1) proclaims the month of January 2006 as the fifth annual "National Mentoring Month";

(2) recognizes that the President has issued a proclamation calling upon the people of the United States and interested groups to observe the month with appropriate ceremonies and activities that promote awareness of and volunteer involvement with youth mentoring; and

(3) recognizes with gratitude the contributions of the millions of caring adults who are already serving as mentors and encourages more adults to volunteer as mentors.

Mr. KENNEDY. Mr. President, it is a privilege today to join Senator McCain and 25 of our colleagues in submitting a resolution recognizing January 2006 as National Mentoring Month. Business, community, and media leaders have formed a coalition to raise public awareness about the importance of taking time to make a real difference in the life of a child.

Under the impressive leadership of the National Mentoring Partnership and the Harvard School of Public Health, the coalition is sponsoring an advertising campaign to explain the benefits of mentoring for children and mentors alike. Each of us has had adults who have made a positive difference for us, family, teachers, coaches, clergy, neighbors or caring friends who were there to listen and offer guidance. Each of us has the opportunity to offer that same gift to young persons today.

Each week with many of my colleagues in the Senate, I read with an elementary school student in the District of Columbia in the Everybody Wins program. During our lunchtime sessions, my second grade partner and I share good books and stories. Whether mentors choose reading programs or some other activity, these times are dedicated to listening and responding to the child's needs. Mentors have busy lives, but every child needs to know that we can make time for them.

In States across this country there are long lists of young persons waiting for mentors. This important project will connect new mentors to these waiting children and enhance the quality of their lives. I urge the Senate to approve this resolution.

SENATE CONCURRENT RESOLUTION 78—CONDEMNING THE GOVERNMENT OF IRAN FOR VIOLATING ITS INTERNATIONAL NUCLEAR NONPROLIFERATION OBLIGATIONS AND EXPRESSING SUPPORT FOR EFFORTS TO REPORT IRAN TO THE UNITED NATIONS SECURITY COUNSEL

Mr. FRIST (for himself, Mr. Reid, Mr. Allard, Mr. Allen, Mr. Biden, Mr. Brownback, Mr. Burr, Mrs. Clinton, Mr. Coleman, Mr. Crapo, Mr. Ensign, Mrs. Feinstein, Mr. Graham, Mr. Hagel, Mr. Kyl, Mr. Lieberman, Mr. Lugar, Ms. Mikulski, Mr. Nelson of Florida, Mr. Santorum, Mr. Schumer, Mr. Talent, Mr. Warner, Mr. McCain, Mr. Voinovich, Mr. Dodd, Ms. Cantwell, Mrs. Boxer, Mr. Feingold, Mr. Kerry, and Mr. Menendez) submitted the following concurrent resolution; which was considered and agreed to:

S. Con. Res. 78

Whereas Iran is a non-nuclear-weapon State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968 (commonly referred to as the "Nuclear Non-Proliferation Treaty"), under which Iran is obligated, pursuant to Article II of the Treaty, "not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices";

Whereas Iran signed the Agreement Between Iran and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons, done at Vienna June 19, 1973 (commonly referred to as the "Safeguards Agreement"), which requires Iran to report the importation and use of nuclear material, to declare nuclear facilities, and to accept safeguards on nuclear materials and activities to ensure that such materials and activities are not diverted to any military purpose and are used for peaceful purposes and activities;

Whereas Iran signed the Protocol Additional to the Agreement Between Iran and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons at Vienna on December 18, 2003 (commonly referred to as the "Additional Protocol");

Whereas the International Atomic Energy Agency (IAEA) reported in November 2003 that Iran had been developing an undeclared nuclear enrichment program for 18 years and had covertly imported nuclear material and equipment, carried out over 110 unreported experiments to produce uranium metal, separated plutonium, and concealed many other aspects of its nuclear facilities and activities;

Whereas the Government of Iran informed the Director General of the IAEA on November 10, 2003, of its decision to suspend enrichment-related and reprocessing activities, and stated that the suspension would cover all activities at the Natanz enrichment facility, the production of all feed material for enrichment, and the importation of any enrichment-related items;

Whereas, in a Note Verbale dated December 29, 2003, the Government of Iran specified the scope of suspension of its enrichment and reprocessing activities, which the IAEA was invited to verify, including the suspension of the operation or testing or any centrifuges, either with or without nuclear material, at the Pilot Fuel Enrichment Plant at Natanz, the suspension of further introduction of nuclear material into any centrifuges, the suspension of the installation of new centrifuges at the Pilot Fuel Enrichment Plant and the installation of centrifuges at the Fuel Enrichment Plant at Natanz, and, to the extent practicable, the withdrawal of nuclear material from any centrifuge enrichment facility;

Whereas, on February 24, 2004, the Government of Iran informed the IAEA of its decision to expand the scope and clarify the nature of its decision to suspend to the furthest extent possible the assembly and testing of centrifuges and the domestic manufacture of centrifuge components, including those related to existing contracts, informed the IAEA that any components that are manufactured under existing contracts that cannot be suspended will be stored and placed under IAEA seal, invited the IAEA to verify these measures, and confirmed that the suspension of enrichment activities applied to all facilities in Iran;

Whereas, in November 2004, the Governments of the United Kingdom, France, and Germany entered into an agreement with Iran on Iran's nuclear program (commonly referred to as the "Paris Agreement"), securing a formal commitment from the Government of Iran to voluntarily suspend uranium enrichment operations in exchange for discussions on economic, technological, political, and security issues;

Whereas the Department of State has reported for a decade on Iran's state sponsorship of terrorism and has declared in its most recent Country Reports on Terrorism that Iran "remained the most active state sponsor of terrorism in 2004";

Whereas President of Iran Mahmoud Ahmadinejad expressed, in an October 26, 2005, speech, his hope for "a world without America" and his desire "to wipe Israel off the map" and has subsequently denied the existence of the holocaust;

Whereas Article XII.C of the Statute of the IAEA requires the IAEA Board of Governors to report the noncompliance of any member of the IAEA with its IAEA safeguards obligations to all members and to the Security Council and General Assembly of the United Nations;

Whereas Article III.B-4 of the Statute of the IAEA specifies that "if in connection with the activities of the Agency there should arise questions that are within the competence of the Security Council, the Agency shall notify the Security Council, as the organ bearing the main responsibility for the maintenance of international peace and security";

Whereas, on September 24, 2005, the IAEA Board of Governors adopted a resolution finding that Iran's many failures and breaches of its obligations to comply with the Safeguards Agreement constitute noncompliance in the context of Article XII.C of the Statute of the IAEA and that matters concerning Iran's nuclear program have given rise to questions that are within the competence of the Security Council as the organ bearing the primary responsibility for the maintenance of international peace and security;

Whereas, on January 3, 2006, the Government of Iran announced that it planned to restart its nuclear research efforts, nullifying the Paris Agreement;

Whereas, in January 2006, Iranian officials, in the presence of IAEA inspectors, began to remove IAEA seals from the enrichment facility in Natanz, Iran;

Whereas Foreign Secretary of the United Kingdom Jack Straw warned Iranian officials that they were "pushing their luck" by removing the United Nations seals that were placed on the Natanz facility by the IAEA 2 years earlier;

Whereas President of France Jacques Chirac said that the Governments of Iran and North Korea risk making a "serious error" by pursuing nuclear activities in defiance of international agreements;

Whereas Foreign Minister of Germany Frank-Walter Steinmeier said that the Government of Iran had "crossed lines which it knew would not remain without consequences";

Whereas Secretary of State Condoleezza Rice stated, "It is obvious that if Iran cannot be brought to live up to its international obligations, in fact, the IAEA Statute would indicate that Iran would have to be referred to the U.N. Security Council.";

Whereas President Ahmadinejad stated, "The Iranian government and nation has no fear of the Western ballyhoo and will continue its nuclear programs with decisiveness and wisdom."; and

Whereas the United States has joined with the Governments of Britain, France, and Germany in calling for a meeting of the IAEA Board of Governors to discuss Iran's non-compliance with its IAEA safeguards obligations: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) condemns the many failures of the Government of Iran to comply faithfully with its nuclear nonproliferation obligations, including its obligations under the Safeguards Agreement (as reported by the Director General of the IAEA to the IAEA Board of Governors since 2003), its suspension commitments under the Paris Agreement, and prior commitments to the EU-3 to suspend all enrichment- and reprocessing-related activities;

(2) commends the efforts of the Governments of France, Germany, and the United Kingdom to seek a meaningful and credible suspension of Iran's enrichment- and reprocessing-related activities and to find a diplomatic means to address the noncompliance of the Government of Iran with its obligations, requirements, and commitments related to nuclear non-proliferation;

(3) strongly urges the IAEA Board of Governors, at its special meeting on February 2, 2006, to order that Iran's noncompliance with its safeguards obligations be reported to the United Nations Security Council; and

(4) calls on all members of the United Nations Security Council, in particular the Russian Federation and the People's Republic of China, to act expeditiously to consider any report of Iran's noncompliance in fulfillment of the mandate of the Security Council to respond to and deal with situations bearing on the maintenance of international peace and security.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2696. Ms. SNOWE submitted an amendment intended to be proposed by her to the bill S. 662, to reform the postal laws of the United States; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2696. Ms. SNOWE submitted an amendment intended to be proposed by her to the bill S. 662, to reform the postal laws of the United States; which was ordered to lie on the table; as follows:

On page 256, after line 3 add the following:

SEC. 1005. APPLICATION OF LAWS ASSURING FAIR TREATMENT OF SMALL BUSINESSES AND OTHER POSTAL SUPPLIERS.

(a) APPLICATION OF OTHER LAWS.—Section 410(b) of title 39, United States Code, is amended—

(1) in paragraph (5)—

(A) in subparagraph (A), by striking "and" at the end;

(B) in subparagraph (B), by adding "and" at the end; and

(C) by adding at the end the following:

"(C) chapter 9 (the Contract Disputes Act of 1978);";

(2) by striking paragraph (9) and inserting the following:

"(9) the following provisions of title 31:

"(A) subchapter V of chapter 35 (known as the bid protest provisions of the Competition in Contracting Act of 1984); and

"(B) chapter 39 (known as the Prompt Payment Act);";

(3) in paragraph (10), by striking "and" at the end;

(4) in paragraph (11), by striking the period at the end and inserting "; and"; and

(5) by adding at the end the following:

"(12) the Small Business Act (15 U.S.C. 631 et seq.).".

(b) CONFORMING AMENDMENT.—Section 3(b) of the Small Business Act (15 U.S.C. 632(b)) is amended by striking "the United States Postal Service or".

CONTINUATION OF RELIEF RESPONSE TO EARTHQUAKE IN SOUTH ASIA

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 356 submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 356) urging a commitment by the United States and the international community to continue relief efforts in response to the earthquake in South Asia and to help rebuild critical infrastructure in the affected areas.

There being no objection, the Senate proceeded to consider the resolution.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon table, and that any statements relating thereto be printed in the RECORD, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 356) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 356

Whereas on October 8, 2005, a magnitude 7.6 earthquake struck Pakistan, India, and Afghanistan;

Whereas the epicenter of the earthquake was located near Muzaffarabad, approximately 60 miles north-northeast of Islamabad, with aftershocks and landslides continuing to affect the area;

Whereas more than 75,000 people have died, including approximately 17,000 children, nearly 70,000 people are injured and approximately 3,000,000 people are homeless as a result of the earthquake;

Whereas the United States has pledged a total of $510,000,000 in assistance to the affected areas, including $300,000,000 for relief and reconstruction, $110,000,000 to support Department of Defense relief operations, and at least $100,000,000 in anticipated contributions from private entities in the United States;

Whereas, as of January 25, 2006, the total amount of humanitarian assistance provided to Pakistan by the United States Agency for International Development is more than $66,500,000;

Whereas the Department of Defense has deployed approximately 875 members of the Armed Forces and 31 helicopters to aid in the earthquake relief efforts;

Whereas since October 8, 2005, United States helicopters have flown more than 3,200 missions, evacuated approximately 3,800 people, and delivered nearly 15,000,000 pounds of supplies;

Whereas the cost of rebuilding the affected areas could be more than $5,000,000,000;

Whereas Secretary of State Condoleezza Rice, during her October 12, 2005 visit to Pakistan, said the United States would support the efforts of the Government of Pakistan over the long-term to provide assistance to the victims of the earthquake and rebuild areas of the country devastated by the earthquake;

Whereas the robust humanitarian response of the Government of the United States to the earthquake disaster has made an impact on the Government and people of Pakistan and demonstrates the United States commitment to Pakistan and the well-being of its residents;

Whereas the United States humanitarian mission in Pakistan may impact positively on the way Americans are viewed, especially in areas where the population may oppose United States counterterrorism policies and where radical groups and affiliates of known terrorist organizations are conducting high-profile relief efforts; and

Whereas the results of a poll taken by the nonprofit organization Terror Free Tomorrow show that, at the end of November 2005, more than 46 percent of Pakistanis had a favorable view of the United States, double the percentage of Pakistanis that held that view in May 2005: Now, therefore, be it

Resolved, That the Senate—

(1) commends the members of the United States Armed Forces and civilian employees of the Department of State and the United States Agency for International Development for their swift and sustained efforts to assist the victims of the earthquake in South Asia that occurred on October 8, 2005;

(2) commends the Governments of Pakistan and India for working together to save lives and provide humanitarian relief in the affected areas and encourages them to continue in this spirit of cooperation;

(3) commends the international community, including nongovernmental organizations, private corporations, and individual citizens, for responding swiftly and generously to the relief and recovery effort;

(4) urges continued attention by international donors and relief agencies to the needs of vulnerable populations in the stricken areas, particularly the thousands of children who have been left parentless and homeless by the disaster; and

(5) urges the Government of the United States to take the lead in encouraging the international community to commit to continue relief efforts in response to the earthquake in South Asia and to help rebuild critical infrastructure in the affected areas.

CONDEMNING THE GOVERNMENT OF IRAN

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Con. Res. 78 which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 78) condemning the Government of Iran for violating international nuclear nonproliferation obligations and expressing support for efforts to report Iran to the United Nations Security Council.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 78) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 78

Whereas Iran is a non-nuclear-weapon State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968 (commonly referred to as the "Nuclear Non-Proliferation Treaty"), under which Iran is obligated, pursuant to Article II of the Treaty, "not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices";

Whereas Iran signed the Agreement Between Iran and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons, done at Vienna June 19, 1973 (commonly referred to as the "Safeguards Agreement"), which requires Iran to report the importation and use of nuclear material, to declare nuclear facilities, and to accept safeguards on nuclear materials and activities to ensure that such materials and activities are not diverted to any military purpose and are used for peaceful purposes and activities;

Whereas Iran signed the Protocol Additional to the Agreement Between Iran and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons at Vienna on December 18, 2003 (commonly referred to as the "Additional Protocol");

Whereas the International Atomic Energy Agency (IAEA) reported in November 2003 that Iran had been developing an undeclared nuclear enrichment program for 18 years and had covertly imported nuclear material and equipment, carried out over 110 unreported experiments to produce uranium metal, separated plutonium, and concealed many other aspects of its nuclear facilities and activities;

Whereas the Government of Iran informed the Director General of the IAEA on November 10, 2003, of its decision to suspend enrichment-related and reprocessing activities, and stated that the suspension would cover all activities at the Natanz enrichment facility, the production of all feed material for enrichment, and the importation of any enrichment-related items;

Whereas, in a Note Verbale dated December 29, 2003, the Government of Iran specified the scope of suspension of its enrichment and reprocessing activities, which the IAEA was invited to verify, including the suspension of the operation or testing or any centrifuges, either with or without nuclear material, at the Pilot Fuel Enrichment Plant at Natanz, the suspension of further introduction of nuclear material into any centrifuges, the suspension of the installation of new centrifuges at the Pilot Fuel Enrichment Plant and the installation of centrifuges at the Fuel Enrichment Plant at Natanz, and, to the extent practicable, the withdrawal of nuclear material from any centrifuge enrichment facility;

Whereas, on February 24, 2004, the Government of Iran informed the IAEA of its decision to expand the scope and clarify the nature of its decision to suspend to the furthest extent possible the assembly and testing of centrifuges and the domestic manufacture of centrifuge components, including those related to existing contracts, informed the IAEA that any components that are manufactured under existing contracts that cannot be suspended will be stored and placed under IAEA seal, invited the IAEA to verify these measures, and confirmed that the suspension of enrichment activities applied to all facilities in Iran;

Whereas, in November 2004, the Governments of the United Kingdom, France, and Germany entered into an agreement with Iran on Iran's nuclear program (commonly referred to as the "Paris Agreement"), securing a formal commitment from the Government of Iran to voluntarily suspend uranium enrichment operations in exchange for discussions on economic, technological, political, and security issues;

Whereas the Department of State has reported for a decade on Iran's state sponsorship of terrorism and has declared in its most recent Country Reports on Terrorism that Iran "remained the most active state sponsor of terrorism in 2004";

Whereas President of Iran Mahmoud Ahmadinejad expressed, in an October 26, 2005, speech, his hope for "a world without America" and his desire "to wipe Israel off the map" and has subsequently denied the existence of the holocaust;

Whereas Article XII.C of the Statute of the IAEA requires the IAEA Board of Governors to report the noncompliance of any member of the IAEA with its IAEA safeguards obligations to all members and to the Security Council and General Assembly of the United Nations;

Whereas Article III.B-4 of the Statute of the IAEA specifies that "if in connection with the activities of the Agency there should arise questions that are within the competence of the Security Council, the Agency shall notify the Security Council, as the organ bearing the main responsibility for the maintenance of international peace and security";

Whereas, on September 24, 2005, the IAEA Board of Governors adopted a resolution finding that Iran's many failures and breaches of its obligations to comply with the Safeguards Agreement constitute noncompliance in the context of Article XII.C of the Statute of the IAEA and that matters concerning Iran's nuclear program have given rise to questions that are within the competence of the Security Council as the organ bearing the primary responsibility for the maintenance of international peace and security;

Whereas, on January 3, 2006, the Government of Iran announced that it planned to restart its nuclear research efforts, nullifying the Paris Agreement;

Whereas, in January 2006, Iranian officials, in the presence of IAEA inspectors, began to remove IAEA seals from the enrichment facility in Natanz, Iran;

Whereas Foreign Secretary of the United Kingdom Jack Straw warned Iranian officials that they were "pushing their luck" by removing the United Nations seals that were placed on the Natanz facility by the IAEA 2 years earlier;

Whereas President of France Jacques Chirac said that the Governments of Iran and North Korea risk making a "serious error" by pursuing nuclear activities in defiance of international agreements;

Whereas Foreign Minister of Germany Frank-Walter Steinmeier said that the Government of Iran had "crossed lines which it knew would not remain without consequences";

Whereas Secretary of State Condoleezza Rice stated, "It is obvious that if Iran cannot be brought to live up to its international obligations, in fact, the IAEA Statute would indicate that Iran would have to be referred to the U.N. Security Council.";

Whereas President Ahmadinejad stated, "The Iranian government and nation has no fear of the Western ballyhoo and will continue its nuclear programs with decisiveness and wisdom."; and

Whereas the United States has joined with the Governments of Britain, France, and Germany in calling for a meeting of the IAEA Board of Governors to discuss Iran's non-compliance with its IAEA safeguards obligations: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) condemns the many failures of the Government of Iran to comply faithfully with its nuclear nonproliferation obligations, including its obligations under the Safeguards Agreement (as reported by the Director General of the IAEA to the IAEA Board of Governors since 2003), its suspension commitments under the Paris Agreement, and prior commitments to the EU-3 to suspend all enrichment- and reprocessing-related activities;

(2) commends the efforts of the Governments of France, Germany, and the United Kingdom to seek a meaningful and credible suspension of Iran's enrichment- and reprocessing-related activities and to find a diplomatic means to address the noncompliance of the Government of Iran with its obligations, requirements, and commitments related to nuclear non-proliferation;

(3) strongly urges the IAEA Board of Governors, at its special meeting on February 2, 2006, to order that Iran's noncompliance with its safeguards obligations be reported to the United Nations Security Council; and

(4) calls on all members of the United Nations Security Council, in particular the Russian Federation and the People's Republic of China, to act expeditiously to consider any report of Iran's noncompliance in fulfillment of the mandate of the Security Council to respond to and deal with situations bearing on the maintenance of international peace and security.

ORDERS FOR MONDAY, JANUARY 30, 2006

Mr. COCHRAN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Monday, January 30; I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate proceed to executive session and resume consideration of the nomination of Samuel Alito to be an Associate Justice of the Supreme Court; I further ask that the time from 10 to 11 be under the control of the Democrats, from 11 to 12 be under the control of the Republicans, and that debate continue to alternate on an hourly basis until 4 p.m.; I further ask unanimous consent that at 4 p.m., the Democratic leader or his designee be recognized for up to 15 minutes and that the final 15 minutes before the cloture vote be under the control of the majority leader or his designee.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. COCHRAN. Mr. President, on Monday, the Senate will continue its consideration of the Alito nomination. As the majority leader announced last night, that cloture vote will occur at 4:30 p.m. Assuming that cloture is invoked, the Senate will proceed to an up-or-down vote on the nomination at 11 a.m. on Tuesday. As is customary, Senators should be prepared to vote from their seats on Tuesday and should adjust their schedules accordingly.

ADJOURNMENT UNTIL MONDAY, JANUARY 30, 2006, AT 10 A.M.

Mr. COCHRAN. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 2:10 p.m., adjourned until Monday, January 30, 2006, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate January 27, 2006:

DEPARTMENT OF AGRICULTURE

BOYD KEVIN RUTHERFORD, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF AGRICULTURE, VICE MICHAEL J. HARRISON, RESIGNED.

DEPARTMENT OF ENERGY

THOMAS P. D'AGOSTINO, OF MARYLAND, TO BE DEPUTY ADMINISTRATOR FOR DEFENSE PROGRAMS, NATIONAL NUCLEAR SECURITY ADMINISTRATION, VICE EVERET BECKNER, RESIGNED.

FEDERAL RESERVE SYSTEM

RANDALL S. KROSZNER, OF NEW JERSEY, TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR THE UNEXPIRED TERM OF FOURTEEN YEARS FROM FEBRUARY 1, 1994, VICE EDWARD M. GRAMLICH, RESIGNED.

KEVIN M. WARSH, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR THE UNEXPIRED TERM OF FOURTEEN YEARS FROM FEBRUARY 1, 2004, VICE BEN S. BERNANKE, RESIGNED.

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED UNDER TITLE 10, U.S.C, SECTION 624:

To be major general

BRIGADIER GENERAL RONALD S. COLEMAN, 3216
BRIGADIER GENERAL JAMES F. FLOCK, 6021
BRIGADIER GENERAL GEORGE J. FLYNN, 5536
BRIGADIER GENERAL KENNETH J. GLUECK, JR, 6343
BRIGADIER GENERAL DENNIS J. HEJLIK, 3767
BRIGADIER GENERAL CARL B. JENSEN, 5079
BRIGADIER GENERAL MARY ANN KRUSA-DOSSIN, 1134
BRIGADIER GENERAL ROBERT B. NELLER, 0298
BRIGADIER GENERAL JOHN M. PAXTON, JR, 0190
BRIGADIER GENERAL EDWARD G. USHER III, 6626

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

BARBARA A. HILGENBERG, 4053

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

EVELYN S. GEMPERLE, 5673

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

JOHN W. AYRES, JR., 3449
PETER F. CONWAY, 8317
CELESTE SANDERS DRYJANSKI, 6226
ALAN E. JOHNSON, 7681

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

DAVID HARRISION BURDETTE, 4240
MARY K. DONNESON, 7852
RONALD G. MOORE, 4331
THERESA M. MUELLER, 9246
DEBORAH S. THOMAS, 6757
DOMINIC O. UBAMADU, 3335

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

KAREN MARIE BACHMANN, 4839
MARK G. CAROLAN, 3137
RICHARD L. DEGEN, 9841
JANET M. KAMER, 8615
TERESE D. LEFRANCOIS, 4796
MARY V. LUSSIER, 4362

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

RAYMOND L. HAGAN, JR., 7205
RANDOLPH MCHONE, 9072
PAUL R. MILLIKEN, 5348
MARK D. MOORE, 5815
GREGORY V. NELSON, 4399
WILLIAM H. WILLIS, SR., 3721

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

RUSSELL G. BOESTER, 7873
MICHAEL D. COLVARD, 6842
EDMUND D. EFFORT, 9023
DENNIS R. HAYES, 8485
RICHARD T. SHELTON, 6553

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be colonel

BILLY P. CECIL II, 0299
CARY A. COLLINS, 4340
MAUREEN J. COUNTER, 8261
MARIO V. DESANCTIS, 0370
LINDA LEE EATON, 2929
AMIR A. EDWARD, 3918
PATRICIA A. GRAULTY, 0584
KARLAN B. HOGGAN, 6667
PAUL F. MARTIN, 2471
MICHAEL E. MENNING, 6881
ROBERT G. RITTER, 0913
MICHAEL R. SKIDMORE, 6948
LYNDSAY A. STAUFFER, 8065
BRIAN K. WITT, 2055

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be colonel

DIANA ATWELL, 2520
KATHLEEN O. CONCANNON, 5140
KATHLEEN M. DUNNCANE, 1606
DIANE L. FLETCHER, 4808
VENNESSA J. HAGAN, 1516
ELIZABETH C. HARRELL, 4937
ROSE A. LAYMAN, 8974
VICKIE R. MOORE, 9725
DENNIS L. OAKES, 8347
ANN L. PARKER, 2015
CONSUELLA B. POCKETT, 4667
ANNE C. SPROUL, 0417

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be colonel

GERALD Q. BROWN, 6039
TIMOTHY J. COTHREL, 0985

TIMOTHY M. DOMEK, 9083
DAWN R. EFLEIN, 1596
TAMARA S. HOLDER, 1627
POLLY S. KENNY, 9048
KAREN E. MAYBERRY, 2511
JOHN S. MEADOR, 4053
DOUGLAS G. MURDOCK, 1884
RONALD R. RATTON, 4421
SHARON A. SHAFFER, 7536
GARY F. SPENCER, 0353
SHARON K. SUGHRU, 7206
CHERYL H. THOMPSON, 4303
STEVEN B. THOMPSON, 1493
LISA L. TURNER, 5656

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

MARK J. BATCHO, 4828
CHRISTOPHER J. BLUM, 8879
BLAKE D. BREWER, 7371
JOHN D. CLARK, 8030
ANDREW T. COLE, 9849
GRETCHEN S. DIETRICH, 4720
DONAL S. DUNBAR, JR., 8563
GARRY T. FELD, 8334
MICHAEL W. GLASS, 8383
LOWELL S. GLASSBURN, 5737
ALAN L. GOODWIN, 6145
BRENDA F. HANES, 8318
ERIC D. HUWEART, 8503
ERIC E. HYDE, 6717
ANTHONY V. K. INGRAM, 4013
NEAL E. JENNINGS, 2977
TERESA ANN P. JONES, 8409
MICHAEL D. LOVERING, 9228
DEBRA M. MIESLE, 7362
LISA A. MOORE, 4409
JOHN P. NEUSER, 9470
MICHAEL G. PATRONIS, 5136
SUSAN J. PIETRYKOWSKI, 9198
CURT B. PRICHARD, 6286
WILLIAM L. RODGERS, 9623
RICHARD B. ROESSLER, 1758
JOHN P. SAVAGE II, 9439
COLIN H. SMYTH, 8574
DANA G. VENENGA, 9532
ANTHONY J. VOIRIN, 1793
FREDERICK C. WEAVER, 0758
MELINDA K. WEIS, 6841
JAMES D. WHITLOCK, 2453
DAVID J. ZEMKOSKY, 0540

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be colonel

TAREK C. ABBOUSHI, 4756
SANDRA M. ADAMS, 6800
MARK G. ALLCOTT, 2294
JOHN P. ALMIND, 2991
J. KEVIN ALTMAN, 3297
BRIAN D. AMOS, 2006
MICHAEL D. ANDERSEN, 0041
BRIAN D. ANDERSON, 5495
JOSEPH F. ARATA, 2841
KENNETH R. ARTEAGA, 7022
JAMES H. BAKER, 9331
JOHN D. BANSEMER, 0341
WILLIAM TERRY BARE, 6073
JAMES M. BARON, 8831
STEPHEN L. BARRETT, 5574
BRYAN K. BARTELS, 1549
JAMES R. BEAMON, 1537
CHARLES J. BECK, 0725
ROBIN E. BECKER, 0713
MARK T. BEIERLE, 1304
THOMAS E. BELL, 9162
JON H. BERRIE, 9136
JAMES M. BIEDA, 4169
STEVEN H. BILLS, 4419
JOHN D. BIRD II, 2101
CASEY D. BLAKE, 7493
JOHN W. BLUMENTRITT, 5456
RICHARD W. BOLTZ, 7017
KEVIN A. BOOTH, 6472
ELIZABETH B. BORELLI, 2609
FLOYD J. BOYER, 0883
JOHN V. BOYLE, 7410
MICHAEL T. BRAMAN, 0709
WILLIAM C. BRANDT, 7025
ALAN C. BRIDGES, 4743
MARK A. BRONAKOWSKI, 3947
ROGER G. BROOKS, 0080
THOMAS P. BROWN, 8032
TIMOTHY D. BROWN, 9334
CARL A. BUHLER, 2126
ALAN W. BURKE, 4723
CHRISTOPHER J. BURKE, 1392
RICHARD E. BURNS, 2163
THOMAS A. BUSSIERE, 2613
JEFFREY T. BUTLER, 2466
STEPHEN D. BUTLER, 4671
GREGORY M. CAIN, 8922
BRIAN D. CAMPBELL, 9996
DAVID B. CAREY, 9906
DOUGLAS B. CARNEY, 4702
GEORGE C. CARPENTER II, 5770
MICHAEL W. CARRELL, 9633
MARK ELLIOTT CARTER, 1795
JAMES P. CASHIN, 0136
ANDREW J. CERNICKY, 9486
MARK A. CHANCE, 5811
DAVID A. CHEVESS, 7132
CHRISTOPHER C. CHOATE, 3294
BENJAMIN J. COFFEY, 3825
ROBERT A. COLELLA, 7106
KEVIN F. COLLAMORE, 8120
ADA A. CONLAN, 0987
DOUGLAS P. CONSTANT, 7670
ANTHONY J. COTTON, 7136
LEEVOLKER COX, 5777
ROBERT L. CRAIG, 0334
CHRIS D. CRAWFORD, 4674
RODERICK L. CREGIER, 8024
ROBERT D. CRITCHLOW, 6590
GARY A. DAIGLE, 0333
GERALD J. DAVID, 2870
RODERICK H. DAVIS, JR., 8083
THOMAS H. DEALE, 5363
THOMAS S. DEAN, 8556
DANIEL R. DEBREE, 1379
JOSEPH C. DILL, 8603
CHRISTOPHER P. DINENNA, 1748
JOSEPH T. DINUOVO, 3466
TROY L. DIXON, 7666
DAVID J. DORYLAND, 7642
JOSEPH J. DOUEZ, 3688
BRIAN K. DOUGHERTY, 3665
THOMAS A. DOYNE, 2334
STEVEN R. DRAGO, 1946
BENJAMIN A. DREW, JR., 4973
KEVIN B. DRISCOLL, 2287
COURTNEY ANNE DUCHARME, 2781
MARK F. DUFFIELD, 1330
JEFFERSON S. DUNN, 8228
MICHAEL S. DUPERIER, 8744
DAVID J. DURGAN, 4358
JAMES E. EILERS, 9389
JOEY A. EISENHUT, 8356
DAVID E. ELLIS, 1790
MARK W. ELLIS, 5605
GREGORY G. EMANUEL, 5868
MICHAEL T. ENGLAND, 8389
MARY L. ENSMINGER, 9019
FRANK J. EPPICH, 5662
ROBERT D. EVANS, 3779
MICHAEL K. FABIAN, 7285
GARY E. FABRICIUS, 7184
CARL L. FARQUHAR, 2161
VINCENT M. FARRELL, 5787
TIMOTHY G. FAY, 5555
ADOLFO J. FERNANDEZ, 9954
KELLY E. FLETCHER, 0926
JAMES A. FOLEY, 2270
THOMAS M. FOLTZ, 5842
BRIAN C. FORD, 6091
RICHARD A. FORSTER, 5718
WILLIAM W. FRANCIS, 9163
MYRON L. FREEMAN, 4154
DAVID C. FRENCH, 5424
CURTIS V. FROST, 6776
CARL J. FRUSHON, 4825
CHARLES H. FULGHUM, 1202
JAMES G. FULTON, 5591
DAVID W. FUNK, 9257
DALE S. GABRIEL, 4885
DOUGLAS A. GALIPEAU, 9998
EFREN V. M. GARCIA, 6539
SARAH L. GARCIA, 2194
LESTER L. GARDNER, JR., 6975
KYLE E. GARLAND, 9049
ERIC E. GATES, 1664
THOMAS W. GEARY, 0247
PETER E. GERSTEN, 9296
DENNIS J. GERVAIS, 5891
DAVID C. GEUTING, 4018
RANDALL W. GIBB, 5521
CLAIR M. GILK, 6998
SCOTT C. GILLESPIE, 4396
PRINCE GILLIARD, JR., 9143
MICHAEL T. GOOD, 7259
JOHN T. GOODE, 2910
TIMOTHY A. GREEN, 1753
BERNARD J. GRUBER, 5166
JOSEPH T. GUASTELLA, JR., 5670
MICHAEL D. HAEFNER, 5741
THOMAS J. HAINS, 0674
STUART L. HAIRE, 5486
MICHAEL F. HAKE, 7090
MICHAEL M. HALE, 3891
LYNNE HAMILTON JONES, 9246
WILLIAM G. HAMPTON, 8910
JERRY W. HANLIN, 9532
STEPHEN D. HARGIS, 7415
CRAIG S. HARM, 4309
MARK S. HASKINS, 6881
MICHAEL C. HATFIELD, 6897
PHIL M. HAUN, 4264
JAMES B. HECKER, 2041
CHARLES A. HELMS, 5774
GORDON B. HENDRICKSON, 5513
STEVEN J. HENNESSY, 3664
JOE C. HERRON, 9486
PATRICK C. HIGBY, 4067
KATHLEEN M. HITHE, 7630
DAVID A. HLATKY, 7412
ANDREW M. HOCKMAN, 1937
SHARON L. HOLMES, 2210
JEFFREY L. HOOD, 9199
ROBERT A. HOPKINS, JR., 6113
DAVID B. HORTON, 1877
JAMES C. HOWE, 1324
CASEY W. HUGHSON, 0310
THOMAS D. HUIZENGA, 7555
DAVID B. HUME, 4256
DAVID P. HUNNINGHAKE, 6499
JON K. HUSS, 1100
ROBERT D. HYDE, 5605
PHILIP A. IANNUZZI, JR., 3851
SHAWN J. JANSEN, 9041
HAGOP JIBILIAN, 3297
MARK K. JOHNSON, 2107
PATRICK W. JOHNSON, 0451
JAMES A. JOLLIFFE, 9944
BRADLEY K. JONES, 5993
GREGORY T. JONES, 1148
BOYKIN B. JORDAN, JR., 2050
JAMES R. JORDAN, 2190
JOHN J. JORDAN, 5121
STEVEN H. JORDAN, 7138
PAUL J. JUDGE, 3157
JOSEPH H. JUSTICE III, 9203
KRISTINA M. KANE, 7858
CHRISTOPHER D. KARLS, 4315
THERESA M. KATEIN, 9456
CHERYL A. KEARNEY, 6145
MARY KELLER, 6265
MARK D. KELLY, 7221
GAVIN L. KETCHEN, 3389
JOANNE M. KILE, 5017
BRIAN M. KILLOUGH, 1572
SCOTT A. KINDSVATER, 2670
JON D. KLAUS, 7762
KIRK M. KLOEPPEL, 7528
EDGAR M. KNOUSE, 8442
JEFFREY A. KOCH, 8892
LESLIE A. KODLICK, 2674
GARY M. KONNERT, 2893
KEITH J. KOSAN, 4323
JEFFREY J. KUBIAK, 2090
MICHAEL A. KUCEJ, 7395
NANCY C. KUNKEL, 5709
BIBIANA R. LABORTE, 0834
ROBERT D. LABRUTTA, 8291
GREGORY S. LAMB, 4352
KYLE M. LAMPELA, 1381
WILLIAM R. LANE, 3751
PHILLIP T. LANMAN, 0564
MARK J. LAROSE, 4826
STEPHEN LATCHFORD, 0353
BARRY W. LEIHER, 2757
JOSEPH L. LENERTZ, 1712
DANIEL P. LEWANDOWSKI, 6098
JUAN F. LIMON, 3800
RICHARD A. LIPSEY, 5197
LEONARD G. LITTON III, 2778
TAMMY H. LIVINGOOD, 9626
JAMES E. LOVELL, 5429
TERRY M. LUALLEN, 8558
STEPHEN P. LUCKY, 4905
CARL A. LUDE, 7272
CYNTHIA M. LUNDELL, 7914
MARTIN L. MACNABB, 2417
MICHAEL A. MACWILLIAM, 0630
FRANKLIN J. MALAFARINA, JR., 6079
JOSEPH W. MANCY, 0067
ROBERT L. MANESS, 0114
MICHAEL A. MARRA, 4637
JAMES D. MARSH, JR., 3479
PATRICK A. MARSHALL, 2129
JOSEPH M. MASTRIANNA, 7968
BERNARD E. MATER, 5750
JOHN J. MAUBACH, 6401
DAMIAN J. MCCARTHY, 9048
JACK E. MCCRAE, JR., 8321
MICHAEL B. MCGEE, JR., 1982
WILLIAM M. MCKECHNIE, 2094
ERIC J. MCKINLEY, 2781
MARK M. MCLEOD, 1688
ADAM J. MCMILLAN, 5245
STEVEN H. MCPHERSON, 0477
MARTHA E. MCSALLY, 8930
WILLIAM D. MILES, 5141
MICHELLE C. MILLERPECK, 3524
DAVID E. MILLER, 5398
JAMES M. MILLER, 4135
KEESEY R. MILLER, 2003
RICHARD A. MILLER, 7064
WILLIAM D. MILLONIG, 9552
DAVID B. MILNER, JR., 0750
JAMES E. MINER, 6502
JEFFREY K. MINER, 7604
BARRY SHAUN MINES, 4437
ROBERT E. MITCHELL, 9391
DONNA J. MOERSCHELL, 0103
DANIEL J. MONAHAN, 9624
JOHN P. MONTGOMERY, 9764
CHARLES L. MOORE, JR., 5200
MARK D. MOORE, 8039
MICHAEL JOHN MORAN, 6325
STEVEN J. MORANI, 1387
JAY P. MORGAN, 4353
MANSON O. MORRIS, 6678
ROBERT A. MORRIS, 9224
WILLIAM H. V. MOTT, 8462
JOHN G. MUELLER, JR., 5931
DAVID A. MULLINS, 7442
MARK MURPHY, 3785
RICHARD M. MURPHY, 9759
WILLIAM F. NADOLSKI, 5052
PAUL D. NELSON, 8977
ROBERT D. NEWBERRY, 3716

MICHAEL E. NEWMAN, 8323
SALMAN M. NODJOMIAN, 7434
PARKER W. NORTHRUP III, 8767
MARCUS F. NOVAK, 5729
ROBERT A. NUANES, 5903
JEROME K. OBRIEN, 5407
BRIAN E. OCONNOR, 8710
JOHN M. ODEY, 0623
MICHAEL S. ODOWD, 4553
DON I. OLDS, JR., 5288
STEPHEN W. OLIVER, JR., 3787
DAWSON S. OSLUND, 2296
GREGORY S. OTEY, 8312
MICHAEL T. PANARISI, 9425
SEAN M. PATRICK, 0821
WAYNE E. PATTERSON, 8303
CREG D. PAULK, 1879
AJRN R. PAULSON, 8437
JOHN H. PEARSON, 8985
MARILYN L. PEPPERSCITIZEN, 0899
ELAINE S. PFEIFFER, 6305
PATRICK P. PIHANA, 4326
JAMES B. PLANEAUX, 0953
BRETT A. PLENTL, 7789
MICHAEL A. POLHEMUS, 9284
MARK R. PRICE, 5843
STEWART S. PRICE, 8865
DANIEL G. PUTBRESE, 4436
JOHN M. QUINN, 1677
JOHN T. QUINTAS, 2479
PATRICK J. RAGLOW, 0677
PHILIP E. RAINFORTH, 8815
NEAL J. RAPPAPORT, 7989
DAVID VINCENT RATHS, 6297
JOHN T. RAUSCH, 0317
THOMAS C. REDFORD, 1289
HENRY M. REED III, 5536
JAMES D. REED, 8017
LAWRENCE S. REED, 8370
JOHN R. REID, 8543
WILLIAM R. RENFROE, 7445
DOUGLAS R. REYNOLDS, 1907
CREIG A. RICE, 7036
DUKE Z. RICHARDSON, 1509
RANDALL JAMES RICHERT, 0074
KENNETH R. RIZER, 9279
DONALD W. ROBBINS, 3936
ALEC M. ROBINSON, 8002
JOHN W. ROBINSON, JR., 4344
THOMAS D. ROBINSON, 0948
TODD W. ROBISON, 6082
DWIGHT A. ROBLYER, 4179
ROBERT J. ROSEDALE, 1889
JOSEPH J. ROSSACCI, 0640
ROGER L. ROSTVOLD, 4736
MICHAEL D. ROTHSTEIN, 3349
KENNETH M. ROZELSKY II, 5590
KATHLEEN C. SAKURA, 3872
MICHAEL A. SALVI, 5437
MARTIN J. SCHANS, JR., 2460
RAY C. SCHULTZ, 2946
GREGORY E. SCHWAB, 9385
ROBERT C. SCHWARZE, 7646
JOHN J. SCORSONE, 3185
GARY T. SCOTT, 1501
BRIAN G. SEARCY, 0302
BARRE R. SEGUIN, 2391
ANTHONY SENCI, 6237
DOUGLAS E. SEVIER, 8329
KARL J. SHAWHAN, 9172
STEPHAN F. SHOPE, 9636
JEFFREY R. SICK, 1875
ANTHONY C. SMITH, 2094
RUSSELL J. SMITH, 0416
SCOTT F. SMITH, 9470
ERIC A. SNADECKI, 5719
CYRIL J. SOCHA, 3483
STEVEN W. SORENSEN, 3515
THEODORE M. SPENCER, 6857
DAVID A. SPRAGUE, 8808
ROBERT G. STEELE, JR., 9176
SHANE T. STEGMAN, 9404
DAVID R. STILWELL, 9650
RAYMOND T. STRASBURGER, 9496
ARNOLD H. STRELAND, 6595
JOHN G. STUTTS, 8420
JOHN E. STUWE, 7158
PAUL J. SUAREZ, 9942
KEVIN L. SULLIVAN, 4026
DAVID A. SUTTON, 6808
JOSEPH A. SWILLUM, 1998
DALE A. TAKENAKA, 2666
EVAN C. THOMAS, 0109
JON T. THOMAS, 1747
HOWARD E. THOMPSON, JR., 0767
KENNETH E. THOMPSON, JR., 9529
KEITH E. TOBIN, 5321
DAVID F. TOOMEY III, 0775
DANIEL R. TORWEIHE, 6156
GIOVANNI K. TUCK, 5957
RICHARD D. TWIGG, 2409
TED T. UCHIDA, 3628
CAROLYN M. VADNAIS, 0946
JOHN C. VALLE, 8897
PETER M. VANDENBOSCH, 8549
JACQUELINE D. VANOVOST, 2289
BRUCE A. VANSKIVER, 8175
KIM M. WALDRON, 7887
ROGER H. WATKINS, 9487
CHARLES J. WESTGATE III, 2163
NANCY P. WHARTON, 9556
MARK K. WHITE, 7255
DAVID M. WHITTEMORE, 6108
JOSEPH T. WILEY, 1975
CHARLOTTE L. WILSON, 3355
CLAYTON E. WITTMAN, 1382
JAMES R. WOLF, 8730
JON G. WOLFE, 7162
DEAN A. WOLFORD, 5636
DAVID E. WOODEN, 3321
KEVIN B. WOOTON, 3157
ERIC J. WYDRA, 8029
EUGENE YIM, 3742
MATTHEW C. YOTTER, 2660
JANET A. YOUNG, 9653
DAVID E. ZEH, 1383
JOHN J. ZENTNER, 2455
MARK D. ZETTLEMOYER, 8790
JOHN J. ZIEGLER III, 2432

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

JEFFREY J. LOVE, 0996

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be major

FRITZJOSE E. CHANDLER, 7596

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be major

JOSE F. EDUARDO, 5562

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be major

DARWIN L. ALBERTO, 1675
SIMONA C. ALLEN, 0665
CARRIE CARROW ARENDALE, 6755
AARON R. BACON, 3913
PAUL G. BAILEY II, 5747
MICHAEL R. E. BARRY, 8978
BARBARA BLAKE, 5951
SHAWN M. BRANSKY, 9541
MICHAEL E. BRUHN, 1650
DANIEL C. BUCSKO, 8012
KENNETH E. BURKETT, 6886
KEVIN K. BYNUM, 0226
STEPHEN J. CASIMIR, 7822
EDWARD M. CASSIN, 2312
JAMES CHISOLM, 9265
BEVERLY A. CLARK, 6758
BRAD J. COGSWELL, 5102
JAMES L. CULVER, 8836
JOSEPH R. DELL, 1186
TINA B. DOYLEHINES, 5770
ROBERT K. ENGLE, 8823
FRANKLIN E. ESPINAL, 6345
CHRISTOPHER J. ESTRIDGE, 2748
SHARIEF M. FAHMY, 4782
JOHN A. FOUNTAIN III, 9527
RUBEN GARZA, JR., 4507
CHRISTOPHER C. GEISE, 3132
KARA A. GORMONT, 4241
RICHARD L. GRIFFITH, 3210
JOSEPH V. HALE, 3543
OSCAR L. HARTLEY, 1468
IDONA E. HENRY, 5295
JEREMY N. HOOPER, 5168
LISA W. HUNTOON, 5643
MERLYN JENKINS, 0146
ROBERT A. JENNESS, 5601
RICHARD A. KELLER, 3020
ANDREW C. LATTIMORE, 6836
ANTONIO D. LOVE, 0003
WINSTON L. MASSEY, 9423
DAVID E. MCCLINTOCK II, 8295
ALEXANDER G. MONTGOMERY, 0446
MARIZZA A. MORENOBENTON, 1479
RUSSELL E. NAIL, JR., 8662
DAVID J. PHILLIPS, 0318
ROBERT E. RETSCH, 2006
DAYTON F. ROGALSKI, 3365
MELISSA L. ROKEY, 5680
VITO S. SMYTH, 7378
ERIC C. SORENSON, 3681
PERRY STANSBURY, 6790
TERESA M. STARKS, 8663
MICHAEL J. STONE, 1733
SANDY A. SUMPTER, 5348
EVANGELINE D. TENNORT, 6411
ANGELA M. THOMPSON, 9749
PAUL J. C. VALDEZ, 4674
CHRISTOPHER A. VAUGHN, 4551
BRADLEY D. WEAST, 1164
JUDY A. WEBBHAPGOOD, 9462
DUANE R. WEBSTER, 9509
VICTOR D. WEEDEN, JR., 4844
KENNETH W. WHITLOCK, 5286
AMY S. WOOSLEY, 3846

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AS CHAPLAINS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be colonel

JOHN W. ALEXANDER, JR., 1504
BRYAN D. BAUGH, 9065
ALLEN B. BOATRIGHT, 4353
DAVID L. DARBYSHIRE, 3693
THOMAS M. DURHAM, 1861
CHESTER C. EGERT, 4725
DAVID P. HILLIS, 4933
CHESTER H. LANIOUS, 2229
DANIEL L. MOLL, 9849
JAMES J. PUCHY, 3320
BYRON J. SIMMONS, 9668
JAMES R. WHITE, JR., 1236
DONALD L. WILSON, 5277

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY JUDGE ADVOCATE GENERAL'S CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

To be lieutenant colonel

SUSAN K. ARNOLD, 0926
JEFF A. BOVARNICK, 2031
ROBERT L. BOWERS, 3992
MARY J. BRADLEY, 0273
DANIEL G. BROOKHART, 9491
MICHELLE E. CRAWFORD, 1305
BOBBI J. DAVIS, 7526
JAMES M. DORN, 6912
* ANTHONY T. FEBBO, 2935
MARTHA L. FOSS, 5731
CHRISTOPHER T. FREDRIKSON, 9928
CHRISTIAN M. GIFFORD, 6145
STEVEN P. HAIGHT, 6942
* STEVEN C. HENRICKS, 6329
MARK A. HOLYCROSS, 7981
BRADLEY J. HUESTIS, 8248
ERIC T. JENSEN, 1018
DANIEL G. JORDAN, 4651
JOSEPH A. KEELER, 4915
NATALIE A. KOLB, 0043
ALLYSON G. LAMBERT, 2932
JOSEPH A. MCCLOSKEY IV, 4605
IMOGENE MCGRIGGSJAMISON, 0292
SUZANNE G. MITCHEM, 4634
STEVEN R. PATOIR, 4982
NATHAN W. RATCLIFF, 8838
KEVIN K. ROBITAILLE, 7982
VANESSA D. RUDOLPH, 8124
MATTHEW P. RUZICKA, 7721
GREGG S. SHARP, 9043
BARRY J. STEPHENS, 0961
RANDOLPH SWANSIGER, 7078
ELIZABETH SWEETLAND, 2462
VINCE T. VANEK, 3660
EVERETT F. YATES, 1956

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY VETERINARY CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10 U.S.C., SECTIONS 624, 531, AND 3064:

To be major

*JAMES A. AMYX, JR., 0629
*KRYSTAL D. BEAN, 9227
*DWAYNE C. BECHTOL, 3320
*PATRICK J. CANCHOLA, 6079
*STEVEN CARROLL, 3486
*CHRISTINE L. CHRISTENSEN, 2022
*TODD A. COLLINS, 7522
*CLAIRE CORNELIUS, 9809
ROBERT S. DOLE, 3858
*JAMES R. DWYER, 9366
*PAUL R. FACEMIRE, 6280
*DAWN FITZHUGH, 9576
*MICHELLE A. FRANKLIN, 5351
*CLINTON GEORGE, 7218
*ANNE E. HESSINGER, 7438
*LISA M. HULL, 8901
CURTIS M. KLAGES, 0582
*CRAIG A. KOELLER, 1568
*DANIEL A. LEACH, 1200
*CHARLES L. MARCHAND III, 4791
*JESSICA A. MCCOY, 9054
*KEVIN W. NEMELKA, 6625
*JACQUELYN S. PARKER, 8828
*RONALD L. POWELL, 5846
*LISA T. READ, 6712
*SCOTT WILLENS, 7077

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SPECIALIST CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

To be major

*JOHN E. ADRIAN, 7227
*RADCLIFFE A. ANTOINE, 3771
*VINCENT M. ANTUNEZ, 5293
*DAVID APONTE, 9065
*ANTHONY T. BUNCH, 6840
*TIMOTHY B. CASS, 9597
*JAY E. CLASING, 9439
*MICHELE E. CURTISJACKSON, 9553
*JOHN J. DEMARCHI, 9337
*LAURI L. DUESLER, 9641

*GREER M. EVANSCHRISTOPHER, 6437
*ANDREW J. FLORES, 7364
MICHAEL E. FRANCO, 7437
*ANTHONY R. GARCIA, 9128
*SCOTT R. GREGG, 4915
*JAN M. GUY, 9532
*DAVID L. HAMILTON, 9803
*KURT HAMMERMUELLER, 1209
*CHERYLE E. HARTLEY, 3883
*MARK A. HARTLEY, 0510
*ROBERT S. HEATH, 3738
*KENNETH E. HENSON, 7469
*SEAN M. HERMICK, 6561
*PHILLIP T. JANSSEN, 9562
*KARL KISCH, 3025
*SHANE L. KOPPENHAVER, 0889
*KIM D. LATTIMORE, 8884
*LEONARD T. MASON, 7984
GAIL L. MAXWELL, 8150
*ROBERT E. MCPHERSON, 3335
*MARLJETA MEDVEREC, 0268
*DAVID B. MELAAS, 2065
*JEFFREY C. MOTT, 3163
*CHARLES A. NEAL IV, 3593
*DAVID L. NIEMAN, 7967
*MICHAEL J. NIEMI, 8274
*JEFFREY E. OLIVER, 0100
*SCOTT A. ORRAHOOD, 0470
*LOPEZ M. ORTIZ, 1751
*CRAIG V. PAIGE, 5292
*DOUGLAS M. PARTANEN, 4439
*WINNIE E. PAUL, 6901
*LESLIE A. RANDOLPHMOSS, 7700
*ROBERT B. RATHER, 7310
*GARY W. REEDY, JR., 2269
*JAMES R. RICE, 9888
*CHESTER C. ROBERTS, JR., 0758
*REVA L. ROGERS, 5151
*NELSON A. SAWYER, 7919
*KATHLEEN M. SCHULTZ, 6813
*JASON L. SILVERNAIL, 2583
*PAULA T. SMITH, 6338
*BARBARA A. SPERO, 8443
*DANIEL P. STOKES, 5766
*NANCY L. TEICH, 0540
*DAVID W. UHRICH, 6998
*RON E. VANWETTERING, 8542
*THEODORE W. WALLACE, 0865
*HENRY L. WATERS, 4047
*SHAWN G. WELLS, 8952
*TIMOTHY M. WEST, 2652
*DAVID A. YOUNG, 6243

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY NURSE CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C. SECTIONS 624, 531, AND 3064:

To be major

*TIMOTHY S. ADAMS, 3046
*RENEE D. ALFORD, 7445
*WILLIAM L. AMSINK, 3901
*DANIEL H. ANTHONY II, 0131
*DEBORAH R. BAIN, 4095
*TRACEY L. BAKER, 1283
*LORETTA BALL, 9521
*SANDRA J. BARR, 7754
*ROMER M. BLANCO, 2811
CATTLEYA M. BORN, 6360
*TIMOTHY J. BRYANT, 8020
*REBECCA L. BURROWS, 8962
SHERI A. BURTON, 5668
*LARA K. CARTWRIGHT, 2096
*EMETERIO L. CERBAS, 7242
*JANE M. CHRISTENSEN, 9253
*DINO W. CHRISTOPHER, 3056
*RODGER S. CHRISTY, 0592
*BETTY E. CLOUDEN, 6642
*GRETA V. COLLIER, 4054
*BETHANY L. CONNOR, 3291
JEFFREY P. CONROY, 3252
*LECIA J. CORNETTFUENTES, 8261
*CHERYL A. CREAMER, 3872
*SAMANTHA CRUMBLY, 8947
*MICHAEL S. CYRA, 5163
*THOMAS A. DEITZ, 3832
*DENITA A. DERAMUS, 7678
CHARLES W. DOUGLAS, 2573
*JOSEPH K. DUBOSE, 4888
*HECTOR ERAZO, 3315
*JASON N. ERNEST, 4110
KYLE E. EWING, 1472
*JENNIFER A. FENTI, 0522
*JAMES FORMAN, 6745
*TANYA M. FOSTER, 0145
*DONNY E. FRANKLIN, 9555
*MARC A. FRY, 1502
*VINCENT GALES, 1489
*LISEL M. GATES, 4978
*GAIL D. GAUTHIER, 0258
RONALD S. GESAMAN, 3977
*KIMBERLY M. GESLAK, 0786
*JENNIFER J. GLIDEWELL, 3855
*KAREN A. GOODEN, 0452
*LINDA S. GOWENLOCK, 4532
*GENNETTE GREEN, 0878
*MARK GRIEVES, 7391
*TERESA L. GUILES, 3164
*KEVIN R. HAMILTON, 2282
MARY K. HANNON, 0017
*SEAN P. HARBERT, 1146
*KAITNARINE M. HARILAL, 8928
JASON W. HARRINGTON, 5531
*DAVID W. HART, 1891
*IRMA T. HARTMAN, 4177
MARK A. HASSLER, 0182
*DAVID HERNANDEZ, 8169
HAYONG N. HIRST, 3858
*GAVIN O. HITCHCOCK, 3509
*ROBERT A. HOLCEK, 3016
*ROGER D. HORNE, 0170
GREGORY P. HUBBS, 7518
*JOSEPH A. HULSE, 5244
*BEVERLY L. INOCENCIO, 1246
*TODD S. JACKSON, 1465
WILLIAM S. JACOBS, 7638
*PAUL M. JOHNSON, 3296
*FELICIA P. JONES, 8592
JOHN K. KAY, 7703
*HEIDI A. KELLY, 7628
*SHAWN D. KELLY, 9380
*DONALD E. KIMBLER, JR., 0262
*STEVEN A. KNAPP, 9623
*JOHN V. KULIG, 3836
*PAUL R. LABRADOR, 4309
*LAUREN C. LASLIE, 5488
*BRIAN E. LAUER, 8874
*CHRISTOPHER G. LINDNER, 4970
*LISA M. LUTE, 7262
*YVETTE M. MALMQUIST, 8810
TERRENCE M. MARK, JR., 7750
*SUELLYN M. MASEK, 7736
*KEVIN J. MCDERMOTT, 8033
PATRICK D. MCELHONE, 1778
*JAMES D. MCGINN, JR., 5138
*VICKIE J. MCLENDON, 3246
*JEFFREY J. MCMURTRY, 0915
PADRAIC M. MCVEIGH, 3207
*KAREN E. MEALER, 5955
*RONALD L. MILAM, JR., 6685
*MARILYN A. MILES, 6822
*MARK L. MITCHELL, 5208
*ROBERT M. MORRIS II, 2255
*PATSY D. MORRIS, 5892
*DENISE A. MOULTRIE, 2204
*HECTOR MUNIZ, 0157
MICHAEL S. NAGRA, 9121
*DAVID NEE, 6277
JASON A. NELSON, 0899
*RICKY R. NORWOOD, 0942
*CARLA J. PATTON, 1342
MARY PENA, 4505
PETER A. PETRUKITAS, 0711
*JENNIE P. POLK, 9694
*PATRICK J. POLLMAN, 4715
ANTHONY L. PORTEE, 9457
*JAMES R. POST, 0932
*HYON S. QUATTLEBAUM, 1728
*ROBERT R. RAMONAS, 6645
*MARK R. REINHARDT, 2995
*ANTHONY E. RHEA, 7436
BRADLEY R. RICHARDSON, 9734
KATHLEEN J. RICHARDSON, 2414
*THERESA M. ROLLASON, 1292
*GERALD C. ROSS III, 0016
*SCOTT D. RUSH, 5810
*ROBERT E. RUSSUM, 9123
*CHRISTOPHER SANCHEZ, 7367
TANYA L. SANDERS, 0157
KENNETH M. SAUNDERS, 5351
*STEVEN M. SCHOENICKE, 0169
*JAMES R. SELLARS, 9171
*BRYAN W. SISK, 9390
*MARK R. SMITH, 9809
*SANDRA A. SNIPES, 0560
*KATHLEEN G. SPANGLER, 2442
*JEFFREY A. SPORER, 1060
*JOHN M. STAS, 5973
*MICHELLE D. STEWMON, 0084
*BRENDA J. STOCKHILL, 9806
*CHRISTIAN B. SWIFT, 9831
*BOZHENA TABAKMAN, 6350
*DAVID L. TAYLOR III, 2289
LANCE C. TAYLOR, 5786
*DARYL D. TURNAGE, 9542
*CORNELIUS R. TYLER, 8248
*DALE A. VEGTER, 9095
JOEL H. VINCENT, 9224
*EMILY R. WASSUM, 5008
*MICHAEL J. WATSON, 4385
*STEPHEN J. WILLIAMS, 5412
HOPE M. WILLIAMSON, 5937
*CATHY D. WILLINGHAM, 1315
*LARRY E. WISE, 2298
MARY A. WITT, 5675
*GLENDA S. WOLFE, 5602
*MYONG S. WOO, 7029
*GREGORY S. YOST, 3734
*TERRI L. YOST, 3846
*PJ ZAMORA, 2926

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SERVICE CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10 U.S.C., SECTIONS 624, 531, AND 3064:

To be major

*JUDE M. ABADIE, 7379
*EDWARD P. AGER, 6149
*CHRISTOPHER C. ALGER, 8716
*JENNIFER R. ALLOUCHE, 9521
*HEATHER S. ANDERSON, 6455
THOMAS J. ANTON, 9713
*JANELLE A. ARNETTE, 2864
JIMMY G. BAKER, 8983
*JON E. BAKER, 6759
*MICHAEL A. BALL, 7470
JAMES W. BEACH, 0666
*BRIAN J. BENDER, 3891
*TAIWO H. BOLAJI, 1205
*BRANDON M. BOWLINE, 6792
TOMMY D. BOWLING, JR., 8355
*JOSEPH A. BOWMAN, 4377
*KENT A. BROUSSARD, 9402
*JEFFREY K. BROWN, 9300
*SEAN A. CASPERSON, 9418
*JOSEPH A. CHAPMAN, 8479
*SAMUEL N. CHEUVRONT, 6350
*STACY A. CHRISTENSEN, 9972
*JINJONG CHUNG, 4519
*MATTHEW G. CLARK, 2647
*BRETT W. COLLIER, 7124
CHARLES C. COOK, 9719
WALTER G. CUMMINGS, 1692
*MISHAW T. CUYLER, 8295
MICHAEL D. DAKE, 6378
*DEBRA L. DANDRIDGE, 0906
ROSS A. DAVIDSON, 1443
*JON M. DAVIS, 2383
MATTHEW S. DOUGLAS, 7726
*PAUL R. DUERINGER, 1822
*JEFFREY A. DUNCAN, 8572
*RYAN R. ECKMEIER, 1033
*LOUANN F. ENGLE, 8642
JOHN M. EVANS, 6254
*THOMAS D. EYER, 3798
*ROGER J. FEAGLER, 3251
*MARCELLA R. FEDDES, 2714
STEPHEN E. FLANNERY, 2132
*JOHN R. FUDA, 8218
AY J. GAO, 4783
*SHAWN R. GELZAINES, 8986
*JEANNE A. GEYER, 3914
PHILIP W. GINDER, 5437
JAMES B. GOETSCHIUS, 9154
*CARL J. GORKOS II, 4288
*MATTHEW J. GORSKI, 8576
JASON L. GRANT, 9883
*THOMAS H. GRANT, 3322
*DOUGLAS R. GRAY, 8288
TIMOTHY O. GREEN, 1592
*ANDREW HAGEMASTER, 7562
*TIMOTHY E. HALE, 8108
BONNIE J. HALL, 5908
JAMES S. HALLMARK, 1770
KEVIN C. HAMILTON, 9368
*JOHN M. HAMMER, 2757
*MARK G. HARTEL, 2072
*JED A. HARTINGS, 0923
*JAMES H. HAYES, 3623
ALEX L. HAYMAN, 1864
*JILL J. HENDERSON, 9410
*CHRISTOPHER C. HENRY, 1051
WILLIAM E. HERMAN, 7072
MICHELLE M. HIDALGO, 7307
BERNITA HIGHTOWER, 6650
*CHRISTOPH A. HILLMER, 7075
*GARY A. HUGHES, 3717
DERECK L. IRMINGER, 8290
*JONATHON A. JAMES, 3954
*ROBERT W. JENKINS, 7094
AMY B. JENSIK, 5956
*CHRISTOPHER R. JOHNSON, 9751
*DAVID S. JOHNSTON, 4353
CAROLINE M. KALINOWSKI, 8168
*JOSEPH C. KELSEY, 4737
*FOREST S. KIM, 2999
*BILLY E. KING, 9713
*DUBRAY KINNEY, SR., 0108
MATTHEW D. KONOPA, 8220
*MICHAEL C. KRAMER, 4491
*SEAN T. LANKFORD, 9844
*MELISSA LECCESE, 8843
*FRANCINE LEWIS, 0364
DEREK J. LICINA, 1626
*JOSELITO C. LIM, 9444
*DOUGLAS K. LOMSHEK, 5398
*KAREN J. MAGNET, 1221
*MARK W. MAITAG, 3660
*MARK S. MANEVAL, 9047
*GLENN E. MARSH, 6380
DEAN L. MARTIN, 5138
ARTHUR R. MATHISEN, 7936
JAMES J. MECKEL, 0641
*CARTER T. MEREDITH, 5553
MARY E. MILLER, 1880
*TROY N. MORTON, 9523
*JOSEPH M. MROZINSKI, 5149
*MICHAEL J. NACK, 8086
*WOODROW NASH, JR., 4656
*RALPH T. NAZZARO, 6598
*JEFFREY J. NEIGH, 5494
LORENZO I. NEILSEN, 2140
BRIAN W. NELL, 5816
MARK F. NEWSOME, 4810
*DANIEL A. NICHOLS, 6447
*RHONDA L. PALMORE, 8756
*THOMAS J. PALYS, 1487
*MICHAEL T. PEACOCK, 7544
KEVIN A. PECK, 9062
*MICHAEL E. PERRY, 8253
*LAWRENCE N. PETZ, 3990
*LEON RAINEY, 8174
*RICARDO A. REYES, 7718

CHRISTIAN P. RICHARDS, 7308
*MICHAEL A. RICHARDS, 2140
STEVEN J. RICHTER, 7290
*LARRY J. RICKS, JR., 9581
GERI L. ROBINSON, 2715
GREGORY T. RULE, 0905
*ORLANDO L. RUMMANS, 6385
TODD A. RYKTARSYK, 8688
*DAVID A. SARTORI, 8385
JEFFREY J. SHAW, 2369
SHANNON N. SHAW, 3891
*SCOTT A. SHOPA, 0674
*BENITA A. SHULTS, 2775
*ROBERT B. SIDELL, 8149
*SUSAN M. SLOAN, 4037
*KEVIN S. SMITH, 8964
*LESLIE E. SMITH, 8237
*NATHANIEL L. SMITH, 7452
*WILLIAM J. SMITH, 8569
BRIAN C. SPANGLER, 3349
*KATRINA M. STREETER, 0916
*ROBERT J. STROB, 9779
KATHERINE V. SUAREZ, 1056
VICTOR A. SUAREZ, 5283
*PATTERSON W. TAYLOR, 8084
*LAWRENCE M. TERENZI, 2670
*REBECCA J. TERRY, 9770
*ROBERT R. TIEDEMANN, 5159
*BRETT H. VENABLE, 5114
*MATTHEW W. VOYLES, 5255
*ERIC J. WAGAR, 9995
*BRYAN J. WALRATH, 0688
*LESLIE G. WALTHALL, 8980
*KEITH D. WASHINGTON, 1605
*DAVID W. WEBB, 8863
*DOUGLAS P. WEKELL, 6342
*JANA L. WILLIAMS, 5139
KRISTIAN E. WILLIS, 7084
CHRISTOPHER M. WILSON, 6680
JASON G. WILSON, 9266
*MITCHELL W. WOODBERRY, 5434
*MARK O. WORLEY, 7923
*JOHN D. YEAW, 2465

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be colonel

JOHN A. AHO, 1211
SCOTT D. AIKEN, 3508
BERN J. ALTMAN, 7833
JOEL D. ANDERSON, 8017
RICHARD A. ANDERSON, 2413
EUGENE N. APICELLA, 3462
TIMOTHY T. ARMSTRONG, 9569
VAUGHN A. ARY, 6163
DAVID F. AUMULLER, 4038
RICHARD W. BAXTER, 2690
JAMES C. BECKER, JR., 3828
MICHAEL H. BELDING, 8210
JOEL H. BERRY III, 6291
BENJAMIN S. BLANKENSHIP, 7945
JOSEPH G. BOWE, 7603
TERENCE P. BRENNAN, 3264
JOHN A. BRUSH, 2257
DAVID L. BURCHINAL, 4741
ADRIAN W. BURKE, 6385
BRENNAN T. BYRNE, 6077
PAUL F. CALLAN, 6961
CHARLES G. CHIAROTTI, 5335
MATTHEW R. CICCHINELLI, 2999
KEITH L. CIERI, 5640
JAMES W. CLARK, JR., 6867
ROBERT D. CLARK, 2305
THOMAS S. CLARK III, 4336
ROBERT W. COATE, 1160
DAVID W. COFFMAN, 8012
RICHARD D. COLEMAN, JR., 3666
ADAM J. COPP, 0957
STEPHEN P. CORCORAN, 0167
WILLIAM R. COSTANTINI, 7691
CRAIG C. CRENSHAW, 5885
DOUGLAS F. CROMWELL, 3821
KRISTA J. CROSETTO, 1929
NEWELL B. DAY II, 0506
RICHARD A. DEFOREST, 6185
JOHN A. DELCOLLIANO, 0042
STUART L. DICKEY, 1711
KURT E. DIEHL, 8648
JON G. DOERING, 1065
GREGORY M. DOUQUET, 4034
JEROME E. DRISCOLL, 7065
ROBERT T. DURKIN, 0450
DANIEL W. ELZIE, 4324
ERIC K. FIPPINGER, 9916
TIMOTHY S. FOSTER, 6818
DAVID S. FOY, 3110
MICHAEL M. FRAZIER, 1579
JAMES B. FRITZ, 1287
THOMAS J. FUHRER, 7937
JAMES M. GANNON, 2786
ROBERT L. GARDNER, 3841
JAMES D. GASS, 8725
ROBERT W. GATES, 9310
BRENT P. GODDARD, 7057
ROBERT G. GOLDEN III, 4168
THOMAS A. GORRY, 4930
KEVIN L. GROSS, 6893
GREGG T. HABEL, 9124
DAVID M. HAGOPIAN, 5185
JOHN R. HAHN, 7300
JACK Q. HALL, 7649
LONNIE R. HARRELSON, 4342
JOSEPH K. HAVILAND, 2224
JEFFREY M. HAYNES, 4660
KENNETH S. HELFRICH, 5381
TIMOTHY A. HERNDON, 7287
JEFFREY M. HEWLETT, 6053
JAMES A. HOGBERG, 2261
LARRY J. HOLCOMB, 5580
MICHAEL R. HUDSON, 1471
JAY L. HUSTON, 5607
HAROLD D. JOHNSON III, 3933
FRANCIS L. KELLEY, JR., 3498
KEVIN M. KELLY, 3230
PAUL J. KENNEDY, 3287
BRIAN D. KERL, 5033
JAMES C. KING II, 2377
KEVIN D. KING, 2461
STEPHEN F. KIRKPATRICK, 7431
DARRIC M. KNIGHT, 8719
BERNARD J. KRUEGER, 4640
JAMES G. KYSER IV, 4046
CHRIS A. LAMSON, 7712
MICHAEL E. LANGLEY, 3483
MICHAEL L. LAWRENCE, 6762
DANIEL J. LECCE, 9124
LAWRENCE S. LOCH, 1084
PATRICK G. LOONEY, 6426
MATTHEW A. LOPEZ, 7059
JOHN K. LOVE, 6661
JON K. LOWREY, 0443
ANDREW R. MACMANNIS, 4943
MARC L. MAGRAM, 9162
JOAQUIN F. MALAVET, 7370
PATRICK J. MALAY, 5352
JOHN C. MALIK III, 0444
STEVEN T. MANNING, 7929
NICHOLAS F. MARANO, 5008
JOSEPH C. MARELLO, JR., 3572
FRANCESCO MARRA, 9265
MARC D. MCCOY, 8547
STEPHEN A. MEDEIROS, 3523
JEFFREY L. MERCHANT, 6896
MICHAEL A. MICUCCI, 7553
MICHAEL F. MORRIS, 5105
DONALD C. MORSE, 8005
CHRISTOPHER J. MULLIN, 1159
BRIAN C. MURTHA, 2966
JAMES E. NIERLE, 5338
STEPHEN G. NITZSCHKE, 8329
GREGG P. OLSON, 7633
DAVID P. OLSZOWY, 3066
ROBERT G. OLTMAN, 9848
JOHN P. OROURKE, 7173
ROY A. OSBORN, 5777
HOWARD T. PARKER, JR., 8465
ROBERT G. PETIT, 0883
JOHN M. POLLOCK, 4105
JOEL R. POWERS, 1093
MICHAEL R. RAMOS, 9330
PATRICK L. REDMON, 9370
TERENCE W. REID, 5227
STEVEN R. RUDDER, 3612
BRADLEY H. SHUMAKER, 9414
BARTON S. SLOAT, 3752
GEORGE W. SMITH, JR., 2329
JOSEPH G. SMITH, 4170
RUSSELL H. SMITH, 0599
ANDREW L. SOLGERE, 9628
WENDY A. STAFFORD, 1313
ANDREW O. STARR, 6849
FREDERICK W. STURCKOW, 0856
KATHY L. TATE, 3229
DAVID M. TAYLOR, 9724
DAVID J. TERANDO, 3343
WILBERT E. THOMAS, 9746
CRAIG Q. TIMBERLAKE, 0175
NORBERT J. TORRES, 4840
ROBERT E. WALLACE, 1442
JOHN S. WALSH, 7292
WES S. WESTON, 2482
LLOYD A. WRIGHT, 6450
DANIEL D. YOO, 5152

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

BRIAN R. LEWIS, 3301

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 1211:

To be chief warrant officer W4

WILLIAM A. KELLY, JR., 2316

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

PAUL W. MARQUIS, 3085

SENATE—*Monday, January 30, 2006*

The Senate met at 10 a.m. and was called to order by the Honorable ROBERT F. BENNETT, a Senator from the State of Utah.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal God, to whom a thousand years are but a moment, by Your mercy we have received the gift of another day. Help us to maximize today's possibilities with humble and grateful hearts. Forgive our past faults and failures and empower us to press forward with faith toward a productive tomorrow.

Bless our lawmakers and the members of their staffs. May the words of their lips and the meditations of their hearts bring glory to You. Let not life's weariness or this world's confusion rob them of their trust in You.

Take control of our lives. Make us large of spirit, generous, and merciful. Use us to lift the fallen and remind us to bless even those who curse us. Show us the straight path and a clear way over the difficulties of today and tomorrow.

We pray in Your sovereign Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable ROBERT F. BENNETT led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, January 30, 2006.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROBERT F. BENNETT, a Senator from the State of Utah, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. BENNETT thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The Senate is available for morning business.

The Senator from Vermont is recognized.

Mr. JEFFORDS. Mr. President, last Thursday I submitted a statement expressing my concerns with the nomination of Judge Samuel Alito to the United States Supreme Court.

I am here today to reiterate these concerns as we move toward a final vote on this nomination.

There is no higher legal body in the United States than the Supreme Court. It is the final authority on the meaning of laws and the Constitution.

A Supreme Court Justice could serve for the life of the nominee, so the consequences of confirming a Supreme Court Justice can span decades.

The confirmation of a Supreme Court Justice is one of the most important votes a Senator will take.

With that in mind, after careful consideration, I have concluded I cannot support Judge Alito's nomination to the U.S. Supreme Court.

My first step in evaluating a nominee is to consider whether he or she is appropriately qualified and capable of handling the responsibilities of a Justice.

Looking over Judge Alito's qualifications, it is clear this minimum standard has been met. However, there are additional factors in considering a judicial nominee.

One such factor is the judicial philosophy of the nominee. Many of my colleagues argue this should have no part in the Senate's deliberations.

However, if judicial philosophy helps determine who the President chooses, the Senate should also be allowed to consider this factor when deciding whether to approve or disapprove the nominee.

This information is critical to retain the balance of power that the Framers of our Constitution envisioned.

In addition to the individual's judicial philosophy, we must also consider the cumulative effect that approving a nominee will have on the Supreme Court.

In the recent past, Republican Presidents have made 15 of the last 17 nominations to the Supreme Court.

The Republican stamp on the current Court is undeniable, and clearly the prospects of the Court becoming more moderate in the near future are unlikely.

Upon this backdrop, I have evaluated the decisions and writings of Judge Alito, closely watched the nomination hearing in the Senate Judiciary Committee, and listened to the statements of many colleagues on his nomination.

I have come away from this review with a number of concerns.

First, Judge Alito did not provide complete answers on many important topics the way now Chief Justice Roberts did during his nomination hearing. These included many critical issues such as: Is Roe settled law? What are the limits of the executive branch's power?

Second, Judge Alito failed to distance himself from the radical views he expressed in his earlier writings on the supremacy of executive power.

Third, Judge Alito's record includes troubling decisions on vital issues such as search and seizure, reproductive rights, the power of Congress, civil rights, and affirmative action.

Because of these facts, I have concluded that the addition of Judge Alito to the Supreme Court would unacceptably shift the balance of the Court on many critical questions facing our county, such as:

Are there limits on the power of the presidency?

Can the Congress regulate the activities of the states?

How expansive is the right to privacy?

What deference should be given to legislative acts of the Congress?

How the Court addresses these questions goes to the heart of what we stand for as a country, which is why this nomination is so important.

While many of my colleagues will disagree with my assessment of Judge Alito, this will be a lifetime appointment and a lifetime is too long to be wrong.

I yield the floor.

EXECUTIVE SESSION

NOMINATION OF SAMUEL A. ALITO, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session and resume consideration of Calendar No. 490, which the clerk will report.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

The assistant legislative clerk read the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States.

The ACTING PRESIDENT pro tempore. Under the previous order, the time from 10 to 11 shall be under the control of the Democratic side.

The Chair recognizes the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, today at 4:30. Members of this body will be casting an extremely important vote, the implications of which are going to be felt not only in the next several months but for a great number of years, not only for this generation but for the next generation and the following. It is on a nomination for the Supreme Court of the United States and whether we are going to move ahead and have a final vote tomorrow.

There is nothing more important than the votes we cast on nominations to the Supreme Court, except sending young Americans to war. The implications of this vote are far reaching. As one who has followed the courts of this country as they moved us to a fairer and more just nation, this nomination has enormous consequences and importance. I doubt if we will cast another such vote, unless it would be for a Supreme Court nominee, any time in the near future.

I remember the beginning of the great march towards progress this Nation made with the Fifth Circuit in the 1950s, the great heroes, Judge Wisdom, Judge Tuttle, Judge Johnson, and many others who awakened the Nation to its greatness in terms of having America be America by knocking down walls of discrimination and prejudice. Our Founding Fathers didn't get it right on that as we know. They effectively wrote slavery into the Constitution. We fought a Civil War that didn't resolve it or solve it. Though, obviously, with President Lincoln and other extraordinary leaders, we began to move the process forward to knock down the walls of discrimination.

It was really as a result of the extraordinary leadership of Dr. King, his allies and associates in the late 1950s, that America began to think about what this country was all about, recognizing the stains of discrimination. We had the beginning of the movement to knock down the walls of discrimination in the Public Accommodation Act of 1964, the Voting Rights Act of 1965, the Civil Rights Act of 1967, housing in 1968, title XIV in 1973. In 1965, we knocked down the walls of discrimination in our immigration laws, the national origin quota system. The Asian-Pacific triangle discriminated against Asians. The national origin quota system discriminated against groups of countries.

We have made enormous progress, not that laws themselves are going to solve these problems. We had laws that were passed, supported by Democrats and Republicans during this time, and we became a fairer and more just nation. Still there are important areas we have to move toward to complete the march. The stains of discrimination are still out there, not nearly as obvious as they were in the earlier part of the last century, but they are still out there. They are evident. All of us at one time or another still see them. It is not limited to a region of the Nation. It exists in my part of the country as well.

The question is, Are we moving forward to knock down the walls of discrimination? That has always been a pretty basic test for me in terms of reaching a judgment on the Supreme Court.

I remember the case of Tennessee v. Lane that was decided not long ago. It involved a woman in a wheelchair, a single mom with two children, trained as a court reporter. The State was Tennessee. About 60 percent of all the courtrooms in Tennessee for some reason are on the second floor. The question involved the Americans with Disabilities Act. I welcomed the opportunity to work closely with my colleague from Iowa, Senator HARKIN, on that program. By the time we came to the floor, we had bipartisan support for that legislation. President Bush 1 indicated it was the piece of legislation of which he was most proud. It wasn't always easy in terms of dealing with the disabled.

I can remember when we had 4 million children who were kept in closets rather than being able to go to school. We had bipartisanship on the IDEA, the Individuals with Disabilities Education Act, and we made enormous progress during that time.

Then we had Tennessee v. Lane. The question was whether that courthouse was going to make reasonable accommodations to let that single mother, who was trained as a court reporter, avoid being carried up a flight of stairs, avoid being carried into the ladies room, avoid other humiliating circumstances because of her disability, was that courthouse going to have to make those reasonable accommodations.

Four Justices on the Supreme Court said no, no, we don't have to make those accommodations. But five said yes. Sandra Day O'Connor said yes on that and they made those accommodations. That mother was able to gain entrance into the courthouse and has had a successful career. She appeared before our committee with tears in her eyes. If that decision had gone 5 to 4 the other way, all 50 States would have had to have passed disability rights acts—not the Americans With Disability Act, but a Massachusetts disabilities act, or Connecticut, or Rhode Island. But we had the Americans With Disabilities Act, so 42 million fellow citizens with physical and mental disabilities are now part of the American family today. Just as we have knocked down the walls of discrimination on race, religion, ethnicity, and gender, we have done so with disability. We have also made some progress in terms of gay and lesbian issues as well.

We have made this march toward progress. The question is whether we are going to have a justice who believes in that march of progress, or whether we are going to have somebody who is going to be a roadblock in that march toward progress. I express my opposition to Judge Alito because I think he is the wrong judge at the wrong time on the wrong court. I don't believe he is going to be part of the whole movement and march toward progress in this country. It is a delicate balance. We have seen at times in American history where Executives have led the way in making this a fairer country and where Congress has led the way and, certainly, we have seen that with Executive power in terms of the adoption of the Medicare Programs and Medicaid. We had Presidential leadership for a while in the early sixties, and finally we passed those. As a result, we are a fairer country. Ask our elderly people if we didn't have the Medicare or the Social Security programs where we would be as a nation. That is the issue.

I accepted the challenge of Judge Alito, who said, let's read my cases. I am reminded of the fact that to understand a nominee, one has to read their dissenting opinions. Ruth Bader Ginsburg and Robert Bork agreed 91 percent of the time. Isn't that extraordinary about two individuals with dramatically different judicial philosophies? They agreed 91 percent of the time. Where you found their differences were in their dissents.

That is where I looked with regard to this nominee. That is why I came to the conclusion this nominee was not going to be friendly to the average worker, friendly on women's rights, friendly on the issues of race, friendly on the issues of the environment, and would no doubt be willing to accede to a more expansive Executive power.

I remember the time when the President announced the nomination of Judge Alito. It was in the early morning. I happened to be up in Massachusetts and I knew the announcement would be made. I didn't know Judge Alito. Certainly the representation was that there is a wide open kind of net that has been spread out across the country to try to find the very best in our Nation who would be a good nominee. I have voted for seven Republican nominees for the Supreme Court. We have had a great many of those nominees who were virtually unanimous in this body—Democrats and Republicans voting together for nominees—and that is what I think all of us were hoping for. We had seen the fiasco that had taken place with Harriet Miers. We saw groups in this country that were prepared to exercise a veto. We have seen groups in our Nation that were prepared to exercise a litmus test. We have seen groups that have said absolutely, no, we are not going to have Harriet Miers. These are the same groups that indicated for so long that nominees are entitled to a vote up or down.

We ought to be able to look at a nominee's judicial philosophy and all the rest. All of those issues went right out the window when Harriet Miers was nominated. The reason was because Harriet Miers didn't pass a litmus test. Now we have Judge Alito. Before the announcement ended, we see this extraordinary wave of favorability that has come over in terms of support for this nominee. I wonder how people could be so opposed to Harriet Miers and, as soon as Judge Alito was announced, how they could be so overwhelmingly for him. What did they know? Who knew?

One of the things I think of is what our Founding Fathers wanted. What did the Constitution say on this issue? The Founding Fathers, in debating the Constitution, considered the issue of appointment of judges four different times. On three occasions they gave all the authority to this body here, the Senate, to recommend and appoint. The last important decision at the Constitutional Convention—10 days before the end—was to share the power, with the Executive having the power to appoint and the Senate having the power to give advice and consent. You cannot read the debates, which I have read, and not understand that it was a shared responsibility—not this idea that the Senate is supposed to be a rubberstamp. I know it suits their interests, but our Founding Fathers wanted the shared responsibility. Remember the checks and balances, the essential aspect of the Constitution of the United States? When they give authority and power in one place, they give authority and power to the other—the Commander in Chief, Executive, making of war; with the Congress, the power of the purse, and the rest of the issues we all are familiar with.

This is a shared responsibility, and we in this Senate have a very important constitutional obligation to review the recommendation. The real question for us now when we have a nominee is to find out—not for ourselves, but as instruments for the American people—what the beliefs of this nominee are; what are the real beliefs are of the nominee for the Supreme Court of the United States; do we have the assurances that this individual is the best of the best. We have seen that. President Reagan gave us Sandra Day O'Connor, who was the best of the best. The list went on. We have had extraordinary jurists in the past.

We approached this to try to find out these things on the Judiciary Committee. We have a pretty good sense that the executive branch knows the philosophy of this nominee. They have made the recommendation and obviously they have inquired of this nominee, so they know where he is.

I was absolutely startled this morning when I picked up the New York Times and saw in Mr. Kirkpatrick's article on the front page exactly how this nominee was selected, who selected him, and what the process was. All during this period of time, that was something those of us on Judiciary Committee had no mind of. Maybe our friends on the other side knew about it. But this is on the front page of the New York Times: Paving the Way For Alito Began In Reagan Era.

It goes on extensively, continuing on page A18. I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

In Alito, G.O.P. Reaps Harvest Planted in '82

(By David D. Kirkpatrick)

Last February, as rumors swirled about the failing health of Chief Justice William H. Rehnquist, a team of conservative grassroots organizers, public relations specialists and legal strategists met to prepare a battle plan to ensure any vacancies were filled by likeminded jurists.

The team recruited conservative lawyers to study the records of 18 potential nominees including Judges John G. Roberts Jr. and Samuel A. Alito Jr.—and trained more than three dozen lawyers across the country to respond to news reports on the president's eventual pick.

"We boxed them in," one lawyer present during the strategy meetings said with pride in an interview over the weekend. This lawyer and others present who described the meeting were granted anonymity because the meetings were confidential and because the team had told its allies not to exult publicly until the confirmation vote was cast.

Now, on the eve of what is expected to be the Senate confirmation of Judge Alito to the Supreme Court, coming four months after Chief Justice Roberts was installed, those planners stand on the brink of a watershed for the conservative movement.

In 1982, the year after Mr. Alito first joined the Reagan administration, that movement was little more than the handful of legal scholars who gathered at Yale for the first meeting of the Federalist Society, a newly formed conservative legal group.

Judge Alito's ascent to join Chief Justice Roberts on the court "would have been beyond our best expectations," said Spencer Abraham, one of the society's founders, a former Secretary of Energy under President Bush and now the chairman of the Committee for Justice, one of many conservative organizations set up to support judicial nominees.

He added, "I don't think we would have put a lot of money on it in a friendly wager."

Judge Alito's confirmation is also the culmination of a disciplined campaign begun by the Reagan administration to seed the lower federal judiciary with like-minded jurists who could reorient the federal courts toward a view of the Constitution much closer to its 18th-century authors' intent, including a much less expansive view of its application to individual rights and federal power. It was a philosophy promulgated by Edwin Meese III, attorney general in the Reagan administration, that became the gospel of the Federalist Society and the nascent conservative legal movement.

Both Mr. Roberts and Mr. Alito were among the cadre of young conservative lawyers attracted to the Reagan administration's Justice Department. And both advanced to the pool of promising young jurists whom strategists like C. Boyden Gray, White House counsel in the first Bush administration and an adviser to the current White House, sought to place throughout the federal judiciary to groom for the highest court.

"It is a Reagan personnel officer's dream come true," said Douglas W. Kmiec, a law professor at Pepperdine University who worked with Mr. Alito and Mr. Roberts in the Reagan administration. "It is a graduation. These individuals have been in study and preparation for these roles all their professional lives."

As each progressed in legal stature, others were laying the infrastructure of the movement. After the 1987 defeat of the Supreme Court nomination of Judge Robert H. Bork conservatives vowed to build a counterweight to the liberal forces that had mobilized to stop him.

With grants from major conservative donors like the John M. Olin Foundation, the Federalist Society functioned as a kind of shadow conservative bar association, planting chapters in law schools around the country that served as a pipeline to prestigious judicial clerkships.

During their narrow and politically costly victory in the 1991 confirmation of Justice Clarence Thomas, the Federalist Society lawyers forged new ties with the increasingly sophisticated network of grass-roots conservative Christian groups like Focus on the Family in Colorado Springs and the American Family Association in Tupelo, Miss. Many conservative Christian pastors and broadcasters had railed for decades against Supreme Court decisions that outlawed school prayer and endorsed abortion rights.

During the Clinton administration, Federalist Society members and allies had come to dominate the membership and staff of the Judiciary Committee, which turned back many of the administration's nominees. "There was a Republican majority of the Senate, and it tempered the nature of the nominations being made," said Mr. Abraham, the Federalist Society founder who was a senator on the Judiciary Committee at the time.

By 2000, the decades of organizing and battles had fueled a deep demand in the Republican base for change on the court. Mr. Bush tapped into that demand by promising to name jurists in the mold of conservative Justices Thomas and Scalia.

When Mr. Bush named Harriet E. Miers, the White House counsel, as the successor to Justice O'Connor, he faced a revolt from his conservative base, which complained about her dearth of qualifications and ideological bona fides.

"It was a striking example of the grass roots having strong opinions that ran counter to the party leaders about what was attainable," said Stephen G. Calabresi, a law

> professor at Northwestern University and another founding member of the Federalist Society.
>
> But in October, when President Bush withdrew Ms. Miers's nomination and named Judge Alito, the same network quickly mobilized behind him.
>
> Conservatives had begun planning for a nomination fight as long ago as that February meeting, which was led by Leonard A. Leo, executive vice president of the Federalist Society and informal adviser to the White House, Mr. Meese and Mr. Gray.
>
> They laid out a two-part strategy to roll out behind whomever the president picked, people present said. The plan: first, extol the nonpartisan legal credentials of the nominee, steering the debate away from the nominee's possible influence over hot-button issues. Second, attack the liberal groups they expected to oppose any Bush nominee.
>
> The team worked through a newly formed group, the Judicial Confirmation Network, to coordinate grass-roots pressure on Democratic senators from conservative states. And they stayed in constant contact with scores of conservative groups around the country to brief them about potential nominees and to make sure they all stuck to the same message. They fine-tuned their strategy for Judge Alito when he was nominated in October by recruiting Italian-American groups to protest the use of the nickname "Scalito," which would have linked him to the conservative Justice Antonin Scalia.
>
> In November, some Democrats believed they had a chance to defeat the nomination after the disclosure of a 1985 memorandum Judge Alito wrote in the Reagan administration about his conservative legal views on abortion, affirmative action and other subjects.
>
> "It was a done deal," one of the Democratic staff members of the Senate Judiciary Committee said, speaking on the condition of anonymity because the staff is forbidden to talk publicly about internal meetings. "This was the most evidence we have ever had about a Supreme Court nominee's true beliefs."
>
> Mr. Leo and other lawyers supporting Judge Alito were inclined to shrug off the memorandum, which described views that were typical in their circles, people involved in the effort said. But executives at Creative Response Concepts, the team's public relations firm, quickly convinced them it was "a big deal" that could become the centerpiece of the Democrats' attacks, one of the people said.
>
> "The call came in right away," said Jay Sekulow, chief counsel of the American Center for Law and Justice and another lawyer on the Alito team.
>
> Responding to Mr. Alito's 1985 statement that he disagreed strongly with the abortion-rights precedents, for example, "The answer was, 'Of course he was opposed to abortion,'" Mr. Sekulow said. "He worked for the Reagan administration, he was a lawyer representing a client, and it may well have reflected his personal beliefs. But look what he has done as judge."
>
> His supporters deluged news organizations with phone calls, press releases and lawyers to interview, all noting that on the United States Court of Appeals for the Third Circuit, Judge Alito had voted to uphold and to strike down abortion restrictions.
>
> Democrats contended that those arguments were irrelevant because on the lower court Judge Alito was bound by Supreme Court precedent, whereas as a justice he could vote to overturn any precedents with which he disagreed.
>
> By last week it was clear that the judge had enough votes to win confirmation. And the last gasp of resistance came in a Democratic caucus meeting on Wednesday when Senator Edward M. Kennedy, joined by Senator John Kerry, both of Massachusetts, unsuccessfully tried to persuade the party to organize a filibuster.
>
> No one defended Judge Alito or argued that he did not warrant opposition, Mr. Kennedy said in an interview. Instead, opponents of the filibuster argued about the political cost of being accused of obstructionism by conservatives.
>
> Still, on the brink of this victory, some in the conservative movement say the battle over the court has just begun. Justice O'Connor was the swing vote on many issues, but replacing her with a more dependable conservative would bring that faction of the court at most to four justices, not five, and thus not enough to truly reshape the court or overturn precedents like those upholding abortion rights.
>
> "It has been a long time coming," Judge Bork said, "but more needs to be done."

Mr. KENNEDY. Mr. President, America is listening to the President. He said: We are going to get the very best nominee we possibly can. That is one side of the story. Most of us certainly believed it. Well, this is the story. This may be accurate and it may not be. I think it is very difficult to read this story and not certainly find a very powerful ring of truth in it:

> Last February, as rumors swirled about the failing health of Chief Justice William H. Rehnquist, a team of conservative grassroots organizers, public relations specialists, and legal strategists met to prepare a battle plan to ensure any vacancies were filled by like-minded jurists.

So the right wing had a plan. They knew what the thinking of the nominee was. The article continues:

> The team recruited conservative lawyers to study the records of 18 potential nominees—including Judges John G. Roberts and Samuel A. Alito—and trained more than three dozen lawyers across the country to respond to news reports on the President's eventual pick.

So members of the right wing are going to make the pick and we see around the country where dozens of lawyers are going to respond to the news reports. It continues:

> "We boxed them in" . . .

Boxed whom in? They boxed in the American people. That is what they are saying proudly—"we boxed them in," one lawyer present during the strategy meetings said with pride in an interview over the weekend.

Boxed whom in? This is a nomination for the Supreme Court of the United States. This is supposed to represent all of the people, all Americans. No, no, they boxed them in, a lawyer present at the strategy meeting said with pride.

This lawyer and others present who described the meeting were granted anonymity because the meetings were confidential and because the team had told its allies not to exult publicly until the confirmation vote was cast.

There it is. They can hardly wait. Although I was surprised that—and this would be my 23rd Supreme Court nominee—the nominee was up in the Capitol last week thanking Senators for their support and receiving congratulations prior to the time we even vote on him.

It has been debated for less than a week on the floor of the Senate. Twenty-five Senators from our side have spoken. Only half of our caucus had a chance to speak. They will not speak now if we cut it off. They have not had a chance to talk. Again, the article says:

> . . . The team had told its allies not to exult publicly until the confirmation vote was cast.

Then they will pop the champagne and say we pulled one over on you. And it continues:

> They laid out a two-part strategy to roll out behind whomever the President picked, people present said. The plan: first extol the nonpartisan legal credentials of the nominee . . .

They don't even know who the nominee is going to be yet, but they have the plan to extol the nonpartisan legal credentials.

> . . . steering the debate away from the nominee's possible influence over hot-button issues. Second, attack the liberal groups they expect to oppose any Bush nominee.

There it is, that is the strategy. It is not that we are going to nominate the best possible nominee and that we are going to work with Republicans and Democrats alike to make sure the American people understand how this nominee is going to protect your constitutional rights and liberties. That is what we thought. That is what has been done at other times—not every time, but most of the time. That is what the American people expect and what they are entitled to.

But, oh, no, this group is already saying we know how we are going to handle this, whoever it is. We are going to exalt the assets of this nominee. The other thing is we are going to launch our attacks on other people before the nominee is even out there. This is the confirmation process for the Supreme Court of the United States for a nominee who is going to make the decisions on your rights and liberties for the next 30, 40 years? Attack them as soon as the nomination is out there. Exalt the nominee's professional credentials. We don't know who it is, but you better get them out there doing it, and we have our network wired around the country to make sure they are going to come out right on it. This for the Supreme Court of the United States? This is what we are finding out.

It continues:

> Mr. Leo and other lawyers supporting Judge Alito were inclined to shrug off the memorandum.

This is the 1985 memorandum of Judge Alito that he used in an application for a job with the Justice Department. He was 35 years old. He had argued 15 cases before the Supreme Court. He had a number of statements in there that were provocative. I will come back to that.

This memorandum was provocative because it indicated that he was against a woman's right to choose, he was against reapportionment, which, of course, has had enormous importance in terms of ensuring people's right to vote and have that vote counted in a meaningful way. There was some concern whether this was going to have any impact. This was his real, true view about the Constitution. This was a document which showed his real view about it, which would have been helpful to the American people to at least understand what Judge Alito's views are.

Those lawyers supporting Alito said we will shrug off the memo:

> . . . which described views which were typical in their circles, people involved in the effort said. But the Conservative Response Concepts, the team's public relations firm, quickly convinced them it was "a big deal" that could become the centerpiece of the Democrats' attacks, one of the people said.

Creative Response Concepts. Who is this Creative Response Concepts? The Creative Response Concepts, if you look them up on the Web, right above the Alito confirmation hearings is the Swift Boat Veterans for Truth—Swift Boat Veterans for Truth, the ones who made the distortions and misrepresentations about my colleague and friend, JOHN KERRY, and his war record. They distorted and misrepresented it. They are now advertising the Alito confirmation hearings. They say, Let us get in it, and into it they go.

The American people are entitled to listen to those who believe in the nominee, and to listen to those on the other side. No, we are getting our message right through a PR firm. Creative Response Concepts. We are getting our truth right through them. The American people are going to understand his views of constitutional rights and liberties from Creative Response Concepts. When we finish doing the Swift Boat Veterans for Truth, we have the Alito nomination right here. This is what the American people are entitled to?

> The team's public relations firm quickly convinced them it was "a big deal" that could become the centerpiece of the Democrats' attack, one of the people said.

The article continues.

This has been a difficult process to make a judgment and be fair to the nominee and also carry forward our responsibilities. But when we have the kind of action on the outside and the failure to be responsive on the inside, in terms of his response to questions, this is a disservice to the American people.

This has been a longstanding campaign. It has been a stealth campaign. I daresay that is not what the Founding Fathers intended, that is not what they expected, and the American people deserve a great deal better.

I hope people will have the chance to read the whole article. I am not going to go through it now. I have given the essence of it. It is very clear how this nominee was selected, why he was selected, and how that campaign for him was conducted.

As the American people are trying to make a judgment on this through their elected representatives today and tomorrow, all we are asking for is an opportunity to have the kind of full discussion and full debate that we ought to and that Members of the Senate who have not had a chance to speak have an opportunity. It is not asking too much.

I have been in the Senate when we really had filibusters. The idea that we are here on a Monday and this came to the Senate last Wednesday and the opposition is saying, Oh, well, this is delaying the work of the Senate—what is more important to the Senate than a vote for a Justice of the Supreme Court of the United States? What is more important? This is the issue, this is the time, this is the nominee, and we find out how we have been treated.

This body deserves better, and the American people deserve better. That is what this vote is this afternoon. That is what it is about. Let's really find out. Let's have a chance to go through these cases and this nominee.

We know that the right wing now has its campaign in full gear. Their mission is to cover up the truth. So we do need a full debate to bring out the truth on Judge Alito's record. What is wrong with debate? Are they afraid of what Americans would do if they really heard the full record? That is what the issue is, and that is why people are entitled to the time.

I was in my State for a few hours on Friday. The people of my State were talking to me, in the few hours I was there, about the prescription drug bill that they just cannot navigate. There are 35 different drug plans from which to choose. There are situations where if an individual signs up for a particular program—it is interesting, the plan itself can change the premiums and the formularies, but the person cannot get off that plan. Once they are in it, they are in it. Or if they do get off the plan, they pay an extraordinary penalty to get onto another. The plan can change deductibles and copays. They are very troubled elderly people.

There are heart wrenching stories. People up there care about the cost of their heating oil going right through the roof. People care about that in my State. People are absolutely in disbelief over how a part of America in New Orleans, Mississippi, and Alabama can be left out and left behind. They are continually pained by the continued loss of sons and daughters from my State and from across the country in the Iraq war with really no end in sight. They are bothered by all of this. They are bothered by the whole issue of lobbying and lobbying corruption.

They are working hard because the middle class is having a more and more difficult time just trying to make ends meet. They are finding that prescription drugs have gone up, heating has gone up, education has gone up, gas has gone up, and their wages have not gone up. It has been 9 years since we increased the minimum wage. Seven times we have increased our own pay, by $30,000, but we cannot afford to increase the minimum wage by a dollar.

Hard-working people are hurting in my State of Massachusetts. Today, they are wondering whether tonight they are going to have food on the table. Now we are asking them to shift their focus to Judge Alito. Judge Alito—how is that going to affect what my family is faced with? It will affect a great deal your children and your children's children's future.

Here are some of the issues Supreme Court decisions affect:

Supreme Court decisions affect the ability of Americans to be safe in their homes from irresponsible search and seizures and other government intrusions. We had those cases come up in the hearings. I will come back and spend some time on them. It is difficult to believe.

Supreme Court decisions affect whether the rights of employees can be protected in the workplace. If you are a worker, you should be concerned about this nominee.

They affect whether families can obtain needed medical care under health insurance policies. Decisions on health care, whether they are under ERISA, often go to the Supreme Court.

Decisions affect whether people will actually receive retirement benefits they were promised. There was $8 billion lost in the last 5 years: 700 retirement programs lost, $8 billion, where workers actually paid in. Who is going to protect their rights? Is it going to be the powerful companies, powerful interests, special interests, or are we going to have a judge who is going to be looking out for the worker and the worker's interest? It is a legitimate issue.

If you care about your health care, if you care about your retirement, if you care about your conditions of employment, this Supreme Court nominee is where you ought to be focused and where you ought to give your attention.

Supreme Court decisions affect whether people will be free from discrimination, prejudice, and outright bigotry in their daily lives, whether you are going to be told you are not going to get the job because of the color of your skin or because of your gender. There are cases we went through during the Judiciary Committee hearings about Judge Alito being insensitive in those areas. I will come back to them.

Do you hear me? Discrimination, prejudice, outright bigotry in their daily lives. You are going to have to make sure you are going to have a Supreme Court that is going to be fighting for you.

The decisions affect whether Americans' most private medical decisions will be a family matter or subject to government interference. Terri Schiavo is a classic example. We have governmental solutions to these issues, or should these matters be left to the individuals who are closest to any patient—their families, their loved ones, their priests, their ministers, their rabbis? We had a debate on this issue. People can think that is a long way away from them, but there is nobody in this body, nobody in this audience, nobody who is watching who doesn't have a real concern for what is going to happen to their parents, to their loved ones, and whether we are going to be able to deal with that issue or whether the Supreme Court is going to say: Well, we think there are appropriate governmental kinds of roles in this kind of a situation. We certainly saw where a majority of this body legislatively felt the courts ought to become much more involved in that situation. They basically retreated on that position, although some still defended it even in recent days.

The decisions affect whether a person with disabilities will have access to public facilities and programs. I gave the example of Tennessee v. Lane. That is a case that was decided in the last few years about disability rights. Who among us doesn't have a member of their family who has some kind of challenges, either mental health challenges or physical challenges? We have certainly seen it in our family, and when we get the chance to talk about disabilities and disability rights in this body, it is always amazing—not amazing, it is always interesting to me that we give such little attention to those who have mental health challenges and disability needs and we give such little attention and assistance to them.

"Parity" is the code word, whether we are going to treat people who have mental health issues and those with disabilities the same as those who have physical issues. We still haven't had it. I certainly hope, with the leadership of Senator DOMENICI, certainly myself, Senator HARKIN, and many other Members, that we will have a chance to vote on that issue this year. It is long overdue.

Supreme Court decisions affect whether we will have reasonable environmental laws that keep our air and water clean. Care about the water? Care about the air we have? Does that really make much of a difference to us, Senator? Does it really make much difference to us? Interesting, we have doubled the number of deaths from asthma this year than we had 5 years ago—doubled the deaths for children. I wonder why that is. Do you know where they are? They are all in the States and cities and communities that, by and large, have inhaled the toxins and the dioxins which have come, as a result of changes in the environmental laws, from major plants, carbon-producing plants in this country.

We had laws. I don't know what to tell a mother when she sees her child having that intense reaction. I know, as a father of a chronic asthmatic, they live with it. The idea that people outgrow it—not in our family. We see the constant challenge that it is for any young person as they grow to adulthood. Asthma is increasing, and there is no question about it. It is because of the pollution in the air.

Are we going to have a judge who will recognize what the Congress wanted to do, or someone who is going to say, Oh, no, we have a very powerful company down here that seems to have a reasonable argument—as we saw with Judge Alito; I will come back to that case as well—so, therefore, we are going to find for the company, and we are going to let them continue to discharge pollutants into the lakes. Do we care about the lakes? Do we care about the streams?

Mercury advisories apply to nearly a third of the area of America's lakes and 22 percent of the length of our rivers, and mercury pollution has led 45 states to post fish consumption advisories. Where kids used to go out and fish and enjoy it, that is absolutely denied them for health reasons. With respect to expectant mothers, that is very real.

We in Congress pass laws, the President signs them, they go to the courts for interpretation, and where will this nominee come out? Will he come out for that mother who has a child who has asthma, or that parent seeing the pollution taking place in a lake nearby and whose child has been affected by those kinds of poisons? Where is he going to come out on the issues of discrimination in jobs, issues we have been fighting to eliminate under title VII of our civil rights laws and that still are a problem.

We can go through those cases where this nominee fails to shape up. Let me just say this vote this afternoon will last for 15 or 20 minutes. But the implications of that vote, the implications for your life, your children's lives and your grandchildren's lives, will continue for years to come. We have only one chance to get it right. This is not a piece of legislation where you can go ahead and pass it and then say, oh, well, we got it wrong.

I think with respect to the prescription drug bill we will have to come back and redo it. I think we should. We can come back and redo a prescription drug bill. Americans are entitled to that. Seniors are entitled to it. We got it wrong when, effectively, the conference was hijacked by the drug companies and the HMOs. There were extraordinary payoffs. It was written up in the Washington Post last week about the payoff—it was $46 billion to the HMOs back in 2003, now it is $67 billion.

People who go to the HMOs are 8 percent healthier, and they got a 7-percent inflator, a 15-percent advantage. I thought Republicans used to say the private sector was more efficient; that we can do it more effectively than the Government so we don't need extra help. No, they want all the extras, 15 percent more, so it comes to $46 billion more. You are asking why people in my State are paying higher copays and premiums and all the rest? It is because we have these kinds of payouts.

We can come back and deal with those. People can deal with those in the elections next fall. I understand that. You win or lose and we come back to it, but not on the Supreme Court of the United States. You get one time, one chance, one vote to get it right. There are no second times. That is what all of this is really about in this debate we will have for the course of the day and this afternoon.

As I say, I don't know what is more important that we are going to deal with. I gave examples of the range of different issues that come before the Supreme Court. I doubt if there is anybody who is listening to this or watching this who is not affected by at least one or two of those different kinds of issues over the course of their lifetime—in terms of their work, their retirement, their pay, in terms of discrimination, in terms of environmental issues and women's privacy issues, which are so at risk at this particular time with this nominee. All of those issues are out there. All we are saying is, don't we think we ought to try to get it right? Don't we think we ought to have the chance to lay this out just a little more?

In every one of those examples I gave, in those nine different titles, there are cases on which Judge Alito has ruled. He has taken a position. In many of those cases he has taken the position in strong opposition to other judges appointed by Republicans. Judge Rendell talked about Gestapo-like tactics that were used when marshals came in on a civil action. There was no crime committed. It was a civil action in order to repossess a farm in bankruptcy to be sold at public auction. People had worked their whole lives for this small farm in Pennsylvania, and the marshals came in, they seized it, and grabbed these individuals who had committed no crime. There was no attempt to run. There was no attempt to hide. There was no attempt to evade. And we have Judge Rendell talking about Gestapo-like tactics by those marshals. Whether they were Gestapo-like or they were not Gestapo-like certainly ought to be decided by the jury. I think most of us would agree with that, would we not?

Judge Alito said: No, no, we are not going to let that go to the jury. They were just performing their own responsibilities. I am not going to let that go to the jury.

Other judges, on issues about whether there is discrimination in employment—including some Republican judges who sat with Judge Alito and said if we follow Judge Alito's reasoning and rationale we would effectively—"eviscerate" is the word that was used—title VII, title VII being the provisions we passed in the 1964 act to make sure we were not going to discriminate in employment.

The list goes on. It is not just myself or others who have expressed opposition. We have the very distinguished Cass Sunstein of the University of Chicago who has done a review of Judge Alito's cases and said that 84 percent of the time Judge Alito decided for the powerful or the entrenched interests or the government. Cass Sunstein said that.

Knight Ridder, that is not a Democratic organ. That is not Democrat members of the committee. They have a whole group who analyzed his opinions independently. The Knight Ridder newspaper chain reached the same decision.

The Yale study group—gifted, talented students and professors up there at Yale University—did a study about Judge Alito's dissents and opinions and came to the same conclusion. If you are looking for someone who is going to protect the workers, if you are looking for someone who is going to protect men and women of color, if you are looking for somebody who is going to protect children, if you are looking for someone who is going to protect the privacy issues of women, this is not your candidate.

Those are the conclusions of a broad range of different groups who have studied this. It was a broad range. They are not just Democrats, not partisan. Knight Ridder is not partisan. Cass Sunstein is basically in the middle. Some will say this afternoon, oh, well, you can always find a few cases. It is not just a few. These are the overwhelming number of studies. Even the Washington Post study, in terms of the number of victories that people of color had or the workers had over the existing power system, reaches the same conclusion.

It seems to me we ought at least to have the opportunity to make sure the American people understand this. It takes time. It took some time for the American people to understand what was really happening in Iraq. It took some time. They understand now, but it took time. People are working hard. They are busy with their jobs and their families, and they are trying to do what is right and play by the rules. It takes some time for them to understand how this nominee is going to affect their lives and their well-being in the future. But there is nothing more important. There is nothing more important here in the Senate. There is nothing more important in the unfinished business of the Senate.

Just pick up the calendar and look at the unfinished business of the Senate. Nothing comes close to it. If you said right behind this is the Defense appropriations bill, this is going to delay a decision on armor and support for our troops, I would say, fine, let's let that go through. Maybe we will find time after that for Judge Alito. But that is not here. What are we doing after this? We are doing asbestos issues. That is entirely different. We have real questions on that, whether there is going to be adequate funding for those people who have been sickest and all the rest. We have to have a full debate on that issue. But there is no reason in the world we cannot take the time and can't have the debate on this issue, which is incalculably more important to the lives and well-being of Americans.

There are sufficient questions across the front pages of America's newspapers today that raise very serious issues and questions about this whole process that ought to cause our colleagues, friends, associates, the Members of this body, some pause. Let's try to think. Let's try to get it right. I say let's try to get it right. We will have an opportunity to do that this afternoon at 4:30.

Mr. President, I believe my time is just about up.

The ACTING PRESIDENT pro tempore. The minority has an additional 3 minutes.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, in one reference to Judge Rendell and also Judge Chertoff on the two cases I referenced, it was Judge Rendell who described the tactics of the marshals brandishing shotguns as "Gestapo-like" and Judge Chertoff who criticized Judge Alito's position in an equally bad case, Doe v. Groody, which involved the strip-search of the 10-year-old girl. I ask the RECORD reflect that change.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Under the previous order, the time from 11 to 12 will be under the control of the majority side, and then debate will continue to alternate on an hourly basis until 4 p.m.

The Senator from Wyoming.

Mr. THOMAS. Mr. President, I appreciate the opportunity to talk a little bit about the judge issue that is before us. I have not done so until now. I have watched this debate with interest because I think it is one of the most important things we do.

The system, of course, is for the President to nominate and for the Senate to confirm or reject. So that is really one of the important issues before us.

I must confess I have been a little surprised at the system we have gone through. It has been strung out for a very long time and seems to me perhaps it has gone on longer than necessary, but nevertheless that is where we are. I was very pleased to learn it is not partisan, not political. I was a little surprised to hear that. But nevertheless I do think it is important.

I have not practiced law, but I certainly understand in our system the Supreme Court is one of the three elements of our Government and is a very important one. And so it is important that we deal with it. I just would like to say that it seems to me, as I have listened and as I have paid as much attention as I could to Judge Alito's hearings, I am certainly impressed. I am impressed with his qualifications and his experience. I would think surely one of the most important elements of the question of confirmation is experience, someone who has the qualifications, someone who has had the background. Certainly Judge Alito has that—Princeton University, Harvard Law School, Army Reserve, DOJ legal counsel, U.S. attorney, unanimously confirmed in New Jersey, circuit court judge Third Circuit, unanimously confirmed. He has argued 12 cases before the Supreme Court. Many attorneys, of course, have not had this kind of distinguished opportunity. I would guess for the most part many of the candidates for the Supreme Court have not had that kind of experience. He has had some 15 years with the Third Circuit, some 35,000 votes. So the background is there.

I think one of the things, certainly, that is a part of the confirmation and the confirmation hearing and what we need to understand is the positions that these various candidates take, and I would like to just share a few quotations, responses that the judge gave to questions that were asked.

In terms of believing in the Constitution and that it protects rights for all, under all circumstances, in times of peace or war, the judge said:

> Our Constitution applies in times of peace and in times of war, and it protects the rights of Americans under all circumstances. It is particularly important that we adhere to the Bill of Rights in times of war and in times of national crisis, because that's when there's the greatest temptation to depart from them.

It seems to me that is very clear and one that has been talked about a good deal currently.

Another question was: Do you believe anyone, the President, the Congress, the courts, rise above the law? The candidate said:

> No person in this country is above the law. And that includes the President and it includes the Supreme Court. Everyone has to follow the law, and that means the Constitution of the United States and it means the laws that are enacted under the Constitution of the United States.

Again, I think that is a very basic premise. We are all treated equally under the law. "Under the law," that is the key.

I, as we do, go to schools quite often, and having spent some time on the Foreign Relations Committee, I often tell students that one of the significant differences about our country and most of the rest of the world is we have laws under which everyone is treated equally. I think that is one of the keys, and that response, it seems to me, is a great one.

He was asked would he base decisions on the Constitution and the rule of law, not shifting public opinion. He said:

> The Court should make its decisions based on the Constitution and the law. It should not sway in the wind of public opinion at any time.

Certainly, that is a very important element as well. He was asked about his personal views and how that would affect his decisions. He said:

> I would approach the question with an open mind, and I would listen to the arguments that were made.
>
> When someone becomes a judge, you really have to put aside the things that you did as a lawyer at prior points in your legal career and think about legal issues the way a judge thinks about legal issues.

When asked about upholding the high standards of integrity and ethics, he said:

> I did what I've tried to do throughout my career as a judge, and that is to go beyond the letter of the ethics rules and to avoid any situation where there might be an ethical question raised.

It seems to me those are the kinds of responses that make you feel comfortable with the candidate. So I am very pleased that apparently we are going toward the end. Certainly, it is time to get down toward the end. There is no reason to continue to drag this out. We know what we need to know, it is there, and it is time to do it.

So I think throughout the process the candidate has answered the questions to the best of his ability. Unfortunately, many of the questioners spent more time giving speeches and circumventing the process than asking relevant questions, but that is part of the process.

I must confess I am getting a little concerned about the Senate confirmation process. We ought to take another look at our role and not deviate from that role for other unrelated reasons. So I hope Members have not taken us down the path of setting a bad precedent, and I am sure that is not the case. I am looking forward to completing this process starting this afternoon and completing it tomorrow. I think we have before us a great opportunity to confirm one of the most capable persons that we could have on our Supreme Court.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENNETT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. THOMAS). Without objection, it is so ordered.

Mr. BENNETT. Mr. President, I was here in the Chamber in the role of Presiding Officer during the presentation of the senior Senator from Massachusetts in which he referred to a story in this morning's New York Times with respect to public relations activity aimed at supporting Judge Alito. He was quite outraged at what he had read in the New York Times and talked about how improper it was for a public relations firm or any group of lawyers to gather together and mount a campaign on behalf of this nominee; that that should be left to the Senate and that there should be no outside interference in this process.

The New York Times had focused on the activities that had been in favor of the nominee, and the Senator from Massachusetts found that objectionable.

As I listened to him, I could not help but think of the actions that went forward in opposition to this nominee by groups of lawyers who gathered together to get their ammunition ready in the public arena, by public relations firms that were hired to oppose the nominee.

I remember the story in the Washington Post when John Roberts was proposed where they described those groups that were opposed to the President gathering with their press releases to attack the nominee, who were forced to strip out the name of the person they thought the nominee would be and put in John Roberts' name so that they could issue the press releases as soon as the name was made public. They had prepared their ammunition to attack the President's nominee before they knew who he was, and they were embarrassed by the fact that they had guessed wrong. But they did not change a single word of their attack once they knew that the actual nominee was someone different than they had anticipated.

My only comments to the Senator from Massachusetts would be that if he decries the work that was done in favor of a nominee by outside lawyer groups and public relations firms, he should join with some of the rest of us and say that the same criticism applies to those who were prepared to savage the nominee, whomever he might have been.

If the Senator from Massachusetts will have a conversation with Ralph Neas and the People for the American Way and say to them, Back off, let the nominee be made known, let his views or her views be made known, have a clear evaluation of where they stand before you start your public relations attack, then I will turn to the groups on the right and say the same thing: You back off. Let the nominee be known. Let the views be examined before you mount your public relations campaign.

But we saw what happened when people in support of a Republican President's nominee back off and allow the field to be dominated by those who are on the attack. Out of that first experience of seeing attack after attack after attack into an empty field, we have created a new word in the English language. It is a verb, to "Bork." The nominee was Robert Bork. I had my problems with Robert Bork. I am not sure how I would have voted, having heard his record. But I do know that the record was distorted and the opportunity to hear his record was changed by virtue of the groups that were all prepared to savage him, to attack his personality, to destroy any careful analysis of his record. He was "Borked." And we heard that other people would be "Borked" by this same savage attack from the left.

So I have sympathy with the Senator from Massachusetts when he complains about the groups on the right that were marshaled in advance of the nomination to defend the nominee. But I say to him they were marshaled to defend the nominee because they saw what happened when such previous activity was not carried forward. With the way in which the Chief Justice, John Roberts, moved through here, with both sides having their say but ultimately the public demonstrating a sense of revulsion about this whole "Borking" process, and now with Judge Alito moving forward in a manner far more dignified than we have seen in the past, I hope "Borking" would become a historic artifact and would disappear and that groups on the far left and the far right would finally realize that the

Senate is not moved by these kinds of tactics; that the ads that are run, television ads attacking the nominee boomerang.

We have seen some of these groups that have attacked Judge Alito have had to have their ads taken down because they were false, they were attacked by the media generally for the severity and the falsity of their position. "Borking" does not work anymore. And I hope that both sides would recognize that the Senate has demonstrated a level of civility and intelligence in this situation that says we will not be moved by those who raise large sums of money, who run television ads in our home States savaging the nominee. We will be focused on what happens in the hearings. We will be focused on the actual record. We will not allow this to turn into an electoral circus.

That was done in the case of Judge Bork. It was not done successfully, although it was attempted with Chief Justice Roberts.

It is not working now with Judge Alito. I hope people on both sides will then abandon those tactics. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I assume the order of business is to speak on the Alito nomination.

The PRESIDING OFFICER. The Senator is correct.

Mr. GRASSLEY. Mr. President, I choose to do that.

I support the nomination of Samuel Alito. Judge Alito, as we heard in our hearings, and so far in most of the debate on the floor, is a person who is a dedicated public servant, who practices what he preaches: integrity, modesty, judicial restraint, and a devotion to the law and to the Constitution. He understands a judge should not have a personal agenda or be an activist on the bench but should make decisions as they should be decided—do it in an impartial manner, do it with an open mind, and do it with appropriate restraint and, of course, in accordance with the laws and the Constitution.

Listening to a lot of my colleagues on the committee, and last week, I am extremely disappointed that we are looking now at an attempt by Senators—and they are all on the other side of the aisle—to delay and filibuster this nominee. It is too bad Majority Leader FRIST had to take the extreme position of filing cloture on this very important nomination. No Supreme Court nomination has ever been defeated by filibuster if a majority of the Senators stood ready to confirm that nominee. Now, that certainly is not the case here because we already know a bipartisan majority of Senators will vote to confirm Judge Alito if we get to that point tomorrow at 11 o'clock. We also know we have had plenty of time to debate this nomination. It is unfortunate that certain Senators will vote against this nominee because they think doing so is a good political issue for them. These Senators are applying a very different standard to what has been the history and the tradition in the Senate of considering Supreme Court nominees. The position being taken by these Senators is that Judge Alito ought to somehow share Justice O'Connor's judicial philosophy in order for him to fill that seat where she has been for the last 25 years.

That sort of thinking is totally at odds with what the Constitution requires, but more importantly than what the Constitution requires, what has been the Senate's tradition in the last 225 years, and that is that Judge Alito does not have to be Justice O'Connor's judicial philosophy soulmate to deserve confirmation by this Senate. Because the Supreme Court does not have seats reserved for one philosophy or another. That kind of reasoning is completely antithetical to the proper role of the judiciary in our system of Government.

My colleagues on the other side, then, have it all wrong. There has never been an issue of ideological balance on the Court. If that were the case, do you think President Ford would have nominated Justice Stevens or President Bush 1 would have nominated Justice Souter—two Republican appointees who have turned out to be the most liberal members on the Court appointed by Republicans? Those Presidents did not think in terms of ideological balance.

The Senate's tradition, then, has not been to confirm individuals to the Supreme Court who promote special interests or represent certain causes. The Senate has never understood its role to maintain any perceived ideological balance on the Court. To the contrary, the Senate's tradition has been to confirm individuals who are well qualified to interpret and to apply the law and who understand the proper role of the judiciary to dispense justice.

Recent history, of course, is proof of that because in my years in the Senate, but as recently as 10, 12 years ago, when Ruth Bader Ginsburg was before the Senate, we gave overwhelming confirmation to her—a former general counsel of the very liberal group, the ACLU. She replaced a conservative Justice, Byron White, on the Court at that time. The Senate confirmed Justice Ginsburg. Why? Because President Clinton won an election, campaigning on the basis of the kind of people he was going to nominate, and President Clinton did that. That is what the Constitution says the role of the President, the role of the Senate is.

Now, some of my colleagues have said elections have results and the Constitution says the President gets to nominate Supreme Court candidates. Of course, Justice Ginsburg, whether you agree with her or not, had the requisite qualifications to serve on the Court.

Right after her, Justice Breyer came to the Supreme Court, a liberal as well, appointed by President Clinton. But the Senate confirmed that Justice by a big vote. The President made his choice, sent it to the Senate, the Senate found him qualified, and he was confirmed on an up-or-down vote. No filibuster was ever talked about, and no one talked about maintaining any ideological balance on the Court.

The Supreme Court, then and historically, is not the place to play politics. The Court is supposed to be, and as far as I know is, free of politics. But the Democrats and liberal outside interest groups want to change the rules because they did not win at the ballot box. They want to implement their agenda from the Court. Of course, that is a dangerous path, making the Supreme Court a superlegislature. The Constitution does not presume that. Under our checks-and-balances system of Government, we do not want to go down that path. Going down that path will create a standard that will seriously jeopardize the independence of the judiciary and distort our system of Government, a system based upon the judiciary being the arbiter of the war that often—I should say continually goes on between the executive branch of Government and the legislative branch of Government.

Democrats want the Supreme Court to assume an expansive role well beyond what was originally intended by the Constitution and its writers. They want the Court to take on a role that is closer to the role of the legislative branch, which is to make policy and bring about changes in our society.

Now, this has consequences when you go down this road. It has brought about the politicization of the judicial confirmation process that we have seen evidenced, particularly on the Alito nomination, but also on the Roberts nomination, or go back 3 years previous to the holding up of several circuit court nominees before this body through the threat of filibuster or not just the threat but the use of the filibuster.

Politicizing the judicial confirmation process is wrong. That is because when judges improperly assume the role of deciding essentially political questions rather than legal questions, the judicial confirmation process devolves into one focused less on whether a nominee can impartially and appropriately implement law. Instead, it becomes one more focused on whether a nominee will implement a desired political outcome, and do it from the bench, regardless of the law and regardless of what the Constitution says.

Americans want what the Constitution writers have always called for: judges who will confine their job to interpreting the law as passed by legislative bodies and the Constitution as written rather than having the same group of men and women make policy and societal changes from the bench. We need to reject firmly the notion that the Supreme Court should be in the business of political decisionmaking or in the business of politicians—you and I who were elected to the Senate.

The Constitution provides that the President nominates a Supreme Court Justice and the Senate provides its advice and consent. Alexander Hamilton wrote an awful lot about the role the judiciary was to play and what judges were supposed to do because he had to explain that in relation to the ratification by the original 13 States. So he wrote several papers. But in Federalist 66, he wrote:

> [I]t will be the office of the President to nominate, and, with the advice and consent of the Senate, to appoint. There will, of course, be no exertion of choice on the part of the Senate. They may defeat one choice of the Executive, and oblige him to make another; but they [meaning the Senate] cannot themselves choose—they can only ratify or reject the choice he may have made.

The way the Senate provides its advice and consent has been by a thorough Judiciary Committee evaluation, and then by an up-or-down vote in the full Senate. The Judiciary Committee has an important job because its members can ask in-depth questions of the nominee. The committee evaluates whether the nominee has the requisite judicial temperament, intellect, and integrity. The committee also looks to see whether a nominee understands the proper role of a Justice and respects the rule of law and the words of the Constitution over any personal agenda because no Justice should be sitting on the Court who has a personal agenda that he wants or she wants to carry out.

I have been a member of the Judiciary Committee for more than 25 years and take this responsibility seriously, as do my colleagues. I thought Judge Alito did a very good job answering our questions and that he was candid. No doubt he was thorough. As far as I am concerned, he was very responsive.

Judge Alito understands the proper role of the judiciary is not to make the law. He will strictly interpret the law as written and do his best to remain faithful to the actual meaning of the Constitution. As Judge Alito said:

> Judges don't have the authority to change the Constitution. The whole theory of judicial review that we have, I think, is contrary to that notion. The Constitution is an enduring document and the Constitution doesn't change. It does contain some important general principles that have to be applied to new factual situations that come up. But in doing that, the judiciary has to be very careful not to inject its own views into the matter. It has to apply the principles that are in the Constitution to the situations that come before the judiciary.

To quote Judge Alito again:

> A judge can't have any agenda. A judge can't have any preferred outcome in any particular case. And a judge certainly doesn't have a client. The judge's only obligation—and it's a solemn obligation—is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires.

Judge Alito also understands that the Constitution provides justice for all, for everybody. He told the committee this:

> No person in this country, no matter how high or powerful, is above the law, and no person in this country is beneath the law.

He said:

> Our Constitution applies in times of peace and in times of war, and it protects the rights of Americans under all circumstances.

Judge Alito understands the importance of the independence of the judiciary in our system of checks and balances. We ought to be careful to make sure that we only approve judges who understand that. His colleagues believe Judge Alito will be an independent judge who will apply the law and the Constitution to every branch of Government and every person because Judge Alito knows that no one, including the President, is above the law. When I said "his colleagues," I meant those colleagues who testified before our committee and have worked with him for a long time on that circuit.

One of his colleagues, Judge Aldisert, testified:

> Judicial independence is simply incompatible with political loyalties, and Judge Alito's judicial record on our court bears witness to this fundamental truth.

Former Judge Gibbons, who now represents clients against the Bush administration over its treatment of detainees in Guantanamo, doesn't believe that Judge Alito will "rubber-stamp" any administration's policy if it violates the law and Constitution. He said:

> I'm confident, however, that as an able legal scholar and a fairminded justice, he will give the arguments—legal and factual—that may be presented on behalf of our clients careful and thoughtful consideration, without any predisposition in favor of the position of the executive branch.

Yet Judge Alito's critics claim he is out of the mainstream. That is what the debate last week was all about from the other side, that he is a judge with an agenda hostile to individual rights, civil rights, women, and the disabled. The truth is, Judge Alito's record has been distorted and mischaracterized. First, a statistical analysis that some try to use of how many times a certain kind of plaintiff wins or loses is not the way we dispense justice in America. It is a bad way to look at a judge's record. It is easy to manipulate and cherry pick cases to reach certain desired conclusions of why somebody should not be on the bench. But the bottom line is, who should win in a case depends on the facts presented in that specific case and what the applicable law says. What is important to Judge Alito is that he rules on specific facts in the case and the issue before the Court, in accordance with the law and the Constitution.

As his colleagues attested, Judge Alito doesn't have a predisposed outcome in cases. He doesn't bow to special interests but sticks to the law regardless of whether the results are popular. That is precisely what good judges should do and what good judging is all about.

Moreover, when you consider all these accusations, look at what the ABA said. They unanimously voted to award Judge Alito their highest possible rating, and that is, in their words, "well qualified." A panel of Third Circuit Court judges—I already referred to two of them—who worked with Judge Alito more than 15 years, in their testimony had unqualified support for Judge Alito as they appeared before the committee. These colleagues didn't see Judge Alito to be an extremist, hostile to specific groups, or with having a personal agenda. They testified about Judge Alito's fairness, his impartiality with respect to all plaintiffs.

Judge Lewis, one I have not quoted yet, described himself to the committee to be "openly and unapologetically pro-choice" and "a committed human rights and civil rights activist." But yet a person coming from this end of the legal continuum fully endorsed Judge Alito to the Supreme Court, testifying:

> I cannot recall one instance during conference or during any other experience that I had with Judge Alito, but in particular during conference, when he exhibited anything remotely resembling an ideological bent.

The testimony of Judge Lewis continues:

> If I believed that Sam Alito might be hostile to civil rights as a member of the United States Supreme Court, I guarantee you that I would not be sitting here today . . . I believe that Sam Alito will be the type of justice who will listen with an open mind and will not have any agenda-driven or result-oriented approach.

Justice Aldisert summarized these judges' testimony best on the day they appeared before the committee when he said:

> We who have heard his probing questions during oral argument, we who would have been privy to his wise and insightful comments in our private decisional conferences, we who have observed at firsthand his impartial approach to decision-making and his thoughtful judicial temperament and know

> his carefully crafted opinions, we who are his colleagues are convinced that he will also be a great justice.

What other conclusion can you come to when you listen to people who have been close to him for a long time? We had a lot of people who worked with him on the court, who were not judges, who also appeared from both political parties. How can you come to any conclusion other than Judge Alito is going to do what Justices on the Supreme Court ought to do based upon his 15 years on the circuit court, that he is fair and openminded and will approach cases without bias and without a personal agenda?

The people who know Judge Alito best believe, without reservation, he is a judge who follows the law and the Constitution without a preset outcome in mind. They believe he is a man of great integrity, modesty, intellect, and insight. They believe he is a fair and openminded judge, committed to doing what is right rather than committed to implementing a personal agenda.

After hearing all that, some of my colleagues ought to be ashamed of the blue smoke they are making out of this nomination or the ghosts they are putting up to scare us. Judge Alito will carry out the responsibilities that a Justice on the Supreme Court should, and he will do it in a principled, fair, and effective manner.

If Members have any doubt where I stand, I will cast my vote in support of Samuel Alito. This highly qualified nominee deserves to be confirmed to the Supreme Court. I hope my colleagues will see that as well and vote accordingly, particularly on a very tough vote because of the extraordinary majority it takes to also vote to end a filibuster, the first filibuster of the 110 nominees to the Supreme Court. Hopefully, we will never see another extraconstitutional action taken by our colleagues on the floor of the Senate with such a filibuster once again. Vote to end the filibuster late this afternoon and then vote to confirm Judge Alito tomorrow.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Ms. STABENOW. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CHAMBLISS). Without objection, it is so ordered.

Ms. STABENOW. Mr. President, this is an incredibly important time in our Nation's history. This is the second Supreme Court nominee to come before the Senate in the past 6 months. We are truly at a time where we are making decisions that will affect our children, our grandchildren, and an entire generation of people. Sandra Day O'Connor, the first woman Justice, and often the critical deciding vote, is retiring, as we know. The nominee who will replace her will have the power to change the direction of the Court and, as I indicated, touch people's lives, affect people's lives and opportunities for a generation.

I take this constitutional responsibility very seriously, as I know my colleagues do. I have closely studied Judge Alito's written opinions, his testimony, as well as the hearing transcript. I commend Senators SPECTER and LEAHY for conducting the hearings in a respectful and bipartisan manner. The Constitution grants all Americans, as we know, the same rights and liberties and freedoms under the law, which is why it is so important that we get this right. These are the sacred values upon which the United States was founded—not just words, but they are values, they are beliefs, they are the motivation for us as we, together, fight for the things we want for our families and work hard every day as Americans to make sure this democratic process works for everybody. We count on the Supreme Court to protect these constitutional rights at all times, whether the majority agrees or whether it is popular. Every American has the same rights under our Constitution.

Judge Alito's nomination comes at a time when we face new controversies over governmental intrusion into people's private lives, from secret wiretaps conducted without a warrant or the knowledge of the FISA Court, to attempt to subpoena millions of Internet searches at random from companies such as Google. One of the most important responsibilities of the Supreme Court is to serve as a check on excessive Government intrusion into people's lives.

In light of where we are today and the issues that this Court will face, it is even more important to have a Justice who will stand up for Americans.

Unfortunately, Judge Alito's record is clear and deeply troubling. When one looks at his writings, his court opinions from over 15 years on the Third Circuit Court of Appeals, and when one looks at the hearing transcripts, there is a clear and consistent record of siding with the government, siding with other powerful interests at the expense of American citizens.

In case after case, whether it is about job discrimination, pensions, illegal searches, or privacy issues, he has been an activist judge who has tilted the scales against the little guy. Often, he has been criticized by his colleagues as trying to legislate from the bench in order to reach the result he desires.

His views are way outside the mainstream, especially in his dissent opinions. There are numerous cases where Judge Alito was the only dissenter, which means he felt strongly enough about his personal views that he objected to what the other 10 judges supported and wrote his own separate opinion on an issue. These dissents give insight into what I believe is an extreme ideology on the most basic of American freedoms, liberties, and rights.

Because of his extreme record and after much deliberation, I concluded that Judge Alito is the wrong choice to replace Sandra Day O'Connor on the U.S. Supreme Court. He may well, as we know, be the deciding vote on issues that affect our children and grandchildren and an entire generation.

His record on workers' protections is outside the mainstream. Our manufacturers are struggling in Michigan, as well as across the country, and every day we see announcements of plant closings and filings of bankruptcy. Michigan families are worried. They are worried that they will not have a job tomorrow. They are worried that they are going to lose their pensions and their health care benefits for themselves and their families. We in Michigan need a Supreme Court nominee who will stand with us, stand with Michigan's workers and families, and Judge Alito is not that nominee.

In Belcufine v. Aloe, a company in bankruptcy did not give its employees the retirement benefits and vacation time they earned before the bankruptcy. Under Pennsylvania law, corporate officers are personally liable for nonpayment of wages and benefits. The employees sued, and Judge Alito sided with the company, saying that the law did not apply once a company filed for bankruptcy. Not only did he side with the CEOs at the expense of their workers' hard-earned wages and pensions, but he legislated from the bench to get the result he wanted.

Judge Greenberg, a Reagan appointee, wrote a strong dissent accusing Judge Alito of trying to rewrite the Pennsylvania law, stating:

> [W]e are judges, not legislators, and it is beyond our power to rewrite the [law] so as to create a bankruptcy exception in favor of statutory employers merely because we believe it would be good for business to do so.

Again, a colleague indicating that, in fact, Judge Alito was writing law instead of just interpreting the law.

In another case addressing pension benefits, the plaintiff had worked in jobs covered by the Teamsters pension fund from 1960 to 1971, had a 7-year break in service, and then worked under the fund again from 1978 until his retirement. The majority on the court held that both periods of employment would be counted when you are calculating his pension benefits, regardless of the break in service. If you are working and then you need to take a break, whether it is illness, caring for a loved one—regardless of the circumstance—if you come back to work under the pension system, you work until retirement, all of the years you worked hard should be counted toward your pension.

Judge Alito dissented, arguing that the first period of employment, a total of 11 years of hard work, should not count, essentially cutting the workers' pension benefits. If his dissent had prevailed—and thank goodness it did not—workers across this country would have their pensions cut, even if they worked 30 years in one job, if there was a gap in their employment. That is not right. If you work hard for 30 years, you should get the entire pension you paid in and you have earned.

The majority once again admonished Judge Alito for ignoring the plain language of the law and trying to legislate from the bench, reminding him that:

> Changes in legislation is a task for Congress and if our interpretation of what Congress has said so plainly is now disfavored, it is for Congress to cure. We do not sit here as a policy-making or a legislative body.

Judge Alito has had a clear and consistent record when it comes to siding with corporate interests over working Americans and, in many of these cases, he has been out of step with the majority of the court. He dissented on a case to pay reporters overtime pay under the Fair Labor Standards Act. He dissented from a majority opinion that found a company in violation of Federal mining safety standards on a site where they were removing materials from a refuse heap and sending them to powerplants to be processed into electricity. These are laws that exist to protect working Americans, to protect their health and their safety. The recent tragedies in West Virginia have reminded us of how important this is, but Judge Alito argued that the safety standards did not apply to this site.

The same is true for workplace discrimination cases. Time and again, he has voted to make it more difficult for victims of discrimination to get their day in court as Americans.

In Sheridan v. E.I. DuPont de Nemours, a hotel employee sued, claiming sex discrimination. Over the years, she was promoted from a part-time waitress to a supervisory position. She received commendations and bonuses for her work. But after she complained about sexual harassment, she was demoted, and her work environment got worse and worse.

The trial court dismissed the case, and by a vote of 10 to 1, the Third Circuit reversed, saying she had produced enough evidence to warrant a jury trial of her peers. Judge Alito was the lone dissenter, arguing that she had not presented enough proof and that her case should be dismissed. When you are outnumbered 10 to 1, you really are outside the mainstream.

In another dissent, Judge Alito voted to deny a mentally retarded young man the chance to challenge severe abuse and sexual harassment. In his very first job out of high school, he had suffered vicious sexual harassment. He was held down in front of a group of workers, subjected to sexual touching, and he feared he would be raped. Judge Alito would have denied him a trial, not because the facts were disputed but because he felt that the brief was not well written.

Judge Alito even joined an opinion preventing veterans from suing the Federal Government for failing to enforce a law which requires agencies to have plans in place to help veterans gain employment.

The Supreme Court is the ultimate check on Presidential overreaching. However, when he was at the Justice Department, Judge Alito advised to expand Presidential power and argued that "the President's understanding of a bill should be just as important as that of Congress." So, in other words, passing a bill for us is not enough; equal standing is what the President believes it says or wants it to say or his opinion on what it says.

He recommended that when the President signs a bill passed by Congress, he should issue a signing statement announcing his interpretation of the law in order to influence the court's interpretation, essentially creating a backdoor line-item veto.

Why is this important? I had one particular case recently which I will share with you, Mr. President. Last fall, Senator VITTER from Louisiana and I included an amendment in the 2006 Commerce-Justice-State appropriations bill to prevent the pharmaceutical industry from taking advantage of the President's trade promotion authority to insert language that prevents prescription drug importation.

A majority of us in the Senate and in the House believes that we should be able to safely bring retail prescription drugs back into our country for our citizens at a much reduced price. There was also a nearly identical provision put in the House bill, and in the final bill, we basically were saying you can't use trade agreements to stop a policy that is supported by Congress and use it as a backdoor way to stop the reimportation of less expensive prescription drugs for citizens.

Even though this was in the final bill that came to the President's desk, in his signing statement, the President stated that this section was "advisory." We passed a law—bipartisan, House, Senate—and it goes to the President's desk. He signs it but states that this section is advisory and basically backdoor-vetoed this new law. The President can't pick and choose which provisions of a law he will enact when he signs a new law when it is passed by this Congress.

These views of Presidential power are troubling enough, but Judge Alito's record on the bench only reinforces his unwavering support for the government's position in case after case. Whether it is the President of the United States or a low-level official, he has supported the government's position at the expense of Americans' liberties and rights.

One of the most important issues we face today is personal privacy and freedom. We are having this debate in the Senate right now with the PATRIOT Act reauthorization, and we see it in the news reports with the Justice Department seeking unprecedented amounts of information on what Americans look up on the Internet.

When has the government gone too far? It is a question we face in the Senate, and the Supreme Court will have to eventually answer. Unfortunately, in cases involving privacy, security, and protection from unjustified search and seizures, Judge Alito has consistently sided with the government interests.

As an Assistant Solicitor General in the Reagan administration, Judge Alito authored a memo on whether the Justice Department should file a friend-of-the-Court brief in Tennessee v. Garner, a Supreme Court case on the constitutionality of a Tennessee law which allowed police to shoot a fleeing suspect, even when the shooting was intended only to prevent the suspect from escaping and not to protect the officer or the public from harm.

In this case, a 15-year-old boy broke into a house and stole $10 worth of money and jewelry. The police arrived while the boy was in the process of running away. They ordered him to stop. He did not stop. And despite the fact they could see he was unarmed, the officer shot him in the back of the head and killed him. The officer did not shoot this unarmed 15-year-old because he was a danger to others but to keep him from escaping.

The Sixth Circuit found that this law was unconstitutional, but in his memo, Judge Alito argued that the case was "wrongly decided" and that this was an issue that should be left to the State legislatures.

The Justice Department did not file a brief in this case, and the Supreme Court ultimately rejected Judge Alito's position and found the law unconstitutional, writing:

> It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that police arrive late or are a little slower afoot does not always justify killing the suspect. A police officer may not seize an unarmed, nondangerous suspect by shooting him dead.

In Doe v. Groody, Judge Alito dissented from a majority opinion written by now Homeland Security Secretary Michael Chertoff to uphold the strip search of a 10-year-old girl and her mother, even though neither was a criminal suspect, presented any risk or was named in the search warrant.

The search warrant specifically limited the search of persons to the suspect, John Doe, but when police arrived, they only found Jane Doe and her 10-year-old daughter inside the house. They took the mother and the little girl to another room and strip-searched them, having them lift their shirts, drop their pants, and turn around.

Judge Chertoff held that the warrant clearly limited police authority to the search of John Doe and not all occupants in the house. Judge Alito dissented, accusing the majority of a "technical" and "legalistic" reading of the warrant. The warrant was clear, but Judge Alito argued for a broad departure from what was actually written in the warrant in a way that would favor governmental intrusion.

I hear my colleagues from across the aisle saying over and over again that they want judges who will follow the law and not legislate from the bench. Judge Alito ignored the plain language of a search warrant in order to allow the strip search of a 10-year-old girl. How is this not legislating from the bench?

Judge Chertoff certainly thought so. He criticized Judge Alito's view as threatening to turn the requirement of a search warrant into "little more than the cliche rubberstamp."

In another case deeply concerning to me, a family of dairy farmers was being forced off their farm by a bankruptcy court. This was in Pennsylvania. It could easily have been in Michigan or anyplace else in the Midwest. When they refused to leave their farm, seven U.S. marshals and a State trooper arrived at their home to evict them by pointing shotguns and semiautomatic rifles at the family. The marshals grabbed a family friend who was also at the house and used him as a human shield. They put a gun to the man's back, led him into another house on the property, and told him: If anything goes wrong in here, you are going to be the first to go down.

The family sued, arguing that the marshals used excessive force. Judge Alito wrote an opinion saying it was reasonable for marshals, carrying out an unresisted civil eviction notice, to point shotguns and semiautomatic rifles at a family sitting in their living room. These people were not criminals. They were not dangerous. They were dairy farmers who had lost their home and their livelihood because of a bankruptcy.

Judge Alito also argued that putting a gun to the man's back and using him as a human shield was not an unreasonable search under the fourth amendment because the marshals never told him that he wasn't free to leave.

A fellow judge on the court dissented and called the marshals' conduct "Gestapo-like" since seven marshals had detained and terrorized the family and friends and ransacked a home while carrying out an unresisted civil eviction. But Judge Alito's decision made sure the family never got a trial.

In another dissent, Judge Alito again would have allowed the invasive search of a mother and her teenage son based on a broad reading of a warrant. Mrs. Baker and her three children arrived at the home of her oldest son for dinner in the middle of a drug raid by police. The warrant was limited to the search of her son's home, but when Mrs. Baker and her three children started walking up to the house, the police threatened them with guns, handcuffed them, and dumped Mrs. Baker's purse out onto the ground. They then took her teenage son into the house and searched him. Judge Alito once again dissented to keep a jury from hearing whether the police acted unlawfully by handcuffing, holding at gunpoint, and searching a mother and her teenage children who by happenstance walked up to visit the home of a family member.

This disregard for the personal privacy and freedom of Americans extends to the decision on a woman's right to choose, which affects every woman in this country. In Planned Parenthood v. Casey, Judge Alito voted in dissent to uphold a law requiring a woman to notify her husband before exercising her constitutional right to obtain an abortion. He argued that the spousal notification provision would only restrict a small number of women and didn't substantially limit access to an abortion, even though the women affected may face physical abuse as a result of this requirement. The Supreme Court, including Judge O'Connor, affirmed that the spousal notification provision was unconstitutional, rejecting Alito's argument, comparing it to antiquated 18th century laws that said that women had no legal existence separate from their husbands.

Justice O'Connor eloquently summarized the problem with Judge Alito's position, writing, "women do not lose their constitutionally protected liberty when they marry."

These cases are not isolated instances. They are part of a long and consistent record of siding with powerful interests over Americans—people who have had their rights violated, people who have been injured, people who have lost their pensions, people who have been victimized and are asking the court to make things right, make things whole, women in this country who want to know they are respected in their privacy and their most personal decisions, just like men.

For 15 years, Judge Alito has said no. A group of schoolchildren, ages 6 to 8, were being sexually abused by their bus driver. Despite the young age of the children and the fact that the driver had total custody of them when they were on the bus, Judge Alito joined an opinion dismissing the case, arguing that the school superintendent did not have a duty to make sure the children were protected because riding the bus wasn't mandatory.

A disabled student had to drop out of medical school because of her severe back pain that made it difficult for her to sit in classes for hours at a time. She had requested a special chair during class so she could continue her studies and become a doctor. The school failed to accommodate her request, and the Third Circuit ruled that her case should go forward, she should have her day in court. But Judge Alito dissented, arguing that the case should not go to trial; she should not get her day in court. The majority wrote that "few if any Rehabilitation Act cases would survive" if Judge Alito's view prevailed.

A college student died at a varsity lacrosse practice. None of the team's coaches were trained in CPR. The nearest phone was 200 yards away on the other side of a 8-foot fence, and there was no ambulance on the field. The Third Circuit ruled to allow the case to move forward, for the family to have their day in court. But once again, Judge Alito said no.

A worker suffered severe injuries after being thrown through the windshield of a garbage truck after the brakes of the truck failed. He brought a products liability lawsuit, arguing that the damaged hydraulic brake lines were a design defect. The Third Circuit ruled in favor of the injured worker, but Judge Alito sided with the company.

When we take a step back and look at the entirety of Judge Alito's record, we see a systematic tilt toward powerful institutions and against the little guy; a long history of writing ideologically driven dissents that are not only out of step with the majority of his peers on the Third Circuit but are way outside the mainstream of America.

Let me say in conclusion, whether it is a family losing their dairy farm, workers losing their pensions, a mentally disabled young man who was the victim of sexual harassment in the workplace, an unarmed 15-year-old boy being shot dead in the back of the head, a strip search of a 10-year-old girl, or the ability of a woman to make her own reproductive health decisions, Judge Alito has consistently said no to the daily concerns of average Americans.

Now we are being asked not just to confirm a nominee who has spent 15 years tipping the scales of justice against those Americans but to confirm a judge who will replace Sandra Day O'Connor, a woman who was a consensus builder, a uniter on the U.S. Supreme Court.

Based on this record, I cannot in good conscience cast my vote for Samuel Alito to be Associate Justice of the U.S. Supreme Court. The Supreme Court is the ultimate check on Presidential overreaching. And over and over again, we see this judge siding against Americans.

We can do better than this nominee at this critical time in American history, and I urge my colleagues to join me in voting no on this nominee.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, on countless nominations Democrats have joined Republicans and Republicans have joined Democrats to send a judicial nomination to the floor with a powerful, bipartisan vote. Chief Justice Roberts came to the floor 13 to 5. Justice Breyer came to the floor unanimously. Justice Ginsburg came to the floor unanimously. Justice Breyer won on the floor 87 to 9; Justice Ginsburg, 97 to 3; and Chief Justice Roberts, 78 to 22.

But, in this case, Judge Alito comes to the floor in a straight party line, particularly divided vote. In a divided country, at a time of heightened partisan tensions, at a time of ideology often trumping common sense or broad public interest, the President has chosen to send a Supreme Court nominee who comes directly out of a revolt by the ideological wing of his party in order to satisfy their demand for ideological orthodoxy.

Some people obviously delight in that. We have read about that today in the New York Times. And that is their right. But most don't. Most don't think that is the way to pick a Supreme Court Justice. It doesn't mean it is good for the country, it doesn't mean it fills our current needs, and it doesn't mean it is even the right thing to do.

As we approach this nominee, we can't forget that he was not the President's first choice. His first choice was Harriet Miers, and opposition to her nomination came not from Democrats but from the far right of the Republican Party. They challenged her ideological purity with such conviction that the President capitulated to their demands and gave them Judge Alito instead—a nominee who they received with gleeful excitement.

Jerry Falwell "applaud[ed]" his appointment. Ed Whelan called it "a truly outstanding nomination." Rush Limbaugh called the nomination "fabulous." Ann Coulter and Pat Buchanan raved about how it would upset liberals. This rightwing reaction can only mean one thing: they know what kinds of opinions Judge Alito will issue—opinions in line with their extreme ideology.

All of this is to be contrasted with the standard set out by Justice Potter Stewart. He said:

> The mark of a good judge is a judge whose opinions you can read and . . . have no idea if the judge was a man or a woman, Republican or Democrat, a Christian or Jew . . . You just know that he or she was a good judge.

What he is saying is not really limited to the status of religion, gender, or politics, or any other trait by which we categorize people. He is saying that a good judge through all their decisions shows no discernible pattern of identity that pigeonholes that judge except for the purity of their legal reasoning, their genuinely open-minded approach to judging.

But in Judge Alito we do see patterns—patterns which demonstrate a bias towards the powerful, patterns which demonstrate a lack of skepticism towards government overreaching, and patterns which demonstrate a hostility to the disadvantaged and the poor. This doesn't mean that Judge Alito never rules in favor of an individual suing the government for an unlawful search or a minority suing a corporation for unlawful discrimination. But it does mean that in the overwhelming majority of cases he has not. And this raises the question of whether he approaches each case with an open mind or whether he comes with a bias that can only be overcome in the rarest of circumstances.

So why should the debate on Judge Samuel Alito continue now? Well, to begin with, there hasn't been that much debate on this nomination in the first place—a nomination of extraordinary consequence. It came to the floor on Wednesday the 25th, and cloture was filed the very next day on Thursday. To this moment, not more than 25 Democratic Senators have had a chance to speak. At this time, the Senate has spent a total of 25 hours on a nomination that will last a lifetime.

The direction our country will take for the next 30 years is being set now and this is the time for debate. This is the time when it counts. Not after the Supreme Court has granted the executive the right to use torture, or to eavesdrop without warrants. Not after a woman's right to privacy has taken away. Is history going to care what we say after the courthouse door is slammed in the faces of women, minorities, the elderly, the disabled, and the poor? No. Except to wonder why we didn't do more when we knew what was coming.

Obviously, I have heard some people try to argue that exercising our rights is "obstructionist." But did people suggest it was obstructionism when the extreme rightwing of the Republican Party scuttled the nomination of Harriet Miers? How many times have we heard our colleagues come to the floor and demand that judicial nominees get an up-or-down vote? She never got an up or down vote. She never even got a hearing. Yet a minority in the Republican Party was able to stop a nominee that they considered unfit for the Supreme Court.

It is hardly obstructionist to use, as the former chair of the Judiciary Committee Senator HATCH described it, "one of the few tools that the minority has to protect itself and those the minority represents." That is exactly what we are doing here. That is why we have the Senate and the rules we live by. We are protecting basic rights and freedoms that are important to every American: privacy, equality, and justice.

It is important to remember that the rights we are expressing concern about didn't come easily. Access to the court house, civil rights, privacy rights, voting rights, antidiscrimination laws—all of these were hard fought for. They came with bloodshed and loss of life. Their achievement required courage and determination. None of these basic rights were written into law without a fight, and still today it requires constant vigilance to make sure they are enforced and maintained. That commitment for vigilance is one of the characteristics that should leap out in a Supreme Court nominee.

We should remember that even though the 13th, 14th, and 15th amendments outlawed slavery, provided for equal protection under the law, guaranteed citizenship, and protected the right to vote for African American Americans, the fact is the Federal Government took very little action to enforce them until the 1960s. Few politicians were willing to take a stand—to fight for the rights of African Americans. Something besides grassroots pressure was ultimately needed to prompt the Congress into action. That something was the unanimous Supreme Court decision in Brown v. Board of Education.

Imagine if the Court had not enforced the equality guaranteed by the 14th amendment. Imagine if it still had the ideological outlook it had when Plessy was decided. Or when Dredd Scott was decided. Two of the most ideologically driven—and regrettable—decisions ever. Segregation would still be a fact of life. African American children would be forced to attend their own schools, would be receiving an inferior and inadequate education. And, there would have been no catalyst to start the civil rights movement.

So a vote for a Supreme Court nominee is in fact a vote for the rights and freedoms we care about and fight for. That is exactly what this vote is.

There is no question in anyone's mind. Samuel Alito will have a profound impact on the Supreme Court. This is a pivotal moment in history for the Court. You only need to look at his past opinions to know that much.

Let me share with you the story of David D. Chittister. On February 14, 1997, David requested sick leave from the Pennsylvania Department of Community and Economic Development, where he worked. He was granted leave, but approximately ten weeks later, his leave was revoked, and he was fired. David knew that the Family Medical Leave Act guaranteed him 12 weeks of sick leave. So he sued the

Pennsylvania Department of Community and Economic Development for firing him during that time.

Put yourself in David's shoes. Imagine that you become sick. You become so sick that you are hospitalized, completely unable to work. The only reason that you can afford your treatment is because you are still employed. And above all you believe that you are protected by the Family Medical Leave Act.

Now imagine that Judge Alito is on the Supreme Court. He is one of the nine voices that gets to decide whether the Family Medical Leave Act is constitutional. And he votes the way he did on the Third Circuit, invalidating that part of the Family Medical Leave Act which guarantees an individual 12 weeks of sick leave and applies to you. You are out of luck as you face mounting medical bills without any source of income.

This is not hypothetical. That is the decision he made. Health care is a very real problem for many more Americans than ever. Many of us have been pushing for a national approach to health care for years. Our citizens can't get the sick leave they need to take care of themselves. They cannot get adequate health insurance—coverage isn't what it should be. The Family Medical Leave Act was a step in the right direction to deal with family values and health needs. It made sure that people could take the time they needed when they became seriously ill without losing their income. It was enacted with overwhelming bipartisan support in a 71 to 27 vote. But if Judge Alito were on the Supreme Court and he follows his own precedent, it would no longer protect State employees.

So I ask my colleagues who voted for the Family Medical Leave Act: didn't we do exactly want we meant to do? Didn't we need to protect all workers? So is it right, now, to put a person on the Supreme Court who will undo the good that we did with that legislation?

Take another example. Many of us have talked on the floor about how Judge Alito routinely defers to excessive government power. And how he is willing to overlook clear fourth amendment violations in the process. This may seem abstract to a lot of people right now, but listen to the facts of this case.

A family of farmers, the Mellotts, fell on hard times. They had to declare bankruptcy and were ordered to leave their farm—like a lot of farmers these days. They asked for permission to appeal and were denied. They asked that the judge be disqualified and were denied. They didn't accept the eviction order and refused to leave their farm. So the marshals were sent to evict them.

When Bonnie Mellott answered the front door, a deputy marshal entered, pointed his gun "right in her face," pushed her into a chair, and kept his gun aimed at her for the remainder of the eviction. Another deputy entered, "pumped a round into the barrel" of his sawed-off shotgun, pointed it at Wilkie Mellott, and told him "to sit still, not move and to keep his mouth shut." When he did this, the marshals knew Wilkie Mellott was recovering from heart surgery.

But that wasn't all. Another marshal ran into the kitchen where a guest was on the telephone with a local sheriff. He "pumped" his semi-automatic gun, "stuck it right in [her] face and . . . said: 'Who are you talking to, hang up the phone.'" When she continued talking, the marshal put his gun "to the back of her head" and repeated the order.

I won't go into further details, but you get the picture. Now obviously the Mellotts were in the wrong to stay in their farm. They were ordered by the court to leave, and they should have. We all understand that.

But there is no fact in evidence suggesting that once the marshals got in the house there was resistance—no facts suggesting there was need for force or intimidation. Nothing justified running into a house, waiving sawed-off shotguns and screaming at the occupants. These folks weren't criminals. They weren't armed. They weren't resisting arrest. You know what, it is tough enough to get kicked off your property; it is another thing to be treated like a felon, absent cause, with pumped shotguns shoved in your face. Most reasonable people would conclude that the government's actions were excessive. But Judge Alito did not, and he wrote the majority opinion for two of the three judges hearing the case calling the law enforcement conduct reasonable. The dissenting judge disagreed. He said that once the marshals arrived and realized that the Mellotts were neither armed nor dangerous, the use of force was "clearly not objectively reasonable."

Where do you come out on this? Which view do you want on our Supreme Court?

Let me also share another story this one about Beryl Bray. Beryl was an African-American female who worked her way up from a room attendant to a Housekeeping manager for Marriott Hotels in less than three years. When the position of Director of Services opened up, Beryl applied. A Caucasian woman got the job, and Beryl sued claiming discrimination.

Now, as a Housekeeping manager, Beryl probably did not make a lot of money. She probably used a lot of her resources to bring her discrimination claim. She wanted her day in court. If Judge Alito had his way, she wouldn't have gotten it. Critical facts were in dispute. Facts which, if resolved as Beryl claimed they should be, would establish a clear case of discrimination. As the lawyers here know, the factual disputes should have been resolved by a jury of her peers. Beryl was entitled to her day in court. Judge Alito, however, did not agree. He would have resolved the facts on his own in favor of Marriott Hotels. He would have ended the case then and there.

Or let's talk about Harold Glass. Mr. Glass worked at Philadelphia Electric Company, of PECO as it is known, for 23 years before he retired. While working full-time, Harold attended school to improve his career opportunities. Over the years, he earned two associate degrees, a bachelor of science degree in industrial and management engineering and a bachelor of science degree in engineering.

In addition to his full-time work and continuing education, Harold was a long-time activist on behalf of PECO employees. In 1968, he helped organize the Black Grievance Committee to respond to problems of racial fairness, including inadequate representation of minorities by PECO's uncertified labor organization. He served as an officer. He represented employees in handling routine individual grievances before management and negotiated with management about employee concerns. In addition, he took the lead in organizing witnesses in three legal actions against PECO concerning racially discriminatory employment practices.

Over the years, Harold applied for promotions to new positions, but each time he was rejected. In addition, he was not able to apply for positions he would have liked to have because they were never posted by the company. This despite the fact that, in 23 years of employment with PECO, Harold received only one performance evaluation which was less than fully satisfactory—when he was serving as a junior technical assistant. Harold claimed that racial harassment at that time from his coworkers and a hostile work environment had affected his job. But the trial judge did not allow him to demonstrate these facts.

On appeal, a divided three-judge panel reversed the trial judge's decision. Two of Judge Alito's colleagues believed that Mr. Glass should have been allowed to present the evidence of racial discrimination to the jury. Judge Alito, however, disagreed. He thought that allowing Mr. Glass to tell his side of the story might cause "substantial unfair prejudice." He called the trial judge's refusal to allow Mr. Glass's evidence "harmless."

Harmless. Was it harmless to Mr. Glass? What do you think? Do you think its harmless error to keep a discrimination plaintiff from showing evidence of discrimination? I think most reasonable people would disagree with Judge Alito.

I believe that is the problem here: Judge Alito has demonstrated a pattern of looking at discrimination claims with a high degree of skepticism. In the dozens of employment discrimination cases involving race that Judge Alito has participated in, he ruled in favor of African Americans on the merits in only two instances. He has never authored a majority opinion favoring African Americans in such cases. He has dissented from rulings of his colleagues in favor of African-American plaintiffs, and in doing so has required an unrealistic amount of evidence before he is willing to step in on behalf of wronged individuals. He is not willing to give them the benefit of the doubt even to just let a jury decide their case.

This is an unacceptable view of the way our country works. Americans know that what sets us apart from almost any other country is the right of any citizen no matter where they come from, what their lot in life is to have their day in court. That is what makes America special. This little guy can hold the big corporations accountable.

Our nation is defined by the great struggle of individuals to earn and protect their rights—particularly the disadvantaged. We have worked hard to ensure that no one is denied their civil rights. Judge Alito's track record casts serious doubt on his commitment to that struggle. The legislation we pass protecting individuals against discrimination requires the courts to fully enforce it. And we just don't keep faith with ourselves if we empower individuals to sue large corporations who act unlawfully and then have the courts refuse to hold them accountable.

Judge Alito's hostility to civil rights claims is not my observation alone. It is an observation shared by many people who have reviewed his record. Let's not forget that after reviewing more than 400 of Judge Alito's opinions, law professors at Yale Law School—Judge Alito's alma matter—concluded that:

> In the area of civil rights law, Judge Alito consistently has used procedural and evidentiary standards to rule against female, minority, age and disability claimants. . . Judge Alito seems relatively willing to defer to the claims of employers and the government, over those advancing civil rights claims.

That is the opinion of those who have studied his record. Similarly, Knight-Ridder concluded that Judge Alito "has worked quietly but resolutely to weave a conservative legal agenda into the fabric of the nation's laws" and that he "seldom-sided with . . . an employee alleging discrimination or consumers suing big business."

Judge Alito may believe that it is his duty to keep these types of cases away from the jury. He may, and in fact probably does, believe that he is doing the right thing. That is his right. But, it is my right to judge the facts of these cases and disagree. It is my right to say that the record of his reaction to the same facts should not be elevated to the Supreme Court.

A fair amount has been said about Judge Alito's endorsement of the unitary executive theory. This is a complicated and somewhat abstract theory of constitutional interpretation, but if it is ever endorsed by a majority of the Court, it will have a significant practical impact on our everyday lives.

What it says is that the President alone is responsible for enforcing the laws. At its most simplistic, it seems somewhat reasonable: Congress makes the laws, the President enforces the laws, and the judiciary interprets the laws. The theory, in fact, dates back to the administration of Franklin Roosevelt, and it has been championed by liberal and conservative scholars and administrations as a way of asserting the President's ability to retain control over independent agencies. But, use of the theory in recent times has been changing.

During Judge Alito's tenure, the Reagan administration developed new uses for the theory. It was used to support claims of limitless presidential power in the area of foreign affairs—including the actions that became the Iran-contra affair. And, this view of Presidential power has been carried on by the current Bush administration, claiming in Presidential signing statements, that the President can ignore antitorture legislation overwhelmingly passed here in Congress. Not only is the substance of that message incredible, but the idea that the President can somehow alter congressional intent—the meaning of legislation agreed upon by 100 Senators—with a single flick of a pen is absolutely ludicrous. It turns the meaning of legislative intent on its head.

In the hearings, Judge Alito attempted to downplay the significance of this theory by saying it did not address the scope of the power of the executive branch, but rather, addressed the question of who controls the executive branch. Don't be fooled by that explanation. The unitary executive theory has everything to do with the scope of executive power.

In fact, even Stephen Calabresi, one of the fathers of the theory, has stated that "[t]he practical consequence of this theory is dramatic." It is just common sense that if the unitary executive theory means that the President can ignore laws that Congress passes, it necessarily expands the scope of Presidential power—and reduces the scope of Congress.

Judge Alito had numerous opportunities in the hearings to define the limits of the unitary executive, but he refused to answer my colleagues' questions. He didn't answer when Senator LEAHY asked him whether it would be constitutional for the Congress to prohibit Americans from using torture. He didn't answer when Senator DURBIN asked whether he shared Justice Thomas's view that a wartime President has inherent powers—beyond those explicitly given to Congress. He didn't answer when Senator FEINGOLD asked what, if any, limits there are on the President's power.

We all understand that under article II, the President has primary responsibility for the conduct of foreign affairs. But, the idea that the President can simply disregard existing law or redefine statutory limits at will in the areas of foreign affairs, national security, and war is a startling one. And it is one that I cannot accept.

We needed to know what limits Judge Alito would place on the executive branch. We needed him to go beyond simple recitations of Supreme Court case law. We needed to know what he actually thought.

Sadly, however, Judge Alito did not give us those answers. In fact, he failed to give us answers on many questions of critical importance. He refused to answer questions from Senator LEAHY, Senator KENNEDY, Senator FEINGOLD, and Senator BIDEN on the question of the power of the presidency. He refused to answer questions from Senator SCHUMER, Senator DURBIN, and Senator FEINSTEIN on whether Roe v. Wade was settled law—an answer that even Chief Justice Roberts was willing to give. He refused to answer Senator LEAHY's questions on court stripping; Senator LEAHY's and Senator FEINSTEIN's questions on congressional power and the commerce clause; Senator FEINGOLD's questions on affirmative action and criminal law; Senator SCHUMER's questions on immigration.

These are all questions about issues that routinely come before the Court. Judge Alito had an obligation to answer them. He had an obligation to explain and clarify the positions he took in his speeches, judicial opinions, and Justice Department memoranda. But he did not.

Why are we supposed to think that is OK? Since when is it acceptable to secure a lifetime appointment to the Supreme Court by hiding behind a smokescreen of nonanswers?

I understand that, for many, voting for cloture on a judicial nomination is a very difficult decision, particularly on this Supreme Court nominee. I also understand that, for some of you, a nomination must be an "extraordinary circumstance" in order to justify that vote. I believe this nomination is an extraordinary circumstance. What could possibly be more important than this?

This is a lifetime appointment to a Court where nine individuals determine what our Constitution protects and what our laws mean. Once Judge Alito is confirmed, we can never take back this vote. Not after he prevents many Americans from having their discrimination cases heard by a jury. Not after he allows more government intrusions into our private lives. Not after he grants the President the power to ignore Federal law under the guise of protecting our national security. Not after he shifts the ideological balance of the Court far to the right.

As I have said before, Judge Alito's nomination was a direct result of the rightwing's vehement attacks on Harriet Miers, an accomplished lawyer whose only failing was the absence of an ideologically bent record. The rightwing didn't wait for the next nominee. The rightwing didn't leave any of the tools in their arsenal unused. The rightwing attacked with every option available to them to prevent Harriet Miers' confirmation, secure in their conviction that it was the right thing for them to do.

We believe no less. And we should do no less. We did allow the confirmation of three of the most objectionable appellate court nominees. There was no talk of prolonged debate on Chief Justice Roberts. Now we are presented with a nominee whose record raises serious doubt about serious questions that will have a profound impact on everyday lives of Americans. What on Earth are we waiting for?

Many on my side oppose this nomination. They say they understand the threat he poses, but they argue that cloture is different. I don't believe it is. It is the only way that those of us in the minority have a voice in this debate. It is the only way we can fully complete our constitutional duty of advice and consent. It is the only way we can stop a confirmation that we feel certain will cause irreversible damage to our country.

I will oppose cloture on the nomination of Judge Alito. And, I sincerely hope my colleagues will join me.

The PRESIDING OFFICER. The assistant majority leader is recognized.

Mr. McCONNELL. Mr. President, I rise today in support of the nomination of Samuel A. Alito, Jr., to be an Associate Justice of the Supreme Court. We are familiar with Judge Alito's academic and professional qualifications. He graduated from Princeton and Yale Law School, where he served as editor of its prestigious Law Journal. He spent his life serving his country as a captain in the Army Reserve, as an assistant, and then as U.S. attorney in New Jersey, and for the past 15 years as a distinguished judge on the Third Circuit Court of Appeals, to name a few of his qualifications with which we are all quite familiar at this point in the process.

Equally important is his deserved reputation for fairness and for integrity and his measured approach to the law. The American Bar Association, hardly a bastion of conservatism, found this out during its exhaustive review of its record. The ABA solicited the views of 2,000 people, including 130 Federal judges and every Supreme Court Justice. After that, the ABA awarded Judge Alito its highest rating, unanimously well qualified. What that means is that every member of the committee of the ABA gave Judge Alito the highest possible mark. It is like getting straight A+'s on your report card.

Let me repeat that since some who are watching and listening have undoubtedly heard the attacks by Judge Alito's most vociferous opponents: The ABA, the largest professional association of lawyers in the country, found Judge Alito to be unanimously well qualified for the Supreme Court. In the past, this rating was referred to by our friends on the other side of the aisle as the gold standard.

More insightful than the ABA's rating is the testimonials of those who know Judge Alito best, his colleagues and his coworkers. Although they possess different political philosophies, Judge Alito's colleagues enthusiastically praise him as "thoughtful, intelligent, and fair" and a judge who "has a great respect for precedent-setting decisions." To most people, that sounds like the kind of Justice we would want on the Supreme Court.

Judge Timothy Lewis served with Judge Alito for 7 years during which Judge Lewis typically voted with the court's liberal members. He recounted how when he joined the Third Circuit in 1992 he consulted his mentor, the late Judge A. Leon Higginbotham, Jr., who was a Carter appointee, a former chief judge of the court and a scholar of U.S. racial history. According to Judge Lewis, Judge Higginbotham said:

> Sam Alito is my favorite judge to sit with on this court. He is a wonderful judge and a terrific human being. Sam Alito is my kind of conservative. He is intellectually honest. He doesn't have an agenda. He is not an ideologue.

That is the late Judge Leon Higginbotham. Judge Lewis added his own experience bore out Judge Higginbotham's evaluation. Judge Lewis said Sam Alito "does not have an agenda" and "is not result-oriented. He is an honest conservative judge who believes in judicial restraint and judicial deference." He "faithfully showed a deference and deep respect for precedent."

That is liberal Judge Lewis of the Third Circuit.

Another former chief judge of the Third Circuit, Edward Becker, similarly praised Judge Alito. Here is what he had to say:

> I found him to be a guy who approached every case with an open mind. I never found him to have an agenda. I suppose the best example of this is in the area of criminal procedure. He was a former U.S. attorney, but he never came to a case with a bias in favor of the prosecution. If there was an error in the trial, or a flawed search, he would vote to reverse.

Judge Becker noted that Judge Alito is "very principled, very analytical, never decides more than he has to in a case. He does believe in judicial restraint in the way he writes opinions, with no ideological overtones."

The Third Circuit current chief judge, Anthony Scirica, succinctly said:

> . . . whatever quality you think a judge ought to have, whether it's scholarship or an ability to deliberate, or fairness or temperance, Sam has each one of these to the highest degree.

That is the current chief judge of the Third Circuit.

These reflections, which include three former or current chief judges of the Third Circuit, are echoed by Judge Alito's former law clerks, many of whom are self-described committed Democrats. Jeff Wasserstein clerked for Judge Alito in 1998. Here is what he had to say:

> I am a Democrat who always votes Democratic, except when I vote for a green candidate—but Judge Alito was not interested in the ideology of his clerks. He didn't decide cases based on ideology.

Mr. Wasserstein recounts how in one criminal case the defense attorney had submitted a sloppy brief while the prosecutor had submitted a neat, presentable brief. Mr. Wasserstein says that in his youth and naivete he suggested to Judge Alito it would be easy to decide the case for the Government. But Judge Alito stopped him "cold by saying that was an unfair attitude to have before I had even read the briefs carefully and conducted the necessary additional research needed to ensure that the defendant had received a fair hearing."

Mr. Wasserstein's simple anecdote illustrates how Judge Alito approaches each case fairly and with an open mind. He observes that Judge Alito has a "restrained approach to the law."

Another former law clerk, Kate Pringle, who worked for Senator KERRY, whom we heard speak a few moments ago, for his Presidential campaign, describes herself as a left-leaning Democrat and a big fan of Judge Alito's. She rejects the notion that Judge Alito is an ideologue, stating he "pays attention to the facts of the cases and applies the law in a careful way. He is a conservative in that sense. His opinions don't demonstrate an ideological slant."

That is Kate Pringle, law clerk of Judge Alito and Kerry supporter for President in 2004.

In light of the accolades from those who know him best, in light of his brilliant academic and professional achievement, in light of receiving the highest possible rating by America's largest association of his peers, the ABA, I was hopeful the Senate would provide Judge Alito with a fair and dignified process. Sadly, this has not been the case.

In the Senate we have known for over 200 years, a judicial nominee with Judge Alito's character, ability, and achievement would command a large bipartisan majority of support. Now it appears Judge Alito will not get that tomorrow. Why is that? It is because there has been a change in the standards by which the Senate considers qualified judicial nominees. In my view, it has not been a change for the better.

According to the New York Times, in early 2001, some of our Democratic colleagues attended a retreat where law professors such as Larry Tribe and Cass Sunstein implored them to "change the ground rules" with respect to how the Senate considered judicial nominees by injecting a political ideology test into the confirmation process. Soon after that meeting, some of our friends initiated a premeditated and sustained effort of serial filibusters of circuit court nominees. We saw a lot them. Those most passionate for this tactic thereby wrote a new and sad chapter into the pages of Senate history.

Like many Republicans and Democrats, I had hoped this sad chapter of trying to deny judicial nominees a simple up-or-down vote would recede into memory as a mere footnote in a long and proud history of the Senate. Unfortunately, today some are trying to revive it with the Alito nomination.

We stand today on the brink of a new and reckless effort by a few to deny the rights of many to exercise our constitutional duty to advise and consent, to give this man the simple up-or-down vote he deserves. The Senate should repudiate this tactic, and it will have an opportunity to do that at 4:30 this afternoon.

There is a role for the filibuster for legislative matters. Although I may disagree with its application in a particular legislative case, I neither deny the tactic nor begrudge it when a colleague employs that tactic when there is good reason to do so. I have done so on many occasions myself. I have not seen a good reason for employing it in the context of judicial nominations. Nor did any Senate prior to the last Congress find that tactic should be employed for judicial nominations.

It certainly is not warranted in the case of Judge Alito. He is clearly qualified. His friends, his peers, and, indeed, his entire life story tell us so.

During his hearings and despite the best efforts of those opposed to his nomination, he acquitted himself admirably. Over 18 hours of testimony he was asked 677 questions and was able to answer 659 of them—truly an impressive feat. In doing so, Judge Alito demonstrated an impressive command of the law and a model judicial temperament.

Now, while Judge Alito conducted himself with grace and dignity, unfortunately, some Senators did not. In fact, those who listened most attentively to the outside pressure groups, such as one whose top lobbyist declared "you name it, we'll do it to defeat Judge Alito," could have learned a thing or two about grace and dignity by watching Judge Alito perform in the face of the most absurd and baseless charges.

Despite the repeated efforts to caricature Judge Alito, the public's support for him only increased. After the hearing, the only thing the American public was concerned about with respect to Judge Alito was the sometimes shabby treatment he received.

With Stephen Breyer and Ruth Bader Ginsburg, Republicans resisted playing base politics and instead measured those two nominees by the traditional confirmation standard of integrity and legal excellence and not a political ideology standard. We did not grandstand on the colorful—to put it delicately—statements Justice Ginsburg had made decades before her nomination such as possibly abolishing Mother's Day and Father's Day and statements about purported constitutional rights to prostitution and polygamy, to name a few. Nor did Republicans seek to disqualify Judge Ginsburg from further judicial service because of her longstanding leadership of the ACLU and the controversial positions it often takes.

And Republicans did not succumb to the idea of a reckless filibuster to gain the approbation of a newspaper or an interest group.

If Republicans had wanted to demagogue and defeat the Ginsburg nomination, we could have done the things to Justice Ginsburg that have been done to Judge Alito. In fact, with her highly controversial writings and advocacy for the ACLU, it would have been a lot easier to do so, but we exercised self-restraint and self-discipline for the good of the country.

In conclusion, I implore my Democratic friends to consider that to engage in these tactics is neither fair nor right. If this hyperpoliticization of the judicial confirmation process continues, I fear in this moment we will have institutionalized this behavior, and some day we will be hard pressed not to employ political tests and tactics against a Supreme Court nominee of a Democratic President. In that case, no one—Republican or Democrat—will have won.

I urge my colleagues to desist in this tactic of turning the confirmation process of a judge into the functional equivalent of a political campaign. It is shortsighted, and we will mourn the day this tactic became the norm.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HATCH). Without objection, it is so ordered.

Mr. CHAMBLISS. Mr. President, the Committee on the Judiciary has recommended that we consent to the President's nomination of Samuel A. Alito, Jr. as Associate Justice of the Supreme Court of the United States. I concur in that recommendation. I am convinced that Judge Alito will make an outstanding addition to the Supreme Court and will be faithful to his judicial oath in neutrally applying the law without imposing his personal, political or ideological views to circumvent the law or the Constitution.

First, I wish to commend Chairman SPECTER and my former colleagues on the Judiciary Committee—including the Presiding Officer—for conducting nomination hearings which established clearly Judge Alito's fitness to serve on the Nation's highest Court. I followed closely Judge Alito's responses to questions during the hearings. I was impressed by his profound patience, sincerity, and dedication to the ethical restraints which compel all nominees to refrain from prejudicing any matter which may come before the court. Many of my colleagues have complained that Judge Alito "did not answer some questions." Their real complaint rather, is that they simply didn't like his answers. Judge Alito quite properly declined, as have all prior nominees to the Court, to address in advance specific matters which may come before them. As Judge Alito stated:

> If a judge or a judicial nominee announced before even reading the briefs or getting the case or hearing the argument what he or she thought about the ultimate legal issue, all of that would be rendered meaningless, and people would lose all their respect for the judicial system, and with justification, because that's not the way in which members of the judiciary are supposed to go about the work of deciding cases.

That statement, and the time-honored concept which it embodies, is profoundly important. Surely, those of my colleagues who have criticized Judge Alito in this regard know better. Surely, they do not want Justices on the Court to signal in advance how they will rule on cases. To the extent they do, they will be judged by the American people as perverting our constitutional system itself.

Others have criticized Judge Alito because he may hold personal, political, or ideological views. We all hold personal views. But the role of a judge, unlike that of a legislator, is to apply the law without respect to his or her personal, political, or ideological views. Judge Alito has demonstrated not only his ability to do this during 15 years of service as a judge on the United States Court of Appeals for the Third Circuit, but his commitment to this principle in responding to questions during his confirmation hearings.

Fidelity to the Constitution and commitment to the rule of law without respect to one's personal views is, at the end of the day, the only principle that provides legitimacy to the Federal judiciary—the only unelected branch of our government. The unelected status of the judiciary was, correctly, viewed with particular suspicion by the Founders, lest that unique status permit judges to impose their own views under the guise of judicial decisions, without direct accountability to the American people. In a letter to Spencer Roan, March 9, 1821, Jefferson stated:

> The great object of my fear is the federal judiciary. That body, like gravity, ever acting with noiseless foot and unalarming advance, [is] gaining ground step by step. . . . Let the eye of vigilance never be closed.

And so that vigilance now rests upon this body. Let us be vigilant in insisting that justices of the Supreme Court, and all other Federal judges who are presented to us, are sufficiently committed to the rule of law.

As I noted during my remarks concerning the nomination of Chief Justice Roberts at a time when too many of those in the judicial branch have sought to use their lifetime tenured position to advance their own personal, ideological, or political preferences in deciding matters which come before them; at a time when too many within the legal, media and political elites have sought to recast the role of the judiciary into a superlegislature, approving of, and even urging judges to supplant their views for those of the elected representatives of the American people—we should be reminded that such actions and such views on the part of some are anticonstitutional and contrary to the rule of law itself.

Describing his own fidelity to the Constitution and to the rule of law, Judge Alito told the Committee on the Judiciary:

> A judge can't have an agenda. A judge can't have a preferred outcome in any particular case. And a judge certainly doesn't have a client. A judge's only obligation—and it's a solemn obligation—is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires.

The standard for rendering advice and consent, which I outlined in my statement concerning Chief Justice Roberts, is the standard I will apply to Judge Alito as well. That standard—demonstrated commitment to the rule of law and fidelity to the Constitution—is amply met by Samuel A. Alito, Jr. I am pleased to support his nomination and will certainly vote to confirm him as Associate Justice of the Supreme Court. I urge my colleagues to do likewise.

Make no mistake about it. The American people do not want to see an obstructionist attitude in their legislative body. The American people are not benefited by an obstructionist attitude. An obstructionist attitude towards Judge Alito means not moving forward with affirming a cloture vote and then confirming Alito to be Associate Justice of the Supreme Court. The American people are best served by a bipartisan attitude in this body. I hope when the cloture vote is made at 4:30 we will see not just the 60 votes needed to not allow a filibuster but that we will see a strong bipartisan vote in support of moving ahead with giving Judge Alito an up-or-down vote on the floor of the Senate. And tomorrow morning, when we consider the confirmation of Judge Alito, I certainly hope that once again we will see a strong bipartisan vote confirming Judge Alito as the next Associate Justice of the Supreme Court.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, how much time does the Senator from New Mexico have allotted?

The PRESIDING OFFICER. The majority controls the time until 2 p.m.

Mr. DOMENICI. I yield myself the time until 5 minutes of 2, and I ask unanimous consent that Senator ALEXANDER and I be permitted to use 5 minutes of that time to speak to an unrelated subject.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROTECTING AMERICA'S COMPETITIVE EDGE

Mr. DOMENICI. Mr. President, today I rise to speak about a very important issue, the competitiveness of the United States and our future standard of living and whether we are going to develop the brainpower in America to meet the challenges of the future.

I compliment two Senators who initiated this endeavor—LAMAR ALEXANDER of Tennessee and JEFF BINGAMAN of New Mexico. They asked me, as chairman of the Energy Committee, if they could pursue a study with recommendations about how to achieve competitiveness. They did that. Now we have the results of that evaluation in a major report hereinafter to be called the Augustine report, named after Dr. Augustine, former president of Lockheed Martin. Many people know of him in many capacities. That report recommends 20 specific ideas to get America back on the track of competitiveness in the world.

Today I want to tell Senators and the world that in a day of confrontation and partisanship the implementation of that study is encapsulated in three bills. The bills now have 53 cosponsors. Of those, 29 are Republicans, 24 are Democrats. The bills are S. 2197, S. 2198, and S. 2199. Three Senators of the 23 have cosponsored only one portion.

At this early date, to have that many cosponsors is rather historic. This means we are going to proceed with the legislation. I am going to yield some time now to the distinguished Senator from Tennessee, closing by saying that the essence of this report says: America, produce better brainpower in math, science, and physics; produce more engineers of all types; produce more research in basic science; cause business to invest through tax credits—and do it as soon as possible. Without this, the report says, we will perish.

Lastly, I want my friend from Tennessee to listen to just one fact. We have at various times attempted to equate what we do with what we ought to do. Jeffrey Immelt, CEO of GE, recently shocked a DC audience with a troubling statistic. He said:

> If you want good manufacturing jobs, one thing you could do is educate more engineers. We had more sports exercise majors graduate than electrical engineering majors last year.

Based on that statistic, he added:

> If you want to be the massage capital of the world, you are well on your way.

That is very interesting. With that, out of my time, I yield to the Senator from Tennessee 3 or 4 minutes to speak to this bill, which is called the PACE legislation.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, I thank the Senator from New Mexico. First, there is nothing more important, along with the war on terror, than finding a way to keep our jobs from going to China, India, and other countries around the world. They have figured out how to increase their standard of living, and it has to do with brainpower.

What I want to say today is, first, I congratulate Senator DOMENICI, without whose leadership this would not have gotten to first base. He encouraged Senator BINGAMAN and I to go to work. He got our meeting with the President. It was he who presided over our homework sessions with the administration. It is he who has taken the leadership with Senator BINGAMAN on this bill to have 55 cosponsors prior to the President's speech tomorrow night. So I thank him first.

Second, I reiterate where this idea came from. It came not from Senators, not from lobbyists, nor from this or that clique. Senator BINGAMAN and I asked the people who should know—the experts at the National Academies—sthe answer to this question: exactly what do we need to do to keep our advantage in science and technology over the next 10 years so we can keep our jobs? They answered that question with 20 specific recommendations involving kindergarten through the 12th grade education, higher education, basic research, maintaining an entrepreneurial environment. These are ideas that many Senators on both sides of the aisle have advocated for several years, but the fact that the National Academy of Sciences, the Institute of Medicine, and the National Academy of Engineering joined together to say "here is the blueprint" is the reason this idea has gone so far. What it does is help keep our edge in science and technology.

I am looking forward to the President's remarks tomorrow night. It is my hope that he makes the Augustine report and the whole idea of keeping America on top and keeping our edge in science and technology a focus of his speech and of his next 3 years.

So it is my privilege today to ask unanimous consent on behalf of Senators DOMENICI, BINGAMAN, and myself to add as cosponsors Senators LAUTENBERG, JOHNSON, MCCONNELL, SNOWE, and now Senator SPECTER of Pennsylvania, who have asked to be added to S. 2197, S. 2198, and S. 2199 as cosponsors, as well as Senator REED of Rhode Island who has asked to be added as a cosponsor of S. 2197, so that we now have 54 cosponsors of these important pieces of legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALEXANDER. Mr. President, I ask unanimous consent that a letter from Senator BINGAMAN and myself, encouraged by Senator DOMENICI, to the National Academy of Sciences on May 27, 2005, and a two-page summary of the Domenici-Bingaman-Alexander-Mikulski legislation, which has 54 cosponsors, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, May 27, 2005.

Dr. BRUCE ALBERTS,
President, National Academy of Sciences,
Washington, DC.

DEAR DR. ALBERTS: The Energy Subcommittee of the Senate Energy and Natural Resources Committee has been given the latitude by Chairman Pete Domenici to hold a series of hearings to identify specific steps our government should take to ensure the preeminence of America's scientific and technological enterprise.

The National Academies could provide critical assistance in this effort by assembling some of the best minds in the scientific and technical community to identify the most urgent challenges the United States faces in maintaining leadership in key areas of science and technology. Specifically, we would appreciate a report from the National Academies by September 2005 that addresses the following:

Is it essential for the United States to be at the forefront of research in broad areas of science and engineering? How does this leadership translate into concrete benefits as evidenced by the competitiveness of American businesses and an ability to meet key goals such as strengthening national security and homeland security, improving health, protecting the environment, and reducing dependence on imported oil?

What specific steps are needed to ensure that the United States maintains its leadership in science and engineering to enable us to successfully compete, prosper, and be secure in the global community of the 21st century? How can we determine whether total federal research investment is adequate, whether it is properly balanced among research disciplines (considering both traditional research areas and new multidisciplinary fields such as nanotechnology), and between basic and applied research?

How do we ensure that the United States remains at the epicenter of the ongoing revolution in research and innovation that is driving 21st century economies? How can we assure investors that America is the preferred site for investments in new or expanded businesses that create the best jobs and provide the best services?

How can we ensure that critical discoveries across all the scientific disciplines are predominantly American and exploited first by firms producing and hiring in America? How can we best encourage domestic firms to invest in invention and innovation to meet new global competition and how can public research investments best supplement these private sector investments?

What specific steps are needed to develop a well-educated workforce able to successfully embrace the rapid pace of technological change?

Your answers to these questions will help Congress design effective programs to ensure that America remains at the forefront of scientific capability, thereby enhancing our ability to shape and improve our nation's future.

We look forward to reviewing the results of your efforts.

Sincerely,

LAMAR ALEXANDER,
Chairman, Energy Subcommittee.
JEFF BINGAMAN,
Ranking Member, Committee on Energy and Natural Resources.

PACE ACT: PROTECTING AMERICA'S COMPETITIVE EDGE

Focuses on keeping America's science and technology edge—as much as 85 percent of our per capita growth in incomes since World War II has come from science and technology.

Helps America continue to set the PACE in the competitive world marketplace.

Keeps our brainpower edge by strengthening K–12 math and science education, attracting bright college students to the sciences and investing in basic research.

In a package of three bills, the PACE Act implements 20 recommendations contained in an October report by the National Academy of Science titled "Rising Above the Gathering Storm."

Protecting America's Competitive Edge through Energy Act (PACE-Energy): Increasing our investment in energy research and in educating future American scientists.

Protecting America's Competitive Edge through Education and Research (PACE-Education): Investing in current and future math and science teachers and K–12 students, attracting bright international students, and investing in non-energy related basic research.

Protecting America's Competitive Edge through Tax Incentives (PACE-Finance): Doubling the research & development tax credit and allowing a credit for employee education.

KEY PROVISIONS OF THE PACE ACTS

Strengthening the nation's traditional commitment to research

More research opportunities for scientists and engineers: Increases basic research spending by up to 10 percent per year for seven years at several federal agencies, including the national laboratories. This investment would generate hundreds, maybe thousands, of new inventions and high-tech companies.

Targeted research grants for early career scientists and engineers: Creates a special research fund for 200 outstanding young researchers across the nation each year.

New federal funds to buy equipment and upgrade research laboratories: Provides a special pool of funds for the nation's research infrastructure to purchase updated research equipment and upgrade lab capabilities.

A New Agency for Transformational Energy Research: Establishes a new research agency within the Department of Energy tasked with developing transformational energy technologies that bridge the gap between scientific discovery and new energy innovations. This agency would be patterned on the management practices of a Pentagon research agency (DARPA) that contributed to innovations like the Internet, stealth technology and global positioning systems.

High-Risk, High-Payoff Research: Directs federal research agencies to develop guidelines that allow eight percent of R&D budgets to be devoted to high-risk, high-payoff research which falls outside the peer review and budget allocation process.

Improving K–12 Science/Math Education

Scholarships for Future Teachers of Math & Science: Each year, up to 10,000 bright students would receive a 4-year scholarship to earn a bachelor's degree in science, engineering or math, while concurrently earning teacher certification. In exchange for these scholarships, they would be expected to serve for at least four years as a math or science teacher.

Math & Science Teacher Training Programs: Funds part of the costs for new math and science teacher training programs based in math and science departments at universities across the country. These programs will stress a solid content knowledge of their subject while also providing the training necessary for teacher certification.

Summer Academies for Teachers: National laboratories and universities across the country would host 1–2 week academies each summer for up to 50,000 math and science teachers so they can get some hands-on experience and take back new, improved ideas for energizing their students.

Advanced Placement Courses in Math & Science: The federal government would provide funding to help establish non-profit organizations to promote Advanced Placement (AP) classes in math and science—tripling the number of students who could join these college-preparatory programs that consistently produce the highest achievers.

Specialty Math & Science High Schools: States would be eligible to apply for a grant from the federal government to help establish a new high school specializing in math and science that students from across each state could attend.

Internships and Summer Programs for Middle and High School Students: Provides unique internship and program opportunities for middle and high school students at national labs and other technology and scientific research facilities.

Increasing the Talent Pool by Improving Higher Education

Scholarships and Fellowships for Future Scientists: Each year, up to 25,000 bright young Americans would receive a 4-year competitive scholarship to earn a bachelor's degree in science, engineering or math, so that our brightest students pursue studies in these fields which are so critical to our economic growth. Up to 5,000 students who have already earned their bachelor's degree, would compete to receive graduate research fellowships to cover education costs and provide a stipend.

Attracting the Brightest Foreign Students to our Universities: Provides an efficient student visa process for bright foreign students to come here to study math, technology, engineering and science and then to stay here—contributing to our economic growth rather than being forced by an outdated immigration system to go home and produce the best new technology in India or China.

Growing our Economy by Providing Incentives for Innovation

Doubling the Research & Development Tax Credit to Encourage Innovation: Doubles the current R&D tax credit and makes it permanent—so companies conduct ground-breaking, job-producing research here, rather than building new facilities overseas.

Creating a Tax Credit to Encourage Employers to Invest in Employees' Education: Establishes a new tax credit to cover costs from providing continuing education to employees—so employees can learn cutting-edge skills.

Development of Science Parks: Supports the development of science parks through infrastructure planning grants and loan guarantees so that U.S. science parks are competitive with those throughout Asia.

Mr. DOMENICI. Mr. President, let me say what a privilege it is today to speak once again to the nomination of a Supreme Court Justice and to the advice and consent function of the Senate.

I came here in 1972, so there have been a lot of men and women nominated to the Supreme Court of the United States. In my time here, I have voted to confirm them all. I based my vote, first, on the fact that the President of the United States recommended them and second, on whether they were qualified. I determined whether they were qualified based upon outside evaluations and personal observations of those who knew, trained and taught that particular nominee. For example, I found Justices Ginsburg and Breyer, who were confirmed 96-to-3 and 87-to-9, to be qualified. In my opinion, neither of those judges, based upon the way the Senate is doing things these days, would have come close to getting those kinds of votes. As a matter of fact, for those who threaten filibuster, I believe there is a serious question.

If filibusters would have been the rule of the day, at least one of those nominees might very well have been filibustered, and the filibuster might have been successful. But that wasn't the way things were done.

Qualification was the question upon which we based our decisions; that has changed. Rancor has taken the place of reason. Partisanship has taken the place of responsibility and fairness. At every step of the process with this nominee, the American people have seen what a confirmation process can turn into if it is not vested and fair, but is instead full of what can be considered as almost hatred, almost fire and brimstone. Our colleagues have focused on the negatives of everything, however small or irrelevant. Currently, the trend is not to do what we have done, which has resulted in some great judges, but rather to be fed by the flames of partisan special interests that want assurances—they want guarantees.

I personally believe this is a dangerous course, and I hope and pray that this will be the last time we follow such procedure. But I doubt that it will be, although I believe such actions are wrong. Rejecting the judicial philosophy tests being urged by some is absolutely imperative.

When we apply the appropriate test of qualification, there is no doubt that Judge Alito is qualified. He is qualified to be a Supreme Court Justice. The American public realizes this and that is why they overwhelmingly indicate that we should get on with this and vote. It is clear that there has been no nominee—and the occupant of the chair has seen many—that has spread before the eyes of the Congress and the public more about themselves, their record, their philosophy, their vote, their rationale, and their ethics than this man.

The President, indeed, took a big chance with this nomination because to have that much of a record and have a vote and all that goes with it here was, indeed, a giant risk. But it paid off because Judge Alito is what he purported to be—a scholarly, terrific judge, who is without any question, distinguished.

My second point concerns "guarantees." I believe some members of the Judiciary Committee questioned this judge in an effort to get some guarantees about how he would vote. It is amazing to consider some of the Supreme Court Justices who have been approved by the Senate based on their testimony and their record, which were presumed to be commitments or guarantees as to how they would vote. We can look back to Justice Warren from California as well as two or three members of the Court right now. Those who voted for such judges could have, indeed, thought they were getting guarantees, and it has turned out not to be the case. Those judges' philosophy, their votes, and everything else has been different on the Court than what they appeared to be guaranteeing during the confirmation process.

There are no guarantees. Those who are making this a partisan fight won't say: We don't have any guarantees, on Roe v. Wade and many other issues, that Judge Alito will vote the way we want him to—they won't say they are doing that. They will use other words like "I am bothered," but that is really their argument.

Now, as to the cloture vote this afternoon—we are going to do that. I have never had to make that vote in 34 years—on 11 Supreme Court nominees. I never had to make that vote. Why? Because this Senate has not used the filibuster on Supreme Court Justices. Some people say, oh, yes we have, or, yes, we almost did. But we did not, and we surely didn't when a majority was for the man or woman. That is the case here.

To have to take this route, I believe the process is headed in the wrong direction. To require cloture is not the way to do it. It is not in tune with the history of the Senate. It contradicts the significance of this body as a fair-minded, deliberative body. I regret to say that with no particular people in mind. If the shoe fits, fine. If it fits no one, fine. But this has turned into nothing more than a political war. Those who are going to vote to continue debate, many of them know that this man is as qualified as anyone we are going to get. He is as assured to make as good of decisions on behalf of the American people as anyone we are going to get. And he is equally as assured to vote different than many of us who will vote for or against him expect. Of that, I have no doubt.

I regret that it has taken us so long to confirm Judge Alito. I regret that it has turned into the spectacle that it has. But perhaps today we will invoke cloture, change things from where they are to where they should be, and with an up-or-down vote tomorrow, this deserving, honest, well-informed, good man will be confirmed.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. REID. Mr. President, the Presiding Officer knows that I don't always agree with him or he with me, but in response to the Senator from New Mexico about the process here, the Presiding Officer was exemplary in how Justice Breyer and Justice Ginsburg were chosen to be members of the Supreme Court. There have been books written about it and chapters of books written about it.

The Presiding Officer, as chairman of the Judiciary Committee, in communication with President Clinton, said: I don't like this person, this person, this person. And so there was a process set up, nonpublic in nature, where the chairman of the Judiciary Committee conferred with the President and his people and waded through lots of names that, in the judgment of the distinguished Senator from Utah, were not appropriate. Now we have two Members on the Supreme Court whom I think have distinguished themselves.

I wish we could have a procedure like that in the future. I think, I repeat, it was exemplary. That is the way things used to be done. I would hope in the future that the President's men and women would be willing to meet with their counterparts in the Senate and come up with a procedure that is somewhat along the lines of the distinguished Senator from Utah. I would hope that would be the case.

The hearings of Ginsburg and Breyer were short and directly to the point. I hope in the future we can do more of that. I extend my applause and congratulations to the Senator from Utah. No matter what happens in the future regarding the long career of the Senator from Utah in the Senate, this, as far as I am concerned, will be an important chapter in his public service.

THE PRESIDENT'S STATE OF THE UNION MESSAGE

Mr. President, tomorrow night, the President of the United States will come to the Capitol and deliver his fifth State of the Union Address. This is an important moment for the President and for the country. Some say, reading the op-eds over the last week or so, this may be the most difficult speech the President will ever give.

The President comes to the Capitol in the midst of also what some write about as the greatest culture of corruption since Watergate. Public trust has dropped significantly in this culture in Washington, and I need not run through all the problems, but I will run through some of them.

The majority leader in the House of Representatives was convicted three times of ethics violations. They even went so far as to change the rules so he could stay in his position after having been indicted. They changed the rules back because the hue and cry of the American people was so intense.

For the first time in 135 years, someone is indicted working in the White House. Mr. Safavian, appointed by the President to handle Government contracting—hundreds of billions of dollars a year—is led away from his office in handcuffs as a result of his dealings with Jack Abramoff and others.

So I think in his speech, the President is obligated to the American people to show that he is committed to restoring the bonds of trust and repairing the damage done by this corruption.

Americans know the country can do better today, and after the year we had, a year of trying to privatize Social Security, Katrina, failures in Iraq, Terri Schiavo, and a heavy heart I have, Mr. President, as a result of how a good woman was—I would not say destroyed because she was not; she is stronger than that. But Harriet Miers, how she was treated is unbelievable. A good woman was treated so poorly, and the people who tried to destroy her are the ones being rewarded now with the Alito nomination. Then, of course, this past year we had Medicare prescription drugs come into being, which is a puzzle that no one can figure out.

So the American people, after this year we have had, simply will no longer be able to blindly accept the President's promises and give him the benefit of the doubt.

Americans will be looking past his rhetoric tomorrow night and taking a hard look at the results he intends to deliver. The President's State of the Union Message is a credibility test. Will he acknowledge the real state of our Union and offer to take our country down a path that unites us and makes us stronger, or will he give us more of the same empty promises and partisanship that has weakened our country and divided Americans for the last 5 years?

If he takes the first approach, together, Democrats and Republicans can build a stronger America. If he gives us more of the same empty promises and Orwellian doublespeak, we know he intends to spend 2006 putting his political fortunes ahead of America's fortunes. We need a fresh start, and I hope President Bush realizes that tomorrow night.

There is much more at stake in his speech than poll numbers. Empty promises will no longer work. We need a credible roadmap for our future, and we need the President to tell us how together we can achieve the better America we all deserve.

Our first signal that the President intends to move our country forward will come in his assessment of the state of our Union. It is not credible for the President to suggest the state of the Union is as strong as it should be. The fact is, America can do much better. From health care to national security, this Republican corruption in Washington has taken its toll on our country. We can see it in the state of our Union.

What is the state of our Union? The state of our Union is that we are less safe in this world than we were 4½ years ago because the White House has decided protecting its political power is more important than protecting the American people.

We are the wealthiest Nation in the history of the world. Shouldn't we be the healthiest? Frankly, we are not because this administration decided to take care of the big pharmaceutical companies, the drug companies, the HMOs, managed care, instead of 46 million uninsured.

We have a national debt climbing past $8 trillion. I have a letter I received a short time ago from the Secretary of the Treasury saying the debt is at $8.2 trillion and we need to raise it more. Over $9 trillion is what they are asking because the President squandered the strongest economy in the history of this country with reckless spending and irresponsible tax breaks for special interests and multimillionaires.

We have an addiction to foreign oil that has climbed steadily over the last 4 years and doubled the price of heat for our homes and gas for our cars because the Vice President let big oil companies write our energy policy. And we have too many middle-class families living literally on the financial cliff. All statistics show the rich are getting richer, the poor are getting poorer, and the middle class is squeezing smaller and smaller all the time.

The economic policies of this administration over 5 years has placed the needs of the wealthy and well connected ahead of working Americans.

If President Bush is committed to making America stronger, he will acknowledge these facts Tuesday night. He will admit the steep price Americans have paid for this corruption, and he will proceed to tell us how he can make our country stronger.

Our second clue that the President is committed to moving America forward will come in his remarks about national security. Tomorrow night, it is not credible for the President to tell us he has done all he can to keep Americans safe for the last 5 years. We know that because we have had vote after vote on the Senate floor to take care of our chemical plants, our nuclear power facilities, to check the cargo coming into this country, what is in the belly of that airplane in the cargo, and vote after vote, on a strictly party-line basis, we have lost.

For all of this tough talk, President Bush's policies have made America less safe. His failed record speaks for itself.

Osama bin Laden, the man who attacked us on 9/11, remains on the loose because, in his rush to invade Iraq, the President took his eye off the ball when we had him cornered in a place called Tora Bora, Afghanistan.

As a result, he is gone. We don't know where he is, and he continues to threaten us today in his taunting, vicious, evil manner.

Then there is the President's "axis of evil." Four years ago, the President declared Iraq, Iran, and North Korea an "axis of evil" whose nuclear threats posed risk to the American people, and he was right. Well, mostly right. Instead of pursuing the correct policy to make it safer, he invaded Iraq. Now two members of the "axis of evil"—North Korea and Iran—are more dangerous, and after spending billions of dollars and losing 2,300 American lives, we found out that the third, Iraq, didn't pose a nuclear threat at all.

Then there is what this President has done to our military. Not only has he failed to properly equip our troops for battle—we know the stories are all over the country about 80 percent of our people who have been injured—that is 18,000 and 2,300 dead—80 percent of them would have been hurt less, many lives would have been saved had they had the body armor that was available.

According to the Pentagon's independent studies, the Pentagon is stretched—stretched in a manner, as indicated in the paper today, as having mass advancements in rank, which they have never done before, because they are trying to keep people in the military, among other things. Our forces are stretched entirely too thin.

The President's poor planning and refusal to change course in Iraq has made progress in 2006 harder to achieve. He has made it more difficult to spread democracy around the world because he has been undermining it right here at home.

As Katrina made clear, he failed in the 4 years after 9/11 to prepare America for the threats we face. New Orleans could have been anyplace in America. The difference with Katrina is we had warning it was coming. But other threats, that won't be the case.

America can do better. Tomorrow night, the President needs to provide a new way forward. Partisan attacks will only divide us. What we need is for the President to rally the country around our most important goal: protecting our people and our way of life.

Democrats have always been willing to work with President Bush to make America more secure. We know our national security policy is not the place for political games. Democrats look forward to hearing how the Commander in Chief will govern and hope we have seen the swagger and partisanship of the "campaigner in chief" for the last time.

Our third signal that President Bush understands what it will take to make the State of the Union strong will come when he talks about health care. Again, we are the wealthiest Nation in the history of the world. Shouldn't we be the healthiest? We are not. Because of the President's inaction on health care over the last 5 years, America faces a health care crisis of staggering proportions. There are 46 million Americans with no health insurance and millions more who are underinsured.

The cost of health care premiums has doubled since 2001. Manufacturing giants, such as Ford and General Motors, are laying off tens of thousands of people for lots of reasons, but one reason is health care costs have skyrocketed.

With a record such as that, it is not credible for the President to claim he has a vision to make health care affordable. He needs to present us new ideas that will move America forward, not trot out the same tired old policies that serve special interests and not the American people. Press reports, I fear, indicate we are in for the same old tired ideas. It is rumored that President Bush will again focus on something called health savings accounts.

This administration has taught me that what I learned in college studying George Orwell has some validity today. We have Orwellian doublespeak such as the Healthy Forests Initiative, one piece of legislation that was for clearcutting of trees and other things to make our forests less healthy; our Clear Skies Initiative, which polluted the skies; Leave No Child Behind, which is leaving children behind; and the Deficit Reduction Act of 2005. Talk about Orwellian doublespeak: using the President's own numbers, the Deficit Reduction Act increased the deficit by $50 billion.

Now he comes up with Health Savings Accounts. That is classic Bush doublespeak. It is not a credible solution to the health care crisis. This plan will force most Americans to spend more on health care while making it less available to millions of others. HSAs are nothing more than another giveaway to the same people the President has favored over hard-working Americans for the past 5 years. In fact, remember Social Security privatization? HSAs, or Health Savings Accounts, are a lot like that. They do nothing to solve the real problem. They make the situation worse for the American people and they create a financial windfall for the President's friends: HMOs, insurance companies and, of course, Wall Street, that will set up all these accounts.

We do not need the President to offer more of the same on health care. We saw with the President's Medicare prescription drug plan that his policies too often put special interests ahead of the American people. Ask any senior citizen today about how the Medicare plan has helped them. Even if they could work a crossword puzzle out of the New York Times on Sunday, which is the hardest, day after day after day, they still couldn't solve the Medicare Program of President Bush. It is impossible.

What we need is a new direction, one that puts families first. Democrats believe that addressing the health care crisis is not just a moral imperative, but it is also vital to our economic security and leadership in the world. Every day we go without reform is another day America takes another step backward from a position as global leader.

For our families, we must make health care affordable and accessible. For our businesses, we must remove the burden of skyrocketing costs that is holding our businesses, our economy, and our workers back in the global marketplace.

Our fourth clue that the President knows what America needs will come in his remarks about the economy. After all we have seen in the past 5 years, it will not be credible for the President to claim our economy is growing, that his plan to reduce his deficits—and I say his deficits—is working, and that Congress is to blame for spending and bad decisions. The truth is, the fiscal nightmare we see today belongs to President Bush and President Bush alone.

I love to watch golf on TV. I know I am not like a lot of people. I should be watching football or basketball or something. I love to watch golf on TV. It is a game of chess. Yesterday, Tiger Woods—this guy is fantastic. He is seven strokes behind after the first day. He has a bad day yesterday and wins the tournament. He has a bad day and wins the tournament.

I mentioned records—he holds all kinds of records. That was the 47th tournament he won—quicker than anyone else, of course. He just turned 30 years old. He won the Buick Open four times. That is what he won yesterday. He holds record after record. I mention these records because President Bush holds all the records. The highest deficit, he holds them all. There is not a close second. He has them all.

It is not a record the American people envy, such as that of Tiger Woods. His financial record has bankrupted this country. We are going to be asked in a couple of days to increase the deficit ceiling—over $8.2 trillion.

Here is another doublespeak Orwell would be proud of we are likely to hear tomorrow night. I am sure we are going to talk about the Bush competitive agenda. The President can talk all he wants about making America competitive, but for 5 years he has done nothing to keep America in the game. From what we have read in the press, this plan sounds like more empty rhetoric from a President who has spent 5 years slashing the funding we need to stay on the cutting edge. He shut the doors to thousands of college students by supporting cuts in student aid. He has allowed our country to fall further behind our trading partners. It is no accident what is happening in South America. President Reagan, President Clinton, and the first President Bush worked hard to democratize Central and South America. These countries are losing their democracy edge because we have so neglected them.

He has lavished billions on big oil instead of investing in American technology and know-how to make us more energy independent. We need to hear new economic ideas tomorrow night. The President needs to tell us how he is going to begin paying down the debt, his debt, so our children and our grandchildren do not pay the price for his reckless fiscal record.

It is so startling to me that Republicans—when I started my political career, they were the ones concerned about deficits. They have created them. They don't complain about them. It is stunning to me. The President has not vetoed a single spending bill. Of course, he hasn't vetoed anything, but why should he? We don't have separate branches of Government while he is here; the Republican Congress does whatever he wants. Maybe beginning the sixth year that will not be the case.

We need the President to speak honestly about tax relief, about middle-class families and how they deal with these energy prices. The truth about the Bush tax cuts is multimillionaires stand, with his newest proposal, to get over $100,000 while the average working family will receive pennies on that. The President's priorities are upside down. It is time for him to join us and bring fairness to our Tax Code.

Democrats are ready to work with President Bush, but he needs to commit to policies that put the needs of hard-working Americans first. One final signal that President Bush is committed to making America stronger will come on the issue of reform. Because of connections to the culture of corruption and stonewalling about Jack Abramoff, it is not credible for President Bush to claim the moral high ground on values as an honest government. President Bush needs to set an example, if he is going to lead our country forward tomorrow night. He needs to come clean about his connections to corruption, with Abramoff—as Republicans have called for. HAGEL, THUNE—Republican Senators have called for this. Too many Republicans have shown in recent days that we are going to obscure the facts and move on.

There is legislation pending. We do not need a task force. We need Senators LIEBERMAN and COLLINS to go ahead with the hearings and decide what needs to be done. Our legislation may not be perfect, but it is legislation we need to start with.

It is Republicans who control the White House where men are willing to break the law and ignore America's best interests so they can protect their political power. Safavian, Libby, Rove—it is Republicans who control the Congress which sold its soul to special interests and a Republican right-wing base, a base that has its sights set on stacking our courts with extremist judges. They have acknowledged that. It has been K Street, the so-called K Street Project, that has conspired with lawmakers to put the well connected first, going so far as having them not hire Democrats to work as representatives.

We have a plan to reform Washington. We need to bring it to the Senate floor. We need to do that. President Bush has to join with us. Anything less, we will know the President has no interest in changing his ways and making America stronger.

The President faces a tremendous test tomorrow night. It is up to him to prove to the American people he intends to denounce the culture of corruption that has come to Washington since he arrived and change direction in 2006. Democrats are ready to work with President Bush in order to move our country forward because we believe that together, America can do better. So tomorrow night I hope President Bush will join us in putting progress ahead of politics so we can have a State of the Union that is as honest and strong as the American people.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I rise today to discuss the President's nomination of Samuel A. Alito, Jr., to the Supreme Court of the United States. I am pleased to have an opportunity to discuss this and to present reasons why my conclusion is going to be as it is.

It is no secret that Judge Alito is from my home State and I was honored to introduce him to the Judiciary Committee. I talked with him privately in my office. He is an accomplished jurist from a distinguished family in New Jersey, and at that hearing our colleague from Pennsylvania, Chairman ARLEN SPECTER, asked me if I was endorsing Judge Alito for this position and I told him I was just presenting evidence to the committee and I will let the record speak for itself. I was not going to make any prejudgments. I wanted to hear from Judge Alito. I wanted to listen to his answers to my colleagues' questions.

This nomination, as all are when it comes to the Supreme Court, is an incredibly important moment for our Nation—particularly because Judge Alito has been nominated to replace Justice Sandra Day O'Connor. Justice O'Connor, over the past 25 years, has proven she is not an ideologically conservative Justice or a liberal Justice. She has not brought an agenda to the Court. That is why Justice O'Connor has been such an important swing vote—because she always studied the facts and the law and tried to apply them fairly.

I did not always agree with her. But, like many Americans, I knew she came at these legal questions fairly and with an open mind. She showed respect for precedent. She put the law above her personal beliefs. In my view, it is critical that we replace Justice O'Connor with someone who shares her open-minded approach of looking at the law and the facts with no political agenda. Even the mere threat of legal activism on this Supreme Court threatens the future of this country and the rights of our children, our grandchildren, and other generations.

Many legal experts—judges, lawyers, professors—have contacted me regarding this nomination. Some supported him, some opposed him. Many of these experts tried to convince me one way or the other. But when I listened to Judge Alito's hearings in the Judiciary Committee, I listened with the faces of my grandchildren in my mind; with the thoughts of ordinary people who depend on the fairness of our society. I was applying Judge Alito's philosophy to the real problems of everyday people—in New Jersey and across the Nation.

I often hear many concerns from my constituents about how powerless they feel in the face of insurance companies that are often indifferent to their plight, or as an employee unfairly treated in the workplace. What rights do everyday Americans have in the face of giant corporations or unchecked Government power? At the hearing, it was clear that Judge Alito almost always lined up against the little guy and with the big corporations and Government. That is the side he came out on. In fact, the Knight-Ridder study of Judge Alito's rulings showed that he "seldom sided with . . . an employee alleging discrimination or consumers suing big business."

The Washington Post analysis of all divided opinions on the Third Circuit involving Judge Alito found that he "has sided against three of every four people who claim to have been victims of discrimination" and "routinely . . . defers to government officials and others in a position of government authority."

I don't think that is what our Founders wanted when they designed the Constitution.

I want to give two examples. In Bray v. Marriott, an African-American motel worker in Park Ridge, NJ, alleged discrimination against her employer. The Third Circuit ruled that she deserved her day in court because there was enough evidence of discrimination. But Judge Alito dissented, citing concerns about the cost of trials to employers. Listen to that—citing concerns about the cost of trials to employers. I wonder if the Constitution makes any reference to that or does it say everybody should have equal rights when it comes to hearing their case in the courtroom?

The other judges in that case criticized Judge Alito's dissent, saying that if it were law, then the employment discrimination laws would have no real effect.

In another case, Sheridan v. Dupont, Judge Alito was the only judge of 11 judges who heard the case to find against a woman's claim of gender discrimination. Judge Alito stated that the alleged victim should not even get a trial. That is absolutely contrary to what our country is about. This is a nation of laws. The other judges were so distressed by Judge Alito's decision that they said "the judicial system has little to gain by Judge Alito's approach."

So if he is confirmed to the Supreme Court we ask ourselves the question: Will Judge Alito make it more difficult for the everyday people to protect themselves and their families against the power of big business and unchecked Government? Do they need the help? Is that what we are talking about when we enact laws here? I hope not.

Unfortunately, it appears almost certain.

Regarding individual rights, there was a very disturbing exchange in the hearing involving the Constitutional right to reproductive choice.

Senator DURBIN asked Judge Alito if he would agree with Chief Justice Roberts' statement that the right to choose is "settled law." It seems to me that it was a "no-brainer"—of course it is settled law. It has been on the books for 33 years and upheld 38 times.

You don't have to go to law school to figure that one out.

But Judge Alito refused to say it was "settled law." To me it was a telling moment in the hearings.

I am not a lawyer, but I understand this: The right to choose is settled law. That means that is the law as it is seen by Judge Roberts, Chief Justice.

Judge Alito's refusal to acknowledge that the right to choose is settled law indicates to me that, even before he sits on the Supreme Court, he intends to overturn Roe v. Wade.

That is the interpretation I make from that.

For everyday New Jerseyans, especially our State's women, that would be the realization of a nightmare. We do not want to turn back the clock on women's rights. Even if abortions become illegal, they will still happen—but largely in unsafe conditions. It's a nightmare that I do not want to risk happening.

Then there is the issue of abuse of power and the power of the Presidency.

Growing up in New Jersey, it is clear that our state is proud of our role in the American War for Independence. More battles of the Revolutionary War were fought in New Jersey than in any other state. The most famous image of that war is George Washington crossing the Delaware River at Trenton.

New Jersey is a state of immigrants. Many New Jerseyans came to America to escape kings, despots and dictators. So we understand why we fought the War of Independence to get rid of King George.

America doesn't want a king or an "imperial President." Neither does New Jersey. That's why we have three co-equal branches of government.

So when Judge Alito talked about his theory of a "unitary executive"—a President above the other two branches of government—I found that very troubling.

The Father of our Nation, George Washington, warned the American people about allowing a leader to claim too much power. In his farewell address to the nation, Washington indicated his concern about the Presidency becoming too powerful.

He said we should avoid allowing:

> the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism.

Those are Washington's words. But they have a real resonance today.

The current administration claims a power beyond the laws that Congress has set. It is an administration that believes it can spy on Americans without a warrant, despite specific laws to the contrary. These are the kinds of abuses that caused the citizens of New Jersey and the other American colonies to rise up against King George

We don't want a King. And we don't want to create a Supreme Court that will crown this President—or any future President—Republican or Democratic.

The question before us is not a generic question of whether Judge Alito is qualified for the Supreme Court. The real question is whether Judge Alito is the right person for this seat on the Supreme Court. The seat at issue is Sandra Day O'Connor's seat. It is a seat held by a middle of the road, balanced justice.

As I noted during my testimony introducing Judge Alito to the Judiciary Committee: he is a young man. If the Senate confirms him for a lifetime appointment to the Supreme Court, he might serve for three decades—or even longer. His decisions would affect not only our rights, but also the rights of our children, our grandchildren and other future generations.

That's why, after careful consideration and deliberation, I have decided to vote no on the confirmation of Judge Alito. He is a good, decent man—an ethical man. I do not think he subscribes to any bigoted views. But I believe there is a grave risk that he carries a legal agenda with him, one that he will bring to the Supreme Court.

I don't think this is a black-and-white issue. I think it is a gray issue. If there is a gray issue, if there is doubt about where we are going to come out, I want to decide on protecting women's rights and protecting ordinary people in fairness before a court of law.

While there will be law professors and others who will disagree with my analysis, as I said before, I am more concerned about the effect of this nomination on everyday people in New Jersey and across the country.

I am proud that there is a Federal courthouse in Newark that carries my name. It was while I was absent from the Senate a while that that was done. But I fought hard to get an inscription placed on the wall of that courthouse. I wrote it. It reads:

> The true measure of a democracy is its dispensation of justice.

This Nation of laws has to continue to be just that, and people have to know that they are treated fairly and that their personal rights are protected and that they can bring courses of action if their rights are damaged.

I believe in that quote. It guides me today.

For the parents fighting an insurance company for access to health care for their child, for the blue-collar worker facing harassment in the workplace, for women who want government's hands off their bodies, for everyday people, I will oppose this nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. MENENDEZ. Mr. President, I rise, for the first time in this body, to speak on the nomination of Samuel Alito to serve on the Supreme Court of the United States. No matter one's political persuasion, we all take pride in the honor that has been bestowed on a fellow New Jerseyan.

Samuel Alito's story is one that rings familiar to so many New Jerseyans, including myself. His parents came to this country in search of opportunity, and worked hard to build a better life for their children. The son of immigrants, Judge Alito's life is a story that demonstrates the power of seizing opportunity and working hard.

Frankly, it is a story close to my own heart. I too, am the son of immigrants who came to New Jersey to seek a better life and greater opportunity. Thanks to their hard work, and my own, I was the first in my family to graduate from college and law school.

Yet home State pride is not a sufficient reason for supporting a nominee. For a Supreme Court appointment is a life-time appointment. When the Supreme Court decides, it is the law of the land and their decisions affect the lives of millions of Americans. So, it's not where you come from that matters, but where you will take the nation.

Sam Alito has served his entire legal career in public service, and for that he is to be commended. His work as a prosecutor and as an appellate judge for the past 15 years has given him substantial experience. In his hearings and his meeting with me, he demonstrated that he has a keen intellect. Judged simply by that standard, Sam Alito is ready to serve.

But competence and intellect is the very least we should expect from someone seeking a lifetime appointment to the highest court in the land. Indeed, competence alone might be enough for a nominee for one of a myriad of other appointments. But this is about the Supreme Court of the United States. The Supreme Court, alone among our courts, has the power to revisit and reverse its previous decisions. So surely, we should also demand that our justices fairly interpret the law, respect judicial precedent, and properly balance the rights of individuals and the power of the state. Above all, we should demand that they check their personal beliefs at the door.

The seat that Judge Alito hopes to fill is one of great importance. Justice O'Connor has been the deciding vote in key cases protecting individual rights and freedoms on a narrowly divided Court, and the stakes in selecting her replacement are high. I have not agreed with every one of her decisions. But she has shown throughout her tenure a respect for law over ideology and a commitment to deciding each case not on the personal views she brought to the bench, but on the facts before her. When some on the court sought to inject an activist political philosophy into judicial decision-making and to turn back the clock on the liberties afforded the American people under the Constitution, it was Justice O'Connor who blocked their path.

I had hoped Judge Alito would clearly demonstrate that he shares the commitment to protecting the individual rights and freedoms that Justice O'Connor so often cast the deciding vote to defend. Decades of progress in protecting basic rights, including privacy, women's rights, and civil rights, are at stake with this nomination. The burden was on Judge Alito to be forthright and unambiguous in his answers.

Unfortunately, his testimony was not reassuring and his record makes clear what kind of justice Judge Alito would be. A justice who would vote to overturn a woman's right to choose, a justice who has time and time again sided with corporations and against average Americans, a justice who would allow this administration to continue to stretch and potentially violate its legal and constitutional authority. Especially with the challenges our Nation faces today and will face tomorrow, America cannot afford that kind of justice.

We live in extraordinary times today. President Bush has sought the accumulation of unprecedented powers. He has asserted the authority to not only torture detainees and indefinitely detain American citizens as enemy combatants, but to also conduct warrantless wiretapping of American citizens.

At different times throughout our country's history, Presidents under the cloak of Commander-in-Chief have exercised excessive authority that has eroded individual rights and freedoms in the name of protecting the Nation. Over 200 years ago, our Founding Fathers purposely established our Nation's government with three distinct coequal branches to help prevent this concentration and abuse of power. An independent judiciary, part of our country's long and proud history of checks and balances, is the only thing that stands between the executive branch and these potential threats to our rule of law.

In 2004, the Supreme Court stood up for the rule of law when it found that the President cannot ignore the Constitution and confine American citizens indefinitely without the ability to challenge their detentions. Decisions such as this, which recognize that our Nation's security is enhanced rather than undermined by respect of the rule of law, are what has always made the United States the envy of people around the world.

The bias Judge Alito has shown in favor of the executive branch threatens to undermine the freedoms that our judiciary has historically protected. From his work as a government lawyer to a speech before the Federalist Society in 2000, he consistently favors the concentration of unprecedented power in the hands of the President, even endorsing the so-called "unitary executive" theory that even many conservatives view as being at the fringe of judicial philosophy. It virtually gives the presidency exclusive powers that historically have belonged to either Congress or the courts. This theory is an activist theory, not a theory that reflects mainstream American thinking or values. In fact, the Supreme Court has largely rejected it.

Judge Alito has also backed granting absolute immunity to high-ranking Government officials who authorized illegal, warrantless wiretaps of American citizens, which is another position the Supreme Court has rejected. As far back as the Reagan administration, he has advocated that the President issue signing statements in an effort to shape the meaning of legislation. President Bush has often used this practice, most tellingly in December when he claimed the administration could ignore the new law banning torture whenever he sees fit. This undermines one of the coequal branches of our government, the people's elected representatives of the United States Congress.

Judge Alito has found against congressional authority when he argued in dissent in United States v. Rybar against a ban on machine guns that five other appellate courts and the Third Circuit itself upheld. Judge Alito also authored the majority opinion in Chittister v. Department of Community and Economic Development, invalidating parts of the Family and Medical Leave Act for exceeding the bounds of congressional authority—a position the Supreme Court subsequently rejected.

Several in-depth reviews show, Judge Alito's rulings, especially his dissents, consistently excuse actions taken by the executive branch that infringe on the rights of average Americans. One study found that 84 percent of Judge Alito's dissents favor the government over individual rights. Another, the Alito Project at Yale Law School conducted a comprehensive analysis of the Judge's 15 years on the Federal bench. They found that "Judge Alito has permitted individuals to be deprived of property or liberty without actual notice or a prior hearing."

During his hearings and in my meeting with him, Judge Alito did nothing to distance himself from these positions; in fact, by refusing to candidly discuss where he stands on executive power, he only strengthened my concerns about his views.

If it's not where you come from that matters, but where you will take the nation, does a Supreme Court with Justice Alito take the nation forward or move our Nation back?

Back to a time when a President suspended the writ of habeas corpus; back to a time when a President ordered the internment of individuals based upon their ethnicity; and back to a time when a President ordered the unlawful breakins and wiretaps against his opponents.

Our next Supreme Court justice must be a check and balance against broad Presidential powers that are inconsistent with our Constitution.

With respect to reproductive rights, Judge Alito told the members of the Judiciary Committee that he would look at such cases with an "open mind." However, he has, throughout his career, written that the Constitution does not protect a woman's right to choose, worked to incrementally limit and eventually overturn Roe v. Wade, so narrowly interpreted the "undue burden" standard in one specific case as to basically outlaw this right for an entire group of women, and refused to state whether Roe is "settled law."

When asked by Judiciary Committee Chairman SPECTER whether he continues to believe that the Constitution does not protect the right to choose, as he wrote in his 1985 job application at the Department of Justice, Judge Alito acknowledged that it was his view in 1985, but refused to say whether or not he holds that view today. I found Judge Alito' s refusal to answer this question extremely troubling.

Later, as an Assistant Solicitor General, Judge Alito wrote a memo outlining a new legal strategy that the Reagan administration could use to "advance the goals of bringing about the eventual overruling of Roe v. Wade and, in the meantime, of mitigating its effects."

As a judge on the Third Circuit Court of Appeals, Judge Alito alone concluded that all of the Pennsylvania restrictions, including the spousal notification provision, should be upheld as constitutional in Planned Parenthood v. Casey. Ultimately, the Supreme Court found 5-4 that the spousal notification provision was unconstitutional. Justice O'Connor, who wrote the opinion, rejected Judge Alito's arguments and wrote that the spousal notification provision constituted an impermissible "undue burden" on reproductive rights. She concluded by saying "Women do not lose their constitutionally protected liberty when they marry."

During our meeting, when I asked Judge Alito, "Do you believe Roe v. Wade is the 'settled law' of the land," he was unwilling to say that it is settled law. During the Judiciary Committee hearing, he said multiple times in response to questions from three of my distinguished colleagues on the Committee that the principle of stare decisis, or respect for precedent, is not an "inexorable command." While this is undoubtly the case, this language is exactly what Justice Rehnquist used in his dissent in Planned Parenthood v. Casey when arguing that Roe should be overturned. Justice Rehnquist wrote, "In our view, authentic principles of stare decisis do not require that any portion of the reasoning in Roe be kept intact. 'Stare decisis is not . . . a universal, inexorable command.'"

Because I was concerned that his approach to these issues is far different than Justice O'Connor's, I gave Judge Alito every opportunity in our meeting to alleviate my concerns and those expressed by many New Jerseyans. I regret that he did not do so.

If it's not where you come from that matters, but where you will take the Nation, does a Supreme Court with Justice Alito take the nation forward or move our Nation back?

What does Morning in America look like after Judge Alito becomes a Supreme Court justice? Will it be an America where a woman's constitutional right to privacy is not acknowledged? Will it be an America where a woman does not have access to the best medical care? Will it be an America where women do not control their own bodies?

Our next Supreme Court justice must respect both the constitutional right to privacy and a woman's right to choose.

Our Nation's civil rights are needed to provide equal rights in employment, voting, or disability, they are designed to eliminate discrimination from our society and to provide equal opportunity and access. These laws are often the direct result of our country's civil rights movement.

Unfortunately, Judge Alito has consistently applied a narrow interpretation of civil rights laws. Over his 15-year judicial career, he has more often than not sided with corporations and against individuals.

In five split decisions involving a claim of sex discrimination, Judge Alito has sided with the person accused of the sex discrimination every time. In Sheridan v. E.I DuPont de Nemours, a woman brought a gender discrimination lawsuit after being denied a promotion. A jury ruled in her favor, but the trial judge threw out the verdict. The full complement of the Third Circuit voted 10–1 to reverse the judge's decision in this sex discrimination case and remand the case for reconsideration. Judge Alito wrote the lone dissent, arguing that the case should be dismissed. If Judge Alito's view was the law of the land, virtually no woman who has been wrongfully denied a promotion based upon her gender would have her day in court.

In the area of race discrimination, Judge Alito voted in dissent against the plaintiff in both split decisions cases. The Third Circuit held that the plaintiff in Bray v. Marriot Hotels had shown enough evidence of possible racial discrimination to merit a trial before a jury. As in Sheridan, Judge Alito dissented, saying that the plaintiff had not produced enough evidence even to get to a trial of a jury of their peers. If Judge Alito's view was the law of the land, virtually no person of color would be able to pursue discrimination based on race in the courts of our nation.

From the bench, Judge Alito has participated in five split decisions in the area of disability rights law and he sided with the defendant four out of the five times. In Nathanson v. Medical College of Pennsylvania, relating to a college's knowledge of and response to the disability needs of a student, the majority held that the facts required a jury to hear her claims. Judge Alito disagreed with the majority, writing that Nathanson failed to prove that the college acted unreasonably in its responses to her requests for alternative seating arrangements. If Judge Alito's view was the law of the land, virtually no disabled person denied alternative accommodations could seek relief from the court.

These are only symbolic of the many cases where Judge Alito would say no to the average American citizen.

If someone's daughter was seeking relief from discrimination based upon her gender, Judge Alito would say no. If an American of color was seeking relief from discrimination based upon their race, Judge Alito would say no. If someone's handicapped son was seeking relief from discrimination based upon his disability, Judge Alito would say no. Judge Alito would make it virtually impossible for an individual to go to court when his or her rights were violated, and have their day of judgment.

If it's not where you come from that matters, but where you will take the Nation, does a Supreme Court with Justice Alito take the Nation forward or move our Nation back?

Back to a time when there was not equal access to schools and government programs, back to a time when employers could fire employees without just cause; and back to a time when all citizens were not guaranteed the right to vote.

Our next Supreme Court justice must truly subscribe to the inscription above the entrance to the United States Supreme Court—"Equal Justice under Law."

The confirmation of a Supreme Court justice is one of the two most important responsibilities that a Senator has, in my view. The first is a decision on war and peace, which is also about life and death. The other is deciding who will have a lifetime appointment to the Court that decides the laws of the land.

Make no mistake about it, Judge Alito is a decent, accomplished, intelligent man. A man who is proud to call our shared State of New Jersey home. But it is not enough to come from New Jersey—the test is—will you represent the values of New Jersey and this Nation on the highest court in the land?

In New Jersey we value creating opportunity, we cherish the idea of individual freedom and responsibility, and we believe that justice is a force that should level the playing field between the individual and the powerful.

I have given careful consideration to this nomination, and I entered the process with hopes of supporting Judge Alito. This is my first vote in this Senate, and I had hoped to cast it in support of this nominee, but after reviewing his record, and his testimony before my fellow Senators, I cannot.

The question for me has been will he tilt the court in its ideology so far that he will place in jeopardy decades of progress in protecting individual rights and freedoms. I am afraid that answer is yes. In good conscience, I regrettably cannot support his nomination for a lifetime appointment to be an Associate Justice of the Supreme Court of the United States.

I yield the floor.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Missouri.

Mr. BOND. Mr. President, on the question of the confirmation of Judge Samuel Alito, when you boil everything down and clear away all of the other issues, the most important thing each of us wants from a judge is fairness and impartiality. None of us would want to go into a courtroom and think our judge had already made up his mind before hearing our case. Whether we are rich or poor, weak or strong, but especially if we are poor or weak, victim or defendant, we need to know we will get a fair trial.

We would not get a fair trial if we faced a judge who had already made up his mind. Not only would the deck be stacked against us, we would be dealt a losing hand if we had to face a judge with an agenda different from our case. That is what justice means—impartial and objective. That is the kind of judge we want hearing our case, and that is the kind of judge Sam Alito is.

Everything we have learned about Judge Alito, from his testimony before the Senate Judiciary Committee, his lengthy record of decided cases, to the testimonials of his colleagues and peers, tells us that Judge Alito will be a fair, impartial, and objective Justice.

Judge Alito has told us how he believes a judge cannot prejudge an issue, a judge cannot have an agenda, a judge cannot have a preferred outcome in any particular case.

I was so glad to see that during his confirmation hearing Judge Alito would not allow himself to be forced into prejudging any cases. Now, many tried. They went down their list of issues and asked whether Judge Alito agreed with their agenda. They wanted to know how he would rule on one kind of case or another. They wanted him to decide cases before he even heard them. That would not be justice, and that would not be Judge Alito.

Not only does Judge Alito know justice, Judge Alito knows democracy. Democracy means that laws governing the people can only be made by those elected by the people to make laws. He knows the Members of Congress are elected to make laws. The citizens of Missouri elected their Representatives and Senators to represent them in Congress, the legislative body. I am honored to be one of those so chosen. Judge Alito is not.

The citizens of Missouri are not electing Judge Alito to make laws. Judge Alito knows he will not have the power to make laws. Judge Alito knows he is neither a Congressman nor a Senator who can pass his own legislation from the bench. That is not the role of a judge.

Judge Alito knows he is not a politician advocating a program. That is not what a judge should do. He is not a politician responding to a stakeholder, carrying out the agenda of his constituency, whether it be New Jersey or any other State in the Nation, taking the pulse of voters or watching the polls. That is not how to be a judge.

Judge Alito has told us he will look at the facts with an open mind and then apply the Constitution and the laws as written. He will not make up the law when he wants, he will not change the law when he needs.

Judge Alito also knows the law, as many of my colleagues on the Senate Judiciary Committee found out. At every stage of his life, he has excelled at knowing and applying the law. As a law clerk to a Federal judge, Department of Justice official, Federal prosecutor, and now a Federal appellate judge with 15 years experience on the bench, Judge Alito is one of the most qualified ever nominated for the Supreme Court.

A very good friend of mine is an appellate judge, who in law school had the pleasure of supervising a legal document written by Judge Alito. He told me Judge Alito had the finest legal, judicial mind he had ever encountered. I trust his judgment.

Judge Alito's peers and colleagues all agree that Judge Alito is supremely qualified for the Supreme Court. He comes highly recommended by his colleagues and members of the legal profession because of his legal knowledge and experience. Even those who have worked with Judge Alito and disagree with him on the issues or the outcome of his rulings consider him fair-minded and evenhanded.

In short, Judge Alito will make a great Supreme Court Justice. Unfortunately, and regrettably, the Senate's vote will not reflect that. Perhaps it was a simpler time, less partisan, less subject to politics, less subject to the whims of shifting constituencies and pressure groups when we could overwhelmingly support those overwhelmingly qualified for the Court.

For example, both Justices Ginsburg and Scalia received unanimous or near unanimous approval. One came from the left, nominated by a Democratic President, and an advocate for the ACLU: another is a brilliant legal mind, supported by the right. Partisan politics were put aside when we voted for these Supreme Court nominees.

Unfortunately, there are those who want to use Judge Alito as a political football. I, for one, believe very strongly our judges and our justice system should be above partisan politics. Justice deserve better than to have the nominees dragged through the political mud.

My focus is on the nominee himself and on his legal knowledge and experience. In that regard, Judge Alito should be on the Supreme Court, and I will proudly vote to place him on the Supreme Court.

Every case he hears, he will approach with an open mind. Every case he considers, he will apply the law and Constitution as written. Every case he decides, he will check his personal feelings at the door and weigh the scales of justice.

We can expect, and should expect, nothing more from a Justice, and justice deserves nothing less.

I urge my colleagues to put aside partisan politics, to put aside pressure from special interests, to vote to invoke cloture, and then to vote on a majority vote to confirm Justice Alito to the Supreme Court.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I have in my hand a number of endorsement letters that have been written, starting with the Grand Lodge of the Fraternal Order of Police. I ask unanimous consent that these letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

GRAND LODGE,
FRATERNAL ORDER OF POLICE,
Washington, DC, November 18, 2005.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

Hon. PATRICK J. LEAHY,
Ranking Member, Committee to the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN AND SENATOR LEAHY: I am writing on behalf of the membership of the Fraternal Order of Police to advise you of our strong support for the nomination of Samuel A. Alito, Jr. to be an Associate Justice on the United States Supreme Court.

Judge Alito has a long and distinguished career as a public servant, a practicing attorney, and a Federal jurist. He currently serves as a justice on the U.S. Court of Appeals for the Third Circuit, the very same Circuit where he began his career as a law clerk for Judge Leonard I. Garth. Judge Alito spent four years as an Assistant U.S. Attorney before becoming an Assistant to the U.S. Solicitor General in 1981. During his tenure with the Solicitor's office, he argued thirteen cases before the United States Supreme Court, winning twelve of them. In 1985, he served as Deputy Assistant U.S. Attorney General before returning to his native New Jersey to serve as U.S. Attorney in 1990. Nominated by President George H.W. Bush to the Third Circuit, the Senate confirmed him unanimously on a voice vote.

The F.O.P. believes that nominees for posts on the Federal bench must meet two qualifications: a proven record of success as a practicing attorney and the respect of the law enforcement community. Judge Sam Alito meets both of these important criteria. In his fifteen years as a Federal judge, he has demonstrated respect for the Consistution, for the rights of all Americans, for law, and for law enforcement officers, who often find it very difficult to successfully assert their rights as employees. Judge Alito demonstrated his keen understanding of this in a case brought by Muslim police officers in Newark, New Jersey (*Fraternal Order of Police Newark Lodge No. 12* v. *City of Newark*, 1999). The Newark Police Department sought to force these officers to shave their beards, which they wore in accordance with their religious beliefs. Judge Alito ruled in favor of the officers in this case, correctly noting that the department's policy unconstitutionally infringed on their civil rights under the First Amendment.

The F.O.P. is also very supportive of Judge Alito's decision in a 1993 decision filed by a coal miner seeking disability benefits under the Black Lung Benefits Act (*Cort* v. *Director, Office of Workers' Compensation Programs*). Judge Alito ruled in favor of a coal miner, holding that the Benefits Review Board which denied the miner's claim had misapplied the applicable law regarding disability. He ordered that the case be remanded for an award of benefits, instructing that the Board could not consider any other grounds for denying benefits. Members of the F.O.P. and survivor families who have been forced to appeal decisions which denied benefits under workers' compensation laws or programs like the Public Safety Officer Benefit (PSOB) know first-hand just how important it is to have a jurist with a working knowledge of applicable law and a strong identification with the claimants as opposed to government bureaucrats looking to keep costs down.

Judge Samuel A. Alito, Jr. has demonstrated that he will be an outstanding addition to the Supreme Court, and that he has rightfully earned his place beside the finest legal minds in the nation. We are proud to support his nomination and, on behalf of the more than 321,000 members of the Fraternal Order of Police, I urge the Judiciary Committee to expeditiously approve his nomination. Please do not hesitate to contact me, or Executive Director Jim Pasco, through our Washington office if we may be of any further assistance.

Sincerely,

CHUCK CANTERBURY,
National President.

NOVEMBER 9, 2005.

Hon. BILL FRIST,
Majority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.
Hon. HARRY REID,
Minority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.
Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.
Hon. PATRICK LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MAJORITY LEADER FRIST, MINORITY LEADER REID, CHAIRMAN SPECTER, AND RANKING MEMBER LEAHY: We are former law clerks of Judge Samuel A. Alito, Jr. We are writing to urge the United States Senate to confirm Judge Alito as the next Associate Justice of the United States Supreme Court.

Our party affiliations and views on policy matters span the political spectrum. We have worked for members of Congress on both sides of the aisle and have actively supported and worked on behalf of Democratic, Republican and Independent candidates. What unites us is our strong support for Judge Alito and our deep belief that he will be an outstanding Supreme Court Justice.

Judge Alito's qualifications are well known and beyond dispute. Judge Alito graduated from Princeton University and Yale Law School. Prior to his appointment to the bench, Judge Alito had a distinguished legal career at the Department of Justice, which culminated in his appointment as the U.S. Attorney for the District of New Jersey. Judge Alito has served on the United States Court of Appeals for the Third Circuit for 15 years and has more judicial experience than any Supreme Court nominee in more than 70 years. During his time on the bench, Judge Alito has issued hundreds of opinions, and his extraordinary intellect has contributed to virtually every area of the law.

As law clerks, we had the privilege of working closely with Judge Alito and saw firsthand how he reviewed cases, prepared for argument, reached decisions, and drafted opinions. We collectively were involved in thousands of cases, and it never once appeared to us that Judge Alito had pre-judged a case or ruled based on political ideology. To the contrary, Judge Alito meticulously and diligently applied controlling legal authority to the facts of each case after full and careful consideration of all relevant legal arguments. It is our uniform experience that Judge Alito was guided by his profound respect for the Constitution and the limited role of the judicial branch. Where the Supreme Court or the Third Circuit had spoken on an issue, he applied that precedent faithfully and fairly. Where Congress had spoken, he gave the statute its commonsense reading, eschewing both rigid interpretations that undermined the statute's clear purpose and attempts by litigants to distort the statute's plain language to advance policy goals not adopted by Congress. In short, the only result that Judge Alito ever tried to reach in a case was the result dictated by the applicable law and the relevant facts.

Our admiration for Judge Alito extends far beyond his legal acumen and commitment to principled judicial decision-making. As law clerks, we experienced Judge Alito's willingness to consider and debate all points of view. We witnessed the way in which Judge Alito treated everyone he encountered—whether an attorney at oral argument, a clerk, an intern, a member of the court staff, or a fellow judge—with utmost courtesy and respect. We were touched by his humility and decency. And we saw his absolute devotion to his family.

In short, we urge that Judge Alito be confirmed as the next Associate Justice of the Supreme Court.

Sincerely,
Signed by 51 former clerks.

EDWARDS ANGELL
PALMER & DODGE LLP,
New York, NY, November 23, 2005.

Re Samuel A. Alito.

U.S. Senate,
Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR MEMBERS OF THE SENATE JUDICIARY COMMITTEE: I am writing to express my enthusiastic and unqualified recommendation that Samuel A. Alito be confirmed as an Associate Justice of the United States Supreme Court.

I worked with Judge Alito in 1987. He was appointed United States Attorney for the District of New Jersey. At that time I was the Deputy Chief and Acting Chief of the Special Prosecutions Unit. I continued in that capacity for approximately eight months after Sam arrived at the U.S. Attorney's Office. He was an exemplary U.S. Attorney. He was also an exemplary boss. He was at all times knowledgeable, thoughtful and supportive of me and the other lawyers in the office. In his quiet and wryly humorous way, he demonstrated wonderful leadership. It was clear that he was very conscious of the responsibilities of that office and he fulfilled those responsibilities admirably. I was very proud to work for Sam Alito.

After leaving the U.S. Attorney's Office, I became a private practitioner. I have had the pleasure of appearing as an advocate before Judge Alito in the United States Court of Appeals for the Third Circuit in a number of cases. It is a pleasure to appear before Judge Alito due to his genial demeanor and obvious professionalism. His opinions—even when against my cause—were thoughtful, considerate, justifiable and well written.

Judge Alito did not ask me to write this letter; I volunteered. I am a lifelong Democrat. I am the President-elect of a national women's bar association. I chair the Corporate Integrity and White Collar Crime group at a national law firm. I do not speak on behalf of either my law firm or the women's bar association. I speak for myself only. But by providing my credentials as an outspoken women's rights advocate and liberal-minded criminal defense attorney, I hope you will appreciate the significance of my unqualified and enthusiastic recommendation of Sam Alito for the Supreme Court.

Sam possesses the best qualities for judges. He is thoughtful, brilliant, measured, serious, and conscious of the awesome responsibilities imposed by his position. I cannot think of better qualities for a Supreme Court Justice. It is my fervent hope that politics will not prevent this extraordinarily capable candidate from serving as Associate Justice on the United States Supreme Court.

I will be happy to provide any further details or information in any private or public forum.

Respectfully submitted,
CATHY FLEMING.

JANUARY 4, 2006.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.
HON. PATRICK LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN AND SENATOR LEAHY: We write in support of the nomination of Judge Samuel A. Alito, Jr. to the United States Supreme Court. Each of us has devoted a significant portion of our legal practice or research to appellate matters. Although we reflect a broad range of political, policy and legal views, we all agree that Judge Alito should be confirmed by the Senate. Judge Alito has a well-deserved reputation as an outstanding jurist. He is, in every sense of the term, a "judge's judge." His opinions are fair, thoughtful and rigorous. Those of us who have appeared before Judge Alito appreciate his preparation for argument, his temperament on the bench and the quality and incisiveness of the questions he asks. Those of us who have worked with Judge Alito respect his legal skills, his integrity and his modesty. In short, Judge Alito has the attributes that we believe are essential to being an outstanding Supreme Court Justice and therefore should be confirmed. Thank you for considering our views.

Sincerely,
Signed by 206 lawyers.

Mr. CORNYN. Mr. President, I also have in my other hand a series of editorials, starting with a Dallas Morning News editorial entitled "Confirm Alito." These are all editorials from newspapers around the country recommending that this body confirm Judge Alito. I ask unanimous consent that these editorials be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Dallas Morning News, Jan. 14, 2006]

CONFIRM ALITO: NOMINEE DESERVES SENATE'S BACKING

After hearing Samuel Alito testify this week, this editorial board's assessment is that the appellate judge has the intellectual breadth and legal depth to sit on the Supreme Court. With few exceptions, he fielded Senate Judiciary Committee questions with a ready grasp of case law and nuance.

He also came across as quite reasonable. Just as Clinton nominee Stephen Breyer struck senators as a mainstream liberal, Mr. Alito resides within the 40-yard lines of conservatism.

We offer this conclusion—and our recommendation of him—after comparing his testimony with several questions we raised Monday.

First, his embrace of judicial precedent was persuasive enough to conclude he wouldn't rush to overturn Roe vs. Wade. He didn't go as far as John Roberts in saying the abortion rights case is settled law. But he repeatedly emphasized his belief in building upon previous decisions.

True, factors could lead him—or any justice—to reconsider a ruling, but they would be extraordinary ones. We'll sum it up this way: Based upon his testimony, we'd feel very misled and deeply disappointed if he joined in an overthrow of Roe.

Second, he allayed fears he wholly prefers presidential power. He left wiggle room on issues such as where the president can deploy troops without congressional authority. But he didn't live up to his billing as a justice who'd make light of checks and balances. Most notably, he agreed presidents don't possess unlimited power, even during war.

Third, his objections to the "one man, one vote" doctrine appeared mostly technical. For example, he wondered whether it meant congressional districts should have an exactly equal amount of voters each term. He unveiled no willingness to undo the ruling that ensures fair voting weight for minorities.

It was unsettling that some of the nominee's views appeared different from earlier speeches or writings. A couple of times, his answers had a disturbing then-and-now quality. But Samuel Alito's testimony showed he could become a thoughtful conservative justice. The Senate should give him that opportunity.

[From the Miami Herald, Jan. 24, 2006]

Qualified To Serve on the Supreme Court

There is little doubt that in the coming days the Senate will confirm the nomination of Judge Samuel Alito to replace Justice Sandra Day O'Connor on the U.S. Supreme Court. He deserves to be confirmed. This is not an assessment of his judicial philosophy but of his undoubted qualifications for the job. He has the intellectual heft, judicial temperament and fealty to the U.S. Constitution that are prerequisites for a Supreme Court justice. In 15 years on the federal appellate bench, he has demonstrated a sure grasp of issues.

Critics have sought to paint Judge Alito as an ideologue whose views are out of the judicial mainstream. In the past, we have found this a reason to raise doubts about some of the more extreme nominations for the federal appeals courts. However, this is not a fair argument to raise against Judge Alito.

According to statistics compiled by the Court of Appeals for the Third Judicial Circuit, Judge Alito has dissented only 16 times in the last six years, fewer times than some of his colleagues. On civil-rights cases, his co-panelists agreed with Judge Alito's votes and written opinions 94 percent of the time. It is possible to take issue with some of his views in those instances where he was in dissent, but this isn't the record of a judge on the fringe of mainstream judicial thinking.

During 18 hours of hearings—almost twice as long as the interrogation of John Roberts—Judge Alito displayed a deep understanding of the legal issues the court is likely to confront and kept cool under fire. He did everything possible to avoid saying how he would rule on some of the controversial issues, but that is hardly surprising. Unfortunately, given the divisiveness in Washington today too much candor can prove fatal to a nominee.

In nominating Judge Alito, President Bush fulfilled a campaign promise to appoint judges who shared the views of Justices Clarence Thomas and Antonin Scalia. Thus, he delivered a candidate with sound credentials but a decidedly conservative record that many find troubling.

This record includes a narrow view of abortion rights, apparent support for the expansive powers of the presidency in wartime and a narrow interpretation of the regulatory authority of Congress. Judge Alito likely will help move the court rightward, and some senators, no doubt, will find this a compelling reason to vote against him.

No justice should be denied a seat on the court, however, solely on the basis of judicial philosophy, particularly someone of Judge Alito's proven ability and experience. The best way for critics—Democrats, mostly—to prevail when it comes to selecting federal judges is to prevail at the ballot box.

[From the Milwaukee Journal Sentinel, Jan. 15, 2006]

Supreme Court; Alito Deserves Confirmation

Samuel Alito should be confirmed to the U.S. Supreme Court.

And, barring any last-minute disqualifying revelations, the first step toward that goal should be yes votes in the Senate Judiciary Committee, including from Wisconsin's two senators, both of whom sit on that committee.

Democrats are understandably concerned about specific red flags in Alito's record but should nonetheless reject a filibuster. Nor should they move, as it appeared likely late last week they would, to delay the committee's vote. Both would be antithetical to the democratic process in this specific case.

That's because, though we would have preferred Alito to be more open about his judicial philosophy, he did make one case quite effectively. He is a conservative jurist. This is what the electorate, albeit narrowly, indicated it wanted when it reelected George W. Bush as president in 2004. There can be no reasonable claim that voters did not know this to be a likely consequence of their votes.

Yes, Alito's views peg him as closer to a constitutional originalist than one with more expansive views of that document, a view we prefer. But Alito is likely not the wildeyed, knee-jerk ideologue his critics have depicted. Instead, a broad view of his writings, rulings and character indicate a judge capable of giving proper and due weight to the law. Alito is scholarly, intelligent and eminently qualified to sit on the bench, as attests his rating as such by the American Bar Association.

This is not to say that there isn't a roll-of-the-dice quality to this choice for the Supreme Court. But this is so with most, if not all, judicial nominations. Just ask Republicans, many of whom now have buyers' remorse over Justices David Souter and Anthony Kennedy.

Alito's 1985 stance, writing as a lawyer within the Reagan administration, that the Constitution does not support abortion rights is troubling. Unlike John Roberts during his recent chief justice confirmation hearings, Alito refused to state that Roe vs. Wade is settled law. He did assert that it is "embedded in the culture" and should be respected as precedent.

A stronger statement would have been more reassuring, but in a living, breathing Constitution, much, in fact, will not be settled. Were it so, then Plessy vs. Ferguson, which the Supreme Court used in 1896 to enable decades of segregation under a separate but equal rule, could not have been undone by the court in 1954.

Americans should take some comfort in Alito's acknowledgment of a right to privacy in the Constitution. His refusal to be pinned down more concretely on this point is defensible given that the court will rule on abortion.

Similarly, the public should take some solace from his contention that no president is above the law, given the controversies sparked by several presidential actions in the war on terrorism.

Wisconsin is fortunate to have two early votes on judicial nominations. Democratic Sens. Herb Kohl and Russ Feingold are both Judiciary Committee members. Both acquitted themselves ably in questioning the nominee. And both should vote the nominee out of committee.

Kohl properly probed on abortion and one-person, one-vote and inquired about glowing Alito comments on Robert Bork, denied a Supreme Court seat in 1987. Feingold asked necessary questions on executive powers, Alito's ruling in a case involving a mutual fund in which he invested and on the death penalty. Together, they helped ensure the hearings were more than a GOP lovefest for the nominee.

But Alito handled himself well in answering. If not as forthcoming as would be ideal, he offered enough assurances to warrant his confirmation. Democrats, however, are most upset over what Alito didn't say rather than what he did. This is not an entirely acceptable standard.

We're aware that this nomination carries a weighty significance because the nominee will replace Justice Sandra Day O'Connor, often a swing vote in a divided court. And Alito is still an open book on important issues. But, again, elections have consequences. Voters knew what these were, and Alito is not demonstrably beyond the pale of the U.S. mainstream.

Alito—and Roberts—could disappoint, of course, and renege on their own claims of open-mindedness. If they do, they will have betrayed a trust to the American people. But it is not at all as assured as critics have contended that Alito or Roberts will do this.

Confirm Alito. It's not risk-free, but it's the right thing to do.

[From the Philadelphia Inquirer, Jan. 15, 2006]

Confirm Judge Alito

The Senate should confirm Judge Samuel A. Alito Jr., President Bush's nominee for the Supreme Court.

Alito, a member of the Philadelphia-based Third Circuit Court of Appeals, demonstrated during three days of questioning last week by the Senate Judiciary Committee that he does not bring a precast agenda to the job.

He does bring a cast of mind that causes some legitimate concern. But Alito showed he has the experience, modest temperament, reverence for the law, and mastery of his profession needed to serve on the high court.

A common complaint about confirmations has been that nominees stonewall the committee. Alito tried to answer nearly every question put to him. Democratic senators may not have liked his responses, but Alito dodged very few questions.

This endorsement is not enthusiastic. Alito is a more conservative nominee than anyone concerned with the nation's drift toward excessive executive power and disdain for civil liberties would prefer.

But the Supreme Court should not be stocked with justices all of the same political persuasion, left or right. As the replacement for a valuable centrist, Sandra Day O'Connor, Alito might very well move the court perceptibly to the right. But his methodical, just-the-facts approach to the law does not portend a shocking shift, and would not justify a filibuster of his nomination.

Alito did fail to allay some important concerns. On abortion, he rebuffed entreaties by Democrats to characterize Roe v. Wade as "settled law." Chairman Arlen Specter (R., Pa.) commended Alito for discussing the issue in more depth than did Chief Justice John G. Roberts Jr., but this extended discourse was less than encouraging. Alito, who wrote in 1985 that the Constitution doesn't guarantee the right to abortion, would not say he feels differently today.

He pledged to "keep an open mind" on abortion cases. But he also said Supreme Court precedent is not "an inexorable command." If Alito does consider the Constitution a living document, as he testified, he should weigh carefully the expressed desire of a majority of Americans to preserve reproductive freedoms.

On the question of presidential power, concerns linger that Alito would give undue deference to the executive branch. For all President Bush's talk about "strict constructionism," his freewheeling notions about his powers would have appalled many of the Constitution's framers, who deeply feared an authoritarian executive.

At the hearings, Alito sought to temper the enthusiasm for presidential prerogative he showed in earlier writings with the statement that the president is not above the law. At least he is on the record with this view now. Being on the high court has been known to focus a justice's mind on the value of the judiciary's constitutional role as a check on the other two branches.

A distressing point was Alito's membership in the now-defunct Concerned Alumni of Princeton, a group created in 1972 to oppose the admission of women and minorities to the university. His protests that he knew little about the group's agenda, even though he touted his membership on a 1985 application for a job in the Reagan administration, were unpersuasive.

But the example of Alito's life must count for something, and that example diminishes the significance of the Princeton misstep. He is not a bigot. He has hired and promoted women and minorities. Colleagues testify to his basic decency and are mystified that he joined CAP. He has renounced the group's goals.

Alito has admitted that his failure to recuse himself in 2002 from a case involving Vanguard mutual funds, in which Alito had invested, was an "oversight." It was a mistake, even though the conflict of interest was not significant. Investing in a mutual fund is not like owning stock in an individual company. But Alito had pledged to bow out of cases involving Vanguard, then didn't. That was wrong.

An analysis of Alito's written opinions shows his overriding respect for authority: for the police, for the government, for employers. Given all the recent evidence of how those parties commit deeds that damage individuals, you'd like the high court to take a more balanced view.

But Alito's cast of mind does not disqualify him. As pragmatic Judge Edward Becker of the Third Circuit testified, he and Alito disagreed only 27 times in 1,050 cases they heard together. Alito is not in the mainstream of judicial thought, but he is not too far to the right of it.

[From the Salt Lake Tribune, Dec. 7, 2005]

JUDGE ALITO IS NO IDEOLOGUE

(By Jeffrey N. Wasserstein)

As a former clerk for Judge Samuel Alito, I can tell you he is not the conservative ideologue portrayed in a recent article by Knight Ridder reporters Stephen Henderson and Howard Mintz ("Alito Opinions Reveal Pattern of Conservatism").

I am a registered Democrat who supports progressive causes. (To my wife's consternation, I still can't bring myself to take my "Kerry for President" bumper sticker off of my car.) I clerked for Judge Alito from 1997 to 1998. Notwithstanding my close work with Judge Alito, until I read his 1985 Reagan job application statement, I could not tell you what his politics were. When we worked on cases, we reached the same result about 95 percent of the time. When we disagreed, it was largely due to the fact that he is a lot smarter than I am (indeed, than most people) and is far more experienced.

It was my experience that Judge Alito was (and is) capable of setting aside any personal biases he may have when he judges. He is the consummate professional.

One example that I witnessed of Judge Alito's ability to approach cases with an open mind occurred in the area of criminal law, an area in which Judge Alito—a former federal prosecutor—had particular expertise. One time, I was looking at a set of legal briefs in a criminal appeal. The attorney for the criminal defendant had submitted a sloppy brief, a very slip-shod affair. The prosecuting attorney had submitted a neat, presentable brief. I suggested (in my youth and naivete) that this would be an easy case to decide for the government.

Judge Alito stopped me cold by saying that that was an unfair attitude to have before I had even read the briefs carefully and conducted the necessary additional research needed to ensure that the defendant received a fair hearing before the court.

Perhaps not what one would expect from a conservative ideologue (and former federal prosecutor), but it is indicative of the way Judge Alito approaches each case with an open mind, and it is a lesson I've never forgotten.

Another example, which reached a result that would seem contrary to a conservative ideologue, was a case I worked on with Judge Alito (U.S. v. Kithcart) in which Judge Alito reversed a conviction of a black male, holding that an all-points-bulletin for "two black men in a black sports car" was insufficient probable cause to arrest the driver of the car. Notwithstanding the driver's guilty plea, Judge Alito reversed, finding that the initial arrest lacked probable cause, stating, "The mere fact that Kithcart is black and the perpetrators had been described as two black males is plainly insufficient."

This is hardly the work of a conservative ideologue.

As a former clerk to Judge Alito, I can attest to Judge Alito's deep and abiding respect for precedent and the important role of stare decisis—the doctrine that settled cases should not be continually revisited. Judge Alito has served on the U.S. Court of Appeals for the 3rd Circuit for 15 years, and has compiled a distinguished record that conclusively demonstrates respect for precedent.

The best indicator of how a justice may act on the Supreme Court is the judicial record the justice had before elevation to the court. In Judge Alito's case, one can clearly see a restrained approach to the law, deferring to a prior court decision even if he may have disagreed with its logic.

While a bald statement that "the Constitution does not protect a right to an abortion" in a vacuum might be cause for concern, Judge Alito's statement must be taken in context. Sen. Diane Feinstein, D-Calif., said after her meeting with Judge Alito that he explained that regardless of his statement on the job application, "I'm now a judge, I've been on the Circuit Court for 15 years and it's very different. I'm not an advocate. I don't give heed to my personal views, what I do is interpret the law." Sen. Ted Kennedy, D-Mass., also noted that Judge Alito said "he had indicated that he is an older person, that he has learned more, that he thinks he is wiser person (and) that he's got a better grasp and understanding about constitutional rights and liberties."

Given Judge Alito's respect for precedent and stare decisis as demonstrated by actually adhering to precedent for 15 years while on the Court of Appeals—even in cases that reached results that would seem incorrect to a conservative—and the open mind with which I saw him approach cases, labeling Judge Alito an "ideologue" would be unfair and distorts his record on the bench.

Mr. CORNYN. Mr. President, I support the nomination of Sam Alito to the U.S. Supreme Court. The American people, in public opinion polls we have seen reported in the newspapers, indicate they also want Judge Alito on the Supreme Court. Yet we are here today, after extended debate, because there are a handful of Senators who are determined to stop Judge Alito's nomination from even receiving an up-or-down vote. Hence, at 4:30 we will have a vote on cloture, whether to close debate. It is my sincere hope that at least 60 Senators will vote to close debate so tomorrow morning we can have that up-or-down vote that this nominee deserves and that the Constitution requires.

There really is no pretense that this tactic of delay for delay's sake is needed for extended debate. Judge Alito was nominated months ago, and we have been debating this nomination without interruption since last Wednesday. Not only has Judge Alito been investigated by the FBI but also by the American Bar Association's Standing Committee on the Federal Judiciary. He has been investigated by the Senate Judiciary Committee, on which I am proud to serve, and been through extended televised hearings. The fact is, even the minority leader, the Democrat leader, conceded "[t]here's been adequate time for people to debate" this nomination.

So this is delay for delay's sake. Fortunately, there is no indication this delay tactic will succeed. Judge Alito's supporters in this body are so numerous that everyone has conceded—even the minority, who is determined to try to filibuster this nomination, concedes the filibuster attempt is futile and this nominee will be confirmed.

So what could possibly be the motivation? The Senator from Missouri, who just spoke before me, alluded to this. I think it is common knowledge that it really is outside interest groups that are putting, in some cases, irresistible pressure on Senators to oppose this nomination, even though they realize the delay and the potential filibuster are futile. These are groups that have declared—and I quote, in one instance—"you name it, we'll do it" to defeat Judge Alito. I am very sorry that some of my colleagues have fallen under the spell of some of these groups. In my view, it is wrong to place the wishes of these interest groups before the wishes of the American people.

I think it is also a mistake to waste the valuable time of the Senate, time we could be using to address other real and urgent needs that no doubt the President will address tomorrow night in his State of the Union speech and which are well known to each of us here. We have more important things to do than to stage events to facilitate fundraising by special interest groups. I urge all of my colleagues to stand up against the interest groups and to put the American people first by voting against the filibuster.

I also continue to be struck by the lengths some will go in order to defeat this good man and good judge. This raises the question of "Why?" Why do liberal special interest groups and their allies in this body oppose Judge Alito so vehemently?

I believe, at bottom, the reason they oppose his nomination is because he has refused to do their bidding. After all, Judge Alito is a judge who believes in judicial restraint, who understands the differences between the roles judges and legislators—elected representatives of the people—are to play in our government. He believes judges should respect the legislative choices made by the American people through their representatives. And he believes, as I do, judges have no warrant to impose their own beliefs on the rest of us under the guise of interpreting the Constitution.

It is sad but true that the prospect of a Supreme Court Justice who will respect the legislative choices of the American people scares the living daylights out of these interest groups and their allies. Why? Because the legislative choices of the American people are not the legislative choices of these interest groups.

There are some in this country who are entitled to their opinion but whose views are so extreme they will never prevail at the ballot box. The only way they could possibly hope to get their views enacted into law would be to circumvent the Democratic process and pack the courts with judicial activists who will impose their views on the rest of us.

What are these views? Well, one organization I think makes the point. The American Civil Liberties Union is one example. They represent child pornographers because they believe that child pornography is free speech. Yet at the same time, they litigate against schoolchildren who want to recite the Pledge of Allegiance because it invokes "one nation under God."

They believe the Constitution protects the right to end the life of a partially born child. Yet at the same time, they believe the Constitution does not protect marriage between only one man and one woman.

They seem to believe that criminals have more rights than victims. And they believe that terrorists should receive special rights never before afforded to enemy combatants during a time of war.

This is the hard left's version of America. It is a place where criminals and terrorists run free on technicalities, where pornographers may speak but people of faith must keep quiet, where traditional values are replaced by social experimentation.

The liberal special interest groups and those who agree with them in this body to oppose Judge Alito do so because Judge Alito's America is not the hard left's America.

What, then, is Judge Alito's America? Well, I found one of the best answers to that question in, of all places, the New York Times. On January 12, one of their columnists, David Brooks, wrote a column that captures perfectly the differences between Judge Alito's America and the America envisioned by some on the hard left.

He wrote:

> If he'd been born a little earlier, Sam Alito probably would have been a Democrat. In the 1950s, the middle-class and lower-middle-class whites in places like Trenton, N.J., where Alito grew up, were the heart and soul of the Democratic party.
>
> But by the late 1960s, cultural politics replaced New Deal politics, and liberal Democrats did their best to repel Northern white ethnic voters. Big-city liberals launched crusades against police brutality, portraying working class cops as thuggish storm troopers for the establishment.
>
> The liberals were doves; the ethnics were hawks. The liberals had "Question Authority" bumper stickers; the ethnics had been taught in school to respect authority. The liberals thought that an unjust society caused poverty; the ethnics believed in working their way out of poverty.
>
> Sam Alito emerged from his middle-class neighborhood about that time, made it to Princeton and found "very privileged people behaving irresponsibly."
>
> Alito wanted to learn; the richer liberals wanted to strike. He wanted to join the ROTC; the liberal Princetonians expelled that organization from campus. He was orderly and respectful; they were disorderly and disrespectful.

Mr. Brooks continues:

> If there is one lesson from the Alito hearings, it is that the Democratic Party continues to repel [middle-class white] voters just as vigorously as ever.
>
> If you listened to the questions of [Republicans], you heard [Senators] exercised by the terror drug dealers can inflict on their neighborhoods. If you listened to the [Democrats], you heard [Senators] exercised by the terror law enforcement officials can inflict on a neighborhood.
>
> If forced to choose, most Americans side with the party that errs on the side of the cops, not the criminals.
>
> If you listened to [Republicans], you heard [Senators] alarmed by the threats posed by anti-American terrorists. If you listened to [Democrats], you heard Senators alarmed by the threats posed by American counterterrorists.
>
> If forced to choose, most Americans want a party that will fight aggressively against the terrorists, not the [NSA].

He concluded:

> Alito is a paragon of the old-fashioned working-class ethic. In a culture of self-aggrandizement, Alito is modest. In a culture of self-exposure, Alito is reticent. In a culture of made-for-TV sentimentalism, Alito refuses to emote. In a culture that celebrates the rebel, or the fashionable pseudorebel, Alito respects tradition, order and authority.

I read a lengthy excerpt from Mr. Brooks' column because I could not have said it better. This is Judge Alito's America. It is a place where if we err at all, we err on the side of the law, not on the side of those who break the law, where we fight terrorists, not those who try to stop those terrorists, where we work hard to get ahead, where we are more interested in getting the job done than getting credit for it. In other words, these are the middle-class traditional values of America, Sam Alito's America, and, I believe, our America. They are now apparently so foreign to many in the Democratic Party, particularly the liberal interest groups that seem to agitate for delay for delay's sake and to block an up-or-down vote on this nomination, that they will stop at nothing to oppose someone such as Judge Alito who embodies those values. You name it, whether smears, distortions or even denying the decency of an up-or-down vote, and some will do it. Judge Alito's treatment by this hard core of left-leaning groups and their supporters says more about them than it does Judge Alito.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, the Senate is about to vote on a motion to invoke cloture on the nomination of Samuel Alito to be an Associate Justice of the U.S. Supreme Court. We should not even have to take this step but should be voting instead on whether to consent to Judge Alito's appointment. But since we are being forced to take this unnecessary step, let me explain why I believe the case for both cloture and for confirmation is compelling.

Deliberation and debate are hallmarks of the Senate. Our tradition has been that once a judicial nomination has reached the Senate floor, we debate and then we vote on confirmation. There is no need to revisit all of the arguments regarding judicial nomination filibusters. Suffice it to say that American history contains but a single example of failing to invoke cloture on and then failing to confirm a Supreme Court nomination. The 1968 nomination of Abe Fortas to be Chief Justice, however, bears no relationship to the current situation.

First, while the Fortas nomination did not have majority support, the Alito nomination clearly does. Judge Alito enjoys majority bipartisan support. I realize his opponents are not happy that Judge Alito will be confirmed; no one likes to lose. But the correct response to failure is to pick yourself up and try another day, not to rig the process to get your way.

Second, opposition to cloture on the Fortas nomination was almost evenly bipartisan, with 23 Republicans and 19 Democrats. As we are about to see, opposition to cloture on the Alito nomination will be entirely partisan. The most important reason why the Fortas cloture vote is no precedent for this one is that there had not yet been full and complete debate on the Fortas nomination when the vote ending debate occurred. Senator Robert Griffin of Michigan stated clearly at the time that not all Senators had had a chance to speak and that the debate was being kept squarely on the many serious issues and concerns raised by the Fortas nomination. Senators were debating, not obstructing, the nomination.

The same cannot be said today. Those raising this last-minute call for a filibuster have had a full and fair opportunity to air their views about this nomination. Let us not forget that debate over a nomination, especially to the Supreme Court, begins as soon as the President announces his intention to nominate. The Judiciary Committee chairman, Senator SPECTER, accommodated Democrats and waited to hold the hearing on the Alito nomination until January. In fact, the 70 days between announcement and hearing exceeded the average time for all of the current Supreme Court Justices by more than 60 percent. Nonetheless, committee Democrats insisted on delaying the nomination for an extra week.

The nomination has now been on the floor for nearly a week. While the Senator from Massachusetts, Mr. KENNEDY, says that Senators need still more time to debate, I recall the long, repeated quorum calls last week when Senators who could have spoken chose not to do so. I agree with the distinguished minority leader who last Thursday said that "there has been adequate time for people to debate. No one can complain in this matter that there hasn't been sufficient time to talk about Judge Alito, pro or con."

In fact, the last-ditch call for this filibuster came not from this floor or even from this country. The Senator from Massachusetts, Mr. KERRY, called for this filibuster from Switzerland. There is a difference between not having an opportunity to debate and not winning that debate. Nothing is being short circuited here. This floor has been wide open for debate. No one can even suggest that the debate has not been a full and fair one.

To their credit, some of my Democratic colleagues who oppose the nomination itself have nonetheless said that this 11th-hour filibuster attempt is not in the best interest of the Senate.

The Senator from Illinois, Mr. OBAMA, said over the weekend that the better course for Democrats is to win elections and persuade on the merits, rather than what he called overreliance on procedural maneuvers such as the filibuster. I agree.

We should not have to take this cloture vote today. It only further politicizes and distorts an already damaged judicial confirmation process. Moving beyond that, it is clear that the case for Judge Alito's confirmation is compelling. Last week I outlined three reasons why Judge Alito should be confirmed. He is highly qualified. He is a man of character and integrity, and he understands and is committed to the properly limited role of the judiciary, judges.

During the debate on this nomination, other Senators have explored these matters as well, including the Senator from Texas, Mr. CORNYN, who preceded me here today. Senator CORNYN is a distinguished member of the Judiciary Committee and a former State supreme court justice. His perspective and insight on judicial matters has been and is extremely valuable.

I wish to explore one specific issue that relates to Judge Alito's judicial philosophy which, unfortunately, has been the subject of a disinformation campaign by Judge Alito's opponents. That issue is Judge Alito's view on the role of precedent or prior judicial decisions in deciding cases. Judges settle legal disputes by applying the law to the facts in the cases that come before them. The law that judges apply to settle legal disputes comes in two basic forms.

There is the written law itself in the form of constitutional provisions, statutes, or regulations. Then there are past decisions in which the courts have addressed the same issue. The Latin phrase for following precedent or prior decisions is "stare decisis," which means "let the decision stand." Mr. President, every judge believes in the doctrine of stare decisis. Every judge believes that prior decisions play an important role in judicial decisionmaking. That includes Judge Alito.

As I will explain, Judge Alito's views on precedent are sound, traditional, and principled. When the Judiciary Committee hearing on this nomination opened, I outlined several rules which should guide the confirmation process. The first was that we should take parts or elements of Judge Alito's record on their own terms, in their own context for what they really are. That certainly applies to Judge Alito's views regarding the issue of precedent.

Rather than acknowledging what Judge Alito's views actually are, however, some of his opponents have created a caricature of those views, which serves their political purposes but which misleads our fellow citizens about both Judge Alito's record and this very important issue.

Let me start with Judge Alito's own words. No one expresses his view of precedent better than he does. On January 11, 2006, Judge Alito offered this summary of his views:

> I have said that stare decisis is a very important legal doctrine and that there is a general presumption that decisions of the Court will not be overruled. There needs to be a special justification for doing so, but it is not an inexorable command.

This view has several elements.

First, Judge Alito says plainly that stare decisis is a very important legal concept and doctrine. He described why he thinks precedent is so important. One of his points stood out, and I believe it is worth highlighting. Let me just refer to that point. He said:

> I think the doctrine of stare decisis is a very important doctrine . . . [I]t limits the power of the judiciary . . . it's not an inexorable command, but it is a general presumption that courts are going to follow prior precedent.

Precedent is an important element of judicial restraint. In contrast to the grandiose picture painted by some on the other side of the aisle, the judiciary doesn't exist to right all wrongs, correct all errors, heal social wounds, and otherwise usher in an age of domestic tranquility. Judges have a specific role to play, but, like legislators and the executive, they must stay in their proper place.

Judge Alito believes that giving precedent an important role in deciding cases limits the power of the judiciary. If his opponents believe instead that judges should have unlimited power and may disregard precedent at will, let them try to persuade the American people.

Let me refer again to Judge Alito's summary of his views on precedent. In addition to stare decisis being an important legal doctrine, Judge Alito also said that there is a general presumption that decisions of the Court will not be overruled. If that presumption did not exist, there would be little point in paying attention to prior decisions at all. In fact, it is that presumption which makes precedent useful in limiting the power of the judiciary.

Judge Alito also said that overruling a prior decision requires a special justification. Some of Judge Alito's opponents suggest that he has taken a careless or reckless attitude toward the precedents of the court on which he now sits. I assume that, by this suggestion, they want people to believe that Judge Alito would play fast and loose with Supreme Court precedent once he joins the Court. The suggestion is certainly false.

Judge Alito has voted to overrule his own court's precedents only four times in the 15 years on the U.S. Court of Appeals—only four times. In each of those cases, in which all of the judges in the circuit participated, he was in the majority, and in two of them the decision was unanimous. Judge Alito has demonstrated his view that judges should not heedlessly overrule past decisions.

As he explained it, the factors helping judges to handle precedents, including ones to overrule or reaffirm them, include when a past decision has actually been challenged and the Court has decided to retain it. This would, of course, not include cases in which the validity of a prior decision was neither challenged nor decided. It is, after all, another fundamental principle of judicial restraint, which Judge Alito also endorsed, that courts should not decide constitutional questions unless absolutely necessary. That would include deciding whether prior decisions, especially on constitutional issues, should be overruled or reaffirmed.

Obviously, a court does not decide an issue unless it actually addresses and decides it, and a court cannot be said to reaffirm or uphold a prior decision unless it actually addresses or decides that issue.

That said, a court strengthens the presumption that a precedent will be followed when the court actually does reaffirm such a decision. At the same time, Judge Alito has said that adhering to prior decisions is not an inexorable command. Those are not his words. As he pointed out at his hearing, the Supreme Court has repeatedly used that language, holding over and over again that adherence to precedent is not an inexorable command.

This only makes sense. While following prior decisions is a presumption, it is a rebuttable presumption. Here is where Judge Alito's opponents cry foul the loudest and where they expose their real agenda.

Many of Judge Alito's opponents do not really care about legal doctrines; they only care about political agendas. For them, the political ends justify the judicial means, and so-called principles are infinitely flexible so long as the political goal is achieved. They do not care about precedents in general; they only care about certain precedents in particular.

While Judge Alito has presented a thoughtful, principled approach to handling any prior decision, his opponents have but one simple, hard, political rule: get your hands off the precedents we want to keep. Their rule seems to be stare decisis for me but not for thee. Reaffirm decisions we like; overrule ones we oppose. This one-way ratchet is simply a device for getting the courts to do the political heavy lifting and preserving particularly the Supreme Court's role as policymaker in chief.

The real issue for Judge Alito's opponents is not that he rules too often for this group or that group, as if judges are supposed to make the numbers satisfy some political interest group rather than faithfully apply the law. It is not really about theories such as what has been called the unitary executive, which to Judge Alito apparently means nothing more unusual than that the head of the executive branch should be able to control and lead the executive branch. It is not about guilt-by-association tactics—accusations of affiliation with groups wanting to preserve Princeton's all-male tradition made by Senators belonging to all-male clubs.

No, Mr. President, this is about abortion. That is the be-all and end-all issue of those who oppose Judge Alito. I admit there may be an exception or two over there, but I really believe it comes down to that. That is what is driving this, and that is what the outside special interests, the leftwing groups, are using to drive them. The 800-pound precedent in the room is Roe v. Wade. That is the decision Judge Alito's opponents want left alone at all costs.

Many Senators and leftwing interest groups have demanded to know whether Judge Alito, if confirmed, would ever vote to overrule Roe v. Wade. I applaud their creativity in getting as close as possible to directly asking him that question. For most of Judge Alito's opponents, whether Roe v. Wade was correctly decided doesn't matter. Whether it was a legitimate interpretation of the Constitution does not matter. No, abortion advocates take a fluidly flexible approach to precedent, at least until they get the one they want. Then they become the most rigid and doctrinaire defenders of precedent, insisting on keeping what they have. This all seems like a judicial version of "heads I win, tails you lose."

Mr. President, I am glad to say that Judge Alito follows principle rather than politics on the bench. Can you imagine if the attitude of his opponents regarding this one precedent, Roe v. Wade, actually prevailed across the board? What if adherence to prior decisions was actually an inexorable command? What if the Supreme Court's interpretation of the Constitution, once on the books, could never be changed? If the doctrine of stare decisis were an inexorable command, decisions such as Dred Scott v. Sanford and Plessy v. Ferguson would still be on the books.

Judge Alito put it:

> I don't think anybody would want a rule in the area of constitutional law that . . . said that a constitutional decision once handed down can never be overruled.

The judiciary must be guided by principles, not by politics. The Supreme Court has repeatedly said that the role of precedent is actually the weakest in cases involving the Constitution for a very simple reason. When the Supreme Court construes one of our statutes incorrectly, we can correct that error in short order. When the Supreme Court interprets the Constitution incorrectly, correction comes only through the cumbersome constitutional amendment process or the Court's willingness to review its past decisions.

I ask unanimous consent that a list of Supreme Court decisions affirming the principle that precedent is weakest in constitutional cases be printed in the RECORD.

There being no objection, the material was ordered t9 be printed in the RECORD, as follows:

STARE DECISIS IS WEAKEST IN CONSTITUTIONAL CASES

Agostini v. *Felton*, 521 U.S. 203,235 (1997) (quoting *Payne* v. *Tennessee*, 501 U.S. 808.828 (1991))—Justice O'Connor.

"As we have often noted, '[s]tare decisis is not an inexorable command. . . .' That policy is at its weakest when we interpret the Constitution because our interpretation can be altered only by constitutional amendment or by overruling our prior decisions."

Payne v. *Tennessee*, 501 U.S. 808,828 (1991) (quoting *Helvering* v. *Hallock*, 309 U.S. 196,119 (1940) and *Burnet* v. *Coronado Oil & Gas Co.*, 285 U.S. 393,407 (1932))—Chief Justice Rehnquist.

"Stare decisis is not an inexorable command; rather, it 'is a principle of policy and not a mechanical formula of adherence to the latest decision.' This is particularly true in constitutional cases, because in such cases 'correction through legislative action is practically impossible.'"

Harmelin v. *Michigan*, 501 U.S. 957,965 (1991)—Justice Scalia.

"We have long recognized, of course, that the doctrine of stare decisis is less rigid in its application to constitutional precedents."

Glidden Co. v. *Zdanok*, 370 U.S. 530,543 (1962)—Justice Harlan.

". . . this Court's considered practice not to apply stare decisis as rigidly in constitutional as in nonconstitutional cases. . . ."

New York v. *United States*, 326 U.S. 572 (1946)—Justice Frankfurter.

"But throughout the history of the Court stare decisis has had only a limited application in the field of constitutional law. And it is a wise policy which largely restricts it to those areas of the law where correction can be had by legislation. Otherwise the Constitution loses the flexibility necessary if it is to serve the needs of successive generations."

Smith v. *Allwright*, 321 U.S. 649.665 (1944)—Justice Reed.

"In constitutional questions, where correction depends upon amendment and not upon legislative action, this Court throughout its history has freely exercised its power to reexamine the basis of its constitutional decisions."

St. Joseph Stock Yards Co. v. *United States*, 98 U.S. 38,94 (1936)—Justices Stone and Cardozo, concurring in the result.

"The doctrine of stare decisis . . . has only a limited application in the field of constitutional law."

Burnet v. *Coronado Oil & Gas Co.*, 285 U.S. 393,407 (1932)—Justice Brandeis, dissenting.

"[I]n cases involving the Federal Constitution, where correction through legislative action is practically impossible, this court has often overruled its earlier decisions."

Mr. HATCH. Mr. President, in some of these cases, the Justice whom Judge Alito would replace, Justice Sandra Day O'Connor, is the one repeating this principle.

Let me return once again to how Judge Alito summarized his own view of precedent. It is a very important legal doctrine that serves to limit judicial power. There is a general presumption that past decisions will not be overruled, but this is not an inexorable command.

Judge Alito takes a sound, traditional, principled view of the role of precedent in judicial decisionmaking, and I hope my colleagues will consider Judge Alito's view for what it actually is.

In closing, let me say that the debate over this nomination has been going on for about 3 months. It has been long and vigorous, both inside the Senate and across the country. I wish to note some of the opinions outside of this body on the nomination before us.

Some of my colleagues on other side of the aisle are fond of quoting liberal law professor Cass Sunstein's statistical analysis about which sides have won or lost in different categories of cases before Judge Alito. They have often said it is in his dissent that we may find his true judicial philosophy. I wonder whether they will credit Professor Sunstein's conclusions about Judge Alito's dissents, published last November in the Washington Post.

Here is what he said on the contrary:

> None of Alito's opinions is reckless or irresponsible or even especially far-reaching. His disagreement is unfailingly respectful. His dissents are lawyerly rather than bombastic. He does not berate his colleagues . . . Nor has Alito proclaimed an ambitious or controversial theory of interpretation. He avoids abstractions.

That was November 1, 2005.

Here is the conclusion of New York Newsday, which is titled "Qualifications":

> Samuel Alito is a modest, decent man and an accomplished jurist, well within the country's conservative mainstream. On that basis he should be confirmed. But the Nation will need him to be a strong guardian of the constitutional rights and protections that make this country special.

I ask unanimous consent that three other editorials from the Washington Post, Chicago Tribune, and the Newark Star-Ledger be printed in the RECORD.

There being no objection, the material was ordered, to be printed in the RECORD, as follows:

[From the Washington Post, Jan. 15, 2006]

CONFIRM SAMUEL ALITO

The Senate's decision concerning the confirmation of Samuel A. Alito Jr. is harder than the case last year of now—Chief Justice John G. Roberts Jr. Judge Alito's record raises concerns across a range of areas. His replacement of Justice Sandra Day O'Connor could alter—for the worse, from our point of view—the Supreme Court's delicate balance in important areas of constitutional law. He would not have been our pick for the high court. Yet Judge Alito should be confirmed, both because of his positive qualities as an appellate judge and because of the dangerous precedent his rejection would set.

Though some attacks on him by Democratic senators and liberal interest groups have misrepresented his jurisprudence, Judge Alito's record is troubling in areas. His generally laudable tendency to defer to elected representatives at the state and federal levels sometimes goes too far—giving rise to concerns that he will prove too tolerant of claims of executive power in the war on terror. He has tended at times to read civil rights statutes and precedents too narrowly. He has shown excessive tolerance for aggressive police and prosecutorial tactics. There is reason to worry that he would curtail abortion rights. And his approach to the balance of power between the federal government and the states, while murky, seems unpromising. Judge Alito's record is complicated, and one can therefore argue against imputing to him any of these tendencies. Yet he is undeniably a conservative whose presence on the Supreme Court is likely to produce more conservative results than we would like to see.

Which is, of course, just what President Bush promised concerning his judicial appointments. A Supreme Court nomination isn't a forum to refight a presidential election. The president's choice is due deference—the same deference that Democratic senators would expect a Republican Senate to accord the well-qualified nominee of a Democratic president.

And Judge Alito is superbly qualified. His record on the bench is that of a thoughtful conservative, not a raging ideologue. He pays careful attention to the record and doesn't reach for the political outcomes he desires. His colleagues of all stripes speak highly of him. His integrity, notwithstanding efforts to smear him, remains unimpeached.

Humility is called for when predicting how a Supreme Court nominee will vote on key issues, or even what those issues will be, given how people and issues evolve. But it's fair to guess that Judge Alito will favor a judiciary that exercises restraint and does not substitute its judgment for that of the political branches in areas of their competence. That's not all bad. The Supreme Court sports a great range of ideological diversity but less disagreement about the scope of proper judicial power. The institutional self-discipline and modesty that both Judge Alito and Chief Justice Roberts profess could do the court good if taken seriously and applied apolitically.

Supreme Court confirmations have never been free of politics, but neither has their history generally been one of party-line votes or of ideology as the determinative factor. To go down that road is to believe that there exists a Democratic law and a Republican law—which is repugnant to the ideal of the rule of law. However one reasonably defines the "mainstream" of contemporary jurisprudence, Judge Alito's work lies within it. While we harbor some anxiety about the direction he may push the court, we would be more alarmed at the long-term implications of denying him a seat. No president should be denied the prerogative of putting a person as qualified as Judge Alito on the Supreme Court.

[From the Chicago Tribune, Jan. 15, 2006]

CONFIRM JUDGE ALITO

Having survived the hazing ritual known as a Senate Judiciary Committee confirmation hearing, Judge Samuel Alito Jr. has demonstrated that he should be confirmed for the Supreme Court.

He had largely done so before the hearing. His record on the bench is strong. The American Bar Association determined he is highly qualified. But he had to go through the process of proving that he could remain calm through every contorted attempt by senators to challenge his character and fitness. He has done so.

So what did we learn from the hearing?

That Alito will not prejudge matters before the court, despite the Democrats' fervent demand that he declare abortion is a matter beyond judicial review. (Good judges, he pointedly said, "are always open to the possibility of changing their minds based on the next brief that they read or the next argument that's made by an attorney who's appearing before them or a comment that is made by a colleague ... when the judges privately discuss the case.")

That Alito finds repugnant the views of a long departed, long forgotten Princeton organization to which he, apparently, had the slimmest of connections.

That he believes judges should rule on the law, not make law.

If Democrats on the Judiciary Committee hoped to expose him as a right-wing ideologue, they failed. They did manage, as they did last year in the confirmation hearings for Chief Justice John G. Roberts Jr., to show how pious, preening and pompous they can be.

Alito probably won't get many Democratic votes, even though he deserves their support. We'll go through the ritual of opposition senators declaring that, after careful deliberation, they cannot vote for this nominee. They've already laid the foundation, as the lawyers say; several Democrats have announced that after more than 18 hours of testimony they still have doubts about his "credibility."

A week of hearings. Fifteen years of judicial opinions, all available for review. But in all that, Alito's opponents have failed to unearth anything damaging—or even to elicit an intemperate remark from the judge, though they did succeed in making his wife cry. It's a wonder anyone is willing to endure this process.

The special-interest campaigns will thunder on for a few more days. Some Democrats on the committee have demanded the vote be postponed while they ponder their next moves, including a possible filibuster. What a terribly destructive move that would be.

Alito's integrity, professional competence and judicial temperament "are of the highest standing." That was the judgment of the American Bar Association, reached after interviewing 300 people who know Alito and evaluating 350 of his written opinions and dozens of unpublished opinions, oral arguments and memos.

He "sees majesty in the law, respects it, and remains a dedicated student of it to this day." That, too, was the judgment of the ABA.

Alito is, as his colleague, federal Appellate Judge Edward R. Becker, testified, "a real judge deciding each case on the facts and the law, not on his personal views, whatever they may be."

He deserves every senator's vote.

[From the Newark Star-Ledger, Jan. 17, 2006]

CONFIRM ALITO TO THE COURT

The Senate Judiciary Committee hearings on Supreme Court nominee Samuel Alito Jr. have been a remarkable tutorial—not in the law but in just how low partisan politics have sunk.

Democrats have painted Alito as someone ready to turn back the clock 50 years on civil, reproductive and workers' rights. They have attempted to draw a public portrait of Alito, sometimes relying on half-truths, that those who know him best barely recognize.

Republicans responded to this onslaught with a slew of softball questions designed not to elicit information but to present the nominee in the best possible light.

Neither side has served the public particularly well.

For their part, Senate Judiciary Committee members interjected a level of senatorial logorrhea that was stunning, droning on and on about matters that had nothing to do with Alito's fitness to serve on the nation's highest court.

Despite the spectacle of the hearings, we are convinced Alito, a New Jerseyan who sits on the 3rd U.S. Circuit Court of Appeals, is eminently qualified to serve as an associate justice of the U.S. Supreme Court and should be confirmed by the committee and ultimately by the full Senate, and, yes, with the support of New Jersey's two Democratic senators.

Our support is not an uncritical ode to homegrown talent. It is based, in part, on the respect and praise Alito has garnered from those who have worked with him throughout his distinguished legal and judicial career. Democrats and Republicans, conservatives and liberals, many of whom, perhaps, philosophically disagree with Alito, have consistently maintained he is well-suited for the court.

We think they make a compelling case.

Among those who speak highly of him are Rutgers Law School Associate Dean Ronald Chen, an outspoken liberal who was just named by Gov.-elect Jon Corzine to be public advocate; retired Chief Judge John Gibbons of the 3rd Circuit Court of Appeals, who since leaving the bench has worked aggressively to eliminate the death penalty; well-known Democratic lawyer Douglas Eakeley, who was appointed by President Bill Clinton to the board of directors of the Legal Services Corp.; Democratic criminal defense attorney Joseph Hayden and former Attorney General Robert Del Tufo, who served in Democrat Jim Florio's cabinet and worked with Alito in the U.S. Attorney's Office.

None of these folks had to stand up for Alito, but they did.

Similarly, the judges who sit with Alito on the 3rd Circuit in Philadelphia came forth in an unprecedented show of support, insisting he was not an ideologue, had scrupulously adhered to precedent and had shown no signs of hostility toward a particular class of cases or litigants.

The American Bar Association declared Alito "well-qualified"—the highest approval rating given by the ABA.

This is not to say we like everything we heard from Alito in the hearings.

Given our strong and long-standing support for abortion rights, we worry that Alito's refusal to describe Roe vs. Wade as settled law could mean he'll be inclined to take positions that chip away at a woman's right to abortion. At a time when questions are being raised about the abuse of presidential power in the war on terror, we're discomforted by Alito's expansive view of presidential authority.

The hard truth is that selecting nominees for the Supreme Court is a presidential choice. And it is reasonable and appropriate for a president to pick someone who reflects his values. During the 2004 presidential race, candidate George Bush made no bones about his intention, if given a chance, to select conservatives.

Some Democrats have argued against that standard. They've said nominees have to reflect a political "mainstream." But if that were the case, Clinton's nomination of Ruth Bader Ginsberg would never have been confirmed by a 96-3 vote. Republicans overwhelmingly supported Ginsberg, even though she is the very picture of a left-wing ideologue. She was general counsel of the American Civil Liberties Union and directed the ACLU's Women's Rights Project, arguing numerous controversial abortion rights cases.

Alito is a conservative, but he is not an ideologue. He has demonstrated that he has the intellect and temperament to serve the nation well.

Mr. HATCH. Mr. President, I also note that the attorneys general of 20 States, Democrats and Republicans, have signed a letter urging this body to confirm Judge Alito. I am proud that Mark Shurtleff, attorney general of my home State of Utah, is among them. They write:

> Judge Alito represents the best of the Federal bench and we believe he will be an excellent Supreme Court justice.

I agree, and I ask unanimous consent that this letter be printed into the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

January 6, 2006.

Re Judicial confirmation of Judge Samuel A. Alito, Jr., to the Supreme Court of the United States.

Hon. Bill Frist,
Majority Leader, U.S. Senate,
Washington, DC.
Hon. Arlen Specter,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.
Hon. Harry Reid,
Minority Leader, U.S. Senate,
Washington, DC.
Hon. Patrick Leahy,
Ranking Member, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Majority Leader Frist, Minority Leader Reid, Chairman Specter, and Ranking Member Leahy: We, the undersigned Attorneys General of our respective states, are writing in support of the confirmation of Judge Samuel A. Alito, Jr., to serve as an Associate Justice on the Supreme Court of the United States.

We are confident that Judge Alito will bring to the Court not only years of legal experience and judicial temperament, but also modesty and great personal character.

We reflect diverse views and constituencies and are united in our belief that Judge Alito will be an outstanding Supreme Court Justice and should be confirmed by the United States Senate.

As the Senate prepares for the confirmation process of Judge Alito, it is important to look beyond partisan politics and ideology and focus on the judicial experience of this extremely well qualified nominee. Judge Alito has served the United States as an Assistant to the Solicitor General, as a United States Attorney, and for the past 15 years, as a Judge on the Third Circuit Court of Appeals.

Judge Alito's record on the Third Circuit Court of Appeals demonstrates judicial restraint. He has proven that he seeks to apply the law and does not legislate from the bench. Judge Alito's judgments while on the bench have relied on legal precedent and current law, and he has a long-standing reputation for being both tough and fair. In short, Judge Alito represents the best of the federal bench and we believe he will be an excellent Supreme Court Justice.

We urge the Senate to hold an up or down vote and confirm Judge Alito.

Sincerely,

John W. Suthers, Attorney General of Colorado; Troy King, Attorney General of Alabama; Charlie Crist, Attorney General of Florida; Lawrence Wasden, Attorney General of Idaho; Tom Corbett, Attorney General of Pennsylvania; David W. Márquez, Attorney General of Alaska; Mark J. Bennett, Attorney General of Hawaii; Stephen Carter, Attorney General of Indiana; Phill Kline, Attorney General of Kansas; Jon Bruning, Attorney General of Nebraska.

Wayne Stenehjem, Attorney General of North Dakota; Henry McMaster, Attorney General of South Carolina; Lawrence Long, Attorney General of South Dakota; Judith Williams Jagdmann, Attorney General of Virginia; Michael A. Cox, Attorney General of Michigan; George Chanos, Attorney General of Nevada; Jim Petro, Attorney General of Ohio; Greg Abbott, Attorney General of Texas; Mark Shurtleff, Attorney General of Utah; Rob McKenna, Attorney General of Washington.

Mr. HATCH. Mr. President, the votes we take today and tomorrow give us an important opportunity. The Los Angeles Times editorial of January 15, 2006, got it right, saying that trying to derail this nomination by filibuster rather than on the merits is wrong.

I urge my colleagues to preserve this body's tradition by rejecting this desperate filibuster attempt, and then in a vote tomorrow, I urge my colleagues to honor the judiciary's important but limited role in our system of government by confirming this qualified and honorable man to the Supreme Court of the United States of America.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, it is time for the debate on the nomination of Judge Alito to end. It is time for the Senate to act on the President's nomination of Samuel Alito to serve as a Justice on the U.S. Supreme Court.

We have had ample time to review this nomination. The Judiciary Committee has conducted a thorough review of Judge Alito's background and qualifications. Senator Specter, as chairman of the Judiciary Committee, ensured that all the questions that should be asked of this nominee were asked and answered.

The Judiciary Committee thoroughly reviewed the story of Judge Alito's life and questioned him on a wide range of issues. In the process, Judge Alito demonstrated his ability, intelligence, and his fitness to serve as a Justice on the U.S. Supreme Court.

In almost 3 months of intense scrutiny and over 18 hours of personal testimony before the Senate Judiciary Committee, Judge Alito provided clear and candid answers to all the questions that were asked.

All Senators have had an opportunity to meet with Judge Alito, to review the opinions he has written, to read the articles he has written in law reviews and other publications, to become familiar—as familiar as anyone can—with his thinking, his judicial philosophy, his past performance as a judge, as a solicitor, as a lawyer in private practice, as a student in law school, and as a fellow judge. Judge Alito has more judicial experience than any Supreme Court nominee in over 70 years.

In my opinion, the most impressive and persuasive testimony at the hearings in the committee came from the panel of judges with whom he served on the Third Circuit Court of Appeals. They testified before the committee and discussed the way Judge Alito approached questions before that court, the way he acted during deliberations among other members of the court about the decision that should be reached in each case, and generally the way he went about discharging the enormously important duties he had as a member of that court. And despite differences in politics and viewpoints and backgrounds among some of the judges with him, they were all enthusiastically supporting his confirmation for service on the Supreme Court.

Judge Alito has earned the respect of those who know him best—his colleagues on the Federal courts, as well as his current and former law clerks, and the members of the bar who have appeared before him in court. He is widely respected for his even temperament, his integrity, his sound legal judgment, and his respect and courtesy for others.

I am confident Judge Alito will serve with great distinction as a Justice on the Supreme Court. I think reciting Judge Alito's own words is the best way for me to conclude my remarks. He said:

> Fifteen years ago, when I was sworn in as a judge of the Court of Appeals, I took an oath. I put my hand on the Bible, and I swore that I would administer justice without respect to persons, that I would do equal right to the poor and the rich, and that I would carry out my duties under the Constitution and the laws of the United States. And that is what I have tried to do to the very best of my ability for the past 15 years. And if I am confirmed, I pledge to you that that is what I would do on the Supreme Court.

It is time to end this debate. It is time to confirm the President's nomination of Judge Samuel Alito.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURR). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I know there are a number of people who wish to speak on Judge Alito. I want to add a few comments of my own on this nomination. If I may inquire of the Chair, is there time that needs to be yielded?

The PRESIDING OFFICER. The Senator may speak up until 4 o'clock.

Mr. BROWNBACK. I thank the Chair.

Mr. President, I sat in on the hearings for Judge Alito. I personally interviewed Judge Alito. I talked with him in my office. I sat through the hearings and was able to question him in the Judiciary Committee. I am on the Judiciary Committee, so I sat through those hearings to hear his testimony. I feel as if we had a good chance to take the measure of the man, and he is outstanding. I believe he is going to be an outstanding jurist.

He answered hundreds of questions, more than I believe any prior nominee has answered in the history of the Republic. He answered them deftly. He answered them with an encyclopedic knowledge of the law. It was amazing to me to see that he did not have a note in front of him the whole time, and if you asked him any constitutional question on any case at any time in the history of the Republic, he would say here are the facts of that case, here is how the law was decided, this case is still in question or it isn't. He is a brilliant jurist. He wasn't particularly good on international law, and I was particularly glad to hear he wasn't good on law, on what would happen in other countries.

He has a long history on the bench which I think is important. For a series of years now, only so-called stealth candidates could be approved. Judge Alito is a man with years of experience on the Third Circuit Court of Appeals. He has written a number of opinions that we could dissect them and see. People were looking into his background, trying to determine does he lean this way or that way, but he has hundreds of published opinions, and through them we can see which way he leans.

He is a known commodity—well known, well respected, and well regarded across the board. I do think where he is going to contribute to the country, the Republic, is in the areas of religious freedom and free expression. This has not gotten much play at all in the media or in much of the hearings, but it is one of the areas he has written the most extensively on and in which he is a legal scholar.

He believes in a robust public square, a public square where we can celebrate faith, and where faith can be presented. He believes in this for all faiths and faith traditions. You see that in cases where he has ruled in favor of menorah candles being put forward, Christmas trees, and Muslim police officers being able to dress appropriately to their religion and still be able to be police officers.

He believes in a separation of church and state, but he also believes this is a country full of people of faith and that they should, under the free expression clause, be allowed to express and to live that faith and to be able to show it. I think he is very clear and thoughtful.

If there is an area of the law that needs clarity, it is this because we have rules and tests all over the country. I think he is going to contribute in this area. This is one of the areas that did not get much review, it did not get much comment, but I think he is going to make a clear impression, and I think he is going to make a very helpful impression for this Nation whose motto, as the Chair looks at it, is "In God We Trust."

There is a reason for that. This is a nation of faith. It is one we seek to celebrate, not have an imprimatur from the state saying this is the religion or that is the religion, but rather saying we want you all to be here, have your own faith, be able to celebrate it, and be able to bring it forward in this Nation. I think he is going to contribute greatly in this particular category.

The area of abortion got the most review, and it is unknown how he would rule in the case of Roe v. Wade or anything along that line. He did not state an opinion one way or the other. It is an area of open case law. It is an area, in my opinion, that is not in the Constitution. There is no constitutional right for a woman to abort her child. I believe it to be a matter that should be decided by bodies such as this, or in States around the country.

I remind my colleagues, as they all know, if Roe v. Wade or any portion of it were overturned, the issue goes back to the States. That is the group, that is the body that resolves this issue. It is not something where the ruling automatically shuts everything down. What happens is it goes back and California decides its rules and New York, Florida, Kansas, Minnesota, and other States decide theirs.

I don't see what is so untrustworthy about States resolving this issue. They did prior to 1973, and we didn't have near the level of conflict or difficulty in this country on those laws when the States were resolving these issues.

I strongly doubt all the States would resolve them the same. I doubt a State in a certain part of the country would be identical to another one. Yet I do think it would reflect the will of the people. But we do not know how Judge Alito he will rule on this issue. The Democrats don't know, the Republicans don't know, I don't know. This is an issue I care deeply about, and we don't know. That is probably as it should be because it is an area of active case law and one that is going to come in front of us.

The other area he was challenged so much on was Executive rights and privileges. I believe this man will be very clear in standing up to the executive branch when the executive branch needs to be held in check. I have no doubt at all about that.

One area we talked about that has not again gotten much review, but needs a lot, is the area of judicial restraint. We need a judiciary that will restrain itself. There are three separate branches of Government, each having a sphere and not to overlap the other. The judiciary has not restrained itself in the past. Judge Alito, along with John Roberts, previously coming before the committee and this body, both spoke significantly and clearly about the need for judicial restraint. I believe if we don't start seeing a judiciary that shows some restraint and says it is not an all-powerful judiciary in every area, it cannot appropriate money, that is left to the Congress, that we will start to see these bodies remove judicial review by the Congress, as is allowed in the Constitution. It is not an area that has been used much, but I think we are going to start seeing it used much more, if the judiciary does not show some level of restraint. This has been expressed by both John Roberts and Samuel Alito.

I believe Judge Alito will be an outstanding jurist if we are able to get cloture in this body to end debate, to get the 60 votes necessary to end debate. He is one of the most qualified individuals we have had. His is a beautiful story of immigrant parents coming to the United States and working hard to get a good education.

He is one of sterling character. Probably one of the saddest chapters that has taken place is the challenge to his character, which is nothing short of sterling. This is a gentleman who has worked all his life to uphold the traditions of his family, to make his family proud and see his dad pleased that his son stood for right against wrong.

At the end of the day, I believe he will exercise justice and righteousness, doing both what is just and what is right. That is what we need in this country, a country that is both just and right.

In the greatest traditions of this Nation, we need to do what is right, and we need to be just to the strong, to the weak, to those who cannot speak for themselves. We need to stand up and speak for their rights even if they cannot speak for their own.

I support the nomination and yield the floor.

The PRESIDING OFFICER. Under the previous order, the hour of 4 p.m. having arrived, the Democratic leader or his designee shall be recognized for 15 minutes.

Mr. KERRY. Mr. President, I yield myself 7 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I have heard a lot of my colleagues rely on the ABA's determination that Judge Alito is "well qualified" as a reason—sometimes as reason enough—to vote for his confirmation. But there is a reason why an ABA ranking alone is not all that is required to be confirmed to the bench, let alone the highest Court in the land.

With a decision as fundamental—as irrevocable—and as important to the American people as the confirmation of a Supreme Court Justice, it is important we tell the Americans the full story about the ABA and those rankings.

When making its determination, the ABA considers analytical skills. They consider knowledge of the law. They consider integrity, professional competence, and judicial temperament. But United States Senators must consider more than these criteria.

What the ABA does not look at is the balance of the Supreme Court. What they do not look at is ideology. What they do not look at is judicial activism. What they do not look at is the consequences of a judge's ideologically driven decisions for those who have been wronged and who just want to get their day in court. No matter how smart he may be, no matter how cleverly his opinions may be written, no matter how skillfully he manipulates the law, their standards don't consider the impact of his decisions on average Americans. In short, they don't measure what will happen to average Americans if Judge Alito becomes Justice Alito. That is our job.

None of these measurements consider whether Judge Alito routinely cuts off access to justice for the most disadvantaged Americans—those that need it the most. They don't ask whether he consistently excuses excessive government force when it intrudes into the privacy of individuals. They don't consider that the only statement he has ever made about a woman's right to privacy is that she doesn't have one.

These are things that we must consider here in the United States Senate. These are things that are on the line in this vote this afternoon. And these are the things that I believe most Americans want us to consider. We have to consider whether a judge we confirm to a lifetime appointment to the Supreme Court will undermine the laws that we have already passed that benefit millions of Americans, like the Family Medical Leave Act. We have to consider whether Judge Alito will place barriers in the way of addressing discrimination, whether he will serve as an effective check on the abuse of executive power, whether he will roll back women's privacy rights or whether he will enforce the rights and liberties that generations of Americans have fought and bled and even died to protect. None of the rights we are talking about came easily in this country. There were always those in positions of power who fought back and resisted. What we need in a Justice is somebody who is sensitive to that history. Senator after Senator has described specific cases and the way in which Judge Alito has had a negative impact in these areas—often standing alone, in dissent against mainstream beliefs.

This long record is a record that gave the extreme right wing cause for public celebration with his nomination. That just about tells you what you need to know. The vote today is whether we will take a stand against ideological courtpacking.

Nothing can erase Judge Alito's record. We all know what we are getting. No one will be able to say, in 5 to 10 years, that they are surprised by the decisions Judge Alito makes from the bench. People who believe in privacy rights, who fight for the rights of the most disadvantaged, who believe in balancing the power between the President and Congress need to take a stand now.

I understand that, for many, voting for cloture on a judicial nomination is a very difficult decision, particularly on this Supreme Court nominee. I also understand that, for some, a nomination must be an "extraordinary circumstance" in order to justify that vote. Well, I believe this nomination is an extraordinary circumstance. What could possibly be more important than this—an entire shift in the direction of the Court?

This is a lifetime appointment to a Court where nine individuals determine what our Constitution protects and what our laws mean. Once Judge Alito is confirmed, we can never take back this vote. Not after he prevents many Americans from having their discrimination cases heard by a jury. Not after he allows more government intrusions into our private lives. Not after he grants the President the power to ignore Federal law rather than protecting our system of checks and balances. These questions do not arise out of speculation. They do not arise out of mere statement. They arise out of the record the judge has carved for himself.

These issues and the threat that Judge Alito's nomination poses to the balance that the Supreme Court has upheld in all the years that Justice O'Connor has served there—all of this constitutes an "extraordinary circumstance."

I understand that many Senators oppose this nomination, and I believe the vote tomorrow will indicate that if we are not successful today. They say that they understand the threat Judge Alito poses, but they argue that somehow a vote to extend debate, when there have been a mere 30 hours or so of debate, is different. I do not believe it is. I believe it is the only way that those of us in the minority have a real voice in the selection of this Justice or any Justice. It is the only way we can fully complete our constitutional duty of advice and consent. It is the only way we can be a voice for those Americans who do not have a voice today. It is the only way we can stop a confirmation that we feel will certainly cause irreversible harm to the principles and values that make a real difference in the lives of average Americans. It is the only way we can keep faith with our belief, and the Constitution's promise, of equal justice. That is a position that we can and we should defend anywhere, at any time.

I thank those who have stood to be counted in this effort and who will continue to take a stand with their vote. I particularly thank my senior colleague from Massachusetts, Senator KENNEDY.

I think the remainder of the time Senator KENNEDY will use.

Mr. KENNEDY. I have 7½ minutes, am I correct in that?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. I will yield myself 7 minutes.

First of all, I thank my friend, Senator KERRY, for his strong commitment on this issue and his eloquence, passion, and support of this position. This is a time in the Senate that a battle needs to be fought. This vote that we are casting with regard to Judge Alito is going to have echoes for years and years to come. It is going to be a defining vote about the Constitution of the United States, about our protections of our rights and our liberties in the Constitution of the United States.

People in my State at this particular time are concerned about the difficulties they are having with prescription drugs. They are concerned about the problems they are having in paying their oil bills. They are concerned about their problems in paying for the education of their children. They are troubled by what they see as a result of Katrina. They are bothered by what they hear about the corruption in Washington and are deeply troubled by what is happening in Iraq. They have not had a chance to focus on what is the meaning of this vote in the Senate this afternoon.

But all you have to do is look back into history. Look back into the history of the judiciary. Look back to the history of the Fifth Circuit that was making the decisions in the 1950s. Look at the record of Justice Wisdom, Judge Tuttle, Judge Johnson of Alabama and the courage they demonstrated that said at last we are going to break down the walls of discrimination in this country that have gripped this Nation for 200 years. Our Founding Fathers failed the test when they wrote slavery into the Constitution. Abraham Lincoln pointed the way, and we passed the 13th, 14th, and 15th amendments and had a Civil War, but we did not resolve this issue. It was only until the courage of members of—what branch of Government? Not the Congress. Not the Senate. Not the executive. The judiciary, the Fifth Circuit. We are talking now about the Supreme Court, but they are the ones who changed this country inevitably with what we call the march toward progress, the march toward knocking down the walls of discrimination that permitted us to pass the 1964 Civil Rights Act in public accommodations, so people whose skin was not White could go into restaurants and hotels—public accommodations; the 1965 act for voting, voting rights; the 1968 act on public accommodations; the 1973 act to say that women are going to be treated equally; the Americans with Disabilities Act that say the disabled are going to be part of the American family. All of that is the march to progress. My friends, the one organization, the one institution that protects it is the Supreme Court of the United States.

Too much blood has been shed in those battles, too much sweat, too many tears, to put at risk that march for progress. And that is what we are doing with this nominee. He failed to demonstrate before the Judiciary Committee that he was committed to the continued march toward progress. He doesn't have to say how he is going to vote on a particular case, but he has to make it clear that he understands what this Nation is all about, why we are the envy of the world with the progress that we have made to knock down the walls of discrimination and prejudice and open up new opportunities for progress for our people. That is the definition of America.

Why are we going to put that at risk by putting someone on the Supreme Court who is not committed to that progress? We are not asking that they take a particular position on an issue. That is what is before us. We have a responsibility to try to present this to the American people. Our constituents who are working hard, taking care of their kids, trying to do a job across this country—they are beginning to focus on it. It came to the Senate floor last Wednesday. Today is Monday. What is the next business? What is the next measure on the calendar? Asbestos? Isn't that interesting? Is there anything more important than spending time and permitting the American people to understand this issue? I don't believe so, and that is what our vote at 4:30 is about.

If you are concerned and you want a Justice who is going to stand for the working men and women in this country—it is not going to be Judge Alito. If you are concerned about women's privacy rights, about the opportunity for women to gain fair employment in America—it is not Judge Alito. If you care about the disabled, the Rehabilitation Act that we passed, the IDEA Act to include children in our schools, that we passed, that has been on the books for 25 years, the Americans with Disabilities Act that we have passed to bring all of the disabled into our society, if you are looking for someone who is going to be a friend of the disabled—it is not going to be Judge Alito.

Finally, if you are looking for someone who is going to be willing to stand up to the executive branch of Government at a time that he is going to exceed his power and authority and the law of this country—it is not going to be Judge Alito. It is not going to be. He is not going to be similar to Sandra Day O'Connor who, in the Hamdi case, said: Oh, no. No President, even in times of war, is above the law in this country. He is not going to be similar to Warren Burger, who said "No, Mr. President. No, you have to surrender the papers," at the time of the Watergate break-ins. "No, Mr. President."

This is the time. This is the issue. This happens to be the wrong judge at the wrong time for the wrong Court.

I hope this body will give us the time to be able to explain this in greater detail to our fellow Americans so a real vote can be taken. When it is, I believe this nominee will not be approved.

I understand my time has expired.

Mr. LEAHY. Mr. President, I began the hearing on this nomination by putting forward what for me was the ultimate question during the consideration of a successor to Justice Sandra Day O'Connor: Would Judge Alito, if confirmed by the Senate to the Supreme Court, protect the rights and liberties of all Americans and serve as an effective check on government overreaching?

Since this debate began last Wednesday, I have posed the fundamental question that this nomination raises for this body: whether the Senate will serve its constitutional role as a check on Executive power by preserving the Supreme Court as a constitutional check on the expansion of Presidential power.

This is a nomination that I fear threatens the fundamental rights and liberties of all Americans now and for generations to come. As astonishing as the facts may seem, it does not overstate them to point out that the President is in the midst of a radical realignment of the powers of the government and of its intrusiveness into the private lives of Americans. This nomination is part and parcel of that plan. I am concerned that if confirmed, this nominee will further erode the checks and balances that have protected our constitutional rights for more than 200 years. This is a critical nomination, one that can tip the balance on the Supreme Court radically away from constitutional checks and balances and the protection of Americans' fundamental rights.

The procedural vote just taken was in large measure symbolic. Its result was foreseen by Senators on both sides of the aisle and on both sides of the question. The next vote the Senate takes on this critical nomination is not symbolic. It has real consequences in the lives of the 295 million Americans alive today, and it will influence the lives of generations of Americans to come. It will affect not only our rights but the fundamental rights and liberties of our children and our children's children. In short, it matters, and it matters greatly. The vote the Senate will take tomorrow will determine whether Samuel A. Alito, Jr., replaces Justice Sandra Day O'Connor on the Supreme Court of the United States.

I appreciate why Senators who voted against cloture believe this matter deserves more searching attention by Senators and the American people. Among Democratic Senators, each is voting his or her conscience and best judgment. There will be many Democratic Senators who, like the Democratic members of the Judiciary Committee who have closely studied the record of this nominee, will be voting against the nomination. There will be some Democratic Senators who will vote to confirm the nominee. Among those voting against, there are some who believe that it is not appropriate to withhold the Senate's consent by extending debate. The Senate debated Chief Justice Roberts' nomination during 8 days and over a 10-day calendar period. Although much more divisive and controversial, the Alito nomination will be debated for just 5 days over a 7-day calendar period by the time the vote is called tomorrow.

It is true that Democratic Senators do not all vote in lockstep. Each Democratic Senator individually gives these questions serious consideration. They honor their constitutional duty. I am proud of the Democratic members of the Judiciary Committee for the statements they made last week when the committee considered this nomination and during the course of the last few days. Their hard work in preparing for three Supreme Court nominations over the last few months is to be commended. I thank and commend the many Democratic Senators who came to the floor, who spoke, who set forth their concerns and their views. That includes Democratic Senators opposing the nomination and those in favor. It is quite a roster: Senators KENNEDY, DURBIN, MIKULSKI, CLINTON, KERRY, NELSON of Florida, REED, MURRAY, FEINSTEIN, INOUYE, HARKIN, BINGAMAN, LINCOLN, LIEBERMAN, SALAZAR, CARPER, LEVIN, OBAMA, DAYTON, FEINGOLD, JOHNSON, SARBANES, STABENOW, LAUTENBERG, MENENDEZ, and, in addition, Senator JEFFORDS. These Senators approached the matter seriously, in contrast to those partisan cheerleaders who rallied behind this White House's pick long before the first day of hearings.

I respect those Senators who are giving this critical nomination serious consideration but come to a different conclusion than I, just as I continue to respect the 22 Senators who voted against the Roberts nomination. I have candidly acknowledged that over the course of history, their judgment and vote may prove right. I took Judge Roberts at his word in the belief that his words and the impressions he understood them to be creating had meaning. I continue to hope that as Chief Justice he will fulfill his promise and steer the Court to serve as an appropriate check on abuses of Presidential power and protect the fundamental liberties and rights of all Americans.

Filibusters of judicial nominees—and, in particular, of Supreme Court nominees—are hardly something new. When Justice Fortas was nominated by President Johnson to be the Chief Justice, a filibuster led by Strom Thurmond and the Republican leader resulted in an unsuccessful cloture vote and in that nomination being withdrawn. That was the most recent successful filibuster of a Supreme Court nominee. But that was not the first or last Supreme Court nomination to be defeated. President George Washington, the Nation's first and most popular President, saw the Senate reject his nomination of John Rutledge to the Supreme Court at the outset of our history. Over time approximately one-fifth of Presidents' Supreme Court nominees have not been confirmed.

The last time the country was faced with the retirement of the pivotal vote on the Supreme Court was when Justice Lewis Powell resigned in 1987. A Republican President sought to use that opportunity to reshape the U.S. Supreme Court with his nomination of Judge Robert Bork. Judge Bork had been a law professor, a partner in one of the Nation's leading law firms, a judge on the DC Circuit for 5 years, and he had served as Solicitor General of the United States and even as the Acting Attorney General at a critical juncture of our history.

Many myths have arisen about why the Senate rejected that nomination. I was here and, along with the other Senators, both Republican and Democratic, who voted to defeat that nomination, I know that the nominee's views were the decisive factor in his failure. His rejection of the constitutional right to privacy was a large part of his own undoing. Soon thereafter, President Reagan announced and withdrew the nomination of Judge Ginsburg and then turned to a conservative Federal appellate court judge from California named Anthony Kennedy. Justice Kennedy, though conservative, was confirmed overwhelmingly and in bipartisan fashion. He continues to serve as a respected Justice who has authored key decisions protecting Americans from unfair discrimination because of their sexual orientation.

When the Senate was considering a successor to Justice Powell almost 20 years ago, I said that I believed a Supreme Court nominee's judicial philosophy should play a central role in our consideration. I noted:

> There is no question that the nominee who is confirmed to succeed Justice Lewis Powell will be uniquely influential in determining the direction of the Supreme Court's interpretation of the Constitution for years to come. There can hardly be an issue closer to the heart of the Senate's role than a full and public exposition of the nominee's approach to the Constitution and to the rule of the courts in discerning and enforcing its commands. That is what I mean by judicial philosophy.

The same remains true today as we consider a successor to Justice Sandra Day O'Connor. I strongly believe that Judge Alito's judicial philosophy is too deferential to the government and too unprotective of the fundamental liberties and rights of ordinary Americans for his nomination by President Bush to be confirmed by the Senate as the replacement for Justice O'Connor.

Judicial philosophy comes into play time and again as Supreme Court justices wrestle with serious questions about which they do not all agree. These include fundamental questions about how far the government may intrude into our personal lives. Senators need to assess whether a nominee will protect fundamental rights if confirmed to be on the Supreme Court.

Several Republican Senators said that judicial philosophy and personal views do not matter because judges should just apply the rule of law as if it were some mechanical calculation. Senator FEINSTEIN made this point exceptionally well during the debate. Personal views and judicial philosophy often come into play on close and controversial cases. We all know this to be true. Why else did Republican supporters force President Bush to withdraw his previous nominee for this vacancy, Harriet Miers, before she even had a hearing? She failed their judicial philosophy litmus test.

Indeed, Harriet Miers is the most recent Supreme Court nominee not to have been confirmed. It was last October that President Bush nominated his White House Counsel Harriet Miers to succeed Justice O'Connor. He did so after the death of the Chief Justice and withdrawing his earlier nomination of Judge Roberts to succeed Justice O'Connor. The democratic leader of the Senate quickly endorsed the selection of Ms. Miers as the kind of person, with the kind of background, he found appealing. Democratic Senators went about the serious business of preparing for hearings on the Miers nomination. But there were those from among the President's supporters who castigated Ms. Miers and the President for the nomination. The President succumbed to the partisan pressure from the extreme rightwing of his own party by withdrawing his nomination of Harriet Miers to the Supreme Court after repeatedly saying that he would never do so. In essence, he allowed his choice to be vetoed by an extreme faction within his party, before hearings or a vote. As Chairman SPECTER has often said, they ran her out of town on a rail. In fact, of course, she has remained in town as the President's counsel, but his point is correct. Like the more than 60 moderate and qualified judicial nominees of President Clinton on whom Republicans would neither hold hearings or votes, the Miers nomination was killed by Republicans without a vote—by what was in essence a pocket filibuster. That eye-opening experience for the country demonstrated what a vocal faction of the Republican Party really wants. Their rightwing litmus test demands justice and judges who will guarantee the results that they want. They do not want an independent federal judiciary. They want certain results.

Instead of uniting the country through his third choice to succeed Justice O'Connor, the President has chosen to reward one faction of his party, at the risk of dividing the country. Those so critical of his choice of Harriet Miers as a nominee were the very people who rushed to endorse the nomination of Judge Alito. Instead of rewarding his most virulent supporters, the President should have rewarded the American people with a unifying choice that would have broad support. America could have done better through consultation to select one of the many consensus conservative Republican candidates who could have been overwhelmingly approved by the Senate. Instead, without consultation, the President withdrew the Miers nomination and the next day announced that his third choice to succeed Justice O'Connor was Judge Alito.

At his hearing, Judge Alito began by asking how he got this critical nomination. Over the course of the hearings, I think we began to understand the real answer to that question. It has little to do with Judge Alito's family story and a great deal to do with the pressures that forced the President to withdraw the nomination of Harriet Miers and this President's efforts to avoid any check on his expansive claims to power.

This is a President who has been conducting secret and warrantless eavesdropping on Americans for more than 4 years. This President has made the most expansive claims of power since American patriots fought the war of independence to rid themselves of the overbearing power of King George III. He has done so to justify illegal spying on Americans, to justify actions that violate our values and laws against torture and protecting human rights, and in order to detain U.S. citizens and others on his say so without judicial review or due process. This is a time in our history when the protections of Americans' liberties are at risk as are the checks and balances that have served to constrain abuses of power for more than 200 years.

Judge Alito's opening statement skipped over the reasons he was chosen. He ignored his seeking political appointment within the Meese Justice Department by proclaiming his commitment to an extreme and activist rightwing legal philosophy. His testimony sought to minimize the Federalist Society and his seeking to use membership in Concerned Alumni of Princeton for advancement. He attempted to revise and redefine the theory of the "unitary executive." That is a legal underpinning being used by this President and his supporters to attempt to justify his assertions of virtually unlimited power. The President wanted a reliable Justice who would uphold his assertions of power, his most extreme supporters want someone who will revisit the constitutional protection of privacy rights, and the business supporters wanted someone favorable to powerful special interests.

Supreme Court nominations should not be conducted through a series of winks and nods designed to reassure the most extreme Republican factions while leaving the American people in the dark. No President should be allowed to pack the courts, and especially the Supreme Court, with nominees selected to enshrine Presidential claims of government power. The checks and balances that should be provided by the courts, Congress, and the Constitution are too important to be sacrificed to a narrow, partisan agenda. The Senate stood up to President Roosevelt when he proposed a court-packing scheme and should not be a rubberstamp to this President's effort to move the law dramatically to the right. I do not intend to lend my support to an effort by this President to undermine checks and balances or to move the Supreme Court and the law radically to the right.

So what do we know about the Samuel Alito who graduated from Princeton University and Yale Law School and obtained a plum job in the office of the Solicitor General of the United States? We know that he wanted political advancement and was committed to the radical legal theories of the Meese Justice Department. The job application that was the subject of some question at the hearing is most revealing. I will ask that a copy of that job application be printed in the RECORD at the conclusion of my statement so that the American people can see it.

This confirmation process is the opportunity for the American people to learn what Samuel Alito thinks about their fundamental constitutional rights and whether he will serve to protect their liberty, their privacy and their autonomy from Government intrusion. The Supreme Court belongs to all Americans, not just the person occupying the White House, and not just to a narrow faction of a political party.

We have heard from Judge Alito's supporters that those opposing this nomination were "smearing" him by asking substantive and probing questions at the hearing and by addressing concerns about his record during this debate. The Republican leader opened the debate with that attack. He said this before a single minute of debate or opening statement by any Democratic Senator. These Republican talking points ring hollow and are particularly inappropriate after President Bush was forced by an extreme faction in his own party to withdraw his nomination of Harriet Miers.

Democratic Senators should not be criticized for taking seriously their constitutional role in trying to assess whether Judge Alito is suitable for a lifetime position on the Supreme Court. Democrats also asked tough questions of Justices Ginsburg and Breyer during their confirmation hearings, which is in stark contrast to the free pass given to Judge Alito by Republican Senators during his hearing.

Those critical of the Democrats have a short and selective historical memory. Republican Senators engaged in a party-line vote in committee against the nomination of Louis Brandeis to the Supreme Court. Republican Senators, in an unprecedented party-line vote, blocked the nomination in 1999 of Missouri Supreme Court Justice Ronnie White, an extremely qualified nominee for a Federal district court judgeship. In fact, Republicans pocket-filibustered more than 60 of President Clinton's judicial nominees by holding them up in the Judiciary Committee.

This President continues to choose confrontation over consensus and to be a divider rather than being the uniter that he promised to be. This is in stark contrast to President Clinton's selection of Justices Ginsburg and Breyer after real consultation. In his book, "Square Peg," Senator HATCH described how in 1993, as the ranking minority member of the Senate Judiciary Committee, he advised President Clinton about possible Supreme Court nominees. Senator HATCH recounted that he warned President Clinton away from a nominee whose confirmation he believed "would not be easy." He wrote that he then suggested the names of Stephen Breyer and Ruth Bader Ginsburg, both of whom were eventually nominated and confirmed "with relative ease." President Bush, who had promised to be a uniter, not a divider, failed to live up to his promise or to the example of his predecessor, as described by Senator HATCH. The result is that, rather than sending us a nominee for all Americans, the President chose a divisive nominee who raises grave concerns about whether he will be a check on Presidential power and whether he understands the role of the courts in protecting fundamental rights.

The Supreme Court is the ultimate check and balance in our system. Independence of the courts and its members is crucial to our democracy and way of life. The Senate should never be allowed to become a rubberstamp, and neither should the Supreme Court.

This is a nomination to a lifetime seat on the Nation's highest Court that has often represented the decisive vote on constitutional issues. The Senate needs to make an informed decision about this nomination. This process is the only opportunity that the American people and their representatives have to consider the suitability of the nominee to serve as a final arbiter of the meaning of Constitution and the law. Has he demonstrated a commitment to the fundamental rights of all Americans? Will he allow the government to intrude on Americans' personal privacy and freedoms?

In a time when this administration seems intent on accumulating unchecked power. Judge Alito's views on government power are especially important. It is important to know whether he would serve with judicial independence or as a surrogate for the President who nominated him. Based on a thorough review of his record and that from his hearing, I have no confidence that he will act as an effective check on government overreaching and abuses of power.

As we began the hearings, I recalled the photograph that hangs in the National Constitution Center in Philadelphia, PA. It shows the first woman ever to serve on the Supreme Court of the United States taking the oath of office in 1981. Justice Sandra Day O'Connor served as a model Supreme Court Justice.

She is widely recognized as a jurist with practical values and a sense of the consequences of the legal decisions being made by the Supreme Court. I regret that some on the extreme right have been so critical of Justice O'Connor and have adamantly opposed the naming of a successor who shares her judicial philosophy and qualities. Their criticism reflects poorly upon them. It does nothing to tarnish the record of the first woman to serve as an Associate Justice of the Supreme Court of the United States. She is a Justice whose graciousness and sense of duty fuels her continued service nearly 7 months after she announced her intention to retire.

As the Senate prepares to vote on President Bush's current nomination—his third—for a successor to Justice O'Connor, we should be mindful of her critical role on the Supreme Court. Her legacy is one of fairness that I want to see preserved. Justice O'Connor has been a guardian of the protections the Constitution provides the American people.

Of fundamental importance, she has come to provide balance and a check on government intrusion into our personal privacy and freedoms. In the Hamdi decision, she rejected the Bush administration's claim that it could indefinitely detain a U.S. citizen. She upheld the fundamental principle of judicial review over the exercise of government power and wrote that even war "is not a blank check for the President when it comes to the rights of the Nation's citizens." She held that even this President is not above the law.

Her judgment has also been crucial in protecting our environmental rights. She joined in 5-to-4 majorities affirming reproductive freedom, religious freedom, and the Voting Rights Act. Each of these cases makes clear how important a single Supreme Court Justice is.

It is as the elected representatives of the American people—all of the people—that we in the Senate are charged with the responsibility to examine whether to entrust their precious rights and liberties to this nominee. The Constitution is their document. It guarantees their rights from the heavy hand of government intrusion and their individual liberties to freedom of speech and religion, to equal treatment, to due process and to privacy.

The Federal judiciary is unlike the other branches of Government. Once confirmed, Federal judges serve for life. There is no court above the Supreme Court of the United States. The American people deserve a Supreme Court Justice who inspires confidence that he, or she, will not be beholden to the President but will be immune to pressures from the government or from partisan interests.

The stakes for the American people could not be higher. At this critical moment, Democratic Senators are performing our constitutional advice and consent responsibility with heightened vigilance. I urge all Senators—Republicans, Democrats and Independents—to join with us. The Supreme Court is the guarantor of the liberties of all Americans. The appointment of the next Supreme Court Justice must be made in the people's interest and in the Nation's interest, not to serve the special interests of a partisan faction.

I have voted for the vast majority of President Reagan's, President Bush's, and President Bush's judicial nominees. I recommended a Republican to President Clinton to fill Vermont's seat on the Second Circuit, Judge Fred Parker, and recommended another Republican to President Bush to fill that seat after Judger Parker's death, Judge Peter Hall. I voted for President Reagan's nomination of Justice Sandra Day O'Connor, for President Reagan's nomination of Justice Anthony Kennedy, for President Bush's nomination of Justice Souter, and for this President's recent nomination of Chief Justice Roberts. In fact, I have voted for eight of the nine current Justices of the Supreme Court.

I want all Americans to know that the Supreme Court will protect their rights and will respect the authority of Congress to act in their interest. I want a Supreme Court that acts in its finest tradition as a source of justice. The Supreme Court must be an institution where the Bill or Rights and human dignity are honored. In good conscience, based on the record, I cannot vote for this nomination. I urge all Senators to use this last night of debate to consult their consciences and their best judgment before casting their votes tomorrow. That vote will matter.

In my 30 years in the Senate, I have cast almost 12,000 votes here in the Senate. Few will be as important as the vote we cast tomorrow.

Mr. President, I now ask unanimous consent that the application to which I referred be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PPO NON-CAREER APPOINTMENT FORM

From: Mark R. Levin.

To: Mark Sullivan, Associate Director, PPO.

Date Sent: 11/18/85.

Canadidate: Samuel A. Alito, Jr.

Department: Department of Justice.

Job Title: Deputy Assistant Attorney General.

Grade: ES–I.

Supervisor: Charles J. Cooper.

Race: White.

Sex: Male.

Date of Birth: Apr. 1, 1950.

Home State: New Jersey.

Previous Government Service: Yes.

If yes, give departments, dates career or non-career positions held: Assistant to the Solicitor General, Dept. of Justice, 1981 to present; Assistant U.S. Attorney, N.J., 1977–1981; Law clerk to Judge Leonard I. Garth, U.S. Court of Appeals, Third Cir., 1976–1977.

A complete Form 171, political and personal resumes, complete job description, and letters of support must be included for White House clearance to begin.

1980 Domicile (State): New Jersey.

Please provide any information that you regard as pertinent to your philosophical commitment to the policies of this administration, or would show that you are qualified to effectively fill a position involved in the development, advocacy and vigorous implementation of those policies.

Have you ever served on a political committee or been identified in a public way with a particular political organization, candidate or issue?

(Please be specific and include contacts with telephone numbers.)

I am and always have been a conservative and an adherent to the same philosophical views that I believe are central to this Administration. It is obviously very difficult to summarize a set of political views in a sentence but, in capsule form, I believe very strongly in limited government, federalism, free enterprise, the supremacy of the elected branches of government, the need for a strong defense and effective law enforcement, and the legitimacy of a government role in protecting traditional values. In the field of law, I disagree strenuously with the usurpation by the judiciary decisionmaking authority that should be exercised by the branches of government responsible to the electorate. The Administration has already made major strides toward reversing this trend through its judicial appointments, litigation, and public debate, and it is my hope that even greater advances can be achieved during the second term, especially with Attorney Meese's leadership at the Department of Justice.

When I first became interested in government and politics during the 1960s, the greatest influences on my views were the writings of William F. Buckley, Jr., the National Review, and Barry Goldwater's 1964 campaign. In college, I developed a deep interest in constitutional law, motivated in large part by disagreement with Warren Court decisions particularly in the areas of criminal procedure, the Establishment Clause, and reapportionment. I discovered the writings of Alexander Bickel advocating judicial restraint, and it was largely for this reason that I decided to go to Yale Law School.

After graduation from law school, completion of my ROTC military commitment, and a judicial clerkship, I joined the U.S. Attorney's office in New Jersey, principally because of my strong views regarding law enforcement.

Most recently, it has been an honor and source of personal satisfaction for me to serve in the office of the Solicitor General during President Reagan's administration and to help to advance legal positions in which I personally believe very strongly. I am particularly proud of my contributions in recent cases in which the government has argued in the Supreme Court that racial and ethnic quotas should not be allowed and that the Constitution does not protect a right to an abortion.

As a federal employee subject to the Hatch Act for nearly a decade, I have been unable to take a role in partisan politics. However, I am a life-long registered Republican and have made the sort of modest political contributions that a federal employee can afford to Republican candidates and conservative causes, including the National Republican Congressional Committee, the National Conservative Political Action Committee, Rep. Christopher Smith (4th Dist. N.J.), Rep. James Courter (12th Dist. N.J.), Governor Thomas Kean of N.J., and Jeff Bell's 1982 Senate primary campaign in N.J. I am a member of the Federalist Society for Law and Public Policy and a regular participant at its luncheon meetings and a member of the Concerned Alumni of Princeton University, a conservative alumni group. During the past year, I have submitted articles for publication in the National Review and the American Spectator.

Applicant Signature: Samuel A. Alito, Jr.

Date: Nov. 15, 1985

Associate Director Recommendation: Approved, Mark Sullivan.

Mr. DORGAN. We work on many important issues here in the Congress, but none more important than choosing a Justice to serve on the Supreme Court.

Providing a lifetime appointment to the U.S. Supreme Court is a very serious matter for both the President and the U.S. Senate. Our choice will impact our country well beyond the term of office for the President and for most of the Senate.

Those nominations are also very important to the citizens of our country and my State of North Dakota, many of whom—on both sides—have contacted my office and whose counsel I have heard and valued.

This is the second nomination for the U.S. Supreme Court that has been sent to the Senate by President Bush in the span of a few short months.

During consideration of the nomination of Judge John Roberts to become Chief Justice of the Supreme Court, I studied his record carefully. I reviewed the hearing records of his appearance before the Senate Judiciary committee as well as his record as a Federal judge on the Circuit Court.

And in the end, I voted to confirm Judge Roberts. I concluded that he was very well qualified, and I also felt after meeting with him that he would not bring an ideological agenda to his work of interpreting the U.S. Constitution.

In short, I felt he would make a fine Chief Justice.

The Supreme Court nomination we are now considering is that of Judge Samuel Alito.

This has been a difficult decision for me.

Judge Alito has substantial credentials. His education, work history, and his 15 years of service on the Circuit Court are significant.

However, in evaluating Judge Alito's rulings, writings, and his responses during his nomination hearings, I have been troubled by several things.

First, he has a clear record over many years of a tendency to favor the big interests over the small interests. That is, when an individual is seeking justice in the courts by taking on the government or a large corporation, Judge Alito's rulings are often at odds with the rulings of his colleagues on the Court and tend to overwhelmingly favor the government or the big interests.

People who live in small States like North Dakota have, over many years, found it necessary to use the courts to take on the big economic interests. Whether it is taking on big corporations, the railroads, big financial interests, or the U.S. Government, as farmers have had to do in recent decades, I think it is important that a Supreme Court Justice be someone who will give the people a fair hearing.

Judge Alito's rulings on the circuit court have, I believe, tilted heavily on the side of the big interests.

One of the key questions for me about a new Justice for the Supreme Court is "will this person interpret the Constitution in a manner that expands personal freedom and liberty, or will this person interpret it in a way that restricts personal freedom and liberty?"

I believe Judge Alito's record is one that leans in the direction of restricting the freedom and liberty of individual citizens.

I am also concerned by Judge Alito's view of what is referred to as the unitary executive. This is an issue about Presidential power in our form of government. The judicial branch of Government is designed to be a check and balance on the expansion of Presidential powers. I believe Judge Alito's answers in the Judiciary Committee to questions about the unitary executive tilt toward showing deference toward expanded and unchecked Presidential authority. His views on this issue concern me.

For all of these reasons, I have decided to cast my vote against the nomination of Judge Samuel Alito. I take no joy in opposing his nomination, but for the reasons I have mentioned above, I am not comfortable voting to confirm him for a lifetime appointment on our Nation's highest Court.

Over the years, I have supported about 97 percent of the nominees for the Federal court sent to us by President Bush. My record has been one of substantial support for the President's nominees.

But for me, a nomination to the Supreme Court carries much more weight and greater potential consequences for the country.

Judge Alito is replacing Justice Sandra Day O'Connor on the Court. Justice O'Connor has been a key swing vote on so many issues that have been decided by a 5-to-4 vote in recent years.

I believe that Judge Alito's nomination, if approved by the Senate, would tilt that Court in a direction that will restrict personal freedoms, strengthen the role of government and corporations in our lives, and allow the expansion of power of the Presidency.

For those reasons, I have decided to vote no on this nomination.

Mr. ROCKEFELLER. Mr. President, I rise today to share my thoughts and concerns about the President's nomination of Samuel Alito to be an Associate Justice on the U.S. Supreme Court.

It goes without saying that the decision whether to confirm a nominee for a lifetime position on the Supreme Court is among the Senate's most serious and solemn constitutional obligations.

My ultimate test for whether to support a nominee to the Supreme Court rests with two questions: will the nominee protect the best interests of West Virginians and will the nominee uphold the fundamental rights and freedoms of all Americans that are set out in the Constitution and in our laws. It is a high standard, as it must be for a lifetime appointment to the highest Court in the land.

In the last few weeks and months, through careful consideration, I have attempted to answer those two questions. I have concluded that Judge Alito's judicial record, his writings, and his statements portray a man who will not do enough to stand up against power when the rights of average Americans are on the line and who will not do enough to stand up against the President when the checks and balances in our Constitution are on the line.

I will not support a filibuster because I see it as an attempt to delay his certain confirmation. But I will register my grave concerns about Judge Alito's nomination to the Supreme Court by voting against confirmation when that final vote is before us.

My decision is the result of a long and deliberative process.

As my record plainly shows, I have never applied a partisan or ideological litmus test to nominees. George W. Bush was elected as a conservative President, and I have supported his conservative choices at every level. On the judiciary alone, I have voted to confirm 203 out of 212 judges nominated by President Bush. Just 4 months ago, I voted in support of Chief Justice John Roberts, a true conservative, because I concluded that he would consider fully the lives of average people, the lives of those in need and those whose voices often are not heard. I believed on balance that he would be his own man in the face of inevitable outside pressures.

In recent weeks and months, I have heard from hundreds of West Virginians through letters, telephone calls, and personal conversations. Many have expressed strong opposition to Judge Alito, and many have expressed strong support for him. I have weighed all of their views carefully.

I also have labored over Judge Alito's record—his early writings, his rulings, his speeches, and his Senate testimony—and I met personally with Judge Alito. I wanted to hear directly from him, in his own words, what kind of an Associate Justice he would be.

There is no question he is an intelligent man with a deep knowledge of our legal system. During our conversations, he was a gentleman in every sense of the word. But for me these important character traits are not enough to warrant elevation to the U.S. Supreme Court.

I have concluded that although Judge Alito is a well-qualified jurist, I cannot in good conscience support a nominee whose core beliefs and judicial record exhibit simply too much deference to power at the expense of the individual.

Particularly in the committee hearings, when pressed on issues such as individual rights and Presidential powers, Judge Alito's answers troubled me—they were limited and perfunctory. I was left with a strong sense of his ability to recite and analyze the law as it stands but with very little sense of his appreciation for the principles and the real people behind those laws.

Unfortunately, Judge Alito's record does not allay those concerns. As a government lawyer, a Federal prosecutor, and a 15-year Federal judge on the Third Circuit, with lifetime tenure, Judge Alito has repeatedly sided against people with few or no resources. The average person up against a big corporation, an employer, or even the government itself, all too often comes out on the short end of the stick in front of Judge Alito.

I am particularly troubled by one case, RNS Services v. Secretary of Labor. In RNS Services, Judge Alito argued, in a lone dissent, against protecting workers in a Pennsylvania coal plant by not enforcing the jurisdiction of the Mine Safety and Health Administration, MSHA. Judge Alito claimed that the coal processing plant was closer to a factory than a mine, and therefore should be governed by the more lenient Occupational Safety and Health Administration, OSHA, standards. Fortunately for the miners, the majority of judges in the case did not agree with Judge Alito, and MSHA's standards prevailed.

Outside the courtroom, Judge Alito has at various times in his career suggested, directly and indirectly, that he supports a disproportionately powerful President and executive branch. As a mid career government lawyer, his writings showed a solicitous deference to the executive branch and a willingness to undercut the constitutional authority of Congress. As recently as 2000, Judge Alito forcefully argued in support of a controversial theory known as the "unitary executive" which would allow the President to act in contravention of the laws passed by Congress in carrying out his duties.

As vice chairman of the Senate Intelligence Committee, I have developed an even greater appreciation for the wisdom of our Nation's Founders in creating a system of checks and balances among the judicial, executive and legislative branches of Government. The interaction between the President and the Congress on matters of national security, classified and unclassified, is incredibly important to our safety and our future. Today there is a serious legal and constitutional debate going on in our country about whether the President, who already has enormous inherent powers as the leader of our country, has expanded his executive reach beyond the bounds of the law and the Constitution. The fact is the President does not write the laws, nor is he charged with interpreting them—the Constitution is unequivocally clear that lawmaking resides with the Congress and interpretation resides with the courts—yet this President, on many fronts, is attempting to do both.

This alarming trend has been exacerbated by the fact that we have a single party controlling both the White House and the Congress, resulting in minimal congressional oversight of an overreaching executive branch.

The Supreme Court, in the coming months and years, will be forced to rule on any cases related to expansion of Executive power. This nominee will play a pivotal role in settling the legal questions of today and charting a course for the legal questions of our children's and grandchildren's generations.

These are core questions: What is the scope of presidential power under the Constitution? What is the appropriate balance between the President and the Congress? When must the constitutionally protected rights of average Americans—workers' rights, families' rights, and individuals' rights—prevail?

At the end of the day, I am left with the fear that Judge Alito brings to the Court a longstanding bias in favor of an all-powerful presidency and against West Virginians' basic needs and interests.

Mr. LEVIN. Mr. President, while I had expected that the Senate would move directly to an up-or-down vote on Judge Alito's nomination to the Supreme Court without a vote on cloture, because I strongly oppose this nomination, as I explained in my remarks last week, and because the filibuster has been a time-honored and accepted part of the checks and balances on the President's appointment powers, I will vote against cloture on this nomination.

Mr. GREGG. Mr. President, I rise today to speak on the nomination of Judge Samuel A. Alito, Jr., to become an Associate Justice of the Supreme Court. After following the confirmation process and reviewing Judge Alito's qualifications, I am pleased to support this nomination and congratulate President Bush on another outstanding pick for our Nation's highest Court. Although there are no guarantees about how any judicial nominee will carry out his or her responsibilities once confirmed, I believe that Judge Alito will serve our country well as Justice Sandra Day O'Connor has done for almost a quarter of a century on the Supreme Court.

To explain why I support the nomination of Judge Alito, let me first begin my remarks by referring to article II of the U.S. Constitution—in particular, section 2, which states that it is up to the President to appoint individuals to our highest Court. As he pledged to the voters who elected him, President Bush has exercised his appointment powers to pick someone who firmly believes in the rule of law, the importance of protecting the rights of all Americans, and the Founding Fathers' wisdom of leaving policy decisions to the elected branches of Government. The President has followed through on his promise to the American people by choosing Judge Alito.

With that said, Judge Alito is not simply the fulfillment of a campaign promise—he is also one of the sharpest legal minds in the Federal appellate ranks and a dedicated public servant. A former editor of the Yale Law Journal and Army reservist, Judge Alito has served as a law clerk for Judge Leonard Garth of the Third Circuit, an assistant U.S. attorney for New Jersey, an Assistant to the Solicitor General, Deputy Assistant Attorney General in the Department of Justice's Office of Legal Counsel, and the U.S. attorney for New Jersey. After his first 15 years of public service, he then went on to serve as a judge on the Third Circuit, for which he was unanimously confirmed by the Senate in 1990. In total, Judge Alito has served our Nation for 30 years, using his legal experience and talents for public good rather than for personal profit. We should all applaud and support such a record of public service, especially when you consider the fact that Judge Alito has more judicial experience than any Supreme Court nominee in over 70 years.

Unfortunately, however, there are a number of my colleagues from across the aisle who somehow believe that this record of public service is something to deride and distort. Forget the fact that nearly everyone who has worked with Judge Alito or has taken an impartial review of this man's record and credentials, such as the American Bar Association, supports this nomination wholeheartedly. Forget the fact that Judge Alito has garnered the near unanimous support of his colleagues on the Third Circuit and lawmakers from both parties—including Governor Ed Rendell of Pennsylvania—who know him best. Forget the fact that Judge Alito has ruled in favor of minorities who have alleged racial discrimination or were convicted of crimes. Forget that Judge Alito is known by those who have worked with him as a good and decent man who does not put ideology over public responsibility. Some of my colleagues do not want to consider any of these facts, or they somehow distort all of them as they try to smear the President's nominee. And why? Well, because Judge Alito is simply that; he is President Bush's nominee.

As someone who supported both of President Clinton's nominations to the Supreme Court, I find this type of partisanship appalling. Instead of accepting the obvious fact that Judge Alito is more than well qualified to serve on the Supreme Court, some of my colleagues want to cherry-pick and distort a few opinions out of the hundreds that he has written, hype up his alleged relationship with a university organization, or huff and puff about the Vanguard recusal matter even though the American Bar Association and most well regarded legal ethics experts have found nothing unethical. As opposed to qualifications, some of my colleagues across the aisle want to focus solely on these petty matters that are borne simply out of personal vendetta or the echo chamber of liberal blogs. They now want the Senate and the American people to forget everything else and base this important vote on a few dubious claims.

None of this is healthy for the Senate or for our Nation. It does not take a genius to realize that most Americans are tired of this petty partisanship, and the personal attacks on Judge Alito and the distortion of his record will only further discourage, not encourage, future nominees who have lengthy records of public service and judicial experience. This is troubling, and I hope that the previous few months are not more evidence of a trend towards partisanship at all costs. Whether some may like it or not, President Bush was elected by the American people. His nominees therefore deserve fair and dignified consideration by the Senate, even by those who opposed the President's election or his views on certain issues.

Perhaps these past few months should not have been a surprise to people like me who believe that the Senate should not let politics or ideology stand in the way of qualified nominees. After all, maybe all of this was foreseen by the Founding Fathers when they established the nomination process in article II, section 2 of the Constitution and gave the Senate only a limited advice and consent role. As Edmund Randolph noted, "Appointments by the Legislatures have generally resulted from cabal, from personal regard, or some other consideration than a title derived from the proper qualifications." Looking at how some of my colleagues have approached the nomination of Judge Alito, I believe that Mr. Randolph, sadly, may have been right when he said this more than 200 years ago.

Fortunately, there are a greater number of colleagues here in the Senate who do view the issue of judicial nominations as being about qualifications, not politics. They include the majority leader and the chairman of the Judiciary Committee, who have both done a commendable job of moving this nomination forward and giving us the opportunity to have an up-or-down vote. I congratulate them on their efforts and look forward to casting my vote in support of Judge Alito. He certainly deserves it, as well as the support of the rest of the Senate.

Ms. COLLINS. Mr. President, I rise today to speak in favor of the nomination of Samuel Alito to serve as Associate Justice of the Supreme Court.

The Supreme Court is entrusted with an enormous power—the power to interpret the Constitution, to say what the law is, to guard one branch against the encroachments of another, and to defend our most sacred rights and liberties.

The decision of whether to confirm a nominee to the Supreme Court is a solemn responsibility of the Senate and one that I approach with the utmost care. It is a duty that we must perform despite the fact that nominees are constrained in the information they can provide us.

Some interest groups, and even some of my colleagues, have called on nominees to promise to vote a certain way; they demand allegiance to a particular view of the law or a guarantee in the outcome of cases involving high-profile issues. These efforts are misguided.

To avoid prejudging and to ensure impartiality, a nominee should not discuss issues in areas of the law that are "live"—where cases are likely to come before the Court. Parties before the Court have a right to expect that the Justices will approach their case with a willingness to fully and fairly consider both sides.

The cases that come before the Supreme Court each year present legal issues of tremendous complexity and import, and Justices should not be asked to speculate as to how they would vote, or make promises in order to win confirmation. Justice Ginsberg stated during her hearing that a nominee may provide "no hints, no forecasts, no previews" on issues likely to come before the Court. As Justice Ginsberg's statement underscores, the Justices should reach a conclusion only after extensive briefing, argument, research, and discussion with their colleagues on the Court.

We must also recognize that there are limits to our ability to anticipate the issues that will face the Court in the future. Twenty years ago, few would have expected that the Court would hear cases related to a Presidential election challenge, would try to make sense of copyright laws in an electronic age, or would face constitutional issues related to the war on terrorism.

While we cannot know with certainty how a nominee will rule on the future cases that will come before him or her, we are not without information on which to base our judgement. We must engage in a rigorous assessment of the nominee's legal qualifications, integrity, and judicial temperament, as well as the principles that will guide the nominee's decisionmaking. In fact, in Judge Alito's case, I note that we have significantly more information on which to base our judgement than with other nominees, given his long tenure as a judge on the Third Circuit Court of Appeals.

The excellence of Judge Alito's legal qualifications is beyond question. Even his fiercest critics acknowledge that he is an extraordinary jurist with an impressive knowledge of the law, a conclusion also reached by the American Bar Association, ABA.

The ABA Standing Committee on the Judiciary conducted an exhaustive review of his qualifications. During this process, the Committee contacted 2,000 individuals throughout the Nation, conducted more than 300 interviews with Federal judges, State judges, colleagues, cocounsel, and opposing counsel, and formed reading groups to review his published opinions, unpublished opinions, and other materials. Based on its review, the committee found Judge Alito's integrity, his professional competence, and his judicial temperament to be of the highest standard, and decided unanimously to rate him "well qualified"—the highest possible rating.

When asked at his hearing what type of Justice he would be, Judge Alito directed Senators to his record as a judge on the Third Circuit. I agree this is the appropriate focus.

During his 15 years of service on the Third Circuit, Judge Alito has voted in more than 4,800 cases and has written more than 350 opinions. His record on the bench is one of steady, cautious, and disciplined decisionmaking. He is careful to limit the reach of his decisions to the particular issues and facts before him, and he avoids inflammatory or politically charged rhetoric. And despite this extensive record, there is no evidence that his decisions are results-oriented. For example, in the area of reproductive rights, I note that he has reached decisions favoring competing sides of the political debate.

After reviewing Judge Alito's dissenting opinions, Cass Sunstein, a well-known liberal law professor from the University of Chicago, reached the following conclusion: "None of Alito's opinions is reckless or irresponsible or even especially far-reaching. His disagreement is unfailingly respectful. His dissents are lawyerly rather than bombastic. . . . Alito does not place political ideology in the forefront."

During his hearing, the committee heard the testimony of seven judges from the U.S. Court of Appeals for the Third Circuit, the court on which Judge Alito currently serves. The panel was comprised of current and retired judges, appointed by both Democratic and Republican Presidents, and holding views ranging across the political spectrum.

Who better to know how Judge Alito thinks, reasons, and approaches the law, than those with whom he worked so closely over the past 15 years? And it is significant that these colleagues were unanimous in their praise of Judge Alito—in his legal skills, his integrity, his evenhandedness, and his dedication to precedent and the rule of law.

As Judge Becker commented, "The Sam Alito that I have sat with for 15 years is not an ideologue. He's not a movement person. He's a real judge deciding each case on the facts and the law, not on his personal views, whatever they may be. He scrupulously adheres to precedent. I have never seen him exhibit a bias against any class of litigation or litigants."

Judge Aldisert, who was appointed by President Johnson, had this to say: "The great Cardozo taught us long ago the judge, even when he is free, is not wholly free. He is not free to innovate at pleasure. This means that the crucial values of predictability, reliance and fundamental fairness must be honored. . . . And as his judicial record makes plain, Judge Alito has taken this teaching to heart."

Judge Lewis, a committed human rights and civil rights activist who described himself as "openly and unapologetic pro-choice," said: "I cannot recall one instance during conference or during any other experience that I had with Judge Alito . . . when he exhibited anything remotely resembling an ideological bent. . . . If I believed that Sam Alito might be hostile to civil rights as a member of the United States Supreme Court, I guarantee you that I would not be sitting here today."

Judge Alito's colleagues provided compelling testimony of his deep and abiding commitment to the rule of law, the limited role of a judge, and the obligation to decide the case based on the facts and the record before him. They also testified that Judge Alito's decisions have been constrained by established legal rules and specifically by a respect for the rules of precedent. The weight of their testimony is substantial—they know far more about Judge Alito's judicial philosophy than we could hope to learn in a few days of public hearings.

A nominee's judicial philosophy matters to me. When I met with Judge Alito, I specifically asked him about his views on the importance of precedent and stare decisis—the principle that courts should adhere to the law set forth in previously decided cases.

During both our meeting and his hearing, Judge Alito evidenced a strong commitment to the principle of stare decisis. Judge Alito acknowledged the importance of this principle to reliance, stability, and settled expectations in the law.

At his hearing, Judge Alito, referring to the landmark Roe v. Wade decision, testified as follows: "[I]t is a precedent that is protected, entitled to respect under the doctrine of stare decisis. . . ."

Similarly, Chief Justice Roberts, who was confirmed with a strong bipartisan support, made a nearly identical statement at his hearing. He said that Roe is "a precedent of the court, entitled to respect under the principles of stare decisis."

After a careful comparison of these statements and others, I find that on substance, there is little that distinguishes the two nominees' statements on this issue. Both nominees clearly acknowledged the importance of precedent, the value of stare decisis, and the factors involved in analyzing whether a prior holding should be revisited. Both agreed that the Constitution protects the right to privacy, and that the analysis of future cases involving reproductive rights begins not with Roe but with the Casey decision, which reaffirmed Roe's central holding. And both testified that when a case has been reaffirmed multiple times, as Roe has, this increases its precedential value.

Despite the strong testimony of both Chief Justice Roberts and Judge Alito, the reality is that no one can know for certain how a Justice will rule in the future. History has shown us that many predictions about how other Justices would decide cases have proven wrong.

At her hearing in 1981, Justice O'Connor vigorously defended her belief that abortion was wrong and stated that she found it "offensive" and "repugnant." Justice Souter once filed a brief as a State attorney general opposing the use of public funds to finance what was referred to in the brief as the "killing of unborn children." Justice Kennedy once denounced the Roe decision as the "Dred Scott of our time."

Yet, in 1992, all three of these Justices joined together to write the joint opinion in Casey reaffirming Roe based on the "precedential force" of its central holding.

Based on my review of his past decisions, I doubt that I will agree with every decision Judge Alito reaches on the Court, just as I do not agree with all of his previous decisions. I anticipate, however, that his legal analysis will be sound, and that his decisionmaking will be limited by the principle of stare decisis and the particulars of the case before him.

Judge Alito has demonstrated his fitness for this appointment with his clear dedication to the rule of law. After an exhaustive review process, the ABA has given him its highest possible rating. His colleagues on the Third Circuit, both Republican and Democrat appointees alike, have been unqualified in their praise of his nomination.

Based on the record before me, I believe that Judge Alito will be a Justice who will exercise his judicial duties guided not by personal views, but based on what the facts, the law, and the Constitution command.

For these reasons, I will vote to confirm Judge Alito. I hope and expect that he will prove his critics wrong and that his record on the Supreme Court will show the same deference to precedent, respect for the limited role of a judge, and freedom from ideologically driven decisionmaking that he has demonstrated during his tenure on the Third Circuit.

Mr. KYL. Mr. President, I explained last Wednesday that I would support the nomination of Judge Alito. Since then, I have been somewhat frustrated at how this Senate debate has progressed. Time and time again, some

Senators have mischaracterized the cases and record of Judge Alito. I would like to take a few minutes and walk through just a few of those misstatements.

First, let me address the case of Sheridan v. DuPont.

On January 26, the junior Senator from Colorado indicated that Judge Alito was unlikely to support principles of diversity because he ruled against a female plaintiff in a gender discrimination case. The Senator said, "In Sheridan, Judge Alito registered the lone dissent among thirteen judges voting to prevent a woman who had presented evidence of employment gender discrimination from going to trial." The Senator's summary of the case requires additional elaboration, though.

According to the record of that case, the plaintiff, Barbara Sheridan, was employed as head captain of the Green Room restaurant in the Hotel DuPont. Initially, she received good performance reviews, but DuPont claimed that her performance began to deteriorate in 1991. At that point, her manager met with her to ask her to stop using the restaurant bar for smoking and grooming. Apparently Sheridan was frequently late to work, and other employees had complained about food and drinks she gave away. In February 1991, the hotel decided to reassign Sheridan to a nonsupervisory position that did not involve the handling of cash. She would not suffer any reduction in pay because of this job transfer. Rather than accept reassignment, Sheridan resigned in April 1992 and sued for gender discrimination.

When the case came before him on appeal, Judge Alito joined a unanimous three-judge panel that ruled for Ms. Sheridan. He held that her case should go to trial because it was plausible that a jury could agree with her. Judge Alito explained, "a rational trier of fact could have found that duPont's proffered reasons for the constructive termination were pretextual."

Later, however, the case was heard by the full Third Circuit. At that time, Judge Alito expressed doubt about the applicable Third Circuit precedent. Hesitant about the court's broad rule that affected all cases with varying factual situations, he explained that when the employee makes out a case like this, she should usually, but not always, be accorded a trial. He reached this conclusion after parsing the Supreme Court's 1993 decision in St. Mary's Honor Center v. Hicks. And most importantly for present purposes, the Supreme Court later agreed with Judge Alito's view in a unanimous opinion authored by Justice O'Connor. That case, Reeves v. Sanderson Plumbing Products, can be found at 533 U.S. 133, and was decided by the Supreme Court in 2000.

The job of an appellate court judge is to faithfully interpret the Constitution and the Supreme Court's interpretations of statutes. The history of this case demonstrates that Judge Alito got it right when he examined pleading standards in title VII cases.

Let's move on to another case, the 1996 case of U.S. v. Rybar, in which Judge Alito dissented.

On January 25, the Senior Senator from Rhode Island said that Judge Alito "advocated striking down Congress's ban on the transfer and possession of machine guns." He further said that Judge Alito had argued that he was "not convinced by Congress' findings on the impact of machine guns on interstate commerce. He substituted his own policy preferences in a way that the Third Circuit majority found was, in their words, counter to the difference that the owes to its two coordinate branches of government."

I discussed this case with Judge Alito during his confirmation hearings. The description we have just heard does not tell the whole story.

Judge Alito's dissent in that case had nothing to do with being "convinced" by Congress's findings. Rather, Judge Alito based his dissent, in part, on the fact that Congress made no explicit findings regarding the link between the intrastate activity regulated by these laws, the mere possession of a machine gun, and interstate commerce. Note that this case was about possession, not transfer or commercial activity.

Second, the dissent had nothing to do with Judge Alito's own policy preferences regarding the possession of machine guns. Rather, it was a careful application of the then-recent decision in United States v. Lopez, which reminded courts to take seriously the limits of Congress's powers under the commerce clause. In Lopez, the Supreme Court had held that Congress's power to regulate commerce among the several States did not include the power to regulate possession of a gun near a school where the gun never crossed State lines. It was for the Third Circuit to decide whether Congress's power to regulate interstate commerce included the power to regulate possession of a machine gun where the machine gun never crossed State lines. In Judge Alito's view, the Supreme Court's decision "require[d] [the court] to invalidate the statutory provision at issue." He relied on and cited Lopez at least 22 times in his 9-page dissenting opinion.

Again, this is the job of an appeals court judge: to interpret Supreme Court precedent and apply it to new cases.

I should also point out that Judge Alito's dissenting opinion provided a virtual roadmap for how Congress could regulate the possession of guns in a way consistent with the Constitution and Supreme Court case law. This is hardly the behavior of someone bent on imposing a "policy preference" against regulating machine guns. According to Judge Alito, all Congress had to do was make findings as to the link between the possession of firearms and interstate commerce or add a requirement that the government prove that the firearm moved across State lines.

Let me add one last word on the Rybar case. It is often said that Judge Alito always sides with the government. Well, this case was called "United States versus Rybar," and Judge Alito was on the side of Mr. Rybar. Of course, he did not think of himself being on anyone's side. He was just doing as he believed the Constitution and Supreme Court required. And he would have felt the same way if the law required the opposite conclusion.

Let us now move on to another case, that of Riley v. Taylor.

Speaking at the executive business meeting for the nomination of Judge Alito, the senior Senator from Illinois left a misimpression of the facts of this case, so I would like to clear up any confusion.

In that case, Judge Alito found there was insufficient evidence to support a criminal defendant's claim that the prosecutor had violated his constitutional rights by striking three minorities from the jury pool. The Senator said that the prosecutor had "in three previous murder cases, used every challenge they had to make certain that only white jurors would stand in judgment of black defendants." That is not accurate. While it is true that the criminal defendant relied heavily on the anemic evidence that in three previous trials no African Americans ended up on the jury, it is also the case that the prosecutor had struck both Blacks and Whites from those juries. Indeed, Judge Alito pointed out in his decision that, of the excluded jurors in the previous trials, only 24 percent were African Americans. He suggested that this might not even be disproportionately high in a county where the most recent census indicated that 18 percent of the population was Black.

Most importantly, Judge Alito's opinion rejected the selective use of statistics based upon the sample size of three trials. In so ruling, Judge Alito was in agreement with multiple State and Federal judges who had heard the case before him. On the full Third Circuit, four other judges, half of them Democratic appointees, joined in his opinion on this point. Not a single judge thought the statistical argument settled the case.

As a postscript, when Riley was given a new trial by the Third Circuit, he was again convicted of all charges. When he again appealed, the Delaware Supreme Court found that his petition was "wholly without merit."

Let me turn to another case, one also discussed by the senior Senator from Illinois, but during his January 25 floor speech, that of Pirolli v. World Flavors.

The Senator from Illinois stated: "Another case involved an individual who was the subject of harassment in the work place. This person had been assaulted by fellow employees. He was a mentally retarded individual." The Senator continued, "His case was dismissed by a trial court, and it came before Judge Alito to decide whether or not to give him a chance to take his case to a jury. And Judge Alito said no. The man should not have a day in court."

Several corrections are needed here.

First, the plaintiff in this case did have his day in court; he just did not reach a jury. During the course of the proceedings, the plaintiff presented his argument to not one, but four judges—one district court judge and three appellate court judges. The rules of the Third Circuit require that a plaintiff present his case in a minimally adequate fashion in order to be considered. The plaintiff must, at a minimum, state what happened to him and provide the basis for his claim. But the plaintiff in this case, a man who had a lawyer, never did that. The Third Circuit judges in this case were not provided with enough facts to make an adequate and informed decision. Judge Alito emphasized, "I would overlook many technical violations of the Federal Rules of Appellate Procedure and our local rules, but I do not think it is too much to insist that Pirolli's brief at least state the ground on which reversal is sought."

Second, with regard to the plaintiff's sexual harassment claim, Judge Alito refused to accept the arguably demeaning stereotype which the plaintiff's lawyer advanced, which was "that retarded persons are any more (or less) sensitive to harassment than anyone else." Judge Alito required evidence on which to base his ruling and refused to rely on the proposed stereotype.

Let's move on to another case, that of Doe v. Groody.

This case was mentioned by several Senators but in particular by the Junior Senator from Massachusetts on January 25. The Senator said that Judge Alito did not support individual rights because he dissented in Doe v. Groody. He said, "Judge Alito's hostility to individual rights isn't limited to civil rights. He consistently excuses government intrusions into personal privacy, regardless of how egregious or excessive they are. In Doe v. Groody," the Senator from Massachusetts argued, "dissented from an opinion written by then-Judge Michael Chertoff because he believed that the strip search of a ten year-old was reasonable."

First, let's get the legal question straight. The issue in Doe v. Groody was whether police officers should be able to be personally sued for money damages when they misunderstand the scope of the search warrant they were given.

Second, let's look at what happened during the event in question. On March 6, 1998, as a result of a long-term investigation of a John Doe for suspected narcotics dealing, officers of the Schuylkill County Drug Task Force sought a search warrant for Doe and his residence. The typed affidavit in support of the warrant stated, among other things, that a reliable confidential informant had purchased methamphetamine on several occasions from John Doe at his residence. The affidavit sought permission to "search all occupants of the residence and their belongings."

However, the printed sheet entitled "Search Warrant and Affidavit" contained an entry naming only John Doe under the question, "specific description of premises and/or persons to be searched." When the officers entered the house to commence the search, they decided to search Jane Doe and her daughter, Mary, age 10, for contraband. A female officer removed both Jane and Mary Doe to an upstairs bathroom where she searched them for drugs. No contraband was found. Once the search was completed, both mother and daughter returned to the ground floor to await the end of the search.

As a matter of policy, the sad reality is that drug dealers often hide weapons and drugs on children in the home. Judge Alito acknowledged in his opinion that he found the fact that the search occurred to be unfortunate. Accordingly, police officers sometimes request warrants that allow them to search all persons found during a drug bust.

The Does sued the police officers personally for money damages. The issue was how to read the warrant in light of the affidavit. And the legal question question was whether a reasonable officer could have believed that the search warrant allowed the officers to search everyone in the house. Two judges on the panel said no, while Judge Alito said yes.

Why did Judge Alito believe that the police officers should not be liable personally? He concluded that a reasonable police officer could think that the warrant should be read in conjunction with the attached affidavit. Judge Alito reasoned that a "commonsense and realistic" reading of the warrant authorized a search of all occupants of the premises. Judge Alito found that the officers in this case "did not exhibit incompetence or a willingness to flout the law. Instead, they reasonably concluded that the magistrate had authorized a search of all occupants of the premises."

So, on the law, Judge Alito did not, as he has been accused repeatedly over the past few days, authorize the strip-search of a 10-year-old girl. He just tried to sort out a practical, on-the-ground problem for law enforcement. It is sad but predictable that this case, with its inflammatory facts, would come up repeatedly, but repetition is not going to change the record of what happened.

Mr. President, let's move on.

I want to address a claim by the junior Senator from Illinois in a January 26 speech that, whenever Judge Alito has discretion, he will rule against an employee or a criminal defendant. To quote, the Senator said, "If there's a case involving an employer and employee and the Supreme Court has not given clear direction, Judge Alito will rule in favor of the employer. If there's a claim between prosecutors and defendants if the Supreme Court has not provided a clear role of decision, then he'll rule in favor of the state."

This just is not the case. There are 4,800 cases that could be reviewed to demonstrate the inaccuracy of that claim, but let's just look at a few.

In Zubi v. AT&T, an employee claimed that AT&T had fired him based on his race, but the record was far from clear. Judge Alito clearly had room to rule against the employee. After all, the other two judges deciding the case on appeal did so and threw out the employee's claim. They held that the employee had waited too long to bring his claim. In contrast, Judge Alito issued a lone dissent arguing that the employee was entitled to bring his discrimination claim. Later, the Supreme Court unanimously vindicated Judge Alito's view.

As another example to counter the Senator from Illinois's claim, consider the case of United States v. Igbonwa. There, a criminal defendant argued that the prosecutor had failed to honor his plea agreement. The majority of the court voted against the defendant and in favor of the prosecutor. Clearly, Judge Alito had legal grounds to do the same. Instead, Judge Alito issued a lone dissent arguing that the prosecutor was required to fulfill this promise to the defendant.

In yet another example, in Crews v. Horn, Judge Alito ruled that a prisoner was entitled to more time to bring his habeas petition. Again, the Supreme Court and Third Circuit had never decided the question, and the statute was unclear. Judge Alito could have ruled either way, yet he ruled in favor of the prisoner's claim.

This is a good time to remind the Senate what Third Circuit Judge Edward Becker, who served with Judge Alito for 15 years, had to say on this point. He testified, "The Sam Alito that I have sat with for 15 years is not an ideologue. He's not a movement person. He's a real judge deciding each case on the facts and the law, not on his personal views, whatever they may be. He scrupulously adheres to precedent. I have never seen him exhibit a bias against any class of litigation or litigants." As Judge Becker summarized Judge Alito's career, "His credo has always been fairness."

Mr. President, I want to turn to some of the mischaracterizations of Judge Alito's past record as a government official.

In her January 25 speech, the junior Senator from New York said that Judge Alito had written that "in his estimation it is not the role of the federal government to protect the health, safety, and welfare of the American people."

As best I can tell, the Senator is referring to a 1986 document addressing the Truth in Mileage Act, a bill to require States to change their automobile registration forms to include the mileage of the car every time it was sold. That document did not, as the Senator said, offer Alito's "estimation" on anything. Judge Alito was drafting a veto message for President Reagan. Accordingly, he drafted that message in President Reagan's voice and restated President Reagan's policy on federalism. The first-person pronoun in that message is President Reagan, not Alito.

It is also worth nothing that Judge Alito did not challenge Congress's powers. His cover memo acknowledged that "Congress may have the authority to pass such legislation." He did point out that the legislation was "in large part unnecessary since only five states and the District of Columbia do not already have" title forms that meet this requirement.

Let's move to another statement from the Senator from New York. She stated that Judge Alito's "time on the bench shows an unapologetic effort to undermine the right to privacy and a woman's right to choose."

In fact, Judge Alito's record confirms that he is not an ideologue on a crusade to curtail Roe v. Wade. In his 15 years on the bench, he has confronted seven restrictions on abortion, and he struck down all but one. Judge Alito has upheld a woman's right to choose even when he had the discretion to limit abortion rights.

For example, in the 1995 case of Elizabeth Blackwell Health Center for Women v. Knoll, Judge Alito struck down two abortion restrictions by the State of Pennsylvania. The first provided that a woman who became pregnant due to rape or incest could not obtain Medicaid funding for her abortion unless she reported the crime to the police. The second provided that if a woman needed an abortion to save her life, she had to obtain a second opinion from a doctor who had no financial interest in the abortion. The question was whether these laws conflicted with a Federal regulation issued by the Secretary of Health and Human Services. There was no binding Supreme Court precedent on point, and Judge Alito easily could have upheld the abortion restrictions if he had such a preset agenda. But Judge Alito voted to strike down both laws in favor of a woman's right to choose. This is not the behavior of someone bent on chipping away at Roe v. Wade. This is the behavior of a jurist who understands the importance of precedent.

The junior Senator from New Jersey came to the floor earlier today and criticized the work Judge Alito had done on behalf of the Reagan Justice Department on abortion cases. He suggested that those efforts showed a bias against Roe v. Wade that would matter in the future. But the record shows just the opposite, as discussed above. How else to explain the Knoll case? Moreover, the Senator said that Judge Alito would not describe Roe v. Wade as, quote, "settled law." Judge Alito addressed this question repeatedly during the hearing. A judge cannot call an area of law "settled" when it is likely that cases dealing with that area will come before him. This demand to say that Roe is settled is little more than a desire to prejudge all those cases, including cases pending before the Supreme Court today. Judge Alito simply cannot do that without violating his judicial ethics and depriving those litigants of their fair day in court.

I will move on.

Earlier today, the junior Senator from Michigan said that Judge Alito had "been criticized by his colleagues for trying to legislate from the bench in order to reach the result that he desires." I am not aware of a single example of any member of the Third Circuit, or of any other court in the Nation, claiming that Judge Alito had any tendency toward quote, "legislating from the bench."

In fact, just the opposite is true. It is especially surprising to hear such a claim given the testimony of Judge Alito's colleagues on the Third Circuit. Would seven current and former Third Circuit judges testify for Judge Alito if they believed he was a judicial activist or otherwise unqualified for the bench? Those listening now or reading the CONGRESSIONAL RECORD in future years should go to the Judiciary Committee records on the Internet and read what those judges had to say when they testified on January 12. When I spoke last week, I entered in the RECORD a series of excerpts from that testimony that the Senate Republican Policy Committee, which I chair, had compiled. The complete testimony is worth reviewing, too. Again, I am not aware of a single time that any judge has accused Judge Alito of legislating from the bench.

As one last point, I must address this unitary executive issue. The senior Senator from New Jersey and others have said that Judge Alito somehow believes in making the executive more powerful than the legislative and judicial branches. One wonders how many times this misstatement has to be corrected. Judge Alito made clear during his testimony that his past comments regarding the unitary executive theory only—only, Mr. President—dealt with who has the power to control executive agencies. As he said repeatedly, insofar as this theory deals with the scope of Presidential power, he does not—repeat, does not—subscribe to it. What else can he say? He has made this extremely clear. He has said it repeatedly.

Mr. President, there have been other misstatements and mischaracterizations of Judge Alito's record. I can only respond to so many. I will simply encourage future students of this debate to look at the cases in question, and to carefully review the Committee record, before reaching conclusions based on floor debate.

I look forward to Samuel Alito serving on the Supreme Court for many years to come.

The PRESIDING OFFICER. Under the previous order, the majority leader or his designee will be recognized for the final 15 minutes prior to the vote on the motion to invoke cloture.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I urge my colleagues to invoke cloture on the nomination of Judge Alito to the Supreme Court and to support him on the final vote.

As the chairman of the Judiciary Committee, I sat through every minute of the proceedings, reviewed in advance some 250 cases of Judge Alito's, his work in the Justice Department, his work as U.S. Attorney, as Assistant U.S. Attorney, his academic record, and I found him to be eminently well qualified.

The objections which have been raised to the nomination turn on those who think he should have been more specific on answering certain questions. But to have been more specific, he would have had to in effect state how he would rule on cases to come before the Court, and that is going too far. He went about as far as he could go.

With the critical question of women's right to choose, his testimony was virtually identical to Chief Justice Roberts, and he affirmed the basic principles of stare decisis, a Latin phrase which means "let the decision stand."

He is not an originalist. He characterized the Constitution as a living document, as Cardozo did, reflecting the values of our country, the importance of the reliance on precedent, and articulated those views. He also indicated that he had an open mind on the issue of a woman's right to choose, notwithstanding what he had done in an advocacy role for the Department of Justice, notwithstanding any views he had expressed at an earlier date.

When it came to the critical question of Executive power, as to how he would handle cases, he subscribed to Justice Jackson's concurrence in the steel seizure cases, which is the accepted model. And here again, he went about as far as he could go in discussing the considerations and the factors which would guide his decisions.

When it came to Executive power, again he discussed the considerations which would guide him on his decisions but necessarily stopped short of how he would decide a specific case.

He disagreed with the Supreme Court of the United States, which has declared acts of Congress unconstitutional because of our method of reasoning, saying that our method of reasoning somehow was defective compared to the Court's method of reasoning. Judge Alito rejected that.

Perhaps most importantly in evaluating the prospects as to how Judge Alito will rule, we have to bear in mind that history shows the rule to be that there isn't a rule. Justice Sandra Day O'Connor, Justice Anthony Kennedy, Justice David Souter before coming to Court all expressed their sharp disagreement with abortion rights; once they got to the Court they have upheld a woman's right to choose. Then there is the classic case of President Truman's nominees on the big Youngstown case on steel seizure, voting contrary to what the President, their nominator, had expected.

We heard enormously powerful testimony coming from seven circuit judges, some past, some senior, and some currently active who have worked with Judge Alito. There were precedents for other judges coming forward to testify on behalf of a nominee—but not quite in this number, not quite in this magnitude. The seven judges were uniform in their assessment that Judge Alito has no agenda and has an open mind. These are jurists who know his work well, jurists who go with him after oral arguments into a closed room—no clerks, no secretaries, no recording—they see how he thinks and how he considers cases.

I think two judges were especially significant. The first was Judge Edward R. Becker, the winner of the Devitt Award as the outstanding Federal jurist a couple of years ago. Judge Becker has sat with Judge Alito on more than 1,000 cases. He is well known as a centrist and is a highly respected judge. He testified that Judge Alito and he had disagreed on a very small number of cases, about 25. The second was Judge Timothy Lewis, an African American who identifies himself as being very strongly pro-choice, very strong for civil rights. He was seated on the left-hand side of the panel—he made a reference to that reflecting his position on the philosophical spectrum—and testified very strongly on Judge Alito's behalf, saying that if he did not have every confidence in Judge Alito he would not have appeared as a witness in the proceeding.

The prepared statement which I filed in the record last week details a great many cases where Judge Alito has decided in favor of the so-called little guy.

In the context of the hundreds of decisions that Judge Alito has written and the thousands of cases where he has sat, you could pick out a few and put him with any position on the philosophical spectrum of the court.

Candidly, it is a heavy responsibility to cast a vote on a Supreme Court nominee, especially one who is taking the place of Justice O'Connor, a swing vote. But when we look at the traditional standard as to intellect, this man is an A plus. When we look at the traditional standard of character, again he is an A plus. When you look at the standard of experience and public service, he is an A plus. When you look at his analytical style as a jurist, again he is an A plus.

Some have objected to nominees because, as some have put it, there is no guarantee. Guarantees are for used cars and washing machines, not for Supreme Court nominees.

I believe Judge Alito is well qualified to receive an affirmative vote by the Senate and be confirmed as an Associate Justice of the Supreme Court.

I note the distinguished majority leader on the floor. The time left before the cloture vote—almost a full minute—I yield to Senator FRIST.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, I will be using some leader time. For my colleagues, the vote will be in about 10 minutes or so.

In a few moments the Senate will decide whether to invoke cloture to close debate on the nomination of Sam Alito to be the 110th Associate Justice of the Supreme Court.

Before we vote, I want to take a minute to reflect just a bit on the progress that we have made in this overall judicial confirmation process over the last 12 months.

In the Senate, I really wear three hats. One is the Senator from the great State of Tennessee; second, the Republican leader; and third, majority leader. Wearing the third hat as majority leader, I have become a steward of our institution, steward in the sense of its rules and its precedents, its practices and the customs of this Senate.

My job is to bring Senators together, both sides of the aisle, to govern. That is why we are here, to govern with meaningful solutions to people's real problems, problems today, problems in the future, to identify what those problems are and then to resolve them and to secure America's future by honoring its past and by building on a record of accomplishment every day as we move forward.

Three years ago, when I assumed this position as majority leader, there was probably no single greater challenge or obstacle than the judicial confirmation process. In a word, it was broken. The minority party had decided to put partisanship first in the judicial confirmation process by, at that time, orchestrating regular, almost routine filibusters to block what we all know were highly qualified nominees from getting fair up-or-down votes. This partisan obstructionism began in 2001, it continued into 2002, in 2003, and then 2004.

If we look back to the 108th Congress alone, the Senate voted 20 times to end debate on 10 different nominees. Each time, cloture failed. We spent more time debating judicial nominations during those 2 years than in any previous Congress. This partisan obstructionism was unprecedented. This routine use of the filibuster was wrong. Never in 214 years had a minority denied a nominee with majority support that fair up-or-down vote. The minority had used the filibuster to seize control of the appointments process. They used it unfairly to apply a new political standard to judicial nominees and to deny a vote to any nominee who did not subscribe to a liberal, activist, ideological agenda.

To justify this unprecedented obstruction, Democratic leaders unfairly attacked the character of these nominees. They sought to paint them as extremists and radicals and threats to our society and our institutions. But the American people saw through the attacks. They saw them for what they were, purely partisan.

Finally, early this year the Republican leadership said: Enough is enough; enough obstruction, enough partisanship, enough disrespect to these good, decent, and accomplished professionals. We put forward a very simple, straightforward principle. A nominee with the support of a majority of Senators deserves a fair up-or-down vote. And we led on that principle. Because we did that, seven nominees who had been previously filibustered, or blocked, obstructed in the last Congress—and we were told at the time would be blocked in this Congress—got fair up-or-down votes and were confirmed and now sit on our circuit courts. A new Chief Justice of the United States, Chief Justice Roberts, now sits at the helm of the High Court.

If we had not led on principle, there would have been no Gang of 14. Filibusters would have become even more routine and led to more obstruction. However, the sword of the filibuster has been sheathed because we are placing principle before politics, results before rhetoric.

With the nomination of Sam Alito before the Senate, this Senate must again choose principle or partisanship. Should we choose to lead on the principle that judicial nominees, whether nominated by a Republican or a Democrat, deserve an up-or-down vote, or should we revert to the partisan obstructionism of the past? I believe a bipartisan group of Senators will choose today to put principle first.

Last week, the distinguished minority leader said there has been adequate time for people to debate. No one can complain in this matter that there has not been sufficient time to talk about Judge Alito, pro or con. I could not agree more with my colleague and friend. It is time to end debate. It is time to move on. Since President Bush announced Judge Alito's nomination on October 31, Senators have had 91 days to review his nomination, to review his records, his writings.

To put that in perspective, Chief Justice John Roberts' confirmation took 72 days, even including an extra week's delay to pay respects to his predecessor, Chief Justice Rehnquist. Justice O'Connor, who Judge Alito will replace, was confirmed in 76 days. President Clinton's two Supreme Court nominees, Justices Ginsburg and Breyer, got a fair up-or-down vote in an average of 62 days. Judge Alito today is at 91 days.

During this 3-month period since Judge Alito was nominated, Members have had an abundance of his written materials, documents, and opinions to review. They have had over 4,800 opinions from his tenure on the Third Circuit Court of Appeals spanning 27,000 pages; another 1,000 pages of documents from Judge Alito's service at the Department of Justice; numerous speeches and news articles. The list goes on and on.

Members have had 30 hours of testimony from Judge Alito's judicial committee hearings; statements of 33 witnesses, including 7 who are Judge Alito's colleagues on the Third Circuit; Judge Alito's answer to over 650 questions, doubling the number of questions that either of President Clinton's Supreme Court nominees answered; and 4 days of debate in the Senate.

Despite all this, some Members have launched a partisan campaign to filibuster this nominee and have forced the Senate to file cloture which we will be voting on. Certainly, it is any Senator's right to force this vote, but it sets an unwelcome precedent for the Senate.

As a reminder to my colleagues, the Senate did not have a cloture vote on any of the nine Justices currently sitting on the Supreme Court. Judge Alito has majority support. A bipartisan majority of Senators stands ready to confirm him and have announced their support. Judge Alito deserves to be Justice Alito. He has the professional qualifications, the judge temperament and integrity our highest Court deserves.

Whether Members agree with me, whether Members support him, we should not prevent Judge Alito from getting a vote. I urge my colleagues to join me in voting for cloture. It is our constitutional obligation of advise and consent, because it is fair and because it is the right thing to do.

Senators stand for election; judges should not. Absent some extraordinary evidence, we should not challenge a nominee's personal character, credibility, or integrity. Continuing down this path could deter qualified men and women from putting their names forward for nomination, from volunteering to serve their country as Federal judges. It could threaten the quality Americans most desire in their judiciary: fairness and independence.

A vote today for cloture is a vote to support all we have done over the past 3 years to repair what was broken. True, it is a vote to bring Sam Alito's nomination to a fair up-or-down vote, but it is also a vote that is so much more. It is a vote to demonstrate Members working together to end partisan obstructionism and to lead on that simple principle that every judicial nominee, with majority support, deserves a fair up-or-down vote.

In closing, if I may borrow the words of my good friend Senator KENNEDY from 1998:

> We owe it to Americans across the country to give these nominees a vote. If our [colleagues] don't like them, vote against them. But give them a vote.

I agree with Senator KENNEDY's statement. I say to my colleagues, if you do not like Judge Alito, vote against him. That is your right. But let's give him a vote. That is our constitutional duty.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, I will use leader time.

I want the record spread with the fact that Senator ENSIGN will miss the vote today. The Senate is very fortunate. He was in a head-on collision in Las Vegas going to the airport to return to Washington, DC. I spoke to him from the hospital. He is going to be fine. He has no head injuries. The bags inflated, and I am sure saved him great bodily pain. I talked to him. He was under some medication. He said he is sore but he is going to be fine.

With all the travel we do, we all live on the edge of something happening. I am so happy Senator ENSIGN is fine. He is a wonderful man. He has great faith. He is a good friend of mine and to all of the Senate. I know all of our thoughts and prayers will be with him. I am confident he is going to be fine.

As indicated, I spoke with him. I want Darlene, especially, to know our thoughts are with her and the children.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the hour of 4:30 having arrived, the Senate will proceed to a vote on the motion to invoke cloture on Executive Calendar No. 490.

Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

> CLOTURE MOTION
>
> We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Samuel A. Alito, Jr., of New Jersey to be an Associate Justice of the Supreme Court of the United States.
>
> Bill Frist, Elizabeth Dole, Michael B. Enzi, Jim DeMint, Wayne Allard, Kit Bond, John Ensign, Arlen Specter, Rick Santorum, Kay Bailey Hutchison, Pete Domenici, Judd Gregg, Lisa Murkowski, Norm Coleman, George Allen, Mitch McConnell.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on Executive Calendar No. 490, the nomination of Samuel A. Alito, Jr., of New Jersey, to be Associate Justice of the Supreme Court of the United States, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from Nevada (Mr. ENSIGN) and the Senator from Nebraska (Mr. HAGEL).

Mr. DURBIN. I announce that the Senator from Iowa (Mr. HARKIN) is necessarily absent.

I further announce that if present and voting, the Senator from Iowa (Mr. HARKIN) would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 72, nays 25, as follows:

[Rollcall Vote No. 1 Ex.]

YEAS—72

Akaka
Alexander
Allard
Allen
Baucus
Bennett
Bingaman
Bond
Brownback
Bunning
Burns
Burr
Byrd
Cantwell
Carper
Chafee
Chambliss
Coburn
Cochran
Coleman
Collins
Conrad
Cornyn
Craig
Crapo
DeMint
DeWine
Dole
Domenici
Dorgan
Enzi
Frist
Graham
Grassley
Gregg
Hatch
Hutchison
Inhofe
Inouye
Isakson
Johnson
Kohl
Kyl
Landrieu
Lieberman
Lincoln
Lott
Lugar
Martinez
McCain
McConnell
Murkowski
Nelson (FL)
Nelson (NE)
Pryor
Roberts
Rockefeller
Salazar
Santorum
Sessions
Shelby
Smith
Snowe
Specter
Stevens
Sununu
Talent
Thomas
Thune
Vitter
Voinovich
Warner

NAYS—25

Bayh
Biden
Boxer
Clinton
Dayton
Dodd
Durbin
Feingold
Feinstein
Jeffords
Kennedy
Kerry
Lautenberg
Leahy
Levin
Menendez
Mikulski
Murray
Obama
Reed
Reid
Sarbanes
Schumer
Stabenow
Wyden

NOT VOTING—3

Ensign
Hagel
Harkin

The PRESIDING OFFICER. On this vote, yeas are 72, the nays are 25. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. DEMINT. Mr. President, I ask unanimous consent to speak for 15 minutes.

Mrs. BOXER. Mr. President, reserving the right to object, and I will not object, would my friend extend his unanimous consent request to include the following Democratic Members: Senator BOXER for 20 minutes, Senator BAUCUS for 20 minutes, Senator DODD for 20 minutes, and Senator BIDEN for 5 minutes.

Mr. DEMINT. Mr. President, I do add that to the request.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from South Carolina is recognized.

STATE OF THE UNION ADDRESS

Mr. DEMINT. Mr. President, today the Democratic leader, HARRY REID, gave what was billed as a "prebuttal" to the President's upcoming State of the Union Address.

I am, frankly, astounded that he would criticize a speech so harshly that has not even been given yet.

I will let the President speak for himself when he addresses the Nation tomorrow night, but this misleading partisan rhetoric put forth on this floor by the Senator from Nevada cannot go unanswered, rhetoric which, unfortunately, further proves Democrats will say anything but do nothing.

Today, we heard many of the same tired cliches from the minority leader. He talks about a credibility gap. Well, the largest credibility gap in American politics is between what Democrats say and what they do. Democrats promised months ago to bring forth their own legislative agenda, but the Nation is still waiting. Day after day, the Democrats launch attack after attack on Republicans and our agenda, but how are we to take them seriously when they cannot articulate a clear plan of their own? They will say anything to get a media sound bite, but when it comes to solving today's challenges, Democrats do nothing.

It has been 4 years since 9/11, and after all their rock-throwing, Democrats still have no plan for victory in the war on terror. In fact, they have undermined the war effort with partisan attacks on the President.

They have complained about the economy since President Bush took office, but almost everything they do makes it harder for American businesses to compete.

Democrats spent the last year criticizing Republican efforts to strengthen Social Security but still offer nothing to fix this system in crisis. They even refuse to guarantee benefits for today's seniors and blocked a bill that would have stopped Congress from spending Social Security dollars on other Government programs.

They have decried looming deficits but offer no map to a balanced budget, instead calling for higher taxes and more spending programs.

How are we to take seriously a party that has no legislative agenda, that has no solutions or ideas to solve America's greatest challenges?

In stark contrast to the Democrats' invisible agenda, Republicans have clearly articulated and delivered a bold agenda to secure America's future. And while we have had some victories in recent years, the truth is that Democrats have fought bitterly to block progress for America every step of the way. Then these same Democrats come to this floor and blame inaction on Republicans.

To give just one example, Republicans have been working for decades to secure America's energy independence. However, Democrats, at the behest of extreme environmental activists, oppose real solutions to high energy prices such as increasing production of domestic oil and natural gas supplies and removing barriers to oil refinery investment such as onerous permitting requirements and a proliferation of boutique fuel blends.

Just last month, Democrats blocked energy exploration and production on the Coastal Plain of the Arctic National Wildlife Refuge which would provide millions of barrels of oil a day, or about 4.5 percent of the current U.S. consumption, with no significant environmental impact.

It is not just in Alaska where Democrats oppose efforts to access our Nation's energy resources. It has been estimated that enough natural gas lies under the Outer Continental Shelf and in the interior Western States to supply 27 years' worth of natural gas consumption, the primary fuel used to heat Americans' homes. Yet Democrats support policies that have closed these areas to exploration and production.

The administration has attempted to cut regulatory redtape, reduce regulatory costs, and streamline regulatory processes to allow more sensible use of the Nation's energy resources, while maintaining environmental standards—efforts that have been largely rebuffed by Democrats in Congress.

The obstacle to America's energy independence is clear: it is the blockade formed by the Democratic Party. In seeking to appease far-left interest groups, Democrats have blocked Republican efforts to reduce our dependence on foreign oil and have needlessly allowed energy prices to climb higher and higher for America's families.

Senator REID likes to say Democrats can do better. I think he is right, Democrats should do better. They have been conducting a war of rhetoric for years without offering anything positive to the public debate. Americans are rightly frustrated with a Democratic Party that will say anything but do nothing.

Now let me address what has become the favorite sound bite of the Democratic Party. Senator REID said it today and many times over the last week, what he likes to call the "culture of corruption." Apparently, Democrats believe this media strategy will carry them to a sweeping electoral victory in November. I have news for my Democratic colleagues: The problem of outside influence on Congress is not a partisan issue. This is a bipartisan problem and requires a bipartisan solution.

For those hoping to usher in a new Democratic majority in Congress on a media sound bite, history teaches us that elections are won on ideas, not rhetoric. Americans are far too smart and today's challenges are far too serious for Democrats to expect they can coast to a victory in November with no solutions and no ideas.

Republicans learned this lesson long ago from one of our greatest teachers, Ronald Reagan. President Reagan always talked about ideas that still resonate with Americans today: limited government, personal freedom and responsibility, and peace through strength.

Republicans did not win on rhetoric in 1994. We won because Americans agreed with our solutions: lower taxes, fiscal responsibility, traditional values, and strong national defense.

President Bush has connected with the American people because he has run his campaigns on ideas. He promised to lower taxes, and he has. He promised to aggressively fight the war on terror to protect American families, and he has. He promised to nominate judges who will follow the law instead of creating it, and he has.

Yet, as Senator REID demonstrated today, Democrats still do not understand that Americans want solutions, not more partisan rhetoric. I know there are some Democrats who do have some good ideas and desire to work together to improve the lives of Americans. I have talked to many of my colleagues on the other side of the aisle who do seem to understand the reality, but their leadership refuses to allow them to break from the party line.

I urge the Democratic Party to think long and hard about the war of rhetoric they are waging. It is poisoning the atmosphere in the Senate, and it is turning off Americans from the public debate. The consequences of these actions will be fewer and fewer Democrats returning next year. This has been proved out during the last elections, as I and my fellow freshman Republican Senators can testify.

If Democrats sincerely want the opportunity to govern again, they need to abandon this "say anything, do nothing" stance and put forward some ideas and solutions. Regardless, the Republican Party will not wait around. We will continue to secure America's future with a bold, positive agenda.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I wish to amend the unanimous consent agreement to add an additional 10 minutes for Senator BAUCUS, which will give him 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DEMINT. Mr. President, I ask the Senator to add to her request that following the Democratic-allowed time that has already been agreed to, Senator INHOFE be recognized for up to an hour.

Mrs. BOXER. Certainly. I ask that at the conclusion of Senator BIDEN's remarks, Senator INHOFE be recognized for up to an hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from California.

Mrs. BOXER. Mr. President, I was listening to the Senator from South Carolina. I thought he was going to make some comments about the vote that just took place on one of the most important issues facing the Senate. Instead, he launched into an attack on Senator HARRY REID.

Shakespeare once said something to this effect: When someone acts that way, he is protesting too much. So Senator REID must have hit a chord with the Senator from South Carolina, and there are reasons for it.

Senator REID speaks straight from the heart, straight from the shoulder. He is fighting for the American people. He wants us to fix the mess this President and this Congress made in the Medicare prescription drug benefit. He wants us to take care of our men and women in uniform. He wants to make sure the budgets are balanced. He wants to make sure that our families have health care, that we are moving forward on homeland security, and cleaning up the culture of corruption which has been brought to us by the ruling party. Remember, we have one party that rules Washington.

So I think his remarks must have deeply touched the Senator from South Carolina for him to launch into such a personal attack on the Democratic leader. I stand here and say: Keep it up, Senator REID. You must be doing something right to elicit that kind of outrageous response.

Mr. President, many of us have been in elected life for more than a decade—in my case, three decades—and we know that when certain issues come before us, they are so profound, they are so important to the people we represent, they are such a watershed that they need to be marked, not rushed.

The vote on Samuel Alito to be a Justice of the Supreme Court is such a moment in our history. Yes, we are having two votes on this nomination, one just completed, which gave me and other opponents of the nomination an opportunity to signal that this nomination should be sent back to the President for a mainstream nominee in the mold of Sandra Day O'Connor.

We fell short of the 41 votes we needed to send this nomination back. But yet I am still glad I had the opportunity to go on record twice. And do you know why? Because the Supreme Court belongs to the people of America. It is their court. It is not George Bush's court. It is not any Senator's court. It is the people's court, and the highest court. It is their freedoms that are at stake, their protection from a power-hungry Executive, their right to clean air, to clean water, and safe communities, their right to make private decisions with their families, not with Senators and Congressmen and a President or Vice President breathing down their necks.

So although we knew the votes were not there for the filibuster of Judge Alito, we felt it was appropriate to use that historic Senate debate tool so the American people would know that we were willing to pursue even a losing effort because the stakes are so high.

Tomorrow, we will cast our votes on the nomination itself, and I want the record to reflect why I will be voting no.

Mr. President. Every judicial nomination is important, but rarely are the stakes as high for the Nation as they are in the case of the nomination of Samuel Alito to be an Associate Justice of the Supreme Court.

We now have a divided Court, a divided Congress, and a divided electorate, as evidenced in the last two Presidential elections. Unfortunately, we also have a President who failed to remember his promise, which he made in the campaign of 2000: to govern from the center—to be "a uniter, not a divider." If he had kept that promise, he would not have nominated Samuel Alito.

Judge Alito was nominated to take the seat of Justice Sandra Day O'Connor, the first woman on the Court. She has long been the swing vote, and a commonsense voice of moderation, in some of the most important cases to come before the Court, including a woman's right to choose, civil rights, and freedom of religion.

The right thing to do for the court and for the Nation would have been to nominate someone in the mold of Justice O'Connor, and that is what the President should have done.

Let me be clear: I do not deny Judge Alito's judicial qualifications. He is experienced, intelligent, and capable. His family should be proud of him, and all Americans should be proud that the American dream was there for him and for the Alito family.

But these facts do not outweigh my deep conviction that Judge Alito's extreme views of the law make him the wrong person for this job.

As a Senator, I have no more solemn duty than to vote on a nomination for the Supreme Court of the United States. These are lifetime appointments, with extraordinary power to shape the law of the land, and to affect the lives of Americans, not just those living now, but for generations to come.

In the 218 years since our Constitution was adopted, our Nation has made great strides toward achieving the more perfect Union that the Founding Fathers dreamed of Women were given the right to vote. African-Americans were given civil rights. A right to personal privacy has been recognized for women and families. The accused have a right to counsel. Congress has been recognized to have the power to enact laws protecting the health and safety of the people. This has led to a cleaner environment, safer workplaces and communities, and better health care for all Americans.

We who have enjoyed the fruits of this progress owe it to future generations not to let it slip away. Thus, in a vote such as this, which will have long lasting effects, it is incumbent on us to consider what those effects might be.

If Judge Alito is confirmed, he will join the far right wing of the Court now led by Justices Scalia and Thomas. Should their extreme views of the Constitution ultimately prevail—as they may well do in the very near future—I fear they will take our Nation on a backward path—toward a time of fewer rights for individuals and greater restrictions on Congress's ability to protect the public health and welfare. In addition, I believe that Judge Alito will support Justice Thomas's radical ideas about stronger Presidential powers.

In short, our children could end up living in a very different America from the one we treasure. What kind of Nation would that be?

Abortion undoubtedly would be illegal in many States. Dangerous automatic weapons might become broadly available. It might be almost impossible to get a claim of workplace discrimination to a jury. Search warrants might not have to be issued, or if they were, wouldn't have to be specific. The Nation's most important environmental laws might be made toothless for lack of enforcement in the courts. Trial by jury, one of the most precious of all rights guaranteed to Americans by their Constitution, could be tainted by racism in the selection of jurors.

This is a harsh picture, but I believe it is not unrealistic. If you consider where the Court is now and consider Judge Alito's record and views carefully, you must conclude, as I did, that approving his nomination could have dire consequences for our Nation.

In reviewing Judge Alito's record, I asked myself whether, as a Supreme Court Justice, he would be likely to vote to preserve fundamental American liberties, values, and interests for all the people.

Would Justice Alito vote to uphold Congress's constitutional authority to pass laws to protect Americans' health, safety, and welfare? The record says no. When his Third Circuit Court of Appeals voted to uphold a ban on machine gun possession, Judge Alito voted to strike it down because he said Congress lacked the power to enact such a law. His colleagues on the court criticized him, saying his position ran counter to "a basic tenet of the constitutional separation of powers."

Would Justice Alito vote to protect the right to privacy, especially a woman's reproductive freedom? Judge Alito's record says no. We have all heard about Judge Alito's 1985 job application which he wrote that the Constitution does not protect the right of a woman to choose. When given the chance to disavow that position during the hearings, he refused to do so. He had the chance to say, as Judge Roberts did, that Roe v. Wade is settled law, and he refused.

When given the chance to explain his dissent in the Casey decision, in which he argued that the Pennsylvania spousal notification requirement was not an undue burden on a woman seeking an abortion because it would affect only a small number of women, he refused to back away from his position. The Supreme Court, by a 5 to 4 vote, found the provision to be unconstitutional, and Justice O'Connor, cowriting for the Court, criticized the faulty analysis supported by Judge Alito, saying that "the analysis does not end with the one percent of women" affected, "it begins there."

Judge Alito's ominous statements and narrow-minded reasoning clearly signal a hostility to women's rights, and portend a move back toward the dark days when abortion was illegal in many States, and many women died as a result.

In the 21st century, it is astounding that a nominee for the Supreme Court would not view Roe v. Wade as settled law. The fundamental principle of Roe—a woman's right to make reproductive choices for herself—has been reaffirmed many times since it was decided.

Would Justice Alito vote to protect Americans from illegal searches in violation of the fourth amendment? Judge Alito's record says no. In a 2004 case, he found that a police strip search of a 10-year-old girl was lawful, even though she was not named in the warrant. Judge Alito said that even if the warrant did not actually authorize the search of the girl, "a reasonable police officer could certainly have read the warrant as doing so . . ."

This cavalier attitude toward one of our most basic constitutional guarantees—the fourth amendment right against unreasonable searches—is stunning. As Judge Alito's own court said regarding warrants, "a particular description is the touchstone of the fourth Amendment." Americans have reason to fear a Supreme Court justice who does not understand this fundamental constitutional protection.

Would Justice Alito vote to let citizens stop companies from polluting their communities? The record says no. In a case involving toxic discharges into a major river, Judge Alito voted to stop citizens from taking the polluting company to court, as they were authorized to do under the Clean Water Act. Fortunately, in another case several years later, the Supreme Court overturned Alito's narrow reading of the law.

Would Justice Alito vote to let working women and men have their day in court against employers who discriminate against them? Judge Alito's record says no. In a 1997 case, Judge Alito was the only judge to say that a hotel employee claiming racial discrimination could not take her case to a jury. His colleagues on the court said that if his standard for getting to a jury were required of a plaintiff, it would "eviscerate" title VII of the Civil Rights Act of 1964, which prohibits discrimination in the workplace.

In another case, a female employee sued for discrimination, alleging that after she complained about incidents of sexual harassment, she was demoted and marginalized to the point that she was forced to quit. By a vote of 10 to 1, the Third Circuit found for the plaintiff. Guess who was the one? Only Judge Alito thought the employee should have to show that discrimination was the main cause of the employer's action. Using his standard would make it almost impossible for a woman claiming discrimination in the workplace to get to trial.

Would Justice Alito be an effective check on an overreaching executive branch? Judge Alito's record says no. As a Judiciary Department lawyer, Alito wrote a memorandum proposing that the President assert his own interpretations of statutes by issuing "signing statements" when the laws are enacted. He said this would give the Executive "the last word" on interpreting the laws.

The administration is now asserting vast powers, including spying on American citizens without seeking warrants, in clear violation of the Foreign Intelligence Surveillance Act, violating international treaties, and ignoring laws that ban torture.

We need Justices who will put a check on such overreaching by the Executive, not rubberstamp it. Judge Alito's record and his answers at the hearings raise very serious doubts about his commitment to being a strong check on an "imperial President."

During the hearings, we all felt great compassion for Mrs. Alito when she became emotional in reaction to the tough questions her husband faced in the Judiciary Committee.

Everyone in politics knows how hard it is for families when a loved one is asked tough questions. It is part of a difficult process, and whoever said politics is not for the faint of heart was right.

Emotions have run high during this process. That is understandable. But I wish the press had focused more on the tears of those who will be affected if Judge Alito becomes Justice Alito and his extreme views prevail.

I worry about the tears of a worker who, having failed to get a promotion because of discrimination, is denied the opportunity to pursue her claim in court.

I worry about the tears of a woman who is forced by law to tell her husband that she wants to terminate her pregnancy and is afraid that he will leave her or stop supporting her.

I worry about the tears of a young girl who is strip searched in her own home by police who have no valid warrant.

I worry about the tears of a mentally retarded man who has been brutally assaulted in the workplace, when his claim of workplace harassment is dismissed by the court simply because his lawyer failed to file a well-written brief on his behalf.

These are real cases in which Judge Alito has spoken. Fortunately, his views did not prevail in these cases. But if he sits on the Supreme Court, he will have a much more powerful voice. His voice that will replace one of moderation and balance, and he will join the voices of other Justices who share his severe views.

Perhaps the most important statement Judge Alito made during the entire hearing process was when he told the Judiciary Committee that he expects to be the same kind of Justice on the Supreme Court as he has been a judge on the Circuit Court.

That is precisely the problem. As a judge, Samuel Alito seemed to approach his cases with an analytical coldness that reflected no concern for the human consequences of his reasoning.

Listen to what he said about a case involving an African-American man convicted of murder by an all white jury in a courtroom where the prosecutors had eliminated all African-American jurors in many previous murder trials as well.

Judge Alito dismissed this evidence of racial bias and said that the jury makeup was no more relevant than the fact that lefthanders have won five of the last six Presidential elections. When asked about this analogy during the hearings, he said it "went to the issue of statistics . . . (which) is a branch of mathematics, and there are ways to analyze statistics so that you draw sound conclusions from them. . . ."

That response would have been appropriate for a college math professor, but it is deeply troubling from a potential Supreme Court Justice.

As the great Jurist and Supreme Court Justice Oliver Wendell Holmes, Jr. wrote in 1881:

> The life of the law has not been logic; it has been experience . . . The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.

What Holmes meant is that the law is a living thing, that those who interpret it must do so with wisdom and humanity, and with an understanding of the consequences of their judgments for the lives of the people they affect.

It is with deep regret that I conclude that Judge Alito' s judicial philosophy lacks this wisdom, humanity, and moderation. He is simply too far out of the mainstream in his thinking. His opinions demonstrate neither the independence of mind nor the depth of heart that I believe we need in our Supreme Court Justices, particularly at this crucial time in our Nation's history.

That is why I must oppose this nomination.

The PRESIDING OFFICER. Under the previous order, the Senator from Montana is recognized.

Mr. BAUCUS. I ask unanimous consent the order for recognition of Senator BIDEN be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, on the corridor of the first floor of this Capitol building appear the words of Samuel Adams:

> Freedom of thought and the right of private judgment in matters of conscience direct their course to this happy country.

America still stands as the world's beacon of individual rights and liberties. Of that I know we are very proud. In large part, it is because of our Supreme Court. Our Founding Fathers were very wise setting up three separate branches of Government, including a very strong, independent judiciary, something many countries have struggled to attain, and their failure to achieve greatness is largely because they do not have a very strong, independent judiciary—and I mean independent.

The Senate protects the independence of the Supreme Court. How? By seriously exercising its responsibility to advise and consent on the nominations to that honorable Court. It is in the Constitution. We all take that duty seriously. We take it seriously by examining nominees. I personally have three criteria I use to examine nominees. They are professional competence, personal integrity, and a view of important issues within the mainstream of contemporary judicial thought. Let me review those three criteria.

First, professional competence. The Supreme Court must not be a testing ground for the development of a jurist's basic values. Nor should a Justice require further training. The stakes are simply too high. The nominee must be an established jurist already. Of that we must be very clear.

A second criteria is personal integrity. Nominees to our Nation's highest court must be of the highest caliber.

Third, the nominee should fall within the broad mainstream of contemporary judicial thought. Justices must possess the requisite judicial philosophy to be entrusted with the Court's sweeping constitutional powers. I believed that then-Judge and now Chief Justice Roberts met those tests. That is why I voted to support his confirmation.

Measuring Judge Alito against these three criteria, I have decided he does not meet these three tests. I do not think he is the right choice for my State of Montana or for our country.

This was not an easy decision. I grappled with it. I took my time. I have reviewed this nomination very carefully. I reviewed Judge Alito's prior writings and case rulings. I reviewed his Judiciary Committee testimony and I met with Judge Alito personally for over an hour.

Nominations to the Supreme Court rank among the Senate's most important decisions. Only the brightest, most objective minds should serve on the bench. But Judge Alito, in my judgment, stands outside the mainstream. I base my decision on what I think is right for my State and my country, and that is why I cannot support this nomination.

I reviewed the Judiciary Committee's hearings. The Judiciary Committee held 5 days of hearings. The committee questioned Judge Alito for 4 days. The committee heard from panels supporting and opposing his nomination. The Judiciary Committee members sought Judge Alito's views on many matters, including States rights, antidiscrimination laws, immigrant rights, due process, privacy, equal protection, ethical considerations, and broad judicial philosophy. Judge Alito responded eloquently, but he provided little detail. Members of the Committee attempted to pin Judge Alito down on many of his views, but Judge Alito did not offer detailed answers to their questions, at least not enough information to get a sense of who he was and where he was. Judge Alito appeared well prepared for these hearings—very well prepared, I might add. He appeared to have been advised to say as little as possible.

On January 24, the Judiciary Committee voted to report Judge Alito's nomination on a party-line vote. Unfortunate, but that is how it turned out; again, I think in part because of the nature of the nominee's views.

Let me take a few moments to examine Judge Alito's nomination in greater detail against the criteria I have laid out. First, professional competence. Mr. Alito received an excellent education. He holds an undergraduate degree from Princeton and a law degree from Yale School of Law. Judge Alito also has extensive experience as a judge, serving 15 years as a judge on the Third Circuit Court of Appeals. In fact, he has served more years on the bench than many nominees to the Supreme Court.

Mr. Alito's work prior to his judicial appointment focused exclusively on representing only one client, the U.S. Government. Some have raised questions about Judge Alito's experience protecting the rights of individuals rather than the Government. I conclude that Judge Alito is professionally competent to serve as a Supreme Court Justice.

Second, personal integrity. Several issues arise from Judge Alito's promise to avoid conflicts of interest as a judge. Some raised questions about Judge Alito's sensitivity to the avoidance of conflicts of interest, and some raised questions about how steadfastly Judge Alito keeps his commitments to the Senate.

In 1990, Judge Alito told the Senate Judiciary Committee that he would disqualify himself from any cases involving five matters with which he had personal connections. Those matters were the Vanguard Companies, the brokerage firm of Smith Barney, the First Federal Savings & Loan of Rochester, New York, his sister's law firm, and matters that he worked on or supervised at the United States Attorney's Office in New Jersey. In the period of 1995 to 2002, however, Judge Alito heard cases related to these matters.

Judge Alito initially blamed the conflicts of interest on a computer glitch. In subsequent correspondence with Senators on the Judiciary Committee, Judge Alito argued that his promise during his 1990 confirmation hearings referred to only his "initial service." He argued that as his service continued, he found unduly restrictive his 1990 promise to recuse himself from cases involving entities in which he had a financial interest. And he argued that the mutual funds in which he was invested were not at issue in the case that he heard.

In his responses to questions concerning Vanguard, Judge Alito testified:

> I think that once the facts are set out, I think that everybody will realize that in this instance I not only complied with the ethical rules that are binding on federal judges—and they are very strict—but also that I did what I've tried to do throughout my career as a judge, and that is to go beyond the letter of the ethics rules and to avoid any situation where there might be an ethical question raised.

But Judge Alito also admitted to Senator KENNEDY that "if I had to do it all over again, I would have handled this case differently."

Judiciary Committee members also asked about Judge Alito's membership in an organization called Concerned Alumni of Princeton. In his 1985 job application to the Reagan Justice Department, Judge Alito listed Concerned Alumni of Princeton as one of his extracurricular activities. Concerned Alumni of Princeton is an alumni group that took the extreme position of arguing against letting women and minorities attend Princeton. When questioned about Concerned Alumni of Princeton, Judge Alito claimed that he had no recollection of ever having been a member of the group.

Judge Alito testified:

> I really have no specific recollection of that organization. But since I put it down on that statement, then I certainly must have been a member at that time. . . . I have tried to think of what might have caused me to sign up for membership, and if I did, it must have been around that time. And the issue that had rankled me about Princeton for some time was the issue of ROTC. I was in ROTC when I was at Princeton and then until it was expelled from campus, and I thought that was very wrong.

Judge Alito's response about Concerned Alumni of Princeton raises concerns. In 1985, he apparently thought that his membership in this discriminatory organization was important enough to put on his page-and-a-half job application. His failure of memory now about that inconvenient position then raises questions about his credibility.

I am also disappointed that the White House has chosen not to release Judge Alito's tax returns for review by the Joint Committee on Taxation. On December 13 of last year, I introduced a bill that would require all Supreme Court nominees to submit 3 years of tax returns to the nonpartisan Joint Committee on Taxation for review on a confidential basis. The Joint Committee would report its findings on the nominee's tax compliance to the Finance and Judiciary Committee.

I might add that all nominees who are referred to the Finance Committee—from Cabinet Secretaries to Tax Court judges—have their tax returns reviewed for compliance. The reviews are discreet and confidential. We protect nominees' personal information. And I might say that in several cases we found errors of facts, matters that had to be attended to—and they were.

I understand the administration does a "tax check" for all Supreme Court nominees. They say they already do one. But I believe it is important for Congress to do its own due diligence on a nominee's tax returns. After all, this is a person who serves on the judiciary. That is a separate branch, not the executive, not the judicial. Both entities—namely both the Executive and the congressional—have a stake in making sure that the nominee's tax returns comply with the law.

I might also say, as I mentioned earlier, many so-called tax checks the administration has taken on other nominees have been very inadequate, full of mistakes, and we have had to correct them.

The Finance Committee views proof of the nominee's tax compliance as a testament to the nominee's integrity. What individuals do on their tax returns is a window on their ethical decision making. It is a good test of integrity and character.

The American people expect their national leaders to comply faithfully with the tax laws. A showing that leaders in the Federal Government faithfully comply with the tax laws sends an important message to people who might consider cheating on their taxes.

On January 19, President Bush appeared to agree. He told small business leaders in Sterling, VA, that public officials' tax returns should be public, because public officials have a "high responsibility to uphold the integrity of the process."

When I met with Judge Alito, I asked him to release his tax returns for such a review. He initially agreed to do so. But the White House official present at the meeting immediately intervened to block the release saying that he cannot do so.

The President was right when he said in Virginia that the release of public officials' tax returns contributes to the integrity of our whole tax system. And his White House was wrong to withhold that information on Judge Alito. I will continue to press future nominees to allow this kind of neutral review of their tax returns because I think it is the right thing to do.

Let me turn now to judicial philosophy.

I do not believe that a Senator should oppose a nominee just because the nominee does not share that Senator's particular judicial philosophy. But the Senate must determine whether a nominee is in the broad mainstream of judicial thought. Is this a wise person, not an ideologue of the far left or the far right. The Senate must determine whether a nominee is committed to the protection of the basic Constitutional values of the American people.

What are those values?

One is the separation of powers of our Federal Government—including the independence of the Supreme Court itself.

Another is freedom of speech. Another is freedom of religion. Another is equal opportunity. Another is personal autonomy—the right to be left alone. And yet another is an understanding of the basic powers of the Congress to pass important laws like those providing for protection of the environment.

These are not unimportant matters. They are hugely difficult—all of these are.

The stakes are high. The Senate has a duty to ensure that the nominee will defend America's mainstream Constitutional values.

Judge Alito's record calls into question his ability to act as a check on executive powers. Recently, many have noted with concern the National Security Agency's surveillance of American citizens. At the Judiciary Committee's hearing, a number of questions focused on Judge Alito's interpretations of executive power, and the importance of the court's role as an effective check on overreaching presidential power and on government intrusion.

Judge Alito responded that "no person is above the law." But he did not provide assurances that he would act on the Court to balance executive authority. His prior statements and court rulings indicate that he has an expansive view of the scope of executive power and a narrow view of Congress's authority to legislate.

In a 1984 memorandum, Mr. Alito argued that the Attorney General deserves blanket protection from lawsuits when acting in the name of national security, even when those actions involve the illegal wiretapping of American citizens.

In a 2000 speech to the Federalist Society, Judge Alito said that "the theory of a unitary executive . . . best captures the meaning of the Constitution's text and structure." Judge Alito said: "The President has not just some executive powers, but the executive power—the whole thing." Some have thus interpreted the theory of a unitary executive to support the proposition that the Constitution reserves all executive power exclusively for the President. The theory would thus prohibit other branches of Government from carrying out any power that one could characterize as having executive characteristics. This view of executive power could limit Congress's ability, for example, to create independent agencies such as the SEC with oversight duties. And some believe that this view could allow the President the ability to legislate through signing statements.

When Senator LEAHY pressed Judge Alito about his view of the unitary executive as well as his strategy of utilizing Presidential signing statements to expand executive authority, Judge Alito responded that he did not see a connection between these two principles.

In a 1986 memo, Mr. Alito argued that "the President's understanding of the bill should be just as important as that of Congress." He argued that signing statements would allow the President to "increase the power of the Executive to shape the law."

President Bush has employed this method of Presidential signing statements to document his interpretation of congressional legislation, again even though he is certainly not a member of Congress. He didn't write the law. How could he say what Congress intended to do? He has, in fact, issued 108 signing statements expanding his executive interpretation of the laws passed by Congress.

Judge Alito's judicial rulings on the Third Circuit Court of Appeals, as well as his 1985 job application to the Reagan Justice Department, do not indicate an expansive view of civil rights and civil liberties. In his 1985 job application, Judge Alito wrote that he developed a "deep interest in constitutional law, motivated in large part by disagreement with the Warren Court." Many credit the Warren Court with expanding civil rights and civil liberties.

Judge Alito has narrowly construed constitutional criminal procedure protections, such as the fourth amendment restrictions on search and seizure. In the case of Doe v. Grody, for example, Judge Alito wrote a dissent. He argued that the strip search of a mother and her 10-year-old daughter without a proper search warrant did not violate their constitutional rights.

That is his dissent, that is his view.

Judge Alito testified:

> It was a rather technical issue about whether the affidavit that was submitted by the police officers was properly incorporated into the warrant for purposes of saying who could be searched. And I thought that it was, and I thought that it was quite clear that the magistrate had authorized a search for people who were on the premises. That was the point of disagreement.

Judge Alito also refused to agree that Congress cannot take away the Supreme Court's ability to protect Americans' First Amendment rights.

In contrast, both Chief Justice Roberts and former Chief Justice Rehnquist have agreed to the position that Congress cannot take away the Supreme Court's ability to protect Americans' first amendment rights. This is sometimes called "court stripping." It is extremely critical, extremely important. It is no academic matter. Basically it is that the Congress can say to the Supreme Court it does not have jurisdiction to hear any cases with respect to, say, the first amendment brought by an individual citizen; that is, Congress can take away the Court's authority to interpret the Constitution with respect to the first amendment. That is what that view held. I think it is an outrageous view. I don't understand how anybody can tentatively hold that view.

Judge Alito defended his viewpoint, saying this is an academic debate on which scholars are divided. I am astounded at that answer.

Judge Alito's rulings on civil rights cases appear to set a high bar for proving unequal treatment. A review of his record indicates that plaintiffs rarely ever prevail. Senator COBURN defended Judge Alito's record by noting that Judge Alito ruled for the "little guy" in a list of 13 cases. Judge Alito's record, however, includes almost 500 published and unpublished opinions. Thirteen is not very many out of 500.

Knight Ridder conducted a survey of Judge Alito's published opinions. They concluded that:

> although Judge Alito's opinions are rarely written with obvious ideology, he's seldom sided with a criminal defendant, a foreign national facing deportation, an employee alleging discrimination or consumers suing big business.

I am also concerned by Judge Alito's responses to privacy questions at the Judiciary Committee hearings which conflict with his past statements. In his 1985 job application, Mr. Alito wrote:

> It has been an honor and a source of personal satisfaction for me to serve in the office of the Solicitor General during President Reagan's administration and to help to advance legal positions in which I personally believe very strongly. I am particularly proud of my contributions in recent cases in which the government has argued in the Supreme Court that . . . the Constitution does not protect a right to an abortion.

In June 1985, Mr. Alito wrote a 17-page memo providing a strategy for using the Government's brief in the case of Thornburgh v. American College of Obstetricians and Gynecologists as an "opportunity to advance the goal of bringing the eventual overruling of Roe v. Wade, and in the meantime, of mitigating its effects." Judge Alito advocated a strategy of creating a series of burdens on a woman's right to choose. In the hearings, however, Judge Alito responded to Senator FEINSTEIN that he "did not advocate in the memo that an argument be made that Roe be overruled."

In his hearings, Judge Alito acknowledged that the Constitution protects a right to privacy generally. He agreed with the premise in the Griswold case, which protects the right to use contraceptives. It is unclear, however, how widely the right to privacy extends for Judge Alito.

When pressed, Judge Alito refused to acknowledge that the Constitution protects a woman's right to choose. Judge Alito explained that he would approach privacy cases with an open mind.

On the Third Circuit Court of Appeals, Judge Alito also wrote a dissent in the case of Planned Parenthood of Southeastern Pennsylvania v. Casey. In that dissent, he argued that upholding Pennsylvania's restrictive spousal notification requirement did not place an undue burden on women.

Yet Justice O'Connor, writing for the majority of the Supreme Court, wrote that the spousal notification requirement "embodies a view of marriage consonant with the common law status of married women, but repugnant of our present understanding of marriage and of the nature of the rights secured by the Constitution."

When questioned specifically about the landmark case of Roe v. Wade, Judge Alito commented that he understands the principle of stare decisis—that courts should honor precedents. But he also said that this principle is not "an inexorable command."

Here again, Judge Alito's statements contrast with then-Judge Roberts' comments during his hearings. Judge Roberts said in his hearings that Roe v. Wade was settled law. When Senators asked Judge Alito about Judge Roberts' statements, Judge Alito responded that "I think it depends on what one means by the term 'settled.'" Judge Alito engaged in some discussion about what "settled law" means to him. His interpretation of how settled the right to privacy is remains unclear.

Judge Alito answered questions about his judicial philosophy by testifying that precedent is entitled to respect. But he would not provide great detail about specific precedents such as Roe v. Wade. Senator FEINSTEIN pushed Judge Alito to clarify the discrepancy between answering cases about one-person one-vote, but not responding to questions about abortion and precedent. Judge Alito did not give a clear answer.

Judge Alito appears to support deference to the Framers' original intent. Judge Alito testified:

> I think we should look to the text of the Constitution, as we should look to the meaning that someone would have taken from the text of the Constitution at the time of its adoption.

That is called originalism.

Judge Alito's judicial philosophy of original intent raises concerns about whether the Court could adapt to a changing society. And his philosophy indicates that he may not take an active role in extending Constitutional protections to new situations in the 21st century.

I have some concern about one ruling that Judge Alito issued related to the environment. In 2001, in the case of W.R. Grace & Company v. United States Environmental Protection Agency, Judge Alito threw out the Environmental Protection Agency order under the Safe Drinking Water Act for an ammonia-spill cleanup near Lansing, MI. Judge Alito concluded that the government cleanup standard was "arbitrary and capricious." He explained that the reason for not upholding the order was that the EPA lacked a rational basis for imposing the cleanup standards on the company. This case raises sensitivities for me, because in my home state, W.R. Grace has acted with complete disregard of the health effects for Montanans in Libby, where illness from tremolite asbestos caused by W.R. Grace has hit the community hard.

In 1988, Judge Alito commented that Robert Bork "was one of the most outstanding nominees of this century." When I asked Judge Alito about that, he did not provide an adequate response. He ducked the question.

He did not respond adequately to many of my questions. He evaded my questions, questions I asked in good faith, intended to elicit what kind of Justice he might be.

He was vague. He seemed not to want to talk to me. He seemed not to want to have an honest discussion about what kind of person he is. That is why I find it very difficult to support this nominee.

I supported Judge Roberts for Chief Justice in large part because of Judge Roberts' hearing testimony and responses when he met with me personally.

Judge Alito does not meet my standards for a Supreme Court Justice. Judge Alito has explained that he will be "the same person that I was on the Court of Appeals." Judge Alito's record demonstrates that he is a very conservative judge who rules often in favor of expanding executive authority and of limiting civil rights and civil liberties. If the Senate confirms Judge Alito to Justice O'Connor's seat, he could change the balance of the Court, tipping it in a direction that could reverse or restrict important constitutional protections.

Based on all this information, I will vote against this nomination. I believe that Judge Alito is out of the mainstream. He is not the right choice for our country.

On a corridor on the first floor of this Capitol building appear the words of former Supreme Court Justice Louis D. Brandeis, who said:

> The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

I shall thus vote against this nomination to carry out seriously my responsibility as a Senator to Advise and Consent on nominations to that honorable Court. I shall vote against this nomination because I believe the nominee is well-meaning, but without sufficient understanding of the importance of our cherished rights and liberties. And I shall vote against this nomination to help keep this great country the world's beacon of freedom.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Oklahoma.

The PRESIDING OFFICER. Under the previous order, the Senator from Connecticut is now recognized for up to 20 minutes.

Mr. DODD. Mr. President, I wish to commend my colleague, Senator MAX BAUCUS from Montana, before he leaves the Floor, for a very fine statement. I appreciate his thoughts and comments.

I rise today to discuss my vote on the nomination of Judge Samuel Alito to the United States Supreme Court. First of all, I wish to briefly comment on the cloture vote that occurred this afternoon. I voted not to invoke cloture on the nomination. I want to explain why.

As many of my colleagues know, I went through minor surgery to have a knee replacement before the holidays and I have been home in Connecticut recuperating. I looked forward to coming back to participate in the debate on the Judge Alito nomination and I followed the confirmation process closely from home. For this reason, I was somewhat stunned to learn that Senator FRIST filed a cloture motion on the nomination a day after it was voted out of the Judiciary Committee.

I have been a member of this body for a quarter of a century and I have voted to confirm the majority of the judicial nominations that have come before this Senate. I, too, like my colleague from Montana, voted with enthusiasm for the nomination of Chief Justice Roberts only a few months ago. The majority leader's action was surprising to me. It is exceedingly rare that a cloture motion is filed on debate regarding a Supreme Court nomination. In is my experience, cloture motions have gotten filed when the majority got frustrated with the minority for insisting upon extending debate—beyond a reasonable period of time. In this case, I feel strongly that there has not been a reasonable period of debate, let alone an extended debate.

But I am only one Member. Certainly, this institution cannot wait for one Member. I was allocated only 5 minutes of time this afternoon to comment on this nomination. However, my flight was canceled out of Hartford, CT, and thus, I lost that small window of 5 minutes to be heard. I consider the matter of confirmation of a Supreme Court Justice with great seriousness and solemnity. In my view, some of the most important votes that we make in the Senate are to fill vacancies in the Judicial Branch, second only to declarations of war. Constitutional amendments are not far behind. Therefore, to be notified that I would have only 5 minutes to comment on the nomination of a Supreme Court Justice who will serve for life, far beyond the tenure of the Chairman of the Federal Reserve Board, far beyond the tenure of a President of the United States, far beyond the tenure of a Senator or Congressman, I found rather disturbing.

We have always respected one another here, at least we try to, and to recognize this is the Senate, different entirely from the body down the hall. We are a bicameral body for good reason. This is the place where we spend a little more time evaluating issues that come before the Senate. To ask for a few more days to have discussion about the nominee that has provoked serious controversy in the country, seems little to ask.

Put aside the nominee for a second, put aside your decision to vote for or against the nominee, we should respect one another's desire to be heard on these matters. Tomorrow is the State of the Union, and there will be a photo opportunity for the President. I am deeply disturbed that this Senate may have made a decision to rush this nomination through, to invoke cloture, in order to provide a photo opportunity for a swearing-in ceremony prior to this President's State of the Union Message.

I note the presence of my good friend and colleague from Texas in the chair of the Presiding Officer. He serves on the Judiciary Committee. He watched the gavel-to-gavel hearing proceedings. While I was at home rehabilitating this knee, I had a chance to watch my colleagues do their job. The circumstances around this nomination have been complicated. The nomination came up after Harriet Miers withdrew. We had the Thanksgiving holiday and the recess coming up. In fact, the Judiciary Committee met when we were out of session. Obviously, the desire was to move this along. I have no objection to that. That seems to be a reasonable request to have the committee meet when it did. Certainly, we all had an opportunity to watch those proceedings.

The majority leader stated earlier than we have consumed an excessive amount of time on this nomination. This statement is correct if we measure it by days on the calendar. If we measure it by days we have actually been here during the last couple of months, it is incorrect. We have been out of session. There have been only a limited number of days in session and only a limited number of votes. Obviously, the number of days that have been consumed since the nominee was presented to this Senate is more than usual due to the circumstances surrounding the nomination and holiday session.

I cannot allow the moment to pass without expressing my concerns about it and the rationale regarding why I voted against cloture. I would have preferred not to have voted on a cloture motion at all. If this were an extended debate, the majority leader might have been right to invoke cloture. I am troubled that now we are setting a new precedent for invoking cloture within only a short time after a nomination comes out of the committee.

Mr. President, I rise today to explain my vote on this nomination. Tomorrow, at 11 a.m., we are going to vote on the Alito nomination.

I would be remiss, obviously, if I did not thank the distinguished chairman of the Judiciary Committee, Senator SPECTER, and the minority ranking member, my good friend from Vermont, Senator LEAHY, for the extraordinary service they have rendered to the Senate, along with their colleagues, during this nomination process.

Over the last several months, these members have managed three separate nominations to the Supreme Court: Chief Justice Roberts, Harriet Miers, and now Samuel Alito. They are to be congratulated for their commitment to fair hearings and for the manner in which they discharged their duties.

The Constitution, as we know, vests in this great body, the Senate, the privilege and the solemn responsibility to advise and give consent to the President on Supreme Court nominations—a unique role in our governance. The Framers intended for the Senate to take an active role in the confirmation process. However, the Constitution does not delineate the factors by which each Member of this body should determine the fitness of a judicial nominee to serve his or her lifetime appointment on the Federal bench. Thus, each Member of the Senate, each Senator, must determine for him or herself the acceptable criteria in judging a Supreme Court nominee.

I have never opposed a nominee solely because he or she holds different views than my own regarding the Constitution or the Court's role in interpreting or applying it. I have supported seven of the last nine nominees to the Supreme Court, including the current President's nomination of John Roberts to be our country's Chief Justice. As I said earlier, I did it with enthusiasm, having witnessed and gone through the process and watched the process of his confirmation hearing.

I, like many of my colleagues, have supported the overwhelming majority of the current President's judicial nominees. Of the current President's 230 judicial nominees, only 5 have failed to be confirmed, a rather remarkable record.

In the course of my Senate career, I have never imposed a litmus test while reviewing Supreme Court nominees. But, due to the nature of a lifetime appointment, I feel they are entitled to a higher level of scrutiny than other judicial nominees for the Federal bench.

I have three specific criteria that a Supreme Court must satisfy: First, I require that the nominee possess the technical and legal skills which we must demand of all Federal judges. Second, the nominee, in my view, must be of the highest character and credibility. And, finally, I vigorously examine the nominee's record to see whether he or she displays a commitment to equal justice for all under the law, in order to protect the individual rights and liberties guaranteed by the Constitution of the United States.

Now, I waited until after the committee vote had occurred last week, and then, in an interview with my local press in Connecticut, indicated how I would vote on this nominee. I have always done that. I have always reserved the first judgment to be made by the committee. It seems to me to respect the committee process is very important, and the views of my colleagues are important to me. Whether I agree with them or not, I like to hear how they have arrived at their decisions.

So on Supreme Court nominees, I have never announced a view on a nominee until after the committee has completed its review. Hence, less than a week after the committee voted, I find myself having to rush to the floor to make a hurried statement on this nominee. I am denied the opportunity to debate back and forth with other members of the Senate.

I waited to make my decision because I felt that Judge Alito deserved a hearing before the Judiciary Committee. I felt that each of us who are not on the committee should have an opportunity to review the transcripts of that hearing and then engage, as nonmembers of the committee, in a discussion of the merits and demerits of this nominee. That has been denied this Member because of the cloture motion filed by the majority leader, provoking what I deeply regret that occurred only a few hours ago, and that was actually to have to vote on a cloture motion.

I did not like casting that vote. I did not want to vote for it, but I felt I deserved the opportunity to be heard. So I do not regret at all that I am a part of a very small minority that voted against cloture. I wish more Members had. But I wish the majority leader had not filed that cloture motion, which provoked the exact scene we saw unfold here a few hours ago.

Now, there is little question in my mind as to Judge Alito's intellectual competence and legal experience, and all of that. If this were the only criteria, I would be for him.

Judge Alito received his legal education from Yale University School of Law in my home State of Connecticut. He served as a Government attorney in a number of positions including: Assistant Solicitor General, Deputy Assistant Attorney General in the Office of Legal Counsel, and U.S. Attorney for the District of New Jersey under President Reagan. In 1990, Judge Alito was nominated by George H.W. Bush to U.S. 3rd Circuit Court of Appeals. In the course of his 15 years on the Federal bench, Judge Alito has heard more than 3,000 cases. Furthermore, the American Bar Association has twice unanimously awarded Judge Alito with their highest rating of "well qualified." I have great respect and admiration for his intellect, legal experience, and service to the American people as part of the Judicial Branch.

Next, I turn to character and creditability. The question is: Does Judge Alito possess the qualities of mind and temperament expected of a Supreme Court Justice? I do not question whether Judge Alito is personally decent or if he has integrity. I was impressed by the diverse group of former clerks and colleagues who testified before the Judiciary Committee who could not have given him higher praise.

Let me also say I know there were questions raised. I listened carefully regarding these concern including those regarding the Concerned Alumni of Princeton and the recusal issues that were raised by a number of committee members on the Judiciary Committee. These questions, while relevant, and certainly need to be explored, would not have decided my vote on this nominee. I do not minimize it. But if my decision were to be based solely on the recusal question or Judge Alito's membership in the Concerned Alumni of Princeton issue, I would be here supporting this nomination.

Those are not the most important issues to this Member. But what is important are other issues that were raised during this nomination. Indeed, I am troubled that throughout Judge Alito's hearings, Judge Alito failed to provide clear and germane responses to legitimate questions.

A few examples. For instance, when Senator SCHUMER, our colleague from New York, asked Judge Alito if he still believed his statement from the 1985 memo that said the "Constitution does not protect the right to an abortion," rather than reply with a simple yes or no answer, Judge Alito deflected the question and instead replied, "The answer to the question is that I would address the issue in accordance with the judicial process as I understand it and as I have practiced it."

When Senator FEINSTEIN of California asked Judge Alito if Roe v. Wade was the settled law of the land—not an unpredictable question, a fair one, one you might ask about Brown v. Board of Education, Griswold v. Connecticut, and there is a long list of cases that are considered established law, settled law—when she asked the nominee whether Roe v. Wade—one in that litany of cases—is settled law, instead of answering it directly one way or the other, as Justice Roberts did, in very unequivocal terms—others might have said absolutely not; that would have been a very straightforward answer—what did we hear? He said—this is reminiscent of some comments that were heard earlier—"I think it depends on what one means by the term 'well settled.'"

When Senator DURBIN of Illinois asked the same question, Judge Alito offered the convoluted response: "It is—if settled means that it can't be reexamined, then that's one thing. If settled means that it is a precedent then that is entitled to respect of stare decisis . . . then it is a precedent that is protected, entitled to respect under the doctrine of stare decisis in that way."

Imagine giving that answer to Brown v. Board of Education. Imagine giving that answer to the long list of cases we now have as settled law. Now, the answer is, as Justice Roberts said: "It is settled law". But what you have here with Judge Alito is this dance going on here, instead of a direct yes or no. A no answer would have been a very honest answer. In fact, I suspect that is what his answer is, but he did not have the courage, in my view, to say that, which I would have respected. I might have disagreed with it, but I would have respected it. That is troublesome to me.

Finally, I think we should vigorously examine the nominee to see whether he or she is capable of and committed to upholding the Constitution of the United States and its promise of freedom and equality for all. Protecting the constitutional rights of all Americans is perhaps the most fundamental duty of a Supreme Court Justice. Therefore, I am deeply concerned in his 1985 memo Judge Alito explained that his interest in constitutional law was "motivated in large part by disagreement with Warren Court decisions, particularly in the areas of criminal procedure, the Establishment Clause, and reapportionment."

That is a fairly sophisticated answer in 1985. Many of these decisions, of course, compromise the cornerstone of the Supreme Court's modern jurisprudence, in enforcing the fundamental democratic principle of one person, one vote, in preventing the violation of an individual's privacy by the state—a matter that concerns everybody in this country: we see a lot of it going on today—and in ensuring procedural fairness in criminal trials. To wholeheartedly reject this legacy is also to reject the continued pursuit of the constitutional ideals of liberty and equality, in my view.

Before the Judiciary Committee, Judge Alito defended himself by saying he wrote the comments 20 years ago. Twenty years ago, he was well into his thirties. This is not some 18-year-old who is writing these thoughts. Of course, before becoming a judge, in that case, he was merely outlining the development of his thinking about constitutional law at the time and pledged to keep an "open mind" if confirmed to the Supreme Court. Well, that is nice to know. I am glad to hear he is going to have an open mind.

The seven current and former members of the Third Circuit Court of Appeals stated Judge Alito is "not an ideologue," "has no agenda," and "is attentive and respectful of all views and is keenly aware that judicial decisions are not academic exercises but have far-reaching consequences on people's lives." I think those were certainly worthwhile comments to make, and certainly the comments of his fellow peers on the court I found to be compelling arguments on his behalf. However, I must say, having said all of that—I respect the fact they said it in our hearings—Judge Alito's long record as a Third Circuit judge, particularly in cases involving questions of individual rights, indicates a personal intent on stripping away many of these so-called Warren Court era achievements. In Reynolds v. Simms, for instance, Justice Warren wrote:

> The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.

Yet, in Jenkins v. Manning, Judge Alito was part of a decision to dismiss a suit brought by African-American voters who argued that the district's voting system diluted the voting strength of minorities. In that case, the dissenters argued that the decision failed to give effect to "the broad sweep of the Voting Rights Act."

Judge Alito's long record of opinions and dissents in these, and other divided cases lead me to believe that he has a legal philosophy which lies outside the mainstream. Several newspapers and scholars provided support for this concern. One study conducted by University of Chicago Professor Cass Sunstein, found that when there was a conflict between institutions and individual rights, Judge Alito's dissenting opinions supported the institutional interest over individual rights 84 percent of the time. Moreover, 91 percent of Alito's dissents take positions more conservative than his colleagues—including those appointed by Presidents Bush and Reagan.

Judge Alito has set an incredibly high standard for individuals to meet when bringing a claim against the Government or a Corporation. He has repeatedly dissented in cases where the majority has ruled in favor of an individual alleging racial or gender discrimination. In Bray v. Marriott Hotels, for example, a housekeeper manager alleged that she was denied a promotion because she was black. While the Third Circuit Court of Appeals ruled that the plaintiff had established the essential elements of a case of race discrimination and therefore was entitled to go to trial by a jury. Judge Alito dissented. He argued for a heightened evidentiary burden in order to protect employers who, in the future, would have to choose between—and I quote—"competing candidates of roughly equal qualifications and the candidate who is not hired or promoted claims discrimination." The majority again criticized Alito's approach stating that "Title VII would be eviscerated if our analysis were to halt where the dissent suggests."

I also fear that if confirmed, Judge Alito may pose a threat to the laws that protected disabled citizens from discrimination. In Nathanson v. Medical College of Pennsylvania the majority held that the plaintiff, a victim disabled by a terrible car accident, should be allowed to present, to the jury, evidence that the college had failed to make reasonable accommodation for her disability. Alito dissented, and again the majority reacted strongly to Alito's analysis: "few if any Rehabilitation Act cases would survive summary judgment if such an analysis were applied to each handicapped individual's request for accommodations."

But, I am especially troubled about Judge Alito's dissent in the Third Circuit Case of Chittester v. Department of Community and Economic Development. That case involved an employee who was fired while taking sick leave and who sought to enforce his rights under the Family and Medical Leave Act, which became law in 1993. I was the original author of this law which has enabled more than 50 million workers to take leave for medical reasons or to care for a child or family member. A primary objective of the act is to ensure that both male and female workers have access to leave, and that they were not punished or discriminated against because of their family responsibilities. However, Judge Alito found that the law was not a valid exercise of Congressional power to enforce the Equal Protection Clause. He said:

> Unlike the Equal Protection Clause, which the Family Medical Leave Act is said to enforce, the Family Medical Leave Act does much more than require nondiscriminatory sick leave practices; it creates a substantive entitlement to sick leave.

The decision reflects a proscriptively narrow conception of what "equal protection" required. Real equality cannot be achieved, and the very real effects of discrimination cannot be remedied, without meaningful, substantive action. This is precisely why Congress enacted the Family and Medical Leave Act. The Supreme Court recognized this in Nevada Department of Human Resources v. Hibbs. In a 6–3 decision authored by Chief Justice Rehnquist, the Court held that contrary to what Judge Alito said in Chittester, a worker can sue a State employer who fired him for taking family leave to care for his sick wife. This finding is critical to ensure that workers and their families can continue to take leave without fearing for their job. This right might be jeopardized if Judge Alito is confirmed, as during the hearing Judge Alito continued to reject evidence of discrimination in personal sick leave even though there is compelling evidence in the legislative history of this law.

In these cases, the very judges who talked about our nominee as being fair and not being an ideologue, in their majority opinions had very different things to say about their colleague on some very critical cases on which this Appellate Court Judge reached different opinions, such as I have cited here, as well as in several others that came before that circuit.

I am also concerned about Judge Alito's ruling regarding the Family and Medical Leave Act, which I authored. The Family Medical Leave Act has provided meaningful relief to millions of Americans. Judge Alito would have made significant changes, if not eliminated the law altogether, a great setback, in my view. The Supreme Court strongly overruled his decision.

Finally, I am troubled that the rights of privacy which are so deeply valued by Americans could be eroded by a Justice on the bench who does not appreciate the importance of these issues.

I am alarmed by Judge Alito's unwillingness to explain his previous statements on the unitary executive theory of Presidential power. In a November 2000 speech to the Federalist Society, Judge Alito expressed strong support for the unitary executive theory calling it "Gospel according to the Office of Legal Counsel" referring to the position he held in the Reagan Justice Department. Proponents of this theory believe that the Constitution vests in the executive complete control over the administrative and regulatory branches. Judge Alito's failure to shed any light on his professed support for a powerful, unitary executive is troubling. In Hamdi v. Rumsfeld, Justice O'Connor acknowledged that the executive power must have reasonable limits, asserting that "a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens." Judge Alito refused to comment on O'Connor's statement, and instead remarked that "no person is above the law, and that includes the President." Unlike Chief Justice Roberts at his confirmation hearing, Judge Alito did not identify an affirmative obligation of the courts to block an executive action if the Executive acts unconstitutionally. Judge Alito' s answer fails to adequately explain in any substantial way, his views on limitations to executive power.

This failure is of particular significance given the current political landscape. President Bush and his lawyers adopted an expansive interpretation in their view of executive power, particularly in relation to the War on Terror and the conflict in Iraq. In fact, President Bush has cited the "unitary executive" theory in several recent instances to override congressional provisions he finds objectionable. I am disturbed that the President has claimed, for himself, the authority to overrule the will of the Congress in passing its antitorture legislation—legislation which received the overwhelming support of congressional Members. This undermines the separation of powers and democratic principles. I am further troubled that in the course of the Judiciary Committee hearing, Judge Alito did not adequately distance himself from the current administration's belief that this theory provides justification for the NSA to engage in the warrantless wirewrapping of U.S. citizens in defiance of the Foreign Intelligence Surveillance Act, and for the detention of U.S. citizens accused of being enemy combatants.

Defining permissible boundaries of Presidential power is among the most pressing of today's constitutional questions, and will almost inevitably arrive before the Supreme Court in the years to come. It is for this reason that Judge Alito' s inability to shed light on his past comments and his current beliefs is so significant. These failures call into question whether Judge Alito has sufficiently demonstrated that his jurisprudential philosophy allows for the degree of respect for democratic checks and balances, and the protection of individual rights and freedoms that the Constitution—and the public—demands.

A Supreme Court Justice influences the most critical issues facing this and future generations of Americans. I believe that the Court may now be at a pivotal point in which the future direction of our law is at stake. Judge Alito, if confirmed, will take the seat of Justice Sandra Day O'Connor on the Supreme Court. While all Supreme Court Justices have the same unique obligation—to serve as the ultimate guardians of the Constitution, the rule of law, and the rights and liberties of every individual citizen—Justice O'Connor has long provided a voice of reason and open-mindedness as she has carried out this weighty responsibility. With a moderate temperament and judicial independence, Justice O'Connor has often supplied the deciding vote to protect fundamental American rights and freedoms. We cannot underestimate how much is at stake in filling this critical seat on the Court.

When I spoke on this floor regarding the nomination of Chief Justice John Roberts, I stated that for those of us concerned about keeping America strong, free and just, his confirmation was no easy matter. However, I ultimately concluded that although he was a conservative nominee, Judge Roberts was within the mainstream of judicial thinking—in his judicial philosophy, his respect for precedent and his belief that the Constitution cannot be read as a document frozen in time. While his responses to questions in the Judiciary Committee may not have been as open as I had hoped, I decided that there was sufficient evidence to believe that he would honor and protect the individual rights and freedoms enshrined in our Constitution as the majority of his record showed him to be a persuasive advocate for his clients rather than a radical judge out of the mainstream of judicial thought.

I regret to say that, having reviewed his judicial record and his responses to the committee, I cannot be convinced that Judge Alito falls within the judicial mainstream. His evasiveness in the face of questioning by the committee, his established record on the bench of taking a restrictive view of individual rights, and his inability to explain his past comments on executive power all lead me to harbor significant concern. Determining whether to confirm a nominee to the Supreme Court is never an easy decision. Whether a nominee is sufficiently within the mainstream of judicial thinking is often a question of degree. While Judge Alito is clearly intellectually qualified and legally experienced, I am not convinced that Judge Alito's judicial philosophy will allow for the faithfulness to the constitutional rights and freedoms, and the protection of equality before the law we have come to expect from a Supreme Court Justice.

After a review of Judge Alito's extensive record, his decisions as a judge on the Third Circuit, and his testimony before the Senate Judiciary Committee, I must oppose this nomination. I have concluded that Judge Alito's judicial temperament is out of step with our fundamental constitutional values and that his confirmation would not be in the best interests of the United States.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DODD. So, Mr. President, for the reasons I have stated, I will oppose this nomination. I say this with regret because it will only be the fourth occasion in 25 years I will have voted against a nominee for the Supreme Court. I will do so tomorrow at 11 a.m.

I deeply regret that I didn't have the opportunity to engage in a fuller discussion. It is somewhat disturbing, that I was only allocated 20 minutes. Because of the constraints on time, this is all this Senator can say about a lifetime appointment to a coequal branch of Government, a nominee that will have a huge impact on the course of America in the 21st century.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for up to 1 hour.

Mr. INHOFE. Mr. President, I say to my good friend from Connecticut, I was surprised to find out he was not a member of the conservative caucus. Now I know. But I would agree with him insofar as the significance of the confirmation vote that will take place tomorrow. There is nothing more solemn, nothing more significant that we have to deal with than confirming judges, whether they are nominated by Democrats or by Republicans.

However, I respectfully disagree with the Senator from Connecticut. I look forward to voting for the successful confirmation of Judge Alito. I have had a chance to talk about him. I believe he will be a strict constructionist and will do a good job for the United States, specifically for my 20 kids and grandkids.

NATIONAL SECURITY

Mr. INHOFE. Mr. President, I am not here, people will be glad to know, to talk about Judge Alito. I am here as an assignment. Serving on the Senate Armed Services Committee, as is the keeper of the chair, I have been there for quite a number of years. I have taken the assignment of giving a grade as to what President Bush, prior to his State of the Union Message tomorrow night, has done in the way of national security and national defense. I am proud to say that I am very proud of the job he has done. In doing this, what I would like to do is break it down into three segments.

First, I want to talk about the problems this President inherited when he became President in terms of our national security; second, the solutions, the very impressive solutions so far to these problems; and third, the challenges he has for the future, for the next 2 or 3 years. In doing this, I know I will come across as being very partisan. Quite frankly, when we are dealing with national defense, I am quite partisan. I think the most important thing we have to do here is to keep America strong, make sure that we have a strong national defense system. I hate to say it, but that becomes a partisan issue. However, it is too serious of an issue to try to be diplomatic, so I will not attempt to be diplomatic tonight. I will be dealing with the truth.

Winston Churchill said: Truth is incontrovertible. Panic may resent it, ignorance may deride it, malice may destroy it, but there it is.

First, in dealing with the problems that he inherited, I would like to outline seven huge problems that this President inherited when he became President. The first is, when he was inaugurated he received a military structure that was in total disarray. During the Clinton administration in the 1990s, I will show you in terms of dollars what happened to our system. There was a euphoric attitude everyone had that somehow the Cold War was over and we did not need a military anymore.

This is what the Clinton administration did. If you take this line right here, this is kind of the baseline only increased by inflation. So by doing this, we would say if that President had taken the baseline, the appropriations that he came in with and just applied the inflationary rate, it would be that top line, the black line. However, he didn't do it. Instead, with his budget, this yellow line is what he requested.

Fortunately, we in Congress were able to get this up to what I see as a green line here. So this is actually what happened right here. This is what was actually appropriated. This would have been a static system. This is what the President wanted.

What does that mean? It means that during the years he was President, he decreased spending from the level where it was by $313 billion. If we had not raised the amount that was in his budget, his budget called for a decrease of $412 billion. We are talking about the difference between the black line and the red line. It means that the Clinton-Gore administration cut the budget by 40 percent, reducing it to the lowest percentage of gross national product since before World War II.

The first 2 years of the Clinton administration, I was in the House of Representatives. I was on the House Armed Services Committee. I knew what he was going to be doing to our military. I started complaining about this during the first 2 years of his administration. Then as I saw it taking place, we were on the floor at least every week or two talking about what this President was doing to our military.

When they say the Cold War is over, we don't need a military anymore, I look wistfully back to the days of the Cold War. During the Cold War, we knew we had one superpower out there. It was the Soviet Union. We knew what they had. They were predictable. Their attitudes were predictable. They represented a great country, the U.S.S.R. We knew pretty much where we were. We had a policy that was in place. It was a military that stood up to an Eastern Bloc type of mentality. It was one that was working quite well.

During the time of the 1990s, during the Clinton drawdown of the military, one particular general comes to mind. I considered him to be a hero because it took courage. It is hard to explain to real people, as I go back to Oklahoma, how much courage it takes for someone to stand up against his own President if he is in the military. These are career people. GEN John Jumper, who later became the Chief of the Air Force, stood up in 1998 or 1999 and said: This insane drawdown of our military is something we cannot continue.

Not only were we drawing down to almost 60 percent, in terms of Army divisions, of our tactical airwings, our ships were coming down from 600 to 300, but also our modernization program.

So General Jumper, with all the credibility that he had—and there is no one in America more credible than he is—was able to say that we have a very serious problem and we now are sending our kids out in strike vehicles where the prospective enemy has better equipment than we do.

People don't realize it. When I go back to Oklahoma, I say: Do you realize some countries make better fighting equipment. For instance, five countries make a better artillery piece than the very best one that we have, which is the Paladin.

John Jumper said: Our best strike vehicles are the F–15 and F–16. The Russians are now making the SU–27, the SU–30s, and are proposing to make the SU–35. Those vehicles are better than the best ones we have in terms of jammers and radar.

I could get more specific in how they were better, but they were better. I agreed with him at the time and said so and applauded him when he made the statement that we need to move on with the FA–22 so we can get back and be competitive again.

People wonder why the liberals and, I say, the Democrats do not support a strong national defense. There are some reasons for this. One of the things we have in this country, which people don't stop and really think through, is the convention system. It is kind of a miracle. In a living room in Broken Arrow, OK, Republicans all meet and they decide what we stand for. We stand for a strong national defense, we are pro-life, all that stuff. At the same time, across the street you have the Democrats meeting. They are talking about gay rights and abortion and all the things they stand for. They decide what delegates go to the county convention. So the most activist of each side, liberals and conservatives, become the people who end up going to the conventions. Then they go to the district convention, the State convention, and then the national convention.

The bottom line is, if any Republican wants to run for the Senate or for the House or for a higher position, that person has to embrace the philosophy, at least partially, that is adopted by his party in the national convention of the Republican Party. It is a conservative agenda. For the Democratic Party, it is liberal agenda. That is a long way around the barn, but it kind of explains as to why these Members of the Senate from the Democratic side are not strong in terms of a national defense.

It is because if you really look at a liberal, they don't think you need a military to start with. Liberals believe that if all countries would stand in a circle and hold hands and unilaterally disarm, all threats would go away. They don't say that, but that is what they really think. So we have these people running for President on the Democratic side, and they don't want to perform in terms of what the needs are from a national security standpoint.

I said at the outset, there are two things unique to America. The other one is, we are so privileged in this country. If people at home want to know how JIM INHOFE, as a Member of the Senate, or any other Republican or Democratic Member of the Senate or House is voting, they can find out because we are ranked and rated on a daily basis. If you are back home and wondering what your Member of Congress is doing and somehow your concern is taxes, the National Taxpayers Union ranks all of us in terms of what we do and what we feel in terms of taxes. If we want to increase taxes or decrease taxes, they know.

They don't have to listen to us because, unfortunately, a lot of the Members of the Senate and the House go back home and lie to the people. They tell them they are for reducing taxes when, in fact, they vote to increase taxes.

If you are concerned about whether you are a conservative, then the American Conservative Union ranks every Member of the Senate, every Member of the House in terms of whether they are conservative or liberal. I bring that up because they happen to have me as the most conservative Member this last year. I was very proud of that ranking.

If you are concerned and you are back in Sapulpa, OK, wondering which Members are voting for a more favorable climate for small business, the National Federation of Independent Business ranks each one of us as to what our attitude is insofar as business issues.

I say that because if you want to know how we are voting on national security issues or on national defense issues, the Center for Security Policy is a ranking organization that ranks each one of us. I could name 30 or 40 of them. Ratification of the Comprehensive Test Ban Treaty, confirmation of John Bolton, missile defense filibuster, the American Missile Protection Act—these are all things that have to do with defending America. This is significant and people need to know it. The way we are ranked in accordance with how we vote for national defense issues, the most recent report shows that the Republicans voted in favor of national security 82 percent of the time. The Democrats voted prosecurity and prodefense 21 percent of the time. That tells you why defending America is a partisan issue.

We all know what happened during the hollow force that followed the Carter administration. We saw what Reagan had to do to rebuild our defenses. He did it. Now we have a situation where we are going through essentially the same thing. The Bush administration inherited the Clinton military and had to start building on it. That is a serious problem, but he has done a good job.

I said there are seven things that this President inherited. The second thing is an economy that was set up to fall. We all know now that we went into the recession in March of 2000. That was prior to the time that President Bush came into office. So he inherited this recession. People have asked: What does that have to do with national security? What does that have to do with national defense? It has a lot to do with it because each 1 percent of increase in economic activity translates to $46 billion in new revenue. So if we are 5 or 6 percent down during a recession, that is money that the President can't spend.

I often say to my conservative friends when I go back to Oklahoma and they are complaining about the deficit—and you hear the ranting and raving from this side that Republicans are responsible for it—they have to realize that this President not only inherited a military that had to be built up, he also inherited an economy that was down in the cellar and, of course, he had to prosecute a war. That is a serious problem. That is the second thing this President inherited.

The third thing this President inherited were the international challenges that have become threatening to this country. In Iraq, the failure of the Oil-for-Food Program, we all know about that. We know about Saddam Hussein taking the money and using it for other purposes and denying the weapons inspectors access to the country, as he had agreed to do. All these things were happening in Iraq. Sometimes I look at the way people were trying to—I don't think they are trying anymore—talk about weapons of mass destruction. That wasn't the real issue at the time. When you stop and realize, if we hadn't gone in and done what we did to Saddam Hussein, we would have more of what we had for the 12 years, between the first and the second Persian Gulf wars.

Let me explain that a little bit. The first freedom fight came in 1991, after the first Persian Gulf war. I was one of nine people selected to go on the first freedom fight. Alexander Hague went, and a Democrat, Tony Cohelo, went. We had one person I will not mention. We had a prominent Kuwaiti citizen, one of nobility, and his 7-year-old daughter. All they could talk about was they wanted to go back and see what their home looked like after the demise took place in the first Persian Gulf war. We found that their home—this was the day after the war was over. At that time, the Iraqis didn't even know the war was over. They were still burning the oilfields. We went to their home on the Persian Gulf, which was a beautiful palace, only to find that—the individual and his daughter who were with us on this first freedom fight found out that Saddam Hussein had used that particular house for a headquarters. I took the 7-year-old girl up to her room—she wanted to see her animals—only to find that her bedroom was used as a torture chamber. There were ears and body parts scattered about the place. Twelve years following that, one of the bloodiest regimes took place, with the torturing of individuals. They were shredding people, and they would beg to be put into the shredder head first to avoid the pain. It was the same with vats of acid. Babies were taken from their mothers; they were taken by their arms and banged against a brick wall until they were dead. This happened for a long period of time. And people think the only reason to go in there was for weapons of mass destruction.

There is something kind of interesting happening right now that I don't think even the Presiding Officer is aware of, and that is there is an individual I met in my office in Oklahoma, a former general in the Iraqi Army. He was an air general of the Air Force in Iraq, Georges Sada. There is a book he has written, which is out today, called "Sadam's Secrets." He witnessed what they did with the weapons of mass destruction. They took them and put them into various aircraft and took them across the Syrian border. It is all in this book. He was on "Hannity and Colmes" about 4 days ago. Watch for this guy, Georges Sada. He will let you know that there were weapons of mass destruction. We knew that anyway because he used them on some 200,000 people that he was able to painfully kill using chemical weapons.

But I say that not because we have now solved the mystery of the weapons of mass destruction because that never was important. What was important was the things we knew when we went into Iraq.

Let me tell you the most significant thing and the greatest victory that we could not talk about at that time, which was the three major terrorist training camps that were located in Iraq—Samarra, Ramadi, and Salman Pak. We broke those as soon as we brought down Saddam Hussein.

I said there were seven things the President inherited—a downgraded military, a broken economy, and one was the national security challenge. The fourth one is international terrorism. We had with bin Laden—and during the Clinton administration we remember a lot of things that did happen. We had the 1993 car bomb that went off in the basement of the World Trade Center. We saw, in 1996, Khobar Towers blow up. We remember the embassies in Dar es Salaam, Tanzania, and Nairobi, Kenya, that were blown up in 1998. We remember, of course, the USS *Cole* in Yemen, when a little boat floated up and killed a bunch of our sailors. The Clinton response was comparatively benign, restrained and, at best, inconsistent. The operation "Infinite Reach" included cruise missile strikes against Afghanistan and Sudan, which were not the problem. But that was during the Lewinsky scandal, so nobody paid much attention to that.

The fifth thing was the proliferation of weapons of mass destruction. This is something we saw. When the Soviet Union fell, when the vast nuclear stockpile kind of disappeared—we had people going up there, including brokers—and then we could only identify some 30 or 40 percent of that which was stolen from the massive stockpile that the Soviets had put together. That means there is about 60 to 70 percent of the stolen stockpile out there, and we are not sure where that is.

During this time, AQ Khan, the father of Pakistan's nuclear program, began an international network of clandestine nuclear proliferation to Libya, Iran, and North Korea.

I remember one thing that happened because I was in this body at that time and a member of the Armed Services Committee. I was trying to get the point across that even though President Clinton's staff had said we don't have a problem in terms of North Korea, I asked the question—I wrote a letter to the Clinton administration on August 24, of 1998 and I asked the question: How long will it be until North Korea has multiple-stage rockets that could send a missile that could reach the United States. I got a reply back, but it wasn't in writing—they didn't want to put it in writing. They said it would be 5 to 10 years before they will have that capability. Seven days later, on August 31 in 1998, the North Koreans fired a multiple-stage rocket with the capability of reaching America. In fact, it did reach some areas of Alaska: that is America.

We have gone through the weapons of mass destruction proliferation, and we didn't have a strong response to that. The strongest response we had back during the problem with Somalia and Mogadishu—you might remember that tragedy—we bailed out, "cut and run," which is a favorite thing for liberals to do when crises appear.

The sixth huge problem that the President inherited was an intelligence breakdown. It had been broken for a long time. I could not blame Democrats for that. When I was elected in 1994 from the House to the Senate, I replaced David Boren. Senator Boren had been chairman of the Senate Intelligence Committee for quite some time. After I was elected in that special election, he said we need to sit down and talk about our intelligence system. So we did. He talked about turf battles, that we have the CIA, FBI, NSA, and DIA, and none of them were cooperating or coordinating with one another. I said I will get on the Intelligence Committee, which I did, only to find out what David Boren told me was exactly the situation. We tried to correct it, and we were not successful, the same as he was not successful prior to 1994.

I remember once going down to the NSA in Virginia and they were showing me, at that time, a new listening device that could listen to somebody through 2 feet of concrete. I said: That is great; it is what they need in New York City right now. The FBI has a need for this type of technology. They said: This is ours, they cannot have it. That is the type of situation we had. It was something that had been that way for a long period of time. Nonetheless, the President did inherit that.

The last thing that falls into the class of the huge inherited problems by this President is the problem of China, and I was critical about this on the Senate floor. I stood here at this podium and said at the time that the first thing Clinton-Gore did when they assumed office was go to our energy labs and start tearing down the security system. They did away with color-coded badges. We remember that. Everybody knew that. Do you know why? They said: This is demeaning for someone who has a color that designates a lower form of security. We want everybody to be the same. Then they did away with background checks and with the FBI wiretapping, and as a result of that—remember Wen Ho Lee who ended up taking to China everything we had from our energy labs? We lost at that time to China our W-88 warhead capability. This was a crown jewel; this was the device that would allow us to have nuclear capability where we could attach 10 nuclear missiles to a single warhead. We lost that and the Chinese got that.

Remember what happened with the Loral Corporation? At that time, we had a system the Loral Corporation had that was a guidance technology that we were using in this country. However, they were precluded from sending it to other countries because this was something we didn't want anybody else to have. In order to send this to China, the President, Bill Clinton, had to sign a waiver, and he signed a waiver so Loral could sell guidance technology to the Chinese so they would be more accurate in their efforts to use their missiles. I am sure it was not related at all to the fact that Bernard Schwartz, the head of Loral Corporation, was their largest single financial contributor. Now they are talking about how terrible this thing is with this guy that was contributing to both Democrats and Republicans and, yet, that wasn't half as bad as what happened during the time that President Clinton signed a waiver so the Chinese would have our guidance technology.

Tomorrow night is going to be the State of the Union Message. I sat in the House Chamber and watched the second or third one that President Clinton had. He made the statement—and it was documented that at the time he made the statement the Chinese had between 13 and 18 of our cities targeted, and he stood up and said: Not one missile is pointed at one American child tonight, not one. Everybody applauded, but at that time between 13 and 18 of our cities were targeted by the Chinese.

So we have had a problem that is a very serious one and one that the President had to deal with. Of course, we knew the Chinese were transferring the prohibited weapons technology to Pakistan, Iraq, Iran, Syria, and North Korea and other countries. That is the ninth thing the President inherited. That is the real serious problem. Yet if we look at this chart again, the President had the lowest, in terms of percentage of gross national product, since before World War II.

This President came in, and the first thing the Bush administration tried to do is rebuild this broken military system. This is what President Bush did. I was so proud of him for doing it. You saw the other one, where you take the static line up there and it looked like a bathtub, where Clinton was $400 billion below, down here, just a static increase that would go with the inflationary rate. This is what the Bush administration did. If you take that black line, instead of being below that, they proposed, and the Senate and House agreed, to increase it during that period of time. That is up now, and that is 5 years. So it is $334 billion more than the static inflation-rate increase—not $400 billion less, as it was in the Clinton administration. Now, if you take, in addition to that, the emergency supplementals that went to military, that is another $292 billion. Add that together, and it is $626 billion more. That is a lot of money.

It is hard for me, as a conservative, to stand here and brag about the fact that we are spending more on the military, but we had to in order to strengthen our programs and build up our troop strength and our modernization program. Bush went in and he did a lot of other things, too. He helped the troops by increasing salaries and their housing allowances. Prior to this time, they were having to spend 15 percent of their housing out of their own pockets.

He took care of that for them. He increased their capabilities and readiness. the growth in the language training and funding of intelligence, and we have seen an increase in lethality across all forces by focusing much more on precision instruments.

If I could, I will go through our different services and make some comments as to what this President did when he inherited this broken defense system.

In the Army, he moved it from the old system of dealing with divisions and organized them into modular brigades, combat teams that are much more capable and much faster to be deployed. These are ongoing plans to increase our force size from 33 brigades to 42 brigades to build back up what came down in the nineties.

Because of this reorganization, about 75 percent of the Army's brigade structure should always be ready, and with the increase for the Special Ops, for the Psych Ops, for the military police, and for the logistic units, he has done a remarkable job.

The rotation of units is kind of interesting, and I will get to that in a minute.

In looking at the Navy, the biggest problem he inherited there was spare parts. None of our ships would float. He concentrated on spare parts, and he now has the ships so they are out and ready and are actually out in areas that could be combat areas.

One of the changes he made was, instead of bringing it all the way back to the United States and changing the crews, he leaves the ship in the battle area and flies the crew back and puts a new crew in. As a result, the percentage of ships routinely at sea has increased by more than 50 percent.

In the Air Force, the modernization program—we are back with the Joint Strike Fighter working for that, and we actually have our FA-22. It is flying. We have increased that fleet. We are actually going to be ahead of the other countries.

Keep in mind—I talked about China a minute ago—back during the time the Russians were selling the SU-27s which are better than our F-15s and F-16s, in one purchase, the Chinese purchased 240 of those. We have a long way to get back.

One of the things the President did in the Air Force was recognize our ALCs, air logistic centers, and start funding them again so we can maintain and rebuild our aging aircraft fleet. We now have three ALCs. They are located in Utah, Georgia, and Oklahoma.

It is amazing what they have done. The rate of aircraft grounded due to parts issues decreased by 37 percent, it has bettered our flying goal of 922,000 hours, the rate of aircraft incidents due to parts issues has decreased by 23 percent, and logistics response time has increased by 20 percent. Good things are happening, and we see tangible results.

On force posturing, this is something the President did, and I am very proud I had something to do with this. It occurred to me as a member of the Senate Armed Services Committee that we have all these families deployed in Western Europe and South Korea, and yet, as chairman of the Environment and Public Works Committee, I know what some of the far-left environmentalists are doing to our ability to have live ranges.

In Europe, that same thing was happening. So our families with our soldiers training over there could only train on live ranges, sometimes 5 days a week, sometimes 3 days a week, only during daylight hours, and the restrictions were so cumbersome that we were not able to train these guys.

It just made sense, if we tried something totally different and changed our force structure, instead of having them in Western Europe where they cannot train, put them in Eastern Europe. I went to Bulgaria and Romania and a number of places where they have training ranges that they will allow us to use free of charge. They will even billet us while we are there.

In changing our structure, we will bring all the families back. Instead of having 2-, 3-, 4-year deployments with the families going over to Western Europe, we will have 2- and 3-month deployments and not send the families, just the troops over to the eastern areas, and they can get as much training in 3 months as they could before this in 3 years. That is one of the major changes. Right now, we are in the process of bringing back 70,000 troops, and 100,000 family members are coming back. It is a major improvement.

That is how Bush responded to the national security threats. He did it swiftly and decisively. After taking office, he was faced with a couple of crises. The first one was not quite as severe, but it was serious. That was back when the Chinese shot down one of our EP-3 Navy surveillance planes, and he was able to, because of the decisive action he took, bring the plane back and the crew and no one was hurt.

Then along came the tragedy of all tragedies, 9/11. I thought: Boy, am I glad we have somebody in there who is decisive and can respond. The World Trade Center and the Pentagon got hit. If it had not been for the courageous bunch of people over Pennsylvania, very likely this building, where I am speaking right now, would have been one of the targets and one of the victims. That is what we are dealing with and the changes that were made.

The third part is policy change. I am going to run through this quickly, but I would like to have people think about this. The President changed the policy, and I think we can pretty much take his rhetoric that he has lived up to and see how different this is from the decade of the nineties.

The President said: You are either with us or against us. That is what the President said to other countries. If you are not with us, you are an enemy. He said that Americans are asking how will we fight to win this war:

> We will direct every resource at our command, every means of diplomacy, every tool of intelligence, every instrument of law enforcement, every necessary weapon of war to the disruption and defeat of the global war on terror network.

The President went further to say we are going to do four things. He said we are determined to prevent the attacks of terrorist networks before they occur.

Second, we are determined to deny weapons of mass destruction to outlaw regimes and to their terrorist allies who will use them.

Third, we are determined to deny radical groups the support and sanctuary of outlaw regimes.

Fourth, we are determined to deny militants control of any nation.

Within weeks of 9/11, he sent the military to Afghanistan to remove the Taliban. Operation Enduring Freedom was successful.

He asked Congress for the PATRIOT Act.

He established the Department of Homeland Security.

He formed the 9/11 Commission. The 9/11 Commission had 39 recommendations, of which we adopted 37.

He launched a preemptive attack against Saddam Hussein, and that worked successively. That was Operation Iraqi Freedom.

He established the National Counterterrorism Center, which is now up and running.

He established a Domestic Nuclear Detection Office where just one single Federal agency is in charge so these things don't get lost in a barrage of bureaucracies.

He established the Terrorist Screening Center.

He established and transformed the FBI to focus on preventing terrorism.

He strengthened the Transportation Safety Administration.

He improved border screening and security through the US-VISIT entry-exit system.

For the first time, he started looking at our problems with regard to cargo coming into this country. He set up the National Targeting Center, which is responsible for that.

He expanded shipping security through the Container Security Initiative, which worked successfully.

He developed Project Bioshield. This is an organized defense against chemical weapons and biological weapons, as well as nuclear attacks.

He aggressively cracked down on terrorist financing with many international partners. Over 400 individuals and entities have been designated pursuant to the Executive order, resulting in nearly $150 million in frozen assets and millions more blocked so they cannot get to the terrorist activities.

The international successes he has had are incredible. We are safer today.

Mr. President, 9/11 was a wake-up call. We are doing the right things.

Another measure of success is Iraq. You would never know it, listening to the media. The first thing the troops ask me when I go over there is, Why doesn't the media like us? Why don't they understand what we are doing? I think now they are catching on that the American people are aware of our success.

They have had three successful nationwide elections. They voted for a transitional government and drafted the most progressive democratic constitution in the Arab world, approved a new constitution, elected a new government under a new constitution, with each election less violent, with a bigger turnout than the one before.

The Sunnis, the ones who were not cooperating, are now cooperating. There was an article about a week ago in the Los Angeles Times that talked about the killing by a suicide bomber of literally hundreds of Iraqi troops, and most were Sunnis, and 225 Sunni families each offered another member of their family to replace those who had been killed. That is Iraq.

Still, there are international successes with terrorism. The terrorists who attacked on 9/11 are in jail, dead, or on the run. They are isolated. Al-Qaida and bin Laden no longer have a safe haven in which to hide. The Taliban is deposed, and democracy is in its place.

The al-Qaida structure has been taken out. No major attacks on the United States have taken place since all this took place. We have had the disruption of at least 10 serious al-Qaida terrorist plots since 9/11. Three of those plots, incidentally, were plots to do something to the United States of America within the confines of our borders.

We had the proliferation of weapons of mass destruction that was taking place during the nineties and the AQ Khan network in Pakistan. They are no longer distributing weapons of mass destruction or information about them.

There are now six-party talks ongoing with North Korea, and the United States is no longer alone in pressuring the North Koreans to give up their nuclear programs.

Libya opened its doors to inspection. This is really critical because Libya, during the Clinton administration of the nineties, was building weapons of mass destruction, their unconventional weapons program. I can't help but think they equate President Bush with President Reagan because we remember and they remember, certainly, what happened in 1986 when President Reagan sent about F-111s into Libya and pounded them into the ground. All of a sudden, Libya opened their doors to our inspectors, and they have admitted the country had sought to develop unconventional weapons, but now they are eliminating them.

In missile defense, this is significant because since 1983 when the SDI program started and people were deriding it—the liberals didn't want us to be able to defend ourselves against incoming missile attacks. We now have the beginning of one coming in place. We can now knock down incoming missiles into the United States. That is huge. Not many people are aware of it, but that is what is happening.

We talked about the problems he inherited and about the solutions. How much further do we have to go? In the State of the Union Message tomorrow night, we are going to hear the President talk about Iraq and about some of the things we need to continue in Iraq, the successes we have had, but also the international community, the fact they are going to have to come up with what they agreed to. They agreed to supply $13 billion toward the war in Iraq. They have not done it yet. I think he is going to invite them to do it tomorrow night.

The Iran problem, with the President of Iran declaring Israel must be wiped off the map and the Holocaust was actually a myth—a far more serious issue is Iran's attempt to restart their nuclear program. Against the International Atomic Energy Agency directive, on January 10, Iran reopened Natanz nuclear complex. That is a serious problem.

Mexico and the borders—we have talked about that and recognize it is a serious problem.

The NSA eavesdropping—I think the President will talk about that. Everyone is concerned about people's feelings being hurt and not about the intervention of the President to eavesdrop and try to get information from known terrorist groups coming into this country and trying to communicate with terrorists within the country. I am really proud of this President for sticking to his guns on this issue. We need to keep that going. I am sure he will mention something about that tomorrow night.

China—I am sure he will talk about the problems with China. I have to say this: As a member of the Armed Services Committee, during the nineties, during the Clinton administration, I watched the dismantling of our system. At the time, we were going down to about 60 percent of what we had at the end of the Persian Gulf war, and at that time, China had increased its military procurement by 1,000 percent. That is bad enough, and that is serious, but the other thing they are doing, their problem with us is we are the No. 1 and No. 2 country in terms of having to depend on other countries to have the energy to run our country and certainly to fight a war.

When we do this, I see China out there all of a sudden has its $70 billion deal with Iran, and now they are importing 13 percent of their oil from Iran. They are refusing to go along with us on sanctions against the Sudan with all the atrocities going on there. Now they are importing 70 percent of their oil from Sudan. We know what they have been doing with Chavez in Venezuela.

These are real serious problems we are facing with China. I am sure he will talk about these tomorrow night.

He will talk about our overreliance on foreign oil. I cannot be critical of the Democrats or Republicans. We are all responsible for that.

Back when Don Hodel was Secretary of Interior during the Reagan administration, we had a little song and dance where we would go out to the consumption States, such as New York and Illinois, and we would tell them that our reliance on foreign countries for energy is really not an energy issue, it is a national security issue because we are relying on them for our ability to fight a war. Do you know what our reliance was at that time? We were relying on foreign countries for 35 percent of our total amount of oil imports, oil to run our country. Now it is at 63 percent. That is serious.

I have to say in conclusion I believe the President deserves excellent grades. What this administration accomplished in the last 5 years is phenomenal. If we compare where we were and where we are now, we are a more secure nation. We have finally awakened and we have started to deal aggressively with the threats that are facing us. We are no longer treating the terrorist enemies of the United States like disadvantaged people. We are no longer turning a blind eye to the nuclear proliferation by negotiating without the real threat of military action. Our negotiators can now go to the table with more credibility.

We are no long underfunding the readiness challenge. If we had an administration without the willingness to fund defense, take decisive action and stand up to our allies with their heads buried in the sand, we would be in far worse shape than we are today. I believe Europe is slowly awakening to the threats that exist. Fortunately we have had one very strong ally who stayed with us through this challenging period, Tony Blair. I am sure the President will renew his praise for Tony Blair and all the help he has given to us.

I wish to say one thing. Let me ask the Chair how much time I have remaining?

The PRESIDING OFFICER (Mr. TALENT). The Senator has approximately 14 minutes remaining.

Mr. INHOFE. Let me make a comment about this thing, "The U.S. Military Under Strain and at Risk." It is amazing that the media would give any attention to this group. Do you know who this group is? This group is Madeleine Albright, Burger—this is the group, Podesta—these are the ones who gave us the problems we had in the 1990s and so they came with a report and say the military is under strain, at risk.

We are undoing the damage they did. The far-left Democrat club that gave us the broken force of the 1990s is the one in charge of this report. If you watch TV, you would think they are actually people who are seriously concerned about the United States of America and concerned about undoing the damage that has been done there when they in fact were the ones who caused damage. The Chief of Staff of the Army, General Schoomacker is a good guy. He came out of retirement and agreed to do this. He didn't have to do it. He is not one of the guys who had to do it for a job. He is retired. He is down on a ranch. He agreed to come in and become the commander of the Army, and he read this report and said there is no truth to it. Our Army is not broken. We are actually going through modernization challenges, but it is trying to modernize, modularize, and mobilize, and fight a global war at the same time.

The accusations that were made, let's look at one of them in particular. It says:

> Nearly all of the available combat units in the U.S. Army National Guard and Marine Corps have been used in the current operations.

That is true because we started with a force that was underfunded and had been drawn down during the 1980s by the very people who came out with this report. They didn't have the right kind of a mix. So we are changing that and taking it away from the Cold War military to one that is facing this asymmetric threat we have out there. We are currently raising the number of our brigades from 33 to 42. Congress has given us now, through the leadership of the President, authorization for 30,000 more troops.

The shortfall, that was their fault. Again, you can go in and read more of this report saying the Army is experiencing the beginnings of what could become a major recruiting crisis. Right now we are raising our number within the Army from 484,000 to 512,000 and, while we are doing that, our recruiting and our retention is very good. Right now the Active Force retention and recruiting figures combined for 2005 were 99.1 percent. It may not be growing as fast as we would like toward the 512,000, but we can hardly call that a failure. In the first quarter of fiscal year 2006, we achieved 104 percent of the recruiting mission and 100 percent of the retention mission for the quarter.

The Guard and Reserve are all overworked, but in the first quarter, recruiting figures for the National Guard are 106 percent and the Reserves are doing even better at 122 percent. General Fuzzy Webster, who came back with the Third Infantry Division—that was their second rotation—they now have a 133-percent retention. That is the third ID that has been over there fighting for freedom on two different occasions.

Anyway, the surprising thing is the press would give them any attention at all.

Last, let me share my own personal experience. I have had occasion to go to Iraq or the Iraq area 10 times now. I take very seriously my job as a member of the Senate Armed Services Committee. Let me share with you, not all 10 times but a little anecdotal experience on 3 of those times.

First, in January. January is the first vote. I remember one lady—I had an interpreter and we were interviewing—and she said I couldn't see the ballot because of the tears in my eyes. Then it occurred to me, this is not the first time in the 30 years of the butcher Saddam Hussein, this is the first time in 7,000 years we have had an opportunity at self-determination.

A few days later I decide to spend my time in the Sunni triangle because that is where they are supposed to hate us the most. There is a general in Fallujah by the name of Mahdi, the brigade commander for Saddam Hussein, the brigade commander for the Iraqi security forces in Fallujah. At that time he hated Americans, until they started training with the Marines in Fallujah, called embedded training. They became so fond of the Marines, when they rotated the Marines out we all got together and we cried. He renamed Fallujah Iraqi security force the Fallujah marines. That man is now in charge of security in Baghdad because he is doing security for us. In Tikrit, I was there when they blew up one of the training centers where 40 Iraqis were seriously injured. What you don't see in the media is the 40 families who had that loss replaced their loved ones with another member of the family.

When you go across the Sunni triangle 50 or 100 feet off the ground in a helicopter, little kids are waving American flags. When we send care packages to our kids, cookies or candies, they don't eat them, they repackage them and throw them to the kids there. That is the truth of what was happening.

I was up there last month during the election. Everybody expected the problems of the terrorists, the insurgents, to spike at that time, but it didn't happen because they have run out of steam. The IEDs, they went down by 30 percent in the month before the December election. Suicide bombs went down by 70 percent in 90 days. The road from the airport that goes into the green zone, I have been on it many times, they were having about 10 terrorist activities each week and now there have not been any for 7 months. Not one. That is when we turned over the security to the Iraqis and they are taking care of their own security.

These are the successes that are taking place. The number of tips that come in from Iraqis, they used to be 500 a month, now they are up to 5,000 a month. This is what is happening.

When we see that this general is now in Baghdad, and more than the eastern half of Baghdad, there is not one American boot on the ground, they are all Iraqis. They are the ones taking care of their own security and the 112 battalions they have right now, approximately 220,000 troops, 32 of those 112 battalions are either level 1 or level 2; that is, they can go into battle on their own. In January a year ago none were in that position.

Is it going to be over? People are always asking that question. People are not answering. I will answer that question. If you take the trend where we are right now, right now we have trained and equipped 220,000 Iraqi troops. By the end of this year it will be 300,000 Iraqi troops. The goal was to get up to 325,000. Why? Because all the military people tell me we need to get to 10 divisions before we can turn the security of Iraq over to the Iraqis, and that will be 325,000. We will be there by June of 2007. By June of 2007 we will have turned over the security to the Iraqis. We will still have a few troops there—we still have troops in Bosnia and Kosovo—but the security will have been turned over to them.

When you go through the towns and see the hospitals, the schools, the businesses—$22 billion in oil reserves are going in. Yet you have several Senators coming back, Senators who, I might add, are running for President in 2008, trying to make you think things are not successful there. Senator BIDEN came back and said they only had 30,000 troops. It was not 30,000, it was 200,000 when he made that statement. Senator KERRY said our troops are out at night terrorizing women. I talked to the troops. None of them even know what he is talking about.

I have to conclude, and I say this in all sincerity to the authors of this report and to the 1990s crowd that got us into this mess, and I say to the naysayers, and I say to the cut-and-run caucus, I have named them—I say to the hand wringers: I am sure glad you are not in charge because, if you were, what happened to the military and national security in the 1990s would be happening again right now. We would be right back to the same path where surrender is always an option. Back where? Negotiating with terrorists.

There is nothing wrong with that. Negotiate and appease, negotiate and appease. I thank God every day our President, George Bush, is not an appeaser. An appeaser is a guy who throws his friends to the alligators hoping they will eat them last.

Hiram Mann said:

No man survives when freedom fails.
The best men rot in filthy jails.
And those who cry appease, appease,
are hanged by those they tried to please.

Back in 2000 we came within six electoral votes of being hanged by those we tried to please.

Looking at what this President has done, grading the President on national defense and national security, very clearly President Bush—I am anxious to hear him tomorrow night—very clearly he will get an A.

MORNING BUSINESS

Mr. INHOFE. Mr. President, I ask unanimous consent there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. without objection, it is so ordered.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

Jason Gage is a 29 year old gay man. On March 12, 2005, he was beaten and stabbed with a piece of glass at his Waterloo, IA, apartment. According to reports, the attacker later told his girlfriend that he assaulted Gage after he made sexual advances toward him.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

TRIBUTE TO FORMER SENATOR WILLIAM PROXMIRE

Mr. SESSIONS. Mr. President, I rise today to pay tribute to our late colleague, Senator William Proxmire—beloved father, husband, veteran, and former member of this body. With over 32 years of service in this institution, Senator Proxmire constantly challenged us to remain fiscally responsible. As chairman of the Committee on Banking, Housing, and Urban Affairs for four Congresses, he was constantly working to protect the taxpayers.

Most Members of this esteemed body recall the steady reminder by Senator Proxmire that "Uncle Sam is the last of the big spenders." His firm advocacy for good sense and forethought on spending led to the creation of the "Golden Fleece" awards. Senator Proxmire would hand these awards out, to friend and foe, to highlight government waste, abuse and scandal. His "maverick" attitude toward our responsibilities with the taxpayers' dollars should be remembered, honored, and, as I am sure he would agree, employed more today. We miss Senator Proxmire and his "Golden Fleece" awards.

Our country lost Senator Proxmire this past December as he succumbed to the devastating affects of Alzheimer's—a disease he battled daily since 1994. He spent his last years at the Copper Ridge Institute in Eldersburg, MD. Copper Ridge is a fantastic facility dedicated to the study of caring for those suffering from dementia. The goals of the Copper Ridge Institute are to share the knowledge it has acquired in the field of dementia care. For the last 10 years, staff from Copper Ridge, the Copper Ridge Institute and the Johns Hopkins University School of Medicine have worked together to develop a model of care that respects the dignity of the people battling this disease and that provides a better quality of life to them.

I had the pleasure of meeting and talking with Senator Proxmire's wife, Ellen, in September 2004. Mrs. Proxmire sponsors an annual award in the name of her husband for those who support this dedicated Alzheimer's research. Mrs. Proxmire has truly become the voice for those who cannot speak. She has worked diligently to see more national attention given to Alzheimer's disease and the important role specific care models like that at Copper Ridge play in preserving the dignity and quality of life of those with the disease. As Mrs. Proxmire likes to point out, "Until there is a cure for the disease, learning to care for those with Alzheimer's is paramount."

Mr. President, we have a responsibility, as nearly 4.5 million Americans find themselves faced with this terrible disease, to work with those involved with research and medicine in this field. Our country is stronger today because the name "William Proxmire" is found on the rolls of the Senate. As we pause to remember this great man, true patriot, and fellow Senator, this institution should take heed and continue our support in the fight for an Alzheimer's cure.

PALESTINIAN LEGISLATIVE COUNCIL ELECTIONS

Mr. FEINGOLD. Mr. President, while we are still awaiting final certification of the election results, it is apparent that the Islamic Resistance Movement, or Hamas, has obtained a significant number of seats in the new Palestinian legislative council. Despite its electoral success, Hamas remains a terrorist organization that has refused to renounce its fundamental commitment to the destruction of Israel and to the use of violence to achieve its goals.

Electoral results do not change the fact that a lasting, viable peace can only be obtained through a two-state solution. Hamas must use its electoral success as an opportunity to renounce its violent platform and to join in a coalition dedicated to achieving peace in the region. Renouncing terrorism and violence and accepting the right of Israel to exist are essential steps toward fulfilling the desire of the Palestinian people for a peaceful representative democracy.

NATIONAL MENTORING MONTH

Mr. GRASSLEY. Mr. President, I am pleased to join my colleagues Senator McCAIN and Senator KENNEDY in sponsoring a resolution designating the month of January as "National Mentoring Month." Adult-to-youth mentoring has long shown positive impacts on our Nation's young people in becoming responsible, productive adults.

This January will mark the fourth anniversary of the National Mentoring Month campaign to focus national attention on the need for mentors, as well as how each of us within the public and private sector can work together to increase the number of mentors and assure brighter futures for our youth.

Currently, it is estimated that 15 million children need or want a mentor. That is 15 million young people who need the guidance to improve life-essential skills, make healthy choices, and increase their own self worth. I hope the rest of the Senate will join in supporting this resolution and supporting this very important campaign.

ABRAMOFF SCANDAL

Mr. JOHNSON. Mr. President, as both vice chairman of the Senate Ethics Committee and a member of the Senate Committee on Indian Affairs, I have been absolutely appalled at the scope and the depth of the villainy associated with the Abramoff lobbying scandal.

Inasmuch as Washington recently has become consumed and distracted by the utterly shameful actions of disgraced lobbyist Jack Abramoff, I believe that it is essential to understand just how far removed from this scandal

Indian tribes are. While a small handful of tribes were represented by Mr. Abramoff and were victimized by his incredibly shady and cynical manipulation of their funds, the vast majority of our Nation's 560 tribes and Alaskan Native villages had nothing to do with him or his practices. Less than half of those tribes operate casinos, and only a tiny proportion of those generate the kind of money that would attract the likes of Mr. Abramoff.

Most of the tribes that operate casinos are far from wealthy. The myth that all or most gaming Indian tribes are rolling in dough is wildly incorrect. The tribes in South Dakota and many around the country have large land bases and extensive enrolled memberships. Their casinos are often located in remote, rural areas far away from large numbers of affluent customers and set amidst dire levels of poverty and unemployment. The truth is that most of these casinos provide some badly needed jobs and only a modest amount of revenue. The income that remains after payroll expenses are largely then immediately consumed by a huge backlog of financial needs for education, housing, health and economic development within their reservations.

While a few Indian tribes were associated with Mr. Abramoff, the fees they paid were far beyond what most tribes could possibly afford—and in the end, their hired lobbyist abused both their money and their trust. Clearly, this scandal was a lobbying scandal, not a tribal scandal. The reality in too much of Indian Country is the consequence of chronic poverty: shocking levels of disease, inadequate housing, crime, drug and alcohol abuse, low school graduation rates, hunger, and stressed families. These tribes aren't paying Washington lobbyists millions of dollars, but instead are struggling every day to make ends meet and to help restore the dignity of their members.

While I did not receive any money from Jack Abramoff, I did receive legal contributions from tribes he represented. I am proud of the support Indian tribes and individual Native Americans have extended to me over the years. We must help restore the American public's faith in good, responsible government and preserve participation by sovereign Indian tribes in our democracy.

ADDITIONAL STATEMENTS

CONGRATULATING EAGLE SCOUTS

• Mr. THUNE. Mr. President, today I rise to congratulate Seth Honerman, Robert Viste, Kevin and Kyle Roades, Dennis VerHey, Donald Nordlie, Adam English, Michael King, Jordan Richter, Bayard Carlson, Ryan King, Thomas Hieber, Jeffrey Wilkes, and Travis Maholovich who have recently obtained the rank of Eagle Scout. The rank of Eagle Scout is the highest rank given to lifetime members of the Boy Scouts. This honor is not given lightly, and it represents their great drive and dedication to excellence.

These young men should be proud of their accomplishment. The rank of Eagle is given to only 2 percent of all Boy Scouts, and these young men find themselves among other great Americans including Neil Armstrong and Gerald Ford. I look forward to these Scouts going on to do great things as well.

I am proud to join the friends and family of these proud Scouts in congratulating them on their many and most recent accomplishments.•

AWARD FOR EXCELLENCE IN EDUCATION

• Mr. DAYTON. Mr. President, I rise today to honor Bamber Valley Elementary School, in Rochester, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

Bamber Valley Elementary School is truly a model of educational success. The school is Rochester's largest elementary school, serving 885 students in kindergarten through fifth grade. The successful partnership created between families and the community has made possible a school that exemplifies teamwork, pride, and excellence.

Bamber Valley is making full use of test score data to improve teaching techniques and to address the specific reading and math challenges facing individual students. The administration's quick dissemination of test data to the classroom teachers has allowed the teachers to adjust their teaching strategies, addressing the skills that students found to be the most difficult on the standardized tests.

Bamber Valley is home to the district's programs serving the elementary deaf and hard-of-hearing children. The program's resource teachers work with families encountering crisis situations, and a gifted and talented specialist is assigned to the school to help challenge students who excel.

For students in the first through fifth grades, the school has an afterschool academy program, where laughter and high energy combine to create a learning environment that is safe, welcoming, and fun.

Much of the credit for Bamber Valley Elementary School's success belongs to its principal, Ms. Becky Gerdes, and her dedicated teachers. The students and staff at Bamber Valley Elementary School understand that, in order to be successful, a school must go beyond achieving academic success; it must also offer a nurturing environment where students develop the knowledge, skills, and attitudes for a lifetime of success. All of the faculty, staff, and students at Bamber Valley Elementary School should be very proud of their accomplishments.

I congratulate Bamber Valley Elementary School in Rochester, MN, for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.•

AWARD FOR EXCELLENCE IN EDUCATION

• Mr. DAYTON. Mr. President, I rise today to honor Mayo High School, in Rochester, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

Mayo High School is truly a model of educational success. Several years ago, the school established three major goals and developed an action plan to achieve them: No. 1, to improve the graduation rate; No. 2, to address a disproportionate number of suspensions of racial minority students; and No. 3, to improve poor math and reading test scores.

Several key school leaders are largely responsible for the school's attaining these goals.

Ms. Joan Bachman, who chaired the diversity committee, initiated a multiyear plan, working with the community, staff, and students to make Mayo High School a more welcoming place for all students. Through her leadership, the school has won the District's Diversity Award for each of the last 4 years. She also won the Rochester Diversity Council's Educators Award last year.

Ms. Jeri Brown oversees the school's conflict mediation program and trains students in conflict mediation skills. The students who receive conflict mediation training perform nearly 400 mediations per year, achieving a 93-percent success rate.

Mr. Ron Randall, chair of the math department, and Barb Milburn, chair of the English department, have done a superior job in improving the academic performance of all students. Last year, Mayo received the State's Five Star rating in math.

Recognizing that many of the students receiving suspensions for behavioral reasons were the same students who least could afford time away from school, Mayo modified its policies. By focusing on addressing causes of students' poor behavior, Mayo has avoided loss of valuable class time. Consequently, suspension rates have improved, and graduation rates have dramatically risen. Last year, the school boasted a 95-percent graduation rate.

Much of the credit for Mayo High School's success belongs to its principal, Dr. John Frederikson, and his dedicated teachers. The students and staff at Mayo High School understand that, in order to be successful, a school must go beyond achieving academic success; it must also provide a nurturing environment where students develop the knowledge, skills, and attitudes for a lifetime of success. All of the faculty, staff, and students at Mayo High School should be very proud of their accomplishments.

I congratulate Mayo High School in Rochester, MN, for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.•

AWARD FOR EXCELLENCE IN EDUCATION

• Mr. DAYTON. Mr. President, I rise today to honor Eagle Lake Elementary School, in Eagle Lake, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

Eagle Lake Elementary School is truly a model of educational success, having earned a Five Star rating from the Minnesota Department of Education. The school, which is part of the Mankato Area School District, serves 290 students from the communities of Eagle Lake and Madison Lake. Although relatively small, Eagle Lake Elementary offers an impressive variety of educational opportunities, including all-day kindergarten, special education services, assurance of mastery program for at-risk students, a school psychologist and social worker, a structured study center, afterschool academic assistance, speech and language assistance, an artist-in-residence program, mentoring program, lyceum programs, and challenging opportunities for highly capable students.

Eagle Lake Elementary's "400 Club," a school-wide home reading program, encourages students to spend at least 100 minutes per week reading. At the end of each month, a school-wide celebration honors those who have read over 400 minutes for the month. The "Reading Buddies" program pairs early elementary students with fourth and fifth grade students to explore reading through weekly themed projects and activities. The older buddy learns role model and leadership skills while the younger buddy is encouraged to develop lifelong reading habits. The school also boasts an orchestra program, a science fair, a Quiz Bowl, Peace Makers, which teaches peer mediation and conflict resolution, novel study, word masters, art masterpiece, geography and spelling bees, Jump Rope for Heart, and a variety of afterschool activities.

Parents' involvement in the education of their children is also very high at Eagle Lake Elementary. This fall, 99 percent of all parents participated in parent-teacher conferences.

Much of the credit for Eagle Lake Elementary School's success belongs to principal, Jason Scherber, and his dedicated teachers. The students and staff at Eagle Lake Elementary School understand that, in order to be successful, a school must go beyond achieving academic success; it must also provide a nurturing environment where students develop the knowledge, skills, and attitudes for a lifetime of success. All of the faculty, staff, and students at Eagle Lake Elementary School should be very proud of their accomplishments.

I congratulate Eagle Lake Elementary School in Eagle Lake, MN, for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.•

HAPPY 90TH BIRTHDAY TO RAYMOND TWOMEY

• Mr. KERRY. Mr. President, I rise today to celebrate a special occasion in the life of a true American; Mr. Raymond Twomey of Boston, MA. As Ray gathers with his friends and family, I wish to join with all of them in celebrating his career of public service, his distinguished military service, and his 90th birthday.

Ray was born on January 30, 1916, and grew up in east Boston, where he resides to this day with his son Jerry and daughter-in-law Sandra. He answered his country's call to service in World War II and worked as a medic in the "Spearhead Division," known outside the service by its more formal title of the U.S. Army 703rd Tank Destroyer Battalion, 3rd Armored Division. He ascended to the rank of corporal, fought courageously in the critical Battle of the Bulge, and was subsequently awarded a Purple Heart.

Upon his return to the States, Ray began his work for the U.S. Postal Service and served the Boston neighborhoods of Beacon Hill and the North End. He married the lovely Marie Louise Spinazola, also of east Boston, in 1948; and their four children, Jerry, Claudia, Mary and Bernadette were born and raised in east Boston as well. He is the proud grandfather of six grandchildren and one great grandchild.

On the occasion of Ray's 90th birthday, his entire family will gather to honor him and celebrate his life and accomplishments. I am proud to join them in wishing happy birthday to Ray and wish him the very best.•

HONORING THE LIFE OF CHARLES F. CUMMINGS

• Mr. LAUTENBERG. Mr. President, I rise today to pay tribute to Charles F. Cummings, the official historian of Newark, NJ. Mr. Cummings passed away on December 21, 2005, at the age of 68.

Mr. Cummings was born in Puerto Rico and raised in Virginia, but it was Newark, NJ, to which he pledged his life's work. With a master's degree in American History from Vanderbilt University, Mr. Cummings arrived in New Jersey in 1963 to begin a job with the Newark Public Library. He adapted quickly to his new home, studying the history and traditions of both the city and the State. Before long, Mr. Cummings was renowned for having an encyclopedic knowledge of all things New Jersey.

Not content to keep this information to himself, Mr. Cummings sought to make the State's history public knowledge so that the people of Newark would love his adopted home as much as he did. As an employee of the Newark Public Library for over 40 years, Mr. Cummings took pride in curating public exhibitions that shed light on the history of Newark and brought to life the stories of those who lived there. Mr. Cummings shared the history and accomplishments of Newark with thousands of New Jersey residents by conducting walking tours of the city and writing a regular column for the The Star Ledger of New Jersey called "Knowing Newark." He also served as an affiliate member of the Rutgers University Federated Department of history, where he taught a popular undergraduate course on the history of Newark.

There has hardly been a person, past or present, who has cared about the history of Newark the way Mr. Cummings did. He was an indispensable resource for journalists, historians, and citizens alike. While Mr. Cummings will be missed by the people of New Jersey, he will be forever cherished as a loyal friend, a great man, and a true Newark treasure.

Mr. President, I ask my colleagues to join me in paying tribute to Charles F. Cummings and the immeasurable contributions he has made to the city of Newark and the State of New Jersey.•

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5391. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report relative to the completion of a feasibility study of inland navigation improvements for the Chickamauga Lock and Dam, Tennessee; to the Committee on Environment and Public Works.

EC–5392. A communication from the Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior, transmitting, pursuant to law, the report of a draft bill entitled "District of Columbia Snow Removal Amendment Act"; to the Committee on Environment and Public Works.

EC–5393. A communication from the Chairman, Nuclear Regulatory Commission, transmitting, pursuant to law, the Commission's monthly report on the status of its licensing and regulatory duties; to the Committee on Environment and Public Works.

EC–5394. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Air Quality Implementation Plans; Maryland; Update of Materials Incorporated by a Reference" (FRL No. 8021–7) received on January 16, 2006; to the Committee on Environment and Public Works.

EC–5395. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Emission Reductions to Meet Phase II of the Nitrogen Oxides (NO_X) SIP Call" (FRL No. 8020–4) received on January 16, 2006; to the Committee on Environment and Public Works.

EC–5396. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Guidelines for Awarding Clean Water Act Section 319 Base Grants to Indian Tribes in FY 2006; Request for Proposals from Indian Tribes for Competitive Grants under Clean Water Act Section 319 in FY 2006 (CFDA 66.460—Nonpoint Source Implementation Grants; Funding Opportunity Number EPA–OW–OWOW–0602)" (FRL No. 8021–6) received on January 16, 2006; to the Committee on Environment and Public Works.

EC–5397. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Beaches Environmental Assessment and Coastal Health Act" (FRL No. 8020–3) received on January 16, 2006; to the Committee on Environment and Public Works.

EC–5398. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to Control Volatile Organic Compound Emissions; Volatile Organic Compound Control for Facilities in the Dallas/Fort Worth Ozone Nonattainment Area" (FRL No. 8022–2) received on January 18, 2006; to the Committee on Environment and Public Works.

EC–5399. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Ohio: Final Authorization of State Hazardous Waste Management Program Revision" (FRL No. 8023–3) received on January 18, 2006; to the Committee on Environment and Public Works.

EC–5400. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; New Jersey Consumer Products Rules" (FRL No . 8020) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5401. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation Plans; New Mexico, Visibility" (FRL No. 8025–5) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5402. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Disapproval of Air Quality Implementation Plans; Montana; Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants" (FRL No. 8026–1) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5403. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana; Direct Final Rule" (FRL No. 8012–5) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5404. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana; New Source Performance Standards for Montana; Final Rule" (FRL No. 8012–9) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5405. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky; Redesignation of the Christian County, Kentucky, Portion of the Clarksville-Hopkinsville 8-Hour Ozone Nonattainment Area to Attainment for Ozone" (FRL No. 8023–8) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5406. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; Tennessee; Nashville Area Second 10-Year Maintenance Plan for the 1-Hour Ozone National Ambient Air Quality Standard; Correction" (FRL No. 8023–5) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5407. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of State Implementation Plans; Oregon; Portland Carbon Monoxide Second 10-Year Maintenance Plan" (FRL No. 8015–3) received on January 25 , 2006; to the Committee on Environment and Public Works.

EC–5408. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Colorado; Long-Term Strategy of State Implementation Plan for Class I Visibility Protection" (FRL No. 8010–2) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5409. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for New Source Performance Standards" (FRL No. 8011–1) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5410. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Maine: Determination of Adequacy for the State Municipal Solid Waste Landfill Permit Program" (FRL No. 8024–2) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5411. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Contaminated Sediment Remediation Guidance for Hazardous Waste Sites" (http://www.epa.gov/superfund/resources/sediment) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5412. A communication from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Migratory Bird Hunting; Approval of Tungsten-Iron-Copper-Nickel, Iron-Tungsten-Nickel Alloy, and Tungsten-Bronze (Additional Formulation), and Tungsten-Tin-Iron Shot Types as Nontoxic for Hunting Waterfowl and Coots; Availability of Environmental Assessments" (RIN5412–AT87) received on January 26, 2005; to the Committee on Environment and Public Works.

EC–5413. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Thymol; Exemption from the Requirement of a Tolerance" (FRL No. 7754–9) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5414. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Brucellosis in Cattle; State and Area Classifications; Idaho" (Doc. No. 06–001–1) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5415. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2005–2006 Crop Year for Tart Cherries" (Docket No. FV05–930–1 FR) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5416. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Hazelnuts Grown in Oregon and

Washington; Establishment of Final Free and Restricted Percentages for the 2005–2006 Marketing Year" (Docket No. FV06–982–1 IFR) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5417. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Milk in the Upper Midwest Marketing Area—Final Order" (Docket No. AO–361–A39; DA–04–03–A) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5418. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 2005–2006 Marketing Year" (Docket No. FV05–985–2 IFR) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5419. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Walnuts Grown in California; Increased Assessment Rate" (Docket No. FV05–984–2 FR) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5420. A communication from the Administrator, Food Safety and Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Addition of Chile to the List of Countries Eligible to Export Meat and Meat Products to the United States" (RIN0583–AD16) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5421. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Pesticides; Emergency Exemption Process Revisions" (FRL No. 7749–3) received on January 25, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5422. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Sorbitol Octanoate; Exemption from the Requirement of a Tolerance" (FRL No. 7757–2) received on January 25, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5423. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Standards of Performance for Stationary Gas Turbines" (FRL No. 8025–9) received on January 25, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5424. A communication from the Secretary, Department of Agriculture, transmitting, pursuant to law, the Fiscal Year 2004 Status Report to Congress for the Herger-Feinstein Quincy Library Group Forest Recovery Act Pilot Project; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5425. A communication from the Chairman, Medicare Payment Advisory Commission, transmitting, pursuant to law, a report entitled "Home Health Agency Case Mix and Financial Performance"; to the Committee on Finance.

EC–5426. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "January–March 2006 Bond Factor Amounts" (Rev. Rul. 2006–5) received on January 18, 2006; to the Committee on Finance.

EC–5427. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Determination of Basis of Stock and Securities; Treatment of Excess Loss Accounts" ((RIN1545–BC05, RIN1545–BE88) (TD9244)) received on January 26, 2006; to the Committee on Finance.

EC–5428. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Reporting Requirements for Widely Held Fixed Investment Trusts" ((RIN1545–BA83) (TD9241)) received on January 26, 2006; to the Committee on Finance.

EC–5429. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Statutory Mergers and Consolidations" (RIN1545–BA06, RIN1545–BD76) (TD9242)) received on January 26, 2006; to the Committee on Finance.

EC–5430. A communication from the Acting Director, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, transmitting, pursuant to law, the report of a rule entitled "Low- and Medium-Voltage Diesel-Powered Electrical Generators" (RIN1219–AA98) received on January 25, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–5431. A communication from the Acting Director, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, transmitting, pursuant to law, the report of a rule entitled "Training Standards for Shaft and Slope Construction Workers at Underground Mines and Surface Areas of Underground Mines" (RIN1219–AB35) received on January 25, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–5432. A communication from the Deputy Executive Director, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled "Disclosure to Participants; Benefits Payable in Terminated Single-Employer Plans" (29 CFR Parts 4011 and 4022) received on January 25, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5433. A communication from the Deputy Executive Director, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled "Allocation of Assets in Single-Employer Plans, Valuation of Benefits and Assets; Expected Retirement Age" (29 CFR Part 4044) received on January 25, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5434. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Food Labeling: Health Claims; Soluble Dietary Fiber From Certain Foods and Coronary Heart Disease" (Docket No. 2004P–0512) received on January 25, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5435. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Food Labeling: Ingredient Labeling of Dietary Supplements That Contain Botanicals; Withdrawal" (Docket No. 2003N–0346) received on January 25, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5436. A communication from the Regulations Coordinator, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products" ((RIN0910–AA94) (Docket No. 2000N–1269)) received on January 25, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5437. A communication from the Deputy General Counsel, Office of Strategic Alliances, Small Business Administration, transmitting, pursuant to law, the report of a rule entitled "Cosponsorships, Fee and Non-Fee Based SBA-Sponsored Activities, and Gifts" (RIN3245–AF37) received on January 25, 2006; to the Committee on Small Business and Entrepreneurship.

EC–5438. A communication from the Deputy General Counsel, Office of Strategic Alliances, Small Business Administration, transmitting, pursuant to law, the report of a rule entitled "Small Business Size Standards, Inflation Adjustment to Size Standards; Business Loan Program; Disaster Assistance Loan Program" (RIN3245–AF41) received on January 25, 2006; to the Committee on Small Business and Entrepreneurship.

EC–5439. A communication from the Deputy General Counsel, Office of Strategic Alliances, Small Business Administration, transmitting, pursuant to law, the report of a rule entitled "Small Business Technology Transfer Program Policy Directive" (RIN3245–AE96) received on January 25, 2006; to the Committee on Small Business and Entrepreneurship.

EC–5440. A communication from the Secretary of the Air Force, transmitting, pursuant to law, the report of a Program Acquisition Unit Cost (PAUC) and Acquisition Procurement Unit Cost (APUC) breach relative to the National Polar-orbiting Operational Environmental Satellite System; to the Committee on Armed Services.

EC–5441. A communication from the Assistant Secretary of Defense (Health Affairs), transmitting, pursuant to law, a report entitled "Fiscal Year 2005 Report on Medical Informatics"; to the Committee on Armed Services.

EC–5442. A communication from the Commissioner, Social Security Administration, transmitting, pursuant to law, the Administration's Inspector General Semiannual Report for the period from April 1, 2005 through September 30, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5443. A communication from the Acting Chief of Staff, Federal Mediation and Conciliation Service, transmitting, pursuant to law, the report of the Federal Mediation and Conciliation Service under the Federal Managers' Financial Integrity Act for Fiscal Year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5444. A communication from the Director of Administration, National Labor Relations Board, transmitting, pursuant to law, the Board's Competitive Sourcing Activities Report for Fiscal Year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5445. A communication from the Chairman, Broadcasting Board of Governors, transmitting, pursuant to law, the Board's Semiannual Report of the Office of the Inspector General for the period of April 1, 2005 through September 30, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5446. A communication from the Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled "Federal Acquisition Circular 2005–08" (FAC Case 2005–08) received on January 25, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5447. A communication from the Director, Strategic Human Resources Policy Division, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled "Examining System" (RIN3206–AK35) received on January 25, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5448. A communication from the Director, Strategic Human Resources Policy Division, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled "Prevailing Rate Systems; Change in the Survey Cycle for the Harrison, Mississippi, Nonappropriated Fund Federal Wage System Wage Area" (RIN3206–AK96) received on January 26, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5449. A message from the President of the United States, transmitting, pursuant to law, the report of the continuation of the national emergency with respect to terrorists who threaten to disrupt the Middle East peace process; to the Committee on Banking, Housing, and Urban Affairs.

EC–5450. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the six-month periodic report on the national emergency with respect to Liberia that was declared in Executive Order 13348 of July 22, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–5451. A communication from the Assistant Secretary, Department of the Treasury, transmitting, pursuant to law, the Department's Fiscal Year 2005 Competitive Sourcing Efforts Report; to the Committee on Banking, Housing, and Urban Affairs.

EC–5452. A communication from the Associate General Counsel for Legislation and Regulations, Office of Community Planning and Development, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled "Prohibition on Use of Community Development Block Grant Assistance for Job-Pirating Activities" ((RIN2506–AC04)(FR-4556–I–02)) received on January 25, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5453. A communication from the Associate Director, Office of Foreign Assets Control, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Economic Sanctions Enforcement Procedures for Banking Institutions" (31 CFR Part 501) received on January 25, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5454. A communication from the Associate Director, Office of Foreign Assets Control, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Partial Withdrawal of the Office of Foreign Assets Control's Proposed Rule Published January 29, 2003, Relating to the Economic Sanctions Enforcement Guidelines" (31 CFR Part 501) received on January 25, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5455. A communication from the Secretary of Energy, transmitting, pursuant to law, the Department's Fiscal Year 2005 Competitive Sourcing Activity Report; to the Committee on Energy and Natural Resources.

EC–5456. A communication from the Principal Deputy General Counsel, Office of the General Counsel, Federal Energy Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled "Accounting and Financial Reporting for Public Utilities Including RTOs" (Docket No. RM04–12–000) received on January 25, 2006; to the Committee on Energy and Natural Resources.

EC–5457. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Termination of Federal Enforcement for Parts of the Missouri Permanent Regulatory Program and Return of Full Regulatory Authority to the State of Missouri" (Docket No. MO–738) received on January 26, 2006; to the Committee on Energy and Natural Resources.

EC–5458. A communication from the Acting Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Iowa Regulatory Program" (Docket No. IA–015–FOR) received on January 26, 2006; to the Committee on Energy and Natural Resources.

EC–5459. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to the Case-Zablocki Act, 1 U.S.C. 112b, as amended, the report of the texts and background statements of international agreements, other than treaties (List 06–01–06–08); to the Committee on Foreign Relations.

EC–5460. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled "Amendment to the International Traffic in Arms Regulations: Registration Fee Change" (RIN 1400–AB97) received on January 25, 2006; to the Committee on Foreign Relations.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DEMINT:

S. 2207. A bill to extend the temporary suspension of duty on certain manufacturing equipment; to the Committee on Finance.

By Mr. DEMINT:

S. 2208. A bill to suspend temporarily the duty on para-Chlorophenol; to the Committee on Finance.

By Mr. DEMINT:

S. 2209. A bill to suspend temporarily the duty on 4-Chloro-3-[[3-(4-methoxyphenyl)-1,3-dioxopropyl]-amino]-do decyl ester; to the Committee on Finance.

By Mr. DEMINT:

S. 2210. A bill to extend the temporary suspension of duty on 2,6 Dichlorotoluene; to the Committee on Finance.

By Mr. DEMINT:

S. 2211. A bill to extend the temporary suspension of duty on Fluorobenzene; to the Committee on Finance.

By Mr. DEMINT:

S. 2212. A bill to suspend temporarily the duty on Diresul Brown GN Liquid Crude; to the Committee on Finance.

By Mr. DEMINT:

S. 2213. A bill to extend the suspension of duty on sulfur black 1; to the Committee on Finance.

By Mr. DEMINT:

S. 2214. A bill to extend the suspension of duty on reduced vat blue 43; to the Committee on Finance.

By Mr. DEMINT:

S. 2215. A bill to suspend temporarily the duty on Sulfur Blue 7; to the Committee on Finance.

By Mr. DEMINT:

S. 2216. A bill to suspend temporarily the duty on 1,4-Benzendicarboxylic Acid, Polymer With N,N-Bis(2-Aminoethyl)-1,2-Ethanediamine, Cyclized, Me Sulfates; to the Committee on Finance.

By Mr. DEMINT:

S. 2217. A bill to suspend temporarily the duty on Aniline 2 ,5 Di-sulphonic Acid; to the Committee on Finance.

By Mr. DEMINT:

S. 2218. A bill to extend the temporary suspension of duty on certain sawing machines; to the Committee on Finance.

By Mr. DEMINT:

S. 2219. A bill to extend the temporary suspension of duty on certain sector mold press machines; to the Committee on Finance.

By Mr. DEMINT:

S. 2220. A bill to extend the temporary suspension of duty on certain manufacturing equipment for molding; to the Committee on Finance.

By Mr. DEMINT:

S. 2221. A bill to extend the temporary suspension of duty on certain extruders used in the production of radial tires; to the Committee on Finance.

By Mr. DEMINT:

S. 2222. A bill to provide for the liquidation or reliquidation of entries of certain manufacturing equipment; to the Committee on Finance.

By Mr. DEMINT:

S. 2223. A bill to extend the temporary suspension of duty on certain manufacturing equipment used for working iron or steel; to the Committee on Finance.

By Mr. DEMINT:

S. 2224. A bill to provide for the liquidation or reliquidation of entries of certain mold press machines; to the Committee on Finance.

By Mr. DEMINT:

S. 2225. A bill to provide for the liquidation or reliquidation of entries of certain manufacturing equipment; to the Committee on Finance.

By Mr. DEMINT:

S. 2226. A bill to provide for the liquidation or reliquidation of entries of certain manufacturing equipment; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. JOHNSON (for himself and Mr. THUNE):

S. Res. 358. A resolution expressing the sense of the Senate that the Secretary of

Health and Human Services, acting through the Director of Indian Health Service, should maintain the current operating hours of the Wagner Service Unit until the Secretary submits to Congress a new report that accurately describes the current conditions at the Wagner Service Unit; to the Committee on Indian Affairs.

ADDITIONAL COSPONSORS

S. 521

At the request of Mrs. HUTCHISON, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 521, a bill to amend the Public Health Service Act to direct the Secretary of Health and Human Services to establish, promote, and support a comprehensive prevention, research, and medical management referral program for hepatitis C virus infection.

S. 602

At the request of Ms. MIKULSKI, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 602, a bill to amend the Public Health Service Act to fund breakthroughs in Alzheimer's disease research while providing more help to caregivers and increasing public education about prevention.

S. 707

At the request of Mr. ALEXANDER, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from Maryland (Ms. MIKULSKI) and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. 707, a bill to reduce preterm labor and delivery and the risk of pregnancy-related deaths and complications due to pregnancy, and to reduce infant mortality caused by prematurity.

S. 967

At the request of Mr. LAUTENBERG, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 967, a bill to amend the Communications Act of 1934 to ensure that prepackaged news stories contain announcements that inform viewers that the information within was provided by the United States Government, and for other purposes.

S. 1172

At the request of Mr. SPECTER, the names of the Senator from Oregon (Mr. WYDEN) and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. 1172, a bill to provide for programs to increase the awareness and knowledge of women and health care providers with respect to gynecologic cancers.

S. 1800

At the request of Ms. SNOWE, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 1800, a bill to amend the Internal Revenue Code of 1986 to extend the new markets tax credit.

S. 1934

At the request of Mr. SPECTER, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1934, a bill to reauthorize the grant program of the Department of Justice for reentry of offenders into the community, to establish a task force on Federal programs and activities relating to the reentry of offenders into the community, and for other purposes.

S. 2012

At the request of Mr. STEVENS, the names of the Senator from Arkansas (Mr. PRYOR) and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. 2012, a bill to authorize appropriations to the Secretary of Commerce for the Magnuson-Stevens Fishery Conservation and Management Act for fiscal years 2006 through 2012, and for other purposes.

S. 2025

At the request of Mr. BAYH, the names of the Senator from Georgia (Mr. ISAKSON) and the Senator from Rhode Island (Mr. CHAFEE) were added as cosponsors of S. 2025, a bill to promote the national security and stability of the United States economy by reducing the dependence of the United States on oil through the use of alternative fuels and new technology, and for other purposes.

S. 2154

At the request of Mr. OBAMA, the names of the Senator from Virginia (Mr. ALLEN) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 2154, a bill to provide for the issuance of a commemorative postage stamp in honor of Rosa Parks.

S. 2172

At the request of Ms. LANDRIEU, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 2172, a bill to provide for response to Hurricane Katrina by establishing a Louisiana Recovery Corporation, providing for housing and community rebuilding, and for other purposes.

S. 2179

At the request of Mr. OBAMA, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 2179, a bill to require openness in conference committee deliberations and full disclosure of the contents of conference reports and all other legislation.

S. 2197

At the request of Mr. ALEXANDER, the names of the Senator from New Jersey (Mr. LAUTENBERG), the Senator from South Dakota (Mr. JOHNSON), the Senator from Kentucky (Mr. MCCONNELL), the Senator from Maine (Ms. SNOWE), the Senator from Pennsylvania (Mr. SPECTER) and the Senator from Rhode Island (Mr. REED) were added as cosponsors of S. 2197, a bill to improve the global competitiveness of the United States in science and energy technology, to strengthen basic research programs at the Department of Energy, and to provide support for mathematics and science education at all levels through the resources available through the Department of Energy, including at the National Laboratories.

At the request of Mr. FRIST, his name was added as a cosponsor of S. 2197, supra.

At the request of Mr. DOMENICI, the names of the Senator from New York (Mr. SCHUMER), the Senator from North Dakota (Mr. DORGAN), the Senator from Maryland (Mr. SARBANES) and the Senator from Nevada (Mr. REID) were added as cosponsors of S. 2197, supra.

S. 2198

At the request of Mr. ALEXANDER, the names of the Senator from New Jersey (Mr. LAUTENBERG), the Senator from South Dakota (Mr. JOHNSON), the Senator from Kentucky (Mr. MCCONNELL), the Senator from Maine (Ms. SNOWE) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of S. 2198, a bill to ensure the United States successfully competes in the 21st century global economy.

At the request of Mr. FRIST, his name was added as a cosponsor of S. 2198, supra.

At the request of Mr. DOMENICI, the names of the Senator from Maryland (Mr. SARBANES) and the Senator from Nevada (Mr. REID) were added as cosponsors of S. 2198, supra.

S. 2199

At the request of Mr. ALEXANDER, the names of the Senator from New Jersey (Mr. LAUTENBERG), the Senator from South Dakota (Mr. JOHNSON), the Senator from Kentucky (Mr. MCCONNELL), the Senator from Maine (Ms. SNOWE) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of S. 2199, a bill to amend the Internal Revenue Code of 1986 to provide tax incentives to promote research and development, innovation, and continuing education.

At the request of Mr. FRIST, his name was added as a cosponsor of S. 2199, supra.

At the request of Mr. DOMENICI, the names of the Senator from New York (Mr. SCHUMER), the Senator from Maryland (Mr. SARBANES) and the Senator from Nevada (Mr. REID) were added as cosponsors of S. 2199, supra.

S. 2201

At the request of Mr. OBAMA, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 2201, a bill to amend title 49, United States Code, to modify the mediation and implementation requirements of section 40122 regarding changes in the Federal Aviation Administration personnel management system, and for other purposes.

S. 2205

At the request of Mr. THUNE, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2205, a bill to direct the

Secretary of the Interior to convey certain parcels of land acquired for the Blunt Reservoir and Pierre Canal features of the initial stage of the Oahe Unit, James Division, South Dakota, to the Commission of Schools and Public Lands and the Department of Game, Fish, and Parks of the State of South Dakota for the purpose of mitigating lost wildlife habitat, on the condition that the current preferential leaseholders shall have an option to purchase the parcels from the Commission, and for other purposes.

S. CON. RES. 78

At the request of Mr. ISAKSON, his name was added as a cosponsor of S. Con. Res. 78, a concurrent resolution condemning the Government of Iran for violating its international nuclear nonproliferation obligations and expressing support for efforts to report Iran to the United Nations Security Counsel.

S. RES. 182

At the request of Mr. COLEMAN, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. Res. 182, a resolution supporting efforts to increase childhood cancer awareness, treatment, and research.

S. RES. 320

At the request of Mr. ENSIGN, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. Res. 320, a resolution calling the President to ensure that the foreign policy of the United States reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian Genocide.

S. RES. 355

At the request of Mr. NELSON of Nebraska, the names of the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Michigan (Ms. STABENOW), the Senator from Maine (Ms. COLLINS), the Senator from Minnesota (Mr. COLEMAN), the Senator from Nebraska (Mr. HAGEL), the Senator from Tennessee (Mr. ALEXANDER), the Senator from Illinois (Mr. OBAMA), the Senator from Delaware (Mr. CARPER), the Senator from Tennessee (Mr. FRIST), the Senator from Nevada (Mr. REID) and the Senator from West Virginia (Mr. BYRD) were added as cosponsors of S. Res. 355, a resolution honoring the service of the National Guard and requesting consultation by the Department of Defense with Congress and the chief executive officers of the States prior to offering proposals to change the National Guard force structure.

S. RES. 357

At the request of Mr. MCCAIN, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. Res. 357, a resolution designating January 2006 as "National Mentoring Month".

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 358—EXPRESSING THE SENSE OF THE SENATE THAT THE SECRETARY OF HEALTH AND HUMAN SERVICES, ACTING THROUGH THE DIRECTOR OF INDIAN HEALTH AND HUMAN SEVICES, ACTING THROUGH THE DIRECTOR OF INDIAN HEALTH SERVICE, SHOULD MAINTAIN THE CURRENT OPERATING HOURS OF THE WAGNER SERVICE UNIT UNTIL THE SECRETARY SUBMITS TO CONGRESS A NEW REPORT THAT ACCURATELY DESCRIBES THE CURRENT CONDITIONS AT THE WAGNER SERVICE UNIT

Mr. JOHNSON (for himself and Mr. THUNE) submitted the following resolution; which was referred to the Committee on Indian Affairs:

S. RES. 358

Whereas the Senate reaffirms the policy that, as provided in section 3(a) of the Indian Health Care Improvement Act (25 U.S.C. 1602(a)), "it is the policy of this Nation, in fulfillment of its special responsibilities and legal obligation to the American Indian people, to assure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy."

Whereas the Senate reaffirms the finding that, as provided in section 2(a) of the Indian Health Care Improvement Act (25 U.S.C. 1601(a)), "Federal health services to maintain and improve the health of the Indians are consonant with and required by the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian people.";

Whereas the Senate reaffirms the finding that, as provided in section 2(c) of the Indian Health Care Improvement Act (25 U.S.C. 1601(c)), "Federal health services to Indians have resulted in a reduction in the prevalence and incidence of preventable illnesses among, and unnecessary and premature deaths of, Indians.";

Whereas the Senate reaffirms the finding that, as provided in section 2(d) of the Indian Health Care Improvement Act (25 U.S.C. 1601(d)), "Despite such services, the unmet health needs of the American Indian people are severe and the health status of the Indians is far below that of the general population of the United States.";

Whereas the Senate reaffirms the policy, as provided in section 301(b)(1) of the Indian Health Care Improvement Act (25 U.S.C. 1631(b)(1)), that—

"(1) Notwithstanding any provision of law other than this subsection, no Service hospital or outpatient health care facility of the Service, or any portion of such a hospital or facility, may be closed if the Secretary has not submitted to the Congress at least 1 year prior to the date such hospital or facility (or portion thereof) is proposed to be closed an evaluation of the impact of such proposed closure which specifies, in addition to other considerations—

"(A) the accessibility of alternative health care resources for the population served by such hospital or facility;

"(B) the cost effectiveness of such closure;

"(C) the quality of health care to be provided to the population served by such hospital or facility after such closure;

"(D) the availability of contract health care funds to maintain existing levels of service;

"(E) the views of the Indian tribes served by such hospital or facility concerning such closure;

"(F) the level of utilization of such hospital or facility by all eligible Indians; and

"(G) the distance between such hospital or facility and the nearest operating Service hospital.";

Whereas the Secretary of Health and Human Services, acting through the Director of Indian Health Service, has proposed that the operating hours of the Wagner Service Unit, which serves the Yankton Sioux Tribe and others, should be reduced from 24 hours per day to the hours between 7:00 a.m. and 11:00 p.m.;

Whereas the 1997 proposed closure report, submitted by the Secretary pursuant to section 301(b)(1) of the Indian Health Care Improvement Act (25 U.S.C. 1631(b)(1)), is currently out of date and no longer accurately represents the impact of such closure upon eligible Indians at the Wagner Service Unit; and

Whereas, during the previous year, the Santee Sioux Tribe of Nebraska requested health care services formerly provided by the Indian Health Service under the Indian Self-Determination Act (25 U.S.C. 450 et seq.) from another provider, thereby removing "shares" from the Wagner Service Unit and creating a budgetary crisis that forced the facility to announce reductions in the operating hours of the emergency room: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) pursuant to section 301(b)(1) of the Indian Health Care Improvement Act (25 U.S.C. 1631(b)(1)), the Secretary of Health and Human Services, acting through the Director of Indian Health Services, should submit to Congress a new report that evaluates the impact of reduction in emergency room services at the Wagner Service Unit of Indian Health Service; and

(2) the Secretary should maintain the current operating hours of the Wagner Service Unit until the Secretary submits to Congress a report described in paragraph (1).

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Monday, January 30, 2006, at 2 p.m., for a hearing titled. "Hurricane Katrina: Urban Search and Rescue in a Catastrophe."

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. INHOFE. Mr. President, I request that my fellow, Scott Fisher, be granted floor privileges during the debate tonight and for tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR TUESDAY, JANUARY 31, 2006

Mr. INHOFE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:45 a.m. on Tuesday, January 31. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate proceed to executive session to resume consideration of the nomination of Samuel Alito to the United States Supreme Court as under the provisions of the previous order.

I ask further that the time until 10:20 a.m. be equally divided, with the time from 10:20 to 10:30 under the control of Senator LEAHY and the time from 10:30 to 10:40 under the control of Senator SPECTER, the time from 10:40 to 10:50 under the control of the Democratic leader, and the time from 10:50 to 11 be reserved for the majority leader. I further ask unanimous consent that following the vote on confirmation, the Senate proceed to the consideration of the nomination of Ben Bernanke to be Chairman of the Federal Reserve, as under the previous order.

I further ask unanimous consent that the Senate stand in recess from 12:30 to 2:15 p.m. to accommodate the weekly party luncheons, and that Senator BUNNING be recognized at 2:15 for his 30 minutes of debate on the Bernanke nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. INHOFE. Tomorrow morning at 11 o'clock we will vote on the confirmation of Judge Alito to be an Associate Justice on the Supreme Court. Senators should be seated at their desks for this historic vote. Following that vote, we will consider the nomination of Ben Bernanke to be Chairman of the Federal Reserve under a time agreement reached last week. Tomorrow evening we will proceed as a body to the House Chamber to hear the President's State of the Union Message, which is due to be delivered at 9 o'clock eastern standard time.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

Mr. INHOFE. If there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:44 p.m., adjourned until Tuesday, January 31, 2006, at 9:45 a.m.

EXTENSIONS OF REMARKS

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, January 31, 2006 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

FEBRUARY 1

9:30 a.m.

Indian Affairs

To hold oversight hearings to examine off-reservation gaming issues, focusing on the process for considering gaming applications.

SD–106

Judiciary

To hold hearings to examine consolidation in the energy industry.

SD–226

10 a.m.

Commerce, Science, and Transportation

To hold hearings to examine promotion and advancement of women in sports.

SH–216

Homeland Security and Governmental Affairs

To continue hearings to examine Hurricane Katrina response issues, focusing on managing the crisis and evacuating New Orleans.

SD–342

2 p.m.

Judiciary

Constitution, Civil Rights and Property Rights Subcommittee

To hold hearings to examine the death penalty in the United States.

SD–226

2:30 p.m.

Intelligence

To receive a closed briefing regarding intelligence matters.

SH–219

FEBRUARY 2

9:30 a.m.

Foreign Relations

To hold hearings to examine Convention between the Government of the United States of America and the Government of Bangladesh for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed at Dhaka on September 26, 2004 with an exchange of notes enclosed (Treaty Doc. 109-5), Protocol Amending the Convention Between the Government of the United States of America and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Paris on August 31, 1994 (Treaty Doc. 109-4), Protocol Amending the Convention Between the United States of America and the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Estates, Inheritances, and Gifts signed at Washington on November 24, 1978 (Treaty Doc. 109-7), and Protocol Amending the Convention Between the Government of the United States of America and the Government of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed at Washington on September 30, 2005 (Treaty Doc. 109-8).

SD–419

10 a.m.

Banking, Housing, and Urban Affairs

To resume hearings to examine proposals to reform the National Flood Insurance Program.

SD–538

Budget

To hold hearings to examine the CBO budget and economic outlook.

SD–608

Homeland Security and Governmental Affairs

To continue hearings to examine Hurricane Katrina response issues, focusing on the role of the Governors in managing the catastrophe.

SD–342

Intelligence

To hold hearings to examine the world threat.

SD–106

Aging

To hold hearings to examine meeting the challenges of Medicare Drug Benefit Implementation.

SH–216

10:30 a.m.

Veterans' Affairs

To hold hearings to examine "The Jobs for Veterans Act Three Years Later: Are VETS' Employment Programs Working for Veterans?".

SR–418

2 p.m.

Judiciary

To hold hearings to examine pending nominations.

SD–226

2:30 p.m.

Foreign Relations

To hold hearings to examine the nominations of Gary A. Grappo, of Virginia, to be Ambassador to the Sultanate of Oman, and Patricia A. Butenis, of Virginia, to be Ambassador to the People's Republic of Bangladesh.

SD–419

Intelligence

To hold closed hearings to examine intelligence matters.

SH–219

FEBRUARY 3

9:30 a.m.

Joint Economic Committee

To hold hearings to examine the employment-unemployment situation for January 2006.

2212 RHOB

FEBRUARY 6

9:30 a.m.

Judiciary

To hold hearings to examine wartime executive power and the NSA's surveillance authority.

Room to be announced

2 p.m.

Homeland Security and Governmental Affairs

To resume hearings to examine Hurricane Katrina response issues, focusing on managing law enforcement and communications in a catastrophe.

SD–342

FEBRUARY 7

9:30 a.m.

Armed Services

To hold hearings to examine the defense authorization request for fiscal year 2007 and the future years defense program.

SD–106

FEBRUARY 8

10 a.m.

Finance

To hold hearings to examine implementation of the new Medicare drug benefit.

SD–215

Commerce, Science, and Transportation

National Ocean Policy Study Subcommittee

To hold hearings to examine S. 1215, to authorize the acquisition of interests in underdeveloped coastal areas in order better to ensure their protection from development.

SD–562

2:30 p.m.

Commerce, Science, and Transportation

Consumer Affairs, Product Safety, and Insurance Subcommittee

To hold hearings to examine protecting consumers' phone records.

SD–562

FEBRUARY 9

10 a.m.

Commerce, Science, and Transportation

To hold an oversight hearing to examine commercial aviation security, focusing on Transportation Security Administration's aviation passenger screening

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

programs, Secure Flight and Registered Traveler, to discuss issues that have prevented these programs from being launched, and to determine their future.

SD-562

Energy and Natural Resources

To hold hearings to examine the President's proposed budget request for fiscal year 2007 for the Department of Energy.

SD-366

Finance

To hold hearings to examine the President's proposed budget request for fiscal year 2007 for the Department of Health and Human Services.

SD-215

2:30 p.m.

Energy and Natural Resources

To hold hearings to examine the Energy Information Administration's 2006 annual energy outlook on trends and issues affecting the United States' energy market.

SD-366

FEBRUARY 14

10 a.m.

Veterans' Affairs

To hold hearings to examine the President's proposed budget request for fiscal year 2007 for the Department of Veterans Affairs.

SR-418

FEBRUARY 15

11 a.m.

Energy and Natural Resources

Business meeting to consider the President's views and estimates to be submitted to the Committee on the Budget.

SD-366

2:30 p.m.

Commerce, Science, and Transportation

To hold hearings to examine developments in nanotechnology.

SD-562

Energy and Natural Resources

Public Lands and Forests Subcommittee

To hold hearings to review the progress made on the development of interim and long-term plans for use of fire retardant aircraft in Federal wildfire suppression operations.

SD-366

FEBRUARY 16

9:30 a.m.

Armed Services

To hold hearings to examine priorities and plans for the atomic energy defense activities of the Department of Energy and to review the President's proposed budget request for fiscal year 2007 for atomic energy defense activities of the Department of Energy and the National Nuclear Security Administration.

SD-106

2:30 p.m.

Commerce, Science, and Transportation

To hold hearings to examine NOAA budget.

SD-562

FEBRUARY 28

2 p.m.

Veterans' Affairs

To hold hearings to examine legislative presentation of the Disabled American Veterans.

SD-106

MARCH 1

2:30 p.m.

Commerce, Science, and Transportation

Disaster Prevention and Prediction Subcommittee

To hold hearings to examine winter storms.

SD-562

MARCH 9

10 a.m.

Commerce, Science, and Transportation

To hold hearings to examine aviation security and the Transportation Security Administration.

SD-562

MARCH 16

10 a.m.

Commerce, Science, and Transportation

Disaster Prevention and Prediction Subcommittee

To hold hearings to examine impacts on aviation regarding volcanic hazards.

SD-562

MARCH 30

10 a.m.

Commerce, Science, and Transportation

Disaster Prevention and Prediction Subcommittee

To hold an oversight hearing to examine National Polar-Orbiting Operational Environmental Satellite System.

SD-562

CANCELLATIONS

FEBRUARY 2

9:30 a.m.

Judiciary

Business meeting to consider pending calendar business.

SD-226

POSTPONEMENTS

FEBRUARY 9

2:30 p.m.

Commerce, Science, and Transportation

To continue oversight hearings to examine commercial aviation security, focusing on physical screening of airline passengers, including issues pertaining to Transportation Security Administration's Federal passenger screener force, TSA procurement policy, air cargo screening, and the deployment of explosive detection technology.

SD-562

SENATE—*Tuesday, January 31, 2006*

The Senate met at 9:45 a.m. and was called to order by the Honorable DAVID VITTER, a Senator from the State of Louisiana.

The PRESIDING OFFICER. Today's prayer will be offered by the former Senate Chaplain, Dr. Lloyd John Ogilvie.

PRAYER

The guest Chaplain offered the following prayer:

Gracious God, You have chosen us to be present to Your presence in each moment of this day. Our souls snap to attention. We salute You as sovereign of our beloved Nation and personal Lord of our lives.

Lord, on behalf of the people of this Nation, I pray for the women and men of this Senate and all who serve with them. Continue to put a bellows on the red embers in the hearth of their hearts. Set them aflame again with the passion of patriotism. Rekindle in them a sense of their divine election by You. You have made work in government one of the highest callings. Our times demand greatness—the greatness of seeking Your best for our Nation, dependence on Your supernatural guidance, and commitment to unity as Americans.

On this day of the State of the Union Address by our President, we ask for Your special blessing on him. We renew our loyalty to him as our President, our attentiveness to listen to him, and our prayerful reflection on his vision for the awesome issues before our Nation and our terrorism-turbulent world. As he stands before the joint session of Congress and our Nation, clear the prayer channels as we join with Americans everywhere in prayer for Your guidance for him.

Today, Lord, we praise You for the courageous life of Coretta Scott King, so faithfully committed to the cause of human rights and equality.

And now, Spirit of the living God, fall afresh on the Senators as they seek to work together with civility and mutual respect. You are Jehovah Shammah who promises to be present with us, Immanuel, our Saviour, who will never leave nor forsake us.

Amen.

PLEDGE OF ALLEGIANCE

The Honorable DAVID VITTER led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, January 31, 2006.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DAVID VITTER, a Senator from the State of Louisiana, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. VITTER thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning we will have the final closing remarks with respect to the confirmation of Judge Alito to be Associate Justice of the Supreme Court. The vote on the confirmation is scheduled for 11 o'clock this morning. I remind all of our colleagues to be seated at their desks in the Senate Chamber for this historic vote.

Following the confirmation vote, we will consider the nomination of Ben Bernanke to be a member and the Chairman of the Federal Reserve to succeed Chairman Alan Greenspan. Under the time agreement, we will have 1 hour of debate under the control of Chairman SHELBY and the ranking member, Senator SARBANES. No rollcall vote is necessary on the Bernanke nomination, and we will have a voice vote on the confirmation.

Finally, this evening the Senate will gather in the Senate Chamber at 8:30 and proceed as a body to the House Chamber at 8:35 to hear the President's annual State of the Union Address. Members are asked to please plan their schedules accordingly for today's events.

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

ALLOCATION OF TIME

Mr. REID. Mr. President, before the majority leader leaves the floor, we have an hour of time divided before the 11 o'clock vote. I know the short amount of time we have is allocated to the very second. I am wondering if it would be appropriate to have a full hour prior to the vote. I guess my question is, How much time do you need on your side?

PATRIOT ACT REAUTHORIZATION

Mr. REID. Mr. President, a small number of provisions of the USA PATRIOT Act are due to expire. Senate Democrats stand ready to provide law enforcement with all necessary tools to keep Americans safe from terrorism. Democrats supported the original PATRIOT Act that was passed in 2001. We supported the reauthorization bill that passed the Senate unanimously this past summer. And we support reauthorization of the PATRIOT Act now with modest improvements.

A reauthorization bill should continue to provide the Government with the tools it needs to fight terrorism but must also include sufficient checks to protect against potential governmental abuse of these expansive powers. There is widespread bipartisan support for a reauthorization bill that will protect both national security and the rights of innocent Americans.

I applaud Senators SUNUNU, CRAIG, MURKOWSKI, and HAGEL for their principled stand on this issue. I urge the White House to work with these Senators and with Senators LEAHY and SPECTER to craft a bill that all Senators can support. If a compromise cannot be reached before the end of this week, we are willing to enact another short-term extension of the current law. There has already been discussion of a 6-week extension of the act to give negotiators time to finalize a long-term reauthorization bill. That approach will be satisfactory to this side of the aisle. We do not want the PATRIOT Act to expire. There is no reason it should.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF SAMUEL A. ALITO, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session and resume consideration of Calendar No. 490, which the clerk will report.

The legislative clerk read the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10:20 a.m. shall be equally divided.

The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, will the Chair clarify before the time begins how much time we have now to debate?

The ACTING PRESIDENT pro tempore. Right now the minority side has 12 minutes, 30 seconds.

Mr. DURBIN. I thank the Chair. If he will be kind enough to notify me when I have reached 6 minutes.

The ACTING PRESIDENT pro tempore. Certainly.

Mr. DURBIN. I ask unanimous consent that Senator SCHUMER be recognized to follow me for the remaining period of time allotted to the Democratic side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, after voting on war, a vote on a Supreme Court nominee is the most important vote a U.S. Senator can cast. The selection of a Justice to the Supreme Court of the United States is one of those moments when 100 Senators speak for the rights, the hopes, and the dreams of 300 million Americans. Soon this Senate will vote on a lifetime appointment to the Supreme Court for Judge Samuel Alito. Judge Alito is likely to receive more "no" votes than any confirmed Supreme Court Justice in the history of the United States, other than Clarence Thomas. Why?

Two reasons: The first is Sam Alito's legal career which separates him from the legal mainstream in America. The second is the judge whom Judge Alito would replace. This is no ordinary vacancy. This is the Sandra Day O'Connor vacancy on the Supreme Court. In case after case during her career, Sandra Day O'Connor has cast the fifth and decisive vote. Her votes helped preserve the constitutional rights that many of us cherish: workers' rights, disability rights, the right to privacy, the separation of church and state, and the principle that in a democracy no man or woman is above the law.

As we prepare to vote for Justice O'Connor's successor, I am reminded of the words of Justice Harry Blackmun. Like Justice O'Connor, Justice Blackmun was a lifelong Republican. He was chosen to write the majority opinion in Roe v. Wade. In his dissent in a 1989 case that narrowed the protections of Roe v. Wade, Justice Blackmun wrote:

> For today, the women of this Nation still retain the liberty to control their destinies. But the signs are evident and very ominous, and a chill wind blows.

I may be wrong about Judge Alito. If I am, no one will be more pleased. But I fear on this January morning in the Senate Chamber, a chill wind blows, a chill wind which will snuff out the dying light of Sandra Day O'Connor's Supreme Court legacy.

When you read his record as a Justice Department lawyer and a Federal judge, it seems unlikely that Justice Alito will preserve Justice O'Connor's respected record of measure and moderation. In case after case during his 15 years on the bench, Judge Alito has consistently sided with powerful special interests, big business, and the heavy hand of government against the individual. In many of these cases, Judge Alito was the lone voice. More than any of the 29 judges with whom he served, Sam Alito stood alone. Rarely did he stand on the side of the poor, the powerless, and the dispossessed.

Over the past several weeks during our hearings, we looked closely at the decisions he rendered. We heard about a case in which Sam Alito wrote a dissent denying a fair trial to an African-American defendant who was forced to stand trial for murder before an all-White jury. We heard about the case in which Judge Alito was the only judge on his court to rule that the Constitution authorized a strip-search of a 10-year-old girl not listed in the search warrant. We heard about a case in which Judge Alito was the only judge on his court to vote to dismiss the case of a mentally retarded man who was the victim of a brutal sexual assault in his workplace. He voted to dismiss this man's case because his lawyer wrote a poor legal brief.

Judge Alito has consistently ruled against those whose lives have been touched by the crushing hand of fate. As an ambitious young lawyer seeking a job with the Reagan administration, Judge Alito wrote flatly:

> The Constitution does not protect a right to an abortion.

As a judge, he voted to uphold a controversial restriction on reproductive freedom, a position later rejected by the Supreme Court and Justice O'Connor.

When I asked Judge Alito at his hearing, is Roe v. Wade settled law in America, he did the Federalist Society shuffle, dancing away from admitting what he really believes. In all his words, never once would he say what John Roberts said, that Roe v. Wade is settled precedent.

With Sam Alito's nomination, when it comes to privacy rights and personal freedom, a chill wind blows for America.

In the area of Executive power, I fear that Judge Alito will do the most damage to our constitutional rights and civil liberties. His history tells us he will be more likely to defer to the President's power than to defend fundamental rights. Judge Alito is a disciple of a controversial theory that gives Presidents extremely broad powers. The so-called unitary executive theory has been cited by the administration in more than 100 bill signings.

What it basically says, according to some of its proponents, is that a President can ignore the laws he doesn't care to follow. I fear that Judge Alito will be an easy ally for this President or any President who seizes more power than the Constitution ever envisioned.

Last Friday I was walking through O'Hare Airport. A woman in an airline employee uniform came by and said hello as she passed. Then she came back to me.

She stopped me and she said: Senator, isn't this Alito thing really about holding a President back from doing things he should not be allowed to do? Isn't this really about checks and balances? It was a wonderful moment, a moment when a person who is busy with their life and family paused to think about the values that make America so unique.

There are some who will cheer the elevation of Judge Alito to the Supreme Court.

Yesterday, the New York Times ran a story with the headline, "In Alito, G.O.P. Reaps Harvest Planted in '82." The article lifted the veil behind the Alito nomination. It revealed that Judge Alito is among a small group of lawyers who have been precleared by the ultraconservative Federalist Society.

We all remember the fury on the far right when President Bush first nominated Harriet Miers for this opening. Ms. Miers was not one of their chosen few, so they hounded her until the President withdrew her name from consideration.

But the far right is rejoicing with the name of Sam Alito. For the vast majority of Americans, there is no rejoicing. When we look to the Supreme Court as the last refuge for our rights and liberties, Sam Alito is no cause for celebration; he is a cause for great concern.

On this January morning, a chill wind blows.

Mr. President, I yield the floor.

Mr. SCHUMER. Mr. President, how much time remains before I begin?

The ACTING PRESIDENT pro tempore. There is 5 minutes 15 seconds remaining.

Mr. SCHUMER. Would it be possible to ask unanimous consent for an additional 2 minutes? I also ask unanimous consent that an additional 2 minutes be given to the other side.

The ACTING PRESIDENT pro tempore. Is there an objection?

Mr. SESSIONS. Mr. President, I thought the leaders agreed not to ask for additional time. Otherwise, I would not have an objection. I don't know what Senators REID and FRIST said. They have the time set for an 11 o'clock vote. So I am inclined to object unless——

The ACTING PRESIDENT pro tempore. There is objection. The Senator from Illinois is recognized.

Mr. DURBIN. I renew the request. At the risk of being smitten, I think we can afford 4 more minutes on a Supreme Court nominee.

Mr. SESSIONS. I will not object.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, in a few minutes, we will vote on the nomination of Judge Samuel Alito to the Supreme Court. In a few hours, we will hear the President tell us about his view of the state of the Union. Without doubt, Judge Alito today has the votes to win confirmation. Without doubt, the President tonight will boast of his nominee's victory in this vote. But I must say that I wish the President were in a position to do more than claim partisan victory tonight. The Union would be better and stronger and more unified if we were confirming a different nominee—a nominee who would have united us more than divided us. Had he chosen such a person, the President could have taken the lectern this evening and rightfully claimed the mantle of leadership in the United States of America. Instead, this is not a day of triumph for anybody except the conservative minority who caused the President to capitulate to their demands when Harriet Miers was not to their liking. There will be more votes against this nominee than on any since Clarence Thomas, who was hardly a unifying figure.

Tonight, when the President announces, to applause, the fact of Judge Alito's confirmation, what he should really hear, because of the partisan nature of his choice, is the sound of one hand clapping. While some may rejoice at Judge Alito's success, millions of Americans will come to know that the lasting legacy of this day will be ever more power for the President and less autonomy for the individual.

While some may exalt at the packing of the Court with yet another reliable, extreme voice in the mold of Scalia and Thomas, millions of Americans will be at risk of losing their day in court when they suffer the yoke of discrimination. Some may celebrate the elevation of a Judge Alito to the Supreme Court, but millions of Americans will suffer the consequences of a jurisprudence that would strip Congress of the power to make their lives better in countless ways.

Why, then, with so many Americans at risk, so many rights at jeopardy, will Judge Alito win confirmation? What does his confirmation mean for the future of the Supreme Court? I have been thinking about this long and hard. It is an important question, and I don't have an easy answer, but I believe several things are clear.

For one thing, even though Judge Alito has demonstrated a record of being well out of the mainstream on a host of issues, my friends from across the aisle dutifully march in rigid lockstep when the President nominates one of their choosing but oppose those who do not share their values and visions. Republican Senators should be aghast at Judge Alito's endorsement of vast Executive power, and they should be alarmed at his rejection of a woman's right to choose.

The hill will be steeper when a nominee evades, as Judge Alito did, answering questions about his core judicial beliefs. All evidence points to the fact that he will still hold his constitutional view that the right to choose is not protected in the Constitution, that he will still believe the Federal Government doesn't have the power to regulate machine guns, and the evidence supported the conclusion that he will turn back the clock on civil rights. But he was clever enough not to say so directly. So that, too, has been a factor.

In the end, there is one more thing at work here. The American people have grown accustomed to the umbrella of protection they have under the Constitution. They are loathe to believe that those rights could, with one nominee, evaporate into thin air. Who can believe it? Who wants to believe it? Even though no nominee since Robert Bork has such a clear record of being opposed to so many things the American people hold dear, the public doesn't want to believe that Judge Alito will remove those protections, even when the record is clear. Who wants to believe that after 40 years, a single nominee to the Supreme Court could eviscerate title VII? Yet that is just what his colleagues on the Third Circuit accused him of attempting to do. Who wants to believe that a single nominee, one so seemingly soft-spoken and erudite, would, with the stroke of a pen, take average Americans' rights away and not give them their day in court?

People naturally don't want to believe the worst. Perhaps people think of Earl Warren and David Souter, who defied their President and did not stroke as hard a line as their benefactors might have hoped. But I say to the American people, the days of Warren and Souter are over. The days of stealth nominees whose views may not match the President are over. That is clear when a small minority pushed the President to withdraw Harriet Miers.

In the coming months and years, we will be watching the Court. We will be watching the votes. We will be watching our two newest Justices. And make no mistake, we will make sure the American people understand the implication of these votes today. Elections do have consequences. But votes such as these also have consequences on future elections, and I believe that when the American people see the actual Court decisions which are rendered by the new Court, they will have a strong and countervailing reaction.

Again, I wish President Bush could tonight claim to lead a united country, but with this nominee and with this vote, sadly, he cannot.

I yield the remainder of my time to the Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank the Senator.

Indeed, it has been most distressing to me to see this nominee, the epitome of a restrained, principled and highly respected judge, be portrayed as some sort of extremist. It is beyond my comprehension, frankly. Questions have been raised about different cases. Alito answered each and every one of those questions in front of the Judiciary committee. Senator SCHUMER and I serve on the committee. He was asked about them repeatedly. He was asked 677 questions, and he answered a higher percentage of them than perhaps any judge in history—97.3 percent. A Clinton appointee, Justice Ginsburg, for example, was only asked 384 questions, and she only answered 80 percent of them. Justice Breyer, another Clinton appointee, was asked 355 questions, and he answered 82 percent.

So Judge Alito was most forthcoming. He was asked more questions and grilled and grilled, and he answered them with skill, fairness, and reasonableness. He was unflappable in his testimony and so judicious in his approach to every question. It was a tour de force, a real model of how a judge should perform. I could not be more proud of him and more proud of President Bush for nominating him.

They say this nomination divides the country. Whom does it divide? It divides the hard left, who wants the Court to eliminate all expression of religion from public life. We see the words "In God We Trust" above the door in this Chamber. We had a chaplain open this Senate with prayer. Are we going to have the Supreme Court come in and strike those things down? People are very confused about those issues today. We have people who want to get rid of religion from the public square. They know they cannot achieve this by votes, so they want a judge to do these things. They are not happy with the U.S. Constitution. They want a judge to quote foreign law to reinterpret the words in our statutes and in our Constitution. That is not what the rule of law in America is about.

We have had a lot of extreme cases redefining the meaning of marriage. States have defined marriage since the founding of the Republic. Now all of a sudden we have lifetime-appointed, unelected judges discussing, and some court finding, that the legislature's definition of marriage—people who are responsible to the people, the legislative branch—is not correct. So the judges are now going to reinterpret that definition and make it say what they want it to say. They are going to take people's private property, not for public use, as the Constitution says. Now the court says we can take even poor people's homes so that someone can build a private shopping center. That is not what the Constitution says.

I know of judges who thought it would be better policy if the Constitution said what they want it to, so they just made it say that. But that is not a principled approach to the law; it is not the American approach to law. President Bush said we don't need that kind of judge. We want judges who are faithful and principled to the rule of law. They say Judge Alito is extreme. That is not so. It is an incredibly false charge.

What about the American Bar Association? Those of us on the Republican side have been somewhat critical of them over the years. The ABA is pretty liberal in all of the resolutions it passes. Sometimes it is very liberal. We felt that liberal persuasion infected their evaluation of judicial nominees. But they still evaluate nominees in a very careful way.

The American Bar Association reported to our committee, after surveying 2,000 people, personally interviewing 300, having teams of scholars read all of the writings Judge Alito ever wrote or participated in, and then they voted among themselves. They talked to lawyers who litigated against Judge Alito when he was in practice and judges who served with him and litigants who appeared before him, people who have known him, judges who served with him, and 300 were interviewed in depth. This committee of the American Bar Association—15 of them from all over the country—reviewed all of that. Many of them participated directly in the interviews. Sometimes, people will tell the ABA things they may not tell the newspaper, things that are bad about somebody. They came back with a unanimous conclusion that Judge Alito was entitled to the highest possible rating. The American Bar Association, after a most intensive review, has given him the highest possible rating. Would they have done that if they thought he was an extremist? Would they have done that if they thought some of these cases we have heard about were wrongly decided or extreme in any way? No, they would not. So did his colleagues on the bench. One of the most extraordinary panels of witnesses I have ever seen involved judges who served with him on the Third Circuit, not a rightwing circuit. The Third Circuit, if anything, is considered a moderate to liberal circuit. It is in the Northwest, and Philadelphia is the seat of the Third Circuit. New Jersey is also in that circuit. Judge Alito served on that bench for 15 years.

People have suggested that somehow he is a tool of President Bush. He had a lifetime appointment on the Federal bench in the Third Circuit and has served for 15 years. He has not been a part of any of this terrorism stuff we have heard about or any of these rulings involving the Administration. He hasn't been a part of it at all. He comes to it with all his skills and intelligence as an honored graduate at Princeton and Yale, where he served on the Yale Law Review. He will bring his insight into these cases, which is exactly what we want—an unbiased umpire to deal with the issues.

Mr. Stephen Tober and others explained how one gets a unanimous ABA rating. The American Bar Association panel repeatedly gave him high marks. They said Judge Alito "has . . . established a record of both proper judicial conduct and evenhanded application in seeking to do what is fundamentally fair."

One of the three members of the ABA who testified was a civil rights attorney, an African American who represented the University of Michigan in that famous affirmative action quota case. He said this about Alito. He said that all the people they contacted concluded that Judge Alito was held in "incredibly high regard."

The ABA witnesses said they were unaware of anyone who has claimed that Alito intentionally did anything wrong with regards to the Vanguard matter that has been raised repeatedly and I guess dropped now since we haven't heard that much about it.

We now hear this interesting argument that we needed Harriet Miers. They are now harkening back to Harriet Miers nomination, claiming the Republicans are at fault for her withdrawal. Not one Republican Senator I am aware of ever said Harriet Miers should not be voted on or said they would vote against Harriet Miers. Some raised questions about her experience, as did Senator SCHUMER, who raised the issue a few moments ago. When Harriet Miers was being considered, Senator SCHUMER said:

> I think there are three places where Harriet Miers yet hasn't sort of met the burden of proof. The first is qualifications, the second is independence, and the third, most importantly, we have to know her judicial philosophy.

So Senator SCHUMER, who is now asking that we have Harriet Miers, was raising serious questions about her a few weeks ago.

She withdrew. She withdrew because she was sitting at the right hand of the President during so many of these matters involving the war on terrorism. The other side had already made clear they were going to demand her personal conversations, her personal documents, her communications with the President, which are legal documents protected by client-attorney privilege. She realized it was going to be a matter that would probably not be acceptable to the Members of the Senate. It would be an uncomfortable process for her, and she withdrew.

Mr. President, what is the remainder of the time on this side?

The ACTING PRESIDENT pro tempore. The Senator has 5 minutes remaining.

Mr. SESSIONS. Mr. President, the case we have heard the most about is Doe v. Groody. The allegation has been made time and again that Judge Alito ordered the strip search of a 10-year-old girl.

I was a prosecutor for nearly 15 years. I read the case. I was at the Judiciary Committee and heard Alito testify. I would like to share some thoughts about that case. The reason I would like to talk about it is because I would like for everyone who is hearing me talk to understand that this is a typical example of distortion and misrepresentations of the actions of Judge Alito. It is so wrong and so biased and so unfair that it ought to embarrass those who made the charges against him. He clearly did the right thing, in my opinion and it has been misrepresented. It is symbolic of what has been said about other cases that I don't have time to talk about at this late date.

In Doe v. Groody, police officers were investigating a drug-dealing group at a certain house. They went to the judge and presented an affidavit to search that house and all persons on the premises. They presented adequate probable cause to believe that a drug-dealing operation was going on in the house, and the judge agreed.

There was a form for a search warrant and that said John Doe was to be searched. In this case, the judge directly incorporated an affidavit attached to the warrant for purposes of probable cause. The affidavit is where officers asserted probable cause to search all persons on the premises. This was a magistrate in a State court years before Judge Alito ever knew the case existed. He was sitting on the Federal appellate bench at the time.

So officers go out and do a search, and a female police officer takes the mother, along with the 10-year-old child, into the bathroom. She asks them to pull down their trousers and lift up their shirts so that she could detect whether there were any hidden drugs or weapons. They did not take off their undergarments, nor was there any intrusive touching. The female officer saw no drugs hidden on the mother or the girl, and that was the end of that until sometime later when the police officers were sued personally for money damages.

When it came before Judge Alito, he concluded that the affidavit had been made a part of the warrant that asked for the privilege of searching people on the premises, which gave the police officers at least a reasonable basis to believe they had the authority to do so. They got a warrant. They asked for this privilege. They thought, by attaching the affidavit to the warrant that they had the power to search everyone on the premises. I don't know what the right answer is legally, but I do agree with Judge Alito that the police officer could reasonably have felt that they were operating under the law, and should not be personally liable for money damages to some dope dealer.

American police officers need to pay attention to this matter if this is what my colleagues think is bad law. They get sued enough trying to do their duty.

One of the more fabulous panels we ever had, I thought, were colleagues on the bench who served with Judge Alito. Judge Edward Becker has been on the bench for 25 years, the full time that Judge Alito has been on that bench. One of the more respected appellate judges in America said these things about Judge Alito. This is a man they are accusing of being some radical, some extremist. This is what Judge Becker, who has been on the Federal bench for 25 years, said: Sam Alito "is gentle, considerate, unfailingly polite, decent, kind, patient, and generous. I have never once heard Sam raise his voice, express anger or sarcasm or even try to proselytise. He expresses his views in measured and tempered ways."

On integrity, Judge Becker says:

> Judge Alito is the soul of honor. I have never seen a chink in the honor of his integrity which I view as total.

On intellect:

> He is brilliant, he is analytical and meticulous and careful in his comments and his written word.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. SESSIONS. Mr. President, I conclude with these words:

> He is not doctrinaire, but rather open to differing views and will often change his mind in light of the views of a colleague.

This is the man who has been nominated and who is entitled to confirmation by the Senate. I thank the President and yield the floor.

The ACTING PRESIDENT pro tempore. Under the previous order, the time from 10:24 a.m. to 10:34 a.m. shall be under the control of the Senator from Vermont.

Mr. LEAHY. Mr. President, I yield to the distinguished Senator from Delaware.

The ACTING PRESIDENT pro tempore. The Senator from Delaware.

Mr. BIDEN. Mr. President, I will vote no on the nomination of Judge Alito to the Supreme Court for three reasons: first, his expansive view of Executive power; second, his narrow view of the role of the Congress; and third, his grudging reading of antidiscrimination law reflecting a lack of understanding of congressional intent and the nature of discrimination in the 21st century.

First, Judge Alito's expansive view of Presidential power.

In November 2000, Judge Alito said that "the unitary executive theory . . . best captures the meaning of the Constitution's text and structure."

Justice Thomas in his Hamdi dissent lays out his views on the power of an unchecked unitary executive to wage war and exercise foreign policy.

Although Judge Alito said his interpretation of the unitary executive was much narrower and that he couldn't recall Justice Thomas using that term, I find Judge Alito's explanation not at all convincing.

I understand the term "unitary executive" in the manner in which John Yoo—the administration's legal architect—conceives of executive power.

I asked Judge Alito whether he agreed with Professor Yoo's reasoning that would allow the President under his absolute power—even in the absence of an emergency or imminent threat—to invade another country, to invade Iran tomorrow, no matter what Congress says.

Judge Alito declined to answer this basic, fundamental question.

Traditionally "conservative" Justices, such as Robert Jackson, strongly believed in the wisdom of checks and balances.

Judge Alito was asked repeatedly at the hearing about Justice Jackson's famous concurring opinion in the 1952 steel seizure case. During the Korean War, President Truman attempted to nationalize the steel mills in order to avoid a labor work stoppage that would have had negative effects on the war effort. A 6 to 3 Supreme Court ruled against President Truman.

Justice Jackson put it this way about what was at stake:

> [N]o doctrine that the Court could promulgate would seem to me more sinister and alarming than that a President whose conduct of foreign affairs is so largely uncontrolled, and often even is unknown, can vastly enlarge his mastery over the internal affairs of the country by his own commitment of the Nation's armed forces to some foreign venture. . . . That military powers of the Commander in Chief were not to supersede representative government of internal affairs seems obvious from the Constitution and from elementary American history.

Justice Jackson also laid out a three-part framework for how to view subsequent cases in which the President is arguing he's doing something under his Commander in Chief authority—a framework the Rehnquist Court embraced as "analytically useful" in the 1981 case of Dames & Moore v. Regan. First, is the instance in which "the President acts pursuant to an express or implied" authorization of Congress. Second, "when the President acts in absence of either a congressional grant or denial of authority." And third, when the President takes "measures incompatible with the expressed or implied will of Congress."

Judge Alito showed remarkably little appreciation and understanding of this framework, at one point confusing prong two and prong three of Justice Jackson's framework. Judge Alito's record and his answers at the hearing raise great concern that both individual freedoms and the separation of powers are in jeopardy.

In 1984, Judge Alito wrote that he did not "question the authority that the Attorney General should have absolute immunity" in cases involving wiretaps. This again signifies a willingness by Judge Alito to give the President and his officers dangerously expansive powers.

At his hearings, Judge Alito tried to distance himself from his previous statement, claiming he was only doing the bidding of his clients. But at the same time, he refused to definitively say that he did not personally believe his previous assertion.

It is also useful to note that we are currently in midst of a potentially endless war. The war on terror is almost 5 years old; and, unfortunately, shows no signs of abating. Will these expansive Presidential powers become a permanent fixture? What kind of powers do we want our President to have in dealing with a war that may go on for decades? Should our courts have no role?

In 1986, Alito drafted a proposal to make full use of presidential signing statements in order to "increase the power of the Executive to shape the law." It was yet another way to increase the power of the executive at the expense of the other branches.

Senator LEAHY asked Judge Alito at the hearing, "wouldn't it be constitutional for the Congress to outlaw Americans from using torture?" This is exactly what the Senate attempted to do in voting overwhelmingly on a bipartisan basis to support the so-called McCain anti-torture amendment.

But when this legislation was signed into law by President Bush on December 30, 2005, he issued a "Presidential signing statement" stating basically that no matter what me legislation says on its face, he could still order torture in certain circumstances. Specifically, the statement read that the "executive branch shall construe this [prohibition] in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch. . . .''

That is what is at stake with ''Presidential signing statements.'' As my colleague Senator LEAHY has pointed out, President Bush has cited the unitary executive 103 times in these ''Presidential signing statements.''

Judge Alito, at this hearing, responded to Senator LEAHY's question about whether Congress could outlaw torture this way:

> Well, Senator, I think the important points are that the President has to follow the Constitution and the laws. . . . But, as to specific issues that might come up, I really need to know the specifics.

To me this is a dangerous nonanswer and one that is entirely consistent with President Bush's use of a signing statement to override Congress's outlawing of torture. The implications are very troubling.

Judge Alito's view of the Executive is what worries me most. He referred to Justice Jackson in the Steel Seizure case many times. But I want to read one, short quote by Justice Jackson.

Justice Jackson said in 1952:

> With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations. Such limitations may be destined to pass away. But it is the duty of the Court to the last, not first, to give them up.

I believe they'll be destined to pass away with this Justice.

To allow the President—whether this one or any future one—to be unconstrained in his or her powers; to be able to pick and choose which laws he or she wants to follow, is unacceptable. The Supreme Court was intended by our Founders to serve as a bulwark against executive overreaching. Any nominee to the Court who doesn't agree is a nominee who should not be confirmed.

Second, Judge Alito has a very narrow view of congressional power.

Judge Alito will very likely join with the present members of the Court who have struck down three dozen federal laws in less than 20 years—laws which said, for example, you can't have guns within 1,000 feet of an elementary school; laws requiring a 5-day background check for a handgun purchase; laws battling violence against women; laws requiring the clean-up of low level nuclear waste; laws designed to ensure freedom of religion; laws saying states can't steal somebody's ideas and inventions.

This recent level of ''conservative'' judicial activism is more than six times the rate over the history of our Republic. Over the first seven decades of the Court's existence, in comparison, only two federal laws were held unconstitutional.

On his 1985 job application, Judge Alito wrote, ''I believe very strongly in . . . federalism''—the principle that has been used by this activist court to knock down Federal law after Federal law.

In an October 27, 1986, draft letter on behalf of Assistant Attorney General for Legislative Affairs, John Bolton, Alito urged President Reagan to veto the ''Truth in Mileage Act.'' Alito drafted these words for President Reagan:

> My Administration believes that the Constitution intended to establish a limited Federal government, one that would not interfere with the vast array of activities that have been in the states' traditional concern. Over time, Congress has taken steps to eviscerate that constitutional scheme by legislating in numerous areas that should be governed by State law.

Judge Alito continued his federalist activism on the bench. As a judge, he has fully embraced—and even aggressively sought to broaden—the Supreme Court's federalism opinions, most centrally in his sole dissenting opinion in the Rybar case.

In that case, Judge Alito called federalism ''vital'' and said that ''even today, the normative case for federalism remains strong.'' The majority of his colleagues in that case sharply criticized Judge Alito's opinion:

> While the dissent writes in the name of 'constitutional federalism' it recognizes that even Lopez abjures such a requirement . . . but overlooks that making such a demand of Congress or the Executive runs counter to the deference that the judiciary owes to its two coordinate branches of government, a basic tenet of the constitutional separation of powers. Nothing in Lopez requires either Congress or the Executive to play Show and Tell with the Federal courts at the peril of invalidation of a Congressional statute.

At his hearings, Judge Alito did nothing to allay concerns that he would continue to push this activist federalism agenda if confirmed to the Supreme Court. For example, he refused to recognize the well-settled nature of some of the Court's bedrock Commerce Clause precedents. And as a Supreme Court Justice, he would no longer be bound to follow these precedents.

When asked about these issues by Chairman SPECTER and others, Judge Alito provided answers that reinforced my view that he has a very low regard for Congress's power to legislate. When Chairman SPECTER asked Judge Alito whether he would ''overturn [] congressional acts because of [Congress's] method of reasoning,'' Judge Alito gave the following answer:

> I think that Congress's ability to reason is fully equal to that of the judiciary.

On its face, that may sound like a good answer; but it's not. Under the rational basis test—a cornerstone of constitutional law—the Supreme Court has greatly deferred to Congress's judgment and reasoning ability.

Under the rational basis test, the Supreme Court has historically and rightfully deferred to Congress's reasoning as to why it did what it did—after all, this is the branch that can hold hearings; the branch that can call witnesses; and the branch that can build a record . . . all things the Court can't do. Judge Alito's answer seems to question this bedrock principle.

What does this mean? What is at stake here? Does Judge Alito agree with those on the intellectual right who are attempting to reverse a healthy consensus going back to the days of the Great Depression that our government can act as a shield to protect Americans from the abuse of powerful interests?

Michael Greve of the American Enterprise Institute puts it straight forwardly:

> I think what is really needed here is a fundamental intellectual assault on the entire New Deal edifice. We want to withdraw judicial support for the entire modern welfare state.

What is at stake if this view gains ascendancy in our Supreme Court?

If the Court is allowed to second-guess congressional judgment, a broad range of vital Federal legislation could potentially hang in the balance.

Can we protect the air we breathe? Can we keep arsenic out of our drinking water? Can we keep tobacco companies from targeting our kids? Can we establish minimum national standards to provide equal opportunity and human dignity for society's most vulnerable members—our elderly, our disabled, women victimized by violence? That is all at stake.

Listen to the debates going on behind these constitutional issues. It's about devolution of government. It is about stripping—as a matter of law—the right of the Federal Government to do much of anything other than provide the national defense.

Justice Thomas has voted to strike down over 65 percent of the Federal laws that have been challenged before the Supreme Court. Justice Thomas wrote in one of his opinions recently, ''If anything, the wrong turn was the Court's dramatic departure in the 1930s.'' What most view as a ''healthy consensus,'' Judge Thomas and others call ''a wrong turn.''

What is at risk if this view of the Constitution ever gained full ascendancy? The Clean Air Act, the Safe Drinking Water Act, the Clean Water Act, and the Endangered Species Act, all rely on the Congress's commerce clause power.

The intellectual right is also determined to elevate private property at the expense of protecting our safety, well-being, and communities. Under their reading of the appropriate language in the Constitution—the takings clause of the fifth amendment—the only way to keep a chemical plant out of your neighborhood would be to compensate the chemical plant to not build because you are taking their property.

Our bedrock civil rights laws are also based on post-1937 constitutional interpretations.

There also could be no Federal minimum wage and no maximum hour laws. We wouldn't be having a debate about increasing the minimum wage because there wouldn't be one.

The consequence of this judicial philosophy is to shift power to the already powerful and eliminate the ability of the less powerful to use the democratic branches of government to rebalance the playing field.

And the intellectual right understands that in order to shift power, you need to focus on the courts. In 1988, a Reagan Justice Department document stated:

> There are few factors that are more critical to determining the course of the nation and yet are more often overlooked than the values and philosophies of the men and women who populate the third co-equal branch of the government, the federal judiciary.

Obviously, every judge could impact the course of the Nation; but most important are the nine Justices on the United States Supreme Court.

And that is why Judge Alito was selected to our highest Court, a consequence of which will be to threaten Congress's power to protect the American people.

Third, Judge Alito lacks an understanding as to how prejudice plays out in the real world and has a very restrictive view of the antidiscrimination legislation Congress has passed.

Earlier this month, I was thinking about my vote as I was preparing to speak before a Martin Luther King, Jr., event. And I reread his letter from the Birmingham jail.

Everybody was telling him, "We won. Give it up. Give it up." And here is what he wrote, laying out a standard by which to measure ourselves.

Dr. King wrote:

> When you are harried by day and haunted by night by the fact you are Negro, living constantly at tiptoe stance, never quite knowing what to expect next, and are plagued with inner fears and outer resentments; when you [are] forever fighting a degenerating sense of 'nobodiness,' then you will understand why we find it difficult to wait.

We shouldn't wait. We should own up to the fact that prejudice is still around and has evolved. It's not the prejudice of the '60s when they would say, "we don't want any blacks here," or more descriptive terms.

Now it's more subtle. They say, "we're not sure you'd fit in." New words, for old sins.

All public officials, including judges, must understand prejudice still lurks in the shadows. Judge Alito's record demonstrates that he does not look into the shadows.

There is no question Judge Alito has ruled a number of times for the little guy, women, and minorities, but it's mostly in cases where the outcome was clear. When it was a close call, time and again Judge Alito ended up almost inevitably on the other side, many times dissenting from every one of his colleagues looking at the case.

Judge Alito disagreed with all 10 of his colleagues and would have overturned the jury in Barbara Sheridan's case, stating that an employer "may not wish to disclose his real reasons" for making personnel decisions.

In another solo dissent, he would have deferred to a corporation's "subjective business judgment." His other colleagues said his approach would "eviscerate" antidiscrimination law.

Our courts are where the less powerful are supposed to get a fair shake. Our courts are supposed to safeguard individuals against powerful institutions; they are where a single individual—even one who's not wealthy or well-connected—is on the same footing as a powerful corporation.

I focused on discrimination cases to try to find out how Judge Alito reasoned. What I found troubled me, as did how he reasoned in other cases I asked him about, including the Family and Medical Leave Act case.

Judge Alito told me that he "can't know everything about the real world." So, in this case, he discounted any gender-related connection to the sick leave provisions, despite the fact that one in four people taking sick leave under the Act were women with difficult pregnancies, and one of the reasons we wrote the law was because we know about the stereotyping of women.

Now, I don't think Judge Alito is a bad guy, but it is clear he has a blind spot; a dangerous blind spot for millions of Americans who still suffer from discrimination and stereotypes—however subtle or sophisticated.

To my colleagues who would say it is inappropriate to look at the judicial philosophy or substantive rulings of our nominees to the Supreme Court, I would ask the following rhetorical question. Can you imagine on that hot, steamy Philadelphia summer in 1787, with the Founders sitting on the second floor so no one could hear what they were doing; can you imagine them saying, by the way, we are going to have three coequal branches of government. Two of them will be scrutinized by the American people, and the presumption will be that they are not entitled to the office unless a majority of the people conclude they should hold the office. But as for the third branch, all we want to know is are they honorable, decent, and straightforward?

It is also useful to point out that it is right to subject nominees to the Supreme Court to more exacting standards than nominees to the lower courts, for as the highest court in the land, the Supreme Court dictates the judicial precedents that all lower courts are bound to respect.

As a result, there are hundreds of lower court nominees I would neither have personally nominated nor would have voted for confirmation to the Supreme Court, but whom I did support for lower courts.

But the Supreme Court is different. Because the Supreme Court is not bound by precedent in the way lower courts are—a point Judge Alito agreed to at his hearing—the judicial philosophy of Supreme Court nominees is not only fair game; it is crucial. This is the reason I have voted against a much higher percentage of Supreme Court nominees than lower court nominees during my time in the Senate, from Bork to Thomas, from Rehnquist to Roberts.

It is also important to remember that we currently have a Justice serving on the Supreme Court nominated by President Ford. We even have judges still serving in the lower courts appointed by Presidents Kennedy and Eisenhower. From the early 1800s, in fact, the average time federal judges spend on the bench has increased from 15 years to 24 years. By that count, a Justice Alito may still be handing down decisions in the year 2030.

Judge Alito, like Justice Thomas before him, has supported the theories of strict construction and originalism. He stated:

> I think we should look to the text of the Constitution and we should look to the meaning that someone would have taken from the text of the Constitution at the time of its adoption.

According to originalist logic, many Supreme Court decisions that are fundamental to the fabric of our country are simply wrong. Perhaps even more importantly, how would a Justice Alito deal with the big issues of the future: for instance, can microscopic tags be implanted in a person's body to track his every movement? Can patents be issued for the creation of human life? Can brain scans be used to determine whether a person is inclined toward criminal behavior? What about the questions we can't even conceive of from this vantage point?

Twenty or 30 years into the future, what would a Justice Alito be saying about important issues of the day? That is what makes today's vote so momentous.

And when I look at all the evidence before us—Judge Alito's writings, his statements, his judicial records, his opinions, and the little we learned about him in these hearings—I am forced to conclude that he should not serve on the Supreme Court. That is why I am voting no.

I yield the floor and thank my colleague.

Mr. KOHL. Mr. President, I rise today after a thorough examination of the nomination of Judge Samuel Alito, Jr., to the Supreme Court. After that thorough examination, I cannot support the nomination of Judge Alito to the Supreme Court. I fear that a Justice Alito will narrow our rights, limit our freedoms, and overturn decades of progress. To confirm Judge Alito to the Supreme Court would be to gamble with our liberties, a bet I fear the Constitution—and the American people—would lose.

Generations of Americans have looked to the Supreme Court as more than a simple legal tribunal asked to decide cases and controversies. Rather, we expect the Supreme Court to guard our liberties, protect our rights, and—where appropriate—expand our freedoms.

This process of bringing life to the promises of the Constitution has never moved predictably—or smoothly. As Martin Luther King, Jr., once noted, "Human progress is neither automatic nor inevitable. Every step toward the goal of justice requires . . . the tireless exertions and passionate concern of dedicated individuals." Throughout American history, those "dedicated individuals" have fought on many battlegrounds—from the steps of the White House and Congress, to the dangerous back roads traveled by the Freedom Riders. And somehow the fight always leads to the Supreme Court—it is there that these brave individuals have found refuge and, through their victories, changed America for the better.

Many of these victories are now identified with individuals through familiar case names: Brown v. Board of Education, Gideon v. Wainwright, Baker v. Carr and Miranda v. Arizona. Judge Alito has stated his allegiance to the principles of these cases—and we are grateful for that. But we would expect any nominee to any court in this land to agree that schools should not be segregated and votes should count equally. That is a starting point. But we must dig much deeper to discover whether Judge Alito should serve as an Associate Justice on the Supreme Court of the United States.

We must ask ourselves: how will Judge Alito view the next "dedicated individuals" who come before him seeking justice? What of the next Brown? The next Gideon? We do not consider Judge Alito for a seat on the bench in 1954 or 1965 but, rather, in 2006, and possibly 2036. Given his narrow judicial philosophy—on display throughout his legal career—Judge Alito is unlikely to side with the next "dedicated individual."

This narrow judicial philosophy is clear, for example, in his views on civil rights. In his now famous 1985 job application, he took issue with the Warren Court decisions that established one-person/one-vote, Miranda rights, and protections for religious minorities. These statements leave the clear impression that his antagonism toward these decisions—decisions that helped religious and racial minorities receive protection from majority abuses—motivated Judge Alito's pursuit of the law.

While Judge Alito claimed that he was merely describing his opinions as a young man, his judicial opinions suggest a more well-formed philosophy of limited rights and restricted civil liberties.

He was in the extreme minority of judges around the country when he found that Congress has no ability to regulate machine guns. His efforts to strike down portions of the Family and Medical Leave Act were rejected by then-Chief Justice Rehnquist. He raised the bar to unreachable heights repeatedly in employment discrimination cases, to the point where the majority of his court concluded that he was attempting to "eviscerate" the laws entirely.

His restrictive view of constitutional liberties was echoed in his thoughts about a woman's right to choose. In a 1985 job application, he expressed a legal view that there was no such right and worked hard to craft a legal strategy that would chip away at—and ultimately—eliminate that right from the Constitution.

When asked about this, Judge Alito has said—in essence—that was then and this is now. Yet even years after his work for the Reagan administration, his narrow views on privacy echoed throughout his opinion in Planned Parenthood v. Casey. He would have placed more restrictions on a woman's freedom than other conservative judges—including the woman he seeks to replace on the Supreme Court.

Even today, Judge Alito is unwilling to declare that Roe v. Wade is "settled law"—a pronouncement that Chief Justice Roberts made with ease. Judge Alito affirmed that one person/one-vote, integrated schools, and some privacy rights were settled, but not a woman's right to choose.

In addition, Judge Alito's decisions call into question our right to be free of police intrusion and government power. For example, Judge Alito, in disagreement with his colleagues in the Reagan Justice Department, argued that the police acted reasonably in shooting—and killing—a fleeing, unarmed, teenage suspect. In many opinions as a judge, he deferred reflexively to the police in cases involving the interpretation of search warrants—including one permitting the strip search of a 10-year-old girl.

At a time in our history when the balance between our security and our civil liberties requires the active involvement of the courts, Judge Alito's deference to Presidential power concerns us. He promoted the radical idea of a "unitary executive"—the concept that the President is greater than, not equal to, the other branches of Government. Judges are meant to protect us from unlawful surveillance and detention—not simply abide the President's wishes.

Although it is the most important standard, judicial philosophy is not the only measure of a nominee. We had hoped that Judge Alito would have been able to satisfy the concerns we had with his record at his hearing. Instead, he chose to avoid answering many of our questions. His inability or unwillingness to answer those questions in even the most general manner did a disservice to the country and to his nomination.

For example, when questioned on his support for Judge Bork—calling him "one of the most outstanding nominees of the century"—Judge Alito answered that he was just supporting the administration's nominee.

When questioned about his membership in the Concerned Alumni of Princeton, he said he could not remember this group—despite citing it with pride in a job application.

When questioned about whether Bush v. Gore should have been heard by the Supreme Court, Judge Alito said that he had not thought about it as a judge and did not have an opinion.

In each of the six Supreme Court nominations that I have voted on, I have used the same test of judicial excellence. Justices Souter, Breyer, Ginsburg, and Roberts passed that test. Judge Alito does not.

Judge Alito's record as a professional—both as a Justice Department official and as a judge—reflects something more than a neutral judicial philosophy. Instead, it suggests a judge who has strong views on a variety of issues, and uses the law to impose those views.

Judge Alito has the right to see, read, and interpret the Constitution narrowly. And we have the obligation to decide whether his views have a place on the Supreme Court. I have decided they do not, and so I will oppose Judge Alito's nomination today.

Mr. AKAKA. Mr. President, I rise today in opposition to the confirmation of Judge Samuel Alito as an Associate Justice of the United States. In the months since President George W. Bush nominated Judge Samuel Alito as an Associate Justice on the U.S. Supreme Court, I have carefully considered his record. I evaluated his long history of government service and his work on the U.S. Court of Appeals for the Third Circuit, and I have closely followed his confirmation hearings.

When I review all the evidence before me, I do not believe Judge Alito will be able to fairly apply the principles embodied in the U.S. Constitution. Our Constitution sets forth important civil rights and privacy protections that are fundamental to our way of life today. In recent years, these freedoms have been precariously protected by a delicate balance on the Supreme Court, with Justice O'Connor frequently tipping the scales in favor of the civil rights and privacy protections that so many Americans depend upon. I am disheartened by the reality that so many of these freedoms will likely be eroded when Judge Alito joins the Court.

Judge Alito's approach to the law is not merely conservative, it is extreme. Judge Alito's opinions in race and gender employment discrimination cases have crafted a restrictive interpretation of civil rights laws that would make it much more difficult for women and minorities to prevail or even receive a jury trial. I am also troubled by Judge Alito's statement in his infamous 1985 job application that he was "particularly proud" of his work in the Reagan administration, where he counseled the administration to restrict affirmative action and limit remedies for racial discrimination.

I cherish our system of checks and balances in Government, where each branch of the Government is coequal with the other. I believe that it is critical that this balance, which our forefathers so wisely and carefully created, is protected and maintained. However, Judge Alito supports the "unitary executive" theory, an expansive view of Presidential powers that he and his colleagues set forth while working in the Office of Legal Counsel of the Reagan Justice Department. Since joining the Third Circuit, Judge Alito made it clear that he still holds the premise of the "unitary executive" theory to be true, and this approach concerns me, especially in this political climate. This approach also undermines Congress's authority to protect the public. Judge Alito has ruled that Congress did not have the authority to pass the Family Medical Leave Act or to enact a Federal ban on the possession or transfer of machine guns. In both cases, the Supreme Court disagreed with Judge Alito's conclusions and upheld these protections, demonstrating that Judge Alito's opinions are not in the mainstream.

I take my responsibility to provide advice and consent seriously. I cannot support Judge Alito's nomination. Unfortunately, Judge Alito is expected to be confirmed as Justice Sandra Day O'Connor's replacement. This means he will be in the position to affect a number of critical issues in the coming years. Important questions on privacy, the environment, Presidential power, and women's reproductive rights will all come before the Court to be resolved. With Judge Alito sitting on the Supreme Court, I am very concerned about the direction the Court will take our great Nation. Although during his hearings Judge Alito promised that he would not legislate from the bench, his record indicates otherwise. For the sake of our country, I am hopeful that Judge Alito will take seriously his commitments to uphold the principles of our Constitution.

Ms. CANTWELL. Mr. President I rise to discuss the nomination of Judge Samuel A. Alito, Jr., to the Supreme Court to the United States.

After closely and carefully studying his record and recent testimony before the Judiciary Committee, I have decided to vote against Judge Alito's confirmation to the Supreme Court of United States.

Of course, it is vital that any lifetime appointee to the highest court in the Nation possess the breadth of experience and character necessary to review the most significant, complex, and far-reaching legal questions of our time.

But that is not enough. I see disappointing and clear evidence in Judge Alito's long record, rulings, and statements of dangerously skewing the balance and relationship between our branches of Government. I do not expect any nominee to the Supreme Court to predict and promise with certainty how he or she will rule in any and all future cases.

But I do expect nominees to make clear that they would protect the most basic rights of individuals and the fundamental structure and foundations of our democracy. Yet I cannot be sure that Judge Alito would do either. Indeed, I question whether he would show due respect for the authority of Congress or apply a necessary check to the reach of the executive.

Serving as that check has long been one of the Court's most solemn obligations. Today, that role is more important than ever. We have seen evidence of a National Security Agency's eavesdropping program operating in question of a legal framework and without due oversight. We are seeing literally, in wartime, a President reach without probable cause or warrant at the expense of individual rights and the most basic protections of the Constitution. Yet it is a question whether Judge Alito would adequately control that reach.

Judge Alito has a record of concern when it comes to placing and consolidating the rights of the government over the rights of the individual. Consider, for example, how Judge Alito would give virtually unfettered authority to the police to trample on the clear privacy protections given to every American as demonstrated in his 2004 dissent in Doe v. Groody. In this case he would have upheld the strip search of a 10-year-old girl and her mother, despite the fact that they were not suspected of any crime nor named in any search warrant.

When asked at his hearing about this case, and his minority opinion, Judge Alito repeatedly sought to portray it as "a rather technical issue," a question of whether the police affidavit should be incorporated into the warrant itself, and suggested that the police were operating under time pressure.

These claims are inconsistent with the facts, as made clear by Judge Alito's colleague, then-Judge Michael Chertoff, now Secretary of Homeland Security. According to Judge Chertoff, the approach advocated by Alito in Groody "might indeed transform the judicial officer into little more than the cliche 'rubber stamp.'" The American people deserve a Supreme Court Justice who understands how important privacy rights are to all Americans, even the most vulnerable. They deserve more than just a rubber stamp.

History shows that our courts have often stood up to Presidential overreaching during wartime: protecting the right of habeas corpus during the Civil War; forbidding the president from authorizing domestic warrantless wiretaps during the Cold War; and in the War on Terror by an 8-to-1 margin, the Supreme Court held that the President cannot indefinitely detain American citizens without allowing them to challenge their detentions before a neutral decisionmaker, another power this administration had claimed.

Worse still, in areas where precedent is sparse or dated—such as the war on terror and the executive's power to carry it out—Judge Alito's record and testimony suggests that he is far more likely to defer to the ideological ambitions of our President than the protection and rights of our citizens.

To be sure, there is nothing wrong with an aggressive executive, especially at times of great peril. An aggressive executive, however, also requires a strong and functional Congress, the responsive voice of the people. I have questions, however, if Judge Alito's rulings will narrowly define the law and therefore threaten the authority and ability of Congress to govern effectively and affirmatively.

Writing in Chittister v. Department of Community & Economic Development, Judge Alito wrote that parts of the Family and Medical Leave Act, FMLA, which allow employees to leave when they or family members are seriously ill, were not applicable against the States. When passing the legislation Congress had identified the importance of both men and women in caring for young children and family members with serious health conditions.

Congress also pointed to the burden that family caretaking imposes on women. But Judge Alito denied those findings. He saw no "existence, much less the prevalence, in public employment of personal sick leave practices that amounted to intentional gender discrimination in violation of the Equal Protection Clause."

This view essentially deflated Congress's ability to defend civil rights. He wrote: "Even if there were relevant findings or evidence, the FMLA provisions at issue here would not be congruent or proportional. Unlike the Equal Protection Clause, which the FMLA is said to enforce, the FMLA does much more than require nondiscriminatory sick leave practices: it creates a substantive entitlement to leave. This is 'disproportionate to any unconstitutional conduct that conceivably could be targeted by the Act.'"

The Supreme Court later rejected Alito's position on the FMLA.

Ultimately, the Commerce clause is about understanding Congress's power to protect our families and its ability to respond to threats that immediately affect those families. In February, for example, the Court is scheduled to hear arguments on the scope of the commerce clause in two critical cases that could restrict the geographic jurisdiction of the Clean Water Act to one percent of its current coverage.

In my State, we know how fragile our precious natural resources can be. The Pacific Northwest is blessed with incredible beauty. But habitat loss and other pressures threaten some of my State's most iconic species, salmon that spawn our great rivers and birds that depend on old growth forests.

We also know that how we treat those resources and that wildlife speaks to our priorities as a people and a nation. How do we value our communities and ensure their safety? How do we honor an individual's freedom and his or her rights?

While I do not expect any judicial nominee to prejudge future cases, I do expect all nominees to make their positions clear on protecting the most basic rights of individuals and the fundamental structure and foundations of our democracy. In the end, I cannot be sure that Judge Alito would do either.

As I mentioned earlier, I believe that Judge Alito has a record of concern when it comes to placing and consolidating the rights of the government over the rights of the individual, and he has not provided the answers to adequately reassure the people of our Nation. I must conclude that he would neither show due respect for the authority of Congress nor apply a necessary check to the reach of the executive. With great respect for the institution, I cannot vote to confirm Judge Alito to the Supreme Court of the United States.

Mr. CHAFEE. Mr. President, President Bush has nominated Judge Samuel Alito to replace Justice Sandra Day O'Connor on the Supreme Court. Justice O'Connor has had a remarkable career of public service. Her strong and moderate voice on the Supreme Court will be missed. I was lucky to get to socialize with her and her husband through mutual acquaintances and recommend her book about growing up on a ranch in arid Arizona—The Lazy B. She is an exceptional person.

As is the custom, Judge Alito sought a meeting with any Senator so interested. For our meeting, I suggested the Capitol steps and he agreed since it was a warm sunny day. I thought it was appropriate to be visually connected to two of the three branches of government as we talked about constitutional issues. If confirmed, the decisions he will make on the Supreme Court will affect the lives of Americans profoundly.

Judge Alito has outstanding legal credentials and an inspiring life story. However, I am greatly concerned about his philosophy on some important constitutional issues. In particular, I carefully examined his record on executive power, women's reproductive freedoms and the commerce clause of article 1, section VIII of the Constitution.

On executive power, it is likely that cases dealing with the fourth amendment will be heard by the Supreme Court. The fourth amendment reads:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

To me this language is very clear that a warrant is required for a search. That premise is now being questioned regarding warrantless wiretaps.

At the Judiciary Committee hearings, Judge Alito was asked a question on executive powers and warrantless wiretapping. He said he would have to determine "whether the President's power, inherent powers, the powers given to the President under article 2 are sufficient, even taking away congressional authorization, the area where the President is asserting a power to do something in the face of explicit congressional determination to the contrary".

The only power in article 2 that Judge Alito could be referring to would be:

> The President shall be Commander in Chief of the Army and Navy of the United States. . . .

Judge Alito was also asked ". . . is it possible under your construct that an inherent Constitutional power of the President could, under some analysis or some case, override what people believe to be a Constitutional criminal statue?" Judge Alito responded that this was possible, noting a "possibility that that might be justified".

How far do we want Commander in Chief stretched? As Justice O'Connor wrote in a recent case, "a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens".

On the issue of Roe v. Wade as with other issues, I am less interested in what Judge Alito wrote or said as a lawyer for his client the Reagan Administration, than how he has ruled as a judge and how he testified at his nomination hearing. As an appellate court judge, Judge Alito was the lone dissenter on Planned Parenthood v. Casey, a court case reviewing the Pennsylvania Abortion Control Act.

The Supreme Court wrote on this landmark affirmation of Roe v. Wade:

> These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the state.

The five majority Justices, who wrote that, were all Republican appointees: two Reagan appointees, one each of Bush "41", Ford and Nixon.

An important standard of law is the concept of stare decisis—it stands decided. At the hearing Chairman SPECTER asked Judge Alito to discuss his view of stare decisis. He responded:

> It's not an inexorable command, but it is a general presumption that courts are going to follow prior precedents". In the Supreme Court dissent on Casey, the justices who arguably wanted to overturn Roe v. Wade wrote "stare decisis is not . . . a universal inexorable command.

Not only did Judge Alito rule in favor of the Pennsylvania Abortion Control Act as a lower court judge, he used the same language as the high court dissenters at his Supreme Court nomination hearing. Stare decisis is not an inexorable command.

Additionally, at his nomination hearing Judge Roberts was willing to call Roe v. Wade "settled law" but Judge Alito refused to make a similar statement.

The last point I would like to make concerning constitutional law is on the commerce clause. As you know the Constitution creates a Government of limited power—Congress can only enact legislation in areas that are specifically set out under the Constitution. Congress is expressly prohibited from enacting legislation in other areas, leaving this authority to the States per the tenth amendment:

> The powers not delegated to the United States by the Constitution . . . are reserved to the States respectively, or to the people.

Every law enacted by Congress must be based on one of the powers enumerated in the Constitution. The Framers of the Constitution gave Congress broad power to regulate immigration, national security and economic activity between the states, and left most other power with the States.

However, section VIII of article 1 states that "the Congress shall have the power to regulate Commerce . . . among the several states". This is the commerce clause and it is the most powerful provision in the Constitution providing Congress the authority to enact legislation in a host of areas—including environmental protection. A key Supreme Court case regarding the commerce clause was in 1942 when the Supreme Court upheld legislation that allowed USDA to set quotas on local wheat growing. The Court noted that while crops regulated may never actually enter into interstate commerce, such local activity, coupled with similar activity in other States as an aggregate has a direct impact on interstate commerce. Since then using the "aggregate effects test" or "substantial effects test" Congress has passed broad ranging environmental legislation such as the Clean Air Act, Clean Water Act and the Endangered Species Act, all of which were signed into law by Republican President Nixon.

While I agree there should be constitutional limits on legislative power, Judge Alito seems to have agreed with Justice Thomas who wrote:

> I believe we must further reconsider our substantial effects test with an eye toward constructing a stand that reflects the text and history of the Commerce Clause.

Indeed in a dissent to a gun case heard before his court Judge Alito wrote:

> In sum, we are left with no appreciable empirical support for the proposition that the purely intrastate possessions of machine guns, by facilitating the commission of certain crimes, has a substantial effect on interstate commerce, and without such support I do not see how the statutory provision at issue here can be sustained.

What is noteworthy in this dissent is that Judge Alito was alone with all members of his appeals court ruling the other way.

If "the aggregate or substantial effects tests" are overruled as Justice Thomas has advocated, federal environmental laws could be ruled unconstitutional. Indeed on February 21, the Court is scheduled to hear arguments on two cases, Carabell v. United States and United States v. Rapanos.

In both cases the lower court upheld protection of wetlands, which are currently protected under the Clean Water Act. Environmentalists argue that these wetlands are critical to the health of our nation's water supply and wildlife habitat.

Industry groups argue that the Army Corps of Engineers has no authority under the Clean Water Act to regulate "isolated wetlands" that have no connection with "navigable waters." This would be a major setback to the Clean Water Act.

The critical issue is whether under the commerce clause, Congress has the authority to regulate non-navigable bodies of water within a single State. Based on the writing of Judge Alito, he would appear to side with the faction what would greatly limit the ability of Congress to protect such "intrastate" issues.

These constitutional issues, the scope of executive power, women's reproductive freedoms and the commerce clause are likely to be heard by the Supreme Court in the coming months. I care deeply about these issues.

Believe me, having been an executive in government, I want to support President Bush's choice to the Supreme Court. The President did win the election. He has made his promises and I have made mine.

I am a pro-choice, pro-environment, pro-Bill of Rights Republican and I will be voting against this nomination.

Ms. LANDRIEU. Mr. President, confirmation of a Supreme Court Justice is one of the most important duties the Senate performs under the Constitution. We should consider the nomination of Judge Alito carefully and conduct our debate on this nominee with dignity and respect.

The Supreme Court is the final arbiter of whether the laws of our land conform to the Constitution. Once confirmed to the Court, Justices serve for life, beholden only to the Constitution and the rule of law. It is an awesome responsibility; and for such an important event, we must have a confirmation process fitting of that responsibility. Too often in recent years, we have not.

Though the judicial branch of our government is supposed to be independent of politics, the nomination and confirmation process has become far too political to the point that it no longer serves the Nation's interests, regardless of partisan or philosophical differences.

Judge Alito, whom I have met and found to be an honorable, intelligent man, was placed in the unfortunate position of having been selected as a result of this process. As my colleagues know, he was not the President's first choice to fill Justice Sandra Day O'Connor's seat. John Roberts was. After his nomination was switched to become Chief Justice, Harriet Miers became the President's second choice. After she was attacked by members of the President's own party, her nomination was withdrawn. Again, politics prevailed.

Judge Alito's nomination was the President's third choice for this seat and, in many ways, a gesture to the organized interest groups of the President's party who had derailed Ms. Miers' nomination. Unfortunately, it was a nomination of, by, and for politics.

This highly charged political process spilled over into the confirmation hearings before the Judiciary Committee. To secure confirmation, Judge Alito said as little as possible. The strategy was clear: hide, don't explain or embrace, your judicial philosophy.

The Supreme Court nomination and confirmation process has become a game of hide-the-ball. It is a process that does not help to inform Senate deliberations, and it sadly leaves the American people uninformed about who will be sitting on this highest of American courts until it may be too late.

The chairman and ranking member of the Judiciary Committee are not to blame for what has happened to the confirmation process. I also thank Judge Alito for his willingness to appear before the committee for as long as he did. But the entire process is clearly not what the Framers of our Constitution intended. No one in America should be afraid to speak his or her mind openly and honestly. The American people are poorly served by a process that places tactical politics above guiding principle.

If confirmed, Judge Alito will replace one of the most important justices on the Court today, Sandra Day O'Connor. Justice O'Connor is a conservative, appointed by a conservative President. Over time, she became a consensus builder on the Court who took great pains to strike a careful balance in her opinions, never forgetting that the Court's decisions have real consequences for real people. She was open-minded and independent. Her influence on the Court was tremendous and her reasoning always carried great weight. She did not prejudge cases and applied the law to the facts in a fair manner.

Justice O'Connor, who was appointed by President Reagan, was a swing vote on a number of important decisions. Whether you or I agree with her individual opinions or not, I think she acted responsibly; someone committed to equal justice under the law, who applied the law to the facts as presented to her and did not "overreach" from the bench. She showed proper respect for the legislative branch and was careful not to cater to Executive authority.

While Samuel Alito has solid qualifications to become a Supreme Court Justice, it is our duty to look deeper. Though we can never know how a Justice will decide a case before it is presented and argued, it is important to know, during the confirmation process, which principles of judicial philosophy will underlie a potential Justice's future constitutional interpretations. We can give advice and consent to a Supreme Court nomination without this information or these insights, as this Senate is about to do. But without this information and these insights, we cannot give informed advice or informed consent.

It was never intended that the Senate be a rubberstamp, approving everyone the President nominated simply because he sent them to us. The Framers expected Senators to bring wisdom and understanding to the task, not to simply check off boxes on an application form.

Judge Alito's record gives me cause for concern. And his testimony during the confirmation hearings unfortunately did very little to lessen that concern. His opinions and dissents on the bench leave open very serious questions as to how he views fundamental civil rights for all Americans and how he views protecting the individual rights of average citizens, especially when they are threatened by powerful forces, including the government itself. Judge Alito's nonanswers to so many questions presented to him at the confirmation hearing added to those troubling concerns.

I have voted for conservative judges nominated by Republican Presidents many times. John Roberts was the most recent. But I must oppose this nomination. I want my vote against confirmation to send a signal to all who care that the Supreme Court nomination process has become far too political and far too removed from the original purposes set forth by the Framers of the Constitution.

It is time for all of us, Republicans and Democrats of every possible philosophical persuasion, to stand up against a process that so poorly serves the people of the States we represent in this great body.

The ACTING PRESIDENT pro tempore. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, on this rainy morning in our Nation's Capital, we just learned the sad news of the passing of Coretta Scott King. We are reminded again of the crucial role our courts played in making real the promises of our national charter, the Constitution. It was the courts to whom Dr. Martin Luther King spoke, and they responded.

The Nation mourns the loss of another civil rights leader and is reminded again of the vital role our courts play as the place where ordinary Americans can turn for justice when justice is denied them. Coretta Scott King and her late husband, Dr. Martin Luther King, Jr., put their lives on the line to bring those promises to untold millions of Americans. Let us never squander or take for granted all that has been achieved. Let us keep their dream alive.

That is why, since this debate began last Wednesday, I posed the fundamental question this nomination raises: whether the Senate is going to serve its constitutional role as a check on the President by preserving the Supreme Court as a constitutional check on the expansion of Presidential power.

This nomination now before us is an unacceptable threat to the fundamental rights and liberties for all Americans now and for generations to come. This President is in the midst of a radical realignment of the powers of the Government and its intrusiveness into the private lives of Americans.

I am concerned that if confirmed, this nominee is going to further erode the checks and balances that have protected our constitutional rights for more than 200 years. This is a crucial nomination, one that can tip the balance of the Supreme Court radically away from constitutional checks and balances and from the protection of Americans' fundamental rights.

The vote that the Senate is about to take has real consequences, not just for the 100 of us in this body but for 295 million Americans. We stand in their shoes. We stand in the shoes of generations to come. The vote will determine whether Samuel Alito, Jr., replaces Justice Sandra Day O'Connor on the Supreme Court of the United States. A vote for this nomination is a vote against constitutional checks and balances. A vote for this nomination is a vote against maintaining the fundamental rights and liberties of ordinary Americans.

Republican Senators have pretended that judicial philosophy and personal views do not matter because judges simply apply the rule of law, as if it were some mechanical calculation. Personal views and judicial philosophy often come into play on close and controversial cases. We all know this to be true. Why else did Republican supporters force President Bush to withdraw his previous nominee for this vacancy, Harriet Miers, before she even had a hearing? It mattered to them when the nominee was Harriet Miers. And it matters now. The only difference is that those who hounded Harriet Miers to withdraw are confident that Judge Alito will pass their litmus tests. Harriet Miers failed their litmus tests because, despite all the backroom whispers and public winks and nods, her conservative opponents were not confident that she would rule the way they wanted. Those from among the President's supporters who castigated Ms. Miers wanted certain results. The President allowed his choice to be vetoed by an extreme faction within his party, before hearings or a vote. As Chairman SPECTER has said, they ran her out of town on a rail. Like the more than 60 moderate and qualified judicial nominees of President Clinton on whom Republicans would neither hold hearings or votes—by what was in essence a pocket filibuster. They do not want an independent federal judiciary. They want certain results.

The President says he is fulfilling a campaign promise. I remind him of his biggest campaign promise to be a uniter and not a divider. He could have nominated so many people who would have united this country, would have gotten 90 to 100 votes in the Senate. Republicans and Democrats would have felt united, and the country would have felt united. But instead of uniting the country through his third choice—and this was his third choice—to succeed Justice O'Connor, the President has chosen to reward a faction of his party at the risk of dividing the country.

Those so critical of his choice of Harriet Miers were the very people who rushed to endorse the nomination of Judge Alito. Unlike what has been said on this floor, the criticism of his choice of Harriet Miers came from the Republican Party. But instead of rewarding his most virulent supporters, the President should have rewarded the American people for the unifying choice that would have broad support.

Think how much better America could have done. America can do better if we have consultation—here we didn't have it—to select one of the many consensus conservative Republican candidates who could have overwhelmingly been approved by the Senate.

Judge Alito was asked at the hearing how he got to this nomination. I think we understand the real answer to that question. It has little to do with Judge Alito's family story and a great deal to do with the pressures that forced the President to withdraw the nomination of Harriet Miers and this President's efforts to avoid any check on his expansive claims of additional powers.

This is a President who has been conducting secret and warrantless eavesdropping on Americans for more than 4 years. This President has made the most expansive claims of powers since America's patriots fought the War for Independence to rid themselves of the overbearing power of King George III. He has done so to justify illegal spying on Americans without the essential check of judicial oversight to justify actions that violate our values and laws against torture and protecting human rights, and in order to detain U.S. citizens and others on his say-so—just on his say-so—without any judicial review or due process. This is a time in our history when the protections of Americans' liberties are at risk, as are the checks and balances that have served to constrain abuses of power for more than 200 years.

The President wanted a reliable Justice who would uphold his assertions of power, his most extreme supporters want someone who will revisit the constitutional protection of privacy rights, and his business supporters wanted somebody favorable to powerful special interests.

A Supreme Court nomination should not be conducted through a series of winks and nods designed to reassure the most extreme factions while leaving the American people in the dark. No President should be allowed to pack the courts, but especially the Supreme Court, with nominees selected to enshrine Presidential claims of Government power. The checks and balances that should be provided by the courts, Congress, and the Constitution are too important to be sacrificed to a narrow, partisan agenda. A Democratic-controlled Senate stood up to Democratic President Franklin Roosevelt when he proposed a Court-packing scheme. The Senate acted as the Senate should and so rarely does today, to say "no" to a President. I will not lend my support to an effort by this President to undermine our constitutional checks and balances or to move the Supreme Court radically to the right.

The Supreme Court belongs to all Americans, not just the person occupying the White House, not just to a narrow faction of a political party. The President continues to choose confrontation over consensus and to be a divider rather than the uniter he promised Americans he would be. Rather than sending us a nominee for all Americans, the President chose a divisive nominee who raises grave concerns about whether he would be a check on Presidential power and whether he understands the role of the courts in protecting fundamental rights.

The Supreme Court is the ultimate check and balance in our system. Independence of the courts and its members is crucial to our democracy and way of life. The Senate should never be allowed to become a rubber stamp, and neither should the Supreme Court.

As the Senate prepares to vote on this nomination, we should be mindful of Justice O'Connor's critical role on the Supreme Court. Her legacy is one of fairness I want to see preserved. Justice O'Connor has been a guardian of the protections of the Constitution provides the American people. Of fundamental importance, she has come to provide balance and a check on Government intrusion into our personal privacy and freedoms. In the Hamdi decision she rejected the President's claim he could indefinitely detain a U.S. citizen. She said not even the President is above the law. She upheld the fundamental principle of judicial review. She wrote that even war "is not a blank check for the President when it comes to the rights of the Nation's citizens."

The American people deserve a Supreme Court Justice who inspires confidence that he or she will not be beholden to the President, but will be immune to pressures from the Government or from partisan interests. The stakes for the American people could not be higher. The appointment of the next Supreme Court Justice must be made in the people's interest and in the Nation's interest, not partisan interest or the President's interest.

It is as the elected representatives of the American people, all the people, that we are charged with the responsibility to examine whether to entrust their precious rights and liberties to this nominee. The Constitution is their document. It guarantees their rights from the heavy hand of Government intrusion and their individual liberties to freedom of speech and religion, to equal treatment, to due process and to privacy. I want all Americans to know that the Supreme Court will protect their rights. I want a Supreme Court that acts in its finest tradition as a source of justice. The Supreme Court must be an institution where the Bill or Rights and human dignity are honored.

This is Judge Alito's single moment in his lifetime, the only moment in his lifetime, of accountability before the prospect of a lifetime on our Nation's highest Court. But it is also an accountability moment for each of the 100 Senators in the decision we reach on this crucial nomination because we have to speak for 295 million Americans.

I urge all Senators to consult their consciences and their best judgment before casting their votes on this critically important nomination. But, in good conscience, based on the record, I cannot, I will not, vote for this nomination.

Mr. President, what is the parliamentary situation?

The ACTING PRESIDENT pro tempore. The Senator has 25 seconds remaining.

Mr. LEAHY. Mr. President, obviously I am distressed for many reasons about this nomination, not the least of which is everything Judge Alito said indicated he would not be a check and balance. I so wish—and I have said this to President Bush personally—I so wish he had been a uniter and not a divider. We could be here with a Senate unanimously approving a nominee, instead of this divisive battle.

I yield the floor.

The ACTING PRESIDENT pro tempore. Under the previous order, the time from 10:34 until 10:44 shall be under the control of the Senator from Pennsylvania. He is now recognized.

Mr. SPECTER. I thank the Chair.

Mr. President, as the Senate moves toward the vote on the nomination of Judge Samuel A. Alito, Jr., to be Associate Justice of the Supreme Court, we are mindful of the very heavy responsibility under the Constitution which the Senate has for confirmation of a Supreme Court Justice for a lifetime appointment. There is no vote as important, except for a declaration of war or the resolution authorizing the use of force, which is the practical equivalent of a declaration of war.

In our society, the Supreme Court of the United States is the final decisionmaker in, as the process has worked out, many cutting-edge questions that come before the Supreme Court. The Supreme Court decides the issue of who shall live, who shall die—the decision which they had recently on the Oregon law or the application of the death penalty. It is the final protector of civil rights, the adjudicator of the Commerce clause, as to what Congress can do by way of legislation, and its authority and power is magnified because so many of the decisions of the Court are on a 5-to-4 count. When we have Justice O'Connor retiring as the swing vote on so many cases, there is an even heavier air of responsibility as we move through the confirmation process of Judge Alito.

It is our responsibility to examine the nominee in terms of his qualifications. Those qualifications have been established by virtue of his educational background and his professional background. We have to make a determination of his temperament, and I believe we saw poise and patience under a very difficult confirmation process. The confirmation process has evolved and, candidly, I think Judge Alito's was a little tougher, a little more confrontational than most. That is the right of the Senators. But he certainly had ample poise and ample calm and demonstrated steadfastness and temperament.

The tougher inquiry is when we bear in and focus on what he is going to do if confirmed? What are his jurisprudential approaches? I think we have come too much to the point in our confirmation process of looking for definite answers. Some have objected to the confirmation of nominees because there is no guarantee on how they will vote in certain cases. A nominee to the Supreme Court is not supposed to give guarantees. A nominee to the Supreme Court is supposed to respond as to factors to be considered and give us an idea of his or her reasoning power. He or she is not supposed to give us guarantees on how they would rule. This goes back to President Lincoln, who said we should loathe somebody who told us in advance how he or she would rule when nominated to the Supreme Court of the United States.

There is a lot of anxiety about a woman's right to choose. I share that anxiety and I share that concern. We have seen in the history of the Court that early indications as to how an individual may feel about a woman's right to choose will not necessarily be the determinant as to how that nominee will vote when the nominee is a Justice on the Supreme Court. We have the operative case on a woman's right to choose. It is Casey v. Planned Parenthood, decided in 1992. It retained the woman's right to choose but modified the rationale from Roe v. Wade in 1973. The opinion was written jointly by Justice O'Connor, Justice Anthony Kennedy, and Justice David Souter. Prior to their becoming Supreme Court Justices, all had expressed opposition to abortion rights, opposition to a woman's right to choose. But when they came to the Court and they took a look at the precedents, when they took a look, as their joint opinion said, on reliance, they sustained the principle of a woman's right to choose.

While you had Judge Alito's statement in 1985, 21 years ago, about his own view on the subject, he made it emphatic that as a jurist he would look to precedent and his own personal views would not dominate his thinking as he applied the law in a constitutional setting.

He was also questioned at length about his work in the Solicitor General's Office on the Thornburgh case. Too much is made of what an individual does in an advocacy capacity representing a client. But Judge Alito was questioned at great length about the philosophical underpinnings of a woman's right to choose. He agreed with Justice Harlan's dissent in Poe v. Ullman about the Constitution being a living document. And he agreed with Cardozo in Palko v. Connecticut, that constitutional interpretation represents the values of an evolving society. He went about as far as he could go without making a commitment in advance.

When it came to the question of Executive power, here again he described the philosophical underpinnings of the President's authority and he agreed with Justice O'Connor that a state of war does not give a President a blank check. He outlined the considerations going to Justice Jackson's concurrence in the steel seizure case, about how he would face an issue on Executive power.

The Congress of the United States can do considerably more by way of oversight on what the Executive does, and we are going to have a hearing next Monday on the President's power for surveillance. What is the President's authority in the face of a statute, the Foreign Intelligence Surveillance Act, which requires court approval for certain surveillance operations? What are the President's article II powers as Commander in Chief? There could be a great deal more activism by the Congress. You don't have to wait for these cases to come to the Supreme Court of the United States. But if, as, and when the question does arise, I think Judge Alito outlined the jurisprudential considerations, and he is on target.

When it comes to congressional power, we could also do a lot more. The Supreme Court has been insulting in its characterization of our reasoning power, striking down legislation to protect women against violence, disagreeing with our method of reasoning, or striking down portions of the Americans With Disabilities Act, as Justice Scalia said, being a taskmaster. We are preparing legislation in the Judiciary Committee to grant Congress standing to go to court to uphold the constitutionality of our statutes.

Mr. President, how much time do I have remaining?

The PRESIDENT pro tempore. The Senator has 40 seconds.

Mr. SPECTER. When you take a look at the values of an individual, who knows him better than the judges with whom he worked?

Seven judges came before the Committee to testify and they all authenticated the conclusion that he does not have a predetermined set of values that he is going to try to force upon the country.

All factors considered, I think he is worthy of confirmation by this body.

I thank the Chair, and I yield the floor.

Mr. ROBERTS. Mr. President, I rise today to offer my support for Judge Samuel Alito, Jr., for Associate Justice to the U.S. Supreme Court. I am honored to have the opportunity to again participate in a nomination for the Supreme Court. The casting of our votes from our Senate desks, as set forth by Senate tradition, is indicative of the meaningfulness and the importance of the confirmation vote for a judicial nomination to the Supreme Court. As before, I am humbled and honored to represent my fellow Kansans in this manner.

Over the course of the hearings, the Nation has had an opportunity to learn more about Judge Alito's character, professional experience, and approach to the law. It is clear that Judge Alito's educational background is quite impressive. The son of public school teachers, Judge Alito grew up in a family in which the importance of education and hard work were firmly rooted. His father, who arrived in the United States as an infant, knew firsthand the struggles of growing up in poverty. His ability to pull himself up by his bootstraps and emphasizing education as the window to a better life laid a firm foundation for his family.

It is no surprise that Judge Alito's exceptional educational background boasts of two formidable Ivy League universities—a notable accomplishment resulting from hard work and a keen mind. However, during his testimony, his statements demonstrated that he fully recognized what an opportunity it was to attend these renowned universities and took full advantage. He said:

> It was a time of turmoil at colleges and universities. And I saw some very smart people and very privileged people behaving irresponsibly. And I couldn't help making a contrast between some of the worst of what I saw on the campus and the good sense and the decency of the people back in my own community.

It is this type of commonsense that resonates with my Kansas constituents.

One only needs to look at Judge Alito's résumé to see his extensive experience in both prosecuting and applying the law. His distinguished career includes almost 15 years as a Federal prosecutor within the Department of Justice, 3 years as the U.S. Attorney for New Jersey, and most recently, 15 years as a Federal judge on the U.S. Court of Appeals for the Third Circuit. Judge Alito is well versed in the law. While some have alleged that his decisions are biased and that he is an ideologue with a political agenda, his record, his testimony, and the testimony of his colleagues and others who have worked with him dispel those allegations. During his confirmation hearing before the Senate Judiciary Committee, Judge Alito stated:

> The role of a practicing attorney is to achieve a desirable result for the client in the particular case at hand, but a judge can't think that way. A judge can't have any agenda. A judge can't have any preferred outcome in any particular case. And a judge certainly doesn't have a client. The judge's only obligation—and it's a solemn obligation is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires.

His fellow colleagues on the U.S. Court of Appeals affirm his openmindedness, impartiality, and decisions based on the facts and the law. Notably, the American Bar Association—long viewed as the gold standard among my colleagues on the other side of the aisle—reviewed Judge Alito's judicial background and gave him their highest rating of "Well Qualified."

In a time of judicial encroachment in which courts are increasingly imposing their political will on the Nation, Judge Alito's judicial record demonstrates his efforts to stem that tide. In his testimony he refers to the role of the judiciary as very important, but limited by the authorities set forth in the Constitution. The judicial branch's responsibility lies in interpretation and application of the law and not enacting policy judgements. In other words, he is guided by the rule of law set forth by the Constitution. Others describe Judge Alito's judicial philosophy as a philosophy of restraint and in accordance with the rule of law. Other witnesses from a broad range of ideologies who know Judge Alito confirm that he is measured and judicial in his decisions.

In closing, I would like to comment on the increasing political nature in which judicial nominees are subjected to during the nominations process. During my remarks on the nomination of now Chief Justice John Roberts, I highlighted the elevated level of partisanship in the Senate. This trend of partisan bickering further threatens the comity and respect that has long been the standard for conducting Senate business. The tenor and manner of questioning, or grilling as referred to in the news headlines, of Judge Alito frays the spirit of our constitutional fabric under which we operate. I call on my colleagues to work together to raise the level of discourse in these hallowed Halls of Congress.

Mr. SHELBY. Mr. President, I rise today to support the nomination of Judge Samuel Alito to be an Associate Justice of the U.S. Supreme Court.

Judge Alito's education, legal training, and judicial record have positioned him well to serve our Nation with honor and dignity on the Supreme Court. A graduate of Princeton and Yale, Judge Alito has more than 30 years of legal experience. Over the years, he has served as a judicial clerk, a prosecutor, an appellate lawyer before both the U.S. Court of Appeals and the U.S. Supreme Court. He has served as legal counsel to the U.S. Government and most recently as a judge on the U.S. Court of Appeals for the Third District. Judge Alito has a full breadth of experience in both criminal and civil cases as well as the trial and appeals phases of the judicial system.

I believe Judge Alito's record on the U.S. Court of Appeals for the Third District shows that he is a fair and impartial jurist. During his tenure on that court, it has been clear that he takes all legal theories and arguments into account when making decisions and issuing rulings. Judge Alito is well respected by his colleagues and has even received their praise for the manner and tone he takes in working through the facts to arrive at a decision. I do not recall anyone questioning his ability to do the job and in fact, he received a unanimous "well-qualified" rating from the American Bar Association, its highest rating.

While many have criticized Judge Alito's supposed judicial philosophy, I believe that his written decisions and statements as well as his appearance before the Judiciary Committee confirmed his ability to set personal views and ideology aside so as to not cloud his interpretation of the law. I commend Judge Alito for his poise and composure throughout one of the most arduous hearings in recent memory.

The time has come for Congress and the President to serve as a check on the judicial activism that has become so prevalent in the judiciary today.

I believe that we must have judges that interpret the Constitution and the law rather than manipulate it to meet their personal ideologies. Judge Alito fits that mold.

Mr. President, I am proud to support Judge Alito and look forward to him becoming the next Associate Justice on the United States Supreme Court.

The PRESIDENT pro tempore. Under the previous order, the Democratic leader is recognized time until 10:54.

Mr. REID. Mr. President, in his opening statement to the Judiciary Committee, Judge Samuel Alito asked, "How in the world did I get here?" That rhetorical question raises a serious concern about him, and it has shadowed his nomination from the very beginning. The fact is, Judge Alito became President Bush's candidate to replace Justice Sandra Day O'Connor only after the radical rightwing torpedoed the nomination of White House counsel Harriet Miers and insisted that someone with Sam Alito's ideology be put in her place. That is how Judge Alito "got here."

I continue to believe that Harriet Miers received a raw deal. She is an accomplished lawyer, a trailblazer for women, and a strong advocate of legal services for the poor. Not only was she denied the up-or-down vote that my Republican colleagues say every nominee deserves, but she was never even afforded the chance to make her case to the Judiciary Committee.

I believe radical elements in the President's own party demanded that Miers withdraw not because of her lack of judicial experience as some exclaimed but because they were insufficiently confident she would support their extreme agenda. Remember, approximately 40 percent of all people who have ever served on the Supreme Court had no judicial experience.

The rightwing distrust of Harriet Miers and their immediate elation when Judge Alito was named raised my suspicions on the day that he was nominated. Those suspicions were heightened when Alito's 1985 application for a job in the Reagan administration came to light. In it, Alito stated, "I am and always have been a conservative." He spoke proudly of his work on behalf of the extreme agenda of the Reagan Justice Department, his disagreement with landmark rulings of the Warren Court in favor of equal rights, and his membership in rightwing organizations. In effect, the 1985 document amounted to Judge Alito's pledge of allegiance to conservative, radical Republican ideology.

I don't propose the Alito nomination is on the basis of a 20-year-old job application. Instead, I view that document as a roadmap to Judge Alito's subsequent judicial opinions and speeches.

Judge Alito's judicial opinions have been largely consistent with his ideological signals; that is, the signals he sent in the 1985 job application. One of the most prominent and eminent legal scholars in all of America, Professor Cass Sunstein of the University of Chicago Law School, who generally supported the nomination of Chief Justice John Roberts, analyzed Alito's opinions and found "a remarkable pattern" of "almost uniformly conservative" dissents. Professor Sunstein concluded that "the real question about Alito involves the disturbingly close link between his political convictions and his legal conclusions."

My concern about Judge Alito falls into three broad categories. First, I fear he will not vindicate the role of the judiciary as a check on executive branch power. Second, he is a leader in the so-called federalism movement which would limit congressional power to pass environmental laws and remedy other national problems. Third, in disputes between ordinary American citizens and the powerful corporations and government, Judge Alito is often—and too often—on the side of the powerful and against the interests of the individual.

First, I am disturbed by Judge Alito's overall bowing to Executive pressure, bowing to Executive power. At a time when President Bush asserted unprecedented authority over the lives of American citizens and the Republican-controlled Congress seems too willing to cede those powers to him, I cannot support the nomination of a judge predisposed to giving the President the benefit of every doubt.

In matters ranging from domestic spying to the use of torture, the current President has effectively declared himself above the law. Meanwhile, a Congress controlled by the President's party has stripped the courts of jurisdiction to hear habeas corpus cases brought by Guantanamo detainees, some of whom have absolutely nothing to do with terrorism. In the face of such profound threats to the separation of powers in our Constitution, we need a Supreme Court comprised of independent and impartial judges willing to stand up to imperial Presidencies.

Rather than serving as a check on President Bush's abuses of power, I worry that Judge Alito will instead serve as a rubberstamp. Both on and off the bench, Alito's writings and opinions show a record of extreme deference to Executive power, whether exercised by the President or by Federal and local law enforcement officials.

Even before he was a judge, Alito made a name for himself arguing for expansive Executive power. As a Justice Department attorney, he wrote that the Attorney General should have absolute immunity from lawsuits arising from illegal wiretaps. He also argued on the side of a Tennessee police officer who shot and killed an unarmed 15-year-old boy not because the officer believed the boy was armed, but to prevent escape from a petty crime.

Alito's judicial rulings on executive power heighten my concerns in this area. In the recent decision of United States v. Lee, he found that an FBI undercover probe that included audio and video surveillance of the defendant's hotel suite without a warrant did not violate the Fourth Amendment.

The government wins, you lose.

In an earlier case in which Judge Alito voted to uphold the strip-search of a 10-year-old girl, then-Judge Michael Chertoff, now President Bush's Secretary of Homeland Security, criticized Alito's views as threatening to "transform the judicial officer into little more than the cliché 'rubber stamp.'"

Again, government wins, you lose.

Judge Alito's unshakable deference to police officers conducting intrusive searches seems to extend to his view at the power of the President to act unilaterally when setting national policies.

In a speech to the Federalist Society in November 2000, he professed his strong belief in the so-called "unitary executive" theory of constitutional law, a theory embraced by those who advocate for expanding executive powers at the expense of the judicial and legislative branches of government.

Judge Alito's disturbing views on the constitutional separation of powers is also reflected in his refusal to condemn laws in which Congress strips courts of jurisdiction to hear certain disputes. For example, Senator LEAHY asked the nominee if Congress could strip the Supreme Court of jurisdiction over all cases arising under the First Amendment. Alito declined to respond directly, saying the matter was the subject of academic dispute.

These comments lead me to doubt that Judge Alito fully appreciates that the role of the courts is to protect constitutional rights and liberties in the face of an overreaching majority.

Second, I am concerned that Judge Alito would limit the authority of Congress to address environmental protection and other national needs. I fear that Alito would join Justices Scalia and Thomas in their activist campaign to narrow congressional power under the Commerce Clause, a movement that threatens important public health and welfare laws in the name of "federalism."

Once again, the roots of Judge Alito's ideology can be found in his work during the Reagan Administration. As Deputy Attorney General in 1986, Judge Alito recommended that President Reagan veto the Truth in Mileage Act, a law designed to prevent odometer tampering, because "it violates the principles of federalism."

And again, Judge Alito seems to have carried his Reagan-era ideology with him when he joined the Third Circuit. In the Chittester case, for example, he held that Congress lacks authority to allow State employees to enforce aspects of the Family and Medical Leave Act. His logic would cripple the ability of Congress to help people with real problems, such as those who are disabled. Again, government wins, you lose.

There is every reason to fear that Judge Alito will work to continue the Court's unwarranted restriction of Congressional power in these areas.

Third and finally, Judge Alito's nomination troubles me because in his 15 years on the bench he has repeatedly and consistently favored the power of government and corporations over the rights of individual American citizens. As many commentators have observed, Judge Alito hardly ever sides with the proverbial "little guy."

The government wins, you lose.

A Knight-Ridder review of Alito's 311 published opinions on the 3rd Circuit Court of Appeals found that Judge Alito very rarely supports individual rights claims. In a separate study, Professor Sunstein found that Judge Alito ruled against the individual in 84 percent of his dissent—84 percent of the time.

Again, government wins, you lose.

In civil rights cases, Judge Alito has often voted to impose higher barriers for people with claims of discrimination.

In Bray v. Marriott Hotels—a case dealing with race discrimination—his colleagues said Title VII of the Civil Rights Act "would be eviscerated" if Alito's approach were followed. Again, big business would win, and you would lose. And in Nathanson v. Medical College of Pennsylvania, he dissented in a disability rights case where the majority said: "few if any Rehabilitation Act cases would survive" if Judge Alito's view were the law.

Again, big business and government wins, you lose.

Perhaps the most important instance when the rights of an individual conflict with the interests of the government are when the state seeks to carry out the death penalty.

How anyone could come up with the conclusion of Judge Alito's is really hard to understand.

Senators LEAHY and FEINGOLD asked Judge Alito whether it would be unconstitutional to execute an "unquestionably innocent man."

The obvious answer from anyone would be quite clear. It would be plainly unconstitutional. But Judge Alito refused to say so. Instead, he spoke in bland bureaucratic terms about the need for the innocent person to file the proper petitions under proper Federal rule.

Remember, the question was, "Would it be unconstitutional to execute an unquestionably innocent man?" Of course, it would.

That was a chilling moment. If the Constitution means anything it means that the state cannot put to death an "unquestionably innocent" person. If Judge Alito cannot say that without equivocation, he is not the kind of judge I want on the Supreme Court of the United States.

These three broad concerns about Judge Alito's record on the bench are all the more troubling in light of the fact that Judge Alito has been nominated to replace Justice Sandra Day O'Connor, a national icon who has been a voice of moderation and reason on the Court for the last quarter of a century.

President Bush was not obligated to nominate a clone of Justice O'Connor. But this President has no mandate to move the Supreme Court and American law in a radical rightward direction. That is precisely what replacing Justice O'Connor with Judge Alito will accomplish.

That Judge Alito has been nominated to replace Justice O'Connor is relevant in another sense. Justice O'Connor was the first of only two women ever to sit on the Supreme Court. It remains disturbing to me that she would be replaced by a man, leaving only one woman on the nine-member Court.

Today, more than half of the nation's law students are women. There are countless qualified women on the bench, in elective office, in law firms, and serving as law school deans. I can't believe the President searched the country and was unable to find a qualified female nominee. But maybe he was unable to find a qualified female nominee who satisfied the radical far right wing of the Republican Party.

Meanwhile, for the third time, this President has turned down the opportunity to make history by nominating the first Hispanic to the Court. How much longer must Hispanics across America wait before they see someone on the nation's highest court who shares their ethnic heritage and their shared experiences?

I have no doubt that Sam Alito is a decent man.

But a confirmation debate is not a popularity contest. The rights and liberties of the American people are at stake. This particular nomination raises profound questions about our system of checks and balances.

We need to ask whether a Justice Alito will serve as an effective check on a swaggering President and his reckless policies.

At this critical moment in our Nation's history, I cannot support the confirmation of this nominee to fill this vacancy on the Supreme Court of the United States.

The PRESIDENT pro tempore. Under the previous order, the majority leader is recognized.

Mr. FRIST. Mr. President, at the end of a debate in the Senate there is rarely a question of whether everything has been said—only whether every Senator has said it.

After 92 days since this nomination was announced, after 30 hours of Judiciary Committee hearings, after Judge Alito answered more than 650 questions, and after 5 days of debate on the floor of the Senate, there is little left to be said. So I will be brief.

To President Bush I say thank you. To President Bush I say thank you for nominating such an exceptionally qualified individual as Sam Alito to serve on the Supreme Court.

To my Senate colleagues I say well done to the supermajority of Senators who joined yesterday to elevate principle above partisan politics and defeat an unjustified filibuster of this nomination.

And to Judge Alito I say: You deserve the seat on the Supreme Court. Today, you will become the 110th Justice to serve on the Court throughout America's history. It is a seat that is reserved for a few but that impacts millions. May the Constitution and rule of law be the light that illuminates each case that comes before you.

So, momentarily, we will vote from our desks, a time-honored tradition that demonstrates, once again, how important and consequential every Member takes his duty under the Constitution to provide advise and consent on a Supreme Court nomination and to give the nominee the fair up-or-down vote he deserves. It is time to call the roll.

There is only one thing left to say. I ask for the yeas and nays on the nomination of Samuel Alito to serve as Associate Justice of the Supreme Court of the United States.

The PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Samuel A. Alito Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States? On this question, the yeas and nays have been ordered. Senators are requested to vote from their seats.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDENT pro tempore. The Chair admonishes all present that no reaction to a Senate vote is permitted under Senate rules.

The result was announced—yeas 58, nays 42, as follows:

[Rollcall Vote No. 2 Ex.]

YEAS—58

Alexander
Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Burr
Byrd
Chambliss
Coburn
Cochran
Coleman
Collins
Conrad
Cornyn
Craig
Crapo
DeMint
DeWine
Dole
Domenici
Ensign
Enzi
Frist
Graham
Grassley
Gregg
Hagel
Hatch
Hutchison
Inhofe
Isakson
Johnson
Kyl
Lott
Lugar
Martinez
McCain
McConnell
Murkowski
Nelson (NE)
Roberts
Santorum
Sessions
Shelby
Smith
Snowe
Specter
Stevens
Sununu
Talent
Thomas
Thune
Vitter
Voinovich
Warner

NAYS—42

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Cantwell
Carper
Chafee
Clinton
Dayton
Dodd
Dorgan
Durbin
Feingold
Feinstein
Harkin
Inouye
Jeffords
Kennedy
Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Menendez
Mikulski
Murray
Nelson (FL)
Obama
Pryor
Reed
Reid
Rockefeller
Salazar
Sarbanes
Schumer
Stabenow
Wyden

The nomination was confirmed.

The PRESIDENT pro tempore. The majority leader.

Mr. FRIST. I move to reconsider the vote.

Mr. McCONNELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FRIST. Mr. President, I ask unanimous consent that the President be immediately notified of the Senate's action.

The PRESIDENT pro tempore. Without objection, it is so ordered.

NOMINATIONS OF BEN S. BERNANKE TO BE A MEMBER AND CHAIRMAN OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Mr. FRIST. Mr. President, I now ask that the Senate proceed to the nominations of Ben Bernanke, as under the previous order.

For the information of colleagues, we will begin debate on the Bernanke nominations now and will conclude the remaining debate after the policy lunches.

The PRESIDENT pro tempore. I cannot hear the leader.

Mr. SARBANES. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The majority leader has the floor.

Mr. FRIST. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SHELBY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BURR). Without objection, it is so ordered.

Under the previous order, the Senate will proceed to consideration of Executive Calendar Nos. 440 and 441, which the clerk will report.

The legislative clerk read the nomination of Ben S. Bernanke, of New Jersey, to be a member of the Board of Governors of the Federal Reserve System.

The legislative clerk read the nomination of Ben S. Bernanke, of New Jersey, to be Chairman of the Board of Governors of the Federal Reserve System.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I rise this morning in support of the nominations of Benjamin S. Bernanke to be a member and the Chairman of the Board of Governors of the Federal Reserve System.

In November of 2005, I chaired our Banking Committee hearing regarding this nomination, and we heard from Dr. Bernanke on a wide range of economic issues. In reporting this nomination to the floor for consideration, I would reiterate that President Bush has made a superb appointment in selecting Dr. Ben Bernanke for this position.

This nomination is of great importance to our Nation and our economy. As the central bank, the Federal Reserve has the responsibility for conducting monetary policy to maintain maximum employment, stable prices, and moderate long-term interest rates. As the U.S. continues to lead the world economy, sound stewardship of the Federal Reserve also affects the global marketplace.

The Chairman of the Federal Reserve would certainly have a big enough job to do if he were tasked only with serving as head of the central bank of the United States. But his job also entails the supervision and regulation of financial institutions, including some of the largest financial entities in the world. The Federal Reserve must ensure the safety and soundness of these institutions and monitor any potential for systemic risk. The American consumer also counts upon the Federal Reserve to foster the fair and efficient delivery of services to customers of financial institutions.

The Federal Reserve also plays a major role in operating the Nation's payment system. Evolving technology continues to change the way we pay for goods and services. The Federal Reserve must oversee these innovations and adaptations and make certain the U.S. payment system is effective, reliable, and safe.

For nearly two decades, it has been impossible to raise the topic of the Federal Reserve without also mentioning Alan Greenspan, and I will do so briefly here today. Alan Greenspan has been the face and the voice of the Federal Reserve for over 18 years. Today he is chairing his last session of the Federal Open Market Committee.

Chairman Greenspan has made a big impression on all of us—here in Congress, our Nation, and across the world. During his tenure, the U.S. economy and our financial system have withstood a number of significant shocks, including the stock market crash of 1987, the Asian debt crisis which affected capital globally, and, of course, the catastrophic effects of 9/11, which hit the heart of the U.S. financial industry and which affected all of us and our economy in many ways.

Chairman Greenspan also oversaw the longest economic expansion in American history. Because of our economic success, even in the face of great challenges, some consider Chairman Greenspan to be the greatest central banker of all time. I commend Chairman Greenspan for his exemplary service and dedication to our country.

Now it is time for a transition at the Federal Reserve System. As I noted, this will be the first time in nearly two decades that the Congress has had a new nominee before us for consideration. Certainly stepping into Mr. Greenspan's shoes will be a tremendous challenge.

While it may seem a daunting task to follow as distinguished a chairman as Alan Greenspan, we should be mindful of two things.

First, in 1987, many observers wondered whether an economist named Alan Greenspan could successfully follow in the wake of the vaunted Paul Volcker as Chairman of the Federal Reserve. Each person who sits in the Chairman's seat has the opportunity to make that position his own and to become a leader in his own right. That is what has been done, in large part, due to the caliber of the men who Presidents of the United States have chosen for the task.

Second, I would also note that many individuals who hold diverse viewpoints on other topics are in agreement that President Bush has selected the best possible candidate to serve as the next Federal Reserve Chairman. Indeed, Dr. Ben Bernanke may well be the finest monetary economist of his generation. He has both a distinguished career in academia as well as in the policymaking arena.

The list of his experience and achievements is long. I do not have enough time this morning to mention all of them, but I want to mention some of his most important qualifications because his nomination requires someone with the rare expertise that Dr. Bernanke has acquired.

As he moves on to become the Federal Reserve Chairman, Dr. Bernanke will be completing his duties as Chairman of the President's Council of Economic Advisers. During his service at the CEA, Dr. Bernanke provided the President and our Nation with sound economic advice on a variety of significant policy issues. But before his service at the Council of Economic Advisers, Dr. Bernanke served with great distinction as a member of the Board of Governors of the Federal Reserve System from 2002 to 2005. This experience gives him an inside knowledge of the Federal Reserve and the financial markets.

Dr. Bernanke has earned the tremendous respect and confidence of policymakers in this country as well as around the world. He previously served as chair of the economics department at Princeton University, and prior to that tenure he was an associate professor of economics at the Graduate School of Business at Stanford University. He also served as a visiting professor of economics at New York University and at the Massachusetts Institute of Technology. He was the director of the Monetary Economics Program of the National Bureau of Economic Research. In 1975, he received his B.A. in economics from Harvard University, where he graduated with honors. In 1979, he received his Ph.D. in economics from MIT.

It will be difficult to follow the long and successful tenure of Alan Greenspan. Dr. Bernanke is an excellent choice for the job. Few individuals have this mix of practical and academic experience, especially his prior experience at the Federal Reserve. The Banking Committee reviewed this nomination thoroughly, and we believe Dr. Bernanke will serve this country well at the helm of the Federal Reserve.

I urge my colleagues to support this nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I would like to say a few words on behalf of Dr. Bernanke. But before I do, I would like to state for the record what a great pleasure it has been to work with Dr. Greenspan. It was an honor to have had the opportunity to hear his testimony in committee and to work with him on public policy issues. I wish him well as he moves on to other endeavors. The country is forever grateful for his service as Chairman of the Federal Reserve.

I had an opportunity to sit down and visit with Dr. Bernanke. I was impressed not only with him personally but also with the conversation we had and his record. He is going to bring a lot to the Fed. I join the chairman of the Banking Committee in support of Dr. Bernanke.

Dr. Bernanke is known for his tough stance on fighting inflation. Many expect that Dr. Bernanke's views on interest rates will be similar to Dr. Greenspan's because of his stance on controlling accelerating inflation with interest rate hikes. When I had a chance to visit with him, he stressed the importance of communication and transparency. As Chairman of the Federal Reserve, that is going to be a big part of his responsibilities.

He argued that the final say on debts and deficits lies with the President and the Congress. I couldn't agree more that we need to do more to control deficit spending and the debts we have accumulated over the years. Dr. Bernanke shared with me that his first priority will be to maintain continuity with the policies and strategies established during the Greenspan years.

We have to recognize Dr. Bernanke for what he has already contributed. He is one of the world's leading experts on the subject of how central banks, such as the Fed, should set interest rates and cause the money supply to expand or contract. The combination of Dr. Bernanke's academia, intellect, and his work for and with the Fed will greatly facilitate his transition as the new chairman of the Federal Reserve.

Wall Street and the investment world seemed to like the nomination of Dr. Bernanke as the new Chairman of the Federal Reserve. The Dow Jones Industrial was up some 169.78 points. It was the biggest 1-day point percentage gain since last April. So the response from Wall Street has been good.

Dr. Bernanke spent 20 years at Princeton as a professor of economics and public affairs. He also served as the chairman of Princeton University's economic department. Before being appointed to the President's Council of Economic Advisors, he served as a Governor of the Federal Reserve. His current and past positions have groomed Dr. Bernanke and serve as an apprenticeship to succeed Chairman Greenspan.

Dr. Bernanke was widely considered one of the leading candidates to replace Dr. Greenspan as Chairman of the Federal Reserve. I was glad to see the President make his appointment, and I urge my colleagues to join me in supporting Dr. Bernanke as Chairman of the Federal Reserve.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senator from Maryland controls 30 minutes. The Senator from Alabama has 18 minutes 43 seconds remaining.

Mr. SARBANES. Mr. President, I yield 2 minutes to the Senator from Massachusetts who wishes to speak on a different subject.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

(The remarks of Mr. KENNEDY and Mr. SARBANES are printed in today's RECORD under "Morning Business.")

Mr. SARBANES. Mr. President, I join my able colleague from Alabama in supporting the nomination of Ben Bernanke to be a member and Chairman of the Federal Reserve Board of Governors. We will be voting on a 14-year term on the Board of Governors, one of the longest terms we give to anyone other than Federal judges in the workings of our political system, and a 4-year term to be the Chairman of the Federal Reserve Board.

Before I address Dr. Bernanke, I wish to take a moment, as my colleagues have, to say a word about Chairman Alan Greenspan. Chairman Greenspan chairs the Federal Reserve Open Market Committee that is right now taking place. Then he steps down. He has served for over 18 years as Chairman of the Federal Reserve, the second-longest tenure in our history, exceeded only by William McChesney Martin. There have been occasions when I have differed with Chairman Greenspan on some of his decisions, most notably the green light he gave to large and excessive tax cuts in 2001 which helped to precipitate us into a serious deficit situation. But this ought not obscure the many accomplishments and successes during his long tenure.

Others have referenced the stock market crash which happened only a few months after he took office; the Asian Russian long-term capital management crisis, some 10 years later in the late 1990s; and, of course, the 9/11 attacks in 2001. Throughout all of that, he brought a steadying presence to the workings of the financial system and a shrewd understanding of the situation and what needed to be done to address it.

I commend Chairman Greenspan for bringing greater transparency into the workings of the Federal Reserve system, something which Dr. Bernanke has indicated he intends to continue and support, and Chairman Greenspan's rejection of rigid policymaking, rejecting the idea that there was a rigid formula or ideology by which you could establish a monetary policy. In particular, he was able to push the limits on lowering unemployment and providing jobs while still being able to control inflation. As a result we were able to get the unemployment rate down to levels that everyone previously had argued would lead to a spurt of inflation. Chairman Greenspan thought that wouldn't happen. It didn't happen. Now we have established different benchmarks in terms of monetary policy.

Dr. Bernanke, whose nomination is before us, is no stranger to the Senate. This is the fourth time in 3 years that we have been called upon to consider his nomination to a very significant position. In 2002, he was nominated to serve as a member of the Federal Reserve Board of Governors. He was renominated to that position in the following year. In 2005, he was nominated to serve as Chairman of the President's Council of Economic Advisers. Today, we have his nomination to serve as Chairman for a term of 4 years and as a Governor for a term of 14 years.

There is no question about Dr. Bernanke's qualifications for the position to which he has been nominated. He has served with distinction on the Federal Reserve Board from all accounts. He has had direct experience of economic policymaking at the Council of Economic Advisers and he has a very distinguished academic and scholarly background with a B.A. in economics from Harvard and a Ph.D. in economics from MIT. He has been on the faculty at MIT and at Stanford. Most recently, of course, he was at Princeton, where he served as chair of the economics department from 1996 to 2002, a department recognized as one of the very best, if not the best, in the country.

He commands great respect from his peers in the profession and I think great respect from all who have come in contact with him.

I do, though, want to take a moment to speak a bit about the seriousness of the economic challenges we face and which Dr. Bernanke will face as he assumes this important responsibility. We have seen the weakest recovery in our labor market of any post recessionary period since World War II—that is, in 60 years. While we have had some recent improvement, compared with recoveries from previous recessions, we have fallen well short. Furthermore, real wages have fallen over the past few years for middle class and working Americans.

Meanwhile, U.S. economic policy has been marked by a recklessness in its reliance on borrowing on the apparent assumption that substantial borrowing at home and abroad can go on and on and will always remain a continuing option for us. The consequence of this is that we are running dangerous current account deficits and substantial budget deficits in amounts that dwarf anything we have previously experienced. Many observers think that these deficits—the fiscal deficit and the current account deficit threaten our economy and our ability to deal with the challenges of the future.

Mr. President, the most recent figures indicate that economic growth has slowed to almost a crawl over the past 3 months. It was just over 1 percent in the last quarter of last year. That is the lowest rate of growth since 2002, and but for the buildup of inventories that took place in the fourth quarter, economic activity fell by three-tenths of 1 percent. So it was only the inventory accumulation that kept us from experiencing negative economic growth.

Mr. Bernanke, along with his colleagues at the Fed and those on the Open Market Committee, will face questions concerning the conduct of monetary policy. Of course, monetary policy doesn't exist in a vacuum. It plays a significant role in determining the shape and direction of the economy. Therefore, we need to consider it in the broader context. In fact, the Federal Reserve Act clearly mandates two goals: maximum employment and stable prices. Those goals are set out in the Federal Reserve Act and constitute the guidance and direction from the Congress to the Federal Reserve for the objectives in the conduct of monetary policy.

The act says:

> The Board of Governors of the Federal Reserve system and the Federal Open Market Committee shall maintain long-run growth of the monetary and credit aggregates commensurate with the economy's long-run potential to increase production so as to promote effectively goals of maximum employment, stable prices, and moderate long-term interest rates.

Accomplishing the Fed's dual mandate is the most important responsibility of the Chairman of the Federal Reserve. The experience of the 1990s, with unemployment down at 4 percent and inflation below 3 percent, demonstrated that these goals can be harmonized, unlike the assertion by some that they are inherently in conflict. Dr. Bernanke was pressed on this point in his confirmation hearing because he has been a proponent of what is called "inflation targeting," which requires the Fed to set a specific numeric target for inflation, announce that target to the markets and then manage the economy with the objective of reaching that target.

I want to underscore the importance of the Fed honoring its statutory dual mandate and not replacing it with a policy of inflation targeting. We must be concerned that if a numerical figure were to be set for inflation to the detriment of other considerations, employment foremost among them, policymaking would shift and so, too, would the debate about the health and strength of the economy. I fear that the focus of the debate would become not whether the Fed was successful in meeting the dual mandate, but rather the Fed's one-sided success or failure in reaching a numerical inflation goal.

Chairman Greenspan himself has made this point. Bloomberg News recently reported:

> Fed Chairman Alan Greenspan has rejected adopting a target, saying it would rob U.S. policymakers of the flexibility they need to respond to developments in a rapidly changing economy.

I was, therefore, somewhat reassured when at his confirmation hearing Dr. Bernanke told the Banking Committee that he "subscribes entirely to the Humphrey-Hawkins mandate," which puts employment growth and output growth on a fully equal footing with inflation in terms of the Federal Reserve's objectives. Furthermore he went on to say, "I would not be interested in pursuing that matter"—referring to inflation targeting—"if I thought it involved changing the mandate of the Federal Reserve."

Mr. President, I put this issue out here only as a matter to be focused on as we move ahead into the future. Dr. Bernanke indicated that it was not his intention to seek changes in the Federal Reserve Act. I think that is a wise and prudent course to follow. How much time remains?

The PRESIDING OFFICER. The Senator has 14 minutes 20 seconds remaining.

Mr. SARBANES. I yield myself an additional 3 minutes. We learned last week that our economy slowed dramatically over the past 3 months to a growth rate of 1.1 percent, the slowest growth level in the past 3 years and, obviously, insufficient to meet our needs. Moreover, as I noted, even that modest growth was based entirely on inventory growth, which is a one-time shot for the economy and not a sustainable basis for growth.

The current unemployment rate of about 5 percent obscures the fact that the job creation during the course of this administration is the worst since the Hoover administration. In other words, every previous administration since that of Herbert Hoover has produced more jobs than this administration has produced. In fact, real wages are down for a great number of Americans, and it is little wonder that working Americans are concerned about their economic future.

Given these factors and the potential problems with our record level of deficits and debt at home and abroad, I urge the Fed to consider taking a pause from what has been a steady upward push in interest rates. We have had 13 successive increases in interest rates. Short-term rates have gone from 1 percent to 4.25 percent. We had 1-percent growth in the economy last quarter.

Furthermore, let me note two or three other serious issues. One is our current account deficit. Our international accounts are steeply imbalanced. We expect the current account deficit to approach $800 billion for 2005, in excess of 6 percent of GDP. We are borrowing from abroad over $2 billion on a daily basis to finance this deficit, and there is a broad consensus among economic experts that current account deficits of this magnitude are not sustainable. We will be obligated to pay this debt out into the future, which means it will come right out of the standard of living at home. Warren Buffet, talking about this situation, warned that we risk becoming what he called a "sharecropper's society."

Furthermore, as we continue to fall deeper into debt with the rest of the world, we are experiencing growing imbalances here at home. Real wages for the majority of working Americans have declined, while the real incomes of the wealthiest have increased astronomically. A recent Bloomberg News story observed that U.S. wages are lagging inflation and, even with unemployment near a 4-year low, workers have little leverage to demand higher pay. Other articles have reported the record bonuses that are now being given out on Wall Street. In fact, Chairman Greenspan in testimony before the committee stated:

> I think the income distribution issue is very critical because you can't have a significant inequality of income and expect to have support for the type of institutions which have made this country great.

Mr. President, I also note the Fed's responsibility for carrying out important supervisory and regulatory authority over the safety and soundness of the Nation's banking and financial system. In the area of consumer protection, the Fed has broad jurisdiction over a host of consumer laws—the Community Reinvestment Act, Truth in Lending Act, Truth in Savings Act, Home Mortgage Disclosure Act, Electronic Funds Transfer Act, the Equal Credit Opportunity Act, and the Homeowners Equity Protection Act. These are major responsibilities of the Fed over and above its monetary policy responsibilities.

Finally, as I indicated, I intend to vote for this nominee. I think this nominee is extremely well qualified. He will assume the chairmanship at a time when the economy faces problems that have serious implications for our future economic health and the prospect of a rising standard of living for working Americans. In the current climate, our Nation will be well served by a policy of prudence and independent thought on the part of the Federal Reserve. I am hopeful that Dr. Bernanke will draw upon his distinguished work as an academic economist and his experience as a policymaker at the highest level of the Federal Government to make a prudent and independent policy the hallmark of the Fed in coming years.

Mr. DOMENICI. Mr. President, I rise today to express my support for the nomination of Dr. Ben Bernanke to be Chairman of the Federal Reserve. The Federal Reserve, or the Fed as it is commonly known, was created by Congress over 90 years ago to create a safe and stable financial system for the American people. The Chairman of the Federal Reserve must be a person of sound and prudent judgment and strong character. Throughout his academic and professional career, Dr. Bernanke has exhibited all these traits and I laud President Bush for nominating him to this important public position.

For the past 18 years, Americans have become accustomed to the sound analysis and policy judgments of outgoing Chairman Alan Greenspan. During this period, we as a nation have experienced several transformational events. The stock market crashed in 1987, a mere 2 months into Chairman Greenspan's tenure, and we have also dealt with financial crises in Asia, Latin American, and even closer, Mexico. The country has also suffered major natural disasters and terrorist attacks on our homeland. Throughout these occasions, Chairman Greenspan guided our Nation's financial markets with astute analyses and sound policy decisions. As a result, our economy has endured a number of shocks and continues to remerge from each stronger than it was before.

In his hearings before the Senate, Dr. Bernanke displayed the candor and intellectual gravitas that has endeared him to colleagues and policymakers throughout his long and distinguished career. Dr. Bernanke was graduated from Harvard College with a bachelor's degree and he later went on to earn a doctorate from the Massachusetts Institute of Technology. Since then he has taught economics to students at some of America's most prestigious universities and has become a highly regarded scholar of banking and monetary policy. Dr. Bernanke has a history of public service, having served on his local school board in Montgomery Township, NJ, the U.S. Census Advisory Board, and most recently the Council of Economic Advisers.

Our economy faces a number of challenges in the near future. Some of which include the pressures on the Social Security system, rising health care costs, and stresses on the Federal budget. Dr. Bernanke promises to bring a sound, fair, and nonpartisan economic adviser to the President and Congress on a number of macroeconomic matters. I laud his desire to continue pursuing policies aimed at maximum employment and control over inflation.

Dr. Bernanke's qualifications for this job are impeccable, and I ask my colleagues to join me in supporting his nomination to be the fourteenth Chairman of the Federal Reserve.

Mr. CHAMBLISS. Mr. President, I rise today in support of the nomination of a fellow Georgian, Dr. Ben Bernanke, to serve as not only a member of the Board of Governors of the Federal Reserve System, but to succeed Dr. Alan Greenspan as the next Chairman of the Board.

Dr. Greenspan has served America well for more than 18 years. During his service as Chairman, he guided the U.S. economy through a number of challenging hurdles including the stock market crash of 1987, the financial crises in Mexico and Asia, recessions in the United States and other spikes in the economy from corporate scandals, terrorist attacks, and natural disasters. Dr. Greenspan's tenure also includes the longest economic expansion in U.S. history which lasted from 1991–2001. For these reasons, it is clear why many refer to Chairman Greenspan as one of the greatest central bankers of all time.

While his footsteps will be difficult to follow, I am fully confident that Dr. Bernanke will continue Chairman Greenspan's legacy by guiding our economy in the right direction, and making the best decisions not only for the American people, but for the role of the United States in the global marketplace.

The Federal Reserve Board guides the Nation and its economy with a safe, flexible, and stable monetary and financial system. As the U.S economy continues to grow, so does the role of the Federal Reserve Board in the global marketplace. Therefore, the qualifications for the Chairman of the Federal Reserve System must be held to the highest standard. I feel Dr. Bernanke's impeccable qualifications and financial expertise make him an excellent candidate to succeed Dr. Greenspan.

Dr. Bernanke graduated from Harvard University with the highest honors and later received his Ph.D. in Economics from the Massachusetts Institute of Technology. Most recently he served as Chairman of the President's Council of Economic Advisers, CEA, where he "provided the President with objective economic analysis and advice on the development and implementation of a wide range of domestic and international economic policy issues." Prior to serving as Chairman of the CEA, Dr. Bernanke served 4 years on the Board of Governors of the Federal Reserve System.

Dr. Bernanke's expertise is well respected in the academic community. He was a professor of Economics at Stanford University and later served as a professor of Economics and Public Affairs at Princeton University, where he also served as Chairman of their Economics department for 6 years. Dr.

Bernanke also served as the Director of the Monetary Economics Program of the National Bureau of Economics Research, as a member of the National Bureau of Economic Research's Business Cycle Dating Committee, and he has also worked for two terms as a member of New Jersey's Montgomery Township Board of Education, and as the Editor of the American Economic Review.

Dr. Bernanke is also one of the most cited authors in the financial community. He has also given several important lectures at the London School of Economics on monetary theory and monetary policy. Dr. Bernanke has also been the recipient of many prestigious fellowships and awards including the renowned Guggenheim Fellowship, the Sloan Fellowship and the Econometric Society Fellowship.

I have no doubt that with such an impressive background, Dr. Bernanke will serve with impartiality and will continue to guide our economy, as Dr. Greenspan has done for the last 18 years, down a stable and prosperous path. I urge my colleagues to join me in support of this distinguished nominee, and confirm Dr. Bernanke to the Board of Governors, and as Chairman of the Board for the next 4 years.

Mr. HATCH. Mr. President, I would like to take this chance to say a few words of thanks to Alan Greenspan for his service to our Government and to wish him well as he leaves the Federal Reserve. Alan Greenspan has done a commendable job as Chair of the Fed, and we are, indeed, fortunate to have had him in that position for the past 18 and a half years.

The previous two decades have seen an amazingly large number of crises that have impacted financial markets. The stock market crash of 1987, the Savings and Loan collapse and subsequent bailout in 1990, the Mexican bond crisis of 1994, the Asian financial panic in 1997, Russia's bond default and the subsequent collapse of Long Term Capital Management in 1998, the collapse of the tech bubble in 2000, and the implosion of Enron in 2001.

In recent years, we have witnessed a sharp rise in housing prices, along with a concomitant chorus of financial experts exhorting him to "do something." Besides these various financial crises, the United States has also been the victim of a massive terrorist attack in 2001, which shut down financial markets for over a week, and we were forced to intervene militarily in Kuwait, Afghanistan, and Iraq.

Despite the staggering number of potentially catastrophic events, the United States has had only two short recessions in the past 20 years, a record that is to me simply amazing. Of course, it would be wrong to give the Federal Reserve and Alan Greenspan full credit for the prosperous conditions of the previous quarter century, but it is impossible to conceive of us achieving this level of prosperity without a vigilant and responsible Federal Reserve.

The main contribution of Chairman Greenspan and the Federal Reserve in the past 18½ years has been the taming of inflation. The effort to control this scourge began with Paul Volker, of course, but the specter of inflation does not die easily. It took Alan Greenspan another 10 or 15 years to finally rid the financial markets of the fear that as the economy expands, so must the rate of inflation. The evidence of high inflation's demise can be seen merely by looking at mortgage rates. The record low interest rates of the past few years has allowed tens of thousands of families in my home State of Utah to afford to buy their own home, something that was beyond the reach of many before.

Chairman Greenspan's success in taming inflation and creating a stable economic climate has paved the way for our next Fed Chairman, Ben Bernanke, to explicitly state that low inflation is his primary goal. Indeed, countries all over the world are following our lead of having an independent central bank dedicated to a stable price system, modeled after the one in the United States. This is no small credit to the ability of Mr. Greenspan and the capable economists employed by the Federal Reserve.

The pressure on the Chair of the Federal Reserve to "do something" in response to crises, both real or perceived, can be great. It is to his credit that Chairman Greenspan has been able to resist many of those calls and avoided meddling in situations where the potential economic benefits from such action were slight, but the potential costs heavy. In central banking, inaction is most often the better part of valor.

At this time, I would also like to express my enthusiastic support for the nomination of Ben Bernanke to be the next Chairman of the Federal Reserve's Board of Governors. Mr. Bernanke has served quite admirably for the past 4 years both as a member of the Board of Governors and for the past 9 months as the head of the President's Council of Economic Advisers. He is a world-renowned scholar on monetary economics and the banking industry, and is one of the preeminent experts on the causes and consequences of the Great Depression.

Before Dr. Bernanke came to Washington, he was a professor of economics at Princeton University, perhaps the top school for economics in the world. He also served as its department chair for a number of years. While living in Princeton, he served on the local school board for a number of years, putting the lie to any notion that he has ever been an ivory tower academic unfamiliar with how the real world operates.

Benjamin Bernanke brings a gifted intellect, a wide variety of relevant experience, and an understanding of the importance of what the Federal Reserve does and the harm that it can bring to an economy. I wholeheartedly encourage my colleagues to join with me in voting for his nomination.

Mr. MENENDEZ. I rise in support of the nomination of Ben Bernanke, of my home State of New Jersey, to be the next Chairman of the Federal Reserve. Once again, New Jersey is honored that the President has nominated one of our own to serve our Nation in such a vital position.

Dr. Bernanke has a remarkable record of scholarship. He graduated from Harvard with top honors and later earned a doctorate in economics from the Massachusetts Institute of Technology, MIT. Dr. Bernanke then entered academia and has taught at some of the preeminent universities of our Nation, starting at Stanford before continuing at MIT and New York University and eventually ending as the Chairman of the Economics Department at Princeton University. He has also served our Nation with distinction in his roles at both the Council of Economic Advisers and the Federal Reserve.

As the newest member of the Senate Committee on Banking, Housing, and Urban Affairs, I look forward to working with Dr. Bernanke in ensuring that inflation remains in check, that our Nation's deficits are addressed and dealt with in a forthright manner, and that all Americans are able to successfully participate in our country's economy. He has a reputation of basing his decisions on sound economics, rather than ideology and partisanship, and I expect this to continue in his new role as Chairman.

Mr. President, I would be remiss if I did not also take this time to thank Alan Greenspan for his almost two decades of service and economic stewardship as the outgoing Chairman.

I am quite pleased that the President has nominated my fellow New Jerseyan, Dr. Bernanke, to be Chairman of the Federal Reserve and am confident that he will do a good job in his new position, while making our shared State of New Jersey proud.

Mr. President, I yield the floor.

Mr. SHELBY. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 18 minutes 43 seconds remaining. The Senator from Maryland has 8 minutes 5 seconds remaining.

Mr. SHELBY. Does the Senator wish to continue?

Mr. SARBANES. I will yield half of the remaining time to Senator DORGAN and the other half to Senator SCHUMER.

The PRESIDING OFFICER. The Senator from New York is recognized for 4 minutes 17 seconds.

Mr. SCHUMER. Thank you, Mr. President. I rise in strong support of the nomination of Mr. Bernanke to become Chairman of the Federal Reserve. First, I would be remiss if I didn't say a few words of congratulations to Alan Greenspan, who has truly been a giant in the field. He will be missed. He hovered over our economy similar to a caring guardian and has done an incredibly fine job. Every American of every political stripe should be grateful that Alan Greenspan served so well and so long. I called him yesterday to wish him well. He will do just fine. He is 79 and he is entitled to retire. I, for one, with no aspersions on Mr. Bernanke, wish he would have even stayed a little longer.

I think Mr. Bernanke is extremely well qualified for the job for a number of reasons. That is why I strongly support his nomination. He is erudite, he is smart, and he is one of those rare people who has made monetary policy his life's work. Many of us would not choose to do that, but he did and he has done it very well.

Second, Mr. Bernanke has assured us that he will follow the policies of Chairman Greenspan. That bespeaks well of his wisdom because Chairman Greenspan did such a superb job managing monetary policy. Anybody who says that starts with a leg up.

Third, he is not an ideologue. He is a solid, thoughtful person. He does not go to the extreme. He does not have a narrow theory that governs the way economic policy should be made. He assured us, despite some rumors to the contrary, for instance, that he would not follow a mechanistic, formulaic monetary policy. That is very important because our economy is so complicated and there are so many international considerations that you cannot be mechanistic in this changing new world, and he is not.

He is also not an ideologue in terms of general economic policy. He is not one of these people who advocate tax cuts above all, even if it plunges us into greater deficits. He is a thoughtful, moderate man. He is the right choice for the job.

Senator GRAHAM and I have been very concerned about the balance of trade with China and them pegging their currency at a low rate. He showed sympathy—in fact, greater sympathy than many—when we talked about that with him.

There are great challenges for Chairman Bernanke. There is the internationalization of the economy. That affects monetary policy because, as I said, there are loopbacks. What happens with the yen and the yuan and the Euro affects the dollar in ways that did not occur before when so little of our economy was based on international trade.

He has to deal with another problem in our society—the agglomeration of wealth to the top. Our society cannot continue with the top 10 percent that agglomerates most of the wealth. I hope he will speak out on issues beyond monetary policy because we don't have any respected voices who do that without a partisan edge, other than the Chairman of the Fed.

I make one final point. Contrast the nomination of Dr. Bernanke and Judge Alito. Dr. Bernanke is a moderate. There was consultation, and he is getting every Democratic vote. Judge Alito was a partisan nomination. There was no consultation. He is regarded by many of us on key issues at the extreme, and we had a divided vote. I hope and pray that in the future, the President will follow the nomination process more like he did with Dr. Bernanke, a unifying choice, rather than like Judge Alito, a partisan choice.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, I will be brief. I had thought I agreed to the unanimous consent request in exchange for 10 minutes to speak on this nomination, but if that time does not exist, I will truncate my remarks.

Mr. SHELBY. Mr. President, I will be glad to yield to the Senator from North Dakota some of my time.

Mr. DORGAN. Mr. President, in that case, let me compliment the chairman and ranking member, which I would have done in any event. Let me spend more time complimenting them for their work.

The Banking Committee is very important in the Senate. It takes a very serious view of these issues and I know did a very thorough job in the hearings held late last year on this nomination for Chairman of the Federal Reserve Board. I thank the chairman for his courtesy, and I thank the chairman and the ranking member for their work, not just on this nomination but on so many important issues.

I don't come to the Chamber to oppose Mr. Bernanke's nomination. That is not my purpose. I wish him well. I want him to succeed. He is going to be confirmed almost unanimously today by the Senate.

Chairman Greenspan and I have had very significant differences over a long period of time. But I wish him well. I want to thank him for his service to our country, even if we have different views about monetary policy.

I know people will talk about big shoes to fill. Whenever someone leaves, there are big shoes to fill. I don't know if the shoes are big, little, Ferragamos or Payless—but they are shoes. We have someone else answering to the call of public service, in this case someone well qualified.

Mr. Bernanke has served at the Federal Reserve Board dealing with monetary policy and at the White House dealing with fiscal policy for President Bush. The Senate will confirm him today, and he will go back to the Federal Reserve Board as Chairman.

What I wanted to say today is that we have the twin issues of fiscal policy and monetary policy, and there needs to be some responsibility to understand how they work together to improve this country's future. I am very concerned about this country's economic future for reasons that Senator SARBANES touched on a moment ago. I wish to describe it to my colleagues.

I think the Federal Reserve Board for some long while—and, yes, it was under Chairman Greenspan's stewardship—has been providing green lights saying, It is OK, go right ahead, to a series of fiscal policy moves which has put us deep in debt. It is not just in budget policy where we have these deep and abiding long-term deficits and, therefore, increases in the Federal debt. We also have large trade deficits. In about a week and a half, we will have an announcement about last year's trade deficit. My expectation is it is going to be about $750 billion, the highest in history. That debt is devastating to this country. It is unsustainable. At the same time, in fiscal policy, the Federal debt will increase in this fiscal year somewhere around $650 billion.

I wish to put up a chart that shows what is happening. This is the wall of debt in fiscal policy. You will see year after year after year, going from 2006 to 2011, up to $12 trillion in fiscal policy debt. Extend this another 5 years, and you get to $16 trillion. This is a relentless wave of bad news in fiscal policy that we cannot continue. This is just fiscal policy. The trade policy debt looks even worse. Its growth is even more dramatic. Of course, that relates to the issues of jobs.

Last week, we heard Ford Motor say: Oh, by the way, we are going to cut 30,000 workers. Several months ago, it was General Motors saying: By the way, we are going to cut 20,000 to 30,000 workers. Four months before that, it was General Motors calling in the heads of the companies that provide the General Motors' parts, 300 people in a room, and the person in charge of parts for General Motors said this to them: You need, when making parts for General Motors cars, to outsource those jobs to China to get the costs down.

Where is all this heading? Ford, General Motors, parts to China, $750 billion trade deficit in a year? It is headed in the wrong direction, and we are today selecting one person who is going to be in a position of very significant influence in our Government about the direction of this country. Mr. Bernanke will play a significant role in determining the amount of economic growth and opportunity that will exist in the future, what kind of good jobs we will have, and how many.

Our fiscal policy, judged by anyone soberly looking at the facts, is seriously off track. I don't blame Mr.

Bernanke for that, although he most recently worked at the White House in the fiscal policy arena. It is not a question of blame, it is a proposition that all of us, Republicans and Democrats, liberals, conservatives, moderates, must finally come together to say this is unsustainable.

Our country is off track in fiscal policy and trade policy. This debt will have consequences. And in the construct of monetary policy, it is critically important that Mr. Bernanke understand these messages and not do as has been done in most recent years and put up a big old green light and say to friends in Congress: Oh, by the way, go ahead, it will all work out; be happy. Fine. That is exactly what has happened in recent years, with a couple of exceptions.

The Federal Reserve Board is a strong central bank that is largely accountable to no one. I know, go back to the nineteen-teens when the Federal Reserve Board was created, and it was said on the floor of the Senate, we are not creating a central bank, we are not creating a strong central bank, and we are not for certain creating a strong central bank accountable to no one, but that's exactly what happened. You can make the case over a long period of time that things have gone pretty well with monetary policy here, fiscal policy there.

My colleague from Maryland talks about economic stabilizers. You can talk about some successes. Our recessions have been less deep in recent years because of economic stabilizers and some thoughtful approaches to dealing with monetary policy and fiscal policy. But I believe it is very important for us to understand where we are. If you don't understand where you are at the moment, it is pretty hard to figure out where you are going.

As we consider the nomination of one of the most important people in this country with respect to economic policy, a new Chairman of the Federal Reserve Board, I call attention once again to the fact that we have very serious, abiding, long-term economic problems which, unless resolved, will injure this country's long-term opportunity to remain a world economic power. It is that serious.

One final point. There is a little fund down at the Federal Reserve Board to which I also wish to call attention. I assume Mr. Bernanke knows of it. It is a fund in which $12.9 billion exists. It is a fund at the Federal Reserve Board which is called a surplus account. The Federal Reserve Board, I remind everyone, effectively creates money. It does not need a rainy-day fund because it will never lose money. It has not suffered an annual loss in some 90 years. And yet the Federal Reserve Board has a rainy-day fund, a surplus fund, which has grown now to $12.9 billion.

I believe the Fed and the Congress ought to take a hard look at that and ask themselves, given the fact we are choking on debt these days, is there any reason that the Federal Reserve should continue to have a surplus fund of $12.9 billion? The Fed wants a fund apparently because it might lose money someday. The Fed makes money. The Fed creates money. The Fed does not need $12.9 billion in a surplus account.

So as Mr. Bernanke receives his approval of the Senate today, my hope is he might, with Members of Congress, take a look at that issue. Senator REID and I and others asked for a GAO report on that 10 years ago now—and the Fed blithely ignores the consequences of any of that and does what it wants to do. In fact, at that point, the reserve or surplus rainy-day fund was $4.5 billion. Not only did the criticism of that fund not deter them, it has grown now to nearly triple that amount, in a rainy-day fund in a climate where it never rains. I am sorry, but Mr. Bernanke should take a good, hard look at that, and so should the Congress.

Having said all that, pointing out especially that we have very abiding and serious fiscal policy problems and trade policy problems, my hope is that Mr. Bernanke, in seizing the reins of our monetary policy in this country as Chairman of the Federal Reserve Board, has a successful tenure. I wish him well. I want him to do well. I want our country to do well. I come to the Chamber only to ask that all of us finally join together, including the Chairman of the Federal Reserve Board, to see where we are and where we must be if we want a strong America in the future, one that grows and finds opportunities for our children and grandchildren.

I again thank my two colleagues for the time. I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SHELBY. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SHELBY. Mr. President, I reserve the remainder of my time at this point.

The PRESIDING OFFICER. The Senator from Alabama reserves the remainder of his time, 11 minutes 17 seconds.

The Senator from Georgia is recognized.

(The remarks of Mr. ISAKSON and Mr. OBAMA are printed in today's RECORD under "Morning Business.")

Mr. OBAMA. Mr. President, today I am introducing a resolution honoring the life and contributions of Coretta Scott King. I hope all my colleagues will join me in this effort.

Mr. SARBANES. Will the Senator yield? Will the Senator place me on his resolution?

Mr. OBAMA. I am happy to.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will stand in recess until 2:15.

Thereupon, the Senate, at 12:26 p.m., recessed until 2:15 p.m., and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

NOMINATIONS OF BEN S. BERNANKE TO BE A MEMBER AND CHAIRMAN OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM—Continued

Mr. BUNNING. Mr. President, I rise today to oppose the nomination of Dr. Ben Bernanke to be Chairman of the Board of Governors of the Federal Reserve. I am not one who relishes opposing President Bush's nominees or his policies. I have been supportive of an overwhelming majority of them, but I have opposed a nominee or two on a few occasions. This is one of those rare occurrences.

Dr. Bernanke has an impressive resume and career. He received his bachelor of arts in economics in 1975 from Harvard University. From there he headed off to Massachusetts Institute of Technology where he received his Ph.D. in economics in 1979. He was assistant professor of economics in the graduate School of Business at Stanford University from 1979 to 1983 and then became associate professor of economics at Stanford's graduate School of Business from 1983 to 1985.

Ben Bernanke then popped over to Princeton University. There he became a professor of economics and public affairs from 1985 to 1994. He stayed at Princeton and ultimately became chair of its economic department until 2002. He was then appointed to serve as a member of the Board of Governors of the Federal Reserve System by President Bush.

Dr. Bernanke was then tapped as chairman of the President's Council of Economic Advisers and he has held that post since June of 2005.

Of course, along with this academic and employment résumé, Dr. Bernanke has received many honors and fellowships along the way. He has also published many articles on a wide variety of economic issues, articles relating to monetary policy, inflation targeting, microeconomics, central banking, and many other issues relating to economic and monetary theories.

This all sounds very impressive, and it is. It is an economic elitist dream. For some, it can be a nightmare. I hope he does not hold too many of the ivorytowered theories of academia for real-world wisdom as he heads off to be the next Fed Chairman.

I voted for Ben Bernanke in the Banking Committee and in the Senate to be the Fed Governor in 2002. I supported him to the Board of Governors at the Fed because of a private meeting we had.

Over the years I have had some great concern about the Federal Reserve and the way it operates. One of my biggest concerns is that the Federal Open Market Committee, the FOMC, suffers from "group think." It seems to me no one ever challenges the Fed Chairman. I rarely, if ever, witnessed or heard any of the Fed Governors publicly challenging or disagreeing with Chairman Alan Greenspan.

Chairman Greenspan has done an admirable job during his tenure at the Federal Reserve. He had a difficult task. Part of his job was to predict the future. However, I believe Chairman Greenspan has always erred on the side of raising interest rates. I am not alone with this opinion. History has shown he has made many mistakes in raising rates for too long. My problem is when he did that, not one Governor raised their voice. Instead, they either bit their tongue out of fear they would be viewed as not a team player or perhaps what might be worse is that they all agreed with each other and simply reinforced bad ideas.

Diversity of thought and dissension is, indeed, necessary within the Federal Reserve. After all, the Chairman of the Fed and its Board of Governors essentially have the greatest power over shaping our economy. And the economy affects every American.

I understand the argument that to have an FOMC rife with dissension might not be the best for the markets. I have heard the argument that it would rattle the markets and send Wall Street into a tizzy. Yes, overall, it is important the FOMC speak with one voice. However, the pendulum can swing too far from dissent. My fear is that the FOMC under Chairman Greenspan has arguably suffered from group think and that the FOMC has unintentionally become a rubberstamp for Chairman Greenspan's recommendations.

We need an FOMC that is truly independent. It must be independent from the Congress and the executive branch. We cannot have a Fed that is influenced by the President. We certainly know the Fed does not pay any attention to Congress. For the FOMC to function properly, its members must challenge the Chairman. No Chairman should be able to dominate. There must be intellectual sparring so all members are heard and the FOMC can come up with the best decision for the country.

The Federal Open Market Committee needs independent voices. Dr. Bernanke promised me he would be an independent voice as a member of the FOMC. He promised me he would stand up to the Chairman if he thought he was being rolled. Sadly, I have not seen very much evidence of him being independent. I never saw him vote, not once, against the Chairman. I never, ever saw him challenge the Chairman. And as far as I can tell, they never had a disagreement.

As important as it is for the FOMC member to be independent, it is more important the Chairman be independent. The Fed Chairman must not give in to outside pressures. Monetary policy decisions must be made for the good of the country and not for political considerations. When Dr. Bernanke was a Fed Governor, I did not witness him showing independence from the Chairman at all. During his tenure as a Fed Governor, there were 23 votes taken by the FOMC committee. Not once did Dr. Bernanke vote against Chairman Greenspan. I don't think that is independence; that is group think. He did not show independence as a Fed Governor. How can we be sure he will be an independent person as Chairman of the Fed?

The pressures to go along for a quick political fix will be even greater. Will he stand up to the President? Will he stand up to the New York Times, the Washington Post, the Wall Street Journal? Will he stand up to the business and economic pundits in the broadcast media or anyone else when they call for rate increases or decreases? I am not convinced he will. The past is prologue. I hope I am wrong.

It is mainly for this reason that in 2005 I opposed his confirmation as Chairman of the President's Council of Economic Advisers. I hope Ben Bernanke proves to be a fine Chairman of the Federal Reserve. I hope he uses his vast knowledge of our economy to make correct monetary policy decisions. I hope he gains the trust of Wall Street, much like the last two chairmen.

Dr. Bernanke has talked about bringing more transparency to the Fed. I hope he does this. I hope he continues to be plain spoken.

One other reason I oppose Dr. Bernanke is because he says he will continue the policies of Chairman Greenspan. That does not sit well with me. I hope this is not completely true. I hope Ben Bernanke refrains from talking about things outside the purview of the Federal Reserve. One of my biggest problems with Chairman Greenspan was that he talked about everything under the sun: tax policy, trade deficits, budgets, fiscal policy, the Nation's oil patch. The Fed's jurisdiction is narrowly scoped to monetary policy, but if you asked Chairman Greenspan about monetary policy, he would talk about everything under the Sun without ever answering your questions. If you asked him something that had nothing to do with monetary policy, he was more than happy to give you a clear and concise answer. Hopefully, Dr. Bernanke will be a different kind of chairman in that respect. Hopefully, he will talk only about monetary policy and not interfere with tax and fiscal policy. Those matters should be left to the legislative branch and other areas of the executive branch.

Also, Chairman Greenspan's problems were not just the fact that he talked outside the monetary policy arena. Yes, Chairman Greenspan's tenure held relatively low inflation with growing economic conditions. However, his record came about from the creation of a fat market bubble that ultimately popped. Then there was a housing bubble. It led to an unbalanced economic recovery fueled by cash raised from soaring home prices. This resulted in record household debt and negative consumer savings rates.

We also witnessed the endless bailouts of Chairman Greenspan. There was the 1997 Fed bailout of the Asian crisis. There was the long-term capital management bailout in 1998. We had a financial crisis and the Fed got involved with Mexico and all this led to a huge trade and Federal budget deficits. This was all further affected by record energy prices which raised the cost of goods and services.

After almost 20 years, Chairman Greenspan is now acknowledging some of the bad consequences of his decisions. He said inflation may be creeping in. But Chairman Greenspan leaves knowing that his mess will fall to his apprentice, Ben Bernanke.

Yes, Dr. Bernanke has an impressive resume. But the question is whether he knows what is waiting for him around each economic corner. It is indeed ironic that Dr. Bernanke finds it necessary to continue the Greenspan policies. I hope this is not true. This would be disastrous. These policies have not been the best for our economy.

I hope Dr. Bernanke does not follow too closely in the footsteps of Chairman Greenspan in his approaches. But regardless, he just might inherit a mess from Chairman Greenspan. If so, I hope he can clean it up.

I hope there is no damaging recession or financial crisis looming. If so, I hope Ben Bernanke does not live up to his nickname of "Helicopter Ben," and throw the U.S. mint's printing presses into overdrive.

I have no personal qualms with Dr. Bernanke. We simply differ on opinions. I do not relish opposing President Bush's nominees. But, regretfully, I must oppose Dr. Ben Bernanke to be Chairman of the Federal Reserve.

Mr. President, I ask unanimous consent that I be recorded as being opposed to Ben Bernanke's nomination upon its approval.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUNNING. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SHELBY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SHELBY. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator yields back his time.

Does the Senator from Kentucky yield back his time?

He does.

The question is on Calendar No. 440. The question is, Will the Senate advise and consent to the nomination of Ben S. Bernanke, of New Jersey, to be a member of the Board of Governors of the Federal Reserve System?

The nomination was confirmed.

Mr. SHELBY. I move to reconsider the vote.

Mr. BUNNING. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on Calendar No. 441. The question is, Will the Senate advise and consent to the nomination of Ben S. Bernanke, of New Jersey, to be Chairman of the Board of Governors of the Federal Reserve System?

The nomination was confirmed.

Mr. SHELBY. I move to reconsider the vote.

Mr. BUNNING. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SHELBY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WYDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. COLEMAN). Without objection, it is so ordered.

Under the previous order, the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

The Senator from Oregon.

Mr. WYDEN. Mr. President, I ask unanimous consent to speak for up to 30 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

TAXES AND HEALTH CARE

Mr. WYDEN. Mr. President, while Senators talk about prebuttal and rebuttal speeches before the State of the Union speech, I hear middle-class folks saying "drop the buts and make our lives easier." I know because in January, when I was home, I held 21 community meetings. The big issues then were those where the second word was "bill"—medical bills, gas bills, heating bills, mortgage bills, college bills, and especially tax bills.

It is not hard to see why those are the issues. Middle-class folks in this country are not keeping up. Even their wages do not keep up with inflation. And while they want a better life for their kids—the way their parents wanted for them—they stay up nights worrying that they cannot make it happen.

So today I want to spend a few minutes discussing just two issues: taxes and health care. I believe in each of these two issues Congress could work on a bipartisan basis for genuine relief for the middle class. We may not hear about it tonight, but as middle-class folks begin pulling together their 1099s, their W-2s, their schedule this and schedule that, and all of what they have to do to comply with filling out their tax forms, I simply wanted to come to the floor and say it does not have to be this way.

I brought, today, just part of what constitutes the regulations and rules for complying with taxes in America. One of the experts in the field told me there have been more than 14,000 amendments to the Tax Code since the last major overhaul in 1986. It comes to almost three for every working day in America.

This year, Americans are going to spend $140 billion on tax compliance. Americans are going to spend more money complying with the tax rules than the Federal government is spending on higher education in our country.

I have come to the floor today because I want to make it clear I do not think it has to be that way. I have developed an alternative. My one-page 1040 form is just 30 lines long. Take your income from all sources, subtract your deductions, take your credits, send it off to the IRS, and you can even add a note: I'm done. Have a nice day.

I filled this out myself, and that in and of itself is a little bit of a revolution because it has been a long time since a member of the Senate Finance Committee or someone in the other body on the Ways and Means Committee could fill out their own tax form.

What happens today? More than three million people, for example, have to essentially fill out their taxes twice. They have that alternative minimum tax staring at them. Scores of families are pulling together shoe boxes full of receipts, shouting across the living room, "Honey, can you find that receipt for the copier that we bought months ago?" because part of it is for business and part of it was used for the family. I say it does not have to be this way.

I have shown that you can have a one-page 1040 form. The President's advisory committee report that came out in the fall had a similar form—I do not happen to agree with all they did, but their one-page form isn't that much longer than mine. For purposes of Government work, we could put the two of them together and really do something meaningful on a bipartisan basis to simplify the Tax Code, to use that $140 billion now spent on compliance on something I know the Presiding Officer has a great interest in—education and infrastructure and other areas that are of great importance to our country.

But on top of simplifying the Tax Code, there is more that has to be done to help the middle class. I suspect we are not going to hear about it tonight, but Warren Buffett, the second wealthiest man in America, pays a lot lower tax rate than his receptionist. That is because there is a double standard.

We hit people a lot harder when they work for wages than when they make their money off investments. I am not interested in soaking anybody. I believe in markets. I believe in creating wealth. But something is out of whack when middle-class folks have to spend the time to figure out how to wade through all of this and spend literally much of the money they want to spend on their families on just filling out their taxes—it is not right to hammer people who work for a living.

Here is the way it works. If a cop working outside the Capitol gets a little bit of a pay raise—maybe $500—that cop pays 25 percent of the pay raise to the Federal Government in income taxes and pays Social Security payroll taxes on top of it. If, however, you make your money on investments—we want everybody to do well in that area also—you pay 15 percent of what you make on your investments in income taxes and you do not pay any Social Security payroll taxes.

There is a double standard. We discriminate against people who work for a living. In Ohio, in Oregon, across the country, if you work hard, play by the rules, and work for a wage, you get hit a lot harder than the people who make their money on investments.

I have already said I am not interested in soaking anybody. I happen to believe marginal rates are a big deal. And because I do, I have not raised the top rate in my proposal. I have three tax brackets: 15, 25, and 35 percent. So it is progressive. I have said to colleagues on the other side of the aisle, folks in the administration, there is plenty of flexibility in my proposal. If we want to make it 13, 23 and 33, I am up for that, too. We can do that in a bipartisan way.

But tonight, I suspect, instead of hearing that we ought to take on the tax bureaucracy embodied in a few of these volumes, in effect we are going to be told to re-up for business as usual. I don't think it has to be that way. I refer colleagues to what happened in 1986, 20 years ago. Then we had a Republican President, revered by millions of Americans, Ronald Reagan, who worked with Democrats, Dan Rostenkowski, Bill Bradley, Dick Gephardt. They found common ground in a proposal that has many of the same features I bring to the Senate today.

They were concerned about marginal rates. There were Democrats, such as myself, who think marginal rates are a big deal. They worked together with a Republican President to achieve a significant success. They removed a lot of clutter from the Tax Code. I wish we hadn't gone back over the last 20 years since that historic legislation and added it all back, those more than 14,000 provisions. But it happened. We all know it has a little bit to do with the lobbyists, because the lobbyists all come and ask for this particular break or another. I had one of our colleagues say to me: Ron, I don't agree with every part of your proposal, but you are right, probably every 20 years you ought to automatically cleanse the Tax Code. You automatically ought to give it a bath.

So I come tonight to say I am interested in working on a bipartisan basis to do something about all this dead wood. I would rather preserve the trees that go into all these volumes and simplify the life of middle-class folks. We have our folks talking on cell phones all day and pagers and practically tethered to the Internet. I know of young people trying to get ahead. They work 12, 14 hours a day. They come home and they are still checking their e-mail. Do we want to put them through another 30 hours of preparing their taxes?

I filled out my one-page 1040 form. I already said the President's Advisory Panel on tax reform had some good ideas. We could come up with an alternative. But we have to want to lead. We have to want to lead as President Reagan did, as Bill Bradley did. We have to say we want to do it on a bipartisan basis.

I am hopeful that if we hear tonight about business as usual on taxes, I can join with colleagues on the other side of the aisle. I have already talked to some on the Finance Committee where I am honored to serve. I have discussed it both with Chairman GRASSLEY and Senator BAUCUS, two who frankly are role models for bipartisanship.

I came today to particularly talk about how this could help middle-class folks. I am going to put in the RECORD examples of how various middle-class people would be affected. I will ask unanimous consent to print in the RECORD some examples of how my proposal would help the middle class.

Under my proposal we will have a lot of middle-class people, people making $70, $80, $90,000 a year—there are a lot of them in Ohio and Oregon—will get a significant amount of relief. Essentially, all those families who make up to $150,000 a year, primarily on wage income, maybe a little bit of investment thrown in, they are going to get real tax relief or they are going to stay about the same. I want to see us do it in a fiscally responsible way. I know this is of great concern to the Senator from Ohio. The Congressional Research Service said that it is possible to get the tax relief to millions of middle-class people that is outlined in my legislation, the Fair Flat Tax Act, and pay down the Federal deficit by $100 billion. That is clearly not all you have to do to stop the hemorrhaging of the Federal budget, but at least it is a downpayment.

The Senator from Ohio has done an awful lot of good work in terms of pay-as-you-go budgeting and taking on health care costs and some of the skyrocketing cost of entitlements. My proposal doesn't pretend to deal with all of the red ink we see in the Federal budget, but it does get real tax relief to middle-class people and does it in a fiscally responsible way, with the Congressional Research Service saying that it would pay down the Federal deficit by $100 billion over the next few years.

I will be back on the floor over the next few days and weeks trying to make the case for bipartisanship to overhaul the tax system. I don't think it is possible to continue to add a piece here and a piece there and make any sense out of all this. We will only be adding more and more volumes. For example, virtually every Senator I have talked to wants to deal with the alternative minimum tax. We know there are a lot of people being swept up in the alternative minimum tax who certainly don't consider themselves fat cats. They weren't the kind of people anybody was talking about when the AMT came into being. But we are getting to the point now where it is almost impossible to put a patch on the AMT without having that change ripple all the way through the system.

What we ought to say, on a bipartisan basis, is we can make the code simpler, flatter, and fairer. I have described today how it can be made simpler. I have a one-page 1040 form. The President's advisory commission has one that is a bit longer, but they are close enough for purposes of Government work. I have three brackets in my tax proposal: 15, 25, and 35. It is fine with me to adjust the numbers a little bit, particularly the idea of going down a couple of points for each of the brackets. The biggest challenge in terms of working out a bipartisan proposal is on the issue of fairness, because that is obviously in the eye of the beholder. What is fair to one person may not be fair to somebody else.

I want to close on one point with respect to taxes. Ronald Reagan signed a bill in 1986 that treated investment income the way wage income was treated. Ronald Reagan in 1986, working with Bill Bradley, Dick Gephardt, a host of Democrats, signed a bill that treated investment income as it treated wage income. He did it because he thought the overall set of tax brackets made sense. I happen to think mine do as well. Colleagues may have other approaches. What we know for a fact is what was done in 1986 worked. The stock market was not hampered. For colleagues on the other side of the aisle, a Republican got elected President in 1988 so no Republican was hurt by tax reform, where there was bipartisan leadership.

I come to the floor with my first comments, that while, unfortunately, we are not going to hear about comprehensive tax reform tonight, this Senator wants to make it clear that this is a cause I am not giving up on. I am going to push this at every possible opportunity. I am going to work with colleagues on the other side of the aisle. We know that you can't get anything important done unless it is bipartisan. I am going to do it because I don't think you can defend business as usual with this tax system. The simplification that I have come to argue for makes sense. Frankly, that ought to be a no-brainer for everyone. We can make the code flatter.

Let's role up our sleeves and try to come up with a system that is fairer for everybody, the way it was done back in 1986. If we can get it done—and I have the good fortune of being able to stay on the Senate Finance Committee, if the people of Oregon honor me with a chance to continue to serve there—this time I am going to fight those lobbyists who will try to go back and clutter it up. Frankly, that is what happened in 1986. Nobody really said "no" after that historic reform.

How much time do I have remaining?

The PRESIDING OFFICER. There is 10½ minutes.

Mr. WYDEN. I want to conclude on another pocketbook issue for the middle class by talking about health care. I am a Senator who believes there ought to be private choices in American health care. There are some who think that all the health care ought to be privatized, some who think that Government ought to do everything. I am one who believes there is a role for both the private sector and for Government in health care.

Unfortunately, I voted for the Medicare prescription drug program. As a former director of the Oregon Gray Panthers, I still have the welts on my back to show for it. I never conceived that the administration of this program could be so bungled. We have bedlam out there right now with seniors with advanced degrees trying to sort all this out. Again, it did not have to be this way. If, for example, the administration had at least standardized the policies a little bit so that people could compare the various prescription drug coverages available, we could have avoided this chaos. There is a model for this as well, a model used for the private health insurance supplements that seniors bought to add to their Medicare.

Before I came to Congress, I was director of the Gray Panthers. It was not uncommon for a senior to have 10, 15 private health insurance policies. We drained that swamp. Now seniors for the most part have only one Medigap policy. It meets their needs. The insurance industry has indicated it works for them. We ought to be trying to standardize or at least make more understandable the private health policies that seniors are looking at now to meet their prescription drug needs.

I have suggested this to the Secretary of Health and Human Services. To his credit, he has indicated that he is interested in pursuing it. The administration of this program didn't have to roll out this way. It could have been simpler and more understandable, if the choices that were made available to seniors had simply been structured in a clearer, more understandable way.

There is a second thing that needs to be done on health care. Senator SNOWE and I got 51 votes late last year for our legislation to lift the restriction on Medicare's right to bargain to hold down the cost of prescription medicine. The way Medicare is buying this medicine defies anything that goes on in the private sector. It is similar to somebody going to Costco and buying toilet paper one roll at a time. Nobody would shop the way Medicare is purchasing these prescription drugs.

By my count, Senator SNOWE and I now have 53 votes for our legislation to lift the restriction on Medicare bargaining. I commend a number of colleagues who have been involved. On our side of the aisle, Senators STABENOW and FEINSTEIN have done a lot of heavy lifting. Senator MCCAIN has been a wonderful supporter. We ought to pass that legislation. We ought to make it possible for Medicare to bargain to hold down the cost of medicine. I look forward to talking to our colleagues further, including the distinguished Senator in the chair.

There are other steps that ought to be taken to hold down the costs in health care. I hope we will hear about them tonight. One of the best is to make more accurate information available about how doctors and hospitals price their services.

It is possible to shop for just about anything in the United States, but you cannot shop very much for health care. It makes no sense at all. Senator CORNYN, the distinguished Senator from Texas, has a great interest in this issue. Other colleagues do as well. But if we are serious about holding down costs—I think the President will talk about cost containment tonight—let's get better, more understandable, more usable information about doctors and hospitals out to the American people. That is step No. 2.

Step No. 3 involves end-of-life care—one of the most controversial issues in American health care. As my colleagues know, I was the one who blocked the original Schiavo legislation from coming up on the floor. Let me talk about something all of us can agree on, and that is we ought to expand hospice and comfort care to deal with end-of-life services because this is something which will help us save money, will avoid some of the family tragedies that result in these horrible, polarizing kinds of problems such as we saw in the tragic Schiavo case.

There is no reason, given the fact that a growing fraction of the health care dollar gets spent in the last few months of an individual's life, that to be both compassionate and hold down health care costs, Republicans and Democrats cannot join hands on expanding hospice care as an alternative to what our citizens face now with end-of-life choices.

The fourth step is an area the Chair has a great interest in, and that is health care technology. We know many communities have multiple technologies, such as MRI machines. There are some very exciting and tremendous new products that are available. Many communities have lots of these technologies, and some have none at all. There is a maldistribution of health care resources. So an area I have a great interest in is, making it possible in communities in Minnesota and Oregon for health care providers to share these technologies, perhaps even giving them a waiver of antitrust restrictions, so that rather than everybody having to keep up with the Joneses and adding to health care expenses in an area that has fueled our costs, let's figure out a way that will not freeze innovation. Nobody wants to do that.

The Senator from Minnesota has been a leader in that field. We don't want to freeze innovation, but we want to hold down costs and make sure there is access. I think there are ways in which we can create incentives to share these exciting health care technologies. I have suggested just one this afternoon. That is a way to hold down health care costs.

Mr. President, to recap, let's clean up the Medicare prescription drug benefit. Let's figure out how to get better and more accurate information about doctors and hospital costs and services out. Let's expand hospice and compassionate end-of-life care. And let's make sure there are incentives to better use health care technology.

Those are four practical steps which can hold down health care costs and improve health care services in our country.

I close by way of saying that I came to the Senate floor today because I had those 21 town meetings at home. I heard middle-class people talk about all the issues where the second word was "bill"—medical bill, tax bill, mortgage bill, gas bill, home heating bill. They are concerned about economics and their pocketbooks. We don't need all this dead wood in our tax system. We can come up with a 1-page alternative. I proposed one, as have others. We can work in a bipartisan way to hold down health care costs.

Tonight, we may not hear about some of what I have discussed this afternoon, but I look forward to working with colleagues on both sides of the aisle and with the Bush administration because on both the tax issue and the health care issue, we can do better.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

(The remarks of Mr. LAUTENBERG are printed in todays RECORD under "Morning Business.")

Mr. LAUTENBERG. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. DURBIN are printed in today's RECORD under "Morning Business.")

Mr. DURBIN. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE RETIREMENT OF JUSTICE SANDRA DAY O'CONNOR

Mr. FRIST. Mr. President, today has been an extraordinarily historic and eventful day, one in which we have paid tribute to, and reflected upon, the great deeds and towering leadership of some of the most consequential individuals of the 20th century. It has also been a fast-paced day of action, of looking to the future, guiding America toward our most cherished goals and most cherished ideals.

One person we honor today, who has helped lead that journey, is retiring Supreme Court Justice Sandra Day O'Connor. For over two decades, Justice O'Connor has presided over some of the most complex, difficult, and vexing debates of our times.

Justice O'Connor, who turns 76 this year, retires with a sterling reputation as a brilliant legal scholar, a fair and impartial jurist, and an individual of impeccable personal integrity.

Born in the humble town of El Paso, TX, to Harry and Ada Mae, the young Sandra Day grew up on her family's cattle ranch in southeastern Arizona. It was not far and wasn't long to Stanford University where she graduated magna cum laude with a bachelor's degree in economics. She was accepted into the university's prestigious school of law and earned a coveted position on the law review's board of editors. She completed law school in only 2 years and finished near the top of her class. Among her classmates was a young man who would later sit beside her on the highest Court in the land: the late Chief Justice William Rehnquist.

Despite her extraordinary credentials, the private sector didn't easily welcome a woman into its male-dominated ranks. After a frustrating job search in the private sector, the young lawyer began her career as Deputy County Attorney of San Mateo, CA. A 4-year stint in Europe, where her husband was posted, and 3 sons later, Sandra Day O'Connor became Arizona's Assistant Attorney General in 1965.

She served 4 years before being appointed to fill an unexpired seat in the Arizona State Senate. In the State senate she proved herself an adept and popular lawmaker. She rose to its highest office to become the first woman State majority leader ever in the history of the United States.

In 1975, Sandra Day O'Connor was elected judge of the Maricopa County Superior Court, and 4 years later, in 1979, was appointed to the Arizona Court of Appeals. There she served until President Ronald Reagan appointed her Associate Justice to the Supreme Court.

Twenty-five years ago, on September 21, 1981, the Senate unanimously confirmed her nomination. On that day, Sandra Day O'Connor again made history. She became the first female Justice in the Court's history. When asked for her reaction to her nomination, Sandra Day O'Connor said:

> I can only say I will approach [my work on the bench] with care and effort and do the best job I possibly can do.

So she has. Justice O'Connor has served with distinction and as an example to all Americans that, through persistence and hard work, the highest peaks can be achieved. Despite her early professional obstacles, she never surrendered her determination, her focus, nor did she surrender her Southwestern roots. Fiercely proud of her heritage, Justice O'Connor and her brother H. Alan Day authored a best selling memoir entitled "Lazy B: Growing Up on a Cattle Ranch in the American Southwest." Anyone who has entered the inner compounds of Justice O'Connor's Supreme Court office has seen that sign that reads: "Cowgirl Parking Only: All Others will be Towed."

About 11 years ago, when Karen and I first came to Washington, DC, we didn't really know anybody here. We were a little bit lost, a physician and his family moving to this city. We early on met John and Justice O'Connor. Since that time, we have had the opportunity to be with them socially. We respect their wonderful and loving relationship, which has been always and continues to be manifested in so many wonderful ways. They welcomed our family to this Washington community and expressed that welcome in warm and heartfelt ways, again and again.

To echo the worlds of Ronald Reagan, Sandra Day O'Connor is "truly a 'person for all seasons,' possessing those unique qualities of temperament, fairness, intellectual capacity and devotion to the public good which have characterized the 101 'brethren' who have preceded her."

Sandra Day O'Connor has served this country for over five decades as an Arizona State Senator and majority leader, State court judge, assistant State attorney general, and in the capacity of which she will long be remembered, as an Associate Justice of the Supreme Court of America. The "cowgirl from Arizona" may never have dreamed of riding to the highest Court in the land but, boy oh boy, is America fortunate that she did.

On behalf of my fellow Senators and the American people, I offer my deepest gratitude to Justice O'Connor for her service to this great Nation, and I wish Mrs. O'Connor the best in all of her future endeavors.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. FRIST are printed in today's RECORD under "Morning Business.")

(The remarks of Mr. CHAMBLISS are printed in today's RECORD under "Morning Business.")

Mr. CHAMBLISS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period for morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

RETIREMENT OF MR. JAMES M. PHILPOTT

Mr. STEVENS. Mr. President, I rise to pay tribute to Mr. James M. Philpott, Assistant Deputy Chief of Staff for Resource Management, U.S. Army Pacific, who, in early 2006, will retire from a distinguished career spanning 35 years of exemplary service to America.

Mr. Philpott began his Federal career as a Comptroller Management Intern with the U.S. Army Pacific in 1971. He has served with Army organizations in Hawaii, Okinawa, mainland Japan, Korea, and Fort Huachuca, AZ. Mr. Philpott also spent 2 years with the U.S. Department of Energy where he directed the Comptroller's independent financial management review and analysis function.

During his more than 30 years involved in Army resource management, Mr. Philpott was a highly respected leader and expert on the Army budget and a wide range of related issues concerning the Asia-Pacific region. He played a critical role in the formulation, approval, and execution of U.S. Army Pacific budgets that produced a much-needed strengthening of America's defense posture and enabled our military to fulfill its many demanding commitments within the Pacific area of responsibility.

Mr. Philpott developed and led a diverse staff of analysts. Over the years, he mentored and guided a generation of Army budget and management analysts. Mr. Philpott was the primary leader in tracking and resolving budget and realignment matters involving U.S. Army Pacific. He meticulously tracked numerous and complex actions affecting the funding and manpower available to the command. Mr. Philpott has been a loyal and trustworthy adviser to nine commanding generals of U.S. Army Pacific, spanning 19 years. His expertise of Pacific resource management matters is unparalleled.

Mr. Philpott produced substantial top-quality analysis on complex economic, fiscal, and budget topics for commanders of U.S. Pacific Command and U.S. Army Pacific and other senior leaders. He also improved support for these leaders by initiating important resource management reforms that saved staff time and improved the quality of decisionmaking data.

For his extraordinary achievements, Mr. Philpott received the Meritorious Service Award three times. He was awarded the Nick Hoge Award for Professional Development, and Superior Civilian Service Award and Commander's Award two times. He earned the deep respect of leaders throughout the U.S. Army Pacific, Department of the Army, and with Congress's defense oversight committees. These leaders benefited enormously from his exceptional knowledge and dedication. Mr. Philpott's service has substantially helped our Nation's leaders make the wisest possible allocation of its defense resources in order to ensure America's future security.

Throughout his distinguished career, Mr. Philpott has had the resolute support of his wife Kathy and his three children. He has earned the deep gratitude of the American people. I join my staff, particularly our Defense Appropriations Subcommittee Staff Director, Sid Ashworth, in wishing Mr. Philpott and his family all the best in the coming years.

TRIBUTE TO ALAN GREENSPAN

Mr. FRIST. Mr. President, today marks the end of one of the most outstanding public service careers in this country's history.

Today, Dr. Alan Greenspan steps down as Chairman of the Board of Governors of the Federal Reserve System.

These last 18 years many accolades have been showered on Chairman Greenspan's leadership in steering monetary policy—a period that included some very difficult waters.

But I think the true strength of his leadership can be measured by the numbers. The Chairman, I understand, devours statistics in helping to make sound decisions. And the measurable results have been impressive.

Since being appointed to the chairmanship—first by President Reagan in August 1987, and then, later, by Presidents George Bush, Bill Clinton, and George W. Bush—U.S. economic growth has averaged 3 percent per year.

The annual rate of increase in consumer prices has similarly averaged a low 3 percent annually.

If price stability is the key responsibility of our independent Federal Reserve System, one can only conclude that Chairman Greenspan's leadership has been extraordinarily successful.

Meanwhile, the number of payroll jobs in America has grown from 102 million when he took on the chairmanship to nearly 135 million today. The unemployment rate has averaged slightly more than a low 5½ percent.

But Chairman Greenspan has been more than an outstanding captain of the economic seas. He has been a shrewd analyst and forecaster, shaping the economic future.

One key statistic that the Chairman brought to the public's attention—and particularly to those of us involved in the policy process—is the issue of productivity.

He was the first to recognize that the rise of productivity allowed unemployment to fall lower than many economists thought possible without stoking the fires of inflation, therefore, allowing the Federal Reserve to keep interest rates low.

Over his tenure, productivity growth averaged 2.2 percent per year, nearly double the rate of growth in the seventies and eighties.

There were major challenges along the way:

Only 2 weeks after taking his position at the Federal Reserve, the stock market dropped nearly 23 percent—marking the worse 1-day decline in the market's history.

There was an Asian and Russian financial crisis in 1998.

And, of course, the tragedy of September 11 that hit directly at the heart of our financial system.

In each instance, quick action by the Chairman to provide liquidity into the market through interest rate decisions allowed for the economy, indeed the global economy, to right itself, stabilize, and continue to grow.

One measure of the Chairman's counsel has been his highly anticipated testimonies before the Committees of Congress. Those hearings have always been sold out, headliner events. We have always listened very closely.

On a more personal level, it has been my distinct pleasure to have gotten to know Alan Greenspan and discuss informally with him the challenges that confront this country—in particular, our health care system and the increasing costs of health care, pensions and public entitlements.

I will miss those discussions with Mr. Greenspan. But I am confident that he will continue to offer his wise counsel to those who request it. For he will always remain, at heart, a public servant seeking to better the lives of citizens throughout this country and the world.

A counselor to Presidents and Congresses, a thoughtful thinker, flexible and non doctrinaire, Chairman Greenspan possesses the rare ability to communicate complicated ideas clearly and to make difficult decisions under complex, dynamic and uncertain conditions. For 18 years, he has done so consistently. For 18 years, he has done so masterfully.

Alan Greenspan leaves the Federal stage a giant in his field.

And if my high praise suggests a dash of "irrational exuberance," so be it. Chairman Greenspan is deserving of our highest regard.

On the passing of John Maynard Keynes, the British economist Alfred Marshall wrote that: "a great economist must possess a rare combination of gifts: mathematician, historian, statesman, philosopher." Alan Greenspan possesses each in large measure.

Thank you, Mr. Chairman, for your outstanding service to your country and to your fellow Americans.

On behalf of the U.S. Senate, best wishes to you in all of your future endeavors.

HONORING OUR ARMED FORCES

SPECIALIST PRINCE KOA TEEWIA

Mr. CARPER. Mr. President, I would like to set aside a few moments today to reflect on the life of SPC Prince Koa Teewia. Prince epitomized the best of our country's brave men and women who fought to free Iraq and to secure a new democracy in the Middle East. He exhibited unwavering courage, dutiful service to his adopted country, and above all else, honor. In the way he lived his life—and how we remember him—Prince reminds each of us how good we can be.

Born in Liberia in 1979, Prince was separated from his mother when she visited the United States, and civil war broke out in her native country. Due to security concerns, she was not allowed to return to her homeland to be with her children. After his father fled the war-torn region in 1990, Prince stayed with an aunt and eventually found refuge in neighboring Sierra Leone.

One by one, his mother managed to find ways for her eldest sons to join her in the United States. Prince was finally reunited with his parents when he moved to Durham, NC, in 1998 to live with friends and relatives. Shortly after his return, his parents moved to Delaware in the hopes of finding better paying employment. Prince stayed behind in North Carolina with the hopes of furthering his education and to enroll in classes at North Carolina Central University.

Prince Teewia had always wanted to join the military of his adopted homeland and, in 2004, he signed up for the 101st Airborne Division, based out of Fort Campbell, KY. He had been deployed in Iraq for less than a month when he was killed on December 29, 2005, by a roadside bomb that detonated next to the humvee he was riding in.

Specialist Teewia was granted full status as a U.S. citizen shortly after his death. This distinction was bestowed upon him because of his honorable service in the Armed Forces and his willingness to pay the ultimate cost while performing his duty in Iraq.

Prince was laid to rest with full military honors in Delaware Veterans Memorial Cemetery in Bear, DE, on January 13, 2006. He is survived by his parents John and Rebecca, his maternal grandparents, as well as eight brothers and six sisters.

I rise today to commemorate Prince, to celebrate his life, and to offer his family our support and our deepest sympathy on their tragic loss.

BUDGET SCOREKEEPING REPORT

Mr. GREGG. Mr. President, I hereby submit to the Senate the budget scorekeeping report prepared by the Congressional Budget Office under section 308(b) and in aid of section 311 of the Congressional Budget Act of 1974, as amended. This report meets the requirements for Senate scorekeeping of section 5 of S. Con. Res. 32, the first concurrent resolution on the budget for 1986.

This report shows the effects of congressional action on the 2006 budget through January 25, 2006. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of the 2006 concurrent resolution on the budget, H. Con. Res. 95. Pursuant to section 402 of that resolution, provisions designated as emergency requirements are exempt from enforcement of the budget resolution. As a result, the attached report excludes these amounts.

The estimates show that current level spending is under the budget resolution by $14.015 billion in budget authority and by $379 million in outlays in 2006. Current level for revenues is $17.286 billion above the budget resolution in 2006.

Since my last report, dated November 18, 2005, the Congress has cleared and the President has signed the following acts that changed budget authority, outlays, or revenues: Military Quality of Life and Veterans Affairs Appropriations Act, 2006, P.L. 109–114; Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006, P.L. 109–115; Valles Caldera Preservation Act of 2005, P.L. 109–132; Naval Vessels Transfer Act of 2005, P.L. 109–134; An act to provide certain authorities to the Department of State, P.L. 109–140; Terrorism Risk Insurance Extension Act of 2005, P.L. 109–144; Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, P.L. 109–148; Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006, P.L. 109–149; Second Higher Education Extension Act of 2005, P.L. 109–150; Employee Retirement Preservation Act, P.L. 109–151; TANF and Child Care Continuation Act of 2005, P.L. 109–161; National Defense Authorization Act for 2006, P.L. 109–163; and, United States-Bahrain Free Trade Agreement Implementation Act, P.L. 109–169.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, January 26, 2006.

Hon. JUDD GREGG,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The enclosed tables show the effects of Congressional action on the 2006 budget and are current through January 25, 2006. This report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended.

The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions for fiscal year 2006 that underlie H. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2006. Pursuant to section 402 of that resolution, provisions designated as emergency requirements are exempt from enforcement of the budget resolution. As a result, the enclosed current level report excludes these amounts (see footnote 1 on Table 2).

Since my last letter, dated November 17, 2006, the Congress has cleared and the President has signed the following acts that changed budget authority, outlays, or revenues:

Military Quality of Life and Veterans Affairs Appropriations Act, 2006 (Public Law 109–114);

Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Public Law 109–115);

Valles Caldera Preservation Act of 2005 (Public Law 109–132);

Naval Vessels Transfer Act of 2005 (Public Law 109–134);

An act to provide certain authorities to the Department of State (Public Law 109–140);

Terrorism Risk Insurance Extension Act of 2005 (Public Law 109–144);

Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Public Law 109–148);

Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006 (Public Law 109–149);

Second Higher Education Extension Act of 2005 (Public Law 109–150);

Employee Retirement Preservation Act (Public Law 109–151);

TANF and Child Care Continuation Act of 2005 (Public Law 109–161);

National Defense Authorization Act for 2006 (Public Law 109–163); and

United States-Bahrain Free Trade Agreement Implementation Act (Public Law 109–169).

The effects of the actions listed above are detailed in the enclosed tables.

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

TABLE 1.—SENATE CURRENT-LEVEL REPORT FOR SPENDING AND REVENUES FOR FISCAL YEAR 2006, AS OF JANUARY 25, 2006

(In billions of dollars)

	Budget Resolution [1]	Current Level [2]	Current Level Over/Under (–) Resolution
On-budget			
Budget Authority	2,094.4	2,080.4	–14.0
Outlays	2,099.0	2,098.6	–0.4
Revenues	1,589.9	1,607.2	17.3
Off-budget			
Social Security Outlays [3]	416.0	416.0	0
Social Security Revenues [4]	604.8	604.8	*

Source: Congressional Budget Office.

Note: * = Less than $50 million.

[1] H. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2006, assumed the enactment of emergency supplemental appropriations for fiscal year 2006, in the amount of $50 billion in budget authority and approximately $62.4 billion in outlays, which would be exempt from the enforcement of the budget resolution. Since the current level totals exclude the emergency appropriations in Public Laws 109–13, 109–61, 109–62, 109–68, 109–73, 109–77, 109–88, 109–106, 109–114, 109–135, and 109–148 (see footnote 1 on Table 2), the budget authority and outlay totals specified in the budget resolution have also been reduced (by the amounts assumed for emergency supplemental appropriations) for purposes of comparison.

[2] Current level is the estimated effect on revenue and spending of all legislation that the Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations even if the appropriations have not been made.

[3] Excludes administrative expenses of the Social Security Administration, which are off-budget.

[4] The Employee Retirement Preservation Act (Public Law 109–151) has a loss of revenue of $1 million.

TABLE 2.—SUPPORTING DETAIL FOR THE SENATE CURRENT-LEVEL REPORT FOR ON-BUDGET SPENDING AND REVENUES FOR FISCAL YEAR 2006, AS OF JANUARY 25, 2005

[In millions of dollars]

	Budget Authority	Outlays	Revenues
Enacted in Previous Sessions:			
Revenues	n.a.	n.a.	1,607,650
Permanents and other spending legislation	1,293,035	1,250,308	n.a.
Appropriation legislation	0	382,272	n.a.
Offsetting receipts	–479,872	–479,872	n.a.
Total, enacted in previous sessions	813,163	1,152,708	1,607,650
Enacted This Session:			
Authorizing Legislation:			
TANF Extension Act of 2005 (P.L. 109–19)	148	165	0
An act approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2005 (P.L. 109–39)	0	0	–1
Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (P.L. 109–53)	27	27	–3
Energy Policy Act of 2005 (P.L. 109–58)	141	231	–588
Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (P.L. 109–59)	3,444	36	9
National Flood Insurance Program Enhanced Borrowing Authority Act of 2005 (P.L. 109–65)	2,000	2,000	0
Pell Grant Hurricane and Disaster Relief Act (P.L. 109–66)	2	2	0
TANF Emergency Response and Recovery Act of 2005 (P.L. 109–68)	–4,965	105	0
Natural Disaster Student Aid Fairness Act (P.L. 109–86)	36	18	0
Community Disaster Loan Act of 2005 (P.L. 109–88)	751	376	0
Medicare Cost Sharing and Welfare Extension Act of 2005 (P.L. 109–91)	354	341	0
An act to extend the special postage stamp for breast cancer research for two years (P.L. 109–100)	–1	–1	0
Valles Caldera Preservation Act of 2005 (P.L. 109–132)	0	2	0
Naval Vessels Transfer Act of 2005 (P.L. 109–134)	–26	–26	0
An act to provide certain authorities to the Department of State (P.L. 109–140)	1	1	0
Terrorism Risk Insurance Extension Act of 2005 (P.L. 109–144)	210	210	0
Second Higher Education Extension Act of 2005 (P.L. 109–150)	–50	–45	0

TABLE 2.—SUPPORTING DETAIL FOR THE SENATE CURRENT-LEVEL REPORT FOR ON-BUDGET SPENDING AND REVENUES FOR FISCAL YEAR 2006, AS OF JANUARY 25, 2005—Continued

[In millions of dollars]

	Budget Authority	Outlays	Revenues
Employee Retirement Preservation Act (P.L. 109–151)	0	0	−2
TANF and Child Care Continuation Act of 2005 (P.L. 109–161)	73	81	0
National Defense Authorization Act for 2006 (P.L. 109–163)	−23	−24	0
United States-Bahrain Free Trade Agreement Implementation Act (P.L. 109–169)	1	1	−20
Appropriation Acts:			
Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (P.L. 109–13)	−39	−21	11
Interior Appropriations Act, 2006 (P.L. 109–54)	26,211	17,301	122
Legislative Branch Appropriations Act, 2006 (P.L. 109–55)	3,804	3,185	0
Homeland Security Appropriations Act, 2006 (P.L. 109–90)	31,860	19,306	0
Agriculture Appropriations Act, 2006 (P.L. 109–97)	99,262	57,294	0
Foreign Operations Appropriations Act, 2006 (P.L. 109–102)	20,979	8,164	0
Energy and Water Appropriations Act, 2006 (P.L. 109–103)	30,459	19,604	0
Science, State, Justice, Commerce Appropriations Act, 2006 (P.L. 109–108)	58,210	35,763	0
Military Quality of Life and VA Appropriations Act, 2006 (P.L. 109–114)	83,519	67,294	0
Transportation, Treasury and HUD Appropriations Act, 2006 (P.L. 109–115)	81,149	69,465	0
Defense Appropriations Act, 2006 (P.L. 109–148)	393,349	273,692	0
Labor, HHS, and Education Appropriations Act, 2006 (P.L. 109–149)	505,060	370,483	0
Total, enacted this session:	1,335,946	945,030	−472
Entitlements and mandatories:			
Difference between enacted levels and budget resolution estimates for appropriated entitlements and other mandatory programs	−68,740	−879	n.a.
Total Current Level [1, 2]	2,080,369	2,098,617	1,607,178
Total Budget Resolution	2,144,384	2,161,420	1,589,892
Adjustment to budget resolution for emergency requirements [3]	−50,000	−62,424	n.a.
Adjusted Budget Resolution	2,094,384	2,098,996	n.a.
Current Level Over Adjusted Budget Resolution	n.a.	n.a.	17,286
Current Level Under Adjusted Budget Resolution	14,015	379	n.a.

Source: Congressional Budget Office.

Notes: n.a. = not applicable; P.L. = Public Law.

[1] Pursuant to section 402 of H. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2006, provisions designated as emergency requirements are exempt from enforcement of the budget resolution. As a result, the current level totals exclude the following amounts:

	Budget Authority	Outlays	Revenues
Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (P.L. 109–13)	0	30,757	0
Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising From Hurricane Katrina, 2005 (P.L. 109–61)	0	7,750	0
Second Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising From Hurricane Katrina, 2005 (P.L. 109–62)	0	21,841	0
TANF Emergency Response and Recovery Act of 2005 (P.L. 109–68)	200	245	0
Katrina Emergency Tax Relief Act of 2005 (P.L. 109–73)	128	128	−3,191
Community Disaster Loan Act of 2005 (P.L. 109–88)	−751	0	0
National Flood Insurance Program Further Enhanced Borrowing Authority Act of 2005 (P.L. 109–106)	15,000	14,000	0
Military Quality of Life and VA Appropriations Act, 2006 (P.L. 109–114)	1,225	1,103	0
Gulf Opportunity Zone Act of 2005 (P.L. 109–135)	27	27	−3,920
Defense Appropriations Act, 2006 (P.L. 109–148)	59,152	36,572	0
Total, enacted emergency requirements	74,981	112,423	−7,111

[2] Excludes administrative expenses of the Social Security Administration, which are off-budget.

[3] H. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2006, assumed the enactment of emergency supplemental appropriations for fiscal year 2006, in the amount of $50,000 million in budget authority and $62,424 million in outlays, which would be exempt from the enforcement of the budget resolution. Since the current level totals exclude the emergency appropriations in P.L. 109–13, P.L. 109–61, P.L. 109–62, P.L. 109–68, P.L. 109–73, P.L. 109–77, P.L. 109–88, P.L. 109–106, P.L. 109–114, P.L. 109–135, and P.L. 109–148 (see footnote 1 above), the budget authority and outlay totals specified in the budget resolution have also been reduced (by the amounts assumed for emergency supplemental appropriations) for purposes of comparison.

IMPROVING THE PATRIOT ACT

Mr. LEAHY. Mr. President, those of us working constructively and in a bipartisan way to extend the USA PATRIOT Act with improvements have repeatedly offered to meet to work out the remaining differences. Sadly, the Senate leadership has not made the effort to work through the remaining concerns or brought us together.

I have continued meeting and talking with interested Republican and Democratic Senators. Senate staff has finally gotten together this week in a bipartisan meeting. I urge the majority leader to bring together key interested Senators to work out a bipartisan compromise that improves the failed conference report.

A majority of Senators—Republicans and Democrats, those who voted against cloture on the conference report that failed to pass the Senate and those who voted for it urged the Republican leader to act on a short-term, 3-month extension before the end of the last session. Instead, he chose to proceed with a 6-month extension that Republicans in the House found objectionable. That led to the short extension that is about to expire this week. The President had said that he would not approve a short-term extension. House Republicans had said that they would not allow a short-term extension. But just before Christmas they demanded and enacted a shorter extension than anyone else had proposed.

As soon as it became apparent that the conference report filed by the Republican leadership would be unacceptable to the Senate, I joined on Thursday, December 8, in urging a 3-month extension to work out a better bill. On the first day the Senate was next in session, Monday, December 12, Senator SUNUNU and I introduced such a bill, S.2082. We sent out a "Dear Colleague" letter to other Senators on December 13 and that bipartisan bill was cosponsored by 46 other Senators. That bill would have extended the PATRIOT Act until March 31, 2006, to allow us all to work out the remaining differences and improve this reauthorization legislation in ways to better protect the rights of ordinary Americans. It proposed a commonsense solution to allow us to take a few more weeks to get this right for all Americans.

Contrary to the false claims and misrepresentations by some, there was no effort on either side of the aisle to do away with the PATRIOT Act. That is just not true. Along with others here in the Senate, I am seeking to mend and extend the PATRIOT Act, not to end it. There is no reason why the American people cannot have a PATRIOT Act that is both effective and that adequately protects their rights and their privacy. The only people who were threatening an expiration of the PATRIOT Act were the President and House Republicans. As I noted on December 21, the administration and the Republican congressional leadership were the ones who were objecting to extending the act and threatening to have it expire. That was wrong. That made no sense. They came to their senses in the days that followed. But now, as we approach the expiration of the current extension this Friday, the Republican congressional leadership has taken no further action and we risk sections of the PATRIOT Act expiring, again.

Republican and Democratic Senators joined together last month to say we can do better to protect Americans' liberties while ensuring our national security is as strong as it can be. In the days after 9/11 we acted as Americans, not Democrats, not Republicans. The President's political adviser Karl Rove and the rest of those who are seeking to make the PATRIOT Act a partisan political issue should instead join with our bipartisan coalition and work with us to provide a better balance to protect the rights of Americans.

Every single Senator—Republican and Democratic—voted last July to mend and extend the PATRIOT Act. That bipartisan solution was cast aside by the Bush administration and Republican congressional leaders when they hijacked the conference report, rewrote the bill in ways that fell short in protecting basic civil liberties and then tried to ram it through Congress as an all-or-nothing proposition. I have joined with Senators of both parties in an effort to work to improve the bill. Some of us are working hard to protect the security and liberty of Americans. What is wrong is for the White House to manipulate this into a partisan fight for its partisan political advantage. Instead of playing partisan politics, the Bush administration and Republican congressional leadership should join in trying to improve the law.

This is a vital debate. The terrorist threat to America's security is very real, and it is vital that we be armed with the tools needed to protect Americans' security. At the same time, however, the threat to civil liberties is also very real in America today. The question is not whether the Government should have the tools it needs to protect the American people. Of course it should. That is why I coauthored the PATRIOT Act 5 years ago, and that is why that Act passed with broad bipartisan support. When I voted for the PATRIOT Act, I did not think it was an ideal piece of legislation, and I knew that it would need careful oversight and, in due course, reform. None of us wants the PATRIOT Act to expire, and those who threatened to let it expire rather than fix it play a dangerous game.

This is about how to reconcile two shared and fundamental goals—ensuring the safety of the American people and protecting their liberty by means of a system of checks and balances that keeps the Government—their Government—accountable. Those goals are not the goals of any particular party or ideology; they are shared American goals. How to balance security with liberty and Government accountability was the most fundamental dilemma with which the Framers of our Constitution wrestled, and how to adjust that balance in the post-9/11 world is a fundamental dilemma before this Congress.

Our Nation is a democracy, founded on the principles of balanced government. We need to restore checks and balances in this country to protect us all and all that we hold dear. Our Congress and our courts provide checks on the abuse of executive authority and should protect our liberties. Congress must write the law so it provides not just a check on Presidential power but also a clear role for the courts. All Americans need to take notice and need to demand that their liberties be maintained. We can do better and must do better for the American people.

IRAN'S EFFORTS TO OBTAIN NUCLEAR WEAPONS

Mr. FEINGOLD. Mr. President, as a known sponsor of international terrorism, and in light of the president of Iran's recent apocalyptic statements calling for the destruction of Israel, Iran must not be allowed to develop nuclear weapons. The international community must respond quickly and decisively to Iran's gross disregard of international treaties and obligations and to its concerted and malicious efforts to develop the capability to create nuclear weapons.

The international community must take concerted and decisive action to prevent Iran from furthering its nuclear research and technology development. In its forthcoming meeting on February 2, 2006, the International Atomic Energy Agency (IAEA) Board of Governors should heed the calls by Russia, China, the European Union, and the United States to reaffirm its findings that Iran has blatantly violated its international obligations, recognize the grave nature of Iran's recent actions, and refer Iran to the United Nations Security Council. The Security Council should then speak with one voice to condemn Iran's actions and send a clear signal that continued defiance of the international community will not be tolerated.

It is essential that the Security Council approve specific actions to prevent the furthering of Iran's nuclear capabilities. The Security Council specifically, and the international community generally, must recognize the potentially devastating link between the violent and defiant rhetoric of Iran's president and his regime's determined effort to undermine approved and transparent methods of developing civilian nuclear technology for energy use.

Congress can also take steps to help stop or slow Iran's acquisition of nuclear and other WMD-related technology, including adding teeth to export control legislation such as the Iran and Syria Nonproliferation Act. The Iran Nonproliferation Enhancement Act, S.1976, that Senator KYL and I introduced late last year would do just that. It would toughen the ISNA by requiring rather than merely authorizing sanctions on proliferators, extending sanctions to the parent companies, and increasing the types of sanctions that apply to proliferators. By adopting this legislation, we would be sending a crystal clear message to would-be proliferators: if you choose to assist Iran in developing nuclear or other WMD-related capabilities, you are also choosing to forgo doing business with the United States.

History teaches us that we cannot ignore the stated intent of those who seek to destroy nations. A nuclear-armed Iran would pose a grave threat to the region, to Israel, and to the entire international community. A concerted international effort is needed to prevent Iran from procuring the technology and materiel needed to develop a nuclear weapon. This effort must begin now, and it must be comprehensive.

ADDITIONAL STATEMENTS

IN RECOGNITION OF DR. KATHERINE ESTERLY

• Mr. CARPER. Mr. President, I rise today to recognize the achievements of Dr. Katherine Esterly. Kitty, as she is known to her friends, has had an enormous impact on the lives of countless people, many of whom were too young to even realize that she was helping them.

Dr. Esterly has dedicated her life to advancing the field of neonatology, which is the field of pediatric medicine that deals with the care of newborn infants. She has helped countless mothers-to-be and their young children by helping bring healthier babies to term and assisting those newborns who need a little extra care after their delivery. This work transcends the concepts of reduced health care costs and decreased infant mortality rates. It means healthier babies and stronger families and that is an accomplishment worthy of our praise and admiration.

Katherine Esterly grew up in Norristown, PA, knowing that she wanted to work with children. After graduating from Temple University's medical school in 1951, she moved to Delaware to work towards that goal. Delaware was truly blessed when she made this decision.

Despite her diminutive size and warm personality, Dr. Esterly has always approached her efforts to care for Delaware's babies with a steel will and an unwillingness to accept "no" for an answer. She demands high standards from her colleagues and has lived her life by this same commitment to excellence.

One of the hallmarks of her care is how she continually goes above and beyond the traditional role of simply caring for the newborn child. She uses a gentle hand and an open style of communication to develop a level of trust with parents that greatly improves their hospital experience during such difficult times. Whether it is a reassuring word or a simple explanation of a complex procedure. Kitty is always willing to do whatever it takes to assure parents that their newborn is receiving the best possible care.

Katherine Esterly became a practicing pediatrician in 1954 after completing her internship and residency at the Delaware Hospital. Dr. Esterly then served as an associate in pediatrics for the Children's Bureau of Delaware from 1954 until 1968. During this time, Kitty worked tirelessly to help adoptive and foster children. In 1968, because of her outstanding record of leadership and her dedication to her profession, she was named director of this organization.

After the merger of community hospitals in Wilmington in 1967, the Medical Center of Delaware was formed and a new department of pediatrics was created. Unfortunately, there wasn't a neonatologist on staff at this new institution. Dr. Esterly took the initiative to get the necessary training so she could fill this void in the department's neonatal intensive care unit. She went on to become the director of the neonatology division in 1975. Throughout the 1980s, Dr. Esterly expanded the division and added additional full-time neonatologists to her staff, resulting in a world-class practice where even the sickest of newborns could be cared for.

Dr. Esterly also advanced the cause of nurses by working with colleagues and government officials to highlight and promote the qualifications of professional nurses. Her actions led to nurse practitioners being able to treat patients and write prescriptions, which greatly reduces the workload of practicing physicians and allows for greater responsibility on behalf of nurses.

In addition, Katherine Esterly helped create a neonatal nurse practitioner program for schools in Delaware and New Jersey that continue to train the next generation of caregivers. Her ability and willingness to share her knowledge has ensured that future generations will continue the work that Kitty pioneered so many years ago.

In 1995, while serving as Governor of Delaware, I appointed Dr. Esterly to serve as the chair of Delaware's Perinatal Board. In this capacity, she spearheads Delaware's efforts to promote the health and welfare of countless numbers of children. The First State and her children are better off because of her efforts.

Most recently, the Katherine L. Esterly Nursing Education Scholarship fund was established for the College of Health Sciences at the University of Delaware. When asked if she would allow her name to be used to distinguish this scholarship, Dr. Esterly, in her customary selfless fashion, not only agreed but also made a personal contribution to the very fund that now bears her name. Her generosity will help ensure that her legacy of caring for Delaware's youngest residents will be preserved and passed on to future generations of caregivers.

Kitty's dedication and innovation in the field of neonatology serves as an example to us all. I rise today to honor her achievements and to thank her on behalf of all Delawareans for her years of hard work, dedication, and constant championing of Delaware's youngest residents.●

RECOGNITION OF THE UNIVERSITY OF NORTHERN IOWA

● Mr. HARKIN. Mr. President, on Wednesday, the American Association of Colleges for Teacher Education will present its Best Practice for Collaboration with a Community College Award to the University of Northern Iowa. This award recognizes outstanding collaboration between a university teacher education program and a community college—in this case, Des Moines Area Community College. This partnership is a wonderful example of two fine educational institutions working together to meet the needs of schools in rural Iowa, and I congratulate them for this accomplishment.

Eleven years ago, UNI joined forces with the DMACC campus in Carroll to develop a new approach to address the unique needs of rural school districts. The idea was simple—locate a teacher preparation program where you have the need. Instead of training teachers 160 miles away on its campus in Cedar Falls, UNI established a joint program with DMACC in the heart of rural western Iowa.

Rural communities face many unique challenges, including the need to recruit highly qualified teachers. At the same time, many rural residents have a need to upgrade their skills, but are unable to move to a larger community to attend college. The 2+2 program is a perfect solution. This homegrown approach allows individuals to obtain the training they need to fill the jobs that are literally in their own backyards.

Since 1995, UNI has awarded baccalaureate degrees to nearly 100 teachers at the Carroll campus. It is very important to point out that nearly all of these individuals continue to live in western Iowa, and are working for school districts in the surrounding area.

This program has been an enormous success and I am very proud to have secured Federal funding from the U.S. Department of Education to support this innovative program. UNI is building on this experience and will be expanding the 2+2 model to other fields of study, including technology management, general business and criminology. The University will also expand the partnership to include Western Iowa Tech Community College in Sioux City, Northeast Iowa Community College in Peosta and Calmar, Eastern Iowa Community College in Davenport, and Iowa Western Community College in Council Bluffs.

The success of this project is due to the creative energy and hard work of many individuals from UNI, DMACC and the community of Carroll including: Dr. Constantine Curris, former President of UNI; Dr. Joe Borgen, former President of DMACC; Dr. Robert Koob, President of UNI; Dr. Robert Denson, President of DMACC; Dr. Richard Hawkes, Professor of Teaching at UNI; Dr. Roger Kueter, Director of Community College Projects at UNI; Dr. Jim Knott, Provost of the DMACC Carroll campus; Steve Schultz, coordinator of the 2+2 program for DMACC; Art Neu, former mayor of Carroll and former Lieutenant Governor of the State of Iowa; and Jim Wilson, publisher of the Carroll Daily Times Herald.

I extend my congratulations to all of them on this outstanding achievement.●

IN MEMORY OF WILLIAM R. ROBERTSON

● Mrs. BOXER. Mr. President, I am deeply saddened to inform you of the passing of Bill Robertson, former secretary treasurer for the Los Angeles County Federation of Labor, AFL–CIO. I would like to take a few moments to recognize Bill Robertson's many important accomplishments and the tremendous impact he made on the labor movement.

Born in St. Paul, MN, Bill Robertson was a man with humble beginnings. He lost both his parents when he was a child and lived in an orphanage for a brief period. Growing up in difficult circumstances in the middle of the Great Depression shaped Bill's social and personal beliefs. He intimately understood the struggle that working men and women faced to achieve dignity in the United States.

Bill led the Los Angeles County Federation of Labor for nearly two decades. During his tenure, he fought for the rights of working people with passion and great success. In 1975, Bill Robertson became secretary-treasurer for the Los Angeles County Federation of Labor, AFL–CIO. Under his leadership, The Los Angeles County Federation of Labor saw phenomenal growth. He coordinated many successful labor rights victories and spent a great deal of time building the labor movement and fighting for fairness and equality. In addition to his efforts to further the labor movement, Bill Robertson took steps to assist the city of Los Angeles' homeless population. In the winter of 1985, the city of Los Angeles had authorized a temporary tent shelter to be erected for the city's homeless population. Bill Robertson found this solution to be inadequate and successfully persuaded then Mayor Tom Bradley to authorize construction of a temporary structure to house the 138-bed shelter. Bill Robertson rallied volunteer laborers and secured union funds to buy the construction materials.

Bill also played a major role in bringing prominence and recognition to the city of Los Angeles. In addition to assisting city officials with securing the rights to host the 1984 Olympic Games, Bill also played a pivotal role in establishing a home for a professional football team in Los Angeles. It was through his role as chief negotiator in the $6.7-million deal in 1980 that brought the Raiders football team from Oakland to the Los Angeles Coliseum. Bill Robertson considered this achievement as one of the proudest of his career.

I invite all of my colleagues to join me and the many members of the labor community in recognizing and honoring Bill Robertson for his guidance and lifelong effort in fighting to improve the lives of working people. He is survived by his wife, Dresden Graham Robertson; his two sons, William and Robert; three grandchildren; and four great-grandchildren.●

IN MEMORY OF JUDGE WILLIAM MATTHEW BYRNE, JR.

● Mrs. BOXER. Mr. President, I am deeply saddened to inform you of the passing of Judge William Matthew Byrne, Jr. I would like to take a few moments to recognize Judge Byrne's many important accomplishments and the tremendous impact he made on the judicial system.

William Byrne was born in East Los Angeles in 1930 and attended Loyola High School and the University of Southern California. Before becoming a Federal prosecutor in Los Angeles, he served as a judge advocate from 1956 to 1958 in the U.S. Air Force. In 1967, he was appointed as U.S. attorney by President Lyndon B. Johnson. In 1970, when President Richard Nixon created the President's Commission on Campus Unrest, he chose William Byrne as its executive director.

Byrne became the youngest judge ever appointed to the Federal bench when he was confirmed in 1971 at age 40, and he served as the Central District's chief judge from 1994 to 1998. In more than 30 years of service on the Federal bench, Judge Byrne had the opportunity to handle many cases. He is, however, best known for presiding over the Pentagon Papers case, which was assigned to him just 2 years after his confirmation as a Federal judge. The Pentagon Papers case involved military analyst Daniel Ellsberg and co-defendant Anthony J. Russo, Jr. who were indicted on 12 Federal counts, including conspiracy, theft of Government property, and espionage after an unauthorized release of a secret study of U.S. involvement in the Vietnam War. Judge Byrne dismissed the case in 1973 after ruling that it was the Government that was guilty of misconduct.

I invite all of my colleagues to join me in recognizing and honoring Judge William Matthew Byrne, Jr., for his long and distinguished service to our country.●

AWARD FOR EXCELLENCE IN EDUCATION

● Mr. DAYTON. Mr. President, I rise today to honor Woodson Kindergarten Center, in Austin, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

The Woodson Kindergarten Center, which is funded by Austin Public Schools, is truly a model of educational success. The district recognized the advantages of joining together all of its kindergarteners in a single building. This made economic sense and also improved the students' experience, allowing all kindergarten teachers and specialists to work together and to benefit from the expertise each person brought to the team. Currently, 390 children attend Woodson Kindergarten Center, which provides special education services and English language learner services for children of all ages.

At Woodson Kindergarten, students are grouped for reading and math based on skill level. A student who has not mastered all of the skills needed for first grade attends 6 weeks of summer school. Woodson emphasizes reading to children in school and at home and also focuses throughout the day on building children's social skills, including conflict resolution.

Woodson Kindergarten Center better prepares students for first grade and provides a stronger foundation for at-risk children. Its full-day curriculum offers more time for hands-on discovery, for experimenting and making mistakes, for reading the whole story, and for richer, more developmentally appropriate learning.

Much of the credit for Woodson Kindergarten Center's success belongs to its principal, Jean McDermott, and her dedicated teachers. The staff at Woodson Kindergarten Center understand that, in order to be successful, a school must go beyond achieving academic success; it must provide a nurturing environment where students develop the knowledge, skills and attitudes for a lifetime of success. All of the faculty, staff, and students at the Woodson Kindergarten Center should be very proud of their accomplishments.

I congratulate Woodson Kindergarten Center in Austin, MN, for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.●

AWARD FOR EXCELLENCE IN EDUCATION

● Mr. DAYTON. Mr. President, I rise today to honor Dakota Meadows Middle School, in North Mankato, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

Dakota Meadows Middle School is truly a model of educational success. One hundred of the school's eighth-grade art students have created a glass mosaic, measuring 3 feet by 24 feet, for the school's media center. The project was financed by the Prairie Ecology Bus Center. The overall design, based on nature, correlates with the Dakota Meadows Middle School Ecology curriculum, and includes images of fish, birds, and sky. I had the honor to be present at the school for the official unveiling, and found it to be an awe inspiring piece.

The glass mosaic medium was chosen to introduce the students to an ancient medium. The mosaic's dimensions allowed each student to make a unique contribution toward an artistic work of lasting beauty.

Much of the credit for Dakota Meadows Middle School's success belongs to its principal, Shane Baier, and his dedicated teachers. The school and its artist in residence, Dr. Arnoldus Gruter, made it possible for the students to produce their own work of art, which is also their legacy to the school. The students and staff at Dakota Meadows Middle School understand that, in order to be successful, a school must go beyond achieving academic success; it must also provide a nurturing environment where students develop the knowledge, skills and attitudes for a lifetime of success. All of the faculty, staff, and students at Dakota Meadows Middle School should be very proud of their accomplishments.

I congratulate Dakota Meadows Middle School in North Mankato, MN, for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.●

AWARD FOR EXCELLENCE IN EDUCATION PRESENTED TO MANKATO WEST HIGH SCHOOL, YOUTH SERVICE LEARNING CLASS, MANKATO, MINNESOTA

● Mr. DAYTON. Mr. President, today I honor last fall's Youth Service Learning class, at Mankato West High School, in Mankato, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements.

The Youth Service Learning class at Mankato West High School is truly a model of educational success. As part of its fall curriculum, the class embraced Project Homecoming, a statewide effort to raise money to help pay for the cost of bus transportation from

Camp Shelby, MS, to Minnesota, for 400 Minnesota National Guard soldiers. The soldiers had been training at Camp Shelby for deployment to Iraq in early 2006. Although they were given 10 days leave for the holidays, no funding was available through the military or National Guard to provide round-trip transportation to Minnesota and back.

The Youth Service Learning class, which focuses on volunteerism and the functioning of nonprofits in the community, gained some real life experience by helping Project Homecoming raise $75,000 in just under 4 weeks. The students learned how to establish a tax-exempt fundraising effort, engage the media in an event, and raise significant money for a cause they considered extremely important to their communities. In less than 3 days, the students raised over $1,500 from their schoolmates, made telephone calls to potential donors, and asked their own employers to help in the effort. With the students' help, Project Homecoming reached its $75,000 goal.

Much of the credit for the Youth Service Learning class's success belongs to Mr. Bruce Borchers, Mankato West principal; Mr. Tim Walz, Youth Service Learning teacher; and Mr. Pat Griffiths, Project Homecoming coordinator. The students and staff who participated in the class understand that in order to be successful, a school must go beyond achieving academic success; it must also provide a nurturing environment where students develop the knowledge, skills, and attitudes for a lifetime of success. All of the faculty, staff, and students should be very proud of their accomplishments.

I congratulate the Youth Service Learning class at Mankato West High School in Mankato, MN, for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.•

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT ON THE STATE OF THE UNION DELIVERED TO A JOINT SESSION OF CONGRESS ON JANUARY 31, 2006—PM 35

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was ordered to lie on the table:

To the Congress of the United States:

Mr. Speaker, Vice President CHENEY, Members of Congress, Members of the Supreme Court and diplomatic corps, distinguished guests, and fellow citizens:

Today our Nation lost a beloved, graceful, courageous woman who called America to its founding ideals and carried on a noble dream. Tonight we are comforted by the hope of a glad reunion with the husband who was taken from her so long ago, and we are grateful for the good life of Coretta Scott King.

Each time I am invited to this rostrum, I am humbled by the privilege, and mindful of the history we have seen together. We have gathered under this Capitol dome in moments of national mourning and national achievement. We have served America through one of the most consequential periods of our history and it has been my honor to serve with you.

In a system of two parties, two chambers, and two elected branches, there will always be differences and debate. But even tough debates can be conducted in a civil tone, and our differences cannot be allowed to harden into anger. To confront the great issues before us, we must act in a spirit of goodwill and respect for one another—and I will do my part. Tonight the state of our Union is strong—and together we will make it stronger.

In this decisive year, you and I will make choices that determine both the future and the character of our country. We will choose to act confidently in pursuing the enemies of freedom—or retreat from our duties in the hope of an easier life. We will choose to build our prosperity by leading the world economy—or shut ourselves off from trade and opportunity. In a complex and challenging time, the road of isolationism and protectionism may seem broad and inviting—yet it ends in danger and decline. The only way to protect our people . . . the only way to secure the peace . . . the only way to control our destiny is by our leadership—so the United States of America will continue to lead.

Abroad, our Nation is committed to an historic, long-term goal—we seek the end of tyranny in our world. Some dismiss that goal as misguided idealism. In reality, the future security of America depends on it. On September 11, 2001, we found that problems originating in a failed and oppressive state seven thousand miles away could bring murder and destruction to our country. Dictatorships shelter terrorists, feed resentment and radicalism, and seek weapons of mass destruction. Democracies replace resentment with hope, respect the rights of their citizens and their neighbors, and join the fight against terror. Every step toward freedom in the world makes our country safer, and so we will act boldly in freedom's cause.

Far from being a hopeless dream, the advance of freedom is the great story of our time. In 1945, there were about two dozen lonely democracies on Earth. Today, there are 122. And we are writing a new chapter in the story of self-government—with women lining up to vote in Afghanistan . . . and millions of Iraqis marking their liberty with purple ink . . . and men and women from Lebanon to Egypt debating the rights of individuals and the necessity of freedom. At the start of 2006, more than half the people of our world live in democratic nations. And we do not forget the other half—in places like Syria, Burma, Zimbabwe, North Korea, and Iran—because the demands of justice, and the peace of this world, require their freedom as well.

No one can deny the success of freedom, but some men rage and fight against it. And one of the main sources of reaction and opposition is radical Islam—the perversion by a few of a noble faith into an ideology of terror and death. Terrorists like bin Laden are serious about mass murder—and all of us must take their declared intentions seriously. They seek to impose a heartless system of totalitarian control throughout the Middle East, and arm themselves with weapons of mass murder. Their aim is to seize power in Iraq, and use it as a safe haven to launch attacks against America and the world. Lacking the military strength to challenge us directly, the terrorists have chosen the weapon of fear. When they murder children at a school in Beslan . . . or blow up commuters in London . . . or behead a bound captive . . . the terrorists hope these horrors will break our will, allowing the violent to inherit the Earth. But they have miscalculated: We love our freedom, and we will fight to keep it.

In a time of testing, we cannot find security by abandoning our commitments and retreating within our borders. If we were to leave these vicious attackers alone, they would not leave us alone. They would simply move the battlefield to our own shores. There is no peace in retreat. And there is no honor in retreat. By allowing radical Islam to work its will—by leaving an assaulted world to fend for itself—we would signal to all that we no longer believe in our own ideals, or even in our own courage. But our enemies and our friends can be certain: The United States will not retreat from the world, and we will never surrender to evil.

America rejects the false comfort of isolationism. We are the Nation that saved liberty in Europe, and liberated death camps, and helped raise up democracies, and faced down an evil empire. Once again, we accept the call of history to deliver the oppressed, and move this world toward peace.

We remain on the offensive against terror networks. We have killed or captured many of their leaders—and for the others, their day will come.

We remain on the offensive in Afghanistan—where a fine president and national assembly are fighting terror while building the institutions of a new democracy.

And we are on the offensive in Iraq, with a clear plan for victory. First, we are helping Iraqis build an inclusive government, so that old resentments will be eased, and the insurgency marginalized. Second, we are continuing reconstruction efforts, and helping the Iraqi government to fight corruption and build a modern economy, so all Iraqis can experience the benefits of freedom. Third, we are striking terrorist targets while we train Iraqi forces that are increasingly capable of defeating the enemy. Iraqis are showing their courage every day, and we are proud to be their allies in the cause of freedom.

Our work in Iraq is difficult, because our enemy is brutal. But that brutality has not stopped the dramatic progress of a new democracy. In less than 3 years, that nation has gone from dictatorship, to liberation, to sovereignty, to a constitution, to national elections. At the same time, our coalition has been relentless in shutting off terrorist infiltration, clearing out insurgent strongholds, and turning over territory to Iraqi security forces. I am confident in our plan for victory . . . I am confident in the will of the Iraqi people . . . I am confident in the skill and spirit of our military. Fellow citizens, we are in this fight to win, and we are winning.

The road of victory is the road that will take our troops home. As we make progress on the ground, and Iraqi forces increasingly take the lead, we should be able to further decrease our troop levels—but those decisions will be made by our military commanders, not by politicians in Washington, DC.

Our coalition has learned from experience in Iraq. We have adjusted our military tactics and changed our approach to reconstruction. Along the way, we have benefited from responsible criticism and counsel offered by Members of Congress of both parties. In the coming year, I will continue to reach out and seek your good advice.

Yet there is a difference between responsible criticism that aims for success, and defeatism that refuses to acknowledge anything but failure. Hindsight alone is not wisdom. And second-guessing is not a strategy.

With so much in the balance, those of us in public office have a duty to speak with candor. A sudden withdrawal of our forces from Iraq would abandon our Iraqi allies to death and prison . . . put men like bin Laden and Zarqawi in charge of a strategic country . . . and show that a pledge from America means little. Members of Congress: however we feel about the decisions and debates of the past, our Nation has only one option: We must keep our word, defeat our enemies, and stand behind the American military in its vital mission.

Our men and women in uniform are making sacrifices—and showing a sense of duty stronger than all fear. They know what it is like to fight house to house in a maze of streets . . . to wear heavy gear in the desert heat . . . to see a comrade killed by a roadside bomb. And those who know the costs also know the stakes. Marine Staff Sergeant Dan Clay was killed last month fighting the enemy in Fallujah. He left behind a letter to his family, but his words could just as well be addressed to every American. Here is what Dan wrote: "I know what honor is. It has been an honor to protect and serve all of you. I faced death with the secure knowledge that you would not have to . . . Never falter! Don't hesitate to honor and support those of us who have the honor of protecting that which is worth protecting."

Staff Sergeant Dan Clay's wife, Lisa, and his mom and dad, Sara Jo and Bud, are with us this evening. Our Nation is grateful to the fallen, who live in the memory of our country. We are grateful to all who volunteer to wear our Nation's uniform—and as we honor our brave troops, let us never forget the sacrifices of America's military families.

Our offensive against terror involves more than military action. Ultimately, the only way to defeat the terrorists is to defeat their dark vision of hatred and fear by offering the hopeful alternative of political freedom and peaceful change. So the United States of America supports democratic reform across the broader Middle East. Elections are vital—but they are only the beginning. Raising up a democracy requires the rule of law, protection of minorities, and strong, accountable institutions that last longer than a single vote. The great people of Egypt have voted in a multi-party presidential election—and now their government should open paths of peaceful opposition that will reduce the appeal of radicalism. The Palestinian people have voted in elections—now the leaders of Hamas must recognize Israel, disarm, reject terrorism, and work for lasting peace. Saudi Arabia has taken the first steps of reform—now it can offer its people a better future by pressing forward with those efforts. Democracies in the Middle East will not look like our own, because they will reflect the traditions of their own citizens. Yet liberty is the future of every nation in the Middle East, because liberty is the right and hope of all humanity.

The same is true of Iran, a nation now held hostage by a small clerical elite that is isolating and repressing its people. The regime in that country sponsors terrorists in the Palestinian territories and in Lebanon—and that must come to an end. The Iranian government is defying the world with its nuclear ambitions—and the nations of the world must not permit the Iranian regime to gain nuclear weapons. America will continue to rally the world to confront these threats. And tonight, let me speak directly to the citizens of Iran: America respects you, and we respect your country. We respect your right to choose your own future and win your own freedom. And our Nation hopes one day to be the closest of friends with a free and democratic Iran.

To overcome dangers in our world, we must also take the offensive by encouraging economic progress, fighting disease, and spreading hope in hopeless lands. Isolationism would not only tie our hands in fighting enemies, it would keep us from helping our friends in desperate need. We show compassion abroad because Americans believe in the God-given dignity and worth of a villager with HIV/AIDS, or an infant with malaria, or a refugee fleeing genocide, or a young girl sold into slavery. We also show compassion abroad because regions overwhelmed by poverty, corruption, and despair are sources of terrorism, organized crime, human trafficking, and the drug trade.

In recent years, you and I have taken unprecedented action to fight AIDS and malaria, expand the education of girls, and reward developing nations that are moving forward with economic and political reform. For people everywhere, the United States is a partner for a better life. Short-changing these efforts would increase the suffering and chaos of our world, undercut our long-term security, and dull the conscience of our country. I urge Members of Congress to serve the interests of America by showing the compassion of America.

Our country must also remain on the offensive against terrorism here at home. The enemy has not lost the desire or capability to attack us. Fortunately, this Nation has superb professionals in law enforcement, intelligence, the military, and homeland security. These men and women are dedicating their lives to protecting us all, and they deserve our support and our thanks. They also deserve the same tools they already use to fight drug trafficking and organized crime—so I ask you to reauthorize the Patriot Act.

It is said that prior to the attacks of September 11th, our Government failed to connect the dots of the conspiracy. We now know that two of the hijackers in the United States placed telephone calls to al-Qaida operatives overseas. But we did not know about their plans until it was too late. So to prevent another attack—based on authority given to me by the Constitution and by statute—I have authorized a terrorist surveillance program to aggressively pursue the international communications of suspected al-Qaida operatives and affiliates to and from America. Previous presidents have used the same constitutional authority I have—and Federal courts have approved the use of that authority. Appropriate Members of Congress have been kept informed. This terrorist surveillance program has helped prevent terrorist attacks. It remains essential to the security of America. If there are people inside our country who are talking with al-Qaida, we want to know about it—because we will not sit back and wait to be hit again.

In all these areas—from the disruption of terror networks, to victory in Iraq, to the spread of freedom and hope in troubled regions—we need the support of friends and allies. To draw that support, we must always be clear in our principles and willing to act. The only alternative to American leadership is a dramatically more dangerous and anxious world. Yet we also choose to lead because it is a privilege to serve the values that gave us birth. American leaders—from Roosevelt to Truman to Kennedy to Reagan—rejected isolation and retreat, because they knew that America is always more secure when freedom is on the march. Our own generation is in a long war against a determined enemy—a war that will be fought by Presidents of both parties, who will need steady bipartisan support from the Congress. And tonight I ask for yours. Together, let us protect our country, support the men and women who defend us, and lead this world toward freedom.

Here at home, America also has a great opportunity: We will build the prosperity of our country by strengthening our economic leadership in the world.

Our economy is healthy, and vigorous, and growing faster than other major industrialized nations. In the last two-and-a-half years, America has created 4.6 million new jobs—more than Japan and the European Union combined. Even in the face of higher energy prices and natural disasters, the American people have turned in an economic performance that is the envy of the world.

The American economy is pre-eminent—but we cannot afford to be complacent. In a dynamic world economy, we are seeing new competitors like China and India. This creates uncertainty, which makes it easier to feed people's fears. And so we are seeing some old temptations return. Protectionists want to escape competition, pretending that we can keep our high standard of living while walling off our economy. Others say that the Government needs to take a larger role in directing the economy, centralizing more power in Washington and increasing taxes. We hear claims that immigrants are somehow bad for the economy—even though this economy could not function without them. All these are forms of economic retreat, and they lead in the same direction—toward a stagnant and second-rate economy.

Tonight I will set out a better path—an agenda for a Nation that competes with confidence—an agenda that will raise standards of living and generate new jobs. Americans should not fear our economic future, because we intend to shape it.

Keeping America competitive begins with keeping our economy growing. And our economy grows when Americans have more of their own money to spend, save, and invest. In the last 5 years, the tax relief you passed has left $880 billion in the hands of American workers, investors, small businesses, and families—and they have used it to help produce more than 4 years of uninterrupted economic growth. Yet the tax relief is set to expire in the next few years. If we do nothing, American families will face a massive tax increase they do not expect and will not welcome.

Because America needs more than a temporary expansion, we need more than temporary tax relief. I urge the Congress to act responsibly, and make the tax cuts permanent.

Keeping America competitive requires us to be good stewards of tax dollars. Every year of my presidency, we have reduced the growth of non-security discretionary spending—and last year you passed bills that cut this spending. This year my budget will cut it again, and reduce or eliminate more than 140 programs that are performing poorly or not fulfilling essential priorities. By passing these reforms, we will save the American taxpayer another $14 billion next year—and stay on track to cut the deficit in half by 2009. I am pleased that Members of Congress are working on earmark reform—because the Federal budget has too many special interest projects. And we can tackle this problem together, if you pass the line-item veto.

We must also confront the larger challenge of mandatory spending, or entitlements. This year, the first of about 78 million Baby Boomers turn 60, including two of my Dad's favorite people—me, and President Bill Clinton. This milestone is more than a personal crisis—it is a national challenge. The retirement of the Baby Boom generation will put unprecedented strains on the Federal Government. By 2030, spending for Social Security, Medicare, and Medicaid alone will be almost 60 percent of the entire Federal budget. And that will present future Congresses with impossible choices—staggering tax increases, immense deficits, or deep cuts in every category of spending.

Congress did not act last year on my proposal to save Social Security, yet the rising cost of entitlements is a problem that is not going away—and with every year we fail to act, the situation gets worse. So tonight, I ask you to join me in creating a commission to examine the full impact of Baby Boom retirements on Social Security, Medicare, and Medicaid. This commission should include Members of Congress of both parties, and offer bipartisan answers. We need to put aside partisan politics, work together, and get this problem solved.

Keeping America competitive requires us to open more markets for all that Americans make and grow. One out of every five factory jobs in America is related to global trade, and we want people everywhere to buy American. With open markets and a level playing field, no one can out-produce or out-compete the American worker.

Keeping America competitive requires an immigration system that upholds our laws, reflects our values, and serves the interests of our economy. Our Nation needs orderly and secure borders. To meet this goal, we must have stronger immigration enforcement and border protection. And we must have a rational, humane guest worker program that rejects amnesty . . . allows temporary jobs for people who seek them legally . . . and reduces smuggling and crime at the border.

Keeping America competitive requires affordable health care. Our Government has a responsibility to help provide health care for the poor and the elderly, and we are meeting that responsibility. For all Americans, we must confront the rising cost of care . . . strengthen the doctor-patient relationship . . . and help people afford the insurance coverage they need. We will make wider use of electronic records and other health information technology to help control costs and reduce dangerous medical errors. We will strengthen Health Savings Accounts—by making sure individuals and small business employees can buy insurance with the same advantages that people working for big businesses now get. We will do more to make this coverage portable, so workers can switch jobs without having to worry about losing their health insurance. And because lawsuits are driving many good doctors out of practice—leaving women in nearly 1,500 American counties without a single OB-GYN—I ask the Congress to pass medical liability reform this year.

Keeping America competitive requires affordable energy. Here we have a serious problem: America is addicted to oil, which is often imported from unstable parts of the world.

The best way to break this addiction is through technology. Since 2001, we have spent nearly $10 billion to develop cleaner, cheaper, more reliable alternative energy sources—and we are on the threshold of incredible advances. So tonight, I announce the Advanced Energy Initiative—a 22-percent increase in clean-energy research at the Department of Energy, to push for breakthroughs in two vital areas. To change how we power our homes and offices, we will invest more in zero-emission coal-fired plants; revolutionary solar and wind technologies; and clean, safe nuclear energy.

We must also change how we power our automobiles. We will increase our research in better batteries for hybrid and electric cars, and in pollution-free cars that run on hydrogen. We will also fund additional research in cutting-edge methods of producing ethanol, not just from corn but from wood chips, stalks, or even leaves. Our goal is to make this new kind of ethanol practical and competitive within 6 years. Breakthroughs on this and other new technologies will help us reach another great goal: to replace more than 75 percent of our oil imports from the Middle East by 2025. By applying the talent and technology of America, this country can dramatically improve our environment . . . move beyond a petroleum-based economy . . . and make our dependence on Middle Eastern oil a thing of the past.

And to keep America competitive, one commitment is necessary above all: We must continue to lead the world in human talent and creativity. Our greatest advantage in the world has always been our educated, hard-working, ambitious people—and we are going to keep that edge. Tonight I announce the American Competitiveness Initiative, to encourage innovation throughout our economy, and to give our Nation's children a firm grounding in math and science.

First: I propose to double the Federal commitment to the most critical basic research programs in the physical sciences over the next 10 years. This funding will support the work of America's most creative minds as they explore promising areas such as nanotechnology, supercomputing, and alternative energy sources.

Second: I propose to make permanent the research and development tax credit, to encourage bolder private-sector investment in technology. With more research in both the public and private sectors, we will improve our quality of life—and ensure that America will lead the world in opportunity and innovation for decades to come.

Third: We need to encourage children to take more math and science, and make sure those courses are rigorous enough to compete with other nations. We have made a good start in the early grades with the No Child Left Behind Act, which is raising standards and lifting test scores across our country. Tonight I propose to train 70,000 high school teachers, to lead advanced-placement courses in math and science . . . bring 30,000 math and science professionals to teach in classrooms . . . and give early help to students who struggle with math, so they have a better chance at good, high-wage jobs. If we ensure that America's children succeed in life, they will ensure that America succeeds in the world.

Preparing our Nation to compete in the world is a goal that all of us can share. I urge you to support the American Competitiveness Initiative . . . and together we will show the world what the American people can achieve.

America is a great force for freedom and prosperity. Yet our greatness is not measured in power or luxuries, but by who we are and how we treat one another. So we strive to be a compassionate, decent, hopeful society.

In recent years, America has become a more hopeful Nation. Violent crime rates have fallen to their lowest levels since the 1970s. Welfare cases have dropped by more than half over the past decade. Drug use among youth is down 19 percent since 2001. There are fewer abortions in America than at any point in the last three decades, and the number of children born to teenage mothers has been falling for a dozen years in a row.

These gains are evidence of a quiet transformation—a revolution of conscience, in which a rising generation is finding that a life of personal responsibility is a life of fulfillment. Government has played a role. Wise policies such as welfare reform, drug education, and support for abstinence and adoption have made a difference in the character of our country. And everyone here tonight, Democrat and Republican, has a right to be proud of this record.

Yet many Americans, especially parents, still have deep concerns about the direction of our culture, and the health of our most basic institutions. They are concerned about unethical conduct by public officials, and discouraged by activist courts that try to redefine marriage. And they worry about children in our society who need direction and love . . . and about fellow citizens still displaced by natural disaster . . . and about suffering caused by treatable disease.

As we look at these challenges, we must never give in to the belief that America is in decline, or that our culture is doomed to unravel. The American people know better than that. We have proven the pessimists wrong before—and we will do it again.

A hopeful society depends on courts that deliver equal justice under law. The Supreme Court now has two superb new members, Chief Justice John Roberts and Justice Sam Alito. I thank the Senate for confirming both of them. And I will continue to nominate men and women who understand that judges must be servants of the law, and not legislate from the bench. Today marks the official retirement of a very special American. For 24 years of faithful service to our Nation, the United States honors Justice Sandra Day O'Connor.

A hopeful society has institutions of science and medicine that do not cut ethical corners, and that recognize the matchless value of every life. Tonight I ask you to pass legislation to prohibit the most egregious abuses of medical research—human cloning in all its forms . . . creating or implanting embryos for experiments . . . creating human-animal hybrids . . . and buying, selling, or patenting human embryos. Human life is a gift from our Creator—and that gift should never be discarded, devalued, or put up for sale.

A hopeful society expects elected officials to uphold the public trust. Honorable people in both parties are working on reforms to strengthen the ethical standards of Washington—and I support your efforts. Each of us has made a pledge to be worthy of public responsibility—and that is a pledge we must never forget, never dismiss, and never betray.

As we renew the promise of our institutions, let us also show the character of America in our compassion and care for one another.

A hopeful society gives special attention to children who lack direction and love. Through the Helping America's Youth Initiative, we are encouraging caring adults to get involved in the life of a child—and this good work is led by our First Lady, Laura Bush. This year we will add resources to encourage young people to stay in school—so more of America's youth can raise their sights and achieve their dreams.

A hopeful society comes to the aid of fellow citizens in times of suffering and emergency—and stays at it until they are back on their feet. So far the Federal Government has committed $85 billion to the people of the Gulf Coast and New Orleans. We are removing debris, repairing highways, and building stronger levees. We are providing business loans and housing assistance. Yet as we meet these immediate needs, we must also address deeper challenges that existed before the storm arrived. In New Orleans and in other places, many of our fellow citizens have felt excluded from the promise of our country. The answer is not only temporary relief, but schools that teach every child . . . and job skills that bring upward mobility . . . and more opportunities to own a home and start a business. As we recover from a disaster, let us also work for the day when all Americans are protected by justice, equal in hope, and rich in opportunity.

A hopeful society acts boldly to fight diseases like HIV/AIDS, which can be prevented, and treated, and defeated. More than a million Americans live with HIV, and half of all AIDS cases occur among African-Americans. I ask Congress to reform and reauthorize the

Ryan White Act . . . and provide new funding to States, so we end the waiting lists for AIDS medicine in America. We will also lead a nationwide effort, working closely with African-American churches and faith-based groups, to deliver rapid HIV tests to millions, end the stigma of AIDS, and come closer to the day when there are no new infections in America.

Fellow citizens, we have been called to leadership in a period of consequence. We have entered a great ideological conflict we did nothing to invite. We see great changes in science and commerce that will influence all our lives. And sometimes it can seem that history is turning in a wide arc, toward an unknown shore.

Yet the destination of history is determined by human action, and every great movement of history comes to a point of choosing. Lincoln could have accepted peace at the cost of disunity and continued slavery. Martin Luther King could have stopped at Birmingham or at Selma, and achieved only half a victory over segregation. The United States could have accepted the permanent division of Europe, and been complicit in the oppression of others. Today, having come far in our own historical journey, we must decide: Will we turn back, or finish well?

Before history is written down in books, it is written in courage. Like Americans before us, we will show that courage and we will finish well. We will lead freedom's advance. We will compete and excel in the global economy. We will renew the defining moral commitments of this land. And, so we move forward—optimistic about our country, faithful to its cause, and confident of victories to come.

Thank you, God bless you, and may God bless America.

GEORGE W. BUSH.

THE WHITE HOUSE, *January 31, 2006*.

MESSAGE FROM THE HOUSE

At 5:15 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the following resolution:

H. Res. 650. A resolution informing the Senate that a quorum of the House is present and that the House is ready to proceed with business.

The message also announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 77: Concurrent resolution to provide for a joint session of Congress to receive a message from the President on the state of the Union.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. VITTER:

S. 2227. A bill to amend the Harmonized Tariff Schedule of the United States to remove the 100 percent tariff imposed on roasted chicory and other roasted coffee substitutes; to the Committee on Finance.

By Mrs. LINCOLN (for herself and Mr. PRYOR):

S. 2228. A bill to designate the facility of the United States Postal Service located at 2404 Race Street, Jonesboro, Arkansas, as the "Hattie W. Caraway Post Office."; to the Committee on Homeland Security and Governmental Affairs.

By Mr. KENNEDY:

S. 2229. A bill to provide quality, affordable health care for all Americans; to the Committee on Finance.

By Mr. DODD (for himself and Mr. KENNEDY):

S. 2230. A bill to ensure that members of the Armed Forces have complete personal armored protection necessary for their duties, and for other purposes; to the Committee on Armed Services.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Ms. LANDRIEU:

S. Res. 359. A resolution concerning the Government of Romania's ban on intercountry adoptions and the welfare of orphaned or abandoned children in Romania; to the Committee on Foreign Relations.

By Mrs. MURRAY:

S. Res. 360. A resolution designating the week of February 6 through February 10, 2006, as "National School Counseling Week"; considered and agreed to.

By Mr. ALLEN (for himself and Mr. STEVENS):

S. Res. 361. A resolution honoring professional surveyors and recognizing their contributions to society; considered and agreed to.

By Mr. FRIST (for himself, Mr. REID, Mr. OBAMA, Mr. ISAKSON, Mr. CHAMBLISS, Mr. SANTORUM, Mr. AKAKA, Mr. ALEXANDER, Mr. ALLARD, Mr. ALLEN, Mr. BAUCUS, Mr. BAYH, Mr. BENNETT, Mr. BIDEN, Mr. BINGAMAN, Mr. BOND, Mrs. BOXER, Mr. BROWNBACK, Mr. BUNNING, Mr. BURNS, Mr. BURR, Mr. BYRD, Ms. CANTWELL, Mr. CARPER, Mr. CHAFEE, Mrs. CLINTON, Mr. COBURN, Mr. COCHRAN, Mr. COLEMAN, Ms. COLLINS, Mr. CONRAD, Mr. CORNYN, Mr. CRAIG, Mr. CRAPO, Mr. DAYTON, Mr. DEMINT, Mr. DEWINE, Mr. DODD, Mrs. DOLE, Mr. DOMENICI, Mr. DORGAN, Mr. DURBIN, Mr. ENSIGN, Mr. ENZI, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GRAHAM, Mr. GRASSLEY, Mr. GREGG, Mr. HAGEL, Mr. HARKIN, Mr. HATCH, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. JEFFORDS, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. KYL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LOTT, Mr. LUGAR, Mr. MARTINEZ, Mr. MCCAIN, Mr. MCCONNELL, Mr. MENENDEZ, Ms. MIKULSKI, Ms. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mr. PRYOR, Mr. REED, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. SALAZAR, Mr. SARBANES, Mr. SCHUMER, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH, Ms. SNOWE, Mr. SPECTER, Ms. STABENOW, Mr. STEVENS, Mr. SUNUNU, Mr. TALENT, Mr. THOMAS, Mr. THUNE, Mr. VITTER, Mr. VOINOVICH, Mr. WARNER, and Mr. WYDEN):

S. Res. 362. A resolution honoring the life of Coretta Scott King and expressing the condolences of the Senate on her passing; considered and agreed to.

ADDITIONAL COSPONSORS

S. 8

At the request of Mr. ENSIGN, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 8, a bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

S. 58

At the request of Mr. INOUYE, the names of the Senator from South Dakota (Mr. JOHNSON) and the Senator from New Jersey (Mr. MENENDEZ) were added as cosponsors of S. 58, a bill to amend title 10, United States Code, to permit former members of the Armed Forces who have a service-connected disability rated as total to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft.

S. 403

At the request of Mr. ENSIGN, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 403, a bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

S. 409

At the request of Mr. COLEMAN, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 409, a bill to establish a Federal Youth Development Council to improve the administration and coordination of Federal programs serving youth, and for other purposes.

S. 1173

At the request of Mr. DEMINT, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 1173, a bill to amend the National Labor Relations Act to ensure the right of employees to a secret-ballot election conducted by the National Labor Relations Board.

S. 2049

At the request of Mr. DOMENICI, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 2049, a bill to improve the security of the United States borders and for other purposes.

S. 2157

At the request of Mrs. BOXER, the name of the Senator from Maine (Ms.

SNOWE) was added as a cosponsor of S. 2157. a bill to amend title 10. United States Code, to provide for the Purple Heart to be awarded to prisoners of war who die in captivity under circumstances not otherwise establishing eligibility for the Purple Heart.

S. 2178

At the request of Mr. DEWINE, his name was added as a cosponsor of S. 2178, a bill to make the stealing and selling of telephone records a criminal offense.

S. 2179

At the request of Mr. OBAMA, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 2179, a bill to require openness in conference committee deliberations and full disclosure of the contents of conference reports and all other legislation.

S. 2197

At the request of Mr. DOMENICI, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 2197, a bill to improve the global competitiveness of the United States in science and energy technology. to strengthen basic research programs at the Department of Energy. and to provide support for mathematics and science education at all levels through the resources available through the Department of Energy. including at the National Laboratories.

S. 2198

At the request of Mr. DOMENICI, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 2198, a bill to ensure the United States successfully competes in the 21st century global economy.

S. 2199

At the request of Mr. DOMENICI, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 2199, a bill to amend the Internal Revenue Code of 1986 to provide tax incentives to promote research and development, innovation. and continuing education.

S. 2201

At the request of Mr. OBAMA, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from Washington (Ms. CANTWELL), the Senator from Massachusetts (Mr. KENNEDY) and the Senator from North Dakota (Mr. DORGAN) were added as cosponsors of S. 2201, a bill to amend title 49, United States Code. to modify the mediation and implementation requirements of section 40122 regarding changes in the Federal Aviation Administration personnel management system. and for other purposes.

S. RES. 354

At the request of Ms. LANDRIEU, her name was added as a cosponsor of S. Res. 354, a resolution honoring the valuable contributions of Catholic schools in the United States.

S. RES. 355

At the request of Mr. NELSON of Nebraska, the names of the Senator from Vermont (Mr. LEAHY), the Senator from New York (Mr. SCHUMER) and the Senator from Florida (Mr. MARTINEZ) were added as cosponsors of S. Res. 355, a resolution honoring the service of the National Guard and requesting consultation by the Department of Defense with Congress and the chief executive officers of the States prior to offering proposals to change the National Guard force structure.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KENNEDY:

S. 2229. A bill to provide quality, affordable health care for all Americans; to the Committee on Finance.

Mr. KENNEDY. Mr. President, in this century of the life sciences. medical miracles have the potential to improve the health and extend the lives of millions of Americans and millions more across the world.

But for too many of our citizens, quality affordable health care is a distant dream. and the promise of the century of the life sciences rings hollow.

Forty-six million Americans have no health insurance. Under the current Administration, the number has climbed every year of this Administration, from 40 million in 2000 to 46 million today. That's equivalent to the population of 24 States and the District of Columbia—combined.

That's 46 million Americans who wonder whether a cough or fever will turn into a serious illness that brings financial ruin, and 46 million Americans who have to make the impossible choice between paying for a visit to the doctor or paying the rent to keep a roof over their heads.

Even these figures understate the problem. Over a two year period. 82 million Americans. one out of every three Americans under 65, will be uninsured for a period of at least two months.

The burden of lack of health insurance falls most heavily on minority populations. Less than 13 percent of white Americans are uninsured, but over 20 percent of African Americans lack health insurance. For Hispanic Americans, the figure is even more appalling—over a third of Hispanic Americans lack coverage.

Over 80 percent of the uninsured are members of working families. They work 40 hours a week, fifty-two weeks a year—but all their hard work can't buy them the health insurance they need to protect themselves and their families—because they can't afford it and their employers don't provide it.

In any given year. one third of the uninsured go without needed medical care. Eight million uninsured Americans fail to take the drugs their doctors prescribe—because they can't afford to fill the prescription. 270,000 children suffering from asthma never see a doctor. 27,000 uninsured women are diagnosed with breast cancer each year. They are twice as likely as insured women not to receive medical treatment until their cancer has spread. As a result, they are 50 percent more likely to die of the disease.

The list of grim examples goes on and on.

Some argue that despite the lack of health care coverage. the uninsured get the care they need. But that's a myth. The facts prove otherwise.

Thirty five percent of the uninsured—over 15 million Americans—skip recommended treatment because of cost. Over a third of the uninsured need care but do not get it. and nearly half postpone care because of its cost. Millions of Americans are at risk of ignoring serious illnesses, because they can't afford to see a doctor for a needed test.

Whether the disease is AIDS or mental illness or cancer or heart disease or diabetes. the uninsured are left out and left behind. In hospital and out, young or old. black or white. they receive less care, suffer more. and are 25 percent more likely to die than those who are insured.

But the large and growing number of the uninsured is only part of the health care crisis. Costs are rising out of control, making health care coverage less affordable for businesses and individuals. and undercutting American industry in the global marketplace.

There is no doubt that America has the finest health care professionals. the best hospitals and the most creative medical researchers in the world. But having the best components is no guarantee of success for the health care system as a whole.

In the amount of money spent on health care per person. America is first in the world by a large margin. By that standard, we spend 49 percent more than the Swiss, 88 percent more than the Germans. 150 percent more than the British, and 160 more than the Japanese. Despite this enormons expenditure, America's health care system fails all too often to deliver quality health care. Among the world's leading industrialized countries, the United States ranks only 22nd in average life expectancy and 25th in infant mortality.

The most significant difference between the American health care system and those of our economic competitors is that these other nations regard health as a right, not a privilege. They make certain that their citizens have access to good health care. By establishing a national system of care, they have been able to hold down costs and keep quality high.

In the United States, we have refused to commit to quality health care for all Americans.

As a result, those who can afford the best care receive it, but millions of other Americans are left by the wayside.

Because of our fractured system of care, America's health care system is the most economically inefficient in the industrial world. The administrative costs alone of our system are nearly double those of Canada. Reducing our administrative costs to the low level of the Canadian system would save about $250 billion every year.

The difference between the way health care is financed in Canada and the U.S. saves the Canadian auto industry $4.00 an hour in worker compensation compared to the U.S. The Canadian branches of the big three automakers have released a joint letter with the Canadian Auto Workers Union stating that the Canadian system is a "strategic advantage for Canada" and "has been an important ingredient" in the success of Canada's "most important export industry."

Wise investments have helped contain health care costs here at home too. Since 1996, costs per patient in the Veterans medical system have actually decreased 7 percent, while private sector costs per patient have increased by 62 percent. The VA system did not achieve these savings by stinting on patient care or denying needed services. The VA has been widely praised for improving its quality of care through investments in information technology and a strong commitment to quality for all.

As a result of America's failure to focus on comprehensive care and cost reduction, costs are soaring out of control. Health care premiums have gone up over 70 percent in the last five years—over 5 times the overall rate of inflation in the economy. More and more small businesses can't afford to offer health care to their employees.

Health care costs mean that working Americans who have health coverage through their job are increasingly worried that their employer will eliminate the coverage on which they rely. Those who obtain coverage on the individual market must often pay huge premiums and accept large gaps in their coverage if they have any history of illness, no matter how slight. Many cannot obtain coverage at any price.

Even those who have health insurance have little security. Millions of Americans have seen health care costs eat away their savings and cut into their paychecks more and more every year.

Since the year 2000, the average cost of a family health insurance policy has increased by over $4,500, so that it now costs the average family nearly $11,000 for a health care policy. Family earnings have not kept pace. According to the Kaiser Family Foundation, health insurance premiums climbed by 73 percent over the last five years—but earnings increased only 15 percent.

The costs keep climbing higher and higher. Almost one in five working families have seen their premiums go up over 15 percent—and one in ten have faced increases over 20 percent.

These out-of-control costs are devastating for both individuals and businesses. Working families often face the agonizing choice between paying for health insurance and paying rent or buying groceries. Or they compromise by buying a meager insurance policy that provides little refuge when big danger strikes.

It's no wonder that unpaid medical bills cause nearly half the bankruptcies in America.

It's no wonder that practically every business leader in America cites rising health care costs as a top concern. When General Motors has to spend more on health care than it does on steel, it's time for a change. When ten percent of the total cost of a ton of steel manufactured in the United States is consumed by retiree health benefits alone, it's time for a change. When Starbucks spends more on health care than it does on coffee, it's time for a change.

In world markets, American businesses have to compete with foreign firms whose health costs are heavily subsidized by the government. American workers are the best in the world, but we give other nations an unfair advantage, because we refuse to enact long overdue policies to reduce health costs and ease the heavy burden of health care for American employees.

To say that this Administration and its Republican allies in Congress have stood idly by as this crisis has worsened would be untrue. To say they have taken no action as 3,000 more Americans have become uninsured during every single day of the Bush Administration would be inaccurate. They have taken action—by making the health care crisis worse.

Tomorrow, the House of Representatives will vote on a budget bill that will make the health care crisis worse for the 50 million Americans for whom Medicaid is literally the difference between life or death. The Republican bill makes them pay more and more for the health care on which their lives depend. I urge the House to reject these distorted priorities.

Currently, communities across the nation are struggling to cope with the disaster caused by the Republican Medicare drug "plan". Millions of seniors have faced a baffling array of choices, instead of the certainty of Medicare in getting the medications they need. Millions of persons with disabilities, or those facing the challenge of HIV/AIDS or living with mental illnesses have been denied the prescriptions they require, or have been told to pay exorbitant fees by the insurance companies that Republicans put in charge of the drug benefit. Try telling those who have been denied their medicines that they are in charge of their health care.

Tonight, the President will try to make the American people believe that the solution to rising health costs is to shift more and more of those costs to patients, or to deny care to those in need. That's the wrong prescription for health care.

The President's proposal will let the wealthiest Americans rack up billions of dollars in tax giveaways, while shifting the costs of health care to working families and those least able to pay.

Our people deserve true health care reform—not gimmicks and giveaways that worsen the crisis. They deserve a guarantee that when they get sick, they'll be able to obtain decent health care at a price they can afford.

Medicare has meant quality health care for millions of senior citizens for forty years. The time has come to make Medicare available to every American who wants to enroll in it. It's the best way to bring the enormous promise of this new century of the life sciences to every American.

America's failure to guarantee the basic right to health care for all its citizens was one of the great public policy failures of the 20th century, and we must not allow that failure to continue in this new century.

There is a better way. Our goal should be an America where no citizen of any age fears the cost of health care, and no employer stops creating jobs because of the high cost of providing health insurance.

We should build on the tried and true and trusted model of Medicare. Administrative costs are low, patient satisfaction is high, and patients have the right to choose any doctor and hospital they think is best—not the one an insurance company thinks is best for them.

Today I am introducing legislation to extend Medicare to all Americans, from birth to the end of life. Those who prefer private insurance can choose any of the plans offered to members of Congress and the President. I call this approach Medicare for All, because it will free all Americans from the fear of medical expenses and enable them to seek the best possible care when illness strikes. Nothing is more cynical than a Member of Congress who gives a speech denouncing health care for all, then goes off to see his doctor for a visit paid for by the Federal Employees Health Benefit Plan.

To ease the transition, Medicare for All will be phased in by age group, starting with those 55–65 years old and children up to the age of 20.

The plan contains a number of provisions to reduce costs and improve quality, including more effective use of health information technology. It also puts new emphasis on preventive care, because preventing illness before it occurs is always better and less expensive than treating patients after they become ill.

My proposal will be entirely voluntary. Any American who wishes to stay in their current employer-sponsored plan can do so, and employers can tailor their health plans to provide additional services to their employees that wrap around Medicare coverage.

As we implement this reform, financing must be a shared responsibility. All will benefit, and all should contribute. Payroll taxes should be part of the financing, but so should general revenues, to make the financing as progressive as possible.

We can offset a large part of the expense by a single giant step—bringing health care into the modem age of information technology. By moving to electronic medical records for all Americans when they go to the hospital or their doctor, we can save hundreds of billions of dollars a year in administrative costs while improving the quality of care. Equally important, we should pay for health care based on value and results, not just the number of procedures performed or days in a hospital bed.

We all know that Medicare is one of the most successful social programs ever enacted. It makes no sense to make it available only to senior citizens. I have no doubt that if we were enacting Medicare today, we would not limit its benefits to seniors. The need for good health coverage is as urgent today for all Americans as it was for senior citizens 40 years ago, when Medicare was first enacted.

The battle to achieve Medicare for All will not be easy. Powerful interests will strongly oppose it, because they profit immensely from the status quo. But no battle worth fighting is easy—and the struggle to fulfill the promise of this century of the life sciences for all our citizens is as worthy as any in American history.

I urge my colleagues to make good on the promise of America, and see that all our citizens receive the quality health care that should be their birthright. I urge the Senate to support Medicare for All.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 359—CONCERNING THE GOVERNMENT OF ROMANIA'S BAN ON INTERCOUNTRY ADOPTIONS AND THE WELFARE OF ORPHANED OR ABANDONED CHILDREN IN ROMANIA

Ms. LANDRIEU submitted the following resolution; which was referred to the Committee on Foreign Relations.

S. Res. 359

Whereas following the execution of Romanian President Nicolae Ceausescu in 1989, it was discovered that more than 100,000 underfed, neglected children throughout Romania were living in hundreds of squalid and inhumane institutions;

Whereas citizens of the United States responded to the dire situation of these children with an outpouring of compassion and assistance to improve conditions in those institutions and to provide for the needs of abandoned children in Romania;

Whereas, between 1990 and 2004, citizens of the United States adopted more than 8,200 Romanian children, with a similar response from the citizens of Western Europe;

Whereas the United Nations Children's Fund (UNICEF) reported in March 2005 that more than 9,000 children a year are abandoned in Romania's maternity wards or pediatric hospitals and that child abandonment in Romania in "2003 and 2004 was no different from that occurring 10, 20, or 30 years ago";

Whereas there are approximately 37,000 orphaned or abandoned children in Romania today living in state institutions, an additional 49,000 living in temporary arrangements, such as foster care, and an unknown number of children living on the streets and in maternity and pediatric hospitals;

Whereas, on December 28, 1994, Romania ratified the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption which recognizes that "intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin";

Whereas intercountry adoption offers the hope of a permanent family for children who are orphaned or abandoned by their biological parents;

Whereas UNICEF's official position on intercountry adoption, in pertinent part, states: "For children who cannot be raised by their own families, an appropriate alternative family environment should be sought in preference to institutional care, which should be used only as a last resort and as a temporary measure. Inter-country adoption is one of a range of care options which may be open to children, and for individual children who cannot be placed in a permanent family setting in their countries of origin, it may indeed be the best solution. In each case, the best interests of the individual child must be the guiding principal in making a decision regarding adoption.";

Whereas unsubstantiated allegations have been made about the fate of children adopted from Romania and the qualifications and motives of those who adopt internationally;

Whereas in June 2001, the Romanian Adoption Committee imposed a moratorium on intercountry adoption, but continued to accept new intercountry adoption applications and allowed many such applications to be processed under an exception for extraordinary circumstances;

Whereas on June 21, 2004, the Parliament of Romania enacted Law 272/2004 on "the protection and promotion of the rights of the child", which creates new requirements for declaring a child legally available for adoption;

Whereas on June 21, 2004, the Parliament of Romania enacted Law 273/2004 on adoption, which prohibits intercountry adoption except by a child's biological grandparent or grandparents;

Whereas there is no European Union law or regulation restricting intercountry adoptions to biological grandparents or requiring that restrictive laws be passed as a prerequisite for accession to the European Union;

Whereas the number of Romanian children adopted domestically is far less than the number abandoned and has declined further since enactment of Law 272/2004 and 273/2004 due to new, overly burdensome requirements for adoption;

Whereas prior to enactment of Law 273/2004, 211 intercountry adoption cases were pending with the Government of Romania in which children had been matched with adoptive parents in the United States, and approximately 1,500 cases were pending in which children had been matched with prospective parents in Western Europe; and

Whereas the children of Romania, and all children, deserve to be raised in permanent families: Now, therefore, be it

Resolved, That the Senate—

(1) supports the desire of the Government of Romania to improve the standard of care and well-being of children in Romania;

(2) urges the Government of Romania to complete the processing of the intercountry adoption cases which were pending when Law 273/2004 was enacted;

(3) urges the Government of Romania to amend its child welfare and adoption laws to decrease barriers to adoption, both domestic and intercountry, including by allowing intercountry adoption by persons other than biological grandparents;

(4) urges the Secretary of State and the Administrator of the United States Agency for International Development to work collaboratively with the Government of Romania to achieve these ends; and

(5) requests that the European Union and its member states not impede the Government of Romania's efforts to place orphaned or abandoned children in permanent homes in a manner that is consistent with Romania's obligations under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

SENATE RESOLUTION 360—DESIGNATING THE WEEK OF FEBRUARY 6 THROUGH FEBRUARY 10, 2006, AS "NATIONAL SCHOOL COUNSELING WEEK"

Mrs. MURRAY submitted the following resolution; which was considered and agreed to:

S. Res. 360

Whereas the American School Counselor Association has declared the week of February 6 through February 10, 2006, as "National School Counseling Week";

Whereas the Senate has recognized the importance of school counseling through the inclusion of elementary and secondary school counseling programs in the reauthorization of the Elementary and Secondary Education Act of 1965;

Whereas school counselors have long advocated that the education system of the United States must leave no child behind and must provide opportunities for every student;

Whereas personal and social growth results in increased academic achievement;

Whereas school counselors help develop well-rounded students by guiding them through their academic, personal, social, and career development;

Whereas school counselors have been instrumental in helping students, teachers, and parents deal with the trauma that was inflicted upon them by hurricanes Katrina, Rita, and Wilma;

Whereas students face myriad challenges every day, including peer pressure, depression, and school violence;

Whereas school counselors are usually the only professionals in a school building who are trained in both education and mental health matters;

Whereas the roles and responsibilities of school counselors are often misunderstood, and the school counselor position is often among the first to be eliminated in order to meet budgetary constraints;

Whereas the national average ratio of students to school counselors of 478-to-1 is more than double the 250-to-1 ratio recommended by the American School Counselor Association, the American Counseling Association, the American Medical Association, the American Psychological Association, and other organizations; and

Whereas the celebration of National School Counseling Week would increase awareness of the important and necessary role school counselors play in the lives of students in the United States:

Resolved, That the Senate—

(1) designates the week of February 6 through February 10, 2006, as "National School Counseling Week"; and

(2) encourages the people of the United States to observe the week with appropriate ceremonies and activities that promote awareness of the role school counselors perform in the school and the community at large in preparing students for fulfilling lives as contributing members of society.

SENATE RESOLUTION 361—HONORING PROFESSIONAL SURVEYORS AND RECOGNIZING THEIR CONTRIBUTIONS TO SOCIETY

Mr. ALLEN (for himself and Mr. STEVENS) submitted the following resolution; which was considered and agreed to:

S. RES. 361

Whereas there are over 45,000 professional surveyors in the United States;

Whereas 2006 marks the 200th anniversary of the end of the Lewis and Clark landmark expedition through the upper reaches of the Louisiana Territory and the American West;

Whereas this journey is one of the most important surveying expeditions in the history of the United States because of the wealth of geographical and scientific information it provided about the new Nation;

Whereas the nature of surveying has changed dramatically since 1785, as it is no longer limited to the description and location of land boundaries;

Whereas hydrographic surveys are important to the use of all our bodies of water;

Whereas engineering surveys are utilized in the study and selection of engineering construction;

Whereas geodetic surveys determine precise global positioning for such activities as aircraft and missile navigation;

Whereas cartographic surveys are used for mapping and charting, as well as photogrammetry, the science of using aerial photographs for measurement and map production;

Whereas many services are provided through the use of sophisticated equipment and techniques, such as satellite-borne remote sensing devices and automated positioning, measuring, recording, and plotting equipment;

Whereas the role of the surveyor has been, and remains, of vital importance in the development of the United States;

Whereas since the colonial days of this Nation, surveyors have been leaders in the community, Statesmen, influential citizens, and shapers of cultural standards;

Whereas former surveyors include George Washington, Thomas Jefferson, and Abraham Lincoln;

Whereas it was the work of the surveyor that determined the boundaries of land, the greatest economic asset in the colonies that became the United States;

Whereas Thomas Jefferson chaired a committee in 1784 to devise a plan for disposing of lands west of the 13 original colonies;

Whereas Thomas Jefferson argued that surveying before sale was necessary to prevent overlapping claim and to simplify deeds and registers;

Whereas Thomas Jefferson reportedly wrote a plan, which was debated in Congress and in modified form was adopted as the Land Ordinance of May 20, 1785, establishing the Public Land Survey System ("PLSS"), the rectangular system that continues today in 30 midwestern and western states; and

Whereas the establishment of the third week of March as National Surveyors Week would be a fitting tribute to all surveyors: Now, therefore, be it

Resolved, That the Senate—

(1) recommends the establishment of National Surveyors Week;

(2) calls on the people of the United States to observe National Surveyors Week each year with appropriate ceremonies and activities paying tribute to professional surveyors and their contribution to society; and

(3) invites the people of the United States to look back at the historic contributions of surveying and look ahead to the new technologies which are constantly modernizing this honored and learned profession.

SENATE RESOLUTION 362—HONORING THE LIFE OF CORETTA SCOTT KING AND EXPRESSING THE CONDOLENCES OF THE SENATE ON HER PASSING

Mr. FRIST (for himself, Mr. REID, Mr. OBAMA, Mr. ISAKSON, Mr. CHAMBLISS, Mr. SANTORUM, Mr. AKAKA, Mr. ALEXANDER, Mr. ALLARD, Mr. ALLEN, Mr. BAUCUS, Mr. BAYH, Mr. BENNETT, Mr. BIDEN, Mr. BINGAMAN, Mr. BOND, Mrs. BOXER, Mr. BROWNBACK, Mr. BUNNING, Mr. BURNS, Mr. BURR, Mr. BYRD, Ms. CANTWELL, Mr. CARPER, Mr. CHAFEE, Mrs. CLINTON, Mr. COBURN, Mr. COCHRAN, Mr. COLEMAN, Ms. COLLINS, Mr. CONRAD, Mr. CORNYN, Mr. CRAIG, Mr. CRAPO, Mr. DAYTON, Mr. DEMINT, Mr. DEWINE, Mr. DODD, Mrs. DOLE, Mr. DOMENICI, Mr. DORGAN, Mr. DURBIN, Mr. ENSIGN, Mr. ENZI, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GRAHAM, Mr. GRASSLEY, Mr. GREGG, Mr. HAGEL, Mr. HARKIN, Mr. HATCH, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. JEFFORDS, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. KYL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LOTT, Mr. LUGAR, Mr. MARTINEZ, Mr. MCCAIN, Mr. MCCONNELL, Mr. MENENDEZ, Ms. MIKULSKI, Mrs. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mr. PRYOR, Mr. REED, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. SALAZAR, Mr. SARBANES, Mr. SCHUMER, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH, Ms. SNOWE, Mr. SPECTER, Ms. STABENOW, Mr. STEVENS, Mr. SUNUNU, Mr. TALENT, Mr. THOMAS, Mr. THUNE, Mr. VITTER, Mr. VOINOVICH, Mr. WARNER, and Mr. WYDEN) submitted the following resolution; which was considered and agreed to:

S. RES. 362

Whereas Coretta Scott King was an inspirational figure and a woman of great strength, grace, and dignity who came to personify the ideals for which her husband fought;

Whereas Coretta Scott was born and raised in rural Alabama, graduated as the valedictorian from Lincoln High School, and received a Bachelor of Arts degree from Antioch College in Yellow Springs, Ohio;

Whereas Coretta Scott fought to be allowed to teach in the local public schools in Ohio but was denied because of her race;

Whereas Coretta Scott studied music at the New England Conservatory of Music in Boston and, while attending school in the City, met a graduate student who was studying for his doctorate degree at Boston University;

Whereas that graduate student, Martin Luther King, Jr., told her on their first date, "The four things that I look for in a wife are character, personality, intelligence, and beauty. And you have them all.";

Whereas Coretta Scott and Martin Luther King, Jr. were married on June 18, 1953, and moved to Montgomery, Alabama;

Whereas Mrs. King gave birth to her first child, Yolanda, 2 weeks before the start of the Montgomery bus boycott, and protected her when opponents of the boycott bombed the King household;

Whereas Dr. and Mrs. King were to have 3 more children named Martin Luther, III, Dexter, and Bernice;

Whereas during the lifetime of Dr. King, Mrs. King balanced the demands of raising their 4 children, serving as the wife of a pastor, and speaking before church, civic, college, fraternal, and peace groups;

Whereas Mrs. King participated in more than 30 "Freedom Concerts", where she lectured, read poetry, and sang to raise awareness of and money for the civil rights movement;

Whereas Mrs. King stood by the side of her husband during many civil rights marches and other notable occasions, including a 1957 trip to Ghana to mark the independence of that country, a 1959 trip to India to visit sites associated with Mahatma Gandhi, and a 1964 trip to Oslo, Norway, to accept a Nobel Peace Prize awarded to Dr. King;

Whereas just 4 days after the assassination of her husband in 1968, Mrs. King led a march of 50,000 people through the streets of Memphis and, later that year, took his place in the Poor People's March to Washington;

Whereas Mrs. King devoted her energy to carrying on the message of nonviolence and the work of her husband to create a United States in which all people have equal rights;

Whereas Mrs. King dedicated herself to raising funds and developing programs for the Atlanta-based Martin Luther King, Jr. Center for Nonviolent Social Change, where she served as founding President, Chair, and Chief Executive Officer;

Whereas Mrs. King was instrumental in seeing that the birthday of her husband was honored as a Federal holiday, an occasion first marked in 1986;

Whereas Mrs. King received honorary doctorates from over 60 colleges and universities, and authored 3 books;

Whereas Mrs. King received the congressional gold medal for her invaluable contributions to the United States as a leader of the civil rights movement;

Whereas Mrs. King traveled to every corner of the United States and the globe to speak out on behalf of a number of important issues, including racial and economic justice, the rights of women and children, religious freedom, full employment, health care, and education; and

Whereas Coretta Scott King was a civil rights icon and one of the most influential African Americans in history: Now, therefore, be it

Resolved, That the Senate—

(1) mourns the loss of Coretta Scott King;

(2) admires her lifelong commitment to social justice and peace;

(3) recognizes her role as a leading participant in the American Civil Rights Movement and her support to democracy movements world-wide;

(4) expresses its sympathies to the family of Coretta Scott king and;

(5) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to the family of Coretta Scott King.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. SHELBY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, January 31, 2006, at 2:30 p.m., on video content.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. SHELBY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, January 31, 2006, at 2:30 p.m., to hold a hearing on nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. SHELBY. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to hold a hearing during the session of the Senate on Tuesday, January 31, 2006, at 2 p.m., in SD-106.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. SHELBY. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Tuesday, January 31, 2006, at 10 a.m. for a hearing titled, "Challenges in a Catastrophe: Evacuating New Orleans in Advance of Hurricane Katrina."

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL SCHOOL COUNSELING WEEK

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 360, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 360) designating the week of February 6 through February 10, 2006, as "National School Counseling Week."

There being no objection, the Senate proceeded to consider the resolution.

Mrs. MURRAY. Mr. President, today I am pleased to submit this resolution designating the week of February 2, 2006 as "National School Counseling Week," on behalf of my colleagues, Senator BIDEN, Senator DORGAN, Senator JOHNSON, and Senator DODD. This resolution honors and celebrates the important work of school counselors, which the Senate has recognized since 1965 through the inclusion of school counseling in the Elementary and Secondary Education Act.

Across the country, there are approximately 95,000 school counselors, including 2,100 in Washington State. School counselors are critical components of a successful school and contribute significantly to the growth and success of students. In fact, school counselors were instrumental in helping students, teachers, and parents deal with the trauma of terrorism on September 11, 2001, and its aftermath. However, despite their important service, counselors are expected to serve, on average, 485 students each, and are overwhelmed. The American School Counseling Association, the American Medical Association, and the American Psychological Association recommend the ratio of students to school counselors be 250 students to 1 school counselor.

I want to share just a few examples of how school counselors throughout America are helping students.

In a middle school in southern California, school counselors realized that 257 students were in danger of not passing on to the next grade. They discovered that only 15 percent of the students understood the promotion and retention requirements. The school counselors presented a series of individual and small-group lessons on promotion and retention criteria. After the lessons, 100 percent of the students understood the requirements. As a result, 72 of the 257 students, about 28 percent, avoided retention that year.

In a high school in Racine, WI, a math teacher realized that 100 of his students failed algebra in the first quarter of the year. He asked a school counselor for help. Together, they discovered some of the reasons why students were failing. They initiated several programs, such as peer tutoring and homework assistance. As a result, 93 of the 100 students passed algebra by the end of the year and were able to move on to the next level of math.

A school district in Kentucky realized that the retention rate among ninth grade students was unacceptably high. School counselors, teachers and administrators worked together to develop and implement strategies targeted at helping ninth graders move to tenth grade. As a result, retention rates improved in 16 of the 17 high schools in the county in just 1 year. One school saw the retention rate improve more than 25 percent.

This resolution, though, is merely the beginning of what we need to be doing to support school counselors. We need to reduce the ratio of students to counselors to, at the most, 250 to 1. We need to help schools maintain their funding so that school counselors are not cut from school budgets. And we need to support our school counselors so that they can continue to be integral in the fabric of our schools and help our students achieve success in high school and beyond.

School counselors design and implement comprehensive developmental school counseling programs that are integral to the success of every student. They help students improve academic achievement, develop personally and socially and prepare for successful careers that will enable them to be contributing members of society. National School Counseling Week focuses public attention on the unique contribution of professional school counselors and highlights the tremendous impact that school counselors have in helping students achieve success in school and beyond.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 360) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 360

Whereas the American School Counselor Association has declared the week of February 6 through February 10, 2006, as "National School Counseling Week";

Whereas the Senate has recognized the importance of school counseling through the inclusion of elementary and secondary school counseling programs in the reauthorization of the Elementary and Secondary Education Act of 1965;

Whereas school counselors have long advocated that the education system of the

United States must leave no child behind and must provide opportunities for every student;

Whereas personal and social growth results in increased academic achievement;

Whereas school counselors help develop well-rounded students by guiding them through their academic, personal, social, and career development;

Whereas school counselors have been instrumental in helping students, teachers, and parents deal with the trauma that was inflicted upon them by hurricanes Katrina, Rita, and Wilma;

Whereas students face myriad challenges every day, including peer pressure, depression, and school violence;

Whereas school counselors are usually the only professionals in a school building who are trained in both education and mental health matters;

Whereas the roles and responsibilities of school counselors are often misunderstood, and the school counselor position is often among the first to be eliminated in order to meet budgetary constraints;

Whereas the national average ratio of students to school counselors of 478-to-1 is more than double the 250-to-1 ratio recommended by the American School Counselor Association, the American Counseling Association, the American Medical Association, the American Psychological Association, and other organizations; and

Whereas the celebration of National School Counseling Week would increase awareness of the important and necessary role school counselors play in the lives of students in the United States:

Resolved, That the Senate—

(1) designates the week of February 6 through February 10, 2006, as "National School Counseling Week"; and

(2) encourages the people of the United States to observe the week with appropriate ceremonies and activities that promote awareness of the role school counselors perform in the school and the community at large in preparing students for fulfilling lives as contributing members of society.

HONORING PROFESSIONAL SURVEYORS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 361, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 361) honoring professional surveyors and recognizing their contributions to society.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 361) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 361

Whereas there are over 45,000 professional surveyors in the United States;

Whereas 2006 marks the 200th anniversary of the end of the Lewis and Clark landmark expedition through the upper reaches of the Louisiana Territory and the American West;

Whereas this journey is one of the most important surveying expeditions in the history of the United States because of the wealth of geographical and scientific information it provided about the new Nation;

Whereas the nature of surveying has changed dramatically since 1785, as it is no longer limited to the description and location of land boundaries;

Whereas hydrographic surveys are important to the use of all our bodies of water;

Whereas engineering surveys are utilized in the study and selection of engineering construction;

Whereas geodetic surveys determine precise global positioning for such activities as aircraft and missile navigation;

Whereas cartographic surveys are used for mapping and charting, as well as photogrammetry, the science of using aerial photographs for measurement and map production;

Whereas many services are provided through the use of sophisticated equipment and techniques, such as satellite-borne remote sensing devices and automated positioning, measuring, recording, and plotting equipment;

Whereas the role of the surveyor has been, and remains, of vital importance in the development of the United States;

Whereas since the colonial days of this Nation, surveyors have been leaders in the community, Statesmen, influential citizens, and shapers of cultural standards;

Whereas former surveyors include George Washington, Thomas Jefferson, and Abraham Lincoln;

Whereas it was the work of the surveyor that determined the boundaries of land, the greatest economic asset in the colonies that became the United States;

Whereas Thomas Jefferson chaired a committee in 1784 to devise a plan for disposing of lands west of the 13 original colonies;

Whereas Thomas Jefferson argued that surveying before sale was necessary to prevent overlapping claim and to simplify deeds and registers;

Whereas Thomas Jefferson reportedly wrote a plan, which was debated in Congress and in modified form was adopted as the Land Ordinance of May 20, 1785, establishing the Public Land Survey System ("PLSS"), the rectangular system that continues today in 30 midwestern and western states; and

Whereas the establishment of the third week of March as National Surveyors Week would be a fitting tribute to all surveyors: Now, therefore, be it

Resolved, That the Senate—

(1) recommends the establishment of National Surveyors Week;

(2) calls on the people of the United States to observe National Surveyors Week each year with appropriate ceremonies and activities paying tribute to professional surveyors and their contribution to society; and

(3) invites the people of the United States to look back at the historic contributions of surveying and look ahead to the new technologies which are constantly modernizing this honored and learned profession.

HONORING THE LIFE OF CORETTA SCOTT KING

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 362, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 362) honoring the life of Coretta Scott King and expressing the condolences of the Senate on her passing.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I rise today to mark the passing of a great American.

Coretta Scott King, a leader of the civil rights movement, died in her sleep yesterday evening.

In 15 years of marriage to Rev. Martin Luther King Jr. and nearly four decades of tireless advocacy after his assassination, Mrs. King proved herself a strong and tireless voice for the principle of human equality.

At her husband's side through good times and bad, she played a major role in speaking out against the injustice and evils of State-mandated discrimination and private bigotry.

Her work with her husband played a key role in the passage of our most vital civil rights laws: the 1964 Civil Rights Act and the 1965 Voting Rights Act.

Following her husband's death, she helped found the Martin Luther King Jr. Center for Nonviolent Social Change and led the successful campaign to establish her husband's birthday as a national holiday.

As a Southerner who hails from a state that once imposed the terrible evils of Jim Crow, I am deeply grateful for the work of the Civil Rights Movement.

As majority leader of the Senate, I had the privilege and the pleasure of being with Coretta Scott King on a number of occasions. As I was reflecting back over the course of the day, the one I remember most was now 2 or maybe 3 years ago when I joined her for a church service at Ebenezer Baptist Church Heritage in Atlanta where the family has been historically attending services.

Without the achievements of the civil rights movement, Tennessee, and indeed the entire American South, would have remained mired in cultural and political and economic patterns of the distant past. It took leadership. It took boldness. It took vision.

As we move forward with our work today and in the whole of this Congress, let us remember that heroic, that bold, yet humble, work of Coretta Scott King. Let us prove ourselves worthy of the legacy of the civil rights movement the King family have bequeathed to our Nation.

Mr. REID. Mr. President, we were all awakened this morning to the news of the passing of one of our Nation's true heroes in the struggle for civil rights, Coretta Scott King. Together, Americans all mourn her passing. We offer our deepest thanks for her dedication to keeping the dream of racial equality and national harmony alive even after losing her husband, the Reverend Dr. Martin Luther King, Jr. I join all Americans in extending our thoughts and prayers to her extended family.

Mr. OBAMA. Mr. President, today we mourn the passing of Coretta Scott King.

When I think about Coretta Scott King, I think about a little girl who walked 5 miles to school on those rural Alabama roads and felt the heat of racism each day she passed the door of the Whites-only school, so much closer to home.

It didn't matter, because she studied and succeeded and excelled beyond most of her classmates, Black and White. She earned a college degree, and an acceptance to a prestigious graduate school up North.

One day she met a young preacher from Atlanta, and she fell in love with him. And he told her his dreams. And she believed in them. And she decided that she would help to make them real—not just as a wife or as a friend, but as a partner in freedom's cause.

Over the next years, Coretta Scott King did that in so many ways we can't even imagine. She raised a family, she marched through the streets, she inspired through song, she led through speech, and she even dodged countless attempts on her family's life.

And when one of those attempts finally took her love from this world, she made the selfless decision to carry on. With no time to even cry or mourn, to wallow in anger or vengeance, Coretta Scott King took to the streets just four days after Dr. King's assassination and led 50,000 people through the streets of Memphis in a march for the kind of justice for which her husband had given his life.

She spent the rest of her time on this earth marching for that same justice—leading the King Center for Nonviolent Social Change in Atlanta, and spreading her family's message of hope to every corner of this world.

I had the great honor of knowing Mrs. King, and the occasion to visit with her in Atlanta last year. She was an extraordinarily gracious woman. We sat and chatted in her living room. She showed me an album of photographs of her, Dr. King and the children. Then she told me what her husband had said to her once, at a time when she was feeling burdened, understandably, by all the stress and strain that had been placed on the family as a consequence of his role in the civil rights movement. She said her husband advised:

> When you are willing to make sacrifices for a great cause, you will never be alone. Because you will have divine companionship and the support of good people.

Coretta Scott King died in her sleep last night, but she certainly was not alone. She was joined by the companionship and support of a loving family and a grateful Nation—inspired by her cause, dedicated to her work, and mournful of her passing.

My thoughts and condolences today are with her children. I ask that she and her husband now rest together in eternal peace.

Mr. ISAKSON. Mr. President, I rise on behalf of myself, all Georgians, and I am sure all Americans, to express my deepest sympathy and condolences to the family of Coretta Scott King, the wife of Dr. Martin Luther King. We learned this morning that she passed away yesterday at the age of 78. Coretta Scott King is known in history for being the wife of Dr. Martin Luther King, but she was far more than that. As he wrote in his "Letter from the Birmingham Jail" to the concerned clergy of Birmingham about his justification for coming to Birmingham on behalf of the citizens who had been discriminated against, Dr. King said:

> I come because injustice anywhere is a threat to justice everywhere.

As we all know from history, he took his mission wherever it took him to fight on behalf of justice for all Americans. He was able to do that in large measure with the support and the partnership of his great partner in life, Coretta Scott King. I had the privilege, as a Georgian, of knowing her since my days in the legislature. I saw her as an equal with Dr. King in the movement. I saw her as a loving mother in the raising of their four children. And I have seen her, since the loss of Dr. King, as an untiring advocate on behalf of ensuring that the legacy of Dr. King and his movement is perpetuated in American history.

A few months ago, the United States of America and this Senate honored the life of Rosa Parks as a significant leader, the matriarch of the civil rights movement. There is no question today, as we pause in sympathy for the loss of Dr. King's wife, Coretta Scott King, that she joins Rosa Parks as a great woman in American history and as a tireless advocate for equality for all Americans.

On behalf of my State, myself, and all those who love peace and justice, I express our sympathy on the loss of Coretta Scott King.

Mr. CHAMBLISS. Mr. President, I rise today to remember an extraordinary and courageous woman, Coretta Scott King.

Coretta Scott King was one of the most influential women leaders in our world. She entered the public stage in 1955 as wife of the Rev. Dr. Martin Luther King, Jr. and as a leading participant in the American civil rights movement.

Born and raised in Marion, AL, Coretta Scott graduated valedictorian from Lincoln High School. She received a B.A. in music and education from Antioch College in Yellow Springs, OH, and then went on to study concert singing at Boston's New England Conservatory of Music, where she earned a degree in voice and violin. While in Boston she met Martin Luther King, Jr. who was then studying for his doctorate in systematic theology at Boston University. They were married on June 18, 1953, and in September 1954 took up residence in Montgomery, AL, with Coretta Scott King assuming the many functions of pastor's wife at Dexter Avenue Baptist Church.

During Dr. King's career, Mrs. King devoted most of her time to raising their four children. However, she balanced mothering and work, speaking before church, civic, college, fraternal and peace groups. She conceived and performed a series of favorably-reviewed Freedom Concerts which combined prose and poetry narration with musical selections and functioned as fundraisers for the Southern Christian Leadership Conference, the direct action organization of which Dr. King served as first president.

After Dr. King's assassination in 1968, Mrs. King devoted much of her energy and attention to developing programs and building the Atlanta-based Martin Luther King, Jr. Center for Nonviolent Social Change as a living memorial to her husband's life and dream. For 27 years, Mrs. King devoted her life to developing the King Center. As founding President, Chair, and Chief Executive Officer, she dedicated herself to providing local, national and international programs that have trained tens of thousands of people in Dr. King's philosophy and methods; she guided the creation and housing of the largest archives of documents from the civil rights movement; and, perhaps her greatest legacy after establishing the King Center itself, Mrs. King spearheaded the massive educational and lobbying campaign to establish Dr. King's birthday as a national holiday. In 1983, an act of Congress instituted the Martin Luther King, Jr. Federal Holiday Commission, which she chaired for its duration. And in January 1986, Mrs. King oversaw the first legal holiday in honor of her husband—a holiday which has come to be celebrated by millions of people world-wide and, in some form, in over 100 countries.

Coretta Scott King carried the message of nonviolence around the world. She led goodwill missions to many countries in Africa, Latin America, Europe and Asia. She spoke at many of history's most massive peace and justice rallies. She was the first woman to deliver the class day address at Harvard, and the first woman to preach at a statutory service at St. Paul's Cathedral in London.

In 1974 Mrs. King formed a broad association of over 100 religious, labor, business, civil and women's rights organizations dedicated to a national policy of full employment and equal economic opportunity, as co-chair of the Full Employment Action Council. In 1983, she brought together more than 800 human rights organizations to form the Coalition of Conscience, sponsors of the 20th anniversary march on Washington, until then the largest demonstration in our Nation's capital. In 1988, she reconvened the Coalition of Conscience for the 25th anniversary of the March on Washington. In preparation for the Reagan-Gorbachev talks, in 1988 she served as head of the U.S. delegation of Women for a Meaningful Summit in Athens, Greece; and in 1990, as the USSR was redefining itself, Mrs. King was coconvener of the Soviet-American Women's Summit in Washington, DC.

Mrs. King received honorary doctorates from over 60 colleges and universities; authored three books and a nationally-syndicated column; and served on, and helped found, dozens of organizations, including the Black Leadership Forum, the National Black Coalition for Voter Participation, and the Black Leadership Roundtable.

On a very personal note, I had the pleasure of meeting Mrs. King on a number of occasions, both within my great State of Georgia as well as outside of our State. Most notably, I have been to a number of the Martin Luther King, Jr., Day celebrations at Ebenezer Baptist Church and was there last year, which happened to be the last time that Ms. King was there. She was unable to be there this year.

She was a remarkable lady in that, in spite of her high profile relative to the civil rights movement, as well as since Dr. King's death, she remained a very humble, a very personable, a very congenial lady who had a great sense of humor. Certainly during the time of the civil rights movement, this lady was undoubtedly one of the most admired women in the world because of what she saw her husband going through.

She was loyal and steadfast in the support of her husband. She obviously loved her husband. She loved her family until her death last night. Her legacy will live on for generations, generations and generations to come.

Coretta Scott King worked tirelessly to make a better world. History will judge that she did. We mourn her passing.

Mr. DURBIN. Mr. President, in 1968, I was a law student at Georgetown University here in Washington, DC. It was a tumultuous year, and I recall sitting in the library working for my class assignments when a law professor walked in and said: I would like all of you students who are second- and third-year law students to come outside. We walked outside, and he said: We need to ask for your help. The District of Columbia is in an uproar. With the assassination of Dr. Martin Luther King, there are riots all over our Nation's Capital and many cities across the country, and our legal system has broken down. They have arrested people for a variety of charges and have filled up the DC jails. They have no room for them and no attorneys to represent them. We would like to ask you as a law student to walk across the street to the DC courts and provide some legal advice to the people who are being arrested.

I couldn't believe that as a law student they would ask me to serve as a lawyer, but it was an emergency situation.

As I went over there and saw the DC courts in turmoil over the uproar and the riots, if you will, in the streets of the District of Columbia, I reflected on that terrible year and all that we had been through. Dr. Martin Luther King, Robert Kennedy—it was a year no one will ever forget.

I did my part and recall shortly afterwards watching as the television was filled with the funeral of Dr. Martin Luther King. I can recall his casket being drawn by a team of mules to his final resting place. I can recall his brave wife walking in the front of the line behind him.

Many of us still recall when Jackie Kennedy faced that same awful burden with the assassination of her husband, John Kennedy, the exceptional courage she showed under what must have been the most stressful and terrible moment of her life.

Coretta Scott King showed that same courage that day, leading the followers of Dr. Martin Luther King to his final resting place. She could have easily retired from public life at that moment and become honored in her own right for having given so much to this country, but she did not. She decided to carry on his legacy, and she led a public life from that point forward in his memory.

The strength we saw on the day of his burial was the strength that continued until her last moment of life a few hours ago. We were all saddened this morning to wake up to the news of the death of Coretta Scott King, a champion of justice and human rights. We honor her memory and send our deep condolences to her family.

A few days ago, Martin Luther King, her son, spoke at Mayor Daley's Martin Luther King breakfast in Chicago, IL. He did an exceptional job. He spoke to us about the challenges his mother faced even in her illness and told us about the continued commitment of his family to civil rights.

Because of her deep humility, there is a tendency to think of Coretta Scott King as her husband's supporter. In fact, as Dr. King himself made clear, she was his indispensable partner. Listen to what Dr. King told an interviewer in 1967. Speaking of Mrs. King, he said:

> I never will forget [that] the first discussion we had when we met was the whole question of racial injustice and economic injustice and the question of peace. In her college days, she had been actively engaged in movements dealing with these problems.

And then he added:

> I must admit, I wish I could say, to satisfy my masculine ego, that I led her down this path; but I must say we went down together, because she was as actively involved and concerned when we met as she is now.

For more than 50 years, Mrs. King called America toward greater justice and equality. She spoke with dignity and a quiet authority that challenged us to fulfill our American obligation to create a more perfect union by embracing equal rights and genuine economic and social justice for all Americans, regardless of race, religion, gender, national background, or sexual orientation.

Coretta Scott King was the driving force behind the establishment of the Martin Luther King, Jr., national holiday, for which I was proud to vote, and of the construction of the King Center in Atlanta which I visited with Congressman John Lewis. Yet she reminded us that the best way to honor her husband's legacy was to devote our lives to his work.

It is perhaps no accident that as Coretta Scott King laid her head down for the last time, it was the very day that a decision was made to locate the new Museum of African-American History and Culture near the Lincoln Memorial where her husband delivered his immortal "I Have a Dream" speech. It was a dream they shared and to which they both dedicated their lives.

Now Coretta Scott King and Martin Luther King, Jr., rest together in eternal peace, and it is up to us to keep that dream alive.

Mr. KENNEDY. Mr. President, Coretta Scott King was a driving force, not just for the civil rights movement, but for the great march toward progress.

Martin Luther King and Coretta Scott King awakened the conscience of a nation that began the journey toward equality, knocking down the walls of discrimination based on race, on religion, and on ethnicity. We have all benefited so much from their inspiration and their leadership.

Coretta was not only a powerful and charismatic figure and leader for our time, but she was a mother who helped her children grow up to be individuals with a sense of dignity, a sense of pride in their heritage and a strong commitment to do something for someone else. I admire her for that as well, and my thoughts and prayers are with her children today.

The signs of bigotry and discrimination are still evident today. They're much more sophisticated and much more subtle than when Dr. King was facing the police dogs and the beatings that took place in Selma, Montgomery, and in towns and cities across America. There's no question that we're a fairer and a better nation because of Dr. King, and I believe what Coretta Scott King would want us to do is continue this march toward progress when it comes to disability rights, women's rights, civil rights—and not retreat from it.

Mr. SARBANES. Mr. President, I thank the able Senator from Massachusetts. I was privileged to have worked with Mrs. King on the Martin Luther King, Jr. holiday bill for which she pushed so hard and which eventually was passed by the Congress. I agree with the Senator from Massachusetts, she was a champion of decency and human rights and a more just and humane society in her own right, not only as a partner of her husband. We mourn her death and recognize the extraordinary contributions she has made to our Nation.

Mr. LAUTENBERG. Mr. President, today, I rise to pay tribute to the life of a great American, Coretta Scott King, who passed away last night at the age of 78.

Mrs. King, Alabama born, was educated in Ohio and Boston. It was while attending the New England Conservatory of Music that she met a young man from Atlanta, Martin Luther King, Jr. She knew from their first date that Martin Luther King, Jr., was brilliant and exceptional, a born leader.

When they were married at her home in Alabama in 1953, Reverend King's father, who was a pastor, performed the ceremony. But at Coretta's request, he omitted the bride's vow to obey her husband. That was pretty bold at that time. It was highly unusual, but it provided a glimpse of the strength and independence Coretta Scott King would demonstrate throughout her life.

Coretta Scott King joined her husband in the fight for equality and justice. She believed that was our Nation's promise to every citizen, but it had too long been denied to African Americans. She was Dr. King's constant partner in the struggle for civil rights. She marched alongside him and used her talent as a singer to raise money for their cause while raising their children and keeping their family together in the face of constant threats and a bombing by the Ku Klux Klan.

After Dr. King's assassination 38 years ago, Coretta Scott King might have quietly slipped out of public life, but she chose to continue his work. She created the Martin Luther King, Jr., Center for Nonviolent Social Change in Atlanta in search of civil rights and equality for everyone in America. Coretta Scott King never lost faith in her husband's dream of peace and mutual respect. I had the honor of being able to identify a courthouse in the city of Newark that was being built as the Martin Luther King, Jr., Courthouse. I called Coretta Scott King to be certain that this was an acceptable item in the memory of Dr. Martin Luther King. We were pleased to do it, and that courthouse stands today as a reminder to everybody who passes in that area, everybody who lives in that region, that Martin Luther King was the great leader that he was, and his wife followed closely in his footsteps. She never wavered from Dr. King's commitment to achieve change through nonviolent means.

Dr. King lived long enough to see the passage of landmark legislation that removed legal barriers to equality. His wife lived to see more African Americans and Latino Americans elected as public officials and serving as Secretary of State for the United States, Chairman of the Joint Chiefs of the military, and CEOs of companies such as American Express, Kmart, and Time-Warner.

Although some of the legal barriers to equality have fallen, economic barriers remain. At the time of his assassination, Dr. King was beginning to focus on economic justice. Today, 38 years later, we still have not achieved his dream of economic justice. That promise rings hollow today for millions of hard-working Americans. It rings hollow for the people who clean the rooms in the big hotels but cannot afford a decent place to live. It rings hollow for garment workers, those who work in the factories over sewing machines and needles and the pressing machines, whose children wear hand-me-down clothes. They work making beautiful clothing, but they cannot afford to clothe their own children in many cases. And farm workers who grow and harvest the crops, they often cannot afford healthy food for their families.

Last year, Hurricane Katrina revealed to the whole world the stark poverty that still afflicts our Nation. The greatest majority of the poor people we saw stranded in New Orleans were African Americans. In the past 5 years, the poverty level among African Americans has increased. More than one-third of all Black children in this country live in poverty. That suggests something in the long-term that is not good for them, nor for country.

I had the privilege yesterday of going to a school in Patterson, NJ, that I attended many years ago. Patterson, NJ, is a minority city of African Americans and new immigrants. I looked at the faces of those children. We had a demonstration by the band. My wife and I were there. In the faces of those kids you could see hope, and you could see a desire to have a chance at life. It is a terrible condition that prohibits, many times, their opportunity to get an education, to have the kind of nutrition they need to grow healthy bodies and strong minds. The overall poverty rate among African Americans is almost three times as high as non-Hispanic Whites. That is not economic justice, Mr. President.

The great promise of America has always been that if you work hard, you can build a better life for your family. Poverty is a national disgrace in this wealthy country we inhabit. Dr. King and Coretta Scott King knew that. They believed America could do better. They loved this country for its promise of liberty and justice for all, and in holding us to that promise, they appealed to the best nature of the American spirit.

Mr. President, I find it fitting that on the very day Coretta Scott King passed away, the Smithsonian Institute announced its intention to build a museum of Black history on the National Mall. That is where it belongs: it belongs in the founding elements of our country, to demonstrate the contribution that has been made by African Americans in our society. That museum will be just a few blocks from the Lincoln Memorial, where her husband delivered his famous "I have a dream" speech during the 1964 march on Washington. It is an appropriate place—a place where President Abraham Lincoln is remembered for his fight against slavery and the abuse of the people who were kept in this condition.

For almost four decades, Coretta Scott King has helped keep that dream alive. Now we must all do the same.

Mr. NELSON of Florida. Mr. President, I wish to share my thoughts on the passing of Coretta Scott King. I once had the privilege of hosting Mrs. King at my home. She was an extraordinary woman who was deeply involved in a movement that led our nation closer to a more equal and just society.

Although Mrs. King is often referred to as the wife of the late Reverend Dr. Martin Luther King, she was a civil rights activist in her own right. Following Dr. King's death in 1968, she devoted her energies to the Martin Luther King, Jr. Center for Nonviolent Social Change. Her leadership helped spread Dr. King's message of positive social change through nonviolent means. She often said, "The center enables us to go out and struggle against the evils in our society."

Mrs. King, like her husband, was a uniter. She brought together diverse groups for common causes. In 1974, Mrs. King formed the Full Employment Action Council, consisting of civil rights, religious, labor, and business groups promoting equal economic opportunity and full employment for all Americans. Nine years later, she helped form the Coalition of Conscience, consisting of over 800 human rights groups, to commemorate the 20th anniversary of the March on Washington.

Globally, she was a goodwill ambassador to countries around the world and an adviser to world leaders such as Nelson Mandela. Later this year, Mrs. King and her late husband were to receive the Congressional Gold Medal for their contributions to the Nation.

Mrs. King has left us, but her legacy lives on as we remember and honor her historical impact. We should strive to follow in her footsteps. Today, my thoughts and prayer are with Mrs. King and her family and friends.

Ms. CANTWELL. Mr. President, I was saddened today to learn of the death of Coretta Scott King. Her work and life gave one man great strength and inspired a nation. In a lifetime, suffering and pain can envelop communities and span generations; it can also touch us intimately and immediately. When her husband was assassinated in April of 1968, Mrs. King suffered a world of loss in one moment. She persevered with passion and devotion, honoring the movement her husband made so strong. She taught the world that carrying on a great legacy requires more than simply remembering the words of the dead, but requires imbuing those words with action, life, leadership, and vision. Mrs. King has left our Nation a vital legacy of her own.

Mrs. LINCOLN. Mr. President, today I rise to pay tribute to a fallen pillar of the movement to extend civil and social rights to millions of African Americans: Coretta Scott King.

Mrs. King was loved and respected the world over as one of the pioneers of the civil rights movement of the 1950s and 1960s. She was the friend, partner and wife of the leader of the civil rights movement, the Reverend Dr. Martin Luther King, Jr.

Born in Marion, AL, on April 27, 1927, Coretta Scott graduated as valedictorian of her high school class and attended Antioch College in Yellow Springs, OH. She received a B.A. in music and education and then studied concert singing at the New England Conservatory of Music in Boston, MA.

As the young Martin Luther King, Jr., began his civil rights work in Montgomery, AL, Mrs. King worked closely with him, organizing marches and sit-ins at segregated restaurants while at the same time raising their four children: Yolanda Denise, Martin Luther III, Dexter Scott, and Bernice Albertine.

During the height of the civil rights movement, Mrs. King and her husband endured threats and attempts on their lives. In spite of the violence that surrounded them and that would one day take Dr. King's life, they never abandoned a fundamental belief in nonviolence. They were committed to peace.

After her husband's death, Mrs. King took a more visible role in the movement. She worked to keep his ideology of equality for all people at the forefront of the Nation's agenda. She pushed for more than a decade to have her husband's birthday observed as a national holiday, then watched with pride in 1983 as President Reagan signed the bill into law.

King became a symbol, in her own right, of her husband's struggle for peace and brotherhood, presiding with a quiet, steady, stoic presence over seminars and conferences on global issues. Throughout her years of service, however, she never lost sight of the fact that her children were her greatest responsibility.

Mrs. King was also a role model for many young women. She showed them that their own voices had value and that their thoughts and actions mattered.

Our loss of Mrs. King leaves a void that won't soon be filled. We have lost a great leader, a great role model, a great woman, and a great American, but it is also important for us to remember that her children have lost their mother. May the Lord grant them peace in this time of mourning. Our thoughts and prayers go out to her family and friends.

Mr. President, today is a sad day for the Nation. We have lost one of our leading voices for equality and justice. In closing, I am sure that the entire Senate will join with me in honoring the life of Mrs. Coretta Scott King.

Mr. KYL. Mr. President, today I rise to pay tribute to the life of Mrs. Coretta Scott King. She was a steady force in the civil rights movement who ably supported the work of her late husband, the Reverend Dr. Martin Luther King Jr. Her legacy, like that of Dr. King, is steeped in the American principles we all hold dear: those of equality and justice, patriotism, faith, and family values.

As a young woman, Coretta Scott, a native of Marion, AL, experienced the racism and prejudice that characterized the South at that time. She had a desire to exceed expectations in the most challenging of environments. Coretta was valedictorian of Lincoln High School in 1945 and pursued the serious study of music at Antioch College in Ohio, and then at the New England Conservatory of Music. It was in Boston that Coretta first met the young Martin King, a divinity student earning his doctorate in theology.

Both of them knew the value of education and study, but both were also determined to serve others. Coretta had been involved in the civil rights movement before she met Dr. King; but when they joined forces as husband and wife in 1953, the movement was strengthened. Each place they lived in was roiled by the controversies of the movement to end racial segregation. In every place, bigots threatened the King family's safety. Amidst the violence, the arrests of peaceful protesters, the bombings, and assassination attempts against her husband, Mrs. King remained a bedrock for her husband and the protector of her children. Yolanda, Martin III, Dexter, and Bernice found remarkable role models in both of their parents, but it was Mrs. King's steady hand that directed their upbringing.

As the world took notice of Dr. King's philosophy of nonviolent social change, Mrs. King spread it effectively, especially among women. She lent her time and talents to numerous educational causes and civil rights groups. She exhibited poise, dignity, and grace in everything she did.

Mrs. King's commitment to civil rights did not diminish in 1968 when her husband's life was ended by an assassin's bullet. She instead made a commitment to the nonviolent achievement of social justice as her life's work. The Martin Luther King Jr. Center for Nonviolent Social Change in Atlanta, GA, stands today as a testament to Dr. King's work and to that of his wife, for it was she who made the institution what it is. Mrs. King's strong will and courageous strength allowed her to stay the course and further the movement.

She was also a strong force behind the national holiday to commemorate Dr. King's life.

Coretta Scott King and the late Rosa Parks were often regarded as "Mothers of the Civil Rights Movement." We are sad to have lost both of them in so short a time. But as we enter Black History Month in February and then Women's History Month in March, the message and example of these American heroines will be before us. They demonstrate that ordinary people can achieve extraordinary things. Their selflessness will not be forgotten.

May Mrs. Coretta Scott King find the peace for which she and Martin strived so hard to achieve. God speed.

Mrs. FEINSTEIN. Mr. President, I rise today to pay tribute to the first lady of the civil rights movement—Coretta Scott King. Mrs. King, the widow of the late Reverend Martin Luther King, Jr., dedicated her life to sharing Dr. King's quest for social justice and peace.

Although one cannot say enough about her lifelong commitment to the cause of racial and economic equality, it is important to also note that Coretta Scott King was a visionary for women's rights on her own merit. She was the first woman to deliver the Class Day address at Harvard, and the first woman to preach at a statutory service at St. Paul's Cathedral in London. And Mrs. King served as a liaison to international peace and justice organizations even before Dr. King took a public stand in 1967 against United States intervention in the Vietnam war.

As we mourn the passing of Coretta Scott King, we are once again reminded of her quiet and resolute compassion for others. As she once remarked, and continued to demonstrate throughout her long life, Dr. King's dream was equally hers as well. "I didn't learn my commitment from Martin. We just converged at a certain time."

Together, their fearless commitment to the civil rights movement shaped and inspired the revolutionary social changes in the United States over the last half-century.

Rev. Martin Luther King, Jr., and Coretta Scott King were first vaulted to the national stage during the Montgomery bus boycott. Led by Dr. King, the 1955 boycott lasted nearly 13 months and truly ignited the Nation's civil rights movement.

The boycott led to the Supreme Court questioning the legality of the Jim Crow law that mandated the discrimination of African-Americans on the public bus system. And on November 13, 1956, in the landmark case Browder v. Gayle, the Supreme Court banned segregation on buses. It was truly a remarkable victory for the cause of freedom and equality.

Throughout the turbulent decades of the 1950's and 60's, Dr. King's vision helped the Nation form a new and better understanding of itself, one that celebrates its diverse nature and strengthens its commitment to the principles of equality and justice.

Yet one cannot simply overlook the passion and commitment of Mrs. King as her own individual. Throughout her long life, Mrs. King served as an inspirational presence around the world for the values of equality and peace.

Coretta Scott was born April 27, 1927, the middle of three children born to Obadiah and Bernice Scott. She grew up in the two-room house her father built on land that had been owned by the family for three generations. Her exposure to the injustices of segregation were formed early on, as she walked to her one-room school house each day, watching buses full of white children kick up dust as they passed.

During high school, Mrs. King excelled academically and demonstrated a great talent for music. She attended Antioch College in Yellow Springs, OH, where 2 years earlier her older sister, Edythe, had become the first black to enroll. At Antioch, she studied education and music.

In 1953, the young Coretta Scott was preparing for a career in music at the New England Conservatory of Music in Boston, when she met a young graduate student in philosophy. A year later she and Dr. King, then a young minister from a prominent Atlanta family, were married.

During Dr. King's career, Mrs. King mostly shied away from the prominent spotlight of her husband, balancing motherhood and movement work. She devoted most of her time to raising their four children: Yolanda Denise, born in 1955, Martin Luther III, born in 1957, Dexter Scott, born in 1961, and Bernice Albertine, born in 1963. But she also gained recognition for the "Freedom Concerts" she organized, where she lectured, read poetry and sang to raise awareness of and money for the burgeoning civil rights movement.

Upon the tragic assassination of Rev. Martin Luther King, Jr., on April 4, 1968, Mrs. King bravely took up the mantle of the civil rights cause. Even before her husband was buried, she marched at the head of the garbage workers he had gone to Memphis to champion.

Over the next few decades, Coretta Scott King gained nationwide interest and admiration for her efforts to establish a national holiday in honor of her husband. By an act of Congress, the first national observance of the holiday took place in 1986. Dr. King's birthday is now marked by annual celebrations in over 100 countries.

During the 1970s, Mrs. King continued to work on behalf of the cause of economic justice. In 1974 she formed the Full Employment Action Council, a broad coalition of over 100 religious, labor, business, civil and women's rights organizations dedicated to a national policy of full employment and equal economic opportunity.

She also helped to found the Martin Luther King Jr. Center for Non-Violent Social Change in Atlanta, dedicated both to scholarship and to activism.

Over time, Mrs. King also developed her own causes and rhetoric, which were consistent with the vision of her husband. For example, when she stood in for her husband at the Poor People's Campaign at the Lincoln Memorial on June 19, 1968, she spoke not just of his vision for social justice, but also of gender and racial equality. She called upon American women "to unite and form a solid block of women power to fight the three great evils of racism, poverty and war."

Mrs. King also dedicated herself to the cause of peace, traveling throughout the world on goodwill missions to Africa, Latin America, Europe and Asia. In 1983, she marked the 20th anniversary of the historic March on Washington by leading a gathering of more than 800 human rights organizations, the Coalition of Conscience, in the largest demonstration the Capital City had seen up to that time. And in 1993, Mrs. King was invited by President Clinton to witness the historic handshake between Prime Minister Yitzhak Rabin and Chairman Yassir Arafat at the signing of the Middle East peace accords.

Mrs. King also envisioned plans for a memorial dedicated to her husband. Recently, I cosponsored a bill that approved funding for such a memorial. This memorial will be the first on the National Mall in honor of a person of color. It is my hope that this memorial will continue to remind the Nation, and the world, of the powerful words of hope Dr. King expressed here in Washington, DC, more than 40 years ago.

Throughout her life, Mrs. King was seen as an inspirational figure around the world, someone who truly personified the ideals to which she and Dr. King pledged their lives.

But although our country has come a long way since the days when our country first met the legendary Coretta Scott King and Rev. Martin Luther King, Jr., we still have much to accomplish. We must steadfastly protect the advances already made in the fight for social equality, and also further those advances in the years ahead.

We owe the legacy of Coretta Scott King, and that of her remarkable husband, the late Martin Luther King, Jr., no less.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 362) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 362

Whereas Coretta Scott King was an inspirational figure and a woman of great strength, grace, and dignity who came to personify the ideals for which her husband fought;

Whereas Coretta Scott was born and raised in rural Alabama, graduated as the valedictorian from Lincoln High School, and received a Bachelor of Arts degree from Antioch College in Yellow Springs, Ohio;

Whereas Coretta Scott fought to be allowed to teach in the local public schools in Ohio but was denied because of her race;

Whereas Coretta Scott studied music at the New England Conservatory of Music in Boston and, while attending school in the City, met a graduate student who was studying for his doctorate degree at Boston University;

Whereas that graduate student, Martin Luther King, Jr., told her on their first date, "The four things that I look for in a wife are character, personality, intelligence, and beauty. And you have them all.";

Whereas Coretta Scott and Martin Luther King, Jr. were married on June 18, 1953, and moved to Montgomery, Alabama;

Whereas Mrs. King gave birth to her first child, Yolanda, 2 weeks before the start of the Montgomery bus boycott, and protected her when opponents of the boycott bombed the King household;

Whereas Dr. and Mrs. King were to have 3 more children named Martin Luther, III, Dexter, and Bernice;

Whereas during the lifetime of Dr. King, Mrs. King balanced the demands of raising their 4 children, serving as the wife of a pastor, and speaking before church, civic, college, fraternal, and peace groups;

Whereas Mrs. King participated in more than 30 "Freedom Concerts", where she lectured, read poetry, and sang to raise awareness of and money for the civil rights movement;

Whereas Mrs. King stood by the side of her husband during many civil rights marches and other notable occasions, including a 1957 trip to Ghana to mark the independence of that country, a 1959 trip to India to visit sites associated with Mahatma Gandhi, and a 1964 trip to Oslo, Norway, to accept a Nobel Peace Prize awarded to Dr. King;

Whereas just 4 days after the assassination of her husband in 1968, Mrs. King led a march of 50,000 people through the streets of Memphis and, later that year, took his place in the Poor People's March to Washington;

Whereas Mrs. King devoted her energy to carrying on the message of nonviolence and the work of her husband to create a United States in which all people have equal rights;

Whereas Mrs. King dedicated herself to raising funds and developing programs for the Atlanta-based Martin Luther King, Jr. Center for Nonviolent Social Change, where she served as founding President, Chair, and Chief Executive Officer;

Whereas Mrs. King was instrumental in seeing that the birthday of her husband was honored as a Federal holiday, an occasion first marked in 1986;

Whereas Mrs. King received honorary doctorates from over 60 colleges and universities, and authored 3 books;

Whereas Mrs. King received the congressional gold medal for her invaluable contributions to the United States as a leader of the civil rights movement;

Whereas Mrs. King traveled to every corner of the United States and the globe to speak out on behalf of a number of important issues, including racial and economic justice, the rights of women and children, religious freedom, full employment, health care, and education; and

Whereas Coretta Scott King was a civil rights icon and one of the most influential African Americans in history: Now, therefore, be it

Resolved, That the Senate—

(1) mourns the loss of Coretta Scott King;

(2) admire her lifelong commitment to social justice and peace;

(3) recognizes her role as a leading participant in the American Civil Rights Movement and her support to democracy movements world-wide;

(4) expresses it sympathies to the family of Coretta Scott King and;

(5) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to the family of Coretta Scott King.

ORDERS FOR WEDNESDAY, FEBRUARY 1, 2006

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it recess until 8:35 p.m. tonight, at which time the Senate will proceed as a body to the House of Representatives Chamber for the President's State of the Union Address; provided that upon the dissolution of the joint session, the Senate adjourn until 9:15 a.m. on Wednesday, February 1. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then proceed to the consideration of Calendar No. 325, H.R. 4297, the tax reconciliation bill. I further ask consent that following the majority leader, there be a period of morning business for up to 60 minutes, with the first 30 minutes under the control of the majority leader or his designee and the final 30 minutes under the Democratic leader or his designee, with that time counted against the underlying statutory time limitation.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, we have had a very productive day with the Senate confirming the nominations of Samuel Alito as an Associate Justice of the Supreme Court and Ben Bernanke as Chairman of the Federal Reserve. The Senate will recess until 8:35 tonight and, just after that, we will proceed as a body to the House for a joint session of Congress to hear the President's State of the Union Address. Tomorrow the Senate will begin consideration of the tax reconciliation bill. We have already passed this bill once and had hoped that we could expedite the process of sending the bill to conference and resolving our differences with the House. Unfortunately, it appears that this will be a somewhat lengthy process, and it will take several days and multiple votes. We will finish it this week.

RECESS

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in recess until 8:35 p.m. tonight, under the previous order.

There being no objection, the Senate, at 4:14 p.m., recessed until 8:36 p.m. and reassembled when called to order by the Presiding Officer (Mr. THUNE).

JOINT SESSION OF THE TWO HOUSES—ADDRESS BY THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 109-80)

The PRESIDING OFFICER. The Senate will proceed to the Hall of the House of Representatives to hear the address by the President of the United States.

Thereupon, the Senate, preceded by the Assistant Sergeant at Arms, Lynne Halbrooks, the Secretary of the Senate, Emily J. Reynolds, and the Vice President of the United States, RICHARD B. CHENEY, proceeded to the Hall of the House of Representatives to hear the address by the President of the United States, George W. Bush.

(The address delivered by the President of the United States to the joint session of the two Houses of Congress is printed in the proceedings of the House of Representatives in today's RECORD.)

ADJOURNMENT UNTIL 9:15 A.M. TOMORROW

At the conclusion of the joint session of the two Houses, and in accordance with the order previously entered, at 10:10 p.m., the Senate adjourned until Wednesday, February 1, 2006, at 9:15 a.m.

NOMINATIONS

Executive nominations received by the Senate January 31, 2006:

EXECUTIVE OFFICE OF THE PRESIDENT

EDWARD P. LAZEAR, OF CALIFORNIA, TO BE A MEMBER OF THE COUNCIL OF ECONOMIC ADVISERS, VICE BEN S. BERNANKE.

DEPARTMENT OF HOMELAND SECURITY

W. RALPH BASHAM, OF VIRGINIA, TO BE COMMISSIONER OF CUSTOMS, DEPARTMENT OF HOMELAND SECURITY, VICE ROBERT C. BONNER, RESIGNED.

DEPARTMENT OF LABOR

PAUL DECAMP, OF VIRGINIA, TO BE ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR, VICE TAMMY DEE MCCUTCHEN, RESIGNED.

DEPARTMENT OF JUSTICE

JEFFREY L. SEDGWICK, OF MASSACHUSETTS, TO BE DIRECTOR OF THE BUREAU OF JUSTICE STATISTICS, VICE LAWRENCE A. GREENFELD, RESIGNED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

JULIE K. STANLEY, 5692

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

JOHN JULIAN ALDRIDGE III, 9991
MARY J. BURNS, 0948
TERRI L. CARVER, 0272
AMY M. GRIESE, 6983
ODELL GROOMS, 2021
JAMES A. KING, JR., 7856
JERRY M. LANG, 9724
JANE S. LOVE, 4831
PAULA W. RISENHOOVER, 3081
SUSAN L. SIEGMUND, 5664

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

ISIDRO ACOSTA CARDENO, 5275
GEORGE F. COHEN, 7740
CHARLES R. ELLIS, 6683
FERNANDO FERNANDEZ, 5360
ROBERT L. LANDGRAF, 1995
JACOB C. MARSHALL, JR., 9780
VIRENDRA S. MEHTA, 7288
BILLY R. MORGAN, 8977
CATHERINE C. OHSIEK, 8285
DEAN E. ROBINSON, 0246
EDMUND J. RUTHERFORD, 6962
JOSEF F. SCHMID III, 6915
ROSS A. SNOW, 9461
JOHN G. SOTOS, 8300
THOMAS L. WALKER, 0511
LARRY A. WOODS, 2710

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

EVELYN L. BYARS, 8921
JAMES W. CONLEY, 4258
MARY C. DELUCIA, 0561
SUSAN E. DRAINE, 2633
PATRICK N. FRANCISCO, 5873
CHERYL A. HEYWARD, 8342
PAMELA C. MCBRIDE, 4897
LEOLA MCNEILL, 8952
MAUREEN F. MINTZLAFF, 9679
LISA A. NAFTZGERKANG, 6257

KIM H. NEIMAN, 0431
BARBARA RUTH NITZ, 4804
MARCIA D. PARKER, 2527
DALENE D. PERDUE, 8488
SUSAN EISEL SIDES, 3746
DEBRA A. STEPHENS, 0158
LOUIS J. SYTSMA, 5796
KENNETH R. WHEELER, JR., 6651
SHERALYN A. WRIGHT, 9759

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be colonel

RONALD A. ABBOTT, 8209
WOODY C. BAKER, 4124
SHARON RUSCH BANNISTER, 2070
THOMAS S. BINGHAM, 0722
CHRISTOPHER M. COLLIER, 2033
JULIE M. COLLINS, 9784
ROBERT I. DELO, 4681
PAUL D. DEVEAU, 1621
JON M. DOSSETT, 2582
DREW W. FALLIS, 1623
PAUL M. FORTUNATO, 4280
JENNIFER A. HARTE, 8790
HARRY HOLIDAY, 5042
KELVIN K. KRAUSE, 5927
JOSEPH S. KROBOCK, 9083
CHRISTOPHER S. LAURITZEN, 4411
MICHAEL J. MAYERCHAK, 8614
KEVIN J. MURPHY, 7755
JOSEPH E. NOVAK, 1564
DAVID B. POWERS, 8982
MICHAEL D. SIGNORELLI, 4629
DAVID M. SMITH, 0826
JEFFREY S. THOMPSON, 2726
JOSE VILLALOBOS, 6974

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be colonel

DALE R. AGNER, 9420
KATHLEEN M. ANKERS, 4172
ELEANOR E. AVERY, 5261
DAVID P. BLAKE, 9395
DANIEL G. BURNETT, 0011
MARK S. CAMPBELL, 5411
CRAIG Y. CASTILLO, 4002
RICHARD D. CESPEDES, 0003
WILBERT E. CHARLES, 4231
JAMES W. COCKERILL, 9377
JOHN J. DEGOES, 0665
ROBERT J. DIGERONIMO, 1737
WARREN C. DORLAC, 2123
MARY D. DVORAK, 9614
KATHLEEN B. ELMER, 2857
PAUL A. FRIEDRICHS, 7938
JAMES W. GASQUE, 0604
ROBERT T. GILSON, 3429
MARC V. GOLDHAGEN, 6990
TERRY L. HASKE, 5136
STEPHEN W. HIGGINS, 0032
HELEN M. HOOTSMANS, 2726
TIMOTHY A. HURSH, 2080
GARY L. HURWITZ, 0818
MARK A. KOENIGER, 7398
EDWARD R. KOST, 7265
JOHN G. LEVASSEUR, 9365
DAVID S. LOUDER, 8890
KENNETH P. MCDONNELL, 4975
MICHAEL R. MURCHLAND, 5324
SCOTT B. NORRIS, 4157
MICHAEL B. OSSWALD, 2842
CRAIG S. PACKARD, 7255
SUSAN M. PEREZDETAGLE, 1636
GORDON C. PETERS, 7367
TIMOTHY D. ROBINETTE, 4666
MARTHA P. SCHATZ, 5722
GALE J. SKOUSEN, 4024
DAVID L. SMITH, 6792
ERIC B. STONE, 5069
GERALD V. WIEST, 3817
JOHN M. WIGHTMAN, 6027
DAVID A. WILLIAMS, 6750

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

MARK ROBERT ACKERMANN, 0035
CRAIG R. ALLISON, 4988
JON G. ANDRE, 6855
PHIL L. AUSTIN, 1142
PAUL T. BABIN, JR., 1092
ABEL BARRIENTES, 2540
SCOTT LEE BATTLES, 6837
MARK M. BAUKNIGHT, 0463
DAVID JOHN BEK, 2621
PATRICIA S. BLASSIE, 9937
DENIS O. BOUDREAUX, 0896
RHONDA JEAN BRAUDIS, 9774
GEORGE F. BREWER II, 4641
MICHAEL J. BRILL, 5041
NANCY JANE BROOKS, 1658
RICHARD ANTHONY BRUNNER, 3621
ERIC L. BUCHANAN, 4782
CHARLES F. CALAMONERI, 4470
PAUL WESLEY CARR, 9639
WINONA N. CASON, 0489
CLIVE SHUN HSIAO CHI, 1728
DAVID H. CLARK, 6030
STEVEN R. CLAYTON, 0332
LYNN ELIZABETH COEHOORN, 2313
MICHAEL J. COLE, 5642
KEVIN C. COLEMAN, 9018
BETHANY J. COLOMBO, 9051
RICHARD NICHOLAS CONFORTI, 1729
MICHAEL P. CONNER, 0094
LEON E. CONTRERAS, 2010
TIMOTHY S. COSTA, 2048
STEPHEN J. COUBROUGH, 3644
ROBERT AUSTIN CRAMER, 6195
RICKY L. CREWS, 3405
DAVID F. CROWDEN, 8736
DAVID L. CULBERTSON, 2046
LIDA DAIS DAHNKE, 7102
JENNIFER JOAN DALRYMPLE, 7040
GERALD J. DANKO, 3953
JOSE H. DAVISON, 4893
CYNTHIA A. DECARLO, 3999
DAVID M. DELGADO, 8783
JAMES A. DENTON, 8111
TIMOTHY D. DODGE, 0499
KEVIN P. DOHERTY, 8627
SCHERRY E. DOUGLAS, 6813
TIMOTHY DUFFY, 1079
ANNE L. DUNLAP, 3601
ROBERT L. DUNN, 9007
GREGORY A. ECKFELD, 3490
CHRISTOPHER L. EDDY, 9718
LYMAN L. EDWARDS, 0045
RICHARD T. EGTVEDT, 5851
DARREL L. EKSTROM, 2633
JONATHAN M. ELLIS, 8858
WILLIAM L. ERICKSON, 6991
JAMES A. ESCH, 5719
PATRICIA A. EVANS, 3470
BRENT J. FALKENBERG, 0233
DAVID C. FEDORS, 7002
GEORGE W. FENIMORE III, 2137
BRUCE A. FERNALD, 3183
ELLEN M. FIEBIG, 7657
MARK J. FREDERICKSON, 5429
JAMES D. FRISHKORN, 3965
ROGER M. GALLET, 9079
EDWARD GARCIA, 7172
MELVIN J. GIDDINGS, JR., 1986
KAREN D. GILES, 6461
JEAN L. GLINES, 3738
JOHN GONZALES, 5959
DAVID H. GOODHUE, 8479
OZZIE H. GORBITZ, 8846
ROBIN F. GRANTHAM, 4499
JOHN T. GUNNOE, 0425
KURT A. HAMMER, 5599
CRAIG A. HARDIN, 7687
LINDA L. HARLAN, 6068
HARRY E. HEFLIN, JR., 6566
CHRISTINE M. HEIKKINEN, 4617
EDWARD H. HENSON, 6353
JAMES W. HERRON, 7515
MARK P. HETTERLY, 3614
JOHN A. HICKOK, 3901
WALTER LEROY HOLMES, 8877
LLOYD W. HULSEY, 8561
MICHAEL J. HUMPHREY, 2262
JANET M. HUMPHREYS, 2134
MICHAEL W. HUTTNER, 0902
RICHARD T. HYLAND, 7164
JON K. ILSENG, 6462
VIRGINIA M. JABOUR, 1303
DENNIS J. JACOBS, 0347
LILLIAN A. JAMESONEAL, 8617
WILLIAM D. JENNE, 6405
JEFFREY L. JOHNSON, 2645
STEVEN D. JOHNSON, 8444
JAMES A. KELLEY, 9015
STUART C. KENNEY, 6102
TERRI A. R. KETT, 5519
GERALD P. KIRCHNER, 6862
KEVIN D. KISER, 9370
THOMAS E. KITTLER, 4698
STEVEN M. KLEINMAN, 3267
TERRY A. LAWRENCE, 4016
MARGARET Z. LAWSON, 3976
PAMELA A. LEBLANC, 9377
STEWART M. LEBLANC, 6888
MICHAEL J. LICATA, 1363
DALE S. LINDER, 4665
MICHAEL F. LOGRANDE, 0441
CAROLYN A. LOHMAN, 6446
THOMAS E. LOHR, 7915
JANE M. LOUMA, 9858
ROGELIO LOZANO, JR., 9410
ROBERT LOUIS MACHO, 6043
JAMES F. MACKEY, 4942
SCOTT A. MALCOLM, 6152
THOMAS F. MANLEY III, 3871
STEVE L. MANN, 9104
PHILIP J. MANNING, 3805
PAUL J. MARKLEY, 8402
CLAUDETTE S. MARTIN, 2974
ROBERT J. MARTIN, 3240
JEFFERY L. MATTOX, 9200
SHAUN T. MAYNARD, 3934
CHRISTOPHER A. MAZUR, 8534
SEAN D. MCCLUNG, 1612
GIORDANO B. MCMULLEN, 4067
KEVIN J. MCNEIGHT, 7191
JOSEPH E. MCREYNOLDS, 6476
MARK A. MELCHER, 6882
ROY ANTHONY MERRELL, 9000
ROBERT EARL MICHAEL, 5271
SCOTT A. MLYNARCZYK, 4709
CHARLES W. MOOD, 1686
MICHAEL HOLLIS MORGAN, 5408
GUY H. MORLEY, JR., 4604
PAUL J. MUNYON, 0388
ELLIE F. NIX, JR., 7902
NOEL CHRISTINA NOLTA, 1545
DAVID B. OBRIEN, 5064
SHARON A. OLBETER, 9806
MICHELLE OSBORNE, 1669
STEVEN J. PANETTA, 8995
MATTHEW A. PARKS, 9073
ARTHUR G. PETRUCCELLI, 0096
ROBERT N. POLUMBO, 7293
RAYMOND DANIEL RABATIN, 3359
JOSEPH C. RALLO, 5619
ALBERT M. REIF, 0846
DANA G. RICHARD, 1465
DAVID L. ROBIE, 3082
MARY K. ROEHL, 9083
RALPH J. ROMINE, 5391
STEVEN T. ROSE, 1958
GLENN D. ROSENBERGER, 5056
ROBERT J. ROXBROUGH, 6041
CLETUS G. RUDD, 7894
SCOTT S. RUSSELL, 0003
PATRICK M. RYAN, 9178
WALTER J. SAMS, 4196
PAMELA S. SANDERS, 4045
THOMAS R. SANDERS, JR., 8020
JAMES PATRICK SCANLAN, 1538
AUGUST G. SCHALKHAM, 0936
JOSEPH P. SCHERRER, 9589
KARL A. SCHMITKONS, 8483
JAMES A. SCHNELL, 8265
GLENN R. SCHUMACHER, 2103
RICHARD W. SCOBEE, 2849
STAN A. SHELEY, 1642
JAMES C. SHORE, 2479
RONALD D. SIMS, 9160
DANIEL R. SITTERLY, 5943
CHRISTOPHER F. SKOMARS, 7070
JEFFRY JOHN SMITH, 7186
WADE ROBERT SMITH, 5486
WILLIAM J. SMITH, 8364
ROBIN G. SNEED, 8474
SHARON L. SOUNHEIN, 4311
JON R. SPANGLER, 9306
MICHAEL L. SPEER, 9821
KELLEY J. SPELLMAN, 5775
RUSSELL L. STINE, 0692
VICKI L. SULLIVAN, 7565
ALLAN L. SWARTZMILLER, 9576
DAVID C. TALLEY, 8912
LISA K. TANK, 2685
DARRELL A. TAYLOR, 5244
VINCENT J. TEUBER, 5273
MICHAEL W. THORNAL, 7117
DIANNE E. TIANO, 5408
SIMON TONG, 1559
JOHN E. TRNKA, JR., 2710
JAMES E. TULLY, 5376
CHARLES P. UNTERREINER, 1642
KEVIN S. VAILLE, 7040
KENT A. VALENTINE, 0848
STEVEN D. VAUTRAIN, 6421
EDUARDO A. VILLAVICENCIO, 9106
JANICE E. VINCENT, 0053
CYNTHIA L. VISEL, 4973
WILLIAM B. WALDROP, JR., 7582
TIMOTHY J. WARD, 2871
JOHN R. WEIGAND, 0204
STEVEN V. WILKERSON, 5141
HARRY H. WILKINS, 3923
SCOTT A. WILSON, 8218
MARTIN S. WISEMAN, 3177
KEVIN M. WOODS, 5301
DARRELL G. YOUNG, 5346
SHEILA ZUEHLKE, 6696

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

JAVIER A. ABREU, 8637
LLOYD H. ANSETH, 4398
LENA M. ARVIDSON, 7560
PHILIP R. BARONE, 9947
LARS O. BOUMA, 1168
ERIC L. CATHEY, 9671
HAEOH CHOE, 7937
SARA A. DIXON, 3724
MIROSLAWA R. DUDEK, 3578
RICHARD J. ECKERT, JR., 1581
ROBIN E. FONTENOT, 5908
MARTIN F. GIACOBBI, 7787
MARTIN J. HAMILTON, 9939
TAMMY KNAPP HEISEY, 1682
ANDRE A. HENRIQUES, 5621
JOHN W. HULTQUIST, 3928
PHILIP S. JUNGHANS, 7796
DAVID B. KIESER, 8148
JEFFRY J. LARSON, 5236
LARRY K. LONG, 8456
DAVID L. MAPES, 3042
ANGELA M. MONTELLANO, 2117
JOSEPH A. MUHLBAUER, 5218

BASEEMAH S. NAJEEULLAH, 8177
GRACE S. NIEVES, 5294
ALBERT L. OUELLETTE, 7058
RYLLIS A. ROUSSEAU, 5268
RUBEN S. SAGUN, JR., 4484
DANIEL A. SAVETT, 0030
ROBERT S. SHEPERD, 3371
TONI C. STRONG, 7862
DAWN M. WAGNER, 8263
MARK A. WEISKIRCHER, 7336
KYLE S. WENDFELDT, 9900

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

ERIC J. ASHMAN, 4738
BROADUS Z. ATKINS, 0425
MATT A. BAPTISTA, 7540
TODD M. BERTOCH, 5354
RICHARD E. BLAIR, 2173
PAUL BOSTROM, 7784
STEVEN P. BOWERS, JR., 6761
ANDREW N. BOWSER, 5329
SCOTT C. BRANDON, 0720
LAURA A. BRODHAG, 5509
DAVID M. BUSH, 4690
THATCHER R. CARDON, 6682
LI ING CHANG, 7414
YUN C. CHONG, 4015
STEVEN L. CLARK, 9245
CHRISTINE S. CLARKE, 9398
GEORGE A. CLARKE, 8095
DAVID S. COCKRUM, 4351
JUNE M. COOK, 3754
MARK O. COVINGTON, 4700
DANA K. CRESSLER, 2963
JIM D. CROWLEY, 4787
GREGORY A. DEYE, 8732
JAMES P. DOLAN, 0812
ERIC J. DUDENHOEFER, 4260
STEVEN J. DURNING, 9794
DAVID V. EASTHAM, 9141
RAYMOND FANG, 4769
SUSAN L. FARBER, 6984
MICHAEL A. FORGIONE, 4321
JEFFREY J. FREELAND, 4919
CARL A. FREEMAN, 3818
STEPHEN M. GALVIN, 5931
FANG YUN GAN, 0407
JUAN GARZA, 4797
MICHAEL R. GAURON, 9053
STEPHEN L. GEORGE, 8276
DOUGLAS J. GOTTSCHALK, 1044
BARRY J. GREER, 1839
RUTH P. GULLOTTA, 2855
JOHN D. HALLGREN, 9761
SCOTT A. HARTWICH, 5077
FRANCIS T. HOLLAND, 6329
STEPHEN H. HOOPER, 3052
LIDIA S. ILCUS, 9231
ALAN J. IVERSON, 7417
MONICA L. JOHNSON, 3551
VALERIE V. T. JOHNSON, 4251
WILLIAM T. JOHNSTON, 1170
BENJAMIN C. KAM, JR., 1723
JOHN CHOONGWHA KANG, 5313
PACHAVIT KASEMSAP, 4267
LEONID M. KATKOVSKY, 2770
JAY D. KERECMAN, 1533
MARK W. KOLASA, 7234
THOMAS E. KOLKEBECK, 3211
JERRY D. LABSON, 9700
JENNIFFER L. LAPOINTE, 3148
ERNEST C. LEE, 6224
BRADLEY A. LLOYD, 3468
JAMES D. LOWE, 1894
CHERYL L. LOWRY, 8483
KAI WOOD MA, 3766
DANIEL M. MACALPINE, 6156
MICHAEL L. MARTIN, 4792
TIMOTHY J. MAZZOLA, 7623
KURT D. MENTZER, 0172
MICHAEL T. MEYER, 3397
GIOVANNI G. MILLARE, 8286
PATRICK J. MILLER, 1376
JESSICA T. MITCHELL, 5069
PATRICK B. MONAHAN, 8138
RICHARD L. MOONEY, 9257
SUSAN O. MORAN, 6394
DARIN K. MORGAN, 9387
CHRISTOPHER C. MUENCHEN, 3815
PAIGE L. NEIFERT, 8603
ERIC W. NELSON, 0892
NGHIA H. NGUYEN, 5252
TERRI J. NUTT, 4989
JOHN Y. OH, 5018
MARK D. PACKER, 8370
MYUNG S. PARK, 6367
MICHAEL A. PECK, 4185
STEVEN J. PECKHAM, 4416
DAWN E. PEREDO, 6682
JAMES A. PHALEN, 9364
ALLAN S. PHILP, JR., 3788
KIMBERLY D. PIETSZAK, 3098
LAURA L. PLACE, 3510
PAUL W. PLOCEK, 8129
RAY L. PLUMLEY, 6296
HARRIS R. PRAGER, 8150
JOHN C. RABINE, 1427
MICHAEL RAJNIK, 7923
STEVEN E. RASMUSSEN, 8416
CHARLES D. REILLY, 6133
PETER L. REYNOLDS, 6545
KAREN C. RICHARDS, 7263
MICHAEL F. RICHARDS, 2074
SCOTT A. RIISE, 3873
TERRI L. RIUTCEL, 7771
JOSHUA S. ROTENBERG, 7630
RICHARD M. RUBIN, 2549
STEPHANIE A. SCHAEFER, 9461
LARRY R. SCHATZ, 7922
DARLENE P. SCHULTZ, 1731
GREGORY L. SCHUMACHER, 8541
PARIMAL K. SHAH, 0404
JON R. SHERECK, 6322
PAUL A. SKLUZACEK, 3371
DANIEL T. SMITH, 6358
JOHN J. STEELE III, 9939
MICHAEL D. STEVENS, 1438
PAMELA L. STRICKLAND, 1952
RICHARD J. STRILKA, 6379
ERIC A. SUESCUN, 4194
LEIGH A. SWANSON, 7749
SUSAN M. SWAYNE, 2354
ANTHONY A. TERRERI, 7165
JOHN M. TOKISH, 2014
GEOFFREY D. TOWERS, 9207
BLAINE A. TUFT, 1228
CHARLES A. TUJO, 3073
JANET L. VEESART, 3379
NINO A. VIDIC, 6962
BRIAN A. VROON, 0844
JAMES M. WARD, 8989
CHARLES N. WEBB, 9182
KYLE J. WELD, 5229
GREGORY C. WIGGINS, 7128
LINDY W. WINTER, 8391
RANDY W. WOBSER, 8638
MATTHEW P. WONNACOTT, 0083
DAVID A. WOOD, 4423
MICHAEL J. WOOD, 3137
SAMUEL K. WOOD, 2628
JENNIFER A. WRIGHT, 2335
KENNETH C. Y. YU, 0052

IN THE ARMY

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

LISA R. LEONARD, 9053
MICHAEL D. POWELL, 7452
BRET A. SLATER, 2620

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY DENTAL CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C. SECTIONS 624, 531, AND 3064:

To be colonel

BRUCE B. BREHM, 1852
CLARK M. COMEAUX, 7424
STEVEN M. FLORENCE, 9727
GEORGE M. GIBSON, 1828
ROBERT L. HOLMES, 0458
JAMES R. HONEY, 8590
NAOMI J. HOROWITZ, 4301
KAREN M. KEITH, 6731
DAVID J. KRYSZAK, 1065
JONATHAN A. MAHAFFEY, 1844
ROBERT B. NEESE, 4602
SANDFORD W. PRINCE, 6939
KENDALL L. RAY, 3741
FRANCISCO RUIZ, 9497
COLLEEN C. SHULL, 4664
*ROBERT W. WINDOM, 2439

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C. SECTIONS 624, 531, AND 3064:

To be colonel

BRUCE D. ADAMS, 4094
DARRYL J. AINBINDER, 0046
LARRY K. ANDREO, 2788
VICTOR J. BERNET, 6379
RICHARD H. BIRDSONG, 8365
CRAIG R. BOTTONI, 5401
JOHN C. BRADLEY, 7379
* GEORGE T. BRANDT, 0030
ALAN D. BRUNS, 8859
DAVID A. CANCELADA, 5255
WILLIAM P. CORR III, 6902
THOMAS G. CRABTREE, 7106
KEVIN M. CREAMER, 6038
ROBERT C. DEAN, 0941
THOMAS M. DEBERARDINO, 2798
ROBERT A. DELORENZO, 9139
ANDREW S. EISEMAN, 4722
MARLEIGH E. ERICKSON, 1405
DAVID R. FINGER, 0639
MICHAEL J. FINGER, 0643
DAVID T. FLOYD, 1974
SUSAN D. FRACISCO, 3649
THOMAS B. FRANCIS, 7734
STEVEN P. FRIEDEL, 4701
* ANDREW C. FRIEDMAN, 6827
VINCENT X. GRBACH, 7281
STEPHEN E. GREEFKENS, 2479
* STEPHEN C. GROO, 8810
JOHN B. HALLIGAN, 6501
ELEANOR R. HASTINGS, 9319
KEITH L. HIATT, 3182
RICHARD B. HILBURN, 2532
JAMES B. HILL, 3430
CURTIS J. HUNTER, 5814
LONNIE L. IMLAY, 9624
RICHARD B. JACKSON, 2467
JEFFREY L. KINGSBURY, 9342
BEVERLY C. LAND, 9116
EMIL P. LESHO, 1243
DAVID B. LONGENECKER, 5515
MARK A. LOVELL, 5306
GLYNDA W. LUCAS, 2565
WILLIAM P. MAGDYCZ, JR., 8327
GREGORY A. MARINKOVICH, 8964
* JOHN MATLOCK, 2158
ROBERT A. MAZUR, 7783
SCOTT D. MCLEAN, 6375
ANNA MILLER, 2815
COLIN K. MILLER, 4352
JOSEPH P. MILLER, 8810
ROBERT S. MILLER, 3596
LISA K. MOORES, 9809
PETER G. NAPOLITANO, 0279
JOHN J. OBRIEN, 0912
KAREN S. PHELPS, 3939
RONALD D. PRAUNER, 0226
BERTRAM C. PROVIDENCE, 0072
ROBERT A. PUNTEL, 9307
MICHAEL A. RAVE, 5677
WILLIAM A. RICE, 8722
GAYLORD S. ROSE, 7392
STEPHEN M. SALERNO, 4247
KEITH L. SALZMAN, 7357
JAMES R. SANTANGELO, 4408
DANIEL A. SCHAFFER, 2293
JOHN P. SCHRIVER, 5772
GREGORY J. SEMANCIK, 5826
CYNTHIA H. SHIELDS, 0092
JOHN J. SIMMER, 2521
MARK H. SMITH, 3652
SCOTT A. STANEK, 2384
RONALD T. STEPHENS, 7441
MARK W. THOMPSON, 7170
CAROLYN A. TIFFANY, 3301
IAN S. WEDMORE, 7218
* GREGORY P. WELCH, 2285
MALCOLM A. WHITAKER, 6817
MORGAN P. WILLIAMSON, 5951
STEPHEN M. YOEST, 2598
LISA L. ZACHER, 8544

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

JOHN D. ADAMS, 5798
PAUL AMATO, 4182
JAMES E. BACCHUS, 8961
PATRICE M. BAUMANN, 3891
THOMAS J. BECKMAN, 6905
PHILIP A. BENNETT, 3728
THOMAS E. BOWERS, 0321
DAVID S. BUNN, 4638
LINDERMAN L. BURKHART, 0361
CLYDE T. BURTON, 1388
WILLIAM H. BUTLER, JR., 0909
DANIEL A. CAJKA, 0798
JOHN M. CALDWELL, 2326
JOSEPH H. CALLAHAN, JR., 9979
ELOY CAMPOS, 6855
KENT A. CARPENTER, 8381
LEONARD D. CHRISTIAN, 0764
WILLIAM T. COLLINS, 9356
DAVID J. CONAWAY, 2249
PATRICK P. CONNELLY, 4734
HARRY G. CONSTANT, JR., 3973
DAVID A. DAVENPORT, 9207
JAMES A. DAVIDSON, 7582
JAMES G. DONLAN, 1205
MICHAEL J. DRAKE, 6152
TIMOTHY M. DUNN, 2900
DAVID B. DYSART, 7041
JONATHAN T. ELLIOTT, 5819
DAVID M. ELSE, 4141
ERIC S. ERDMANN, 7243
LAURA A. FALKENBACH, 8483
HAROLD J. FLANAGAN, 5105
KARL F. FROST, 3329
GEOFFREY A. GALLO, 9236
JEFFERY A. GARDNER, 1789
JOEL P. GARLAND, 1290
ORPHEUS L. GARRISON, JR., 9502
JOSEPH F. GATELY, 6862
KIMBERLY J. HARDING, 2815
JAMES R. HARPER III, 7101
DANIEL C. HERBERT, 1676
PATRICK J. HERMESMANN, 7788
MARK C. HICKMAN, 4209
ROBERT W. HIGBEE, 4534
ROBERT L. HOSTETTER, 5779
JAMES C. HULL, 2261
BRADLEY S. JAMES, 8508
CARL J. JOHNSON, 6644
DAVID M. JOHNSON, 4535

RAYMOND JOHNSON, 6081
RICHARD A. JOHNSON, JR., 6760
DANIEL P. KENNEDY, 9357
MICHAEL K. KOZIK, 5440
GRAYDON A. KRAPOHL, 5226
KEVIN K. KUTINA, 1261
ROBERT J. LAIN, 9288
MARTIN E. LAPIERRE, JR., 5543
MICHAEL A. LAWRENCE, 0059
THOMAS H. LEDBETTER, 9205
IGNATIUS P. LIBERTO, 7231
ANTHONY M. LOMBARDO, 8637
NATHAN S. LOWREY, 8533
THOMAS A. LYNN, 4836
ANDREW C. MACLACHLAN, 6043
ROBERT C. MCARTHUR, 5534
JOHN G. MCGONAGLE, 1930
BRIAN J. MCGOVERN, 0369
THOMAS C. MCKELVEY, 6125
ROBERT B. MCMONAGLE, 8265
MARK A. MELIN, 5391
GREGG L. MOORE, 0341
JEFFREY A. MOORE, 8378
JOSEPH S. MOORE, 3149
GLEN C. MORRIS, 1558
JOSEPH A. NEBEL, JR., 9234
WALTER E. OHNEMUS III, 9646
PATRICK J. OROURKE, 2577
TIMOTHY J. OTT, 4981
KEITH W. PANKHURST, 8850
MAURICE C. PERDOMO, 4739
JOSEPH F. PERITO, 2095
JOHN M. PIOLI, 6919
STEPHEN C. PUCKETT, 4539
PAUL L. PUGLIESE, 0511
THOMAS M. QUOSS, 5726
WILLIAM J. RAPP, 9401
NANCY R. RATHGEBER, 6638
JOHN V. RESCHAR, JR., 3284
JEFFREY A. RIEHL, 8260
CHRIS J. ROACH, 5498
TOM M. RODGERS, 6030
OTTO J. RUTT, 0205
CHARLES B. SAGEBIEL, 6433
MICHAEL K. SAMMONS, 2192
JOSEPH A. SHEEHAN, 1004
MICHAEL R. SILVEN, 9268
MARK A. SILVIA, 4620
DAVID M. SMITH, 9904
MARK A. SMITH, 9299
ROBERT S. STARBUCK, 2249
GREGORY D. STEVENS, 0769
GREGORY A. STUDDS, 0478
PAUL J. SWEENEY, 2849
JONATHAN M. TAYLOR, 6772
MATTHEW C. TAYLOR, 5347
DAVID M. THOMPSON, 8138
GORDON L. TODD, JR., 8113
KEVIN M. TREPA, 1709
DEAN F. TRIEBEL, 4981
KENT M. VARNEY, 0316
BURKE W. WHITMAN, 5443
MINDY G. WILLIAMS, 2076
BRANDON W. WILSON, 4246

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

SANFORD P. PIKE, 4056

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

PHILLIP R. WAHLE, 4529

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

JAMES A. CROFFIE, 3664

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

JAMES H. ADAMS III, 9118
JOE H. ADKINS, JR., 3633
DARRELL L. AKERS, 7936
JOHN L. ALBERS, 6363
MICHAEL E. ALOISE, 8833
JAMES H. ANDERSON II, 8238
MARCUS B. ANNIBALE, 8702
MICHAEL P. ANTONIO, 5220
TRAY J. ARDESE, 4567
ERIC E. AUSTIN, 2356
CHARLES R. BAGNATO, 1719
JAMES M. BAKER, 0079
ANTHONY S. BARNES, 3402
BRAD S. BARTELT, 3804
GARY L. BASH, JR., 7634
ERIC E. BATTLE, 4797
RAYMOND E. BEAL II, 8986
JASON A. BEAUDOIN, 4828
DOUGLAS L. BELL, 2085
GRADY A. BELYEU, JR., 1926
DARREL C. BENFIELD, 8180
JEANNE A. BENFIELD, 9694
WILLIAM C. BENTLEY III, 1762
PAUL F. BERTHOLF, 2546
ANTHONY J. BIANCA, 1494
BRENT W. BIEN, 0613
STEFAN E. BIEN, 5329
EDWARD W. BLIGH, 2135
JOHN A. BOLT, 8337
RICHARD L. BOMHOLD, JR., 8594
MICHAEL J. BORGSCHULTE, 2727
JOSE L. BORJA, 7730
BRETT A. BOURNE, 4381
THOMAS S. BOWERS, 7902
ANTHONY W. BOWN, 8362
ROBERT C. BOYLES, 1486
JAMES D. BRACKEN, 2453
FREDERICK W. BREMER, 7562
THOMAS A. BRUNO, 2740
GREGORY A. BRYANT, 9156
WILLIAM T. BUFKIN II, 3777
BRIAN E. BUFTON, 5153
WAYNE M. BUNKER, 5382
RAYMOND R. BURKEMPER, 8698
DAVID W. BUSSEL, 2864
MAX W. CAIN II, 0720
PETER S. CALOGERO, 4077
SCOTT E. CAMDEN, 0722
STEVE L. CANTRELL, 8038
MARIO D. CARAZO, 8896
JOHN J. CARROLL, JR., 2409
MITCHELL E. CASSELL, 9135
MICHAEL N. CASTLE, 5473
ALEXANDER A. CHATMAN, JR., 9147
KEVIN M. CHENAIL, 4189
JEFFREY S. CHESTNEY, 2683
DONALD C. CHIPMAN, 3602
JOHN P. CHRISTOPHER, 3903
ALTON L. COCHRAN, JR., 2110
DOUGLAS S. COCHRAN, 7842
KEVIN P. COLLINS, 2412
MATTHEW S. COOK, 4351
BENJAMIN W. COPELAND, 0548
KIRK F. CORDOVA, 4292
MICHAEL S. COTTREAU, 1241
CHARLES B. COX, 1344
WAYNE O. COX II, 5250
SCOTT S. CREED, 2339
DANIEL P. CREIGHTON, 9137
CHARLES M. CROMWELL, 7765
VANCE L. CRYER, 6094
MICHAEL J. CURTIN, 6026
EVAN W. DAVIES, 9113
JOHN B. DAVIS, 4775
THOMAS E. DAVIS, 8976
MATTHEW A. DAY, 9482
KENNETH R. DEVERO II, 4478
OSSEN J. DHAITI, 5595
PETER J. DILLON, 3695
CHRISTOPHER G. DIXON, 7753
THOMAS P. DOLAN, 1867
RONALD A. DOMINGUE, JR., 0335
DOUGLAS G. DOUDS, 3811
CHARLES DOWLING, 6287
DANIEL H. DUBBS, 0642
JON D. DUKE, 3968
EVERETT W. DUNNICK, 4119
ROBERT H. DURYEA, 9105
MATTHEW D. DWYER, 8600
JOHN W. EVANS, JR., 8988
JOSEPH M. EVANS, JR., 3142
ADRIENNE F. EVERTSON, 8633
SHAWN S. FARRINGTON, 9038
DANIEL E. FENNELL, 7910
MATTHEW P. FERGUSON, 4218
ROBERT S. FERGUSON, 0909
TODD R. FINLEY, 1602
BRIAN G. FITZPATRICK, 8048
MARK A. FLOURNOY, 0293
ROBERT B. FORD, 1972
TODD D. FORD, 0016
DAVID C. FORREST, 7576
JONATHAN D. FOSTER, 2947
THOMAS E. FREDERICK, 0007
ROBERT C. FRIEDMAN, 5037
RICHARD F. FUERST, 5894
CHRISTOPHER D. GIDEONS, 4646
MICHAEL P. GILBERT, 3788
STEVEN R. GIRARD, 4822
SEAN M. GODLEY, 9145
THOMAS J. GORDON IV, 5714
GERALD C. GRAHAM, 1627
DONALD E. GRAY, JR., 1841
ROBERT M. GREEN, 2166
SCOTT M. GRIFFITH, 1978
MICHAEL R. GRISCHKOWSKY, 9632
JESSE L. GRUTER, 1858
CHRIS T. GUARNIERI, 6390
DAVID A. GUNDLACH, 1239
SCOTT V. HALLSTROM, 7909
RICHARD K. HALSTED, 9038
JEFFREY G. HANCOCK, 7064
PATRICK M. HAYDEN, 4067
ANTHONY M. HENDERSON, 6115
ELAINE M. HENSEN, 0824
JAMES R. HENSIEN, 8279
WAYNE M. HERBERT, 7867
MATTHEW N. HESS, 1621
ROBERT W. HESSER, 9008
ALEXANDER G. HETHERINGTON, 4929
JOHN D. HICKS, 2434
ERIC W. HILDEBRANDT, 6650
CURTIS L. HILL, 2613
THOMAS K. HOBBS, 1516
JEFFREY P. HOGAN, 7316
GEORGE N. HOUGH, 3536
KELLY P. HOULGATE, 6295
KEVIN M. HUDSON, 6392
CHRISTOPHER W. HUGHES, 9622
THEODORE J. HUNTINGHORSE, 0706
JAMES T. IULO, 7437
MICHAEL S. JACKSON, 7847
TODD M. JENKINS, 8656
MARK J. JOHNSON, 2762
PAUL H. JOHNSON III, 5297
MARION D. JONES, 2287
PRESTON W. JONES, 3894
RICHARD E. JORDAN, 9127
KENNETH R. KASSNER, 4033
DARRIN D. KAZLAUSKAS, 8290
JAMES J. KELLEY III, 0977
JAMES R. KENDALL, 5147
BRIAN M. KENNEDY, 0050
MICHAEL J. KENNEDY, 6034
PETERJOHN H. KERR, 8938
TODD A. KERZIE, 0006
BRIAN J. KING, 9184
GLENN M. KLASSA, 4581
CHARLEY A. KNOWLES II, 5189
KURT A. KOCH, 9280
ROBERT W. LAATSCH, 9022
LAWRENCE M. LANDON, 4998
GERALD R. LAY, 6504
PETER E. LAZARUS, 0392
EVAN G. LEBLANC, 3649
PETER N. LEE, 0423
JAMES C. LEWIS, 1088
MICHAEL J. LINDEMANN, JR., 3173
STUART R. LOCKHART, 6585
DANIEL E. LONGWELL, 7771
BRYAN F. LUCAS, 1905
BARTLETT D. LUDLOW, 1700
VINCENT J. LUMALCURI, 0634
DOUGLAS J. MACINTYRE, 3470
MARK D. MACKEY, 1858
SEAN R. MADDEN, 3185
GARY L. MADDUX, JR., 5190
ARTURO J. MADRIL, 2360
CHRISTOPHER S. MANIS, 4523
JEFFREY L. MANNING, 7050
MICHAEL A. MANNING, 4244
ANTHONY M. MARRO, 7226
DAMIEN M. MARSH, 4740
BRADFORD L. MARTIN, 1761
RICARDO MARTINEZ, 5489
TROY C. MAYO, 9934
SEAN M. MCBRIDE, 3235
ROBERT E. MCCARTHY III, 7996
WILLIAM F. MCCOLLOUGH, 3750
KATHERINE M. MCDONALD, 3699
DANIEL P. MCGOVERN, 4494
ROY MCGRIFF III, 4410
CHRISTOPHER T. MCKAY, 1690
MATTHEW MCLAUGHLIN, 9545
CHARLES A. MCLEAN II, 7684
WILLIAM D. MCSORLEY IV, 7404
MELANIE A. MERCAN, 9598
GUILLERMO G. MEZAORTEGA, 2315
SCOTT G. MILES, 7235
JOHN C. MOORE, 1315
MICHAEL A. MOORE, 9024
KEVIN G. MOSS, 6164
SAMUEL P. MOWERY, 4458
ANDREW J. MOYER, 4744
DOUGLAS J. MRAK, 4564
JOSEPH W. MURPHY, 9105
CHRISTOPHER B. NASH, 8150
DAVID NATHANSON, 0485
WILLIAM J. NEMETH, 3743
CHRISTIAN L. NICEWARNER, 0204
SETH L. OCLOO, JR., 4117
DAVID L. ODOM, 5171
JACK E. O'DONNEL, JR., 3651
DAVID S. OLIVER, 0360
JOHN R. ONEAL, 5946
TODD J. ONETO, 2054
MICHAEL H. OPPENHEIM, 3474
CARL L. OROS, 7303
LUIS E. ORTIZ, 0084
RICHARD T. OSTERMEYER, 0559
KURT S. OSUCH, 1829
RANDOLPH T. PAGE, 3628
BENJAMIN J. PALMER, 6086
MARK T. PALMER, 1869
MATTHEW W. PARK, 8603
JOHN E. PASSANT IV, 9458
PHILIP M. PASTINO, 4692
DOUGLAS R. PATTERSON, 6983
JOHN M. PECK, 6262
MARK B. PENNINGTON, 8011
FRITZ W. PFEIFFER, 8885
KRISTI E. PHELPS, 8028
WILLIAM N. PIGOTT, JR., 1553
CHRISTOPHER S. PINCKNEY, 6131
MICHAEL M. PITTS, 9748
STEVEN A. PLATO, 8295
JOHN C. POEHLER, 2212
THOMAS E. POST, 6843
THOMAS M. PRATT, 5928
MARK C. PRICE, 2824
MORRIS W. PRIDDY, 3873
JOHN H. PYLANT, JR., 3063

KEITH H. RAGSDELL, 7003
JOHN A. RAHE, JR., 7831
MINTER B. RALSTON IV, 1849
WILLIAM A. RANDALL, 8312
STEPHEN E. REDIFER, 5222
MICHAEL S. REED, 3730
ANDREW M. REGAN, 3516
DESMOND A. REID, JR., 6867
THOMAS R. REILLY, 5341
WILLIAM H. REINHART, 1319
ROBERT A. RENARD, 0714
ROBERTO V. RICHARDS, 8122
PAUL W. RICHARDSON, 6662
DONALD B. RICHWINE, JR., 0058
ERIC L. RINE, 3100
JEROME P. RIZZO, 4650
DANIEL B. ROBINSON, 2100
RICHARD J. ROCHELLE, 7298
RANDY W. ROSS, 5922
SHANE L. ROSSOW, 3319
PETER S. RUBIN, 3462
JOSEPH J. RUSSELL, 0056
SEAN M. SALENE, 7962
THOMAS J. SANZI, 7064
ERIC W. SCHAEFER, 6111
MARK R. SCHAEFER, 7553
HERBERT E. SCHWEITER, 3463
THOMAS R. SEIFERT, 4309
JASPER W. SENTER III, 9220
MILO L. SHANK, 2861
ROBERTA L. SHEA, 4110
BRETT T. SHERMAN, 1951
MICHAEL D. SHERMAN, 7239
JAMES E. SHORES, 6610
CHARLES L. SIDES, 7434
MATTHEW M. SIEBER, 3090
JOSEPH D. SINICROPE, JR., 5306
THOMAS J. SISAK, 6467
ROBERT J. SMULLEN, 7133
MIKE D. SNYDER, 4410
MARK E. SOJOURNER, 6916
DANIEL U. SPANO, 1629
ROGER D. STANDFIELD, 5705
PAUL A. STEELE, 8693
DAVID STOHS, 3612
ARTHUR J. STOVALL II, 6914
MICHAEL D. STOVER, 4925
CRAIG H. STREETER, 2943
DAVID A. SUGGS, 9683
DANIEL M. SULLIVAN, 3376
PAUL T. SULLIVAN, 3680
JAMES E. SZEPESY, 4731
MICHAEL W. TAYLOR, 4697
ROBERT J. TERSELIC, 8736
CHRISTOPHER C. THIBODEAUX, 8235
ALAN D. THOBURN III, 0729
DANIEL T. THOELE, 4333
MATTHEW R. THOMAS, 8462
STEPHEN S. TIELEMANS, 5407
MARK E. TINGLE, 9060
JEFFREY S. TONTINI, 0695
STEPHEN P. TREICHEL, 2898
MICHELLE L. TRUSSO, 9909
JEFFREY D. TUGGLE, 2804
LORETTA L. VANDENBERG, 3650
DANNY J. VERDA, 1355
JOHN E. VINCENT, 0943
LEWIS D. VOGLER, JR., 0021
JOHN E. WALKER, JR., 9568
MICHAEL A. WALL, 6363
TYE R. WALLACE, 9815
ALBERT C. WANG, 8599
GAINES L. WARD, 1665
SCOTT C. WARD, 8496
HUGH R. WARE, 9576
JAMES S. WASHBURN, 7301
BENJAMIN T. WATSON, 1413
AARON S. WELLS, 7884
DIXON D. WELT, 5416
STEVEN L. WHALEY, 4997
DANIEL F. WHITE II, 5491
RAYMOND M. WHITE III, 0530
DWAYNE A. WHITESIDE, 0346
ALAN F. WILLIAMS, 8556
CHRISTOPHER J. WILLIAMS, 8151
ERIC S. WISE, 0341
CHRISTOPHER P. WOODBURN, 8883
CHRISTIAN F. WORTMAN, 1538
JAMES B. WOULFE, 6174
BRIAN P. WRIGHT, 6967
ROBERT C. WRIGHT, JR., 9107
MICHAEL P. WYLIE, 5791
WILLIAM E. ZAMAGNI, JR., 9753
MICHAEL W. ZELIFF, 3657
SIDNEY G. ZELLER, 2116
RICHARD D. ZYLA, 3108

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

DAVID T. CLARK, 7946
CHRISTOPHER D. DIEDERICH, 4833
FRANK A. FARROW, 5480
SCOTT A. JOHNSON, 4307
TODD J. KROME, 1980
NIEVES G. VILLASENOR, 5977

CONFIRMATIONS

Executive nominations confirmed by the Senate: Tuesday, January 31, 2006:

FEDERAL RESERVE SYSTEM

BEN S. BERNANKE, OF NEW JERSEY, TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR A TERM OF FOURTEEN YEARS FROM FEBRUARY 1, 2006.

BEN S. BERNANKE, OF NEW JERSEY, TO BE CHAIRMAN OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR A TERM OF FOUR YEARS.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

SUPREME COURT OF THE UNITED STATES

SAMUEL A. ALITO, JR., OF NEW JERSEY, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES.

HOUSE OF REPRESENTATIVES—*Tuesday, January 31, 2006*

The House met at noon.

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord God, ever present, source of all wisdom and self-giving love, the sacred scriptures reveal Your continued guidance in human affairs. We thank You for the many blessings granted this Nation throughout its history.

Today, as a new page is turned, fill the hearts of Your people with even greater confidence and renewed faith in Your promises to be near us and attentive to our needs.

As work begins on this Second Session of the 109th Congress, we seek Your mercy and rely on Your revelation to guide and protect this legislative body. As this House of Representatives and the United States Senate anticipate a joint session and await the State of the Union message of President George W. Bush, we pray to You for his health, enlightenment, and well-being. Together with the Supreme Court, may all three branches of this government be drawn into Your Spirit of wisdom and good judgment. With renewed standards of ethics and a deeper commitment of accountability, may all who serve in public office be Your steady instrument in unifying, protecting, and guiding the American people of this democracy to increasing virtue, greater prosperity, and a witness to goodness for the world.

Lord, bless America and its people who place their trust in You, now and forever.

Amen.

RESIGNATION FROM THE HOUSE OF REPRESENTATIVES

The SPEAKER laid before the House the following resignation from the House of Representatives:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 16, 2006.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
Washington, DC.

Mr. SPEAKER: For the past thirteen years I have had the great honor and privilege of serving the people of New Jersey as a Member of the United States House of Representatives.

As Governor Jon S. Corzine of New Jersey has told me his intention to appoint me to fulfill the remainder of his term in the United States Senate upon his inauguration as Governor, I submit my resignation as a Member from the House of Representatives, effective close of business on Monday, January 16, 2006.

I accept my new position with enthusiasm but also a sense of gratitude for the trust and confidence the voters of the Thirteenth Congressional District have placed in me over the years. I have always tried to reflect credit on the District, the great state of New Jersey, and this body. It has been a distinct pleasure to work and serve with many good friends and colleagues in the House of Representatives.

I look forward to continuing my service to the people of the State of New Jersey through my service as a Member of the United States Senate.

Sincerely,

ROBERT MENENDEZ,
Member of Congress.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 16, 2006.

Hon. JON S. CORZINE,
Governor-Elect, The Statehouse, Trenton, NJ.

GOVERNOR-ELECT CORZINE: For the past thirteen years I have had the great honor and privilege of serving the people of New Jersey as a Member of the United States House of Representatives.

As I prepare to fulfill the remainder of your term in the United States Senate upon your inauguration as Governor, please accept this letter as notification of my resignation as a Member of the House of Representatives, effective close of business on Monday, January 16, 2006.

I thank you for bestowing this great privilege upon me and I pledge that I will work every day to fulfill the honor that comes with serving in the United States Senate.

I look forward to continuing my service to the people of the State of New Jersey through my service as a Member of the United States Senate, and I look forward to working with you on behalf of the State of New Jersey.

Sincerely,

ROBERT MENENDEZ,
Member of Congress.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. Under clause 5(d) of rule XX, the Chair announces to the House that, in light of the resignation of the gentleman from New Jersey (Mr. MENENDEZ), the whole number of the House is adjusted to 433.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 26, 2006.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on January 26, 2006, at 10:15 am:

That the Senate agreed to S. Con. Res. 77.

Appointments:

Board of Visitors of the United States Military Academy.

Board of Visitors of the United States Naval Academy.

Board of Visitors of the United States Air Force Academy.

With best wishes, I am

Sincerely,

KAREN L. HAAS,
Clerk of the House.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 27, 2006.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives, Washington, DC

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on January 27, 2006, at 3:00 pm:

That the Senate agreed to S. Con. Res. 78.

With best wishes, I am

Sincerely,

KAREN L. HAAS,
Clerk of the House.

RECESS

The SPEAKER. Pursuant to clause 12(a) of rule I, the House stands in recess until approximately 3:30 p.m. today.

Accordingly (at 12 o'clock and 5 minutes p.m.), the House stood in recess until approximately 3:30 p.m.

☐ 1530

AFTER RECESS

The recess having expired, the House was called to order at 3 o'clock and 30 minutes p.m.

CALL OF THE HOUSE

The SPEAKER. The Clerk will utilize the electronic system to ascertain the presence of a quorum.

Members will record their presence by electronic device.

The call was taken by electronic device, and the following Members responded to their names:

[Roll No. 1]

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Andrews
Baca
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Becerra
Berkley
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Cleaver
Clyburn
Coble
Cole (OK)
Conaway
Cooper
Costa
Costello
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
Delahunt
DeLauro
Dent
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hostettler
Hoyer
Hulshof
Inglis (SC)
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Mack
Maloney
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McKinney
McMorris
McNulty
Meek (FL)
Meeks (NY)
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neugebauer
Ney
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Saxton
Schakowsky
Schiff
Schmidt
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (TX)
Snyder
Sodrel
Solis
Souder
Spratt
Stearns
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Wamp
Wasserman Schultz
Waters
Watt
Waxman
Weiner
Weldon (PA)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

☐ 1555

The SPEAKER. On this rollcall, 389 Members have recorded their presence by electronic device, a quorum.

Under the rule, further proceedings under the call are dispensed with.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Michigan (Mr. KILDEE) come forward and lead the House in the Pledge of Allegiance.

Mr. KILDEE led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

COMMITTEE TO NOTIFY THE PRESIDENT

Mr. DREIER. Mr. Speaker, I offer a privileged resolution (H. Res. 649) providing for a committee to notify the President of the assembly of the Congress, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 649

Resolved, That a committee of two Members be appointed by the Speaker on the part of the House of Representatives to join with a committee on the part of the Senate to notify the President of the United States that a quorum of each House has assembled and Congress is ready to receive any communication that he may be pleased to make.

The resolution was agreed to.

A motion to reconsider was laid on the table.

APPOINTMENT AS MEMBERS OF COMMITTEE TO NOTIFY THE PRESIDENT, PURSUANT TO HOUSE RESOLUTION 649

The SPEAKER. Pursuant to House Resolution 649, the Chair appoints as members of the committee on the part of the House to join a committee on the part of the Senate to notify the President of the United States that a quorum of each House has been assembled and that Congress is ready to receive any communication that he may be pleased to make:

The gentleman from Missouri (Mr. BLUNT) and

The gentlewoman from California (Ms. PELOSI).

NOTIFICATION TO THE SENATE

Mr. DREIER. Mr. Speaker, I offer a privileged resolution (H. Res. 650) to inform the Senate that a quorum of the House has assembled, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 650

Resolved, That the Clerk of the House inform the Senate that a quorum of the House is present and that the House is ready to proceed with business.

The resolution was agreed to.

A motion to reconsider was laid on the table.

DAILY HOUR OF MEETING

Mr. DREIER. Mr. Speaker, I offer a privileged resolution (H. Res. 651) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 651

Resolved, That unless otherwise ordered, before Monday, May 15, 2006, the hour of daily meeting of the House shall be 2 p.m. on Mondays; noon on Tuesdays; and 10 a.m. on all other days of the week; and from Monday, May 15, 2006, for the remainder of the 109th Congress, the hour of daily meeting of the House shall be noon on Mondays, 10 a.m. on Tuesdays, Wednesdays and Thursdays; and 9 a.m. on all other days of the week.

The resolution was agreed to.

A motion to reconsider was laid on the table.

JOINT SESSION OF THE CONGRESS—STATE OF THE UNION MESSAGE

Mr. DREIER. Mr. Speaker, I offer a privileged Senate concurrent resolution (S. Con. Res. 77) and ask for its immediate consideration.

The SPEAKER. The Clerk will report the Senate concurrent resolution.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 77

Resolved by the Senate (the House of Representatives concurring), That the two Houses of Congress assemble in the Hall of the House of Representatives on Tuesday, January 31, 2006, at 9 p.m., for purpose of receiving such communication as the President of the United States shall be pleased to make to them.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

MAKING IN ORDER MORNING HOUR DEBATE

Mr. DREIER. Mr. Speaker, I ask unanimous consent that the order of the House of January 4, 2005, providing for morning hour debate be extended for the remainder of the 109th Congress except that the date of May 15, 2006, shall be used in lieu of May 16, 2005.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

GRANTING MEMBERS OF THE HOUSE PRIVILEGE TO EXTEND REMARKS AND INCLUDE EXTRANEOUS MATERIAL IN THE CONGRESSIONAL RECORD FOR THE SECOND SESSION OF THE 109TH CONGRESS

Mr. DREIER. Mr. Speaker, I ask unanimous consent that for the remainder of the 109th Congress, all Members be permitted to extend their remarks and to include extraneous material within the permitted limit in that section of the RECORD entitled "Extensions of Remarks."

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON TOMORROW

Mr. DREIER. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with tomorrow.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

□ 1600

REPORT ON RESOLUTION RELATING TO CONSIDERATION OF S. 1932, DEFICIT REDUCTION ACT OF 2005

Mr. DREIER, from the Committee on Rules, submitted a privileged report (Rept. No. 109–366) on the resolution (H. Res. 653) relating to consideration of the Senate bill (S. 1932) to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95), which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. DREIER, from the Committee on Rules, submitted a privileged report (Rept. No. 109–367) on the resolution (H. Res. 654) waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 3855

Mrs. CUBIN. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H.R. 3855.

The SPEAKER. Is there objection to the request of the gentlewoman from Wyoming?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 4354

Ms. ROS-LEHTINEN. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H.R. 4354.

The SPEAKER. Is there objection to the request of the gentlewoman from Florida?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE RESOLUTIONS 635, 636 AND 637

Ms. ZOE LOFGREN of California. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of House Resolutions 635, 636 and 637.

The SPEAKER. Is there objection to the request of the gentlewoman from California?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 3855

Mr. OTTER. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H.R. 3855.

The SPEAKER. Is there objection to the request of the gentleman from Idaho?

There was no objection.

MOMENT OF SILENCE IN MEMORY OF MRS. CORETTA SCOTT KING

The SPEAKER. In memoriam to the death this morning of Mrs. Coretta Scott King, I ask all Members to stand and observe a moment of silence.

HONORING THE LIFE AND ACCOMPLISHMENTS OF MRS. CORETTA SCOTT KING

Mr. SENSENBRENNER. Mr. Speaker, I offer a resolution (H. Res. 655) honoring the life and accomplishments of Mrs. Coretta Scott King and her contributions as a leader in the struggle for civil rights, and expressing condolences to the King family on her passing, and ask unanimous consent for its immediate consideration in the House pursuant to the following order: the resolution shall be considered as read; the previous question shall be considered as ordered on the resolution and the preamble to its adoption without intervening motion except 1 hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; and notwithstanding the operation of the previous question, the Chair may postpone further consideration of the resolution to a time designated by the Speaker.

The SPEAKER pro tempore (Mr. LAHOOD). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

H. RES. 655

Whereas Coretta Scott King was an inspirational figure and a woman of great strength, grace, and dignity who came to personify the ideals of the Civil Rights Movement, for which she and her husband fought.

Whereas Coretta Scott was born on April 27, 1927, to parents Obadiah and Bernice Scott, was raised in rural Alabama, graduated valedictorian from Lincoln High School, and received a B.A. from Antioch College in Yellow Springs, Ohio;

Whereas Coretta Scott came of age in the segregated South, took an active interest in the emerging Civil Rights Movement as an undergraduate, and joined the Antioch chapter of the NAACP, and the Race Relations and Civil Liberties Committees of Antioch College;

Whereas Coretta Scott won a scholarship to study concert singing at Boston's New England Conservatory of Music;

Whereas while in Boston, Coretta Scott met Martin Luther King, Jr., who was a graduate student studying for his doctorate at Boston University;

Whereas after Coretta Scott and Martin Luther King, Jr. were married on June 18, 1953, Mrs. Coretta Scott King completed her degree in voice and violin at the New England Conservatory of Music, and the young couple moved in September 1954 to Montgomery, Alabama, where Martin Luther King, Jr. had accepted an appointment as Pastor of the Dexter Avenue Baptist Church.

Whereas their first child, Yolanda, was born in 1955, just two weeks before the beginning of the Montgomery bus boycott, during which the King house was bombed;

Whereas the Kings had four children: Yolanda Denise, Martin Luther, III, Dexter Scott, and Bernice Albertine;

Whereas during Dr. King's lifetime, Mrs. King served as an equal partner in the Civil Rights Movement, balancing the demands of raising their four children, serving as a pastor's wife, and speaking before church, civic, college, fraternal, and peace groups;

Whereas Mrs. King established and performed in more than 30 successful "Freedom Concerts" that combined prose and poetry narration with musical selections to increase awareness and understanding of the Movement and the Southern Christian Leadership Conference, of which Dr. King served as the first president;

Whereas Mrs. King stood side-by-side with her husband during many civil rights marches and on other notable occasions, including a 1957 trip to Ghana to mark that country's independence, a 1959 trip to India to visit sites associated with Mahatma Gandhi, and a 1964 trip to Oslo, Norway, to accept Dr. King's Nobel Peace Prize;

Whereas just four days after her husband's assassination on April 4, 1968, Mrs. King led a march of 50,000 people through the streets of Memphis, Tennessee, and later that year took his place in the Poor People's March to Washington, D.C.;

Whereas Mrs. King devoted her energy to carrying on her husband's legacy of nonviolence and his work to create an America in which all people have equal rights;

Whereas Mrs. King dedicated herself to developing and building the Atlanta-based Martin Luther King, Jr. Center for Nonviolent Social Change as an enduring memorial to her husband's life and their dream of nonviolent social change and full civil rights for all Americans and, as its founding President, Chair, and Chief Executive Officer, she guided the creation and housing of the largest archive of documents from the Civil Rights Movement;

Whereas Mrs. King was instrumental in seeing her husband's birthday honored as a Federal holiday, an occasion first marked in 1986;

Whereas Mrs. King received honorary doctorates from over 60 colleges and universities and authored three books;

Whereas Mrs. King worked to advance the cause of justice and human rights around the world and spoke out on behalf of a number of important issues, including racial and economic justice, women's and children's rights, religious freedom, full employment, health care, and education; and

Whereas Mrs. Coretta Scott King was a civil rights icon and one of the most influential African Americans in history, and her work brought us closer to achieving the "Beloved Community": Now, therefore, be it

Resolved, That the House of Representatives honors the life and accomplishments of Mrs. Coretta Scott King and her contributions as a leader in the struggle for civil rights, and expresses condolences to the King family on her passing.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 30 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. HASTERT), the distinguished Speaker of the House.

Mr. HASTERT. Mr. Speaker, I was truly saddened this morning when I learned of the death of Coretta Scott King.

My experience with the Kings goes back to 1960 as a freshman student of North Central College, wide-eyed from the country, not really knowing all of the new social issues that were before us. But yet Dr. Martin Luther King came to that little town, came to that college accompanied by his wife. It made a great impression on a college freshman.

The word that comes to my mind as I think about this great woman is "devotion": devotion to her husband, devotion to her family, and devotion to the cause of civil rights. Standing side by side with her husband, Dr. Martin Luther King, she helped bring America to an understanding that "all men are created equal."

In my first year as Speaker, we had a Congressional Gold Medal award ceremony honoring the Little Rock Nine. It took place just a few feet from here in the rotunda of this Capitol building. Coretta Scott King was there. As I gazed across the room, I saw her stoic and yet gentle presence. Stoic, yet gentle, qualities that reminded me also of her husband and the struggles he and his wife had to overcome so that we as a Nation could overcome our shortcomings and our prejudices.

Even after the hate-inspired death of her husband, she called for love and understanding and found meaning and purpose in the continuing of her husband's work. It is not surprising that she did so, because it was her work too.

While I wish we had her with us for more years to come, to teach and bear witness to future generations, it is fitting that we honor her death on the 31st of January, the day before our Nation begins its month-long celebration of the accomplishments of African Americans. She now becomes a permanent part of that history.

A few hours ago, Senate Majority Leader FRIST and I ordered the flags on this Capitol building be lowered to half staff. It is a small way in which we can say on behalf of a grateful Nation thank you, Coretta Scott King, thank you for picking up the torch of civil rights and taking it across the country and the world. We are a better Nation because you and your husband passed our way. May God welcome you home, and may he hold your family close in this time of sorrow.

Mr. CONYERS. Mr. Speaker, I yield such time as she may consume to the gentlewoman from California (Ms. PELOSI), the minority leader of the House.

Ms. PELOSI. Mr. Speaker, I thank the distinguished gentleman from Michigan (Mr. CONYERS), and a civil rights leader in his own right, for yielding me this time.

This is an unusual phrase I am going to use today, but I wish to associate myself with the eloquent remarks of the Speaker of the House, Mr. HASTERT, in praise of the life and leadership of Coretta Scott King.

Mr. Speaker, I am proud to rise here today to also join the Speaker in honoring Coretta Scott King. She was not only the keeper of the flame; she was one of our Nation's greatest civil rights leaders in her own right. For all of her life, Coretta Scott King was her own woman. She grew up in rural and segregated Alabama in a hardworking and ambitious Scott family. She followed her sister, who was the first African American ever to attend Antioch College in Ohio; and after, Coretta moved to Boston to pursue a music career. It was there that she met a young preacher through a friend.

We all know who that young preacher was to become, but what we do not know is who he might have been without Coretta by his side. The wise man that he was, Martin Luther King was not just looking for a wife, he said, but for a partner; and he was taken with her immediately.

It took Coretta a little longer, 6 months of deliberations before she accepted his marriage proposal. To the shock of Dr. King's father, but probably to no surprise of anyone who knew her, she asked that the phrase "obey thy husband" section be removed from their marriage vows.

Of their work together, Dr. King would later say, "I wish I could say that I led her down this path. But I must say, we went down this path together because she is as actively involved and concerned when we met as she is now."

A year after they were married, Martin Luther King and Coretta Scott King had to decide where to move after Dr. King completed his studies in Boston, whether to stay in the North or move back to the South. The year was 1954 and the South was deeply divided by the issue of race.

The newlywed couple had both grown up in the segregated South. They knew the racial injustice that permeated the South, the indignities of sitting in the back of the bus and drinking from separate water fountains.

Yet they chose to return to the heart of what they wanted to change, and they accepted the pastorate at Dexter Avenue Baptist Church in Montgomery, Alabama, going straight to the heart of what was wrong, with the aim to make it right.

In the years that followed, Coretta Scott King marched alongside her husband, Dr. Reverend Martin Luther King, for that very cause. They marched together in Selma to demand voting rights for African Americans, and aren't we all proud to call Mr. John Lewis a colleague, who was also on that march, that very historic march so long ago. Dr. and Mrs. King marched together in Washington to demand a Federal law to protect the civil rights of all Americans, and they marched together the night before Dr. King was killed. They marched together in Memphis for the sanitation workers facing entrenched discrimination.

In immediate days following the tragedy, Coretta Scott King kept marching, carrying the aspirations of the civil rights movement with her. She led the Poor People's March to Washington. That was the first time I saw her while I watched that march coming into Washington, and I have been a fan of hers ever since. She marched in South Africa standing against apartheid. And for nearly 40 years of her life that came after Dr. King's death, she marched for civil rights everywhere and to root out injustice anywhere it existed.

Because of her singularity of purpose and sheer tenacity, Coretta Scott King often triumphed. The Martin Luther King, Jr., Center for Nonviolent Social Change and the Martin Luther King holiday both stand today as testament to her vision, her determination, her efforts, and indeed, her leadership. But her work is not yet completed.

On the day of her death and on the eve of Black History Month, we must recommit to finishing her work.

It is with great sadness and respect that I extend deepest condolences to Mrs. King's four children, Yolanda, Martin, Dexter, and Bernice; her family; and to the multitudes of her friends and supporters throughout the world. I hope it is a comfort to them that the entire Nation mourns their loss and is praying for them at this sad time.

□ 1615

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of House Resolution 655, a resolution that honors the life and the accomplishments of Mrs. Coretta Scott King, her contributions as a leader in the struggle for civil rights, and express condolences to the King family on her passing.

Mrs. Coretta Scott King, wife of the late Reverend Dr. Martin Luther King, Jr. was one of our country's most visible members of the civil rights movement, carrying on her husband's legacy with courage, wisdom and dignity. Her life serves as an example of her devotion to making our country, and the world, a better place.

Having experienced firsthand the evils of segregation, Mrs. Coretta Scott King dedicated herself to helping all Americans realize racial equality and justice. She committed herself to her education, earning valedictorian honors from Lincoln High School, earning a Bachelor of Arts from Antioch College, and earning a scholarship to the prestigious New England Conservatory of Music located in Boston, Massachusetts, where she eventually met her husband.

As the spouse and partner of the late Reverend Dr. Martin Luther King, Jr., Mrs. Coretta Scott King gained recognition in her own right, remaining active in the civil rights movement while devoting herself to her family.

Her steadfast devotion to her husband's legacy after his assassination helped bring his message of nonviolent change to millions of Americans. She led the campaign to recognize her late husband's birthday as a national holiday and to establish the Martin Luther King, Jr. Center for Nonviolent Social Change, the first institution established in memory of an African American. This center also houses our country's largest archives of documents from the civil rights movement.

Mrs. King's commitment and devotion to equal justice should serve as a reminder of the foundation and principles upon which this country was founded and should inspire us all to work to ensure that these guarantees are recognized by all Americans.

I encourage my colleagues to join me in honoring Mrs. Coretta Scott King's life, her accomplishments and her contributions to our country by voting in favor of this resolution.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on House Resolution 655 currently under consideration.

The SPEAKER pro tempore (Mr. LAHOOD). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield as much time as he may consume to the gentleman from Georgia (Mr. LEWIS), a civil rights leader, one who has been in the struggle since the beginning. I remember him from 1963 and he had been in it long before.

Mr. LEWIS of Georgia. Mr. Speaker, I rise today with a heavy heart to honor the life and accomplishment of Mrs. Coretta Scott King. The passing of Coretta Scott King is a tragic loss for the movement of peace, justice and equality around the world. She was a leader in her own right. She was the glue that held the civil rights movement together. Long before she married Dr. King, she was an activist for peace and nonviolence.

Mr. Speaker, it is very difficult for me to speak about this beautiful, charming, graceful and dignified woman who became the personification of the best that America had to offer.

She grew up as I did in rural Alabama where segregation and racial discrimination were real. She tasted the bitter fruits of racism, but she did not give up. She did not give in. She did not give out. She received a very good education at Antioch College and the New England Conservatory School of Music.

She met Martin Luther King, Jr. while they were both studying in Boston. She fell in love. They got married and they returned to the South, the capital of the old confederacy, the City of Montgomery.

He became the pastor of a little old church, the Dexter Avenue Baptist Church in Montgomery. This little red brick church stood in the shadow of the Capitol building of the State of Alabama.

Dr. King thought he would live the life of a Baptist minister, and Coretta thought, well, she would be a preacher's wife. But they decided to respond to the courage of Rosa Parks on December 1, 1955, when she refused to give up her seat on a city bus in Montgomery. Dr. Martin Luther King, Jr., emerged as a leader in the modern day civil rights movement and Coretta was by his side every step of the way.

I first met Mrs. King in 1957 when I was only 17. I was a student in Nashville, Tennessee. She was traveling around America, especially in cities of the South telling the story of the Montgomery movement through song. She was so beautiful, so inspiring, she would sing a little, and she would talk a little, and through her singing and talks she inspired an entire generation.

At times when Dr. King could not be present or had another commitment, Coretta was there to speak, to sing, or to encourage. She marched with us in 1963 at the march on Washington. In 1965 she marched with us from Selma to Montgomery.

She was not just a celebrity. She was a very, very warm person. She had the ability, she had the capacity to forget about her own circumstances and get involved in the circumstances of others.

For the past 20 years she has sent me a birthday card on every single birthday, or she might send me a book or note. I still have every single one of those cards and the books. I will cherish them always.

After the assassination of her husband she did not hide in some dark corner. She did not become bitter or hostile. A few days after the assassination she led more than 50,000 people through the streets of Memphis, and later she would travel with many of us through the South, through the heart of the deep South, through the Black Belt of Alabama, through the Delta of Mississippi, through southwest Georgia, through North Carolina and South Carolina, urging people to register and to vote.

She went all out to create a living memorial, a living monument to Dr. King called the Martin Luther King Center for Nonviolent Social Change. She lobbied the Congress. She organized and mobilized the American people to make Dr. King's birthday a national holiday, and because of her effort generations yet unborn will learn of his message of peace, and they will hear about his struggle for equal justice in America.

Mr. Speaker, Coretta Scott King must be looked upon as one of the founding mothers of the new America, for through her action, through her deeds, she helped liberate us all. This Nation is a better place because she passed this way.

But Coretta Scott King, my friend, my big sister, and sometimes she acted like she was my mother, must be looked upon not just as a citizen of America, but as a citizen of the world. This world is a better place because of Mrs. King.

Mr. Speaker, she will be deeply missed. I urge all of my colleagues to support this resolution.

Mr. CONYERS. Mr. Speaker, I yield myself as much time as I may consume.

Today we mourn the loss of a dignified and peaceful woman who showed us by example how to pursue change in the world, despite the costs of that struggle.

My friends in the Congress, I have known Coretta King since I went south during the civil rights movement as a lawyer. She was a vibrant, consistent, totally dedicated partner with her husband. She helped him stay strong, especially in the beginning when there were so many threats and challenges to the revolutionary idea that we would start a civil rights movement in the South itself. Many people tried to dissuade Martin from that course. As a child of the segregated South, she agreed that the movement should begin at the seat of Jim Crow.

When faced with the loss of her husband, Coretta remained able to advance their vision of a free and equal America. She continued her husband's legacy by devoting her life to advancing racial and economic justice and for the rights of women, children, the poor, and the homeless. She also fought for employment, education and health care opportunities for all. Most notably, this woman stood for equality and peace, the very virtues to which her husband had dedicated his life.

It was with Coretta's approval that 4 days after Martin's assassination on April 4, 1968, that I introduced a bill to name a holiday in his honor. Coretta was at the heart of this effort, as well as were many others to continue the life and work of King. In 1969, I joined Coretta at the King Center in Atlanta to kick off the campaign for a national holiday. She orchestrated a national grassroots movement that urged passage of this legislation and would come to Congress in 1979 and 1980 and 1981 and 1982 and 1983 to testify before the Congress and urge support of the King holiday. It was with her diligence and perseverance that that holiday bill was passed in 1983 and first observed in 1986.

Today, upon the passing of Mrs. King, we will pledge to continue the King legacy as she has for the past 37 years. As the life and work of the Kings touched millions during their lifetime in this country and around the world, we here in Congress must ensure that their lives continue to impact millions more in the coming years, and that is why I am so proud to join the rest of us in supporting and urging passage of the King resolution.

Mr. Speaker, I would now yield to the gentleman from North Carolina (Mr. WATT), the distinguished chairman of the Congressional Black Caucus.

Mr. WATT. Mr. Speaker, I rise in support of the resolution honoring the life and memory of Mrs. Coretta Scott King and would like to pull up some information from the resolution itself that other people may not focus on because we are tempted sometime to think of Mrs. King as simply the spouse, the wife of Dr. Martin Luther King, and I think it would be a grave, grave mistake for people to do that.

So I first point to the part of the resolution that says, Whereas Mrs. King received honorary doctorates from over 60 colleges and universities and authored three books. That in and of itself is something that, aside from her commitment to the civil rights movement and her companionship and partnership with Dr. Martin Luther King, would in and of itself be deserving of particular note.

Second, I pull up the fact that, as has been pointed out by my colleague, Representative JOHN LEWIS, Coretta Scott came of age in the segregated South and took an active interest in the emerging civil rights movement. This coming of age in the segregated South is something that I think we should not allow to go unnoticed because either, in many ways like slavery or the movement itself, either segregation or slavery tramped down people or it made them stand up and raise their shoulders and raise their sights. And when you find somebody like a John Lewis and a Coretta Scott King who fall into the latter category, it is important to take note of that fact.

So then I go to the first paragraph of the resolution, and when I first read the resolution, I kind of pushed back from the first paragraph because it says Whereas Coretta Scott King was an inspirational figure and a woman of great strength, grace and dignity, I think most of us focus primarily, if we knew Coretta Scott King, on the grace and dignity part of that, and had I kind of an off the top of the head reaction would be I would put grace first and I would put dignity second and then I would put the word "strength." But when you note that she grew up in the segregated South, it is really appropriate the way this has been drafted to put the strength part of that three-part prong equation first.

□ 1630

I think it is something that says here is a woman that is strong and willing to fight and yet still has grace and dignity.

Finally, Mr. Speaker, I would just like to read, on behalf of the members of the Congressional Black Caucus, the press release and make a final point. It says: "The Congressional Black Caucus released the following statement: 'The Congressional Black Caucus extends its sincere condolences to the family of Coretta Scott King, the First Lady of the Civil Rights Movement. Mrs. King, who became a symbol of strength and resolve during the life of Dr. Martin Luther King, after his death was an inspiration to millions of people around the world who sought justice and equality. She has remained the carrier of the freedom flame for almost 38 years since Dr. King's death.' "

And then the following paragraph is what I want to focus on. It says: " 'Mrs. King's death marks the end of an era, but certainly not the end of the continued struggle that she was such an integral part of and that African Americans face daily for equity and parity in education, health care, and employment security.' "

I do not think we should lose sight of that last part because the struggle goes on and we would honor Coretta Scott King's memory by keeping that struggle alive until we reach full equality. As we approach the State of the Union address tonight, let us not miss the point that this lady fought and lived and died for the struggle for equality.

I thank the gentleman for yielding.

Mr. CONYERS. Mr. Speaker, it is my privilege now to yield such time as he may consume to the gentleman from Maryland (Mr. HOYER), the honorable Democratic whip of the House, who I happen to know worked with Rosa Parks. And I am delighted that he came to several of her farewell memorial tributes and that he is with us on the floor today for the resolution for the late Coretta Scott King.

Mr. HOYER. Mr. Speaker, I thank my friend for yielding me the time. And I thank the chairman and the ranking member for bringing this resolution to the floor.

I was honored to stand many a time on the west wing of the Capitol of the United States as Mr. CONYERS led the effort to ensure that America recognized the extraordinary contributions of one of America's greatest sons, Martin Luther King, Jr., and that we set a day aside to recognize not only his contributions but to recommit ourselves to the objectives that he lived for and died for. And I want to congratulate Mr. CONYERS and thank him for the contributions that he has made to live out that commitment of Dr. King's.

Our Nation has lost a true hero. Coretta Scott King was one of the most eloquent and determined civil rights activists in our history, both as a partner to her husband, Dr. King, in the fight for equality and justice in the United States and as a keeper of his legacy after his assassination in Memphis on April 4.

Mrs. King's grace, of which Mr. WATT spoke and of which the resolution speaks, was experienced by all who met her. Her tenacity ensured that the civil rights movement that she helped to pioneer has continued to stay in the forefront of America's consciousness. She worked closely with JOHN CONYERS and many others in this body and around the world.

A dedicated mother of four children, all of whom I have had the privilege of knowing for some period of time, Coretta Scott King became a symbol of peace and human rights and justice and equality not just here in the United States but around the world. After her husband's death, she devoted her energy to carrying on Dr. King's legacy of nonviolence and his work to create an America in which all people were judged not on the color of their skin but on the content of their character.

She inspired activists from South Africa to Latin America. And what is perhaps one of her greatest accomplishments, she worked with JOHN CONYERS and so many others to ensure that we set aside a day to recognize the contributions, recognize the message, and to recommit ourselves to living out the promises that America made but which Dr. King so eloquently told America we were not living out, that we had made the promises but we were not keeping them, in that extraordinary speech in August of 1963.

Each year this day serves as a reminder to Americans that we must keep working towards equality and justice for all citizens. That is what Coretta Scott King's life was about. It teaches younger Americans about the harrowed journey the country has traveled to fulfill the promise of civil rights.

In addition, she was the driving force in the founding of the Martin Luther King, Jr. Center for Nonviolent Social Change in Atlanta. Nonviolent social change. Ghandi changed a nation; Martin Luther King, Jr. changed the world. He and Nelson Mandela and others who believed that by peaceful demonstration, by peaceful action, they could change the world and move mountains.

In addition, Coretta was the driving force in making sure that Martin Luther King, Jr. Day was not a holiday, not a day off, but a day of focus, a day of commitment.

Coretta Scott King's poise and determination are qualities that we would all appreciate, admire, and remember each time we met her and talked to her. She carried on Dr. King's legacy, but she had a legacy, certainly, of her own: an extraordinarily accomplished musician; a wonderful and bright, intelligent woman; a leader of our country in her own right.

Today I want to join my colleagues, Mr. CONYERS and Mr. SENSENBRENNER and all of our colleagues, to express our heartfelt sympathies to Mrs. King's children, Yolanda, Martin Luther III, Dexter, and Bernice, as well as all of her family and friends.

Today a Nation mourns the loss of a great leader and recognizes her extraordinary contributions to making America a better place.

Mr. SENSENBRENNER. Mr. Speaker, I yield such time as he may consume to the gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Speaker, I thank the gentleman for yielding to me.

At a time like this, I tend to think of who are the people I respect the most and who are the people that have had impact over the world and my country as I have grown up and become an adult. I think of someone like Winston Churchill. I think of someone like Martin Luther King. I think of someone like Coretta Scott King. I think of someone like Nelson Mandela. And I think about my colleague John Lewis. These are my heroes. And it is interesting to me that most of them are men and women of color.

I think of, when I was first elected in 1987, whom did I want to meet? I wanted to meet our President, Ronald Reagan; and I wanted to meet a man called John Lewis, who, when I was in college, led a civil rights movement with Martin Luther King and crossed the Selma Bridge. There were only two people I wanted to meet: one was Ronald Reagan and the other was John Lewis.

I think of Martin Luther King, Sr., whom some people refer to as Daddy King, who lost his younger son A.D., in a drowning; and then he lost his older son, Martin Luther King, Jr., in an assassination; and then he lost his wife in a bombing in our country. This precious woman's life was snuffed out. And I think of Martin Luther King, Sr., eulogizing his wife and saying, I have lost two sons; I have lost my wife. And then he looked out in the audience, and he said, in so many words, but I am a grateful man because I have my daughter, Christine, and her family and I have Coretta and her family. And the focus of his presentation was how grateful he was to have her. Well, he had her; we all had Coretta Scott King. We all had her, and we have all been blessed by her leadership.

Coretta Scott King was a hero of the civil rights movement as a partner to Martin Luther King, clearly; but in her own right she played an absolutely instrumental role in her husband's work and carried on his legacy of fighting for human rights and equality. Their legacy is one of lasting change, making for a Nation that is freer, more compassionate, and more accepting. And while I was not by their side, I got to see what they did in my lifetime.

I have had a number of opportunities to meet her and be in her presence, including my trip in 2005 with John Lewis and others to Birmingham, Montgomery, and Selma, where I heard her speak for the last time. She led by quiet example, and her personal strength was truly an inspiration. Yes, she was a woman of extraordinary grace. She was dignified. But she had a presence that said, I have experienced so much in my life and I want a different country.

And we are a different country. We are not where she may want us to be, but we are a different and better country because of Coretta Scott King and the other heroes that I love deeply.

Mr. CONYERS. Mr. Speaker, it is our understanding that there will be continuation of the debate on this resolution tomorrow.

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman is correct.

Mr. CONYERS. Until then, Mr. Speaker, I would like to yield such time as she may consume to the distinguished gentlewoman from California (Ms. WATERS), a member of the Judiciary Committee and a civil rights leader when she was in State government and a civil rights leader today, to close on our side.

Ms. WATERS. Mr. Speaker, I would like to thank JOHN CONYERS for organizing our ability to be on the floor today to remember the life and times of Dr. Coretta Scott King.

Let me just say that Coretta Scott King was a friend of mine. We have worked on so many projects together. We have been in countless meetings together. And not only did I know her well; I held her in high esteem, the greatest respect for a woman of dignity, a woman who conducted herself in such a respectful fashion, a woman who was well disciplined, and a woman who suffered a lot. A woman who suffered during the years that she was raising her small children, having to literally put up with the threats and the intimidation. A woman who took care of the children, raised them in her husband's absence because Dr. Martin Luther King, Jr., was out fighting for civil rights. He was out putting himself on the line so that this country could be a better place for us all. So Coretta Scott King had to be mother and father, and she did a wonderful job of it. She raised her children, and they are wonderful children.

Yolanda King is a wonderful woman who lives in Los Angeles who is an actress and who has devoted her time to putting on plays that will help further the cause of civil rights, equality, and justice. Martin Luther King III was an elected official and headed SCLC, did a fine job of it; and I traveled to Georgia to give him support at some of the dark hours of the organization. And, of course, there is Dexter, a fine young man who has a responsibility for making big decisions as it relates to the King Center and all of the intellectual property that is associated with it. And even when it is very difficult, they are going to get through whatever they need to get through in order to make sure that Dr. Martin Luther King is remembered in the way that he should be remembered.

□ 1645

Then, of course, there is a young daughter, Bernice, who decided that she wanted to walk in her father's footsteps as a minister. I have seen her on many occasions, not only at the White House, but in churches all over America, a young woman who is a fine minister and preacher and a teacher. So Coretta Scott King and Dr. Martin Luther King did a fabulous job, and Coretta Scott King instilled in her children the values that will hold them in good stead.

Let me just close by saying I was pleased to be an honoree at the Dr. Martin Luther King Center just a few years ago when I was invited by the family to come and to remember Dr. Martin Luther King at the King Day events that are held in Atlanta, and I am very appreciative of that, because I had an opportunity to spend some time with Coretta Scott King in a way that I had not been able to do before.

I can recall that we ended up in a little diner, at Pascal's, the favorite soul food restaurant in Atlanta, where we had an opportunity to talk about a lot of things, and we revisited the time that Buthelezi came to Atlanta. I was so opposed to him coming, and Coretta tried to talk sense into me and said, "Well, we all support Nelson Mandela and we all know that Buthelezi is a person that was opposed to the work of Mandela, but we must be bigger than Buthelezi, we must be bigger than that, and we must understand that we must try to use an opportunity to influence him."

She was that kind of person. She would think through very carefully her response and her responses to information that was out about whatever work she was doing, and she always responded in such a fashion that not only caused people to respect her, but it also showed the patience that she had, the ability to take people with all their faults and still not be bitter.

So the world is going to miss her. JOHN CONYERS is absolutely correct; she put her work into making sure that Martin Luther King memorials were organized and committees were organized all over this country, all over this world, and that they literally celebrated his birth and they carried out his work, and they continue to do that, and it was because of her traveling from city to city, from town to town, from legislature to legislature, that she has these Martin Luther King committees all over the country.

So today we pay our respects, and we just say farewell to her. We will always remember her, and we will always know that because of her, Martin Luther King was able to do what he was able to do; because of her, her children are doing what they are able to do; because of her, many of us are able to see things a little bit differently and honor the work of Dr. Martin Luther King and support nonviolence.

Mr. CONYERS. Mr. Speaker, I yield 30 seconds to another Member person to testify in terms of this House Resolution tonight, Congresswoman DIANE WATSON, a member of the Congressional delegation, but, more than that, she was a distinguished State senator from California and she was one of the few in this body who have been named an ambassador.

Mr. SENSENBRENNER. Mr. Speaker, I yield the gentlewoman from California 2 minutes.

The SPEAKER pro tempore (Mr. LAHOOD). The gentlewoman from California is recognized for 2½ minutes.

Ms. WATSON. Mr. Speaker, I thank Chairman SENSENBRENNER for yielding me time, and Congressman CONYERS for never letting down on your struggle to recognize the movers and shakers for civil rights and always being on point in an expeditious way.

I extend my condolences to the King family. We have lost a national treasure and a civil rights icon.

Mrs. King was a loving partner and an inspiration to her husband, Dr. Martin Luther King, Jr., and her husband's untimely death placed a tremendous responsibility on her shoulders. She not only excelled at raising her four children, but also worked tirelessly to preserve the vision of her late husband. She carried on Martin Luther King's legacy with grace, love and a strong sense of spirituality.

Dr. King left a gift to the world in Coretta, who continued to travel throughout the United States and abroad to reinforce his vision of civil and human rights, not only for all Americans but indeed all citizens of the world. She understood the demonstrative power of one of Martin's most cherished phrases, "We shall overcome."

Mrs. King was indeed an angel among us. She enhanced the civil rights movement with her dignified and gracious presence. We are saddened by her passing, but also rejoice in a life full of meaning and purpose.

Mr. SENSENBRENNER. Mr. Speaker, I yield 10 minutes to the gentleman from Michigan (Mr. CONYERS) and ask unanimous consent that he be allowed to yield portions of that time to whomever he chooses.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. CONYERS. Mr. Speaker, I thank the chairman.

I am pleased to yield 3⅓ minutes to a member of the Committee on the Judiciary from Houston, Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the distinguished ranking member of the Committee on the Judiciary, I thank the leader of the House, Leader PELOSI, and the Speaker of the House for giving us this opportunity to take a moment in history to be able to simply say thank you; to be able to, for a moment, honor a woman who did not pause and mourn as they buried her husband in April of 1968, as many of us would have thought.

I start from that moment, because many have already recounted what a beautiful person Coretta Scott King was and for me continues to be. We already know of her beautiful voice, of the partnership, where she stood alongside of Martin Luther King, of the beautiful children, Martin, Dexter and her beautiful girls. So we know that she has been all that you would want a woman to be, particularly in the context of our history.

But I think it is important to be able to say simply "thank you," as she rose to take the call, to carry forth the dream and the mantle.

I think there is something more that we need to say thank you to Coretta Scott King for. As you know, and I see one of the able Representatives, as I heard John Lewis and my good friend Ms. MCKINNEY, who has the honor and privilege of representing the area, all those of us who live outside that great State of Georgia say that we honored and admired what she did by holding together the legacy of Dr. King, the words of Dr. King, the papers of Dr. King, minimally to many people, but now that we have lost both, what a richness that we will be able now to go to a place that was her expanded vision, and that of course was the vision to hold together this wonderful legacy, years, decades of history. We thank you for that, Coretta.

We thank you also for rejecting wealth and prestige, not being honored and worshipped, being put on a pedestal, and for traveling around the country, place after place after place, person after person, and being yourself and letting us touch you, letting us feel that warmth, Dr. King's spirit, your spirit, your relationship with a man and a cause, and beginning to understand and know you for yourself that you could have been and were the leader that you were and knowing that it was not just the fact that you were Martin Luther King's wife, but you were Coretta Scott King.

We are reminded of the words when you spoke about hatred, when you said it is not the hated that feel the venom of hatred, but it is the hater. So we take to heart your message.

The moment I heard this, I had to stop, broken in tears and spirit. I just wondered where would we go and what would we be, because there were many leaders, but you brought together a spirit, a humble spirit.

So I simply wanted to rise today on the floor to be able to say thank you to your family for sharing you, to thank you for being the woman that you are, for you taking to heart a dream and saying to us it should never die.

I do say that today we had the moving forward of the Supreme Court. It gives us only a greater cause to fight for justice. And I promise you, not on behalf of Sheila Jackson-Lee, but really on behalf of the constituents of the Eighteenth Congressional District, and I know also many colleagues in this place, that we will link arms and that the dream will never die. Coretta Scott King will be one of the icons of history and that your spirit will live on, and that we in our own actions will walk the walk and talk the talk and never step away from a fight for equality and justice for all.

To Coretta Scott King, we love you, and your spirit will be in us forever. May God provide rest to your soul and may God bless your family.

Mr. Speaker, I rise in support of H. Res. 655, honoring the life and accomplishments of Mrs. Coretta Scott King and her contributions as a leader in the struggle for civil rights, and expressing condolences to the King family on her passing.

With sadness, I recognize the passing last night of Coretta Scott King, a courageous and heroic individual who sacrificed her life so Americans might relish in the gift of equal justice. Coretta Scott King and her late husband, Dr. Martin Luther King, Jr., were Americans of monumental strength and stature through their lives. They will be remembered for their ceaseless efforts to advance race relations, civil rights, social justice and human rights. Her immense contributions to our national community will never be forgotten.

Corretta Scott King once said, "Hate is too great a burden to bear. It injures the hater more than it injures the hated." Whether segregation, sexual orientation, the rights of the poor or the rights of women, Mrs. King was a consistently strong and resonant voice for those who were desperately in need of help.

I have known Coretta Scott King over the last several years, and she had a rare gift to motivate others to carry on the legacy of equality, the idea of freedom, and social justice which was first accomplished by her husband and partner, Dr. Martin Luther King, Jr. She will truly be an unspeakable loss. It is our duty in her honor to never waver in the face of injustice and degradation.

As a member of the House Judiciary and Homeland Security Committees, my thoughts can't help but turn to today's confirmation of Justice Alito to the U.S. Supreme Court. I have had concerns about Justice Alito's past judicial record. I am still apprehensive, and I would like to take this opportunity to point out what I believe is a test of civil liberties presented today.

The tragic passing of Coretta Scott King, a formidable human rights and civil liberties activist, and the concurrent confirmation of Justice Alito, may foreshadow difficult times ahead for American freedoms. Much of what Coretta Scott King fought for is now threatened by Justice Alito's confirmation to the U.S. Supreme Court. His dubious record on voter's rights, discrimination issues, civil rights, civil liberties, reproductive freedom, the right to privacy and environmental protections, among others, fly in the face of the life and work of Coretta Scott King. The passing of Coretta Scott King and the confirmation of Justice Alito should be a wake-up call to America.

Dr. and Mrs. King will forever hold an esteemed place in my heart and the hearts of all Americans. As an African American woman, and a Member of Congress, I shall endeavor in my own way to continue their fight for equality and justice every day.

I rise in strong support of this proposed legislation, and urge my colleagues to follow suit.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 3⅓ minutes to the gentlewoman from Ohio (Mrs. JONES), an attorney, a prosecutor, a member of the Committee on the Judiciary and a staunch advocate for civil rights.

Mrs. JONES of Ohio. Mr. Speaker, I would like to thank the gentleman from Michigan for yielding me time.

Mr. Speaker, I rise today in celebration of the life of Coretta Scott King. This morning, I woke, like many of you, to hear of the sad news of the passing of Mrs. King. As I watched the news and read the papers, I came across an article that said "Coretta Scott King played a major backup role in the civil rights movement until the death of her husband, Martin Luther King." The words "backup role" stood out to me, because in my mind she always has been very much at the forefront. For so long she was simply known as the widow of Dr. Martin Luther King, but she was so much more.

Oftentimes we hear of the many great men who led the civil rights movement, but it was women who were in the heart and soul of that movement.

I am reminded that in the City of Cleveland there were several ministers that were involved with Dr. King. One of them, Dr. Hoover, another, Dr. Otis Moss, another minister, and one of the daughters of those ministers, her name is Carol Hoover, ultimately became the head of the Chamber of Commerce in the City of Cleveland.

□ 1700

And the reason I mention Carol Hoover is because Carol Hoover gave me my only opportunity to sit in a living room and have a long conversation with Mrs. King.

And the thing that I remark about that opportunity was she was very soft spoken. She was so very, very regal in her style, and so very confident and comfortable in helping me understand what my role was in public life.

I will never forget that opportunity that Carol Hoover gave me, and I will never forget Mrs. Coretta Scott King. If only we had a few more women like Coretta Scott King who handled tragedy so very well, but stood up, continued to raise a family, and helped us lift up her wonderful, wonderful husband.

As we celebrate the life of this great woman let us continue to remember the work that she did. Let us encourage our children to understand what she went through in order to be such a great leader, and let us to continue to pray for all of her family.

It is because of Coretta Scott King that the legacy of Rev. Dr. Martin Luther King lives on to this day. It was Coretta whose hard work and determination led to the founding of the Martin Luther King, Jr. Center for Nonviolent Change and the establishment Martin Luther King's birthday as a national holiday. It is for these reasons and so many others that we honor and celebrate this great woman and her contributions to this country.

She was the pillar of her family. Supporting her husband while raising four children during what were tumultuous times in our nation's history. Those of us who are mothers know that raising a child, particularly black children then and even in today's society is not an easy task. She was truly phenomenal.

It is important that we understand that the dream of equality for all people was not just Rev. Dr. Martin Luther King's Dream but it was a shared dream of both he and Coretta Scott King. It was through her vision as well that today we are closer to that dream.

As a tribute to this woman, I encourage everyone to help keep both Coretta and Dr. King's dream alive by working for peace and justice for all people.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from the District of Columbia (Ms. NORTON), who has distinguished herself in the field of law, in the executive branch of our government, and has also appeared in the Supreme Court on a number of occasions on behalf of civil rights issues.

Ms. NORTON. Mr. Speaker, I thank the gentleman for his kindness in yielding. My condolences first to Yolanda and Martin the Third, and Dexter and Bernice. I come to the floor to speak of Coretta Scott King, the woman, and of Coretta, my friend.

Mr. Speaker, I hope that we will remember Coretta as I am sure she wanted to be remembered, as a movement woman, fully engaged from the outset in the work of her husband, except it was their work.

King himself said, "I did not bring Coretta to this work, she was there." These two people found each other, these southerners who went north for education, precisely because, alone and in the North with few blacks and whites who believed that they did, they were fully at one with each other.

Coretta Scott King did not come to the movement by marriage. She once herself said she was married to the movement as well as to Martin. She therefore is not like most widows of great men. Of course, she carried on his legacy, but anyone who watched how ceaselessly and magnificently she worked for the essence of his legacy, nonviolence and universal human rights, will of course understand that Coretta Scott King deserves to be remembered, in justice, for her own extraordinary work.

I cannot help but also remember Coretta the friend, the friend who I would lolly-gag on the phone and laugh and talk about any old thing, not about the movement, but any old thing, particularly in the 1970s and 1980s at the height of her movement work. The last time we spoke, we sat underneath the Lincoln Memorial in those rooms preparing to go up to unveil the marker where King gave his 1963 March on Washington speech. May she be remembered for herself and her great work.

Mr. CONYERS. Mr. Speaker, I would like to yield the balance of our time to the gentleman from Montgomery, Alabama (Mr. DAVIS) who in closing will perhaps yield as much of his time as he can to the gentlewoman from Georgia (Ms. MCKINNEY) where Mrs. Coretta Scott King resided for so many years.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Alabama (Mr. DAVIS).

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from Alabama is recognized for 3½ minutes.

Mr. DAVIS of Alabama. Mr. Speaker, I thank Mr. CONYERS for yielding to me. Mr. CONYERS, you mentioned that I was born in Montgomery. Coretta Scott King was born in Marion, which is in the heart of my Congressional District. I am honored to stand here today as the person who still represents some of her family in the State of Alabama.

I only met her once as a younger Member of this institution and as someone who was not around to participate in the glorious days of the movement. I only met her once, at a Congressional Black Caucus in 2002. And I was a little bit in awe of her, Mr. CONYERS, because when you grow up in the State of Alabama, Coretta Scott King is a heroine, and she has a very, very special place all over this country.

There are two things I want to say about her today. When she was born in Marion in 1929, she could not have conceived, her parents could not have conceived, and as she grew into young womanhood, she could not have conceived that the person who represented her City of Marion would one day be an African American. That would not have crossed her mind.

And when she formed her partnership with Martin Luther King, they had all kinds of dreams for this country. I wonder if they ever anticipated that they would accomplish the things that they did, the holiday, the King Center, the Civil Rights Act, the Voting Rights Act. They were big dreamers, but I do not know if they could even have seen those things.

So that is the first aspect of Coretta Scott King that we are to acknowledge today, that she had an opportunity to see her South and her country transformed in ways that were inconceivable, and she lived to see it. She lived to tell about it. She lived to appreciate it and to breathe it.

The second point that I want to make is, every time I saw her on television as a young man, every time I saw her, I was always struck by the power of her quiet dignity, and I mention that, Mr. Speaker, because we live in an age where sometimes our side thinks we have to outshout the other side, they think they have to outshout our side.

What this wonderful women appreciated is that there is a power and a force to quiet, persuasive argument. And she kept updating the legacy. In the 1980s it meant arguing against apartheid, and then arguing against the ugly rise of southern conservatism. It meant in the 1990s arguing for fair welfare policies. In the early 21st century it meant arguing for more enlightened policy around the world. She kept updating the legacy, and as she kept updating the legacy she freshened it and she put her own touch on it.

I conclude with just that observation. My colleague from Ohio was so right. My colleague from the District was so right. This woman was not a backstage figure, she was a co-anchor and a co-pillar of this movement.

Mr. Speaker, I yield the balance of my time to the gentlewoman from Georgia (Ms. MCKINNEY).

Mr. SENSENBRENNER. Mr. Speaker, I yield 5 minutes to the gentlewoman from Georgia.

The SPEAKER pro tempore. The gentlewoman from Georgia is recognized for 5¾ minutes.

Ms. MCKINNEY. Mr. Speaker, I would like to extend my condolences to Martin King, III, Yolanda, Dexter, and Bernice King, and to the entire King family.

I was shocked and saddened this morning when I heard the news as well. I had the opportunity to speak this year at the Martin Luther King ceremonies held annually at Ebenezer Church. And for the first time in many, many years, our queen mother, Ms. Coretta Scott King, was not there with us personally at the church, but she was looking at the proceedings and the ceremony on television.

One thing is fairly clear from the proceedings of the House today, and that is that the King family is loved by this body, by these Members, by the American people, by the African American community in particular, and the progressive community in general because it was the King family and their sacrifices that moved our country forward. They moved America forward. And so, I am so proud to represent Stone Mountain, Georgia, that same Stone Mountain, Georgia, that Dr. King spoke of in 1963, but today it is represented by an African American Congresswoman. It is represented by me.

This country can change. This country's leaders can change. This country can raise to its highest ideals if we have the will to do so. And Dr. King and Mrs. King and the King family continue to shine the light on America finding that will to do the best that it can do, to be the best that it can be.

Mr. Speaker, I yield to the gentlewoman from the U.S. Virgin Islands (Mrs. CHRISTENSEN).

Mrs. CHRISTENSEN. Mr. Speaker, I will be very brief. I associate myself with all of the accolades that have been given before.

I rise, Mr. Speaker, to bring the condolences of the people of the Virgin Islands and the people of the Caribbean to this beautiful woman, Coretta Scott King, a woman of courage, a woman of strength, a woman of compassion, and a woman of history. She worked side by side with her husband, the Reverend Dr. Martin Luther King, Jr., and we are forever grateful for both of their sacrifice and both of their service.

Ms. MCKINNEY. Mr. Speaker, I yield to the gentlewoman from California (Ms. MILLENDER-MCDONALD).

Ms. MILLENDER-MCDONALD. Mr. Speaker, I would like to thank the chairman and the ranking member for this time that they have allotted to recognize an American icon, a woman of great distinction, of grace, of courage, one whom I have known for a long time because she was my soror, an AKA. And we met many times to talk about issues of women, women's suffrage, we talked about sexual exploitation of women around this world and human indignities.

As I heard about her passing I could not help but to reflect on the many times that we have spent together and on the courage that I drew from her and the strength that I drew from her, because this woman showed us so much, so much class, so much leadership, and so much strength in moments of tragedy.

And this is why I come together with my friends from across the aisle, and on both sides, to talk about the legacy of Mrs. Coretta Scott King, the aptly named first lady of the civil rights movement. She was the embodiment of a living soul who chose to help others without regard for self. Coretta Scott King was her husband's most ardent supporter during his darkest days and his most shining triumphs.

She spent the years after Dr. King's tragic assassination as the beacon of life toward equality and human rights for women and for all Americans. Fighting alongside her husband, however, through the many blessed years of their marriage, Coretta Scott King faced hardships, derision and physical violence.

In 1956, Mrs. King was in her home with her baby daughter when someone attempted to end her life and her husband's life, who was on a crusade. They threw a bomb into their home. The bomb did not injure her nor her child, but she could have rightfully ended her involvement on that particular issue at that time.

Thirteen years later her husband was brutally murdered in his quest for a social revolution.

□ 1715

Mrs. King stood strong only days later and led thousands of people marching in her husband's honor. The world is a better place, Mr. Speaker, because she was a giant of a woman, a crusader for justice and a courageous woman in the face of enormous adversity and tragedy.

Coretta Scott King campaigned tirelessly wherever she saw oppression or injustice. She celebrated Dr. King's legacy and created one of her own. Women's rights groups, people who fight against hunger, unemployment, disenfranchisement, and racism owe her a debt of gratitude. She embraced her husband's method of peaceful resistance and applied it in her crusade against the violence that corrupts our Nation.

Coretta Scott King was an activist, an icon, and a great wife and mother. America was so influenced by her, Mr. Speaker. She will continue to live in our memory and in our spirit as we further her work of nonviolence.

Mr. RAHALL. Mr. Speaker, today we mark with sadness the passing of Coretta Scott King, a true patriot in the American Civil Rights Movement. But we also celebrate, together, a life well-lived and remember with fondness the accomplishments of a remarkable woman who, with the sound of a gunshot on April 4, 1968, moved swiftly and strongly from the role of supporting preacher's wife to torchbearer of her husband's mission for equality.

Mrs. King herself once said, following her husband Rev. Martin Luther King Jr.'s death, "Because his task was not finished, I felt that I must rededicate myself to the completion of his work." And that she certainly did.

Whether meeting with such pivotal figures in the civil rights movement as the Rev. Wyatt Tee Walker, her husband's former chief of staff, and Betty Shabazz, widow of Malcolm X, or marching with activists from across America, Mrs. King made it clear from early on that the dream of Martin Luther King would live on, as would his legacy.

She lobbied for over 10 years to have her husband's legacy honored and President Reagan finally granted her wish in 1983, when he signed the federal holiday into law.

And determined to ensure Americans did not forget her husband or his dream of a colorblind society, she created a memorial and a forum in the Martin Luther King Jr. Center for Nonviolent Social Change in Atlanta.

Mrs. King was the matriarch of a movement, a dedicated and loving mother to a family in the face of loss, and a model to us all.

I join my colleagues in support of a House resolution honoring Mrs. King and her contributions and expressing condolences to the King family on her passing.

May we all honor her legacy by collectively taking up the torch she carried so high for so long.

Mr. TOM DAVIS of Virginia. it is with great sadness that I rise today to honor the life of Coretta Scott King.

Born April 27, 1927, in Marion, Alabama, Mrs. King led a life of activism beside her husband during the civil rights movement, and carried on his work after he was killed in 1968. Coretta Scott King is a great American heroine who possessed the determination to make the seemingly impossible, possible. Soon after her husband's death, she stated, "I'm more determined than ever that my husband's dream will become a reality."

Mrs. King came from humble beginnings; her father ran a country store, and she worked as a waitress to put herself through college. Her strength and resolve guided her through many difficult times as a young widow left to raise four children on her own, but her determination propelled her to achievements of great significance. For almost a decade, she pushed Congress for a national holiday in observance of her late husband's birthday. She was ultimately successful in 1983 when Congress passed and the president signed legislation creating the holiday. The first national celebration of Dr. Martin Luther King, Jr. Day occurred in 1986. In 1969, she founded the Martin Luther King Jr. Center for Nonviolent Social Change in Atlanta to serve as a living memorial to the Rev. Dr. King's legacy. Additionally, she spoke out against the promotion of violence by movie and television companies.

Mr. Speaker, in closing, I would like to express my heartfelt condolences to the King family and call upon my colleagues to forever remember her legacy and message.

Mr. VAN HOLLEN. Mr. Speaker, I rise today to join all Americans and others around the world in mourning the death of Coretta Scott King, a woman who worked to create change so that all Americans would have the opportunity to experience true freedom and justice. Mrs. King walked alongside her husband the Rev. Dr. Martin Luther King, Jr. until his untimely death. It was her courage and steadfast resolve in the aftermath of this tragedy that led to the launching of the Martin Luther King, Jr. Center for Nonviolent Social Change and the designation of Martin Luther King Day as a federal holiday.

As we prepare to begin our observance of Black History Month tomorrow, it is important that we recommit ourselves to continuing the work that Dr. and Mrs. King began more than 40 years ago. I extend my deepest sympathies to Mrs. King's family. I hope that they can find solace in knowing that all Americans are grieving the loss of this courageous woman.

Mr. SERRANO. Mr. Speaker, I rise today to bid a last farewell to Mrs. Coretta Scott King, a woman of great character and conviction who worked tirelessly to make the dream of her husband a reality.

Although we know her as the widow of Dr. Martin Luther King Jr., that label is far too small to encompass the life of this remarkable woman. Born April 27, 1927 in Marion, Alabama, to Bernice McMurry Scott and Obeadiah Scott, Coretta was an accomplished student, graduating at the top of her high school class while becoming an exceptional musician. Although her parents worked hard to ensure that she was protected from the hardships of the segregated South, she was very aware of the fact that she and all blacks were deprived of many rights. In her 1969 autobiography, "My Life With Martin Luther King Jr." Coretta stated: "From the first, I had been determined to get ahead, not just for myself, but to do something for my people and for all people." Little did she know that fate would have her help shape the mind of a world leader.

She met a young King in Boston while he was a student at Boston University and she a student at the New England Conservatory. After receiving her degree in voice and violin, the young couple moved to Montgomery, Alabama. Fifteen months later on December 1, 1955, a woman by the name of Rosa Parks refused to move to the back of a city bus . . . and the rest is history.

Over the next 13 years she and her husband pushed our nation to tear down the walls of oppression and to reach for its great potential. By 1968 she had lived a life worth writing about, but it was the woman she became after the assassination of her husband in 1968 that will define her legacy.

Only months after his death, she created the Martin Luther King Jr. Center for Nonviolent Social Change as a living memorial to her husband's life and dream. Leading marches, giving speeches and meeting with various world leaders, Coretta devoted all her energies to alleviating the pain and suffering of the disenfranchised at home and abroad. She probably will be most remembered for her successful campaign to establish a national holiday to honor the life and works of her husband.

Mr. Speaker, throughout our history, great men and women have come and gone from these halls of Congress. However, their contributions to the American discourse did not die with them because we as a body have picked up where they left off, just as those who come after us will undoubtedly do. We all know that none of us are more important than this institution and what it represents. Coretta realized the same was true of her husband's dream. Though he was a great man, his dream was greater than him.

Had she allowed it to die with him, we all would have suffered a great disservice. Through her tireless work post-1968, she has ensured that our nation will never forget the dream of Dr. King, and more importantly, that we will never stop working towards its fulfillment.

For her great service to America and her unyielding spirit, I ask that my colleagues join me in paying tribute to Mrs. Coretta Scott King and in bidding her a final farewell.

Mr. LANGEVIN. Mr. Speaker, I rise today to pay my respects to Coretta Scott King, a great woman who passed away yesterday. Mrs. King, the widow of slain civil rights leader Martin Luther King, Jr., worked alongside her husband in promoting the dream of equality for all. Mrs. King continued the legacy of her husband after his death by remaining a vocal proponent of civil rights and founding the Martin Luther King Jr. Center for Nonviolent Social Change in Atlanta, Georgia.

Unfortunately, our nation has become increasingly divided about how to promote freedom and equality, both here at home and abroad. We have again experienced an increased number of hate crimes, more than half of which targeted victims because of race. As the costs of fuel, health care, and college education rise, we have been told we should cut important social programs. Such misguided priorities are falsely justified under the guise of fiscal responsibility, even though millionaires grow wealthier at the expense of the poor.

However, it is when we are most frustrated and disheartened by the world around us that Dr. and Mrs. King's message is most important. As we begin National Black History Month, we must remember the vital contributions that Dr. and Mrs. King made to the civil rights movement and let them inspire us to continue our nation's march toward equality. We must remember their heroism, compassion and a determination to make this country a better place. We must harness their passion to improve all aspects of our society, from education to health care to the economy. Our job, not just today but every day, is to act in such a manner that moves our nation a little further along that path to freedom. We do so with the hope that we, our children, and our grandchildren may experience the America that Dr. and Mrs. King envisioned for all of us.

Mrs. King will be greatly missed and our thoughts and prayers go out to her family, friends and all those who mourn her loss.

Ms. SOLIS. Mr. Speaker, today we celebrate the life and mourn the passing of Coretta Scott King. Following the assassination of her husband, Dr. Martin Luther King in 1968, Coretta Scott King worked tirelessly to keep the ideology of equality for all people alive. A civil rights leader in her own right, she created the King Center for Non-Violent Social Change in Atlanta, Georgia, in order to continue her husband's work. She fought with dignity and a quiet strength to end hunger, unemployment, voting rights violations and racism. We must continue to follow in the footsteps of Coretta Scott King and work to achieve equality though peaceful protests in order to improve our country for future generations.

Mr. FATTAH. Mr. Speaker, I rise today to pay homage to Coretta Scott King, a great leader in the movement for civil and human rights on the occasion of her passing.

Known first as the wife of Dr. Martin Luther King, Mrs. King's commitment to the struggle for all people continued throughout her life. Attending Antioch College in Yellow Springs, Ohio, Coretta Scott King earned a Bachelor's Degree in music and education, skills she used to organize Freedom Concerts to benefit the Southern Christian Leadership Conference. Serving as a delegate from Women Strike for Peace at a 1962 Disarmament Conference in Geneva, Switzerland, Mrs. King demonstrated her commitment to working for peace and justice worldwide.

Following the tragic murder of her husband, Coretta Scott King committed herself to promoting Dr. King's principles of nonviolence and social justice. First, in establishing the King Center for Nonviolent Social Change, which has trained tens of thousands of people in the philosophy and methods of Dr. King, she has been able to preserve and further his legacy. Second, she served as chair of the Martin Luther King Jr. Federal Holiday Commission and worked for the national recognition of Dr. King's birthday.

In addition to working for the recognition of her husband's legacy, Mrs. King was always a tireless advocate for the abolition of Apartheid in South Africa, women and children's rights, gay and lesbian dignity, full employment and ecological sanity. In recognition of this work, Coretta Scott King has lead goodwill missions across the globe consulting with world leaders. In addition, the American Library Association has awarded Coretta Scott King Awards to more than 175 books written or illustrated by African Americans that promote understanding and appreciation for all cultures and demonstrate commitment to equality and justice.

Surely the passing of Coretta Scott King is a great loss to this Nation and the world. Mrs. King demonstrated a resilience and commitment to the ideals of equality and justice that has been matched by few and we all owe her a debt of gratitude.

Mr. GEORGE MILLER of California. Mr. Speaker, I rise today to pay tribute to Coretta Scott King, who, sadly, passed away last week at the age of 78.

Mrs. King will be greatly missed and fondly remembered as a remarkable woman who passionately worked with her husband, Martin Luther King, Jr., in America's nonviolent struggle for equal rights and who pursued the vision of equality and justice long after his tragic death in 1968. While I and constituents throughout my district, including those in Richmond, California, mourn her loss we remember her achievements, her courage, and what she symbolized to people across the country and throughout the world.

While she was Dr. King's partner in the struggle for equal rights, Coretta Scott King was also a civil rights activist in her own right. Dr. King once said, "I wish I could say . . . that I led her down this path. But I must say we went down it together, because she was as actively involved and concerned when we met as she is now."

An inspirational woman to so many already, Mrs. King will remain a role model for generations to come.

When her husband's fight for equality was cut short by the brutal shot of bigotry and hatred, Mrs. King's fight had only just begun. And now with her death, we face the same question she faced so many years ago. President Clinton eloquently spoke about this question yesterday at Mrs. King's funeral service in Atlanta when he said,

> . . . the most important day in her life for everyone of us here at this moment in this church, except when she embraced her faith, the next most important day was April 5, 1968, the day after her husband was killed. She had to decide, "What am I going to do with the rest of my life?" We would have all forgiven her, even honored her if she said, "I have stumbled on enough stony roads. I have been beaten by enough bitter rods. I have endured enough dangers, toils and snares. I'm going home and raising my kids. I wish you all well." None of us, nobody could have condemned that decision. But instead, she went to Memphis—the scene of the worst nightmare of her life—and led that march for those poor hard-working garbage workers that her husband [advocated for]. Now, that's the most important thing for us. Because what really matters if you believe all this stuff we've been saying is, "What are we going to do with the rest of our lives?"

Indeed, she went on to work so hard for all of us. In addition to her efforts to build the Martin Luther King memorial in Atlanta to establishing a national holiday in her husband's memory, Coretta Scott King worked tirelessly so that her husband's struggle, and the struggle of the millions of Americans who worked with him and shared his vision to bring equality to all people, was never forgotten.

She took upon herself the responsibility of keeping alive Dr. King's civil rights legacy but also found her own causes. She advocated equality for all. She became active with the National Organization for Women and said, "Women, if the soul of the Nation is to be saved, I believe that you must become its soul." In 2000 she spoke at a fundraiser sponsored by the Metropolitan Community Church, a predominantly gay denomination in San Francisco, where she gave a powerful speech expressing that "until everybody has equality; no one has equality. We can't just be for civil rights of one group."

The King family has a strong history with the community in Richmond, CA.

Mrs. King's speech in San Francisco inspired Jerrold Hatchett of Richmond to form the National Brotherhood Alliance, a non-profit organization that serves as a collaborative of business, community, religious, and grassroots organizations to mentor youth and address community issues.

Richmond Mayor Irma Anderson remembers attending Union Methodist Church in Boston with the Kings. Her husband, Rev. Booker T. Anderson, who went on to become a Richmond city councilman, attended Boston University School of Theology with Dr. King. Their relationship was one of the reasons Dr. King stopped in Richmond to meet with local leaders when he visited northern California in 1961. Mayor Anderson remembers Mrs. King as being loyal to her husband and family and supportive of the civil rights movement, and she had a beautiful singing voice.

Mayor Anderson said that, "Mrs. King's singing voice changed after her husband was murdered." It, however, did not alter her passion for justice and she continued her struggles against injustice.

Mr. Speaker, on behalf of my constituents, I rise to acknowledge the loss of a great woman, a mother, a friend to all and a hero. I extend my heartfelt condolences to the King family and their friends in this difficult time.

America owes the entire King family an enormous debt of gratitude for teaching all Americans the meaning of dignity, patriotism and justice. This Congress, and this nation, must not let down Dr. King down. We must not let Mrs. King down. We must pursue their vision of justice and freedom as vigilantly today as ever before and preserve the greatness of America for our children and our children's children.

Mr. REYES. Mr. Speaker, I rise today in strong support of H. Res. 655, honoring the life and accomplishments of Mrs. Coretta Scott King. It is with great respect and a heavy heart that I pay tribute to the life of a woman admired by so many Americans.

On January 31, 2006, God summoned home one of His most dedicated activists in the fight for equal rights and social justice. It seems like only yesterday that Mrs. King joined her husband, the late Reverend Martin Luther King, Jr., to fight for equality for all Americans.

While the country mourned the loss of Rev. Martin Luther King, Jr., Mrs. King picked up the torch and continued the fight for social justice, at the same time caring for their four children: Yolanda Denise, Martin Luther III, Dexter Scott, and Bernie Albertine. In doing so, she worked tirelessly on multi-national disarmament treaties, anti-poverty efforts in the U.S., and opposition to apartheid in South Africa. Later, in 1985, she initiated the creation of the Martin Luther King, Jr. Research and Education Institute to ensure that future generations of leaders carry on Rev. King's dream of peace and social justice. It is fitting that we honor her today not far from where she led several hundred-thousand people to commemorate her husband's historic march on our Nation's Capital.

Because of the Reverend and Mrs. King's hard work and many sacrifices throughout the years, millions of Americans have greater opportunities today. Without their efforts, people like me might not have the opportunity to serve in the House of Representatives today.

While the loss of Mrs. Coretta Scott King brings great sadness, it brings a sense of peace knowing that she will be reunited with her husband the late Reverend Martin Luther King, Jr., and that their legacy will flourish for generations to come.

Mr. KENNEDY of Rhode Island. Mr. Speaker, Coretta Scott King's passing is a tremendous loss for our country and for all who have worked to uphold America's promise of equal justice under the law. She led with great passion, integrity and with a spirit that should be a guiding light for all of us.

When Americans visit our Nation's Capital, they are overwhelmed with beautiful monuments honoring the great leaders of our country. From the Jefferson Memorial to the Washington Monument to the U.S. Capitol, every building and statue is in place to remind Americans of the legacy left by these leaders and their contributions to the framework of our Nation. There is no monument or building dedicated to the heroic actions that mark Mrs. King's life in the Nation's Capital, but I believe her legacy lives on in ways that cannot be adequately honored with a statue. Mrs. King's legacy is honored when African-American women join their neighbors at the local poll to vote on Election Day. And she is honored when children read for the first time a sign that says "Whites Only," not in their community, but in a museum.

Mrs. King, who was faced with the tragic and early loss of her life partner, The Reverend Dr. Martin Luther King Jr., did not act bitterly towards the violence that interrupted her life, but continued to spread the message of peace and equality to all corners of the world. As founding President, Chair, and Chief Executive Officer of the Martin Luther King Jr. Center for Nonviolent Social Change, Mrs. King spent her life furthering the Civil Rights Movement, and later, creating the largest archive of documents from this era. With this collection in place, future generations will have the ability to educate themselves beyond what is read in textbooks, and will have the opportunity to experience firsthand the sacrifices that were made to build the world we live in today.

Like all who have sacrificed for the most fundamental American value—that equality and justice are the birthright of everyone in our society—Mrs. King has left us a country that is better today than when she arrived. However, there is still much work that remains to ensure that every American has the opportunity to fulfill their potential and we must uphold her legacy by continuing her work.

I hope that all Americans will pause to remember the values for which she stood and to consider how we can work together to make sure the promise of America is enjoyed equally by all.

Mr. SENSENBRENNER. Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore (Mr. LAHOOD). Pursuant to the order of the House of today, further proceedings on the resolution will be postponed.

* * *

APPOINTMENT AS MEMBER TO SOCIAL SECURITY ADVISORY BOARD

The SPEAKER pro tempore. Pursuant to section 703 of the Social Security Act (42 U.S.C. 903 note), the order of the House of December 18, 2005, and upon the recommendation of the minority leader, the Chair announces the Speaker on January 18, 2006, appointed the following member on the part of the House to the Social Security Advisory Board for a term of 6 years:

Mrs. Barbara Kennelly, Connecticut

* * *

APPOINTMENT AS MEMBERS TO BOARD OF TRUSTEES OF AMERICAN FOLKLIFE CENTER

The SPEAKER pro tempore. Pursuant to 20 U.S.C. 2103(b), and the order of the House of December 18, 2005, the Chair announces the Speaker on January 23, 2006, made the following appointments from private life to the Board of Trustees of the American Folklife Center in the Library of Congress on the part of the House for a term of 6 years:

Appointed Mr. Charlie Seeman, Spring Creek, Nevada, and

Reappointed Ms. Kay Kaufman Shelemay, Cambridge, Massachusetts

* * *

APPOINTMENT AS MEMBERS TO NATIONAL SURFACE TRANSPORTATION POLICY AND REVENUE STUDY COMMISSION

The SPEAKER pro tempore. Pursuant to section 1909(b) of SAFETEA-LU (P.L. 109–59), and the order of the House of December 18, 2005, the Chair announces on January 23, 2006, the Speaker appointed the following members on the part of the House to the National Surface Transportation Policy and Revenue Study Commission:

Mr. Jack L. Schenendorf, Chevy Chase, Maryland

Mr. Matthew K. Rose, Westlake, Texas

* * *

APPOINTMENT AS MEMBERS TO UNITED STATES-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

The SPEAKER pro tempore. Pursuant to section 1238(b)(3) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (22 U.S.C. 7002), amended by division P of the Consolidated Appropriations Resolution, 2003 (22 U.S.C. 6901), and the order of the House of December 18, 2005, the Chair announces on January 25, 2006, the Speaker appointed the following members on the part of the House to the United States-China Economic and Security Review Commission for terms to expire December 31, 2007:

Mr. Peter T.R. Brookes, Springfield, Virginia; and

Ms. Kerri Houston, Great Falls, Virginia.

* * *

COMMUNICATION FROM THE HONORABLE BART STUPAK, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable BART STUPAK, Member of Congress:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 10, 2006.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a subpoena, issued by the District Court for the District of Columbia, for documents.

I will make the determinations required by Rule VIII.

Sincerely,

BART STUPAK,
Member of Congress.

COMMUNICATION FROM STAFF MEMBER OF THE HONORABLE J. DENNIS HASTERT, SPEAKER OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from Bonnie Walsh, Casework Director for the Honorable J. DENNIS HASTERT, Speaker of the House:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 18, 2006.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a criminal subpoena, issued by the Circuit Court for the 16th Judicial Circuit, DeKalb County, Illinois, for testimony.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

BONNIE WALSH,
Casework Director for J. Dennis Hastert, Speaker.

COMMUNICATION FROM THE OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER

The SPEAKER pro tempore laid before the House the following communication from Derek Scott, Sales Clerk, Office Supply Service, U.S. House of Representatives:

OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER, HOUSE OF REPRESENTATIVES,
Washington, DC, January 23, 2006.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a criminal subpoena, issued by the Superior Court of the District of Columbia, for testimony.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

DEREK SCOTT,
Sales Clerk, Office Supply Service, House of Representatives.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair desires to make an announcement.

After consultation among the Speaker, the majority and minority leaders, and with their consent and approval, the Chair announces that tonight when the two Houses meet in joint session to hear an address by the President of the United States, only the doors immediately opposite the Speaker and those on his left and right will be open.

No one will be allowed on the floor of the House who does not have the privilege of the floor of the House.

Due to the large attendance that is anticipated, the Chair feels that the rule regarding the privilege of the floor must be strictly adhered to.

Children of Members will not be permitted on the floor, and the cooperation of all Members is requested.

The practice of reserving seats prior to the joint session by placard will not be allowed. Members may reserve their seats by physical presence only following the security sweep of the Chamber.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until approximately 8:40 p.m. for the purpose of receiving in joint session the President of the United States.

Accordingly (at 5 o'clock and 22 minutes p.m.), the House stood in recess until approximately 8:40 p.m.

□ 2043

AFTER RECESS

The recess having expired, the House was called to order at 8 o'clock and 43 minutes p.m.

JOINT SESSION OF THE HOUSE AND SENATE HELD PURSUANT TO THE PROVISIONS OF SENATE CONCURRENT RESOLUTION 77 TO HEAR AN ADDRESS BY THE PRESIDENT OF THE UNITED STATES

The Speaker of the House presided.

The Deputy Sergeant at Arms, Mrs. Kerri Hanley, announced the Vice President and Members of the U.S. Senate, who entered the Hall of the House of Representatives, the Vice President taking the chair at the right of the Speaker, and the Members of the Senate the seats reserved for them.

The SPEAKER. The Chair appoints as members of the committee on the part of the House to escort the President of the United States into the Chamber:

The gentleman from Missouri (Mr. BLUNT);

The gentlewoman from Ohio (Ms. PRYCE);

The gentleman from California (Mr. DREIER);

The gentlewoman from California (Ms. PELOSI);

The gentleman from Maryland (Mr. HOYER); and

The gentleman from South Carolina (Mr. CLYBURN).

The VICE PRESIDENT. The President of the Senate, at the direction of that body, appoints the following Senators as members of the committee on the part of the Senate to escort the President of the United States into the House Chamber:

The Senator from Tennessee (Mr. FRIST);

The Senator from Kentucky (Mr. MCCONNELL);

The Senator from Pennsylvania (Mr. SANTORUM);

The Senator from Texas (Mrs. HUTCHISON);

The Senator from Arizona (Mr. KYL);

The Senator from North Carolina (Mrs. DOLE);

The Senator from Pennsylvania (Mr. SPECTER);

The Senator from Nevada (Mr. REID);

The Senator from Illinois (Mr. DURBIN);

The Senator from Michigan (Ms. STABENOW);

The Senator from New York (Mr. SCHUMER);

The Senator from Illinois (Mr. OBAMA);

The Senator from Colorado (Mr. SALAZAR); and

The Senator from New Jersey (Mr. MENENDEZ).

The Deputy Sergeant at Arms announced the Dean of the Diplomatic Corps, His Excellency Roble Olhaye, Ambassador from the Republic of Djibouti.

The Dean of the Diplomatic Corps entered the Hall of the House of Representatives and took the seat reserved for him.

The Deputy Sergeant at Arms announced the Chief Justice of the United States and the Associate Justices of the Supreme Court.

The Chief Justice of the United States and the Associate Justices of the Supreme Court entered the Hall of the House of Representatives and took the seats reserved for them in front of the Speaker's rostrum.

The Deputy Sergeant at Arms announced the Cabinet of the President of the United States.

The members of the Cabinet of the President of the United States entered the Hall of the House of Representatives and took the seats reserved for them in front of the Speaker's rostrum.

At 9 o'clock and 7 minutes p.m., the Sergeant at Arms, the Honorable Wilson Livingood, announced the President of the United States.

The President of the United States, escorted by the committee of Senators and Representatives, entered the Hall of the House of Representatives and stood at the Clerk's desk.

(Applause, the Members rising.)

The SPEAKER. Members of Congress, I have the high privilege and the distinct honor of presenting to you the President of the United States.

(Applause, the Members rising.)

THE STATE OF THE UNION ADDRESS BY THE PRESIDENT OF THE UNITED STATES

The PRESIDENT. Mr. Speaker, Vice President CHENEY, Members of Congress, members of the Supreme Court and Diplomatic Corps, distinguished guests and fellow citizens:

Today our Nation lost a beloved, graceful, courageous woman who called America to its founding ideals and carried on a noble dream. Tonight we are comforted by the hope of a glad reunion with the husband who was taken from her so long ago, and we are grateful for the good life of Coretta Scott King.

Every time I am invited to this rostrum, I am humbled by the privilege, and mindful of the history we have seen together. We have gathered under this Capitol dome in moments of national mourning and national achievement. We have served America through one of the most consequential periods of our history, and it has been my honor to serve with you.

In a system of two parties, two chambers, and two elected branches, there will always be differences and debate. But even tough debates can be conducted in a civil tone, and our differences cannot be allowed to harden into anger. To confront the great issues before us, we must act in a spirit of good will and respect for one another, and I will do my part. Tonight the state of our Union is strong, and together we will make it stronger.

In this decisive year, you and I will make choices that determine both the future and the character of our country. We will choose to act confidently in pursuing the enemies of freedom, or retreat from our duties in the hope of an easier life. We will choose to build our prosperity by leading the world economy, or shut ourselves off from trade and opportunity. In a complex and challenging time, the road of isolationism and protectionism may seem broad and inviting, yet it ends in danger and decline. The only way to protect our people, the only way to secure the peace, the only way to control our destiny is by our leadership, so the United States of America will continue to lead.

Abroad, our Nation is committed to a historic, long-term goal. We seek the end of tyranny in our world. Some dismiss that goal as misguided idealism. In reality, the future security of America depends on it. On September 11, 2001, we found that problems originating in a failed and oppressive state 7,000 miles away could bring murder and destruction to our country. Dictatorships shelter terrorists, feed resentment and radicalism, and seek weapons of mass destruction. Democracies replace resentment with hope, respect the rights of their citizens and their neighbors, and join the fight against terror. Every step toward freedom in the world makes our country safer, and so we will act boldly in freedom's cause.

Far from being a hopeless dream, the advance of freedom is the great story of our time. In 1945, there were about two dozen lonely democracies in the world. Today, there are 122. And we are writing a new chapter in the story of self-government, with women lining up to vote in Afghanistan, and millions of Iraqis marking their liberty with purple ink, and men and women from Lebanon to Egypt debating the rights of individuals and the necessity of freedom. At the start of 2006, more than half the people of our world live in democratic nations. And we do not forget the other half, in places like Syria, Burma, Zimbabwe, North Korea, and Iran, because the demands of justice, and the peace of this world, require their freedom as well.

No one can deny the success of freedom, but some men rage and fight against it. And one of the main sources of reaction and opposition is radical Islam, the perversion by a few of a noble faith into an ideology of terror and death. Terrorists like bin Laden are serious about mass murder, and all of us must take their declared intentions seriously. They seek to impose a heartless system of totalitarian control throughout the Middle East and arm themselves with weapons of mass murder. Their aim is to seize power in Iraq and use it as a safe haven to launch attacks against America and the world. Lacking the military strength to challenge us directly, the terrorists have chosen the weapon of fear. When they murder children at a school in Beslan, or blow up commuters in London, or behead a bound captive, the terrorists hope these horrors will break our will, allowing the violent to inherit the Earth. But they have miscalculated: we love our freedom, and we will fight to keep it.

In a time of testing, we cannot find security by abandoning our commitments and retreating within our borders. If we were to leave these vicious attackers alone, they would not leave us alone. They would simply move the battlefield to our own shores. There is no peace in retreat. And there is no honor in retreat. By allowing radical Islam to work its will, by leaving an assaulted world to fend for itself, we would signal to all that we no longer believe in our own ideals, or even in our own courage. But our enemies and our friends can be certain: the United States will not retreat from the world, and we will never surrender to evil.

America rejects the false comfort of isolationism. We are the Nation that saved liberty in Europe, and liberated death camps, and helped raise up democracies, and faced down an evil empire. Once again, we accept the call of history to deliver the oppressed, and move this world toward peace.

We remain on the offensive against terror networks. We have killed or captured many of their leaders. And for the others, their day will come. We remain on the offensive in Afghanistan, where a fine president and national assembly are fighting terror while building the institutions of a new democracy.

And we are on the offensive in Iraq, with a clear plan for victory. First, we are helping Iraqis build an inclusive government, so that old resentments will be eased and the insurgency will be marginalized. Second, we are continuing reconstruction efforts and helping the Iraqi government to fight corruption and build a modern economy, so all Iraqis can experience the benefits of freedom. Third, we are striking terrorist targets while we train Iraqi forces that are increasingly capable of defeating the enemy. Iraqis are showing their courage every day, and we are proud to be their allies in the cause of freedom.

Our work in Iraq is difficult because our enemy is brutal. But that brutality has not stopped the dramatic progress of a new democracy. In less than 3 years, that nation has gone from dictatorship, to liberation, to sovereignty, to a constitution, to national elections. At the same time, our coalition has been relentless in shutting off terrorist infiltration, clearing out insurgent strongholds, and turning over territory to Iraqi security forces. I am confident in our plan for victory. I am confident in the will of the Iraqi people. I am confident in the skill and spirit of our military. Fellow citizens, we are in this fight to win, and we are winning.

The road of victory is the road that will take our troops home. As we make progress on the ground, and Iraqi forces increasingly take the lead, we should be able to further decrease our troop levels; but those decisions will be made by our military commanders, not by politicians in Washington, D.C.

Our coalition has learned from our experience in Iraq. We have adjusted our military tactics and changed our approach to reconstruction. Along the way, we have benefited from responsible criticism and counsel offered by Members of Congress of both parties. In the coming year, I will continue to reach out and seek your good advice.

Yet there is a difference between responsible criticism that aims for success and defeatism that refuses to acknowledge anything but failure. Hindsight alone is not wisdom. And second-guessing is not a strategy.

With so much in the balance, those of us in public office have a duty to speak with candor. A sudden withdrawal of our forces from Iraq would abandon our Iraqi allies to death and prison, put men like bin Laden and Zarqawi in charge of a strategic country, and show that a pledge from America means little. Members of Congress: however we feel about the decisions and debates of the past, our Nation has only one option: we must keep our word, defeat our enemies, and stand behind the American military in its vital mission.

Our men and women in uniform are making sacrifices and showing a sense of duty stronger than all fear. They know what it is like to fight house to house in a maze of streets, to wear heavy gear in the desert heat, to see a comrade killed by a roadside bomb. And those who know the costs also know the stakes. Marine Staff Sergeant Dan Clay was killed last month fighting in Fallujah. He left behind a letter to his family, but his words could just as well be addressed to every American. Here is what Dan wrote: "I know what honor is. It has been an honor to protect and serve all of you. I faced death with the secure knowledge that you would not have to. Never falter. Don't hesitate to honor and support those of us who have the honor of protecting that which is worth protecting."

Staff Sergeant Dan Clay's wife, Lisa, and his mom and dad, Sara Jo and Bud, are with us this evening. Welcome. Our Nation is grateful to the fallen, who live in the memory of our country. We are grateful to all who volunteer to wear our Nation's uniform; and as we honor our brave troops, let us never forget the sacrifices of America's military families.

Our offensive against terror involves more than military action. Ultimately, the only way to defeat the terrorists is to defeat their dark vision of hatred and fear by offering the hopeful alternative of political freedom and peaceful change. So the United States of America supports democratic reform across the broader Middle East. Elections are vital, but they are only the beginning. Raising up a democracy requires the rule of law, protection of minorities, and strong, accountable institutions that last longer than a single vote. The great people of Egypt have voted in a multiparty presidential election, and now their government should open paths of peaceful opposition that will reduce the appeal of radicalism. The Palestinian people have voted in elections, and now the leaders of Hamas must recognize Israel, disarm, reject terrorism, and work for lasting peace. Saudi Arabia has taken the first steps of reform. Now it can offer its people a better future by pressing forward with those efforts.

Democracies in the Middle East will not look like our own, because they will reflect the traditions of their own citizens. Yet liberty is the future of every nation in the Middle East, because liberty is the right and hope of all humanity.

The same is true of Iran, a nation now held hostage by a small clerical elite that is isolating and repressing its people. The regime in that country sponsors terrorists in the Palestinian territories and in Lebanon, and that must come to an end. The Iranian government is defying the world with its nuclear ambitions, and the nations of the world must not permit the Iranian regime to gain nuclear weapons. America will continue to rally the world to confront these threats. And tonight, let me speak directly to the citizens of Iran: America respects you, and we respect your country. We respect your right to choose your own future and win your own freedom. And our Nation hopes one day to be the closest of friends with a free and democratic Iran.

To overcome dangers in our world, we must also take the offensive by encouraging economic progress, fighting disease, and spreading hope in hopeless lands. Isolationism would not only tie our hands in fighting enemies; it would keep us from helping our friends in desperate need. We show compassion abroad because Americans believe in the God-given dignity and worth of a villager with HIV/AIDS, or an infant with malaria, or a refugee fleeing genocide, or a young girl sold into slavery. We also show compassion abroad because regions overwhelmed by poverty, corruption, and despair are sources of terrorism, organized crime, human trafficking, and the drug trade.

In recent years, you and I have taken unprecedented action to fight AIDS and malaria, expand the education of girls, and reward developing nations that are moving forward with economic and political reform. For people everywhere, the United States is a partner for a better life. Shortchanging these efforts would increase the suffering and chaos of our world, undercut our long-term security, and dull the conscience of our country. I urge Members of Congress to serve the interests of America by showing the compassion of America.

Our country must also remain on the offensive against terrorism here at home. The enemy has not lost the desire or capability to attack us. Fortunately, this Nation has superb professionals in law enforcement, intelligence, the military, and homeland security. These men and women are dedicating their lives to protecting us all, and they deserve our support and our thanks. They also deserve the same tools they already use to fight drug trafficking and organized crime, so I ask you to reauthorize the PATRIOT Act.

It is said that prior to the attacks of September 11, our government failed to connect the dots of the conspiracy. We now know that two of the hijackers in the United States placed telephone calls to al Qaeda operatives overseas. But we did not know about their plans until it was too late. So to prevent another attack, based on authority given to me by the Constitution and by statute, I have authorized a terrorist surveillance program to aggressively pursue the international communications of suspected al Qaeda operatives and affiliates to and from America. Previous Presidents have used the same constitutional authority I have, and Federal courts have approved the use of that authority. Appropriate Members of Congress have been kept informed. This terrorist surveillance program has helped prevent terrorist attacks. It remains essential to the security of America. If there are people inside our country who are talking with al Qaeda, we want to know about it, because we will not sit back and wait to be hit again.

In all these areas, from the disruption of terror networks, to victory in Iraq, to the spread of freedom and hope in troubled regions, we need the support of our friends and allies. To draw that support, we must always be clear in our principles and willing to act. The only alternative to American leadership is a dramatically more dangerous and anxious world. Yet we also choose to lead because it is a privilege to serve the values that gave us birth. American leaders, from Roosevelt to Truman to Kennedy to Reagan, rejected isolation and retreat because they knew that America is always more secure when freedom is on the march. Our own generation is in a long war against a determined enemy, a war that will be fought by Presidents of both parties, who will need steady bipartisan support from the Congress. And tonight I ask for yours. Together, let us protect our country, support the men and women who defend us, and lead this world toward freedom.

Here at home, America also has a great opportunity: we will build the prosperity of our country by strengthening our economic leadership in the world.

Our economy is healthy and vigorous and growing faster than other major industrialized nations. In the last 2½ years, America has created 4.6 million new jobs, more than Japan and the European Union combined. Even in the face of higher energy prices and natural disasters, the American people have turned in an economic performance that is the envy of the world.

The American economy is preeminent, but we cannot afford to be complacent. In a dynamic world economy, we are seeing new competitors like China and India. This creates uncertainty, which makes it easier to feed people's fears. And so we are seeing some old temptations return. Protectionists want to escape competition, pretending that we can keep our high standard of living while walling off our economy. Others say that the government needs to take a larger role in directing the economy, centralizing more power in Washington and increasing taxes. We hear claims that immigrants are somehow bad for the economy, even though this economy could not function without them. All these are forms of economic retreat, and they lead in the same direction, toward a stagnant and second-rate economy.

Tonight I will set out a better path, an agenda for a Nation that competes with confidence, an agenda that will raise standards of living and generate new jobs. Americans should not fear our economic future, because we intend to shape it.

Keeping America competitive begins with keeping our economy growing, and our economy grows when Americans have more of their own money to spend, save, and invest. In the last 5 years, the tax relief you passed has left $880 billion in the hands of American workers, investors, small businesses, and families; and they have used it to help produce more than 4 years of uninterrupted economic growth. Yet the tax relief is set to expire in the next few years. If we do nothing, American families will face a massive tax increase they do not expect and will not welcome.

Because America needs more than a temporary expansion, we need more than temporary tax relief. I urge the Congress to act responsibly and make the tax cuts permanent.

Keeping America competitive requires us to be good stewards of tax dollars. Every year of my Presidency, we have reduced the growth of nonsecurity discretionary spending, and last year you passed bills that cut this spending. This year my budget will cut it again and reduce or eliminate more than 140 programs that are performing poorly or not fulfilling essential priorities. By passing these reforms, we will save the American taxpayer another $14 billion next year and stay on track to cut the deficit in half by 2009. I am pleased that Members of Congress are working on earmark reform, because the Federal budget has too many special interest projects. And we can tackle this problem together, if you pass the line-item veto.

We must also confront the larger challenge of mandatory spending, or entitlements. This year, the first of about 78 million baby boomers turn 60, including two of my dad's favorite people, me and President Clinton. This milestone is more than a personal crisis; it is a national challenge. The retirement of the baby boom generation will put unprecedented strains on the Federal Government. By 2030, spending for Social Security, Medicare, and Medicaid alone will be almost 60 percent of the entire Federal budget. And that will present future Congresses with impossible choices, staggering tax increases, immense deficits, or deep cuts in every category of spending.

Congress did not act last year on my proposal to save Social Security; yet the rising cost of entitlements is a problem that is not going away. And with every year we fail to act, the situation gets worse. So tonight, I ask you to join me in creating a commission to examine the full impact of baby boom retirements on Social Security, Medicare, and Medicaid. This commission should include Members of Congress of both parties, and offer bipartisan solutions. We need to put aside partisan politics, work together, and get this problem solved.

Keeping America competitive requires us to open more markets for all that Americans make and grow. One out of every five factory jobs in America is related to global trade, and we want people everywhere to buy American. With open markets and a level playing field, no one can outproduce or outcompete the American worker.

Keeping America competitive requires an immigration system that upholds our laws, reflects our values, and serves the interests of our economy. Our Nation needs orderly and secure borders. To meet this goal, we must have stronger immigration enforcement and border protection. And we must have a rational, humane guest worker program that rejects amnesty, allows temporary jobs for people who seek them legally, and reduces smuggling and crime at the border.

Keeping America competitive requires affordable health care. Our government has a responsibility to help provide health care for the poor and the elderly, and we are meeting that responsibility. For all Americans, we must confront the rising cost of care, strengthen the doctor-patient relationship, and help people afford the insurance coverage they need. We will make wider use of electronic records and other health information technology to help control costs and reduce dangerous medical errors. We will strengthen health savings accounts by making sure individuals and small business employees can buy insurance with the same advantages that people working for big businesses now get. We will do more to make this coverage portable, so workers can switch jobs without having to worry about losing their health insurance. And because lawsuits are driving many good doctors out of practice, leaving women in nearly 1,500 American counties without a single OB-GYN, I ask the Congress to pass medical liability reform this year.

Keeping America competitive requires affordable energy. Here we have a serious problem: America is addicted to oil, which is often imported from unstable parts of the world.

The best way to break this addiction is through technology. Since 2001, we have spent nearly $10 billion to develop cleaner, cheaper, and more reliable alternative energy sources; and we are on the threshold of incredible advances. So tonight, I announce the Advanced Energy Initiative, a 22 percent increase in clean energy research at the Department of Energy, to push for breakthroughs in two vital areas. To change how we power our homes and offices, we will invest more in zero-emission coal-fired plants; revolutionary solar and wind technologies; and clean, safe nuclear energy.

We must also change how we power our automobiles. We will increase our research in better batteries for hybrid and electric cars and in pollution-free cars that run on hydrogen. We will also fund additional research in cutting-edge methods of producing ethanol, not just from corn but from wood chips, stalks, or switch grass. Our goal is to make this new kind of ethanol practical and competitive within 6 years. Breakthroughs on this and other new technologies will help us reach another great goal: to replace more than 75 percent of our oil imports from the Middle East by 2025. By applying the talent and technology of America, this country can dramatically improve our environment, move beyond a petroleum-based economy, and make our dependence on Middle Eastern oil a thing of the past.

And to keep America competitive, one commitment is necessary above all: we must continue to lead the world in human talent and creativity. Our greatest advantage in the world has always been our educated, hardworking, ambitious people; and we are going to keep that edge. Tonight I announce the American Competitiveness Initiative, to encourage innovation throughout our economy and to give our Nation's children a firm grounding in math and science.

First: I propose to double the Federal commitment to the most critical basic research programs in the physical sciences over the next 10 years. This funding will support the work of America's most creative minds as they explore promising areas such as nanotechnology, supercomputing, and alternative energy sources.

Second: I propose to make permanent the research and development tax credit, to encourage bolder private-sector investment in technology. With more research in both the public and private sectors, we will improve our quality of life and ensure that America will lead the world in opportunity and innovation for decades to come.

Third: We need to encourage children to take more math and science and make sure those courses are rigorous enough to compete with other nations. We have made a good start in the early grades with the No Child Left Behind Act, which is raising standards and lifting test scores across our country. Tonight, I propose to train 70,000 high school teachers to lead advanced placement courses in math and science; bring 30,000 math and science professionals to teach in classrooms; and give early help to students who struggle with math, so they have a better chance at good high-wage jobs. If we ensure that America's children succeed in life, they will ensure that America succeeds in the world.

Preparing our Nation to compete in the world is a goal that all of us can share. I urge you to support the American Competitiveness Initiative, and together we will show the world what the American people can achieve.

America is a great force for freedom and prosperity. Yet our greatness is not measured in power or luxuries, but by who we are and how we treat one another. So we strive to be a compassionate, decent, hopeful society.

In recent years, America has become a more hopeful Nation. Violent crime rates have fallen to their lowest levels since the 1970s. Welfare cases have dropped by more than half over the past decade. Drug use among youth is down 19 percent since 2001. There are fewer abortions in America than at any point in the last three decades, and the number of children born to teenage mothers has been falling for a dozen years in a row.

These gains are evidence of a quiet transformation, a revolution of conscience, in which a rising generation is finding that a life of personal responsibility is a life of fulfillment. Government has played a role. Wise policies such as welfare reform, drug education, and support for abstinence and adoption have made a difference in the character of our country. And everyone here tonight, Democrat and Republican, has a right to be proud of this record.

Yet many Americans, especially parents, still have deep concerns about the direction of our culture and the health of our most basic institutions. They are concerned about unethical conduct by public officials, and discouraged by activist courts that try to redefine marriage. And they worry about children in our society who need direction and love, and about fellow citizens still displaced by natural disaster, and about suffering caused by treatable diseases.

As we look at these challenges, we must never give in to the belief that America is in decline or that our culture is doomed to unravel. The American people know better than that. We have proven the pessimists wrong before, and we will do it again.

A hopeful society depends on courts that deliver equal justice under the law. The Supreme Court now has two superb new members on its bench, Chief Justice John Roberts and Justice Sam Alito. I thank the Senate for confirming both of them. I will continue to nominate men and women who understand that judges must be servants of the law, and not legislate from the bench. Today marks the official retirement of a very special American. For 24 years of faithful service to our Nation, the United States is grateful to Justice Sandra Day O'Connor.

A hopeful society has institutions of science and medicine that do not cut ethical corners and that recognize the matchless value of every life. Tonight, I ask you to pass legislation to prohibit the most egregious abuses of medical research: human cloning in all its forms, creating or implanting embryos for experiments, creating human-animal hybrids, and buying, selling or patenting human embryos. Human life is a gift from our Creator, and that gift should never be discarded, devalued, or put up for sale.

A hopeful society expects elected officials to uphold the public trust. Honorable people in both parties are working on reforms to strengthen the ethical standards of Washington, and I support your efforts. Each of us has made a pledge to be worthy of public responsibility, and that is a pledge we must never forget, never dismiss, and never betray.

As we renew the promise of our institutions, let us also show the character of America in our compassion and care for one another.

A hopeful society gives special attention to children who lack direction and love. Through the Helping America's Youth Initiative, we are encouraging caring adults to get involved in the life of a child, and this good work is being led by our First Lady, Laura Bush. This year we will add resources to encourage young people to stay in school, so more of America's youth can raise their sights and achieve their dreams.

A hopeful society comes to the aid of fellow citizens in times of suffering and emergency and stays at it until they are back on their feet. So far the Federal Government has committed $85 billion to the people of the gulf coast and New Orleans. We are removing debris, repairing highways, and building stronger levees. We are providing business loans and housing assistance. Yet as we meet these immediate needs, we must also address deeper challenges that existed before the storm arrived. In New Orleans and in other places, many of our fellow citizens have felt excluded from the promise of our country. The answer is not only temporary relief, but schools that teach every child and job skills that bring upward mobility and more opportunities to own a home and start a business. As we recover from a disaster, let us also work for the day when all Americans are protected by justice, equal in hope, and rich in opportunity.

A hopeful society acts boldly to fight diseases like HIV/AIDS, which can be prevented and treated and defeated. More than a million Americans live with HIV, and half of all AIDS cases occur among African Americans. I ask Congress to reform and reauthorize the Ryan White Act and provide new funding to States so we end the waiting lists for AIDS medicines in America. We will also lead a nationwide effort, working closely with African American churches and faith-based groups, to deliver rapid HIV tests to millions, end the stigma of AIDS, and come closer to the day when there are no new infections in America.

Fellow citizens, we have been called to leadership in a period of consequence. We have entered a great ideological conflict we did nothing to invite. We see great changes in science and commerce that will influence all our lives. And sometimes it can seem that history is turning in a wide arc, toward an unknown shore.

Yet the destination of history is determined by human action, and every great movement of history comes to a point of choosing. Lincoln could have accepted peace at the cost of disunity and continued slavery. Martin Luther King could have stopped at Birmingham or at Selma and achieved only half a victory over segregation. The United States could have accepted the permanent division of Europe and been complicit in the oppression of others. Today, having come far in our own historical journey, we must decide: Will we turn back, or finish well?

Before history is written down in books, it is written in courage. Like Americans before us, we will show that courage, and we will finish well. We will lead freedom's advance. We will compete and excel in the global economy. We will renew the defining moral commitments of this land. And so we move forward, optimistic about our country, faithful to its cause, and confident of the victories to come.

May God bless America.

[Applause, the Members rising.]

At 10 o'clock and 5 minutes p.m., the President of the United States, accompanied by the committee of escort, retired from the Hall of the House of Representatives.

The Deputy Sergeant at Arms escorted the invited guests from the Chamber in the following order:

The Members of the President's Cabinet; Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States;

The Dean of the Diplomatic Corps.

JOINT MEETING DISSOLVED

The SPEAKER. The Chair declares the joint meeting of the two Houses now dissolved.

Accordingly, at 10 o'clock and 10 minutes p.m., the joint meeting of the two Houses was dissolved.

The Members of the Senate retired to their Chamber.

MESSAGE OF THE PRESIDENT REFERRED TO THE COMMITTEE OF THE WHOLE HOUSE ON THE STATE OF THE UNION

Mr. GOODLATTE. Mr. Speaker, I move that the message of the President be referred to the Committee of the Whole House on the State of the Union and ordered printed.

The motion was agreed to.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. LYNCH (at the request of Ms. PELOSI) for today before 5 p.m. on account of airline delays.

Mr. NEAL of Massachusetts (at the request of Ms. PELOSI) for today before 5 p.m. on account of airline delays.

Mr. GARY G. MILLER of California (at the request of Mr. BLUNT) for today on account of illness.

SENATE BILL REFERRED

A concurrent resolution of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. Con. Res. 78. Concurrent resolution condemning the Government of Iran for violating its international nuclear nonproliferation obligations and expressing support for efforts to report Iran to the United Nations Security Council; to the Committee on International Relations.

ADJOURNMENT

Mr. GOODLATTE. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 11 minutes p.m.), the House adjourned until tomorrow, Wednesday, February 1, 2006, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

5955. A letter from the Administrator, AMS, Department of Agriculture, transmitting the Department's final rule — Revision of Fees for the Fresh Fruit and Vegtables Terminal Market Inspection Services [Docket Number FV-04-310] (RIN: 0581-AC46) received January 3, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

5956. A letter from the Administrator, AMS, Department of Agriculture, transmitting the Department's final rule — Fresh Bartlett Pears Grown in Oregon and Washington; Termination of Marketing Order No. 931 [Docket No. FV05-931-1 FR] received January 3, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

5957. A letter from the Administrator, AMS, Department of Agriculture, transmitting the Department's final rule — USDA Farmers Market Operating Procedures [Docket No. TM-04-09] (RIN: 0581-AC39) received January 3, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

5958. A letter from the Administrator, AMS, Department of Agriculture, transmitting the Department's final rule — Dried Prunes Produced in California; Decreased Assessment Rate [Docket No. FV05-993-5 FIR] received January 3, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

5959. A letter from the Administrator, FSIS, Department of Agriculture, transmitting the Department's final rule — Addition of Chile to the List of Countries Eligible to Export Meat and Meat Products to the United States [Docket No. 02-019F] (RIN: 0583-AD16) received January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

5960. A letter from the Director, Regulations Policy and Management Staff, Food and Drug Administration, transmitting the Administration's final rule — Biological Products; Bacterial Vaccines and Toxoids; Implementation of Efficacy Review [Docket No. 1980N-0208] received January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

5961. A communication from the President of the United States, transmitting a request for an emergency designation for FY 2006 budget amendments for the Department of Veterans Affairs; (H. Doc. No. 109–86); to the Committee on Appropriations and ordered to be printed.

5962. A letter from the Acting Director, DPAP, Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Contract Financing [DFARS Case 2003-D043] received January 3, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

5963. A letter from the Assistant to the Board, Board of Governors of the Federal Reserve System, transmitting the Board's final rule — Home Mortgage Disclosure [Regulation C; Docket No. R-1245] received January 3, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5964. A letter from the General Counsel, FEMA, Department of Homeland Security, transmitting the Department's final rule — Changes in Flood Elevation Determinations — received January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5965. A letter from the General Counsel, FEMA, Department of Homeland Security, transmitting the Department's final rule — Changes in Flood Elevation Determinations — received January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5966. A letter from the General Counsel, FEMA, Department of Homeland Security, transmitting the Department's final rule — Changes in Flood Elevation Determinations [Docket No. FEMA-D-7579] received January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5967. A letter from the General Counsel, FEMA, Department of Homeland Security, transmitting the Department's final rule — Changes in Flood Elevation Determinations [Docket No. FEMA-P-7646] received January 6, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5968. A letter from the General Counsel, FEMA, Department of Homeland Security, transmitting the Department's final rule — Final Flood Elevation Determinations — received January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5969. A letter from the General Counsel, FEMA, Department of Homeland Security, transmitting the Department's final rule — Final Flood Elevation Determinations — received January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5970. A letter from the General Counsel, FEMA, Department of Homeland Security, transmitting the Department's final rule — Suspension of Community Eligibility [Docket No. FEMA-7895] received January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5971. A letter from the General Counsel, FEMA, Department of Homeland Security, transmitting the Department's final rule — List of Communities Eligible for the Sale of Flood Insurance [Docket No. FEMA-7782] received January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5972. A letter from the General Counsel, FEMA, Department of Homeland Security, transmitting the Department's final rule — Changes in Flood Elevation Determinations [Docket No. FEMA-B-7455] received January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5973. A letter from the General Counsel, FEMA, Department of Homeland Security, transmitting the Department's final rule — Suspension of Community Eligibility [Docket No. FEMA-7899] received January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5974. A letter from the General Counsel, FEMA, Department of Homeland Security, transmitting the Department's final rule — Suspension of Community Eligibility [Docket No. FEMA-7903] received January 4, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5975. A letter from the Counsel for Legislation and Regulations, Department of Housing and Urban Development, transmitting the Department's final rule — Electronic Submission of Applications for Grants and Other HUD Financial Assistance [Docket No. FR-4875-F-02] (RIN: 2501-AD02) received January 3, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5976. A letter from the Secretary, Federal Trade Commission, transmitting the Commission's final rule — Notice Regarding Charges for Certain Disclosures — received January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5977. A letter from the Secretary, Securities and Exchange Commission, transmitting the Commission's final rule — Revisions to Accelerated Filer Definition and Accelerated Deadlines for Filing Periodic Reports [Release Nos. 33-8644; 34-52989; File No. S7-08-05] (RIN: 3235-AJ29) received December 27, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5978. A letter from the Assistant Deputy Secretary for Innovation and Improvement, Department of Education, transmitting the Department's final rule — State Charter School Facilities Incentive Program — received January 4, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

5979. A letter from the Deputy Executive Director, Pension Benefit Guaranty Corporation, transmitting the Corporation's final rule — Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits — received December 27, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

5980. A letter from the Secretary, Federal Trade Commission, transmitting the Commission's final rule — Rules and Regulations Under the Textile Fiber Products Identification Act — received January 3, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5981. A communication from the President of the United States, transmitting notification stating that the emergency declared with respect to foreign terrorists who threaten to disrupt the Middle East peace process is to continue in effect beyond January 23, 2006, pursuant to 50 U.S.C. 1622(d); (H. Doc.

No. 109-84); to the Committee on International Relations and ordered to be printed.

5982. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting pursuant to section 36(c) of the Arms Export Control Act, certification regarding the proposed license for the export of defense articles and services to the Republic of Korea (Transmittal No. DDTC 043-05); to the Committee on International Relations.

5983. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting pursuant to section 36(c) of the Arms Export Control Act, certification regarding the proposed license for the export of defense articles and services to the Government of the United Kingdom (Transmittal No. DDTC 069-05); to the Committee on International Relations.

5984. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting pursuant to section 36(c) and (d) of the Arms Export Control Act, certification of a proposed manufacturing license agreement for the manufacture of military equipment abroad and the export of defense articles and services to the Government of Japan (Transmittal No. DDTC 065-05); to the Committee on International Relations.

5985. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting pursuant to section 36(c) and (d) of the Arms Export Control Act, certification of a proposed manufacturing license agreement for the manufacture of military equipment abroad and the export of defense articles and services to the Government of Japan (Transmittal No. DDTC 066-05); to the Committee on International Relations.

5986. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting pursuant to section 36(d) of the Arms Export Control Act, certification regarding the proposed license for the manufacture of defense equipment from the Government of the United Kingdom to the Government of the Netherlands (Transmittal No. DDTC 068-05); to the Committee on International Relations.

5987. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting pursuant to section 36(c) of the Arms Export Control Act, certification regarding the proposed license for the export of defense articles and services to the Government of Japan (Transmittal No. DDTC 061-05); to the Committee on International Relations.

5988. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting pursuant to section 36(c) of the Arms Export Control Act, certification regarding the proposed license for the export of defense equipment and articles to the Government of Switzerland (Transmittal No. DDTC 047-05); to the Committee on International Relations.

5989. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting pursuant to section 36(c) and (d) of the Arms Export Control Act, certification of a proposed manufacturing license agreement for the export of defense articles and services to the Government of Japan (Transmittal No. DDTC 060-05); to the Committee on International Relations.

5990. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting pursuant to section 36(c) of the Arms Export Control Act, certification regarding the proposed license for the export of defense articles and services to the Government of Taiwan (Transmittal No. DDTC 067-05); to the Committee on International Relations.

5991. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting pursuant to section 36(c) of the Arms Export Control Act, certification regarding the proposed license for the export of defense articles and services to the Government of the Netherlands (Transmittal No. DDTC 063-05); to the Committee on International Relations.

5992. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting pursuant to Section 620C(c) of the Foreign Assistance Act of 1961, as amended, and in accordance with section 1(a)(6) of Executive Order 13313, a report prepared by the Department of State and the National Security Council on the progress toward a negotiated solution of the Cyprus questioncovering the period October 1, 2005 through November 30, 2005; to the Committee on International Relations.

5993. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a Memorandum of Justification for a drawdown to provide international disaster relief assistance to Pakistan, pursuant to Sections 506 and 652 of the Foreign Assistance Act of 1961, as amended; to the Committee on International Relations.

5994. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting pursuant to section 3(d) of the Arms Export Control Act, certification regarding the proposed transfer of major defense equipment from the Government of the Australia (Transmittal No. RSAT-04-05); to the Committee on International Relations.

5995. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting pursuant to Section 620C(c) of the Foreign Assistance Act of 1961, as amended, and in accordance with section 1(a)(6) of Executive Order 13313, a report prepared by the Department of State and the National Security Council on the progress toward a negotiated solution of the Cyprus question covering the period June 1, 2005 through July 31, 2005 and August 1, 2005 through September 30,2005; to the Committee on International Relations.

5996. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting pursuant to Section 620C(c) of the Foreign Assistance Act of 1961, as amended, and in accordance with section 1(a)(6) of Executive Order 13313, a report prepared by the Department of State and the National Security Council on the progress toward a negotiated solution of the Cyprus question covering the period June 1, 2005 through July 31, 2005 and August 1, 2005 through September 30, 2005; to the Committee on International Relations.

5997. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of a determination pursuant to Section 1306 of the National Defense Authorization Act for FY 2003; to the Committee on International Relations.

5998. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report pursuant to Paragraph (5)(D) of the Senate's May 1997 resolution of advice and consent to the ratification of the Conventional Armed Forces in Europe Treaty Flank Document of May 31, 1996; to the Committee on International Relations.

5999. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the Department's report on CWC Compliance; to the Committee on International Relations.

6000. A letter from the Secretary, Department of Commerce, transmitting the semiannual report on the activities of the Inspector General for the period March 31 through September 30, 2005, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform.

6001. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-248, "Vending Licensing Moratorium Amendment Act of 2005," pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6002. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-233, "District of Columbia Health Professional Recruitment Program Act of 2005," pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6003. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-232, "Dedication of Portions of the Alley System in Square 5252, S.O. 03-1707, Act of 2005," pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6004. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-230, "Stevie Sellows Intermediate Care Facility for the Mentally Retarded Quality Improvement Act of 2005," pursuant to D.C. Code section 1-233(c)(1); to the Committee on Government Reform.

6005. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-231, "Grandparent Caregivers Pilot Program Establishment Act of 2005," pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6006. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-299, "Karyn Barquin Adult Protective Services Self-Neglect Expansion Amendment Act of 2005," pursuant to D.C. Code section 1-233(c)(1); to the Committee on Government Reform.

6007. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-228, "Highway Trust Fund and District Department of Transportation Temporary Amendment Act of 2005," pursuant to D.C. Code section 1-233(c)(1); to the Committee on Government Reform.

6008. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-226, "Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Temporary Amendment Act of 2005," pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6009. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-224, "Estate and Inheritance Tax Clarification Temporary Act of 2005," pursuant to D.C. Code section 1-233(c)(1); to the Committee on Government Reform.

6010. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-225, "Public Assistance Confidentiality of Information Temporary Amendment Act of 2005," pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6011. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-222, "National Community Reinvestment Coalition Real Property Tax Exemption Act of 2005," pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6012. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-223, "Real Property Disposition Economic Analysis Temporary Amendment Act of 2005," pursuant to D.C. Code section 1-233(c)(1); to the Committee on Government Reform.

6013. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-219, "Water Pollution Control Amendment Act of 2005," pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6014. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-220, "Human Rights Clarification Amendment Act of 2005," pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6015. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-221, "Domestic Partner Health Care Benefits Tax Exemption Act of 2005," pursuant to D.C. Code section 1-233(c)(1); to the Committee on Government Reform.

6016. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-215, "Full Service Grocery Store Alcohol License Exception Act of 2005," pursuant to D.C. Code section 1-233(c)(1); to the Committee on Government Reform.

6017. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-216, "Walt Whitman Designation Act of 2005," pursuant to D.C. Code section 1-233(c)(1); to the Committee on Government Reform.

6018. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-217, "Producer Summary Suspension Amendment Act of 2005," pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6019. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-218, "Adams Morgan Business Improvement District Amendment Act of 2005," pursuant to D.C. Code section 1-233(c)(1); to the Committee on Government Reform.

6020. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-214, "Old Morgan School Place Designation Act of 2005," pursuant to D.C. Code section 1-233(c)(1); to the Committee on Government Reform.

6021. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-227, "Criminal Background Checks for the Protection of Children Clarification Temporary Amendment Act of 2005," pursuant to D.C. Code section 1-233(c)(1); to the Committee on Government Reform.

6022. A letter from the Federal Co-Chair, Appalachian Regional Commission, transmitting the semiannual report on the activities of the Office of Inspector General for the period April 1, 2005, through September 30, 2005, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 8G(h)(2); to the Committee on Government Reform.

6023. A letter from the Chairman, Broadcasting Board of Governors, transmitting in accordance with the requirements of the Accountability of Tax Dollars Act of 2002 (Pub. L. 107-289), the Board's FY 2005 Performance and Accountability Report; to the Committee on Government Reform.

6024. A letter from the Chairman, Broadcasting Board of Governors, transmitting the semiannual report on the activities of the Office of Inspector General for the period from April 1, 2005 to September 30, 2005, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform.

6025. A letter from the General Manager, Defense Nuclear Facilities Safety Board, transmitting in accordance with Section 647(b) of Title VI of the Consolidated Appropriations Act, FY 2004, Pub. L. 108-199, the Board's Report to Congress on FY 2005 Competitive Sourcing Efforts; to the Committee on Government Reform.

6026. A letter from the Secretary, Department of Energy, transmitting the Department's Performance and Accountability Report for FY 2005; to the Committee on Government Reform.

6027. A letter from the Secretary, Department of Labor, transmitting in accordance with Section 647(b) of Title VI of the Consolidated Appropriations Act, FY 2004, Pub. L. 108-199, the Department's Report to Congress on FY 2005 Competitive Sourcing Efforts; to the Committee on Government Reform.

6028. A letter from the Inspector General, Department of Labor, transmitting in accordance with Section 647(b) of Title VI of the Consolidated Appropriations Act, FY 2004, Pub. L. 108-199, the Department's Report to Congress on FY 2005 Competitive Sourcing Efforts; to the Committee on Government Reform.

6029. A letter from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting the semiannual report on the activities of the Office of Inspector General for the period April 1, 2005 through September 30, 2005, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 8G(h)(2); to the Committee on Government Reform.

6030. A letter from the Acting Chief Financial Officer, Federal Trade Commission, transmitting the Commission's FY 2005 Performance and Accountability Report, as requiredby The Government Performance and Results Act of 1993 and The Accountability of Tax Dollars Act of FY 2002; to the Committee on Government Reform.

6031. A letter from the Assistant Administrator, Office of Legislative Affairs, National Aeronautics and Space Administration, transmitting in accordance with Section 647(b) of Division F of the Consolidated Appropriations Act, FY 2004, Pub. L. 108-199, and the Office of Management and Budget Memorandum 06-01, the Administration's report on competitive sourcing efforts for FY 2005; to the Committee on Government Reform.

6032. A letter from the Director, Office of Personnel Management, transmitting in accordance with Section 647(b) of Division F of the Consolidated Appropriations Act, FY 2004, Pub. L. 108-199, and the Office of Management and Budget Memorandum 05-01, the Office's report on competitive sourcing efforts for FY 2005; to the Committee on Government Reform.

6033. A letter from the Director, SHRP, Office of Personnel Management, transmitting the Office's final rule — General Schedule Locality Pay Areas (RIN: 3206-AK78) received January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform.

6034. A letter from the Chief Administrative Officer, transmitting the quarterly report of receipts and expenditures of appropriations and other funds for the period October 1, 2005 through December 31, 2005 as compiled by the Chief Administrative Officer, pursuant to 2 U.S.C. 104a Public Law 88–454; (H. Doc. No. 109–83); to the Committee on House Administration and ordered to be printed.

6035. A letter from the Clerk, U.S. House of Representatives, transmitting list of reports pursuant to clause 2, Rule II of the Rules of the House of Representatives, pursuant to Rule II, clause 2(b), of the Rules of the House; (H. Doc. No. 109–81); to the Committee on House Administration and ordered to be printed.

6036. A letter from the Director, Office of Surface Mining, Department of the Interior, transmitting the Department's final rule — West Virginia Regulatory Program [WV-108-FOR] received December 27, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

6037. A letter from the Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries [I.D. 121205F] received January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

6038. A letter from the Acting Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery: Specifications and Management Measures; Inseason Adjustments [Docket No. 040830250-5062-03; I.D. 112305B] received January 3, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

6039. A letter from the Deputy Assistant Administrator for Regulatory Programs, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Sea Turtle Mitigation Measures [Docket No. 050801214-5283-02; I.D. 072105D] (RIN: 0648-AQ91) received January 3, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

6040. A letter from the Deputy Assistant Administrator for Regulatory Programs, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries Off West Coast States and in the Western Pacific; Pelagic Fisheries; Additional Measures to Reduce the Incidental Catch of Seabirds in the Hawaii Pelagic Longline Fishery [Docket No. 050620162-5326-02; I.D. 061505D] (RIN: 0648-AS30) received January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

6041. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Anchorage Regulations; Mississippi River Below Baton Rouge, LA, Including South and Southwest Passes [CGD08-05-016] (RIN: 1625-AA01) received December 28, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6042. A letter from the Chief, Regulations and Administrative Law, USCG Department of Homeland Security, transmitting the Department's final rule — Security Zones; Oahu, Maui, Hawaii, and Kauai, HI [CGD14-04-116] (RIN: 1625-AA87) received December 28, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6043. A letter from the Attorney, USCG, Department of Homeland Security, transmitting the Department's final rule — Marine Casualties and Investigations; Chemical Testing Following Serious Marine Incidents [USCG-2001-8773] (RIN: 1625-AA27) (Formerly

RIN: 2115-AG07) received December 28, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6044. A letter from the Attorney-Advisor, USCG, Department of Homeland Security, transmitting the Department's final rule — Reporting Marine Casualties [USCG-2000-6927] (RIN: 1625-AA04) (Formerly RIN: 2115-AD98) received December 28, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6045. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Regulated Navigation Area; East Rockaway Inlet to Atlantic Beach Bridge, Nassau County, Long Island, New York [CGD01-05-106] (RIN: 1625-AA11) received December 28, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6046. A letter from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting the Administration's final rule — NASA Research Announcements — Small Business Subcontracting Plans and Publication Acknowledgements and Disclaimers (RIN: 2700-AD03) received January 3, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Science.

6047. A letter from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting the Administration's final rule — Property Administration and Reporting for Interagency Acquisitions (RIN: 2700-AD20) received January 3, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Science.

6048. A letter from the National Adjutant, Disabled American Veterans, transmitting 2005 National Convention Proceedings Of The Disabled American Veterans, pursuant to 36 U.S.C. 90i and 44 U.S.C. 1332; (H. Doc. No. 109–77); to the Committee on Veterans' Affairs and ordered to be printed.

6049. A letter from the Office of Regulation Policy and Management, Veterans Benefits Administration, Department of Veterans' Affairs, transmitting the Department's final rule — Use of Diagnostic Code Numbers; Schedule of Ratings-Neurological Conditions and Convulsive Disorders (RIN: 2900-AM32) received January 3, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Veterans' Affairs.

6050. A letter from the Director, Office of Personnel Management, transmitting the Office's Fiscal Year 2004 annual report on Veteran's Employment in the Federal Government, pursuant to 38 U.S.C. 4214(e)(1); to the Committee on Veterans' Affairs.

6051. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Information Reporting and Other Guidelines Regarding Distributions With Respect to Securities Issued by Foreign Corporations [Notice 2006-3] received December 28, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6052. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Administrative, Procedural, and Miscellaneous (Rev. Proc. 2006-3) received December 28, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6053. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Uniform Capitalization of Costs (temporary), (Rev. Proc. 2006-11) received December 28, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6054. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Changes in Accounting Periods and in Methods of Accounting (Rev. Proc. 2006-12) received December 28, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6055. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Guidance Under Section 7874 for Determining Ownership by Former Shareholders or Partners of Domestic Entities [TD 9238] (RIN: 1545-BE94) received December 28, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6056. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Weighted Average Interest Rates Update [Notice 2005-96] received December 28, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6057. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Administrative, Procedural, and Miscellaneous (Rev. Proc. 2006-13) received December 28, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6058. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — 2005 Cumulative List of Changes in Plan Qualification Requirements [Notice 2005-101] received December 28, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6059. A letter from the Regulations Officer, Social Security Administration, transmitting the Administration's final rule — Medicare Part D Subsidies (RIN: 0960-AG03) received December 28, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); jointly to the Committees on Energy and Commerce and Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. TOM DAVIS of Virginia: Committee on Government Reform. Bringing Communities into the 21st Century: A Report on Improving the Community Development Block Grant Program (Rept. 109–365). Referred to the Committee of the Whole House on the State of the Union.

Mr. PUTNAM: Committee on Rules. House Resolution 653. Resolution relating to consideration of the bill (S. 1932) to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95) (Rept. 109–366). Referred to the House Calendar.

Mrs. CAPITO: Committee on Rules. House Resolution 654. Resolution waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (Rept. 109–367). Referred to the House Calendar.

Mr. POMBO: Committee on Resources. H.R. 3897. A bill to authorize the Secretary of the Interior, acting through the Bureau of Reclamation to enter into a cooperative agreement with the Madera Irrigation District for purposes of supporting the Madera Water Supply and Groundwater Enhancement Project; with an amendment (Rept. 109–368). Referred to the Committee of the Whole House on the State of the Union.

Mr. DREIER: Committee on Rules. House Resolution 648. Resolution to eliminate floor privileges and access to Member exercise facilities for registered lobbyists who are former Members or officers of the House (Rept. 109–369 Pt. 1). Referred to the House Calendar.

DISCHARGE OF COMMITTEE

Pursuant to clause 2 of rule XII the Committee on House Administration discharged from further consideration of H. Res. 648.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. SCHIFF:

H.R. 4654. A bill to provide a national innovation initiative; referred to the Committee on Science, and in addition to the Committees on Energy and Commerce, Ways and Means, Armed Services, the Judiciary, Transportation and Infrastructure, and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. JONES of North Carolina (for himself, Ms. BORDALLO, and Mr. TAYLOR of Mississippi):

H.R. 4655. A bill to amend the Federal Election Campaign Act of 1971 to require political committees which are associated but not affiliated with a Federal candidate or officeholder to include in the statements of organization and the reports such committees file with the Federal Election Commission the identification of each candidate or officeholder with which the committee is associated, and for other purposes; to the Committee on House Administration.

By Mr JINDAL:

H.R. 4656. A bill to increase the borrowing authority of the Federal Emergency Management Agency for carrying out the national flood insurance program; to the Committee on Financial Services.

By Mr. LIPINSKI (for himself and Mr. CASE):

H.R. 4657. A bill to amend title 18, United States Code, to prevent the selling of telephone customer proprietary network information; to the Committee on the Judiciary.

By Mr. KENNEDY of Minnesota:

H.R. 4658. A bill to amend title 18, United States Code, to prohibit former Members of Congress from engaging in certain lobbying activities; to the Committee on the Judiciary.

By Mr. SENSENBRENNER:

H.R. 4659. A bill to amend the USA PATRIOT ACT to extend the sunset of certain provisions of such Act; to the Committee on the Judiciary, and in addition to the Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ALLEN (for himself, Mr. BROWN of Ohio, Mr. BERRY, Mr. ROSS, Mr.

Michaud, Mr. Strickland, and Mr. Wynn):

H.R. 4660. A bill to provide for necessary beneficiary protections in order to ensure access to coverage under the Medicare part D prescription drug program; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ANDREWS:

H.R. 4661. A bill to prohibit the provision of Federal funds to any entity for the construction of a Federal facility unless the entity has in effect a policy of conducting a criminal background check on an employee before allowing the employee to participate in the construction of a public elementary school or secondary school, and for other purposes; to the Committee on Transportation and Infrastructure, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mrs. BLACKBURN (for herself, Mr. Inslee, Mr. Dicks, Mr. Higgins, Mr. Weiner, Mrs. Drake, Mr. Ross, Mr. Wilson of South Carolina, Mr. Reichert, Mrs. Musgrave, Ms. Harris, Ms. Matsui, Mr. Gillmor, Mr. Gene Green of Texas, Mr. Pombo, Mr. DeFazio, Mr. Kline, Ms. Carson, and Mr. Davis of Florida):

H.R. 4662. A bill to prohibit the obtaining of customer information from telecommunications carriers by false pretenses, and the sale or disclosure of such records obtained by false pretenses; to the Committee on Energy and Commerce.

By Mr. BRADLEY of New Hampshire:

H.R. 4663. A bill to authorize the Secretary of Health and Human Services to reimburse States for expenditures associated with the implementation of the Medicare prescription drug benefit for dual eligible individuals; to the Committee on Energy and Commerce.

By Mr. CAPUANO:

H.R. 4664. A bill to amend the Federal Election Campaign Act of 1971 to reduce certain contribution limits under such Act; to the Committee on House Administration.

By Mr. CARDIN (for himself, Ms. Pelosi, Mr. Hoyer, Mr. Rangel, Mr. Stark, Mr. Waxman, Mr. George Miller of California, Ms. Hooley, Mrs. Capps, Mr. Wexler, Ms. Norton, Mr. Thompson of California, Mr. Ross, Mr. Davis of Florida, Ms. Matsui, Ms. Woolsey, Mr. Sanders, Mr. McDermott, Ms. Eshoo, Ms. Harman, Mr. Gutierrez, Mr. Hastings of Florida, Mr. Nadler, Mr. Engel, Mr. Van Hollen, Mrs. Maloney, Ms. Moore of Wisconsin, Mr. Kanjorski, Mr. Higgins, Mr. Jefferson, Mr. Bishop of New York, Mr. Delahunt, Ms. Baldwin, Mr. Hinchey, Mr. Grijalva, Ms. Lee, Mr. DeFazio, Mr. Lantos, Mr. Doyle, Ms. DeGette, Mr. Farr, Mr. McGovern, Mr. Ortiz, Ms. Zoe Lofgren of California, Mr. Kildee, Mr. Wynn, Mr. Cleaver, Mr. Kennedy of Rhode Island, Mr. Payne, Mr. Filner, Mr. Michaud, Mr. Ruppersberger, Mr. Ford, Mr. Cummings, Mr. Crowley, Mr. Honda, Mr. Berry, Mr. Frank of Massachusetts, Ms. Schakowsky, and Mr. Price of North Carolina):

H.R. 4665. A bill to amend title XIX of the Social Security Act to provide for an offset from the Medicaid clawback for State emergency prescription drug expenditures for Medicare dual-eligible individuals; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. FITZPATRICK of Pennsylvania (for himself, Mr. Holden, Mr. Holt, Mr. Peterson of Pennsylvania, Mr. Platts, and Ms. Schwartz of Pennsylvania):

H.R. 4666. A bill to amend the Help America Vote Act of 2002 to extend until November 2006 the deadline by which States which received payments under such Act for the replacement of punch card or lever voting systems must ensure that all such systems are replaced; to the Committee on House Administration.

By Mr. FITZPATRICK of Pennsylvania:

H.R. 4667. A bill to provide greater transparency with respect to lobbying activities, and for other purposes; to the Committee on the Judiciary, and in addition to the Committees on Standards of Official Conduct, Rules, Resources, and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. FOSSELLA (for himself, Ms. Berkley, Mr. Cantor, Mr. Garrett of New Jersey, Mr. Gerlach, Mr. Brown of South Carolina, Mrs. JoAnn Davis of Virginia, Mr. Sensenbrenner, Mr. Norwood, Mr. Hensarling, Mr. McNulty, Mr. Engel, Mr. Otter, Mr. Kline, and Mr. Jones of North Carolina):

H.R. 4668. A bill to limit assistance to the Palestinian Authority unless the President certifies to Congress that the Palestinian Authority is not controlled by a foreign terrorist organization, and for other purposes; to the Committee on International Relations.

By Mr. GARRETT of New Jersey:

H.R. 4669. A bill to amend the Ethics in Government Act of 1978 to require Members and staff of the House of Representatives to verify their compliance with the gift rule; to the Committee on House Administration.

By Mr. GARRETT of New Jersey:

H.R. 4670. A bill to impose additional restrictions on lobbying activities; to the Committee on the Judiciary.

By Mr. GARRETT of New Jersey:

H.R. 4671. A bill to amend the Lobbying Disclosure Act of 1995 to require reporting of the congressional offices to which gifts are provided; to the Committee on the Judiciary.

By Ms. GRANGER:

H.R. 4672. A bill to amend the Internal Revenue Code of 1986 to allow a credit for the purchase of idling reduction systems for diesel-powered on-highway vehicles; to the Committee on Ways and Means.

By Mr. MARKEY (for himself, Mr. Inslee, and Ms. Kaptur):

H.R. 4673. A bill to require that an increasing percentage of new automobiles be dual fueled automobiles, to revise the method for calculating corporate average fuel economy for such vehicles, and for other purposes; to the Committee on Energy and Commerce.

By Mr. MOORE of Kansas (for himself, Mr. Tiahrt, Mr. Ryun of Kansas, and Mr. Moran of Kansas):

H.R. 4674. A bill to designate the facility of the United States Postal Service located at 110 North Chestnut Street in Olathe, Kansas, as the "Governor John Anderson, Jr. Post Office Building"; to the Committee on Government Reform.

By Mr. PALLONE (for himself, Ms. McCollum of Minnesota, Mr. Jefferson, Ms. Baldwin, Mr. Holt, Mr. Sanders, Mr. McDermott, Mr. Higgins, Mr. Boren, Mr. Honda, Mr. Stark, Mr. Andrews, Mr. Grijalva, Mr. Brown of Ohio, Mr. Michaud, Ms. Jackson-Lee of Texas, Mr. Berry, Mr. Lynch, Mr. Kucinich, Mr. Conyers, Mr. Frank of Massachusetts, Mr. Nadler, Mr. Costa, and Ms. Lee):

H.R. 4675. A bill to amend title XIX of the Social Security Act to provide for an offset from the Medicaid clawback for State emergency prescription drug expenditures for covered part D drugs for Medicare beneficiaries; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. PASCRELL:

H.R. 4676. A bill to direct the Secretary of the Interior to conduct a study to determine the feasibility and suitability of designating the 9-11 Memorial in West Orange, New Jersey, as unit of the National Park System, and for other purposes; to the Committee on Resources.

By Mr. ROGERS of Michigan (for himself, Mr. Ehlers, and Mr. Wolf):

H.R. 4677. A bill to impose a two year moratorium on the approval by the Secretary of the Interior of new Tribal-State compacts for gaming under the Indian Gaming Regulatory Act; to the Committee on Resources.

By Ms. SCHAKOWSKY (for herself, Mr. Hinchey, Ms. Kilpatrick of Michigan, and Mr. Gutierrez):

H.R. 4678. A bill to prohibit fraudulent access to telephone records; to the Committee on Energy and Commerce.

By Mrs. SCHMIDT:

H.R. 4679. A bill to amend the Foreign Agents Registration Act of 1938, as amended, to require the Attorney General to make available on the Internet website of the Department of Justice all registration statements and other documents filed with the Attorney General under such Act; to the Committee on the Judiciary.

By Mrs. CAPITO (for herself, Mr. Rahall, Mr. Mollohan, Mr. Boehner, and Mr. George Miller of California):

H. Con. Res. 331. Concurrent resolution honoring the sacrifice and courage of the 12 coal miners killed and the stamina and courage of the one who survived the mine disaster in Sago, West Virginia, and the sacrifice and courage of the two coal miners killed in the Aracoma Alma mine disaster, and recognizing the rescue crews for their outstanding efforts in the aftermath of the tragedies; to the Committee on Education and the Workforce.

By Mr. JONES of North Carolina (for himself, Mr. Jindal, and Mr. Flake):

H. Res. 646. A resolution denying the entitlement to the privilege of admission to the Hall of the House to any former Member of the House who is a registered lobbyist; to the Committee on Rules.

By Mr. JONES of North Carolina (for himself and Mr. Flake):

H. Res. 647. A resolution requiring the Clerk of the House of Representatives to post on the Internet for public review all travel disclosure reports submitted by Members, officers, and employees of the House; to the Committee on Rules.

By Mr. DREIER:

H. Res. 648. A resolution to eliminate floor privileges and access to Member exercise facilities for registered lobbyists who are former Members or officers of the House; to the Committee on Rules, and in addition to the Committee on House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. DREIER:

H. Res. 649. A resolution providing for a committee to notify the President of the assembly of the Congress; considered and agreed to.

By Mr. DREIER:

H. Res. 650. A resolution to inform the Senate that a quorum of the House has assembled; considered and agreed to.

By Mr. DREIER:

H. Res. 651. A resolution providing for the hour of meeting of the House; considered and agreed to.

By Mrs. JO ANN DAVIS of Virginia:

H. Res. 652. A resolution expressing the sense of the House of Representatives that there should be established a National Inflammatory Skin Disease Awareness Month; to the Committee on Government Reform.

By Mr. SENSENBRENNER:

H. Res. 655. A resolution honoring the life and accomplishments of Mrs. Coretta Scott King and her contributions as a leader in the struggle for civil rights, and expressing condolences to the King family on her passing.

By Ms. HERSETH (for herself and Mr. RAHALL):

H. Res. 656. A resolution expressing the sense of the House that the Secretary of Health and Human Services, acting through the Director of Indian Health Service, should maintain the current operating hours of the Wagner Service Unit until the Secretary submits to Congress a new report that accurately describes the current conditions at the Wagner Service Unit; to the Committee on Resources, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. KENNEDY of Minnesota (for himself, Mr. LIPINSKI, Mr. FOSSELLA, Mr. BAKER, Ms. BORDALLO, Mr. FITZPATRICK of Pennsylvania, Mr. FOLEY, Mr. LANTOS, Mr. EHLERS, Mr. ENGLISH of Pennsylvania, Mr. CHABOT, Mr. MCCOTTER, Mr. RYAN of Ohio, Mr. HOLDEN, Mr. MCCAUL of Texas, Ms. KAPTUR, Ms. HART, Mr. GILLMOR, Mr. DAVIS of Kentucky, Mr. CASE, Mr. BOEHNER, Mr. WILSON of South Carolina, Mr. WEINER, Mr. HOLT, Mrs. CHRISTENSEN, Mr. CLEAVER, Mr. GONZALEZ, Mr. ROTHMAN, Mr. MURPHY, Mrs. BIGGERT, Mr. WOLF, Mr. NEAL of Massachusetts, Mr. RAMSTAD, Mr. OXLEY, Mr. HAYWORTH, Mr. MCGOVERN, Mr. KLINE, and Ms. ESHOO):

H. Res. 657. A resolution honoring the contributions of Catholic schools; to the Committee on Education and the Workforce.

By Ms. EDDIE BERNICE JOHNSON of Texas (for herself and Mr. BLUMENAUER):

H. Res. 658. A resolution supporting the goals and ideals of World Water Day; to the Committee on International Relations.

By Mr. OBEY (for himself, Mr. FRANK of Massachusetts, Mr. PRICE of North Carolina, Mr. ALLEN, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. BACA, Mr. BAIRD, Ms. BALDWIN, Mr. BARROW, Mr. BECERRA, Ms. BERKLEY, Mr. BERMAN, Mr. BERRY, Mr. BISHOP of New York, Mr. BLUMENAUER, Mr. BOSWELL, Mr. BOREN, Mr. BOYD, Mr. BROWN of Ohio, Mr. BUTTERFIELD, Mrs. CAPPS, Mr. CARDOZA, Ms. CARSON, Mr. CASE, Mr. CHANDLER, Mr. CLEAVER, Mr. COOPER, Mr. COSTELLO, Mr. CROWLEY, Mr. DAVIS of Alabama, Mr. DAVIS of Illinois, Mrs. DAVIS of California, Mr. DEFAZIO, Ms. DEGETTE, Mr. DELAHUNT, Ms. DELAURO, Mr. DINGELL, Mr. DOGGETT, Ms. ESHOO, Mr. ETHERIDGE, Mr. EVANS, Mr. FARR, Mr. FILNER, Mr. FORD, Mr. GONZALEZ, Mr. GUTIERREZ, Mr. GORDON, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Ms. HARMAN, Mr. HASTINGS of Florida, Ms. HERSETH, Mr. HIGGINS, Mr. HINCHEY, Mr. HINOJOSA, Mr. HOLT, Mr. HONDA, Mr. HOYER, Mr. ISRAEL, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. KAPTUR, Mr. KENNEDY of Rhode Island, Mr. KILDEE, Mr. KUCINICH, Mr. LANGEVIN, Mr. LANTOS, Mr. LARSEN of Washington, Mr. LARSON of Connecticut, Ms. LEE, Mr. LEVIN, Mr. LEWIS of Georgia, Mrs. MALONEY, Mr. MARKEY, Mr. MARSHALL, Ms. MATSUI, Mrs. MCCARTHY, Ms. MCCOLLUM of Minnesota, Mr. MCDERMOTT, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MEEHAN, Mr. MICHAUD, Mr. MILLER of North Carolina, Mr. GEORGE MILLER of California, Ms. MILLENDER-MCDONALD, Mr. MOORE of Kansas, Ms. MOORE of Wisconsin, Mr. MORAN of Virginia, Mr. NADLER, Mrs. NAPOLITANO, Ms. NORTON, Mr. OLVER, Mr. ORTIZ, Mr. OWENS, Ms. PELOSI, Mr. PETERSON of Minnesota, Mr. RANGEL, Mr. REYES, Mr. ROSS, Mr. ROTHMAN, Mr. RUPPERSBERGER, Mr. RYAN of Ohio, Mr. SALAZAR, Ms. LINDA T. SÁNCHEZ of California, Ms. LORETTA SANCHEZ of California, Mr. SANDERS, Mr. SCOTT of Virginia, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SERRANO, Mr. SHERMAN, Mr. SKELTON, Mr. SNYDER, Ms. SOLIS, Mr. SPRATT, Mr. STRICKLAND, Mr. STUPAK, Mrs. TAUSCHER, Mr. TAYLOR of Mississippi, Mr. TIERNEY, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. VAN HOLLEN, Ms. VELÁZQUEZ, Ms. WATSON, Mr. WATT, Mr. WAXMAN, Ms. WOOLSEY, and Mr. WU):

H. Res. 659. A resolution amending the Rules of the House of Representatives to protect the integrity of the institution; to the Committee on Rules, and in addition to the Committee on Standards of Official Conduct, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. OSBORNE (for himself, Ms. MCCOLLUM of Minnesota, Mr. HONDA, Mr. BOSWELL, Mr. VAN HOLLEN, Mrs. TAUSCHER, Mr. SIMPSON, Mr. WAXMAN, Mr. KELLER, Mr. CRENSHAW, Mr. GRIJALVA, Mr. SCHIFF, Mr. DAVIS of Illinois, and Mrs. BIGGERT):

H. Res. 660. A resolution supporting the goals and ideals of National Mentoring Month; to the Committee on Education and the Workforce.

By Mr. PALLONE (for himself, Mrs. JONES of Ohio, Mr. FITZPATRICK of Pennsylvania, Mr. SALAZAR, Mr. GRIJALVA, Ms. HARRIS, Mrs. MCCARTHY, and Mrs. CHRISTENSEN):

H. Res. 661. A resolution encouraging States to establish programs to award high school diplomas to veterans who left high school before receiving diplomas in order to serve in the Armed Forces during a time of war; to the Committee on Education and the Workforce.

By Mr. PRICE of Georgia (for himself, Mr. AKIN, Mr. BARTLETT of Maryland, Mrs. BLACKBURN, Mr. BURGESS, Mr. CANTOR, Mr. CARTER, Mr. CHABOT, Mr. CULBERSON, Mr. FORTUÑO, Ms. FOXX, Mr. FRANKS of Arizona, Mr. GINGREY, Mr. GOHMERT, Mr. GUTKNECHT, Mr. HENSARLING, Mr. HERGER, Mr. DANIEL E. LUNGREN of California, Mr. MCKEON, Mrs. MUSGRAVE, Mr. NEUGEBAUER, Mr. RYAN of Wisconsin, Mr. PEARCE, Mr. PENCE, Mr. PITTS, Mr. SODREL, Mr. KING of Iowa, Mr. TIAHRT, Mr. WAMP, Mr. WELDON of Florida, Mr. WICKER, Mr. WILSON of South Carolina, Mr. COLE of Oklahoma, Mr. BACHUS, Mr. BARRETT of South Carolina, and Mr. KLINE):

H. Res. 662. A resolution amending the Rules of the House of Representatives to require that general appropriation bills contain a separate list of all earmarks in the accompanying report and the name of the sponsoring Member of each such earmark; to the Committee on Rules.

By Mr. SNYDER:

H. Res. 663. A resolution amending the Rules of the House of Representatives to prohibit former Members and former officers of the House who are registered lobbyists from admission to the Hall of the House, and for other purposes; to the Committee on Rules, and in addition to the Committee on House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

[Omitted from the Record of January 3, 2006]

H.R. 1372: Mr. SCHWARZ of Michigan.

H.R. 1742: Mr. PRICE of North Carolina.

H.R. 3858: Mr. RANGEL.

[Submitted January 31, 2006]

H.R. 25: Mr. BACHUS and Mr. SULLIVAN.

H.R. 40: Mr. WYNN.

H.R. 63: Mr. HIGGINS.

H.R. 65: Mr. FLAKE and Mr. RAMSTAD.

H.R. 111: Mr. MEEHAN.

H.R. 147: Mr. JONES of North Carolina, Ms. MCKINNEY, and Mr. SHAYS.

H.R. 219: Ms. FOXX.

H.R. 503: Mr. WEXLER, Mr. MCCOTTER, Mr. LANTOS, Ms. KAPTUR, Ms. KILPATRICK of Michigan, Mr. CLYBURN, Ms. LINDA T. SÁNCHEZ of California, Mr. EMANUEL, and Mr. RUPPERSBERGER.

H.R. 550: Mr. FATTAH.

H.R. 552: Mr. FITZPATRICK of Pennsylvania.

H.R. 558: Mr. LIPINSKI.

H.R. 602: Mr. KELLER.

H.R. 699: Mr. MARKEY.

H.R. 735: Mr. STARK.

H.R. 752: Mr. HASTINGS of Florida, Mr. DELAHUNT, Ms. MCCOLLUM of Minnesota, Mrs. Davis of California, Ms. Baldwin, Mrs. Lowey, Mrs. Capps, and Mr. Doggett.

H.R. 769: Mr. Rothman, Ms. Hart, Mr. Brady of Pennsylvania, and Mr. Emanuel.

H.R. 772: Mr. Berman, Mr. Latham, Mr. Cardin, Mr. Murphy, and Mr. Doyle.

H.R. 791: Mr. Meehan.

H.R. 858: Mr. Stearns.

H.R. 886: Ms. Watson, Mrs. Maloney, Mr. Walsh, Mr. Sessions, Mr. Moran of Virginia, Mr. Tierney, Mr. McDermott, Mr. Smith of Washington, Mr. Blumenauer, Mr. George Miller of California, Mr. Kirk, and Mrs. Biggert.

H.R. 910: Mr. Fattah.

H.R. 917: Mr. Michaud.

H.R. 941: Mr. Simmons.

H.R. 944: Mr. McCotter, Mr. Larsen of Washington, and Mr. Cummings.

H.R. 952: Ms. Matsui.

H.R. 986: Mr. Pallone and Mr. Wynn.

H.R. 994: Mr. Neal of Massachusetts, Mr. Crowley, Mr. Strickland, and Mr. Kind.

H.R. 998: Mr. Filner, and Mr. Reichert.

H.R. 1020: Mr. Filner.

H.R. 1059: Mr. Sherman and Mr. Wu.

H.R. 1079: Mr. Fortenberry.

H.R. 1107: Mr. Boswell.

H.R. 1108: Mr. Ford and Mr. Emanuel.

H.R. 1120: Mr. Brown of Ohio, Ms. Zoe Lofgren of California, Mr. Payne, Mr. McCotter, Ms. Schwartz of Pennsylvania, and Mr. Skelton.

H.R. 1124: Mr. Smith of Washington and Mr. Rothman.

H.R. 1131: Mrs. Emerson and Mr. Pearce.

H.R. 1143: Mr. Brown of South Carolina and Mr. Hastings of Florida.

H.R. 1144: Mr. Strickland, Mr. Cummings, and Mr. Fattah.

H.R. 1172: Mr. Van Hollen, Ms. Millender-McDonald, and Mr. Weldon of Pennsylvania.

H.R. 1177: Mrs. Emerson.

H.R. 1188: Mrs. Davis of California.

H.R. 1217: Mr. Al Green of Texas.

H.R. 1227: Mr. Tom Davis of Virginia.

H.R. 1255: Mr. Ross.

H.R. 1259: Mr. English of Pennsylvania, Mr. Davis of Florida, Mr. Aderholt, Mr. Hall, Mr. Linder, Mr. Case, Mr. Doyle, Ms. Hooley, Mr. Langevin, Mr. Pomeroy, Mr. Visclosky, Mr. Kennedy of Minnesota, Mr. Moore of Kansas, Mr. Foley, Ms. Pryce of Ohio, Ms. Herseth, Mr. Lynch, Mr. McHugh, Mr. Calvert, Mr. Chandler, Mr. Gibbons, Mr. Saxton, Mr. Shaw, Mr. McCrery, Mr. Turner, Mr. Ramstad, Mr. Boren, Mr. Weller, Mr. Fossella, Mr. Franks of Arizona, Mr. Shimkus, Mrs. Johnson of Connecticut, Mr. Tom Davis of Virginia, Mr. Costello, Mr. Davis of Tennessee, Mr. Peterson of Pennsylvania, Mr. Dent, Mr. Bartlett of Maryland, Mr. Hefley, Mr. Doolittle, Mr. Inslee, Mr. Peterson of Minnesota, Mr. Blumenauer, Mr. Boucher, Mr. Mollohan, Mr. Olver, Mr. Kind, Mr. Hayworth, Mr. Stupak, Mr. Rahall, Mr. Gingrey, Mr. Kirk, Mr. Burton of Indiana, Mr. Bilirakis, and Mr. Kingston.

H.R. 1290: Mr. Kucinich and Mr. Baird.

H.R. 1393: Mr. Kline.

H.R. 1426: Mr. Davis of Tennessee.

H.R. 1431: Mrs. Capps, Mr. Lantos, Mr. Grijalva, Mr. Blumenauer, Mr. George Miller of California, Ms. Corrine Brown of Florida, and Ms. Loretta Sanchez of California.

H.R. 1518: Mr. Weller and Mr. Hinojosa.

H.R. 1558: Mr. Shays and Mr. Doyle.

H.R. 1594: Mr. Moran of Kansas.

H.R. 1619: Mr. Andrews.

H.R. 1642: Mr. Bass, Mr. George Miller of California, Mr. Platts, Mr. Lewis of Kentucky, Mr. Kline, Mr. Shays, Mr. Ford, Mr. Chabot, Mr. Bartlett of Maryland, Mr. Udall of Colorado, Mr. Simmons, Mr. Bradley of New Hampshire, Mr. Tiahrt, Mr. Ryan of Wisconsin, Ms. Loretta Sanchez of California, Ms. Hart, Mr. Wamp, Mr. Akin, Mr. Waxman, Mr. Petri, Mr. Chocola, and Mr. Becerra.

H.R. 1657: Mr. Westmoreland.

H.R. 1668: Mr. Kennedy of Rhode Island.

H.R. 1671: Mr. Brown of Ohio and Mr. Bradley of New Hampshire.

H.R. 1689: Mr. Norwood.

H.R. 1696: Mr. Tanner.

H.R. 1823: Mr. Grijalva.

H.R. 1861: Mr. Simmons and Ms. Baldwin.

H.R. 2037: Mrs. Jones of Ohio.

H.R. 2047: Mr. Shimkus and Mrs. Cubin.

H.R. 2052: Mr. Davis of Kentucky.

H.R. 2088: Mr. Gene Green of Texas.

H.R. 2233: Mr. Baird.

H.R. 2237: Mr. Andrews.

H.R. 2238: Mr. Cardin.

H.R. 2328: Mr. McIntyre, Mr. Platts, and Mr. Conyers.

H.R. 2378: Mr. Evans.

H.R. 2390: Mr. Engel.

H.R. 2429: Mr. Fattah and Mr. Smith of Washington.

H.R. 2512: Mr. Wolf and Mr. Boucher.

H.R. 2558: Mr. Wolf.

H.R. 2567: Ms. Baldwin.

H.R. 2717: Mrs. Davis of California, Mr. Baker, Mr. Meehan, Mr. Castle, and Ms. DeGette.

H.R. 2719: Mr. Meehan.

H.R. 2799: Mr. Cuellar.

H.R. 2828: Mr. Meehan, Mr. McGovern, Mr. Sanders, and Ms. Matsui.

H.R. 2872: Mr. Engel, Mr. Shaw, Mr. Boehlert, Mr. Inslee, Mr. Blunt, Mr. Fattah, Mrs. McCarthy, Mr. Davis of Alabama, Mr. Bishop of New York, Mr. McIntyre, Mr. Brown of South Carolina, Mr. Bartlett of Maryland, Mr. Frank of Massachusetts, Mr. Faleomavaega, Mr. Kennedy of Rhode Island, Ms. Linda T. Sánchez of California, Mrs. Wilson of New Mexico, Mrs. Drake, Mr. Pombo, Mr. Rogers of Alabama, Mr. Stark, Mr. Wolf, Mr. Kind, and Mr. Visclosky.

H.R. 2926: Mr. Dent.

H.R. 2961: Mr. Marshall.

H.R. 2963: Ms. DeGette and Mr. Cummings.

H.R. 3049: Mr. Kirk.

H.R. 3059: Mr. Ross.

H.R. 3080: Mr. Pombo.

H.R. 3142: Ms. Zoe Lofgren of California.

H.R. 3151: Mr. Kennedy of Rhode Island.

H.R. 3173: Mr. Filner.

H.R. 3196: Mr. Filner, Mr. Melancon and Mr. Honda.

H.R. 3255: Mr. Kildee.

H.R. 3272: Mr. Higgins.

H.R. 3334: Mr. Daniel E. Lungren of California, Mr. Boucher, Mr. Rothman, and Mr. Inslee.

H.R. 3352: Mr. Udall of New Mexico.

H.R. 3404: Mrs. McCarthy.

H.R. 3420: Mr. Case and Mr. Meehan.

H.R. 3476: Mr. Marchant, Mr. Young of Alaska, Mr. Hall, Mr. Meehan, and Ms. Harris.

H.R. 3492: Mr. Tierney, Mrs. Napolitano, Ms. Woolsey, Ms. Eshoo, Mr. Andrews, Mr. Abercrombie, and Ms. Kilpatrick of Michigan.

H.R. 3639: Mr. Barrow and Mr. Baird.

H.R. 3684: Mr. Bartlett of Maryland and Mr. Calvert.

H.R. 3701: Mr. Hinchey.

H.R. 3725: Mr. Paul.

H.R. 3782: Mr. Gilchrest.

H.R. 3858: Mr. Fortuño, Mr. Simmons, and Mrs. Christensen.

H.R. 3861: Mr. Rush, Mr. Cummings, Mr. Chandler, Mr. Reyes, Mr. Strickland, Mr. Larsen of Washington, Mr. Baca, Mr. Moran of Kansas, Mrs. Lowey, Mr. Boswell, Mr. Marshall, Mr. Smith of Washington, Mr. Scott of Georgia, and Mr. Salazar.

H.R. 3883: Mr. Beauprez, Mr. Gallegly, Mr. Inslee, Mr. Gordon, and Mr. Porter.

H.R. 3917: Mr. Jefferson and Mr. Kildee.

H.R. 3923: Mr. Sensenbrenner.

H.R. 3924: Mr. Sensenbrenner.

H.R. 3931: Mr. Fattah and Mr. Hastings of Florida.

H.R. 3940: Mr. Scott of Georgia.

H.R. 3954: Mr. Ortiz.

H.R. 4005: Mr. Baca and Mr. Hinchey.

H.R. 4015: Mr. Case and Mr. Davis of Alabama.

H.R. 4030: Mr. Nadler and Mr. Conyers.

H.R. 4036: Mr. Otter.

H.R. 4042: Mr. Ortiz.

H.R. 4049: Mrs. Davis of California.

H.R. 4089: Mr. Sensenbrenner.

H.R. 4158: Mr. Pallone.

H.R. 4179: Mr. Udall of Colorado.

H.R. 4183: Ms. Harman.

H.R. 4184: Ms. Harman.

H.R. 4196: Ms. McCollum of Minnesota.

H.R. 4197: Mr. Andrews and Mr. Cardin.

H.R. 4211: Mr. Berman.

H.R. 4222: Mr. Gordon, Mr. Udall of New Mexico, and Ms. Schakowsky.

H.R. 4223: Mr. Owens and Mr. Kildee.

H.R. 4232: Mr. Conyers.

H.R. 4242: Mr. Saxton, Mr. McCotter, and Mr. Tancredo.

H.R. 4258: Mr. English of Pennsylvania.

H.R. 4259: Ms. Harman.

H.R. 4264: Mr. Israel.

H.R. 4272: Mr. Waxman.

H.R. 4282: Ms. McKinney.

H.R. 4291: Mr. Baird.

H.R. 4298: Mr. Barrow, Mr. Gordon, and Ms. McCollum of Minnesota.

H.R. 4313: Mr. Bachus.

H.R. 4315: Ms. Pryce of Ohio, Mr. Castle, Ms. Herseth, Mr. Johnson of Illinois, and Mr. Beauprez.

H.R. 4319: Mr. Wynn and Mr. McDermott.

H.R. 4332: Mr. Skelton and Mr. Ross.

H.R. 4347: Mr. Fattah, Mr. Ruppersberger, and Mr. Cummings.

H.R. 4348: Mr. Evans.

H.R. 4351: Mr. Cummings.

H.R. 4361: Mr. Rohrabacher, Mr. Hinojosa, Mr. Emanuel, and Mr. Pallone.

H.R. 4365: Mr. Salazar.

H.R. 4372: Mr. Evans.

H.R. 4392: Mr. Evans.

H.R. 4395: Mr. Owens, Mr. Hinojosa, and Ms. Lee.

H.R. 4405: Mr. Gene Green of Texas, Mr. Boehlert, Mr. Coble, Mr. Capuano, Mr. Norwood, Mr. Kildee, Mr. Kucinich, Mr. Bartlett of Maryland, and Mr. Sanders.

H.R. 4411: Mr. Wicker and Mr. McCotter.

H.R. 4427: Mr. Al Green of Texas.

H.R. 4447: Mr. Kucinich.

H.R. 4448: Mr. Serrano, Mr. Gonzalez, Mr. McDermott, Mr. Farr, and Mr. Payne.

H.R. 4452: Mr. Smith of Washington, Mr. Hayworth, Ms. Harman, Ms. Roybal-Allard, Mr. Abercrombie, Ms. Schakowsky, Mr. Israel, and Mr. Filner.

H.R. 4463: Mr. Gonzalez, Mr. Hinchey, Mr. Waxman, and Mr. Cummings.

H.R. 4479: Mr. Rangel, Ms. Schakowsky, Ms. Eddie Bernice Johnson of Texas, and Mr. Ackerman.

H.R. 4491: Mrs. McCarthy and Mr. McCotter.

H.R. 4493: Mrs. Napolitano.

H.R. 4520: Mr. Wexler and Ms. Schakowsky.

H.R. 4535: Mr. WOLF, Mr. SHERMAN, and Mr. FITZPATRICK of Pennsylvania.

H.R. 4542: Mr. CROWLEY, Mr. LEVIN, Mr. MCCOTTER, Mr. GOODE, and Mr. SMITH of Washington.

H.R. 4546: Mr. BACHUS, Mr. CONAWAY, Mr. FEENEY, Mr. GARRETT of New Jersey, Mr. JINDAL, Mr. KLINE, Mr. DANIEL E. LUNGREN of California, Mr. MCHENRY, Mr. ROGERS of Michigan, Mr. SODREL, Mr. TANCREDO, and Mr. MURPHY.

H.R. 4548: Mr. KELLER, Mr. ENGLISH of Pennsylvania, Mr. WELLER, Mr. LEWIS of Kentucky, Mr. SAXTON, Mr. COBLE, Mr. MILLER of Florida, Mr. WELDON of Florida, Mr. SENSENBRENNER, Mr. KLINE, Mr. OTTER, and Mr. GARRETT of New Jersey.

H.R. 4561: Mr. MARCHANT and Mr. HALL.

H.R. 4575: Mrs. WILSON of New Mexico, Mr. CHABOT, Mr. FITZPATRICK of Pennsylvania, and Mr. JONES of North Carolina.

H.R. 4576: Mr. HERGER and Mr. NORWOOD.

H.R. 4578: Mr. OBERSTAR and Mr. PETERSON of Minnesota.

H.R. 4597: Mr. KENNEDY of Minnesota, Mr. MCGOVERN, Ms. BORDALLO, Mr. CALVERT, and Mr. UPTON.

H.R. 4604: Mr. MEEKS of New York and Mr. MATHESON.

H.R. 4612: Ms. PRYCE of Ohio.

H.R. 4619: Mr. MCCOTTER.

H.R. 4649: Mr. WELDON of Pennsylvania.

H. J. Res. 55: Mr. INSLEE.

H. Con. Res. 99: Ms. CORRINE BROWN of Florida, Ms. SOLIS, Mr. HALL, and Mr. FARR.

H. Con. Res. 106: Mr. SPRATT.

H. Con. Res. 137: Ms. LEE and Mr. POMBO.

H. Con. Res. 172: Mr. TIERNEY and Mr. CUMMINGS.

H. Con. Res. 174: Mr. DOGGETT, Mrs. TAUSCHER, Mr. STARK, and Mr. MURTHA.

H. Con. Res. 231: Mr. LARSEN of Washington and Mr. BRADLEY of New Hampshire.

H. Con. Res. 278: Mr. ISRAEL, Ms. MCCOLLUM of Minnesota, and Ms. HERSETH.

H. Con. Res. 316: Mrs. WILSON of New Mexico.

H. Con. Res. 317: Mr. EVANS.

H. Res. 81: Mr. CHABOT.

H. Res. 85: Mr. BACA, Mr. SCOTT of Georgia, Ms. BORDALLO, and Mr. SESSIONS.

H. Res. 305: Mr. MCCOTTER, Mr. PLATTS, Mr. MORAN of Virginia, Mr. REYES, and Mr. FILNER.

H. Res. 477: Mr. SMITH of Washington and Mr. ROTHMAN.

H. Res. 489: Mr. KUCINICH and Mr. UDALL of Colorado.

H. Res. 507: Mr. INGLIS of South Carolina and Mr. MICHAUD.

H. Res. 526: Mr. BRADLEY of New Hampshire, Mr. MCCOTTER, and Mr. OLVER.

H. Res. 552: Mr. GREEN of Wisconsin.

H. Res. 555: Mr. ROTHMAN.

H. Res. 556: Mr. MOORE of Kansas, Mr. KING of Iowa, Mr. CONYERS, Mr. MCDERMOTT, Mr. CARDOZA, Mr. POMEROY, Mr. DOOLITTLE, Mr. MORAN of Kansas, Mr. GORDON, Mr. OBERSTAR, Ms. BORDALLO, Mr. DAVIS of Tennessee, Mr. MICHAUD, Mr. STUPAK, Mr. LATHAM, Mr. FORD, and Mr. INSLEE.

H. Res. 573: Mr. GONZALEZ.

H. Res. 590: Mr. STRICKLAND, Mr. FALEOMAVAEGA, and Mr. BLUMENAUER.

H. Res. 613: Mr. MCNULTY.

H. Res. 628: Mr. ANDREWS, Mrs. MALONEY, Mr. KUCINICH, Mr. GEORGE MILLER of California, Mr. MCGOVERN, Mr. HIGGINS, Mr. SERRANO, Mr. HINCHEY, Mrs. MCCARTHY, Mr. ABERCROMBIE, Mr. LANTOS, and Mr. MOLLOHAN.

H. Res. 629: Mr. SCHWARZ of Michigan, Mr. SIMMONS, Mrs. BLACKBURN, Mr. HINOJOSA, Mrs. JONES of Ohio, Mr. CALVERT, Mr. MEEKS of New York, Mr. MORAN of Virginia, Mr. MELANCON, Mr. UPTON, Mr. KILDEE, Mr. PICKERING, Mr. SESSIONS, Mr. BACHUS, Mr. ROGERS of Alabama, Mr. SHIMKUS, Mr. JINDAL, Mr. GIBBONS, Mr. BOUSTANY, Mr. DAVIS of Kentucky, Mr. WILSON of South Carolina, Mr. FORTENBERRY, Mr. SNYDER, Mr. JENKINS, Mrs. MYRICK, Mr. WALDEN of Oregon, Mr. HAYWORTH, Mr. WELDON of Florida, Mr. FORTUÑO, Mr. FITZPATRICK of Pennsylvania, Mr. JONES of North Carolina, Mr. BURTON of Indiana, Mr. MOORE of Kansas, Mr. ISSA, Mr. KUHL of New York, Mr. BURGESS, Ms. FOXX Mr. CLEAVER, Mr. JEFFERSON, Mr. SIMPSON, Mr. PAYNE, and Mr. WHITFIELD.

H. Res. 635: Mr. MCDERMOTT, Mr. ABERCROMBIE, Mr. OWENS, Mr. CLAY, Mr. NADLER, Ms. BALDWIN, Mr. STARK, and Ms. SCHAKOWSKY.

H. Res. 636: Mr. MCDERMOTT, Mr. CLAY, Mr. NADLER, Mr. OWENS, Mr. STARK, and Ms. SCHAKOWSKY.

H. Res. 637: Mr. MCDERMOTT, Mr. CLAY, Mr. NADLER, Mr. OWENS, Mr. STARK, and Ms. SCHAKOWSKY.

H. Res. 643: Mr. AL GREEN of Texas, Mr. SMITH of Washington, Mr. STARK, Mr. FARR, Mr. BAIRD, Mr. SANDERS, and Mr. PRICE of North Carolina.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 7 of rule XII, sponsors were deleted from public bills and resolutions as follows:

H.R. 3855: Mrs. CUBIN and Mr. OTTER.

H.R. 4354: Ms. ROS-LEHTINEN.

H. Res. 635: Ms. ZOE LOFGREN of California.

H. Res. 636: Ms. ZOE LOFGREN of California.

H. Res. 637: Ms. ZOE LOFGREN of California.

PROCEEDINGS OF THE HOUSE OF REPRESENTATIVES AFTER SINE DIE ADJOURNMENT OF THE 109TH CONGRESS FIRST SESSION AND FOLLOWING PUBLICATION OF THE FINAL EDITION OF THE CONGRESSIONAL RECORD OF THE 109TH CONGRESS FIRST SESSION

BILLS APPROVED BY THE PRESIDENT AFTER SINE DIE ADJOURNMENT

The President, after sine die adjournment of the First Session, 109th Congress, notified the Clerk of the House that on the following dates, he had approved and signed bills of the following titles:

December 30, 2005

H.R. 2863. An act making appropriations for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes.

H.R. 3010. An act making appropriations for the Departments of Labor, Health and Human Services, and Education, and Related Agencies for the fiscal year ending September 30, 2006, and for other purposes.

H.R. 4525. An act to temporarily extend the programs under the Higher Education Act of 1965, and for other purposes.

H.R. 4579. An act to amend title I of the Employee Retirement Income Security Act of 1974, title XXVII of the Public Health Service Act, and the Internal Revenue Code of 1986 to extend by one year provisions requiring parity in the application of certain limits to mental health benefits.

H.R. 4635. An act to reauthorize the Temporary Assistance for Needy Families block grant program through March 31, 2006, and for other purposes.

SENATE BILLS APPROVED BY THE PRESIDENT AFTER SINE DIE ADJOURNMENT

The President, after sine die adjournment of the First Session, 109th Congress, notified the Clerk of the House that on the following dates, he had approved and signed bills of the Senate of the following titles:

December 30, 2005:

S. 205. An act to authorize the American Battle Monuments Commission to establish in the State of Louisiana a memorial to honor the Buffalo Soldiers.

S. 652. An act to provide financial assistance for the rehabilitation of the Benjamin Franklin National Memorial in Philadelphia, Pennsylvania, and the development of an exhibit to commemorate the 300th anniversary of the birth of Benjamin Franklin.

S. 1238. An act to amend the Public Land Corps Act of 1993 to provide for the conduct of projects that protect forests, and for other purposes.

S. 1281. An act to authorize the Programs of the National Aeronautics and Space Administration.

S. 1310. An act to authorize the Secretary of the Interior to allow the Columbia Gas Transmission Corporation to increase the diameter of a natural gas pipeline located in the Delaware Water Gap National Recreation Area, to allow certain commercial vehicles to continue to use Route 209 within Delaware Water Gap National Recreation Area, and to extend the termination date of the National Park System Advisory Board to January 1, 2007.

S. 1481. An act to amend the Indian Land Consolidation Act to provide for probate reform.

S. 1892. An act to amend Public Law 107–153 to modify a certain date.

S. 1988. An act to authorize the transfer of items in the War Reserves Stockpile for Allies, Korea.

S. 2167. An act to amend the USA PATRIOT Act to extend the sunset of certain provisions of that Act and the lone wolf provision of the Intelligence Reform and Terrorism Prevention Act of 2004 to July 1, 2006.

EXTENSIONS OF REMARKS

TRIBUTE TO STATE SENATOR NORMA ANDERSON

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. UDALL of Colorado. Mr. Speaker, I occasionally use this forum to acknowledge the contributions my fellow Coloradans make on behalf of Colorado and our country. Today, I rise to commend the service of just such a person, my former colleague, State Senator Norma Anderson.

Last month, Senator Anderson announced her retirement from the Colorado State Senate after nearly 20 years of uninterrupted service as a legislator. Both Democrats and Republicans lauded her record, and I wanted to lend my name to her long list of unabashed admirers. While we have served in different political parties and held separate offices in the public arena, I have always admired Norma Anderson's direct and honest approach to public service. She is the kind of person who speaks her mind, knows the rules, respects the needs of her constituents and above all, she is the kind of leader who is not afraid to let the chips fall after making a decision. Norma has never suffered fools and she is not one to be intimidated. In my brief service in the Colorado General Assembly I came to deeply respect her judgment; I appreciated her way of dealing with colleagues, and I still consider her a friend.

A respected Denver Post columnist, Diane Carman, has called her "an old-fashioned Republican with a sharp tongue, impeccable taste and a stubborn independent streak." I don't believe I can improve on this description of Norma except to add that she has always struck me as a formidable and principled woman, and her record of accomplishment and service to Colorado has few equals.

[From the Denver Post, Jan. 4, 1906]

SENATOR WIELDED GRACE, INDEPENDENCE

(By Diane Carman)

She's an old-fashioned Republican with a sharp tongue, impeccable taste and a stubborn independent streak.

In a lot of ways, that explains it all.

Norma Anderson retired Tuesday after 19 years in the Colorado legislature, saying only, "It's the right thing for me at this time."

She's not sick, the vibrant 73-year-old said. She's not angry or frustrated or bored. She's simply finished.

The fact that a successor to her Senate seat will be appointed under a Republican governor and will have the edge of incumbency in the next election surely must have crossed her mind, though, as well as the inescapable reality that with the Republicans in the minority again this session, she wouldn't be wielding any gavels in the last months of her term-limited legislative career.

Still, she exited gracefully with a subtle nod to partisan interests, a private party for her supporters and a firm commitment to personal priorities.

No news conferences with TV cameras trained on her face. No razzmatazz.

It was pure Norma, her ego in check.

Many times over the years, she has been on the short lists to run for the U.S. Congress, for governor or for other statewide offices. She never caught the fever.

"At one time I was thinking about secretary of state. I sat down with Donetta Davidson: We talked a little bit, and I just said, 'You do it, Donetta.' "

Being a state legislator was enough, she said, "I never had any desire to do anything else."

Not that it's been all bill-signing galas and warm accolades.

Anderson is known for her ability to irritate her fellow lawmakers, maybe especially those in her own party.

In the 1990s, when Colorado Republicans started leaning decidedly far to the right, Anderson remained a moderate—and a sometimes exasperating one at that.

In one memorable stand against the party juggernaut, she voted against a bill to outlaw same-sex marriage. In another, she opposed a bill to require students to say the Pledge of Allegiance in schools.

She wasn't being obstinate, she said, she just didn't believe the government should be messing around in people's personal lives or requiring people to repeat pledges. She'd done her homework, she said, and it didn't seem right.

She accepts credit for marshaling support for dozens of bills over the years, for establishing the state departments of transportation and human services, and for breaking untold barriers that kept women out of legislative leadership positions for decades.

There are a few episodes she doesn't recall fondly, however, and one of them was the infamous midnight gerrymander.

Anderson played a crucial role in slamming through the Republican redistricting scheme in the last three days of the 2003 legislative session, though she was clearly ambivalent about it.

Sure, her expertise with Senate rules and circumventing them was critical to passage of the last minute bills, and she presided over most of the chaotic sessions. But she was not happy about it.

In the midst of the nasty political uproar, she even declined to return a call from Bush adviser Karl Rove, who was either the mastermind of the ham-handed strategy or simply an interested observer, depending on whose spin you believe.

That may have been her proudest moment in the whole mess.

"It was pretty common knowledge that I had concerns," Anderson told me back then, "but I was elected to lead my caucus, and that's what I did."

Months later, when the state Supreme Court threw out the redistricting plan and the U.S. Supreme Court refused to hear the Republicans' appeal, she didn't join the party bigs in fulminating about judicial overreach and legislating from the bench. She kept quiet.

She respected the process. She believed in the democratic system. And if some folks think that's being stubbornly independent, she's OK with that.

In a lot of ways, that explains it all.

RECOGNIZING THE OUTSTANDING EFFORTS OF DR. MARTIN LUTHER KING, JR.

HON. C.A. DUTCH RUPPERSBERGER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. RUPPERSBERGER. Mr. Speaker, I rise today to commemorate the life and the contributions of Dr. Martin Luther King, Jr., and to mark the 77th anniversary of his birth on January 15, 1929.

History is indeed made up of significant events which shape our future and outstanding leaders who influence our destiny. Martin Luther King, Jr. has had numerous historic moments in the struggle for civil rights that have been used to identify him—prime mover of the Montgomery bus boycott, keynote speaker at the March on Washington, youngest Nobel Peace Prize laureate.

But in retrospect, Mr. Speaker the single events are less important than the fact that King, and his policy of nonviolent protest, was the dominant force in the civil rights movement during its decade of greatest achievement, from 1957 to 1968.

Born on January 15, 1929, a son was born to the Reverend and Mrs. Martin Luther King in an upstairs bedroom of 501 Auburn Avenue, in Atlanta, GA. The couple named their first son after Rev. King, but he was simply called "M.L." by the family.

Mr. Speaker, during the next 12 years, this fine two story Victorian home is where M.L. would live with his parents, grandparents, siblings, aunts, uncles, and their boarders. It was in these surroundings of home, church and neighborhood that M.L. experienced his childhood. Here, M.L. learned about family and Christian love, segregation in the days of "Jim Crow" laws, diligence and tolerance.

Mr. Speaker, Dr. Martin Luther King, Jr. was undoubtedly a vital figure of the modern era. His lectures and dialogues stirred the concern and sparked the conscience of a generation. The movements and marches he led brought significant changes in the fabric of American life through his courage and selfless devotion. His charismatic leadership inspired men and women, young and old, in this Nation and around the world.

Dr. King's concept of "somebodiness," which symbolized the celebration of human worth and the conquest of subjugation, gave African-Americans and all people hope and a sense of dignity.

The Martin Luther King, Jr. holiday celebrates the life and legacy of a man who

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

brought hope and healing to America. We commemorate as well the timeless values he taught us through his example—the values of courage, truth, justice, compassion, dignity, humility and service that so radiantly defined Dr. King's character and empowered his leadership. On this holiday, we commemorate the universal, unconditional love, forgiveness and nonviolence that empowered his revolutionary spirit.

Mr. Speaker, let there be no misunderstanding that the King holiday honors the life and contributions of America's greatest champion of racial justice and equality, the leader who not only dreamed of a color-blind society, but who also lead a movement that achieved historic reforms to help make it a reality.

It is a day of interracial and intercultural cooperation and sharing. No other day of the year brings so many peoples from different cultural backgrounds together in such a vibrant spirit of brother and sisterhood. Whether you are African-American, Hispanic or Native American, whether you are Caucasian or Asian-American, you are part of the great dream Martin Luther King, Jr. had for America. This is not just an African-American holiday; it is a peoples' holiday. And it is the young people of all races and religions who hold the keys to the fulfillment of his dream.

Mr. Speaker, I challenge all Americans by making your personal commitment to serve humanity with the vibrant spirit of unconditional love that was his greatest strength, and which empowered all of the great victories of his leadership.

May we who follow Martin now pledge to serve humanity, promote his teachings and carry forward his legacy into the 21st century.

We honor Dr. Martin Luther King, Jr. because he showed us the way to mend those broken fences and to move on in building this land rather than destroying it. He led campaign after campaign in the streets of America and on to the governor's mansion—even to the White House—in an effort to secure change.

Mr. Speaker, today African-Americans have Federal legislation which provides access and legal protection in the areas of public accommodations, housing, voting rights, schools, and transportation. Thank you, Dr. King for being the drum major who was able and ready to lead our Nation to greater heights through love and peace.

TRIBUTE TO ROBERT J. SAMUELS

HON. JIM DAVIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. DAVIS of Florida. Mr. Speaker, I rise in honor of Robert J. Samuels, this year's recipient of the Minority Health Leadership Award from the U.S. Department of Health and Human Services, Office of Public Health and Science, Office of Minority Health.

Following his own battle with cancer, Bob dedicated his life to helping others in the fight against prostate cancer. He quickly become a passionate and dedicated advocate for men's health not only in Florida, but nationwide, and his visionary leadership has produced significant advances in beating back prostate cancer.

Bob is the founding chairman of the Florida Prostate Cancer Network (FPCN) and the National Prostate Cancer Coalition, as well as an advisor on a host of other national committees and task forces that are working to promote cancer research and treatment. In Congress and the Florida Legislature Bob has been a strong voice for increased funds for cancer research. He played a critical role in the passage of the Florida Prostate Cancer Awareness Act and in the effort to secure a $1 million federal grant to establish a prostate cancer training and research institute at Florida Agricultural and Mechanical University.

Numerous organizations, including the Florida Legislature, Florida Department of Health, Hillsborough County, the City of Tampa and The Prostate Net, have honored Bob for his tireless efforts. On behalf of the Tampa Bay community, I would like to thank Bob for his commitment to helping those struggling with cancer and thank the Department of Health and Human Services for recognizing Bob's work.

HONORING MASTER SERGEANT SUSAN M. RAINONE UPON HER RETIREMENT

HON. LOIS CAPPS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mrs. CAPPS. Mr. Speaker, today I rise to pay tribute to MSgt Susan Rainone upon her retirement, and wish to thank her for her service to our country. Originally from Waukesha, Wisconsin, MSgt Susan M. Rainone enlisted in the United States Air Force in January of 1986. After graduating from Basic Military Training at Lackland AFB, she was sent to Chanute AFB, Illinois to attend the Airframe Repair Apprentice course.

In June 1986, A1C Rainone was assigned to the 6515th Field Maintenance Squadron at Edwards AFB, California. During her assignment at Edwards, she worked as an Airframe Repair Journeyman on a variety of airframes from the small A–37 to a much larger KC–135. In her second year in service, A1C Rainone competed and was selected for Senior Airmen Below the Zone, which allowed her to sew on the Senior Airman stripe six months early. In late 1988, she was promoted to the rank of Buck Sergeant and within the following six months she was notified of her selection to Staff Sergeant. In May, 1989 she completed the Training Systems Specialist course at Sheppard AFB, Texas and returned to Edwards AFB, to work in the Base Training office where she responsible for the training programs of the base. While at Edwards AFB, SSgt Rainone attended the Airman Leadership School and upon graduation was selected as a distinguished graduate, finishing in the top 10% of her class.

After being stationed at Edwards AFB for almost 9 years SSgt Rainone and was transferred to Osan Air Base in the Republic of South Korea. While at Osan, SSgt Rainone served as the Unit Training Manager for the 51st Transportation Squadron. During her tenure she nearly doubled the number of personnel enrolled in college courses. After her tour in Korea, SSgt Rainone was assigned to Davis-Monthan AFB, Arizona where she served as the Non-commissioned Officer in Charge of the Scheduling Element. Here she was responsible for scheduling and updating training for over 3,500 aircraft maintenance personnel.

In September 1998 SSgt Rainone was promoted to Technical Sergeant. She applied and was selected for the position of Training Manager for the United States Air Force Air Demonstration Squadron, "Thunderbirds." In April, 1999 TSgt Rainone relocated to Nellis AFB, Nevada where she was assigned as the Unit Safety Representative, a load team member responsible for 50,000 pounds of air show equipment. In October 1999, MSgt Rainone attended the Non-Commissioned Officer Academy and again graduated as a distinguished graduate. TSgt was promoted to the rank of Master Sergeant in December 2002.

MSgt Rainone was reassigned to Vandenberg AFB, California April 2003. She was assigned to the 392nd Training Squadron as the Superintendent, Space and Missile Operations Training Development responsible for managing courses supporting the combat readiness of the nation's Intercontinental Ballistic Missile force. While at Vandenberg, MSgt Rainone completed the Senior Non-Commissioned Officer Academy course by correspondence, earning the Academic Excellence Award by averaging 95% over five closed book exams. One year later, she was moved to Detachment 1, 345th Training Squadron, Naval Base Ventura County, where she is the Chief, Education and Training Programs and Course Manager for Vehicle and Equipment courses.

I wish to commend and thank MSgt Rainone for her leadership and dedication. She is truly a role model and deserves the many commendations and awards that she has received. I wish her a happy and relaxing retirement.

TRIBUTE TO MR. ROBERT "SONNY" SMITH

HON. MARILYN N. MUSGRAVE

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mrs. MUSGRAVE. Mr. Speaker, I rise today to honor Robert "Sonny" Smith who was recently inducted into the Babe Ruth Baseball Hall of Fame. Babe Ruth Baseball was started as a "grass roots" movement in the small, rural communities of Colorado. The town of Las Animas is no exception, and like most towns, the Babe Ruth program has flourished because of the efforts and actions of volunteers like Sonny who stepped up to the plate to serve others.

Sonny's involvement with Babe Ruth began around 1982. He was the District 2 Commissioner for 10 years and then became the Assistant State Commissioner for the 15 year-old Babe Ruth program. He has held that position from 1992 to the present time.

Sonny has not just been active in Babe Ruth in his community, but in other endeavors as well. He was the Las Animas Ball Association Vice President from 1978–1980. He served as a Las Animas City Councilman from 1982–1986 and was the chairman for the Parks and Swimming Pool committees. Sonny was a member of the Las Animas School Board from 1996–2000. He has been a member of the Bent County Recreation Committee from 1978 to the present time. He served on the St. Mary's Catholic Church Council from 1988–1992, and he has served as a football, baseball, softball, and basketball official from 1978 to the present time.

One of Sonny's most notable achievements was his work on the Ad-Hoc Committee for building the new baseball field in Las Animas from 1998–2004. This field has hosted many area tournaments, as well as the local Babe Ruth League games.

Where does this man get the energy to accomplish these feats? I believe it comes from a strong desire to see the young people in his community and around the state have an opportunity to participate and excel in the great game of baseball.

Sonny has been a very valuable member of the Colorado Babe Ruth League, Inc. management team. His good-natured attitude and "laid back" style have served him well when handling issues that come up at the various levels of tournament play. He has even worked on Babe Ruth Tournaments for the Midwest Region.

Because of Sonny's love for kids and his commitment to the Babe Ruth program, he has been welcomed into the Colorado Babe Ruth Hall of Fame, and I am proud to represent such a fine individual in the U.S. Congress. I ask my colleagues to join me in congratulating Robert "Sonny" Smith for his outstanding contributions to his community.

CONGRATULATING KEN STROM, RECIPIENT OF THE NATIONAL AUDUBON SOCIETY'S GOLDEN EGRET AWARD

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. UDALL of Colorado. Mr. Speaker, I rise today to acknowledge Ken Strom, who is this recipient of the National Audubon Society's Golden Egret Award.

Ken is the Director of Conservation and Public Policy for Audubon Colorado, a graduate of Cornell University, and a Viet Nam veteran.

Ken started his Audubon experience at Francis Beidler Forest in South Carolina. For 11 years Ken managed Audubon's Rowe Wildlife Sanctuary, a critical habitat for Whooping Cranes and Sandhill Cranes on the Platte River in Nebraska. Ken's efforts protected hundreds of thousands of these birds so that they could use the same feeding grounds as their predecessors.

Ken coordinated a series of international partnerships for over ten years in which he advised scientists and policy-makers in a number of countries including Russia and Pakistan, countries without a history of wildlife conservation. These unique partnerships allowed Ken to establish conservation strategies for water resources and wetland habitats. Due to his work with Mumtaz Malik in the Northwest Frontier of Pakistan, two protected areas for cranes today exist on branches of the Indus River. In Russia, he was part of team with Serge Smirenski, George Archibald and Noritaki Ishida that established the first private park on the Indus River.

In Colorado, Ken has helped to establish and monitor 53 Important Bird Areas (IBA). Given the state of wetlands in Colorado, this accomplishment stands out. Ken also directed Audubon's highly visible nationwide population and habitat program that engaged hundreds of leaders and 20,000 activists working on education and public advocacy. A result of this significant project, millions of Americans learned about the effects between human population growth and the environment.

Ken served as an instructor and director of Audubon's Ecology Camp in the Rockies, educating teachers, instructors and citizens. He inspired hundreds of people each year to become voices on behalf of conservation.

Ken is also an accomplished writer with a keen sense for describing nature. He is the co-editor with his wife, Pat Waak, of the book, "Sharing the Earth: Cross Cultural Perspectives on Population, Wildlife and the Environment." He is also the author of "Population and Habit in the New Millennium."

Ken Strom is effectively working to fight the good fight to protect and win important victories for wilderness, wetlands and other critical habitat areas. As Audubon honors Ken Strom with its highest award, I believe it is fitting for my colleagues to join me in acknowledging a lifetime of achievement in conservation.

TRIBUTE TO THE 376TH ENGINEER BATTALION OF HAMMOND, INDIANA

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. VISCLOSKY. Mr. Speaker, it is with great pride and respect that I take this opportunity to welcome home members of the 376th Engineer Battalion of Hammond, Indiana, and to honor them for their patriotism, their dedication, and their willingness to defend their country. These brave soldiers, known as the Men of Steel, recently returned to Northwest Indiana after completing several missions in Mosul, Iraq in support of Operation Enduring Freedom. The 376th honorably provided security during the recent Iraqi elections, took part in reconstruction efforts within Iraqi cities, provided humanitarian support to the people of Iraq, and courageously disposed of improvised explosive devices. The members of the 376th Engineer Battalion will be recognized at a homecoming ball in their honor, which will take place on January 21, 2006, at the Dynasty Banquet Hall in Hammond, Indiana.

The people of this entire nation, as well as the citizens of Iraq, can be proud of the sacrifice and courage of these fine individuals: CPT Sean Begley, PV2 Alexander Baker, SPC Christopher Bennett, PV1 Adam Branson, SPC David Croyle, PV1 Joseph Gibbs, SPC Jaime Hoch, SPC Muain Issa, SPC Tobey Johnson, SGT Nicholas Kowalczyk, SPC Ashley Sharp, SPC Terry Specyal, SGT Jose Tovalin, SPC Aaron Vance, SPC Michael Vician, SGT Travis Wheatley, SFC William Johnson, SPC Luke Abbott, SPC Daniel Wiley, SPC Joseph Veyette, SPC Enrique Uribe, SSG Mark Tegtman, SPC William Sideris, SPC Aaron Santonelli, SPC Carlos Reyes, SPC Brian Panzik, SGT Donald Mull, PFC William Mills, SPC Angel Lozano, SPC Timothy Bishop, PFC Christopher Boger, SPC Steven Bramer, PV2 David Kuzmar, SPC Jason Loebbaka, SPC Thomas Martinez, PFC Brandon McCormick, SGT David Moake, SSG Stephen Otten, SGT Gershom Parr, SFC Melvin Pennington, SPC Daniel Rubalcava, SPC Vincent Lenart, SPC Allen Hughes, SGT Robert Jaso, SPC Matthew Gabrano, SGT Ryan Bood, SPC Jonathan Bright, SPC Corrie Covelli, SPC Ryan Eder, SGT Michael Guz, SGT Brian Brandenburg, SPC Joshua Buikema, SPC Jonathan Cuevas, SSG Thomas Kopanda, SPC Paul Gordon, SSG Matthew Hamater, PFC Michael Brunsman, and SPC Michael Coughlin.

Mr. Speaker, at this time I ask that you and my other distinguished colleagues join me in honoring the members of the 376th Engineer Battalion, the Men of Steel, for their dedication and courage in support of Operation Enduring Freedom. They will forever remain heroes in the eyes of their families, their communities, and their country. Let us welcome them home and thank them for their commitment to preserve the ideals of freedom and democracy.

HONORING JAN BORMAN'S COMMITMENT TO THE LABOR MOVEMENT

HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. HIGGINS. Mr. Speaker, today I rise to honor the exemplary service that Jan Borman provided for the labor community of western New York.

Jan began her career in the labor force in 1966 as an operator at New York Telephone. She was active as a job steward and then chief steward as a frame tech at the Hertel Central office in Buffalo, NY.

In 1986 Jan was elected area vice president of the Communication Worker's of America, CWA, Local 1122 where she represented New York Telephone, Visiting Nursing Association and Jewish Family Services employees.

As CWA area vice president, Jan extended herself and her talents to several worthy community organizations including: The United Way, Citizens Action, AFL–CIO and the Monsignor Healy Foundation. In 1994 Jan was elected to the Board of Directors of the United Way and was also active on the boards of the Work Force Development Committee, and Independent Health of western New York.

Jan's involvement in organized labor flourished, and she served in several leadership capacities. In 2000, Jan was the first woman ever to be elected as executive vice president of CWA Local 1122. Jan demonstrated her commitment to labor and earned the trust of her fellow members and in 2003 Jan Borman became the first woman President of CWA Local 1122.

Most recently Jan was elected as recording secretary for the Buffalo Council AFL–CIO CLC where she demonstrated her commitment to the organized labor movement.

Jan will be remembered for her dedication and pursuit of just labor causes. Her service enriched the lives of so many men and women who live and work in the western New York area.

Mr. Speaker, I am proud to have worked with Jan Borman. She served CWA Local 1122 proudly and with strong conviction. I would like to thank Jan for her service to our community and wish her well in all of her future endeavors.

HONORING THE 50TH ANNIVERSARY OF THE HONORABLE JOHN D. DINGELL'S SERVICE IN THE HOUSE OF REPRESENTATIVES

HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Ms. DELAURO. Mr. Speaker, I rise to join my colleagues to honor the dean of the House—a man who over the course of a half century has changed the face of this institution. Over the course of 25 Congresses, serving under 10 Presidents, JOHN DINGELL has embodied the best of public service—of honoring those who elect us to office and fulfilling our obligations to people. His is an ideal each of us, in our own way, hopes to achieve in our time as Members of this institution.

Like his father before him, JOHN DINGELL has made a mark on every Member with whom he has served. He is shrewd, he is tough, and he is as skilled as any public official I have ever known. Indeed, when I was elected to the Congress, one of my first orders of business was to meet with JOHN DINGELL—not to say anything, but to listen. And I will never forget what he told me that day: "Assist your colleagues when you can—but if they ask for something you can't deliver, just be honest and tell them. Always maintain credibility with your colleagues." For 15 years, that advice has stayed with me, helping me serve my constituents and the American people more effectively.

In whatever capacity he has served his country—from his 4 years as a page in this institution as a boy, to his time in the Army when he rose to the ranks of second lieutenant to his half-century in Congress—JOHN DINGELL has served with dignity, with distinction and with historic consequences.

TRIBUTE TO SPECIALIST ERIC McGONIGLE

HON. BILL SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. SHUSTER. Mr. Speaker, I rise today to honor Specialist Eric McGonigle of the United States Army. Specialist McGonigle was on active duty in Iraq for 3 years, serving in Kuwait, Camp Spearhead, and Operation Iraqi Freedom from April 2003 to April 2004. Not only has Specialist McGonigle served his country abroad, he has protected his community serving as a firefighter for the Duncansville Volunteer Fire Department for the past 5 years.

While serving in Iraq, Specialist McGonigle worked as a truck driver and ran convoys for the Army. He acknowledged the appreciation of the people of Iraq for our continued help. McGonigle continues to serve our country as a member of the Army Reserves in the E–4 332nd Engineering Company of Kittanning, PA.

Now back home in Duncansville, PA, Specialist McGonigle is dedicated to his family and his community. He has been a truck engineer for the Duncansville Fire Department for the past 2 years. His fellow firefighters regard him as a community-oriented man, helping the people around him as much as possible.

Prior to volunteering at the Duncansville Fire Department, Specialist McGonigle volunteered with the Cresson Fire Department. His current fire department chief, Dave Boland, remembers meeting him as a young member of the Cresson Fire Department and hearing what an asset he was to the department. Chief Boland was pleasantly surprised when he moved to Duncansville and began volunteering at the Duncansville Fire Department.

Mr. Speaker, Specialist McGonigle has dedicated much of his life to serving his country and his community, and the citizens of Duncansville and I would like to thank him for his courage and devotion.

TRIBUTE TO ALI SAHABI

HON. KEN CALVERT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. CALVERT. Mr. Speaker, I rise today to recognize and honor Ali Sahabi for his dedication and commitment to improving the community of Corona, California. The Corona Chamber of Commerce honored Ali by presenting him with its 2005 "Citizen of the Year" award on January 14, 2006.

Ali is currently the President of SE Corporation, a privately held, California-based land planning, entitlement, and development firm. For nearly 18 years, Ali Sahabi has been an active member of our community, devoting a tremendous amount of time and effort to causes greater than his own.

After spending much of his youth in a middle class family in the country of Iran, Ali was sent to Michigan to live with an uncle and aunt at the age of thirteen. After graduating high school, Ali and his brother drove to California, where they lived in a small apartment with their grandmother and another uncle.

In California, the two brothers worked at a variety of odd jobs and Ali, always the entrepreneur, began trying his hand at different kinds of small business opportunities including sales. He became a print broker and opened his own printing business in downtown Los Angeles. Ali finished his bachelor's degree in business management at Pepperdine University, which he had been working on in the evening, and sold the print shop. Later, Ali obtained his Master of Real Estate Development degree from the School of Urban Planning and Development at the University of Southern California.

Throughout his career, Ali has undertaken a number of development projects across Southern California including industrial, multi-family residential and commercial retail projects. He has been instrumental in implementing innovative planning solutions and environmentally sensitive development plans for the Dos Lagos mixed use development in southwest Riverside County, making it a true model for sustainable development.

Ali is an active and leading proponent of local and regional collaboration and the stewardship of natural resources, establishing and endowing the Blakeley Center for Suburban Sustainable Development at UC Riverside. Through his vision and tireless efforts the Center has contributed to forming alliances across jurisdictional lines bringing individuals, local governments and communities together to address major issues that represent significant challenges for entire regions and communities.

Locally, Ali somehow finds time to play a significant role in a number of non-profit and community-based organizations. He serves notably on the Board of Directors of the Children's Spine Foundation and the Corona Regional Medical Center Foundation, Governor's Mentoring Program, and is active with the American Cancer Society, YMCA, At Risk Children's Angels, Boy Scouts, and ICUC among others.

I want to express my appreciation for Ali's tireless efforts on behalf of our entire community and congratulate him on receiving this award.

TRIBUTE TO DEPARTMENT OF ENERGY EMPLOYEES FOR WORK IN CLEANING UP ROCKY FLATS

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. UDALL of Colorado. Mr. Speaker, I rise today to acknowledge and praise the extraordinary efforts of so many Department of Energy, DOE, employees in the successful cleanup and closure of the Rocky Flats Nuclear Weapons Facility in Colorado.

Last year, the DOE began the process of certifying the completion of Kaiser-Hill Corporation's cleanup of the Rocky Flats facility. This certification marks the end of an era in our Nation's history. The story of Rocky Flats includes two different chapters that describe human achievement and technological prowess—not only the buildup of our nuclear arsenal during the tense days of the Cold War but also the completion of a remarkably complicated environmental restoration program that is a model for the world.

I believe that the men and women who worked to write both of these chapters in the Rocky Flats story deserve our admiration and appreciation. All involved deserve recognition as heroes of the Cold War era and also heroes in the new era of environmental protection. That includes Federal officials and employees of the Environmental Protection Agency, the Defense Nuclear Facilities Safety Board and DOE, as well as officials and employees of Colorado's Department of Health and Environmental Protection and the private-sector employees of DOE's contractors.

In December 2005, Kaiser-Hill rightly sponsored a community event that celebrated these achievements. Invitations went to employees of DOE as well as others, but the DOE Office of General Counsel insisted that DOE employees be charged more than other Federal employees to attend this celebration. I objected to this decision because it did not apply to high-ranking DOE officials who had speaking roles at the event, and struck me as an unduly restrictive interpretation of Federal ethical guidelines that sounded a sour note in an otherwise happy occasion. I felt so strongly about it that I decided against attending the event as a message of solidarity with DOE employees.

In part to reinforce my admiration and respect for the hard work of so many DOE employees at Rocky Flats, and to ensure that this body fully acknowledges their contributions to our national security and our environment, I will place in the RECORD the names of DOE employees who deserve our thanks and an acknowledgement of the service they gave in turning Rocky Flats into a success story:

Jeff Allison, Charlie Anderson, Mariane Anderson, Tod Anderson, Robert Birk, Robert Bistline, Ron Bostic, Gerald Boyd, Ken Brakken, Lisa Bressler, Patti Bubar, Roger Butler, George Cannode, Kathleen Carlson, William Casey, Norma Castaneda, Jack Craig, Hank Dalton, Charlie Dan, Gina Dan, Ann Davis, Paul Detwiler, Glenn Doyle, Patrick Etchart, Jim Fiore, Cliff Franklin, Mark Frei, David Garman, Christine Gelles, Dave George, Fred Gerdeman, Mark Gilbertson, Paul Golan, Robert Goldsmith, Dave Grosek, Kent Grover, Tom Grumbley, James Hartman, Art Haugh, Larry Helmerick, Dave Hicks, Richard Hopf, Rod Hoffman, Gary Huffman, Carolyn Huntoon, Brent Johansen, Elizabeth Jordan, Jeremy Karpatkin, Keith Klein, Joe Legare, Gary Lietz, Ellen Livingston, Frazer Lockhart, Paul Longsworth, Tom Lukow, Karen Lutz, Mary Lynch, Larry Maghrak, Barbara Male, Barbara Mazurowski, Matt McCormick, Steve McCracken, Deanna McCranie, Anna Martinez-Barnish, Greg Moore, Gary Morgan, John Mullarkey, Theresa Nash, Robert Nelson, Ricky Newton, Dennis Oba, Shirley Olinger, Mike Owen, Jim Owendoff, Jeff Parkin, Ray Plieness, Lloyd Piper, Jane Powell, Barbara Powers-Hargreaves, Michael Hargreaves, Richard B. Provencher, William Prymak, Don Rack, John Rampe, William C. Rask, Brad Ring, Jessie Roberson, Mell Roy, Norm Sandlin, Dero Sargent, Rich Schassburger, Roy Schepens, Lance Schlag, Gene Schmitt, John Schneider, Gary Schuetz, Clay Sell, Beth Sellers, Warren Seyfert, Frank Sheppard, Mark Silverman, Dave Simonson, Steve Sohinki, Joe Springer, Jim Steward, John Stover, Scott Surovchak, Maryanne Tinney, Ines Triay, Reginald Tyler, Phil VanLoan, David Vaughn, Patty Wagner, Bruce Wallin, Bob Warther, Kerry Watson, Mike Weis, Ed Westbrook, Dotti Whitt, Elizabeth Wilson and Lam Xuan.

TRIBUTE TO SSG KEITH A. BENNETT

HON. C.A. DUTCH RUPPERSBERGER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. RUPPERSBERGER. Mr. Speaker, I rise before you today to pay tribute to SSG Keith A. Bennett who faithfully served his country by fighting the war on terror.

He joined the National Guard in February 1997. He was a loyal soldier determined to serve our great Nation. During his time with the Guard, Sergeant Bennett traveled to Saudi Arabia. There, he was a military escort for less than a year.

Bennett, a member of the Second Brigade Combat Team, 28th Infantry Division, was killed by a suicide bomber. While standing guard at a checkpoint which protects a facility where United States Marines train Iraqis to be police officers, an insurgent detonated the explosives leading to Bennett's death.

Sergeant Bennett is survived by his father, Harry E. Bennett of Aberdeen, MD, his mother and stepfather, Carolyn Hasson and Thomas Miller of Holtwood, PA, his sister, Tina Daley, and his stepbrother, Tommy Miller, Jr. His family remembers him as a devoted soldier, son, and brother with a flare for adventure and loving to spend time riding his motorcycle and cruising in his 2003 black Mustang Cobra.

Mr. Speaker, I ask that you join with me today to honor SSG Keith A. Bennett for the dedication he has shown to his family, his friends, and the American people.

TRIBUTE TO BERNARD B. "SKIP" GARCIA

HON. JIM DAVIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. DAVIS of Florida. Mr. Speaker, I rise in honor of Bernard B. "Skip" Garcia, a legend in Tampa's political circles, an asset to any Tampa politician who ran for office and a staple in the Tampa community.

Skippy helped good people win elections the right way—by knocking on doors, talking to friends and shaking hands. Skippy's energy was boundless. He knew just about everyone in Tampa and they all knew how much he cared for his community. So when Skippy would call, people would listen. For someone who is trying to reach out to voters, that kind of help was essential.

When Skippy wasn't helping win elections, he was always at work for our community. He served in the Merchant Marines during World War II and went on to work as a Hillsborough sheriff's deputy and deputy state fire marshal. Skippy supported the West Tampa Little League, the Boys and Girls Clubs, St. Joseph's Catholic School and Church and the Salesian Sisters, and he was an active Shriner, member of the Scottish Rite and a 32nd degree Mason.

Tampa won't be the same without Skippy. On behalf of the entire Tampa community, I would like to extend my deepest sympathies to his family.

HONORING BOB BASON UPON HIS RETIREMENT

HON. LOIS CAPPS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mrs. CAPPS. Mr. Speaker, today I rise to pay tribute to Bob Bason on the occasion of his retirement after 35 years as fundraiser and capital campaign consultant to charities and nonprofits throughout the United States. He is truly an asset to our local community and his work has touched the hearts of people worldwide.

Mr. Bason has spent his life ministering to those in need in a variety of ways. Born in Wisconsin, Bob earned a bachelors and masters in Theology from Fuller Theological Seminary in Pasadena and was ordained in the Methodist Church. In 1967, Mr. Bason left the active ministry to become executive director of an organization working with the church in South and East Africa.

In 1969, Bob, his wife Carol, and their two daughters moved to Santa Barbara—a move they consider to the best decision of their lives. Here, Bob's ministry in the philanthropic community began. He became assistant Director of Development at Westmont College in 1969, Director of Development at the University of California, Santa Barbara in 1972, and Director of Development at the Sansum Diabetes Research Institute in 1974. Also in 1974, Mr. Bason established Charitable Funding Services, Inc., a consulting firm specializing in capital campaigns. In the middle of his consulting career, Mr. Bason joined UCSB as assistant Chancellor for University Relations from 1980 to 1985 and served as the Senior Vice President for Development and Marketing at the Planned Parenthood Federation of America in New York City from 1993 to 1995.

Mr. Bason has conducted more than 130 capital campaigns, raising nearly $1 billion, an accomplishment he attributes to the volunteers with whom he worked. His clients have included universities, colleges, hospitals and medical research institutions, museums, zoos, botanical gardens, churches, private schools and countless social service agencies. Highlights of his consulting career include one of the first national campaigns to end child abuse and a $50 million campaign for the first Africa food crisis.

Bob has volunteered with numerous charities in California and throughout the U.S. With a life-long passion for the work of Planned Parenthood, he is particularly proud of his years as a Planned Parenthood volunteer where he conducted fundraising seminars and trainings for more than 100 Planned Parenthood affiliates across the country and his 15 years as a board member for the local Planned Parenthood and Planned Parenthood Federation of America.

I commend Mr. Bason's gift of talent, passion, and devotion to charitable organizations helping our most needy citizens. His work has been instrumental in making dreams come true and miracles happen. I feel deeply honored to share this community with Bob Bason and I have seen first hand the difference his work has made in the lives of so many. I wish him much happiness and much deserved relaxation in retirement.

HONORING MR. SCOTT DOYLE

HON. MARILYN N. MUSGRAVE

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mrs. MUSGRAVE. Mr. Speaker, I rise today to honor an exceptional public servant, Mr. Scott Doyle of Fort Collins, Colorado. Throughout his tenure as Larimer County's Clerk and Recorder, Mr. Doyle has distinguished himself as an innovator and a natural leader.

Mr. Doyle was recently named the 2005 Public Official of the Year by the National Association of County Recorders, Election Officials, and Clerks. This award honors an individual who has made exceptional contributions to both his profession and community.

Two of Mr. Doyle's initiatives as County Clerk and Recorder have received particular recognition. In an effort to provide Larimer County residents more convenient access to county services, Mr. Doyle created the Citizen Information Center. The Citizen Information Center is located on the first floor of the county courthouse and provides a one-stop-shop for many county services. Furthermore, Mr. Doyle spearheaded the development and implementation of Larimer County's innovative Vote Center concept. This concept has earned national recognition as a cost effective way of implementing the goals and requirements of the Help America Vote Act.

During Mr. Doyle's remarkable career, his commitment to public service has been unmistakable. While serving our country in the Navy, Mr. Doyle worked on nuclear submarines and for Naval Intelligence in Washington, DC. He has also served as a Wyoming State Patrol officer, Public Information Officer for the Wyoming Air and Water Quality Division, and Hazardous Waste Manager for the Larimer County Department of Natural Resources.

Mr. Speaker, I applaud Larimer County Clerk and Recorder Scott Doyle's dedication to his community and urge my colleagues to join me in recognizing Mr. Doyle's unrivaled commitment to public service.

TRIBUTE TO TINA ARAPKILES

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. UDALL of Colorado. Mr. Speaker, I rise today to acknowledge a dear friend and a good citizen, Ms. Tina Arapkiles. Tina recently "retired" from the Rocky Mountain Regional office of Sierra Club to spend more time with her family and other pursuits. I have known Tina for many years and have the highest regard for her work on behalf of conservation and the environment.

Tina's reputation for gentle, but persuasive, advocacy is well known in Colorado and I think it is fair to say that she has admirers from across the broad spectrum of public opinion, and not just from within the environmental community. Certainly, her reputation with members of the Colorado Congressional Delegation (past and present) from both parties has been above reproach.

Advocacy in the public arena is all too often characterized by angry debate and an unhealthy appetite for making villains out of those with whom one disagrees. This has never been Tina's way, and it is much to her credit that she leaves her service at the Sierra Club with a well-deserved reputation for thoughtfulness and respect for others. Her example of quiet, but determined and passionate advocacy, is one I greatly admire.

For the last 20 years, she has been a consistent advocate for protecting the West's land, air, water, and wildlife. She began her work on these matters with a lobbying trip to Washington to help pass the Superfund law in 1985. In 1989 and 1990, she worked with Congress to revise the Clean Water Act and Clean Air Act. She has worked to protect the Arctic National Wildlife Refuge since the inception of the campaign and has been a staunch supporter of Utah wilderness.

She also helped pass the California Desert Protection Act and the Colorado Wilderness Act of 1993. In fact, Tina, some say, single-handedly gained protections for the Wheeler Peak area. She also worked to designate Colorado's first Wild and Scenic River—the Cache la Poudre along Colorado's northern Front Range just north and east of Rocky Mountain National Park.

Because of her work on environmental issues and her reputation for thoughtful advocacy, Tina was invited to be a member of the Denver Post's Community Roundtable in 1995 to discuss international trade issues. She was also appointed in 1992 to the Board of Editorial Contributors for the Rocky Mountain News to offer regular perspectives on environmental policy.

In January of 2000, Tina directed the Southern Rockies Wolf Restoration Project, a coalition of groups and individuals that played a strong role in the Colorado Wolf Working Group, which pushed the State to allow wolves to roam freely throughout the State. Her essay on wolves and camping with her family appears in the recently published collection Comeback Wolves.

She highlights working with Sierra Club volunteers as one of the best memories of her job, as well as attending the signing of the Colorado Wilderness Act of 1993 in Colorado by President Clinton.

In addition to her work in the public arena, Tina has perhaps the more important distinction of successfully raising two children. For anyone who knows Tina, it is clear that her passion for the natural world is directly related to her interest in humanity. She cares deeply about Mother Earth, not because trees are more important than people, but because people need trees and all the other wonders of the natural world in order to be fully human.

Although she is leaving a distinguished career of service on behalf of the environment, and will be missed at the Colorado State capitol and in the halls of Congress, I know she will continue to be active in all the causes that she believes in, and I ask my colleagues to join me in wishing her the very best in her future endeavors.

TRIBUTE TO MR. JAMES REYOME

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. VISCLOSKY. Mr. Speaker, it is with great honor that I congratulate Mr. James Reyome on his retirement as Public Works Director for the Town of Griffith. James has spent over 40 years of his life dedicated to the interests of the residents of Griffith, Indiana. His career in public service has allowed him the opportunity to touch the lives of numerous people.

James has accomplished many visionary goals throughout his career. He started his career with the Griffith Police Department in 1962, where he worked until 1983, spending the last 7 years as Chief of Police. James also worked security at LTV Steel. He then became Lake County Police Chief under then Sheriff Bob Stiglich. In 1997, he was named Town of Griffith Public Works Director, a position his father held for 20 years. However, shortly before assuming the position of Public Works Director, James had a major stroke, followed by 2 milder strokes in 2002 and August 2005, which caused him to speed up his retirement plans.

James's family and friends should be proud of his efforts, as his leadership has served as a beacon of hope throughout the community. His longstanding commitment to improving the quality of life for the citizens in Griffith, Indiana is truly inspirational and should be commended. Our community has certainly been rewarded by the true service, uncompromising dedication, and loyalty displayed by Mr. Reyome.

While James has dedicated a considerable amount of time and energy to his community, he has never limited the time he gives to his most important interest: his family. James and his wife, Anna, have 3 children, 2 grandchildren, and 2 great-grandchildren.

Mr. Speaker, I respectfully ask that you and my other distinguished colleagues join me in congratulating Mr. James Reyome for his outstanding devotion to Indiana's First Congressional District. His unselfish, lifelong dedication to those in need is worthy of the highest commendation, and I am proud to represent him in Congress.

HONORING MARY UBER FOR HER SUCCESSES

HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. HIGGINS. Mr. Speaker, I rise today to honor Mary Uber for her success in overcoming disabilities to become a high quality worker. Please insert the following article from the Jamestown Post Journal of December 18, 2005 into the RECORD.

STATE AGENCY NAMES JAMESTOWN WOMAN "OUTSTANDING PERFORMER"

Mary Uber of Jamestown recently was honored by the state as an "Outstanding Performer" for her success in overcoming disabilities to become a high-quality worker.

Ms. Uber was recognized by New York State Industries for the Disabled as part of its annual program to acknowledge exceptional job performance and personal success by people with disabilities employed on NYSID contracts. She has a job through The Resource Center's Environmental Services division, which employs people with disabilities in janitorial jobs throughout Chautauqua and Cattaraugus counties. Some of its cleaning contracts come to The Resource Center through NYSID.

Ms. Uber has overcome disabilities and a history of short-term job experiences to become a successful member of the Environmental Services team. While lacking in self-assurance at first, Ms. Uber, who now is in her fifth year as a custodian, proved that she had a desire to work and was willing to try any job assigned to her. She has grown tremendously in terms of personal maturity and her ability on the job.

Due to hard work and personal growth, Ms. Uber was promoted to the position of leader of a three-person crew that cleans the Western New York Developmental Disabilities Services Office in Little Valley. As the lead member of the crew, she is responsible for seeing that all cleaning tasks are completed and supplies are on hand. She must also communicate with the customer as well as her supervisor, who says of Ms. Uber, "She takes charge, thinks on her feet and can lead others."

With the Resource Center's assistance, Ms. Uber has obtained her driver's license, so she now can transport her crew members and cleaning supplies to Little Valley, and she also is able to work extra cleaning jobs at some of Environmental Services' other contract sites.

The Resource Center honored Ms. Uber as part of its observance of October as National Disability Employment Awareness Month.

Ms. Uber has overcome many odds to set herself apart and achieve great things, that is why, Mr. Speaker, I rise to honor her today.

THE PENSION PROTECTION ACT OF 2005

HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Ms. DELAURO. Mr. Speaker, pension plans are today underfunded in this country by $450 billion—up over 1,000 percent since 2000—and the agency that insures these pension plans, the Pension Benefit Guaranty Corporation, is $23 billion in debt, facing billions more in possible claims from companies such as Delta Airlines, Delphi, and Northwest Airlines.

Why? Well, my colleagues on the other side of the aisle give the same excuse every time: September 11. We are at war. Times are tough. But during that same time, corporate profits have risen an astonishing 50 percent and CEO compensation has grown even faster. Indeed, USA Today reports that 300 executives responsible for more than three-quarters of a trillion dollars in corporate losses since 2000 were rewarded with salary, bonuses and stock options totaling a staggering $12 billion—$8 million per year.

Times are not so tough for them—and little wonder. As a confidential letter sent to the SEC shows, CEO compensation at many publicly traded companies bears no relation to company performance. But as we all know, pensions do.

And when we talk about pensions and why reform is so badly needed, we should remember who it is that depend on them most—we are talking about people who have worked all their lives and are looking to enjoy their later years with some measure of financial security. Most of the 34 million Americans who are covered by a traditional pension that provides a guaranteed monthly benefit in retirement are not young adults starting out, with their whole careers in front of them—people who can change course at a moment's notice. These are very often seniors, people who have raised families; again, people who have worked their entire lives and paid not only their taxes but their dues to society with the expectation that what they have invested will be returned to them. The least we can do as their elected representatives is tell them that we will ensure that the Government does its part to guarantee that their employers will honor their end of this bargain.

That should be the bedrock principle on which this legislation is predicated, but it is not. H.R. 2830 fails to protect older and longer-service workers that are involved in cash balance pension plan conversions. It does not prevent employers from giving the same conflicted financial advice to their workers that gave us Enron and WorldCom. And perhaps most disturbingly, it fails to stop companies from dumping billions of dollars of unfunded pension obligations onto the PBGC by declaring bankruptcy at the expense of taxpayers and employees.

And let's be clear, that is very much by design. The goal of this Republican majority from the beginning with pension reform these last few years has been the same—relieving companies from their obligations to employees, providing an out to the point where we would have no choice but to switch from a strong pension system to one that leaves retirees in a much more tentative, less secure financial state. And with Republicans in charge these last 4 years, we have almost reached that point—but not quite yet.

But this is not the direction we want to take as a country. And so, I urge my colleagues to make a statement with this vote that says companies do have obligations their workers—that says reforming our pension system is possible but only if we ask employees and employers alike to share in the benefits and the sacrifice. We can do better than this bill and I urge my colleagues to oppose it.

TRIBUTE TO CPT MICHAEL GONSMAN

HON. BILL SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. SHUSTER. Mr. Speaker, I rise today to honor CPT Michael Gonsman of the Pennsylvania Army National Guard. Captain Gonsman of Altoona, PA, served in Beiji, Iraq for 11 months. In addition to serving our country on the streets of Iraq, Captain Gonsman serves his home community as a member of the Duncansville Volunteer Fire Department.

Captain Gonsman has dedicated 19 years to the fire department, serving as a truck foreman and a line officer. His fellow firefighters were like family to him, and while it was difficult for him to leave them and his wife and three children, he courageously moved forward to serve his country.

His fellow firefighters have said that he has always been dedicated to serving his country, and he has done just that. Captain Gonsman, who served as company commander, bravely led his soldiers to help the people of Iraq. He loved serving, and felt that the local people appreciated their presence.

Mr. Speaker, Captain Gonsman's fire department chief regarded him as a person who worked to better himself while helping others, and was willing to do anything he can for people in need. Through his service in Iraq and on the Duncansville Volunteer Fire Department, he has proven that he is still that way today. The citizens of Duncansville and I would like to thank Captain Gonsman for his service and dedication to his country and community.

TRIBUTE TO RADM MICHAEL G. MATHIS

HON. KEN CALVERT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. CALVERT. Mr. Speaker, I rise today to recognize and honor Rear Admiral Michael G. Mathis, United States Navy, for his more than 30 years of active duty service to our country. Admiral Mathis most recently served as the deputy commander for Test and Evaluation at the Naval Sea Systems Command and he retired on January 26, 2006.

For over two decades, Admiral Mathis shaped the Navy's strategic planning of surface ship combat systems, from electronic warfare and tactical data systems to advanced radars and several generations of surface-to-air missiles. He is the rare combination of leadership at sea, exceptional engineering and scientific accomplishments, and success as a program executive and program manager. Serving tirelessly as a Navy and Joint leader, including as the Assistant Secretary of the Navy, Chief Engineer, Admiral Mathis kept the spotlight on the RDT&E required to meet the Department of Defense's current and future needs.

In his many years as the leader of the Surface Navy's acquisition professionals, as well as the Navy's senior expert in advanced and future weapons systems, Admiral Mathis instilled pride in generations of naval officers and civilian engineers. A strong proponent of technical proficiency in naval officers, he promoted the Navy's advanced science and engineering degree programs for junior officers.

Admiral Mathis's inspirational leadership and management of the 22,000 men and women of the Naval Surface Warfare Systems Command during wartime has directly contributed to the tremendous record of success in Operation Enduring Freedom and Operation Iraqi Freedom, including the fielding of thermobaric weapons and innovative Force Protection advances developed in his warfare center laboratories. He put the weapons and tools in the hands of the warfighters when they were needed. Most recently, his talents and dedication to our warfighters were further put to use by our country as he served in the Joint Staff as Deputy Director, J–8 for Force Protection.

Throughout his career, the Navy's leadership selected Admiral Mathis for a series of key positions to mold the technical direction of the Navy's Theatre Missile Defense program. His foresight, vision, and management decisions led to the development and continuing success of missile defense programs vital to our Nation's defense. Key among his assignments was as the Director, Joint Theater Air and Missile Defense Organization, where he was responsible to the Chairman and Secretary of Defense for evaluating systems and emerging technologies to determine the optimum mix of surveillance, fire control systems, and the associated battle management system to counter aircraft, cruise missile and ballistic missile threats to our Nation.

More than just a leader providing the technical punch for the global war on terror, Admiral Mathis has focused on maintaining our Nation's technological edge in future weapons systems. He is the senior advocate and leader for the RDT&E in laser and directed energy weapons, inspiring industry and government engineers to solve engineering challenges and ensuring our next generation of warfighters has the weapons needed to win. He has championed the need for battle force, joint, and coalition interoperability and warfighting capabilities, serving as the Single Integrated Air Picture System Engineer for the Chairman, JCS, and Commander, Joint Forces Command. He also led the development of the Joint Integrated Air and Missile Defense roadmap, and to identify joint solutions to surveillance and command and control challenges.

As the Joint Staff lead for Interagency Homeland Air Security issues, Admiral Mathis most recently worked in close cooperation with USNORTHCOM, NORAD, the Services, Federal Aviation Administration, Department of Homeland Security, and the Office of Homeland Security.

On behalf of a grateful nation, I want to express my appreciation for his dedicated service and I wish him well in his retirement from the Navy.

TRIBUTE TO RON NEELY

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. UDALL of Colorado. Mr. Speaker, I rise today to pay tribute to Mr. Ronald Neely. Ron passed away in January. He was a passionate and effective leader of historic preservation and community betterment in Georgetown, Colorado, an historic mining town nestled in the Clear Creek Valley along Interstate 70 just east of the Continental Divide.

Ron established a distinguished career in Georgetown on a number of projects, and was known throughout the state as a champion of preserving local history. His accomplishments were recently acknowledged through his selection as the recipient of three simultaneous awards in Colorado: the Stephen H. Hart Award from the Colorado Historical Society, the Dana Crawford Award for Excellence from Colorado Preservation, Inc., and the President's Award from the National Trust for Historic Preservation. No one has ever received all three awards before, which underscores his influence for enhancing community quality of life and historic appreciation, not only in Georgetown, but throughout Colorado and the nation.

Much can be said of Ron and how he affected the lives of many people. Perhaps the best synopsis comes from The Denver Post columnist Joanne Ditmer. In a column appearing in The Denver Post in late November, she wrote:

> Counting our Thanksgiving blessings usually is a litany of material things, as well as family and friends who enrich our lives. But this year I'm giving thanks for the people who have vision, commitment and practical know-how to make our communities the best possible places to live.
>
> A sterling example is Ron Neely of Georgetown, who for 35 years has had one goal: to keep that splendid old Victorian mining town as a wonderful place to live and visit. He's a historic preservationist, not just for saving beautiful old buildings, but for preserving and nurturing the unique man-built qualities that make his town one of the most attractive and healthy in the state.
>
> I can think of no other individual who has made such an impact on the looks and spirit of this historic community. He is a visionary, hard-headed and practical, with financial savvy. All over Colorado, those with similar interests see Georgetown as the example of how to get it right, despite some really tough battles along the way.

I agree with these reflections on Ron and his work.

In 1966, Georgetown was named a National Historic Landmark District, among the first designated by Congress. Shortly thereafter, Ron founded and became executive director of Historic Georgetown Inc. (HGI) in 1970. The next year, HGI bought the 1867 Hammil House and converted it into a museum, which showcases how wealthy mine owners and others lived in the harsh environment of the west at the turn of the century. From there, Ron and others went on to purchase and protect a number of historic structures throughout the town.

In addition, Ron helped lead an effort to stop the building of a condominium complex on a mountain above the town. Following that success in 1982, Ron and HGI helped to buy the land on which the development would have occurred in order to keep it as open space. Presently, HGI has secured 2,000 acres of open space on the mountainsides towering above the town. This will not only preserve the historic feel of the area, but it also will protect some of the old mining artifacts and workings on these open spaces.

In 1995, Ron worked with HGI to purchase an old filling station right of the interstate. His vision was to turn this into a Gateway Visitors Center to create an inviting first impression for visitors to Georgetown. Together with HGI and the Colorado Department of Transportation, Ron's vision became a reality when this facility was opened in 2003. Now, the Center sees 300,000 visitors annually.

I had the pleasure of knowing and working with Ron. He continued to work steadfastly on projects and efforts to preserve, protect and enhance the Georgetown community. The town will reap the benefits of his work for years to come. I also had the chance to thank him personally at the ceremony early this year where he received the three awards.

Mr. Speaker, I ask my colleagues to join me in recognizing the life and achievement of Ron Neely. His legacy will live on in Georgetown and in others who work to preserve our past and make our communities vibrant places to live, work, raise a family, and appreciate. I have also included a story from the Rocky Mountain News regarding his death and life's work.

[From Rocky Mountain News, Jan. 14, 2006]

NEELY HELPED CREATE HISTORIC GEORGETOWN

(By Mary Voelz Chandler)

Ronald J. Neely's passion for preservation led to the founding of Historic Georgetown, new life for numerous buildings and stature as a wellspring of information for others who battle to save historic sites.

Even a diagnosis in June of amyotrophic lateral sclerosis, the progressive neuromuscular disease also known as Lou Gehrig's disease, didn't temper his love of talking about preservation battles past or present—or future.

But complications from the disease ended his life Friday morning at Lutheran Medical Center. He died at age 66 of respiratory failure.

"Ron is the epitome of a leader who takes on a community with pride and passion and takes it light-years ahead," said Dana Crawford, a preservationist and developer, as well as president of Urban Neighborhoods. "He did so much for that community and for others."

Mr. Neely moved out of Denver to work at Loveland Ski Area in the late 1960s, tired of the city and eyeing a life on skis. Soon after, he settled in Georgetown and, with friends, in 1970 founded the preservation group that is credited with being the oldest in Colorado.

"A town like this kind of grabs you in a hurry," Mr. Neely said last year in an interview with the Rocky Mountain News.

A few weeks before, he had been honored by three preservation groups with the Colorado Historical Society's Stephen H. Hart Award, Colorado Preservation Inc.'s Dana Crawford Award for Excellence in Historic Preservation, and the National Trust for Historic Preservation's President's Award.

During the emotional program at the Oxford Hotel, Crawford looked out at the crowd and said, "I feel we all went to college together—at Ron Neely University."

The line brought laughter then; on Friday it brought agreement.

"He was one of the early preservation pioneers in the state and set the standard for the rest of us to follow in how you do it, in what grass-roots preservation is all about," said Barbara Pahl, head of the Mountains/Plains Office of the National Trust for Historic Preservation. "He was one of the best and one of our state's treasures."

Mr. Neely and Historic Georgetown worked to preserve several buildings in that city and were in discussions about buying and restoring the town's 1874 school building.

His wife, Cynthia Neely, said Friday that effort will continue. When she told the school's owner of Mr. Neely's death, "He said, 'This will be a different place without him.' And he's right. This will be a different place without him."

Passion and determination are words that come up often in conversations about Mr. Neely.

"The loss of Ron is a tremendous loss on so many levels," said Mark Wolfe, director of the State Historical Fund. "He symbolized the determination preservation needs to be successful with sensitivity and generosity. I think that is a unique combination. He sincerely cared, not just about preservation, but the way it affected people."

Survivors include his mother, Fran Phipps, of Arvada; wife, Cynthia, of Georgetown; son, Ronald J. (Burr) Neely Jr., of Fairbanks, Alaska; sister, Cherie DeAngelis, of Arvada; stepson, Ted Wadsworth, of Boston; close friend, Christine Bradley, of Georgetown; and several nieces and nephews.

A tribute will be next week at the Hamill House in Georgetown, though the date has not been set, said Dana K. Abrahamson, executive director of Historic Georgetown Inc.

RECOGNITION OF MS. CHRISTINE TOLBERT'S EXTRAORDINARY WORK AS AN EDUCATOR

HON. C.A. DUTCH RUPPERSBERGER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. RUPPERSBERGER. Mr. Speaker, it is with great honor that I rise before you today to recognize the efforts of a truly significant person in the education field. Not only is it a privilege to represent her in the Second Congressional District of Maryland, but also to call Ms. Christine Tolbert a friend.

Ms. Tolbert breathed her passion for educating youth into the Hosanna School, known for being the first African-American school in Harford County. As years have past, the school has been adopted by the National Registry of Historic Places, serving as a museum and as grounds for living history. Ms. Tolbert has been the Executive Director of this project since nineteen hundred eighty.

She took particular interest in this school because her ancestors have lived in Harford County as early as the 1700s. During her years as a student, schools, libraries, theatres, and restaurants were segregated. Here she is able to share with students of all ages the African American history unique to Harford County. Spectators are able to tour the one-room schoolhouse while learning what our fellow Americans have overcome.

This generation's students may be surprised that furthering her education seemed a mere fantasy. However, a friend, Mr. Stephen P. Moore, Jr. showed her family it was not only a reality, but an undeniable opportunity. She attended Maryland State Teachers' College in Bowie, Maryland. Upon graduation, she began work in Harford County Public School where she taught every grade level in elementary school except kindergarten and third grade. Not feeling satisfied there, her thirst for knowledge continued. She went on to obtain a Master's degree from Loyola College in guidance and counseling.

Next, she served as a guidance counselor at Aberdeen High School where she developed Harford School's first Black Heritage Club. She didn't stop there; she also worked with others to form Black Youth in Action. Despite the demands of her current job, Ms. Tolbert sought more for herself. Her quest for reaching students still did not seem complete. Back to school again, this time earning the requirements needed to qualify for an administration position. She served as Supervisor of Elementary and Secondary schools until she retired from the Harford County Public School system.

Retirement didn't last long; she accepted a position as a Career Counselor at Open Doors Career Center. Shortly thereafter, she spread her branches into the college world as she joined the Harford Community College team as an adjunct professor.

Ms. Tolbert has dedicated her life to educating the future leaders of our country. She has received awards from the Maryland Retired Teachers' Association, the National Retired Teachers' Association, and she's received an award for Excellence from Colin Powell's group America's Promise. She's also received Harford County's coveted historic preservation award for her book A Journey Through Berkley Maryland which she co-authored with Constance Beims. She's an inductee of Harford County's Educator's Hall of Fame, and she's received recognition by Governor Hughes for the time she and her husband spent as foster parents.

Mr. Speaker, as you can see from this incredible list of accomplishments Ms. Christine Tolbert is truly an asset to the educational field. Her heart has always been devoted to bettering our nation's youth. She is an advocate for kids of all ages. I have often heard her say that if you guide children in the right direction and educate them, they will be successful. I ask that you join with me today to applaud the tremendous work she has done for this community.

TRIBUTE TO RALPH C. DELL

HON. JIM DAVIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. DAVIS of Florida. Mr. Speaker, I rise in honor of Ralph C. Dell, a prominent, greatly respected attorney whose passing is a tremendous loss to the Tampa Bay community.

Raised in St. Petersburg, Florida, Ralph graduated from the University of Florida and earned his law degree at University of Florida Law School. Ralph settled down in Tampa and soon cofounded his law practice, Allen Dell, representing clients such as Tampa General Hospital and the Atlantic Coast Line railroad.

Ralph gave all his work his very best, earning acclaim not only from his loyal clients, but also from his colleagues. In 1987, he was selected by the Hillsborough Bar Association to receive the prestigious Herbert Goldberg Award. He also served as a member of the board of governors of the Florida Bar and as a fellow in the American College of Trial Lawyers.

But Ralph will also be remembered for his involvement in his community through a number of local organizations. An active member of the First Presbyterian Church of Tampa, Ralph served as an elder and clerk of session and he taught Sunday school for nearly 60 years.

Ralph's tremendous integrity, vivacious spirit, his dedication to the legal profession and the quality of his work will always be remembered. On behalf of the Tampa Bay community, I extend my deepest sympathies to Ralph's family.

HONORING THE LIFE OF WARREN M. DORN OF MORRO BAY

HON. LOIS CAPPS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mrs. CAPPS. Mr. Speaker, today I rise to ask my colleagues to join me in honoring Warren M. Dorn, a longtime resident of Morro Bay, California in my District, who died on January 10, 2006.

A graduate and recipient of the Lifetime Achievement Award of University of California, Santa Barbara, Warren served as Mayor of Pasadena, on the Los Angeles Board of Supervisor from 1956–72, and later, as Mayor of Morro Bay. He chaired the Los Angeles Air Pollution Control District for eight years during his board tenure where he managed to have a profound impact on more than 160 laws improving our air quality. He also played key roles in the creation of the Los Angeles County Music Center and in developing airports, museums, sports areas and medical centers. He was passionate about water conservation and was instrumental in building the California Aqueduct. Throughout his time in public life, Warren Dorn was known for bipartisan efforts with all that he undertook.

This distinguished public servant also had another area of devotion: to his wife of 63 years, Phyllis, and to his three children and their families. Warren and Phyllis co-founded Morro Bay Beautiful in 1980, spending two decades dedicated to keeping area beaches clean.

The city of Morro Bay and the state of California are forever enriched by the contributions of Warren Dorn. His friendships were many, from the famous to the not so famous. Indeed, by his life's work he was a friend to us all.

RECOGNIZING JOHN TWEEDY OF LANDLOCKED FILMS

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. UDALL of Colorado. Mr. Speaker, I rise today to congratulate Mr. John Tweedy on the success of his documentary film-making company, Landlocked Films. His work is deserving of recognition for its superb quality, emotional realism, and the depth and diversity of its subject matter. John Tweedy's Boulder-based independent documentary video company is co-owned and run in collaboration with his wife, Ms. Beret Strong.

Tweedy's films have won both national and local awards and have been screened at film festivals both in the U.S. and abroad, as well as being broadcast on over 100 Public Broadcasting System affiliates in the U.S. and Canada. Before moving to Boulder, Tweedy received his law degree from Stanford University Law School and an M.A. in Sociology from Brown University. In addition to practicing law and making films, he has worked for the court system of the Commonwealth of the Northern Mariana Islands on Saipan. His films are as broad-ranging as his background and are inspiring and evocative.

"Lieweila: A Micronesion Story," is an apt example of Tweedy's ability to render a compelling history through his art. Using historical footage, old photographs, and the voice of a Refalawasch narrator, Tweedy helps an indigenous people give their history and describe their struggles with colonialism and modernization, creating an educational and inspirational film experience.

His films on the education of children include "Song of Our Children," "The Dance of Conversation: Strategies for Encouraging Children's Language Development," and "Training 3, from C to B: Age Transitions for Kids with Special Needs." John actively participates in local education, serving on the boards of Sojourner Charter School, Horizons Alternative School, and Kids Connections.

In another film, "Streams of Gold," Tweedy makes himself a subject of his own filmmaking. Traveling to southern Ecuador, Tweedy uncovers a piece of his own history by documenting the story of an Andean gold mining town in which his grandparents lived and worked for nearly 30 years. The result is a personal and informational film that has much to say about economics and the modern world.

Landlocked Films also produces videos profiling non-profit organizations, schools, and companies in a way that projects more heart than glitz. Each of the promotional videos is designed and produced as a mini-documentary, allowing the viewer to experience the organization from the inside out. Among recent promotional efforts are "Mothers Acting Up," showing this organization's actions to redefine the priorities of our national government, and "Teaching from the Heart: Celebrating Ten Years of Horizons Alternative," a film that guides the viewer from the school's founding with archival footage through the present with student interviews.

Mr. Speaker, I ask my colleagues to join me in expressing our gratitude to John Tweedy for making films that speak to our community socially, culturally, and artistically. We thank him for his film achievements and look forward to appreciating his films for many years to come. I wish him, his wife Beret, and his children, Paige and Marcus, good health and happiness in their future.

CELEBRATING THE RAWLINGS MUSEUM AND THE MAN WHOSE LEGACY MADE IT POSSIBLE

HON. MARILYN N. MUSGRAVE

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mrs. MUSGRAVE. Mr. Speaker, I rise today in recognition of the Rawlings Museum in Las Animas, Colorado, and to pay tribute to the man whose legacy made this dream possible.

The Pioneer Historical Museum, which celebrates the history of Bent County, will be housed in the newly restored 106-year-old Odello Lodge building. The project is being spearheaded by the local Pioneer Historical Society and the Bent County Development Foundation, and is funded by a generous gift from Robert Hoag Rawlings, publisher of the Pueblo Chieftain. The gift was given in honor of Mr. Rawlings' late father and civic leader, John W. Rawlings.

Mr. John W. Rawlings served in the Army during World War I and was promoted to the rank of Second Lieutenant shortly thereafter. While in the service, he met Dorothy Hoag who he married in April 1920. After Mr. Rawlings and his wife were discharged in 1919, they took residence in Monte Vista, Colorado and had three children: John William Jr., Robert Hoag, and Dorothy Louise.

In 1941, Mr. Rawlings became president of First National Bank in Las Animas and later became chairman of the board. He was active in the community and sought to promote progress in southeastern Colorado. Mr. Rawlings served as president of the Las Animas Chamber of Commerce. Moreover, Mr. Rawlings was an influential member of the Agriculture Committee of the Colorado Bankers Association and served as the president of the local Lions Club.

As the Rawlings Museum progresses and exhibits begin to open, I urge my colleagues to join me in celebrating the life of Mr. John W. Rawlings and honoring his lifetime of contributions to the Las Animas community.

TRIBUTE TO CORETTA SCOTT KING

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. VISCLOSKY. Mr. Speaker, it is with great sorrow that I rise to remember the late Coretta Scott King. Our nation has lost one of its great leaders, but her memory will live on forever. Her legacy will live on so that future generations will continue to know and fight for the compassion and equality that she treasured so dearly.

With the passing of Coretta Scott King, our country has lost a leader; a leader who dedicated her life to doing what was right and what was just. In order to carry out her legacy—and that of her husband, Dr. Martin Luther King Jr.—we must each individually dedicate ourselves to the causes they so passionately believed in.

Equality, justice, and opportunity drive the human spirit forward, and by working on behalf of these principles, Coretta Scott King advanced the causes of mankind. My heart, thoughts and prayers go out to her friends and family. Our nation will miss her greatly.

As we reflect on Coretta Scott King's legacy, we are reminded of the challenges that democracy poses to us and the delicate nature of liberty. Her life reminds us that we must continually fight to secure and protect our freedoms. In her courage to act, her willingness to meet challenges, and her ability to achieve, she embodied all that is good and true in the battle for liberty.

After she married Dr. Martin Luther King, Jr., and as a young pastor he began his civil rights work in Montgomery, Alabama, Mrs. King worked closely with him. She organized marches and sit-ins at segregated restaurants while balancing an equally daunting task: raising their four children. She held the family together as it endured the tragic events surrounding Dr. King. Even after her family home was bombed in Montgomery, she persevered—at a time when most would have given up. Those children, Yolanda Denise, Martin Luther III, Dexter Scott, and Bernice Albertine are as much a part of her legacy as her dynamic civil rights work.

Mr. Speaker, I ask that you and my other distinguished colleagues rise in honor of the legacy and life of Coretta Scott King. Her determination and dedication has made our world a better place to live, and I am proud to honor her legacy.

HONORING TONI AND DAVID "GOOGIE" WILLIS

HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. HIGGINS. Mr. Speaker, I rise today to honor Toni and David "Googie" Willis of Dunkirk, New York for their leadership in raising funds for the Muscular Dystrophy Association.

This amazing pair of dedicated people have been the organizers for the annual Muscular Dystrophy Association for many years.

Their countless hours of volunteer work should never go unnoticed. These unsung heroes give their all in the effort to raise funds so that others may have a better life.

Through the years Toni and Googie have helped raise $65,000 for the cause. Without their devotion and passion this would never be possible.

Toni and Googie have given their all for a wonderful cause without stopping to think of themselves, that is why, Mr. Speaker, I rise to honor them today.

THE "NATIONAL LEVEE SAFETY PROGRAM ACT OF 2005"

HON. JOHN J. DUNCAN, JR.

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. DUNCAN. Mr. Speaker, I am very pleased that prior to the end of the 1st Session of the 109th Congress, Subcommittee Ranking Member EDDIE BERNICE JOHNSON, Chairman DON YOUNG, Ranking Member JIM OBERSTAR, and I introduced H.R. 4650, the "National Levee Safety Program Act of 2005."

We have seen in the Gulf Region what can happen when hurricane and flood protection infrastructure is inadequate or fails to perform.

The National Inventory of Dams shows that 45 percent of all Federal dams are at least 50 years old; and that 80 percent of them are at least 30 years old.

We know less about the status and capabilities of our levees. We do not know how many levees there are in the United States, we do not know how old they are, and in many cases we do not know who constructed them or who is responsible for their operation and maintenance. There has never been a national inventory of levees.

Over the decades, levees have been built by different entities, at different times, and to different standards. They have been linked together to provide a protective system for a city, but with such a mixture of conditions, the true level of protection may be in doubt.

Every day the Nation's engineers and scientists learn more about the reliability and limitations of dams and levees. New techniques and materials are discovered in the laboratories. Without investments in infrastructure, we cannot benefit from what we have learned.

What is the condition of our hurricane and flood protection infrastructure? What should it be? Do we need to make policy changes to be sure that we are making the best investments of taxpayer dollars? Before we make a massive investment of taxpayer dollars, we need to do an inventory of levees across the United States.

That is why today we are introducing the "National Levee Safety Program Act", to get an inventory of levees in the United States and work with the States to encourage them to develop their own levee safety programs.

We have worked closely with members on both sides of the aisle and the various groups to advance the goal of improving the infrastructure in the most cost effective manner. We have received favorable feedback from diverse parties. The National Levee Safety Program Act of 2005 embraces innovative solutions for these parties and I urge members to support this legislation.

TRIBUTE TO IRVIN "MIKE" FAULKNER

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. RADANOVICH. Mr. Speaker, I rise to honor Irvin "Mike" Faulkner posthumously for his tremendous service to his country and community. Mr. Faulkner passed away on December 12, 2005, and is survived by his wife Eleanor, children, grandchildren, great grandchildren and great-great grandchildren.

Mike was born in 1919 in Blackwell, Oklahoma. Growing up during the Great Depression, he faced many hardships, but with great determination and a strong work ethic he strived to achieve a better life.

At the onset of World War II, Mike Faulkner answered his country's call. Serving in the Third Army, Mike was involved in many major battles throughout Europe. He stormed the beach at Normandy, survived the Battle of the Bulge and participated in the liberation of Dachau. It was at Dachau that Mike saw the cruelty of the Nazi regime. Mike later shared his story in a documentary on the concentration camps to remind generations to come of some of our world's darkest history.

Upon returning home, he moved to California where he attended Fresno College, known today as California State University—Fresno. He obtained a degree in Biology and a teaching credential. In 1955, he became a teacher with the Madera Unified School District. Many will remember Mr. Faulkner as their favorite biology teacher at Thomas Jefferson Middle School.

In 1960, the science teacher married his beloved Eleanor and together they raised 3 daughters, Glenda, Shirley and Joyce Ann as well as 2 foster children, John and Carolyn Sue Vogel.

One of the crowning achievements of Mr. Faulkner's career in education was as Principal at John Adams Elementary School in Madera, California. As Principal, he was known as a strict taskmaster who was quick to punish you when you did wrong but equally quick to recognize and reward a job well done.

Retirement couldn't keep Mike Faulkner out of the classroom. He continued to lend his years of experience to troubled youth at the Juvenile Hall and the Sugar Pine Continuation School. He served as a substitute teacher at Madera High School and when he wasn't substitute teaching, he spent time baking, sharing stories with friends, and caring for his beloved family.

Mr. Speaker, I rise to honor Irvin "Mike" Faulkner posthumously for his tremendous service to his country and community. I invite my colleagues to join me in celebrating the life of Irvin "Mike" Faulkner and to express the condolences of a grateful Nation to the Faulkner family.

TRIBUTE TO VIVIAN TESSIERI ON THE OCCASION OF HER RETIREMENT FROM THE U.S. HOUSE COMMITTEE ON SCIENCE

HON. BART GORDON

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. GORDON. Mr. Speaker, I rise today on behalf of the Democratic Members and staff of the House Science Committee to recognize a long-time member of the Committee staff—Vivian Tessieri.

Vivian will be leaving the Science Committee early next month after nearly 30 years of devoted service. She is one of the longest serving staff members in the history of the Committee and she will be greatly missed.

Vivian was hired by the Committee on Science in 1977, shortly after legislation passed to significantly expand committee staffs. At that time, the Science Committee had 7 subcommittees and the minority staff (then Republican) grew from 4 to its present size.

I'm told that the rapidly growing staff needed someone to bring order to the chaos, and Vivian—then a young staff assistant with a number of years experience at the General Accounting Office—fit the bill.

Vivian's job has not been easy. Her first assignment was on an extremely busy subcommittee. Vivian jumped right in and brought unprecedented discipline to the operation.

Staff who worked with her assured me that Vivian's years on the Energy Subcommittee were some of its most productive—laying the foundation of energy policy still adhered to today. Vivian excelled at her job and was quickly promoted. When the Full Committee's legislative clerk retired in the early 1980s, Vivian was the obvious choice for that position.

She brought her enthusiasm for organization, common sense to ask questions, and savvy communications ability to the position and it has never been the same.

Generations of members and staff assume that Committee events automatically run smoothly and flawlessly, but the fact is that Vivian has been the force behind the Committee's administrative success.

Even in the midst of her daily workload—endless archiving, copying and maintenance of Committee records—Vivian has always found time to take a personal interest in staff members' legislative issues and keep them informed of related topics moving forward outside of the Science Committee's jurisdiction. She has a keen eye and depth of historical Committee knowledge that is unparalleled.

Only one other Committee employee has worked for the Republicans, then the Democrats, then the Republicans once again. This is a testament to Vivian's unparalleled professionalism and devotion to her job.

Those who have worked alongside Vivian through the years say that to describe Vivian is to combine a high level of competence with an unfailingly helpful, professional and friendly manner. She has been a delight to work with, always dependable and conscientious in her work, while maintaining her serenity and good cheer under pressure.

Vivian loves this institution. Her commitment to her work is a testament to her genuine desire to see members, Committees and staffs succeed for the constituents they serve.

People like Vivian do not come along very often and many times we don't realize their true value until they have gone. Regrettably that time has come. Vivian, we wish you nothing but success and happiness as you take your immense talents to the private sector.

HONORING CHIEF RICHARD CUPIT

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. KILDEE. Mr. Speaker, I rise today to commend Chief Richard Cupit for 43 years of service to the Mundy Township Fire Department and community.

Over the past 43 years, Chief Cupit has saved lives, homes, and businesses. His actions have directly impacted the quality of life in Genesee County. His courageous actions saving a life in 1988 and the Chief's assistance during the Clara Barton Nursing Home disaster are just two of many acts that have been singled out by the State of Michigan and Genesee County.

The Mundy Township community has changed since Chief Cupit first started working as a fire fighter for the township in 1963. As he moved up through the ranks the community grew and the nature of firefighting changed. His work with the 800MHz Committee, the Hazmat Committee, the Local Emergency Planning Committee, the Genesee County, Michigan and International Fire Chiefs associations, reflect his strong commitment to serving the people of this community. As the director of county fire department coordination he exhibited the ability to work with a diverse group of peers with competing priorities and often under stressful and life threatening circumstances.

I ask the Congress to rise with me today and congratulate Chief Richard Cupit on a long and illustrious career as a fire fighter and a Fire Chief and extend our best wishes to him as he enters a new phase of his life.

TRIBUTE TO FOUR WWII U.S. ARMY CHAPLAINS

HON. SUE W. KELLY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mrs. KELLY. Mr. Speaker, I rise today to honor the heroism and courageous act of self-sacrifice of four U.S. Army Chaplains. On a chilly February day in 1943 during the perilous times of World War II, these four soldiers selflessly gave their life jackets to their fellow comrades as the USS *Dorchester* sunk to the depths of the Atlantic Ocean. The chaplains may have perished on that fateful day but their memory of sacrifice lives on forever.

The chaplains included: LT George L. Fox, LT Alexander D. Goode, LT Johnny P. Washington, and LT Clark V. Poling. The four honorable men represented differing religious faiths ranging from Catholic to Jewish to Protestant. Not only did each chaplain teach of their respective religion, but with their humble act exercised their faiths inherent principles of goodwill and charity toward others.

I would like to commend the American Legion Argonne Post No. 71 in Brewster, New York, who on Monday, February 6, 2006, will remember the four Army chaplains in ceremony. Honoring the requests of the Argonne Legion post I gratefully join them in remembering February 5th as Four Chaplain's Sunday. As a Nation, it's imperative that we follow the lead of the American Legion and join in honoring these four brave and courageous soldiers.

TRIBUTE TO MR. WILLIAM LEPSCH

HON. THOMAS M. REYNOLDS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. REYNOLDS. Mr. Speaker, I rise today to honor Mr. William Lepsch on the occasion of his retirement and his dedication to public service.

Mr. Lepsch has made a lifetime commitment to his community and Nation. As a young man, he served our Nation in the army during the Vietnam War. He has spent over 30 years as a member of the Attica Fire Department, serving as Chief, Rescue Squad Captain, EMT, and representing the department on various county and regional boards. He has served the residents of the Village of Attica as a Village Trustee for 10 years, most recently as Deputy Mayor. Mr. Lepsch has also been active in his parish church, serving as a parish board member and parish school volunteer accountant.

Colleagues, friends, and family alike hail Mr. Lepsch as someone who has exemplified genuine concern and dedication to his family and his neighbors and constituents.

It is with a great pride and gratitude that I rise to thank and honor Mr. Lepsch for his many years of commitment and loyalty to the citizens of Attica and Wyoming County.

HONORING GEORGETTE "TOOTSIE" LASKE ON THE OCCASION OF HER RETIREMENT

HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Ms. DELAURO. Mr. Speaker, it is with great pleasure that I rise today to join the many family, friends, and community members who have gathered to pay tribute to an outstanding member of the Branford community and a dear friend of mine, Georgette "Tootsie" Laske. After twenty-seven years of dedicated service to the Town of Branford, Tootsie has retired from municipal service. Though she will no longer be at Town Hall, I have no doubt that Tootsie will continue to be a fixture in the Branford community.

A life-long resident of Branford, Tootsie graduated from Branford High School where she was an active and skilled athlete. Playing basketball, field hockey, volleyball, and gymnastics, Tootsie was recognized in 1999 for her accomplishments with induction into the Branford Sports Hall of Fame. After high school, Tootsie began working for Security Insurance Company and Nationwide Insurance. However, in 1978, Tootsie was hired by then Town Clerk Peter Abondi as Branford's Assistant Town Clerk—a position which she held until her election as Town Clerk in 1992. In her many years of service at Town Hall, Tootsie has made residents and non-residents alike feel welcome with her complimentary Tootsie Roll candies. Her kind heart and special way with people made her a popular figure at Town Hall and there is no doubt that her presence will be missed.

Tootsie's dedication to her community extended far beyond her work at Town Hall. Our communities would not be the same without those individuals who so willingly volunteer their time and energy on behalf of others. Throughout her lifetime, Tootsie has been this kind of community member—always willing to help in any way that she could. Whether it was as a volunteer for the Special Olympics World Games Connecticut in 1995, as a long-time member of the Italian-American Women's Auxiliary of Branford, or her work with a multitude of local civic organizations, Tootsie's unwavering efforts have touched the lives of many. I have no doubt that, though she will be enjoying her retirement, Tootsie will continue to find ways in which she can enrich the community as well as the lives of others.

I am also glad to have this opportunity to extend my personal thanks and sincere appreciation to Tootsie for her many years of support and friendship. Tootsie is an extraordinary woman and I consider myself privileged to call her my friend.

For her countless hours of service, both professionally and personally, to the Town of Branford, I am proud to rise today to join her husband, James; her four children, Kathleen, Nancy, Thomas, and James; her eight grandchildren, Jenna, Bridget, Kelly, Scott, Mikayla, Patrick, Allison, and Kirsten; family, friends, colleagues, and community members in extending my sincere congratulations to Georgette "Tootsie" Laske as she celebrates her retirement. Her generosity, compassion, and good heart have left an indelible mark on the Branford community and a legacy that will inspire generations to come. My very best wishes for many more years of health and happiness.

HONORING THE 25TH ANNIVERSARY OF CATHOLIC CHARITIES OF SAN JOSE'S REFUGEE RESETTLEMENT PROGRAMS

HON. ZOE LOFGREN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Ms. ZOE LOFGREN of California. Mr. Speaker, I rise to acknowledge and honor Catholic Charities of San Jose's 25th anniversary of its refugee resettlement programs.

Less than 1 percent of the refugees in camps are accepted by Western countries for resettlement. Refugees who have already suffered unthinkable crimes and injustices are often forced to wait in camps for as long as 10 years before being interviewed for consideration. The very lucky few who are accepted for immigration to the United States often arrive with little to no money, few, if any, family and only the hope and dream of a better life.

To ease this very difficult transition, Catholic Charities meets these refugees at the airport and begins the resettlement process immediately. They and their team of committed volunteers provide financial support for housing, food, clothing and other necessities, medical care, case management and independent living skills training such as budgeting skills, housing assistance and food preparation.

In their 25 years of dedication and hard work, over 20,000 refugees have been assisted in their quest to build a better life for themselves and their future generations. Catholic Charities of San Jose provides these valuable services at no cost to the immigrant.

This program is one of many that Catholic Charities provides in its overall vision of transforming lives. This wonderful organization strives to empower meaningful, quality living through economic, familial and emotional stability. Catholic Charities serves people of all beliefs, cultures, ethnicities and ages and serves a diverse population from various ethnic backgrounds and provides services in 17 languages.

It is indeed an honor and a privilege to have a warm, welcoming and nurturing organization in my district that appreciates and honors the diversity that makes America, and specifically San Jose, California, a desirable place to live, work and raise a family.

TRIBUTE TO THE GARY FRONTIERS SERVICE CLUB

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. VISCLOSKY. Mr. Speaker, as we celebrate the birth of Dr. Martin Luther King, Jr., and reflect on his life and work, we are reminded of the challenges that democracy poses to us and the delicate nature of liberty. Dr. King's life and, unfortunately, his untimely death remind us that we must continually fight to secure and protect our freedoms. Dr. King, in his courage to act, his willingness to meet challenges, and his ability to achieve, embodied all that is good and true in the battle for liberty.

The spirit of Dr. King lives on in the citizens of communities throughout our Nation. It lives on in the people whose actions reflect the spirit of resolve and achievement that will help move our country into the future. In particular, several distinguished individuals from Indiana's First Congressional District will be recognized during the 27th Annual Dr. Martin Luther King, Jr. Breakfast on Monday, January 16, 2006, at the Genesis Center in Gary, Indiana. The Gary Frontiers Service Club, founded in 1952, sponsors this annual memorial breakfast.

This year the Gary Frontiers Club will pay tribute to five local individuals who, for decades, have unselfishly contributed to improving the human condition of others in the City of Gary. Those individuals who will be recognized as Dr. Martin Luther King, Jr. Marchers at this year's breakfast include: Reverend Norman L. Hariston Sr., who is retired and a member of St. John Baptist Church; Dr. Alfonso D. Holliday II, a semi-retired physician who served Gary residents and is now a consultant; Roosevelt Haywood Jr., activist and former Gary City Councilman; Willie Kuykendall, a 1960's voting activist; and Cherrie B. White, a retired activist, will receive the 2006 Dr. Martin Luther King, Jr. Drum Major Award.

The late Mrs. Rosa Louise Parks will become the only person to receive a Dr. Martin Luther King, Jr. Honorary Drum Major Award for her single courageous act of dignified defiance on December 1, 1955, which set in motion the Modern Civil Rights Movement.

Though very different in nature, the achievement of all these individuals reflect many of the same attributes that Dr. King possessed as well as the values he advocated. Like Dr. King, these individuals saw challenges and rose to the occasion. Each one of the honored guests' greatness has been found in their willingness to serve with "a heart full of grace and a soul generated by love." They set laudable goals, and they worked hard to achieve them.

Mr. Speaker, I ask that you and my other distinguished colleagues join me in commending the Gary Frontiers Service Club: President Floyd Donaldson, Breakfast Chairman Oliver Gilliam, Breakfast Co-Chairman Clorius L. Lay, Master of Ceremonies Alfred Hammond, Melvin Ward, and all other members of the service club for their initiative, determination, and dedication to making Northwest Indiana a better place for all who live and work there.

SALUTING THE TENNESSEE ARMY NATIONAL GUARD'S 168TH MILITARY POLICE BATTALION

HON. JIM COOPER

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. COOPER. Mr. Speaker, I rise today to salute an outstanding group of men and women—the Tennessee Army National Guard's 168th Military Police Battalion of Lebanon, TN. On Sunday, February 5, the 168th will receive the Valorous Unit Award at a special presentation at the Armory in Lebanon.

The Valorous Unit Award is one of the Nation's most prestigious military awards. It is presented to units of the Armed Forces of the United States for extraordinary heroism in action against an armed enemy of the United States while engaged in military operations involving conflict with an opposing force. To receive this award, a unit must have performed with marked distinction under difficult and hazardous conditions in accomplishing its mission so as to set it apart from, and above, other units participating in the same conflict. Its equivalent in individual awards is the Silver Star.

I know all Tennesseans, and all Americans, join with me in thanking the 168th for their bravery, their commitment and their selfless service while in Iraq.

The 168th received its award for performance of duties from May 20, 2003 through January 31, 2004. While they performed many duties, some of their key accomplishments during their service were to establish law and order operations in all of east Baghdad, establish Iraqi police stations, train Iraqi police officers and establish an Iraqi police academy. The battalion coordinated numerous offensive operations and patrols within its area of operations under very austere conditions. They were responsible for confiscating numerous weapons caches, counterfeit money, and ammunition. And they frequently provided escort and security service to convoys in the region.

During their service, the 168th Battalion and its subordinate units receive numerous Bronze Stars, Purple Hearts, and Army Commendation Medals for Valor. Their service was one that required heroism and courage on a daily basis.

I am honored to serve as the Congressman for Lebanon and privileged to represent these men and women in Washington. We are all blessed to live in the greatest country in the history of the world. And we are particularly blessed that men and women, like the members of Tennessee's 168th Military Police Battalion, willingly put their lives on the line every day so that we may continue to enjoy freedom here at home.

Words cannot adequately thank the members of the 168th for their exceptional service. But I want to take this moment, and this occasion of their Valorous Unit Award presentation, to salute them on behalf of all Americans for their heroic service to our country and to freedom around the world.

HONORING ST. XAVIER UNIVERSITY ON ITS 50TH ANNIVERSARY

HON. DANIEL LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. LIPINSKI. Mr. Speaker, I rise today to honor as a community St. Xavier University and to celebrate its 50th Anniversary. St. Xavier is located in Chicago's Mount Greenwood neighborhood.

When founded in 1846 by the Sisters of Mercy, St. Xavier was a Catholic institution grounded in the tradition of the liberal arts. As one of 18 colleges and universities sponsored by the Sisters of Mercy, St. Xavier has evolved into an institution that seeks to provide its students with the meaning of scholarship, the support of the community, and the spirit of moral and ethical sensibility.

Although a Catholic university of approximately 5,700 students, St. Xavier welcomes students of all faiths and religious backgrounds. Because of its rich traditions and commitment to excellence St. Xavier has become one of Chicago's premier collegiate institutions for students studying nursing, business, as well as education.

It is my honor to recognize this school and its many achievements both academically and athletically. In addition, I commend St. Xavier University for fostering the intellectual and cultural growth of the administration, faculty and students who all play a vital role in the success of the university's existence in today's society.

TRIBUTE TO THE TOWN OF GUADALUPE, ARIZONA ON THE 31ST ANNIVERSARY OF ITS INCORPORATION

HON. ED PASTOR

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. PASTOR. Mr. Speaker, I rise before you today to pay tribute to the Town of Guadalupe, Arizona, a community in my district which I proudly represent, on the occasion of the 31st Anniversary of its incorporation. Named after the patron saint of Mexico, the Virgin of Guadalupe, this culturally-rich community is home to about 5,500 residents.

Guadalupe was founded by Yaqui Indians around the turn of the century when they fled their traditional homeland along the Yaqui River in Sonora, Mexico to avoid persecution and enslavement by the Mexican government under Porfirio Diaz. When the Yaqui people fled as refugees, many were able to find a home in the Salt River Valley's agricultural economy. One of the villages was in south Tempe, just north of the present Guadalupe site. A missionary Franciscan Friar, Lucius Zittier, petitioned President Woodrow Wilson for 40 acres of land so the Yaqui could permanently settle. The site, undesirable as uncultivable, is located in the center of the present community, known as "La Cuarenta," or "The 40," as some still call it today.

Guadalupe also became home to many Hispanic families over the years, and it has become a stopping point for Mexican immigrant workers. As the community has grown, it has demonstrated its resilience in the face of difficult economic times, poverty, and racism.

Many young men of Mexican and Yaqui descent answered the call for military service and defended our country. Dozens of Guadalupe veterans' names are on the rolls of those who served, and many paid the ultimate sacrifice.

In the early 1960s, Guadalupe Organization, Inc., was formed and it began to identify and address the community's needs. Many services taken for granted in other communities were not provided in Guadalupe and residents began to get organized. A new voting precinct in Guadalupe was formed, and U.S. Sen. Carl Hayden was instrumental in securing home mail delivery for residents. As the Guadalupe Organization advocated for community betterment and educated residents about civil awareness, many small victories were achieved for the community. The organization prevented a freeway from being built through the center of Guadalupe, opened a dental clinic with volunteer dentists, fought discrimination against Guadalupe students, and most notably, led the charge for incorporation.

Neighboring cities had mostly rebuffed Guadalupe and its residents until property values soared. To stop annexation attempts and preserve their community's rich culture, the Guadalupe Organization began incorporation efforts and the Citizens Committee to Incorporate Guadalupe was formed. It was led by Mr. Andres "Andy" Jimenez, who served as president of the group. Election results of Feb. 4, 1975, which showed an 83 percent voter turnout, approved the plan of incorporation, and the Town of Guadalupe was born.

Since then, the Town of Guadalupe has been a leader in demonstrating concern for its residents and passing progressive policies. The Town Council was the first in Arizona to ban smoking in public places. It declared a paid Cesar Chavez Holiday for Guadalupe town employees. The town has also donated land for construction of educational and recreational entities.

Maricopa County Community Colleges also have established a branch of South Mountain Community College in Guadalupe with its rental fee subsidized for many years by the Guadalupe Organization. Guadalupe had one college graduate in 1960 and one in 1967. Now graduates at all levels, from high school to Ph.D., call Guadalupe their home.

As you can see, Guadalupe is a community rich with the traditions of three cultures, deeply devoted to the welfare of its residents, and the prosperity of its community. As the former director of the Guadalupe Organization, I feel a special bond to this community and take great pride in its progress. This bond is felt by many, as children follow in their parents' footsteps, opting to make a home in Guadalupe as they begin to make a life of their own. Ironically, the current Mayor of Guadalupe is Ms. Bernadette Jimenez, daughter of Andy Jimenez, who led the Citizens Committee to Incorporate Guadalupe.

In honor of the success of this community and its residents, I ask my colleagues to please stand and join me today in paying tribute to the Town of Guadalupe, Arizona, on the occasion of the 31st Anniversary of its Incorporation.

SUPPORT FOR JOHANNA'S LAW

HON. KAY GRANGER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Ms. GRANGER. Mr. Speaker, I would like to draw attention to a disease affecting women throughout the United States. According to the American Cancer Society, ovarian cancer accounts for 3 percent of all cancers among women and over 22,220 new cases are expected to be diagnosed this year in the U.S. Unfortunately, the death rate for this disease has remained steady in the last 50 years.

I am a proud cosponsor of Johanna's Law which would create a national public education campaign to increase awareness of gynecologic cancers, including ovarian cancer. The legislation will also provide grants to local and national organizations to increase such awareness among women and health professionals. Johanna's Law is named after Johanna Silver Gordon who died of ovarian cancer in 2000.

It is essential that ovarian cancer, like all gynecologic cancers, be detected in the earliest stages of the disease because it is more easily treatable at that time. Unfortunately, as the cancer progresses, it becomes more difficult to treat and is generally fatal in later stages. Johanna's Law would help women to recognize their symptoms and encourage regular check-ups, thereby preventing many of these cancers from becoming terminal. The best hope of survival is early detection.

I would like to highlight language in the FY2006 Labor, Health and Human Services, and Education Appropriations bill, which addresses key goals of Johanna's Law. Specifically, this report language directs $100,000 for a national education campaign concerning gynecologic cancer, with an emphasis on early detection. The Centers for Disease Control and Prevention, CDC, and the Secretary of Health and Human Services', HHS, Office of Women's Health will work together to coordinate these education and outreach efforts.

As a member of the Labor-HHS Subcommittee, I am proud of this important first step in helping to educate women and health care professionals about gynecologic cancer. I look forward to working with my colleagues to continue our public education efforts and pass Johanna's Law in the 109th Congress.

IN RECOGNITION OF JUDGE HILDA R. GAGE

HON. JOE KNOLLENBERG

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. KNOLLENBERG. Mr. Speaker, I want to recognize the extraordinary career and accomplishments of the Honorable Hilda R. Gage as she retires this year. I am honored to recognize her service to Michigan and Oakland County as Judge of the Michigan Court of Appeals and the Oakland County Circuit Court.

Judge Gage has long been an influential woman in both Oakland County and Michigan. Elected to the Oakland County Circuit Court in November of 1978, she presided there for three terms before she was appointed to the Michigan Court of Appeals by Governor Engler. She is retiring this year after a combined total of 37 years of service in Michigan courts.

While presiding, Judge Gage has been honored by many associations for her exemplary service. She is widely regarded as a very influential woman not only in the State of Michigan but nationally as well. In March 2002 she was recognized by Corp! Magazine as one of "Michigan's 95 Most Powerful Women" and has been honored by the Women's Bar Association in December, 2000 for her contributions to the practice of law, improving the legal system, and her dedication to the community. Additionally, she was given the Roberts P. Hudson Award in October 1991, by the State Bar of Michigan for Outstanding Contributions to the Bar. This is the highest honor bestowed by the State Bar.

Judge Gage is also credited with many "firsts" throughout her judicial career. She was the first female chairperson of the National Conference of State Trial Judges in 1986 and holds the same distinction for the Michigan Judicial Tenure Commission in 1991. She also chaired and helped to originate the State Bar of Michigan Judicial Conference, holding the chair of that conference from its inception in 1982 through 1984. This conference was the first organized body in which the circuit, probate, and district judicial associations meet on a regular basis. Finally, she was the first recipient of the Award of Judicial Excellence, given by the National Conference of State Trial Judges and American Bar Association in August of 1994.

Judge Hilda Gage has served Oakland County and the State of Michigan with honor and pride for the duration of her career and I am honored to thank her for her commitment to justice and integrity.

IN RECOGNITION OF THE 50TH ANNIVERSARY OF THE BOARD OF COOPERATIVE EDUCATION SERVICES, BOCES, MONROE COUNTY, NY

HON. JAMES T. WALSH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. WALSH. Mr. Speaker, I rise today in recognition of the Board of Cooperative Educational Services, BOCES' 50th anniversary. Enacted in 1948, New York State Legislature and the New York State Education Department sought a way to offer districts an even stronger cooperative network. In 1955, school board members from several eastside Monroe County school districts petitioned the State Education Department for a BOCES to serve their area. On January 5, 1956, Monroe BOCES was established.

Boards of Cooperative Educational Services, or BOCES, are public education collaborative that function as extensions of local school districts. A BOCES helps school districts provide quality programs and services that are more economical to offer cooperatively, sharing costs with other districts. The function of a BOCES is to provide shared services to the component school districts, providing efficiency, effectiveness and equity for students.

Monroe BOCES provides support for thousands of individuals, from newborns to adult students, to help them achieve success and improve the quality of their lives. BOCES coordinated more than 86 programs and services that helped students of diverse backgrounds and abilities discover their learning potential in an environment that benefited all students. More than 5,500 students from the 10 suburban school districts in eastern Monroe County attended BOCES programs. BOCES also served school districts by helping their students meet the State learning standards in specialized areas.

BOCES programs and services provide valuable hands-on learning opportunities for students that they might not experience otherwise, opportunities such as career and technical training, workplace preparation and internships, as well as a network of services for transitioning to the workforce.

An organization such as Monroe BOCES will sustain itself and continue to coordinate innovative educational enrichment programs, from the arts to technology, to help students reach beyond classroom walls.

It is my honor to recognize and congratulate Monroe County BOCES on its continued success and 50th anniversary.

TRIBUTE TO JOSEPH MATTHEW GONDOLA

HON. BILL PASCRELL, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. PASCRELL. Mr. Speaker, I would like to call your attention to the life and work of an outstanding individual whom I feel fortunate to call my friend, Mr. Joseph Matthew Gondola. He was recognized on Sunday, January 15, 2006, on the occasion of his retirement after 42 years of service to the United States Postal Service, USPS.

Joseph Gondola is the youngest of seven children, having five sisters and one brother. Over the course of his childhood, he overcame frequent hospitalization, where he received treatments for medical ailments ranging from septic poisoning to the dreaded disease, polio. Through it all, Joseph persevered and he did not allow his health problems to prevent him from accomplishing his goals.

Joseph attended Central High School in Paterson, where he began his academic growth. This experience was translated effectively to Montclair State College where he received his bachelor of science and master of arts degrees, both cum laude. From that point, he continued his pursuit in higher learning at Seton Hall University.

At age 31, Joseph was appointed Clifton postmaster by Representative Charles Joelson, NJ-8th, making him the youngest postmaster for that size postal district. Over the course of his term, he served the USPS as officer in charge in Jamestown, PA, and Newark, NJ. He has hosted and chaired many safety committee meetings in his Clifton office, and served on several review boards. He is very proud that several of his employees have also become postmasters under his guidance.

Joseph has remained active in NAPUS, previously serving as president of the New Jersey Chapter, area vice-president, national legislative chairman, and postmaster representative. In 1981, he was elected to a 2-year term as the national president of NAPUS, a position that he currently holds. He also serves as president of the NAPUS Federal Credit Union. He has served, on numerous committees for the American Cancer Society, Boy Scouts of America, and Saint Andrew the Apostle Church in Clifton, NJ.

Joseph's tenure at both the USPS and NAPUS is a testament of his character and a remarkable story of one person's belief in the power of public service. It is only fitting that Joseph Matthew Gondola be honored for his commitment to improving the quality of life in Clifton, and on a national level through the postal service, in this, the permanent record of the greatest freely elected body on earth.

Joseph remains happily married to Dorothy, his wife of 46 years, with whom he has three children, Mark, Kristen, and Jennifer, and eight adored grandchildren.

Mr. Speaker, the job of a United States Congressman involves so much that is rewarding, yet nothing compares to recognizing the efforts of devoted public servants like Mr. Joseph Matthew Gondola. I ask that you join the city of Clifton, the employees of the USPS, Mr. Gondola's family and friends and me, in recognizing Joseph Matthew Gondola for his years of outstanding service to the citizens of our great Nation.

HONORING THE LEGACY OF CORETTA SCOTT KING

HON. KENDRICK B. MEEK

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. MEEK of Florida. Mr. Speaker, I rise to honor the passing of a tremendous voice in the struggle for equality, Coretta Scott King.

Mrs. King was best known as the wife of Dr. Martin Luther King, Jr., but she was a key advocate for civil rights in her own right.

Mrs. King was with Dr. King when he received the Nobel Peace Prize in 1964 and marched by his side in the Selma march.

Following Dr. King's assassination in 1968, Mrs. King championed her husband's work, leading the effort to establish a national holiday in her husband's honor, and founding the Martin Luther King Jr. Center for Non-Violent Social Change in Atlanta, a center dedicated to learning and activism.

She worked to keep Dr. King's dream alive by keeping his ideology of equality and social change at the top of our Nation's agenda. She became a symbol of her husband's struggle for peace and brotherhood, but developed a voice separate from that of her late husband. She branched out from issues of race and was outspoken on a number of international human rights concerns.

Mrs. King continued her husband's mission with a keen sense of devotion. She has kept his work alive and evolved his mission of equality to confront new times and new challenges. We must now work to renew our community's commitment to the ideals that Mr. and Mrs. King embraced, and ensure that generations to come never forget the groundbreaking contributions of these two legends.

A TRIBUTE TO FLORENCE GERTRUDE BAKER

HON. ROBERT E. ANDREWS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. ANDREWS. Mr. Speaker, I rise today to celebrate the 100th birthday of Florence Gertrude Baker of Collingswood, New Jersey. A dedicated kindergarten teacher for 46 years, Ms. Baker has served my community well throughout her lifetime.

During World War II, Ms. Baker organized and served as Co-Chair of the Collingswood Veterans' Service Council. As Chair, she organized military wives in Collingswood and helped to provide them with many beneficial programs. During that time, she began a lifelong commitment to service through the Red Cross. Ms. Baker served as a Red Cross Gray Lady and spent numerous hours at Fort Dix and Walson Army Hospital. Additionally, she was a Red Cross Canteen worker and over the years has chaired many successful Red Cross Blood Drives. These are just a few of the many charitable works to which she has devoted her time and energy.

I stand here today to commend Ms. Baker, as so many other groups have before. She has educated our children, cared for our wounded, and been a shining example of civic responsibility and dedication. Happy Birthday, Ms. Baker, and thank you for your decades of generosity and service.

ELMONT MEMORIAL JUNIOR-SENIOR HIGH SCHOOL RECEIVING THE DISPELLING THE MYTH AWARD

HON. CAROLYN McCARTHY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mrs. McCARTHY. Mr. Speaker, I am proud to announce that on November 3, 2005, Elmont Memorial Junior-Senior High School, which is in my district, was honored with the Dispelling the Myth Award at the Education Trust National Conference.

Elmont Memorial is one of five schools recognized for "dispelling the myth" that poor and minority children cannot learn to high levels. At Elmont, 75 percent of the students are African American, 12 percent Latino, and 24 percent are low income. Most ninth-graders become seniors and almost every senior graduates, with a majority going on to attend 4-year colleges. In 2004, Elmont had the Nation's highest number of African-American students who received college credit on the Advanced Placement World History exam.

The success at Elmont Memorial is due in no small part to its staff. Former principal, Al Harper, who is now the superintendent of the Elmont Union Free School District, has said "Because a child is poor doesn't mean he can't learn." With the high standards set at Elmont, Principal John Capozzi takes pains to ensure teachers are carefully selected, and teachers are forewarned about the intense expectation at the school. Teachers at Elmont Memorial are considered to be part of a larger enterprise with a lot of support and encouragement, not punishment. Elmont Memorial's staff takes a coherent approach to both instruction and the building of personal relationships among adults and students which has led to high achievement.

In addition to former Principal Harper, and Principal Capozzi, Elmont Memorial boasts many other superb staff members including: Alicia Calabrese, English chairperson; Karen Dunkley, social studies teacher; Russell Marino, math teacher; Baytoram Ramharack, social studies chairperson; Wendy Tague, English teacher; Chris Yee, art and technology chairperson. Elmont also has a hardworking, driven and determined student body. Many students are in the school building long after classes end, as part of clubs, sports, or getting help from teachers.

Elmont Memorial's success can be attributed to school system unity, a supportive school board and superintendent, teachers, administrative staff and the students themselves. Mr. Speaker, it is with pride and admiration I offer my congratulations to Elmont Memorial.

TRIBUTE TO CORETTA SCOTT KING

HON. BENJAMIN L. CARDIN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. CARDIN. Mr. Speaker, "Struggle is a never ending process. Freedom is never really won—you earn it and win it in every generation."—Coretta Scott King

Coretta Scott King not only spoke those words, she lived them. Today, America mourns her passing at age 78, and we celebrate her remarkable life.

So many images of Mrs. King's life are etched on the American canvas, and we recall them on this day.

Her exuberance as she marched alongside Dr. King, John Lewis, Ralph Abernathy, and Andrew Young through the 1950's and 1960's South, blazing new paths of hope for the disenfranchised.

Her joy as she called upon her New England Conservatory of Music training to organize Freedom Concerts across the country raising money for the movement.

Her grace in the depths of sorrow as she comforted her four young children at Dr. King's funeral in 1968.

Her steadfast commitment to justice as she opened the King Center for Nonviolent Social Change in Atlanta in 1969 and continued to speak out against injustice everywhere.

And her beaming smile as she watched President Reagan sign into law the 1983 bill establishing the third Monday in January as a Federal holiday honoring her husband.

What would have shattered many others instead became a source of strength for Mrs. King. Throughout the nearly 4 decades that followed Dr. King's assassination, this daughter of the segregated South continued to carry the mantle of nonviolent social change, addressing students and activists, writing books, and inspiring new generations to continue the struggle. America is a better place because of Coretta Scott King's life.

Our thoughts and prayers are with Marty, Dexter, Yolanda, and Bernice, who following in the steps of their legendary parents, have dedicated their lives to achieving equality through peace.

CONGRATULATIONS TO BRUSH ENGINEERED MATERIALS INC.

HON. STEPHANIE TUBBS JONES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mrs. JONES of Ohio. Mr. Speaker, I rise today to recognize the 75th anniversary of Brush Engineered Materials Inc., a company that has been a pillar of the Cleveland business community and which, I hope, will continue to be an important part of our city and our regional economy for years to come. The company's predecessor was incorporated on January 9, 1931, to develop innovative applications for beryllium. These applications play a significant role in many aspects of our lives, from early diagnosis and treatment of disease to critical areas of homeland security and national defense.

It is well known that for more than a hundred years the City of Cleveland has been a major center of this country's industrial might, providing the essential goods and services needed by fellow citizens throughout the United States and, indeed, by people throughout the world. In addition to its economic contributions, Cleveland has been a world-class center of learning, of the arts and music, and of medical research and health care. It is a city with a proud and productive tradition.

In recent years, like many other cities in the Midwest, Cleveland has been buffeted by a national economic downturn, exacerbated by competition overseas. A number of our Cleveland companies have been forced to close down, others cut their payrolls, still others relocated.

Brush Engineered Materials has never wavered in its commitment to the City of Cleveland. Headquartered for all of its 75 years within the city, it provides quality employment and payroll tax revenues, business opportunities for suppliers and vendors, property taxes, and a measure of hope for its Collinwood-Nottingham neighborhood.

This Cleveland company played a major role in defending freedom and providing support for our armed forces in World War II, in lowering the Iron Curtain, in developing the Nation's space program, in increasing the efficiency of oil exploration, improving the mileage of our automobiles, saving lives through mammography X-ray and other medical imaging equipment, and saving lives on the road through air bags and improved automotive braking systems. It also provides essential parts for the computers and cell phones that keep us connected every day.

In today's military, it helps save the lives of our brave men and women in uniform in Iraq and Afghanistan by providing infrared and optical sensors for radar and navigation systems and unmanned aerial vehicles. And in homeland security, materials from Brush are used in air traffic control radar, airport X-ray inspection, wireless communications, global positioning systems and other applications.

Brush Engineered Materials of Cleveland has provided 75 years of innovation in beryllium and non-beryllium materials that have benefited our Nation in many fields. It has also established a tradition of public service and commitment to the community in which we can all take pride. I congratulate the people of Brush Engineered Materials for their many achievements and wish them continued success.

TRIBUTE TO DIANA L. GOLDBERG

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. HOYER. Mr. Speaker, today I rise to honor Diana Goldberg, one of my closest friends. Diana is stepping down as Chairman of the Board, a post that she has held since 2002, for the Children's National Medical Center in Washington, DC, one of the finest pediatric institutions in the Nation.

The leadership, work and generosity of Diana and her husband, Stephen, have helped to make our Nation's Capital a stronger, healthier community. Diana has been heavily involved with Children's Hospital for the past 20 years. She has served on the Child Health Center Board, of which she was president from 1994 to 1996, and the boards of Children's Hospital Foundation, of which she was chairman from 1999 to 2001, Children's Hospital, and, eventually, Children's National Medical Center. However, her dedication to the health of children in the Washington Metropolitan region extends far beyond her leadership positions. Diana has taken a hands-on approach to volunteering and given countless hours of her time to ensuring that the patients receive the care that they need, while Diana herself has continued to be personally involved with many of the organization's operations.

Furthermore, Diana has truly been a philanthropic leader in Washington, DC, especially for Children's where Children's School Services, a child health data lab, and Jazzmatazz, which is a major benefit to raise money for Children's, are among the programs and fundraising events that she has generously supported. However, Mr. Speaker, most laudatory are Diana's efforts to set up health centers across the city. In 2001, Diana and Stephen donated an astounding $25 million to Children's National Medical Center for the Diana L. and Stephen A. Goldberg Center for Community Pediatric Health. This significant gift allows the Center to maintain community-based health centers in Shaw, Adams Morgan, and Anacostia and three mobile vans. The Center provides immediate healthcare needs, with special attention given to primary care, HIV and AIDS, asthma, sickle cell disease, child abuse, childhood injuries, lead poisoning, and violence prevention. The Goldberg Center is also focused on the greater neighborhood by sponsoring programs like the Adolescent Employment Readiness Center, which prepares disabled adolescents and young adults to enter the workforce.

The Goldbergs' benevolence also includes work with the Edmund Burke School, the Black Student Fund, the Washington AIDS Partnership, a scholarship for the Frederick B. Abramson Memorial Foundation, the National Kidney Foundation of the National Capital Area, Arena Stage, and numerous other worthy causes and organizations. Notably, when the Centers for Disease Control, CDC, was forced to cut its funding for important HIV prevention programs in the District, Diana stepped in and made a sizeable financial gift to make up for the shortfall. Diana Goldberg is a shining model for the good that can be accomplished through the power of giving and a passionate dedication to public service.

Mr. Speaker, on behalf of the thousands of children that Diana has helped over the years as a member of the greater Washington community, I would like to congratulate and thank Diana Goldberg for her leadership as the Chairman of the Board of Children's National Medical Center and for all her projects. I look forward to seeing what exciting new challenges Diana will undertake next. Undoubtedly, she will continue to give back to the community and help make Washington, DC a better place for all its citizens.

STATEMENT HONORING THE LIFE AND ACCOMPLISHMENTS OF CIVIL RIGHTS LEADER CORETTA SCOTT KING

HON. EDDIE BERNICE JOHNSON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I rise today to pay tribute to the life of an American icon, Mrs. Coretta Scott King. After living a remarkably accomplished life that spanned 78 years, Coretta Scott King passed away on Monday, January 30, 2006.

As the matriarch of the civil rights movement, Coretta Scott King displayed dignity and strength in time of great tragedy and injustice. After Dr. King's assassination, she continued his legacy promoting racial and economic justice for all Americans. Mrs. King was determined to make his dream a reality. As Americans, and as human beings, we are blessed to have known her compassion and dedication.

Coretta Scott King and I traveled to South Africa in 1994 for Nelson Mandela's inauguration. I am proud to say that she was a friend and confidant as well as one of my greatest mentors. I regard Mrs. King as one of the finest individuals I have known. I will continue to hold her spirit and strength close to my heart.

It has been said that the ultimate measure of a person's life is the extent to which they made the world a better place. Coretta Scott King's work has forever shaped the way we treat each other as human beings. Though her passing marks the end of an era, it is up to all of us to continue the compassion that her husband preached and she so graciously followed.

IN RECOGNITION OF AMELIA EARHART ELEMENTARY SCHOOL

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. STARK. Mr. Speaker, I rise today to pay tribute to Amelia Earhart Elementary School, in Alameda, California, on being named a 2005–2006 National Blue Ribbon School.

Amelia Earhart Elementary School has been serving students in the Bay Farm Island community of Alameda, California, since 1979. The mission of the school is to inspire academic excellence, a passion for learning and respect for self and community.

Amelia Earhart Elementary school was named a California Distinguished School in 2004 by the California Department of Education and a National "No Child Left Behind" Blue Ribbon School in 2005.

The teachers, staff, administration, parents and community members work together to create a culture at the school that promotes a dynamic school-wide vision of academic success for all students.

Amelia Earhart teachers, staff and administrators collaborate to use student data to drive informed decisions about instruction and provide a quality educational setting where all children can learn and excel.

Amelia Earhart Elementary School is a national model of excellence and an outstanding example of the ideal that all students should have an equal educational opportunity in a supportive environment and that none should be forgotten.

I join in congratulating Amelia Earhart Elementary School for its commitment to excellence, which has earned the school the well-deserved, nationally recognized, Blue Ribbon School honor.

CELEBRATING THE CENTENNIAL OF SUSTAINED FILIPINO IMMIGRATION TO THE UNITED STATES

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Ms. PELOSI. Mr. Speaker, I rise today in strong support of Con. Res. 218 and join my colleagues and the Congressional Asian Pacific American Caucus in recognizing the upcoming centennial celebration of sustained Filipino immigration to the United States. For over a century now, Filipino Americans have been a vibrant part of the American story, adding to our great diversity and contributing to the success of our country.

Since the first small group of Filipino immigrants arrived in 1906 to work in the sugar plantations of Hawaii, Filipino Americans have been an important part of our country's history. Indeed, their story of struggle and success is the story of America, whether as migrant laborers working in the fields of California, or as soldiers fighting for freedom and democracy in every major conflict of the past century. One hundred years later, the Filipino American community is now over 2 million strong and the second largest Asian Pacific Islander American community in our country.

In addition, this centennial also celebrates the strong bond and friendship that the United States and the Philippines have shared for over 100 years. From the period of American governance starting in 1898 and independence in 1946, the Philippines have proven to be one of our most enduring and important allies. Today, that bond has been strengthened through sustained immigration where the exchange of ideas and cultural experiences has added to our diverse landscape.

I cannot stress enough the enormous contributions of Filipino Americans, especially all those who have served with great distinction in our Armed Services. That is why, as we celebrate this centennial, it is so important to recognize and honor the service of those Filipino veterans who served honorably during World War II. The United States made a promise to these veterans and I will continue to fight to fully restore their benefits that are 6 decades overdue.

Filipino Americans are the second most populous Asian American community in my district of San Francisco, and I am proud to represent this vibrant and active community in Congress. I look forward to commemorating the contributions of Filipino Americans and advancing the issues of the community throughout the upcoming centennial year.

HONORING THE LIFE OF DR. ROBERT SANDERS

HON. BART GORDON

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. GORDON. Mr. Speaker, I rise today to honor the life of Dr. Robert Sanders, a generous man who dedicated his life to keeping our children safe. Dr. Sanders passed away earlier this month.

Dr. Sanders wore many hats in my hometown of Murfreesboro, where he resided. He was a husband, father, farmer and pediatrician. He served as Director of the Rutherford County Health Department from 1969 to 1991 and served as the county's medical examiner from 1983 to 1999.

As a pediatrician, Dr. Sanders cared for thousands of Murfreesboro's children. As an advocate for child safety restraints in vehicles, he saved the lives of countless more. Because of Dr. Sanders' tireless efforts, Tennessee became the first State in the Nation to pass a law requiring children in vehicles to be restrained in safety seats. Every other State in the country eventually followed Tennessee's lead.

Even after the passage of that law in 1977, Dr. Sanders kept working to keep children safe while riding in vehicles. His efforts led to a state seat belt law and loaner programs to help low-income families acquire child-restraint seats.

The Tennessee Medical Association, Tennessee Public Health Association and Tennessee Pediatric Society all have honored Dr. Sanders for his great service.

Although Dr. Sander's dedication to a noble cause will benefit children for generations to come, I know he will be deeply missed by his family, his friends and countless Middle Tennesseans like me.

HONORING THE SERVICE OF K. LARRY STORRS ON HIS RETIREMENT FROM CONGRESSIONAL RESEARCH SERVICE

HON. JIM KOLBE

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. KOLBE. Mr. Speaker, I would like to take this opportunity to extend my appreciation to a dedicated public servant at the Congressional Research Service of the Library of Congress. Dr. K. Larry Storrs is retiring from CRS after more than 30 years of service to Congress and the Nation. This length of public service is not only a credit to Dr. Storrs, but also a demonstration of the dedication that he and many others at the Congressional Research Service bring to support our work in Congress.

Hailing from the small farm town of American Fork, Utah, Dr. Storrs first became interested in politics and public policy through his participation in debate and student government in high school and college. For 2½ years he was a missionary in Brazil, beginning his life-long involvement with Latin America. After returning from Brazil, he completed his undergraduate studies at Brigham Young University majoring in political science and won a fellowship funded by the National Defense Education Act to support his doctoral studies in government and Latin American studies at Cornell University. Newly married, he returned to Brazil in the mid-1960s to research his dissertation on Brazil's foreign policy. Before joining the Library of Congress, Dr. Storrs taught for 8 years at Vassar College and the George Washington University, focusing on Latin American politics and U.S.-Latin American relations. His love of teaching ensured that he would continue teaching part-time during his public service career, including at George Washington University, American University, the Foreign Service Institute, and National Defense University. He has continued to teach me and many other Members of Congress about Latin America.

Dr. Storrs began work with CRS in 1975 as analyst in Latin American affairs and was later promoted to specialist. During his career, he has written almost 400 memoranda and reports for Members of Congress and congressional committees, organized numerous seminars, and provided thousands of briefings to congressional staff on Latin American policy issues. Until the late 1970s, Dr. Storrs worked primarily on issues in U.S. relations with Chile and Panama. On Chile, he helped support the hearings on the role of the Central Intelligence Agency in foreign policy. He also provided extensive support to the Senate during the Panama Canal Treaties debate and to both houses during consideration of the legislation creating the Panama Canal Commission that operated the Canal until the end of 1999. In the 1980s and 1990s, Dr. Storrs wrote extensively on several controversial issues related to Central America and the Caribbean: congressional conditions on military aid to El Salvador and Guatemala; congressional prohibitions on covert assistance to the contras in Nicaragua; the recommendations of the bipartisan Kissinger Commission on Central America; and enactment of the Caribbean Basin Initiative.

Beginning in the early 1990s, Dr. Storrs's research focused more on Brazil and Mexico within the context of U.S. initiatives to promote free trade in Latin America. On Mexico, he dealt with issues relating to congressional passage of the North American Free Trade Agreement in 1993, congressional concerns with political stability and a guerrilla insurgency in 1994, and a large financial assistance package for Mexico in 1995. He also worked extensively on congressional initiatives to strengthen regional and bilateral drug control programs with Mexico. For well over a decade Larry has provided extensive support to the annual U.S.-Mexico Isnterparliamentary Group meetings, and he has accompanied the U.S. delegation for the past 7 years.

Larry Storrs is a fine example of those many dedicated staff of the Congressional Research Service who help inform Congress as it deliberates important public policy issues. His gracious demeanor and considerable expertise on Latin America made him an invaluable asset to Congress for many years. On behalf of my colleagues, I extend our deep appreciation to Larry for his service, and wish him the very best in future endeavors. I doubt he will really retire from teaching. Good teachers never do. There will always be someone lucky enough to learn from Dr. Storrs. We wish you the best, Larry!

PERSONAL EXPLANATION

HON. SUE WILKINS MYRICK

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mrs. MYRICK. Mr. Speaker, due to surgery, I was unable to participate in the following votes. If I had been present, I would have voted as follows:

December 17, 2005:

Rollcall vote 663, on Agreeing to H. Res. 623—Providing for consideration of motions to suspend the rules, I would have voted aye.

Rollcall vote 664, on the Motion to Suspend the Rules and Agree to the Senate Amendment to H.R. 2520—the Stem Cell Therapeutic and Research Act, I would have voted aye.

December 19, 2005:

Rollcall vote 665, on Agreeing to the Conference Report H.R. 1815—the National Defense Authorization Act of FY 2006, I would have voted aye.

Rollcall vote 666, on Agreeing to H. Res. 639—Waiving points of order against the conference report on H.R. 2863, FY 2006 Department of Defense Appropriations, I would have voted aye.

Rollcall vote 667, on Motion to Suspend the Rules and Agree, as Amended to H. Con. Res. 284—Expressing the sense of Congress with respect to the 2005 presidential and parliamentary elections in Egypt, I would have voted aye.

Rollcall vote 668, on the Motion to Recommit with instructions H.R. 2863—Making appropriations for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes, I would have voted nay.

Rollcall vote 669, on Agreeing to the Conference Report H.R. 2863—Making appropriations for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes, I would have voted aye.

Rollcall vote 670, on Agreeing to the Conference Report S. 1932—the Budget Reconciliation Act of 2006, I would have voted aye.

Rollcall vote 671, on the Motion to Suspend the Rules and Agree—Expressing the sense of Congress regarding the education curriculum of the Kingdom of Saudi Arabia, I would have voted aye.

U.N. SECRETARY GENERAL KOFI ANNAN INAUGURATES INTERNATIONAL DAY OF COMMEMORATION FOR THE VICTIMS OF THE HOLOCAUST

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. LANTOS. Mr. Speaker, I rise today to call to my Colleagues' attention to a very important event, the first annual International Day of Commemoration for the Victims of the Holocaust, which took place last Friday, January 27, 2006, at the U.N. in New York.

Mr. Speaker, under the leadership of my two good friends, Secretary General Kofi Annan and General Assembly President Jan Eliasson, the U.N. established this annual remembrance, and in doing so, has taken a critical step to begin to undue a dark legacy of bias and hatred directed against Jews and the Democratic State of Israel that has long plagued the U.N. The idea for an annual U.N. Commemoration for the Victims of the Holocaust, which was instituted by Resolution 60/7 on November 1, 2005, grew out of an event that took place one year ago in New York, an historic Special Session of the U.N. General Assembly to mark the 60th Anniversary of the Liberation of the Nazi Death Camps on January 25, 2005. Last year's U.N. Special Session was convened with the support of the vast majority of U.N. member State's at the urging of Secretary General Annan.

The relevance of and the need for this International Day of Commemoration for the Victims of the Holocaust could not be more clear. Mr. Speaker, in the months following the establishment of the International Day of Commemoration for the Victims of the Holocaust by Resolution 60/7, the current President of Iran, Mr. Mahmoud Ahmadinejad, has publicly stated that he believes that Holocaust is a "myth" and that Israel "should be wiped off the map."

Mr. Speaker, I draw my colleagues attentions to the courageous remarks U.N. Secretary General Kofi Annan delivered on the occasion of the International Day of Commemoration in Memory of the Victims of the Holocaust last Friday, January 27th. The Secretary General stated, "Remembering is a necessary rebuke to those who say the Holocaust never happened or has been exaggerated. Holocaust denial is the work of bigots. We must reject their false claims whenever, wherever and by whomever they are made."

Mr. Speaker, I ask that the entire text of the Secretary General's important address be placed in the RECORD. I also ask that the entire text of remarks delivered at that same event by General Assembly President Jan Eliasson of Sweden and Israel's Permanent Representative to the United Nation's, Ambassador Dan Gillerman be included in the RECORD.

MESSAGE FOR THE INTERNATIONAL DAY OF COMMEMORATION IN MEMORY OF THE VICTIMS OF THE HOLOCAUST BY SECRETARY-GENERAL KOFI ANNAN

Today, for the first time, the United Nations marks what will, from now on be an annual observance: the International Day of Commemoration in memory of the victims of the Holocaust.

There can be no reversing the unique tragedy of the Holocaust. It must be remembered, with shame and horror, for as long as human memory continues.

Only by remembering can we pay fitting tribute to the victims. Millions of innocent Jews and members of other minorities were murdered in the most barbarous ways imaginable. We must never forget those men, women and children, or their agony.

Remembering is a necessary rebuke to those who say the Holocaust never happened or has been exaggerated. Holocaust denial is the work of bigots. We must reject their false claims whenever, wherever and by whomever they are made.

Remembering is also a safeguard for the future. The abyss reached in the Nazi death camps started with hatred, prejudice and anti-Semitism. Recalling these origins can remind us to be ever on the lookout for warning signs.

As the Holocaust recedes in time, and as the number of survivors dwindles, it falls to us—the current generation—to carry the torch of remembrance and uphold the cause of human dignity.

The United Nations was founded as a reaction to the horrors of the Second World War. Even so, the international community has too often failed to stand up to mass atrocities.

In recent years we have taken important steps to improve on that record, such as establishing the International Criminal Court and agreeing on the collective responsibility to protect.

On this International Day of Commemoration, the theme of our observance is "remembrance and beyond". In that spirit, let us pledge ourselves to even greater efforts to prevent genocide and crimes against humanity.

MESSAGE BY THE PRESIDENT OF THE UNITED NATIONS GENERAL ASSEMBLY, H.E. MR. JAN ELIASSON, ON THE OCCASION OF THE INTERNATIONAL DAY OF COMMEMORATION IN MEMORY OF THE VICTIMS OF THE HOLOCAUST

Today we observe for the first time the International Day of Commemoration in memory of the victims of the Holocaust. This event will take place every year on 27 January. This follows the adoption without a vote of General Assembly resolution 60/7 on "Holocaust remembrance", on 1 November, 2005.

This year's commemoration is of special significance. It takes place only one year after the General Assembly's Special Session on 24 January 2005, which marked the sixtieth anniversary of the liberation of the Nazi concentration camps.

The liberation of the Nazi death camps revealed to the world one of the most horrendous crimes against humanity. Auschwitz-Birkenau, Dachau, Sobibor, and Treblinka are among the sites where the lives of millions of people were extinguished on political, religious or ethnic grounds.

Remembering this low point in human history is a solemn duty for all of us. We must continue to exorcise the evil of the past. In resolution 60/7, the General Assembly unequivocally "rejects any denial of the Holocaust as an historic event, either in full or in part."

We must also commit ourselves to preventing the reoccurrence of genocide in the future, whenever and wherever it might occur. We must remain vigilant. The forces of hatred, bigotry and racism are still at work in the world.

It is a tragedy that the international community has not been able to stop new horrors in the years since the Holocaust. This makes it all the more important that we remember the lessons of the Holocaust. It must be a unifying cause around which we all can rally.

On this International Day of Commemoration let us pay tribute to all the victims of the Holocaust. Let us also honour the survivors. And in looking back at this sombre page of history and other atrocities and crimes of genocide following it, let us join forces and recommit ourselves to building mutual respect and dignity for all. Holocaust remembrance will strengthen us in this resolve.

INTERNATIONAL DAY OF COMMEMORATION IN MEMORY OF THE VICTIMS OF THE HOLOCAUST. STATEMENT BY H.E. AMBASSADOR DAN GILLERMAN, PERMANENT REPRESENTATIVE

I, Danny Gillerman, born in Israel to parents who fled the Nazis, but whose grandparents and family perished, stand before you today, as an Israeli, a Jew, and a citizen of the world—moved and filled with pride as the world embarks on a journey beyond remembrance.

I stand here as a representative of the Jewish State that arose out of the ashes of the Holocaust. A Jewish State whose cabinet yesterday convened a Special Session at the Holocaust Memorial Museum in Jerusalem, Yad Vashem. A Jewish State that has become, against all odds, a beacon of beauty, excellence, creativity, and justice for the whole world.

And today, on this solemn occasion, I urge you to imagine. Indeed many of you in this hall don't need to imagine because you were there, but I urge the rest of the world to imagine—imagine the shattering of skulls, the burning of flesh, the cries of anguish. Look at one child, and multiply it by a million and a half. Look at one member of your family and multiply him by six million. Imagine!

But imagine too what a world this would be if they, and their children, were still with us. How much more beauty, more excellence, more art and culture, more cures and innovations there would be. Imagine. Imagine how much better the world would be.

So today, as we look to the past, embrace the present, and look to the future, we must all pray. We must remember, salute, sound an alarm, and vow. We remember the sacrifice of the victims, we salute the courage of the survivors, many of them in this hall, whose numbers dwindle as the Holocaust turns from being memory to becoming history. And we sound an alarm, a call to arms, and a wake up call to the world.

A world in which a Member State of this organization calls for wiping Israel off the face of the map. A world in which an extreme and evil regime denies the Holocaust while preparing the next one.

A world that stood still 65 years ago and has since witnessed Cambodia and Rwanda.

A world that must act today to atone for yesterday and preserve our tomorrow.

On this day, I want to also express to you in this hall and around the world, my deep regret. I deeply, very deeply regret, and I believe the rest of the world should too, that the State of Israel did not exist in 1938 or 1943. Because if it did, this horrible event would never have happened.

And today, from this podium, in this hall, on this solemn day, I vow to you. I vow to you that as long as there is an Israel, no Jew will again be made to wear a yellow star or be tattooed with a number. And I vow to you that there will forever be an Israel, so these horrors will never be witnessed again—Never Again!

Ladies and Gentlemen, as we gather here today, night is descending on Jerusalem, and the Jewish Sabbath is enfolding Israel. So it is from here, from this world stage, that I say this Eve of Shabbat prayer:

"May God Give His People Strength. May God Bless His People With Peace."

Shabbat Shalom.

TRIBUTE TO CLYDE P. SELIG

HON. HENRY CUELLAR

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. CUELLAR. Mr. Speaker, I rise today to honor Clyde P. Selig, president and CEO of Commercial Metals Steel Group, CMSG. CMSG ships around 2.4 million tons of steel a year, employs over 6,700 people and grosses close to $1.3 billion a year in sales.

Mr. Speaker, Clyde Selig attended Clarkson College of Technology and graduated from the University of Maryland. He also served in the U.S. Army in various command and staff positions in Europe.

Mr. Selig has served in many capacities with SMI-Texas including manager of maintenance and engineering, manager of steelmaking, works manager, vice president of operations and general manager before becoming executive vice president of CMC Steel Group Mills. He was appointed President and COO in February of 1997 and CEO in May of 2002.

A strong believer in community support and involvement, Mr. Selig was one of the founders of the Seguin Boys' Club, and is a former president of the Seguin Chamber of Commerce. He also served as vice president of the City/County Hospital Board, including the Citizens Advisory Juvenile Board. Currently, he serves with the Rotarians.

Mr. Speaker, the 28th district of Texas is proud to have such an outstanding civic leader living in San Antonio.

CONGRATULATING MS. CHRISTIANE E. BUUCK

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. BURGESS. Mr. Speaker, I rise today to congratulate Ms. Christiane E. Buuck of Bedford, TX, for receiving the prestigious Fulbright award to study abroad in France during the 2005–2006 academic year. Ms. Buuck was honored with this award for her studies in creative writing at the University of Arizona.

The Fulbright program is sponsored by the Department of State Bureau of Educational and Cultural Affairs. The program was established in 1946 with the purpose of building mutual understanding between the people of the United States and the rest of the world by allowing recipients to study, lecture or conduct research in an international exchange program.

Christiane was selected on the basis of academic achievement, as well as demonstrated leadership potential in her field.

I extend my sincere congratulations to Ms. Christiane Buuck on receiving this award and commend her dedication and desire to help her community and country.

CONGRATULATING NATALIE SOLFANELLI AS SHE IS HONORED BY THE LACKAWANNA RIVER CORRIDOR ASSOCIATION

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. KANJORSKI. Mr. Speaker, I rise today to ask you and my esteemed colleagues in the House of Representatives to pay tribute to Natalie Solfanelli, executive director of the Lackawanna Heritage Valley Authority in Lackawanna County, PA. Mrs. Solfanelli has been honored by the Lackawanna River Corridor Association for her exceptional performance in creating partnerships to preserve and develop the Lackawanna Valley's historic, cultural, natural and economic resources through preservation, education and promotion of the regional heritage.

The Lackawanna River Corridor Association is a nonprofit community organization created in 1987 to promote the restoration and protection of the Lackawanna River and its watershed resources. A major goal of the LRCA is to foster the development of a 40-mile long network of parks and trails along the Lackawanna River.

The Lackawanna Heritage Valley Authority and the Lackawanna River Corridor Association have been collaborating to get the 40-mile trail and greenway system built. Known as the Lackawanna River Heritage Trail, several sections were developed in the past few years. Other sections are in final engineering phases and will be under construction soon.

Mrs. Solfanelli's leadership and vision have contributed to making the Lackawanna River Heritage Trail project a strategic link in the work of the authority and its partners to promote the economic and environmental revitalization of communities along the river.

After being named LHVA executive director, Mrs. Solfanelli began to enhance the scope of the Downtown Riverfront Trail Project and position the trail as an economic development generator. She is leading a riverfront partnership effort to look ahead at the next steps that will enable private developers and local public agencies to further develop the riverfront area as a complement to the revitalization of downtown Scranton.

Mrs. Solfanelli has an impressive background in financial services, having served with Alpha Benefits Group, Consulting Group, Inc. and Omni Health Plan. She is an NASD licensed registered representative with MidSouth Capital, Inc. and has been president of Harbor Group, Inc., an insurance and investment planning firm since 1989. Mrs. Solfanelli is also a certified life underwriter and a long term care professional.

Mrs. Solfanelli serves on the board of Scranton Tomorrow, the Jewish Federation of Northeastern Pennsylvania, the St. Francis of Assisi Kitchen, Temple Hesed, Presidents Advisory Council of Keystone College and the Economic Development Council of Lackawanna County.

Married to Attorney Joseph R. Solfanelli, the couple has three adult children.

On a personal note, let me express my appreciation to Natalie for welcoming me into the Greater Scranton community. Her boundless energy and enthusiasm are infectious; everyone who deals with Natalie is inspired to work even harder to make Lackawanna County a better place to live.

Mr. Speaker, please join me in congratulating Natalie Solfanelli on the occasion of this honor. Mrs. Solfanelli epitomizes the finest level of selfless community service and the quality of life in the greater Scranton area is better because of her efforts.

TRIBUTE TO CENTENARIAN DORA KAUFFMAN OF HERNANDO COUNTY, FLORIDA

HON. GINNY BROWN-WAITE

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Ms. GINNY BROWN-WAITE of Florida. Mr. Speaker, I rise today to honor Dora Kauffman of Hernando County, Florida. Dora has done something that all of us strives for, but that very few of us will ever accomplish, celebrate her 100th birthday.

Born January 19, 1906 in New York, DORA says that some of her fondest memories of her childhood were times spent playing games. She remembers seeing a dog for the first time as one of the happiest events in her life. She says she loved playing with the dog everyday.

Dora married and was blessed with two children, four grandchildren and several great grandchildren. She says she is happy with her life and would not change a thing if she had her life to live over.

Today, Dora gets the most pleasure from visiting with her resident friends and sitting down to a good hot meal. The one thing she likes most about Hernando County is the people, in addition to the good weather. Her favorite flower is the rose and her favorite color is blue. Her advice to the young people is to, "work hard and be good and kind to people."

Mr. Speaker, I ask that you join me in honoring Dora Kauffman for reaching her 100th birthday. I hope we all have the good fortune to live as long as she has.

INTRODUCTION OF LEGISLATION DESIGNATING THE GOVERNOR JOHN ANDERSON, JR. POST OFFICE BUILDING

HON. DENNIS MOORE

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. MOORE of Kansas. Mr. Speaker, joined today by my Kansas colleagues Todd Tiahrt, Jim Ryun and Jerry Moran, I am introducing legislation that would designate the United States post office located at 110 North Chestnut Street in Olathe as the "Governor John Anderson, Jr. Post Office Building."

Governor Anderson was born near Olathe in 1917 and educated at Kansas State University and the University of Kansas, where he received a law degree in 1944. After serving on the staff of U.S. District Court Judge Walter Huxman for two years, John Anderson won election as Johnson County Attorney in 1947, where he served for six years. He was a member of the Kansas State Senate from 1953–1956, and was appointed Kansas Attorney General, serving from 1956–1961. Elected Governor of Kansas in 1960 and 1962, he defeated incumbent Governor George Docking, served as Governor during Kansas' centennial celebration, and appointed James B. Pearson to the United States Senate upon the death of Senator Andrew Schoeppel.

John Anderson's tenure as Kansas Governor was marked by numerous achievements, including:

Revision of the state's pardon and parole systems;

Creation of a combined state medical and psychiatric hospital;

Restructuring of the state's public school system into unified districts;

Increasing of the state's per-pupil expenditure allowance;

Addition of the University of Wichita to the state board of regents system;

Sanctioning of fair employment practices standards;

Approval of an advanced public employee retirement system;

Advancements in highway construction;

Expansion of vocational-technical schools;

Authorization of a state library consultant;

Improvements in the public welfare system; and

Reorganization of state agencies, commissions and boards.

Mr. Speaker, this legislation honoring an important Kansas leader is long overdue, and I know that my delegation colleagues look forward with me to its speedy enactment.

IN MEMORY OF FRANCIS L. BRANNIGAN, FIRE SERVICE CONSTRUCTION EDUCATOR WITH A LEGACY OF PUBLIC SERVICE AS A GROUNDBREAKING LEADER IN PROVIDING FOR FIREFIGHTER SAFETY

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. WELDON of Pennsylvania. Mr. Speaker, I rise today with great sadness and tremendous gratitude to honor the life of Francis L. Brannigan, who over the years has helped firefighters be more astute to the importance of knowing building construction to promote firefighter safety. As a groundbreaking leader in providing for firefighter safety, Frank was one of the first to realize that the biggest threat to firefighters were the buildings they were working in. Throughout his career, Frank provided constant focus on the issues associated with building construction and the fire environment. The safety of firefighters was always the focus of his message and as a result, generations of firefighters will be safer because of his message. The knowledge that he possessed, and generously shared, was second to none.

Frank Brannigan devoted more than half of his 63-year career to the safety of firefighters in building fires. He was well known as the author of "Building Construction for the Fire Service," and for his lectures and videotapes. The first edition of his "Building Construction for the Fire Service" was an instant success in 1971. Since then, it has sold more than 130,000 copies in three editions, the most recent of which was published in 1992. Designated by Fire Chief as one of the 20 people who most influenced the fire service in the 20th century, Frank Brannigan was truly one of the giants of the fire service.

Frank Brannigan was not a fire chief or an engineer, but he became one of the most important influences in the fire service in the last quarter of the 20th century. I am proud to say I knew Frank Brannigan.

Mr. Speaker, the Fire Service has lost an exceptional leader and guardian of firefighters everywhere. I wish Frank Brannigan's wife Maurine and family my heartfelt condolences and may they find comfort in knowing that the many people he impacted deeply value his dedication and generosity and the example of his life and work. Frank Brannigan exemplified the spirit of service that has made this country great. As long as firefighters fight fires, the fire service will be the beneficiary of Frank's writing, scholarship, zeal and life-saving message.

TRIBUTE TO MARIA DE LOS ANGELES OBREGON

HON. HENRY CUELLAR

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. CUELLAR. Mr. Speaker, I rise today to celebrate the 100th birthday of Maria de los Angeles Obregon Peña who was born on the 23rd of December, 1905, in San Luis Potosi, Mexico.

Maria de los Angeles Obregon Peña moved to Laredo, TX in 1910 with her two brothers and widowed mother. Her father, Gumaro Obregon, was the youngest brother of President Alvaro Obregon and was assassinated for political reasons. While in Laredo, Maria has memories of sitting on the rooftops in Laredo and listening to gun fire just across the border in Nuevo Laredo during the 1910 Revolution.

Maria attended public school until the eighth grade when she was forced to leave to help the family make enough money to sustain itself. Later, on July 10th, 1933, she married Ramiro Santos Peña in Laredo. Together, they had three children, Pauline P. Baclesse of Mexico, MO, Ramiro A. Peña of Holland, TX, and Carlos D. Peña of Clear Lake, TX.

Maria and Ramiro were both active members of the Primera Iglesia Bautista where their children were baptized. Maria credits her outlook on life and her faith in God for her longevity. Laredo is proud to have Maria as a citizen, and is pleased to celebrate her 100th birthday.

Mr. Speaker, I appreciate the chance to honor a fine citizen of Texas.

CONGRATULATING DR. TIMOTHY LYNN JACKSON

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. BURGESS. Mr. Speaker, I rise today to congratulate Dr. Timothy Lynn Jackson of Highland Village, TX, for receiving the prestigious Fulbright award to teach abroad in South Korea during the 2005–2006 academic year. Dr. Jackson was honored with this award for his talents in the field of music at the University of North Texas.

The Fulbright program is sponsored by the Department of State Bureau of Educational and Cultural Affairs. The program was established in 1946 with the purpose of building mutual understanding between the people of the United States and the rest of the world by allowing recipients to study, lecture or conduct research in an international exchange program.

Timothy was selected on the basis of his professional achievement, as well as demonstrated leadership potential in his field.

I extend my sincere congratulations to Dr. Timothy Lynn Jackson on receiving this award and praise his dedication and desire to help his community and country.

CONGRATULATING JOHN COSGROVE AS HE IS HONORED BY THE LACKAWANNA RIVER CORRIDOR ASSOCIATION

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. KANJORSKI. Mr. Speaker, I rise today to ask you and my esteemed colleagues in the House of Representatives to pay tribute to John Cosgrove, former executive director of the Lackawanna Heritage Valley Authority in Lackawanna County, Pennsylvania. Mr. Cosgrove has been honored by the Lackawanna River Corridor Association for his leadership in creating partnerships to preserve and develop the Lackawanna Valley's historic, cultural, natural and economic resources through preservation, education and promotion of the regional heritage.

The Lackawanna River Corridor Association is a non-profit community organization created in 1987 to promote the restoration and protection of the Lackawanna River and its watershed resources. A major goal of the LRCA is to foster the development of a 40 mile long network of parks and trails along the Lackawanna River.

The Lackawanna Heritage Valley Authority and the Lackawanna River Corridor Association have been collaborating to get the 40 mile trail and greenway system built. Known as the Lackawanna River Heritage Trail, several sections were developed in the past few years. Other sections are in final engineering phases and will be under construction soon.

Begun under Mr. Cosgrove's tenure, the Lackawanna River Heritage Trail project is a strategic link in the work of the authority and its partners to promote the economic and environmental revitalization of communities along the river.

Mr. Cosgrove was named to be the first executive director of the newly formed Association of National Heritage Areas in 2004. Prior to his 6 years with the LHVA, he served as executive director of Neighborhood Housing of Scranton and held several positions in the administration of the late Governor Robert P. Casey. He also chaired several initiatives for Scranton Tomorrow including City Pride and First Night Scranton.

Mr. Cosgrove resides in Scranton with his wife, the former Eileen Egan Cosgrove and their three daughters.

On a personal note, I wanted to mention how much I enjoy working with John and look forward to continuing to work with him on his expanded portfolio serving heritage areas around the country. John is yet another example of a talented Northeastern Pennsylvanian who is now sharing his skills to serve the entire Nation.

Mr. Speaker, please join me in congratulating John Cosgrove on the occasion of this honor. Mr. Cosgrove's leadership, dedication and commitment has enhanced the quality of life in the Greater Scranton region and all its citizens are better because of it.

TRIBUTE TO CENTENARIAN ANNA PORIZO OF HERNANDO COUNTY, FLORIDA

HON. GINNY BROWN-WAITE

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Ms. GINNY BROWN-WAITE of Florida. Mr. Speaker, I rise today to honor Anna Porizo of Hernando County, Florida. Anna has done something that all of us strives for, but that very few of us will ever accomplish, celebrate her 100th birthday.

Born September 20, 1905 in Jersey City, New Jersey, Anna attended school through the 10th grade and then went to work at the Box Company. She has fond memories of cooking with her mother during her childhood years.

Anna married John Porizo and was blessed with a child, a grandchild and 2 great grandchildren. The happiest moment in her life was the birth of her daughter. Anna says that the proudest and most meaningful moments in her life were watching her daughter and grandson grow up.

Anna moved to Hernando County with her daughter and says the weather is what she likes most about the county. Today, she gets the most pleasure from relaxing and enjoying a bowl of cold ice cream. Her favorite flower is the rose and her favorite color is pink. Her advice for the young people is to, "spend more time with family and do more family things."

Mr. Speaker, I ask that you join me in honoring Anna Porizo for reaching her 100th birthday. I Hope we all have the good fortune to live as long as she has.

TRIBUTE TO MAX FALKENSTIEN

HON. DENNIS MOORE

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. MOORE of Kansas. Mr. Speaker, I rise to pay tribute to Max Falkenstien, the "Voice of the Kansas Jayhawks", who will be retiring at the conclusion of the 2005—2006 men's basketball season at the University of Kansas.

The conclusion of the current season will mark Max Falkenstien's 60th season of broadcasting Kansas University sporting events. At age 81, he has been inducted into the Naisimith Basketball Hall of Fame, the College Football Hall of Fame, the Kansas Sports Hall of Fame, and the KU Athletic Hall of Fame. He was the first inductee of the Lawrence High School Hall of Honor. Additionally, he has been awarded an honorary "K" by the Kansas Lettermen's Club. The Sporting News in 2001 named Falkenstien "the best college radio personality in the country" and ESPN's Dick Vitale included KU's Bob Davis and Falkenstien in his "Sweet 16" of the best announcer teams in the United States.

A true legend, Max Falkenstien has been synonymous with KU athletics for 6 decades. As KU basketball coach Bill Self recently said in the Lawrence Journal-World, "Max has performed at the highest level over an extended period of time like very few in his profession." Falkenstien broadcast his first basketball game—an NCAA tournament game in Kansas City between KU and Oklahoma A&M—on March 18, 1946. His next broadcast was KU versus TCU in football on September 21, 1946. He was play-by-play voice of the Jayhawks for 39 years and then switched to a commentator's role in September 1984 when Bob Davis assumed play-by-play duties. Falkenstien provided play-by-play for the Big Eight Conference basketball game of the week between 1968 and 1971, and for more than 3 decades hosted football and basketball coaches' TV programs, including those for Don Fambrough, Pepper Rogers, Mike Gottfried, Ted Owens, Larry Brown and Roy Williams.

Mr. Speaker, I include with this statement a recent article from the Lawrence Journal-World summarizing Max Falkenstien's outstanding career and I join with all KU fans in wishing him well in his long overdue, richly deserved retirement as "Voice of the Kansas Jayhawks."

HONORING JOSEPH J. MANERCHIA UPON HIS RETIREMENT AS CHIEF OF THE MARCUS HOOK FIRE DEPARTMENT

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. WELDON of Pennsylvania. Mr. Speaker, I would like to take this opportunity to pay tribute to Chief Joseph J. Manerchia upon his retirement as Fire Chief of the Marcus Hook Fire Department after more than 30 years of distinguished and dedicated service to the Department.

Joseph J. Manerchia joined the Marcus Hook Fire Company No. 1 at the age of 15 in 1975. In the years that followed, he held every administrative and Fire Line office within the company. In 1995, he became company chief and is credited with initiating many positive changes in the operation of the company, especially in areas of firefighter/fire officer training, firefighter safety, development of fire officer qualifications and training programs for apparatus drivers. He also wrote the first Standard Operating Guideline Manual adopted by the fire company and developed a "Fire Department/Police Department Interface Program" to promote better cooperation between the two agencies. Chief Manerchia led his company to 4 consecutive Pennsylvania State Championships as the "Best Appearing Marching Unit" in the Pennsylvania State Firemen's Convention Parade.

In 1999, Joe rose to the rank of Borough Fire Chief, a position he would hold through 2005 which made him the longest serving Borough Fire Chief in the history of the department. At that time, the Marcus Hook Fire Department was comprised of the Marcus Hook Fire Company No. 1 and the Viscose Fire Company No. 2. As Borough Fire Chief he provided the leadership that would eventually consolidate the two local fire companies into one organization. In the year 2000, he was instrumental in developing a plan that led to the replacement of the fire department's aging aerial ladder truck with a new 75 Foot Quint. Again under his chairmanship, the State spotlight was cast on Marcus Hook as the Fire Department hosted the Pennsylvania State Firemen's Convention in September 2003, a first for the fire department and the borough.

The Chief has attended local, State and nationally accredited fire, hazardous materials and command training classes. He is the graduate of several National Fire Academy on campus programs as well as programs at the University of Texas A&M and the University of Nevada at Reno. Joe holds Pro-Board Certification as a Fire Instructor and as an Industrial Firefighter and is a Pennsylvania certified Emergency Medical Technician and Vehicle Rescue Technician. He is a member of the International Association of Fire Chiefs, International Association of Fire Service Instructors and is on the board of directors of the local chapter of the American Red Cross.

Currently Chief Manerchia is working on a degree in Emergency Management and accreditation as a "Chief Fire Officer Designate" through the International Association of Fire Chiefs. He continues to lecture locally and regionally on fire company consolidations and chairs a committee charged with consolidating three fire companies in two municipalities. Joe is still active with the Marcus Hook Fire Department and is a member of the Emergency Management Committee of the Borough of Marcus Hook.

On January 21, 2006, Chief Joseph M. Manerchia was recognized for his 7 years as Borough Fire Chief as well as his 30 years of service to the community and the Fire Department at a banquet held in his honor hosted by the Marcus Hook Fire Department and the Borough of Marcus Hook. During his 30 years of service, he certainly has earned this recognition, and I call upon all of my colleagues to join me in applauding his leadership in both his Department and community. While his service will not soon be forgotten and his boots will not soon be filled, the high standards he has set for his department will strengthen fire service for many years to come.

TRIBUTE TO ROY STURGES

HON. HENRY CUELLAR

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. CUELLAR. Mr. Speaker, I rise today to honor Roy Alonzo Sturges, a deputy in La Salle County which is in the 28th district of Texas, who served bravely in Southern Texas as a Chief Jailor

Mr. Speaker, La Salle County commissioners voted unanimously in November to support the naming of the county detention center in Cotulla, Texas, the Roy Alonzo Sturges Law Enforcement Center, for his efforts to foil an attempted escape by a prisoner.

On April 27, 1973, Mr. Sturges thwarted the attempt by a county prisoner but was injured in the process. Records indicate that Mr. Sturges was struck by the inmate with a wooden board, but the jailor was still able to get a door locked to stop the escape. After Mr. Sturges and his wife, who came to his aid after hearing the scuffle, secured the jail, they drove to the local sheriff's office. On the way, he reportedly suffered a fatal heart attack.

Roy Alonzo Sturges was memorialized in Texas in 1994 as a fallen law enforcement officer. La Salle County is honored to have had such an outstanding gentleman serve the people of the 28th district.

Mr. Speaker, I am proud to pay tribute to Roy Alonzo Sturges.

IN MEMORY OF LEO C. STUVER

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. BURGESS. Mr. Speaker, I rise today to give tribute to Mr. Leo C. Stuver from the 26th Congressional District of Texas, for his lifelong contributions to his community and to his fellow citizens.

Born in Maricopa County, Arizona on July 8, 1917, Mr. Stuver attended Mexia High School and later spent 2 years at Westminster College in Tehuacana and later attended Sam Houston State University on a football scholarship where he received his bachelor's and master's degrees.

Mr. Stuver started his 41-year career in education in the Dodge School District serving as superintendent. He served several school districts as a principal, and was a superintendent and Teague and Hillsboro school districts before settling down in the Lewisville Independent School District, LISD, in July 1969.

Mr. Stuver was a critical aide in the expansion of the LISD. Not only did he serve his community through basic administrative duties, but he also predicted the needs of the district and was proactive in finding solutions to issues facing the school district. His leadership is admired, and the local auditorium was named in his honor as a small token of appreciation compared to his contributions.

It was my honor to know Mr. Leo Stuver. I extend my sympathies to his family and friends. I hope the dedication and success of this man may serve as inspiration to all who seek their dreams to serve their communities and fellow man.

CONGRATULATING PITTSTON MAYOR MICHAEL LOMBARDO ON THE OCCASION OF HIS TESTIMONIAL DINNER AND ROAST

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. KANJORSKI. Mr. Speaker, I rise today to ask you and my esteemed colleagues in the House of Representatives to pay tribute to Michael Lombardo, mayor of the city of Pittston, in Luzerne County, PA, and senior vice president and chief operating officer of the Greater Wilkes-Barre Chamber of Business and Industry as he is honored by his friends and colleagues at a testimonial dinner.

Mayor Lombardo is widely respected for epitomizing what an elected official should be: committed, decisive, dedicated, and visionary.

Under Mayor Lombardo's leadership, the city of Pittston has been improved in many ways to enhance the quality of life for its residents and visitors alike.

As a senior member of the management team at the Greater Wilkes-Barre Chamber of Business and Industry, Mayor Lombardo has been able to apply the skills learned as a mayor of a single city in ways that touch the lives of citizens from many towns in a positive manner.

Mayor Lombardo is a former educator in the Pittston Area School District. In that capacity he encouraged many young men and women to aspire to great things and to always search for ways to contribute to the greater community.

Mayor Lombardo has been actively involved in the community for many years. He is a board member at the Northeast Regional Cancer Institute, the Greater Pittston Chamber of Commerce, the Greater Pittston YMCA and at College Misericordia's Insalaco Center. He is a member of the Council of Delegates at the NEPA Alliance, the Pennsylvania League of Cities Policy Council, the Knights of Columbus and the Wyoming Valley Watershed Coalition Steering Committee for the Riverfest Project.

He is co-chairperson of the American Cancer Society Relay for Life in the Pittston area and the Pittston Tomato Festival. He is also vice president of the Pittston City Festival Association.

Mayor Lombardo has received awards for his community service from the Pennsylvania Library Association and the Greater Wilkes-Barre Chamber of Commerce Community Partnership. He was named Greater Pittston Person of the Year in 2000.

On a personal note, I would like to say that I have greatly enjoyed the opportunity to work with Mike over the years. Whenever I helped him obtain Federal money for the city of Pittston, I knew that it would be spent wisely and for the long-term benefit of the people of Pittston. I look forward to continuing to work with him as he serves in his new capacity.

Mr. Speaker, please join me in congratulating Mayor Michael Lombardo for setting a fine example for others to emulate.

HONORING THE LIFE AND SACRIFICE OF ARMY SGT. DENNIS J. FLANAGAN OF INVERNESS, FL

HON. GINNY BROWN-WAITE

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Ms. GINNY BROWN-WAITE of Florida. Mr. Speaker, I rise today to commemorate the life and sacrifice of Army SGT Dennis J. Flanagan of Inverness, Florida. Sergeant Flanagan was killed by terrorist insurgents while on patrol in Hawijah, Iraq. In times when children and families need role models to look up to and emulate, Sergeant Flanagan was a true American hero.

A 2001 graduate of Lecanto High School, Sergeant Flanagan was an active member of the Junior ROTC, achieving the rank of First Lieutenant his junior year. Within a week following the terrorist attacks of September 11, 2001, Sergeant Flanagan enlisted in the U.S. Army. Serving with the 101st Airborne Division, 327th Infantry Regiment, 1st Brigade Combat Team, Sergeant Flanagan was part of the air assault infantry that invaded Iraq in 2003.

Following his first tour of duty, Sergeant Flanagan re-enlisted this past September for a second tour in Iraq. He was killed January 20th, along with three other U.S. soldiers when an improvised explosive device blew up his Humvee. Only the driver of the Humvee survived the blast.

Sergeant Flanagan was a soldier who firmly believed in the mission in Iraq and in advancing the cause of freedom. As a young boy, Sergeant Flanagan knew that he wanted to be a soldier in the U.S. Armed Forces. A soldier who felt we must defend America and fight for freedom, Sergeant Flanagan received glowing recommendations from his superior officers and fellow soldiers. One of the principle reasons that he re-enlisted was to act as a mentor to the newly enlisted soldiers and to help train the Iraqi army recruits.

Speaking of his future as a soldier and a patriot, Sergeant Flanagan once wrote a poem that included the words, "And now, my son, I pray to thee. Never ever forget me; that I died a soldier's death, to keep you free with my last breath." The speaker then passes a torch and says, "Keep it high for liberty." These prophetic words show that Sergeant Flanagan knew the risks associated with serving as a soldier and that he was willing to accept that risk fighting for America and for liberty and freedom.

Mr. Speaker, as a mother and a grandmother, I know the pain that comes when a child leaves home for the first time. What Sergeant Flanagan's family must cope with today, however, is the knowledge that their child will not return home. I can offer this pledge, however; that this Congress will never forget the sacrifice Sergeant Flanagan made serving his country.

TRIBUTE TO RAUL RODRIGUEZ

HON. HENRY CUELLAR

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. CUELLAR. Mr. Speaker, I rise today to honor the achievements of Raul Rodriguez who served as Managing Director of the North American Development Bank (NADBank) since October of 2000.

Mr. Speaker, the NADBank, a U.S.-Mexico international institution created under NAFTA and headquartered in San Antonio, works to finance and develop needed environmental infrastructure projects in the border region such as water and wastewater treatment plants.

Under the leadership of Mr. Rodriquez, the North American Development Bank has seen dramatic growth in its portfolio, and in its ability to help communities in the U.S.-Mexico border region improve their quality of life.

Since Mr. Rodriguez took the reigns in 2000, the NADBank has increased the diversity of its programs in order to reach more communities, not only financing water and wastewater projects, but also developing projects in other environmental areas such as water conservation.

Mr. Rodriguez has been instrumental in facilitating a higher level of coordination between the U.S. and Mexico on environmental issues of mutual concern. He is a true friend to the United States and a true advocate of the U.S.-Mexico border region.

Mr. Speaker, San Antonio is proud to have dedicated service from Raul Rodriguez.

CONGRATULATING DR. ERIKA MARTINA NELSON

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. BURGESS. Mr. Speaker, I rise today to congratulate Dr. Erika M. Nelson of Providence Village, Texas for receiving the prestigious Fulbright award to study abroad in Austria during the 2005–2006 academic year. Dr. Nelson was honored with this award for her talents in teaching Language and Literature at the University of North Texas.

The Fulbright Program is sponsored by the Department of State Bureau of Educational and Cultural Affairs. The program was established in 1946 with the purpose of building mutual understanding between the people of the United States and the rest of the world by allowing recipients to study, lecture or conduct research in an international exchange program.

Erika was selected on the basis of professional and academic achievement, as well as demonstrated leadership potential in her field.

I extend my sincere congratulations to Dr. Erika Martina Nelson on receiving this award and commend her dedication and desire to help her school, community and country.

CONGRATULATING ANDREW J. BENYO JR. UPON HIS RETIREMENT AS SUPERVISOR IN HAZLE TOWNSHIP, PENNSYLVANIA

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. KANJORSKI. Mr. Speaker, I rise today to ask you and my esteemed colleagues in the House of Representatives to pay tribute to Andrew J. Benyo Jr., a supervisor in Hazle Township, Luzerne County, Pennsylvania, who has retired after completing 18 years of dedicated public service.

Mr. Benyo was educated at St. Gabriel's Elementary and High School in the city of Hazleton, Pennsylvania and at St. Bernard's College in Cullman, Alabama, where he earned a Bachelor of Arts degree in education and English.

He is a veteran of the United States Air Force, having served during the Vietnam War at DaNang Air Base in the field of combat support.

During his years of service as an elected official in Hazle Township, Mr. Benyo held fast to a campaign promise to avoid raising property taxes. He was successful in accomplishing numerous construction projects, including Humboldt Fire Station No. 2, Community Park Soccer Fields, Babe Ruth Field, North Park Road and the Municipal Office Complex and Commons Building.

An environmental activist, Mr. Benyo also served on the Council of Governments.

Well known for his compassion and responsiveness to his constituents, he was a driving force in securing a resolution to water problems in the Beaver Brook area of the township.

He was also instrumental in bringing about the connector road between Route 93 and Route 309 in the area of 28th Street in the township.

Mr. Benyo never failed to make himself available, especially during winter months, and, in particular, during the severe winter storms of 1993, 1996 and the ice storm of 2005.

Mr. Benyo enjoys spending time with his wife, Judy, and their children, Karin and Sgt. Andrew J. Benyo 3d, who is serving with the U. S. Army Rangers, and his wife, Christine. He also intends to make time for salmon and deep sea fishing and his other hobbies that include boating, woodworking and cooking.

Mr. Speaker, please join me in congratulating Mr. Benyo for 18 years of devoted service and commitment to his community.

Because of individuals like Mr. Benyo, the quality of life in communities like West Hazleton is enhanced. And, for that, we can all be grateful.

TRIBUTE TO EDWARD "TONY" LYONS OF CITRUS COUNTY, FL

HON. GINNY BROWN-WAITE

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Ms. GINNY BROWN-WAITE of Florida. Mr. Speaker, I rise today to recognize Edward "Tony" Lyons of Citrus County, Florida. Tony was recently named the 2005 Florida Army National Guard Soldier of the Year.

Born in Nicaragua, Tony moved to Floral City, Florida at the age of two. He currently lives with his aunt, who is also his adopted mother, serves in the Florida Army National Guard and works construction in Citrus Hills to help support his family.

As an outstanding student athlete at Citrus High School, Tony led the cross country team, finishing sixth at the state meet and earning multiple awards for his athletic prowess.

Tony signed up as a member of the Florida Army National Guard in late 2004, and immediately dedicated himself to the rigors of training. Assigned to the Hernando County-based 856th Quartermaster Battalion, Tony earned the Soldier of the Year award by finishing first among the Army Guard soldiers who completed a rigorous testing regimen conducted at Camp Blanding in North Florida.

Mr. Speaker, Tony's recognition shows that hard work and dedication in pursuit of a goal can indeed bring success. I congratulate him on being named the 2005 Florida Army National Guard Soldier of the Year, and wish him good luck in the upcoming first Army Southern Region National Guard Soldier of the Year competition.

TRIBUTE TO TUX AND BOOTS BALL

HON. HENRY CUELLAR

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. CUELLAR. Mr. Speaker, I rise today to honor the sesquicentennial of Atascosa County, which is a county in the 28th district of Texas and was founded in 1856. This year marks the 150th anniversary of Atascosa's beginnings and we will kick off a year long celebration at the annual Tux and Boots Ball on Saturday, January 28th in Pleasanton, TX.

Mr. Speaker, Atascosa County is south of San Antonio on the Rio Grande Plain region of south central Texas. The first census taken in Atascosa County was in 1860 and counted 1,578 people. Today, Atascosa County's population is at more than 43,000 residents.

The earliest schools in Atascosa County were organized around the time of the Civil War. By 1914, there were thirty-seven schools in the county. By the 1940s the school districts had begun to consolidate. The total number of persons over the age of twenty-five who had completed four years of high school rose from 1,300 in 1950 to 2,083 in 1960. In addition, the number of residents with some college rose from 395 in 1950 to 473 in 1960. By the year 2000, when the census counted 38,628 people living in Atascosa County, over 65 percent of residents age twenty-five and older had four years of high school. Agriculture, government services, and some light manufacturing are key elements of the area's economy. The largest communities in the County are Jourdanton, the county seat, and Pleasanton the county's largest town. Other communities include Poteet, Lytle, Charlotte, Christine, Leming, McCoy, and Peggy. Some of the County's wonderful attractions include the Poteet Strawberry Festival, the Jourdanton Days Celebration, and the Cowboy Homecoming and Rodeo in Pleasanton. As we look back on the last 150 years with pride, we also look forward to a promising future for Atascosa.

Mr. Speaker, I am proud to honor Atascosa County on their 150th anniversary and all of their accomplishments.

CONGRATULATING MR. ERIC R. JONES

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. BURGESS. Mr. Speaker, I rise today to congratulate Mr. Eric R. Jones of Denton, Texas for receiving the prestigious Fulbright award to study abroad in Bolivia during the 2005–2006 academic year. Mr. Jones was honored with this award for his studies in Ethnomusicology at the University of North Texas.

The Fulbright Program is sponsored by the Department of State Bureau of Educational and Cultural Affairs. The program was established in 1946 with the purpose of building mutual understanding between the people of the United States and the rest of the world by allowing recipients to study, lecture or conduct research in an international exchange program.

Eric was selected on the basis of academic achievement, as well as demonstrated leadership potential in his field.

I extend my sincere congratulations to Mr. Eric Jones on receiving this award and commend his dedication and desire to help his school, community and country.

ON REMOVAL OF NAME AS COSPONSOR OF HOUSE RESOLUTIONS 635, 636, AND 637

HON. ZOE LOFGREN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Ms. ZOE LOFGREN of California. Mr. Speaker, during the December recess I was surprised to read in a newspaper article that I was listed as a cosponsor of House Resolutions 635, 636 and 637 since I had not cosponsored any of these measures. I discovered that due to administrative errors, my name was mistakenly added to these bills by the Judiciary Committee staff. I never was a cosponsor of any of them but the only way to correct the committee's error under the rules of the House is to ask unanimous consent to have my name removed as a cosponsor even though I never asked to be added to these pieces of legislation. I could not correct these errors until the House reconvened, which is why I am taking this action today.

I have been involved in two impeachment proceedings against American Presidents. The first was in 1974, during the impeachment inquiry related to President Nixon when I served on the staff of a member of the House Judiciary Committee, Congressman Don Edwards. The second was in 1998, as a Member of the Judiciary Committee during the impeachment of President Clinton.

Impeachment of a President is provided for in the Constitution only in cases of bribery, treason or "high crimes and misdemeanors." The latter phrase had a very specific meaning to the drafters of our Constitution and was meant to include misbehavior by a President that threatened the very nature of our government. President Nixon resigned before the Congress could vote on his impeachment, but the impeachment articles adopted by a bipartisan majority of the Judiciary Committee included behavior that was so lawless that it could threaten the very nature of the American government.

The partisan 1998 impeachment was based on personal misbehavior by the President and was, in my judgment, a misuse of the impeachment provisions in the Constitution. Use of impeachment for any reason that does not meet the standard set in the Constitution must be avoided by the Congress.

Serious questions have been raised about President Bush's actions in approving warrantless wiretaps by the NSA, as well as questions about both the Vice President's and the President's information that was provided to the Congress as the basis for the decision to initiate war in Iraq. These important questions need to be answered, and Congress should then consider the answers in a careful, deliberate and thoughtful manner. It is important that this process be done in a dispassionate way that avoids partisanship. This thorough analysis should, in my judgment, be undertaken before anything such as these resolutions are considered.

TRIBUTE TO FALLBROOK PEOPLE TO PEOPLE SERVICES

HON. DARRELL E. ISSA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. ISSA. Mr. Speaker, today I rise to honor Fallbrook People to People Services on the occasion of 24 years of outstanding services to the North County San Diego community.

On January 29, 2006, Fallbrook People to People Services celebrated 24 years of providing nonprofit, volunteer run, free employment and counseling resources to under served members of North San Diego County. The volunteers have served the community by matching citizens with needs with individuals whom can assist. As a result, over 11,300 jobs have been identified and filled.

Mr. Speaker, with the dedication of Fallbrook People to People Service volunteers, many elderly or incapacitated clients are able to find affordable home health care, housekeeping, and home maintenance assistance that they would otherwise be unable to locate. Many local businesses also take advantage of this resource to staff sales, service, office and maintenance positions. Young mothers, first time workers, and middle-aged women are given assistance to support their families and find meaningful employment in order to become self-sufficient citizens.

On the occasion of Fallbrook People to People Service's 24th anniversary, I would like to personally recognize the work of those who have served as volunteers, staff and board members of this exceptional, nonprofit organization.

TRIBUTE TO CHRIS JONES

HON. HENRY CUELLAR

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. CUELLAR. Mr. Speaker, I rise today to honor the accomplishment of Chris Jones, a Texas State University senior who was recently sworn in as the newest member of the San Marcos, Texas City Council.

Mr. Speaker, Chris Jones is the first student to be elected to the San Marcos City Council in 33 years. He won the election because of his values, determination and hard work.

Chris Jones was raised in the small West Texas town of Seminole between Lubbock and Midland. He is a graduate of Seminole High School and has completed undergraduate studies in Public Administration at Texas State University.

Councilman Jones ran his campaign on the idea of a better future for San Marcos, one that includes bringing jobs into the city. His service to his community is extensive considering his age. He served as Student Body Vice President at Texas State and currently serves on the Chancellor's Advisory Board. He is an ambassador to the President of the University from the Student Foundation. He also served as President of Black Student Alliance and currently chairs the Student Chapter of the Texas State Alumni Association. On top of all of this, he has interned for Texas Lt. Governor Bill Ratliff and State Representative Patrick Rose. These achievements represent only a portion of his service, contributions that earned him an honor by the Dunbar Heritage Association in 2004 for his service to the community.

Mr. Speaker, Chris Jones is a valuable asset to San Marcos and I am proud to have him in the 28th district of Texas.

TRIBUTE TO ROBERT RAWLINGS

HON. JOHN T. SALAZAR

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. SALAZAR. Mr. Speaker, I rise today to recognize Robert Rawlings on his induction into the Colorado Business Hall of Fame.

Bob Rawlings was born in Pueblo in 1924 and bravely defended his country during the Second World War, serving in the U.S. Navy from 1942 to 1946. With a degree from Colorado College, Bob then began a career as a reporter for the Pueblo Chieftain in 1947. His enthusiasm and passion for journalism propelled him to the position of Editor and then to President of Star-Journal Publishing Corporation in 1984.

His achievements in the field of Journalism prompted the University of Colorado to induct Bob as a "Living Legend" in 1997. The Colorado Press Association named him "Colorado Newspaper Person of the Year" in 1989 and the Pueblo Chamber of Commerce gave him the title of "Outstanding Citizen of the Year" in 1993.

While Bob is today being honored as a remarkable businessman, his name is equally synonymous with service. Always devoted to his hometown of Pueblo, over the years he has contributed generously of himself to the Colorado State University at Pueblo, and was honored in 2004 as "Volunteer of the Year" by the Council for the Advancement and Support of Education.

Even with all of this public activity, Bob is still a family man first and foremost. He and his wife Sandy have 4 children and 5 grandchildren.

Bob's story is the story of the American spirit. A spirit and life defined by a will to succeed and a desire to give back. It is also a life of service and generosity, of drive and achievement. Bob's persistence, patriotism, and devotion to business and community should serve as an example for us all.

I am honored to be a part of the induction of this great man into the Colorado Business Hall of Fame.

CELEBRATING THE LUNAR NEW YEAR

HON. HILDA L. SOLIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Ms. SOLIS. Mr. Speaker, today I join the Chinese community in ushering in the Lunar New Year and celebrating the Year of the Dog.

Since the earliest days of this country, people from all cultures have journeyed to our Nation seeking the promise of freedom, opportunity, and the American dream. As an integral part of our society, Chinese Americans are leaders in public service, government, science, law, education, athletics, and the arts. As business entrepreneurs, Chinese Americans are helping to strengthen our economy and our communities through their hard work and ingenuity. As patriots, Chinese Americans continue to risk their lives defending liberty.

I am pleased to help celebrate the Year of the Dog and commend those organizing events in its honor. These events promote greater understanding of the Chinese culture and society and honor not only the historical contributions of Chinese traditions, but also encourage greater awareness of the modern contributions of Chinese Americans.

As a member of the Congressional Asian Pacific Islander American Caucus, I am proud to pay tribute to the 120,000 individuals of Asian descent I represent in California's 32nd Congressional District. Residents of Rosemead, Monterey Park, Covina, West Covina, and other cities throughout my district know first hand the economic and cultural contributions of the Asian and Pacific Islander communities.

Gung Hay Fat Choy. Xin Nien Kuai Le.

IN MEMORY OF DR. CHARLES HANSON SAUNDERS

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. BURGESS. Mr. Speaker, I rise today to remember Dr. Charles Hanson Saunders, a wonderful man and a friend to the community of Denton, Texas. Dr. Saunders passed away peacefully on Monday, December 26th, 2005 at his home at the age of 90.

Dr. Saunders was born on March 17, 1915 to Mr. and Mrs. Charles and Frances Saunders. Born and raised in Denton, he spent his life serving our country and committing his life to continuing education and working vigorously. He became involved in the Boy Scouts of America at an early age and eventually earned his Eagle award. He is responsible for starting the first Cub Scout den in Denton and continued to support the Boy Scouts of America throughout his lifetime.

His formal education began at North Texas State Teachers College where he earned a Bachelor of Science in 1935. Later, Dr. Saunders attended Baylor University College of Dentistry and went on to receive his Doctor of Dental Surgery degree from the University of Michigan College of Dentistry in 1938.

After graduation, Dr. Charles Saunders returned to Denton and established his dental practice alongside his father. Later, he volunteered and entered the Army Air Force Dental Corps where he served his country while stationed in England during World War II with the 39200 Bomber Group. He returned and married Ms. Mabel Pearson, and they celebrated their 60th Anniversary in early 2005.

Dr. Saunders returned to his dental practice in Denton and then specialized in the practice of periodontics until his retirement in 1986.

A lifetime member of the Denton Kiwanis Club, Dr. Saunders served on the board of directors as well as on the board of directors for the Children's Clinic Trust. He received the Hixon Award from Kiwanis International for his outstanding service to the club. Additionally, he was extremely involved in the First Presbyterian Church of Denton. Over his lifetime membership, he served as a deacon and an elder. He was also a cofounder, board member and vice president of the Clear Creek Watershed Authority in Denton County. Dr. Saunders also served in leadership positions for the Flow Memorial Hospital for 10 years.

Dr. Saunders was a wonderful contributor to many local activities. His leadership and support created many opportunities for the members of his community. Today, I would like to recognize and celebrate the life of Dr. Charles H. Saunders. He was intelligent, giving and a true American. Charles leaves behind his lovely wife, Mrs. Mabel Pearson Saunders; his two children Charles P. Saunders and Gail P. Saunders; three grandchildren, Rachel Pryor, Kierstin Rusk and Nicholas Burgess; eight greatgrandchildren; and two nieces, Carolyn Thayer and Lois Hudman.

INTRODUCTION OF THE FUEL SECURITY AND CONSUMER CHOICE ACT

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. MARKEY. Mr. Speaker, we have an opportunity to change fundamentally the relationship of the United States to energy in a way that helps the consumer, reduces pollution, reduces greenhouse gases, and reduces the need to use military force to protect oil fields in countries thousands of miles from our shores. Nearly 70 percent of all the oil we use is consumed by the transportation sector, so we must look for alternatives to imported oil for fueling our cars and trucks. Today, advances in the production of ethanol—the refining of starch, sugar and cellulose into auto fuel—have reached the point where we have an opportunity to make a huge difference in opening up the market for alternatives to gasoline. Now is the time to be bold.

The powerful promise of ethanol to dramatically reduce foreign oil imports has just been demonstrated by Brazil. As a result of its ethanol production and technological development, Brazil has cut its dependence on foreign oil from about 80 percent in the 1970's to nearly zero today—despite being the 10th largest energy consumer in the world. Ethanol now accounts for 20 percent of Brazil's transportation fuel—we should be able to do that here.

The ethanol that the U.S. currently produces—3.4 billion gallons in 2004, or the equivalent of 250,000 barrels of oil a day—is made from corn. Producing ethanol from corn has been tremendously successful in the Midwest and now we must look to replicate that success all across the country, even in places where corn doesn't grow. There is great potential in ethanol refined from sources of cellulose, which are abundant and widely available in every corner of America. Experts tell us that biomass as diverse as switchgrass, sawgrass, tree bark, or wastes such as sawdust, paper pulp or sugar cane waste could now be turned into ethanol. Cellulosic ethanol holds incredible potential—by many estimates, the ability to replace 1–2 million barrels of oil a day or nearly the amount of oil that we consume from the Middle East.

But cellulosic ethanol can be derived not just from new crops grown in the farm belt, but also the waste streams of every city and village in urban and suburban America. Right now this surplus cellulose is being trucked to a landfill at great cost. But this so-called "waste stream" is actually the potential backbone of an alternative auto fuel. Turning cellulosic waste into ethanol would also have the virtue of helping to relieve the immense pressure in urban areas on landfills while also producing a protein rich animal food.

We need to make ethanol a national program here as Brazil has done. Right now ethanol is a boutique fuel for the Midwest that is not widely used in the urban areas or our coasts because the costs of transporting it there make it uneconomic. We need to give every region of our country an ability to produce and use ethanol. We need to give every sector of industry a stake in developing ethanol from the byproducts produced at plants in urban areas.

Right now, there are nearly five million vehicles already on the road in the U.S. that are capable of running on E85, a fuel mix that is 85 percent ethanol and 15 percent gasoline. Recently, automakers such as Ford and GM have announced plans to ramp up production of flexfuel vehicles, planning to produce a combined 650,000 such vehicles in 2006. Making vehicles that are capable of running on 85 percent ethanol is also not significantly more expensive than making cars that run on gas only. Right now, vehicles that have flexfuel models retail for the same prices as their gas-only counterparts.

Today, I am introducing the "Fuel Security and Consumer Choice Act"—legislation mandating that within 10 years all cars, trucks and SUV's sold in the United States be flex-fuel vehicles, capable of running on gasoline, ethanol or a combination of both. This legislation would also gradually phase out the so-called "dual fuels loophole" over a 4 year period—expiring roughly around the year 2010, when the credit is currently set to expire under the Energy Bill passed last year. This phase out will ensure that as we move forward as a Nation towards using these new fuels, we do not inadvertently move backwards in overall fuel economy standards for our Nation's fleet of cars, trucks and SUVs.

Mandating that U.S. cars be capable of running on ethanol will spur the development of these new cellulosic ethanols and improve technology for producing ethanol from corn. We are a technological giant and we must develop fuels for the future for our transportation sector if we ever want to replace our dependence on oil, reduce greenhouse gas emissions and provide relief to American consumers from high gas and energy prices.

TRIBUTE TO CLEAN OCEAN ACTION

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. PALLONE. Mr. Speaker, I rise today to recognize the work of the volunteers for Clean Ocean Action, an organization that has made tremendous efforts to clean up the Jersey Shore over the past 22 years.

Clean Ocean Action, COA, was established in 1984 by individuals with a deep-rooted concern for the environment and a strong desire to help clean up our oceans and beaches. Today we can say with certainty that the waters of the New York/New Jersey Bight have benefited greatly from the efforts of COA, its volunteers, and the many citizens who have participated in COA activities.

In the late 1980s, medical waste and other trash washing up on the Jersey Shore closed our beaches for an entire summer. Off our coast, eight separate ocean dumpsites collected all kinds of foul waste. COA and its volunteers helped lead the charge, in conjunction with Federal and State efforts, to keep trash off our beaches and close the dumpsites, and we can see the results every day.

More than 30,000 Clean Ocean Action volunteers gather for biannual beach cleanups that have removed millions of pieces of trash and debris that typically wash up on our shores. COA compiles statistics on the trash collected during their sweeps, providing a very valuable tool to determine the leading source of debris pollution on our beaches and in our coastal waters.

Having spent much of my career in elected office working on policies to protect our oceans and our coastline, I am keenly aware of the contributions that this organization have made to the Jersey Shore. The efforts of groups like the COA, and their unpaid volunteers often pass with little notice, but we all benefit from their work and we should support their efforts.

Mr. Speaker, Clean Ocean Action is holding a brunch to thank its volunteers for their hard work. I urge my colleagues to join me in also thanking these volunteers as well as the hard-working staff that has done so much to clean up the Jersey Shore and protect the New York/New Jersey Bight.

IN RECOGNITION OF MR. CHARLES S. WARREN ON THE OCCASION OF HIS RETIREMENT AS CHAIRMAN OF MANHATTAN COMMUNITY BOARD 8

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mrs. MALONEY. Mr. Speaker, I rise to acknowledge the achievements of Mr. Charles S. Warren on the occasion of his retirement as chairman of New York, City's Community Board 8. A tireless and dedicated community activist and civic volunteer, Charles Warren is a consummate New Yorker who has distinguished himself throughout a remarkable career in the public and private sectors.

A highly regarded attorney in private practice, Charles S. Warren has also distinguished himself through his public and community service. After earning a bachelor of arts degree from the University of Florida, an L.L.B. from Columbia University Law School, and an advanced L.L.M. degree from the New York University School of Law, Mr. Warren launched a remarkable career in public service. He became the chief legislative assistant to the senior United States Senator from New York, the late Jacob K. Javits, serving as the top advisor to that eminent statesman. In this capacity, Charles Warren was the principal drafter of the 1973 War Powers Resolution and developed extensive expertise on issues ranging from housing and urban development to environmental protection and conservation.

Because of Mr. Warren's outstanding reputation, President Jimmy Carter reached across party lines to tap him to serve as director of the Office of Legislation of the United States Environmental Protection Agency. He was subsequently promoted to the position of EPA administrator for Region II with jurisdiction over New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands. As Region II administrator, Charles S. Warren supervised implementation and enforcement of critical environmental laws and oversaw the awarding of grants and contracts valued at more than $500 million for various environmental protection and related programs to states, communities, and other recipients.

Mr. Warren then went on to distinguish himself in the not-for-profit and private sectors. He served as the senior vice president for the Public Broadcasting Service's flagship public television station, WNET/Channel 13. He went on to be named a partner at the Manhattan law firm of Berle, Kass & Case. Since 1994, he has been a Partner at the highly regarded firm of Bryan Cave LLP, where he currently serves as the deputy director of the Environmental Client Group. Mr. Warren's practice includes regulatory, administrative, environmental review, permitting, and enforcement matters, and his clients have included banks, railroads, industrial and commercial corporations and local and regional authorities.

It is for his volunteer service as a member and chairman of Community Board 8 for which Mr. Warren is being honored by his fellow Board members and community residents on the evening of January 30, 2006. Community Board 8, which encompasses Manhattan's Upper East Side and Roosevelt Island, serves as the representative town meeting of the historic and nationally prominent neighborhoods that lie within its boundaries. It thus provides a voice to community residents and their concerns running the gamut of issues from land use to traffic to sanitation and beyond. After joining the Board in 1985, Mr. Warren became a dedicated and energetic representative for his fellow citizens. His leadership abilities were recognized when he was elected chairman of Manhattan's Community Board 8 in January of 2003. He has just concluded 3 years as chairman. Community Board 8 residents are fortunate that Charles S. Warren will continue to serve their interests as a member of Community Board, where he currently serves as the co-chairman of its Transportation Committee. Throughout a career of professional and voluntary activity, Charles S. Warren has fought for and secured immeasurable improvements to the quality of life of his fellow New York County residents.

Mr. Speaker, in recognition of his tremendous contributions to civic and public life, I request that my colleagues join me in paying tribute to Mr. Charles S. Warren, a great New Yorker and a great American. Charles Warren's dedication to public and community serves as an inspiration to us all.

RECOGNIZING THE 50TH ANNIVERSARY OF THE PRINCE WILLIAM REGIONAL CHAMBER OF COMMERCE

HON. TOM DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. TOM DAVIS of Virginia. Mr. Speaker, I rise today along with Representative Frank Wolf and Representative Jo Ann Davis of Virginia to recognize the achievements and contributions of the Prince William Regional Chamber of Commerce as they plan to commemorate their 50th anniversary.

The Prince William Regional Chamber's mission is to sustain the strong business climate and high quality of life that has made Prince William one of the best places to live in the Nation. It is an organization comprised of more than 1,000 businesses and community groups that work together to strengthen the community and promote the region's business development.

Prince William's business community has grown and diversified tremendously over the Chamber's 50 years of existence. In order to effectively represent the range of member industries, the chamber is comprised of various business councils to ensure all industry perspectives are represented as policies and programs are developed and implemented.

The Regional Chamber is integral to promoting businesses' profitability and effectiveness, but also serves as an important resource for startup and existing businesses. They provide valuable information for area businesses and hold informative seminars on everything from developing successful business plans to creating effective marketing strategies. In addition, the Chamber is active in enhancing the community's quality of life by providing scholarships for area high school students, promoting the efforts of area not-for-profit organizations and community help organizations, and each year honoring area regional public safety professionals who have preformed beyond the call of duty.

We have had the privilege to meet and work with the members of the Chamber on various occasions to discuss the issues that affect the Prince William community and the Nation. The Regional Chamber has maintained a relationship with policy makers at the Federal, State and local level, and they have worked tirelessly to ensure that area businesses grow and succeed.

Mr. Speaker, in closing, we call upon our colleagues to join us in congratulating the Prince William County Regional Chamber of Commerce on 50 years of success and wishing the Chamber success in the years to come.

ARTICLE ON FOOD SAFETY

HON. CHRIS VAN HOLLEN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. VAN HOLLEN. Mr. Speaker, I would like to call your attention to the following article on food safety, which I submit for the Record, written by my constituent, Richard Gilmore. Mr. Gilmore is the President and CEO of the GIC Group. Mr. Gilmore's article addresses the issue of food safety. While I may not agree with all of Mr. Gilmore's proposals, I recommend this article to every citizen interested in the integrity of the food supply chain and the safety of the food we consume every day.

[From Barron's Online, Nov. 7, 2005]

GET READY FOR HEALTH WARS

(By Rick Gilmore)

It's not easy to fight a war when the weapons could be candy bars or milk, and if the battlegrounds are in Halloween candy baskets or dairy farms. And if we ever do master these theaters of warfare, we'll have to prepare for other modes of transmission for pathogens, such as fruit and vegetable juices, canned foods, pastas and other grain-based foods, chicken and fish.

As bad as the chances of a pandemic disease may be, the possibilities for a deliberate attack on our food chain are endless. And worse: They are likely because the weapons are immediately accessible, require minimal training, are cheap to produce and offer high kill ratios of innocent citizenry.

Even before 9/11, our government had been thinking about these ugly scenarios. Multiple scientific studies model and quantify the human impact of the deliberate release of a toxin at a dairy farm or a pathogen in a major city. A theoretical study on milk said a terrorist needs to add only 10 grams of botulism toxin to a truck-full of milk to get 400,000 casualties. An aerosol-generated attack of anthrax sprayed with the prevailing wind could affect as much as 35% of the nearby population within three days, with a case fatality rate as high as 70%.

Governments and the private sector most certainly are attempting to build their own territorial defenses, sometimes more effectively than in others. The Australian method of dealing with candy bars allegedly contaminated with a pesticide was to recall all the affected Mars and Snickers bars, crush them, and dispose of them with a deep burial. The U.K. government detected a carcinogenic food coloring in a Worcestershire sauce ingredient, and it notified consumers and withdrew the product from the shelves. Unfortunately, it did not promptly notify other states in the European Union, violating Europe's Rapid Alert System for Food and Feed.

Such accidents are probably impossible to stop. We also cannot eradicate avian flu if it threatens us, but our combat strategy has many weaknesses. President Bush outlined a new plan to spend $7.1 billion to stockpile medications like Tamiflu and Relenza to combat an outbreak. The country expects to have four million doses on hand by Jan. 1, but the World Health Organization recommends stockpiling doses for at least 25% of the population—73 million Americans.

Whatever our country's plans, problems abound. Roche has made it clear that it is already back-ordered more than a year on Tamiflu, and researchers are concerned that there won't be enough antiviral medicine available to blunt the global onslaught of a possible pandemic. A pandemic triggered by a mutated H5N1 virus, moreover, may not be affected by antiviral drugs or any of the vaccines currently in development. Bush belatedly supported efforts to develop cell-based vaccines that can be produced much faster than today's vaccines, but discoveries don't come on timetables.

The BioShield Act of 2004 was passed to address just the kind of threat we face with avian flu. It sets out to accomplish three goals: speed the Food and Drug Administration's approval of drugs and vaccines to counter a bioterror attack; create incentives for companies to develop new products through government-guaranteed purchases of pharmaceuticals and biologics; and secure long-term stockpiles of such products in case of an outbreak. Despite the fanfare of the program, progress has been slow, primarily because of underfunding and uncertainties regarding liability insurance and intellectual property protection.

When it comes to our defense system against bioterrorism, the whole nation is still held hostage. Each leg of the stool—preparedness, surveillance and protection—is wobbly at the moment.

We're planning for an attack within our borders and have placed minimal attention on what occurs outside them, despite the internationalization of our food system. Food ingredients are imported from around the world and exported to consumers and corporate affiliates worldwide. Kansas and the Punjab are part of the same food chain.

Staple food items now travel a minimum of 1,400 miles from farm to table. And yet, we have a system in place under the FDA and the U.S. Department of Agriculture that focuses on U.S. registrations, port notifications and reporting for American-based food companies. Although we seek information on foreign food companies selling and distributing to U.S. companies, the data do not go back to the point of origin. Even here at home we exclude farms, including aquaculture, from any reporting requirements, though on-farm crops are the most likely targets to serve as carriers for the best-known pathogens—stem rust for cereals, Southern corn-leaf blight, rice blast, potato blight and citrus canker. The European Union takes a more thorough approach to traceability, including every link in the food chain from farm to table.

By adhering to a territorial defense strategy, we are leaving ourselves and our trading partners vulnerable when it comes to exports. Right now, a contaminated food item from the U.S. could be exported to another country without our knowledge and without warning to the foreign buyer. European export certification is compulsory unless specifically exempted by the importing country.

Another vulnerability: The pathogen itself. Studying likely pathogens that might be used in an attack is somewhat like finding a needle in a haystack. USDA is now funding research centers to deal with plant diseases and zoonoses, which are pathogens transmitted from animals to humans. Still, the focus is on the usual suspects, and not enough on new pathogens, many of which can be developed cheaply by slightly altering the original virus strain.

We have learned the hard way that one terrorist cell can inflict more human and economic damage than we can protect at a given time. Congress and the Bush administration are addressing the issue, but haven't created a safer food environment. The system in place is a labyrinth of bureaucratic federal regulations that reflect yesterday's assumptions, not future possibilities. Federal funding for state activities has fallen short of their target, and state enforcement capabilities are not uniformly satisfactory. For industry, duplication of regulatory-agency requirements is costly and confounding, particularly for small and medium-size companies. Despite two years' worth of warnings of an avian-flu pandemic, drug companies still lack liability protection to launch and distribute new vaccines.

Closing the loopholes is not a matter of fine tuning because the holes are too wide to close. At home, we need to look to new genomic research that will determine how to develop crops that are resistant to a full range of pathogens. Internationally, there is an urgent need for greater coordination of research and information. No system can be failsafe when it comes to bioterrorism, but we can reshape the one we have today to be more effective.

NEW REPORT SHOWS INDIA ENGULFED BY CORRUPTION

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. TOWNS. Mr. Speaker, I rise today to inform my colleagues about a new report written by Indian writer M.S. Rahi, PhD, entitled "Corruption and Its Effect on Social Life." As you know, we have recently been having some problems with corruption here in Washington as well, so the paper particularly caught my eye at this time.

In it, Dr. Rahi exposes the massive corruption that has engulfed Indian government at all levels. Lately it has even begun to run through the judiciary, which had been the single semi-autonomous branch of government there and the single one that had shown even minimal concern for human rights. This is tragic for the people of India, as Dr. Rahi shows. He notes that India has been plagued with one corruption scandal after another, highlighting the Mundra, Bofors, Security Scam, Kargil Coffin Scam, Tehelka, and Recruitment Scam scandals by name. He notes that many of the lawyers practicing in Indian courts are the family members of the judges before whom they are practicing. He notes how Indian politics have been rigged to ensure dynastic succession, as the sons and daughters of Members of Parliament and of the Legislative Assemblies succeed them.

He does not discuss one of the major Indian corruption scandals of recent times, the selling of government jobs in Punjab by the Badal government (labeled "fee for service"), nor does he discuss the massive human-rights violations in India, except to make the very good and valid point that this kind of endemic corruption inevitably leads to human-rights violations. If the corruption can be cleaned, perhaps the human-rights violations will be reduced, something that we all desire.

The latest scandal is that Sikhs who bought land in the new state of Uttaranchal Pradesh have had their farms taken away and they have been expelled. Sikhs are not permitted to buy property in Rajasthan or in Himachal Pradesh. Yet anyone can buy land in Punjab, the predominantly Sikh state.

As you know, Mr. Speaker, over 250,000 Sikhs have been murdered in India. In addition, over 300,000 Christians in Nagaland, more than 90,000 Muslims in Kashmir, tens of thousands of Muslims and Christians elsewhere in the country, and tens of thousands of Assamese, Bodos, Dalit "untouchables," Manipuris, Tamils, and other minorities have been killed. Recently, the Bodos have threatened to end their truce with the Indian government.

Prime Minister Manmohan Singh made a good first step by apologizing for the Delhi massacre of Sikhs in November 1984, but he has made no move to compensate the families of the victims nor to apologize for any of the Indian government's other atrocities and compensate those victims.

Over 52,000 Sikhs are being held as political prisoners, along with tens of thousands of other minorities. The first step India must take is to release all political prisoners. And it must adopt stricter anti-corruption laws to ensure that corruption will be held to a minimum and when it does occur, it will be punished. As Dr. Rahi reminds us, the impunity of corrupt officials and the impunity of the officials who commit these atrocities go hand in hand. Until basic human rights, including the right to buy property, live free of the threat of violence, and be safe from government corruption, are allowed to be enjoyed by all Indians, we must cut off our aid and trade. And we must put Congress on record in support of a free and fair plebiscite on the subject of independence in Punjab, Khalistan, in Nagaland, in Kashmir (as promised to the United Nations in 1948), and wherever people are seeking their freedom. The essence of democracy is the right to self-determination and the people of these troubled regions will only escape the corruption and brutality when they are allowed to live in freedom.

RECOGNIZING GRANT D. ASHLEY

HON. JIM GIBBONS

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. GIBBONS. Mr. Speaker, today, I would like to recognize the efforts of one outstanding law enforcement official who dedicated much of his life to fighting crime. After serving almost three decades in law enforcement, Grant D. Ashley will retire from the FBI today, January 31, 2006. Grant Ashley began his service with the FBI in 1976 in his hometown of Los Angeles, California. After being appointed as a Special Agent and following a period of training at Quantico, Virginia, Mr. Ashley investigated White Collar and Violent Crimes in the Los Angeles Division and served on the Los Angeles Division SWAT team.

Grant Ashley would later serve as a supervisor of Drug Investigation in the Criminal Investigative Division at FBI Headquarters in Washington, D.C. He would then supervise the Violent Crimes Task Force and a special squad on Organized Crime and Narcotics in Chicago. In the mid-1990s, Mr. Ashley gained responsibility over national security matters in the San Diego division of the FBI, and was then appointed Associate Special Agent in Charge of the San Francisco Division. In February 1999, Grant Ashley moved to Las Vegas, Nevada, to serve as designated Special Agent in Charge. Three years later he was appointed Assistant Director of the Criminal Investigative Division.

In 2004, FBI Director Robert Mueller appointed Grant Ashley to serve as Executive Assistant Director for Law Enforcement Services, where he had oversight over the FBI's broad efforts to support State and local law enforcement. When Director Mueller appointed Mr. Ashley he said, "Support for our partners in law enforcement is a priority for the FBI and is absolutely vital to our success in fighting terrorism and crime. Grant's background and experience as an investigator and manager make him ideally suited to oversee these efforts. He will bring to bear the same drive and innovation that he brought to criminal investigations to our efforts to improve the FBI's law enforcement services."

And indeed he did. Mr. Ashley served admirably as he worked to coordinate the efforts of the FBI, such as the laboratory division, forty-seven legal attaché offices, the Investigative Technologies Division, and the Criminal Justice Information Services Division, with the dedicated efforts of our State and local law enforcement. He understood the challenges facing our Nation's law enforcement officials, especially now in the 21st century as we fight terrorism at home and abroad. His dedication to improving law enforcement coordination across-the-board will continue to serve as a model for our Nation.

I am pleased to have had the opportunity to work with Grant Ashley and to have had the great honor to call him, friend. Today, I also call him a patriot. As he retires from close to three decades of service with the FBI, I would like to thank Grant Ashley for his outstanding service to law enforcement and to his Nation. Grant Ashley's commitment and dedication to fighting crime and law enforcement has made our country safer, and for that we should all thank him and congratulate him on an exceptional career with the FBI.

TRIBUTE TO THE CORNER HEALTH CARE CENTER ON ITS 25TH ANNIVERSARY

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. DINGELL. Mr. Speaker, I rise today to honor The Corner Health Center on its 25th anniversary. Located in Ypsilanti, MI, The Corner Health Center offers medical care, health education, as well as support services for low income youth between the ages of 12 to 21. This vital assistance provides the necessary support to help these young people make healthy choices now and in the future.

As Michigan's first teen health center, The Corner Health Center educates at-risk teens on the long-range implications of their health behaviors. In addition, The Corner Health Center also encourages these youths to develop responsible behaviors and take responsibility for their own health, using such innovative programs as: a theatre troupe, individualized baby booklets, as well as drug, alcohol and pregnancy prevention counseling.

Mr. Speaker, organizations such as The Corner Health Center serve our communities in invaluable ways. They provide key services supporting both the health of individuals as well as the health of their communities in which they live. I am proud to have The Corner Health Center in Michigan's 15th Congressional District and I would like to congratulate The Center on its 25th anniversary.

IN RECOGNITION OF THE RETIREMENT OF BOSTON POLICE DEPARTMENT DETECTIVE JOHN F. GILLESPIE

HON. STEPHEN F. LYNCH

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. LYNCH. Mr. Speaker, I rise today to honor the dedication of Detective John F. Gillespie of the Boston Police Department. Upon his recent retirement, I wish to praise John for his thirty-five years of devoted service to the city of Boston.

John joined the Boston Police Department on October 7, 1970 and was first assigned to District Two in Roxbury. After more than two years of exemplary service, he was assigned to the Tactical Patrol Force (TPF), which patrolled the various neighborhoods of Boston.

John's next assignment was to District Eleven in Dorchester, where he received several letters of commendation during his tenure. One in particular was awarded to John for his courageous apprehension of a man wielding a shotgun.

In 1985, he moved to the position of Information Officer, which worked directly with the Boston Police Commissioners Office. After three years of service John was promoted to Detective and assigned to the Intelligence Unit, which is designated to dignitary protection. In this position he coordinated with Federal and State agencies in order to protect various heads of state as well as United States presidents.

John Gillespie is a remarkable gentleman with a long and illustrious career with the Boston Police Department. John's personal integrity, hard work and determination illustrate the best characteristics of those who work to protect and serve us all.

Mr. Speaker, it is my distinct honor to join with John's family, friends, and fellow officers on the Boston Police Department to thank him for his service. Additionally, I think we all would like to congratulate him on his much deserved retirement. I urge my colleagues to join me in celebrating John Gillespie's distinguished career and thank him for a job well done.

TRIBUTE TO JAMES D. SCANLON

HON. MAURICE D. HINCHEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. HINCHEY. Mr. Speaker, I rise today to honor James D. Scanlon for a distinguished professional career that has spanned more than 39 years. As Jim prepares for his retirement as president of BAE Systems Platform Solutions, I would like to recognize and thank him for his tremendous leadership of one of our region's biggest and most stable employers, as well as his leadership in the Greater Binghamton business community.

After serving in the U.S. Army as a nuclear weapons officer, Jim began his career in the private sector with General Electric's Engineering Career Development Program, developing design and management systems for military aircraft. In 1992, he was named General Manager of GE's Control Systems business, retaining that position when the business was acquired by Martin Marietta and then merged with Lockheed. In 1995, as president of Lockheed Martin Control Systems, Jim led the acquisition of GE Aircraft Engines' engine control manufacturing operation. When Lockheed Martin Control Systems was combined with BAE Systems in 2000, Jim was named president of BAE Systems Controls. During the course of his career, he has overseen the development and production of mission-critical control systems used on all U.S. military aircraft and most of the global military aircraft, as well as every regional and large commercial aircraft worldwide.

In addition to his broad engineering and management experience, Jim has been an invaluable resource for our community, ensuring that BAE Systems and the previous owners of the Johnson City, New York, plant were involved and committed partners in the redevelopment of the Greater Binghamton region's economy. He has matched his professional commitment to our communities with a personal one, serving on the directorial boards of several local organizations, including the United Way and the SUNY Binghamton School of Management. He has justly received the many honors bestowed upon him by community organizations.

In addition to these numerous professional credentials, it must be noted that I, like so many others in Broome County, regard Jim as a friend. He inspires great loyalty in his employees and affection from the countless others with who he has worked over the years, in the defense industry, in the government, and in his home community of Vestal. He will be sorely missed by those of us who have had the pleasure of working with him.

Mr. Speaker, I am delighted to congratulate Jim Scanlon and his family on his retirement. I offer my very best wishes to him and his wife Dolores as they begin this new chapter in their lives, along with my deep appreciation for his innovation, dedication and hard work for the past 39 years.

TRIBUTE TO CLAIR ORR, CHAIRMAN AND FOURTH DISTRICT REPRESENTATIVE OF COLORADO STATE BOARD OF EDUCATION

HON. MARILYN N. MUSGRAVE

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mrs. MUSGRAVE. Mr. Speaker, I rise today to honor Clair Orr, a fellow Coloradan who has served with distinction on the State Board of Education. Since 1994, Clair has endeavored to provide students around the state with greater opportunity in life by obtaining high quality educations in our state's public schools. On this eight-member Board, Clair served as its Chairman and represented the 35,000-square-mile Fourth Congressional District.

Over the course of his tenure, Clair was instrumental in advancing initiatives because of his heart for service, dedication to helping students, and his ability to make tough stands for policies he knew would make a real difference.

It has been said that Clair measures his success by upholding the Colorado Revised Statutes, the U.S. Constitution, and the legal authority given to the Board. For these reasons, it is no wonder that Mr. Orr received the Distinguished Service Award by the National Association of States Board Educators (NASBE) after being nominated by his colleagues in his second term.

Shortly after beginning his service on the Board, Clair Orr successfully challenged Colorado Governor Roy Romer, standing up to his proposed constitutional amendment to change the Colorado Children's Trust Fund Board. Later, in 2000, he was appointed to this Trust by Governor Bill Owens.

Because of his leadership on the Board, however, Governor Romer appointed Clair to the Principle and Administrators Standards Board as well as the Colorado Achievement Task Force.

In the wake of the devastating Columbine shooting that shook our nation, Clair Orr organized an emergency Board meeting and led the bipartisan group to take unanimous action.

Among his other notable contributions over his 11 year term were the design and implementation of the Colorado Student Assessment Program, which is now the longest-standing standards-based assessment in the country. While serving on the Board, Clair oversaw the creation of an accreditation system where the state accredits local school districts using an 11 point system, which in-turn accredit local schools.

Clair Orr helped implement the School Accountability Reports program, which was considered the largest administrative task undertaken by the Colorado Department of Education. Additionally, he played a critical role in reviewing Colorado's plan to implement President Bush's No Child Left Behind.

In addition, Clair served on the Colorado Civics Task and helped secure a multi-million dollar grant for its projects. He was also selected by other Board members to serve for four years on the Nominations Committee for the NASBE.

Throughout Colorado, Clair Orr is revered by the education community and he has received high remarks from those who he has served alongside. Here are some of the comments of his peers:

> "Mr. Orr brought both grace and wisdom to his work for the children of Colorado. His experience, integrity and faith informed his positions and gave meaning to his comments. On behalf of my constituents, I thank him for his efforts to better the education of every child. On behalf of myself and my family, I thank him for being a stellar example of a true public servant."—Rico Munn, 1st Congressional District, Colorado State Board of Education.
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> "Clair Orr is a kind and gentle man, one of great integrity and conviction. I will remember him most for these things: his insistence on abiding by the words of the Constitution, his deep-felt admiration for the soldiers who gave their lives for our country, his joy in reciting the Gettysburg Address, his stories about raising his three daughters, and his wonderful sense of humor. What I appreciated most about working with him was that even when he had a strong opinion about something, he was willing to listen to others' points of view, give them serious consideration, and compromise."—Evie Hudak, 2nd Congressional District, Colorado State Board of Education.
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> "During Clair's tenure on the Colorado State Board of Education he never wavered in his oath of office to uphold the Constitution of the United States, he also referred to the Constitution quite frequently, keeping us on track. Always the Gentleman, he demonstrated quality leadership with strong convictions. His devotion and dedication to the academic achievement for all of Colorado's Children was without a doubt exemplary. The Citizens of Colorado are truly indebted to Clair for his service on our Colorado State Board of Education. I personally want to thank Clair for his mentorship, leadership and most of all friendship!"—Pamela Jo Suckla, Chairman 3rd Congressional District Colorado State Board of Education.
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> "Clair Orr is a unique education leader. His special attention to rural schools has opened doors of academic opportunity for hundreds of thousands of Colorado youngsters. Clair's commonsense approach to pressing issues and sweeping changes in public education has made him a true statesman among education leaders. Clair's example of hard work, boundless dedication and compassion will long be the template for how the State Board of Education operates in the future."—Bob Schaffer, State Board of Education and Former U.S. Congressman, 4th Congressional District.
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> "CLAIR stands for: Concern for all children, not just a few; Leadership by moving boldly forward; A passion for service in his unwavering commitment to make Colorado schools move towards excellence; Integrity drove every decision he made during his eleven years on the board; Righteousness exudes from his very presence. There was never any question of Clair's motives."—Peg Littleton, State Board of Education, 5th Congressional District
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> "I am honored to have served my first year on the Colorado State Board of Education with my colleague Clair Orr. As the newest member of the board, I found that his perspective, his respect for history and his vision for the State Board of Education was critical to our success as an elected board and a cohesive working group. Without his sense of history and where we had come, we would have—and now will—lacked a critical viewpoint in our deliberations. Clair Orr will be sorely missed and I wish him all the best in his next endeavors."—Karen Middleton, State Board of Education, 7th Congressional District.
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> "Clair Orr has volunteered for the state of Colorado and its schoolchildren for eleven years on the State Board of Education. He has served as Chairman, and was also recently acknowledged by the National Association of State Boards of Education for his many years of distinguished service. The example that Mr. Orr has set raises the bar for all of us and serves to encourage others to give back to this great Democratic Republic. When I was first elected to the board, Mr. Orr helped get me caught up on the many issues we faced and always had time to help me out with questions. The state of Colorado owes Mr. Orr a debt of gratitude for his time and efforts."—Jared Polis, Member-At-Large, Colorado State Board of Education.

For Clair, though, it is not about appointments, awards or public recognition, it was about keeping students front and center. For this reason, he often traveled the hundreds of miles needed in order to speak at town hall meetings, meet with parents, hear from school boards, and visit with educators around Northern and Southeastern Colorado. Mr. Orr utilized the media to get his message out. He had regularly scheduled radio appearances and frequently wrote editorials for the many small town papers throughout the district.

Clair Orr is also a dedicated family man and a successful business man. He has been married over 30 years to his wife Deb and has three grown daughters. Clair is a native Colorado resident and a fourth generation farmer. Mr. Orr is founder and is Chief Executive Officer of Agtown Technologies, which specializes in water accounting programs and web development for agro-businesses. One of his top clients is the renowned Western Stock Show. He also is a real estate broker who specializes in water rights sales as well as farms and ranches.

In 2004, Clair was nominated by the Northern Colorado Business Report as an Emerging Entrepreneur. In 2003, he was named Businessman of the Year by the National Republican Committee. In 2002, he was appointed to the Presidential Business Commission.

As a former member of the Board of Education in Morgan County, Colorado, I have seen Clair Orr work firsthand, and I have witnessed his drive to improve the quality of teaching in Colorado's classrooms. Mr. Speaker, I ask that this legislative body recognize the talents and successes of Mr. Clair Orr and join me in congratulating him on two successful and challenging terms as a State Education Board member.

SAGO, ALMA NO. 1 MINE TRAGEDIES

HON. NICK J. RAHALL II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 31, 2006

Mr. RAHALL. Mr. Speaker, 2006 has not been kind to West Virginia's coal mining communities. First, we lost 12 miners in Sago. Then, just 17 days later, a fire broke out at the Alma No. 1 mine in Melville, trapping two men, untraceable beneath the Earth's surface. I was with the families of Ellery "Elvis" Hatfield and Don Bragg while we waited for news of the two men. We clung tightly to the hope that those men, dust-covered and weary, would emerge from the Alma mine to the hugs of grateful families. In the end, our worst fears were realized, and West Virginia lost two more brave souls.

These tragic events must be investigated by the appropriate officials. Meanwhile, with the Governor advancing new laws at the State level, I and the entire West Virginia Congressional delegation led by Senator BYRD, have already begun to respond by crafting legislative proposals at the federal level to make our mines safer places to work. The nation owes it to our coal miners to advance and enforce new and improved safety measures, and I am wholly dedicated to that endeavor.

I and the rest of the West Virginia Delegation, recently met with White House and other federal officials regarding our concern for mine safety laws and future improvements. I have also called on Congress to convene hearings on the Sago and Melville mine tragedies.

Too often in recent years, miners have expressed fears that the agency's safety mission has been diluted by concerns about costs and that the agency is, in fact, rolling back safety and health gains made since its creation. West Virginia miners toil every day to keep our Nation strong and so we are compelled to do all that we can to ensure their safety and well-being. No stone should be left unturned in the efforts to learn the causes of these tragedies. The Sago and Melville communities—and miners across the nation—deserve a full, fair and expeditious look into these critically important issues.

God bless the families who lost their loved ones in these tragedies, and God bless all who toil in our mines every day.

SENATE—*Wednesday, February 1, 2006*

The Senate met at 9:15 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Spirit of love, enlarge our horizons. Give to us this day vistas that lie beyond pessimism and negativity. Enable us to lift our eyes to You, our provider, sustainer, and friend. May we never permit today's challenges to make us forget how powerfully You have led us in the past.

Bless our legislative branch today with Your wisdom. Help our Senators to follow the path that leads to the fulfillment of Your purposes. Inspire them to focus on the priorities that will accomplish the most good for Your glory. Strengthen them to labor with such faithfulness that Your will may be done on Earth as it is done in heaven.

Take war and strife from our world and hasten the day when nations will live in friendship with each other, united by Your sovereignty.

We pray in Your marvelous Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

TAX RELIEF EXTENSION RECONCILIATION ACT OF 2005

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the consideration of H.R. 4297, which the clerk will report.

The legislative clerk read as follows:

> A bill (H.R. 4297) to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006.

Mr. FRIST. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today, in just a short while, we will begin consideration of the House-passed tax reconciliation bill. As Senators remember, the Senate passed our bill, the Senate bill on November 18. We considered the bill for 3 days and after 17 votes, passed the bill with a 64-to-33 vote. With the two bills now complete, we would normally reach agreement to send them to conference to produce a final conference report. I have had a number of conversations with the Democratic leader on this matter. I know Members on his side of the aisle will object and desire to start the House bill with the 20 hours remaining under the statute. That is their right and that is what we will be doing.

We have already considered the Tax Relief Act of 2005, and it is not my desire to take up any more of the Senate's time on this bill. We do need to move forward and get both bills to conference in order to reach an agreement on final language. That would take unanimous consent and, with objection from the other side, we have no choice but to proceed in the manner that we will, under statute over the next 20 hours. I do ask that Senators on both sides of the aisle use restraint and try not to use their entire block of time.

Much of the discussion that carried on in the quorum call is how we can organize that in such a way to consider amendments appropriately and in a reasonable way. But we should not have to use all 20 hours. We have a lot of other important issues to consider.

In the meantime, we will be on the reconciliation bill throughout the day and the evening and the rest of the week until we finish the measure.

I ask unanimous consent that after the House bill is reported, we begin a period of morning business, as under the order from last night, and further, that following the scheduled morning business period, the bill be open for debate only until later today when either I or the assistant majority leader is recognized.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. Reserving the right to object, I haven't talked specifically to either one of the Republican leaders about this, but I would like that to be amended. We did not clear time for Senator DURBIN to speak as in morning business. I ask unanimous consent that he be allowed to speak in morning business for 15 minutes, and another 15 minutes would be added to the time of the majority, and that the only thing that would be out of the ordinary is that Senator DURBIN would be recognized. The Republicans are to have the first half hour. I ask that Senator DURBIN be recognized for 15 minutes. He has to give a speech. He could be recognized to use his additional 15 minutes when we start morning business.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. We understand that additional half hour would come out of the time on the resolution.

Mr. FRIST. As I understand it, all morning business time, including this additional 30-minute increment, would be part of the 20 hours.

The PRESIDENT pro tempore. Is there objection to the request of the Democratic leader?

Mr. FRIST. Reserving the right, the recognition prior to Senator DURBIN would be to Senator BOND?

Mr. REID. I am trying to get to Senator DURBIN so he can go downtown and give a speech. How long will the Senator from Missouri be talking?

Mr. FRIST. We have the initial 30 minutes. Is the request made to talk within our 30 minutes?

The PRESIDENT pro tempore. The Chair understands the request is for Senator DURBIN to speak before the 30 minutes commences.

Mr. REID. Through the Chair to the Senator from Missouri, how long will you be speaking?

Mr. BOND. Mr. President, responding to the distinguished minority leader, I plan to speak about 10 minutes. I would be happy to allow Senator DURBIN to go first. I have some obligations.

Mr. REID. I am wondering if after you complete your speech, could he go ahead and do his?

Mr. FRIST. Mr. President, reserving the right to object, we had 30 minutes. Our people are not here, but they were lined up. The plans had been scheduled. I request that the Senator from Illinois speak right after our 30 minutes, the first part.

Mr. REID. That is OK. I didn't want to use leader time, but we will work it out. We have an extra 15 minutes on each side.

The PRESIDENT pro tempore. The agreement is to add 30 minutes to the original hour?

Mr. REID. That is correct.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. And the Republicans' 45 minutes is first.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Under the previous order, there will be a period for transaction of morning business for up to 90 minutes, with the first half of the time under the control of the majority leader or his designee, and the second half of the time under the control of the Democratic leader or his designee, with the time counted against the underlying statutory time limitation on the bill.

Who yields time?

The Senator from Missouri is recognized.

COMMENDING OUR MILITARY OVERSEAS

Mr. BOND. Mr. President, I rise today to recognize and commend the valiant efforts of our men and women who are serving overseas. Almost 4½ years after the dreadful events of September 11 seized our Nation, brave Americans continue to serve overseas in our response to those attacks. During the past 2 months, I have visited with our troops, agency operators, and aid workers in two areas I believe are the two fronts of the war on terrorism, the Near East and Southeast Asia. Those I met with in the Philippines, Indonesia, Thailand, Iraq, Afghanistan, and Pakistan all relayed to me, on the whole, very encouraging reports. In Iraq, our congressional delegation, which included Senator BAYH, Senator OBAMA, Representative FORD, and I, was told by intelligence officials that in spite of the increasing numbers of IEDs, improvised explosive devices, attacks, they see more reason for optimism this year than they did in the previous year, and they see it as no small achievement that many of the insurgent groups are joining the political process. From Iraqi President Jalal Talabani, to U.S. Ambassador Zalmay Khalilzan, to U.S. military commanders, intelligence officials, aid workers, and the Iraqi people themselves, everyone told us that this year will be a bellwether year for Iraq in which we see the potential for great achievements. But we need to make progress in three key areas:

First, the Iraqis must ensure that a national unity government reigns in Baghdad. This was emphasized by President Talabani. The Sunni, Shia, and Kurds have to work together to incorporate all three parties in one governing structure. We were all greatly encouraged by the 77-percent voter turnout in the December general elections, as it evidences that more and more Iraqis are buying into the wonderful concept of democracy. Now they need to show us they are willing to work together as we provide them assistance and stability.

Second, we need to focus our primary efforts in standing up Iraqi police and domestic forces this year. Civilian authority must reign in Iraqi cities for citizens to gain confidence in their new democratic form of government.

Third, we must continue to provide maximum assistance for reconstruction efforts so that more Iraqis may gain access to electrical power, use water and sewer systems, and drive safely on their roads.

This is not to say we have not already made significant gains in these areas, for everywhere I went our troops and workers expressed to me their disappointment that the tremendous achievements we have made have gone largely unreported in the U.S. media. One phrase I heard used often in our major networks is: If it bleeds, it leads. They talk about the tragedies and the losses, but they somehow fail to talk about the progress we have made. A few suicide bombings per day executed by wayward individuals, mindless terrorists, who are willing to sacrifice themselves, is apparently a higher priority in the media than acts of sacrifice, courage, and commitment by several hundred thousand coalition workers and over 26 million Iraqis. To be sure, Iraq is a dangerous place—the day before we arrived at one base, five of their marines had been killed—but it is also a place of tremendous transformation, and over the past year our progress is often crowded out on the evening news.

But we must not lose our resolve. As the President said last night:

> In all these areas, from disruption of terrorist networks, to victory in Iraq, to the support of freedom and hope in troubled regions, we need the support of friends and allies. To draw that support we must always be clear in our principles and willing to act. The only alternative to American leadership is a dramatically more dangerous and more anxious world.

The President also addressed his terrorist surveillance program. He said:

> This program has helped prevent terrorist attacks in our country. It remains essential to the security of America. If there are people inside our country who are talking with al-Qaida, we want to know about it because we will not sit back and wait to let it happen again.

That is what I hear from the people I talk to in my home State.

In Afghanistan, also, phenomenal progress has been made. Yet what we hear about on the daily news are the incidents of terrorism that grab headlines. Today in London, the international community is coming together to chart the course for Afghan assistance for the next few years. This is a vital meeting where peace-loving nations will commit to invest in Afghanistan's newfound democracy. Afghanistan is in a very different situation from Iraq, yet it currently has two of the same pressing needs: the standup of strong, reliable, civil-controlled interior security forces and infrastructure development.

I also heard from our leaders on the ground, including President Karzai of Afghanistan and our commander of that region, General Eikenberry, that Afghanistan desperately needs a viable agriculture and farm credit system. We need to get the farmers back on their feet so they do not turn to poppy production to feed their families. We have tremendous agricultural resources in our country, as the occupant of the chair knows. We can leverage these resources to help gain leverage for international security in Afghanistan. I have written the U.S. Secretaries of State, Defense, and Agriculture to encourage their cooperation in developing a joint venture to put Afghan farmers back on their feet. I envision a corporate venture between State, USAID, the Defense Department, the Department of Agriculture, land grant colleges and universities, and private sector volunteers, working together to provide Afghanis with viable forms of agriculture. This endeavor would counter the significant drug problems in Afghanistan and destroy the incentive that many farmers face in deciding to grow poppy. Existing counternarcotics funds in the Defense budget would be well spent in this area by giving farmers a way out of drug production. I am more than willing to encourage assistance from the colleges and universities in Missouri and to work legislatively with my colleagues on a proposal to move this initiative forward.

In Afghanistan, there is now enough security in many areas to put less of an emphasis on warfighting and more emphasis on the livelihoods of the Afghan people we are there to serve. This is one of the most effective ways to invest in our national security for the future—making an investment in their infrastructure and assisting them to develop a viable economic means of earning a living, without turning to the production of poppy, which leads to the production of dangerous drugs.

Finally, I will address an issue of great frustration to me. Over the past year, there seems to have arisen in our national security community an apparent absence of fear of punishment in regard to the arbitrary and senseless divulging of our most secret and classified intelligence information. I am talking about individuals who have taken solemn vows to protect our Nation, who are breaking these vows for their own particular purposes. In taking a vow to protect classified information, one must acknowledge that he or she will be privy to information that, if divulged, could be very harmful to their fellow Americans. They acknowledge a solemn trust by the people of the United States to protect classified information and thereby to protect their neighbors and themselves. I myself am under an obligation as a Senator, and particularly as a member of the Senate Intelligence Committee, to protect classified information. I believe the access I have to such information is a privilege and a solemn trust, and how I handle that information has repercussions.

For example, it has come to my attention from a variety of intelligence officials on the ground, on the front lines, who have told us that the leaks in the past year have adversely and significantly affected our intelligence operations and thus diminished our national security. It is my view that we are much less safe in our homeland because of some of the actions we have taken, some by legislation, but primarily by individuals disclosing information that has been classified for good reason. Potential sources in the regions I have visited are now refusing to speak with U.S. officers or to cooperate with them for fear of their information leaking. They see some of our most sensitive programs on the front pages of our newspapers and conclude that we are a nation that has no respect for classified information. As a result, we are less likely to get information we need because sources are rightfully fearful that disclosure of their information could lead to their identification and the assassination of the sources themselves and probably their families.

Would you or I want to put our lives and the lives of our families in the hands of a nation that we believed could not keep a secret? Of course not. Last month, the Arab news network al-Jazeera aired a tape by Osama bin Laden warning the U.S. of future terrorist attacks planned for our Nation. On Monday of this week, his deputy, the infamous and deadly Ayman al-Zawahiri, taunted President Bush on videotape for not killing him at Damadola, a village in Pakistan—in the ungovernable and unreachable areas of Pakistan. These tapes demonstrate that the threat from al-Qaida is present and very real. From my personal visit to that area, I can tell you that that area of Pakistan, the tribal areas in which they operate, is truly a hostile environment to all foreigners, and not just to the United States, or British, or Australians, but to representatives of the Pakistan Government. When we drove out toward the tribal areas, we were faced with a sign that said "foreigners not allowed." When we drove up to that checkpoint, five men with AK-47s stepped out in the road in front of us. I thought this was a good signal to turn back.

We have a great difficulty in getting information on what is going on in that area. But leaks of our secrets and our top sensitive programs are killing one of our last lines of defense against pending terrorist attacks. I think any reasonable person would agree.

This is an election year. Some may be content to play politics with our national security. I am not one of them. I don't think the people of America appreciate that. For me, I will do all in my power to ensure that we move forward in the work that needs to be done to strengthen our national security. I invite my colleagues, no matter their political persuasion, to join me in this endeavor. This, to me, is a very significant challenge, a challenge from which we cannot retreat. We must persevere and we must remedy the costs to our intelligence gathering that is so essential in a war against terror. We must help countries develop strong economies and democratic structures, recognizing human rights and civilian control of forces. This is a challenge that is ours to keep and we must not slack from that effort.

Mr. President, I yield the floor.

The PRESIDENT pro tempore. The Senator from Pennsylvania is recognized.

STATE OF THE UNION SPEECH

Mr. SANTORUM. Mr. President, I congratulate the Senator from Missouri for his excellent comments. I join with him in talking about some of the issues the President brought up with respect to the State of the Union and, in particular, some of the issues confronting us overseas.

Before I do that, I congratulate the President for focusing like a laser beam on the crucial issues we have to deal with on the domestic side—the issues of health care, doing something to curb health care costs, improving the efficiency of the system through technology, expanding access through both health savings accounts and tax credits to those health savings accounts to let more people who do not have employer-provided health care purchase health insurance; his initiatives on competitiveness and education, preparing all of our students, K-12 as well as in college, for the new technology jobs that will be available; and an emphasis on improving the quality of education through teacher training, as well as providing opportunities and incentives for folks who get into the areas of math and science—very important initiatives.

Obviously, there was a lot of focus on energy. It has profound national security implications, as the President laid out.

The President cited our addiction to oil and laid out a charge for us to reduce our dependency. It is a great aspirational goal for a President to lay out and charge all of us, on both sides of the aisle, to come forward with our best ideas to create more energy in the United States using the great minds and the technologies being developed in our university communities and in our laboratories.

We are going to work very diligently on trying to address energy again in this session of Congress, to build on what we did last year.

We bring up the tax bill, what I call the Tax Increase Prevention Act, which is to continue the presence of progrowth policies that have resulted in dramatically increasing revenues to the Federal Government because we have seen dramatic improvement in the health of the economy, more jobs being created, stronger investment, more capital investment which has led to more capital gains taxes than otherwise anticipated. We actually have seen an increase in capital gains taxes over what was anticipated prior to reduction. Here we reduced the rate and got more revenue. It is something many of us here have been arguing for a long time, and we see it borne out with the issue of capital gains.

Again, one of the hindrances of our economic system right now is lawsuit abuse and the horrific trauma some of these unscrupulous trial lawyers—there are a lot of good trial lawyers, but there are some unscrupulous ones, a small percentage, who are wreaking havoc on our society, which we will deal with after the Tax Increase Prevention Act, and also medical liability, frivolous lawsuits in a whole host of other areas, obesity lawsuits and the like. We need to get our arms around that and have a much more rational system. The President called for that.

Finally, there is the issue of fiscal responsibility, tighter spending. I think he is going to propose a very tough budget for next year. It will be tough to get done, but I think many of us are looking forward to the kind of fiscal discipline we believe this country needs as we enter a period of time when the baby boomers are going to start to retire and the pressure on us is going to grow dramatically, exponentially.

U.S. SERVICE MEMBERS' SUCCESS IN IRAQ

Mr. SANTORUM. Mr. President, the reason I have come to the Chamber to speak is because I received a letter recently, which was passed on to me, from a soldier in Iraq. This was passed on to me by his parents. This is not a letter he sent to me; he sent it to his parents and his friends telling about his experience in Iraq.

The letter was written on December 15 of last year. His parents wanted me to see it to share their son's experience of what is going on and to juxtapose that with what some in this Chamber have been saying is going on in Iraq, as certainly many in the national media say. It dovetails nicely with what the President said last night and the advances and the progress that are being made in Iraq. Instead of hearing my words, I will read what this fine soldier—this fine Pennsylvania soldier—said to his friends in writing from Baghdad. It says:

> Friends, I apologize in advance for this mass email. I felt I had to gather every email address I had and send a message. . . . I am writing this from outside of Baghdad, and this is how I see the war from my small corner. This is my opinion only, and not the position of the U.S. Army or government (I think I have to say it).
>
> The bottom line is that I have witnessed enormous progress in just my short four

> months in Iraq. We are on the right path, and we must complete our mission here.
>
> Democracy is Winning:
>
> The election today was a great success with more voters and less violence than anyone imaged. I sat in our operations center watching reports come in. I think the biggest emergency was getting a busload of students to the polls despite the ban on driving (Iraqi police escorted them). Building democracy is a slow process that must be shepherded along the way, but clearly the majority of Iraqis want to participate in a democratic process and have a democratic government. This is evident all the way from the neighborhood councils to these national elections. The choice is between terrorism and democracy . . . and 15 million chose democracy.
>
> We are Defeating the Enemy:
>
> Our battalions in our area have routed out much of our enemy, forced them to ground, or forced them to flee. The Marine and Army actions in the west have cut off new recruits and supplies. If a bad guy does something, nine out of ten times, he pays for it. The threat is shifting from terrorism to one that is more criminal in nature, but make no mistake, the insurgency is not over. This is driven by the casualties we have taken in our unit, though they have been gratefully few. The insurgency will continue even as Iraqis take over the fight, and it may continue for years, but it is waning, there is no doubt.
>
> The Iraqi Army is Effective:
>
> I can only speak for our area, but here the Iraqi Army units are motivated and effective. We continue to turn over more and more of the city to the Iraqi Army and they have done well at continuing to defeat the insurgents. The Iraqi Army and police successfully provided all of the security for the elections in our area, with our units acting only as a quick reaction force if required. We continue to partner U.S. soldiers with Iraqi units and they continue to improve. It is inevitable that they will be able to carry the full burden securing their country in the near future.
>
> Consequences:
>
> The consequences of pulling out too early are enormous. It would likely lead to a civil war and terrorist haven in Iraq, possibly dragging the entire region into further turmoil. Al Qaeda would be encouraged to continue to attack America, at home and abroad. Staying to finish this fight, though more soldiers will lose their lives, is a much smaller price to pay. The benefits of creating a modest democracy in Iraq are also enormous. The people of Iran, Syria, and Saudi Arabia will witness the benefits of an open democracy and, hopefully, pressure the governments to change. What was a swelling of jobless, dissatisfied Arab young men, easily recruited to the ideology of terror just a few years ago, will soon have nonviolent outlets through democracy and an economic future through open markets.
>
> Negative Political and Media Comments are Damaging our Efforts:
>
> I want to make it unequivocally clear that political comments about pulling out of Iraq or losing this war does hurt soldier morale and absolutely gives hope and encouragement to our enemies. The only way the terrorists can win in Iraq is if the American people lose the will to finish what we started and withdraw early. Now our battered enemies have been given a sliver of hope by weak politicians, so they will fight on and gain additional recruits. This political mistake will cost more blood than any military error yet made in this war. Of course the crime is worsened by an alarmist media always willing to tell everyone the sky is falling. Well, it is not. The great thing is that the support regular American citizens show for their soldiers is overwhelming and counters the negative political and media comments. Care-packages, cards, e-mails, and letters are abundant, and send a strong message to those of us in the fight.
>
> There is a Plan:
>
> And the plan is that we pull U.S. soldiers out as Iraqis become strong enough to secure themselves. We are doing this little by little, slowly withdrawing and turning security over to the Iraqis. Slow and methodical is the key, not a rushed abandonment of our allies and friends. A vacuum in the wake of a rapid U.S. pullout would only be filled by chaos.
>
> Like almost all soldiers here, I would like to go home. For me it would be to see my young children and wife. However, in the end I would prefer to stay until the job is done, or return for a second tour. I say this because I recognize that we are making progress, and that we will win . . . and I recognize the cost of failure. I do not want my family to be a target of terrorism in my homeland, nor do I want my son to have to fight the war I should have finished.
>
> Thank you for taking the time to read this. I hope it helps balance what you are hearing in the media.

This soldier wrote this letter on his own. No one called him or wrote him or asked him to write this letter. He did it, obviously, because he cares a lot about his country, his family, and the future security of our country.

I can tell you that this is not an unusual letter I have received or an unusual comment I have been given by soldiers who have returned from their duty in Iraq. It is almost unanimous. The sentiments expressed in this letter are the sentiments I hear, whether it is talking to folks back in Pennsylvania, talking to folks at Walter Reed or Bethesda. I hear it over and over—the optimism, the high morale, the sense of accomplishment, and the fact that we are, in fact, winning this conflict in Iraq.

I will tell you that I agree with him, that we are making progress, that we have a plan, that democracy is winning, we are defeating the insurgents, the Iraqi army is becoming more capable and effective each day, and, as he said, there are real consequences of losing, of withdrawing before the job is finished, and that the defeatist rhetoric and the media bias do have an impact on our ability to accomplish this task.

It is far too often in this country, now that we are 4½ years removed from the events of 9/11, that we forget what happened there and what happened before; that we were not antagonizing our enemy, we were not out there riling up the insurgency, we were not threatening terrorists around the world. We were "minding our own business," and they hit us and hit us hard.

My wife and part of my family watched the A&E special the other night on flight 93. I encourage every American to watch that just to be reminded of, obviously, the incredible heroism of the members of that ill-fated flight but also of what we are up against and what they are willing to do to take down our way of life.

We have a job to do, and we need to finish it, and that includes we have a job to do in the U.S. Congress. We have to pass the PATRIOT Act. It is absolutely irresponsible for us to have every few months or few weeks the PATRIOT Act potentially not being extended, out there hanging over our law enforcement people. We need to improve the PATRIOT Act, pass it, improve both civil liberties and our ability to protect ourselves, and we need to do it now.

We also need to stand behind our President in his efforts to make sure we are intercepting communications between suspected al-Qaida terrorists and those who want to coordinate from places all over the world.

I hear often in reference to the events of 9/11 that the critics of the administration are saying they failed to connect the dots. I don't know how many times I have heard that the President or the administration or the intelligence community failed to connect the dots. And these very same people today want to erase the dots. They don't even want us to have the dots to connect. They don't want us to get the intelligence so we can, in fact, proceed in having those dots a little closer together so we have an idea of in what direction they are going.

This is not a political folly of the President, to track down enemies of the administration and eavesdrop on them. This is a targeted program run by professional people of suspected al-Qaida terrorists who are communicating overseas. I find it almost incredible that this has become a political football in this overtly and, I believe, extreme political environment we are in right now.

I am hopeful that the rhetoric will back off and that we will focus again on what this soldier said. We have a mission to accomplish—to protect America and to secure our freedom in the future—and we need to do so together, in a bipartisan manner, without snipping at each other's heels trying to get political advantage. Simply support the mission that is best for the long-term future of our security.

I have one final comment on the NSA program of trying to uncover terrorists who are potentially planning and plotting further destruction in America.

It came from an op-ed that I read in the Wall Street Journal the other day, from the sister of Charles Burlingame. He was one of the pilots on American Airlines flight 77. He was from my State. I had the opportunity to meet his wife and members of his family.

Debra Burlingame writes in the Wall Street Journal this week:

> NBC News aired an "exclusive" story in 2004 that dramatically recounted that how

> al-Hazmi and al-Mihdhar, the San Diego terrorists who would later hijack American Airlines flight 77 and fly it into the Pentagon, received more than a dozen calls from an al Qaeda "switchboard" inside Yemen where al-Mihdhar's brother-in-law lived. The house received calls from Osama Bin Laden and relayed them to operatives around the world. Senior correspondent Lisa Myers told the shocking story of how, "the NSA had the actual phone number in the United States that the switchboard was calling, but didn't deploy that equipment, fearing it would be accused of domestic spying." Back then, the NBC didn't describe it as "spying on Americans." Instead, it was called one of the "missed opportunities" that could have saved 3,000 lives.

It is a classic case in point where people complained about connecting the dots, but in this case we simply did not have the dots because we were afraid to go out and find the information we needed to prevent the loss of lives in America.

Don't hamper our ability to do that in the future. Quit playing politics with the safety and security of the American public.

I yield the floor.

The PRESIDING OFFICER (Mr. VITTER). The Senator from Alaska is recognized.

Ms. MURKOWSKI. Mr. President, how much time remains on the majority side?

The PRESIDING OFFICER. There remain 12½ minutes on the majority side

AFFORDABLE ENERGY

Ms. MURKOWSKI. Mr. President, I want to take a few minutes this morning to speak to the issue of affordable energy that the President raised last night in his State of the Union Address. He said that keeping America competitive requires affordable energy. I think all of us across the country are certainly keying in to the terminology that he used, "affordable energy."

Right now what we are seeing is causing us to choke a little bit at a time when world oil prices are back up to nearly $68 a barrel for crude oil. Yesterday, it was $67.95 for a barrel of crude oil. This is after even an unusually warm winter in the Northeast.

Gasoline prices nationally are averaging $2.34 a gallon. This is up nearly a quarter in the past several weeks, according to the Automobile Club of America. So when we are talking about energy supplies, it is the prices that people in the United States are really focused on. It is not just when it comes to paying the price at the pump, it is also a very heavy reminder to us as we receive our utility bills every month and as we look at the ever-increasing price of natural gas and what it is costing to heat our homes. The cost of home heating fuel in my State of Alaska is through the roof. We have families, we have whole communities that are struggling to make their payments, wondering how cold this winter is really going to be and what it is going to mean to them in terms of the availability of fuel and their ability to pay. It might be warm here, but it is the coldest January that interior Alaska has seen in probably 30 or 35 years or so. The average temperature in Fairbanks this past month has been—I think it was 22 degrees below zero, but that is just the average. So it is cold there. So when we talk about the cost of home heating fuel and what it means to people, it really does hit home.

The President said last night that we must reduce our reliance on Middle Eastern sources of oil. He is setting a goal for us to reduce that reliance by 75 percent. He suggests the way we need to do it, the way we have to get there, is to utilize technology to promote new energy sources and new efforts at energy efficiency. But, really, it comes down to the technology.

As we all know, just last year we finally were successful in moving forward a comprehensive energy bill that promotes ethanol production, promotes hydrogen fuel cell development, promotes energy from biomass, ocean currents, new generation of nuclear power—we took positive steps last year through that bill. The President has clearly recognized that and is seeking to move forward on that agenda and improve on that. He spoke specifically to enhanced wind, solar, ethanol through saw grass. He is looking to that technology that will reduce our reliance on foreign sources of oil.

He said, further, we must also change how we power our automobiles. This is significant. It is important. We agree we must work toward this particular goal. We must change how we power our automobiles. But we also have to keep in mind that it is not just the automobiles that are using the oil that we consume as a nation. Think about how we get here, through the airplanes, the aviation fuel, the diesel products, the petrochemical products that we consume as a nation—whether it is Band-Aids or CDs or cosmetics. So much of what we utilize in our daily products is petroleum based.

While we must be honest and say we must figure out another way to power, to fuel our vehicles, we have to recognize that to a certain extent we will still need oil in our society. We will still need these petroleum-based products. We will still need aviation fuel for our aircraft.

So how do we get to where the President wants to get, which is a reduced reliance on foreign sources? It is all about what we do domestically. It is all about what we do with our innovation to provide for additional resources domestically so we are not reliant on Middle Eastern oil, we are not reliant on the OPEC countries. We have to do more in a balanced way to use the new technology to increase the domestic energy production from conventional sources. This means producing more oil, more natural gas, and more coal from American land.

Last night, the President specifically mentioned coal and the use of zero-emissions coal. This is what we need to be doing, where we need to be going. But when it comes to oil production, you have heard me on the floor of the Senate, and Senator STEVENS on the floor of the Senate, talking about what the potential is up north in Alaska on a tiny portion of Alaska's coastal plain; the opportunity on the Arctic National Wildlife Refuge for additional sources of oil that could help America reduce its reliance on foreign sources.

When the President talked about the key to America ending its addiction to oil, often imported from unstable parts of the world, it is through utilizing this new technology. He said: Go there. He might just as well have used ANWR. He didn't use it. All the newspaper articles this morning noted the fact that he didn't use that. But we have already developed and continue to develop a host of new technologies that will permit oil development from the Arctic coastal plain without harm to the environment or the wildlife.

There was an energy conference in Anchorage just a couple of weeks ago where the industry unveiled this new directional extended-reach drilling. It is technology that will be tested this year. It should permit the oil deposits to be tapped from up to 8 to 10 miles away from a well site, 8 to 10 miles away from that well site. This is almost double the 4 miles that drilling currently accesses oil at the nearby Alpine field up on the North Slope. So the technology is moving at an incredible rate.

Further improvements in extended-reach drilling—what this does is allows us to have less disruption on the surface. This means that potentially you are looking at almost a 100-square-mile area that is going to be absolutely undisturbed on the surface so animals can range freely, undisturbed by drilling sites. A 100-mile area is a lot of room, whether you are a caribou or muskoxen—or a lot of caribou. We have also new three-dimensional and four-dimensional drilling technology that will identify small oil pools without the disturbance to wildlife that once was caused by the old seismic technology. We have new equipment that allows oil wells to be drilled within a few feet of one another, thus reducing the size of the pads by as much as 88 percent. Compare this to what we are currently doing on the original Prudhoe Bay oilfield, which is about 90 miles to the west. It is something worth seeing. I hope to have the opportunity yet again this year to invite other Senators to come up north to see for themselves what the technology means as far as reducing disturbance to the land, preventing pollution, and preventing any environmental degradation.

With this new technology—this is according to the latest estimates that we received last year from the USGS—we can develop the nearly 10 billion barrels of oil that we anticipate will be found on the coastal plain. When you look at the prices we are at now and you estimate $55 a barrel, the opportunity for us as a nation to provide for America's needs, and thus reduce reliance on foreign sources, is incredibly significant.

When we look at where we are receiving our oil from now, America today is importing 4.7 million barrels of oil a day from OPEC nations—1.47 million from Saudi Arabia, 1.43 million from Venezuela. These are just the names of the OPEC nations on which we are relying now. ANWR production—given the estimates I just cited from USGS, given the estimates I have of the prices—we estimate we would likely see 1 million barrels per day, potentially as much as 2 million barrels a day. This, again, is according to USGS estimates. This will dramatically reduce our dependence in the future on OPEC and should help to lower world oil prices.

We understand that the President is going to have more to say on several of the measures that he discussed last evening, including energy and his proposal for the national security as well as economic security when it comes to reliable, affordable energy. He understands our concerns and understands that in order to be a competitive nation in a global economy, we must have reliable, affordable energy; an energy source that does not cause us to be vulnerable.

Some may think that ANWR was settled just a few weeks ago at the end of December when we missed by just several votes in the Senate from breaking a filibuster on the issue. But I want to assure Senate Members that the issue of ANWR is far too important for us as a nation to not bring forward again. For the good of this Nation we need a balanced energy solution, one that both increases domestic production of conventional sources and that produces new energy from alternative sources and improves efficiency, improves energy conservation. It has to be all three. I will not stand before you and say it just is the production piece.

That is not a balanced approach. That is not the approach for the future. The approach for the future is to make sure we use our technology and our innovation to get us to the point where we have energy independence. That ought to be a goal for us as a nation, energy independence, and we can get that. But it does have to be a solution that is comprehensive and balanced.

For the good of the Nation, we need to get moving forward quickly in utilizing our new technology to produce more energy from both ANWR and new energy sources.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent to speak as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. BYRD, Mr. REID, and Mr. ROCKEFELLER pertaining to the introduction of S. 2231 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Iowa.

Mr. GRASSLEY. Mr. President, we are back at taxes once again. What the people of this country are going to be hearing in the debate for the most part is very similar to what we discussed in this Chamber back in the second and third week of November of last year. Thinking of how to give a picture to this debate, I picked as a starting point the fact that tomorrow is Groundhog Day. I think you see a portrait of Punxsutawney Phil, the famous groundhog. Tomorrow, is he going to see his shadow? If he does, then we have 6 more weeks of winter. If he doesn't, then spring is here. I guess that is the way it has been for 100 years or maybe longer.

Punxsutawney is in Pennsylvania, and Phil is the name of the groundhog. In thinking of Phil and his impending weather report, I also thought of a popular film entitled "Groundhog Day," which starred Bill Murray, in which a man relives the same day, Groundhog Day, over and over and over. This film has taken on greater significance for me as I seem to be in a similar situation. More than just a sense of deja vu, I feel I am reliving a past experience because starting this hour, we are going to begin debate on a Senate tax reconciliation bill. Yet I seem to remember that we had this debate. I referred to these debates in the first words of my time when I said that we did this starting Wednesday, November 16, 2005. That was at 3:35 Wednesday afternoon. We took up S. 2020, the Tax Relief Act of 2005. I want to hold this up here. This isn't just any little document we took up; it is a tax bill, expiring provisions. Everything in this, when we were discussing this on November 16, was reenacting provisions that sunset December 31, 2005, so that there would not be an automatic tax increase on the American people. We are in a situation that if we don't get this done pretty soon and a year from now people are filing their taxes for 2006 and 2007, they are going to have big tax increases. One that is very obvious to everybody is the alternative minimum tax, which I will discuss in a minute. The alternative minimum tax is going to hit no fewer than 14 million people and maybe as many as 19 million people who would not otherwise be paying the alternative minimum tax. All these people would be basically middle-income Americans. The alternative minimum tax was meant to hit very wealthy people who took advantage of every tax relief available or every tax loophole that was legally available within the Tax Code and still didn't pay any taxes, that they ought to pay some tax. So it was referred to as the alternative minimum tax so that everybody, regardless of how wealthy they might be or how high their income might be, paid a little something into the income tax fund for the privilege of living in America. That privilege is a constitutional right, but everybody contributes something to it. That was the theory behind it.

Well, that was not indexed. And since that wasn't indexed, we have to change the Tax Code from time to time so it doesn't apply to more people. Actually, the thing ought to be repealed because it is not serving the purpose it was intended to serve.

First of all, it was not meant to hit middle-income taxpayers. Secondly, a lot of people today, because they hire the right people to do their income tax, have legally found ways of avoiding the alternative minimum tax. So it is not even hitting the people it was supposed to hit. Yet it is hitting millions of people it was never intended to hit. How you keep tax policy like that on the books, I don't know. I would like to repeal it. If I could get 51 votes to repeal it, that would be my first amendment. But under the way we do things in the Senate and the points of order that can be made, I am not apt to get that sort of an approach. So what we do is, we kick the can down the road.

I wish to get back to this history—deja vu—of seeing the shadow and the Groundhog Day and all that stuff to give you the history of why the question is, Why are we going through this now on February 1 and 2, and it will probably carry over into next week, to February 4, 5, and 6? Why are we going through this when we spent all that time back in November doing exactly the same thing?

The rules of the Senate provide the minority—or maybe I should say not just the minority, every Member, but in this case it looks to me as if it is mostly the minority which is taking advantage of it—certain motions that have to be given to get to conference to iron out the differences between the House and the Senate. In this case, the minority is going to take full advantage of that even if we redo all the debate.

I will bet you can take speeches out of November 2005 and you will read the same speeches today and tomorrow and next Monday and Tuesday in the debate on this bill. If you take out speeches of a month ago and can repeat them, there is no end to the speechmaking you can do in this body. We started this debate at 3:35 on Wednesday, November 16, 2005. We took up this bill, S. 2020. As we were considering this bill, we dealt with 80 different amendments. They were filed. Maybe we didn't deal with 80, but at least there were 80 ideas out there by people who wanted to change this bill. They were filed. Now, seven of them were agreed to. It was a very lively debate. It culminated in 18 rollcall votes about whether amendments ought to be included in the bill or whether there ought to be final passage. We finally got to final passage at 12:05 a.m., Friday, November 18.

According to the Secretary of the Senate, at least 97 of us were there at that midnight hour to vote on this bill, so I am not the only one reliving this experience. There are going to be 97 Senators who were there at midnight on November 18—or I guess you would say that Friday morning at 12:05 a.m. As we considered the Senate amendment to the House version of this bill—the House version is the Tax Relief Extension Reconciliation Act of 2005—I have to ask myself—but in a sense, I am asking each of the Members—why are we still here? Didn't we already go through this exercise? Are we not finished with the Senate debate?

I conclude that there is no rational reason for still being here because, normally, it would be a unanimous consent motion that we ought to go to conference to work out the differences between the House and Senate. Unless you do that, you never get anything to the President. It has to pass both bodies in identical form. That is usually a pro forma operation here. We could have done that in 5 minutes—Senator BAUCUS and I—or the leaders could have done that, but we are still here because maybe people want to slow up the process. Maybe they don't want to get to the asbestos bill next week, which is very important to get to. The fact is, we already went through this exercise, and we ought to be finished with the Senate debate, but we are not.

In the face of a multitude of other important issues this body needs to deal with, does the Democratic leadership really want to reenact recent debates and resuscitate old talking points? Our tax reconciliation bill already passed, and not just by Republican votes because 64 of us voted for that, including 15 Democrats. The only way you get anything done in the Senate, because of protection of minority rights, which the Constitution allows, is by bipartisanship; otherwise, nothing gets done. So we had bipartisanship on this bill.

While I believe this legislation is extremely important, and I will, as chairman of the committee and manager of the bill, debate it as long as is necessary, quite frankly, as I have indicated in my points, I question the necessity of going through a long process that resulted in the bipartisan passage of the same bill just 2 months ago. So that is my first point.

This is a very curious exercise. It is an exercise with no purpose, no apparent purpose other than simply delay. Is the delay on the part of the Democratic leadership important? The answer is yes. Ask the American taxpayers, and you will get an answer. The answer is yes, if you are one of almost 20 million families waiting for certainty that you are not going to be caught up in the clutches of the alternative minimum tax.

We hear a lot about the AMT, the alternative minimum tax. You will hear about it in this debate over the next few hours. This bill does something about the AMT: it extends the hold-harmless provisions so those 14 million, up to 19 million Americans won't get hit with it. I have a chart here that will tell you exactly the number of people in the respective States, based upon the previous year, 2003, so it doesn't add up to the 14 million to 19 million people we think will be hit by 2006. But the number of people who will be hit by it in my State of Iowa is 65,813.

In the State of Nevada, even more people—68,273 people—are going to be hit by it. Why would anybody from Nevada not want to do something yesterday rather than tomorrow about the alternative minimum tax? As I said, these numbers understate what this problem is today because there are going to be a lot more people getting hit by it.

The basis of the bill the Senate passed, and the bill that is once again before us, is an extension of the alternative minimum tax hold-harmless provision. So every Member who is participating in this deliberate strategy of delaying—delaying our entrance into the conference with the House of Representatives is delaying the certainty these millions of American taxpayers deserve.

I emphasize the word "certainty" as far as the Tax Code is concerned. There is nothing that does more economic good than knowing what the future holds in the way of taxes as it affects spending and investment. So if you want to improve the economy of this country, if you want to keep this economy strong, certainty of tax policy is very important.

These are the facts on the AMT. Look it up in the Internal Revenue Code. The AMT relief provision expired already, on December 31, 2005. I ask my friends in the Democratic leadership to take a look at the calendar. One month now has passed, and the AMT hold-harmless provision has not been extended. That is the cornerstone of this very massive piece of legislation. It also happens to be the cornerstone of a bill the Democratic leadership is delaying. So I don't want to hear folks talk about some sort of AMT problem and at the same time delay real action to help those millions of taxpaying families.

This bill goes way beyond helping people who would be hurt by the AMT. It also includes popular and broadly applicable tax benefits. I wish to talk about some of them and talk about them individually and use charts as I move along.

For instance, the deductibility of college tuition is a very important part of that 2001 tax bill. This is a benefit for families sending their kids to college. By definition, this benefit is geared toward helping middle-income families who always have a hard time educating their kids. They might not qualify for Pell grants or guaranteed student loans, yet they need help to send their kids to college because they are not millionaires. These are not high-income people. They get the full benefit of the deduction if they make up to $65,000 as a single person and up to $130,000 as a couple. Beyond these levels, the benefit phases out. A lot of these folks are paying significant Federal, State, and local taxes, and they get no help in defraying the high costs of a college education for their kids. This tax deduction helps provide and helps these hard-pressed, middle-income families with a benefit, and it furthers a very important national goal of supporting higher education—not an end in itself, but to keep America competitive in the global economy.

This deduction runs out at the end of this year. It did run out December 31, 2005, but we have to be ahead of the curve as people plan to send their kids to college. Will this be around for 2007? Not unless this bill passes. So these folks are going to face a tax increase without even a vote of the Congress. Automatically, taxes are going to go up if we don't enact this piece of legislation which we already passed back in November.

Here I have a chart that shows for each Member how many families in their respective States are going to be hit next year if we don't enact this legislation. Again, I will speak to my State of Iowa, where the number is 37,364 taxpayers. In Nevada, it is 25,776 taxpayers. Why would anybody want Nevada taxpayers to pay more taxes? And why would you not want them to know that today rather than tomorrow? Why not get this bill to conference and get this issue behind us so that the taxpayers in Nevada know that in the year 2007, their families are going to be able to take advantage of the college tuition exemption from the income tax? Once again, in that particular State, it is 25,000 families.

There is another benefit that is addressed in this bill, S. 2020. It is called the small savers credit. Here I am talking about a tax credit for low-income people to save through an IRA or a pension plan. We are talking about people who don't know about saving or don't have the ability to save, that we are going to give an incentive to save and can get an ethic for saving because saving for retirement is something not enough Americans have done and particularly not enough low-income Americans have done. So as a matter of public policy, to encourage savings for people who cannot afford to save or don't have the ethic to save, give them an incentive to save through the small savers credit. We all think that savings is important. We all want low-income people to save for retirement.

I have a chart that shows the number of low-income savers who benefit in this bill on a State-by-State basis, which benefit won't be there if we don't pass this, or it is being delayed by 4 or 5 days because we have to go through the same debate we went through back in November.

Again, in my State of Iowa, there are 95,000 people who could take advantage of this small saver's credit but who will not be able to.

Let's take another State, Nevada. There are 36,923 people who are low income who will not be able to take advantage of this provision.

Again, if you want to establish an ethic for saving, you should not pass tax policy to encourage that ethic for saving and then sunset it and expect people to establish a lifelong pattern of saving. You cannot stop and start tax policy and expect people to develop an ethic to conform to saving, and I believe we all think the ethic of saving is very important.

The bill before us will also extend a tax deduction for teachers who buy their own supplies for their students. I think this provision was developed in the 2002 tax bill by Senators WARNER and COLLINS to give teachers who go that extra mile by paying out-of-pocket expenses some help through the Tax Code.

Who is going to argue with that? One might argue that we ought to pay teachers more, so they don't have to do that. We ought to appropriate more money for schools so they don't have to buy the supplies out of their pockets. But we have 40,000 school districts in the country, and we are not going to be able to make policy here for every school district. We know that some teachers are so devoted to their students that they are going to spend some of this money out of their pockets, so Senators COLLINS and WARNER came up with this idea of a tax credit for teachers who pay for supplies out of pocket.

Again, on a State-by-State basis, I have a chart that shows how many teachers benefit from this provision. I will pick out Nevada again. Nevada has 21,853 teachers who took advantage of this provision. In Iowa, we had 33,812 teachers take advantage of this provision. Why wouldn't you want teachers who devote a life to a profession at relatively low pay—compared to what other people with the same amount of education get in other segments in the economy—because they are devoted to doing good or they wouldn't be teaching in the first place—why would you want to question this so they won't have it this year?

Right now those teachers are buying supplies and probably don't think the least bit that Congress would have sunsetted this legislation on December 31, 2005. So they are going out and buying all these supplies thinking they are getting a deduction, and then when they file their income tax a year from now, they are going to be surprised.

I wish I could tell every one of them that the Democratic leadership won't let us go to conference so we can keep that provision. I am not going to be able to tell all 33,000 teachers in Iowa. They are going to find it out the rude way when they go to file their income tax. I would really like to tell the teachers in Nevada about this as well.

We don't have to have this problem. All we have to do is get to conference. We can get to conference in 5 minutes and work these provisions out, and by next week, we can have this bill to the President of the United States, or give us another week to work out the differences between the House and the Senate. We can get this all worked out, get the bill to the President, and we don't have to worry about that.

There is another point. We all think of small business. There are small business provisions in this bill, S. 2020, that passed the Senate by a bipartisan vote at the midnight hour way back in November, and here we are piddling around with procedural motions to get to conference.

Everybody advocates small business because it creates 70 to 80 percent of the new jobs in America. This bill would extend the small business expensing. Many small businesses use this benefit to buy equipment on an efficient aftertax basis. It is good for small business, it is good for small business workers, and it is good for economic growth.

I have a chart on a very important issue, at least to the people of Alaska, Florida—and Nevada, again, is going to benefit—South Dakota, Tennessee, Texas, Washington, and Wyoming. This is because we established in the tax bill the deductibility of State and local taxes. This bill will help 12.3 million taxpayers in these States—Alaska, Florida, Nevada, Washington, Texas, South Dakota, Tennessee, and Wyoming. Tennessee is involved. It is the home of our distinguished leader. Senator FRIST has worked very hard to get this bill to the floor, and for the second time. He is frustrated because we can't move this along.

Nevada is one of these States. It is the home of my friend, the Democratic leader. Unfortunately, the Democratic leader has fought this bill tooth and nail, even though his constituents benefit from it, particularly in this instance with the deductibility of State and local taxes.

I ask them to focus on the taxpayers of their respective States, whether they are from Alaska, Florida, Nevada, South Dakota, Tennessee, Texas, Washington, or Wyoming, to get this bill passed so their taxpayers will know their local and State sales taxes can be deducted. I hold out hope that the Democratic leadership will see the light. I hope they will work with me to see their folks in their State will be able to deduct these State and local taxes this year and know they can do it very soon this year.

These provisions are bipartisan and millions of American taxpayers rely on them. Every Senator ought to help us pass this bill for these provisions alone.

The bill before us addresses expiring business and individual provisions that I have not talked about yet, what we call extenders. These provisions include research and development tax credits and the work opportunity tax credit, just to mention a couple.

This bill also includes many of the charitable incentives that were introduced in what we refer to as the CARE Act and which have previously passed the Finance Committee and previously passed the Senate. I appreciate the work of Senator SANTORUM and Senator BAUCUS in working with me to balance these incentives with several of the much needed reforms that are supported by the charitable sector, the Treasury Department, the IRS, the donors, and the taxpayers to make sure charitable giving and the tax exemption for it serves the purpose intended and that charitable organizations use the money that was donated to them for the purpose they asked for it.

Beyond the CARE Act, this bill contains loophole closures and tax shelter fighting provisions that raise revenue.

This bill is bipartisan. I have not thanked my friend and ranking member, Senator BAUCUS, for his cooperation. We had cooperation going way back when we first started working on this bill in the summer of last year so we could be ahead of the curve. He and I, when we first started, were not partners, but we teamed up in the Finance Committee. We teamed up in the first Groundhog Day floor debate and, as always, his cooperation and, more important with something as serious as this, his good humor makes a difference.

I thank those Democratic Senators, and that is 13 others besides Senator BAUCUS, who joined me in a bipartisan effort on our first floor journey. I ask them to help me persuade their leaders to let this bill proceed. I ask them to ask their leaders to focus on taking care of the legislative business and put a damper on the political games that appear to me to be nothing but going through what we went through last November. We waste enough taxpayer money. There is no point wasting it again, duplicating the debate of 3 days back in November.

We can move on to other important items, including a lot of items the Democrats want us to bring up on the floor of the Senate. I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, last evening at 8:30, the Senate assembled as a body to proceed to the House Chamber to sit together as one Congress. We did so because every year about this time, we meet to hear the President deliver his State of the Union Address. We also meet together in the House—all Members of the Senate and Members of the House of Representatives—for an address to the Congress, for example, by a foreign leader. We did so for the address last July by the Prime Minister of India. But it is the exception rather than the rule when the House and Senate sit together.

Our country's Founding Fathers, in their wisdom, created a bicameral legislative branch; that is, the House and Senate separately. Carrying into practice the ideas of Montesquieu and Madison, our Constitution creates a very separate House of Representatives and Senate, two totally, entirely different bodies.

Oftentimes when confronted with the same task, the House and the Senate come to very different solutions. That is certainly the case with the bill before us today, the tax reconciliation bill.

We have something called a budget resolution which we take up every year. That resolution gave the House and the Senate the same task. On April 28 of last year, the Congress adopted that resolution, and the conference report was adopted by a narrow margin of 52 votes. That budget resolution instructed both the House Ways and Means Committee and the Senate Finance Committee to report legislation that would cut taxes by a net of $70 billion.

Underlying that budget resolution was the assumption that the two committees—the Ways and Means Committee in the House and the Finance Committee in the Senate—could cut taxes on capital gains, cut taxes on dividends, prevent tax increases by virtue of the alternative minimum tax, otherwise known as the AMT, and extend a series of expiring tax provisions.

The chairmen of the Ways and Means Committee and the Finance Committee each set out to do those things, and each of those able chairmen found that it was not easy to assemble the votes to do all of those things. Faced with that reality, faced with that task, the House and the Senate came to very different solutions.

The Senate is a place where Members often work together across party lines. The Senate is a place that often requires a supermajority, which helps encourage Senators to work together. Chairman GRASSLEY, the chairman of the Finance Committee, often works with me, the senior Democrat. We meet together every Tuesday the Senate is in session, and I might say, those Tuesday meetings are terrific. We get an awful lot done at those weekly meetings. It is essentially bipartisan, working together to get solutions.

Last year, Chairman GRASSLEY worked together with many Democrats and produced the Senate's version of the reconciliation bill. The Senate reconciliation bill included continued alternative minimum tax relief. The Senate bill included extensions of expiring tax provisions. The Senate bill, however, did not include capital gains and dividends tax cuts. And the Senate included offsets—that is some increases, basically the so-called loophole closers—to pay for some of the bill.

In keeping with the traditions of the Senate, that was also a consensus solution, because in November of last year the Senate passed a bill with 64 votes.

Contrast that with the House of Representatives, which took a different path. The House is a body where the majority rules. There is no requirement of supermajority. And often the majority rules absolutely. It is often a place where the slimmest of majorities rules. Some on the House side of the Capitol, I believe, too conveniently and inappropriately believe any votes more than needed for a majority are wasted votes. That is a mistake. But that is the House. That is their decision.

When the House considered this tax bill that is under the same instructions the Senate considered it, the House did something different. It did include capital gains and dividend tax cuts. The House did not, however, include AMT relief as contained in the Senate bill. And the House bill did not include any offsets to pay for any of the bill for them.

In keeping with the House traditions, that was a partisan solution. In December of last year, the House passed that bill with 234 votes, 16 more than the 218 needed to pass the bill.

Confronted with the very same task, the House and Senate came to very different solutions. At the heart of this debate today is the difference between alternative minimum tax protection for working families and capital gains tax cuts for investors.

What is AMT, alternative minimum tax? For 17 million American families the year 2006 came in with an unwelcome surprise; that is, a stealth tax, a new tax, an additional tax called AMT. The temporary protection from the AMT expired on December 31 of last year. That means 17 million more American families will be subject to this additional tax in the tax year 2006. That is an increase from 3 million people to 20 million people in 1 year alone. Three million last year paid it. This next year, if Congress does not act, 20 million Americans will be paying the additional AMT stealth tax.

Many families will not see this higher tax bill until later this year or next April. But saying, Don't worry, we will fix it, probably will not reassure those families when they hear there is nothing—that is right, nothing—in the House bill to fix the alternative minimum tax; that is prevent that tax from going into effect. The House tax reconciliation bill before us today chooses to extend capital gains and dividends cuts. However, those tax cuts do not expire until January 2009. AMT protection expired 3 weeks ago. That is why I urge my colleagues to reject the House solution and insist on the Senate version, remembering we have an enforcer here, a limitation of $70 billion. We cannot lower taxes in the net, the aggregate, more than $70 billion, so it is almost impossible to do all the provisions lowering taxes so many Members have in mind. We have to choose.

I think the better choice is to prevent the tax going into effect next year rather than worrying about a tax increase that may go into effect in the year 2009. We do not have the luxury to do it all right now, today.

The House proposal says the extension of capital gains and dividends tax cuts is a priority over AMT. If that House proposal fails, then taxpayers will have reason to worry. If Congress does not extend the alternative minimum tax protection, then the AMT will hit a family with three children earning $63,000 this year. The AMT is a family-unfriendly tax and the AMT creeps deeper and deeper into the middle class each year. Protection from the AMT should be a priority for all in both Houses of Congress, and especially for the American people.

Instead, however, the House has passed a separate AMT bill that is outside the context of the budget resolution. That bill does not have the procedural protections of this reconciliation bill. This other House bill purports to protect families from the AMT, but under that other House bill there would still be 600,000 additional taxpayers paying higher taxes next year due to this stealth AMT tax.

Some called the House AMT tax a hold-harmless provision, but that provision does not hold everyone harmless. Under existing tax law, 3.6 million American taxpayers paid this alternative minimum tax in 2005. Under the House bill, 4.2 million taxpayers would pay the alternative minimum tax in 2006, an increase of 600,000 taxpayers and an increase I hope we can avoid. The House gave alternative minimum tax relief second-class status—not first-class status, second class, although it expired last year. Not only that, the House bill pokes a hole in the patch. Instead, this House bill allocates $50 billion over the next 10 years in order to extend for 2 years the capital gains and dividends tax cuts—again reminding all present, Senators especially, that need not be done because the current provision with respect to dividends and capital gains, that is the provision that was in effect last year, is also in effect next year and the next year up until, as I mentioned, January 1, 2009.

In summary, I think it makes sense for us to reject the House solution. Let us remember what our priorities are, especially the priorities of the American people, given the limitations we have in the budget reconciliation instructions, and let us protect the millions of working families now subject to a tax increase courtesy of the alternative minimum tax.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, parliamentary inquiry: I don't believe there is any order of speaking rather than the normal trying to rotate back and forth, so I wish to make a few brief remarks now.

Mr. BAUCUS. Sounds good.

Mr. LOTT. Mr. President, I thank Chairman GRASSLEY for his speech this morning. I thought it was extraordinarily good. I thought there was a little bit too much emphasis on Iowa—we need a little more mention of Mississippi in the process—but it was very good. My colleague touched on every important issue I had actually thought I might mention, but I will not belabor those points. He made it very clear that this is tax legislation that has broad support: 64 Senators voted for it back in December and there were at least 2 who missed it who would have supported it, so 66 at least are for this. This is a classic case where there are some people, I guess, who are opposed to moving on to conference because of something they think may be in conference or some other things which I suspect, which I will talk about in a moment. But there has been good leadership. It is time to get into conference.

I thank Senator GRASSLEY's partner and helpmate on most legislation, Senator MAX BAUCUS, for what he has had to say and for the support he has given on good tax policy over the years. They are examples of what can happen in this institution, how we can work together across the aisle, in committees, as individuals. I commend them both for their position on these issues.

Of course, you can go through every bill and find some piece or some portion or some section you don't necessarily agree with or would like to have more or all kinds of arguments. But this one is amazing to me. I will talk a little bit about the substance in a moment, but I want to talk about what is happening here.

Some people have said to me, Why are we doing this? Have we done this in the past? Have we had extended debate and the opportunity for 20 hours of time and a vote-arama at the end and amendments ongoing to confront? No, we have not. This is unusual.

Why are we in this position? This is a case where the Senate got sort of—we didn't want to wait forever on the House. We moved first. Because of the way it was taken up, procedurally, we now have to go through this extra motion to take up the House bill and all of that. I don't want to get into the details because it is irrelevant, but I will make this point: This is an administrative proceeding. This is a question dealing with the fact the Senate acted before the House and usually the House acts first on a tax bill. Maybe we should not do that. Yet we get criticized quite often because the House is waiting on us. This is a case where we were waiting on the House. We passed good legislation, with broad support. We should go to this conference. We should have done it earlier today. This is a voice-vote thing. There should not be any debate.

So what is happening here? I think it is sort of the sign of the times. We just went through the Supreme Court confirmation of Sam Alito. A lot of us scratched our heads and said, How did it come to this? How low do we go? When do we stop the partisanship?

Some people look at us and say, Why is this? Here is an example. There is no call for this. When are we going to end the tit for tat, and I will get you here or I got you there, delaying the process? Obstructionism—I don't get it. Why we do not have an agreement of how to deal with this now is beyond me. Why our leadership—I am not criticizing either one of them. There is just the fact that there has not been an agreement to do it by voice vote, no agreement to limit the time or agreement to limit the amendments—no agreement.

Here we are, on an administrative proceeding to go to conference on a very important tax package, action if we do not take will cause people's taxes to be raised.

We need to stop. We need to work out an agreement how this is going to proceed. We should be through this by sundown tonight. But, no, what is going to happen is we are now headed—we are going to be on this next week. Some people say we ought to be doing this, we ought to be doing that, why aren't we debating—whatever—because we are messing around like this.

As a Republican and in support of the bill, my attitude is, fine; throw me in the briar patch. I love to talk about this. This is a positive agenda. This will help the economy. This will help the families with children. This will help my State. This will help most Senators' States. Why don't we just do it? If we want to talk about it, we can do that. But I urge both sides of the aisle, find a way to get an agreement on how to do this.

What is going on here beneath the surface is two or three things. It is kind of a general anger right now, unfortunately, between both sides. We need to get over that. But, also, there is a plan, I am sure, to offer other agenda items, nongermane, "gotcha" kind of amendments. That is what is going to happen. I don't like that. I think it contributes to the bad atmosphere around here. But I am a realist. We can deal with that. Tell us what the amendments are and identify a limited number and let's get it on, let's have a vote, and let's be done with it.

We can't even get that done. That is what is going to happen. We are going to have "gotcha" amendments on a whole variety of subjects. I don't want to talk about them right now because I maybe know what they are going to be and maybe I should not know, but that is OK. If you want to have a debate on some nonrelevant amendment coming out of the stratosphere to put people on the spot, OK, but let's at least agree to how we get that done.

There is another reason behind this. There are some people who fear that, in conference, we might eventually also include something to do with holding down capital gains rates—capital gains taxes and dividend taxes. I hope so. I certainly hope we will do that because it is important to individuals, it is important for the economy. But it is not in this bill. This is another case where we are having a huge argument over what is not in a bill. This is a classic example of why the atmosphere here is so bad. I hope we will find a way to do it. We should all assume some of the blame. We ought to all root around and say to each other, "Can we work this out? Can we find a way to kind of get through this process?" Let's do it and get on to the next subject. I know the next bill we go to is going to cause a fracas—and probably it should.

Asbestos reform? I have been trying to figure a way to do asbestos reform for 20 years and haven't been able to do it. We have not been able to do it.

Do we need it? Yes.

Is the bill which the judiciary reported out a perfect solution? I am not saying it doesn't have some good benefit. I know the committee has worked hard on it, and I know Arlen Specter has worked hard on it. But it is tough. We should at least do that.

If we are going to be attacked by the Democrats, that would be a good place to do it. It will be a bipartisan fight, I am sure.

I don't understand. I wish we could get over it.

This is good legislation. It has been coming for a long time. It is ready for conference. The conference probably won't be that acrimonious, and it probably won't take that long. I hope and expect that it will be bipartisan. It probably will be.

But this procedural, dilatory action which will drag us out for the rest of this week and into next week probably is holding up a number of important issues.

Do the Democrats really oppose the centerpiece of the bill? The biggest chunk of it—$30 billion—is for ensuring the AMT doesn't hit more than 9 million middle-income families this year. Do they oppose that?

Do Democrats oppose the research and development tax credit, a 1-year extension which costs nearly $10 billion?

Do they oppose small business expensing?

We all stand here on the floor of the Senate and praise the small businesses in this country as to how important they are to the economy and the jobs they create. They do. It is true. Why wouldn't we want to extend small business spending? Why would we want that to end? It will, if we don't act.

Do Democrats oppose the work opportunity tax credit?

Do they oppose extending the welfare-to-work tax credit?

Do they oppose allowing above-the-line for teacher classroom expenses?

Do they oppose the provisions in here that would be beneficial to States which do not have a sales tax, such as Nevada and Florida?

The answer is no, they don't oppose those things. They are for them. An overwhelming majority support 98 percent of what is in this bill. Yet we are going to ding round here the rest of this week, and we are going to even have to go through an extra motion of sending it back to the House, and having the House kick it back over here. I think we should not be proceeding in this way.

I also want to make it clear that I think it is very important for us to take another look at what is in the House version in conference which would support the progrowth policy of tax and capital gains and dividends at 15 percent or at 5 percent for individuals in the 10- or 15-percent tax brackets.

I am disappointed that we don't have a 2-year extension in this bill. I believe if we did that it would spur and encourage economic growth and would bring in more revenue to the Treasury.

The CBO has indicated that the capital gains and dividends tax relief policies generated an additional unanticipated $26 billion into the Treasury.

This is not what has caused the deficit. The deficit is caused by us spending more money. A lot of it is justified. We have the war in Afghanistan, the war in Iraq, the war on terror. I have been here pleading with my colleagues to help those of us in the Katrina area. It costs lots of money; both of them hundreds of billions of dollars.

But we also have not been able to check our appetite for spending. There is no offsetting reduction in spending.

If we don't have these progrowth tax incentives, we will have a worse deficit because the revenue they generate will not come in.

I don't want to mislead anybody. I am absolutely hoping that I will be a conferee, and I will be pushing for holding down these capital gains and dividend rates.

We need to look at what is happening in the economy. What is happening is good. It is not perfect. But we need to think about ways to continue the growth we have seen and create the jobs. Millions of jobs have been created in the last 3 years. Unemployment is 4.9 percent. The gross domestic product growth is strong. Household wealth is at an all-time high, reaching $51.1 trillion in 2005. Seventy percent of Americans now own their homes. The American dream is becoming a reality. Income is rising. Inflation remains in check. There is a lot to be proud of. But that is not good enough.

We need to look at where the problems exist and at how we can provide incentives for growth and create better paying jobs and to pay attention to people's retirement needs and their health care needs. There is a lot we need to do.

I wish we could find a way to agree more on how we can move legislation in this body—not how we can drag it out or get the drop on each other.

I remember when I used to talk to Tom Daschle when we were in leadership positions. We would get tangled up in arguments—heated ones. And I used to fill up the tree every now and then where amendments could not be offered, which he didn't appreciate, and he said as much. But many times we would come together and say in the end: Good politics means good policy. If you do things that help the people, everybody benefits—Democrats and Republicans.

Do we need to do something about the delivery of health care in America and the accessibility and affordability of it? Yes.

Do we need to find a way to deal with border security and all of the ramifications of immigration? Absolutely.

Do we need to find more ways and better ways to deal with the future energy needs of this country? Yes.

Would it be good if we could find reform on asbestos that would actually help the people who are truly injured and not have all the money go to my friends in the plaintiffs' bar? Yes. We ought to do that. We ought to find a way to do it in a bipartisan way.

I plead again with the leadership of the Democratic side. Let us get an agreement on how to finish this. Let us not have a shootout when it is not even necessary on this bill. There will be plenty of time for a shootout. In fact, let us arrange a time. OK, at 12 noon we are going to meet at the OK Corral next Tuesday and get it over with—but not on this bill.

Can we do a few things together before we fight like cats and dogs because it is an election year? We ought to find a way to do that.

But if we are not going to get an agreement, I will say repeatedly, as long as we are on this bill, this is our territory. I am glad to talk the rest of this year about going to conference on tax relief for working Americans, for teachers, for families with children. Hallelujah. I would just as soon let us stay on this for the rest of this month. I will be a happy camper. Politically, I don't know who is winning. Maybe we are. That suits me fine, too. I have my speech ready to talk about the substance over and over again. We can do that. But we also can go to conference and get this work done, and then we could go on to the next issue.

I thank the Chair and my colleagues for this time. I yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Montana.

Mr. BAUCUS. Madam President, I must say it is delightful to listen to the Senator from Mississippi. I wish sometimes he could come to the floor more often. He makes a good point, that we have to work together. And we all know that we try hard to work together. At the same time, Senators have the right to offer amendments. We will work together the very best we can.

I want to say how much I appreciate the comments he made and how much I appreciate the addition he is making to the discussion.

As I noted in my opening statement, one of the weightiest differences between the underlying House bill and the pending Senate substitute before us is that the House bill includes capital gains and dividend tax cuts. The Senate didn't include them. The Senate chose instead to favor AMT protection for working families. We couldn't do both. The Senate chose to apply the AMT relief.

There are several reasons the Senate did not include the capital gains and dividend tax cuts. One among the many good reasons is that the Senate's rules make them hard to include.

In a moment, I will propound a series of parliamentary inquiries to the Presiding Officer on this point. But let me first take a moment to explain.

The Senate's Byrd rule—actually, we know there are several Byrd rules—section 313 of the Congressional Budget Act contains what a reconciliation bill can include. The rule is named after the distinguished senior Senator from West Virginia. Senator BYRD and those who joined him in writing the Byrd rule recognized that the budget reconciliation process is a powerful engine. And the Byrd rule keeps reconciliation bills more on the purpose for which they were intended.

One subparagraph of the Byrd rule deals with the worsening deficit in the outyears; that is, years beyond the budget resolution. Section 313(b)(1)(E) of the Budget Act says that a provision is out of order if the title that includes it would worsen the deficit for any future fiscal year after the fiscal years covered by the reconciliation bill. The provision was designed to prohibit legislation that would make our deficit problem worse by hiding the costs in the future.

The capital gains provision in the House bill is one such provision. The dividend provision in the House bill is another. The capital gains provision in the House bill would worsen the deficit by close to $13 billion in fiscal year 2012 alone. This is because lower capital gains tax rates in the short run will induce holders of property to sell their assets earlier than they otherwise would have. As a result, the U.S. Treasury may realize some increased revenues in the short run as property holders pay capital gains on those sales. But the Treasury will lose revenue in the long run because the property holders will not sell that asset at the later time which they otherwise would have sold the asset. And the Treasury will also lose revenue in the long run because the Government will tax capital gains at a lower rate.

A similar phenomenon takes place with dividend tax cuts. The dividend tax cuts in the House tax bill would worsen the deficit by more than $9 billion in 2011 alone.

I have been citing numbers provided by the Joint Committee on Taxation.

I ask unanimous consent that the full table setting forth the Joint Committee's estimated revenue effects of the House bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ESTIMATED REVENUE EFFECTS OF H.R. 4297, THE TAX RELIEF EXTENSION RECONCILIATION ACT OF 2005, AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS—FISCAL YEARS 2006–2015

[Millions of dollars]

Provision	Effective	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–10	2006–15
I. Extension and Modification of Certain Provisions Through 2006:													
1. Treatment of nonrefundable personal credits under the individual alternative minimum tax (sunset 12/31/06).[1]	tyba 12/31/05	–565	–2,260									–2,825	–2,825
2. Tax incentives for business activities on Indian reservations:													
a. Indian employment tax credit (sunset 12/31/06)	tyba 12/31/05	–21	–29	–11	–1							–62	–62
b. Accelerated depreciation for business property on Indian reservations (sunset 12/31/06)	ppisa 12/31/05	–161	–280	–104	23	77	120	98	52	6	–10	–445	–179
3. Extend and modify the work opportunity tax credit (sunset 12/31/06).	wpoifibwa 12/31/05	–125	–193	–87	–38	–23	–13	–2				–466	–480
4. Welfare-to-work tax credit (sunset 12/31/06)	wpoifibwa 12/31/05	–12	–27	–24	–12	–6	–3	–1	([2])			–80	–85
5. Enhanced deduction for qualified computer contributions (sunset 12/31/06).	cmd tyba 12/31/05	–66	–55									–121	–121
6. Availability of Archer medical savings accounts (sunset 12/31/06).	DOE						*Negligible Revenue Effect*						
7. 15-year straight-line cost recovery for qualified leasehold improvements (sunset 12/31/06).	ppisa 12/31/05	–46	–138	–181	–177	–171	–155	–146	–155	–152	–150	–714	–1,472
8. 15-year straight-line cost recovery for qualified restaurant improvements (sunset 12/31/06).	ppisa 12/31/05	–22	–56	–68	–68	–68	–67	–67	–65	–63	–57	–283	–601
9. Suspension of 100 percent-of-net-income limitation on percentage depletion for oil and gas from marginal wells (sunset 12/31/06).	tyba 12/31/05	–46	–25									–70	–70
10. Tax incentives for investment in the District of Columbia (sunset 12/31/06)[3].	tyba 12/31/05	–58	–30	–2	–1	–4	–13	–46	–23	–21	–23	–95	–221
11. Possession tax credit with respect to American Samoa (sunset tyba 12/31/06).	tyba 12/31/05	–2	–8									–10	–10
12. Parity in the application of certain limits to mental health benefits (sunset 12/31/06)[4].	DOE	–3	–45	–10								–58	–58
13. Extend and modify the research credit (sunset 12/31/06).	apoia 12/31/05 & tyea DOE.	–3,330	–3,219	–1,480	–1,097	–740	–192					–9,866	–10,057
14. Qualified zone academy bonds (sunset 12/31/06)	bia 12/31/05	–3	–7	–14	–19	–20	–20	–20	–20	–20	–20	–62	–162
15. Above-the-line deduction for teacher classroom expenses capped at $250 annually (sunset 12/31/06).	epoi tyba 12/31/05	–60	–139									–199	–199
16. Deduction for qualified tuition and related expenses (sunset 12/31/06).	pmi tyba 12/31/05	–420	–1,260									–1,680	–1,680
17. Deduction of State and local general sales taxes (sunset 12/31/06).	tyba 12/31/05	–525	–1,574									–2,099	–2,099
Total of Extension and Modification of Certain Provisions Through 2006.		–5,465	–9,345	–1,981	–1,390	–955	–343	–184	–211	–250	–260	–19,135	–20,381
II. Extensions of Certain Provisions for Two Additional Years, and Other Modifications													
1. Extend and expand to petroleum products the expensing of "Brownfields" environmental remediation costs (sunset 12/31/07).	epoia 12/31/05	–219	–375	–130	47	54	56	49	44	38	32	–625	–406
2. Controlled foreign corporations:													
a. Exception under subpart F for active financing income (sunset 12/31/08).	([5])		–775	–2,339	–1,682							–4,796	–4,796
b. Look-through treatment of payments between related CFCs under foreign personal holding company income rules (sunset 12/31/08).	([6])	–82	–237	–260	–167							–746	–746
3. Tax capital gains and dividends with a 15%/0% rate structure:													
a. Capital gains (sunset 12/31/10)	tyba 12/31/08			–1,549	–8,375	2,672	–54	–12,698	([2])	([2])		–7,252	–20,004
b. Dividends (sunset 12/31/10)	tyba 12/31/08			–860	–4,431	–8,008	–9,368	–6,326	–1,224	–450	–112	–13,299	–30,779
4. Credit for elective deferrals and IRA contributions (sunset 12/31/08).	tyba 12/31/06		–481	–1,428	–903	–10	–11	–11	–11	–10	–10	–2,823	–2,875
5. Increase section 179 expensing from $25,000 to $100,000 and increase the phaseout threshold amount from $200,000 to $400,000; include software in section 179 property; and extend indexing of both the deduction limit and the phaseout threshold (sunset 12/31/09).	tyba 12/31/07			–2,605	–4,459	–209	2,707	1,772	1,222	826	476	–7,274	–271
Total of Extensions of Certain Provisions for Two Additional Years, and Other Modifications.		–301	–1,868	–9,171	–19,970	–5,501	–6,670	–17,214	31	404	386	–36,815	–59,877
III. Other Provisions:													
1. Taxation of certain settlement funds (sunset 12/31/10).	aafca DOE	–3	–9	–10	–11	–12	–13	–14	–15	–15	–15	–45	–117
2. Modify rules for distributions of controlled corporations (sunset 12/31/10).	generally da DOE	–1	–7	–8	–8	–9	–9	–5	–3	–1		–33	–51
3. Expand the qualified veterans' mortgage bond program (sunset 12/31/10).	bia 12/31/05	([2])	–1	–2	–4	–7	–8	–9	–9	–9	–9	–14	–58
4. Provide capital gains treatment for certain self-created musical works (sunset 12/31/10).	soei tyba DOE	–1	–4	–5	–5	–4	–2	–4				–19	–25
5. Expand the eligibility for the tonnage tax election (minimum of 6,000 deadweight tons) (sunset taxable years ending before 1/1/11).	tyba 12/31/05	–2	–3	–4	–4	–4	–3					–17	–20
6. Modification of certain arbitrage rules for certain funds (include 20% State limitation) (sunset 8/31/09).	bia DOE			–1	–2	–1	([2])	([2])				–4	–5
Total of Other Provisions		–7	–24	–30	–34	–37	–35	–32	–27	–25	–24	–132	–276
Net Total		–5,773	–11,237	–11,182	–21,394	–6,493	–7,048	–17,430	–207	129	102	–56,082	–80,534

[1] The "Economic Growth and Tax Relief Reconciliation Act of 2001" provides that the child tax credit and adoption tax credit are allowed for purposes of the alternative minimum tax for 2002 through 2010.

[2] Loss of less than $500,000.

[3] The extension of tax-exempt financing is effective for bonds issued after the date of enactment.

[4] This provision will have a negligible effect on penalty excise tax receipts. However it will have an indirect effect on income tax receipts through increases in employer-contributions for health insurance and corresponding decreases in cash wages. The table shows this indirect revenue effect, which was estimated by the Congressional Budget Office.

[5] Effective for taxable years of foreign corporations beginning after December 31, 2006, and before January 1, 2009, and to taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

[6] Effective for taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2009, and to taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

Note: Details may not add to totals due to rounding. Date of enactment is assumed to be December 1, 2005.

Legend for "Effective" column: aafca = accounts and fund created after; apoia = amounts paid or incurred after; bia = bonds issued after; cmd = contributions made during; da = distributions after; epoi = expenses paid or incurred in; epoia = expenses paid or incurred after; DOE = date of enactment; pmi = payments made in; ppisa = property placed in service after; soei = sales or exchanges in; tyba = taxable years beginning after; wpoifibwa = wages paid or incurred for individuals beginning work after.

Mr. BAUCUS. Madam President, under the Budget Act, the Budget Committee is the authority on scoring matters. Section 312(a) of the Budget Act provides in relevant part that "the levels of . . . revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget . . . the Senate, as applicable."

In practice, this means that the Presiding Officer will turn to the chair of the Budget Committee for projections of dollars and cents effects of the legislation. In practice, the chair of the Budget Committee tends to rely on the Joint Committee on Taxation for revenue estimates.

I have let the chairman of the Budget Committee know that I was going to propound this inquiry. I believe the chairman of the Budget Committee concurs that the Joint Committee on Taxation estimates that I have just cited are authoritative.

I have a series of parliamentary inquiries. Is it not true that by virtue of section 313(b)(1)(E) of the Budget Act, section 313(b)(1)(E) of the act—part of the Byrd rule—applies to conference reports?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAUCUS. Madam President, if the conference committee on the legislation before us today were to return a conference report that included the capital gains and dividends tax cut provisions in the underlying House bill before us today, is it not true that a point of order would lie under section 313(b)(1)(E) of the Budget Act against both of those provisions?

The PRESIDING OFFICER. The Senator is again correct.

Mr. BAUCUS. Madam President, if a Senator raised that point of order against the provisions just cited, and the Presiding Officer sustained the point of order, is it not true that the offending provisions would be deemed stricken from the conference report and the Senate would then have before it an amendment between the Houses consisting of the rest of the conference report not so stricken?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAUCUS. Madam President, is it not true that a motion to waive a point of order raised under that section of the Budget Act or an appeal of the ruling of the Chair under that section would require the affirmative vote of 60 Senators to succeed?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAUCUS. Thank you, Madam President.

I believe this set of inquiries has established an important point. The capital gains and dividend provisions in the House bill worsen the deficit in the outyears. The conference committee thus must remove those provisions from the bill, pay for them in the outyears, or plan for needing 60 votes to waive the violation of the Budget Act. Those are the alternatives.

I might note that in the waning days of the last session, the Senate demonstrated that it is capable of employing the Byrd rule against reconciliation conference reports. For example, Senator CONRAD raised a point of order under the Byrd rule against several provisions in the spending reconciliation bill, and the Presiding Officer sustained the points of order under the Byrd rule. That is why the House of Representatives, this very day, in 2 or 3 hours, is voting on that spending reconciliation bill again.

So there are good reasons for the conference committee on this bill not to include the capital gains and dividend tax cuts the House bill includes. One of those good reasons is the Senate rules.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Madam President, I thank the Senator from Montana for reviewing for our colleagues the rules that relate to points of order, points of order that may lie because of Byrd rule violations with respect to this legislation. It is critically important we do this within the rules.

I commend the ranking member and the chairman for putting together an excellent package. I have other business now, unfortunately, that will take me away from the Senate, but I intend to come back and at some point offer a substitute that will be paid for with the same package. The chairman and ranking member have done an excellent job of presenting a package that is very much in the interest of the country. Also, I will offer a pay-go provision. I don't think we can give up on the notion that any new spending or any tax cuts need to be paid for. Our deficits and debt are running amok.

I again alert my colleagues what concerns me the most, even though the deficit gets all the attention in the press, the far more serious threat is the exponential growth of the debt. Last year, the deficit was some roughly $320 billion, but the growth of the debt was $550 billion.

For this year, when we put back things that have been excluded, we see a deficit in the $360 billion range, but the growth of the debt we now estimate is more than $630 billion, every penny of which has to be repaid.

The budget that we are still working on from last year will increase the debt of this country—by the estimates of the authors of the budget—will increase the debt more than $600 billion a year each and every year of the 5 years of its life. That is a $3 trillion increase in the debt. The first 5 years of this administration the debt has already increased more than $3 trillion.

Looking ahead to the next 5 years, there is another $3 trillion increase. We are now headed, we believe, for a $12 trillion debt by the end of this 5-year period, a doubling of the debt in a 10-year-period. Foreign holdings of our debt have doubled in 5 years.

It took 42 Presidents 224 years to run up $1 trillion of debt held abroad, U.S. debt held by foreigners. In the last 5 years under this President, we have doubled that amount—in fact, more than doubled that amount. That is an utterly unsustainable course. It is absolutely incumbent on us to get hold of our budget deficits and our trade deficits that are requiring this unprecedented foreign borrowing. I will have more to say about this when I offer a substitute and when I offer a pay-go provision.

I urge my colleagues to pay close attention. Together we have to deal with this burgeoning deficit and debt. It is threatening our country. It threatens our economic security. It threatens our national security. It certainly threatens our financial security. In my substitute, I alert my colleagues, I will take the very provisions the chairman and ranking member proposed—they have done an excellent job of putting together a package that makes sense for the country. It has the right priorities. They have done an excellent job. I have taken those provisions, and I have added some more pay-fors so we cover the cost.

Again, clearly, some of these tax reductions need to be extended. Goodness knows we have a whole series of things on which the American people rely. We ought to extend them. The chairman and the ranking member have done a terrific job of putting this package together in a bipartisan way. I will offer a substitute that takes their package and adds some pay-fors so the cost is covered.

With that, I indicate to my colleague that we will try to work out with his staff when it is most appropriate to return. I have another obligation at 12:30.

Mr. BAUCUS. Madam President, I very much thank my good friend from North Dakota. More than any other Senator, he is constantly reminding Members that our budget deficit is getting out of control. It is a message I wish more Senators and the public would heed. I hear the problem constantly.

I was in India and China for 10 days earlier this month. We all travel overseas, and we all talk to the leaders privately and publicly worldwide. I heard this constantly. We Americans have to get our fiscal house in order. We have to do it right away. The earlier we begin the better. There is no doubt, all mainstream economists agree, after a while it makes it very difficult for the United States to compete, and we have such a low savings rate, our national savings rate and our personal savings rate.

I thank the Senator again. I want him to know how much I appreciate all he is doing to try to get some attention to this very important subject.

Mr. CONRAD. I appreciate the remarks of the Senator from Montana.

Mr. BAUCUS. Madam President, our personal savings rates are negative. We consume more than we save in America today. Our national savings rate is low today because our fiscal deficit is so high. Corporate and private debt is high.

We have a great country, no doubt about that, a wonderful country. I am saying as clearly as I can say it, we run a great risk as a country of squandering what we now have as Americans if we do not, sooner rather than later, get our act together and get the deficits down. I am not being partisan.

It was not too many years ago we had projected surpluses. President Clinton bit the bullet. It was tough, very tough. He sent a budget to the Congress which included spending cuts and included some revenue increases only on the most wealthy. It was 50–50, 50 percent revenue cuts and 50 percent revenue raises on only the top 2 percent income earners in America, and it got through the Congress, one vote in each body.

Guess what. As a consequence, we projected surpluses, about $5 trillion in surplus over the following 10 years. I know that gave a great boost of confidence to businesses, to investors, that we would have a surplus in America, that we would be a strong country. It did not adversely affect the overall economic factors we face today.

With that huge deficit, I remind everyone, who is financing the deficit? Foreigners. Foreign governments by and large are financing this deficit. China's reserves at the end of the year will be $1 trillion, surpassing Japan's foreign reserves. They are building up their bank accounts to such a great degree, loaning dollars to the United States with treasuries and other instruments. They are financing this.

We have to begin to get this budget deficit down right away. There is no alternative. The sooner we begin the better. I thank the Senator from North Dakota and others who are working very hard to try to get the job done and get our budget deficits reduced.

The Senate is now considering, to remind my colleagues, the House tax reconciliation bill, the bill before the Senate now. The Senate substitute is not yet pending. Thus, I encourage Senators who wish to speak on the tax provisions—that is, the House bill before the Senate—to come to the floor and deliver their statements. At some point in midafternoon we expect the majority leader or the assistant majority leader to offer the Senate substitute and the Grassley-Baucus perfecting amendment, essentially taking the House bill before the Senate now and substituting the Senate-passed reconciliation bill. We hope the Senate will adopt the Grassley-Baucus perfecting amendment by voice vote. Thereafter, I encourage tax-related amendments.

Just to review the situation now, this is a good time to make statements on the bill. I also encourage Senators who have tax-related amendments to offer those first. I would like the tax-related amendments brought before the Senate, debated, and dealt with. Afterwards, we can deal with the non-tax-related amendments, amendments which will be nongermane and, if offered, against which points of order will be made, we are in a 60-vote situation.

That is where we are today. It is Wednesday noon. We have a total of 20 hours on the whole bill. I am hopeful we will not have to use that 20 hours, but it is 20 hours. The clock is ticking. I urge Senators to come to the Senate now.

Like the budget deficit, earlier is better than later. Senators can offer their amendments now, and they have a better chance of getting full debate. Later, they probably will get squeezed.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Madam President, I rise out of concern for our generation and also for the generations of our children and grandchildren and the legacy we leave them.

It has been said that the real test for a moral society is the kind of world it leaves to its children. With that in mind, I speak about the reconciliation tax bill before the Senate.

First, I comment on the larger context of what I and others see as a great threat to our future way of life. Comptroller General David Walker has said that the greatest threat to our future is our fiscal irresponsibility.

He also says:

> America suffers from a serious case of myopia or nearsightedness both in the public sector and the private sector. We need to start focusing more on the future, we need to recognize the reality that we are on an imprudent and unsustainable fiscal path and we need to get started now.

In November of last year, Alan Greenspan testified before the Joint Economic Committee and told Congress:

> We should not be cutting taxes by borrowing. We do not have the capability of having both productive tax cuts and large expenditure increases, and presume that the deficit doesn't matter.

I, for one, am taking this warning very seriously, and I have since I have been a Member of the Senate. I strongly believe deficits do matter. I do not know how anyone can say with a straight face that when we voted to cut spending in December to help achieve deficit reductions, we can now turn around a short while later to provide tax cuts that exceed or cancel out the reduction in spending. I voted to cut spending in the reconciliation bill, but I voted against the tax cuts that were part of the reconciliation effort. In my opinion, it is the only responsible course of action.

There are three reasons we should oppose tax cuts at this time. It is simple. First of all, we cannot afford those tax cuts; two, we do not need these tax cuts; three, we should be working on tax reform rather than tax cuts.

Let's look at some of the looming problems or liabilities that our Federal Government will have to face in the near future. There is the often quoted but perhaps not recognized statistic that 77 million baby boomers, about whom the President talked last night—he is one of them; so is Bill Clinton—will begin to retire in just a couple of years, and they will be a tremendous drain on our entitlement programs. It has been called a demographic tsunami that will never go away.

By 2030, the Congressional Budget Office projects Social Security spending as a share of the U.S. economy will rise by 40 percent. The bottom line is the predictions are that by 2030 almost the entire budget will be used for Social Security, Medicare, and Medicaid, and we will not have anything left for anything else.

At the size of the Federal budget today, according to the Congressional Budget Office, the prescription drug benefit will cost $155 billion a year by 2016, and taken together with Medicare and Medicaid will cost us $1.3 trillion or about one-third of Federal spending.

On top of this, we must consider the pension liabilities taxpayers may soon take on. The Pension Guaranty Corporation has assumed 1.3 million pensions, which adds up to about $23 billion more in obligations than its premiums can cover. That shortfall could grow to more than $100 billion in the near future, considering that about 1,100 companies are at high risk of defaulting on their plans. All that may be added to the Government's bill to pay. We are going to have to pick up the tab on that if this happens.

The war on terror has cost us over $350 billion since it began. This just happens to be the size of the tax cut we enacted in 2003. I took a lot of heat for holding the line on that $350 billion, but the costs of the war were not clear at that time. Consider where we would be today had we not limited the scope of the tax cuts. Where would we be in terms of our budgets being in balance and our national debt? I voted for funding for the war on terror because it is the Federal Government's primary duty to provide national security. However, considering these large increases in spending, it certainly does not make sense to give away large tax cuts.

The Congressional Budget Office projects that Defense spending will rise from $420 billion in 2006 to $461 billion in 2011. This is excluding supplemental appropriations. And, of course, we must look at the Federal spending for Hurricane Katrina. While not as expensive as originally thought, relief spending will amount to about $101.5 billion—the total cost of the supplemental appropriations, targeted tax relief, and other Katrina-related bills we have passed.

Now add to that we are already operating in a deficit. In case anyone has forgotten, the deficit for fiscal year 2005 was $319 billion. In October of last year, the gross Federal debt climbed past $8 trillion. The debt has grown from $5.5 trillion, when I first came into office, to a staggering $8.1 trillion. The debt service alone threatens to gobble up revenues in the near future. According to CBO, in fiscal year 2005, interest on the public debt grew more rapidly than any other major spending category, rising 14 percent above the fiscal year 2004 level.

Let's face it, we have been lucky. Interest rates have been very low so our interest costs to the debt have been relatively modest. But as we move up the chain and interest rates start to rise, they are going to take a much larger share of our expenditures.

Without major spending cuts, tax increases, or both, the national debt will grow by more than $3 trillion through 2010, to $11.2 trillion, according to the General Accounting Office. In other words, it is going to grow more than $3 trillion through 2010. According to the General Accounting Office, that will be nearly $38,000 for every man, woman, and child. The interest alone would cost $561 billion in 2010, the same as the budget of the Pentagon. In other words, the interest costs in 2010 are going to be the same cost as to entirely fund our Defense budget.

However, we all know the real problem is our long-term debt. By the General Accounting Office's own estimates, about 35 years from now, when my grandchildren have their own children to care for, balancing the budget could require actions as large as cutting total Federal spending by 60 percent. We had a tough time with our modest reduction in terms of cutting expenses 1 percent. We went through all kinds of furor around here.

By passing these tax cuts into law, I believe we are increasing the deficit and thus the Nation's debt, which results in a future tax on our Nation's children. I believe it is immoral to bequeath trillions of dollars in debt to our children and grandchildren. This will not be politically easy, and I understand that. But the simple, undeniable fact is we cannot have it all. We have to make hard choices. We have to decide we cannot say to them: You pay for things we wanted and were not willing to pay for. We should either pay for them or be doing without them.

I learned this lesson while I was mayor of Cleveland for 10 years and as Governor of Ohio for 8. You have to balance budgets. You have to deal with deficits.

In the words of Robert J. Samuelson in a Newsweek article called "Capitalism vs. Democracy":

> So it is that budget deficits persist; any combination of spending cuts and tax increases arouses a coalition of the angry. And so it is that—despite a gradual aging of the population that will require huge and, probably, damaging tax increases—no one has seriously attempted to contain these costs. It is easier to pretend that there will be no ill effects.

It is time to recognize a simple fact, and that is this: Tax cuts do not pay for themselves. We have heard all of this about: Did the tax cuts generate more revenues than what we had expended? The red bars on this chart show the revenue projected before we cut taxes in 2003. In other words, these are the revenues we expected to get if we had not cut taxes. The blue bars show the revenue projected after we cut taxes. The green bars show the revenue actually collected. The green bar shows the most important thing.

The blue bar shows what we thought we were going to get, and we did get more revenue than we expected in 2003. We expected this, as shown by the blue bar, in 2004, and we got the green. We expected what is shown with the blue bar, as projected, and we were able to get added revenue, as shown by the green bar. The revenue came up, but there is a big debate.

Particularly, we were talking about that yesterday in a meeting, about what caused the increase in revenues. Some were arguing it was because of reducing the tax on dividends and lowering the capital gains tax. I asked the question: Did the lowering of interest rates have anything to do with the fact that we had added revenues? We talk about the stock market. Did the fact interest rates were down impact on the fact that the stock market has gone up?

So there are a lot of things that come into play. I am sorry, but so many of my colleagues say these two tax reductions made the difference for America and fail to realize there were a lot of other things that were happening in our economy. The 2003 tax cuts, yes, were not as expensive as we feared, but the fact is, they still did not pay for themselves in terms of what we projected the revenues to be if we did not have the tax cuts.

The Government Accountability Office and the Congressional Budget Office have both stated we cannot simply grow our way out of the problem. The Congressional Budget Office said last year:

> [E]conomic growth alone is unlikely to bring the nation's long-term fiscal position into balance.

What I am saying is we have to make some tough choices around here. I voted for tax cuts in 2001, 2002, and 2003 because the country needed stimulative medicine. It has worked. The economy has grown. But like any other medicine, an overdose of tax cuts can, and in my opinion will, do more harm than the original disease.

In 2003, I said that $350 billion in tax cuts would be enough to get the economy moving, and it worked. Now I am saying that any more would be an overdose. It is time to put the tax cut medicine back on the shelf, particularly in light of the war in Iraq, our spending on homeland security, Hurricanes Katrina and Rita, and all the other mandatory spending I have mentioned earlier.

The second reason to put the tax cut medicine back on the shelf is that many important tax extensions do not have to happen today. They do not. For instance, the reduced rates on dividends and capital gains do not expire until 2008. As a matter of fact, we could wait until 2009 to deal with it in terms of the 2008 tax year. That is 3 years from now. If we wait to look at these extensions, perhaps it would give us a chance to find offsets to pay for them or even look further at something that is long overdue, tax reform. I am going to discuss that in a moment.

When Alan Greenspan testified before the Joint Economic Committee at the end of last year, a member of the committee asked if he supported extending the current 15-percent tax rate for capital gains and dividends. Former Chairman Greenspan replied he could only support extending these tax cuts if they were paid for. According to Chairman Greenspan, large budget deficits will drive up interest rates over time, raising the Government's debt-service costs, which I referred to 5 minutes ago; that is, interest costs go up, and we end up paying a large portion of our budget on interest costs. Chairman Greenspan said: unless the situation is reversed, at some point these budget trends will cause serious economic disruptions.

The fact is if these taxes are so important, we should pay for them, which is why I supported the pay-go amendment to the budget resolution in March and supported it again in November. We have pay-go that says if you want to spend more, you have to find some way to pay for it. We should do the same thing with tax cuts. No, we decided not to do that.

I also supported the Deficit Reduction Act when it passed the Senate in December because I believe controlling the growth of entitlement spending is essential to dealing with our fiscal challenges. The Deficit Reduction Act has been presented as an important step toward putting our fiscal house in order.

However, adjusting the balances on the pay-go scorecard to reflect the passage of the reconciliation bill would give credence to the criticism that we voted to restrain entitlement spending to allow for larger tax cuts, not to reduce the deficit. In other words, you guys cut your expenses so you could pay for your tax reductions, and you did nothing for the deficit.

Furthermore, even though the budget resolution adopted last April allowed for legislation increasing the deficit by $75.6 billion, the fiscal and political environment is very different now than it was when the budget resolution was adopted. As I mentioned before, the costs of responding to Hurricane Katrina have had a substantial impact on the budget deficit. Katrina hit the United States on August 29, well after we passed the budget resolution. We had no idea this was coming. This was the worst natural disaster we have had, and we have to say: Well, we will take care of it. We will find some way to fudge it and pay for it. But we know fudging it means our budget for 2006 is going to be more unbalanced and we are going to add to the national debt.

The Office of Management and Budget recently announced that the deficit will exceed $400 billion once again in fiscal year 2006, $60 billion higher than projected last summer.

Another important step toward fiscal responsibility is to have honest accounting for the Social Security surplus. We have borrowed over $1.9 trillion from Social Security to finance the rest of the Government. I want to make this point clear. When I first came to the Senate, we were talking about "unified budget" and "on budget." All of a sudden, we are now back to the unified budget. In those days, we were saying: We cannot spend the Social Security surplus. Now we do not even talk about the Social Security surplus. The real number is masked by borrowing from the trust funds of other programs. When you add the off-budget surplus of $175 billion from the Social Security trust fund and Postal Service outlays, the real, or on-budget, number is $494 billion. The American people do not understand that. We report $319 billion. The fact is, it cost us almost $500 billion. The Government's accounting for total trust fund surpluses is actually $226 billion. That would increase the total deficit to $545 billion.

In other words, we talk about the Social Security surplus we spent. We do not tell the American people that we are also spending the other money that is in the trust funds. So if you add them all up, we are talking about a deficit of $545 billion, when you include spending the money that is in Social Security and the other trust funds.

It is time to stop the raid on Government trust funds. That is why I have introduced the Truth in Budgeting Act. I am happy Senator CONRAD is willing to work with me on this important budget reform. The legislation would stop the Federal Government from using surplus trust fund revenues to hide the true size of the Government's deficit spending and highlight the true size of the Federal debt by forcing the Government to increase borrowing from the public to cover general fund expenses.

I have introduced this bill not as a Social Security reform measure but as a budget reform measure. It is important to have an honest accounting of where we are and where we are headed from a fiscal perspective.

If you look at a study by the Heritage Foundation on Western European economies, you get a glimpse of where we are going. Many older European nations have been forced to impose large tax increases on workers to fund benefit systems mainly for retirees. Overall government spending in the 15 nations comprising the European Union averages 48 percent of GDP, and tax revenues average 41 percent of GDP, which has placed a significant drag on their economies. Compared to the United States, per capita income is 30 percent lower in these countries. Economic growth rates are 34 percent lower than the United States, and unemployment is substantially higher. As their populations continue to age, the economies of countries such as Germany and France risk collapsing under the weight of their unrealistically generous retirement and welfare systems. We can't allow that to happen here.

I am pleased that President Bush, in the State of the Union Address last night, called for a bipartisan commission to examine the full impact of baby boom retirements on Social Security, Medicare, and Medicaid. He said the commission "should include Members of Congress of both parties and offer bipartisan solutions. We need to put aside partisan politics and work together and get this problem solved." I couldn't agree more. We have ignored this issue. It is time that we sit down in a bipartisan basis and face up to this pending disaster and deal with it now before it is too late.

My third reason for opposing tax cuts at this time is that the President's Advisory Panel on Tax Reform released its final report in November of last year. All of us have heard from families and businesses in our States lamenting the complexity and frustration with the current Tax Code. I don't know about the Presiding Officer, but I know my wife and I spend hours getting our papers together, and we have to take them to an accountant. I used to do my tax return. I am a lawyer. I wouldn't touch my tax return today with a 10-foot pole.

I am disappointed that the administration seems to have put tax reform on the back burner. Why extend tax reductions, which we are talking about now, piecemeal when we should be considering fundamental tax reform instead? The goal of any government revenue program should be to raise sufficient funds to operate public programs with the least amount of disruption to the economy. Our tax structure should be simple, fair, and honest. Our current Tax Code achieves none of these objectives.

Last year, the Tax Foundation, a conservative think tank, estimated that Americans spent more than 6 billion hours doing their taxes and that complying with the current Federal income tax code costs U.S. individual businesses and nonprofits $265 billion, which is 22 cents for every dollar of income tax collected. This is equivalent to the combined budgets of the Departments of Education, Homeland Security, Justice, Treasury, Labor, Transportation, Veterans Affairs, Health and Human Services, and NASA.

Individuals and businesses lose money they could otherwise save, invest, spend on their kids' education, or enjoy an extra evening out with the family. But the Federal Government gains nothing from this atrocious tax system we have. It is the equivalent of stacking money in a pile and lighting a match. It doesn't do anything for anybody.

We all recognize the need for a simple, fair, and honest Tax Code. This would be a win-win goal for everyone. We will soon be considering a bill that would cut taxes by about $60 billion. Simply cutting tax compliance costs in half, from 20 percent to 10 percent, would have the impact of a much larger tax cut in the amount of $130 billion. In other words, if we could get a fair, simple, understandable Tax Code and eliminate this enormous amount of money it costs all of us to pay our taxes and reduce that by half, we could save the American people $130 billion. That is real money. This tax cut we are talking about is $60 billion. We are talking about $130 billion out there that we have in our pockets. It doesn't impact the revenues to the Federal Government one iota. However, it would be a tax cut that doesn't reduce our revenue.

We all know that fundamental tax reform is critical. I cannot understand why some of my colleagues want to make so many provisions of the Tax Code permanent or add new tax cuts when we very well may be eliminating precisely the same provisions as part of fundamental tax reform.

The problem we have is this, if you want to be practical: When I got involved in this whole business in 2003 of the $350 billion tax reduction to stimulate the economy, and we started talking with some of the high leadership in the House of Representatives, I was saying to them: When I was Governor, what we did is we looked at tax reductions that stimulate the economy, and then we looked at other areas where we could increase taxes that would have less impact on the economy. We had to be concerned about balancing our budget.

What I heard from the leadership on the other side of the Capitol was: We can't increase taxes because we all took the pledge that we can't increase taxes.

I said: Even if you could increase taxes that don't have that much impact on the economy so that you could decrease taxes that would help stimulate the economy?

No way.

Where are we going? If that is the deal, we will never get anything done around here.

It is my opinion that it is not time for piecemeal tinkering. No homeowner would remodel their kitchen and bathroom a year before tearing down the house to build a newer and better one. We need to tear down the house.

If you look at that Tax Code, consider it to be a Christmas tree. If you look at all the ornaments on that tree, you would sit back and say: Who in the devil ever decorated this tree? They must have been under the influence of alcohol or drugs. That is what it is today. We just keep adding things, one after another, another bell, another whistle, this and that. It is time for us to look at this.

I wish to reiterate the three reasons I think we should oppose these tax cuts at this time.

No. 1, we cannot afford them because of our soaring deficit and the national debt. Putting our spending on the credit cards of our kids is unconscionable, particularly because they are going to have to work harder and smarter to compete in a global marketplace just to maintain our current standard of living. Don't think they are not worried about that. And as a parent, don't think I am not worried about the kind of environment in which my kids are going to live. They are going to have to work very hard in this new competitive world. We better wake up to it. It is the most formidable competition we have ever had in my lifetime; from China, India, you name it. What we are basically saying to our kids is: You are going to go into this competitive society and have to work harder than you have ever had to before. And by the way, down the road, you are going to have to pay for things we weren't willing to do without or pay for. God bless you.

I can't do that. I cannot do that. I don't think any of us can do that.

Second, we don't need tax cuts at this time. If this body believes we must have them, then follow Alan Greenspan and David Walker's advice and let's pay for them.

Third, from a public policy point of view, these tax cuts are premature because in the very near future we may well change them as part of fundamental tax reform and simplification.

I thank my colleagues for their attention and urge them to consider the ramifications of additional tax cuts at this time and reaffirm a principle we have held dear over the years and that I have adhered to as mayor of Cleveland and governor of Ohio. That is to balance budgets and reduce deficits and, yes, when the circumstances warrant it, cut taxes, as I did the last 3 years as governor of Ohio.

I yield the floor.

The PRESIDING OFFICER (Mr. THUNE). The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I am informed that it is not appropriate at this point to offer an amendment or to call up my amendment and offer it, but I do wish to speak to one of the amendments, which is at the desk, that I have filed. It is an amendment that is cosponsored by Senators ROCKEFELLER, MURRAY, CANTWELL, CLINTON, KENNEDY, KOHL, LIEBERMAN, SCHUMER, MENENDEZ, KERRY, and LEAHY.

This amendment relates to the prescription drug problem which all of us hear about when we return to our home States. It is an immediate issue and an immediate concern for our constituents. I have an amendment that tries to address a substantial amount of that concern.

On January 1, 2006, just a month ago, senior citizens and people with disabilities were promised and fully expected to begin enjoying savings on their prescription drugs through the Medicare program. For many, the drug bill has been a lifeline and is working. But for millions of Americans, the transition to this new prescription drug benefit has been nothing short of a disaster.

The sad reality is that implementation problems with the Medicare drug benefit are widespread. What is especially troubling is that the problems are adversely affecting the most vulnerable—low-income beneficiaries who have lost comprehensive drug coverage they previously had under Medicaid and have found themselves without coverage for certain drugs they previously had or have fallen completely through the cracks and have no coverage for any kind of drugs.

It is unacceptable that this benefit is costing taxpayers hundreds of billions of dollars over the next 10 years and yet has left many of our Nation's most vulnerable citizens actually worse off. Consequently, I will offer at the appropriate time this critically important amendment to address the crisis.

The amendment simply ensures that our Nation's seniors and pharmacists and States, many of which have come forward to fill the gap, are not left holding the bag for mistakes and problems caused by the Federal Government's failed implementation of the program.

This legislation ensures that senior citizens and people with disabilities are getting the prescription drugs and services they need and that both States and pharmacists are being compensated for the costs they are absorbing whenever either Medicare or the drug plan has failed to cover those costs.

While it is impossible to know the exact number of senior citizens and people with disabilities who are facing problems, we do know that at least 300,000 low-income seniors are paying far more in drug costs than they are supposed to be paying. We understand that up to 100,000 seniors showed up at their local pharmacy and were not in the new Medicare system at all.

Further, we know that the Health and Human Services Inspector General's Office confirmed last week that millions of the dual-eligible individuals who were automatically enrolled in the new program were placed in drug plans that did not cover the drugs they used. For some senior citizens and for the disabled, it was a cruel lottery that has left them without the drugs they need. Fortunately, as Americans of good conscience always do, both the pharmacists and States all across the Nation have stepped up to fill the gaps. But their good deeds should not be punished. We should make sure they are fully compensated for their effort, and this amendment will, in fact, do that.

I appreciate all that Secretary Leavitt has committed to do to address the multifaceted problems that have been identified. I do believe things are getting somewhat better. However, we are a long way off from having these problems resolved, and promises of better times ahead are not adequate.

A pharmacist in Carlsbad, NM, reported to my office yesterday the problems, in his words, that are still prevalent. As he says:

> We call the processor; they say call Medicare. We call Medicare; they say call the drug plan. It is just a continuous circle of finger pointing with no resolution.

Therefore, I rise today, at the first opportunity we have had in this Congress, to offer this critically important amendment to fix some of these immediate problems with the Medicare prescription drug bill. The language of the amendment comes largely from legislation introduced by my good friend, Senator JAY ROCKEFELLER, in a bill which is entitled the "REPAIR Act." Who are the people we are talking about?

In a New York Times article entitled "Medicare Woes Take High Toll on Mentally Ill," an article published on January 21, a little over a week ago, reporter Robert Pear profiles Mr. Stephen Starnes, who begged for medication he had been receiving for 10 years to combat paranoid schizophrenia. His pharmacy could not get approval for this medication from the new Medicare drug plan. The result was that he was hospitalized, and he was treated by a fee-for-service Medicare provider due to failure of the private drug plan.

So in effect, Medicare pays private drug plans for coverage and then it pays again for their failure to provide that coverage in a much more costly way.

Clearly, immediate action is needed. This is one of dozens and dozens of newspaper reports nationwide. I have a chart that makes the case fairly dramatically. We have taken some of these headlines from around the country: "Medicare Woes Take High Toll" is the one I mentioned before; "Patience Only Remedy For Drug Plan Confusion"; Pharmacists Deal with Medicare Confusion"; Pitfalls No Surprise in Drug Benefit Launch"; "Seniors Denied Prescription Drug Benefits." There are is a wealth of these stories throughout country. The problems are legion, and we all hear about them on a daily basis when we are in our home States.

Mr. President, I know that some will likely speak in opposition to this amendment and point out that the underlying legislation on the floor is a tax reconciliation bill. They will raise the objection that the amendment is nongermane. However, this crisis dictates that we should not let Senate procedural motions prevent our Nation's senior citizens from getting the prescription drug benefit they were promised. I urge my colleagues not to take parliamentary steps to keep us from considering and dealing with this issue.

Others might say that the administration has promised to fix the problems. Yet we know they have had the opportunity to fix the problems already, but they have not done so. Here are some examples:

On November 3 of last year, a couple of months ago, our colleague, Senator MURRAY, traveled around her State and foresaw many of the problems we are witnessing today. Consequently, at that time in November, she offered an amendment that would have provided a 6-month transition during which dual eligibles—people both on Medicaid and eligible for Medicare—could continue to receive drug coverage through Medicaid. This would have given the administration more time to work through the many problems that confront these dual-eligible individuals. Unfortunately, the administration opposed that amendment and it was rejected.

The CMS had a second opportunity when Medicare rights centers and a number of other senior and disability organizations filed suit to compel the Secretary to continue Medicaid drug benefits "for any dual eligible who is not then enrolled in a Medicare prescription drug plan or otherwise receiving Medicare drug coverage." But again, the administration fought that suit by arguing that the "remedy is unnecessary and it runs counter to the public interest because of the considerable obstacles and confusion it will generate in the few remaining days between January 1, 2006." They further argued that they would be in a position to quickly rectify any problems that might arise.

I think we can all agree that it is unfortunate that both Congress and CMS failed to take advantage of clear opportunities to slow the transition of the 6 million dual-eligible individuals from the Medicaid system to Medicare and that CMS was clearly way off in its assessment of how smoothly that transition would occur.

Unfortunately, we have missed both of those opportunities that I mentioned. But we have a third chance, and that chance is being presented by this amendment I am offering today to provide immediate help to seniors and people with disabilities who are being adversely impacted by problems that have arisen with the implementation of the drug benefit.

We had a meeting in the Finance Committee this last week. Chairman GRASSLEY asked a question of Secretary Leavitt, who was meeting with us there, and CMS Administrator McClellan. Chairman GRASSLEY asked whether legislation was needed to fix some of these problems. Dr. McClellan simply responded "no." The administration continues to take the position that Congress is not needed as part of the solution, that legislation is not needed, and that these problems will resolve themselves.

Two weeks ago, CMS announced that States that had stepped into the breech to provide vulnerable citizens with the prescription drugs they needed would not be reimbursed by CMS because they didn't have the legal authority to help these States. Legislation was introduced immediately in the House and the Senate, and less than a week later CMS reversed itself and said it would be working to ensure that States would be fully reimbursed.

Public opinion polls indicate that approval ratings for the Congress have sunk to the lowest levels in a decade. Part of that is due to the repeated failure of Congress to act when action is clearly called for. Hundreds of thousands of our citizens are calling out for help to address the many bureaucratic snafus that we are witnessing in the implementation of this Medicare prescription drug program.

I urge my colleagues to support this amendment, when it is offered later today, to ensure that senior citizens and pharmacists and States get the support they need to get through this immediate crisis.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call roll.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that all quorum calls be counted equally against both sides.

The PRESIDING OFFICER. Without objection, so ordered.

Mr. BINGAMAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CARPER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATE OF THE UNION MESSAGE

Mr. CARPER. Mr. President, I was joking earlier with the occupant of the chair, and I said I would like to be recognized so I could tell you what I thought of the President's State of the Union message last night. I appreciate the chance to offer some thoughts and comments.

First of all, the Presiding Officer may recall that when he kicked off his speech, he called for a return to civility. That is called for around here from time to time. Sometimes it is called for earnestly and other times it is something that we just say. I hope that it was offered in earnest and that all of us, Democrats and Republicans, will respond in like kind. I always found that in my old job in Delaware as Governor, I got a lot more done when we were civil to one another. Regarding the kinds of issues before us that the President talked about last night, if we are going to be successful, we need to do that.

One of things I have been calling for, for I guess about a year or 2 now, ever since the President laid out his Social Security reform initiatives, was the notion of, if we are making progress on something as politically explosive as Social Security reform, it would be helpful to go back in time maybe 23 years to when President Reagan was President and Tip O'Neill was Speaker of the House. At the time, I was elected to the House of Representatives, where the Presiding Officer also served. In 1982, when I got there, we learned that Social Security was about to go bankrupt and that we needed to do something not to ward off the problem in 10, 15, 20, or 25 years but that next year, in 1983, because we were going to run out of money to pay benefits to our seniors. What President Reagan and Tip O'Neill did and maybe the Democratic leader of the Senate, who may have at the time been our colleague, ROBERT BYRD—I am not sure—they created a commission chaired by Alan Greenspan.

The members included people such as Senator Robert Dole, whose wife serves with us now, and Senator Daniel Patrick Moynihan, now deceased. He was chairman of the Finance Committee, either then or at a later time. It also included Claude Pepper, from Florida, chairman of the Aging Committee in the House, and a number of other notable people. So Alan Greenspan chaired the Commission. They went to work in 1982 and came up with a whole raft of ideas. The Commission endorsed them in total.

We endorse all these ideas to raise revenues, to slow the outflow of spending from the Social Security trust funds. Because they embraced the ideas in total, it gave the rest of us cause to believe that maybe there is some merit to them.

Not only that, President Reagan said we are going to take the politics out of this. If you, the House and Senate, pass this package, I will sign it. Ronald Reagan, a Republican President, gave political coverage to the Democrats in the House and Senate. Tip O'Neill and the majority leader of the Senate gave political coverage to the Republicans. I describe it as drinking the Kool-Aid together, holding hands and jumping off the bridge together.

We passed a major overhaul of Social Security, and the President signed it into law. It put Social Security on firm footing, not just in 1983 but for a couple of decades to come. We know, looking down the road in 20, 30 years, we will have a serious problem with Social Security. The sooner we get started on it, the better off we all will be.

It reminds me a little bit of compounded interest. Save a little, and as time goes by, it adds up to a lot of savings. To the extent we can get started on Social Security sooner rather than later, it will help us more quickly than we might imagine.

As worrisome as the Social Security trust funds may be, the Medicare trust fund is an even greater, more urgent problem that needs to be addressed. I was very pleased to hear the President say last night not only a blue-ribbon commission with an eye toward the boomers and their effect on retirement but also Medicare and Medicaid. As you know, more than half the money we spend in Medicaid ends up with senior citizens in long-term care facilities. So I think that was a very good thing.

Going back to the President's call for civility, a bipartisan approach, unless we have it, this kind of deal may see the light of day, but we will never make any progress on it. And, frankly, we need to make progress on it for the sake of our parents and for the sake of our children and grandchildren, some of whom are the ages of the pages sitting in front of me today.

The President also lamented the fact that we have this terrible addiction to imported oil and that we have to do something about it. That was great. In fact, when JOHN KERRY was running for President, one of the centerpieces of his campaign was energy independence I think by 2020, or something such as that. The President echoed some of the same concerns last night in his speech. I welcome those. People on our side welcome them as well.

It is important we not just say the words but we go forward and make sure we fund the technology initiatives and other initiatives that will help make renewable energy a reality, not just biodiesel and ethanol, but that we do a better job than we are doing now on solar energy, wind, and geothermal.

The President also mentioned last night a new generation, not just encouraging more wind, solar, soy, diesel, ethanol, and so forth, but he also called for a new generation of nuclear powerplants. I know people have concern about the waste, and we should, but I also think we ought to be smart enough to figure out in the next 10 to 20 years what to do with the waste, how to recycle and better control it and reduce the threat that someone will get hold of it and turn it into nuclear weapons. We are too smart a people not to solve that problem.

The President mentioned in his speech—I was kind of concerned by this—I think he said let's replace 75 percent of our oil dependence on the Middle East by 2025. I don't think all our oil comes from the Middle East. I think 60 percent is imported today, not all from the Middle East. A lot comes from other places around the world. To say we are going to reduce our oil from the Middle East is not good enough and I don't think good enough to do it by 2025. It is my hope that we can move up that timetable sooner and maybe eradicate not only our dependence on oil from the Middle East but from other places outside our borders as well.

The President talked about affordable health care. The cost of health care is killing our competitiveness as a nation. One of the reasons—not the only reason—but one of the reasons why GM and Ford are struggling, losing money, laying people off, and closing plants is the huge legacy costs they carry with their pensions and health care costs for their employees today and for people who are retired.

GM alone provides health insurance for about a million people—folks working in the plants and their families, people who used to work in the plants and are retired. It is about a million people. Some folks describe GM and some of these auto companies as basically a health care provider that happens to build cars and trucks on the side. I know they say that with tongue in cheek, but it is not far off the mark.

A couple things the President mentioned I think made a lot of sense. One was electronic records. For a lot of people, it doesn't mean much. I will use an example.

We had hearings this morning on Katrina, a followup to what went wrong and what didn't go wrong on the heels of Katrina in New Orleans. When most people were evacuated—and we spent a fair amount of time this morning talking in our hearing about the evacuation of people who were in nursing homes and how it didn't go well. A lot of times people who were in nursing homes ended up in places outside Louisiana. Frankly, the people who received them in other nursing homes and other hospitals did not have a clue what medicines these folks were taking, they didn't know what their lab tests were, they didn't know the condition they were in. They had no real record of their x-rays or their MRIs. Basically, all these older people were dumped in the laps of these nursing homes and hospitals outside the gulf coast. It was a mess.

Compare and contrast that with the folks who are veterans and are being cared for by the VA in VA nursing homes and hospitals in the same area. When they were transferred to their new sites and other States surrounding the gulf coast, going with them, figuratively and literally, were their electronic health records. When they ended up in a new hospital or nursing home, the receiving entity knew they had the medical history of this veteran. They knew what medicines they were taking. They knew what their lab tests were, MRIs, x-rays. They had a running history of the health care provided to these veterans. The veterans had an electronic health care record.

We have a similar system put in place for Active-Duty folks in the Department of Defense. When I was in the Navy, we carried around manila folders that literally had our health care records. We would take them from station to station, base to base, as we were transferred. We don't do that anymore. Frankly, we do something similar to that in civilian life. We ought not do it.

My little State of Delaware is trying to provide something similar to that. It is called the Delaware Health Information Network. That would allow everybody in our State to have an electronic health record. If you go into a hospital or doctor's office, they can figure out a little bit about your health history and how they can provide better care for you.

We obviously need to do that for our country. The Congress and the President can do something to help that. It is not just money either. It is having standards so we are basically singing off the same sheet of music. People who go to a hospital in South Dakota, North Dakota, or Delaware can have standards that are interoperable, systems that are interoperable and using the same standards so we can get good care, better care because the folks receiving us know something about our medical history.

The President talked about health savings accounts. They are about a year or so old. He talked about ideas to make them better. I know not everybody is crazy about health savings accounts. I know it is not a silver bullet, but it is part of the solution to provide health care help for those who don't have health care insurance, which is about 45 million people. It is an option that we can try to improve.

I want to mention one last point. Here on the Senate floor not too long ago, I was with our colleague, LAMAR ALEXANDER from Tennessee. He is a very thoughtful guy. Senator ALEXANDER shared with me an idea that grew out of the National Academy of Sciences. It is an idea of looking ahead and figuring out how we are going to provide job opportunities for children who are the same age as my children—15, 17, the age of these pages. I guess they are about 15, 16, 17 years old as well.

The folks at the National Academy of Sciences came up with this idea. Senator ALEXANDER was good enough to give this to me, Mr. President. I don't know if you have seen this. It is titled "Rising above the Gathering Storm." It is the executive summary, a quick read. I commend it to everybody. When I heard the President talking about his idea last night of making sure our young people coming out of our high schools are better steeped in math and science and making sure the people teaching in our schools can actually teach math and science—I think the President said double the investments in technology that lead to innovation. I said that sounds vaguely familiar to me.

As it turns out, it is basically in the recommendations shared with me by Senator ALEXANDER that came out of the work done by the National Academy of Sciences. It is good stuff.

As we look forward, trying to figure out how we are going to be competitive with the rest of the world in this century, I am not sure we have all the answers. Part of it is, frankly, making health care more affordable for our people and employers. That is part of it. Part of it also is making sure our kids, our students, our young people who walk out of our high schools and colleges and go off into the world can read, write, think, they can do math, they know science, and are familiar with technology. There are a lot of good ideas in this publication, and I think the President has embraced this proposal and we, as Democrats and Republicans, might want to do the same.

P.S., sometimes we say things in speeches that sound good and a lot of people stand up and applaud and say: That is right, that is good. I like that. But the followthrough is not always there. It is important, if we are going to go down this road—and we probably should—that the followthrough be there.

What do I mean by that? The President is going to submit a budget proposal to us in about a week or so. It will be interesting to see how the administration funds these initiatives. When we go through the budget process, at the end of the day—we will adopt our appropriations bills later this year—it will be interesting to see how hard the administration pushes for these kinds of provisions outlined in the proposal from last night and from the National Academy of Sciences. It will be interesting to see what the administration proposes next year and the year after that and the year after that and how hard they push for funding.

I will be watching, and to the extent the administration wants to support these proposals, I suspect they will have my support and probably the support of other Democrats and Republicans. It would be nice not just to hear words from the President but deeds as well.

I say to the Presiding Officer, I don't know how he felt about the President's speech last night. I didn't catch his interviews. I know he did them. I did them back in Delaware, and they don't cover much in South Dakota either or in Washington, for that matter. I heard encouraging things in what the President said. I wanted to mention those.

I will close. I know the Senator from North Dakota is waiting for me to get out of his way so he can take the floor as well. I will close with this. Just about every Member of the Senate has been over to Iraq in the last year or so. I was in Iraq in December. I met with our military leaders. I met with our civilian leaders, and I met with Iraqi military leaders and Iraqi civilian leaders. I was encouraged on several fronts.

It was just before they had their elections. It was encouraging we had so many people wanting to run for the parliamentary seats—275 seats and 7,000 candidates. That is a pretty amazing outcome in terms of participation, trying to put a coalition government together, stand it up, rewrite their constitution, build the economy. That is a whole lot to do at once in the middle of an insurgency.

One of the more encouraging comments I had was from GEN George Casey. We were talking about whether the Iraqis are able to stand up, take on more of the fight, cover the responsibilities geographically and otherwise. We got an encouraging report, not one that said we are going to be able to leave in 6 months, 12 months, or even 24 months. But in General Casey's words, what he said with reference to our presence in Iraq is it is time for us, the United States, to start moving toward the door.

Our President has said consistently that when the Iraqis are ready to stand up militarily, we, the United States, will be ready to stand down. He has been pretty consistent in saying that. What I heard from our own military leaders there, and the Chairman of the Joint Chiefs of Staff is that the Iraqis are able to militarily stand up in ways this year that they could not a year ago: Battalions can lead the fight, and there are some that can actually go out and fend for themselves; how the Iraqis control the border with Syria, control roughly one-third of Baghdad; have taken over a bunch of the bases where the United States used to be.

They are standing up, and as they stand up, at least in the words of our own military leaders, maybe it is time for us to head toward the door. The President said last night—this is almost a quote—those decisions as to troop level will be made by our military commanders and not by politicians in Washington, DC. I heard that last night.

Most people applauded, but I thought, what our military commanders in Iraq are telling me is that it is time for us to begin moving toward the door—not to leave, not to close the door, but to begin moving toward the door.

I was a little disappointed last night. I think the President may have missed an opportunity to signal that we are in a position to begin reducing, to some extent, our troop presence there.

In a way, a perverse kind of way, what that is likely to do is, as the Iraqis move up and stand up and the other Arab nations come to support this new government in Iraq, in a perverse kind of way our beginning to reduce our presence undercuts the latent support the insurgency enjoys.

I could not understand why there is this latent support for the insurgency over in Iraq, but one of the reasons is when the Iraqi people hear—or at least a lot of them hear—our President say or us say we are there until we have complete victory, we are there for as long as it takes, what they hear is: The Americans are here for our oil, and they are not going to leave until they get it all or at least control it all. Hence this latent support for the insurgency.

I hope we will look for opportunities—not to pull out lock, stock, and barrel by the end of the year; that doesn't make any sense—we are going to be there for some time—but to find a way for us to be, in the words of one Iraqi I heard over there, less visible and less numerous. To the extent we are able do that and they stand up and assume the new responsibilities, maybe we will be able to enable them to do a bit more with a bit fewer of us, which would please the American people; I believe it would please the Iraqi people; it would help reduce, a little bit, our budget deficit and maybe actually promote the day when Iraqis are running the show on their own and making them proud and us proud of them.

I have gone on long enough. Thank you for the opportunity today to share some reflections from last night.

With that having been said, I yield the floor. I see my friend from North Dakota is ready to take the floor and say a few words.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. I thank my colleague from Delaware.

Mr. President, the issue that is going to be debated now and voted on later today and perhaps tomorrow is the revenue piece of the reconciliation bill. I know that sounds a little like a foreign language to some people, but we have a process here called reconciliation. One part of that is spending, and the other part is revenue. This is the revenue side.

For all of us, the question is, As we legislate here, are we gaining ground or losing ground? Are we moving our country ahead, or are we falling behind?

I listened attentively last night to the President's State of the Union Address. He described some of these issues, although he did not describe domestic policy in much detail. The first half hour or so was about foreign policy. There is no question that Iraq is very important. The war on terrorism and national security are issues that are very important to our country. But I also believe it is important as well to begin taking care of things here at home, and we have a lot to take care of.

I have told my colleagues before about a wonderful man in North Dakota called the Flying Farmer from McCody. McCody is a town of about 80 people. The Flying Farmer from McCody goes out to county fairs and State fairs and he takes an old car he fixed up—he works in a machine shop—then he puts up a ramp and jumps other cars: a daredevil kind of thing. The Flying Farmer from McCody. He jumps cars at county fairs.

But he is also in the Guinness Book of Records. John Smith, the Flying Farmer from McCody, is in the Guinness Book of Records. He is in there because he drove a car in reverse 500 miles, averaging 36 miles an hour. I don't know who would want to drive a car in reverse 500 miles or who would want to set a record for a reverse speed of 36 miles an hour for 500 miles, but he owns the record.

That is probably a perfect metaphor for the U.S. Congress—setting records for going backward. The question for us is, Can we move forward? Can we take this country forward, move ahead, and advance this country's interests?

As we talk now about the revenue side of reconciliation, we are talking about taxes. So let me talk a bit about the tax system and where we are.

In recent days, we have had an announcement by Ford Motor Company that they are deciding to cut 30,000 more jobs. They cut 10,000 last year. They are going to cut 30,000 more workers. This follows on the heels of General Motors. General Motors announced it was going to cut 30,000 workers.

By the way, the top guy in General Motors who is in charge of acquiring parts called all the suppliers of General Motors together, some 300 of them, the CEOs of the parts companies, and said to them this last year: You need to start outsourcing your parts production to China to bring your costs down. The parts for General Motors. Ford—shut down the jobs, move jobs to China. Is our country moving ahead or backward when we see these things?

The reason I mention this Ford announcement is Ford announced that at the same time it was cutting 30,000 jobs, from the Washington Post, Ford said:

> Repatriation of foreign earnings pursuant to the American Jobs Creation Act of 2004 resulted in a permanent tax savings of about $250 million.

Let me describe that in English. What Ford said is they picked up a quarter of a billion dollars in tax breaks under the act Congress passed that they called the American Jobs Creation Act. They announced that same day, we are cutting 30,000 people. How is it that Congress passes something called the American Jobs Creation Act and the company that announces it gets a quarter of billion dollars of benefit under that act at the same time tells us it got that benefit that it cuts 30,000 jobs? How does that work? Does that make sense to anybody? Do people who pass this kind of legislation and call it the Jobs Creation Act, do they seem embarrassed when they see this?

It is not just Ford Motor. I should not pick on Ford Motor. But Hewlett-Packard brought $14.5 billion back from abroad and cut 14,500 workers. Colgate Palmolive, Motorola—I could go on.

What was this little scheme called the 2004 American Jobs Creation Act? Here is what it was. It said for those companies which have parked income overseas and have not repatriated their income yet back to this country—which when they do, they will owe on it with a credit for foreign taxes paid—we will give you a special deal under this Jobs Creation Act. If you bring your money back to this country, you can pay a 5.25 tax rate. That is one half the tax rate of the lowest income American who pays income taxes. So we said to the biggest companies in the world: If you bring your income back, we will give you a deal—5.25 percent. That is the income tax rate you pay.

We now know they repatriated somewhere around $350 billion. By my calculation, this Congress—not with my vote by the way awarded those companies $104 billion in tax breaks.

I don't know of anybody who actually stands up and boasts about that here on the floor of the Senate. They do it because they believe in this sort of thing, but they don't want to brag about it. But I hope those who talked on this issue, when this American Jobs Creation Act was passed, would come to the Chamber and recite for us what they said then and what we know now.

They said if we give these biggest companies huge tax breaks, it will create jobs in this country. Now what we know is—and Ford is the best example of it—they announced: We got a quarter of a billion—thank you, Congress—and we are going to cut 30,000 workers. It is right on down the line. I could spend some time talking about these companies. I will not do that, only to say those who believed this was a jobs creation act now should be disabused of that notion.

We talk about our Tax Code and suggest what is the best way to use our money. They decide the best way to use our money would be to go to some of the largest corporations in America that are doing business overseas and say to them: If you bring that money back, you can pay the lowest income tax rate in America—yes, it is lower than your neighbor, lower than the person down the street, lower than the person up the block, lower than the person out on the farm. You get to pay the lowest tax rate in America. That is almost unbelievable. It is stranger than fiction. But that is exactly what the majority in this Congress did. One would think it should be profoundly embarrassing when we see the results.

Let me also say that this is not just about providing big tax cuts to companies. It is a situation where, with these kinds of tax policies, when we say, Put up a slice of bread here and let us slather some butter all over it, what we are saying to these companies is, We want to encourage you to actually take jobs and move them overseas. We want to tell you that, if you will fire your American workers, padlock the front gate on your American manufacturing plant, and move it all to China or India or Sri Lanka or Bangladesh or Vietnam, we will give you a tax cut. I know people must listen to that and say: That cannot be true. That would be absolutely nuts; you cannot possibly be accurate. But I am. I am. We actually offer a tax cut for companies that get rid of their American workers, outsource their production, and then ship the production back into this country for sale on our store shelves in Toledo and Pittsburgh and Los Angeles and Fargo. Produce it in China, sell it back here, and we will give you a tax break.

I want to draw a circle around all this because it all relates. I want to show a picture of a building. I want to show you what is happening because this relates to taxes and jobs.

This building is a little five-story building in the Cayman Islands. It is a white building. It is called the Ugland House. According to Bloomberg News, this building on Church Street in the Cayman Islands is the official address of 12,748 companies. Let me say that again because someone would say that is kind of crowded. That would be crowded if they were all there. They are not there, of course. This is just their address. 12,748 companies claim this little white building as their official address in the Cayman Islands on quiet Church Street. Why would that be the case? I will tell you why. Because companies these days want to do the following: They want to produce in China by paying people 30 cents an hour, working them 12 to 14 hours a day, 7 days a week; they want to ship the products to the store shelves of the United States of America to sell to American consumers because that is where the money is; and they want to run their income through the Ugland House in the Cayman Islands so they can avoid paying U.S. taxes on their profits. It is perfect symmetry, isn't it?

Of course, it doesn't involve saying the Pledge of Allegiance. You can't really say the Pledge of Allegiance and do this: say, I want all America has to offer, all the protection of our country, the ability to be chartered in America as an American corporation, the ability to be protected by American military might, the ability to be protected by American laws and courts, but I also want this for my company: I want to be able to produce in China, sell in Cincinnati, and run my money through the Cayman Islands. I am telling you, you don't say the Pledge of Allegiance when you do that. You weaken this country. You pull the rug out from American workers. And you also weaken those who are not leaving this country and who are deciding to continue to manufacture here.

There are some wonderful companies that do stay here and do manufacture here. I have told stories of a number of them. I will not do that today. This is not a broad-brush of all companies, but it is increasingly the activities we see in some very large companies that no longer think of themselves in any terms of economic nationalism. They are world enterprises, citizens of the world who want to produce where it is cheap, sell into an established marketplace in the United States, and run their income through a tax haven country. It does not work, in my judgment, in the long term. What do we do about all that?

In addition to talking about the Ugland House, I wish to make sure people understand, from other speeches I have given, that these companies which are leaving America are real companies.

This company, by the way, was a company in this country for over a century. For over 100 years, this company made little red wagons, and I guarantee most American kids have sat in a little red wagon called Radio Flyer. Radio Flyer wagons were originally created by a guy in Chicago, an immigrant. The "Radio"? That was after Marconi. He was so enthused about Marconi. And the "Flyer"? That is because he loved flying. So he built a little red wagon called Radio Flyer, and I bet every kid in this country at one time has seen it, and most of them have ridden in one.

After 100 years in this country, the Radio Flyer is gone. This is gone. They don't make Radio Flyers in America anymore; they make them in parts of the world where you can pay 30 cents and 40 cents an hour for labor. So the company that makes Radio Flyers still aspired to sell them in the United States, it is just that they don't make them here anymore.

I could go through a list of dozens and dozens of companies that represent exactly the same story.

We have all seen these ads over many years, the guys who are dressed as grapes—you know, green grapes, red grapes. They dance and they sing. What a playful bunch of people. Who on Earth thought you could do a little television commercial with a bunch of people singing dressed like grapes? Fruit of the Loom underwear.

Now Fruit of the Loom underwear is gone. It is all gone. They are in other parts of the world where you can produce shorts and t-shirts and underwear for much less cost. The people who used to work for Fruit of the Loom used to have good jobs, the same as the people who worked for Radio Flyer. They worked there for a lifetime, loved their jobs, but then they were told: You cannot compete with 30 cents an hour. So long. See you later. Yet the grapes still sing, and the workers weep for their jobs.

I only point out Huffy bicycles because Huffy bicycles just announced it was becoming Chinese in nationality, which was, in fact, just a formality because they don't make Huffy bicycles here anymore; they have been making them in China. All the people in Ohio lost their jobs making Huffy bicycles. They lost their jobs because they were told they make $11 an hour plus benefits, and that is way too much money, and we are going to make Huffy bicycles at 33 cents an hour in China, for people who work 7 days a week, 12 to 14 hours a day.

The last job, by the way, for the folks in Ohio was to put this decal on. This is a decal of the globe. This used to be a decal of the American flag, when Huffy bicycles were made by Americans here in America. They changed that because all the Huffy bicycles workers were fired. Huffy bicycles are made in China, and now the flag decal was the last job those workers performed before losing their jobs and having to drive out of that plant for the last time. They put the decal of the globe on it.

So if you want to buy a Huffy bicycle at Wal-Mart, Kmart, or Sears, understand they used to be made by people in this country making $11 an hour. No longer. It is all in China. And incidentally, this company also decided it cannot pay the retirement benefits that were owed to the workers, so now the American taxpayer is going to pay that.

The company declared bankruptcy. Now they have announced it is going to be a Chinese company, a Chinese brand and style of Huffy. It is still a Huffy, of course.

One last thing: Lest some think this doesn't matter, the people at Huffy, I was told by someone who on the last day of work, when they left their parking space, those workers who lost their jobs making Huffy bicycles, on the last day in their jobs, those workers left a pair of shoes in the space where their cars used to park. It was their way of sending a message to the company that you can move our jobs to China but you are not going to fill our shoes. It is what those jobs meant to those people.

It is going on all over this country.

When you hear that Ford is going to lay off 30,000 workers, you don't think much; you think 30,000 jobs is not much; it is too big to understand. But the fact is think this country is losing jobs all over, and they are being replaced by jobs that pay less with fewer benefits.

American workers are now discovering downward pressure on wages because this strategy doesn't pull American workers up. It pushes Americans workers down as it exploits foreign workers.

We are in a situation where we have the largest trade deficit in history—$740 billion last year, we believe. That is $2 billion a day, 7 days a week above that which we export from other countries. We are selling America. Every single day, we sell $2 billion worth of this country to foreigners with this insidious trade strategy.

The people who listen to me talk about this will say this is another protectionist, xenophobic, isolationist stooge who doesn't get it. What I get is the need to stand up for the economic interests of this country.

I support trade, the more the better. But it must be fair trade. If it is not fair trade, and if this country doesn't have the guts to require other countries to pull their standards up, then all we are inevitably going to do is continue do push standards down in our country. That is not what we should aspire to in the long term in this country.

It is my intention to offer an amendment that will once again deal with this perverse tax break that pays people to actually shut American plants down and move their jobs overseas. I hope to do that on this bill.

Let me also say I have offered that amendment four times. Members of the House and Senate decided they wanted to continue a tax break for those companies that ship their American jobs overseas.

I hope that one of these days there is a big, old klieg light that shines on all of these votes so people have to answer to those votes. At the very least, we ought to have some sort of neutrality. We ought not be giving tax breaks or benefits to those companies that decide to ship their jobs outside of this country.

If I may make one final point, I talked a bit about these tax issues and running income through the Cayman Islands. We ought to shut that down.

By the way, I have introduced a bill that says if your purpose for setting up operations in a tax-haven country is for the purpose of avoiding taxes, we are going to treat you for tax purposes as if you never left this country. You have a responsibility to pay taxes in this country. We can shut all of that down very quickly, if we have the guts to do it.

If you can't take the first baby step in the right direction to shut down tax breaks for people who are getting rid of American jobs and shipping their jobs overseas, how can you do something more complex?

We will have another vote on that. It will be the fifth vote on that. If some have not seen the light, they can perhaps feel the heat and change at some point.

I have described all of this not in terms of Democrats or Republicans. All of us, I think, want this country to do well. I want the President to do well. I want this country to do well. I want there to be less partisanship. I want there to be more cooperation. But I also want us to take a look at public policy that is wrongheaded and change it.

If we say we have a jobs creation act out there and we give $100 billion in tax breaks and we see fewer jobs as a result of it, something is wrong with that. We ought to understand it.

I want to make one final point about the tax issue. One of the things hanging up the revenue side of the reconciliation bill is the issue of dividends and capital gains, and a 15-percent top tax rate for both dividends and capital gains income.

There are some people who look at the issue of taxation and they think this: We have the opportunity to levy taxes on several different things. We can tax work. We all know what work is. That is when somebody gets up in the morning, puts on a pair of shoes, and clothes, and goes to work. We can tax work. We can tax investment, we can tax rents, and so on. We have people who have decided with respect to dividends and capital gains, that investment income, dividends and capital gains should have a much lower tax rate than tax on work.

Ask the question: Where do you stand on taxation? Some of them say, Well, you know what I think we ought to do. We ought to tax work and exempt investment.

Say you have two people living side by side. One is a multimillionaire who makes all of his or her money on dividends and capital gains. The other one lives next door and wears steel-toed boots and goes to work every day. He works hard, sweats, comes home and feels he has earned a good day's income. We have people in this Chamber who believe the way that ought to be taxed is the person who works should be taxed, the person who earns it only in capital gains and dividends should have no tax. I know. It is 15 percent. But there are a lot of people in here who would like it to be zero.

We have a circumstance where we say let us tax work, and let us give a benefit to investment. I don't know, what value system is that? Is investment worthy? Of course it is, absolutely. There is no question that people who are investors are good people. They help run this economic engine. I understand that. What value system is it that says work ought to be taxed higher than investment? Work reflects the labor of the American people. I will not go through the list, but it was, I think, in 1943 when Stalin turned to Roosevelt when he was meeting with Roosevelt and Churchill, and he pointed out that we wouldn't have a chance to win this war without American manufacturing. He was talking about the productivity of the American worker. "The Glory and The Dream" by Manchester describes what this country did, what American manufacturing did to turn out massive products in the form of liberty ships, airplanes, tanks, and trucks; unbelievable. The American worker is an unbelievable force in this country.

When we come to the side of taxation, tell me the value system that says, by the way, let us tax work but let us exempt investment. There is a fairness issue here that this Congress has a requirement to confront, in my judgment. I know this issue is actually hanging up this bill between the House and the Senate. The House is insisting no, no, no, you have to substantially extend this lower tax rate for investment income. I do not know.

Who is standing up here on the floor of the Senate saying I am standing up for work, for the people who earn a wage? I am standing up for the person who has to shower after work, people who sweat, work hard, earn an honest day's pay?

Finally, let me say this. Part of this is all about the noise of democracy, about debate, about coming to the same point from several different intersections and different perspectives. I feel passionately and strongly about my perspective about trade. Our trade is way off balance. It is going to injure this country. We are going to become a nation of sharecroppers. Warren Buffet makes that point. He is absolutely dead right. Our fiscal policy is way off track.

People say the budget deficit is only $340 billion next year. Nonsense. We will borrow $650 billion in additional debt. That is what our obligation is to our kids.

Trade is out of balance and our fiscal policy is way off track. I am not suggesting there has to be a Republican or Democratic way to fix it. I am just suggesting that we ought to look truth right in the eye, the President and the Congress, and say we have trouble here and we need to fix it. Let us find a way to come together to fix it, get together with what everybody has to offer, that works for each, but find a way to move this country forward.

I am pleased we are having this discussion today about our fiscal policy, and I wanted to come over at least briefly today and weigh in on some thoughts that I think are very important on trade and fiscal policy, about the economic direction of this country, about the direction we are headed, about things we can do—we, the President and Congress—all of us together can do to fix them so we have a brighter future and a future of expansion, of opportunity not just for some but for all Americans.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I wish to respond directly to my friend from North Dakota on a couple of points which he made in the context of the discussion of the legislation before us.

I wish to begin by quoting what the President said last night in his State of the Union Speech, and then I think we will see how it fits into comments just made.

Last night, the President reported in his State of the Union Speech in terms of our economy.

He said:

> Our economy is healthy, and vigorous, and growing faster than other major industrialized nations. In the last two-and-a-half years, America has created 4.6 million new jobs—more than Japan and the Europeans Union combined. Even in the face of higher energy prices and natural disasters, the American people have turned in an economic performance that is the envy of the world.

Then he went on to say:

> Keeping America competitive begins with keeping our economy growing. And our economy grows when Americans have more of their own money to spend, save, and invest. In the last five years, the tax relief you passed has left 880 billion dollars in the hands of American workers, investors, small businesses, and families—and they have used it to help produce more than four years of uninterrupted economic growth. Yet the tax relief is set to expire in the next few years.

> If we do nothing, American families will face a massive tax increase they do not expect and will not welcome.
>
> Because America needs more than a temporary expansion, we need more than temporary tax relief.

Part of what is in the bill before us is designed to continue that same tax policy.

There are, for example, funds to do what the President talked about last night to stimulate research and development. There are tax provisions that encourage people to do that. This legislation would continue those tax policies.

The President last night talked about educating our young people. When you pay college tuition, if you are not an itemizer, we believe you should still have a tax deduction for that. As a result, this bill would continue that tax policy. Those are the kinds of provisions that are embodied in the bill that is before us.

I ask my colleagues, almost two-thirds of us who voted for this very same bill before, has something changed where we would not want to continue those kinds of tax policies, the kind of things that have helped us to stimulate and continue this economic growth? It seems to me we want to continue those policies.

One of the things that has been discussed is not in the bill; that is, the tax on capital gains and dividends my friend from North Dakota talked about. That is not in the bill before us. Nevertheless, it is a good discussion to have because, as the President noted last night, this is part of that tax package that has provided this great economic growth, and it is part of what the House of Representatives has passed.

When the bill goes to conference with the House of Representatives, it is very likely, and I think very desirable, that the continuation of the tax rates on capital gains and dividends be included in the final conference report we will approve. Those rates expire in 2008. When people are making investments today, they want to know what the tax rate is going to be when they invest. Is there a return on the investment, let us say in 4 years—4 years from now is 2010. What we want to do is extend those rates from 2008 to 2010. If we don't, what we are going to find, as the President said, is tax increases the American people do not expect, do not appreciate, and it certainly won't be good for the economy.

My friend from North Dakota said people who work hard and have a tax on their wages get one set of taxes, but presumably people who do not work hard and receive dividends or capital gains should not have a lower tax rate. This is a fundamental misunderstanding of the Tax Code and the way our economy works.

Take the person who put on his boots every day and went to work and for 40 or 50 years paid income taxes, tried to save some money along the way, and when he could invested that money because upon retirement he does not want to be dependent upon Social Security benefits. He has a small pension or he has invested in the stock market. He retires and he is now faced with a situation where he is not receiving a wage anymore that he is paying taxes on. Instead, his income now is coming through the deferred gratification of the investment he made throughout the years when instead of spending money he saved it and invested it. Now there are rewards coming to him in the form of dividends or capital gains—in other words, a return on his investment. That, plus Social Security, is now all he has to live on.

He paid income tax on that money. Make this point very clear: All his working life he paid his income tax and his aftertax dollars went into these investments. Now he is being taxed a second time on that money when he begins to get the return, when he gets dividends from his investment or capital gains. Yes, the tax rate is a little lower depending upon what his taxable bracket is. It could be the same, but the tax currently is 15 percent. Thank goodness, because the reduction a few years ago from 20 percent down to 15 percent means we have had a tremendous stimulation for the economy. So this person has paid his income tax and now he is paying another tax on capital gains or on dividends.

Actually, this is not just the second time this money is taxed; this money was also taxed when the corporation or the entity that earned the money earned it and had to pay its taxes. So the corporation pays its taxes and then what is left over it either takes as profit or returns part of that profit in the form of dividends to the shareholders—our friend now, the senior citizen we are talking about.

This money has been taxed at least three times now: When the income was earned by the individual, when the corporation paid the tax on the investment, and when it provided the dividend to our senior citizen, the retired fellow living in Sun City, AZ. And he now has to pay 15 percent on that again.

You can only tax this so many times. Yet we have found that by having a Tax Code that tries to keep these taxes as low as possible, we are able not only to continue to stimulate investment, create jobs, and provide a living for people, and then a retirement income, but also to provide enough money for our Government to grow. We are spending a lot of money in this Government now. We are not standing still. We are spending far too much money, according to some—and I put myself in that category. Revenues are not the problem with respect to our deficit; we are spending too much. Our revenues exceeded the projections last year by something like $270 billion or more. It was $100 billion more than we assumed at the beginning of last year. So we have gotten far more in revenues than we ever expected. Why? Because our economy is growing so rapidly. What is one of the reasons it is growing? Because of the tax structure we have. That tax structure is part of what the legislation before the Senate intends to continue so we cannot only leave more money in the hands of the people who provide the growth for our country and provide for our families and small businesses but also provide the revenue for the Government to provide what they need, as well.

There was something else my friend from North Dakota said that is quite wrong. That is the comment that we provided tax relief for rich people, that these dividends and capital gains are not for the average working person, and that the tax policy we are promoting in this legislation, therefore, does not help most Americans, that somehow it only helps the wealthy.

I noted before the legislation before the Senate does not even mention the words "capital gains" or "dividends," but we are assuming when the bill comes back from conference it will have those taxes in it. One of the taxes we are seeking to ameliorate the effect of in this bill is the AMT. Almost everyone believes we either ought to eliminate the AMT, the alternative minimum tax, or significantly reduce its impact on taxpayers. Let's take a look at what the AMT does to the people in the country versus capital gain and dividends since, according to my colleague, the latter two are good ways to raise revenue and the AMT is a bad way.

Of all of the taxpayers in the AMT in 2003, the last year we have statistics, 9.7 percent had an adjusted gross income of under $100,000. We are talking about relief in the bill before the Senate that presumably most of my friends on the other side of the aisle are very much for, relief here for 9.7 percent of the filers having income of less than $100,000. The other people we are providing relief for were above that, obviously.

Let's compare that with the people who are paying capital gains or dividends. Of all the taxpayers reporting capital gains income in the year 2003, 67.5 percent had adjusted gross income under $100,000. Of all the taxpayers reporting dividends income in 2003, more than 70 percent had an adjusted gross income under $100,000.

If we are talking about trying to provide relief for the average American family—maybe a two-worker family; their income, in any event, is less than $100,000—the AMT relief we are providing, 9.7 percent of the folks we are providing relief for are in that under $100,000 category, whereas the relief we would be providing if we included the capital gain and dividends would apply to 67.5 percent with respect to capital gains and 70 percent with respect to dividend income. These are the people, 70 percent, who report incomes of $100,000.

The fact is we have become a nation of investors. Over half of the American people now are invested in the stock market. When we talk about providing tax relief, we are providing tax relief for average families, for small businesses and investors in America who rely on these kinds of investments in their retirement years. More than half of all Americans own stock either directly or through mutual funds. In the 2003 marginal rate on investment, marginal rate cut on investment income worked by giving these investors an incentive to put more of their money at work in the markets. That is what stimulated the great economic recovery we are enjoying now. At the lower rates, the tax penalty imposed on the additional investment earnings—the reward for taking the additional risk—the penalty is smaller and thus the risk is more attractive. That is why we have had this great economic recovery because people have been willing to invest more of their money getting a greater return for that investment.

It is interesting that all of the guesses about what kind of income our economy would derive from capital gains, to take one of these taxes, turned out to be incorrect. What we find is instead of the capital gains rate cut cutting revenues, the capital gains rate cut from 20 percent to 15 percent in 2003 has actually increased revenues to the Treasury. In other words, this tax cut has more than paid for itself.

This is not just me saying it; this is according to the Congressional Budget Office, the CBO. Its annual Budget and Economic Outlook, just released, shows the 2003 tax cut on capital gains has more than paid for itself. What the CBO did was compare the estimated revenues from capital gains with the actual revenues from capital gains. The actual liabilities from capital gains were $71 billion in 2004, $80 billion in 2005 for a 2-year total of $151 billion. What was originally estimated to be the return from this tax? The sum of $125 billion. So there was an actual increase in revenue to the Federal Treasury of $26 billion. Instead of costing the Government $27 billion, which was originally estimated, the tax cuts actually earned the Government an extra $26 billion.

The bottom line is that sometimes raising tax rates does not raise tax revenue. If you want to think of this in simple terms, say we want to bring in the maximum amount of revenue. Say we will put a tax on of 100 percent. One cannot get any higher than that. How many of us would work if 100 percent of our earnings would be taxed? I daresay not very many. How about 90 percent? How about 80 percent? We still will not get many takers. The point is, people will not work or invest, put their capital at greater risk, if the tax penalty is so great it is not worth it. The object is for Government to find that level which produces the most revenue to the Treasury with the least amount of damage to the economy. In other words, it encourages people to work or encourages people to invest to the maximum extent and that extent, then, produces the maximum amount of revenue.

Basically, one thing we found from the tax rate reduction from 20 percent to 15 percent with capital gains is 20 percent was still too high. With 15 percent people were far more willing to invest. It put their money at risk. And because so much of that activity occurred, the revenues, even with lower rates, far exceeded the revenues at the higher rates. That is why the House of Representatives has included in its legislation a 2-year continuation of this same 15-percent rate for capital gain and dividends because it will actually produce more revenues to the Treasury because more Americans will invest and will save, because this will provide more job creation and provide continued economic growth in our country.

Since over half of Americans are investors in our stock market, since more than 70 percent of those earning $100,000 or less receive this benefit with respect to capital gains and with respect to dividends, 67.5 percent, clearly this is designed to help most Americans.

I find it ironic my colleagues who are so insistent on doing something to fix the problem of the AMT are talking about only 9.7 percent of the people with adjusted gross incomes under $100,000. When sometimes people loosely say, your tax cuts are only for the rich, I guess I would say to my friends, your tax cuts are for the rich, if you are focusing mostly on the alternative minimum tax.

Now, I happen to think we should provide relief in all of those areas. That is why I think what we are doing in this legislation—to provide relief from the alternative minimum tax; and then, assuming the House of Representatives includes it in the conference, for dividends and capital gains, when the bill comes back to us—we will ensure that not only will we be able to continue to help our families and our small businesses but also to ensure that we will continue to have economic growth in this country. That is why I encourage my colleagues to support the legislation before us.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield 15 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized for 15 minutes.

Mr. SCHUMER. Thank you, Mr. President. I thank our leader on the Democratic side on this committee for his leadership on this issue and so many others. I thank also my colleague from Iowa, the chairman of the committee, who always tries to work things in a bipartisan way. In fact, on this issue which I will be speaking about, the alternative minimum tax, we have tried in the Senate to work in a bipartisan way on a proposal that passed earlier.

I rise in support of two amendments that I have filed with my colleague from New Jersey, Senator MENENDEZ, on the important issue of the alternative minimum tax.

It is unclear right now when the majority will let us bring up either of these amendments for a vote. But the issue is an extremely important one. It cannot be swept under the rug. I want to alert my colleagues to what we will do.

AMT relief is a critical part of the Senate's version of this bill, and we all must do everything we can to ensure that this tax—which affects middle-class and upper-middle-class taxpayers, above all—is addressed this year.

In fact, this body will have a choice: whether we take the money we can use for tax cuts and give it to the person who is in the middle class or slightly above middle class or give it to people whose income is above $1 million. That is the choice that faces us.

Our first amendment would substitute the Senate-passed AMT relief for the 2-year extension of the tax cuts on dividends and capital gains which were signed into law in 2003 but do not expire until the end of 2008. The amendment contains the necessary offsets so that the overall bill stays within the parameters in the budget resolution.

The second amendment is a sense of the Senate. Senator MENENDEZ and I will be joined, I believe, by Senators FEINSTEIN and KERRY on that one as well. It simply states that providing relief from the alternative minimum tax should be a higher priority for the Congress than providing a tax cut on dividends and capital gains in 2009.

It is simple, straightforward, and, in my view, should hardly be controversial because whatever your views are on the preference of which tax, the alternative minimum tax will go up this coming fiscal year; whereas, the dividends and capital gains do not expire until 2009.

Now, it would be nearly impossible to overstate the AMT issue in its importance and its urgency. The individual alternative minimum tax was enacted in 1969 as a supplemental tax on wealthy tax evaders, but, unfortunately, as incomes have risen, it has evolved into a tax on millions of middle-class working families, particularly families in which both parents work and families with two or more children—hardly people we would want to penalize.

Some people say it has evolved from a "class tax" into a "mass tax." Other people say it has evolved from a "wealth tax" into a "stealth tax." But whatever you call it, it is something that catches unsuspecting middle-class families by surprise. And starting next year, it will explode in significance if Congress fails to act.

In fact, by the end of the decade, the AMT will ensnare more than 30 million taxpayers, the majority of whom will have incomes below $100,000. The National Taxpayer Advocate at the IRS has identified the alternative minimum tax as the most serious problem facing individual taxpayers.

There is an important point I want to make for my colleagues. The AMT is often portrayed as a tax that is most problematic for residents of so-called blue States, such as New York, California, Massachusetts, New Jersey. It certainly affects my State. But that is not the truth, the whole truth, that it just affects "blue" States. There are a whole lot of "red" States or "purple" States that have a significant percentage of taxpayers affected by the AMT, including States of colleagues from across the aisle: Oregon, Virginia, Minnesota, Ohio, Maine, Georgia, North Carolina, and Pennsylvania. So this problem is not a "red" State or "blue" State issue or a partisan issue. It is simply an issue of national importance.

Here are a few statistics I want to mention to my colleagues. They are quite astounding. The year 2006 is the "tipping point" for the AMT. The number of taxpayers affected will explode from 3.6 million to more than 19 million, if the Congress fails to act. A family with two children will become subject to the AMT at about $67,500 of income in 2006. That is hardly anybody who is wealthy. People with that income often struggle. I know many of them myself. And a family with five children will start owing in the AMT at about $54,000 of income this year, if Congress does not act.

In 2004, only 6.2 percent of families earning between $100,000 and $200,000 a year were subject to the AMT. It will explode to 50 percent this year. Half of all people making above $100,000 but below $200,000 will be affected. They are hardly rich.

And starting in 2008, the average married couple with two children earning $75,000 will find that more than half of the tax cuts they have been expecting from the laws passed since George Bush became President will be taken back via the AMT, if Congress fails to act.

There are two main reasons why the AMT relief should be a high priority for the Congress rather than extending the cuts on dividends and capital gains. The first has to do with fairness, the second with timing.

If the AMT relief is extended through 2006, about two-thirds of the benefits will be realized by families earning under $200,000. It affects people whose income is between $50,000 and $200,000—not the poorest people in our society but people who get clobbered by taxes, by large expenses, and who do not simply have the necessary income.

More than half of the total benefits will go to families with incomes between $100,000 and $200,000. In New York, and many other States, particularly in or near major cities, a combined income of $100,000 or $150,000 does not make you rich.

Contrast this with the tax relief for dividends and capital gains, where more than half of the total benefit goes to families with over $1 million in income. This is more than 50 percent of the benefit going to less than one-half of 1 percent of all the taxpayers in the country. So we are faced with a choice here. This is not our classic tax cuts versus spending. This is, rather, tax cuts for the very wealthy versus tax cuts for the middle- and upper-middle-income range.

Now, some Members say some people do not like it when we point out these lopsided statistics. They say it is "class warfare." This is not class warfare. This is just the obvious truth of prioritizing tax cuts. And a dividend and capital gains cut put ahead of AMT relief hurts the hard-working middle class. No amount of rhetoric can change that.

I want my colleagues to think about what it means for the AMT to start hitting families with children making $75,000 or $100,000. These are the same families facing higher health care costs, higher tuition costs, higher energy costs. And they will soon start to lose their tax cuts to the AMT.

A police officer and a schoolteacher in my city of New York will almost certainly be pushed into the AMT, if they have not been already. A Georgia family, maybe a marine biologist at the new Atlanta aquarium and her insurance broker husband, will pay the AMT, if we do nothing. A computer programmer in Virginia, married to a firefighter; or a professor in Oregon, married to a vintner that makes some of the State's great pinot noir; or two factory workers in Ohio—all these families would be subject to the AMT if we fail to act.

There is something else these families likely have in common; and that is, the dividends and the capital gains cuts passed in 2003 helped them very little, if at all. The reason for this is most middle-class families who own stocks, bonds, or mutual funds have them in either a retirement plan or a savings plan for their kid's education. That is where my family's savings go right now.

These middle-class families probably own very little in terms of taxable investments. Their savings are already growing tax free. So they get very little benefit from the lower rates on dividends and capital gains. That is why these tax cuts benefit the very wealthy. It is because most of the stocks and bonds owned by the middle class—and that is a lot—but they are shielded from tax already.

I know my friends on the other side of the aisle talk about the so-called investor class and point out, correctly, how, for the first time, more than half of all Americans own stock. Senator KYL made this point a moment ago. But the truth is, most middle-class families own very little in the way of taxable investments. More than three-quarters of Americans earn less than $1,000 a year in taxable income from dividends and capital gains.

Let me repeat this because it may be a surprise to some. More than three-quarters of American families earn less than $1,000 in taxable income from dividends and capital gains.

So in terms of priorities, in terms of whom it affects, we should prefer the AMT, whatever we feel about dividends and capital gains cuts. And I am not averse to those cuts in a nonbudget-deficit situation.

How about timing? This is even more obvious. Consider the statistics I mentioned and who will become subject to the AMT this year if we fail to act. Now consider when each tax takes effect, when it bites. Capital gains, dividends, not until 2009. AMT, immediately, in the next fiscal year. Many of my colleagues on the other side of the aisle make the argument we need to extend the relief now since the market is counting on it. They say it is "built" into the market, and the stock market will decline if we do not extend those cuts today. That is simply not true.

If there's one thing I know about investing—and a lot of people in my State make a living at it—it's this: People who are really affected by these rates who buy and sell significant amounts of stocks and bonds are sophisticated investors, and they follow politics. They know that Congress changes tax laws all the time. It is hard to believe people are investing their money today based on what the tax rate might be years from now when they finally sell that investment. Smart businesspeople, smart investors make their investment decisions based on market factors, not on what Congress might or might not do, particularly in this type of situation where it is simply this year or next year.

And, of course, there is the obvious argument that if making all of these tax laws consistent and permanent was so important, then the leadership on the other side should not have pushed for reconciliation protection in the first place. They should have compromised back in 2001 and 2003 and passed less ideological legislation within the Senate's normal rules of procedure.

In conclusion, Mr. President, the Senate was right the first time. After some initial debate in the Finance Committee, we passed out a bipartisan bill that excluded the dividends and capital gains cuts and provided generous AMT relief for 2006 that will keep nearly 8 million families out of the AMT this year. That bill passed the Senate with 64 votes, and I encourage Chairman GRASSLEY to bring a similar bipartisan bill back from conference.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield 10 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized for 10 minutes.

Mrs. CLINTON. Thank you, Mr. President. I thank the Senator from Montana. I commend my colleague from New York for that very eloquent and lucid description of what the challenges facing 8 million families are with respect to the AMT.

I rise to talk about Katrina. I introduced legislation to establish a Katrina commission last year. I am proud to have 17 cosponsors. I intend to offer this legislation as an amendment on this bill or any other bill that is coming before the Senate.

Now, I can imagine some asking: Why are we talking about a Katrina commission on the tax reconciliation bill? The answer is that the White House is stonewalling the ongoing House and Senate investigations, as many of us feared and warned that they would. And something must be done about it.

I commend our colleagues in the Senate on the Governmental Affairs Committee, led by Senator COLLINS and Senator LIEBERMAN, for their diligent, persistent efforts to try to get information that would answer the questions that people have about what happened.

Stonewalling the investigation into a storm that killed over 1,000 of our fellow Americans, displaced hundreds of thousands, and cost over $100 billion in damages is something every American should wonder about.

Last week, it was reported that the White House is declining to turn over key documents related to Hurricane Katrina and that senior White House officials will not provide sworn testimony about the failed Federal response to the people in the gulf region. Other reports indicate that the White House Situation Room, which is the nerve center of the White House crisis response, received reports that a storm like Katrina would cause severe flooding and breaching of the levees, but apparently that was not a priority. There are reports that the Department of Homeland Security has attorneys telling witnesses not to talk about any communications whatsoever between the Department of Homeland Security and the White House. In fact, reports indicate that Michael Brown, whom we will remember as "heck of a job, Brownie," the former head of FEMA, is now refusing to provide testimony because FEMA lawyers are advising him not to tell the congressional committees when he talked to the President and what he said, if he did, about damage and destruction on the ground.

Just today the Comptroller General of the United States issued a GAO report which stated that there was a complete failure of leadership at the highest levels of our Government after the storm hit and that there needs to be a single person put in charge.

There are also reports that the Army Corps of Engineers may not be providing adequate information to investigators. We have heard that a team of independent engineering experts, whose work is funded by the National Science Foundation, say they have grown frustrated with the Army Corps. In fact, it has been reported that the Corps has refused to release information needed to fully understand the levee failures that left so much of New Orleans shattered and soaked.

If we don't have an open, broad-ranging inquiry into why the levees failed, if the Army Corps is not responding to independent engineering experts, can we, with any confidence, expect that whatever kind of patchwork is going on now will secure those levees when the next hurricane season comes around starting next summer?

There are separate committees in the House and Senate conducting their own hearings, seeking to establish what happened. We have to be absolutely unafraid to face the facts, wherever they take us. People's lives are at stake. A great part of our country is devastated. I have been there. I have seen the destruction with my colleague, Senator LANDRIEU. It is heartbreaking.

How do we know that the money we are appropriating, that we are sending somewhere to someone—independent contractors and other recipients, billions of dollars of taxpayer money—is doing what needs to be done when we don't know what was wrong the first time they did it?

I hope we look to the model of the 9/11 Commission. The 9/11 Commission was instrumental in both helping America understand what happened and beginning a process of us coming together to try to make sure it doesn't happen again. We had a dedicated group of citizens who lost loved ones who came to the Congress month after month, who went to the White House and said: We want to know why our husbands, our wives, our children, our parents died. You have to give us answers.

I was heartened when I saw in the last several days a dedicated group of citizens from the impacted gulf coast region, called Women of the Storm, were up here demanding answers and actions. They deserve no less. These are our fellow Americans. These are our brothers and sisters. I commend them for coming to Washington to petition their Government. But if we do not establish this commission, I fear they will not ever get the information they deserve. Even worse, we may make the same mistakes again.

In this GAO report, it refers to a study that was done after Hurricane Andrew in southern Florida. There were a series of recommendations made. The Clinton White House followed the recommendations. People were put in charge. There was a chain of command. Information went up. Decisions were made. FEMA, on the Clinton administration's watch, functioned. It was filled with experts, not cronies. In 5 short years, all that work was undone.

So here we are, after the worst natural disaster in modern times, after having demoralized and defunded FEMA, after having created the behemoth Department of Homeland Security, and no one was in charge. I guess that is what the White House doesn't want anybody to figure out; although, frankly, I think we have a pretty good idea that no one was in charge. But we need to fix our systems.

I will, once again, be offering a Katrina commission amendment. I will, once again, try to help the people of the gulf coast get the answers they deserve. I will, once again, call on us to do what we did after 9/11, put together an independent commission—appointed by Democrats and Republicans—of distinguished people who can concentrate on this issue. They are not in Congress, responding to a million different pressures. Give them the power to get the answers and give us the recommendations that we need in order to make sure that no part of our country, no American ever faces both the natural and manmade disaster that happened on the gulf coast.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Montana.

Mr. BAUCUS. Mr. President, on another matter, I am speaking now because we are waiting for the Senator from North Dakota. I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL GUARD

Mr. BAUCUS. Mr. President, I rise in support of our National Guard, and I want to express my serious concern for their future.

The National Guard comprises only 45 percent of the entire Department of Defense budget, yet next week when the President's budget and the Quadrennial Defense Review are presented to Congress, the Guard's force structure may be dangerously reduced. There is a grave national security danger in doing this, and quite simply, it just does not make sense.

Last night in his State of the Union Address, the President stated that "we remain on the offensive in Afghanistan and Iraq." At a time when we cannot forsee any cutbacks in our military commitments at home and abroad, why are we proposing cutbacks in our National Guard?

The Guard is now fighting overseas in unprecedented numbers. In the global war on terrorism, over 50 percent of the land combat forces in Iraq are Army National Guard and over 85 percent of available Army National Guard units have been mobilized. The Air National Guard is providing over 50 percent airlift capability.

Since September 11, 2001, about 80 percent of Montana's National Guard members have been deployed to the Middle East, some of them more than once. Our guardsmen have never failed a mission. In fact, they have gone above and beyond, and they have fought with maturity and experience.

Reports estimate that the Department of Defense will be carrying out across-the-board cuts of up to 26,000 Guard personnel. On January 18, the Secretary of the Army confirmed that DoD has proposed making cuts to the number of brigade combat teams. Their ground units are in Pennsylvania, North Carolina, Washington State, Tennessee, Mississippi, Louisiana, Minnesota and Idaho.

In Montana, the National Guard's 1–163rd Infantry Battalion is a subordinate unit of the 116th Brigade Combat Team of the Idaho National Guard. This is one of the units to face troop reduction, and the loss of this unit would mean the loss of 800 of Montana's Army National Guardsmen. That's one third of the Montana Army National Guard.

The Guard predicts that the payroll losses associated with these jobs could reach $15.5 million.

Our Governors and adjutant generals should not have to send guardsmen to war without the security that those troops will have jobs and a future when they return home.

We are treating our guardsmen as active-duty members with full time demands, but not in the benefits that they receive. Let me emphasize the danger that this presents to the volunteerism that has kept our guard going. Montana has a proud tradition of serving our country, and we need the resources of our National Guard.

Montana is a rural, northern border State, and it is crucial that we have our guardsmen to fight fires, support law enforcement, and support homeland security initiatives.

I traveled to the Gulf States days after Hurricane Katrina hit, and I saw first-hand the valuable and unique emergency response capabilities of Montana's guardsmen who had been deployed to the region. The Guard has a dual role, and we must have them available to fulfill these requirements at home.

Last night, regarding Iraq, President Bush said, "We must stand behind the military in this vital mission." The President is a former Governor and National Guardsmen. So I have no doubt that the President is aware of the Guard's immense contribution to our Nation.

I stand behind our military and I support the National Guard Association, the Governors, and the adjutant generals in their opposition to all reductions in National Guard troop structure.

Last week, I joined Senator BEN NELSON, Senator LINDSEY GRAHAM, and others from both sides of the aisle as an original cosponsor of a resolution which calls for the Department of Defense to consult the Governors and the TAGs whenever there are decisions to make changes to the Guard. I have joined that National Guard Caucus' letter to Secretary Rumsfeld, and I have sent my own letters to Secretary Rumsfeld and the President.

Last summer, I fought hard on behalf of Montana's 120th Fighter Wing when DoD proposed closing their base. I should not be here again.

Our Air Guard last year won the Air Force Outstanding Unit Award, the Maintenance Effectiveness Award, and the Air Force Security Forces Award, while standing alert and deploying to Iraq. Montana's Army Guard has deployed many times overseas and the 1–163rd Infantry Battalion has just returned from an 18 month deployment in Iraq.

Our brave National Guards men and women join the ranks of many other military personnel and lay their lives on the line to help protect the freedoms we enjoy as Montanans and Americans. At a time when our Guard is already stretched too thin, we should not be sacrificing manpower. We should be boosting it. The National Guard is the backbone of our armed services, and troop reductions of any kind would be detrimental to the Nation and to my home State of Montana.

While I am waiting for the Senator from North Dakota—he wants to speak for about 35 minutes, and he is the ranking member of the Budget Committee—let me again remind Senators of where we are. Essentially, we are still on the House bill. My sense is that the majority leader, in the not too distant future, will offer the Senate amendment as a substitute. It will include the perfecting amendment by Senator GRASSLEY and myself. It is my hope that the perfecting amendment can be adopted by voice vote. I think it is not controversial. Then we will have before us both bills, the House bill, as well as the Senate substitute amendment. I am not sure how much time remains. We have 20 hours on this bill. But it is my expectation and my hope that Senators will come up quickly and offer amendments.

I might say to my very good friend, the chairman of the committee, we face an alternative. Frankly, I hope we can work this out in a way that is amicable to Senators. We have two options. One option is to fill a tree; that is, prevent any amendments from coming up until we get to the expiration of the 20 hours. At that point, Senators can offer amendments because when you get off the bill and pass the bill, we have to start taking down the tree.

When the tree starts coming down, amendments come down, and Senators can offer amendments then. Although we will be in a vote-arama situation, time will not have expired for the purpose of offering amendments. Senators will still be able to offer amendments. The question is, Is it better all the way around to have the tree filled and offer those amendments when we get to the so-called vote-arama, or is it better to let Senators offer their amendments earlier and accommodate Senators a little more because we are going to get the 20 hours one way or the other?

It is my thought that probably if Senators are allowed to offer amendments earlier on—that is, the tree is not filled up—and there is an accommodation made to Senators who are going to offer amendments anyway, that we may be able to proceed more expeditiously because Senators will be accommodated and won't be upset and so forth. On the other hand, if the tree is filled and Senators are not allowed to offer amendments until afterward—I don't know this; I am just saying this because it is a possibility or speculation—that Senators may say: I was denied my opportunity, and I can't offer it now. They didn't give me an opportunity to offer my amendment. Maybe he wasn't going to offer it anyway.

I raise that question for the majority to think about as we decide how to proceed on this bill. Many Senators have come up to me and said they wanted to offer an amendment. That is a Senator's right. I have said to them I understand that, but I am not sure when they will be able to offer them. They will be able to anyway, but the question is whether they will be able to do it earlier or later. I know that is not a decision that is going to be decided at this point, but it is a decision I think we are going to have to deal with. My general view is it is better to work with people than not. Generally, if you work with people, you are more likely to get matters resolved more expeditiously and more amicably. I raise that point for the consideration of all concerned.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, my response to that is a friendly response. It is not a very definitive response because I think my friend from Montana knows that some of these negotiations go on at a little higher level than he and I are in leadership.

Mr. BAUCUS. No negotiation goes on higher than the chairman of the Finance Committee.

Mr. GRASSLEY. Well, there are other considerations that come into this. I will put it in this perspective. First of all, I hope what he says could happen. It seems to me that, No. 1, we are kind of in an environment where we believe we are wasting some time, in the sense that we are going through a lot of procedural motions that redebate something that was decided in a bipartisan way by this body back on December 18 on a 64-to-something vote, a very bipartisan vote. Normally, what we are doing now is trying to go to conference. We are faced with a lot of amendments—some that might be the same as what we dealt with previously. So that is kind of an environment that maybe a lot of us believe we should not have to go through because it is a waste of time. But now that is a fact of life. That is how the Senate operates.

So as what my friend, the distinguished Senator from Montana, said, it boils down to this: To the extent we can have a massive amount of transparency on what might be offered, with some limit on the number of amendments that might be offered, and get that settled very soon, then what happened in the sense of him saying we would fill up the tree with amendments, we would not do that.

That is what we would like to do. But it seems to me there has been some inability to know exactly how many amendments might come from the Democratic side of the aisle, what they were, and the extent to which they were germane versus nongermane. Obviously, the more that are nongermane as opposed to germane makes it even more difficult. If we can settle those things—I know Senator BAUCUS and I could settle those things, and we could be on our way to not filling the tree. So far we have not seen that sort of transparency.

Mr. BAUCUS. Mr. President, my good friend makes a very good point. I had a chuckle to myself because, I say to my friend, I am not even aware of all of the amendments. The Senators don't come to me, frankly, as I would like them to. It makes it difficult to decide some of these issues. The Senator makes a good point. Over the next hour and a half or so, let's sit down and see what we can do to work out a list the best we can to get a sense of things so that we can proceed more expeditiously.

Mr. GRASSLEY. Mr. President, I always anticipate the picture show that we are going to have now from the Senator from North Dakota. Anyway, I hope he will be tolerant. I have always wanted to engage him in some debate on these issues because I think he always tells half the story. I don't think he ever says anything that is wrong, but the whole story could give a different impression to the public.

I yield the floor.

Mr. BAUCUS. Mr. President, I yield up to 35 minutes to the Senator from North Dakota, the ranking member of the Budget Committee.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, I thank my colleague for his courtesy. I also laud his very good work and the chairman's good work in putting this package together. I know we enjoy these debates. I certainly enjoy them because we have found a way to disagree without being disagreeable.

Mr. President, I also say to my colleagues that I believe deeply that the additional tax cuts ought to be paid for. At the appropriate time, I will offer a way of paying for them. I think the package that the chairman and the ranking member put together is a responsible package. There are things that need to be done for the American people and the American economy. The one difference I have is I would really like to see it paid for. I think there is a way to do that.

In addition, I will be offering, at the appropriate time, a pay-go amendment to go back to the budget disciplines we have used in the past that say: If you are going to have more tax cuts, pay for them. If you are going to have new mandatory spending, pay for it. I very strongly believe we have to restore those budget disciplines. It is also the view of the departing chairman of the central bank in this country, Chairman Greenspan. I think it is the view of most people who are seriously interested in restoring fiscal discipline to this country that we have to restore the pay-go rules that functioned very well for the country in the 1990s.

The reason I am so concerned is I look at our budget situation today, and here is what I see. We have just had, in these last 4 years, four of the biggest budget deficits in the history of the country. In fact, we have, in the case of these four budgets, the four biggest deficits we have ever had in dollar terms. That is coming off the last year of the Clinton administration when we had a surplus. Of course, the year before in the Clinton administration we had an even larger surplus.

Last year, the deficit was $318 billion. This year, they are forecasting $337 billion, but they are leaving out certain things. If you put back the things that they have left out, we can now anticipate a deficit of about $360 billion this year.

That is just the beginning of the story. The situation we face with the debt is really far more serious. The deficit, as we project it this year, of $364 billion—it is a little more than that, but look at how big the debt is going to grow. The debt is going to grow not by $364 billion but by over $637 billion. I don't see the media cover the growth of the debt. All they want to talk about is the deficit because that is the story they are used to writing. The problem is that things have changed.

Well, what has changed? The biggest thing is that Social Security surpluses are growing, and growing dramatically year after year. And the idea was to prepare for the retirement of the baby boom generation. The problem is, this Congress and this administration are taking the money. They are taking every penny of the Social Security surplus—it is not really a surplus at all because we are going to need every dime when the baby boomers retire. But instead of using that money that is in surplus this year, this Congress and this administration are taking every dime to pay other bills.

When you look at every other trust fund, they are raiding every trust fund in sight. The result is, instead of $360 billion being added to the debt, the real increase in the debt would be over $600 billion—not just this year, but every single year of this 5-year budget deal, at the very time the President is telling us: Don't worry, we are going to cut the deficit in half over the next 5 years.

The problem is, the deficit does improve over the next 5 years, but growth of the debt keeps getting worse. Why the difference? Because Social Security surpluses are growing every year to prepare for the retirement of the baby boom generation. But we are not using the money to either prepay debt or pay down the debt or prefund the liability. Instead, we are taking, and the President is taking every dime to pay other bills.

Here is the pattern of expenditures and revenues of the Federal Government, going back to 1980. The red line is the expenditure line of the Federal Government. You can see that during the 1990s each and every year spending as a share of gross domestic product came down. Why do it as a percentage of gross domestic product? Every economist will tell you that is the fairest comparison to make. That takes out the effect of inflation. The same is done with the revenue line. You can see that during the 1990s revenue went up every year and the result of declining expenditures and rising revenue was to eliminate the deficit, and during the 3 or 4 golden years here, we eliminated deficit spending and reduced the growth of the debt. Then President Bush came into office and spending has gone up. In fairness to him, spending went up because of the increased spending for defense, the increased spending for homeland security, and rebuilding New York. Just those three items explain about 90 percent of the discretionary spending increase.

You can see that spending as a share of GDP is still substantially below where it was in all of the 1980s and much of the 1990s. So while it is true that we have had a substantial increase in spending, we are still well below where we were in all of the 1980s and a big chunk of the 1990s.

On the revenue side of the equation, President Bush came into office here and he said revenue was at a record high. He was right. Look what has happened—the revenue side of the equation has collapsed. And while it is true we had an uptick last year and the year before, we are still way below the historical average for the 1980s and 1990s.

Going forward, you can see we have this big gap between projected spending and projected revenue. The result is a never-ending stream of deficits and burgeoning debt.

Some have said the tax cuts of the Bush era show that if you cut taxes, you get more revenue. No, it doesn't show that. In fact, revenue has just recovered last year over where it was—just gotten back to where it was in 2000. We have not had increases in revenue. As a share of GDP, here is what happened to revenue. It collapsed. It is this combination of increased spending, dramatically reduced revenue—and a big chunk of this is because of the tax cut. That combination has plunged us into record deficits and even more rapidly growing debt.

My colleagues, this is utterly unsustainable. My colleagues say when you cut taxes, you get more revenue. No, you don't. You would have gotten more revenue had you not cut taxes.

Look, here is the reality. Back in 2000, the revenue was just over $2 trillion. It took until 2005 for the revenue side of the equation to come back to where it was 5 years before. Again, as a share of GDP, we have never gotten back. We are nowhere close to where we were, and I don't advocate we should get back to where we were because revenue was at record levels. We are nowhere near close to the average of the eighties and nineties.

On individual income taxes, we are still below where we were in 2000, and by 10 percent. So the notion that if you cut taxes you get more revenue is a great theory, but it has not worked in reality.

The President says to us we are going to cut the deficit in half over the next 5 years. No. 1, I don't believe that ought to be the goal because if you look at the President's plan, the deficits explode right beyond the 5-year window. But in addition to that, the only way the President reaches his conclusion is he leaves out all kinds of items. He leaves out war costs, he leaves out the cost to fix the alternative minimum tax, and he leaves out the effect of his making the tax cuts permanent.

When we add all those items back in, including his defense buildup, here is what we see in terms of the deficits, according to the Congressional Budget Office, adjusted for the things that have been left out. Here is what we see, the long-term deficit outlook. In fact, it is an ocean of red ink that gets much worse past the year 2011.

This is the harsh reality of the Bush plan. It is a plan of burgeoning deficit, of massive debt, and at the worst possible time, right before the baby boomers retire.

The President of the United States is, in effect, hiding from the American people the full consequences of his proposals because he stops his budget after 5 years. But here is what happens right beyond the 5-year window.

He has dramatically underfunded long-term war costs. Fifty billion dollars has been appropriated for war costs in 2006 so far. The CBO estimates of additional outlays for ongoing military operations are $378 billion.

The President says he is going to cut the deficit in half, but he accomplishes that by leaving out things we all know we are going to have to pay for. War cost is No. 1. The President dramatically understates what the war is going to cost.

Here is the big enchilada. The President said last night: Make the tax cuts permanent. This dotted line on this chart is the next 5 years. This is what it costs over the next 5 years to make the tax cuts permanent. We see it is very modest. Look what happens to the cost of making the tax cuts permanent right beyond the 5-year budget window. The costs of the tax cuts absolutely explode. Total cost over 10 years to make the tax cuts permanent is over $2.2 trillion.

That is the President's plan. He has no plan to pay for it. He is not cutting spending to cover this difference. We are already at record deficits. The baby boomers are just going to begin to retire, and the President says: Dig the hole deeper; dig it deeper; let's have more debt. What kind of a plan is that for America's future, more debt.

It is not just the war cost the President has left out or understated, it is not just the full effects of making the tax cuts permanent, but the President has left out entirely the cost of fixing the alternative minimum tax.

The alternative minimum tax is the old millionaire's tax that is rapidly becoming a middle-class tax trap. If we don't act on the alternative minimum tax, it is going to affect 20 million people this year—20 million people. It takes $1 trillion over 10 years to fix the alternative minimum tax. The President doesn't have a dime in his budget to deal with this.

This is the problem we have. We have an air of unreality in this town about where we are headed. Here is what the President told us back in 2001:

> . . . [M]y budget pays down a record amount of national debt. We will pay off $2 trillion of debt over the next decade. That will be the largest debt reduction of any country, ever. Future generations shouldn't be forced to pay back money that we have borrowed. We owe this kind of responsibility to our children and grandchildren.

That is what the President said when he embarked on this course: Paydown of the debt. Let's do a reality check and look at what has happened versus what the President said. See any paydown of debt going on here? Any paydown of debt? There is no paydown of debt.

Leading up to this, when the President came in, the debt was $5 trillion. The debt was below the bottom of this chart. The bottom of this chart is $7 trillion. The debt was below the bottom of this chart when the President started. He has increased the debt by $3 trillion. That is in 5 years. He said he was going to pay down the debt by $2 trillion. Instead, he has increased the debt by $3 trillion, and that is where we are today.

But look where we are headed under his plan. He is going to add another $3.5 trillion over the next 5 years. He has already added $3 trillion; now he is going to add another $3.5 trillion. We are going to have $12 trillion of debt by the time this President's plan is done.

What difference does it make? Ask yourself this question: Where are we getting the money? Where are we getting the money to float this boat? Increasingly, we are borrowing this money from abroad. When we have a debt auction, increasingly the ones who are buying our debt are foreigners.

It is very instructive. It took 42 Presidents 224 years to run up $1 trillion of external debt, debt of ours held by foreigners. This President has more than doubled that amount in 5 years. That is utterly unsustainable. Foreign holdings of U.S. debt have doubled under this President in just 5 years.

The result is we owe Japan almost $700 billion. We owe China $250 billion. We owe the United Kingdom over $220 billion. My favorite, the Caribbean banking centers, we now owe them over $115 billion. We owe Taiwan $71 billion. We owe OPEC almost $70 billion. We owe South Korea over $60 billion. We owe Germany, Canada, Hong Kong, and up and up it goes, debt on top of debt.

Now the Secretary of the Treasury writes us a letter on December 29. That is an interesting time to write us, the week between Christmas and New Year's when Congress is not here and nobody is paying attention. What does the Secretary of the Treasury say to us:

> The administration now projects the statutory debt limit, currently $8,184 billion—

Let me repeat that, the current debt of our country is $8,184 billion. You can translate that into trillions. It is $8.2 trillion.

He says:

> [The debt limit] will be reached in mid-February of 2006. At that time, unless the debt limit is raised or the Treasury Department takes authorized extraordinary actions, we will be unable to continue to finance Government operations.

That is a fancy way of saying we won't be able to pay our bills. The most powerful Nation in the world won't be able to pay its bills by the middle of February unless the debt is dramatically increased.

Here is what has happened to the debt under this President. Remember, he said he is going to have maximum paydown of the debt; he is going to pay the debt down by $2 trillion. That is not what happened. Instead of debt being reduced, debt has been dramatically increased.

By the way, in the previous 5 years, during the Clinton administration, this is how much the debt limit increased: Zero. We were actually paying down debt. In 2002, the debt had to be increased $450 billion; in 2003, under this administration, the debt had to be increased another $984 billion; in 2004, the debt had to be increased another $800 billion; and now they want to increase the debt another $781 billion. You add it up. This President, in just these 4 years, has added $3 trillion to the debt. The debt was only $5 trillion when he took over. He has increased the debt in just these 5 years by 60 percent, and we now know that in the next 5 years, he is going to increase the debt another $3 trillion. He will more than have doubled the debt of our country during his administration.

One President—1 out of 43—has run up more debt than the other 42 combined—more national debt, more debt held by foreigners.

Is this supposedly an indication of strength? What would people say out there? Is this an indication that our country is strong, that we are borrowing more and more money all around the world, or is it a sign of weakness?

I know what I think. I think it is a sign of vulnerability.

Last night, the President said we are addicted to foreign oil. He is right. You know what else? We are addicted to foreign money, and this President says: It is the people's money, give it back to them. The problem is, he is borrowing the money from China, Japan, and all around the rest of the world to give it back to them. That is what is going on here.

It is the people's money, yes; absolutely, it is the people's money. Do you know what else? It is the people's debt. Every dime of this has our taxpayers' name on it, and they are going to have to pay it, and this President doesn't seem to be the least bit concerned about this explosion of debt on his watch.

Now we have this budget proposal before us, and there are three chapters to it. There are three chapters to this book. Chapter 1 is to cut spending $39 billion. That is what they call the deficit reduction package.

Look what the second chapter says. The second chapter says: Oh, when you have cut the spending $39 billion, cut the revenue by $70 billion.

I was educated in schools in Bismarck, ND. I went to Roosevelt grade school. I had wonderful teachers—Ms. Senzick, Ms. Barbie, Ms. Hook. They taught me math and they were very good teachers, and I was good in math. I could go back to the second grade and figure this out. Is the deficit getting smaller or larger as a result of this plan? If you cut your spending $39 billion but you cut your revenue $70 billion, have you made the deficit bigger or smaller?

Everybody knows you have made the deficit bigger. Yet our friends on the other side of the aisle say they have a deficit reduction package. No, they don't. They have a deficit increase package when we already have record deficits, record additions to the debt. And they say they have a deficit reduction package? Come on. There is no deficit reduction going on here.

The third chapter of the book is the one they really don't want you to read. The third chapter of the book is they are going to increase the debt $781 billion.

Here it is another way: $39 billion of spending cuts over 5 years—virtually nothing as a share of the spending which will occur over that period—and $70 billion of tax cuts not paid for. The result is they have just added to the deficit, added to the debt, and they will tell you this is really working because we are getting strong economic growth.

Are we really? Are we really getting strong economic growth? Let me say this: In the last 4 years, median family income in this country has gone down each and every one of the years. That is a fact. Median family income has gone down each and every one of the last 4 years. We only have the records through 2004, but 2005 I predict will show the same thing—another reduction in the median family income in this country.

When we compare this recovery to the previous recoveries since World War II, here is what we see. This is the average of the nine previous business cycles; that is, if you look at the nine recoveries we have had from recessions since World War II, here is what we see. This red line is the average in terms of economic growth. This black line is the growth we have seen in this recovery. It is well below the average. It is 25 percent lower than the average economic growth we have seen in the previous recoveries.

These are facts. Something is wrong. This strategy is not working. It is no wonder the American people are concerned about the economy, even though people tell us the economy is great. What we see is, in a recovery, this is one of the weakest of any we have had since World War II.

Let's look at another measure: business investment. This red line is what has happened in each of the nine recoveries. This is the average of each of the nine recoveries since World War II. But here is what has happened in this recovery. Yes, things have gotten better, but they are way below—in fact, 50 percent less than the average of every other recovery since World War II. These are signs something is wrong. Something is not working with this strategy.

It does not stop there. Here is the job loss comparison. This red line shows the average of every recovery since World War II, nine of them. We have had nine major recessions and nine recoveries. This red line shows what has happened on average with job growth during a recovery.

Here is the line with respect to this recovery. We are 6.9 million private sector jobs short of a typical recovery. Is anybody paying any attention? Is anybody doing anything other than making rhetorical speeches and running around the country chanting "economic growth, economic growth, this is really working"? Something is not working. The average recovery since World War II has been stronger than this one in job production, in economic growth, and in business investment.

These are facts. The Federal Reserve Chairman, Mr. Greenspan, who just left office, said he opposes deficit-financed tax cuts. He said we should not be cutting taxes by borrowing. The Chairman of the Federal Reserve was exactly right. We should not be cutting taxes by borrowing, especially borrowing from China and Japan and the Caribbean banking centers.

The Chairman said this about pay-go, which is the amendment I will be offering when it is appropriate to do so. Pay-go is a budget discipline. Pay-go says simply this: If you are going to have more tax cuts, yes, you can have them, but you have to pay for them. Yes, you can increase mandatory spending, but if you do, you have to pay for it. If you want new spending, you have to pay for it. If you want more tax cuts, you have to pay for them.

The Chairman of the Federal Reserve, who just retired, Chairman Greenspan says:

All I'm saying is that my general view is I like to see the tax burden as low as possible.

So do I.

And in that context, I would like to see tax cuts continue.

So would I.

But as I indicated earlier that has got to be, in my judgment, in the context of a PAYGO resolution.

That is what I am going to be offering to my colleagues, the exact pay-go resolution the Chairman is referring to, the pay-go we had in the 1990s, which helped us impose discipline, which helped us restore fiscal responsibility, which helped us turn record deficits into record surpluses, which got us on a sound financial course, which, unfortunately, under this President and this administration and this Congress, we have veered from so dramatically back into the deficit ditch—record deficits, record increase in debt. We are headed for $12 trillion of debt, more than a doubling of our debt on this President's watch and already more than a doubling of U.S. debt held by foreigners.

Think of it. It took 42 Presidents 224 years to run up $1 trillion of external debt for this country. This President has more than doubled it in 5 years. What is conservative about that? This is the biggest liberal, when it comes to debt, we have ever had in the White House in this Nation's history. He is very free with debt.

The pay-go I am offering simply says that all mandatory spending and all tax cuts that increase deficits must be paid for or require a supermajority vote, 60 votes. The current pay-go rule, and you will hear from the other side that we have pay-go—we have it; it is a joke. It exempts all tax cuts and exempts all mandatory spending increases that are assumed in any resolution, no matter how much they increase deficits. And they say they have pay-go? Come on. They don't have pay-go; what they have is debt-go. Let's get going on the debt, that is what these guys have. And they are doing it and, boy, is our country going to pay a terrible bill for what these guys are doing.

This administration and this Congress are not going to be treated well by history because at the critical moment, just before the baby boomers retire, instead of what other countries are doing, which is to run surpluses to get ready for the retirement of the baby boomers, this country, under this administration, this Congress, is running massive debt, doubling the debt of our country during this President's watch.

I will offer the pay-go resolution at the appropriate time. I will offer a second amendment which will say: Yes, we can have these tax cuts which the chairman and ranking member have brought before us, which is a responsible package. But it ought to be paid for.

Let me put up the tax cut package I will offer my colleagues, the very same one the chairman and ranking member have come up with: small business expensing, a savers credit, tuition deduction—all of these until 2009, the same as their package; new market tax credit until 2008, same as theirs; sales tax deduction until 2007; the R&D credit until 2007, exactly what they have; work opportunity welfare-to-work credits, the same as they have; teacher classroom expenses until 2007, the same as they have; leasehold and restaurant improvements until 2007; other traditional extenders until 2007, exactly as they have; the AMT hold harmless, through this year.

The difference is I am paying for it over the next 10 years, paying for it all. How am I doing it? In this way: I am providing the same offsets as the Grassley-Baucus substitute. In other words, they have a package of offsets here closing the tax gap by shutting down abusive tax shelters and other reforms. They have $34 billion. That includes ending the tax benefit for leasing foreign subway and sewer systems—saving $5 billion.

This is the scam of all time. This is the scam of all time. We have people who are buying subway systems and sewer systems in foreign countries and depreciating them for the purpose of their U.S. taxes and then leasing back the sewer systems and the subway systems to foreign countries in foreign cities. Is anybody listening? You tell me we should not stop this scam? This is unbelievable. When my staff first brought this to my attention, I could not believe it myself. You have to be kidding me. Companies in America are buying the sewer systems in foreign countries and depreciating them for the purposes of their U.S. taxes. Can you believe this is going on? Companies are buying the sewer systems in a foreign country and depreciating them for the purposes of their U.S. taxes? It is true. We could stop that and save $5 billion.

I take that package, then I add ending a loophole for oil companies that lets them avoid taxes on foreign operations. That is another $9 billion.

We could require tax withholding on Government payments to contractors such as Halliburton just as we do to mainstream businesses in this country. You know, if you are a business in this country, you have to pay withholding taxes. But we have Halliburton over there with all these funny-money contracts in Iraq—they don't have that requirement. Why not? That would save $7 billion.

If we renew the Superfund tax so the polluting companies pay for cleaning up toxic waste sites, we would save $17 billion. And then we close other tax loopholes for another $22 billion.

This is a picture of Ugland House in the Cayman Islands, the building from which they run all of these scams. I used to be a tax administrator. One of my jobs used to be to scout out these scams. That is one of the reasons I am here, because people I represent thought I did a pretty good job of unearthing these scams and shutting them down. But this one takes the prize. I credit my colleague, Senator DORGAN, for finding it.

Has anybody been to the Cayman Islands? The Cayman Islands are just south of Cuba. You go to the Cayman Islands, and you find this building. It is five stories tall, and 12,748 companies call this building home. This is one of the scams of the ages. Let me repeat this. You have this building right here—this is a picture of it—down in the Cayman Islands. It is five stories tall. It is home to 12,748 companies. Do you see them all? They are working there. Are they working there? Are 12,700 companies working there? No, they are not. They are running fraudulent operations there. They are shuffling paper there.

When I was tax commissioner, I found a major company that showed all of its profits down in the Cayman Islands. Gee, how would that be? They are doing work all over the country in the United States, buying and selling, buying and selling. They showed those were all break-even operations.

Then they ran a little operation with one person down in the Cayman Islands. They showed a $1 billion profit.

This shouldn't be a partisan issue. This is a scam. It is a scam on all of us to have 12,000 companies.

I was just describing the company. They had one employee down in the Cayman Islands. They showed all of their profits down there with one employee. I said that is the most efficient man in the world. This one man—all the profits of the company are in his division, and he is the only one in the division.

Why do they do it in the Cayman Islands? Because there are no taxes in the Cayman Islands. They weren't doing any work down there. They are just shoveling profits between subsidiaries.

That is what is going on in this building. This building is home to 12,748 companies that are doing business down in the Cayman Islands. They are shoveling tens of billions of dollars in profit out of this building. This building, I am sure, is a smart building. It must have the latest wiring. They must have the latest technology to be producing tens of billions in profits in this one building—the profits of 12,000 companies. What a scam. We ought to stop it.

My bill says: Yes, we should have this tax relief for the American people. We ought to pay for it by closing that kind of scam. We ought to stop the scam where companies are buying foreign sewer systems and depreciating them on the books in the United States for the purposes of lowering their taxes here. It is nothing but a ripoff and a scam, and we ought to stop it. We ought to pay for the tax cut, every dime of it. That is what my proposal does.

I thank the Chair and yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). Who yields time?

Mr. BAUCUS. Mr. President, I yield 15 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 15 minutes.

Mr. KERRY. Mr. President, thank you very much. I thank the distinguished manager.

Mr. President, we don't know at this point what is going to happen in terms of the parliamentary procedure. So I am not sure whether the Senator from New Jersey is going to have the opportunity, which I know he wants, to be able to propose an amendment with respect to the AMT. My hope is that he will be able to because I think it is absolutely critical that the Senate address this issue.

I wish to speak for a few minutes about the amendments that the Senator from New Jersey will submit and why I support them and why I think it is so important.

There is no rationale—no economic rationale, no social rationale, political rationale—for addressing tax issues that expire in 2009 before we take care of the individual alternative minimum tax issue that affects people today.

There is no common sense behind saying we are going to address a tax issue with respect to 3 or 4 years from now when we have an enormous number of American families who are going to be negatively impacted by the alternative minimum tax.

It is almost inexplicable that the House bill chooses capital gains and dividend relief over preventing 19 million families from having to pay AMT.

Let me make it clear that I have supported a reduction in the capital gains tax on any number of occasions. In fact, I wrote it with Senator Bumpers back in 1993. We drafted a targeted capital gains tax reduction that passed the Senate. It got caught up in the complicated rulemaking process. It didn't work as effectively as it might because of the rules, not the concept. Ultimately, I have supported a reduction in capital gains.

But to suggest that we ought to now make it permanent, when we see the gap growing wider and wider between the "haves" and "have nots," when we realize that what we are talking about in this tax reduction is providing those Americans who earn more than $1 million a year about $32,000 worth of tax relief next year alone, while people earning less than $50,000 a year will get about $20 each.

It doesn't make sense, on any measurement of fairness or common sense about how we are trying to expand the economic pie for all Americans, particularly when you look at the data about the numbers of American families who are being squeezed and squeezed when having a hard time. Median wages have not gone up—they have gone down about 2 percent over the last few years for average Americans. But public college tuition has gone up about 57 percent. Since 2000, private college tuition has gone up something like 32 percent. Families are paying higher health care costs.

All of us know, as the President reminded us last night in the State of the Union Message, gasoline prices are killing people at the pump. A lot of workers are seeing whatever gains they might have tried to save get taken away just trying to get to and from work.

We are struggling with this gap, which is growing. Yet the priority of the House of Representatives is to give the wealthiest people in America yet another break while many Americans are going to be pushed into the alternative minimum tax regime.

You shouldn't even call it the alternative minimum tax. You ought to call it the family tax because that is what it is. The taxpayers get hit by the alternative minimum tax according to where they live and because they have children.

If you live in a certain State—take a State with a relatively high standard of living and a fair amount of public contribution, such as Massachusetts or California or some other State, New York, Connecticut. In those States, the only thing you can do to not pay this tax is to not start a family. If you start a family and have children, the tax cuts end. You wind up being hit harder.

We are literally punishing Americans for having children and building families. The more children you have, the more you are impacted by the alternative minimum tax at a lower income level. It doesn't make sense.

If no action is taken on the alternative minimum tax, a family with three children with an income of $63,000 would be impacted by the AMT, and a family with six children with an income of $50,000 would be even more impacted by the AMT.

In May, we heard testimony from the Urban Institute about how the AMT was once upon a time a class tax, but it is soon becoming a mass tax because more and more taxpayers, mostly because they are having children, will be forced to pay it.

Nina Olson, the taxpayer advocate who works every day on practical implications of what we do, has repeatedly testified about the complexities and the inequities of the AMT. She said sarcastically the AMT punishes taxpayers for such classic tax avoidance behavior as having children or living in a high-tax State.

If you look at his history of the AMT, you can tell that it really does need reform.

The individual AMT was created in 1969. It was created in 1969 to address 155 individual taxpayers in America whose incomes exceeded $200,000 a year, who paid no Federal income tax at all in 1969. That is why this tax was created. You had high-income people paying no income tax, and 155 people were the target of this effort. But now it has grown from 155 taxpayers in 1969 to 1 million in 1999, to almost 29 million by the year 2010. It now affects families with incomes well below $200,000 a year.

By the end of the decade, repealing the alternative minimum tax will cost more than repealing the regular income tax.

Unfortunately, we can't end this today. Obviously, we can't do that. But we can do a lot more than what is in the House reconciliation bill. The House tax reconciliation bill includes a provision that extends taxation of capital gains and dividends at a lower rate through 2010; whereas, the alternative minimum relief expired at the end of 2005, and it needs to be addressed. The capital gains and dividends provision doesn't expire until 2008.

The amendment before the Senate—provided Senator MENENDEZ is given the opportunity to provide it—is going to strike the extension of capital gains and dividends at a lower rate. That provision has a cost of $20 billion over 5 years and a $50 billion cost over 10 years.

The budget resolution has been drafted in a way that hides the cost of the capital gains and dividend cuts by putting most of the expenses outside of the 5-year budget window, and it will actually cost more than twice as much as is stated.

One rationale for cutting the tax on capital gains and individual dividend income is that it stimulates investment.

That has not held true, and the record does not show that is, in fact, what happened. If you talk to people on Wall Street, they will tell you point blank, No. 1, they are concerned about the deficit, and No. 2, they believe that their behavior is not going to be affected. It is a great windfall for them. They will all tell you that if they get an extra $100,000 in their pocket, at their income levels, they can do something with it. But it will not affect the fundamental investment decisions that they are going to make anyway.

The fact is that the stock market, as we all know during the 1990s, did a lot better than it is doing today when it had a higher capital gains rate, notwithstanding the fact that we lowered it at that time.

We have a choice, a very straightforward choice: Either help the wealthiest investors in America or you can help hard-working families.

It is that simple. That is exactly what this choice is about. I hope a majority of the folks believe—that we ought to be helping those families that most need the help today.

It is a simple matter of priority. It is a simple matter of fairness, and it is common sense with respect to our economy and the money we want to put into the pockets of Americans so they can go out and pay their bills, continue to purchase, and drive our economy.

I want the tax bill to reward work first and wealth second.

This can be done by making the alternative minimum tax relief a priority over capital gains and dividend tax relief.

The fact is that Congress has an opportunity to stop punishing taxpayers because of where they live, because they move from one State to another for work or for school, or because they decide to start a family. Those are not the reasons on which you ought to base a tax on in our country.

We have an important opportunity to take a step to deal with this. It is my hope that we will do so.

I yield whatever time may remain.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I want to comment on what the Senator from Massachusetts said.

First of all, I think everything he said about the AMT, I agree with; what he said about the capital gains, I disagree with.

I am only going to comment on that part that I agree with him on about the AMT.

But let us have a little history in the process of doing that.

No. 1, either in 1998 or 1999, we repealed the AMT. President Clinton vetoed it.

So we wouldn't be dealing with this issue if President Clinton had signed that bill.

In a sense I am kind of asking for support from anybody on the other side of the aisle who thinks we are not doing enough on AMT. I happen to be one of those who even today, 6 to 7 years later, is for repeal. I believe it ought to be repealed. We ought to have a standup vote, without any points of order, and get rid of this.

There are Republicans who would say if we do that in the out years, our budget might look like it has a much bigger deficit than it has, and over here there might be people who say if you are going to get rid of this tax, you ought to have an offset for it, so the budget deficit does not look different. The reason neither one of those concerns is legitimate is because in this bill we are talking about having the AMT hit the middle-class Americans whom it was not intended to hit.

The Senator from Massachusetts is right in the sense that for parents with children and the larger the family the more it hits them. It was never intended to hit but a few wealthy people who used every legal loophole to avoid paying taxes and that somehow everyone who makes a lot of money ought to pay a little something of income tax into the Federal Treasury. A little something or big something, whatever the case might be, whatever the alternative minimum tax hit them with, they ought to pay that.

If Senator BAUCUS will bear with me, he has heard me say 150 times how ridiculous it is to have this side of the aisle say we ought to offset a tax that was never intended to be collected in the first place from the people who otherwise will be hit with it if we did not pass this legislation, and over here, people are worried if we do away with it, the budget deficit will look bigger because we do not have the phantom tax income coming in from people who were never supposed to pay the alternative minimum tax in the first place. If we have a tax hitting people who were never intended to pay it in the first place, it should not be showing up in the budget figures, anyway. So we have to worry about an offset or we have to worry about whether we have a burgeoning budget deficit over here if it is not there. It is a phantom. We ought to do what you do with phantoms, hit them with a needle, let the air out, get rid of them.

Also, particularly what the Senator from Massachusetts said about hitting people, it is like a geographical tax to some extent because a lot of States, such as New York, New Jersey, and California, have a lot of high-income people. Therefore, they have a disproportionate number of people getting hit by the AMT. If you fall into that income class, you will get hit with it. More of these people live in higher income States and it happens that some of the States are what we call blue States instead of red States, so I don't know why we do not have a massive drive on this side to force Republicans to do something that is hurting your constituents.

Let's do away with the darned tax. People aren't supposed to be paying it in the first place. Why are we spending a lot of time working the issue? I would like to have the Senator from Massachusetts solve this problem forever and help us repeal it, like we did in 1998, with a President who I am sure will sign it.

On a procedural matter, I wish also to make a comment. My good friend from Montana asked if we could see what we could work on, on amendments. I will briefly comment even beyond what he has asked us to do and try to help speed this along as best I can, as to where we are.

It has been suggested on this side that Republicans work with Members to help them get their amendments up and voted on. First, we should not even be in this situation, a truly unprecedented situation, where we are essentially being forced to do a reconciliation bill over. Yes, we are doing a reconciliation bill over, within 2 months of when we first did it. We could be doing the Nation's business of problems that have to be solved, not waste 3 days on this bill now when we spent 3 days on it in November. We could be working on lobbyist reform. We could be working on asbestos reform and a lot of other things that Members want before the Senate. However, leadership on the other side is wasting the Senate's time and the American people's time. Surely there is a better way.

For those who thought this was over back in November, we are in the middle of a rude awakening. Cooperation is a two-way street. Even though we should not be in this position where the minority party is trying to reopen the bill, we have said we are willing to entertain a limited number of amendments. Another way to put this, I said to Senator BAUCUS privately that we need total transparency on this, get everything on the table. We do not get a response from the Democratic leadership.

They have taught me a few lessons from our first go-around on this bill. I learned that you do not vote on amendments too early because we know what happens if you do that; they get their press release out, they lose the amendment, then it comes back within a matter of hours, sometimes two or three different versions of the very same amendment. We end up voting on all of them, wasting everyone's time. So the extent to which we lay everything on the table and level with everyone on what we are faced with, we will be able to get this bill completed. We could finish this late tomorrow night.

Unless we can get an agreement for a limited number of amendments or amendments in total, I don't see any reason but to wait until the time has expired on the bill and let the so-called vote-arama begin one vote right after another and we spend a couple of minutes debating an amendment back and forth, to have that vote-arama without an agreement. I am convinced this will save the Senate a lot of time in the end. Either way, we have a limited number of amendments. Let us know what they are, have some sort of agreement so we can get done, or have a vote-arama.

I yield the floor.

The PRESIDING OFFICER (Mr. BURR). The Senator from Montana.

Mr. BAUCUS. Mr. President, I listened with great attention to my good friend from Iowa. I feel very lucky to have him as chairman of my committee. I don't know any Member who is more decent and fair and in a certain sense nonpartisan than the Senator from Iowa. I deeply appreciate his approach and friendship.

I think he knows no one is trying to delay anything. This is the Senate, after all. The Senators on both sides of the aisle have the opportunity to offer amendments. That is why we are Senators. We can offer amendments to bills. Sometimes one political party is in the majority and sometimes the other party is in the majority. As the Senator knows, it goes back and forth. I remember years when the party on the Senator's side of the aisle was in the minority, and my Lord, we faced all kinds of amendments because Senators wished to offer amendments to their points of view.

We are here today trying to work our way through. I have instructed Senators on the Democratic side of the aisle to tell me all the amendments Members have and we will work our way through this so we can be more than accommodating to the Senator from Iowa.

My view is to lay all your cards on the table so people know what they are. As civil and reasonable people we will figure out a reasonable way to deal with this. We all know the rules. We will let Senators offer their amendments in a way that is civil, positive, and accommodating—nothing personal. These are legitimate points of view that 100 Senators have. I hope to get the list to the Senator from Iowa very quickly so we can work that out.

I yield 10 minutes to our new Member, Senator MENENDEZ, from New Jersey. We are honored to have him here.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 10 minutes.

Mr. MENENDEZ. Mr. President, I thank the distinguished ranking Democrat on the Senate Committee on Finance for yielding time and for his work in preparing the opportunity to offer this amendment.

Later today I intend to offer an amendment, and I do certainly hope it will be in order, that lets families across the Nation know we are on their side.

In the bill before the Senate we have a clear choice: We can stop a tax increase for 17 million middle-class taxpayers, a tax that was never intended to penalize anyone considered middle class; or we can continue to give people who need it the least a break on their capital gains at the expense of middle-class workers.

I thank my colleagues on the Committee on Finance, Senators BAUCUS, SCHUMER, KERRY, and FEINSTEIN, who have worked very hard on this issue to ensure that the final result of this bill will not be a tax increase for middle-class families.

The options before the Senate are a choice of values. Do we value ensuring fairness for all hard-working Americans or would we rather give a break to those who need it the least? The Senate made the sensible choice when it passed the tax reconciliation bill last November by extending the protection for middle-class families from the alternative minimum tax. Now that the House bill is to come before the Senate, this Senate must make it clear it stands by that vote and that middle-class families will not bear an additional burden of tax cuts for the wealthy.

In the past year, this Congress has given enormous tax breaks to an oil industry that has racked up record profits while American drivers saw the price of gas go through the roof, and given out tax break after tax break for those who need it the least, while ignoring middle-class families.

I am proud to later offer an amendment that will help hard-working families in America and New Jersey get real relief and to make sure in this great body the middle class is heard at least as clearly as the powerful and the privileged.

Last night we heard more of the familiar rhetoric on tax cuts. We heard the President speak about "a massive tax increase" American families will face that "they do not expect and will not welcome," if the President's tax cuts are allowed to expire as scheduled in the next few years. The truth is, millions of families, not only in New Jersey but across the landscape of the country, will face an unexpected increase this year if the AMT exemption is not extended and the President's tax cuts do not include a fix for this problem.

Time and time again, the President has pushed for his tax credits from 2001 to be made permanent, which overwhelmingly benefit those who need it the least. More than 70 percent of the President's tax cuts have gone to people who make over $200,000, while families who earn between $50,000 and $75,000 have received less than 5 percent of the cuts. Yet the President has done nothing to make the AMT exemption permanent, a tax which in the next 4 years will affect nearly every two-parent family with two kids earning between $75,000 and $100,000.

We also heard the President call for more than just "temporary extensions." Yet the fact is all the President has done in terms of this middle-class tax is to propose temporary extensions and only cosmetic changes while proposing no underlying reform to the AMT itself.

Would we like to do more than a 1-year extension? Absolutely. But when the President has directed all of his efforts, his priorities, and the Nation's bank account to tax breaks for the wealthy, there is little room, let alone money, left over for the reforms that affect nearly 20 million middle-class taxpayers.

When Americans wonder why there has been little attention on what most tax analysts refer to as the single most important tax issue facing the Nation, they should know that it is because tax cuts for the middle class have not been a priority for this administration.

Let's be honest. Once again, it is the middle-class families, the hard-working families, who are struggling to send their children to college, to keep up with the cost of health care, to care for aging parents, who pay all of their bills and try to make ends meet each month who are being asked to foot the bill for the top earners in our country. Why? How many middle-class families out of the 17 million know right now they could be facing a tax increase this year? I would guess not very many. It does not help that the President has been silent on this, one of the most significant tax increases facing the middle class.

The fact is many families will be faced with a harsh reality at the end of the year. In my State of New Jersey, where nearly 180,000 families were subject to AMT in 2003, the number of middle-class taxpayers subject to this tax will at least double if no fix is enacted.

Average families, which are far from wealthy and think they are below the threshold, could face significantly higher taxes this year if we do not act on the crisis at hand. For example, a typical New Jersey family with two parents, where one is a preschool teacher and the other a paramedic, with three kids would be subject suddenly to this new tax increase this year.

So this amendment we hope to offer is for middle-class families who may not know a tax hike is coming and for average families who should not be expected to shoulder the burden of the President's tax cuts for the wealthy.

This amendment will make very clear that our priority should be to protect middle-class families from this unintentional tax hike and that millions of taxpayers should not wake up next tax season to realize they owe more in taxes even though their income has not changed.

Let's remember, this was a tax intended to assure those making some very significant income pay some taxes. It was never intended to raise the taxes of average Americans.

This is a zero-sum game. With soaring budget deficits and rapidly climbing debt, tax cuts for top wage earners are just one more burden being put on the shoulders of the working middle class.

The reality is, without this amendment, many families could be paying possibly $1,000 more in taxes next year. That is $1,000 more they could put in their pocket, $1,000 more they could use to save for their retirement, $1,000 more they could use for college tuition, $1,000 more to help make ends meet.

It is clear there is not room on the President's tax cut agenda for this middle-class tax crisis. That is why we seek to offer this amendment. This is why it is vital this body once again show its support for a tax package that includes an increased AMT exemption to protect middle-class families and not ignore the looming crisis before us.

We in this body know the consequences if we do not act. Many Americans do not. We know that if we fail to act, an astounding 30 million Americans will be subject to a higher tax rate within the next 4 years. We also know what many American families do not—that a family with three kids making $63,000 will be facing a higher tax rate next year if we do not enact this fix now.

Now, I hear a lot of talk about values. With this amendment, the Senate can decide which values—which values—it wants to embrace: rewarding those who work hard, play by the rules, and struggle to make ends meet, or give yet another tax cut to those who need it the least?

Let's send a clear message that the values we embrace are the values of American families. Let's embrace fairness and equal treatment for those who work hard. This is a chance for this body to go on record that we should not be imposing an unfair tax break on our middle-class families just to extend a tax break for those at the top.

I hope my colleagues will support this amendment when it is offered, presuming we have the opportunity to offer it, and ensure that hard-working American families, not just top dividend earners, remain our top priority.

I also look forward to offering an amendment later on with Senator KENNEDY that would expand a critical tool for college students and their families under the HOPE scholarship tax credit. As the first in my family to go to college, I fully understand the power of some of these programs and how they helped me, in my case, be the first in my family to go to college.

This amendment will simply expand what the credit can cover to include other associated costs for a college education. I look forward to the opportunity to offer that amendment as well.

I yield back whatever time I may have.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator's time has expired.

Mr. BAUCUS. Madam President, I yield 5 minutes to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Madam President, I intend to bring forward an amendment that will provide additional protections for Medicare beneficiaries during the first year of the implementation of the new Medicare prescription drug benefit. And that first year is right now, since it just started.

The amendment expands the existing 6-month open enrollment period from the May 15 deadline to 6 months later, into December. It is going to give people additional time to do the research to make the best decisions.

Secondly, the amendment is going to give to every beneficiary the opportunity to make a one-time change in the plan enrollment at any point during this calendar year, 2006.

Now, why is this important? Well, if every Senator here has been hearing from their senior citizens like the Senators in Florida have been hearing from our senior citizens, you can certainly understand that the senior citizens are very concerned. In many cases, they are confused because of the multiplicity of plans.

As a matter of fact, in Florida, there are 18 companies offering a total of 43 stand-alone prescription drug plans. Now, each of those plans differs in terms of premiums, cost-sharing requirements, drugs covered, and pharmacy access, and some of these plans are very time-consuming and very confusing. So when senior citizens are telling us Senators they are confused and bewildered, we ought to be paying attention.

Now, in some cases, the senior citizens are frightened, as well. This is because they know that come the deadline of May 15, if they have not selected a plan, they could be penalized 1 percent a month or 12 percent a year. That frightens them. What also frightens them is if they pick a plan by the deadline and then realize they made a mistake, they cannot rectify that mistake for a year. That is the source of great consternation and some fright to senior citizens.

Now, we can easily fix this. Back in November, when we had this bill before us then, I offered this amendment. It got 51 votes. It got a majority of the Senate. But there was a point of order on the budget because there is a minor financial consequence to this. So under the rules of the Budget Act, there has to be a 60-vote majority to pass such an amendment. We got 51 votes. I think we have a good chance to get 60 votes now because of Senators having heard all of the confusion and the bewilderment and the fright our senior citizens are experiencing. So I will be offering this amendment at the appropriate time.

Madam President, I yield the floor.

Mr. BAUCUS. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAUCUS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Madam President, I wish to make the very simple but very important point that given the choice, given the alternative between an extension of dividend and capital gains tax provisions compared with the AMT change, it is far better for this Congress to grant the alternative minimum tax relief than it is to grant an extension of the dividend and capital gains tax reduction.

First of all, the current law provides, under what is called the alternative minimum tax—which taxpayers who have certain incomes will pay, basically middle-income taxpayers—that this year they will be paying more taxes if we do not change the law. And 17 million Americans will be paying more taxes than they would pay under an ordinary calculation of their income under the Tax Code.

To say the same thing differently, because of this provision called the alternative minimum tax, 17 million more Americans will be paying more taxes—actually 20 million. Three million Americans this last year paid more taxes because they fell under the alternative minimum tax. Next year, if we do not make changes for tax year 2006, 17 million more will be paying it, for a total of 20 million. If we do not make these changes, 20 million Americans will be paying increased taxes next year, and those 20 million are essentially middle-income taxpayers.

To contrast that with dividend and capital gains, current law provides for lower dividend and capital gains taxation. That law extends, if we do nothing, for 2 more years, until essentially January 1, 2009.

So we have a choice here, all things being equal. We have a choice generally because we have a $70 billion floor. The budget resolution says we cannot pass more than $70 billion of tax cuts unless we want to override that with 60 votes. We have that floor, and it is hard to do everything. It is hard to have a capital gains extension, and it is hard to have an AMT extension. But basically we have the choice of either preventing a tax increase this year under AMT or extending dividends and capital gains, which need not be extended because currently the favorable dividends and capital gains is already in law and does not expire until January 2009.

The alternative is to extend capital gains and dividends from January 1, 2009, for 2 more years and do nothing to AMT. Or do we say, that's not very smart, we will deal with a dividends and capital gains extension later. Or do we, instead say, we are not going to extend something that does not need to be extended but rather we will reduce the AMT bite for this year. To say it differently, will we prevent the implementation of the alternative minimum tax this year, which has the effect of raising people's taxes? That is the question.

The Senate bill answered that question by saying, it makes more sense to prevent the AMT from going into effect this year than it does to extend dividends and capital gains which doesn't have to be extended anyway for the reasons I indicated.

The House bill, on the other hand, looks at that exact opposite. The House bill says, we are not going to prevent the increase of the alternative minimum tax this year. They are going to allow that to go ahead. Rather, they are saying, we want to extend dividends and capital gains favorable treatment, even though current law gives that treatment and it is going to be in law until January 1, 2009. That is what the House did.

There were some on the Senate floor earlier today who said: Gee, the House bill is better. Why? The argument is, without addressing the timing issue, because AMT relief is only for wealthy Americans. That is the argument. Whereas a dividends-and-cap-gains extension gives favorable tax treatment to a lot broader base and maybe middle-income Americans because a lot of people have mutual funds and own stocks and so forth. So, really, if you are going to help middle America, basically it is better to extend dividends and capital gains than it is to pass AMT relief, although we don't have to anyway because current law provides those benefits.

I would like to show with this chart a little bit about what AMT actually does to rebut that point. The facts show that AMT relief helps middle-income taxpayers a lot more than does favorable dividend and capital gains treatment. I will show that with a couple other charts.

This first chart basically shows income levels where the alternative minimum tax starts to take hold. To remind everyone, taxpayers have to make two calculations when calculating their income taxes. One is the regular way. You look at your deductions, decide whether you have the standard deduction or itemized deductions. That is the standard, ordinary way.

After a taxpayer has calculated his or her income taxes, every taxpayer has to then go through a separate set of calculations. It is called the alternative minimum tax. Under that separate set of calculations, if it turns out that you owed more under the AMT than under the regular tax, then that is the tax you pay. You pay the greater of the two calculations.

AMT, when it was passed years ago, was supposed to hit the very wealthy. That was the intention. But it has not worked out that way. The actual effect of the AMT is to hit essentially middle-income Americans.

It comes down to the question, what do you mean by middle income? That is the question. This chart shows that for a family earning about $80,000—that is becoming more and more the middle-income taxpayer. If you have a family making $80,000, they have expenses: kids going to school—$80,000 these days is not an awful lot of money.

Unfortunately, most Americans earn less than that, but an awful lot of Americans earn $80,000. The point being, if you earn $80,000 roughly, then you probably don't have to pay the alternative minimum tax if you have no children. But this chart shows that the more children you have, if you have one child, two children, four children, then—and that is what the brown lines show on the chart for this year, 2006—it shows that if you have more children, then the level at which the AMT starts to kick in is lower and lower.

That means, say, you have four children. At that level, if you are earning $60,000 for a family with four children, then at that point the AMT starts to kick in, which is to say, you start paying more tax.

There are other considerations, such as if the taxpayer is in a State with high State and local taxes. If you are in a State with high State and local taxes, or the more children you have, et cetera, then the AMT is going to be much more of a bite and hurt you. The main point is, we are talking about income levels. For families with one child, it is $72,000; for a family down on the end of the chart with, say, six children, it is about $50,000. That is not a lot of money for a family with six kids. So it is a middle-income tax.

Before I turn to the next chart, this is for this year showing what will happen if we do nothing. Those are the brown bars on the chart. The blue bars are really for last year, 2005, which goes to show you that if we do nothing this year, this AMT is really going to hit. The current AMT hit about 3 million taxpayers. This year, it is going to hit 17 million more, for a total of 20 million. That is why there is a difference between the blue and the brown lines on the chart. This year, it will really start to hit.

This chart shows that relief from the alternative minimum tax helps taxpayers more in the middle income of the tax bracket compared with tax relief under dividends and capital gains. The blue bars are the alternative minimum tax relief. That is what the blue bars show. The other brown bars show relief from dividends and capital gains reductions. What does this show? We are talking about a little bit wealthier taxpayer. The blue bar shows if your income is, say, $75,000 to $100,000, and then especially about $100,000 to $200,000, 52 percent of the relief of what we will be enacting, if we pass the alternative minimum tax, will be for taxpayers in that bracket. I grant you that is higher than a lot of Americans, but it still shows that beginning at about $50,000 of income and up to $100,000, then it starts to fall off if you earn $200,000.

It also shows that the very wealthy don't pay the alternative minimum tax. The wealthy whose income is, say, $500,000, $1 million, $2 to $3 million, AMT doesn't affect them. Rather, the AMT hits people whose incomes are roughly between $75,000 up to, say, $200,000 to $250,000.

Contrast that with the dividends and capital gains tax relief. That is the brown bars on the chart. What does that show? The brown bars show that by far the greater relief that people receive from the benefit of the dividends and capital gains reduction is the very high income bracket of Americans. That is what the brown bars show. That is $1 million—more than $1 million in income. The bar shows that about over 52 percent of the relief from dividends and cap gains relief goes to taxpayers where incomes are over $1 million; whereas 52 percent of the AMT tax relief goes to taxpayers in the bracket at under $200,000. Again, the facts show that dividend and capital gains relief goes by far to the most wealthy Americans. Those earning $1 million or more get by far the largest break from this provision. Whereas the AMT tax relief does not give relief to the most wealthy. It gives relief to those, as shown by this chart, roughly between $50,000 in income and up to $150,000 and $200,000 in income. That is a big difference.

Again, I must remind all my colleagues, the alternative minimum tax will be a tax this year, 2006, this year, if we do nothing. If we pass the relief we are talking about here for 1 year, then taxpayers who pay taxes in 2006 will find their taxes are not increased. If we do nothing about capital gains and dividends taxes this year, there will be no change in taxation on dividends and capital gains. There will be no change next year on income taxes on dividends and capital gains.

It is abundantly clear to me that in the alternative, we should certainly focus on passage of a provision which prevents a tax increase for 2006 that will otherwise go into effect rather than not doing that, let the tax increase go into effect, and say, well, we will extend the current law with respect to dividends and capital gains for 2 more years, beyond 2009 into 2010. That is a no-brainer.

You might ask: Gee, why not do both? Let's do both. Therein is the rub because we have a $70 billion limit given to us by the budget resolution which we all passed in this body and the other body. You can't do it all. And add to that that we don't want to, I don't think, worsen the deficit. We already have huge deficits facing the country, increasing debts on top of that.

We could pay for both, if we want to, by raising taxes someplace else. That is an option. I don't know whether we want to do that. But we cannot and should not pass dividends and capital gains relief at the expense of AMT.

I might add, under a ruling from the Parliamentarian earlier today, I think the Presiding Officer was presiding at that moment, a budget point of order would lie against a conference report that came back with dividends and cap gains extensions because of the outyear costs, unless it is paid for.

It is my fervent hope that we deal with what we have to deal with now, and that is the alternative minimum tax. Let's not let that go into effect.

I don't see anybody else who wishes to speak, so I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROCKEFELLER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROCKEFELLER. Madam President, I ask that I be allowed to speak for several minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. ROCKEFELLER. Madam President, I rise to let my colleagues know that, at an appropriate time, I plan to offer an amendment to the package of tax cuts that the Senate is, in fact, considering today.

The recent tragedy in West Virginia's coal mines, as well as in Kentucky, highlights the need for Congress to take steps to better protect miners who have worked hard for years to extract the coal used to create over half of all of our electricity and the country doesn't know it because we are always talking about oil.

The amendment I am going to offer provides incentives for coal companies to make crucial investments in equipment and training that will help coal miners return to their families safely each night. The world of coal mining, as you know, is a very close one. Almost nobody ever gets to go into a coal mine for the obvious reasons—its danger and the training needed. So as to that which provides the majority of our power in this country, people never get to see and understand the dangers involved.

Let me briefly explain the tax incentives this amendment would create. First, coal companies would be allowed to immediately expense 50 percent of the cost of purchasing new safety equipment. This is extremely important because American mines simply don't have the best available equipment at this time. In fact, some of the equipment, I regret to say, is the most important—for example, oxygen. Rescue hasn't changed a whit since 1977. Other countries, such as Canada, New Zealand, and Australia, have much more advanced mining equipment than do we. That is not fair to American miners. We need to mine coal and have companies willing to do it. We need to be absolutely certain that miners are as safe as we can possibly make them.

Several types of safety equipment would be eligible under my amendment for the tax benefit. First, communications technology that enables miners to maintain constant contact with the ground above. That would seem to be easy; to wit, we can talk from the Moon to the Earth but we cannot talk from over ground 500 feet down or a thousand feet down to a miner who is trapped to take their vital signs and do all kinds of things so we can protect them and get them out safely.

I am absolutely confident that the technology for doing this exists. It is just that it hasn't been put into use. That is not fair. So there are several types, and I mentioned the contact with ground. Secondly, electronic tracking devices that enable an individual above ground to locate miners underground at all times.

Third, emergency breathing apparatuses, including devices carried by miners and additional oxygen supplies stored by the mine in tunnels off to the side of the mine as you go down the main shafts.

You are no doubt aware that Canada had a problem very recently. They had these sort of sheds, little houses that went behind that people could go in and be totally safe. In there was oxygen, food, and all kinds of things. Nobody was hurt or killed because they had equipment which we don't have. I think Congress needs to decide whether, with coal mining increasing in this country and with probably not much chance of doing anything major about oil, we ought to be protecting our miners so they can mine coal for us.

Finally, mine atmospheric monitoring equipment to measure the levels of carbon monoxide and methane and oxygen in the mine at all times. That is very important because often a rescue team, if it is in a mine, cannot proceed if the level of carbon monoxide, for example, is too high or if methane is too high and there is a chance of an explosion. Knowing the levels of all of those is important to be able to understand that from above ground.

In addition to investment in lifesaving technology, we need our mines to invest more in mine rescue teams. Experienced miners, specially trained to rescue their fellow workers, are essential in the event of an emergency.

I can remember when I was Governor, we used to have right outside my window, so to speak, multi-State competition between mine rescue teams from various States. Mine rescue operations are extraordinarily complex, extraordinarily precise, and they have to be taught and practiced, and they have to keep at it. So that it is in our interest that, unlike what happened at Sago where no mine rescue teams arrived for a long time because Sago did not have its own rescue team, being a relatively small mine, they do not have to wait. The result at Sago, as we all know, in part, is that 12 people did not live.

Of course, training and equipping a mine rescue team is expensive. Companies have not committed enough resources to having skilled rescue teams available at all times and during all shifts, if there is a multishift operation.

Therefore, the amendment I am proposing would provide a mine operator a tax credit of $10,000 for each miner that they have trained and equipped as a mine rescue team member. Somebody will say that is a lot of money. If a mine doesn't have a rescue team, then the chance—if there is an explosion—of safely getting them out of the mine diminishes enormously. To me, it is akin to the cost of doing business. Having said that, the people don't have it. I think we have to be able to ease them into it, to encourage them, incentivize them to do it—not make it permanent but incentivize them to make it permanent so they get going on that. It is my understanding that a credit of this size would offset approximately 20 percent of the cost of preparing a miner to be ready to rescue his colleagues. So it is not paying for the whole thing.

I believe we need to make our mines safer as soon as possible, so I am proposing that both of these tax incentives be available only for the next 3 years. We need coal mines that are improving their safety standards immediately, which also gives them sufficient time to find or develop the best equipment.

I know that in DOD, DARPA, for example, in research labs around the country—I had someone visit me yesterday with all kinds of ideas, and they are working on mine safety rescue equipment. There just has not been a push on the part of anybody—MSHA, the companies, us, whoever—to get more modern equipment into the mines. If you are using the same oxygen rescue equipment that you were in 1977, we know that is inadequate.

Let me answer some skeptics who may be wondering why we need to provide tax breaks to companies to encourage them to take safety precautions they ought to be required to take. That is a very fair question, and I am sure it will come up.

I share the desire to mandate by, either Federal law or regulation, strict safety regulations on America's coal mines. I believe we owe coal miners the safest possible work environment, all within the context of coal being the energy source of the future, not exclusively, but the energy source, the biggest one of the future.

That said, I believe we must also act in good faith with coal companies. This is not a punishment. This is about improving the situation. If we are asking them to make substantial new investments in specific technology and training, it is appropriate to offer tax relief to lessen the impact of those investments at least for a period of 3 years.

Following any kind of accident in a mine, the most important things are locating the miners underground—that is very hard to do now—communicating with them—and that is hard to do now—making sure they have sufficient supplies of oxygen until they are rescued—and that is very hard to do now since the oxygen usually runs out after 1 hour—and having skilled and well-trained mine rescue teams quickly available.

These are worthy results. Sometimes people say: Can a mine afford it? The answer is yes. Look at the Sago mine in northern West Virginia. That is going to be closed for a long period of time. What they are losing in the way of their bottom line compared to what I am talking about here isn't even close. So I think it is in our interest to do this, and I really believe that.

Miners deserve to know that in the event of an accident that their employers have made the investments necessary for their safe return. The amendment I am proposing today will stimulate such investments.

In closing, I am very pleased to be working with my colleagues on the Finance Committee, Chairman GRASSLEY and Senator BAUCUS, on this proposal. I am grateful for their cooperation and assistance as we try to make coal mines safer. And I am very hopeful that these investment incentives can be included in the tax bill before the Senate.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. COBURN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I was pleased to hear President Bush talk last night about the U.S. economy in the State of the Union Address. Some of the other proposals of the President, such as reducing the deficit and making the R&D tax credit permanent, make a lot of sense. I strongly support them. Others, such as his proposal on health care costs, frankly, would do very little to rein in soaring health care costs that we see. And that is important, frankly. We must do more to rein in health care costs because they serve as a drag on the competitiveness of American industry. But there are certainly areas where we can work together on health care.

For the past year, I have made a number of statements on the steps our country must take, in my judgment, to bolster U.S. competitiveness. Just last week, I unveiled plans for a comprehensive legislative effort to bolster U.S. competitiveness from education to savings to innovation and research. I invite the President to support these provisions, to support this agenda. I look forward to working with him to turn these proposals into law. Only by working together can we ensure that we keep America first in the world, preserve its economic leadership, and assure jobs and prosperity for American generations to come.

"Competitiveness" is an amorphous term because it covers some different areas, from international trade to education. But these are the issues which are critical to our future. Why? Because the world is changing, and for America to remain on top, we have to make sure our domestic house is order.

I just got back from a 10-day trip to China and India. I must tell you, it was, to say the least, very eye-opening.

In China, I saw gleaming superhighways burrowing through brightly lit tunnels. I saw robots stacking the shelves of a Chinese computer company. I saw teams of Chinese researchers determined to discover the next big thing. I saw capitalists and entrepreneurs betting on China's rise. I saw a confident middle class ready for the future.

It is astounding. We all know that. Every time you go to China, it is amazing how much more advanced they are compared to the previous visit. I was there only a year earlier.

After a quarter century of growth, China is set to become the world's largest economy by about the year 2030. Just think about that. By 2030, China is positioned to become the world's largest economy. China is already the world's third largest exporter. China has surpassed America as the largest exporter of information technology products.

India, I might say, is no different. There, I saw confident, young engineering students who have no doubt that the India of tomorrow will be better than the India their parents left them. I saw information technology companies where state-of-the-art technology has made them global technology leaders. I saw Indian Government leaders bent on making 21st century India the world's success story.

As a side note—it is a very small point but not so small—I asked the head of a major high-tech research center in India why they are in India. What is the answer I got? The answer I got was because India has the greatest talent pool for engineers and scientists.

I asked, What is the next best country?

China, he said.

I asked, Where is the United States?

Sorry, Senator, you are down the list pretty far.

That is a small slice of what we are going up against. These two reawakening civilizations, with over 2.3 billion people between them, are on the march. Their confidence is palpable. Are we prepared to meet the challenge they present? Of course we are. We are Americans. We have a great history of meeting challenges. America is capable of overcoming any challenge. We are capable, but we must act.

America remains the world's economic powerhouse—very much so. We are undisputed today. We lead all major economies in output. Our companies' workers grow more productive each year. However, we also have to face facts. In many important areas, America is beginning to lose its competitive edge.

In information technology, we have lost our preeminence, falling behind Singapore, Iceland, Finland, and Denmark. At the same time, Federal support for R&D is in a 30-year decline.

In education, we have neglected our human capital. When I started in the Senate, America ranked third in the world in the share of young people with science or engineering degrees. Thirty years later, we have slipped—not back to 3rd, 4th, or 5th; we have slipped to 17th. In global rankings of math, reading, and science skills, our 15-year-olds have also fallen even further behind 17th in the world.

In health care, rising costs threaten to cripple many companies. Too often, employees have little or no health care coverage. The average American spends more than $5,000 a year on health care costs—twice as much on a per capita basis as the next most costly country. We spend twice as much on health care in America as any other country. I ask, are we twice as healthy even though we spend twice as much per person? Clearly, the answer is no. We must cut back on the cost we pay for health care.

In international trade, over the last few years we have distanced ourselves from Asia, leaving China to engage the region. By not pushing to open the world's biggest markets and not explaining the importance of trade, this administration fosters surging protectionism.

To make that same point, I heard constantly in Asia, China, India, and Singapore—I had a very long conversation with Lee Kuan Yew, who is the wise man of Singapore—where is America? Where is the American Government? There are all kinds of international trade negotiations and forums. We don't show up. We don't participate. I asked: What about our companies? Our companies are not there. Sure, we have American companies in China. In India, I heard constantly from every person I spoke with that we can't find Americans; we need American companies to do business in India.

There is a big, fancy subway, for example, in New Delhi. When you think of New Delhi, most Americans don't have an image of tall, gleaming skyscrapers as in Manhattan. Think of

Delhi, India. It is a huge city. There is a New Delhi and an Old Delhi. But India and Delhi have a subway system built, completely finished, and it is gleaming. It is fancy. It is up to date. Guess what. Cell phones work in the New Delhi subway. In a lot of American subways, you can't turn on your cell phone. They are not wired for cell phone use. You can in India. And they plan to build subways in 18 other cities in that country.

Finally, our macroeconomic fundamentals are at a danger point. That is a fancy term. What does that mean? Essentially, it means that we are in deep financial trouble. Our country is set to rack up another record account deficit. That is another big, fancy word. It basically means we are importing a lot more materials and goods than we are exporting. That is the current account deficit.

We borrow more than 80 percent of the world's savings. Think of that for a second. Americans borrow more than 80 percent of the world's savings.

Our net foreign debt has not been this high as a percentage of gross domestic product—that is how we count our economy—since Grover Cleveland was in the White House. This is unsustainable and costly. And too few people think about it. When they do they wonder, Why didn't we do something about it earlier?

Do we just put our heads in the sand and give up? No. Clearly, we must choose a path to greater economic competitiveness. That means taking advantage of opportunities we see and meeting our challenges head-on. We need a comprehensive agenda for a 21st century competitive economy. We must look inward and scrutinize our own policies thoroughly, comprehensively, and honestly. Look at the facts, put aside ideologies, put aside partisanship. The stakes are just too high.

I have spent much of the last year attempting to develop such an agenda—not perfect, clearly. I have no monopoly on the best ideas. But I believe we must start, and I have done my best to start.

In the coming months, I will launch seven individual legislative proposals to address America's competitiveness in education, energy, health, savings, research, tax, and international trade. That is how we can compete better—by improving our education dramatically.

How do we wean ourselves from OPEC? Thank goodness the President mentioned that, and I praise him for his comments in the State of the Union last night.

How do we address this health care problem in America, the high cost of health care, and make sure more Americans are covered? How do we encourage more savings? That is a bit alarming. I know that it is just a statistic. It is still quite alarming.

We Americans are not savers. We Americans have a negative personal savings rate. We also on average spend more than we save. We charge up our credit cards, mortgage payments, and we spend more than we save. That adds up. After a while, it catches up to us.

What about other countries? In China, the personal savings rate is about 40 percent. About 40 percent of what the Chinese people earn, they save. There are similar, high statistics in other Asian countries. Japan—I do not know the exact figure; I know it is high. In Singapore, it is about the same level. In India, it is very high, too. Some might say that is because those countries don't have savings accounts; they don't have Social Security, as well, as we have; they do not have health care benefits or pension plans as lucrative as ours. Ask any American how well our savings plans are working and how health care benefits are working. We have a problem.

The point is, they are saving and we are not saving. They are saving, we are spending. They are investing, we are consuming. After a while, that catches up.

As I said, I don't pretend to have all the answers. But we have to start tackling these questions right now. I invite my colleagues on both sides of the aisle as well as the administration and anyone in our country to join me in enacting these bills.

I welcome the President's focus on education. I will soon introduce what I call the Education Competitiveness Act, designed to make the priority of lifelong learning an inseparable part of American society and American culture. We have to continue to be educated to grow and learn. My bill will encourage more students to go into math and science by funding college scholarships for the sciences, providing free tuition for science and engineering students, and creating partnerships with employers and continuing education centers to meet the technology needs of companies. I will also propose legislation to invest in our teachers by raising starting salaries and providing loan forgiveness for teachers.

I was very impressed a couple of nights ago to see on the evening news that in the city of Chicago, Chinese language is offered at every level K–12. Chinese language is offered in the Chicago school system. That is incredibly important. I wish Chinese were offered in many more American school systems. Why? Because Chinese is the language that is going to be very important down the road. Sure, English is going to be the major language in the countries of the world. That is absolutely clear. But the more we understand Chinese, the more we are going to help. We can learn the Indian language and lots of others, too, but Mandarin Chinese is going to be very important in the future.

Also, students might not be fluent in Chinese. They may just take 2 or 3 years. Some students may become very fluent in Chinese. Even for those students who don't become fluent in Chinese, what does it do it for us and for our kids to think a little bit more about overseas, about Asia, think more internationally, think more about what is going on in the world? When some event occurs in a country—it doesn't have to be China—if you study Chinese, it will help. You will think about it more and read the newspapers or watch the news. You will begin to think about how these things are interrelated.

We have to strongly boost our education system. I must say that I take my hat off to the Chicago school system for offering Chinese at every single level, K–12.

I applaud the President's recognition of energy as a critical facet of our Nation's competitiveness and the critical factor that innovation and R&D play in ridding ourselves of our dependence on Middle East oil. The President said last night that we are addicted to foreign oil. We are at our peril. The sooner we wean ourselves from OPEC and become more self-sufficient, the better off we are all going to be.

What can we do about it?

I will invite the President to support my energy competitiveness bill. What does it do? It will create a new agency, what I call the Advanced Research Projects Agency, or ARPA–E, modeled after the Defense Research Projects Agency, which is so helpful in providing so many cutting-edge technologies. It will help provide cutting-edge research to break out of the energy squeeze that we now face.

Last night, the President mentioned programs within the Department of Energy. I think that is good. My personal view is that this is such an important issue, we have to have a separate outfit called ARPA–E; otherwise, it will be consumed in the Department of Energy. I worry that it is going to be lost in the bureaucracy much too soon. It has to be a lean, mean agency.

I also support the commitment to expand research and to make permanent the research and development tax credit. I will introduce a research competitiveness bill in the coming weeks which does just that. The tax credit is not enough, especially when it comes to basic research. We have to do more than the R&D tax credit. I believe more support for private and public research partnerships can be an effective vehicle for basic research. They can help find the resources for more basic research.

We did this in the 1980s when semiconductor companies and the Government collaborated to share risk and leverage discoveries for semiconductor technology. It is called Semtech. It was in Austin, Texas. I spent a couple of days there and was very impressed with what they have done. It was so successful it helped support semiconductor technology that has spun off. Semtech is no longer necessary. It would get us jump-started in meeting the Japanese and other challenges where countries are underwriting the development of semiconductor production.

I welcome the President's focus on savings and acknowledge the need to address mounting Government costs and the growing deficit. We should not focus solely on programs such as Social Security and Medicare if we are going to address this problem. Rather, it is time to explore every nook and cranny for opportunity to bring the deficit down, to look at corporate tax loopholes, and to close the annual $300 billion tax gap.

What is that? What is the $300 billion annual tax gap? Every year about $300 billion in taxes legally owed is not collected. We can do better. I don't know if we can get it all, but we ought to get the lion's share of that collected. That is a way to help pay for some of these things, the investments we have to make. Let's do a better job in closing the tax gap. The IRS is working on it. I have prodded the chairman of the committee, Chairman GRASSLEY, many times. The time has come to light a bigger fire, accelerate this effort to make sure that most of that $300 billion of taxes legally owed to Uncle Sam is collected; otherwise, we are subsidizing $300 billion worth of deadbeats because those taxes are not collected.

A savings competitiveness plan such as the savings competitiveness bill I will introduce will make certain the Federal Government spends taxpayer dollars wisely. We can accomplish that objective if, when we spend money around here, we pay for it; otherwise, the debt and deficit keep building. We are borrowing more and more. We cannot continue this borrowing binge.

It must also create incentives for private savings by pursuing the automatic enrollment savings plan. Make the tax credit permanent for savers. There are a lot of things we can do on the edges that will snowball as we increase personal savings in the country, which clearly is needed for investment in energy, other technologies, education, in training programs to assure people they can keep their job, and if they cannot keep the job, they can make the adjustment to a new job; otherwise, with all the hundreds of thousands of people who have been laid off in companies in America because of global competition, they will not have a stake in what we are trying to do. We have to do this together as a country. I certainly believe increasing the personal savings will be a large part of that.

Then we have to turn to international trade. Competitiveness requires we break down market access barriers and seek opportunities in foreign markets such as China and India, which continue to crave American investment. We pass laws to encourage our companies to export and to do business overseas. We must do that to help American companies strive and do well, so long as they pay attention to local workers. We must let them know their Government has their back and that foreign markets are open and stay open when they play by the rules. We have to make sure the countries play by the rules. They are not playing by the rules as much as they should and could.

Take intellectual property, for example. Many countries overseas—China, India—are making some progress, but we are losing all kinds of dollars because America is not enforcing the rules sufficiently for other countries.

I will introduce a trade competitiveness bill to make the administration more politically accountable to Congress, identifying and pursuing the most egregious foreign market access barriers. It will build on an idea of Senator STABENOW of Michigan to create a new Senate-confirmed chief trade prosecutor at the USTR dedicated to investigating and prosecuting trade enforcement cases.

Then we have taxes. The President's focus there is not quite properly placed. We need to make sure our international tax rules, which were written in a time when U.S. businesses were the only players on the block, are changed. Make sure they provide other businesses flexibility to compete.

The Tax Code contains a number of anti-abuse rules so companies cannot shelter passive income but must allow U.S. businesses to redeploy the resources from active to foreign operations, as their competitors already do.

I will review these rules, as well as transfer pricing rules, cost recovery periods for business assets, and the inappropriate use of offshore tax havens to make sure U.S. businesses can compete fairly on a level playing field with both domestic and foreign competitors.

A final element of my plan is health care. That is where the President's address fell short. The President offered some options for some Americans, but as broad health care solutions, they may not be doing very much to control costs or expand health insurance coverage. In fact, Americans who need health insurance coverage the most could pay more out of their pockets under health savings account plans.

The President ignored the health care elephant in the room: the problems our seniors are having with the drug care benefit. I am surprised he did not mention that. It is on seniors' minds. We have to address that.

My health competitiveness legislation will invest in innovation, in efficiency, and also will put emphasis on making Medicare move toward pay for performance as we get better quality of value for Medicare dollars.

I close by saying competitiveness is the key to America's future. Bolstering our great companies' competitive potential will allow us to ensure that we leave our children more productive, more prosperous, and a more secure America than our parents left us. This is important. It is very difficult to get our hands wrapped around it. But the more we do and the earlier we do so, the better off we are all going to be.

I yield up to 20 minutes to the Senator from Rhode Island, the ranking Democrat of the Joint Economic Committee, the senior member of the Committee on Armed Services.

The PRESIDING OFFICER. The Senator is recognized for 20 minutes.

Mr. REED. Mr. President, it is my intention when it is appropriate to offer an amendment entitled Strengthening America's Military. This amendment will repeal the extension of tax breaks for capital gain and dividends and instead use the funding to give our military some of the vital help it needs. There is no question we have the most formidable military in the world. It is a combination of the courage and skill of our fighting men and women, together with the best technology. But we have to ensure that this Army and our Marine Corps and all of our military forces are adequately equipped.

It is a question of priorities. As members of this administration are quick to point out, we are a nation at war. But they have not asked all the people of this Nation to sacrifice for that war, something this country has done in almost all past conflicts. There are literally thousands of young Americans serving and sacrificing in Afghanistan, Iraq, and around the globe. Their families sacrifice as they wait for them to return. Their communities have sacrificed as they have seen National Guard units mobilized and sent overseas. But the vast majority of Americans has not been summoned to this great struggle. I argue now is the time where such sacrifice is necessary, particularly among those who benefit most from society.

Rather than debating whether to extend certain tax cuts, we should consider ways to increase Federal revenues to pay for the costs of the war, something the country has done in almost all past military conflicts. To raise the additional revenues needed to equip our military, we first need to remove the provisions in the tax reconciliation bill that extend the lower tax rates on dividends and capital gains.

There are many reasons to oppose the extension of the lower tax rates and dividends on capital gains, but the key reason is the fact they are unfair. Most of the tax goes to upper income families: 53 percent of the tax goes to .2 percent of families who have incomes of $1 million or more; 78 percent of the tax goes to families with incomes of $200,000 or more.

Secondly, there is a host of offsets that Democrats and Republicans alike have supported. As the ranking member on the Budget Committee, Senator CONRAD has long pressed for such amendments, including shutting down abusive tax shelters, ending a loophole for oil companies that lets them avoid taxes on foreign corporations, and ending the tax benefit for the leasing of foreign subway and sewer systems, requiring tax withholding on Government payments to contractors, and renewing the Superfund tax so polluting companies pay for cleaning up toxic waste. These offsets, included in this amendment, more than meet the equipment needs of our soldiers, and as such, the remaining revenue will go for reducing the deficit, another important goal and need.

When I say "equipment needs," I mean repairing, rehabilitating, and replacing, or what the military calls "resetting and recapitalization" of the equipment of the Army and the Marine Corps which is being used in Afghanistan and Iraq.

I recently returned from my seventh trip to Iraq and my fourth trip to Afghanistan. I was impressed by the superb dedication and professionalism of our fighting men and women. However, it is clear to me and to many experts who study the military that our Armed Forces, particularly our ground forces, are suffering from the strain on personnel and equipment.

An article in today's USA Today notes that the war in Iraq is taking the biggest toll on military equipment since the Vietnam war.

Last week, the National Security Advisory Group, chaired by former Secretary William Perry, released a report about the strain and risk for our military. In their words:

> Given the harsh environment of Iraq and Afghanistan [resetting the force] is proving more extensive and expensive than in previous operations. Estimates of the cost of rehabilitating Army equipment coming back from operations overseas continues to grow . . . in addition, both the Army and the Marine Corps expect to see increasing costs associated with recapitalizing aging forces and transforming their capabilities for a broader range of 21st century missions.

Gary Motsek, the Army's Deputy Director for Support Operations at the U.S. Materiel Command, has stated the Army has to repair or rebuild virtually everything that goes to Iraq. If you have been to Iraq—and I know many of my colleagues have—this is an intense and difficult environment to operate equipment; certainly intense and difficult for military personnel there. The temperatures in the summertime can get to be 120 degrees. There is sand throughout the country which is sucked up into the blades of helicopters, into the intakes of moving vehicles on the ground. The wear and tear is extensive.

The same is true with Afghanistan. It is very difficult, in addition, because of the high altitudes. It is extremely difficult for our helicopters and our fixed-wing aircraft to operate, particularly helicopters. These are very demanding environments and they are taking their toll on equipment. We have to ensure that our military forces have this equipment.

Let me further point out, we are not talking about buying a new class of ships or planes. We are just talking about taking those vehicles that have been run down because of combat operations and bringing them back into the shop, fixing them, repairing them, and getting them back to our troops. If we do not do that, then what we are going to see—perhaps not this month or next month or this year but inevitably—is that our forces will be sent out with equipment which is inadequate, which is literally, perhaps, falling apart.

We owe it to these soldiers, we owe it to these marines, we owe it to the Nation to make sure they have the best equipment, the best maintained equipment. That is going to cost a lot of money. The question here today is, very simply: How will we pay for it? Do we give tax breaks to the wealthiest Americans in terms of dividend preferences, or do we give a dividend to our soldiers and marines? And the dividend is equipment they can count on—reliable, well-maintained equipment, ready for battle. I would vote for a dividend for our troops, not special dividend treatment for the wealthiest Americans.

In a briefing given to staff members of the Armed Services Committee this month, the Army estimated over the next 6 years it will cost approximately $35.6 billion to reset and recapitalize the force.

Last November, the Marine Corps estimated it would cost $11.7 billion to repair and replace their equipment over the next 5 years.

These are costs that are already incurred. We cannot avoid them. This is not buying new things we need or want. This is fixing what we have and must operate. And there is no end in sight to our operations in Afghanistan and Iraq. We hope that improvements in the security climate will allow forces to be redeployed, equipment to be redeployed. But any sensible observer in both countries would tell you quickly that our presence will be long term and the demands on our troops and equipment will be there not just this year but for many years in the future.

GEN Paul Kern, who just retired as head of the Army Materiel Command, gave an estimate of between $60 and $100 billion to replace the Army equipment alone—just the Army equipment: to replace it, repair it, get our troops back to the condition they were before these operations began in Afghanistan and Iraq.

Last October, GAO released a report on military readiness. It assessed the state of 30 pieces of equipment, predominantly tanks, vehicles, helicopters, and aircraft. It made several disturbing observations. It stated:

> GAO's analysis showed that reported readiness rates declined between fiscal years 1999 and 2004 for most of these items. The decline in readiness, which occurred more markedly in fiscal years 2003 and 2004, generally resulted from 1. the continued high use of equipment to support current operations and 2. maintenance issues caused by the advancing ages and complexity of the systems. Key equipment items—such as Army and Marine Corps trucks, combat vehicles and rotary wing aircraft—have been used well beyond normal peacetime use during deployments in support of operations in Iraq and Afghanistan.

In sum, we are wearing this equipment out in combat operations overseas that are continuing today and will continue for the foreseeable future. This equipment is essential for our defense and for the protection of our military personnel. We have to do this. It is unavoidable. And the question, again, is very clear: Are we going to give a dividend to the wealthiest Americans or a dividend to our troops in the form of equipment they can rely upon, equipment they can use to defend us, equipment that will protect them, equipment that will assure their families they have the best, so when they bid them farewell, as their unit deploys, they will not have to worry that equipment will break down and endanger their loved ones? That is our job. To me, the choice is pretty clear.

This report of the GAO goes on to say:

> Until the DOD ensures that condition issues for key equipment are addressed, DOD risks a continued decline in readiness trends, which could threaten its ability to continue meeting mission requirements. The military services have not fully identified near and long term program strategies and funding plans to ensure that all of the 30 selected equipment items can meet defense requirements.

This language is very disturbing. It suggests rather strongly that the readiness of our military forces is in question in terms of equipment, certainly, if we do not respond quickly. And "respond" does not simply mean borrow some more money and throw it at the problem. To me, it means making sure our priorities are such that we can afford to do this not just today but in the years ahead.

Another GAO report states that more than 101,000 pieces of National Guard equipment, including trucks, radios, and night vision devices, have been sent to soldiers in operations overseas. This means the Guard does not have the equipment it needs to respond to crises here. It is another aspect of our deployment situation. We have shipped Guard units over along with their equipment. The equipment has stayed behind. The Guard has come back. If there is a crisis in the homeland, if there is a natural disaster, we are deploying Guard units without a lot of the equipment they had just 2 or 3 years ago, a lot of the equipment which is essential to their plans to respond to crises in the homeland and natural disasters.

I believe this problem was exemplified during Katrina when the Guard stated its communications equipment had been overseas and, therefore, it was unable to operate effectively in the aftermath of the disaster.

There are real costs that we have to face today, and we have to face it not simply by charging it to the next generation but by biting the bullet, asking people to make sacrifices. And, again, when the sacrifice is the choice between a dividend that accumulates for the very wealthiest Americans or a dividend for the troops, give the dividend to the troops.

Mr. President, these reports are warning signs. Now, Secretary Rumsfeld continues to state that our troops are performing well and are battle hardened. He is absolutely correct. But our troops and their equipment cannot continue to perform well without the proper upkeep. Our troops need a break, and their equipment needs to be repaired and refurbished. I think he has to distinguish, and we all have to distinguish, between the individual valor and skill and patriotism of soldiers and marines and their units and the institutional Army and Marine Corps, with their need to continue to provide adequate equipment for all of these troops and these units.

There is no doubt about the fighting spirit and fighting skill and the tenacity and the experience of these units today. But you have to look very clearly at the capacity of the Army and the Marine Corps to generate the equipment and rehabilitate the equipment and repair the equipment that these soldiers and marines rely upon.

Secretary Rumsfeld says reports such as the Perry report I mentioned and the report by Andy Krepenevich—a former military officer who was actually commissioned by the Pentagon to do the report, and who looked at it and reached the same conclusions, essentially, as the Perry report—he says they were looking at old data when they found that the military was strained. There Secretary Rumsfeld is wrong. These reports were not looking back, they were looking forward. And they see danger ahead, and make the point very clearly that our Army is not broken, but the strain is increasing. And if we do not act now—responsibly now—to fix these problems, the future ahead is dire, indeed, for our forces in terms of their readiness, in terms of their equipment preparedness, and in terms of the strain on our personnel.

The responsible thing to do is not simply go out and borrow $50 or $60 billion more and add it to our deficit, it is to make the hard choices here, to demand a little of the sacrifice that our soldiers and marines and sailors and airmen and airwomen give us every day.

Secretary Rumsfeld says we have the finest fighting force in the world. I agree with that. The difference is, I want to keep it that way, and I want to do it honestly. I want to do it by paying for it. I want to do it by making sure we set the priorities right here, now, not simply borrowing more money, going down the road borrowing again and again and again because eventually—and I believe the military understands this—we are not going to be able to fund these operations and these requirements by simply having supplemental appropriations every year which are outside the budget.

At some point, the effect on our economy, the effect on our fiscal posture is so crippling that we will have to scale back. And the people who will be squeezed out, then, will be the soldiers and the marines and the sailors and airmen and airwomen we count on today to defend and protect us.

The Perry report makes the following recommendation:

> In order to restore the health of U.S. ground forces in the wake of Iraq, the nation must step up and invest substantial resources to reset, recapitalize, and modernize the force. . . . Restoring the health of both services is not a matter of simply returning them to their status quo; it is a matter of ensuring that they are organized, trained, equipped and restored to meet the full range of traditional and nontraditional challenges in the future.

Next year alone, in the budget and the supplemental, the Army needs $23 billion and the Marines need $7.5 billion for reset and recapitalization—again, military terms for repairing, rehabilitating, getting the equipment back up to operational readiness. While we have yet to see the President's budget, or the supplemental, it is not guaranteed these needs will be funded.

In recent years, the President's budget requests and the supplementals have provided less funding than the military services have requested. Furthermore, if it is funded, this just covers this year's bill. These bills will continue on for many years.

As I pointed out before, at some point economic pressures—and, ironically, those pressures will be more severe if the situation in Iraq and Afghanistan begin to resolve themselves—those pressures could curtail the adequate funding necessary to fully care for this equipment and the personnel who operate this equipment.

It is time we asked Americans to sacrifice a little for those who do so much for us. As someone who commanded a company of paratroopers in a younger day, I can tell you, there is nothing more disconcerting to morale than not having good equipment to do your job. Not only does it endanger the soldier and the marine, it sends a much stronger signal about our priorities and what we care about in terms of supporting the military than any speech given by any politician in Washington or elsewhere.

That is our responsibility today, to stand up and be counted—like those troops are standing up and being counted—to take care of their needs, and do it responsibly, not add more to the deficit, not add more force to choke off, eventually, the funding they need so desperately to do their job so well.

More than anything else, when soldiers go out on operations, they and their families want to be certain they have the best equipment and that that equipment is well maintained. Rather than providing dividends to the wealthy, let's provide our troops with an equipment dividend.

Our fighting men and women have volunteered to risk their lives every single day in a war zone for the rest of us. They deserve the best, and we owe it to them.

I urge my colleagues to support this amendment. To me, the logic is compelling. The need to help is there. Let's put our actions where so many times our words are.

Mr. President, I yield back the remainder of my time to the Senator from Montana.

The PRESIDING OFFICER (Mr. DEMINT). Who seeks time?

The Senator from Iowa.

Mr. HARKIN. Mr. President, once the Senate amendment is laid down, I intend to offer an amendment for myself and Senators KENNEDY, KOHL, and LEVIN that will eliminate a very expensive pair of provisions contained in the 2001 tax bill, most of the benefits of which go to those individuals in America making over $1 million a year in income. The amendment I intend to offer would take that money and increase the benefits going to working-class families trying to cover the costs of daycare for their children or elder care for their parents. And the rest of the money would go for deficit reduction.

The bill we will have before us, as soon as the Republican leader lays down the Senate amendment, will sharply increase the deficit in future years by as much as $70 billion. Again, most of the benefits, as usual, go to taxpayers making high incomes.

Indeed, the House bill is even worse, with 40 percent of the benefits going to those making over $1 million per year. Forty percent of the benefits in the House-passed tax bill go to those individuals making over $1 million a year.

Now, the chairman of the Finance Committee in the Senate discussed how this measure contains a 1-year extension of relief from the AMT, the alternative minimum tax. He correctly noted there are millions of people who would face a tax increase if the 1-year fix in the Senate bill is not passed. Well, it should be passed. But I believe it ought to be fully paid for.

Fixing the AMT problem in the long term is likely to cost about $860 billion from 2007 to 2017—$860 billion. So it is a big problem.

Well, why do we have this big alternative minimum tax problem that the chairman of the Finance Committee was talking about? In large part, it is because of the way the 2001 tax bill was put together and pushed through by the Republican majority. That measure, very much on purpose, doubled the number of people who would be affected by the AMT in the long term, while only fixing the problem for the first couple of years.

Now, I have here a chart prepared by the Joint Tax Committee, which was prepared when we were considering the 2001 tax bill. People knew about it. What is important to note is, this chart was prepared in 2001 by the Joint Tax Committee. We had this data before us before the Republican majority pushed through the 2001 tax bill. We had it before us. Prior to the 2001 tax bill being passed, we could see that in 2006 the estimate was that about 8.7 million taxpayers would be affected by the alternative minimum tax. Going out to 2010, there would be 17.5 million.

They passed the 2001 tax bill. Look what the Joint Tax Committee said would happened if the bill became law. By 2006, the amount of taxpayers affected by the alternative minimum tax, an estimated 19.6 million—over double what it would have been had we not had the 2001 tax bill passed. In the first years, they are all about the same amount of taxpayers because they included a short-term fix to the problem. It explodes in 2005 and 2006, and it explodes in 2007, 2008, 2009, and 2010.

So for the chairman to say that we have this big problem and we have to do something about it—well, yes, but why do we have this problem? We have the problem to a significant degree because of what they did in the 2001 tax bill. You can actually say that if we hadn't had the 2001 tax bill, about 8.7 million taxpayers would still affected by the alternative minimum tax. Now, if the estimate held, it is 19.6. So you could say over half of those with the alternative minimum tax have it because of what the tax committees did in 2001 and what the Senate did and the House did and what the President signed into law.

I find it of more than passing interest that people now come in and say: My gosh, we have this terrible problem, we have to fix it. I am sorry. You created a large part of the problem. By not fully addressing the AMT timebomb, the 2001 bill was able to encompass a range of additional tax cuts. These other tax cuts were designed in such a way that their costs would explode later on. That is why the President, in his State of the Union Message, said: We have to make the tax cuts permanent. But, it is going to explode.

That is setting the groundwork for my amendment because my amendment seeks to do something about a pair of the provisions which were included in the 2001 tax bill that is grossly unfair. It is a provision in the 2001 tax bill that I defy any Senator—I ask if there is any Senator who has correspondence from individuals saying that they want these two provisions repealed. I would like to see it. These two provisions called PEP and Pease.

Rather than get into the ways to describe it—it is a little convoluted. It has to do with deductions and how you figure deductions on upper income people and exemptions. That is basically it.

What happened in 2001 in the tax bill is they said: Beginning this year, in 2006, we will phase out provisions of the tax laws that were put in in 1990. The first year to go into effect may have been either 1990 or 1991. It was put in by President George Herbert Walker Bush. Why? To reduce the deficit. So we lived with these provisions from 1990 until 2006—16 years.

What my amendment does is three things. It stops the phaseout of these PEP and Pease provisions, which, as I pointed out, helps mostly those making over $1 million a year. And it will cost the Treasury $29 billion between now and 2010—$29 billion that we will be collecting taxes from high-income people which will go into the Treasury between now and 2010 will not be collected. And in the decade after that, the cost of this phaseout is $146 billion.

My amendment stops this phaseout. It reallocates the savings in the coming 5 years to reducing the deficit and a portion of the savings to helping child and dependent care. Again, the need for this is overwhelming and obvious. This fiscal year alone, in order to pay for the Iraq war and hurricane damages, the deficit is expected to climb back toward $360 billion, close to an all-time record. Yet, today on the Senate floor, the majority party is using reconciliation not to reduce the deficit, which is what reconciliation was supposed to be for when we passed it in the 1970s—reconciliation was in order to hold down the deficit. Here we have a reconciliation tax bill before us that doesn't reduce the deficit but increases the deficit even further by passing another $70 billion in tax cuts. It actually increases the deficit.

This is reckless. It is unconscionable. Our first priority must be to use the savings from my amendment. It will reduce the deficit by more than $100 billion in the long term.

My amendment also updates the child and dependent care tax credit. This credit is provided to working families who have children in daycare who need to pay for the care or who need to pay for the care of elderly parents. If taxpayers aren't working, they don't get the credit. This goes to working families. Right now, the maximum amount that can be taken is $3,000 for child or dependent care or up to $6,000 for two or more. That was set some years ago. Clearly, dependent costs have been rising. My amendment would increase the amount of dependent care costs that can be taken against the tax credit to $6,000 for a single child or any other dependent or $10,000 for two or more.

The amendment also increases the percentage of the credit that can be taken. Right now, a taxpayer with $50,000 of income gets a 20-percent credit. Under my amendment, that would increase to 30 percent, and then, as income increases, it would phase out and go down to 20 percent. So for a person making $50,000 a year, this could increase the size of the tax credit from $1,200 a year to $3,000 a year. That is meaningful. That would help working families with their childcare or dependent care costs.

The cost of improving this credit would be about $2 billion, while eliminating PEP and Pease would save about $23 billion through 2010. So the rest of that would be used for deficit reduction. But the big gains would occur in the long term, since the full savings are expected to be over $140 billion in the decade after 2010.

Again, the repeal of these PEP and Pease provisions, which overwhelmingly benefit the wealthiest Americans, was included in the 2001 tax bill. But the effective date was delayed until 2006 which took a far smaller share of what could be spent in the first 10 years. But like other provisions in the 2001 tax bill, it created a bow wave of debt beyond. We simply cannot afford it.

Five years after the passage of the 2001 tax bill, the chickens are now coming home to roost. We now know the true cost of those 2001 tax cuts. They have created a string of record budget deficits, and the deficits are only going to get bigger in the years to come. It is time to restore some measure of order and sanity to the Federal budget.

But the majority party, the Republicans, are not saying "enough." Despite record deficits, despite a war in Iraq that has now cost us over $250 billion and rising, despite the unpaid bills for two devastating hurricanes, they are demanding more tax cuts, more tax cuts overwhelmingly for the wealthiest in our country. They are using this reconciliation process not to cut the deficit but to ram through another $70 billion in tax cuts rather than find offsets, increasing the deficit. To make matters worse, they are insisting that the PEP and Pease tax reductions go forward, adding another $146 billion to the deficit over the next decade. Why? Again, to give more tax breaks to those who least need it.

According to CBO, more than half of the benefits of repealing PEP and

Pease would go to taxpayers earning more than $1 million a year. Ninety-seven percent of all the benefits of repealing this tax measure would go to those earning more than $200,000 a year, 97 percent, half of it to those making over $1 million a year.

Again, when I raised this issue several months ago and I did, and we had a vote on it during the so-called vote-arama last summer—the chairman of the Finance Committee came to the floor and said that my amendment, which would retain the PEP and Pease provisions which had been in the law since 2000, would effectively be a tax rate increase. I am sorry. That is not right.

All I am saying is, don't lower the effective rates on people making more than $1 million and those making over $200,000 a year with these two provisions. That is what the law was. If the provisions were in the law, my amendment would keep those rates the same. What the majority party did in the 2001 tax bill is, they took the effective tax rates and further lowered them.

So it is wrong to say that my amendment will increase rates. My amendment would just keep the rates the same as they have been for 15 years. So there is no effective rate increase with my amendment. All I am doing is saying: Don't cut it out. Keep it in the law. I wanted to clear up that point.

Let me state the obvious. The rich don't need PEP and Pease taken out of the law. I have not heard from any rich people in America saying: Oh, I have to get rid of this PEP and Pease that has been in the law. They hardly notice it. Yet we are just going to give them some more money. We are going to take money from hard-working Americans who have to pay their taxes, and we are going to give it to the wealthy. That is all they are doing by doing away with PEP and Pease. It is income transfer from working families to the wealthy.

I am going to offer this amendment to keep PEP and Pease in. And to use the money to offset the deficit and to help pay for the increased cost of childcare and dependent care.

Again, I believe that by voting for this amendment, Senators have an opportunity to join with the American people to say: Enough of this giveaway to the wealthy. Enough of putting the burden on our grandkids to pay these huge bills. Enough of exploding the deficit. Enough of going to China with hat in hand and asking them if they will just please buy some more of our bonds, which they are doing. That is another issue we have to address—the amount of our debt being purchased by foreign countries, especially by China.

Now, you may say that is not a problem right now. Well, China already finances our debt to the tune of more than $800 billion. That gives them leverage in trade disputes and in diplomatic negotiations. It put our whole economy at the mercy of decisions made by the Chinese Government regarding our bonds they own, which at last look was not a democratically elected government, by the way. They may choose to dump their dollars and hurt our currency and throw us into a recession.

We are increasing our deficits and giving more tax giveaways to the wealthy. I urge my colleagues to vote yes to reduce the deficit, yes for shared sacrifice, and yes to help working class families with their childcare and dependent care.

When the Senate lays down its amendment, I will be offering this amendment. I assume it will be some time tomorrow. I hope to have a few more minutes to expound on it tomorrow.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BAUCUS. Mr. President, I yield 10 minutes to the Senator from Illinois.

Mr. OBAMA. Mr. President, I thank the Senator from Montana.

Let me begin by congratulating Senator HARKIN for his outstanding explanation of some of the flaws in the reconciliation bill that we are receiving from the House. I thank Senator GRASSLEY and Senator BAUCUS for the fine work they are doing in trying to deal with what is probably the biggest ticking timebomb we have in the Tax Code, and that is the alternative minimum tax. It is absolutely a critical necessity for us to address that.

Mr. President, I rise to speak about an amendment to the tax reconciliation bill that I intend to offer at the appropriate time.

The amendment achieves two goals. First, it helps keep a promise the President made to rebuild the gulf coast in the wake of Hurricane Katrina. Second, in a $70 billion bill laden with tax cuts for the wealthy and well- connected, it sets aside less than 1 percent for the neediest in our society.

Two weeks after Katrina made landfall, President Bush stood in the ruins of New Orleans and vowed to "do what it takes" to help the region recover. He also acknowledged the terrifying images of abject poverty that struck Americans on their TV screens and said, "We have a duty to confront this poverty with bold action." Five months later, the President's timid actions have not matched his bold rhetoric. He has not lived up to his promises.

My amendment uses a cost-effective and proven tool in our tax code—the child tax credit—to extend aid to low-income working families affected by Hurricane Katrina.

Enacted in 1997, the child credit allows families with qualifying children to receive a credit of $1,000 per child against their Federal income tax. Unfortunately, the credit is skewed so that many families who need it the most can't get it.

Under current law, families that earn less than $11,000 get no benefit from the refundable child credit. That means that a child is left out of the credit even if her parent works full time at minimum wage, which has not increased since 1997. And the child doesn't get the full benefit of the $1,000 credit until her parent earns close to $18,000, or even more if the child has siblings.

What's worse, if her parents' incomes stagnate, are disrupted for any reason, or the economy stalls and work hours or wages are reduced, the value of the credit drops or even disappears. Under current law, almost 17 million children get less than the full credit.

We all know what happened to the families on the gulf coast due to Hurricane Katrina, and it will be a long time before these families can rebuild their lives. Many of the families in the affected States were evacuated to other areas, and many of them cannot even afford to go back. And the Federal response so far has been inadequate to get these families effectively back on their feet.

We need to do better. At a time when we are debating $70 billion of tax breaks, many of which will benefit those who need the least help, it is critical that we remember the worst off and the most vulnerable members of our society.

When I went to Houston after the hurricane, I met an evacuee from New Orleans who said to me: "we had nothing before the hurricane, and now we've got less than nothing." Life was hard for many families even before Katrina hit. In Louisiana, Mississippi, and Alabama, for example, more than 900,000 children under 17 years of age were so poor that they got no child tax credit or only a partial credit. These States had among the highest rates of children too poor to get the full credit. In fact, more than one-third of the children in Mississippi and Louisiana didn't get the full benefit of the child tax credit. That is what our measure is designed to do.

This amendment, at a cost of less than 1 percent of the overall tax reconciliation bill, will provide necessary assistance to many of these families. The amendment eliminates the income threshold that excluded all children in families with less than $11,000 of income.

My amendment sends a simple message: If you work, your kids get a benefit. It provides a partial credit starting with the first dollar of a parent's income for families who lived in the areas affected by Hurricane Katrina.

The amendment is simple. It says that the children of low-income working parents affected by Hurricane

Katrina will no longer be denied the child credit. You work, your kids get a benefit. If you don't work, no benefit. And if you want the full benefit, you have to earn at least $10,000, which is just about the income of a full time job at minimum wage.

That's a commonsense way to support families with children, especially families that have experienced the huge cost—psychological and financial—of a natural disaster.

My amendment is also narrowly tailored and fiscally responsible. It is aimed at families affected by the hurricanes, and it provides short-term support, expiring in 2008.

With this amendment, hundreds of thousands of this country's most disadvantaged children will see an increase in their credit. Katrina offered us a window into America's poverty. Let's not let that window close without doing something to provide a chance for America's children to rebuild their lives with dignity, hope, and opportunity. That is what this country is about. I hope that is what this Chamber is about.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BAUCUS. Mr. President, I yield 15 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I thank my colleague from Montana.

I begin by once again expressing my appreciation to both he and my good friend from Iowa, the chairman of the Finance Committee, and their staffs. They do tremendous work and we are all grateful to them and the members of their staffs for pulling together important pieces of legislation such as this one. It is not an easy job. It is one of the most important, if not the most important, committees of the Senate. They do a remarkable job and I personally thank them for a tremendous job. I know we don't make their lives any easier when we, who are not on the committee, offer different amendments and ideas, but we have ideas we would like to suggest as well.

Let me mention, if I can—I will state the obvious—that we are a nation at war. It has been said over and over again by others, but maybe not often enough. We enjoy a relative calm and comfort in Washington these days, but as we speak, we know that there are the young men and women of our armed services who are in harm's way in Afghanistan and Iraq. These soldiers, sailors, airmen, and marines are bravely defending our freedom on battlefields overseas, and keeping America safe and secure at home. The President, last evening, in the State of the Union Address spoke to this issue, and the thunderous response from Democrats and Republicans in the joint session of Congress, I think, evidenced the strong support we all feel for these brave men and women who wear the uniform of the United States both on troubled battlefields as well as elsewhere around the globe. They deserve our unending support and admiration for their work.

We all know that over 2,200 men and women in uniform have been killed in Iraq, and over 16,000 have been severely wounded. The U.S. Government should have few higher priorities than taking care of our military veterans who have served in harm's way to defend our freedom.

Sadly, however, the Bush administration in recent years has had other priorities, it would seem. Throughout the last 5 years, the administration failed, in my view, to meet its commitments to our troops and their families, despite the rhetoric coming from the White House. In fact, just days ago we learned the Pentagon has now only started to address the inexcusable and shocking shortfalls in troop protection. Three years into the Iraq war and more than 4 years after the start of the conflict in Afghanistan, the Pentagon has just now decided to order more than 200,000 additional sets of body armor. Sadly, it may take another year before all of this equipment reaches our soldiers and marines deployed in harm's way.

The administration's failures have not ended there. When our troops have come home, the Government's efforts to meet their needs also has fallen short. In fact, last year, despite adamant denials by the administration, we now know as a matter of fact that the President's 2006 budget fell over $1 billion short of meeting veterans' health care needs. Although our colleagues such as DAN AKAKA of Hawaii and PATTY MURRAY of Washington, had said so from the very outset last year on this floor and warned about what was being done, Congress had to step up as late as June to restore funding in an emergency supplemental.

Such an occurrence, in my view, is unconscionable—that the White House's Office of Management and Budget seemed to treat America's veterans and their health care needs as almost an afterthought. I fear the administration is poised to repeat that mistake in 2007 as well.

Indeed, we already know that our Federal resources are straining to meet veterans' needs, particularly the needs of military personnel just returning from Iraq and Afghanistan.

According to the Department of Defense, 120,000 servicemembers, or 28 percent of military veterans returning from Central Asia, are being treated in the VA system. But for some reason, the administration refuses to incorporate those very figures into its development of the VA budget.

Other medical facilities treating America's brave men and women are straining as well—military hospitals, such as Walter Reed, put on the base closure list by the administration; State veterans facilities funded by State budgets already stretched far too thin, such as my own State of Connecticut's State Veterans medical and residential facilities at Rocky Hill; and private health facilities that help veterans throughout the country.

It has been noted recently in the press that a rehabilitation center for amputees and other wounded soldiers is being built near the Brooke Army Medical Center. This critical facility, to be established at Fort Sam Houston, will be the nation's premier facility for treating troops who have lost limbs, suffered severe burns, blindness, and head injuries on the battlefields of Iraq and Afghanistan.

But as the San Antonio Express-News recently asked on its front page: Why isn't the Federal Government paying for any of it? In fact, although eventually this facility will be handed over to VA and Army personnel to administer, its construction is being fully financed with donations of private citizens.

I admire those making these contributions to support this facility for our heroes, but the idea that the Federal Government would not be taking better care of our veterans, I think, is an outrage. But apparently, the Bush administration believes that our military veterans should have to rely on the charity of private citizens to provide the resources for their critical care—because to the White House, tax breaks for millionaires seems to be a far bigger priority.

Such logic simply makes no sense. It is our Federal Government's responsibility to meet its obligations to our combat veterans.

I mentioned the other night that I had a knee replacement operation a few weeks ago. I go downstairs in this very building and I get rehabilitation. We have a wonderful facility where I can spend an hour each day and get rehabilitation. I am happy to do that.

Explain to this Senator why it takes private donations to provide facilities for rehabilitation for veterans coming back from Iraq or Afghanistan who lost a leg, is blind, or has suffered burns or other serious injuries? There is something wrong with a situation when Members of Congress can get taken care of, but our veterans do not.

The amendment I will be offering tomorrow will provide critical resources to facilities such as the Center for the Intrepid in Texas which, due to current shortfalls in the federal government, is being constructed using exclusively private funds.

Again, I respect immensely those making the private donations, but we have to do better on behalf of our veterans than we are doing. It is unconscionable that we now have to rely on the charity of citizens to establish important rehabilitation centers for our military veterans.

We already know that our Federal resources are being stretched thin as a result of this administration's policies. The package of budget reconciliation legislation this body has considered over the previous few months presents us with a clear choice in philosophies: Do we invest in the priorities that will meet our commitments to America's brave men and women who have sacrificed on the battlefield for our country, or do we continue to prolong a primitive agenda that has failed to address the major challenges of our era?

We heard the President at least begin to say the right things in his State of the Union Message last evening to support our troops, and I thank him for that, but it is not enough just to talk about these issues; we need to do far more. We need to start matching our words with our policies. Rather than put Federal resources toward important facilities, including the ones I have mentioned, the President has decided to reward the wealthiest of our fellow citizens with these tax cuts.

One could argue that no Presidential administration in history has been as generous toward the ultra-affluent as this administration has. Under the tax breaks of 2001 and 2003 alone, individuals with incomes greater than $1 million a year, who represent two-tenths of 1 percent of the population, have received more than $125 billion in tax-cut benefits. Meanwhile, our soldiers and veterans are being told to go without essential items and rely on private donations to take care of them with items such as body armor and the health care they need and deserve.

If we cancel the final 2 years of the capital gains and dividend tax breaks for two-tenths of 1 percent—two-tenths of 1 percent, Mr. President—of individuals with incomes greater than $1 million—only two-tenths of 1 percent—then we can save approximately $28 billion, while still preserving reduced rates for 99.8 percent of all the other Americans.

My amendment would make this change, and with the $28 billion saved over the next 2 years, funds would be distributed to health facilities that treat military personnel and veterans. These facilities would include, as I mentioned, Federal military hospitals, VA hospitals and clinics, State and other institutions that treat military veterans throughout our Nation. We owe it to America's men and women in uniform.

This is not hyperbole. These are the facts. It is tragic, in this day and age, that we can't do a better job of servicing these brave individuals. So at an appropriate time tomorrow, I will offer this amendment which will do what I have been talking about.

Again, I thank my colleague from Montana and my colleague from Iowa for their gracious leadership on this bill.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield 10 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank the ranking member of the committee, Senator BAUCUS of Montana, for yielding a few minutes to me.

We are in the process of considering an important tax bill, the reconciliation bill. The chairman of the Finance Committee, the Senator from Iowa, is on the floor now. I am about to offer an amendment which I have offered before. Senator GRASSLEY is aware of this amendment. I am hoping this time to win his support for the amendment. Let me tell my colleagues very briefly what amendment No. 2701 will do. I know the time will come when we can make a specific offer of these amendments.

We have choices to make on the floor of the Senate just as families across America have choices to make every day. We have to take a limited amount of Federal revenue and decide who will receive it. In this case, we are talking about who will receive a tax break. The tax break is rather substantial for the wealthiest people in America. We can't quite put our finger on how many may benefit from this tax break that will give them added benefits if you claim capital gains or dividends as income, but we know that the amount is substantial. In fact, the estimates I have suggest that over a 2-year period of time, the extension on capital gains would cost some $20 billion. That is the reality.

So we have to decide whether giving a capital gains tax break to the wealthiest people in America is the best expenditure of America's resources. The only way to make that choice is to take into consideration what else we might do with that money. My amendment No. 2701 makes a specific suggestion, and here is the reasoning.

There are 9.1 million children in America without health insurance. Not having health insurance has its consequences for these children. According to the Center for Studying Health System Change, uninsured children, when compared to privately insured children, were 3½ times more likely to have gone without needed medical, dental or health care; uninsured kids are four times more likely to have delayed seeking medical care; five times more likely to go without needed prescription drugs; 6½ times less likely to have a usual source of care.

Let me give a hard number. From the year 2003, 6 million children in America went without needed health care. The President last night challenged us and America to do something about health care in America. The amendment which I am offering does something directly.

While Congress has failed to address the overall problem of health care coverage, we should, at the very least, take steps to extend the coverage of health insurance to our children to make health insurance accessible, affordable, and quality health insurance coverage.

Kids are the least expensive people to insure. The average cost to cover a child under the SCHIP program is $93.25 a month. So the total cost to the Federal Government to cover all 9.1 million children in America under SCHIP would be about $7 billion a year.

Remember that figure I mentioned earlier. The capital gains tax break going to the wealthiest people, primarily to the wealthiest people in America, is going to cost us, over a 2-year period of time, $20 billion. We could cover all the kids in America for 2 years for the cost of the capital gains and dividend tax cuts and still have money left over for deficit reduction.

My amendment will make it possible for all States to do what my home State of Illinois is already setting out to achieve: Make sure every child in my State has health insurance.

I salute my Governor, Rod Blagojevich, who has engineered this approach. If Illinois achieves it—and I believe we can under his leadership—we will set a standard for the Nation. It will be inexcusable for States and for our Nation not to insure all the children.

If you are going to extend health insurance across America, wouldn't you start with our kids?

My amendment would provide grants to States, safety-net providers, schools, and other community and nonprofit organizations to facilitate the enrollment of 6.8 million children currently eligible for SCHIP but not enrolled.

It will make all uninsured children in America eligible for the SCHIP program.

It will establish a grant program under which a State may apply for a waiver to expand coverage of children in their State.

It will encourage States to cover all insured children by providing them with an enhanced matching rate under SCHIP if they submit a plan to cover all children.

The majority of the benefits of the capital gains and dividend tax cuts go to households with incomes over $1 million a year.

Think about that. Do we want to provide a tax cut for families and households making over $1 million a year or do we want to provide health insurance for 9 million uninsured children in America? That is our choice. It is a choice on which we can vote.

With amendment No. 2701, Members of the Senate can make that choice. So like families in America, we will decide our priorities. A family has to decide whether it is going to buy a big car or a small car, an expensive vacation or a modest one. We have to decide whether households making over $1 million a year are a higher priority than 9 million uninsured children. We have to decide whether giving those households more money to put into their savings account, the opportunity to perhaps buy another home or another car or a boat or some luxury item is more important than basic health care for children.

I think it is a pretty simple choice, and I hope that my colleagues on both sides of the aisle will remember what the President told us last night: Health care is a priority for America. If it is a priority, with amendment No. 2701, we will be able to move this country closer to the goal of full insurance. Out of 46 million uninsured Americans, we can make sure that the 9 million most vulnerable children are covered.

I think this amendment speaks to the priorities Americans want us to address. There is no special interest group standing outside the door begging for health insurance for children. There are plenty all around Washington begging for tax breaks for millionaires. To whom are we going to listen? The special interest groups for the millionaires or the children of families across America who need health insurance?

We should make giving kids a healthy start in life a priority over giving millionaires the high life.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I hope every taxpayer in this country knows that what they heard was a philosophy that every dollar you make belongs to the Government, and we are going to let you keep a little bit of it.

We kept hearing about tax cuts costing us, tax cuts costing us. If we give you a tax cut, it is costing us in Government, and we can't do as much for you as if we tax you more.

So there is a basic philosophy behind this legislation whether we ought to let tax cuts stay in the pockets of Americans and let them spend it and do the economic good and let the marketplace decide how the goods and services in this country be divided or whether we ought to tax at a higher rate and bring it to Washington and let a few politicians make a decision on how to spend it.

I opt for trusting the American people with how they spend their money and the growth that comes from the investment that creates jobs that causes our economy to expand.

I will have more to say about some of the other speakers who have been in opposition to this bill as soon as the Senator from New Hampshire concludes. I wanted to make that point before my good friend got out of here because a lot of times he never gets a chance to hear what I say, and I wanted to make sure he heard it.

I yield whatever time he might consume to the Senator from New Hampshire.

Mr. GREGG. Mr. President, I thank the Senator from Iowa. I associate myself with the Senator's comments. I agree, as I think most Americans do if they apply common sense, and this is a little Midwestern common sense we are getting from the Senator from Iowa, as we always do, which is that the Government doesn't own this money. This money doesn't belong in Washington. This money belongs in the pockets of the taxpayers who earned it. And, yes, taxes must be paid, but they must be paid at a reasonable rate, a rate which allows people to continue with their lives, to make the investments to start a small business or to send a child to college or to buy a home or purchase a car.

You cannot tax people simply because somebody in Washington has a good idea and they want to pay for it and they figure, Let's go out and take it from the people working for a living and bring it to Washington and spend it.

It reflects a certain elitism and arrogance to take that position, in my opinion, basically saying to average Americans that those of us sent to Washington—and this great bureaucracy grown up in Washington—know more about how to manage your life than you do as working Americans. If you turn your money over to us, we will do a better job of managing that money than you can do. I don't agree with that. I think the Senator from Iowa made that point, an appropriate point.

The point I want to reinforce is that the Senator from Iowa, as always, has done yeoman's labor to bring forward a very strong bill to extend tax cuts or tax proposals which benefit working Americans. The irony of this is that it is being attacked from the other side of the aisle with enthusiasm on the basis, essentially, as the Senator from Iowa has pointed out, that tax cuts and extending tax cuts is a bad idea; that this money should stay in Washington. But, also, the irony of this is most of the items within this bill are actually supported from the other side of the aisle, or will receive significant votes from the other side of the aisle if they are taken up separately. These are items like the alternative minimum tax patch, items like extending the R&D tax credit, items like the deduction for teachers who spend money for their classrooms so they can bring crayons or whatever they want into their classrooms. Those are items which have general support around here. If you add them all up they make up the vast majority of this tax package.

Yet if you were to listen to the generalities of the language from the other side of the aisle, you would think this proposal to extend these tax cuts was an outrage, that we were somehow taking money out of Washington and transferring it to rich people across the country. That is not true at all. It is not true at all. These tax cuts, in fact, basically have the impact of giving working Americans the opportunity to take advantage of the dollars they earn and not have them taken by the Federal Government.

I think equally important is the issue of the one item of tax policy which does not happen to be in the Senate bill but which is in the House bill, which is the extension of the capital gains and dividends rates, where we do get this debate or this argument that this is a tax which basically benefits wealthy Americans. To begin with, the practical effect of these proposals, the reduction in capital gains rates—or the maintenance of the capital gains rate at 15 percent and the maintenance of the dividend rate at 15 percent basically benefits the Government because the effect of those two tax rates is that it generates significant economic activity which results in more taxes coming into the Federal Treasury.

You do not have to believe me on this. Just look at the numbers. The numbers are hard, they are real, and they are there. Prior to the capital gains rate going into place, the Joint Tax Committee estimated that there would be $45 billion raised from capital gains in 2003. But after the cut, it turns out there is $50 billion. That is a $5 billion change.

Then in 2004 it was estimated there would be $44 billion with the capital gains rate at 15 percent. After the change in rates, the Federal Government got $60 billion. In 2005 it was estimated that with higher rates there would only be $49 billion coming in through capital gains taxes. It turns out with the lower rates the Federal Government got $75 billion.

As a result of lowering the capital gains rate, the Federal Government received $47 billion we didn't expect to get. Those are Joint Tax numbers. Those are hard numbers. Those are real numbers—$47 billion. Why is that? It is very simple. It is called human nature, and human nature drives what revenues are here at the Federal Government. If you are going to have a high tax on someone when they sell their home or when they sell their business or when they sell some sort of the stock that they may have purchased a long time ago and it has appreciated in value, the odds are that person may make a decision: I don't want to pay all those taxes upon making that sale, so I am just going to hold on to that asset. As a result, they hold on to the asset and the Federal Government does not get it. There is no sale, no capital gains tax as a result of that, and the Federal Government doesn't get any income from that event.

But when you lower that tax rate, as we did under the President's suggestion, a person says: Now I can adjust to this. I can make this sale and I can live with this tax rate and then I am going to take the profits from that sale and I am going to reinvest them. That creates two events that are very positive for the Federal Government and for taxpayers generally. No. 1, it is a taxable event so that money comes in. As we have seen, $60 billion came in that was not there before, or we did not expect it before because the people were making that activist decision now that the tax rates were lower.

No. 2, what was money which was locked up in maybe a nonproductive economic activity is moved. By human nature it is going to be moved into something that is more productive, and that is going to generate more economic activity. Maybe somebody is going to start a small business or something with those extra dollars they now have, and that is going to create jobs. It is just basic economics that when you reinvest money like that you have the money go to a much more efficient use, which produces a more productive, more efficient economy, and therefore more jobs. So you get more tax revenues and you get more jobs out of a lower rate. This has been proven time and time again. It was proven by the Kennedy tax cuts. That was President John Kennedy. It was proven by the Reagan tax cuts, and now it has been proven by the Bush reduction in capital gains and dividends rates.

Reducing those rates creates more economic incentive for people to be productive, and it actually generates more economic activity which is taxable and therefore generates more income to the Federal Treasury, and as a result $47 billion of income came in that we would not otherwise have had.

I misstated, I said $60 billion before. It was $47 billion during that 3-year period we would not have gotten before—$47 billion more than was anticipated.

Last year, as a result of this economic activity that was created by this engine of productivity which was generated by having lower tax rates, we saw the biggest jump in revenues, I think, or the second biggest jump in our history. We picked up literally tens of billions of dollars of income as a Federal Government that we did not expect to get. That helped reduce the deficit, and it also helped us carry on the business of the Federal Government, specifically the need to fight terrorism, invest in health care, invest in education.

These tax cuts have been extraordinarily positive, and the extension of these rates is critical to maintaining that economic activity. But to get back to one point here, which is this: this package of proposals coming out of the Senate has very broad support in this body, and it is a good package in general. However, there is a single item that I happen to take reservation with, and that is the deductibility of State and local sales taxes.

Why do I have concerns about that? It is not the biggest item in the package. The R&D tax is bigger, and obviously the AMT patch is bigger, but the deductibility of State and local taxes creates an atmosphere where we give to high tax States an incentive to increase their taxes because we allow the people in those States to deduct the taxes as those taxes are increased. So you are basically transferring taxing room, if you will, available assets that may be taxed from the State governments to the Federal Government, which allows those States which pursued a high tax policy to benefit and creates, actually, an incentive in those States to increase those taxes.

I don't happen to be a big supporter of the deductibility of State and local taxes, but I suspect the majority of the other side is, even though they are railing against this bill. My view is a State such as New Hampshire, which doesn't have a sales or income tax and takes a very frugal approach to government, should not be penalized for that at the Federal level by turning a deduction over to other States, thus reducing Federal revenues, which encourages high-tax States—such as New York, Connecticut, Illinois, New Jersey, California—to basically raise their taxes.

This comes to the irony of this bill. Even though it is being attacked profusely and aggressively by the other side, it turns out probably the majority of the Senators on the other side support deductibility of State and local taxes, sales taxes. As a matter of fact, all those high-tax States I have listed have only Democratic Members of the Senate. This bill benefits them. I would like to take a test and offer an amendment to strike that language from this bill and see whether there was strong bipartisan support for that type of language. My own view is from a tax policy standpoint it makes little sense to have it in here.

In a general sense, what we are dealing with here is the economics of what happens when you give people the chance to keep more of their money. The simple fact is, what happens is that when you give people a chance to keep more of their money, they are more productive and they have a bigger incentive to go out and work and therefore they create more economic activity which in turn creates more taxable events which in turn creates more revenue for the Federal Government.

We should continue tax proposals which do expand and energize the creativity of the economic entrepreneur. A key element of that is to do the capital gains and dividend extension. If we fail to do that, in my opinion, we are going to have a fairly significant negative effect on revenues coming into the Federal Government, and instead of having $47 billion revenues coming in as a result of a lower capital gains tax rate, we will probably see we actually go back to the original Joint Tax proposals or estimates, and we will lose revenue. So it is not a revenue gainer to our Government to overtax people.

Although I said it in a convoluted way, it is just a summary or restatement of what the Senator from Iowa said in a very down-to-earth and commonsense way. Therefore, I congratulate the Senator from Iowa. I appreciate his bringing this bill forward and look forward to working for its passage.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I appreciate hearing from all my colleagues, both Republicans and Democrats, about everything that is wrong with the AMT because there is a lot wrong with the AMT. But I take great pleasure in trying to remind, particularly my Democrat colleagues, that a Republican-controlled Senate and House in 1998 completely repealed the alternative minimum tax. They completely repealed it, sent it to President Clinton, and he vetoed it. So I don't want anybody telling me how bad the alternative minimum tax is and that something ought to be done so that middle-income Americans, who were never intended to pay the tax, don't get caught paying it.

Besides the repeal that we proposed in 1998, I can also point to a lot of tax bills since then where we have done what we call hold-harmless so no more people are hit by the alternative minimum tax because of tax changes that you make in any tax bill which indirectly, then, affects who might pay the alternative minimum tax.

So I specifically want to take issue with the remarks of my colleague from Iowa, Senator HARKIN. It was suggested the tax cuts have contributed to this AMT problem. That demonstrates a complete misunderstanding of what we have done in several tax bills, going back to the year 2001, or it at least doesn't give us credit for proposing repeal of the AMT in 1998.

It is true that we are required to act to extend the hold-harmless provision as the Senate has done in Senate-passed reconciliation bills and in the years going forward—the bill we are on now and in the bills going forward. But that is the point of the hold-harmless. Of course, it is critically important that we included AMT relief in our bill. Moreover, it has been the subject of public debate, as all my colleagues likely know. But we take issue with analyses that suggest that tax cuts are the source of enhancing the AMT problem. Quite to the contrary, the fact is that failure to index the alternative minimum tax for inflation for the last 35 years is the key source of the problem.

I don't know why folks cannot own up to that fact and recognize that at a minimum we are going to have to index the alternative minimum tax going forward, if it is meant to serve its original purpose of hitting just very high-income people who avoid paying any income tax through use of legal loopholes and not hit middle-income Americans.

Again, for the understanding of my colleague from Iowa who spoke on this point—but other people have spoken on it as well, mostly from the other side of the aisle—in 2001 and 2003, in those tax bills, we made sure that the alternative minimum tax would not impact any more taxpayers as a result of the tax reductions of those bills.

So it is entirely wrong to say that tax cuts bring about the AMT problem or that we don't care about that problem or that we didn't do anything about that problem because we did in each of those tax bills.

We have to continue to uphold the promise that we made that we were not going to tax any more people with the alternative minimum tax.

This is a very important part of this reconciliation bill that we passed back in November that we are now making a rerun of this year.

This bill includes $30 billion of alternative minimum tax relief to ensure that Senator HARKIN's argument is, in fact, untrue, and it is also untrue as far as the 2001 tax bill and the 2003 tax bill is concerned.

I wish to give some figures so people know what this is. It is not just in the State of New Jersey, as we heard from the junior Senator from New Jersey. It is not just a problem in Illinois, where we heard from the junior Senator from Illinois. It is not just a problem in Massachusetts, as we heard from the Senator from Massachusetts. The alternative minimum tax problem is a problem in Iowa as well.

Another point that my colleague brought up—I don't think anybody else has talked about the arcane issues of what we call PEPS and Pease. I don't want to say those things without explaining what they are. They were put in, I think, in the 1990 tax bill because nobody wanted to go over the 40-percent marginal tax rate. Yet they wanted to raise more money and have a higher marginal tax rate on a little higher income people.

What was done in that tax bill to camouflage a higher marginal tax rate was to leave the marginal tax rate at 39.6 percent, but for certain people above—for certain people of higher income—then phase out a lot of the exemptions that every other taxpayer can use and effectively raise the marginal tax rate—I do not know for sure, around 42 percent—maybe people who were involved in subchapter S corporations, maybe even a marginal tax rate around 45 or 46 percent. I am not sure exactly what those percentages were.

But the idea was the terms "PEPS" and "Pease" were put into the Tax Code to camouflage higher marginal tax rates by making it look like nobody ever paid a tax rate above 39.6; whereas, the fact was a lot of taxpayers got hit at a marginal tax rate above 40 percent—in some cases quite a bit above 40 percent.

I am very troubled by the comments of my colleague regarding PEPS and Pease because they are hidden in the marginal tax increase that affects millions of Americans, including thousands of Iowans. We have 32,906 Iowans that are hit by the Pease part of the Tax Code on their returns. And we have 14,000—almost 15,000—Iowans that are hit by what we call the PEPS part of the Tax Code on their returns.

If somebody tells me that these are tax cuts for the millionaires, let me tell you, I know that we don't have 32,900-plus, or 14,900 millionaires in my State of Iowa.

So we are talking about camouflaging the Tax Code to raise the marginal tax rate on a lot of middle-income Americans.

That was done in the 1990 tax bill. Starting this year, under the 2001 tax bill, these are gradually going to be phased out.

I think it is truth in taxing, truth in packaging, that if you have a marginal tax rate of 35 percent, it ought to be a marginal tax rate of 35 percent. And you shouldn't remove a lot of exemptions from a certain number of people to raise it up to 40 or more percent. If you want to tax people that high rate of taxation, you ought to have the guts to do it.

We took those camouflage things out of the Tax Code because we wanted a marginal tax rate of 35 percent which was transparent, with no hidden additional taxes.

Now it is said that we are trying to benefit millionaires through this, when 33,000 and 15,000 people—that would be 48,000 people in my State—are being hit by those taxes.

To listen to my colleagues, you would think that PEPS and Pease was paid only by millionaires. Nothing could be further from the truth. PEPS and Pease hit millions of families, two-income families that are struggling to pay their mortgage, as most Americans do, struggling to send their children to college, as most families do, or people who want to contribute to their churches and charities, as most middle-income Americans do.

In fact, the families hit by PEPS and Pease are very often the same families hurt by the AMT that my colleague was expressing so much concern about.

PEPS and Pease is bad tax law. It is dishonest tax law. It complicates the Tax Code. It hurts families and discourages charitable giving. It is bad tax law that needs to be shown the door.

We did that in the 2001 tax bill, truth in taxing, and somebody is finding fault with it. It isn't a millionaire tax. Keeping PEPS and Pease is a "Full Employment for Accountants Act" because of that complicated Tax Code, and the people who have to deal with it are going to hire more accountants to accomplish the goal that we have.

We have heard from many Senators today, singing the old song that the problem of the deficit before us, the budget deficit, is because we cut taxes. The tax cuts that have brought about our economic growth and created millions of jobs is good policy. I don't expect anybody to accept Senator GRASSLEY, the Senator from Iowa, making that statement. There is no one with better credibility on economic and tax policies than Chairman Greenspan. And he has made it very clear that the 12 quarters of economic growth that we have had, creating 4.6 million new jobs, and a higher rate of growth than we had even during the 1990s—and most of my Democrat colleagues would think the 1990s was the best economy you could ever have. But in fact, the economic growth of the last 12 quarters is higher than the average growth we had during the previous administration. Chairman Greenspan said that the tax cuts are responsible for this growth.

To get back to the reality of deficits, it is caused by record spending. It is done by Republican Congresses or Democratic Congresses, whether we have a Democratic President or a Republican President. Spending beyond our means has caused our budget deficit problem.

Because of the tax cuts, revenues are way up—record highs projected.

Chairman Greenspan gives Congress credit for the tax cuts of 2003 bringing about the best economic growth we have ever had and which has resulted in $270 billion more coming into the Federal Treasury from income taxes in 2005 than we had in 2004; in fact, so much beyond projection that we had $70 billion more coming in throughout 2005 than we even thought we would have coming January 1, 2005.

The answer is not to raise taxes and hurt our economy. The answer is to do something on the spending side of the ledger.

We can say, after the vote in the House of Representatives this very day by a 2-vote margin, they passed our budget reconciliation bill, saving $39.6 billion over the next 5 years that Congress would have otherwise spent if we had not passed that measure. We didn't get any help from the other side of the aisle on getting this budget reconciliation through.

That came from the fiscal responsibility of people on this side of the aisle.

Whether it is tax cuts, spending cuts, tax increases, whatever the issue might be, if you listen to your people in town meetings—and I only have the opportunity to listen to Iowans in my town meetings because I don't represent anyplace else in the country—I know I don't have people coming to me and saying: I am undertaxed, tax me more. But I surely have people come to my town meetings and saying: You guys are responsible for your spending there in Washington, DC. Get your spending down.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for quorum call be rescinded.

The PRESIDING OFFICER. Without objection, so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

IRAQ

Mr. STEVENS. Mr. President, I ask unanimous consent that the attached Wall Street Journal article, "Iraq's Future, Our Past," be printed into the RECORD. This article was written by Mr. Rastislav Kacer, Mr. Petr Kolar, Mr. Janusz Reiter and Mr. Andras Simonyi, respectively, the Slovak, Czech, Polish and Hungarian Ambassadors to the United States.

I applaud the Ambassadors' leadership and the work of the Visegrád Group, a partnership of their four countries. Emerging out of a shared history of dictatorship, these Central European countries strive for cooperative and democratic development. They deeply understand the challenges of an emerging democracy but champion its ultimate rewards. Their vision and experience are strong examples for the country of Iraq and they stand ready to lend a helping hand.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Dec. 16, 2005]

IRAQ'S FUTURE, OUR PAST

(By Rastislav Kacer, Petr Kolar, Janusz Reiter, and Andras Simonyi)

When it comes to tyranny, we believe we can offer some personal experience. After all, it was only a short while ago that our countries emerged from Soviet oppression. During the decades of dictatorship, our peoples' attempts to restore freedom and democracy were crushed. Who would have thought in 1956 in Hungary, in 1968 in Czechoslovakia, or in 1980 in Poland, that we could get rid of the dictatorial regimes in our lifetimes and shape our own future?

The memories of tyranny are still alive in the minds of many Czechs, Hungarians, Poles and Slovaks. We also remember the challenges we faced early in our democratic transition. It is a testament to the resilience of our peoples that we are where we are now—members of NATO and the European Union, and strong allies of the U.S. We got here by believing in the transformational power of democracy and a market economy. But we needed others to believe in us, too. We could not have made it alone. We needed the perseverance and support of Western democracies for freedom finally to arrive.

The attainment of our immediate goals of stability and prosperity could have made us complacent. It has not. We feel that as free and democratic nations we have a duty to help others achieve the security and prosperity that we now enjoy. That is why we have been part of the coalition to help democracy emerge in Iraq.

Establishing democracy in Iraq was never going to be easy. Yet it is essential for the political and economic stability of the entire Middle East—and also vital for the security of our countries. We are convinced that for Iraq to become a vigorous partner in the war on terrorism, the Iraqis will need our continuous help for rebuilding their country, as well as for establishing democratic institutions and a market economy. The good news is that we are not alone; it's a truly international partnership, based on a U.N. mandate. More than 30 nations are on the ground with the coalition and NATO, and more than 80 have signed up for the "new international partnership" with Iraq. European countries work closely with the U.S. on strengthening stability and democracy in Iraq, and the U.N. is providing key support to achieve our goals.

The Visegrad Group, which includes our countries, has been one of the most effective regional partnerships in Europe established after the changes of 1989. With our vast experience in transitioning from dictatorship to democracy, we can be of special help. Although the Central European reality is quite different from Iraq, we offer our assistance in building democratic institutions as well as civil society. We can share the successes and challenges of our transition with the Iraqis, as we all know that freedom comes at a price. The experiences from the area of responsibility of the Multinational Division Central-South prove that transformation in Iraq can be completed with success. Right now we are transferring more power and responsibilities to the local Iraqi authorities, which, thanks to our assistance, are capable of securing their future.

Democratic transition is a long, painful process. It requires sacrifice. But, more than anything, it requires a belief that democratic values will prevail and people will have a better life as a result. We had that belief to guide us during the most difficult years of transition and we want to keep that belief alive in the people of Iraq. Maybe it takes countries with vivid recollections of tyranny to serve as the institutional memory of a larger community of democracies. If so, we are ready to fulfill that role.

SOUTH AMERICA

Mr. McCONNELL. Mr. President, earlier this month I led a delegation to South America to review security, trade, and foreign assistance issues. Joining me were Senators MARTINEZ, BURR, and THUNE. With the exception of my friend from Florida, this was the first visit to Brazil, Argentina, and Chile for my colleagues and me. In short, this is a region full of promise—and problems.

Let me begin my remarks with a word of appreciation to the Governments of Brazil, Argentina and Chile for their excellent cooperation on security matters, including countering terrorism and narcotics. These are shared threats and pose myriad challenges, whether in the case of Brazil's massive border—particularly with Colombia and Venezuela—the notorious tri-border area—TBA—of Brazil, Argentina, and Paraguay, or vicious terrorist attacks against Israeli and Jewish interests in Buenos Aires in the 1990s. Given the unequivocal support for indigenous coca growers by Bolivia's new President, Evo Morales, I encourage the State Department to further strengthen cooperation on security matters with these countries in the months and years ahead.

Brazil, Argentina and Chile also deserve recognition for their participation in United Nations peacekeeping missions, particularly in Haiti. While not always popular with domestic constituencies, their respective contributions provide critical support for international efforts to secure stability in the region. Peacekeeping is not without risks, and I condemn attacks against peacekeepers in Haiti, including the recent incident in the Cite Soleil district of Port-au-Prince that killed two Jordanian nationals.

Brazil, Argentina and Chile should be recognized for their support of democracy and human rights throughout the region. While we did not see eye-to-eye on every issue, it is clear everyone is watching Bolivia and Venezuela closely. In one meeting in Brasilia, Senator MARTINEZ counseled that in determining the new agenda of President Morales, the region would be wise to "trust but verify." This is a wise maxim whether assessing coca cultivation or threats to nationalize the energy sector in Bolivia, or professed support for democracy and justice in Chavez's Venezuela.

In general, there is significant room for improvement in U.S. trade relations with Brazil and Argentina, particularly regarding intellectual property rights and demonstrable support for the free trade area of the Americas negotiation. Through meetings with business leaders in Brazil and Argentina, the delegation heard first hand many of the challenges facing the business community in both countries. President Kirchner would be wise to listen to the concerns of international companies doing business in the region regarding price controls and the harassment and intimidation of business leaders.

As one businessman familiar with Argentina's investment climate quipped, "If you want to make a small fortune in Argentina, go there with a big one." The challenge for President Kirchner is to maintain expansion of Argentina's economy by attracting investment and capital—and not aiding in its flight.

Let me close with a word or two on Chile, a country clearly committed to democracy, the rule of law and free trade. Our delegation was heartened by the views of our Chilean friends and U.S. country team that regardless of the outcome of the January 15 elections, won by Michelle Bachelet, democracy was alive and well in Chile, and that our bilateral relationship would remain strong. I am pleased our bilateral free trade agreement, FTA, with Chile has been beneficial to both U.S. and Chilean businesses, with exports boosted by an estimated 40 percent since the FTA's implementation in January 2004. Still, there is room for improvement, and I encourage continued engagement on intellectual property rights issues. Ambassador Craig Kelly and his team are doing a terrific job in Santiago, and I have every confidence that under his capable leadership relations will continue to be vibrant and strong.

Mr. President, I have shared a few, brief observations of this trip, but I hope Senator MARTINEZ,—who has much experience in this part of the world, will speak to this body on his views of the region and, in particular, the challenges to U.S. policy and business interests posed by Presidents Chavez of Venezuela, Morales of Bolivia, and Castro of Cuba. There is much going on in South America deserving of the Senate's close scrutiny.

HAMAS

Mr. McCONNELL. Mr. President, I wish to take a brief moment to speak to the issue of U.S. foreign assistance for the West Bank and Gaza.

Hamas's victory at the polls poses immediate challenges to the United States, the European Union, and other countries and organizations that provide humanitarian and development assistance to the Palestinian people. Perhaps frustrated with the corruption of the ruling Fatah Party, the slow pace of reforms, or, more darkly, supportive of indiscriminate violence against innocent Israeli men, women, and children through terrorist attacks on Israeli soil, Palestinians cast their ballots for an organization that supports terrorism and rejects Israel's right to exist.

In the West Bank and Gaza, Palestinians had a choice between ballots and bullets—and chose both.

As domestic and international observers appear to have deemed the election process as credible, Palestinian leadership choices are now crystal clear. But as President Bush and Secretary of State Rice have already said, the United States will not provide assistance to a foreign terrorist organization.

The ball is now in Hamas's court. Either its leadership will renounce terrorism and violence against Israel in both word and deed, recognize Israel's right to exist, and—in President Bush's words—be a "partner in peace"—or they will come to the harsh realization that governance in the territories absent foreign aid is an impossible task. In the past, American taxpayers have paid for Palestinian private sector development, health, community services, and higher education. This generous support is now in real jeopardy.

As the chairman of the State, Foreign Operations and Related Programs Subcommittee, I intend to continue to follow developments in the region closely and to work with the administration and others to determine the best and most appropriate course of action regarding the provision of U.S. foreign assistance in the wake of the Palestinian elections.

To paraphrase the Israeli diplomat and politician Abba Eban, Hamas literally cannot afford to miss this opportunity to renounce terrorism, recognize Israel, and embrace responsible governance. If they do that, they will find the missed opportunity very costly.

HONORING OUR ARMED FORCES

Mrs. BOXER. Mr. President, today I rise to pay tribute to 15 young Americans who have been killed in Iraq since December 9. This brings to 523 the number of soldiers who were either from California or based in California that have been killed while serving our country in Iraq. This represents 23 percent of all U.S. deaths in Iraq.

LCpl Samuel Tapia, age 20, died December 18 from small-arms fire while conducting combat operations in Ar Ramadi. He was assigned to the 3rd Battalion, 7th Marine Regiment, 1st Marine Division, Twentynine Palms, CA. During Operation Iraqi Freedom, his unit was attached to the 2nd Marine Division.

SGT Regina C. Reali, age 25, died December 23 in Baghdad when an improvised explosive device detonated near her humvee. She was assigned to the Army Reserve's 351st Civil Affairs Command, Mountain View, CA. She was from Fresno, CA.

SGT Cheyenne C. Willey, age 36, died December 23 in Baghdad when an improvised explosive device detonated near his humvee. He was assigned to the Army Reserve's 351st Civil Affairs Command, Mountain View, CA. He was from Fremont, CA.

SPC Sergio Gudino, age 22, died December 25 in Baghdad when an improvised explosive device detonated near his M1A1 tank during combat operations. He was assigned to the 1st Battalion, 64th Armor Regiment, 2nd Brigade Combat Team, 3rd Infantry Division, Fort Stewart, GA. He was from Pomona, CA.

SPC Marcelino R. Corniel, age 23, died December 31 in Baghdad when an enemy mortar attack occurred in the vicinity of his observation post. He was assigned to the Army National Guard's 1st Battalion, 184th Infantry Regiment, Fullerton, CA. He was from La Puente, CA.

PVT Robbie M. Mariano, age 21, died January 5 in An Najaf when an improvised explosive device detonated near his humvee during convoy operations. He was assigned to the 3rd Battalion, 16th Field Artillery, 2nd Brigade Combat Team, 4th Infantry Division, Fort Hood, TX. He was from Stockton, CA.

SGT Adam L. Cann, age 23, was killed in action on January 5 by a suicide bomb attack on an Iraqi police recruitment center in Ar Ramadi. He was assigned to Security Battalion, Camp Pendleton, CA. During Operation Iraqi Freedom, his unit was attached to the 2nd Marine Division.

MAJ Douglas A. La Bouff, age 36, died January 7 near Tal Afar when his UH-60 Black Hawk helicopter crashed. He was assigned to the Army's 3rd Armored Cavalry Regiment, Fort Carson, CO. He was from La Puente, CA.

LCpl Raul Mercado, age 21, died January 7 when his vehicle was attacked with an improvised explosive device while conducting combat operations near Al Karmah. He was assigned to 2nd Maintenance Battalion, 2nd Marine Logistics Group, Camp Lejeune, NC. He was from Monrovia, CA.

CPL Justin J. Watts, age 20, died January 14 from an apparent nonhostile gunshot wound in Haditha. His death is currently under investigation. He was assigned to the 3rd Battalion, 1st Marine Regiment, 1st Marine Division, Camp Pendleton, CA. During Operation Iraqi Freedom, his unit was attached to the 2nd Marine Division.

CWO3 Rex C. Kenyon, age 34, died January 16 in Baghdad when his Apache helicopter was shot down while conducting aerial patrols. He was assigned to the 1st Battalion, 4th Aviation Regiment (Attack), Combat Aviation Brigade, 4th Infantry Division, Fort Hood, TX. He was from El Segundo, CA.

CPL Carlos Arrelanopandura, age 22, died January 20 from a suicide vehicle-borne improvised explosive device while conducting combat operations in Haqlaniyah. He was assigned to the 3rd Battalion, 1st Marine Regiment, 1st Marine Division, Camp Pendleton, CA. During Operation Iraqi Freedom, his unit was attached the 2nd Marine Division. He was from Los Angeles, CA.

LCpl. Brandon Dewey, age 20, died January 20 from a suicide vehicle-borne improvised explosive device while conducting combat operations in Haqlaniyah. He was assigned to the 3rd Battalion, 1st Marine Regiment, 1st Marine Division, Camp Pendleton, CA. During Operation Iraqi Freedom, his unit was attached to the 2nd Marine Division. He was from San Joaquin, CA.

SGT David L. Herrera, age 26, died January 28 in Baghdad when an improvised explosive device detonated near his humvee during combat operations. He was assigned to the 2nd Battalion, 506th Infantry Regiment, 4th Brigade Combat Team, 101st Airborne Division, Fort Campbell, KY. He was from Oceanside, CA.

LCpl Hugo R. Lopezlopez, age 20, died January 27 at Brooke Army Medical Center in San Antonio from wounds sustained from an improvised explosive device while conducting combat operations against enemy forces in Rawah, Iraq on November 20, 2005. He was assigned to the 2nd Battalion, 11th Marine Regiment, 1st Marine Division, Camp Pendleton, CA. During Operation Iraqi Freedom, his unit was attached to the 2nd Marine Division. He was from La Habra, CA.

Mr. President, 523 soldiers who were either from California or based in California have been killed while serving our country in Iraq. I pray for these young Americans and their families.

HOUSE PASSAGE OF THE DEFICIT REDUCTION ACT OF 2005

Mr. GRASSLEY. Mr. President, today the House of Representatives completed final action on the S. 1932, the Deficit Reduction Act of 2005, DRA. I am pleased that this important legislation will soon be enacted into law.

It has been 8 years since Congress last passed a reconciliation bill. In crafting S. 1932, we worked hard to ensure that none of the changes made would adversely affect beneficiary coverage. The Deficit Reduction Act will allow States across the country to continue to offer these essential services to their beneficiaries.

The Deficit Reduction Act also includes a number of provisions to ensure that the Federal Government pays Medicare providers accurately and appropriately. One such provision relates to payment policies under the Medicare Advantage program. Specifically, Section 5301 of S. 1932 phases-out the budget neutrality adjustment for Medicare Advantage plans. Section 5301 and the joint statement which accompanied the conference report in the Senate requiring adjustments for differences in coding patterns is intended to include adjustments for coding that is inaccurate or incomplete for the purpose of establishing risk scores that are consistent across both fee-for-service and Medicare Advantage settings, even if such coding is accurate or complete for other purposes. This will ensure that the goal of risk adjustment—to pay plans accurately—is met.

I am also pleased that the Deficit Reduction Act includes the Family Opportunity Act. I have been working tirelessly on this legislation since 1999 with Senator KENNEDY. The measure will allow States to create options for families who have children with multiple medical needs to buy into Medicaid while continuing to work. Families with children with such medical needs should not have to choose between providing for their children and their children's health care. This provision in the Deficit Reduction Act will help prevent just that.

I applaud the Congress for passing this important legislation today. Beneficiaries and taxpayers across the country deserve to get the highest value for every dollar that is spent on Medicare, Medicaid and other safety net programs. This legislation will help accomplish that objective.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

James Oliver Bailey was an 80-year-old gay man. On November 26, 2005, he was beaten to death with a 2 by 4 by Chris Nieves. According to reports, Mr. Nieves attacked Mr. Bailey solely because of sexual advances perpetrated by Bailey.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

DEMOCRACY AND PEACE IN NEPAL

Mr. LEAHY. Mr. President, one of the many things one learns as a Senator is that speaking out about autocratic, corrupt and abusive governments invariably elicits a response.

The victims of such regimes, including human rights and prodemocracy citizens who are often imprisoned and tortured, express their appreciation. Knowing that they have supporters halfway around the world gives them hope.

The officials of those governments and their supporters respond differently. Knowing that they cannot honestly defend their ill gotten gains and abuse of power, they do what they can do. They attack the messenger. And they do so through distortion and outright fabrication.

I have made several statements about the troubling situation in Nepal, a poor country with the most majestic mountains on Earth, which has received too little attention by the Congress. It is a country struggling against a determined Maoist insurgency that has brought extortion, brutality and false promises of a better future to virtually every province.

And it is a country in which an autocratic monarchy has sought to consolidate its grip on power and take the country backwards after a decade of fledgling democracy.

One year has passed since last February 1 when King Gyanendra dissolved the multiparty government, curtailed civil liberties, and imprisoned political opponents. He has ignored appeals of the United States, India, and Great Britain, as well as the United Nations, to negotiate with the leaders of Nepal's political parties on a plan to restore democracy.

When the Maoists unilaterally announced and then extended a 4-month cease-fire, the army and the palace rejected out of hand the suggestion that reciprocating could test the Maoists' intentions and possibly create an opening for dialogue to end the conflict.

What we are witnessing in Nepal is, put simply, a struggle between the discredited, anachronistic past, and the possibility of a democratic future.

There is also a third possibility. A Maoist government that imposes its will on whomever remains in Nepal after a mass exodus, and which further destabilizes an already troubled region.

Predictably, those who have enjoyed the undeserved benefits of absolute power and privilege want to hold on to what they have. They seem to believe that the Maoists can be defeated by military force. As desirable as that might be, there is no evidence to support it.

Those who see the King's repressive policies as reckless and playing into the hands of the Maoists, have risked their freedom and their lives by calling for an inclusive democratic process. And, as the situation continues to deteriorate, calls for a republic are growing louder.

On January 2, the Maoists ended their cease-fire by triggering bombs in several locations. A few days later they killed 12 police officers in Katmandu. They have carried out attacks in Nepalganj and other cities, causing civilian casualties. A week ago, in an apparent attempt to derail the controversial municipal elections scheduled for February 8, gunmen who are suspected of being Maoists killed a promonarchy party member in the city of Janakpur. These brutal acts should be universally condemned. There is absolutely no justification for the use of violence to terrorize civilians or to disrupt an election.

But neither can it be said that the United States has an effective policy when it appears to amount to little more than blaming the Maoists and repeating over and over that the King should reach out to the political parties. He should, but for almost a year he has refused to do so and absent stronger pressure there is no reason to believe that he will.

It also begs the question of what is the legitimate role in the 21st century for a monarchy that has squandered its moral authority and shown no competence for governing.

Three weeks ago, in the King's latest attempt to quell mounting public criticism of his failed policies, the palace announced a preemptive curfew and a ban on political demonstrations. Since then, hundreds of prodemocracy citizens, including several political party leaders, have been imprisoned around the country.

Two weeks ago, the police used tear gas and water cannons to break up a rally in Katmandu, and more political protesters were arrested. The former Prime Minister remains in custody after a widely ridiculed "trial" by the King's hand picked anticorruption commission.

The Nepali people want peace. But nearly a year after King Gyanendra justified his power grab as necessary to defeat the Maoists, they are stronger and peace is more elusive. As many others have said, the only viable way forward is through dialogue, including the Maoists, under United Nations or other international auspices, with the clear purpose of developing a broadly accepted plan to restore and strengthen democracy.

To those of Nepal's ruling class who in various opinion pieces have distorted my words, mischaracterized my record and questioned my motives, I can only say that sooner or later they will have to face reality. They could help save their country, but not if they continue to bury their heads in the sand and malign those whose only desire is to see a democratic, peaceful Nepal.

Nepal is a beautiful country with a remarkable culture. Its people, as resilient as they are, do not deserve the hardships of caste discrimination, poverty and violence that they endure daily. The Maoists have shown no respect for the rights of civilians. But neither has the King shown that he has a workable plan to stop Nepal's downward spiral. His decision to hold municipal elections has only widened the gap between himself and the leaders of the political parties who were never consulted, who see this latest move as part of a calculated strategy to consolidate his power, and who have said they won't participate.

Far more creative and persuasive leadership is urgently needed in Nepal, including from the army, as well as from the United States, India, China and other friends of Nepal, to prevent a tragic situation from becoming a disaster.

CONSOLIDATION IN THE ENERGY INDUSTRY: RAISING PRICES AT THE PUMP?

Mr. LEAHY. Mr. President, earlier this morning, the Judiciary Committee held a hearing on the consolidation of the energy industry. Regretfully, due to a scheduling conflict, I was unable to attend the hearing which was noticed only 1 week ago. I come to the floor this afternoon because this is an issue that needs to be addressed, not only by me, or the Committee, but by this entire body. The exorbitant cost of fuel is one of the most critical issues facing our nation.

Strong leadership by this Congress is needed to help all of the Americans whose pockets are being emptied by the skyrocketing costs of fuel. Consumers, small businesses, farmers, families trying to heat their homes in the cold winter months, senior citizens on limited incomes, every community in this country has felt the pinch of trying to keep up with energy costs. Everyone has suffered—or rather, almost everyone.

The day before yesterday, the big oil companies posted their year-end profit reports for 2005. The five biggest—ExxonMobil, ChevronTexaco, ConocoPhillips, BP, and Shell—trumpet raking in record profits for the year. In fact, ExxonMobil, with $36.7 billion in profit last year, turned the highest yearly profit in U.S. history for any business.

We did not hear from these companies today because they have declined to appear at this hearing. I am disappointed by their decision. Boycotting this hearing will not stifle our questions or the need for their accountability to Congress and American consumers. The chairman has announced a second hearing for the end of this month, and the executives from the oil companies will attend, whether voluntarily or in answer to subpoenas. We will not rest in our effort to understand, and then correct, the problems in the energy markets.

On its face, the deplorable issue here is not the unprecedented profits garnered last year. Surely, any business the size of these corporations could produce a high yield selling their product at $60 a barrel. Rather, the striking issue here is how these profits compare with years past. For example, since 1999, oil refiners have seen a 334 percent increase in yield made on each gallon of gasoline refined. Moreover, these same companies have more than doubled their control over oil production.

Time and time again, oil companies have defended startling statistics such as these. They claim that increased costs for production, exploration, and meeting environmental standards justify increasing prices at the pumps. This is obscene. I say it is time to invest in the American people. We need to investigate excessive market concentration in the oil industry that is stifling competition, constricting supply, and ultimately harming consumers. And then we need to do something about it.

I was glad to hear the President sounding like a Democrat on energy last night in his State of the Union speech. I can only hope that his words mean that he has finally abandoned the failed policy of the Cheney energy task force that had worked in secret with Ken Lay and other energy industry bigwigs. Had we adopted the Democratic energy proposal on which Senator BINGAMAN and others have worked so hard over the last several years, we would be much farther along. Nonetheless, we welcome the President and, I hope, some congressional Republicans to the Democratic emphasis on alternative and renewable fuels. After all that the Bush administration and the Republican leadership have done to advance the interests of the oil companies, including the attempts by House Republican leadership to insert special interest provisions in conference reports to give oil companies immunity for the environmental and health damage they cause, this reversal of position would be a good development for the American people.

Along with conservation, renewable energy is a key to a cleaner, more efficient energy future. If the President would work with us and follow through with sensible proposals, we can forge a bipartisan partnership. Working together, we can do better to make this a safer more energy efficient and more prosperous country. I along with the rest of America will be watching to see if these statements are reflected in the President's policies and budget request, however.

We need to relieve America's dependence on foreign oil. Although the Mideast is not the source of the majority of our energy, its share has grown during this administration. I also urge the President and the Republican leadership of Congress to work with us to relieve our dependence on foreign investors and on borrowing from Social Security to finance the record deficits and growing debt that their policies have created.

REMEMBERING CORETTA SCOTT KING

Mr. TALENT. Mr. President, it is with great sadness that I offer my condolences on the passing of Coretta Scott King, who passed away at the age of 78. Indeed, I offer these remarks on behalf of all Missourians who have been touched by her legacy and that of Dr. Martin Luther King, Jr. A tireless champion and partner in her husband's work, Mrs. King's life represents an American story from which we can all draw strength. She never stopped working toward the prize God called her to achieve.

Born in rural Alabama on April 27, 1927, Coretta Scott was the second child of Obadiah and Bernice Scott, hard working parents who wanted more opportunities than they had for their children. An ambitious student, Mrs. King graduated first in her high school class and continued her studies at Antioch College in Yellow Springs, OH. She had a passion for education and music and went on to the New England Conservatory of Music in Boston, following her graduation from Antioch.

It was in 1952 in Boston where she met the man who would become her husband, Dr. Martin Luther King, Jr. They were married the next year and eventually settled in Atlanta, where they reared their four children, Yolanda, Martin, Dexter, and Bernice. Mrs. King was by no means a bystander in the groundbreaking changes her husband worked to achieve. She was a partner in her husband's historic work to make this country whole.

Following the murder of her husband in 1968, Mrs. King could have chosen to retreat into the privacy of her family. Indeed, in the aftermath of that tragedy, she was a widow who had the sole responsibility of raising four young children. But instead, Mrs. King bravely chose to continue her husband's work and his quest for racial equality. She worked tirelessly to have her husband's birthday memorialized as a national holiday and to establish the King Center, a lasting memorial and research institution dedicated to the Dr. King's principles of justice, equality, and peace.

Mr. President, Coretta Scott King continued her work to bring this country together until her final days. She never stopped believing that we have a historic responsibility to move America forward and extend the American dream to all those who seek it, regardless of race. Today, as a nation, we mourn Mrs. King's passing. We are thankful for her time here with us, the fruits of her labor, and the profound impact she has left on a grateful country.

I yield the floor.

Mr. SPECTER. Mr. President, I wish to offer some remarks on our loss of Mrs. Coretta Scott King, who has passed away at the age of 78. I join my colleagues in cosponsoring and supporting S. Res. 362 to honor the life of and express the condolences of the Senate on her passing.

Coretta Scott King was born April 27, 1927, on a farm in Heiberger, AL, to Obadiah, Obie, and Bernice McMurry Scott. Though her family owned the land, it was often a hard life. All the children had to pick cotton during the Great Depression to help the family make ends meet.

Graduating from Lincoln Normal School in Marion, AL, at the top of her class in 1945, Coretta went to Antioch College in Yellow Springs, OH. After graduation, she moved to Boston, MA, where she met Martin Luther King, Jr. They were married in 1953 on the lawn of her parents' house and with the ceremony performed by King's father. Coretta King received a degree in voice and violin at the New England Conservatory, then moved with her husband to Montgomery, AL, in September 1954 after he was named pastor of the Dexter Avenue Baptist Church. Together, they had four children: Yolanda Denise King, Martin Luther King III, Dexter Scott King, and Bernice Albertine King.

Mrs. King received honorary degrees from many institutions including Princeton University and Bates College. She was a member of Alpha Kappa Alpha, a noted African-American women's sorority.

The King family was front and center to one of the most turbulent times of the 20th century. Just 2 weeks after the birth of her first child, Rosa Parks was arrested on a Montgomery bus, helping spark what would develop into the modern civil rights movement that would be led by her husband. The struggles that followed included a narrow escape from death in 1956 when Mrs. King and her daughter were home when a bomb exploded at the family's residence—her husband was speaking at Rev. Ralph Abernathy's First Baptist Church at the time.

Mrs. King later put together a series of Freedom Concerts that combined poetry, narration, and music to highlight the movement and also raise funds for the Southern Christian Leadership Conference. In 1962, she served as a Women's Strike for Peace delegate to the 17-nation Disarmament Conference in Geneva, Switzerland.

Notably, she preceded her husband by 2 years in opposing the Vietnam War, addressing a 1965 antiwar rally at Madison Square Garden in New York City, while also serving as a liaison to international peace and justice organizations.

Over the years, she was active in preserving the memory of her husband and in other political issues. After her husband was assassinated in 1968, she began attending a commemorative service at Ebenezer Baptist Church in Atlanta to mark her husband's birth every January 15th and fought for years to make it a national holiday, a quest that was realized in 1986, when the first Martin Luther King Day was celebrated and which we just recently celebrated 2 weeks ago.

In her own right, Mrs. King was vocal and influential on many issues, including opposing apartheid; opposing capital punishment; opposing the 2003 invasion of Iraq; and advocating for the rights of women, lesbians and gays, as well as AIDS/HIV prevention.

I was disturbed to hear of Mrs. King's hospitalization in August 2005 after suffering a stroke and a mild heart attack but encouraged by her progress in regaining some of her speech and continued physiotherapy at home. I understand that on January 14, 2006, Mrs. King made her last public appearance in Atlanta at a dinner honoring her husband's memory and that, fittingly, she will be buried in Atlanta next to her husband at The King Center.

Dr. Martin Luther King, Jr. and Coretta Scott King were remarkable people who led remarkable lives. Our Nation is a better place for their actions, and they will continue to live in our collective memory for many years to come. I wish to offer her family and friends my deepest condolences.

Mr. LEVIN. We first came to know Coretta Scott King as Dr. Martin Luther King's wife, but we came to treasure her for the more than 50 years of courageous and inspiring leadership she gave to our Nation. During Dr. King's tragically brief yet profoundly important time as America's most prominent civil rights leader, Mrs. King played an indispensable role, speaking before church and community groups, serving as a pastor's wife, and raising four children. She was Dr. King's rock during one of the most turbulent times in our history.

Mrs. King's heroism and unyielding determination to continue the struggle for justice and equality for all could not be more evident than in how she responded to a despicable incident in 1956. Mrs. King was in her home with her infant daughter, Yolanda, while Dr. King was away on one of his many missions for the civil rights movement, speaking at the First Baptist Church in Montgomery, AL. Someone threw a bomb into the Kings' home, and the bomb exploded. Even though Mrs. King and little Yolanda narrowly escaped physical harm that day, the bombing failed to deter her. Instead, Mrs. King's involvement in the civil rights movement intensified.

Following her husband's assassination, Coretta Scott King picked up his mantle and made clear that his dream, of a just America, was her dream too. Over the nearly 40 years that followed, her fight for that dream took her to every corner of the world and into every heart that loved justice. She established the Martin Luther King, Jr.

Center for Nonviolent Social Change. She worked to advance the cause of justice and human rights around the world, speaking out for racial and economic justice, women's and children's rights, religious freedom, full employment, health care, and education. She championed the national holiday in honor of Dr. King's legacy. And, as she carried on Dr. King's message, she became an icon of the civil rights movement in her own right.

In September 2004, the Senate passed legislation to honor Mrs. King and Dr. Martin Luther King, Jr., posthumously, with Congress's highest honor—the Congressional Gold Medal—for their contributions to the Nation. It was my great honor to deliver this news to Mrs. King the next day at an awards ceremony sponsored by the Senate Black Legislative Staff Caucus, where Mrs. King was honored with their Leadership and Achievement Award. Over the next few months, my staff worked with Mrs. King, along with the U.S. Mint and Congressman JOHN LEWIS's staff, in designing the gold medal. In March 2005, Mrs. King contributed these words, from some of her favorite lines from Dr. King's speeches, to appear on one side of the medal: "I suggest that the philosophy and strategy of nonviolence become immediately a subject for study for serious experimentation in every field of human conflict, by no means excluding the relations between nations. This may well be mankind's last chance to choose between chaos and community." Mrs. King offered these lines less than a year ago, reflecting her steadfast commitment to nonviolence throughout her entire life.

Coretta Scott King moved our Nation forward, and we owe her a debt that we cannot repay. As we mourn Mrs. King's passing today, let us celebrate her exceptional life, and let us honor her by recommitting ourselves to the dream the Kings shared of freedom, justice, and equality for all people.

Our thoughts and prayers are with Yolanda, Martin III, Dexter, and Bernice King and all of the King family.

SPACE SHUTTLE "CHALLENGER"/ "COLUMBIA"

Mr. CORNYN. Mr. President, I rise today to remember two events, one which occurred 20 years ago this past Wednesday, and another which took place 3 years ago today. These dates mark profound tragedies in the history of the U.S. space program.

As my colleagues will remember, the space shuttle *Challenger* exploded just minutes after takeoff in 1986, claiming the lives of five men and two women, among them Christa McAuliffe, who was to have been the first teacher in space. She is quoted as saying shortly before the flight, "One of the things I hope to bring back into the classroom is to make that connection with the students that they too are part of history, the space program belongs to them." I believe this statement represents very well the spirit of curiosity and the hope for the future that both these brave explorers and the space program represent.

Then, just 3 short years ago, seven men and women lost their lives when the space shuttle *Columbia* exploded as it reentered the atmosphere. So many individuals pulled together to help in recovery efforts after this national tragedy. The police departments, firefighters, local VFWs and emergency services, as well as the thousands of volunteers from East Texas and across the State, worked remarkably well together to handle the crisis and to prevent further tragedy on the ground. Law enforcement officials, NASA, and FEMA faced such a difficult time in the aftermath—and they handled the stress with grace.

The NASA community suffered a profound loss with these tragedies. This dedicated team of professionals is a symbol of our passion for science, exploration, and the discovery of places and worlds as yet unknown, and we appreciate the service of all of these men and women.

The seven heroes who lost their lives that day had dedicated themselves to the future of our Nation's space program, seven men and women who knew the risks of climbing into a rocket, leaving the Earth, and exploring the heavens, seven men and women who volunteered for an extremely dangerous but critically important mission:

Shuttle Commander Rick Husband
Pilot William McCool
Payload Commander Michael Anderson
Mission Specialist Kalpana Chawla
Mission Specialist David Brown
Mission Specialist Laurel Blair Salton Clark
Payload Specialist Ilan Ramon

These brave seven, as well as the crew lost with *Columbia*, as well as the three who lost their lives to the *Apollo 1* fire in 1967, are all shining examples of the courage, enthusiasm, and awe that runs through the veins of all the men and women of NASA—and all the eager children across this Nation who look to the stars and see the beginning, not the end, of their universe.

These brave astronauts throughout the space program inspire not only our Nation and our children—they inspire the world. Their actions, bravery, and achievement are a challenge to humankind. A challenge to dream, to achieve more and to reach farther than ever thought possible. I thank these courageous explorers—and those they left behind—for their sacrifice for our country.

ADDITIONAL STATEMENTS

CONGRATULATING DR. LEILA DAUGHTRY DENMARK ON HER 109TH BIRTHDAY

• Mr. CHAMBLISS. Mr. President, Dr. Leila Daughtry Denmark is truly a remarkable person; she is someone to be greatly admired. Her accomplishments as a doctor and a humanitarian are exceptional. It is with great pleasure that Julianne and I extend our warmest congratulations to her on her 109th birthday.

Today, Dr. Denmark's loved ones gather around her to celebrate her birthday and recognize a lifetime of achievement. Her tireless, selfless, compassion for others is an example to all of us.

Edna Jones, a friend of Dr. Denmark, said it best when she described her as truly a "one of a kind lady." Edna's remarks are right on target, she is a true pioneer. After being the third woman to graduate from Georgia Medical College, she became Egleston Hospital's first intern, as well as Georgia's first pediatrician. She quickly gained expertise and respect, joining with her colleagues to develop the D.P.T. shot which immunizes against whooping cough and tetanus. This breakthrough has saved countless lives all over the world.

Dr. Denmark's kindness and compassion as a human being along with her brilliance and talent as a doctor have earned her considerable praise and recognition. She has been commended by both Georgia's Senate and House legislative bodies—Dr. Denmark has even had a highway intersection named in her honor. In 1998, she was named as one of Atlanta Business Chronicle's Health Care Heroes.

She also published her book, "Every Child Should Have a Chance" in 1971. Her message to parents was how to raise happy healthy children who are well adjusted and well mannered, children who are of virtue and of strong character. Her book and her wisdom have had an impact on numerous parents and children alike and continue to serve as a guide to many.

For 56 years, Dr. Denmark volunteered once a week at Atlanta's Central Presbyterian Clinic, and chances are, if you were a patient of Dr. Denmark, she wouldn't charge you more than $10 a visit. In everything she does, Dr. Denmark exemplifies a true humanitarian and remains committed to her healing profession. We could all stand to learn from a person like her.

Dr. Denmark has a sincere, no-nonsense devotion to others. She has been an example and an inspiration to generations. I am impressed by her lifetime commitment and service to others. And I know that Georgians are proud to count Dr. Denmark as one of our own.

Mr. President, again, my wife, Julianne, and I are delighted to wish her a happy 109th birthday and continued happiness and health.•

AWARD FOR EXCELLENCE IN EDUCATION

• Mr. DAYTON. Mr. President, I rise today to honor the Pierz Public Schools, in Pierz, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

The Pierz Public School District is truly a model of educational success. Mr. George Weber, the superintendent of the Pierz School District, describes "the overall feeling of pride the citizens have in our schools and in our work ethic, which has resulted in a broad sense of excellence." The District's accomplishments are even more impressive, given that they have occurred during an era of revenue reductions at the State and Federal levels, in a relatively poor community where more than 40 percent of the children qualify for free and reduced lunches, and in a part of the State experiencing falling enrollment and economic decline.

Despite repeated State revenue shortfalls, the Pierz Public School District has managed to preserve a balanced budget. The district operates on a very lean administrative staff, whose superintendent and business manager perform all central administrative functions, including curriculum, human resources, plant management, student services, transportation, and food service. This restraint has allowed the district to devote the vast majority of its resources to the classroom.

The district's commitment to its classrooms has allowed the schools to keep class sizes small—ranging from 19 to 27—with half of the classrooms kept to fewer than 23 students. By contrast, in Minnesota, the number of students per classroom averages between 27 to 30. The district also provides all-day kindergarten for all, which is not supported by the State's school revenue formula.

The Pierz School District has also demonstrated its commitment to providing exceptional facilities for its students. The district has added a new computer lab in each of the past 3 years; remodeled an old gymnasium into a new performing arts center; and built a new gymnasium, an eight-lane running track with state-of-the-art electronic timing equipment, two irrigated baseball fields, and a newly remodeled football stadium.

Much of the credit for the Pierz Public School District's success belongs to Superintendent George Weber, elementary school principal Lealen Swoboda, high school principal Paul DeMorett, and their dedicated teachers. The students and staff at the Pierz Public Schools understand that, in order to be successful, a school must go beyond achieving academic success; it must also provide a nurturing environment where students develop the knowledge, skills, and attitudes for success in life. All of the faculty, staff, and students at the Pierz Public School District should be very proud of their accomplishment.

I congratulate the Pierz Public School District in Pierz, MN, for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.•

AWARD FOR EXCELLENCE IN EDUCATION

• Mr. DAYTON. Mr. President, I rise today to honor Riverside Elementary School, in Brainerd, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

Riverside Elementary School is truly a model of educational success. On my recent visit to Riverside, 10 fourth-graders shared with me their essays on what makes Riverside a special place to learn. Toni Gohman, Amanda Kunde, Allison Morris, Tom Stoxen, Kallie Konklin, Gretchen Gramer, Paige Phillips, Kaela Middleton, Anna Razidlo, and Emma Higgenbothem are to be commended for their exceptional writing ability and for superbly reading their essays at an all-school assembly.

I would like to quote briefly from several of the essays to offer a true flavor of the exceptional educational achievements at Riverside Elementary.

Amanda Kunde writes, "I feel safe and happy here at Riverside. . . . Mrs. Engler, the teachers and the teachers' assistants are awesome. It's nice to know that people care about me."

Allison Morris writes, "Our teachers make learning fun, interesting & exciting. They . . . not only teach the standard subjects like reading and math, they help teach us to be responsible for our actions, and to respect one another."

Gretchen Gramer writes, "Every student has a different personality. We help each other when we are stuck and when we are hurt. . . . We get rewarded when we are good by a new program called 'Caught Being Good.' . . . We have other great helpers at our school. The custodians, the nurse, the office staff and the cooks all do a great job."

Toni Gohman writes, "Riverside is an awesome school. It has an awesome principal, great teachers, and respectful and kind students."

Tom Stoxen writes, "All of the people at our school are really friendly and helpful to all of the kids. . . . The cooks are really nice and cook good food. We even get seconds sometimes, but not on the dessert."

Paige Phillips writes, "Every day when I come to school I feel safe, and to me that is very important. . . . When I get hurt I always know someone's ready to take care of me."

Kaela Middleton writes, "I am going to tell you what we do in our everyday school day so you know that it is not always fun and games, but that it can also be very hard work."

Anna Razidlo writes, "Riverside deserves this award because we have so many kind, fun and exciting teachers! . . . Almost every student gets a great score . . . on their tests because we learn so much . . . we don't even notice how hard we are working to learn. . . . I feel lucky to go to a great school."

Emma Higgenbothem writes, "Riverside makes you want to come to school everyday because we have nice people, kind teachers, and we learn a lot of things. . . . We also have kind custodians who work hard to clean our school. I like coming to a clean school everyday."

And, finally, Kallie Konklin captures the overall success of Riverside by writing, "If you are wondering why Riverside is a school of excellence, I think you came to the right person to ask. . . . Our teachers are very kind, caring and patient with our needs and different personalities. . . . Last, but not least, we have Mrs. Engler, our principal. She is the one who keeps everything running smoothly, and deals with all of the politics associated with running a large grade school."

As Kallie and several other pupils noted, much of the credit for Riverside Elementary School's success belongs to its principal, Cathy Engler, and her dedicated teachers. The students and staff at Riverside Elementary understand that, in order to be successful, a school must go beyond achieving academic success; it must also provide a nurturing environment where students develop the knowledge, skills, and attitudes for success in life. All of the faculty, staff, and students at Riverside Elementary should be very proud of their accomplishment.

I congratulate Riverside Elementary in Brainerd, MN, for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.•

HONORING CAROLE PAGONES

• Mr. JOHNSON. Mr. President, I rise today to publicly recognize and honor Carole Pagones on the occasion of her retirement from Main Street Sioux Falls, Inc. Under her extraordinary leadership, Main Street Sioux Falls helped to engineer a dramatic revitalization of the core commercial district in South Dakota's largest city.

When Carole took the helm at Main Street Sioux Falls, first-floor vacancies in downtown buildings were at a discouraging 69 percent, and the downtown area was usually deserted after 5 o'clock. Like so many towns and cities, Sioux Falls struggled to maintain the vitality of the area that was once its heart and soul.

While some merely lamented this situation, Carole energetically set about changing it. During a 12-year stint as the executive director of Main Street Sioux Falls, and later as the organization's development director, she initiated new events to draw people to the area. She worked to enhance the area's appearance to make it more inviting. The historic preservation of building facades and outdoor dining opportunities are particularly valuable enhancements for the downtown area. And she wielded her personal charm to persuade individual businesses to return to the area.

Today, any visitor to downtown Sioux Falls can immediately sense the wonderful results of Carole's efforts. Numerous shops, restaurants, and other businesses now operate in an area that is once again one of the city's most desirable locations. Statistics tell the same story—under Carole's tenure, the vacancy rate that once stood at nearly three quarters of all first-floor downtown properties has been whittled down to a mere 7 percent.

Besides restoring the vibrancy of the core downtown area, Carole has also helped Sioux Falls prepare for transformational developments that will expand and improve what we have traditionally considered to be "downtown". For example, the Philips-to-the-Falls project will link downtown with the natural amenities of nearby Falls Park. And development is now gaining steam on the "East Bank" of the Big Sioux River, opposite the vibrant area on the west side of the river.

Though Carol's presence at Main Street Sioux Falls will be sorely missed following her retirement, she leaves the organization well prepared to build upon her remarkable record of success. Fortunately, Sioux Falls and the entire State will continue to benefit from Carole's leadership through her membership on the State's Board of Regents and her ongoing participation in many Main Street Sioux Falls events.

On behalf of all South Dakotans, I congratulate Carole Pagones for her outstanding leadership, and I wish her continued successes on all her new challenges and opportunities.•

TRIBUTE TO JESSIE TEHRANCHI

• Mr. SHELBY. Mr. President, Jessie Tehranchi was a passionate advocate for improved public transportation and universal health care from my State of Alabama. Jessie dedicated her time to helping others as she worked to advocate on behalf of the issues that shaped her life.

Jessie's passion was personal; diagnosed with multiple sclerosis in 1987, she spent much of her adult life confined to a wheelchair. Faced with seemingly insurmountable odds, Jessie used her experience to better the lives of many others with similar handicaps. A fixture in transportation activist groups, she spoke across the country on behalf of her causes.

Jessie testified before the U.S. Senate Committee on Banking, Housing, and Urban Affairs in 2002 at a Housing and Transportation Subcommittee meeting. Jessie emphasized the need for effective public transportation and cited her own experiences as a person unable to drive. Her testimony was powerful and useful as the Senate worked on the Transportation Equity Act for the 21st Century.

Jessie was optimistic, energetic, and passionate. I am proud of her efforts, and I am grateful for her dedication to this important cause. I know that she will be missed not only by her husband, Jim Tehranchi, and two sons, David and Michael, and her many friends, but by the many people whose lives she touched through her devotion to public transportation.•

TRIBUTE TO MARTHA TSCHETTER

• Mr. THUNE. Mr. President, today I rise to recognize Martha Tschetter for her tireless work bringing warmth and kindness to total strangers. Mrs. Tschetter, at the age of 85, has worked tirelessly since 1988 hooking quilts for a Mennonite charity. In November, Martha donated her 3,000th quilt to charity. Martha's contribution to her community does not stop there.

Martha's service to her community did not start eighteen years ago but began many decades ago. Mrs. Tschetter served as a teacher in the Freeman area for the better part of five decades. Martha spent thirty six years as a full time teacher in the Freeman area only to serve another twelve years as a substitute teacher at Freeman Elementary.

Martha is a shining reminder to us all that life does not end at 65. She has never stopped giving of herself to help those in need. Today, I am glad to rise with Martha's friends and family in congratulating her on her continual service to her community.•

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 6:12 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agree to the amendment of the Senate to the amendment of the House to the bill (S. 1932) to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95).

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4659. An act to amend the USA PATRIOT Act to extend the sunset of certain provisions of such Act.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 332. Concurrent resolution providing for a conditional adjournment of the House of Representatives.

The message also announced that pursuant to section 703 of the Social Security Act (42 U.S.C. 903 note), the order of the House of December 18, 2005, and upon the recommendation of the Minority Leader, the Speaker on January 18, 2006, appointed the following member on the part of the House of Representatives to the Social Security Advisory Board for a term of 6 years: Mrs. Barbara Kennelly of Connecticut.

The message further announced that pursuant to 20 U.S.C. 2103(b), and the order of the House of December 18, 2005, the Speaker on January 23, 2006, appointed from private life to the Board of Trustees of the American Folklore Life Center in the Library of Congress on the part of the House of Representatives for a term of 6 years: Appointed Mr. Charlie Seeman of Spring Creek, Nevada, and Reappointed Ms. Kay Kaufman Shelemay of Cambridge, Massachusetts.

The message also announced that pursuant to section 1909(b) of SAFETEA-LU (Public Law 109–59), and the order of the House of December 18, 2005, the Speaker on January 23, 2006, appointed the following members on the part of the House of Representatives to the National Surface Transportation Policy and Revenue Study Commission: Mr. Jack L Schenendorf of Chevy Chase, Maryland, and Mr. Matthew K. Rose of Westlake, Texas.

The message further announced that pursuant to section 1238(b)(3) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (22 U.S.C. 7002), as amended by division P of the Consolidated Appropriations Resolution, 2003 (22 U.S.C. 6901), and the order of the House of December 18, 2005, the Speaker on January 25, 2006, appointed the following members on the part of the House of Representatives to the United States-China Economic and Security Review Commission for terms to expire December 31, 2007: Mr. Peter T. R. Brookes of Springfield, Virginia, and Ms. Kerri Houston of Great Falls, Virginia.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5461. A communication from the Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Temporary Rule, Quota Adjustment for the Closed Area I Hook Gear Haddock Special Access Program" (RIN0648–AT08) received on January 16, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5462. A communication from the Acting Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Atlantic Herring Fishery; Closure of Directed Fishery for Management Area 1B" (I.D.112505D) received on January 16, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5463. A communication from the Acting Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Groundfish Fisheries of the Exclusive Economic Zone Off the Coast of Alaska; Recordkeeping and Reporting" ((RIN0648–AR67) (I.D.062105B)) received on January 16, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5464. A communication from the Acting Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off the Coast of Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources; Correction" (RIN0648–AS47) received on January 16, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5465. A communication from the Acting Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Amendment 6" (RIN0648–AS16) received on January 16, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5466. A communication from the Acting Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Additional Measures to Reduce the Incidental Catch of Seabirds in the Hawaii Pelagic Longline Fishery" ((RIN0648–AS30) (I.D.060505D)) received on January 16, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5467. A communication from the Acting Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery, Emergency Temporary Rule to Address Haddock Bycatch in Herring Fishery" (RIN0648–AT36) received on January 16, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5468. A communication from the Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Temporary Rule; Inseason Retention Limit Adjustment" (I.D.121205F) received on January 16, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5469. A communication from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled "Property Administration and Reporting for Interagency Acquisitions" (RIN2700–AD20) received on January 18, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5470. A communication from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled "NASA Research Announcements—Small Business Subcontracting Plans and Publication Acknowledgement and Disclaimers" (RIN2700–AD03) received on January 18, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5471. A communication from the Director, National Institute of Standards and Technology, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Small Grants Programs and Precision Measurement Grants Program; Availability of Funds" (RIN0693–ZA64) received January 16, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5472. A communication from the Deputy Bureau Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Order on Reconsideration" (FCC 05–203) received on January 16, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5473. A communication from the Secretary, Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled "Premerger Notification: Reporting and Waiting Period Requirements: Final Rule Amending Premerger Notification Rules" (RIN3084–AA91) received on January 18, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5474. A communication from the Secretary, Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled "Annual Adjustment of Ceiling on Allowable Charge for Certain Disclosures Under the Fair Credit Reporting Act Section 612(f)" received on January 18, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5475. A communication from the Secretary, Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled "Rules and Regulations under the Textile Fiber Products Identification Act" (16 CFR part 303) received on January 18, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5476. A communication from the Secretary, Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled "Premerger Notification: Reporting and Waiting Period Requirements: Final Rules Amending Premerger Notification Rules" (RIN3084–AA91) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5477. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Establishment of Class D Airspace; Modification to Class E: Rogers, AR" ((RIN2120–AA66) (2006–0002)) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5478. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Hazardous Material Training Requirements, Correction" ((RIN2120–AG75) (2006–0001)) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5479. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Supplemental Oxygen; WITHDRAWAL" ((RIN2120–AI65) (2006–0001)) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5480. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Miscellaneous Amendments (43)" ((RIN2120–AA65) (2006–0002)) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5481. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Miscellaneous Amendments (16)" ((RIN2120–AA65) (2006–0003)) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5482. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Miscellaneous Amendments (36)" ((RIN2120–AA65) (2006–0001)) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5483. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Pratt and Whitney JT9D–7R4 Turbofan Engines" ((RIN2120–AA64) (2006–0011)) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5484. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Airworthiness Directives: Dowty Aerospace Propellers Type R321/4–82–F/8, Type R324/4–82–F/9, Type R333/4–82–F/12, and Type R334/4–82–F/13” ((RIN2120–AA64) (2006–0006)) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5485. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Airworthiness Directives: Rolls Royce plc RB211 Trent 800 Series Turbofan Engines” ((RIN2120–AA64) (2006–0007)) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5486. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Airworthiness Directives: Airbus Model A318–100, A319–100, A320–200, A321–100, and A321–200 Series Airplanes; and Model A320–111 Airplanes” ((RIN2120–AA64) (2006–0010)) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5487. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Airworthiness Directives: Fokker Model F27 Mark 050 Airplanes” ((RIN2120–AA64) (2006–0008)) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5488. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Airworthiness Directives: Boeing Model 767–200 and –300 Series Airplanes” ((RIN2120–AA64) (2006–0009)) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5489. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Airworthiness Directives: Empresa Brasileira de Aeronautica SA Model EMB–135BJ, –135ER, 135KE, –135KL, 135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes” ((RIN2120–AA64) (2006–0005)) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5490. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Airworthiness Directives: Empresa Brasileira de Aeronautica SA Model EMB–135 Airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes” ((RIN2120–AA64) (2006–0001)) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5491. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Airworthiness Directives: Turbomeca Astazou XIV B and XIV H Turboshaft Engines” ((RIN2120–AA64) (2006–0004)) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5492. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Airworthiness Directives: Turbomeca Arriel 2B and 2B1 Turboshaft Engines” ((RIN2120–AA64) (2006–0003)) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5493. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Airworthiness Standards; Normal, Utility, Acrobatic, and Commuter Category Airplanes; Correction” (RIN2120–ZZ78) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5494. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Airworthiness Directives: CENTRAIR 101 Series Gliders” ((RIN2120–AA64) (2006–0002)) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5495. A communication from the Acting Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Essential Fish Habitat Amendment” (RIN0648–AS66) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5496. A communication from the Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Temporary Rule; Inseason Retention Limit Adjustment” (I.D.122805B) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5497. A communication from the Acting Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Commercial Grouper Fishery; Trip Limit” (RIN0648–AT12) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5498. A communication from the Acting Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish in the Bering Sea and Aleutian Islands Management Area” (I.D. 122305A) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5499. A communication from the Acting Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; In season Action #10—Adjustment of the Recreational Fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon” (I.D. 110905E) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5500. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Drawbridge Operation Regulations (including 2 regulations): [CGD08–05–049], [CGD01–05–102]” (RIN1625–AA09) received on January 26, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5501. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Drawbridge Operation Regulations (including 2 regulations): [CGD05–06–001], [CGD05–06–004]” (RIN1625–AA09) received on January 26, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5502. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL” (RIN1625–AA11) received on January 26, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5503. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Security Zones (including 2 regulations): [COTP Prince William Sound 02–011], [COTP Prince William Sound 05–012]” (RIN1625–AA87) received on January 26, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5504. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Anchorage Regulations; San Pedro Bay, CA” (RIN1625–AA01) received on January 26, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5505. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Safety Zones (including 5 regulations): [COTP San Francisco Bay 05–011], [COTP ST Petersburg 05–163], [COTP Charleston 06–003], [COTP Charleston 05–143], [CGD13–06–002]” (RIN1625–AA00) received on January 26, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5506. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Validation of Merchant Mariners” Vital Information and Issuance of Coast Guard Merchant Mariners' Licenses and Certificates of Registry” (RIN1625–AA85) received on January 26, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5507. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Shipping: Technical, Organizational and Conforming Amendments” (RIN1625–ZA05) received on January 26, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5508. A communication from the Regulatory Ombudsman, Federal Motor Carrier Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Commercial Driver's License Standards; School Bus Endorsement" (RIN2126–AA94) received on January 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–5509. A communication from the Program Analyst, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment to Incentive Grant Criteria for Occupant Protection Programs" (RIN2127–AJ72) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5510. A communication from the Program Analyst, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Tire Safety" (RIN2127–AJ65) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5511. A communication from the Program Analyst, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Petitions for Reconsideration of FMVSS No. 102, Transmission Shift Lever Sequence, Starter Interlock and Transmission Braking Effect" (RIN2127–AJ74) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5512. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Dubach, Natchitoches, Oil City and Shreveport, Louisiana, and Groesbeck, Longrview, Nacogdoches, Tennessee Colony and Waskom, Texas)" (MB Docket No. 05–47) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5513. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Wheatland, Rock River, Lusk, Gillette, Moorcroft, Pine Haven, Upton, Wyoming, and Edgemont, Custer, Murdo, Wall and Ellsworth AFB, South Dakota)" (MB Docket No.) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5514. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Hartford and South Haven, Michigan)" (MB Docket No. 03–257) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5515. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Barstow, California; Newcastle, Texas; Anacoco, Louisiana; Erie, Pennsylvania; and Greenfield, California)" (MB Docket Nos. 03–147, 03–148, 03–177, 03–178, and 03–180) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5516. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Eden, Texas)" (MB Docket No. 03–74) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5517. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Pearsall and Dilley, Texas)" (MB Docket No. 03–87) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5518. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Statesville and Clemmons, North Carolina, Iron Gate, Virginia)" (MB Docket No. 03–219) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5519. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (La Grange, Richlands, Shallotte, Swansboro, Topsail Beach, and Wrightsville Beach, North Carolina)" (MB Docket No. 05–16) received on January 25, 2006; to the Committee on Commerce, Science, and Transportation.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. BYRD (for himself, Mr. Rockefeller, and Mr. Kennedy):

S. 2231. A bill to direct the Secretary of Labor to prescribe additional coal mine safety standards, to require additional penalties for habitual violators, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. VITTER:

S. 2232. A bill to require the Secretary of the Army to submit to Congress a report identifying activities for hurricane and flood protection in Lake Pontchartrain, Louisiana, and for other purposes; to the Committee on Environment and Public Works.

By Mrs. FEINSTEIN:

S. 2233. A bill to reform and improve the regulation of lobbying and congressional ethics; to the Committee on Rules and Administration.

By Mr. SMITH (for himself and Mr. Bingaman):

S. 2234. A bill to amend title XVIII of the Social Security Act to reduce cost-sharing under part D of such title for certain non-institutionalized full-benefit dual eligible individuals; to the Committee on Finance.

By Mr. SCHUMER (for himself, Mrs. Clinton, Mr. Bayh, Ms. Mikulski, Mr. Obama, Mr. Wyden, Mr. Salazar, Mr. Durbin, Mrs. Feinstein, Mr. DeWine, Ms. Stabenow, Mr. Kerry, Mr. Pryor, Mr. Levin, Mr. Lieberman, Mrs. Lincoln, and Mr. Dayton):

S. 2235. A bill to posthumously award a congressional gold medal to Constance Baker Motley; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. JOHNSON:

S. 2236. A bill to amend Public Law 106-348 to extend the authorization for establishing a memorial in the District of Columbia or its environs to honor veterans who became disabled while serving in the Armed Forces of the United States; to the Committee on Energy and Natural Resources.

By Mr. SANTORUM (for himself, Mr. Nelson of Florida, and Mr. Kyl):

S. 2237. A bill to withhold United States assistance from the Palestinian Authority until certain conditions have been satisfied; to the Committee on Foreign Relations.

By Mr. BAYH (for himself and Mr. Bingaman):

S. 2238. A bill to amend title XVIII and XIX of the Social Security Act to assure uninterrupted access to necessary medicines under the Medicare prescription drug program; to the Committee on Finance.

By Mr. MARTINEZ (for himself and Mr. Nelson of Florida):

S. 2239. A bill to prohibit offshore drilling on the outer Continental Shelf off the State of Florida, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. COLEMAN (for himself and Mr. Kennedy):

S. Res. 363. A resolution designating February 2006 as "Go Direct Month"; considered and agreed to.

By Mr. VITTER (for himself and Ms. Landrieu):

S. Res. 364. A resolution honoring the valuable contributions of Catholic schools in the United States; considered and agreed to.

By Mr. THUNE (for himself, Mr. Lieberman, Mr. Talent, Mr. Brownback, Mr. Chambliss, Mr. Voinovich, and Mr. Johnson):

S. Con. Res. 79. A concurrent resolution expressing the sense of Congress that no United States assistance should be provided directly to the Palestinian Authority if any representative political party holding a majority of parliamentary seats within the Palestinian Authority maintains a position calling for the destruction of Israel; considered and agreed to.

ADDITIONAL COSPONSORS

S. 408

At the request of Mr. DeWine, the name of the Senator from Georgia (Mr. Isakson) was added as a cosponsor of S. 408, a bill to provide for programs and activities with respect to the prevention of underage drinking.

S. 731

At the request of Mr. Conrad, the name of the Senator from Michigan (Ms. Stabenow) was added as a cosponsor of S. 731, a bill to recruit and retain more qualified individuals to teach in Tribal Colleges or Universities.

S. 843

At the request of Mr. Santorum, the name of the Senator from Delaware

(Mr. BIDEN) was added as a cosponsor of S. 843, a bill to amend the Public Health Service Act to combat autism through research, screening, intervention and education.

S. 910

At the request of Ms. SNOWE, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 910, a bill to require that health plans provide coverage for a minimum hospital stay for mastectomies, lumpectomies, and lymph node dissection for the treatment of breast cancer and coverage for secondary consultations.

S. 1215

At the request of Mr. GREGG, the name of the Senator from South Carolina (Mr. DEMINT) was added as a cosponsor of S. 1215, a bill to authorize the acquisition of interests in underdeveloped coastal areas in order better to ensure their protection from development.

S. 1419

At the request of Mr. LUGAR, the name of the Senator from South Dakota (Mr. THUNE) was added as a cosponsor of S. 1419, a bill to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media.

S. 1504

At the request of Mr. BUNNING, his name was added as a cosponsor of S. 1504, a bill to establish a market driven telecommunications marketplace, to eliminate government managed competition of existing communication service, and to provide parity between functionally equivalent services.

S. 1530

At the request of Mrs. MURRAY, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 1530, a bill to provide a Federal tax exemption for forest conservation bonds, and for other purposes.

S. 1691

At the request of Mr. CRAIG, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 1691, a bill to amend selected statutes to clarify existing Federal law as to the treatment of students privately educated at home under State law.

S. 1710

At the request of Mr. SANTORUM, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 1710, a bill to amend section 255 of the National Housing Act to remove the limitation on the number of reverse mortgages that may be insured under the FHA mortgage insurance program for such mortgages.

S. 1727

At the request of Mr. VITTER, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 1727, a bill to provide grants for prosecutions of cases cleared through use of DNA backlog clearance fund.

S. 1948

At the request of Mr. DEWINE, his name was added as a cosponsor of S. 1948, a bill to direct the Secretary of Transportation to issue regulations to reduce the incidence of child injury and death occurring inside or outside of passenger motor vehicles, and for other purposes.

S. 2039

At the request of Mr. DURBIN, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 2039, a bill to provide for loan repayment for prosecutors and public defenders.

S. 2178

At the request of Mr. SCHUMER, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2178, a bill to make the stealing and selling of telephone records a criminal offense.

S. 2182

At the request of Mr. ISAKSON, the names of the Senator from Colorado (Mr. ALLARD), the Senator from South Carolina (Mr. DEMINT), the Senator from Oklahoma (Mr. INHOFE) and the Senator from Louisiana (Mr. VITTER) were added as cosponsors of S. 2182, a bill to terminate the Internal Revenue Code of 1986, and for other purposes.

S. 2183

At the request of Mr. ROCKEFELLER, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 2183, a bill to provide for necessary beneficiary protections in order to ensure access to coverage under the Medicare part D prescription drug program.

S. 2201

At the request of Mr. OBAMA, the names of the Senator from New York (Mrs. CLINTON) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of S. 2201, a bill to amend title 49, United States Code, to modify the mediation and implementation requirements of section 40122 regarding changes in the Federal Aviation Administration personnel management system, and for other purposes.

S. 2206

At the request of Mr. VITTER, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 2206, a bill to amend title X of the Public Health Service Act to prohibit family planning grants from being awarded to any entity that performs abortions.

S. RES. 355

At the request of Mr. NELSON of Nebraska, the names of the Senator from Connecticut (Mr. DODD), the Senator from Iowa (Mr. GRASSLEY), the Senator from Oregon (Mr. SMITH) and the Senator from Kansas (Mr. ROBERTS) were added as cosponsors of S. Res. 355, a resolution honoring the service of the National Guard and requesting consultation by the Department of Defense with Congress and the chief executive officers of the States prior to offering proposals to change the National Guard force structure.

S. RES. 357

At the request of Mr. MCCAIN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. Res. 357, a resolution designating January 2006 as "National Mentoring Month".

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BYRD (for himself, Mr. ROCKEFELLER, and Mr. KENNEDY):

S. 2231. A bill to direct the Secretary of Labor to prescribe additional coal mine safety standards, to require additional penalties for habitual violators, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. ROCKEFELLER. Mr. President, it is my honor today to join with my colleague Senator BYRD, who I am sure will be here very shortly. We are very proud to announce that we are, as an entire West Virginia delegation, introducing the Federal Mine Safety and Health Act of 2006.

The last few weeks have been an emotional roller coaster in West Virginia and across large parts of the country as we watched the damage and the pain and the crying and the anger because of a series of coal mine accidents that happened in West Virginia where 14 miners lost their lives and in the State of Kentucky where a miner lost his life. There is no real way of describing the sadness and the grief of being with families as they find out their coal-miner spouses are no longer alive.

Everybody understands that coal mining is very dangerous, but you go in every day with the hope that it will be all right. It is a way of life. People ask, Why do you go into coal mining? They go into coal mining to keep the lights of America on and they do it to earn a good wage.

What we have to do is make sure the legacy of these 15 miners who died—1 in Kentucky and 14 in West Virginia, 15 miners in all—is that we make sure this kind of tragedy never happens again.

It is amazing to be in a coal-mining community when tragedy hits. People pull together amazingly, in Kentucky very much like West Virginia in that respect, and there is a sense of family. One person's loss is every person's loss.

Obviously, we have the losses that come in Iraq and in wartime in general. But there is something about coal mining. When there is a death in coal mining, it is devastating to a community and it takes a long time to heal.

I would come to churches—the Freewill Baptist Church in Logan County, the Sago Baptist Church in Upshur County, one south and the other up north—and you learn spiritually and personally forever with people who are bound together forever because they have gone through something which is truly difficult.

I note that in the case of Kentucky, we even have evidence of a miner who was killed two years ago who was actually videotaping with his video camera things which he thought were not proper in that particular mine, as he was killed. He was still videotaping as he was killed.

Legislation is needed.

I note the presence on the floor of my distinguished senior colleague, Senator BYRD.

What we plan to do in the Senate and in the House—we in the Senate and our three Members in the House—is, in fact, to take the first step toward improving mine safety and doing it through legislation.

It is a sad thing to say, for the country and for all of us, where we have gone through a period of years where we haven't had large numbers of people killed in the mines, that we have been lulled into thinking that mining is not dangerous. That has been compounded by the fact that the obsession with oil which the President spoke about last night has been very real. What is going on overseas in Afghanistan, Iraq, and other places of danger across the world has generally tended to pull us away, I think maybe for 20 years, from a review of what coal mine safety legislation, rules, and regulation through MSHA, the Mine Safety and Health Agency, ought to be. Things haven't changed a lot. The safety technology in the mines has not changed a lot. There is a bit of a lax attitude, and a little bit of indifference. This is the world we live in—the world of mining—and it is as it is, and it ever shall be. That kind of thinking we have to stop.

As a delegation, led by Senator BYRD, we are determined to do that. We are determined that the legacy of these 14 miners in West Virginia and the one in Kentucky will be that this kind of accident never takes place again. We do not want that to happen.

The irony is that coal, which has always been taken for granted by the American people, to my distress, is a full 31 percent—and it has been for years—of all of our energy use in America. People are always thinking about importing oil, and we do. That is a tremendous addition to our trade deficit, and it causes all kinds of other problems when we are dealing with very unstable countries—increasingly unstable countries. But all the while coal has been sitting there. We have a 250-year supply of coal in the United States of America. That can be substituted for much of that oil.

The coal industry is growing. The price of coal is going up. People are going to be opening new coal mines. I wouldn't say it is a hot industry in financial terms, but it is very close to it, which means there are going to be more mines opened. Therefore, more people will be getting into mining—some will be small, some will be larger. We have to make sure they will be mining safely and responsibly. That takes vigilance on our part, on the part of the Secretary of Labor, and on MSHA's part. That is why Senator BYRD, my senior Senator, will no doubt submit the bill.

But we want to call immediate attention to the Mine Safety and Health Administration and the Secretary of Labor because they have in their power right now the ability to cause to happen a number of the suggestions which we are making. They can simply do it. They have the rulemaking power to do that, but they have not done that.

What we are doing is looking at a few ways that the Mine Safety and Health Administration and also the Secretary of Labor, Elaine Chao, can act aggressively to improve mine safety, as they can do without a single change in any law at all. In many cases, Congress has given them this authority. It is just a matter of the Secretary of Labor moving on these issues. It ought to ring loud and clear, and there ought to be results from that.

In our bill, we also instruct the Secretary to promulgate rules quickly to require a series of things: advanced communication and breathing apparatus, technologies that can be deployed in our mines.

This is something which has baffled Senator BYRD, myself, and our delegation for a long time. We have a lot of rules and regulations; regarding breathing apparatuses, for example; oxygen supplies, for example—which have not changed since 1977, or before. We have just gone through a period of years when we have not put the focus on coal mine safety. Now that is at an end. We have to have advanced communications and breathing apparatus technologies.

It has been said often—it will be said once again—that we could talk with Neil Armstrong on the Moon when he was there many years ago, but we can't talk with a coal miner in a two-way communications system who may be 1,000 or 2,000 feet underground. To say the technology for that doesn't exist is to say that America isn't America.

I have had in my office, as I am sure others have, numerous people in the last several days pouring out ideas they are working on or have developed. The families of the victims gave us many ideas of what could be done. We are a country of new technologies. We have simply declined to apply it to coal mine safety, and the coal mines have been a bit lax to take the initiative on that. This is something we are all going to have to do together. We have to demand that rescue teams be staffed and on site in every single mine.

There was a major problem, particularly at the Sago mine up north. But rescue teams have to be a part of an operation. If you are going to start a business, a rescue team within your workforce has to be a part of what you do—not simply wait for a rescue team 2 hours away to collect itself and then come. That is usually too late. It is amazing to me that that situation exists.

We have to also develop a schedule of fines for mining violations. They have to mean something. The average mine violation at Sago—there seem to be several hundred of them—all seems to be $60 or $270. That doesn't change behavior. That encourages a company to say, Look, we will pay because there is no real penalty on us.

Fines can be charged up to $60,000, and we are going to increase that. Mines can be shut down by Federal mine inspectors if they choose to do that. But for the most part they have not chosen to do that. The lesson has to sink in to be responsible as a coal mine or else you can't do it.

Another matter in our legislation is that we have to notify the MSHA immediately when there is an accident. That was not done in a couple of our cases. In one case, it took a very long period of time to notify the agency. That seems a small thing, but that is a huge thing, particularly because small mines today don't necessarily have their own rescue teams.

There have to be extra alerts that go out across the Federal and the State bureaucracy and within the mining community so that rescue teams can get to the spot as soon as possible.

So we want the Federal mine safety agency to make the health of miners its first and foremost priority.

As of the day that first problem happened at Sago with the death of so many miners, it has become my first priority and will stay that way until we get what we need in coal mine safety, working with the companies, with the Federal Government and, where necessary, to use legislation.

The enforcement of mine safety laws requires a set of penalties that reflects the seriousness. We cannot have a situation such as we had at Sago Mine—$60 or $270 fines with over 200 violations. They have to reflect the seriousness, and be proportional. They have to be larger and have impact. Companies cannot just say, I will go ahead and pay that, but I don't have to make any change because I can afford to pay that; then I don't have to have people coming in and looking at what is going on in my mine as much.

MSHA has minimal penalties and that is the fault of all of us; but primarily MSHA should do its job. As part of MSHA's invigorated commitment to the safety of miners, we are going to seek to have in our legislation the agency enforce a longstanding rule which was canceled in 2004. It is a very serious rule and one that I will briefly explain. Mine operators have been using fresh air escapeways to house coal conveyer belts. What does that mean? The first thing we need to understand, mines are required to have fresh air escapeways. These are supposed to be free from potentially combustible material, combustible gases, and the possibility of fire. Where there is a beltway—which costs $100 million plus in some cases; it is a very large operation—a single friction could ignite a fire. That fire, then, can take off into the coal seams and cause terrible damage and destruction of human life.

Belt fires such as the one resulting in the deaths of the two brave West Virginians at the Alma mine in southern West Virginia are some of the most dangerous occurrences in coal mining in any form. The very least we can do to protect miners is keep the entrances to the mines—where these miners risk their lives every day to provide the rest of the country with the energy—free of such avoidable hazard. That was the rule. That was the law for many years.

For reasons we can only guess, MSHA altered the enforcement practices to allow for entry coal belts in 2004. That is wrong. That is the lack of vigilance on the part of all who watch over mining.

Finally, our legislation calls for the creation of a position of miner ombudsman. People say, So what? There is a big "so what." It is a fact that miners in some mines are afraid to report safety deficiencies. They are afraid to report certain matters because they think if they do they will get in trouble or get fired or their sister or brother will get fired from a coal mine. I am not making an accusation, but I heard a great deal of talk about that condition when I was in West Virginia for many days, along with my senior Senator, Senator BYRD. I heard that a great deal.

The miners have to have a voice in an overall Federal agency. That voice in the overall Federal agency—MSHA—has to be out of the political process, almost detached, in a sense, from MSHA itself. That is important because we have to provide people a place to report mine safety problems. They have to be able to do it anonymously and they have to be able to do it feeling safe about so doing.

My West Virginia colleague and I do not pretend to be doing a complete fix of mine safety legislation. We do believe our act is a first strong step on a path that Congress should have started down some time ago. It is immensely sad it took the deaths of 14 West Virginians and 1 Kentuckian to galvanize the emotion, anger, and determination one has to have when it comes to making sure the coal mines are safe.

Coal mines are a world within themselves. The taste of a coal mine, the smell of a coal mine, the brotherhood of a coal mine, the danger of a coal mine, these are things which are part of people's lives. Most people in West Virginia, most people across the United States of America, have never been down a coal mine because it is restricted and people cannot wander in to look around. Those who have oversight responsibility have to make sure they do their job.

I, for one, believe those who do represent the mining State need to take this responsibility, as do the companies, as do the operators at the ground level, and also the miners themselves. I have had a slew of ideas in the last several days. I am optimistic we can find technology—it may come out of DARPA or DOD. Remember in the first gulf war, the Marines, Air Force, Navy, and Army could not communicate with each other when they went into Kuwait. Their radio bands were all different. Everyone knows that story. That was bad. They fixed it. That is what we have in our coal mines. That has to be fixed.

Mine safety moved to the top of my legislative priority list the very day I heard of these tragedies. I commend this important legislation to my colleagues. I invite them to join Senator BYRD and myself in cosponsoring this legislation.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. How much time do I have under the order?

The PRESIDING OFFICER. There is 25½ minutes remaining on the minority side. There is no more specific order.

Mr. BYRD. How much time was there at the beginning?

The PRESIDING OFFICER. The allotted time was 45 minutes.

Mr. BYRD. And 25 minutes remain?

The PRESIDING OFFICER. Correct.

Mr. BYRD. Mr. President, it has been almost 1 month since the explosion that killed 12 miners at the Sago mine in Upshur County, WV, and almost 2 weeks since the conveyor belt fire that killed two miners at the Aracoma Alma mine in Logan County, WV. In that same time, the Mine Safety and Health Administration, MSHA, of the U.S. Department of Labor has briefed my office on several occasions. The Senate Labor-HHS Appropriations Subcommittee, at my request and under the leadership of Chairman ARLEN SPECTER and ranking member TOM HARKIN, has held a hearing and solicited testimony from mine safety experts. The West Virginia delegation in the House and the Senate has met with the Governor of West Virginia. Governor Joe Manchin, has met with the White House Chief of Staff, and has met with the acting MSHA Director to review mine safety legislation passed by the West Virginia legislature in the wake of the Sago and Alma tragedies.

We now can speak with some certainty about what contributed to the tragedies at the Sago and Alma mines that killed 14 coal miners. We know these tragedies have highlighted gross weaknesses in mine emergency preparedness and the failure of leadership at the Federal Mine Safety and Health Administration to get tough about rescue procedures.

We know that communications technology in our Nation's coal mines is inadequate. The Federal mine regulators require only that a telephone line connect the working sections of mines to the surface. If that telephone line does not work, in the event of an emergency, the miners trapped underground are cut off from the rescue effort. Those on the surface cannot get a message to the miners underground and the miners underground cannot get a message to those on the surface.

At the Sago and Alma mines, families waited, waited, waited in anguish for 40 hours, not knowing if their loved ones were alive or dead because the communications equipment in the mine did not work.

We know that Federal mine safety officials cannot immediately locate miners trapped underground. At both the Sago and Alma mines, families waited, and waited, and waited while rescue teams searched meticulously through the underground caverns. Those teams could only make educated guesses about the location of the trapped miners, putting the rescue teams' lives and the lives of the trapped miners at increased risk while the search went on.

We know that the MSHA notification and response system is ponderously slow. Federal mine safety officials did not know of the Sago explosion until 2 hours after it happened. It took another 9 hours—9 long, excruciating hours—before rescue teams could enter the mine.

The same thing happened at the Alma mine. Federal mine safety officials did not know of the underground fire for 2½ hours, and in that time the fire spread and got worse. We know Federal mine regulators require only that miners have a 1-hour emergency breathing device; and at the Sago mine, 1 hour of oxygen was not nearly adequate to sustain those miners through a 40-hour rescue operation. We also know that the Mine Safety and Health Administration, tragically—tragically—abandoned its assessment of the rules governing these 1-hour emergency breathing devices in December of 2001. What a travesty.

We know that the mine rescue teams, at both the Sago and Alma mines, were forced to wait for a frustrating amount of time because the coal operators had to negotiate the question of liability before the rescue teams could enter the mines. We know that Federal mine regulators have been aware of this liability problem since 1995. We know that MSHA has not taken steps to address it, or to update and improve the rules related to the number of rescue teams per mine and their ability to respond rapidly. The only recent effort to update these rules was halted by MSHA—now get that—the only recent effort to update these rules was halted by MSHA in 2002.

The Sago mine was a habitual violator with 276 citations and orders issued in 2004 and 2005. The coal operator never paid a fine more than $440, even though mandatory health and safety standards were repeatedly, repeatedly, repeatedly violated. Meanwhile, MSHA assessed fines as low as $99 for violations that were classified as "significant and substantial." Let me say that again. Meanwhile, MSHA assessed fines as low as $99 for violations that were classified as "significant and substantial" in threatening the safety and health of the miners at Sago.

MSHA has broad authority to protect coal miners, and the 1977 Mine Act is the strongest and most sweeping workplace safety law ever enacted in the United States, and, yet, even with these tools—even with these tools—the Mine Safety and Health Administration failed—yes, it failed—to protect the 14 miners who perished at the Sago and Alma mines. What a shame. What a shame.

MSHA has the authority to require that secondary communications equipment be available in the event of an emergency. That authority was not used. MSHA has the authority to require that emergency breathing devices be placed in the mines in the event of an extended recovery effort. That authority was not used. That authority was not used. MSHA has the authority to penalize habitual violators, and to close those mines where pattern violations threaten a coal miner's life. That authority was not used. That authority was not used. What a travesty.

MSHA is the Federal agency charged with protecting coal miners. I will say that again. MSHA is the Federal agency charged with protecting coal miners, but it has scuttled—get that; it has scuttled—18 initiatives in the last 5 years to update and improve mine safety and emergency preparedness. MSHA's leadership has embraced the status quo as good enough, and that attitude puts miners' lives at risk.

In the past, mine disasters such as these have spurred tougher mine safety laws. The Farmington, WV, disaster spurred the 1969 Coal Act, and subsequent disasters spurred the 1977 Mine Act. Now, I was here at the time in both instances. I was in the Senate. This time, the legacy of the Sago and Alma mine disasters must be a tougher agency that will—will—enforce the law.

Together with Senator JAY ROCKEFELLER and the West Virginia delegation in the House, I am introducing legislation today that is a mandate for action. Our legislation does not amend the Mine Act. Our delegation takes the position that the Mine Act already provides the Secretary of Labor with every authority necessary to prevent these kinds of tragedies. Instead, the legislation that I am introducing on behalf of myself and Mr. ROCKEFELLER—and which is being likewise introduced in the House of Representatives today—our legislation directs the Labor Secretary to employ the authorities of the Mine Act. It directs the Labor Secretary, within 90 days, to promulgate a series of health and safety rules aimed at improving mine safety enforcement and emergency preparedness.

This legislation directs the Labor Secretary to establish a rapid notification and response system. This legislation requires coal operators to expeditiously notify MSHA of emergencies. Any coal operator who fails to expeditiously notify Federal mine safety officials will be subject to a $100,000 fine.

We must reduce the amount of time that is lost between a mine emergency and MSHA's notification and arrival on the scene.

Our legislation directs the Labor Secretary to reassess regulations that govern mine rescue teams to ensure that their numbers are sufficient and that obstacles to their deployment are minimized. Mine rescue teams ought to be able to respond just as local fire departments would respond to an emergency. It must not take 11 hours.

Our legislation requires coal operators to store additional emergency breathing supplies underground to sustain miners who may be trapped for an extended period. Our legislation requires the Labor Secretary to update and improve the rules governing emergency communications equipment that would allow miners underground to communicate with surface rescue efforts, and allow surface rescue efforts to locate miners underground. Never again—never again—should a coal miner or any other miner lack access to a reasonable supply of oxygen underground or be unable to receive directions from the surface about escape routes—never again.

On the enforcement side, our legislation requires the Labor Secretary to create a new $10,000 mandatory and minimum penalty for coal operators who display negligence or reckless disregard for safety standards. By negligence or reckless disregard, I am talking about coal operators who knew or should have known of a dangerous condition or practice and failed to take the steps necessary to fix the problem, or who displayed conduct which exhibits a deplorable absence of care for the safety and health of the miners. If penalties are required in this kind of situation, then this statutory floor will help to ensure that those penalties will hurt—let me say that again—if penalties are required in this kind of situation, then this statutory floor will help to ensure that those penalties will hurt, and hurt sufficiently to encourage violators to comply with the law.

Our legislation prohibits the use of belt entries for ventilation in contravention of an MSHA regulation issued in 2004, which likely—hear me now—which likely played a part in the Alma fire.

Our legislation creates a science and technology office in the Labor Department to help expedite the introduction of the most advanced health and safety technologies into the mines, and to ensure that Federal mine safety officials are actively pulling from other Federal agencies those technologies that can help to protect miners. No longer—hear me; hear me now: no longer—should miners be sent underground with safety equipment that is decades out of date.

Our legislation creates the new position of ombudsman in the Labor Department's Inspector General's office to allow miners to more easily report safety violations. To be effective, such a position requires the appointment and the confirmation of someone with at least 5 years—no political hack—someone with at least 5 years of expertise in mine safety and health. No place for a political hack. A miner should never have to feel that he has no options other than to continue to work in a dangerous environment.

Now, I speak from the heart. I grew up in a coal miner's home. My dad was a coal miner—a coal miner. I married a coal miner's daughter. Loretta Lynn sings a song. She is a coal miner's daughter. Well, my wife is a coal miner's daughter. My brother-in-law died of silicosis, black lung. His father was killed by a slate fall in a coal mine. So I speak from the viewpoint of a coal miner, a coal miner's son.

For 5 years, the leadership in the Labor Department and the Mine Safety and Health Administration has worked against—get that—worked against the health and safety needs of coal miners. If we must hold the hand of the Labor Department—if we have to hold the hand of the Labor Department—and lead it like a stubborn and obstinate child, to force it to promulgate rules to implement the Mine Act and save lives, then that is exactly what we should do. If this administration and if MSHA will not lead, then this Congress must lead, and, if necessary, poke, prod, kick, and push MSHA into fulfilling its mandate.

At this late date, we need more than platitudes—more than platitudes—to protect the safety of our Nation's miners. We are not just talking about West

Virginia miners, not just talking about coal miners in West Virginia. We need resources. We need swift action. And we need to impress deeply upon the psyche of MSHA—they better hear that—impress deeply upon the psyche of MSHA and the Nation's coal mine operators that the safety of miners will not be compromised for personal profit or for politics.

Protecting the safety of our miners is a moral responsibility. Hear me. Protecting the safety of our miners is a moral responsibility, and this legislation will help to make sure that we never, ever forget that.

I send the bill to the desk, a bill by Mr. BYRD for himself and Mr. ROCKEFELLER. I ask that it be relayed to the appropriate committee.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The minority leader is recognized.

Mr. REID. Has the Senator from West Virginia yielded the floor?

Mr. BYRD. Yes, I yield the floor, and I thank the distinguished leader.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. REID. I had the opportunity to listen to the remarks of Senators BYRD and ROCKEFELLER. I wanted to add my remarks about mine safety.

As I have told the Senator from West Virginia, my father was a miner. When I was less than a week old, my father was working in a mine at Chloride, AZ. It was a gold mine. It was a vertical. There were two men in the hole. That was standard operating procedure at the time. There was only one person present to light the holes for obvious reasons. So my dad's working companion, a man named Carl Myers, had gone up to the next level so he would be away from the dynamite. In those days, they didn't have product liability protection, and so my dad had lit 12 holes. One of them went off early. The fuse ran and blew my dad in the air, blew the soles off his shoes, blew his carbide light out. In those days, you would take a sinking ladder down in the hole with you, and when you would go out, when the holes were burning, you would take it up with you. My dad was in a state of shock and didn't know that it had blown one of the legs off the ladder. So every time he would try to put the ladder down to climb out, he would fall. And he kept falling.

The man in the next level who heard the 1 hole go off knew there were 11 others that were supposed to go off and knew my dad hadn't come out. This man, Carl Myers, climbed down the hole and, even though he was a smaller man than my father, helped my dad out of the hole, drug him up to the next level. The other holes went off. My dad went to the hospital and spent some time there. But as a result of the heroic feat of Carl Myers, who received a medal for heroism for doing what he did, my father was able to raise his four boys.

The reason I mention that to the distinguished Senator from West Virginia is mine safety means saving people's lives. Growing up in Nevada, my dad worked many times down in the mines alone. That was against the law, but he did it all the time. It was against the law, but there were no mine inspectors. He was down there alone all the time.

I have watched with interest the rash of mining accidents in West Virginia and Kentucky in the last few weeks. I want the Senators from West Virginia to know that I will do anything I can legislatively to make sure these mines are safe. I speak from experience. Mining is a terribly difficult job. That is why there are so many songs written about the dangers of mining.

As I indicated, when I was growing up, my dad didn't have much protection from the State. They abandoned Searchlight. There wasn't a lot going on, so they didn't watch it very much. A rock fell on the head of my dad's best friend. They carried him out of the mine. It killed him. He wasn't as fortunate as my dad because his widow raised the three Hudgens children alone. There are lots of accidents. These things happen.

Without proper protection, there is no occupation more dangerous than being down in a hole.

I applaud the Senator from West Virginia for protecting his State as he always does. But understand also that in faraway Nevada, 2,500 miles away, you have a Senator who will do anything possible to make sure that in the State of West Virginia and in all places where mining takes place, there are Federal regulations in place to protect people like my dad.

Mr. BYRD. Mr. President, if I may be recognized.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Let me thank my friend, the leader, our leader on this side of the aisle, who is a gold miner's son. There are not many of us in here who are gold miners' sons. I am proud that my leader is a gold miner's son. I am proud that he assured us, from his standpoint and within his power, that he will do everything possible—and I hope he will—to help bring this legislation to the floor. He understands that it is needed, and I will welcome his assistance in that regard. I am proud of him as a gold miner's son. I am glad he reminds us of this from time to time. I believe this legislation is badly needed. I implore my leader to do everything he can to see that this bill gets on the calendar and gets taken up by the Senate and acted upon promptly.

I thank all Senators and yield the floor.

Mr. KENNEDY. Mr. President, I want to express my support for the Federal Mine Safety and Health Act of 2006, introduced today by Senators BYRD and ROCKEFELLER.

The recent tragedies at Sago Mine and Alma Mine in West Virginia remind us that the safety of the Nation's workers is paramount. Mining continues to be extremely hazardous—it has consistently been the first or second most dangerous industry in the country. This year we have already had 17 mine fatalities, 15 of them in coal mines, and 14 of them in West Virginia. And sadly, I understand that two more miners may have been killed today.

Our entire Nation joins their families and communities in mourning these fallen miners. We have a continuing obligation to do everything we can to protect the safety of America's workers. It is obvious that we are not meeting that obligation.

Two weeks ago, I traveled with Senator ROCKEFELLER, HELP Committee Chairman ENZI, and Subcommittee Chairman ISAKSON to meet with the family members of the miners who were killed at Sago Mine, and with coalminers, company representatives, and health and safety experts. Each of us made a sincere commitment to improving the Nation's mine safety laws.

This legislation provides a vital first step. It requires swift action by the Mine Safety and Health Administration to adopt standards that are long overdue and bring mine safety standards out of the Stone Age and into the 21st century. It will bring stronger enforcement and up-to-date technology to every mine in America.

First and foremost, we need to ensure that the rescue and communications technology available to our Nation's miners is the most up-to-date available. Coal companies have spent millions on improving techniques for extracting coal and metals from the ground, but miners still have to rely on oxygen units and phone lines that were developed 30 years ago. We already know better communications and miner tracking technology exists in other countries. It has been available in the United States for several years but, despite its proven availability to help save miners' lives, only a handful of mines here in the U.S. are using it. This bill would create a dedicated office at MSHA to explore mine safety technologies and to work with other Federal agencies to ensure that our Nation's mines are using the newest and best safety equipment.

While innovation is important, we also need to ensure that we use all of the tools available today to keep our Nation's miners safe. Earlier this week, 72 workers at a mine in Canada were saved because Canadian mines are required to provide adequate stores of oxygen. It's a travesty that we aren't doing the same for American miners. This bill would require every coal mine in this country to have rescue chambers available, with emergency air supplies and breathing devices to help keep miners alive while they are waiting for rescue.

We also need to see that every mine is adequately prepared to respond to future emergencies. When miners are trapped underground, every minute is precious. Yet our laws and policies do not require mine rescue teams to be onsite. All too often it takes hours for rescuers to reach a mine and, when they do arrive, they are not familiar with the mine's layout. We also are losing experienced miners to work on these teams, as the average age of rescue workers is rising. The number of trained rescuers is decreasing, even as demand for coal production increases.

This legislation would require coal companies to have onsite rescue teams employed by the mine, who are familiar with the layout of the mine and are at the ready in the case of an emergency. It also directs the Secretary of Labor to develop requirements for the training and qualifications of mine rescue workers, and the equipment and technology used in mine rescues.

We also need to ensure that our penalties are a significant deterrent to mine operators who continually violate the law. Sago Mine had an injury rate nearly three times that of the national average and had been cited by MSHA for over 200 safety violations in 2005. Nearly half of these were "serious and substantial"—meaning that the violations had the potential to lead to serious injury. Eighteen of the violations were so serious that they led to partial closures of the mine.

I know that President Bush has proposed raising maximum fines for the most flagrant violations from $60,000 to $220,000. But this ignores the critical failures of our minimum penalties, which are so low as to be toothless. It is difficult to believe that penalties lower than traffic tickets will deter companies that make millions of dollars in profits each year. This legislation would ensure that willful and negligent violators of the law would face a minimum fine of $10,000. Mine operators who fail to immediately notify MSHA of an emergency face fines of up to $100,000.

This bill starts a long overdue process to improve the safety of our Nation's miners. We must act before another tragedy like those at the Sago and Alma Mines occurs. I commend Senator BYRD and Senator ROCKEFELLER and the West Virginia Delegation for crafting this legislation. And I join them in asking my colleagues to support its swift passage.

By Mrs. FEINSTEIN:

S. 2233. A bill to reform and improve the regulation of lobbying and congressional ethics; to the Committee on Rules and Administration.

Mrs. FEINSTEIN. Mr. President, I am introducing legislation today that reforms and improves the regulation of lobbying and raises congressional ethics standards.

There is a perception in America that members of Congress care less about the public interest and more about advancing their own personal and financial interests. We need to make fundamental changes in how we permit lobbyists to influence legislation, hearings, appropriations, and our general oversight of the Executive Branch.

The Democratic leadership bill to reform lobbying rules, the Honest Leadership and Open Government Act, which I am cosponsoring, contains sensible enough reforms.

Rather than standing pat, the measure I am introducing today is tougher medicine. I believe it will go a long way to changing the view of constituents that Congress is corrupt and ethically challenged.

The measure: institutes a Congress-wide two year ban on Senators, House members and their staffs lobbying Capitol Hill; takes a zero tolerance approach to lobbyist offered sports and entertainment tickets and meals; prohibits any lobbyist sponsored, or paid for, travel; and eliminates the option of registered lobbyists working in any capacity for a Senator's or House Member's election campaigns or fundraising operations.

A New York Times poll this past Friday sums up, in stark terms, public perceptions of Congress.

When asked "Do you think that recent reports that lobbyists may have bribed members of Congress are isolated incidents or is this the way things work in Congress", 77 percent of the respondents said bribing is the "way things work" in Congress. The survey indicates a 61 percent disapproval rating of Congress as well.

One poll participant, Mr. Donald Pertius from Arkansas, commented that "It seems like the integrity of Congress Members in the last few years has just gone to pot."

A key step, that will go a long way to clearing up the perception that individuals leaving the Hill immediately trade on their contacts and friendships, is a two year Congress-wide ban on lobbying for Members and staff once they leave their jobs.

Members and staff make a beeline for K Street when they leave the Hill. According to the New York Times, 50 percent of the 36 Senators retired since 1998 and 40 percent of the 162 House Members have signed up as lobbyists.

The Democratic leadership bill, and from what I understand the Republican measure being drafted, restricts staff from lobbying their former offices. That is good but we need to go further.

We need to change the minds of people across America that working in the Senate or House is about a commitment to public service—not a revolving door to cashing in as a private sector lobbyist.

On another front, numerous Senate and House campaigns have registered lobbyists as Treasurers for Members' PACs and in other key finance roles. It's another backdoor way for a lobbyist to insinuate his or her way into a politician's inner circle.

Published reports confirm that 71 lawmakers now list lobbyists as treasurers to their PACs or their campaign committees, nearly a fivefold increase since 1998. We need to make a clean break from this kind of collaboration that's fast on the rise.

The legislation I am introducing prohibits the formation of any political committee by a politician if a person registered as a lobbyist is formally affiliated with such an entity. Alex Knott at the Center for Public Integrity stated in the Wall Street Journal last week that "By putting a lobbyist in charge of your political operations, you are conflicted from the start." He's absolutely correct.

Senators, House Members, their staffs and lobbyists alike ought to brace themselves for major change. The old rules and regulations that govern Washington are due for overhaul, and I believe that the two comprehensive leadership bills will represent a good start to that process. I hope my colleagues are receptive to even more stringent efforts, in the form of this legislation I am introducing today, and look forward to the full Senate debate on this issue in the coming months.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2233

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Lobbyist Reform Act of 2006".

SEC. 2. TWO-YEAR TOTAL BAN ON LOBBYING BY MEMBERS OF CONGRESS AND EMPLOYEES OF CONGRESS.

Subsection (e) of section 207 of title 18, United States Code, is amended to read as follows:

"(e) RESTRICTIONS ON MEMBERS OF CONGRESS AND OFFICERS AND EMPLOYEES OF THE LEGISLATIVE BRANCH.—

"(1) IN GENERAL.—

"(A) PROHIBITION.—Any person who is a Member of Congress, an elected officer of either House of Congress, or an employee of a House of Congress and who, within 2 years after that person leaves office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former Member of Congress or elected officer seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

"(B) CONTACT PERSONS COVERED.—The persons referred to in subparagraph (A) with respect to appearances or communications are any Member, officer, or employee of either House of Congress, and any employee of any other legislative office of Congress.

"(2) DEFINITIONS.—As used in this subsection—

"(A) a person is an employee of a House of Congress if that person is an employee of the Senate or an employee of the House of Representatives;

"(B) the term 'employee of the House of Representatives' means an employee of a Member of the House of Representatives, an employee of a committee of the House of Representatives, an employee of a joint committee of Congress whose pay is disbursed by the Clerk of the House of Representatives, and an employee on the leadership staff of the House of Representatives;

"(C) the term 'employee of the Senate' means an employee of a Senator, an employee of a committee of the Senate, an employee of a joint committee of Congress whose pay is disbursed by the Secretary of the Senate, and an employee on the leadership staff of the Senate;

"(D) the term 'Member of Congress' means a Senator or a Member of the House of Representatives; and

"(E) the term 'Member of the House of Representatives' means a Representative in, or a Delegate or Resident Commissioner to, Congress.".

SEC. 3. BAN ON GIFTS FROM LOBBYISTS.

Paragraph 1(a)(2) of rule XXXV of the Standing Rules of the Senate is amended by adding at the end the following: "This clause shall not apply to a gift from a lobbyist.".

SEC. 4. PROHIBITION ON PRIVATELY FUNDED TRAVEL.

Paragraph 2(a)(1) of rule XXXV of the Standing Rules of the Senate is amended by striking "an individual" and inserting "an organization recognized under section 501(c)(3) of the Internal Revenue Code of 1986 that is not affiliated with any group that lobbies before Congress".

SEC. 5. REGISTERED LOBBYISTS PROHIBITED FROM SERVING ON AUTHORIZED POLITICAL COMMITTEES.

Subsection (d) of section 302 of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(e)) is amended by adding at the end the following new paragraph:

"(6) No political committee may be designated as an authorized committee if a person registered as a lobbyist under section 4 of the Lobbying Disclosure Act of 1995 is formally affiliated with such committee.".

By Mr. MARTINEZ (for himself and Mr. NELSON of Florida):

S. 2239. A bill to prohibit offshore drilling on the outer Continental Shelf off the State of Florida, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. MARTINEZ. Mr. President, I rise today to join my colleague from Florida, Senator BILL NELSON, in introducing the Permanent Protection for Florida Act of 2006.

I believe this bipartisan legislation will provide Florida's pristine coastline, beaches, and our critical military training area with strong, permanent protections—while at the same time providing limited oil and gas exploration in areas that have traditionally been under Presidential moratoria.

Our Nation is struggling with crippling energy prices and the growing pressure to explore off Florida's coast has never been greater than now. Instead of sitting on the sidelines and waiting for others to dictate the terms of oil and gas operations on our coast, we felt compelled to offer an alternative that will protect our State's interests in perpetuity.

This legislation offers historic protections that would create a Florida Exclusion Zone—a buffer area extending 150 miles south of the Panhandle that would also place the Florida Straits and Atlantic Coast permanently off limits to oil and gas exploration.

All leases inside the Florida Exclusion Zone would be relinquished or removed in exchange for royalty forgiveness on active leases in the Central and Western Gulf of Mexico. These relinquished leases must also be environmentally restored to their original condition. In addition, the Permanent Protection for Florida Act would remove the mandatory inventory of the Outer Continental Shelf and extend the current Presidential moratorium through 2020.

This bill sends a message that is loud and clear—Florida's waters are off limits. Florida's leaders have worked too long and too hard on building up these protections just to have them disappear during a brief moment of high energy prices. We have a lot at stake and it is time to solidify our protections into law.

I believe these historic protections will garner significant support from our State's congressional delegation and coastal members of Congress that are concerned with resource exploration off their coasts.

I urge those that are looking for bipartisan solutions to energy exploration to join with me and my colleague Senator NELSON in supporting this legislation.

Mr. NELSON of Florida. Mr. President, I rise today to introduce with my fellow Senator from Florida, MEL MARTINEZ, legislation we believe will enhance our Nation's military preparedness, while also protecting the State of Florida's economy from harm by oil drilling.

It could be said that debate on this issue began 37 years ago last month. It was in January 1969 when an explosion at an offshore drilling site caused a 200,000-gallon crude oil spill off California's coast. While small in comparison to other spills, that incident dealt a devastating blow to neighboring beaches and aquatic life.

As tides brought an 800-square-mile slick ashore, oil coated 35 miles of the coastline, blackening beaches and killing thousands of birds, dolphins, seals, fish and other wildlife. A national outcry followed, and sparked a movement that led to legal bans on drilling on the Outer Continental Shelf, including the eastern Gulf of Mexico off of Florida.

Unfortunately, this past year has seen a number of legislative and administrative attempts to undo this longstanding ban—without a cause that is worth the risk.

In fact, Senator MARTINEZ and I have been fighting an almost daily battle to protect our State's tourism economy, which is heavily dependent on our beautiful beaches and abundant fisheries. At the same time, we have been fighting to preserve our military's vital testing and training sites there in the eastern gulf.

The Martinez-Nelson Permanent Protection for Florida Act will forever safeguard the State's tourism-dependent economy from offshore drilling, while also removing active drilling leases in the eastern gulf. It creates the Florida Exclusion Zone, which will extend out at least 260 miles off much of the State's west coast, and at least 150 miles off the Florida Straits and all the way around the entire east coast.

In short, our proposal will protect Florida's economy and its environment; and, at the same time, enhance our Nation's military preparedness. We, therefore, expect to receive strong support from the Florida Congressional Delegation.

We also expect to receive support from our fellow Senators representing other coastal States. That is because we are fighting not only to protect Florida, but many other environmentally fragile areas along our Nation's coastline. In fact, a key provision of our bill extends the Outer Continental Shelf moratorium from 2012 to 2020.

Senator MARTINEZ and I speak as one on this issue, and, together, we believe we can accomplish great things for Florida and the country. We ask our colleagues to recall with us the words of former President Teddy Roosevelt, who, in essence, said, "A nation that destroys its environment destroys itself."

We look forward to working with the Chairman and Ranking Member of the Energy Committee, and the rest of our colleagues, to enact this legislation as soon as possible.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 363—DESIGNATING FEBRUARY 2006 AS "GO DIRECT MONTH"

Mr. COLEMAN (for himself and Mr. KENNEDY) submitted the following resolution; which was considered and agreed to:

S. RES. 363

Whereas the Department of Treasury issued over 70,000 checks worth approximately $61,000,000 that were illegally signed for in 2004;

Whereas the Department of the Treasury receives approximately 500,000 telephone calls each year regarding problems with paper checks;

Whereas the use of direct deposit has resulted in approximately $5,000,000,000 in savings for the Federal Government since 1986;

Whereas 1 out of every 5 newly eligible Social Security recipients has yet to sign up for direct deposit;

Whereas the United States would generate approximately $120,000,000 in annual savings if all federal beneficiaries used direct deposit;

Whereas the use of direct deposit is a more secure, reliable, and cost effective method of payment because the use of direct deposit—

(1) eliminates the risk of lost or stolen checks;

(2) helps protect against fraud; and

(3) provides citizens of the United States with more control over their money;

Whereas the Department of the Treasury and the Federal Reserve Bank has launched "Go Direct", a national campaign organized to encourage citizens of the United States to use direct deposit for the receipt of Social Security and other Federal benefits; and

Whereas, by working with financial institutions, advocacy groups, and community organizations, the sponsors of "Go Direct" educate citizens of the United States about the advantages of using direct deposit and assist them during the enrollment process: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideas of "Go Direct";

(2) proclaims February 2006 as "Go Direct Month";

(3) commends Federal, State, and local governments, and the private sector, for promoting February as "Go Direct Month"; and

(4) encourages all citizens of the United States to—

(A) participate in events and awareness initiatives held during the month of February;

(B) become informed about the convenience and safety of direct deposit; and

(C) consider signing up for direct deposit of Social Security or other Federal benefits.

SENATE RESOLUTION 364—HONORING THE VALUABLE CONTRIBUTIONS OF CATHOLIC SCHOOLS IN THE UNITED STATES

Mr. VITTER (for himself and Ms. LANDRIEU) submitted the following resolution; which was considered and agreed to:

S. RES. 364

Whereas Catholic schools in the United States have received international acclaim for academic excellence while providing students with lessons that extend far beyond the classroom;

Whereas Catholic schools present a broad curriculum that emphasizes the lifelong development of moral, intellectual, physical, and social values in the young people of the United States;

Whereas Catholic schools in the United States today educate 2,420,590 students and maintain a student-to-teacher ratio of 15 to 1;

Whereas the faculty members of Catholic schools teach a highly diverse body of students;

Whereas more than 27.1 percent of school children enrolled in Catholic schools are minorities, and more than 13.6 percent are non-Catholics;

Whereas Catholic schools saved the United States $19,000,000,000 in educational funding during fiscal year 2005;

Whereas Catholic schools produce students strongly dedicated to their faith, values, families, and communities by providing an intellectually stimulating environment rich in spiritual, character, and moral development; and

Whereas in the 1972 pastoral message concerning Catholic education, the National Conference of Catholic Bishops stated, "Education is one of the most important ways by which the Church fulfills its commitment to the dignity of the person and building of community. Community is central to education ministry, both as a necessary condition and an ardently desired goal. The educational efforts of the Church, therefore, must be directed to forming persons-in-community; for the education of the individual Christian is important not only to his solitary destiny, but also the destinies of the many communities in which he lives.": Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the goals of Catholic Schools Week, an event cosponsored by the National Catholic Educational Association and the United States Conference of Catholic Bishops that recognizes the vital contributions of thousands of Catholic elementary and secondary schools in the United States; and

(2) congratulates Catholic schools, students, parents, and teachers across the United States for their ongoing contributions to education, and for the vital role they play in promoting and ensuring a brighter, stronger future for this Nation.

SENATE CONCURRENT RESOLUTION 79—EXPRESSING THE SENSE OF CONGRESS THAT NO UNITED STATES ASSISTANCE SHOULD BE PROVIDED DIRECTLY TO THE PALESTINIAN AUTHORITY IF ANY REPRESENTATIVE POLITICAL PARTY HOLDING A MAJORITY OF PARLIAMENTARY SEATS WITHIN THE PALESTINIAN AUTHORITY MAINTAINS A POSITION CALLING FOR THE DESTRUCTIOIN OF ISRAEL

Mr. THUNE (for himself, Mr. LIEBERMAN, Mr. TALENT, Mr. BROWNBACK, Mr. CHAMBLISS, Mr. VOINOVICH, and Mr. JOHNSON) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 79

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that no United States assistance should be provided directly to the Palestinian Authority if any representative political party holding a majority of parliamentary seats within the Palestinian Authority maintains a position calling for the destruction of Israel.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2697. Mr. NELSON, of Florida (for himself, Mr. DURBIN, Mr. BINGAMAN, Mr. LAUTENBERG, Mrs. MURRAY, Mr. SCHUMER, Mrs. CLINTON, Mr. KOHL, Mr. LEAHY, Mr. DAYTON, Mr. FEINGOLD, Mr. LIEBERMAN, Mr. NELSON, of Nebraska, and Mr. SARBANES) submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table.

SA 2698. Mr. BINGAMAN (for himself, Mr. ROCKEFELLER, Mrs. MURRAY, Ms. CANTWELL, Mrs. CLINTON, Mr. KENNEDY, Mr. KOHL, Mr. LIEBERMAN, Mr. SCHUMER, Mr. MENENDEZ, Mr. KERRY, Mr. LEAHY, Mr. DURBIN, Mr. DAYTON, Mrs. FEINSTEIN, and Mr. BAYH) submitted an amendment intended to be proposed by him to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2699. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2700. Mr. KENNEDY (for himself and Mr. HARKIN) submitted an amendment intended to be proposed by him to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2701. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2702. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 4297, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2697. Mr. NELSON of Florida (for himself, Mr. DURBIN, Mr. BINGAMAN, Mr. LAUTENBERG, Mrs. MURRAY, Mr. SCHUMER, Mrs. CLINTON, Mr. KOHL, Mr. LEAHY, Mr. DAYTON, Mr. FEINGOLD, Mr. LIEBERMAN, Mr. NELSON of Nebraska, and Mr. SARBANES) submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . PROTECTION FOR MEDICARE BENEFICIARIES WHO ENROLL IN THE PRESCRIPTION DRUG BENEFIT DURING 2006.

(a) EXTENDED PERIOD OF OPEN ENROLLMENT DURING ALL OF 2006 WITHOUT LATE ENROLLMENT PENALTY.—Section 1851(e)(3)(B) of the Social Security Act (42 U.S.C. 1395w-21(e)(3)(B)) is amended—

(1) in clause (iii), by striking "May 15, 2006" and inserting "December 31, 2006"; and

(2) by adding at the end the following new sentence:

"An individual making an election during the period beginning on November 15, 2006, and ending on December 15, 2006, shall specify whether the election is to be effective with respect to 2006 or with respect to 2007 (or both).".

(b) ONE-TIME CHANGE OF PLAN ENROLLMENT FOR MEDICARE PRESCRIPTION DRUG BENEFIT DURING ALL OF 2006.—

(1) IN GENERAL.—Section 1851(e) of the Social Security Act (42 U.S.C. 1395w-21(e)) is amended—

(A) in paragraph (2)(B)—

(i) in the heading, by striking "FOR FIRST 6 MONTHS";

(ii) in clause (i), by striking "the first 6 months of 2006," and all that follows through "is a Medicare+Choice eligible individual." and inserting "2006."; and

(iii) in clause (ii), by inserting "(other than during 2006)" after "paragraph (3)"; and

(B) in paragraph (4), by striking "2006" and inserting "2007" each place it appears.

(2) CONFORMING AMENDMENT.—Section 1860D-1(b)(1)(B)(iii) of the Social Security Act (42 U.S.C. 1395w-101(b)(1)(B)(iii)) is amended by striking "subparagraphs (B) and (C) of paragraph (2)" and inserting "paragraph (2)(C)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173).

SA 2698. Mr. BINGAMAN (for himself, Mr. ROCKEFELLER, Mrs. MURRAY, Ms. CANTWELL, Mrs. CLINTON, Mr. KENNEDY, Mr. KOHL, Mr. LIEBERMAN, Mr. SCHUMER, Mr. MENENDEZ, Mr. KERRY, Mr. LEAHY, Mr. DURBIN, Mr. DAYTON, Mr. FEINSTEIN, and Mr. BAYH) submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC.   . TRANSITION REQUIREMENTS.

(a) REQUIREMENT.—

(1) IN GENERAL.—Section 1860D-4(b) of the Social Security Act (42 U.S.C. 1395w-104(b)) is amended by adding at the end the following new paragraph:

"(4) FORMULARY TRANSITION.—The sponsor of a prescription drug plan is required to provide at least a 30-day supply of any drug that a new enrollee in the plan was taking prior to enrolling in such plan. For individuals residing in a long-term care setting, the sponsor of a prescription drug plan is required to provide at least a 90-day supply of any drug such individual was taking prior to enrolling in such plan. A formulary transition supply provided under this section shall be made by the sponsor of a prescription drug plan without imposing any prior authorization requirements or other access restrictions for individuals stabilized on a course of treatment and at the dosage previously prescribed by a physician or recommended by a physician going forward.

"(5) CUSTOMER SERVICE.—The sponsor of a prescription drug plan is required to provide—

"(A) accessible and trained customer service representatives available for full business hours from coast to coast to provide knowledgeable assistance to individuals seeking help with Medicare Part D including, but not limited to, beneficiaries, caseworkers, SHIP counselors, pharmacists, doctors, and caregivers;

"(B) at least one dedicated phone line for pharmacists with sufficient staff to reduce wait times for pharmacists seeking Medicare Part D assistance to no more than 20 minutes; and

"(C) sufficient staff to reduce wait times for all Medicare Part D-related calls to plan phone lines to no more than 20 minutes.".

(2) APPLICATION.—The requirements under paragraphs (4) and (5) of section 1860D-4(b) of the Social Security Act (42 U.S.C. 1395w-104(b)), as added by subsection (a), shall apply to the plan serving as the national point of sale contractor under part D of title XVIII of such Act.

(b) EFFECTIVE DATE AND ENFORCEMENT.—

(1) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

(2) ENFORCEMENT.—The Secretary may impose a civil monetary penalty in an amount not to exceed $15,000 for conduct that a sponsor of a prescription drug plan or an organization offering an MA-PD plan knows or should know is a violation of the provisions of paragraph (4) or (5) of section 1860D-4(b) of the Social Security Act (42 U.S.C. 1395w-104(b)), as added by subsection (a). The provisions of section 1128A of the Social Security Act (42 U.S.C. a-7a), other than subsections (a) and (b) and the second sentence of subsection (f), shall apply to a civil monetary penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under subsection (a) of such section 1128A(a).

SEC.   . FEDERAL FALLBACK FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS FOR 2006.

(a) IN GENERAL.—

(1) IN GENERAL.—If a full-benefit dual eligible individual (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396u-5(c)(6))), or an individual who is presumed to be such an individual pursuant to subsection (b), presents a prescription for a covered part D drug (as defined in section 1860D-2(e) of such Act (42 U.S.C. 1395w-102(e))) at a pharmacy in 2006 and the pharmacy is unable to locate or verify the individual's enrollment through a reasonable effort, including the use of the pharmacy billing system or by calling an official Medicare hotline, or to bill for the prescription through the plan serving as the national point of sale contractor, the pharmacy may provide a 30-day supply of the drug to the individual.

(2) REFILL.—The pharmacy may provide an additional 30-day supply of a drug if the pharmacy continues to be unable to locate the individual's enrollment through such reasonable efforts or to bill for the prescription through the plan serving as the national point of sale contractor when a prescription is presented on or after the date that a prescription refill is appropriate, but in no case after December 31, 2006.

(3) COST-SHARING.—The cost-sharing for a prescription filled pursuant to this subsection shall be cost-sharing provided for under section 1860D-14(a) of the Social Security Act (42 U.S.C. 1395w-114(a)).

(b) PRESUMPTIVE ELIGIBILITY.—An individual shall be presumed to be a full-benefit dual eligible individual (as so defined) if the individual presents at the pharmacy with—

(1) a government issued picture identification card;

(2) reliable evidence of Medicaid enrollment, such as a Medicaid card, recent history of Medicaid billing in the pharmacy patient profile, or a copy of a current Medicaid award letter; and

(3) reliable evidence of Medicare enrollment, such as a Medicare identification card, a Medicare enrollment approval letter, a Medicare Summary Notice, or confirmation from an official Medicare hotline.

(c) PAYMENTS TO PHARMACISTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall reimburse pharmacists, to the extent that such pharmacists are not otherwise reimbursed by States or plans, for the costs incurred in complying with the requirements under subsection (a), including acquisition costs, dispensing costs, and other overhead costs. Such payments shall be made in a timely manner from the Medicare Prescription Drug Account under section 1860D-16 of the Social Security Act (42 U.S.C. 1395w-116) and shall be deemed to be payments from such Account under subsection (b) of such section.

(2) RETROACTIVE APPLICATION TO BEGINNING OF 2006.—The costs incurred by a pharmacy which may be reimbursed under paragraph (1) shall include costs incurred during the period beginning on January 1, 2006, and before the date of enactment of this Act.

(d) RECOVERY OF COSTS FROM PLANS BY SECRETARY NOT PHARMACIES.—The Secretary of Health and Human Services shall establish a process for recovering the costs described in subsection (c)(1) from prescription drug plans (as defined in section 1860D-1(a)(3)(C) of the Social Security Act (42 U.S.C. 1394w-101(a)(3)(C))) and MA-PD plans (as defined in section 1860D-41(a)(14) of such Act (42 U.S.C. 1395w-151(a)(14))) if the Secretary determines that such plans should have incurred such costs. Amounts recovered pursuant to the preceding sentence shall be deposited in the Medicare Prescription Drug Account described in subsection (c)(1).

SEC. _____. ENSURING THAT FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS ARE NOT OVERCHARGED.

(a) IN GENERAL.—Section 1860D-14 of the Social Security Act (42 U.S.C. 1395w-114) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

"(d) ENSURING FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS ARE NOT OVERCHARGED.—

"(1) IN GENERAL.—The Secretary shall, as soon a possible after the date of enactment of this subsection, establish processes for the following:

"(A) TRACKING INAPPROPRIATE PAYMENTS.—The Secretary shall track full-benefit dual eligible individuals enrolled in a prescription drug plan or an MA-PD plan to determine whether such individuals were inappropriately subject under the plan to a deductible or cost-sharing that is greater than is required under section 1860D-14.

"(B) REDUCTION IN PAYMENTS TO PLANS AND REFUNDS TO INDIVIDUALS.—If the Secretary determines under subparagraph (A) that an individual was overcharged, the Secretary shall—

"(i) reduce payments to the sponsor of the prescription drug plan under section 1860D-15 or to the organization offering the MA-PD plan under section 1853 that inappropriately charged the individual by an amount equal to the inappropriate charges; and

"(ii) refund such amount to the individual within 60 days of the determination that the individual was inappropriately charged.

If the Secretary does not provide for the refund under clause (i) within the 60 days provided for under such clause, interest at the rate established under section 6621(a)(1) of the Internal Revenue Code of 1986 shall be payable from the end of such 60-day period until the date of the refund.

"(2) REQUIREMENT.—The processes established under paragraph (1) shall provide for the ability of an individual to notify the Secretary if the individual believes that they were inappropriately subject under the plan to a deductible or cost-sharing that is greater than is required under section 1860D-14.".

(b) REPORT TO CONGRESS.—Not later than January 1, 2007, the Secretary of Health and Human Services shall submit a report to

Congress on the implementation of the processes established under subsection (d) of section 1860D–14 of the Social Security Act (42 U.S.C. 1395w–114), as added by subsection (a).

SEC. _____. REIMBURSEMENT OF STATES FOR 2006 TRANSITION COSTS.

(a) Reimbursement.—

(1) In general.—Notwithstanding section 1935(d) of the Social Security Act (42 U.S.C. 1396u–5(d) or any other provision of law, the Secretary of Health and Human Services shall reimburse States for 100 percent of the costs incurred by the State during 2006 for covered part D drugs (as defined in section 1860D–2(e) of such Act (42 U.S.C. 1395w–102(e))) for part D eligible individuals (as defined in section 1860D–1(a)(3)(A) of the Social Security Act (42 U.S.C. 1394w–101(a)(3)(A))) which the State reasonably expected would have been covered under such part but were not because the individual was unable to access on a timely basis prescription drug benefits to which they were entitled under such part. Such payments shall be made from the Medicare Prescription Drug Account under section 1860D–16 of the Social Security Act (42 U.S.C. 1395w–116) and shall be deemed to be payments from such Account under subsection (b) of such section.

(2) Retroactive application to beginning of 2006.—The costs incurred by a State which may be reimbursed under paragraph (1) shall include costs incurred during the period beginning on January 1, 2006, and before the date of enactment of this Act.

(b) Recovery of Costs From Plans by Secretary Not States.—The Secretary of Health and Human Services shall establish a process for recovering the costs described in subsection (a)(1) from prescription drug plans (as defined in section 1860D–1(a)(3)(C) of the Social Security Act (42 U.S.C. 1394w–101(a)(3)(C))) and MA–PD plans (as defined in section 1860D–41(a)(14) of such Act (42 U.S.C. 1395w–151(a)(14))) if the Secretary determines that such plans should have incurred such costs. Amounts recovered pursuant to the preceding sentence shall be deposited in the Medicare Prescription Drug Account described in subsection (a)(1).

(c) State.—For purposes of this section, the term "State" includes the District of Columbia.

SEC. _____. FACILITATION OF IDENTIFICATION AND ENROLLMENT THROUGH PHARMACIES OF FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS IN THE MEDICARE PART D DRUG PROGRAM.

(a) In General.—The Secretary of Health and Human Services shall provide for outreach and education to every pharmacy that has participated in the Medicaid program under title XIV of the Social Security Act, particularly independent pharmacies, on the following:

(1) The needs of full-benefit dual eligible individuals and the challenges of meeting those needs.

(2) The processes for the transition from Medicaid prescription drug coverage to coverage under such part D for such individuals.

(3) The processes established by the Secretary to facilitate, at point of sale, identification of drug plan assignment of such population or enrollment of previously unidentified or new full-benefit dual eligible individuals into Medicare part D prescription drug coverage, including how pharmacies can use such processes to help ensure that such population makes a successful transition to Medicare part D without a lapse in prescription drug coverage.

(b) Holding Pharmacies Harmless for Certain Costs.—

(1) In general.—The Secretary of Health and Human Services shall provide for such payments to pharmacies as may be necessary to reimburse pharmacies fully for—

(A) transaction fees associated with the point-of-sale facilitated identification and enrollment processes referred to in subsection (a)(3); and

(B) costs associated with technology or software upgrades necessary to make any identification and enrollment inquiries as part of the processes under subsection (a)(3).

(2) Time.—Payments under paragraph (1) shall be made with respect to fees and costs incurred during the period beginning on December 1, 2005, and ending on June 1, 2006.

(3) Payments from account.—Payments under paragraph (1) shall be made from the Medicare Prescription Drug Account under section 1860D–16 of the Social Security Act (42 U.S.C. 1395w–116) and shall be deemed to be payments from such Account under subsection (b) of such section.

SEC. _____. STATE COVERAGE OF NON-FORMULARY PRESCRIPTION DRUGS FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS DURING 2006.

(a) State Coverage of Non-Formulary Prescription Drugs for Full-Benefit Dual Eligible Individuals During 2006.—For prescriptions filled during 2006, notwithstanding section 1935(d) of the Social Security Act (42 U.S.C. 1396v(d)), a State (as defined for purposes of title XIX of such Act) may provide (and receive Federal financial participation for) medical assistance under such title with respect to prescription drugs provided to a full-benefit dual eligible individual (as defined in section 1935(c)(6) of such Act (42 U.S.C. 1396v(c)(6)) that are not on the formulary of the prescription drug plan under part D or the MA–PD plan under part C of title XVIII of such Act in which such individual is enrolled.

(b) Application.—

(1) Medicare as primary payer.—Nothing in subsection (a) shall be construed as changing or affecting the primary payer status of a prescription drug plan under part D or an MA–PD plan under part C of title XVIII of the Social Security Act with respect to prescription drugs furnished to any full-benefit dual eligible individual (as defined in section 1935(c)(6) of such Act (42 U.S.C. 1396v(c)(6)) during 2006.

(2) Third party liability.—Nothing in subsection (a) shall be construed as limiting the authority or responsibility of a State under section 1902(a)(25) of the Social Security Act (42 U.S.C. 1396a(a)(25)) to seek reimbursement from a prescription drug plan, an MA–PD plan, or any other third party, of the costs incurred by the State in providing prescription drug coverage during 2006.

SA 2699. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. REQUIREMENT OF SIGNED CERTIFICATION PRIOR TO PLAN ENROLLMENT UNDER PART D.

(a) In General.—Section 1860D–1(b)(1) of the Social Security Act (42 U.S.C. 1395w–101) is amended by adding at the end the following new subparagraph:

"(D) Special rule for plans with an initial coverage limit.—

"(i) In general.—The process for enrollment established under subparagraph (A) shall include, in the case of a prescription drug plan or an MA–PD plan that has an initial coverage limit (as described in section 1860D–2(b)(3)), a requirement that, prior to enrolling a part D eligible individual in the plan, the plan must obtain a certification signed by the enrollee or the legal guardian of the enrollee that meets the requirements described in clause (ii) and includes the following text: 'I understand that the Medicare Prescription Drug Plan or MA–PD Plan that I am signing up for may result in a gap in coverage during a given year. I understand that if subject to this gap in coverage, I will be responsible for paying 100 percent of the cost of my prescription drugs and will continue to be responsible for paying the plan's monthly premium while subject to this gap in coverage. For specific information on the potential coverage gap under this plan, I understand that I should contact (insert name of the sponsor of the prescription drug plan or the sponsor of the MA–PD plan) at (insert toll free phone number for such sponsor of such plan).'.

"(ii) Certification requirements described.—The certification required under clause (i) shall meet the following requirements:

"(I) The certification shall be printed in a typeface of not less than 18 points.

"(II) The certification shall be printed on a single piece of paper separate from any matter not related to the certification.

"(III) The certification shall have a heading printed at the top of the page in all capital letters and bold face type that states the following: 'WARNING: POTENTIAL MEDICARE PRESCRIPTION DRUG COVERAGE GAP'.".

(b) Effective Date.—The amendment made by this section shall take effect on the date of enactment of this Act.

SA 2700. Mr. KENNEDY (for himself and Mr. Harkin) submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. . REPEAL OF STATE OPTIONS FOR ALTERNATIVE PREMIUMS AND COST SHARING AND FLEXIBILITY IN BENEFIT PACKAGES UNDER THE MEDICAID PROGRAM.

(a) Repeal of State Option for Alternative Premiums and Cost Sharing.—

(1) Repeal.—Section 1916A of the Social Security Act, as added by sections 6041(a), 6042(a), and 6043(a) of the Deficit Reduction Act of 2005, is repealed.

(2) Conforming amendments.—

(A) Subsection (y) of section 1903 of the Social Security Act (42 U.S.C. 1396b), as added by section 6043(b) of the Deficit Reduction Act of 2005, is repealed.

(B) Section 1916 of the Social Security Act (42 U.S.C. 1396o) is amended—

(i) in subsection (f), by striking "and section 1916A" after "(b)(3)"; and

(ii) by striking subsection (h).

(C) Section 1938(c) of the Social Security Act, as added by section 6082 of the Deficit Reduction Act of 2005, is amended—

(i) in paragraph (3), by striking "and 1916A"; and

(ii) in paragraph (5), by striking "sections 1916 and 1916A" and inserting "section 1916".

(b) Repeal of State Option of Providing Benchmark Benefit Packages.—

(1) REPEAL.—Section 1937 of the Social Security Act, as added by section 6044(a) of the Deficit Reduction Act of 2005, is repealed.

(2) CONFORMING AMENDMENTS.—

(A) Sections 1938 and 1939 of the Social Security Act, as added and redesignated, respectively, by section 6082 of the Deficit Reduction Act of 2005, are redesignated as sections 1937 and 1938, respectively, of the Social Security Act.

(B) 1937(b)(3) of the Social Security Act, as redesignated by subparagraph (A), is amended by inserting "(as added by section 6044(a) of S. 1932 of the 109th Congress, as passed by the Senate on December 21, 2005)".

(c) EFFECTIVE DATE.—The repeals and amendments made by subsections (a) and (b) shall take effect as if included in the enactment of the Deficit Reduction Act of 2005.

SEC. ___. ADDITIONAL FUNDING FOR THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM.

(a) IN GENERAL.—Section 2104(a) of the Social Security Act (42 U.S.C. 1397dd(a)) is amended—

(1) in paragraph (9), by striking "$4,050,000,000" and inserting "$6,550,000,000"; and

(2) in paragraph (10), by striking "$5,000,000,000" and inserting "$7,500,000,000".

(b) FUNDS IN ADDITION TO FUNDS PROVIDED TO ELIMINATE FISCAL YEAR 2006 SHORTFALLS.—The Secretary of Health and Human Services shall carry out subsection (d) of section 2104 of the Social Security Act (42 U.S.C. 1397dd(d)), as added by section 6101(a) of the Deficit Reduction Act of 2005, (including the determination of a State's allotment for fiscal year 2006 under paragraph (2)(C) of that subsection), without regard to the amendment made by subsection (a)(1) providing increased funding for State allotments for fiscal year 2006.

SEC. ___. REPEAL OF THE SCHEDULED PHASE-OUT OF THE LIMITATIONS ON PERSONAL EXEMPTIONS AND ITEMIZED DEDUCTIONS.

(a) IN GENERAL.—The Internal Revenue Code of 1986 is amended—

(1) by striking subparagraphs (E) and (F) of section 151(d)(3), and

(2) by striking subsections (f) and (g) of section 68.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

(c) APPLICATION OF EGTRRA SUNSET.—The amendments made by this section shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 to the same extent and in the same manner as the provision of such Act to which such amendment relates.

SA 2701. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

On page 19, strike lines 19 through 22 and insert the following:

SEC. 203. ELIGIBILITY OF ALL UNINSURED CHILDREN FOR SCHIP.

(a) IN GENERAL.—Section 2110(b) of the Social Security Act (42 U.S.C. 1397jj(b)) is amended—

(1) in paragraph (1)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(2) in paragraph (2)—

(A) by striking "include" and all that follows through "a child who is an" and inserting "include a child who is an"; and

(B) by striking the semicolon and all that follows through the period and inserting a period; and

(3) by striking paragraph (4).

(b) NO EXCLUSION OF CHILDREN WITH ACCESS TO HIGH-COST COVERAGE.—Section 2110(b)(3) of the Social Security Act (42 U.S.C. 1397jj(b)(3)) is amended—

(1) in the paragraph heading, by striking "RULE" and inserting "RULES";

(2) by striking "A child shall not be considered to be described in paragraph (1)(C)" and inserting the following:

"(A) CERTAIN NON FEDERALLY FUNDED COVERAGE.—A child shall not be considered to be described in paragraph (1)(C)"; and

(3) by adding at the end the following:

"(B) NO EXCLUSION OF CHILDREN WITH ACCESS TO HIGH-COST COVERAGE.—A State may include a child as a targeted vulnerable child if the child has access to coverage under a group health plan or health insurance coverage and the total annual aggregate cost for premiums, deductibles, cost sharing, and similar charges imposed under the group health plan or health insurance coverage with respect to all targeted vulnerable children in the child's family exceeds 5 percent of such family's income for the year involved.".

(c) CONFORMING AMENDMENTS.—

(1) Titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 et seq.; 1397aa et. seq.) are amended by striking "targeted low-income" each place it appears and inserting "targeted vulnerable".

(2) Section 2101(a) of such Act (42 U.S.C. 1397aa(a)) is amended by striking "uninsured, low-income" and inserting "low-income".

(3) Section 2102(b)(3)(C) of such Act (42 U.S.C. 1397bb(b)(3)(C)) is amended by inserting ", particularly with respect to children whose family income exceeds 200 percent of the poverty line" before the semicolon.

(4) Section 2102(b)(3)(E), section 2105(a)(1)(D)(ii), paragraphs (1)(C) and (2) of section 2107, and subsections (a)(1) and (d)(1)(B) of section 2108 of such Act (42 U.S.C. 1397bb(b)(3)(E); 1397ee(a)(1)(D)(ii); 1397gg; 1397hh) are amended by striking "low-income" each place it appears.

(5) Section 2110(a)(27) of such Act (42 U.S.C. 1397jj(a)(27)) is amended by striking "eligible low-income individuals" and inserting "targeted vulnerable individuals".

(d) EFFECTIVE DATE.—The amendments made by this section take effect on October 1, 2006.

SEC. 203A. INCREASE IN FEDERAL FINANCIAL PARTICIPATION UNDER SCHIP AND MEDICAID FOR STATES WITH SIMPLIFIED ENROLLMENT AND RENEWAL PROCEDURES FOR CHILDREN.

(a) SCHIP.—Section 2105(c)(2) of the Social Security Act (42 U.S.C. 1397ee(c)(2)) is amended by adding at the end the following:

"(C) NONAPPLICATION OF LIMITATION AND INCREASE IN FEDERAL PAYMENT FOR STATES WITH SIMPLIFIED ENROLLMENT AND RENEWAL PROCEDURES.—

"(i) IN GENERAL.—Notwithstanding subsection (a)(1) and subparagraph (A)—

"(I) the limitation under subparagraph (A) on expenditures for items described in subsection (a)(1)(D) shall not apply with respect to expenditures incurred to carry out any of the outreach strategies described in clause (ii), but only if the State carries out the same outreach strategies for children under title XIX; and

"(II) the enhanced FMAP for a State for a fiscal year otherwise determined under subsection (b) shall be increased by 5 percentage points (without regard to the application of the 85 percent limitation under that subsection) with respect to such expenditures.

"(ii) OUTREACH STRATEGIES DESCRIBED.—For purposes of clause (i), the outreach strategies described in this clause are the following:

"(I) PRESUMPTIVE ELIGIBILITY.—The State provides for presumptive eligibility for children under this title and under title XIX.

"(II) ADOPTION OF 12-MONTH CONTINUOUS ELIGIBILITY.—The State provides that eligibility for children shall not be redetermined more often than once every year under this title or under title XIX.

"(III) ELIMINATION OF ASSET TEST.—The State does not apply any asset test for eligibility under this title or title XIX with respect to children.

"(IV) PASSIVE RENEWAL.—The State provides for the automatic renewal of the eligibility of children for assistance under this title and under title XIX if the family of which such a child is a member does not report any changes to family income or other relevant circumstances, subject to verification of information from State databases.".

(b) MEDICAID.—

(1) IN GENERAL.—Section 1902(l) of the Social Security Act (42 U.S.C. 1396a(l)) is amended—

(A) in paragraph (3), by inserting "subject to paragraph (5)", after "Notwithstanding subsection (a)(17),"; and

(B) by adding at the end the following:

"(5)(A) Notwithstanding the first sentence of section 1905(b), with respect to expenditures incurred to carry out any of the outreach strategies described in subparagraph (B) for individuals under 19 years of age who are eligible for medical assistance under subsection (a)(10)(A), the Federal medical assistance percentage is equal to the enhanced FMAP described in section 2105(b) and increased under section 2105(c)(2)(C)(i)(II), but only if the State carries out the same outreach strategies for children under title XXI.

"(B) For purposes of subparagraph (A), the outreach strategies described in this subparagraph are the following:

"(i) PRESUMPTIVE ELIGIBILITY.—The State provides for presumptive eligibility for such individuals under this title and title XXI.

"(ii) ADOPTION OF 12-MONTH CONTINUOUS ELIGIBILITY.—The State provides that eligibility for such individuals shall not be redetermined more often than once every year under this title or under title XXI.

"(iii) ELIMINATION OF ASSET TEST.—The State does not apply any asset test for eligibility under this title or title XXI with respect to such individuals.

"(iv) PASSIVE RENEWAL.—The State provides for the automatic renewal of the eligibility of such individuals for assistance under this title and under title XXI if the family of which such an individual is a member does not report any changes to family income or other relevant circumstances, subject to verification of information from State databases.".

(2) CONFORMING AMENDMENT.—The first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) is amended by striking "section 1933(d)" and inserting "sections 1902(l)(5) and 1933(d)".

(c) EFFECTIVE DATE.—The amendments made by this section take effect on October 1, 2006.

SEC. 203B. LIMITATION ON PAYMENTS TO STATES THAT HAVE AN ENROLLMENT CAP BUT HAVE NOT EXHAUSTED THE STATE'S AVAILABLE ALLOTMENTS.

(a) In General.—Section 2105 of the Social Security Act (42 U.S.C. 1397ee) is amended by adding at the end the following:

"(h) Limitation on Payments to States That Have an Enrollment Cap but Have Not Exhausted the State's Available Allotments.—

"(1) In general.—Notwithstanding any other provision of this section, payment shall not be made to a State under this section if the State has an enrollment freeze, enrollment cap, procedures to delay consideration of, or not to consider, submitted applications for child health assistance, or a waiting list for the submission or consideration of such applications or for such assistance, and the State has not fully expended the amount of all allotments available with respect to a fiscal year for expenditure by the State, including allotments for prior fiscal years that remain available for expenditure during the fiscal year under subsection (c) or (g) of section 2104 or that were redistributed to the State under subsection (f) or (g) of section 2104.

"(2) Rule of construction.—Paragraph (1) shall not be construed as prohibiting a State from establishing regular open enrollment periods for the submission of applications for child health assistance.".

(b) Effective Date.—The amendments made by this section take effect on October 1, 2006.

SEC. 203C. ADDITIONAL ENHANCEMENT TO FMAP TO PROMOTE EXPANSION OF COVERAGE TO ALL UNINSURED CHILDREN UNDER MEDICAID AND SCHIP.

(a) In General.—Title XXI (42 U.S.C. 1397aa et seq.) is amended by adding at the end the following:

"SEC. 2111. ADDITIONAL ENHANCEMENT TO FMAP TO PROMOTE EXPANSION OF COVERAGE TO ALL UNINSURED CHILDREN UNDER MEDICAID AND SCHIP.

"(a) In General.—Notwithstanding subsection (b) of section 2105 (and without regard to the application of the 85 percent limitation under that subsection), the enhanced FMAP with respect to expenditures in a quarter for providing child health assistance to uninsured children whose family income exceeds 200 percent of the poverty line, shall be increased by 5 percentage points.

"(b) Uninsured Child Defined.—

"(1) In general.—For purposes of subsection (a), subject to paragraph (2), the term 'uninsured child' means an uncovered child who has been without creditable coverage for a period determined by the Secretary, except that such period shall not be less than 6 months.

"(2) Special rule for newborn children.—In the case of a child 12 months old or younger, the period determined under paragraph (1) shall be 0 months and such child shall be considered uninsured upon birth.

"(3) Special rule for children losing medicaid or schip coverage due to increased family income.—In the case of a child who, due to an increase in family income, becomes ineligible for coverage under title XIX or this title during the period beginning on the date that is 12 months prior to the date of enactment of the All Kids Health Insurance Coverage Act of 2005 and ending on the date of enactment of such Act, the period determined under paragraph (1) shall be 0 months and such child shall be considered uninsured upon the date of enactment of the All Kids Health Insurance Coverage Act of 2005.

"(4) Monitoring and adjustment of period required to be uninsured.—The Secretary shall—

"(A) monitor the availability and retention of employer-sponsored health insurance coverage of dependent children; and

"(B) adjust the period determined under paragraph (1) as needed for the purpose of promoting the retention of private or employer-sponsored health insurance coverage of dependent children and timely access to health care services for such children.".

(b) Cost-Sharing for Children in Families With High Family Income.—Section 2103(e)(3) of the Social Security Act (42 U.S.C. 1397cc(e)(3)) is amended by adding at the end the following new subparagraph:

"(C) Children in families with high family income.—

"(i) In general.—For children not described in subparagraph (A) whose family income exceeds 400 percent of the poverty line for a family of the size involved, subject to paragraphs (1)(B) and (2), the State shall impose a premium that is not less than the cost of providing child health assistance to children in such families, and deductibles, cost sharing, or similar charges shall be imposed under the State child health plan (without regard to a sliding scale based on income), except that the total annual aggregate cost-sharing with respect to all such children in a family under this title may not exceed 5 percent of such family's income for the year involved.

"(ii) Inflation adjustment.—The dollar amount specified in clause (i) shall be increased, beginning with fiscal year 2008, from year to year based on the percentage increase in the consumer price index for all urban consumers (all items; United States city average). Any dollar amount established under this clause that is not a multiple of $100 shall be rounded to the nearest multiple of $100.".

(c) Additional Allotments for States Providing Coverage to All Uninsured Children in the State.—

(1) In general.—Section 2104 of the Social Security Act (42 U.S.C. 1397dd) is amended by inserting after subsection (c) the following:

"(d) Additional Allotments for States Providing Coverage to All Uninsured Children in the State.—

"(1) Appropriation; total allotment.—For the purpose of providing additional allotments to States to provide coverage of all uninsured children (as defined in section 2111(b)) in the State under the State child health plan, there is appropriated, out of any money in the Treasury not otherwise appropriated—

"(A) for fiscal years 2007, 2008, and 2009, $3,000,000,000;

"(B) for fiscal year 2010, $5,000,000,000; and

"(C) for fiscal year 2011, $7,000,000,000.

"(2) State and territorial allotments.—

"(A) In general.—In addition to the allotments provided under subsections (b) and (c), subject to subparagraph (B) and paragraphs (3) and (4), of the amount available for the additional allotments under paragraph (1) for a fiscal year, the Secretary shall allot to each State with a State child health plan that provides coverage of all uninsured children (as so defined) in the State approved under this title—

"(i) in the case of such a State other than a commonwealth or territory described in subsection (ii), the same proportion as the proportion of the State's allotment under subsection (b) (determined without regard to subsection (f)) to 98.95 percent of the total amount of the allotments under such section for such States eligible for an allotment under this subparagraph for such fiscal year; and

"(ii) in the case of a commonwealth or territory described in subsection (c)(3), the same proportion as the proportion of the commonwealth's or territory's allotment under subsection (c) (determined without regard to subsection (f)) to 1.05 percent of the total amount of the allotments under such section for commonwealths and territories eligible for an allotment under this subparagraph for such fiscal year.

"(B) Minimum allotment.—

"(i) In general.—No allotment to a State for a fiscal year under this subsection shall be less than 50 percent of the amount of the allotment to the State determined under subsections (b) and (c) for the preceding fiscal year.

"(ii) Pro rata reductions.—The Secretary shall make such pro rata reductions to the allotments determined under this subsection as are necessary to comply with the requirements of clause (i).

"(C) Availability and redistribution of unused allotments.—In applying subsections (e) and (f) with respect to additional allotments made available under this subsection, the procedures established under such subsections shall ensure such additional allotments are only made available to States which have elected to provide coverage under section 2111.

"(3) Use of additional allotment.—Additional allotments provided under this subsection are not available for amounts expended before October 1, 2005. Such amounts are available for amounts expended on or after such date for child health assistance for uninsured children (as defined in section 2111(b)).

"(4) Requiring election to provide coverage.—No payments may be made to a State under this title from an allotment provided under this subsection unless the State has made an election to provide child health assistance for all uninsured children (as so defined) in the State, including such children whose family income exceeds 200 percent of the poverty line.".

(2) Conforming amendments.—Section 2104 of the Social Security Act (42 U.S.C. 1397dd) is amended—

(A) in subsection (a), by inserting "subject to subsection (d)," after "under this section,";

(B) in subsection (b)(1), by inserting "and subsection (d)" after "Subject to paragraph (4)"; and

(C) in subsection (c)(1), by inserting "subject to subsection (d)," after "for a fiscal year,".

(d) Effective Date.—The amendments made by this section take effect on October 1, 2006.

SA 2702. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

On page 19, strike lines 19 through 22 and insert the following:

SEC. 203. EXTENSION OF RESEARCH CREDIT.

(a) Extension.—

(1) In general.—Subparagraph (B) of section 41(h)(1) (relating to termination), as amended by section 113 of this Act, is amended by striking "December 31, 2006" and inserting "December 31, 2008".

(2) CONFORMING AMENDMENT.—Subparagraph (D) of section 45C(b)(1) (relating to special rule), as amended by section 113 of this Act, is amended by striking "December 31, 2006" and inserting "December 31, 2008".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred after December 31, 2005.

(b) EXPANSION OF CREDIT TO EXPENSES OF GENERAL COLLABORATIVE RESEARCH CONSORTIA.—

(1) IN GENERAL.—Section 41 is amended—

(A) by striking "an energy research consortium" in subsections (a)(3) and (b)(3)(C)(i) and inserting "a research consortium",

(B) by striking "energy" each place it appears in subsection (f)(6)(A),

(C) by inserting "or 501(c)(6)" after "section 501(c)(3)" in subsection (f)(6)(A)(i)(I), and

(D) by striking "ENERGY RESEARCH" in the heading for subsection (f)(6) and inserting "RESEARCH".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years ending after December 31, 2005.

NOTICES OF HEARINGS/MEETINGS

SUBCOMMITTEE ON WATER AND POWER

Ms. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Water and Power of the Committee on Energy and Natural Resources.

The hearing will be held on Tuesday, February 28 at 2:30 p.m. in room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony on the Bureau of Reclamation's Reuse and Recycling Program, title XVI of P.L. 102–575.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

For further information, please contact Kellie Donnelly, 202–224–9360 or Shannon Ewan at 202–224–7555.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, February 1, 2006, at 10 a.m. on Women in Sports.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Wednesday, February 1, 2006, at 10 a.m. for a hearing titled, "Hurricane Katrina: Managing the Crisis and Evacuating New Orleans."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, February 1, 2006, at 9:30 a.m. in room 106 of the Dirksen Senate Office Building to conduct an oversight hearing on Off-Reservation Gaming. The Process for Considering Gaming Applications lands eligible for gaming pursuant to the Indian Gaming Regulatory Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on "Consolidation in the Energy Industry: Raising Prices at the Pump?" on Wednesday, February 1, 2006, at 9:30 a.m. in Hart Senate Office Building room 226.

Witness list

Panel I: The Honorable Bill Kovacic, Commissioner and former General Counsel, Federal Trade Commission, Washington, DC; James Wells, Director, Natural Resources and Environment, United States Government Accountability Office, Washington, DC; The Honorable Richard Blumenthal, Attorney General, State of Connecticut, Hartford, CT; R. Preston McAfee, Stanley Johnson Professor of Business, Economics and Management, California Institute of Technology, Pasadena, CA; Tyson Slocom, Acting Director, Energy Program, Public Citizen's, Washington, DC; Tim Hamilton, Founder and Executive Director, Automotive United Trades Organization, Seattle, WA.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND PROPERTY RIGHTS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Subcommittee on the Constitution, Civil Rights and Property Rights be authorized to meet to conduct a hearing on "An Examination of the Death Penalty in the United States" on Wednesday, February 1, 2006, at 1:30 p.m. in SD226.

Witness list

Panel I: Mrs. Ann Scott, Tulsa, OK; Ms. Vicki Schieber, Chevy Chase, MD.

Panel II: Dr. John McAdams, Professor of Political Science, Marquette University, Milwaukee, WI; Mr. Stephen Bright, President and Counsel, Southern Center for Human Rights, Atlanta, GA; Dr. Paul Rubin, Professor of Economics, Emory University, Atlanta, GA; Dr. Jeffrey Fagan, Professor of Law and Public Health, Columbia University, New York, NY.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. BAUCUS. Mr. President, I ask unanimous consent that the following fellows and interns with the Finance Committee staff be granted the privilege of the floor for the duration of the debate on the tax reconciliation bill: Mary Baker, Robin Burgess, Tiffany Smith, Tom Louthan, Richard Litsey, Stuart Sirkin, Zachary Henderson, Lesley Meeker, Britt Sandler, and Lauren Shields.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESTRICTING ASSISTANCE TO THE PALESTINIAN AUTHORITY

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to immediate consideration of S. Con. Res. 79, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 79) expressing the sense of Congress that no United States assistance should be provided directly to the Palestinian Authority if any representative political party holding a majority of parliamentary seats within the Palestinian Authority maintains the position calling for the destruction of Israel.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 79) was agreed to, as follows:

S. CON. RES. 79

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that no United States assistance should be provided directly to the Palestinian Authority if any representative political party holding a majority of parliamentary seats within the Palestinian Authority maintains a position calling for the destruction of Israel.

DESIGNATING FEBRUARY 2006 AS "GO DIRECT MONTH"

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 363, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 363) designating February 2006 as "Go Direct Month."

There being no objection, the Senate proceeded to consider the resolution.

Mr. KENNEDY. Mr. President, it's a privilege to join my colleague Senator GRASSLEY in submitting this important resolution commemorating February 2006 as Go Direct Month.

In 2004, the Treasury Department issued over 70,000 checks worth $61 million that were illegally signed for. The Treasury receives approximately half a million phone calls each year from people having problems with paper checks.

Go Direct encourages Americans to use direct deposit for their Federal checks, such as Social Security. Under direct deposit, the Federal Government transfers its payments directly to a person's bank account, eliminating the risk of lost or stolen checks. Since 1986, direct deposit has also saved the Federal Government $5 billion in administrative costs—$120 million a year for Social Security checks alone.

Now, the Treasury Department and the Federal Reserve have launched Go Direct to encourage Americans to protect their Federal benefits and take more control of their money. Go Direct Month, promoted by the Federal Government and by State and local governments and the private sector as well, will inform as many citizens as possible about the advantages of direct deposit and help them adopt direct deposit for the future.

I urge my colleagues to approve this worthwhile resolution and to encourage their constituents to take advantage of this time-saving and problem-avoiding initiative.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 363) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 363

Whereas the Department of Treasury issued over 70,000 checks worth approximately $61,000,000 that were illegally signed for in 2004;

Whereas the Department of the Treasury receives approximately 500,000 telephone calls each year regarding problems with paper checks;

Whereas the use of direct deposit has resulted in approximately $5,000,000,000 in savings for the Federal Government since 1986;

Whereas 1 out of every 5 newly eligible Social Security recipients has yet to sign up for direct deposit;

Whereas the United States would generate approximately $120,000,000 in annual savings if all federal beneficiaries used direct deposit;

Whereas the use of direct deposit is a more secure, reliable, and cost effective method of payment because the use of direct deposit—

(1) eliminates the risk of lost or stolen checks;

(2) helps protect against fraud; and

(3) provides citizens of the United States with more control over their money;

Whereas the Department of the Treasury and the Federal Reserve Bank has launched "Go Direct", a national campaign organized to encourage citizens of the United States to use direct deposit for the receipt of Social Security and other Federal benefits; and

Whereas, by working with financial institutions, advocacy groups, and community organizations, the sponsors of "Go Direct" educate citizens of the United States about the advantages of using direct deposit and assist them during the enrollment process: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideas of "Go Direct";

(2) proclaims February 2006 as "Go Direct Month";

(3) commends Federal, State, and local governments, and the private sector, for promoting February as "Go Direct Month"; and

(4) encourages all citizens of the United States to—

(A) participate in events and awareness initiatives held during the month of February;

(B) become informed about the convenience and safety of direct deposit; and

(C) consider signing up for direct deposit of Social Security or other Federal benefits.

HONORING THE CONTRIBUTIONS OF CATHOLIC SCHOOLS IN THE UNITED STATES

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 364, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 364) honoring the valuable contributions of Catholic schools in the United States.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 364) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 364

Whereas Catholic schools in the United States have received international acclaim for academic excellence while providing students with lessons that extend far beyond the classroom;

Whereas Catholic schools present a broad curriculum that emphasizes the lifelong development of moral, intellectual, physical, and social values in the young people of the United States;

Whereas Catholic schools in the United States today educate 2,420,590 students and maintain a student-to-teacher ratio of 15 to 1;

Whereas the faculty members of Catholic schools teach a highly diverse body of students;

Whereas more than 27.1 percent of school children enrolled in Catholic schools are minorities, and more than 13.6 percent are non-Catholics;

Whereas Catholic schools saved the United States $19,000,000,000 in educational funding during fiscal year 2005;

Whereas Catholic schools produce students strongly dedicated to their faith, values, families, and communities by providing an intellectually stimulating environment rich in spiritual, character, and moral development; and

Whereas in the 1972 pastoral message concerning Catholic education, the National Conference of Catholic Bishops stated, "Education is one of the most important ways by which the Church fulfills its commitment to the dignity of the person and building of community. Community is central to education ministry, both as a necessary condition and an ardently desired goal. The educational efforts of the Church, therefore, must be directed to forming persons-in-community; for the education of the individual Christian is important not only to his solitary destiny, but also the destinies of the many communities in which he lives.": Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the goals of Catholic Schools Week, an event cosponsored by the National Catholic Educational Association and the United States Conference of Catholic Bishops that recognizes the vital contributions of thousands of Catholic elementary and secondary schools in the United States; and

(2) congratulates Catholic schools, students, parents, and teachers across the United States for their ongoing contributions to education, and for the vital role they play in promoting and ensuring a brighter, stronger future for this Nation.

PROVIDING FOR A CONDITIONAL ADJOURNMENT OF THE HOUSE

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 332, which was received from the House.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 322) providing for a conditional adjournment of the House of Representatives.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the concurrent resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 332) was agreed to, as follows.

H. CON. RES. 332

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of Wednesday, February 1, 2006, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 2 p.m. on Tuesday, February 7, 2006, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on the legislative day of Wednesday, February 8, 2006, or Thursday, February 9, 2006, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 2 p.m. on Tuesday, February 14, 2006, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker or his designee, after consultation with the Minority Leader, shall notify the Members of the House to reassemble at such place and time as he may designate if, in his opinion, the public interest shall warrant it.

STATE HIGH RISK POOL FUNDING EXTENSION ACT OF 2005

Mr. FRIST. Mr. President, I ask unanimous consent that the HELP Committee be discharged and the Senate proceed to the immediate consideration of H.R. 4519.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4519) to amend the Public Health Service Act to extend funding for the operation of State high risk health insurance pools.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 4519) was read the third time and passed.

WATER NEEDS OF THE DRY PRAIRIE RURAL WATER ASSOCIATION

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 355, S. 1219.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1219) to authorize certain tribes in the State of Montana to enter into a lease or other temporary conveyance of water rights to meet the water needs of the Dry Prairie Rural Water Association, Inc.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1219) was read the third time and passed, as follows:

S. 1219

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TEMPORARY CONVEYANCE OF WATER RIGHTS TO DRY PRAIRIE RURAL WATER ASSOCIATION, INC.

(a) IN GENERAL.—The Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana (referred to in this section as the "Tribes") may, with the approval of the Secretary, enter into a lease or other temporary conveyance of water rights recognized under the Fort Peck-Montana Compact (Montana Code Annotated 85–20–201) with the Dry Prairie Rural Water Association, Incorporated (or any successor non-Federal entity) for the purpose of meeting the water needs of that association, in accordance with section 5 of the Fort Peck Reservation Rural Water System Act of 2000 (Public Law 106–382; 114 Stat. 1454).

(b) CONDITIONS OF LEASE.—With respect to a lease or other temporary conveyance described in subsection (a)—

(1) the term of the lease or conveyance shall not exceed 100 years; and

(2)(A) the lease or conveyance may be approved by the Secretary without monetary compensation to the Tribes; and

(B) the Secretary shall not be subject to liability for any claim relating to any compensation or consideration received by the Tribes under the lease or conveyance.

(c) NO PERMANENT ALIENATION OF WATER.—Nothing in this section authorizes a permanent alienation of any water by the Tribes.

ORDERS FOR THURSDAY, FEBRUARY 2, 2006

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Thursday, February 2. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate proceed to consideration of H.R. 4297, the tax reconciliation bill; provided further that when the Senate resumes the bill there be 3½ hours remaining for each side under the statute; further, that the bill be subject to debate only until the majority leader is recognized at 10:45 a.m. on Thursday.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, today the Senate did begin consideration of the House version of the tax relief bill that this body passed last November. We now have 7 hours remaining under the statutory time limit for this piece of legislation. We began with 20 hours and now have 7 hours remaining.

Tomorrow, we will continue debate on this important bill. At this point I expect further debate tomorrow morning until all time has expired. As all Senators are aware, once all time expires Senators may offer amendments, and therefore a series of stacked votes over the course of tomorrow afternoon is to be expected. Senators should expect a busy afternoon, and I ask Members to remain close to the Chamber tomorrow while these amendments are considered to this tax reconciliation bill. We don't know exactly how many amendments that will be, but once those amendments start we will go straight through those amendments until completion, whether that be tomorrow night or on Friday. We will finish the bill this week and it is possible we could finish it tomorrow night if we have good cooperation from both sides of the aisle on this legislation. But if not, we will go into Friday to complete the bill.

Progress was good today. There was a lot of discussion over the course of the day. We have a lot of people who said they wished to offer amendments and I do hope that they would reconsider and make sure, if the amendment is to be offered, it is a substantive amendment, important to the tax reconciliation bill and, if not, not offer the amendment. Thus we could get through this tomorrow night.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8 p.m., adjourned until Thursday, February 2, 2006, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate February 1, 2006:

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. DAVID P. VALCOURT, 6455

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. RAYMOND T. ODIERNO, 8425

HE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. STANLEY A. MCCHRYSTAL, 3565

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 601:

To be major general

BRIG. GEN. ELDER GRANGER, 1583

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

REAR ADM. ROBERT T. CONWAY, JR., 2950

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be major

BRUCE S. ABE, 0662
CLIFTON W. BAILEY, 9479
KEVIN H. BLACK, 4434
MICHAEL D. BROOKS, 5143
JEFFREY S. BROWN, 5319
ROBERT M. CRITTENDEN, 9332
AARON W. ENGELS, 8424
EDITHANN JENNINGS GRAHAM, 4076
JODY S. HARRISON, 6080
BRENT E. HAVEY, 4684
CLAYTON G. HICKS, 2895
GRETCHEN B. JUNGERMANN, 5737
ALFRED G. KHALLOUF, 2041
CARL A. LABELLA III, 8868
BRIAN J. LOREI, 1249
JENNIFER F. MCCARTHY, 9907
NORMAN L. MCGEATHY III, 2373
JOANNA SAENZ MCPHERSON, 9749
MASOUD MILANI, 2023
LEONARDO M. RIOSANDERSEN, 8438
LEE E. ROUNDY, 1072
JENNIFER B. SAMS, 9703
LOGAN SMITH, 1371
STEPHEN H. SPECK, 5886
JANICE TIMOTHEE, 8489
JAMES D. WATTS, 7657
RYAN COOPER WAYLAND, 6724
ANN E. ZIONIC, 3137

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be major

STEVEN J. ACEVEDO, 5386
ZARAH ANN A. ALBA, 0252
ANTOIN M. ALEXANDER, 4323
MICHAEL B. ALEXANDER, 2727
BRETT K. ANDERSON, 6830
BRIAN A. ARTZBERGER, 5391
LEE S. ASTLE, 7819
KAREN M. AYOTTE, 1600
LAURA E. BABER, 9228
SCOTT A. BALDRIDGE, 3596
NICOLE M. BALLINGER, 7818
CHRISTINE L. BALTZER, 5489
SHANE B. BANKS, 6732
SCOTT J. BARNACLE, 5450
RICHARD J. BARNETT, 4707
DEAN W. BARTHOLOMEW, 9752
IAN M. BAXTER, 2940
JONATHAN B. BERG, 4199
BRIAN S. BERKE, 2196
JEANETTE KEENAN BERRONG, 6084
DOMINGO R. BICALDO, 2267
GRETCHEN E. BLACK, 2170
JAMES J. BOEHMKE, JR., 6436
BRADLEY J. BOETIG, 3738
JUSTIN B. BOGE, 6769
TERESA A. BONZANI, 3998
BRIAN M. BOSSCHER, 1103
JONATHAN N. BOWMAN, 1122
MICHAEL S. BOXUM, 4302
KARA M. BOYER, 5108
CHRISTOPHER N. BRESSLER, 8454
JONATHAN D. BREWER, 3076
BEATRICE Y. BREWINGTON, 3663
CHRISTOPHER M. BROWN, 1498
JAMES K. BROWN, 9001
JEFFREY D. BUSHNELL, 3177
CHRISTOPHER W. CALABRIA, 1228
MATTHEW A. CARLSON, 2085
KEN J. CARPENTER, 7379
NOELLE A. CARPENTER, 7437
PHIL O. CASTILLO, 4371
NATHAN D. CECAVA, 3604
MAURICE G. CHEN, 2656
JENNIFER C. CHOW, 0958
ANTHONY J. CIAMPA, 6179
STEPHANIE L. CIAMPA, 1456
RAYMOND J. CLYDESDALE, 2388
BRIAN G. COMER, 2897
JOHNATHAN M. COMPTON, 9637
CHRISTIE M. COOKSEY, 5008
BRETT D. COONS, 9163
AMY A. COSTELLO, 9585
ERIC C. CRABTREE, 3585
ROBERT M. CROMER, 5306
JOHN M. CROWE, 8133
TERESA A. CRUTCHLEY, 4385
LISA K. CULTON, 3189
OSCAR J. CURRIE, 6884
RICHARD L. DAGROSA, 1609
EILEEN H. DAUER, 9432
CHARLES M. DAVIS, 1408
STEVEN W. DAVIS, 8845
PAUL T. DEFLORIO, 8835
SUSANN DEMARINO, 1044
NICOLE M. DEYAMPERT, 1710
BRAD A. DEYKIN, 3257
JAYSON C. DOCK, 1434
JOSEPH J. DUBOSE, 7074
TIMOTHY J. DUNCAN, 7883
AN T. DUONG, 6743
JAMES S. EADIE, 3947
TRACY J. EICHER, 0411
HERMAN R. ELLEMBERGER, 2010
SPRING R. ELLEMBERGER, 7571
ROBERT L. ELLER, 9624
AMY S. ERICKSON, 3897
JASON H. EVES, 6472
GEOFFREY L. EWING, 0491
SHANNON D. FABER, 5842
DELANO S. FABRO, JR., 0794
OLUWOLE O. FADARE, 3239
TROY D. FATE, 8876
BRYAN A. FICARRA, JR., 0971
CARLIE D. FINAN, 6024
RYAN O. FINSTEN, 2499
KEITH A. FISHER, 6586
ERIC M. FLAKE, 7558
TRACY M. FROEHLICH, 4420
SCOTT ALAN FUJIMOTO, 3895
HEIDI L. GADDEY, 8940
NORA E. GERSON, 3286
JULIE L. GLENN, 1933
SANJAY A. GOGATE, 6429
PAMELA K. GORDON, 5695
RUSSELL K. GORE, 5051
STEVEN M. GORE, 3813
CHRISTOPHER R. GORMAN, 9774
ALLISON E. GORREBEECK, 4687
JOSEPH T. GOWER, 8662
RICHARD T. GRECO, 3825
KELLIE D. GRIFFITH, 5049
STUART R. GROSS, 6386
MARK A. GUNST, 4920
KARRN E. GUSTAFSON, 5100
GERALD R. HADDOCK II, 2911
AUDREY M. HALL, 4516
NADEEM A. HAMID, 4422
TAYLOR S. HAN, 3948
EVELYN M. HARDER, 3753
MARTIN J. HARSSEMA, 7085
MICHELLE R. HARSSEMA, 8499
CHAD W. HARSTON, 2966
MARSHALL T. HAYES, 9510
KEVIN D. HETTINGER, 2001
ARTHUR V. HICKSON, 4330
AQUILLA L. HIGHSMITHTYLER, 6777
JOSHUA A. HODGE, 1992
STEFANIE K. HORNE, 5001
STEVEN J. HOSPODAR, 4353
ROBERT J. HOWE, 0756
DAVID T. HSIEH, 1535
DAVID L. HUANG, 0870
JUDY M. HUYNH, 7441
TEODOR J. HUZIJ, 7822
JULIA C. JACKSON, 6947
MICHAEL W. JACKSON, 4185
THEODORE J. JERDEE, 5111
JEFFREY JOHNS, 4663
LYELL K. JONES, JR., 4751
KURT W. KAMPERT, 8469
DREW M. KEISTER, 9381
MICHAEL P. KENNEY, 6463
TINA R. KINSLEY, 0561
LEE M. KUXHAUS, 9462
ROSELIA I. LABBE, 2157
JULIO R. LAIRET, 3634
THOMAS A. LAMPERTI, 2931
JASON W. LANE, 0527
WAYNE A. LATACK, 3565
HARRISON Q. LE, 2920
PETER A. LEARN, 9616
CHRISTOPHER T. LEBRUN, 3325
JASON C. LEE, 4303
RACHEL A. L. LEONARDI, 8701
AMY C. LOTHIAN, 8840
PATRICK S. LOVEGROVE, 1948
BRANT J. LUTSI, 6856
MICHAEL R. LYAKER, 6130
DAVID H. LYNCH, 0330
JOHN W. LYNCH III, 2135
ROBERT A. LYONS, 8347
GLEN D. MACPHERSON, 6567
IRENE MANHSIAO, 0028
VINCENT C. MARCONI, 3442
JON KYLE MARTI, 2198
SHELLY D. MARTIN, 1545
VIRGINIA G. MATHESON, 3091
STEPHEN C. MATURO, 5709
MARILYN A. MAYNE, 0644
SEAN P. MAYO, 7081
HEATH B. MCANALLY, 3093
DANIEL S. MCBRIDE, 9975
JONATHAN W. MCCLAIN, 4453
PATRICK E. MCCLESKEY, 2161
MATTHEW J. MCKAY, 1867
ANDREA BARBER MCMURPHY, 0168
BETHANNE K. MILLER, 2421
LEE A. MILLER, 4066
RUSSEL S. MILLER, 1166
KI LEE MILLIGAN, 6006
CHINMOY MISHRA, 6837
JASON A. MITCHELL, 2112
JEFFREY W. MOLLOY, 6651
JUSTIN E. MORGAN, 5678
JOSHUA C. MORGANSTEIN, 0078
JASON C. MORVANT, 4566
MARK S. MULLER, 9494
KARSTEN MUNCK, 5197
JAVIER A. MUNIZ, 3914
ROMAN M. J. NATION, 7934
JEFFREY S. NELSON, 1937
JENNIFER B. NELSON, 9838
RANDALL J. NETT, 3462
WILLIAM B. NEWMAN, 0454
LINH C. NGUYEN, 4000
SHAWNN D. NICHOLS, 1337
MATTHEW G. NIEMI, 1840
BROCK P. NOLAN, 0909
CHARLES M. NOLDER, 5522
MARK A. NOVAS, 6613
JON J. OPRY, 0146
LUIS B. OTERO, 6116
HANS F. OTTO, 7701
PATRICIA A. PANKEY, 6668
MICHAEL W. PEELLE, 4378
JACQUELINE J. PERCY, 9297
MICHELE ANN PHILLIPS, 9629
KEVIN C. PLAISANCE, 7430
ERIC V. PLOTT, 6105
MATTHEW S. POGODZINSKI, 4975
GINGER L. POLE, 0960
GLEN T. PORTER, 7078
JAMES M. PROBASCO, 6839
CHARLES V. PULS, 2455
JOSEPH PUSKAR, 0815
JULIA D. QUINLAN, 3225
ERICA D. RADDEN, 8154
CARL C. REID, 5241
SARA J. REID, 9089
JENNIFER L. RIPPON, 0085
DEBRA A. ROBERTS, 9539
BEN C. ROBINSON, 2003
MARK O. ROBINSON, 3512
JOHN C. ROCKWELL, 0799
DAVID C. RODRIGUEZ, 1331
DAVID C. ROE, 9641
CRAIG A. ROHAN, 9685
BENJAMIN G. ROMICK, 6197
PAOLO G. RONCALLO, 4991
DANIEL T. ROSE, 2857
MARK T. ROVICK, 6799
MELINDA L. RUFF, 3778
RAFAEL RUIZ, 5433
HANS D. SCHURICHT, 7027
JENNIFER A. SCOBLE, 2178
JIFFY C. SETO, 8055
ABDUL Q. SHAHID, 0375
CATHERIN T. D. SHOFF, 0903
MEGAN M. SHUTTSKARJOLA, 8190
JEFFREY A. SIMERVILLE, 0192
ANAND K. SINGH, 7156
KAMAL D. SINGH, 8881
ALLEN R. SKIDMORE, 2369
KRISTEN A. SOLTISTYLER, 4871
JAMES E. SOWRY, 8419
BARTON C. STAAT, 7305
MICHAEL W. STACEY, 3443
EVELYN L. STENDER, 7496
THOMAS G. STERNBERG, 6380
DUSTIN E. STEVENSON, 8720
DESHAWN K. STEWART, 6740
LOYAL R. STIERLEN, 1178
MARY C. STOCKKEISTER, 4458
SHAYNE C. STOKES, 6496
SARA R. STORCH, 7804
JAMES E. STORMO, 5180
TEDDY J. SU, 4538
RICHARD L. SUNDERMEYER, 7186
ERICH L. SWAFFORD, 5240
WILLIAM E. SWILER, 8888
JEFFREY P. TAN, 3547
JOHN J. THOPPIL, 8589
JILL M. TIA, 0854
ROBERT J. TIBESAR, 6674
STEPHEN J. TITUS, 5446
LUAN C. TRAN, 2413
TIMOTHY D. TRAPP, 5303
ZOLTAN A. VARRO, 0118
ALEJANDRO A. VEGA, 8511
JASON M. WAGNER, 9873
SHAKA M. WALKER, 0745
WILLIAM J. WALKER, 4273
CHARLES J. WANKER, 5077
KRISTIN K. WARNER, 3801
JOHN L. WASHBURN, JR., 4636
GERALD M. WEBB, 3786
DAVID E. WEBER, 2632
CHRIS A. WENTZEL, 7508
STEPHANIE L. WERNER, 1788
NGOZI U. WEXLER, 3465
DOUGLAS W. WHITE, 4094
KEVIN M. WHITE, 6769
SARA A. WHITTINGHAM, 0709
CHRISTOPHER D. WILLIAMS, 7822
TRAVIS D. WILSON, 5774
WENDI E. WOHLTMANN, 1448
TORY W. WOODARD, 7369
BRENT M. WYATT, 5090
HEATHER L. YUN, 9867
STEVEN R. ZIEBER, 2806

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

MITCHELL S. ACKERSON, 1970
LARRY W. BIEDERMAN, 2096
BRENSON P. BISHOP, 3229
STEPHEN B. BOYD, 8122
STEVEN M. COLWELL, 2002

JOSEPH N. CONN, JR., 2086
PATRICK J. DOLAN, 7963
GREGG L. DREW, 1591
ROBERT F. EWING, 6688
RICHARD R. GENZMAN, 5764
DENNIS M. GOODWIN, 0680
WAYLAND HAMLIN, 9171
KERRY N. HAYNES, 7496
LAWRENCE M. HENDEL, 0268
BERT S. KOZEN, 9410
ROB E. NOLAND, 2163
JAMES D. REECE, 9950
TIMOTHY M. SAMORAJSKI, 5397
WILLIAM D. WEST, 7571
GLENN R. WOODSON, 7978

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

STEPHEN J. MCNULTY, 5016
EDWARD B. RAPP III, 7668
ROBERT R. UNDERWOOD, 3937
STEPHEN D. WALDRON, 3352
DONALD C. WAYMAN, 2802

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

RALPH P. HARRIS III, 6987
CHARLES L. THRIFT, 2412

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

CARNELL LUCKETT, 6547
CARLOS D. SANABRIA, 3396

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

STEPHEN J. DUBOIS, 8530
CHARLES T. PARTON, 9739
JOHN D. PAULIN, 5948

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

JAY A. ROGERS, 3984
STANLEY M. WEEKS, 2943

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

SEAN P. HOSTER, 9957
TIMOTHY D. WHEELER, 7413

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

NEIL G. ANDERSON, 1103
EDWARD M. MOEN, JR., 2633

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

CARL BAILEY, JR., 2082
JAMES A. JONES, 7963

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

GREGORY M. GOODRICH, 5193
MARK W. WASCOM, 5540

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

JAYSON A. BRAYALL, 7587

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

JACK G. ABATE, 3343
RAYMOND E. BARNETT, 5305
JAMES KOLB, 8019

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

DEAN L. JONES, 1614
DENNIS L. PARKS, 5751
CHRISTOPHER A. SUTHERLAND, 7608

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

PETER G. BAILIFF, 8955
ROY H. BARRETT II, 4283
DWIGHT D. BELIN, 4204
TIMOTHY D. SECHREST, 5445

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

ISRAEL GARCIA, 4916
CEDRIC M. INGRAM, 1177
MARK A. IVY, 4426
ROGER N. RUDD, 5720
JAMES I. SAYLOR, 4464

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

BEN A. CACIOPPO, JR., 1645
MICHAEL R. GLASS, 8622
JEFFREY C. HACKETT, 2950
DONALD L. HULTZ, 3928
WALTER D. ROMINE, JR., 2568

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

PETER M. BARACK, JR., 2266
TIMOTHY L. COLLINS, 2116
STEVEN J. LENGQUIST, 2981
RALPH G. PRATT, 2571
JOHN D. SOMICH, 6666

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

BENJAMIN J. ABBOTT, 9402
CHRISTOPHER G. ABRAHAM, 6930
CEASAR M. ACHICO, 8414
ERIC J. ADAMS, 6232
JOHN B. ADAMS, 9928
TROY C. ADAMS, 2275
JOSEPH S. AGRES, 2199
MICHELLE E. AKERS, 4484
EZIEKEL E. ALLEN, 8201
PATRICK E. ALLEN, 7942
JUSTIN J. ANDERSON, 5620
KAIN C. ANDERSON, 2300
MICHAEL C. ANDERSON, 3905
JUSTIN J. ANSEL, JR., 5277
JAMES F. ARMAGOST, 4977
PHILLIP N. ASH, 2069
THOMAS A. ATKINSON, 4973
WENCESLAO AVALOS, 1333
MEREDITH B. AWAD, 8992
JULIE L. AYLWIN, 7979
ENRIQUE A. AZENON, 7890
MICHAEL J. BABILOT, 7869
JOSEPH T. BACHMANN, 5416
ANTHONY BAGGS, 7242
MICHAEL A. BAHE, 7180
CASEY M. BARNES, 1498
GILBERT A. BARRETT III, 5696
JOHN C. BARRY, 9055
FRANCIS A. BARTH III, 7759
KENNETH W. BATTAGLIA, 9515
CHARLES S. BAUER, 3213
CHRISTOPHER D. BEASLEY, 9223
STEPHANI M. BECK, 2996
BRIAN M. BELL, 1974
JESSE J. BELSKY, 7593
GARRETT L. BENSON, 6144
CHARLES H. BERCIER III, 5921
STEVEN C. BERGER, 4440
BRIAN D. BERNTH, 2167
JOHN F. BERRIGAN III, 8763
AMY E. BERTAS, 9285
THEODORE C. BETHEA II, 1591
JAMES W. BISHOP, 0274
MICHAEL J. BISSONETTE, 2686
EDUARDO C. BITANGA II, 2031
BRENT W. BLAND, 2902
DONALD P. BLAND, 6184
ALDRICK C. BLUNT, 7555
MICHAEL A. BOCCOLUCCI, 1930
ROBERT J. BODISCH, JR., 9716
DARYL S. BOERSMA, 8878
BRAD P. BOITNOTT, 3865
BRANDON M. BOLLING, 4578
CHRISTOPHER L. BOPP, 8277
GARY A. BOURLAND, 3855
DEREK M. BRANNON, 8317
SEAN C. BRAZIEL, 8289
TOBIN J. BREVITZ, 9139
ERI W. BRINKERHOFF, JR., 2212
IAN C. BRINKLEY, 8539
FRANK J. BROGNA III, 2543
CHRISTOPHER J. BRONZI, 6343
BRANDON C. BROOKS, 5931
DANA R. BROWN, 3942
GREGORY L. BROWN, 7788
SHANNON M. BROWN, 8056
JEROME BRYANT, 3099
SHAWN J. BUDD, 7513
BRYANT E. BUDDE, 1289
THOMAS A. BUDREJKO, 8019
DAWN M. BURKE, 5902
ROBERT S. BURRELL, 2921
GAREY W. BURRILL, JR., 4654
SEAN K. BUTLER, 0320
WALTER J. BUTLER, JR., 0100
RUSSELL P. BUTTRAM, 6234
JEFFREY D. CABANA, 6706
LONNIE M. CAMACHO II, 3567
LOUIS A. CAMARDO II, 2670
DANIEL R. CAMPBELL, 4006
RAFAEL A. CANDELARIO II, 6410
RONALD M. CANNIZZO, 7887
LEO J. CANNON, 3189
PATRICK L. CANTWELL, 7940
FREEDOM J. CARLSON, 7709
MARK E. CARLTON, 5036
MICHAEL J. CARREIRO, 4219
MICHAEL R. CHALLGREN, 5667
JOHN L. CHERRY, 4375
WILLIAM D. CHESAREK, JR., 2885
ALICIA A. CHIARAMONTE, 4006
CHAD A. CHORZELEWSKI, 9433
CHRISTOPHER M. CHOWN, 4865
JESUS M. CLAUDIO, 7050
GREGORY H. CLAYTON, 2914
C. R. CLIFT, 1859
DARIUS COAKLEY, 0062
GERALD C. COLLINS, 4169
DANIEL E. COLVIN, JR., 2215
ADAM S. CONWAY, 9180
JOHN COOK, 9835
SCOTT J. COOK, 6350
TOMMY D. CORNSTUBBLE, JR., 9957
STEPHEN L. COSBY, 6871
JOHN M. COSTELLO, 8807
HEATHER J. COTOIA, 7282
BRADLEY S. COWLEY, 4415
BRIAN P. COYNE, 6870
KEITH S. CRABTREE, 0600
PATRICK R. CRAWFORD, 3820
ERIC T. CREEKMORE, 9213
HENRY L. CRUSOE, 9316
CHRISTOPHER C. CURRAN, 0777
STEPHANIE L. DAUGHERTY, 6609
ARTHUR L. DAVIDSON, JR., 0902
JOHN S. DAVIDSON, 7730
SAMUEL D. DAVIS, 9787
SHALISA W. DAVIS, 5160
CHRISTOPHER E. DEANTONI, 3661
MICHAEL J. DEDDENS, 9500
CORY E. DEKRAAI, 9264
GERALD DELIRA, JR., 5774
STEVEN M. DEMATTEO, 6102
MARK E. DETHLEFSEN, 6406
PATRICIA R. DEYONG, 6440
KEVIN L. DIGMAN, 4438
ERIC C. DILL, 4472
JEFFREY S. DIMMIG, 7617
FRANK DIORIO, JR., 0966
ANDREW P. DIVINEY, 2172
ERIC L. DIXON, 4337
JENNIFER M. DOLAN, 0646
WILLIAM P. DONNELLY III, 5230
DAVID A. DOUCETTE, 8875
ERIC J. DOUGHERTY, 2243
STEVEN R. DOUGLAS, 6812
TROY M. DOWNING, 2028
MATTHEW J. DREIER, 8390
BRIAN S. DRYZGA, 9794
NICOLE C. DUBE, 7039
NEAL W. DUCKWORTH, 6400
CINDY R. DUGGAN, 4060
CHRISTOPHER M. DUKE, 1343
RICHARD E. DUNN, 9951
MICHAEL A. DURHAM II, 2216
PATRYCK J. DURHAM, 5074
TANYA M. DURHAM, 8149
JAMES F. EDWARDS III, 2415
SCOTT C. EDWARDS, 3545
PHILIP E. EILERTSON, 7586
MARK D. ERAMO, 9864
BRUCE J. ERHARDT, JR., 0919
KYRL A. ERICKSON, 0180
KEVIN M. ERKER, 4702

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BRYAN M. ESPRIT, 1237
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MATTHEW S. FAHRINGER, 1577
ROBERT A. FARIAS, 9733
JOSEPH A. FARLEY, 0860
MICHAEL M. FARRELL, 1158
THOMAS P. FAVOR, 9340
JAMEY M. FEDERICO, 3412
WILLIAM A. FEEKS, 0787
SCOTT E. FERENCE, 9337
ERNEST D. FERRARESSO, 8845
TODD P. FERRIS, 4720
GREGORY L. FIELD, 8691
ANDREW J. FINAN, 5376
MARTIN J. FISHER, 2972
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THOMAS H. GILLEY IV, 1761
JAMES R. GLADDEN III, 1291
RICHARD L. GLADWELL, JR., 8205
SEAN M. GLEASON, 5919
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JENNIFER M. GODDARD, 5403
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REBECCA L. GOODRICHHINTON, 5461
BRADLEY V. GORDON, 6016
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JOSHUA S. GORDON, 8887
BRIAN T. GRANA, 0103
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JAMES W. GROOMS II, 6852
ROBERT J. GUICE, 7369
REGINA M. GUSTAVSSON, 4346
JOHN T. GUTIERREZ, 9240
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JEREMY G. HALL, 4818
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ELIZABETH A. HARVEY, 8373
HOWARD H. HATCH, 5991
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ROBERT C. HAWKINS, 4684
BRENDAN G. HEATHERMAN, 0714
ROBERT P. HEFFNER, JR., 5504
ERIK B. HEISER, 7703
WILLIAM C. HENDRICKS IV, 1559
SEAN D. HENRICKSON, 4054
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LARRY J. HERRING, 0706
RALPH HERSHFELT III, 3520
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TERRELL D. HOOD, 7431
JAMES B. HOOVER, 3468
JEFFREY S. HOUSTON, 2617
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WILLIAM C. HOWLETT, 5683
RYAN M. HOYLE, 4681
GEORGE A. HUGGINS, 3631
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CHRISTIAN S. RUWE, 0144
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JOHN T. RYAN, 4142
RUSSELL C. RYBKA, 2415
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JOHN E. SARNO, 0092
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JOSEPH G. SCHMITT, 6239
DAVID E. SCHNEIDER, 1256
PAUL M. SCHNEIDER, 4952
WILLIAM M. SCHRADER, 4161
SEAN D. SCHROCK, 0656
JASON L. SCHWARTZ, 4048
JOHN T. SCHWENT, JR., 0360
ROBERT C. SELLERS, 0429
MICHAEL P. SHAND, 9147

DAVID B. SHEALY, 1576
DANIEL B. SHEEHAN III, 9024
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SAMUEL L. SLAYDON, 0669
DAVID P. SMAY IV, 3629
ANTHONY L. SMITH, 4545
DANIEL B. SMITH, 8093
ELIESER R. SMITH, 1967
KEITH D. SMITH, 7001
MIRANDA D. SMITH, 4650
ROGER A. SMITH, 5100
TRACI L. SNIVELY, 8412
JARED A. SPURLOCK, 0543
MATTHEW A. SPURLOCK, 6659
MICHAEL W. STEHLE, 9914
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MARK A. STIFFLER, 1520
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DEAN T. STOUFFER, 9774
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ERIC S. SYVERSON, 4957
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BRIAN J. TAYLOR, 4411
JAMES T. TAYLOR, 6525
STEPHEN J. TAYLOR, 8643
BRADLEY J. TEEMLEY, 9105
THOMAS M. TENNANT, 3059
GREGORY A. THIELE, 7770
AMY N. THOMAS, 8455
WILLIAM A. THOMAS II, 7293
ANDREW J. THOMPSON, 9325
ERIC N. THOMPSON, 7696
IAN F. THOMPSON, 0168
JEREMY S. THOMPSON, 4667
PATRICK F. TIERNAN, 2702
WINSTON S. TIERNEY, 2186
ARCHIE L. TINJUM, JR., 1190
VIRGIL E. TINKLE, 8407
EMMANUEL V. TIPON, 3588
CURTIS J. TOMCZAK, 9602
EDMUND B. TOMLINSON, 6471
MICHAEL D. TRAPP, 8858
SCOTT T. TRENT, 0277
JAMES W. TROY, 3805
JOSEPH M. TURGEON, 6665
JOSEPH B. TURKAL, 1449
TRAY A. TURNER, 1338
JAMES D. UTSLER, 5967
GLENN H. VANAIRSDALE, 1507
MARK R. VANDERBEEK, 3732
TOBIAS K. VANESSELSTYN, 2620
DAVID J. VANLANEN, 8505
SCOTT E. VASQUEZ, 7387
ANTONIO E. VELASQUEZ II, 6103
ANDREW E. VELLENGA, 6282
BENJAMIN M. VENNING, 8236
CHARLIE R. VONBERGEN, 0259
PAT P. VONGSAVANH, 8568
FRANCIS M. WALD, 8969
STEVEN O. WALLACE, 3532
WALTER J. WALLACE, 7499
RANDAL M. WALSH, 2952
WAYNE J. WALTRIP, 4395
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GREGORY J. WARDMAN, JR., 4881
ANTONIO H. WATERS, 0101
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KEITH S. WEINSAFT, 2579
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MICHAEL S. WILBUR, 3616
DARBY R. WILER, 1526
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JERRY D. WILLINGHAM, 8805
BRETT M. WILSON, 0730
BRYAN D. WILSON, 9169
PETER A. WILSON, 3952
MATTHEW D. WINKELBAUER, 5236
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DAVID L. YAGGY, 0997
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DANIEL R. ZAPPA, 7815
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HOUSE OF REPRESENTATIVES, Wednesday, February 1, 2006

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mrs. MILLER of Michigan).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
February 1, 2006.

I hereby appoint the Honorable CANDICE S. MILLER to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

The Reverend Don Davidson, Pastor, First Baptist Church, Alexandria, Virginia, offered the following prayer:

Dear God, our Heavenly Father, maker of all that there is, the One in whom we live and move and have our being. We pause at the beginning of this day to acknowledge that You are God, and we are not. We are but Your servants, and we humbly bow before You.

Thank You for this rich and diverse country, the United States of America, and for this great deliberative body and the role each Member plays in leading our government and charting our Nation's course.

Grant these men and women wisdom and courage for the decisions of this hour. Give them strength for today and bright hope for tomorrow. Speak, Lord, and may these hear You and obey You, that Your will can be done on Earth just as it is in Heaven.

We confess our sinfulness, but we are reminded of the scripture that says if we confess our sins, You are faithful and just and will forgive us our sins and cleanse us from all unrighteousness. We ask for Your grace in abundance.

Through Jesus Christ, I pray. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House her approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Texas (Mr. POE) come forward and lead the House in the Pledge of Allegiance.

Mr. POE led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER pro tempore. The Chair will entertain up to 15 one-minute speeches on each side.

HELP OUR LOCAL SMALL BUSINESSES

(Mrs. KELLY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. KELLY. Madam Speaker, I rise today to urge my colleagues to work more collectively and comprehensively in Congress during the legislative year ahead to help our local small businesses. The President stressed last night that the tax and economic policies to help small businesses lead to continued economic growth and new jobs. Now is the time to put those words into action.

During the past month, I have held town hall forums with small business owners and employees in New York's Hudson Valley. We agreed that there are five areas that we should focus our efforts to help our small businesses:

One, lower health insurance costs for small businesses.

Two, stop excessive and redundant Federal regulations on small business.

Three, level the playing field for small businesses and give them the same advantages as larger companies.

Four, permanently end the death tax that is a direct hit on family-owned small businesses and family farms.

Five, extend tax relief for small businesses to help them grow and create jobs.

Let us fully demonstrate our commitment to small businesses by continuing to pursue legislative solutions to the challenges being faced by small businesses in the Hudson Valley and throughout our country.

THE "CHALLENGER" MAGNIFICENT SEVEN

(Mr. POE asked and was given permission to address the House for 1 minute.)

Mr. POE. Madam Speaker, 20 years ago, the seven crew members of the space shuttle "*Challenger*" tragically died while seeking the wonders and worlds of space.

In the tradition of great explorers of the past like Columbus, the Conquistadores and Lewis and Clark, the astronauts aboard the space shuttle "*Challenger*" were exploring and embarking on the last frontier when they gave their lives on January 28, 1986.

That courageous "*Challenger*" crew of Francis Scobee, Michael Smith, Judith Resnick, Ellison Onizuka, Gregory Jarvis, high school teacher Christa McAuliffe and Texan Ronald McNair were the best of the brave, the bold and the brazen. They were not only remembered by NASA in my hometown of Houston, but throughout the world.

These magnificent seven epitomized the spirit of the explorers of old and will be remembered for their sense of adventure and courage. Space exploration is America's marvelous mission that will continue to be our dream and our goal.

These seven brothers and sisters of space and their enduring legacy are part of that goal to conquer and to challenge space. That's just the way it is.

RONALD REAGAN ORAL HISTORY PROJECT

(Mr. GOODE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GOODE. Madam Speaker, first I want to say it is a pleasure to be here with Reverend Don Davidson today. Reverend Davidson used to live in the Fifth District of Virginia, and I want to wish him the best in his new location in Alexandria.

Days before we observe Ronald Reagan's birthday, I think it important to share some of the achievements of Ronald Reagan's Oral History Project developed by the Miller Center at the University of Virginia.

This project began in August 2001. In 45 interviews, it has recorded volumes about President Reagan's political career. The purpose of the Oral History Project is to record recollections of persons apart from the pressures of incumbency.

A majority of the almost 3,000 pages of transcripts will be released later this month, and the Miller Center will hold a three-part forum to celebrate their release.

Nancy Reagan commented that the Miller Center has become a valuable

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☐This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

part of our lives, as it works closely with the Ronald Reagan Presidential Library to create a definitive oral history of the Reagan presidency.

MINE SAFETY AND HEALTH ACT OF 2006

(Mrs. CAPITO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. CAPITO. Madam Speaker, first I would like to thank the Nation and my fellow West Virginians for their prayers during our month of sorrow caused by our coal mining accidents. As you know, two major mining accidents took place in West Virginia, killing 12 miners at Sago mine in Upshur County and 2 at the Alma mine in Logan County. Today the West Virginia Congressional delegation, on a bipartisan basis, will introduce the Federal Mine Safety and Health Act of 2006. This mine safety legislation will require the Mine Safety and Health Administration to issue regulations to provide for immediate notification of mine accidents, new regulations for mine safety teams, and to ensure a quick response and improve technology to keep miners safe.

This legislation creates an MSHA Office of Science and Technology and examine mine safety and rescue technologies, including refuge chambers. The world watched as tragedy was averted in Canada this past weekend because 72 trapped miners were able to escape to a designated safe haven. American miners deserve to have the best safety equipment as well.

It is important that this House act on legislation to improve the safety of our coal mines. I spent time with the friends and family of the Sago mine victims, both as we awaited the news of the rescue efforts and after we heard the tragic result. I do not want to watch more families endure what the families of the Sago victims have gone through.

I urge my colleagues, whether your State is a major producer of coal or not, to join the West Virginia delegation in helping to prevent future mine tragedies.

HELP AMERICA VOTE ACT

(Mr. FITZPATRICK of Pennsylvania asked and was given permission to address the House for 1 minute.)

Mr. FITZPATRICK of Pennsylvania. Madam Speaker, I rise today in support of legislation that I introduced yesterday to delay penalties to local governments who are unable to meet the May deadlines imposed by the Help America Vote Act of 2002. As a former county commissioner with firsthand experience with local voting boards, I know how hard it is to maintain the high standards we hold for our democratic process while meeting prescribed Federal guidelines and deadlines. I know that many local governments across the Nation right now are struggling to meet HAVA's requirements at the risk of losing all of their Federal funding.

The "Help America Vote Act" was written to strengthen our election process, and to bring it up to date nationwide. For many areas this means buying new voting machines. This is no easy task, Madam Speaker, for many areas that are still using the same reliable machines that had been in use for many decades. Local governments need time to make such an important decision, not a deadline with a threat of Federal penalties.

My legislation buys more time for local governments who are acting in good faith to follow the letter of the law by extending HAVA's deadlines from May to the general election in November. This is commonsense reform of necessary legislation, and I urge my colleagues to support it.

SUPPORT OUR TROOPS

(Mr. YOUNG of Florida asked and was given permission to address the House for 1 minute.)

Mr. YOUNG of Florida. Madam Speaker, last night in this Chamber, as the President of the United States was encouraging Americans to support our troops, my wife was sitting in this gallery right over here, and she was ordered to leave the gallery because she was doing, and this was in the middle of the President's speech, what the President said we should all do.

She had on this shirt, a very conservative shirt, long sleeves, high neck. But it says "Support our Troops." Someone at this door in the gallery ordered her to leave. When she got into the corridor, they explained to her that she was a demonstrator, that she was a protester. Besides that they lied about what she did. They said she had on a jacket, she flashed open the jacket and exposed this shirt. Not true. She did not have a jacket on. Then they called her a demonstrator and a protester.

When asked about this incident by a reporter from the St. Petersburg Times in my home district, they denied, denied, and said she left on her own volition.

My wife supports our troops on every day, every hour, every waking hour. It is with a passion, because of a passion that comes from the hours and the days and the weeks and the months that she has spent in our military hospitals ministering to those who have been wounded in the line of duties, helping with their families.

Yes, she has a real passion for our troops, and she shows it in many, many ways. Most members in this House know that. But because she had on a shirt that someone did not like that said "Support our Troops," she was kicked out of this gallery while the President was speaking and encouraging Americans to support our troops. Shame, shame.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the House will stand in recess subject to the call of the Chair.

Accordingly (at 10 o'clock and 12 minutes a.m.), the House stood in recess subject to the call of the Chair.

□ 1305

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. LAHOOD) at 1 o'clock and 5 minutes p.m.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken later today.

ELIMINATING FLOOR PRIVILEGES OF FORMER MEMBERS AND OFFICERS

Mr. DREIER. Mr. Speaker, I move to suspend the rules and agree to the resolution (H.Res. 648) to eliminate floor privileges and access to Member exercise facilities for registered lobbyists who are former Members or officers of the House.

The Clerk read as follows:

H. RES. 648

Resolved,

SECTION 1. FLOOR PRIVILEGES OF FORMER MEMBERS AND OFFICERS.

Clause 4 of rule IV of the Rules of the House of Representatives is amended to read as follows:

"4. (a) A former Member, Delegate, or Resident Commissioner; a former Parliamentarian of the House; or a former elected officer of the House or former minority employee nominated as an elected officer of the House shall not be entitled to the privilege of admission to the Hall of the House and rooms leading thereto if he or she—

"(1) is a registered lobbyist or agent of a foreign principal as those terms are defined in clause 5 of rule XXV;

"(2) has any direct personal or pecuniary interest in any legislative measure pending before the House or reported by a committee; or

"(3) is in the employ of or represents any party or organization for the purpose of influencing, directly or indirectly, the passage, defeat, or amendment of any legislative proposal.

"(b) The Speaker may promulgate regulations that exempt ceremonial or educational functions from the restrictions of this clause.".

SEC. 2. PROHIBITING ACCESS TO MEMBER EXERCISE FACILITIES FOR LOBBYISTS WHO ARE FORMER MEMBERS OR OFFICERS.

(a) IN GENERAL.—The House of Representatives may not provide access to any exercise facility which is made available exclusively to Members and former Members, officers and former officers of the House of Representatives, and their spouses to any former Member, former officer, or spouse who is a lobbyist registered under the Lobbying Disclosure Act of 1995 or any successor statute or agent of a foreign principal as defined in clause 5 of rule XXV. For purposes of this section, the term "Member of the House of Representatives" includes a Delegate or Resident Commissioner to the Congress.

(b) REGULATIONS.—The Committee on House Administration shall promulgate regulations to carry out this section.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. DREIER) and the gentlewoman from New York (Ms. SLAUGHTER) each will control 20 minutes.

The Chair recognizes the gentleman from California.

PARLIAMENTARY INQUIRY

Mr. SNYDER. Mr. Speaker, a parliamentary inquiry, if I might. Because of the State of the Union last night, and we always have the tradition of lots of former Members. I have two or three parliamentary inquiries that I would like to ask about the rules of the House governing this debate today.

Under rule IV, clause 4, if I might read it, because I think most Members may not have looked at this in a while: "former Members, Delegates and Resident Commissioners; former Parliamentarians of the House; and former elected officers and minority employees nominated and elected as officers of the House shall be entitled to the privileges of admission to the Hall of the House and rooms leading thereto only if,

"(1) they do not have any direct personal or pecuniary interest in any legislative measure pending before the House or reported by a committee; and,

"(2) they are not in the employ of or do not represent any party or organization for the purpose of influencing, directly or indirectly, the passage, defeat or amendment of any legislative measure pending before the House reported by a committee or under consideration in any of its committees or subcommittees."

In Mr. DREIER's proposal today, it specifically includes all registered lobbyists, any former Members that are registered.

The SPEAKER pro tempore. What is the gentleman's inquiry?

Mr. SNYDER. My inquiry is this: Under the current rules that we are operating under today, do the rules prohibit any registered lobbyist who is a former Member from being on the floor of the House today or in the rooms adjoining thereto?

The SPEAKER pro tempore. Under certain circumstances, yes.

Does the gentleman have another inquiry?

Mr. SNYDER. Mr. Speaker, I would like a further amplification on that. Clearly, a registered lobbyist, since Mr. DREIER's legislation specifically refers to registered lobbyists, who are former Members, have a direct personal interest in this legislation pending today. I am not sure how that application, perhaps I have not been clear in my question, how a registered lobbyist who is a former Member could be on the House floor today when Mr. DREIER's legislation specifically involves registered lobbyists who are former Members.

The SPEAKER pro tempore. What is the gentleman's inquiry?

Mr. SNYDER. My inquiry is: Are those Members, former Members, who are registered lobbyists, are they not under current rules prohibited from being on the floor today because they would have, obviously, a personal interest in this, the intent of Mr. DREIER's bill?

The SPEAKER pro tempore. Would the gentleman restate his question.

Mr. SNYDER. Mr. Speaker, my question is: If a former Member, who is currently a registered lobbyist, may that former Member, who is currently a former lobbyist, be on the floor today during the consideration of this bill?

The SPEAKER pro tempore. Such a former Member should not be on the floor given the pendency of this motion.

Mr. SNYDER. Mr. Speaker, that is what my understanding was.

The SPEAKER pro tempore. Does the gentleman have another inquiry?

Mr. SNYDER. Mr. Speaker. I do. Under the rules that I just read, it refers to the Hall of the House and rooms leading thereto. I assume that means the Speaker's Lobby and the two cloakrooms. Is that the Speaker's interpretation of that rule?

The SPEAKER pro tempore. The gentleman is correct. It also includes the Rayburn Room, just off the House floor.

Mr. SNYDER. Mr. Speaker, my third parliamentary inquiry, under current rules, I see no exemption, under the current rule, for any kind of an educational function to occur during the consideration of this measure; is that correct?

The SPEAKER pro tempore. The gentleman is correct.

Mr. SNYDER. Mr. Speaker, my fourth parliamentary inquiry, this bill is now under our suspension calendar. Is it the Speaker's ruling that no amendments are allowed to broaden the application of this rule?

The SPEAKER pro tempore. The gentleman is correct.

The gentleman from California (Mr. DREIER) may proceed.

Mr. DREIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me begin by thanking my friend from Arkansas for pointing to some of the important aspects of this legislation.

We are committed to bold, strong, dynamic reform for this institution. The Republican Party, Mr. Speaker, has stood for reform ever since I can remember. When I was in the minority, we had the privilege of working on the Joint Committee on the Organization of Congress, and that committee made a wide range of recommendations that would have focused on improving the deliberative nature of this institution, the transparency that is necessary, and the accountability. Unfortunately, when we Republicans were in the minority, they were not implemented. When we won the majority in 1994, we proceeded with very sweeping reforms which focused on lobbying and a wide range of other areas.

I have always argued, Mr. Speaker, that when we are completed with reforms, what we should do is proceed with more reform; and it needs to be done in a way in which we recognize the deliberative nature of this institution. I love this institution, Mr. Speaker. I proudly describe myself as an institutionalist. But we have a problem that needs to be addressed.

We have just begun this process of beginning the reforms for the Second Session of the 109th Congress. We have been working on reforms in the past session of Congress and in Congresses before that, but today we begin the work following the President's great State of the Union message on the issue of reform; and that is why this measure that we are moving forward with is one that we believe is very important, very transparent and gets at a problem that does exist.

The fact of the matter is, every single American has the constitutional right to petition their government. It is a precious right that we need to protect, and we need to do everything possible to ensure that every American can in fact come to their elected representative and state their opinion.

Concern has come forward from a number of Members, and this has existed really since the beginning of time, or since the beginning of this institution, where we have now seen former Members who are registered lobbyists come to the House floor and engage in lobbying activity. It is against the rules, it is not supposed to happen, but in fact it has happened. That is why this resolution is designed to ensure, Mr. Speaker, that former Members of Congress who are registered lobbyists do not have any kind of advantage over the average American when it comes to access to Members of the United States House of Representatives.

This resolution is clear. It says for the House of Representatives, the House floor and the gym, that former

Members of Congress are not able, if they are registered lobbyists, to have access there. We believe that this is a concern that needs to be addressed; and I hope very much that we will be able to, as I have been very pleased in the past several weeks to work in a bipartisan way on the passage of this measure.

Let me state, Mr. Speaker, that this is the first step in our process of greater reform. My friend from Arkansas has come forward with some very interesting ideas. He testified before the Rules Committee. I will say to him right now that I am very happy and pleased to look at the proposals that he has offered and consider them legislatively.

This is the first day of the Second Session of the 109th Congress, but there are a wide range of reforms that Speaker HASTERT and I and others have proposed. There are a wide range of reforms that have been proposed by our colleagues on the other side of the aisle.

So I am convinced we can, in a bipartisan way, work to increase the level of transparency and make sure that there is a greater degree of accountability to this institution. This step is one that we can begin with; and it is one that should enjoy, as I said, strong bipartisan support.

Mr. Speaker, I reserve the balance of my time.

□ 1315

Ms. SLAUGHTER. Mr. Speaker, just over a year ago, on the very first day of the last session of Congress, I stood on the floor and watched the Republican majority force through a new set of House rules, rules designed to destroy the House Ethics Committee and to protect the leadership and their Members from any measure of real accountability.

And ironically they called it an ethics reform package. As a result of that package we still do not have a working ethics committee today.

On that day the word "corruption" became synonymous with Congress in the minds of many of the American people. 2005 went on to be a year defined by corruption in a way never before seen. The magnitude of the Republican culture of corruption overwhelming this House has only been exceeded by the high cost of that corruption for every man, woman and child in this country.

From the Medicare legislation affecting the health of our seniors, to the safety of our troops in Iraq, to the energy bills that determine if families can afford to heat their homes during the winter and drive their cars, nothing has proved too precious to avoid being sold for a price.

But despite this shameful record today, the Republican majority asks us to believe they have now seen the light and they are suddenly committed to producing an ethical Congress. And so we are opening this year with another ethics rules change.

It is a reform that I support, because the stranglehold lobbyists have over our process is indeed a tremendous problem facing our Nation.

The fact that there are 34,000 registered lobbyists in Washington today, 63 for each Member of Congress, demonstrates just how much power special interests wield in this Congress. And clearly, former Members of this body who lobby should not have special access to lawmakers on the floor or the gym.

But let me be clear, that this rules change is so minor in relation to the magnitude of the problem that it does not amount to a drop in the ocean. In fact, I suspect it is illegal already.

First, we know that they should not be here, but we have ignored that rule and done nothing to enforce it. But more importantly, shifting the blame for the rampant corruption in Washington only to lobbyists is part of an effort to avoid the central issue.

Corrupt lobbyists like Jack Abramoff have done much harm to this country, but they can only be as corrupt as those in power allow them to be. Let me say that again. They have done a lot to harm the country, but they can only be as corrupt as those in power allow them to be.

A true responsibility for corruption begins and ends here in this Chamber with those who pull the strings. Lobbyists are simply the symptom. The disease is here. Because after all, lobbyists are writing the bills that come out of this House because the Republican leadership wanted it that way. House rules are being ignored and our ethics process destroyed because the Republican leadership wants it that way.

We now have a government that is too corrupt to sustain itself any longer, too undemocratic to even pretend to be a democracy. We simply cannot allow Band-aid packages like the one presented today to take the place of real reform. It is self-evident now that those who put America up for sale have neither the ability nor the credibility to lead us in a new direction.

It is going to take a lot more than preventing former Members from going to the House gym to produce an ethical Congress. If we ever hope to restore true democracy to our government, it is going to take a fundamental change in the culture of this institution, one devoutly to be wished and felt and certainly a thing that we will work hard for on this side.

Mr. Speaker, I reserve the balance of my time.

Mr. DREIER. Mr. Speaker, I yield 3 minutes to my good friend and classmate, the gentleman from Ohio (Mr. OXLEY), the distinguished chairman of the Committee on Financial Services.

Mr. OXLEY. Mr. Speaker, I have no particular problem with dealing with former Member/lobbyists on the floor of the House. This is where we do our business. The rule frankly has always been that there is no lobbying on the floor of the House. And, frankly, in 24 plus years here, I have never had that experience, even since I have been committee chairman. So to some extent we are somewhat tilting at windmills.

My big concern really is what the message is in terms of Members, former Members who are lobbyists in the wellness center, as we call it. I happen to chair that, and I have been for a number of years, one of the last vestiges of bipartisanship and camaraderie in this institution that many of us share, many times with former Members who have continually been members of the wellness center and have come down and enjoyed the camaraderie, the exercise.

Not once in that time have I been lobbied, nor have I heard any complaints since I have been chairman of the wellness center about lobbying taking place. I think it is a perhaps unwritten rule. Maybe it ought to be a written rule, but to ban these distinguished former Members that we all served with on both sides of the aisle, whether it is Lee Hamilton or whether it is Jack Fields or Jack Quinn or Bill Archer, former chairman of the Ways and Means Committee, I think really does a disservice to this institution, and I am really concerned about it.

Let us take a look at the language of this proposal. It basically says if you are a former Member/lobbyist, a Bill Archer or a Jack Fields, you are no longer welcome in the wellness center, you can just go ahead and clean out your locker. But if you are a convicted felon, and not a former Member/lobbyist, you can participate in the wellness center. It seems to me rather incongruous and rather upside down towards trying to come to grips with some of these alleged problems that are out there.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. OXLEY. I yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, as I said at the outset, I thank my friend for yielding, this is the first step in the beginning of the 109th Congress second session in dealing with this issue of reform, and we are open to making any kind of modification. I will tell you the notion of having convicted felons having access to the House floor obviously we find that abhorrent, and so I will just assure my friend that that is an issue that we are more than happy to address.

Mr. FRANK of Massachusetts. Mr. Speaker, will the gentleman yield?

Mr. OXLEY. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. I do suggest a possible compromise, because there is a certain self-interest. Let us be honest among the Members. Perhaps the modification could be that any former Member using any piece of equipment would have to yield to a current Member.

Mr. OXLEY. Well, I think the gentleman from Massachusetts makes a good point. I think once we start down this slippery slope it is really not in the best interests of this institution. And I think, talking to Members privately on both sides of the aisle, I think that we have clearly overreached here. I have no problem with the floor privileges, but the wellness center is a different animal.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts (Mr. MEEHAN).

Mr. MEEHAN. Mr. Speaker, I rise to urge my colleagues to support comprehensive lobbying reform. Over the past few years special interests have had a larger and larger say over who gets what in America, and the voices of average citizens are being shut out.

The worst excesses of the Congress of the 1980s pale in comparison with what is going on in Washington today. K Street has become Congress' back office. That is where the bills are written and the deals are made. Lobbyists from the energy companies wrote the energy bill to increase their already excessive profits, and lobbyists from the pharmaceutical industry wrote the prescription drug bill that actually makes it illegal for the Federal Government to buy drugs in bulk for the 40 million Americans who are on Medicare.

Sadly, today's proposal does nothing to address the abuses of power that have allowed lobbyists unfettered access to government. Something barring former lawmakers, current lobbyists form the gym or the floor of the House and calling it lobbying reform is sort of like putting a Band-aid on a broken leg. It does not even begin to address the real problems that have allowed the system to get so out of control.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. MEEHAN. I yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, I will be happy to yield the gentleman additional time if it is necessary. The gentleman was not here on the floor when I gave my opening statement, and from the private conversation that you and I have had, I would like to again state for the record, Mr. Speaker, that this is simply a first step in dealing with the issue of comprehensive reform of the lobbying and ethics process to which my friend referred.

I would like to for the record say that. I thank my friend for yielding.

Mr. MEEHAN. Mr. Speaker, I look forward to working on bipartisan lobbying reform, but it is seems to me pretty clear that we need real lobbying reform. There is no reason why, given the discussions we have been having across the Capitol over a period of 6 or 8 months now, why we cannot come in with a comprehensive proposal and have an opportunity to debate it.

We need to make the process more transparent, through disclosure. We need to have tougher restrictions on gifts. We need a tougher enforcement program and, most importantly, we need to fix the badly broken ethics system. So it seems to me if we are really committed to reforming the House, then putting this Band-aid really does not get at the crux of the issue.

Mr. DREIER. Mr. Speaker, I yield myself such time as I may consume to enter into a colloquy with the gentleman.

I want to simply say once again, Mr. Speaker, that all of the items that he has outlined, whether it is dealing with the issue of a gift ban, greater transparency and accountability, looking at the issue of privately funded travel, all of these are issues, as the gentleman knows and as others know, that Speaker HASTERT is committed to addressing in a comprehensive way.

And it is our intention, I hope very much that as we craft legislation, that we will be able to do so in a bipartisan way. We felt strongly, Mr. Speaker, that at the outset here, as we begin the second session of the 109th Congress, that this issue which falls within the jurisdiction of the Rules Committee, which I am privileged to chair, could be addressed on the opening day to make it clear that we are committed to comprehensive reform.

And so anyone who would lead someone to believe otherwise is just plain wrong. So I would simply say to my colleague that I do look forward to working. He has very, very creative, good, interesting and important ideas in the legislative package that he has put forward, and I am committed to looking at every single one of those as we craft our legislation.

I am happy to yield to my friend.

Mr. MEEHAN. Mr. Speaker, I am happy to hear all of that, but the crux of the issue here is that there is no way that not allowing former Members, for example, to be in the gym and to be on the floor would have undone what was done in the energy bill, for example. There is no way that that would stop the $8 billion of tax credits for the oil industry. There is no way that we would not have passed a Medicare prescription drug bill that actually makes it illegal to buy prescriptions in bulk if somehow former Members were not allowed to come to the floor.

All I am saying is, while I recognize the fact that this is one of the ideas that is out there, we really need to, and I am willing to sit down, I would love to work with the majority on this, but we need to have comprehensive reform.

Mr. Speaker, I am worried that by taking little pieces here that sound like could be, might be some kind of reform, we miss the crux of the issue, which is changing that system that allows legislation at 3 o'clock in the morning and a vote is left open.

Mr. DREIER. Mr. Speaker, reclaiming my time.

Mr. Speaker, I would simply say that the Republican Party has been and continues to be the party of reform. We are committed with this first step that we are taking today, with this package, that addresses something that is just not right.

Former Members of Congress, who are registered lobbyists should not have access to the floor of the House of Representatives, and that is something that we are going to do. It is not a Band-aid. No one is arguing that this is comprehensive reform. This is a first step towards the large process which will allow us to address the concerns that have come forward.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Speaker, the problem that we are dealing with is exemplified by what we are dealing with today, a bill that comes to the floor under suspension of the rules. I do not think the party of reform distinguishes itself by bringing up this issue in a way that does not allow amendment. Why not bring this to the floor in an open rule?

The fact is that we have had in this House for years now, under Republican rule, a suppression of democracy, a failure to throw things open. Why was there a necessity to have this under a suspension? Why should not this be open?

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, I thank my friend for yielding.

Mr. Speaker, let me just state that the process of suspension of rules is a time honored structure that has existed here which requires a super majority. This measure will not pass unless two-thirds of the Members, a bipartisan coalition of Members, vote in support of it.

Mr. FRANK of Massachusetts. Mr. Speaker, reclaiming my time, the gentleman misses the point entirely. The question is not whether we pass something, which frankly seems to me rather trivial. I am going to vote for it, I think it is better than not. It is interesting it took the party of reform, what, 11 years to stumble across it.

But what is important is what is not here. The gentleman misunderstands the legislative process if he thinks that he satisfies it by saying, okay, we will take one piece of this and we will bring it up and we will decide what is up and what is not, and we will open it up to debate.

It is the lack of debate that has been a problem. It is also the case, of course, that the corruption we are dealing with goes very deep. And I have to say that the suggestion that the Republican Party, the assertion, is a party of reform simply does not square with the facts.

Let us talk about some of the legislation. The problem frankly has not been former Members. When you came to prescription drugs and dealing with the pharmaceutical industry in general, it has been future former Members.

□ 1330

That is current Members who plan to be former Members in the arms of the industry that they were voting to regulate.

Frankly, Mr. Speaker, we have got a serious systemic problem of corruption that I am prepared at this point to correct myself. I am one of those who talks about in Washington a vast right-wing conspiracy. It now seems clear to me that we instead have had a vast right-wing kleptocracy, and putting people out of the gym is not a beginning of dealing seriously with that problem.

Mr. DREIER. Mr. Speaker, I am very happy to yield 4 minutes to the gentleman from Florida (Mr. LINCOLN DIAZ-BALART), the distinguished vice chairman of the Committee on Rules, my friend from Miami.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I thank the distinguished chairman for the time. I was walking by here and then stumbled here on this interesting debate.

I think our friends have to decide which of two arguments that have been propounded is really the argument they have to come down upon in support of.

One is, we have heard, that we offer lack of democracy. We just heard that. I guess that means insufficient input, ability for Members, et cetera. Another debate we just heard is that the legislation that we brought forth should do more.

We have presented this resolution the first day that we are back to do what we are able to do on the first day we are back, having done it through regular order. In other words, the Rules Committee had a hearing on this resolution and brought it forth yesterday for the consideration of the floor today.

With regard to the other aspects that have been mentioned here, it is precisely because of our offer of full democracy, regular order, the committee process that the Speaker has instructed that this legislation go through, the ethics reform go through, that it is not before us in its completion today. In other words, with regard to all these other ideas that have been mentioned, precisely they are going to be considered, not only under regular order by the appropriate committees, but the Speaker has asked that all of those committees act with great promptness; in other words, that they report back within 4 to 6 weeks.

So we are offering what we are offering today, which is important, which I am glad as my friend from Massachusetts says he is going to vote for and I will join with him in voting for. In addition, we are offering so much democracy that we are submitting to the regular order the consideration of all of these ideas that have been mentioned by the distinguished Member from Massachusetts (Mr. MEEHAN) and others.

So substantive ideas of importance, the first day we are back we have brought forth to the floor, due to the leadership and instruction of the Speaker, who has demanded that we act immediately, and with regard to input ability, ability for discussion, for thought, et cetera; in other words, plenty of democracy, we are also offering that, Mr. Speaker, with regard to all of these other important ideas which our friends on the other side of the aisle have mentioned. They have mentioned some of them.

So in summary, Mr. Speaker, this is an important piece of legislation that I am glad we are bringing forth today. It shows the seriousness of the Speaker of the House, of the chairman of the Rules Committee, of the Committee of Rules generally and the leadership to consider this important issue. So I am glad we are considering it the first day we are back.

Mr. DREIER. Mr. Speaker, may I inquire of the Chair how much time is remaining on both sides?

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from California (Mr. DREIER) has 6 minutes remaining. The gentlewoman from New York (Ms. SLAUGHTER) has 12 minutes remaining.

Mr. DREIER. Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I am pleased to yield 2½ minutes to the gentleman from North Carolina (Mr. PRICE).

Mr. PRICE of North Carolina. Mr. Speaker, I first want to commend my colleague from California, Mr. DREIER, for introducing what he rightly says is a first step toward reining in the culture of abuse and corruption that has been laid bare by the various scandals currently surrounding this institution.

I know that broader lobbying reform is on the way, but I want to suggest that lobbying abuses are only part of a more comprehensive problem that is going to require a more comprehensive solution.

Congressional scholars Norman Ornstein and Tom Mann put it this way in a recent article: "This is not simply a problem of a rogue lobbyist or a pack of them. Nor is it a matter of a handful of disconnected, corrupt lawmakers taking favors in return for official actions.

"The problem starts not with lobbyists but inside Congress. Over the past 5 years, the rules and norms that govern congressional deliberation, debate and voting have routinely been violated, especially in the House of Representatives, in ways that mark a dramatic break from custom."

Lobbying reform alone is not going to right this ship. We need a comprehensive plan that gets to the root of the problem, the deterioration and mismanagement of our institutions of governance, particularly this institution.

Congressional Democrats have offered such a plan in the Honest Leadership and Open Government Act, introduced today. Yesterday I joined my colleagues Mr. OBEY, Mr. FRANK and Mr. ALLEN, along with 127 other original cosponsors, in introducing H. Res. 659, a 14-point plan that would address many of the abuses of power that we have witnessed in recent years. Among many other things, our plan would reform the earmarking process, end protracted rollcalls, require House-Senate conference committees to actually meet and vote, and ensure Members that they have time to read and understand what they are voting on.

I will gladly support the first step that we are taking today, but unless we enact meaningful and comprehensive reforms of the way this Chamber conducts its business, Jack Abramoff will be the least of our concerns.

Ms. SLAUGHTER. Mr. Speaker, may I inquire if my colleague has more speakers.

Mr. DREIER. I do not have any more speakers on this side. We are expecting no requests.

Ms. SLAUGHTER. Mr. Speaker, I yield 5 minutes to the gentleman from Arkansas (Mr. SNYDER).

Mr. DREIER. Mr. Speaker, I yield 30 seconds to the gentleman from Arkansas (Mr. SNYDER).

Mr. SNYDER. Mr. Speaker, I thank the gentlewoman from New York (Ms. SLAUGHTER) for the time. I thank the gentleman from California (Mr. DREIER) for his courtesy yesterday in letting me testify before his committee and then this discussion today.

Unfortunately, this has been a rushed process. Our first day back in the new session and we start out with a bill being presented without amendment, with very little understanding of it. As the gentleman from California (Mr. DREIER) pointed out, it already is against the rules of lobbying that we have been hearing about on the House floor, as he indicated in his floor comments just a short time ago, is already against the rules. The problem on the House floor is enforcement, and so any changes we are making about lobbying on the House floor is essentially just a repeat of what is already the rule.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, I will just clarify again. If former Members of Congress, who are registered lobbyists, being paid to represent interests, are not allowed to even enter the Chamber when we are doing our work here on the House floor, it is very clear there will not be a problem. I thank my friend for yielding.

Mr. SNYDER. Mr. Speaker, as you pointed out, you indicated, under the current rules the activities you have heard about are already not allowed under our current rules.

Mr. DREIER. Right, but the best way to enforce this, of course, is just to ensure that those who are paid lobbyists do not even get to come on to the House floor.

Mr. SNYDER. Well, that is what the current rule is. It is not just about lobbying on the floor. It is privilege. This is the current rule, the privilege of admission to the hall of the House. That is the current rule.

Let me continue with my comments.

To me I agree with the gentleman from Massachusetts' (Mr. MEEHAN) comment. This is probably not the greatest place to start but it is a place to start, but our goal ought to be this. Our goal ought to be for Joe Q. Arkansas back home, that wants to come to the Nation's capital and lobby, how can he be treated fairly and equally alongside everyone else. We have a situation now where former Members, who are well sought after when they leave this body or the Senate to be lobbyists, they have privileges that Joe Q. and Jane Q. Arkansas do not have.

What are some of those? First of all, when they pull their car into one of the House parking lots, they show their former Member's ID, they are waved right in. They get a parking place. They do not have to stand in the security lines. They can just walk. They are bypassed on around. They can roam all through the halls of the Capitol or any of the office buildings in the House or the Senate side. They have access to the Members' dining room where only Members, and I have been lobbied at the Members' dining room. They have access to memorial services. I have been actually lobbied at the memorial service for a former Member that had passed away. They can roam the halls at all hours, day or night. They can go to the rooms behind the committees that Joe Q. Arkansas cannot do.

So our goal ought to be to provide equality with people from back home.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, just a quick comment. I will say that every single one of those items that my friend from Arkansas has mentioned, Mr. Speaker, we are more than willing to look at and consider as we work on this issue of comprehensive reform. I thank my friend for yielding.

Mr. SNYDER. Mr. Speaker, based on that comment, I am going to vote for the gentleman's bill today. I am very disappointed if we come to the end of this year and I do not have an opportunity to present these ideas on the floor of the House for debate.

I have an alternative I filed yesterday, and I encourage Members to take a look at, H. Res. 663, and it says if you register as a former Member to be a registered lobbyist, you do not get the former Members' privileges. Once you no longer are a registered lobbyist you get them back. It seems to be very, very clear, and we do not have to get into this mumbo-jumbo about the gym versus not the gym and all those kinds of things.

There is also a section of the bill being proposed today that I think may be a weakening of current law. Under current law, this is what it says currently: The Speaker shall promulgate such regulations as may be necessary to implement this rule and to ensure its enforcement. That language is being changed under the proposal by Mr. DREIER, and it says, "The Speaker may promulgate regulations that exempt ceremonial or educational functions from the restrictions of this clause."

First of all, we will not have the opportunity, I do not believe, to vote on whatever regulation the Speaker puts out. Educational function can be all kinds of things in this body. For example, my fear is that it could be interpreted to be, during the heat of a close vote on a Medicare prescription drug bill, that very well respected former Member Billy Tauzin could be brought over here to meet with 12 undecided Members, not to lobby, but to educate these undecided Members on what this bill means. Somebody is going to have to explain to me, it is very clear from the way of the language of this bill is written, that the intent is that former Members who are registered lobbyists who have a personal or pecuniary interest or are lobbying on behalf of whatever is on the floor of the House would be allowed, under the Speaker's exemption to come and perform an educational function in one of these rooms back here.

I do not think that Joe Q. Arkansas is going to have that opportunity. Jane Q. Arkansas is not going to have that opportunity. That is the problem when we pick on one little portion about this. We do not have hearings, we do not have discussion, we do not get people like Thomas Mann and Norm Ornstein and the Heritage Foundation to really thrash this stuff through and have the Members thrash it through.

Mr. DREIER. Mr. Speaker, if the gentleman would further yield, I am just reading from the committee report here, Mr. Speaker, and it is very specific in saying that you referred to "educational functions from the restrictions of this clause, such as a joint meeting to receive a message from a foreign head of state," and last night the State of the Union message would have obviously been an exemption; "a tour when the House is not in session" when no Members of Congress are on the House floor. I suppose they could be conceivably when the House is not in session but I do not know when they have ever been. Or for Former Member's Day, when there is a conclave of former Members of the House and Senate who come here to the House floor for the former Members' meeting.

So we are very specific and I thank my friend for yielding.

Mr. SNYDER. Mr. Speaker, reclaiming my time, the language of the bill says educational functions. There are already exemptions for ceremonial events, but you are still going to have to explain to me when we have a vote on whatever regulation the Speaker comes out on this, and why Billy Tauzin, coming over here during the heat of a close vote on Medicare, would not be able to have scheduled for him in the cloakroom an educational function to educate undecided Members at 2 a.m. on what a bill means, not to lobby.

So I think that is one of the things that people have not talked about, are not aware it is in the bill. I am going to support this bill, but I think this is a very, very poor way, in a rushed manner, in a nontransparent manner to begin this discussion of reform of this body.

Mr. DREIER. Mr. Speaker, let me yield myself such time as I may consume to respond to the gentleman by simply saying we all know what it is that we are trying to do here, and I believe that we are in a position where we will address those things.

The prospect of the kind of gathering taking place in the cloakroom, which my friend just outlined, is obviously outrageous, and I will say that I am determined to make sure that it does not happen. I will say that, again, all of the issues that my friend has brought forward we look forward to addressing in comprehensive legislation.

Mr. Speaker, I reserve the balance of my time.

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Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. MCDERMOTT).

Mr. MCDERMOTT. Mr. Speaker, this bill is the fox adjusting the lock on the hen house door. I intend to submit for the record before the end of the day an article from 1995 when the then Speaker of the House set up the K Street

Project. K stands for kleptomania or kleptocracy. I'm not sure exactly what the K stands for, but this project was set up in 1995; and what is going on today is an absolutely predictable result of what was done in 1995 when the lobbyists were told, Don't hire any Democrats. You only hire Republicans. You only give to Republicans. You don't give to Democrats.

For us to come out here today and put a bill up here as though it were going to do anything, when it is proposed by the people who put the K Street Project together in the first place, is absolutely unbelievable. This House is in a delusional state that anything is changing on behalf of the people.

The fact is that this is what you get when you have a K Street Project in place. And they are not fixing it this way, and they want to wrap us all around it and say, well, you'll help us fix it this way by keeping some old Member out of the gym from playing basketball with me. Come on, they have all got my phone number. They have got everybody's phone number in this whole building. And for you to think that this silly little piece of legislation is going to do one thing about cleaning up this town is simply nonsense.

We ought to be talking about public funding of elections. Then we would be talking about reform. But you are not going to reform it by keeping a couple of guys off the floor or a couple of guys out of the gym or whatever. That is simply not going to work, and it is foolish. Everyone should vote "no" on this rule.

[From the Washington Post, Nov. 27, 1995]

SPEAKER AND HIS DIRECTORS MAKE THE CASH FLOW RIGHT

(By David Maraniss and Michael Weisskopf)

In the annals of the House Republican revolution, a pivotal moment came last April when an unsuspecting corporate lobbyist entered the inner chamber of Majority Whip Tom DeLay, whose aggressive style has earned him the nickname "the Hammer." The Texas congressman was standing at his desk that afternoon, examining a document that listed the amounts and percentages of money that the 400 largest political action committees had contributed to Republicans and Democrats over the last two years. Those who gave heavily to the GOP were labeled "Friendly," the others "Unfriendly."

"See, you're in the book," DeLay said to his visitor, leafing through the list. At first the lobbyist was not sure where his group stood, but DeLay helped clear up his confusion. By the time the lobbyist left the congressman's office, he knew that to be a friend of the Republican leadership his group would have to give the party a lot more money.

It didn't take long for the word to spread around town about the Hammer and his book. By some accounts—apocryphal as it turns out—DeLay even made lobbyists turn to their contribution totals and initial them, like a report card. Such stories actually make DeLay's job easier. When an aide once asked whether efforts should be made to quell the legend, DeLay leaned back in his chair and said, "No, let it get bigger."

Inside the House Republican leadership, the former pest exterminator from Houston is the enforcer. His mission is to ensure that money flows along the same stream as policy, that the probusiness deregulatory agenda of the House Republicans receives the undivided financial support of the corporate interests that benefit from it. His motto is an unabashedly blunt interpretation of the dictums of Speaker Newt Gingrich: "If you want to play in our revolution, you have to live by our rules."

The role of money in the revolution has been obscured by the titanic clash with President Clinton and the Democrats over balanced budgets and the reshaping of the federal government, but it is part of that larger struggle. Money is at the center of Gingrich's transformation of the House. With the new alignment of ideological allies in the business and political worlds, there are unparalleled opportunities for both the people who give the money and the people who receive it.

It is such an obvious quid pro quo that it goes almost unnoticed. From House Republicans come measures that gratify industry: weakening environmental standards, loosening workplace safety rules, limiting the legal liability of corporations, defunding nonprofit groups that present an opposing view. From the beneficiaries of that legislation come millions of dollars in campaign contributions.

"The Republicans have a wonderful situation," said one trade association president, a longtime Democrat. "They don't have to prostitute themselves. They are ideologically in sync" with the corporate PACs. "Every politician dreams of being able to meet your conscience and raise money at the same time."

Yet money is also the source of increasing tension among House Republicans that could ultimately weaken them, if not tear them apart. The conflict, in essence, is between ideology and populist reform. One wing wants to collect as much corporate money as possible to sustain and expand the revolution. Another wing fears that this will disillusion voters who brought the Republicans to power to change the traditional ways of doing business in Washington. Gingrich stands in the middle aware, people around him say, that his tenure could depend in part on his ability to resolve the conflict.

Gingrich, DeLay and their comrades have set in motion a historic shift in campaign giving. As recently as 1993 the National Republican Congressional Committee, the main vehicle for fundraising for House GOP candidates, was millions of dollars in debt. But by soliciting contributions from the corporate world through a combination of tenacity, cheerleading and intimidation—"playing offense" all the time, as DeLay describes it—the revolution has established a formidable money machine. The turnaround has been dramatic. House Republicans received 58 percent of the money from the top 400 PACs during the first six months this year and their numbers are rising every month. Last year two of every three PAC dollars went to the ruling Democrats. The trend is evident in all industries, including those with traditional Democratic ties.

The Transportation Political Education League, for example, gave only 3 percent to the Republicans last year but 42 percent this year. The No. 1 corporate contributor to the GOP in 1995, United Parcel Service, which worked closely with DeLay and the leadership in fighting federal workplace safety regulations, also made a decisive partisan transformation, its contributions going from 53 percent Democratic to 71 percent Republican in one year.

The once-threadbare NRCC raised a record $18.7 million from January through June, four times as much as its Democratic counterpart. Its two elite organizations, which offer private sessions with House leaders at the Capitol Hill Club, are suddenly fat and happy: 225 corporations and political action committees have joined the House Council at $5,000 apiece, and 150 are enrolled in the Congressional Forum for $15,000 to $20,000 each. Rep. Bill Paxon of New York, the NRCC's chairman, estimates that he has met privately with "200 to 300" chief executive officers of Fortune 500 companies to make his pitch.

"If you believe in the revolution and what's happening, then it's time to follow common sense," Paxon tells them. "Why do you support the enemy? Why do you give money to people who are out there consciously every day trying to undermine what's good for you?" He often leaves, Paxon says, with a financial pledge.

Another $20 million, double the Democratic number, has come to the party in unrestricted contributions known as soft money, used for party rebuilding efforts, voter drives and policy initiatives. Leading the way in the soft money realm this year have been tobacco companies that, concerned about regulation by the Food and Drug Administration, gave a record $1.5 million to the Republicans during the first six months, tenfold what they gave two years ago.

Gingrich, DeLay, Majority Leader Dick Armey of Texas and Republican Conference Chairman John Boehner of Ohio all have established separate PACs this year with goals of raising millions of dollars more. Gingrich's new PAC, dubbed "Monday Morning" in honor of a refrain from his swearing-in speech, has already raised more than $330,000, with pledges of an additional $60,000 since its inception a few months ago.

Advised by kitchen cabinets of industry lobbyists, these leadership fund-raising operations will distribute money to Republican congressional candidates, strengthening the bond between the revolution and industry while reinforcing the loyalty of House colleagues to Gingrich and his lieutenants.

The freshman class, 73 Republican newcomers who consider themselves the vanguard of the revolution, has proved as ambitious in the fund-raising realm as elsewhere. They have bumped up the average price of a fund-raising ticket fourfold from the previous term to $1,000, hired professional consultants to run their events and solicit contributions, and formed steering committees of lobbyists to advise them. Almost all have liquidated their campaign debts in the first 10 months of their first term, and more than half belong to the NRCC's $100,000 Club, having at least that much cash ready for next year. The average Republican freshman raised $123,000 in the first six months, nearly double the amount of their Democratic colleagues.

Even reform-minded freshmen who oppose PACs have pursued them aggressively. Sam Brownback of Kansas solicited Washington lobbyists to contribute to a fund-raising event for him soon after he had returned from Ross Perot's United We Stand convention in August. There he had given a speech denouncing the Washington lobbying scene as "a domestication process where you bring in new, fresh legislators and then you start to try to tame them and assist them with gifts and meals and trips almost like you would a horse with a sugar cube." Several lobbyists who received Brownback's fund-raising invitation angrily turned him down.

A few days after the House Republicans took power last January, DeLay turned to one of his most trusted allies in the lobbying community, David Rehr of the National Beer Wholesalers Association, and said, "I want you to do something with the freshmen just to get them on the right course." Rehr was a member of a small group of Washington lobbyists who had remained loyal to the Republicans throughout the long period of Democratic control. His informal duties now included serving as a PAC adviser to both DeLay and the NRCC.

Rehr set up a seminar at NRCC headquarters entitled "Seven Steps in Liquidating Your Debt and Building for the Future," and more than a quarter of the freshman class attended. Rehr instructed them to set up steering committees of PAC supporters to be their "eyes and ears" in the Washington community. He suggested that they contact the NRCC and House committee chairmen for a list of PACs relevant to their committee assignments.

Make contacts personally, Rehr, whose own PAC contributed $144,492 to the House Republicans in the first six months this year, advised the freshmen. If a PAC opposed them during the campaign, they should not take it personally. Those PACs, he said, should now be considered "additional prospects."

Rehr is among a new breed of Capitol Hill operators on the rise, fortyish, ideological and fervently committed to the House revolution and its two primary bankers, DeLay and Paxon. The lobbyists span the corporate world, commanding networks of business allies along with large PACs of their own organizations. Dan Mattoon of BellSouth, another lecturer at the NRCC seminar, is the leadership's main link to local telephone companies. Bob Rusbuldt, a top insurance lobbyist, taps the financial resources of the related fields of mortgage banking and real estate. Jim Boland of Philip Morris draws from the tobacco industry and its food subsidiaries. Freelance lobbyists such as former Bush White House aide Gary Andres bring lists of diverse clients and the ability to penetrate new fund-raising channels.

The Republican takeover has been a time for "cashing in," as a PAC director close to Gingrich put it, and also a time for "getting right." Lobbyists whose PACs or clients once gave heavily to Democrats have been eager to show they found religion, leading to such scenes as the one late one recent night at one of the steak and cigar restaurants fashionable along Pennsylvania Avenue.

"Man," said a lobbyist approaching a GOP leadership aide and pleading to be restored to good graces, "just want to tell you, we've given like 70 percent to you guys now."

DeLay, for his part, has launched what has come to be known as the "K Street Strategy," named for the downtown Washington avenue lined with lobbying headquarters, law firms and trade associations. The strategy is to pressure those firms to remove Democrats from top jobs and replace them with Republicans.

Headhunters now call DeLay's office in search of recommendations. When one corporation lobbyist sought a meeting with the whip, DeLay telephoned the firm's CEO and complained that his agent in Washington was "a hard-core liberal." If the company wanted to get in to see him, DeLay added, "you need to hire a Republican." The hard-core liberal lobbyist was soon transferred to London.

One drug company hired a Democrat to head its office, but after he was unmasked at a DeLay fund-raiser, he called the whip's office the next day to plead that his firm not be scorned by the House Republicans. His position was only temporary, he said, and he would soon be replaced by someone more aligned with the revolution.

"There are just a lot of people down on K Street who gained their prominence by being Democrat and supporting the Democrat cause, and they can't regain their prominence unless they get us out of here," said DeLay. "We're just following the old adage of punish your enemies and reward your friends. We don't like to deal with people who are trying to kill the revolution. We know who they are. The word is out."

At times, Republican leaders have had to choose between friends, and money may have been a factor. When the Commerce Committee voted on a sweeping telecommunications deregulation bill in May, for example, its legislation appeared to favor AT&T and other long-distance firms over the regional Bell companies. A last-minute amendment by Chairman Thomas Bliley would have complicated entry of the seven regional Bells into the long-distance market. AT&T has a plant in Bliley's Richmond district and a new PAC profile: reversing a past preference for Democrats, it has given 58 percent to GOP lawmakers this year.

But the baby Bells, with combined PAC donations double those of AT&T and with influential lobbyists such as Mattoon, appealed the decision. Help came from Paxon and deputy whip Denny Hastert of Illinois, both Commerce Committee members who had voted for the Bliley provision as part of the May bill. But after hearing from Bell lobbyists, they argued for change at a Speaker's Advisory Group meeting in early July, contending that the Bells would be prevented from competing, a participant said. Gingrich directed Bliley to "rescrub" the bill, and by mid-July the Bliley provision was deleted. Two weeks before the new bill passed the House, Pacific Telesis Group's chief executive hosted a fund-raiser for Gingrich at his San Francisco home, raising $20,000.

Paxon said he was guided by his "driving passion" for deregulation, not fund-raising calculations, in siding with the Bells. "I haven't sat down with a legislative calendar," he said, "and said this is the time to go after this industry group."

But some fund-raising efforts have been less than subtle. Ways and Means Committee Chairman Bill Archer lectured corporate leaders not to give to Democrats. In an Oct. 23 letter, signed by the Oklahoma GOP delegation, corporate lobbyists were told that they were expected to support freshman Tom Coburn in his tough reelection race.

"As you are courted by others to get involved in this race, we want to make our position clear," the letter read. "We strongly support our good friend and colleague, Tom Coburn, and we will be unified as we work on his behalf. We trust you will join us in our effort and certainly not oppose us."

That letter was mild compared with a similar dispatch earlier in the year from DeLay, a no-nonsense missive that helped establish his reputation as "the Hammer." Days before freshman Randy Tate of Washington state was to hold a fund-raiser in Washington, DeLay sent out a letter listing the exact sum each PAC had given to the losing cause of Tate's Democratic opponent in 1994, Mike Kreidler.

While he was "surprised to see you opposed Randy Tate," DeLay wrote, "you now have the opportunity to work toward a positive future relationship." The note got more demanding—"your immediate support for Randy Tate is personally important to me and the House Republican leadership team"—before closing with an offer of redemption: "I hope I can count on you being on the winning team. "

The aftermath of that letter captures DeLay's unapologetic mode of operation. A reporter received a copy of it and called DeLay's PAC director, Karl Gallant. Gallant asked the reporter how he obtained the letter. When he was told it came from a lobbyist, Gallant responded, "That tells me it's effective. They want you to write a negative story so we'll back off. You just made my day."

DeLay agreed, distributing the article to his colleagues. "It had great impact," DeLay said later. "It raised him (Tate) a bunch of money. We know who we sent the letters to and who we got checks from."

One other result: Kreidler recently decided not to challenge Tate in 1996, citing as one factor his difficulty in raising PAC money.

For Gingrich, learning the value of fund-raising has been a gradual process. Staffers at the NRCC in the 1970s and early 1980s would roll their eyes when the small-college history professor with mutton-chop sideburns strolled through the door, knowing they were in for a long day of lectures on the Ming dynasty and a barrage of expensive ideas for promoting his conservative opportunity society. "In those early days Newt was very naive about money," said Steve Stockmeyer, then the executive director of the NRCC. "He was always coming up with ideas on how to spend it, not raise it."

But despite his early naivete about the ways of money, Gingrich, more than DeLay or any other figure, was most responsible for turning the revolution into a money machine.

Two years ago the financial situation for the Republicans seemed bleak. They were "walking in the valley of the shadow of death," as Paxon, installed by Gingrich as chairman of the NRCC, put it.

They were the minority party in the House and Senate and without the White House. Their fund-raising relied largely on a direct-mail list that had become utterly obsolete. Of the more than 1 million names on it, only one in 10 had given to the party in recent years. Many were in nursing homes or dead. But by April 1994 Gingrich had become convinced that the Republicans would seize control of the House that year. He went over to the NRCC and wrote personal appeals for funds claiming that the Republicans would soon be in the majority.

"Gingrich was for my purposes the whole ballgame when we wanted to raise money," said Grace Wiegers, then director of fund-raising for the NRCC and now the head of Gingrich's leadership PAC, Monday Morning.

In August and September he met individually with more than 150 Republican members, assigning fund-raising tasks and goals to each. Incumbents from safe seats were asked to raise $50,000 for Republican challengers or vulnerable colleagues. Ranking minority members of House committees made pledges to Gingrich to raise even larger amounts traveling for other candidates on the road.

When the revolution arrived, Gingrich had a system already in place for maintaining and expanding the money operation. DeLay would be his hammer. Paxon would serve as cheerleader. Majority Leader Armey would position himself as ideological arbiter, attacking corporations for funding nonprofit agencies that opposed the revolution. Conference Chairman Boehner would nourish business coalitions, bringing them in for regular Thursday sessions to plan how the corporate world could advance conservative policy. Committee chairmen Bliley of Commerce, Archer of Ways and Means and Bud Shuster of Transportation would cultivate industries in their turfs.

The lines between elected revolutionaries and their business cohorts occasionally blurred. Lobbyists helped DeLay write his regulatory moratorium bill. Shuster raised money for the revolution with the assistance of his former political aide, Ann Eppard, a lobbyist whose clients included Amtrak, Conrail, Federal Express and the Pennsylvania Turnpike Authority, all of whom had issues pending before Shuster's committee.

Eppard maintains a close relationship with her old boss. At the same time that she was soliciting money from industry for the "Bud Shuster Portrait Committee" which commissioned a painting of the chairman in his committee room, she was also sending out fundraising letters for Republican candidates. One to industry colleagues on behalf of a Virginia candidate ended with the boldfaced assertion: "This dinner is of personal importance to Chairman Shuster."

Given the place Gingrich assigned to fundraising, his handshake agreement with President Clinton in June to form a bipartisan commission on campaign finance reform took his allies by surprise. More than any other act, it revealed the tensions within his revolution.

At the next meeting of the House leadership, the tone, said one participant, was, "Why the hell did you go and do that?"

Armey, responsible for scheduling the revolution's legislative agenda, worried about how he would be able to fit the issue into an already packed calendar. DeLay, and to a lesser degree Paxon, questioned whether the timing was right and whether the Republicans should cede anything to Clinton and the Democrats now that the revolution's money machine was operating so effectively. Gingrich's response was that the handshake "buys us time." He needed to think the issue through, he said.

Another wing of Gingrich's House, represented by populist freshmen Brownback and Linda Smith of Washington, along with veteran moderate Christopher Shays of Connecticut, was pushing Gingrich from the other side. If the Republicans did not clean up Washington and prove that they were not continuing business as usual, they said, the revolution would collapse from a fatal flaw of political hubris. If reform did not happen on the Republican watch, said Shays, it would become "our Achilles" heel" While Shays and Brownback took Gingrich's handshake with Clinton as a sign that he supported reform, Smith was skeptical. She said she thought he was just stalling.

Gingrich found himself in a familiar position: on both sides of a debate and looking for another way entirely. He understood the call for reform and had a lingering resentment toward PACs for funding the Democrats when they controlled Congress. But he also, he and his aides say, felt equally strongly that the revolutionaries should not unilaterally disarm themselves while they were engaged in a more profound struggle of what he called the "Information Age."

The real fight, Gingrich told his aides, was not over money but information and how it is disseminated. Money was one weapon in that struggle and important to the movement as a way to counter the American mass media, which the speaker considered largely hostile to the revolution.

Gingrich said as little as possible about the issue after the handshake, promising that at some point he would deliver a white paper on the subject. As months went by, the reformers grew increasingly agitated. At Shays's request, Gingrich met with the reformers in his office late on the afternoon of Sept. 29 just before the Columbus Day break. While Shays hoped to discuss another reform issue involving a gift ban, the meeting devolved into a tense confrontation over campaign finance reform between Gingrich and Smith, who had just planted a story with conservative columnist Robert Novak in which she said that the leadership was not telling the truth about their intentions on reform.

"He got so mad. He kicked the staff out and yelled at them, he was so unhappy," Smith recalled. The session was "testy and pointed," according to Brownback. Gingrich was overwhelmed by other concerns that day, including Medicare and Bosnia. He was late for a meeting at the White House, and freshman Smith kept jabbing at him.

Noting that Smith was working with Common Cause and United We Stand in pushing campaign reform, Gingrich told her that she had to decide whether she wanted to be an outsider or work with the House leadership. "Whatever you decide is okay with me," he said. "We just have to know."

Smith wanted to know why Gingrich needed a time-consuming commission, why he could not just support legislation eliminating PACs, as he had when he was in the minority. She told the speaker that he tried to carry too much of the burden himself and that he should let others take the load on this issue.

Then, according to Smith's recollection of the scene, corroborated by others in the room, "Newt looked at me and said, Nobody can do it but me! I have the most experience. I'm the only one who can do this. I'll just have to take some time this week and write a paper on it.' "

Shortly after that meeting the leadership announced that the Oversight Committee would hold hearings on campaign finance reform starting Nov. 2 and that Gingrich would be the first to testify. One aide took memos from a group of informal advisers, including Stockmeyer, the former NRCC director who now ran the National Association of Business PACs. PACs were invented as a reform in the 1970s, he noted, and another round of reforms doing away with them would probably create a system that was worse.

Sen. Mitch McConnell of Kentucky sent a letter over to the House noting that the Republicans had killed campaign finance reform before the 1994 elections—"proof positive that this issue is not a hindrance to us at the polls." In a handwritten P.S., McConnell added: "We'd be foolish to throwaway our ability to compete."

Another Gingrich aide began piecing together his speech. He plunged into a long assigned reading list and followed up on the speaker's request to compare the amount of money spent in political campaigns with what is spent in advertising products. Companies spent $100 million selling two stomach acid pills recently, he discovered, one-sixth of the total amount spent on all congressional campaigns last year. One of the great myths of American politics, Gingrich concluded, was that campaigns are too expensive. He believed that most of the criticism of the campaign system came from "nonsensical socialist analysis based on hatred of the free enterprise system."

Smith was sitting one row behind Gingrich and off to his right when he delivered those conclusions at the hearing. She wanted to watch his eyes and his facial expressions as a means of gauging his earnestness, she said, but as he continued to attack the reformers, including some of the groups she had been working with, she became increasingly distraught.

"His anger at the media drove what he said," she concluded. She retreated to her office, where she reached a final decision on Gingrich's earlier ultimatum to her. She would work from the outside.

Gingrich's lieutenants expressed satisfaction with his speech. If reform is inevitable, they say, it will not involve the elimination of PACs and it will not diminish the role of money in the revolution. DeLay said he would work the system until PACs gave an appropriate amount to the Republicans. "Ninety percent would be about right," he declared. DeLay has a running competition with Gingrich over who can raise more money. There are scores of revolutionaries doing the same thing, but he is not worried that they might trip over each other.

"It's a big country," said the Hammer.

PARLIAMENTARY INQUIRY

Mr. SNYDER. Mr. Speaker, under the rules of the House, this is a proposal to change the rules, when a provision says the Speaker may promulgate regulations, under the rules of the House, will there or will there not be a vote of approval of those promulgated regulations by the Speaker on the definition of educational functions?

The SPEAKER pro tempore (Mr. LAHOOD). The Chair will read this.

Mr. SNYDER. You're a great reader, Mr. Speaker.

The SPEAKER pro tempore. The degree to which the pending proposal changes the status quo is a matter for the House to debate. It is not the function of the Chair to interpret a legislative proposal while it is under debate.

Mr. SNYDER. I am sorry, when the Speaker promulgates regulations, regardless of a minor change or a major change, my inquiry is: Does that or does that not require a vote of the body?

The SPEAKER pro tempore. I will stand by what I said. The terms of the resolution must speak for themselves.

Mr. SNYDER. I will stand with you, Mr. Speaker. Thank you.

Ms. SLAUGHTER. Mr. Speaker, I yield back the balance of my time.

Mr. DREIER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I want to close this debate by saying again that we do have a problem that exists, and we are committed to bringing about major institutional reform. Increasing the level of transparency and disclosure is a high priority. We have seen guilty pleas from lobbyists who have done things that are absolutely reprehensible, and we want to do everything that we can, in a bipartisan way, to ensure that those things never happen again.

Every American has the right to petition their government. Every single American has the right to petition their government. We do not believe that anyone should have an unfair advantage over any other American when it comes to that. That is why what we are doing here today is the right thing to do. Former Members of Congress who are registered lobbyists should not be on the House floor when the House of Representatives is doing its business.

Today, we begin the work of the Second Session of the 109th Congress, and it is very apparent that we will be able to enjoy strong bipartisan support for this first step on the road to reform. There are many other things that need to be addressed. The Speaker of the House has been working on this. I have been working with him on this issue, and he is committed to getting input from Members on both sides of the aisle and to work in a bicameral way with our colleagues who serve in the other body.

I have had countless meetings with Democrats and Republicans. I have been listening to proposals, and I believe that we are going to have an opportunity to address those understandable concerns so that the American people will once again be able to hold this institution in high regard. It is a challenge. This is the greatest deliberative body known to man, but I believe that it is our responsibility to do what it is that we are going to do here today.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today in support of H. Res. 648, Mr. DREIER's provision to eliminate floor privileges and access to Member exercise facilities for registered lobbyists who are former Members or officers of the House.

Since the founding of our country, interest groups, or "factions," as Madison called them in 1787, were seen as both a boon and a bane to giving the American people fair representation. Fully 90 years before votes were finally given to African Americans and former slaves, and 150 years before universal suffrage, our Founding Fathers understood the dangers of interest groups and the biased effect they can have on policy and law.

Unfortunately, in 2006, the interest groups now have the higher hand at the expense of our citizens and constituents. The pockets of powerful Members of Congress, and the unequal access former Members of Congress have, supercede their responsibility to their constituents. This is unequal access to democracy.

Reforms are desperately needed, and for once, we have bipartisan agreement. The difficulty now, is determining where reform is needed urgently and unequivocally, and seeing it through to established law.

As a co-sponsor for the Honest Leadership and Open Government Act of 2006, which we will all be considering soon enough, I can say that today's bill should be the beginning of many reforms.

The Honest Leadership and Open Government Act of 2006:

Limits gifts and travel: Bans gifts, including meals, tickets, entertainment and travel, from lobbyists and non-governmental organizations that retain or employ lobbyists, prohibits lobbyists from funding, arranging, planning or participating in congressional travel.

Regulates Member travel on private jets: Requires Members to pay full charter costs when using corporate jets for official travel and to disclose relevant information in the CONGRESSIONAL RECORD, including the owner or lessee of the aircraft and the other passengers on the flight.

Shuts down the K Street Project: Makes it a criminal offense and a violation of the House Rules for Members to take or withhold official action, or threaten to do so, with the intent to influence private employment decisions.

Slows the revolving door: Prohibits former Members, executive branch officials and senior staff from lobbying their former colleagues for 2 years; eliminates floor and gym privileges for former Members and officers who are lobbyists; and requires Members and senior staff to disclose outside job negotiations.

Ends the practice of adding special interest provisions in the dead of the night: Prohibits consideration of conference reports and other legislation not available in printed form and on the Internet for at least 24 hours; requires full and open debate in conference and a vote by the conferees on the final version of the legislation; prohibits consideration of a conference report that contains matters different from what the conferees voted on.

Toughens public disclosure of lobbying activities: Requires lobbyists to file quarterly reports with more information, including campaign contributions, fundraisers and other events that honor Members, and the name of each Member contacted. Report must be in electronic format, searchable on the Internet; increases civil and criminal penalties for lobbyists who violate the rules.

The most obvious place to begin these reforms is here, where we conduct business every day. It is unconscionable that we would allow this access to special interest groups in a place where citizens of this country are not allowed to step. The House has played favorites, against the people we took an oath to protect and serve.

Lobbyists should not be allowed on the floor, or in exercise rooms maintained for the well-being and personal use of congressional Members, staff, and employees.

I am ashamed that we have to urge my Republican colleagues to adopt more effective measures. It should be a no-brainer. Let's start with this simple reform and keep it going until we succeed in delivering the government "of the people, by the people, and for the people," back to the people.

It is for these reasons that I vigorously support drawing a clear ethical line at that door and preventing unjust and unethical influence in our place of business. I urge my colleagues to also extend their support for H. Res. 648 and renew our dedication to our constituencies and ethical principles.

Mr. PAUL. Mr. Speaker, anyone who doubts that symbols often take priority over substance in Washington only needs to consider that among our first items of business the House of Representatives is considering this year is a measure banning from the House gym former members of Congress who are now lobbyists. This bill is being rushed to the floor in order to assure the American people that Congress is "cracking down" on lobbying practices in response to recent scandals.

This measure does nothing to address the root cause of the scandals—the ever-growing size and power of the Federal Government. As long the Federal Government continues to regulate, tax, and subsidize the American people, there will be attempts to influence those who write the laws and regulations under which the people must live. Human nature being what it is, there will also be those lobbyists and policymakers who will manipulate the power of the regulatory state to enrich themselves. As I have said before, and I fear I will have plenty of opportunity to say again, the only way to get special interest money and influence out of politics is to get the money and power out of Washington. Instead of passing new regulations and laws regulating the people's right to petition their government, my colleagues should refuse to vote for any legislation that violates the constitutional limits on Federal power or enriches a special interest at the expense of American taxpayers. Returning to constitutional government is the only way to ensure that our republican institutions will not be corrupted by powerful interests seeking special privileges.

Mr. DREIER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. DREIER) that the House suspend the rules and agree to the resolution, H. Res. 648.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. DREIER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

RELATING TO CONSIDERATION OF S. 1932, DEFICIT REDUCTION ACT OF 2005

Mr. PUTNAM. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 653 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 653

Resolved, That the House hereby concurs in the Senate amendment to the House amendment to the bill (S. 1932) to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95).

UNFUNDED MANDATE POINT OF ORDER

Mr. McDERMOTT. Mr. Speaker, pursuant to section 426 of the Congressional Budget Act of 1974, I make a point of order against consideration of this rule, H. Res. 653. Section 425 of that same act states that a point of order lies against legislation which imposes an unfunded mandate in excess of specified amounts against State or local governments. Section 426 of the Budget Act specifically states that a rule may not waive the application of section 425.

H. Res. 653 states that the House hereby concurs in the Senate amendment to the bill S. 1932 to provide for reconciliation. This self-executing rule effectively waives the application of section 425 to provisions in the underlying bill on child support enforcement which the Congressional Budget Office informs us impose an intergovernmental mandate as defined by the Unfunded Mandates Reform Act.

Therefore, I make a point of order that the rule may not be considered pursuant to section 426.

The SPEAKER pro tempore. The gentleman from Washington makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974.

In accordance with section 426(b)(2) of that Act, the gentleman has met the threshold burden to identify the specific language in the resolution on which the point of order is predicated.

Under section 426(b)(4) of the Act, the gentleman from Washington (Mr. MCDERMOTT) and the gentleman from Florida (Mr. PUTNAM) each will control 10 minutes of debate on the question of consideration.

Pursuant to section 426(b)(3) of the Act, after that debate, the Chair will put the question of consideration, to wit: Will the House now consider the resolution?

The Chair recognizes the gentleman from Washington (Mr. MCDERMOTT) for 10 minutes.

Mr. MCDERMOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I have no doubt that a lot of moderate Republicans wish they were somewhere else today, anywhere where they could escape the embarrassment of voting against the American people one more time in a brand-new year just after that State of the Union last night.

Here we go again. The first legislative act of 2006 looks just like the last legislative day of 2005. Republicans call this a reconciliation, but it is really Republican resignation from meeting the needs of American people or addressing the issues that threaten our security.

This vote will occur out in the open on the House floor, but the deals were cut in secret behind closed doors with the American people locked out and the Republican Party locked in.

Until Republican leaders got what they wanted, and it is not in the best interest of the American people, we have before us today an example of the President's ownership society: you own the problem. This bill removes Federal money from child support enforcement and for caring for abused kids, requiring States to pick up the tab.

Republicans will twist arms to pass this unconscionable and unfunded mandate. If you are a middle-class student, Republican reconciliation will have you seeing red because your college education will be awash in high-priced debt. Republican leaders care so much about middle-class America that they are cutting $12 billion in student loans.

Want an education? Financial institutions give Republicans a lot more money than you do. Now you get to give the financial institutions a whole lot more money. That is some rabbit-out-of-the-hat trick. By the magic of Republican reconciliation, students will pay more, your parents will pay more when they try to help you, and America will pay more when we deny the next generation the opportunity to get a higher education.

Republicans increase the interest rate for their core corporate constituency and increase the failure rate of the Nation investing in a more important asset: our next generation. Republican reconciliation offers dollars that make no sense. That is what happens when Republican Members have to answer to their leadership before their constituents.

Republicans talk about security, but there is no security in gutting a student loan program that invests in America's future. There is no common sense either. That is no surprise, of course. Republican reconciliation sacrifices common sense for uncommon greed.

Students from solid middle-class families will suffer. So will seniors who use Medicare, because almost $7 billion in Medicare cuts are buried inside this Republican reconciliation. Seniors will pay more so that America's wealthiest can keep more.

The Republicans have squandered our commitment to America's distinguished citizens in order to trade need for greed. Part B premiums for some Medicare beneficiaries are going up because the Republicans locked themselves into a conference committee without the Democrats and locked the American people out.

On Friday, the nonpartisan Congressional Budget Office informed us that $28 billion in cuts to Medicaid in this bill would impose new costs on 13 million poor and working-poor recipients. These are the people the President said last night we are taking care of your health care. Brother, you don't want a guy like that taking care of you.

By 2015, new fees would end insurance coverage for 65,000 Medicaid enrollees, 60 percent of them children.

□ 1400

Meanwhile, the cost of prescription drugs will rise and the number of people helped will fall.

It all happened when Republicans gathered and locked out America. Why debate in public when you can decide it in secrecy? That is the way the Republicans like to do it. They hope no one will notice. They forgot that when middle America is floundering in a lifeboat with loss of pensions, loss of health care, loss of jobs, the Republicans capsize the boat. It is hard not to notice. Water is pouring in all around us, just like New Orleans. Remember when the President said, "Brownie, you are doing a heck of a job." He sure did. Rarely have we seen so much lost over so little, dinner.

Republicans have raised the bar with reconciliation. As bad as it will be for students and as hard as it will be for seniors, Republicans saved their worst tactics for our most vulnerable and defenseless citizens: Kids in foster care, kids in single parent households, kids in low-income families, and kids in families with a disabled parent.

This reconciliation cuts almost $3 billion from programs for America's most vulnerable children. Deadbeat dads, have a great day, guys. The Republicans have given you a head start out of responsibility. Someone may find you eventually. The program to make sure that child support is paid crumbles under this Republican rule.

Today Republicans have resigned from their responsibility to take care of America's interests. They say all of these problems are up to the States to solve on their own because that is what they mean by an ownership society: States own the problems.

Republicans are now telling States to put more welfare recipients into make-work activities, but they do not provide any resources to achieve that goal. They do not even let child care funding keep pace with inflation. So States may have to cut child care assistance to pay for the new welfare requirements. It is just one more unfunded mandate for the States and one more burden for working families.

Now, cash would be nice, but they have drained the Treasury to pay for the President's economic stimulus. Now it is an addiction. Just keep giving the wealthiest Americans more and more money. There is no end to how much money the President is willing to give them, and there is no end to how much money it will take from a host of foreign governments to finance a deficit rising higher than the sky.

Reconciliation by Republicans is a one-point program: Make the rich richer. It was crafted in secret. At least now finally it is out in the open.

Mr. Speaker, I reserve the balance of my time.

Mr. PUTNAM. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill before us today has changed somewhat from its travels in the Senate. The rhetoric on the other side of the aisle has not. It is the same old tired class-warfare rhetoric, more befitting of a response to the State of the Union than anything at all related to a parliamentary inquiry regarding unfunded mandates.

The specific point as it relates to an unfunded mandate claim by the other side regarding the child support changes in the Deficit Reduction Act is simply not correct. According to the GAO, in 2004 the Federal Government paid 88 percent of all child support program costs. Eighty-eight percent. Ten States made money on their program from the taxpayers from the other 40 States. Ten States retained more child support collections than it cost them to operate it. They actually generated substantial profit with the Federal Government picking up 100 percent of their costs, the Federal Government obviously not being a nebulous concept, the Federal government being the other 40 States subsidizing 10 States' child support programs to the tune of a profit.

Over the next 5 years, the Federal Government will spend nearly $20 billion on child support program costs. That is after the changes that are made here in the Deficit Reduction Act, and still far more than the States are expected to spend. States continue to receive $500 million in Federal incentive funds every year, on top of $2 in Federal funds for every $1 of State funds spent for a 66 percent Federal matching rate. Not a bad deal.

Set in this context, this claim of unfunded mandates is simply not correct and not meaningful. The child support savings in the Deficit Reduction Act result from ending the practice of States claiming Federal matching funds for spending Federal child support incentive funds, double dipping, if you will.

This double dipping cannot be justified. Closing this loophole, which is what it amounts to, saves $1.6 billion over 5 years with no impact on services being provided to the clients. The change would not take effect until fiscal year 2008, giving States 2 years to adjust to the change. And States could replace every penny of expected Federal savings by increasing their own spending modestly with the Federal Government filling in the difference. States could unlock $2 Federal dollars for every $1 spent under the program's 66 percent match rate. So if States want to increase spending by $900 million, they would have to pony up $300 million of their own. Again, not a bad deal for the States. I think it is a return that most investors would accept readily.

CBO's letter that the gentleman refers to shows it is impossible to achieve even modest savings in this open-ended entitlement program without raising an underfunded mandate objection. Unless your goal is to prevent any reduction in Federal spending, which I think it is fair to stipulate is their goal, this is not a meaningful objection.

Even with this change, CBO expects child support collections will grow each and every year and the projections bear that out, rising from $24 billion today to $28 billion in 2010 and $34 billion in 2015, clearly only a Democratic definition of a cut.

Other features of the Deficit Reduction Act would provide States significant Federal welfare funds, including $17 billion in annual TANF block grants through 2010 and $3 billion in mandatory child care through 2010, a $1 billion increase above current law.

Mr. Speaker, I reserve the balance of my time.

Mr. McDERMOTT. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Michigan (Mr. LEVIN), who stopped the attempt to privatize Social Security.

Mr. LEVIN. Mr. Speaker, last night the President of the United States said, "Wise policies such as welfare reform have made a difference in the character of our country."

What you are doing on the Republican side, I am afraid, is in character. It is not class warfare on our side, it is your warfare against the children of America.

It is not our definition, it is CBO's and I quote from a letter of January 31 to Mr. RANGEL: "As requested by your staff, CBO has reviewed the child support provisions in the conference agreement for S. 1932, the Deficit Reduction Act of 2005, and we have determined that those provisions contain an intergovernmental mandate as defined in the Unfunded Mandates Reform Act." That is what CBO says.

And CBO says something else. That this conference report, with the changes you have made, will lead to a reduction in the amount collected for the kids of America in child support of $8.4 billion. That is CBO, not Democrats saying that.

So I just want to tell everybody who is thinking of voting for this conference report, you should expect now, next week, June, July, August, September, October, and yes, in November, the citizens of this country and of your district, will be asking you to justify how you cut funding for child support in a way that would lead to the kids of your district and America combined losing $8.4 billion in child support. That is kids who need it, families who need it, from people who owe it.

Yes, as the President said yesterday, there are some wise policies that make a difference in the character of our country, not what you are doing today.

Mr. PUTNAM. Mr. Speaker, I yield myself such time as I may consume.

I remind the gentleman that today we will spend $24 billion on the child support collection program to which he refers. By 2010, we will spend $28 billion on the same program; by 2015, $34 billion.

The gentleman is worried about June, July, August, September, October, and yes, even November. We are worried about 2010, 2020, and 2030, about getting our arms around an exploding entitlement program that is engorging the entire Federal budget, and your actions to stop any and all responsible budgeting to prevent entitlement spending from taking up two-thirds of the Federal budget within the decade, to prevent any meaningful Social Security reform that would guarantee that GenX-ers out there will have the same opportunities that those in their seventies have, to prevent the types of entitlement reforms that are needed to save the very programs that you are so proud of in Social Security and Medicaid and Medicare, that are worthy pillars of this domestic government, you block each and every time, including this action which is a very modest savings that still generates more money each and every year by substantial sums than the previous and still guarantees a high level of service to the young people.

Mr. LEVIN. Mr. Speaker, will the gentleman yield?

Mr. PUTNAM. I yield to the gentleman from Michigan.

Mr. LEVIN. Does the gentleman deny point blank the estimate of CBO, we do not control it, that this bill will lead to a reduction of $8.4 billion in child support for the kids of America? Do you deny the CBO estimate?

Mr. PUTNAM. Mr. Speaker, reclaiming my time, nowhere in the CBO score for this report is there any estimates that States will lose TANF funds for failure to operate satisfactory child support programs. They would score as an additional Federal savings if they did, and that is just not there.

I think I have answered the gentleman's question.

Mr. Speaker, I reserve the balance of my time.

Mr. McDERMOTT. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, it probably does not surprise most Americans when Republicans and Democrats have different opinions on a bill, so let me highlight the opinion of a third voice, U.S. Conference of Catholic Bishops. Here is what they say about the legislation before us.

> Our Bishops' Conference is deeply disappointed that the final budget reconciliation conference agreement coming once again before the House of Representatives includes provisions in these areas which we believe could prove harmful to many low-income children, families, elderly and people with disabilities who are least able to provide for themselves. Because of these concerns, we ask you to oppose the budget reconciliation conference agreement.

BISHOPS' PRESIDENT URGES HOUSE TO REJECT BUDGET AGREEMENT

WASHINGTON (January 30, 2006).—The recent budget reconciliation bill fails to "meet the needs of the most vulnerable among us," said Bishop William S. Skylstad, president of the United States Conference of Catholic Bishops in a January 24 letter to the House of Representatives.

Bishop Skylstad said the greatest concerns were over: increased Medicaid cost-sharing burdens; cuts to child support enforcement; changes in Temporary Assistance for Needy Families programs which underfund work programs and childcare: and cuts to agriculture conservation programs.

"We urge you to reject the conference agreement and work for policies that put poor children and families first," Bishop Skylstad said.

The text of the entire letter follows.

JANUARY 24, 2006.

HOUSE OF REPRESENTATIVES,
Washington, DC.

DEAR REPRESENTATIVE: In December, as President of the United States Conference of Catholic Bishops, I wrote to you expressing serious concerns about provisions in the budget reconciliation bill. The proposed changes in Medicaid, child support enforcement funding, Temporary Assistance for Needy Families (TANF), and agriculture conservation programs, in particular, could have a negative impact upon the most vulnerable in our nation.

Our Bishops' Conference is deeply disappointed that the final budget reconciliation conference agreement coming once again before the House of Representatives includes provisions in these areas which we believe could prove harmful to many low-income children, families, elderly and people with disabilities who are least able to provide for themselves. Because of these concerns, we ask you to oppose the budget reconciliation conference agreement.

Among the areas of most concern to us are:

Increased Medicaid cost-sharing burdens and eroding federal benefit standards which can result in low-income children, families, pregnant women, elderly and those with disabilities not getting the care they need.

Cuts to child support enforcement, which will mean collecting billions less in child support for children and families than under current law.

TANF-related provisions, including:

Immediate and significant changes in state TANF work rules (although additional proposals to increase hours worked per week were wisely abandoned) without providing sufficient additional funding needed to run work programs and provide child care. This will mean states may have to choose between cutting child care for low-income working families, reducing other services for low-income people, or cutting back on cash assistance for needy families; policies that could have the effect of disadvantaging two-parent families and married couples; and failure to restore TANF benefit eligibility to recently-arrived legal immigrants. Cuts to key agriculture conservation programs, which will undermine efforts to promote soil conservation, improve water quality, protect wildlife, and maintain biodiversity.

We recognize that the bill also includes positive elements, such as additional funding for victims of Hurricane Katrina and a program to promote marriage and healthy families. We are also grateful that cuts to the Food Stamps program were dropped from the package. However, we believe that, overall, the impact of this bill will be to fail to meet the needs of the most vulnerable among us. Therefore, we urge you to reject the conference agreement and work for policies that put poor children and families first.

There are many challenges and much tumult in Washington that demand the attention of our leaders. However, an essential priority of government is to provide for the general welfare of its people, especially "the least among us."

Mr. PUTNAM. Mr. Speaker, I yield myself the balance of my time.

This debate has devolved into a 10-minute extension of the overall concept of deficit reduction. The unfunded mandates claim does not ring true. There is more money going into these States. States have been double-dipping, and the action in this bill today will simply close that loophole and end that practice, particularly by the 10 States that have been operating on Federal dollars at a profit.

Mr. PUTNAM. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SIMPSON). The question is: Will the House now consider the resolution?

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. McDERMOTT. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 226, nays 201, not voting 6, as follows:

[Roll No. 2]

YEAS—226

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Crenshaw
Cubin
Culberson
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hyde
Inglis (SC)
Issa
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—201

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Chandler
Clay
Cleaver
Clyburn
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns

Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—6

Hastert
Hooley
Hunter
Istook
Miller, Gary
Shimkus

☐ 1436

Mr. LARSON of Connecticut and Mr. SCOTT of Virginia changed their vote from "yea" to "nay."

Mr. AKIN, Mr. BROWN of South Carolina, and Mrs. CUBIN changed their vote from "nay" to "yea."

So the question of consideration was decided in the affirmative.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman from Florida (Mr. PUTNAM) is recognized for 1 hour.

Mr. PUTNAM. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentlewoman from New York (Ms. SLAUGHTER), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, we are dealing with the Deficit Reduction Act yet again to address some technical amendments that were made by the Senate. House Resolution 653 provides that the House agree with the Senate amendments to the House passed version of S. 1932. S. 1932 provides for reconciliation as described in the Congressional budget resolution of 2006.

As a member of both the Rules Committee and the Budget Committee and a conferee on this legislation, I am pleased to bring this legislation to the floor for what we hope will be its final, final consideration.

For the first time since 1997, the Congressional budget resolution included deficit reduction instructions to authorizing committees to find and achieve mandatory program savings for a more accountable government. It does this by finding smarter ways to spend and by slowing the rate of the growth of government, especially on the mandatory side of the ledger.

The Deficit Reduction Act seeks to curb the unsustainable growth rate of mandatory programs that are set to consume 62 percent of our total budget in the next decade if left unchecked. The agreement will stimulate reform of these entitlement programs, many of which are outdated, inefficient and excessively costly.

Mr. Speaker, I am proud of this legislation, and I am proud of the work that this House, through its authorizing committees, through the Budget Committee process, through, in short, regular order has achieved. I am proud of that. I am proud that this legislation begins a long-term effort at slowing the growth of entitlement spending.

Our goal was to control government spending so that Americans can keep more of their own money instead of having the government seize more. The authorizing committees from both Chambers have worked very hard to find savings within their individual jurisdictions that total nearly $40 billion in efficiency. The agreement allows programs and agencies to weed out waste, fraud, abuse, duplication of effort, so that we can channel more Federal dollars to programs that succeed and to the people who are truly in need, to serve the intended populations more efficiently, more effectively, and in smarter ways.

I look forward to passing this reform bill and reaffirming sound oversight and fiscal responsibility here in Washington. This legislation is a step towards smarter, more competent government. I urge Members to support it.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

I insert in the RECORD two documents referring to this bill.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC, January 30, 2006.

BUDGET RECONCILIATION AND THE ALEXANDER STRATEGY GROUP

VOTE NO UNTIL WE KNOW

DEAR COLLEAGUE: Do you know why the pending Budget Reconciliation Conference Report contains none of the $10 billion in cuts to pharmaceutical companies that passed the Senate?

Neither do I.

But I have a guess. On the back of this letter is the interim disclosure for the first six months of 2005, showing:

PhRMA,

The Alexander Strategy Group,

Ed Buckham, and

Tony Rudy

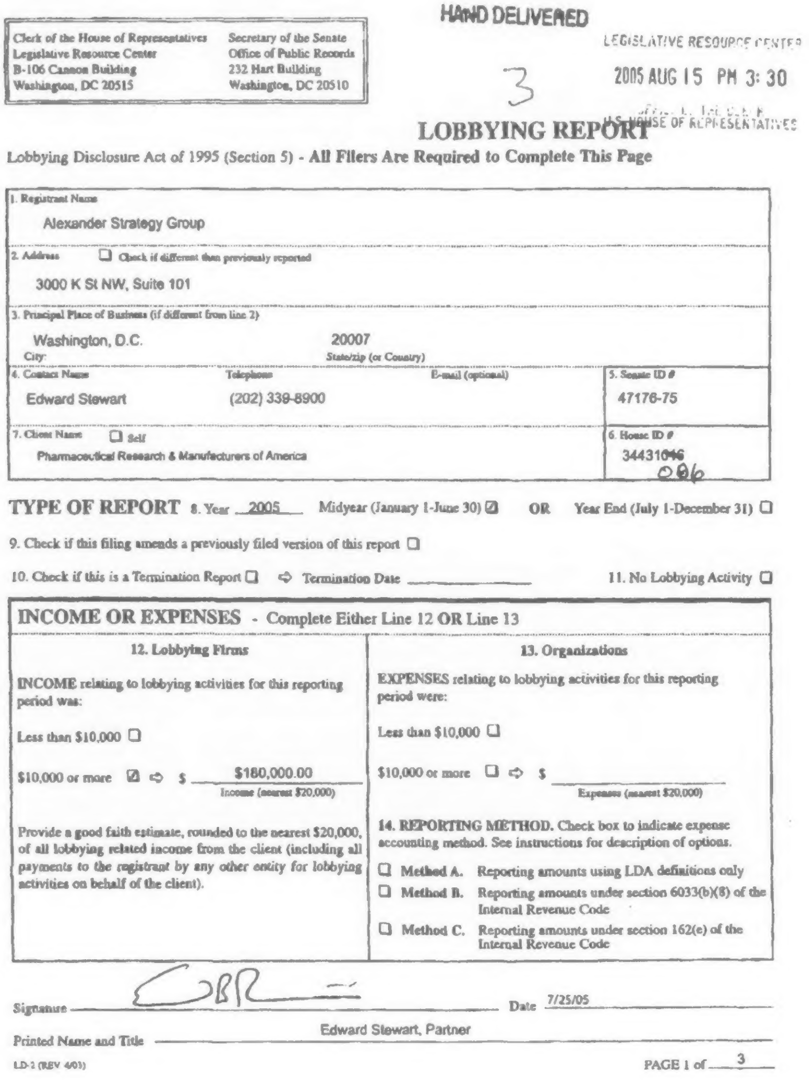
all working together on "Medicare, Medicaid, Prescription Drug Issues, and Budget Process." (The final disclosure forms are not due until February 15).

Postpone the vote on Budget Reconciliation until after an investigation is conducted on the role of the scandal-ridden Alexander Strategy Group in the negotiations. Ask the Speaker to create a bipartisan investigation.

You don't want to vote in favor of a tainted bill. Vote No until we know.

Sincerely,

HENRY A. WAXMAN,
Ranking Minority Member.



Clerk of the House of Representatives
Legislative Resource Center
B-106 Cannon Building
Washington, DC 20515

Secretary of the Senate
Office of Public Records
232 Hart Building
Washington, DC 20510

HAND DELIVERED

3

LEGISLATIVE RESOURCE CENTER
2005 AUG 15 PM 3:30
OFFICE OF THE CLERK
U.S. HOUSE OF REPRESENTATIVES

LOBBYING REPORT

Lobbying Disclosure Act of 1995 (Section 5) - **All Filers Are Required to Complete This Page**

1. Registrant Name
Alexander Strategy Group

2. Address ☐ Check if different than previously reported
3000 K St NW, Suite 101

3. Principal Place of Business (if different from line 2)
City: Washington, D.C.
State/zip (or Country): 20007

4. Contact Name: Edward Stewart
Telephone: (202) 339-8900
E-mail (optional):

5. Senate ID #: 47176-75

6. House ID #: 34431046 006

7. Client Name ☐ Self
Pharmaceutical Research & Manufacturers of America

TYPE OF REPORT 8. Year 2005 Midyear (January 1-June 30) ☑ OR Year End (July 1-December 31) ☐

9. Check if this filing amends a previously filed version of this report ☐

10. Check if this is a Termination Report ☐ ⇨ Termination Date ____________

11. No Lobbying Activity ☐

INCOME OR EXPENSES - Complete Either Line 12 OR Line 13

12. Lobbying Firms

INCOME relating to lobbying activities for this reporting period was:

Less than $10,000 ☐

$10,000 or more ☑ ⇨ $ $180,000.00
Income (nearest $20,000)

Provide a good faith estimate, rounded to the nearest $20,000, of all lobbying related income from the client (including all payments to the registrant by any other entity for lobbying activities on behalf of the client).

13. Organizations

EXPENSES relating to lobbying activities for this reporting period were:

Less than $10,000 ☐

$10,000 or more ☐ ⇨ $ ____________
Expenses (nearest $20,000)

14. REPORTING METHOD. Check box to indicate expense accounting method. See instructions for description of options.

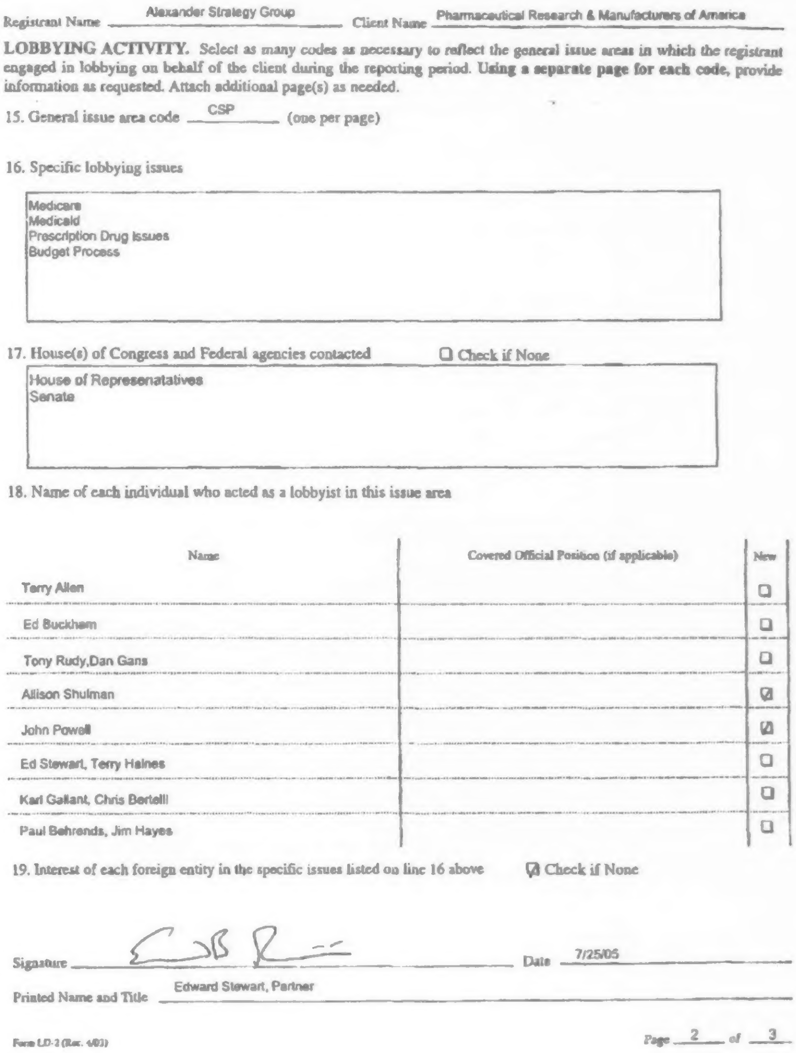
☐ **Method A.** Reporting amounts using LDA definitions only
☐ **Method B.** Reporting amounts under section 6033(b)(8) of the Internal Revenue Code
☐ **Method C.** Reporting amounts under section 162(e) of the Internal Revenue Code

Signature ____________ Date 7/25/05

Printed Name and Title Edward Stewart, Partner

LD-2 (REV 4/01)

PAGE 1 of 3



Registrant Name Alexander Strategy Group Client Name Pharmaceutical Research & Manufacturers of America

LOBBYING ACTIVITY. Select as many codes as necessary to reflect the general issue areas in which the registrant engaged in lobbying on behalf of the client during the reporting period. **Using a separate page for each code,** provide information as requested. Attach additional page(s) as needed.

15. General issue area code CSP (one per page)

16. Specific lobbying issues

Medicare
Medicaid
Prescription Drug Issues
Budget Process

17. House(s) of Congress and Federal agencies contacted ☐ Check if None

House of Represenatatives
Senate

18. Name of each individual who acted as a lobbyist in this issue area

Name	Covered Official Position (if applicable)	New
Terry Allen		☐
Ed Buckham		☐
Tony Rudy,Dan Gans		☐
Allison Shulman		☑
John Powell		☑
Ed Stewart, Terry Haines		☐
Karl Gallant, Chris Bertelli		☐
Paul Behrends, Jim Hayes		☐

19. Interest of each foreign entity in the specific issues listed on line 16 above ☑ Check if None

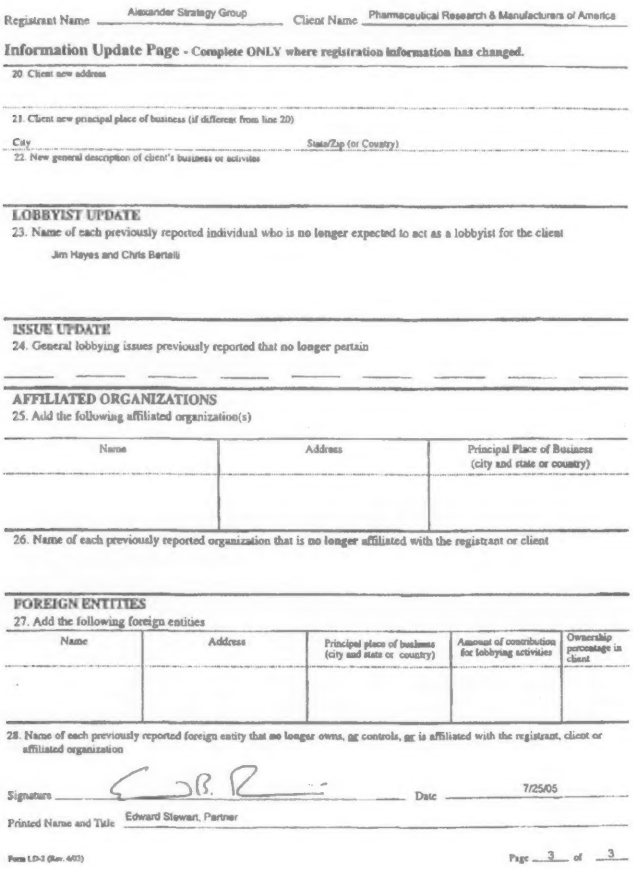
Signature

Date 7/25/05

Printed Name and Title Edward Stewart, Partner

Form LD-2 (Rev. 4/03)

Page 2 of 3



Registrant Name Alexander Strategy Group Client Name Pharmaceutical Research & Manufacturers of America

Information Update Page - Complete ONLY where registration information has changed.

20. Client new address

21. Client new principal place of business (if different from line 20)

City State/Zip (or Country)

22. New general description of client's business or activites

LOBBYIST UPDATE

23. Name of each previously reported individual who is no longer expected to act as a lobbyist for the client

Jim Hayes and Chris Bertelli

ISSUE UPDATE

24. General lobbying issues previously reported that no longer pertain

AFFILIATED ORGANIZATIONS

25. Add the following affiliated organization(s)

Name	Address	Principal Place of Business (city and state or country)

26. Name of each previously reported organization that is no longer affiliated with the registrant or client

FOREIGN ENTITIES

27. Add the following foreign entities

Name	Address	Principal place of business (city and state or country)	Amount of contribution for lobbying activities	Ownership percentage in client

28. Name of each previously reported foreign entity that no longer owns, or controls, or is affiliated with the registrant, client or affiliated organization

Signature Date 7/25/05

Printed Name and Title Edward Stewart, Partner

Form LD-2 (Rev. 4/03) Page 3 of 3

Ms. SLAUGHTER. Mr. Speaker, we have heard a great deal from the Republican Party recently about its commitment to reforming the way the House does business.

Again today the Republicans have told us that they have learned from their mistakes, and they will never again allow special interests to distract them from doing the work of the American people.

Actions speak louder than words, and this budget bill before us today is proof that despite all the talk of reform nothing has changed with its leadership. This is a bill that cuts Medicare spending by $6.4 billion. It cuts child support enforcement by $1.5 billion. It cuts $343 million from foster care programs.

Last year, we knew what was behind this bill. It was tax cuts for the very rich. In order to offset the administration's unprecedented giveaway to the country's richest citizens, they are willing to cut the services to the neediest Americans. All of us, while we were home in January, heard from citizen after citizen, constituent after constituent, of the harm that this bill would do to them, begging us not to vote for it. Such an indefensible set of priorities is still the major reason why the majority gave us this bill again today, but this year things are even worse.

We are being asked to vote on a bill that more than ever before proves that the culture of corruption is alive and well in this Congress. At the behest of the drug and managed care industries, who met with the key legislators in closed, backdoor sessions, the Republican conferees have changed this legislation so that it will save these industries a total of $42 billion.

Now, how do they suggest that we pay for this new and improved giveaway to the corporate lobby? By increasing the co-payments and reducing health coverage for children, for seniors and for people with disabilities who rely on Medicaid.

This last year showed us the terrible consequences of poor leadership. We saw a national disaster turn into a national tragedy because of a failed government response. We saw self-interest run amok as top lawmakers violated the people's trust, and they were indicted and forced to step down in the wake of scandal. We saw our troops and the people of Iraq struggle heroically to lift not just the weight of a vicious insurgency, but also the burden of poor planning and unfulfilled promises from the White House.

Here again today, Republicans are acting to make the American people victims of unscrupulous, disingenuous leadership, while they talk of reform and change, and we cannot afford another year like the last one.

Remember, that as you cut the very life out of these programs, you are doing it to provide a tax cut for the richest Americans.

□ 1445

Every Member of this body needs to know the serious consequences of this vote today. A vote for this bill is a vote to literally take away health care from our children so we can give more money to the super-rich. A vote for this bill is a vote to weaken Medicare for our struggling seniors, who are having enough trouble with the so-called Medicare reform bill that we passed here and is giving everybody a fit trying to understand Medicare part D and that thousands are doing without their medication because of it.

It will also put college education farther out of the reach of our students, even though the President last night discussed that our competitiveness depends on what we are teaching our students today, so we can fund more tax-cut giveaways. Remember, that is what you are voting for.

A vote for this bill supports the culture of corruption, and also America can and must do better than this budget reconciliation and what this party is offering us today. I urge all of my colleagues to vote "no" on this bill and vote "yes" for a new day here in Washington.

Mr. Speaker, I reserve the balance of my time.

Mr. PUTNAM. Mr. Speaker, I am pleased to yield 5 minutes to the distinguished chairman of the Energy and Commerce Committee, Mr. BARTON.

Mr. BARTON of Texas. Mr. Speaker, I rise today in support of H. Res. 653, a resolution that will concur in the Senate amendment to S. 1932, the Deficit Reduction Act of 2005. In passing this resolution, the House will make important reforms in telecommunications and Medicaid, which are under the jurisdiction of the Energy and Commerce Committee.

This resolution is necessary because when the other body took up the budget reform package, or the reconciliation package, they struck three items of the conference report that had a nonfinancial impact under what is called the Byrd Rule in the other body.

The three items are a report requiring value-based purchasing for the Health and Human Services Department to report to Congress on a date certain for a hospital or for a value-based purchasing program. That was the first thing struck.

The second thing struck was a MedPAC report which would have provided a Medicare Payment Advisory Commission report to Congress on that same hospital value-based purchasing program.

The third thing that was struck was a section that would have shielded from legal liability certain hospitals and physicians who enforce cost-sharing requirements for nonemergency care in emergency rooms absent a finding of gross negligence.

Those are the only three changes from the conference report that this body, the House of Representatives, passed by a six-vote margin before we recessed for the holidays. So, substantively, with those changes, the bill before us, if this resolution passes that brings the bill up for consideration, is identical.

With regard to the issues that are in the jurisdiction of the Energy and Commerce Committee, which I chair, the legislation would effectively put us in the Digital Age on February 17, 2009. America and television sets would go all digital on that day. The analog television signals that have come into our homes over the air since the birth of TVs since the 1940s, or maybe in some cases since the 1930s, would end; and we would have the new era finally before us.

In 2004, at my first DTV hearing since becoming chairman of the Energy and Commerce Committee, I announced that expediting the DTV transition would be a top priority. I also noted that the 85 percent loophole in the current law has delayed the consumer benefits of digital television, and it has prevented the clearing of very vital broadcast spectrum for critical public safety and wireless broadband uses.

The DTV legislation in the pending bill brings needed certainty that will allow consumers, broadcasters, cable and satellite operators, manufacturers, retailers, and the government to prepare for the end of the transition. It includes a strong consumer education measure. It helps ensure that all consumers have continued access to broadcast programming, regardless of whether they use analog or digital televisions or whether they watch television signals broadcast by a local station or subscribe to cable TV.

The package also includes necessary revisions to Medicaid. Medicaid is a victim of its own success. The program has grown so expensive that it is unsustainable in its current form. The Nation's Governors on both sides of the aisle understand the grim future of Medicaid without reform. They told us over and over in hearings before the Energy and Commerce Committee that Medicaid will bankrupt the States unless some reasonable reforms are enacted. These were Democrat Governors and Republican Governors. They told us what they needed done, and we attempted to do it.

The proposal that is embedded in the pending legislation contains commonsense reforms and will help fix some of the flaws in the current Medicaid program to ensure that it will continue to be the safety net that protects our Nation's most vulnerable citizens.

Some of these reforms include allowing States to charge some basic copays to higher-income beneficiaries, reducing Medicaid overpayments for drugs, and providing the States with the flexibility to tailor their benefit package to meet the specific health care needs of the beneficiaries. We would also make it more difficult to hide assets so that wealthy clients can pretend to be poor to qualify for long-term Medicaid coverage in nursing homes.

We were tasked in the budget resolution to reduce the growth of Federal spending in this program. Overall, the net savings over a 5-year period are a little over $4.5 billion. It is the right thing to do, regardless of the budget implication; but the budget implication is positive.

I recognize that some of my critics will say that even a modest reform will hurt the poor. I would submit to you that Medicaid in its current form is hurting the poor.

CLARIFYING THE TREATMENT OF DISTRIBUTOR SERVICE FEES UNDER THE NEW MEDICAID PHARMACY REIMBURSEMENT REFORMS

I want to clarify specifically how bona fide services fees, which are negotiated between a manufacturer and pharmaceutical distributor, should be treated under the new Medicaid pharmacy reimbursement metric. Manufacturers pay bona fide service fees for specific services provided by the distributor. Service fees are a relatively new business model to the pharmaceutical distribution industry and how they should be treated under federal reimbursement programs first came into question when the new Average Sales Price (ASP) metric under the Medicare Modernization Act was being recently implemented.

I am pleased to note that Congress specifically did not include service fees as a price concession to be incorporated into the calculation of ASP and CMS subsequently confirmed that, "Bona fide service fees that are paid by a manufacturer to an entity, that represent fair market value for bona-fide service provided by the entity, and are not passed on in whole or in part to a client or customer of the entity should not be included in the calculation of ASP."

The conferees did not intend to have bona fide services fees included in the calculation of the Medicaid Average Manufacturer Price (AMP) based reimbursement methodology as established in the pharmacy reimbursement provisions of the conference agreement.

CLARIFYING CHANGES TO MEDICAID THIRD PARTY LIABILITY STANDARD

The provision regarding the meaning of a new Medicaid third-party liability provision included in section 6036 of the conference agreement on S. 1932, the "Deficit Reduction Act of 2005" seeks to clarify the obligation of third parties that are legally responsible for payment of a claim for a health care item or service, and the requirements for third parties to provide states with coverage eligibility and claims data. Specifically, that section amends the list of third parties named in section 1902(a)(25) of the Social Security Act for which states must ascertain the legal liability to pay for medical care and services available under the state's Medicaid plan. The provision adds "pharmacy benefit managers" to this list, and introduces a new phrase "legally responsible for payment of a claim for a health care item or service".

Under current law, Medicaid is the payor of last resort. In general, federal law requires that available third parties must meet their legal obligation to pay claims before the Medicaid program pays for the care of an individual. The Conference Report amends the list of third parties named in Section 1902(a)(25) of the Social Security Act for which states must take all reasonable measures to ascertain the legal liability to include, among others, pharmacy benefits managers.

I would like to clarify that the addition of pharmacy benefit managers to the definition of liable third parties is in the instance when they are at risk for the underlying benefit, such as operating as a plan sponsor for purposes of providing health benefits or as a risk-bearing entity under the new Medicare Part D program as a stand-alone PDP. This addition is not meant to make pharmacy benefit managers liable when they are acting merely in an administrative capacity on behalf of a liable third party.

The intent is not to create an additional liability where none exists today. Pharmacy benefit managers may or may not be liable third parties. It is dependent upon whether they are ultimately responsible for the payment of a claim. It is my understanding that the health plan or employer contracting with the pharmacy benefit manager is ultimately at risk for the underlying claim, so it is my belief this will not create new liability for the pharmacy benefit manager. I understand that this same intention was addressed in a colloquy on the Senate side between Senator BOND and Senator GRASSLEY on December 21, 2005.

CLARIFYING MEDICAID'S COVERAGE FOR EPSDT SERVICES

There have recently been some public discussions about what benefits states would be required to provide for children under the benefit flexibility provisions contained in Section 6044 of the Deficit Reduction Act. Section 6044 specifies that states may provide flexible benefit packages, but only if such package provides, for any child under age 19, wrap around benefits packages that consist of "early and periodic screening, diagnostic, and treatment services defined in section 1905(r)."

This language reflects the clear legislative intent by both the House and Senate that all children should continue to receive access to coverage of early and periodic screening, diagnostic, and treatment services ("EPSDT") services. That was what Members agreed to and the language was drafted accordingly. In addition, this is exactly how the Congressional Budget Office ("CBO") scored this proposal. In the most recent score of S. 1932, CBO said that "states would be permitted to enroll children in a benchmark benefit plan but would be required to provide supplemental coverage of all other Medicaid benefits, including early and periodic screening, diagnostic, and treatment services."

In a statement released during the Senate debate on S. 1932, CMS Administrator Mark McClellan also indicated that CMS had determined that children under age 19 will still be entitled to receive EPSDT benefits if they are enrolled in benchmark or benchmark equivalent coverage. Further, Administrator McClellan said that in implementing section 6044, CMS would not approve any state plan amendment that does not include the provision of EPSDT services for children.

Congress clearly intended for all children under Medicaid to continue to receive EPSDT services and we will work with Administrator McClellan to ensure that all children will continue to receive access to these important services.

CLARIFYING MEDICAID'S NEW CO-PAYMENT POLICIES

In implementing the new premium and cost sharing provisions contained in section 6041, it was the intent of Congress that Medicaid populations below one hundred percent of the federal poverty level would be exempt from the general application of cost sharing and premiums. The only two exceptions to this rule were that these individuals could still be subject to minimal co-payments for non-preferred drugs and could be charged co-payments if they sought non-emergency services in an emergency room.

CLARIFYING INTENT ON MEDICARE ADVANTAGE BUDGET NEUTRALITY ADJUSTMENT

The phase out of the budget neutrality adjustment for Medicare Advantage plans under section 5301 of S. 1932, the Deficit Reduction Act and the joint statement which accompanied the Conference Report in the Senate requiring adjustments for differences in coding patterns is intended to include adjustments for coding that is inaccurate or incomplete for the purpose of establishing risk scores that are consistent across both fee-for-service and Medicare Advantage settings, even if such coding is accurate or complete for other purposes.

Ms. SLAUGHTER. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from South Carolina (Mr. SPRATT), the ranking member of the Budget Committee.

Mr. SPRATT. Mr. Speaker, it is easy to criticize the contents of this reconciliation bill because it hurts children, single-parent families, students struggling to finance their college education, and many others who are the most vulnerable among us. But I rise today to criticize the process because this a process known as reconciliation; and the purpose of reconciliation is that as you come to the end of a budget season, we use this to change mandatory spending and change revenues so that you reconcile the actual budget to what otherwise would occur.

Ordinarily in the past, reconciliation has led to deficit reduction. That is the purpose. That is the reason it is a priority process in the budget process. In the budget summit agreement of 1990, we saved $482 billion in budget reconciliation; in 1993, we saved $433 billion in reconciliation; in the balanced budget agreement of 1997, we saved $118 billion.

So what do we save today when you put together this spending-cut bill, $39 billion in reconciled spending cuts, with the tax bill that will follow it, the reconciliation tax bill? You add $17 billion to the deficit over that period of time. There is no deficit reduction.

Worse still, if you look back at all of the taxes we passed in this budget cycle this previous year leading up to fiscal year 2006, starting with the transportation bill and including the energy bill and including a 1-year patch, $31 billion, in the Alternative Minimum Tax, the total tax reduction comes to $122 billion. But let me remind you, I just included and we have just included, they just included in this tax bill, $31 billion, a 1-year fix in the AMT. If all of these taxes are reflected on a 5-year basis, there is an additional $167 billion to add to that.

Here is the bottom line. Here is what you are voting for today if you vote for this bill. If you look at it over a true 5-year time period and add up all of the taxes in addition to the reconciliation tax cuts that have been passed in this budget cycle, the addition to the deficit is $380 billion after deducting the $40 billion included in this reconciliation bill. That is the net effect on the deficit.

So anybody coming here to the well of the House or going to the voting machine to register his or vote thinking that this is going to reduce the deficit has another thought coming. This bill will increase the deficit, considering the tax cuts that have been passed this past year. It will leave us with a deficit increase of $280 billion over the next 5 years. That is why the process is a sham and that is reason enough to vote against the bill.

Mr. PUTNAM. Mr. Speaker, I yield 2 minutes to another gentleman from Florida (Mr. CRENSHAW), a distinguished member of the Committee on the Budget.

Mr. CRENSHAW. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of this Deficit Reduction Act. It takes another giant step in trying to get our own financial house in order here in Congress, and that is what the American people want. They want us to control the way we spend their dollars.

We took a step when we cut taxes, as was pointed out just a minute ago. When you cut taxes across the board and you let people keep more of what they earn, well, guess what is happening? They get to decide whether to spend it, whether they want to save it, whether they want to invest it; and when that happens, the economy begins to grow.

We have had 2½ years of positive growth in the economy. What happened? The deficit has gone down because more money comes into the Treasury when the economy grows.

Then last year we took step two. We wrote a budget here in this House that actually reduced nondefense spending by one-half of one percent. That is the first time that has happened since Ronald Reagan was President, and that is another giant step in the right direction.

Here we are now, step three. We are looking at deficit reduction. And now we are looking at the areas in our budget that the appropriations process does not even impact. We are talking about the so-called mandatory spending, entitlement spending, the things that are on automatic pilot. That is where more than half of our money goes in this Congress.

So we are simply saying for the first time in 7 years, let's begin to get a handle on that. Let's control that part of the budget. Because everybody knows the government needs money to provide services. But what we are saying right now is we need reform. We need discipline to rein in spending. We need courage to make decisions that are difficult at times because we have to live like every American has to live, by setting priorities and tightening our belts.

Finally, this is an act that will bring commitment to make sure that every task of government is accomplished more efficiently and more effectively than it ever has been before. That is what this Deficit Reduction Act does, and I urge its passage.

Ms. SLAUGHTER. Mr. Speaker, I yield 3½ minutes to the gentleman from Maryland (Mr. HOYER), the minority whip.

Mr. HOYER. Mr. Speaker, I wish I had at least a half an hour to respond to my friend from Florida who just spoke.

We have run up $1.58 trillion of additional deficits in the last 60 months under your leadership. Last night, the President of the United States addressed the American people from this House Chamber. He demanded that we make his tax cuts permanent. Of course, he also urged new Federal spending, among other things for energy independence, a good objective; on education, math and science, a good objective; prevention and treatment for HIV/AIDS. All worthy endeavors of our great Nation.

But President Bush and this Republican Congress, which have had complete control of our Federal Government for 5 years, continue to refuse to answer the most basic, most obvious and most necessary question: How do we pay for these plans and proposals?

The plain truth is, they do not pay for them. The plain truth is, the President and this Republican Congress have pursued the most irresponsible fiscal policies in the history of our Nation, turning a projected $5.6 trillion surplus into a $4 trillion deficit today, a $9.6 trillion turnaround in 60 months.

Now President Bush and this Republican Congress want to enact tax cuts, even as we face record budget deficits and debt brought about by their policies, even as they prepare to ask for a $780 billion increase in the debt limit, the fourth time they have done so.

Today's budget bill is part and parcel of the Republican Party's free-lunch philosophy. Our Republican friends claim that they are going to cut $40 billion to "restore fiscal discipline." Now, you inherited $5.6 trillion surplus. You followed an administration that had four budget surpluses in a row.

□ 1500

And you want to restore fiscal discipline to the extraordinary fiscal irresponsibility you have been pursuing for 5 years. A good objective, folks.

But the reality is they plan on cutting an additional $70 billion in taxes. Cut $40 billion in spending, cut $70 billion in taxes. You do not have to be much above the sixth grade to understand that is going to add to your deficit.

No, while the President called for increased funding for education last night, this Republican majority today wants to cut funds for students going to college. While the President recognized the need to make health insurance more affordable, this majority today intends to cut funding for Medicaid to the poorest of citizens.

Meanwhile, we now know that as the Republican budget axe fell on the poor and students, powerful special interests in the dark of night in the conference got $20 billion in cuts back, back. Half of all of the cuts they got back.

I urge my colleagues, vote against this irresponsible, mean-spirited, negative proposal, which is contrary to the interests of the American people and the product of Republican fiscal irresponsibility, and a pretense of support for priorities of education and health care, while at the same time cutting our investment in education of our children and the health of our people, and imposing upon our children and our grandchildren the extraordinary costs of our fiscal profligacy.

I would hope that a number of you would in fact be fiscally responsible and vote "no" on this bad package.

Mr. PUTNAM. Mr. Speaker, I yield 2 minutes to the senior member of the Budget Committee, the gentleman from Kansas (Mr. RYUN).

Mr. RYUN of Kansas. Mr. Speaker, recently the Congressional Budget Office released its economic and budget projections for the coming decade; and they reiterate what we already know, that is, that mandatory spending is growing at an unsustainable rate.

If we do not slow down the growth, we are going to have some very tough choices in the years to come and the days ahead, because the growth, by 2030, is expected to continue at 60 percent. At a time when the economy is strong and growing, we cannot forget the problems of mandatory spending programs, that they loom very large.

In his State of the Union address, President Bush warned that the retirement of baby boomers will present future Congresses with impossible choices. And these are the choices: staggering tax increases, immense deficit, or deep cuts in each category of spending.

Right now the House has a choice. We can either begin to address the growing entitlement by passing the Deficit Reduction Act, or we can continue to ignore the problem and leave those difficult choices for a future date.

By passing the Deficit Reduction Act today, the House is choosing to address that problem. The Deficit Reduction Act will begin the process of reform in mandatory spending and save the American taxpayers $40 billion over the next 5 years. The American people elected us to Congress to spend their dollars wisely. We cannot assert that doing our job as we have been allows those programs to grow without review.

The Medicare program, for example, has run on autopilot for almost 40 years without any review. The Deficit Reduction Act will make important changes to reform Medicaid and other important programs to ensure that we are being responsible stewards of taxpayers' dollars.

It is important that the House, as we begin 2006, that we show fiscal restraint. It is also important in the House that we unite behind the concept that bigger government is not better government. And it is also important in the House that we pass the Deficit Reduction Act.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan (Mr. DINGELL).

Mr. DINGELL. Mr. Speaker, my colleagues have recalled that there was no conference on this important legislation. Instead, my Republican colleagues met behind closed doors with a bevy of lobbyists for the health insurance companies and the pharmaceutical houses.

Democratic Members were entirely excluded from this. This is a product of special-interest lobbying, and the stench of special interest hangs over the Chamber as we consider it today.

The bill was brought to the floor in the dead of night; and a couple of hours later, the Members of this body voted on it without ever having seen it, or without a copy of it ever having been printed. The Congressional Budget Office now tells us what went on behind those closed doors in those secret meetings. Special interests and their lobbyists, who were well represented, won. Everybody else was excluded, and everybody else lost.

The conferees made important decisions on health care, because the House and the Senate took very different approaches to the issue. The Senate decided not to harm Medicaid beneficiaries, instead cutting overpayments to Medicare HMOs and reducing unjustified payments to drug companies.

Our Republican colleagues heard the concerns of these special interests and instead chose to raise costs and to cut services to working families, to the poor, the elderly, the disabled, and children covered by Medicaid.

Now, here are the specifics, and you can see them on this chart right here. The Senate cut $36 billion in overpayments to HMOs and Medicare. That included $26 billion in savings by more accurately calculating their payments.

The negotiators, without any help from anybody but the lobbyists, rewrote the provision to save just $4 billion, providing a $22 billion windfall to the HMOs.

The Senate also eliminated a $10 billion slush fund designed to induce HMOs to participate in the prescription drug program by overpayments. The Republican conferees dropped this provision, providing another $10 billion gift to HMOs, for a total of $32 billion.

Finally, the Senate included a provision designed to get the best prices for Medicaid by increasing rebates from drug companies for a nearly $10 billion saving. My good Republican colleagues dropped that provision too.

Instead, our colleagues on the Republican side went after the people who could not be represented in the room and who could not afford to have cuts. Through a combination of benefit reductions, increased copayments and premiums, along with rules making it harder for the elderly to gain access to nursing homes, they saved $25 billion. They sweated it out of the hides of the poor and the unfortunate.

According to the CBO, about 13 million Medicaid enrollees will pay more to see their doctor. CBO reports that 80 percent of the savings comes from the decreased use of services. Look at what they did. Vote against it. This is an outrage.

Mr. Speaker, my colleagues should recall there was no open conference on this important legislation. Instead my Republican colleagues met behind closed doors to negotiate an agreement among themselves and, apparently, lobbyist friends. It was brought to the floor in the dead of night, and a couple of hours later Members voted on it sight unseen.

The Congressional Budget Office (CBO) now confirms what went on behind those closed doors. Special interests and their lobbyists who were well represented won—everyone else was excluded and lost.

The conferees had very important decisions to make in health care because the House and Senate took very different approaches to the issue. The Senate elected not to harm Medicaid beneficiaries, instead cutting overpayments to Medicare HMOs and reducing payments to drug companies. Our House Republican colleagues instead chose to raise costs and cut services to working families, the poor, the elderly, the disabled, and children covered by Medicaid.

Here are the specifics: The Senate bill cut $36 billion in overpayments to the HMOs in Medicare. That included $26 billion in savings by more accurately calculating their payments. But the negotiators rewrote the provision to save just $4 billion, providing a $22 billion windfall to the HMOs.

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Finally, the Senate included a provision designed to get the best prices for Medicaid by increasing rebates from drug companies for a nearly $10 billion saving. That provision was dropped.

Instead our Republican colleagues went after the people who couldn't afford to be in that room—the Medicaid beneficiaries. Through a combination of benefit reductions, increased copayments and premiums, along with rules making it harder for the elderly to gain access to nursing homes, they saved $25 billion.

According to CBO, about 13 million Medicaid enrollees will pay more to see their doctor. CBO reports 80 percent of the savings from this provision will come from decreased use of services. So this bill will be adding to the rolls of the uninsured—contrary to the goal of expanding coverage touted by President Bush last night.

This bill is Exhibit A for special interests and lobbyists writing legislation behind closed doors at the expense of the ordinary citizen. Vote "no."

Mr. PUTNAM. Mr. Speaker, I yield 3 minutes to the gentleman from Georgia (Mr. DEAL).

Mr. DEAL of Georgia. Mr. Speaker, if we want to talk about who won and who lost, let us talk about who did win. It was not special interests. It was those who qualify under the Family Opportunity Act who for the first time for families with disabled children who may be up to 300 percent of poverty will now be able to receive services. That will be 115,000 children who are disabled that will gain Medicaid coverage by 2015, according to CBO.

The Home and Community Based Services, the estimate is that another 120,000 enrollees will be able to take advantage of this, getting services in their own home or in their community, rather than having to go to a nursing home.

With the program that is included of money following the person, instead of people having to go into a nursing home again, they will be able to have services in their own home; and it is estimated that another 100,000 people are going to qualify for that over the next 8- to 9-year period.

So those are some of the people who are certainly going to be benefited. Now let us talk about the program overall. Medicaid is a program that is out of control. Even with the reforms of slowing it down by three-tenths of 1 percent over the next 5 years, it is still going to grow at an estimated 7 percent growth rate; and over the next 10 years, we are going to be spending in State and Federal money $5.2 trillion.

Let us talk about some of the claims that have been made during the time we have been in recess that are without substance and fact. One is with regard to copays. The Governors told us they wanted to be able to put some personal responsibility back into the program and that copays were one way to do it. But we wanted to make sure that we did not hurt the most vulnerable.

As a result, there are no enforceable copays to be charged to beneficiaries and families with incomes below the Federal poverty level. In addition, copays cannot be charged to a select group of individuals in these big categories: mandatory children, individuals receiving adoption and foster care assistance, preventive care and immunizations, pregnancy-related services, hospice residents, institutional spend-down populations, emergency services, family planning services, women who qualify for Medicaid under the breast and cervical cancer eligibility.

Also one of the claims is that we would do away with the early screening of children. It is specifically included in the plan that these children must be included in the so-called ESPDT program regardless of whether the State elects to provide services in an optional format or otherwise.

One of the other areas is with regard to the reforms we have made in asset transfers, the so-called "millionaires on Medicaid." Yes, we have tightened the rules, as we should do. But we have specifically made sure that anyone who is in a legitimate hardship area will have an exclusion, and States are required to provide a review process to make sure that that happens.

So we believe overall that the reforms are needed. There are the kinds of reforms that the Governors have asked us to make so that we can keep the program solvent; otherwise, as the Governors' national representatives on a unanimous basis told us in the committee, if we do not, Medicaid over the long haul will be unsustainable.

So therefore I urge you to adopt the provisions that are included in this bill.

Ms. SLAUGHTER. Mr. Speaker I yield 3 minutes to the gentleman from California (Mr. GEORGE MILLER).

Mr. GEORGE MILLER of California. Mr. Speaker, Members of the House, last night the President stood before this Nation and said that it was important that we educate new math and science teachers and that we bring new people to the math and science fields and that America's students start to study math and science and engineering so that America can remain competitive in the world.

Today, we vote to make student loans far more expensive for those students who take up the President's challenge. We make it more expensive for those students, and we make it more expensive for their parents. Of the $12 billion, the $12 billion, the largest cuts in the history of the student loan program that this legislation takes out of the budget, almost 70 percent of those savings are generated by increasing, by continuing the practice of forcing students and parent borrowers to pay excessive interest rates, and in many cases by raising the interest rates on the parents who then borrow additional money to finance their children's higher education.

Many Members are standing up on the Republican side of the aisle and talking about the courage that they have to make these cuts. What is the courage, what is the judgment, what is the morality of making it more difficult for young people to achieve a higher education, to achieve an advanced degree, to participate to the fullest extent of their talents in the American economy, and to participate in the quest that the President had asked for, to make our economy more innovative, more competitive in a globalized world?

I do not understand it. I do not understand the message of the President saying we want more of your children to get more higher education, and then the budget cuts today that say we are going to make it $12 billion more expensive for these children to do this.

We are going to increase the fees on parents that go into debt, on students who go into debt. Most of those students are working at jobs while they are trying to get that education. But that is what happens in this legislation today.

Either the President has it right and you have it wrong, or the President was not telling us the truth about what he truly wanted to do on behalf of increasing math and science education, and advanced degrees in math, science and engineering. And yet we understand the imperative of this being done, because of the competition that we face from China, India, North Korea, Japan, and other nations of the world who now are graduating 300,000 engineers in China and the same in India, and we are graduating 70,000.

Do we understand the imperative nature of getting these degrees done? Apparently not. Because we are going to make it more expensive with this legislation. Actually, you are going to make it more expensive, because I am not voting for this bill, because I understand what parents and students go through to try to figure out how to finance that education, and how they sit around the kitchen table and figure out the sacrifices that they can make.

The better idea that the Republicans have is that they are going to make it more expensive for students to go to college, an idea that we ought to reject; and I would hope that others on the Republican side of the aisle would reject this very bad idea.

□ 1515

It is an idea that we ought to reject, and I would hope that others on the Republican side of the aisle would reject this very bad idea.

Mr. PUTNAM. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Texas (Mr. HENSARLING), who also serves on the Budget Committee.

Mr. HENSARLING. Mr. Speaker, yet again we consider this historic piece of legislation, and it is historic because today we can begin the process of reforming out-of-control government spending. What happens if we listen to our Democrat friends who tell us we should fail to act?

Retiring Federal Reserve Chairman Alan Greenspan has said, "As a Nation, we may have already made promises to coming generations of retirees that we will be unable to fulfill." That is the Democrat plan.

The Brookings Institution has said expected growth on entitlement programs along with projected increases in interest on the debt and defense will absorb all of the government's currently projected revenues within 8 years, leaving nothing for any other program. No more veterans programs, no more Federal student loans, no more low-income housing programs. That is the Democrat plan.

The General Accountability Office has said that without reforms that we are going to have to double taxes on the next generation just to balance the budget. That is the Democrat plan.

Mr. Speaker, during this debate we are hearing a lot about budget cuts. Everybody is entitled to their own opinion, but they are not entitled to their own facts.

I looked up "cut" in the dictionary. It means to reduce. Yet, under this modest set of reforms, we see that Federal spending will grow at 4.3 percent a year. What we call entitlement spending will grow 6.3 percent a year. Medicaid will grow 7.5 percent a year. TANF and other welfare programs will grow at 8.5 percent a year, and the list goes on and on and on.

What we will cut if we do not pass this legislation is the family budget. It will be cut by $40 billion. That is $40 billion that could help nearly 2 million families to make a down payment on a new home. $40 billion could help almost 1 million families put a child through college. We need to realize that every time we increase the Federal budget we are cutting the family budget. Democrats want to cut the family budget, double taxes on our children and call that compassion.

We need to adopt this rule.

Ms. SLAUGHTER. Mr. Speaker, I am pleased to yield 2 minutes to the gentlewoman from Connecticut (Ms. DELAURO).

Ms. DELAURO. Mr. Speaker, it seems the House has voted on this legislation countless times, and people may be wondering what has changed about this conference report since the House passed this bill at 6:00 in the morning late last year.

This is it. Here is what has changed. This is a Washington Post article: Closed door deal makes $22 billion difference. The Washington Post reported last week the Republican leadership met with lobbyists behind closed doors to restore a $22 billion slush fund for HMOs, a slush fund that the Senate had the decency to drop from this legislation. As one health care lobbyist said, "$22 billion is a lot of money."

But instead of foregoing this latest example of corporate welfare, Republicans have instead put these cuts on the backs of those who cannot afford lobbyists. These include poor children and working families who will face new costs and higher premiums, reducing care for 1.6 million Americans and kicking over 65,000 Americans, mostly whom have kids, off of Medicaid. Others who will be off of Medicaid are working but do not receive health care through their employer. This, less than 24 hours after the President's call to expand health care in his State of the Union address.

$22 billion is a lot of money, enough to restore the $12.7 billion in student loan assistance cut from this legislation, the $1.5 billion of cuts to child and foster care support, and the $7 billion of cuts in health care for families.

Some may look at this brazen example of cronyism at its worst, at all the indictments and plea bargains we have seen, and say, well, that is just the way Washington works. That is how Washington operates today under Republican leadership and a Republican administration.

But that is not the way that it ought to work. Regardless of which party is in power, the people's business ought never to be made and done behind closed doors, much less critical budget decisions that can mean life and death for some families.

The American people deserve better from this body. It is time we gave them a reason to expect better.

PARLIAMENTARY INQUIRY

Mr. FORD. Mr. Speaker, parliamentary inquiry.

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman may inquire.

Mr. FORD. Mr. Speaker, I have heard all the debate and I am curious. To my friend Mr. PUTNAM, the President just left Nashville, and out of curiosity does the President know that you all are introducing this after what he said last night?

The SPEAKER pro tempore. The gentleman has not stated a proper parliamentary inquiry.

Mr. PUTNAM. Mr. Speaker, I yield myself such time as I may consume.

I would like to correct the gentlewoman from Connecticut with regards to the Washington Post article. As is common in this media culture of get-it-fast instead of get-it-right, there was no lobby fix.

The Deficit Reduction Act establishes a timeline for phasing out overpayments to Medicare advantage plans. The Secretary of HHS had already proposed correcting those payment levels but had not set a timeline. Until the Secretary acts, Medicare is currently paying too much to those Medicare advantage plans, and the Deficit Reduction Act sets the timeline for the Secretary to fix it.

The simple explanation for the $22 billion reduction in CBO score is that the Deficit Reduction Act assumes that once the payment system is fixed over the next 5 years the Secretary will have the good sense to keep paying them at the proper level.

So it is incorrect to say that there was a $22 billion giveaway. CBO's estimate assumes that the Secretary will revert to overpaying those same people.

Mr. Speaker, I am pleased to yield 2 minutes to my good friend from Indiana (Mr. PENCE).

Mr. PENCE. Mr. Speaker, I thank the gentleman for yielding me the time.

I rise in strong support of the rule and of the Deficit Reduction Act. It is an important first step toward restoring public confidence in the fiscal integrity of our national government.

2005 will be remembered as a year of good intentions, bad disasters and promises kept. Congress early last year adopted the toughest budget since the Reagan years and, under the leadership of the Appropriations Committee, reported one bill after another on time and on budget.

And then came Katrina, 90,000 square miles of our gulf coast destroyed and $60 billion appropriated in just 6 days. After the storm, many here in Congress thought that fiscal discipline was the last thing that Congress should be thinking about, preferring to raise taxes or increase the national debt instead of making tough choices, but not this majority.

Seeing that a catastrophe of nature could become a catastrophe of debt, dozens of House conservatives challenged our colleagues to offset the cost of Hurricane Katrina with budget cuts, and I will always believe that that effort sparked a national debate that led to this moment.

The American people wanted Washington to pay for Katrina with budget cuts, and Washington got the message. In direct response to the call for cuts, Speaker Dennis Hastert unveiled a bold plan which we consider today to find cuts from every area of the Federal Government, and the Hastert plan, with nearly $40 billion in entitlement savings, becomes a reality.

So, Mr. Speaker, for Americans troubled by a rising tide of red ink here in Washington, D.C., 2006 begins with reason for optimism, as this Congress demonstrates the ability to make touch choices in tough times to put our fiscal house in order.

I urge all my colleagues to support the Deficit Reduction Act.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. SOLIS).

Ms. SOLIS. Mr. Speaker, today I rise in strong opposition to this misguided and irresponsible bill.

Just last night President Bush spoke about working together to build prosperity for our country, but this legislation pays for the prosperity of the richest, the wealthiest in our society while cutting vital services to very needy individuals.

Since President Bush has been in office, the number of Americans in this country living in poverty has grown by 6 million people. In total, 13 million children, including 4.7 million children under the age of six, now live in poverty because of this administration.

Health care costs have risen by 60 percent, and the number of uninsured keeps skyrocketing. More than 13 million Latinos alone continue to be uninsured.

The cost of college education increased by 40 percent because of this administration's misguided approach, forcing typical students to borrow $17,000 in Federal loans and leaving almost 40 percent of student borrowers in unmanageable debt.

Yet this bill cuts another $40 billion in vital programs, Medicaid, Medicare, student loans, and protects more than $70 billion in tax breaks for the wealthy. These programs are critical, not just to low-income people but to the working class Americans of this country.

The reality is that this legislation will do very little to reduce the budget. It will do nothing to help the most vulnerable in our society, and it will do nothing but continue on the wrong path, down the wrong road. Working men and women and children will continue to fall, and our senior citizens will also be caught up in that net.

The bill is not compassionate, it is not decent, and I do not support this legislation. I urge my colleagues to please protect the health and well-being of our citizens and to oppose this legislation.

Mr. PUTNAM. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Mr. Speaker, I thank the gentleman for the time.

For those of us that are deficit hawks and have pushed this bill to cut spending by $40 billion, I think it is important to recognize that between 1995 and 2005, we have seen spending swell on the part of the Federal Government from $1.5 trillion to $2.5 trillion. We have seen it go up $1 trillion in 10 years, and we could cooperate I guess to push it up another trillion, but let me explain my concerns with the national debt that is past $8 trillion and a deficit that is projected to hit $337 billion.

If we fail to confront this challenge of ever higher spending, crowding out the private sector, then the coming decades will be very difficult. Our standard of living will decline, and we will become a much more vulnerable country. This Deficit Reduction Act, this $40 billion, is a good start.

I think that we recognize that Americans, if they ran their personal finances the way the Federal Government has been run, we would be close to bankruptcy. I think Americans recognize it is time for belt tightening, and I think they know that an attempt to just keep increasing the public sphere at the expense of the private sphere and increasing taxes as a result is not the answer.

We need fiscal restraint. We need common sense when it comes to the budget. The future of all Americans depends on an economy free of crippling deficits, free of crippling tax hikes and free of a skyrocketing national debt.

It is incumbent on all of us that we step up to the plate and take responsibility for the Nation's future and that immediate future holds frankly a massive cost that I think all of us know is before us because we have a generation of baby boomers that are set to retire. If we are to ensure the long-term solvency of Medicare and Social Security then we must ensure not only that the budget is balanced but that we begin to pay down our enormous national debt.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from Alabama (Mr. DAVIS).

Mr. DAVIS of Alabama. Mr. Speaker, a number of us believe that there is no finer orator in the House than my friend from Indiana who runs the Republican Study Committee. I wish he were still here because I was struck by some words he used.

He said that this was the toughest budget since Reagan. He said that we were in very tough times and this budget was laden with tough choices.

Where my good friend and my very eloquent friend from Indiana was mistaken is who are we tough on. If this was truly the toughest budget in 20 years, if it had sacrifice all across the board, there would be support for it from the more conservative Members on this side of the aisle. If this were truly a budget that made tough choices and directed those choices at all of our people and not some of our people, there would be significant support for it from the conservative side of this aisle.

□ 1530

There is a reason why there is not. Because it is not tough on everybody.

The average person, Mr. Speaker, earning over $1 million a year, the people who will benefit so handsomely from the President's tax cuts, will get a tax cut this April 15 of $103,000. You could lower that number to $90,000, Mr. Speaker, and recoup every single Medicaid cut that is made.

And I am sure my friends on the other side will say, well, yes, we need to cut Medicaid. Understand who goes on Medicaid. It is not the people who are sitting in this Chamber or our families. It is people who are crushed at the poverty line or near the poverty line. They are the ones whose wages have been frozen. This budget would make them, 13 million of them, pay more than they do today for the cost of Medicare. And it is projected it would put 60,000 of them off the Medicaid rolls all together.

The one word we have not heard in this debate, and it ought to inform it, is not just the word "tough" but the word "fair."

Mr. PUTNAM. Mr. Speaker, may I inquire as to the time remaining on each side.

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman from Florida (Mr. PUTNAM) has 8½ minutes remaining and the gentlewoman from New York (Ms. SLAUGHTER) has 7½ minutes remaining.

Mr. PUTNAM. Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I am pleased to yield 2½ minutes to the gentleman from Illinois (Mr. EMANUEL).

Mr. EMANUEL. Mr. Speaker, last night the President said that in order to keep America competitive, we need to invest in America. So what is the first thing the Republican Congress does? It cuts $12.5 billion from college assistance for kids who are trying to go to college. It is a fascinating way to invest in America's competitiveness and the future. I wonder why nobody else has thought of that.

This is the Republican Congress where the rhetoric of the President last night meets the Republican reality. We kept $14.5 billion in subsidies to big oil and big gas companies, $22 billion in subsidies to the HMO slush fund, and $49 billion for the pharmaceutical industry, all the while we cut $12.5 billion from children trying to go to college, $8 billion from child support collection, and $16 billion from Medicaid.

We increased copayments and premiums leaving thousands of children without children's health care; but we kept in place the subsidies to big oil, big energy companies and big health care interests. What has happened in America?

We have seen a 38 percent increase in college costs in the last 5 years under the Republican watch, and you guys cut $12.7 billion from kids going to college in assistance. We have seen a 78 percent increase in the cost of energy; yet you subsidize Big Oil with $14 billion in taxpayer subsidies. We have seen a 58 percent increase in health care premiums, $3,600 to the average family in America. So what do you do? You cut 6 million children from health care and give the HMOs a $22 billion additional hit for their slush fund and give pharmaceutical companies everything they need.

This budget maintains the status quo. It says of the last 6 years, if you like the economy you have, if you like the investments you have, we will give you two more years to sign on for that.

It is time for a change. It is time for a new direction. It is time to put the American people first by investing in their education, their health care, and child support collection. It is not just the poor that are being affected. This budget and these cuts affect the middle class.

As my colleague from Alabama said, we have heard the word toughness, but we have not heard the word fairness from you. It is not every American in the boat. This is a narrow budget that divides America, rather than unites America.

While Americans are struggling with wages and incomes that have been stagnant for 5 years, with rising health care costs, rising college costs, and rising energy costs, you guys cut children on college assistance, nutrition, health care, and child support. When it comes to women and children, you give a whole new meaning to women and children first. It is time to put the American people first and to set new priorities and change the direction.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. RYAN).

Mr. RYAN of Ohio. Mr. Speaker, I thank the gentlewoman for yielding me this time.

This is kind of funny. It keeps happening. Any time we are having this debate, we hear words or phrases like "fiscal integrity" and how we are making these cuts because we are going to "balance the budget." No one is balancing any budget here. Who are we kidding? We are borrowing the money, billion upon billion upon billion, from the Chinese to fund tax cuts that are going primarily to the top 1 percent of the people.

You are making cuts that are hurting middle-class and poor kids. That is the fact. I am not making this up. But if we try to talk about cutting the energy subsidies or cutting the subsidies to the HMOs or asking simple things like having the Secretary of Health and Human Services negotiate the drug prices on behalf of the Medicare recipients, or asking for reimportation for drugs coming in from Canada to help lower the price, we cannot even hear a word from the Republican majority on these issues.

I had a meeting the other day with a school board member from Youngstown city schools. And I asked him, I said, how many kids live in poverty in this school district? He said, 90 percent. Ninety percent of the kids that go to school in Youngstown city schools live in poverty. And I asked him how many qualify for free and reduced lunch, to maybe get another number. He said, we don't even hand out the form any more because it costs us more to administer the form and the program than to just give it to everybody.

Ninety percent of the kids in Youngstown and you are cutting $12 billion from giving these kids an opportunity to go to college? No Child Left Behind is underfunded in Ohio $1.5 billion a year, just in Ohio alone, while some of these other countries are graduating much higher percentages of kids in math and science.

Let us wake up. We need these kids on the field competing in a global economy, and you will not get them there by cutting education and cutting health care. You want to compete with China? You want to compete with India? Fund these programs.

We are not saying you don't need to change some things, and we are willing to work with you to do it, but for God's sake don't cut programs to kids living in poverty and middle-class kids. You are cutting their health care, you are cutting their education, and you are giving tax breaks to rich people. Period, dot.

Mr. PUTNAM. Mr. Speaker, I continue to reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield 1½ minutes to the gentleman from Tennessee (Mr. FORD).

Mr. FORD. Mr. Speaker, I thank the gentlewoman for yielding me this time, and I want to first of all congratulate TIM RYAN, because I think he framed this debate as clearly as he should, and as clearly as it has been today, along with both ARTUR DAVIS and RAHM EMANUEL.

Mr. Speaker, I will yield to Mr. DAVIS to finish his point, but before doing that, the only point I wanted to make is that I thought I heard the President say all these things last night about making investments to make the country more competitive. And I just don't know if he knows you all are doing this today. Maybe we should call him and let him know. I am going to send him something, along with ARTUR and RAHM and TIM, to let him know what we have done, and maybe he won't sign this if and when it arrives on his desk.

I want to clarify something my colleague, ARTUR DAVIS from Alabama, said. He said if we cut the tax cut that will go to millionaires this year, it is an average of $103,000. So if you earn $1 million and you are watching, listen closely. If not, it doesn't affect you. You get a $103,000 tax break if you are a millionaire. If we cut it to $90,000, what can you do?

Mr. DAVIS of Alabama. Mr. Speaker, will the gentleman yield?

Mr. FORD. I yield to the gentleman from Alabama.

Mr. DAVIS of Alabama. Mr. Speaker, I thank my colleague for yielding to me. That cut was from $103,000 to $90,000.

Mr. FORD. And that is still a tax cut; is that right?

Mr. DAVIS of Alabama. It is still a tax cut, and it would yield approximately $2.6 billion, enough to recoup the Medicaid cuts.

And I make that point, Mr. FORD, simply because last night we heard the President tell us that we are all bound together in this long twilight struggle against terrorists around the world. And if we are all bound together to face terrorists around the world, it is very interesting that a day later we sever a lot of those bonds when it comes to whether we care about education or whether we care about health care.

The President had it right last night. Either we are connected to each other or we are not. And that is where this budget is so wrong.

Mr. FORD. So, Mr. Speaker, so if millionaires took a $65,000 tax cut as opposed to a $103,000 tax cut, we could pay for the student loan program.

Mr. PUTNAM. Mr. Speaker, both of the gentlemen are very eloquent, except they miss the overall point, which is that we are debating the technical amendments to what the House passed long before the President's State of the Union speech.

The three changes that were made by the Senate, that we are dealing with today and that are different than what we have already voted on as a body, deal with a value-based purchasing report, a MedPAC report, MedPAC being the Medicare Payment Advisory Commission, and medical liability. Three items that, for technical rule reasons in the Senate, were stripped, causing the bill to be sent back over here.

The timing of this, situated as it is the day after the President's State of the Union, is irrelevant to the overall issue. We have already voted on this except for these three changes.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield 20 seconds to the gentleman from Tennessee (Mr. FORD).

Mr. FORD. Mr. Speaker, just for the gentleman from Florida, you are saying that these cuts that are being talked about today are imaginary, or are they real? And I would be happy to yield to the gentleman. Are they imaginary cuts or real cuts? Maybe we have got the wrong bill.

Mr. PUTNAM. Mr. Speaker, will the gentleman yield?

Mr. FORD. I yield to the gentleman from Florida.

Mr. PUTNAM. Under your definition, sir, people continue to get more money year after year after year and it is a cut. Under your definition.

Mr. FORD. Reclaiming my time, Mr. Speaker, I love Mr. PUTNAM, but he knows he is wrong.

Mr. Speaker, we are making cuts. The President asked us to make investments. That is the reality of what we are doing here this afternoon.

Ms. SLAUGHTER. Mr. Speaker, may I inquire how much time remains on my side.

The SPEAKER pro tempore. The gentlewoman from New York has 1 minute and 10 seconds remaining.

Ms. SLAUGHTER. Mr. Speaker, I yield 10 seconds to the gentleman from Alabama (Mr. DAVIS).

Mr. DAVIS of Alabama. In 10 seconds, for the 13 million families who will have to pay more money for health care, that is a cut. Because that is less money they can use on food that now they are having to use on health care. And these are the poorest people in our country, Mr. PUTNAM.

Mr. PUTNAM. Mr. Speaker, I am pleased to yield such time as he may consume to the gentleman from Iowa (Mr. NUSSLE), the distinguished chairman of the Budget Committee.

Mr. NUSSLE. Mr. Speaker, I thank the gentleman for yielding me this time.

It is interesting to listen to my colleagues who talk about the President's suggesting we invest in America and somehow they heard government only invest in America. Isn't that interesting?

I can tell you that my folks that I represent in Iowa, when they hear invest in America or invest in Iowa or invest in your community, they think that means them. They think that means Americans investing in America.

Unfortunately, we actually have people, ladies and gentlemen, who believe that when somebody says invest in America, what that means is take money from Americans, take it to Washington, invent fancy programs, fill fancy white buildings full of bureaucrats, create all sorts of bureaucracy and red tape and paperwork, and have those bureaucrats, with our blessing, invest in America.

Now, I do not know about you, but I heard it a little differently last night. The President and I, and those of us who agree with the plan that we have adopted this year, believe in and trust that people make better decisions about their daily lives and the investment in their businesses and their families and their communities much better than the government can for them.

We have a plan. That plan calls for growing the economy by letting people make those decisions with their money. We talk about money out here all the time as if it is our money. It is not our money. Ladies and gentlemen, this is the taxpayers' money. They are the ones who earn it. They are the ones who sweat for it. They are the ones who are concerning themselves every day about ensuring that they can support themselves, let alone being able to send a little bit of it out here.

And the reason why we believe, and it has worked, that we believe that reducing taxes actually helps us grow the ple is because the facts are in. In the last 17 quarters, as a result of us reducing taxes, our economy has grown.

We have heard people come out here today to say when you cut taxes it means the government is going to have less money. It is exactly the opposite. I think we need some of the President's science and math education for maybe even some of us. Because every time in our history that we have reduced taxes, the math shows us that the economy grows and actually more revenue comes into the Treasury. Last year was the largest increase in revenue to our Treasury, in a year when we reduced taxes. Now, you cannot explain that unless you understand basic economics.

Our plan calls for growing the economy and reducing spending, and that is exactly what we did this last year. We held the line on nondefense, nonhomeland security spending because we wanted to protect our country, but we knew we had to reform spending in the discretionary accounts.

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Mr. Speaker, today marks the opportunity to close the books on this process, reform government spending.

Let me remind you what kind of government we have got. In so many instances, we have what I believe is an ineffective Katrina bureaucracy. We saw a little bit of that down in the gulf coast, but what we all know is that same Katrina mentality and bureaucracy permeates so much of our bureaucracy here in Washington. Unless we constantly are vigilant about ensuring that we reform government at all levels, we are never going to get our arms around fiscal discipline and fiscal responsibility.

Finally, this achieves savings, not cuts, not gouging people. My goodness, the kind of rhetoric you hear out here. We are trying to make a modest reduction, giving people at the local level, our Govenors and our authorities at the State level some flexibility so they can deliver a much better product for the people that we care about and are concerned about. These programs need our reform. You cannot assume because you have always done it one way, just continuing it without this kind of oversight and reform will continue to get good results.

These programs have gotten good results in many instances, but too many of them are not achieving the results we need. We need those results. We can achieve savings. We have a plan to accomplish it. It allows us to do so by growing the economy, and I believe it is a fiscal plan that will continue to get us the success that we have seen.

In the last 2 years, we have experienced $200 billion of deficit reduction as a result of this plan. I have no doubt we will hear from one more speaker that will second guess everything that we have done, and I will remind that speaker that the President last night, while they love to quote him about everything else, also said second guessing is not a plan, is not a strategy. If you have got a plan, if you have a strategy, we would love to see it. But thus far we have not seen it. We have a plan. It is working. We need to adopt it today, and we need to get about the business of reforming this government, achieving savings and ensuring that the taxpayers are supported in this body.

Mr. PUTNAM. Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield the balance of my time to the gentlewoman from California (Ms. PELOSI), the distinguished minority leader.

Ms. PELOSI. Mr. Speaker, I thank the distinguished ranking member on the Rules Committee for her leadership in fighting the fight for a budget that is a reflection of the values and priorities of the American people and her leadership in opposition to what the religious community has called this immoral Republican budget.

Mr. Speaker, yesterday and later today we will continue the debate on a resolution honoring and celebrating the life and service and leadership of Coretta Scott King.

One of the stories I like best about the Kings is in the 1950s they traveled to India to learn more about nonviolence, the nonviolence practiced by Mahatma Gandhi, and they brought that back to America and it was a major part of the civil rights movement.

Why I mention it today is because in Sanskrit the name for nonviolence is also translated "truth insistence." Wasn't that what the civil rights movement was about, the insistence on truth in our country? Truth insistence is exactly what is required when we talk about the Republican budget.

Last night in the State of the Union address we heard a great deal of rhetoric about investments the President was going to make in education, research and development, and you name it. But that rhetoric is a far cry from the reality of the budget that the Republicans are bringing to this floor today, which not only does not make those investments in the manner described by the President, it indeed cuts them.

Last night in the State of the Union address the President talked about the importance of educating our children to help keep America competitive. But this budget today tells a different story. The truth is the budget follows the track record of woefully underfunding No Child Left Behind. It increases the cost of student loans to America's families who are struggling to send their children to college. How can that help make America more competitive?

Every time we invest in education, we bring more revenue into the Treasury than any other initiative you can name. No tax cut, no tax credit, no anything, nothing brings more to the Treasury of the Government than investing in the education of our people. So these were not only wrong cuts in terms of competitiveness, they also increase the deficit.

Last night the President said in his State of the Union address, "A hopeful society gives special attention to children." Now I would like to know what kind of attention that the President is giving to the children because the truth is this budget today slashes funding to help care for America's poorest children. It drastically cuts funding for the initiative that enforces the payment of child support. Others have talked about nutrition, and of course good nutrition has a direct impact on the education of these children.

The truth is that this budget is an exact contradiction of the rhetoric that the President presented last night.

Now let us look at the title of it. It is called the Budget Reconciliation Spending Cuts Act. Yet the truth is the policies in this budget will increase the deficit by $300 billion, heaping mountains of debt on our children, and the sad truth is all of this to pay for a tax cut for the wealthiest people in our country.

Republicans will try to say to defend these measures, as evidence of their so-called fiscal responsibility, that this is about small government. But the fact is, the truth is, that this is not about small government, this is about small-minded, petty government that does not meet the needs of the American people.

Republicans will try to defend these measures again by calling for fiscal responsibility, and I would like to talk about the $42 billion difference. It has been widely reported that this bill had a chance, there was an opportunity to reduce excessive Medicare payments that the Federal Government makes to big business HMOs because of a loophole in the law. There was bipartisan agreement that this would take place. But in a closed-door meeting the Republicans eliminated that, and they gave a $22 billion bonanza to the HMOs, and this at the expense of America's children and those in need.

We also were going to get better drug prices for Medicaid, and this relates to the children, from drug manufacturers and eliminate a Medicare slush fund for managed care. By doing those two things, we were going to save the taxpayers another $20 billion. So it was a $42 billion difference in this budget, at the expense of children and seniors to the benefit of the industries to whom the Republicans in Congress are handmaidens.

In the conference committee, without a single Democrat in the room because Democrats were not allowed in the room, this $42 billion worth of savings disappeared from the budget. The $42 billion difference, that is the difference between a closed and corrupt Congress and an open and honest Congress.

Since Democrats did not get a seat at the table in the writing of this bill, who did? America's low-income children did not get a seat at the table, and they are paying the price in their education, their health care and child support.

America's seniors did not get a seat at the table because the bill makes it harder for seniors to qualify for long-term care, and even forces some to forfeit their homes in order to pay for long-term care.

The truth is the drug manufacturers, managed care companies and HMOs clearly get a seat. They came up the big winners with the special interest driven Medicare prescription drug bill that was foisted on America's seniors, and they came up big winners in this budget bill. It would be nice if America's children and seniors had a seat at the table instead of big business.

My colleagues, the truth is that, as our friends in the religious community, almost every religious denomination in the country, has been lobbying against this legislation. They call it a budget deprived of spiritual hope and of nourishing resources. That is the truth about the Republican budget and the Democrats insist that the public know it. I am very proud that we will have 100 percent of our Democratic Members voting "no" on this immoral budget.

Mr. PUTNAM. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, once again the other side is trying to have it both ways. In alternating speaker form, we are in turn told we are awash in a sea of red ink and that this measure is not adequate to deal with the deficit, and then the next speaker says we have consistently underbudgeted for the Nation's priorities and have not spent anywhere nearly enough money for all of the things that they would like to see spent.

Their metaphors are as limitless as their desire to spend the hardworking Americans' money in the sense we have heard that we are going to throw away Tiny Tim's crutches when we did this at the end of last year, we were told that we were the Grinch, and we were quoted to extensively from literary and historic figures, and the bottom line is this: We have an explosion of baby-boomers in this country that will create a demographic crisis and we have an explosion on the mandatory side of our budget that will consume two-thirds of it within less than a decade. Already half of the Federal budget is on autopilot. This is the first step since 1997 in beginning to get our arms around that problem.

I urge Members to support this first step towards long-term fiscal discipline and fiscal health for this Nation.

Mr. FARR. Mr. Speaker, for the third time, I rise in strong opposition to the Deficit Reduction Act (S. 1932). This is a second chance to right a wrong and I urge my colleagues to vote wisely. With a deficit of more than $300 billion in 2005, there is little question that something needs to be done about the federal budget. But S. 1932 is nothing more than smoke and mirrors because it will actually increase the deficit. Let me explain.

I've heard loud and clear from my constituents that they do not support this slash and burn budget. They do not want over $11 billion in cuts to student loans or $6.4 billion in cuts to Medicare, particularly at this time when the prescription drug plan is failing miserably. We already have a shortage of doctors on the Central Coast who accept Medicare patients, and this Republican-drafted bill freezes physician payments for doctors who accept Medicare patients. This misguided attempt at deficit reduction will further exacerbate our physician shortage.

This kind of penny-wise pound-foolish legislation translates into a greater strain on state and local resources. And when our state, county and local governments cannot pick up the slack, families and children will only be left with smoke and mirrors. I urge my colleagues to stand up for middle class Americans and defeat this bill.

Mr. SHAYS. Mr. Speaker, it is my understanding that there has been some confusion about Congress's intent regarding the new section 1937 of the Social Security Act, as added by the Deficit Reduction Act. This provision will give states the flexibility they need to provide benchmark benefit packages for Medicaid beneficiaries. Congressional intent is clear, however, that a State may not fail to provide Medicaid Early and Periodic Screening Diagnostic and Treatment (EPSDT) services for children.

To address this confusion, the Centers for Medicare & Medicaid Services (CMS) has issued a statement that clarifies section 1937 to specify that States requesting benchmark benefits will be required to provide EPSDT services for children. I submit for the RECORD the CMS statement to help clarify Congressional intent regarding this provision.

STATEMENT BY MARK B. MCCLELLAN, M.D., PH.D., ADMINISTRATOR, CENTERS FOR MEDICARE & MEDICAID SERVICES

Questions have been raised about the new section 1937 of the Social Security Act (SSA) (as added by the Deficit Reduction Act of 2005) that permits states to provide Medicaid benefits to children through benchmark coverage or benchmark equivalent coverage. If a state chooses to exercise this option, the specific issue has been raised as to whether children under 19 will still be entitled to receive EPSDT benefits in addition to the benefits provided by the benchmark coverage or benchmark equivalent coverage. The short answer is: children under 19 will receive EPSDT benefits.

After a careful review, including consultation with the Office of General Counsel, CMS has determined that children under 19 will still be entitled to receive EPSDT benefits if enrolled in benchmark coverage or benchmark equivalent coverage under the new section 1937. CMS will review each State plan amendment (SPA) submitted under the new section 1937 and will not approve any SPA that does not include the provision of EPSDT services for children under 19 as defined in section! 905(r) of the SSA.

In the case of children under the age of 19, new section] 937(a)(1) is clear that a state may exercise the option to provide Medicaid benefits through enrollment in coverage that at a minimum has two parts. The first part of the coverage will be benchmark coverage or benchmark equivalent coverage, as required by subsection (a)(1)(A)(i), and the second part of the coverage will be wrap-around coverage of EPDST services as defined in section 1905(r) of the SSA, as required by subsection (a)(J)(A)(ii). A State cannot exercise the option under section 1937 with respect to children under 19 if EPSDT services are not included in the total coverage provided to such children.

Subparagraph (C) of section 1937(a)(1) permits states to also add wrap-around or additional benefits. In the case of children under 19, wrap-around or additional benefits that a state could choose to provide under subparagraph (C) must be a benefit in addition to the benchmark coverage or benchmark equivalent coverage and the EPSDT services that the state is already required to provide under subparagraph (A) of that section. Subparagraph (C) does not in any way give a state the flexibility to fail to provide the EPSDT services required by subparagraph (A)(ii) of section 1937(a)(1).

Mr. THOMAS. Mr. Speaker, I submit the following for the RECORD.

Mr. Speaker, we are here once again to pass the Deficit Reduction Act. The House approved it in December, but another vote is required due to technical changes made in the Senate. This bill is an important step in removing wasteful and unnecessary spending from the budget. Certainly, more can always be done, but this compromise legislation is a first step on what will be a long road of getting our mandatory spending programs under control. The Conference Report reduces the deficit by more than $35 billion over the next five years, nearly $8 billion of which falls into the Ways and Means Committee's jurisdiction.

Under this Conference Report, the Continued Dumping and Subsidy Offset Act, commonly known as the "Byrd amendment," will be permanently repealed, after a brief two-year phase out. The Byrd amendment is not a trade remedy; it is corporate welfare which benefits very few companies and results in negative consequences for many domestic manufacturers—as recently identified by the Government Accountability Office. In addition, it is inconsistent with U.S. international trade obligations. Repealing the Byrd Amendment is the only way to end retaliation against U.S. exports resulting from this violation.

This legislation will reduce wasteful federal spending by eliminating a loophole that currently allows states to claim federal matching funds for spending federal child support incentive funds. The incentive payments will continue, providing states a total of $2.4 billion over the next five years. But states won't get additional federal funds when they spend these federal bonuses, thus ending this double dipping. It is also important to note that this conference agreement maintains the current generous federal matching rate of 66 percent for child support administrative expenditures.

This Conference Report would also address some of the wasteful spending in Medicare while improving quality in the program. For instance, under the legislation, Medicare will pay for service and maintenance of beneficiary-owned durable medical equipment when repairs are actually required, as opposed to current law, which pays regular service payments regardless of whether the equipment is actually serviced. The bill also allows beneficiaries to own their oxygen equipment after 36 months of rental, while still providing coverage of necessary service and maintenance of that equipment.

To improve quality, the legislation includes provisions to encourage hospitals to follow evidence-based guidelines that can reduce the incidence of preventable hospital-acquired infections.

To explore ways to improve cooperation between health care providers and achieve savings in the health care system, the legislation provides for six gain sharing demonstration projects. As a conferee, I intend that these projects be tested broadly in order to produce valid results and policy recommendations. Also, I intend that these projects not be limited to six individual hospitals and that hospital chains and associations are eligible to apply and participate.

To ensure accurate payment for Medicare Advantage plans, the legislation codifies the phase-out of the budget neutrality factor for risk adjustments for those plans. This change will ensure that traditional fee-for-service and Medicare Advantage plans are being compared and paid accurately. This provision requires adjustments for differences in coding patterns, and the intent of that section is to include adjustments for coding that is inaccurate or incomplete for the purpose of establishing risk scores that are consistent across both fee-for-service and Medicare Advantage settings, even if such coding is accurate or complete for other purposes. Other common-sense reforms in the Medicare program will add up to billions of dollars in savings, while improving quality and service for beneficiaries.

Finally, this Conference Report will extend and improve the 1996 welfare reform law for the next five years. It continues current funding for the nation's welfare to work program, despite a 60 percent welfare caseload decline since 1996. And it includes provisions encouraging more work and self-sufficiency, promoting healthy marriages and responsible fatherhood, and increasing child care funding by $1 billion over the next five years.

Mr. Speaker, I urge my colleagues, once again, to support this legislation.

Ms. WOOLSEY. Mr. Speaker, I don't need to remind anyone in this Chamber of the saying that all politics are local. This budget has real effects on the local level, especially in my home State of California.

As a former welfare recipient, I am concerned with the increased work requirements to TANF. The Legislative Analyst's Office (California's version of the Congressional Budget Office) has said that the State will not be able to meet these new requirements, costing them $400 million in the first year alone.

These requirements undermine the bipartisan work that has been done on the State level to help people get the education they need to obtain a decent paying job. Work requirements without the support of education and child care fail to address the real needs of the working poor.

Mr. Speaker, this issue is too important to be buried in a budget conference report. I urge my colleagues to oppose this bill and give the reauthorization of TANF the careful consideration it deserves.

Mr. TOWNS. Mr. Speaker, I rise today in strong opposition to the Budget Reconciliation Conference Report. The draconian slashes presently included in the report will cause serious harm to the millions of low-income children and families, elderly and disabled individuals who rely on Medicaid for essential health and long-term services and Supplemental Security Income (SSI) and Temporary Assistance for Needy Families (TANF) for critical income support.

Of particular concern is the impact of Medicaid cuts on persons living with HIV/AIDS. Nationally, as well as in New York state, Medicaid is the single largest provider of health care for persons living with HIV/AIDS. There are an estimated 72,000 HIV-infected New Yorkers that are enrolled in Medicaid. This is a critical payer of health care for poor persons living with HIV. The proposed changes to the Medicaid system in the budget reconciliation bill would severely limit the ability of poor people with chronic health conditions to afford medical care and life-saving medications. Many residents of the 10th Congressional District of Brooklyn rely on Medicaid to access life-sustaining health care services and medications. I am strongly opposed to the Medicaid slashes because they especially jeopardize the lives of these individuals, who are among the most vulnerable in my district.

Also of grave concern is the negative impact of these slashes on education. This report includes the largest cut to financial aid in history. The significant cuts to the student loan program places an unfair burden on students and families in pursuit of the American dream of higher education. Many students, especially those studying at public universities like the City College of New York (CUNY), already face financial hardships. These student loan program cuts will make it even more difficult for struggling students to complete their education and will also force them to pay thousands of extra dollars back on their student loans. Clearly, this is unacceptable in our great Nation.

I urge all Members of Congress today to stand in agreement and rise up in opposition to this Budget Reconciliation Conference Report. The draconian slashes included in the report will prove disastrous to the health and well-being of the American people.

Ms. MATSUI. Mr. Speaker, this is the third time the House has voted on this budget package and there is good reason this legislation is having such a difficult time receiving final approval from Congress. While we all agree that this Nation cannot continue to spend beyond its means at the expense of future generations, this budget package will do nothing to right our precarious fiscal situation. If you take even a cursory glance at this legislation, it is readily apparent that the Republican method of deficit reduction is to disproportionately pass the burden on to hard-working Americans and the poorest among us. It ignores the idea of shared sacrifice the American people expect and deserve.

My constituents in Sacramento are outraged—I have received hundreds of phone calls and I have stacks of letters; they are astounded that this bill would cut funding for Medicaid, student loans and child support enforcement in order to finance up to $70 billion in tax cuts. Clearly, they have good reason to be outraged. In fact, I completely agree with them.

For instance, according to the Congressional Budget Office, the budget package will cut Medicaid funding by $28 billion over the next decade and impose new co-payments on participants. The result will be that 65,000 individuals will stop participating in Medicaid over the next decade, 60 percent of whom will be children. In total, 13 million Medicaid participants—over a quarter of whom are children—will face higher financial barriers to health care coverage.

Yet, at the same time Congressional Republicans went ahead with their plans to worsen the health care crisis in this country, they modified one provision in this bill to save the health insurance industry $22 billion over 10 years, according to the Washington Post. As their profits show, this industry is not suffering from falling profits, particularly when you factor in the lavish benefits they received from the President's disastrous prescription drug plan.

Congress needs to get back to common sense budgeting that fairly distributes the burden of deficit reduction. And we need to reinstitute the pay-go budget rules that brought us fiscal surpluses during the 1990s. Congress should be protecting the vital programs that our community depends on and the safety net that protects the weakest among us, while still ensuring long-term fiscal responsibility. I urge my colleagues to vote against this legislation so we can start reducing the deficit in a way that is in the best interest of the vast majority of the American people.

Mr. MORAN of Virginia. Mr. Speaker, I rise today in support of America's working families and in opposition to the spending cuts included in the budget reconciliation conference agreement.

While I am committed to restoring fiscal discipline to the House, cuts to essential social services that aid the most vulnerable in our society are not the appropriate way to achieve this goal. Indeed, none of the savings from the cuts included in this legislation will be used to pay down the deficit, but rather to help finance reconciliation tax cuts for the wealthiest in our society.

Under this bill, $39 billion over 5 years will be cut from social services programs that aid families in need. These spending cuts will negatively impact an estimated 58 million Americans who currently participate in Medicaid, student loans, child support, and Medicare.

The package includes $28 billion in cuts to Medicaid over 10 years, 75 percent of which affect provisions that will increase the number of the uninsured and under-insured by raising co-payments and premiums, cutting benefits, and tightening access to long-term care. The misplaced priorities inherent in this bill will force the neediest in our society to pay more for health care, increasing the growing ranks of the uninsured in America.

In addition to facing higher costs, Medicaid recipients will also be required to submit a passport or birth certificate to maintain or gain eligibility. This provision may prove to be a barrier for vulnerable families who participate in the Medicaid program. It will certainly result in fewer adults and children accessing Medicaid services or having to unnecessarily delay access to critical doctor visits or hospital stays.

By cutting $12 billion in student aid programs, this bill will make it more difficult for students to afford a college education. It will raise the cost of college for students and their families through increased interest rates and loan fees. This bill will be the largest student aid cut ever and shows a lack of commitment by the majority party for the education of our next generation.

Families and children who rely on child support payments and other safety net programs will also be hurt by this legislation; $2.6 billion will be cut from child support enforcement, foster care programs, and Supplemental Security Income. Regrettably, the reduction in child support enforcement funds will result in the loss of billions of dollars in potential child support payments, reducing child support collections by $2.9 billion over 5 years and $8.4 billion over 10 years. This is directly taking money out of the hands of single parents struggling to raise their children on their own.

Mr. Speaker, the bottom line is that the shameful cuts offered by the majority hurt our Nation's most vulnerable citizens in a direct effort to provide more tax cuts for wealthy Americans. I, therefore, strongly oppose this legislation.

Mr. BACHUS. Mr. Speaker, today, we have the opportunity to make significant improvements in our Federal Deposit Insurance system. We do this from a position of strength, as both the insurance fund and the banking industry are extremely healthy. What better time than to fine tune the system and establish a strong footing going forward.

BASIC PRINCIPLES OF REFORM: FAIRNESS AND FLEXIBILITY

The fundamental driving principles of reform were to provide fairness to all insured depository institutions by assessing each based on risk and provide the FDIC with greater flexibility to manage the fund to reflect different economic conditions.

Regarding fairness: The bill provides greater fairness to insured banks in many important ways. First, it authorized the FDIC to revise the risk-based formula to better reflect the risk each institution poses to the insurance fund. In providing this authority, our Committee looked to and relied upon examples provided by the FDIC regarding how the new system might work, including FDIC representations that about 42 percent of all banks would likely remain in the lowest risk category. We know that the very nature of bank loans involves risk. Therefore, we expect the FDIC to form a reasonable system that encourages appropriate risk-taking, consistent with safe and sound banking, and with premiums at a level that protect the best run banks from being overcharged and that don't inadvertently stop lending. In this bill, we make explicit that the size of the financial institution should not bar an institution from being in the lowest risk category. It is risk that matters, not size. We expect the FDIC to time assessments in such a manner that banks are able to plan for such an expense, thereby avoiding unexpected or untimely costs on the bank.

Secondly, the bill recognizes that about 10 percent of institutions have never paid a premium to the FDIC to support its operations. This has put a burden on those institutions that fully capitalized the insurance funds in the mid-1990s. Thus, this legislation provides that those institutions that capitalized the fund with initial credits—in proportion to each institution's financial contribution to FDIC—that are intended to offset premium assessments for many years to come. Those institutions that have not financially supported the FDIC would not have these credits and would begin to pay premiums to the FDIC. Moreover, should the insurance fund grow to the upper regions of the normal operating range for the FDIC, banks would be entitled to a cash dividend in proportion to their historic financial contributions.

Regarding flexibility: The bill provides FDIC greater flexibility to manage the insurance fund. The law that our bill replaces constrained the FDIC from charging most banks when the reserve ratio remained above a certain level and would force FDIC to charge high premiums, 23 basis points, at times when it made the least sense. Our bill allows the FDIC to manage the fund within a wide range, with the idea that assessments would remain reasonably constant and predictable.

Importantly, this bill is not intended to raise more money than what the FDIC would have collected under the old law. Nor is this bill intended to encourage the FDIC to build the fund to the highest possible level. In fact, we know that each dollar sent to the FDIC means that there are fewer dollars that can support lending in our communities. And as we considered this bill, we heard testimony that suggested that each dollar sent to Washington means that eight dollars of lending is lost. We cannot afford to restrict lending in our communities just to have more money added to the nearly $50 billion already in the insurance fund.

To protect against the fund growing too quickly, the legislation provides an automatic braking system that would return as a dividend 50 percent of any excess when the reserve ratio of the fund is above 1.35 percent. It also caps the fund level, providing a 100 percent dividend when the reserve ratio exceeds the upper limit of the range at 1.50 percent. This assures that money will remain in our communities. And while we provided the FDIC some authority to suspend the 50 percent dividend under extraordinary circumstances where it expects losses over a 1-year timeframe to be significant, our expectation is that this authority be used rarely and be reviewed each year when the new designated reserve ratio is set. The intention of this exception is that it be temporary and not a regular event, and that the FDIC communicates to Congress and the industry its justifications.

DESIGNED FOR THE FUTURE

Not only does the legislation provide fairness and flexibility, it also anticipates needed changes in the coverage levels over time. We know that inflation has cut in half the real value of the current insurance coverage since it was last changed in 1980. We also know that as the baby boomers move into retirement, that the current coverage level was inadequate to protect their life-long savings. Thus, this bill increased to $250,000 the insurance limit on retirement accounts.

The House has repeatedly voted overwhelmingly in favor of legislation that would automatically index coverage levels based on inflation. The other body has only recently passed deposit insurance reform. The indexing language included in the Senate reconciliation bill required the FDIC to "determine whether" to increase coverage based on the amount of inflation increase plus a long list of factors. The compromise language we have agreed to calls on the FDIC and NCUA to jointly consider just three narrow factors. Those factors are (1) the overall state of the Deposit Insurance Fund and economic conditions affecting insured depository institutions; (2) potential problems affecting insured depository institutions; and (3) whether the increase will cause the reserve ratio of the fund to fall below 1.15 percent of estimated insured deposits. If the FDIC and NCUA elect not to increase coverage, they must make the case based on these three narrow factors. The key language in the compromise is that the FDIC and NCUA, "upon determining that an inflation adjustment is appropriate, shall jointly prescribe the amount by which" coverage "shall be increased by calculating" the amount of inflation. This change in language, from "determine whether" to "shall jointly prescribe" is a clear statement that Congress is establishing a presumption that the agencies will increase coverage if warranted by past inflation.

STRONGER THAN EVER

This legislation will make the insurance fund even stronger than it already is and, in combination with the extensive regulatory and supervisory authorities of the FDIC, ensures that the fund and the banking industry will remain strong for a very long time.

Ms. JACKSON-LEE of Texas. Mr. Speaker, we have before us, for the third time, the Budget Reconciliation Spending Cuts Act. Reigning in spending is an idea that everyone in this House can agree on. Many of my colleagues and I are deeply disturbed where this $40 billion in spending cuts is coming from, however. In a time when it is getting harder and harder for the lower class to get by in this country, the Republicans are asking the poor, the downtrodden, the disabled and the young to sacrifice on behalf of the rich. I want to emphasize that these cuts are not meant to free up money to rebuild the gulf coast, or reduce the deficit, or even help our troops in Iraq. In fact, many of these proposed cuts will actually hurt those affected by Katrina. Overall, these spending cuts, when combined with $86 billion in tax cuts for the rich, will increase the deficit and the national debt, and increase the burden placed on our neediest families.

MEDICAID

In the United States, there are 45 million Americans living today without any health insurance at all. We have one of the worst records of all of the developed nations when it comes to providing health care to our citizens. This conference agreement cuts $6.9

billion over 5 years from Medicaid and State Children's Health Insurance Program, SCHIP. A large portion of the "savings" in Medicaid comes from language that will allow States to reduce the number of beneficiaries eligible for Medicaid, and increase the costs for others. The purported "savings" in the Medicaid program found in this conference agreement will be paid for directly out of the constituents' pocketbooks. This bill makes it even harder for families in need to afford healthcare.

MEDICARE

The conference report includes provisions that will reduce spending on Medicare by a net total of $6.4 billion over 5 years. The agreement reduces Medicare payouts for certain services, and requires beneficiaries to purchase, rather than rent certain medical equipment. In the agreement, also cut are payments to home health care providers, making it even more difficult to provide adequate care to the elderly.

STUDENT LOANS

As founder and co-chair of the Congressional Children's Caucus, as a person who understands the value of our Nation's youth, and as a mother of two, I really want to bring focus on the effect this bill will have on our Nation's children. If you have children who are in, or considering going to college, I want you to listen to this: this agreement, if passed today, will place an added burden of $12.7 billion directly on students over the next 5 years. This is accomplished through adding fees to the processing of student loans, and increasing the interest rates on paying back those loans. Students borrowing money for college will pay thousands of dollars more on their student loans. This is in the face of college costs up over 7 percent this past year alone. Voting "yes" for this agreement will harm one of our most precious national resources, our students.

CHILD SUPPORT ENFORCEMENT

This conference report cuts matching funds to child support enforcement. In other words, we are cutting $1.6 billion to fund that enforces collections on dead-beat dads. It is said that for every $1 put in to child care enforcement, $4 is collected for the families. This cut will seriously harm States' abilities to help families receive child support that is owed to them. The CBO estimates that this policy change will reduce child-support collections by $2.9 billion over 5 years and $8.4 billion over 10 years.

CHILD WELFARE

The bill cuts $577 million from foster care programs by reducing the number of children eligible for foster care. The burden of covering the newly ineligible children is shifted to the states, who are already eye-ball deep in budget crises and will leave some children without the care they need.

LIHEAP

Another important aspect of this bill is the addition of $250 million for Low-Income Home Energy Assistance Program for this year, and $750 million for next year. I appreciate the addition of this money into the conference report, but am concerned that this will not be sufficient. Especially around the gulf coast and in my district of Houston, we are experiencing abnormally high energy costs after the damage caused by Katrina and Rita, and many of the infrastructures of homes in the area has been damaged. I hope we can consider subsidizing this LIHEAP program further in this upcoming session.

JUDICIARY

As a member of the House Judiciary Committee, I would also like to briefly comment on the increased costs to citizens for access to our court system. The cost for filing in Federal appeals court will increase by 80 percent, and the cost for filing in Federal district court will increase by 40 percent. Fees for bankruptcy claims will also significantly increase. Increased fees are marginal to wealthy individuals, but could be restrictive to our poorer constituents who already feel that they have limited access to the judicial system.

KATRINA

I would also like to express my concern over the reduction of $400 million in Katrina health care relief funding from the original House bill. Further, unlike either the House or the Senate bills, this is a capped amount of money as opposed to a guaranteed funding stream. The $2.1 billion towards Katrina health care relief offered in this agreement is a fraction of what should be a much more substantial recovery package for the region. I again hope we can find it in our hearts and our budgets next year to further help the damaged gulf coast and its inhabitants.

Allow me to cite some of the specific cuts I, and our constituents across the country, will find so objectionable in this conference report:

Medicaid—The report cuts Medicaid spending by $6.9 billion nationwide.

Medicare—The report cuts Medicare spending by $6.4 billion nationwide.

Student Loans—The report cuts spending on student loan program by $12.7 billion over 4 years.

Child Support—The report cuts $1.6 billion from child support programs over 5 years. Custodial parents will receive $2.9 billion less child support over 5 years and $8.4 billion less over 10 years.

Child Welfare—The report cuts $577 million from foster care programs by reducing the number of children eligible for foster care. The burden is shifted to the States, who are already deep in budget crises and cannot afford this extra strain.

Judiciary—The report raises $553 million by increasing the fees paid to file for bankruptcy or for civil case filing.

This is not how we take care of our own in Texas, and this is not how we do things in the United States. This conference agreement launches an unabashed attack on the American way by slashing funding towards those that are most vulnerable. And don't you be fooled. These spending cuts aren't meant to offset the costs of rebuilding the gulf coast, these spending cuts are meant to offset tax cuts that will benefit the rich.

Mr. Speaker, we cannot allow the burden of the $40 billion in tax cuts to be placed on the backs of our Nation's neediest families. The decision to vote up or down on this legislation isn't a blurry line involving political ideology; it isn't a debate of republican vs. democratic philosophy. This is black and white. Passing this conference agreement will hurt the children, hurt the poor, hurt the old and hurt the young. I am strongly opposed to this legislation, and I implore my colleagues on both sides of the aisle to vote against these unthinkable cuts.

Mr. VAN HOLLEN. Mr. Speaker, we are here today because of a few minor changes the Senate made to this legislation after it passed the House last year. Those changes did not alter the defective nature of the underlying bill—or my fundamental opposition to it.

From the single largest cut to student aid in the forty year history of the Higher Education Act to new burdens placed on poor people and children served by Medicaid, this reconciliation package targets those with the least in order to pay—or I should really say, partially pay—for tax cuts that flow disproportionately to those with the most.

That's right: When this $39 billion in spending cuts is paired with the $122 billion in tax cuts the House has already approved, the Deficit Reduction Act actually increases the deficit by over $80 billion.

Furthermore, as recent press reports have highlighted, it didn't have to be this way. When it comes to restraining government spending, there are plenty of other choices we could have made—like eliminating $22 billion in overpayments to Medicare HMOs or terminating the $10 billion Medicare PPO slush fund or restoring $9.6 billion in drug company rebates to the Medicaid program. All of these provisions were stripped out of this conference report behind closed doors in the middle of the night.

The Republican leadership here in Congress has allowed special interest lobbyists to drive the legislative process. As a result, the powerful win—and the people we are supposed to serve lose.

Although several higher education provisions I authored related to curtailing excessive lender subsidies, strengthening the school-as-lender program and providing mandatory deferment for active duty military are included in this report, these positive steps are in and of themselves not sufficient to overcome the overarching misdirection of the underlying bill.

For that reason, we should reject this legislation and put an end to the special interest politics that produced it.

Mr. DAVIS of Illinois. Mr. Speaker, last night, the President charged us to encourage economic progress, fight disease, and spread hope in hopeless lands. Unfortunately, this budget bill ignores the economic wellbeing, health, and hopes of the poor within our own nation. Just the idea of some of these draconian measures is enough to send chills up and down one's spine because we are talking about programs that provide basic assistance to vulnerable, low-income families and individuals. The proposed cuts come almost entirely from healthcare and education. We are talking about cutting programs that provide help to people with disabilities, to people who make use of the earned income tax credit, to people who use Supplemental Security Income programs, to people relying on the Temporary Assistance to Needy Families, and to the elderly. Although I do not think it is the majority's intention, these cuts effectively target low-income and minority Americans.

I am disappointed and discouraged that education bears one-third—31 percent—of the budget cuts. Education is central to developing economic progress and a successful citizenry. These education cuts impede access to education for hundreds of thousands of low-income and middle-income students. Financial barriers are the key to determining whether most low income, first generation, and minority students will successfully complete college. Indeed, only 54 percent of lowincome students obtain degrees, compared to 77 percent of high-income students. I will soon introduce legislation to help meet the needs of these students, but I fear that it will not cover the ground lost here.

The societal costs of these cuts are great, and my state and district will dramatically feel their effects. In Illinois, residents with a bachelor's degree enjoy almost double the salary of those with only a high school diploma, a 2.5 percent lower unemployment rate, and a dramatically lower likelihood of receiving public assistance. Undermining the ability of individuals to access education affects their long-term ability to be productive citizens. Moreover, 26 percent of Illinois residents have a bachelor's degree, most of whom required student loans to help them attain their degrees. In my district, I have over 40 institutions of higher education, each of which will suffer from this legislation. At the University of Illinois at Chicago alone, almost 10,000 students depend on the Direct Student Loan program to enable them to attend college. The increased fees and interest rates in this bill will burden a dependent undergraduate student at this respected university with an additional $2,500 in debt. It will burden a dental student with an additional $19,000 in debt over the life of their loan.

This bill continues its war on the poor by undermining the adequate health care, with 50 percent of the proposed cuts coming from Medicaid and Medicare. Although health care coverage continues to be an issue of great concern to many Americans, the House leadership and the Bush administration have brought before us a bill that makes drastic cuts in our nation's health care commitments. Over the next 10 years, nearly $50 billion will be squeezed out of Medicare and Medicaid—the very programs that ensure health coverage for our most vulnerable citizens, low-income seniors, and children. The non-partisan Congressional Budget Office estimates that 65,000 Americans, 60 percent of whom are children, will lose access to Medicaid coverage by 2015. Furthermore, health care costs will increase for an estimated 20 million Americans and 1.6 million will lose vital dental, vision, and mental health services. I can just imagine what this will do to the more than 20 hospitals, health centers, and private physician practices in my district. Imagine the large number of children and poor people who will not be able to access adequate health care. These provisions ignore the needs of our most vulnerable and will have a very real impact in human terms.

Further, these cuts jeopardize the well-being of our most needy—children and families needing temporary assistance. This legislation fails to provide the funding necessary to support low-income families, especially foster care children living with grandparents and other relative providers. One of the most egregious aspects of the bill is that it rewards states for cutting caseloads rather than for successfully moving individuals from welfare to work. This reward system defines success as low-numbers without attention to whether our most vulnerable families are making it. This legislation fails to provide the financial support necessary for families to meet the new requirements, and it sets parents up for failure.

This bill also attacks relative caregivers on multiple fronts. As of 2003, 23 percent of foster children lived with relatives, and, unfortunately, these providers are much more likely than non-kin providers to live in poverty. Rather than support these families, this bill reduces financial support to children living with relatives, encourages non-relative placements, and jeopardizes the ability of states to provide safe and stable placements for children. Given that African-American grandparents serve as kinship care providers at higher rates than other racial/ethnic groups, the elimination of federally funded foster care assistance for thousands of children who live in low-income homes with relatives unfairly discriminate against relative caregivers who are most often African American. These cuts are particularly upsetting to me because I represent a congressional district with the second highest percentage of grandparents caring for their grandchildren.

The estimated "savings" from cuts in the welfare provisions are clearly at the expense of the states and families, and the cuts will negatively affect a state's ability to achieve safety, permanency, and well-being for children in the foster care system, in addition to creating a disincentive to care for these children in need. While noteworthy, this is unfortunately not the only place in this bill in which our most vulnerable citizens who hold little sway in Washington are squeezed to reward the connected and the wealthy.

This legislation comes up short in terms of the needs of businesses as well. Small businesses account for 99.7 percent of America's employers, they are the economic engine that drives America because they create three-fourths of all new jobs, employ half our workers, account for half of our gross domestic product and contribute more than 55 percent of innovations. Yet, the Deficit Reduction Act provides no money for the Small Business Administration's flagship 7(a) Loan Program. It is the agency's largest and most important program in terms of number of loans and program level supported. The 7(a) Program provides loan guarantees to eligible small businesses that have been unsuccessful in obtaining private financing on reasonable terms.

One of the worst offenses of this budget bill is that it legitimizes cutting the basic rights of education, safety, and health to support $70 billion in tax cuts for the extremely wealthy. In essence and in reality, we are talking about Robin Hood in reverse; that is, take from the poor and give to the rich. We are allowing a tremendous burden to be put on working class families to cover budget irresponsibility. Ford Motor Company and General Motors announced plans to lay-off 60,000 workers; workers who have families that are already trying to make ends meet in our in our sluggish economy. I am strongly in favor of our government operating on sound fiscal policies. I am in favor of reducing the deficit to the extent prudent and possible. I am in favor of budget reconciliation, but not on the backs of the poor, needy, and most vulnerable sectors of our society.

This bill is bad for Chicago, for Illinois, and for the nation. I can do nothing less than oppose this bill. As a matter of fact, it would be a dereliction of my duty and responsibility if I were to vote for the Deficit Reduction Act that is before us. I will vote prudently and sensibly.

Mr. ORTIZ. Mr. Speaker, when we passed the Federal budget last year, Democrats offered an alternative that would have achieved a balanced budget in 10 years, 10 years to spread out the pain of finally paying our bills again and freeing up the future for our children. When we passed this budget last spring, we were told there was no fat in it—it was all bone. When you cut bone, you fall down. Last year, the House struck out on this bill.

Today the House is striking out again even if this bill passes today, let it forever be known as the "3 strikes and you're out" budget. Strike 1: It hits hard our senior citizens, currently struggling under a difficult Medicare drug benefit, strike 2: It squeezes our middle class that pays the taxes and struggles to pay the household bills, and strike 3: It hits our children and students, who represent the future of this Nation.

Three strikes, today Congress hits all 3 components of American society with these budget cuts.

But let's get to why this bill is before us today. We're not here because the hurricanes busted the budget. It's not the war, it's just that many people in this House demand that we spend the Treasury's money on tax cuts for wealthier Americans. Period. It's about nothing more than spending this money on tax cuts today which mean tax increases on our children tomorrow.

Budgets are a reflection of who we are and what we value. The budget cuts offered in the House of Representatives today—which I oppose—simply do not represent the values that we say are important to us in this nation. We value each other, we value the rule of law, we value education and keeping our families safe. South Texans have been astounded at the depth of cuts in the Federal budget, which mean Texas students will be less likely to stay in school or go to college. Low income Texas children will be sicker with the cut in health benefits. Seniors will lose essential services.

Today's bill will increase the deficit by $17 billion, give more tax cuts to the wealthy, and hurt those who use student loans, who need health care and who benefit from rural programs. We have got to come up with a budget that represents the right priorities for students, seniors, Katrina families and rural Americans. We had an opportunity to vote for such a budget last spring, with the right priorities, that paid down the deficit—authored by John Spratt—but the House rejected it.

When the $38.8 billion in spending cuts in this package are combined with the total of $122 billion in tax cuts passed by the House in 2005, Republicans are increasing the deficit by $83 billion over the next 5 years. Plus, when an AMT fix is included over the 5-year period, Republicans are actually increasing the deficit by $321 billion. Calling this a deficit reduction bill is not truthful.

It is incumbent upon all of us in Congress to help all Americans, not just the wealthy few. We can do better than this—and we must. This package is cutting vital services upon which working families depend, including the following:

GOP conference report slashes Medicaid by $6.9 billion over 5 years and $28.3 billion over 10 years. The conference report allows states to charge Medicaid enrollees more to get the health care that they need—allowing substantial increases in co-payments and premiums for many low-income enrollees. This increased cost-sharing achieves savings of $1.9 billion of 5 years and $9.9 billion over 10 years. Studies have shown that this increased cost-sharing will result in a decline in enrollees' use of health care services and a worsening of their health status.

Seventy percent of the GOP Raid on Student Aid falls directly on students and parents. Seventy percent of the gross savings in higher education in the conference report are achieved by increasing college loan costs for parent borrowers and by continuing the practice of forcing student and parent borrowers in many cases to pay excessive interest rates on their loans.

GOP conference report will result in $8.4 billion in reduced child support collections. CBO has estimated that the conference report will lead to $8.4 billion in reduced child support collections upon which hundreds of thousands of struggling single parents rely, pushing more children into poverty and letting deadbeat dads off the hook.

Mr. MARKEY. Mr. Speaker, I rise today in strong opposition to this nearly $40 billion cut from programs to help poor and middle class Americans.

Last night, in the State of the Union, President Bush said, "our greatness is not measured in power or luxuries, but by who we are and how we treat one another. So we strive to be a compassionate, decent, hopeful society."

Yet the Republican's first act after the President uttered those words is to take hope and help away from those who need it most.

This Republican reconciliation bill slashes $11.9 billion from student loan programs to help kids go to college.

It cuts $6.4 billion from Medicare and makes elderly beneficiaries pay higher premiums for their health care.

It cuts $1.5 billion from programs to make sure that dead beat dads take responsibility for their actions and pay their child support.

And it takes away $6.9 billion from Medicaid which helps the poorest and sickest children and families in our country get healthcare.

And all of the money that is taken away from the poor and middle class will go straight into the pockets of millionaires. The Republican Reconciliation Tax Cut bill gives the top 1 percent of Americans who are millionaires will get $32,000 extra dollars a year. The average American family will get approximately $7.00 from that bill.

While the Republicans claim that this Reconciliation process will reduce the deficit, it will have the exact opposite effect.

The Republican Reconciliation package will increase the deficit by giving more and more tax cuts to the ultra-rich.

While cutting Medicaid, Medicare and student loans will do little to offset the $122 billion dollars in tax cuts that the Republicans have passed over the past year, it will have an enormous impact on the lives of average Americans.

What does this say about who we are and how we treat one another?

It says that this Republican Congress believes that it is more important to make their fat cat friends fatter than it is to provide education, health care and child support to those who need it most.

So much for compassion and decency.

This Republican bill does not simply rob the poor of resources. The proposed cuts rob the poor of opportunity by targeting programs that work to bridge the gap between rich and poor and even the playing field for all American families.

Our country deserves better than empty promises and recycled rhetoric from our leaders.

Vote "no" on this irresponsible, short-sighted and immoral Republican Reconciliation package.

Mr. ETHERIDGE. Mr. Speaker, once again, I rise in opposition to this misguided budget cut bill.

Let me state clearly that I strongly support tough budget discipline to reverse the policies of the past five years, to rein in the annual deficits, balance the budget again and pay off the national debt. I am tremendously proud that in my first term in the U.S. House, Congress worked together with the White House in a bipartisan manner to balance the budget for the first time in a generation. That cooperative action produced broad-based economic growth and record budget surpluses.

Unfortunately, the current White House and Congressional Republican Leadership have squandered those surpluses and passed reckless budget legislation that has replaced those surpluses with chronic deficits and record national debt. This bill offers more of the same.

This conference report contains harmful cuts to essential services and does nothing to reduce the budget deficits or offset the costs of recovery from Hurricane Katrina or the ongoing war in Iraq. At a time when American families are getting squeezed, the budget reconciliation package cuts funding for priorities including Medicare and Medicaid, student loans, child support and food stamps that assist the working poor and the middle class.

Specifically, this legislation will cut Medicaid by nearly $7 billion, cut Medicare by $6.4 billion, cut student loans by more than $12 billion, and cut child support by $8.4 billion. The bill also breaks the promise of the Farm Bill by cutting $2.7 billion from commodity, conservation and rural development funds. Although I am pleased this version of the bill abandons earlier attempts to open the Arctic Wildlife Refuge and coastal areas like the Outer Banks to oil and gas drilling and a few other modest improvements, these changes in no way compensate for the bill's fundamental flaws.

Congress should reject this legislation and go back to the drawing board to produce a responsible federal budget for the American people. I support pay-as-you-go (PAYGO) budget rules to enact budget discipline and restore fairness and equity to the budget process. I want Congress and the President to work together across the partisan divide to balance the budget once again, pay down the national debt and invest in our people and our country's economic competitiveness in the 21st century global marketplace.

I urge my colleagues to join me in voting against these senseless budget cuts.

Mr. BISHOP of Utah. Mr. Speaker, the Budget Deficit Act of 2005 has the noble goal of being a first step in a long time toward bringing fiscal sanity to the federal budget. Forty billion dollars is a small but correct step in regaining control of our budget, and we can not retreat and drop this burden on the backs of our citizens. For that reason it is important to pass this legislation, but like all bills with multiple titles there are some negative aspects hidden within the 700 plus pages of monetary policy.

I am very disturbed at the introduction of a certain new entitlement program with new mandatory spending in this reconciliation bill. The Academic Competitiveness Grant Program, inserted in Conference under Title VII, section 401 of S. 1932, authorizes $3.5 billion in new spending. It is wrong!

This new entitlement offers scholarships to worthy kids who have completed a "rigorous secondary school program of study"—that part is justifiable—"established by a state or local government education agency"—that part is obvious—"and recognized as such by the Secretary."—that part is illegal and indefensible. Current law specifically prohibits this control of state curriculum by the federal government. It reads, "No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system." (US Code, Title 20, Chapter 31, Subchapter ill, Sec. 1232a) The simple phrase, "recognized as such by the Secretary" will potentially extend federal intrusion into what is Constitutionally a state and local responsibility. The language does not openly insert the federal Education Secretary into education curriculum control, but opens the door for such control for the first time in history. A state not willing to subject itself to the deadening hand of federal control and regulation, will seriously harm students in that state and in their ability to finance a higher education. No state will be able to resist this type of financial extortion, and will ultimately succumb to the control of the federal Education Secretary. One can only hope this was not the subtle intent of the Senators who snuck this provision into the Conference Report, but it is the practical result.

Also frustrating is the lack of deliberation over the merits of this new program and its new spending. The Academic Competitiveness Grant Program was slipped into the Conference Report for S. 1932 after versions without the program passed both the Senate and House. This new federal program of mandatory spending was never heard by a committee in the House or Senate. It was never voted on the floor of either House or Senate. It is a clear violation of the Senate's "Byrd Rule." This program managed to bypass the scrutiny, input, and deliberation of regular order and was unwisely attached to a must-pass savings bill. In a bill dedicated to limiting spending, The Academic Competitiveness Grant Program creates a new almost $4 billion spending entitlement, diminishing the savings or making even deeper reductions in other legitimate programs.

Even if the Academic Competitiveness Grant Program is the panacea for poor student scores in math and science, it is the wrong approach. It threatens to undermine the responsibility of states over education; it threatens to undermine federal law; and it threatens to undermine freedoms guaranteed in the Constitution.

Mr. KUCINICH. Mr. Speaker, the bill before us today cuts approximately $12 billion from the federal student programs. Under this bill, the tax cuts for the super-rich are placed on the backs of students and their families. Under this bill, student borrowers—already saddled with $17,500 in debt—will be forced to pay even more for his or her college loans.

The bill raises student loan interest rate caps and raises student loan taxes and fees. It places billions of dollars in student aid at risk by cutting $2.2 billion in critical funds used to carry out and administer the student aid programs.

Some of the excessive subsidies to large lending institutions are finally cut but no protections are put in place to ensure that students will not have those costs passed on to to them as well. Rather than reinvesting those dollars into low-interest loans and additional grants, this bill uses the money for alleged deficit reduction.

This bill is a travesty. It masquerades as a budget reconciliation, but is truly a tax cut for the wealthy paid for by students. The Higher Education Act was intended to help provide all Americans, regardless of their income-level, with greater educational opportunities. The Act recognizes the shared benefits, by both society and the individual, of a higher education. But instead of working to further those goals, the changes to student loan programs that we are faced with today undermine the goal of HEA.

We must make it clear that we place students above tax cuts for the wealthy and defeat this bill. I urge my colleagues to stand with me and oppose H. Res. 653.

Mr. BACHUS. Mr. Speaker, I rise in strong support of the Deposit Insurance Reform legislation included in S. 1932, the Deficit Reduction Act of 2005.

I want to begin by thanking Financial Services Committee Chairman OXLEY for his relentless efforts on moving this deposit insurance reform legislation. He has shown tremendous leadership in steering this complex bill through the legislative process, and I am deeply grateful that he gave me the opportunity to work on this landmark piece of legislation. I also want to thank the Ranking Member of the Committee, Mr. FRANK, for his support. This was truly a bipartisan effort, and I believe we have a better legislative product because of that. In addition, I want to express my deep appreciation for Senator SHELBY's work on increasing coverage for retirement accounts to $250,000.

Deposit insurance reform has been thoroughly discussed and debated over several years. During both the 107th (H.R. 3717) and 108th (H.R. 522) Congress, I introduced comprehensive deposit insurance reform legislation. The legislation was a byproduct of recommendations made by the FDIC in early 2001, a series of hearings held in my Subcommittee on proposed reforms to the Federal deposit insurance system, and broad-based bipartisan cooperation. H.R. 3717 passed the House in the 107th Congress by a vote of 408–18, and H.R. 522 passed the House in the 108th Congress by a vote of 411–11. During this Congress, Congresswoman HOOLEY and I introduced this same legislation—H.R. 1185—with Chairman OXLEY and Ranking Member FRANK. On May 4, 2005, H.R. 1185 passed the House by a vote of 413 to 10. The legislation is supported by the American Association of Retired Persons (AARP) as well as all of the banking and credit union trade associations.

Federal deposit insurance has been a hallmark of our nation's banking system for more than 70 years. The reforms made by this legislation will ensure that this system that has served America's savers and depositors so well for so long will continue to do so for future generations.

What does the legislation do? First, it merges the separate insurance funds that currently apply to deposits held by banks on the one hand and savings associations on the other, creating a stronger and more stable fund that will benefit banks and thrifts alike.

Second, the bill makes a number of changes designed to address the "pro-cyclical" bias of the current system, which results in sharply higher premiums being assessed at "down" points in the business cycle, when banks can least afford to pay them and when funds are most needed for lending to jumpstart economic growth. By giving the FDIC greater discretion to manage the insurance funds based on industry conditions and economic trends, the legislation will ease volatility in the banking system and facilitate recovery from economic downturns.

Third, the legislation makes monumental changes to law with regard to deposit insurance coverage levels. The system has gone 25 years without such an adjustment—the longest period in its history—and the increases provided for in the legislation are critical if deposit insurance is to maintain its relevance. The legislation establishes a permanent indexation system to ensure that coverage levels keep pace with inflation by indexing coverage from its current level of $100,000 every five years. The indexation, which begins in 2010, applies to all accounts, including retirement and municipal accounts. Without these changes, deposit insurance will wither on the vine, which is an unacceptable outcome for the millions of Americans who depend upon it to protect their savings.

The legislation also immediately increases deposit insurance coverage available to retirement accounts, including IRAs and 401ks, from its current level of $100,000 to $250,000. Particularly in light of volatility on Wall Street and other developments that have shaken confidence in the markets in recent years, senior citizens and those planning for retirement need a convenient, conservative, and secure place for their retirement savings. With the higher coverage levels provided for in this bill, the American banking system will give seniors that safe haven. That is why the AARP has enthusiastically endorsed the coverage increases in this bill.

All of us have heard from community bankers in our districts about the challenges they face in competing for deposits with large money-center banks that are perceived by the market—rightly or wrongly—as being "too big to fail." By strengthening the deposit insurance system, the conference report will help small, neighborhood-based financial institutions across the country, particularly in rural America, continue to play an important role in financing economic development. The deposits that community banks are able to attract through the Federal deposit insurance guarantee are cycled back into local communities in the form of consumer and small business loans, community development projects, and home mortgages. If this source of funding dries up, it will have devastating consequences for the economic vitality of small-town America.

I want to again commend Chairman OXLEY for the tremendous leadership he has shown in steering this complex bill through the legislative process. I also want to thank Ranking Member FRANK, Congresswoman HOOLEY, Senator SHELBY, Senator SARBANES, Senator ENZI, Senator CRAPO, Senator ENZI, and Senator JOHNSON for all of their work on this legislation.

Let me also take this opportunity to thank the staff members on the House Financial Services Committee who worked on this legislation. Both Chairman OXLEY and Ranking Member FRANK are to be commended for assembling such a talented group of staff to work on Deposit Insurance Reform legislation. On the majority side, I would like to thank Bob Foster, Carter McDowell, Peggy Peterson, Tom Duncan, Peter Barrett and Dina Ellis who serves as my designee on the Committee. I want to give a special thanks to Jim Clinger who recently left the Committee to work at the Department of Justice. Without Jim's hard work, dedication and knowledge we would not be here today, and I am grateful for all of his efforts. I would also like to thank Larry Lavender, Warren Tryon and Kim Olive of my staff for their work on this issue. On the minority staff, I would like to thank the following staff members: Jeanne Roslanowick, Jaime Lizarraga, Erika Jeffers, Ken Swab and Matt Schumaker of Congresswoman HOOLEY's staff.

In closing, Mr. Speaker, let me just say that this legislation will promote the stability and soundness of the banking system. It will also provide assurance to working families, retirees, and others who place their hard-earned savings in U.S. banks, thrifts, and credit unions that their FDIC-insured deposits are safe and secure.

Mr. COOPER. Mr. Speaker, I would like to discuss a provision of S. 1932 that has caused great concern among hospitals throughout the State of Tennessee and in my own district. This provision relates to the calculation of Medicare disproportionate share payments for hospitals, commonly known as the DSH adjustment.

Congress created the DSH adjustment to provide appropriate funding to hospitals and other Medicare providers who care for a disproportionate share of low income inpatients. However, since its enactment into law, there has been a dispute between hospitals throughout the country and the Centers for Medicare and Medicaid Services (CMS) over how to calculate the DSH adjustment. Fifteen hospitals in Tennessee took CMS to court over this dispute in the case of Cookeville Regional Medical Center v. Thompson. At issue in Cookeville was whether CMS should include all Medicaid days related to a patient's stay in the DSH calculation, even if the patient was only eligible for Medicaid benefits through a federally approved Medicaid 1115 waiver program. CMS took the position it would exclude Medicare waiver days from the DSH calculation prior to January 20, 2000, in its discussion of an interim final rule promulgated on January 20, 2000.

On September 30, 2005, the United States District Court for the District of Columbia agreed with the Tennessee hospitals that Medicare waiver days must be included for the years 1994 to 2000. The Court determined that Congress intended to include these days in the DSH calculation when it enacted the Medicare DSH statute. CMS's interim final rule did not change that. For the Tennessee hospitals, the decision in Cookeville means up to $100 million in corrected payments covering the years 1994 to 1999. CMS appealed the District Court's September 30th decision on December 23rd.

Mr. Speaker, I thought that this resolved the matter, however I was disturbed to see language in S. 1932 that CMS might argue applies to the Cookeville case on appeal. Section 5002(b) of the Medicare Title of S. 1932 ratifies the interim final rule promulgated on January 20, 2000 by CMS and makes it effective on the date it was promulgated. In other words, CMS might attempt to accomplish legislatively what it could not accomplish in Cookeville.

I rise today to state, as a member of the House Budget Committee which has jurisdiction over S. 1932, the Deficit Reduction Act, that Sec 5002(b) should not be used to reverse the Cookeville decision and deny Tennessee its correct DSH payments as determined under the Medicare statute for the years 1994 through 1999.

Mr. MARIO DIAZ-BALART of Florida. Mr. Speaker, today House Republicans highlighted their commitment to sound fiscal policy and protecting the hard-earned income of the American taxpayer by passing the Deficit Reduction Act. This legislation finds almost $40 billion in savings through programmatic reforms to mandatory spending.

Along with my Republican colleagues, I supported this vital legislation because it ensures that Federal programs are more efficient for the beneficiaries that rely upon them, while safeguarding taxpayer dollars.

Unfortunately, the radical left wing could not even support this modest step towards making government more efficient. It seems that raising taxes and recklessly spending is the only fiscal policy they will support.

I applaud the Leadership of the House and Senate for bringing this legislation to the floor and greatly appreciate the President's support and commitment to fiscal responsibility and reducing the deficit.

Mr. HERGER. Mr. Speaker, I am pleased to join my colleagues today in support of S. 1932, the Deficit Reduction Act of 2005, which provides needed reform to several programs and slows the growth of mandatory spending. This conference report achieves important savings through the modification of certain programs, while making significant new investments in child care, child protection, and the promotion of marriage and families, among other changes.

This legislation includes a compromise on child support for families that provides more support directly to families, especially those who have left welfare. It saves $1.6 billion by ending state "double dipping" on Federal child support incentive funds. Additionally, this legislation provides $300 million for court improvements and services to assist families involved with foster care and adoption programs. Technical changes to the Supplemental Security Income program save an additional $725 million.

Importantly, this conference report reauthorizes the nation's welfare reform law, which was originally signed into law in 1996, expired in 2002, and has been temporarily extended a dozen times. Welfare reform has been a success in reducing poverty, ending dependency, and promoting work. Child poverty has fallen sharply since 1996 with 1.4 million children being lifted out of poverty. Meanwhile, work among welfare recipients has more than doubled as welfare caseloads have fallen by more than 9 million.

Despite these successes, we still have work to do. Currently, 58 percent of welfare recipients are not working or engaged in training programs to acquire necessary skills. Two million families continue to be dependent on welfare. In addition, far too many families break up or never form; these broken homes leave millions of children and parents at a higher risk for future welfare dependence.

The welfare reauthorization contained in this conference report will continue and strengthen the reforms enacted in 1996. While this legislation does not include all of the provisions passed by the House in 2002, 2003, and 2005, it includes the essential features of those proposals. With passage of this legislation, we will help even more low-income families and parents support themselves by promoting more work and stronger families. Child care funding will be increased by $1 billion over the next 5 years and States will continue to receive Record Federal welfare funds, despite huge caseload declines since 1996.

To complement these reforms, the conference report also provides $500 million for the promotion of healthy marriages and $250 million for programs to encourage responsible fatherhood. Independent studies show one of the most effective ways to reduce child poverty and improve child well-being is by promoting healthy, stable marriages. These programs are an important part of preventing future welfare dependence. Despite the often heroic efforts of single parents to work and care for them, children raised by single parents are five times more likely to live in poverty, five times more likely to depend on welfare, two to three times more likely to show behavioral problems, and twice as likely to commit crimes or go to jail. These parents and families need more help to overcome such obstacles, and this legislation provides funding for services to help parents lead fuller lives and better support their families without needing welfare.

I urge my colleagues to support this legislation, which builds on the success of the 1996 welfare reforms and offers brighter prospects for the future of millions of low-income families.

Mr. PUTNAM. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. SIMPSON). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

USA PATRIOT ACT 5-WEEK EXTENSION

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4659) to amend the USA PATRIOT Act to extend the sunset of certain provisions of such Act.

The Clerk read as follows:

H.R. 4659

Be in enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF CERTAIN PROVISIONS OF THE USA PATRIOT ACT.

Section 224(a) of the Uniting and Strengthening America by Providing Appropriate Tolls Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107-56; 115 Stat. 295) is amended by striking "February 3, 2006" and inserting "March 10, 2006".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Virginia (Mr. SCOTT) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4659 currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4659, to extend until March 10 crucial provisions of the PATRIOT Act set to expire this Friday.

On December 23 of last year, both Houses unanimously passed a short-term extension of the PATRIOT Act to preserve critical antiterrorism initiatives that were set to expire at the end of last year. Unfortunately, we must pass another extension today because a minority of Members of the other body have blocked an up-or-down vote on the conference report for H.R. 3199, the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005 which the full House passed by a broad bipartisan vote of 257-171 on December 14.

The opponents in the other body have repeatedly cited their concern for civil liberties as a justification for their obstruction. Ironically, the conference report that has been blocked contains dozens of vital civil liberty protections, many included at their request.

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The original PATRIOT Act contains none of these protections. As a result, we are once again forced to extend the current PATRIOT Act rather than to implement the current important civil liberties protections contained in the conference report that even its detractors acknowledge is an improvement over current law.

When the PATRIOT Act was first passed in October of 2001, I pledged to rigorously examine its implementation to ensure that new law enforcement authorities did not violate civil liberties. Since April of 2005 alone, the House Judiciary Committee received testimony from 35 witnesses during 12 hearings on the PATRIOT Act. In addition to hearings, I have requested, along with Ranking Member CONYERS, written responses from the Attorney General to detailed questions regarding use of the PATRIOT Act and whether any of its provisions have been used to violate individuals' civil liberties.

A chronology of these legislative and oversight activities follows:

OVERSIGHT OF THE USA PATRIOT ACT FROM OCTOBER, 2001, TO NOVEMBER, 2005:

1. November 9, 2005, Department of Justice classified briefing for Committee on the Judiciary staff on press accounts of FBI use of NSLs;

2. October 25, 2005, Department of Justice classified briefing for House & Senate Committees on the Judiciary and Committees on Intelligence staff on press accounts of FBI use of NSLs;

3. October 6, 2005, Department of Justice classified briefing for Committee on the Judiciary Members and staff on press accounts of mistakes in FBI applications to the Foreign Intelligence Surveillance Court under the USA PATRIOT Act;

4. July 12, 2005, letter from Assistant Attorney General William Moschella to the House Committee on the Judiciary responding to July 1, 2005, letter regarding use of the USA PATRIOT Act;

5. July 12, 2005, letter from Assistant Attorney General William Moschella to the House Committee on the Judiciary responding to May 19, 2005, letter regarding use of the USA PATRIOT Act;

6. July 11, 2005, letter from Assistant Attorney General William Moschella to Rep. Bobby Scott responding to questions regarding use of the USA PATRIOT Act;

7. July 11, 2005, letter from Assistant Attorney General William Moschella to the House Committee on the Judiciary regarding use of the USA PATRIOT Act;

8. July 5, 2005, letter from FBI Director Meuller to Senate Committee on the Judiciary responding to questions regarding use of the USA PATRIOT Act;

9. July 1, 2005, letter from Assistant Attorney General William Moschella to Rep. Bobby Scott responding to questions regarding use of the USA PATRIOT Act;

10. July 1, 2005, letter from House Committee on the Judiciary to the Attorney General regarding use of the USA PATRIOT Act; .

11. June 29, 2005, letter from Assistant Attorney General William Moschella to the Senate Committee on the Judiciary responding to April 5, 2005, letter regarding use of the USA PATRIOT Act;

12. June 10, 2005, House Committee on the Judiciary hearing on reauthorization of the USA PATRIOT Act;

13. June 8, 2005, House Committee on the Judiciary hearing on reauthorization of the USA PATRIOT Act;

14. May 26, 2005, House Subcommittee on Crime, Terrorism, & Homeland Security hearing on Material Witness Provisions of the Criminal Code & the Implementation of the USA PATRIOT Act; Section 505 that Addresses National Security Letters; & Section 804 that Addresses Jurisdiction over Crimes Committed at U.S. Facilities Abroad;

15. May 19, 2005, letter from House Committee on the Judiciary to the Attorney General regarding use of the USA PATRIOT Act;

16. May 10, 2005, House Subcommittee on Crime, Terrorism, & Homeland Security hearing on the prohibition of Material Support to Terrorists & Foreign Terrorist Organizations & on the DOJ Inspector General's Reports on Civil Liberty Violations under the USA PATRIOT Act;

17. May 10, 2005, Senate Committee on the Judiciary hearing on continued oversight of the USA PATRIOT Act;

18. May 5, 2005, House Subcommittee on Crime, Terrorism, & Homeland Security hearing on Section 212 of the USA PATRIOT Act that Allows Emergency Disclosure of Electronic Communications to Protect Life and Limb;

19. May 3, 2005, House Subcommittee on Crime, Terrorism, & Homeland Security hearing on Sections 201, 202, 213, & 223 of the USA PATRIOT Act & Their Effect on Law Enforcement Surveillance;

20. April 28, 2005, House Subcommittee on Crime, Terrorism, & Homeland Security hearing: Section 218 of the USA PATRIOT Act—If It Expires Will the "Wall" Return?;

21. April 28, 2005, House Subcommittee on Crime, Terrorism, & Homeland Security hearing: Have Sections 206 and 215 Improved Foreign Intelligence Surveillance Act (FISA) Investigations?;

22. April 26, 2005, letter from Assistant Attorney General William Moschella to Senator Dianne Feinstein responding to April 4, 2005, letter regarding use of the USA PATRIOT Act;

23. April 26, 2005, House Subcommittee on Crime, Terrorism, & Homeland Security hearing: Have Sections 204, 207, 214, & 225 of the USA PATRIOT Act, & Sections 6001 & 6002 of the Intelligence Reform & Terrorism Prevention Act of 2004, improved FISA Investigations?;

24. April 21, 2005, House Subcommittee on Crime, Terrorism, & Homeland Security hearing on Crime, Terrorism, & the Age of Technology—(Section 209: Seizure of Voice-Mail Messages Pursuant to Warrants; Section 217: Interception of Computer Trespasser Communications; & Section 220: Nationwide Service of Search Warrants for Electronic Evidence);

25. April 20, 2005, Senate Subcommittee on Terrorism, Technology, & Homeland Security hearing: A Review of the Material Support to Terrorism Prohibition;

26. April 19, 2005, House Subcommittee on Crime, Terrorism, & Homeland Security hearing on Sections 203(b) and (d) of the USA PATRIOT Act and their Effect on Information Sharing;

27. April 6, 2005, House Committee on the Judiciary hearing with Attorney General Gonzales;

28. April 5, 2005, Senate Committee on the Judiciary hearing on Oversight of the USA PATRIOT Act;

29. March 22, 2005, Department of Justice law enforcement sensitive briefing for Committee on the Judiciary Members and staff on the use of FISA under the USA PATRIOT Act;

30. September 22, 2004, Senate Committee on the Judiciary hearing: A Review of Counter-Terrorism Legislation & Proposals, Including the USA PATRIOT Act & the SAFE Act May 5, 2004, Senate Committee on the Judiciary hearing: Aiding Terrorists—a Review of the Material Support Statute;

31. May 20, 2004, Senate Committee on the Judiciary hearing on FBI Oversight: Terrorism;

32. April 14, 2004, Senate Committee on the Judiciary hearing on Preventing & Responding to Acts of Terrorism: A Review of Current Law;

33. February 3, 2004, Department of Justice briefing for House Committee on the Judiciary staff on its views of S. 1709, the "Security and Freedom Ensured (SAFE) Act of 2003," and H.R. 3352, the House companion bill, as both bills proposed changes to the USA PATRIOT Act;

34. November 20, 2003, request by Chairmen Sensenbrenner & Hostettler to GAO requesting a study of the implementation of the USA PATRIOT Act anti-money laundering provisions. Report was released on June 6, 2005;

35. October 29, 2003, Department of Justice classified briefing for Committee on the Judiciary Members & staff on the use of FISA under the USA PATRIOT Act;

36. September 10, 2003, Senate Subcommittee on Terrorism, Technology, & Homeland Security hearing on Terrorism: Two Years After 9/11, Connecting the Dots;

37. August 7, 2003, Department of Justice briefing for House Committee on the Judiciary Members and staff regarding the longstanding authority for law enforcement to conduct delayed searches & collect business records & the effect of the USA PATRIOT Act on those authorities;

38. July 23, 2003, Senate Committee on the Judiciary hearing on Law Enforcement & Terrorism;

39. June 13, 2003, letter from Assistant Secretary for Legislative Affairs at the Department of Homeland Security, Pamela J. Turner, to the House Committee on the Judiciary responding to questions regarding the USA PATRIOT Act;

40. June 10, 2003, Department of Justice classified briefing for Committee on the Judiciary Members & staff on the use of FISA under the USA PATRIOT Act;

41. June 5, 2003, House Committee on the Judiciary hearing on the U.S. Department of Justice, including its use of the provisions authorized by the USA PATRIOT Act;

42. May 20, 2003, House Subcommittee on the Constitution hearing: Anti-Terrorism Investigations and the Fourth Amendment After September 11th: Where and When Can Government Go to Prevent Terrorist Attacks;

43. May 13, 2003, letter from Acting Assistant Attorney General, Jamie Brown to the House Committee on the Judiciary responding to questions regarding the USA PATRIOT Act;

44. April 1, 2003, letter from the House Committee on the Judiciary to the Attorney General regarding use of the USA PATRIOT Act;

45. October 9, 2002, Senate Subcommittee on Terrorism, Technology, & Homeland Security hearing: Tools Against Terror: How the Administration is Implementing New Laws in the Fight to Protect our Homeland;

46. September 20, 2002, letter from Assistant Attorney General, Daniel Bryant, to the House Committee on the Judiciary responding to questions regarding the USA PATRIOT Act;

47. September 10, 2002, Senate Committee on the Judiciary hearing on the USA PATRIOT Act in Practice: Shedding Light on the FISA Process;

48. August 26, 2002, letter from Assistant Attorney General, Daniel Bryant, to the House Committee on the Judiciary responding to questions regarding the USA PATRIOT Act;

49. July 26, 2002, letter from Assistant Attorney General Daniel Bryant to the House Committee on the Judiciary responding to questions regarding the USA PATRIOT Act;

50. July 25, 2002, Senate Committee on the Judiciary hearing on the Department of Justice, including its implementation of the authorities granted by the USA PATRIOT Act;

51. June 13, 2002, letter from the House Committee on the Judiciary to the Attorney General regarding use of the USA PATRIOT Act;

52. April 17, 2002, Senate Subcommittee on Administrative Oversight and the Courts hearing: "Should the Office of Homeland Security Have More Power? A Case Study in Information Sharing;"

53. December 6, 2001, Senate Committee on the Judiciary hearing on DOJ Oversight: Preserving our Freedoms While Defending Against Terrorism;

54. December 4, 2001, Senate Committee on the Judiciary hearing on DOJ Oversight: Preserving our Freedoms While Defending Against Terrorism;

55. November 28, 2001, Senate Committee on the Judiciary hearing on DOJ Oversight: Preserving our Freedoms While Defending Against Terrorism; and

56. October 3, 2001, Senate Subcommittee on the Constitution, Civil Rights, & Property Rights hearing: Protecting Constitutional Freedoms in the Face of Terrorism.

Mr. SENSENBRENNER. The Inspector General has issued six reports and found no evidence that law enforcement has abused the PATRIOT Act. Opponents of the PATRIOT Act have repeatedly pointed to the Brandon Mayfield case as an example of abuse of the act. Members of Congress asked the DOJ Inspector General to examine whether the PATRIOT Act was abused in this case. On January 6, 2006, the Inspector General concluded: "We do not find any evidence that the FBI misused any of the provisions of the PATRIOT Act in conducting its investigation of Mayfield."

Even though no credible evidence of abuse of the PATRIOT Act has been received by Congress, the conference report adopted over 30 new additional civil liberty protections to address concerns about the potential for misuse. For example, the conference report contained several new reporting requirements that will provide additional information for congressional oversight of the act. These provisions establish specific procedures to consult legal counsel and seek judicial review for those wishing to challenge the national security letter or a section 215 order, two of the authorities most criticized by opponents.

Additionally, the conference report increases accountability by requiring the FBI director, deputy director, or executive assistant director to authorize applications that request the FISA court to issue a section 215 order for certain records, including library records, medical records, educational record and tax return records. The conference report also requires public reporting of the aggregate use of section 215 orders.

Because time does not permit me to detail all of the civil liberty protections contained in the conference report, the following list details each of those safeguards.

ADDITIONAL CIVIL LIBERTIES PROTECTIONS CONTAINED IN THE CONFERENCE REPORT ON H.R. 3199, THE "USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005"

The conference report contains the following additional safeguards:

Requires a description of a specific target in both the application and the court order for "roving wiretaps," and specific facts in the application that show that the target's actions may thwart surveillance efforts—if the target's true identity is unknown.

Requires that the FBI must notify the court within 10 days after beginning surveillance of any new phone for all "roving wiretaps." The notice must include the total number of electronic surveillances conducted under the court's multipoint order.

Includes new reporting requirements to Congress, including new details about the use of "roving" authority.

Requires that for delayed notice search warrants that notice of the search be given within 30 days of its execution, unless the facts justify a later date, eliminating the open-ended period of delay permissible under current law.

Allows for extensions of the delay period in giving notice of a search, but only upon an updated showing of the need for further delay. Also, it limits any extension to 90 days or less, unless the facts of the case justify a longer delay.

Adds new reporting requirements to Congress on the use of delayed notice search warrants.

Requires for section 215 orders, relating to investigator's access to business records, a statement of facts showing reasonable grounds to believe that the records or other things sought are relevant to an authorized investigation to protect against international terrorism or espionage. This provides additional safeguards to the original USA PATRIOT Act, which required the government only to certify that the records at issue were sought for an authorized investigation—without any factual showing.

Requires a three part test for section 215 orders that ensures the records are sought for: a foreign power or an agent of a foreign power; the activities of a suspected agent of a foreign power who is the subject of an authorized investigation; or an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of an authorized investigation. This test combined with the newly required statement of facts should mitigate concerns of government "fishing expeditions," while maintaining the flexibility for legitimate terrorism investigations.

Explicitly guarantees the right for recipients of section 215 orders to consult legal counsel and seek judicial review.

Requires high level approval by either the FBI Director, Deputy Director, or Executive Assistant Director for requests for certain records, including library records, medical records, educational records, and tax return records.

Limits the scope of section 215 orders to materials that could be obtained via grand jury subpoena or a similar court order for the production of records.

Limits retention, and prohibits dissemination, of information concerning U.S. persons.

Requires that the DOJ Inspector General conduct two separate audits of the FBI's use of section 215 orders that will examine: any noteworthy facts or circumstances relating to 215 orders, including any improper or illegal use of the authority; the manner in which such information is collected, retained, analyzed, and disseminated by the FBI; and an assessment of whether the minimization procedures protect the constitutional rights of United States persons.

Requires enhanced reporting to Congress of section 215 orders, including a breakdown of its use to obtain library records, medical records, educational records, and other sensitive types of records.

Requires public reporting of the aggregate use of section 215 orders.

Allows recipients of National Security Letters (NSLs) to consult with legal counsel.

Creates an explicit right to judicial review of NSL requests.

Permits a reviewing court to modify or set aside an NSL if compliance would be unreasonable, oppressive, or otherwise unlawful—this is the same standard used to modify or quash a subpoena in a criminal case.

Provides for judicial review of the nondisclosure requirements.

Adds a "knowing and willfully" standard that must be proven before someone who discloses an NSL can be subject to a 1-year misdemeanor offense.

Requires the DOJ IG to conduct two comprehensive audits of the FBI's use of NSLs.

Requires the Attorney General and the Director of National Intelligence to submit to Congress a report on the feasibility of applying minimization procedures to NSLs to ensure the protection of constitutional rights of U.S. persons.

Adds a new "sunshine" provision that requires annual public reporting on NSLs.

Provides for expanded congressional access to significant FISA reporting currently provided to the Intelligence Committees.

Includes a provision requiring the FISA Court to submit its rules and procedures to Congress.

Creates new reporting requirements for the use of emergency authorities under FISA.

Requires new reporting on the use of emergency disclosures of communications information made under section 212 of the USA PATRIOT Act.

Requires the Department of Justice to submit a report to Congress on the Department's data-mining activities.

Mr. SENSENBRENNER. I would remind Members, Mr. Speaker, of both Houses that the conference committee dissolved after the conference report was filed and the House acted in a bipartisan manner to approve it. I believe it is healthy to continue to debate the merits of the PATRIOT Act and to continue vigorous congressional oversight of its authorities. But it is also imperative that we not play political games with the vital tools our law enforcement and intelligence communities need to keep us safe from additional attacks on American soil.

We must not rebuild the wall of separation between the FBI and CIA and return to the pre-9/11 mindset that made America vulnerable to a terrorist attack. I urge my colleagues to join me in supporting this extension of the PATRIOT Act so as to give the other body the time to expeditiously pass the conference report on H.R. 3199. As recent events have highlighted, the threat of terrorism has not receded, nor has the urgency of continued vigilance.

Mr. Speaker, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I intend to support this short extension today. And doing so will give the Members an opportunity to work together to work on the conference report from the last Congress to include some commonsense improvements to ensure that there are appropriate protections for our citizens' civil rights and civil liberties.

Now, many of the provisions of the original PATRIOT Act for which concerns had been expressed have proven to be noncontroversial and have not operated to threaten civil liberties. Other provisions, however, have become more problematic. This extension will give us the time to look at things like the searches for libraries and other intrusive records; second, a standard for issuing national security letters which are essentially subpoenas without probable cause and without the normal checks and balances and a mechanism for making sure that personal information obtained under these letters is destroyed or properly protected.

A review of wire taps, I think, is appropriate, the roving wiretaps and also review of wiretaps under the President's new NSA policy which many legal scholars believe are just illegal. Those are spying on domestic law-abiding citizens. If there is probable cause that someone is breaking the law, obviously a criminal warrant could be given. We need to look and see exactly what is being done and review the law to determine whether or not they are, in fact, illegal. The elimination of totally unnecessary provisions in the conference report involving habeas corpus and expanding the death penalty had nothing to do with the original PATRIOT Act.

Mr. Speaker, as the chairman has indicated, there are improvements in the PATRIOT Act that are in the conference report, but we need to make sure that we have a version that can pass. We can pass a PATRIOT Act. The Senate has passed the PATRIOT Act several times on virtually a unanimous vote or even unanimous consent. The House Judiciary Committee passed unanimously the original PATRIOT Act until a late-night switch to another version that no one had read. But we can pass a PATRIOT Act; and if we use our time effectively, we can develop an act which serves the needs of law enforcement without allowing the unnecessary spying on law-abiding citizens.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. HYDE), my distinguished predecessor as chairman of the Judiciary Committee.

Mr. HYDE. Mr. Speaker, I take the floor to remind my colleagues of two home truths that may have been forgotten in the 4 years and 4 months since September 11, 2001.

The first of these is that we are a Nation at war. Decades of dealing with terror networks like al Qaeda as a matter of law enforcement or criminal justice helped bring us to September 11. We passed the PATRIOT Act because we understood that we are at war with international terrorism and that wartime measures were required.

The second home truth is that this war is being fought in a technological environment as different from World War II as the technology of World War II is different from the technology of the War Between the States. In a high velocity age of digital communications, the President and those most directly responsible for forestalling another attack of this sort that Osama bin Laden recently threatened must have the means appropriate to the life-or-death task at hand.

If my colleagues will permit me, there has been something surreal, even unreal, about the recent debate on this front. We seem to have forgotten that the terrorists who hijacked the plane that was flown into the Pentagon on September 11 received more than a dozen calls from al Qaeda operatives in Yemen while the terrorists were living in San Diego, and that the NSA, fearful of being accused of domestic spying, did not act.

Do we want a repeat of that? I do not think any of us do. But those who seem to imagine that President Bush is a greater threat to civil liberties than Osama bin Laden is to American lives and liberties need to stop politicizing this issue and work with the rest of us to strike a rational balance between a legitimate concern for civil liberties and the imperative need to equip the agencies responsible for our national security with the technological tools necessary to do their job in an environment where a few hours' delay might prove lethal.

Let us refuse to tie our hands again as our hands were tied before September 11, with the gravest results. The PATRIOT Act is as necessary today as the reauthorization of the draft was in the dangerous months before Pearl Harbor. A few months before that devastating surprise attack, this House came within one vote of essentially dismantling the U.S. Army by refusing to reauthorize conscription. Wiser counsels prevailed.

Let us rise to our responsibility as those who saw more clearly in mid-1941 rose to theirs, and let us give those charged with the weighty responsibility of providing for our national security in a new kind of war, fought with new kinds of weapons, the tools and the legal authority they need to do their crucial job.

Mr. SCOTT of Virginia. Mr. Speaker, I now yield such time as she may consume to the gentlewoman from California (Ms. HARMAN), the ranking member of the Select Committee on Intelligence.

Ms. HARMAN. Mr. Speaker, I strongly support powerful, flexible, and modern tools to detect the plans and intentions of terrorists who may be operating in our country. For that reason, I voted for the PATRIOT Act, even though I believed and still believe there is room for improvement.

We are being asked today to extend the PATRIOT Act for 5 weeks so that Congress can continue to work on some of its most controversial provisions. I think this extension makes good sense. We must extend it, mend it, but not end it.

To that end, I hope we can soon reach agreement on critical issues. First, we should modify the report to explicitly require that records sought under Section 215—commonly called the Library provision—be connected to a foreign power or an agent of a foreign power. This is the traditional FISA standard. A looser standard invites "fishing expeditions."

Second, we should explicitly state 215 recipients have the right to challenge a gag order in court.

Third, we should ensure that National Security Leaders are not used as back doors for getting library circulation, medical, tax and educational institutions records, and to modify the "conclusive presumption" language which makes it virtually impossible for NSL recipients to challenge "gag" orders in court. These and other critical changes to NSLs are included H.R. 4570—a bill that I, my colleagues on the Intelligence Committee, Representative CONYERS and other congressional leaders introduced in December.

As part of the negotiations, Congress must also insist that the President provide the facts on his NSA terrorist surveillance program. His refusal to brief the 36 Members of the intelligence committees, even though hundreds of people in the executive branch have been briefed, violates the requirements of the National Security Act of 1947.

The President also needs to explain why current law, the Foreign Intelligence Surveillance Act, does not provide an adequate framework for his program. Some claim that FISA cannot handle modern communications. But the fact is that the administration requested, and Congress passed as part of the PATRIOT Act of 2001, numerous changes to FISA to deal with phones, e-mail and the Internet. For example, Congress lowered the legal standards for FISA pen registers and trap-and-trace devices to make it easier to track the calls of terrorists who may be in the U.S. We also expanded these pen traps to cover e-mail and the Internet, and we granted roving John Doe wiretap authority to deal with the issue of unidentified terrorists switching phones.

Moreover, in the 2002 Intelligence Authorization Act, we extended the FISA emergency provision to 72 hours, so that surveillance is not delayed by the paperwork involved in getting a warrant. All of these authorities were powers that the President asked for and supported.

Mr. Speaker, FISA is modern, flexible, and effective. Since 1979, 19,000 warrants have been approved. Those who prepare the warrants tell me the process is efficient. If the President believes otherwise, he must come to Congress and explain why.

Mr. Speaker, the message conferees, and I am one, must send is that the American people want to do whatever is necessary to defend America. Let me repeat: the American people want to do whatever is necessary to defend America. But we also want our President to follow the law.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 1 minute to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, I do not believe that any of us in the backdrop of 9/11 have changed our attitude about the consistency and the value and the importance and the crucialness of fighting the war on terror. With not enough time to pursue that debate, let me simply say that this extension is crucial for a reasonable response to the needs of the American people to have their liberty protected. And I read very quickly a statement from "On Liberty," written in 1859: "Protection therefore against the tyranny of the magistrate is not enough. There needs protection against also the tyranny of the prevailing opinion and feeling."

This is an important extension, and I wish it were longer because it is crucial that we investigate beyond the infringement on library records, beyond the infringement in terms of wiretapping, is the President's NSA terrorist surveillance program and the lack of use of FISA.

☐ 1615

FISA is an effective tool, and as I heard the President use the term, to be hit again, obviously striking at the fear and the hearts of Americans. None of us want to be hit again, but we do want to protect our civil liberties. This extension will allow that very effective debate, and we will get the right way to fix the PATRIOT Act and protect America.

One of our Founding Fathers, John Quincy Adams, made the following statement regarding the importance of civil liberties:

> Individual liberty is individual power, and as the power of a community is a mass compounded of individual powers, the nation which enjoys the most freedom must necessarily be in proportion to its numbers the most powerful nation.

I have in my hand a copy of chapter 1 of John Stuart Mill's On Liberty, written in 1859. Selections of this chapter are quite fitting for today's proceeding:

> Protection, therefore, against the tyranny of the magistrate is not enough; *there needs protection also against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them*; to fetter the development, and, if possible, prevent the formation, of any individuality not in harmony with its ways, and compel all characters to fashion themselves upon the model of its own. *There is a limit to the legitimate interference of collective opinion with individual independence; and to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs, as protection against political despotism.* (emphasis added).

We passed the PATRIOT Act in 2001 6 weeks after the terrorist attacks of September 11. While the actual bill passed by wide margins in both Chambers of Congress, I made the record clearly reflect my strong reservations about provisions that pose serious threats to fundamental freedoms and civil liberties.

In my capacity as a member of the House Judiciary Committee, I joined a caucus of members in submitting letters to the administration and to the Department of Justice requesting documentation and statements that speak to the protection of individual rights in light of the potentially dangerous provisions contained within the bill.

Congress included in the bill a "sunset clause" that provides an expiration date for over a dozen provisions on December 31, 2005 unless we act to renew them. This fact was the impetus behind several hearings held by the committee in the first session of the 109th Congress. One of the most talked about issues surrounding the PATRIOT Act is the President's authority to conduct warrantless electronic surveillance searches—in essence, execute an order that allows the National Security Agency, NSA, to monitor, without a warrant, the international, and sometimes domestic, telephone calls and e-mail messages of hundreds and possibly even thousands of citizens and legal residents inside the United States.

I do not oppose the monitoring of telephone calls and e-mail messages when it is necessary for national security reasons. I oppose engaging in such monitoring without a warrant as the law specifies. We have a Foreign Intelligence Surveillance Court that was established for the sole purpose of issuing such warrants when they are justified. That court should have been allowed to decide whether the telephone calls and e-mail messages of American citizens and legal residents is justified by security needs. Doing this kind of surveillance without a warrant is illegal.

The day after this monitoring became public, President Bush admitted that he had authorized it but argued that he had the authority to do so. According to the President, his order was "fully consistent with my constitutional responsibilities and authorities." But his constitutional duty is to "take care that the laws be faithfully executed", article II, section 3; the law here clearly establishes well-defined procedures for eavesdropping on U.S. persons, and the fact is, President Bush ordered that those procedures not be followed. Further, from a statutory argument point of view, it is not credible that the 2001 authorization to use force provides authority for the President to ignore the requirements of FISA. It is very doubtful that the courts would sustain the President on this basis. From a constitutional standpoint, the President can try to make a case, although it is weak, that he does have constitutional authority to conduct warrantless wiretaps of American citizens in the U.S.. for national security purposes. Because the Supreme Court has never said he does not have this power, some regard it as an open question. However, passage of FISA seriously undermines this argument.

In closing let me note that this 6-week extension is not enough time to resolve the important issues that surround the PATRIOT Act. Further I am very disappointed, but not surprised that the Republicans have not been willing to come to the table to meet with us in an effort to come to some middle ground.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 1½ minutes to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Speaker, none of us here deny that some of the provisions of the PATRIOT Act are very useful in fighting the war on terrorism. No one wants the PATRIOT Act to be eliminated, but the PATRIOT Act should be amended to safeguard civil liberties.

Section 215 should be amended to provide meaningful protection from abuse by an overzealous government seeking sensitive and personal documentation. We should replace the mere showing of relevance standard with a three-part test that was the basis of the Senate compromise. Recipients of section 215 orders and of section 505 national security letters must be allowed a meaningful court challenge to the gag order, and the national security letter authority should sunset in order to guarantee Congressional oversight.

We also must be mindful, while debating this, of the President's claim of extraordinary power to wiretap Americans in conversation he says with people who are terrorists abroad. We do not know that is the only wiretapping that is going on. It may be thousands, may be hundreds of thousands of Americans are being wiretapped. We do not know. This is all secret. It only got out because it leaked.

The President claims the power to do this against the apparently plain language of the law. Many of us think it is illegal. Many people think this is illegal the President claims inherent power or that we authorized this when we authorized the use of force in Afghanistan. Well, maybe, but we ought to be holding hearings. It is an abdication of responsibility for the Judiciary and Intelligence Committees of this House not to be holding hearings on this.

Why should the hearings only occur in the Senate? Is this House not an equal branch of the government? So I urge this bill. This extension ought to pass so that we can work out the problem of modification of the PATRIOT Act, and we ought not to abdicate our responsibility. I urge the chairman of the Judiciary Committee to hold hearings so that we can examine these issues.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 1½ minutes to the gentleman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. Mr. Speaker, I rise in strong opposition to this legislation, because it should become crystal clear that the administration is currently and will continue to abuse, attack and outright deny the civil liberties of American citizens in defiance of our Constitution. This administration is illegally wiretapping American citizens, illegally collecting information on peace groups and illegally using signing statements to ignore the torture ban recently enacted by the Congress. The administration is violating the laws Congress has passed, and they are violating the U.S. Constitution.

I will not vote to give this administration any police powers until I am assured that their attack on our democracy is reined in. This Congress is walking away from the checks and balances of our democracy.

I do not believe that this Congress was zealous in oversight investigation prior to 2001. I am not a partisan. I have joined my colleagues in an oversight role prior to 2001. However, since that time we have ignored our constitutional duty, and 200 years of American democracy has suffered. The complacency of Congress is clearly viewed by the administration as a license to ignore the laws it disagrees with and demand Congress pass extended police powers.

I reject this complacency in defense of the United States Constitution. I will not vote to give a single new police power to this administration. The bill before us today enables the FBI to investigate any American for any reason, without the checks and balances of a judicial system. History tells us that unchecked police powers with little or no oversight will be abused, and citizens will be harmed.

The administration's record in this area is concrete proof that history repeats itself. I am for a strong police function that protects citizens of this great Nation, not a police function which nullifies our constitutional rights.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 1½ minutes to the gentlewoman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Mr. Speaker, in a difficult week, well, weeks, following September 11th, Congress passed the U.S. PATRIOT Act in an effort to comfort and protect a shocked and grieving Nation. Yet even in the face of all that, Congress found 16 of the PATRIOT Act's provisions to be so egregious and far-reaching that they were not made permanent, and were slated to expire within 4 years.

Yet somehow, here we are, in the midst of having learned that our President has authorized the NSA to spy on Americans without a warrant, still debating if it is a good idea to further compromise our privacy, and make permanent some of the PATRIOT Act's worse provisions, such as roving wiretaps and expanded access to personal information like medical, library, financial records.

Threats to our civil liberties and freedoms are mounting, an open-ended war, a President copping a "I can because I say I can" attitude, and a dangerous view of what executive powers are bestowed on our President in the U.S. Constitution. We cannot continue on this slippery slope.

As the elected leaders this country, we must vote to protect Americans from dangerous infringements of civil rights and liberties. That is why I encourage my colleagues to oppose extending the PATRIOT Act today.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

I would hope that we would give this brief extension to the PATRIOT Act and that we would use this time effectively to review the NSA wiretaps and also to use this time effectively to develop a bill that can pass both Chambers.

I yield back the balance of my time.

Mr. SENSENBRENNER. I yield myself the balance of my time.

Mr. Speaker, the two speakers who proposed this brief 5-week extension of the PATRIOT Act are symptomatic of the problems that the opponents of the PATRIOT Act have attempted to tar it with. They are wrong.

First, no Federal court has declared unconstitutional as violative of civil rights any of the 16 provisions of the PATRIOT Act that the sunsets were applied to, none whatsoever.

As I stated in my opening remarks, the Inspector General of the Department of Justice is required by the PATRIOT Act to report on civil rights violations to the two Judiciary Committees twice per year. We have received six of those reports on time, and the number of civil rights violations that have been found by the DOJ Inspector General have been zero.

Furthermore, there is a provision in the PATRIOT Act that anybody whose civil rights have been violated can obtain a statutory judgment of $10,000 in addition to any proven monetary damages against the Justice Department if they are successful in a lawsuit. The Justice Department has not paid out one dime in either monetary or statutory damages under this law.

The PATRIOT Act has nothing to do with NSA wiretaps, and anybody who has been familiar with the operation of the PATRIOT Act knows very, very clearly that it does not have anything to do with NSA wiretaps, and I really wish that the opponents would read the law and stick to the proven testimony of the operation of this act. To say that the Judiciary Committee has not conducted oversight is living in a dream world, and it does not comport with the facts.

Mr. CONYERS and I have sent joint oversight letters to the Justice Department and published the nonclassified results of those oversight letters on the committee's website. Last year we had 12 hearings on the PATRIOT Act and the 16 provisions that expire. And guess what? There was no criticism about 14 of the 16 provisions, which the conference report makes permanent. And to say that the 16 provisions that were passed in the PATRIOT Act in October of 2001 were so egregious that sunsets had to be applied really does not talk about what happened then. Every expansion of law enforcement authority contained in the 2001 bill contained a sunset, and we did the oversight, and we found that in 14 of the 16 provisions there was not a problem. And even the witnesses the Democrats brought before the Judiciary Committee said that there was no problem in 14 of the 16 provisions. In the two provisions where there is a sunset in the conference report, there have not been any civil rights violations proven. I have just said that, but one would think that the people's rights were being trampled on. No courts found that, the DOJ Inspector General has not found that, and I really wish that people who do not like the PATRIOT Act would stick to the facts.

Now I would like to talk a little bit about what good the PATRIOT Act has done, and I am going to give credit to Deroy Murdock, who is a New York-based columnist with the Scripps Howard News Service and a senior fellow with the Atlas Economic Research Foundation in Arlington, Virginia. It says: "Let the Numbers do the Talking."

First, the total number of individuals who Islamic fanatics murdered on September 11, 2001: 2,977 people whose civil rights were snuffed out because they were murdered;

The cash sum that PATRIOT Act section 371 let Customs agents seize when terror-tied New Jersey imam Alaa al-Sadawi tried to smuggle funds into Egypt in his father's airline luggage: $659,000;

Pounds of heroin the three al Qaeda- and Taliban-linked San Diego weapons dealers offered undercover FBI agents as partial payment for four Stinger anti-aircraft missiles until PATRIOT Act sections 218 and 504 helped authorities unravel their conspiracy: 1,320 pounds of heroin;

Total terror-related defendants captured with the help of PATRIOT Act provisions: 401;

Total terror-related defendants who have pled guilty or who have been convicted with the aid of PATRIOT Act provisions: 212;

Total feet the Brooklyn Bridge would have plunged into the New York City's East River had the PATRIOT Act not helped authorities stop Iyman Faris's plan to sever the span's cables with acetylene torches: 119. That is New York City.

According to Federal prosecutor Ken Wainstein's January 3 comments after meeting with President Bush, the number of U.S. attorneys who use "the PATRIOT Act tools each and every day in his or her efforts": 93, out of 93 U.S. attorneys:

As U.S. Attorney Roslynn Mauskopf notes, total years of prison time earned under the PATRIOT Act by Osama bin Laden's self-proclaimed spiritual adviser, Mohammed al-Moayad, for trying to funnel $20 million to al Qaeda and Hamas: 75;

Number of scholars, former Cabinet members, and other prominent Americans, including Democratic ex-CIA Directors James Woolsey and James Schlesinger, who joined in signing a January 25 open letter advocating the PATRIOT Act's reauthorization: 68;

Years that David Wayne Hull, former Imperial Wizard of the White Knights of the Ku Klux Klan, will spend behind bars after PATRIOT Act section 201 helped convict him for plotting to blow up abortion clinics with hand grenades: 12;

Number of Northern Virginia Islamofascists jailed after the PATRIOT Act's information-sharing provisions let spies and cops jointly determine that they had trained in Afghan and Pakistani terror camps between 1999 and 2001: Eight;

Total al Qaeda associates in Lackawanna, New York who were jailed for 7 to 10 years after the PATRIOT Act finally let cops and intelligence officers sit in the same room to discuss each other's investigations: Six;

According to the Associated Press, the number of tickets for American Airlines Flight 77 that Pentagon-bound 9/11 hijackers Khalid al-Mihdhar and Nawaf al-Hazmi purchased online, using William Patterson University's library computers, that might have been detected had PATRIOT Act section 215 been in place: Two;

The number of the Portland Seven extremists who escaped the PATRIOT Act by being killed by Pakistani troops on October 3, 2003: One.

☐ 1630

The number of individuals whom Muslim terrorists have killed on American soil since the adoption of the PATRIOT Act: zero.

Mr. Speaker, this law is working. This law has not violated anybody's civil liberty rights. It has not been held unconstitutional by any Federal court in the country. All of the arguments against the PATRIOT Act are a red herring. It has kept us safer. We ought to continue it. We ought to vote for this bill.

Ms. LEE. Mr. Speaker, I rise in total opposition to the extension of this unpatriotic act.

The NSA's warrantless domestic spying scandal has shown how this President has a tendency to overstep the rule of law.

Expanding the administration's powers, in light of these recent developments, may even be unnecessary.

That said, we should be repealing these undemocratic provisions, not continuing to expand government's reach into the private lives of the American people.

Since 2001, the PATRIOT Act has been used more than 150 times to secretly search private homes, and nearly 90 percent of those cases had nothing to do with terrorism.

Americans have rejected provisions in this legislation like sneak-and-peek searches, national security letters, and roving John Doe wiretaps.

And Americans have rejected unwarranted searches of private residences, libraries, businesses, and medical records.

I don't know how much clearer we need to be.

All the administration's word games and sugar-coating will do nothing to change the fact that we can protect our nation and protect civil liberties at the same time.

The PATRIOT Act fails to do so.

Vote "no" on this extension, and keep our civil liberties and our civil rights off the chopping board.

Ms. WATERS. Mr. Speaker, I rise in opposition not only to the lack of opportunity that a five-week sunset will provide but to the underlying legislation that it extends, the USA PATRIOT Act passed during the 107th Congress, Public Law 107–56. Similarly, I felt that the prior-enacted five-week extension, Public Law 109–160, that expires this Friday, February 3, 2006, was inadequate. For the sake of the American people and pursuant to the words of the President of the United States just last night in his State of the Union Address, I hope that the draconian provisions that were contained in the House-passed measure have been removed or drastically improved. Alas, even the process of negotiating the betterment of this very important legislation was kept a secret until brought to the Floor.

I voted in favor of a motion to recommit this Conference Report with instructions, which would have replaced the text of the conference report with the text of the original bill passed by the Senate. The original Senate bill included many more civil liberties protections than does this conference report. That Senate measure would have included a process of judicial review for recipients of a National Security Letter as well as a standard requiring the Government to show a connection to a suspected terrorist or organization when requesting business or library records. The sunsets to the Conference Report that we consider today still require the Government to demonstrate "relevance" in an investigation.

The underlying conference report seeks to make 14 of 16 controversial PATRIOT Act provisions permanent. In making these provisions permanent, Congress will relinquish its responsibility to review their use, granting more permanent power to the executive branch. Congressional oversight has been maintained only through the two provisions scheduled to sunset in 4 years, as well as through the inclusion of a "lone wolf" provision, also scheduled to sunset in 4 years. Congress has a responsibility to check the power of the executive branch, not cede that authority, potentially threatening the civil liberties of our citizens. The underlying conference report unfortunately still fails to safeguard individual privacy rights, and allows the Government, with little burden of proof, to scrutinize nearly every aspect of a person's life.

The President stated in his "State of the Union" address last night that "Our country must . . . remain on the offensive against terrorism here at home." However, in doing so, we cannot allow terrorism to erode our national security or our civil liberties.

I would like to address the following words stated by the President, again in his address:

> . . . based on authority given to me by the Constitution and by statute—I have authorized a terrorist surveillance program to aggressively pursue the international communications of suspected al-Qaida operatives and affiliates to and from America. Previous presidents have used the same constitutional authority. I have—and Federal courts have approved the use of that authority. Appropriate Members of Congress have been kept informed. This terrorist surveillance program has helped prevent terrorist attacks. It remains essential to the security of America.

I authored a letter to the President that is currently being circulated and has already been signed by 50 of my colleagues that categorically negates these assertions based on well-settled caselaw, Federal statutes that remain in the books, and the words of the U.S. Constitution.

At no point during the floor debate of the Authorization to Use Military Force, AUMF, Resolution was there any discussion that the authorization to use military force would extend to the use of warrantless searches and vest the President with the broad authority to intercept telephone calls and other electronic communications of American citizens on American soil without first obtaining a warrant. To the contrary, it was stated during the debate that the authorization "provides no new or additional grants of power to the President." (see CONGRESSIONAL RECORD dated Sept. 14, 2001, page H5677)

It is our duty to uphold the provisions of the U.S. Constitution, preserve the system of checks and balances between branches of our Government, and to protect the rights of the American people to the greatest extent possible. We must remain committed to protect the United States from terrorist attacks and to exercise our legislative responsibility to support any lawful means of preventing any future terrorist activity. However, it is our duty to clarify the mischaracterization of our actions. Congress simply did not intend for the AUMF to be used as justification for programs such as the one currently in use by the NSA.

I join my many colleagues, many victims of terrorism, and many victims of racial and religious profiling in opposing the underlying conference report for H.R. 3199.

Of particular concern to me are a number of immigration-related provisions that cast such a broad net to allow for the detention and deportation of people engaging in innocent associational activity and constitutionally protected speech and that permit the indefinite detention of immigrants and noncitizens who are not terrorists. (Carlina Tapia Ruano, Statement for Oversight Hearing on the Reauthorization of the USA PATRIOT Act before the House Committee on the Judiciary, June 10, 2005.)

Among these troubling provisions are those that:

Authorize the Attorney General, AG, to arrest and detain noncitizens based on mere suspicion, and require that they remain in detention irrespective of any relief they may be eligible for or granted." (In order to grant someone relief from deportation, an immigration judge must find that the person is not a terrorist, a criminal, or someone who has engaged in fraud or misrepresentation.) When relief from deportation is granted, no person should be subject to continued detention based merely on the Attorney General's unproven suspicions.

Require the AG to bring charges against a person who has been arrested and detained as a "certified" terrorist suspect within seven days, but the law does not require that those charges be based on terrorism-related offenses. As a result, an alien can be treated as a terrorist suspect despite being charged with only a minor immigration violation, and may never have his or her day in court to prove otherwise.

Make material support for groups that have not been officially designated as "terrorist organizations" a deportable offense. Under this law, people who make innocent donations to charitable organizations that are secretly tied to terrorist activities would be presumed guilty unless they can prove they are innocent. Restrictions on material support should be limited to those organizations that have officially been designated terrorist organizations.

Deny legal permanent residents readmission to the U.S. based solely on speech protected by the First Amendment. The laws punish those who "endorse," "espouse," or "persuade others to support terrorist activity or terrorist organizations." Rather than prohibiting speech that incites violence or criminal activity, these new grounds of inadmissibility punish speech that "undermines the United States' efforts to reduce or eliminate terrorist activity." This language is unconstitutionally vague and overbroad, and will undeniably have a chilling effect on constitutionally protected speech.

Authorize the AG and the Secretary of State to designate domestic groups as terrorist organizations and block any noncitizen who belongs to them from entering the country. Under this provision, the mere payment of membership dues is a deportable offense. This vague and overly broad language constitutes guilt by association. Our laws should punish people who commit crimes, not punish people based on their beliefs or associations.

While every step must be taken to protect the American public from further terrorist acts, our government must not trample on the Constitution in the process and on those basic rights and protections that make American democracy so unique.

While the PATRIOT Act may not deserve all of the ridicule that is heaped against it, there is little doubt that the legislation has been repeatedly and seriously misused by the Justice Department. Consider the following:

Its been used more than 150 times to secretly search an individual's home, with nearly 90 percent of those cases having had nothing to do with terrorism.

It was used against Brandon Mayfield, an innocent Muslim American, to tap his phones, seize his property, copy his computer, spy on his children, and take his DNA, all without his knowledge.

Its been used to deny, on account of his political beliefs, the admission to the United States of a Swiss citizen and prominent Muslim Scholar to teach at Notre Dame University.

Its been used to unconstitutionally coerce an Internet Service Provider to divulge information about email activity and Web surfing on its system, and then to gag that Provider from even disclosing the abuse to the public.

Because of gag restrictions, we will never know how many times its been used to obtain reading records from library and book stores, but we do know that libraries have been solicited by the Department of Justice—voluntarily or under threat of the PATRIOT Act—for reader information on more than 200 occasions since September 11.

Its been used to charge, detain and prosecute a Muslim student in Idaho for posting Internet Web site links to objectionable materials, even though the same links were available on the U.S. Government's Web site.

Even worse than the PATRIOT Act has been the unilateral abuse of power by the Administration. Since September 11, our Government has detained and verbally and physically abused thousands of immigrants without time limit, for unknown and unspecified reasons, and targeted tens of thousands of Arab-Americans for intensive interrogations and immigration screenings. All this serves to accomplish is to alienate Muslim and Arab Americans—the key groups to fighting terrorism in our own county—who see a Justice Department that has institutionalized racial and ethnic profiling, without the benefit of a single terrorism conviction.

Mr. Speaker, the sunset proposed in the bill before us is insufficient to allow adequate consideration by the House; therefore, I oppose it.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. FOLEY). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 4659.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on questions previously postponed.

Votes will be taken in the following order:

H. Res. 648, by the yeas and nays:

H. Res. 653, by the yeas and nays;

H.R. 4659, by the yeas and nays.

The first electronic vote will be conducted as a 15-minute vote. Remaining electronic votes may be conducted as 5-minute votes.

ELIMINATING FLOOR PRIVILEGES OF FORMER MEMBERS AND OFFICERS

The SPEAKER pro tempore. The pending business is the question of suspending the rules and agreeing to the resolution, H. Res. 648.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. DREIER) that the House suspend the rules and agree to the resolution, H. Res. 648, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 379, nays 50, answered "present" 1, not voting 3, as follows:

[Roll No. 3]

YEAS—379

Ackerman
Aderholt
Alexander
Allen
Andrews
Baca
Bachus
Baldwin
Barrett (SC)
Barrow
Bass
Bean
Beauprez
Becerra
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Butterfield
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cantor
Capito
Capps
Cardin
Cardoza
Carnahan
Carson
Carter
Case
Castle
Chabot
Chandler
Chocola
Cleaver
Clyburn
Coble
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Cramer
Crenshaw
Crowley
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Gerlach
Gibbons
Gilchrest
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall
Harman
Harris
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hensarling
Herger
Herseth
Higgins
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inglis (SC)
Inslee
Israel
Issa
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Jones (NC)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (NY)
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McGovern
McHenry
McHugh
McIntyre
McKeon
McMorris
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Millender-McDonald
Miller (MI)
Miller (NC)
Miller, George
Moore (KS)
Moore (WI)
Moran (KS)
Murphy
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Pallone
Pascrell
Pastor
Payne
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schmidt
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Simmons
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Souder
Spratt
Stark
Stearns
Strickland
Sullivan
Sweeney
Tancredo
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Wexler
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Young (FL)

NAYS—50

Abercrombie
Akin
Baird
Baker
Bartlett (MD)
Barton (TX)
Bonilla
Brady (TX)
Burgess
Burton (IN)
Cannon
Capuano
Clay
Cubin
DeLay
Flake
Garrett (NJ)
Gillmor
Gutknecht
Hastings (FL)
Hefley
Jackson (IL)
Johnson, E. B.
Johnson, Sam
Jones (OH)
King (IA)
Kingston
Kucinich
McDermott
McKinney
Miller (FL)
Mollohan
Moran (VA)
Murtha
Otter
Oxley
Paul
Pearce
Pitts
Sabo
Sessions
Shuster
Simpson
Stupak
Tanner
Thomas
Towns
Whitfield
Wynn
Young (AK)

ANSWERED "PRESENT"—1

Owens

NOT VOTING—3

Blumenauer
Istook
Miller, Gary

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. FOLEY) (during the vote). Members are advised that there are 2 minutes remaining in this vote.

□ 1701

Messrs. JACKSON of Illinois, DELAY, BAKER, KUCINICH and FLAKE changed their vote from "yea" to "nay".

Ms. WOOLSEY, Mr. PICKERING and Mr. CLEAVER changed their vote from "nay" to "yea".

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

DEFICIT REDUCTION ACT OF 2005

The SPEAKER pro tempore (Mr. FOLEY). The pending business is the vote on adoption of House Resolution 653 on which the yeas and nays are ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the resolution.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 216, nays 214, not voting 3, as follows:

[Roll No. 4]

YEAS—216

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Crenshaw
Cubin
Culberson
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Jenkins
Jindal
Johnson (CT)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCaul (TX)
McCotter
McCrery
McHenry
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—214

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Barrow
Bean

Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Boren
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Chandler
Clay
Cleaver
Clyburn
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gerlach
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
LaTourette
Leach
Lee
Levin
Lewis (GA)
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McHugh
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Ney
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Ramstad
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Simmons
Skelton
Slaughter
Smith (NJ)
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Sweeney
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Wilson (NM)
Woolsey
Wu
Wynn

NOT VOTING—3

Blumenauer
Istook
Miller, Gary

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised there are 2 minutes remaining.

☐ 1711

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. Pursuant to House Resolution 653, the House concurs in the Senate amendment to the House amendment to S. 1932.

The text of the Senate amendment to the House amendment is as follows:

In lieu of the matter proposed to be inserted by the House amendment to the text of the bill, insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Deficit Reduction Act of 2005".

SEC. 2. TABLE OF TITLES.

The table of titles is as follows:

TITLE I—AGRICULTURE PROVISIONS
TITLE II—HOUSING AND DEPOSIT INSURANCE PROVISIONS
TITLE III—DIGITAL TELEVISION TRANSITION AND PUBLIC SAFETY
TITLE IV—TRANSPORTATION PROVISIONS
TITLE V—MEDICARE
TITLE VI—MEDICAID AND SCHIP
TITLE VII—HUMAN RESOURCES AND OTHER PROVISIONS
TITLE VIII—EDUCATION AND PENSION BENEFIT PROVISIONS
TITLE IX—LIHEAP PROVISIONS
TITLE X—JUDICIARY RELATED PROVISIONS

TITLE I—AGRICULTURE PROVISIONS

SECTION 1001. SHORT TITLE.

This title may be cited as the "Agricultural Reconciliation Act of 2005".

Subtitle A—Commodity Programs

SEC. 1101. NATIONAL DAIRY MARKET LOSS PAYMENTS.

(a) AMOUNT.—Section 1502(c) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7982(c)) is amended by striking paragraph (3) and inserting the following new paragraph:

"(3)(A) during the period beginning on the first day of the month the producers on a dairy farm enter into a contract under this section and ending on September 30, 2005, 45 percent;

"(B) during the period beginning on October 1, 2005, and ending on August 31, 2007, 34 percent; and

"(C) during the period beginning on September 1, 2007, 0 percent.".

(b) DURATION.—Section 1502 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7982) is amended by striking "2005" each place it appears in subsections (f) and (g)(1) and inserting "2007".

(c) CONFORMING AMENDMENTS.—Section 1502 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7982) is amended—

(1) in subsection (g)(1), by striking "and subsection (h)"; and

(2) by striking subsection (h).

SEC. 1102. ADVANCE DIRECT PAYMENTS.

(a) COVERED COMMODITIES.—Section 1103(d)(2) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7913(d)(2)) is amended in the first sentence by striking "2007 crop years" and inserting "2005 crop years, up to 40 percent of the direct payment for a covered commodity for the 2006 crop year, and up to 22 percent of the direct payment for a covered commodity for the 2007 crop year,".

(b) PEANUTS.—Section 1303(e)(2) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7953(e)(2)) is amended in the first sentence by striking "2007 crop years" and inserting "2005 crop years, up to 40 percent of the direct payment for the 2006 crop year, and up to 22 percent of the direct payment for the 2007 crop year,".

SEC. 1103. COTTON COMPETITIVENESS PROVISIONS.

(a) REPEAL OF AUTHORITY TO ISSUE COTTON USER MARKETING CERTIFICATES.—Section 1207 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7937) is amended—

(1) by striking subsection (a); and

(2) in subsection (b)(1)—

(A) in subparagraph (B), by striking ", adjusted for the value of any certificate issued under subsection (a),"; and

(B) in subparagraph (C), by striking ", for the value of any certificates issued under subsection (a)".

(b) EFFECTIVE DATE.—The amendments made by this section take effect on August 1, 2006.

Subtitle B—Conservation

SEC. 1201. WATERSHED REHABILITATION PROGRAM.

The authority to obligate funds previously made available under section 14(h)(1) of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1012(h)(1)) for a fiscal year and unobligated as of October 1, 2006, is hereby cancelled effective on that date.

SEC. 1202. CONSERVATION SECURITY PROGRAM.

(a) EXTENSION.—Section 1238A(a) of the Food Security Act of 1985 (16 U.S.C. 3838a(a)) is amended by striking "2007" and inserting "2011".

(b) FUNDING.—Section 1241(a)(3) of the Food Security Act of 1985 (16 U.S.C. 3841(a)(3)) is amended by striking "not more than $6,037,000,000" and all that follows through "2014." and inserting the following: "not more than—

"(A) $1,954,000,000 for the period of fiscal years 2006 through 2010; and

"(B) $5,650,000,000 for the period of fiscal years 2006 through 2015.".

SEC. 1203. ENVIRONMENTAL QUALITY INCENTIVES PROGRAM.

(a) EXTENSION.—Section 1240B(a)(1) of the Food Security Act of 1985 (16 U.S.C. 3839aa-2(a)(1)) is amended by striking "2007" and inserting "2010".

(b) LIMITATION ON PAYMENTS.—Section 1240G of the Food Security Act of 1985 (16 U.S.C. 3839aa-7) is amended by striking "the period of fiscal years 2002 through 2007" and inserting "any six-year period".

(c) FUNDING.—Section 1241(a)(6) of the Food Security Act of 1985 (16 U.S.C. 3841(a)(6)) is amended—

(1) by striking "and" at the end of subparagraph (D); and

(2) by striking subparagraph (E) and inserting the following new subparagraphs:

"(E) $1,270,000,000 in each of fiscal years 2007 through 2009; and

"(F) $1,300,000,000 in fiscal year 2010.".

Subtitle C—Energy

SEC. 1301. RENEWABLE ENERGY SYSTEMS AND ENERGY EFFICIENCY IMPROVEMENTS PROGRAM.

Section 9006(f) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8106(f)) is amended by striking "2007" and inserting "2006 and $3,000,000 for fiscal year 2007".

Subtitle D—Rural Development

SEC. 1401. ENHANCED ACCESS TO BROADBAND TELECOMMUNICATIONS SERVICES IN RURAL AREAS.

The authority to obligate funds previously made available under section 601(j)(1) of the Rural Electrification Act of 1936 for a fiscal year and unobligated as of October 1, 2006, is hereby cancelled effective on that date.

SEC. 1402. VALUE-ADDED AGRICULTURAL PRODUCT MARKET DEVELOPMENT GRANTS.

The authority to obligate funds previously made available under section 231(b)(4) of the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224; 7 U.S.C. 1621 note) for a fiscal year and unobligated as of October 1, 2006, is hereby cancelled effective on that date.

SEC. 1403. RURAL BUSINESS INVESTMENT PROGRAM.

(a) TERMINATION OF FISCAL YEAR 2007 AND SUBSEQUENT FUNDING.—Subsection (a)(1) of section 384S of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009cc–18) is amended by inserting after "necessary" the following: "through fiscal year 2006".

(b) CANCELLATION OF UNOBLIGATED PRIOR-YEAR FUNDS.—The authority to obligate funds previously made available under such section and unobligated as of October 1, 2006, is hereby cancelled effective on that date.

SEC. 1404. RURAL BUSINESS STRATEGIC INVESTMENT GRANTS.

The authority to obligate funds previously made available under section 385E of the Consolidated Farm and Rural Development Act and unobligated as of October 1, 2006, is hereby cancelled effective on that date.

SEC. 1405. RURAL FIREFIGHTERS AND EMERGENCY PERSONNEL GRANTS.

(a) TERMINATION OF FISCAL YEAR 2007 FUNDING.—Subsection (c) of section 6405 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 2655) is amended by striking "2007" and inserting "2006".

(b) CANCELLATION OF UNOBLIGATED PRIOR-YEAR FUNDS.—The authority to obligate funds previously made available under such section for a fiscal year and unobligated as of October 1, 2006, is hereby cancelled effective on that date.

Subtitle E—Research

SEC. 1501. INITIATIVE FOR FUTURE FOOD AND AGRICULTURE SYSTEMS.

(a) TERMINATION OF FISCAL YEAR 2007, 2008, AND 2009 TRANSFERS.—Subsection (b)(3)(D) of section 401 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7621) is amended by striking "2006" and inserting "2009".

(b) TERMINATION OF MULTI-YEAR AVAILABILITY OF FISCAL YEAR 2006 FUNDS.—Paragraph (6) of subsection (f) of such section is amended to read as follows:

"(6) AVAILABILITY OF FUNDS.—

"(A) TWO-YEAR AVAILABILITY.—Except as provided in subparagraph (B), funds for grants under this section shall be available to the Secretary for obligation for a 2-year period beginning on the date of the transfer of the funds under subsection (b).

"(B) EXCEPTION FOR FISCAL YEAR 2006 TRANSFER.—In the case of the funds required to be transferred by subsection (b)(3)(C), the funds shall be available to the Secretary for obligation for the 1-year period beginning on October 1, 2005."

TITLE II—HOUSING AND DEPOSIT INSURANCE PROVISIONS

Subtitle A—FHA Asset Disposition

SEC. 2001. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) The term "affordability requirements" means any requirements or restrictions imposed by the Secretary, at the time of sale, on a multifamily real property or a multifamily loan, such as use restrictions, rent restrictions, and rehabilitation requirements.

(2) The term "discount sale" means the sale of a multifamily real property in a transaction, such as a negotiated sale, in which the sale price is lower than the property market value and is set outside of a competitive bidding process that has no affordability requirements.

(3) The term "discount loan sale" means the sale of a multifamily loan in a transaction, such as a negotiated sale, in which the sale price is lower than the loan market value and is set outside of a competitive bidding process that has no affordability requirements.

(4) The term "loan market value" means the value of a multifamily loan, without taking into account any affordability requirements.

(5) The term "multifamily real property" means any rental or cooperative housing project of 5 or more units owned by the Secretary that prior to acquisition by the Secretary was security for a loan or loans insured under title II of the National Housing Act.

(6) The term "multifamily loan" means a loan held by the Secretary and secured by a multifamily rental or cooperative housing project of 5 or more units that was formerly insured under title II of the National Housing Act.

(7) The term "property market value" means the value of a multifamily real property for its current use, without taking into account any affordability requirements.

(8) The term "Secretary" means the Secretary of Housing and Urban Development.

SEC. 2002. APPROPRIATED FUNDS REQUIREMENT FOR BELOW-MARKET SALES.

(a) DISCOUNT SALES.—Notwithstanding any other provision of law, except for affordability requirements for the elderly and disabled required by statute, disposition by the Secretary of a multifamily real property during fiscal years 2006 through 2010 through a discount sale under sections 207(l) or 246 of the National Housing Act (12 U.S.C. 1713(l), 1715z–11), section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11), or section 204 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (12 U.S.C. 1715z–11a), shall be subject to the availability of appropriations to the extent that the property market value exceeds the sale proceeds. If the multifamily real property is sold, during such fiscal years, for an amount equal to or greater than the property market value then the transaction is not subject to the availability of appropriations.

(b) DISCOUNT LOAN SALES.—Notwithstanding any other provision of law and in accordance with the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), a discount loan sale during fiscal years 2006 through 2010 under section 207(k) of the National Housing Act (12 U.S.C. 1713(k)), section 203(k) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11(k)), or section 204(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (12 U.S.C. 1715z–11a(a)), shall be subject to the availability of appropriations to the extent that the loan market value exceeds the sale proceeds. If the multifamily loan is sold, during such fiscal years, for an amount equal to or greater than the loan market value then the transaction is not subject to the availability of appropriations.

(c) APPLICABILITY.—This section shall not apply to any transaction that formally commences within one year prior to the enactment of this section.

SEC. 2003. UP-FRONT GRANTS.

(a) 1997 ACT.—Section 204(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (12 U.S.C. 1715z–11a(a)) is amended by adding at the end the following new sentence: "A grant provided under this subsection during fiscal years 2006 through 2010 shall be available only to the extent that appropriations are made in advance for such purposes and shall not be derived from the General Insurance Fund.".

(b) 1978 ACT.—Section 203(f)(4) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11(f)(4)) is amended by adding at the end the following new sentence: "This paragraph shall be effective during fiscal years 2006 through 2010 only to the extent that such budget authority is made available for use under this paragraph in advance in appropriation acts.".

(c) APPLICABILITY.—The amendments made by this section shall not apply to any transaction that formally commences within one year prior to the enactment of this section.

Subtitle B—Deposit Insurance

SEC. 2101. SHORT TITLE.

This subtitle may be cited as the "Federal Deposit Insurance Reform Act of 2005".

SEC. 2102. MERGING THE BIF AND SAIF.

(a) IN GENERAL.—

(1) MERGER.—The Bank Insurance Fund and the Savings Association Insurance Fund shall be merged into the Deposit Insurance Fund.

(2) DISPOSITION OF ASSETS AND LIABILITIES.—All assets and liabilities of the Bank Insurance Fund and the Savings Association Insurance Fund shall be transferred to the Deposit Insurance Fund.

(3) NO SEPARATE EXISTENCE.—The separate existence of the Bank Insurance Fund and the Savings Association Insurance Fund shall cease on the effective date of the merger thereof under this section.

(b) REPEAL OF OUTDATED MERGER PROVISION.—Section 2704 of the Deposit Insurance Funds Act of 1996 (12 U.S.C. 1821 note) is repealed.

(c) EFFECTIVE DATE.—This section shall take effect no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning on the date of the enactment of this Act.

SEC. 2103. INCREASE IN DEPOSIT INSURANCE COVERAGE.

(a) IN GENERAL.—Section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)) is amended—

(1) by striking subparagraph (B) and inserting the following new subparagraph:

"(B) NET AMOUNT OF INSURED DEPOSIT.—The net amount due to any depositor at an insured depository institution shall not exceed the standard maximum deposit insurance amount as determined in accordance with subparagraphs (C), (D), (E) and (F) and paragraph (3)."; and

(2) by adding at the end the following new subparagraphs:

"(E) STANDARD MAXIMUM DEPOSIT INSURANCE AMOUNT DEFINED.—For purposes of this Act, the term 'standard maximum deposit insurance amount' means $100,000, adjusted as provided under subparagraph (F) after March 31, 2010.

"(F) INFLATION ADJUSTMENT.—

"(i) IN GENERAL.—By April 1 of 2010, and the 1st day of each subsequent 5-year period, the Board of Directors and the National Credit Union Administration Board shall jointly consider the factors set forth under clause (v), and, upon determining that an inflation adjustment is appropriate, shall jointly prescribe the amount by which the standard maximum deposit insurance amount and the standard maximum share insurance amount (as defined in section 207(k) of the Federal Credit Union Act) applicable to any depositor at an insured depository institution shall be increased by calculating the product of—

"(I) $100,000; and

"(II) the ratio of the published annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding the year in which the adjustment is calculated under this clause, to the published annual value of such index for the calendar year preceding the date this subparagraph takes effect under the Federal Deposit Insurance Reform Act of 2005.

The values used in the calculation under subclause (II) shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

"(ii) ROUNDING.—If the amount determined under clause (ii) for any period is not a multiple of $10,000, the amount so determined shall be rounded down to the nearest $10,000.

"(iii) PUBLICATION AND REPORT TO THE CONGRESS.—Not later than April 5 of any calendar year in which an adjustment is required to be calculated under clause (i) to the standard maximum deposit insurance amount and the standard maximum share insurance amount under such clause, the Board of Directors and the National Credit Union Administration Board shall—

"(I) publish in the Federal Register the standard maximum deposit insurance amount, the standard maximum share insurance amount, and the amount of coverage under paragraph (3)(A) and section 207(k)(3) of the Federal Credit Union Act, as so calculated; and

"(II) jointly submit a report to the Congress containing the amounts described in subclause (I).

"(iv) 6-MONTH IMPLEMENTATION PERIOD.—Unless an Act of Congress enacted before July 1 of the calendar year in which an adjustment is required to be calculated under clause (i) provides otherwise, the increase in the standard maximum deposit insurance amount and the standard maximum share insurance amount shall take effect on January 1 of the year immediately succeeding such calendar year.

"(v) INFLATION ADJUSTMENT CONSIDERATION.—In making any determination under clause (i) to increase the standard maximum deposit insurance amount and the standard maximum share insurance amount, the Board of Directors and the National Credit Union Administration Board shall jointly consider—

"(I) the overall state of the Deposit Insurance Fund and the economic conditions affecting insured depository institutions;

"(II) potential problems affecting insured depository institutions; or

"(III) whether the increase will cause the reserve ratio of the fund to fall below 1.15 percent of estimated insured deposits.".

(b) COVERAGE FOR CERTAIN EMPLOYEE BENEFIT PLAN DEPOSITS.—Section 11(a)(1)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(D)) is amended to read as follows:

"(D) COVERAGE FOR CERTAIN EMPLOYEE BENEFIT PLAN DEPOSITS.—

"(i) PASS-THROUGH INSURANCE.—The Corporation shall provide pass-through deposit insurance for the deposits of any employee benefit plan.

"(ii) PROHIBITION ON ACCEPTANCE OF BENEFIT PLAN DEPOSITS.—An insured depository institution that is not well capitalized or adequately capitalized may not accept employee benefit plan deposits.

"(iii) DEFINITIONS.—For purposes of this subparagraph, the following definitions shall apply:

"(I) CAPITAL STANDARDS.—The terms 'well capitalized' and 'adequately capitalized' have the same meanings as in section 38.

"(II) EMPLOYEE BENEFIT PLAN.—The term 'employee benefit plan' has the same meaning as in paragraph (5)(B)(ii), and includes any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986.

"(III) PASS-THROUGH DEPOSIT INSURANCE.—The term 'pass-through deposit insurance' means, with respect to an employee benefit plan, deposit insurance coverage based on the interest of each participant, in accordance with regulations issued by the Corporation.".

(c) INCREASED AMOUNT OF DEPOSIT INSURANCE FOR CERTAIN RETIREMENT ACCOUNTS.—Section 11(a)(3)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(3)(A)) is amended by striking "$100,000" and inserting "$250,000 (which amount shall be subject to inflation adjustments as provided in paragraph (1)(F), except that $250,000 shall be substituted for $100,000 wherever such term appears in such paragraph)".

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the date the final regulations required under section 9(a)(2) take effect.

SEC. 2104. SETTING ASSESSMENTS AND REPEAL OF SPECIAL RULES RELATING TO MINIMUM ASSESSMENTS AND FREE DEPOSIT INSURANCE.

(a) SETTING ASSESSMENTS.—Section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is amended—

(1) by striking subparagraphs (A) and (B) and inserting the following new subparagraphs:

"(A) IN GENERAL.—The Board of Directors shall set assessments for insured depository institutions in such amounts as the Board of Directors may determine to be necessary or appropriate, subject to subparagraph (D).

"(B) FACTORS TO BE CONSIDERED.—In setting assessments under subparagraph (A), the Board of Directors shall consider the following factors:

"(i) The estimated operating expenses of the Deposit Insurance Fund.

"(ii) The estimated case resolution expenses and income of the Deposit Insurance Fund.

"(iii) The projected effects of the payment of assessments on the capital and earnings of insured depository institutions.

"(iv) The risk factors and other factors taken into account pursuant to paragraph (1) under the risk-based assessment system, including the requirement under such paragraph to maintain a risk-based system.

"(v) Any other factors the Board of Directors may determine to be appropriate."; and

(2) by inserting after subparagraph (C) the following new subparagraph:

"(D) NO DISCRIMINATION BASED ON SIZE.—No insured depository institution shall be barred from the lowest-risk category solely because of size.".

(b) ASSESSMENT RECORDKEEPING PERIOD SHORTENED.—Paragraph (5) of section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)) is amended to read as follows:

"(5) DEPOSITORY INSTITUTION REQUIRED TO MAINTAIN ASSESSMENT-RELATED RECORDS.—Each insured depository institution shall maintain all records that the Corporation may require for verifying the correctness of any assessment on the insured depository institution under this subsection until the later of—

"(A) the end of the 3-year period beginning on the due date of the assessment; or

"(B) in the case of a dispute between the insured depository institution and the Corporation with respect to such assessment, the date of a final determination of any such dispute.".

(c) INCREASE IN FEES FOR LATE ASSESSMENT PAYMENTS.—Subsection (h) of section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828(h)) is amended to read as follows:

"(h) PENALTY FOR FAILURE TO TIMELY PAY ASSESSMENTS.—

"(1) IN GENERAL.—Subject to paragraph (3), any insured depository institution which fails or refuses to pay any assessment shall be subject to a penalty in an amount of not more than 1 percent of the amount of the assessment due for each day that such violation continues.

"(2) EXCEPTION IN CASE OF DISPUTE.—Paragraph (1) shall not apply if—

"(A) the failure to pay an assessment is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment; and

"(B) the insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

"(3) SPECIAL RULE FOR SMALL ASSESSMENT AMOUNTS.—If the amount of the assessment which an insured depository institution fails or refuses to pay is less than $10,000 at the time of such failure or refusal, the amount of any penalty to which such institution is subject under paragraph (1) shall not exceed $100 for each day that such violation continues.

"(4) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Corporation, in the sole discretion of the Corporation, may compromise, modify or remit any penalty which the Corporation may assess or has already assessed under paragraph (1) upon a finding that good cause prevented the timely payment of an assessment.".

(d) STATUTE OF LIMITATIONS FOR ASSESSMENT ACTIONS.—Subsection (g) of section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817(g)) is amended to read as follows:

"(g) ASSESSMENT ACTIONS.—

"(1) IN GENERAL.—The Corporation, in any court of competent jurisdiction, shall be entitled to recover from any insured depository institution the amount of any unpaid assessment lawfully payable by such insured depository institution.

"(2) STATUTE OF LIMITATIONS.—The following provisions shall apply to actions relating to assessments, notwithstanding any other provision in Federal law, or the law of any State:

"(A) Any action by an insured depository institution to recover from the Corporation the overpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to the exception in subparagraph (E).

"(B) Any action by the Corporation to recover from an insured depository institution the underpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to the exceptions in subparagraphs (C) and (E).

"(C) If an insured depository institution has made a false or fraudulent statement with intent to evade any or all of its assessment, the Corporation shall have until 3 years after the date of discovery of the false or fraudulent statement in which to bring an action to recover the underpaid amount.

"(D) Except as provided in subparagraph (C), assessment deposit information contained in records no longer required to be maintained pursuant to subsection (b)(4) shall be considered conclusive and not subject to change.

"(E) Any action for the underpaid or overpaid amount of any assessment that became due before the amendment to this subsection under the Federal Deposit Insurance Reform Act of 2005 took effect shall be subject to the statute of limitations for assessments in effect at the time the assessment became due.".

(e) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the date that the final regulations required under section 9(a)(5) take effect.

SEC. 2105. REPLACEMENT OF FIXED DESIGNATED RESERVE RATIO WITH RESERVE RANGE.

(a) IN GENERAL.—Section 7(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)) is amended to read as follows:

"(3) DESIGNATED RESERVE RATIO.—

"(A) ESTABLISHMENT.—

"(i) IN GENERAL.—Before the beginning of each calendar year, the Board of Directors shall designate the reserve ratio applicable with respect to the Deposit Insurance Fund and publish the reserve ratio so designated.

"(ii) RULEMAKING REQUIREMENT.—Any change to the designated reserve ratio shall be made by the Board of Directors by regulation after notice and opportunity for comment.

"(B) RANGE.—The reserve ratio designated by the Board of Directors for any year—

"(i) may not exceed 1.5 percent of estimated insured deposits; and

"(ii) may not be less than 1.15 percent of estimated insured deposits.

"(C) FACTORS.—In designating a reserve ratio for any year, the Board of Directors shall—

"(i) take into account the risk of losses to the Deposit Insurance Fund in such year and future years, including historic experience and potential and estimated losses from insured depository institutions;

"(ii) take into account economic conditions generally affecting insured depository institutions so as to allow the designated reserve ratio to increase during more favorable economic conditions and to decrease during less favorable economic conditions, notwithstanding the increased risks of loss that may exist during such less favorable conditions, as determined to be appropriate by the Board of Directors;

"(iii) seek to prevent sharp swings in the assessment rates for insured depository institutions; and

"(iv) take into account such other factors as the Board of Directors may determine to be appropriate, consistent with the requirements of this subparagraph.

"(D) PUBLICATION OF PROPOSED CHANGE IN RATIO.—In soliciting comment on any proposed change in the designated reserve ratio in accordance with subparagraph (A), the Board of Directors shall include in the published proposal a thorough analysis of the data and projections on which the proposal is based.".

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the date that the final regulations required under section 9(a)(1) take effect.

SEC. 2106. REQUIREMENTS APPLICABLE TO THE RISK-BASED ASSESSMENT SYSTEM.

Section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)) is amended by adding at the end the following new subparagraphs:

"(E) INFORMATION CONCERNING RISK OF LOSS AND ECONOMIC CONDITIONS.—

"(i) SOURCES OF INFORMATION.—For purposes of determining risk of losses at insured depository institutions and economic conditions generally affecting depository institutions, the Corporation shall collect information, as appropriate, from all sources the Board of Directors considers appropriate, such as reports of condition, inspection reports, and other information from all Federal banking agencies, any information available from State bank supervisors, State insurance and securities regulators, the Securities and Exchange Commission (including information described in section 35), the Secretary of the Treasury, the Commodity Futures Trading Commission, the Farm Credit Administration, the Federal Trade Commission, any Federal reserve bank or Federal home loan bank, and other regulators of financial institutions, and any information available from credit rating entities, and other private economic or business analysts.

"(ii) CONSULTATION WITH FEDERAL BANKING AGENCIES.—

"(I) IN GENERAL.—Except as provided in subclause (II), in assessing the risk of loss to the Deposit Insurance Fund with respect to any insured depository institution, the Corporation shall consult with the appropriate Federal banking agency of such institution.

"(II) TREATMENT ON AGGREGATE BASIS.—In the case of insured depository institutions that are well capitalized (as defined in section 38) and, in the most recent examination, were found to be well managed, the consultation under subclause (I) concerning the assessment of the risk of loss posed by such institutions may be made on an aggregate basis.

"(iii) RULE OF CONSTRUCTION.—No provision of this paragraph shall be construed as providing any new authority for the Corporation to require submission of information by insured depository institutions to the Corporation.

"(F) MODIFICATIONS TO THE RISK-BASED ASSESSMENT SYSTEM ALLOWED ONLY AFTER NOTICE AND COMMENT.—In revising or modifying the risk-based assessment system at any time after the date of the enactment of the Federal Deposit Insurance Reform Act of 2005, the Board of Directors may implement such revisions or modification in final form only after notice and opportunity for comment.".

SEC. 2107. REFUNDS, DIVIDENDS, AND CREDITS FROM DEPOSIT INSURANCE FUND.

(a) IN GENERAL.—Subsection (e) of section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817(e)) is amended to read as follows:

"(e) REFUNDS, DIVIDENDS, AND CREDITS.—

"(1) REFUNDS OF OVERPAYMENTS.—In the case of any payment of an assessment by an insured depository institution in excess of the amount due to the Corporation, the Corporation may—

"(A) refund the amount of the excess payment to the insured depository institution; or

"(B) credit such excess amount toward the payment of subsequent assessments until such credit is exhausted.

"(2) DIVIDENDS FROM EXCESS AMOUNTS IN DEPOSIT INSURANCE FUND.—

"(A) RESERVE RATIO IN EXCESS OF 1.5 PERCENT OF ESTIMATED INSURED DEPOSITS.—If, at the end of a calendar year, the reserve ratio of the Deposit Insurance Fund exceeds 1.5 percent of estimated insured deposits, the Corporation shall declare the amount in the Fund in excess of the amount required to maintain the reserve ratio at 1.5 percent of estimated insured deposits, as dividends to be paid to insured depository institutions.

"(B) RESERVE RATIO EQUAL TO OR IN EXCESS OF 1.35 PERCENT OF ESTIMATED INSURED DEPOSITS AND NOT MORE THAN 1.5 PERCENT.—If, at the end of a calendar year, the reserve ratio of the Deposit Insurance Fund equals or exceeds 1.35 percent of estimated insured deposits and is not more than 1.5 percent of such deposits, the Corporation shall declare the amount in the Fund that is equal to 50 percent of the amount in excess of the amount required to maintain the reserve ratio at 1.35 percent of the estimated insured deposits as dividends to be paid to insured depository institutions.

"(C) BASIS FOR DISTRIBUTION OF DIVIDENDS.—

"(i) IN GENERAL.—Solely for the purposes of dividend distribution under this paragraph, the Corporation shall determine each insured depository institution's relative contribution to the Deposit Insurance Fund (or any predecessor deposit insurance fund) for calculating such institution's share of any dividend declared under this paragraph, taking into account the factors described in clause (ii).

"(ii) FACTORS FOR DISTRIBUTION.—In implementing this paragraph in accordance with regulations, the Corporation shall take into account the following factors:

"(I) The ratio of the assessment base of an insured depository institution (including any predecessor) on December 31, 1996, to the assessment base of all eligible insured depository institutions on that date.

"(II) The total amount of assessments paid on or after January 1, 1997, by an insured depository institution (including any predecessor) to the Deposit Insurance Fund (and any predecessor deposit insurance fund).

"(III) That portion of assessments paid by an insured depository institution (including any predecessor) that reflects higher levels of risk assumed by such institution.

"(IV) Such other factors as the Corporation may determine to be appropriate.

"(D) NOTICE AND OPPORTUNITY FOR COMMENT.—The Corporation shall prescribe by regulation, after notice and opportunity for comment, the method for the calculation, declaration, and payment of dividends under this paragraph.

"(E) LIMITATION.—The Board of Directors may suspend or limit dividends paid under subparagraph (B), if the Board determines in writing that—

"(i) a significant risk of losses to the Deposit Insurance Fund exists over the next 1-year period; and

"(ii) it is likely that such losses will be sufficiently high as to justify a finding by the Board that the reserve ratio should temporarily be allowed—

"(I) to grow without requiring dividends under subparagraph (B); or

"(II) to exceed the maximum amount established under subsection (b)(3)(B)(i).

"(F) CONSIDERATIONS.—In making a determination under subparagraph (E), the Board shall consider—

"(i) national and regional conditions and their impact on insured depository institutions;

"(ii) potential problems affecting insured depository institutions or a specific group or type of depository institution;

"(iii) the degree to which the contingent liability of the Corporation for anticipated failures of insured institutions adequately addresses concerns over funding levels in the Deposit Insurance Fund; and

"(iv) any other factors that the Board determines are appropriate.

"(G) REVIEW OF DETERMINATION.—

"(i) ANNUAL REVIEW.—A determination to suspend or limit dividends under subparagraph (E) shall be reviewed by the Board of Directors annually.

"(ii) ACTION BY BOARD.—Based on each annual review under clause (i), the Board of Directors shall either renew or remove a determination to suspend or limit dividends under subparagraph (E), or shall make a new determination in accordance with this paragraph. Unless justified under the terms of the renewal or new determination, the Corporation shall be required to provide cash dividends under subparagraph (A) or (B), as appropriate.

"(3) ONE-TIME CREDIT BASED ON TOTAL ASSESSMENT BASE AT YEAR-END 1996.—

"(A) IN GENERAL.—Before the end of the 270-day period beginning on the date of the enactment of the Federal Deposit Insurance Reform Act of 2005, the Board of Directors shall, by regulation after notice and opportunity for comment, provide for a credit to each eligible insured depository institution (or a successor insured depository institution), based on the assessment base of the institution on December 31, 1996, as compared to the combined aggregate assessment base of all eligible insured depository institutions, taking into account such factors as the Board of Directors may determine to be appropriate.

"(B) CREDIT LIMIT.—The aggregate amount of credits available under subparagraph (A) to all eligible insured depository institutions shall equal the amount that the Corporation could collect if the Corporation imposed an assessment of 10.5 basis points on the combined assessment base of the Bank Insurance Fund and the Savings Association Insurance Fund as of December 31, 2001.

"(C) ELIGIBLE INSURED DEPOSITORY INSTITUTION DEFINED.—For purposes of this paragraph, the term 'eligible insured depository institution' means any insured depository institution that—

"(i) was in existence on December 31, 1996, and paid a deposit insurance assessment prior to that date; or

"(ii) is a successor to any insured depository institution described in clause (i).

"(D) APPLICATION OF CREDITS.—

"(i) IN GENERAL.—Subject to clause (ii), the amount of a credit to any eligible insured depository institution under this paragraph shall be applied by the Corporation, subject to subsection (b)(3)(E), to the assessments imposed on

such institution under subsection (b) that become due for assessment periods beginning after the effective date of regulations prescribed under subparagraph (A).

"(ii) TEMPORARY RESTRICTION ON USE OF CREDITS.—The amount of a credit to any eligible insured depository institution under this paragraph may not be applied to more than 90 percent of the assessments imposed on such institution under subsection (b) that become due for assessment periods beginning in fiscal years 2008, 2009, and 2010.

"(iii) REGULATIONS.—The regulations prescribed under subparagraph (A) shall establish the qualifications and procedures governing the application of assessment credits pursuant to clause (i).

"(E) LIMITATION ON AMOUNT OF CREDIT FOR CERTAIN DEPOSITORY INSTITUTIONS.—In the case of an insured depository institution that exhibits financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or is not adequately capitalized (as defined in section 38) at the beginning of an assessment period, the amount of any credit allowed under this paragraph against the assessment on that depository institution for such period may not exceed the amount calculated by applying to that depository institution the average assessment rate on all insured depository institutions for such assessment period.

"(F) SUCCESSOR DEFINED.—The Corporation shall define the term 'successor' for purposes of this paragraph, by regulation, and may consider any factors as the Board may deem appropriate.

"(4) ADMINISTRATIVE REVIEW.—

"(A) IN GENERAL.—The regulations prescribed under paragraphs (2)(D) and (3) shall include provisions allowing an insured depository institution a reasonable opportunity to challenge administratively the amount of the credit or dividend determined under paragraph (2) or (3) for such institution.

"(B) ADMINISTRATIVE REVIEW.—Any review under subparagraph (A) of any determination of the Corporation under paragraph (2) or (3) shall be final and not subject to judicial review.".

(b) DEFINITION OF RESERVE RATIO.—Section 3(y) of the Federal Deposit Insurance Act (12 U.S.C. 1813(y)) (as amended by section 2105(b) of this subtitle) is amended by adding at the end the following new paragraph:

"(3) RESERVE RATIO.—The term 'reserve ratio', when used with regard to the Deposit Insurance Fund other than in connection with a reference to the designated reserve ratio, means the ratio of the net worth of the Deposit Insurance Fund to the value of the aggregate estimated insured deposits.".

SEC. 2108. DEPOSIT INSURANCE FUND RESTORATION PLANS.

Section 7(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)) (as amended by section 2105(a) of this subtitle) is amended by adding at the end the following new subparagraph:

"(E) DIF RESTORATION PLANS.—

"(i) IN GENERAL.—Whenever—

"(I) the Corporation projects that the reserve ratio of the Deposit Insurance Fund will, within 6 months of such determination, fall below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio; or

"(II) the reserve ratio of the Deposit Insurance Fund actually falls below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio without any determination under subclause (I) having been made,

the Corporation shall establish and implement a Deposit Insurance Fund restoration plan within 90 days that meets the requirements of clause (ii) and such other conditions as the Corporation determines to be appropriate.

"(ii) REQUIREMENTS OF RESTORATION PLAN.—A Deposit Insurance Fund restoration plan meets the requirements of this clause if the plan provides that the reserve ratio of the Fund will meet or exceed the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio before the end of the 5-year period beginning upon the implementation of the plan (or such longer period as the Corporation may determine to be necessary due to extraordinary circumstances).

"(iii) RESTRICTION ON ASSESSMENT CREDITS.—As part of any restoration plan under this subparagraph, the Corporation may elect to restrict the application of assessment credits provided under subsection (e)(3) for any period that the plan is in effect.

"(iv) LIMITATION ON RESTRICTION.—Notwithstanding clause (iii), while any restoration plan under this subparagraph is in effect, the Corporation shall apply credits provided to an insured depository institution under subsection (e)(3) against any assessment imposed on the institution for any assessment period in an amount equal to the lesser of—

"(I) the amount of the assessment; or

"(II) the amount equal to 3 basis points of the institution's assessment base.

"(v) TRANSPARENCY.—Not more than 30 days after the Corporation establishes and implements a restoration plan under clause (i), the Corporation shall publish in the Federal Register a detailed analysis of the factors considered and the basis for the actions taken with regard to the plan.".

SEC. 2109. REGULATIONS REQUIRED.

(a) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, the Board of Directors of the Federal Deposit Insurance Corporation shall prescribe final regulations, after notice and opportunity for comment—

(1) designating the reserve ratio for the Deposit Insurance Fund in accordance with section 7(b)(3) of the Federal Deposit Insurance Act (as amended by section 2105 of this subtitle);

(2) implementing increases in deposit insurance coverage in accordance with the amendments made by section 2103 of this subtitle;

(3) implementing the dividend requirement under section 7(e)(2) of the Federal Deposit Insurance Act (as amended by section 2107 of this subtitle);

(4) implementing the 1-time assessment credit to certain insured depository institutions in accordance with section 7(e)(3) of the Federal Deposit Insurance Act, as amended by section 2107 of this subtitle, including the qualifications and procedures under which the Corporation would apply assessment credits; and

(5) providing for assessments under section 7(b) of the Federal Deposit Insurance Act, as amended by this subtitle.

(b) TRANSITION PROVISIONS.—

(1) CONTINUATION OF EXISTING ASSESSMENT REGULATIONS.—No provision of this subtitle or any amendment made by this subtitle shall be construed as affecting the authority of the Corporation to set or collect deposit insurance assessments pursuant to any regulations in effect before the effective date of the final regulations prescribed under subsection (a).

(2) TREATMENT OF DIF MEMBERS UNDER EXISTING REGULATIONS.—As of the date of the merger of the Bank Insurance Fund and the Savings Association Insurance Fund pursuant to section 2102, the assessment regulations in effect immediately before the date of the enactment of this Act shall continue to apply to all members of the Deposit Insurance Fund, until such regulations are modified by the Corporation, notwithstanding that such regulations may refer to "Bank Insurance Fund members" or "Savings Association Insurance Fund members".

TITLE III—DIGITAL TELEVISION TRANSITION AND PUBLIC SAFETY

SEC. 3001. SHORT TITLE; DEFINITION.

(a) SHORT TITLE.—This title may be cited as the "Digital Television Transition and Public Safety Act of 2005".

(b) DEFINITION.—As used in this Act, the term "Assistant Secretary" means the Assistant Secretary for Communications and Information of the Department of Commerce.

SEC. 3002. ANALOG SPECTRUM RECOVERY: FIRM DEADLINE.

(a) AMENDMENTS.—Section 309(j)(14) of the Communications Act of 1934 (47 U.S.C. 309(j)(14)) is amended—

(1) in subparagraph (A)—

(A) by inserting "full-power" before "television broadcast license"; and

(B) by striking "December 31, 2006" and inserting "February 17, 2009";

(2) by striking subparagraph (B);

(3) in subparagraph (C)(i)(I), by striking "or (B)";

(4) in subparagraph (D), by striking "subparagraph (C)(i)" and inserting "subparagraph (B)(i)"; and

(5) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(b) TERMINATIONS OF ANALOG LICENSES AND BROADCASTING.—The Federal Communications Commission shall take such actions as are necessary—

(1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by February 18, 2009; and

(2) to require by February 18, 2009, that all broadcasting by Class A stations, whether in the analog television service or digital television service, and all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive).

(c) CONFORMING AMENDMENTS.—

(1) Section 337(e) of the Communications Act of 1934 (47 U.S.C. 337(e)) is amended—

(A) in paragraph (1)—

(i) by striking "CHANNELS 60 TO 69" and inserting "CHANNELS 52 TO 69";

(ii) by striking "person who" and inserting "full-power television station licensee that";

(iii) by striking "746 and 806 megahertz" and inserting "698 and 806 megahertz"; and

(iv) by striking "the date on which the digital television service transition period terminates, as determined by the Commission" and inserting "February 17, 2009"; and

(B) in paragraph (2), by striking "746 megahertz" and inserting "698 megahertz".

SEC. 3003. AUCTION OF RECOVERED SPECTRUM.

(a) DEADLINE FOR AUCTION.—Section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended—

(1) by redesignating the second paragraph (15) of such section (as added by section 203(b) of the Commercial Spectrum Enhancement Act (Pub. L. 108–494; 118 Stat. 3993)), as paragraph (16) of such section; and

(2) in the first paragraph (15) of such section (as added by section 3(a) of the Auction Reform Act of 2002 (Pub. L. 107–195; 116 Stat. 716)), by adding at the end of subparagraph (C) the following new clauses:

"(v) ADDITIONAL DEADLINES FOR RECOVERED ANALOG SPECTRUM.—Notwithstanding subparagraph (B), the Commission shall conduct the auction of the licenses for recovered analog spectrum by commencing the bidding not later than January 28, 2008, and shall deposit the proceeds of such auction in accordance with paragraph (8)(E)(ii) not later than June 30, 2008.

"(vi) RECOVERED ANALOG SPECTRUM.—For purposes of clause (v), the term 'recovered analog spectrum' means the spectrum between channels 52 and 69, inclusive (between frequencies 698 and 806 megahertz, inclusive) reclaimed from analog television service broadcasting under paragraph (14), other than—

"(I) the spectrum required by section 337 to be made available for public safety services; and

"(II) the spectrum auctioned prior to the date of enactment of the Digital Television Transition and Public Safety Act of 2005.".

(b) EXTENSION OF AUCTION AUTHORITY.—Section 309(j)(11) of such Act (47 U.S.C. 309(j)(11)) is amended by striking "2007" and inserting "2011".

SEC. 3004. RESERVATION OF AUCTION PROCEEDS.

Section 309(j)(8) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)) is amended—

(1) in subparagraph (A), by striking "subparagraph (B) or subparagraph (D)" and inserting "subparagraphs (B), (D), and (E)";

(2) in subparagraph (C)(i), by inserting before the semicolon at the end the following: ", except as otherwise provided in subparagraph (E)(ii)"; and

(3) by adding at the end the following new subparagraph:

"(E) TRANSFER OF RECEIPTS.—

"(i) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a fund to be known as the Digital Television Transition and Public Safety Fund.

"(ii) PROCEEDS FOR FUNDS.—Notwithstanding subparagraph (A), the proceeds (including deposits and upfront payments from successful bidders) from the use of a competitive bidding system under this subsection with respect to recovered analog spectrum shall be deposited in the Digital Television Transition and Public Safety Fund.

"(iii) TRANSFER OF AMOUNT TO TREASURY.—On September 30, 2009, the Secretary shall transfer $7,363,000,000 from the Digital Television Transition and Public Safety Fund to the general fund of the Treasury.

"(iv) RECOVERED ANALOG SPECTRUM.—For purposes of clause (i), the term 'recovered analog spectrum' has the meaning provided in paragraph (15)(C)(vi).".

SEC. 3005. DIGITAL-TO-ANALOG CONVERTER BOX PROGRAM.

(a) CREATION OF PROGRAM.—The Assistant Secretary shall—

(1) implement and administer a program through which households in the United States may obtain coupons that can be applied toward the purchase of digital-to-analog converter boxes; and

(2) make payments of not to exceed $990,000,000, in the aggregate, through fiscal year 2009 to carry out that program from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)).

(b) CREDIT.—The Assistant Secretary may borrow from the Treasury beginning on October 1, 2006 such sums as may be necessary, but not to exceed $1,500,000,000, to implement this section. The Assistant Secretary shall reimburse the Treasury, without interest, as funds are deposited into the Digital Television Transition and Public Safety Fund.

(c) PROGRAM SPECIFICATIONS.—

(1) LIMITATIONS.—

(A) TWO-PER-HOUSEHOLD MAXIMUM.—A household may obtain coupons by making a request as required by the regulations under this section between January 1, 2008, and March 31, 2009, inclusive. The Assistant Secretary shall ensure that each requesting household receives, via the United States Postal Service, no more than two coupons.

(B) NO COMBINATIONS OF COUPONS.—Two coupons may not be used in combination toward the purchase of a single digital-to-analog converter box.

(C) DURATION.—All coupons shall expire 3 months after issuance.

(2) DISTRIBUTION OF COUPONS.—The Assistant Secretary shall expend not more than $100,000,000 on administrative expenses and shall ensure that the sum of—

(A) all administrative expenses for the program, including not more than $5,000,000 for consumer education concerning the digital television transition and the availability of the digital-to-analog converter box program; and

(B) the total maximum value of all the coupons redeemed, and issued but not expired, does not exceed $990,000,000.

(3) USE OF ADDITIONAL AMOUNT.—If the Assistant Secretary transmits to the Committee on Energy and Commerce of the House of Representatives and Committee on Commerce, Science, and Transportation of the Senate a statement certifying that the sum permitted to be expended under paragraph (2) will be insufficient to fulfill the requests for coupons from eligible households—

(A) paragraph (2) shall be applied—

(i) by substituting "$160,000,000" for "$100,000,000"; and

(ii) by substituting "$1,500,000,000" for "$990,000,000";

(B) subsection (a)(2) shall be applied by substituting "$1,500,000,000" for "$990,000,000"; and

(C) the additional amount permitted to be expended shall be available 60 days after the Assistant Secretary sends such statement.

(4) COUPON VALUE.—The value of each coupon shall be $40.

(d) DEFINITION OF DIGITAL-TO-ANALOG CONVERTER BOX.—For purposes of this section, the term "digital-to-analog converter box" means a stand-alone device that does not contain features or functions except those necessary to enable a consumer to convert any channel broadcast in the digital television service into a format that the consumer can display on television receivers designed to receive and display signals only in the analog television service, but may also include a remote control device.

SEC. 3006. PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS.

(a) CREATION OF PROGRAM.—The Assistant Secretary, in consultation with the Secretary of the Department of Homeland Security—

(1) may take such administrative action as is necessary to establish and implement a grant program to assist public safety agencies in the acquisition of, deployment of, or training for the use of interoperable communications systems that utilize, or enable interoperability with communications systems that can utilize, reallocated public safety spectrum for radio communication; and

(2) shall make payments of not to exceed $1,000,000,000, in the aggregate, through fiscal year 2010 to carry out that program from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)).

(b) CREDIT.—The Assistant Secretary may borrow from the Treasury beginning on October 1, 2006 such sums as may be necessary, but not to exceed $1,000,000,000, to implement this section. The Assistant Secretary shall reimburse the Treasury, without interest, as funds are deposited into the Digital Television Transition and Public Safety Fund.

(c) CONDITION OF GRANTS.—In order to obtain a grant under the grant program, a public safety agency shall agree to provide, from non-Federal sources, not less than 20 percent of the costs of acquiring and deploying the interoperable communications systems funded under the grant program.

(d) DEFINITIONS.—For purposes of this section:

(1) PUBLIC SAFETY AGENCY.—The term "public safety agency" means any State, local, or tribal government entity, or nongovernmental organization authorized by such entity, whose sole or principal purpose is to protect the safety of life, health, or property.

(2) INTEROPERABLE COMMUNICATIONS SYSTEMS.—The term "interoperable communications systems" means communications systems which enable public safety agencies to share information amongst local, State, Federal, and tribal public safety agencies in the same area via voice or data signals.

(3) REALLOCATED PUBLIC SAFETY SPECTRUM.—The term "reallocated public safety spectrum" means the bands of spectrum located at 764–776 megahertz and 794–806 megahertz, inclusive.

SEC. 3007. NYC 9/11 DIGITAL TRANSITION.

(a) FUNDS AVAILABLE.—From the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) the Assistant Secretary shall make payments of not to exceed $30,000,000, in the aggregate, which shall be available to carry out this section for fiscal years 2007 through 2008. The Assistant Secretary may borrow from the Treasury beginning October 1, 2006 such sums as may be necessary not to exceed $30,000,000 to implement and administer the program in accordance with this section. The Assistant Secretary shall reimburse the Treasury, without interest, as funds are deposited into the Digital Television Transition and Public Safety Fund.

(b) USE OF FUNDS.—The sums available under subsection (a) shall be made available by the Assistant Secretary by grant to be used to reimburse the Metropolitan Television Alliance for costs incurred in the design and deployment of a temporary digital television broadcast system to ensure that, until a permanent facility atop the Freedom Tower is constructed, the members of the Metropolitan Television Alliance can provide the New York City area with an adequate digital television signal as determined by the Federal Communications Commission.

(c) DEFINITIONS.—For purposes of this section:

(1) METROPOLITAN TELEVISION ALLIANCE.—The term "Metropolitan Television Alliance" means the organization formed by New York City television broadcast station licensees to locate new shared facilities as a result of the attacks on September 11, 2001 and the loss of use of shared facilities that housed broadcast equipment.

(2) NEW YORK CITY AREA.—The term "New York City area" means the five counties comprising New York City and counties of northern New Jersey in immediate proximity to New York City (Bergen, Essex, Union, and Hudson Counties) .

SEC. 3008. LOW-POWER TELEVISION AND TRANSLATOR DIGITAL-TO-ANALOG CONVERSION.

(a) CREATION OF PROGRAM.—The Assistant Secretary shall make payments of not to exceed $10,000,000, in the aggregate, during the fiscal year 2008 and 2009 period from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) to implement and administer a program through which each eligible low-power television station may receive compensation toward the cost of the purchase of a digital-to-analog conversion device that enables it to convert the incoming digital signal of its corresponding full-power television station to analog format for transmission on the low-power television station's analog channel. An eligible low-power television station

may receive such compensation only if it submits a request for such compensation on or before February 17, 2009. Priority compensation shall be given to eligible low-power television stations in which the license is held by a non-profit corporation and eligible low-power television stations that serve rural areas of fewer than 10,000 viewers.

(b) Credit.—The Assistant Secretary may borrow from the Treasury beginning October 1, 2006 such sums as may be necessary, but not to exceed $10,000,000, to implement this section. The Assistant Secretary shall reimburse the Treasury, without interest, as funds are deposited into the Digital Television Transition and Public Safety Fund.

(c) Eligible Stations.—For purposes of this section, the term "eligible low-power television station" means a low-power television broadcast station, Class A television station, television translator station, or television booster station—

(1) that is itself broadcasting exclusively in analog format; and

(2) that has not purchased a digital-to-analog conversion device prior to the date of enactment of the Digital Television Transition and Public Safety Act of 2005.

SEC. 3009. LOW-POWER TELEVISION AND TRANSLATOR UPGRADE PROGRAM.

(a) Establishment.—The Assistant Secretary shall make payments of not to exceed $65,000,000, in the aggregate, during fiscal year 2009 the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) to implement and administer a program through which each licensee of an eligible low-power television station may receive reimbursement for equipment to upgrade low-power television stations from analog to digital in eligible rural communities, as that term is defined in section 610(b)(2) of the Rural Electrification Act of 1937 (7 U.S.C. 950bb(b)(2)). Such reimbursements shall be issued to eligible stations no earlier than October 1, 2010. Priority reimbursements shall be given to eligible low-power television stations in which the license is held by a non-profit corporation and eligible low-power television stations that serve rural areas of fewer than 10,000 viewers.

(b) Eligible Stations.—For purposes of this section, the term "eligible low-power television station" means a low-power television broadcast station, Class A television station, television translator station, or television booster station—

(1) that is itself broadcasting exclusively in analog format; and

(2) that has not converted from analog to digital operations prior to the date of enactment of the Digital Television Transition and Public Safety Act of 2005.

SEC. 3010. NATIONAL ALERT AND TSUNAMI WARNING PROGRAM.

The Assistant Secretary shall make payments of not to exceed $156,000,000, in the aggregate, during the fiscal year 2007 through 2012 period from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) to implement a unified national alert system capable of alerting the public, on a national, regional, or local basis to emergency situations by using a variety of communications technologies. The Assistant Secretary shall use $50,000,000 of such amounts to implement a tsunami warning and coastal vulnerability program.

SEC. 3011. ENHANCE 911.

The Assistant Secretary shall make payments of not to exceed $43,500,000, in the aggregate, from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) to implement the ENHANCE 911 Act of 2004.

SEC. 3012. ESSENTIAL AIR SERVICE PROGRAM.

(a) In General.—If the amount appropriated to carry out the essential air service program under subchapter II of chapter 417 of title 49, United States Code, equals or exceeds $110,000,000 for fiscal year 2007 or 2008, then the Secretary of Commerce shall make $15,000,000 available, from the Digital Television Transition and Public Safety Fund established by section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)), to the Secretary of Transportation for use in carrying out the essential air service program for that fiscal year.

(b) Application With Other Funds.—Amounts made available under subsection (a) for any fiscal year shall be in addition to any amounts—

(1) appropriated for that fiscal year; or

(2) derived from fees collected pursuant to section 45301(a)(1) of title 49, United States Code, that are made available for obligation and expenditure to carry out the essential air service program for that fiscal year.

(c) Advances.—The Secretary of Transportation may borrow from the Treasury such sums as may be necessary, but not to exceed $30,000,000 on a temporary and reimbursable basis to implement subsection (a). The Secretary of Transportation shall reimburse the Treasury, without interest, as funds are deposited into the Digital Television Transition and Public Safety Fund under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) and made available to the Secretary under subsection (a).

SEC. 3013. SUPPLEMENTAL LICENSE FEES.

In addition to any fees assessed under the Communications Act of 1934 (47 U.S.C. 151 et seq.), the Federal Communications Commission shall assess extraordinary fees for licenses in the aggregate amount of $10,000,000, which shall be deposited in the Treasury during fiscal year 2006 as offsetting receipts.

TITLE IV—TRANSPORTATION PROVISIONS

SEC. 4001. EXTENSION OF VESSEL TONNAGE DUTIES.

(a) Extension of Duties.—Section 36 of the Act entitled "An Act to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes", approved August 5, 1909 (36 Stat. 111; 46 U.S.C. App. 121), is amended—

(1) by striking "9 cents per ton" and all that follows through "2002," the first place it appears and inserting "4.5 cents per ton, not to exceed in the aggregate 22.5 cents per ton in any one year, for fiscal years 2006 through 2010,"; and

(2) by striking "27 cents per ton" and all that follows through "2002," and inserting "13.5 cents per ton, not to exceed 67.5 cents per ton per annum, for fiscal years 2006 through 2010,".

(b) Conforming Amendment.—The Act entitled "An Act concerning tonnage duties on vessels entering otherwise than by sea", approved March 8, 1910 (36 Stat. 234; 46 U.S.C. App. 132), is amended by striking "9 cents per ton" and all that follows through "and 2 cents" and inserting "4.5 cents per ton, not to exceed in the aggregate 22.5 cents per ton in any one year, for fiscal years 2006 through 2010, and 2 cents".

TITLE V—MEDICARE

Subtitle A—Provisions Relating to Part A

SEC. 5001. HOSPITAL QUALITY IMPROVEMENT.

(a) Submission of Hospital Data.—Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) is amended—

(1) in clause (i)—

(A) in subclause (XIX), by striking "2007" and inserting "2006"; and

(B) in subclause (XX), by striking "for fiscal year 2008 and each subsequent fiscal year," and inserting "for each subsequent fiscal year, subject to clause (viii),";

(2) in clause (vii)—

(A) in subclause (I), by striking "for each of fiscal years 2005 through 2007" and inserting "for fiscal years 2005 and 2006"; and

(B) in subclause (II), by striking "Each" and inserting "For fiscal years 2005 and 2006, each"; and

(3) by adding at the end the following new clauses:

"(viii)(I) For purposes of clause (i) for fiscal year 2007 and each subsequent fiscal year, in the case of a subsection (d) hospital that does not submit, to the Secretary in accordance with this clause, data required to be submitted on measures selected under this clause with respect to such a fiscal year, the applicable percentage increase under clause (i) for such fiscal year shall be reduced by 2.0 percentage points. Such reduction shall apply only with respect to the fiscal year involved and the Secretary shall not take into account such reduction in computing the applicable percentage increase under clause (i) for a subsequent fiscal year, and the Secretary and the Medicare Payment Advisory Commission shall carry out the requirements under section 5001(b) of the Deficit Reduction Act of 2005.

"(II) Each subsection (d) hospital shall submit data on measures selected under this clause to the Secretary in a form and manner, and at a time, specified by the Secretary for purposes of this clause.

"(III) The Secretary shall expand, beyond the measures specified under clause (vii)(II) and consistent with the succeeding subclauses, the set of measures that the Secretary determines to be appropriate for the measurement of the quality of care furnished by hospitals in inpatient settings.

"(IV) Effective for payments beginning with fiscal year 2007, in expanding the number of measures under subclause (III), the Secretary shall begin to adopt the baseline set of performance measures as set forth in the November 2005 report by the Institute of Medicine of the National Academy of Sciences under section 238(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

"(V) Effective for payments beginning with fiscal year 2008, the Secretary shall add other measures that reflect consensus among affected parties and, to the extent feasible and practicable, shall include measures set forth by one or more national consensus building entities.

"(VI) For purposes of this clause and clause (vii), the Secretary may replace any measures or indicators in appropriate cases, such as where all hospitals are effectively in compliance or the measures or indicators have been subsequently shown not to represent the best clinical practice.

"(VII) The Secretary shall establish procedures for making data submitted under this clause available to the public. Such procedures shall ensure that a hospital has the opportunity to review the data that are to be made public with respect to the hospital prior to such data being made public. The Secretary shall report quality measures of process, structure, outcome, patients' perspectives on care, efficiency, and costs of care that relate to services furnished in inpatient settings in hospitals on the Internet website of the Centers for Medicare & Medicaid Services.".

(b) Plan for Hospital Value Based Purchasing Program.—

(1) In general.—The Secretary of Health and Human Services shall develop a plan to implement a value based purchasing program for payments under the Medicare program for subsection (d) hospitals beginning with fiscal year 2009.

(2) Details.—Such a plan shall include consideration of the following issues:

(A) The on-going development, selection, and modification process for measures of quality and efficiency in hospital inpatient settings.

(B) The reporting, collection, and validation of quality data.

(C) The structure of value based payment adjustments, including the determination of thresholds or improvements in quality that would substantiate a payment adjustment, the size of such payments, and the sources of funding for the value based payments.

(D) The disclosure of information on hospital performance.

In developing such a plan, the Secretary shall consult with relevant affected parties and shall consider experience with such demonstrations that are relevant to the value based purchasing program under this subsection.

(c) QUALITY ADJUSTMENT IN DRG PAYMENTS FOR CERTAIN HOSPITAL ACQUIRED INFECTIONS.—

(1) IN GENERAL.—Section 1886(d)(4) of the Social Security Act (42 U.S.C. 1395ww(d)(4)) is amended by adding at the end the following new subparagraph:

"(D)(i) For discharges occurring on or after October 1, 2008, the diagnosis-related group to be assigned under this paragraph for a discharge described in clause (ii) shall be a diagnosis-related group that does not result in higher payment based on the presence of a secondary diagnosis code described in clause (iv).

"(ii) A discharge described in this clause is a discharge which meets the following requirements:

"(I) The discharge includes a condition identified by a diagnosis code selected under clause (iv) as a secondary diagnosis.

"(II) But for clause (i), the discharge would have been classified to a diagnosis-related group that results in a higher payment based on the presence of a secondary diagnosis code selected under clause (iv).

"(III) At the time of admission, no code selected under clause (iv) was present.

"(iii) As part of the information required to be reported by a hospital with respect to a discharge of an individual in order for payment to be made under this subsection, for discharges occurring on or after October 1, 2007, the information shall include the secondary diagnosis of the individual at admission.

"(iv) By not later than October 1, 2007, the Secretary shall select diagnosis codes associated with at least two conditions, each of which codes meets all of the following requirements (as determined by the Secretary):

"(I) Cases described by such code have a high cost or high volume, or both, under this title.

"(II) The code results in the assignment of a case to a diagnosis-related group that has a higher payment when the code is present as a secondary diagnosis.

"(III) The code describes such conditions that could reasonably have been prevented through the application of evidence-based guidelines.

The Secretary may from time to time revise (through addition or deletion of codes) the diagnosis codes selected under this clause so long as there are diagnosis codes associated with at least two conditions selected for discharges occurring during any fiscal year.

"(v) In selecting and revising diagnosis codes under clause (iv), the Secretary shall consult with the Centers for Disease Control and Prevention and other appropriate entities.

"(vi) Any change resulting from the application of this subparagraph shall not be taken into account in adjusting the weighting factors under subparagraph (C)(i) or in applying budget neutrality under subparagraph (C)(iii).".

(2) NO JUDICIAL REVIEW.—Section 1886(d)(7)(B) of such Act (42 U.S.C. 1395ww(d)(7)(B)) is amended by inserting before the period the following: ", including the selection and revision of codes under paragraph (4)(D)".

SEC. 5002. CLARIFICATION OF DETERMINATION OF MEDICAID PATIENT DAYS FOR DSH COMPUTATION.

(a) IN GENERAL.—Section 1886(d)(5)(F)(vi) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)(vi)) is amended by adding after and below subclause (II) the following:

"In determining under subclause (II) the number of the hospital's patient days for such period which consist of patients who (for such days) were eligible for medical assistance under a State plan approved under title XIX, the Secretary may, to the extent and for the period the Secretary determines appropriate, include patient days of patients not so eligible but who are regarded as such because they receive benefits under a demonstration project approved under title XI.".

(b) RATIFICATION AND PROSPECTIVE APPLICATION OF PREVIOUS REGULATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), regulations described in paragraph (3), insofar as such regulations provide for the treatment of individuals eligible for medical assistance under a demonstration project approved under title XI of the Social Security Act under section 1886(d)(5)(F)(vi) of such Act, are hereby ratified, effective as of the date of their respective promulgations.

(2) NO APPLICATION TO CLOSED COST REPORTS.—Paragraph (1) shall not be applied in a manner that requires the reopening of any cost reports which are closed as of the date of the enactment of this Act.

(3) REGULATIONS DESCRIBED.—For purposes of paragraph (1), the regulations described in this paragraph are as follows:

(A) 2000 REGULATION.—Regulations promulgated on January 20, 2000, at 65 Federal Register 3136 et seq., including the policy in such regulations regarding discharges occurring prior to January 20, 2000.

(B) 2003 REGULATION.—Regulations promulgated on August 1, 2003, at 68 Federal Register 45345 et seq.

SEC. 5003. IMPROVEMENTS TO THE MEDICARE-DEPENDENT HOSPITAL (MDH) PROGRAM.

(a) 5-YEAR EXTENSION.—

(1) EXTENSION OF PAYMENT METHODOLOGY.—Section 1886(d)(5)(G) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(G)) is amended—

(A) in clause (i), by striking "October 1, 2006" and inserting "October 1, 2011"; and

(B) in clause (ii)(II)—

(i) by striking "October 1, 2006" and inserting "October 1, 2011"; and

(ii) by inserting "or for discharges in the fiscal year" after "for the cost reporting period".

(2) CONFORMING AMENDMENTS.—

(A) EXTENSION OF TARGET AMOUNT.—Section 1886(b)(3)(D) of such Act (42 U.S.C. 1395ww(b)(3)(D)) is amended—

(i) in the matter preceding clause (i)—

(I) by striking "beginning" and inserting "occurring"; and

(II) by striking "October 1, 2006" and inserting "October 1, 2011"; and

(ii) in clause (iv), by striking "through fiscal year 2005" and inserting "through fiscal year 2011".

(B) PERMITTING HOSPITALS TO DECLINE RECLASSIFICATION.—Section 13501(e)(2) of the Omnibus Budget Reconciliation Act of 1993 (42 U.S.C. 1395ww note) is amended by striking "through fiscal year 2005" and inserting "through fiscal year 2011".

(b) OPTION TO USE 2002 AS BASE YEAR.—Section 1886(b)(3) of such Act (42 U.S.C. 1395ww(b)(3)) is amended—

(1) in subparagraph (D), by inserting "subject to subparagraph (K)," after "(d)(5)(G)),"; and

(2) by adding at the end the following new subparagraph:

"(K)(i) With respect to discharges occurring on or after October 1, 2006, in the case of a medicare-dependent, small rural hospital, for purposes of applying subparagraph (D)—

"(I) there shall be substituted for the base cost reporting period described in subparagraph (D)(i) the 12-month cost reporting period beginning during fiscal year 2002; and

"(II) any reference in such subparagraph to the 'first cost reporting period' described in such subparagraph is deemed a reference to the first cost reporting period beginning on or after October 1, 2006.

"(ii) This subparagraph shall only apply to a hospital if the substitution described in clause (i)(I) results in an increase in the target amount under subparagraph (D) for the hospital.".

(c) ENHANCED PAYMENT FOR AMOUNT BY WHICH THE TARGET EXCEEDS THE PPS RATE.—Section 1886(d)(5)(G)(ii)(II) of such Act (42 U.S.C. 1395ww(d)(5)(G)(iv)(II)) is amended by inserting "(or 75 percent in the case of discharges occurring on or after October 1, 2006)" after "50 percent".

(d) ENHANCED DISPROPORTIONATE SHARE HOSPITAL (DSH) TREATMENT FOR MEDICARE-DEPENDENT HOSPITALS.—Section 1886(d)(5)(F)(xiv)(II) of such Act (42 U.S.C. 1395ww(d)(5)(F)(xiv)(II)) is amended by inserting "or, in the case of discharges occurring on or after October 1, 2006, as a medicare-dependent, small rural hospital under subparagraph (G)(iv)" before the period at the end.

SEC. 5004. REDUCTION IN PAYMENTS TO SKILLED NURSING FACILITIES FOR BAD DEBT.

(a) IN GENERAL.—Section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)) is amended by adding at the end the following new subparagraph:

"(V) In determining such reasonable costs for skilled nursing facilities with respect to cost reporting periods beginning on or after October 1, 2005, the amount of bad debts otherwise treated as allowed costs which are attributable to the coinsurance amounts under this title for individuals who are entitled to benefits under part A and—

"(i) are not described in section 1935(c)(6)(A)(ii) shall be reduced by 30 percent of such amount otherwise allowable; and

"(ii) are described in such section shall not be reduced.".

(b) TECHNICAL AMENDMENT.—Section 1861(v)(1)(T) of such Act (42 U.S.C. 1395x(v)(1)(T)) is amended by striking "section 1833(t)(5)(B)" and inserting "section 1833(t)(8)(B)".

SEC. 5005. EXTENDED PHASE-IN OF THE INPATIENT REHABILITATION FACILITY CLASSIFICATION CRITERIA.

(a) IN GENERAL.—Notwithstanding section 412.23(b)(2) of title 42, Code of Federal Regulations, the Secretary of Health and Human Services shall apply the applicable percent specified in subsection (b) in the classification criterion used under the IRF regulation (as defined in subsection (c)) to determine whether a hospital or unit of a hospital is an inpatient rehabilitation facility under the Medicare program under title XVIII of the Social Security Act.

(b) APPLICABLE PERCENT.—For purposes of subsection (a), the applicable percent specified in this subsection for cost reporting periods—

(1) beginning during the 12-month period beginning on July 1, 2006, is 60 percent;

(2) beginning during the 12-month period beginning on July 1, 2007, is 65 percent; and

(3) beginning on or after July 1, 2008, is 75 percent.

(c) IRF REGULATION.—For purposes of subsection (a), the term "IRF regulation" means the rule published in the Federal Register on May 7, 2004, entitled "Medicare Program; Final Rule; Changes to the Criteria for Being Classified as an Inpatient Rehabilitation Facility" (69 Fed. Reg. 25752).

SEC. 5006. DEVELOPMENT OF A STRATEGIC PLAN REGARDING PHYSICIAN INVESTMENT IN SPECIALTY HOSPITALS.

(a) Development.—

(1) In general.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall develop a strategic and implementing plan to address issues described in paragraph (2) regarding physician investment in specialty hospitals (as defined in section 1877(h)(7)(A) of the Social Security Act (42 U.S.C. 1395nn(h)(7)(A)).

(2) Issues described.—The issues described in this paragraph are the following:

(A) Proportionality of investment return.

(B) Bona fide investment.

(C) Annual disclosure of investment information.

(D) The provision by specialty hospitals of—

(i) care to patients who are eligible for medical assistance under a State plan approved under title XIX of the Social Security Act, including patients not so eligible but who are regarded as such because they receive benefits under a demonstration project approved under title XI of such Act; and

(ii) charity care.

(E) Appropriate enforcement.

(b) Reports.—

(1) Interim report.—Not later than 3 months after the date of the enactment of this Act, the Secretary shall submit an interim report to the appropriate committees of jurisdiction of Congress on the status of the development of the plan under subsection (a).

(2) Final report.—Not later than six months after the date of the enactment of this Act, the Secretary shall submit a final report to the appropriate committees of jurisdiction of Congress on the plan developed under subsection (a) together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

(c) Continuation of Suspension on Enrollment.—

(1) In general.—Subject to paragraph (2), the Secretary shall continue the suspension on enrollment of new specialty hospitals (as so defined) under title XVIII of the Social Security Act until the earlier of—

(A) the date that the Secretary submits the final report under subsection (b)(2); or

(B) the date that is six months after the date of the enactment of this Act.

(2) Extension of suspension.—If the Secretary fails to submit the final report described in subsection (b)(2) by the date required under such subsection, the Secretary shall—

(A) extend the suspension on enrollment under paragraph (1) for an additional two months; and

(B) provide a certification to the appropriate committees of jurisdiction of Congress of such failure.

(d) Waiver.—In developing the plan and report required under this section, the Secretary may waive such requirements of section 553 of title 5, United States Code, as the Secretary determines necessary.

(e) Funding.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary for fiscal year 2006, $2,000,000 to carry out this section.

SEC. 5007. MEDICARE DEMONSTRATION PROJECTS TO PERMIT GAINSHARING ARRANGEMENTS.

(a) Establishment.—The Secretary shall establish under this section a qualified gainsharing demonstration program under which the Secretary shall approve demonstration projects by not later than November 1, 2006, to test and evaluate methodologies and arrangements between hospitals and physicians designed to govern the utilization of inpatient hospital resources and physician work to improve the quality and efficiency of care provided to Medicare beneficiaries and to develop improved operational and financial hospital performance with sharing of remuneration as specified in the project. Such projects shall be operational by not later than January 1, 2007.

(b) Requirements Described.—A demonstration project under this section shall meet the following requirements for purposes of maintaining or improving quality while achieving cost savings:

(1) Arrangement for remuneration as share of savings.—The demonstration project shall involve an arrangement between a hospital and a physician under which the hospital provides remuneration to the physician that represents solely a share of the savings incurred directly as a result of collaborative efforts between the hospital and the physician.

(2) Written plan agreement.—The demonstration project shall be conducted pursuant to a written agreement that—

(A) is submitted to the Secretary prior to implementation of the project; and

(B) includes a plan outlining how the project will achieve improvements in quality and efficiency.

(3) Patient notification.—The demonstration project shall include a notification process to inform patients who are treated in a hospital participating in the project of the participation of the hospital in such project.

(4) Monitoring quality and efficiency of care.—The demonstration project shall provide measures to ensure that the quality and efficiency of care provided to patients who are treated in a hospital participating in the demonstration project is continuously monitored to ensure that such quality and efficiency is maintained or improved.

(5) Independent review.—The demonstration project shall certify, prior to implementation, that the elements of the demonstration project are reviewed by an organization that is not affiliated with the hospital or the physician participating in the project.

(6) Referral limitations.—The demonstration project shall not be structured in such a manner as to reward any physician participating in the project on the basis of the volume or value of referrals to the hospital by the physician.

(c) Waiver of Certain Restrictions.—

(1) In general.—An incentive payment made by a hospital to a physician under and in accordance with a demonstration project shall not constitute—

(A) remuneration for purposes of section 1128B of the Social Security Act (42 U.S.C. 1320a-7b);

(B) a payment intended to induce a physician to reduce or limit services to a patient entitled to benefits under Medicare or a State plan approved under title XIX of such Act in violation of section 1128A of such Act (42 U.S.C. 1320a–7a); or

(C) a financial relationship for purposes of section 1877 of such Act (42 U.S.C. 1395nn).

(2) Protection for existing arrangements.—In no case shall the failure to comply with the requirements described in paragraph (1) affect a finding made by the Inspector General of the Department of Health and Human Services prior to the date of the enactment of this Act that an arrangement between a hospital and a physician does not violate paragraph (1) or (2) of section 1128A(a) of the Social Security Act (42 U.S.C. 1320a–7(a)).

(d) Program Administration.—

(1) Solicitation of applications.—By not later than 90 days after the date of the enactment of this Act, the Secretary shall solicit applications for approval of a demonstration project, in such form and manner, and at such time specified by the Secretary.

(2) Number of projects approved.—The Secretary shall approve not more than 6 demonstration projects, at least 2 of which shall be located in a rural area.

(3) Duration.—The qualified gainsharing demonstration program under this section shall be conducted for the period beginning on January 1, 2007, and ending on December 31, 2009.

(e) Reports.—

(1) Initial report.—By not later than December 1, 2006, the Secretary shall submit to Congress a report on the number of demonstration projects that will be conducted under this section.

(2) Project update.—By not later than December 1, 2007, the Secretary shall submit to Congress a report on the details of such projects (including the project improvements towards quality and efficiency described in subsection (b)(2)(B)).

(3) Quality improvement and savings.—By not later than December 1, 2008, the Secretary shall submit to Congress a report on quality improvement and savings achieved as a result of the qualified gainsharing demonstration program established under subsection (a).

(4) Final report.—By not later than May 1, 2010, the Secretary shall submit to Congress a final report on the information described in paragraph (3).

(f) Funding.—

(1) In general.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary for fiscal year 2006 $6,000,000, to carry out this section.

(2) Availability.—Funds appropriated under paragraph (1) shall remain available for expenditure through fiscal year 2010.

(g) Definitions.—For purposes of this section:

(1) Demonstration project.—The term "demonstration project" means a project implemented under the qualified gainsharing demonstration program established under subsection (a).

(2) Hospital.—The term "hospital" means a hospital that receives payment under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)), and does not include a critical access hospital (as defined in section 1861(mm) of such Act (42 U.S.C. 1395x(mm))).

(3) Medicare.—The term "Medicare" means the programs under title XVIII of the Social Security Act.

(4) Physician.—The term "physician" means, with respect to a demonstration project, a physician described in paragraph (1) or (3) of section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)) who is licensed as such a physician in the area in which the project is located and meets requirements to provide services for which benefits are provided under Medicare. Such term shall be deemed to include a practitioner described in section 1842(e)(18)(C) of such Act (42 U.S.C. 1395u(e)(18)(C)).

(5) Secretary.—The term "Secretary" means the Secretary of Health and Human Services.

SEC. 5008. POST-ACUTE CARE PAYMENT REFORM DEMONSTRATION PROGRAM.

(a) Establishment.—

(1) In general.—By not later than January 1, 2008, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall establish a demonstration program for purposes of understanding costs and outcomes across different post-acute care sites. Under such program, with respect to diagnoses specified by the Secretary, an individual who receives treatment from a provider for such a diagnosis shall receive a single comprehensive assessment on the date of discharge from a subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) of the needs of the patient and the clinical characteristics of the diagnosis to determine the appropriate placement of

such patient in a post-acute care site. The Secretary shall use a standardized patient assessment instrument across all post-acute care sites to measure functional status and other factors during the treatment and at discharge from each provider. Participants in the program shall provide information on the fixed and variable costs for each individual. An additional comprehensive assessment shall be provided at the end of the episode of care.

(2) NUMBER OF SITES.—The Secretary shall conduct the demonstration program under this section with sufficient numbers to determine statistically reliable results.

(3) DURATION.—The Secretary shall conduct the demonstration program under this section for a 3-year period.

(b) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act (42 U.S.C. 1301 et seq.; 42 U.S.C. 1395 et seq.) as may be necessary for the purpose of carrying out the demonstration program under this section.

(c) REPORT.—Not later than 6 months after the completion of the demonstration program under this section, the Secretary shall submit to Congress a report on such program, that includes the results of the program and recommendations for such legislation and administrative action as the Secretary determines to be appropriate.

(d) FUNDING.—The Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund established under section 1817 of the Social Security Act (42 U.S.C. 1395i), $6,000,000 for the costs of carrying out the demonstration program under this section.

Subtitle B—Provisions Relating to Part B

CHAPTER 1—PAYMENT PROVISIONS

SEC. 5101. BENEFICIARY OWNERSHIP OF CERTAIN DURABLE MEDICAL EQUIPMENT (DME).

(a) DME.—

(1) IN GENERAL.—Section 1834(a)(7)(A) of the Social Security Act (42 U.S.C. 1395m(a)(7)(A)) is amended to read as follows:

"(A) PAYMENT.—In the case of an item of durable medical equipment not described in paragraphs (2) through (6), the following rules shall apply:

"(i) RENTAL.—

"(I) IN GENERAL.—Except as provided in clause (iii), payment for the item shall be made on a monthly basis for the rental of the item during the period of medical need (but payments under this clause may not extend over a period of continuous use (as determined by the Secretary) of longer than 36 months).

"(II) PAYMENT AMOUNT.—Subject to subparagraph (B), the amount recognized for the item, for each of the first 3 months of such period, is 10 percent of the purchase price recognized under paragraph (8) with respect to the item, and, for each of the remaining months of such period, is 7.5 percent of such purchase price.

"(ii) OWNERSHIP AFTER RENTAL.—On the first day that begins after the 36th continuous month during which payment is made for the rental of an item under clause (i), the supplier of the item shall transfer title to the item to the individual.

"(iii) PURCHASE AGREEMENT OPTION FOR POWER-DRIVEN WHEELCHAIRS.—In the case of a power-driven wheelchair, at the time the supplier furnishes the item, the supplier shall offer the individual the option to purchase the item, and payment for such item shall be made on a lump-sum basis if the individual exercises such option.

"(iv) MAINTENANCE AND SERVICING.—After the supplier transfers title to the item under clause (ii) or in the case of a power-driven wheelchair for which a purchase agreement has been entered into under clause (iii), maintenance and servicing payments shall, if the Secretary determines such payments are reasonable and necessary, be made (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the particular type of durable medical equipment), and such payments shall be in an amount determined to be appropriate by the Secretary.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to items furnished for which the first rental month occurs on or after January 1, 2006.

(b) OXYGEN EQUIPMENT.—

(1) IN GENERAL.—Section 1834(a)(5) of such Act (42 U.S.C. 1395m(a)(5)) is amended—

(A) in subparagraph (A), by striking "and (E)" and inserting "(E), and (F)"; and

(B) by adding at the end the following new subparagraph:

"(F) OWNERSHIP OF EQUIPMENT.—

"(i) IN GENERAL.—Payment for oxygen equipment (including portable oxygen equipment) under this paragraph may not extend over a period of continuous use (as determined by the Secretary) of longer than 36 months.

"(ii) OWNERSHIP.—

"(I) TRANSFER OF TITLE.—On the first day that begins after the 36th continuous month during which payment is made for the equipment under this paragraph, the supplier of the equipment shall transfer title to the equipment to the individual.

"(II) PAYMENTS FOR OXYGEN AND MAINTENANCE AND SERVICING.—After the supplier transfers title to the equipment under subclause (I)—

"(aa) payments for oxygen shall continue to be made in the amount recognized for oxygen under paragraph (9) for the period of medical need; and

"(bb) maintenance and servicing payments shall, if the Secretary determines such payments are reasonable and necessary, be made (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the equipment), and such payments shall be in an amount determined to be appropriate by the Secretary.".

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendments made by paragraph (1) shall take effect on January 1, 2006.

(B) APPLICATION TO CERTAIN INDIVIDUALS.—In the case of an individual receiving oxygen equipment on December 31, 2005, for which payment is made under section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)), the 36-month period described in paragraph (5)(F)(i) of such section, as added by paragraph (1), shall begin on January 1, 2006.

SEC. 5102. ADJUSTMENTS IN PAYMENT FOR IMAGING SERVICES.

(a) MULTIPLE PROCEDURE PAYMENT REDUCTION FOR IMAGING EXEMPTED FROM BUDGET NEUTRALITY.—Section 1848(c)(2)(B) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)(B)) is amended—

(1) in clause (ii)(II), by striking "clause (iv)" and inserting "clauses (iv) and (v)";

(2) in clause (iv) in the heading, by inserting "OF CERTAIN ADDITIONAL EXPENDITURES" after "EXEMPTION"; and

(3) by adding at the end the following new clause:

"(v) EXEMPTION OF CERTAIN REDUCED EXPENDITURES FROM BUDGET-NEUTRALITY CALCULATION.—The following reduced expenditures, as estimated by the Secretary, shall not be taken into account in applying clause (ii)(II):

"(I) REDUCED PAYMENT FOR MULTIPLE IMAGING PROCEDURES.—Effective for fee schedules established beginning with 2007, reduced expenditures attributable to the multiple procedure payment reduction for imaging under the final rule published by the Secretary in the Federal Register on November 21, 2005 (42 CFR 405, et al.) insofar as it relates to the physician fee schedules for 2006 and 2007.".

(b) REDUCTION IN PHYSICIAN FEE SCHEDULE TO OPD PAYMENT AMOUNT FOR IMAGING SERVICES.—Section 1848 of such Act (42 U.S.C. 1395w–4) is amended—

(1) in subsection (b), by adding at the end the following new paragraph:

"(4) SPECIAL RULE FOR IMAGING SERVICES.—

"(A) IN GENERAL.—In the case of imaging services described in subparagraph (B) furnished on or after January 1, 2007, if—

"(i) the technical component (including the technical component portion of a global fee) of the service established for a year under the fee schedule described in paragraph (1) without application of the geographic adjustment factor described in paragraph (1)(C), exceeds

"(ii) the Medicare OPD fee schedule amount established under the prospective payment system for hospital outpatient department services under paragraph (3)(D) of section 1833(t) for such service for such year, determined without regard to geographic adjustment under paragraph (2)(D) of such section,

the Secretary shall substitute the amount described in clause (ii), adjusted by the geographic adjustment factor described in paragraph (1)(C), for the fee schedule amount for such technical component for such year.

"(B) IMAGING SERVICES DESCRIBED.—For purposes of subparagraph (A), imaging services described in this subparagraph are imaging and computer-assisted imaging services, including X-ray, ultrasound (including echocardiography), nuclear medicine (including positron emission tomography), magnetic resonance imaging, computed tomography, and fluoroscopy, but excluding diagnostic and screening mammography."; and

(2) in subsection (c)(2)(B)(v), as added by subsection (a)(3), by adding at the end the following new subclause:

"(II) OPD PAYMENT CAP FOR IMAGING SERVICES.—Effective for fee schedules established beginning with 2007, reduced expenditures attributable to subsection (b)(4).".

SEC. 5103. LIMITATION ON PAYMENTS FOR PROCEDURES IN AMBULATORY SURGICAL CENTERS.

Section 1833(i)(2) of the Social Security Act (42 U.S.C. 1395l(i)(2)) is amended—

(1) in subparagraph (A), by inserting "subject to subparagraph (E)," after "subparagraph (D),";

(2) in subparagraph (D)(ii), by inserting before the period at the end the following: "and taking into account reduced expenditures that would apply if subparagraph (E) were to continue to apply, as estimated by the Secretary"; and

(3) by adding at the end the following new subparagraph:

"(E) With respect to surgical procedures furnished on or after January 1, 2007, and before the effective date of the implementation of a revised payment system under subparagraph (D), if—

"(i) the standard overhead amount under subparagraph (A) for a facility service for such procedure, without the application of any geographic adjustment, exceeds

"(ii) the Medicare OPD fee schedule amount established under the prospective payment system for hospital outpatient department services under paragraph (3)(D) of section 1833(t) for such service for such year, determined without regard to geographic adjustment under paragraph (2)(D) of such section,

the Secretary shall substitute under subparagraph (A) the amount described in clause (ii) for the standard overhead amount for such service referred to in clause (i).".

SEC. 5104. UPDATE FOR PHYSICIANS' SERVICES FOR 2006.

(a) UPDATE FOR 2006.—Section 1848(d) of the Social Security Act (42 U.S.C. 1395w–4(d)) is amended—

(1) in paragraph (4)(B), in the matter preceding clause (i), by striking "paragraph (5)" and inserting "paragraphs (5) and (6)"; and

(2) by adding at the end the following new paragraph:

"(6) UPDATE FOR 2006.—The update to the single conversion factor established in paragraph (1)(C) for 2006 shall be 0 percent.".

(b) NOT TREATED AS CHANGE IN LAW AND REGULATION IN SUSTAINABLE GROWTH RATE DETERMINATION.—The amendments made by subsection (a) shall not be treated as a change in law for purposes of applying section 1848(f)(2)(D) of the Social Security Act (42 U.S.C. 1395w–4(f)(2)(D)).

(c) MEDPAC REPORT.—

(1) IN GENERAL.—By not later than March 1, 2007, the Medicare Payment Advisory Commission shall submit a report to Congress on mechanisms that could be used to replace the sustainable growth rate system under section 1848(f) of the Social Security Act (42 U.S.C. 1395w–4(f)).

(2) REQUIREMENTS.—The report required under paragraph (1) shall—

(A) identify and examine alternative methods for assessing volume growth;

(B) review options to control the volume of physicians' services under the Medicare program while maintaining access to such services by Medicare beneficiaries;

(C) examine the application of volume controls under the Medicare physician fee schedule under section 1848 of the Social Security Act (42 U.S.C. 1395w–4);

(D) identify levels of application of volume controls, such as group practice, hospital medical staff, type of service, geographic area, and outliers;

(E) examine the administrative feasibility of implementing the options reviewed under subparagraph (B), including the availability of data and time lags;

(F) examine the extent to which the alternative methods identified and examined under subparagraph (A) should be specified in such section 1848; and

(G) identify the appropriate level of discretion for the Secretary of Health and Human Services to change payment rates under the Medicare physician fee schedule or otherwise take steps that affect physician behavior.

Such report shall include such recommendations on alternative mechanisms to replace the sustainable growth rate system as the Medicare Payment Advisory Commission determines appropriate.

(3) FUNDING.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Medicare Payment Advisory Commission $550,000, to carry out this subsection.

SEC. 5105. THREE-YEAR TRANSITION OF HOLD HARMLESS PAYMENTS FOR SMALL RURAL HOSPITALS UNDER THE PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES.

Section 1833(t)(7)(D)(i) of the Social Security Act (42 U.S.C. 1395l(t)(7)(D)(i)) is amended—

(1) by inserting "(I)" before "In the case"; and

(2) by adding at the end the following new subclause:

"(II) In the case of a hospital located in a rural area and that has not more than 100 beds and that is not a sole community hospital (as defined in section 1886(d)(5)(D)(iii)), for covered OPD services furnished on or after January 1, 2006, and before January 1, 2009, for which the PPS amount is less than the pre-BBA amount, the amount of payment under this subsection shall be increased by the applicable percentage of the amount of such difference. For purposes of the previous sentence, with respect to covered OPD services furnished during 2006, 2007, or 2008, the applicable percentage shall be 95 percent, 90 percent, and 85 percent, respectively.".

SEC. 5106. UPDATE TO THE COMPOSITE RATE COMPONENT OF THE BASIC CASE-MIX ADJUSTED PROSPECTIVE PAYMENT SYSTEM FOR DIALYSIS SERVICES.

Section 1881(b)(12) of the Social Security Act (42 U.S.C. 1395rr(b)(12)) is amended—

(1) in subparagraph (F), in the flush matter at the end, by striking "Nothing" and inserting "Except as provided in subparagraph (G), nothing";

(2) by redesignating subparagraph (G) as subparagraph (H); and

(3) by inserting after subparagraph (F) the following new subparagraph:

"(G) The Secretary shall increase the amount of the composite rate component of the basic case-mix adjusted system under subparagraph (B) for dialysis services furnished on or after January 1, 2006, by 1.6 percent above the amount of such composite rate component for such services furnished on December 31, 2005.".

SEC. 5107. REVISIONS TO PAYMENTS FOR THERAPY SERVICES.

(a) EXCEPTION TO CAPS FOR 2006.—

(1) IN GENERAL.—Section 1833(g) of the Social Security Act (42 U.S.C. 1395l(g)) is amended—

(A) in each of paragraphs (1) and (3), by striking "paragraph (4)" and inserting "paragraphs (4) and (5)"; and

(B) by adding at the end the following new paragraph:

"(5) With respect to expenses incurred during 2006 for services, the Secretary shall implement a process under which an individual enrolled under this part may, upon request of the individual or a person on behalf of the individual, obtain an exception from the uniform dollar limitation specified in paragraph (2), for services described in paragraphs (1) and (3) if the provision of such services is determined to be medically necessary. Under such process, if the Secretary does not make a decision on such a request for an exception within 10 business days of the date of the Secretary's receipt of the request, the Secretary shall be deemed to have found the services to be medically necessary.".

(2) TIMELY IMPLEMENTATION.—The Secretary of Health and Human Services shall waive such provisions of law and regulation (including those described in section 110(c) of Pub. L. 108–173) as are necessary to implement the amendments made by paragraph (1) on a timely basis and, notwithstanding any other provision of law, may implement such amendments by program instruction or otherwise. There shall be no administrative or judicial review under section 1869 or section 1878 of the Social Security Act (42 U.S.C. 1395ff and 1395oo), or otherwise of the process (including the establishment of the process) under section 1833(g)(5) of such Act, as added by paragraph (1).

(b) IMPLEMENTATION OF CLINICALLY APPROPRIATE CODE EDITS IN ORDER TO IDENTIFY AND ELIMINATE IMPROPER PAYMENTS FOR THERAPY SERVICES.—By not later than July 1, 2006, the Secretary of Health and Human Services shall implement clinically appropriate code edits with respect to payments under part B of title XVIII of the Social Security Act for physical therapy services, occupational therapy services, and speech-language pathology services in order to identify and eliminate improper payments for such services, including edits of clinically illogical combinations of procedure codes and other edits to control inappropriate billings.

CHAPTER 2—MISCELLANEOUS

SEC. 5111. ACCELERATED IMPLEMENTATION OF INCOME-RELATED REDUCTION IN PART B PREMIUM SUBSIDY.

Section 1839(i)(3)(B) of the Social Security Act (42 U.S.C. 1395r(i)(3)(B)) is amended—

(1) in the heading, by striking "5-YEAR" and inserting "3-YEAR";

(2) in the matter preceding clause (i), by striking "2011" and inserting "2009";

(3) in clause (i), by striking "20 percent" and inserting "33 percent";

(4) in clause (ii), by striking "40 percent" and inserting "67 percent"; and

(5) by striking clauses (iii) and (iv).

SEC. 5112. MEDICARE COVERAGE OF ULTRASOUND SCREENING FOR ABDOMINAL AORTIC ANEURYSMS.

(a) IN GENERAL.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended—

(1) in subsection (s)(2)—

(A) by striking "and" at the end of subparagraph (Y);

(B) by adding "and" at the end of subparagraph (Z) and moving such subparagraph 2 ems to the left; and

(C) by adding at the end the following new subparagraph:

"(AA) ultrasound screening for abdominal aortic aneurysm (as defined in subsection (bbb)) for an individual—

"(i) who receives a referral for such an ultrasound screening as a result of an initial preventive physical examination (as defined in section 1861(ww)(1));

"(ii) who has not been previously furnished such an ultrasound screening under this title; and

"(iii) who—

"(I) has a family history of abdominal aortic aneurysm; or

"(II) manifests risk factors included in a beneficiary category recommended for screening by the United States Preventive Services Task Force regarding abdominal aortic aneurysms;"; and

(2) by adding at the end the following new subsection:

"Ultrasound Screening for Abdominal Aortic Aneurysm

"(bbb) The term 'ultrasound screening for abdominal aortic aneurysm' means—

"(1) a procedure using sound waves (or such other procedures using alternative technologies, of commensurate accuracy and cost, that the Secretary may specify) provided for the early detection of abdominal aortic aneurysm; and

"(2) includes a physician's interpretation of the results of the procedure.".

(b) INCLUSION OF ULTRASOUND SCREENING FOR ABDOMINAL AORTIC ANEURYSM IN INITIAL PREVENTIVE PHYSICAL EXAMINATION.—Section 1861(ww)(2) of such Act (42 U.S.C. 1395x(ww)(2)) is amended by adding at the end the following new subparagraph:

"(L) Ultrasound screening for abdominal aortic aneurysm as defined in section 1861(bbb).".

(c) PAYMENT FOR ULTRASOUND SCREENING FOR ABDOMINAL AORTIC ANEURYSM.—Section 1848(j)(3) of such Act (42 U.S.C. 1395w–4(j)(3)) is amended by inserting "(2)(AA)," after "(2)(W),".

(d) FREQUENCY.—Section 1862(a)(1) of such Act (42 U.S.C. 1395y(a)(1)) is amended—

(1) by striking "and" at the end of subparagraph (L);

(2) by striking the semicolon at the end of subparagraph (M) and inserting ", and"; and

(3) by adding at the end the following new subparagraph:

"(N) in the case of ultrasound screening for abdominal aortic aneurysm which is performed more frequently than is provided for under section 1861(s)(2)(AA);".

(e) NON-APPLICATION OF PART B DEDUCTIBLE.—Section 1833(b) of such Act (42 U.S.C. 1395l(b)) is amended in the first sentence—

(1) by striking "and" before "(6)"; and

(2) by inserting ", and (7) such deductible shall not apply with respect to ultrasound screening for abdominal aortic aneurysm (as defined in section 1861(bbb))" before the period at the end.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2007.

SEC. 5113. IMPROVING PATIENT ACCESS TO, AND UTILIZATION OF, COLORECTAL CANCER SCREENING.

(a) NON-APPLICATION OF DEDUCTIBLE FOR COLORECTAL CANCER SCREENING TESTS.—Section 1833(b) of the Social Security Act (42 U.S.C. 1395l(b)), as amended by section 5112(e), is amended in the first sentence—

(1) by striking "and" before "(7)"; and

(2) by inserting ", and (8) such deductible shall not apply with respect to colorectal cancer screening tests (as described in section 1861(pp)(1))" before the period at the end.

(b) CONFORMING AMENDMENTS.—Paragraphs (2)(C)(ii) and (3)(C)(ii) of section 1834(d) of such Act (42 U.S.C. 1395m(d)) are each amended—

(1) by striking "DEDUCTIBLE AND" in the heading; and

(2) in subclause (I), by striking "deductible or" each place it appears.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2007.

SEC. 5114. DELIVERY OF SERVICES AT FEDERALLY QUALIFIED HEALTH CENTERS.

(a) COVERAGE.—

(1) IN GENERAL.—Section 1861(aa)(3) of the Social Security Act (42 U.S.C. 1395x(aa)(3)) is amended—

(A) in subparagraph (A), by striking ", and" and inserting "and services described in subsections (qq) and (vv); and";

(B) in subparagraph (B), by striking "sections 329, 330, and 340" and inserting "section 330"; and

(C) in the flush matter at the end, by inserting "by the center or by a health care professional under contract with the center" after "outpatient of a Federally qualified health center".

(2) CONSOLIDATED BILLING.—The first sentence of section 1842(b)(6)(F) of such Act (42 U.S.C. 1395u(b)(6)(F)) is amended—

(A) by striking "and (G)" and inserting "(G)"; and

(B) by inserting before the period at the end the following: ", and (H) in the case of services described in section 1861(aa)(3) that are furnished by a health care professional under contract with a Federally qualified health center, payment shall be made to the center".

(b) TECHNICAL CORRECTIONS.—Clauses (i) and (ii)(II) of section 1861(aa)(4)(A) of such Act (42 U.S.C. 1395x(aa)(4)(A)) are each amended by striking "(other than subsection (h))".

(c) EFFECTIVE DATES.—The amendments made by this section shall apply to services furnished on or after January 1, 2006.

SEC. 5115. WAIVER OF PART B LATE ENROLLMENT PENALTY FOR CERTAIN INTERNATIONAL VOLUNTEERS.

(a) IN GENERAL.—

(1) WAIVER OF PENALTY.—Section 1839(b) of the Social Security Act (42 U.S.C. 1395r(b)) is amended in the second sentence by inserting the following before the period at the end: "or months for which the individual can demonstrate that the individual was an individual described in section 1837(k)(3)".

(2) SPECIAL ENROLLMENT PERIOD.—

(A) IN GENERAL.—Section 1837 of such Act (42 U.S.C. 1395p) is amended by adding at the end the following new subsection:

"(k)(1) In the case of an individual who—

"(A) at the time the individual first satisfies paragraph (1) or (2) of section 1836, is described in paragraph (3), and has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period; or

"(B) has terminated enrollment under this section during a month in which the individual is described in paragraph (3),

there shall be a special enrollment period described in paragraph (2).

"(2) The special enrollment period described in this paragraph is the 6-month period beginning on the first day of the month which includes the date that the individual is no longer described in paragraph (3).

"(3) For purposes of paragraph (1), an individual described in this paragraph is an individual who—

"(A) is serving as a volunteer outside of the United States through a program—

"(i) that covers at least a 12-month period; and

"(ii) that is sponsored by an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; and

"(B) demonstrates health insurance coverage while serving in the program.".

(B) COVERAGE PERIOD.—Section 1838 of such Act (42 U.S.C. 1395q) is amended by adding at the end the following new subsection:

"(f) Notwithstanding subsection (a), in the case of an individual who enrolls during a special enrollment period pursuant to section 1837(k), the coverage period shall begin on the first day of the month following the month in which the individual so enrolls.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(1) shall apply to months beginning with January 2007 and the amendments made by subsection (a)(2) shall take effect on January 1, 2007.

Subtitle C—Provisions Relating to Parts A and B

SEC. 5201. HOME HEALTH PAYMENTS.

(a) 2006 UPDATE.—Section 1895(b)(3)(B)(ii) of the Social Security Act (42 U.S.C. 1395fff(b)(3)(B)(ii)) is amended—

(1) in subclause (III), by striking "each of 2005 and 2006" and inserting "all of 2005";

(2) by striking "or" at the end of subclause (III);

(3) in subclause (IV), by striking "2007 and" and by redesignating such subclause as subclause (V); and

(4) by inserting after subclause (III) the following new subclause:

"(IV) 2006, 0 percent; and".

(b) APPLYING RURAL ADD-ON POLICY FOR 2006.—Section 421(a) of Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173; 117 Stat. 2283) is amended by inserting "and episodes and visits beginning on or after January 1, 2006, and before January 1, 2007," after "April 1, 2005,".

(c) HOME HEALTH CARE QUALITY IMPROVEMENT.—Section 1895(b)(3)(B) of the Social Security Act (42 U.S.C. 1395fff(b)(3)(B)) is amended—

(1) in clause (ii)(V), as redesignated by subsection (a)(3), by inserting "subject to clause (v)," after "subsequent year."; and

(2) by adding at the end the following new clause:

"(v) ADJUSTMENT IF QUALITY DATA NOT SUBMITTED.—

"(I) ADJUSTMENT.—For purposes of clause (ii)(V), for 2007 and each subsequent year, in the case of a home health agency that does not submit data to the Secretary in accordance with subclause (II) with respect to such a year, the home health market basket percentage increase applicable under such clause for such year shall be reduced by 2 percentage points. Such reduction shall apply only with respect to the year involved, and the Secretary shall not take into account such reduction in computing the prospective payment amount under this section for a subsequent year, and the Medicare Payment Advisory Commission shall carry out the requirements under section 5201(d) of the Deficit Reduction Act of 2005.

"(II) SUBMISSION OF QUALITY DATA.—For 2007 and each subsequent year, each home health agency shall submit to the Secretary such data that the Secretary determines are appropriate for the measurement of health care quality. Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this clause.

"(III) PUBLIC AVAILABILITY OF DATA SUBMITTED.—The Secretary shall establish procedures for making data submitted under subclause (II) available to the public. Such procedures shall ensure that a home health agency has the opportunity to review the data that is to be made public with respect to the agency prior to such data being made public.".

(d) MEDPAC REPORT ON VALUE BASED PURCHASING.—

(1) IN GENERAL.—Not later than June 1, 2007, the Medicare Payment Advisory Commission shall submit to Congress a report that includes recommendations on a detailed structure of value based payment adjustments for home health services under the Medicare program under title XVIII of the Social Security Act. Such report shall include recommendations concerning the determination of thresholds, the size of such payments, sources of funds, and the relationship of payments for improvement and attainment of quality.

(2) FUNDING.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Medicare Payment Advisory Commission $550,000, to carry out this subsection.

SEC. 5202. REVISION OF PERIOD FOR PROVIDING PAYMENT FOR CLAIMS THAT ARE NOT SUBMITTED ELECTRONICALLY.

(a) REVISION.—

(1) PART A.—Section 1816(c)(3)(B)(ii) of the Social Security Act (42 U.S.C. 1395h(c)(3)(B)(ii)) is amended by striking "26 days" and inserting "28 days".

(2) PART B.—Section 1842(c)(3)(B)(ii) of such Act (42 U.S.C. 1395u(c)(3)(B)(ii)) is amended by striking "26 days" and inserting "28 days".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to claims submitted on or after January 1, 2006.

SEC. 5203. TIMEFRAME FOR PART A AND B PAYMENTS.

Notwithstanding sections 1816(c) and 1842(c)(2) of the Social Security Act or any other provision of law—

(1) any payment from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i) or from the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395t) for claims submitted under part A or B of title XVIII of such Act for items and services furnished under such part A or B, respectively, that would otherwise be payable during the period beginning on September 22, 2006, and ending on September 30, 2006, shall be paid on the first business day of October 2006; and

(2) no interest or late penalty shall be paid to an entity or individual for any delay in a payment by reason of the application of paragraph (1).

SEC. 5204. MEDICARE INTEGRITY PROGRAM FUNDING.

Section 1817(k)(4) of the Social Security Act (42 U.S.C. 1395i(k)(4)) is amended—

(1) in subparagraph (B), by striking "The amount" and inserting "Subject to subparagraph (C), the amount"; and

(2) by adding at the end the following new subparagraph:

"(C) ADJUSTMENTS.—The amount appropriated under subparagraph (A) for a fiscal year is increased as follows:

"(i) For fiscal year 2006, $100,000,000.".

Subtitle D—Provisions Relating to Part C

SEC. 5301. PHASE-OUT OF RISK ADJUSTMENT BUDGET NEUTRALITY IN DETERMINING THE AMOUNT OF PAYMENTS TO MEDICARE ADVANTAGE ORGANIZATIONS.

(a) IN GENERAL.—Section 1853 of the Social Security Act (42 U.S.C. 1395w–23) is amended—

(1) in subsection (j)(1)—

(A) in subparagraph (A)—

(i) by inserting "(or, beginning with 2007, 1/12 of the applicable amount determined under subsection (k)(1))" after "1853(c)(1)"; and

(ii) by inserting "(for years before 2007)" after "adjusted as appropriate";

(B) in subparagraph (B), by inserting "(for years before 2007)" after "adjusted as appropriate"; and

(2) by adding at the end the following new subsection:

"(k) DETERMINATION OF APPLICABLE AMOUNT FOR PURPOSES OF CALCULATING THE BENCHMARK AMOUNTS.—

"(1) APPLICABLE AMOUNT DEFINED.—For purposes of subsection (j), subject to paragraph (2), the term 'applicable amount' means for an area—

"(A) for 2007—

"(i) if such year is not specified under subsection (c)(1)(D)(ii), an amount equal to the amount specified in subsection (c)(1)(C) for the area for 2006—

"(I) first adjusted by the rescaling factor for 2006 for the area (as made available by the Secretary in the announcement of the rates on April 4, 2005, under subsection (b)(1), but excluding any national adjustment factors for coding intensity and risk adjustment budget neutrality that were included in such factor); and

"(II) then increased by the national per capita MA growth percentage, described in subsection (c)(6) for 2007, but not taking into account any adjustment under subparagraph (C) of such subsection for a year before 2004;

"(ii) if such year is specified under subsection (c)(1)(D)(ii), an amount equal to the greater of—

"(I) the amount determined under clause (i) for the area for the year; or

"(II) the amount specified in subsection (c)(1)(D) for the area for the year; and

"(B) for a subsequent year—

"(i) if such year is not specified under subsection (c)(1)(D)(ii), an amount equal to the amount determined under this paragraph for the area for the previous year (determined without regard to paragraph (2)), increased by the national per capita MA growth percentage, described in subsection (c)(6) for that succeeding year, but not taking into account any adjustment under subparagraph (C) of such subsection for a year before 2004; and

"(ii) if such year is specified under subsection (c)(1)(D)(ii), an amount equal to the greater of—

"(I) the amount determined under clause (i) for the area for the year; or

"(II) the amount specified in subsection (c)(1)(D) for the area for the year.

"(2) PHASE-OUT OF BUDGET NEUTRALITY FACTOR.—

"(A) IN GENERAL.—Except as provided in subparagraph (D), in the case of 2007 through 2010, the applicable amount determined under paragraph (1) shall be multiplied by a factor equal to 1 plus the product of—

"(i) the percent determined under subparagraph (B) for the year; and

"(ii) the applicable phase-out factor for the year under subparagraph (C).

"(B) PERCENT DETERMINED.—

"(i) IN GENERAL.—For purposes of subparagraph (A)(i), subject to clause (iv), the percent determined under this subparagraph for a year is a percent equal to a fraction the numerator of which is described in clause (ii) and the denominator of which is described in clause (iii).

"(ii) NUMERATOR BASED ON DIFFERENCE BETWEEN DEMOGRAPHIC RATE AND RISK RATE.—

"(I) IN GENERAL.—The numerator described in this clause is an amount equal to the amount by which the demographic rate described in subclause (II) exceeds the risk rate described in subclause (III).

"(II) DEMOGRAPHIC RATE.—The demographic rate described in this subclause is the Secretary's estimate of the total payments that would have been made under this part in the year if all the monthly payment amounts for all MA plans were equal to 1/12 of the annual MA capitation rate under subsection (c)(1) for the area and year, adjusted pursuant to subsection (a)(1)(C).

"(III) RISK RATE.—The risk rate described in this subclause is the Secretary's estimate of the total payments that would have been made under this part in the year if all the monthly payment amounts for all MA plans were equal to the amount described in subsection (j)(1)(A) (determined as if this paragraph had not applied) under subsection (j) for the area and year, adjusted pursuant to subsection (a)(1)(C).

"(iii) DENOMINATOR BASED ON RISK RATE.—The denominator described in this clause is equal to the total amount estimated for the year under clause (ii)(III).

"(iv) REQUIREMENTS.—In estimating the amounts under the previous clauses, the Secretary shall—

"(I) use a complete set of the most recent and representative Medicare Advantage risk scores under subsection (a)(3) that are available from the risk adjustment model announced for the year;

"(II) adjust the risk scores to reflect changes in treatment and coding practices in the fee-for-service sector;

"(III) adjust the risk scores for differences in coding patterns between Medicare Advantage plans and providers under the original Medicare fee-for-service program under parts A and B to the extent that the Secretary has identified such differences, as required in subsection (a)(1)(C);

"(IV) as necessary, adjust the risk scores for late data submitted by Medicare Advantage organizations;

"(V) as necessary, adjust the risk scores for lagged cohorts; and

"(VI) as necessary, adjust the risk scores for changes in enrollment in Medicare Advantage plans during the year.

"(v) AUTHORITY.—In computing such amounts the Secretary may take into account the estimated health risk of enrollees in preferred provider organization plans (including MA regional plans) for the year.

"(C) APPLICABLE PHASE-OUT FACTOR.—For purposes of subparagraph (A)(ii), the term 'applicable phase-out factor' means—

"(i) for 2007, 0.55;

"(ii) for 2008, 0.40;

"(iii) for 2009, 0.25; and

"(iv) for 2010, 0.05.

"(D) TERMINATION OF APPLICATION.—Subparagraph (A) shall not apply in a year if the amount estimated under subparagraph (B)(ii)(III) for the year is equal to or greater than the amount estimated under subparagraph (B)(ii)(II) for the year.

"(3) NO REVISION IN PERCENT.—

"(A) IN GENERAL.—The Secretary may not make any adjustment to the percent determined under paragraph (2)(B) for any year.

"(B) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the authority of the Secretary to make adjustments to the applicable amounts determined under paragraph (1) as appropriate for purposes of updating data or for purposes of adopting an improved risk adjustment methodology.".

(b) REFINEMENTS TO HEALTH STATUS ADJUSTMENT.—Section 1853(a)(1)(C) of such Act (42 U.S.C. 1395w–23) is amended—

(1) by designating the matter after the heading as a clause (i) with the following heading: "IN GENERAL.—" and indenting appropriately; and

(2) by adding at the end the following:

"(ii) APPLICATION DURING PHASE-OUT OF BUDGET NEUTRALITY FACTOR.—For 2006 through 2010:

"(I) In applying the adjustment under clause (i) for health status to payment amounts, the Secretary shall ensure that such adjustment reflects changes in treatment and coding practices in the fee-for-service sector and reflects differences in coding patterns between Medicare Advantage plans and providers under part A and B to the extent that the Secretary has identified such differences.

"(II) In order to ensure payment accuracy, the Secretary shall conduct an analysis of the differences described in subclause (I). The Secretary shall complete such analysis by a date necessary to ensure that the results of such analysis are incorporated into the risk scores only for 2008, 2009, and 2010. In conducting such analysis, the Secretary shall use data submitted with respect to 2004 and subsequent years, as available.".

SEC. 5302. RURAL PACE PROVIDER GRANT PROGRAM.

(a) DEFINITIONS.—In this section:

(1) CMS.—The term "CMS" means the Centers for Medicare & Medicaid Services.

(2) PACE PROGRAM.—The term "PACE program" has the meaning given that term in sections 1894(a)(2) and 1934(a)(2) of the Social Security Act (42 U.S.C. 1395eee(a)(2); 1396u-4(a)(2)).

(3) PACE PROVIDER.—The term "PACE provider" has the meaning given that term in section 1894(a)(3) or 1934(a)(3) of the Social Security Act (42 U.S.C. 1395eee(a)(3); 1396u–4(a)(3)).

(4) RURAL AREA.—The term "rural area" has the meaning given that term in section 1886(d)(2)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(2)(D)).

(5) RURAL PACE PILOT SITE.—The term "rural PACE pilot site" means a PACE provider that has been approved to provide services in a geographic service area that is, in whole or in part, a rural area, and that has received a site development grant under this section.

(6) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(b) SITE DEVELOPMENT GRANTS AND TECHNICAL ASSISTANCE PROGRAM.—

(1) SITE DEVELOPMENT GRANTS.—

(A) IN GENERAL.—The Secretary shall establish a process and criteria to award site development grants to qualified PACE providers that have been approved to serve a rural area.

(B) AMOUNT PER AWARD.—A site development grant awarded under subparagraph (A) to any individual rural PACE pilot site shall not exceed $750,000.

(C) NUMBER OF AWARDS.—Not more than 15 rural PACE pilot sites shall be awarded a site development grant under subparagraph (A).

(D) USE OF FUNDS.—Funds made available under a site development grant awarded under subparagraph (A) may be used for the following expenses only to the extent such expenses are incurred in relation to establishing or delivering PACE program services in a rural area:

(i) Feasibility analysis and planning.

(ii) Interdisciplinary team development.

(iii) Development of a provider network, including contract development.

(iv) Development or adaptation of claims processing systems.

(v) Preparation of special education and outreach efforts required for the PACE program.

(vi) Development of expense reporting required for calculation of outlier payments or reconciliation processes.

(vii) Development of any special quality of care or patient satisfaction data collection efforts.

(viii) Establishment of a working capital fund to sustain fixed administrative, facility, or other fixed costs until the provider reaches sufficient enrollment size.

(ix) Startup and development costs incurred prior to the approval of the rural PACE pilot site's PACE provider application by CMS.

(x) Any other efforts determined by the rural PACE pilot site to be critical to its successful startup, as approved by the Secretary.

(E) Appropriation.—

(i) In general.—Out of funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary to carry out this subsection for fiscal year 2006, $7,500,000.

(ii) Availability.—Funds appropriated under clause (i) shall remain available for expenditure through fiscal year 2008.

(2) Technical assistance program.—The Secretary shall establish a technical assistance program to provide—

(A) outreach and education to State agencies and provider organizations interested in establishing PACE programs in rural areas; and

(B) technical assistance necessary to support rural PACE pilot sites.

(c) Cost Outlier Protection for Rural PACE Pilot Sites.—

(1) Establishment of fund for reimbursement of outlier costs.—Notwithstanding any other provision of law, the Secretary shall establish an outlier fund to reimburse rural PACE pilot sites for recognized outlier costs (as defined in paragraph (3)) incurred for eligible outlier participants (as defined in paragraph (2)) in an amount, subject to paragraph (4), equal to 80 percent of the amount by which the recognized outlier costs exceeds $50,000.

(2) Eligible outlier participant.—For purposes of this subsection, the term "eligible outlier participant" means a PACE program eligible individual (as defined in sections 1894(a)(5) and 1934(a)(5) of the Social Security Act (42 U.S.C. 1395eee(a)(5); 1396u–4(a)(5))) who resides in a rural area and with respect to whom the rural PACE pilot site incurs more than $50,000 in recognized costs in a 12-month period.

(3) Recognized outlier costs defined.—

(A) In general.—For purposes of this subsection, the term "recognized outlier costs" means, with respect to services furnished to an eligible outlier participant by a rural PACE pilot site, the least of the following (as documented by the site to the satisfaction of the Secretary) for the provision of inpatient and related physician and ancillary services for the eligible outlier participant in a given 12-month period:

(i) If the services are provided under a contract between the pilot site and the provider, the payment rate specified under the contract.

(ii) The payment rate established under the original Medicare fee-for-service program for such service.

(iii) The amount actually paid for the services by the pilot site.

(B) Inclusion in only one period.—Recognized outlier costs may not be included in more than one 12-month period.

(3) Outlier expense payment.—

(A) Payment for outlier costs.—Subject to subparagraph (B), in the case of a rural PACE pilot site that has incurred outlier costs for an eligible outlier participant, the rural PACE pilot site shall receive an outlier expense payment equal to 80 percent of such costs that exceed $50,000.

(4) Limitations.—

(A) Costs incurred per eligible outlier participant.—The total amount of outlier expense payments made under this subsection to a rural PACE pilot site with respect to an eligible outlier participant for any 12-month period shall not exceed $100,000 for the 12-month period used to calculate the payment.

(B) Costs incurred per provider.—No rural PACE pilot site may receive more than $500,000 in total outlier expense payments in a 12-month period.

(C) Limitation of outlier cost reimbursement period.—A rural PACE pilot site shall only receive outlier expense payments under this subsection with respect to costs incurred during the first 3 years of the site's operation.

(5) Requirement to access risk reserves prior to payment.—A rural PACE pilot site shall access and exhaust any risk reserves held or arranged for the provider (other than revenue or reserves maintained to satisfy the requirements of section 460.80(c) of title 42, Code of Federal Regulations) and any working capital established through a site development grant awarded under subsection (b)(1), prior to receiving any payment from the outlier fund.

(6) Application.—In order to receive an outlier expense payment under this subsection with respect to an eligible outlier participant, a rural PACE pilot site shall submit an application containing—

(A) documentation of the costs incurred with respect to the participant;

(B) a certification that the site has complied with the requirements under paragraph (4); and

(C) such additional information as the Secretary may require.

(7) Appropriation.—

(A) In general.—Out of funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary to carry out this subsection for fiscal year 2006, $10,000,000.

(B) Availability.—Funds appropriated under subparagraph (A) shall remain available for expenditure through fiscal year 2010.

(d) Evaluation of PACE Providers Serving Rural Service Areas.—Not later than 60 months after the date of enactment of this Act, the Secretary shall submit a report to Congress containing an evaluation of the experience of rural PACE pilot sites.

(e) Amounts in Addition to Payments Under Social Security Act.—Any amounts paid under the authority of this section to a PACE provider shall be in addition to payments made to the provider under section 1894 or 1934 of the Social Security Act (42 U.S.C. 1395eee; 1396u–4).

TITLE VI—MEDICAID AND SCHIP

Subtitle A—Medicaid

CHAPTER 1—PAYMENT FOR PRESCRIPTION DRUGS

SEC. 6001. FEDERAL UPPER PAYMENT LIMIT FOR MULTIPLE SOURCE DRUGS AND OTHER DRUG PAYMENT PROVISIONS.

(a) Modification of Federal Upper Payment Limit for Multiple Source Drugs; Definition of Multiple Source Drugs.—Section 1927 of the Social Security Act (42 U.S.C. 1396r–8) is amended—

(1) in subsection (e)(4)—

(A) by striking "The Secretary" and inserting "Subject to paragraph (5), the Secretary"; and

(B) by inserting "(or, effective January 1, 2007, two or more)" after "three or more";

(2) by adding at the end of subsection (e) the following new paragraph:

"(5) Use of AMP in upper payment limits.—Effective January 1, 2007, in applying the Federal upper reimbursement limit under paragraph (4) and section 447.332(b) of title 42 of the Code of Federal Regulations, the Secretary shall substitute 250 percent of the average manufacturer price (as computed without regard to customary prompt pay discounts extended to wholesalers) for 150 percent of the published price.";

(3) in subsection (k)(7)(A)(i), in the matter preceding subclause (I), by striking "are 2 or more drug products" and inserting "at least 1 other drug product"; and

(4) in subclauses (I), (II), and (III) of subsection (k)(7)(A)(i), by striking "are" and inserting "is" each place it appears.

(b) Disclosure of Price Information to States and the Public.—Subsection (b)(3) of such section is amended—

(1) in subparagraph (A)—

(A) in clause (i), by inserting "month of a" after "last day of each"; and

(B) by adding at the end the following: "Beginning July 1, 2006, the Secretary shall provide on a monthly basis to States under subparagraph (D)(iv) the most recently reported average manufacturer prices for single source drugs and for multiple source drugs and shall, on at least a quarterly basis, update the information posted on the website under subparagraph (D)(v)."; and

(2) in subparagraph (D)—

(A) by striking "and" at the end of clause (ii);

(B) by striking the period at the end of clause (iii) and inserting a comma; and

(C) by inserting after clause (iii) the following new clauses:

"(iv) to States to carry out this title, and

"(v) to the Secretary to disclose (through a website accessible to the public) average manufacturer prices.".

(c) Definition of Average Manufacturer Price.—

(1) Exclusion of customary prompt pay discounts extended to wholesalers.—Subsection (k)(1) of such section is amended—

(A) by striking "The term" and inserting the following:

"(A) In general.—Subject to subparagraph (B), the term";

(B) by striking ", after deducting customary prompt pay discounts"; and

(C) by adding at the end the following:

"(B) Exclusion of customary prompt pay discounts extended to wholesalers.—The average manufacturer price for a covered outpatient drug shall be determined without regard to customary prompt pay discounts extended to wholesalers.".

(2) Manufacturer reporting of prompt pay discounts.—Subsection (b)(3)(A)(i) of such section is amended by inserting ", customary prompt pay discounts extended to wholesalers," after "(k)(1))".

(3) Requirement to promulgate regulation.—

(A) Inspector general recommendations.—Not later than June 1, 2006, the Inspector General of the Department of Health and Human Services shall—

(i) review the requirements for, and manner in which, average manufacturer prices are determined under section 1927 of the Social Security Act, as amended by this section; and

(ii) shall submit to the Secretary of Health and Human Services and Congress such recommendations for changes in such requirements or manner as the Inspector General determines to be appropriate.

(B) Deadline for promulgation.—Not later than July 1, 2007, the Secretary of Health and Human Services shall promulgate a regulation that clarifies the requirements for, and manner in which, average manufacturer prices are determined under section 1927 of the Social Security Act, taking into consideration the recommendations submitted to the Secretary in accordance with subparagraph (A)(ii).

(d) EXCLUSION OF SALES AT A NOMINAL PRICE FROM DETERMINATION OF BEST PRICE.—

(1) MANUFACTURER REPORTING OF SALES.—Subsection (b)(3)(A)(iii) of such section is amended by inserting before the period at the end the following: ", and, for calendar quarters beginning on or after January 1, 2007 and only with respect to the information described in subclause (III), for covered outpatient drugs".

(2) LIMITATION ON SALES AT A NOMINAL PRICE.—Subsection (c)(1) of such section is amended by adding at the end the following new subparagraph:

"(D) LIMITATION ON SALES AT A NOMINAL PRICE.—

"(i) IN GENERAL.—For purposes of subparagraph (C)(ii)(III) and subsection (b)(3)(A)(iii)(III), only sales by a manufacturer of covered outpatient drugs at nominal prices to the following shall be considered to be sales at a nominal price or merely nominal in amount:

"(I) A covered entity described in section 340B(a)(4) of the Public Health Service Act.

"(II) An intermediate care facility for the mentally retarded.

"(III) A State-owned or operated nursing facility.

"(IV) Any other facility or entity that the Secretary determines is a safety net provider to which sales of such drugs at a nominal price would be appropriate based on the factors described in clause (ii).

"(ii) FACTORS.—The factors described in this clause with respect to a facility or entity are the following:

"(I) The type of facility or entity.

"(II) The services provided by the facility or entity.

"(III) The patient population served by the facility or entity.

"(IV) The number of other facilities or entities eligible to purchase at nominal prices in the same service area.

"(iii) NONAPPLICATION.—Clause (i) shall not apply with respect to sales by a manufacturer at a nominal price of covered outpatient drugs pursuant to a master agreement under section 8126 of title 38, United States Code.".

(e) RETAIL SURVEY PRICES; STATE PAYMENT AND UTILIZATION RATES; AND PERFORMANCE RANKINGS.—Such section is further amended by inserting after subsection (e) the following new subsection:

"(f) SURVEY OF RETAIL PRICES; STATE PAYMENT AND UTILIZATION RATES; AND PERFORMANCE RANKINGS.—

"(1) SURVEY OF RETAIL PRICES.—

"(A) USE OF VENDOR.—The Secretary may contract services for—

"(i) the determination on a monthly basis of retail survey prices for covered outpatient drugs that represent a nationwide average of consumer purchase prices for such drugs, net of all discounts and rebates (to the extent any information with respect to such discounts and rebates is available); and

"(ii) the notification of the Secretary when a drug product that is therapeutically and pharmaceutically equivalent and bioequivalent becomes generally available.

"(B) SECRETARY RESPONSE TO NOTIFICATION OF AVAILABILITY OF MULTIPLE SOURCE PRODUCTS.—If contractor notifies the Secretary under subparagraph (A)(ii) that a drug product described in such subparagraph has become generally available, the Secretary shall make a determination, within 7 days after receiving such notification, as to whether the product is now described in subsection (e)(4).

"(C) USE OF COMPETITIVE BIDDING.—In contracting for such services, the Secretary shall competitively bid for an outside vendor that has a demonstrated history in—

"(i) surveying and determining, on a representative nationwide basis, retail prices for ingredient costs of prescription drugs;

"(ii) working with retail pharmacies, commercial payers, and States in obtaining and disseminating such price information; and

"(iii) collecting and reporting such price information on at least a monthly basis.

In contracting for such services, the Secretary may waive such provisions of the Federal Acquisition Regulation as are necessary for the efficient implementation of this subsection, other than provisions relating to confidentiality of information and such other provisions as the Secretary determines appropriate.

"(D) ADDITIONAL PROVISIONS.—A contract with a vendor under this paragraph shall include such terms and conditions as the Secretary shall specify, including the following:

"(i) The vendor must monitor the marketplace and report to the Secretary each time there is a new covered outpatient drug generally available.

"(ii) The vendor must update the Secretary no less often than monthly on the retail survey prices for covered outpatient drugs.

"(iii) The contract shall be effective for a term of 2 years.

"(E) AVAILABILITY OF INFORMATION TO STATES.—Information on retail survey prices obtained under this paragraph, including applicable information on single source drugs, shall be provided to States on at least a monthly basis. The Secretary shall devise and implement a means for providing access to each State agency designated under section 1902(a)(5) with responsibility for the administration or supervision of the administration of the State plan under this title of the retail survey price determined under this paragraph.

"(2) ANNUAL STATE REPORT.—Each State shall annually report to the Secretary information on—

"(A) the payment rates under the State plan under this title for covered outpatient drugs;

"(B) the dispensing fees paid under such plan for such drugs; and

"(C) utilization rates for noninnovator multiple source drugs under such plan.

"(3) ANNUAL STATE PERFORMANCE RANKINGS.—

"(A) COMPARATIVE ANALYSIS.—The Secretary annually shall compare, for the 50 most widely prescribed drugs identified by the Secretary, the national retail sales price data (collected under paragraph (1)) for such drugs with data on prices under this title for each such drug for each State.

"(B) AVAILABILITY OF INFORMATION.—The Secretary shall submit to Congress and the States full information regarding the annual rankings made under subparagraph (A).

"(4) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary of Health and Human Services $5,000,000 for each of fiscal years 2006 through 2010 to carry out this subsection.".

(f) MISCELLANEOUS AMENDMENTS.—

(1) IN GENERAL.—Sections 1927(g)(1)(B)(i)(II) and 1861(t)(2)(B)(ii)(I) of such Act are each amended by inserting "(or its successor publications)" after "United States Pharmacopoeia-Drug Information".

(2) PAPERWORK REDUCTION.—The last sentence of section 1927(g)(2)(A)(ii) of such Act (42 U.S.C. 1396r–8(g)(2)(A)(ii)) is amended by inserting before the period at the end the following: ", or to require verification of the offer to provide consultation or a refusal of such offer".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

(g) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall take effect on January 1, 2007, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 6002. COLLECTION AND SUBMISSION OF UTILIZATION DATA FOR CERTAIN PHYSICIAN ADMINISTERED DRUGS.

(a) IN GENERAL.—Section 1927(a) of the Social Security Act (42 U.S.C. 1396r–8(a)) is amended by adding at the end the following new paragraph:

"(7) REQUIREMENT FOR SUBMISSION OF UTILIZATION DATA FOR CERTAIN PHYSICIAN ADMINISTERED DRUGS.—

"(A) SINGLE SOURCE DRUGS.—In order for payment to be available under section 1903(a) for a covered outpatient drug that is a single source drug that is physician administered under this title (as determined by the Secretary), and that is administered on or after January 1, 2006, the State shall provide for the collection and submission of such utilization data and coding (such as J-codes and National Drug Code numbers) for each such drug as the Secretary may specify as necessary to identify the manufacturer of the drug in order to secure rebates under this section for drugs administered for which payment is made under this title.

"(B) MULTIPLE SOURCE DRUGS.—

"(i) IDENTIFICATION OF MOST FREQUENTLY PHYSICIAN ADMINISTERED MULTIPLE SOURCE DRUGS.—Not later than January 1, 2007, the Secretary shall publish a list of the 20 physician administered multiple source drugs that the Secretary determines have the highest dollar volume of physician administered drugs dispensed under this title. The Secretary may modify such list from year to year to reflect changes in such volume.

"(ii) REQUIREMENT.—In order for payment to be available under section 1903(a) for a covered outpatient drug that is a multiple source drug that is physician administered (as determined by the Secretary), that is on the list published under clause (i), and that is administered on or after January 1, 2008, the State shall provide for the submission of such utilization data and coding (such as J-codes and National Drug Code numbers) for each such drug as the Secretary may specify as necessary to identify the manufacturer of the drug in order to secure rebates under this section.

"(C) USE OF NDC CODES.—Not later than January 1, 2007, the information shall be submitted under subparagraphs (A) and (B)(ii) using National Drug Code codes unless the Secretary specifies that an alternative coding system should be used.

"(D) HARDSHIP WAIVER.—The Secretary may delay the application of subparagraph (A) or (B)(ii), or both, in the case of a State to prevent hardship to States which require additional time to implement the reporting system required under the respective subparagraph.".

(b) LIMITATION ON PAYMENT.—Section 1903(i)(10) of such Act (42 U.S.C. 1396b(i)(10)), is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking "or" at the end of subparagraph (B) and inserting "and"; and

(3) by adding at the end the following new subparagraph:

"(C) with respect to covered outpatient drugs described in section 1927(a)(7), unless information respecting utilization data and coding on such drugs that is required to be submitted under such section is submitted in accordance with such section; or".

SEC. 6003. IMPROVED REGULATION OF DRUGS SOLD UNDER A NEW DRUG APPLICATION APPROVED UNDER SECTION 505(c) OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

(a) INCLUSION WITH OTHER REPORTED AVERAGE MANUFACTURER AND BEST PRICES.—Section 1927(b)(3)(A) of the Social Security Act (42 U.S.C. 1396r–8(b)(3)(A)) is amended—

(1) by striking clause (i) and inserting the following:

"(i) not later than 30 days after the last day of each rebate period under the agreement—

"(I) on the average manufacturer price (as defined in subsection (k)(1)) for covered outpatient drugs for the rebate period under the agreement (including for all such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act); and

"(II) for single source drugs and innovator multiple source drugs (including all such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act), on the manufacturer's best price (as defined in subsection (c)(1)(C)) for such drugs for the rebate period under the agreement;"; and

(2) in clause (ii), by inserting "(including for such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act)" after "drugs".

(b) Conforming Amendments.—Section 1927 of such Act (42 U.S.C. 1396r–8) is amended—

(1) in subsection (c)(1)(C)—

(A) in clause (i), in the matter preceding subclause (I), by inserting after "or innovator multiple source drug of a manufacturer" the following: "(including the lowest price available to any entity for any such drug of a manufacturer that is sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act)"; and

(B) in clause (ii)—

(i) in subclause (II), by striking "and" at the end;

(ii) in subclause (III), by striking the period at the end and inserting "; and"; and

(iii) by adding at the end the following:

"(IV) in the case of a manufacturer that approves, allows, or otherwise permits any other drug of the manufacturer to be sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act, shall be inclusive of the lowest price for such authorized drug available from the manufacturer during the rebate period to any manufacturer, wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States, excluding those prices described in subclauses (I) through (IV) of clause (i)."; and

(2) in subsection (k), as amended by section 6001(c)(1), by adding at the end the following:

"(C) Inclusion of section 505(c) drugs.—In the case of a manufacturer that approves, allows, or otherwise permits any drug of the manufacturer to be sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act, such term shall be inclusive of the average price paid for such drug by wholesalers for drugs distributed to the retail pharmacy class of trade.".

(c) Effective Date.—The amendments made by this section take effect on January 1, 2007.

SEC. 6004. CHILDREN'S HOSPITAL PARTICIPATION IN SECTION 340B DRUG DISCOUNT PROGRAM.

(a) In General.—Section 1927(a)(5)(B) of the Social Security Act (42 U.S.C. 1396r–8(a)(5)(B)) is amended by inserting before the period at the end the following: "and a children's hospital described in section 1886(d)(1)(B)(iii) which meets the requirements of clauses (i) and (iii) of section 340B(b)(4)(L) of the Public Health Service Act and which would meet the requirements of clause (ii) of such section if that clause were applied by taking into account the percentage of care provided by the hospital to patients eligible for medical assistance under a State plan under this title".

(b) Effective Date.—The amendment made by subsection (a) shall apply to drugs purchased on or after the date of the enactment of this Act.

CHAPTER 2—LONG-TERM CARE UNDER MEDICAID

Subchapter A—Reform of Asset Transfer Rules

SEC. 6011. LENGTHENING LOOK-BACK PERIOD; CHANGE IN BEGINNING DATE FOR PERIOD OF INELIGIBILITY.

(a) Lengthening Look-Back Period for All Disposals to 5 Years.—Section 1917(c)(1)(B)(i) of the Social Security Act (42 U.S.C. 1396p(c)(1)(B)(i)) is amended by inserting "or in the case of any other disposal of assets made on or after the date of the enactment of the Deficit Reduction Act of 2005" before ", 60 months".

(b) Change in Beginning Date for Period of Ineligibility.—Section 1917(c)(1)(D) of such Act (42 U.S.C. 1396p(c)(1)(D)) is amended—

(1) by striking "(D) The date" and inserting "(D)(i) In the case of a transfer of asset made before the date of the enactment of the Deficit Reduction Act of 2005, the date"; and

(2) by adding at the end the following new clause:

"(ii) In the case of a transfer of asset made on or after the date of the enactment of the Deficit Reduction Act of 2005, the date specified in this subparagraph is the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care described in subparagraph (C) based on an approved application for such care but for the application of the penalty period, whichever is later, and which does not occur during any other period of ineligibility under this subsection.".

(c) Effective Date.—The amendments made by this section shall apply to transfers made on or after the date of the enactment of this Act.

(d) Availability of Hardship Waivers.—Each State shall provide for a hardship waiver process in accordance with section 1917(c)(2)(D) of the Social Security Act (42 U.S.C. 1396p(c)(2)(D))—

(1) under which an undue hardship exists when application of the transfer of assets provision would deprive the individual—

(A) of medical care such that the individual's health or life would be endangered; or

(B) of food, clothing, shelter, or other necessities of life; and

(2) which provides for—

(A) notice to recipients that an undue hardship exception exists;

(B) a timely process for determining whether an undue hardship waiver will be granted; and

(C) a process under which an adverse determination can be appealed.

(e) Additional Provisions on Hardship Waivers.—

(1) Application by Facility.—Section 1917(c)(2) of the Social Security Act (42 U.S.C. 1396p(c)(2)) is amended—

(A) by striking the semicolon at the end of subparagraph (D) and inserting a period; and

(B) by adding after and below such subparagraph the following:

"The procedures established under subparagraph (D) shall permit the facility in which the institutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual or the personal representative of the individual.".

(2) Authority to make bed hold payments for hardship applicants.—Such section is further amended by adding at the end the following: "While an application for an undue hardship waiver is pending under subparagraph (D) in the case of an individual who is a resident of a nursing facility, if the application meets such criteria as the Secretary specifies, the State may provide for payments for nursing facility services in order to hold the bed for the individual at the facility, but not in excess of payments for 30 days.".

SEC. 6012. DISCLOSURE AND TREATMENT OF ANNUITIES.

(a) In General.—Section 1917 of the Social Security Act (42 U.S.C. 1396p) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e)(1) In order to meet the requirements of this section for purposes of section 1902(a)(18), a State shall require, as a condition for the provision of medical assistance for services described in subsection (c)(1)(C)(i) (relating to long-term care services) for an individual, the application of the individual for such assistance (including any recertification of eligibility for such assistance) shall disclose a description of any interest the individual or community spouse has in an annuity (or similar financial instrument, as may be specified by the Secretary), regardless of whether the annuity is irrevocable or is treated as an asset. Such application or recertification form shall include a statement that under paragraph (2) the State becomes a remainder beneficiary under such an annuity or similar financial instrument by virtue of the provision of such medical assistance.

"(2)(A) In the case of disclosure concerning an annuity under subsection (c)(1)(F), the State shall notify the issuer of the annuity of the right of the State under such subsection as a preferred remainder beneficiary in the annuity for medical assistance furnished to the individual. Nothing in this paragraph shall be construed as preventing such an issuer from notifying persons with any other remainder interest of the State's remainder interest under such subsection.

"(B) In the case of such an issuer receiving notice under subparagraph (A), the State may require the issuer to notify the State when there is a change in the amount of income or principal being withdrawn from the amount that was being withdrawn at the time of the most recent disclosure described in paragraph (1). A State shall take such information into account in determining the amount of the State's obligations for medical assistance or in the individual's eligibility for such assistance.

"(3) The Secretary may provide guidance to States on categories of transactions that may be treated as a transfer of asset for less than fair market value.

"(4) Nothing in this subsection shall be construed as preventing a State from denying eligibility for medical assistance for an individual based on the income or resources derived from an annuity described in paragraph (1).".

(b) Requirement for State To Be Named as a Remainder Beneficiary.—Section 1917(c)(1) of such Act (42 U.S.C. 1396p(c)(1)), is amended by adding at the end the following:

"(F) For purposes of this paragraph, the purchase of an annuity shall be treated as the disposal of an asset for less than fair market value unless—

"(i) the State is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant under this title; or

"(ii) the State is named as such a beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any such remainder for less than fair market value.".

(c) Inclusion of Transfers To Purchase Balloon Annuities.—Section 1917(c)(1) of such Act (42 U.S.C. 1396p(c)(1)), as amended by subsection (b), is amended by adding at the end the following:

"(G) For purposes of this paragraph with respect to a transfer of assets, the term 'assets' includes an annuity purchased by or on behalf of an annuitant who has applied for medical assistance with respect to nursing facility services or other long-term care services under this title unless—

"(i) the annuity is—

"(I) an annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986; or

"(II) purchased with proceeds from—

"(aa) an account or trust described in subsection (a), (c), or (p) of section 408 of such Code;

"(bb) a simplified employee pension (within the meaning of section 408(k) of such Code); or

"(cc) a Roth IRA described in section 408A of such Code; or

"(ii) the annuity—

"(I) is irrevocable and nonassignable;

"(II) is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration); and

"(III) provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.".

(d) Effective Date.—The amendments made by this section shall apply to transactions (including the purchase of an annuity) occurring on or after the date of the enactment of this Act.

SEC. 6013. APPLICATION OF "INCOME-FIRST" RULE IN APPLYING COMMUNITY SPOUSE'S INCOME BEFORE ASSETS IN PROVIDING SUPPORT OF COMMUNITY SPOUSE.

(a) In General.—Section 1924(d) of the Social Security Act (42 U.S.C. 1396r–5(d)) is amended by adding at the end the following new subparagraph:

"(6) Application of 'income first' rule to revision of community spouse resource allowance.—For purposes of this subsection and subsections (c) and (e), a State must consider that all income of the institutionalized spouse that could be made available to a community spouse, in accordance with the calculation of the community spouse monthly income allowance under this subsection, has been made available before the State allocates to the community spouse an amount of resources adequate to provide the difference between the minimum monthly maintenance needs allowance and all income available to the community spouse.".

(b) Effective Date.—The amendment made by subsection (a) shall apply to transfers and allocations made on or after the date of the enactment of this Act by individuals who become institutionalized spouses on or after such date.

SEC. 6014. DISQUALIFICATION FOR LONG-TERM CARE ASSISTANCE FOR INDIVIDUALS WITH SUBSTANTIAL HOME EQUITY.

(a) In General.—Section 1917 of the Social Security Act, as amended by section 6012(a), is further amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f)(1)(A) Notwithstanding any other provision of this title, subject to subparagraphs (B) and (C) of this paragraph and paragraph (2), in determining eligibility of an individual for medical assistance with respect to nursing facility services or other long-term care services, the individual shall not be eligible for such assistance if the individual's equity interest in the individual's home exceeds $500,000.

"(B) A State may elect, without regard to the requirements of section 1902(a)(1) (relating to statewideness) and section 1902(a)(10)(B) (relating to comparability), to apply subparagraph (A) by substituting for '$500,000', an amount that exceeds such amount, but does not exceed $750,000.

"(C) The dollar amounts specified in this paragraph shall be increased, beginning with 2011, from year to year based on the percentage increase in the consumer price index for all urban consumers (all items; United States city average), rounded to the nearest $1,000.

"(2) Paragraph (1) shall not apply with respect to an individual if—

"(A) the spouse of such individual, or

"(B) such individual's child who is under age 21, or (with respect to States eligible to participate in the State program established under title XVI) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1614,

is lawfully residing in the individual's home.

"(3) Nothing in this subsection shall be construed as preventing an individual from using a reverse mortgage or home equity loan to reduce the individual's total equity interest in the home.

"(4) The Secretary shall establish a process whereby paragraph (1) is waived in the case of a demonstrated hardship.".

(b) Effective Date.—The amendment made by subsection (a) shall apply to individuals who are determined eligible for medical assistance with respect to nursing facility services or other long-term care services based on an application filed on or after January 1, 2006.

SEC. 6015. ENFORCEABILITY OF CONTINUING CARE RETIREMENT COMMUNITIES (CCRC) AND LIFE CARE COMMUNITY ADMISSION CONTRACTS.

(a) Admission Policies of Nursing Facilities.—Section 1919(c)(5) of the Social Security Act (42 U.S.C. 1396r(c)(5)) is amended—

(1) in subparagraph (A)(i)(II), by inserting "subject to clause (v)," after "(II)"; and

(2) by adding at the end of subparagraph (B) the following new clause:

"(v) Treatment of continuing care retirement communities admission contracts.—Notwithstanding subclause (II) of subparagraph (A)(i), subject to subsections (c) and (d) of section 1924, contracts for admission to a State licensed, registered, certified, or equivalent continuing care retirement community or life care community, including services in a nursing facility that is part of such community, may require residents to spend on their care resources declared for the purposes of admission before applying for medical assistance.".

(b) Treatment of Entrance Fees.—Section 1917 of such Act (42 U.S.C. 1396p), as amended by sections 6012(a) and 6014(a), is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) Treatment of Entrance Fees of Individuals Residing in Continuing Care Retirement Communities.—

"(1) In general.—For purposes of determining an individual's eligibility for, or amount of, benefits under a State plan under this title, the rules specified in paragraph (2) shall apply to individuals residing in continuing care retirement communities or life care communities that collect an entrance fee on admission from such individuals.

"(2) Treatment of entrance fee.—For purposes of this subsection, an individual's entrance fee in a continuing care retirement community or life care community shall be considered a resource available to the individual to the extent that—

"(A) the individual has the ability to use the entrance fee, or the contract provides that the entrance fee may be used, to pay for care should other resources or income of the individual be insufficient to pay for such care;

"(B) the individual is eligible for a refund of any remaining entrance fee when the individual dies or terminates the continuing care retirement community or life care community contract and leaves the community; and

"(C) the entrance fee does not confer an ownership interest in the continuing care retirement community or life care community.".

SEC. 6016. ADDITIONAL REFORMS OF MEDICAID ASSET TRANSFER RULES.

(a) Requirement To Impose Partial Months of Ineligibility.—Section 1917(c)(1)(E) of the Social Security Act (42 U.S.C. 1396p(c)(1)(E)) is amended by adding at the end the following:

"(iv) A State shall not round down, or otherwise disregard any fractional period of ineligibility determined under clause (i) or (ii) with respect to the disposal of assets.".

(b) Authority for States To Accumulate Multiple Transfers Into One Penalty Period.—Section 1917(c)(1) of such Act (42 U.S.C. 1396p(c)(1)), as amended by subsections (b) and (c) of section 6012, is amended by adding at the end the following:

"(H) Notwithstanding the preceding provisions of this paragraph, in the case of an individual (or individual's spouse) who makes multiple fractional transfers of assets in more than 1 month for less than fair market value on or after the applicable look-back date specified in subparagraph (B), a State may determine the period of ineligibility applicable to such individual under this paragraph by—

"(i) treating the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) during all months on or after the look-back date specified in subparagraph (B) as 1 transfer for purposes of clause (i) or (ii) (as the case may be) of subparagraph (E); and

"(ii) beginning such period on the earliest date which would apply under subparagraph (D) to any of such transfers.".

(c) Inclusion of Transfer of Certain Notes and Loans Assets.—Section 1917(c)(1) of such Act (42 U.S.C. 1396p(c)(1)), as amended by subsection (b), is amended by adding at the end the following:

"(I) For purposes of this paragraph with respect to a transfer of assets, the term 'assets' includes funds used to purchase a promissory note, loan, or mortgage unless such note, loan, or mortgage—

"(i) has a repayment term that is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration);

"(ii) provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made; and

"(iii) prohibits the cancellation of the balance upon the death of the lender.

In the case of a promissory note, loan, or mortgage that does not satisfy the requirements of clauses (i) through (iii), the value of such note, loan, or mortgage shall be the outstanding balance due as of the date of the individual's application for medical assistance for services described in subparagraph (C).".

(d) Inclusion of Transfers To Purchase Life Estates.—Section 1917(c)(1) of such Act (42 U.S.C. 1396p(c)(1)), as amended by subsection (c), is amended by adding at the end the following:

"(J) For purposes of this paragraph with respect to a transfer of assets, the term 'assets' includes the purchase of a life estate interest in another individual's home unless the purchaser resides in the home for a period of at least 1 year after the date of the purchase.".

(e) Effective Dates.—

(1) In general.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to payments under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) for calendar quarters beginning on or after the date of enactment of this Act, without regard to whether or not final regulations to carry

out such amendments have been promulgated by such date.

(2) Exceptions.—The amendments made by this section shall not apply—

(A) to medical assistance provided for services furnished before the date of enactment;

(B) with respect to assets disposed of on or before the date of enactment of this Act; or

(C) with respect to trusts established on or before the date of enactment of this Act.

(3) Extension of effective date for State law amendment.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by a provision of this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

Subchapter B—Expanded Access to Certain Benefits

SEC. 6021. EXPANSION OF STATE LONG-TERM CARE PARTNERSHIP PROGRAM.

(a) Expansion Authority.—

(1) In general.—Section 1917(b) of the Social Security Act (42 U.S.C. 1396p(b)) is amended—

(A) in paragraph (1)(C)—

(i) in clause (ii), by inserting "and which satisfies clause (iv), or which has a State plan amendment that provides for a qualified State long-term care insurance partnership (as defined in clause (iii))" after "1993,"; and

(ii) by adding at the end the following new clauses:

"(iii) For purposes of this paragraph, the term 'qualified State long-term care insurance partnership' means an approved State plan amendment under this title that provides for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy if the following requirements are met:

"(I) The policy covers an insured who was a resident of such State when coverage first became effective under the policy.

"(II) The policy is a qualified long-term care insurance policy (as defined in section 7702B(b) of the Internal Revenue Code of 1986) issued not earlier than the effective date of the State plan amendment.

"(III) The policy meets the model regulations and the requirements of the model Act specified in paragraph (5).

"(IV) If the policy is sold to an individual who—

"(aa) has not attained age 61 as of the date of purchase, the policy provides compound annual inflation protection;

"(bb) has attained age 61 but has not attained age 76 as of such date, the policy provides some level of inflation protection; and

"(cc) has attained age 76 as of such date, the policy may (but is not required to) provide some level of inflation protection.

"(V) The State Medicaid agency under section 1902(a)(5) provides information and technical assistance to the State insurance department on the insurance department's role of assuring that any individual who sells a long-term care insurance policy under the partnership receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care.

"(VI) The issuer of the policy provides regular reports to the Secretary, in accordance with regulations of the Secretary, that include notification regarding when benefits provided under the policy have been paid and the amount of such benefits paid, notification regarding when the policy otherwise terminates, and such other information as the Secretary determines may be appropriate to the administration of such partnerships.

"(VII) The State does not impose any requirement affecting the terms or benefits of such a policy unless the State imposes such requirement on long-term care insurance policies without regard to whether the policy is covered under the partnership or is offered in connection with such a partnership.

In the case of a long-term care insurance policy which is exchanged for another such policy, subclause (I) shall be applied based on the coverage of the first such policy that was exchanged. For purposes of this clause and paragraph (5), the term 'long-term care insurance policy' includes a certificate issued under a group insurance contract.

"(iv) With respect to a State which had a State plan amendment approved as of May 14, 1993, such a State satisfies this clause for purposes of clause (ii) if the Secretary determines that the State plan amendment provides for consumer protection standards which are no less stringent than the consumer protection standards which applied under such State plan amendment as of December 31, 2005.

"(v) The regulations of the Secretary required under clause (iii)(VI) shall be promulgated after consultation with the National Association of Insurance Commissioners, issuers of long-term care insurance policies, States with experience with long-term care insurance partnership plans, other States, and representatives of consumers of long-term care insurance policies, and shall specify the type and format of the data and information to be reported and the frequency with which such reports are to be made. The Secretary, as appropriate, shall provide copies of the reports provided in accordance with that clause to the State involved.

"(vi) The Secretary, in consultation with other appropriate Federal agencies, issuers of long-term care insurance, the National Association of Insurance Commissioners, State insurance commissioners, States with experience with long-term care insurance partnership plans, other States, and representatives of consumers of long-term care insurance policies, shall develop recommendations for Congress to authorize and fund a uniform minimum data set to be reported electronically by all issuers of long-term care insurance policies under qualified State long-term care insurance partnerships to a secure, centralized electronic query and report-generating mechanism that the State, the Secretary, and other Federal agencies can access."; and

(B) by adding at the end the following:

"(5)(A) For purposes of clause (iii)(III), the model regulations and the requirements of the model Act specified in this paragraph are:

"(i) In the case of the model regulation, the following requirements:

"(I) Section 6A (relating to guaranteed renewal or noncancellability), other than paragraph (5) thereof, and the requirements of section 6B of the model Act relating to such section 6A.

"(II) Section 6B (relating to prohibitions on limitations and exclusions) other than paragraph (7) thereof.

"(III) Section 6C (relating to extension of benefits).

"(IV) Section 6D (relating to continuation or conversion of coverage).

"(V) Section 6E (relating to discontinuance and replacement of policies).

"(VI) Section 7 (relating to unintentional lapse).

"(VII) Section 8 (relating to disclosure), other than sections 8F, 8G, 8H, and 8I thereof.

"(VIII) Section 9 (relating to required disclosure of rating practices to consumer).

"(IX) Section 11 (relating to prohibitions against post-claims underwriting).

"(X) Section 12 (relating to minimum standards).

"(XI) Section 14 (relating to application forms and replacement coverage).

"(XII) Section 15 (relating to reporting requirements).

"(XIII) Section 22 (relating to filing requirements for marketing).

"(XIV) Section 23 (relating to standards for marketing), including inaccurate completion of medical histories, other than paragraphs (1), (6), and (9) of section 23C.

"(XV) Section 24 (relating to suitability).

"(XVI) Section 25 (relating to prohibition against preexisting conditions and probationary periods in replacement policies or certificates).

"(XVII) The provisions of section 26 relating to contingent nonforfeiture benefits, if the policyholder declines the offer of a nonforfeiture provision described in paragraph (4).

"(XVIII) Section 29 (relating to standard format outline of coverage).

"(XIX) Section 30 (relating to requirement to deliver shopper's guide).

"(ii) In the case of the model Act, the following:

"(I) Section 6C (relating to preexisting conditions).

"(II) Section 6D (relating to prior hospitalization).

"(III) The provisions of section 8 relating to contingent nonforfeiture benefits.

"(IV) Section 6F (relating to right to return).

"(V) Section 6G (relating to outline of coverage).

"(VI) Section 6H (relating to requirements for certificates under group plans).

"(VII) Section 6J (relating to policy summary).

"(VIII) Section 6K (relating to monthly reports on accelerated death benefits).

"(IX) Section 7 (relating to incontestability period).

"(B) For purposes of this paragraph and paragraph (1)(C)—

"(i) the terms 'model regulation' and 'model Act' mean the long-term care insurance model regulation, and the long-term care insurance model Act, respectively, promulgated by the National Association of Insurance Commissioners (as adopted as of October 2000);

"(ii) any provision of the model regulation or model Act listed under subparagraph (A) shall be treated as including any other provision of such regulation or Act necessary to implement the provision; and

"(iii) with respect to a long-term care insurance policy issued in a State, the policy shall be deemed to meet applicable requirements of the model regulation or the model Act if the State plan amendment under paragraph (1)(C)(iii) provides that the State insurance commissioner for the State certifies (in a manner satisfactory to the Secretary) that the policy meets such requirements.

"(C) Not later than 12 months after the National Association of Insurance Commissioners issues a revision, update, or other modification of a model regulation or model Act provision specified in subparagraph (A), or of any provision of such regulation or Act that is substantively related to a provision specified in *such subparagraph, the Secretary shall review the changes made to the provision, determine whether incorporating such changes into the corresponding provision specified in such subparagraph would improve qualified State long-term care insurance partnerships, and if so, shall incorporate the changes into such provision.''.*

(2) STATE REPORTING REQUIREMENTS.—Nothing in clauses (iii)(VI) and (v) of section 1917(b)(1)(C) of the Social Security Act (as added by paragraph (1)) shall be construed as prohibiting a State from requiring an issuer of a long-term care insurance policy sold in the State (regardless of whether the policy is issued under a qualified State long-term care insurance partnership under section 1917(b)(1)(C)(iii) of such Act) to require the issuer to report information or data to the State that is in addition to the information or data required under such clauses.

(3) EFFECTIVE DATE.—A State plan amendment that provides for a qualified State long-term care insurance partnership under the amendments made by paragraph (1) may provide that such amendment is effective for long-term care insurance policies issued on or after a date, specified in the amendment, that is not earlier than the first day of the first calendar quarter in which the plan amendment was submitted to the Secretary of Health and Human Services.

(b) STANDARDS FOR RECIPROCAL RECOGNITION AMONG PARTNERSHIP STATES.—In order to permit portability in long-term care insurance policies purchased under State long-term care insurance partnerships, the Secretary of Health and Human Services shall develop, not later than January 1, 2007, and in consultation with the National Association of Insurance Commissioners, issuers of long-term care insurance policies, States with experience with long-term care insurance partnership plans, other States, and representatives of consumers of long-term care insurance policies, standards for uniform reciprocal recognition of such policies among States with qualified State long-term care insurance partnerships under which—

(1) benefits paid under such policies will be treated the same by all such States; and

(2) States with such partnerships shall be subject to such standards unless the State notifies the Secretary in writing of the State's election to be exempt from such standards.

(c) ANNUAL REPORTS TO CONGRESS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall annually report to Congress on the long-term care insurance partnerships established in accordance with section 1917(b)(1)(C)(ii) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(ii)) (as amended by subsection (a)(1)). Such reports shall include analyses of the extent to which such partnerships expand or limit access of individuals to long-term care and the impact of such partnerships on Federal and State expenditures under the Medicare and Medicaid programs. Nothing in this section shall be construed as requiring the Secretary to conduct an independent review of each long-term care insurance policy offered under or in connection with such a partnership.

(2) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary of Health and Human Services, $1,000,000 for the period of fiscal years 2006 through 2010 to carry out paragraph (1).

(d) NATIONAL CLEARINGHOUSE FOR LONG-TERM CARE INFORMATION.—

(1) ESTABLISHMENT.—The Secretary of Health and Human Services shall establish a National Clearinghouse for Long-Term Care Information. The Clearinghouse may be established through a contract or interagency agreement.

(2) DUTIES.—

(A) IN GENERAL.—The National Clearinghouse for Long-Term Care Information shall—

(i) educate consumers with respect to the availability and limitations of coverage for long-term care under the Medicaid program and provide contact information for obtaining State-specific information on long-term care coverage, including eligibility and estate recovery requirements under State Medicaid programs;

(ii) provide objective information to assist consumers with the decisionmaking process for determining whether to purchase long-term care insurance or to pursue other private market alternatives for purchasing long-term care and provide contact information for additional objective resources on planning for long-term care needs; and

(iii) maintain a list of States with State long-term care insurance partnerships under the Medicaid program that provide reciprocal recognition of long-term care insurance policies issued under such partnerships.

(B) REQUIREMENT.—In providing information to consumers on long-term care in accordance with this subsection, the National Clearinghouse for Long-Term Care Information shall not advocate in favor of a specific long-term care insurance provider or a specific long-term care insurance policy.

(3) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to carry out this subsection, $3,000,000 for each of fiscal years 2006 through 2010.

CHAPTER 3—ELIMINATING FRAUD, WASTE, AND ABUSE IN MEDICAID

SEC. 6031. ENCOURAGING THE ENACTMENT OF STATE FALSE CLAIMS ACTS.

(a) IN GENERAL.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended by inserting after section 1908A the following:

''STATE FALSE CLAIMS ACT REQUIREMENTS FOR INCREASED STATE SHARE OF RECOVERIES

''SEC. 1909. (a) IN GENERAL.—Notwithstanding section 1905(b), if a State has in effect a law relating to false or fraudulent claims that meets the requirements of subsection (b), the Federal medical assistance percentage with respect to any amounts recovered under a State action brought under such law, shall be decreased by 10 percentage points.

''(b) REQUIREMENTS.—For purposes of subsection (a), the requirements of this subsection are that the Inspector General of the Department of Health and Human Services, in consultation with the Attorney General, determines that the State has in effect a law that meets the following requirements:

''(1) The law establishes liability to the State for false or fraudulent claims described in section 3729 of title 31, United States Code, with respect to any expenditure described in section 1903(a).

''(2) The law contains provisions that are at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims as those described in sections 3730 through 3732 of title 31, United States Code.

''(3) The law contains a requirement for filing an action under seal for 60 days with review by the State Attorney General.

''(4) The law contains a civil penalty that is not less than the amount of the civil penalty authorized under section 3729 of title 31, United States Code.

''(c) DEEMED COMPLIANCE.—A State that, as of January 1, 2007, has a law in effect that meets the requirements of subsection (b) shall be deemed to be in compliance with such requirements for so long as the law continues to meet such requirements.

''(d) NO PRECLUSION OF BROADER LAWS.—Nothing in this section shall be construed as prohibiting a State that has in effect a law that establishes liability to the State for false or fraudulent claims described in section 3729 of title 31, United States Code, with respect to programs in addition to the State program under this title, or with respect to expenditures in addition to expenditures described in section 1903(a), from being considered to be in compliance with the requirements of subsection (a) so long as the law meets such requirements.''.

(b) EFFECTIVE DATE.—Except as provided in section 6035(e), the amendments made by this section take effect on January 1, 2007.

SEC. 6032. EMPLOYEE EDUCATION ABOUT FALSE CLAIMS RECOVERY.

(a) IN GENERAL.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(1) in paragraph (66), by striking ''and'' at the end;

(2) in paragraph (67) by striking the period at the end and inserting ''; and''; and

(3) by inserting after paragraph (67) the following:

''(68) provide that any entity that receives or makes annual payments under the State plan of at least $5,000,000, as a condition of receiving such payments, shall—

''(A) establish written policies for all employees of the entity (including management), and of any contractor or agent of the entity, that provide detailed information about the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, any State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in section 1128B(f));

''(B) include as part of such written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse; and

''(C) include in any employee handbook for the entity, a specific discussion of the laws described in subparagraph (A), the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.''.

(b) EFFECTIVE DATE.—Except as provided in section 6035(e), the amendments made by subsection (a) take effect on January 1, 2007.

SEC. 6033. PROHIBITION ON RESTOCKING AND DOUBLE BILLING OF PRESCRIPTION DRUGS.

(a) IN GENERAL.—Section 1903(i)(10) of the Social Security Act (42 U.S.C. 1396b(i)), as amended by section 6002(b), is amended—

(1) in subparagraph (B), by striking ''and'' at the end;

(2) in subparagraph (C), by striking ''; or'' at the end and inserting '', and''; and

(3) by adding at the end the following:

''(D) with respect to any amount expended for reimbursement to a pharmacy under this title for the ingredient cost of a covered outpatient drug for which the pharmacy has already received payment under this title (other than with respect to a reasonable restocking fee for such drug); or''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on the first day of the first fiscal year quarter that begins after the date of enactment of this Act.

SEC. 6034. MEDICAID INTEGRITY PROGRAM.

(a) ESTABLISHMENT OF MEDICAID INTEGRITY PROGRAM.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended—

(1) by redesignating section 1936 as section 1937; and

(2) by inserting after section 1935 the following:

''MEDICAID INTEGRITY PROGRAM

''SEC. 1936. (a) IN GENERAL.—There is hereby established the Medicaid Integrity Program (in

this section referred to as the 'Program') under which the Secretary shall promote the integrity of the program under this title by entering into contracts in accordance with this section with eligible entities to carry out the activities described in subsection (b).

"(b) ACTIVITIES DESCRIBED—Activities described in this subsection are as follows:

"(1) Review of the actions of individuals or entities furnishing items or services (whether on a fee-for-service, risk, or other basis) for which payment may be made under a State plan approved under this title (or under any waiver of such plan approved under section 1115) to determine whether fraud, waste, or abuse has occurred, is likely to occur, or whether such actions have any potential for resulting in an expenditure of funds under this title in a manner which is not intended under the provisions of this title.

"(2) Audit of claims for payment for items or services furnished, or administrative services rendered, under a State plan under this title, including—

"(A) cost reports;

"(B) consulting contracts; and

"(C) risk contracts under section 1903(m).

"(3) Identification of overpayments to individuals or entities receiving Federal funds under this title.

"(4) Education of providers of services, managed care entities, beneficiaries, and other individuals with respect to payment integrity and quality of care.

"(c) ELIGIBLE ENTITY AND CONTRACTING REQUIREMENTS.—

"(1) IN GENERAL.—An entity is eligible to enter into a contract under the Program to carry out any of the activities described in subsection (b) if the entity satisfies the requirements of paragraphs (2) and (3).

"(2) ELIGIBILITY REQUIREMENTS.—The requirements of this paragraph are the following:

"(A) The entity has demonstrated capability to carry out the activities described in subsection (b).

"(B) In carrying out such activities, the entity agrees to cooperate with the Inspector General of the Department of Health and Human Services, the Attorney General, and other law enforcement agencies, as appropriate, in the investigation and deterrence of fraud and abuse in relation to this title and in other cases arising out of such activities.

"(C) The entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement.

"(D) The entity meets such other requirements as the Secretary may impose.

"(3) CONTRACTING REQUIREMENTS.—The entity has contracted with the Secretary in accordance with such procedures as the Secretary shall by regulation establish, except that such procedures shall include the following:

"(A) Procedures for identifying, evaluating, and resolving organizational conflicts of interest that are generally applicable to Federal acquisition and procurement.

"(B) Competitive procedures to be used—

"(i) when entering into new contracts under this section;

"(ii) when entering into contracts that may result in the elimination of responsibilities under section 202(b) of the Health Insurance Portability and Accountability Act of 1996; and

"(iii) at any other time considered appropriate by the Secretary.

"(C) Procedures under which a contract under this section may be renewed without regard to any provision of law requiring competition if the contractor has met or exceeded the performance requirements established in the current contract.

The Secretary may enter into such contracts without regard to final rules having been promulgated.

"(4) LIMITATION ON CONTRACTOR LIABILITY.—The Secretary shall by regulation provide for the limitation of a contractor's liability for actions taken to carry out a contract under the Program, and such regulation shall, to the extent the Secretary finds appropriate, employ the same or comparable standards and other substantive and procedural provisions as are contained in section 1157.

"(d) COMPREHENSIVE PLAN FOR PROGRAM INTEGRITY.—

"(1) 5-YEAR PLAN.—With respect to the 5-fiscal year period beginning with fiscal year 2006, and each such 5-fiscal year period that begins thereafter, the Secretary shall establish a comprehensive plan for ensuring the integrity of the program established under this title by combatting fraud, waste, and abuse.

"(2) CONSULTATION.—Each 5-fiscal year plan established under paragraph (1) shall be developed by the Secretary in consultation with the Attorney General, the Director of the Federal Bureau of Investigation, the Comptroller General of the United States, the Inspector General of the Department of Health and Human Services, and State officials with responsibility for controlling provider fraud and abuse under State plans under this title.

"(e) APPROPRIATION.—

"(1) IN GENERAL.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to carry out the Medicaid Integrity Program under this section, without further appropriation—

"(A) for fiscal year 2006, $5,000,000;

"(B) for each of fiscal years 2007 and 2008, $50,000,000; and

"(C) for each fiscal year thereafter, $75,000,000.

"(2) AVAILABILITY.—Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

"(3) INCREASE IN CMS STAFFING DEVOTED TO PROTECTING MEDICAID PROGRAM INTEGRITY.—From the amounts appropriated under paragraph (1), the Secretary shall increase by 100 the number of full-time equivalent employees whose duties consist solely of protecting the integrity of the Medicaid program established under this section by providing effective support and assistance to States to combat provider fraud and abuse.

"(4) ANNUAL REPORT.—Not later than 180 days after the end of each fiscal year (beginning with fiscal year 2006), the Secretary shall submit a report to Congress which identifies—

"(A) the use of funds appropriated pursuant to paragraph (1); and

"(B) the effectiveness of the use of such funds.".

(b) STATE REQUIREMENT TO COOPERATE WITH INTEGRITY PROGRAM EFFORTS.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)), as amended by section 6033(a), is amended—

(1) in paragraph (67), by striking "and" at the end;

(2) in paragraph (68), by striking the period at the end and inserting "; and"; and

(3) by inserting after paragraph (68), the following:

"(69) provide that the State must comply with any requirements determined by the Secretary to be necessary for carrying out the Medicaid Integrity Program established under section 1936.".

(c) INCREASED FUNDING FOR MEDICAID FRAUD AND ABUSE CONTROL ACTIVITIES.—

(1) IN GENERAL.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Office of the Inspector General of the Department of Health and Human Services, without further appropriation, $25,000,000 for each of fiscal years 2006 through 2010, for activities of such Office with respect to the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(2) AVAILABILITY; AMOUNTS IN ADDITION TO OTHER AMOUNTS APPROPRIATED FOR SUCH ACTIVITIES.—Amounts appropriated pursuant to paragraph (1) shall—

(A) remain available until expended; and

(B) be in addition to any other amounts appropriated or made available to the Office of the Inspector General of the Department of Health and Human Services for activities of such Office with respect to the Medicaid program.

(3) ANNUAL REPORT.—Not later than 180 days after the end of each fiscal year (beginning with fiscal year 2006), the Inspector General of the Department of Health and Human Services shall submit a report to Congress which identifies—

(A) the use of funds appropriated pursuant to paragraph (1); and

(B) the effectiveness of the use of such funds.

(d) NATIONAL EXPANSION OF THE MEDICARE-MEDICAID (MEDI-MEDI) DATA MATCH PILOT PROGRAM.—

(1) REQUIREMENT OF THE MEDICARE INTEGRITY PROGRAM.—Section 1893 of the Social Security Act (42 U.S.C. 1395ddd) is amended—

(A) in subsection (b), by adding at the end the following:

"(6) The Medicare-Medicaid Data Match Program in accordance with subsection (g)."; and

(B) by adding at the end the following:

"(g) MEDICARE-MEDICAID DATA MATCH PROGRAM.—

"(1) EXPANSION OF PROGRAM.—

"(A) IN GENERAL.—The Secretary shall enter into contracts with eligible entities for the purpose of ensuring that, beginning with 2006, the Medicare-Medicaid Data Match Program (commonly referred to as the 'Medi-Medi Program') is conducted with respect to the program established under this title and State Medicaid programs under title XIX for the purpose of—

"(i) identifying program vulnerabilities in the program established under this title and the Medicaid program established under title XIX through the use of computer algorithms to look for payment anomalies (including billing or billing patterns identified with respect to service, time, or patient that appear to be suspect or otherwise implausible);

"(ii) working with States, the Attorney General, and the Inspector General of the Department of Health and Human Services to coordinate appropriate actions to protect the Federal and State share of expenditures under the Medicaid program under title XIX, as well as the program established under this title; and

"(iii) increasing the effectiveness and efficiency of both such programs through cost avoidance, savings, and recoupments of fraudulent, wasteful, or abusive expenditures.

"(B) REPORTING REQUIREMENTS.—The Secretary shall make available in a timely manner any data and statistical information collected by the Medi-Medi Program to the Attorney General, the Director of the Federal Bureau of Investigation, the Inspector General of the Department of Health and Human Services, and the States (including a Medicaid fraud and abuse control unit described in section 1903(q)). Such information shall be disseminated no less frequently than quarterly.

"(2) LIMITED WAIVER AUTHORITY.—The Secretary shall waive only such requirements of this section and of titles XI and XIX as are necessary to carry out paragraph (1).".

(2) FUNDING.—Section 1817(k)(4) of such Act (42 U.S.C. 1395i(k)(4)), as amended by section 5204 of this Act, is amended—

(A) in subparagraph (A), by striking "subparagraph (B)" and inserting "subparagraphs (B), (C), and (D)"; and

(B) by adding at the end the following:

"(D) EXPANSION OF THE MEDICARE-MEDICAID DATA MATCH PROGRAM.—The amount appropriated under subparagraph (A) for a fiscal year is further increased as follows for purposes of carrying out section 1893(b)(6) for the respective fiscal year:

"(i) $12,000,000 for fiscal year 2006.

"(ii) $24,000,000 for fiscal year 2007.

"(iii) $36,000,000 for fiscal year 2008.

"(iv) $48,000,000 for fiscal year 2009.

"(v) $60,000,000 for fiscal year 2010 and each fiscal year thereafter.".

(e) DELAYED EFFECTIVE DATE FOR CHAPTER.—Except as otherwise provided in this chapter, in the case of a State plan under title XIX of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by a provision of this chapter, the State plan shall not be regarded as failing to comply with the requirements of such Act solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.

SEC. 6035. ENHANCING THIRD PARTY IDENTIFICATION AND PAYMENT.

(a) CLARIFICATION OF THIRD PARTIES LEGALLY RESPONSIBLE FOR PAYMENT OF A CLAIM FOR A HEALTH CARE ITEM OR SERVICE.—Section 1902(a)(25) of the Social Security Act (42 U.S.C. 1396a(a)(25)) is amended—

(1) in subparagraph (A), in the matter preceding clause (i)—

(A) by inserting ", self-insured plans" after "health insurers"; and

(B) by striking "and health maintenance organizations" and inserting "managed care organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service"; and

(2) in subparagraph (G)—

(A) by inserting "a self-insured plan," after "1974,"; and

(B) by striking "and a health maintenance organization" and inserting "a managed care organization, a pharmacy benefit manager, or other party that is, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service".

(b) REQUIREMENT FOR THIRD PARTIES TO PROVIDE THE STATE WITH COVERAGE ELIGIBILITY AND CLAIMS DATA.—Section 1902(a)(25) of such Act (42 U.S.C. 1396a(a)(25)) is amended—

(1) in subparagraph (G), by striking "and" at the end;

(2) in subparagraph (H), by adding "and" after the semicolon at the end; and

(3) by inserting after subparagraph (H), the following:

"(I) that the State shall provide assurances satisfactory to the Secretary that the State has in effect laws requiring health insurers, including self-insured plans, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service, as a condition of doing business in the State, to—

"(i) provide, with respect to individuals who are eligible for, or are provided, medical assistance under the State plan, upon the request of the State, information to determine during what period the individual or their spouses or their dependents may be (or may have been) covered by a health insurer and the nature of the coverage that is or was provided by the health insurer (including the name, address, and identifying number of the plan) in a manner prescribed by the Secretary;

"(ii) accept the State's right of recovery and the assignment to the State of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under the State plan;

"(iii) respond to any inquiry by the State regarding a claim for payment for any health care item or service that is submitted not later than 3 years after the date of the provision of such health care item or service; and

"(iv) agree not to deny a claim submitted by the State solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if—

"(I) the claim is submitted by the State within the 3-year period beginning on the date on which the item or service was furnished; and

"(II) any action by the State to enforce its rights with respect to such claim is commenced within 6 years of the State's submission of such claim;".

(c) EFFECTIVE DATE.—Except as provided in section 6035(e), the amendments made by this section take effect on January 1, 2006.

SEC. 6036. IMPROVED ENFORCEMENT OF DOCUMENTATION REQUIREMENTS.

(a) IN GENERAL.—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended—

(1) in subsection (i), as amended by section 104 of Public Law 109–91—

(A) by striking "or" at the end of paragraph (20);

(B) by striking the period at the end of paragraph (21) and inserting "; or"; and

(C) by inserting after paragraph (21) the following new paragraph:

"(22) with respect to amounts expended for medical assistance for an individual who declares under section 1137(d)(1)(A) to be a citizen or national of the United States for purposes of establishing eligibility for benefits under this title, unless the requirement of subsection (x) is met."; and

(2) by adding at the end the following new subsection:

"(x)(1) For purposes of subsection (i)(23), the requirement of this subsection is, with respect to an individual declaring to be a citizen or national of the United States, that, subject to paragraph (2), there is presented satisfactory documentary evidence of citizenship or nationality (as defined in paragraph (3)) of the individual.

"(2) The requirement of paragraph (1) shall not apply to an alien who is eligible for medical assistance under this title—

"(A) and is entitled to or enrolled for benefits under any part of title XVIII;

"(B) on the basis of receiving supplemental security income benefits under title XVI; or

"(C) on such other basis as the Secretary may specify under which satisfactory documentary evidence of citizenship or nationality had been previously presented.

"(3)(A) For purposes of this subsection, the term 'satisfactory documentary evidence of citizenship or nationality' means—

"(i) any document described in subparagraph (B); or

"(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

"(B) The following are documents described in this subparagraph:

"(i) A United States passport.

"(ii) Form N–550 or N–570 (Certificate of Naturalization).

"(iii) Form N–560 or N–561 (Certificate of United States Citizenship).

"(iv) A valid State-issued driver's license or other identity document described in section 274A(b)(1)(D) of the Immigration and Nationality Act, but only if the State issuing the license or such document requires proof of United States citizenship before issuance of such license or document or obtains a social security number from the applicant and verifies before certification that such number is valid and assigned to the applicant who is a citizen.

"(v) Such other document as the Secretary may specify, by regulation, that provides proof of United States citizenship or nationality and that provides a reliable means of documentation of personal identity.

"(C) The following are documents described in this subparagraph:

"(i) A certificate of birth in the United States.

"(ii) Form FS–545 or Form DS–1350 (Certification of Birth Abroad).

"(iii) Form I–97 (United States Citizen Identification Card).

"(iv) Form FS–240 (Report of Birth Abroad of a Citizen of the United States).

"(v) Such other document (not described in subparagraph (B)(iv)) as the Secretary may specify that provides proof of United States citizenship or nationality.

"(D) The following are documents described in this subparagraph:

"(i) Any identity document described in section 274A(b)(1)(D) of the Immigration and Nationality Act.

"(ii) Any other documentation of personal identity of such other type as the Secretary finds, by regulation, provides a reliable means of identification.

"(E) A reference in this paragraph to a form includes a reference to any successor form.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to determinations of initial eligibility for medical assistance made on or after July 1, 2006, and to redeterminations of eligibility made on or after such date in the case of individuals for whom the requirement of section 1903(z) of the Social Security Act, as added by such amendments, was not previously met.

(c) IMPLEMENTATION REQUIREMENT.—As soon as practicable after the date of enactment of this Act, the Secretary of Health and Human Services shall establish an outreach program that is designed to educate individuals who are likely to be affected by the requirements of subsections (i)(23) and (x) of section 1903 of the Social Security Act (as added by subsection (a)) about such requirements and how they may be satisfied.

CHAPTER 4—FLEXIBILITY IN COST SHARING AND BENEFITS

SEC. 6041. STATE OPTION FOR ALTERNATIVE MEDICAID PREMIUMS AND COST SHARING.

(a) IN GENERAL.—Title XIX of the Social Security Act is amended by inserting after section 1916 the following new section:

"STATE OPTION FOR ALTERNATIVE PREMIUMS AND COST SHARING

"SEC. 1916A. (a) STATE FLEXIBILITY.—

"(1) IN GENERAL.—Notwithstanding sections 1916 and 1902(a)(10)(B), a State, at its option and through a State plan amendment, may impose premiums and cost sharing for any group of individuals (as specified by the State) and for any type of services (other than drugs for which cost sharing may be imposed under subsection (c)), and may vary such premiums and cost sharing among such groups or types, consistent with the limitations established under this section. Nothing in this section shall be construed as superseding (or preventing the application of) section 1916(g).

"(2) DEFINITIONS.—In this section:

"(A) Premium.—The term 'premium' includes any enrollment fee or similar charge.

"(B) Cost sharing.—The term 'cost sharing' includes any deduction, copayment, or similar charge.

"(b) Limitations on Exercise of Authority.—

"(1) Individuals with family income between 100 and 150 percent of the poverty line.—In the case of an individual whose family income exceeds 100 percent, but does not exceed 150 percent, of the poverty line applicable to a family of the size involved, subject to subsections (c)(2) and (e)(2)(A)—

"(A) no premium may be imposed under the plan; and

"(B) with respect to cost sharing—

"(i) the cost sharing imposed under subsection (a) with respect to any item or service may not exceed 10 percent of the cost of such item or service; and

"(ii) the total aggregate amount of cost sharing imposed under this section (including any cost sharing imposed under subsection (c) or (e)) for all individuals in the family may not exceed 5 percent of the family income of the family involved, as applied on a quarterly or monthly basis (as specified by the State).

"(2) Individuals with family income above 150 percent of the poverty line.—In the case of an individual whose family income exceeds 150 percent of the poverty line applicable to a family of the size involved, subject to subsections (c)(2) and (e)(2)(A)—

"(A) the total aggregate amount of premiums and cost sharing imposed under this section (including any cost sharing imposed under subsection (c) or (e)) for all individuals in the family may not exceed 5 percent of the family income of the family involved, as applied on a quarterly or monthly basis (as specified by the State); and

"(B) with respect to cost sharing, the cost sharing imposed with respect to any item or service under subsection (a) may not exceed 20 percent of the cost of such item or service.

"(3) Additional limitations.—

"(A) Premiums.—No premiums shall be imposed under this section with respect to the following:

"(i) Individuals under 18 years of age that are required to be provided medical assistance under section 1902(a)(10)(A)(i), and including individuals with respect to whom aid or assistance is made available under part B of title IV to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under part E of such title, without regard to age.

"(ii) Pregnant women.

"(iii) Any terminally ill individual who is receiving hospice care (as defined in section 1905(o)).

"(iv) Any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

"(v) Women who are receiving medical assistance by virtue of the application of sections 1902(a)(10)(A)(ii)(XVIII) and 1902(aa).

"(B) Cost sharing.—Subject to the succeeding provisions of this section, no cost sharing shall be imposed under subsection (a) with respect to the following:

"(i) Services furnished to individuals under 18 years of age that are required to be provided medical assistance under section 1902(a)(10)(A)(i), and including services furnished to individuals with respect to whom aid or assistance is made available under part B of title IV to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under part E of such title, without regard to age.

"(ii) Preventive services (such as well baby and well child care and immunizations) provided to children under 18 years of age regardless of family income.

"(iii) Services furnished to pregnant women, if such services relate to the pregnancy or to any other medical condition which may complicate the pregnancy.

"(iv) Services furnished to a terminally ill individual who is receiving hospice care (as defined in section 1905(o)).

"(v) Services furnished to any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

"(vi) Emergency services (as defined by the Secretary for purposes of section 1916(a)(2)(D)).

"(vii) Family planning services and supplies described in section 1905(a)(4)(C).

"(viii) Services furnished to women who are receiving medical assistance by virtue of the application of sections 1902(a)(10)(A)(ii)(XVIII) and 1902(aa).

"(C) Construction.—Nothing in this paragraph shall be construed as preventing a State from exempting additional classes of individuals from premiums under this section or from exempting additional individuals or services from cost sharing under subsection (a).

"(4) Determinations of family income.—In applying this subsection, family income shall be determined in a manner specified by the State for purposes of this subsection, including the use of such disregards as the State may provide. Family income shall be determined for such period and at such periodicity as the State may provide under this title.

"(5) Poverty line defined.—For purposes of this section, the term 'poverty line' has the meaning given such term in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by such section.

"(6) Construction.—Nothing in this section shall be construed—

"(A) as preventing a State from further limiting the premiums and cost sharing imposed under this section beyond the limitations provided under this section;

"(B) as affecting the authority of the Secretary through waiver to modify limitations on premiums and cost sharing under this section; or

"(C) as affecting any such waiver of requirements in effect under this title before the date of the enactment of this section with regard to the imposition of premiums and cost sharing.

"(d) Enforceability of Premiums and Other Cost Sharing.—

"(1) Premiums.—Notwithstanding section 1916(c)(3) and section 1902(a)(10)(B), a State may, at its option, condition the provision of medical assistance for an individual upon prepayment of a premium authorized to be imposed under this section, or may terminate eligibility for such medical assistance on the basis of failure to pay such a premium but shall not terminate eligibility of an individual for medical assistance under this title on the basis of failure to pay any such premium until such failure continues for a period of not less than 60 days. A State may apply the previous sentence for some or all groups of beneficiaries as specified by the State and may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.

"(2) Cost sharing.—Notwithstanding section 1916(e) or any other provision of law, a State may permit a provider participating under the State plan to require, as a condition for the provision of care, items, or services to an individual entitled to medical assistance under this title for such care, items, or services, the payment of any cost sharing authorized to be imposed under this section with respect to such care, items, or services. Nothing in this paragraph shall be construed as preventing a provider from reducing or waiving the application of such cost sharing on a case-by-case basis.".

(b) Indexing Nominal Cost Sharing and Conforming Amendment.—Section 1916 of such Act (42 U.S.C. 1396o) is amended—

(1) in subsection (f), by inserting "and section 1916A" after "(b)(3)"; and

(2) by adding at the end the following new subsection:

"(h) In applying this section and subsections (c) and (e) of section 1916A, with respect to cost sharing that is 'nominal' in amount, the Secretary shall increase such 'nominal' amounts for each year (beginning with 2006) by the annual percentage increase in the medical care component of the consumer price index for all urban consumers (U.S. city average) as rounded up in an appropriate manner.".

(c) Effective Date.—The amendments made by this section shall apply to cost sharing imposed for items and services furnished on or after March 31, 2006.

SEC. 6042. SPECIAL RULES FOR COST SHARING FOR PRESCRIPTION DRUGS.

(a) In General.—Section 1916A of the Social Security Act, as inserted by section 6041(a), is amended by inserting after subsection (b) the following new subsection:

"(c) Special Rules for Cost Sharing for Prescription Drugs.—

"(1) In general.—In order to encourage beneficiaries to use drugs (in this subsection referred to as 'preferred drugs') identified by the State as the least (or less) costly effective prescription drugs within a class of drugs (as defined by the State), with respect to one or more groups of beneficiaries specified by the State, subject to paragraph (2), the State may—

"(A) provide cost sharing (instead of the level of cost sharing otherwise permitted under section 1916, but subject to paragraphs (2) and (3)) with respect to drugs that are not preferred drugs within a class; and

"(B) waive or reduce the cost sharing otherwise applicable for preferred drugs within such class and shall not apply any such cost sharing for such preferred drugs for individuals for whom cost sharing may not otherwise be imposed under subsection (b)(3)(B).

"(2) Limitations.—

"(A) By income group.—In no case may the cost sharing under paragraph (1)(A) with respect to a non-preferred drug exceed—

"(i) in the case of an individual whose family income does not exceed 150 percent of the poverty line applicable to a family of the size involved, the amount of nominal cost sharing (as otherwise determined under section 1916); or

"(ii) in the case of an individual whose family income exceeds 150 percent of the poverty line applicable to a family of the size involved, 20 percent of the cost of the drug.

"(B) Limitation to nominal for exempt populations.—In the case of an individual who is otherwise not subject to cost sharing due to the application of subsection (b)(3)(B), any cost sharing under paragraph (1)(A) with respect to a non-preferred drug may not exceed a nominal amount (as otherwise determined under section 1916).

"(C) Continued application of aggregate cap.—In addition to the limitations imposed under subparagraphs (A) and (B), any cost

sharing under paragraph (1)(A) continues to be subject to the aggregate cap on cost sharing applied under paragraph (1) or (2) of subsection (b), as the case may be.

"(3) Waiver.—In carrying out paragraph (1), a State shall provide for the application of cost sharing levels applicable to a preferred drug in the case of a drug that is not a preferred drug if the prescribing physician determines that the preferred drug for treatment of the same condition either would not be as effective for the individual or would have adverse effects for the individual or both.

"(4) Exclusion authority.—Nothing in this subsection shall be construed as preventing a State from excluding specified drugs or classes of drugs from the application of paragraph (1).".

(b) Effective Date.—The amendment made by subsection (a) shall apply to cost sharing imposed for items and services furnished on or after March 31, 2006.

SEC. 6043. EMERGENCY ROOM COPAYMENTS FOR NON-EMERGENCY CARE.

(a) In General.—Section 1916A of the Social Security Act, as inserted by section 6041 and as amended by section 6042, is further amended by adding at the end the following new subsection:

"(e) State Option for Permitting Hospitals To Impose Cost Sharing for Non-Emergency Care Furnished in an Emergency Department.—

"(1) In general.—Notwithstanding section 1916 and section 1902(a)(1) or the previous provisions of this section, but subject to the limitations of paragraph (2), a State may, by amendment to its State plan under this title, permit a hospital to impose cost sharing for non-emergency services furnished to an individual (within one or more groups of individuals specified by the State) in the hospital emergency department under this subsection if the following conditions are met:

"(A) Access to non-emergency room provider.—The individual has actually available and accessible (as such terms are applied by the Secretary under section 1916(b)(3)) an alternate non-emergency services provider with respect to such services.

"(B) Notice.—The hospital must inform the beneficiary after receiving an appropriate medical screening examination under section 1867 and after a determination has been made that the individual does not have an emergency medical condition, but before providing the non-emergency services, of the following:

"(i) The hospital may require the payment of the State specified cost sharing before the service can be provided.

"(ii) The name and location of an alternate non-emergency services provider (described in subparagraph (A)) that is actually available and accessible (as described in such subparagraph).

"(iii) The fact that such alternate provider can provide the services without the imposition of cost sharing described in clause (i).

"(iv) The hospital provides a referral to coordinate scheduling of this treatment.

Nothing in this subsection shall be construed as preventing a State from applying (or waiving) cost sharing otherwise permissible under this section to services described in clause (iii).

"(2) Limitations.—

"(A) For poorest beneficiaries.—In the case of an individual described in subsection (b)(1), the cost sharing imposed under this subsection may not exceed twice the amount determined to be nominal under section 1916, subject to the percent of income limitation otherwise applicable under subsection (b)(1).

"(B) Application to exempt populations.—In the case of an individual who is otherwise not subject to cost sharing under subsection (b)(3), a State may impose cost sharing under paragraph (1) for care in an amount that does not exceed a nominal amount (as otherwise determined under section 1916) so long as no cost sharing is imposed to receive such care through an outpatient department or other alternative health care provider in the geographic area of the hospital emergency department involved.

"(C) Continued application of aggregate cap; relation to other cost sharing.—In addition to the limitations imposed under subparagraphs (A) and (B), any cost sharing under paragraph (1) is subject to the aggregate cap on cost sharing applied under paragraph (1) or (2) of subsection (b), as the case may be. Cost sharing imposed for services under this subsection shall be instead of any cost sharing that may be imposed for such services under subsection (a).

"(3) Construction.—Nothing in this section shall be construed—

"(A) to limit a hospital's obligations with respect to screening and stabilizing treatment of an emergency medical condition under section 1867; or

"(B) to modify any obligations under either State or Federal standards relating to the application of a prudent-layperson standard with respect to payment or coverage of emergency services by any managed care organization.

"(4) Definitions.—For purposes of this subsection:

"(A) Non-emergency services.—The term 'non-emergency services' means any care or services furnished in an emergency department of a hospital that the physician determines do not constitute an appropriate medical screening examination or stabilizing examination and treatment required to be provided by the hospital under section 1867.

"(B) Alternate non-emergency services provider.—The term 'alternative non-emergency services provider' means, with respect to non-emergency services for the diagnosis or treatment of a condition, a health care provider, such as a physician's office, health care clinic, community health center, hospital outpatient department, or similar health care provider, that can provide clinically appropriate services for the diagnosis or treatment of a condition contemporaneously with the provision of the non-emergency services that would be provided in an emergency department of a hospital for the diagnosis or treatment of a condition, and that is participating in the program under this title.".

(b) Grant Funds for Establishment of Alternate Non-Emergency Services Providers.—Section 1903 of the Social Security Act (42 U.S.C. 1396b), as amended by section 6037(a)(2), is amended by adding at the end the following new subsection:

"(y) Payments for Establishment of Alternate Non-Emergency Services Providers.—

"(1) Payments.—In addition to the payments otherwise provided under subsection (a), subject to paragraph (2), the Secretary shall provide for payments to States under such subsection for the establishment of alternate non-emergency service providers (as defined in section 1916A(e)(5)(B)), or networks of such providers.

"(2) Limitation.—The total amount of payments under this subsection shall not exceed $50,000,000 during the 4-year period beginning with 2006. This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Secretary to provide for the payment of amounts provided under this subsection.

"(3) Preference.—In providing for payments to States under this subsection, the Secretary shall provide preference to States that establish, or provide for, alternate non-emergency services providers or networks of such providers that—

"(A) serve rural or underserved areas where beneficiaries under this title may not have regular access to providers of primary care services; or

"(B) are in partnership with local community hospitals.

"(4) Form and manner of payment.—Payment to a State under this subsection shall be made only upon the filing of such application in such form and in such manner as the Secretary shall specify. Payment to a State under this subsection shall be made in the same manner as other payments under section 1903(a).".

(c) Effective Date.—The amendments made by this section shall apply to non-emergency services furnished on or after January 1, 2007.

SEC. 6044. USE OF BENCHMARK BENEFIT PACKAGES.

(a) In General.—Title XIX of the Social Security Act, as amended by section 6035, is amended by redesignating section 1937 as section 1938 and by inserting after section 1936 the following new section:

"STATE FLEXIBILITY IN BENEFIT PACKAGES

"Sec. 1937. (a) State Option of Providing Benchmark Benefits.—

"(1) Authority.—

"(A) In general.—Notwithstanding any other provision of this title, a State, at its option as a State plan amendment, may provide for medical assistance under this title to individuals within one or more groups of individuals specified by the State through enrollment in coverage that provides—

"(i) benchmark coverage described in subsection (b)(1) or benchmark equivalent coverage described in subsection (b)(2); and

"(ii) for any child under 19 years of age who is covered under the State plan under section 1902(a)(10)(A), wrap-around benefits to the benchmark coverage or benchmark equivalent coverage consisting of early and periodic screening, diagnostic, and treatment services defined in section 1905(r).

"(B) Limitation.—The State may only exercise the option under subparagraph (A) for an individual eligible under an eligibility category that had been established under the State plan on or before the date of the enactment of this section.

"(C) Option of wrap-around benefits.—In the case of coverage described in subparagraph (A), a State, at its option, may provide such wrap-around or additional benefits as the State may specify.

"(D) Treatment as medical assistance.—Payment of premiums for such coverage under this subsection shall be treated as payment of other insurance premiums described in the third sentence of section 1905(a).

"(2) Application.—

"(A) In general.—Except as provided in subparagraph (B), a State may require that a full-benefit eligible individual (as defined in subparagraph (C)) within a group obtain benefits under this title through enrollment in coverage described in paragraph (1)(A). A State may apply the previous sentence to individuals within 1 or more groups of such individuals.

"(B) Limitation on application.—A State may not require under subparagraph (A) an individual to obtain benefits through enrollment described in paragraph (1)(A) if the individual is within one of the following categories of individuals:

"(i) Mandatory pregnant women.—The individual is a pregnant woman who is required to be covered under the State plan under section 1902(a)(10)(A)(i).

"(ii) Blind or disabled individuals.—The individual qualifies for medical assistance under the State plan on the basis of being blind or disabled (or being treated as being blind or disabled) without regard to whether the individual is eligible for supplemental security income benefits under title XVI on the basis of being blind *or disabled and including an individual who is eligible for medical assistance on the basis of section 1902(e)(3).*

"(iii) DUAL ELIGIBLES.—The individual is entitled to benefits under any part of title XVIII.

"(iv) TERMINALLY ILL HOSPICE PATIENTS.—The individual is terminally ill and is receiving benefits for hospice care under this title.

"(v) ELIGIBLE ON BASIS OF INSTITUTIONALIZATION.—The individual is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

"(vi) MEDICALLY FRAIL AND SPECIAL MEDICAL NEEDS INDIVIDUALS.—The individual is medically frail or otherwise an individual with special medical needs (as identified in accordance with regulations of the Secretary).

"(vii) BENEFICIARIES QUALIFYING FOR LONG-TERM CARE SERVICES.—The individual qualifies based on medical condition for medical assistance for long-term care services described in section 1917(c)(1)(C).

"(viii) CHILDREN IN FOSTER CARE RECEIVING CHILD WELFARE SERVICES AND CHILDREN RECEIVING FOSTER CARE OR ADOPTION ASSISTANCE.—The individual is an individual with respect to whom aid or assistance is made available under part B of title IV to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under part E of such title, without regard to age.

"(ix) TANF AND SECTION 1931 PARENTS.—The individual qualifies for medical assistance on the basis of eligibility to receive assistance under a State plan funded under part A of title IV (as in effect on or after the welfare reform effective date defined in section 1931(i)).

"(x) WOMEN IN THE BREAST OR CERVICAL CANCER PROGRAM.—The individual is a woman who is receiving medical assistance by virtue of the application of sections 1902(a)(10)(A)(ii)(XVIII) and 1902(aa).

"(xi) LIMITED SERVICES BENEFICIARIES.—The individual—

"(I) qualifies for medical assistance on the basis of section 1902(a)(10)(A)(ii)(XII); or

"(II) is not a qualified alien (as defined in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) and receives care and services necessary for the treatment of an emergency medical condition in accordance with section 1903(v).

"(C) FULL-BENEFIT ELIGIBLE INDIVIDUALS.—

"(i) IN GENERAL.—For purposes of this paragraph, subject to clause (ii), the term 'full-benefit eligible individual' means for a State for a month an individual who is determined eligible by the State for medical assistance for all services defined in section 1905(a) which are covered under the State plan under this title for such month under section 1902(a)(10)(A) or under any other category of eligibility for medical assistance for all such services under this title, as determined by the Secretary.

"(ii) EXCLUSION OF MEDICALLY NEEDY AND SPEND-DOWN POPULATIONS.—Such term shall not include an individual determined to be eligible by the State for medical assistance under section 1902(a)(10)(C) or by reason of section 1902(f) or otherwise eligible based on a reduction of income based on costs incurred for medical or other remedial care.

"(b) BENCHMARK BENEFIT PACKAGES.—

"(1) IN GENERAL.—For purposes of subsection (a)(1), each of the following coverages shall be considered to be benchmark coverage:

"(A) FEHBP-EQUIVALENT HEALTH INSURANCE COVERAGE.—The standard Blue Cross/Blue Shield preferred provider option service benefit plan, described in and offered under section 8903(1) of title 5, United States Code.

"(B) STATE EMPLOYEE COVERAGE.—A health benefits coverage plan that is offered and generally available to State employees in the State involved.

"(C) COVERAGE OFFERED THROUGH HMO.—The health insurance coverage plan that—

"(i) is offered by a health maintenance organization (as defined in section 2791(b)(3) of the Public Health Service Act), and

"(ii) has the largest insured commercial, non-medicaid enrollment of covered lives of such coverage plans offered by such a health maintenance organization in the State involved.

"(D) SECRETARY-APPROVED COVERAGE.—Any other health benefits coverage that the Secretary determines, upon application by a State, provides appropriate coverage for the population proposed to be provided such coverage.

"(2) BENCHMARK-EQUIVALENT COVERAGE.—For purposes of subsection (a)(1), coverage that meets the following requirement shall be considered to be benchmark-equivalent coverage:

"(A) INCLUSION OF BASIC SERVICES.—The coverage includes benefits for items and services within each of the following categories of basic services:

"(i) Inpatient and outpatient hospital services.

"(ii) Physicians' surgical and medical services.

"(iii) Laboratory and x-ray services.

"(iv) Well-baby and well-child care, including age-appropriate immunizations.

"(v) Other appropriate preventive services, as designated by the Secretary.

"(B) AGGREGATE ACTUARIAL VALUE EQUIVALENT TO BENCHMARK PACKAGE.—The coverage has an aggregate actuarial value that is at least actuarially equivalent to one of the benchmark benefit packages described in paragraph (1).

"(C) SUBSTANTIAL ACTUARIAL VALUE FOR ADDITIONAL SERVICES INCLUDED IN BENCHMARK PACKAGE.—With respect to each of the following categories of additional services for which coverage is provided under the benchmark benefit package used under subparagraph (B), the coverage has an actuarial value that is equal to at least 75 percent of the actuarial value of the coverage of that category of services in such package:

"(i) Coverage of prescription drugs.

"(ii) Mental health services.

"(iii) Vision services.

"(iv) Hearing services.

"(3) DETERMINATION OF ACTUARIAL VALUE.—The actuarial value of coverage of benchmark benefit packages shall be set forth in an actuarial opinion in an actuarial report that has been prepared—

"(A) by an individual who is a member of the American Academy of Actuaries;

"(B) using generally accepted actuarial principles and methodologies;

"(C) using a standardized set of utilization and price factors;

"(D) using a standardized population that is representative of the population involved;

"(E) applying the same principles and factors in comparing the value of different coverage (or categories of services);

"(F) without taking into account any differences in coverage based on the method of delivery or means of cost control or utilization used; and

"(G) taking into account the ability of a State to reduce benefits by taking into account the increase in actuarial value of benefits coverage offered under this title that results from the limitations on cost sharing under such coverage.

The actuary preparing the opinion shall select and specify in the memorandum the standardized set and population to be used under subparagraphs (C) and (D).

"(4) COVERAGE OF RURAL HEALTH CLINIC AND FQHC SERVICES.—Notwithstanding the previous provisions of this section, a State may not provide for medical assistance through enrollment of an individual with benchmark coverage or benchmark equivalent coverage under this section unless—

"(A) the individual has access, through such coverage or otherwise, to services described in subparagraphs (B) and (C) of section 1905(a)(2); and

"(B) payment for such services is made in accordance with the requirements of section 1902(bb).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on March 31, 2006.

CHAPTER 5—STATE FINANCING UNDER MEDICAID

SEC. 6051. MANAGED CARE ORGANIZATION PROVIDER TAX REFORM.

(a) IN GENERAL.—Section 1903(w)(7)(A)(viii) of the Social Security Act (42 U.S.C. 1396b(w)(7)(A)(viii)) is amended to read as follows:

"(viii) Services of managed care organizations (including health maintenance organizations, preferred provider organizations, and such other similar organizations as the Secretary may specify by regulation).".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Subject to paragraph (2), the amendment made by subsection (a) shall be effective as of the date of the enactment of this Act.

(2) DELAY IN EFFECTIVE DATE.—

(A) IN GENERAL.—Subject to subparagraph (B), in the case of a State specified in subparagraph (B), the amendment made by subsection (a) shall be effective as of October 1, 2009.

(B) SPECIFIED STATES.—For purposes of subparagraph (A), the States specified in this subparagraph are States that have enacted a law providing for a tax on the services of a Medicaid managed care organization with a contract under section 1903(m) of the Social Security Act as of December 8, 2005.

(c) CLARIFICATION REGARDING NON-REGULATION OF TRANSFERS.—

(1) IN GENERAL.—Nothing in section 1903(w) of the Social Security Act (42 U.S.C. 1396b(w)) shall be construed by the Secretary of Health and Human Services as prohibiting a State's use of funds as the non-Federal share of expenditures under title XIX of such Act where such funds are transferred from or certified by a publicly-owned regional medical center located in another State and described in paragraph (2), so long as the Secretary determines that such use of funds is proper and in the interest of the program under title XIX.

(2) CENTER DESCRIBED.—A center described in this paragraph is a publicly-owned regional medical center that—

(A) provides level 1 trauma and burn care services;

(B) provides level 3 neonatal care services;

(C) is obligated to serve all patients, regardless of State of origin;

(D) is located within a Standard Metropolitan Statistical Area (SMSA) that includes at least 3 States, including the States described in paragraph (1);

(E) serves as a tertiary care provider for patients residing within a 125-mile radius; and

(F) meets the criteria for a disproportionate share hospital under section 1923 of such Act in at least one State other than the one in which the center is located.

(3) EFFECTIVE PERIOD.—This subsection shall apply through December 31, 2006.

SEC. 6052. REFORMS OF CASE MANAGEMENT AND TARGETED CASE MANAGEMENT.

(a) IN GENERAL.—Section 1915(g) of the Social Security Act (42 U.S.C. 1396n(g)(2)) is amended

by striking paragraph (2) and inserting the following:

"(2) For purposes of this subsection:

"(A)(i) The term 'case management services' means services which will assist individuals eligible under the plan in gaining access to needed medical, social, educational, and other services.

"(ii) Such term includes the following:

"(I) Assessment of an eligible individual to determine service needs, including activities that focus on needs identification, to determine the need for any medical, educational, social, or other services. Such assessment activities include the following:

"(aa) Taking client history.

"(bb) Identifying the needs of the individual, and completing related documentation.

"(cc) Gathering information from other sources such as family members, medical providers, social workers, and educators, if necessary, to form a complete assessment of the eligible individual.

"(II) Development of a specific care plan based on the information collected through an assessment, that specifies the goals and actions to address the medical, social, educational, and other services needed by the eligible individual, including activities such as ensuring the active participation of the eligible individual and working with the individual (or the individual's authorized health care decision maker) and others to develop such goals and identify a course of action to respond to the assessed needs of the eligible individual.

"(III) Referral and related activities to help an individual obtain needed services, including activities that help link eligible individuals with medical, social, educational providers or other programs and services that are capable of providing needed services, such as making referrals to providers for needed services and scheduling appointments for the individual.

"(IV) Monitoring and followup activities, including activities and contacts that are necessary to ensure the care plan is effectively implemented and adequately addressing the needs of the eligible individual, and which may be with the individual, family members, providers, or other entities and conducted as frequently as necessary to help determine such matters as—

"(aa) whether services are being furnished in accordance with an individual's care plan;

"(bb) whether the services in the care plan are adequate; and

"(cc) whether there are changes in the needs or status of the eligible individual, and if so, making necessary adjustments in the care plan and service arrangements with providers.

"(iii) Such term does not include the direct delivery of an underlying medical, educational, social, or other service to which an eligible individual has been referred, including, with respect to the direct delivery of foster care services, services such as (but not limited to) the following:

"(I) Research gathering and completion of documentation required by the foster care program.

"(II) Assessing adoption placements.

"(III) Recruiting or interviewing potential foster care parents.

"(IV) Serving legal papers.

"(V) Home investigations.

"(VI) Providing transportation.

"(VII) Administering foster care subsidies.

"(VIII) Making placement arrangements.

"(B) The term 'targeted case management services' are case management services that are furnished without regard to the requirements of section 1902(a)(1) and section 1902(a)(10)(B) to specific classes of individuals or to individuals who reside in specified areas.

"(3) With respect to contacts with individuals who are not eligible for medical assistance under the State plan or, in the case of targeted case management services, individuals who are eligible for such assistance but are not part of the target population specified in the State plan, such contacts—

"(A) are considered an allowable case management activity, when the purpose of the contact is directly related to the management of the eligible individual's care; and

"(B) are not considered an allowable case management activity if such contacts relate directly to the identification and management of the noneligible or nontargeted individual's needs and care.

"(4)(A) In accordance with section 1902(a)(25), Federal financial participation only is available under this title for case management services or targeted case management services if there are no other third parties liable to pay for such services, including as reimbursement under a medical, social, educational, or other program.

"(B) A State shall allocate the costs of any part of such services which are reimbursable under another federally funded program in accordance with OMB Circular A-87 (or any related or successor guidance or regulations regarding allocation of costs among federally funded programs) under an approved cost allocation program.

"(5) Nothing in this subsection shall be construed as affecting the application of rules with respect to third party liability under programs, or activities carried out under title XXVI of the Public Health Service Act or by the Indian Health Service.".

(b) Regulations.—The Secretary shall promulgate regulations to carry out the amendment made by subsection (a) which may be effective and final immediately on an interim basis as of the date of publication of the interim final regulation. If the Secretary provides for an interim final regulation, the Secretary shall provide for a period of public comments on such regulation after the date of publication. The Secretary may change or revise such regulation after completion of the period of public comment.

(c) Effective Date.—The amendment made by subsection (a) shall take effect on January 1, 2006.

SEC. 6053. ADDITIONAL FMAP ADJUSTMENTS.

(a) Hold Harmless for Certain Decrease.—Notwithstanding the first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), if, for purposes of titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 et seq., 1397aa et seq.), the Federal medical assistance percentage determined for the State specified in section 4725(a) of Public Law 105–33 for fiscal year 2006 or fiscal year 2007 is less than the Federal medical assistance percentage determined for such State for fiscal year 2005, the Federal medical assistance percentage determined for such State for fiscal year 2005 shall be substituted for the Federal medical assistance percentage otherwise determined for such State for fiscal year 2006 or fiscal year 2007, as the case may be.

(b) Hold Harmless for Katrina Impact.—Notwithstanding any other provision of law, for purposes of titles XIX and XXI of the Social Security Act, the Secretary of Health and Human Services, in computing the Federal medical assistance percentage under section 1905(b) of such Act (42 U.S.C. 1396d(b)) for any year after 2006 for a State that the Secretary determines has a significant number of evacuees who were evacuated to, and live in, the State as a result of Hurricane Katrina as of October 1, 2005, shall disregard such evacuees (and income attributable to such evacuees) from such computation.

SEC. 6054. DSH ALLOTMENT FOR THE DISTRICT OF COLUMBIA.

(a) In General.—For purposes of determining the DSH allotment for the District of Columbia under section 1923 of the Social Security Act (42 U.S.C. 1396r–4) for fiscal year 2006 and each subsequent fiscal year, the table in subsection (f)(2) of such section is amended under each of the columns for fiscal year 2000, fiscal year 2001, and fiscal year 2002, in the entry for the District of Columbia by striking "32" and inserting "49".

(b) Effective Date.—The amendments made by subsection (a) shall take effect as if enacted on October 1, 2005, and shall only apply to disproportionate share hospital adjustment expenditures applicable to fiscal year 2006 and subsequent fiscal years made on or after that date.

SEC. 6055. INCREASE IN MEDICAID PAYMENTS TO INSULAR AREAS.

Section 1108(g) of the Social Security Act (42 U.S.C. 1308(g)) is amended—

(1) in paragraph (2), by inserting "and subject to paragraph (3)" after "subsection (f)"; and

(2) by adding at the end the following new paragraph:

"(3) Fiscal Years 2006 and 2007 for Certain Insular Areas.—The amounts otherwise determined under this subsection for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa for fiscal year 2006 and fiscal year 2007 shall be increased by the following amounts:

"(A) For Puerto Rico, $12,000,000 for fiscal year 2006 and $12,000,000 for fiscal year 2007.

"(B) For the Virgin Islands, $2,500,000 for fiscal year 2006 and $5,000,000 for fiscal year 2007.

"(C) For Guam, $2,500,000 for fiscal year 2006 and $5,000,000 for fiscal year 2007.

"(D) For the Northern Mariana Islands, $1,000,000 for fiscal year 2006 and $2,000,000 for fiscal year 2007.

"(E) For American Samoa, $2,000,000 for fiscal year 2006 and $4,000,000 for fiscal year 2007.

Such amounts shall not be taken into account in applying paragraph (2) for fiscal year 2007 but shall be taken into account in applying such paragraph for fiscal year 2008 and subsequent fiscal years.".

CHAPTER 6—OTHER PROVISIONS

Subchapter A—Family Opportunity Act

SEC. 6061. SHORT TITLE OF SUBCHAPTER.

This subchapter may be cited as the "Family Opportunity Act of 2005" or the "Dylan Lee James Act".

SEC. 6062. OPPORTUNITY FOR FAMILIES OF DISABLED CHILDREN TO PURCHASE MEDICAID COVERAGE FOR SUCH CHILDREN.

(a) State Option To Allow Families of Disabled Children To Purchase Medicaid Coverage for Such Children.—

(1) In general.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended—

(A) in subsection (a)(10)(A)(ii)—

(i) by striking "or" at the end of subclause (XVII);

(ii) by adding "or" at the end of subclause (XVIII); and

(iii) by adding at the end the following new subclause:

"(XIX) who are disabled children described in subsection (cc)(1);"; and

(B) by adding at the end the following new subsection:

"(cc)(1) Individuals described in this paragraph are individuals—

"(A) who are children who have not attained 19 years of age and are born—

"(i) on or after January 1, 2001 (or, at the option of a State, on or after an earlier date), in the case of the second, third, and fourth quarters of fiscal year 2007;

"(ii) on or after October 1, 1995 (or, at the option of a State, on or after an earlier date), in the case of each quarter of fiscal year 2008; and

"(iii) after October 1, 1989, in the case of each quarter of fiscal year 2009 and each quarter of any fiscal year thereafter;

"(B) who would be considered disabled under section 1614(a)(3)(C) (as determined under title XVI for children but without regard to any income or asset eligibility requirements that apply under such title with respect to children); and

"(C) whose family income does not exceed such income level as the State establishes and does not exceed—

"(i) 300 percent of the poverty line (as defined in section 2110(c)(5)) applicable to a family of the size involved; or

"(ii) such higher percent of such poverty line as a State may establish, except that—

"(I) any medical assistance provided to an individual whose family income exceeds 300 percent of such poverty line may only be provided with State funds; and

"(II) no Federal financial participation shall be provided under section 1903(a) for any medical assistance provided to such an individual.".

(2) INTERACTION WITH EMPLOYER-SPONSORED FAMILY COVERAGE.—Section 1902(cc) of such Act (42 U.S.C. 1396a(cc)), as added by paragraph (1)(B), is amended by adding at the end the following new paragraph:

"(2)(A) If an employer of a parent of an individual described in paragraph (1) offers family coverage under a group health plan (as defined in section 2791(a) of the Public Health Service Act), the State shall—

"(i) notwithstanding section 1906, require such parent to apply for, enroll in, and pay premiums for such coverage as a condition of such parent's child being or remaining eligible for medical assistance under subsection (a)(10)(A)(ii)(XIX) if the parent is determined eligible for such coverage and the employer contributes at least 50 percent of the total cost of annual premiums for such coverage; and

"(ii) if such coverage is obtained—

"(I) subject to paragraph (2) of section 1916(h), reduce the premium imposed by the State under that section in an amount that reasonably reflects the premium contribution made by the parent for private coverage on behalf of a child with a disability; and

"(II) treat such coverage as a third party liability under subsection (a)(25).

"(B) In the case of a parent to which subparagraph (A) applies, a State, notwithstanding section 1906 but subject to paragraph (1)(C)(ii), may provide for payment of any portion of the annual premium for such family coverage that the parent is required to pay. Any payments made by the State under this subparagraph shall be considered, for purposes of section 1903(a), to be payments for medical assistance.".

(b) STATE OPTION TO IMPOSE INCOME-RELATED PREMIUMS.—Section 1916 of such Act (42 U.S.C. 1396o) is amended—

(1) in subsection (a), by striking "subsection (g)" and inserting "subsections (g) and (i)"; and

(2) by adding at the end, as amended by section 6041(b)(2), the following new subsection:

"(i)(1) With respect to disabled children provided medical assistance under section 1902(a)(10)(A)(ii)(XIX), subject to paragraph (2), a State may (in a uniform manner for such children) require the families of such children to pay monthly premiums set on a sliding scale based on family income.

"(2) A premium requirement imposed under paragraph (1) may only apply to the extent that—

"(A) in the case of a disabled child described in that paragraph whose family income—

"(i) does not exceed 200 percent of the poverty line, the aggregate amount of such premium and any premium that the parent is required to pay for family coverage under section 1902(cc)(2)(A)(i) and other cost-sharing charges do not exceed 5 percent of the family's income; and

"(ii) exceeds 200, but does not exceed 300, percent of the poverty line, the aggregate amount of such premium and any premium that the parent is required to pay for family coverage under section 1902(cc)(2)(A)(i) and other cost-sharing charges do not exceed 7.5 percent of the family's income; and

"(B) the requirement is imposed consistent with section 1902(cc)(2)(A)(ii)(I).

"(3) A State shall not require prepayment of a premium imposed pursuant to paragraph (1) and shall not terminate eligibility of a child under section 1902(a)(10)(A)(ii)(XIX) for medical assistance under this title on the basis of failure to pay any such premium until such failure continues for a period of at least 60 days from the date on which the premium became past due. The State may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.".

(c) CONFORMING AMENDMENTS.—(1) Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)) is amended in the matter preceding subparagraph (A), by inserting "1902(a)(10)(A)(ii)(XIX)," after "1902(a)(10)(A)(ii)(XVIII),".

(2) Section 1905(u)(2)(B) of such Act (42 U.S.C. 1396d(u)(2)(B)) is amended by adding at the end the following sentence: "Such term excludes any child eligible for medical assistance only by reason of section 1902(a)(10)(A)(ii)(XIX).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to medical assistance for items and services furnished on or after January 1, 2007.

SEC. 6063. DEMONSTRATION PROJECTS REGARDING HOME AND COMMUNITY-BASED ALTERNATIVES TO PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES FOR CHILDREN.

(a) IN GENERAL.—The Secretary is authorized to conduct, during each of fiscal years 2007 through 2011, demonstration projects (each in the section referred to as a "demonstration project") in accordance with this section under which up to 10 States (as defined for purposes of title XIX of the Social Security Act) are awarded grants, on a competitive basis, to test the effectiveness in improving or maintaining a child's functional level and cost-effectiveness of providing coverage of home and community-based alternatives to psychiatric residential treatment for children enrolled in the Medicaid program under title XIX of such Act.

(b) APPLICATION OF TERMS AND CONDITIONS.—

(1) IN GENERAL.—Subject to the provisions of this section, for the purposes of the demonstration projects, and only with respect to children enrolled under such demonstration projects, a psychiatric residential treatment facility (as defined in section 483.352 of title 42 of the Code of Federal Regulations) shall be deemed to be a facility specified in section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)), and to be included in each reference in such section 1915(c) to hospitals, nursing facilities, and intermediate care facilities for the mentally retarded.

(2) STATE OPTION TO ASSURE CONTINUITY OF MEDICAID COVERAGE.—Upon the termination of a demonstration project under this section, the State that conducted the project may elect, only with respect to a child who is enrolled in such project on the termination date, to continue to provide medical assistance for coverage of home and community-based alternatives to psychiatric residential treatment for the child in accordance with section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)), as modified through the application of paragraph (1). Expenditures incurred for providing such medical assistance shall be treated as a home and community-based waiver program under section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)) for purposes of payment under section 1903 of such Act (42 U.S.C. 1396b).

(c) TERMS OF DEMONSTRATION PROJECTS.—

(1) IN GENERAL.—Except as otherwise provided in this section, a demonstration project shall be subject to the same terms and conditions as apply to a waiver under section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)), including the waiver of certain requirements under the first sentence of paragraph (3) of such section but not applying the second sentence of such paragraph.

(2) BUDGET NEUTRALITY.—In conducting the demonstration projects under this section, the Secretary shall ensure that the aggregate payments made by the Secretary under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) do not exceed the amount which the Secretary estimates would have been paid under that title if the demonstration projects under this section had not been implemented.

(3) EVALUATION.—The application for a demonstration project shall include an assurance to provide for such interim and final evaluations of the demonstration project by independent third parties, and for such interim and final reports to the Secretary, as the Secretary may require.

(d) PAYMENTS TO STATES; LIMITATIONS TO SCOPE AND FUNDING.—

(1) IN GENERAL.—Subject to paragraph (2), a demonstration project approved by the Secretary under this section shall be treated as a home and community-based waiver program under section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)) for purposes of payment under section 1903 of such Act (42 U.S.C. 1396b).

(2) LIMITATION.—In no case may the amount of payments made by the Secretary under this section for State demonstration projects for a fiscal year exceed the amount available under subsection (f)(2)(A) for such fiscal year.

(e) SECRETARY'S EVALUATION AND REPORT.—The Secretary shall conduct an interim and final evaluation of State demonstration projects under this section and shall report to the President and Congress the conclusions of such evaluations within 12 months of completing such evaluations.

(f) FUNDING.—

(1) IN GENERAL.—For the purpose of carrying out this section, there are appropriated, from amounts in the Treasury not otherwise appropriated, for fiscal years 2007 through 2011, a total of $218,000,000, of which—

(A) the amount specified in paragraph (2) shall be available for each of fiscal years 2007 through 2011; and

(B) a total of $1,000,000 shall be available to the Secretary for the evaluations and report under subsection (e).

(2) FISCAL YEAR LIMIT.—

(A) IN GENERAL.—For purposes of paragraph (1), the amount specified in this paragraph for a fiscal year is the amount specified in subparagraph (B) for the fiscal year plus the difference, if any, between the total amount available under this paragraph for prior fiscal years and the total amount previously expended under paragraph (1)(A) for such prior fiscal years.

(B) FISCAL YEAR AMOUNTS.—The amount specified in this subparagraph for—

(i) fiscal year 2007 is $21,000,000;

(ii) fiscal year 2008 is $37,000,000;

(iii) fiscal year 2009 is $49,000,000;

(iv) fiscal year 2010 is $53,000,000; and

(v) fiscal year 2011 is $57,000,000.

SEC. 6064. DEVELOPMENT AND SUPPORT OF FAMILY-TO-FAMILY HEALTH INFORMATION CENTERS.

Section 501 of the Social Security Act (42 U.S.C. 701) is amended by adding at the end the following new subsection:

"(c)(1)(A) For the purpose of enabling the Secretary (through grants, contracts, or otherwise) to provide for special projects of regional

and national significance for the development and support of family-to-family health information centers described in paragraph (2), there is appropriated to the Secretary, out of any money in the Treasury not otherwise appropriated—

"(i) $3,000,000 for fiscal year 2007;

"(ii) $4,000,000 for fiscal year 2008; and

"(iii) $5,000,000 for fiscal year 2009.

"(B) Funds appropriated or authorized to be appropriated under subparagraph (A) shall—

"(i) be in addition to amounts appropriated under subsection (a) and retained under section 502(a)(1) for the purpose of carrying out activities described in subsection (a)(2); and

"(ii) remain available until expended.

"(2) The family-to-family health information centers described in this paragraph are centers that—

"(A) assist families of children with disabilities or special health care needs to make informed choices about health care in order to promote good treatment decisions, cost-effectiveness, and improved health outcomes for such children;

"(B) provide information regarding the health care needs of, and resources available for, such children;

"(C) identify successful health delivery models for such children;

"(D) develop with representatives of health care providers, managed care organizations, health care purchasers, and appropriate State agencies, a model for collaboration between families of such children and health professionals;

"(E) provide training and guidance regarding caring for such children;

"(F) conduct outreach activities to the families of such children, health professionals, schools, and other appropriate entities and individuals; and

"(G) are staffed—

"(i) by such families who have expertise in Federal and State public and private health care systems; and

"(ii) by health professionals.

"(3) The Secretary shall develop family-to-family health information centers described in paragraph (2) in accordance with the following:

"(A) With respect to fiscal year 2007, such centers shall be developed in not less than 25 States.

"(B) With respect to fiscal year 2008, such centers shall be developed in not less than 40 States.

"(C) With respect to fiscal year 2009 and each fiscal year thereafter, such centers shall be developed in all States.

"(4) The provisions of this title that are applicable to the funds made available to the Secretary under section 502(a)(1) apply in the same manner to funds made available to the Secretary under paragraph (1)(A).

"(5) For purposes of this subsection, the term 'State' means each of the 50 States and the District of Columbia.".

SEC. 6065. RESTORATION OF MEDICAID ELIGIBILITY FOR CERTAIN SSI BENEFICIARIES.

(a) In General.—Section 1902(a)(10)(A)(i)(II) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(i)(II)) is amended—

(1) by inserting "(aa)" after "(II)";

(2) by striking ") and" and inserting "and";

(3) by striking "section or who are" and inserting "section), (bb) who are"; and

(4) by inserting before the comma at the end the following: ", or (cc) who are under 21 years of age and with respect to whom supplemental security income benefits would be paid under title XVI if subparagraphs (A) and (B) of section 1611(c)(7) were applied without regard to the phrase 'the first day of the month following'".

(b) Effective Date.—The amendments made by subsection (a) shall apply to medical assistance for items and services furnished on or after the date that is 1 year after the date of enactment of this Act.

Subchapter B—Money Follows the Person Rebalancing Demonstration

SEC. 6071. MONEY FOLLOWS THE PERSON REBALANCING DEMONSTRATION.

(a) Program Purpose and Authority.—The Secretary is authorized to award, on a competitive basis, grants to States in accordance with this section for demonstration projects (each in this section referred to as an "MFP demonstration project") designed to achieve the following objectives with respect to institutional and home and community-based long-term care services under State Medicaid programs:

(1) Rebalancing.—Increase the use of home and community-based, rather than institutional, long-term care services.

(2) Money follows the person.—Eliminate barriers or mechanisms, whether in the State law, the State Medicaid plan, the State budget, or otherwise, that prevent or restrict the flexible use of Medicaid funds to enable Medicaid-eligible individuals to receive support for appropriate and necessary long-term services in the settings of their choice.

(3) Continuity of service.—Increase the ability of the State Medicaid program to assure continued provision of home and community-based long-term care services to eligible individuals who choose to transition from an institutional to a community setting.

(4) Quality assurance and quality improvement.—Ensure that procedures are in place (at least comparable to those required under the qualified HCB program) to provide quality assurance for eligible individuals receiving Medicaid home and community-based long-term care services and to provide for continuous quality improvement in such services.

(b) Definitions.—For purposes of this section:

(1) Home and community-based long-term care services.—The term "home and community-based long-term care services" means, with respect to a State Medicaid program, home and community-based services (including home health and personal care services) that are provided under the State's qualified HCB program or that could be provided under such a program but are otherwise provided under the Medicaid program.

(2) Eligible individual.—The term "eligible individual" means, with respect to an MFP demonstration project of a State, an individual in the State—

(A) who, immediately before beginning participation in the MFP demonstration project—

(i) resides (and has resided, for a period of not less than 6 months or for such longer minimum period, not to exceed 2 years, as may be specified by the State) in an inpatient facility;

(ii) is receiving Medicaid benefits for inpatient services furnished by such inpatient facility; and

(iii) with respect to whom a determination has been made that, but for the provision of home and community-based long-term care services, the individual would continue to require the level of care provided in an inpatient facility and, in any case in which the State applies a more stringent level of care standard as a result of implementing the State plan option permitted under section 1915(i) of the Social Security Act, the individual must continue to require at least the level of care which had resulted in admission to the institution; and

(B) who resides in a qualified residence beginning on the initial date of participation in the demonstration project.

(3) Inpatient facility.—The term "inpatient facility" means a hospital, nursing facility, or intermediate care facility for the mentally retarded. Such term includes an institution for mental diseases, but only, with respect to a State, to the extent medical assistance is available under the State Medicaid plan for services provided by such institution.

(4) Medicaid.—The term "Medicaid" means, with respect to a State, the State program under title XIX of the Social Security Act (including any waiver or demonstration under such title or under section 1115 of such Act relating to such title).

(5) Qualified HCB program.—The term "qualified HCB program" means a program providing home and community-based long-term care services operating under Medicaid, whether or not operating under waiver authority.

(6) Qualified residence.—The term "qualified residence" means, with respect to an eligible individual—

(A) a home owned or leased by the individual or the individual's family member;

(B) an apartment with an individual lease, with lockable access and egress, and which includes living, sleeping, bathing, and cooking areas over which the individual or the individual's family has domain and control; and

(C) a residence, in a community-based residential setting, in which no more than 4 unrelated individuals reside.

(7) Qualified expenditures.—The term "qualified expenditures" means expenditures by the State under its MFP demonstration project for home and community-based long-term care services for an eligible individual participating in the MFP demonstration project, but only with respect to services furnished during the 12-month period beginning on the date the individual is discharged from an inpatient facility referred to in paragraph (2)(A)(i).

(8) Self-directed services.—The term "self-directed" means, with respect to home and community-based long-term care services for an eligible individual, such services for the individual which are planned and purchased under the direction and control of such individual or the individual's authorized representative (as defined by the Secretary), including the amount, duration, scope, provider, and location of such services, under the State Medicaid program consistent with the following requirements:

(A) Assessment.—There is an assessment of the needs, capabilities, and preferences of the individual with respect to such services.

(B) Service plan.—Based on such assessment, there is developed jointly with such individual or the individual's authorized representative a plan for such services for such individual that is approved by the State and that—

(i) specifies those services, if any, which the individual or the individual's authorized representative would be responsible for directing;

(ii) identifies the methods by which the individual or the individual's authorized representative or an agency designated by an individual or representative will select, manage, and dismiss providers of such services;

(iii) specifies the role of family members and others whose participation is sought by the individual or the individual's authorized representative with respect to such services;

(iv) is developed through a person-centered process that—

(I) is directed by the individual or the individual's authorized representative;

(II) builds upon the individual's capacity to engage in activities that promote community life and that respects the individual's preferences, choices, and abilities; and

(III) involves families, friends, and professionals as desired or required by the individual or the individual's authorized representative;

(v) includes appropriate risk management techniques that recognize the roles and sharing of responsibilities in obtaining services in a self-directed manner and assure the appropriateness

of such plan based upon the resources and capabilities of the individual or the individual's authorized representative; and

(vi) may include an individualized budget which identifies the dollar value of the services and supports under the control and direction of the individual or the individual's authorized representative.

(C) BUDGET PROCESS.—With respect to individualized budgets described in subparagraph (B)(vi), the State application under subsection (c)—

(i) describes the method for calculating the dollar values in such budgets based on reliable costs and service utilization;

(ii) defines a process for making adjustments in such dollar values to reflect changes in individual assessments and service plans; and

(iii) provides a procedure to evaluate expenditures under such budgets.

(9) STATE.—The term "State" has the meaning given such term for purposes of title XIX of the Social Security Act.

(c) STATE APPLICATION.—A State seeking approval of an MFP demonstration project shall submit to the Secretary, at such time and in such format as the Secretary requires, an application meeting the following requirements and containing such additional information, provisions, and assurances, as the Secretary may require:

(1) ASSURANCE OF A PUBLIC DEVELOPMENT PROCESS.—The application contains an assurance that the State has engaged, and will continue to engage, in a public process for the design, development, and evaluation of the MFP demonstration project that allows for input from eligible individuals, the families of such individuals, authorized representatives of such individuals, providers, and other interested parties.

(2) OPERATION IN CONNECTION WITH QUALIFIED HCB PROGRAM TO ASSURE CONTINUITY OF SERVICES.—The State will conduct the MFP demonstration project for eligible individuals in conjunction with the operation of a qualified HCB program that is in operation (or approved) in the State for such individuals in a manner that assures continuity of Medicaid coverage for such individuals so long as such individuals continue to be eligible for medical assistance.

(3) DEMONSTRATION PROJECT PERIOD.—The application shall specify the period of the MFP demonstration project, which shall include at least 2 consecutive fiscal years in the 5-fiscal-year period beginning with fiscal year 2007.

(4) SERVICE AREA.—The application shall specify the service area or areas of the MFP demonstration project, which may be a statewide area or 1 or more geographic areas of the State.

(5) TARGETED GROUPS AND NUMBERS OF INDIVIDUALS SERVED.—The application shall specify—

(A) the target groups of eligible individuals to be assisted to transition from an inpatient facility to a qualified residence during each fiscal year of the MFP demonstration project;

(B) the projected numbers of eligible individuals in each targeted group of eligible individuals to be so assisted during each such year; and

(C) the estimated total annual qualified expenditures for each fiscal year of the MFP demonstration project.

(6) INDIVIDUAL CHOICE, CONTINUITY OF CARE.—The application shall contain assurances that—

(A) each eligible individual or the individual's authorized representative will be provided the opportunity to make an informed choice regarding whether to participate in the MFP demonstration project;

(B) each eligible individual or the individual's authorized representative will choose the qualified residence in which the individual will reside and the setting in which the individual will receive home and community-based long-term care services;

(C) the State will continue to make available, so long as the State operates its qualified HCB program consistent with applicable requirements, home and community-based long-term care services to each individual who completes participation in the MFP demonstration project for as long as the individual remains eligible for medical assistance for such services under such qualified HCB program (including meeting a requirement relating to requiring a level of care provided in an inpatient facility and continuing to require such services, and, if the State applies a more stringent level of care standard as a result of implementing the State plan option permitted under section 1915(i) of the Social Security Act, meeting the requirement for at least the level of care which had resulted in the individual's admission to the institution).

(7) REBALANCING.—The application shall—

(A) provide such information as the Secretary may require concerning the dollar amounts of State Medicaid expenditures for the fiscal year, immediately preceding the first fiscal year of the State's MFP demonstration project, for long-term care services and the percentage of such expenditures that were for institutional long-term care services or were for home and community-based long-term care services;

(B)(i) specify the methods to be used by the State to increase, for each fiscal year during the MFP demonstration project, the dollar amount of such total expenditures for home and community-based long-term care services and the percentage of such total expenditures for long-term care services that are for home and community-based long-term care services; and

(ii) describe the extent to which the MFP demonstration project will contribute to accomplishment of objectives described in subsection (a).

(8) MONEY FOLLOWS THE PERSON.—The application shall describe the methods to be used by the State to eliminate any legal, budgetary, or other barriers to flexibility in the availability of Medicaid funds to pay for long-term care services for eligible individuals participating in the project in the appropriate settings of their choice, including costs to transition from an institutional setting to a qualified residence.

(9) MAINTENANCE OF EFFORT AND COST-EFFECTIVENESS.—The application shall contain or be accompanied by such information and assurances as may be required to satisfy the Secretary that—

(A) total expenditures under the State Medicaid program for home and community-based long-term care services will not be less for any fiscal year during the MFP demonstration project than for the greater of such expenditures for—

(i) fiscal year 2005; or

(ii) any succeeding fiscal year before the first year of the MFP demonstration project; and

(B) in the case of a qualified HCB program operating under a waiver under subsection (c) or (d) of section 1915 of the Social Security Act (42 U.S.C. 1396n), but for the amount awarded under a grant under this section, the State program would continue to meet the cost-effectiveness requirements of subsection (c)(2)(D) of such section or comparable requirements under subsection (d)(5) of such section, respectively.

(10) WAIVER REQUESTS.—The application shall contain or be accompanied by requests for any modification or adjustment of waivers of Medicaid requirements described in subsection (d)(3), including adjustments to the maximum numbers of individuals included and package of benefits, including one-time transitional services, provided.

(11) QUALITY ASSURANCE AND QUALITY IMPROVEMENT.—The application shall include—

(A) a plan satisfactory to the Secretary for quality assurance and quality improvement for home and community-based long-term care services under the State Medicaid program, including a plan to assure the health and welfare of individuals participating in the MFP demonstration project; and

(B) an assurance that the State will cooperate in carrying out activities under subsection (f) to develop and implement continuous quality assurance and quality improvement systems for home and community-based long-term care services.

(12) OPTIONAL PROGRAM FOR SELF-DIRECTED SERVICES.—If the State elects to provide for any home and community-based long-term care services as self-directed services (as defined in subsection (b)(8)) under the MFP demonstration project, the application shall provide the following:

(A) MEETING REQUIREMENTS.—A description of how the project will meet the applicable requirements of such subsection for the provision of self-directed services.

(B) VOLUNTARY ELECTION.—A description of how eligible individuals will be provided with the opportunity to make an informed election to receive self-directed services under the project and after the end of the project.

(C) STATE SUPPORT IN SERVICE PLAN DEVELOPMENT.—Satisfactory assurances that the State will provide support to eligible individuals who self-direct in developing and implementing their service plans.

(D) OVERSIGHT OF RECEIPT OF SERVICES.—Satisfactory assurances that the State will provide oversight of eligible individual's receipt of such self-directed services, including steps to assure the quality of services provided and that the provision of such services are consistent with the service plan under such subsection.

Nothing in this section shall be construed as requiring a State to make an election under the project to provide for home and community-based long-term care services as self-directed services, or as requiring an individual to elect to receive self-directed services under the project.

(13) REPORTS AND EVALUATION.—The application shall provide that—

(A) the State will furnish to the Secretary such reports concerning the MFP demonstration project, on such timetable, in such uniform format, and containing such information as the Secretary may require, as will allow for reliable comparisons of MFP demonstration projects across States; and

(B) the State will participate in and cooperate with the evaluation of the MFP demonstration project.

(d) SECRETARY'S AWARD OF COMPETITIVE GRANTS.—

(1) IN GENERAL.—The Secretary shall award grants under this section on a competitive basis to States selected from among those with applications meeting the requirements of subsection (c), in accordance with the provisions of this subsection.

(2) SELECTION AND MODIFICATION OF STATE APPLICATIONS.—In selecting State applications for the awarding of such a grant, the Secretary—

(A) shall take into consideration the manner in which, and extent to which, the State proposes to achieve the objectives specified in subsection (a);

(B) shall seek to achieve an appropriate national balance in the numbers of eligible individuals, within different target groups of eligible individuals, who are assisted to transition to qualified residences under MFP demonstration projects, and in the geographic distribution of States operating MFP demonstration projects;

(C) shall give preference to State applications proposing—

(i) to provide transition assistance to eligible individuals within multiple target groups; and

(ii) to provide eligible individuals with the opportunity to receive home and community-based long-term care services as self-directed services, as defined in subsection (b)(8); and

(D) shall take such objectives into consideration in setting the annual amounts of State grant awards under this section.

(3) WAIVER AUTHORITY.—The Secretary is authorized to waive the following provisions of title XIX of the Social Security Act, to the extent necessary to enable a State initiative to meet the requirements and accomplish the purposes of this section:

(A) STATEWIDENESS.—Section 1902(a)(1), in order to permit implementation of a State initiative in a selected area or areas of the State.

(B) COMPARABILITY.—Section 1902(a)(10)(B), in order to permit a State initiative to assist a selected category or categories of individuals described in subsection (b)(2)(A).

(C) INCOME AND RESOURCES ELIGIBILITY.—Section 1902(a)(10)(C)(i)(III), in order to permit a State to apply institutional eligibility rules to individuals transitioning to community-based care.

(D) PROVIDER AGREEMENTS.—Section 1902(a)(27), in order to permit a State to implement self-directed services in a cost-effective manner.

(4) CONDITIONAL APPROVAL OF OUTYEAR GRANT.—In awarding grants under this section, the Secretary shall condition the grant for the second and any subsequent fiscal years of the grant period on the following:

(A) NUMERICAL BENCHMARKS.—The State must demonstrate to the satisfaction of the Secretary that it is meeting numerical benchmarks specified in the grant agreement for—

(i) increasing State Medicaid support for home and community-based long-term care services under subsection (c)(5); and

(ii) numbers of eligible individuals assisted to transition to qualified residences.

(B) QUALITY OF CARE.—The State must demonstrate to the satisfaction of the Secretary that it is meeting the requirements under subsection (c)(11) to assure the health and welfare of MFP demonstration project participants.

(e) PAYMENTS TO STATES; CARRYOVER OF UNUSED GRANT AMOUNTS.—

(1) PAYMENTS.—For each calendar quarter in a fiscal year during the period a State is awarded a grant under subsection (d), the Secretary shall pay to the State from its grant award for such fiscal year an amount equal to the lesser of—

(A) the MFP-enhanced FMAP (as defined in paragraph (5)) of the amount of qualified expenditures made during such quarter; or

(B) the total amount remaining in such grant award for such fiscal year (taking into account the application of paragraph (2)).

(2) CARRYOVER OF UNUSED AMOUNTS.—Any portion of a State grant award for a fiscal year under this section remaining at the end of such fiscal year shall remain available to the State for the next 4 fiscal years, subject to paragraph (3).

(3) REAWARDING OF CERTAIN UNUSED AMOUNTS.—In the case of a State that the Secretary determines pursuant to subsection (d)(4) has failed to meet the conditions for continuation of a MFP demonstration project under this section in a succeeding year or years, the Secretary shall rescind the grant awards for such succeeding year or years, together with any unspent portion of an award for prior years, and shall add such amounts to the appropriation for the immediately succeeding fiscal year for grants under this section.

(4) PREVENTING DUPLICATION OF PAYMENT.—The payment under a MFP demonstration project with respect to qualified expenditures shall be in lieu of any payment with respect to such expenditures that could otherwise be paid under Medicaid, including under section 1903(a) of the Social Security Act. Nothing in the previous sentence shall be construed as preventing the payment under Medicaid for such expenditures in a grant year after amounts available to pay for such expenditures under the MFP demonstration project have been exhausted.

(5) MFP-ENHANCED FMAP.—For purposes of paragraph (1)(A), the "MFP-enhanced FMAP", for a State for a fiscal year, is equal to the Federal medical assistance percentage (as defined in the first sentence of section 1905(b)) for the State increased by a number of percentage points equal to 50 percent of the number of percentage points by which (A) such Federal medical assistance percentage for the State, is less than (B) 100 percent; but in no case shall the MFP-enhanced FMAP for a State exceed 90 percent.

(f) QUALITY ASSURANCE AND IMPROVEMENT; TECHNICAL ASSISTANCE; OVERSIGHT.—

(1) IN GENERAL.—The Secretary, either directly or by grant or contract, shall provide for technical assistance to, and oversight of, States for purposes of upgrading quality assurance and quality improvement systems under Medicaid home and community-based waivers, including—

(A) dissemination of information on promising practices;

(B) guidance on system design elements addressing the unique needs of participating beneficiaries;

(C) ongoing consultation on quality, including assistance in developing necessary tools, resources, and monitoring systems; and

(D) guidance on remedying programmatic and systemic problems.

(2) FUNDING.—From the amounts appropriated under subsection (h)(1) for the portion of fiscal year 2007 that begins on January 1, 2007, and ends on September 30, 2007, and for fiscal year 2008, not more than $2,400,000 shall be available to the Secretary to carry out this subsection during the period that begins on January 1, 2007, and ends on September 30, 2011.

(g) RESEARCH AND EVALUATION.—

(1) IN GENERAL.—The Secretary, directly or through grant or contract, shall provide for research on, and a national evaluation of, the program under this section, including assistance to the Secretary in preparing the final report required under paragraph (2). The evaluation shall include an analysis of projected and actual savings related to the transition of individuals to qualified residences in each State conducting an MFP demonstration project.

(2) FINAL REPORT.—The Secretary shall make a final report to the President and Congress, not later than September 30, 2011, reflecting the evaluation described in paragraph (1) and providing findings and conclusions on the conduct and effectiveness of MFP demonstration projects.

(3) FUNDING.—From the amounts appropriated under subsection (h)(1) for each of fiscal years 2008 through 2011, not more than $1,100,000 per year shall be available to the Secretary to carry out this subsection.

(h) APPROPRIATIONS.—

(1) IN GENERAL.—There are appropriated, from any funds in the Treasury not otherwise appropriated, for grants to carry out this section—

(A) $250,000,000 for the portion of fiscal year 2007 beginning on January 1, 2007, and ending on September 30, 2007;

(B) $300,000,000 for fiscal year 2008;

(C) $350,000,000 for fiscal year 2009;

(D) $400,000,000 for fiscal year 2010; and

(E) $450,000,000 for fiscal year 2011.

(2) AVAILABILITY.—Amounts made available under paragraph (1) for a fiscal year shall remain available for the awarding of grants to States by not later than September 30, 2011.

Subchapter C—Miscellaneous

SEC. 6081. MEDICAID TRANSFORMATION GRANTS.

(a) IN GENERAL.—Section 1903 of the Social Security Act (42 U.S.C. 1396b), as amended by sections 6037(a)(2) and 6043(b), is amended by adding at the end the following new subsection:

"(z) MEDICAID TRANSFORMATION PAYMENTS.—

"(1) IN GENERAL.—In addition to the payments provided under subsection (a), subject to paragraph (4), the Secretary shall provide for payments to States for the adoption of innovative methods to improve the effectiveness and efficiency in providing medical assistance under this title.

"(2) PERMISSIBLE USES OF FUNDS.—The following are examples of innovative methods for which funds provided under this subsection may be used:

"(A) Methods for reducing patient error rates through the implementation and use of electronic health records, electronic clinical decision support tools, or e-prescribing programs.

"(B) Methods for improving rates of collection from estates of amounts owed under this title.

"(C) Methods for reducing waste, fraud, and abuse under the program under this title, such as reducing improper payment rates as measured by annual payment error rate measurement (PERM) project rates.

"(D) Implementation of a medication risk management program as part of a drug use review program under section 1927(g).

"(E) Methods in reducing, in clinically appropriate ways, expenditures under this title for covered outpatient drugs, particularly in the categories of greatest drug utilization, by increasing the utilization of generic drugs through the use of education programs and other incentives to promote greater use of generic drugs.

"(F) Methods for improving access to primary and specialty physician care for the uninsured using integrated university-based hospital and clinic systems.

"(3) APPLICATION; TERMS AND CONDITIONS.—

"(A) IN GENERAL.—No payments shall be made to a State under this subsection unless the State applies to the Secretary for such payments in a form, manner, and time specified by the Secretary.

"(B) TERMS AND CONDITIONS.—Such payments are made under such terms and conditions consistent with this subsection as the Secretary prescribes.

"(C) ANNUAL REPORT.—Payment to a State under this subsection is conditioned on the State submitting to the Secretary an annual report on the programs supported by such payment. Such report shall include information on—

"(i) the specific uses of such payment;

"(ii) an assessment of quality improvements and clinical outcomes under such programs; and

"(iii) estimates of cost savings resulting from such programs.

"(4) FUNDING.—

"(A) LIMITATION ON FUNDS.—The total amount of payments under this subsection shall be equal to, and shall not exceed—

"(i) $75,000,000 for fiscal year 2007; and

"(ii) $75,000,000 for fiscal year 2008.

This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Secretary to provide for the payment of amounts provided under this subsection.

"(B) ALLOCATION OF FUNDS.—The Secretary shall specify a method for allocating the funds made available under this subsection among States. Such method shall provide preference for States that design programs that target health providers that treat significant numbers of Medicaid beneficiaries. Such method shall provide that not less than 25 percent of such funds shall be allocated among States the population of which (as determined according to data collected by the United States Census Bureau) as

of July 1, 2004, was more than 105 percent of the population of the respective State (as so determined) as of April 1, 2000.

“(C) FORM AND MANNER OF PAYMENT.—Payment to a State under this subsection shall be made in the same manner as other payments under section 1903(a). There is no requirement for State matching funds to receive payments under this subsection.

“(5) MEDICATION RISK MANAGEMENT PROGRAM.—

“(A) IN GENERAL.—For purposes of this subsection, the term ‘medication risk management program’ means a program for targeted beneficiaries that ensures that covered outpatient drugs are appropriately used to optimize therapeutic outcomes through improved medication use and to reduce the risk of adverse events.

“(B) ELEMENTS.—Such program may include the following elements:

“(i) The use of established principles and standards for drug utilization review and best practices to analyze prescription drug claims of targeted beneficiaries and identify outlier physicians.

“(ii) On an ongoing basis provide outlier physicians—

“(I) a comprehensive pharmacy claims history for each targeted beneficiary under their care;

“(II) information regarding the frequency and cost of relapses and hospitalizations of targeted beneficiaries under the physician's care; and

“(III) applicable best practice guidelines and empirical references.

“(iii) Monitor outlier physician's prescribing, such as failure to refill, dosage strengths, and provide incentives and information to encourage the adoption of best clinical practices.

“(C) TARGETED BENEFICIARIES.—For purposes of this paragraph, the term ‘targeted beneficiaries’ means Medicaid eligible beneficiaries who are identified as having high prescription drug costs and medical costs, such as individuals with behavioral disorders or multiple chronic diseases who are taking multiple medications.”.

SEC. 6082. HEALTH OPPORTUNITY ACCOUNTS.

Title XIX of the Social Security Act, as amended by sections 6035 and 6044, is amended—

(1) by redesignating section 1938 as section 1939; and

(2) by inserting after section 1937 the following new section:

“HEALTH OPPORTUNITY ACCOUNTS

“SEC. 1938. (a) AUTHORITY.—

“(1) IN GENERAL.—Notwithstanding any other provision of this title, the Secretary shall establish a demonstration program under which States may provide under their State plans under this title (including such a plan operating under a statewide waiver under section 1115) in accordance with this section for the provision of alternative benefits consistent with subsection (c) for eligible population groups in one or more geographic areas of the State specified by the State. An amendment under the previous sentence is referred to in this section as a ‘State demonstration program’.

“(2) INITIAL DEMONSTRATION.—

“(A) IN GENERAL.—The demonstration program under this section shall begin on January 1, 2007. During the first 5 years of such program, the Secretary shall not approve more than 10 States to conduct demonstration programs under this section, with each State demonstration program covering 1 or more geographic areas specified by the State. After such 5-year period—

“(i) unless the Secretary finds, taking into account cost-effectiveness, quality of care, and other criteria that the Secretary specifies, that a State demonstration program previously implemented has been unsuccessful, such a demonstration program may be extended or made permanent in the State; and

“(ii) unless the Secretary finds, taking into account cost-effectiveness, quality of care, and other criteria that the Secretary specifies, that all State demonstration programs previously implemented were unsuccessful, other States may implement State demonstration programs.

“(B) GAO REPORT.—

“(i) IN GENERAL.—Not later than 3 months after the end of the 5-year period described in subparagraph (A), the Comptroller General of the United States shall submit a report to Congress evaluating the demonstration programs conducted under this section during such period.

“(ii) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Comptroller General of the United States, $550,000 for the period of fiscal years 2007 through 2010 to carry out clause (i).

“(3) APPROVAL.—The Secretary shall not approve a State demonstration program under paragraph (1) unless the program includes the following:

“(A) Creating patient awareness of the high cost of medical care.

“(B) Providing incentives to patients to seek preventive care services.

“(C) Reducing inappropriate use of health care services.

“(D) Enabling patients to take responsibility for health outcomes.

“(E) Providing enrollment counselors and ongoing education activities.

“(F) Providing transactions involving health opportunity accounts to be conducted electronically and without cash.

“(G) Providing access to negotiated provider payment rates consistent with this section.

Nothing in this section shall be construed as preventing a State demonstration program from providing incentives for patients obtaining appropriate preventive care (as defined for purposes of section 223(c)(2)(C) of the Internal Revenue Code of 1986), such as additional account contributions for an individual demonstrating healthy prevention practices.

“(4) NO REQUIREMENT FOR STATEWIDENESS.—Nothing in this section or any other provision of law shall be construed to require that a State must provide for the implementation of a State demonstration program on a Statewide basis.

“(b) ELIGIBLE POPULATION GROUPS.—

“(1) IN GENERAL.—A State demonstration program under this section shall specify the eligible population groups consistent with paragraphs (2) and (3).

“(2) ELIGIBILITY LIMITATIONS DURING INITIAL DEMONSTRATION PERIOD.—During the initial 5 years of the demonstration program under this section, a State demonstration program shall not apply to any of the following individuals:

“(A) Individuals who are 65 years of age or older.

“(B) Individuals who are disabled, regardless of whether or not their eligibility for medical assistance under this title is based on such disability.

“(C) Individuals who are eligible for medical assistance under this title only because they are (or were within the previous 60 days) pregnant.

“(D) Individuals who have been eligible for medical assistance for a continuous period of less than 3 months.

“(3) ADDITIONAL LIMITATIONS.—A State demonstration program shall not apply to any individual within a category of individuals described in section 1937(a)(2)(B).

“(4) LIMITATIONS.—

“(A) STATE OPTION.—This subsection shall not be construed as preventing a State from further limiting eligibility.

“(B) ON ENROLLEES IN MEDICAID MANAGED CARE ORGANIZATIONS.—Insofar as the State provides for eligibility of individuals who are enrolled in Medicaid managed care organizations, such individuals may participate in the State demonstration program only if the State provides assurances satisfactory to the Secretary that the following conditions are met with respect to any such organization:

“(i) In no case may the number of such individuals enrolled in the organization who participate in the program exceed 5 percent of the total number of individuals enrolled in such organization.

“(ii) The proportion of enrollees in the organization who so participate is not significantly disproportionate to the proportion of such enrollees in other such organizations who participate.

“(iii) The State has provided for an appropriate adjustment in the per capita payments to the organization to account for such participation, taking into account differences in the likely use of health services between enrollees who so participate and enrollees who do not so participate.

“(5) VOLUNTARY PARTICIPATION.—An eligible individual shall be enrolled in a State demonstration program only if the individual voluntarily enrolls. Except in such hardship cases as the Secretary shall specify, such an enrollment shall be effective for a period of 12 months, but may be extended for additional periods of 12 months each with the consent of the individual.

“(6) 1-YEAR MORATORIUM FOR REENROLLMENT.—An eligible individual who, for any reason, is disenrolled from a State demonstration program conducted under this section shall not be permitted to reenroll in such program before the end of the 1-year period that begins on the effective date of such disenrollment.

“(c) ALTERNATIVE BENEFITS.—

“(1) IN GENERAL.—The alternative benefits provided under this section shall consist, consistent with this subsection, of at least—

“(A) coverage for medical expenses in a year for items and services for which benefits are otherwise provided under this title after an annual deductible described in paragraph (2) has been met; and

“(B) contribution into a health opportunity account.

Nothing in subparagraph (A) shall be construed as preventing a State from providing for coverage of preventive care (referred to in subsection (a)(3)) within the alternative benefits without regard to the annual deductible.

“(2) ANNUAL DEDUCTIBLE.—The amount of the annual deductible described in paragraph (1)(A) shall be at least 100 percent, but no more than 110 percent, of the annualized amount of contributions to the health opportunity account under subsection (d)(2)(A)(i), determined without regard to any limitation described in subsection (d)(2)(C)(i)(II).

“(3) ACCESS TO NEGOTIATED PROVIDER PAYMENT RATES.—

“(A) FEE-FOR-SERVICE ENROLLEES.—In the case of an individual who is participating in a State demonstration program and who is not enrolled with a Medicaid managed care organization, the State shall provide that the individual may obtain demonstration program Medicaid services from—

“(i) any participating provider under this title at the same payment rates that would be applicable to such services if the deductible described in paragraph (1)(A) was not applicable; or

“(ii) any other provider at payment rates that do not exceed 125 percent of the payment rate that would be applicable to such services furnished by a participating provider under this title if the deductible described in paragraph (1)(A) was not applicable.

“(B) TREATMENT UNDER MEDICAID MANAGED CARE PLANS.—In the case of an individual who

is participating in a State demonstration program and is enrolled with a Medicaid managed care organization, the State shall enter into an arrangement with the organization under which the individual may obtain demonstration program Medicaid services from any provider described in clause (ii) of subparagraph (A) at payment rates that do not exceed the payment rates that may be imposed under that clause.

"(C) COMPUTATION.—The payment rates described in subparagraphs (A) and (B) shall be computed without regard to any cost sharing that would be otherwise applicable under sections 1916 and 1916A.

"(D) DEFINITIONS.—For purposes of this paragraph:

"(i) The term 'demonstration program Medicaid services' means, with respect to an individual participating in a State demonstration program, services for which the individual would be provided medical assistance under this title but for the application of the deductible described in paragraph (1)(A).

"(ii) The term 'participating provider' means—

"(I) with respect to an individual described in subparagraph (A), a health care provider that has entered into a participation agreement with the State for the provision of services to individuals entitled to benefits under the State plan; or

"(II) with respect to an individual described in subparagraph (B) who is enrolled in a Medicaid managed care organization, a health care provider that has entered into an arrangement for the provision of services to enrollees of the organization under this title.

"(4) NO EFFECT ON SUBSEQUENT BENEFITS.—Except as provided under paragraphs (1) and (2), alternative benefits for an eligible individual shall consist of the benefits otherwise provided to the individual, including cost sharing relating to such benefits.

"(5) OVERRIDING COST SHARING AND COMPARABILITY REQUIREMENTS FOR ALTERNATIVE BENEFITS.—The provisions of this title relating to cost sharing for benefits (including sections 1916 and 1916A) shall not apply with respect to benefits to which the annual deductible under paragraph (1)(A) applies. The provisions of section 1902(a)(10)(B) (relating to comparability) shall not apply with respect to the provision of alternative benefits (as described in this subsection).

"(6) TREATMENT AS MEDICAL ASSISTANCE.—Subject to subparagraphs (D) and (E) of subsection (d)(2), payments for alternative benefits under this section (including contributions into a health opportunity account) shall be treated as medical assistance for purposes of section 1903(a).

"(7) USE OF TIERED DEDUCTIBLE AND COST SHARING.—

"(A) IN GENERAL.—A State—

"(i) may vary the amount of the annual deductible applied under paragraph (1)(A) based on the income of the family involved so long as it does not favor families with higher income over those with lower income; and

"(ii) may vary the amount of the maximum out-of-pocket cost sharing (as defined in subparagraph (B)) based on the income of the family involved so long as it does not favor families with higher income over those with lower income.

"(B) MAXIMUM OUT-OF-POCKET COST SHARING.—For purposes of subparagraph (A)(ii), the term 'maximum out-of-pocket cost sharing' means, for an individual or family, the amount by which the annual deductible level applied under paragraph (1)(A) to the individual or family exceeds the balance in the health opportunity account for the individual or family.

"(8) CONTRIBUTIONS BY EMPLOYERS.—Nothing in this section shall be construed as preventing an employer from providing health benefits coverage consisting of the coverage described in paragraph (1)(A) to individuals who are provided alternative benefits under this section.

"(d) HEALTH OPPORTUNITY ACCOUNT.—

"(1) IN GENERAL.—For purposes of this section, the term 'health opportunity account' means an account that meets the requirements of this subsection.

"(2) CONTRIBUTIONS.—

"(A) IN GENERAL.—No contribution may be made into a health opportunity account except—

"(i) contributions by the State under this title; and

"(ii) contributions by other persons and entities, such as charitable organizations, as permitted under section 1903(w).

"(B) STATE CONTRIBUTION.—A State shall specify the contribution amount that shall be deposited under subparagraph (A)(i) into a health opportunity account.

"(C) LIMITATION ON ANNUAL STATE CONTRIBUTION PROVIDED AND PERMITTING IMPOSITION OF MAXIMUM ACCOUNT BALANCE.—

"(i) IN GENERAL.—A State—

"(I) may impose limitations on the maximum contributions that may be deposited under subparagraph (A)(i) into a health opportunity account in a year;

"(II) may limit contributions into such an account once the balance in the account reaches a level specified by the State; and

"(III) subject to clauses (ii) and (iii) and subparagraph (D)(i), may not provide contributions described in subparagraph (A)(i) to a health opportunity account on behalf of an individual or family to the extent the amount of such contributions (including both State and Federal shares) exceeds, on an annual basis, $2,500 for each individual (or family member) who is an adult and $1,000 for each individual (or family member) who is a child.

"(ii) INDEXING OF DOLLAR LIMITATIONS.—For each year after 2006, the dollar amounts specified in clause (i)(III) shall be annually increased by the Secretary by a percentage that reflects the annual percentage increase in the medical care component of the consumer price index for all urban consumers.

"(iii) BUDGET NEUTRAL ADJUSTMENT.—A State may provide for dollar limitations in excess of those specified in clause (i)(III) (as increased under clause (ii)) for specified individuals if the State provides assurances satisfactory to the Secretary that contributions otherwise made to other individuals will be reduced in a manner so as to provide for aggregate contributions that do not exceed the aggregate contributions that would otherwise be permitted under this subparagraph.

"(D) LIMITATIONS ON FEDERAL MATCHING.—

"(i) STATE CONTRIBUTION.—A State may contribute under subparagraph (A)(i) amounts to a health opportunity account in excess of the limitations provided under subparagraph (C)(i)(III), but no Federal financial participation shall be provided under section 1903(a) with respect to contributions in excess of such limitations.

"(ii) NO FFP FOR PRIVATE CONTRIBUTIONS.—No Federal financial participation shall be provided under section 1903(a) with respect to any contributions described in subparagraph (A)(ii) to a health opportunity account.

"(E) APPLICATION OF DIFFERENT MATCHING RATES.—The Secretary shall provide a method under which, for expenditures made from a health opportunity account for medical care for which the Federal matching rate under section 1903(a) exceeds the Federal medical assistance percentage, a State may obtain payment under such section at such higher matching rate for such expenditures.

"(3) USE.—

"(A) GENERAL USES.—

"(i) IN GENERAL.—Subject to the succeeding provisions of this paragraph, amounts in a health opportunity account may be used for payment of such health care expenditures as the State specifies.

"(ii) GENERAL LIMITATION.—Subject to subparagraph (B)(ii), in no case shall such account be used for payment for health care expenditures that are not payment of medical care (as defined by section 213(d) of the Internal Revenue Code of 1986).

"(iii) STATE RESTRICTIONS.—In applying clause (i), a State may restrict payment for—

"(I) providers of items and services to providers that are licensed or otherwise authorized under State law to provide the item or service and may deny payment for such a provider on the basis that the provider has been found, whether with respect to this title or any other health benefit program, to have failed to meet quality standards or to have committed 1 or more acts of fraud or abuse; and

"(II) items and services insofar as the State finds they are not medically appropriate or necessary.

"(iv) ELECTRONIC WITHDRAWALS.—The State demonstration program shall provide for a method whereby withdrawals may be made from the account for such purposes using an electronic system and shall not permit withdrawals from the account in cash.

"(B) MAINTENANCE OF HEALTH OPPORTUNITY ACCOUNT AFTER BECOMING INELIGIBLE FOR PUBLIC BENEFIT.—

"(i) IN GENERAL.—Notwithstanding any other provision of law, if an account holder of a health opportunity account becomes ineligible for benefits under this title because of an increase in income or assets—

"(I) no additional contribution shall be made into the account under paragraph (2)(A)(i);

"(II) subject to clause (iii), the balance in the account shall be reduced by 25 percent; and

"(III) subject to the succeeding provisions of this subparagraph, the account shall remain available to the account holder for 3 years after the date on which the individual becomes ineligible for such benefits for withdrawals under the same terms and conditions as if the account holder remained eligible for such benefits, and such withdrawals shall be treated as medical assistance in accordance with subsection (c)(6).

"(ii) SPECIAL RULES.—Withdrawals under this subparagraph from an account—

"(I) shall be available for the purchase of health insurance coverage; and

"(II) may, subject to clause (iv), be made available (at the option of the State) for such additional expenditures (such as job training and tuition expenses) specified by the State (and approved by the Secretary) as the State may specify.

"(iii) EXCEPTION FROM 25 PERCENT SAVINGS TO GOVERNMENT FOR PRIVATE CONTRIBUTIONS.—Clause (i)(II) shall not apply to the portion of the account that is attributable to contributions described in paragraph (2)(A)(ii). For purposes of accounting for such contributions, withdrawals from a health opportunity account shall first be attributed to contributions described in paragraph (2)(A)(i).

"(iv) CONDITION FOR NON-HEALTH WITHDRAWALS.—No withdrawal may be made from an account under clause (ii)(II) unless the account holder has participated in the program under this section for at least 1 year.

"(v) NO REQUIREMENT FOR CONTINUATION OF COVERAGE.—An account holder of a health opportunity account, after becoming ineligible for medical assistance under this title, is not required to purchase high-deductible or other insurance as a condition of maintaining or using the account.

"(4) ADMINISTRATION.—A State may coordinate administration of health opportunity accounts through the use of a third party administrator and reasonable expenditures for the use of such administrator shall be reimbursable to the State in the same manner as other administrative expenditures under section 1903(a)(7).

"(5) TREATMENT.—Amounts in, or contributed to, a health opportunity account shall not be counted as income or assets for purposes of determining eligibility for benefits under this title.

"(6) UNAUTHORIZED WITHDRAWALS.—A State may establish procedures—

"(A) to penalize or remove an individual from the health opportunity account based on nonqualified withdrawals by the individual from such an account; and

"(B) to recoup costs that derive from such nonqualified withdrawals.".

SEC. 6083. STATE OPTION TO ESTABLISH NON-EMERGENCY MEDICAL TRANSPORTATION PROGRAM.

(a) IN GENERAL.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by sections 6033(a) and 6035(b), is amended—

(1) in paragraph (68), by striking "and" at the end;

(2) in paragraph (69) by striking the period at the end and inserting "; and"; and

(3) by inserting after paragraph (69) the following:

"(70) at the option of the State and notwithstanding paragraphs (1), (10)(B), and (23), provide for the establishment of a non-emergency medical transportation brokerage program in order to more cost-effectively provide transportation for individuals eligible for medical assistance under the State plan who need access to medical care or services and have no other means of transportation which—

"(A) may include a wheelchair van, taxi, stretcher car, bus passes and tickets, secured transportation, and such other transportation as the Secretary determines appropriate; and

"(B) may be conducted under contract with a broker who—

"(i) is selected through a competitive bidding process based on the State's evaluation of the broker's experience, performance, references, resources, qualifications, and costs;

"(ii) has oversight procedures to monitor beneficiary access and complaints and ensure that transport personnel are licensed, qualified, competent, and courteous;

"(iii) is subject to regular auditing and oversight by the State in order to ensure the quality of the transportation services provided and the adequacy of beneficiary access to medical care and services; and

"(iv) complies with such requirements related to prohibitions on referrals and conflict of interest as the Secretary shall establish (based on the prohibitions on physician referrals under section 1877 and such other prohibitions and requirements as the Secretary determines to be appropriate).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on the date of the enactment of this Act.

SEC. 6084. EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE (TMA) AND ABSTINENCE EDUCATION PROGRAM.

Effective as if enacted on December 31, 2005, activities authorized by sections 510 and 1925 of the Social Security Act shall continue through December 31, 2006, in the manner authorized for fiscal year 2005, notwithstanding section 1902(e)(1)(A) of such Act, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose. Grants and payments may be made pursuant to this authority through the first quarter of fiscal year 2007 at the level provided for such activities through the first quarter of fiscal year 2006.

SEC. 6085. EMERGENCY SERVICES FURNISHED BY NON-CONTRACT PROVIDERS FOR MEDICAID MANAGED CARE ENROLLEES.

(a) IN GENERAL.—Section 1932(b)(2) of the Social Security Act (42 U.S.C. 1396u–2(b)(2)) is amended by adding at the end the following new subparagraph:

"(D) EMERGENCY SERVICES FURNISHED BY NON-CONTRACT PROVIDERS.—Any provider of emergency services that does not have in effect a contract with a Medicaid managed care entity that establishes payment amounts for services furnished to a beneficiary enrolled in the entity's Medicaid managed care plan must accept as payment in full no more than the amounts (less any payments for indirect costs of medical education and direct costs of graduate medical education) that it could collect if the beneficiary received medical assistance under this title other than through enrollment in such an entity. In a State where rates paid to hospitals under the State plan are negotiated by contract and not publicly released, the payment amount applicable under this subparagraph shall be the average contract rate that would apply under the State plan for general acute care hospitals or the average contract rate that would apply under such plan for tertiary hospitals.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 2007.

SEC. 6086. EXPANDED ACCESS TO HOME AND COMMUNITY-BASED SERVICES FOR THE ELDERLY AND DISABLED.

(a) HOME AND COMMUNITY-BASED SERVICES AS AN OPTIONAL BENEFIT FOR ELDERLY AND DISABLED INDIVIDUALS.—Section 1915 of the Social Security Act (42 U.S.C. 1396n) is amended by adding at the end the following new subsection:

"(i) STATE PLAN AMENDMENT OPTION TO PROVIDE HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND DISABLED INDIVIDUALS.—

"(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, a State may provide through a State plan amendment for the provision of medical assistance for home and community-based services (within the scope of services described in paragraph (4)(B) of subsection (c) for which the Secretary has the authority to approve a waiver and not including room and board or such other services requested by the State as the Secretary may approve) for individuals eligible for medical assistance under the State plan whose income does not exceed 150 percent of the poverty line (as defined in section 2110(c)(5)), without determining that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded, but only if the State meets the following requirements:

"(A) NEEDS-BASED CRITERIA FOR ELIGIBILITY FOR, AND RECEIPT OF, HOME AND COMMUNITY-BASED SERVICES.—The State establishes needs-based criteria for determining an individual's eligibility under the State plan for medical assistance for such home and community-based services, and if the individual is eligible for such services, the specific home and community-based services that the individual will receive.

"(B) ESTABLISHMENT OF MORE STRINGENT NEEDS-BASED ELIGIBILITY CRITERIA FOR INSTITUTIONALIZED CARE.—The State establishes needs-based criteria for determining whether an individual requires the level of care provided in a hospital, a nursing facility, or an intermediate care facility for the mentally retarded under the State plan or under any waiver of such plan that are more stringent than the needs-based criteria established under subparagraph (A) for determining eligibility for home and community-based services.

"(C) PROJECTION OF NUMBER OF INDIVIDUALS TO BE PROVIDED HOME AND COMMUNITY-BASED SERVICES.—

"(i) IN GENERAL.—The State submits to the Secretary, in such form and manner, and upon such frequency as the Secretary shall specify, the projected number of individuals to be provided home and community-based services.

"(ii) AUTHORITY TO LIMIT NUMBER OF ELIGIBLE INDIVIDUALS.—A State may limit the number of individuals who are eligible for such services and may establish waiting lists for the receipt of such services.

"(D) CRITERIA BASED ON INDIVIDUAL ASSESSMENT.—

"(i) IN GENERAL.—The criteria established by the State for purposes of subparagraphs (A) and (B) requires an assessment of an individual's support needs and capabilities, and may take into account the inability of the individual to perform 2 or more activities of daily living (as defined in section 7702B(c)(2)(B) of the Internal Revenue Code of 1986) or the need for significant assistance to perform such activities, and such other risk factors as the State determines to be appropriate.

"(ii) ADJUSTMENT AUTHORITY.—The State plan amendment provides the State with the option to modify the criteria established under subparagraph (A) (without having to obtain prior approval from the Secretary) in the event that the enrollment of individuals eligible for home and community-based services exceeds the projected enrollment submitted for purposes of subparagraph (C), but only if—

"(I) the State provides at least 60 days notice to the Secretary and the public of the proposed modification;

"(II) the State deems an individual receiving home and community-based services on the basis of the most recent version of the criteria in effect prior to the effective date of the modification to be eligible for such services for a period of at least 12 months beginning on the date the individual first received medical assistance for such services; and

"(III) after the effective date of such modification, the State, at a minimum, applies the criteria for determining whether an individual requires the level of care provided in a hospital, a nursing facility, or an intermediate care facility for the mentally retarded under the State plan or under any waiver of such plan which applied prior to the application of the more stringent criteria developed under subparagraph (B).

"(E) INDEPENDENT EVALUATION AND ASSESSMENT.—

"(i) ELIGIBILITY DETERMINATION.—The State uses an independent evaluation for making the determinations described in subparagraphs (A) and (B).

"(ii) ASSESSMENT.—In the case of an individual who is determined to be eligible for home and community-based services, the State uses an independent assessment, based on the needs of the individual to—

"(I) determine a necessary level of services and supports to be provided, consistent with an individual's physical and mental capacity;

"(II) prevent the provision of unnecessary or inappropriate care; and

"(III) establish an individualized care plan for the individual in accordance with subparagraph (G).

"(F) ASSESSMENT.—The independent assessment required under subparagraph (E)(ii) shall include the following:

"(i) An objective evaluation of an individual's inability to perform 2 or more activities of daily living (as defined in section 7702B(c)(2)(B) of the Internal Revenue Code of 1986) or the need for significant assistance to perform such activities.

"(ii) A face-to-face evaluation of the individual by an individual trained in the assessment and evaluation of individuals whose physical or mental conditions trigger a potential need for home and community-based services.

"(iii) Where appropriate, consultation with the individual's family, spouse, guardian, or other responsible individual.

"(iv) Consultation with appropriate treating and consulting health and support professionals caring for the individual.

"(v) An examination of the individual's relevant history, medical records, and care and support needs, guided by best practices and research on effective strategies that result in improved health and quality of life outcomes.

"(vi) If the State offers individuals the option to self-direct the purchase of, or control the receipt of, home and community-based service, an evaluation of the ability of the individual or the individual's representative to self-direct the purchase of, or control the receipt of, such services if the individual so elects.

"(G) INDIVIDUALIZED CARE PLAN.—

"(i) IN GENERAL.—In the case of an individual who is determined to be eligible for home and community-based services, the State uses the independent assessment required under subparagraph (E)(ii) to establish a written individualized care plan for the individual.

"(ii) PLAN REQUIREMENTS.—The State ensures that the individualized care plan for an individual—

"(I) is developed—

"(aa) in consultation with the individual, the individual's treating physician, health care or support professional, or other appropriate individuals, as defined by the State, and, where appropriate the individual's family, caregiver, or representative; and

"(bb) taking into account the extent of, and need for, any family or other supports for the individual;

"(II) identifies the necessary home and community-based services to be furnished to the individual (or, if the individual elects to self-direct the purchase of, or control the receipt of, such services, funded for the individual); and

"(III) is reviewed at least annually and as needed when there is a significant change in the individual's circumstances.

"(iii) STATE OPTION TO OFFER ELECTION FOR SELF-DIRECTED SERVICES.—

"(I) INDIVIDUAL CHOICE.—At the option of the State, the State may allow an individual or the individual's representative to elect to receive self-directed home and community-based services in a manner which gives them the most control over such services consistent with the individual's abilities and the requirements of subclauses (II) and (III).

"(II) SELF-DIRECTED SERVICES.—The term 'self-directed' means, with respect to the home and community-based services offered under the State plan amendment, such services for the individual which are planned and purchased under the direction and control of such individual or the individual's authorized representative, including the amount, duration, scope, provider, and location of such services, under the State plan consistent with the following requirements:

"(aa) ASSESSMENT.—There is an assessment of the needs, capabilities, and preferences of the individual with respect to such services.

"(bb) SERVICE PLAN.—Based on such assessment, there is developed jointly with such individual or the individual's authorized representative a plan for such services for such individual that is approved by the State and that satisfies the requirements of subclause (III).

"(III) PLAN REQUIREMENTS.—For purposes of subclause (II)(bb), the requirements of this subclause are that the plan—

"(aa) specifies those services which the individual or the individual's authorized representative would be responsible for directing;

"(bb) identifies the methods by which the individual or the individual's authorized representative will select, manage, and dismiss providers of such services;

"(cc) specifies the role of family members and others whose participation is sought by the individual or the individual's authorized representative with respect to such services;

"(dd) is developed through a person-centered process that is directed by the individual or the individual's authorized representative, builds upon the individual's capacity to engage in activities that promote community life and that respects the individual's preferences, choices, and abilities, and involves families, friends, and professionals as desired or required by the individual or the individual's authorized representative;

"(ee) includes appropriate risk management techniques that recognize the roles and sharing of responsibilities in obtaining services in a self-directed manner and assure the appropriateness of such plan based upon the resources and capabilities of the individual or the individual's authorized representative; and

"(ff) may include an individualized budget which identifies the dollar value of the services and supports under the control and direction of the individual or the individual's authorized representative.

"(IV) BUDGET PROCESS.—With respect to individualized budgets described in subclause (III)(ff), the State plan amendment—

"(aa) describes the method for calculating the dollar values in such budgets based on reliable costs and service utilization;

"(bb) defines a process for making adjustments in such dollar values to reflect changes in individual assessments and service plans; and

"(cc) provides a procedure to evaluate expenditures under such budgets.

"(H) QUALITY ASSURANCE; CONFLICT OF INTEREST STANDARDS.—

"(i) QUALITY ASSURANCE.—The State ensures that the provision of home and community-based services meets Federal and State guidelines for quality assurance.

"(ii) CONFLICT OF INTEREST STANDARDS.—The State establishes standards for the conduct of the independent evaluation and the independent assessment to safeguard against conflicts of interest.

"(I) REDETERMINATIONS AND APPEALS.—The State allows for at least annual redeterminations of eligibility, and appeals in accordance with the frequency of, and manner in which, redeterminations and appeals of eligibility are made under the State plan.

"(J) PRESUMPTIVE ELIGIBILITY FOR ASSESSMENT.—The State, at its option, elects to provide for a period of presumptive eligibility (not to exceed a period of 60 days) only for those individuals that the State has reason to believe may be eligible for home and community-based services. Such presumptive eligibility shall be limited to medical assistance for carrying out the independent evaluation and assessment under subparagraph (E) to determine an individual's eligibility for such services and if the individual is so eligible, the specific home and community-based services that the individual will receive.

"(2) DEFINITION OF INDIVIDUAL'S REPRESENTATIVE.—In this section, the term 'individual's representative' means, with respect to an individual, a parent, a family member, or a guardian of the individual, an advocate for the individual, or any other individual who is authorized to represent the individual.

"(3) NONAPPLICATION.—A State may elect in the State plan amendment approved under this section to not comply with the requirements of section 1902(a)(1) (relating to statewideness) and section 1902(a)(10)(C)(i)(III) (relating to income and resource rules applicable in the community), but only for purposes of provided home and community-based services in accordance with such amendment. Any such election shall not be construed to apply to the provision of services to an individual receiving medical assistance in an institutionalized setting as a result of a determination that the individual requires the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded.

"(4) NO EFFECT ON OTHER WAIVER AUTHORITY.—Nothing in this subsection shall be construed as affecting the option of a State to offer home and community-based services under a waiver under subsections (c) or (d) of this section or under section 1115.

"(5) CONTINUATION OF FEDERAL FINANCIAL PARTICIPATION FOR MEDICAL ASSISTANCE PROVIDED TO INDIVIDUALS AS OF EFFECTIVE DATE OF STATE PLAN AMENDMENT.—Notwithstanding paragraph (1)(B), Federal financial participation shall continue to be available for an individual who is receiving medical assistance in an institutionalized setting, or home and community-based services provided under a waiver under this section or section 1115 that is in effect as of the effective date of the State plan amendment submitted under this subsection, as a result of a determination that the individual requires the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded, without regard to whether such individuals satisfy the more stringent eligibility criteria established under that paragraph, until such time as the individual is discharged from the institution or waiver program or no longer requires such level of care.".

(b) QUALITY OF CARE MEASURES.—

(1) IN GENERAL.—The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, shall consult with consumers, health and social service providers and other professionals knowledgeable about long-term care services and supports to develop program performance indicators, client function indicators, and measures of client satisfaction with respect to home and community-based services offered under State Medicaid programs.

(2) BEST PRACTICES.—The Secretary shall—

(A) use the indicators and measures developed under paragraph (1) to assess such home and community-based services, the outcomes associated with the receipt of such services (particularly with respect to the health and welfare of the recipient of the services), and the overall system for providing home and community-based services under the Medicaid program under title XIX of the Social Security Act; and

(B) make publicly available the best practices identified through such assessment and a comparative analyses of the system features of each State.

(3) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary of Health and Human Services, $1,000,000 for the period of fiscal years 2006 through 2010 to carry out this subsection.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) take effect on January 1, 2007, and apply to expenditures for medical assistance for home and community-based services provided in accordance with section 1915(i) of the Social Security Act (as added by subsections (a) and (b)) on or after that date.

SEC. 6087. OPTIONAL CHOICE OF SELF-DIRECTED PERSONAL ASSISTANCE SERVICES (CASH AND COUNSELING).

(a) EXEMPTION FROM CERTAIN REQUIREMENTS.—Section 1915 of the Social Security Act

(42 U.S.C. 1396n), as amended by section 6086(a), is amended by adding at the end the following new subsection:

"(j)(1) A State may provide, as 'medical assistance', payment for part or all of the cost of self-directed personal assistance services (other than room and board) under the plan which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that, but for the provision of such services, the individuals would require and receive personal care services under the plan, or home and community-based services provided pursuant to a waiver under subsection (c). Self-directed personal assistance services may not be provided under this subsection to individuals who reside in a home or property that is owned, operated, or controlled by a provider of services, not related by blood or marriage.

"(2) The Secretary shall not grant approval for a State self-directed personal assistance services program under this section unless the State provides assurances satisfactory to the Secretary of the following:

"(A) Necessary safeguards have been taken to protect the health and welfare of individuals provided services under the program, and to assure financial accountability for funds expended with respect to such services.

"(B) The State will provide, with respect to individuals who—

"(i) are entitled to medical assistance for personal care services under the plan, or receive home and community-based services under a waiver granted under subsection (c);

"(ii) may require self-directed personal assistance services; and

"(iii) may be eligible for self-directed personal assistance services,

an evaluation of the need for personal care under the plan, or personal services under a waiver granted under subsection (c).

"(C) Such individuals who are determined to be likely to require personal care under the plan, or home and community-based services under a waiver granted under subsection (c) are informed of the feasible alternatives, if available under the State's self-directed personal assistance services program, at the choice of such individuals, to the provision of personal care services under the plan, or personal assistance services under a waiver granted under subsection (c).

"(D) The State will provide for a support system that ensures participants in the self-directed personal assistance services program are appropriately assessed and counseled prior to enrollment and are able to manage their budgets. Additional counseling and management support may be provided at the request of the participant.

"(E) The State will provide to the Secretary an annual report on the number of individuals served and total expenditures on their behalf in the aggregate. The State shall also provide an evaluation of overall impact on the health and welfare of participating individuals compared to non-participants every three years.

"(3) A State may provide self-directed personal assistance services under the State plan without regard to the requirements of section 1902(a)(1) and may limit the population eligible to receive these services and limit the number of persons served without regard to section 1902(a)(10)(B).

"(4)(A) For purposes of this subsection, the term 'self-directed personal assistance services' means personal care and related services, or home and community-based services otherwise available under the plan under this title or subsection (c), that are provided to an eligible participant under a self-directed personal assistance services program under this section, under which individuals, within an approved self-directed services plan and budget, purchase personal assistance and related services, and permits participants to hire, fire, supervise, and manage the individuals providing such services.

"(B) At the election of the State—

"(i) a participant may choose to use any individual capable of providing the assigned tasks including legally liable relatives as paid providers of the services; and

"(ii) the individual may use the individual's budget to acquire items that increase independence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance.

"(5) For purpose of this section, the term 'approved self-directed services plan and budget' means, with respect to a participant, the establishment of a plan and budget for the provision of self-directed personal assistance services, consistent with the following requirements:

"(A) SELF-DIRECTION.—The participant (or in the case of a participant who is a minor child, the participant's parent or guardian, or in the case of an incapacitated adult, another individual recognized by State law to act on behalf of the participant) exercises choice and control over the budget, planning, and purchase of self-directed personal assistance services, including the amount, duration, scope, provider, and location of service provision.

"(B) ASSESSMENT OF NEEDS.—There is an assessment of the needs, strengths, and preferences of the participants for such services.

"(C) SERVICE PLAN.—A plan for such services (and supports for such services) for the participant has been developed and approved by the State based on such assessment through a person-centered process that—

"(i) builds upon the participant's capacity to engage in activities that promote community life and that respects the participant's preferences, choices, and abilities; and

"(ii) involves families, friends, and professionals in the planning or delivery of services or supports as desired or required by the participant.

"(D) SERVICE BUDGET.—A budget for such services and supports for the participant has been developed and approved by the State based on such assessment and plan and on a methodology that uses valid, reliable cost data, is open to public inspection, and includes a calculation of the expected cost of such services if those services were not self-directed. The budget may not restrict access to other medically necessary care and services furnished under the plan and approved by the State but not included in the budget.

"(E) APPLICATION OF QUALITY ASSURANCE AND RISK MANAGEMENT.—There are appropriate quality assurance and risk management techniques used in establishing and implementing such plan and budget that recognize the roles and responsibilities in obtaining services in a self-directed manner and assure the appropriateness of such plan and budget based upon the participant's resources and capabilities.

"(6) A State may employ a financial management entity to make payments to providers, track costs, and make reports under the program. Payment for the activities of the financial management entity shall be at the administrative rate established in section 1903(a).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 2007.

Subtitle B—SCHIP

SEC. 6101. ADDITIONAL ALLOTMENTS TO ELIMINATE FISCAL YEAR 2006 FUNDING SHORTFALLS.

(a) IN GENERAL.—Section 2104 of the Social Security Act (42 U.S.C. 1397dd) is amended by inserting after subsection (c) the following:

"(d) ADDITIONAL ALLOTMENTS TO ELIMINATE FUNDING SHORTFALLS.—

"(1) APPROPRIATION; ALLOTMENT AUTHORITY.—For the purpose of providing additional allotments to shortfall States described in paragraph (2), there is appropriated, out of any money in the Treasury not otherwise appropriated, $283,000,000 for fiscal year 2006.

"(2) SHORTFALL STATES DESCRIBED.—For purposes of paragraph (1), a shortfall State described in this paragraph is a State with a State child health plan approved under this title for which the Secretary estimates, on the basis of the most recent data available to the Secretary as of December 16, 2005, that the projected expenditures under such plan for such State for fiscal year 2006 will exceed the sum of—

"(A) the amount of the State's allotments for each of fiscal years 2004 and 2005 that will not be expended by the end of fiscal year 2005;

"(B) the amount, if any, that is to be redistributed to the State during fiscal year 2006 in accordance with subsection (f); and

"(C) the amount of the State's allotment for fiscal year 2006.

"(3) ALLOTMENTS.—In addition to the allotments provided under subsections (b) and (c), subject to paragraph (4), of the amount available for the additional allotments under paragraph (1) for fiscal year 2006, the Secretary shall allot—

"(A) to each shortfall State described in paragraph (2) such amount as the Secretary determines will eliminate the estimated shortfall described in such paragraph for the State; and

"(B) to each commonwealth or territory described in subsection (c)(3), the same proportion as the proportion of the commonwealth's or territory's allotment under subsection (c) (determined without regard to subsection (f)) to 1.05 percent of the amount appropriated under paragraph (1).

"(4) USE OF ADDITIONAL ALLOTMENT.—Additional allotments provided under this subsection are only available for amounts expended under a State plan approved under this title for child health assistance for targeted low-income children.

"(5) 1-YEAR AVAILABILITY; NO REDISTRIBUTION OF UNEXPENDED ADDITIONAL ALLOTMENTS.—Notwithstanding subsections (e) and (f), amounts allotted to a State pursuant to this subsection for fiscal year 2006 shall only remain available for expenditure by the State through September 30, 2006. Any amounts of such allotments that remain unexpended as of such date shall not be subject to redistribution under subsection (f) and shall revert to the Treasury on October 1, 2006.".

(b) CONFORMING AMENDMENTS.—Section 2104 of the Social Security Act (42 U.S.C. 1397dd) is amended—

(1) in subsection (a), by inserting "subject to subsection (d)," after "under this section,";

(2) in subsection (b)(1), by inserting "and subsection (d)" after "Subject to paragraph (4)"; and

(3) in subsection (c)(1), by inserting "subject to subsection (d)," after "for a fiscal year,".

(c) EFFECTIVE DATE.—The amendments made by this section apply to items and services furnished on or after October 1, 2005, without regard to whether or not regulations implementing such amendments have been issued.

SEC. 6102. PROHIBITION AGAINST COVERING NONPREGNANT CHILDLESS ADULTS WITH SCHIP FUNDS.

(a) PROHIBITION ON USE OF SCHIP FUNDS.—Section 2107 of the Social Security Act (42 U.S.C. 1397gg) is amended by adding at the end the following:

"(f) LIMITATION OF WAIVER AUTHORITY.—Notwithstanding subsection (e)(2)(A) and section 1115(a), the Secretary may not approve a waiver, experimental, pilot, or demonstration project

that would allow funds made available under this title to be used to provide child health assistance or other health benefits coverage to a nonpregnant childless adult. For purposes of the preceding sentence, a caretaker relative (as such term is defined for purposes of carrying out section 1931) shall not be considered a childless adult.''.

(b) Conforming Amendments.—Section 2105(c)(1) of such Act (42 U.S.C. 1397ee(c)(1)) is amended—

(1) by inserting ''and may not include coverage of a nonpregnant childless adult'' after ''section 2101)''; and

(2) by adding at the end the following: ''For purposes of the preceding sentence, a caretaker relative (as such term is defined for purposes of carrying out section 1931) shall not be considered a childless adult.''.

(c) Rule of Construction.—Nothing in this section or the amendments made by this section shall be construed to—

(1) authorize the waiver of any provision of title XIX or XXI of the Social Security Act (42 U.S.C. 1396 et seq., 1397aa et seq.) that is not otherwise authorized to be waived under such titles or under title XI of such Act (42 U.S.C. 1301 et seq.) as of the date of enactment of this Act;

(2) imply congressional approval of any waiver, experimental, pilot, or demonstration project affecting funds made available under the State children's health insurance program under title XXI of the Social Security Act (42 U.S.C. 1397aa et. seq.) or any amendment to such a waiver or project that has been approved as of such date of enactment; or

(3) apply to any waiver, experimental, pilot, or demonstration project that would allow funds made available under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) to be used to provide child health assistance or other health benefits coverage to a nonpregnant childless adult that is approved before the date of enactment of this Act or to any extension, renewal, or amendment of such a waiver or project that is approved on or after such date of enactment.

(d) Effective Date.—This section and the amendments made by this section shall take effect as if enacted on October 1, 2005, and shall apply to any waiver, experimental, pilot, or demonstration project that is approved on or after that date.

SEC. 6103. CONTINUED AUTHORITY FOR QUALIFYING STATES TO USE CERTAIN FUNDS FOR MEDICAID EXPENDITURES.

(a) In General.—Section 2105(g)(1)(A) of the Social Security Act (42 U.S.C. 1397ee(g)(1)(A)) is amended by striking ''or 2001'' and inserting ''2001, 2004, or 2005''.

(b) Effective Date.—The amendment made by subsection (a) shall apply to expenditures made under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) on or after October 1, 2005.

Subtitle C—Katrina Relief

SEC. 6201. ADDITIONAL FEDERAL PAYMENTS UNDER HURRICANE-RELATED MULTI-STATE SECTION 1115 DEMONSTRATIONS.

(a) In General.—The Secretary of Health and Human Services shall pay to each eligible State, from amounts appropriated pursuant to subsection (e), amounts for the following purposes:

(1) Under the authority of an approved Multi-State Section 1115 Demonstration Project (in this section referred to as an ''section 1115 project'')—

(A) with respect to evacuees receiving health care under such project, for the non-Federal share of expenditures:

(i) for medical assistance furnished under title XIX of the Social Security Act, and

(ii) for child health assistance furnished under title XXI of such Act;

(B) with respect to evacuees who do not have other coverage for such assistance through insurance, including (but not limited to) private insurance, under title XIX or title XXI of the Social Security Act, or under State-funded health insurance programs, for the total uncompensated care costs incurred for medically necessary services and supplies or premium assistance for such persons, and for those evacuees receiving medical assistance under the project for the total uncompensated care costs incurred for medically necessary services and supplies beyond those included as medical assistance or child health assistance under the State's approved plan under title XIX or title XXI of the Social Security Act;

(C) with respect to affected individuals receiving health care under such project for the non-Federal share of the following expenditures:

(i) for medical assistance furnished under title XIX of the Social Security Act, and

(ii) for child health assistance furnished under title XXI of such Act; and

(D) with respect to affected individuals who do not have other coverage for such assistance through insurance, including (but not limited to) private insurance, under title XIX or title XXI of the Social Security Act, or under State-funded health insurance programs, for the total uncompensated care costs incurred for medically necessary services and supplies or premium assistance for such persons, and for those affected individuals receiving medical assistance under the project for the total uncompensated care costs incurred for medically necessary services and supplies beyond those included as medical assistance or child health assistance under the State's approved plan under title XIX or title XXI of the Social Security Act.

(2) For reimbursement of the reasonable administrative costs related to subparagraphs (A) through (D) of paragraph (1) as determined by the Secretary.

(3) Only with respect to affected counties or parishes, for reimbursement with respect to individuals receiving medical assistance under existing State plans approved by the Secretary of Health and Human Services for the following non-Federal share of expenditures:

(A) For medical assistance furnished under title XIX of the Social Security Act.

(B) For child health assistance furnished under title XXI of such Act.

(4) For other purposes, if approved by the Secretary under the Secretary's authority, to restore access to health care in impacted communities.

(b) Definitions.—For purposes of this section:

(1) The term ''affected individual'' means an individual who resided in an individual assistance designation county or parish pursuant to section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as declared by the President as a result of Hurricane Katrina and continues to reside in the same State that such county or parish is located in.

(2) The term ''affected counties or parishes'' means a county or parish described in paragraph (1).

(3) The term ''evacuee'' means an affected individual who has been displaced to another State.

(4) The term ''eligible State'' means a State that has provided care to affected individuals or evacuees under a section 1115 project.

(c) Application to Matching Requirements.—The non-Federal share paid under this section shall not be regarded as Federal funds for purposes of Medicaid matching requirements, the effect of which is to provide fiscal relief to the State in which the Medicaid eligible individual originally resided.

(d) Time Limits on Payments.—

(1) No payments shall be made by the Secretary under subsection (a)(1)(A) or (a)(1)(C), for costs of health care provided to an eligible evacuee or affected individual for services for such individual incurred after June 30, 2006.

(2) No payments shall be made by the Secretary under subsection (a)(1)(B) or (a)(1)(D) for costs of health care incurred after January 31, 2006.

(3) No payments may be made under subsection (a)(1)(B) or (a)(1)(D) for an item or service that an evacuee or an affected individual has received from an individual or organization as part of a public or private hurricane relief effort.

(e) Appropriations.—For the purpose of providing funds for payments under this section, in addition to any funds made available for the National Disaster Medical System under the Department of Homeland Security for health care costs related to Hurricane Katrina, including under a section 1115 project, there is appropriated out of any money in the Treasury not otherwise appropriated, $2,000,000,000, to remain available to the Secretary until expended. The total amount of payments made under subsection (a) may not exceed the total amount appropriated under this subsection.

SEC. 6202. STATE HIGH RISK HEALTH INSURANCE POOL FUNDING.

(a) In General.—There are hereby authorized and appropriated for fiscal year 2006—

(1) $75,000,000 for grants under subsection (b)(1) of section 2745 of the Public Health Service Act (42 U.S.C. 300gg-45); and

(2) $15,000,000 for grants under subsection (a) of such section.

(b) Treatment.—The amount appropriated under—

(1) paragraph (1) shall be treated as if it had been appropriated under subsection (c)(2) of such section; and

(2) paragraph (2) shall be treated as if it had been appropriated under subsection (c)(1) of such section.

(c) References.—Effective upon the enactment of the State High Risk Pool Funding Extension Act of 2005—

(1) subsection (a)(1) shall be applied by substituting ''subsections (b)(2) and (c)(3)'' for ''subsection ''(b)(1)'';

(2) subsection (b)(1) shall be applied by substituting ''(d)(1)(B)'' for ''(c)(2)''; and

(3) subsection (b)(2) shall be applied by substituting ''(d)(1)(A)'' for ''(c)(1)''.

SEC. 6203. IMPLEMENTATION FUNDING.

For purposes of implementing the provisions of, and amendments made by, title V of this Act and this title—

(1) the Secretary of Health and Human Services shall provide for the transfer, in appropriate part from the Federal Hospital Insurance Trust Fund established under section 1817 of the Social Security Act (42 U.S.C. 1395i) and the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of such Act (42 U.S.C. 1395t), of $30,000,000 to the Centers for Medicare & Medicaid Services Program Management Account for fiscal year 2006; and

(2) out of any funds in the Treasury not otherwise appropriated, there are appropriated to such Secretary for the Centers for Medicare & Medicaid Services Program Management Account, $30,000,000 for fiscal year 2006.

TITLE VII—HUMAN RESOURCES AND OTHER PROVISIONS

SEC. 7001. REFERENCES.

Except as otherwise expressly provided, wherever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the amendment *or repeal shall be considered to be made to a section or other provision of the Social Security Act.*

Subtitle A—TANF

SEC. 7101. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND RELATED PROGRAMS FUNDING THROUGH SEPTEMBER 30, 2010.

(a) IN GENERAL.—Activities authorized by part A of title IV and section 1108(b) of the Social Security Act (adjusted, as applicable, by or under this subtitle, the amendments made by this subtitle, and the TANF Emergency Response and Recovery Act of 2005) shall continue through September 30, 2010, in the manner authorized for fiscal year 2004, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose. Grants and payments may be made pursuant to this authority on a quarterly basis through fiscal year 2010 at the level provided for such activities for the corresponding quarter of fiscal year 2004 (or, as applicable, at such greater level as may result from the application of this subtitle, the amendments made by this subtitle, and the TANF Emergency Response and Recovery Act of 2005), except that in the case of section 403(a)(3) of the Social Security Act, grants and payments may be made pursuant to this authority only through fiscal year 2008 and in the case of section 403(a)(4) of the Social Security Act, no grants shall be made for any fiscal year occurring after fiscal year 2005.

(b) CONFORMING AMENDMENTS.—Part A of title IV (42 U.S.C. 601 et seq.) is amended—

(1) in section 403(a)(3)(H)(ii), by striking "December, 31, 2005" and inserting "fiscal year 2008";

(2) in section 403(b)(3)(C)(ii), by striking "2006" and inserting "2010"; and

(3) in section 409(a)(7)—

(A) in subparagraph (A), by striking "or 2007" and inserting "2007, 2008, 2009, 2010, or 2011"; and

(B) in subparagraph (B)(ii), by striking "2006" and inserting "2010".

(c) EXTENSION OF THE NATIONAL RANDOM SAMPLE STUDY OF CHILD WELFARE THROUGH SEPTEMBER 30, 2010.—Activities authorized by section 429A of the Social Security Act shall continue through September 30, 2010, in the manner authorized for fiscal year 2004, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose. Grants and payments may be made pursuant to this authority on a quarterly basis through fiscal year 2010 at the level provided for such activities for the corresponding quarter of fiscal year 2004.

SEC. 7102. IMPROVED CALCULATION OF WORK PARTICIPATION RATES AND PROGRAM INTEGRITY.

(a) RECALIBRATION OF CASELOAD REDUCTION CREDIT.—

(1) IN GENERAL.—Section 407(b)(3)(A) (42 U.S.C. 607(b)(3)(A)) is amended—

(A) in clause (i), by inserting "or any other State program funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i))" after "this part"; and

(B) by striking clause (ii) and inserting the following:

"(ii) the average monthly number of families that received assistance under any State program referred to in clause (i) during fiscal year 2005.".

(2) CONFORMING AMENDMENT.—Section 407(b)(3)(B) (42 U.S.C. 607(b)(3)(B)) is amended by striking "and eligibility criteria" and all that follows through the close parenthesis and inserting "and the eligibility criteria in effect during fiscal year 2005".

(b) INCLUSION OF FAMILIES RECEIVING ASSISTANCE UNDER SEPARATE STATE PROGRAMS IN CALCULATION OF PARTICIPATION RATES.—

(1) Section 407 (42 U.S.C. 607) is amended in each of subsections (a)(1), (a)(2), (b)(1)(B)(i), (c)(2)(A)(i), (e)(1), and (e)(2), by inserting "or any other State program funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i))" after "this part".

(2) Section 411(a)(1) (42 U.S.C. 611(a)(1)) is amended—

(A) in subparagraph (A), by inserting "or any other State program funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i))" before the colon; and

(B) in subparagraph (B)(ii), by inserting "and any other State programs funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i))" after "this part".

(c) IMPROVED VERIFICATION AND OVERSIGHT OF WORK PARTICIPATION.—

(1) IN GENERAL.—Section 407(i) (42 U.S.C. 607(i)) is amended to read as follows:

"(i) VERIFICATION OF WORK AND WORK-ELIGIBLE INDIVIDUALS IN ORDER TO IMPLEMENT REFORMS.—

"(1) SECRETARIAL DIRECTION AND OVERSIGHT.—

"(A) REGULATIONS FOR DETERMINING WHETHER ACTIVITIES MAY BE COUNTED AS 'WORK ACTIVITIES', HOW TO COUNT AND VERIFY REPORTED HOURS OF WORK, AND DETERMINING WHO IS A WORK-ELIGIBLE INDIVIDUAL.—

"(i) IN GENERAL.—Not later than June 30, 2006, the Secretary shall promulgate regulations to ensure consistent measurement of work participation rates under State programs funded under this part and State programs funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i)), which shall include information with respect to—

"(I) determining whether an activity of a recipient of assistance may be treated as a work activity under subsection (d);

"(II) uniform methods for reporting hours of work by a recipient of assistance;

"(III) the type of documentation needed to verify reported hours of work by a recipient of assistance; and

"(IV) the circumstances under which a parent who resides with a child who is a recipient of assistance should be included in the work participation rates.

"(ii) ISSUANCE OF REGULATIONS ON AN INTERIM FINAL BASIS.—The regulations referred to in clause (i) may be effective and final immediately on an interim basis as of the date of publication of the regulations. If the Secretary provides for an interim final regulation, the Secretary shall provide for a period of public comment on the regulation after the date of publication. The Secretary may change or revise the regulation after the public comment period.

"(B) OVERSIGHT OF STATE PROCEDURES.—The Secretary shall review the State procedures established in accordance with paragraph (2) to ensure that such procedures are consistent with the regulations promulgated under subparagraph (A) and are adequate to ensure an accurate measurement of work participation under the State programs funded under this part and any other State programs funded with qualified State expenditures (as so defined).

"(2) REQUIREMENT FOR STATES TO ESTABLISH AND MAINTAIN WORK PARTICIPATION VERIFICATION PROCEDURES.—Not later than September 30, 2006, a State to which a grant is made under section 403 shall establish procedures for determining, with respect to recipients of assistance under the State program funded under this part or under any State programs funded with qualified State expenditures (as so defined), whether activities may be counted as work activities, how to count and verify reported hours of work, and who is a work-eligible individual, in accordance with the regulations promulgated pursuant to paragraph (1)(A)(i) and shall establish internal controls to ensure compliance with the procedures.".

(2) STATE PENALTY FOR FAILURE TO ESTABLISH OR COMPLY WITH WORK PARTICIPATION VERIFICATION PROCEDURES.—Section 409(a) (42 U.S.C. 609(a)) is amended by adding at the end the following:

"(15) PENALTY FOR FAILURE TO ESTABLISH OR COMPLY WITH WORK PARTICIPATION VERIFICATION PROCEDURES.—

"(A) IN GENERAL.—If the Secretary determines that a State to which a grant is made under section 403 in a fiscal year has violated section 407(i)(2) during the fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to not less than 1 percent and not more than 5 percent of the State family assistance grant.

"(B) PENALTY BASED ON SEVERITY OF FAILURE.—The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.".

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on October 1, 2006.

SEC. 7103. GRANTS FOR HEALTHY MARRIAGE PROMOTION AND RESPONSIBLE FATHERHOOD.

(a) HEALTHY MARRIAGE AND FAMILY FUNDS.—Section 403(a)(2) (42 U.S.C. 603(a)(2)) is amended to read as follows:

"(2) HEALTHY MARRIAGE PROMOTION AND RESPONSIBLE FATHERHOOD GRANTS.—

"(A) IN GENERAL.—

"(i) USE OF FUNDS.—Subject to subparagraphs (B) and (C), the Secretary may use the funds made available under subparagraph (D) for the purpose of conducting and supporting research and demonstration projects by public or private entities, and providing technical assistance to States, Indian tribes and tribal organizations, and such other entities as the Secretary may specify that are receiving a grant under another provision of this part.

"(ii) LIMITATIONS.—The Secretary may not award funds made available under this paragraph on a noncompetitive basis, and may not provide any such funds to an entity for the purpose of carrying out healthy marriage promotion activities or for the purpose of carrying out activities promoting responsible fatherhood unless the entity has submitted to the Secretary an application which—

"(I) describes—

"(aa) how the programs or activities proposed in the application will address, as appropriate, issues of domestic violence; and

"(bb) what the applicant will do, to the extent relevant, to ensure that participation in the programs or activities is voluntary, and to inform potential participants that their participation is voluntary; and

"(II) contains a commitment by the entity—

"(aa) to not use the funds for any other purpose; and

"(bb) to consult with experts in domestic violence or relevant community domestic violence coalitions in developing the programs and activities.

"(iii) HEALTHY MARRIAGE PROMOTION ACTIVITIES.—In clause (ii), the term 'healthy marriage promotion activities' means the following:

"(I) Public advertising campaigns on the value of marriage and the skills needed to increase marital stability and health.

"(II) Education in high schools on the value of marriage, relationship skills, and budgeting.

"(III) Marriage education, marriage skills, and relationship skills programs, that may include parenting skills, financial management,

conflict resolution, and job and career advancement, for non-married pregnant women and non-married expectant fathers.

"(IV) Pre-marital education and marriage skills training for engaged couples and for couples or individuals interested in marriage.

"(V) Marriage enhancement and marriage skills training programs for married couples.

"(VI) Divorce reduction programs that teach relationship skills.

"(VII) Marriage mentoring programs which use married couples as role models and mentors in at-risk communities.

"(VIII) Programs to reduce the disincentives to marriage in means-tested aid programs, if offered in conjunction with any activity described in this subparagraph.

"(B) LIMITATION ON USE OF FUNDS FOR DEMONSTRATION PROJECTS FOR COORDINATION OF PROVISION OF CHILD WELFARE AND TANF SERVICES TO TRIBAL FAMILIES AT RISK OF CHILD ABUSE OR NEGLECT.—

"(i) IN GENERAL.—Of the amounts made available under subparagraph (D) for a fiscal year, the Secretary may not award more than $2,000,000 on a competitive basis to fund demonstration projects designed to test the effectiveness of tribal governments or tribal consortia in coordinating the provision to tribal families at risk of child abuse or neglect of child welfare services and services under tribal programs funded under this part.

"(ii) LIMITATION ON USE OF FUNDS.—A grant made pursuant to clause (i) to such a project shall not be used for any purpose other than—

"(I) to improve case management for families eligible for assistance from such a tribal program;

"(II) for supportive services and assistance to tribal children in out-of-home placements and the tribal families caring for such children, including families who adopt such children; and

"(III) for prevention services and assistance to tribal families at risk of child abuse and neglect.

"(iii) REPORTS.—The Secretary may require a recipient of funds awarded under this subparagraph to provide the Secretary with such information as the Secretary deems relevant to enable the Secretary to facilitate and oversee the administration of any project for which funds are provided under this subparagraph.

"(C) LIMITATION ON USE OF FUNDS FOR ACTIVITIES PROMOTING RESPONSIBLE FATHERHOOD.—

"(i) IN GENERAL.—Of the amounts made available under subparagraph (D) for a fiscal year, the Secretary may not award more than $50,000,000 on a competitive basis to States, territories, Indian tribes and tribal organizations, and public and nonprofit community entities, including religious organizations, for activities promoting responsible fatherhood.

"(ii) ACTIVITIES PROMOTING RESPONSIBLE FATHERHOOD.—In this paragraph, the term 'activities promoting responsible fatherhood' means the following:

"(I) Activities to promote marriage or sustain marriage through activities such as counseling, mentoring, disseminating information about the benefits of marriage and 2-parent involvement for children, enhancing relationship skills, education regarding how to control aggressive behavior, disseminating information on the causes of domestic violence and child abuse, marriage preparation programs, premarital counseling, marital inventories, skills-based marriage education, financial planning seminars, including improving a family's ability to effectively manage family business affairs by means such as education, counseling, or mentoring on matters related to family finances, including household management, budgeting, banking, and handling of financial transactions and home maintenance, and divorce education and reduction programs, including mediation and counseling.

"(II) Activities to promote responsible parenting through activities such as counseling, mentoring, and mediation, disseminating information about good parenting practices, skills-based parenting education, encouraging child support payments, and other methods.

"(III) Activities to foster economic stability by helping fathers improve their economic status by providing activities such as work first services, job search, job training, subsidized employment, job retention, job enhancement, and encouraging education, including career-advancing education, dissemination of employment materials, coordination with existing employment services such as welfare-to-work programs, referrals to local employment training initiatives, and other methods.

"(IV) Activities to promote responsible fatherhood that are conducted through a contract with a nationally recognized, nonprofit fatherhood promotion organization, such as the development, promotion, and distribution of a media campaign to encourage the appropriate involvement of parents in the life of any child and specifically the issue of responsible fatherhood, and the development of a national clearinghouse to assist States and communities in efforts to promote and support marriage and responsible fatherhood.

"(D) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $150,000,000 for each of fiscal years 2006 through 2010, for expenditure in accordance with this paragraph.".

(b) COUNTING OF SPENDING ON CERTAIN PRO-FAMILY ACTIVITIES.—Section 409(a)(7)(B)(i) (42 U.S.C. 609(a)(7)(B)(i)) is amended by adding at the end the following:

"(V) COUNTING OF SPENDING ON CERTAIN PRO-FAMILY ACTIVITIES.—The term 'qualified State expenditures' includes the total expenditures by the State during the fiscal year under all State programs for a purpose described in paragraph (3) or (4) of section 401(a).".

Subtitle B—Child Care

SEC. 7201. ENTITLEMENT FUNDING.

Section 418(a)(3) (42 U.S.C. 618(a)(3)) is amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by striking the period at the end of subparagraph (F) and inserting a semicolon; and

(3) by adding at the end the following:

"(G) $2,917,000,000 for each of fiscal years 2006 through 2010.".

Subtitle C—Child Support

SEC. 7301. ASSIGNMENT AND DISTRIBUTION OF CHILD SUPPORT.

(a) MODIFICATION OF RULE REQUIRING ASSIGNMENT OF SUPPORT RIGHTS AS A CONDITION OF RECEIVING TANF.—Section 408(a)(3) (42 U.S.C. 608(a)(3)) is amended to read as follows:

"(3) NO ASSISTANCE FOR FAMILIES NOT ASSIGNING CERTAIN SUPPORT RIGHTS TO THE STATE.—A State to which a grant is made under section 403 shall require, as a condition of paying assistance to a family under the State program funded under this part, that a member of the family assign to the State any right the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so paid to the family, which accrues during the period that the family receives assistance under the program.".

(b) INCREASING CHILD SUPPORT PAYMENTS TO FAMILIES AND SIMPLIFYING CHILD SUPPORT DISTRIBUTION RULES.—

(1) DISTRIBUTION RULES.—

(A) IN GENERAL.—Section 457(a) (42 U.S.C. 657(a)) is amended to read as follows:

"(a) IN GENERAL.—Subject to subsections (d) and (e), the amounts collected on behalf of a family as support by a State pursuant to a plan approved under this part shall be distributed as follows:

"(1) FAMILIES RECEIVING ASSISTANCE.—In the case of a family receiving assistance from the State, the State shall—

"(A) pay to the Federal Government the Federal share of the amount collected, subject to paragraph (3)(A);

"(B) retain, or pay to the family, the State share of the amount collected, subject to paragraph (3)(B); and

"(C) pay to the family any remaining amount.

"(2) FAMILIES THAT FORMERLY RECEIVED ASSISTANCE.—In the case of a family that formerly received assistance from the State:

"(A) CURRENT SUPPORT.—To the extent that the amount collected does not exceed the current support amount, the State shall pay the amount to the family.

"(B) ARREARAGES.—Except as otherwise provided in an election made under section 454(34), to the extent that the amount collected exceeds the current support amount, the State—

"(i) shall first pay to the family the excess amount, to the extent necessary to satisfy support arrearages not assigned pursuant to section 408(a)(3);

"(ii) if the amount collected exceeds the amount required to be paid to the family under clause (i), shall—

"(I) pay to the Federal Government the Federal share of the excess amount described in this clause, subject to paragraph (3)(A); and

"(II) retain, or pay to the family, the State share of the excess amount described in this clause, subject to paragraph (3)(B); and

"(iii) shall pay to the family any remaining amount.

"(3) LIMITATIONS.—

"(A) FEDERAL REIMBURSEMENTS.—The total of the amounts paid by the State to the Federal Government under paragraphs (1) and (2) of this subsection with respect to a family shall not exceed the Federal share of the amount assigned with respect to the family pursuant to section 408(a)(3).

"(B) STATE REIMBURSEMENTS.—The total of the amounts retained by the State under paragraphs (1) and (2) of this subsection with respect to a family shall not exceed the State share of the amount assigned with respect to the family pursuant to section 408(a)(3).

"(4) FAMILIES THAT NEVER RECEIVED ASSISTANCE.—In the case of any other family, the State shall distribute to the family the portion of the amount so collected that remains after withholding any fee pursuant to section 454(6)(B)(ii).

"(5) FAMILIES UNDER CERTAIN AGREEMENTS.—Notwithstanding paragraphs (1) through (3), in the case of an amount collected for a family in accordance with a cooperative agreement under section 454(33), the State shall distribute the amount collected pursuant to the terms of the agreement.".

(B) STATE OPTION TO PASS THROUGH ADDITIONAL SUPPORT WITH FEDERAL FINANCIAL PARTICIPATION BEGINNING WITH FISCAL YEAR 2009.—

(i) IN GENERAL.—Section 457(a) (42 U.S.C. 657(a)) is amended by adding at the end the following:

"(7) STATE OPTION TO PASS THROUGH ADDITIONAL SUPPORT WITH FEDERAL FINANCIAL PARTICIPATION.—

"(A) FAMILIES THAT FORMERLY RECEIVED ASSISTANCE.—Notwithstanding paragraph (2), a State shall not be required to pay to the Federal Government the Federal share of an amount collected on behalf of a family that formerly received assistance from the State to the extent that the State pays the amount to the family.

"(B) Families that currently receive assistance.—

"(i) In general.—Notwithstanding paragraph (1), in the case of a family that receives assistance from the State, a State shall not be required to pay to the Federal Government the Federal share of the excepted portion (as defined in clause (ii)) of any amount collected on behalf of such family during a month to the extent that—

"(I) the State pays the excepted portion to the family; and

"(II) the excepted portion is disregarded in determining the amount and type of assistance provided to the family under such program.

"(ii) Excepted portion defined.—For purposes of this subparagraph, the term "excepted portion" means that portion of the amount collected on behalf of a family during a month that does not exceed $100 per month, or in the case of a family that includes 2 or more children, that does not exceed an amount established by the State that is not more than $200 per month.".

(ii) Effective date.—The amendment made by clause (i) shall take effect on October 1, 2008.

(iii) Redesignation.—Effective October 1, 2009, paragraph (7) of section 457(a) of the Social Security Act (as added by clause (i)) is redesignated as paragraph (6).

(C) State plan to include election as to which rules to apply in distributing child support arrearages collected on behalf of families formerly receiving assistance.—Section 454 (42 U.S.C. 654) is amended—

(i) by striking "and" at the end of paragraph (32);

(ii) by striking the period at the end of paragraph (33) and inserting "; and"; and

(iii) by inserting after paragraph (33) the following:

"(34) include an election by the State to apply section 457(a)(2)(B) of this Act or former section 457(a)(2)(B) of this Act (as in effect for the State immediately before the date this paragraph first applies to the State) to the distribution of the amounts which are the subject of such sections and, for so long as the State elects to so apply such former section, the amendments made by subsection (b)(1) of section 7301 of the Deficit Reduction Act of 2005 shall not apply with respect to the State, notwithstanding subsection (e) of such section 7301.".

(2) Current support amount defined.—Section 457(c) (42 U.S.C. 657(c)) is amended by adding at the end the following:

"(5) Current support amount.—The term 'current support amount' means, with respect to amounts collected as support on behalf of a family, the amount designated as the monthly support obligation of the noncustodial parent in the order requiring the support or calculated by the State based on the order.".

(c) State Option To Discontinue Older Support Assignments.—Section 457(b) (42 U.S.C. 657(b)) is amended to read as follows:

"(b) Continuation of Assignments.—

"(1) State option to discontinue pre-1997 support assignments.—

"(A) In general.—Any rights to support obligations assigned to a State as a condition of receiving assistance from the State under part A and in effect on September 30, 1997 (or such earlier date on or after August 22, 1996, as the State may choose), may remain assigned after such date.

"(B) Distribution of amounts after assignment discontinuation.—If a State chooses to discontinue the assignment of a support obligation described in subparagraph (A), the State may treat amounts collected pursuant to the assignment as if the amounts had never been assigned and may distribute the amounts to the family in accordance with subsection (a)(4).

"(2) State option to discontinue post-1997 assignments.—

"(A) In general.—Any rights to support obligations accruing before the date on which a family first receives assistance under part A that are assigned to a State under that part and in effect before the implementation date of this section may remain assigned after such date.

"(B) Distribution of amounts after assignment discontinuation.—If a State chooses to discontinue the assignment of a support obligation described in subparagraph (A), the State may treat amounts collected pursuant to the assignment as if the amounts had never been assigned and may distribute the amounts to the family in accordance with subsection (a)(4).".

(d) Conforming Amendments.—Section 6402(c) of the Internal Revenue Code of 1986 (relating to offset of past-due support against overpayments) is amended—

(1) in the first sentence, by striking "the Social Security Act." and inserting "of such Act."; and

(2) by striking the third sentence and inserting the following: "The Secretary shall apply a reduction under this subsection first to an amount certified by the State as past due support under section 464 of the Social Security Act before any other reductions allowed by law.".

(e) Effective Date.—

(1) In general.—Except as otherwise provided in this section, the amendments made by the preceding provisions of this section shall take effect on October 1, 2009, and shall apply to payments under parts A and D of title IV of the Social Security Act for calendar quarters beginning on or after such date, and without regard to whether regulations to implement the amendments (in the case of State programs operated under such part D) are promulgated by such date.

(2) State option to accelerate effective date.—Notwithstanding paragraph (1), a State may elect to have the amendments made by the preceding provisions of this section apply to the State and to amounts collected by the State (and the payments under parts A and D), on and after such date as the State may select that is not earlier than October 1, 2008, and not later than September 30, 2009.

(f) Use of Tax Refund Intercept Program To Collect Past-Due Child Support on Behalf of Children Who Are Not Minors.—

(1) In general.—Section 464 (42 U.S.C. 664) is amended—

(A) in subsection (a)(2)(A), by striking "(as that term is defined for purposes of this paragraph under subsection (c))"; and

(B) in subsection (c)—

(i) in paragraph (1)—

(I) by striking "(1) Except as provided in paragraph (2), as used in" and inserting "In"; and

(II) by inserting "(whether or not a minor)" after "a child" each place it appears; and

(ii) by striking paragraphs (2) and (3).

(2) Effective date.—The amendments made by paragraph (1) shall take effect on October 1, 2007.

(g) State Option To Use Statewide Automated Data Processing and Information Retrieval System for Interstate Cases.—Section 466(a)(14)(A)(iii) (42 U.S.C. 666(a)(14)(A)(iii)) is amended by inserting before the semicolon the following: "(but the assisting State may establish a corresponding case based on such other State's request for assistance)".

SEC. 7302. MANDATORY REVIEW AND ADJUSTMENT OF CHILD SUPPORT ORDERS FOR FAMILIES RECEIVING TANF.

(a) In General.—Section 466(a)(10)(A)(i) (42 U.S.C. 666(a)(10)(A)(i)) is amended—

(1) by striking "parent, or," and inserting "parent or"; and

(2) by striking "upon the request of the State agency under the State plan or of either parent,".

(b) Effective Date.—The amendments made by subsection (a) shall take effect on October 1, 2007.

SEC. 7303. DECREASE IN AMOUNT OF CHILD SUPPORT ARREARAGE TRIGGERING PASSPORT DENIAL.

(a) In General.—Section 452(k)(1) (42 U.S.C. 652(k)(1)) is amended by striking "$5,000" and inserting "$2,500".

(b) Conforming Amendment.—Section 454(31) (42 U.S.C. 654(31)) is amended by striking "$5,000" and inserting "$2,500".

(c) Effective Date.—The amendments made by this section shall take effect on October 1, 2006.

SEC. 7304. MAINTENANCE OF TECHNICAL ASSISTANCE FUNDING.

Section 452(j) (42 U.S.C. 652(j)) is amended by inserting "or the amount appropriated under this paragraph for fiscal year 2002, whichever is greater" before ", which shall be available".

SEC. 7305. MAINTENANCE OF FEDERAL PARENT LOCATOR SERVICE FUNDING.

Section 453(o) (42 U.S.C. 653(o)) is amended—

(1) in the first sentence, by inserting "or the amount appropriated under this paragraph for fiscal year 2002, whichever is greater" before ", which shall be available"; and

(2) in the second sentence, by striking "for each of fiscal years 1997 through 2001".

SEC. 7306. INFORMATION COMPARISONS WITH INSURANCE DATA.

(a) Duties of the Secretary.—Section 452 (42 U.S.C. 652) is amended by adding at the end the following:

"(l) Comparisons With Insurance Information.—

"(1) In general.—The Secretary, through the Federal Parent Locator Service, may—

"(A) compare information concerning individuals owing past-due support with information maintained by insurers (or their agents) concerning insurance claims, settlements, awards, and payments; and

"(B) furnish information resulting from the data matches to the State agencies responsible for collecting child support from the individuals.

"(2) Liability.—An insurer (including any agent of an insurer) shall not be liable under any Federal or State law to any person for any disclosure provided for under this subsection, or for any other action taken in good faith in accordance with this subsection.".

(b) State Reimbursement of Federal Costs.—Section 453(k)(3) (42 U.S.C. 653(k)(3)) is amended by inserting "or section 452(l)" after "pursuant to this section".

SEC. 7307. REQUIREMENT THAT STATE CHILD SUPPORT ENFORCEMENT AGENCIES SEEK MEDICAL SUPPORT FOR CHILDREN FROM EITHER PARENT.

(a) State Agencies Required To Seek Medical Support From Either Parent.—

(1) In general.—Section 466(a)(19)(A) (42 U.S.C. 666(a)(19)(A)) is amended by striking "which include a provision for the health care coverage of the child are enforced" and inserting "shall include a provision for medical support for the child to be provided by either or both parents, and shall be enforced".

(2) Conforming amendments.—

(A) Title IV–D.—

(i) Section 452(f) (42 U.S.C. 652(f)) is amended by striking "include medical support as part of any child support order and enforce medical support" and inserting "enforce medical support included as part of a child support order".

(ii) Section 466(a)(19) (42 U.S.C. 666(a)(19)), as amended by paragraph (1) of this subsection, is amended—

(I) in subparagraph (A)—

(aa) by striking "section 401(e)(3)(C)" and inserting "section 401(e)"; and

(bb) by striking "section 401(f)(5)(C)" and inserting "section 401(f)";

(II) in subparagraph (B)—

(aa) by striking "noncustodial" each place it appears; and

(bb) in clause (iii), by striking "section 466(b)" and inserting "subsection (b)"; and

(III) in subparagraph (C), by striking "noncustodial" each place it appears and inserting "obligated".

(B) STATE OR LOCAL GOVERNMENTAL GROUP HEALTH PLANS.—Section 401(e)(2) of the Child Support Performance and Incentive Act of 1998 (29 U.S.C. 1169 note) is amended, in the matter preceding subparagraph (A), by striking "who is a noncustodial parent of the child".

(C) CHURCH PLANS.—Section 401(f)(5)(C) of the Child Support Performance and Incentive Act of 1998 (29 U.S.C. 1169 note) is amended by striking "noncustodial" each place it appears.

(b) ENFORCEMENT OF MEDICAL SUPPORT REQUIREMENTS.—Section 452(f) (42 U.S.C. 652(f)), as amended by subsection (a)(2)(A)(i), is amended by inserting after the first sentence the following: "A State agency administering the program under this part may enforce medical support against a custodial parent if health care coverage is available to the custodial parent at a reasonable cost, notwithstanding any other provision of this part.".

(c) DEFINITION OF MEDICAL SUPPORT.—Section 452(f) (42 U.S.C. 652(f)), as amended by subsections (a)(2)(A)(i) and (b) of this section, is amended by adding at the end the following: "For purposes of this part, the term 'medical support' may include health care coverage, such as coverage under a health insurance plan (including payment of costs of premiums, co-payments, and deductibles) and payment for medical expenses incurred on behalf of a child.".

SEC. 7308. REDUCTION OF FEDERAL MATCHING RATE FOR LABORATORY COSTS INCURRED IN DETERMINING PATERNITY.

(a) IN GENERAL.—Section 455(a)(1)(C) (42 U.S.C. 655(a)(1)(C)) is amended by striking "90 percent (rather than the percentage specified in subparagraph (A))" and inserting "66 percent".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2006, and shall apply to costs incurred on or after that date.

SEC. 7309. ENDING FEDERAL MATCHING OF STATE SPENDING OF FEDERAL INCENTIVE PAYMENTS.

(a) IN GENERAL.—Section 455(a)(1) (42 U.S.C. 655(a)(1)) is amended by inserting "from amounts paid to the State under section 458 or" before "to carry out an agreement".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2007.

SEC. 7310. MANDATORY FEE FOR SUCCESSFUL CHILD SUPPORT COLLECTION FOR FAMILY THAT HAS NEVER RECEIVED TANF.

(a) IN GENERAL.—Section 454(6)(B) (42 U.S.C. 654(6)(B)) is amended—

(1) by inserting "(i)" after "(B)";

(2) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively;

(3) by adding "and" after the semicolon; and

(4) by adding after and below the end the following new clause:

"(ii) in the case of an individual who has never received assistance under a State program funded under part A and for whom the State has collected at least $500 of support, the State shall impose an annual fee of $25 for each case in which services are furnished, which shall be retained by the State from support collected on behalf of the individual (but not from the 1st $500 so collected), paid by the individual applying for the services, recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and the fees shall be considered income to the program);".

(b) CONFORMING AMENDMENTS.—Section 457(a)(3) (42 U.S.C. 657(a)(3)) is amended to read as follows:

"(3) FAMILIES THAT NEVER RECEIVED ASSISTANCE.—In the case of any other family, the State shall distribute to the family the portion of the amount so collected that remains after withholding any fee pursuant to section 454(6)(B)(ii).".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2006.

SEC. 7311. EXCEPTION TO GENERAL EFFECTIVE DATE FOR STATE PLANS REQUIRING STATE LAW AMENDMENTS.

In the case of a State plan under part D of title IV of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this subtitle, the effective date of the amendments imposing the additional requirements shall be 3 months after the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.

Subtitle D—Child Welfare

SEC. 7401. STRENGTHENING COURTS.

(a) COURT IMPROVEMENT GRANTS.—

(1) IN GENERAL.—Section 438(a) (42 U.S.C. 629h(a)) is amended—

(A) by striking "and" at the end of paragraph (1);

(B) by striking the period at the end of paragraph (2) and inserting a semicolon; and

(C) by adding at the end the following:

"(3) to ensure that the safety, permanence, and well-being needs of children are met in a timely and complete manner; and

"(4) to provide for the training of judges, attorneys and other legal personnel in child welfare cases.".

(2) APPLICATIONS.—Section 438(b) (42 U.S.C. 629h(b)) is amended to read as follows:

"(b) APPLICATIONS.—

"(1) IN GENERAL.—In order to be eligible to receive a grant under this section, a highest State court shall submit to the Secretary an application at such time, in such form, and including such information and assurances as the Secretary may require, including—

"(A) in the case of a grant for the purpose described in subsection (a)(3), a description of how courts and child welfare agencies on the local and State levels will collaborate and jointly plan for the collection and sharing of all relevant data and information to demonstrate how improved case tracking and analysis of child abuse and neglect cases will produce safe and timely permanency decisions;

"(B) in the case of a grant for the purpose described in subsection (a)(4), a demonstration that a portion of the grant will be used for cross-training initiatives that are jointly planned and executed with the State agency or any other agency under contract with the State to administer the State program under the State plan under subpart 1, the State plan approved under section 434, or the State plan approved under part E; and

"(C) in the case of a grant for any purpose described in subsection (a), a demonstration of meaningful and ongoing collaboration among the courts in the State, the State agency or any other agency under contract with the State who is responsible for administering the State program under part B or E, and, where applicable, Indian tribes.

"(2) SEPARATE APPLICATIONS.—A highest State court desiring grants under this section for 2 or more purposes shall submit separate applications for the following grants:

"(A) A grant for the purposes described in paragraphs (1) and (2) of subsection (a).

"(B) A grant for the purpose described in subsection (a)(3).

"(C) A grant for the purpose described in subsection (a)(4).".

(3) ALLOTMENTS.—Section 438(c) (42 U.S.C. 429h(c)) is amended—

(A) in paragraph (1)—

(i) by inserting "of this section for a grant described in subsection (b)(2)(A) of this section" after "subsection (b)"; and

(ii) by striking "paragraph (2) of this subsection" and inserting "subparagraph (B) of this paragraph";

(B) in paragraph (2)—

(i) by striking "this paragraph" and inserting "this subparagraph";

(ii) by striking "paragraph (1) of this subsection" and inserting "subparagraph (A) of this paragraph"; and

(iii) by inserting "for such a grant" after "subsection (b)";

(C) by redesignating and indenting paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(D) by inserting before and above such subparagraph (A) the following:

"(1) GRANTS TO ASSESS AND IMPROVE HANDLING OF COURT PROCEEDINGS RELATING TO FOSTER CARE AND ADOPTION.—"; and

(E) by adding at the end the following:

"(2) GRANTS FOR IMPROVED DATA COLLECTION AND TRAINING.—

"(A) IN GENERAL.—Each highest State court which has an application approved under subsection (b) of this section for a grant referred to in subparagraph (B) or (C) of subsection (b)(2) shall be entitled to payment, for each of fiscal years 2006 through 2010, from the amount made available under whichever of paragraph (1) or (2) of subsection (e) applies with respect to the grant, of an amount equal to the sum of $85,000 plus the amount described in subparagraph (B) of this paragraph for the fiscal year with respect to the grant.

"(B) FORMULA.—The amount described in this subparagraph for any fiscal year with respect to a grant referred to in subparagraph (B) or (C) of subsection (b)(2) is the amount that bears the same ratio to the amount made available under subsection (e) for such a grant (reduced by the dollar amount specified in subparagraph (A) of this paragraph) as the number of individuals in the State who have not attained 21 years of age bears to the total number of such individuals in all States the highest State courts of which have approved applications under subsection (b) for such a grant.".

(4) FUNDING.—Section 438 (42 U.S.C. 629h) is amended by adding at the end the following:

"(e) FUNDING FOR GRANTS FOR IMPROVED DATA COLLECTION AND TRAINING.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Secretary, for each of fiscal years 2006 through 2010—

"(1) $10,000,000 for grants referred to in subsection (b)(2)(B); and

"(2) $10,000,000 for grants referred to in subsection (b)(2)(C).".

(b) REQUIREMENT TO DEMONSTRATE MEANINGFUL COLLABORATION BETWEEN COURTS AND AGENCIES IN CHILD WELFARE SERVICES PROGRAMS.—Section 422(b) (42 U.S.C. 622(b)) is amended—

(1) by striking "and" at the end of paragraph (13);

(2) by striking the period at the end of paragraph (14) and inserting "; and"; and

(3) by adding at the end the following:

"(15) demonstrate substantial, ongoing, and meaningful collaboration with State courts in the development and implementation of the State plan under subpart 1, the State plan approved under subpart 2, and the State plan approved under part E, and in the development and implementation of any program improvement plan required under section 1123A.".

(c) Use of Child Welfare Records in State Court Proceedings.—Section 471 (42 U.S.C. 671) is amended—

(1) in subsection (a)(8), by inserting "subject to subsection (c)," after "(8)"; and

(2) by adding at the end the following:

"(c) Use of Child Welfare Records in State Court Proceedings.—Subsection (a)(8) shall not be construed to limit the flexibility of a State in determining State policies relating to public access to court proceedings to determine child abuse and neglect or other court hearings held pursuant to part B or this part, except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents, and family.".

SEC. 7402. FUNDING OF SAFE AND STABLE FAMILIES PROGRAMS.

Section 436(a) (42 U.S.C. 629f(a)) is amended to read as follows:

"(a) Authorization.—In addition to any amount otherwise made available to carry out this subpart, there are authorized to be appropriated to carry out this subpart $345,000,000 for fiscal year 2006. Notwithstanding the preceding sentence, the total amount authorized to be so appropriated for fiscal year 2006 under this subsection and under this subsection (as in effect before the date of the enactment of the Deficit Reduction Act of 2005) is $345,000,000.".

SEC. 7403. CLARIFICATION REGARDING FEDERAL MATCHING OF CERTAIN ADMINISTRATIVE COSTS UNDER THE FOSTER CARE MAINTENANCE PAYMENTS PROGRAM.

(a) Administrative Costs Relating to Unlicensed Care.—Section 472 (42 U.S.C. 672) is amended by inserting after subsection (h) the following:

"(i) Administrative Costs Associated With Otherwise Eligible Children not in Licensed Foster Care Settings.—Expenditures by a State that would be considered administrative expenditures for purposes of section 474(a)(3) if made with respect to a child who was residing in a foster family home or child-care institution shall be so considered with respect to a child not residing in such a home or institution—

"(1) in the case of a child who has been removed in accordance with subsection (a) of this section from the home of a relative specified in section 406(a) (as in effect on July 16, 1996), only for expenditures—

"(A) with respect to a period of not more than the lesser of 12 months or the average length of time it takes for the State to license or approve a home as a foster home, in which the child is in the home of a relative and an application is pending for licensing or approval of the home as a foster family home; or

"(B) with respect to a period of not more than 1 calendar month when a child moves from a facility not eligible for payments under this part into a foster family home or child care institution licensed or approved by the State; and

"(2) in the case of any other child who is potentially eligible for benefits under a State plan approved under this part and at imminent risk of removal from the home, only if—

"(A) reasonable efforts are being made in accordance with section 471(a)(15) to prevent the need for, or if necessary to pursue, removal of the child from the home; and

"(B) the State agency has made, not less often than every 6 months, a determination (or redetermination) as to whether the child remains at imminent risk of removal from the home.".

(b) Conforming Amendment.—Section 474(a)(3) (42 U.S.C. 674(a)(3)) is amended by inserting "subject to section 472(i)" before "an amount equal to".

SEC. 7404. CLARIFICATION OF ELIGIBILITY FOR FOSTER CARE MAINTENANCE PAYMENTS AND ADOPTION ASSISTANCE.

(a) Foster Care Maintenance Payments.—Section 472(a) (42 U.S.C. 672(a)) is amended to read as follows:

"(a) In General.—

"(1) Eligibility.—Each State with a plan approved under this part shall make foster care maintenance payments on behalf of each child who has been removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) into foster care if—

"(A) the removal and foster care placement met, and the placement continues to meet, the requirements of paragraph (2); and

"(B) the child, while in the home, would have met the AFDC eligibility requirement of paragraph (3).

"(2) Removal and foster care placement requirements.—The removal and foster care placement of a child meet the requirements of this paragraph if—

"(A) the removal and foster care placement are in accordance with—

"(i) a voluntary placement agreement entered into by a parent or legal guardian of the child who is the relative referred to in paragraph (1); or

"(ii) a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child and that reasonable efforts of the type described in section 471(a)(15) for a child have been made;

"(B) the child's placement and care are the responsibility of—

"(i) the State agency administering the State plan approved under section 471; or

"(ii) any other public agency with which the State agency administering or supervising the administration of the State plan has made an agreement which is in effect; and

"(C) the child has been placed in a foster family home or child-care institution.

"(3) AFDC eligibility requirement.—

"(A) In general.—A child in the home referred to in paragraph (1) would have met the AFDC eligibility requirement of this paragraph if the child—

"(i) would have received aid under the State plan approved under section 402 (as in effect on July 16, 1996) in the home, in or for the month in which the agreement was entered into or court proceedings leading to the determination referred to in paragraph (2)(A)(ii) of this subsection were initiated; or

"(ii)(I) would have received the aid in the home, in or for the month referred to in clause (i), if application had been made therefor; or

"(II) had been living in the home within 6 months before the month in which the agreement was entered into or the proceedings were initiated, and would have received the aid in or for such month, if, in such month, the child had been living in the home with the relative referred to in paragraph (1) and application for the aid had been made.

"(B) Resources determination.—For purposes of subparagraph (A), in determining whether a child would have received aid under a State plan approved under section 402 (as in effect on July 16, 1996), a child whose resources (determined pursuant to section 402(a)(7)(B), as so in effect) have a combined value of not more than $10,000 shall be considered a child whose resources have a combined value of not more than $1,000 (or such lower amount as the State may determine for purposes of section 402(a)(7)(B)).

"(4) Eligibility of certain alien children.—Subject to title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, if the child is an alien disqualified under section 245A(h) or 210(f) of the Immigration and Nationality Act from receiving aid under the State plan approved under section 402 in or for the month in which the agreement described in paragraph (2)(A)(i) was entered into or court proceedings leading to the determination described in paragraph (2)(A)(ii) were initiated, the child shall be considered to satisfy the requirements of paragraph (3), with respect to the month, if the child would have satisfied the requirements but for the disqualification.".

(b) Adoption Assistance.—Section 473(a)(2) (42 U.S.C. 673(a)(2)) is amended to read as follows:

"(2)(A) For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if the child—

"(i)(I)(aa) was removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) and placed in foster care in accordance with a voluntary placement agreement with respect to which Federal payments are provided under section 474 (or section 403, as such section was in effect on July 16, 1996), or in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and

"(bb) met the requirements of section 472(a)(3) with respect to the home referred to in item (aa) of this subclause;

"(II) meets all of the requirements of title XVI with respect to eligibility for supplemental security income benefits; or

"(III) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to the minor parent of the child as provided in section 475(4)(B); and

"(ii) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

"(B) Section 472(a)(4) shall apply for purposes of subparagraph (A) of this paragraph, in any case in which the child is an alien described in such section.

"(C) A child shall be treated as meeting the requirements of this paragraph for the purpose of paragraph (1)(B)(ii) if the child—

"(i) meets the requirements of subparagraph (A)(ii);

"(ii) was determined eligible for adoption assistance payments under this part with respect to a prior adoption;

"(iii) is available for adoption because—

"(I) the prior adoption has been dissolved, and the parental rights of the adoptive parents have been terminated; or

"(II) the child's adoptive parents have died; and

"(iv) fails to meet the requirements of subparagraph (A) but would meet such requirements if—

"(I) the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part; and

"(II) the prior adoption were treated as never having occurred.".

Subtitle E—Supplemental Security Income

SEC. 7501. REVIEW OF STATE AGENCY BLINDNESS AND DISABILITY DETERMINATIONS.

Section 1633 (42 U.S.C. 1383b) is amended by adding at the end the following:

"(e)(1) The Commissioner of Social Security shall review determinations, made by State agencies pursuant to subsection (a) in connection with applications for benefits under this

title on the basis of blindness or disability, that individuals who have attained 18 years of age are blind or disabled as of a specified onset date. The Commissioner of Social Security shall review such a determination before any action is taken to implement the determination.

"(2)(A) In carrying out paragraph (1), the Commissioner of Social Security shall review—

"(i) at least 20 percent of all determinations referred to in paragraph (1) that are made in fiscal year 2006;

"(ii) at least 40 percent of all such determinations that are made in fiscal year 2007; and

"(iii) at least 50 percent of all such determinations that are made in fiscal year 2008 or thereafter.

"(B) In carrying out subparagraph (A), the Commissioner of Social Security shall, to the extent feasible, select for review the determinations which the Commissioner of Social Security identifies as being the most likely to be incorrect.".

SEC. 7502. PAYMENT OF CERTAIN LUMP SUM BENEFITS IN INSTALLMENTS UNDER THE SUPPLEMENTAL SECURITY INCOME PROGRAM.

(a) In General.—Section 1631(a)(10)(A)(i) (42 U.S.C. 1383(a)(10)(A)(i)) is amended by striking "12" and inserting "3".

(b) Effective Date.—The amendment made by subsection (a) shall take effect 3 months after the date of the enactment of this Act.

Subtitle F—Repeal of Continued Dumping and Subsidy Offset

SEC. 7601. REPEAL OF CONTINUED DUMPING AND SUBSIDY OFFSET.

(a) Repeal.—Effective upon the date of enactment of this Act, section 754 of the Tariff Act of 1930 (19 U.S.C. 1675c), and the item relating to section 754 in the table of contents of title VII of that Act, are repealed.

(b) Distributions on Certain Entries.—All duties on entries of goods made and filed before October 1, 2007, that would, but for subsection (a) of this section, be distributed under section 754 of the Tariff Act of 1930, shall be distributed as if section 754 of the Tariff Act of 1930 had not been repealed by subsection (a).

Subtitle G—Effective Date

SEC. 7701. EFFECTIVE DATE.

Except as otherwise provided in this title, this title and the amendments made by this title shall take effect as if enacted on October 1, 2005.

TITLE VIII—EDUCATION AND PENSION BENEFIT PROVISIONS

Subtitle A—Higher Education Provisions

SEC. 8001. SHORT TITLE; REFERENCE; EFFECTIVE DATE.

(a) Short Title.—This subtitle may be cited as the "Higher Education Reconciliation Act of 2005".

(b) References.—Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

(c) Effective Date.—Except as otherwise provided in this subtitle or the amendments made by this subtitle, the amendments made by this subtitle shall be effective July 1, 2006.

SEC. 8002. MODIFICATION OF 50/50 RULE.

Section 102(a)(3) (20 U.S.C. 1002(a)(3)) is amended—

(1) in subparagraph (A), by inserting "(excluding courses offered by telecommunications as defined in section 484(l)(4))" after "courses by correspondence"; and

(2) in subparagraph (B), by inserting "(excluding courses offered by telecommunications as defined in section 484(l)(4))" after "correspondence courses".

SEC. 8003. ACADEMIC COMPETITIVENESS GRANTS.

Subpart 1 of part A of title IV (20 U.S.C. 1070a) is amended by adding after section 401 the following new section:

"SEC. 401A. ACADEMIC COMPETITIVENESS GRANTS.

"(a) Academic Competitiveness Grant Program.—

"(1) Academic Competitiveness Grants Authorized.—The Secretary shall award grants, in the amounts specified in subsection (d)(1), to eligible students to assist the eligible students in paying their college education expenses.

"(2) Academic Competitiveness Council.—

"(A) Establishment.—There is established an Academic Competitiveness Council (referred to in this paragraph as the 'Council'). From the funds made available under subsection (e) for fiscal year 2006, $50,000 shall be available to the Council to carry out the duties described in subparagraph (B). The Council shall be chaired by the Secretary of Education, and the membership of the Council shall consist of officials from Federal agencies with responsibilities for managing existing Federal programs that promote mathematics and science (or designees of such officials with significant decision-making authority).

"(B) Duties.—The Council shall—

"(i) identify all Federal programs with a mathematics or science focus;

"(ii) identify the target populations being served by such programs;

"(iii) determine the effectiveness of such programs;

"(iv) identify areas of overlap or duplication in such programs; and

"(v) recommend ways to efficiently integrate and coordinate such programs.

"(C) Report.—Not later than one year after the date of enactment of the Higher Education Reconciliation Act of 2005, the Council shall transmit a report to each committee of Congress with jurisdiction over a Federal program identified under subparagraph (B)(i), detailing the findings and recommendations under subparagraph (B), including recommendations for legislative or administrative action.

"(b) Designation.—A grant under this section—

"(1) for the first or second academic year of a program of undergraduate education shall be known as an 'Academic Competitiveness Grant'; and

"(2) for the third or fourth academic year of a program of undergraduate education shall be known as a 'National Science and Mathematics Access to Retain Talent Grant' or a 'National SMART Grant'.

"(c) Definition of Eligible Student.—In this section the term 'eligible student' means a full-time student who, for the academic year for which the determination of eligibility is made—

"(1) is a citizen of the United States;

"(2) is eligible for a Federal Pell Grant; and

"(3) in the case of a student enrolled or accepted for enrollment in—

"(A) the first academic year of a program of undergraduate education at a two- or four-year degree-granting institution of higher education—

"(i) has successfully completed, after January 1, 2006, a rigorous secondary school program of study established by a State or local educational agency and recognized as such by the Secretary; and

"(ii) has not been previously enrolled in a program of undergraduate education;

"(B) the second academic year of a program of undergraduate education at a two- or four-year degree-granting institution of higher education—

"(i) has successfully completed, after January 1, 2005, a rigorous secondary school program of study established by a State or local educational agency and recognized as such by the Secretary; and

"(ii) has obtained a cumulative grade point average of at least 3.0 (or the equivalent as determined under regulations prescribed by the Secretary) at the end of the first academic year of such program of undergraduate education; or

"(C) the third or fourth academic year of a program of undergraduate education at a four-year degree-granting institution of higher education—

"(i) is pursuing a major in—

"(I) the physical, life, or computer sciences, mathematics, technology, or engineering (as determined by the Secretary pursuant to regulations); or

"(II) a foreign language that the Secretary, in consultation with the Director of National Intelligence, determines is critical to the national security of the United States; and

"(ii) has obtained a cumulative grade point average of at least 3.0 (or the equivalent as determined under regulations prescribed by the Secretary) in the coursework required for the major described in clause (i).

"(d) Grant Award.—

"(1) Amounts.—

"(A) The Secretary shall award a grant under this section in the amount of—

"(i) $750 for an eligible student under subsection (c)(3)(A);

"(ii) $1,300 for an eligible student under subsection (c)(3)(B); or

"(iii) $4,000 for an eligible student under subsection (c)(3)(C).

"(B) Notwithstanding subparagraph (A)—

"(i) the amount of such grant, in combination with the Federal Pell Grant assistance and other student financial assistance available to such student, shall not exceed the student's cost of attendance;

"(ii) if the amount made available under subsection (e) for any fiscal year is less than the amount required to be provided grants to all eligible students in the amounts determined under subparagraph (A) and clause (i) of this subparagraph, then the amount of the grant to each eligible student shall be ratably reduced; and

"(iii) if additional amounts are appropriated for any such fiscal year, such reduced amounts shall be increased on the same basis as they were reduced.

"(2) Limitations.—The Secretary shall not award a grant under this section—

"(A) to any student for an academic year of a program of undergraduate education described in subparagraph (A), (B), or (C) of subsection (c)(3) for which the student received credit before the date of enactment of the Higher Education Reconciliation Act of 2005; or

"(B) to any student for more than—

"(i) one academic year under subsection (c)(3)(A);

"(ii) one academic year under subsection (c)(3)(B); or

"(iii) two academic years under subsection (c)(3)(C).

"(e) Funding.—

"(1) Authorization and Appropriation of Funds.—There are authorized to be appropriated, and there are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of Education to carry out this section—

"(A) $790,000,000 for fiscal year 2006;

"(B) $850,000,000 for fiscal year 2007;

"(C) $920,000,000 for fiscal year 2008;

"(D) $960,000,000 for fiscal year 2009; and

"(E) $1,010,000,000 for fiscal year 2010.

"(2) Use of Excess Funds.—If, at the end of a fiscal year, the funds available for awarding grants under this section exceed the amount necessary to make such grants in the amounts

authorized by subsection (d), then all of the excess funds shall remain available for awarding grants under this section during the subsequent fiscal year.

"(f) RECOGNITION OF PROGRAMS OF STUDY.—The Secretary shall recognize at least one rigorous secondary school program of study in each State under subsection (c)(3)(A) and (B) for the purpose of determining student eligibility under such subsection.

"(g) SUNSET PROVISION.—The authority to make grants under this section shall expire at the end of academic year 2010–2011.".

SEC. 8004. REAUTHORIZATION OF FEDERAL FAMILY EDUCATION LOAN PROGRAM.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 421(b)(5) (20 U.S.C. 1071(b)(5)) is amended by striking "an administrative cost allowance" and inserting "a loan processing and issuance fee".

(b) EXTENSION OF AUTHORITY.—

(1) FEDERAL INSURANCE LIMITATIONS.—Section 424(a) (20 U.S.C. 1074(a)) is amended—

(A) by striking "2004" and inserting "2012"; and

(B) by striking "2008" and inserting "2016".

(2) GUARANTEED LOANS.—Section 428(a)(5) (20 U.S.C. 1078(a)(5)) is amended—

(A) by striking "2004" and inserting "2012"; and

(B) by striking "2008" and inserting "2016".

(3) CONSOLIDATION LOANS.—Section 428C(e) (20 U.S.C. 1078–3(e)) is amended by striking "2004" and inserting "2012".

SEC. 8005. LOAN LIMITS.

(a) FEDERAL INSURANCE LIMITS.—Section 425(a)(1)(A) (20 U.S.C. 1075(a)(1)(A)) is amended—

(1) in clause (i)(I), by striking "$2,625" and inserting "$3,500"; and

(2) in clause (ii)(I), by striking "$3,500" and inserting "$4,500".

(b) GUARANTEE LIMITS.—Section 428(b)(1)(A) (20 U.S.C. 1078(b)(1)(A)) is amended—

(1) in clause (i)(I), by striking "$2,625" and inserting "$3,500"; and

(2) in clause (ii)(I), by striking "$3,500" and inserting "$4,500".

(c) FEDERAL PLUS LOANS.—Section 428B (20 U.S.C. 1078–2) is amended—

(1) in subsection (a)(1)—

(A) in the matter preceding subparagraph (A), by striking "Parents" and inserting "A graduate or professional student or the parents";

(B) in subparagraph (A), by striking "the parents" and inserting "the graduate or professional student or the parents"; and

(C) in subparagraph (B), by striking "the parents" and inserting "the graduate or professional student or the parents";

(2) in subsection (b), by striking "any parent" and inserting "any graduate or professional student or any parent";

(3) in subsection (c)(2), by striking "parent" and inserting "graduate or professional student or parent"; and

(4) in subsection (d)(1), by striking "the parent" and inserting "the graduate or professional student or the parent".

(d) UNSUBSIDIZED STAFFORD LOANS FOR GRADUATE OR PROFESSIONAL STUDENTS.—Section 428H(d)(2) (20 U.S.C. 1078–8(d)(2)) is amended—

(1) in subparagraph (C), by striking "$10,000" and inserting "$12,000"; and

(2) in subparagraph (D)—

(A) in clause (i), by striking "$5,000" and inserting "$7,000"; and

(B) in clause (ii), by striking "$5,000" and inserting "$7,000".

(e) EFFECTIVE DATE OF INCREASES.—The amendments made by subsections (a), (b), and (d) shall be effective July 1, 2007.

SEC. 8006. PLUS LOAN INTEREST RATES AND ZERO SPECIAL ALLOWANCE PAYMENT.

(a) PLUS LOANS.—Section 427A(l)(2) (20 U.S.C. 1077a(l)(2)) is amended by striking "7.9 percent" and inserting "8.5 percent".

(b) CONFORMING AMENDMENTS FOR SPECIAL ALLOWANCES.—

(1) AMENDMENTS.—Subparagraph (I) of section 438(b)(2) (20 U.S.C. 1087–1(b)(2)) is amended—

(A) in clause (iii), by striking ", subject to clause (v) of this subparagraph";

(B) in clause (iv), by striking ", subject to clause (vi) of this subparagraph"; and

(C) by striking clauses (v), (vi), and (vii) and inserting the following:

"(v) RECAPTURE OF EXCESS INTEREST.—

"(I) EXCESS CREDITED.—With respect to a loan on which the applicable interest rate is determined under subsection (k) or (l) of section 427A and for which the first disbursement of principal is made on or after April 1, 2006, if the applicable interest rate for any 3-month period exceeds the special allowance support level applicable to such loan under this subparagraph for such period, then an adjustment shall be made by calculating the excess interest in the amount computed under subclause (II) of this clause, and by crediting the excess interest to the Government not less often than annually.

"(II) CALCULATION OF EXCESS.—The amount of any adjustment of interest on a loan to be made under this subsection for any quarter shall be equal to—

"(aa) the applicable interest rate minus the special allowance support level determined under this subparagraph; multiplied by

"(bb) the average daily principal balance of the loan (not including unearned interest added to principal) during such calendar quarter; divided by

"(cc) four.

"(III) SPECIAL ALLOWANCE SUPPORT LEVEL.—For purposes of this clause, the term 'special allowance support level' means, for any loan, a number expressed as a percentage equal to the sum of the rates determined under subclauses (I) and (III) of clause (i), and applying any substitution rules applicable to such loan under clauses (ii), (iii), and (iv) in determining such sum.".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall not apply with respect to any special allowance payment made under section 438 of the Higher Education Act of 1965 (20 U.S.C. 1087–1) before April 1, 2006.

SEC. 8007. DEFERMENT OF STUDENT LOANS FOR MILITARY SERVICE.

(a) FEDERAL FAMILY EDUCATION LOANS.—Section 428(b)(1)(M) (20 U.S.C. 1078(b)(1)(M)) is amended—

(1) by striking "or" at the end of clause (ii);

(2) by redesignating clause (iii) as clause (iv); and

(3) by inserting after clause (ii) the following new clause:

"(iii) not in excess of 3 years during which the borrower—

"(I) is serving on active duty during a war or other military operation or national emergency; or

"(II) is performing qualifying National Guard duty during a war or other military operation or national emergency; or".

(b) DIRECT LOANS.—Section 455(f)(2) (20 U.S.C. 1087e(f)(2)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following new subparagraph:

"(C) not in excess of 3 years during which the borrower—

"(i) is serving on active duty during a war or other military operation or national emergency; or

"(ii) is performing qualifying National Guard duty during a war or other military operation or national emergency; or".

(c) PERKINS LOANS.—Section 464(c)(2)(A) (20 U.S.C. 1087dd(c)(2)(A)) is amended—

(1) by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively; and

(2) by inserting after clause (ii) the following new clause:

"(iii) not in excess of 3 years during which the borrower—

"(I) is serving on active duty during a war or other military operation or national emergency; or

"(II) is performing qualifying National Guard duty during a war or other military operation or national emergency;".

(d) DEFINITIONS.—Section 481 (20 U.S.C. 1088) is amended by adding at the end the following new subsection:

"(d) DEFINITIONS FOR MILITARY DEFERMENTS.—For purposes of parts B, D, and E of this title:

"(1) ACTIVE DUTY.—The term 'active duty' has the meaning given such term in section 101(d)(1) of title 10, United States Code, except that such term does not include active duty for training or attendance at a service school.

"(2) MILITARY OPERATION.—The term 'military operation' means a contingency operation as such term is defined in section 101(a)(13) of title 10, United States Code.

"(3) NATIONAL EMERGENCY.—The term 'national emergency' means the national emergency by reason of certain terrorist attacks declared by the President on September 14, 2001, or subsequent national emergencies declared by the President by reason of terrorist attacks.

"(4) SERVING ON ACTIVE DUTY.—The term 'serving on active duty during a war or other military operation or national emergency' means service by an individual who is—

"(A) a Reserve of an Armed Force ordered to active duty under section 12301(a), 12301(g), 12302, 12304, or 12306 of title 10, United States Code, or any retired member of an Armed Force ordered to active duty under section 688 of such title, for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; and

"(B) any other member of an Armed Force on active duty in connection with such emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which such member is normally assigned.

"(5) QUALIFYING NATIONAL GUARD DUTY.—The term 'qualifying National Guard duty during a war or other military operation or national emergency' means service as a member of the National Guard on full-time National Guard duty (as defined in section 101(d)(5) of title 10, United States Code) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, in connection with a war, other military operation, or a national emergency declared by the President and supported by Federal funds.".

(e) RULE OF CONSTRUCTION.—Nothing in the amendments made by this section shall be construed to authorize any refunding of any repayment of a loan.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to loans for which the first disbursement is made on or after July 1, 2001.

SEC. 8008. ADDITIONAL LOAN TERMS AND CONDITIONS.

(a) DISBURSEMENT.—Section 428(b)(1)(N) (20 U.S.C. 1078(b)(1)(N)) is amended—

(1) by striking "or" at the end of clause (i); and

(2) by striking clause (ii) and inserting the following:

"(ii) in the case of a student who is studying outside the United States in a program of study abroad that is approved for credit by the home institution at which such student is enrolled, and only after verification of the student's enrollment by the lender or guaranty agency, are, at the request of the student, disbursed directly to the student by the means described in clause (i), unless such student requests that the check be endorsed, or the funds transfer be authorized, pursuant to an authorized power-of-attorney; or

"(iii) in the case of a student who is studying outside the United States in a program of study at an eligible foreign institution, are, at the request of the foreign institution, disbursed directly to the student, only after verification of the student's enrollment by the lender or guaranty agency by the means described in clause (i).".

(b) Repayment Plans: Direct Loans.—Section 455(d)(1) (20 U.S.C. 1087e(d)(1)) is amended by striking subparagraphs (A), (B), and (C) and inserting the following:

"(A) a standard repayment plan, consistent with subsection (a)(1) of this section and with section 428(b)(9)(A)(i);

"(B) a graduated repayment plan, consistent with section 428(b)(9)(A)(ii);

"(C) an extended repayment plan, consistent with section 428(b)(9)(A)(v), except that the borrower shall annually repay a minimum amount determined by the Secretary in accordance with section 428(b)(1)(L); and".

(c) Origination Fees.—

(1) FFEL Program.—Paragraph (2) of section 438(c) (20 U.S.C. 1087-1(c)) is amended—

(A) by striking the designation and heading of such paragraph and inserting the following:

"(2) Amount of Origination Fees.—

"(A) In General.—"; and

(B) by adding at the end the following new subparagraph:

"(B) Subsequent Reductions.—Subparagraph (A) shall be applied to loans made under this part (other than loans made under sections 428C and 439(o))—

"(i) by substituting '2.0 percent' for '3.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2006, and before July 1, 2007;

"(ii) by substituting '1.5 percent' for '3.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2007, and before July 1, 2008;

"(iii) by substituting '1.0 percent' for '3.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2008, and before July 1, 2009;

"(iv) by substituting '0.5 percent' for '3.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2009, and before July 1, 2010; and

"(v) by substituting '0.0 percent' for '3.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2010.".

(2) Direct Loan Program.—Subsection (c) of section 455 (20 U.S.C. 1087e(c)) is amended—

(A) by striking "(c) Loan Fee.—" and inserting the following:

"(c) Loan Fee.—

"(1) In General.—"; and

(B) by adding at the end the following:

"(2) Subsequent Reduction.—Paragraph (1) shall be applied to loans made under this part, other than Federal Direct Consolidation loans and Federal Direct PLUS loans—

"(A) by substituting '3.0 percent' for '4.0 percent' with respect to loans for which the first disbursement of principal is made on or after the date of enactment of the Higher Education Reconciliation Act of 2005, and before July 1, 2007;

"(B) by substituting '2.5 percent' for '4.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2007, and before July 1, 2008;

"(C) by substituting '2.0 percent' for '4.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2008, and before July 1, 2009;

"(D) by substituting '1.5 percent' for '4.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2009, and before July 1, 2010; and

"(E) by substituting '1.0 percent' for '4.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2010.".

(3) Conforming Amendment.—Section 455(b)(8)(A) (20 U.S.C. 1087e(b)(8)(A)) is amended by inserting "or origination fee" after "reductions in the interest rate".

SEC. 8009. CONSOLIDATION LOAN CHANGES.

(a) Consolidation Between Programs.—Section 428C (20 U.S.C. 1078-3) is amended—

(1) in subsection (a)(3)(B)(i)—

(A) by inserting "or under section 455(g)" after "under this section" both places it appears;

(B) by inserting "under both sections" after "terminates"

(C) by striking "and" at the end of subclause (III);

(D) by striking the period at the end of subclause (IV) and inserting "; and"; and

(E) by adding at the end the following new subclause:

"(V) an individual may obtain a subsequent consolidation loan under section 455(g) only for the purposes of obtaining an income contingent repayment plan, and only if the loan has been submitted to the guaranty agency for default aversion."; and

(2) in subsection (b)(5), by striking the first sentence and inserting the following: "In the event that a lender with an agreement under subsection (a)(1) of this section denies a consolidation loan application submitted to the lender by an eligible borrower under this section, or denies an application submitted to the lender by such a borrower for a consolidation loan with income-sensitive repayment terms, the Secretary shall offer any such borrower who applies for it, a Federal Direct Consolidation loan. The Secretary shall offer such a loan to a borrower who has defaulted, for the purpose of resolving the default.".

(b) Repeal of In-School Consolidation.—

(1) Definition of Repayment Period.—Section 428(b)(7)(A) (20 U.S.C. 1078(b)(7)(A)) is amended by striking "shall begin—" and all that follows through "earlier date." and inserting the following: "shall begin the day after 6 months after the date the student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution).".

(2) Conforming Change to Eligible Borrower Definition.—Section 428C(a)(3)(A)(ii)(I) (20 U.S.C. 1078-3(a)(3)(A)(ii)(I)) is amended by inserting "as determined under section 428(b)(7)(A)" after "repayment status".

(c) Additional Amendments.—Section 428C (20 U.S.C. 1078-3) is amended in subsection (a)(3), by striking subparagraph (C).

(d) Conforming Amendments to Direct Loan Program.—Section 455 (20 U.S.C. 1087e) is amended—

(1) in subsection (a)(1) by inserting "428C," after "428B,";

(2) in subsection (a)(2)—

(A) by striking "and" at the end of subparagraph (B);

(B) by redesignating subparagraph (C) as subparagraph (D); and

(C) by inserting after subparagraph (B) the following:

"(C) section 428C shall be known as 'Federal Direct Consolidation Loans'; and "; and

(3) in subsection (g)—

(A) by striking the second sentence; and

(B) by adding at the end the following new sentences: "To be eligible for a consolidation loan under this part, a borrower shall meet the eligibility criteria set forth in section 428C(a)(3). The Secretary, upon application for such a loan, shall comply with the requirements applicable to a lender under section 428C(b)(1)(F).".

SEC. 8010. REQUIREMENTS FOR DISBURSEMENTS OF STUDENT LOANS.

Section 428G (20 U.S.C. 1078-7) is amended—

(1) in subsection (a)(3), by adding at the end the following: "Notwithstanding section 422(d) of the Higher Education Amendments of 1998, this paragraph shall be effective beginning on the date of enactment of the Higher Education Reconciliation Act of 2005.";

(2) in subsection (b)(1), by adding at the end the following: "Notwithstanding section 422(d) of the Higher Education Amendments of 1998, the second sentence of this paragraph shall be effective beginning on the date of enactment of the Higher Education Reconciliation Act of 2005."; and

(3) in subsection (e), by striking ", made to a student to cover the cost of attendance at an eligible institution outside the United States".

SEC. 8011. SCHOOL AS LENDER.

Paragraph (2) of section 435(d) (20 U.S.C. 1085(d)(2)) is amended to read as follows:

"(2) Requirements for Eligible Institutions.—

"(A) In General.—To be an eligible lender under this part, an eligible institution—

"(i) shall employ at least one person whose full-time responsibilities are limited to the administration of programs of financial aid for students attending such institution;

"(ii) shall not be a home study school;

"(iii) shall not—

"(I) make a loan to any undergraduate student;

"(II) make a loan other than a loan under section 428 or 428H to a graduate or professional student; or

"(III) make a loan to a borrower who is not enrolled at that institution;

"(iv) shall award any contract for financing, servicing, or administration of loans under this title on a competitive basis;

"(v) shall offer loans that carry an origination fee or an interest rate, or both, that are less than such fee or rate authorized under the provisions of this title;

"(vi) shall not have a cohort default rate (as defined in section 435(m)) greater than 10 percent;

"(vii) shall, for any year for which the institution engages in activities as an eligible lender, provide for a compliance audit conducted in accordance with section 428(b)(1)(U)(iii)(I), and the regulations thereunder, and submit the results of such audit to the Secretary;

"(viii) shall use any proceeds from special allowance payments and interest payments from borrowers, interest subsidies received from the Department of Education, and any proceeds from the sale or other disposition of loans, for need-based grant programs; and

"(ix) shall have met the requirements of subparagraphs (A) through (F) of this paragraph as in effect on the day before the date of enactment of the Higher Education Reconciliation Act of 2005, and made loans under this part, on or before April 1, 2006.

"(B) Administrative Expenses.—An eligible lender under subparagraph (A) shall be permitted to use a portion of the proceeds described in subparagraph (A)(viii) for reasonable and direct administrative expenses.

"(C) Supplement, Not Supplant.—An eligible lender under subparagraph (A) shall ensure

that the proceeds described in subparagraph (A)(viii) are used to supplement, and not to supplant, non-Federal funds that would otherwise be used for need-based grant programs.".

SEC. 8012. REPAYMENT BY THE SECRETARY OF LOANS OF BANKRUPT, DECEASED, OR DISABLED BORROWERS; TREATMENT OF BORROWERS ATTENDING SCHOOLS THAT FAIL TO PROVIDE A REFUND, ATTENDING CLOSED SCHOOLS, OR FALSELY CERTIFIED AS ELIGIBLE TO BORROW.

Section 437 (20 U.S.C. 1087) is amended—

*(1) in the section heading, by striking "**CLOSED SCHOOLS OR FALSELY CERTIFIED AS ELIGIBLE TO BORROW**" and inserting "**SCHOOLS THAT FAIL TO PROVIDE A REFUND, ATTENDING CLOSED SCHOOLS, OR FALSELY CERTIFIED AS ELIGIBLE TO BORROW**"; and*

(2) in the first sentence of subsection (c)(1), by inserting "or was falsely certified as a result of a crime of identity theft" after "falsely certified by the eligible institution".

SEC. 8013. ELIMINATION OF TERMINATION DATES FROM TAXPAYER-TEACHER PROTECTION ACT OF 2004.

(a) Extension of Limitations on Special Allowance for Loans From the Proceeds of Tax Exempt Issues.—Section 438(b)(2)(B) (20 U.S.C. 1087-1(b)(2)(B)) is amended—

(1) in clause (iv), by striking "and before January 1, 2006,"; and

(2) in clause (v)(II)—

(A) by striking "and before January 1, 2006," each place it appears in divisions (aa) and (bb); and

(B) by striking ", and before January 1, 2006" in division (cc).

(b) Additional Limitation on Special Allowance for Loans From the Proceeds of Tax Exempt Issues.—Section 438(b)(2)(B) (20 U.S.C 1087-1(b)(2)(B)) is further amended by adding at the end thereof the following new clauses:

"(vi) Notwithstanding clauses (i), (ii), and (v), but subject to clause (vii), the quarterly rate of the special allowance shall be the rate determined under subparagraph (A), (E), (F), (G), (H), or (I) of this paragraph, as the case may be, for a holder of loans-

"(I) that were made or purchased on or after the date of enactment of the Higher Education Reconciliation Act of 2005; or

"(II) that were not earning a quarterly rate of special allowance determined under clauses (i) or (ii) of subparagraph (B) of this paragraph (20 U.S.C. 1087–1(b)(2)(b)) as of the date of enactment of the Higher Education Reconciliation Act of 2005.

"(vii) Clause (vi) shall be applied by substituting 'December 31, 2010' for 'the date of enactment of the Higher Education Reconciliation Act of 2005' in the case of a holder of loans that—

"(I) was, as of the date of enactment of the Higher Education Reconciliation Act of 2005, and during the quarter for which the special allowance is paid, a unit of State or local government or a nonprofit private entity;

"(II) was, as of such date of enactment, and during such quarter, not owned or controlled by, or under common ownership or control with, a for-profit entity; and

"(III) held, directly or through any subsidiary, affiliate, or trustee, a total unpaid balance of principal equal to or less than $100,000,000 on loans for which special allowances were paid under this subparagraph in the most recent quarterly payment prior to September 30, 2005.".

(c) Elimination of Effective Date Limitation on Higher Teacher Loan Forgiveness Benefits.—

(1) Technical clarification.—The matter preceding paragraph (1) of section 2 of the Taxpayer-Teacher Protection Act of 2004 (Pub. L. 108-409; 118 Stat. 2299) is amended by inserting "of the Higher Education Act of 1965" after "Section 438(b)(2)(B)".

(2) Amendment.—Paragraph (3) of section 3(b) of the Taxpayer-Teacher Protection Act of 2004 (20 U.S.C. 1078–10 note) is amended by striking ", and before October 1, 2005".

(3) Effective dates.—The amendment made by paragraph (1) shall be effective as if enacted on October 30, 2004, and the amendment made by paragraph (2) shall be effective as if enacted on October 1, 2005.

(d) Coordination With Second Higher Education Extension Act of 2005.—

(1) Repeal.—Section 2 of the Second Higher Education Extension Act of 2005 is amended by striking subsections (b) and (c).

(2) Effect on amendments.—The amendments made by subsections (a) and (c) of this section shall be effective as if the amendments made in subsections (b) and (c) of section 2 of the Second Higher Education Extension Act of 2005 had not been enacted.

(e) Additional Changes to Teacher Loan Forgiveness Provisions.—

(1) FFEL provisions.—Section 428J (20 U.S.C. 1078–10) is amended—

(A) in subsection (b)(1)(B), by inserting after "1965" the following: ", or meets the requirements of subsection (g)(3)"; and

(B) in subsection (g), by adding at the end the following new paragraph:

"(3) Private school teachers.—An individual who is employed as a teacher in a private school and is exempt from State certification requirements (unless otherwise applicable under State law), may, in lieu of the requirement of subsection (b)(1)(B), have such employment treated as qualifying employment under this section if such individual is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in the applicable grade levels and subject areas. For such purposes, the competency tests taken by such a private school teacher shall be recognized by 5 or more States for the purpose of fulfilling the highly qualified teacher requirements under section 9101 of the Elementary and Secondary Education Act of 1965, and the score achieved by such teacher on each test shall equal or exceed the average passing score of those 5 States.".

(2) Direct loan provisions.—Section 460 (20 U.S.C. 1087j) is amended—

(A) in subsection (b)(1)(A)(ii), by inserting after "1965" the following: ", or meets the requirements of subsection (g)(3)"; and

(B) in subsection (g), by adding at the end the following new paragraph:

"(3) Private school teachers.—An individual who is employed as a teacher in a private school and is exempt from State certification requirements (unless otherwise applicable under State law), may, in lieu of the requirement of subsection (b)(1)(A)(ii), have such employment treated as qualifying employment under this section if such individual is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in the applicable grade levels and subject areas. For such purposes, the competency tests taken by such a private school teacher shall be recognized by 5 or more States for the purpose of fulfilling the highly qualified teacher requirements under section 9101 of the Elementary and Secondary Education Act of 1965, and the score achieved by such teacher on each test shall equal or exceed the average passing score of those 5 States.".

SEC. 8014. ADDITIONAL ADMINISTRATIVE PROVISIONS.

(a) Insurance Percentage.—

(1) Amendment.—Subparagraph (G) of section 428(b)(1) (20 U.S.C. 1078(b)(1)(G)) is amended to read as follows:

"(G) insures 98 percent of the unpaid principal of loans insured under the program, except that—

"(i) such program shall insure 100 percent of the unpaid principal of loans made with funds advanced pursuant to section 428(j) or 439(q);

"(ii) for any loan for which the first disbursement of principal is made on or after July 1, 2006, the preceding provisions of this subparagraph shall be applied by substituting '97 percent' for '98 percent'; and

"(iii) notwithstanding the preceding provisions of this subparagraph, such program shall insure 100 percent of the unpaid principal amount of exempt claims as defined in subsection (c)(1)(G);".

(2) Effective date of amendment.—The amendment made by this subsection shall apply with respect to loans for which the first disbursement of principal is made on or after July 1, 2006.

(b) Federal Default Fees.—

(1) In general.—Subparagraph (H) of section 428(b)(1) (20 U.S.C. 1078(b)(1)(H)) is amended to read as follows:

"(H) provides—

"(i) for loans for which the date of guarantee of principal is before July 1, 2006, for the collection of a single insurance premium equal to not more than 1.0 percent of the principal amount of the loan, by deduction proportionately from each installment payment of the proceeds of the loan to the borrower, and ensures that the proceeds of the premium will not be used for incentive payments to lenders; or

"(ii) for loans for which the date of guarantee of principal is on or after July 1, 2006, for the collection, and the deposit into the Federal Student Loan Reserve Fund under section 422A of a Federal default fee of an amount equal to 1.0 percent of the principal amount of the loan, which fee shall be collected either by deduction from the proceeds of the loan or by payment from other non-Federal sources, and ensures that the proceeds of the Federal default fee will not be used for incentive payments to lenders;".

(2) Unsubsidized loans.—Section 428H(h) (20 U.S.C. 1078–8(h)) is amended by adding at the end the following new sentences: "Effective for loans for which the date of guarantee of principal is on or after July 1, 2006, in lieu of the insurance premium authorized under the preceding sentence, each State or nonprofit private institution or organization having an agreement with the Secretary under section 428(b)(1) shall collect and deposit into the Federal Student Loan Reserve Fund under section 422A, a Federal default fee of an amount equal to 1.0 percent of the principal amount of the loan, which fee shall be collected either by deduction from the proceeds of the loan or by payment from other non-Federal sources. The Federal default fee shall not be used for incentive payments to lenders.".

(3) Voluntary flexible agreements.—Section 428A(a)(1) (20 U.S.C. 1078–1(a)(1)) is amended—

(A) by striking "or" at the end of subparagraph (A);

(B) by striking the period at the end of subparagraph (B) and inserting "; or"; and

(C) by adding at the end the following new subparagraph:

"(C) the Federal default fee required by section 428(b)(1)(H) and the second sentence of section 428H(h).".

(c) Treatment of Exempt Claims.—

(1) Amendment.—Section 428(c)(1) (20 U.S.C. 1078(c)(1)) is amended—

(A) by redesignating subparagraph (G) as subparagraph (H), and moving such subparagraph 2 em spaces to the left; and

(B) by inserting after subparagraph (F) the following new subparagraph:

"(G)(i) Notwithstanding any other provisions of this section, in the case of exempt claims, the Secretary shall apply the provisions of—

"(I) the fourth sentence of subparagraph (A) by substituting '100 percent' for '95 percent';

"(II) subparagraph (B)(i) by substituting '100 percent' for '85 percent'; and

"(III) subparagraph (B)(ii) by substituting '100 percent' for '75 percent'.

"(ii) For purposes of clause (i) of this subparagraph, the term 'exempt claims' means claims with respect to loans for which it is determined that the borrower (or the student on whose behalf a parent has borrowed), without the lender's or the institution's knowledge at the time the loan was made, provided false or erroneous information or took actions that caused the borrower or the student to be ineligible for all or a portion of the loan or for interest benefits thereon.".

(2) EFFECTIVE DATE OF AMENDMENTS.—The amendments made by this subsection shall apply with respect to loans for which the first disbursement of principal is made on or after July 1, 2006.

(d) CONSOLIDATION OF DEFAULTED LOANS.—Section 428(c) (20 U.S.C. 1078(c)) is further amended—

(1) in paragraph (2)(A)—

(A) by inserting "(i)" after "including"; and

(B) by inserting before the semicolon at the end the following: "and (ii) requirements establishing procedures to preclude consolidation lending from being an excessive proportion of guaranty agency recoveries on defaulted loans under this part";

(2) in paragraph (2)(D), by striking "paragraph (6)" and inserting "paragraph (6)(A)"; and

(3) in paragraph (6)—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(B) by inserting "(A)" before "For the purpose of paragraph (2)(D),"; and

(C) by adding at the end the following new subparagraphs:

"(B) A guaranty agency shall—

"(i) on or after October 1, 2006—

"(I) not charge the borrower collection costs in an amount in excess of 18.5 percent of the outstanding principal and interest of a defaulted loan that is paid off through consolidation by the borrower under this title; and

"(II) remit to the Secretary a portion of the collection charge under subclause (I) equal to 8.5 percent of the outstanding principal and interest of such defaulted loan; and

"(ii) on and after October 1, 2009, remit to the Secretary the entire amount charged under clause (i)(I) with respect to each defaulted loan that is paid off with excess consolidation proceeds.

"(C) For purposes of subparagraph (B), the term 'excess consolidation proceeds' means, with respect to any guaranty agency for any Federal fiscal year beginning on or after October 1, 2009, the proceeds of consolidation of defaulted loans under this title that exceed 45 percent of the agency's total collections on defaulted loans in such Federal fiscal year.".

(e) DOCUMENTATION OF FORBEARANCE AGREEMENTS.—Section 428(c) (20 U.S.C. 1078(c)) is further amended—

(1) in paragraph (3)(A)(i)—

(A) by striking "in writing"; and

(B) by inserting "and documented in accordance with paragraph (10)" after "approval of the insurer"; and

(2) by adding at the end the following new paragraph:

"(10) DOCUMENTATION OF FORBEARANCE AGREEMENTS.—For the purposes of paragraph (3), the terms of forbearance agreed to by the parties shall be documented by confirming the agreement of the borrower by notice to the borrower from the lender, and by recording the terms in the borrower's file.".

(f) VOLUNTARY FLEXIBLE AGREEMENTS.—Section 428A(a) (20 U.S.C. 1078–1(a)) is further amended—

(1) in paragraph (1)(B), by striking "unless the Secretary" and all that follows through "designated guarantor";

(2) by striking paragraph (2);

(3) by redesignating paragraph (3) as paragraph (2); and

(4) by striking paragraph (4).

(g) FRAUD; REPAYMENT REQUIRED.—Section 428B(a)(1) (20 U.S.C. 1078–2(a)(1)) is further amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following new subparagraph:

"(B) in the case of a graduate or professional student or parent who has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining funds under this title, such graduate or professional student or parent has completed the repayment of such funds to the Secretary, or to the holder in the case of a loan under this title obtained by fraud; and".

(h) DEFAULT REDUCTION PROGRAM.—Section 428F(a)(1) (20 U.S.C. 1078–6(a)(1)) is amended—

(1) in subparagraph (A), by striking "consecutive payments for 12 months" and inserting "9 payments made within 20 days of the due date during 10 consecutive months";

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) A guaranty agency may charge the borrower and retain collection costs in an amount not to exceed 18.5 percent of the outstanding principal and interest at the time of sale of a loan rehabilitated under subparagraph (A).".

(i) EXCEPTIONAL PERFORMANCE INSURANCE RATE.—Section 428I(b)(1) (20 U.S.C. 1078–9(b)(1)) is amended—

(1) in the heading, by striking "100 PERCENT" and inserting "99 PERCENT"; and

(2) by striking "100 percent of the unpaid" and inserting "99 percent of the unpaid".

(j) UNIFORM ADMINISTRATIVE AND CLAIMS PROCEDURE.—Section 432(l)(1)(H) (20 U.S.C. 1082(l)(1)(H)) is amended by inserting "and anticipated graduation date" after "status change".

(1) Section 428(a)(3)(A)(v) (20 U.S.C. 1078(a)(3)(A)(v)) is amended—

(A) by striking "or" at the end of subclause (I);

(B) by striking the period at the end of subclause (II) and inserting "; or"; and

(C) by adding after subclause (II) the following new subclause:

"(III) in the case of a loan disbursed through an escrow agent, 3 days before the first disbursement of the loan.".

(2) Section 428(c)(1)(A) (20 U.S.C. 1078(c)(1)(A)) is amended by striking "45 days" in the last sentence and inserting "30 days".

(3) Section 428(i)(1) (20 U.S.C. 1078(i)(1)) is amended by striking "21 days" in the third sentence and inserting "10 days".

SEC. 8015. FUNDS FOR ADMINISTRATIVE EXPENSES.

Section 458 is amended to read as follows:

"SEC. 458. FUNDS FOR ADMINISTRATIVE EXPENSES.

"(a) ADMINISTRATIVE EXPENSES.—

"(1) MANDATORY FUNDS FOR FISCAL YEAR 2006.—For fiscal year 2006, there shall be available to the Secretary, from funds not otherwise appropriated, funds to be obligated for—

"(A) administrative costs under this part and part B, including the costs of the direct student loan programs under this part; and

"(B) account maintenance fees payable to guaranty agencies under part B and calculated in accordance with subsections (b) and (c),

not to exceed (from such funds not otherwise appropriated) $820,000,000 in fiscal year 2006.

"(2) AUTHORIZATION FOR ADMINISTRATIVE COSTS BEGINNING IN FISCAL YEARS 2007 THROUGH 2011.—For each of the fiscal years 2007 through 2011, there are authorized to be appropriated such sums as may be necessary for administrative costs under this part and part B, including the costs of the direct student loan programs under this part.

"(3) CONTINUING MANDATORY FUNDS FOR ACCOUNT MAINTENANCE FEES.—For each of the fiscal years 2007 through 2011, there shall be available to the Secretary, from funds not otherwise appropriated, funds to be obligated for account maintenance fees payable to guaranty agencies under part B and calculated in accordance with subsection (b).

"(4) ACCOUNT MAINTENANCE FEES.—Account maintenance fees under paragraph (3) shall be paid quarterly and deposited in the Agency Operating Fund established under section 422B.

"(5) CARRYOVER.—The Secretary may carry over funds made available under this section to a subsequent fiscal year.

"(b) CALCULATION BASIS.—Account maintenance fees payable to guaranty agencies under subsection (a)(3) shall not exceed the basis of 0.10 percent of the original principal amount of outstanding loans on which insurance was issued under part B.

"(c) BUDGET JUSTIFICATION.—No funds may be expended under this section unless the Secretary includes in the Department of Education's annual budget justification to Congress a detailed description of the specific activities for which the funds made available by this section have been used in the prior and current years (if applicable), the activities and costs planned for the budget year, and the projection of activities and costs for each remaining year for which administrative expenses under this section are made available.".

SEC. 8016. COST OF ATTENDANCE.

Section 472 (20 U.S.C. 1087ll) is amended—

(1) by striking paragraph (4) and inserting the following:

"(4) for less than half-time students (as determined by the institution), tuition and fees and an allowance for only—

"(A) books, supplies, and transportation (as determined by the institution);

"(B) dependent care expenses (determined in accordance with paragraph (8)); and

"(C) room and board costs (determined in accordance with paragraph (3)), except that a student may receive an allowance for such costs under this subparagraph for not more than 3 semesters or the equivalent, of which not more than 2 semesters or the equivalent may be consecutive;";

(2) in paragraph (11), by striking "and" after the semicolon;

(3) in paragraph (12), by striking the period and inserting "; and"; and

(4) by adding at the end the following:

"(13) at the option of the institution, for a student in a program requiring professional licensure or certification, the one-time cost of obtaining the first professional credentials (as determined by the institution).".

SEC. 8017. FAMILY CONTRIBUTION.

(a) FAMILY CONTRIBUTION FOR DEPENDENT STUDENTS.—

(1) AMENDMENTS.—Section 475 (20 U.S.C. 1087oo) is amended—

(A) in subsection (g)(2)(D), by striking "$2,200" and inserting "$3,000"; and

(B) in subsection (h), by striking “35” and inserting “20”.

(2) Effective date.—The amendments made by paragraph (1) shall apply with respect to determinations of need for periods of enrollment beginning on or after July 1, 2007.

(b) Family Contribution for Independent Students Without Dependents Other Than a Spouse.—

(1) Amendments.—Section 476 (20 U.S.C. 1087pp) is amended—

(A) in subsection (b)(1)(A)(iv)—

(i) in subclause (I), by striking “$5,000” and inserting “$6,050”;

(ii) in subclause (II), by striking “$5,000” and inserting “$6,050”; and

(iii) in subclause (III), by striking “$8,000” and inserting “$9,700”; and

(B) in subsection (c)(4), by striking “35” and inserting “20”.

(2) Effective date.—The amendments made by paragraph (1) shall apply with respect to determinations of need for periods of enrollment beginning on or after July 1, 2007.

(c) Family Contribution for Independent Students With Dependents Other Than a Spouse.—

(1) Amendment.—Section 477(c)(4) (20 U.S.C. 1087qq(c)(4)) is amended by striking “12” and inserting “7”.

(2) Effective date.—The amendment made by paragraph (1) shall apply with respect to determinations of need for periods of enrollment beginning on or after July 1, 2007.

(d) Regulations; Updated Tables.—Section 478(b) (20 U.S.C. 1087rr(b)) is amended—

(1) in paragraph (1), by adding at the end the following: “For the 2007–2008 academic year, the Secretary shall revise the tables in accordance with this paragraph, except that the Secretary shall increase the amounts contained in the table in section 477(b)(4) by a percentage equal to the greater of the estimated percentage increase in the Consumer Price Index (as determined under the preceding sentence) or 5 percent.”; and

(2) in paragraph (2)—

(A) by striking “2000–2001” and inserting “2007–2008”; and

(B) by striking “1999” and inserting “2006”.

(e) Employment Expense Allowance.—Section 478(h) (20 U.S.C. 1087rr(h)) is amended—

(1) by striking “476(b)(4)(B),”; and

(2) by striking “meals away from home, apparel and upkeep, transportation, and housekeeping services” and inserting “food away from home, apparel, transportation, and household furnishings and operations”.

SEC. 8018. SIMPLIFIED NEED TEST AND AUTOMATIC ZERO IMPROVEMENTS.

(a) Amendments.—Section 479 (20 U.S.C. 1087ss) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking clause (i) and inserting the following:

“(i) the student's parents—

“(I) file, or are eligible to file, a form described in paragraph (3);

“(II) certify that the parents are not required to file a Federal income tax return; or

“(III) received, or the student received, benefits at some time during the previous 12-month period under a means-tested Federal benefit program as defined under subsection (d); and”; and

(ii) in subparagraph (B), by striking clause (i) and inserting the following:

“(i) the student (and the student's spouse, if any)—

“(I) files, or is eligible to file, a form described in paragraph (3);

“(II) certifies that the student (and the student's spouse, if any) is not required to file a Federal income tax return; or

“(III) received benefits at some time during the previous 12-month period under a means-tested Federal benefit program as defined under subsection (d); and”; and

(B) in the matter preceding subparagraph (A) of paragraph (3), by striking “A student or family files a form described in this subsection, or subsection (c), as the case maybe, if the student or family, respectively, files” and inserting “In the case of an independent student, the student, or in the case of a dependent student, the family, files a form described in this subsection, or subsection (c), as the case may be, if the student or family, as appropriate, files”;

(2) in subsection (c)—

(A) in paragraph (1)—

(i) by striking subparagraph (A) and inserting the following:

“(A) the student's parents—

“(i) file, or are eligible to file, a form described in subsection (b)(3);

“(ii) certify that the parents are not required to file a Federal income tax return; or

“(iii) received, or the student received, benefits at some time during the previous 12-month period under a means-tested Federal benefit program as defined under subsection (d); and”; and

(ii) by striking subparagraph (B) and inserting the following:

“(B) the sum of the adjusted gross income of the parents is less than or equal to $20,000; or”; and

(B) in paragraph (2)—

(i) by striking subparagraph (A) and inserting the following:

“(A) the student (and the student's spouse, if any)—

“(i) files, or is eligible to file, a form described in subsection (b)(3);

“(ii) certifies that the student (and the student's spouse, if any) is not required to file a Federal income tax return; or

“(iii) received benefits at some time during the previous 12-month period under a means-tested Federal benefit program as defined under subsection (d); and”; and

(ii) by striking subparagraph (B) and inserting the following:

“(B) the sum of the adjusted gross income of the student and spouse (if appropriate) is less than or equal to $20,000.”; and

(3) by adding at the end the following:

“(d) Definition of Means-Tested Federal Benefit Program.—In this section, the term ‘means-tested Federal benefit program’ means a mandatory spending program of the Federal Government, other than a program under this title, in which eligibility for the program's benefits, or the amount of such benefits, are determined on the basis of income or resources of the individual or family seeking the benefit, and may include such programs as—

“(1) the supplemental security income program under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.);

“(2) the food stamp program under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

“(3) the free and reduced price school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.);

“(4) the program of block grants for States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

“(5) the special supplemental nutrition program for women, infants, and children established by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786); and

“(6) other programs identified by the Secretary.”.

(b) Evaluation of Simplified Needs Test.—

(1) Eligibility guidelines.—The Secretary of Education shall regularly evaluate the impact of the eligibility guidelines in subsections (b)(1)(A)(i), (b)(1)(B)(i), (c)(1)(A), and (c)(2)(A) of section 479 of the Higher Education Act of 1965 (20 U.S.C. 1087ss(b)(1)(A)(i), (b)(1)(B)(i), (c)(1)(A), and (c)(2)(A)).

(2) Means-tested federal benefit program.—For each 3-year period, the Secretary of Education shall evaluate the impact of including the receipt of benefits by a student or parent under a means-tested Federal benefit program (as defined in section 479(d) of the Higher Education Act of 1965 (20 U.S.C. 1087ss(d)) as a factor in determining eligibility under subsections (b) and (c) of section 479 of the Higher Education Act of 1965 (20 U.S.C. 1087ss(b) and (c)).

SEC. 8019. ADDITIONAL NEED ANALYSIS AMENDMENTS.

(a) Treating Active Duty Members of the Armed Forces as Independent Students.—Section 480(d)(3) (20 U.S.C. 1087vv(d)(3)) is amended by inserting before the semicolon at the end the following: “or is currently serving on active duty in the Armed Forces for other than training purposes”.

(b) Definition of Assets.—Section 480(f)(1) (20 U.S.C. 1087vv(f)(1)) is amended by inserting “qualified education benefits (except as provided in paragraph (3)),” after “tax shelters,”.

(c) Treatment of Family Ownership of Small Businesses.—Section 480(f)(2) (20 U.S.C. 1087vv(f)(2)) is amended—

(1) in subparagraph (A), by striking “or”;

(2) in subparagraph (B), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following new subparagraph:

“(C) a small business with not more than 100 full-time or full-time equivalent employees (or any part of such a small business) that is owned and controlled by the family.”.

(d) Additional Definitions.—Section 480(f) is further amended by adding at the end the following new paragraphs:

“(3) A qualified education benefit shall not be considered an asset of a student for purposes of section 475.

“(4) In determining the value of assets in a determination of need under this title (other than for subpart 4 of part A), the value of a qualified education benefit shall be—

“(A) the refund value of any tuition credits or certificates purchased under a qualified education benefit; and

“(B) in the case of a program in which contributions are made to an account that is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account, the current balance of such account.

“(5) In this subsection:

“(A) The term ‘qualified education benefit’ means—

“(i) a qualified tuition program (as defined in section 529(b)(1)(A) of the Internal Revenue Code of 1986) or other prepaid tuition plan offered by a State; and

“(ii) a Coverdell education savings account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986).

“(B) The term ‘qualified higher education expenses’ has the meaning given the term in section 529(e) of the Internal Revenue Code of 1986.”.

(e) Designated Assistance.—Section 480(j) (20 U.S.C. 1087vv(j)) is amended—

(1) in the subsection heading, by striking “; Tuition Prepayment Plans”;

(2) by striking paragraph (2);

(3) by redesignating paragraph (3) as paragraph (2); and

(4) by adding at the end the following new paragraph:

“(3) Notwithstanding paragraph (1) and section 472, assistance not received under this title

may be excluded from both estimated financial assistance and cost of attendance, if that assistance is provided by a State and is designated by such State to offset a specific component of the cost of attendance. If that assistance is excluded from either estimated financial assistance or cost of attendance, it shall be excluded from both.".

SEC. 8020. GENERAL PROVISIONS.

(a) Academic Year.—Paragraph (2) of section 481(a) (20 U.S.C. 1088(a)) is amended to read as follows:

"(2)(A) For the purpose of any program under this title, the term 'academic year' shall—

"(i) require a minimum of 30 weeks of instructional time for a course of study that measures its program length in credit hours; or

"(ii) require a minimum of 26 weeks of instructional time for a course of study that measures its program length in clock hours; and

"(iii) require an undergraduate course of study to contain an amount of instructional time whereby a full-time student is expected to complete at least—

"(I) 24 semester or trimester hours or 36 quarter credit hours in a course of study that measures its program length in credit hours; or

"(II) 900 clock hours in a course of study that measures its program length in clock hours.

"(B) The Secretary may reduce such minimum of 30 weeks to not less than 26 weeks for good cause, as determined by the Secretary on a case-by-case basis, in the case of an institution of higher education that provides a 2-year or 4-year program of instruction for which the institution awards an associate or baccalaureate degree.".

(b) Distance Education: Eligible Program.—Section 481(b) (20 U.S.C. 1088(b)) is amended by adding at the end the following new paragraphs:

"(3) An otherwise eligible program that is offered in whole or in part through telecommunications is eligible for the purposes of this title if the program is offered by an institution, other than a foreign institution, that has been evaluated and determined (before or after the date of enactment of the Higher Education Reconciliation Act of 2005) to have the capability to effectively deliver distance education programs by an accrediting agency or association that—

"(A) is recognized by the Secretary under subpart 2 of part H; and

"(B) has evaluation of distance education programs within the scope of its recognition, as described in section 496(n)(3).

"(4) For purposes of this title, the term 'eligible program' includes an instructional program that, in lieu of credit hours or clock hours as the measure of student learning, utilizes direct assessment of student learning, or recognizes the direct assessment of student learning by others, if such assessment is consistent with the accreditation of the institution or program utilizing the results of the assessment. In the case of a program being determined eligible for the first time under this paragraph, such determination shall be made by the Secretary before such program is considered to be an eligible program.".

(c) Correspondence Courses.—Section 484(l)(1) (20 U.S.C. 1091(l)(1)) is amended—

(1) in subparagraph (A)—

(A) by striking "for a program of study of 1 year or longer"; and

(B) by striking "unless the total" and all that follows through "courses at the institution"; and

(2) by amending subparagraph (B) to read as follows:

"(B) Exception.—Subparagraph (A) shall not apply to an institution or school described in section 3(3)(C) of the Carl D. Perkins Vocational and Technical Education Act of 1998.".

SEC. 8021. STUDENT ELIGIBILITY.

(a) Fraud: Repayment Required.—Section 484(a) (20 U.S.C. 1091(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; and"; and

(2) by adding at the end the following new paragraph:

"(6) if the student has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining funds under this title, have completed the repayment of such funds to the Secretary, or to the holder in the case of a loan under this title obtained by fraud.".

(b) Verification of Income Date.—Paragraph (1) of section 484(q) (20 U.S.C. 1091(q)) is amended to read as follows:

"(1) Confirmation with IRS.—The Secretary of Education, in cooperation with the Secretary of the Treasury, is authorized to confirm with the Internal Revenue Service the information specified in section 6103(l)(13) of the Internal Revenue Code of 1986 reported by applicants (including parents) under this title on their Federal income tax returns for the purpose of verifying the information reported by applicants on student financial aid applications.".

(c) Suspension of Eligibility for Drug Offenses.—Section 484(r)(1) (20 U.S.C. 1091(r)(1)) is amended by striking everything preceding the table and inserting the following:

"(1) In general.—A student who is convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance for conduct that occurred during a period of enrollment for which the student was receiving any grant, loan, or work assistance under this title shall not be eligible to receive any grant, loan, or work assistance under this title from the date of that conviction for the period of time specified in the following table:".

SEC. 8022. INSTITUTIONAL REFUNDS.

Section 484B (20 U.S.C. 1091b) is amended—

(1) in the matter preceding clause (i) of subsection (a)(2)(A), by striking "a leave of" and inserting "1 or more leaves of";

(2) in subsection (a)(3)(B)(ii), by inserting "(as determined in accordance with subsection (d))" after "student has completed";

(3) in subsection (a)(3)(C)(i), by striking "grant or loan assistance under this title" and inserting "grant assistance under subparts 1 and 3 of part A, or loan assistance under parts B, D, and E,";

(4) in subsection (a)(4), by amending subparagraph (A) to read as follows:

"(A) In general.—After determining the eligibility of the student for a late disbursement or post-withdrawal disbursement (as required in regulations prescribed by the Secretary), the institution of higher education shall contact the borrower and obtain confirmation that the loan funds are still required by the borrower. In making such contact, the institution shall explain to the borrower the borrower's obligation to repay the funds following any such disbursement. The institution shall document in the borrower's file the result of such contact and the final determination made concerning such disbursement.";

(5) in subsection (b)(1), by inserting "not later than 45 days from the determination of withdrawal" after "return";

(6) in subsection (b)(2), by amending subparagraph (C) to read as follows:

"(C) Grant overpayment requirements.—

"(i) In general.—Notwithstanding subparagraphs (A) and (B), a student shall only be required to return grant assistance in the amount (if any) by which—

"(I) the amount to be returned by the student (as determined under subparagraphs (A) and (B)), exceeds

"(II) 50 percent of the total grant assistance received by the student under this title for the payment period or period of enrollment.

"(ii) Minimum.—A student shall not be required to return amounts of $50 or less.";

(7) in subsection (d), by striking "(a)(3)(B)(i)" and inserting "(a)(3)(B)"; and

(8) in subsection (d)(2), by striking "clock hours—" and all that follows through the period and inserting "clock hours scheduled to be completed by the student in that period as of the day the student withdrew.".

SEC. 8023. COLLEGE ACCESS INITIATIVE.

Part G is further amended by inserting after section 485C (20 U.S.C. 1092c) the following new section:

"SEC. 485D. COLLEGE ACCESS INITIATIVE.

"(a) State-by-State Information.—The Secretary shall direct each guaranty agency with which the Secretary has an agreement under section 428(c) to provide to the Secretary the information necessary for the development of Internet web links and access for students and families to a comprehensive listing of the postsecondary education opportunities, programs, publications, Internet web sites, and other services available in the States for which such agency serves as the designated guarantor.

"(b) Guaranty Agency Activities.—

"(1) Plan and activity required.—Each guaranty agency with which the Secretary has an agreement under section 428(c) shall develop a plan, and undertake the activity necessary, to gather the information required under subsection (a) and to make such information available to the public and to the Secretary in a form and manner as prescribed by the Secretary.

"(2) Activities.—Each guaranty agency shall undertake such activities as are necessary to promote access to postsecondary education for students through providing information on college planning, career preparation, and paying for college. The guaranty agency shall publicize such information and coordinate such activities with other entities that either provide or distribute such information in the States for which such guaranty agency serves as the designated guarantor.

"(3) Funding.—The activities required by this section may be funded from the guaranty agency's Operating Fund established pursuant to section 422B and, to the extent funds remain, from earnings on the restricted account established pursuant to section 422(h)(4).

"(4) Rule of construction.—Nothing in this subsection shall be construed to require a guaranty agency to duplicate any efforts under way on the date of enactment of the Higher Education Reconciliation Act of 2005 that meet the requirements of this section.

"(c) Access to Information.—

"(1) Secretary's responsibility.—The Secretary shall ensure the availability of the information provided, by the guaranty agencies in accordance with this section, to students, parents, and other interested individuals, through Internet web links or other methods prescribed by the Secretary.

"(2) Guaranty agency responsibility.—The guaranty agencies shall ensure that the information required by this section is available without charge in printed format for students and parents requesting such information.

"(3) Publicity.—Not later than 270 days after the date of enactment of the Higher Education Reconciliation Act of 2005, the Secretary and guaranty agencies shall publicize the availability of the information required by this section, with special emphasis on ensuring that populations that are traditionally underrepresented in postsecondary education are made aware of the availability of such information.".

SEC. 8024. WAGE GARNISHMENT REQUIREMENT.

Section 488A(a)(1) (20 U.S.C. 1095a(a)(1)) is amended by striking "10 percent" and inserting "15 percent".

Subtitle B—Pensions

SEC. 8201. INCREASES IN PBGC PREMIUMS.

(a) Flat-Rate Premiums.—

(1) SINGLE-EMPLOYER PLANS.—

(A) IN GENERAL.—Clause (i) of section 4006(a)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended by striking "$19" and inserting "$30".

(B) ADJUSTMENT FOR INFLATION.—Section 4006(a)(3) of such Act (29 U.S.C. 1306(a)(3)) is amended by adding at the end the following new subparagraph:

"(F) For each plan year beginning in a calendar year after 2006, there shall be substituted for the premium rate specified in clause (i) of subparagraph (A) an amount equal to the greater of—

"(i) the product derived by multiplying the premium rate specified in clause (i) of subparagraph (A) by the ratio of—

"(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which such plan year begins, to

"(II) the national average wage index (as so defined) for 2004; and

"(ii) the premium rate in effect under clause (i) of subparagraph (A) for plan years beginning in the preceding calendar year.

If the amount determined under this subparagraph is not a multiple of $1, such product shall be rounded to the nearest multiple of $1.".

(2) MULTIEMPLOYER PLANS.—

(A) IN GENERAL.—Section 4006(a)(3)(A) of such Act (29 U.S.C. 1306(a)(3)(A)) is amended—

(i) in clause (iii)—

(I) by inserting "and before January 1, 2006." after "Act of 1980,"; and

(II) by striking the period at the end and inserting ", or"; and

(ii) by adding at the end the following:

"(iv) in the case of a multiemployer plan, for plan years beginning after December 31, 2005, $8.00 for each individual who is a participant in such plan during the applicable plan year.".

(B) ADJUSTMENT FOR INFLATION.—Section 4006(a)(3) of such Act (29 U.S.C. 1306(a)(3)), as amended by this subsection, is amended by adding at the end the following new subparagraph:

"(G) For each plan year beginning in a calendar year after 2006, there shall be substituted for the premium rate specified in clause (iv) of subparagraph (A) an amount equal to the greater of—

"(i) the product derived by multiplying the premium rate specified in clause (iv) of subparagraph (A) by the ratio of—

"(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which such plan year begins, to

"(II) the national average wage index (as so defined) for 2004; and

"(ii) the premium rate in effect under clause (iv) of subparagraph (A) for plan years beginning in the preceding calendar year.

If the amount determined under this subparagraph is not a multiple of $1, such product shall be rounded to the nearest multiple of $1.".

(b) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—Subsection (a) of section 4006 of such Act (29 U.S.C. 1306) is amended by adding at the end the following:

"(7) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—

"(A) IN GENERAL.—If there is a termination of a single-employer plan under clause (ii) or (iii) of section 4041(c)(2)(B) or section 4042, there shall be payable to the corporation, with respect to each applicable 12-month period, a premium at a rate equal to $1,250 multiplied by the number of individuals who were participants in the plan immediately before the termination date. Such premium shall be in addition to any other premium under this section.

"(B) SPECIAL RULE FOR PLANS TERMINATED IN BANKRUPTCY REORGANIZATION.—In the case of a single-employer plan terminated under section 4041(c)(2)(B)(ii) or under section 4042 during pendency of any bankruptcy reorganization proceeding under chapter 11 of title 11, United States Code, or under any similar law of a State or a political subdivision of a State (or a case described in section 4041(c)(2)(B)(i) filed by or against such person has been converted, as of such date, to such a case in which reorganization is sought), subparagraph (A) shall not apply to such plan until the date of the discharge or dismissal of such person in such case.

"(C) APPLICABLE 12-MONTH PERIOD.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The term 'applicable 12-month period' means—

"(I) the 12-month period beginning with the first month following the month in which the termination date occurs, and

"(II) each of the first two 12-month periods immediately following the period described in subclause (I).

"(ii) PLANS TERMINATED IN BANKRUPTCY REORGANIZATION.—In any case in which the requirements of subparagraph (B)(i)(I) are met in connection with the termination of the plan with respect to 1 or more persons described in such subparagraph, the 12-month period described in clause (i)(I) shall be the 12-month period beginning with the first month following the month which includes the earliest date as of which each such person is discharged or dismissed in the case described in such clause in connection with such person.

"(D) COORDINATION WITH SECTION 4007.—

"(i) Notwithstanding section 4007—

"(I) premiums under this paragraph shall be due within 30 days after the beginning of any applicable 12-month period, and

"(II) the designated payor shall be the person who is the contributing sponsor as of immediately before the termination date.

"(ii) The fifth sentence of section 4007(a) shall not apply in connection with premiums determined under this paragraph.

"(E) TERMINATION.—Subparagraph (A) shall not apply with respect to any plan terminated after December 31, 2010.".

(c) CONFORMING AMENDMENT.—Section 4006(a)(3)(B) of such Act (29 U.S.C. 1306(a)(3)(B)) is amended by striking "subparagraph (A)(iii)" and inserting "clause (iii) or (iv) of subparagraph (A)".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to plan years beginning after December 31, 2005.

(2) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (b) shall apply to plans terminated after December 31, 2005.

(B) SPECIAL RULE FOR PLANS TERMINATED IN BANKRUPTCY.—The amendment made by subsection (b) shall not apply to a termination of a single-employer plan that is terminated during the pendency of any bankruptcy reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State), if the proceeding is pursuant to a bankruptcy filing occurring before October 18, 2005.

TITLE IX—LIHEAP PROVISIONS

SEC. 9001. FUNDING AVAILABILITY.

(a) IN GENERAL.—In addition to amounts otherwise made available, there are appropriated, out of any money in the Treasury not otherwise appropriated, to the Secretary of Health and Human Services for a 1-time only obligation and expenditure—

(1) $250,000,000 for fiscal year 2007 for allocation under section 2604(a) through (d) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8623(a) through (d)); and

(2) $750,000,000 for fiscal year 2007 for allocation under section 2604(e) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8623(e)).

(b) SUNSET.—The provisions of this section shall terminate, be null and void, and have no force and effect whatsoever after September 30, 2007. No monies provided for under this section shall be available after such date.

TITLE X—JUDICIARY RELATED PROVISIONS

Subtitle A—Civil Filing Adjustments

SEC. 10001. CIVIL CASE FILING FEE INCREASES.

(a) CIVIL ACTIONS FILED IN DISTRICT COURTS.—Section 1914(a) of title 28, United States Code, is amended by striking "$250" and inserting "$350".

(b) APPEALS FILED IN COURTS OF APPEALS.—The $250 fee for docketing a case on appeal or review, or docketing any other proceeding, in a court of appeals, as prescribed by the Judicial Conference, effective as of January 1, 2005, under section 1913 of title 28, United States Code, shall be increased to $450.

(c) EXPENDITURE LIMITATION.—Incremental amounts collected by reason of the enactment of this section shall be deposited in a special fund in the Treasury to be established after the enactment of this Act. Such amounts shall be available for the purposes specified in section 1931(a) of title 28, United States Code, but only to the extent specifically appropriated by an Act of Congress enacted after the enactment of this Act.

(d) EFFECTIVE DATE.—This section and the amendment made by this section shall take effect 60 days after the date of the enactment of this Act.

Subtitle B—Bankruptcy Fees

SEC. 11101. BANKRUPTCY FEES.

(a) BANKRUPTCY FILING FEES.—Section 1930(a) of title 28, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (A) by striking "$220" and inserting "$245"; and

(B) in subparagraph (B) by striking "$150" and inserting "$235"; and

(2) in paragraph (2) by striking "$1,000" and inserting "$2,750".

(b) EXPENDITURE LIMITATION.—Incremental amounts collected by reason of the amendments made by subsection (a) shall be deposited in a special fund in the Treasury to be established after the enactment of this Act. Such amounts shall be available for the purposes specified in section 1931(a) of title 28, United States Code, but only to the extent specifically appropriated by an Act of Congress enacted after the enactment of this Act.

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect 60 days after the date of the enactment of this Act.

VACATING ORDERING OF YEAS AND NAYS ON H.R. 4659, USA PATRIOT ACT 5-WEEK EXTENSION

Mr. SENSENBRENNER. Mr. Speaker. I ask unanimous consent that the ordering of the yeas and nays on H.R. 4659 be vacated to the end that the Chair put the question de novo.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 4659.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

RESIGNATION AS CHAIRMAN AND ELECTION AS CHAIRMAN OF COMMITTEE ON HOUSE ADMINISTRATION

The SPEAKER pro tempore laid before the House the following resignation as chairman of the Committee on House Administration:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES, COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC, January 17, 2006.

Hon. J. DENNIS HASTERT,
Speaker of the House of Representatives, the Capitol, Washington, DC.

DEAR MR. SPEAKER: It has been an honor and a privilege to serve you and the House as Chairman of the Committee on House Administration for the past five years. I am grateful to you for the opportunity you gave me to serve in this position, and am very proud of my record of service.

Over the course of the past year, there have been numerous reports questioning the propriety of certain actions I have taken. I assure you that I have done absolutely nothing wrong, and I am convinced this truth will ultimately be shown and the accusations made against me will be proven groundless.

However, it has become clear to me that the allegations surrounding me and ensuing investigations have become a distraction within the Committee and our Conference. Therefore to preserve the integrity of the Committee on House Administration, I regret to inform you that I have decided to step down from the Chair at this time. My love and respect for this institution and the Committee is too great for me to allow this distraction to interfere with our ability to get our important work done.

Our Conference has important issues to address for the American people in the upcoming year. I will continue to support the ideals of this party and country and assist you in any way I can as we move forward on our agenda. Once the allegations that have been made against me have been shown to be false, I look forward to resuming the Chair for the rest of my appointed term and continuing the important work of the Committee.

Sincerely,

BOB NEY.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

Ms. PRYCE of Ohio. Mr. Speaker, I offer a resolution (H. Res. 664) and ask unanimous consent for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 664

Resolved, That the following named Member be, and that he hereby is, elected to the following standing committee of the House of Representatives:

Committee on House Administration: Mr. Ehlers, Chairman.

Resolved, That the following named Member be, and that he hereby is, ranked as follows on the following standing committee of the House of Representatives:

Committee on House Administration: Mr. Ney, after Mr. Ehlers.

The SPEAKER pro tempore (Mr. BOUSTANY). Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

□ 1715

PROVIDING FOR AN ADJOURNMENT OF THE HOUSE

Ms. PRYCE of Ohio. Mr. Speaker, I offer a privileged concurrent resolution (H. Con. Res. 332) and ask for its immediate consideration.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 332

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of Wednesday, February 1, 2006, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 2 p.m. on Tuesday, February 7, 2006, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on the legislative day of Wednesday, February 8, 2006, or Thursday, February 9, 2006, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 2 p.m. on Tuesday, February 14, 2006, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker or his designee, after consultation with the Minority Leader, shall notify the Members of the House to reassemble at such place and time as he may designate if, in his opinion, the public interest shall warrant it.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

CONDITIONAL ADJOURNMENT TO FRIDAY, FEBRUARY 3, 2006

Ms. PRYCE of Ohio. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 2 p.m. on Friday, February 3, 2006, unless it sooner has received a message from the Senate transmitting its concurrence in House Concurrent Resolution 332, in which case the House shall stand adjourned pursuant to that concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Ms. PRYCE of Ohio. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

APPOINTMENT OF HONORABLE MAC THORNBERRY AND HONORABLE TOM DAVIS TO ACT AS SPEAKER PRO TEMPORE TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS THROUGH FEBRUARY 7, 2006

The SPEAKER pro tempore laid before the House the following communication:

HOUSE OF REPRESENTATIVES,
Washington, DC, February 1, 2006.

I hereby appoint the Honorable MAC THORNBERRY and the Honorable TOM DAVIS to act as Speaker pro tempore to sign enrolled bills and joint resolutions through February 7, 2006.

J. DENNIS HASTERT
Speaker of the House of Representatives.

Without objection, the appointment is approved.

There was no objection.

HONORING THE LIFE AND ACCOMPLISHMENTS OF MRS. CORETTA SCOTT KING

The SPEAKER pro tempore. Pursuant to the order of the House of Tuesday, January 31, 2006, proceedings will now resume on the resolution (H. Res. 655) honoring the life and accomplishments of Mrs. Coretta Scott King and her contributions as a leader in the struggle for civil rights, and expressing condolences to the King family on her passing.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. When proceedings were postponed on that day, 3½ minutes of debate remained on the resolution. The gentleman from Wisconsin (Mr. SENSENBRENNER) had 3½ minutes remaining, and the gentleman from Michigan (Mr. CONYERS) had no time remaining.

The Chair recognizes the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that the time for debate on the pending resolution be enlarged by 30 minutes, equally divided between myself and the gentleman from Michigan (Mr. CONYERS).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The SPEAKER pro tempore. The gentleman from Wisconsin will have 18½ minutes, and the gentleman from Michigan will have 15 minutes.

Mr. SENSENBRENNER. Mr. Speaker, I yield 4 minutes to the gentleman from Ohio (Mr. REGULA).

Mr. REGULA. Mr. Speaker, I thank the gentleman for yielding me this time. I want to rise to say that I served with Coretta Scott King on the Federal Holiday Commission. She was the chair and I was vice-chair at her request. She did a wonderful job of carrying on the message of Dr. King. She traveled widely and was highly respected in her efforts to take the message across America and the world.

The fact that 50 States now acknowledge the Federal King holiday is in part out of respect for her leadership on the Federal Holiday Commission. The Commission was designed to achieve that. In addition, many communities across the country have celebrations of the King holiday and the life of Martin Luther King and bring to college students, to high school, and grade school students the story of how he impacted our Nation's future and our society. This happened because of her leadership as chairman of the Federal Holiday Commission.

She truly was a remarkable woman. She deserves enormous credit for carrying on the legacy of Dr. King and taking this message to America. I just have to say that she did this with great humility, with great understanding, and great ability to persuade those that she came in contact with, with groups and leaders across the Nation, of the importance of the King message.

Her life is something that we should all respect and cherish as part of the American scene. I think she deserves enormous credit for what she accomplished as chairman of the Holiday Commission. She made happen what the intent of Congress was in passing the holiday language, that the message be taken to the States and to the people of the Nation. Many of these celebrations are as a result of her efforts. A truly great woman. A great individual.

She has been recognized by many groups and well deserved all of the accolades that she has received. Her death is a great loss to our Nation; but her life was a great strength for our Nation, and we are all indebted to her for the leadership she provided.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from California (Mr. SCHIFF), a distinguished member of the Judiciary Committee.

And I would like to thank the chairman of the Judiciary Committee (Mr. SENSENBRENNER) for accommodating us with the extra time that we have here this evening for the Coretta Scott King resolution.

Mr. SCHIFF. Mr. Speaker, I rise today to honor the life of Mrs. Coretta Scott King, a civil rights icon. Raised on a small farm in Alabama, Coretta Scott found her way to Boston where she met Martin Luther King, Jr. The two married and moved to Montgomery, Alabama, where Dr. King became the seminal figure of the civil rights movement. Mrs. King joined her husband's pursuit of civil rights by serving as an equal partner in Dr. King's tireless efforts to pursue justice, equality, and peace.

Mrs. King recalled that after her husband's tragic assassination she felt compelled to rededicate herself to the completion of his work. Indeed, Coretta Scott King became an ardent activist in the struggle against injustice, fighting to achieve Dr. King's unfulfilled dreams.

Two years ago, I joined a civil rights pilgrimage to Alabama, and it was a remarkable experience. Led by Congressman JOHN LEWIS, a number of our colleagues visited many of the sites of the civil rights struggles, including the Kings' Dexter Avenue church. We relived the experiences of those that led the movement, saw the incredible events of that time through their eyes, and it was an unforgettable experience.

Those of us who were too young to remember well the civil rights movement continue to ask ourselves what would we have done. Would we have stood up? Would we have questioned those in power? Would we have demanded equality and justice? Or would we, like so many Americans, have remained indifferent?

The best answer we can find to that question of what we would have done is answered by asking what are we doing now to advance the cause of justice and equality. In 1960s Alabama, the Kings battled overt bigotry. Today, we arm ourselves against silent intolerance.

While we look to our past and consider how far we have come, we must keep an eye towards the future, knowing that the movement is not over and that each one of us must continue to dedicate ourselves to pursuing an America with equal opportunity for all.

Mr. CONYERS. Mr. Speaker, I am pleased now to yield 2 minutes to the gentleman from New York (Mr. RANGEL), a dear friend of the honoree in this resolution, who had worked with Mrs. King for many years.

Mr. RANGEL. Mr. Speaker, I thank former chairman CONYERS for yielding me this time. It is really ironic that you would be on the Judiciary Committee during all of the years that it took to get the King holiday there; and also that, as a Member of Congress, you lived through the civil rights movement with the people that we have honored in the past and with Dr. Coretta King.

I think if we had to review where we are with Coretta King, it is that she wasn't that woman behind a successful man. She was truly a partner and a leader in her own right. Somehow she knew when to speak out and when just to leave it to Martin Luther King.

What I have found over the years is that she has such a personality and such a soothing voice; but, boy, I am telling you, if it dealt with a challenge against what is right, against inequality and injustice, this very soft spoken, beautiful woman knew how a civil rights leader is supposed to take risk and go to the mat.

☐ 1730

When we lost Dr. King, how quickly she was able to pick up that torch and to give to this Nation the leadership that really turned us around from a Nation that was struggling with racism and even today continues in that fight for equality for all Americans.

Those of us that were able to march with Dr. Martin Luther King cannot think of a time when she was not there marching with him. Any pictures from the past, Coretta Scott King was there.

How often we work with these people as though they are mere mortals, only to find out when they are gone how deep that vacuum has been made by their loss. For all of the groups that Coretta Scott King has provided the leadership for, we hope since we cannot replace Coretta King, that all of us have in us some type, some quality of the conviction and the courage that Dr. King and his beautiful wife had. And collectively, if all of us can say this is not a struggle for the King family or a civil rights leader, but a struggle for this great country, I think we can move forward.

Mr. Speaker, I rise today to honor the life and legacy of Mrs. Coretta Scott King and to add my support to H. Res. 655 honoring the life of this extraordinary woman. As much as we loved and respected Mrs. King, her family has suffered an even greater loss. To the King children—Yolanda, Martin III, Dexter, and Bernice, know that you have our deepest heartfelt sympathy.

Hailed as the 'First Lady of the Civil Rights Movement', Coretta Scott King had to endure injustices at an early age. Born in Heiberger, Alabama and raised on the farm of her parents Bernice McMurry Scott, and Obadiah Scott, she was exposed at an early age to the injustices of life in a segregated society. She walked five miles a day to attend the one-room Crossroad School in Marion, Alabama, while the White students rode buses to an all-White school closer by. Yet through it all, young Coretta excelled at her studies, particularly music, and was valedictorian of her graduating class at Lincoln High School.

She graduated in 1945 and received a scholarship to Antioch College in Yellow Springs, Ohio. As an undergraduate, she took an active interest in the emerging civil rights movement; and joined the Antioch chapter of the NAACP, as well as the college's Race Relations and Civil Liberties Committees.

Her life would be forever changed when she met a young theology student, Martin Luther King, Jr. They were married on June 18, 1953, in a ceremony conducted by King's father, the Rev. Martin Luther King, Sr.

Coretta Scott King was very supportive to her husband during the most turbulent days of the American civil rights movement. After his assassination in Memphis, Tennessee, on April 4, 1968, she kept his dream alive while also raising their four children. In her own words, she was "more determined than ever that her husband's dream would become a reality."

For more than a decade, she worked tirelessly to have her husband's birthday observed as a national holiday. Her determination would payoff when it was first celebrated in 1986.

In 1969, she established the Martin Luther King Jr. Center for Nonviolent Social Change in Atlanta, dedicated both to scholarship and to activism.

With fierce determination and undying strength, Mrs. King worked to keep Dr. King's ideology of equality for all people at the forefront of people's minds. She picked up the baton when it was dropped by her husband's assassination and continued to move forward in the civil rights arena.

In her own words, "We must make our hearts instruments of peace and nonviolence, because when the heart is right, the mind and the body will follow."

She exemplified courage, strength, and a deep compassion for justice. Coretta Scott King will be remembered as one of America's greatest treasures and will be forever missed.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. LEE), who has worked in the King venue even before she became a Member of Congress when she was a staffer and when she was a State senator in California.

Ms. LEE. Mr. Speaker, I want to thank the gentleman for yielding me this time and for his leadership and say to him what an honor it is to serve with him. Mr. CONYERS is truly an icon and someone for us all to follow.

It is with a deep sense of gratitude and yet a deep sense of sadness that I rise tonight to pay tribute to the late Coretta Scott King and offer my sincerest condolences and prayers to her family and friends.

Today we mourn the loss of an incredible woman, an American legacy. She joined her husband, the late Dr. Martin Luther King, Jr., on the front lines of the civil rights movement and made it her life's work to ensure that civil rights, a nonviolent struggle for justice, continued. You see, Mrs. King's marathon for justice and yes, for peace, transcended race, gender and national boundaries.

Mrs. King was really an example for us all of us. I remember her leadership in fighting to end apartheid in South Africa and her determination to connect all of the dots of how social injustices affect us all.

As a congressional staffer to my predecessor Congressman Dellums, I remember the 15-year legislative battle, led by the great Congressman Mr. JOHN CONYERS to create a national holiday honoring Dr. King, but it took a grassroots national movement and Mrs. King's tireless advocacy to finally have this legislation enacted into law. That is when I first met this brilliant, beautiful woman.

Mrs. King was a role model for many women, including myself. On several occasions she reached out to me to offer her counsel, support and love. I will always remember her words of support and her comfort during some very challenging times for me. She hugged me, and would always tell me to stay the course, and she would say that is what Martin would want.

Several years ago I was invited to keynote the Martin Luther march and rally in Atlanta on Dr. King's birthday. Again, she encouraged me to remember Martin and his quest for peace through nonviolence as part of my work as a Member of Congress. I will deeply miss this great woman.

Mrs. King stood tall when many would have been overwhelmed. Imagine how she coped when her husband was arrested, beaten and wiretapped. She was an amazing woman, and we are going to miss her.

Mr. Speaker, my thoughts and prayers are with the King family this evening as we honor and as we celebrate the life of this great woman. Let us ensure that the flame of nonviolence and peace burns in her memory.

Mr. Speaker, I thank Mr. CONYERS for making sure that we have the opportunity to reflect on this great woman tonight.

Mr. Speaker, it is with a deep sense of sadness yet gratitude that I rise to pay tribute to the late Coretta Scott King, and offer my sincerest condolences and prayers to her family and friends.

Today, we mourn the loss of an incredible woman—an American legacy. She joined her husband, the late Dr. Martin Luther King, Jr., on the frontlines of the civil rights movement and made it her life's work to ensure that the civil rights and non-violent struggle for justice and peace continued.

You see Mrs. King's marathon for justice and peace transcended race, gender and national boundaries. Mrs. King was an example to us all; I remember her leadership in fighting to end apartheid in South Africa, and her determination to connect the dots of how social injustice affects us all.

As a congressional staffer to my predecessor Congressman Ronald V. Dellums, I remember well the 15-year legislative battle led by Congressman CONYERS to create a national holiday honoring Dr. King. It took a grassroots, national movement, and Mrs. King's tireless advocacy to finally have this legislation signed into law. That is when I first met this brilliant, beautiful woman.

Mrs. King was a role model for many women, including myself. On several occasions, she reached out to me to offer her counsel, support and love. I'll always remember her words support and comfort during some challenging times for me. She hugged me, told me to stay the course and that would be what Martin would want.

Several years ago, I was invited to keynote the MLK March and Rally in Atlanta on Dr. King's birthday. Again, Mrs. King encouraged me to remember Martin in his quest for peace through non-violence as part of my work as a Member of Congress. I will deeply miss this great woman.

As the head of the first family of the civil rights movement, Mrs. King always handled everything with a distinct style and grace. As a single-parent to their four children—Yolanda, Martin III, Dexter and Bernice, she raised and educated her children while keeping Dr. King's dream alive. What a woman.

Mrs. King stood tall when many would have been overwhelmed. Imagine how she coped with her husband being arrested, beaten and stabbed, her home being bombed, her phone ringing with hate calls at all times of the day and night. Imagine how she felt isolated and hunted by the very ones who swore to protect her family.

Mr. Speaker, I would like to read an excerpt from Mrs. King's autobiography, My Life with Martin Luther King, Jr., just to give you a glimpse of how the King family persevered despite being under constant attack—by segregationists, by pro-war radicals, and even by her own government. She wrote:

". . . By 1965 we were sure that the FBI was tapping lines and was treating the Movement as if it were an alien enemy. We accepted that as part of the evil and injustice that come with leadership which challenges the status quo. We knew we did not deserve that treatment from our government. . . . We believed in our vows; we never became embittered or disillusioned; we held on to our faith. . . . We were not intimidated; we just realized that it was too much to try to take on an organization like that while maintaining our struggle for civil rights. How much farther we still had to go!" Mrs. King endured warrantless domestic spying.

In Northern California, many continue to look to Coretta Scott King as a beacon of dignity in the face of adversity. We are a cultural and ethnic mosaic and continue to strive to realize the goals of the Kings' dream—peace, equality, and freedom.

Today as we pay tribute to Mrs. King's legacy, we must never forget her sacrifices and contributions to protect the liberties and rights that so many of us take for granted. And we need to recommit ourselves to the goals and ideals that she envisioned and embodied.

Wars and rumors of wars permeate our existence. Many of our young people see violence as an option to solve their problems. Mrs. King's life was about non-violence, and those who mourn her loss should embrace her ideals of peace and non-violence. It is in times like these that we must recall the legacy of Mrs. King embodied in places like Oakland's Martin Luther King, Jr. Freedom Center which brings together our community to develop peaceful, nonviolent solutions to the challenges we all continue to face.

My thoughts and prayers are with the King family this evening as we honor and celebrate the life of this great woman. Let us ensure that the flame of nonviolence and peace burns in her memory.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Mrs. CAPPS), who has worked tirelessly in the field of health care since she came to Congress.

Mrs. CAPPS. Mr. Speaker, I thank my colleague from Michigan for his leadership and for yielding me this time to speak.

The opportunity to speak in memory of Coretta Scott King and the importance today to acknowledge not only what she did for racial justice in this country and the rest of the world, but what she contributed to women's rights, to children's rights, gay and lesbian rights, religious freedom, the needs of the homeless and poor, full employment, health care, educational opportunities, and the continued unrelenting emphasis on nonviolence.

She was a mentor for me and so many of us. She did not take the easy path, she took the right path. The recent confirmation of two new Supreme Court justices reminds us of the importance of expanding our civil rights, not limiting them. We can do this in memory and honor of both Martin and Coretta, and it is their lives being dedicated to the highest values of human dignity and pushing for social change that stand as a pinnacle for what we want to continue to achieve.

I have fond memory of hearing with my husband when we were studying at Yale University early in the 1960s, hearing this young promising preacher from the South come and preach in Battelle Chapel. I was touched that day, and have been ever since.

Here we have also had the mentorship of our dear colleague, Mr. JOHN LEWIS, and in taking so many of us, me included, down to Birmingham, Selma and Montgomery, I will always remember walking across the Edmund Pettus Bridge, and of course 2 weeks later, Dr. Martin Luther King led 25,000 men, women and children on that unforgettable march from Selma to Montgomery. Within 3 years he was assassinated, and how that must have affected his young widow. She had the responsibility to raise those young children and be concerned with his legacy, but she became a champion in her own right.

I know that we now can fully appreciate what she has accomplished and are dedicated to continuing. In her words, I want to close with these three phrases that she said, "Be a drum major for justice. Be a drum major for love. Be a drum major for peace." Thank you, Coretta Scott King, for your life.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Georgia (Mr. SCOTT), who has shown his interest in the ideals of Dr. King by joining the Committee on the Judiciary in connection with the Voter Rights Act extension which is currently under debate.

Mr. SCOTT of Georgia. Mr. Speaker, I thank the gentleman for allowing me the opportunity not only to serve with him on the Voting Rights Act reaffirmation, but also for being able to be part of this extraordinary effort this evening on behalf of Mrs. King.

I am a proud Member of Atlanta, Georgia, a product of the civil rights movement, a product of the political movement, which says it all when you step up here and mention the name of Coretta Scott King.

I am very pleased to be able to stand here in the United States Congress and say that I am here because Coretta Scott King touched my life. In 1974, just out of college, the opportunity came for me to step into the political arena in a bid for the State House of Representatives, and at the time to be one of the youngest, but not the youngest, to be elected to that body. It was Coretta Scott King that invited me into Ebenezer to be her Youth Day speaker. Can you imagine what it meant to me to stand in that pulpit where Dr. King was? She gave me advice that sticks with me today. She gave me advice from a scripture that was so meaningful to me, that gave me the courage to step out and run for office, and that scripture was in the Book of Ephesians and Paul's letter where he said put on the whole arm of God so you will be able to stand in the evil day and having done all to stand.

That is what Coretta Scott King did for me, to give me the encouragement.

She was more than just Dr. Martin Luther King's wife, she was a leader in her own right. And in many measures perhaps when her legacy is truly written and truly examined, you will clearly see that God called her as he has called so many in our history of America and the world to come at the right time and the right place, as she established his foundation over the last quarter of a century and the national holiday. That was her legacy that gives us every year a chance to reflect on Dr. King and the establishment of the King Center.

God bless Coretta Scott King, and God, we thank You for sending Coretta Scott King our way.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentleman from American Samoa (Mr. FALEOMAVAEGA), who has worked with us on civil rights issues both in this country and in other places in the world.

Mr. FALEOMAVAEGA. Mr. Speaker, I want to extend my appreciation and commendation to the distinguish gentleman who is the chairman of the Judiciary Committee, Mr. SENSENBRENNER, and my friend, Mr. CONYERS, the ranking member, for bringing this important resolution to our colleagues for our consideration.

I have mentioned you cannot mention the name Martin Luther King, Jr., without echoing the name of this great American woman, Coretta Scott King. In all of the years I have had the privilege of getting to understand and appreciate the tremendous contributions that our African American community has made to the greatness of our Nation, I think we cannot deny the fact that Martin Luther King, Jr., and all of the accomplishments and all of the things that he has done, and in my humble opinion when times are really bad and depressing and all the things the great leader has done, I can actually say that Coretta Scott King was the healer, the soother, the one that gave Martin Luther King, Jr., all the moral support that he needed in the afflictions he had to face in bringing down so many evils and the problems affecting the civil rights of our fellow Americans who just happened to be of African descent.

I once read somewhere that it was Leo Tolstoy and Mahatma Gandhi who advocated the principle of nonviolence, and it was from those writings that Martin Luther King, Jr., took the matter in the same way that Mahatma Gandhi did in India. How important it is that we conquer obstacles by usage of nonviolence and use pure love. I really, really appreciate the fact that we have this resolution to honor Mrs. King, and I urge my colleagues to pass this resolution. I also would like to express my severe sympathies and condolences to the members of the King family.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. DAVIS), a dear friend who was in the civil rights movement.

Mr. DAVIS of Illinois. Mr. Speaker, I want to thank the gentleman from Michigan for yielding. I could not let the moment go by without at least a comment.

During the mid-1960s, the King family moved into the neighborhood where I lived and worked. That is in the North Lawndale community on the west side of the City of Chicago in the 1500 block of South Hamlin. They brought with them an aura of excitement.

I was a young schoolteacher who taught not very far from the location, and my friend and I would leave school in the afternoon and come by the King house. It was really an apartment. Sometimes Dr. King would come out and just kind of talk with us for a moment or two. They often ate at a restaurant, Edna's Restaurant, and Mr. CONYERS may know it. They would bring to the restaurant a whole horde of people. Everybody would come and watch.

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And so on behalf of all of the people who lived in that community, I simply express condolences to the King family, but also express the great feeling of joy and inspiration that they brought to our community when they lived on the west side of Chicago during the mid-1960s as they came north with the northern crusade.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina (Mr. BUTTERFIELD) to close our discussion this evening.

The SPEAKER pro tempore (Mr. BOUSTANY). The gentleman has 1 minute remaining.

Mr. SENSENBRENNER. Mr. Speaker, I yield the gentleman from North Carolina an additional minute.

Mr. BUTTERFIELD. Thank you, Mr. Chairman, for yielding the additional minute. I am not sure I am going to be using all of that time, but thank you so much for your kindness.

To the ranking member of the committee, my friend from Michigan, Congressman JOHN CONYERS, thank you so very much for your leadership as well.

Mr. Speaker, I come to the floor this evening to recognize the life and work of Mrs. Coretta Scott King. The greatest contribution of this great American was her willingness to cheerfully share her husband with the world. On the day of her husband's assassination, April 4, 1968 Dr. King was due in my home community to lead a voter registration drive. But 2 days before the drive was scheduled to commence, he was diverted to Memphis, Tennessee; and that is where his life was ended. I went to his funeral in Atlanta, Georgia. In fact, the ranking member and I stayed in the same hotel there in Atlanta in 1968, and we have many memories of that week.

But I want to thank Dr. King and Mrs. King for the contributions that they have made to America. Dr. King would have been very proud of my home community. My congressional district in eastern North Carolina now has 302 African American elected officials, and the voter registration drive that Dr. King was scheduled to lead was designed to improve and increase the number of black elected officials. And so, on behalf of the First Congressional District of North Carolina, on behalf of the 660,000 people that I have the honor to represent, I extend my condolences to the King family. May God bless the memory of Coretta Scott King.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. RUSH).

Mr. RUSH. Mr. Speaker, I want to thank the chairman of the committee for yielding his time to me, and I certainly want to thank the ranking member of this committee for all of his efforts on behalf of human rights and justice throughout not only this Nation but throughout the world. He has been an inspiration to us all.

Mr. Speaker, we lost an inspiration. We lost an icon. Mrs. Coretta Scott King was more than just the wife of Dr. Martin Luther King. She was, indeed, an incredible force in the movement for equality, for justice in her own right. And she was the strong spirit and character that certainly laid the foundation for many of us who are present in this body tonight who serve in this Congress and in other elected offices throughout our Nation.

Mrs. King, as was indicated earlier, was born Coretta Scott on a farm in Heiberger, Perry County, Alabama to Obadiah and Bernice McNurry Scott. She graduated from the Lincoln Normal School in Marion, Alabama, at the top of her class before going to Antioch College in Yellow Springs, Ohio. After graduating from college, she moved to Boston, Massachusetts, where she was classically trained as a promising opera singer.

The story is well known about her meeting Dr. Martin Luther King, another student in Boston, and their unity that was ordained before the Lord. Mrs. King was a steadfast partner of Dr. King, and she shared in his sacrifice and also his hardships. It was not an easy life that they led. It was a very difficult life that they led. They raised four children. Mrs. King raised four children. It was very difficult for her to keep her family safe and united in the face of what would ordinarily be overwhelming anger, extreme violence, and deep-seated resentment. But for Mrs. King, her majestic poise and grace made her efforts seem to the rest of us almost seamless. And after the death of her husband, she continued on with his legacy of seeking justice, equality, and liberty for all citizens.

Leading marches, participating in protests and organizing civil rights groups, Mrs. King continued to struggle against racial injustice, economic inequality, military adventurism, hate crimes, and violence.

Mr. Speaker, this Nation owes Coretta Scott King an incredible debt. We owe the King family an incredible debt for the sacrifices that they made.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. AL GREEN).

Mr. AL GREEN of Texas. Thank you, Mr. Chairman; and thank you, Mr. Ranking Member, for this opportunity.

Mr. Speaker, I consider it a singular privilege and a superlative pleasure to speak today in honor of Mrs. King.

Mr. Speaker, Dr. King expressed some of the great ideals of our time, ideals like injustice anywhere is a threat to justice everywhere. But it was Mrs. King who went to South Africa and, in a sense, made real that ideal by reminding the South Africans that apartheid was unacceptable, and causing many of us to understand that injustice in South Africa was a threat to justice in America.

Dr. King expressed the ideal that we should transform neighborhoods into brotherhoods; but it was Mrs. King who met with gang members and caused them to understand that it was their neighborhood and their brotherhood that was needed to cause these to be good neighborhoods.

Dr. King reminded us that life is an inescapable network of mutuality tied to a single garment of destiny, that whatever impacts one directly impacts all indirectly. But it was Mrs. King who went to Mrs. Mandela and who visited with her as her husband was on the eve of leaving prison because she understood that Nelson Mandela's suffering was indirectly impacting the suffering of all people in the world.

So I am honored today to honor the first lady of the civil rights movement, who has been said to have been a person with a gentle spirit, but with a will, a will of steel. And while she was the first lady, I think many of us will always see her as our queen. Thank you, Queen Mother King.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, during the last 2 days, the eulogies that have been given on behalf of Mrs. King hit the nail on the head. This was a woman who became a widow when her husband was tragically assassinated and had very young children, and she could have withdrawn from society and spent all of her time and all of her efforts raising those kids to become grown men and grown women.

She did more than that. She knew that it was her destiny to carry on her assassinated husband's legacy, and that is why we have heard such eloquent speeches on both sides of the aisle on behalf of this resolution which I was honored to introduce.

May God have mercy on the soul of Coretta Scott King, and may she join the angels and saints in paradise.

Mr. Speaker, I urge the adoption of this resolution.

Mr. PORTER. Mr. Speaker, on January 31, 2006, a woman of grace and dignity passed from this life to the next. Today, with the passage of House Resolution 655, we honor the life and legacy of Mrs. Coretta Scott King and her contributions as a leader in the Civil Rights struggle.

There are few whose life and example transform a nation. Dr. Martin Luther King was one of those few whose exemplary life gave the promise of hope and equality to every race and color of people. But the struggles he endured as a national leader were not suffered alone. By his side stood a woman of gentleness and grace who joined triumphantly in his victories and suffered greatly in his pain.

Mrs. King embraced the principles and themes of nonviolence that her husband fought to bring to the forefront of the American psyche. After Dr. King's death in 1968, it was Mrs. King who kept his work and legacy alive. Through her, Americans were challenged to remember the sacrifices that her husband made for nonviolence, peace and equality.

As a nation, we must embrace the challenges that Dr. King and Mrs. King laid before us. At the advent of African American history month, we must remember the struggles for freedom that slaves and abolitionists jointly fought for to achieve emancipation and we must remember the struggles for equality that the many African Americans and civil rights leaders sought to escape during the Jim Crow era.

Even as we work to advance freedom and democracy to the Iraqi people and the many oppressed men and women in the Middle East and throughout the world, we must not forget our own dark history of oppression and how it has shaped our united push for freedom. The realities of our past are a scar to our Nation, but a reminder of what we can overcome as a Nation united in a common cause. We must continue to work for freedom and opportunity for every American of every race, color, gender and ethnicity. We must do so for the posterity of our Nation and for the American people.

Mr. Speaker, I thank you and my colleagues for passing this resolution in honoring the life and legacy of a virtuous woman whose pearls of wisdom and dedication to truth, equality, and nonviolence are an example for us now and for generations to come.

Ms. CORRINE BROWN of Florida. Mr. Speaker, the great Coretta Scott King, perhaps best known as being the wife of the Reverend Martin Luther King, was, like her husband, a pioneer in the civil rights field in her own right.

Rising from the dust of rural poverty of a small town in Alabama, she will be remembered as being an outstanding advocate of racial peace and nonviolent social change. Ms. King was a strong woman, one of the few women leaders in a civil rights movement which, at the time, consisted almost exclusively of men. Mrs. King was one of the first who broke the mold. A mother of four, which in and of itself is more than a full day's work, she also was a woman who took on a high profile position in the civil rights movement in a most difficult time of conflict in our country.

Soon after the death of the late Martin Luther King, she quickly developed her own voice and even her own causes. Although there was some overlap with her husband's battles, she broadened the civil rights agenda quite a bit, focusing on the inclusion of women in our society here at home, speaking out against the war in Vietnam, and promoting peace internationally.

She quickly moved on to stand in for her late husband at the Poor People's Campaign at the Lincoln Memorial on June 19, 1968, just two months after his assassination. At the Memorial, she spoke not just about the Reverend's vision, but also about her own, a vision about gender as well as race, wherein she called upon American women to "unite and form a solid block of women power to fight the three great evils of racism, poverty, and war." She then joined the board of directors of the National Organization for Women, as well as the Southern Christian Leadership Conference and became widely identified with a broad array of international human rights issues, rather than being focused primarily on race here in the United States. This broadened view, she went on to say, was her way of carrying on the legacy of her husband, the great Reverend Martin Luther King.

In doing so, she led the effort to memorialize Dr. King, and was the greatest advocate for a national holiday in his honor, which came to fruition on January 20th in 1986, and has been celebrated on the third Monday in January every year since then.

She later founded the Martin Luther King, Jr. Center for Non-Violent Social Change in Atlanta, an institution dedicated to scholarships and activism, with the purpose of continuing on his work and providing a research center for scholars studying the civil rights era.

To the end, Mrs. King remained to be a most loved woman by all. Often compared to Jacqueline Kennedy Onassis as a woman who overcame tragedy, held her family together and then became an inspirational presence around the world. Her admirers always said that Mrs. King took on a particularly difficult task, that of carrying on her husband's work and teachings—with a sense of spirit and purpose that made her more than just a symbolic figure, but a true leader.

Indeed, her death is a heartfelt loss, not only for African Americans, but for our Nation. I wholeheartedly believe that the people of our Nation need to work to uphold the legacy of these two brave women and the civil rights movement, which, although it has come a long way, has taken recent strides in the wrong direction under a more than callous Republican leadership. Mrs. King was a most inspirational woman, whose unwavering spirit stepped in to continue the struggle for the ideals of the great Reverend Dr. Martin Luther King.

All of my heart and prayers go out to the King family.

Mr. CUMMINGS. Mr. Speaker, I rise today to pay tribute to Mrs. Coretta Scott King, a true sheroe, who departed this earth on January 30, 2006, due to stroke complications. Although usually referred to as the widower of the incomparable Rev. Dr. Martin Luther King, Jr., the work she did after his death secured her place as one of the greatest leaders, voices, and phenomenal women in American history.

Mr. Speaker, Mrs. King was born on April 27, 1927 in Marion, Alabama to Obadiah and Bernice Scott. Her parents farmed on land they had owned since the Civil War. At an early age, she witnessed the racial inequities that occurred in the Deep South; however, she recalled, "my mother always told me that I was going to go to college, even if she didn't have but one dress to put on".

Through her mother's teachings coupled with her deeply spiritual roots in the Christian Baptist faith, Coretta persevered and graduated as the valedictorian of Lincoln High School in 1945. Blessed with both vocal and musical instrument gifts, she pursued and received her B.A. on a scholarship in music and education from Antioch College in 1951. In 1953, she furthered her education and earned a graduate degree in voice and music education from the New England Conservatory of Music in Boston.

While attending school, she met a young Martin Luther King, Jr., who was pursuing his doctorate in theology at Boston University. Although hesitant about the courtship in the beginning, through prayer and confirmation from God, Mrs. King married Dr. King on June 18, 1953.

The couple relocated to Montgomery, Alabama and Dr. King began work in the ministry and the Civil Rights Movement. After this relocation, there lives became almost immediately tumultuous. In fact, the first boycott occurred 2 weeks after their first child was born in 1955, and in 1956 their house was bombed. But this was no ordinary couple—the Kings went on to build a family of four children—all while helping to build the civil rights platform for a nation.

People talk about Dr. King's dream, but he wasn't the only one who had the dream. She bought into his dream, and he bought into hers, too. Mrs. King admits "when I say I was married to the cause, I was married to my husband whom I loved, I learned to love, it wasn't love at first sight—but I also became married to the cause. It was my cause, and that's the way I felt about it. So when my husband was no longer there. . . ., I prayed that God would give me the direction for my life. . . ." Mr. Speaker, it is clear that God answered her prayers.

They were partners in the freedom movement and it is my belief that they shared the same spirit. She ran the race with him, holding the baton with him, and when he had to let go, she kept running and was able to cultivate the dream they shared.

This notion was evident in the way she transformed her grief into an aspiration to eradicate social injustice and achieve equality for all. When Dr. King was assassinated prior to a planned march, four days after his death, she traveled to Memphis and led a march of 50,000 people.

She worked diligently and tirelessly—traveling worldwide, giving speeches, organizing marches and sit-ins, receiving awards on her late husband's behalf, leading peace delegations, and developing and performing in Freedom Concerts, where she incorporated her artistic gifts in song and poetry to narrate stories of the Civil Rights Movement.

In 1969, she founded the Martin Luther King, Jr. Center for Non-Violent Social Change in Atlanta as a memoriam to her husband. She served as the founder, president, and CEO for 27 years. The organization provides an extraordinary history of the Civil Rights movement while offering interpretations of Dr. King's philosophies to over 1 million visitors each year.

In 1986, through her endless efforts, the Federal Government established a national holiday on her husband's birthday to commemorate his achievements. Mrs. King also authored 3 books, earned 60 honorary degrees, and also served in dozens of organizations. She was an untiring nonviolent warrior whose work created a lasting effect—of raising the level of civil rights consciousness and civility around the globe.

I remember asking her after a lecture she delivered in Baltimore what one lesson would she like for us to extrapolate from her life.

She replied "the thing to always remember is that the baton is handed from one generation to another. You've just got to make sure, first of all, to grab it and then don't drop it." What we must do now is make sure her efforts, spirit and commitment live on in us.

Mrs. King was an icon and a paragon of excellence. It was no coincidence that she died in her sleep—for she exited this world in the way that she physically dreamed it—with everlasting peace and love for all of humanity.

God Bless Coretta Scott King. My deepest condolences to her family.

Ms. MATSUI. Mr. Speaker, Coretta Scott King dedicated her life to racial and economic justice as a leader in the civil rights movement working in partnership with her late husband, the great civil rights leader Dr. Martin Luther King, Jr. And after his assassination, she continued her tireless efforts fighting for equal justice for children, the poor and the forgotten among us.

She was a passionate advocate for equality here in the United States and around the world. Her efforts ensured a fledgling civil rights organization—the Southern Christian Leadership Conference—had the funds to continue its critical work and her actions made certain apartheid did not fade from the world's conscience.

Mrs. King once eloquently said, "Women, if the soul of the nation is to be saved, I believe that you must become its soul." And her accomplishments—the civil rights legacy she created in her own right—demonstrate how she became our nation's soul.

As a nation we mourn the loss of one of our civil rights pioneers, Coretta Scott King. Together we must continue her life's work of equality and justice. My thoughts and prayers go out to her family and friends at this time of loss.

Mr. HASTINGS of Florida. Mr. Speaker, I rise today in support of this resolution honoring the memory of Coretta Scott King who passed away yesterday morning. In a lifetime of effort and tireless struggle, Mrs. King championed the principles of peace, integrity, and human dignity. Alongside her husband, the Reverend Martin Luther King, Jr., Mrs. King strove for civil rights, endured bombings on her home, and dreamed of a better life for her children. Because of her and so many others, my children and grandchildren are growing up in a world of greater opportunity.

After her husband was taken away tragically, Mrs. King, still shouldering the immense emotional burden of her loss, did not choose to withdraw from the world. She chose instead to continue forward with the work they had started and the legacy they had built. Only 4 days after the death of King, Mrs. King led a march of 50,000 people through the streets of Memphis. For her determination and courage, we are forever grateful.

Coretta Scott was born in Heiberger, near Marion, Alabama, on April 27, 1927. Growing up on her parents' farm, Coretta walked 5 miles every day to her one-room school in order to receive an education. As a young woman, she learned the lessons of struggle and perseverance from her determined mother. These lessons helped her excel and graduate as the valedictorian from Lincoln High School. Mrs. King then went on to enroll at Antioch College where her sister Edythe had been the first full-time black student to live on campus.

Mrs. King majored in education and music, pursuing the love she had inherited from her mother. By her graduation in 1951, Mrs. King decided to become a professional singer and accepted a scholarship to the New England Conservatory of Music in Boston. It was in Boston that she met Martin Luther King, Jr., a fellow student. They were married 2 years later. Their first child, Yolanda, was born in 1955, only 2 weeks before the Montgomery bus boycott. Three more children soon followed: Martin Luther III, Dexter, and Bernice.

During the campaign for civil rights, Coretta Scott King did more than support her husband, she worked as his peer; giving speeches in her husband's stead and traveling to Geneva on behalf of Women's Strike for Peace as a delegate at the Disarmament Conference in Geneva in 1962. Mrs. King maintained her passion for music throughout this turbulent period, often giving concerts on behalf of civil rights. In May 1968, only months after her husband's assassination, Coretta Scott King took up his place in the Poor People's March to Washington. That year, Mrs. King founded the Martin Luther King, Jr. Center for Nonviolent Social Change, the first institution built in memory of an African American leader.

Mrs. King was also instrumental in the establishment of the Martin Luther King, Jr. National Holiday. After personally leading an enormous education campaign and seeking an Act of Congress, Mrs. King oversaw the first national observance of the holiday to honor her husband in 1986. In 1974, she formed the Full Employment Action Council, a coalition of over 100 organizations dedicated to full employment and equal economic opportunity. In 1983 Mrs. King gathered over 800 human rights organizations on the 20th Anniversary of the historic March on Washington in the Coalition of Conscience. While protesting apartheid in 1985, Mrs. King and three of her children were arrested outside the South African embassy in Washington, DC. Nearly a decade later, she stood in Johannesburg as Nelson Mandela was inaugurated as the new President of South Africa.

Throughout her life, Coretta Scott King remained a devoted promoter of positive social change. Despite grief and constant sacrifice, she continued to lend her voice to issues of social justice, human equality, and democratic progress. Mrs. King advocated for a more open-minded global community.

The world is better because of Coretta Scott King. She affected countless lives and her voice will be deeply missed, especially by those who carry on her incredible undertaking.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I rise today to remember the life and accomplishments an extraordinary woman—my friend—Mrs. Coretta Scott King.

I was surprised and deeply saddened to learn of Mrs. King's passing yesterday morning. Mrs. King and I were friends and confidants for many years. She was an incredible woman—graceful and dignified—who showed strength in the face of indignation and tragedy.

Coretta Scott King was a committed activist in the civil rights movement even before she met Dr. King. After they married, she was with him every step of the way—supporting him and promoting the philosophy of nonviolence. Following Dr. King's assassination, she continued his legacy promoting social and economic justice for all. Mrs. King was determined to make his dream a reality. She did all this while remaining committed to her family and raising her children.

Mrs. King made it her mission to spread the message of peace. She was not just an American, but a citizen of the world. As human beings, we are blessed to have known her compassion and dedication.

It has been said that the ultimate measure of a person's life is the extent to which they made the world a better place. Coretta Scott King's work has forever shaped the way we treat each other as human beings. Her passing marks the end of an era. It is up to all of us to honor her dedication and continue the struggle for equality.

Mr. ENGEL. Mr. Speaker, as we celebrate Black History month, it saddens me that our nation has lost one our foremost civil rights activists—Coretta Scott King.

Though best known as the wife of the great Martin Luther King, Jr., Coretta had a distinguished career herself. She was an activist not only for racial equality but for economic justice, women's and children's rights, gay and lesbian dignity, religious freedom, the needs of the poor and homeless, health care, educational opportunities, nuclear disarmament and ecological sanity. She was also a powerful voice in bringing an end to the scourge of apartheid in South Africa.

During the civil rights movement, she was at the forefront of the movement alongside her husband. Coretta was a music student and she brought her talent to the civil rights movement by performing in "Freedom Concerts," singing and reading poetry to raise money for the cause. Planning marches and sit-ins, she never relented even after her family members were targets of beatings and stabbings. She never relented, even after the jailing of her husband. She never relented, even after their family home was bombed.

Long after Martin's assassination, Coretta continued her work and concentrated her energies on fulfilling her husband's work by building The Martin Luther King, Jr. Center for Nonviolent Social Change as a living memorial to her husband's life and dream.

I had the pleasure of meeting her. For me, meeting her was meeting an icon. The civil rights movement began when I was about 8 or 9. Years later, to meet her in person was awe inspiring. It was, frankly, astonishing. Coretta Scott King was not a witness to history, she was an active participant and a leader in making history. Speaking to her one on one was a humbling experience and one that I will never forget.

Coretta Scott King will be sorely missed by people not only in the United States but those throughout the world who looked to her as a strong woman and a leader in the non-violent resistance movement.

Mr. WALSH. Mr. Speaker, I rise today to honor the life of the courageous Coretta Scott King.

Mrs. King first came to the public eye as the wife of the great civil rights leader Martin Luther King, Jr. Aside from being Mr. King's wife, Coretta Scott King became an international symbol for the civil rights movement and a prominent advocate of the women's rights movement. As a civil rights leader, Mrs. King's vision of racial peace and nonviolent social change was a fortifying staple in advancing the civil rights movement.

Following her husband's untimely death, Mrs. King fought strongly to continue battling the struggle against social injustice. Mrs. King went on to found the Martin Luther King, Jr. Center for Non-Violent Social Change in Atlanta, GA, and led a valiant effort for a national holiday in honor of her late husband. Both actions are a strong indicator of Mrs. King's dedication to scholarship and activism.

Through her continued efforts, Mrs. King came to be seen as an inspirational figure. Her enormous spirit and strong moral values came to personify not only the ideals Dr. King fought for, but also personified a movement that transformed our Nation.

I would like to extend my thanks to Mrs. King for all the wonderful contributions she made throughout her life. I also would like to extend my prayers and condolences to her family, who will undoubtedly continue to fight for what Mrs. King stood for.

It is an honor to stand and praise all the hard work this beloved figure has done to better our Nation.

Ms. JACKSON-LEE of Texas. Mr. Speaker, the passing Monday night of Coretta Scott King, filled me with sadness, an emptiness, and a determination to see her work through to the end. She was a courageous, heroic, and beautiful individual who sacrificed her life so Americans might relish in the gift of equal justice. Coretta Scott King and her late husband, Dr. Martin Luther King, Jr., were Americans of monumental strength and stature through their lives. In times of struggle, frustration, injustice, and violence, they spoke of composure, grace, love, and equality.

They will be remembered for their tireless and ceaseless efforts to advance race relations, civil rights, social justice and human rights.

I would like to share a few quotes with you. These are moments in which the voice, character, and spiritual tenacity of Mrs. King was captured. When a heroine passes away, we look to her words, and our memories, to convey the spirit and tenacity she carried with her, brought into every room, and left imprinted on our souls.

Corretta Scott King once said, "Hate is too great a burden to bear. It injures the hater more than it injures the hated." Whether segregation, sexual orientation, the rights of the poor or the rights of women, Mrs. King spoke with a voice that resonates beyond the limits of radiowaves and printed pages and out to who are desperately in need of help.

I have known Coretta Scott King over the last several years, and she had a rare gift to motivate others to carry on the legacy of equality, the idea of freedom, and social justice which was first accomplished by her husband and partner, Dr. Martin Luther King, Jr. It is our duty in her honor to never waver in the face of injustice and degradation.

"Struggle is a never ending process. Freedom is never really won; you earn it and win it in every generation." These words of Coretta Scott King are increasingly relevant.

As a member of the House Judiciary and Homeland Security Committees, my thoughts can't help but turn to yesterday's confirmation of Justice Alito to the U.S. Supreme Court. I have had concerns about Justice Alito's past judicial record. I am still apprehensive, and I would like to take this opportunity to point out what I believe is a test of civil liberties presented today.

The tragic passing of Coretta Scott King, a formidable human rights and civil liberties activist, and the concurrent confirmation of Justice Alito, may foreshadow difficult times ahead for American freedoms. Much of what Coretta Scott King fought for is now threatened by Justice Alito's confirmation to the U.S. Supreme Court. His dubious record on voter's rights, discrimination issues, civil rights, civil liberties, reproductive freedom, the right to privacy and environmental protections, among others, fly in the face of the life and work of Coretta Scott King. The passing of Coretta Scott King and the confirmation of Justice Alito should be a wake-up call to America.

Dr. and Mrs. King will forever hold an esteemed place in my heart and the hearts of all Americans. As an African-American woman, and a Member of Congress, I shall endeavor in my own way to continue their fight for equality and justice every day.

Mr. DAVIS of Illinois. Mr. Speaker, I rise today to honor the life and legacy of Mrs. Coretta Scott King. She was the widow of Dr. Martin Luther King, Jr. and an important figure in the civil rights movement in her own right. She passed away Monday night in California.

Coretta Scott King was born in Marion, AL, on April 27, 1927. She attended Antioch College in Ohio and earned a B.A. in music and education. During her postgraduate studies at the New England Conservatory of Music in Boston she met her future husband, Martin Luther King, Jr., who was studying systematic theology at the nearby Boston University. They were married on June 18, 1953 in her hometown of Marion.

While she devoted most of her time to raising their 4 children, her husband's prominent involvement in the civil rights movement meant that she, too, was deeply involved. She took part in sit-ins at segregated restaurants, organized marches, and performed in many "freedom concerts." She even marched with Dr. Martin Luther King from Selma, AL, to Montgomery in 1965. Just days after her husband was slain she and three of her children traveled to Memphis to lead a march honoring his life.

She not only honored his life but also ensured that his legacy would live on. In 1969 she founded the Martin Luther King, Jr., Center for Non-Violent Social Change in Atlanta, GA, as well as the Coalitions of Conscience to advocate for human rights issues.

King has carried the message of nonviolence and her husband's dream to nearly every corner of the globe. In 1962 she served as a delegate to the 17-nation disarmament conference in Geneva, Switzerland. She was the first woman to deliver the class address to Harvard University students and the first woman to preach at a service in St. Paul's Cathedral in London. She stood beside Nelson Mandela when he became the first democratically elected president of South Africa and she was an eye-witness to the signing of the Middle East peace accords.

Coretta Scott King was a woman of great influence, wisdom, compassion, and determination. She was a woman who devoted her life to making our world a better place. I leave you with a quote from Coretta Scott King, "Struggle is a never ending process. Freedom is never really won, you earn it and win it in every generation."

Ms. CARSON. Mr. Speaker, as I rise today to speak on the life of Coretta Scott King I can't help but be reminded of the Gospel according to St. Matthew, "And while they went to buy, the bridegroom came; and they that were ready went in with him to the marriage: and the door was shut. Afterward came also the other virgins, saying Lord, Lord open to us. But he answered and said, Verily I say unto you, I know you not." The life of Coretta Scott King was one that was spent prepared to serve her Lord and fellow man and she has now joined her bridegroom.

The words and deeds of Coretta Scott King have made an indelible imprint not only on the lives of Americans but of all people across the world. From her work with Nelson Mandela and in the struggle for civil rights to her work on behalf of the gay and lesbian community she was always willing to stand with those who were defending their right to live a life of freedom. She served as a true moral compass for all people. We need more people to live like Kings.

She was a phenomenal person who was kind to all she met and worked tirelessly on behalf of those she had not. I want to express my deepest condolences to the King family on behalf of the people of the 7th Congressional District. Our thoughts and prayers are with you.

Mr. ETHERIDGE. Mr. Speaker, I rise in support of this resolution. Today we mourn the loss Mrs. Coretta Scott King. We honor her personal strength, her determination as a civil rights leader and her vision of a nation where freedom is denied to no man and to no woman.

Together Coretta Scott King and Dr. Martin Luther King, Jr. worked to create an America where all people are equal. Together they marched through the streets for civil rights, and together they spoke before church, civic, college, fraternal and peace groups to encourage peace.

After her husband's tragic assassination in 1968, Mrs. King devoted her energy to carrying on Dr. King's legacy of nonviolence and civil rights. She built the Martin Luther King Jr. Center for Nonviolent Social Change as an enduring memorial to her husband's dream of full civil rights for all Americans. Throughout her life, Mrs. King worked to advance the cause of justice and human rights throughout the world and spoke out on behalf of many important issues, including racial and economic justice, women's and children's rights, and religious freedom. For her continued service to our country Mrs. King received over 60 honorary doctorate degrees from colleges and universities and inspired Congress to create a Federal holiday on her husband's birthday. Mrs. King was truly an American hero.

Today our thoughts and prayers are with the four King children: Yolanda Denise, Martin Luther III, Dexter Scott, and Bernice Albertine, all of her family and friends, and with all of those who continue to feel the wrath of social and economic injustice.

Just as Coretta Scott King honored the memory of her husband through her work, let us honor her by continuing to fight for peace, justice and equality for all Americans. Thank you, Mr. Speaker. I yield back the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, it was with great sadness that I learned of the passing of Mrs. Coretta Scott King. I rise today along with my colleagues to celebrate and remember the life of a remarkable woman and support H. Res. 655. I know that I speak for my colleagues here today when I say that America has lost one of its great citizens.

Mrs. King's greatness lay in the special talents she had and her ability to use them in the numerous roles she played in her life. She started her adult life as an accomplished musician, receiving music degrees from Antioch College in Yellow Springs, OH, and the New England Conservatory of Music in Boston, MA. It was in Massachusetts that she met Dr. Martin Luther King, Jr. They were married on June 18, 1953. In 1954, with her husband's installation at Dexter Avenue Baptist Church in Montgomery, AL, Mrs. King accepted the roles and responsibilities of a pastor's wife.

Mrs. King's singular talents may have been known just to members of the Dexter Avenue Baptist Church if it had not been for the winds of change swirling around Montgomery in 1955. With the arrest of Rosa Parks for her refusal to give up her seat on a Montgomery public bus, the struggle for civil rights for Blacks in America formally began. Dr. King was at the epicenter of the civil rights movement, and Mrs. King was there by his side.

It is amazing that Coretta Scott King could play such a vital role in the civil rights movement while simultaneously raising a family. She was the mother of four at a time when a woman was expected to be a homemaker and not much else. Not content to stand on the sidelines of history, Mrs. King spoke on the cause of equality to church, civic, college, fraternal and peace groups. She also produced and performed in a series of freedom concerts as fundraisers for the Southern Christian Leadership Conference, the direct action organization of which Dr. King served as first president.

It is easy to forget the duress under which Mrs. King lived such an exemplary life. The threat of violent death was always present. The King family home was bombed in 1956. Death threats against her family arrived by phone and mail constantly, and Martin was stabbed and nearly killed in a New York department store in 1958. The threat became reality with Dr. King's assassination on April 4, 1968. No one would accuse Mrs. King of cowardice if she had retired from public life after Dr. King's death. But Dr. King's dream of an undivided America became her dream, and Mrs. King continued to work as an advocate for equality through nonviolent resistance.

Mrs. King devoted much of her energy to developing the Martin Luther King, Jr. Center for Nonviolent Social Change in Atlanta as a living memorial to her husband's life and dream. She led goodwill missions around the world speaking at massive peace and justice rallies. She was the first woman to deliver the class day address at Harvard University and the first woman to preach at a statutory service at St. Paul's Cathedral in London.

Mrs. King led the campaign to establish Dr. King's birthday as a national holiday. In 1983, the 98th Congress passed H.R. 5890 instituting the Martin Luther King, Jr. Federal Holiday Commission, which Mrs. King chaired for its duration. And in January 1986, Mrs. King oversaw the first legal holiday in honor of her husband—a holiday which has come to be celebrated by millions of people.

My thoughts and prayers are with the King family. I hope that this resolution honoring Mrs. King will be a comfort to them at this difficult time.

Ms. KILPATRICK of Michigan. Mr. Speaker, I rise to salute Mrs. Coretta Scott King, the widow of civil rights pioneer and icon Dr. Martin Luther King, Jr. I join millions in this country and around the world who mourn her passing and celebrate her life. I extend my condolences and prayers to her children and family.

Coretta Scott King was born in Marion, AL, on April 27, 1927. She grew up in segregated Alabama. Mrs. King went on to study music at Antioch College in Yellow Springs, OH, and later studied at the New England Conservatory of Music in Boston, MA. It was in Boston, where she met Dr. King, who at the time was working on his doctorate in theology at Boston University. They married in 1953 and had four children, Yolanda Denise, Martin Luther III, Dexter Scott, and Bernice Albertine.

Coretta Scott King marched beside her husband in towns across the then segregated south. Mrs. King did not quietly slip out of public life. With dignity and courage, she chose to continue to work for justice, access, and equality. She advanced the message of social justice, peace, and mutual respect.

Mrs. King started the Martin Luther King Jr. Center for Non Violence and Social Change out of the family home in Atlanta. The Center now houses the tomb of Dr. King and thousands of documents related to his work. Thousands of people each year visit the center, which sits in Atlanta's Martin Luther King Jr. National Historic Site.

Coretta Scott King was active in the fight against apartheid in South Africa and an advocate for human rights. Mrs. King received honorary doctorates from more than 60 colleges and universities and authored three books.

As we enter Black History Month and then Women's History Month in March, I urge Congress and the American people to reflect on the legacy of Mrs. King. She was tireless in her effort to make America a better place for every American. Coretta Scott King will always be remembered for promoting racial and economic equality for all Americans.

Ms. MCKINNEY. Mr. Speaker, when I first heard the news this morning I was at once both shocked and saddened. Although Mrs. King belonged to her children and cousins and nieces and nephews, she also belonged to us—the American people and the family of black people all over the world.

When she was alive, there was a sense of comfort. Mother King guarded us, protected us; she helped set this country free when she picked up Martin's cross.

I was given the privilege of speaking at this year's Martin Luther King ceremony at Ebenezer Church. Due to illness, she watched the proceedings on the television, not able to be there with us. Our love went out to her then and it does so now. I love the King Family as do we all. Her vision and Martin's vision moved our country forward.

In 1963 Dr. King spoke of Stone Mountain, Georgia. I now represent Stone Mountain, Georgia. Change is possible in our country. It is possible for people of conscience to come together and move this country forward.

What Mrs. King embodies will not be extinguished. She is our Queen Mother. And we should spend this day reflecting on her life, her legacy, her spirit, and what we will do in our lives to further Martin and Coretta's vision for our beloved community.

My condolences to all the members of the King family; and to Martin III, Yolanda, Dexter, and Bernice.

In every sense of the word, they were our first family and now we look to the children to wear the family's mantle.

Mr. THOMPSON of Mississippi. Mr. Speaker, I rise in support of resolution (H. Res. 655) honoring the life and accomplishments of Mrs. Coretta Scott King and her contributions as a leader in the struggle for civil rights, and I also express my heart felt condolences to the King family on her passing.

As the wife of Reverend Martin Luther King, Jr., Mrs. King was recognized by many as the "first lady" of the Civil Rights movement. Born and raised in Marion, Alabama, Coretta Scott graduated valedictorian from Lincoln High School. She received a B.A. in music and education from Antioch College in Yellow Springs, Ohio, and then went on to study concert singing at Boston's New England Conservatory of Music, where she earned a degree in voice and violin. While in Boston she met Martin Luther King, Jr. who was then studying for his doctorate in systematic theology at Boston University. They were married on June 18, 1953, and in September 1954 took up residence in Montgomery, Alabama, with Coretta Scott King assuming the many functions of pastor's wife at Dexter Avenue Baptist Church.

During Dr. King's career, Mrs. King devoted most of her time to raising their four children: Yolanda Denise (1955), Martin Luther, III (1957), Dexter Scott (1961), and Bernice Albertine (1963). She performed a series of Freedom Concerts which combined prose and poetry narration with musical selections and functioned as fundraisers for the Southern Christian Leadership Conference, the direct action organization of which Dr. King served as first president.

In 1957, she and Dr. King journeyed to Ghana to mark that country's independence. In 1958, they spent a belated honeymoon in Mexico, where they observed first-hand the immense gulf between extreme wealth and extreme poverty. In 1959, Dr. and Mrs. King spent nearly a month in India on a pilgrimage to disciples and sites associated with Mahatma Gandhi. In 1964, she accompanied him to Oslo, Norway, where he received the Nobel Peace Prize. Even prior to her husband's public stand against the Vietnam War in 1967, Mrs. King functioned as liaison to peace and justice organizations, and as mediator to public officials on behalf of the unheard.

In 1969, Coretta Scott King published the first volume of her autobiography, My Life with Martin Luther King Jr. In the 1970s, Mrs. King maintained her husband's commitment to the cause of economic justice. In 1974 she formed the Full Employment Action Council, a broad coalition of over 100 religious, labor, business, civil and women's rights organizations dedicated to a national policy of full employment and equal economic opportunity; Mrs. King served as Co-Chair of the Council.

In 1983, she marked the 20th Anniversary of the historic March on Washington, by leading a gathering of more than 800 human rights organizations, the Coalition of Conscience, in the largest demonstration the capital city had seen up to that time.

Mrs. King and three of her children were arrested in 1985 at the South African embassy in Washington, DC, for protesting against apartheid. Mrs. King led the successful campaign to establish Dr. King's birthday, January 15, as a national holiday in the United States. By an Act of Congress, the first national observance of the holiday took place in 1986. Dr. King's birthday is now marked by annual celebrations in over 100 countries. Mrs. King was invited by President Clinton to witness the historic handshake between Prime Minister Yitzhak Rabin and Chairman Yassir Arafat at the signing of the Middle East Peace Accords.

Mrs. King devoted much of her energy and attention to developing programs and building the Atlanta-based Martin Luther King, Jr. Center for Nonviolent Social Change as a living memorial to her husband's life and dream. Situated in the Freedom Hall complex encircling Dr. King's tomb, The King Center is part of a 23-acre national historic park which includes his birth home, and which hosts over one million visitors a year.

In 1995 she turned over leadership of the King Center to her son, Dexter Scott King, who served as Chairman, President & CEO until January 2004. On that date, Mrs. King was named interim Chair and her eldest son Martin Luther King, III assumed the leadership position of President & CEO.

She remained active in the causes of racial and economic justice, and most recently devoted much of her energy to AIDS education and curbing gun violence.

A woman of wisdom, compassion and vision, Coretta Scott King has tried to make ours a better world and, in the process, has made history. I am saddened by the loss of our "First Lady". She met the challenge of preserving the memory of her husband head on. Her tireless work in keeping the dream alive has been invaluable not only to civil rights, but to human rights. Mrs. Coretta Scott King kept the torch burning and as opposed to passing the torch, she lit torches along the way. She is a true inspiration to us all.

Ms. McCOLLUM of Minnesota. I rise today in honor of the late Coretta Scott King, an extraordinary civil rights leader, who passed away on January 30th. Throughout her life, Mrs. King worked tirelessly for the struggle of non-violent activism, social justice and peace.

Coretta Scott King was born and raised in Marion, Alabama, where she graduated as valedictorian from Lincoln High School. She received a B.A. in Music and Education from Anitoch College in Yellow Springs, Ohio, before going on to study at Boston's New England Conservatory of Music. While there, she met a theology student from Atlanta, Martin Luther King, Jr., who was then studying for his doctorate at Boston University.

Before her marriage to Dr. King, Mrs. King was active in the civil rights and non-violent social change movement. As an equal partner to the young Dr. King during the turbulent times their family and the civil rights movement faced, Mrs. King organized sit-ins and protest marches; spoke at church, civic, and peace group gatherings; and performed at more than 30 successful "Freedom Concerts" to raise awareness of civil rights and garner support for the Southern Christian Leadership Conference. While serving on the front lines of the fight for equal rights, Mrs. King also raised their four children: Yolanda Denise, Martin Luther III, Dexter Scott and Bernice Albertine.

During Dr. King's life and after his death, Mrs. King was integral to the struggle for equality and justice. Just four days after her husband's assassination in 1968, in an unmistakable display of determination and perseverance, Mrs. King took his place and led a march of 50,000 people through the streets of Memphis, Tennessee. A woman of wisdom, compassion and vision, she helped to preserve her husband's legacy and played a key role in making Dr. Martin Luther King, Jr. Day a national holiday. She also worked hard to establish and make The King Center a reality. As the work of The King Center continues, local, national and international programs have trained tens of thousands of people in Dr. King's philosophy of non-violent social change.

It is with great sadness that I send my deepest condolences to the King family. Mrs. King's lasting contributions to freedom and equality will always be remembered. Let us honor Mrs. King's memory by committing ourselves to promoting civil rights and peace.

Mr. Speaker, please join me in paying tribute to the life of Mrs. Coretta Scott King.

Mr. BECERRA. Mr. Speaker, I rise today to honor and pay my respects to an American treasure: Mrs. Coretta Scott King. An admirable advocate of social justice and peace, Mrs. Scott King will be greatly missed by those who care about equal opportunity for all. Alongside her husband, the late Reverend Martin Luther King, Jr., she was a successful leader and advocate for racial peace and fought for social change.

Following the death of her husband, she maintained his commitment to racial and economic justice. Her devotion to civil and human rights has no borders as she is recognized at home and abroad for remaining a catalyst for change.

Just as Cesar Chavez is remembered for his role in the struggle for human rights and dignity of migrant farm workers, Mrs. Scott King will be remembered for her accomplishments in the struggle for peace and justice, and for her steadfast belief that care and respect should be shown to others not because of the color of one's skin, but because of "the content of their character."

Mr. Speaker, as a nation and with the world, we mourn the loss of Coretta Scott King, a civil rights icon in her own right whose accomplished life is laudable, whose care for the human condition is remarkable, and whose loss will be felt by countless millions all across this great country that she helped unite.

Mr. UDALL of Colorado. Mr. Speaker, I rise to join in expressing my sorrow at the news of the death of Coretta Scott King and my support for the resolution (H. Res. 655) now before us.

By passing that resolution, the House of Representatives honors her life and accomplishments and her contributions as a leader in the struggle for civil rights, and expresses condolences to the King family on her passing.

I wholeheartedly join in that expression of views shared not only by the House but by millions of Americans in Colorado and across the nation.

Mrs. King was no stranger to our state. As noted in today's Denver Post, she paid her first visit to Denver in 1958 and returned to Colorado many times thereafter to further the cause of equality for which her husband and she labored for so long.

Now, in the words of the Rocky Mountain News, our nation mourns her as a champion of freedom, and Coloradans join in that mourning.

For the information of our colleagues, I attach an editorial and a news story from today's Denver daily newspapers.

[From the Rocky Mountain News, Feb. 1, 2006]

Nation Mourns Champion of Freedom

Coretta Scott King, 78, died peacefully at a medical clinic in Mexico early Tuesday. While she may always be remembered as "the widow of Dr. Martin Luther King Jr.," Mrs. King created an inspiring legacy of her own.

Her tireless efforts convinced lawmakers to recognize her late husband's place in history with the national holiday that celebrates his birth. She stood with and spoke for the downtrodden, in America and around the world.

Mrs. King surely would have lauded the news that the Smithsonian Institution on Monday approved a site on the National Mall near the Washington Monument for the National Museum of African American History and Culture.

We've long supported a moratorium on further construction on the Mall, which has grown cluttered with newly built memorials and security barriers over the past three decades. And so we would prefer that the museum occupy land near but not on the Mall. But leading museum proponents considered such an alternative a slap in the face, and the Smithsonian board foreclosed that option.

So be it. Whatever the museum's location, the construction of such a memorial is long overdue. The task is to ensure that it becomes a national treasure, a source of inspiration for Americans of every heritage.

[From the Denver Post, Feb. 1, 2006.]

Nonviolence Espoused in Many Denver Visits

(By Claire Martin)

Despite the death threats and bombings, the assassination of her iconic husband and hostility that persisted for decades, Coretta Scott King remained such a passionate advocate of nonviolence that she insisted on her bodyguards being unarmed during her public appearances.

"In all her visits to Denver, we provided Mrs. King with security, but always that was one of her prerequisites—no weapons, no guns," said Vern Howard, longtime civil rights advocate and marshal of Denver's annual Martin Luther King Jr. Day parade. "It was hard for us organizers. We didn't want anything to happen to her on our watch."

Coretta Scott King first visited Denver in 1958 to speak at a New Hope Baptist Church event arranged by Helen Gamble, grandmother of former Denver Mayor Wellington Webb.

King later confided to Webb that the speech intimidated her, despite her formal training as a vocalist at the New England Conservatory of Music. "As a soloist, it's easier for me to sing than to give a keynote speech," Webb recalled King saying.

Her theme in that debut—civil rights and nonviolence—set the tone for countless future speeches, first by her husband's side and then in his stead.

"She never wavered in her commitment to civil rights," said Wilma Webb, a former state legislator and the wife of Wellington Webb, who authored the state's King holiday bill. "She carried the banner. She gave us direction. She had the stature of a first lady."

King returned regularly to Colorado after her husband's death. She stumped for Wellington Webb in his first mayoral campaign in 1983 and urged him to run for the U.S. Senate in 2002.

During the mid-1980s, her visits focused on the controversial effort to create a national holiday honoring her husband.

During a visit to the Colorado legislature in 1985, a year after the assembly voted for the holiday marking her husband's birthday, House Speaker Bev Bledsoe snubbed King. Although Senate Speaker Ted Strickland allowed King to address his assembly, Bledsoe, a Hugo Republican who opposed the King holiday, refused to grant her the same privilege, provoking criticism from Democrats.

She continued to visit Colorado, sometimes to watch her playwright daughter, Yolanda Denise King, perform in one of her plays. Her final appearance in the state in January 2005 invoked a version of her 1958 message.

"We can solve conflicts without terrorism and war," she said. "This is the only way to lasting peace and security."

Mr. KILDEE. Mr. Speaker, I rise today to mourn the loss of Mrs. Coretta Scott King. Her death is a great loss for America and for peace and justice the world over.

I had the pleasure of meeting Mrs. King on two occasions; once in my congressional office and again at a ceremony marking the 25th Anniversary of the March on Washington. I was always impressed by her inner strength and graciousness. In troubled and violent times, she raised a family and was a genuine partner with her husband Martin Luther King, Jr. in the fight for civil rights and equality. She ensured that his dream did not die by leading the fifteen year fight to make her husband's birthday a national holiday and by establishing the Martin Luther King Jr. Center for Nonviolent Social Change in Atlanta. Her personal activism included traveling the world advocating for women, promoting world peace and protesting apartheid. I know that I am a better person because of her and indeed our country is a better place because of her legacy.

In closing I would like to express my condolences to the King family. May the God of all comfort be there for them through all the days ahead.

Mr. JEFFERSON. Mr. Speaker, I rise today to recognize the passing of one of the strongest and most inspirational African-American women in our country's history: Mrs. Coretta Scott King.

Mrs. King was not the person referred to in the cliché . . . she was not the, "good woman behind a great man." She was the determined, intelligent woman who stood right alongside him. When Coretta Scott married Doctor Martin Luther King, Junior, she had already led an impressive life of her own. She had already established herself as a role model. Coretta Scott graduated at the top of her high school class in Alabama, and was accepted at Antioch College in Ohio, and later at the New England Conservatory of Music in Boston. She had a scholarship to the music school that covered her tuition, but she was not too proud to take a job cleaning stairwells to pay for her room and meals. It was in Boston when Coretta Scott met her future husband—Martin Luther King, Junior, and her journey as not only the wife—but the partner of a man who would change the way Americans lived, had just begun.

From the Montgomery bus boycott, to outbreaks of racial violence in the streets, to a bombing at the Kings' residence in 1956, Mrs. King stood by her and her husband's dreams of racial equality. And with the bad, came the good—Mrs. King was there for her Doctor King's uplifting sermons, his many trips abroad and his—"I Have a Dream" speech on the National Mall.

After experiencing such a tumultuous, unpredictable life as the wife of a great civil rights leader, some thought Mrs. King would choose to lead a quiet life—leaving the spotlight after her husband's untimely death. Instead, Coretta Scott King chose to carry on her the fight. Until her health started to fail her last year, she continued to speak out against injustice, and promote fairness and equality among all men. To quote the late Mrs. King, "Hate is too great a burden to bear. It injures the hater more than it injures the hated." This is a fitting epithet for the great American, the First Lady of the Civil Rights Movement, Mrs. Coretta Scott King.

Mr. EMANUEL. Mr. Speaker, I rise today to honor the memory of Coretta Scott King, and I offer my condolences to her family after she passed away in her sleep early this morning. She was a remarkable human rights advocate who was a living symbol of the struggles and successes of the civil rights movement.

Mrs. King was best known as the loving wife and widow of Dr. Martin Luther King, Jr. She provided invaluable support to the man who became the Nation's leading civil rights advocate and an international icon. She stood by him as he was harrassed, intimidated and eventually assassinated for fighting for equality.

Her grace and dignity after her husband's death showed the country that she was more than just a strong wife. Alone with four children, she did not retreat but instead insisted on continuing the mission that her late husband had started. She continued the march in Memphis before his funeral. As time progressed, she spearheaded the effort to create a federal holiday to honor her husband. Her strong insistence on furthering Dr. King's ideals led to the creation of the holiday in 1983.

Mrs. King quickly became an internationally known figure who embodied the spirit of nonviolent resistance and human rights advocacy. Her work was not limited solely to civil rights; She worked tirelessly for other noble causes, becoming a leader in the women's liberation movement and vocally opposing apartheid in South Africa.

Mrs. King's life is an inspiration to millions of people worldwide who struggle to overcome human rights issues. She overcame her own personal tragedy to keep her family together and further the causes of the civil rights movement.

Mr. Speaker, Coretta Scott King has been a role model for those seeking to overcome tragedy and discrimination with grace and determination. I rise today to honor her life and her legacy.

Mr. MICHAUD. Mr. Speaker, today our nation has lost a great champion of civil and human rights. Coretta Scott King's courage and commitment should be an example to all of us.

After the assassination of her husband, the late Martin Luther King, Jr., Mrs. King devoted herself to carrying on his legacy. Only four days after his death, she took her husband's place at the head a march in support of sanitation workers in Memphis. She went on to found and lead, for over two decades, the King Center. The Center stands as a memorial to her husband, but also is an active force in the struggle to achieve equality between all people, confronting issues of hunger, unemployment, voting rights and racism. King remained active throughout her whole life, participating in protests against apartheid in South Africa in the 1980's and speaking out against the war in Iraq in early 2003.

It is the responsibility of each of us, who sit in this House and pledge to uphold the Constitution, to continue to fight for Martin Luther King, Jr.'s dream of equality, which Coretta worked so unselfishly to sustain.

Mr. BLUMENAUER. Mr. Speaker, it is a great irony that the day of Coretta Scott King's passage is the same day 141 years ago that the House of Representatives passed the 13th amendment to the Constitution abolishing slavery. That the Constitutional amendment passed by but two votes during the time of our Civil War reminds us that the issue of fighting for equality and against racial discrimination has been a pitched battle throughout our history.

The widow of Dr. Martin Luther King was in the forefront of the revolution of progress and heartbreak. She will be remembered as woman of great courage and dignity whose role in this great civil rights movement is only now being fully appreciated. I join with the Nation in extending condolences to the King family and in honoring the life of Coretta Scott King.

Mr. BISHOP of Georgia. Mr. Speaker, I rise today in memory of an extraordinary woman and in recognition of a life that meant so much to so many.

I was honored to know Coretta Scott King. She was a woman of great eloquence and dignity, but also of great faith. She endured hatred, violence and ultimately the loss of her husband, but she never lost her vision for mankind or her determination to stand up for what is right and what is just.

Coretta Scott King was one of the greatest activists in our Nation's history and it is right that we honor her here today. She carried on the legacy of her husband, the Rev. Dr. Martin Luther King, but she had her own legacy—a legacy of putting herself on the line to make the world a better place for all of God's children. And many of us continue to reap the rewards of her work today.

Mrs. King called "Hate . . . too great a burden to bear." Saying, "It injures the hater more than it injures the hated." These are words that not only inspired millions, but that must continue to inspire us today.

As we meet in these hallowed halls, we must remember the legacy of Dr. and Mrs. King and the dream that defined their lives. We mourn her passing, but the best way to celebrate her life and legacy is to recommit ourselves to the ideals of equality and justice for all.

I would like to extend my deepest sympathies to the children and family of Coretta Scott King. Today, we have truly lost an American treasure.

Mr. HOLT. Mr. Speaker, I rise today in strong support of H.R. 655 which honors the life and accomplishments of Mrs. Coretta Scott King.

We can all learn from the life of this brave civil rights leader. Her example to us is one of perseverance and inspiration. My prayers and condolences are with the King family at this difficult time.

Throughout her life, Coretta Scott King exemplified the values of human dignity and equality, social justice, and service to others. As the mother of four children and widow of the most influential civil rights leader in our nation's history, Mrs. King spent her life advocating racial and religious tolerance, promoting democracy, and speaking out against violence.

It was her tireless effort that led to the establishment of the Martin Luther King Federal Holiday in 1983. This is a day in which Americans are called to remember the struggle of the Civil Rights Movement and to engage in community service to help others. Every generation of Americans should understand the importance of his struggle and the tremendous odds that Dr. King and others overcame to help form a more perfect union. But the work of Dr. and Mrs. King is far from finished.

There are still too many communities in America that remain divided by race. There are too many places where the color of one's skin, not the content of one's character matters. The King family has over the years accomplished great things, but work remains. As a Nation we need to examine ourselves about race. We need to understand that to this day although a people are endowed by their creator with the same rights and privileges as others in their community not all feel they can exercise those rights. Until we eliminate racism from the earth, the important work of Dr. King and Mrs. King must continue. I look forward to new generations of leaders continuing the cause and enduring in the struggle to form a more perfect union. This will truly honor Mrs. King's legacy.

Mr. RANGEL. Mr. Speaker, I rise today to honor the life and legacy of Mrs. Coretta Scott King and to add my support to H. Res. 655 honoring the life of this extraordinary woman. As much as we loved and respected Mrs. King, her family has suffered an even greater loss. To the King children—Yolanda, Martin III, Dexter, and Bernice, know that you have our deepest heartfelt sympathy.

Hailed as the 'First Lady of the Civil Rights Movement', Coretta Scott King had to endure injustices at an early age. Born in Heiberger, Alabama and raised on the farm of her parents Bernice McMurry Scott, and Obadiah Scott, she was exposed at an early age to the injustices of life in a segregated society. She walked five miles a day to attend the one-room Crossroad School in Marion, Alabama, while the white students rode buses to an all-white school closer by. Yet through it all, young Coretta excelled at her studies, particularly music, and was valedictorian of her graduating class at Lincoln High School.

She graduated in 1945 and received a scholarship to Antioch College in Yellow Springs, Ohio. As an undergraduate, she took an active interest in the emerging civil rights movement; and joined the Antioch chapter of the NAACP, as well as the college's Race Relations and Civil Liberties Committees.

Her life would be forever changed when she met a young theology student, Martin Luther King, Jr. They were married on June 18, 1953, in a ceremony conducted by King's father, the Rev. Martin Luther King, Sr.

Coretta Scott King was very supportive to her husband during the most turbulent days of the American civil rights movement. After his assassination in Memphis, Tennessee, on April 4, 1968, she kept his dream alive while also raising their four children. In her own words, she was "more determined than ever that her husband's dream would become a reality."

For more than a decade, she worked tirelessly to have her husband's birthday observed as a national holiday. Her determination would payoff when it was first celebrated in 1986.

In 1969, she established the Martin Luther King Jr. Center for Nonviolent Social Change in Atlanta, dedicated both to scholarship and to activism.

With fierce determination and undying strength, Mrs. King worked to keep Dr. King's ideology of equality for all people at the forefront of people's minds. She picked up the baton when it was dropped by her husband's assassination and continued to move forward in the civil rights arena.

In her own words, "We must make our hearts instruments of peace and nonviolence, because when the heart is right, the mind and the body will follow."

She exemplified courage, strength, and a deep compassion for justice. Coretta Scott King will be remembered as one of America's greatest treasures and will be forever missed.

Mr. AL GREEN of Texas. Mr. Speaker, today I would like to honor and commemorate Coretta Scott King, a tireless advocate for civil rights and the widow of the great civil rights leader, Rev. Dr. Martin Luther King, Jr.

Today, we continue to mourn the loss of a great woman and a pioneer of civil rights. While Dr. King was the visionary behind the civil rights movement, Mrs. King was the architect. She made real the ideals expressed by Dr. King. A driving force, she valiantly worked to found the King Center to both preserve the history of the civil rights movement and to train the many men and women in the philosophy of non-violent resistance.

Mrs. King was first and foremost a woman of strong character. She was a leader in her steadfast presence, her determination, and her courage. As one of the first people to speak out against apartheid, she embodied her husband's words "injustice anywhere is a threat to justice everywhere."

Her passion for equality and justice led her on numerous peace delegations around the world. Her actions and work with gang members demonstrated the value and the necessity of transforming neighborhoods into brotherhoods. Mrs. King spoke out against attacks on affirmative action and against racial profiling. As a result of her unrelenting campaign efforts, a bill was signed in support of the Martin Luther King, Jr. National Holiday.

Devoting relentless energy to her noble work, Mrs. Coretta Scott King has made a tremendous impact on American history. She will be missed by all those who knew her and remembered by all those who have benefited from her enormous contributions.

Mr. MEEHAN. Mr. Speaker, I rise in honor of Coretta Scott King, wife of the late Dr. Martin Luther King Jr. and a guiding force of the modern civil rights movement in her own right.

Just seventeen days ago we honored the birthday of her husband and celebrated January 16th as a national holiday in his honor. It would be too easy to remember Mrs. King simply as the wife of Dr. King, one of this country's great 20th century leaders. To do this would be a disservice to the memory of a champion of civil and equal rights in her own right.

Coretta Scott King began her long career of civic engagement as an undergraduate at Antioch College where she joined the local chapter of the National Association for the Advancement of Colored People.

After graduating from Antioch with a B.A. in music and education, Coretta Scott received a scholarship to study concert singing at the New England Conservatory of Music in my home state of Massachusetts. While there she met her future husband, Martin Luther King Jr.

After receiving her degree from the Conservatory, she and Dr. King moved to Montgomery, Alabama. It was here that she and her husband became central figures in the Montgomery Bus Boycott and ultimately, the civil rights movement.

Following the success of the Montgomery Bus Boycott, Dr. and Mrs. King traveled tirelessly to ensure that the civil rights movement continued to grow. Mrs. King's talent and education in the arts led her to conceive of and perform a series of Freedom Concerts which incorporated poetry, narration, and music to tell the story of the larger movement for equal rights. These concerts were vital in the fundraising efforts for the Southern Christian Leadership Conference, the organization her husband headed.

Mrs. King was not deterred by her husband's assassination, and if anything this tragic event strengthened her resolve in their shared struggle. In 1974, she established the Full Employment Action Council, a diverse coalition of more than 100 religious, labor, civil, and women's rights groups dedicated to economic justice through equal opportunity.

In 1983, Coretta Scott King marked the 20th anniversary of the 1963 March on Washington with another march on the Capitol featuring hundreds of organizations called the "Coalition of Conscience." At the time it was the largest demonstration in Washington's history.

Mrs. King led the movement to have her husband's birthday, January 15th, established as a federal holiday and I am happy to say that Congress and the President acted on the merit of Coretta Scott King's wish and established Martin Luther King Jr. Day as a national holiday in 1986.

While we are truly saddened at her passing, we are given pause to contemplate the impact she made during her lifetime on our lives and those of future generations. The freedoms all Americans enjoy today are due in no small part to her participation in the struggle for civil rights and equality.

Mr. Speaker, let us celebrate the achievements of this remarkable woman's lifetime and work to ensure that her legacy endures long after her passing.

Mr. SCHIFF. Mr. Speaker, I rise today to honor the life of Ms. Coretta Scott King, a civil rights icon and the widow of Dr. Martin Luther King, Jr., who died January 30, 2006, at the age of 78. Coretta Scott was born and raised on a farm near Marion, Alabama, where she knew little racial prejudice. However, living in town to attend high school, young Coretta learned firsthand of the harassment and violence directed at African-Americans. In 1942, at the age of 15, she was personally exposed to this hatred when the Scott home was set on fire on Thanksgiving night.

Church and music became Coretta Scott's salvation, and in 1945, she left for Antioch College in Ohio where as one of three African-American students in her class, she began to study music and education. After graduation, Coretta ventured off to the New England Conservatory of Music in Boston to study concert singing. It was in Boston where Coretta met Martin Luther King Jr., who was then studying for his doctorate in theology. She later said, "Even at the time we were courting, Martin was deeply concerned—and indignant—with the plight of the Negro in the United States."

The two married in 1953 and within the following decade became the parents to two sons and two daughters. In her new life as a married woman, Mrs. King gave up music to take on the role of a pastor's wife at Dexter Avenue Baptist Church in Montgomery, Alabama, where Dr. King became the seminal figure in the civil rights movement. Mrs. King joined her husband's pursuit of civil rights, and occasionally substituted for him as a speaker. They traveled the world, observing severe poverty and all its consequences, and together they learned the art of nonviolent protest from the disciples of Mahatma Gandhi. Throughout their married life, Mrs. King was an equal partner in Dr. King's tireless efforts to pursue justice, equality and peace, and was by his side in Oslo in 1964 when he received the Nobel Peace Prize.

On April 4, 1968, Mrs. King learned of her husband's assassination through a telephone call from Reverend Jesse Jackson. While supporting a sanitation workers' strike, Dr. King was shot on a Memphis motel balcony. In her autobiography, My Life with Martin Luther King Jr., Mrs. King recalled, "Because his task was not finished, I felt that I must rededicate myself to the completion of his work." Indeed, she was compelled to fully immerse herself in the nonviolent civil rights movement that her husband led. Many wives become spokespersons for their husband's causes, yet Coretta Scott King was unique; an ardent activist in the fight against injustice, Mrs. King brought a new energy to the civil rights movement. Giving hundreds of speeches and leading countless marches, Mrs. King overcame the challenges of widowhood and witnessed the successes of the civil rights movement and her husband's unfulfilled dreams.

Neverending in her commitment to justice, Mrs. King was appointed by President Carter to the United Nations General Assembly, where she devoted herself to the development of Third World nations. She joined the fight to end apartheid and lobbied the U.S. Congress for sanctions against South Africa. Mrs. King also coordinated a 15-year campaign to keep her husband's memory alive, culminating in 1983 with the passage of legislation introduced by Congressman JOHN CONYERS and Congresswoman Shirley Chisholm to commemorate her husband's work with a federal holiday. Dr. and Mrs. King have been succeeded by their four children who have each followed in their parents' footsteps, carrying with them strong hearts, minds and voices in pursuit of justice and peace.

Two years ago, I was invited to join a civil rights pilgrimage to Montgomery, Birmingham and Selma, Alabama. The journey was a remarkable experience. Led by Congressman JOHN LEWIS, a number of my colleagues in the House and the Senate and I visited the sites of many of the civil rights struggles, including the Kings' own Dexter Avenue Baptist Church. We experienced these places with some of the activists that led the movement and relived the moments through their eyes. To hear them share their account of the very church we were sitting in being attacked by a mob of segregationists was extraordinary.

Those of us who were too young to remember well the civil rights movement continue to ask ourselves what would we have done? Would we have stood up, would we have questioned those in power, would we have demanded equality and justice? Or would we, like so many Americans, have remained indifferent? The best answer we can find to that question of what we would have done is answered by what are we doing now to advance the cause of justice and equality. In 1960s Alabama, Coretta Scott King and Martin Luther King, Jr., battled overt bigotry. Today, we arm ourselves against silent intolerance. While we must look to our past and consider how far we have come, we must keep an eye toward the future knowing that the movement is not over and that each one of us must continue to dedicate ourselves to pursuing an America with equal opportunity for all.

Mrs. MALONEY. Mr. Speaker, Coretta Scott King was a major reason that our Nation advanced from the backward ways of segregation. Her passing is a tremendous loss for all of America.

Mrs. King was a civil rights hero—she was active in the cause before she married the great Dr. Martin Luther King, and she helped shape the movement as his wife, and later, his widow.

As my friend and colleague, the great champion of civil rights John Lewis, said yesterday, "She was more than the devoted wife of a great minister . . . she was a leader in her own right."

With dignity and with strength, Mrs. King helped lead the civil rights movement for decades. For many, she was the face of the movement.

We are saddened by the loss of a great American and we are so thankful for her life. As Black History Month begins today, I hope we will all use this month and beyond to honor Mrs. King, her husband and all of our civil rights heroes, and to live their message of peace and equality, everyday of our lives.

Mr. LEWIS of Georgia. Mr. Speaker, Coretta Scott King was a radiant symbol of the best that the American South and this nation have to offer. She was beautiful, charming, graceful and dignified. She was a shining light who had the ability to brighten the dark places, to bring hope where there was hopelessness.

I first met her in 1957 when I was a 17-year-old student in Nashville. She was traveling around America, especially in the South, telling the story of the Civil Rights Movement through song. I will never forget it. She looked like an opera star standing on stage. She wore a lovely pearl-white dress with layers of cascading ruffles falling gently around her. She would sing a little and then talk a little, and through her singing and talks she inspired an entire generation.

She was more than the widow of Martin Luther King, Jr. She was a leader in her own right. She was the glue that held the Civil Rights Movement together and the strength that sustained one of the most charismatic leaders of our time. Long before she married Dr. King, she was an activist for non-violence, traveling to a conference in Europe with Women Strike for Peace to discuss the dangers of atmospheric nuclear testing.

Though she tasted the bitter fruits of segregation and racial discrimination, Coretta Scott King was prepared for a privileged life. She was well-educated and married a gifted minister from a prominent family. Just like any other mother she wanted to raise her four children in peace. But when an opportunity came for her to actualize the philosophy of non-violent change, she did not ignore her convictions.

Along with her husband and the more than 50 thousand black people of Montgomery, she responded to the courage of Rosa Parks, who on December 1, 1955, refused to give up her seat on a city bus in Alabama. That simple act launched the modern-day Civil Rights Movement and changed Coretta King's life forever.

Her commitment to non-violence led her to trade her privilege to live under the constant threat of brutality. Her home was bombed, her husband was repeatedly jailed, people she knew were killed, her husband's life was always in jeopardy. And finally one day he was assassinated by a gunman's bullet.

She did not become bitter or hostile. She did not hide in some dark corner, but she drew on her faith in the transformative power of peace. And a few days after the assassination, she led striking workers through the streets of Memphis. All the days of her life, she would travel throughout the South, America, and the world urging respect for the dignity of humanity.

She went all out to create a living memorial to her husband called the Martin Luther King Jr. Center for Non-Violent Social Change, one of the most visited landmarks in Atlanta. She met with President Reagan, who was not inclined to sign the legislation, but in the end he could not deny her. She used her prominence to mobilize the American people and built a bipartisan coalition in Congress to make her husband's birthday a national holiday. Because of her efforts, generations yet unborn will learn his message of peace, and they will hear about his struggle for equal justice in America.

I loved Coretta Scott King. She was so warm, so genuine, so caring. For 20 years, she always sent me a card or a book on my birthday. I will cherish those mementos always.

I will remember Coretta Scott King as a dear friend. But the historians will remember her as one of the founding mothers of the new America, for through her noble acts, she helped liberate us all. This nation is a better nation, and we are a better people because she passed this way. However, she was not only a citizen of America, she was a citizen of the world, a world still yearning to build the Beloved Community, a world still yearning to make peace with itself. Above all, Coretta Scott King personified the beautiful, peaceful soul of a non-violent movement that still has the power to transform America, that still has the power to change the world.

Mr. BERRY. Mr. Speaker, on January 31, just one day before the start of Black History Month, we lost one of our Nation's most important civil rights pioneers—Coretta Scott King. Black History Month is an appropriate opportunity to mourn her death, celebrate her extraordinary life, and reflect on the extraordinary partnership of Mrs. King and her husband, Dr. Martin Luther King, Jr.

Although Dr. King was the heart and face of the civil rights movement, Mrs. King was its backbone. She marched alongside her husband in Selma to demand voting rights for African Americans. She marched with him again in Washington to demand a Federal law protecting the civil rights of all Americans. And she marched with her husband in Memphis one day before he was killed, to provide relief for the sanitation workers facing entrenched discrimination.

After Dr. King's murder in 1968, Coretta Scott King fought with enormous grace and determination to keep her husband's legacy alive. She founded the Martin Luther King, Jr. Center for Nonviolent Social Change to further his dream of racial equality, and fought tirelessly to establish a national holiday to honor her late husband. Although it took her 15 years to accomplish this goal, Congress finally enacted a law in 1983 designating the third Monday of January as Dr. Martin Luther King Day.

Since her husband's death 38 years ago, Mrs. King continued her work as a civil rights activist, an advocate for women's rights, and a leader in the struggle against apartheid in South Africa. She fought for the ideals that made this country great, and became the epitome of American strength and perseverance during a difficult struggle for civil rights.

In the spirit of Coretta Scott King, let us rededicate ourselves to give all Americans the opportunity and justice they need to meet the challenges of today. Through perseverance and a deep belief in God and humanity, we can go a long way to achieving a more perfect America.

Mr. LARSON of Connecticut. Mr. Speaker, yesterday, I attended the heartfelt memorial service of Mrs. Coretta Scott King. Mrs. King was a model citizen and will truly be missed by the Nation. Last week the House debated H. Res. 655, which honored the life and accomplishments of Mrs. Coretta Scott King. This resolution recognized her contributions as a leader in the Civil Rights Movement and expresses condolences to the King family on her passing.

Coretta Scott King was born on April 27, 1927, in Heiberger, Alabama. Mrs. King graduated from Antioch College with a degree in music and education and was granted a scholarship to study concert singing at the New England Conservatory of Music in Boston, Massachusetts. It was in Boston where she met a young theology student, Martin Luther King, Jr., who was attending Boston University, and her life was forever changed. They were soon caught up in a dramatic series of events that sparked the modern Civil Rights Movement. Dr. King was recognized as the face of the movement, called upon to lead various marches from city to city, with Mrs. King right by his side, encouraging citizens, regardless of race, to defy the laws of segregation.

On April 4, 1968, Martin Luther King, Jr., was assassinated in Memphis, Tennessee. Channeling her grief, Mrs. King concentrated her energies on fulfilling her husband's work by building The King Center in Atlanta, Georgia, as a living memorial to her husband's life and dream. However, Mrs. King's greatest accomplishment was yet to come. She set out to establish her late husband's birthday as a national holiday, and that dream came to fruition when Congress declared the first observance of this national holiday in 1986. Today, the holiday is marked by annual celebrations in over 100 countries.

Mrs. King was an influential public figure and is referred to as the "First Lady of the Civil Rights Movement." She was a world-renowned speaker who gave hundreds of speeches both abroad and at home, and was active in organizations such as the National Council of Negro Women and the Women's Strike for Peace. Mrs. King was also known for her writing, most notably for her autobiography, My Life With Martin Luther King. Jr.

Mrs. Coretta Scott King had a vision and she had the wherewithal to keep that vision alive. The journey towards equality for all has been greatly advanced by her work and accomplishments. Mrs. Coretta Scott King is a true American hero and will dearly be missed by her family, the Nation, and the world.

Mr. KUCINICH. Mr. Speaker, I rise today in honor and remembrance of Coretta Scott King, devoted wife, mother, grandmother and civil rights leader, whose courageous mission has left an indelible light of peace and justice visible across our country and around the world. Mrs. King gracefully raised aloft the dreams and legacy of the most prominent visionary for social change in our nation's history, her husband, Dr. Martin Luther King, Jr. Their unified mission of peacefully dismantling the racist foundation of America would change the course of our Nation forever.

Mrs. King's entire life was framed by dignity, courage and an unwavering commitment to social justice and humanitarian causes. She grew up working in the cotton fields of Alabama, where she experienced the harsh reality of racism. Taught by her parents that only a solid education could open the door to freedom and opportunity, Mrs. King focused on her studies and graduated with honors from Antioch College in southern Ohio, one of the first integrated colleges in the country. While a student, she joined the NAACP and became deeply involved in the civil rights movement, foregoing a career in music to carry out the work of peace and justice.

The assassination of Dr. King did not diminish her resolve. She courageously forged ahead on the road to justice, despite the danger inherent in her noble cause. As a young widow with four young children to raise, Mrs. King remained steadfast in her commitment to her children and also unwavering in her determination to continue on the path set by Dr. King. She took up the torch of her late husband, holding it high and dignified, exposing a broken society degraded by racism and injustice and illuminating the reality of peaceful change.

Refined, articulate and reflecting a quiet grace, Mrs. King did not retreat from the movement sparked by Dr. King. She deliberately stepped out into the sharp glare of the public and bravely marched on, leading civil protests where her husband had marched before. She led an unrelenting effort to establish Martin Luther King Jr. Day, an endeavor that took her fifteen years and over six million petitions. Determined to keep Dr. King's legacy alive, Mrs. King founded the King Center in 1968, serving as its president for 26 years.

Armed with a sharp mind, a warm smile and a passion for social change, Mrs. King journeyed around the world, speaking to college and church audiences and meeting with world leaders. Mrs. King championed the rights of the poor and advocated for social and economic justice for women and for the protection and rights of gay men and lesbian women. She marched in protest against racial discrimination across the South and was arrested for protesting apartheid in South Africa.

Mr. Speaker and Colleagues, please join me in honor, recognition and memory of Coretta Scott King, whose life mission on behalf of human rights has served to raise the collective conscience of the entire world into the promise of universal freedom from oppression. Mrs. King's brilliant legacy, framed in peace, determination and dignity, will forever resound with the voice of her husband, Dr. Martin Luther King, Jr.—along our urban streets, across the South and around the world—echoing the ongoing struggle for freedom in a chorus of hope that will someday rise with their words on the dawning of a new day of peace and justice for all.

Mr. RUPPERSBERGER. Mr. Speaker, as we celebrate the start of Black History Month with recognizing the many, many great deeds of African Americans, we also mourn the loss of an icon for people of all races—Mrs. Coretta Scott King. Mrs. King was one of our most influential black woman leaders in the world today.

The "first lady" of the civil rights movement was born Coretta Scott in Heiberger, Alabama.

She was raised on the family farm of her parents where she was exposed to the injustices of a segregated society.

Mrs. King excelled at her studies, particularly music, and was valedictorian of her graduating class at Lincoln High School. She graduated in 1945 and received a scholarship to Antioch College in Yellow Springs, Ohio.

As an undergraduate, she took an active interest in the civil rights movement; she joined the Antioch chapter of the NAACP, and the college's Race Relations and Civil Liberties Committees. She graduated from Antioch with a B.A. in music and education and won a scholarship to study concert singing at New England Conservatory of Music in Boston, Massachusetts.

In Boston she met a young theology student, Martin Luther King, Jr., and her life was changed forever.

Mr. Speaker, Mrs. King has been described as quiet, steady, and courageous and while all of that may be true let it be noted to add steadfast and certainly noble.

Mrs. King was a serious thinker, a committed activist, a talented musician and an outspoken woman whose influence and activism extended well beyond the career of her famous husband.

Mrs. King undoubtedly became a symbol of racial equality for all Americans. For a woman of her stature, rearing four little children when there was civil unrest, and to have suffered the loss of her husband sent a clear message to this Nation that the movement was too powerful to stop and must go on.

Just like the late Mrs. Jacqueline Kennedy, Mrs. Coretta Scott King showed us how to meet personal crisis with courage, and then how to transcend crisis with victory.

Although, I had never had the pleasure of meeting Mrs. King, I too share her husband's vision of peace and brotherhood as a steady theme that should be heard all across this Nation.

Mr. Speaker, history has a way of placing women like Coretta Scott King in the shadows of their powerful husbands but it is time we remember them as more than civil-rights-movement wives and widows.

I once heard someone say that behind every good man stands a good woman, but I say to you and to this Nation that beside every great man stands an even greater woman.

Mr. Speaker, her's was a remarkable life, and along the way she helped improve the lives of millions. While we mourn her lose, we must celebrate her legacy—now recognized with that of her husband.

Mr. SENSENBRENNER. Mr. Speaker. I yield back the balance of the time.

The SPEAKER. All time for debate has expired.

Pursuant to the order of the House of Tuesday, January 31, 2006, the resolution is considered read, and the previous question is ordered on the resolution and the preamble.

The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on House Resolution 655.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair desires to make an announcement.

The House has adopted a revision to the rule regarding the admission to the floor and the rooms leading thereto. Clause 4 of rule IV provides that a former Member, Delegate or Resident Commissioner or a former Parliamentarian of the House, or a former elected officer of the House or a former minority employee nominated as an elected officer of the House shall not be entitled to the privilege of admission to the Hall of the House and the rooms extending thereto if he or she is a registered lobbyist or an agent of a foreign principal; has any direct personal pecuniary interest in any legislative measure pending before the House, or reported by a committee; or is in the employ of or represents any party, organization for the purpose of influencing, directly or indirectly, the passage, defeat, or amendment of any legislative proposal.

This restriction extends not only to the House floor but adjacent rooms, the cloakrooms and the Speaker's lobby.

Clause 4 of rule IV also allows the Speaker to exempt ceremonial and educational functions from the restrictions of this clause. These restrictions shall not apply to attendance at joint meetings or joint sessions, Former Members' Day proceedings, educational tours, and other occasions as the Speaker may designate.

Members who have reason to know that a person is on the floor inconsistent with clause 4 of rule IV should notify the Sergeant at Arms promptly.

☐ 1800

SPECIAL ORDERS

The SPEAKER pro tempore (Mr. BOUSTANY). Under the Speaker's announced policy of January 4, 2005, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

BORDER INSURGENTS

Mr. POE. Mr. Speaker, I ask unanimous consent to claim the time of the gentleman from Indiana (Mr. BURTON).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. POE) is recognized for 5 minutes.

Mr. POE. Mr. Speaker, our border is being held hostage by the lawless that roam the murky river banks of the Rio Grande.

Just last week along the Texas-Mexico border, about 50 miles east of El Paso, Texas lawmen faced off with outlaws dressed as Mexican army soldiers. These criminals attempted to flee Texas State authorities. U.S. law enforcement authorities were met with camouflaged military-style Humvees with .50-caliber machine guns, forcing an armed standoff along these dangerous banks of the rugged Rio Grande. The Mexican government has claimed that these so-called soldiers were actually drug smugglers. Fortunately, whoever they were, their criminal intent was foiled because U.S. border officials, even though they were outgunned, tracked the smugglers and the outlaws until they quickly fled back into Mexico after the initial standoff. These outlaws left behind nearly a ton of marijuana after they set one of their own vehicles ablaze. Mexican officials are denying that these men were members of the Mexican army, claiming it is quite easy to buy Mexican military uniforms in local stores. But, of course, Mr. Speaker, we do not know the truth about that statement.

This incident is not the first either. In November the U.S. border patrol chased criminals in a dump truck full of marijuana in the same area until it got stuck in the Rio Grande River on its way back to Mexico. As Border Patrol agents sought to unload the three tons of marijuana from the truck, the driver, who had initially fled, returned with an army of heavily armed men wearing, yes, that is correct, Mexican military uniforms carrying military-style weapons. The army of thugs backed the agents away and then bulldozed their own truck back into Mexico, this safe haven for drug dealers.

And the war for the border is not just taking place above ground. This month in California officials have stumbled upon four underground tunnels that lead from Mexico into the United States. Just last Thursday authorities spent the day removing an estimated two tons of marijuana from a tunnel that began inside a warehouse in Tijuana, Mexico near their airport and ended up in a vacant industrial building on the American side. The 2,400-foot tunnel was about 5 feet wide and high enough for an adult to stand. The floor was cement and there was electricity and ventilation. Customs officials have described the tunnel as longer and much more massive than the other smuggling tunnels discovered since September 11, 2001.

Mr. Speaker, this is an issue of national security. If these drug cartels are so boldly bringing drugs across our borders through these tunnels, what is to prevent them from using these same tunnels to smuggle terrorists and humans as well? We cannot ignore this issue.

In early January, Customs and Border Protection border patrol agents of Brewster County, Texas seized over $2 million worth of cocaine from three Mexican nationals carrying the drugs in backpacks into the United States. These narcoterrorists make money because of the lack of border security in the United States. And, Mr. Speaker, these drug dealers are serious. Federal officials have recently warned U.S. border patrol agents that they could be the targets of assassins hired by immigrant smugglers. According to a memo from Homeland Security, "Unidentified Mexican alien smugglers are angry about the border security along the U.S.-Mexico border and have agreed that the best way to deal with U.S. border patrol agents is to hire a group of contract killers." Well, it is time for us to get angry as well and come up with the best way to deal with them.

We are fighting a serious insurgency along our borders, and we must stop this lawless out-of-control invasion. Our border is critically and visibly vulnerable. What is it going to take for us to figure this out? It is chilling to think what may be next. Will it be a shootout on the Rio Grande River?

We must win this battle for our borders. We must win the battle for American sovereignty. We must win the battle against the lawlessness that has invaded our country before Americans pay for this lawless behavior of others. That is just the way it is.

COAL MINE SAFETY

Mr. RAHALL. Mr. Speaker, I ask unanimous consent to take my Special Order at this time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from West Virginia (Mr. RAHALL) is recognized for 5 minutes.

Mr. RAHALL. Mr. Speaker, I rise in anger and outrage. This very afternoon two more coal miners perished in my home State of West Virginia in Boone County in separate unrelated incidents. This comes on the heels of the 14 coal miners in West Virginia who tragically died in two mines just last month.

The death toll must stop. This is scandalous. The leadership, if I may use that word, of the Federal regulatory authority charged with coal mine safety, the Mine Safety and Health Administration, has apparently completely abdicated its responsibility under this administration.

For the national spotlight to be turned on coal mine safety just last month, for those responsible for coal mine safety to be grilled during a committee hearing held in the other body just last month, yet to remain so aloof and so deficient in meeting their mission and mandate just boggles the mind. It defies logic. It smacks of callous disregard. It is inhumane. It is inexcusable.

Just this morning the West Virginia congressional delegation introduced remedial legislation to force the issue, to compel the Federal agency in charge to do its job, to enforce the coal mine and health safety standards of this Nation. This initiative is high priority for us. The shame is that it now comes on the tears of even more grieving families and this sudden and unexpected departure of two more coal miners. Why is it that every Federal coal mine health and safety law we have on the books is written with the blood of coal miners? The status quo is unacceptable. It is totally unacceptable. It must change.

I now call on the Mine Safety and Health Administration to do its duty and respond immediately to the request the Governor of West Virginia just made in a press conference. Send additional assistance to my State to allow the Mine Safety and Health Administration to do its job. Conduct a massive and comprehensive safety inspection of our mines. We must put an end to this continuing nightmare.

ADULT STEM CELL TRANSPLANTATION FOR SYSTEMIC LUPUS ERYTHEMATOSUS

Mr. WELDON of Florida. Mr. Speaker, I ask unanimous consent to claim the time of the gentleman from North Carolina (Mr. JONES).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. WELDON) is recognized for 5 minutes.

Mr. WELDON of Florida. Mr. Speaker, I rise to address the House regarding a recent article just published in the Journal of the American Medical Association.

As my colleagues know, I practiced medicine for about 15 years before my election to the House in 1994 and I continue to see patients about once a month at the veterans clinic in my congressional district. And juggling the burdens of my congressional position, I continue to try to read the medical literature. And one of the journals that I take is the Journal of the American Medical Association. And I have been engaged in an ongoing debate in this body regarding the potential usefulness of embryonic stem cells versus adult stem cells, and I have been advocating the position that the medical literature and the scientific literature is replete with evidence that adult stem cells and cord blood stem cells are proven to be highly efficacious in human applications, in treating human diseases, and that embryonic stem cells, on the other hand, not only have they never been successfully used in a human clinical trial, and you cannot show me one research article where an embryonic stem cell has been used to help a human being, they have not really been shown to be very efficacious even in animals. We do not today have a good animal model of an animal disease, say, an animal model of diabetes, where embryonic stem cells have been successfully used to cure those animals, whereas that has been done with adult stem cells in the case of diabetes in mice. It was done years ago, as a matter of fact. They tried to do that with embryonic stem cells and it failed.

And what is very significant is this article just published in the Journal of the American Medical Association, they had some 50 patients, almost, enrolled in a study, and they used adult stem cell treatments for what we call refractory or basically untreatable systemic lupus erythematosus.

Systemic lupus is a terrible disease. It affects 1.5 million Americans. Ninety percent of them are women. It is also a disease that is very common in minorities, two to three times more prevalent in minorities. The traditional treatment has not changed for 40 years. We have not had a new drug for this, and it is typically the use of what we call glucocorticords or steroids and other immunosuppressive drugs, some of the drugs that we use for cancer. Very significant side effects. No new drugs in 40 years. And it can lead to very, very serious complications, to include renal failure and to have to go on dialysis. And of this group, 48 people enrolled, they cured, cured, 33 people. No disease symptoms, published in the Journal of the American Medical Association's flagship JAMA. Richard K. Burt is the lead author. There are about 10different authors. Burt is at the University of Chicago. I know about his work. I went there to see this guy years ago because he was doing so many innovative things and using adult stem cells, and he has cured 33 people. Some of them they have been following as long as 7 years, disease free.

Mr. Speaker, this has never been done before where they can actually take somebody with severe lupus, and the only people they can typically get enrolled in these clinical trials are the bad ones that are not responding to drugs. So these are the worst cases. They are not responding to drugs. Adult stem cell transplants, and he has cured 33 of 48 patients.

Just another point to make that adult stem cells are showing tremendous clinical promise. In this particular medical group at the University of Chicago, they have treated about 50 different diseases with adult stem cells. Tremendous promise. Embryonic stem cells, on the other hand, no promise has been shown in humans to date. And as well I will reiterate they do not as yet have a good animal model that they will ever work. They are prone to form tumors called teratomas when they are used in treatment, and there are immune complications. There are a whole host of complications in animals while they try to use them.

So I wanted to bring all my colleagues up to date on this very important piece of research. It is good news for Americans with lupus who are not responding to drugs. Stem cells work. But it is adult stem cells, not embryonic stem cells.

IRAN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Missouri (Mr. SKELTON) is recognized for 5 minutes.

Mr. SKELTON. Mr. Speaker, thousands of Americans have lost their lives and billions of U.S. dollars have been spent in the war in Iraq. This war has dangerously overstretched our military and preoccupied our country for almost 3 years now, and it still has no end in sight.

And after all this, what a tragedy and disaster it will be if the real winner in this war is not the Iraqi people nor a more secure and democratic Middle East but rather Iran, a country that supports terrorism and opposes most of what we stand for. Yet today this possible scenario is exactly what we face.

Iran has used our preoccupation in Iraq to its advantage. While we have searched for nonexistent weapons of mass destruction in Iraq, Iran has pursued its own nuclear ambitions. Now, with its decision to resume uranium enrichment, Iran is dangerously closer to having the capability to produce nuclear weapons. And press reports today link Iran's supposedly peaceful nuclear program to its military work on high explosives and missiles.

At the same time, Iran has deeply insinuated itself in Iraq. It has taken advantage of Iraq's porous borders and is supporting anti-American efforts there. Its goal is to promote a Shiite-dominated anti-American state that can strengthen Iran's military, economic and political power in the region.

But even before its latest nuclear pursuits and involvement in Iraq, Iran's actions have been seriously troubling. It has pursued dangerous chemical, biological, and ballistic missile capabilities; supported terrorists; and undermined the Middle East peace process.

□ 1815

Amidst all of this, Iran's leaders have escalated their anti-Semitic rhetoric, threatening to wipe Israel off the map.

Yet, rather than handle Iran's nuclear situation and involvement in Iraq early and decisively with a sophisticated policy that also addresses the broader problems posed by the country, this administration largely relied on the Europeans to sort this thing out. As a result, the nuclear situation is now an international crisis, and we risk having a radical anti-American regime armed with nuclear weapons entrenched as the dominant power in the Middle East.

We simply cannot let this happen. Iran must not acquire a nuclear weapon. It must respect Iraq's sovereignty, and it must become a constructive member of the international community. While cooperation with our allies and strategic partners is critical, the U.S. must take the lead here. The agreement brokered by Secretary Rice this week to report Iran to the U.N. Security Council is encouraging, but action by the council is uncertain and may not resolve the nuclear crisis or much else. The administration must put forth the necessary plan, and Congress must do its part. Today, the House Armed Services Committee held a hearing on this matter and will do more.

There are no simple answers or easy solutions, but one thing is clear: the administration, with Congress, must be more engaged and must get this right. Other countries will be closely watching this situation, and there are serious implications for the security of our Nation, stability in the Middle East and the nonproliferation regime.

We must address the immediate nuclear crisis, but we must also account for the complexity of the situation and broader, long-term issues involved; and we must consider all tools at our disposal. Yet there are limits to what we can accomplish militarily, and sweeping sanctions could cause more harm than good. Still, there are many tools available that this administration has, unfortunately, failed to utilize effectively or at all.

Here are some of them: we should actively support the IAEA's efforts. We should pursue more focused and vigorous diplomacy and encourage China, Russia, and India to play key roles. We should develop necessary human intelligence capabilities.

We should cultivate U.S. support among the Iranian population and substantially increase democracy promotion efforts that encourage the population to demand more moderate leadership. Specifically, we should increase communication through TV, radio, and the Internet. We should convey a coordinated U.S. policy. We should widely disseminate information about the regime's repression and corruption. We should provide effective assistance to Iranian dissidents and pro-democracy NGOs here in the United States.

We should increase cultural, academic, and professional opportunities for Iran's youth and women. Additionally, we should consider "smart sanctions," as well as incentives that would target Iran's leadership, avoid harming the Iranian population and have strong international support. For example, we should sanction overseas assets of corrupt leaders.

Also, we should encourage Lebanon to disarm Hezbollah, which Iran uses to reject power. We should limit Iran's ability to disrupt oil and gas supplies and increase energy prices. This includes reducing the vulnerability of Middle Eastern energy resources to Iranian-backed terrorist attacks and decreasing U.S. reliance on such resources.

We simply cannot allow Iran to emerge as the real winner in the war in Iraq. This must be a top bipartisan priority.

ECONOMIC RESULTS SPEAK FOR THEMSELVES

Ms. FOXX. Mr. Speaker, I ask unanimous consent to take the time of Mr. MACK.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from North Carolina?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from North Carolina (Ms. FOXX) is recognized for 5 minutes.

Ms. FOXX. Mr. Speaker, I first want to commend the gentleman from Florida (Mr. WELDON) for bringing this exciting news about adult stem cell success to us. Last week, Congresswoman NANCY JOHNSON and I had the opportunity to visit again Wake Forest Medical Center's regenerative medicine program, where they are doing some absolutely wonderful things from adult stem cells, and I hope sometime in the future soon to bring some information about that program.

But, Mr. Speaker, tonight I want to talk about some other good news. While we were working in our districts for the past month, good economic news continued to pour in, thanks to the Republicans' fiscal restraint and pro-growth economic agenda. In fact, our unemployment rate is lower than the average of the 1970s, 1980s, and 1990s; and earlier this month, the Dow Jones Industrial Average closed above 11,000 for the first time since the 2001 terrorist attacks. In addition, new-home sales reached an all-time high in 2005. Finally, it was just reported that consumer confidence has risen this month to the highest level since June of 2002.

The great economic news flies in the face of the Democrats' message of doom and gloom. Before the district work period, Republicans passed a Deficit Reduction Act, which was a plan to reform the government and yield savings for American taxpayers. Fortunately, today we passed this bill again, modified slightly by the Senate; but it was with no support from the Democrats. Once again, we show that Republicans are indeed the party of fiscal restraint.

Mr. Speaker, Republicans will continue to push for pro-growth economic policies aimed at ensuring that all Americans can realize the American Dream.

COMMENTS ON THE STATE OF THE UNION ADDRESS

Ms. WOOLSEY. Mr. Speaker, I ask unanimous consent to take the time of the gentleman from Oregon (Mr. DEFAZIO).

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

Ms. WOOLSEY. Mr. Speaker, last night, Cindy Sheehan was evicted from this Chamber and arrested. Her crime? Wearing a T-shirt that highlighted the number of dead soldiers in Iraq and asking, "How many more?"

Since when is free speech conditional on whether or not you agree with the President of the United States? In fact, isn't the whole point of the first amendment to our Constitution to protect dissenters? And how ironic is it, Mr. Speaker, that this outrageous suppression of peaceful protest should take place on the very same day that America lost one of the pioneers of civil disobedience, Coretta Scott King.

I will say about this episode what I said about the torture of prisoners, the PATRIOT Act, and the administration's illegal domestic surveillance program: How can we claim to be fighting on behalf of freedom around the world, making the world safe for freedom, when we are smothering freedom here at home?

Let us not forget also that Cindy Sheehan has given her child for this country and this war. She deserves the sympathy and gratitude of every American. No one who sat in this Chamber last night has the moral authority she does to express an opinion on the Bush Iraq policy.

But I might argue that it is actually a little misleading to classify Ms. Sheehan's views as "dissent" or "protest," because a majority of Americans agree with her that the invasion of Iraq was a tragic mistake and a majority agrees with her that the President misled us about weapons of mass destruction intelligence in order to justify this war.

The President, meanwhile, represents a minority view, and he tried once again to sell that minority view to skeptical Americans last night. And once again he did so by employing a spin, misleading rhetoric, and outright deception.

Of course, he conveniently conflated the 9/11 attacks on America with the conflict in Iraq, exploiting a national tragedy for the umpteenth time. He talked about the importance of Iraqi reconstruction, but did not mention that the official in charge of reconstruction says there is not enough funding to complete key projects. He said that military commanders on the ground would make decisions for troop levels, but in 2003 he dismissed the general who correctly warned that keeping the peace in post-war Iraq would require hundreds of thousands of troops.

The President set up this misleading either/or proposition choice last night: you either support his militarism, or you believe in "retreating within our borders and the false comfort of isolation."

This is a false charge. We should absolutely be engaging the nations of the world, especially ones that are poor, underdeveloped, and vulnerable to terrorism; but we should be engaging the world with humanitarian support, not with bombs and missiles.

Yes, by all means, let us meet the challenges of the world, where too many suffer under economic and political repression. But instead of sending troops, let us send small business loans, let us send agricultural experts, let us send doctors, teachers, scientists and constitutional scholars. Let us engage, not invade.

This has been the core philosophy of my SMART Security Plan that I have discussed here many, many times: less brawn, more brains; less belligerence, more benevolence.

It is interesting that a President who has disparaged allies, rejected multilateralism, and ignored global commitments now talks about the dangers of isolation. The only way to promote peace and security to combat terrorism, to stop the spread of deadly weapons is to embrace a vision of global partnership, cooperation and diplomacy: and that is exactly what the President has failed to do.

He could start by abandoning his vision of conquest and bring our troops home. Only then can we begin the hard work of defeating tyranny and ensuring freedom and ensuring peace around the world.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair would remind Members to avoid improper references toward the President or the Vice President.

STATUS REPORT ON CURRENT SPENDING LEVELS OF ON-BUDGET SPENDING AND REVENUES FOR FY 2006 AND THE 5-YEAR PERIOD FY 2006 THROUGH FY 2010

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa (Mr. NUSSLE) is recognized for 5 minutes. I am transmitting a status report on the current levels of on-budget spending and revenues for fiscal year 2006 and for the five-year period of fiscal years 2006 through 2010. This report is necessary to facilitate the application of sections 302 and 311 of the Congressional Budget Act and section 401 of the conference report on the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95). This status report is current through January 27, 2006.

The term "current level" refers to the amounts of spending and revenues estimated for each fiscal year based on laws enacted or awaiting the President's signature.

The first table in the report compares the current levels of total budget authority, outlays, and revenues with the aggregate levels set forth by H. Con. Res. 95. This comparison is needed to enforce section 311(a) of the Budget Act, which creates a point of order against measures that would breach the budget resolution's aggregate levels. The table does not show budget authority and outlays for years after fiscal year 2006 because those years are not considered for enforcement of spending aggregates.

The second table compares, by authorizing committee, the current levels of budget authority and outlays for discretionary action with the "section 302(a)" allocations made under H. Con. Res. 95 for fiscal year 2006 and fiscal years 2006 through 2010. "Discretionary action" refers to legislation enacted after the adoption of the budget resolution. This comparison is needed to enforce section 302(f) of the Budget Act, which creates a point of order against measures that would breach the section 302(a) discretionary action allocation of new budget authority for the committee that reported the measure. It is also needed to implement section 311(b), which exempts committees that comply with their allocation from the point of order under section 311(a).

The third table compares the current levels of the discretionary appropriations for fiscal year 2006 with the "section 302(b)" suballocations of discretionary budget authority and outlays among Appropriations subcommittees. The comparison is also needed to enforce section 302(f) of the Budget Act because the point of order under that section equally applies to measures that would breach the applicable section 302(b) suballocations as well as the 302(a) allocation.

The fourth table gives the current level for 2007 of accounts identified for advance appropriations under section 401 of H. Con. Res. 95. This list is needed to enforce section 401 of the budget resolution, which creates a point of order against appropriation bills or amendments thereto that contain advance appropriations that are: (i) identified in the statement of managers or (ii) would cause the aggregate amount of such appropriations to exceed the level specified in the resolution.

REPORT TO THE SPEAKER FROM THE COMMITTEE ON THE BUDGET—STATUS OF THE FISCAL YEAR 2006 CONGRESSIONAL BUDGET ADOPTED IN H. CON. RES. 95

[Reflecting action completed as of January 27, 2006—On-budget amounts, in millions of dollars]

	Fiscal years—	
	2006	2006–2010
Appropriate Level:		
Budget authority	2,144,384	(1)
Outlays	2,161,420	(1)
Revenues	1,589,892	9,080,006
Current Level:		
Budget authority	2,135,436	(1)
Outlays	2,161,041	(1)
Revenues	1,607,178	9,176,057
Current Level over (+)/under(−) Appropriate Level:		
Budget authority	−8,948	(1)
Outlays	−379	(1)
Revenues	17,286	96,051

[1] Not applicable because annual appropriations acts for fiscal years 2007 through 2010 will not be considered until future sessions of Congress.

BUDGET AUTHORITY

Enactment of measures providing new budget authority for FY 2006 in excess of $8,948,000,000 (if not already included in the current level estimate) would cause FY 2006 budget authority to exceed the appropriate level set by H. Con. Res. 95.

OUTLAYS

Enactment of measures providing new outlays for FY 2006 in excess of $379,000,000 (if not already included in the current level estimate) would cause FY 2006 outlays to exceed the appropriate level set by H. Con. Res. 95.

REVENUES

Enactment of measures that would reduce revenue for FY 2006 in excess of $17,286,000,000 (if not already included in the current level estimate) would cause revenues to fall below the appropriate level set by H. Con. Res. 95.

Enactment of measures resulting in revenue reduction for the period of fiscal years 2006 through 2010 in excess of $96,051,000,000 (if not already included in the current level estimate) would cause revenues to fall below the appropriate levels set by H. Con. Res. 95.

DIRECT SPENDING LEGISLATION—COMPARISON OF CURRENT LEVEL WITH AUTHORIZING COMMITTEE 302(a), ALLOCATIONS FOR DISCRETIONARY ACTION, REFLECTING ACTION COMPLETED AS OF JANUARY 27, 2006

[Fiscal Years, in millions of dollars]

House Committee	2006		2006–2010 total	
	BA	Outlays	BA	Outlays
Agriculture:				
Allocation	0	0	0	0
Current level	0	0	0	0
Difference	0	0	0	0
Armed Services:				
Allocation	0	0	0	0
Current level	−23	−24	−57	−64
Difference	−23	−24	−57	−64
Education and the Workforce:				
Allocation	100	100	500	500
Current level	−12	−25	28	33
Difference	−112	−125	−472	−467
Energy and Commerce:				
Allocation	100	100	2,000	2,000
Current level	141	231	2,283	2,240
Difference	41	131	283	240
Financial Services:				
Allocation	0	0	0	0
Current level	2,210	2,210	3,356	3,356
Difference	2,210	2,210	3,356	3,356
Government Reform:				
Allocation	50	50	50	50
Current level	−1	−1	0	0
Difference	−51	−51	−50	−50
House Administration:				
Allocation	0	0	0	0
Current level	0	0	0	0
Difference	0	0	0	0
Homeland Security:				
Allocation	0	0	0	0
Current level	0	0	0	0
Difference	0	0	0	0
International Relations:				
Allocation	0	0	0	0
Current level	−25	−25	−27	−27
Difference	−25	−25	−27	−27
Judiciary:				
Allocation	6	6	6	6
Current level	0	0	0	0
Difference	−6	−6	−6	−6
Resources:				
Allocation	8	8	50	50
Current level	0	2	1	3
Difference	−8	−6	−49	−47
Science:				
Allocation	0	0	0	0
Current level	0	0	0	0
Difference	0	0	0	0
Small Business:				
Allocation	0	0	0	0
Current level	0	0	0	0
Difference	0	0	0	0
Transportation and Infrastructure:				
Allocation	3,027	0	4,107	0
Current level	4,195	412	37,125	1,271
Difference	1,168	412	33,018	1,217
Veterans' Affairs:				
Allocation	0	0	0	0
Current level	0	0	0	0
Difference	0	0	0	0
Ways and Means:				
Allocation	350	346	1,537	1,914
Current level	705	720	311	373
Difference	355	374	−1,226	−1,541

DISCRETIONARY APPROPRIATIONS FOR FISCAL YEAR 2006—COMPARISON OF CURRENT LEVEL WITH APPROPRIATIONS COMMITTEE 302(a) ALLOCATION AND APPROPRIATIONS SUBCOMMITTEE 302(b) SUBALLOCATIONS

[in millions of dollars]

Appropriations Subcommittee	302(b) suballocations as of November 2, 2005 (H. Rpt. 109–264)		Current level reflecting action completed as of January 27, 2006		Current level minus suballocations	
	BA	OT	BA	OT	BA	OT
Agriculture, Rural Development, FDA	17,088	18,691	16,777	18,590	−311	−101
Defense	403,280	372,696	357,823	374,803	−45,457	2,107
Energy & Water Development	30,495	30,273	30,189	30,498	−306	225
Foreign Operations	20,937	25,080	20,700	25,130	−237	50
Homeland Security	30,846	33,233	30,258	32,980	−588	−253
Interior-Environment	26,159	27,500	25,891	28,600	−268	1,100
Labor, HHS & Education	142,514	143,802	141,218	143,285	−1,296	−517
Legislative Branch	3,804	3,804	3,766	3,777	−38	−27
Military Quality of Life-Veterans Affairs	44,143	81,634	85,467	75,487	41,324	−6,147
Science-State-Justice-Commerce	57,854	58,856	57,208	58,148	−646	−708
Transportation-Treasury-HUD-Judiciary-DC	65,900	120,837	64,135	120,864	−1,765	27
Unassigned	0	430	0	0	0	−430
Total (Section 302(a) Allocation)	843,020	916,836	833,432	912,162	−9,588	−4,674

Statement of FY2007 advance appropriations under section 401 of H. Con. Res. 95, reflecting action completed as of January 27, 2006

[In millions of dollars]

	Budget Authority
Appropriate Level	23,158
Current Level:	
Elk Hills	0
Employment and Training Administration	2,463
Education for the Disadvantaged	7,383
School Improvement	1,435
Children and Family Services (Head Start)	1,389
Special Education	5,424
Vocational and Adult Education	791
Payment to Postal Service	73
Section 8 Renewals	4,200
Shipbuilding and Conversion, Navy	0
Total	23,158
Current Level over (+)/ under (-) Appropriate Level	0

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 1, 2006.

Hon. JIM NUSSLE,
Chairman, Committee on the Budget, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The enclosed report shows the effects of Congressional action on the fiscal year 2006 budget and is current through January 27, 2006. This report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended.

The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of H. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2006. Pursuant to section 402 of that resolution, provisions designated as emergency requirements are exempt from enforcement of the budget resolution. As a result, the enclosed current level report excludes these amounts (see footnote 2 of the report).

Since my last letter, dated December 13, the Congress has cleared and the President has signed the following acts that affect budget authority, outlays, or revenues for fiscal year 2006:

Valles Caldera Preservation Act of 2005 (Public Law 109–132);

Naval Vessels Transfer Act of 2005 (Public Law 109–134);

An act to provide certain authorities to the Department of State (Public Law 109–140);

Terrorism Risk Insurance Extension Act of 2005 (Public Law 109–144);

Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Public Law 109–148);

Labor, HHS, Education, and Related Agencies Appropriations Act, 2006 (Public Law 109–149);

Second Higher Education Extension Act of 2005 (Public Law 109–150);

Employee Retirement Preservation Act (Public Law 109–151);

TANF and Child Care Continuation Act of 2005 (Public Law 109–161);

National Defense Authorization Act of Fiscal Year 2006 (Public Law 109–163); and

United States-Bahrain Free Trade Agreement Implementation Act (Public Law 109–169).

The effects of the action listed above are detailed in the enclosed report.

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

FISCAL YEAR 2006 HOUSE CURRENT LEVEL REPORT AS OF JANUARY 27, 2006

[In millions of dollars]

	Budget authority	Outlays	Revenues
Enacted in previous sessions:[1]			
Revenues	n.a.	n.a.	1,607,650
Permanents and other spending legislation	1,346,313	1,314,358	n.a.
Appropriation legislation	0	382,272	n.a.
Offsetting receipts	−479,872	−479,872	n.a.
Total, enacted in previous sessions:	866,441	1,216,758	1,607,650
Enacted this session:			
Authorizing Legislation:			
TANF Extension Act of 2005 (P.L. 109–19)	148	165	0
An act approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2005 (P.L. 109–39)	0	0	−1
Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (P.L. 109–53)	27	27	−3
Energy Policy Act of 2005 (P.L. 109–58)	141	231	−588
Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (P.L. 109–59)	3,444	36	9
National Flood Insurance Program Enhanced Borrowing Authority Act of 2005 (P.L. 109–65)	2,000	2,000	0
Pell Grant Hurricane and Disaster Relief Act (P.L. 109–66)	2	2	0
TANF Emergency Response and Recovery Act of 2005 (P.L. 109–68)[2]	102	105	0
Natural Disaster Student Aid Fairness Act (P.L. 109–86)	36	18	0
Community Disaster Loan Act of 2005 (P.L. 109–88)[2]	751	376	0
QI, TMA, and Abstinence Programs Extension and Hurricane Katrina Unemployment Relief Act of 2005 (P.L. 109–91)	354	341	0
An act to extend the special postage stamp for breast cancer research for 2 years (P.L. 109–100)	−1	−1	0
Valles Caldera Preservation Act of 2005 (P.L. 109–132)	0	2	0
Naval Vessels Transfer Act of 2005 (P.L. 109–132)	−26	−26	0
An act to provide certain authorities to the Department of State (P.L. 109–140)	1	1	0
Terrorism Risk Insurance Extension Act of 2005 (P.L. 109–144)	210	210	0
Second Higher Education Extension Act of 2005 (P.L. 109–150)	−50	−45	0
Employee Retirement Preservation Act (P.L. 109–151)	0	0	−2
TANF and Child Care Continuation Act of 2005 (P.L. 109–161)	73	81	0
National Defense Authorization Act for Fiscal Year 2006 (P.L. 109–163)	−23	−24	0
United States-Bahrain Free Trade Agreement Implementation Act (P.L. 109–169)	1	1	−20
Appropriations Acts:			
Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (P.L. 109–13)[2]	−39	−21	11
Interior Appropriations Act, 2006 (P.L. 109–54)	26,211	17,301	122
Legislative Branch Appropriations Act, 2006 (P.L. 109–55)	3,804	3,185	0

FISCAL YEAR 2006 HOUSE CURRENT LEVEL REPORT AS OF JANUARY 27, 2006—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Homeland Security Appropriations Act. 2006 (P.L. 109–90)	31.860	19,306	0
Agriculture Appropriations Act. 2006 (P.L. 109–97)	99,262	57,294	0
Foreign Operations Appropriations Act. 2006 (P.L. 109–102)	20.979	8.164	0
Energy and Water Appropriations Act, 2006 (P.L. 109–103)	30,459	19,604	0
Science, State, Justice, Commerce Appropriations Act. 2006 (P.L. 109–108)	58,210	35.763	0
Military Quality of Life and VA Appropriations Act, 2006 (P.L. 109–114)[2]	83,519	67,294	0
Transportation, Treasury, HUD Appropriations Act. 2006 (P.L. 109–115)	81.149	69.465	0
Defense and Emergency Supplemental Appropriations Act, 2006 (P.L. 109–148)[2]	393,349	273.692	0
Labor, HHS, and Education Appropriations Act. 2006 (P.L. 109–149)	505,060	370,483	0
Total, enacted this session:	1,341,013	945,030	−472
Entitlements and mandatories: Budget resolution baseline estimates of appropriated entitlements and other mandatory programs not yet enacted	−72,018	−747	n.a.
Total Current Level[2 3]	2,135,436	2,161,041	1.607.178
Total Budget Resolution	2.144.384	2.161.420	1,589,892
Current Level Over Budget Resolution	n.a.	n.a.	17,286
Current Level Under Budget Resolution	8,948	379	n.a.
Memorandum:			
Revenues, 2006–2010			
House Current Level	n.a.	n.a.	9,176,057
House Budget Resolution	n.a.	n.a.	9,080.006
Current Level Over Budget Resolution	n.a.	n.a.	96.051
Current Level Under Budget Resolution	n.a.	n.a.	n.a.

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[1] The effects of an act to provide for the proper tax treatment of certain disaster mitigation payments (P.L. 109–7) and the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (P.L. 109–8) are included in this section of the table, consistent with the budget resolution assumptions.

[2] Pursuant to section 402 of H. Con. Res. 95, the Concurrent Resolution of the Budget for Fiscal Year 2006, provisions designated as emergency requirements are exempt from enforcement of the budget resolution. As a result, the current level excludes the following amounts:

	Budget Authority	Outlays	Revenues
Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (P.L. 109–13)	0	30,757	0
Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising From Hurricane Katrina, 2005 (P.L. 109–61)	0	7,750	0
Second Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising From Hurricane Katrina, 2005 (P.L. 109–62)	0	21.841	0
TANF Emergency Response and Recovery Act of 2005 (P.L. 109–68)	200	245	0
Katrina Emergency Tax Relief Act of 2005 (P.L. 109–73)	128	128	−3.191
Community Disaster Loan Act of 2005 (P.L. 109–88)	−751	0	0
National Flood Insurance Program Further Enhanced Borrowing Authority Act of 2005 (P.L. 109–106)	15,000	14,000	0
Military Quality of Life and VA Appropriations Act, 2006 (P.L. 109–114)	1.225	1.103	0
Gulf Opportunity Zone Act of 2005 (P.L. 109–135)	27	27	−3,920
Defense and Emergency Supplemental Appropriations Act, 2006 (P.L. 109–148)	59.152	36.572	0
Total, enacted emergency requirements:	74,981	112,423	−7,111

[3] Excludes administrative expenses of the Social Security Administration, which are off-budget.

Source: Congressional Budget Office.

Notes: n.a. = not applicable; P.L. = Public Law.

VACATING 5-MINUTE SPECIAL ORDER

The SPEAKER pro tempore. Without objection, the 5-minute Special Order of the gentleman of New Jersey (Mr. PALLONE) is vacated.

There was no objection.

THE NEED FOR ENERGY INDEPENDENCE

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

Ms. KAPTUR. Mr. Speaker, last night we heard the President say something that has been repeated on news broadcast after news broadcast across our country: America is addicted to imported oil. This chart shows that over 30 percent, one-third of what we consume, comes just from the Middle East. Mr. President, thank you for finally saying what many of us have been trying to tell you and your administration and your father's administration for the past decade-and-a-half. Your own Secretary of Defense told me on the record in the Defense Appropriations Committee that energy independence for America wasn't his job, and yet he runs the largest department in your cabinet.

My constituents complain to us daily about the cost of home heating, the cost of gasoline. Small business people can't afford to pay their bills. But they don't want to have to wait until 2025 for a solution after you have been out of office for nearly two decades.

The United States consumes over $7 billion worth of imported petroleum, most of it from very undemocratic places. You called them "unstable" last night. They are more than unstable. They are undemocratic. Saudi Arabia being the premier country.

Now. Mr. President, you are in the sixth year of your Presidency. Four years ago you claimed to offer an energy plan in this book that had 103 recommendations. I said then and I say now, not a single one of these recommendations were directed at new fuels like ethanol and biodiesel, which you referenced last night. It is interesting that you waited until the sixth year, the middle of your second term, to even offer any kind of new energy program for our country. It kind of makes you wonder whether the Bush administration is really serious.

We must do something now about America's chief strategic vulnerability. We don't need to wait 20 years; we don't need to wait another decade for cellulosic research. In fact, Minnesota moved to a 10 percent ethanol blend, and we ought to do the very same thing nationally.

We can provide funds for infrastructure; just put the pumps in the ground. I can buy the vehicles in Detroit today. I can't get the fuel in my own district.

□ 1830

We landed a man on the Moon in 10 years. A man on the Moon. And yet we cannot get pumps in the ground across America. We lay tar and concrete all over the country. Let us get serious.

The 2002 farm bill contained the first-ever energy title. I know, we wrote it. Have we had any support from the administration? So small, it is almost embarrassing. In 2004 the administration recommended cutting the minuscule biofuels program operated by the U.S. Department of Agriculture by $70 million. In 2005 by $2 million more.

They have cut the money for the National Renewable Energy Labs by over $46 million in Golden, Colorado. All of the pieces of the puzzle that could give us the answer and wean us off this foreign dependence are not part of the President's budget proposal.

What are you going to do, Mr. President, to recapture lost markets? Think about this: Exxon yesterday reported extraordinary profits of over $36 billion, the largest corporate profit in U.S. history. $36 billion. Yet the entire budget of the Department of Energy is $23 billion.

Exxon's profits are almost double the entire budget of the Department of Energy. How many jobs we could create if that windfall could be put to making America energy independent here at home.

So, Mr. President, we welcome your interest at long last. We hope it continues. Though you are late to the table, do not shortchange the American people. Our national security depends on it.

CONGRATULATIONS TO THE SEVEN ASIAN-PACIFIC AMERICANS PLAYING IN THIS WEEK'S SUPER BOWL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from American Samoa (Mr. FALEOMAVAEGA) is recognized for 5 minutes.

Mr. FALEOMAVAEGA. Mr. Speaker, it is with great pleasure and indeed a personal honor for me to share with my colleagues and the American people that for myself as a Polynesian of Samoan ancestry and as a Member of the United States Congress, to congratulate, to recognize and to commend seven sons of the Asian-Pacific American community who will be playing in Super Bowl XL this coming Sunday, at Detroit, Michigan.

These seven players are Lofa Tatupu, Itula Mili, and Wayne Hunter of the Seattle Seahawks, and Troy Polamalu, Shaun Nua, Chris Kemoeatu, and Kimo van Oelhoffen of the Pittsburgh Steelers.

Among the seven Polynesian players in this Sunday's Super Bowl game, Kimo von Oelhoffen is Native Hawaiian, Chris Kemoeatu is Tongan, and Lofa Tatupu, Itula Mili, Wayne Hunter, Shaun Nua, and Troy Polamalu are all Samoans.

Mr. Speaker, this is a monumental achievement in the history of our Polynesian people in this great country of ours. These young men exemplify for me a journey of our people, particularly those of us who come to this country from humble beginnings as people of small island nations, with nothing but our values, our culture and our great fear of God to navigate the great highways of our Nation.

Today, Mr. Speaker, I am especially proud of these young men, give tremendous credit to their parents and extended families. It is a pride that comes from a deep understanding that great feats are accomplished through a dedication to basic hard work, perseverance, determination, and a lot of patience. Each of these young men have had to overcome great obstacles to be where he is today.

Such a feat reminds me of the wisdom of one of my great heroes, the nonviolent leader, Mahatma Gandhi, whose insight into the human spirit sums up quite frankly what I believe to be a fundamental truth. Mahatma Gandhi says strength does not come from physical capacity; it comes from the indomitable will.

Lofa Tatupu, Itula Mili, Wayne Hunter, Troy Polamalu, Shaun Nua, Chris Kemoeatu, and Kimo von Oelhoffen epitomize the indomitable will of our Polynesian people, which in my opinion is another clear manifestation of the greatness of our Nation, to allow its citizens whose roots are from just about every part of the world to be all you can be if given the opportunity.

And in this instance, seven Polynesians have stepped to the plate to share their God-given talent of playing the sport of football in the National Football League.

Of the 300 million Americans today, only 30,000 are Tongan Americans, and about 200,000 are Samoans living in my district and in the Continental United States, and approximately 400,000 Native Hawaiians nationwide.

From these meager statistics, Mr. Speaker, the presence of these seven Polynesian men in the Super Bowl this Sunday should remind us all as Americans that the values upon which this country was founded are still alive; that pure hard work, commitment, determination, and perseverance continue to be rewarded.

Mr. Speaker, let me give you a brief summary of each of those players' achievements. Of the seven players, Itula Mili and Chris Kemoeatu are graduates of my alma mater, Kahuku High School in the State of Hawaii. As a matter of fact, Mr. Speaker, of the 24 Samoans that currently play in the National Football League, five are graduates of Kahuku High School of Hawaii, and five are graduates of high schools of my little territory of American Samoa.

Itula Mili wears jersey No. 88 and plays for the Seattle Seahawks. Wayne Hunter wears jersey No. 73 and plays for the Seattle Seahawks. Lofa Tatupu wears the jersey of 51 and plays for the Seattle Seahawks. Lofa is the son of the former NFL great fullback and special teams great and my dear friend, Mosi Tatupu, both alumni of the University of Southern California Trojans.

Wearing No. 43 with the Pittsburgh Steelers is Troy Polamalu. Polamalu has developed into one of the NFL's top safeties and was one of the six Steelers selected to the 2005 Pro Bowl. He has been selected to the 2006 Pro Bowl team. He was named to the Associated Press second team all pro squad as a ferocious hitter with excellent speed.

Twenty-four-year-old No. 96, Shaun Nua, plays for the Pittsburgh Steelers. Born in American Samoa, he attended a local high school. He is known as an athletic defensive lineman.

Chris Kemoeatu wears jersey No. 68 for the Pittsburgh Steelers, Kahuku high School graduate. All American University of Utah. Komo von Oelhoffen wears No. 67 for the Pittsburgh Steelers. He hails from Kaunakakai, Hawaii, a graduate of Molokai High School.

Mr. Speaker, on behalf of the Asian-Pacific American community living in this great Nation of ours, once more, it is with pride that I share with my colleagues and indeed with all of my fellow Americans the accomplishments of our Polynesian young men in the field of sports, specifically football.

Mr. Speaker, again I want to say fa'afetai tele, mahalo nui loa, and malo e lelei, which means "thank you" in Samoan, Hawaiian, and the Tongan languages.

Mr. Speaker, I will insert for the RECORD at this point articles on these players.

[From Sports Illustrated, Nov. 14, 2005]

THE YOUNG AND RELENTLESS

VERSATILE, HARD-HITTING AND OOZING CONFIDENCE, THE NEXT GENERATION OF DEFENSIVE STARS IS DISRUPTING GAME PLANS AND CREATING A NEW BLUEPRINT FOR BUILDING WINNERS

(By Peter King)

Something hard to quantify hit the NFL in the first half of the season. Not quite a trend, but more than a feeling: Young defensive players—rookies, second- and third-year players—are making a bigger impact than, well, maybe ever.

The Colts are 8-0 and on track for the Super Bowl using seven key defensive players who are 25 or younger: Colts defensive end Robert Mathis, 24, is tied for the NFL sack lead with eight, while linebacker Cato June, 25, is second in the league with five interceptions. The Jets followed middle linebacker Jonathan Vilma's young leadership to the playoffs last year, and now two contenders—Cincinnati (with Odell Thurman) and Seattle (Lofa Tatupu)—have rookie middle 'backers calling defensive signals. In Chicago safety Mike Brown, 27, is the old man of a rock-solid secondary for the NFC North-leading Bears. None of his fellow starters (cornerbacks Charles Tillman and Nathan Vasher and rookie safety Chris Harris) has turned 25 yet. Five rookies are playing in Cowboys defensive coordinator Mike Zimmer's rotation, helping Dallas contend in the resurgent NFC East. The most accomplished of the young bunch, and certainly the most recognizable, may be Steelers safety Troy Polamalu (page 44), who in just three seasons has become a force in the league, ranging all over the field, hair flowing as he delivers game-changing plays.

"I see it every week, right in front of me," says Chiefs defensive coordinator Gunther Cunningham. "The league is changing. First-day draft picks are coming in and making an impact early on defense."

"If you're good, you're good," says Tillman, 24, an intelligent third-year player who has started since October of his rookie year. "LeBron James was—what?—18 when he came into the NBA. Michelle Wie's playing with the best at 16. No one said, 'Oh, she's too young.' Football's not old school anymore, where you sit till you're a senior in college, then get to play, then sit for two or three years before you get your chance in the NFL. When I came to camp as a rookie, it was all about who was the best guy."

The philosophy of building a defense with star free agents and supplementing them with meat and potatoes in the draft began to wane in the late '90s, after several high-profile mistakes. In 1998 Jacksonville gave linebacker Bryce Paup a five-year, $21.8-million deal, and he gave the Jags 7½ sacks in two years before being cut. That same year cornerback Doug Evans (Carolina), defensive end Gabe Wilkins (San Francisco) and defensive tackle Dana Stubblefield (Washington) signed for a combined $79 million; they made zero Pro Bowls for those teams. In '99 Dale Carter signed a six-year, $38 million deal and gave Denver one lousy season on the field and a second in which he was suspended for substance abuse.

"Money can make fools of all of us," says Chargers coach Marty Schottenheimer. "There've been some lessons learned from free agency. And I've changed a little bit when it comes to the draft. I used to say draft a guy and let him sit till he learns it, maybe two or three years. Now, the last five or six years, they've got to produce in year two and three."

The first five picks in last April's draft were offensive players, but 34 of the next 59 were defenders. And there's no question that the bigger impact has been made by the defensive rookies, led by Thurman, San Diego's Luis Castillo and Shawne Merriman, and Dallas's Demarcus Ware—any of whom could make the Pro Bowl this season.

Says Tennessee director of pro scouting Al Smith, a 10-year NFL linebacker who retired in 1997, "On our side of the business we're seeing it's better to draft a good prospect and develop him rather than spending $10 or $15 million on a signing bonus in free agency and getting burned. With guys like Merriman and Ware, you basically tell them, 'Get to the quarterback and don't jump offside.' "

[From the Washington Post, Feb. 1, 2006]

Everybody's in a Big Hurry

STEELERS' BLITZES MAKE PROTECTING THE QUARTERBACK A PROBLEM

(By Leonard Shapiro)

Detroit, Jan. 31.—It's the kind of image that can keep an offensive lineman tossing and turning at night.

Over the last week or so, Robbie Tobeck, Seattle's 12th-year center, and his teammates on the line have studied videotape of the Pittsburgh Steelers' defense, particularly the constant and often devastating blitzes that can come at any time, from any place on the field.

"You know they're going to be extremely physical," Tobeck said. "What you see is when they've been successful, they've basically gotten people into a panic. That's something we can't allow to happen. We've got to relax, take our time and make the adjustments to prevent something like that."

The Steelers have been a blitzing team ever since Bill Cowher showed up as their coach 14 years ago. One of the original architects of the Steelers' zone blitz schemes was Dick LeBeau, who played 14 years at cornerback in the NFL and spent I six years as an assistant coach with the Steelers in the mid-1990s. He returned as the team's defensive coordinator in 2004, and his handiwork has been evident in Pittsburgh's run to Super Bowl XL.

No team in the NFL blitzed more than the Steelers in 2005, using the tactic on a league-high 287 pass attempts during the regular season. The blitz was primarily responsible for eliminating the top-seeded Indianapolis Colts in the second round of the AFC playoffs in a game in which quarterback Peyton Manning spent more time on his back than standing upright. Manning was so undone he complained afterward that his teammates simply couldn't protect him.

There was more of the same 10 days ago in the AFC title game, when the Steelers forced Broncos quarterback Jake Plummer into four turnovers—two interceptions and two fumbles under a particularly heavy rush—in Pittsburgh's upset at Denver's Invesco Field. In all three playoff victories, the Steelers stuffed their opponent's running game, made offenses become one-dimensional and took early leads, allowing their defense even more latitude to create mayhem—and perhaps a little panic, as well.

"First of all, they have great athletes," Seattle Coach Mike Holmgren said Tuesday. "They have the kind of players who can execute what they ask them to do. You have to have the right people to run the schemes. In Pittsburgh's case, when they blitz the linebacker, that linebacker is really good at blitzing. We've all seen teams that blitz and the blitzer runs right into the blocker. It's an awesome collision, but he never gets home. Their players are physical, but they also have enough wiggle and speed to make it very, very difficult."

The Steelers operate out of a 3-4 alignment—three down linemen and four linebackers. The front three linemen—end Aaron Smith (298 pounds), nose tackle Casey Hampton (325) and end Kimo von Oelhoffen (299)—provide a major push toward the quarterback, sometimes occupying two offensive linemen on one defensive lineman, creating openings for linebackers and defensive backs to rush the quarterback.

The zone blitz also often drops a defensive lineman into the pass-coverage lanes and almost always includes one safety playing in a deep zone.

If a linebacker blitzes, one of his teammates will simply play a zone to cover an area, as opposed to a specific receiver. Fifteen players had at least one sack this season for the Steelers, who were tied for third in the league with 47, including nine by safeties and cornerbacks. Linebacker Joey Porter led the Steelers with 10 1/2 sacks, and fellow linebacker Clark Haggans, Porter's former Colorado State teammate, had nine.

Strong safety Troy Polamalu, with the long hair he described Tuesday as "my fifth appendage," has emerged as arguably the Steelers'' most dangerous defender. He's a 5-foot-10, 212-pound dynamo who lines up all over the field and has a knack for avoiding blocks and making huge hits—in opposing backfields and the secondary if he stays in pass coverage.

"This kid Polamalu is the best football player I've ever seen," Denver defensive lineman Trevor Pryce said before the Steelers faced the Broncos in the AFC championship game. "There's something very strange about him that I can't put a finger on. They call him 'ninja' because he just pops out of nowhere and pops you. He's reckless. He does not care. He has an advantage being 5–10. When you're short and strong, you have an advantage because those 6–5 offensive linemen can't get a hold of anything to block."

During the regular season, Polamalu tied for fourth on the team in total tackles with 91, was second in interceptions (two) and added three sacks and three fumble recoveries. He has been just as impressive in the playoffs.

"I don't know if he's changing [the way defense is played], but he is a very unique player at his position," Cowher said. "He combines the athletic ability to cover, the explosion to be a great blitzer. He's also an outstanding tackler, and on top of that he's a very instinctive player."

He also studies more than most. After the 2004 season, Polamalu watched more than 20 hours of tape of the NFL's top safeties, including his role model, New England safety Rodney Harrison, as well as Denver's John Lynch and Dallas's Roy Williams.

Last year at the Pro Bowl, Polamalu played on the AFC team with Lynch and sought some one-on-one tutoring.

"Early in the week, he came up to me and said, 'Any way I could pick your brain and if you don't mind spend some time with you?' " Lynch told the Rocky Mountain News. "I respect that out of young players. The guy is committed to the game of football and obviously is a tremendous talent. He makes their defense go."

And blitz. But it isn't enough to merely blitz. A team must disguise its blitzing packages, and Polamalu is particularly adept at coming up to the line of scrimmage as if planning to rush the passer, then wheeling and turning his back on the offense as if to go back into coverage. Then he does another whirl at the snap of the ball and heads back toward the quarterback.

Porter also earned a trip to the Pro Bowl this year with his own disruptive tactics, and will try to do the same this week against Seattle quarterback Matt Hasselbeck.

"I have to do something to make Hasselbeck feel not so comfortable in the pocket," Porter said. "I have to do something to make him run and get outside the pocket. I like my opportunity with me and Kimo over there, the way we've been playing. It's going to make for a good matchup.

"When we take the run away from teams, we're also playing to our strength, making them one-dimensional. When we make teams one-dimensional, I always like our chances."

[From Sports Illustrated, Jan. 30, 2006]

Shock Value

AFTER PLAYING THE PANTHERS LOW, HARD-HITTING ROOKIE LINEBACKER LOFA TATUPU MAY BE THE MAN WHO BRINGS THE SEAHAWKS THEIR FIRST SUPER BOWL TROPHY

(By Michael Silver)

The commotion had unnerved him, and Lofa Tatupu, the Seattle Seahawks' rookie middle linebacker, was bent on restoring order. "Shut up, Bailey!" Tatupu yelled, momentarily interrupting the incessant barking of the 15–pound fox terrier running around his Kirkland, Wash., town house last Friday night. Then, in an instant, Tatupu's angry stare turned sheepish. That's because Bailey, who belongs to Tatupu's girlfriend, Rachael Marcott, has grown on the Seahawks' leading tackler. "Come here, Bailey," he said, extending his right fist. "Give me some dap."

Balancing on his hind legs, Bailey dutifully lifted his left paw and hit Tatupu's fist. "That's my dog," Tatupu said, beaming. At the sight of a little pooch turning the 23-year-old former USC star into a softie, you had to wonder: Does this 5'11", 226-pound linebacker sip soy lattes? Does Lofa use a loofah?

Two days later, to the delight of a Seattle fan base hoping to shed more than a quarter century's worth of postseason disappointment, Tatupu affirmed his machismo with a bang in the NFC Championship Game at Qwest Field. Deciphering the Carolina Panthers' offense like a savvy veteran, Tatupu quickly set the tone for the Seahawks' 34-14 victory. With 5:07 left in the first quarter, he stepped in front of All-Pro wideout Steve

Smith to make an interception that led to a field goal. Little more than three minutes later, with Seattle on top 10–0, Tatupu correctly read a sweep around right end and closed hard on Carolina running back Nick Goings. Their headon collision was as charged as a Pearl Jam gig at the nearby Crocodile Café, and both players slumped to the ground.

"I wasn't sure who had won that one," Seattle defensive end Bryce Fisher said later. "But their guy left the game, and ours shook off the cobwebs and kept playing. That was huge, because Lofa's our leader."

That a would-be college senior could help lead the Seahawks to their first Super Bowl spoke to the strangeness of a season few envisioned back last April, when Seattle drafted Tatupu in the second round and essentially allowed him to take charge of the defense. On Sunday, with the help of smelling salts and the urgings of 67,837 fans, Tatupu played three-plus quarters with what was later diagnosed as a mild concussion and helped the Seahawks complete a declawing of the Panthers that reverberated from Grungeville all the way to Motown.

When the Seahawks (15–3) face the Pittsburgh Steelers (14-5) in Super Bowl XL on Feb. 5 in Detroit, the latest version of the Steel Curtain won't be the only defense at Ford Field capable of controlling the game. "We come hard, and we're fighters," Tatupu said of a unit that limited Carolina to 109 total yards through three quarters and didn't allow the offense to score until 5:09 remained.

If the Panthers (13-6), fresh off impressive road playoff victories over the New York Giants and the Chicago Bears, didn't see it coming, Don Hasselbeck did—more than a decade ago. Back then Hasselbeck, a former NFL tight end, was coaching the Norfolk (Mass.) Vikings in a Pop Warner league the same time his former New England Patriots teammate, fullback Mosi Tatupu (Lofa's father), was coaching the King Philip Warriors. "My son Nathaniel was our quarterback, and Lofa, at 12, was all over him," Don recalled while standing in the Seahawks' locker room on Sunday night. "I had to run double reverses just to give us a chance." A few feet away Nathaniel's big brother, Matt, the Seahawks' quarterback, nodded in agreement. Matt had just demoralized the Carolina defense with his typically heady and efficient play—20 of 28 passing for 219 yards and two touchdowns—while league MVP Shaun Alexander had carried 34 times for 132 yards and a pair of TDs.

Keying Seattle's attack, as always, was the NFL's preeminent offensive line, a group that Hasselbeck's former backup, Cleveland Browns quarterback Trent Dilfer, affectionately calls "the grumpy old men." As much as the well-acquainted linemen—all the starters except second-year right tackle Sean Locklear have been with the team for at least five seasons—like to carp at one another off the field, their unspoken understanding of how to adjust to defensive alignments is what defines this unit. "If you're not making calls at the line, it confuses a defensive lineman," All-Pro left tackle Walter Jones said at lunch last Saturday at a Kirkland T.G.I. Friday's. "At that point he can only guess what you're cooking up."

The Seahawks' vastly improved chemistry this season was no accident. After last January's 27-20 wild-card playoff loss at home to the St. Louis Rams—extending the franchise's streak without a postseason victory to an NFL-worst 21 years—Seattle shook things up. Owner Paul Allen dismissed team president Bob Whitsitt, whose ongoing feud with coach Mike Holmgren escalated to the point that the two had stopped talking to each other. In Whitsitt's place, Allen hired Tim Ruskell, a former Tampa Bay Bucs and Atlanta Falcons executive. The front-office tension was eased, and Ruskell purged the roster of players perceived as selfish or divisive. Then he went after guys who, he says, "loved playing football, played hard and had all the intangibles." That's what compelled him to trade up in the draft (with the Panthers, of all teams), for the 45th pick, and take Tatupu.

At his first minicamp Tatupu showed the Seahawks they had gotten more than they'd bargained for. Recalls Fisher, "He pretty much stepped in the huddle and told everyone, 'Listen to me because I know what I'm doing.'" Tatupu started all 16 games, and as the season went on he became increasingly bold in practices—irking Holmgren by calling fake punts (Tatupu occasionally filled in as the up-back on the punt team) and switching pass coverages during two-minute drills. Yet against the Panthers he was a coach's dream, repeatedly identifying the plays Carolina was about to run and positioning his teammates accordingly. This was essential to Seattle's defensive game plan, which was designed to frustrate Smith with a variety of double coverages and required Seattle to stop the run with only seven men near the line of scrimmage. The plan worked beautifully. The only damage Smith (five catches, 33 yards) inflicted was a 59-yard punt return for a touchdown, and the Panthers' running backs gained all of 21 yards on nine carries.

"It's amazing that he can be that good in his first year," Carolina center Jeff Mitchell said of Tatupu after the game. "He always seems to know where the ball is going."

Added Fisher, "Most offenses are designed to fool the linebackers. Lofa was out there calling exactly what they were doing, so they didn't have a whole lot of options."

Sometimes Tatupu's signals weren't easy to hear, as the boisterous crowd celebrated a team it hopes can win Seattle's first major professional sports championship since the SuperSonics won the 1978–79 NBA title. "This is the craziest crowd I've ever seen in this town," said a man who should know, Pearl Jam bassist Jeff Ament, as he mingled on the field during the postgame trophy presentation. "There's been sort of a gloomy mentality in Seattle—because of the weather [27 consecutive days of rain, a streak that ended on Jan. 15], because there've been so many heartbreaks—but this is an enormous boost for the fans."

Tatupu was delirious, too, but in a different way. "My head hurts, and everything is really foggy," he said softly as he walked slowly toward the players' parking lot less than an hour after the game. "That play knocked me stupid, and I vaguely remember the rest of the game. Maybe it'll come back to me later. I'm just glad we won."

Tatupu managed a slight smile. In half an hour he would be home, where a small dog was waiting to give him some well-earned dap.

[From the New York Times, Jan. 30, 2006]

Pittsburgh Safety Could Lurk Anywhere Against Seattle

(By Judy Battista)

DETROIT, Jan. 29.—In the days before the 2003 N.F.L. draft, the dissection of the college prospects was already at its hypercritical zenith. One defensive back from the University of Southern California, with his 4.3 speed in the 40-yard dash, his 43-inch vertical leap and football instincts honed from hours of studying film, looked like a can't-miss pick. That was especially so because of defenses that were increasingly demanding players who possessed the intelligence to decipher different offenses and the athleticism to destroy them in seconds.

But in the search for the perfect specimen, for an android in cleats, the scouts and the seers had allowed doubt to drift in.

Could this back, Troy Polamalu, play against the pass?

Three seasons later, offenses face a more vexing question: What can't Polamalu do?

The Pittsburgh Steelers shook off the doubts and traded up to select Polamalu with their first pick, the 16th over all. In the last two years—since Dick LeBeau's return as the Steelers' defensive coordinator—Polamalu has emerged as the defense's man for all seasons, a blitzer of uncommon speed on passing downs, a tackler of staggering strength against the run, and a moving part so itinerant that opposing offenses find themselves playing Where's Troy before they snap the ball.

Polamalu is listed on the roster as a strong safety because he has to be given a position. But the versatility and the skill he brings to the Steelers' secondary make him difficult to categorize. He finished the regular season with 100 tackles, 11 passes batted down, 3 sacks, 2 interceptions and a forced fumble, according to the Steelers.

"He gives you unlimited flexibility," LeBeau said in a telephone interview from Pittsburgh last week. "He can play the deep perimeter. He can play as a linebacker support player. He can blitz. For a defensive coordinator, he's ideal. You can put him anyplace."

Or no place. LeBeau trusts Polamalu so much that he is rarely confined to one area of the field. Instead, LeBeau gives Polamalu boundaries for what his role is on a play, and Polamalu takes it from there.

In one of his most dazzling moves, he will fake a blitz, jumping in and out of gaps on the defensive line like a rabbit, then pull back, whirl around so that he appears headed for the secondary, only to spin back as the ball is snapped to attack the line of scrimmage.

If Colts quarterback Peyton Manning is known for his arm-flapping orchestration of audibles, real and imagined, then Polamalu and his whirling-dervish routine are the defensive equivalent, a thickly layered disguise designed to make offenses wait until the snap before they know where he is going. It is particularly devastating because quarterbacks are taught to read where the safety is to know what kind of coverage the defense is in.

"Troy improvises a lot of that stuff," LeBeau said, laughing. "We give him parameters, and sometimes Troy may stretch those a bit."

Just a bit. Polamalu has not lined up at nose tackle, but he has done everything else in the Steelers' blitz-happy 3–4 defense (three defensive linemen, four linebackers).

On first down, he is usually at the line of scrimmage over the tight end to stop the run, said Kennedy Pola, the Jacksonville Jaguars' running backs coach, who is also Polamalu's uncle. On second down, Polamalu might be at the line of scrimmage again or he might drop back and play deep. The critical element at the line, LeBeau said, is to make sure Polamalu does not have to take on the guard and the center, who each might outweigh Polamalu—who is 5 feet 10 inches and 212 pounds—by 100 pounds or more.

But it is on third down and other passing situations that Polamalu becomes Pittsburgh's wild card. He might be a blitzing linebacker, rushing up the middle, or he might line up as a pass-rushing end off the edge of the line, essentially turning the 3-4 defense into a 4-4. He has covered the slot receiver as the nickelback, or fifth linebacker, and played deep safety, although his weakness is perceived to be when he has to cover receivers in the open field. Still, Polamalu came close to intercepting Manning in the American Football Conference divisional game against Indianapolis when he dove for a pass while running free in the middle of the field.

"When you see a squat body with long hair, you don't think he can run that fast," Pola said.

Big mistake. Steelers linebacker Joey Porter sacked Manning twice in three plays late in the fourth quarter because the Colts' offensive line thought Polamalu was coming up the middle.

Against the Broncos in the A.F.C. title game, Polamalu tackled Denver running back Tatum Bell a yard short of a first down, while Polamalu was being blocked and was falling down. Later, Polamalu nearly tackled running back Mike Anderson for a safety on a screen pass on third-and-10—even though Polamalu was responsible for covering a deep pass in the seam. Those are the kinds of plays, LeBeau said, that caused him to run the film back asking, "Did he do that?"

Polamalu's soft-spoke nature belies his fierce play, and Pola said that whenever they spoke, Polamalu talked only about how many of his other teammates should be going to the Pro Bowl with him.

But those who have followed Polamalu's career know his instincts were apparent early. In one of his first scrimmages as a freshman at U.S.C., Polamalu burst into the backfield, tackled a senior running back, stripped him of the ball as he was knocking him down and took off the other way.

"Everyone was like, 'Ohmigosh, this guy has no fear,'" U.S.C.'s linebackers coach, Rocky Seto, said. "Most guys who rush the quarterback—from Lawrence Taylor to Reggie White—they have a hunger and a desire to get there. He's not as big, but Troy certainly has that fire and tenacity."

That tenacity is buttressed by his work habits. LeBeau said that Polamalu had watched more game film than anyone, and that after last season, Polamalu made a DVD of other N.F.L. safeties so he could study their techniques.

Polamalu, in just his second full season in LeBeau's system, has learned to read an offense so well that LeBeau feels comfortable letting him follow his gut. That, LeBeau said, reminded him of how he used to feel about cornerback Rod Woodson and safety Carnell Lake, former Pro Bowl Steelers who also had the speed to play in the open field, the strength to play at the line of scrimmage and the sense to know where to go.

"I know Dick preaches it, you don't want a robot as a player and you don't want a cowboy either," said Woodson, who works for the NFL Network. "You want a guy who plays within the system but who can play fast. He's a gambler. They're calculated risks. You study film and he believes in his eyes. For Troy, they've been his friend."

The irony is that the gambler in Polamalu is what earned him a reputation before the 2003 draft as a player who "flew up on everything," said Gil Brandt, who helped shape the Dallas Cowboys as the vice president for player personnel from 1960 to 1989 and who now writes for NFL.com. The concern was that Polamalu would leave his safety position to try to get closer to the ball and risk getting burned by a deep pass in the process.

Is that so wrong? Not anymore.

"There's an old military axiom, 'Reinforce strength'" LeBeau said. "When you see a player who has a good feel for things, you try not to get in his way. If they are not where they are supposed to be, they better be making the play."

Polamalu usually is.

TROY POLAMALU
Pittsburgh Steelers/S/#43
College: USC Rookie Yr: 2003
Ht., Wt.: 5'10", 212
KIMO VON OELHOFFEN
Pittsburgh Steelers/DT/#67
College: Boise State Rookie Yr: 1994
Ht., Wt.: 6'4", 299
CHRIS KEMOEATU
Pittsburgh Steelers/G/#68
College: Utah Rookie Yr: 2005
Ht., Wt.: 6'3", 344
SHAUN NUA
Pittsburgh Steelers/DE/#96
College: Brigham Young Rookie Yr: 2005
Ht., Wt.: 6'5", 280
LOFA TATUPU
Seattle Seahawks/LB/#51
College: USC Rookie Yr: 2005
Ht., Wt.: 6'0", 238
ITULA MILI
Seattle Seahawks/TE/#88
College: Brigham Young Rookie Yr: 1998
Ht., Wt.: 6'4", 260
WAYNE HUNTER
Seattle Seahawks/T/#73
College: Hawaii Rookie Yr: 2003
Ht., Wt.: 6'5", 303

AMERICA'S ENERGY POLICIES

Mr. McDERMOTT. Mr. Speaker, I ask unanimous consent to claim the time of the gentlewoman from California (Ms. LEE).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Washington (Mr. McDERMOTT) is recognized for 5 minutes.

Mr. McDERMOTT. Mr. Speaker, last night we heard the President deliver his State of the Union message from this Hall. By the light of day, today, we know that the glow was artificial and the highlights were inaccurate at best.

I will enter into the RECORD at this point a story from today's Los Angeles Times.

[From the Los Angeles Times, Feb. 1, 2006]

BUSH STRETCHES TO DEFEND SURVEILLANCE

(By Peter Wallsten and Maura Reynolds)

WASHINGTON.—President Bush received a roaring ovation Tuesday for his prime-time defense of wiretapping phone calls without warrants. But Bush's explanation relied on assumptions that have been widely questioned by experts who say the president offers a debatable interpretation of history.

Defending the surveillance program as crucial in a time of war, Bush said that "previous presidents have used the same constitutional authority" that he did. "And," he added, "federal courts have approved the use of that authority."

Bush did not name names, but was apparently reiterating the argument offered earlier this month by Atty. Gen. Alberto R. Gonzales, who invoked Presidents Lincoln, Wilson and Franklin D. Roosevelt for their use of executive authority.

However, warrantless surveillance within the United States for national security purposes was struck down by the U.S. Supreme Court in 1972—long after Lincoln, Wilson, and Roosevelt stopped issuing orders. That led to the 1978 passage of the Foreign Intelligence Surveillance Act that Bush essentially bypassed in authorizing the program after the Sept. 11 attacks.

Since the surveillance law was enacted, establishing secret courts to approve surveillance, "the Supreme Court has not touched this issue in the area of national security," said William Banks, a national security expert at Syracuse Law School.

"He might be speaking in the broadest possible sense about the president exercising his authority as commander-in-chief to conduct a war, which of course federal courts have upheld since the beginning of the nation," Banks said. "If he was talking more particularly about the use of warrantless surveillance, then he is wrong."

Bush's historical reference on domestic spying marked one of several points in his speech in which he backed up assertions with selective uses of fact, or seemed to place a positive spin on his own interpretation.

On his headline-grabbing pledge to decrease U.S. reliance on Middle East oil by 75% over the next 20 years, Bush's words seemed to suggest a dramatic new program to reduce dependence on foreign oil.

But experts point out that the U.S. gets only a fraction—about 10%—of its oil imports from the Middle East. In fact, the majority now comes from Canada and Mexico—and Bush said nothing on Tuesday about them.

Speaking about Iraq, Bush argued that "our coalition has been relentless in shutting off terrorist infiltration." But he may have left the wrong impression about how far U.S.-led forces have gotten in closing off the huge border areas, especially the 375-mile-long one between Syria and Iraq.

Administration officials have often complained that the Syrian government does little to police the border and have said it may not be possible to close it, given its size.

Two weeks ago, Rep. H. James Saxton (R-NJ), chairman of a House Armed Services subcommittee, complained in a column in the Washington Times that the border is "extremely porous" and called for new steps to cut off the flow of enemy fighters.

Bush made a number of claims for his economic stewardship that were technically accurate but told only a part of the story.

"In the last 2½ years, America has created 4.6 million new jobs," Bush said. Although the claim is essentially true, he did not say that the United States lost 2.6 million jobs in the first 2½ years of his presidency.

"In the last five years," Bush continued, "the tax relief you passed has left $880 billion in the hands of American workers, investors, small businesses and families, and they have used it to help produce more than four years of uninterrupted economic growth."

But to many economists, the cause-and-effect relationship is not so stark; they credit tax cuts of 2001 and 2003 with helping to turn around a stagnant economy, but now they worry that the resulting deficits may retard it.

"Every year of my presidency, we have reduced the growth of non-security discretionary spending." Bush said. True again, but this represents less than 20% of all spending. Including defense and the giant benefit programs such as Social Security and Medicare, spending has risen by about 30% in the five Bush years.

The president also seemed to ignore Supreme Court precedent when he called for Congress to give him the "line item veto." But Congress did that once, in 1996, and it was used once, by former President Clinton. But in 1998, a federal judge ruled that it was unconstitutional. That was affirmed by a 6–3 decision of the Supreme Court.

Bush praised his administration's efforts to help the Gulf Coast recover from Hurricane Katrina. "A hopeful society comes to the aid of fellow citizens in times of suffering and emergency, and stays at it until they are back on their feet," he said.

But Bush omitted any mention of tensions between Gulf State officials and the administration over responsibility for the botched response to the storm. "There was nothing in terms of new money," said Rep. Bennie Thompson (D-Miss.). Perhaps Bush's most controversial language came as he defended the surveillance program.

The president echoed earlier administration assertions that the domestic surveillance program would have been useful before the Sept. 11 attacks. Bush said two Sept. 11 hijackers living in San Diego made telephone calls to Al Qaeda associates overseas, but that "we did not know about their plans until it was too late."

However, The Times has previously reported that some U.S. counterterrorism officials knowledgeable about the case blame an interagency communications breakdown, not a surveillance failure or shortcomings of the Foreign Intelligence Surveillance Act.

Point by point, the Times compared the President's rhetoric to America's reality. They are not even close. Here is what the Times said about the President's domestic spying program. Defending the surveillance program is crucial in a time of war. Bush said that Presidents have used the same constitutional authority that he did, and he said Federal courts have approved the use of that authority.

Bush did not name names, but was apparently reiterating the argument offered earlier by the Attorney General, Alberto Gonzales, who invoked Presidents Lincoln, Wilson, and Franklin Delano Roosevelt for their use of executive authority.

However, warrantless surveillance within the United States for national security purposes was struck down by the U.S. Supreme Court in 1972, long after Lincoln, Wilson, and Roosevelt stopped issuing orders.

This led to the passage of the 1978 Foreign Intelligence Surveillance Act that Bush essentially bypassed in authorizing the program after September 11. The analysis comes from one of America's bedrock institutions of journalism, facts, not spin.

Here is the analysis of the President's remarks about the war. Speaking about Iraq, Bush argued that "our coalition has been relentless in shutting off terrorism infiltration." But he may have left the wrong impression about how U.S.-led forces have gotten in closing off the huge border areas, especially the 375-mile border between Syria and Iraq.

Administration officials have often complained the Syrian Government does little to police the border, and many have said it may not be possible to close it given its size.

Let me mention one other example. The President finally got religion on America's energy crisis. But he needs an atlas and a vision. Here is what the Times said. On his headline-grabbing pledge to decrease U.S. reliance on Middle Eastern oil by 75 percent over the next 20 years, Bush's words seem to suggest a dramatic new program to reduce dependence on foreign oil.

But experts point out that the U.S. gets only a fraction, about 10 percent, of its oil imports from the Middle East. In fact, the majority comes from Canada and Mexico, and Bush said nothing Tuesday night about them.

I was proud the President used my words in his speech: "America is addicted to oil." But he did not give a proper prescription. But beyond co-opting Democratic philosophy and Democratic programs, the President is an oil man through and through. Today's New York Times said this: "President Bush devoted 2 minutes and 15 seconds of the State of the Union message to speak about energy independence."

It was hardly the bold signal we have been waiting for years for about global warming and deadly struggles in the Middle East where everything takes place in the context of what Mr. Bush rightly called our addiction to imported oil.

Last night's remarks were woefully insufficient. The country's future economic and national security depend on whether the Americans can control their enormous appetite for fossil fuels. This is not a matter to be lumped in a laundry list of other initiatives, including in a once-a-year speech to Congress. It is a key to everything else that happens.

I will enter at this point in the RECORD the New York Times editorial.

[From the New York Times, Feb. 1, 2006]

THE STATE OF ENERGY

President Bush devoted two minutes and 15 seconds of his State of the Union speech to energy independence. It was hardly the bold signal we've been waiting for through years of global warming and deadly struggles in the Middle East, where everything takes place in the context of what Mr. Bush rightly called our "addiction" to imported oil.

Last night's remarks were woefully insufficient. The country's future economic and national security will depend on whether Americans can control their enormous appetite for fossil fuels. This is not a matter to be lumped in a laundry list of other initiatives during a once-a-year speech to Congress. It is the key to everything else.

If Mr. Bush wants his final years in office to mean more than a struggle to re-spin failed policies and cement bad initiatives into permanent law, this is the place where he needs to take his stand. And he must do it with far more force and passion than he did last night.

American overdependence on oil has been a disaster for our foreign policy. It weakens the nation's international leverage and empowers exactly the wrong countries. Last night Mr. Bush told the people that "the nations of the world must not permit the Iranian regime to gain nuclear weapons," but he did not explain how that will happen when those same nations are so dependent on Tehran's oil. Iran ranks second in oil reserves only to Saudi Arabia, where members of the elite help finance Osama bin Laden and his ilk, and where the United States finds it has little power to stop them.

Oil is a seller's market, in part because of America's voracious consumption. India and China, with their growing energy needs, have both signed deals with Iran. Rogue states like Sudan are given political cover by their oil customers. The United Nations may wish to do something about genocide in Darfur or nuclear proliferation, but its most powerful members are hamstrung by their oil alliances with some of the worst leaders on the planet.

Even if the war on terror had never begun, Mr. Bush would have an obligation to be serious about the energy issue, given the enormous danger to the nation's economy if we fail to act. His own Energy Department predicts that with the rapid development of India and China, annual global consumption will rise from about 80 million barrels of oil a day to 119 million barrels by 2025. Absent efforts to reduce American consumption, these new demands will lead to soaring oil prices, inflation and a loss of America's trade advantage. It should be a humbling shock to American leaders that Brazil has managed to become energy self-sufficient during a period when the United States was focused on building bigger S.U.V.'s.

Part of the answer, as Mr. Bush indicated last night, is the continued development of alternative fuels, especially for cars. The Energy Department has addressed this modestly, and last night the president said his budget would add more money for research. That's fine, but hardly the kind of full-bore national initiative that will pump large amounts of money into the commercial production of alternatives to gasoline.

When it comes to cars, much of the research has already been done—Brazil got to energy independence by figuring out how to get its citizens home from work in cars run without much gasoline. The answer is producing the new fuels that have already been developed and getting cars that use them on the lots. There are several ways to make that happen. The president could call for higher fuel economy standards for car manufacturers. He could bring up the subject of a gas tax—the most effective way of getting Americans to buy fuel-efficient cars, and a market-based tax on consumption that conservative lawmakers ought to embrace if they are honest with themselves and their constituents. But Mr. Bush took the safe, easy and relatively meaningless route instead.

There is still an enormous amount to be done to find new sources of clean, cheap power to heat homes and create electricity. But regrettably, the president made it clear last night that he would rather spend the country's resources on tax cuts for the wealthy. The oil companies are currently flush with profits from the same high prices that have plagued consumers, and the president might have asked the assembled legislators whether their current tax breaks might be redirected into a real energy initiative.

Simply calling for more innovation is painless. The hard part is calling for anything that smacks of sacrifice—on the part of consumers or special interests, and politicians who depend on their support. After 9/11, the president had the perfect moment to put the nation on the road toward energy independence, when people were prepared to give up their own comforts in the name of a greater good. He passed it by, and he missed another opportunity last night.

Of all the defects in Mr. Bush's energy presentation, the greatest was his unwillingness to address global warming—an energy-related emergency every bit as critical as our reliance on foreign oil. Except for a few academics on retainer at the more backward energy companies, virtually no educated scientist disputes that the earth has grown warmer over the last few decades—largely as a result of increasing atmospheric concentration of carbon dioxide produced by the burning of fossil fuels.

The carbon lodged in the atmosphere by the Industrial Revolution over the last 150 years has already taken a toll: disappearing glaciers, a thinning Arctic icecap, dead or dying coral reefs, increasingly violent hurricanes. Even so, given robust political leadership and technological ingenuity, the worst consequences—widespread drought and devastating rises in sea levels—can be averted if society moves quickly to slow and ultimately reverse its output of greenhouse gases. This will require a fair, cost-effective program of carbon controls at home and a good deal of persuasion and technological assistance in countries like China, which is building old-fashioned, carbon-producing coal-fired power plants at a frightening clip.

Mr. Bush said he would look for cleaner ways to power our homes and offices, and provide more money for the Energy Department's search for a "zero emission" coal-fired plant whose carbon dioxide emissions can be injected harmlessly into the ground without adding to the greenhouse gases already in the atmosphere. But once again he chose to substitute long-range research—and a single, government-sponsored research program at that—for the immediate investments that have to be made across the entire industrial sector.

That Mr. Bush has taken a pass on this issue is a negligence from which the globe may never recover. While he seems finally to have signed on to the idea that the earth is warming, and that humans are heavily responsible, he has rejected serious proposals to do anything about it and allowed his advisers on the issue to engage in a calculated program of disinformation. At the recent global summit on warming, his chief spokesmen insisted that the president's program of voluntary reductions by individual companies had resulted in a reduction in emissions, when in fact the reverse was true.

The State of the Union speech is usually a feel-good event, and no one could fault Mr. Bush's call for research, or fail to applaud his call for replacing more than 75 percent of the nation's oil imports from the Middle East within the next two decades. But while the goal was grand, the means were minuscule. The president has never been serious about energy independence. Like so many of our leaders, he is content to acknowledge the problem and then offer up answers that do little to disturb the status quo. If the war on terror must include a war on oil dependence, Mr. Bush is in retreat.

Let me just read one other excerpt, because it is very important. Of all of the defects in Mr. Bush's energy presentation, the greatest was his unwillingness to address global warming, an energy-related emergency every bit as critical as our reliance on foreign oil.

Except for a few academics on retainer at the most backward energy companies, virtually no educated scientist disputes that the Earth has grown warmer over the last decades. This is the New York Times talking. Largely as a result of increasing atmospheric concentrations of carbon dioxide produced by burning fossil fuels, gas. I read this and wonder how many alarms have to be sounded before the leaders follow.

With new eyes in space like the great Hubble telescope, we understand the danger of great meteorites striking the Earth. Some are large enough to be called planet killers. We fear what might come from above, but we ignore what is coming from right here on the Earth.

Mr. Speaker, the President could have done better. But he did not have it in him.

The extinction of the dinosaurs provided for the extraction of fossil fuel.

The addiction to oil could provide for the extraction of mankind from a planet too hot to inhabit.

Is it science fiction or a looking glass? Too many scientists know we are looking into the future, and ignoring it.

I urge the American people to read today's LA Times and New York Times.

Compare the common sense expressed in bedrock journalism against Republican's unlimited access to uncommon hype. You decide.

Mr. Speaker, like oil, even Republican hype is a finite resource, and that's the best energy news for America in a decade.

ANOTHER ACCUTANE DEATH

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan (Mr. STUPAK) is recognized for 5 minutes.

Mr. STUPAK. Mr. Speaker, on this first day of the Second Session of the 109th Congress, I sadly inform the House of Representatives of another Accutane death. I will enter into the RECORD an article from the Appleton Post Crescent. The article is dated today, February 1, 2006. If I may, I would like to quote from this newspaper.

☐ 1845

"Justin Zimmer shot himself January 15 in his bedroom, a shocking suicide his family struggles to comprehend and fears may be tied to Justin's acne medication.

"The day of Justin's death, the family had returned home from a meeting to discuss a trip planned by Justin's church youth group.

"His parents, Wendy and Warren, left for the grocery store. An hour later they pulled into the driveway and learned Justin was dead.

"How could their happy, high-achieving teen, who couldn't wait to take his driver's test on his 16th birthday Thursday, end a life of so much promise?

"All the Zimmers and their other two children are left with are questions, and the only answer they can come up with to explain his death is Accutane, the prescription drug Justin started taking in December for severe acne."

I wish to extend my heartfelt condolences to the Zimmer family. I, too, know the struggle and heartache and pain that they are going through as I lost my son B.J. on May 14, 2000.

To go on the article says that the FDA and the drug manufacturer of Accutane, Roche, indicated that the rate of depression among Accutane users is 1.5 times higher than among nonusers, according to a December 7, 2004 report in USA Today.

As Mr. Zimmer said, "'They can snap in as little as an hour. I'd just as soon see it off the market.'" meaning Accutane. "'If this can happen to a kid with all this going for him, think what could happen to a kid who's struggling?'"

"'They shouldn't sell it to anyone . . .'"

Another doctor, "an Appleton dermatologist, said he has looked at a number of studies and has no qualms about prescribing isotretinoin," which is the medical term for Accutane.

He goes on and says, this dermatologist, "'It's something we're concerned about and we ask about, but we don't see any scientific evidence to say there is an increased risk for it.'" He said the side effects, including the potential for depression and suicide, are there, but he is not concerned about it.

Mr. Speaker, I have come to this floor before, and I have brought forth this PET scan of the frontal orbital cortex. If you take a look at it, this is the medical evidence that directly links Accutane to depression and suicide ideation and suicide in the users of Accutane.

If you take a look at it, here is the baseline of Accutane over on my far right. That is the frontal orbital cortex of the brain. When you take a look there is all the red in the picture over here, that is the baseline. Four months later they take a PET scan of the brain over here, post-Accutane, 4 months on Accutane. Notice there is very little redness in this front part of the brain, the frontal orbital cortex, the front part of the brain we know causes depression.

The reason why there is no redness is because the metabolism of the brain has been stopped or affected by the use of the Accutane. In this particular slide, this person had a 21 percent decrease in brain activity while on Accutane.

So, when this dermatologist says there is no medical evidence, there is. Here is the direct evidence. This has been published in the American Journal of Psychiatry last year. Also, there are animal tests which show the same thing, how Accutane actually destroyed a brain in these animals.

We can even take it one step further. This person who has this PET scan here, if you gave this person, a number of dermatologists said they would monitor them, if you give this person the Beck's depression test, which is standard indication of signs of depression to see if the person is suffering from depression, this person who had a 21 percent decrease in brain activity passed every one of them. The only reason why they knew something was going on besides the PET scan was the personal behavior had changed. Unless you are monitoring that person all the time you never would know that from the Beck's depression test because it did not show a change in personality.

Getting back to the young man that unfortunately took his life on January 15, his parents went on to say, "'He had an appointment this Thursday to take his driver's test and it was one of the few times he'd take off of school. We were shopping for cars.'

"Justin was sensitive and shy, with a ready smile and a penchant for perfection, said his parents. At school, he was sophomore class president, and ranked No. 1 in his class with straight A's. He was in wrestling, football and baseball."

Mr. Speaker, we presented these findings of this PET scan to then-Secretary of Health and Human Services Secretary Thompson and also to then Mr. Crawford, and we are still waiting for answers back as to these PET scans and what it shows.

Mr. Speaker, there are so many unanswered questions. My time has expired. I look forward to continuing this discussion on this serious drug, and it should be pulled from the market.

The article I previously referred to is as follows:

[From the Post-Crescent, Feb. 1, 2006]

ACCUTANE BLAMED IN SUICIDE

(By Kathy Walsh Nufer)

MENASHA.—Justin Zimmer shot himself Jan. 15 in his bedroom, a shocking suicide his family struggles to comprehend and fears may be tied to Justin's acne medication.

The day of Justin's death, the family had returned home from a meeting to discuss a trip planned by Justin's church youth group.

His parents, Wendy and Warren, left for the grocery store. An hour later they pulled into the driveway and learned Justin was dead.

How could their happy, high-achieving teen, who couldn't wait to take his driver's test on his 16th birthday Thursday, end a life of so much promise?

All the Zimmers and their other two children are left with are questions, and the only answer they can come up with to explain his death is Accutane, the prescription drug Justin started taking in December for severe acne.

Accutane is a brand name of the anti-acne drug isotretinoin, which went on the market in 1982.

It has become controversial because of its serious side effects, including birth defects, mental disorders and even suicide.

Those side effects, however, are so rare that many doctors think they statistically are insignificant, and the Food and Drug Administration only warns people to be aware of them, not to abstain from using the drug.

The Zimmers blame their son's death on the drug, said Warren, who was aware of the side effects but saw no warning signs in his son's behavior.

"That's why we felt it necessary to get this out. We want parents to know just how sudden this can come on. If we can save someone, maybe his death isn't a total loss and someone else doesn't have to go through this."

U.S. Rep. Bart Stupak, D-Mich., whose son committed suicide in 2000 while taking Accutane, has pressed for more public warnings about the link between depression and isotretinoin, more restricted distribution and more tracking of side effects.

The Zimmers say they have talked to countless people who know someone taking isotre-tinoin. "It's more prevalent than you think," Warren said.

The couple now urges parents to take their teens off the medication if they are on it.

"They can snap in as little as an hour," Warren said. "I'd just as soon see it off the market. If this can happen to a kid with all this going for him, think what could happen to a kid who's struggling?"

"They shouldn't sell it to anyone under 18," Wendy said.

Adrianne Marsh, a spokeswoman for Stupak's office, said Tuesday the FDA has attributed about 200 suicides to the drug so far and last spring put out an isotretinoin alert.

Dr. Charlie Kagen, an Appleton dermatologist, said he has looked at a number of studies and has no qualms about prescribing isotretinoin.

"It's something we're concerned about and we ask about, but we don't see any scientific evidence to say there is an increased risk for it," he said of the side effects, including the potential for depression and suicide.

"There's a suggestion it (Accutane) might play a role, but statistically we can't say it does. Well over 6 million people in the U.S. alone have used it since 1982."

Side effects are explained in the medication guide Roche Laboratories, the maker of Accutane, puts out for patients.

The literature notes that some patients may become depressed or develop such symptoms as sadness, anxiety, irritability, anger, thoughts of violence and suicide.

Patients sign a consent form, agreeing to stop using the medication if they notice any symptoms, and are required to meet with their doctor once a month, which Justin did.

Justin, who had taken Accutane for a month before his death, had tried other topical acne medications with little luck, said his parents. He had decided on Accutane, which is prescribed when other treatments don't work, after discussing it with his dermatologist.

He also had discussed the side effects with his parents.

"It's not that we took it lightly," said Warren. "We were watching for warning signs."

"We saw nothing," said Wendy. "I could talk to him about things, and he promised he would come to me if anything bothered him."

When police asked the Zimmers what they thought happened, Warren noticed the prescription slip for Accutane on the kitchen counter.

Justin's last appointment with the dermatologist had been Jan. 12 and on the slip was the orange sticker giving the pharmacist the OK for a new 30-day supply.

Warren and Wendy Zimmer insist their son's suicide had to be related to the drug.

"He had so much going for him," said Warren. "He was good at everything he did. He respected everybody. He didn't have an enemy in the world."

"He had an appointment this Thursday to take his driver's test and it was one of the few times he'd take off of school. We were shopping for cars."

Justin was sensitive and shy, with a ready smile and a penchant for perfection, said his parents. At school, he was sophomore class president, and ranked No. 1 in his class with straight A's. He was in wrestling, football and baseball.

"He had an undefeated season in wrestling and was so looking forward to baseball," Wendy said. "He'd been sleeping with his baseball glove by his pillow."

Justin planned to join the military, Warren said. "He was a big 'CSI' fan. Who knows where he would have gone? He had a heck of a start on life."

The Zimmers can't say enough about the support of family, school personnel and the community, especially Menasha students, through their ordeal. "When we came home from the wake there were 100 kids in our front yard having a candlelight vigil. They encircled us. It was so healing," Wendy said.

Even so, Warren said he is beset by "streaks of anger" when he thinks about Justin's death.

"Your life changes so quickly in a matter of an hour. You go to the grocery store and come back and you don't have five people at home anymore. You have four."

THE PRESIDENT'S STATE OF THE UNION ADDRESS

The SPEAKER pro tempore (Mr. KUHL of New York). Under the Speaker's announced policy of January 4, 2005, the gentleman from Iowa (Mr. KING) is recognized for 60 minutes as the designee of the majority leader.

Mr. KING of Iowa. Mr. Speaker, as always, I profoundly appreciate the privilege to address this body and on a subject matter before us that we have not had the opportunity to debate and deliberate within this Chamber and one of the broader subjects that I would like to address in this upcoming 60 minutes, Mr. Speaker, is the President's State of the Union address last night. I have a copy in my hand here, the one I took notes on as he spoke in this Chamber last night.

Before I move into that, Mr. Speaker, I would like to address a couple of subject matters that were raised by one of the previous speakers and point out that the Foreign Intelligence Surveillance Act, this seems to be something that is debated across this country intensively by the mainstream media. It fits within the same category of the PATRIOT Act which we extended at least from this floor today.

I sat through in the Judiciary Committee at least part if not all of the 12 to 13 hearings that we had, and we asked continually, give us some names, give us some specific examples of someone who had their rights trampled or abused or usurped under the PATRIOT Act and I say also under FISA. The criticism continues, Mr. Speaker, but I still continue to ask, name the case, name the individual, give me the circumstances by which these laws that have protected us so well have been abused by anyone this administration or the opening by which that might be done. I have not heard that answer, and I continue to ask that question.

This country has not been attacked because we have been prudent in our surveillance. This surveillance under the Foreign Intelligence Surveillance Act has been used by many Presidents and only challenged now after it was brought forward in the New York Times, the very morning that there is a PATRIOT Act vote in the United States Senate. I would question the motives of that newspaper that sat on that story for a year. We need to continue to ask that question and what was the motive of the paper, and by the way, what was the motive of the Members of this body and the other body when they had been briefed on FISA and those kind of foreign intelligence surveillance, they did not seem to have an objection when they were briefed. They only had an objection when they were briefed by the media. We have a larger responsibility than that, Mr. Speaker, and I would point that out.

Also, one of the previous speakers addressed the issue of "our addition to foreign oil." I would ask those people, help us use this domestic supply of energy that we have. Let us unlock ANWR, let us unlock the Outer Continental Shelf. Let us develop these domestic supplies of renewable energies that we have. Let us join together in a bipartisan effort to grow the size of this energy pie.

So those two in response to the previous remarks that were made, Mr. Speaker, and then I would also address the idea, the President covered a whole series of subject matters last night. Our national defense is one. Energy is another. Education is another.

Of course, one of the key components to our national security is immigration, border enforcement, and here with us tonight to address the border security issue and border enforcement and I expect will have some kind words to say about our brave border patrol is the gentleman from Florida (Mr. KELLER) to whom I would be pleased to yield to.

Mr. KELLER. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I have just returned from the Mexican border and I am here to report my findings.

We were 5,000 feet up in the mountains along the border California shares with Mexico at 2:00 a.m., freezing in 30-degree weather with the wind howling in our faces. Eight shivering young men, illegal aliens in their late teens and early 20s, sat on the cold ground in handcuffs, grateful to be caught. One of them pleaded with the border patrol agent to find his girlfriend Maria who was still stuck on one of the cliffs.

Illegal aliens, like the ones I saw in handcuffs, continue to enter the United States from the Mexican border at the rate of 8,000 per day. Today, we have 11 million illegal aliens in the United States.

Illegal immigration presents a huge problem. That is why I decided to spend a week along the southern border to see firsthand how bad the problem was and what Congress could do to fix it.

Last year, our border patrol agents arrested 1.2 million illegal aliens attempting to enter the United States from Mexico. Significantly, 155,000 of those arrested were from countries other than Mexico. They included illegal immigrants from Iran, Iraq and Afghanistan. Our porous Mexican-U.S. border offers the perfect cover for terrorists, especially since tighter controls have been imposed at airports.

This poses a very serious national security problem, according to CIA Director Porter Goss. I personally spoke with border patrol agents who had apprehended suspects on the terrorist watch list.

One night while I was riding along with the border patrol two illegals from Pakistan were captured. One convicted sexual predator was caught trying to cross, so were wanted murder suspects, drug dealers and smugglers.

I was impressed by the bravery of the border patrol agents who escorted me. I saw a border patrol supervisor get out of his vehicle, pull an illegal alien off of a 10-foot wall and arrest him despite his violent attempts to resist the arrest.

The border patrol agent I rode with told me he had been shot at on several occasions. Twenty-three of his colleagues have been killed in the line of duty since 1990. For example, border patrol agents Susan Rodriguez and Ricardo Salinas were gunned down by a murder suspect. Agent Jefferson Barr was shot to death by a drug trafficker.

If the job of a border patrol agent sounds dangerous, imagine the risk to people who actually live along the border.

I sat down in the living rooms of four different families who own ranches along the border. One couple, Ed and Donna Tisdale, documented on home video 13,000 illegal aliens crossing their property in one year alone. The Tisdales had their barbed-wire fences cut by illegals, running off the family's cattle. When their dogs barked to scare off intruders, the dogs were poisoned.

Another rancher told me about numerous break-ins at his home while his family slept, as illegal aliens tried to find food and clothing. One morning his daughters had gone out to feed their pet bunnies, only to find them skinned and taken for food by illegal aliens trying to escape to a nearby highway.

The economic impact of crossers who are successful is catastrophic.

Illegal immigration costs taxpayers $45 billion per year in health care, education and incarceration expenses. The cost of the estimated 630,000 illegal aliens in Florida is about $2 billion a year, meaning every family in my congressional district pays a hidden tax of $315 each year, and yet still faces depressed wages because of illegal immigration.

So how do we fix the problem?

First, we need to crack down on employers who knowingly hire illegal workers. Jobs are the magnet drawing illegal aliens across the border, and the United States House of Representatives has acted to make it mandatory for employers to check the paperwork of new hires or else face stiff penalties if they do not. Now it is up to the Senate to act.

Second, we need to complete construction of the double fence for 700 miles along the border near populated, urban areas. San Diego saw a steep reduction in crossings, from 500,000 down to 130,000, when the double fence was completed there.

Third, where mountains and rugged terrain make completion of a double fence impossible, we need to have a virtual fence. Congress needs to appropriate more money for infrared cameras that enable agents to see the entire border.

Finally, we need more border patrol agents. Although Congress has tripled the number of border patrol agents since the late 1980s, more are still needed.

Mr. Speaker, one million illegal immigrants come to America legally each year, and my staff members spend the majority of their time helping those who want to come to our country to work hard and play by the rules.

□ 1900

We are protected from dangerous people entering the country at our airports. IDs are checked against the terrorist watch list and baggage is screened. Well, who is doing the checks on the 8,000 people who arrive here illegally every day? Who is our last line of defense? It is a Border Patrol agent in a green uniform working alone.

At 2 a.m. tonight, after all of us are asleep, he will be working somewhere near the top of a cold 5,000-foot mountain along the California-Mexican border. He will get a radio call telling him to approach a group of illegals who have been spotted by an infrared scope and are located near the top of that mountain. He will track their footprints in the dirt and make his way toward them. As he approaches, there is something he doesn't know: Are these illegal aliens a group of harmless teenagers who are scared and freezing, or are they heavily armed and dangerous drug traffickers, like the ones who have killed so many of his colleagues?

Either way, he will approach them, because it is another day on the job. Mr. Speaker, I have a message for that Border Patrol agent working tonight: the United States Congress knows you are there, we appreciate your service, and help is on the way.

Mr. KING of Iowa. Mr. Speaker, I thank the gentleman from Florida. I appreciate his travel down to the border. I have done that on occasion myself and traveled the border at night and flown in helicopters and had my meetings with the Border Patrol down there. It wasn't quite as eventful as yours appears to have been, Mr. KELLER; but for those of us in the House of Representatives who have not gone down and had personal experience on the border to see how it functions and how sometimes it doesn't function, I think it is important for us to take that visit and do that.

The statement that was given that there were 1.2 million stopped at the southern border last year, of course we know that is a rounded number. The number in a little more precise term is stuck in my head: 1,159,000 illegals, and I say collared at the southern border in the last year. And of those, there were only 1,640 that were adjudicated for deportation. The balance of them, in summary terms, were released on their promise to return to their home country. Many of those who were other than Mexicans, the 155,000, were simply released into this country without an expectation of going back to their home country.

In that haystack of humanity, the Border Patrol has testified before our immigration subcommittee that they believe they stop one-third, maybe one-fourth, of those illegal crossers. So we know that that 1.2 million multiplied times three or four gets you in the neighborhood of how many actually came across and how many came in here and successfully completed their crossing and stayed. That numbers approaches, I believe, 4 million in the last year.

That 4 million-strong haystack of humanity includes people looking for a better life, but also in that are the needles in that haystack that are terrorists, drug dealers, criminals, rapists, and people who wish this country ill will, along with a pretty good sized portion of them that simply see the United States as a giant ATM, who come here seeking their fortune and then wire the money back, go back and withdraw that money from their banks and live happily ever after.

That number, in 2005, when the report comes in, will be very near, if it does not exceed, $30 billion wired south of our border, $20 billion into Mexico and another $10 billion into the other Central American states. That is a huge number. We say we cannot get along without this economy, but the illegal labor in this country is generating about $76 billion in wages. That $76 billion amounts to 2.2 percent of the wages that are earned in the United States, even though they are 4 percent of the labor force.

So the argument we cannot get along without the illegals is a specious argument and is just plain false. We will find a way in this country. There are 7.5 million people being paid not to work, on unemployment. There are another 5 million that have exhausted their unemployment benefits and are still seeking work. So there are 12.5 million people in this country looking for work. And of the 11 million illegals in this country, 6.3 million illegals are in our workforce. So the 6.3 million that we have to replace if we shut off the jobs magnet could come from the unemployed and that 12.5 million that I stipulated.

Additionally, there are 9 million young people in America between the ages of 16 and 19 that are not in the labor force, even in a part-time job, for whatever reason. There are about another 4 to 4.5 million between the ages of 55 and 69 that are not working that might be if we didn't have penalties in there for their work. So you begin to add that up, and it is 13 million added to the 12.5 million. So there are about 25 million people in this country that would be sitting there to fill the 6.3 million vacancies if we shut off the jobs magnet. So one in four. And that doesn't include the 51 million between the ages of 20 and 64, between those ages, that are simply not in the workforce because they are retired, they choose not to work, or whatever the reason might be. That takes us up to 76 million in a potential workforce to tap into or to replace 6.3 million.

I do not think we have examined those numbers or we wouldn't be having the debate we are having, Mr. Speaker.

I want to take this opportunity to yield some time to the gentleman from Texas, who had spoken to us a little earlier about the immigration issue. I appreciate his stance on the energy issue. In fact, we have stood on this floor a number of times and joined forces together. I joined forces with Mr. POE of Texas in cosponsoring his bill that opens up the Outer Continental Shelf to both gas and oil drilling. So I yield to the gentleman from Texas.

Mr. POE. Mr. Speaker, I appreciate the time and the work of the gentleman on numerous issues, the first of course being the overriding issue of our Constitution, a document you keep in your pocket every day in case someone wants to question you on what it says and what it doesn't say. I commend you for your strong stand on the Constitution.

And on the issue of border security being a national security issue, because it is a national security problem. It is unfortunate that so many Americans are oblivious or refuse to believe the problem that has been discussed tonight by our friend from Florida and yourself.

And then there is the issue, of course, of offshore drilling. We have heard even tonight in this Chamber a discussion about the importance of having our country not be dependent on other countries for our energy. We are held hostage to some extent to Third World countries that really determine how we are to obtain much of our oil and natural gas. And there were some concerns mentioned tonight that folks in the Northeast are needing home heating oil and we can't depend on foreign countries. Well, we don't need to depend on foreign countries. We don't need to depend on the Middle East as much as we are.

We hear the rhetoric in Venezuela from the president there, his anti-American comments and how he threatens every once in a while to cut off the oil supply to the United States; and Bolivia, with its new president, is talking about doing the same thing with natural gas to the United States. Once again, the United States appears to be held hostage by Third World countries on our energy.

So what do we do about it? Well, the President mentioned last night several proposals of how we have to go to alternative energy sources, and we need to do that. But we need to take another look at where we drill, why we drill, and why we don't drill. We will start with the offshore drilling.

I have here a chart that explains where we drill off the coast of the United States and where we don't drill. We drill in my home State of Texas, and we're glad to drill offshore. Texans know the importance of drilling offshore. We drill offshore from the State of Texas; we drill offshore from Louisiana and the State of Mississippi. This blue area is the only place we drill offshore, because the rest of the Gulf of Mexico, Florida, the entire east coast, and the sacred west coast, if I can use that phrase, we don't drill because there are prohibitions from drilling offshore.

We need to lift the prohibitions in this entire red area. Not the environmental regulations, but the overall prohibitions from drilling in these entire areas. There is much oil in the Gulf of Mexico. There is much oil on the east coast and off the west coast, and we don't drill there for reasons that I think are a myth. The myth is we can't drill offshore safely, that it is an environmental problem.

Mr. Speaker, that is a myth because we can drill offshore safely. Let us just go back recently to two hurricanes that hit this area, this blue area. Hurricane Katrina and then the forgotten hurricane, Hurricane Rita, that came right through this entire area. In this area we not only drill offshore but we have refineries.

My home State, Texas, right here, this district I represent, southeast Texas, 23 percent of our gasoline is refined right here in this area where Hurricane Rita came through and shut down our refineries for a period of time. But during all of the conversations and discussion and moaning and groaning about the disaster of Hurricanes Katrina and Rita, we heard little, if any, talk about offshore drilling and the danger and the leakage from crude oil coming up from the bottom of the Gulf of Mexico because of these two hurricanes. Because it didn't happen. There was very little environmental impact with the hurricanes that came through this area, because we do drill safely offshore.

That should tell us a couple of things. First, these rigs offshore that shut down, and some were damaged, caused little or no economic or environmental impact in the gulf coast. Second, since this is the only place we drill offshore, someone should realize that maybe we should not depend on this entire blue area, hurricane alley as we call it, for our offshore drilling.

With Hurricanes Katrina and Rita, many of these rigs were shut down and some of our refineries were closed down. All of that takes place in this one blue area. We are dependent not only on foreign oil but in our own country we are dependent on this little area of offshore drilling. So we do need to expand. We need to use some common sense and drill offshore safely in this entire other region where there is much crude oil and much natural gas.

We don't do it because people are concerned about the environmental impact. This is actually one of those myths that has convinced so many people in this House and many Americans who are afraid we can't drill offshore safely.

Where do these offshore oil spills come from? Pollution from crude oil in the Gulf of Mexico? Well, 63 percent of the crude oil that comes to our shorelines in the Gulf of Mexico is from nature itself, as this chart shows. Sixty-three percent comes from the natural seepage of crude oil from the bottom of the ocean. That is where most of the pollution comes from.

Second, 32 percent comes from those boats, the shipping industry that patrols the Gulf of Mexico. Three percent comes from those tankers that are bringing crude oil from other countries, like the Middle East. And only 2 percent of pollution, if we use that phrase, in the Gulf of Mexico from crude oil comes from, yes, that is right, offshore drilling.

Now, most Americans are unaware of this. Most Americans think it is just the reverse. They think the crude oil drilling offshore causes most of the pollution, and that is not true.

No one wants polluted beaches. No one wants an unsafe environment. I certainly do not. No one does that advocates offshore drilling. So the environmental impact is very small if we drill offshore. We can do so safely.

They drill offshore in the roughest waters in the world, and that is the North Sea, and they do so safely. Most of those people that are drilling there are from Texas to begin with, and those folks that know how to drill offshore safely drill all over the world. Yet we have a mindset in this country that we shouldn't drill in these sacred areas because of the environmental impact.

So that myth needs to be denounced as a myth and we need to take care of our own selves, be self-sufficient, because there is plenty of crude oil here, on the east coast, the rest of the Gulf of Mexico, and there is also much natural gas resources that we are not tapping into as well. Not to mention going up here to Alaska, to ANWR, another place where we ought to drill, because we can drill in that area safely.

Hopefully, these two bodies will agree to drill in ANWR. Because gasoline prices continue to rise. Home heating oil prices continue to rise. Natural gas prices continue to rise. The answer is not to look to more foreign countries. The answer is to drill safely, environmentally correct, around the United States coastline.

□ 1915

Just to mention one other thing, when an oil company goes out here into the Gulf of Mexico and wishes to set up a new rig, they obtain a lease from the Federal Government. They pay for that. Those leases bring in millions of dollars to the United States Treasury that we lease to oil companies for permission and the right and privilege to drill offshore. That is a source of revenue. So more leases bring more revenue to the national Treasury. We talk about the deficit and government spending. Revenue can be obtained from these oil companies that drill offshore.

So it is a situation where I believe more Americans need to be aware that we can do so safely. We have seen hurricanes hit these oil rigs with minimal damage to the environment. We know there is oil and natural gas out here, and if we do not take care of ourselves and become more dependent on ourselves for our own energy, crude oil and natural gas, gas prices will rise, crude oil prices will rise, home heating oil prices will rise, and natural gas prices will continue to rise, and without doing so there is really no answer. We need to do both. We need to look for alternative sources such as nuclear energy, as the President mentioned last night. We also need to drill where we have oil and natural gas available.

I appreciate the opportunity to make these comments. Hopefully working together we can solve our own energy and not be held hostage by other countries.

Mr. KING of Iowa. Mr. Speaker, as I look at the gentleman's lower chart, Pollution from Oil, and it shows 2 percent of the pollution from oil comes from offshore drilling and the balance from the composition that the gentleman describes. For the record, I ask what percentage of pollution comes from natural gas? Does any come from drilling for natural gas? Is there any example of a natural gas spill offshore anywhere in the world that has damaged a beach anywhere?

Mr. POE. That does not occur. When a natural gas well is drilled, it does not cause pollution. So another reason we should obviously be drilling offshore for both of these commodities.

Mr. KING of Iowa. Mr. Speaker, I appreciate Mr. POE's presence here.

I did see natural gas boiling up out of the water, and I saw it on fire when I went down to visit New Orleans in the early part of September. There was a great visual for what happens if you happen to get a natural gas leak coming down from 8 or 10 feet of water, and it might come from 1,000 feet of water, the natural gas boils to the top. If there is a spark it burns. It burns without a lot of heat. If there is no spark, it dissipates into the atmosphere. I do not have the statistics how much gas just percolates up through the ocean floor, but my understanding is that it is a significant amount. Do you have any background on that?

Mr. POE. I do not have the statistics either, but natural gas is even less of a pollutant than crude oil. Of course there is natural seepage with natural gas just as there is with crude oil from the bottom of the ocean. That is the way nature has been doing business for a long time. I do not have the statistics, but it would be interesting to find out what they are.

Mr. KING of Iowa. We are looking at the distribution of that large volume of natural gas that comes out of Hurricane Alley. We are supplying some of those gaps in that need for natural gas through liquefied natural gas that comes over on tankers, and then we have to run it through a plant and convert it back to our gas form and deliver it through our pipelines. It is essential from our cost to be able to take natural gas as close to the demand as possible and tap into the nearest supply so we do not have that expensive transportation and compression that goes on into the Middle East, bringing it in and converting it back to a gas in the Untied States. It is an expensive proposition.

When I see that red map with leases all around the shore of the United States, that is all accessible to the population centers of the United States which are our coastlines. It would be a natural to tap into the gas that is within 200 miles of its demand as opposed to several thousand miles across the ocean. Would you comment on that?

Mr. POE. Certainly. We bring in liquefied natural gas from the Middle East. It is converted and used in the United States. We need that process as well, but it makes a lot more common sense to use the resources we have, our own natural resources, to satisfy the need for energy in the United States and continue to develop other alternative energy sources as well.

To me it defies common sense that we do not drill offshore. We can do so safely. We have proven that. The best experts in the world on drilling offshore from the United States, they go to other countries and contract out and drill for other countries. Hopefully we can change the mindset in this country.

Mr. KING of Iowa. Mr. Speaker, I thank Mr. POE.

I would like to pick up on that framework that has been laid out by the gentleman from Texas and talk a little bit about the national security of our energy situation. As I listen to the rhetoric that comes out of the Venezuela and Hugo Chavez, for example, it is a bit difficult to believe he is a friend of the United States. It is hard to think that he had our best interests in mind even though he did donate some natural gas for heating over in Massachusetts. I would think their politics might be a little more sympathetic than they are in Texas or Iowa.

But as I look at that, I question the motives and I see the dollars that have flowed into that administration in Venezuela, and I look across to the Middle East where we are buying that liquefied natural gas, and everybody in the Middle East is not our friend, and they do not have our best interests in mind either. But the wealth of the United States of America is being spent in purchasing expensive energy resources from overseas, expensive supplies of energy, and we are enriching people who do not have our best interests in mind in the Middle East as well as in Venezuela and other parts around the world.

What kind of a nation would sit on all of that oil that we have up in ANWR, and I have been up there and looked at that? The gentleman from Texas spoke about the environmental friendliness and the safety we have with our oil drilling offshore. I would point out the record of developing the North Slope oil that started in about 1972. Up there when you look at the hundreds and perhaps thousands of wells that have been drilled in that area and the millions and millions of barrels of oil that have been pumped down the Alaskan pipeline, and you fly over from the air and you look for that environmental wasteland that supposedly is up there, all I see is green tundra. And I see a white 50-inch pipeline that goes across the country, across the Yukon River and on down to Valdez. We flew over at about 1,500 feet in altitude. They told me we were over the North Slope oil fields, and I looked out the windows and cast my eyes below and said, Where are the wells? I have worked in the oil fields and have been up on the derrick and I know what it looks like. I expected to see pump jacks like you see in Texas or Oklahoma. I saw none of that in Alaska. All I saw was a white rock pad about 50 by 150 feet, maybe 3 or 4 feet up off that Arctic tundra sitting there waiting in case there needed to be some work done on that well, which would take place in the wintertime on an ice road, the same way the drilling took place in the wintertime on ice roads and ice pads.

It is environmentally friendly because there is not a disturbance to that environment when it is not frozen solid. When it is frozen solid, they build ice roads and come in, they set the work-over rig on that rock pad and pull out a submersible pump, put it in the well and have it ready to go. It pumps oil into that collection system, which I do not see either from the air.

I do not know how it could be any more environmentally friendly. The threat that it would reduce the caribou herd, for example. I happen to know in 1970 they did a census. They counted every caribou, citizen or not. There were 7,000 head of caribou on the North Slope, and that is an American herd. Today there are over 28,000 head of caribou in that same place. We surely did not damage their environment.

Those who watch that herd will tell you that caribou cows get up on top of those rock pads and have their calves instead of dropping them in the ice cold water. They will have them in the spring when the permafrost starts to melt. That is one reason they survive better. Another reason is they have a place to get up out of the wet, and the wind blows the flies away. The wind dries off the calves, and they will dry off and live better and do better. So we see a population that has multiplied four times in caribou.

If you go over to ANWR, there is not a resident caribou herd there, notwithstanding as many times as you have seen the commercials on television. It is not a pristine alpine forest. There is not a single tree in that entire plain where we would like to drill for oil. Not a single tree.

In fact, I have a picture of the furthest most northerly spruce tree that is there. It is about 600 miles further south. I point out for people who did not take 8th grade science and geography, that the circle around the globe known as the Arctic Circle, that is the line that has been drawn around the globe north of which trees cannot grow. So the commercial do not destroy the trees in ANWR is a phony commercial. The commercial that it will disturb the caribou herds is a phony commercial. If anything, it will enhance the caribou herd on the North Slope. There is no resident caribou herd in ANWR which lies just to the east of the North Slope, identical as far as I can tell in ecological regions, at least close to that same kind of climate and ecological region, but they do have a caribou herd that comes in from Canada. They come in and have their calves and when the calves are strong enough to walk, they walk back to Canada. I do not think any thinking person thinks they would be disturbed if we drilled some wells up there and pumped a million barrels a day on down here to the United States to take the pressure off the foreign oil.

That is one thing with drilling in ANWR. There is a lot of gas in ANWR. There is gas developed on the North Slope. That gas that sits there now, we need to build a pipeline from the North Slope on down to the lower 48 States. There is 38 trillion cubic feet of natural feet developed and ready to tap into up there. There is more gas up there not developed, and that reserve has not necessarily been identified in its volume.

But if you recall the map of the coastal regions of the United States that was done in red, the undrilled portion of our Outer Continental Shelf, there are known reserves out there of 406 trillion cubic feet of natural gas. The United States consumes 22.5 trillion cubic feet of natural gas a year. That chunk up there on the North Slope, there is more up there than the 38 trillion, but just by comparison, 38 trillion cubic feet of natural gas in the North Slope of Alaska, and 406 trillion cubic feet offshore of the United States.

Those huge supplies of natural gas, the ability to deliver a million barrels of crude oil a day coming out of the ANWR region, all of the oil that is in that red area of the map along with the natural gas, and this Nation goes anywhere else in the world to purchase at a high price energy that enriches people that sometimes are our sworn enemies, and I would say the leader of Iran would be one of those, and the leader of Venezuela has been swearing at us for some time, and he is convincing me he is our enemy, too. So we enrich them and sit on top of our energy reserves. I would declare that to be a form of economic suicide, to pay a high price for energy when we have it right underneath our very feet and not tap into it and instead enrich our enemies.

Those are big things that matter in a big way. This Congress cannot seem to get together on the obvious. As I listen to the gentleman from Washington in the previous hour speak about us being addicted to foreign oil, I think we have been intimidated by the cult of environmental extremism. The idea that we are going to do something to tap in our energy that is going to upset this Mother Nature that some folks would like to convert back to pre Garden of Eden, and when I say that, that would be back before Adam and Eve walked on this Earth. All other species are fine, but this human species should not compete with other species on this Earth, and I will tell you that as I read it, we are put here to have dominion over all those species, plant or animal. They are here for us to use respectfully and to manage, and we do do that, and we are better than we were 30 or 50 years ago, and we will be better in another 50 years.

We have been extraordinarily effective and prudent in our care with our environment, and no one can point to a single natural gas environmental damage of any kind, and certainly your illustration of the very small percentage of oil pollution that comes from spills should tell us that if we were going to do anything, we should shut down the boating in the gulf as opposed to shutting down the drilling in the gulf.

□ 1930

I would open them both up because I do not see that there is a big problem there. I see that I have here tonight the gentleman, Mr. SHIMKUS, who has, I know, a passion in his heart for ethanol. And I want to make that endorsement before I hand this microphone over to him, in that I come from a district that may well be the one that has its ethanol production build out, all the corn we have to supply turned into ethanol, and we are now an energy export center; and I look for that kind of development across the entire Corn Belt. And I would be happy to yield as much times as he may consume to the gentleman from Illinois (Mr. SHIMKUS).

Mr. SHIMKUS. I thank my colleague and friend from Iowa. And we have made great strides. We appreciate Iowa's efforts because so much corn has gone to Iowa ethanol production; Illinois corn is now going to the feed lots in Texas, which used to be, which your corn used to go to. So when my producers are looking at the static cost of a bushel of corn, I always tell them, where do you think you would be without new demands going to ethanol?

I have a flexible fuel vehicle. It runs on 85 percent ethanol. And I had one in the last Congress, 2 years ago. I could not fill it up anywhere in my district. Now I can go all throughout my district, go to a regular retail pump and fill it up with 85 percent ethanol fuel. And it is usually, on average, 20 cents cheaper a gallon. So we are making great strides. It is a great story to tell, especially in this area. And as much as, you know, we are from Illinois, you are from Iowa, by definition you have to be supportive of ethanol. And we are. The President addressed it last night. And we also acknowledge the fact that there are other ways you can produce ethanol, and we want to encourage that because we want all the country to have the benefits that we are having and the country would have based upon energy independence. And that is where this debate has to be.

But I am not here to talk about ethanol tonight. I am here to talk about another overlooked resource which we use partially, not to its fullest extent, and that is coal. Now, we all know that we use coal to generate electricity. And a lot of people do not realize that 50 percent of the electricity generation in this country is from coal. And there are new technologies out there that will help us use clean coal technologies, as the President addressed last night. We want to encourage that. We also address that in the energy bill.

Clean coal technologies, the products of research and development conducted over the past 20 years, include more than 20 new lower cost, more efficient and environmental compatible technologies for use by electric utilities, steel mills, cement plants, and other industries. Coal already generates more than half our Nation's electricity, and it is the largest single source of the overall domestic energy production, more than 31 percent of the total.

When we talk about energy, though, we sometimes get confused, because energy is lot of different things. Energy is electricity generation. But energy is also fuel. So we have to be careful that we clarify for this debate all the benefits.

In looking at coal, we have over 250 years of demonstrated reserves, right now, untapped, 250 years' worth of demonstrated reserves. Coal is a readily available domestic resource.

Furthermore, new clean coal technologies, such as the gassification combined cycle, IGCC, which a lot of people know about, coal to liquid and coal to gas technologies. And this is not pie-in-the-sky stuff. The German Army, in World War II, used technology called fissure tropes to take coal and to turn it into fuels to run and operate the German war machine. Fifty years ago.

So what we are proposing and continuing to make sure that we understand it in this arena is that we can take these 250 years' worth of accessible coal reserves and continue to use it for electricity generation, but also use it to make fuel. And it is a cleaner process. So the debates we have had on the floor of the House is, part of it, the refinery issue.

We are addicted, I would say, I would agree with the President, we are addicted to crude oil from imports. So how do we address that addiction? One way we address it is make sure we have our local reserves. That is going the renewable fuels debate. But it also means that we take coal and we can, through current technology available today, we can turn it into gas, which addresses our natural gas challenges, which are really affecting manufacturing and home heating costs for the average consumer. And we can take coal and we can turn it into fuel.

Now, in a best-case scenario, we take that coal, liquid fuel, and then mix it with a renewable fuel and then we have a lot more independence. You have the reserves of coal, you have the local refinery. So you have the coal mine, you have the coal mining jobs, you have the refinery, you have the building the refinery, you have the refinery jobs, and then you have the transportation to the retail location, all in the cycle within the United States, not dependent on any other foreign source.

We have been talking and we are encouraged with our discussions with the administration, and we want to continue to push this issue because I think the public really does not appreciate the great reserves that we have.

The Illinois coal basin, if you look on a geological map, is basically the State of Illinois minus Chicago and Cook County. It also bleeds into western Kentucky a little bit, it bleeds into southwestern Indiana, but it is the outline of the State of Illinois. That is where an abundant access of coal is. And of course we know the other great coal producing States, Wyoming, Montana, West Virginia, Ohio, Kentucky; and so there are people willing, ready and able to take, to get back into this arena.

But there are always additional challenges that have to be faced. The existing obstacles to move this forward are as follows: there is a high capital investment to begin with. The disadvantage of the environment that we are in today is that we are paying 60 to $65 a barrel for crude oil. There was a time, in my lifetime, when it was $18, and they were capping marginal oil wells because it cost more money to get it out than you could sell on the market. It is good for the consumer, bad for oil exploration. Now at $65 a barrel, you have the opportunity to say, if there is a consistent market signal, that that $65 is going to be here for years to come, that the market will say there is a good possibility of return. I am going to make this billion dollar capital investment. Can the Federal Government help? What can we do because of this high capital investment for the plants?

The capital costs of the plants could be reduced by the experience gained in the actual construction and operation of commercial facilities, in addition to a focused effort by Congress and the administration to address the risks and capital hurdles for new development.

Perceived environmental concerns. My colleague who is leading this Special Order addressed that. Environmental concerns will be addressed by using clean coal technology, IGCC, to reduce emissions of the criteria pollutants. In addition, indirect liquification of coal processes produce clean zero sulfur liquid fuels. We have a debate of high sulfur fuels. We passed regulations that are going to affect the trucking industry. Low sulfur fuels can be produced through coal to liquification, and that addresses one of our major concerns.

You know, to conclude, and maybe join with my colleague in other energy debates, because it is, you kind of develop expertise or a forte based upon the area in which you live, or maybe the committee on which you serve. I am very honored and pleased to serve on the Commerce Committee; and I, in my 9 years, I have served on the Energy Subcommittee. So we have seen this coming, these hurdles that we have in front of us. And we finally were able, after many, many years, to pass a comprehensive piece of energy legislation; but we have to do more.

I want to bring to my colleagues attention the benefits of coal, not just for electricity generation, but for coal to gas, coal to gassification, coal to liquid technology and its use. Coal to liquid technology provides geographic diversity for domestic refining capacity, not all situated in the South on the gulf coast. It could be in the Midwest, could be in Iowa, could be in Illinois and improves national and economic security by lessening dependence on foreign oil and substituting plentiful, more affordable U.S. coal.

Coal to liquid technology also allows for the capturing of carbon dioxide emissions which serves as a bridge to a hydrogen fuel future through polygeneration, which is the linking of multiple types of plants into one such as the coal production of liquid fuels, electricity hydrogen; and that is what the President is proposing, and that is what we are excited about in the whole future gen proposal.

See, we are going to capture carbon dioxide, and through this process you can reinsert it back into the ground; and if you have an area like southern Illinois where you have marginal oil wells, that is going to help the additional oil that is left that is hard to draw out of the ground to be drawn out. So we have great opportunities in the future.

You know, coal has been given a bum rap for a long time. I think what those of us who believe in coal and those who invest and take risks and capital expenses want is just to know what the playing field is so that we can allow technology to meet the standards and there is consistency in regulations.

You know, the problem is when there is inconsistent rules and no one knows what the rules of the playing game is that the risk is higher. If you are going to invest billions of dollars, you want to lower the risk, you want to know what the rules are. We are now at a point with technology and the work we have done through the Department of Energy and clean coal technology research programs that we can get there with clean coal tech for electricity generation. We can turn coal into gas which will affect our natural gas crisis, and we can turn coal into liquid fuels which will help to decrease our reliance on foreign oil. So with that, my colleague, I appreciate the time.

Mr. KING of Iowa. I thank the gentleman from Illinois (Mr. SHIMKUS), and I appreciate that presentation. I always learn from these things this evening. And I look across at Illinois and we have a friendly competition in corn production, soybean production and sometimes football, basketball. And I look at the coal production you have and the oil and I think you have gas wells there too running in conjunction with it. It looks like Illinois has a little head start on Iowa when it comes to exporting energy and we are focusing our energies in that fashion too to develop that energy.

I would like to emphasize, Mr. Speaker, a concept and it is a concept I would like to try to sell to America, that we can begin to think about our energy in a little bit different fashion, and that is we need to grow the size of the energy pie. And if you just think in your mind's eye, and I will put a chart out here sometime within the next couple of months that demonstrates this. But there are pieces in every pie, and whether you slice up six, eight, or 10, but just draw that circle in your mind's eye and think there is a piece there for coal and there is a piece for ethanol and a piece for biodiesel and a piece for hydrocarbon-based fossil fuels, both gas and diesel fuel and our oil that we draw out of that.

There is a piece for natural gas that is energy. There is a piece for nuclear power, hydroelectric and there is a piece for solar. There is a piece for wind. There is a piece for hydrogen. And I am probably forgetting two or three pieces out of this energy pie that we have. But the more pieces we have, the more alternatives we have, the more options that consumers have, and the less dependency we have on foreign oil and foreign energy, and then of course the larger those pieces of the pie are, the more supply there is of energy.

And with supply and demand of course the rule is that then the value of the cost of energy will go down if we can grow the size of the energy pie, adjust the proportion, the percentage of the pie that are those pieces, those components of the different kinds of energy so that it reflects the resources we have in this country, the development of those resources, those being coal, nuclear, ethanol, biodiesel, natural gases sitting in the offshore and crude oil that sits out there offshore, drilling in the ANWR, the development of natural gas resources up in the north slope of Alaska, that the natural gas that is across this country underneath public lands, that we have not talked very much in the last year in this Congress about natural gas underneath public lands; but the statement has been made on this floor and it is in this CONGRESSIONAL RECORD that underneath public non-national park public lands in the United States there is enough natural gas to heat every home in America for the next 150 years.

And we can drill it and we can tap into it, but we cannot build the roads and the collection system to deliver and distribute that gas because of other environmental infringements and obstructions. And so if we can do things to develop energy that are compatible with the environment, then we have to get away from this cult of environmental extremism, and we have got to get together here and save this economy from America and not commit this economic suicide of purchasing from our enemies, enriching our enemies so that they can buy weapons and hire terrorists and send those people to bomb us, but instead provide that independence for ourselves.

And that is the biggest piece about this energy that I think needs to be laid out here. If we can go at it on all fronts, and I think that the natural gas offshore would be the thing that would reduce the overall cost of the United States the most.

We sit here in the United States of America and the heartland of it and Mr. SHIMKUS and myself, in particular, are in the middle of the Corn Belt. And everything you raise takes nitrogen to produce it.

□ 1945

And we purchase nitrogen fertilizer. It takes more nitrogen for corn than any other crop that I know of. And 90 percent of the cost of that nitrogen fertilizer is the cost of the natural gas that is converted into that nitrogen fertilizer. We have nearly lost the fertilizer industry in America because we have not developed our natural gas in America. And that fertilizer industry is going offshore in places like Trinidad and Tobago, and those are American interests, and I am grateful for that. But they are also going to Venezuela and Russia. And we are sitting here paying $15 for natural gas, and they are paying 95 cents in Russia so they can ship fertilizer to us. It will not be long, if we keep down this path, before the entire fertilizer industry is gone and we will see a fertilizer cartel pop up in Venezuela and Russia. And if you think it was a tough deal when you saw an oil cartel seek to control the price of crude oil and gasoline in America, think what it would be like if somebody has control over the cost of the production of our food in the United States of America.

So, Mr. Speaker, I would like to recap. I started out by addressing the President's State of the Union address, and he covered a lot of subject matter. We have addressed the energy intensively, and I do not think we mentioned that he addressed the initiative to develop ethanol out of cellulose. Wood chips, stalks and I think cornstalks, fiber like switch grass. There is a lot of energy there, and we are on the edge of being able to open up that technology. And if we accelerate that he believes, and I have no reason to disagree with his statement, that we could have ethanol production out of cellulose competitive with our current ethanol production within 6 years. That is good for all of us that can raise fiber of any kind. And it can convert waste products to put that in your gas tank at E85 levels, as Mr. SHIMKUS said. And I certainly support his initiative on clean coal, as the President spoke to that as well.

But the point that he made last night that has not been said here, the central point to his speech that I want to make, is that we fight to win in this War on Terror. And it is the most essential battle that we have as our national security. One of the things we are susceptible to, of course, with that is our dependence on that oil. We can get away from that, but we will still be threatened by our enemies from abroad.

We fight to win. We are winning. And the people on this side of the aisle stood and cheered when the President said that; the people on the other side of the aisle sat on their hands. And when the President said the decisions will be made on whether we deploy troops back out of Iraq by commanders in the field, not by politicians in Washington, D.C., people on this side of the aisle stood and cheered; people on the other side sat on their hands, Mr. Speaker. And when he said we stood behind our military, then we kind of got some support from both sides, but it was reluctant on the one side. And I wonder about that. I wonder what kind of sentiment would not be 100 percent behind every man and woman who wears a uniform and puts their life on the line for our freedom and for our safety. I think that is an absolute commitment that we have made. We have had that debate in this Congress. We have endorsed the President's authority to defend our interests in Iraq and around the world. He has done that. And I am grateful to every man and woman who has gone out there and put their lives on the line and those especially who have given their lives for our safety and our freedom.

It is going to be a long row to hoe to get to the end of this War on Terror. But the freedom that is coming in places like Afghanistan, the freedom that is coming in places like Iraq can be the lode star for a free Arab world. We never go to war against another free people, and to the extent that freedom can be promoted throughout the world, that is the extent by which all people on this globe are free from that curse of terrorism.

So I would ask us all to join together in that cause and let us open up this energy we have in this country so we are not hostage to those countries. Let us not enrich them. Let us enrich this economy here in the United States of America and promote the freedom that comes from a free economy.

THE 30-SOMETHING WORKING GROUP

The SPEAKER pro tempore (Mr. POE). Under the Speaker's announced policy of January 4, 2005, the gentleman from Florida (Mr. MEEK) is recognized for 60 minutes as the designee of the minority leader.

Mr. MEEK of Florida. Mr. Speaker, it is an honor to come before the House of Representatives once again. I want to give a special thanks to Democratic leader NANCY PELOSI and also Democrat whip STENY HOYER and our chairman, Mr. JIM CLYBURN, for leading us in the way that Americans are now seeing that we are moving in the right direction.

Just today, Mr. Speaker, we had an election of Mr. JOHN LARSON, who has become the vice chairman of our caucus. We are continuing to move in this area of not only bright ideas about also a forward lean to make America stronger.

It is also a great day for us to reflect on where we have been and where we want to go as a country. And I think it is important to take note of what took place last night. We had the State of the Union address. We were all there. We paid very close attention to what the President had to say, the Commander in Chief, about his vision for this country. Also, some of the vision was embraced by all of us. Some of the vision was embraced by a few of us. And some of the vision that he was saying that he had we heard once before as a vision.

A reporter called me, Mr. Speaker, and asked me for a response to the President's address, and I had to scratch my head for a moment because it was a lot of what we heard in the past. Theme language. We have to get tough on them before they get tough on us, we heard that before. We have to fight them over there so we do not have to fight them here, we have heard that before. We have to stay the course, we have heard that before. A lot of themes, a lot of slogans. I think what the American people were looking for was some direction on where we are going to go and how we are going to get there, sending a very strong message to our young people, to our middle-aged people, and also to our seniors that are out there, also to our troops. And I think it is so very important that we pay very close attention to what our troops are learning and what they are hearing from this Congress and what they are not hearing as it relates to the direction that we are going on the stateside. When I say state, dealing with diplomats in Iraq and Afghanistan and other areas, and also as it relates to something as simple as body armor and also continued support for our troops.

Of course, I did not see anyone say that we do not support the troops. We all support the troops. Every American supports the troops. I think it is important for us to understand that we have to make sure that they have what they need. And, Mr. Speaker, as you know, this 30-Something Working Group meets constantly to not only promote the ideas that are bipartisan in nature but also the ideas that on the Democratic side we want to share that not only with the majority side but also with the Americans, and I think it is important.

I think it is important for us to even look at issues as it relates to national security. We must stand behind the American military. That is what the President said. But I want to make sure that everyone understands, here on this side of the aisle and I would even say a couple of my friends on the majority side, Democrats were calling and have been calling for the last 3 years for implementing plans to strengthen and revitalize our overstretched military at this time. It is also important for us to understand that we have to be ready to fight other wars and other conflicts when they do arise, and we need to make sure that we are ready. We need to make sure we have Humvees. We have to make sure we have the body armor. We have to make sure that we have a clear task and mission so that our men and women know exactly what their purpose is, they know what their mission will be, and they know when they will be coming home. It is not a big secret to say when you are coming home. Maybe it is a secret as to when you are leaving to go to war, but when you are coming home is something that I think our troops need to know. We hear little words like, well, they just want to stop or they just want to cut and run or whatever the case may be. You can use your slogans, but what we are now seeing in the polling, Mr. Speaker, is that

American people are saying, You have to be a little clearer with us on this. You just cannot say, well, stay the course, we will stay there as long as we need to be there. Well, that would be great. I am pretty sure many of our U.S. city mayors, many of whom just left town, Mr. Speaker, would love to hear, with our community development blocks grants or what they had with their COPS program that they no longer have the funding from the Federal Government. If the President were to say we are going to stay the course in those areas and make sure that we build small and big communities, that we are going to stay the course in making sure that police officers have the dollars they need to be able to get the things that they need to fight crime in communities and have afterschool programs, that we are going to stay the course, they would love to hear that. But fiscal responsibility and just simple common sense, Mr. Speaker, would say that you have to be able to set some benchmarks. You just cannot say I would like to spend billions of dollars and do not ask any questions and if you do, you are being a pessimist.

Mr. RYAN of Ohio. Mr. Speaker, will the gentleman yield?

Mr. MEEK of Florida. Mr. Speaker, I am so glad that Mr. RYAN has joined us, and it is so good to be back here in 2006 with the 30–Something Group once again.

I yield to the gentleman.

Mr. RYAN of Ohio. Mr. Speaker, it is good to be back with the gentleman again.

I think the word that needs to be applied to this conversation is "accountability," and this is something that the 30–Somethings have talked about since we started. Being Democrats, we want to talk about accountability. We have a responsibility when we get the taxpayers' money that we are not just going to spend it and not ask any questions. And if the program is not working the way it is supposed to work, we are not for just throwing more money at the problem because that does not work. We want to talk about accountability.

But before we can even begin the conversation about accountability with programs and local communities, the COPS program, schools and everything else, there needs to be accountability here in this Chamber. And I believe that the Republican majority in the House and in the Senate and in the White House has really not been held accountable for what they have been doing. If you look at the budget deficits that we have right now, and the 30–Something Group cares about this because this is our generation that is going to have to foot the bill for this thing, $500 billion more spent last year than we took in in tax revenue. So we borrow it from the Chinese, from the Saudi Arabians, from the Japanese. We have borrowed more money in the last 4 years, and Kendrick will show this, from 2000 to 2004.

Mr. MEEK of Florida. Mr. Speaker, I want Mr. RYAN to talk about this. I know it is a chart that I usually speak from, but he is making a valid point here and I think that the Members need to be able to see it.

Mr. RYAN of Ohio. I appreciate you sharing, and I bet when you were in grade school that your teachers put on there "Kendrick Meek plays well with others."

Mr. MEEK of Florida. And governs well with others, and that is something we want to do here in this Chamber on the majority side. We want to move in a bipartisan way.

Mr. RYAN of Ohio. In the last 4 years, this President and the Republican House and the Republican Senate have borrowed more money, $1.05 trillion, than any every other President before him and Congresses before this one in the last 224 years. We are borrowing money to give rich people a tax cut, period, dot. And when we talk about accountability, this is what we are talking about because this has long-term ramifications to our potential economic growth because the money we are spending to pay down this debt and to pay the interest to the Chinese government is money that we are not investing into the COPS program, we are not investing into our veterans, we are not investing into research and development, we are not investing into making sure that every household has access to broadband communications. We are not investing that money into public venture capital that will lure private investment like they are doing in Israel, and they have a lot of innovative things going on in Ireland. These are the things that we need to do, but it all starts with balancing here in budget in the United States Congress.

Mr. MEEK has two beautiful kids. He cannot ask his kids to be responsible and then his example is to be irresponsible. It just does not work that way. He works hard and his kids see him work hard. So at the end of the day, they are going to learn a lesson from him.

I appreciate the gentleman's yielding to me. I appreciate his allowing me to use his chart because this has been his chart for the last few months.

Mr. MEEK of Florida. Unfortunately, the burden has been the American burden, the American taxpayer.

Mr. Speaker, I must say that it is very important. Mr. RYAN was speaking about this whole honest leadership piece, and I think it is important. We know that we have some Members that have made some bad decisions, and we are not going focus on that, and past Members. People make mistakes. I am just going to fall on the side that people make mistakes.

□ 2000

But when you have institutions such as this one that is making mistakes that cost American taxpayer more money, that is when we have a problem.

Now, the good thing about this is in the next 9 months the American people will be able to make some decisions. It is something that we have in the U.S. Constitution. You know, when you come to the House all of us have to run every couple of years. I call it a time where we are judged by all of our constituents throughout this country.

Mr. RYAN of Ohio. A job interview.

Mr. MEEK of Florida. It is a job interview. Thank you, Mr. RYAN. We need to write that down. It is a job interview, where you come, you are being interviewed by all of your constituents, and they are going to evaluate, is my Congressman doing everything that he or she can do to make sure that my life is better? A grandmother, is my Congressman or my Congresswoman doing what they should do to make sure that my children and grandchildren have better opportunities than what I had?

Is my Congressman or Congresswoman making sure that my health care costs are under control and that I have to with my prescription drugs choose between whether I am going to eat or take my medication like I should? Do I have a community where we have a sound community? Is my Congress passing on unfunded mandates to my local government that I have to then pay additional taxes just for general services?

Those are going to be some of the questions that people are going to ask. Is my Congress playing a leadership role in the area of the culture, okay, Mr. RYAN, the culture of corruption and cronyism and incompetence that permeates throughout this Chamber and throughout this Congress?

This is not the Kendrick Meek-Tim Ryan report. Just pick up Newsweek, Time, the Washington Post, the Washington Times. You can pick up the Miami Herald, the Chicago Sun. Pick up any paper you want to pick up, and there is no secret that there is a culture of corruption and cronyism and incompetence.

Let me just say this: it means more, it means more to the American taxpayer, the people that are paying taxes every day, when they have to pay more because of certain special interests having worked their way into getting sweetheart deals from this Congress. It hurts, because we are here to represent those individuals that have sent us here to represent them.

Mr. RYAN, you have heard me say this once before, and I will say it again: the American people, all of them, just about all of them that participate in the electoral process, woke up early, Mr. Speaker, one Tuesday morning, 7 a.m. in some cases, to cast their ballot for representation in the U.S. Congress. They didn't cast their ballot for a K Street project. They didn't cast their ballot for a corporation who is running an operation here on K Street for some sort of agreement which was not an open agreement.

Mr. RYAN, I just started to think about this K Street Project, and I can't help but think about what is going on now that we don't know about similar to a K Street Project. K Street was fine a couple of months ago. Now it is not fine.

Let me just talk a little bit about the whole K Street piece and make sure the Members don't get amnesia as it relates to the K Street Project.

Mr. RYAN of Ohio. Shakedown Street.

Mr. MEEK of Florida. You call Shakedown Street. The deal was, and I am not talking about the deal with cards, the deal was, and may still be, as far as we know, is that corporations and special interests had to hire, okay, quote-unquote, former staffers from the Republican side to work in their corporation. The leadership of those lobbying groups had to be a Republican person that was trusted by certain Members and certain former Members of the majority. So that was the deal. You do that, and then you have to make sure that we have a line of communications, because we are in this thing together.

I can tell you it has resulted in a lack of health care policy. And now the President is talking about health savings plans, which is very interesting, because we already have something similar and it is not working, Mr. RYAN. Higher prescription drug costs, okay? Not allowing us to negotiate with drug companies.

I must say, Mr. RYAN, I don't blame the industry. I don't blame the industry. I don't want to walk around here and say "you bad industry." You made us, or you made the majority.

No. The majority voted for it, and that is what happened. The bottom line is that it wasn't these special interest groups that voted to have Members of Congress. They didn't go to the polls. I didn't see a special interest group say, well, I am going to go to the poll and vote for this Congressman because they are going to serve me when they get to Washington. No, an individual American did that. I think it is important that we realize what is going on here.

So now we have the majority saying we are going to disband the K Street Project. Well, it was wrong from the beginning, Mr. RYAN, and they all knew it, and we knew it. We talked about it.

Mr. RYAN of Ohio. It has been wrong for 10 or 12 years now.

Mr. MEEK of Florida. It has been wrong for a number of years. Guess what, Mr. RYAN? We came to the floor definitely within the last 2 years and since the creation of the 30-Something Working Group and brought this to the attention of the Members that this is wrong. You even called it Shakedown Street. We didn't even want to call it K Street, because it promoted too much.

People laughed in their offices at us saying, look at them on the floor. They are talking about it. We are in control. This is no biggie.

One article that I read, one Member that will go unnamed at this moment, we all know, had a little booking office. If you were not in the book, you did not get to see me, or that particular Member.

So I think it is important, Mr. RYAN, that we make sure that Americans know and the American people know, no matter where they live, that under a Democratic-controlled Congress, and this is the message to the Members and the majority, because there are some Members in the majority that feel the way we feel, Mr. RYAN, but, unfortunately, the majority of the majority doesn't feel that way.

So maybe we can have a paradigm shift as we start working on this job interview that you mentioned, which we call in broader terms an "aka election day," that hopefully there be a paradigm shift where these Members will say, you know, I think it is important that we work in a bipartisan way to benefit Americans, and I think it is important that we make sure that the American people feel they are getting their vote worth out of this Congress, versus a K Street Project or Shakedown Street.

So, Mr. RYAN, I am glad to report that we, the Democrats, have worked very hard in making sure that we bring this honest leadership to this Chamber and to this institution to benefit the American people. It is nothing against certain individuals and Members that have made bad decisions. That is what they have to deal with individually, okay?

But when it deals with the overall function of this House, and I am so glad in our legislation that we have, Mr. RYAN, on the Democratic side, that we are doing away with those in-the-dead-of-the-night special interest votes while Americans are sleeping because they got to go to work in the morning and punch in and work with very little health care benefits; that at 2 and 3 o'clock in the morning their Congress, their House of Representatives, took their vote, took their confidence, and gave it to the special interests.

We are saying we want to disabuse this Chamber of doing that, we are saying we have a plan to do it, and we are saying that we have been amplifying this kind of what some may say is illegal activity that has been taking place in so many different areas and what has been reported in the media, we have been reporting this.

Mr. RYAN, I would feel uncomfortable saying what I am saying right now on the floor of the House of Representatives if we hadn't been saying it for months and months and months. Finally there is validation that is happening, that it was happening, and that it is time for a change and it is time for us to make sure that this country gets its votes worth out of this Congress.

Mr. RYAN of Ohio. I agree. Not only the culture that you talked about, let's talk about what the cost is. Let's connect the dots. Let's talk about what happens here.

We talked about the Health Savings Accounts. This is the President's idea to solve the health care problem, and it allows individuals to take money, extra money that they have at the end of the month, spare money, and put it in a side account.

Well, that is great if you have got spare money at the end of the month to put in a side account. We have millions and millions of people in this country who do not have that extra money to put in a side health care savings account to address the health care issue, so there is going to be millions and millions of people.

I am not saying it is a bad idea. Maybe it is a good idea for those people who have money and they can set it aside. Great. But the vast majority of the people who live in this country do not have the luxury of having an extra $500 at the end of the month to put in a side account.

Mr. MEEK of Florida. Forty-six million.

Mr. RYAN of Ohio. Forty-six million don't have anything now, and millions of others can't afford it, or can barely afford what they have. So our goal on the Democratic side is to figure out how to reduce the cost of health care. And we tried to do that, Mr. MEEK, when we had the prescription drug bill here.

The Democrats, this bill started out at $400 billion, and later after the vote we found out it was $700 billion. But all the seniors that are out there, Mr. MEEK, will qualify for this, $700 billion worth.

What the Democrats wanted to do to save the taxpayer money, to be accountable for the money that we spend here, the Democrats wanted to put two provisions on to that Medicare part D, the prescription drug bill.

We wanted to allow the Secretary of Health and Human Services to be able to negotiate down the drug price on behalf of all the Medicare recipients. We didn't want to create a new program, a new bureaucracy. We just wanted to give the Secretary of HHS the ability to go to Pfizer and negotiate down the drug price. You want the Medicare contract? Fine. We got to talk price. Knock 15 to 20 percent off the cost and we will give it to you. Boom, we save money. Democrats. That is our idea. The Republican majority shot it down in the dead of night.

The other idea, we wanted to allow for reimportation of pharmaceuticals, to allow these prescription drugs to come in from Canada to create real competition in the pharmaceutical industry in the United States and drive down the cost. We would save the taxpayer money, we would lower the cost of prescription drugs, and maybe we could start reducing our deficit and eventually make some investments in the education and research and development and other things.

The cost of the pharmaceutical industry giving the Republicans $100 million is higher drug prices for average Americans and the taxpayers not getting their money spent wisely because there is not the accountability here that we need.

Mr. MEEK of Florida. Well, it is interesting, Mr. RYAN, that when you started talking about health care, I think it is important that we have plans to cut health care costs. We also want to reduce the number of the uninsured and provide tax credits for health insurance for small businesses.

Mr. RYAN, there are a number of small businesses in my district that say, you know something, Congressman? I would like to offer a real health care plan to my employees, Mr. Speaker, but they can't. They can't do it because they, A, cannot afford it, and, B, the insurance is too high.

Even when you have insurance, you may call it insurance, but the premiums are too high. Also making sure we allow patients to buy into a CHIPA program, and also allow Americans age 55 to 64 to buy Medicare, and also provide proposals to bring down the cost of prescription drugs.

Mr. Speaker, the President mentioned nothing, absolutely nothing, you can check the speech on the White House Web site, nothing on prescription drugs, nada, even though we have seniors throughout the country trying to figure out where is the cost savings in the bill that was passed are. I mean, absolutely nothing. I can see at least like one little word, "Well, I want to address this." Just one line. Nowhere in the speech.

So the American people know as far as the majority, the Republican majority, you have the Republican U.S. House of Representatives looking forward to the status quo. If you are happy with the status quo right now, I think you need to stick with it. If you are not happy and are concerned, like many millions of Americans are, I think you need to be able to put that on that interview you have with your Member of Congress.

□ 2015

Mr. RYAN of Ohio. Can I ask a question? I thought of this last night as I was sitting right over there as the President was giving his speech. It is almost amazing to me, I think, that the speech that was given here last night was dealing with the same issues that we were dealing with today.

Last night the President was talking about investing in education and research and development, and we are going to make these great investments. We came here today and did this Budget Deficit Reduction Act that actually increases the deficit, and we are cutting education, we are cutting the investments. So that was kind of perplexing to me.

But I was over there listening to him talk about energy independence and how we are addicted to oil. And I thought, wow, he actually said it, which I thought was great. It is a big first step to admit that there is a problem. So maybe it has taken 5 years, but we have now admitted, the administration has now admitted that we have a problem.

And then I was waiting for, you know, all right, this is it. And he says, and we are going to reduce our dependence on foreign oil by 75 percent by 2025. And I thought, my goodness gracious, we went to the Moon in 10 years. Where is the urgency?

Mr. MEEK of Florida. The European markets when they opened, they said ha. You know, they were concerned because before the speech it was all of this talk about what he was going to say. But they did not even respond to what the President said, because they did not even take him seriously.

So I think it is important that we understand, that the Members understand, it is not about the President of the United States. It is about what this House is going to do on behalf of the American people. That is what it is about.

Mr. RYAN of Ohio. That is exactly it, what do we do day in and day out to improve the lives and improve the position politically of our country? And the Democratic idea is to get our idea to become self-sufficient, self-sustaining with energy in the next 10 years. And you cannot tell me that if we marshall all of the intelligence and the wealth of this country that we cannot do it in the next decade.

As I said, we went to the Moon in a decade. And look at not only the economic impact that we would have in this country, the jobs that would be created with ethanol and biodiesel, and all of the hydrogen engines and hybrid cars and all of these things that we could create an economy back in the United States that we are actually producing, which I think is very positive, but let me make this final point.

Imagine the political position the United States would be in, the Secretary of State would be in, if we told all of those oil producing countries we are done. We do not need you. We do not want you. We will deal with you and help you along the way, but we are not tied to you. We are not addicted to your oil. So we do not need to get in all of this international political stuff that we have been getting in for the last 30 years.

It has been nothing but bad for the United States, to be in these different countries playing with their internal politics and puppeteering who is coming in and who is going out, and Saddam Hussein needs to be here because he is a Sunni, and we have got the Shiias in Iran. Hey, we are going to take care of home first.

A stronger America begins at home. And the Democratic idea is to take the resources of this country, the intelligence of this country, and become energy independent in the next 10 years. And no one can convenience me that it cannot happen.

Got a chart. And this chart is the gasoline prices and oil company profits. The bars, the grey bars are the profits starting in 2002. And as you can see, every year 2003, 2004, 2005 the profits have skyrocketed.

And look what happens to the price of gas. It has gone up as well. So the profits go up, the cost goes up. Unbelievable. These people continue to make money off a basic resource that everyone is dependent on.

That is why we got to get away from this. Exxon, I think it was Exxon that made $36 billion dollars in their last quarter. $80,000 per minute. Come on. It is time for the Democratic ideas to take center stage in this country.

Mr. MEEK of Florida. Mr. RYAN, as you know, we believe in making sure that we share with the Members that we are prepared, we are ready and able to lead. And we are going to present a case every time we get an opportunity to have the Republicans join the debate on some of our ideas. We are willing to even share some of our ideas with the majority.

And we have offered procedurally to the Republicans our ideas, but since we are not a part of the legislative writing, the legislative creating, the legislative process here, where we have folks outside of this process that are unelected that have more input than our caucus on a piece of legislation of significance to the American people, we have to make sure that we share our case.

I want to make sure, I want to make sure that the Members on the majority side know that they can go to www.democrats.gov and pull up our innovation agenda. Mr. RYAN, pull up our innovation agenda.

And this is just the executive summary of it on how we are talking about how we are going to make America better, how we are going to find alternative energy, how we are going to make sure that our next generation is ready to lead the world, not the United

States, but the world. How we are not going to leave our young people behind, how we are going to invest in technology so that we do not have to come up with special visa programs.

Let me just break that down. Special passports or credentials from foreign countries because we do not have the know-how here in our country to do what we need to do as a country, and to continue to stay the superpower of the world. If we continue on this track, we are going to have some real financial issues, Mr. RYAN, that you mentioned earlier. And we are going to have a brain drain, because we have some folks that are more interested on the majority side on giving special deals to the special interests.

I also want to add, and you mentioned this, and I just want to refer to my notes, but I want to make sure that we are crystal clear, and that everyone understands what we are saying here.

We have an energy independence plan within 10 years, like Mr. RYAN said with new investments and clean energy and technology, calling for the repeal of the $8 billion subsidy to the oil companies, and use it for consumer relief.

Now, I think that is important. We are going to take $8 billion from the special interests. This is our plan. $8 billion. This is not a new program like they like to say, this is taking away from the special interest programs, Mr. RYAN, our friends who you made mention of, record profits, all of the way up. I know you mentioned Exxon and Mobil, but there are a number of other companies taking the cookies from them because they are making money.

I mean, it is not like, you know, a small business would love to say, well, you know, I made money this year, but I do not even have to spend my money to invest in future profits. I will just spend the taxpayers' money to invest in my own profits and to my stockholders.

So folks want to talk about fiscal responsibility, I think it is important that we understand that there are people working out there that are paying more for heating oil and fuel and LP gas than at any other time in history of this country.

But meanwhile the corporations that are able, that are a part of the legislative process here in this Congress, Mr. Speaker, and a part of writing legislation over in the White House as we have read reports on, they are getting what they want. What about the folks that woke up early one Tuesday morning to vote for representation? So there is a clear choice. Just like we were talking about the K Street Project for 2 years, 24 months.

One member of the K Street project, a substantial member on the Republican side admitted guilt, willing to, you know, okay, go spend some time in jail. It was all right. And then when he did that, then all of a sudden the K Street Project, it is not good. We need to do away with it. We have been saying that on the Democratic side for a long time.

It was not only working toward the demise of bipartisanship here in this House of Representative, it was working toward the demise of the American spirit. And making sure democracy rings, and making sure that every individual received the just-due representation that they voted for, not the just-due representation of the special interests, the just-due representation of what they voted for.

Yes, Members, it is painful. It is very painful, Mr. Speaker, to come to the floor and speak truths. But I think it is important that Republicans, Independents, Democrats, Green Party, you name it, Reform Party know exactly what is going on under the Capitol dome.

We were not sent here to be cozy-cozy and buddy-buddy and allow this country or the leadership of this country to in many ways turn their back on future generations and this generation.

You mentioned today, the budget once again passed by 1 or 2 votes, passed by 2 votes today. That cut substantially student loans and student opportunities to our young people, but better yet, the President stood up here last night around this time, or last night, an hour from when we are talking now, and said we believe in innovation, we believe in making sure, because, you know, what the President saw our plan and saw that we were talking about, our plan, and heard about our town meetings, that we were having as Democrats, about our plan on innovation.

So he decided to talk about it. But he is talking the talk but he is not walking the walk. It is not in his budget. It was not in his budget last year. And the action by the House today, by the majority that voted to set back the clock on so many Americans that work every day. Parents work every day, Mr. Speaker. They pay taxes every day.

I mean they pay the highest taxes because, guess what, they do not get the big breaks like special interests get. And yet we made their job even harder today in making sure that they educate their children.

So, Mr. RYAN, I would be uncomfortable in saying what they have been saying, and saying what we have not been saying for a very long time. I want to remind the Members once again that if we were in the majority, when I say we, I am talking about the Democrats, there would not be a lot of talk about what we should do or we could do, it will be the fact that we are doing, and that we are working on behalf of everyday Americans, and if they are a police officer, a teacher, a person mopping up the floor at a hotel on the midnight shift, they are retired, they are trying to figure out how they are going to make ends meet, or if that they have reached the American dream, had a small business, it is now a big business and providing jobs to everyday Americans, and making sure that they are equally represented. It would not be a question.

Mr. Speaker, it would not be a question, and we would not even have to talk about bipartisanship, because we would have bipartisanship, because that is what we are supposed to do in this House, and what the American people voted us in and expect from us to do is to work together, not only on naming post offices and bridges like we do to Americans that deserve it, I am not belittling that process.

We all bring legislation here to honor our constituents and Americans that have served our local communities. We all vote for it, with a few exceptions, but on issues such as health care, on issues such as tax reform, on issues such as the rights and body armor for our troops, we should be united on that. It would not be a question if we could or we would, we would be doing it.

So that is the programs that we make from this side, Mr. RYAN. And guess what? We have history to prove that we work in a bipartisan nature. So when you talk about election time in November, and you talking about the fact that people will be coming forward, the American people in an interview, as though they are applying for their job once again, or we say an evaluation, when they sit down to that evaluation, we want to make sure that the Members know exactly what the American people, the kind of questions they are going to be asking or what kind of action they will be taking.

□ 2030

Mr. RYAN of Ohio. Absolutely. I think you make several very, very good points, and what we are trying to communicate here is that we have better ideas and we want to take the country in a new direction. If you are perfectly comfortable with the way everything is right now, then you probably do not want to vote for Democrats, but if you are having some trouble and you think the country is maybe going in the wrong direction, just listen to what we are talking about and how we are going to actually implement our plan.

We have figured out in the past 10 years that we have not always made the best argument, we have not always presented ourselves in the best way. We allowed our Republican friends to define us, and as they defined us, they continued to win elections. But over the past few years, 4 years, 5 years in particular, they have defined themselves through their actions, and we now have the ideas and the commitment and the energy to take this country in a new direction and maybe we needed that time to learn. Maybe we needed that time to figure out exactly what needed to be done, but we are talking about, on the Democratic side, making sure that every household has broadband access in the next 5 years, that the country is energy independent in the next 10 years, by taking some of the savings that we will generate through the prescription drug program, by doing a couple of the things I talked about earlier by saving money, by making government run more efficiently and not being afraid quite frankly to ask Bill Gates to pay his fair share in taxes.

The President said again last night, make the tax cuts permanent. I will agree with a part of it, making the middle class tax cuts permanent, but let us ask these people who have been making money hand over fist over the past 10 years, we need your help. You think we want to ask you for more money? You think we like it? No, but we need you to help us. The country is running a $500 billion deficit. We could either ask you for it or we could borrow it from the Chinese, which is what we are doing now.

So if we ask you for it, we get it and we hopefully balance our budget, lower interest rates, and that will lead to economic growth. Right now, we are borrowing the money because the Republican majority does not have the guts to ask the wealthiest people in the country for money, and we are borrowing it from the Chinese.

It is that simple. We are not making this up. This is not a complicated process. We are spending $500 billion more than we are taking in. So we have got to get it from somewhere, and if you run a deficit at home, you go to the bank and you borrow it and they charge you interest. That is what we are doing right now. We are borrowing money from the Chinese bank, the Japanese bank, and we are paying interest on it, and that is money that we cannot invest, that interest payment. We cannot invest that into education.

I told this story earlier on the floor as we were debating the budget reconciliation, and it really hit me. I had a meeting last week with a school board member from Youngstown, Ohio, Youngstown City Schools, and I asked him as we were sitting there what is the poverty rate for these kids that go to Youngstown City Schools, a pretty simple question. Ninety percent of the kids of the 8,000 kids that go to Youngstown City Schools live in poverty. I do not even know why I asked him because it does not really make sense to ask this question, I asked how many qualify for the free and reduced lunch. He said we do not even pass out the form anymore because so many kids qualify, it is more expensive to administer the program by passing things out and trying to figure out who we can give it to than it is to just give it to everybody in the school. Can you imagine that?

What we are saying here is that these budget deficits and these tax cuts and these cuts to education and this not funding the No Child Left Behind and not funding Medicaid, which provides health care for those kids, by not funding those programs, these kids do not have a chance. We will have certain kids that pop up and they go against the odds to be successful, but these kids do not have the opportunity that every single American should have.

What the Democrats are saying is that we want an opportunity because you know why? I will sit here for 10 hours. I have 12 years of Catholic school in me. I could make every moral argument for doing that that is necessary in the book and in the good book, how many times Christ talked about helping the poor and poverty. We could make all those arguments, but let us set them aside.

How are we going to compete with 1.3 billion Chinese workers, 1 billion workers that live in the country of India, the massive advancements that are going on in Ireland and Israel and some of these other countries? How are we going to compete if we have a school district and 90 percent of the kids live in poverty? We need those kids to be on the field with all of us competing in a global economy, as mathematicians, scientists, chemists, engineers, computer programmers, entrepreneurs, artists and musicians. We need them on the field. We do not need them in a cycle of poverty.

If this Republican leadership, if they do not have any new ideas, then give us control. Give us the keys to the car because that kid should have access to broadband. That kid should have three square meals a day. That kid should have art programs after school and should have the opportunity to play in an intramural league after school.

That is how we are going to move the country forward. We are stagnant right now because we are not investing in kids, and Katrina took the veil off this. We all drive around, go through the suburbs and try to do our thing, go around these outer belts and try to stay away from that. Katrina took the veil off that, and I think that that is not only a moral issue, it is an economic issue that needs to be addressed.

We have plan after plan after plan after plan to fix that. The Democrats have ideas, and we just need the opportunity to implement them.

I did not mean to get all worked up, but I tell you, when I think of 8,000 kids in my district and there is more because I also represent a lot of other school districts, living in poverty and not having the kind of opportunity that they should have because they are born on this soil here. It gets frustrating.

Mr. MEEK of Florida. If you are not passionate, if you did not have a special place in your heart and your mind, then something would be really wrong. You are one of the Members of Congress that knew and appreciate what it meant when someone or a constituent of yours went to go vote for representation. That is what they voted for. They voted for someone that was willing to stand up for them, even if they get strange looks by certain Members the next day or right after we leave the floor.

That is what this thing is about. That is the reason why we serve. That is why we make sacrifices, to be here on this floor after everyone else has gone home and flipping cable channels saying, well, you know, today I have done my part.

We still have an America out there that is suffering, and I am not talking necessarily about poor people. I am talking about folks that work every day. I am talking about small businesses trying to figure out how they are going to control their health insurance costs. I am talking about victims of natural disasters in our Nation. I am talking about families of troops, men and women in harm's way, that are concerned about their loved ones and the lack of vision and leadership and direction that we are not providing and sending the signals to other governments and taking the training wheels off of them and saying now, listen, there has to be an end or a strategy to bringing our men and women home and saving the U.S. taxpayer money. That can be accomplished and protect America at the same time.

Mr. Speaker, I think it is important that we speak truth to power when we talk about those kinds of things because you cannot let statements just float saying that we just stay as long as we have to stay. What does that mean? Stay the course, what does that mean? It is not giving the very men and women that have sand in their teeth as we are speaking here on this floor a piece of mind on our vision as a Congress and as a White House. I think that is important.

The reason why you were speaking so passionately, I just want to reflect on tax cuts. As we start talking about them, I can tell you right now I was in the State legislator, Mr. Speaker. I voted for a number of tax cuts. Yes, I did, for people that worked every day, for small businesses that were trying to make a way out of no way, helping them achieve the American dream, even for some large businesses that wanted to create more jobs. I did it. I did even a hearing in this House as it relates to tax cuts for middle class families, and so did a number of colleagues on this side even had proposals that would help small businesses more than the majority proposals would help small businesses or recommended helping small businesses.

I think it is important for us to look at when we talk about tax cuts and urge the Congress to make the tax cuts permanent, okay, well, let us break that down. Let us put that in English. That is another theme. That is a slogan. That is an old Burger King theme, have it your way. There are a couple of other themes that are out there: Stop by, we leave the lights on. Those are themes. Those are slogans. That is a marketing campaign. That is not governance. Let us just share this for a moment.

Let me just translate for the President. What he is talking about, and the majority of the House of Representatives is talking about, the extension of capital gains and dividend tax breaks were provided to the top 1 percent tax cuts up to $14.361 in 2010. Meanwhile, using the same timeline, middle class, low-income families would only get $41. I can tell you, either everyone in America has to be part of the top 1 percent to enjoy the majority's vision on the Republican side or else. That is it. Either you pull yourself up by your bootstraps, Republicans, Democrats, Independents, Green Party and Reform Party members, or you get the $41. That is just where it is. You get what kind of tax cut? $41. It almost costs $41 to prepare your taxes. So the tax guy takes that right off the top. You do not even see that. It is just enough to prepare your taxes and report to this government.

I think it is important that we break this thing down for the American people, that they understand exactly what is going on and that we let the majority side, as we did with the K Street project, as we talked about the Republican culture of corruption and cronyism and incompetence, I cannot say it enough because there is no better vindication than being right.

I tell you, some people wait years. Some folks say, well, maybe 10 years from now they will realize what this Republican majority has embraced as doing business in Washington, D.C., but there is a higher power that will reveal to his people what is going on in this government that has he ordained. You say you have 12 years of Catholic school. I have got about forty-some years of Mount Table Missionary Baptist Church in me, and I have been in the neighborhood where when folks pray hard, they pray hard. I have been in street revivals. I have seen evangelists on television. I have seen them under a tent, but the bottom line is whether it be Christian or a Jewish person or a Muslim, I am going to tell you right now, regardless of what one's faith is, right is right and wrong is wrong.

I would tell you, if we make things permanent and totally lock in middle America, poor people in this country into what the President is talking about, we better all try to be part of the 1 percent because if you are not, you are going to get shortchanged. Not only are you going to get shortchanged, your child is not going to have the education dollars that they need to even prepare themselves to be a part of the 1 percent. That is where it comes down to.

Members need to understand that the American people are going to have to make a choice, and they will make a choice in the coming months. You said it and I will say it again. We are ready, prepared, we have our chin strap buckled, Super Bowl coming up, to lead, not next year but right now. If the majority side wants to have a paradigm shift and say that we want a bipartisan working group on making sure that we do things the way we are supposed to do it here, then, fine, we can get to work now.

□ 2045

But as long as the Republican majority feels that they need to hold us down, Mr. RYAN: oh, we got to keep those Democratic ideas down; oh, we have to procedurally not allow them to bring ideas to the floor; oh, we need to gavel them down in committee when they try to present these ideas because we don't want our Members to vote for them because they may be judged by their constituents, I can tell you, and I am so glad I thought of this, Mr. RYAN, and I know you have the next hour, but let me just say this real quickly.

A perfect example: vindication within our lifetime is wonderful, within our political lifetime of the 109th Congress. Social Security. The President last night said, Well, you know, we have to work on Social Security. Well, the Congress stopped the President and the majority side from the privatization of Social Security last year.

Mr. RYAN of Ohio. Democrats.

Mr. MEEK of Florida. Democrats. Democrats. And Mr. RYAN, in the 30-somethings we like to tell the truth, so a few Republicans, just a few in this House, stopped the Republican majority. And guess what? And everyday-working Americans, Mr. RYAN. The millions of Americans that wrote their Members of Congress.

But on the Democratic side we had hundreds of town hall meetings informing Americans about what this Congress was going to do to them on behalf of special interests. The only guarantee was special interests were going to get their money off the top and their benefits were going to go down.

But, guess what? Now the President is saying that because it takes a little blood and fire in this thing, oh, maybe we can put together another, and another. I think it is the fourth or fifth so-called bipartisan commission to look at Social Security.

I'm going to tell you, Mr. RYAN, the only way we fight, the only way we win as Americans against special interests, coupled with the majority side, is by fire and through commitment and the American spirit.

I must say that I am very excited about the fact that we have energized Members on this side of the aisle that are not willing to take it. Now, I'm saying some people might say take it any more, but we never took it. We are making sure we bring the fight to the majority side. If they want to work against the will of everyday American people, we are going to give the American people the voice. Even if they are Republicans, even if they are Independents, even if they are part of the Reform Party, they are Americans. We have been federalized to represent them, and they will receive their representation.

Mr. RYAN of Ohio. I appreciate that, my good friend from Florida. We are about to wrap up, and I think what we are saying is, we want a chance. We want an opportunity to lead this country. As we close here, Mr. MEEK, I just want to say that our caucus had an election today.

Mr. MEEK of Florida. I have already mentioned it.

Mr. RYAN of Ohio. Have you?

Mr. MEEK of Florida. But go ahead.

Mr. RYAN of Ohio. Well, I just wanted to personally congratulate JOHN LARSON of Connecticut, who is our new vice-chair of the Democratic Caucus. We had a great race. It is sometimes difficult within the caucus. JAN SCHAKOWSKY from Illinois and JOE CROWLEY from New York both ran great races, both great members of our caucus. But this was something that really got everybody's juices flowing and ready for the next year.

I want to give our e-mail address out. 30-somethingdems@mail.house.gov, so the Members can give us a holler, if they want to. That is 30, the number, somethingdems@mail.house.gov. Send us your e-mails and let us know what you think. You can go to the leader's Web site and find out about our innovation agenda; you can find out about what the Democratic plan is to lead this country in the next few years and in the next few decades. It is exciting stuff, it really is, and I am proud to be a part of it. I want to thank Leader PELOSI and STENY HOYER and Mr. CLYBURN as well.

Mr. MEEK of Florida. Thank you, Mr. RYAN, for joining us. We are going to spare the great staff here in the Chamber. It was a long night last night. We are going to call it a night with this hour. We will not take our second hour. We want to once again thank the Democratic leadership for allowing us to have this hour, Mr. Speaker.

CORRECTION TO THE CONGRESSIONAL RECORD OF TUESDAY, JANUARY 31, 2006, AT PAGE H5

JOINT SESSION OF THE CONGRESS—STATE OF THE UNION MESSAGE

The SPEAKER laid before the House the following privileged Senate concurrent resolution (S. Con. Res. 77) to provide for a joint session of Congress to receive a message from the President on the state of the Union.

The Clerk read the Senate concurrent resolution, as follows:

S. Con. Res. 77

Resolved by the Senate (the House of Representatives concurring), That the two Houses of Congress assemble in the Hall of the House of Representatives on Tuesday, January 31, 2006, at 9 p.m., for purpose of receiving such communication as the President of the United States shall be pleased to make to them.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. Gary G. Miller of California (at the request of Mr. Blunt) for today on account of illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. George Miller of California) to revise and extend their remarks and include extraneous material:)

Mr. Skelton, for 5 minutes, today.

Mr. DeFazio, for 5 minutes, today.

Ms. Woolsey, for 5 minutes, today.

Mr. Pallone, for 5 minutes, today.

Mr. Schiff, for 5 minutes, today.

Ms. Kaptur, for 5 minutes, today.

Mr. Emanuel, for 5 minutes, today.

Mr. Faleomavaega, for 5 minutes, today.

Ms. Lee, for 5 minutes, today.

Mr. McDermott, for 5 minutes, today.

Ms. Corrine Brown of Florida, for 5 minutes, today.

Mr. Stupak, for 5 minutes, today.

(The following Members (at the request of Mr. Poe) to revise and extend their remarks and include extraneous material:)

Mr. Burton of Indiana, for 5 minutes, today.

Mr. Poe, for 5 minutes, today.

Mr. Jones of North Carolina, for 5 minutes, today, and February 7 and 8.

Mr. Mack, for 5 minutes, today.

Mr. Weldon of Florida, for 5 minutes, today.

Mr. Nussle, for 5 minutes, today.

Ms. Foxx, for 5 minutes, today. (The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. Rahall, for 5 minutes, today.

ADJOURNMENT

Mr. MEEK of Florida. Mr. Speaker, pursuant to the order of the House of today, I move that the House do now adjourn.

The motion was agreed to.

The SPEAKER pro tempore (Mr. Westmoreland). Accordingly, pursuant to the previous order of the House of today, the House stands adjourned until 2 p.m. on Friday, February 3, 2006, unless it sooner has received a message from the Senate transmitting its adoption of House Concurrent Resolution 332, in which case the House shall stand adjourned pursuant to that concurrent resolution.

Thereupon (at 8 o'clock and 50 minutes p.m.), pursuant to the previous order of the House of today, the House adjourned until 2 p.m. on Friday, February 3, 2006, unless it sooner has received a message from the Senate transmitting its adoption of House Concurrent Resolution 332, in which case the House shall stand adjourned pursuant to that concurrent resolution.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

6060. A letter from the Director, Financial Crimes Enforcement Network, Department of the Treasury, transmitting the Department's final rule — Financial Crimes Enforcement Network; Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts (RIN: 1506-AA29) received January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

6061. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-249, "Brentwood Retail Center Real Property Tax Exemption Act of 2006," pursuant to D.C. Code section 1-233(c)(1); to the Committee on Government Reform.

6062. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Standard Instrument Approach Procedures; Miscellaneous Amendments [Docket No. 30472; Amdt. No. 3147] received January 24, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6063. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Standard Instrument Approach Procedures; Miscellaneous Amendments [Docket No. 30474; Amdt. No. 3149] received January 24, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6064. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Pratt & Whitney JT9D-7R4 Turbofan Engines [Docket No. FAA-2005-23072; Directorate Identifier 2005-NE-38-AD; Amendment 39-14430; AD 2005-26-09] (RIN: 2120-AA64) received January 24, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6065. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Establishment of Class D Airspace, Modification to Class E; Galveston, TX [Docket No. FAA-2005-22999; Airspace Docket No. 2004-ASW-20] received January 24, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6066. A letter from the Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Treatment of Certain Travel, Lodging, and Other Allowances Paid by Federal Executive Agencies to Employees Evacuated from Hurricane Katrina Core Disaster Area [Notice 2006-10] received January 18, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6067. A letter from the Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Determination of Basis of Stock or Securities received in Exchange For, or With Respect to, Stock or Securities in Certain Transactions; Treatment of Excess Loss Accounts [TD 9244] (RIN: 1545-BC05) (RIN: 1545-BE88) received January 25, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6068. A letter from the Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Statutory Mergers and Consolidations [TD 9242] (RIN: 1545-BA06) (RIN: 1545-BD76) received January 25, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6069. A letter from the Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Reporting for Widely Held Fixed Investment Trusts [TD 9241] (RIN: 1545-BA83) received January 25, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6070. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Administrative, Procedural, and Miscellaneous Matters (Rev. Proc. 2006-5) received January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6071. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Administrative, Procedural, and Miscellaneous (Rev. Proc. 2005-4) received January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6072. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Administrative, Procedural, and Miscellaneous (Rev. Proc. 2006-6) received January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6073. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Administrative, Procedural, and Miscellaneous (Rev. Proc. 2006-8) received

January 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6074. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Administrative, Procedural, and Miscellaneous (Rev. Proc. 2006-14) received January 9, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6075. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Credit for New Qualified Alternative Motor Vehicles (Advanced Lean Burn Technology Motor Vehicles and Qualified Hybrid Motor Vehicles) [Notice 2006-9] received January 18, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6076. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Low-Income Housing Credit (Rev. Rul. 2006-5) received January 18, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6077. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Guidance Under Subpart F Relating to Partnerships [TD 9240] (RIN: 1545-BF15) received January 18, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6078. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property (Rev. Rul. 2006-7) received January 20, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6079. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property (Rev. Rul. 2006-7) received January 25, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. OXLEY: Committee on Financial Services. H.R. 4320. A bill to restore the financial solvency of the national flood insurance program, and for other purposes; with an amendment (Rept. 109-370). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. WELLER (for himself and Mr. MORAN of Virginia):

H.R. 4680. A bill to provide temporary duty suspension on products from Sri Lanka; to the Committee on Ways and Means.

By Ms. ROS-LEHTINEN (for herself, Mr. LANTOS, Mr. CANTOR, Mr. CHABOT, Mr. ACKERMAN, Mr. ENGEL, Mr. PENCE, Mr. WELLER, Ms. HARRIS, Mr. BURTON of Indiana, Mrs. MCCARTHY, Mr. CARDOZA, Mr. MACK, Ms. BEAN, Mr. CROWLEY, Mr. LYNCH, Mrs. JO ANN DAVIS of Virginia, Mr. CHANDLER, Mr. BROWN of South Carolina, Mr. MCCAUL of Texas, Mr. KING of New York, Mr. ISRAEL, Ms. BERKLEY, Mr. POE, Mr. ROYCE, Mrs. BLACKBURN, Mr. TANCREDO, Mr. SCHIFF, Mr. SHERMAN, and Mr. NADLER):

H.R. 4681. A bill to promote the development of democratic institutions in areas under the administrative control of the Palestinian Authority, and for other purposes; to the Committee on International Relations, and in addition to the Committees on the Judiciary, and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. PELOSI (for herself, Mr. HOYER, Mr. CLYBURN, Mr. GEORGE MILLER of California, Ms. DELAURO, Mr. EMANUEL, Mr. DINGELL, Mr. CONYERS, Mr. OBEY, Mr. RANGEL, Mr. WAXMAN, Mr. SKELTON, Mr. FRANK of Massachusetts, Mr. LANTOS, Mr. BERMAN, Mr. SPRATT, Ms. SLAUGHTER, Mr. EVANS, Mr. PETERSON of Minnesota, Ms. MILLENDER-MCDONALD, Ms. HARMAN, Mr. ACKERMAN, Mr. ALLEN, Mr. ANDREWS, Mr. BACA, Mr. BAIRD, Ms. BALDWIN, Mr. BARROW, Ms. BEAN, Mr. BECERRA, Ms. BERKLEY, Mr. BERRY, Mr. BISHOP of New York, Mr. BISHOP of Georgia, Mr. BLUMENAUER, Ms. BORDALLO, Mr. BOSWELL, Mr. BROWN of Ohio, Mr. BUTTERFIELD, Mrs. CAPPS, Mr. CARDIN, Mr. CARNAHAN, Ms. CARSON, Mr. CASE, Mr. CHANDLER, Mr. CLAY, Mr. CLEAVER, Mr. COOPER, Mr. CROWLEY, Mr. CUELLAR, Mr. CUMMINGS, Mr. DAVIS of Alabama, Mrs. DAVIS of California, Mr. DAVIS of Florida, Mr. DAVIS of Illinois, Mr. DAVIS of Tennessee, Mr. DEFAZIO, Ms. DEGETTE, Mr. DELAHUNT, Mr. DICKS, Mr. DOGGETT, Mr. EDWARDS, Mr. ETHERIDGE, Ms. ESHOO, Mr. FALEOMAVAEGA, Mr. FARR, Mr. FATTAH, Mr. FILNER, Mr. FORD, Mr. GONZALEZ, Mr. GORDON, Mr. AL GREEN of Texas, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HASTINGS of Florida, Ms. HERSETH, Mr. HIGGINS, Mr. HINCHEY, Mr. HINOJOSA, Mr. HONDA, Mr. HOLT, Ms. HOOLEY, Mr. INSLEE, Mr. ISRAEL, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. KENNEDY of Rhode Island, Mr. KILDEE, Mr. KIND, Mr. KUCINICH, Mr. LANGEVIN, Mr. LARSEN of Washington, Mr. LARSON of Connecticut, Ms. LEE, Mr. LEVIN, Mr. LEWIS of Georgia, Mr. LIPINSKI, Ms. ZOE LOFGREN of California, Mrs. LOWEY, Mr. LYNCH, Mrs. MCCARTHY, Ms. MCCOLLUM of Minnesota, Mr. MCDERMOTT, Mr. MCGOVERN, Mr. MCNULTY, Mrs. MALONEY, Mr. MARKEY, Ms. MATSUI, Mr. MEEHAN, Mr. MEEK of Florida, Mr. MELANCON, Mr. MICHAUD, Mr. MILLER of North Carolina, Mr. MOORE of Kansas, Mr. MORAN of Virginia, Mr. NADLER, Mrs. NAPOLITANO, Ms. NORTON, Mr. OLVER, Mr. ORTIZ, Mr. OWENS, Mr. PALLONE, Mr. PASCRELL, Mr. POMEROY, Mr. PRICE of North Carolina, Mr. REYES, Mr. ROSS, Mr. ROTHMAN, Ms. ROYBAL-ALLARD, Mr. RUPPERSBERGER, Mr. RYAN of Ohio, Mr. SALAZAR, Ms. LINDA T. SÁNCHEZ of California, Mr. SANDERS, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SCOTT of Georgia, Mr. SCOTT of Virginia, Ms. SCHWARTZ of Pennsylvania, Mr. SHERMAN, Mr. SMITH of Washington, Ms. SOLIS, Mr. STARK, Mr. STRICKLAND, Mrs. TAUSCHER, Mr. TAYLOR of Mississippi, Mr. THOMPSON of California, Mr. TIERNEY, Mr. TOWNS, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. VAN HOLLEN, Mr. VISCLOSKY, Ms. WASSERMAN SCHULTZ, Ms. WATERS, Ms. WATSON, Mr. WEINER, Mr. WEXLER, Ms. WOOLSEY, and Mr. WU):

H.R. 4682. A bill to provide more rigorous requirements with respect to disclosure and enforcement of ethics and lobbying laws and regulations, and for other purposes; to the Committee on the Judiciary, and in addition to the Committees on Rules, Government Reform, Standards of Official Conduct, Armed Services, and House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. DINGELL (for himself, Mr. STARK, Mr. BROWN of Ohio, Mr. WAXMAN, Mr. RANGEL, Mr. WYNN, Mr. STRICKLAND, Mr. BOUCHER, Ms. BALDWIN, Ms. SCHAKOWSKY, Mr. RUSH, Mr. TOWNS, Mr. ROSS, Mr. MARKEY, Mr. GENE GREEN of Texas, and Mr. ALLEN):

H.R. 4683. A bill to provide quality, affordable health care for all Americans; to the Committee on Ways and Means, and in addition to the Committees on Energy and Commerce, and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. CRAMER:

H.R. 4684. A bill to amend the Small Business Act to provide for an increase in the amount of awards under the first and second phases of the Small Business Innovation Research program; to the Committee on Small Business, and in addition to the Committee on Science, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. DINGELL (for himself, Mr. RANGEL, Mr. SPRATT, Mr. WAXMAN, Mr. BROWN of Ohio, Mr. STARK, Ms. PELOSI, Mr. MARKEY, Mrs. CAPPS, Mr. BOUCHER, Ms. SCHAKOWSKY, Ms. DEGETTE, Mr. PALLONE, Ms. SOLIS, Ms. BALDWIN, Mr. GENE GREEN of Texas, Mr. GORDON, Mr. ALLEN, Mr. INSLEE, Mr. CLEAVER, Ms. SLAUGHTER, Mr. EMANUEL, Mr. NEAL of Massachusetts, Mr. DELAHUNT, Mr. DOGGETT, Mr. CONYERS, Ms. MATSUI, Mr. BERMAN, Mr. LARSON of Connecticut, Mr. CARDIN, Mr. MCNULTY, Mr. HOLDEN, Mr. OWENS, Ms. HERSETH, and Mrs. MCCARTHY):

H.R. 4685. A bill to amend titles XVIII and XIX of the Social Security Act to assure uninterrupted access to necessary medicines under the Medicare prescription drug program; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. GILCHREST (for himself and Mr. POMBO):

H.R. 4686. A bill to reauthorize various fisheries management laws, and for other purposes; to the Committee on Resources.

By Mr. GREEN of Wisconsin:

H.R. 4687. A bill to ease the transition of National Guard and Reserve members adversely affected by the closure or realignment of reserve component facilities by authorizing their temporary detail to duty with other reserve component units; to the Committee on Armed Services.

By Mr. HAYES (for himself, Mrs. Myrick, Mr. Price of North Carolina, Mr. Coble, Mr. Watt, Mr. Miller of North Carolina, Mr. Butterfield, Mr. McHenry, Mr. Jones of North Carolina, Mr. Etheridge, Ms. Foxx, Mr. McIntyre, and Mr. Taylor of North Carolina):

H.R. 4688. A bill to designate the facility of the United States Postal Service located at 1 Boyden Street in Badin, North Carolina, as the "Mayor John Thompson 'Tom' Garrison Memorial Post Office"; to the Committee on Government Reform.

By Ms. HERSETH (for herself, Mrs. Cubin, and Ms. Kaptur):

H.R. 4689. A bill to amend the Federal Meat Inspection Act to provide that a quality grade label issued by the Secretary of Agriculture for beef and lamb may not be used for imported beef or imported lamb; to the Committee on Agriculture.

By Ms. KAPTUR:

H.R. 4690. A bill to amend section 207 of title 18, United States Code, to further restrict Federal officers and employees from representing or advising foreign entities after leaving Government service; to the Committee on the Judiciary.

By Ms. KAPTUR (for herself and Mr. Thompson of Mississippi):

H.R. 4691. A bill to establish a Gulf Coast Region Redevelopment Commission to coordinate and manage the Federal response to and cooperate with State and local entities in rebuilding that part of the Gulf Coast region damaged by Hurricanes Katrina and Rita; to the Committee on Transportation and Infrastructure.

By Ms. KAPTUR:

H.R. 4692. A bill to amend the Federal Election Campaign Act of 1971 to prohibit contributions and expenditures by multicandidate political committees controlled by foreign-owned corporations, and for other purposes; to the Committee on House Administration, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. NORTON:

H.R. 4693. A bill to amend title III of the Higher Education Act of 1965 to include the University of the District of Columbia as an eligible graduate institution, and for other purposes; to the Committee on Education and the Workforce.

By Mr. OBEY (for himself, Mr. Frank of Massachusetts, Ms. DeLauro, Mr. Filner, Mr. Israel, Mr. McGovern, Mr. Ryan of Ohio, and Mr. Waxman):

H.R. 4694. A bill to amend the Federal Election Campaign Act of 1971 to provide for expenditure limitations and public financing for House of Representatives general elections, and for other purposes; to the Committee on House Administration, and in addition to the Committees on Ways and Means, and Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. RAHALL (for himself, Mr. Mollohan, and Mrs. Capito):

H.R. 4695. A bill to direct the Secretary of Labor to prescribe additional coal mine safety standards, to require additional penalties for habitual violators, and for other purposes; to the Committee on Education and the Workforce.

By Mr. ROGERS of Michigan:

H.R. 4696. A bill to make certain reforms in lobbying, ethics, and campaign finance laws, and for other purposes; to the Committee on the Judiciary, and in addition to the Committees on Government Reform, House Administration, Rules, and Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SANDERS (for himself, Mr. Kucinich, Mr. DeFazio, Mr. Owens, Ms. Lee, Mr. Hinchey, Mr. Payne, Mr. Grijalva, Mr. Olver, Mr. Stark, Ms. Woolsey, Mr. Nadler, Mr. McGovern, Ms. Kaptur, Mr. Conyers, Ms. Corrine Brown of Florida, Mrs. Emerson, and Mr. Tierney):

H.R. 4697. A bill to amend title XVIII of the Social Security Act to replace the Medicare prescription drug benefit adopted by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 with a revised and simplified prescription benefit program for all Medicare beneficiaries; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SENSENBRENNER:

H.R. 4698. A bill to provide liability protection for individuals who volunteer to assist victims of national disasters; to the Committee on the Judiciary.

By Mr. UDALL of Colorado (for himself, Mr. Cooper, and Mrs. Musgrave):

H.R. 4699. A bill to facilitate Presidential leadership and Congressional accountability regarding reduction of spending; to the Committee on the Budget, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. UPTON:

H.R. 4700. A bill to provide for the conditional conveyance of any interest retained by the United States in St. Joseph Memorial Hall in St. Joseph, Michigan; to the Committee on Transportation and Infrastructure.

By Ms. KAPTUR:

H.J. Res. 76. A joint resolution proposing an amendment to the Constitution of the United States relating to limitations on the amounts of contributions and expenditures that may be made in connection with campaigns for election to public office; to the Committee on the Judiciary.

By Ms. PRYCE of Ohio:

H. Con. Res. 332. Concurrent resolution providing for a conditional adjournment of the House of Representatives; considered and agreed to.

By Ms. KAPTUR:

H. Con. Res. 333. Concurrent resolution expressing the sense of Congress that the Supreme Court misinterpreted the First Amendment to the Constitution in the case of Buckley v. Valeo; to the Committee on the Judiciary.

By Ms. PRYCE of Ohio:

H. Res. 664. A resolution electing a certain Member to a certain standing committee of the House of Representatives; considered and agreed to.

By Mr. FORD (for himself, Mr. Cardoza, and Mr. Davis of Tennessee):

H. Res. 665. A resolution honoring the service of the National Guard and requesting consultation by the Department of Defense with Congress and the chief executive officers of the States prior offering proposals to change the National Guard force structure; to the Committee on Armed Services.

By Mr. GOODE (for himself and Mr. McCotter):

H. Res. 666. A resolution amending the Rules of the House of Representatives to prohibit privately-funded travel by any Member, Delegate, Resident Commissioner, officer, or employee of the House; to the Committee on Rules.

By Mr. KUHL of New York:

H. Res. 667. A resolution commending hospice care providers such as Hospeace House for allowing people with life-limiting illness or injury to die pain-free and with dignity; to the Committee on Energy and Commerce.

By Mr. REYES (for himself, Mr. Barton of Texas, Mr. Bonilla, Mr. Cole of Oklahoma, Mr. Conaway, Mr. Conyers, Mr. Cuellar, Mr. Culberson, Mr. Cummings, Mr. Doggett, Mr. Edwards, Mr. Evans, Mr. Ford, Mr. Gonzalez, Ms. Granger, Mr. Graves, Mr. Al Green of Texas, Mr. Gene Green of Texas, Mr. Grijalva, Mr. Hall, Mr. Hastings of Florida, Mr. Hinojosa, Ms. Jackson-Lee of Texas, Mr. Jefferson, Ms. Eddie Bernice Johnson of Texas, Ms. Kilpatrick of Michigan, Mr. Lucas, Mr. McDermott, Ms. McKinney, Mr. Meeks of New York, Mr. Moran of Kansas, Mr. Ortiz, Mr. Rangel, Mr. Ruppersberger, Ms. Schakowsky, Mr. Serrano, Mr. Smith of Texas, Mr. Snyder, and Mr. Thompson of Mississippi):

H. Res. 668. A resolution celebrating the 40th anniversary of Texas Western's 1966 NCAA Basketball Championship and recognizing the groundbreaking impact of the title game victory on diversity in sports and civil rights in America; to the Committee on Education and the Workforce.

By Mr. STARK:

H. Res. 669. A resolution directing the Sergeant-at Arms of the House of Representatives to report to the House on the circumstances surrounding the removal of two individuals from the gallery of the House prior to the beginning of the State of the Union address on January 31, 2006, based on the allegation that the individuals were engaging in protest solely because the individuals wore shirts with printing on the front; to the Committee on House Administration.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 47: Ms. Harris.

H.R. 136: Mr. Boozman.

H.R. 156: Mr. Edwards.

H.R. 215: Mr. McCotter and Mr. Clyburn.

H.R. 303: Mr. Thompson of California, Mr. Davis of Tennessee and Mr. Frank of Massachusetts.

H.R. 328: Mr. MARSHALL.

H.R. 356: Mr. MELANCON, Mr. ROGERS of Michigan, Mr. BRADY of Texas, Mr. MARIO DIAZ-BALART of Florida and Mr. OSBORNE.

H.R. 389: Mr. CASE.

H.R. 398: Mr. CASE, Mr. PALLONE, Mr. HONDA, Mr. GUTIERREZ and Mr. OBERSTAR.

H.R. 503: Mr. DENT.

H.R. 566: Mr. ISRAEL.

H.R. 615: Mr. LIPINSKI, Mr. FITZPATRICK of Pennsylvania, Mr. ISRAEL, Mr. MEEKS of New York and Mr. JOHNSON of Illinois.

H.R. 625: Mr. MEEHAN and Mr. SHERMAN.

H.R. 676: Mr. WEXLER and Mr. BROWN of Ohio.

H.R. 691: Mr. FARR, Mrs. DAVIS of California and Mr. PEARCE.

H.R. 698: Mr. GOODLATTE.

H.R. 699: Mr. WATT.

H.R. 717: Mr. WALSH.

H.R. 752: Mr. GENE GREEN of Texas.

H.R. 759: Mr. DAVIS of Illinois.

H.R. 799: Mr. WAXMAN.

H.R. 817: Ms. HOOLEY, Ms. PRYCE of Ohio, Mr. FATTAH, Mr. GIBBONS, Mrs. MILLER of Michigan, Mr. FORD, Mr. MCCOTTER, Mr. ENGLISH of Pennsylvania, Mr. THOMPSON of Mississippi, Mr. GENE GREEN of Texas, Mr. BRADY of Pennsylvania, Mr. MEEKS of New York, Mr. ETHERIDGE, Mr. PITTS and Mr. SPRATT.

H.R. 831: Mr. CUMMINGS.

H.R. 867: Mr. RAHALL.

H.R. 872: Mr. FATTAH.

H.R. 884: Mr. DOGGETT.

H.R. 896: Mr. MORAN of Kansas, Mr. DEFAZIO and Mr. DAVIS of Florida.

H.R. 916: Mrs. TAUSCHER, Mr. BISHOP of Georgia, Ms. DELAURO, Ms. MOORE of Wisconsin and Mr. BISHOP of New York.

H.R. 925: Mr. WELDON of Pennsylvania and Mr. MURPHY.

H.R. 947: Mr. CALVERT.

H.R. 955: Mr. SHAYS.

H.R. 986: Mrs. CAPITO.

H.R. 995: Mr. BROWN of Ohio and Mr. ROSS.

H.R. 1000: Mr. SCHWARZ of Michigan.

H.R. 1029: Mr. ROTHMAN and Mr. MEEHAN.

H.R. 1053: Mr. DAVIS of Illinois, Mr. KIRK and Mr. SIMMONS.

H.R. 1088: Mr. UDALL of Colorado.

H.R. 1105: Mr. MCNULTY.

H.R. 1106: Mr. MICHAUD.

H.R. 1120: Mr. BAIRD.

H.R. 1150: Mr. BEAUPREZ.

H.R. 1186: Mr. MCCOTTER and Mr. JINDAL.

H.R. 1252: Mr. VAN HOLLEN.

H.R. 1254: Mr. FILNER.

H.R. 1259: Mr. REYNOLDS, Mr. NEY, Mr. SAM JOHNSON of Texas, Mr. DEFAZIO and Mr. UDALL of New Mexico.

H.R. 1262: Ms. WATERS and Ms. KAPTUR.

H.R. 1298: Mr. PASCRELL, Ms. ROYBAL-ALLARD and Mr. CLAY.

H.R. 1306: Mr. NORWOOD, Mr. LARSON of Connecticut, Mr. CARTER, Mr. REYES and Mr. WALSH.

H.R. 1310: Mr. AL GREEN of Texas, Mr. MEEHAN, Ms. HARMAN and Mr. PRICE of North Carolina.

H.R. 1323: Mr. MCHUGH.

H.R. 1370: Mr. HERGER, Mr. GIBBONS and Mr. BUTTERFIELD.

H.R. 1413: Mr. MILLER of North Carolina.

H.R. 1462: Mr. PAUL.

H.R. 1591: Mr. GEORGE MILLER of California and Mr. MEEHAN.

H.R. 1615: Mr. MEEHAN.

H.R. 1642: Mr. STARK, Mr. LEACH, Mr. KENNEDY of Minnesota, Mr. RAMSTAD, Mr. MCCAUL of Texas, and Mr. BLUMENAUER.

H.R. 1652: Ms. HOOLEY.

H.R. 1704: Mr. ENGLISH of Pennsylvania and Mr. EMANUEL.

H.R. 1709: Mr. KENNEDY of Rhode Island and Mr. MEEHAN.

H.R. 1736: Mr. KLINE and Mr. DAVIS of Kentucky.

H.R. 1849: Mr. GERLACH.

H.R. 1850: Mr. VAN HOLLEN and Mr. MEEHAN.

H.R. 1871: Mr. CHOCOLA.

H.R. 1951: Mr. ANDREWS and Ms. Matsui.

H.R. 2048: Mr. BERMAN, Ms. LORETTA SANCHEZ of California, Mr. LEWIS of Georgia, Mr. SABO, Mr. ETHERIDGE, Mr. FORD, Mr. PETERSON of Minnesota, Ms. CORRINE BROWN of Florida and Mrs. JO ANN DAVIS of Virginia.

H.R. 2076: Mr. PRICE of North Carolina.

H.R. 2088: Mr. BEAUPREZ.

H.R. 2193: Mr. MEEHAN.

H.R. 2230: Mr. HASTINGS of Florida.

H.R. 2231: Ms. GINNY BROWN-WAITE of Florida.

H.R. 2317: Mr. ABERCROMBIE.

H.R. 2369: Mr. TANCREDO, Mrs. BLACKBURN, Mr. GORDON, Mr. MICHAUD, Mr. EDWARDS, Mr. DAVIS of Tennessee and Mr. BURTON of Indiana.

H.R. 2412: Mr. MICHAUD.

H.R. 2521: Mrs. JONES of Ohio and Mr. LAHOOD.

H.R. 2553: Mr. DELAHUNT, Mr. MEEHAN and Mr. BISHOP of New York.

H.R. 2554: Mr. BISHOP of Georgia, Mr. CLAY, Mr. CLEAVER, Mr. CLYBURN, Mr. DEFAZIO, Mr. GUTIERREZ, Mr. HASTINGS of Florida, Mr. KUCINICH, Ms. MCCOLLUM of Minnesota, Mr. MEEK of Florida, Mr. MEEKS of New York, Ms. NORTON, Mr. SANDERS, Ms. SCHAKOWSKY, Mr. SERRANO, Ms. WATERS, Ms. WATSON and Mr. WATT.

H.R. 2669: Mr. ENGLISH of Pennsylvania, Mr. UDALL of Colorado, Mrs. BIGGERT, Mr. KENNEDY of Rhode Island, Mr. FATTAH, Mr. SNYDER, Mrs. JONES of Ohio, Mr. BOUCHER and Mr. PRICE of North Carolina.

H.R. 2682: Mr. ROSS.

H.R. 2694: Mr. BOUCHER and Mr. RUSH.

H.R. 2727: Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. TAUSCHER, Mr. PLATTS and Mr. BACHUS.

H.R. 2803: Mr. SULLIVAN and Mr. MORAN of Kansas.

H.R. 2811: Mr. SHAYS.

H.R. 2841: Mr. WAXMAN.

H.R. 2861: Mr. PALLONE, Mr. COSTELLO, Mr. SMITH of Washington, Mr. BONILLA and Mr. KNOLLENBERG.

H.R. 2872: Mr. UDALL of New Mexico, Mrs. CAPPS, Mr. SIMMONS, Mr. HUNTER, Mr. BONNER, Mr. WALSH, Mr. CAMP of Michigan, Mr. TOM DAVIS of Virginia, Mr. TANCREDO, Ms. BEAN, Mr. CARDOZA, Mr. WHITFIELD, Mr. SULLIVAN and Mr. MEEK of Florida.

H.R. 2895: Mr. BAIRD.

H.R. 2928: Mr. MEEHAN.

H.R. 2989: Mr. ANDREWS, Mr. LANTOS, Mr. BACHUS, Mr. ACKERMAN and Mr. STRICKLAND.

H.R. 3000: Mr. FATTAH.

H.R. 3005: Mrs. MUSGRAVE, Mr. BEAUPREZ and Mr. SALAZAR.

H.R. 3061: Mr. LATOURETTE.

H.R. 3099: Mr. HONDA, Mr. FILNER and Mr. KUCINICH.

H.R. 3147: Mrs. CUBIN.

H.R. 3187: Mr. BLUMENAUER.

H.R. 3255: Ms. HOOLEY.

H.R. 3267: Mr. LANTOS.

H.R. 3312: Mr. KANJORSKI.

H.R. 3313: Ms. WOOLSEY.

H.R. 3326: Mr. ISRAEL.

H.R. 3361: Mr. BASS.

H.R. 3385: Ms. BERKLEY.

H.R. 3417: Mr. CUMMINGS.

H.R. 3427: Ms. WOOLSEY, Mr. KENNEDY of Rhode Island, Mr. FRANK of Massachusetts, Ms. HOOLEY and Mrs. MCCARTHY.

H.R. 3449: Mr. GUTIERREZ.

H.R. 3476: Mr. OLVER and Mr. BASS.

H.R. 3478: Ms. BORDALLO and Mr. CUMMINGS.

H.R. 3545: Mr. STARK.

H.R. 3547: Mr. REYES and Mr. OTTER.

H.R. 3559: Mr. SIMMONS, Mr. LEACH, Mrs. DAVIS of California, Mr. REYES, Mr. PLATTS, Mr. CROWLEY and Mr. KUHL of New York.

H.R. 3569: Mr. LARSEN of Washington.

H.R. 3579: Mr. MCGOVERN.

H.R. 3616: Mrs. LOWEY, Ms. BALDWIN, Mr. FATTAH, Mrs. MCCARTHY, Mr. FORBES, Mr. KENNEDY of Rhode Island, Mrs. JO ANN DAVIS of Virginia and Mr. BOEHLERT.

H.R. 3625: Mr. SMITH of Washington.

H.R. 3628: Mr. MOORE of Kansas.

H.R. 3639: Mr. PASTOR.

H.R. 3779: Mrs. JONES of Ohio.

H.R. 3795: Mr. BOEHLERT, Mr. FATTAH, Mr. KILDEE and Mr. BISHOP of New York.

H.R. 3837: Ms. MCCOLLUM of Minnesota.

H.R. 3852: Ms. BEAN and Ms. SCHWARTZ of Pennsylvania.

H.R. 3861: Mr. NADLER, Ms. Moore of Wisconsin and Mr. VAN HOLLEN.

H.R. 3907: Mr. CALVERT.

H.R. 3949: Mr. THOMPSON of Mississippi, Ms. JACKSON-LEE of Texas, Mrs. MCCARTHY, Mr. BOREN, Mr. SCHIFF, Mr. SIMMONS and Mr. COSTELLO.

H.R. 3957: Mr. BISHOP of Georgia and Mr. PASTOR.

H.R. 3973: Mr. VAN HOLLEN and Mr. FRANK of Massachusetts.

H.R. 4019: Mr. PENCE, Mr. HENSARLING and Mr. COBLE.

H.R. 4030: Ms. JACKSON-LEE of Texas.

H.R. 4042: Mr. HALL.

H.R. 4049: Mr. GALLEGLY.

H.R. 4059: Mrs. MALONEY, Mr. CROWLEY, Ms. JACKSON-LEE of Texas, Mr. HINCHEY, Ms. ROS-LEHTINEN, Mr. MCNULTY and Mr. TURNER.

H.R. 4063: Mr. PLATTS, Mr. FRANK of Massachusetts and Mr. KENNEDY of Rhode Island.

H.R. 4072: Mr. FITZPATRICK of Pennsylvania.

H.R. 4098: Mr. SOUDER, Mr. GOODE, Mrs. MCCARTHY, Mr. ROTHMAN and Mr. ROGERS of Alabama.

H.R. 4140: Mr. CUMMINGS, Mr. FILNER, Mr. GONZALEZ, Mr. HASTINGS of Florida, Ms. JACKSON-LEE of Texas, Mr. THOMPSON of Mississippi, Mr. ABERCROMBIE, Mr. JEFFERSON, Ms. MATSUI, Mr. RANGEL, Mr. SNYDER, Ms. WOOLSEY and Mr. CLAY.

H.R. 4141: Mr. FILNER, Mr. HASTINGS of Florida, Ms. JACKSON-LEE of Texas, Ms. Matsui and Ms. WOOLSEY.

H.R. 4166: Mr. JEFFERSON, Mr. MCNULTY and Mr. MCDERMOTT.

H.R. 4170: Mr. INGLIS of South Carolina and Mrs. MYRICK.

H.R. 4186: Mr. EVANS.

H.R. 4228: Mr. POMEROY, Mr. HIGGINS and Ms. SLAUGHTER.

H.R. 4229: Ms. MOORE of Wisconsin.

H.R. 4233: Mr. SENSENBRENNER.

H.R. 4236: Mr. TURNER.

H.R. 4239: Mr. SULLIVAN.

H.R. 4294: Mr. CASE.

H.R. 4300: Mr. EHLERS.

H.R. 4315: Mr. FORD.

H.R. 4318: Mr. PLATTS, Mr. WHITFIELD, Mr. HASTINGS of Washington, Mr. TANNER and Mrs. MYRICK.

H.R. 4341: Mr. UPTON, Mrs. EMERSON, Mr. BURTON of Indiana, Mr. BARTLETT of Maryland, Mr. PENCE, Mr. REHBERG, Mr. DENT, Mrs. CAPITO, Mrs. JO ANN DAVIS of Virginia, Mr. MCCAUL of Texas and Mr. BAKER.

H.R. 4398: Mr. VAN HOLLEN.

H.R. 4416: Mr. FOLEY and Mr. ROTHMAN.

H.R. 4434: Mr. KENNEDY of Rhode Island, Mr. RUPPERSBERGER and Ms. MATSUI.

H.R. 4435: Mr. RUPPERSBERGER and Ms. MATSUI.

H.R. 4453: Mr. SENSENBRENNER.

H.R. 4465: Ms. LINDA T. SÁNCHEZ of California, Mr. MOORE of Kansas, Mr. SMITH of Washington, Mr. INSLEE and Ms. HOOLEY.

H.R. 4472: Mr. DELAY, Mr. MCCOTTER and Mr. WELDON of Pennsylvania.

H.R. 4479: Mr. INSLEE and Mr. MCNULTY.

H.R. 4497: Ms. GINNY BROWN-WAITE of Florida and Mr. GARRETT of New Jersey.

H.R. 4507: Mrs. MCCARTHY.

H.R. 4511: Mr. DUNCAN, Mr. SESSIONS, Mr. WILSON of South Carolina, and Mr. BACHUS.

H.R. 4524: Mr. EVANS and Mr. MICHAUD.

H.R. 4533: Mr. CARDIN, Mr. GONZALEZ, and Mr. OWENS.

H.R. 4547: Mr. ROGERS of Alabama, Ms. FOXX, Mr. ENGLISH of Pennsylvania, Mr. GOODE, Mr. WILSON of South Carolina, Mrs. MUSGRAVE, and Mr. DAVIS of Kentucky.

H.R. 4551: Mr. WILSON of South Carolina, Mr. WESTMORELAND, Mrs. MYRICK, Mr. PITTS, Mr. WAMP, Mr. SULLIVAN, Mr. WELDON of Florida, Mr. FEENEY, Mr. FRANKS of Arizona, Mr. BROWN of South Carolina, and Mr. PRICE of Georgia.

H.R. 4585: Mr. JINDAL.

H.R. 4596: Mr. FORD, Ms. MATSUI, and Mr. LIPINSKI.

H.R. 4603: Ms. WOOLSEY and Mrs. MCCARTHY.

H.R. 4604: Mr. SHAYS, Mr. EVANS, Mr. SCOTT of Georgia, and Mr. MICHAUD.

H.R. 4606: Mr. CLEAVER, Ms. JACKSON-LEE of Texas, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. MCCARTHY, Mr. MARSHALL, Mr. RANGEL, and Mr. BERMAN.

H.R. 4609: Mr. STRICKLAND, Mrs. JONES of Ohio, and Mr. EVANS.

H.R. 4619: Mr. WALSH, Mr. SIMMONS, and Mr. DELAHUNT.

H.R. 4623: Mr. INSLEE.

H.R. 4625: Mr. BACHUS, Mr. CARTER, Mr. FORBES, Mr. PLATTS, and Mr. RENZI.

H.R. 4655: Mr. ENGLISH of Pennsylvania and Mr. BASS.

H.R. 4662: Mr. WOLF, Ms. SCHWARTZ of Pennsylvania, Mr. CLAY, and Mr. CARDIN.

H.R. 4665: Mr. MCNULTY, Mr. BERMAN, Mr. LEWIS of Georgia, and Ms. HERSETH.

H.R. 4672: Mr. BOOZMAN.

H.R. 4675: Mr. MCGOVERN and Mr. MCNULTY.

H.J. Res. 37: Mr. SNYDER.

H.J. Res. 67: Mr. DENT.

H.J. Res. 71: Mr. GRAVES and Mr. SHIMKUS.

H. Con. Res. 50: Mr. CALVERT.

H. Con. Res. 90: Mr. MEEHAN and Mr. VISCLOSKY.

H. Con. Res. 138: Mr. HINCHEY and Mr. BUTTERFIELD.

H. Con. Res. 158: Mr. PRICE of North Carolina.

H. Con. Res. 197: Ms. MATSUI.

H. Con. Res. 282: Mr. FATTAH, Ms. CARSON, Mr. HINCHEY, Mr. HONDA, Mr. CLAY, Mr. FRANK of Massachusetts, and Mr. RANGEL.

H. Con. Res. 306: Mr. BRADLEY of New Hampshire.

H. Con. Res. 313: Mr. JEFFERSON.

H. Res. 97: Mr. WALDEN of Oregon.

H. Res. 189: Mr. ROTHMAN.

H. Res. 322: Mr. ANDREWS.

H. Res. 323: Mr. JINDAL, Mr. PETERSON of Minnesota, Mr. LARSEN of Washington, Mr. REYES, Mr. HOLDEN, Ms. LEE, Mr. BAIRD, Mr. NEAL of Massachusetts, Mr. LEACH, Mr. JEFFERSON, Mr. EMANUEL, Mr. DAVIS of Tennessee, Mr. SMITH of Washington, and Mr. KLINE.

H. Res. 335: Mr. BRADLEY of New Hampshire, Mr. RAHALL, Mr. DENT, and Mr. LARSEN of Washington.

H. Res. 475: Mr. STARK, Mr. CROWLEY, Mr. MCNULTY, Mr. GRIJALVA, Mr. KUCINICH, Mr. BLUMENAUER, and Mr. EVANS.

H. Res. 490: Mr. FATTAH, Mr. SNYDER, Mr. FILNER, Mr. OWENS, Mr. MCNULTY, Ms. WOOLSEY, Mr. CLAY, and Ms. ROS-LEHTINEN.

H. Res. 498: Mr. SHIMKUS, Mr. PALLONE, Mr. GERLACH, Mr. ISSA, Mr. SIMMONS, and Mr. BISHOP of New York.

H. Res. 521: Mr. BRADLEY of New Hampshire, Mr. WEINER, Mr. BROWN of South Carolina, Mr. FATTAH, and Ms. LORETTA SANCHEZ of California.

H. Res. 556: Mr. RYAN of Ohio, Mrs. CAPITO, Mr. WOLF, Ms. CARSON, Mr. SCHWARZ of Michigan, Mr. KENNEDY of Minnesota, and Mr. JEFFERSON.

H. Res. 561: Mr. GONZALEZ.

H. Res. 566: Mr. LEWIS of Kentucky and Ms. LORETTA SANCHEZ of California.

H. Res. 576: Mr. ROTHMAN.

H. Res. 600: Mr. FERGUSON, Mr. NADLER, Mr. ENGEL, Mr. CONYERS, Mr. TOWNS, Ms. SCHAKOWSKY, and Mr. MICHAUD.

H. Res. 628: Mr. THOMPSON of California.

H. Res. 629: Mr. BOOZMAN and Mr. WELLER.

H. Res. 635: Mr. OBERSTAR and Ms. LEE.

H. Res. 636: Ms. LEE.

H. Res. 637: Ms. LEE.

H. Res. 641: Mr. PALLONE, Ms. MOORE of Wisconsin, Mr. HOLT, Mrs. CHRISTENSEN, Mr. STARK, Ms. SCHAKOWSKY, Ms. KILPATRICK of Michigan, Ms. WATSON, Mr. CLEAVER, Mrs. TAUSCHER and Ms. LINDA T. SÁNCHEZ of California.

H. Res. 644: Mr. HOLT.

H. Res. 645: Mr. HOLT.

H. Res. 655: Mr. BURGESS, Mr. TURNER, Mr. PORTER, Ms. PELOSI, Mr. LEWIS of Georgia, Mr. CONYERS, Mr. HOYER, Mr. CLYBURN, Mr. WATT, Mr. ACKERMAN, Mr. ALLEN, Mr. BACA, Ms. BALDWIN, Mr. BARROW, Ms. BEAN, Mr. BECERRA, Ms. BERKLEY, Mr. BERMAN, Mr. BERRY, Mr. BISHOP of Georgia, Mr. BLUMENAUER, Ms. BORDALLO, Mr. BOYD, Mr. BRADY of Pennsylvania, Ms. CORRINE BROWN of Florida, Mr. BROWN of Ohio, Mr. BUTTERFIELD, Mrs. CAPPS, Mr. CAPUANO, Mr. CARDIN, Mr. CARNAHAN, Ms. CARSON, Mr. CASE, Mr. CHANDLER, Mr. CLAY, Mr. CLEAVER, Mr. COOPER, Mr. COSTA, Mr. COSTELLO, Mr. CROWLEY, Mr. CUELLAR, Mr. CUMMINGS, Mr. DAVIS of Alabama, Mr. DAVIS of Illinois, Mr. DAVIS of Florida, Mrs. DAVIS of California, Mr. DELAHUNT, Ms. DELAURO, Mr. DICKS, Mr. DINGELL, Mr. DOYLE, Mr. EDWARDS, Mr. EMANUEL, Mr. ENGEL, Ms. ESHOO, Mr. ETHERIDGE, Mr. EVANS, Mr. FALEOMAVAEGA, Mr. FARR, Mr. FATTAH, Mr. FILNER, Mr. FORD, Mr. FRANK of Massachusetts, Mr. GONZALEZ, Mr. AL GREEN of Texas, Mr. GRIJALVA, Mr. GUTIERREZ, Ms. HARMAN, Mr. HASTINGS of Florida, Mr. HIGGINS, Mr. HINCHEY, Mr. HINOJOSA, Mr. HOLDEN, Mr. HOLT, Mr. HONDA, Mr. ISRAEL, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Mr. JEFFERSON, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. JONES of Ohio, Mr. KANJORSKI, Ms. KAPTUR, Mr. KILDEE, Ms. KILPATRICK of Michigan, Mr. KUCINICH, Mr. LANTOS, Mr. LARSEN of Washington, Mr. LARSON of Connecticut, Ms. LEE, Mr. LEVIN, Mr. LIPINSKI, Ms. ZOE LOFGREN of California, Mr. LYNCH, Mrs. MALONEY, Mr. MARSHALL, Mr. MATHESON, Ms. MATSUI, Mrs. MCCARTHY, Ms. MCCOLLUM of Minnesota, Mr. MCINTYRE, Ms. MCKINNEY, Mr. MCNULTY, Mr. MEEHAN, Mr. MEEK of Florida, Mr. MEEKS of New York, Mr. MELANCON, Mr. MICHAUD, Ms. MILLENDER-MCDONALD, Mr. MILLER of North Carolina, Mr. GEORGE MILLER of California, Mr. MOORE of Kansas, Ms. MOORE of Wisconsin, Mr. NADLER, Mrs. NAPOLITANO, Mr. NEAL of Massachusetts, Ms. NORTON, Mr. OBERSTAR, Mr. ORTIZ, Mr. OWENS, Mr. PALLONE, Mr. PASCRELL, Mr. PASTOR, Mr. PAYNE, Mr. PRICE of North Carolina, Mr. RAHALL, Mr. REYES, Mr. ROSS, Ms. ROYBAL-ALLARD, Mr. RUPPERSBERGER, Mr. RUSH, Mr. RYAN of Ohio, Mr. SABO, Mr. SALAZAR, Ms. LINDA T. SÁNCHEZ of California, Ms. LORETTA SANCHEZ of California, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SCOTT of Georgia, Mr. SCOTT of Virginia, Mr. SERRANO, Mr. SHERMAN, Mr. SMITH of Washington, Mr. SNYDER, Ms. SOLIS, Mr. SPRATT, Mr. STARK, Mr. STRICKLAND, Mr. STUPAK, Mr. TANNER, Mrs. TAUSCHER, Mr. THOMPSON of Mississippi, Mr. TOWNS, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. VAN HOLLEN, Ms. VELÁZQUEZ, Mr. VISCLOSKY, Ms. WASSERMAN SCHULTZ, Ms. WATERS, Ms. WATSON, Mr. WAXMAN, Mr. WEINER, Mr. WEXLER, Ms. WOOLSEY, Mr. WU, Mr. WYNN and Mr. REGULA.

H. Res. 657: Mr. SMITH of New Jersey, Mr. BOUSTANY, Mr. CLAY, Mr. RADANOVICH, Mr. MANZULLO, Ms. MCCOLLUM of Minnesota, Mr. KING of New York and Mr. NEUGEBAUER.

H. Res. 659: Mr. BISHOP of Georgia.

EXTENSIONS OF REMARKS

TRIBUTE TO REVEREND DON DAVIDSON

HON. RON LEWIS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. LEWIS of Kentucky. Mr. Speaker, it is my great honor to introduce Reverend Don Davidson, Senior Pastor of the First Baptist Church in Alexandria, Virginia, joining us to deliver this morning's prayer. Reverend Davidson is a remarkable man and Christian witness whose vocation has touched the hearts and moved the spirits of countless men and women throughout his three decades of pastoral service.

Born in Suffolk, Virginia, Reverend Davidson earned degrees from Virginia Commonwealth University and Southeast Baptist Theological Seminary at Wake Forest, North Carolina. His Christian mission has brought him and his equally gifted wife Audrey to pastorates in Farmville, Virginia; Henderson, North Carolina; Orlando, Florida; and Danville, Virginia before being called to the First Baptist Church of Alexandria this past September.

The First Baptist Church has been a place of worship for numerous Members of Congress and their staff throughout its 200-year history. In fact, Reverend Davidson first came to my attention through Darla Tomes, a former member of my staff, who works for the Department of Defense.

Thank you, Reverend Davidson, for being here today to invoke God's divine guidance as we start this Second Session of the 109th Congress. I ask my colleagues to join me in welcoming you to the House of Representatives.

CONGRATULATING MR. CHRISTOPHER D. SAPP

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. BURGESS. Mr. Speaker, I rise today to congratulate Mr. Christopher D. Sapp of McKinney, Texas, for receiving the prestigious Fulbright award to study abroad in Austria during the 2005–2006 academic year. Mr. Sapp was honored with this award for his studies in Germanic languages and literature at Indiana University.

The Fulbright Program is sponsored by the Department of State, Bureau of Educational and Cultural Affairs. The program was established in 1946 with the purpose of building mutual understanding between the people of the United States and the rest of the world by allowing recipients to study, lecture or conduct research in an international exchange program.

Christopher was selected on the basis of academic achievement, as well as demonstrated leadership potential in his field.

I extend my sincere congratulations to Mr. Christopher Sapp on receiving this award and commend his dedication and desire to help his school, community and country.

IN HONOR AND REMEMBRANCE OF U.S. ARMY MASTER SERGEANT JOSEPH J. ANDRES, JR.

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. KUCINICH. Mr. Speaker, I rise today in honor and remembrance of United States Army Master Sergeant Joseph J. Andres, Jr., who bravely and selflessly heeded the call of duty and made the ultimate sacrifice on behalf of our country.

Family, friends and concern for others lined the journey of Sergeant Andres' life. He gained personal strength and faith from his family and friends, especially his mother and father, Sandra and Joseph J., Sr.; his sisters, Deborah, Pamela, Christine, Maureen and Sharon; his brothers-in-law, David, Edward and William; his grandparents, Walter and Winifred Haders; and, his nieces and nephews, Claire, Brielle, Collin, Ryan, Evan and Brandon.

Sergeant Andres' limitless joy for living, dynamic spirit and expansive heart reflected consistently throughout his life, from childhood on. He was a 1989 graduate of Padua Franciscan High School and studied engineering at the University of Cincinnati before enlisting in the Army. Sergeant Andres' seemingly endless reserve of energy, joy for living and strong foundation of personal faith, equaled his steadfast sense of duty to others and to our country.

Mr. Speaker and colleagues, please join me in honor and remembrance of Master Sergeant Joseph J. Andres, Jr. I extend my deepest condolences to his family members and many friends, especially his parents and sisters. The ultimate sacrifice, significant service and true heart that illuminated the life of Sergeant Andres will shine forever in the hearts and memories of all those who knew him best and loved him most—his family and close friends. Sergeant Andres' legacy of service and courage will be honored and remembered by the Cleveland community and by our entire Nation, today, and for all time.

HONORING DR. CHARLES GILBERT

HON. JOHN SHIMKUS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. SHIMKUS. Mr. Speaker, I rise today to honor Dr. Charles Gilbert upon his retirement from Western Illinois University. Dr. Gilbert retired January 26 after most recently serving as Director of Institutional Research and Planning.

Since receiving his Ph.D. in Education from Southern Illinois University in 1972, Dr. Gilbert has served as a faculty member at Western Illinois University. He has served as an associate professor, but outside the classroom, his work has focused on research and planning.

Aside from the title which he recently retired, he has held the titles of Associate Director and Assistant Director for Institutional Research and Planning and Project Director, Board of Governors Common Software Project.

Dr. Gilbert has also served as Chairman of the Western Illinois University Council on Planning. He has been a member of the Board of Directors of the Illinois Association for Institutional Research and the Mid-Illinois Computer Consortium.

I appreciate Dr. Gilbert's dedication to higher education throughout his career. I join the faculty at Western Illinois University in thanking Dr. Gilbert for his service and congratulate him on a job well done.

HONORING THE LIFE AND SERVICE OF STEVE WALTER

HON. MIKE McINTYRE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. McINTYRE. Mr. Speaker, I rise today to pay special tribute to an outstanding individual in Southeastern North Carolina, Mr. Steve Walter. Mr. Walter passed away on December 21, 2005, just before Christmas, during one of his daily jogs and bicycle rides. However, his spirit and contributions will live on in the hearts and minds of many for generations to come.

Born in Brooklyn, New York, Steve went on to serve his country with distinction, dedication and determination, As a graduate of Pennsylvania Military College, Steve served in the military for 28 years, including two tours in Vietnam. He received several honors and awards during his time of service, including the Defense Superior Service Medal, Secretary of Defense and Army Staff Identification Badges, Bronze Star with cluster, Meritorious Service Medal with clusters, Joint Service and Army Commendation Medals, and the Vietnamese Cross of Gallantry. Steve finished his

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

years of service as a strategic planner with the Secretary of Defense at the Pentagon and retired as a colonel in 1988.

After Steve retired from military service, he enjoyed a successful real estate career in Maryland and moved to Topsail Island, North Carolina in 1993, where he and his beloved wife of more than 42 years, Patti, have lived ever since. Steve has been an active member of the Topsail Island community. Since moving there, he has been a member of various organizations, including the Sea Turtle Hospital, the Missiles and More Museum, Topsail Island Kiwanis, Topsail Island Realtors, Topsail Beach Shore Protection Committee, and the North Carolina Beach, Inlet, and Waterway Association. Steve and Patti also are the proud parents of three wonderful children—Kimberly, Lisa, and Stephen.

Samuel Logan Brengle, the legendary leader in the Salvation Army, once said some very important words that reflect the character and life of Steve. He said, "the final estimate of a man will show that history cares not one iota about the title he has carried or the rank he has borne, but only about the quality of his deeds and the character of his heart." Indeed, Steve Walter has reflected these words through his sacrifice and commitment.

Mr. Speaker, dedicated service to others combined with dynamic leadership has been the embodiment of Steve's life. May we all use his wisdom, selflessness, and integrity as a beacon of direction and a source of true enlightenment for many years to come. Indeed, may God bless to all of our memories the honored life and legacy of Steve Walter.

CONGRATULATING MR. MICHAEL P. HATLEY

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. BURGESS. Mr. Speaker, I rise today to congratulate Mr. Michael P. Hatley of Aubrey, Texas, for receiving the prestigious Fulbright award to study abroad in Germany during the 2005–2006 academic year. Mr. Hatley was honored with this award for his studies in comparative politics at St. Louis University.

The Fulbright Program is sponsored by the Department of State, Bureau of Educational and Cultural Affairs. The program was established in 1946 with the purpose of building mutual understanding between the people of the United States and the rest of the world by allowing recipients to study, lecture or conduct research in an international exchange program.

Michael was selected on the basis of academic achievement, as well as demonstrated leadership potential in his field.

I extend my sincere congratulations to Mr. Michael P. Hatley on receiving this award and praise his dedication and desire to help his school, community and country.

CONCERN ABOUT BECOMING ADDICTED TO OIL

HON. JO ANN EMERSON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mrs. EMERSON. Mr. Speaker, I rise today to echo the concern of the President, who recently told this body and the American people that he is afraid our Nation is becoming "addicted to oil." Not only is America dependent on foreign sources of this increasingly politicized resource, but supplies of that resource are dwindling and increasingly expensive. In order to assure the national security and economic prosperity of our Nation, we must find alternative sources of energy.

America's farmers have found it already—in the rows and rows of corn and soybeans I drive past each time I go home to Missouri.

Alternative sources of energy must be part of the solution to our dependence on foreign oil. We cannot ask Americans to drive to the grocery store or doctor's office less, we cannot ask our manufacturers to ship fewer goods, we will not all pick up and move from rural America to the city so we can ride the subway. The Americans who suffer most from high fuel prices live in places like Southern Missouri, where goods are shipped in from far away and our agriculture and manufacturing products are shipped out even greater distances to far-off markets. We drive farther in a day than most urban Americans drive in a week. We use tractors, semi-trailers, and heavy-duty trucks on our farms and at our factories. Energy is the lifeblood of our rural economy, and high energy costs are a crushing burden on families, farms and businesses. Rural America, in particular, depends on our freedom to travel. And in that same rural America, there is fuel growing in the fields.

Those same farmers are growing crops that could power all their vehicles. When I am out on the highway in Southern Missouri, I see literally fields of fuel—corn and soybeans that can be converted into Ethanol and bio-diesel. In Southern Missouri, we are starting to build Ethanol and bio-diesel refineries. The first few E85 stations are opening for business, selling fuel for cars designed to run on 85 percent Ethanol and only 15 percent petroleum. America is leading the way in these technologies, just as we lead the way on our farms producing the world's safest, most secure food supply. It is in the very best interests of our country to support these efforts in every possible way. Oil is the most politicized natural resource in the world, it is limited, and its use will eventually become archaic. But there are fields of renewable fuel, Mr. Speaker, everywhere.

HONORING DR. CHARLES PAPPAS

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. KILDEE. Mr. Speaker, I rise today to pay homage to a dear friend, Dr. Charles Pappas. Mott Community College in my hometown of Flint, Michigan, will host a luncheon on February 13th in his honor. In appreciation of his contributions to the school, Mott Community College will name a building in tribute to him.

Charles Pappas has had an enviable career as an educator. After working in the public school arena, he took a position with the Cuyahoga Community College in 1965 as Dean of Business Administration. He went on to become the founding president of the Metropolitan Campus, and then in 1970, he accepted the post of president of Genesee Community College. It was later renamed to Charles Stewart Mott Community College. Thus began a fruitful association with the Flint area. Dr. Pappas served as president until 1981 and was elected to the Board of Trustees and served in that capacity for 6 years after he left the presidency.

Under his leadership the school partnered with the Michigan School for the Deaf and started offering classes to the hearing impaired. He initiated the Weekend College concept at Mott Community College allowing adults greater opportunities to attend classes and he initiated a program to allow senior citizens to attend classes for free. This implementation of the lifelong learning concept put Mott Community College on the cutting edge of innovate education for adult students.

In recognition of Dr. Pappas's vision the UAW has bestowed the Walter P. Reuther Distinguished Service Award on him. For developing a labor studies program at Mott Community College he was named to the Labor Hall of Fame at Wayne State University. Ohio State University conferred the Vocational-Technical Education Distinguished Service Award on Dr. Pappas and the Flint Area Chamber of Commerce previously named him the Charles Stewart Mott Citizen of the Year. He has served as the president of the Council of North Central Community and Junior Colleges, president of the Michigan Community College Association, and president of the Michigan Vocational Business Education Association.

Mr. Speaker, I ask the House of Representatives to join me in congratulating Dr. Charles Pappas as he is honored by the Flint area community.

RECOGNIZING THE LIFE AND PUBLIC SERVICE OF MRS. MAE CRUZ TENORIO

HON. MADELEINE Z. BORDALLO

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Ms. BORDALLO. Mr. Speaker, it is with a heavy heart and profound sadness that I rise today to honor the life and public service of Mrs. Mae Cruz Tenorio. Mae managed my District Office in Guam with humor, courtesy and professionalism for 3 years, which marked a continuation of almost 8 years of service as the Special Assistant and Special Projects Director for my predecessor, Representative Robert Underwood. Mae possessed the qualities of commitment to good government, selfless service to her community, and integrity that are valued so highly by our congressional community.

Mae's commitment to her community, to the United States and to public service began in 1971, at the Tulare County Credit Bureau in Visalia, California, where she worked as a part-time secretary and credit reporter. Mae returned to Guam in June 1978, to work for the Office of the Governor. She remained in public service to Guam for 35 years.

Mae's work as a dedicated public servant and community leader has many highlights. Three themes throughout it are prominent: the advancement and empowerment of women; the strengthening of the family; and the improvement of our island. Her leadership on these issues spanned her work with the Government of Guam Office of the Comptroller, the Commission on Self-Determination, Office of the Governor of Guam, the Office of Congressman Robert Underwood, and in my office.

Her reputation for thoroughness and high quality staff work, earned as a result of her tenure on the Commission on Self-Determination beginning in 1984, is of particular note. She provided the staff support for the Commission's initial public hearings under then Governor Ricky Bordallo. Governor Joseph Ada's decision to retain Mae's services when he became the Commission's Chairman is a testament to her dedicated service and unique abilities. Mae served as the Commission's senior Professional Staff Member until 1992.

Equally notable was her work with the Office of the Governor promoting awareness of women and family issues on Guam from 1992 to 1995. Mae continued her work to promote women and family issues as a leader of important community organizations on Guam. She was a founding member of the Guam Single Parents Network, established in 1977. Additionally, Mae became the first female president of the Pacific Jaycees in 1987, ably representing the Jaycees and Guam throughout the Pacific region and the world promoting community service and volunteerism.

Mae's commitment to improving Guam and promoting the issues important to our island and its people continued when she joined the Office of Congressman Robert Underwood in 1995. As a respected and active member of that office she helped attract funding for The War in the Pacific National Historical Park Asan Bay Overlook Memorial Wall Project, while compiling the list of names for the memorial at the park, educating on and off-island Chamorro groups about the project, and helping to plan the official dedication of the wall. Mae's other contributions included providing timely and responsive constituent services and providing staff support to Congressman Underwood's War Restitution, Philippine Visa Waiver, and Economic Task Forces. Mae also organized Guam's Centennial Exhibit in Washington, DC, a pictorial review of Guam's history aimed to educate visitors to our Nation's Capital about our island and the issues that are important to us.

Mae will be remembered not only for the excellent work she did on behalf of her beloved island and the United States of America, but for her grace, humanity, and humility. Her good humor, mentorship, and friendship were appreciated by all who had the pleasure of knowing her. Her efforts touched the lives of countless members of our island's community and Guam's friends in the United States and around the world. The influence of her work will remain strong for years to come.

But Mae was not a woman that can be defined solely by her work; she was so much more to so many.

Mae, a caring mother to Christina, Nick and Andrew, a loving wife to Joseph Tenorio, a trusted friend for many, a daughter of Guam, and a faithful servant to her island and her country, was called her home by her Heavenly Father on January 10, 2006. The call home relieved her from her suffering. But it left a definite void in my life and in the lives of those who knew and loved her. Mae's full and rewarding life and our memories of her gentle demeanor will serve as inspiration for us all for years to come. Mae was a kind soul. She will be dearly missed.

TRIBUTE TO ANN EPPARD

HON. BILL SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. SHUSTER. Mr. Speaker, on Christmas Eve, Ann Eppard, long-time chief of staff to Congressman Bud Shuster, passed away from complications from Barrett's disease. The following tribute to her by Bud Shuster, M.C., ret., appeared in several papers throughout Pennsylvania:

A TRIBUTE TO ANN EPPARD

(By Congressman Bud Shuster, Ret.)

Once upon a shining time there was a team that had a 35-year winning streak. I was the coach and Ann Eppard was the captain of the team. Over the years we had all-star teammates who became lifelong friends.

It all began when I instructed a manager at Datel Corp. to find me an executive assistant. After I nixed several who didn't quite fit, he said he located an outstanding gal at Computer Sciences Corporation who although only 26, was managing 28 people. "She's smart, personable, energetic, knows computers and she's good-looking. I said I preferred a man, and the last thing we needed was a good-looking babe to distract the salesmen. Just interview her, he pleaded. Reluctantly, I agreed, and she was impressive. When I asked her to take a test she asked if I had taken it. When I said "no" she smiled, "Then I'll take it after you do."

"You've got spunk. You'll do," I laughed. "But I'd like to talk to your boss at Computer Sciences." After he confirmed her capabilities I asked if she had any weaknesses. "Oh yes," he said, " Overload her with work or she'll pester you." So I did. For nearly 35 years!

When I announced for Congress, Ann volunteered along with some Sigma Chi brothers. She moved into an old converted smokehouse at the farm with my daughter, Peggy, and our team campaigned 24/7 for several months. My wife, Patty, and I went door-to-door with Ann, my daughter, Gia, and others advancing us. Ann's sister, Karen, and her mother did nightly polling to measure our progress. Ann helped design a superb computer system to mail thousands of personalized letters on the weekend before the election. Campaigning at the railroad shops, she wore a red miniskirt and white boots. The guys didn't pay any attention to me, and for years afterward when we went through the shops they would yell, "Hey, Annie, where's your white boots?" We surprised everyone by winning, and as they say, the rest is history.

Ann loved political combat. Once when she was deeply involved in reapportionment, she had a Democratic legislator make a last-minute change to the map, putting an opponent's residence a few yards outside the district. The opponent insisted that a Republican had changed the map, for no Democrat would do that. He was wrong! Another time, when an opponent's petitions were being circulated at a Democratic hangout, they suddenly disappeared. On election night, a Democratic leader proudly produced the purloined petitions but Ann whisked him across the room to the bar before I saw them.

Ann loved the people of the District. She had Pennelec relocate a light pole because an elderly lady couldn't sleep with the light shining in her window.

The story behind creating the Loysburg bypass exemplified her dedication. Still in the minority, I worked for months to get District projects in a transportation bill, through the House, the Senate Conference. On the last day of the Conference she whispered that we should put in a project to build a Loysburg bypass. I said it was impossible, the Conference was ending.

"But the people need that dangerous hairpin curve eliminated," she pleaded. "Get away," I ordered.

"What if I can get Chairman Howard and Senator Moynihan to agree?"

"Don't you breathe my name to them," I hissed.

"I won't." She went over and whispered to Howard and Moynihan. A few minutes later, Howard said, "If Senator Moynihan agrees, I'd like to add a project to replace a dangerous curve in Loysburg, Pennsylvania, with a bypass." Moynihan replied, "Absolutely! I agree!"

When I'm on the bypass I think, this is really the Ann Eppard bypass.

Ann may be the only person to ever hang-up on the President of the United States. One day she answered my private line and a voice said, "This is Ronald Reagan. Could I please speak to Bud?"

"Quit fooling around, Ralph," she slammed down the phone. It rang again and the White House operator said, "President Reagan was trying to call the Congressman but got disconnected. Could you please put him on?"

When I was going through several operations at Bethesda Naval Hospital to repair my broken neck, she practically took over the ward, making sure I got my pain medicine on time. When she discovered a lost sailor hobbling through the hall pushing his I-V, searching for the X-ray lab, she chewed out the attendants and got him help. "Harrisburg: Online" recently wrote, "She was the epitome of the self-made, tough-as-nails kid from Pennsylvania's hard coal region."

Ann loved coming to our farm, pestering me to let her work. One spring when we were going to move the cattle into the barnyard, she showed up in her designer jeans and red cowgirl boots. I explained to everyone that we had to walk slowly behind the cattle, arms outstretched, pushing them toward the barn. If one cow broke away, they all would and we would have to start over. Finally we got them in. Losing her balance in the mucky barnyard, she cried, "I fell in the mud!" My farm manager replied, "Miss Annie, that ain't mud."

Few knew of Ann's many charities. Father Paulko in Hollidaysburg called her when a deserving family needed financial help. She quietly responded.

When troubles came, as they sometimes do in her life, her grace under pressure epitomized class, as she ultimately prevailed.

When she retired, the accolades poured in. The entire Pennsylvania delegation published a letter praising her as "a straight shooter whose word was trusted and advice was much sought after . . . you also served as a pathfinder for the now increasing number of women assuming leadership positions on Capitol Hill. Your dedication . . . helped this delegation achieve legislative prodigies." A lecturer at the Library of Congress stated: "Ann Eppard was the most effective Chief of Staff on Capitol Hill."

Forming Ann Eppard Associates, she established a highly respected lobbying firm. Congressman Jim Oberstar publicly credited her efforts with helping pass the historic "Truth in Budgeting Act," to unlock the Highway Trust Fund.

But above all, she loved her family, especially her two darling granddaughters, Kelly and Shannon. They, need to know that their "Annie" was a larger-than-life super-lady: dedicated, smart, energetic and compassionate. Ann was devout and there is little doubt that she is in God's arms. She's probably telling St. Peter how to better organize the place.

To paraphrase Shakespeare, she may have had the body of a tender woman, but she had the heart of a lion. And we might add, the soaring spirit of the indomitable American eagle.

TRIBUTE TO MARIJKE BYCK-HOENSELAARS

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Ms. WOOLSEY. Mr. Speaker, I rise today with great sadness to honor my friend, Marijke Byck-Hoenselaars, who died in a tragic accident on January 5, 2006. Marijke's death leaves a void in the Sonoma County community that will be a reminder of her compassion, grace, and generosity for years to come.

Born in Holland in 1933, Marijke met her husband Walter Byck in the cafeteria of the New York hospital where both worked, she as a nurse and he as a radiologist. Long-time lovers of the arts, the two decided to marry in 1961 while visiting the Kroller-Muller Museum in the Netherlands.

The couple moved to Santa Rosa in 1965 and purchased the Paradise Ranch in 1978. After raising grapes for many years, they opened Paradise Ridge Winery in 1994. Their five children were raised mostly on the 156-acre property and several worked in important positions at the winery where Marijke was chief executive.

Taking advantage of the beautiful site in the hills on the edge of Santa Rosa, Marijke and her family created a unique facility as well as producing outstanding wines. The grounds feature a sculpture garden which exhibits the work of local artists, and the large central building with its stunning views has been home to many unique events over the years.

But Marijke's legacy will be especially marked by her tireless efforts, frequently performed anonymously, on behalf of the less fortunate in Sonoma County. From delivering in old sweat pants food packages and holiday gifts for children to low-income families to serving as a Board Member, benefactor, and leader with local nonprofit groups, her helping hand and personal involvement were the hallmark of her style.

Marijke's compassion led to her participation in the Sonoma Task Force for the Homeless, the National Women's History Project, Catholic Charities, The Children's Village of Sonoma County, and other causes for which her winery served as the site for benefits and fundraisers. She also cared deeply about global peace issues, and her activism reflected these broader concerns as well.

According to one friend, her service went beyond compassion. She was hungry as a child in Holland during the war years and felt a deep empathy that was integrated seamlessly into her life. Whenever she went out to dinner, she boxed her leftovers and did not go home till she found a hungry person to give them to.

Commitment to her family played a key role in this seamless life. She is survived by her husband Walter, her five children, and many grandchildren whose presence gladdened her heart and enhanced her joy in life. Their loss will be deeply felt and shared by their many friends.

Mr. Speaker, it is hard to imagine life in Sonoma County without Marijke Byck-Hoensellars' warm smile, her friendship, and her humanitarianism. I am confident that her spirit will live on in those of us she has inspired during her 40 years in the community.

CONGRATULATING JERRY MOHELNITZKY

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. BURGESS. Mr. Speaker, I rise today to congratulate Mr. Jerry Mohelnitzky on receiving the Longhorn Boy Scouts of America Distinguished Citizen Award for this year.

Mr. Mohlnitzky has been involved in the Denton community for over 3 decades. He participates on the boards of the Chamber of Commerce, Greater Denton Arts Council, Economic Development Partnership Board and the Dallas Ecological Foundation. He also serves as the Board Chairman for the economic Development Board.

The Longhorn Council of the Boy Scouts of America serves more than 40,000 youths with scouting programs in Central and North Texas. More than 15,000 adults volunteer to help with the programs. This prestigious award is given to members of the community whose leadership focuses on volunteerism.

I extend my sincere congratulations to Mr. Jerry Mohelnitzky for receiving the Longhorn Boy Scouts of America Distinguished Citizen Award. His contributions and service to the Denton community should inspire us all.

IN HONOR OF BISHOP ANTHONY M. PILLA

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. KUCINICH. Mr. Speaker, I rise today in honor and recognition of my good friend Bishop Anthony M. Pilla, as we celebrate his twenty-fifth year as a spiritual teacher, leading nearly 800,000 Roman Catholic individuals within the Cleveland Catholic Diocese.

Bishop Pilla grew up in Cleveland, the son of Italian immigrants. His parents instilled within him a strong sense of family, faith and service to others. His spiritual vocation began in 1959, when he was ordained to the priesthood. Bishop Pilla served as pastor for a short time before accepting a teaching position at Borromeo Seminary High School in Wickliffe, where he was named President in 1972. Seven years later, he was named Auxiliary Bishop and on January 6, 1981, he was appointed as Diocesan Bishop of Cleveland.

Bishop Pilla's service and presence has been a focused instrument of faith and hope along the streets of Cleveland. Bishop Pilla's dedication to the well being of Cleveland's urban residents is evidenced within the historic churches throughout the city that remain open and viable sources of hope and faith for worshipers of all ages. Additionally, Bishop Pilla's outreach efforts and vision of cultural and interfaith unity has created unbreakable, vital partnerships among members and leaders of all faiths—partnerships that promote understanding and respect for differing views and bonds that celebrate our diversity.

Mr. Speaker and Colleagues, please join me in honor and recognition of my dear friend, Bishop Anthony M. Pilla, whose spiritual leadership, guidance and devotion to the people of Cleveland reflects throughout the Cleveland Catholic Dioceses. It has been such a pleasure to work with Bishop Pilla over the years and I am grateful for our years of friendship. Bishop Pilla has been a great strength of hope and courage for me through the years. His guidance, passion, leadership and unwavering commitment has illuminated hope and faith for countless families and individuals of every faith, throughout our Cleveland community, and far beyond.

HONORING DORSEY, ILLINOIS

HON. JOHN SHIMKUS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. SHIMKUS. Mr. Speaker, I rise today to honor Dorsey, Illinois upon her sesquicentennial. Settled in 1856, the citizens of Dorsey will celebrate the sesquicentennial on July 22 and 23, 2006.

An active railroad ran through Dorsey for over 100 years starting in 1854, two years before the community was officially settled by the Dorsey Family. Also, in 1854, Emmaus Lutheran Church was founded. After being settled in 1856, the first post office in Dorsey opened in 1857.

I congratulate the citizens of Dorsey on 150 years of history in the community. I thank you for the contributions to our great Nation. May God bless Dorsey and may He continue to bless America.

A TRIBUTE TO LANCE CORPORAL JERIAD PAUL JACOBS

HON. MIKE McINTYRE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. McINTYRE. Mr. Speaker, I rise today to pay tribute to Lance Corporal Jeriad Paul Jacobs of Clayton, North Carolina, for serving his country valiantly with the United States Marine Corps in Operation Iraqi Freedom. On January 7, 2006, Lance Corporal Jacobs sacrificed his life when he encountered enemy fire in Fallujah, Iraq. He was courageously serving his Nation, and our heartfelt thanks and our prayers go out to his family and friends in this time of grief.

Jacobs, a member of the Lumbee Tribe in the Seventh Congressional District, had a great love for family, country, and heritage. He was a fine young man who truly loved service and duty. As a young man growing up in rural Robeson County, Jeriad enjoyed sports, music, and poetry. After moving to Clayton, North Carolina, and graduating from Clayton High School, he fulfilled a lifelong dream and enlisted in the United States Marine Corps.

As a Marine, Lance Corporal Jacobs dedicated his career to defending the values this Nation holds dear. By risking his life to ensure the safety of others, Jeriad made the ultimate sacrifice. His valiant actions and steadfast service remind us of the gratitude we have to him and all the other servicemen and women who have given their lives serving as guardians of this great country. Jeriad was indeed a man of courage and integrity.

Jacobs leaves behind a wonderful family that includes his parents, Janet and Daryl Graybill, sisters, Brittany and Sierra, grandparents, Carolyn Sutton, Fannie Stoltzfus, and Lloyd and Mary Graybill, aunt Kristi Clark, and uncle, State Representative Ron Sutton of the North Carolina General Assembly.

Mr. Speaker, may the memory of Lance Corporal Jeriad Paul Jacobs live on in our hearts, and may God's strength and peace be with his family.

TRIBUTE TO 9 HEROES OF MISSOURI'S 8TH CONGRESSIONAL DISTRICT

HON. JO ANN EMERSON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mrs. EMERSON. Mr. Speaker, today I rise to honor the heroism of nine individuals in Missouri's Eighth Congressional District whose quick thinking and brave actions saved the lives of a family of five.

In the early morning hours of December 14th, a billion-gallon flood from the Taum Sauk Reservoir swept through the Johnson Shut Ins State Park. Park Ranger Jerry Toops, his wife and their three children, ages 5, 3, and seven months, were awakened to a harrowing scene as the freezing cold floodwaters crashed through their home and carried them all away.

Their rescuers were immediately set into motion. Mr. Josh McCarty, Mr. Gary Maize, Mr. Tyler Wright, Mr. Robbie Jordan, Mr. Ryan Wadlow and Fire Chief Ben Meredith of the Lesterville Fire Department, Reynolds County Sheriff's Deputy Brian Fox knew the Toops family had been in the path of the flood and raced to the scene. Also on the scene was a good Samaritan—Mr. Greg Coleman—a truck driver who had been stranded on the roof of his semi truck and heard Jerry Toops calling for help from a tree. He called the local emergency dispatcher and, as soon as the icy water receded, met the fire department and set out to find the family. Mr. Butch Walker, a neighbor, used his truck to clear a path through the flood debris for the emergency responders. They found the five members of the Toops family alive, but in urgent need of medical care.

On the ensuing ambulance rides, the lives of the three children hung in the balance. Their parents, the county, the State and the Nation all prayed that they would survive. They did. But a moment later, a minute's delay, or a notch less of urgency and the outcome could have been grim for the Toops family, laying in their nightclothes on the cold, wet ground.

If not for these nine men with their training and determination, acting fast, in the dark, frozen moments after the flood, one, some, or all of these five lives would have been lost. It is this character, selflessness, and reliability for neighbors in need that make Southern Missouri a wonderful place to live. They are heroes of whom we are proud, though they would say they are just doing their jobs or doing what anyone would do in their position. Yet they responded without hesitation, and we owe them a great debt of gratitude. I commend them today in the U.S. House of Representatives and thank God for their great deeds.

CONGRATULATING BOB SHERMAN ON DISTINGUISHED CITIZEN AWARD

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. BURGESS. Mr. Speaker, I rise today to congratulate Mr. Bob Sherman of Denton, TX, on receiving the Longhorn Boy Scouts of America Distinguished Citizen Award for this year.

Mr. Sherman returned to Denton with his wife after 30 years of a banking career in Chicago. Bob Sherman was president and chief executive officer of First Colonial Bankshares. He is on the board of directors for Northstar Bank of Texas and serves on the President's Council, College of Arts and Sciences Advisory Board and the strategic planning committee for the University of North Texas. Today, he continues his life of service through his position on the board of Denton Christian School and is leading the capital campaign for Cumberland Presbyterian Children's Home.

The Longhorn Council of the Boy Scouts of America serves more than 40,000 youths with scouting programs in Central and North Texas. More than 15,000 adults volunteer to help with the programs. This prestigious award is given to members of the community whose leadership focuses on volunteerism.

I extend my sincere congratulations to Mr. Bob Sherman for receiving the Longhorn Boy Scouts of America Distinguished Citizen Award. His contributions and service to the Denton community should inspire us all.

IN HONOR OF THE VIETNAMESE NEW YEAR: TET. 2006—YEAR OF THE DOG

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. KUCINICH. Mr. Speaker, I rise today in recognition of the Vietnamese New Year: Tet, 2006—Year of the Dog. To celebrate this joyous event, the Vietnamese Community in Greater Cleveland, Inc., will gather at Bo Loong Chinese Restaurant to rejoice with family and friends and enjoy Vietnamese culture and performances.

The Tet celebration will include recognition of volunteer leaders, Vietnamese culinary offerings and dancing and entertainment by Vietnamese youth of Cleveland. Tet is the time of year to pay homage to ancestors, reconnect with friends and family, and celebrate the hope and possibility within the rising of a new year.

This year also marks the 31st anniversary of the establishment of the Vietnamese Community in Greater Cleveland, Inc.—reflecting nearly three decades of this agency's superior commitment, service and community outreach to Americans of Vietnamese heritage. The Vietnamese community in Cleveland reflects a vibrant layer within the colorful fabric of our culturally diverse city. And the Vietnamese Community of Greater Cleveland, Inc. plays a significant role in preserving and promoting the ancient cultural and historical traditions that spiral back throughout the centuries—connecting the old world to the new, extending from Vietnam to America.

Mr. Speaker and colleagues, please join me in honor and recognition of Le Nguyen, President of the Vietnamese Community in Greater Cleveland, Inc., and all members, past and present, for their dedication and support of Americans of Vietnamese heritage within our Cleveland community. As we join in celebration of the Vietnamese New Year, the Year of the Dog, may every American of Vietnamese heritage hold memories of their past forever in their hearts, and find happiness and peace with the dawning of each new day.

HONORING A.D. AND SHIRLEY McGREGOR

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. KILDEE. Mr. Speaker, I rise today to ask the House of Representatives to join me in congratulating A.D. and Shirley McGregor as they are honored by the Saginaw County Convention and Visitors Bureau on February 17th in Saginaw, Michigan.

A.D. and Shirley McGregor are lifelong residents of the Saginaw area and have worked tirelessly to promote and enhance the life of the community. They exemplify true volunteer spirit. Since 1948 when they were still in school, the McGregors have worked tirelessly to make Saginaw a wonderful place to live. At that time they became volunteers for Healthsource Saginaw and began a lifelong commitment to service.

During the intervening years the couple has helped numerous organizations and worked at various events. For 28 years they have helped the Saginaw CROP Walk raise money to alleviate world hunger. For 30 years they have played Mr. and Mrs. Santa Claus for churches, schools, nursing facilities and non-profits. They have spent the last several years organizing Christmas caroling for shut-ins. The Castle Museum of Saginaw has benefited from their help for the past 28 years.

Fridays in the summertime can often find them working with the Friday Night Live concerts for Pride in Saginaw Incorporated. Many other organizations have benefited from their dedication. The Saginaw County Fair, Rescue Mission/Community Village, Billy Graham Evangelistic Association, Temple Theatre, Saginaw Depot Preservation, and Saginaw Valley State University have all reaped the rewards of A.D. and Shirley's generous giving.

Their guiding prayer is "Jesus First, Others Second, Yourself Last." Day after day the McGregors live this prayer in an openhanded, amiable way. The McGregors are excellent role models for our youth. Mr. Speaker, I ask the House of Representatives to rise and join me and the Saginaw County Convention and Visitors Bureau in thanking this wonderful couple for their compassion, charity and congeniality.

HONORING THE LIFE OF SPC KASPER ALAN CAMACHO DUDKIEWICZ

HON. MADELEINE Z. BORDALLO

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Ms. BORDALLO. Mr. Speaker, I rise today with the solemn charge of paying tribute to SPC Kasper Alan Camacho Dudkiewicz, 22, U.S. Army, of Guam. SPC Dudkiewicz was Killed in Action on January 15, 2006, in Mosul, Iraq. The United States and the U.S. Army have lost a proud and able soldier, and Guam and a loving family have lost a son, brother, and husband.

SPC Dudkiewicz was assigned to the 511th Military Police Company, 91st Military Police Battalion, 10th Mountain Division, Fort Drum, New York. He was dedicated to the mission in Iraq and he personified his unit's motto: "strike fear." SPC Dudkiewicz is one of three Dudkiewicz brothers to serve in Iraq, continuing Guam's strong commitment to service in the United States military. SPC Dudkiewicz was posthumously promoted from Private First Class to Specialist in recognition of his distinguished service.

My thoughts and prayers are with the Dudkiewicz and Camacho families during this time of loss. SPC Dudkiewicz is survived by his wife Katie, who is a soldier serving in Korea, and their sons, Alexander W. Parker and Zane Nicolas Blas Cruz. Additionally, SPC Dudkiewicz is survived by his parents, Kasper Dudkiewicz and Maria Margaret Crisostomo Camacho and his stepmother Connie Fergurgur Dudkiewicz. SPC Dudkiewicz' brothers and sisters, Kevin and Ty, Korey, Kollin, Kris, Kurt, Corina, Jereco, Elijah, and Regina and Jeremy also cherish his memory. My deepest sympathies are with them during this difficult time. I join them in mourning his loss.

SPC Dudkiewicz now joins the honored company of other fallen heroes who have put the ideals of duty, honor, and country before themselves and made the ultimate sacrifice. It is my hope that SPC Dudkiewicz' commitment to creating a bright future for his children, his devotion to his wife, and his dedication to his parents and siblings will remain strong and guiding influences from which his family, friends, and neighbors can draw strength for years to come.

The people of Guam take this time to extend to the Dudkiewicz and Camacho families their most heartfelt wishes of hope during this difficult time. We take this time to reflect upon the sacrifices made by the men and women like SPC Dudkiewicz who shoulder the responsibility of protecting our homeland, our families and the American way of life. The debt of gratitude we owe to these individuals, although un-payable, is worthy of our most sincere appreciation. God bless our men and women in uniform and God bless America.

TRIBUTE TO J. WILLIAM STOVER

HON. BILL SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. SHUSTER. Mr. Speaker, I rise today to recognize the life and accomplishments of J. William Stover, of Chambersburg, PA. Mr. Stover was a committed citizen to his community and his country. William spent the majority of his life serving the public—in the Army, as a member of the Town Council, as mayor of Chambersburg or as District Justice.

Mr. Stover is remembered as taking his responsibilities as a public servant with the utmost seriousness and always weighing heavily the consequences of his actions. Well respected and admired by those he worked for and with, William's work will have a lasting impact. He will be sorely missed.

J. William Stover, born April 27, 1925 to Andrew S. and Mary Cook Stover in Chambersburg, began his life of service in the Army Air Force during World War II as part of the Greatest Generation. Upon his return to civil life he began what would become a long and distinguished line of public service to Chambersburg residents. He started as a member of the Civil Service Commission, then moved on to become a member of the Town Council and was elected Mayor of Chambersburg in 1970. Ten years later William was appointed District Justice for the Borough of Chambersburg and Hamilton Township, a post which he held until 1994. In retirement he took on a substitute role as Senior District Justice. Truly a tremendous life dedicated to public service and the people of his community.

William Stover was also an active member and former deacon of the Zion Reformed Church of Chambersburg. Mr. Stover took great pride in his service and he will always be remembered for the great impact he left on the community of Chambersburg during his nearly half-century of service.

TRIBUTE TO GENE BENEDETTI

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Ms. WOOLSEY. Mr. Speaker, I rise today to honor a community friend, Gene Benedetti, of Petaluma, CA, who died on January 13, 2006. Gene's larger than life personality, his generosity, civic pride, and business leadership will be greatly missed.

Gene was born in a small Sonoma County farmhouse in 1919. He was the youngest child of Italian immigrants, whose family labored in the ranching traditions of rural Northern California. A gifted student and talented athlete, Gene excelled in every subject while attending Petaluma High School, Santa Rosa Junior College, and the University of San Francisco. He was a legend on the football field throughout his college career, and later helped establish and coach the Petaluma Leghorns, a powerhouse semipro football team that dominated the Bay Area leagues that existed in the 1940s and 50s.

A true patriot of "the Greatest Generation," Gene was a World War II hero who landed on Omaha Beach during the D–Day invasion and was awarded the Silver Star for his bravery. His love for his country was persistently expressed, as he proudly led the singing of "God Bless America" at any social event he attended.

After returning from the war, Gene and his wife Evelyn, who passed away in March of 2004, raised their six children in a community they would later help to build. The young war veteran was first offered a job as assistant manager of the California Cooperative Creamery in Petaluma, and then quickly rose to the ranks of manager. Later in his career, he and his business partners would purchase the Clover and Stornetta dairies and establish Clover-Stornetta Farms in 1977.

Gene's legacy, however, will be marked by his abiding commitment to the community he was such a part of. As a lifelong resident of Sonoma County, Gene devoted his time serving on numerous boards and commissions. As president of Clover-Stornetta Farms, he lent his company's resources to endorse countless organizations and sponsor many local events. His legacy will also survive in the generations of Sonoma County children who will grow up drinking Clover brand milk and savoring Clover ice cream. And of course, who can forget Gene's alter persona, cartoon character, television and billboard star, the beloved Clover Dairy mascot, Clo the Cow. Through Clo, Gene's lively spirit will live on, as he will be remembered as a real "moooover and shaker."

Gene was a loving husband, caring father and grandfather, and a patriarch of Sonoma County. Mr. Speaker, I want to take the time to recognize the life of a wonderful man. The memory of Gene Benedetti will live forever in the heart of a community he helped to build.

CONGRATULATING MS. JENNIFER A. SADOFF

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. BURGESS. Mr. Speaker, I rise today to congratulate Ms. Jennifer A. Sadoff of Dallas, TX, for receiving the prestigious Fulbright award to study abroad in Austria during the 2005–2006 academic year. Ms. Sadoff was honored with this award for her studies in musicology at the University of North Texas.

The Fulbright program is sponsored by the Department of State, Bureau of Educational and Cultural Affairs. The program was established in 1946 with the purpose of building mutual understanding between the people of the United States and the rest of the world by allowing recipients to study, lecture or conduct research in an international exchange program.

Jennifer was selected on the basis of academic achievement, as well as demonstrated leadership potential in her field.

I extend my sincere congratulations to Ms. Jennifer Sadoff on receiving this award and commend her dedication and desire to help her school, community and country.

IN HONOR AND REMEMBRANCE OF DR. MAHMOUD "MICHAEL" ORRA

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. KUCINICH. Mr. Speaker, I rise today in honor and remembrance of Dr. Mahmoud "Michael" Orra—beloved husband, father, brother and friend to many, whose innovation in medicine and focus on healthcare for the poor will forever resound throughout our community.

Dr. Orra was born in Baka Valley, Lebanon. His dedication to his family and to our most vulnerable citizens remained unwavering throughout his life. Dr. Orra's vision and innovation led him to the practice of specialized medical treatments including holistic methods. He was the CEO of four clinics that infused holistic and traditional medical care. His medical expertise was surpassed only by his compassion for others. Dr. Orra's kind demeanor and quick smile easily drew others to him, and most significantly, he was a light of hope and well being for families, children and senior citizens who struggled daily against a tide of poverty and homelessness on Cleveland's West side.

Dr. Orra regularly provided free medical services to low-income individuals and families, free of charge. He offered respect and dedicated attention to every patient, regardless of the person's station in life. Dr. Orra's generosity and vision extended throughout Cleveland's Arab community. Throughout his volunteer tenure with AACCESS-Ohio Arab American Community Center for Economic and Social Services, Dr. Orra was instrumental in helping the organization expand its services, which now include programs assisting immigrant and low-income families.

Mr. Speaker and colleagues, please join me in honor and remembrance of Dr. Mahmoud "Michael" Orra, whose energetic spirit, boundless vision and expansive heart has served to uplift the lives of countless families and individuals throughout our community. I extend my deepest condolences to Dr. Orra's wife, Amne Youssef; to his children, Muna, Leana and Michael; and to his brother, Dr. Abdul Orra. Dr. Orra's legacy of faith, family and community will forever reflect within the hearts of his family and friends, and will continue on as a source of personal hope, healing and strength, where none existed before.

TRIBUTE TO BEN KININGHAM

HON. JOHN SHIMKUS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. SHIMKUS. Mr. Speaker, I rise to pay tribute to a reporter in my home State of Illinois. While it may be unusual for a Member of Congress to praise a member of the media, I do so with pride and respect.

Ben Kiningham has covered politics and government longer than I have been involved. He is one of the few reporters who have indeed covered my entire career, covering my first unsuccessful race for Congress and subsequent successful ones.

Mr. Kiningham retired January 31, 2006, from the Illinois Radio Network after a 40 year radio news career. His first radio job was with WTAX in Springfield, Ill, in 1966. That station purchased what later became the Illinois Radio Network in 1974, and he became its State House bureau chief.

Mr. Kiningham has covered Illinois governors from Otto Kerner to Rod Blagojevich. He has reported on the good side of Illinois politics and the bad side.

Mr. Kiningham has been recognized with the lifetime achievement award from the Illinois News Broadcasters Association, as well as numerous other awards for his work.

Mr. Kiningham is respected by coworkers, former colleagues, and even those of us he has covered over the years. He may have tried to get a scoop or catch us in our own words, but he was always respectful and fair. What more can you say about a reporter?

Thank you, Ben, for your hard work in gathering the news for us Illinoisans.

A TRIBUTE TO JOSEPH BRYANT RAYNOR, JR.

HON. MIKE McINTYRE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. McINTYRE. Mr. Speaker, on Sunday, January 29, Camp Ground United Methodist Church held a special celebration to honor the life and service of Senator Joseph Bryant Raynor, Jr. I rise today to join the pastor, staff, members, and friends of Camp Ground to pay tribute to this fine public servant for his 22 years of work as a State representative and senator. Senator Raynor's tremendous spirit, dedication and work as an elected official and member of the Fayetteville, NC, community has positively impacted citizens and communities and will live on in the hearts and minds of generations to come.

Born and raised in Fayetteville, Senator Raynor demonstrated his strong work ethic from a very early age. During high school, he worked as a bagger at Efirds Department Store. Following graduation, Joe went to work as a stockroom clerk at Hunter Brothers Appliance Store and then as a ticket agent with the Queen City Coach Company. In 1946, he joined his uncle's tire business where his hard work paid off. Just 6 years after joining the family business, Joe was able to buy his uncle's interest and assume ownership of the company. More than 60 years later, Raynor Supply Company continues to thrive.

Senator Raynor began his memorable career in public service in 1965 when he successfully ran for the North Carolina State Legislature. During his public career, Senator Raynor championed many important issues, including mental health, veterans and law enforcement. Senator Raynor was largely responsible for establishing a State-run veterans' assisted living facility in Fayetteville, the Cumberland County Mental Health Center, and a program to help families of police officers killed in the line of duty.

Throughout his career, Senator Raynor held numerous membership and leadership positions. He served on the Commission for the Study of Alcoholism and the Commission for the Study of Mental Retardation and Mental Health. He was the chairman of the North Carolina House and Senate Committee on Mental Health, the Senate Committee on Law Enforcement, and the Cumberland County Board of Elections. Additionally, he was appointed a Cumberland County special deputy sheriff under four administrations.

From his service as both a State representative and senator to local businessman to active member of Camp Ground United Methodist Church to devoted husband, father and friend, Joe Raynor has truly been a foundation on which Fayetteville and Cumberland County have continued to flourish. Service to others has been the embodiment of Senator Raynor's life—service that sets a path for others to follow and that we should all emulate.

As we approach President's Day, let each of us remember the words of a great President, Thomas Jefferson, who said, "To do our fellow man the most good, we must lead where we can, follow where we cannot, and still go with him always watching for that favorable moment to help him another step forward!"

We thank Senator Raynor, on behalf of the citizens of southeastern North Carolina, for always looking for that favorable moment and always helping his fellow citizens. May God's strength, joy and peace be with him always.

CONGRATULATING BETTE SHERMAN ON DISTINGUISHED CITIZEN AWARD

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. BURGESS. Mr. Speaker, I rise today to congratulate Ms. Bette Sherman of Denton, TX, on receiving the Longhorn Boy Scouts of America Distinguished Citizen Award for this year.

Ms. Sherman served as chairwoman and chief executive officer of First Colonial Investment Services, and senior vice president of First Colonial Bankshares. After retirement, she moved back to Denton alongside her husband, and they established Sherman Enterprises.

Bette is on the board of the Denton Benefit League, Salvation Army and Cumberland Presbyterian Children's Home. She cochairs the annual luncheon for the American Cancer Society and is a member of the Ariel Club, Denton Humane Society, the Arts Guild and National Society of Magna Charta Dames. She has been chairwoman of the Denton Convention and Visitor's Bureau, Denton Main Street Association and Greater Denton Arts Council.

The Longhorn Council of the Boy Scouts of America serves more than 40,000 youths with scouting programs in central and north Texas. More than 15,000 adults volunteer to help with the programs. This prestigious award is given to members of the community whose leadership focuses on volunteerism.

I extend my sincere congratulations to Ms. Bette Sherman for receiving the Longhorn Boy Scout of America Distinguished Citizen Award. Her contributions and service to the Denton community should inspire us all.

IN HONOR AND REMEMBRANCE OF MARY LEHMANN

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. KUCINICH. Mr. Speaker, I rise today in honor and remembrance of Mary Lehmann, whose joyous life was framed by family, community and giving to others. Her passing marks a great loss for her family and friends, yet her good works, generous spirit and energy for life will never be forgotten.

Born to Italian and German immigrants, Ms. Lehmann's parents instilled within her the significance of family, faith and community. The well being of her family and service to others framed her entire life. She taught her children by example, reflecting the vital gifts of family unity, reaching out to those in need, hard work and an endless joy for learning and living. Ms. Lehmann's intellectual level was reflected in her numerous and varied life interests. After her children were grown, she enrolled in college, earning a perfect 4.0 grade point average and an associate's degree. Her compassionate heart directed her onto pathways where she gave freely of her time and talent. Ms. Lehmann volunteered at Hillcrest Hospital, worked with special needs children at Millridge Elementary School, read to visually impaired children and volunteered in the gift shop at Cleveland Play House.

Mr. Speaker and colleagues, please join me in honor and remembrance of Mary Lehmann. Her limitless spirit of giving and endless joy for life has had a profound impact upon the lives of her family, friends and the children and adults whom she so graciously served. I extend my deepest condolences to her children, David, Joan, John and Carol; to her daughters and sons-in-law, Kim, Roger, Melissa and Gil; to her grandchildren, Michael, Jennifer, Eric, Reid, Brittany, Ashley, Jonathon, Gilbert, Elena, Eva, Andrea, Lily and the memory of David; to her companion, Dr. Oscar Stadtler; and to her many extended family members and friends. The kindness, energy, joy and love that defined Mary Lehmann's life will live forever in the hearts of her family and within every soul she touched during her journey here—and she will never be forgotten.

TRIBUTE TO SENATOR EUGENE JOSEPH McCARTHY

HON. BETTY McCOLLUM

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Ms. McCOLLUM of Minnesota. Mr. Speaker, I rise today in honor of the late Senator Eugene Joseph McCarthy, a former member of this body, who passed away on December 10th. Senator McCarthy's home state of Minnesota mourns his passing as a resolute, dedicated public servant, and a national man of conscience.

Eugene McCarthy began his lifelong commitment to learning and teaching at various educational institutions in Minnesota. As a member of the Democratic-Farmer-Labor Party, he served as a member of the U.S. House of Representatives representing Minnesota's Fourth Congressional District from 1949 until 1959, when he began serving the first of two terms in the U.S. Senate. By taking a principled stand against the Vietnam War as a presidential candidate in 1968, he reached out to a disenfranchised generation, inspiring the youth of America to take part in the political process. After failing to receive the Democratic Party's nomination for president, Senator McCarthy continued to serve in the U.S. Senate until 1971 as he continued his dedication to the people of Minnesota and the American public.

His connection to the people he represented was genuine. Senator McCarthy's family and the people of Minnesota can be proud of the legacy that he leaves behind. I am honored to continue to represent many of the same people he served in Congress.

I extend my thoughts and prayers to his daughter Ellen, who continues her father's legacy of public service as a staff person in the U.S. House, as well as his daughter Margaret, his son Michael, his brother Austin, his sister Marian and his six grandchildren.

Mr. Speaker, please join me in paying tribute to the life of Senator Eugene McCarthy.

COMMENDING PRC COMPASSION'S EXTENSIVE CONTRIBUTIONS IN THE WAKE OF HURRICANES KATRINA AND RITA

HON. BOBBY JINDAL

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. JINDAL. Mr. Speaker, it is my unique privilege today to have the rare opportunity to recognize and honor a truly great organization, the Pastor's Resource Council (PRC), and the work of the PRC Compassion. Formed several years ago, the PRC comprises of a coalition of churches and pastors who united together in order to provide relief to the community whenever necessary. For the past several years, the PRC has been playing an indispensable role in serving communities affected by the ravages of natural disasters whether it was through providing shelter to the homeless, food to the hungry, or offering spiritual comfort and guidance to those who needed it among a myriad of other services. True to its name, the PRC has always been there for the people of Louisiana to lend a compassionate, helping hand in the most difficult of times.

The tragedy inflicted upon us by the wake of Hurricanes Katrina and Rita was certainly no exception. As Hurricane Katrina wreaked havoc and destruction over the peoples of the state of Louisiana, PRC once again answered the call of duty and courageous pastors, priests, and other ministers, united in the cause of humanity and service, promptly organized on September 1, 2005 as "PRC Compassion" to provide immediate response to the disasters through compassion and inspiring hope. According to its mission, PRC Compassion coordinates national, state, and local faith and community-based organizations to meet the physical, emotional, and spiritual needs of people impacted by Hurricane Katrina. PRC Compassion has worked tirelessly and selflessly to assist those disaster stricken communities in a number of different capacities. The organization's accomplishments in the face of such adversity cannot be overstated: 1,801,200 people served; 253,260 volunteer hours logged; 17,220 tons of food, water and supplies distributed; 11,480 evacuees sheltered; 10,152 volunteers deployed; 4,500 medical encounters facilitated; 676 trained counselors and chaplains mobilized; 250 faith based organizations involved; 84 faith based shelters established; and 16 stress management teams deployed. The organization continues to assist the community today.

While words cannot adequately encapsulate the gratitude and debt the people of Louisiana and the rest of the country owe to this incredible organization, we can pay tribute to the heroic men and women of PRC Compassion by formally recognizing and acknowledging the caliber and breadth of their service to the people of Louisiana. It is for that reason I am pleased to recognize and commend the heroic, timely, and selfless actions and prayers of the faith community, particularly the actions and prayers of PRC Compassion, in providing assistance and support to the citizens of Louisiana who were displaced by Hurricanes Katrina and Rita. While each and every member of PRC Compassion deserves this commendation, I must also recognize the able leadership of the PRC Compassion's Board of Directors, namely Pastor Larry Stockstill of Bethany World Prayer Center in Baton Rouge, LA; Pastor Fred Luter of Franklin Avenue Baptist Church in New Orleans, LA; Pastor Jacob Aranza of Our Savior's Church in Lafayette, LA; Pastor Steve Robinson of Church of the King in Mandeville, LA; Pastor Dennis Watson of Celebration Church in New Orleans, LA; Apostle Willie Wooten of Gideon Christian Fellowship in New Orleans, LA; Dr. Jere Melilli of Christian Life Fellowship in Baton Rouge, LA; and Pastor Dino Rizzo of Healing Place Church in Baton Rouge, LA.

Mr. Speaker, it is an honor to be able to recognize and commend PRC Compassion, who went well above and beyond the call of duty in assisting the peoples of Louisiana during their hour of need.

FEDERAL MINE SAFETY AND HEALTH ACT OF 2006

HON. NICK J. RAHALL II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. RAHALL. Mr. Speaker, on the evening of January 19, a fire erupted on a conveyor belt at the Aracoma, Alma Number 1 coal mine, in Melville, West Virginia. Black smoke began rolling through that mine. Nineteen miners escaped. Two were missing. It was the beginning of another episode in our recurring nightmare.

West Virginians were still veiled in grief. Still trying to make sense of the loss of 12 miners, taken from us just 17 days before, at the Sago coal mine, in Upshur County. Then it started again.

Media had flooded into Sago. They had covered the waiting, the watching, the praying, and the mourning. Now they were streaming back into West Virginia. And with them, the world was drawn to another coal mining town, this time in Logan County, to witness yet another mine tragedy unfolding.

I stayed with the families, gathered at the Bright Star Freewill Baptist Church. We held hands. We prayed. We believed in the power of miracles. We clung tightly to the hope that those men, dust-covered and weary, would emerge from the Alma mine to the hugs of grateful families.

But, tragically, in the end, our worst fears were realized. Instead of a joyous reunion, our coal communities had lost two more souls. Fourteen men gone in a span of less than three weeks. Two fatal mine tragedies that might have been prevented. Two emergencies that went unreported for far too long. Two anguishing events where time stood still for hours on end, with rescue teams frustrated and idling, and helpless families waiting.

In this age of high-technology, when reporters at the mouth of a mine could beam reports around the Earth in an instant, it defies logic that we could not communicate with those men just a few thousand feet underground. When electricity was running all types of comfort-giving and life-saving devices around the globe, it was unbelievable that men who toiled in danger to make that power possible were trapped in primitive conditions, untraceable, with just one precious hour of oxygen.

It was in 1969, spurred by another horrific West Virginia mine disaster, that one at Farmington, that the Congress passed the Federal Coal Mine Safety and Health Act, broad, comprehensive legislation to improve the lot of the miner. In 1977, we reinforced that act, giving the labor Secretary immense powers to protect miners.

Since then, much progress has been made. Tragedies such as these have become less frequent. Yet, as technology enabled our Nation to mine much more coal in much less time with far fewer workers, advances that could improve the conditions for workers in the mines were tragically shoved aside. Mine safety funds were cut. Federal enforcement became lax. Indeed, less than three years ago I stood on this floor of the House of Representatives and offered an amendment to halt the Administration's attempt to allow a fourfold increase in the amount of respirable dust in underground coal mines. A regulation, I would note, that would have resulted in more coal miner deaths due to the crippling disease known as black lung.

Yet the miners kept kissing their families goodbye, whispering a prayer for their own safe return, and going into the mines, into the dark, under tons of rock and dirt, to earn an honest wage.

That so many tools available to the Secretary of labor under existing law have been left to just sit on the shelf while miners continue to die underground is inhumane and inexcusable.

It must stop now.

That is the aim of legislation being introduced by the West Virginia Delegation in the House and the Senate.

This legislation provides what apparently is a necessary roadmap to the Secretary of labor of available statutory authorities which can be implemented immediately to improve health and safety in our underground coal mines. A necessary roadmap, I would point out, in light of the numerous improvements, either already on the books or in the proposal stage, this Administration abandoned in recent years. Following my remarks, I would include in the RECORD an overview and explanation of our legislation, entitled, the "Federal Mine Safety and Health Act of 2006. "

Mr. Speaker, shamefully the coalfields of our Nation are littered with examples of how tragedy will always arise when the safety of miners is neglected.

Facing his final moments, trapped in the mine as oxygen waned, miner Powell Harmon wrote:

"Dear Wife and Children: My time has come. I trust in Jesus. He will save. It is now ten minutes to 10 o'clock, Monday morning, and we are almost smothered. May God bless you and the children, and may we all meet in Heaven. Good-bye till we meet to part no more."

That was in 1902, in Tennessee.

Less than a month ago, Martin Toler, Jr., trapped in the Sago mine in West Virginia, left these words: "Tell all I'll see them on the other side. It wasn't that bad. Just went to sleep. I love you."

Indeed, today the battle cry of Mary 'Mother' Jones, that fiery advocate of coal miner justice during the early part of the last century, rings just as loudly in our ears: "Pray for the dead and fight like hell for the living."

We can take some comfort in knowing that when those 14 West Virginia miners succumbed to the fire at Melville and the toxic gases of Sago, waiting to welcome them on the other side were generations of miners who know and understand their bravery and love.

But we should, as well, feel with unease the fact that the Mine Safety and Health Administration—vested and empowered by the Congress with necessary authorities—still has not done enough to prevent these tragedies, and in fact, has retreated from many advances in health and safety standards over the recent years.

I aim to ensure that the legacy of the Sago and Alma Miners will be the certainty that those laws are not left to idle on the shelf, but are, instead, enforced to the fullest extent. We owe them, their brothers and sisters still in the mines, and those yet to don a miner's cap, nothing less.

WEST VIRGINIA CONGRESSIONAL DELEGATION

FEDERAL MINE SAFETY AND HEALTH ACT OF 2006

The landmark Federal Coal Mine Health and Safety Act of 1969, as amended by the Federal Mine Safety and Health Act of 1977, contains sufficient authority for the Secretary of Labor to update, and enhance, underground coal mine health and safety regulations. Instead, as the unfortunate incidents of last month at the Sago and Melville mines in West Virginia underscored, current Mine Safety and Health Administration regulations and policies are woefully inadequate on several fronts, such as their neglect of advances in technologies that could be deployed to increase the survival of coal miners involved in emergency situations. The "Federal Mine Safety and Health Act of 2006" mandates action to end the status quo. The legislation would—

Sense of Congress

The legislation provides that the Mine Health and Safety Administration should strictly enforce health and safety standards as required under the Federal Mine Safety and Health Act of 1977.

Enhanced Rescue Requirements

Require the Secretary of Labor, within 90 days of enactment, to implement the following:

(1) Better notification—Require underground coal mine operators to expeditiously

provide notification of any accident where rescue work is necessary, and require that the Mine Health and Safety Administration implement a system to immediately receive these notifications.

(2) Rapid emergency response—Each operator would be required to maintain mine rescue teams whose members are employed by the operator and who are familiar with the workings of the coal mine to ensure "an immediate and rapid response to an emergency." This requirement would be in addition to existing practice, in which rescue teams from other mining operations are also used to respond to a given emergency. Operators would also be required to have a coordination and communications plan between mine rescue teams and local emergency response personnel, who, under the legislation, would be eligible to receive appropriate training to be familiar with mine rescue work. In addition, the Secretary is directed to issue regulations to address the adequacy of rescue team training and member qualifications, the type of equipment used by the teams, the structure of teams including the number of each team's members and the use of contractor teams, as well as liability and insurance issues.

(3) Emergency air and communications—Each operator would be required to maintain emergency supplies of air and self-contained breathing equipment at strategic locations within the mine for persons awaiting rescue. These devices would be in addition to the rescuers worn by miners and would provide air to maintain life for a "sustained" period of time. Operators would also be required to maintain, at these locations, independent communications systems to the surface for persons awaiting rescue, including, secondary two-way telephone or equivalent communication devices to the surface.

(4) Emergency tracking—Each operator would be required to implement an electronic tracking device for rescue and recovery, and each person in an underground coal mine would be provided with a portable device calibrated to communicate with the surface and with mine rescue teams.

Penalties

Within 90 days of enactment, the legislation requires the Labor Secretary to prescribe minimum civil penalty of up to $10,000 for a violation of the health and safety standards in instances where an operator displays "negligence or reckless disregard" of the standards. This penalty would be assessed in addition to the Act's existing penalty for failure to correct a violation. The Secretary is also directed to provide for a penalty of up to $100,000 in instances where an operator fails to expeditiously provide notification of any accident where rescue work is necessary.

Prohibited Practices

The bill reaffirms the existing statute's prohibition on using entries which contain conveyor belts to ventilate work areas in underground coal mines. When mines are arranged this way, and a fire breaks out on a belt, the belt tunnel can carry flames and deadly gases directly to the miners' work area, or to vital evacuation routes. This long-standing prohibition was skirted by an April 2004 Mine Safety and Health Administration rulemaking.

Technological Advances

Under the bill, an Office of Science and Technology Transfer would be established within the Mine Health and Safety Administration to conduct research and development to advance new technologies for underground coal miner health and safety. A periodic review of existing health and safety standards would be required to enable more modern technologies to be incorporated as they become available.

Miner Ombudsman

Proposed to be established within the Labor Department's Office of Inspector General, the legislation would create the position of Miner Ombudsman to ensure that coal miners may confidentially report mine safety and health violations. The ombudsman would also be charged with the collection of safety information, providing information on violations to the Mine Safety and Health Administration for investigation and the overall improvement of coal miner safety.

TRIBUTE TO VOLUNTEER DENTISTS AND PHYSICIANS OF UTAH

HON. CHRIS CANNON

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. CANNON. Mr. Speaker, I rise today to recognize the dedicated dentists and physicians who volunteer in my home state of Utah to provide much needed care to low-income, uninsured residents in my district.

An estimated one-third of Utah County residents lack dental insurance. Hundreds of thousands of school hours and even more work hours are lost every year due to oral pain when families cannot afford to visit a dentist. In Utah, needy patients are linked with dental providers who are willing to see patients on a charity basis.

For example, a constituent of mine was a patient suffering from severe oral pain due to three abscesses. She had been working full-time; however, she did not have dental insurance through her employment. Even with her full-time wages, she made less than $1,500 a month—which put her family of four more than 150 percent below the poverty level. Fortunately, through a system of volunteer dentists, this constituent was able to schedule an emergency appointment with one of the dentists in a local volunteer provider network. The dentist was able to see her in his office the next day.

This is just one of many success stories among patients who are treated by volunteer dentists and physicians, none of which would be possible without the dedicated professionals who volunteer to give back to their community. I commend the dentists in Utah who willingly donate their time, their resources, and their skill as dentists to help the less-fortunate members of their own community. Their service and commitment in helping the underserved is a testament to the strength of the local community, and I applaud their efforts.

H.R. 4314, THE "TERRORISM RISK INSURANCE REVISION ACT OF 2005"

HON. JEB HENSARLING

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. HENSARLING. Mr. Speaker, extraordinary times call for extraordinary measures. Our Nation has had to respond to the attacks of September 11th in many different ways, including providing Federal support for our terrorism insurance market.

While I can understand support for an extension of TRIA, I have many concerns about the piece of legislation we will be voting on shortly. Let me highlight a few of them.

First, this bill greatly expands the TRIA program, going so far as to provide Federal assistance for individual lines of insurance, rather than just covering a company's losses in the event of a terrorist attack.

This bill even goes so far as to include a group life insurance component, a sector of the insurance marketplace that has shown no sign of failure.

Allowing this type of line-by-line coverage pushes the government into competitive, private insurance markets where it does not belong. A system of this nature will inevitably expose taxpayers to more risk sooner in the process, while at the same time allowing insurance companies to obtain government assistance before it may be necessary.

Further, this bill continues to maintain a very low trigger for when the government would step in. While $50 million is higher than the current trigger level—set shortly after September 11th—the Department of Treasury had requested a number closer to $500 million. For a program that was designed to be triggered for catastrophic events only, this higher threshold is perfectly applicable.

While the bill before us is only a two-year extension, it allows for a third year without Congressional approval. I am hard pressed to believe that this will be the final extension proposed.

The Federal Government consists of thousands and thousands of Federal programs created by Congress. Many of these, I am convinced, were started with the intention that they would be temporary. To quote President Reagan, "No government ever voluntarily reduces itself in size. Government programs, once launched, never disappear. Actually, a government bureau is the nearest thing to eternal life we'll ever see on this earth."

At some point, after some reasonable transition, either the market demands terrorism reinsurance or it does not. Our opinion should not be the relevant one. The relevant opinion is that of the market.

If the market is not interested in terrorism reinsurance, Congress should not force the matter. If the market does demand this product, we should not assume that the Federal Government needs to be a permanent fixture.

Modifying or eliminating regulations, reducing corporate income tax rates, and preventing the abuse of our legal system are all important factors that, if addressed, would free up massive amounts of capital for insurers and re-insurers.

This additional capital would help to increase the supply of terrorism insurance, leading to a reduction in premium rates, and minimizing the need for a Federal backstop program or Federal involvement at all.

Unfortunately, until we rid the world of the terrorists who seek to destroy us, terrorism insurance will continue to be a fact of life for businesses in this country. Until then, I have faith in our markets and their ability to respond accordingly to the challenges posed by domestic and international events.

Regrettably, I cannot support this legislation but I plan to reluctantly support it.

REMEMBERING SHIRLEY LYNNE

HON. CHRIS VAN HOLLEN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. VAN HOLLEN. Mr. Speaker, I rise to honor the life of Shirley Lynne and reflect on her many wonderful contributions to our community. This is a time of great sadness, made even sadder by the suddenness of Shirley's passing. There was no time to say our goodbyes. It is a time of great loss for our community because Shirley was always in the middle of so much that went on—especially in her Wheaton community. She would always know exactly what was happening in Wheaton, whether it was the Wheaton Metro development, something happening at Wheaton Mall—Westfields that is—or any other happenings in the community. If you wanted to find out what was going on in Wheaton, Shirley was always in the know. These days many people live side-by-side without ever really getting to know their neighbors. Not Shirley. She knew so much that some of us suspected she had tapped into everybody's telephones.

In fact, Shirley got to know her neighbors the old fashioned way—by knocking on their doors and introducing herself. She got to know many of them in her capacity as the Democratic precinct captain. Shirley always had the courage of her convictions. While she was small in height, she had a huge heart and a feisty nature. She never shied away from a tough issue. She always stood up for the underdog and believed deeply in the values and principles of the Democratic Party. Her neighbors mostly followed her lead and she always delivered her precinct for Democratic candidates.

I will always be grateful to Shirley for her support in my Congressional election. She took me door-to-door throughout her precinct and introduced me to her friends and neighbors. She also charmed and cajoled many of them into putting up "Van Hollen" lawn signs. They might have said "no" to me, but no one dared say "no" to Shirley Lynne. Needless to say, we won her precinct. Thank you, Shirley.

Shirley was also deeply committed to helping individuals with mental illnesses. She spent countless hours helping out at the Thrift Shop on Rockville Pike to benefit the Alliance for the Mentally Ill. She never asked for anything in return for all that she did to help that important cause or for the other good works she did for our community.

The health of this great democracy of ours depends on people of good will joining together to build a better future for our community. That was what Shirley Lynne was all about. She did not sit out life on the sidelines. She made a difference through the many lives she touched and the legacy of a stronger and more caring community that she helped to nourish. We need many more Shirley Lynnes.

To Shirley's family, let me say that you are in our hearts and prayers. I especially want to say to Diane, what a wonderful daughter you have been to Shirley. You were best friends and inseparable. I know that you were—and you remain—her greatest joy. Please know that we all share your grief at this painful time, but that we also share your great pride in your mother's many accomplishments.

CHILDREN SHALL LEAD THEM

HON. BERNARD SANDERS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. SANDERS. Mr. Speaker, I want to commend a group of young people in Vermont who have done a wonderful thing, worth bringing to the attention of my colleagues in the Congress and the American people.

A group of students in the Sunday School of the United Church in Lincoln, Vermont, have raised over $5,000 dollars for Heifer International. Lincoln is a beautiful community in the Green Mountains of Vermont, but it is not a large community, so a fundraising effort of this magnitude, for the benefit of a rural village in an underdeveloped country is testimony to how much the youth of America care about the world.

This project began with conversations about world hunger. Students, as young as 3 and as old as 14, decided that raising money for Heifer International would be a good way to address, positively, the issue of world hunger.

Many people are trapped by poverty, underdevelopment, and the impossibility of finding the resources they need for self-improvement. Heifer International believes in self-help: if human beings are given the tools they need, they can improve their lives. So Heifer International provides livestock, education in agriculture, and small business counseling, so individuals and entire communities get a hand up instead of a handout.

Over the course of 18 months the kids of the United Church Sunday School made countless cow-shaped cookies and holiday ornaments and sold them for a dollar each. It took a lot of cookies and ornaments to reach the goal of $5,000. They were helped by the school superintendent, Chris Bohjalian and a group of dedicated Sunday school teachers. But the real effort, the real credit, goes to the young people, for on this past Christmas Eve, their goal of $5,000 was reached.

An "ark" of farm animals will be delivered to a village, most likely in Armenia, the gift of visionary and committed children from Lincoln, Vermont. According to Pastor David Wood, the ark will have everything "from fish to llamas to cows. And chickens and pigs, and also trees to provide ongoing food and medicinals."

Yes, we do live in a global village, and our children are showing us how it can be rich in generosity and neighborliness.

MOURNING THE VICTIMS OF THE KATOWICE DISASTER

HON. RAHM EMANUEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. EMANUEL. Mr. Speaker, I rise today to extend my deepest condolences to the people of Poland in their time of national mourning following the building collapse disaster in Katowice on Saturday, January 28, 2006.

I sympathize with those families who have lost loved ones as a result of this catastrophe and join the world in prayer for a swift recovery for those who were injured.

I would also like to offer my appreciation to the brave men and women who selflessly rushed in to the building to conduct the search and rescue operations in freezing temperatures and saved so many lives.

Mr. Speaker, I join with the residents of the 5th district indeed all of Chicago in offering our thoughts and prayers to the Polish people.

RECOGNIZING MR. MARVIN BRAUDE

HON. HILDA L. SOLIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Ms. SOLIS. Mr. Speaker, I rise today to recognize and celebrate the life of Mr. Marvin Braude. Marvin Braude was a long-time Los Angeles City Council Member, an outdoor enthusiast, and a pioneering environmentalist.

Braude served on the L.A. City Council from 1965 until 1997. His achievements on behalf of the people of Los Angeles significantly improved their day-to-day quality of life. Braude's work included building a coalition to stop an oil-drilling project off the coast of Pacific Palisades and fighting for the ban on smoking in restaurants, elevators, city offices, and markets. Perhaps Braude's most notable accomplishment was the creation of the Santa Monica Mountains National Recreation Area. Braude's vision for the area, stretching from North Santa Monica to Venice Beach, provides residents and visitors alike the opportunity to enjoy the outdoors by foot, bike, and even rollerblade.

Marvin's late wife, Majorie, was a psychiatrist, a leader among women doctors, and a leader in the fight against domestic violence. Braude is survived by his two daughters, Ann and Liza Braude, and two grandchildren, Emma Braude Adler and Benjamin Braude Adler.

HONORING JENNY SILVER

HON. ROBERT E. ANDREWS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. ANDREWS. Mr. Speaker, I rise today to honor Ms. Jenny Silver for her efforts to brighten the holidays of those children in New Orleans who have been affected by the recent devastation of Hurricane Katrina. Ms. Silver's actions have served not only as a means of bringing holiday cheer to the children of the Crescent City, but also as an impetus for those of us not directly affected by Katrina to keep its victims in our thoughts.

Ms. Silver recently organized a community bowling event in my district, held on December 18, 2005. The event itself was free, provided that each participant raised at least $8 in donations. One hundred percent of the proceeds from that event were used to buy teddy bears, which have since been sent to Children's Hospital in New Orleans. There, the hospital, in conjunction with a local nonprofit organization, distributed the bears as holiday gifts to disadvantaged children both at the hospital and elsewhere in the city.

Ms. Silver's generosity in devoting her time and energy to this cause exemplifies the selflessness and civic-mindedness that makes our country great. I commend Jenny Silver, and all those who took part in this event, for their embodiment of what it means to be good neighbors and good Americans.

IN HONOR OF THE NEOSHO DAILY NEWS

HON. ROY BLUNT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. BLUNT. Mr. Speaker, I rise today to honor the Neosho Daily News, which recently celebrated the One Hundredth Anniversary of the establishment of the newspaper.

The Neosho Daily News began publishing its first edition as the Daily Democrat on January 23, 1905. In 1952, Howard Bush purchased the newspaper from the Anderson family and began publishing the newspaper under its current name. Publishers have included Howard Bush, Kenneth Cope, Randy Cope, and Rick Rogers. The Neosho Daily News provides information to parts of Missouri, Arkansas, Oklahoma and Kansas. In two of the past three years, the Neosho Daily News has been awarded the Missouri Press Association General Excellence Award. The newspaper has consistently been an outstanding community leader, sponsoring such events as the Neosho Business and Industry Show, the Neosho Christmas Parade, and Share Your Christmas. The newspaper is currently part of the Liberty Publishing Group.

Throughout its one-hundred years of existence, the Neosho Daily News has made a positive impact to the four-state area that it serves.

TRIBUTE TO ACADEMY NOMINEES FOR 2005 FROM THE 11TH CONGRESSIONAL DISTRICT OF NEW JERSEY

HON. RODNEY P. FRELINGHUYSEN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. FRELINGHUYSEN. Mr. Speaker, every year, more high school seniors from the 11th Congressional District trade in varsity jackets for Navy pea coats, Air Force flight suits, and Army brass buckles than most other districts in the country. But this is nothing new—our area has repeatedly sent an above average portion of its sons and daughters to the nation's military academies for decades.

This fact should not come as a surprise. The educational excellence of area schools is well known and has long been a magnet for families looking for the best environment in which to raise their children. Our graduates are skilled not only in mathematics, science, and social studies, but also have solid backgrounds in sports, debate teams, and other extracurricular activities. This diverse upbringing makes military academy recruiters sit up and take note—indeed, many recruiters know our towns and schools by name.

Since the 1830's, Members of Congress have enjoyed meeting, talking with, and nominating these superb young people to our military academies. But how did this process evolve? In 1843, when West Point was the sole academy, Congress ratified the nominating process and became directly involved in the makeup of our military's leadership. This was not an act of an imperial Congress bent on controlling every aspect of Government. Rather, the procedure still used today was, and is, a further check and balance in our democracy. It was originally designed to weaken and divide political coloration in the officer corps, provide geographical balance to our armed services, and to make the officer corps more resilient to unfettered nepotism and handicapped European armies.

In 1854, Representative Gerritt Smith of New York added a new component to the academy nomination process—the academy review board. This was the first time a Member of Congress appointed prominent citizens from his district to screen applicants and assist with the serious duty of nominating candidates for academy admission. Today, I am honored to continue this wise tradition in my service to the 11th Congressional District.

The Academy Review Board is composed of six local citizens, many of whom are veterans, who have shown exemplary service to New Jersey, to their communities, and to the continued excellence of education in our area. Though from diverse backgrounds and professions, they all share a common dedication that the best qualified and motivated graduates attend our academies. And, as true for most volunteer panels, their service goes largely unnoticed.

I would like to take a moment to recognize these men and women and thank them publicly for participating in this important panel. Being on the board requires hard work and an objective mind. Members have the responsibility of interviewing upwards of 50 outstanding high school seniors every year in the academy review process.

The nomination process follows a general timetable. High school seniors mail personal information directly to the Military Academy, the Naval Academy, the Air Force Academy, and the Merchant Marine Academy once they become interested in attending. Information includes academic achievement, college entry test scores, and other activities. At this time, they also inform my office of their desire to be nominated.

The academies then assess the applicants, rank them based on the data supplied, and return the files to my office with their notations. In late November, our Academy Review Board interviews all of the applicants over the course of 2 days. They assess a student's qualifications and analyze character, desire to serve, and other talents that may be hidden on paper.

This year the board interviewed over 40 applicants. Nominations included 10 to the Naval Academy, 14 to the Military Academy, 4 to the Merchant Marine Academy and 7 to the Air Force Academy—the Coast Guard Academy does not use the Congressional nomination process. The recommendations are then forwarded to the academies by January 31st, where recruiters reviewed files and notified applicants and my office of their final decision on admission.

As these highly motivated and talented young men and women go through the academy nominating process, never let us forget the sacrifice they are preparing to make: to defend our country and protect our citizens. This holds especially true at a time when our nation is fighting the war against terrorism. Whether it is in Afghanistan, Iraq, or other hot spots around the world, no doubt we are constantly reminded that wars are fought by the young. And, while our military missions are both important and dangerous, it is reassuring to know that we continue to put America's best and brightest in command.

ACADEMY NOMINEES FOR 2005

11TH CONGRESSIONAL DISTRICT NEW JERSEY:

Air Force Academy—David J. Dobrosky, Mountain Lakes, Mountain Lakes H.S.; Oliver J. Kotelnicki, Bridgewater, Bridgewater-Raritan H.S.; Benjamin K. Joelson, Far Hills, Morristown-Beard School; Brian J. Monga, Rockaway, Morris Knolls H.S.; Scott N. Pierson, Parsippany, Parsippany Hills H.S.; Alexander C. Roosma, Bloomingdale, Butler H.S.; Sean C. Schiess, Flanders, Mount Olive H.S.

Merchant Marine—Kurt T. Bethman, Sparta, Sparta H.S.; Derek W. Day, Madison, Newark Academy; Jonathon M. Dobbins, Randolph, Randolph H.S.; Matthew F. Poloniak, Sparta, Sparta H.S.

Military Academy—Andrew D. Carbone, Basking Ridge, Ridge H.S.; Thomas L. Comer, Gillette, Seton Hall Preparatory School; Stephanie Forgione, Morristown, Morristown H.S.; Jason Johanson, Parsippany, Morris Hills H.S.; Patrick H. Loeuis, Chatham, Chatham, H.S.; Megan O. Maiello, Succasunna, Roxbury H.S.; Evan R. Malanga, Basking Ridge, Ridge H.S.; Dario Marcelli, III, East Hanover, Hanover Park H.S.; Megan Milhisler, Succasunna, Roxbury H.S.; Scott D. Nordland, Mendham, St. Georges School; Kent S. Patterson, Madison, Madison H.S.; Andrew C. Peterson, Short

Hills, Morristown-Beard School; Omar S. Shaikh, Short Hills, Millburn H.S.; Quentin Sica, Stanhope, Lenape Valley H.S.

Naval Academy—Lindsey C. Asdal, Chester, West Morris Mendham H.S.; Michael J. Campbell, Mendham, Delbarton School; Ralph N. Grossman, Green Pond, Morris Knolls H.S.; Michael C. Howley, West Caldwell, Seton Hall Preparatory School; William D. McAloon, Madison Delbarton School; Brian J. McNally, Morristown, Morristown H.S.; Christopher K. Schneider, Mendham, Seton Hall Preparatory School; Heather R. Smith, East Hanover, Hanover Park H.S.; Timothy F. Whitney, Pine Brook, Montville H.S.; Mark J. Van Orden, Jr., Morris Plains, Delbarton School.

RACHEL DUNN

HON. TED POE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. POE. Mr. Speaker, today I want to congratulate Rachel Dunn on her recent offer of appointment to the United States Military Academy at West Point. Rachel sought a nomination to West Point through my office, competing with a group of highly qualified applicants. Rachel was selected for a nomination and West Point has offered her an appointment to their celebrated institution. I am proud to have given her a Congressional nomination.

Rachel is currently a senior at Humble High School in Humble, Texas. She possesses many qualities that will make her an excellent cadet at West Point, and an excellent officer in the United States Army. She has shown an unwavering sense of dedication to long-term goals, as she has played on the Humble Lady Wildcats volleyball team for her full four year career at Humble High. Rachel's hard work paid off during her senior year when her teammates voted her captain of the team. She has earned various awards: Volleyball JV Squad MVP in 2003, Offensive Player of the Year in 2004 and 1st Team All-District in 2004.

Not only has Rachel excelled in the sports arena, she also has excelled in the classroom. She has a 4.9 GPA on a 5.0 scale and was ranked 27th in a class of 887. She acted courageously to save someone's life, showing tremendous fortitude under intense pressure.

In addition Rachel interviewed with poise and intelligence with my Service Academy Nomination Board. The Board recommended her to me without hesitation.

Mr. Speaker, I believe Rachel is a fine Texan who will serve her country with distinction and I wish her good fortune in this new chapter of her life.

IN MEMORY OF WAYNE SHUMATE

HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. ROGERS of Kentucky. Mr. Speaker, I rise today to pay tribute to Wayne Shumate, an all around outstanding Kentuckian. Wayne passed away on November 14, 2005, the day after his 71st birthday.

Known for his intelligence, strong work ethic, and the ability to bring out the absolute best in people, Wayne Shumate made it easy to remember him. He led a distinguished career in the textile industry, serving as director of Jockey International and then as chairman of both Blue Grass Industries and Kentucky Textiles.

Always one to enjoy a challenge, Wayne began raising blackberries at his Nicholas County farm in an effort to find a replacement crop for Kentucky's dwindling tobacco industry. Thanks to Wayne's hard work and business savvy, the blackberry venture took off and became incredibly successful. Today—twenty-years after Wayne planted his first Hull Thornless blackberries—WindStone Farm is nationally recognized and famous for its Blackberry Jam.

Never one to rest of his laurels, Wayne was affiliated with many different civic and nonprofit boards, which also speaks volumes about his personal character and reputation. Three different Governors appointed him to the Kentucky Harness Racing Commission and he served as President of the Association of Racing Commissioners International (RCI). Wayne also spent two terms on the Cincinnati/Cleveland 4th District Federal Reserve Board, chaired Governor Julian Carroll's Economic Development Commission, and was widely known and recognized in the cities of Carlisle and Paris, Kentucky for his thoughtful leadership.

Wayne was a loving father and loyal companion, and I want to take this opportunity to extend my heartfelt condolences to his mother, Carrie Spivey Shumate, his wife, Kay George Shumate, his two children, Clifford Wayne Shumate Jr. and Sara Paige Shumate Short, his sister, Rose Carol Shumate, and the rest of his family and friends.

Mr. Speaker, I ask my colleagues to join me in honoring the memory of Wayne Shumate. While he will be sorely missed, I am confident his legacy—not to mention his famous smile—will continue to live on in the hearts and minds of his loving family and many friends.

PERSONAL EXPLANATION

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. HYDE. Mr. Speaker, on January 31, 2006, I was absent for the following vote for personal reasons. Had I been present, I would have voted "present" on rollcall No. 1.

IN MEMORY OF THE "COLUMBIA" AND "CHALLENGER" HEROES

HON. TOM DeLAY

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. DELAY. Mr. Speaker, I rise today to remember 14 heroes of our Nation's space program.

Three years ago today, on a clear blue morning, the space shuttle *Columbia* exploded in the skies above Texas, killing all seven members of her crew.

The tragedy reminded us of a similar cloudless morning almost 17 years to the day earlier, when the space shuttle *Challenger* was lost moments after liftoff.

The 14 men and women who died on these missions were extraordinary individuals, but they were typical of the men and women NASA employs.

Courageous.

Dauntless.

Driven by a spirit of exploration and a desire to understand the unknown.

The *Columbia* and *Challenger* crew members knew the risks of spaceflight, but they chose to serve anyway—not in spite of the risks, but in part because of them.

They gave their lives in the hard and noble work of discovery, in service to their country and for all mankind.

Though these 14 heroes have slipped the "surly bonds of earth," their legacy remains, grounded in the hearts and memories of those who strive every day to finish their life's work.

COMMENTS ON SECTION 1403 OF ENERGY POLICY ACT OF 2005

HON. JOE BARTON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. BARTON of Texas. Mr. Speaker, I rise today to address the Energy Policy Act of 2005 that was signed by the President in August. This Act is the most comprehensive energy legislation in 30 years, and I believe it will lower energy prices for consumers, spur our economy, create hundreds of thousands of jobs, and take unprecedented steps to promote greater energy conservation and efficiency. I want to highlight one provision that I included in the House passed version of this legislation and which was retained in the final conference report. This provision promotes energy efficiency of electric transformers and improved public safety, but also promotes strong environmental stewardship. This provision, [section 1403,] governs the use of non petroleum oil in electric transformers as electrical insulation.

The intent of section 1403 was to provide clarity for the new Oil Spill Prevention, Containment, and Countermeasures (SPCC) regulations. As some of my colleagues know, electric transformers, whether the small buckets on telephone poles or those pad mounted on the ground, include some quantities of oil used as an electrical insulation and thermal dissipation medium.

Under SPCC, small and rural utilities and institutions that have their own electric transformers—including hospitals, schools, and military bases—will be required to build secondary containment diking around their electric transformers in case there is a spill of the oil used in transformers as thermal insulation. It should be noted that by the government's own estimates, facilities with less than 10,000 gallons of storage capacity account for less than 2 percent of the total volume of oil spilled in the United States. Furthermore, the amount of volume contained in electric transformers is well below this figure.

All those facts aside, section 1403 was included in the Energy Policy Act of 2005 as a means to provide an alternative to the increased costs of Federal regulations on rural communities and institutions that have electric transformers, providing regulatory relief for bio-based oils that have proven environmental benefits. Specifically, local communities and institutions that have electric transformers can avoid the costs of constructing secondary diking containment around their transformers if they use bio-based, non petroleum oils as insulation. In addition, many older electric transformers still contain Polychlorinated Biphenyls (PCBs) in their electrical insulation. By promoting these alternatives to petroleum-based oil used as thermal insulation in electric transformers, we provide a smart and environmentally friendly option to encourage the replacement of PCBs. It should be noted that this provision was retained in the final legislation without opposition or controversy.

Additionally, in 1995, Congress passed the Edible Oil Regulatory Reform Act. This statue set forth specific guidelines for implementing regulations on oil spills. The Edible Oil Regulatory Reform Act states ". . . in issuing or enforcing any regulation or establishing any interpretation or guideline relating to the transportation, storage, discharge, release, emission, or disposal of a fat, oil, or grease under any Federal law, the head of that Federal agency shall differentiate between and establish separate classes . . . and consider differences in the physical, chemical, biological, and other properties, and in the environment." Nearly a decade later, EPA continues to maintain the position that "oil is oil." EPA has either been unwilling or unable to differentiate between the different classes of oils. I raise this issue because I want to make clear how the author of section 1403 intends it to be interpreted.

Section 1403, Regulation of Certain Oil Used in Transformers, reads as follows: "Notwithstanding any other provision of law, or rule promulgated by the Environmental Protection Agency, vegetable oil made from soybeans and used in electric transformers as thermal insulation shall not be regulated as an oil identified under section 2(a)(1)(B) of the Edible Oil Regulatory Reform Act (33 U.S.C. 2720(a)(1)(B))."

EPA's broad generalization that "oil is oil" disregards renewable oils that, I believe, have an improved effect on the environment in case of a spill. EPA's broad policy impedes the replacement of fluids known to be harmful to the environment with fluids that have proven, tested benefits for the environment.

CHARLES WARREN CILISKE

HON. TED POE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. POE. Mr. Speaker, today I want to congratulate Charles Warren Ciliske on his recent offer of appointment to the U.S. Military Academy at West Point. Charles sought a nomination to West Point through my office, competing with a group of highly qualified applicants. He was selected for a nomination and West Point has offered him an appointment to their celebrated institution. I am proud to give him a Congressional nomination.

Charles is currently a senior at Kingwood High School in Kingwood, Texas and he possesses many qualities that will make him an excellent cadet at West Point, and an excellent officer in the United States Army. He has shown the ability to dedicate himself to a goal over the long-term, and to succeed with this dedication. Charles is a 4-year varsity swimmer on the Kingwood High School Swim Team and was Captain of the team this season. He is a 5-time High School All-American, 2003 Rookie of the Year and 2005 District Swimmer of the Year. Also in 2005, he was on the Team 5A Texas State Champs and was a National Runner-Up.

Charles has proven himself academically as well, earning the AP Scholar Award. He is a member of the USA Swimming Academic All-American Team and a member of the National Honor Society.

The clincher for Charles was the interview by my Service Academy Nomination Board. Nothing can replace a personal encounter to establish credibility and repute. His interviewers said that he was an exceptional candidate, with excellent character and strong moral values. They were impressed by Charles's professed dream to attend the U.S. Military Academy, and knew he understood the gravity of the commitment to the Academy and of becoming an officer in the U.S. Army. They recommended him to me without reservation.

Mr. Speaker, I believe that Charles is a fine Texan who will serve his country with distinction and I wish him good fortune in this new chapter of his life.

COMMENDING THE SAN ANTONIO STOCK SHOW AND RODEO

HON. HENRY BONILLA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. BONILLA. Mr. Speaker, today I wish to recognize and offer my congratulations to the San Antonio Stock Show and Rodeo for receiving honors as the "Large Indoor Rodeo of the Year for 2005" and "Top Rough Stock Remuda of the Year Award." Everyone who worked together to support our world-class rodeo in San Antonio deserves our commendation.

Each year, the Professional Rodeo Cowboys Association honors the best of the best in contract personnel, stock contractors and rodeo committees during the annual "Contract Personnel Awards Banquet" on the eve of the National Finals Rodeo. The San Antonio Stock Show and Rodeo took home the prestigious honor of "Large Indoor Rodeo of the Year for 2005." The award is especially meaningful because winners are voted on by over 10,000 of their peers in the rodeo industry. It is the equivalent of the national championship for rodeo.

San Antonio made history in 2005 by bringing some new athletes into the rodeo: the roughest, toughest and best livestock from sixteen different stock contractors all over North America. This prompted the Professional Rodeo Cowboys Association to create a category especially for the San Antonio Stock Show & Rodeo: the "Top Rough Stock Remuda of the Year Award."

The Executive Director Keith Martin and the over 4,000 dedicated San Antonio Stock Show and Rodeo volunteers deserve special recognition. It is their hard work and dedication that makes the San Antonio Stock Show and Rodeo one of the best in the Nation.

FREEDOM FOR JORGE LUIS GARCIA PEREZ

HON. LINCOLN DIAZ-BALART

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I rise today to remind my colleagues about Jorge Luis Garcia Perez, better known as Antunez, a long suffering and heroic political prisoner in totalitarian Cuba.

Antunez, Mr. Speaker, is the face of the real Cuba.

Antunez has been locked in the totalitarian gulag since 1990. In a sham trial, he was sentenced to 6 years in prison for "oral enemy propaganda." In May 1993, he was tried in a second sham trial, and sentenced to an additional 15 years to be served from that moment. In total, Antunez has been sentenced to 18 years in Castro's grotesque, inhuman gulag.

Despite being locked up in the tyrant's gulag, Antunez has bravely carried out heroic activism in Cuban jails, writing reports on prison conditions and carrying out numerous protests and hunger strikes to demand more humane treatment for prisoners. He has never wavered in his commitment to human rights and democracy for the Cuban people. Antunez has never given in to the beatings, the punishment cells and the instruments of torture inflicted on him by the Castro regime. Antunez always rises up and calls out, demanding human rights and freedom for Cuba.

After over 15 years in the gulag, Antunez is still feared and relentlessly attacked by the dictatorship. According to the Department of State's Country Reports on Human Rights Practices for 2004, "on July 6, family members of political prisoner Jorge Luis Garcia Perez, reported being beaten along with Garcia during a prison visit. Authorities handcuffed and beat Garcia and later punched his sister and kicked his girlfriend's 9 year old son after the visitors protested the harsh treatment."

No matter how intense the repression, no matter how horrifically brutal the consequences to him and his family, Antunez will not waiver in his conviction that Cuba should be and will be free. He is a symbol of dignity and heroic resistance to tyranny.

Mr. Speaker, this courageous man has been in Castro's gulag since 1990, for failing to keep silent about the nightmare that is the Castro regime. My Colleagues, it is a profound embarrassment for mankind that the world stands by in silence and acquiescence while political prisoners are systematically tortured because of their belief in freedom, democracy, human rights and the rule of law. We should never forget those who are locked in gulags because of their desire to be free. We must demand the immediate and unconditional release of Jorge Luis Garcia Perez and every prisoner of conscience in totalitarian Cuba.

INADEQUACY OF REIMBURSEMENT FOR IMMUNE GLOBULINS

HON. JOSEPH R. PITTS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. PITTS. Mr. Speaker, I rise today to bring to the House's attention a very important issue relating to the reimbursement of plasma protein therapeutics. Specifically, I continue to be concerned regarding the inadequacy of reimbursement for immune globulins.

A fragile Medicare beneficiary population is dependent on immune globulins for life saving therapies. As a result, Congress and the Centers for Medicare and Medicaid Services (CMS) share a responsibility to assure access to these therapies. CMS recently recognized the importance of this issue by providing for a pre-administration fee in both sites of service for immune globulins, physician offices and hospital outpatient settings. This provision was outlined in CMS's Hospital Outpatient Prospective Payment System final rule and in the Physician Fee Schedule final rule.

Third party studies are currently underway to identify the true costs associated with the acquisition, handling, and administration of immune globulins. Congress anticipates that CMS will issue a Program Memorandum reflecting the study findings upon receipt of the data.

To guarantee access, I urge CMS to provide for product specific reimbursement for each separate immune globulin and to recognize that the infusion of immune globulins should be classified as a biologic response modifier for reimbursement purposes.

I intend to follow this matter carefully and look forward to working with the Administration and my colleagues on the Energy and Commerce Committee to address these concerns.

TRIBUTE TO JEAN SIRI

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. GEORGE MILLER of California. Mr. Speaker, it was with great sadness that I learned of the passing of Jean Siri last week. I knew Jean well, enjoyed our conversations, and highly valued her opinions on local and national concerns.

Jean Siri was born Jean Brandenberg on March 11, 1920, in Lakot, North Dakota. She grew up in a farming family her father was a prominent veterinarian. She earned a bachelor's degree from Jamestown College in North Dakota, then did graduate work at San Francisco State University and the University of California, Berkeley. Jean was a staff biologist at Lawrence Berkeley National Laboratory from 1945 to 1952, then a board member and Chair of the Stege Sanitary District in El Cerrito from 1975 to 1979. She also served on the El Cerrito City Council from 1980 to 1985 and again from 1987 to 1991, including two terms as Mayor.

At the time of Will Siri's passing in 2004, the couple had been married 54 years. Mr. Siri was renowned as both a scientist and mountaineer. From 1943 to 1945 he worked as a member of the Manhattan Project. In 1963 he was the co-leader of the first American expedition to climb Mount Everest. Will was a leading researcher in biophysics at Lawrence Berkeley Labs. During the 1960s and 1970s he also served as President-Director of the Sierra Club.

The impact of Jean's life-long work on behalf of the environmental movement, public access to recreational resources, and public health is immeasurable. Among the long list of agencies that Jean supported with her time and endless energy were the West Contra Costa Conservation League, County Hazardous Materials Commission, the League of Women Voters, the West County Toxics Coalition, the Contra Costa County Public and Environmental Health Board, the Gray Panthers, and the Fresh Start Homeless Board of Directors. Along with her husband Will, Jean was instrumental in the creation of Save the Bay and was a long-time member of the Sierra Club. Jean will always be remembered as a staunch environmentalist and lover of the outdoors. Together, she and Will were recipients of many awards, including the Feinstone Environmental Award from Syracuse University in New York for their work on corrective legislation for air pollution, land use and solid waste treatment.

Perhaps though, her greatest advocacy role was her representation on the East Bay Regional Park District Board of Directors. She was elected in 1992, and re-elected in 1996, 2000, and 2004. Jean loved the District, its staff, her colleagues on the Board and those who advocated on the District's behalf. She was passionate about the parks and contributed not only her great leadership experience, but a sharp wit and a wonderful smile for all who had the good fortune to work with her.

To Jean's two daughters, Lynn Siri Kimsey of Davis and Anne Siri of Philo, and their families, I extend my heartfelt condolences. Their loss is shared by all who came to know and admire Jean. All Californians will benefit for generations to come from her work born of an uncommon passion for people of all walks of life and our fragile environment.

TRIBUTE TO ADAM SUSSER

HON. ROBERT WEXLER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. WEXLER. Mr. Speaker, I would like to call to your attention and that of Congress and the American people an inspirational story of a 5-year-old boy named Adam Susser; whose uplifting story is a true testament to the hope that stem cell research brings in the quest for the treatment and cure of numerous diseases, injuries, and birth defects from which hundreds of millions of people suffer worldwide.

Due to severe asphyxiation at birth, Adam Susser was diagnosed as being cortically blind with spastic quadriplegic cerebral palsy. Despite recommendations that Adam be institutionalized, and despite the grim predictions that he would never gain the ability to see or walk; his parents, Gary and Judith, and his twin brother, Brandon, refused to give up hope. With the help of the Genetics Policy Institute, a leading non-profit agency dedicated to the establishment of a positive legal framework to advance the search for cutting-edge cures like stem cell research, Adam's family discovered the means to provide him with the medical care he desperately needed.

Now, after receiving multiple stem cell treatments, Adam has miraculously recovered partial sight; he has overcome his atrophy, gaining the ability to move and walk; he communicates verbally and even goes horseback riding. While I am encouraged by Adam's astonishing progress against significant odds, his story casts a disturbing light on the current barriers that Americans face when seeking such treatment. Stem cell research, including embryonic-based research—which studies stem cells with the unique capability of developing into any cell type—offers the greatest hope to those who suffer from a myriad of deadly and debilitating diseases, like Parkinson's, Alzheimer's, heart disease and diabetes. An even more promising aspect of embryonic stem-cell therapy is that it does not require expensive anti-rejection drugs after transplantation.

Unfortunately, the Bush Administration policy continues to hinder the use of embryonic stem cells by only allowing researchers access to a limited number of these cells, most of which are unusable due to contamination. This unconscionable policy stance takes us in the wrong direction, as the Administration and Congress should be doing everything in their power to facilitate the scientific and medical community's search for a cure to horrific diseases afflicting millions in America and globally. Adam Susser's story is a shining example of what can be achieved through the use of stem cell therapy, and I urge all my colleagues in Congress to join me in recognizing his courage as well as his family's refusal to give up hope.

STEVEN ROBERT SOLLEE

HON. TED POE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. POE. Mr. Speaker, today I want to congratulate Steven Robert Sollee on his recent offer of appointment to the United States Military Academy at West Point. Steven sought a nomination to West Point through my office, competing with a group of highly qualified applicants. He passed the evaluation process, and I am proud to give him a Congressional nomination.

Steven is currently a senior at Kingwood High School in Kingwood, Texas. He has dreamed of becoming an officer in the United States Army. Steven possesses many qualities that will make him an excellent cadet at West Point and upon graduation, an excellent officer in the United States Army. He has always shown a dedication to public service as an Eagle Scout and a member of the Order of the Arrow, the Boy Scouts' Honor Society. Steven is a Christian with a deep faith in God that he demonstrates with his service to his church. He has a stellar academic background with 3.89 GPA and a class rank of 54 out of 980. He won the K-Award in Chemistry at Kingwood High School, which recognizes the best student of the class. Steven has achieved all these honors while participating in a demanding schedule of extracurricular activities, including varsity tennis, the high school band, the language club, the National Honor Society and the National French Honor Society.

The interview by my Service Academy Nomination Board was the real clincher for Steven. Nothing can replace a personal encounter to establish credibility and character. His interviewers said that Steven was a first class candidate, well qualified and highly motivated to attend West Point. They were impressed by his professed dream and knew Steven understood the gravity of the commitment to the Academy. They recommended him for a nomination without hesitation.

I believe that Steven is a fine Texan who will serve his country with distinction and I wish him good fortune in this new chapter of his life.

TRIBUTE TO MAX FALKENSTIEN

HON. DENNIS MOORE

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. MOORE of Kansas. Mr. Speaker, I rise to pay tribute to Max Falkenstien, the "Voice of the Kansas Jayhawks", who will be retiring at the conclusion of the 2005–2006 men's basketball season at the University of Kansas.

The conclusion of the current season will mark Max Falkenstien's 60th season of broadcasting Kansas University sporting events. At age 81, he has been inducted into the Naismith Basketball Hall of Fame, the College Football Hall of Fame, the Kansas Sports Hall of Fame, and the KU Athletic Hall of Fame. He was the first inductee of the Lawrence High School Hall of Honor. Additionally, he has been awarded an honorary "K" by the Kansas Lettermen's Club. The Sporting News in 2001 named Falkenstien "the best college radio personality in the country" and ESPN's Dick Vitale included KU's Bob Davis and Falkenstien in his "Sweet 16" of the best announcer teams in the United States.

A true legend, Max Falkenstien has been synonymous with KU athletics for six decades. As KU basketball coach Bill Self recently said in the Lawrence Journal-World, "Max has performed at the highest level over an extended period of time like very few in his profession." Falkenstien broadcast his first basketball game—an NCAA tournament game in Kansas City between KU and Oklahoma A&M—on March 18, 1946. His next broadcast was KU versus TCU in football on September 21, 1946. He was play-by-play voice of the Jayhawks for 39 years and then switched to a commentator's role in September 1984 when Bob Davis assumed play-by-play duties. Falkenstien provided play-by-play for the Big Eight Conference basketball game of the week between 1968 and 1971, and for more than three decades hosted football and basketball coaches' TV programs, including those for Don Fambrough, Pepper Rogers, Mike Gottfried, Ted Owens, Larry Brown and Roy Williams.

Mr. Speaker, I include with this statement a recent article from the Lawrence Journal-World summarizing Max Falkenstien's outstanding career and I join with all KU fans in wishing him well in his long overdue, richly deserved retirement as "Voice of the Kansas Jayhawks."

[From the Lawrence Journal-World, Jan. 7, 2006]

TO THE MAX

(By Dave Ranney)

A few seconds after he'd worked his way past security and into the Jayhawks' dressing room, veteran broadcaster Max Falkenstien fielded a warm, friendly—but unexpected—greeting. "Hey, Max, how're you doing?" It was Michael Lee, a popular reserve guard from last year's basketball team who had recently signed with the Harlem Globetrotters. Falkenstien smiled as they shook hands. There wasn't time to chat. A crowd of well-wishers had gathered around Lee and Kansas University had just trounced the Yale Bulldogs, 87–46, so Falkenstien needed to get ready for his postgame interview with coach Bill Self.

Quickly, Lee explained he was in town for a checkup for an irregular heartbeat. He wanted Falkenstien to know because the "Voice of the Jayhawks" cares. Despite their generational differences, Falkenstien, 81, and Lee, 22, are friends. "Max is cool," Lee said afterward. "As soon as you get here people start telling you, 'That's Max Falkenstien. He's been here forever.' So even before you meet him, you respect him. And then when you meet him, he's always nice. He always says hello. It's like you can't go wrong with him."

Lee isn't alone. Falkenstien, it seems, has more friends than Kansas has sunflowers. Some, like Wilt Chamberlain or coach Phog Allen, have been famous. Most are not. "I was with Max at the (KU vs.) K-State football game this year," said Jim Marchiony, KU associate athletics director. "It took us 20 minutes to get from the parking lot to the press box because so many people stopped to talk to him—and these were K-State fans! "Whenever you're on the road with Max, it's like you're with the mayor of whatever city you're in," he said. "It's amazing."

Late last summer, Falkenstien announced he would retire after the 2005-06 men's basketball season. Sixty years behind a microphone, he said, was enough. "I'll miss it terribly," Falkenstien told the Journal-World. "But I think this is a good place to stop. I don't want to overstay my welcome." Though he underwent emergency intestinal surgery Sept. 7, Falkenstien said he was in good health.

"My surgery was completely unexpected and had no relationship to my decision to retire," he said. "As far as I know, I'm in good shape. Of course, something could happen tomorrow. You never know." Falkenstien's exit will mark the end of an era.

"I can remember my father listening to Max on a battery-powered radio out on the farm," said Dr. Earl Merkel, a 73-year-old KU Medical School alumnus from Russell. "In Kansas, everybody identifies with him," Merkel said. "They may not have met him, but they know his voice. They feel like they know him." "Max is an institution," said John Clarke, a 1979 KU graduate who lives in Hays. "He is synonymous with the Jayhawks. When you hear him, you think of KU."

Falkenstien and his play-by-play partner, Bob Davis, have a one-of-a-kind relationship. "I don't think we've ever argued or had a disagreement," Falkenstien said. "We've had a lot of laughs in 22 years," Davis said. Both are native Kansans. Falkenstien grew up in Lawrence, Davis in Hays. Neither is young. Davis is 61.

"When you stand the test of time like they have for 22 years, you must be doing something right," said Tom Hedrick, a veteran broadcaster who competed with Falkenstien from the late 1940s into the early 1960s. "It'll be difficult for anyone else to do what Bob and Max have done because people move around so much now," said Hedrick, who's semiretired and lives in Lawrence. Falkenstien and Davis have stayed put. Both have other jobs. Davis is play-by-play announcer for the Kansas City Royals. Falkenstien was senior vice president of marketing for Douglas County Bank for 25 years. He remains an occasional consultant. "I've led a charmed life, I know," Falkenstien said.

While a senior at Liberty Memorial High School (now Central Junior High School, 1400 Mass.) Falkenstien heard that local radio station WREN had a job opening. He'd been told he had a good voice for radio, so he applied. "Arden Booth, who a lot of people will remember, had been called into the service," Falkenstien said. "I got the job, but it had nothing to do with sportscasting. I was just a staff announcer."

Falkenstien graduated from LMHS in 1942, six months after the Japanese bombed Pearl Harbor. After a semester at KU, he enlisted in the Army Air Corps in hopes of becoming a meteorologist. "I put in 35 months, but I never went overseas," he said. Falkenstien returned to Lawrence. He'd been in town about a week when his former boss at WREN asked him to broadcast a basketball game in Kansas City that pitted KU against Oklahoma A&M (now Oklahoma State University) in the NCAA district finals.

The fact he'd never done play-by-play didn't matter.

"Back then, it wasn't like it is now. People didn't expect to hear a game on the radio. They'd read about it in the newspaper," he said. "What we were doing was new." Falkenstien stayed at WREN until 1967, when he had a falling out with the station's owner, former Kansas Gov. Alf Landon. The Big Eight Conference wanted him to be the play-by-play announcer for its televised "Game of the Week." "Back then," Falkenstien said, "there was only one game a week that was televised. So this was a big deal for me."

But Landon refused to let his station manager, Falkenstien, appear on television. "I kept saying it would make me more sellable—that would be good for business," Falkenstien said. "But he just didn't get the concept." Falkenstien jumped to WIBW-TV, where he continued to broadcast KU football and basketball games.

In 1984, KU decided to put the broadcast rights to its basketball and football games up for bid. Before then, Falkenstien and Hedrick broadcast the games for different stations. Learfield Communications, a company based in Jefferson City, Mo., won the bid in 1985. It brought in Davis, who had been broadcasting Fort Hays State University games for 16 years. Falkenstien was offered the sidekick role. "I had a lot of misgivings at first," Falkenstien said. But Davis welcomed the chance to work with Falkenstien.

"I know this sounds a little corny, but when I was growing up my heroes were sportscasters, and Max was one of the first ones out there," Davis said. "He was a pioneer."

Together, Davis and Falkenstien have mastered a low-key, fishing-buddy delivery that's unpretentious, never overbearing.

"Bob and I try to keep things in perspective," Falkenstien said. "Games are supposed to be fun. They're not the end of the world." He added: "It's like Dr. (Phog) Allen used to tell his players. He'd say, 'Remember, guys, there are 300 million Chinese out there who don't even know who we are.'" Falkenstien said he and Davis keep the game simple, their delivery conversational. "Too many color commentators are too analytical," Falkenstien said. "They lose the average fan."

Neither Davis nor Falkenstien pretend to be experts. "I remember one time, I had to ask Roy Williams what a 'secondary break' was, so I'd look smart," Falkenstien said, laughing. In the game programs, Falkenstien used to be listed as color analyst. "I had them drop the 'analyst,'" he said. "I'm just 'color.'"

The broadcasts are not as laid-back as they appear. Davis scrambles to keep track of fouls and points while Falkenstien plucks statistics from a nearby monitor, lifts tidbits from the day's sports pages and pulls trivia from packets provided by the teams' athletic departments—all while the game is going on, all without missing a beat.

Contrary to popular opinion, their press-row seats across from the KU bench are not the best in Allen Fieldhouse. They cannot see the scoreboard without leaning back and looking straight up. They are so cramped they cannot stand or cross their legs. Many times, a referee blocks their view. During the Yale game, Davis barked "there's a turnover" without mentioning who had stolen the ball from whom. That's because he couldn't see the play; referee Steve Welmer was standing in front of him, less than an arm's length away.

After the game, Falkenstien is the first—and only—member of the media allowed to meet with Self in the coaches' dressing room.

When they finish, Self leaves for a meeting with the press corps at-large. He uses a back door. Falkenstien leaves through the front door, where hopeful fans wait for autographs. He is an easy target. "Max! Max! Over here!" said Genie Gnagi, standing behind her 6-year-old daughter, Michaela, with a miniature plastic basketball. "May we have your autograph, please?"

Without hesitation, a smiling Falkenstien complies. "He is a true KU legend," Gnagi said. "He will be missed."

TRIBUTE TO FRANCISCO (PACO) ROVIRA-CALIMANO

HON. LUIS FORTUÑO

OF PUERTO RICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. FORTUÑO. Mr. Speaker, I rise today to pay tribute to an outstanding individual, Mr. Francisco Rovira-Calimano, whose life work serves as an example to us all. He is a hard-working gentleman, an honest citizen, and a true humanitarian dedicated to the betterment of humanity. Today, Mr. Rovira-Calimano celebrates his 95th birthday—and this is a cause for great celebration.

Paco, as everyone knows him in his beloved town of Guayama, Puerto Rico, was born on February 1, 1911, to Amalia Calimano-Diaz and Jose Rovira-Tomas, his hard-working parents, an exemplary couple in that lovely town by the Guamani River. As the eldest child, Paco soon learned the value of sharing, supporting others, fairness, and hard work principles—values which he has sustained throughout his long and fruitful life. He was an exceptional son, who for 20 years took care of all his mother's needs after his father passed away. He is a man of few words but strong actions and convictions.

While growing up, he attended the Guayama public schools system during his elementary school years, then St. Augustine Academy in San Juan and completed high school at Peekskill Military Academy in New York State. He attended college at Louisiana State University and graduated from The New York State Institute of Agriculture in 1934. Since childhood, he had worked at the family dairy farm "La Cuadra", doing extensive manual labor, and upon graduation he returned to work there. Later, he also acquired "La Tuna", a farm which he skillfully managed raising sugar cane, plantains, cattle and tending to his beloved Paso Fino horses.

Over the years, Paco was involved in many civic endeavors. He joined and became an active member of the Farmers Association of Puerto Rico. Additionally, he was an active member of the Regulatory Board of the Milk Producing Industry, of which he is still an honorary member. He has also been a member of the Guayama Rotary Club for over 40 years and served as its president in 1957. He was a member and an active board member of the "Asociación de Dueños de Caballos de Paso Fino de Puerto Rico", (Paso Fino Horse Owner Association). For many years he collaborated with the "Asociación Agropecuaria" (Agriculture and Livestock Association) from Mayaguez, and was a board member for two years. His main goal was to bring together people from all walks of life sharing a common interest.

Paco's life spans through WWI, the Great Depression, WWII, the Korean war, the Vietnam conflict, and the two gulf wars in Iraq. He has seen 17 Presidents enter the White House and even though he is an American citizen residing in Puerto Rico, he unfortunately cannot vote for the President because of where he lives. However, he has always wanted to see Puerto Rico become an integral part of our powerful nation.

Mr. Speaker, at 95 years of age, Paco continues to work hard every day. He is currently the President of the Campoamor Corporation, and the Santa Elena Development Company. This exceptional human being is married to Elsa Sabater-Recio. They recently celebrated their 65th wedding anniversary. He is the loving father of 5, the doting grandfather of 14, beloved great-grandfather of 11, and father figure of many, many more.

I ask my colleagues to join me in honoring Mr. Francisco Rovira-Calimano on his 95th birthday and to thank him for sharing his wonderful life, his heart, his time, and his energy with his family, the people of Guayama, and all Puerto Ricans. Mr. Speaker, he has set a high standard for all of us to follow.

RECOGNIZING THE SIGNIFICANT CONTRIBUTIONS OF TOASTMASTERS EN ESPAÑOL

HON. JON C. PORTER

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. PORTER. Mr. Speaker, I rise today to recognize the founding of Toastmasters en Español, the first and only Spanish-language Toastmasters club in the State of Nevada.

Toastmasters International is a global organization devoted to teaching communication and leadership skills. It has more than 211,000 members, with 10,500 clubs in 90 countries. Las Vegas is home to 50 of these clubs. With the mission statement, "to make effective communication a worldwide reality," Toastmasters en Español was founded by Maite Salazar to improve the public-speaking and leadership skills of the more than half-million Spanish-speaking residents of the Las Vegas Valley, and to help Spanish-language learners improve their skills in a constructive, affirming environment.

Toastmasters en Español held its first meeting on October 3, 2005, at the Cambridge Community Center in central Las Vegas. The initial meeting attracted dozens of participants. Within 3 weeks, the club had enough active members to be officially chartered by Toastmasters International.

Today, Toastmasters en Español has 31 active members who hail from nearly every country in the Spanish-speaking world, and from every walk of life. The club also includes many native-born Americans who understand the importance of being bilingual in an increasingly interdependent world.

Mr. Speaker, as the world becomes more globalized, communication becomes increasingly more important for peaceful cooperation. I applaud the efforts of Toastmasters en Español in this regard and look forward to their continued involvement and dedication to the improvement of their community and the entire State of Nevada.

CELEBRATING THE LIFE OF CAROL SUNAKO CONNELLY

HON. MICHAEL M. HONDA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. HONDA. Mr. Speaker, today I rise to honor the life of Carol Sunako Connelly. Carol was born on August 22, 1936 in Salinas, CA. She graduated from Stanford University School of Nursing in 1959 and worked briefly for the county of Alameda as a public health nurse.

Carol served 33 years in the Franklin McKinley School District in San Jose, CA as "school nurse extraordinaire", working at numerous schools in the district, including Fair, Kennedy, Los Arboles and Meadows.

Carol was dedicated to her professions of nursing and teaching. She inspired many lives, both young and old throughout her years of service. Teachers depended on her extensive knowledge to help with everything from human anatomy to head lice.

She led many fascinating and unforgettable lessons in "grossology": countless hours cutting up eyeballs with third graders, lungs with fifth graders, and hearts with sixth graders. In addition to these grade level standards, she also conducted numerous dissections and the cooking of squid in the primary grades. There are not many school nurses who have either the time or the passion to work with children in the classrooms.

Carol retired in 2003 at the age of 67. Though very busy in retirement, she continued to volunteer her time to Franklin McKinley School District.

Carol lived in Santa Cruz for the past 15 years and was an active member of TOPS—Take Off Pounds Sensibly, Mah Jongg Players of Santa Cruz, Santa Cruz Senior Center, and the Pleasure Point Community Church.

Carol died on August 28, 2005. She is survived by her three daughters, Adrienne Keane of Santa Cruz, Heather Haan of San Jose, and Jennifer Haan of Los Angeles, and four grandchildren, Quinn and Malia Keane and Roland and Ava Kemmerer. She is also survived by her sister, Joyce Kawahara, and her brothers, Lloyd and Milton Yoshioka, all from Petaluma. Carol Connelly will be sorely missed. To the thousands of students and teachers who crossed paths with Carol, she will never be forgotten.

STARK OPPOSES UNJUST REPUBLICAN BUDGET

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. STARK. Mr. Speaker, I rise in opposition to this unjust Republican budget that cuts funding for working class programs and does nothing to improve the U.S. deficit.

"Remember Pearl Harbor" was a rallying cry to unite Americans in shared sacrifice to respond to a military attack on our Nation. In contrast, 9/11 will be remembered as a tragedy exploited by President Bush to divide Americans and place the financial burden of his ill-advised policies on working class Americans.

President Bush and his Republican cronies have used this tragedy to justify an unnecessary war in Iraq and ensure that the wealthiest Americans contribute nothing to pay for it by giving them billions of dollars in tax cuts. As the wealthiest Republican party donors—like Halliburton—make billions from this failed war, the Republican budget sticks America's working families with the tab.

This Republican budget cuts health care, child care, student loans, foster care payments, job training and aid to the elderly and people with disabilities in exchange for the Iraq war and tax cuts for the wealthiest Americans.

Not even the extreme poverty displayed on televisions across this country of Hurricane Katrina's victims has been able to stir compassion into the cold hearts of the President and his Republican cronies in Congress. This bill forces states to stop providing job training and vocational education programs for the poor and force millions of them into low-waged, dead end jobs with no health insurance or child care. In addition, many poor families will have to pay copays and deductibles for their health insurance on their incomes of less than $19,000 a year for a family of four. Instead of giving the poor a hand up, this bill puts a boot in their face to push them down.

In true fashion, the Republican budget does take care of their rich lobbyist friends. For instance the Republicans decided to remove a provision that would have stopped taxpayers from overpaying HMOs participating in Medicare by $22 billion. Had that provision remained in, cuts to programs that help people—not corporations—could have been reduced by that level.

Similar protections were given to the private lenders that provide student loans. The Chronicle of Higher Education reported that chairman of the House Education and Workforce Committee, Representative JOHN BOEHNER, met with these private lenders in December, who contribute handsomely to his campaigns, and said: "Relax. Stay calm. At the end of the day, I believe you'll be at least satisfied, or even perhaps happy. Know that I have all of you in my two trusted hands."

This budget clearly demonstrates that the Republican Party's corruption and cronyism causes real harm to average Americans. The next time a parent or former student has to pay extra for their student loan, or a senior citizen is forced to pay more for their health care, they should thank the Republican Party. You can be sure that the health insurance industry and private student lenders will be donating millions more to Republican campaigns to show their thanks.

I urge my colleagues to vote against this corrupt and unjust bill.

THE MEDICARE PRESCRIPTION DRUG EMERGENCY GUARANTEE ACT

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. DINGELL. Mr. Speaker, after the first month of implementation of the Medicare private drug plan, it is clear that a number of measures are needed to ensure that seniors and Americans with disabilities who need prescription drugs do not leave the pharmacy empty-handed or overcharged.

Representatives BROWN of Ohio, RANGEL, STARK, WAXMAN, SPRATT, and I are introducing legislation today to make sure seniors are guaranteed the prescription drug relief they were promised in 2003 and deserve today.

This bill would do the following:

Ensure beneficiaries get at least 60 days of needed medicines, whether or not the pharmacist can verify the plan they are in or whether or not the drug they need is covered by their plan.

Eliminate red tape for pharmacists by allowing the pharmacy to bill Medicare directly. Medicare would then collect the payments from the drug plans.

Ensure beneficiaries can navigate the complex system, by providing a standard notice and appeals process and information on how to locate a more suitable plan when a person's drug is not covered by the plan.

Protect beneficiaries from losing coverage of needed medicines during the year they are enrolled by not allowing plans to change what drugs they will pay for during that year.

Finally, for all those who actually paid more than they should have for their medications, this bill requires Medicare to reimburse them, as well as any others who have stepped in to pay the costs for seniors and those with disabilities when they were denied or overcharged for their medicines. Medicare should be cutting through the red tape, not the beneficiaries or their pharmacist.

Democrats have also introduced legislation that focuses on the major structural problems built into the program designed by the Republicans and their industry friends. But today we introduce this bill to alleviate some of the short-term and transition problems that have arisen with the current ill-conceived Medicare prescription drug benefit.

This Administration has failed in providing seniors and people with disabilities with a smooth transition to prescription drug coverage. Let us not fail them again by ignoring the immediate problems.

PAYING TRIBUTE TO CHIEF EARL A. GREENE, JR. OF THE CLARK COUNTY NEVADA FIRE DEPARTMENT

HON. JON C. PORTER

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. PORTER. Mr. Speaker, I rise today to honor Earl A. Greene, Jr., Chief, Clark County

Nevada Fire Department. Chief Greene is retiring from the fire department after 33 years of dedicated service. He has been involved in all areas of fire services, including: Suppression, Prevention, Hazardous Materials, Logistics, Volunteer Fire, and Administration.

Chief Greene received a Bachelor of Arts degree in Political Science with an emphasis on pre-law from Southwestern State College in Weatherford, OK. He is married to the former Susan Enoch and has two grown children, Earl III and Camile.

Among the highlights of Chief Green's career are his involvement in the implementation of the retrofit of building and fire codes that were passed as a result of the MGM Grand and Las Vegas Hilton Hotel fires. Chief Greene was also instrumental in the establishment of the Police and Fire Executives of Southern Nevada, an organization that brings together all sheriffs and police and fire chiefs on a regular basis to discuss and deal with issues common to public safety agencies.

Under Chief Green's direction, the Clark County Fire Department became the first county-level department to achieve Insurance Services Office (ISO) Level 1 status, and in 2003, the department was awarded accredited agency status by the Commission on Fire Accreditation International. In August, 2003, Chief Greene was awarded the prestigious Chief Fire Officer Designation by the Commission on Fire Accreditation International, an honor bestowed upon only 319 individuals nationwide who have demonstrated personal and professional excellence within the fire service.

Mr. Speaker, Chief Greene is a dedicated officer who has worked diligently for Clark County, NV. I ask my fellow colleagues to stand with me today and honor all fire fighters across the country, like Chief Greene, who have dedicated many years in protecting the residents of their community and State.

CELEBRATING THE LIFE OF THE HONORABLE KATHLEEN AKAO

HON. MICHAEL M. HONDA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. HONDA. Mr. Speaker, today I rise along with Congressman SAM FARR to pay tribute to the Honorable Kathleen Akao, her invaluable contributions to Santa Clara County and her longstanding dedication to upholding the integrity of our justice system.

Kathleen Akao was born in Long Beach on September 28, 1948 to Tokio and Lillian Katayama. She graduated from San Jose State University in 1971 with a Bachelors Degree in English and received her law degree from Santa Clara University in 1981.

In Santa Clara, Kathleen served as President of the Asian Law Students Association and later as Staff Attorney with San Jose's Asian Law Alliance, where she worked with many recent immigrants to the Bay Area. Kathleen was admitted to the California Bar in 1982 and immediately joined the State Bar's Subcommittee on Redress, working to seek recognition and restitution for Americans interned during World War II, an issue of particular resonance to Kathleen, whose mother had been interned during the war. Kathleen's personal experiences and dedication to understanding issues in-depth gave perspective to her work as a community activist, a lawyer and a judge.

Kathleen held a private law practice, and later, served as Deputy Public Defender for Santa Clara County. From 1986–1994, she worked for Santa Cruz County as Assistant County Counsel. In 1991, Kathleen's husband, James Akao, passed away at the young age of 46—a great loss for both Kathleen and their son, Kristoffer.

In 1994, Kathleen Akao became the first Asian American attorney in California to successfully challenge and unseat an incumbent Superior Court judge. Her victory highlighted her commitment to the public justice system and represented a landmark accomplishment in the Asian American community.

However, Kathleen's greatest achievement was the indelible mark she left on the community for her outstanding work with juveniles and families. She took a keen and genuine interest in providing the best options for juveniles and families who found themselves in her courtroom. In 1999, Kathleen established a county Drug Court, which coupled penalties with treatment programs, proving her commitment to the rehabilitation process. She believed in fair decisions for all and devoted her time to Teen Peer Court, a system under which juveniles may have their sanctions decided by their peers.

Kathleen died on November 27th, 2005—her untimely passing was due to heart failure following a biopsy procedure. She will always be known for her integrity and fairness both in and outside of her courtroom. She was compassionate and generous, and had an uplifting sense of humor. Colleagues said she treated everyone with dignity and respect, approached problems pragmatically, and always sought to improve and expand the ways in which she served the public. Through her innovative and selfless work with her community and her tireless efforts to rule her courtroom fairly, Kathleen shaped and improved the lives of those around her.

Judge Akao is survived by her son, Kristoffer, her father, Tokio Katayama, her three brothers, Danny, Robert, and David, and a legacy of service, integrity and compassion for our community to share and uphold. We will all miss her.

INTRODUCTION OF RESOLUTION PROTECTING THE CIVIL LIBERTIES OF HOUSE GALLERY VISITORS

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. STARK. Mr. Speaker, last night, at President Bush's State of the Union address, two visitors were forced from the House Chamber. Cindy Sheehan and Rep. Bill Young's wife, Beverly. Cindy Sheehan was arrested for unlawful conduct, Mrs. Young was not.

What did they do wrong?

They were each wearing T-shirts that the Capitol Police determined were "protests". Ms. Sheehan's shirt read: "2245 Dead. How many more?" Mrs. Young's shirt read: "Support the Troops—Fighting for Freedom."

Nothing in the House Rules prohibits the wearing of T-shirts or has limitations on what those shirts can have written on them.

Both individuals insist they were not protesting, but simply wearing shirts that delivered important messages for them.

What happened to them can only be described as Gestapo behavior. Each woman was forced to leave the House Gallery and Ms. Sheehan was then arrested and charged with unlawful conduct.

It is my understanding that because President Bush was in the Chamber, control of the Chamber was ceded to him—or the Secret Service to be exact.

Therefore, none of us should be surprised by what happened. Whenever and wherever President Bush speaks, he has the Secret Service sanitize and sterilize the audience. There are countless reports of people with T-shirts stating views that differ from the President being removed from his supposedly public appearances.

What happened last night to Ms. Sheehan and Mrs. Young was un-American and undemocratic. That's why I am introducing a resolution calling on the Office of the Sergeant at Arms to report to Congress within 30 days making clear under what authority these two individuals were prosecuted and making recommendations to Congress so we can assure that nothing like this ever happens again. I urge my colleagues to join me in support of this important resolution.

How can we allow the President to proclaim he is fighting for freedom abroad when he continually tramples our freedoms here at home?

This is supposed to be the people's house. Therefore, the President should not be able to override our governance and make us part of his Gestapo regime.

MEDICARE FOR ALL ACT

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. DINGELL. Mr. Speaker, the story of our Nation's healthcare system is one of great success but also one of great failure and missed opportunity. We have some of the finest medical institutions in the world: the best trained medical professionals, cutting-edge technology, and state-of-the-art facilities.

We also have, however, major gaps in our healthcare system. At last count nearly 46 million Americans were uninsured. Close to six million Americans lost their insurance between 2000 and 2004. More than 18,000 Americans die prematurely each year because they lack health insurance coverage. Despite the outstanding job by hospitals, community health centers, and others, our safety net is becoming threadbare. Federal spending on the healthcare safety net declined 8.9 percent between 2001 and 2004, while the need continues to grow even larger.

The time is ripe for action. Today several of my Democratic colleagues and I are introducing a bill to bring the tried, true, and trusted Medicare program to all. This bill will for the first time make Medicare available to those under age 65. Americans will also have the option of selecting any of the plans offered to members of Congress, the President, and Federal employees.

According to the Institute of Medicine, covering all Americans will actually save the country $380 billion a year. That is partly because we are already paying for the health care of the uninsured through emergency room services. By providing people the ability to obtain comprehensive healthcare coverage, they will be able to receive better prevention services and earlier treatments, lowering the cost of their care. All Americans will reap the economic benefits of a healthier Nation.

And this plan will save not only lives, but also American industries and jobs. We currently have an unlevel economic playing field. American companies are competing in the international marketplace against companies that do not directly bear the costs of providing their employees and retirees health care. American companies are doing the right thing, but being penalized for it.

I am pleased to introduce this "Medicare for All" bill today as a companion bill to the legislation Senator KENNEDY introduced yesterday. I urge my colleagues to support this bill, and I urge the Republican leadership to let us address the healthcare crisis faced by millions of Americans.

PAYING TRIBUTE TO ELLEN KNOWLTON; SPECIAL AGENT IN CHARGE OF THE FBI LAS VEGAS OFFICE

HON. JON C. PORTER

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. PORTER. Mr. Speaker, I rise today to honor the contributions of Ellen Knowlton, who retires from the Federal Bureau of Investigations on February 3, 2006, after 24 years of dedicated service.

Special Agent in Charge Ellen Knowlton, is a graduate of California State University, Sacramento, where she received a bachelors of science in business administration. She also obtained a master's degree in business administration from Saint Mary's College, Moraga, California. Prior to joining the Federal Bureau of Investigation, she worked in the Insurance Industry as a Claims Supervisor.

Agent Knowlton has served in many offices and many positions throughout her years as an FBI agent. She has traveled the world on assignment and lived in many cities and countries as demanded by her job. Mrs. Knowlton's first assignment was to the FBI's Sacramento Field Office, where she was responsible for investigating bank robbery, fugitive, and kidnapping matters. She was later transferred to the Oklahoma City Field Office, where she was responsible for investigating white-collar crime matters.

When assigned to the San Francisco Field Office, she was responsible for investigating foreign counterintelligence and white-collar crime matters. In the New Orleans Field Office, she supervised the White-Collar Crime Squad. Later, she became Unit Chief in the Criminal Investigative Division at FBIHQ. Other managerial positions Mrs. Knowlton held were Assistant Special Agent in Charge, FCI ASAC, and Criminal Special Agent in Charge of the Washington Field Office, Inspector, and Deputy Assistant Director of the National Security Division, Counterintelligence Operations Support.

In May of 2002 Agent Ellen Knowlton moved with her family to Las Vegas in order to begin her job as Special Agent in Charge of the FBI's Las Vegas office. During her tenure, Agent Knowlton has earned the respect of her colleagues and community leaders.

Mr. Speaker, we have been fortunate to have Ellen Knowlton in Las Vegas, Nevada, and the state has benefited from her knowledge and skill as an FBI agent. It is with great pleasure that I recognize Agent Knowlton today, and I ask my colleagues to join with me in honoring all FBI agents, like Agent Ellen Knowlton, who have dedicated years of their lives to protecting the residents of our communities.

TRIBUTE TO FIRST PRESBYTERIAN CHURCH OF SUCCASUNNA

HON. RODNEY P. FRELINGHUYSEN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. FRELINGHUYSEN. Mr. Speaker, I rise today to honor the First Presbyterian Church of Succasunna in the Township of Roxbury, Morris County, New Jersey, a vibrant community I am proud to represent. On April 29, 2006, the good citizens of Succasunna will celebrate the First Presbyterian Church's 250th anniversary.

The congregation first organized in 1756. In 1760, their first building was erected and measured approximately 36 by 40 feet in size, had plain seats, an unfinished floor and no ceiling. In fact, it wasn't until 1768 that the congregation was strong enough to extend a call for a full-time pastor, Reverend William Woodhull, whom they shared with a congregation in Chester, New Jersey for a salary of £400. The church building was used during the Revolutionary War for barracks, for a hospital, and to keep material dry. It is rumored that George Washington visited hospitalized troops there. When the new Centennial Bell for Independence Hall in Philadelphia was being cast, the church contributed one of the cannons being stored there for bell metal.

On May 3, 1817, the church incorporated a Board of Trustees as "The Trustees of the First Presbyterian Church of Suckasunny Plains."

In 1853, the congregation tore down the original building and raised a new one in the fall of the same year. Amongst other relics, they placed a brief history of the church, a list of the officers and members at that time, certain newspapers, and a bullet found in removing the old building bearing the date in etching July 4, 1776 within the cornerstone of the new church. The first service in this new building was the funeral for Mahlon Dickerson, a distinguished native son, who had been judge, general, Governor of New Jersey, Member of Congress, and Secretary of the Navy in the cabinet of President Jackson. He was responsible for bringing President Martin Van Buren to worship there.

The building, now known as the Chapel, was erected in the memory of Eliza Platt Stoddard, a step-daughter to then Reverend Dr. Elijah W. Stoddard. In 1957, a committee planned fundraising for a new pipe organ and a major expansion project for what is now known as Fellowship Hall.

Mr. Speaker, I urge you and my colleagues to join me in congratulating the First Presbyterian Church of Succasunna on the celebration of its 250 years serving Morris County.

PERSONAL EXPLANATION

HON. JO ANN DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mrs. JO ANN DAVIS of Virginia. Mr. Speaker, I was granted a leave of absence for December 19, 2005. Had I been present, I would have voted the following:

Rollcall 665, H.R. 2520, the Stem Cell Therapeutic and Research Act—"yea."

Rollcall 666, waiving points of order against the conference report on H.R. 2863, Department of Defense Appropriations for FY06—"yea."

Rollcall 667, H. Con. Res. 284, expressing the sense of Congress with respect to the 2005 presidential and parliamentary elections in Israel—"yea."

Rollcall 668, motion to recommit Conference Report to H.R. 2863, Defense Appropriations for FY06—"nay."

Rollcall 669, H.R. 2863, on agreeing to the Department of Defense Appropriations Conference Report for FY06—"yea."

Rollcall 670, S. 1932, on agreeing to the Conference Report to the Budget Reconciliation bill for FY06—"yea."

Rollcall 671, H. Con. Res. 275, expressing the sense of Congress regarding the education curriculum in the Kingdom of Saudi Arabia—"yea."

PETER R. STROHM JOINS MANTOLOKING BOROUGH COUNCIL

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. PALLONE. Mr. Speaker, on Monday, January 2, Peter R. Strohm was sworn in as a new member of the Mantoloking Borough Council. Joining him in taking the oath of office for a three-year term was incumbent John H. Jones.

As the only Democrat on the seven member council, Mr. Strohm will be bringing a bipartisan spirit, years of legal experience and a desire to work long hours on behalf of the approximately 500 residents of Mantoloking, NJ, a beautiful, historic seashore community.

He is a principal in the law firm of Rothstein, Mandell, Strohm, Must & Gertner in Lakewood, NJ, in which he has practiced for 35 years. He serves and chairs a number of committees of the Ocean County Bar Association and of the New Jersey Supreme Court, including probate, chancery, and judicial appointments. In 2000, he received the Professionalism Award from the New Jersey State Bar Association.

He served in the past as an adjunct professor of law at Georgian Court University in Lakewood, NJ, and from 1968 to 1996, in the U.S. Army Reserve, from which he retired as a Lieutenant Colonel.

Mr. Strohm received degrees from Washington & Lee, Columbia University School of Law, New York University School of Law, and the United States Command and General Staff College of Fort Leavenworth, Kansas.

I congratulate Mr. Strohm and Mr. Jones as they begin their terms in office. Although Mantoloking is a small community, it is busy tackling large problems, such a beach erosion, bridge construction and protection of the fragile seashore environment. I look forward to working with them and their county, state and federal representatives on these critical issues.

PAYING TRIBUTE TO CHARLES AND PATRICIA WILLIAMS FOR THEIR VOLUNTEER EFFORTS TO PRESERVE RED ROCK CANYON

HON. JON C. PORTER

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. PORTER. Mr. Speaker, I rise today to honor Charles and Patricia Williams, retirees from the Las Vegas community, who have given countless hours of service in helping preserve the Red Rock Canyon National Conservation Area.

Chuck and Pat moved to Las Vegas in 1995 and started their love affair with the canyon. They enjoyed hiking there every weekend and, after Chuck's retirement in 1999, they decided it was time to repay Red Rock Canyon for the enjoyment that they had received. They began regularly volunteering their time and have since contributed over 13,000 hours of service dedicated to area preservation, improvement, and restoration.

Both Chuck and Pat are active in the volunteer organization Friends of Red Rock Canyon, a group of volunteers dedicated to preserving the canyon. They perform a wide range of tasks including removing graffiti and trash, maintaining the authorized trail system, and rebuilding and repairing miles of trails. Chuck was president of the group from 2000 to 2002 and continues to participate in cultural site documentation and monitoring, trail rehabilitation and work event coordination; Pat has been the membership coordinator since 2000 and was elected president in 2004.

In 2002, Chuck and Pat were recipients of the Bureau of Land Managements National Volunteer Award, "Making a Difference on Public Lands," and later in 2004 they received "The Presidents Call to Service Award," for their volunteer contributions.

Mr. Speaker, I am grateful for the opportunity to honor this couple and their contributions to the protection of the environment of the state of Nevada.

IN MEMORIAL OF GEORGE WORTHINGTON WILLIAMS

HON. BOB ETHERIDGE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. ETHERIDGE. Mr. Speaker, I rise to honor the life of my dear friend, George Worthington "Jo Jo" Williams of Dunn, NC, who died December 8, 2005. In his passing, North Carolinians and veterans everywhere have lost a tireless voice and an outstanding civic leader.

Jo Jo Williams led a rich and full life, highlighted by his boundless energy and patriotism. Mr. Williams was a veteran of World War II, serving in the Army Air Corps in the South Pacific theater of operations. Following the war, Jo Jo's dedication to those who serve our country led him to become a passionate advocate for America's veterans. As a U.S. Army veteran myself, I truly appreciate his life-long work on behalf of veterans. He maintained membership in numerous organizations including the American Legion, the Military Order of the Purple Heart, Disabled American Veterans, AM Vets, the World War II Commission, and 20th Air Force Association. Jo Jo was also a life board member of Veterans of Foreign Wars National Home for Children and was chosen by the American Legion of North Carolina to attend the dedication of the World War II Memorial here in Washington, DC.

However, Mr. Williams's service and contributions were not limited to the arena of veterans. Jo Jo also found time to be active in countless other community endeavors. He served as a chairman and member of the Harnett County Nursing Home Commission, as a member and former chair of the State Employees Credit Union, and as a trustee for the Harnett County Library Commission. Following his retirement from the N.C. State Surplus Division in Raleigh, he served as Harnett County magistrate. He also served on the Dunn Planning Board and as a member of the Harnett County Jury Commission. Additionally, Mr. Williams was an active member of First Baptist Church where he acted as clerk for 25 years and a popular Sunday school teacher and church deacon.

Though the death of a friend brings great sadness, it is a privilege for me to take a moment to honor a man who spent so much of his life honoring others. Let Jo Jo Williams's life serve as a testament to caring, sacrifice and service.

TRIBUTE TO MATTHEW MYRICK, TEXAS STATE TROOPER

HON. RANDY NEUGEBAUER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. NEUGEBAUER. Mr. Speaker, last month, Texas lost a law-enforcement officer in the line of duty. Trooper Matthew DeWayne Myrick lived in Hereford, TX, and served as a State trooper for 2 years. He died in an automobile accident while responding to another accident south of Hereford.

While I didn't have the honor to know Trooper Myrick personally, I did have the opportunity to pay my respects at his memorial service. There I learned about a remarkable man who loved God, his family and his country.

Trooper Myrick served his country as a member of the U.S. Navy. He then earned both his undergraduate degree and a masters degree in Agronomy from Texas Tech University. He was a devoted husband of Christy and loving father of four children, Matilyn, Tate, Luke and Embry. A family man, he was well known for his strong faith in God. His love for God was the center of his life and affected every part of his life.

Trooper Myrick leaves behind a great legacy of faith, love for his family and public service. He will be greatly missed by all who knew and loved him and by those West Texans he served through his work with the Texas State Patrol. His family and community can be proud of his life of love and service. He is an example to us all of a life well-lived.

THE FEDERAL MINE SAFETY AND HEALTH ACT OF 2006

HON. SHELLEY MOORE CAPITO

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mrs. CAPITO. Mr. Speaker, in the month of January, two major mining accidents took place in West Virginia, killing 12 miners at the Sago mine in Upshur County and 2 at the Alma mine in Logan County. Today the West Virginia congressional delegation on a bipartisan basis, introduced the Federal Mine Safety and Health Act of 2006. This mine safety legislation will require the Mine Safety and Health Administration to issue regulations to provide for immediate notification of mine accidents, new regulations for mine safety teams to ensure a quick response, and improved technology to keep miners safe.

Specifically, the bill requires that mine rescue teams employed by the mine operator and familiar with an individual mine be available to respond immediately. Regulations require that three mine safety teams be present—two in a mine and one standing by outside—prior to a rescue operation beginning. It is important that the necessary rescue teams be in place as soon as possible so that the rescue can begin as soon as mine conditions allow.

This legislation creates an MSHA Office of Science and Technology, and requires MSHA to examine new mine safety and rescue technologies, including refuge chambers. The world watched as tragedy was averted in Canada this past weekend because 72 trapped miners were able to escape to a designated safe haven with a supply of oxygen and communications technology.

The Federal Mine Safety Act would require that emergency supplies of oxygen and breathing equipment be placed in strategic locations in the mine. Each of these locations would also include communications equipment so that miners can provide information about their location and condition to rescuers, and miners can receive information from the outside. The legislation also calls for miners to be provided with emergency tracking devices.

Other provisions of the legislation, including a miner ombudsman in the Department of Labor to take reports of safety violations from miners, will also help to make our mines safer.

It is important that this House act on legislation to improve the safety of our coal mines. I spent time with the friends and families of the Sago mine victims, both as we awaited news on the rescue effort and after we knew the tragic result. I do not want to watch more families endure what the families of the Sago victims went through.

I urge my colleagues, whether your State is a major producer of coal or not, and regardless of your party affiliation, to join the West Virginia delegation in helping to prevent future mining tragedies.

PAYING TRIBUTE TO EDNA HARRIS FOR TWENTY-FIVE YEARS OF SERVICE TO THE LAS VEGAS MUNICIPAL COURT

HON. JON C. PORTER

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. PORTER. Mr. Speaker, I rise today to honor Edna Harris who died Sunday, January 29, 2006 after battling cancer.

Edna recently retired from the City of Las Vegas in January 2005, after serving 25 years in the Alternative Sentencing & Education Division of Las Vegas Municipal Court, as the Supervisor of Misdemeanor Programs. In the workplace, she was known for her fight to reduce the incidence of domestic violence. She was appointed to serve on the State of Nevada Committee on Domestic Violence, on which she served since its inception. She also chaired the Municipal Court's annual Domestic Violence Conference.

Edna was well known for her smile and humor. She always had a song to give you or a word of inspiration. Near and dear to her heart was her love for family and the church where she was first lady and also active as an evangelist. Edna will be missed but never forgotten.

Mr. Speaker, Edna Harris was a shining example of diligent public service. Her legacy will long be remembered by the State of Nevada. I am grateful for the opportunity to recognize her on the floor of the House in front of my colleagues.

IN RECOGNITION OF THE HISPANIC CHAMBER OF COMMERCE OF WISCONSIN AND MARIA MONREAL-CAMERON

HON. MARK GREEN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. GREEN of Wisconsin. Mr. Speaker, it is my honor and pleasure to recognize before this House the Hispanic Chamber of Commerce of Wisconsin (HCCW), and its President and CEO Maria Monreal-Cameron.

For over 30 years, HCCW has been helping hard-working Hispanics throughout Wisconsin, share in a fundamental slice of the American dream—running a business. A nonprofit organization founded in 1972, HCCW serves as an incubator for Latino-run businesses across the state—focusing primarily, however, on the Milwaukee metropolitan area. The organization helps create greater opportunities for Hispanic entrepreneurs by offering some of the educational and technical resources necessary to start a business, while promoting greater involvement in the Hispanic community.

At the helm of this fantastic organization has been Maria Monreal-Cameron. For the past 16 years, Maria has served as President and CEO of HCCW, helping the Hispanic Chamber's membership swell to over 600 members. On top of that, under her leadership the organization has provided nearly $350,000 in scholarships to college-bound high school students in Wisconsin. Maria has left an indelible mark on HCCW, and Wisconsin's Latino community.

Mr. Speaker, few have done more for Wisconsin's Hispanic citizens than the Hispanic Chamber of Commerce of Wisconsin and Maria Monreal-Cameron, and that is why I consider it such a wonderful privilege to honor them today. I commend them for their work, and wish them continued success in 2006.

A TRIBUTE TO SCONYERS BARBECUE RESTAURANT OF AUGUSTA, GEORGIA FOR 50 YEARS OF SOUTHERN HOSPITALITY AND SERVICE

HON. CHARLIE NORWOOD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. NORWOOD. Mr. Speaker, today I would like to mark a milestone in Southern politics and culture by recognizing the 50th Anniversary of a culinary and political tradition in my district—Sconyers Barbecue Restaurant of Augusta, Georgia.

Those outside my region might not be aware of how much a role a successful "barbecue" plays in Southern hospitality and politics.

The first thing one needs to understand is that in the South, the word itself can be noun, a verb, or an adjective. It is more than food, it is a cultural identification, and one that crosses all party lines.

I don't think there is any better example of this than Larry Sconyers and Sconyers Barbecue Restaurant in Augusta, Georgia.

Sconyers Bar-B-Que was founded 50 years ago in 1956, when Claude and Adeline Sconyers could no longer make a living at farming and decided to give their hobby a try.

With all their children but one grown and no one to help them on the farm, they opened Sconyers Bar-B-Que on Peach Orchard Road, just about a mile from the Tobacco Road of Erskine Caldwell fame. The small restaurant was an instant hit, with classically prepared southern barbecue.

Larry Sconyers, Claude and Adeline's youngest son, took over the business after the death of his father. Under Larry's direction, the hobby grew into a major business in the Augusta area, with a move to a larger and more upscale location.

But Larry wanted to take the traditional southern barbecue to a higher level—catering.

Over the years Sconyers' Bar-B-Que has been served on the White House lawn for President Jimmy Carter and members of Congress, in Atlanta at the Georgia Capital as well as at many local and state events, including my own fundraising barbecues.

Larry's close ties with political events almost cost us this wonderful asset.

He was enticed to run for office himself, first serving as a Richmond County Commissioner from 1991–95, then as the first Mayor of a consolidated Augusta-Richmond County—Georgia's second largest city—until he retired from direct politics in 1998 to return to the barbecue business.

All this isn't just me talking. Sconyer's Barbecue has been featured in People's Magazine as one of the top ten Bar-B-Que restaurants in the United States.

Mr. Speaker, on behalf of the people of the 9th District of Georgia, I commend Larry Sconyers, the Sconyers family, and the entire staff, past and present, of Sconyers Barbecue for a half-century of service and traditional southern hospitality to the people of East Central Georgia, the South, and the nation.

TEXAS LONGHORNS—NATIONAL CHAMPIONS

HON. TED POE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. POE. Mr. Speaker, I was personally on hand January 4, 2006 to see one of the greatest college football games ever played: Texas vs. USC in the granddaddy of them all, the Rose Bowl. Today I rise to congratulate the victors, College Football's National Champion, the University of Texas Longhorns.

In front of over 100,000 fans, an impressive portion of which were wearing burnt orange, the Longhorns triumphed with a stunning come from behind win that will be talked about for years to come. The State of Texas is immensely proud of the Longhorn's Head Coach Mack Brown, his entire staff, and the fine players that represent them.

Those fine young men and the thousands of screaming Texas faithful taught the entire country the lesson that Sam Houston taught Santa Anna at the Battle of San Jacinto. You don't ever want to share the same field as a bunch of fired up Texans.

That's just the way it is.

PAYING TRIBUTE TO ROBERT "NOLAN" CARWELL AFTER 25 YEARS OF DEDICATED SERVICE

HON. JON C. PORTER

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. PORTER. Mr. Speaker, I rise today to honor Robert "Nolan" Carwell, Postal Inspector, in Las Vegas, Nevada. Nolan is retiring from the U.S. Postal Inspection Service after twenty five years of dedicated service.

Nolan Carwell began his career as a Postal Inspector in May of 1980 when he accepted an assignment with the Seattle Division. In April 1983, he transferred to the Oakland/San Francisco Division 976 as a reserve officer and in November of that same year, he transferred to the Los Angeles Division where he was assigned to the External Crimes and Violent Crimes Division. He remained in Los Angeles until 2000 when he accepted a transfer back to the field as a Multi-Functional Team Leader with the Las Vegas Domicile Division.

Nolan has received the Vice President's Award for the Department of Justice Task Force, investigating conspiracy allegations into the Dr. Martin Luther King assassination; the Meritorious Service Award for the investigation of the Los Angeles riots; the Los Angeles Federal Bar Association Distinguished Achievement Award; and the Chief Inspector Performance Award, serving as an Instructor with FLETC, teaching classes in crime scene investigation, crime scene preservation, drug abuse, fingerprints, death investigation, rape investigation and burglary, photography, undercover technical investigations equipment, and labs and practical exercise programs to over 15,000 students representing over 70 federal law enforcement agencies.

Mr. Speaker, Nolan Carwell has worked diligently with the U.S. Postal Inspection Service for twenty five years I ask my fellow colleagues to stand with me today to honor him, to thank him for his service, and to wish him a long, happy and healthy retirement.

RECOGNIZING THE CONTRIBUTION OF CATHOLIC SCHOOLS TO THE NATION DURING THE 32ND ANNUAL CATHOLIC SCHOOLS WEEK

HON. DANNY K. DAVIS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. DAVIS of Illinois. Mr. Speaker, during the 32nd annual Catholic Schools Week, I want to recognize the contributions of Catholic schools to this Nation. Mr. Speaker, children all across America have benefited from Catholic education. I applaud these schools for their long commitment to education, to a value system and character development, and to developing the kind of lifestyles that students as well as adults need to seek. There are almost 8,000 Catholic schools nationwide. Illinois is one of the ten States with the highest enrollments of Catholic students, with over 181,000 students in 538 schools in the State. In Chicago, as in other urban areas, Catholic schools play an important role in providing quality academic training to children and youth. Indeed, the Archdiocese of Chicago was the second largest Catholic school system in the country. There are many outstanding Catholic schools in my Congressional district. Among them is Fenwick High School in Oak Park, Resurrection Elementary School in Chicago, and, of course, St. Ignatius Preparatory, which is recognized as one of the top preparatory schools in the Nation.

Catholic schools emphasize discipline, values, and parental involvement—three elements that are critical to raising responsible citizens. Self-discipline, or the ability to restrain our impulses and to apply ourselves in the face of competing interests, is a quality that is important for young people and old. It allows us to use prudence and wisdom in making choices rather than to act out of impulse. Value-added education instills in youth a commitment to others and one's community. In an age where many individuals place primacy on their personal needs, such a focus prepares students to contribute to society by considering the needs of others. The close involvement of parents, a hallmark of Catholic education, makes clear that education is not something that occurs only within the school house, but is a life-long process.

One of the truly great aspects of the American education system is its diversity. The goal of our system should be both public and private, and it is to provide anyone and everyone in any city, any State, with the opportunity they need to succeed. The educational recipe for success in our country certainly includes Catholic schools. These schools contribute to the rich diversity that truly makes American education powerful. Catholic schools help make American education successful in its mission and provide a strong and positive force in America's educational system.

CONGRATULATIONS TO THE CONTAINER STORE

HON. KENNY MARCHANT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. MARCHANT. Mr. Speaker, I would like to congratulate the Container Store, whose headquarters are based in Coppell, Texas, for being ranked number 6 on Fortune Magazine's 2006 list of the "100 Best Companies to Work For."

The Container Store is one of only two companies from the State of Texas to make the Top 10 overall. It was awarded a number 3 ranking in the "Best Medium-Sized Companies (2,500–10,000 employees) to Work For" category.

The companies are chosen based upon Fortune's evaluation of the policies and culture of the company, and the opinion of its employees. The latter is given more weight; it is found from employee responses to a survey that evaluates factors such as attitudes towards management and job satisfaction.

The Container Store continues in the excellent tradition of employee satisfaction. The company has been at the top of the "Best Companies to Work For" list for 7 years in a row. Last year it was ranked number 15 on the top 100 list. The company prides itself on the philosophy that "employees are our greatest asset."

And so, I commend the Container Store for maintaining its dedication to a friendly and productive workplace environment. Its successful and creative practices have not only led to satisfied employees, but a business that continues to thrive and expand on a national level as well.

RECOGNIZING FEBRUARY AS BLACK HISTORY MONTH

HON. C.A. DUTCH RUPPERSBERGER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. RUPPERSBERGER. Mr. Speaker, February is a month of remembrance. February is a significant month for the United States of America because it marks an important part of our heritage, Black History Month. It is important for all Americans to recognize the great contributions of African-Americans.

Dr. Carter G. Woodson, a Harvard scholar, deserves most of the credit for establishing Black History Month. He was determined to bring Black history into the mainstream public arena and he succeeded. In 1926, Woodson organized the first annual Negro History Week, which took place during the second week of February. Woodson chose this date to coincide with the birthdays of Frederick Douglass and Abraham Lincoln—two men who had greatly impacted the Black population.

Over time, Negro History Week evolved into Black History Month. This 4-week-long celebration of African-American history is packed with important anniversaries and remembrances of African-American struggles and triumphs. February 14, 1817 is the presumed birthday of Frederick Douglass, February 21, 1965 marks the date of Malcolm X's assassination and Nelson Mandela's release from prison was on February 11, 1990.

Americans must remember that within the 4 short weeks of February, American history was radically changed. Many African-Americans risked their lives to stand up for their freedoms and as a result our culture has changed for the better.

The first day of February is significant for two separate reasons: On this day in 1865 Abraham Lincoln approved the 13th amendment to abolish slavery, and 1960 was the date of the Woolworth lunch counter sit-in. African-Americans prevailed again throughout February with the ratification of the 15th amendment guaranteeing that race would not prevent a man from voting, February 3, 1870; the day of the Montgomery bus boycott arrests, February 22, 1956; and opera star Marian Anderson's birthday on February 27, 1897.

Black History Month pays tribute to inspirational African-Americans from the past, as well as those who will continue to make history well into the future. It is important to inspire today's children by teaching them that there were people in the past such as Jackie Robinson, Harriet Tubman, and Dr. Vivien Thomas who laid the paths for all Americans. The hard work, sacrifices and hardships of these role models permitted the accomplishments of a new generation: Tiger Woods, Senator BARACK OBAMA, and Dr. Benjamin Carson.

Mr. Speaker, with all of the significant contributions African-Americans have accomplished throughout history, it is important that we recognize those achievements. Let's make sure that all Americans celebrate and understand the principles, achievements and ideals of African-Americans; after all, African American history is American history.

PAYING TRIBUTE TO FLORENCE MURPHY, PILOT AND CO-FOUNDER OF NORTH LAS VEGAS AIRPORT

HON. JON C. PORTER

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. PORTER. Mr. Speaker, I rise today to honor the memory of Florence Murphy who died Monday January 22, at the age of 94. I recognize Florence for her accomplishments in aviation and business, and for paving the way for other women as one of Nevada's first female pilots and the first woman to be vice president of an airline company.

Florence Murphy attended the University of Nevada, Reno, for 2 years before meeting her husband, John Murphy. He worked for the State Highway Department and she was a legal secretary when they first got the chance to fly in 1936. Two years later they each had their pilot's licenses. Murphy earned her flight instructor's license in 1941, and 3 years later she became the first woman in Nevada to earn a commercial pilot's license.

She was not always welcomed in the male-dominated field of commercial aviation, especially when she took the controls of an airliner. At times, she had to board the plane before the passengers so they could not see that a woman was flying the plane.

In 1941, Florence Murphy, her husband and their friend Bob Barrett built Sky Haven Airport, which is now North Las Vegas Airport. The airport opened on December 7, 1941. The festivities came to an abrupt end when an unscheduled military plane landed and shut down the airport with the announcement that Pearl Harbor had just been bombed. Florence's husband and Barrett then went to Arizona as civilian flight instructors. Florence stayed behind to keep the Sky Haven running during World War II.

After the war, Florence met Ed Converse, a Navy veteran who had started Bonanza Airlines. She joined the company and eventually became vice president, the first woman to hold such a position with an airline. She stayed with the company until 1958, when she started a real estate company with another friend, Larry McNeil. She remained active as a licensed pilot until the age of 82 and as a real estate executive until 93.

Mr. Speaker, it is with great pride that I have the opportunity to honor the memory of Florence Murphy, and her achievements, in front of my colleagues of the house.

TRIBUTE TO MR. FRANK CUTRONA

HON. STEVEN R. ROTHMAN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. ROTHMAN. Mr. Speaker, I rise to recognize Mr. Frank Cutrona, a resident of the Ninth District of New Jersey and the San Ciro Society's Man of the Year for 2006.

The San Ciro Society, located in Garfield, NJ, is an organization comprised of New Jerseyans of Italian-American descent that makes contributions to many worthy charitable causes each year. Locally, it provides students with scholarships to continue their education. On the international level, the society has sponsored foster children in Africa.

Frank Cutrona was born in Marineo, Italy on February 18, 1956. At the age of 13, his family moved to America to realize the American dream and settled in Garfield, NJ. Frank grew up in Garfield and worked as a truck driver for Dorwin Manufacturing, located in Elmwood Park, NJ, for 26 years. He now lives in Carlstadt with his beautiful wife, Rosa, where they run their own deli and where Frank works part-time for the Carlstadt Board of Education. The couple has two wonderful children, Joseph and Christina. Frank has been a devoted member of the San Ciro Society for 15 years and has served as its secretary of finance for 7 years.

Today, I would like to recognize Frank Cutrona's dedication to the San Ciro Society and send the Garfield, NJ's San Ciro Societa Religiosa my best wishes for their upcoming 97th annual Dinner Dance. Viva San Ciro.

HONORING BARBARA SNOPEK, PRINCIPAL OF SAINT FRANCIS XAVIER

HON. DANIEL LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. LIPINSKI. Mr. Speaker, I rise today to honor Barbara Snopek, Principal of Saint Francis Xavier in La Grange, Illinois and recipient of the 2005 National Distinguished Principal Award.

The National Distinguished Principals Program was established in 1984 as an annual event to honor exemplary elementary school principals who set the pace, character, and quality of the education children receive during their early school years. One principal is chosen from each of the 50 states and the District of Columbia, and this year Ms. Barbara Snopek has been selected as a National Distinguished Principal.

Before arriving at St. Francis in 1989, Snopek served as principal at St. Genevieve in Chicago and St. Suzanna in Harvey, Illinois. In her first year at St. Francis she worked closely with the staff to create and implement new curricula for the school. Since Ms. Snopek began her work at St. Francis, enrollment in the school has increased greatly and the majority of the students are testing above the 75th percentile in all academic areas on standardized tests.

Aside from initiated programs that benefit students, Ms. Snopek is also credited with an excellent ability to recognize the talents of her teachers. She helps develop staff members by providing them with varied opportunities for professional growth, including pursuing advanced degrees. Teachers and administration alike recognize Ms. Snopek as one who merges her responsibilities as a spiritual and educational leader to the benefit of her students and staff.

It is my honor to recognize Ms. Barbara Snopek who serves as an example of one of the best in PreK–8 school leadership and helps to foster a greater understanding of the principal's key role in meeting the challenging responsibility of educating children.

THE LEGACY OF FAYARD NICHOLAS

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. RANGEL. Mr. Speaker, today I rise to recognize legendary tap dancer Fayard Nicholas who died on Tuesday, January 24, 2006 at the age of 91 and to enter into the RECORD a statement remembering Nicholas prepared by the National Association for the Advancement of Colored People.

Nicholas was the elder half of an amazing tap dance legend—The Nicholas Brothers. Together the show-stopping duo influenced generations of dancers with their wildly creative tap routines, which included slides across the floor and signature no-hands leg splits.

Legends in their own time and ours, Fayard and Harold Nicholas are best known for their unforgettable appearances in more than 30 Hollywood musicals in the 1930s and '40s. They were talented singers and actors as well, but Jim Crow segregationist customs kept them from having speaking parts. Their artistry, choreographic genius, and unique style—a smooth mix of tap, jazz, ballet and acrobatic moves—have astonished vaudeville, theatre, film and television audiences all over the world. Their work influenced dancers from Gene Kelly to Fred Astaire to Debbie Allen, Gregory Hines to Savion Glover. Russian ballet dancer Mikhail Baryshnikov once called the Nicholas Brothers "the most amazing dancers I have ever seen in my life—ever."

Born in Mobile, the brothers learned to dance while watching their musician parents who played in their own band at the old Standard Theater—their mother at the piano and father on drums. Fayard was 18 and Harold was just 11 when they became the featured act at New York's Cotton Club in 1932. They then appeared on Broadway with "The Ziegfield Follies of 1936" and later Hollywood appearing in such great hits as "The Pirate" (1948) with Gene Kelly and Stormy Weather (1943) with Fred Astaire.

In 1981, the Brothers were honored with a retrospective of their work in films at the Academy Awards. Fayard received a Tony Award for his choreography in the Tony Award winning Broadway show "Black and Blue" in 1989. Two years later, the brothers received a Kennedy Center Honor. Their legacy has also been remembered with a star on the Hollywood Walk of Fame and induction into the Apollo Theater Hall of Fame. Even after Harold passed away in 2000 due to heart failure, Fayard kept their legend alive by giving lectures and demonstrations until 2004, when he suffered a stroke.

Not only is the Nicholas Brother's dance skill to be admired and remembered but so is their spirit. With each advancement in their career, they overcame racial discrimination, proving that even ignorance cannot dampen one's skills and drive. The Nicholas Brothers stand as a testament and an example to all by finding joy in following one's passion. I join the NAACP in remembering Fayard Nicholas.

NAACP MOURNS THE LOSS OF LEGENDARY TAP DANCER FAYARD NICHOLAS

NICHOLAS BROTHERS DUO INSPIRED DANCERS SUCH AS FRED ASTAIRE, GREGORY HINES AND SAVION GLOVER

The National Association for the Advancement of Colored People (NAACP) mourns the loss of Fayard Nicholas, the elder half of the tap-dancing duo the Nicholas Brothers, who died Tuesday in Los Angeles after suffering from pneumonia.

Bruce S. Gordon, NAACP President and CEO, said "Both of the Nicholas Brothers will be greatly missed. They took their passion for the art of dance and turned raw talent into skill. Each performance by the Nicholas Brothers demonstrated the depth of their creativity and left audiences gasping at their show-stopping presentation."

Fayard and his brother Harold overcame racial boundaries when their vaudeville tap show headlined New York's Cotton Club in 1932. From there the brothers went on to dazzle audiences on Broadway and Hollywood.

In 1934, the Nicholas Brothers were hired to be in their first major musical titled, Kid Millions, and appeared on Broadway in The Zeigfield Follies of 1936. Despite the lack of formal training, the Nicholas brothers also pioneered in the art of ballet and in 1937, they performed in Babes in Arms.

Throughout the 1940s, the Nicholas Brothers updated their style and performed in a series of musical films in Hollywood. Among those films was Sun Valley Serenade (1941) with performances with Dorothy Dandridge, whom Harold later married and divorced. In 1948, the pair performed a memorable routine with Gene Kelly in Be a Clown.

After a series of international tours, nightclub and television performances, the brothers' schedule remained tight. In 1970, Fayard captured the leading role in The Liberation of L.B. Jones and in 1989 won a Tony Award for his choreography of the Broadway revue Black and Blue, featuring child tap star Savion Glover.

In 1991, the Nicholas Brothers received the Kennedy Center Honors and were honored at the Academy Awards. Harold passed away in 2000 from heart failure, but Fayard continued to give lectures and demonstrations until suffering a stroke in November 2004. Fayard Nicholas was 91.

Founded in 1909, the National Association for the Advancement of Colored People is the nation's oldest and largest civil rights organization. It's adult and youth members throughout the United States and the world are the premier advocates for civil rights in their communities and monitor equal opportunity in the public and private sectors.

TRIBUTE TO NORMAN J. PERA

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Ms. ESHOO. Mr. Speaker, I rise to honor Norman J. Pera of Saugatuck, Michigan, who died on January 1, 2006, at the age of 83.

Norman J. Pera was born in Gary, Indiana, where he graduated from Horace Mann High School in 1939. He served honorably from 1942 to 1946 in the U.S. Navy, including active duty in the Pacific Theater during Word War II.

Upon completing military service, he attended the Rose Hulman Institute of Technology in Terre Haute, Indiana, and graduated in 1948 with a degree in Mechanical Engineering. He worked for Inland Steel of East Chicago, Indiana, and retired in 1982 as the Assistant Superintendent of the Mechanical Department. Mr. Pera moved to Saugatuck in 1989 and became an active volunteer for many local organizations, giving generously of his time and his many talents.

He is survived by his wife Patricia, the great love of his life for 57 years, their 5 outstanding sons, David, Timothy, Mark, Thomas, and John; his daughters-in-law Ruth, Kathleen, Leslie and Catherine; his nephew and niece Anthony and Mary Ester Merza, and his 11 beautiful grandchildren.

Norman Pera was a principled and decent man who loved his family, his faith, his community and his country very deeply.

Mr. Speaker, I ask all my colleagues to join me in honoring the life of my dear cousin Norman and extend to his beloved family our deepest sympathy. America has lost a magnificent citizen.

PAYING TRIBUTE TO TYRONNE E. DORAM, SR. FOR TWENTY-TWO YEARS OF TEACHING FOR THE CLARK COUNTY SCHOOL DISTRICT

HON. JON C. PORTER

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. PORTER. Mr. Speaker, I rise today to honor Mr. Tyronne E. Doram, Sr., who retired on January 20, 2006, after twenty-two years of teaching in the Clark County School District.

Mr. Doram has been a role model, mentor, and constant example of what is good in education. In 1994, he was honored as Kiwanis Teacher of the Year, and when many people are winding down their careers, Mr. Doram was instrumental in expanding the Culinary Arts program at the Area Technical Trade Center (ATTC), in North Las Vegas. His senior students have had the opportunity to complete internships in various hotel culinary departments both on and off the Las Vegas Strip. Many of his graduates have secured positions in the industry immediately after graduation while other students have continued their education in postsecondary institutions. Mr. Doram and his students were recognized by President Clinton for their contributions to the 1995 White House Christmas celebration. Graduates from the 2004 and 2005 ATTC culinary arts program have received over $90,000 in scholarships, due mainly to Mr. Doram's fine teaching.

Prior to becoming a teacher, Mr. Doram served our country for twenty years in the United States Air Force. He retired as a Master Sergeant, with his most notable tours of duty being Vietnam and Thailand. Mr. Doram was honored by President Ford for his ideals and recommendations that saved the country money in the operations of the culinary departments, throughout the United States Armed Forces.

The Clark County School District will greatly miss Mr. Doram, who during his years as a teacher was an outstanding educator who deeply cared about the youth of Nevada. Yet his legacy of service to the community will be seen for generations to come.

Mr. Speaker, it is an honor that I am able to recognize Tyronne E. Doram today, on the floor of the House in front of my colleagues. I commend Mr. Doram for his fine example and exemplary service to the State of Nevada.

UNIVERSITY OF THE DISTRICT OF COLUMBIA GRADUATE PROGRAMS ACT

HON. ELEANOR HOLMES NORTON

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Ms. NORTON. Mr. Speaker, today I introduce the University of the District of Columbia Graduate Programs Act that amends Section 326 of the Higher Education Act to provide federal Historically Black College and University (HBCU) grant funding to the qualified graduate programs at the University of the District of Columbia.

The University of the District of Columbia, or UDC, is the District's only public university and institution of higher learning. An open admission institution at the undergraduate level, the University has consistently and historically provided higher education opportunity to D.C. residents at low and affordable cost. The University justifiably prides itself on its vital role in educating the leaders of the next generation by producing theoretically sound and practically skilled graduates, ready to undertake careers in service in both the public and private sectors.

UDC also is one of the Nation's oldest HBCUs, but the university did not receive federal funding as an HBCU until 1999, when Congress passed the District of Columbia College Access Act that my good friend, Government Reform Committee Chair TOM DAVIS, and I sponsored to establish the D.C. Tuition Assistance Grant program.

Funding from the Historically Black Graduate Institutions (HBGIs) program will allow UDC to increase its production of skilled graduates in vital disciplines and jobs in which African Americans, Hispanics and others are underrepresented and to strengthen its graduate programs in occupations where there are shortages in our region. For example, the University has graduate degree programs in cancer biology prevention and control, early childhood education, mathematics, special education, and speech and language pathology, and other graduate programs in the College of Arts and Sciences, the David A. Clarke School of Law, and the School of Business and Public Administration. A graduate curriculum is being developed in the School of Engineering and Applied Sciences.

I urge all of my colleagues to support this bill.

A TRIBUTE TO GLORIA CONWAY

HON. MICHAEL E. CAPUANO

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. CAPUANO. Mr. Speaker, I rise today to congratulate and pay tribute to an outstanding woman, Gloria Conway, the long-time editor of the Charlestown Patriot. She recently sold this neighborhood weekly, a publication that she owned with her husband, Jim, for nearly 40 years.

Gloria's passion for her neighborhood was evident in the pages of her paper and in the various charity events she champions with her husband. As editor of The Charlestown Patriot, she would honor a mother's wish to recognize a son's first little league homerun with the same importance as any news emanating from Washington, DC. Her paper creatively balanced a nostalgic tie to Charlestown's historic past while also covering today's relevant topics, and it was always done with a local flair.

The Patriot will remain in Charlestown with Gloria Conway as Publisher Emeritus. It has a different look and new owners, but the decades of positive influence that Gloria Conway provided will endure at the Patriot and within the Charlestown community for years to come. I wish Gloria, Jim and the entire Conway family all the best in whatever the future holds. I want to thank them for their friendship and commitment as they recorded Charlestown's most recent history in their pages.

HONORING JESSICA TURNER

HON. RON LEWIS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. LEWIS of Kentucky. Mr. Speaker, I rise today to recognize Jessica Turner, an exemplary citizen from my district who was recently named recipient of the Elizabethtown Independent Schools' 2005–06 Excellence in the Classroom and Educational Leadership (ExCEL) Award.

A teacher for more than six years, Ms. Turner promotes a unique style in her classroom that incorporates hard work, cooperation and respect among her kindergarten and first grade students at the Helmwood Heights Elementary School in Elizabethtown, KY. Year after year, she continues to capture the attention of her students, encouraging them to feel comfortable with themselves and with each other as she blends activities with lessons to keep them engaged and learning.

In addition to her work in the classroom, Jessica Turner oversees the professional development of kindergarten, first-grade, and second-grade teachers and is a valuable resource to new faculty. Ms. Turner is also actively involved in numerous teacher training programs including the Kentucky Reading Project and the Louisville Writing Project.

I applaud Jessica Turner's accomplishments in public education, an occupation of great responsibility and even greater reward. On behalf of so many in the Elizabethtown area, I would like to express my profound appreciation for her service and inspiration as she motivates young people to recognize and develop their talents and abilities.

It is my great privilege to recognize Jessica Turner today, before the entire U.S. House of Representatives, for her achievements as an educator. Her unique dedication to the development and well-being of young people and the communities they will someday serve make her an outstanding citizen worthy of our collective honor and respect.

BLACK HISTORY MONTH

HON. MICHAEL M. HONDA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. HONDA. Mr. Speaker, this February we commemorate Black History Month. Since 1976, the month of February has been the designated time for honoring the countless African-American contributions to American history and culture. We should all take this opportunity to learn about and understand the Black experience in this country. It has completely revolutionized our shared concepts of freedom, hope, and justice.

In celebrating the progress our country has made because of these contributions, let us also be honest and frank in determining what remains undone. We must work to ensure that all of America's communities have access to the American dream. We cannot ignore the reality that many Americans, particularly within the African-American community, still face serious obstacles in accessing the opportunities everyone deserves in education, health care, home ownership, and economic development. The devastation of Hurricanes Katrina and Rita only serve to highlight the remaining challenges of seeking equality and equal treatment under the law.

We must commit ourselves to challenging the social, political, and economic status quo so that each of us may realize the dream of equal opportunity envisioned by the late Dr. King, and now the late Coretta Scott King. This year, Black History Month will be dedicated to the memory of Ms. King.

Our Nation mourns the recent loss of Coretta Scott King, a true American icon who championed civil and human rights for all Americans. Widow of the Reverend Martin Luther King, Jr., Ms. King first stepped into the international spotlight as the wife and faithful supporter of the famed minister, ultimately emerging as an influential civil rights advocate in her own right. She was 78 at her passing. I hope you will join me in remembering this great person and the precious values that her life embodied. She was not only a symbol of positive change but also a tireless agent of progress. May her work continue to influence future generations in the ongoing fight for justice in this Nation and throughout the world.

During the month of February, I encourage all Americans to honor African-Americans by attending local Black History Month events, or hosting a roundtable discussion about Black History Month at the local library with African-American activists from your community. The best way to honor the African American experience is to educate oneself and one's community. Use this month to expose yourselves to the ways in which the African American experience has already been made a part of your life.

HIGHLIGHTS OF CIVIL LIBERTY SAFEGUARDS CONTAINED IN PATRIOT ACT CONFERENCE REPORT

HON. F. JAMES SENSENBRENNER, JR.

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. SENSENBRENNER. Mr. Speaker, I would like to include the following House Judiciary Committee press releases that highlight important civil liberty safeguards that are contained in the PATRIOT Act conference report.

PATRIOT Act Conference Report Civil Liberty Safeguard #1—Requiring High-Level Approval and Additional Reporting to Congress for Section 215 Requests for Sensitive Information Such as Library or Medical Records:

Section 215 of the PATRIOT Act authorizes the Director of the Federal Bureau of Investigation or a designee of the Director to apply to the Foreign Intelligence Surveillance Act (FISA) Court for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for a foreign terrorism or spy investigation. This authority provides counterterrorism and law enforcement officials a helpful tool to uncover what activities suspected terrorists or spies are engaged in. The Department of Justice testified in April 2005 to the House Judiciary Committee that a Section 215 order had not been used to request sensitive information such as library, bookstore, medical, or gun records and no evidence has been presented to demonstrate otherwise. Nonetheless, some have raised concerns that this authority could be abused by mid-level officials to seek sensitive categories of records about law-abiding Americans.

To address these concerns, the conference report provides that when the documents sought relate to certain sensitive categories of records (such as library, bookstore, tax return, firearms sales, educational, and medical records), only the FBI Director, Deputy Director, or Official-in-Charge of Intelligence may approve the application before it can be submitted to the FISA court. Without the personal approval of one of these 3 officials, the 215 order for these sensitive categories of records may not be issued. Additionally, the conference report establishes enhanced reporting requirements to Congress regarding the use of Section 215, including a breakdown of its use to obtain library, medical, educational, and other sensitive types of records in order to further protect this authority from possibly being abused. These civil liberty safeguards contained in the conference report do not exist under current law.

PATRIOT Act Conference Report Civil Liberty Safeguard #2—Statement of Facts Showing Relevance to a Terrorism or Foreign Spy Investigation Required for Section 215 Requests:

Section 215 of the PATRIOT Act authorizes the Director of the Federal Bureau of Investigation or a designee of the Director to apply to the Foreign Intelligence Surveillance Act (FISA) Court for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for a foreign terrorism or spy investigation. This authority provides counter-terrorism and law enforcement officials a helpful and less invasive tool to both uncover what activities suspected terrorists or spies are engaged in and clear innocent people suspected of terrorism or spying. Without Section 215 authority, counter-terrorism and law enforcement officials seeking to discover whether a person is involved in terrorism or spying activity would be forced to use more invasive investigative techniques such as obtaining a search warrant. Current law only requires that an application for a Section 215 order state that the requested records are sought for an authorized investigation to collect foreign terrorism or spy information.

The conference report requires that a Section 215 application must include a statement of facts demonstrating that the records sought are "relevant" to an authorized investigation to obtain terrorism or foreign intelligence information. This statement of facts requirement contains language offered by Senator Leahy. This statement of facts civil liberty safeguard contained in the conference report does not exist under current law. In addition, the conference report maintains the specific prohibition that the requested information not concern a U.S. person unless it is to protect against international terrorism or spying activities.

PATRIOT Act Conference Report Civil Liberty Safeguard #3—Explicitly Allowing a FISA Court Judge to Deny or Modify a Section 215 Request:

Under current law, upon receiving the Section 215 application, the FISA Court judge must approve or modify the order; the current law does not include specific authority for the court to deny an application. The PATRIOT Act conference report explicitly provides a FISA Court judge the discretion to not only approve or modify a Section 215 application, but also to deny an application. This civil liberty safeguard contained in the conference report does not exist under current law.

PATRIOT Act Conference Report Civil Liberty Safeguard #4—Requiring Minimization Procedures to Limit Retention and Dissemination of Information Obtained About U.S. Persons From Section 215 Requests:

In order to address concerns that information sought in a Section 215 order might be unnecessarily retained or disseminated, the PATRIOT Act conference report requires that the Attorney General create minimization procedures for the retention and dissemination of this data and that the FBI use these procedures. Specifically, the A.G. must establish minimization procedures to minimize the retention, and dissemination, of nonpublicly available information concerning non-consenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information. This civil liberty provision provides another safeguard to ensure information about innocent U.S. persons is not kept or used in nefarious or inappropriate ways. This civil liberty safeguard is not contained in current law and was requested by Senator Leahy.

PATRIOT Act Conference Report Civil Liberty Safeguard #5—Explicitly Providing for a Judicial Challenge to a Section 215 Order:

Current law requires judicial review before a Section 215 order can be issued. Specifically, the FISA Court is required to review all applications before a Section 215 order is approved. However, current law does not provide a judicial review process after a 215 order has been issued. The pending PATRIOT Act conference report explicitly establishes a judicial review process after the 215 order has been issued to allow the recipient of a 215 order to challenge the order before the FISA Court. The FISA Court may quash a Section 215 request if it does not meet the requirements of the statute or is otherwise unlawful. This civil liberty safeguard contained in the conference report does not exist under current law.

PATRIOT Act Conference Report Civil Liberty Safeguard #6—Explicitly Clarifying that a Recipient of a Section 215 Order May Disclose Receipt to an Attorney or Others Necessary to Comply with or Challenge the Order:

Current law prohibits the recipient of a 215 order from disclosing the receipt of such an order except to those necessary to comply with the order. This is done for 2 main reasons: 1) fear of tipping off terrorists or spies that they are being investigated; and 2) irreparably harming the reputations of innocent people by publicly disclosing their activities were investigated because of terrorism or spying links. Current law is silent as to whether a 215 order recipient may disclose the receipt of such an order to an attorney to comply with the order. The pending PATRIOT Act conference report clarifies this issue by stating explicitly that the recipient of a 215 order may disclose receipt to an attorney or others necessary to comply with or challenge the order. This civil liberty safeguard contained in the conference report does not exist under current law.

PATRIOT Act Conference Report Civil Liberty Safeguard #7—Requiring Public Reporting of the Number of Section 215 Orders:

On April 6, 2005, Attorney General Alberto Gonzales testified before the House Judiciary Committee that as of March 30, 2005, the FISA Court had approved the Justice Department's request for a Section 215 order 35 times. However, under current law, the number of Section 215 orders is not required to be made public. At the request of Senator Leahy and other Senate Democratic conferees, the PATRIOT Act conference report requires the Justice Department to report to the public annually the aggregate number of Section 215 applications submitted, approved, modified, and denied. Despite the concerns of some that this public reporting requirement unnecessarily informs America's enemies of the sources and methods being used to thwart terrorism and spying, the conference reports includes this civil liberty safeguard to assuage any concerns that the Section 215 authority is being abused. This civil liberty safeguard contained in the conference report does not exist under current law.

PATRIOT Act Conference Report Civil Liberty Safeguard #8—Requiring the Justice Department's Independent Inspector General to Conduct an Audit of Each Justice Department Use of Section 215 Orders:

The PATRIOT Act conference report provides additional public information and congressional oversight by requiring the Justice Department's independent Inspector General to conduct an audit for each Justice Department use of Section 215 orders. These audits will be compiled into two Inspector General public reports with classified annexes. This civil liberty safeguard contained in the conference report does not exist under current law.

PATRIOT Act Conference Report Civil Liberty Safeguard #9—Explicitly Providing for a Judicial Challenge to a National Security Letter (NSL):

Current law does not specify that an NSL can be challenged in court and provides no process for challenging an NSL. The conference report provides explicit authority to challenge in court an NSL under all existing statutes authorizing NSLs. Specifically, the conference report provides that the recipient of an NSL may petition for an order modifying or setting aside the NSL request in the U.S. district court for the district where the recipient does business or resides. This civil liberty safeguard is stronger than the Senate-passed bill, which only addressed one of the NSL statutes, does not exist under current law, and was written by Rep. Jeff Flake (R-Ariz.).

Originally created by a Democrat-led Congress and signed into law by President Carter, NSLs are a long-standing tool by which the FBI and other appropriate federal law enforcement officials request, for sensitive foreign spying or international terrorism investigations, subscriber information and toll billing records of a wire or electronic communication service provider, such as a phone company or AOL.

PATRIOT Act Conference Report Civil Liberty Safeguard #10—Explicitly Clarifying: that a Recipient of a National Security Letter (NSL) May Disclose Receipt to an Attorney or Others Necessary to Comply with or Challenge the Order:

As NSLs may only be used in highly sensitive international terrorism or foreign espionage investigations with national security implications, current law prohibits the recipient of an NSL from disclosing the receipt of such an order. Current law is silent as to whether an NSL recipient may disclose the receipt of such an order to an attorney to comply with or challenge the order. The pending PATRIOT Act conference report clarifies this issue by stating explicitly that the recipient of an NSL may disclose receipt to an attorney or others necessary to comply with or challenge the order. This civil liberty safeguard contained in the conference report does not exist under current law and was written by Rep. Jeff Flake (R-Ariz.).

PATRIOT Act Conference Report Civil Liberty Safeguard #11—Providing that a Nondisclosure Order Does Not Automatically Attach to a National Security Letter (NSL):

Current law automatically prohibits the recipient of an NSL from disclosing receipt of it. The conference report amends the law so that a nondisclosure order does not automatically attach to an NSL. Instead, a nondisclosure requirement will attach to an NSL only upon a certification by the government that disclosure could cause one of the harms specified in the conference report, such as endangering a witness or threatening national security. This civil liberty safeguard does not exist in current law and was written by Rep. Jeff Flake (R-Ariz.).

PATRIOT Act Conference Report Civil Liberty Safeguard #12—Providing Explicit Judicial Review of a Nondisclosure Requirement to a National Security Letter (NSL):

Current law does not allow the recipient of an NSL to challenge a nondisclosure order attached to the NSL. The conference report changes this by explicitly providing for judicial review of a nondisclosure requirement to an NSL. The NSL recipient may challenge the nondisclosure requirement in the U.S. district court for the district in which the recipient does business or resides. This civil liberty safeguard does not exist in current law and was written by Rep. Jeff Flake (R-Ariz.).

PATRIOT Act Conference Report Civil Liberty Safeguard #13—Requiring Public Reporting of the Number of National Security Letters (NSLs):

At the request of Senator Leahy and other Senate Democratic conferees, the PATRIOT Act conference report includes—for the first time—public reporting on the aggregate number of NSLs requested for information about U.S. persons. Despite the concerns of some that this public reporting requirement unnecessarily informs America's enemies of the sources and methods being used to thwart terrorism and spying, the conference reports includes this civil liberty safeguard to assuage any concerns that the NSL authority is being abused. This civil liberty safeguard contained in the conference report does not exist under current law.

PATRIOT Act Conference Report Civil Liberty Safeguard #14—Requiring the Justice Department's Independent Inspector General to Conduct Two Audits of the Use of National Security Letters (NSLs):

The PATRIOT Act conference report provides additional public information and congressional oversight by requiring the Justice Department's independent Inspector General to conduct two audits on the use of NSLs during the years 2003—2006. These audits will be compiled into two Inspector General public reports with classified annexes. This civil liberty safeguard contained in the conference report does not exist under current law.

PATRIOT Act Conference Report Civil Liberty Safeguard #15—Requiring Additional Reporting to Congress by the Justice Department on Use of National Security Letters (NSLs):

The PATRIOT Act conference report enhances congressional oversight over the use of NSLs by requiring additional classified reporting to Congress on the use of NSL authorities. Specifically, the conference report requires the House and Senate Judiciary Committees to receive all classified reports regarding use of NSLs; currently these committees only receive classified reports under one of the five statutes authorizing NSLs.

PATRIOT Act Conference Report Civil Liberty Safeguard #16—Requiring the Justice Department to Re-Certify that Nondisclosure of a National Security Letter (NSL) is Necessary:

The PATRIOT Act conference report explicitly allows an NSL recipient to challenge a nondisclosure requirement in U.S. district court. If an NSL recipient challenges the prohibition on disclosure more than a year after the NSL is issued, the Justice Department must re-certify that nondisclosure is necessary, or else the nondisclosure requirement lapses. This civil liberty safeguard contained in the conference report does not exist under current law.

PATRIOT Act Conference Report Civil Liberty Safeguard #17—Narrowing the Deference Given to the Justice Department on a National Security Letter (NSL) Nondisclosure Certification:

The PATRIOT Act conference report provides greater judicial discretion by narrowing the deference given to certifications by the Justice Department on NSL nondisclosure requirements. Like the Senate-passed version, the conference report provides an additional level of deference if an NSL nondisclosure certification is made on the grounds that disclosure may endanger national security or diplomatic relations. At the request of Senator Leahy, this heightened degree of deference is only provided to certifications made by a few Senate-confirmed officials at the time the nondisclosure petition is filed. This civil liberty safeguard contained in the conference report does not exist under current law.

PATRIOT Act Conference Report Civil Liberty Safeguard #18—Requiring a Report to Congress on Any Use of Data-Mining: Programs by the Justice Department:

Data-mining programs take vast amounts of information and try to utilize it for specific purposes such as identifying a group with similar features. These programs can be helpful in "connecting the dots" and are becoming more useful as a tool to bolster homeland security. Congress wants to ensure that agencies using data-mining programs take all necessary steps to protect privacy and the unauthorized dissemination of information.

The PATRIOT Act conference report enhances congressional oversight of data-mining programs by requiring the Justice Department to report to Congress on the use or development of any of these programs by the Justice Department. This report will help inform Members of Congress of the civil liberty protections that are built into—or should be built into—these Justice Department data-mining programs. This new civil liberty safeguard contained in the PATRIOT Act conference report does not exist in current law and was written by Reps. Howard Berman (D-Calif.) and William Delahunt (D-Mass.).

PATRIOT Act Conference Report Civil Liberty Safeguard #19—Requiring Notice Be Given on Delayed-Notice Search Warrants Within 30 Days of the Search:

Prior to the enactment of the PATRIOT Act in 2001, the U.S. Courts had authorized delayed notice search warrants under limited circumstances. For these special situations, the PATRIOT Act adopted the Courts' practice of requiring law enforcement to provide notice within a reasonable amount of time after the search has been carried out. Some were concerned that using a "reasonable amount of time" standard could allow abuse. Thus, the PATRIOT Act reauthorization conference report narrows and clarifies this standard by providing a Court the discretion to delay notice for up to 30 days after the search is executed. This new conference report civil liberty safeguard is not found in current law.

Notice has been delayed in only rare cases. As of January 31, 2005, the Justice Department has requested delayed-notice search warrants approximately 155 times since passage of the PATRIOT Act on October 26, 2001 out of the tens of thousands of search warrants authorized each year. These warrants make up fewer than 1 in 500 search warrants obtained in that period. Delayed-notice search warrants have been a valuable tool used by law enforcement for decades. Like all criminal search warrants, a delayed-notice search warrant is issued by a federal judge only upon a showing that there is probable cause to believe that a crime has been or will be committed and that the property sought or seized constitutes evidence of this criminal offense. Notice is delayed only to protect an on-going investigation and the safety of the American public. Not delaying notice could allow a terrorist or criminal to flee the country, destroy evidence about his activity, alert associates to go into hiding, or even kill witnesses who could implicate the individual.

PATRIOT Act Conference Report Civil Liberty Safeguard #20—Limiting Delayed-Notice Search Warrants Extensions to 90 Days or Less:

Like the versions passed by the House and the Senate, the PATRIOT Act conference report narrows and clarifies the permissible extension period by providing a Court the discretion to extend the delay of notice for up to 90 days except under exceptional circumstances. This new conference report civil liberty safeguard is not found in current law.

PATRIOT Act Conference Report Civil Liberty Safeguard #21—Requiring an Updated Showing of Necessity in Order to Extend the Delay of Notice of a Search Warrant:

To ensure that a Court considering extending a delay of notice has the best and most up-to date information, the PATRIOT Act conference report requires an updated show of necessity by the applicant in order to extend the delay of notice of a search warrant. This new conference report civil liberty safeguard is not found in current law.

PATRIOT Act Conference Report Civil Liberty Safeguard #22—Requiring Annual Public Reporting on the Use of Delayed-Notice Search Warrants:

To assuage concerns that delayed-notice search warrants could be abused, the PATRIOT Act conference report requires public reporting on the use of these search warrants. Specifically, the annual public report will include the "number of applications for warrants and extensions of warrants authorizing delayed notice, and the number of such warrants and extensions granted or denied during the preceding fiscal year." This new conference report civil liberty safeguard is not found in current law.

PATRIOT Act Conference Report Civil Liberty Safeguard #23—Requiring Additional Specificity from an Applicant Before Roving Surveillance May be Authorized:

In an age of disposable cell phones, "roving" wiretaps are a reasonable and commonsense updating of investigative techniques to account for technological advances. A "roving" wiretap follows the target rather than just a single phone or communications device. The PATRIOT Act conference report addresses concerns about vagueness in applications for "roving" wiretaps in foreign spying and terrorism investigations by requiring additional specificity in these applications in order for a Foreign Intelligence Surveillance Act (FISA) Court judge to consider authorizing a "roving" wiretap. This civil liberty safeguard is not included in current law.

Congress has authorized criminal wiretaps for decades as an effective crime-fighting tool. Because of technological advances, including the use of cell phones, in 1986 Congress authorized "roving" wiretaps in criminal cases that allowed for the surveillance to target a person rather than a specific phone or communications device. However, prior to the PATRIOT Act, this authority did not exist for international spying or terrorism cases; thus, for these cases the government had to return to the FISA Court and apply for a new wiretap every time the suspected spy or terrorist used a different phone or communications device. This costly, cumbersome, and time-consuming requirement served as a major impediment in foreign spying and terrorism investigations. The PATRIOT Act extended the "roving" wiretap authority to international spying and terrorism cases by allowing a FISA Court judge to authorize a "roving" wiretap provided the applicant demonstrates there is probable cause to believe the target is a foreign spy or terrorist.

PATRIOT Act Conference Report Civil Liberty Safeguard #24—Requiring Court Notification Within 10 Days of Conducting Surveillance on a New Facility Using a "Roving" Wiretap:

The PATRIOT Act conference report addresses concerns the "roving" wiretap authority could be abused by requiring the investigators to inform the Foreign Intelligence Surveillance Act (FISA) Court within 10 days when the "roving" surveillance authority is used to target a new facility.

PATRIOT Act Conference Report Civil Liberty Safeguard #25—Requiring Ongoing FISA Court Notification of the Total Number of Places or Facilities Under Surveillance Using a "Roving" Wiretap:

The PATRIOT Act conference report enhances judicial oversight to address any concerns that the "roving" wiretap authority could be abused. Specifically, the conference report requires the Foreign Intelligence Surveillance Act (FISA) Court to be informed on an ongoing basis of the total number of places or facilities under surveillance using a "roving" wiretap authority.

PATRIOT Act Conference Report Civil Liberty Safeguard #26—Requiring Additional Specificity in a FISA Court Judge's Order Authorizing a "Roving" Wiretap:

The PATRIOT Act conference report addresses concerns about vagueness about the target in a Foreign Intelligence Surveillance Act (FISA) Court judge's order authorizing a "roving" wiretap in foreign spying and terrorism investigations by requiring additional specificity. The conference report requires the FISA Court judge's order authorizing a "roving" wiretap to specify "the identity, if known, of the specific target" of the surveillance. Current law requires "the identity, if known, or a description of the target." This new civil liberty safeguard is not included in current law.

PATRIOT Act Conference Report Civil Liberty Safeguard #27—Providing a Four-Year Sunset on FISA "Roving" Wiretaps:

Despite no evidence that the FISA "roving" wiretap authority has been abused, the PATRIOT Act conference report aggressively attempts to avoid any potential abuse of FISA "roving" wiretaps by providing a four-year sunset of this authority. This civil liberty safeguard will ensure Congress revisits this authority in four years.

PROVIDING FUNDS FOR TOURETTE SYNDROME RESEARCH

HON. PETE SESSIONS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. SESSIONS. Mr. Speaker, I rise today to applaud Congress for including $1.8 million for Tourette Syndrome research in H.R. 3010, Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 2006, and to encourage the Centers for Disease Control and Prevention (CDC) to continue its partnership with the Tourette Syndrome Association (TSA).

The Tourette Syndrome education program provides intensive training and education about Tourette Syndrome for the public, physicians, allied healthcare workers, and teachers. Its objectives are to increase recognition and diagnosis, decrease the stigma, increase the provision of and improve the nature of treatments, decrease negative impacts on families, and improve academic outcomes for children with this disorder.

In May 2004, Chairman REGULA indicated in a letter to the CDC Director that the money Congress was appropriating to help those with Tourette Syndrome should be sole-sourced to the Tourette Syndrome Association. He respected TSA's expertise, and I congratulate him for recognizing that they would be the entity best able to undertake the following kinds of successful and efficient use of the funds. It is my sincere hope that CDC will continue to work in partnership with TSA, so they can build upon the successes they have demonstrated to date.

TSA, in partnership with the CDC, completed the first year of the program on August 31, 2005 and began the second year on September 1, 2005. In the first year, TSA offered 25 expert medical education programs, as well as five major education-allied professional programs. The medical programs trained 2,149 physicians, nurses and medical-related allied professional while the education programs trained 745 teachers and school-based allied professionals. These program sites were well distributed across the country.

An April 2005 analysis found that 73.5 percent of the physicians who responded to TSA's evaluation reported that over half of the material presented in the training was new to them.

The Tourette Syndrome Association also videotaped Dr. John Walkup's presentation on "Diagnosis and Treatment of Tourette Syndrome" which has been made available on TSA's website as the first of several Continuing Medical Education (CME) programs. To learn more about Tourette Syndrome or to view this presentation please, visit http://tsa-usa.org.

All ready for year two of this program, the Tourette Syndrome Association has scheduled twenty medical education programs and seventeen education programs. TSA also plans to videotape Dr. Jorge Juncos offering training for neurologists in both English and Spanish for a future CME presentation on TSA's website.

It is in the best interest of the Centers for Disease Control and Prevention to continue its partneship with the Tourette Syndrome Association, so that this established program will continue to reach medical and education specialists across the country.

HONORING STEVE MONTGOMERY

HON. RON LEWIS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. LEWIS of Kentucky. Mr. Speaker, I rise today to pay public tribute to Steve Montgomery, an exemplary community leader, businessman and citizen from Kentucky's Second Congressional District. A charter member of the CORE Committee at Fort Knox, Steve is stepping down from his duties after 14 years of dedicated service marked by tremendous growth and success.

Steve Montgomery first came to Radcliff, KY in 1983 to buy and operate an auto dealership. He has remained in the community for 22 years, distinguishing himself as a business leader and good neighbor. As a charter member, Steve has served on the CORE Committee since its inception. One of Steve's first recorded duties was to arrange a meeting for the group with MG Foley, then Fort Knox Commanding General. MG Foley was briefed on the details of CORE activities and objectives at the congressional, state and Fort Knox levels. Following their initial meeting with Senator MCCONNELL in 1992, the CORE Committee was directed to devote primary focus on securing the future of Fort Knox. In this effort, the Committee has ably managed numerous challenges throughout the years that have followed.

In 1992, the Committee played a major role in the decision to relocate USAREC Headquarters to Fort Knox after Fort Sheridan closed. Soon thereafter, the CORE Committee began conducting informational briefings for local governments and business requesting monetary support. Steve Montgomery was elected Vice Chairman in 1993 and immediately worked to build a strong rapport with Kentucky's Congressional Delegation. Steve was elected Chairman of the CORE Committee in 1996. During his Chairmanship, Fort Knox has endured an especially active decade as the post adapted to a new security environment, carried on a wartime training mission, managed BRAC considerations and the significant administrative changes that have followed.

Under Steve Montgomery's leadership, funding was secured to modernize facilities, such as the new STARBASE barracks, significantly enhancing Fort Knox's future viability. Perhaps Steve's greatest legacy will be his tireless promotion of Fort Knox's military value during Base Realignment and Closure proceedings in 2005. Because of his critical contributions, working with the Governor, Members of Congress, and private consultants, Fort Knox remains open today, adapting to a new mission as a vital multi-functional home to operational Army forces and various administrative commands. Steve leaves the CORE Committee having completed the mission he was assigned many years earlier in the committee's nascence.

It is my great privilege to recognize Steve Montgomery today, before the entire U.S. House of Representatives, for his example of leadership and service. I ask my colleagues to join me in congratulating him for his invaluable contributions to the CORE Committee, Fort Knox, and the Greater Radcliff community. His unique achievements make him an outstanding American worthy of our collective honor and respect.

REMEMBERING THE SPACE SHUTTLE "COLUMBIA" CREW

HON. MADELEINE Z. BORDALLO

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Ms. BORDALLO. Mr. Speaker, I rise today to remember the astronauts of Mission STS–107 who lost their lives on February 1, 2003, when our Nation lost the Space Shuttle *Columbia*. The crew included Rick Husband, William "Willie" McCool, Michael Anderson, David Brown, Laurel Clark, Kalpana Chawla, and Colonel Han Ramon.

Commander William "Willie" C. McCool was a son of Guam. Commander McCool, who attended Dededo Middle School and John F. Kennedy High School on Guam, was the pilot of the *Columbia* on Mission STS–107. He proudly carried the Guam flag with him on the mission. Commander McCool's life and service to our Nation and our world holds special meaning to the people of Guam.

STS–107, like other Space Shuttle missions, sought to broaden our understanding of the world in which we live and of the heavens beyond. That mission, and the work of STS–107, represents the best of human endeavor. Willie McCool understood this. On January 29, 2003, Commander McCool reported from orbit high above the Earth, "From our orbital vantage point, we observe an Earth without borders, full of peace, beauty and magnificence, and we pray that humanity as a whole can imagine a borderless world as we see it and strive to live as one in peace." Willie McCool gave his life in pursuit of that dream. It is a dream that should be honored, and one that should be an inspiration to us as well as our children.

For that reason, on February 11, 2003, I introduced H.R. 672, a bill to rename the Guam South Elementary/Middle School after Commander McCool. The President signed H.R 672 into law on April 11, 2003. And today, as namesake to the Commander William C. McCool Elementary/Middle School, Willie McCool's dream of a borderless world of peace lives on.

Exploration of space is exciting and inspiring. Rocketing into the heavens and returning to Earth represents the best of American ingenuity and courage. Manned space travel was once only a science fiction writer's dream. Our Nation made it a reality. Landing a man on the Moon and returning him safely to the Earth was thought to be impossible. Our Nation proved the critics wrong. Routine missions to space flown by the Space Shuttle were considered frivolous. But our Nation remains proud of the Space Shuttle program, the Astronaut corps, and the contributions to science, to other fields of study, and the practical applications of technology that regular space travel have made possible. With the perspective that only orbiting the Earth can provide a man, Willie McCool was inspired to dream of a borderless world of peace. That dream makes me proud. And achieving this dream should be the foundation upon which future manned spaceflight is based.

Let us renew our commitment to space exploration and manned space flight on the occasion of the anniversary of this mission and the loss of the *Columbia* crew. We also honor the memory of the *Challenger*, Mission STS 51–L, and the *Apollo 1* crews, and all pioneers who have lost their lives in the mission to explore space.

HONORING A NATIONAL LEADER IN CHILD SAFETY: DR. ROBERT SANDERS

HON. JIM COOPER

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. COOPER. Mr. Speaker, I rise today to honor one of our nation's most important voices in the fight to protect our children: Dr. Robert Sanders.

Today it is almost impossible to imagine but, as recently as the late 1970s, there were no laws requiring that young children be buckled into safety seats while traveling in a vehicle. Dr. Sanders, a soft-spoken pediatrician from my home state of Tennessee, had seen what happens to children in an automobile accident when they are not protected. He knew that so many of those injuries and deaths were preventable. And Dr. Sanders decided then and there that someone had to speak out on behalf of children and their safety.

Starting with the Tennessee General Assembly, Dr. Sanders and his wife Pat spent countless hours presenting medical data. Their facts and their passion overcame initial doubts. In 1977, thanks to the vision and determination shown by Dr. and Mrs. Sanders, Tennessee became the first state in the nation to adopt a law mandating that all children under the age of 4 must ride in a safety seat. State by state, the rest of the nation followed. Today all 50 states require this protection for young children.

Dr. Sanders passed away on January 19th after a long illness. He leaves behind his wife, Patricia Pelot Sanders, and two children. And he leaves behind a legacy of fighting for the needs of others. Even after he had won the battle for child safety seats, he continued to speak out on issues such as the need for seat belt laws, health care reform and environmental protections. His work earned him the love and appreciation of his community and citizens across the state of Tennessee, as well as awards from groups including the Tennessee Medical Association, the Tennessee Public Health Association and the Tennessee Pediatric Society.

Dr. Robert Sanders believed that each citizen had a responsibility to help others whenever possible. Dr. Sanders lived his life doing that every day. In addition to his public policy work, he served as chief physician and director of the Rutherford County Health Department from 1969 until his retirement in 1991.

Dr. Robert Sanders will be missed in Middle Tennessee. He will be missed by many who, like me, had the privilege of working alongside him as he fought for better health care policies. And he will be missed by all of us who were fortunate to know him as a neighbor, a friend and an inspiration.

TREATY OF GUADALUPE HIDALGO

HON. TOM UDALL

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. UDALL of New Mexico. Mr. Speaker, tomorrow is an important date in America's history. On February 2, 1848, the Treaty of Guadalupe Hidalgo was signed, ending the Mexican-American war. I ask that my colleagues in Congress and all New Mexicans join me in commemorating this significant date.

In 2000, New Mexico's Senators BINGAMAN and DOMENICI requested a study by the General Accounting Office to investigate whether the United States fulfilled its obligations under the Treaty with regard to community land grants made by Spain and Mexico in what is now the State of New Mexico. I was proud to join in their effort because of the importance of this issue to many of my constituents.

In June of 2004 the General Accounting Office issued its final report in response to the requested investigation. The GAO also identified for consideration by Congress a range of possible options in response to community land grant concerns. Additionally, last month, a group of land grant community leaders submitted its own ambitious proposal to resolve this situation. I want to thank them for their efforts in drafting this plan, and I look forward to working with the New Mexico delegation and the land grant communities to consider all possible approaches.

Regardless of any individual's personal thoughts on celebrating the anniversary of the signing of the Treaty of Guadalupe Hidalgo, February 2nd is a significant event in the history of the New Mexico and the United States. The Treaty is a living document in much the same way that the U.S. Constitution is. Many believe, however, that our Federal Government has failed to honor the commitments it made in the Treaty of 1848 in respect to the property rights of community grants. Many Mexicans who became American citizens as a result of the Treaty lost all right and title to much of their lands.

During the 107th Congress, I introduced H.R. 1823, the Guadalupe Hidalgo Treaty Land Claims Act, which would have established a Presidential commission to determine and evaluate the validity of certain land claims arising out of the Treaty of Guadalupe Hidalgo of 1848 involving the descendants of persons who were Mexican citizens at the time of the Treaty. The GAO also recommended such a commission as one of their options for consideration by Congress.

For 158 years, descendants have been fighting to get the Federal Government to look into this matter. I am very proud to be part of the effort to bring justice to this issue. In order to move on, we need to close this sad chapter in our Nation's history. We have an obligation to do no less.

REMEMBERING THE HOLOCAUST WHILE FIGHTING ANTI-SEMITISM

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. SMITH of New Jersey. Mr. Speaker, the anniversary of the liberation of the Auschwitz-Birkenau death camps is often selected as the day to honor those murdered at the hands of the Nazis and their collaborators. More than one million people were killed at Auschwitz before the survivors were liberated on January 27, 1945. Appropriately, each January 27, individuals and governments around the world pause to remember those individuals murdered by the Nazis during the Holocaust. Also known as the Sho'ah, Hebrew for "calamity," the Holocaust witnessed the death of six million Jews by the Nazi killing machine, many of them in concentration camps or elsewhere in a web that stretched throughout the heart of Europe. Millions of individuals—political dissidents, Jehovah's Witnesses, those with disabilities, and others including entire Romani families—also perished at the hands of the Nazis.

Holocaust Remembrance Day also celebrates those brave souls who faced unimaginable horrors and lived to tell of their experiences. In a historic first, late last year the United Nations designated January 27 as International Holocaust Remembrance Day. Initial drafters of the resolution—Australia, Canada, Israel, Russia and the United States—were joined by 100 nations in sponsoring the resolution in the General Assembly. Other international organizations, like the Organization for Security and Cooperation in Europe (OSCE), have done much to ensure the lessons of the Holocaust are taught in schools across Europe, including the former Soviet Union. In addition, the Belgian Chair-in-Office of the OSCE held a commemorative event for Holocaust victims on January 27 in Brussels.

Unfortunately, while the Holocaust is rightly remembered, its lessons have yet to be fully learned. Early on, the world said "Never Again" to genocide, only to allow genocide to happen again in Bosnia-Herzegovina and Rwanda in the 1990s, and in Darfur today. The establishment of international tribunals to seek justice in response to these crimes may indicate some progress, but the best way to honor the lives of those who died during the Holocaust or in subsequent genocides would be to have the resolve to take decisive action to try to stop the crime in the first place.

Some heads of state refuse to recognize even the existence of the Holocaust. Mahmoud Ahmadinejad, the President of Iran, made the outrageous claim on December 14 that Europeans had "created a myth in the name of Holocaust." Showing his virulent anti-Semitic nature, two months earlier in October, he said Israel is "a disgraceful blot" that should be "wiped off the map." While Ahmadinejad's anti-Semitic hate is shocking, other hate mongers have physically attacked Jews. In early January, a knife-wielding skinhead shouting "I will kill Jews" and "Heil Hitler" burst into a Moscow synagogue and stabbed at least eight worshippers. A copycat attack followed in Rostov-on-Don, with the attacker thankfully being stopped inside the synagogue before anyone was hurt.

As Co-Chairman of the U.S. Helsinki Commission, I have worked over the past four years with other Members of Congress and parliamentarians from around the world to fight anti-Semitism. I was pleased to have either authored or cosponsored three resolutions at the OSCE Parliamentary Assembly, which condemned anti-Semitism, while also being a principal sponsor to the Global Anti-Semitism Review Act that passed the Congress and was signed into law by President Bush in 2004. Internationally, the OSCE has held three international meetings focusing on anti-Semitism and has pledged to hold another major conference in Romania in 2007.

Mr. Speaker, while our struggle continues, we have made progress, moving governments and international organizations to begin to act. To reverse Edmund Burke's truism, what is necessary for the triumph of good over evil is for good men and women to take action.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, February 2, 2006 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

FEBRUARY 3

9:30 a.m.
Joint Economic Committee
To hold hearings to examine the employment-unemployment situation for January 2006.
2212 RHOB

FEBRUARY 6

9:30 a.m.
Judiciary
To hold hearings to examine wartime executive power and the NSA's surveillance authority.
Room to be announced

2 p.m.
Homeland Security and Governmental Affairs
To resume hearings to examine Hurricane Katrina response issues, focusing on managing law enforcement and communications in a catastrophe.
SD–342

FEBRUARY 7

9:30 a.m.
Armed Services
To hold hearings to examine the defense authorization request for fiscal year 2007 and the future years defense program.
SD–106

Foreign Relations
To hold hearings to examine common defense to common security relating to NATO.
SD–419

10 a.m.
Finance
To hold hearings to examine the President's proposed budget request for fiscal year 2007 for the Department of the Treasury.
SD–215

2 p.m.
Judiciary
To hold hearings to examine judicial nominations.
SD–226

3 p.m.
Budget
To hold hearings to examine the President's fiscal year 2007 budget proposal.
SD–608

Homeland Security and Governmental Affairs
Federal Financial Management, Government Information, and International Security Subcommittee
To hold hearings to examine Federal agencies and conference spending.
SD–342

FEBRUARY 8

9:30 a.m.
Environment and Public Works
To hold hearings to examine pending nominations.
SD–628

Foreign Relations
To hold hearings to examine Iraq stabilization and reconstruction.
SH–216

10 a.m.
Finance
To hold hearings to examine implementation of the new Medicare drug benefit.
SD–215

Commerce, Science, and Transportation
National Ocean Policy Study Subcommittee
To hold hearings to examine S. 1215, to authorize the acquisition of interests in underdeveloped coastal areas in order better to ensure their protection from development.
SD–562

10:30 a.m.
Budget
To continue hearings to examine the President's fiscal year 2007 budget proposal.
SD–608

2:30 p.m.
Commerce, Science, and Transportation
Consumer Affairs, Product Safety, and Insurance Subcommittee
To hold hearings to examine protecting consumers' phone records.
SD–562

FEBRUARY 9

9:30 a.m.
Foreign Relations
To hold hearings to examine new initiatives in cooperative threat reduction.
SD–419

10 a.m.

Commerce, Science, and Transportation

To hold an oversight hearing to examine commercial aviation security, focusing on Transportation Security Administration's aviation passenger screening programs, Secure Flight and Registered Traveler, to discuss issues that have prevented these programs from being launched, and to determine their future.

SD–562

Energy and Natural Resources

To hold hearings to examine the President's proposed budget request for fiscal year 2007 for the Department of Energy.

SD–366

Finance

To hold hearings to examine the President's proposed budget request for fiscal year 2007 for the Department of Health and Human Services.

SD–215

Health, Education, Labor, and Pensions

To hold hearings to examine global competitiveness.

SD–430

2:30 p.m.

Energy and Natural Resources

To hold hearings to examine the Energy Information Administration's 2006 annual energy outlook on trends and issues affecting the United States' energy market.

SD–366

FEBRUARY 14

9:30 a.m.

Armed Services

To resume hearings to examine the defense authorization request for fiscal year 2007 and the future years defense program.

SD–106

10 a.m.

Veterans' Affairs

To hold hearings to examine the President's proposed budget request for fiscal year 2007 for the Department of Veterans Affairs.

SR–418

FEBRUARY 15

10 a.m.

Commerce, Science, and Transportation

To hold hearings to examine video franchising.

SD–562

11 a.m.

Energy and Natural Resources

Business meeting to consider the President's views and estimates to be submitted to the Committee on the Budget.

SD–366

2:30 p.m.

Commerce, Science, and Transportation

To hold hearings to examine developments in nanotechnology.

SD–562

Energy and Natural Resources

Public Lands and Forests Subcommittee

To hold hearings to review the progress made on the development of interim and long-term plans for use of fire retardant aircraft in Federal wildfire suppression operations.

SD–366

FEBRUARY 16

9:30 a.m.

Armed Services

To hold hearings to examine priorities and plans for the atomic energy defense activities of the Department of Energy and to review the President's proposed budget request for fiscal year 2007 for atomic energy defense activities of the Department of Energy and the National Nuclear Security Administration.

SD–106

2:30 p.m.

Commerce, Science, and Transportation

To hold hearings to examine NOAA budget.

SD–562

FEBRUARY 28

2 p.m.

Veterans' Affairs

To hold hearings to examine legislative presentation of the Disabled American Veterans.

SD–106

2:30 p.m.

Energy and Natural Resources

Water and Power Subcommittee

To hold hearings to examine the Bureau of Reclamation Reuse and Recycling Program (Title XVI of Public Law 102–575).

SD–366

MARCH 1

2:30 p.m.

Commerce, Science, and Transportation

Disaster Prevention and Prediction Subcommittee

To hold hearings to examine winter storms.

SD–562

MARCH 9

10 a.m.

Commerce, Science, and Transportation

To hold hearings to examine aviation security and the Transportation Security Administration.

SD–562

MARCH 16

10 a.m.

Commerce, Science, and Transportation

Disaster Prevention and Prediction Subcommittee

To hold hearings to examine impacts on aviation regarding volcanic hazards.

SD–562

MARCH 30

10 a.m.

Commerce, Science, and Transportation

Disaster Prevention and Prediction Subcommittee

To hold an oversight hearing to examine National Polar-Orbiting Operational Environmental Satellite System.

SD–562

POSTPONEMENTS

FEBRUARY 9

2:30 p.m.

Commerce, Science, and Transportation

To continue oversight hearings to examine commercial aviation security, focusing on physical screening of airline passengers, including issues pertaining to Transportation Security Administration's Federal passenger screener force, TSA procurement policy, air cargo screening, and the deployment of explosive detection technology.

SD–562

SENATE—*Thursday, February 2, 2006*

The Senate met at 9:30 a.m. and was called to order by the Honorable LISA MURKOWSKI, a Senator from the State of Alaska.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O God who has comprehended our lives and is the author and finisher of our faith, teach us to live our days with the heights above us and on level plains. We thank You for Your grace that strengthens us for the tasks of each day and for the unfolding of Your wonderful Providence. Keep us from becoming intoxicated by the desire for success and protect us from the fear of failure that paralyzes noble striving. Lead us through the abysses of pride and across the gorges of pretension to the richness of Your transforming spirit of love.

Guide the Members of our Nation's legislative branch today with Your wisdom. Show them solutions to the problems that beset our land. Empower them with a compassion that seeks first Your glory and deliver them from coldness of heart and wanderings of mind.

Help us all to praise You with our words and deeds.

We pray in the name of the captain of our salvation.

Amen.

PLEDGE OF ALLEGIANCE

The Honorable LISA MURKOWSKI led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

> U.S. SENATE,
> PRESIDENT PRO TEMPORE,
> *Washington, DC, February 2, 2006.*
>
> *To the Senate:*
>
> Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable LISA MURKOWSKI, a Senator from the State of Alaska, to perform the duties of the Chair.
>
> TED STEVENS,
> *President pro tempore.*

Ms. MURKOWSKI thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority whip is recognized.

SCHEDULE

Mr. McCONNELL. Madam President, this morning we will resume debate on the House-passed tax reconciliation bill. I would like to observe that yesterday and today, up until the time we pass the tax reconciliation bill, we are actually engaging in an utterly futile activity that should have been avoided by the simple act of granting consent. In effect, the minority, in apparently a display of pique, wants to make the Senate, in effect, do again a bill it already did in December.

I am not opposed to dilatory tactics when they are not pointless. I have been in the minority in this body and have been a proud guardian of gridlock from time to time when there was a point to it, when we were actually trying to defeat a measure. But it seems to me to some extent it demeans the institution and grates on the nerves of everyone when common courtesy of granting consent is not offered.

Nevertheless, yesterday and today, we will plod through a bill that we did about 5 weeks ago one more time; at the end, with the same result.

Let me report that at this point there are 7 hours remaining for that debate, although we do not believe all of that time will be necessary. At some point early this afternoon, we expect on this side to yield back time, and we would begin voting. The so-called vote-arama will be a series of consecutive votes on amendments to the bill which will eventually lead to passage. We hope it is not a lengthy voting series because that will simply inconvenience all Members on both sides of the aisle. However, that is up to the Members of this body as to how many amendments they choose to offer.

In any event, the majority leader has stated that we will stay on the bill until we complete it this week. I encourage Senators to stay close to the Chamber once the voting sequence begins because, as we all recall, there is not much time between those votes.

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

DEFICIT REDUCTION

Mr. REID. Madam President, through the Chair to the distinguished Senator from Kentucky, and to anyone within the sound of my voice, if there were ever a grating of nerves, it is the nerves of the American people by what this piece of legislation does to them. This legislation was named by the majority in conjunction with the President. It is called the Deficit Reduction Act of 2005. If there were ever Orwellian doublespeak, it is that.

Using the numbers the majority placed in this bill, the budget Deficit Reduction Act of 2005—we are in 2006, but it was named and completed in 2005—it increases the deficit by $50 billion. The Deficit Reduction Act of 2005 increases the deficit by $50 billion using their numbers. So let's not talk about grating the nerves. If there were ever a grating of nerves, it should be the American people who are so concerned about what has happened to the economy of this country.

In just a few days we are going to be asked to increase the debt ceiling from $8.2 trillion to whatever figure they pick, $9 trillion; "they" meaning the majority. Talk about grating the nerves. We, the minority, need not be lectured on common courtesies as expressed by the distinguished Senator from Kentucky. There is no one in the Senate who is more bipartisan than the distinguished senior Senator from Montana who is the floor manager of this legislation. We are doing nothing but following procedure.

Frankly, what happened yesterday didn't extend common courtesy. We were not allowed to offer a single amendment. If this is how we want to start the year, by pointing fingers, we can point fingers just as well as the majority. We chose not to do that yesterday. There wasn't a speech given yesterday about how we had been prevented from offering amendments, but the Senator from Kentucky comes out here this morning and lectures us on common courtesy and grating nerves. Any time that debate needs to take place, we will be involved.

The ACTING PRESIDENT pro tempore. The majority whip.

Mr. McCONNELL. Madam President, I certainly don't intend to engage in a prolonged debate this morning. Let me repeat that we passed this bill about 5 weeks ago. A number of Democrats voted for it on final passage. The reason they voted for it is they know it is the only way to prevent a tax increase on many middle-class people who are counting on the tax relief that was passed several years back and hope that it will continue. My only point is, I say to my good friend from Nevada—and he is my good friend—we have been there and done that on this bill. To simply redo the same measure is arguably a waste of the Senate's time. Nevertheless, that is where we are. At some point this week we will complete, once again, the passage of this Tax Increase Prevention Act which will be to the substantial benefit of the American people.

I yield the floor.

TAX RELIEF EXTENSION RECONCILIATION ACT OF 2005

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 4297, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4297) to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Madam President, we have a few hours left on this side. I believe the Senator from California, Mrs. BOXER, is on her way to the Chamber and will be here momentarily. Until that moment arrives, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Madam President, I ask unanimous consent that I may yield to the distinguished Senator from Michigan such time as she may require and that I may be recognized at the close of her remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Michigan.

Ms. STABENOW. Madam President, I thank the distinguished Senator from West Virginia for his kindness this morning.

I rise in support of Senator BAUCUS's amendment. At a time when middle-class families are struggling to pay their bills, the House tax bill would actually increase taxes by more than $30 billion on those families—$30 billion.

This is a very difficult time for Michigan families. Every day we hear news about another plant closing or a company entering into bankruptcy. Michigan has lost 111,000 manufacturing jobs, and that doesn't include the recent announcement by Ford to cut another 30,000 jobs.

Michigan families are worried about their jobs. They are also worried about losing the pension that they have worked hard for and paid into for the 30 years that they have worked. They see their health care premiums continue to skyrocket, and they are struggling to fill gas tanks and pay home heating bills. The average price of gasoline in Michigan last month was $2.35 a gallon. Now middle-class families are facing home heating bills that are as much as 35 percent more expensive than last year. And their salaries and their pay stubs don't show a 35-percent increase. If anything, they are going down in terms of income.

What does the House bill propose to do to help middle-class families? Raise their taxes. This was quite stunning to me when I reviewed the bill that came over from the House of Representatives. We are talking about a bill that actually raises taxes on middle-income families. That is not acceptable. We can do better than that. Our middle-class way of life is in danger. I believe very strongly that in Michigan and places all across this country we are fighting for a way of life. Will we have the standard of living that we have had? Will we have the ability to send our kids to college and be able to buy a home and be able to dream the American dream and be successful? At every turn, we are seeing action taken here that takes our way of life and our opportunities away. Before Christmas, it was a bill that is part of this whole package, cutting over $12 billion in opportunities for people to go to college, by cutting student loans.

So this is another one of those cases where people are working hard, expecting us to do the right thing and, in fact, the House bill would raise taxes on middle-income people, while lowering taxes for those who are already very blessed, earning millions of dollars a year. We need to be passing legislation that lowers health care costs, which is hurting American manufacturers. We need legislation that will protect people's pensions. This ought to be a basic premise and principle that we abide by in this country. When you work hard all your life and you pay into a pension, you should know that that will be there for you and your family.

We must also enforce our trade laws and insist that countries such as China and Japan play by the rules and stop manipulating their currency and that we don't see counterfeit products coming into this country illegally, or other countries stealing our ideas and patents.

That is the debate we should be having. These are actions we should be taking. I was deeply concerned the other night to hear the President talk about those of us who want to enforce trade laws, essentially saying we are protectionists if we don't stand back and say that in a global economy, whatever happens happens, that those of us who care about the rules and want trade to be fair are somehow protectionists. I profoundly disagree with that.

It is our job to fight for American businesses and American workers. That is what I do every day, and I know that many colleagues feel the same way. The debate we need to be having on the floor of the Senate is how to save our middle class, save our way of life. But at a minimum, we should not be passing a tax increase on middle-class families.

Michigan is the heart and soul of the middle class. There are 52,000 families in jeopardy of facing a tax increase if we do not address the alternative minimum tax. The alternative minimum tax ceiling needs to be raised, as we know. Fundamentally, while there has been agreement in this Chamber to do that, if that does not come out of conference committee between the House and the Senate, we will see 19 million families getting a tax increase as a result of actions of the Congress.

For instance, a family with five children would be hit with this ceiling if their income exceeds $54,000. They would, under the current system, pay more taxes. But without children, their income could exceed $76,000 before they pay more taxes. Think about that. Why is that fair? If you have five children, five mouths to feed, five children to buy clothes for, five children whom you are worried about going to college, you are going to pay higher taxes than somebody without children. That makes no sense. That is a $20,000 difference, a $20,000 penalty for having children. That makes absolutely no sense. What is American about that?

Sadly, under the current system on taxes with the AMT, the larger your family, the larger taxes you pay. To add insult to injury, the House bill extends the capital gains and dividend tax rates to provide $50 billion in tax breaks to our wealthiest Americans—$50 billion in tax breaks to our wealthy Americans—while a family with five children, earning $54,000 a year, will pay more taxes.

The majority of Americans are looking at this and asking, what is going on here? Where are our priorities, our values? This is backward. Even more egregious is the fact that these tax breaks that are given under the House bill are not set to expire until 2008. So the current tax cuts being given to the wealthiest Americans don't even expire until 2008, but the current problem for middle-income families happens right away; the current tax increase happens right away.

This bill is money to ensure that the wealthiest 3 percent of Americans are given tax breaks way out until 2010. Meanwhile, right now, middle- and low-income families are facing lower wages, mounting health care costs, trying to pay the gas bill, trying to pay the home heating bill, trying to send the kids to college, while we cut student loans. I did not support that. And now we are going to say, potentially, if the House bill were to become reality, by the way, you are going to pay more in taxes. This makes absolutely no sense.

I commend my colleague, Senator BAUCUS, and I commend the chairman of the Finance Committee, as well, for working together to fix this, getting the Senate to work together to fix this. We need to fix this—and not only in the Senate because we have agreed that is not right—this needs to be fixed when the bill ends up going to the President's desk. That is when we will know whether 19 million American families will have a tax increase. My vote is "no" on that one, and it is "yes" on making sure we fight for that which will keep our way of life in this country.

Madam President, I yield the floor, and I thank the Senator from West Virginia again for allowing me to use this time.

The ACTING PRESIDENT pro tempore. The Senator from Montana is recognized.

Mr. BAUCUS. Madam President, several on our side wish to make statements before we get to offer amendments and vote. It is my understanding that it will begin at about 2:15. There will be a series of amendments then offered which, obviously, we will vote on. There are a good number on this side and a few on the other side of the aisle. I encourage Senators to quickly firm up those amendments so we can line things up as expeditiously as we possibly can.

In the meantime, I remind the Senate where we are. We are on the House deficit reduction bill. Later today, I expect that the majority leader will offer a substitute amendment. That will be the Senate amendment; that is a Senate-passed bill to the House bill. The Senate-passed bill will include a perfecting amendment. The perfecting amendment will modify the Senate-passed bill that previously passed in the Senate by extending the so-called tax extenders, R&D tax credit, the WOTC tax credit, tuition reduction, and savers' credit, for an additional year. Those provisions expired at the end of 2005. The Senate bill extended all those provisions, so-called extenders, for 1 more year, until the end of 2006.

The perfecting amendment that will be offered will then add another year to all those, so that those provisions, if that amendment passes, will not expire; they will have 2 more years of life. That is the major change that will be in the perfecting amendment to the Senate substitute, which the majority leader, I assume fairly quickly, will offer.

To remind Senators, the main difference between the House and Senate bill is this: The House bill includes the extension of the lower taxes—the dividend tax and capital gains taxes—for 2 more years. Currently, taxation on dividends and income taxation on capital gains enjoys a lower rate that was put into effect several years ago. That provision or lower rate is in current law and will extend under current law for 2 more years, until the end of 2008, December 31. The House-passed bill extends that provision 2 more years, so it would be in effect for not only 2006, 2007, and 2008, but the House bill would be 2009 and 2010, the full calendar years.

The House-passed bill doesn't, however, include any relief for alternative minimum taxes, which about 17 million Americans will have to pay this year, 2006. Actually, it is about 20 million because 3 million taxpayers had to pay for 2005, and 17 million more taxpayers will have to pay an additional tax under the so-called stealth tax, the alternative minimum tax in 2006. So the House bill extends provisions that need not be extended because the law doesn't change, but it does not reduce taxes for people who are going to pay more for taxes in 2006. Contrast that with the Senate-passed bill, which would be the substitute for the House bill. If it passes, it will send that back over to the House. They, presumably, will disagree with the Senate and ask for a conference. We will appoint conferees and begin a conference on the two separate bills. That will happen next week probably.

Again, the Senate bill doesn't extend dividend reduction, capital gains taxation reduction, for 2 more years. It maintains current law, which provides the current low rate in existence for not only this year but also next year and also the following year, through December 31, 2008. We did, however, in the Senate bill, say, OK, those 17 million people—Americans who are going to have to pay AMT—that is additional tax for 2006—should not have to pay that additional tax. We, in the Senate bill, said we are going to extend the provisions, the so-called AMT patch, so those Americans will not have to pay additional tax under the alternative minimum tax.

That is a major difference between the House and Senate bill. I hope that we in Senate can do what I think most Americans want. Most Americans would say, OK, 17 million Americans—let's not raise their taxes; let's make sure those taxes are not raised. And then we will worry about 2009 and 2010, when we may or may not want to extend more favorable tax treatment on capital gains income and on dividend income. We can cross that bridge when we get there. Because the budget resolution says we cannot lower taxes by more than $7 billion over 5 years, we just can't do it all. We have to make choices. If you add up all the provisions that people want—the tax extenders and other extensions of tax breaks—it is forcing us in the Congress to begin to make a choice as to what is more important: prevent the additional taxes people have to pay next year under the AMT, or is it more important that they should pay those taxes but, more for the sake of principle than anything else, extend that dividend and capital gains preferential treatment for years 2009 and 2010.

Again, the House bill only addresses 2009 and 2010. Why? Because under current law, capital gains income and dividend income enjoy favorable tax treatment.

That is the basic posture we are in here. It should not take too long. After various amendments are brought up and Senators vote on them, we will send the bill over to the House. The House will probably disagree and request a conference. We will have a conference when we come back next week and finally work out passage of this bill.

I see the Senator from West Virginia is on the floor. I turn to the Senator from West Virginia and yield to him whatever time he desires.

Mr. BYRD. Madam President, I thank my distinguished friend. He can go ahead with whatever remarks he has. I would love to wait 2 or 3 more minutes.

Mr. BAUCUS. Madam President, if I may ask the Senator from California, how much time does she desire?

Mrs. BOXER. If I can have 20 minutes following Senator BYRD, which we think will be used by other Senators on the same topic.

Mr. BAUCUS. I will do this. Why don't I yield to the Senator from Michigan 5 minutes and then the Senator from West Virginia. Is that all right with the Senator from California?

Mrs. BOXER. If I can be in that line.

Mr. BAUCUS. Yes. I think the Senator from West Virginia would like to defer to the Senator from Michigan at this point.

Mr. BYRD. I thank the Senator.

Mr. BAUCUS. I appreciate the Senator speaking on short notice. Madam President, I yield 5 minutes to the Senator from Michigan.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

DETROIT AND SUPER BOWL XL

Ms. STABENOW. Madam President, after speaking in support of the Boxer amendment, which I think is extremely important, I wanted to take a moment in the middle of this very important debate, a very important bill, and rise to speak to another important event that is occurring this weekend.

I rise today to cheer not for the Pittsburgh Steelers or the Seattle Seahawks but for the city of Detroit and the State of Michigan, which is the host of the Super Bowl XL this weekend. We are very excited about this important event. It is a spotlight shining on Detroit, MI, and I am confident the city and my home State are ready for their closeup this weekend.

The State of Michigan and the city of Detroit are honored to play host to the most watched sporting event in our country. I am sure Detroit will shine, as it has before when it has hosted the Stanley Cup finals, the World Series, and the Major League Baseball All-Star Game, which was just held this last summer.

Ford Field is a beautiful stadium which will be an ideal setting for the Seahawks and Steelers, and Cobo Hall will play host to the NFL Experience, a football "theme park" where children and their parents can enjoy over 50 interactive football theme games and displays.

We are expecting over 100,000 visitors to downtown Detroit. I was there last week and saw that a lot of people have gotten there early to enjoy what our city offers. We are so pleased to welcome them. Not only will visitors have a chance to experience Detroit's restaurants and nightlife, but they can go to the Henry Ford Museum and see the bus on which Rosa Parks made her historic stand and visit the African-American Museum. This weekend's visitors will see all the wonderful things Detroit and the State of Michigan have to offer.

I must say that we have over 10,000 volunteers who are ready and are working to make sure everyone enjoys every minute of their stay, and I thank those volunteers for their hard work in being a part of helping Detroit shine.

Detroit is the home of Motown, and I am thrilled that Stevie Wonder will perform before the game and that Aretha Franklin will sing the National Anthem. On Saturday, Motown's music heritage will be on display when the Four Tops, the Miracles, the Contours, the Dramatics, the former ladies of the Supremes, Freda Payne, Brenda Holloway, Martha Reeves and the Vandellas, the Velvelettes, and Paul Hill play at the Masonic Temple. That will be an amazing event to participate in and listen to.

On Friday and Saturday night, Kid Rock plays at the Joe Lewis Arena before a sold-out house, proving that Detroit is the Rock City.

This weekend, Detroit will welcome home two of its native sons—Jerome Bettis and Larry Foote, both members of the Pittsburgh Steelers. Larry Foote, a graduate of Pershing High, is at the beginning of a promising NFL career, while Jerome Bettis is near the end of a Hall of Fame career where he has displayed the character and toughness of a Detroit native. Bettis graduated from MacKenzie High in the late eighties, entered the NFL in 1993, and has since been mowing down defenses on his way to ranking fifth on the NFL's alltime rushing list.

The Super Bowl will give Detroit and the State of Michigan and the region an economic boost, but it will also provide a more important opportunity for the people I represent to shine, as I know they will. I am proud of Michigan's history and excited about our future. I am sure that on Sunday night, those who have visited Detroit, those who have watched the game will be excited as well. We say welcome to all of them.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. BYRD. I thank the very distinguished occupant of the chair, who presides over this august Chamber with a dignity that is so rare as a day in June and a loveliness that permeates the Chamber. I thank the Chair.

MINE SAFETY

Madam President, yesterday, two more coal miners died in West Virginia—two more, two more coal miners died yesterday in West Virginia—one at Long Branch Energy's No. 18 tunnel mine in Boone County and the other at the Black Castle Surface Mine, which is also in Boone County, WV. That is a total of 16 coal miner deaths this year, and the year is only 33 days old. This situation is deplorable—ghastly deplorable.

The Governor of West Virginia, the Honorable Joseph Manchin, announced last night that he has asked the coal operators of West Virginia to cease production immediately and to go into a mine safety standdown. He has asked that miners be removed from mines in order to review safety procedures and asked that each new shift also review safety procedures before entering the mine.

The Governor has called for expedited inspections of the State's mines, and he has asked that the U.S. Labor Department send additional Federal inspectors and personnel to the State.

The Mine Safety and Health Administration of the U.S. Department of Labor announced last night that it would expand the mine safety standdown to mines across the Nation on Monday, February 6.

This is a very noble action on the part of our Governor, Joe Manchin. I have talked with Governor Manchin, and I compliment him.

I have to say that shutting down the mines for 1 hour is not a serious solution. It may be a timeout for safety, but it is not time enough for meaningful safety. Mine safety officials are displaying increasing concern about this rash of mining fatalities.

Those who consider the tragedies at the Sago and Alma mines to be random occurrences are now taking a second look. They are asking this morning: When will these mine tragedies stop? When? The answer to that question is unsettling, isn't it? It is possible that these accidents are not going to stop. God only knows. Life and death are in God's hands.

It is possible that mine safety protections have eroded so much in recent years that these actions are going to continue. Who would have thought that these mine deaths would occur as they have and in one State? It is possible that these accidents are going to continue to happen again and again unless new action—dramatic action—is taken by the Federal Government to curb these mining hazards.

The danger to our coal miners is real—very real. Yes, very, very real. The dangers to our miners is very real. There are too many needs, from emergency communications and breathing equipment to a rapid notification and response system to penalizing the reckless disregard of Federal safety standards. Real. Too many needs, I say, are not being addressed by the Labor Department and the Mine Safety and Health Administration and require swift action by the Congress.

The longer we wait to act in Congress, the more likely another fatality and then another fatality and then another may occur. The longer we wait to act, the greater the threat to our energy infrastructure. If these tragedies continue, mines could be closed and coal and energy production could falter. The consequences could ripple throughout the national economy. We cannot delay. We cannot delay in responding.

I spoke with the distinguished majority leader yesterday. Of course, I have already spoken with our distinguished minority leader, who has joined in supporting the need for action on the bill that I have introduced, along with Senator ROCKEFELLER and along with the delegation in the House, a bipartisan delegation. I spoke with the majority leader yesterday, and I have asked mine safety legislation be considered quickly, and I publicly renew that request.

I have come to the Senate floor hoping to see the majority leader again this morning, but he is needed elsewhere, and for good reason, at the moment. But I publicly renew that request, and upon his arrival I shall discuss this matter with him. I have discussed it already with the assistant leader, Mr. MCCONNELL. I urge that this legislation be scheduled as soon as possible, that there be scheduled time as soon as possible on mine safety legislation.

The bill the West Virginia delegation introduced yesterday will help to protect the lives of our miners. It will help to keep West Virginia mines open. It will help to keep the coal coming. It will help to keep the coal fueling the energy demands of our national economy. But we must act quickly. We must ensure the safety of our coal miners.

Hear me. Listen. We must ensure the safety of our coal miners in order to ensure the security of the Nation. The security of the Nation depends on the safety of our coal miners. We have delayed too long already, and every additional day we wait puts another miner's life at risk.

> O Death, where is thy sting?
> O grave, where is thy victory?

Senators, listen: For whom does the bell toll? Who knows who will be next?

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Madam President, I yield 20 minutes to the Senator from California.

Mrs. BOXER. I ask my colleague to make sure Senator LAUTENBERG knows my colleagues are willing to yield him 10 minutes upon my completion; is that correct?

Mr. BAUCUS. I will then subsequently yield to the Senator from New Jersey.

Mr. BYRD. Madam President, will the distinguished Senator from California yield?

Mrs. BOXER. Yes.

Mr. BYRD. I ask so that I might thank her again for delaying her speech until I could make these few remarks. I thank her from the bottom of my heart. She is so considerate always, so courteous: "And what is so rare as a day in June?" The beauty of the Senator from California.

Mrs. BOXER. Oh, that is so nice.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mrs. BOXER. I thank my friend and colleague, and really, in so many ways, our leader in the Senate, and say to him before he leaves the floor how much we stand with him on these mine safety questions.

We Americans are just facing so many tragedies. My colleague reports on yet more deaths in the mines, deaths that are preventable if we do the right thing by our workers. We are mourning together today five more American soldiers killed in Iraq. We had an incident, a workplace killing in Santa Barbara where five or six people lay dead. It is tough times. But I want my good friend to know that we will stand with him on this mine safety question.

Mr. BYRD. Madam President, if I might just take 1 minute, I deeply thank—as they say in the other body—the gentlelady from California, for her noble comments and for her support. The West Virginia delegation in the House and the Senate is pleased at her expressions of support. We are glad to have that support. West Virginia is proud of the California delegation, the delegation that stands with us in this hour of sorrow.

I thank the Senator from California for yielding and for her support.

Mrs. BOXER. Madam President, I rise now to discuss an amendment on behalf of myself and Senators KERRY and LAUTENBERG, which expresses the sense of the Senate that the White House should provide the public with a thorough account of the meetings that the President, his staff, and senior executive branch officials held with Jack Abramoff. The public's confidence in the Government has been rocked, rocked by the widespread reports of public corruption involving Jack Abramoff.

On January 3, Mr. Abramoff pleaded guilty to conspiracy, fraud, tax evasion charges, charges that carry up to a 30-year sentence. He agreed to cooperate with prosecutors in their investigation of a number of public officials, and we don't know where all this will lead. I urge the Justice Department to continue its investigation into any bribery and corruption.

The damage to the public trust from the Abramoff scandal, combined with the recent prosecution of Congressman Randy Cunningham, and the indictment of Congressman TOM DELAY is massive. The investigation by the Department of Justice has really just begun. But right now, sadly, there is a very low opinion of politicians, and trust must be restored with the American people. We cannot govern effectively without the support and confidence of the people. We are supposed to be their representatives. We owe them everything, and we must start with honesty, with ethics, so we can regain their trust.

If the people have lost confidence, we have to win it back. Every Senator I know has searched his or her records for contributions from Jack Abramoff, from his associates and the tribes he represented. Each of us has responded in our own way. But to my knowledge, we have all made our actions public. We have told our constituents what the situation is and whether we plan to do something about it.

In the State of the Union Address the President said:

> Each of us has made a pledge to be worthy of public responsibility—and that is a pledge we must never forget, never dismiss, and never betray.

Those are noble sentiments, very noble sentiments, and I challenge the President to live up to them. Where there is an appearance of impropriety, it is the responsibility of public officials to be open with the public and to clear up any questions that might exist. I know in my long career in elected life, and it is now more than 30 years of elected life, I have had to return contributions from time to time. I have tried to avoid the appearance of a conflict of interest. I have even recused myself on three occasions because I believed that was the right thing to do. But no matter what each of us does there will still be those who doubt us. It is the system. It is a system that is based on private financing, so it is very difficult, with that system, to gain the trust of the people.

But it starts with openness. It starts with transparency. We should each try to be as open as we can and make sure that, whatever we decide to do, the public is informed. It doesn't help to be secretive. It doesn't help to say: I don't have to do this; it is my right not to tell the public anything. It may be your right, but it does not make it right.

According to the press secretary of the President, Scott McClellan, the President does not know and doesn't remember ever meeting Jack Abramoff, and despite repeated requests the White House has failed to provide details of meetings between Jack Abramoff and the President and his staff. The problem is, more and more details keep coming out about the relationship between Mr. Abramoff and the President.

Starting in 1997, Mr. Abramoff claimed credit for procuring a letter from then-Governor Bush that praised the then-Northern Marianas Island Education Plan. In 2000, Jack Abramoff joined the Bush-Cheney transition team. Several colleagues of Mr. Abramoff ended up being appointed to key positions in the Department of Interior, the agency that regulates Indian gaming issues, central to Mr. Abramoff's lobbying business.

According to the Associated Press, Jack Abramoff and his lobbying team had nearly 200 contacts with the Bush administration in the first 10 months they were in office—200 contacts in less than a year, and nobody remembers anything? I mean it doesn't pass the smell test, to be crude about it.

By 2001, Mr. Abramoff appears to have been selling his clients access to the President. On May 9, 2001, the White House arranged an event on behalf of the group Americans for Tax Reform. That group is a very strong ally of President Bush. The event was attended by the President and a number of legislators. There is a trail of documents that shows that Mr. Abramoff asked some of his clients for $25,000 to go to that event, with the funds going to this Americans for Tax Reform.

I want to show you some e-mails because I think that tells the story better than anything. So here is what Mr. Abramoff asked in an e-mail to a representative of one of his tribal clients. These are Mr. Abramoff's words from an e-mail.

> Americans for Tax Reform is bringing together the speakers of all Republican-led legislatures for a meeting with Bush and the

> congressional leadership. They have requested sponsorship ($25 K) from only four groups. Two of them will be major corporations and one will be Choctaw. Chief Martin will be coming to the event I expect. I told them that I would ask you guys to participate. The exposure would be incredible and would be very helpful. One of the things we need to do is get the leaders of the tribe (ideally the chief) in front of the President as much as possible. Please let me know as soon as you can. Thanks.

That is Mr. Abramoff to the representative of one of the tribes.

Let us see what that particular individual wrote to her tribe after she received Mr. Abramoff's e-mail. She wrote:

> Attached is an e-mail from Jack Abramoff with the firm of Greenberg & Traurig. The chairman has agreed for the tribe to be one of the four sponsors of and participate in a White House event on behalf of the Americans for Tax Reform which is being held on May. 9, 2001 in D.C. Please immediately prepare a check made payable to Americans for Tax Reform in the amount of $25,000 and forward it to my office by Federal Express. Then Fed/Ex the check to Mr. Abramoff.

Just to finish this story, here we have a copy of the check Mr. Abramoff received from the Coushatta Tribe of Louisiana in the amount of $25,000—selling the President of the United States and using Federal property.

The meeting was held in the Old Executive Office Building. In all, it appears that four or more of Abramoff's clients attended the event, and at least two claimed they paid the $25,000 requested. They paid that to get close to the President on Federal property. Jack Abramoff, as I said, delivered the President of the United States in exchange for his clients' contribution to the President's supporters. How many more Abramoff clients attended is not clear, and who paid money to attend the White House event is not clear. The White House claims it has no record of Mr. Abramoff attending, but Time magazine claims there is a photo of the President standing with Abramoff and one of Abramoff's clients.

This event alone warrants the President providing full disclosure of meetings with White House officials and Jack Abramoff.

But this was not a one-time event. The following year, Mr. Abramoff solicited money from his clients for another White House event in behalf of Americans for Tax Reform.

The public has more and more questions about the relationship between Jack Abramoff, the President, and his staff, but no answers are forthcoming. The President's refusal to provide additional information about these meetings has increased the public's distrust in the administration and our Government at large.

The President said some very noble words at the State of the Union Address. He said it was important for us to bring trust back. Yet we see no movement for transparency and openness.

The public has a right to know whom Mr. Abramoff met with, what they discussed, and whether improprieties existed. According to a Washington Post/ABC News poll, 76 percent said Bush should disclose his contacts with his aides and Mr. Abramoff. Two of three Republicans favored disclosure. Let me say that again. In the poll, two of three Republicans favored disclosure.

In fact, members of the President's own party in the Senate and in the House have urged the President to provide information to the public about this administration's dealings with Mr. Abramoff. I agree with them. All Government officials who serve the public must take all steps necessary to maintain their trust and confidence.

I hope my colleagues will support this important amendment which I plan to offer on behalf of Senator KERRY and Senator LAUTENBERG. It simply calls on the White House to immediately and publicly disclose each visit and meeting between Jack Abramoff and the President, White House staff, or senior executive branch officials.

Much is made about how Senators get an opportunity to fight for funds for their State. Senator MCCAIN has derided this action. Senator MCCAIN said earmarks right on their face are wrong. If you look at the number of earmarks Members of the Senate are involved in for our States—I know my colleague and I sit on the Public Works Committee. I don't need any lobbyist to tell me that I need a road in my urban area when one is broken down. I don't need a lobbyist to tell me that I need an HOV lane or a new water system or a new sewer system or a new school or a new senior center. It is my job to know that. Senator MCCAIN thinks that is all terrible. But the bottom line is the number of earmarks pales in comparison with the amount of funds that are distributed by this administration and any subsequent or prior administration. They distribute most of the funds.

It is very important, as we all look at our campaign contributions, to sort out in any of them which are in any way tainted by Mr. Abramoff and that the White House comes to the table and is as open as we have been. I believe it is very important. This isn't a partisan issue. Republicans have been calling for the White House to come clean on this, and Democrats are doing the same.

If we are going to restore confidence in our Government, it starts with simple openness, not saying: Oh, this is privileged, this is secret. I will tell you right now, we all learned it from our moms and dads. When somebody says, this is secret, watch out. Our Government is supposed to be open, not secret.

I hope there will be strong support for this particular amendment. I believe its timing is crucial. We can't let any more time elapse.

There are calls for—and I am joining them—a special prosecutor in this particular case. But even before that debate begins, let us have everyone come clean on these meetings, contributions, and the like.

I thank my colleague from Montana, the ranking member of the Finance Committee, for his generosity of spirit in allowing me to discuss this issue. Technically, of course, it isn't a matter of the Finance Committee jurisdiction, but I believe the timing is so important that we should have a vote on this.

Thank you very much. I yield back whatever time remains.

Mr. BAUCUS. Madam President, I very much thank the Senator from California for her terrific service to her State and to the Nation.

I yield 10 minutes to the Senator from New Jersey.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey is recognized.

Mr. LAUTENBERG. Madam President, I thank my colleague from Montana. I also congratulate our colleague, the Senator from California, for her diligence in pursuing this issue. Senator BOXER has an interest in fairness and equity at all times, and open government. I am so pleased that we can rely on her and her staff to research this matter and to bring it to the public's attention.

Everyone knows there is a cloud over Washington these days. It is a cloud of corruption that challenges the fundamental concept of democracy in our great country, one that says the President, under the guise of an act of patriotism, can spy on people, innocent people, invade their privacy totally, and yet withhold records that are vital to the public's confidence in government, withhold data that is required in this scandal we are now witnessing which hangs over Washington.

This deep-seated corruption was exposed as part of an investigation into the activities of the lobbyist Jack Abramoff. We now know that he committed despicable acts against his own clients and that he conspired at the same time with certain Members of Congress. His contacts with the White House and his friends are still very much a mystery. Imagine that—contacts with the President of the United States hidden from the public. It is incomprehensible. President Bush refuses to disclose his contacts with Mr. Abramoff for reasons that are unclear. If there is no wrongdoing, there should be nothing to hide.

I wish to quote President Bush from a statement he made when running for President in 2000. He said, and I quote him:

> Americans are tired of investigations, scandals, and the best way to get rid of them is to elect a new President—

We are talking about 2000.

> —who will bring a new administration, who will restore honor and dignity to the White House.

What an empty statement that has proven to be. President Bush pledged to run an ethical White House. Now, as we see, those words seem almost hypocritical. At the very least, in order to keep this pledge, President Bush must release information on contacts between him, his staff, and Mr. Abramoff. What is he ashamed of? Whether he is ashamed of it or not, he ought to release it to clear the air. The public wants these contacts disclosed. The President needs to help the truth come out, the whole truth, and nothing but the truth. And he should be assisting us in this investigation.

White House Press Secretary Scott McClellan says President Bush does not know Mr. Abramoff. But there is stark evidence to the contrary. According to Washingtonian magazine, Abramoff said that not only did he know the President but that the President knew the names of Abramoff's children and asked about them during their meeting.

There appears to be a long trail of contacts between Mr. Abramoff and the Bush White House. For starters, President Bush put Mr. Abramoff on his 2000 Presidential transition team—a pretty important job. Mr. Abramoff was then able to get his allies appointed to key positions at the Department of the Interior. Why the Department of the Interior? Because it regulates Indian gaming issues that were central to Mr. Abramoff's lobbying business.

He was also one of President Bush's top campaign fundraisers, a so-called Pioneer. He raised over $100,000 for President Bush's 2004 reelection campaign. That was the definition of "Pioneer"—big-time money.

According to Time and Newsweek magazines, Mr. Abramoff also sold access to the White House through payments sent to Grover Norquist's front organization, Americans for Tax Reform. Senator BOXER displayed a check which was made out to Indian tribes which paid upwards of $25,000 to Norquist for access to President Bush and his top adviser, Karl Rove. Mr. Abramoff bragged to one his clients, Tyco, that he talked to Karl Rove about their issues. And David Safavian, a White House official now under indictment, funneled confidential information to Abramoff to help Tyco.

Mr. Abramoff's own billing records show that his office had almost 200 contacts with the Bush administration in only its first 10 months. The officials listed as contacts included the then-Attorney General John Ashcroft and Vice President CHENEY's top advisers.

As far back as 1997, there is evidence of contacts between then-Governor Bush and Mr. Abramoff. Abramoff charged his client at the time, the Northern Mariana Islands, to get Governor George W. Bush to write a letter praising the island's education plan. Governor Bush did write such a letter to the island government on July 18, 1997, with a "cc" to one of Mr. Abramoff's deputies.

The bottom line is that this amendment—once again, I salute my colleague from California for bringing this up, and I intend to support it vigorously—the bottom line is that this amendment urges the President to clear the air. The American people want to know whether the Bush White House was complicit with Mr. Abramoff's schemes. Maybe Mr. Abramoff was exaggerating his contacts with the White House. That is possible. But there is only one way to find out—release the records. We are seeing withholding of information by the White House. I sit on the Committee on Government Accountability. The Republican chairman, SUSAN COLLINS, has asked the White House for information related to the Federal Government's response to Hurricane Katrina. We cannot get that. There has been a public display of the requests for that information.

Does this suggest this White House is committed to keeping the information—information that belongs to the public—private, within their confines so they can do anything they want and not be challenged with their conduct related to this issue? It looks like a constant pattern.

I urge my colleagues to support honest and open government and to vote for the Boxer amendment.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DEMINT). Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I am pleased that later today we will be offering a modification to the Senate amendment to provide a 2-year extension and enhancement to the research and development tax credit. Of course, I have filed legislation with my friend, Senator HATCH, to make a permanent commitment to research-intensive businesses in the United States.

This legislation is bipartisan and bicameral. But 2-years is certainly much better than the usual yearly extender. I am already starting to hear from business taxpayers how important a commitment to longer term research projects are, and I agree with them.

I am hopeful that we can prevail upon our House conferees to retain this 2-year incentive.

You know, just the other night, the President spoke of the importance of the R&D credit to maintaining America's competitive edge. He is right, and that is why I have been a strong supporter of legislation to make the credit permanent for the last few Congresses.

Every morning we hear news of some new product or discovery that promises to make our jobs easier or our lives better. Many of these innovations started with a business decision to hire needed researchers and finance the expensive and long process of research and experimentation.

Since 1981, when the R&D tax credit was first enacted, the Federal Government was a partner in that business endeavor because of the potential spillover benefits to society overall from additional research spending.

But the credit has been hobbled over the years because of its temporary nature. As stated in an analysis last year by the Joint Committee on Taxation, "Perhaps the greatest criticism of the R&D credit among taxpayers regards its temporary nature."

Joint Tax went on to say, "A credit of longer duration may more successfully induce additional research than would a temporary credit, even if the temporary credit is periodically renewed."

I think we should heed the advice of the experts at Joint Tax and renew this credit for as long as we can. That is why I will support a modified Senate proposal later today for a 2-year extension.

Research has shown that a tax credit is a cost-effective way to promote R&D. The General Accounting Office, the Bureau of Labor Statistics, the National Bureau of Economic Research, and others have all found significant evidence that a tax credit stimulates additional domestic R&D spending by U.S. companies.

A report by the Congressional Research Service, CRS, indicates that economists generally agree that, without Government support, firm investment in R&D would fall short of the socially optimal amount, and thus CRS advocates Government policies to boost private sector R&D.

R&D is linked to broader economic and labor benefits. R&D lays the foundation for technological innovation, which, in turn, is an important driving force in long-term economic growth—mainly through its impact on the productivity of capital and labor. We have many times heard testimony from economists, including Federal Reserve Board Chairman Alan Greenspan, that the reason our economy grew at such breakneck speed during the 1990s stemmed from the productivity growth we realized thanks to technological innovations.

There has been a belief that companies would continue to increase their research spending and that the benefits of these investments on the economy and labor markets would continue without end. Unfortunately, that is not the case.

According to Battelle's 2005 funding forecast, industrial R&D spending will increase only 1.9 percent above last year, to an estimated $191 billion, which is less than the expected rate of inflation of 2.5 percent. For the fifth year in a row, industrial R&D spending growth has been essentially flat.

It is also important to recognize that many of our foreign competitors are offering permanent and generous incentives to firms that attract research dollars to those countries.

A 2001 study by the Organization of Economic Cooperation and Development, OECD, ranked the United States ninth behind other nations in terms of its incentives for business R&D spending. Countries that provide more generous R&D incentives include Spain, Canada, Portugal, Austria, Australia, Netherlands, France, and Korea.

The United Kingdom was added to this list in 2002 when it further expanded its existing R&D incentives program. The continued absence of a long-term U.S. Government R&D policy that encourages U.S.-based R&D will undermine the ability of American companies to remain competitive in U.S. and foreign markets. This disparity could limit U.S. competitiveness relative to its trading partners in the long run.

Also, U.S. workers who are engaged in R&D activities currently benefit from some of the most intellectually stimulating, high-paying, high-skilled jobs in the economy.

My own State of Montana is an excellent example of this economic activity. During the 1990s, about 400 establishments provided high-technology services, at an average wage of about $35,000 per year. These jobs paid nearly 80 percent more than the average private sector wage of less than $20,000 per year during the same year.

Many of these jobs would never have been created without the assistance of the R&D credit.

While there may not be an immediate rush to move all projects and jobs offshore, there has been movement at the margins on those projects that are most cost-sensitive. Once those projects and jobs are gone, it will be many years before companies will have any incentive to bring them back to the United States.

We continue to grapple with the need to stimulate economic growth and advance policies that represent solid long-term investments that will reap benefits for many years to come. I repeatedly have pointed to the R&D tax credit as a measure that gives us a good "bang for our buck." I hope my colleagues will join me in supporting a 2-year extension. It is good for American businesses and workers, and we need it to maintain our global competitive edge.

Mr. President, I take a few moments to talk about the schedule for the rest of the day. The majority leader will be coming to the floor momentarily. Obviously, he will give a better idea of the schedule.

I expect sometime before 11 o'clock this morning the majority leader will come to the floor to offer the Senate substitute in a Grassley-Baucus perfecting amendment. I understand the majority then will fill the amendment tree—that is, offer amendments to fill up the tree—preventing the offering of amendments this morning. However, Senators on this side of the aisle will be able to offer their amendments. It is just a question of when they can offer amendments.

Later in the day Members can offer amendments. It is the managers' expectation Senators will have used or yielded all time back on the bill at 2:15 and we will begin a series of votes that regularly follow debate time on the reconciliation bill; that is, the so-called vote-arama. Roughly at 2:15 we begin the vote-arama. As Senators offer the amendments, at that point we will vote on the amendments. I am hopeful we will have a couple minutes' time for an explanation as to what the amendments actually are. That is the procedure.

I discussed the order of amendments to be offered with the Democrat leader, and I have discussed the order with the chairman of the Committee on Finance. Shortly, I will announce the plans for the first 10 amendments the Democrat Senators will offer.

Those first 10 amendments in this order are as follows: an amendment by Senator BINGAMAN on prescription drug implementation; next is an amendment by Senator MENENDEZ, AMT dividends and capital gains, which is germane; third, a Rockefeller amendment on mine safety; fourth, an amendment by Senator CONRAD, he will offer the substitute amendment which is fully offset; fifth, an amendment by Senator KENNEDY which essentially is the R&D extension for 3 years, and that will be germane; sixth, an amendment by Senator OBAMA with respect to Katrina child tax credit; next, seventh, an amendment by Senator CANTWELL dealing with energy taxes; and No. 8, an amendment by Senator SCHUMER which is a sense of the Senate on AMT; ninth, an amendment by Senator HARKIN with respect to so-called PEP and Pease provisions and dependent care credit; and tenth is an amendment by Senator LANDRIEU for expansion of the low-income housing tax credit. She wants to expand the tax credit.

There will be other amendments later. I am hopeful the additional Democrat amendments can be 10, 12, 14, but I am not sure. I don't want to prejudge that. These are the first 10. We will indicate what the others will be.

This is our intention of how to proceed. My expectation is the other side of the aisle will offer amendments. We will work with the chairman of the committee and go back and forth at the appropriate time.

That is the general procedure we have in mind. It is not locked in, but that is the general procedure in consultation with the chairman of the committee that we would like to work out. Senators from the other side of the aisle will want to offer their amendments. It will be the managers' intention to alternate between both sides of the aisle. We will seek to obtain copies of amendments and announce information on them as soon as possible.

Obviously, if Senators get information on the amendments to us quickly, the more likely we get the amendments up earlier rather than later.

With those caveats, those are the first 10 amendments we expect to be offered. Pending that, the majority leader is in the Senate. I am sure he wants to make a statement.

I yield the floor.

The PRESIDING OFFICER. The Senate majority leader is recognized.

Mr. FRIST. Mr. President, I have been talking to the ranking member before coming to the floor. I think he explained generally what will take place. I will comment on it after completion of procedural requests.

AMENDMENT NO. 2707

(Purpose: To provide a substitute amendment)

Mr. President, I send a substitute amendment to the desk, and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST], for Mr. GRASSLEY and Mr. BAUCUS, proposes an amendment numbered 2707.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. FRIST. I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. FRIST. I now ask that notwithstanding the Budget Act, it be in order for me to send additional amendments and motions to the desk with all the statutory debate time on each amendment or motion still reserved.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2708 TO AMENDMENT NO. 2707

(Purpose: To provide a substitute amendment)

Mr. FRIST. I send a first-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST], for Mr. GRASSLEY and Mr. BAUCUS, proposes an amendment numbered 2708 to amendment No. 2707.

(The amendment is printed in Today's RECORD under "Text of Amendments.")

Mr. FRIST. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 2709 TO AMENDMENT NO. 2708

Mr. FRIST. I now send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] proposes an amendment numbered 2709 to amendment No. 2708.

The amendment is as follows:

At the end of the amendment add the following:

"This section shall become effective 1 day after enactment."

MOTION TO COMMIT

Mr. FRIST. I move to commit the pending bill, and I send the motion to the desk.

The PRESIDING OFFICER. The clerk will report the motion.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] moves to commit the pending bill to the Committee on Finance, with instructions to report back forthwith, with an amendment.

Mr. FRIST. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 2710

(Purpose: To provide a substitute amendment)

Mr. FRIST. I send an amendment to the instructions to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST], for Mr. GRASSLEY and Mr. BAUCUS, proposes an amendment numbered 2710 to the instructions on the motion to commit.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. FRIST. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 2711 TO AMENDMENT NO. 2710

Mr. FRIST. Mr. President, I send a second-degree amendment to the desk for its consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST], for Mr. TALENT, proposes an amendment numbered 2711 to amendment No. 2710.

The amendment is as follows:

(Purpose: To repeal the sunset of the provisions in EGTRRA relating to the child tax credit)

At the end of the amendment add the following:

SEC. ____. PERMANENT EXTENSION OF EGTRRA PROVISIONS RELATING TO CHILD TAX CREDIT.

Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset provisions) shall not apply to the amendments made by section 201 of such Act.

Mr. FRIST. Mr. President, as a continuation of the explanation, it has not been my preference to file these amendments, but we have tried over the last couple of days to bring a semblance of order so we can complete the activity that is in the Senate. It was November when we first passed this bill. The House passed a bill. Under the usual circumstances, with unanimous consent, we marry the two bills and it goes to conference.

We are spending these 20 hours, and we have had good debate over the course of yesterday and this morning. But we have been unable to get unanimous consent to have a list of these amendments with language which would allow our chairman and ranking member to begin voting on those amendments. Thus, what will happen today is, as the ranking member explained, time will expire sometime around 2:15 today. I don't know the exact time. After that, there will be a series of rollcall votes. The rollcall votes begin with the Talent amendment, which is the pending amendment. After that, others will have the opportunity to offer amendments, and they would be voted on accordingly.

I do encourage all of our colleagues to work with the chairman and ranking member, the managers of the bill, so we can have an orderly process and we can stick with amendments that are pertinent and relative to the underlying bill. It means if we work aggressively but work collaboratively over the course of the day we will start voting early this afternoon. We will be voting until we finish this particular bill.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. REID. Mr. President, I am sorry to have been late. Are we going to finish these votes today, tonight?

Mr. FRIST. Mr. President, through the Chair, in response, I certainly hope so. I believe we are in a position to do so, but it depends on how many amendments we have. Once we start voting, we will keep the amendments very tight. Both the Democrat leader and I said we hoped it would not come to this point to have a vote-arama, but that is what it will be. I believe we can finish it tonight. The only hesitation is how much cooperation we get from our side of the aisle and your side of the aisle. If we do not finish tonight, we will continue tomorrow until we complete the legislation.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, if it is helpful to all Senators, especially the Senator from Tennessee and the Senator from Nevada, we have a total of about 20 amendments on this side. I don't know how many are on the other side, but I guess maybe we could finish by around 7 o'clock or 8 o'clock tonight. That is a rough estimate. Maybe earlier.

The PRESIDING OFFICER. The minority leader.

Mr. REID. Mr. President, I appreciate the positive tone of voice of my distinguished friend from Montana, but if we have 20 votes—and that is on our side—and there are second-degree amendments to those, and amendments offered on the other side, we are talking about a long night. The best we can do, no matter how hard we try, is three, three and a half amendments an hour. So we are talking about, if we start at 2 o'clock, a lot of hours.

I appreciate everyone being confident we will do this. And we will certainly cooperate any way we can. And, as happens, there may be Members who decide not to offer their amendments. That is always a possibility. We will do the best we can. It may be necessary to alert Senators that there may be work tomorrow. The distinguished majority leader is in the Senate, but it is very likely we may not be able to finish all these votes—well, maybe not "very likely"—but it is certainly possible we may not be able to finish the votes tonight.

Mr. FRIST. Mr. President, I have made it clear from the outset we need to finish this legislation this week. Friday is a working day, as we all know. If we have to be here, we will do that. On the other hand, once people understand where we are and that we do not actually have to be doing this, people will step back and be reasonable in terms of the number of amendments, making sure they are amendments relative to the underlying bill.

The managers will do this later, but Members need to be clear these are 10-minute votes, as well.

I yield the floor.

Mr. BAUCUS. Mr. President, I don't see any Member wishing to speak at this moment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I rise to make an opposite point of view and critical comments on a statement that was made yesterday by the Senator from North Dakota, Mr. DORGAN. Once again, he made a very impassioned case, and everybody who hears him knows he presents his case very well. He made an impassioned case for American workers whose jobs have been lost when plants move overseas.

We have all witnessed this heart-wrenching event. I know even in my home State of Iowa we have had plant closings for that reason. Some of those operations have been moved out of the United States. But as far as Iowans are concerned, let me remind you this has been a phenomenon of plants moving from Iowa to other places for a long time, before we ever heard the word "outsourcing."

I remind my colleagues I was a member of the International Association of Machinists at a sheet metal factory, the Waterloo Register in the town of Cedar Falls, IA. We made furnace registers. I started working there in 1961, when I was a young member of the Iowa Legislature, to supplement the income of a citizen legislator, and also to supplement the income of a young farmer getting started at that time because I was only farming 80 acres at that time. Even in 1961, you could not make a living farming 80 areas. You could not make a living getting $3,000 every other year being an Iowa legislator. So I became a factory worker.

At about 1971, the people who owned our company decided people in Texas would work for less money than people in Waterloo, IA, so they moved the plant to Texas. Our job was shut down. Our job was lost. The outsourcing was not to China, it was to Texas. I presume that 25 years later there were jobs that moved from Iowa to Texas that eventually moved to Mexico, and then it was not long Mexico was losing jobs from Mexico to China. Now we hear about jobs moving from China to someplace else, where somebody is going to work someplace else for a lower wage. I guess when you have a planet of 6.5 billion people, and people want to eat, they want jobs, somebody is going to seek that work and do it. So I believe I have been a victim of outsourcing not to China but to Texas. But it is still a problem today, and it is one for which we have to have sympathy.

Senator DORGAN, obviously, presents a great case for those people. But I want people to know I have lived through that and know what it is like when I am commenting because I do not want people to think I am unsympathetic to outsourcing. But I think we have to recognize the economic facts of life, whether it is my job at the Waterloo Register in Cedar Falls, IA, or whether it was 250 years ago when manufacturing jobs left Great Britain to come to the Colonies in the United States of America.

Now, I want to say, unfortunately, Senator DORGAN's amendment—if it is the same one we saw in 2004. And you can tell from the debate that we just had that we do not have the language on these amendments, and we are begging for them. Anybody who believes in transparency of Government ought to get these amendments out here. There is no reason to be secretive about the people's business because everybody is watching us right here on television. We are not trying to hide anything. So we need to see those amendments.

But the point is, if it is like the amendment in 2004, that amendment will not do one thing to bring jobs back to America. In fact, it could very well cost even more U.S. jobs. I would like to explain, then, why I come to this conclusion.

This amendment, if it is similar, repeals deferral for property imported into the United States by a foreign subsidiary of a U.S. company, without regard to whether that property was ever previously produced, manufactured, or grown in the United States.

This means the amendment by Senator DORGAN fails to focus on their primary complaint that U.S. companies are shutting their plants, moving production offshore, and selling back into the United States. The bill does not focus on this scenario. Instead, it overshoots the mark by hitting all goods sold into America by U.S. companies, even if it is impossible for those goods to be produced in America.

For example, if a produce company sets up a banana farm in Costa Rica to import bananas into the United States and around the world, the income from sales to the United States is not eligible for deferral. I may be mistaken on this point, but I am not aware of too many banana farms in Texas or Florida, so I do not see how allowing a banana farm in Costa Rica is going to cost U.S. jobs.

Similarly, if a U.S. company wanted to start a mining operation in some faraway land to extract a new and exotic mineral that is not found at home, they could see that anywhere in the world, but they cannot import that back into the United States without triggering the impact of this amendment.

Or let's look at coffee. We have a lot of coffee shops on our streets these days. If they set up their own coffee plantation in Brazil, they would be hit by the Dorgan amendment. I think we only raise coffee in one State in the United States, and maybe they do not do that in Hawaii anymore. But there is not much coffee raised in the United States. We sure do not raise it in my State of Iowa.

Our friends from New York and New Jersey ought to consider the effects of this amendment on Puerto Rican residents who work in plants owned by subsidiaries of U.S. companies. Many of the U.S. multinationals have manufacturing subsidiaries in Puerto Rico that import products into the U.S. market. Since our Tax Code treats Puerto Rican corporations like foreign corporations, this amendment would hit those companies very hard. But it would not hit their foreign-owned competitors who sell into the United States.

It seems Senator DORGAN's amendment would allow a U.S. company to sell a foreign-produced good to anyone in the world except Americans; but it would allow a foreign-based company to sell those same goods to Americans. When you stop to think about looking out for the benefit of Americans, this does not make any sense.

I have described how the bill would operate, but I do not think this is the intent of the legislation. What I believe is intended is that deferral should be denied if a company closes a U.S. plant, produces the goods offshore, and then imports the goods back into the United States.

This does not actually happen very often. We have had this debate before. The last time I spoke on this issue was when we were debating the JOBS bill back in 2004. I do not think much has changed since then.

At that time, the latest Department of Commerce data on U.S. multinationals showed that only 7 percent of foreign subsidiary sales were into the United States—only 7 percent.

Nevertheless, this amendment insists that the rule of "deferral" in our tax law is somehow a "tax benefit" that moves jobs offshore and allows you to not pay taxes on foreign income. This is not true, of course. Deferral has nothing to do with moving jobs, and it never forgives taxes that are owed on foreign profits of U.S. companies.

Many U.S. companies, however, choose to reinvest their foreign earnings in foreign markets, and so the U.S. tax on those earnings is, then, indefinitely deferred.

As Senator DORGAN noted, the JOBS bill, that we call the American Jobs Creation Act of 2004, did contain a provision that provided U.S. multinationals a temporary ability to receive dividends from their foreign subsidiaries at a reduced tax rate. Now, it is important to note that companies could only avail themselves of this reduced rate on an amount of earnings they identified in SEC filings as "permanently reinvested." That is a legal term, which means they had no intention of bringing that money back to the United States.

Senator DORGAN's characterization of that provision is misleading, and I would say in two ways. First, Senator DORGAN calls the repatriation provision a tax cut of over $100 billion. To arrive at that huge number, the Senator's calculation must assume these companies would have brought close to $340 billion of their foreign earnings home in the absence of the repatriation provision of the JOBS bill.

Now, the fact is—and I get this from scoring by the nonpartisan Joint Committee on Taxation—this provision has a cost to the Treasury of not $100 billion but $1.9 billion over 5 years and $3.3 billion over 10 years; and it actually scored as a revenue raiser in the first year of $2.8 billion.

Now, I plan on looking at the actual results of this repatriation provision when all the facts are in, after the fact. You are kind of guessing before you pass a bill. But after it has operated for a couple years, then you get a chance to get a real look at it. So we are going to look at this repatriation provision. But the Joint Committee on Taxation must have scored this provision as a raiser in year 1, and a relatively small cost over 5 and 10 years, because 5.25 percent of a large amount that was repatriated is a lot more than 35 percent of a much smaller amount that would have been repatriated otherwise.

In other words, it is not as much money coming back into this country, and if it does not come back here, it is not taxed.

I am not here to defend the repatriation provision or those companies that laid off workers or took advantage of the repatriation provision. I am just as troubled by those announcements as Senator DORGAN. I am simply pointing out that Senator DORGAN's characterization of that provision as a $100 billion tax cut is extremely misleading.

Second, Senator DORGAN talks as if the repatriation provision was the cornerstone of the American Jobs Creation Act, and it was kind of an appendage. In fact, the repatriation provision was a very small part of the bill. One of the key pieces of the JOBS bill was the manufacturing deduction which does actually give a tax break for companies that manufacture, leaving jobs here or creating jobs here. The Joint Committee on Taxation scored this provision as a cost to the Treasury of $76 billion over a 10-year period. That is, in fact, a tax cut, and it is a tax cut that will maintain jobs in America and will create jobs because one of the problems for American corporations compared to international competition is the high tax rate that we have on corporations compared to a lot of other countries. Those other countries are waking up. Just look at Ireland, look at Europe, what we are talking about doing now—sometimes through the European Union, sometimes through individual countries. They are seeing great advantage by reducing the corporate tax rate in their respective countries.

Two years ago, we thought we had moved ahead of them. Now they are following suit. We may have to go back and look at our corporate tax to find out if we are going to continue to be noncompetitive.

I would like to go back to the deferral issue. The rule of deferral exists to keep U.S. companies competitive in the global marketplace. Deferral is not something new. It has been in our tax laws since 1918. We have debated the rule of deferral on several occasions, and we will no doubt continue to do so when we debate tax reform proposals.

Opponents of deferral too often make wild accusations about how this rule, which has been in place since 1918, spells doom for the American worker. Of course, none of this is true. In fact, just the opposite is true because we must always be vigilant about enhancing international competitiveness for our U.S. companies. Hence, deferral ensures an ever-growing base of opportunity for U.S. companies and, more importantly, their employees at home and abroad.

U.S. multinationals are a critical component of our economy. These companies operate in virtually every industry and, the last time I checked, have investments of more than $13 trillion in facilities located within the United States. As employers, they provided 23.5 million jobs for Americans in the year 2001. That was nearly 18 percent of the payroll jobs in the United States. They had a payroll of $1.1 trillion. When you go back to this debate we had in the year 2004, I noted at that time that the U.S. multinationals created more than 53 percent of the manufacturing jobs in America and employed more than two U.S. employees for every foreign worker. Those were the latest years for which I had figures, but I have no reason to believe it is different today.

During the 10 years from 1991 to 2001, U.S. multinationals increased domestic employment at a faster rate than the overall economy. A recent study confirms that U.S. multinationals are significant job creators, and those jobs are not created through "exporting" jobs to foreign nations with low-labor and low-tax costs, as Senator DORGAN contends. The Department of Commerce data shows that the bulk of the U.S. investment abroad occurs in high-income, high-wage countries.

Again, referring to the year 2001, 79 percent of foreign assets and 67 percent of foreign employment of U.S. multinationals were located in high-income, developed nations such as Australia, Canada, Hong Kong, Japan, New Zealand, Singapore, South Africa, and the countries of the European Union. We have to remember a very simple maxim for why companies go into foreign markets: 4 percent of the people in the world live in the United States. If you want to create jobs in America and you just want to sell to that 4 percent, you are going to have a very limited market. Whether you are in agriculture, like I and my son and grandson are, selling corn and soybeans overseas, or whether you are manufacturing John Deere tractors, whatever you are manufacturing, if you want prosperity, you go where the market is. That is the 96 percent of the people who don't live in the United States.

Again, referring to that debate on the JOBS bill in 2004, fully 95 percent of the world's population and 80 percent of its purchasing power—so the only new thing I am giving is not that 96 percent of the people live outside of the United States, but 80 percent of its purchasing power—is located outside the United States. Foreign sales growth has outstripped domestic sales growth. So our companies are taking advantage of selling to the rest of the world. This increased growth requires increased employment wherever you can find it. The good news is that foreign growth also results in U.S. job growth.

A recent study confirmed that during the 10 years from 1991 through 2001, for every one job that U.S. multinationals created abroad, they created nearly two U.S. jobs in their parent corporations. That is why it is critical to our economy that U.S. companies remain competitive in the international marketplace.

I would like to review a more rational explanation of deferral and how it works to keep our U.S. companies competitive. The United States taxes all of the worldwide income of its citizens and corporations. The U.S. income tax applies to all domestic and foreign earnings of U.S. companies. The United States fully taxes income earned overseas by foreign subsidiaries of U.S. companies. However, many foreign countries tax their companies on a territorial basis, meaning that they only tax income earned within their country's borders and don't impose tax on the earnings of foreign subsidiaries. Major countries using this territorial system of corporate taxation are Australia, Belgium, Canada, Denmark, Finland, France, Germany, Italy, Luxembourg, Netherlands, Sweden, and Switzerland. A company from one of these countries that uses the territorial tax system has great advantage over U.S. companies.

For example, a U.S. company with a Singapore subsidiary will pay U.S. tax and Singapore tax on the subsidiary's income. A French company with a Singapore subsidiary will pay Singapore tax but no French tax. This means that a U.S. company in Singapore has a higher tax burden than a French company in Singapore. Two basic tax rules answer this problem and seek to put U.S. companies on a level playing field with foreign competitors from territorial countries. The first rule says that when foreign income is brought home, the U.S. allows a reduction against U.S. tax for any foreign taxes paid on that income. The foreign tax credit prevents the U.S. from double-taxing foreign earnings which would make our companies noncompetitive in the international marketplace. And like deferral, this has been in the tax law since 1918.

The foreign tax credit, however, is limited. It may only offset the U.S. tax on that income which is currently imposed at a 35-percent rate. If the foreign tax rate is higher, the credit stops at 35 percent. If the credit is lower, say 10 percent, then additional U.S. taxes will be owed up to the full 35 percent. In this example, an additional 25 percent of the taxes would be owed to the United States, which is the difference between the 10 percent and 35 percent of the U.S. rate.

The second basic tax rule is that U.S. companies are allowed to defer U.S. tax on income from the active business operation of a foreign subsidiary until that income is brought back into this country, usually in the form of dividends paid to the U.S. parent. This is referred to as the rule of deferral, meaning that the U.S. tax is deferred until the earnings are brought back. This is the rule the Dorgan amendment attacks.

It is important to note that deferral is not the forgiveness of tax. It simply means that we impose the full U.S. tax when foreign earnings are repatriated to the United States instead of doing it the very day of earning. The reason that we defer tax on active business operations is so that U.S. companies can remain competitive with foreign companies that have a different system of taxation than what we have. I am referring to what I called the territorial tax. We don't defer tax on passive activities like setting up an offshore bank account or other passive investments. We tax passive activities yearly. But active operations are subject to competitive disadvantage.

For example, if we impose U.S. tax today on the profits of a Singapore subsidiary, then the U.S. company will pay a 35-percent tax in the United States, net of any Singapore taxes, but that French competitor located right next door in Singapore will pay only the Singapore tax. If the Singapore tax rate is less than 35 percent, which is the U.S. tax rate, then the French competitor will have a tax advantage. Who wants to give any advantage to a French competitor? This is because the United States allows a foreign tax credit to offset the U.S. income tax imposed on those foreign earnings but only up to the 35 percent U.S. corporate rate.

If the foreign rate is less than the U.S. 35 percent rate, then residual U.S. taxes are owed on the difference between the U.S. tax rate and the foreign rate. For example, if a Singapore tax is 15 percent and the U.S. tax is 35 percent, then the United States will impose an additional 20 percent on those Singapore earnings. The French company, however, would only pay the 15 percent Singapore tax. If we did not allow deferral on that additional 20 percent of tax, then the U.S. company today would have a 20-percent tax disadvantage compared to the French company.

The question on repealing deferral is whether we want to hand over the world market to companies from France and Germany and other countries that have a different system of taxation than we have, called the territorial system. Repealing deferral means that we export our high U.S. tax rates to U.S. corporations around the globe. The United States has one of the highest corporate tax rates in the world. There are few countries with rates higher than the United States. This means that without deferral, U.S. companies will be at a continual worldwide disadvantage compared to their foreign competitors.

That is why we defer U.S. tax on active business operations, so that U.S. companies can be competitive in the global marketplace.

Some Senators have proposed repealing deferral or cutting back on it, as Senator DORGAN's amendment would do. These proposals would export the high U.S. tax rate to U.S. operations around the world. That would be fine if all companies around the world were paying the high U.S. tax rate, but, as I have said so many times, they are not. We have one of the highest corporate tax rates in the world. Companies of foreign countries are not subject to our tax laws and are usually taxed at lower rates. This all brings us back to the implications of Senator DORGAN's proposal. It would enhance the competitive advantage of foreign-owned multinationals over U.S. multinationals.

Our focus in considering this amendment must be on the ability of American companies to compete within the United States as well as in foreign markets if we want to maintain and create jobs in America. The issue is not whether we tax foreign earnings currently but whether we cede the U.S. market to foreign competition.

The Dorgan amendment will increase taxes on U.S. companies, but their foreign competitors in the U.S. will not face a similar tax increase. This can lead to a loss of domestic market share, or even if market share is maintained, losses may be incurred on domestic sales because of pricing pressures and uncompetitive margins created by the additional tax burden.

No one is happy when companies move abroad to a tax haven to avoid U.S. tax. But let me tell you another side effect of the proposal to eliminate and cut back on deferrals. In the American Jobs Creation Act of 2004—that bill I always referred to as the JOBS bill—we enacted a provision that prevents corporate inversion, where a company would pretend to move its corporate headquarters to Bermuda, to a simple post office box there, and do it not because they are going to do anything productive there but for the sole purpose of avoiding U.S. taxes. Many U.S. multinationals complained that inversions were necessitated by an inability to compete with foreign-owned multinationals that aren't subject to the higher U.S. tax rate.

We should be proud, then, that we shut down those inversions, those shell corporations, those postal box corporations which do nothing over there except go there to avoid tax and then make the situation even worse for honest corporate taxpayers in America that are paying the tax into the Federal Treasury. But in the process of doing that, we didn't do it at the expense of repealing deferral. Now that we have shut down inversions, if we repeal deferrals, or significantly cut back on them, the only other alternative that would be available to U.S. multinationals would be to sell themselves to foreign companies or to be taken over by a foreign company in a possible hostile takeover. If we prevent U.S. companies from deferring their foreign profits, we will see more and more U.S. multinationals being bought out by foreign-owned multinationals. Tax changes have consequences.

Increasing taxes on U.S. multinationals will not bring jobs back to America. You only pay taxes if the company is profitable, and you only stay profitable as long as you remain competitive. But in the United States, taxes are 35 percent cost-to-profit, and that is where a competitiveness disadvantage can occur when a U.S. company is competing against foreign companies that will not incur this tax increase.

Senator BAUCUS and I held hearings a couple years ago regarding the effects of the international competition within the United States, so we as leaders of the Finance Committee are very familiar with the effects of these kinds of rate differentials.

I think a quote by Joseph Guttentag, international tax counsel of the Clinton administration, during testimony before the Finance Committee in July of 1995 is a very good place to end this debate. So I end with this quote:

> Current U.S. tax policy generally strikes a reasonable balance between deferral and current taxation in order to ensure that our tax laws do not interfere with the ability of our companies to be competitive with their foreign-based counterparts.

Now, if that position just expressed by Joseph Guttentag, international tax counsel in the Clinton administration, the last Democratic administration, testifying before a Republican Congress, isn't good enough evidence that the route Senator DORGAN wants to go is the wrong route and a route contrary to previous leaders of his own party, then I don't know what will be evidence that this position is going to make American companies uncompetitive, not go to the marketplace of the other 96 percent of the consumers around the world outside the United States, and consequently creating jobs in the United States, and I don't know what it takes to convince him that position is a wrong position for the United States and is so different than what we have traditionally had for the Tax Code since 1918. When I say 1918, that goes back almost to the beginning of the income tax in the United States.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, it is sort of with mixed emotions that I am here on the floor to talk about this tax bill. In one sense, I am very happy we are moving forward with the Tax Increase Protection Act. At the same time, I am at somewhat of a loss as to why we are spending 2, 3, and maybe more days of the Senate's time for something that is traditionally done when there is comity and cooperativeness in the Senate by unanimous consent, putting in a substitute Senate-passed bill for the House bill and go to conference. That is something we do routinely here, almost daily. We have disagreements with the House, and we simply go through the procedure of moving to conference and having those differences worked out.

Unfortunately, we are at a time here where even routine things become weeklong labors to accomplish them. That does not reflect well on the Senate. I don't believe it accomplishes anything other than to delay other matters that are to come before the Senate.

We have a very important bill dealing with an issue that is of vital importance to my State—many manufacturing jobs in my State—and that is the asbestos debacle going on throughout the courts in this country where over half of the money paid out by corporations in asbestos claims has gone to lawyers. There are many people in the Commonwealth of Pennsylvania who are literally getting pennies—people who are sick and some are dying and some have died, and they have received literally pennies for their exposure to asbestos and their subsequent disease because of the horrific environment of litigation on asbestos, where lawyers are profiting and patients—those who are sick or are survivors of those who have gotten ill and died—get virtually nothing. This is something we have to address.

Instead of addressing that, which is what we should be doing right now, we are holding up the Senate on a procedural matter. It is truly sad that we can no longer just cooperate on the normal business. Everything is obstruction and slowdown and political potshots and making points. I think that is unfortunate for this body. It sets a very dangerous precedent that we are going to conduct business like this in the future. Whether it is in the next election or elections in the future, at some point in time, the tables will turn. I believe what we are establishing today is not something that will be beneficial for the long term in our ability to get things done in the Senate.

While the chairman is still on the Senate floor, I thank him again. I am repeating this because we are doing the same bill. I thank him for all the hard work he has put into this bill. The fact that he was able to get a bipartisan bill through the Senate is a testament to him, and I know it is very difficult and trying, negotiating within our own conference as well as negotiating with Members on the other side of the aisle. He was able to, as he has done on many occasions, cut through all of the difficulty and partisanship and the angst some Members have about various provisions and find a good middle ground, and well over 60 Members of the Senate supported the Senate bill that passed in November. I thank him for his good work and for the work he has done with me, in particular, on the issue of helping the nonprofit sector in our society meet the needs of those.

We were at the prayer breakfast this morning, and Senator GRASSLEY was there. We heard Bono and the President talk about taking care of the least of our brothers and sisters. The President says it so well. I have been advocating so long that nobody really does it better than our faith-based communities and our community nonprofits. They are the ones on the front line. We talked about it at the prayer breakfast—whether it is responding to a natural disaster or, more often and less prominently, responding to a person in need in our communities across America, rich as well as poor, people in need who are suffering.

It is important that we recognize that portion of this bill has to be a net plus for our charitable community. There are provisions in there that I have expressed concerns about which would do damage to those nonprofits' ability to be able to provide the needed services and to do the good works in our communities that make America stronger.

We have some good charitable-giving incentives, which are a big plus, but we also have charitable reforms on which I worked with the chairman. I think that maybe we are 90 percent of the way there, making sure we weed out some bad practices and making sure there isn't abuse within the charitable field, but at the same time not saddling our charities with a Sarbanes-Oxley type of oversight and regulations that would drive a lot of our small volunteer-oriented nonprofits out of existence and leave a big hole in our communities across America.

I am hopeful that when we get to the House and into conference, Chairman THOMAS will work with us and we will be able to get a bill that will be not only a net plus but a big plus for the armies of compassion, the foot soldiers across America who are helping men and women in need and children in need in our society.

A big part of this bill, obviously, is the tax relief. It is not exactly what I had hoped for. It is one of those compromises we had to make along the way. I thought the House bill actually had some better provisions when it comes to some of the tax provisions. It continues on a policy that has resulted in a lot of positive economic news over the past several years since 2003. We have seen that by these changes in the Tax Code and reducing marginal rates and capital gains taxes and dividends, it has incentivized the entrepreneurial spirit and incentivized business investment; it has created an explosion of growth in this country, which has also resulted in millions of people getting jobs—net new jobs across America.

I have a chart that shows, since the Jobs and Growth Act of May of 2003, and looking at the real GDP growth in America, there is a dramatic tilting upward since these provisions were passed. That has resulted in a dramatic increase, as we have seen on some other charts, in Federal revenues.

There is a constant complaint, a drumbeat on the other side of the aisle, and from a few on this side of the aisle, that somehow we cannot afford these tax reductions.

It is interesting; if you think of tax reductions, that leaves the question, What is a tax reduction? What is a tax reduction? Is a tax reduction a reduction in the taxes paid; or is it a reduction in the rate of the tax paid? What is a tax reduction?

Depending on how you view a tax reduction—and the answer is different based on what we did—if you look at, Did we reduce taxes, the answer is, with respect to rates, yes, we reduced taxes; we reduced the capital gains dividend rates, the marginal tax rates. We reduced the rates on the taxation of married couples and in several other areas. So, yes, we reduced the rate of tax.

The question is, Did we reduce the collection of taxes? What should Congress be more concerned about? Should we be more concerned about the rates of taxes or should we be more concerned about the collection of tax revenues?

I would think most people, when we have cut taxes, would say we reduced the collection of taxes in America. That is not what happened. When we reduced the rate of taxes, when we cut taxes, we actually didn't cut taxes. We actually increased the flow of revenue to the Federal Government.

So if we are looking at it from the standpoint of the budgeteers, the folks who are responsible for managing the receipts and distributions of Government, then the actions taken by the Congress in 2001 and 2003 resulted in increased taxes paid to the Federal Government through a policy that believes in the innovation and the energy of the people, that if you unshackle them from higher tax rates, they will produce more, they will create more jobs—and job growth has been terrific, over 2 million jobs, and the unemployment rate has been under 5 percent—and we end up with a better quality of life, more revenue to the Federal Government, and higher growth rates overall in our economy.

That is a pretty good picture. So why the complaints? Why are people so upset that we actually put a program in place that has resulted in more revenues coming to the Federal Government? Why the complaints? Why the gnashing of teeth that somehow this is a policy that is harmful to the budget deficit? Revenues were up 14 percent last year. How is that harmful to the budget deficit?

They say: That would have happened; in fact, we would have gotten more money had we not reduced taxes. Is that true? Let's look at the capital gains issue.

The Congressional Budget Office estimated in 2003 that we would collect roughly $125 billion in the year 2004 and 2005 in capital gains taxes. We went ahead and reduced the capital gains tax rate. Many of us stood on the floor and said, by reducing that rate, we will actually get more revenues. The Congressional Budget Office said "no," everybody on the other side said "no," and, in fact, everybody on the other side still said "no" and still says we shouldn't keep those rates low, we have to increase those rates because we need the money.

How did it work out? What happened when we reduced those rates? Did we get, as the Congressional Budget Office suggested, $26 billion less money? And that is what they projected. They projected in 2004 and 2005 that the amount of money coming into the Treasury in capital gains taxes paid would go down by $26 billion. What happened? Now we know. The amount of revenue collected in capital gains taxes went up $27 billion.

I was talking to a reporter the other day. I said: Lo and behold, I voted for a tax increase and didn't even know it. I voted for a provision that actually increased taxes to the Federal Government, and the folks who paid those taxes were very happy to pay them, by the way, because they were investing in America and America's values were increasing. Stock in America, real estate in America, the things that made wealth in America were increasing because of a growing economy because of what we did on the floor of the Senate, and they were very happy to have paid those taxes. And we got more Federal revenues.

What does the other side want to do? They want to have that rate go back up. One might suggest that if the rate goes back up, revenues could do down. What could be their motivation? What is the motivation of trying to increase a tax to get less revenue? Think about it. What could be the possible motivation of coming to the floor of the Senate and saying we need to increase taxes, even though by doing so we are going to get less money. Why would you do that? From a public policy perspective, why would you want to do that?

I can tell you that the argument is given that we need it to balance the budget. Wait a minute. We are going to get less money, so why would you do it? Could it be something of the whole politics of envy, the politics of pointing the finger at those who are successful, get a paycheck, and invest in America and say we need to tax them more; that is the fairness issue? We hear that a lot on the floor of the Senate: It is about fairness. That is what it is about? Stick it to those who succeeded, invested, purchased real estate, purchased stocks and bonds; we are going to take a bigger chunk of their money because that is fair. We may get less revenue, we may get slower economic growth, fewer jobs will be created, but we will feel better.

That is not sound public policy. That is not in the best interest of the American people. We did not get in the Senate bill a reduction of capital gains tax rate extension for 2 more years, but I will tell you that we will work very hard in the conference to make sure that happens. It is important for the economic growth of our country, for the job creation in our country, and for Federal revenues that we get that extension in law.

There are a lot of games being played on the floor of the Senate when it comes to tax policy and the politics of envy. What we should be focused on is how does this Senate, how does this Government create the best environment for growth opportunity and job creation and how do we do it in a way that is fiscally responsible. Those are the two things on which we should be focusing.

I would make the argument that the bill before us, which prevents an increase in taxes—these are tax policies that are in place right now; there is no new policy or, I should say, very minor, little new policy changes, such as the charitable giving incentives, but very small policy changes, a very small percentage of the money. The overall bill deals with provisions such as the alternative minimum tax, which is vitally important and the small saver's credit, which is important. About a quarter of a million people in my State strongly support that provision, in fact, would strongly support increased incentives for low-income individuals to save and, in fact, put forth a bill with former Senator Corzine to do that. So I am looking for another new cosponsor if anybody wants to join. It is called a kid's account to give every child in America a nest egg to begin to save at their birth.

I am big on giving people the opportunity to save, invest, build wealth, and feel connected to the economy of this country. We need to do more of that. But we have a little piece of that here, which is important to the people in my State. Mr. President, 150,000 families and students in my State will lose their deduction for college tuition if we don't extend that provision. With regard to the teacher tax credit provision Senator COLLINS championed, 142,000 teachers in Pennsylvania will not be able to deduct that. We can go on and on.

These are preventions of tax increases, a tax reduction that caused the kind of economic growth we have seen. It is important for us to have these provisions stay in law.

Finally, I want to talk about an issue that has been brought up—and it is an important issue—and that is the issue of mine safety. I know Senator ROCKEFELLER has put forth an idea that I think deserves some consideration because it has merit. It provides mining companies with incentives to make available newer technology that will enhance safety.

We have seen over the last month in West Virginia and we saw, I guess, 3 years ago in Pennsylvania, mine disasters occur where human life was lost, in the cases of West Virginia, and certainly a major disaster was diverted in Quecreek in Pennsylvania.

This is a serious issue, one I care deeply about. My grandfather was a coal miner in a deep mine for 30 years, so this is very close to home for me. This is one issue we need to do something about, to improve the safety for those who literally risk their lives every day to provide for their families, to build strong communities, and to provide energy for all of us so these lights will work in the Chamber. We need to do all we can to improve enforcement as well as to create incentives for the mining community to improve safety at the workplace.

There is another provision in the Rockefeller bill that has to do with training for rescue teams. Because of the way it is written, I have some concerns about it. I heard from a lot of our small mining operations, family-run operations, that this provision would not benefit them at all.

As we know, a large percentage—at least in my State—a large percentage of the mine operations in my State are not big corporate mining operations. They are small, in some cases small corporations, family-run operations. So while I certainly strongly support the first provision and support the concept behind the second provision, I have serious concerns about the way that provision will tilt to the benefit of the larger mining operations.

While I support it and will support this amendment, I hope it is included and that we can work on something in conference to include improvement of mine safety. I am putting my marker down here that we will do so not to discriminate against small mines versus larger mining operations. If anything—if anything—we should be concerned about, as we do on a lot of issues in the Senate, helping the little guy, as opposed to helping the big guy because the big guys already have the resources to spend to provide for a safer workplace.

What we should be doing is focusing on how we can make smaller mining operations safer. That is not what this amendment that Senator ROCKEFELLER puts forward does. As a result of that, while I support it and will support the provision to be included in the conference, I put the marker down that we are going to work diligently to make sure it uniformly impacts across the industry and, if anything, it benefits the smaller mine operator as opposed to the bigger one. That is not the way it is currently drafted.

I completely understand. I don't think Senator ROCKEFELLER—at least I hope he didn't go in there with the idea that we are going to favor one segment of the mining industry over the other. I hope that is not his intention. Whether it is his intention, I will certainly work with him to make sure it is a much more balanced provision when it comes out of conference.

With that, Mr. President, I thank the chairman for yielding the time to speak on this important bill. I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. My friend from Iowa came to the floor to speak a bit this morning on a couple of subjects I spoke about yesterday. Let me again say I have very high regard for Senator GRASSLEY. We worked together on a good number of issues. I enjoy working with him. But there are times when you have disagreements on policy, and we certainly have that on an issue I am going to talk about. It is an issue he talked about this morning as well. Actually, there are a couple of tax issues.

Before I do, however, I want to just make a slight correction to the remarks that were made by the Senator from Pennsylvania a few minutes ago. I heard him say the Democrats were holding up this bill on, I guess—I think he said a technicality. I think he said it was a technicality. I think that was the impression he intended to leave, obstruct or holding this up on a technicality.

I guess the technicality is our interest in offering amendments. I know to some that is not a pleasant thing around here, to have people offer amendments and actually debate them and vote on them, but that is the way the system works. The reason there are not amendments offered—and I would try to offer one right now, but I would be unable to offer one—is because the majority party has done something that is called filling the tree. It is a parliamentary procedure to make sure every branch of this legislative tree is filled so that no one is allowed to offer an amendment.

For example, while this bill is on the floor, under the rules of the Senate, I should be able to offer an amendment. The majority party decided to fill the tree, as it is called, so no one on this side may offer an amendment. So when my colleague from Pennsylvania said the Democratic side of the aisle is using a technicality—whatever, I forget his term exactly—to hold this up, I am sorry that is not what is happening at all.

He made a point that I share. I think it would be great to work together. I think there ought to be less rancid partisanship and we ought to find ways to work together to do the Nation's business. We, after all, represent the same interests. We represent the interests of this country. I hope we represent the interests of the American people. I would like to find areas where we can work together.

In this case, however, let me just say there is no obstruction going on here. The only obstruction is we are obstructed from being able to offer an amendment which in ordinary circumstances the rules of the Senate would permit. I regret that. I wish the majority party would have allowed me. I would have offered the amendment yesterday, in fact, and I would offer it right now. I have an amendment to offer. I guess we will vote on it later because you will have to have a circumstance where we can offer the amendment. I suppose the purpose is to allow amendments to be offered when all time is expired so there is no debate that is allowed. I guess that is probably the purpose. But I did want to disabuse anyone of the notion left by my colleague from Pennsylvania that somehow it is this side that is hanging all of this up.

It may be inconvenient to have people offer amendments in the Senate, but there are a couple of hundred years of tradition of this inconvenience. The inconvenience is to be able to offer ideas, debate the ideas in the form of an amendment, and then have a vote, and the vote determines whether the idea that is offered represents public policy that the full Senate will accept.

Let me just respond to a couple of things my distinguished colleague from Iowa has said. Yesterday, I gave a presentation talking about something called deferral. I know most of these things sound like foreign language around here. Deferral of income tax obligations is what it is. If a company does business overseas, an American company does business overseas and earns income overseas, at some point when it brings those profits, that income back to our country, they will be required to pay an income tax to our country for the income they have earned. They will get a credit, actually, against taxes they paid to a foreign country so they will not be double-taxed. But when they repatriate that income, as it is called, they have to pay a tax.

My colleagues in the Congress, a sufficient number of colleagues who represent the majority, decided that they wanted to have a kind of little sweetheart deal for companies that would repatriate their earnings because many companies park their earnings for a long while overseas and don't bring them back. When they bring them back they have to pay the full tax rate. My colleagues said: Let's create new jobs in America by allowing these companies to bring their income back, and we will give them a special superdeal.

You have heard of blue light specials; this is the blue light special of all specials. It says you bring that money back from overseas, you get to pay not 35 percent, not 30 percent, not 25 percent, not 15 percent or 10 percent—which is the lowest income tax rate that is paid by the lowest income earner who has to pay income taxes—you get to pay a 5.25-income-tax rate. Who is the "you"? The biggest companies in our country: Ford Motor, for one thing. I mention that because when they announced they are going to lay off 30,000, they also said: By the way, we picked up a quarter of a billion dollars of tax refunds under the Jobs Creation Act. Isn't that interesting? Ford Motor said in the same press release: We are going to lay off 30,000 workers in this country and, by the way, we were able to get a quarter of a billion dollars, a $250 million benefit from the jobs creation tax rate special benefit of 5.25 percent.

The whole purpose was to create jobs in our country and, at least in the most recent job announcement of 30,000 jobs lost, the very company that announces 30,000 jobs gone points out they got a quarter of billion dollars under this provision.

My colleagues seem to suggest the provision really does work, it is helpful. No, it doesn't work. It didn't work. By my calculation, the income that was parked overseas and at some point would have had to have been repatriated to this country, that income would have borne a tax that is about $104 billion more than what was paid under the 5.25 percent.

Is anybody going to have to answer to that? I don't know. Maybe not. Maybe nobody cares—$104 billion. You could reduce the Federal debt, reduce the annual budget deficit. You could probably provide some health care to people who do not have it, perhaps help some kids who are hungry, perhaps provide health care for kids who are sick, improve some classrooms in schools that need improvement—maybe there is a lot of things you could do. But $104 billion, that is a tax break given to the biggest corporations in this country who brought income back to our country and would have had to pay normal income tax rates but were told by this Congress that we are going to give you a superspecial deal that no other American taxpayer has: 5.25 income tax rate.

Wouldn't every American love to pay a 5.25 income tax rate? But they can't. That deal is just reserved by the Congress for some bigger interests.

I didn't vote for that. I didn't support it. I strongly opposed it. My colleague who sat in this chair right here, Senator Fritz Hollings, who is now retired, offered the amendment to strip that out, but we were not successful. So this blue light special, 5.25 percent special income tax rate for big interests who were bringing money back from overseas—it got done and $104 billion, as I calculate it, was saved by those who otherwise would have had to pay regular income tax rates.

I wanted to respond to that because I still think that was one of the goofiest ideas in the world for this Congress to embrace, saying let's provide a 5.25 tax rate because we think it will create jobs. The evidence is all around us. It didn't create jobs. In fact, I have charts saying the largest companies that got some of the biggest benefits—one company got a $14.5 million benefit and laid off 14,500 people—almost complete and perfect symmetry, wasn't it? Except they were supposed to have hired people if they got this kind of special tax rate. They just forgot and laid them off, I guess.

Let me go to the other point which is what persuaded my colleague to come to the floor and engage on this issue, and that was the point I made yesterday. We have a provision in our Tax Code that says to someone in Iowa or North Dakota or Colorado or Pennsylvania, if you have a manufacturing plant and you are across the street from your competitor and your competitor has a manufacturing plant and you produce exactly the same products but you do something different, you move your jobs to China and manufacture your widgets in China, your competitor across the street stays home and manufactures them here in this country—one thing has happened as a result of that move. We have embedded in this Tax Code a perverse incentive that says: By the way, we will give you a break. You move those jobs to China, close your plant door, get rid of your workers, produce in China, and we will give you a tax break. You are not going to pay as much in income taxes as your competitor across the street who stayed in this country.

I think that is wrong. Going all the way back to 1961 with John F. Kennedy, proposals have existed to change it. Going back to 1987, the House actually passed legislation to change it. But we can't change it any longer because now, of course, the big economic interests that benefit a lot from that—and we have a lot of companies getting rid of American workers, padlocking their doors and shipping the jobs to China. I have spoken about many of them on the floor of the Senate. We have a lot of companies that like this tax break. Why? They like to hire people for 33 cents an hour, produce the product in China, sell it in Cincinnati or Toledo or Pittsburgh, and then run their income through the Grand Cayman Islands, through the Ugland House on Church Street on the island of Grand Cayman, that houses 12,748. It is just an address, of course, but the purpose is to reduce the tax burden.

My point is on four occasions when I offered amendments on the floor of the Senate so we ought to at least decide as a country that we will not provide financial incentives in the Tax Code for those who decide to move their jobs overseas—that ought to be the least we ought to do. That ought to be the baby step in the right direction—but four times we have voted and on four occasions those big interests that really like this and have benefits from it have been able to persuade a majority of the Senate to oppose closing that loophole.

I indicated yesterday I would once again offer that legislation. I would offer it right this moment except I am prevented because the majority has done what is called filled the tree and prevented anybody from offering any amendments. My colleague from Iowa came down this morning and offered what I believe is called the Banana defense. That is what he called it the last time he offered it. It had to do something with bananas.

I don't know, maybe we could debate apricots or tailpipes or bananas. It doesn't matter to me what the product is. We could have a long debate about it. I will just call this the banana debate then. But whatever the product or circumstances, the question remains: Do you believe that our Tax Code ought to provide financial benefits and rewards to companies that have decided to move their jobs overseas? Should Huffy bicycle have gotten a reward for firing all their workers and producing Huffy bicycles in China? Should Radio Flyer little red wagon have gotten a benefit from moving all their jobs overseas? Fruit of the Loom, should they have gotten the benefit?

I could go on at some length. Fig Newton cookies, when they went to Monterrey, Mexico, should they get a benefit? If you think yes, then good for you, and I suppose the benefit will continue to exist in our Tax Code, but we are going to continue to vote on it. I am not deterred. As far as I am concerned we can vote 10 times on it. At some point there will be enough people filling the seats in this Chamber to understand that at a time that we have a crisis, and it is a crisis with substantial numbers of jobs moving outside of this country in search of lower labor costs to produce products to ship back into this country, at a time when we have that kind of crisis and the American people are facing downward pressure on wages, they are facing the stripping away of their pensions, the loss of their health care—at a time when we have that kind of crisis, the question is: Will there be enough people filling the seats in this Chamber to stand up and say let's take the first baby step in addressing it?

The first baby step is to say: Let's not provide incentives in the Tax Code for companies to move those jobs overseas. If we can't do that, we can't solve this problem. But we will have plenty of chances. We will have one more chance now. We had four chances previously.

I respect everybody's ability and interest to vote however they choose in this Chamber. I don't demean their reputation nor diminish their capability. I only say that I feel very strongly that if they support this provision, they are wrong. They are wrong for this country. The right public policy position is at least to have some basic neutrality on the question of whether we want to export jobs and whether we want to have the financial incentives for exporting jobs in our Tax Code.

I regret that we don't have a back and forth. I would love to have a real debate about this because I know there are those who benefit handsomely from this who want to continue it and want it to remain in the Tax Code. But I feel strongly that this provision that is known as deferral—and, incidentally, my repeal of deferral does not go to the John F. Kennedy proposal on repealing deferral. My repeal on deferral is rather narrow. It is those companies that leave this country and ship back into this country.

I think it is a perfectly appropriate thing, especially now given the crisis we face with jobs and opportunities in this country, for us to do that.

I have a right, under the procedures of the Senate, to offer this amendment. I should have the right to offer it at the moment but I am not because there is—I guess the word "obstruction" is to be used—obstruction at the moment is the tree is filled so that no one can offer an amendment. So we are going into some process that is a vote-arama, and I will offer the amendment, and we will have a vote.

Let me finally say it again.

There is not one Member of the Senate that puts on a dark suit every morning and comes to work here that has ever been threatened to have their job outsourced—not one. There is not a person here that is ever going to have their job outsourced. Maybe they do not think much about it. I don't know. We have all of these people in blue suits who come here every day and we talk and we talk, and mostly we talk. We are good at talking.

But the question for most Americans who worry about their jobs and who see their neighbors' jobs moved overseas is, Will their jobs be moved? The question for them is, Will Congress do something about it?

I mentioned a few moments ago the Ugland House in the Grand Cayman Islands, which is a slightly different approach than the Tax Code I have been describing.

I wanted to mention that there is a man from Bloomberg News named David Evans who has done some reporting on this Ugland House. The Ugland House is a house on Church Street in the Cayman Islands. It was, according to news reports, dug out by David Evans, who has done the research. This is a five-story white building that houses 12,748 companies. It doesn't really house 12,748 companies—it is an address. This is a five-story white house address on Church Street in the Cayman Islands. Why would 12,000 companies congregate to have an address in this five-story building? There is only one reason. And, by the way, every one of them are represented by the same law firm. Why? So they don't have to pay taxes, that is why.

They want to access cheap labor in Asia, sell in America, and run it through the Cayman Islands so they don't pay taxes.

That is what this is all about.

Because we have a tax bill on the floor of the Senate, I have another amendment that I will not be offering now for those companies that want to congregate at an address in a tax-haven country, the Cayman Islands. But if you are creating an address to have a tax haven and avoid taxes, you shall be treated for tax purposes as if you have never left our country. You don't get to claim that you now have an address in the Ugland House, and, therefore, you are running your income through that house. My legislation would say you are going to be treated as if you never left for business purposes.

We can shut that down like that, if Members of Congress have the interest and the will.

Does anybody believe this is anything other than a huge scam, by having a little five-story house with 12,000 businesses congregate there under the umbrella of a law firm that runs their mail through that place in order to avoid paying U.S. taxes?

Thanks to David Evans for the work he has done. But in many ways, I think this is the tip of the iceberg. There is substantial tax avoidance going on. Some of it is legal. The first description I made today was the description of the avoidance of what I think is about $104 billion in taxes under the 5.25-percent special tax deal.

The other one I mentioned, deferral for those who move their jobs overseas, that is in law. I am not criticizing companies for following the law. I am criticizing the Congress for not changing the law and doing what we should do—stand up for American jobs.

I was thinking I had actually done plenty yesterday to either aid or injure my cause, however one views these issues. But when I heard my colleague from Iowa come to the floor today, I at least wanted to respond to that. As I was coming over, I heard my colleague from Pennsylvania say someone else was obstructing, I guess, the work of the Congress over what I think is a technicality, and the technicality was we wanted to offer amendments.

I say to my colleague, there is never a technicality when someone wants to offer an amendment. If the rules allow us to offer amendments, just have the amendments, have a little debate, vote regular order, and let it go. When it is done and the dust is settled, we decide what we decide, and everybody is responsible for the vote they cast.

My colleague from Pennsylvania said he wished we would be a little less partisan. So do I. I think we need to find ways to make this a little less partisan. A good step in that direction would be, for example, for somebody to right now come out and say: We have a bill on the floor, let us have regular order. If amendments are, by the way, allowed, let us go ahead and offer them. Will you give us a time agreement? Sure. Vote, act the way legislators should act, and at the end of the day, we will all feel better about that.

That is what the Senate ought to be about when we call this the greatest deliberative body in the world. It has slipped a bit. We can regain that status if we only decide amendments are good and not bad things. Debate is good—not bad. The noise of democracy coming from the Senate is welcome noise for the American people, if we are engaged in constructive debate about issues that matter.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRAHAM). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHUMER. Mr. President, I rise today, in recognition of the beginning of Black History Month, in support of a bill to posthumously award a congressional gold medal to Constance Baker Motley, an American hero who, sadly, passed away on September 28, 2005, after having lived an extraordinary and exemplary life. I am pleased to introduce this bill along with my colleague from New York, Senator CLINTON.

Constance Baker Motley was the first African-American woman, and only the fifth woman, to serve on the Federal judiciary. Before becoming a judge, she was a renowned civil rights lawyer, public servant, and trailblazer. Her remarkable career reads like a civil rights history book.

After earning her bachelor of arts degree in Economics from New York University and her law degree from Columbia University, Judge Motley joined Thurgood Marshall at the NAACP Legal Defense and Educational Fund. For two decades, Judge Motley worked closely with Marshall and other leading civil rights lawyers to dismantle desegregation throughout the country.

As a Black woman practicing law in the South, Judge Motley endured gawking and physical threats. But she was not deterred.

She won cases that ended segregation in Memphis restaurants and at Whites-only lunch counters in Birmingham, AL. She fought for Dr. Martin Luther King, Jr.'s right to march in Albany, GA, and visited him in jail whenever he was arrested.

Judge Motley was the only woman on the legal team that won the landmark desegregation case, Brown v. Board of Education. She went on to argue 10 major civil rights cases before the Supreme Court, winning all but one of them, including James Meredith's fight to gain admission to the University of Mississippi.

Before she died, Judge Motley would grin when she told people that she actually won 20 years later the only Supreme Court case that she lost, when the Court eventually agreed with her position and adopted her reasoning in holding that it was a violation of equal protection for prosecutors to use their peremptory challenges to strike Blacks from a jury because of their race.

In 1964, Judge Motley became the first African-American woman elected to the New York State Senate, and in 1965, she became the first African-American woman, and first woman, to serve as a city borough president. During this time, Judge Motley worked tirelessly to revitalize the inner city and improve urban housing and public schools.

In 1966, President Lyndon B. Johnson appointed Judge Motley to the Southern District of New York. She was confirmed 9 months later, over the strong opposition of Southern Senators. As a judge, Motley continued her commitment to social justice.

She rose to the position of Chief Judge in 1982, and assumed senior status 4 years later. Judge Motley served with distinction for nearly four decades, until she passed away last fall, at the age of 84. At that time, I was pleased to introduce a Senate resolution, which passed by unanimous consent with 27 Democrat and Republican cosponsors, to honor her life and achievements.

Since then, our country has lost two other great civil rights heroes, Rosa Parks and Coretta Scott King. Both of these remarkable women were awarded congressional gold medals for their leadership and contributions to American society while they were alive. I deeply regret that Judge Motley was not. But it is not too late for us to show our national appreciation to her friends and family. Congressional gold medals are reserved expressly for that purpose, and Judge Motley's lifelong commitment to the advancement of civil rights and social justice, and her lengthy career in public service, is worthy of just that.

The Senate Banking Committee requires 67 cosponsors before it will consider legislation to award a congressional gold medal. I am pleased to introduce this bill with 16 other original cosponsors from both sides of the aisle. I now call on all of my Senate colleagues to join us this Black History Month to give thanks on behalf of the country to one of our greatest civil rights leaders and public servants, Judge Constance Baker Motley.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume.

I will make some additional points on the Dorgan tax haven included in the Conrad substitute. I share Senator CONRAD's concerns about the ability of large corporations to manipulate the Tax Code, to shift large amounts of profit offshore, but this provision is not the right way to address those concerns. It is very overbroad and inadequate. It is overbroad because it harms the competitiveness of United States multinationals, repealing deferral for holding company structures that allow them to efficiently allocate active foreign generated resources among their foreign operations without incurring U.S. tax on entirely foreign transactions.

It is inadequate because it applies only to the subsidiaries in black-listed countries. Companies that use tax savings for abusive purposes could easily avoid this rule by locating in a low-tax country that is not on the list. Ireland would be a perfect example of that, where we read press reports that companies such as Microsoft are shifting huge profits. Treasury would have authority to add countries to the list, but does anyone think Ireland, with whom we already have a tax treaty, would be added to that black list? The way to deal with those cases is through effective transfer pricing policy and enforcement, not by curtailing deferrals.

Another issue that is going to be soon before us is the Democratic substitute of revenue raisers that are in our bill. I am flattered by the tax relief side of Senator CONRAD's substitute amendment since it includes extension of the same widely applicable tax relief provisions in the underlying bill.

I should also be flattered, and I am, by some of the pay-fors in that amendment—in particular, the provisions regarding the so-called SILO transactions. It is a fact that we shut down the abusive tax shelters that involve U.S. corporations claiming tax benefits on foreign subways and sewer systems in 2004. So these deals can no longer be done. The underlying bill would repeal a generous grandfather provision for certain domestic deals and would deny benefits for foreign deals entered into before the effective date of the JOBS Creation Act of 2004.

We have introduced a fully offset tax relief bill in the past. Most recently, that act of 2004 produced $82 billion of tax relief that was completely offset. The underlying bill, in fact, contains almost $20 billion of offsets while providing $90 billion in broad-based tax relief. We do not need any more offsets to pay for the lost AMT revenue that we never intended to collect and for other provisions, such as the R&D credit, for example, that are broadly supported as good for the economy.

We all know tax receipts are on the rise. In 2005, we had $274 billion more coming in over the taxes that came in in 2004 under the same tax policy, and we exceeded the CBO baseline by—can you believe it—$97 billion. It is a very vibrant economy which produces that kind of revenue. That amount, whether it is the $274 billion in 2005 over 2004 or the $97 billion above the CBO baseline, that amount exceeds the $70 billion of reconciled tax relief over 5 years provided in the budget resolution.

So I hope we will be able to take these points I have just made about the inadequacies of the amendments we are going to be dealing with when we vote on these amendments.

I would now, Mr. President, speak on the issue of an amendment I am going to place before the Senate this afternoon. In fact, I will submit this amendment at this point.

I wish to take just a few minutes, in offering this amendment, to speak about amendments that are also offered by Senator BINGAMAN and Senator NELSON regarding the Medicare prescription drug program. I thank the Senators for their amendments. I know their intentions are good and their hearts are in the right place. But having said that, I am forced to oppose the amendments, and my reasons follow.

Opponents of the benefit are trying to make it look as if Republicans are indifferent to the problems of the implementing part of the Medicare program. Such is not the case because everyone has to be concerned about the issues faced by some beneficiaries in getting their prescription drugs, even if that might be a very small percentage of the people who are involved. Whoever needs these prescriptions, we have to do everything we can to get them to them.

Like everybody else, I am concerned about the drug benefit implementation issues. It is not acceptable that some of the most vulnerable and frail seniors are experiencing problems. But my opposition to the amendments is rooted in the goal of not just taking some action, but that we need to take the right action when we act. There is no question that Congress meddling could just make things worse.

With that in mind, I want to share with you the following quote as to another new program that was getting underway:

> As the program gets under way the danger is that the strains on it will generate pressures for unsound change. They will come from those who will be disappointed because they have been led to expect too much as well as from those who see failure in every shortcoming. Changes will come in time, but they should be made on the basis of the program's own experience. This program must be given ample time to get over its growing pains.

Now, that is not about the prescription drug bill that is just now going into effect. That is a quote from the July 1, 1966, edition of the New York Times, and it is about the implementation of the original underlying Medicare Program passed by Congress a year before this July 1 edition of the New York Times.

Now, when I read that quote of 1966 just now, it said "the program" instead of "Medicare" because I did not want to give it away. The point of this editorial is that those words are extremely relevant today.

I am not trying to make excuses or minimize the difficulties some are having. Those problems need to be fixed, and fixed fast. By all accounts, everyone is working hard to get them resolved. But in my opinion—echoed by the New York Times nearly 40 years ago—rushing to "fix" things through legislation could do more harm than good.

Just last week, the Finance Committee, in a bipartisan setting—with almost every member of the Finance Committee there—had a meeting with Secretary Leavitt and CMS Administrator Mark McClellan. We had a candid discussion about the unfortunate glitches, and we heard about steps taken by the agency to address them. We had a very constructive dialog. That dialog covered a range of issues the Agency had identified and the administration's actions already taken to address them.

It is clear to me legislation is not needed at this time. Secretary Leavitt has the authority. Current law allows him to have a smooth transition. And administrative actions will work faster than if we pass this legislation. That is because changes in law have to be followed by more administrative actions. This is very much going to slow things down. That is not what we want. We want, need, and will get quick action.

The issues that have surfaced do not lend themselves to legislative fixes. For example, we talked about problems in the data files. The data files have not always identified the plan where a dual eligible is enrolled. Obviously, that is a problem. But can Congress write a law to dictate exactly how to fix computer system data files? That is not something I would want to do. There is an opportunity for getting something wrong, if I ever saw an opportunity for Congress to do something wrong.

But more importantly, these amendments are unnecessary. Senator BINGAMAN's amendment gets at issues that have already been addressed administratively. CMS has the authority to address these that way. And it will get fixed faster than if we pass additional legislation.

So I am going to offer a sense-of-the-Senate resolution. That resolution expresses our concerns about these problems, and it expresses the Senate's support for the Agency's efforts to fix them.

For example, prescription drug plans must have a first-fill policy. The first-fill policy already requires at least 30 days of coverage for the first prescriptions filled, even if the drugs are not on the plan's formulary. And just yesterday, Secretary Leavitt announced that the first-fill policy is being extended further. It is now going to be in place for 60 or 90 days as a first-fill policy. The Bingaman amendment requires only a 30-day policy. So it is already out of date. The administrative actions are much faster. Changes in law are not needed to address the issue.

Now, here is another one. The Bingaman amendment says that dual-eligible beneficiaries, whom we call dual eligibles, should be presumptively eligible. But the dual eligibles are already automatically eligible under the law, and they are automatically assigned to a plan. So again, no change in law is required.

Another example. The Bingaman amendment says it would require plans to reimburse enrollees for cost-sharing problems. Here again, plans are already responsible for the costs to cover drugs. They are responsible for reimbursing beneficiaries for any cost-sharing charged in error. No change in law is required.

Let me give you another one. Some States have stepped up to fill claims during the transition. The Bingaman amendment requires States to be reimbursed for their costs. This is already happening. Last week, Secretary Leavitt announced that the Federal Government will reimburse States for costs they have incurred during the transition period. We were told that that day we met with Secretary Leavitt. I do not know exactly when Senator BINGAMAN was there, but he was there for that meeting. Not every Senator stayed for every minute of the meeting, but Secretary Leavitt made this very clear. So again, legislation is not needed because administrative action is being taken, with the legal authority of the Secretary to do it. So no additional legislation is needed.

Senator NELSON's amendment would extend the enrollment period through the end of the year and permit beneficiaries to change once before the end of the year. We have discussed this amendment before. The Senate has already voted twice, and we voted it down twice. And changing the enrollment period does nothing to address any of the issues experienced by beneficiaries just this last month.

We are well into the enrollment period. Enrollment is exceeding expectations. Twenty-four million beneficiaries out of 44 million, potentially, have prescription drug coverage. Every day, nearly 90,000 beneficiaries are enrolling in the program, and about 1 million prescriptions are being filled daily. So again, legislation is not needed.

There are a number of resources for beneficiaries to help them choose a plan. There is the Medicare call center. It is available 24 hours a day, and the Medicare Web site. Every State has counselors available to assist beneficiaries through the State Health Insurance Information Program. That is the whole point of that program—the SHIP program, it is called for short—to help beneficiaries understand their Medicare benefits. The prescription drug plans based their proposals to serve Medicare beneficiaries on the enrollment period specified in the law.

In addition, there are already rules in place under which a beneficiary can change their enrollment outside of the open enrollment period. A beneficiary can seek what is called a special election period if that is needed for that individual—for example, if a plan fails to provide a beneficiary with information about the plan's benefits on a timely basis, or if it fails to provide benefits in line with quality standards, or if the plan, its agent, or plan provider materially misrepresents the plan in marketing that plan. So in all of these instances, there can be a special enrollment period or an opportunity to change.

So again, we do not need legislation. These are issues already covered in the law today.

I want to make another point about what is going on with these amendments. There was a time when opponents of this benefit were concerned that there wouldn't be enough choice. Now their concern is that there is too much choice. When we were in conference with the House on this 2 years ago, we were fearful there might not be a choice for people. So we provided if there wasn't a choice, the Secretary set up a subsidized choice so that every individual could at least choose from two. We wanted people to have choice. We followed the Federal Employees Health Benefit Plan where people have the choice of many plans to choose from, and they get to change once a year. We wanted to make sure we didn't cram anything down any senior citizen's throat. If they didn't want to participate, if they were satisfied with Medicare the way it was, they didn't have to. But if they wanted to participate, they elected.

You don't write one plan for 44 million seniors because everybody has different benefits. And one-third of the people already had some prescription drug coverage. We didn't want to screw up their plans. So we subsidized those plans so that those people who had something they wanted would be able to keep it. I don't know when you satisfy people. I didn't think there would be enough choice. Now we are hearing complaints about too many choices. There are 44 million Americans; there are 44 million different personal needs of those people. We, sitting on the floor of the Senate, are not going to figure out what those 44 million needs are and pass a one-size-fits-all plan that is going to satisfy the needs of everybody.

The point is, the opponents of this new benefit will complain and fight it no matter what happens. I hope everyone remembers that. I also find it ironic that folks think that legislation is the answer. These are the same people who are concerned about confusion. Now they are proposing legislative changes in a bill that has only been in operation for 1 month, on top of administrative actions that the agency has already taken. They want to screw that up with legislation on the floor of the Senate with changes that will have no impact on any of the problems encountered this last month, legislation that would have to be followed by yet more administrative action, a snowball rolling down the hill, just getting more complicated as it rolls on.

I ask whether this is going to help these perceived problems. Well, not just perceived problems; I admitted there are problems out there. I admitted when you put something like this into place, there are growing pains, just like I quoted that New York Times article from 1966 about the growing pains that we were going to have with Medicare when it was first put in place. Do you think these things are going to smooth the transition? I don't think so. Talk about opportunity for confusion among beneficiaries, pharmacists, and plans. This is not going to reduce the confusion.

Passing legislation now runs the very real risk of undermining and complicating things. It can undermine the progress already made. It will interrupt actions taken by the administration. It will create more problems, not fewer problems. I, for one, have a steadfast commitment to gaining a full understanding of the problems and pursuing the most appropriate and timely course of action.

When the Secretary came before my committee and everybody turned out to make their complaints known, and the Secretary announced at that time seven problems and he announced at that time seven solutions to those problems and took full responsibility for them, I had a feeling people left that meeting fairly satisfied that nobody was going to blame somebody else and they had a grasp of the problems and solving problems, with some accountability that some changes had already taken place for the better.

So then when you come out of an environment of a committee meeting like that, you wonder what planet they have been on when these amendments are being offered—amendments that, if they were passed, would not get to the President for another 30 days—to solve problems that were evident 30 days ago that the Secretary has already identified and taken action to overcome.

Senator BAUCUS and I are working together to get to the bottom of this issue. That is how we do it in our committee. We do it in a bipartisan way so that we are going to also be able to work together if it turns out that legislation is needed. But I asked the Secretary at that very committee meeting: Do you need any legislative changes to take care of these problems that we have all identified, particularly the seven that he identified? He said: No, he had ample legislative authority to do it.

An important part of Senator BAUCUS's and my work in this regard is going to be brought up at next week's Finance Committee hearing, an open hearing. We will hear from Dr. McClellan. We will hear from representatives of the plans. We will hear from pharmacies. We are, most importantly, going to hear from the people involved in educating and enrolling beneficiaries into the plan. More than once I have heard Members take issue with attempts to bypass the committee process. The amendments before us are just that.

Senator BINGAMAN's amendment has not gone through the Finance Committee. It is clear that this amendment falls within the jurisdiction of the Finance Committee, and the Senator from New Mexico is a member of that committee. I ask him to work within the committee. If the Senate proceeds on legislation that the full committee has not considered, then nothing would prevent the Senate from legislating on other Finance Committee issues without the benefit of hearings or committee action.

Next week's hearing is very important. We need to gather more information about what is happening. This is needed to inform all of us of any necessary response. In the absence of such information gathering, it is dangerously premature to consider any amendments related to the prescription drug program. We all know that this whole issue of Medicare prescription drug coverage has long been a political issue. With the amendments offered today, I can't help but think that is very unfortunate. It is also unfortunate that is probably not going to change during the 109th Congress.

On the other hand, I hope that is not the case. But here we are, just 1 month into the prescription drug program, already we see a lineup of amendments to perhaps the most inappropriate vehicle there could ever possibly be to deal with Medicare. In other words, these amendments are on a tax bill. But more importantly than just the process, these amendments are unnecessary because of administrative actions taken to date or to be taken tomorrow, if a new problem comes up.

When these amendments that I have discussed—the Bingaman and Nelson amendments—come up for a vote, I hope my colleagues will trust what we learned in the committee: that the Secretary of HHS doesn't need any new legislative authority, consequently bringing any more uncertainty into this process by voting for these amendments. Vote them down.

I said that I had an amendment I wanted to have considered when we vote this afternoon. I send the amendment to the desk and ask for it to be printed.

I yield the floor. And since nobody else is desiring to speak, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MARTINEZ). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. MURRAY. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. MURRAY. Mr. President, I came to the floor this afternoon to spend a few minutes speaking in support of the Bingaman-Rockefeller-Murray Medicare drug REPAIR amendment that we will be seeing this afternoon. I came to the floor to urge my colleagues to support this amendment so we can address the immediate crisis facing our most vulnerable citizens.

I wish we were here debating a real fix to the Medicare Modernization Act, but unfortunately the Senate leadership has placed a lot higher priority on tax cuts than on providing reliable access to prescription drugs for low-income seniors and the disabled, so we are here today debating that. I know the chairman of the Finance Committee was on the floor earlier talking about the relevance of this amendment, the Bingaman-Rockefeller-Murray Medicare drug REPAIR amendment, but this is the first piece of legislation that we have had on the floor since the rollout of the Medicare prescription drug bill. Offering this amendment on this tax bill is our only option.

What this amendment does is ensure that our low-income seniors and our disabled—who are often technically referred to as duals—are at least ensured of a 30-day supply of lifesaving drugs, regardless of any communication or data exchange problem. It simply ensures that States and pharmacies and beneficiaries who have had to provide coverage to those who have fallen through the cracks in this rolling out of the Medicare prescription drug bill receive just and fair reimbursement.

Finally, it will end the confusion facing any of our duals. And for any of my colleagues who have not been out in their States since January 1, I will tell you there is tremendous confusion and conflict and people are falling through the cracks and we need to end that confusion so they know whether, in fact, they qualify for assistance.

Because of the tremendous data and outreach problems, many of these so-called duals have been told they have to meet a $250 deductible before their plan is going to cover their prescription drugs. If they are eligible today for Medicare and Medicaid, they are assumed eligible at the drugstore.

I have listened to Secretary Leavitt and CMS Administrator McClellan reassure all of us that they are acting to fix these problems. I am here today to applaud their attention and their commitment and their recognition of the tremendous challenges out there, particularly for our duals, as this prescription drug rollout bill is occurring. I only wish they had listened last November when I offered an amendment to provide a 6-month transition and predicted the dire straits that we are now in before this was rolled out.

I will say they have been responsive since January 1. But all of the steps that have been implemented are worthless if there is no education of our pharmacists and our seniors, or if there is no aggressive oversight and enforcement. Saying that they are just going to work to ensure the plans honor their commitment is not the same as saying plans will be required by law to honor that commitment. It doesn't do a senior any good to be told we are going to hold plans accountable, and they still do not have any access.

There are a number of problems with this flawed structure, but I think it is critical that we address the immediate crisis for those people who have very few options. If anyone on this floor today thinks this is fixed, or these problems are going to go away, I want them to know they are sadly mistaken. I have traveled around my home State of Washington since August. I am not hearing that things are getting any better. I have people come to forums that I am holding where I try to give them information, and every forum I have had, time after time, there are new problems, new challenges: pharmacists are falling through the cracks, doctors who don't know how to deal with their patients, long-term care facilities that are at their wits' end, and certainly the mental health advocates who are telling us we have people who could be in serious crisis very soon if we don't address these problems.

There is a lot of frustration. There is a tremendous amount of panic for these dual eligibles that they are being denied access to lifesaving drugs, and to low-income seniors, especially those in group homes, who can't afford the added burden of copayments. It is wrong for us to sit here and say this is going to get worked out. I think it is our responsibility to stand up today, at our very first opportunity, and make sure we fix this Medicare prescription drug plan.

This week, my Governor, as many Governors who have been facing this at home on the ground, joined with me in urging the Federal Government to fix this mess. I want to quote her. She said:

> All we are asking is don't make these people worse off than they were.

Our Governor's office, as many Governors' offices, has been flooded with calls about this prescription drug plan. She says some of these people are telling her they would rather take their own life than deal with the situation.

I have sat in forums in my State where people have said that to me, to my face, as well. These are people with mental health problems, they are elderly, they are having trouble working through the system. It is too much for them. They cannot deal with the copayments for the first time—and that is not what our country should be about. It does not sound to me like things are getting better and the kinks are getting worked out.

Congress promised in 2005, they promised to people in this country access to affordable prescription drug coverage. It is clear they are not getting that today. We know these problems cannot be fixed through some kind of administrative action alone. We here in Congress have an obligation to act and not follow CMS.

I urge my colleagues to support this amendment and send a message to those who are living, literally, in fear today that Congress is not going to wait and we are going to do the right thing.

I do not agree that this is not the bill to deal with this issue. I wish we had another bill in front of us. I wish we had an actual fix in front of us. But we cannot wait to work through the next several weeks and then the budget process and everything else coming down the pike to deal with this issue. We are talking about real individuals in real communities who are not getting access to their prescription drugs because of the challenges that CMS is facing as this plan is rolled out, and we have an obligation to act.

I urge my colleagues to support the Bingaman-Rockefeller-Murray drug REPAIR amendment and get a fix in place so people's lives are not in crisis. We have an obligation to do this, and I urge my colleagues to vote for this amendment.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ALEXANDER). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TALENT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TALENT. Mr. President, I rise for a moment to speak in favor of amendment No. 2711, which is at the desk. It is my amendment regarding the child tax credit offered by the majority leader. I will discuss briefly that amendment.

I originally hoped I could offer an amendment making the child tax credit permanent, which would help millions of workers and families around the country. I wanted to offer a straight-out extension. The Senate rules preclude that from being offered today. Instead, I will put the Senate on record that this Senator supports a permanent extension of the child tax credit.

In 2001, the Congress set in motion legislation which extended that credit to $1,000 per child, but in 2011, unless Congress acts beforehand, the clock will turn back and taxes will go up effectively 50 percent on the workers and families who qualified for the child tax credit. This additional money has made a big difference to families around the country and in Missouri. People like Beth Davis, who is a hairdresser in Kansas City, a single mother of three children, use this money to help pay for necessities for their children.

The most recent Treasury Department data shows that 543,000 married couples and single parents in Missouri benefit from the child tax credit enacted in 2001. I believe this child tax credit is supported very strongly in the Senate. I expect the sense-of-the-Senate will be approved. I certainly hope it will so that, at the minimum, we can go on record to support making this projob, progrowth, prochild tax credit permanent.

I yield the floor.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, we had a meeting and thought the votes would start immediately, and Members were advised that.

It is my understanding, Senator BAUCUS, the voting will not start for at least a half hour. Everyone should understand the votes will not start now but within the next half hour, 45 minutes probably.

Mr. BAUCUS. It is my understanding we could start early if Senators have amendments. We do not have to wait a full half hour.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, we have half an hour remaining. If there are Senators who wish to speak on their amendments, they should get over here immediately. If they do not come within a reasonable period of time, I am confident Senator BAUCUS will yield back the time on this side, as he should. If there is no one here who desires to speak, we can move to the votes more quickly. That is left up to Senator BAUCUS. If Members want to talk, now is the time.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. Mr. President, I will speak up to 5 minutes on an amendment that is not in the first package of amendments we will vote on, but since we will have no opportunity in the second and third package of amendments, I will speak to it now.

I have an amendment that is fashioned to deal with the 9/11 Commission Report that came out less than 2 months ago, on December 5, 2005. It was the so-called report card where this prestigious bipartisan Commission, led by former Republican Governor Tom

Kean and former Democratic Congressman Lee Hamilton, took a look at what we have done based on what they recommended in the 9/11 Report. It tells how little we have learned and how little we have done to actually make the homeland safer.

Most Americans, at least in my State, believe at least the most obvious steps have been taken to close the gaps in our homeland defense. They believe, at the very least, we have a plan, that we have set priorities, and we know what the next step will be.

Let me quote from the Commission's report, which is only 6 or 7 weeks old, on what we have done to assess the risks and vulnerabilities of our critical infrastructure—transportation, communications, industrial assets. Here is what they say:

> No risk and vulnerability assessments actually made; no national priorities established; no recommendations have been made on allocation of scarce resources. All key decisions [on homeland security] are at least a year away.

We all remember September 11 when we discovered that local police, fire, and rescue units could not communicate with each other, could not communicate with Federal agencies. There was no way to coordinate the action, no way to share information. Things are no better today.

It gets worse. Airline passenger screening, the one place most Americans think we have done pretty well, the 9/11 Commission gives that effort a grade of "F."

Regarding airline baggage screening, to check for explosives, from the report on December 5, 2005:

> Improvements have not been made a priority by Congress or the Administration.

This is unacceptable. This administration tries to fill in the most obvious gaps in our homeland defense, but they have not done it. We have not done it. We simply have not done it.

This amendment is designed to fill in the most obvious gaps. It begins with those areas where the Commission graded us and the President as "F" and "D" in the Commission Report. It addresses other issues such as the utter lack of a systematic program for rail security, passenger freight, stations, tunnels, rail yards, bridges.

Every dime in this amendment is fully paid for by closing corporate tax loopholes. Frankly, this is a modest list. There is much more to be done. We will need more resources to make us safer. Wiretapping, even if it is legal, is not the sole homeland defense. This amendment focuses on the most glaring and dangerous shortcomings in our homeland defense. By closing these loopholes, this amendment actually returns $23 billion to the Treasury to improve our fiscal security and reduce our dependence on borrowing from other countries.

I have been joined in this amendment—and I did not have time to notify her because I did not know until 2 minutes ago—by Senator STABENOW of the State of Michigan, who has worked tirelessly on dealing with this issue.

It is pretty basic. We have done nothing much to deal with the problems most Americans know relate to homeland security. We are safer but not nearly safe enough.

The bipartisan commission that got great grades from everybody in the Nation felt compelled on their own dime, with their own money, their own resources, not funded by the Government, to continue to issue reports and to hold hearings. And they issued a report on December 5 that is, quite frankly, embarrassing and dangerous.

So our amendment is designed to fill some of the loopholes, not all of them, that, in fact, have been left by the President's failure to secure our national interest, our homeland defense, as well as by our failure as a Congress to step to the ball.

We can and we have to marshal all our country's resources in this struggle. I will bet you $100, if you asked anybody in the public, from corporate CEOs to the average American out there. Would you rather us spend this money on securing our ports, our nuclear plants, our railroads, our cities, or would you rather us give it back in a tax break. I think it is just like the COPS bill years ago, given the choice, the American people said let's make our streets safer. I am confident they think we should make the country safer.

This amendment will be voted on not in this first tranche of amendments but the second, but I am not going to get a chance to speak to it at the later date. There was a little opening in time, and I thank the staff for letting me know this time was available.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Mr. President, I rise, as we are waiting for the votes as well, to join with Senator BIDEN and to thank him for his continued leadership. We have come to this floor on numerous occasions to speak about this issue over and over again, ever since 9/11, and we still do not have this fixed.

So I am pleased to be joining with Senator BIDEN to offer this amendment. It is time we act. It is past time. As Senator BIDEN said, it should be an embarrassment to all of us, the failing grades we received from the 9/11 Commission, a bipartisan commission, whose sole focus is on giving us information about whether we are safe today and what it will take to keep us safe, what it will take in the future to make sure Americans are safe.

We received, collectively—the administration, the Congress—failing grades in area after area. One of my main focuses has been on whether the radios work; it is stunning to me we are still talking about this. It is very unfortunate that after 9/11—because we did not connect all of the radios to be able to work to communicate with each other—that we saw the same kinds of failings that had firefighters and police officers running into buildings in New York instead of running out, as they should have been, because they did not know what was happening—that the same kinds of things, then, happened in the gulf, in New Orleans.

I will never forget, going down right after the hurricanes with the bipartisan leadership, sitting outside of the New Orleans Convention Center with someone from Michigan who was with the Army National Guard, someone from the Michigan Coast Guard, talking with these folks who had not slept for several days, who were down doing their part, trying to save lives, getting people off of rooftops, doing what was necessary.

I asked the gentleman from the Army National Guard: "Do you have radios?" "Yeah." I asked the individual from the Coast Guard: "Do you have radios?" "Yeah, of course." Then I asked: "Can you talk to each other?" "No." I asked: "Well, how are you talking to each other?" "Well, when we're out in the boats, we use hand signals." This was, at the time, 2005 in the United States of America, and they are using hand signals to tell whether they have found somebody, whether they are OK, and so on, because the radios did not work.

When are we going to get this right? People expect us to get this right. They do not understand why this has not already happened. This amendment basically puts our priorities in place by saying it does not matter what your income level is, if there is another attack, you are going to want the radios to work. It does not matter where you live in America. It does not matter if you are a CEO or if you are a person going in and punching a timeclock every day or if your kids are playing in a school yard. You expect that your Government is doing everything humanly possible to keep you safe.

We have heard from the 9/11 Commission. They have overwhelmingly told us that is currently not true. So I hope and pray we take action, that we would create the priorities that Americans are asking us to create, which is by starting with security, starting with security, making sure we are putting that at the top of the list, that we are providing police officers and firefighters with what they need in dealing with ports and nuclear plants and chemical plants and all of the other issues, such as with Amtrak, making sure people are safe as they travel, as well as airlines.

We can do that by setting the right priorities. And that is what this amendment does. I urge my colleagues to join us in adopting this amendment.

Thank you, Mr. President.

Mr. BAUCUS. Mr. President, I support the pending substitute amendment. I encourage my colleagues to support it as well.

I almost need a flow chart to explain how we got here. But because of several events, there is now more room for tax cuts. Yes, you heard right: more tax cuts.

We should tread carefully, though, rather than dive in. We have an opportunity to show responsibility. And I think that this substitute does just that.

Let me first explain how we got here. As my colleagues will recall, the tax reconciliation bill that we passed last November included much-needed relief for the Gulf States affected by Hurricane Katrina. Congress passed and enacted those incentives separately in December.

Further, our tax bill allocation was limited by the fact that the spending reconciliation bill had not been enacted. The House is expected to pass that bill today, clearing it for the President.

The bottom line is that this bill can accommodate $18 billion more in tax cuts.

We have an opportunity here to show some responsibility. And the responsible thing to do is to pass another year of extenders. Otherwise, we will be right back here in a few months to pass those extenders. Or since it is an election year, we will be back during a lame duck session considering the same set of expiring provisions.

These are very popular, bipartisan tax cuts we extend year after year. But we never have the resources in any given year to make them permanent.

This list of annual extenders includes several proven tax incentives. Businesses are encouraged to do more U.S.-based research and create high-paying jobs. Long-term welfare recipients and others who are hard to employ are given job opportunities through an employer credit. And teachers who reach into their pockets to pay for classroom supplies can get a small deduction for their expenses.

These tax incentives were all part of the original Senate reconciliation bill. But in that bill, they were limited to one year. Now, Chairman GRASSLEY and I are pleased to offer this amended version today to extend these provisions through the end of next year. We will thus provide certainty to businesses, workers, and teachers.

We know we will all vote to extend these provisions, if pressed at the end of the year to do so. We should take this opportunity now to provide these tax incentives through the end of 2007. It is the responsible thing to do. Individual and business taxpayers will be thankful.

Mr. President, before us now are a series of amendments. I have a list of 21 Democratic amendments. I have a list of eight Republican amendments, with promises of more amendments on that side of the aisle, depending upon the course we take today.

Pending a few moments ago, first was an amendment by the majority leader to permanently extend the child tax credit. That is a very popular amendment. I support—I think most of my colleagues do—extending the child tax credit. I daresay that most Senators on both sides of the aisle would probably strongly support extension of the child tax credit. Senator TALENT, the author, however, has expressed his will to convert his amendment to a sense of the Senate. The majority promises to offer the full version later.

Because of the Nation's record on budget deficits, I would prefer that we paid for the pending amendment. But because of the procedural posture in which we find ourselves, we will not have that choice. So we will be faced with an unattractive choice of voting for an appealing tax cut without paying for it or voting against an appealing tax cut.

After this amendment from the other side, we have been promised similar votes on measures to extend marriage penalty relief, estate tax relief, Social Security tax relief, 10 percent tax bracket relief, and so on. At the end of the day, this could become a fiscally very irresponsible exercise.

I wish to propose a different path. I propose that we address a limited number of amendments—just six—and then go to third reading. I propose that these six amendments be Senator TALENT's sense of the Senate on the child tax credit, Senator BINGAMAN's prescription drug benefit, a Republican alternative to the prescription drug amendment, a modified Schumer-Menendez-Grassley sense of the Senate on AMT relief, a modified Rockefeller-Santorum mine safety amendment, and a paid-for substitute by Senator CONRAD, and then go to third reading.

The Republican manager has conveyed to me that he would find this procedure acceptable. This procedure would require, obviously, many Senators to forgo their opportunity to offer amendments. That is clear. It would have that consequence. But this procedure would also do the most to maintain fiscal responsibility. This procedure would also allow Senators to get back to their States and their constituents in much shorter order.

I implore my colleagues, let us choose the path of reason. Let us choose the path of moderation. Let us end this bill this afternoon.

I have given deep thought to this issue. I know there are many on both sides of the aisle who have conflicting emotions and views on this basic prospect we find ourselves facing. It is my considered judgment that the path I am outlining is probably the best course for the Senate and, more importantly, the best course for the Nation. After all, we are here representing our constituents. We should go the extra mile to do whatever we possibly can to represent the people back in our home States as well as we possibly can.

The PRESIDING OFFICER (Mr. ISAKSON). The Senator from North Dakota.

Mr. CONRAD. Mr. President, we are here at a moment that people have to think very soberly about what the possible consequences of our actions might be. The Senator from Montana has outlined one possible scenario. Far be it for me to judge which amendments would be in order and which would not. Let me just say what consequences could flow from a failure to reach agreement.

I have just had a consultation with the Parliamentarian. He informs me that if we were to waive on any one of the amendments that have been talked about on the other side, if we were to waive all budget points of order through conference committee, that would open up to the conference committee the opportunity to come back with legislation that would cost far in excess of the $70 billion limit we currently face as a result of the budget resolution.

I know this is complicated, but I urge my colleagues to think very carefully about the potential consequences. Let me give four.

If all points of order were waived through conference committee on the child credit, that could open up the conference committee to $185 billion of additional tax cuts, not offset. If the estate and gift tax changes that have been proposed by some were adopted and all points of order waived through the conference committee, that could add $358 billion that the conference committee could come back with with no points of order prevailing or possible.

On the expanded 10 percent bracket, that would open up an additional $262 billion for the conference committee to come back to this Chamber with no points of order pending. An income tax raise of 25, 28, 33, and 35 percent, if all points of order were waived through the conference committee, we could come back here and open up this Chamber to an additional $385 billion of tax reduction with no point of order pending.

I do not pretend to know what the package is that could be agreed on to resolve this. I do know that the Senator from Montana has made an impassioned plea to our colleagues to think twice before we get into this destruction derby. Believe me, the potential is, at the end of the day, we would find ourselves in the circumstance very easily in which you could have a trillion dollars of additional tax cuts pending on the floor of the Senate, with no point of order available.

I notice the leader is in the Chamber. I yield the floor.

Mr. REID. Mr. President, I think what we have here is a case being made for how bad this reconciliation plan is that we have. We have a number of amendments that Senators in good faith have tried to offer. There will be votes on these amendments. Ours doesn't break the bank, as indicated by the Senator from North Dakota. All the amendments he is talking about that are going to cost all this money come from the other side. With rare exception, our amendments are offset. We don't expect to ask to waive points of order through conference on our amendments. That is why Members should not vote to waive through conference.

Also, I hope the country is watching what is going on here today. First of all, as I said earlier today, we are working on something that has been named by the majority the "Deficit Reduction Act of 2005." Using the numbers given us by the majority, it increases the deficit by $50 billion. Today, as I was walking to lunch, a reporter says: Are you aware that we are going to get a supplemental next week for $90 billion? The budget gimmicks of this administration are unbelievable. Everyone knows the cost of the war is ongoing. We are in our fourth year of war. The President doesn't include it in his budget because it would show the American people how deeply in the red we are. Rather than do that, he comes back later with all these supplementals. But I understand, having managed a few bills in my day, how the distinguished Senator from Montana and I will feel about it.

We want to get the bill out of here and move on to other things with as little damage as possible. But, Mr. President, damage has been done by having this reconciliation bill in the manner that we got it in the first place. Having been given this bill, we are $50 billion in the hole to begin with, using the numbers of the majority.

Now, people in good faith on our side offered amendments, or soon will offer them. Some have been debated. Our amendments take, for example, the amendment of the Senator from New York. She wants to have this Senate on record as to whether the Senate will stand for an independent bipartisan commission to study what went wrong with Katrina. We have been stymied every step of the way to do that. Rather than have a 9/11-type commission to find out what went wrong in the most significant natural disaster in the history of this country, we are being stonewalled. That is an amendment the majority doesn't want to vote on.

I wish there were an easy way out of this, but there is not. I say to my friends who are offering this amendment on the child tax credit, if it is offered, a lot of Senators over here on this side are going to vote for it. Someday maybe this administration will recognize what they have done to this country economically. We are going to be asked in a few days to increase the debt ceiling from $8.2 trillion to whatever the majority wants—$8.2 trillion is not enough. So my suggestion is, let's just start voting.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CORNYN). Without objection, it is so ordered.

Mr. FRIST. I ask unanimous consent that the motion to commit be withdrawn. I further ask consent that amendment No. 2709 be withdrawn and further that the yeas and nays be vitiated on amendment No. 2708; further, that the amendment be agreed to; provided further that the only remaining amendments in order be the following, and further, when a motion to waive occurs, it be in order for each leader to offer up to two amendments to each motion to waive.

The amendments are:

Talent, child tax credit; Nelson, prescription drugs; Republican alternative to Nelson, relevant; Byrd-Rockefeller-Santorum, mine safety; Conrad, substitute; Dodd, veterans health; Republican alternative to Dodd, relevant; Reed, America's military; Republican alternative to Reed, relevant; Clinton, Katrina commission; Republican alternative to Clinton, relevant; Menendez, AMT; Grassley, AMT; Reid, relevant to any amendment on the list; Frist, relevant to any amendment on the list.

I further ask consent that at the conclusion of this unanimous consent, all time be yielded back and the Senate proceed to votes in relation to the following amendments; that all votes in the sequence be limited to 10 minutes each; that following the reporting of each amendment, the amendment be considered as read and there be 2 minutes equally divided prior to the vote in relation to the amendment; finally, that following disposition of amendments, the substitute be agreed to, the bill be read the third time, and the Senate proceed to a vote on passage of the bill, with no intervening action or debate. The amendments will be considered in the order sent to the desk.

The PRESIDING OFFICER (Mr. CHAFEE). Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 2727

Mr. FRIST. Mr. President, on behalf of Senator TALENT, I would like to call up his amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant journal clerk read as follows:

The Senator from Tennessee [Mr. FRIST], for Mr. TALENT, proposes an amendment numbered 2727.

The amendment is as follows:

(Purpose: To express the sense of the Senate regarding the permanent extension of the amendments to the child tax credit made by the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Jobs and Growth Tax Relief Reconciliation Act of 2003)

At the appropriate place insert the following:

SEC. ____. SENSE OF THE SENATE REGARDING THE PERMANENT EXTENSION OF EGTRRA AND JGTRRA PROVISIONS RELATING TO CHILD TAX CREDIT.

It is the sense of the Senate that the conferees for the Tax Relief Act of 2006 should strive to permanently extend the amendments to the child tax credit under section 24 of the Internal Revenue Code of 1986 made by the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Jobs and Growth Tax Relief Reconciliation Act of 2003.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2727) was agreed to.

The PRESIDING OFFICER. The Senator from Montana is recognized.

AMENDMENT NO. 2728 TO AMENDMENT NO. 2707

Mr. BAUCUS. On behalf of Senators BYRD, ROCKEFELLER, and SANTORUM, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant journal clerk read as follows:

The Senator from Montana [Mr. BAUCUS], for Mr. BYRD, for himself, Mr. ROCKEFELLER, and Mr. SANTORUM, proposes an amendment numbered 2728 to amendment No. 2707.

The amendment is as follows:

(Purpose: To provide tax incentives for the purchase of advanced mine safety equipment and the training of mine rescue teams, and for other purposes)

At the appropriate place insert the following:

SEC. . PARTIAL EXPENSING FOR ADVANCED MINE SAFETY EQUIPMENT.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 is amended by inserting after section 179D the following new section:

"SEC. 179E. ELECTION TO EXPENSE ADVANCED MINE SAFETY EQUIPMENT.

"(a) TREATMENT AS EXPENSES.—A taxpayer may elect to treat 50 percent of the cost of any qualified advanced mine safety equipment property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the qualified advanced mine safety equipment property is placed in service.

"(b) ELECTION.—

"(1) IN GENERAL.—An election under this section for any taxable year shall be made on the taxpayer's return of the tax imposed by this chapter for the taxable year. Such election shall specify the advanced mine safety equipment property to which the election applies and shall be made in such manner as the Secretary may by regulations prescribe.

"(2) ELECTION IRREVOCABLE.—Any election made under this section may not be revoked except with the consent of the Secretary.

"(c) QUALIFIED ADVANCED MINE SAFETY EQUIPMENT PROPERTY.—For purposes of this section, the term 'qualified advanced mine safety equipment property' means any advanced mine safety equipment property for use in any underground mine located in the United States—

"(1) the original use of which commences with the taxpayer, and

"(2) which is placed in service by the taxpayer after the date of the enactment of this section.

"(d) ADVANCED MINE SAFETY EQUIPMENT PROPERTY.—For purposes of this section, the term 'advanced mine safety equipment property' means any of the following:

"(1) Emergency communication technology or device which is used to allow a miner to maintain constant communication with an individual who is not in the mine.

"(2) Electronic identification and location device which allows an individual who is not in the mine to track at all times the movements and location of miners working in or at the mine.

"(3) Emergency oxygen-generating, self-rescue device which provides oxygen for at least 90 minutes.

"(4) Pre-positioned supplies of oxygen which (in combination with self-rescue devices) can be used to provide each miner on a shift, in the event of an accident or other event which traps the miner in the mine or otherwise necessitates the use of such a self-rescue device, the ability to survive for at least 48 hours.

"(5) Comprehensive atmospheric monitoring system which monitors the levels of carbon monoxide, methane, and oxygen that are present in all areas of the mine and which can detect smoke in the case of a fire in a mine.

"(e) SPECIAL RULES.—

"(1) COORDINATION WITH SECTION 179.—No expenditures shall be taken into account under subsection (a) with respect to the portion of the cost of any property specified in an election under section 179.

"(2) BASIS REDUCTION.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

"(f) REPORTING.—No deduction shall be allowed under subsection (a) to any taxpayer for any taxable year unless such taxpayer files with the Secretary a report containing such information with respect to the operation of the mines of the taxpayer as the Secretary shall require.

"(g) TERMINATION.—This section shall not apply to property placed in service after the date which is 3 years after the date of the enactment of this section.".

(b) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1) is amended by striking "or" at the end of subparagraph (J), by striking the period at the end of subparagraph (K) and inserting ", or", and by inserting after subparagraph (K) the following new subparagraph:

"(L) expenditures for which a deduction is allowed under section 179E.".

(2) Section 312(k)(3)(B) is amended by striking "or 179D" each place it appears in the heading and text thereof and inserting "179D, or 179E".

(3) Section 1016(a) is amended by striking "and" at the end of paragraph (36), by striking the period at the end of paragraph (37) and inserting ", and", and by adding at the end the following new paragraph:

"(38) to the extent provided in section 179E(e)(2).".

(4) Section 1245(a)(2)(C) is amended by inserting "179E," after "179D,".

(5) The table of sections for part VI of subchapter B of chapter 1 is amended by inserting after the item relating to section 179D the following new item:

"Sec. 179E. Election to expense advanced mine safety equipment.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to costs paid or incurred after the date of the enactment of this Act.

SEC. . MINE RESCUE TEAM TRAINING TAX CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end the following new section:

"SEC. 45N. MINE RESCUE TEAM TRAINING CREDIT.

"(a) AMOUNT OF CREDIT.—For purposes of section 38, the mine rescue team training credit determined under this section with respect to any eligible employer for any taxable year is an amount equal to the lesser of—

"(1) 20 percent of the amount paid or incurred by the taxpayer during the taxable year with respect to the training program costs of each qualified mine rescue team employee (including wages of such employee while attending such program), or

"(2) $10,000.

"(b) QUALIFIED MINE RESCUE TEAM EMPLOYEE.—For purposes of this section, the term 'qualified mine rescue team employee' means with respect to any taxable year any full-time employee of the taxpayer who is—

"(1) a miner eligible for more than 6 months of such taxable year to serve as a mine rescue team member as a result of completing, at a minimum, an initial 20-hour course of instruction as prescribed by the Mine Safety and Health Administration's Office of Educational Policy and Development, or

"(2) a miner eligible for more than 6 months of such taxable year to serve as a mine rescue team member by virtue of receiving at least 40 hours of refresher training in such instruction.

"(c) ELIGIBLE EMPLOYER.—For purposes of this section, the term 'eligible employer' means any taxpayer which employs individuals as miners in underground mines in the United States.

"(d) WAGES.—For purposes of this section, the term 'wages' has the meaning given to such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section).

"(e) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 2008.".

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) is amended by striking "and" at the end of paragraph (25), by striking the period at the end of paragraph (26) and inserting ", and", and by adding at the end the following new paragraph:

"(27) the mine rescue team training credit determined under section 45N(a).".

(c) NO DOUBLE BENEFIT.—Section 280C is amended by adding at the end the following new subsection:

"(e) MINE RESCUE TEAM TRAINING CREDIT.—No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45N(a).".

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 45N. Mine rescue team training credit.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

Mr. BAUCUS. Mr. President, I believe we have 1 minute each. I yield 1 minute to the Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I simply want to thank the chairman of the Finance Committee, and I thank the ranking member for working this out and having everybody in it together. I welcome working with Senator SANTORUM. It is a good thing to do. It is dark days in Appalachia now, and this will help a lot. Thank you.

Mr. FRIST. Mr. Presient, on behalf of Senator SANTORUM, we yield back the remainder of our time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2728) was agreed to.

Mr. BAUCUS. Mr. President, the next amendment on the list is to be offered by the Senator from North Dakota, Mr. CONRAD. He should be here at any moment now. Until he is here, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

Mr. CONRAD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CONRAD. Mr. President, is this an appropriate time to offer my amendment?

The PRESIDING OFFICER. Yes.

Mr. BAUCUS. It is.

AMENDMENT NO. 2729 TO AMENDMENT NO. 2707

Mr. CONRAD. Mr. President, I send my amendment to the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant journal clerk read as follows:

> The Senator from North Dakota [Mr. CONRAD], for himself and Mr. BINGAMAN, proposes an amendment numbered 2729 to amendment 2707.

Mr. CONRAD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. CONRAD. Mr. President, the chairman and ranking member have done an excellent job in putting together this package that is in the interest of the American people. I have all of the same tax relief provisions that are in their package. The only difference is that I have paid for it over the 10 years. I have done it by adopting the same offsets as in the managers' package: closing the tax gap by shutting down abusive tax shelters and other reforms, raising some $34 billion, including revoking tax benefits for leasing foreign subway and sewer systems; second, ending a loophole for big oil that lets them avoid taxes on foreign operations, raising $9 billion; requiring tax withholding on Government payments to contractors such as Halliburton, raising $7 billion; renewing the Superfund tax so that polluting companies pay for cleaning up toxic waste sites, raising $17 billion; and closing additional loopholes, raising $22 billion.

This is the package that has all of the tax relief in the managers' package. It just has additional pay-fors, so we cover the costs. We have exploding deficits, exploding debt. Let's pay for these tax cuts we are offering.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I disagree with the proposal in two important parts.

First, the proposal does not extend to 2009 several provisions that are very important to both sides, bipartisan—specifically, the section 179 expensing, which encourages the growth of small business in our country, and the college tuition deduction, which will give parents more certainty in the planning of their children's education, and the low-income savers' credit, which assists families who make less than $50,000 in saving for their retirement.

The second point I have——

Mr. CONRAD. Mr. President, would the Senator yield on this point?

Mr. GRASSLEY. I only have 1 minute.

Mr. CONRAD. Can I grant you some additional time?

Mr. GRASSLEY. We don't have that time.

Mr. CONRAD. Mr. President, I ask unanimous consent for 30 seconds on this point, if I could.

Mr. GRASSLEY. Then I will take 30 seconds, too.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CONRAD. That is more than fair.

I say to my colleague that the statement he made is just not true. I have precisely the same tax relief in my package as in yours. Every one of the items the chairman just mentioned is in my package for exactly the same period of time as is in yours.

Mr. GRASSLEY. All I can say in my 30 seconds on my point is that the Senator may be entirely correct, but that is one of the things that happens when we have 2 days of debate and these amendments are not put before the Senate to study until the last minute.

The second concern I have about the proposal is the inclusion of offsets which we have not had an opportunity to fully consider or with respect to which we have some policy concerns. An example of that is the revival of the environmental excise tax offered, referred to as the "Superfund tax." As you might expect, I believe the bill passed by a bipartisan majority with 64 votes in the Senate in November, which we are not going through again, represents a more balanced bill, one that provides longer-term benefits, including increased certainty and reduced complexity for planning.

In addition, I raise a point of order that the budget does not meet reconciliation instructions to the Senate. It is an issue of germaneness, Mr. President.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, pursuant to section 904 of the Congressional Budget Act, I move to waive the applicable sections of the act for the purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant journal clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from New Mexico (Mr. DOMENICI), the Senator from Oklahoma (Mr. INHOFE), and the Senator from Wyoming (Mr. THOMAS).

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. BINGAMAN) is necessarily absent.

The PRESIDING OFFICER (Mr. ALLEN). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 44, nays 52, as follows:

[Rollcall Vote No. 3 Leg.]

YEAS—44

Akaka
Baucus
Bayh
Biden
Boxer
Byrd
Cantwell
Carper
Chafee
Clinton
Conrad
Dayton
Dodd
Dorgan
Durbin
Feingold
Feinstein
Harkin
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Menendez
Mikulski
Murray
Nelson (FL)
Obama
Pryor
Reed
Reid
Rockefeller
Salazar
Sarbanes
Schumer
Stabenow
Wyden

NAYS—52

Alexander
Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Burr
Chambliss
Coburn
Cochran
Coleman
Collins
Cornyn
Craig
Crapo
DeMint
DeWine
Dole
Ensign
Enzi
Frist
Graham
Grassley
Gregg
Hagel
Hatch
Hutchison
Isakson
Kyl
Lott
Lugar
Martinez
McCain
McConnell
Murkowski
Nelson (NE)
Roberts
Santorum
Sessions
Shelby
Smith
Snowe
Specter
Stevens
Sununu
Talent
Thune
Vitter
Voinovich
Warner

NOT VOTING—4

Bingaman
Domenici
Inhofe
Thomas

The PRESIDING OFFICER. On this vote, the yeas are 44, the nays are 52. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

Mr. GRASSLEY. Mr. President, I move to reconsider the vote.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, we are making a lot of progress. I think if we just keep operating in the sense of comity we can do quite well. In that spirit, I ask unanimous consent the Grassley AMT amendment and the Mendendez AMT amendment be moved down the amendment list in the time of offering.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. That means the next amendment is the amendment of Senator GRASSLEY on the Medicare prescription drug program.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, tonight it has taken a long time to get where we are. We are going to have 10-minute rollcall votes, so everybody needs to stay in the Chamber. We are going to cut everybody off. We have agreed to 10 minutes. It has been a long day already. We know what we are going to be doing the rest of the night. We have the amendments laid out, but it means everybody has to stay here. It will be 10-minute votes. Everybody stay here.

Second, we have a request from the other side of the aisle that after this series of amendments there be a rollcall vote on the extension of the PATRIOT Act. We will run through the series of amendments as outlined and then, in discussion with the other side of the aisle, they are requesting a rollcall vote on the extension of the PATRIOT Act following these stacked votes on the amendments.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, what is the regular order?

The PRESIDING OFFICER. The next amendment is the Grassley amendment.

The Senator from Iowa is recognized.

AMENDMENT NO. 2731 TO AMENDMENT NO. 2707

Mr. GRASSLEY. Mr. President, the amendment expresses the sense of the

Senate about the concerns regarding the problems encountered in implementing the new drug benefit. It expresses the Senate's support for the administration's efforts to fix them. These efforts have proven to be much speedier in getting the problems fixed, and fixed fast, than any legislation can do. To that point, one amendment offered yesterday has provisions that are completely unnecessary because administrative actions have already taken care of it. I see no point in legislating for the sake of legislating.

Moreover, legislative action on top of administration action will undermine and complicate progress to date.

I urge my colleagues to support this sense-of-the-Senate amendment.

The PRESIDING OFFICER. The Senator from Iowa will please send the amendment to the desk.

AMENDMENT NO. 2731 TO AMENDMENT NO. 2707

Mr. GRASSLEY. I call up amendment No. 2731.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY] proposes an amendment numbered 2731 to amendment No. 2707.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To express the sense of the Senate regarding the Medicare part D prescription drug program)

At the appropriate place, insert the following:

SEC. ___. SENSE OF THE SENATE REGARDING THE MEDICARE PART D PRESCRIPTION DRUG PROGRAM.

(a) FINDINGS.—The Senate finds the following:

(1) It is not acceptable that startup issues under the new Medicare prescription drug program have resulted in some of our Nation's most vulnerable citizens having difficulties getting their prescription drugs covered under the program, and these issues must be addressed and resolved.

(2) The Department of Health and Human Services and the Centers for Medicare & Medicaid Services are working tirelessly to address these startup issues and have taken numerous steps to smooth the transition process.

(3) All prescription drug plans under part D of title XVIII of the Social Security Act and MA-PD plans under part C of such title (in this section referred to as "Medicare prescription drug plans") already have a "first fill" policy in place that provides a new enrollee with coverage for prescription drugs during at least the first 30 days of enrollment regardless of whether the particular prescription drug is on the plan's formulary, and the Centers for Medicare & Medicaid Services is enforcing this requirement.

(4) Under current law, full-benefit dual eligible individuals (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1395u–5(c)(6)) are already automatically enrolled into Medicare prescription drug coverage so no change in law is necessary.

(5) Medicare prescription drug plans are already responsible for covering the cost of covered prescriptions filled for enrollees, including short term transition prescriptions.

(6) Medicare prescription drug plans are already responsible for reimbursing any enrollee, including full-benefit dual eligible individuals, for any out-of-pocket costs incurred by the enrollee that should have been covered by the plan.

(7) The Centers for Medicare & Medicaid Services is already reimbursing States for the reasonable administrative costs incurred by States that have temporarily covered some claims for prescription drug coverage during the transition period.

(8) Enrollment is exceeding projections, with at least 24,000,000 Medicare beneficiaries who now have drug coverage and another 90,000 are enrolling each day in the Medicare prescription drug program;

(9) In addition, the Secretary of Health and Human Services has taken many other actions to smooth the implementation of the Medicare prescription drug program, including the following:

(A) Establishing processes to ensure that full-benefit dual eligible individuals are not overcharged for their prescriptions and to require Medicare prescription drug plans to refund overcharges to such individuals.

(B) Establishing a reconciliation process to ensure that Medicare prescription drug plans reimburse pharmacies for costs incurred by pharmacies that are payable by such plans.

(C) Conducting extensive and continuing outreach to pharmacies and pharmacy associations on the implementation of the Medicare prescription drug benefit, particularly with respect to full-benefit dual eligible individuals, as well as establishing a special pharmacy telephone help line.

(D) Requiring Medicare prescription drug plans to have comprehensive formularies and procedures for enrollees to rapidly secure an exception to the limitation of coverage of a prescription drug when medical necessity is demonstrated.

(E) Permitting full-benefit dual eligible individuals to switch Medicare prescription drug plan under the Medicare prescription drug benefit at any time, for any reason, and improving data flows and communication with plans to ensure that plan switches by such individuals become fully effective as quickly as possible.

(F) Partnering with national, State, and local groups that work with full-benefit dual eligible individuals to educate such individuals about the Medicare prescription drug program, and assisting in their transition to, and enrollment under, such program.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Secretary of Health and Human Services is making significant progress in smoothing the implementation of the new Medicare prescription drug program, legislation changing the program is not needed at this time, and legislation at this time would also likely complicate implementation of the program and confuse beneficiaries;

(2) each of the implementation problems identified under the Medicare prescription drug program will be resolved more quickly through administrative actions, which the Secretary of Health and Human Services already has the authority to take under current law, rather than through Congressional action followed by administrative action;

(3) the Senate fully supports the efforts of the Secretary of Health and Human Services, Medicare prescription drug plans, pharmacists, and others to implement the Medicare prescription drug program and to resolve problems that have occurred during the implementation of the program; and

(4) the pace of enrollment in the Medicare prescription drug benefit indicates that extending the six-month enrollment period is not warranted at this time, and, by contrast, such an action could exacerbate implementation issues under the program.

Mr. BAUCUS. Mr. President, I yield 1 minute allocated to my side to the Senator from Florida.

Mr. NELSON of Florida. Mr. President, Senators had better look at this sense-of-the-Senate amendment because it indicates that "extending the 6-month enrollment period is not warranted."

That is a direct quote. You know what you have been hearing from your senior citizens and how confused they are. This sense of the Senate says it shouldn't be extended.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. NELSON of Florida. Mr. President. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from North Carolina (Mr. BURR), the Senator from New Mexico (Mr. DOMENICI), and the Senator from Wyoming (Mr. THOMAS).

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. BINGAMAN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 42, nays 54, as follows:

[Rollcall Vote No. 4 Leg.]

YEAS—42

Alexander
Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Coburn
Cochran
Collins
Cornyn
Craig
Crapo
DeMint
Dole
Enzi
Frist
Graham
Grassley
Gregg
Hagel
Hatch
Inhofe
Isakson
Kyl
Lott
Lugar
Martinez
McCain
McConnell
Murkowski
Roberts
Santorum
Sessions
Shelby
Smith
Stevens
Sununu
Talent
Thune
Vitter

NAYS—54

Akaka
Baucus
Bayh
Biden
Boxer
Byrd
Cantwell
Carper
Chafee
Chambliss
Clinton
Coleman
Conrad
Dayton
DeWine
Dodd
Dorgan
Durbin
Ensign
Feingold
Feinstein
Harkin
Hutchison
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Menendez
Mikulski
Murray
Nelson (FL)
Nelson (NE)
Obama
Pryor
Reed
Reid
Rockefeller

Salazar
Sarbanes
Schumer
Snowe
Specter
Stabenow
Voinovich
Warner
Wyden

NOT VOTING—4

Bingaman
Burr
Domenici
Thomas

The amendment (No. 2731) was rejected.

AMENDMENT NO. 2730 TO AMENDMENT NO. 2707

(Purpose: To provide for necessary beneficiary protections in order to ensure access to coverage under the Medicare Part D prescription drug program)

Mr. NELSON of Florida. Mr. President, I call up amendment No. 2730.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Florida [Mr. NELSON], for himself and Mr. BINGAMAN, proposes an amendment numbered 2730.

Mr. NELSON of Florida. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. NELSON of Florida. On the vote Members just rejected, the thought was that extending the 6-month enrollment period was not warranted because, in fact, you have been hearing from your senior citizens. So we will give you an opportunity now.

This amendment expands the 6-month enrollment period for the entire year of 2006 and allows beneficiaries, one time, to change plans in that year when they make a mistake. We are also going to make all those folks, those seniors who are out of pocket, the pharmacies that are out of pocket, the States that are out of pocket because of the Federal bungling, we will reimburse them in the implementation where individual senior citizens have had to eat the cost when they find their drugs that are essential to their health, that they cannot get them because they are not eligible under the new plan under Medicare.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I object to this amendment. Remember, all but two of our members of the Committee on Finance, Republican and Democrat, joined with Secretary Leavitt to go over the problems 2 weeks ago that this program is having. Secretary Leavitt took responsibility for those problems. He laid out seven problems. He laid out seven solutions to those problems that he has already inputted.

I asked him if he needed additional legislative authority to solve these problems. He did not need any additional legislative authority. He had plenty. We are going to pass legislation now that not only will take a while to get passed, but we will also have a period of time afterwards of having regulations to administer that legislation.

The problem goes on and on. The problem is being solved by the Secretary right now. Let's not screw up what the Secretary is trying to do, something that is working very well. There are problems, yes, but those problems are identified, and they can work.

I raise a point of germaneness on this amendment. I raise a point of order under section 310 of the Budget Act, and I ask for the yeas and nays.

Mr. NELSON of Florida. Pursuant to 904 of the Congressional Budget Act, I move to waive the applicable sections of that act for consideration of this amendment. I ask for the yeas and nays on my motion.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is opn agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from New Mexico (Mr. DOMENICI) and the Senator from Wyoming (Mr. THOMAS).

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. BINGAMAN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 52, nays 45, as follows:

[Rollcall Vote No. 5 Leg.]

YEAS—52

Akaka
Baucus
Bayh
Biden
Boxer
Byrd
Cantwell
Carper
Chafee
Clinton
Coleman
Collins
Conrad
Dayton
DeWine
Dodd
Dorgan
Durbin
Feingold
Feinstein
Harkin
Hutchison
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Menendez
Mikulski
Murray
Nelson (FL)
Nelson (NE)
Obama
Pryor
Reed
Reid
Rockefeller
Salazar
Sarbanes
Schumer
Snowe
Specter
Stabenow
Warner
Wyden

NAYS—45

Alexander
Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Burr
Chambliss
Coburn
Cochran
Cornyn
Craig
Crapo
DeMint
Dole
Ensign
Enzi
Frist
Graham
Grassley
Gregg
Hagel
Hatch
Inhofe
Isakson
Kyl
Lott
Lugar
Martinez
McCain
McConnell
Murkowski
Roberts
Santorum
Sessions
Shelby
Smith
Stevens
Sununu
Talent
Thune
Vitter
Voinovich

NOT VOTING—3

Bingaman
Domenici
Thomas

The PRESIDING OFFICER. On this vote, the yeas are 52, the nays are 45. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

Mr. GRASSLEY. I move to reconsider the vote.

Mr. BENNETT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New York.

AMENDMENT NO. 2716 TO AMENDMENT NO. 2707

(Purpose: To establish a congressional commission to examine the Federal, State, and local response to the devastation wrought by Hurricane Katrina in the Gulf Region of the United States especially in the States of Louisiana, Mississippi, Alabama, and other areas impacted in the aftermath and make immediate corrective measures to improve such responses in the future)

Mrs. CLINTON. Mr. President, I call up amendment No. 2716 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will please report.

The legislative clerk read as follows:

The Senator from New York [Mrs. CLINTON], for herself, Ms. MIKULSKI, Mr. HARKIN, Mr. LAUTENBERG, Mr. REED, Mr. SALAZAR, Mr. OBAMA, Mrs. BOXER, Ms. STABENOW, Mr. SCHUMER, Mr. DURBIN, Mrs. FEINSTEIN, Mr. FEINGOLD, Mr. CARPER, Mr. JOHNSON, Mr. LEAHY, and Mr. JEFFORDS, proposes an amendment numbered 2716.

Mrs. CLINTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mrs. CLINTON. Mr. President, this amendment would establish a Katrina commission modeled after the 9/11 Commission, made up of experts on a bipartisan basis.

We are seeing the administration withholding documents, testimony, and information from the ongoing investigations by the House and Senate.

I commend our colleagues, Senator COLLINS and Senator LIEBERMAN, for their efforts to obtain the information that is needed. But we must establish this commission to get at what the truth is about what actually happened in order to take steps that will fix the problems so they do not happen anywhere else in our country.

A vote against this commission is a vote for continued stonewalling, sweeping problems under the rug, and ignoring the problems that we know exist today. That is a dangerous precedent for the people of this Nation.

I urge my colleagues to vote for the Katrina commission.

The PRESIDING OFFICER. Who yields time in opposition? The Senator from Maine.

Ms. COLLINS. Mr. President, the Homeland Security Committee of the Senate has been conducting a thoroughly comprehensive, bipartisan, and thorough investigation into the preparation for and response to Hurricane

Katrina. We have held 15 hearings. the latest of which was today. We have interviewed 270 witnesses. We have reviewed 800,000—800,000—pages of documents. We have a completely bipartisan staff of investigators. attorneys. and other experts.

We are working together. We are making great progress. We will finish in March. We will produce a report and legislation. And. most important, we will finish our work before the next hurricane season is here.

I urge opposition to the amendment. and I raise a point of order that the pending amendment is not germane to the measure now before the Senate. I raise a point of order under section 305(b) of the Budget Act.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Mr. President, I move to waive the applicable sections of the Budget Act for purposes of the pending amendment. and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion to waive.

The clerk will please call the roll.

The bill clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from New Mexico (Mr. DOMENICI) and the Senator from Wyoming (Mr. THOMAS).

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. BINGAMAN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 44, nays 53. as follows:

[Rollcall Vote No. 6 Leg.]

YEAS—44

Akaka
Baucus
Bayh
Biden
Boxer
Byrd
Cantwell
Carper
Clinton
Conrad
Dayton
Dodd
Dorgan
Durbin
Feingold
Feinstein
Harkin
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Menendez
Mikulski
Murray
Nelson (FL)
Nelson (NE)
Obama
Pryor
Reed
Reid
Rockefeller
Salazar
Sarbanes
Schumer
Stabenow
Wyden

NAYS—53

Alexander
Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Burr
Chafee
Chambliss
Coburn
Cochran
Coleman
Collins
Cornyn
Craig
Crapo
DeMint
DeWine
Dole
Ensign
Enzi
Frist
Graham
Grassley
Gregg
Hagel
Hatch
Hutchison
Inhofe
Isakson
Kyl
Lott
Lugar
Martinez
McCain
McConnell
Murkowski
Roberts
Santorum
Sessions
Shelby
Smith
Snowe
Specter
Stevens
Sununu
Talent
Thune
Vitter
Voinovich
Warner

NOT VOTING—3

Bingaman
Domenici
Thomas

The PRESIDING OFFICER. On this vote, the yeas are 44. the nays are 53. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative. the motion is rejected. The point of order is sustained and the amendment falls.

Mr. GRASSLEY. I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Iowa.

AMENDMENT NO. 2732

Mr. GRASSLEY. Mr. President, I call up amendment No. 2732.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY] proposes an amendment numbered 2732.

The amendment is as follows:

(Purpose: To support the health needs of our veterans and military personnel)

At the appropriate place, insert the following:

SEC. ___. FUNDING FOR VETERANS HEALTH CARE AND DISABILITY COMPENSATION AND HOSPITAL INFRASTRUCTURE FOR VETERANS.

(a) FUNDING FOR MEDICAL SERVICES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated for the Department of Veterans Affairs for the Veterans Health Administration for Medical Care amounts as follows:

(A) $900,000,000 for fiscal year 2006.

(B) $1,300,000,000 for fiscal year 2007.

(C) $1,500,000,000 for fiscal year 2008.

(D) $1,600,000,000 for fiscal year 2009.

(E) $1,600,000,000 for fiscal year 2010.

(2) SUPPLEMENT NOT SUPPLANT.—The amounts authorized to be appropriated by this subsection are in addition to any other amounts authorized to be appropriated for the Veterans Health Administration for Medical Care under any other provisions of law.

(b) FUNDING FOR DISABILITY COMPENSATION BENEFITS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated for the Department of Veterans Affairs for the Veterans Benefits Administration for Compensation and Pensions amounts as follows:

(A) $2,300,000,000 for fiscal year 2006.

(B) $2,700,000,000 for fiscal year 2007.

(C) $3,000,000,000 for fiscal year 2008.

(D) $3,000,000,000 for fiscal year 2009.

(E) $3,000,000,000 for fiscal year 2010.

(2) SUPPLEMENT NOT SUPPLANT.—The amounts authorized to be appropriated by this subsection are in addition to any other amounts authorized to be appropriated for the Veterans Benefits Administration for Compensation and Pensions under any other provisions of law.

(c) FUNDING FOR INFRASTRUCTURE IMPROVEMENTS FOR HOSPITALS PROVIDING HEALTH CARE AND SERVICES TO VETERANS.—

(1) ESTABLISHMENT OF FUND.—There is hereby established on the books of the Treasury an account to be known as the "Veterans Hospital Improvement Fund" (in this subsection referred to as the "Fund").

(2) ELEMENTS.—The Fund shall consist of the following:

(A) $1,000,000,000, which shall be deposited in the Fund upon the enactment of this subsection.

(B) Any other amounts authorized for transfer to or deposit in the Fund by law.

(3) ADMINISTRATION.—The Funds shall be administered by the Secretary of Veterans Affairs.

(4) USE OF FUNDS.—

(A) IN GENERAL.—Amounts in the Fund shall be available expenditures for improvements of health facilities treating veterans, including military medical treatment facilities, medical centers and other facilities administered by the Secretary of Veterans Affairs for the provision of medical care and services to veterans, and other State, local, and private facilities providing medical care and services to veterans.

(B) APPLICATION FOR FUNDS.—A non-Federal health facility seeking amounts from the Fund shall submit to the Secretary of Veterans Affairs an application therefor setting forth such information as the Secretary shall require.

(C) AVAILABILITY.—Amounts in the Fund shall remain available until expended.

Mr. GRASSLEY. Mr. President, the problem with the Dodd amendment is that it doesn't even do what the author says it does. He says it is paid for by using capital gains, but capital gains offsets don't even come into play until the year 2009. The author is leading us to believe that the military assistance is coming now. But it is not, if it is tied to an offset that won't come due until 2009. Our alternative now before the Senate will do the same thing as the Dodd amendment, but we don't tie it up with an offset that is way down the road 3 years. That is not truth in budgeting. I urge support for my amendment.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield the 1 minute allocated to our side to the Senator from Connecticut.

Mr. DODD. Mr. President, with all due respect to my good friend from Iowa, for the Dodd amendment, the offsets begin next year, 2007, on the capital gains and dividends tax breaks. The Grassley amendment I will support. I hope the Senator from Iowa will support my amendment. The distinction between the two amendments is whether you pay for it. I am grateful that the Senator from Iowa has taken my language on veterans resources going to veterans hospitals, things such as the Intrepid Fallen Heroes Fund facility at Fort Sam Houston in Texas, and others, so that we can provide for the 103,000 veterans who come out of Iraq and Afghanistan, where there is a shortfall today. If you take my amendment, we actually pay for it by asking one-fifth of 1 percent of those people who in the year 2007 and 2008 would be beneficiaries as a result of capital gains and dividends tax reductions; 99.8 percent of all the beneficiaries under the capital gains and dividends tax reductions would not be touched by the Dodd amendment.

This is a simple distinction here. If you think we ought to do something on behalf of our veterans, then we ought to have the courage to pay for it. You have to make choices. A modest reduction in the capital gains and dividends tax reduction for 2 years, coming from less than one-fifth of 1 percent of the population making over $1 million a year is very little to ask for.

I ask for the adoption of the Grassley amendment. I also urge you to adopt our amendment. I don't want to see this amendment drop before it gets to the Ohio clock, and I know that is what is going to happen if we don't pay for the amendment.

Mr. GRASSLEY. Mr. President, I raise a budget point of order on my amendment, and I also move to waive all provisions of the Budget Act and budget resolution necessary for the consideration of the pending amendment to this bill and for the inclusion of the language of the pending amendment in the consideration of amendments between the House and conference report on the bill.

Mr. DODD. Mr. President, in a bizarre situation, pursuant to section 904 the Congressional Budget Act——

Mr. GRASSLEY. I ask unanimous consent that the motion be agreed to.

The PRESIDING OFFICER. Is there objection?

Mr. CONRAD. Reserving the right to object, I ask for a quorum call.

Mr. LEAHY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Iowa has not relinquished the floor. Does the Senator from Iowa consent or dissent to a quorum call?

Mr. GRASSLEY. I have asked for unanimous consent.

Mr. CONRAD. I object.

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

The Democratic leader is recognized.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to waive all provisions of the Budget Act and budget resolutions necessary for the consideration of the pending amendment to this bill, and for the inclusion of the language of the pending amendment in the consideration of an amendment between Houses.

The PRESIDING OFFICER. Is there objection?

Mr. CONRAD. Mr. President, reserving the right to object, and I will not object.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, this just makes clear that we would not be doing something tonight the Senate has never done before: allow direct spending on a bill such as this without the chance of it being considered in conference and coming back here without any points of order prevailing.

I apologize to colleagues for taking this time, but we cannot be engaging in a process never before done in the Senate to spend tens of billions of dollars without the ability to review it when it comes back from conference. I will not object.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to amendment No. 2732.

The amendment (No. 2732) was agreed to.

Mr. DODD. I move to reconsider the vote.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Connecticut.

AMENDMENT NO. 2735 TO AMENDMENT NO. 2707

Mr. DODD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Connecticut [Mr. Dodd], for himself, Mr. Kennedy, Mr. Kerry, Mr. Lautenberg, Mrs. Boxer, Ms. Mikulski, Mr. Akaka, and Mr. Reed, proposes an amendment numbered 2735.

Mr. DODD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To support the health needs of our veterans and military personnel and reduce the deficit by making tax rates fairer for all Americans)

At the appropriate place, insert the following:

SEC. ___. FUNDING FOR VETERANS HEALTH CARE AND DISABILITY COMPENSATION AND HOSPITAL INFRASTRUCTURE FOR VETERANS.

(a) Funding for Medical Services.—

(1) Authorization of appropriations.—There is hereby authorized to be appropriated for the Department of Veterans Affairs for the Veterans Health Administration for Medical Care amounts as follows:

(A) $900,000,000 for fiscal year 2006.

(B) $1,300,000,000 for fiscal year 2007.

(C) $1,500,000,000 for fiscal year 2008.

(D) $1,600,000,000 for fiscal year 2009.

(E) $1,600,000,000 for fiscal year 2010.

(2) Supplement not supplant.—The amounts authorized to be appropriated by this subsection are in addition to any other amounts authorized to be appropriated for the Veterans Health Administration for Medical Care under any other provisions of law.

(b) Funding for Disability Compensation Benefits.—

(1) Authorization of appropriations.—There is hereby authorized to be appropriated for the Department of Veterans Affairs for the Veterans Benefits Administration for Compensation and Pensions amounts as follows:

(A) $2,300,000,000 for fiscal year 2006.

(B) $2,700,000,000 for fiscal year 2007.

(C) $3,000,000,000 for fiscal year 2008.

(D) $3,000,000,000 for fiscal year 2009.

(E) $3,000,000,000 for fiscal year 2010.

(2) Supplement not supplant.—The amounts authorized to be appropriated by this subsection are in addition to any other amounts authorized to be appropriated for the Veterans Benefits Administration for Compensation and Pensions under any other provisions of law.

(c) Funding for Infrastructure Improvements for Hospitals Providing Health Care and Services to Veterans.—

(1) Establishment of fund.—There is hereby established on the books of the Treasury an account to be known as the "Veterans Hospital Improvement Fund" (in this subsection referred to as the "Fund").

(2) Elements.—The Fund shall consist of the following:

(A) $1,000,000,000, which shall be deposited in the Fund upon the enactment of this subsection.

(B) Any other amounts authorized for transfer to or deposit in the Fund by law.

(3) Administration.—The Funds shall be administered by the Secretary of Veterans Affairs.

(4) Use of funds.—

(A) In general.—Amounts in the Fund shall be available expenditures for improvements of health facilities treating veterans, including military medical treatment facilities, medical centers and other facilities administered by the Secretary of Veterans Affairs for the provision of medical care and services to veterans, and other State, local, and private facilities providing medical care and services to veterans.

(B) Application for funds.—A non-Federal health facility seeking amounts from the Fund shall submit to the Secretary of Veterans Affairs an application therefor setting forth such information as the Secretary shall require.

(C) Availability.—Amounts in the Fund shall remain available until expended.

(d) Offset Through Modification of Tax Rates on Capital Gains and Dividends for Individuals With $1,000,000 or More of Taxable Income.—

(1) In general.—Section 1(h) is amended by adding at the end the following new paragraph:

"(12) Modified rates for individuals with $1,000,000 or more of taxable income.—If a taxpayer has taxable income of $1,000,000 or more for any taxable year—

"(A) paragraph (11) (relating to dividends taxed as capital gain) shall not apply to any qualified dividend income of the taxpayer for the taxable year, and

"(B) paragraph (1)(C) shall be applied by substituting '20 percent' for '15 percent' with respect to the adjusted net capital gain of the taxpayer for the taxable year, determined by only taking into account gain or loss properly allocable to the portion of the taxable year after December 31, 2006."

(2) Application to minimum tax.—Section 55(b)(3) is amended by adding at the end the following new sentence: "In the case of a

taxpayer with alternative minimum taxable income of $1,000,000 or more for any taxable year, the rules of section 1(h)(12) shall apply for purposes of this paragraph."

(3) EFFECTIVE DATES.—

(A) CAPITAL GAINS.—Section 1(h)(12)(B) of the Internal Revenue Code of 1986 (as added by paragraph (1)) shall apply to taxable years beginning after December 31, 2006.

(B) DIVIDEND RATES.—Section 1(h)(12)(A) of such Code (as added by paragraph (1)) shall apply to dividends received after December 31, 2006.

(4) APPLICATION OF JGTRRA SUNSET.—The amendments made by this subsection shall be subject to section 303 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 to the same extent and in the same manner as the provision of such Act to which such amendment relates.

Mr. DODD. Mr. President, I offer this amendment on behalf of a number of colleagues: Senators KENNEDY, KERRY, LAUTENBERG, BOXER, MIKULSKI, AKAKA, and REED.

First, I thank the American Legion. I ask unanimous consent that a letter from the American Legion endorsing the Dodd amendment be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE AMERICAN LEGION,
Washington, DC, February 2, 2006.

Hon. CHRISTOPHER J. DODD,
Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, DC.

DEAR GENTLEMEN: On behalf of the 2.8 million members of The American Legion, I would like to offer our support of the proposed amendment to the Tax Relief Extension Reconciliation Act of 2005 that would provide for the unbudgeted costs of health care for veterans returning from Iraq and Afghanistan.

The amounts offered by this amendment would be in addition to any other amounts provided for medical care under other statutory provisions and would help to avoid funding shortfalls, such as what took place last year, or other problems that arise due to the discretionary funding model currently in place for VA health care. This amendment would also establish a "Veterans Hospital Improvement Fund" to provide for improvements in health care facilities treating veterans, including military medical treatment facilities, VA facilities and other facilities (state, local and private) that provide medical care and services to veterans.

Again, we appreciate your efforts on behalf of our nation's veterans. Your amendment acknowledges the need for adequate funding to ensure our nation's veterans receive the healthcare and other benefits to which they are entitled.

Sincerely,

STEVEN ROBERTSON,
Director, National Legislative Commission.

Mr. DODD. Mr. President, the distinction between this amendment and what we just voted on is, of course, paying for this. This amendment would provide at least around $18 billion, $19 billion in needed funds to serve returning veterans from theater of conflict.

We know last year that over 100,000 Iraqi veterans returned home. Yet the administration's fiscal year 2006 budget for the VA was only prepared to handle 23,000 veterans. There are shortfalls in every State across the country. There are shortfalls in private facilities as well as public ones. This amendment is for us finally to say let's do something for these people.

Last year, we were promised it would be accommodated in the appropriations process. It had to be done as almost an afterthought. I don't like offering this amendment on this bill. I understand the problems associated with it. But if we don't finally do something, these veterans will lose the support they deserve. That is why the American Legion is so strongly supporting this amendment.

I urge my colleagues to join me in seeing to it we have the resources to pay for this. If we don't pay for it, this amendment will not make it past the Ohio Clock. It will be dropped, and, once again, veterans will suffer. I urge adoption of the amendment.

Mr. AKAKA. Mr. President, I rise today with my friends, Senators KENNEDY and DODD, to offer an amendment to address the costs of providing health care and improved benefits to troops serving in Iraq and Afghanistan.

This amendment we offer today allows VA to provide care for returning troops—without displacing those veterans currently using the system. Let us never forget the budget disaster last year. Early in the year, we knew VA was not making ends meet. The administration, however, took months to come to that realization. And just last week, the President signed a declaration of emergency funding for $1.2 billion for fiscal year 2006.

We cannot repeat last year's budget scenario. This amendment provides more cushion for this fiscal year and future years.

Early warnings are that this will not be enough to cover expected shortfalls for this fiscal year. And VA will surely not have enough funding to open the system up to all veterans. In 2003, this administration closed the doors to all middle-income veterans who had not enrolled prior to that time. To date, more than 250,000 veterans who have tried to enroll for VA health care have been rejected. In Hawaii alone, 710 veterans were turned away at the door. We have no idea how many middle-income veterans never even try to enroll.

This amendment also sends a message that the Senate wishes to ensure that our veterans are appropriately compensated. For many of our severely injured veterans, disability compensation is their only income—the only way for them to provide for their families. This amendment ensures that our wounded warriors receive the compensation they have earned.

This amendment establishes a fund for infrastructure improvements. VA's infrastructure has suffered greatly over the past 5 years. Major construction projects were held up for some time while we waited for VA's own construction study. And while that process still awaits conclusion, VA has been trying to catch up with the projects that have been stuck in the queue for years. At the same time, the Department has faced consistent funding shortfalls that have paralyzed its ability to carry out these projects. Its no secret that when the health care account is strained, funds are then diverted from "non-essential" areas—such as maintenance and construction—to be spent on direct health care costs.

Meanwhile, smaller scale projects are put in jeopardy. In my home State of Hawaii, we have a need for $6.9 million to build a new VA mental health facility in Honolulu.

The costs of the war we are fighting today will continue to add up long after the final shot is fired, mainly in the form of veterans health care and benefits.

I urge my colleagues to join us in this effort to see that they are provided the care they are currently earning.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, first, since we adopted the previous amendment, we obviously don't need this amendment. But even if we consider this amendment, I raise a budget point of order on the amendment.

Mr. DODD. Mr. President, I move to waive all provisions of the Budget Act and budget resolutions necessary for consideration of the pending amendment to this bill, and for inclusion of the language of the pending amendment in the consideration of an amendment between the Houses.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from New Mexico (Mr. DOMENICI) and the Senator from Wyoming (Mr. THOMAS).

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. BINGAMAN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 44, nays 53, as follows:

[Rollcall Vote No. 7 Leg.]

YEAS—44

Akaka
Baucus
Bayh
Biden
Boxer
Byrd
Cantwell
Carper
Chafee
Clinton
Conrad
Dayton
Dodd
Dorgan
Durbin
Feingold
Feinstein
Harkin
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln

Menendez
Mikulski
Murray
Nelson (FL)
Obama
Pryor
Reed
Reid
Rockefeller
Salazar
Sarbanes
Schumer
Stabenow
Wyden

NAYS—53

Alexander
Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Burr
Chambliss
Coburn
Cochran
Coleman
Collins
Cornyn
Craig
Crapo
DeMint
DeWine
Dole
Ensign
Enzi
Frist
Graham
Grassley
Gregg
Hagel
Hatch
Hutchison
Inhofe
Isakson
Kyl
Lott
Lugar
Martinez
McCain
McConnell
Murkowski
Nelson (NE)
Roberts
Santorum
Sessions
Shelby
Smith
Snowe
Specter
Stevens
Sununu
Talent
Thune
Vitter
Voinovich
Warner

NOT VOTING—3

Bingaman
Domenici
Thomas

The PRESIDING OFFICER. On this vote, the yeas are 44, the nays are 53. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

The Senator from Iowa.

Mr. GRASSLEY. Just not to confuse anybody, we are kind of going through the same thing we did on the previous two amendments, so be alerted.

Mr. BAUCUS. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senator is correct. The Senate will please come to order.

AMENDMENT NO. 2736

Mr. GRASSLEY. I call up amendment No. 2736.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], proposes an amendment numbered 2736.

The amendment is as follows:

(Purpose: To strengthen America's military and for other purposes)

TITLE IV—STRENGTHENING AMERICA'S MILITARY

SEC. 401. SHORT TITLE.

This title may be cited as the "Strengthening America's Military Act".

Subtitle A—Military Funding

SEC. 402. FUNDING FOR MILITARY OPERATIONS.

There is appropriated, out of any money in the Treasury which is not otherwise appropriated, for the fiscal years 2006 through 2010, the following amounts, to be used for resetting and recapitalizing equipment being used in theaters of operations:

(1) $16,900,000,000 for operations and maintenance of the Army.

(2) $1,800,000,000 for aircraft for the Army.

(3) $6,300,000,000 for other Army procurement.

(4) $10,000,000,000 for wheeled and tracked combat vehicles for the Army.

(5) $467,000,000 for the Army working capital fund.

(6) $6,000,000 for missiles for the Department of Defense.

(7) $100,000,000 for defense wide procurement for the Department of Defense.

(8) $4,500,000,000 for Marine Corps procurement.

(9) $4,500,000,000 for operations and maintenance of the Marine Corps.

(10) $2,700,000,000 for Navy aircraft procurement.

Mr. GRASSLEY. The same arguments that I made on the previous amendments apply here as well. My amendment will do the same as the Reed amendment but doesn't raise taxes to pay for it, so it will provide more equipment for our troops without increasing taxes. I urge support of my amendment.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. I yield 1 minute to the Senator from Rhode Island.

Mr. REED. Mr. President, the amendment proposed by the Senator from Iowa is my amendment. It would meet the supreme need of the military to reset, recapitalize, and rehabilitate $43 billion or more of equipment. The one big difference is that my amendment will pay for it. It will take the responsible step of actually paying to help our military. What I will use is dividend offsets. I will offer that later. But we have the responsibility to be responsible, not only give the troops what they need but pay for it so we do not increase the deficit. I hope we respond by supporting my amendment which takes care of the troops but does so in a responsible way by providing the resources to pay for this necessary equipment.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, again I raise a budget point of order. I ask unanimous consent it be exactly the same as the previous one on the last two bills. I ask unanimous consent to waive all provisions of the Budget Act and budget resolutions necessary for the consideration of the pending amendment to this bill and for the inclusion of the language of the pending amendment in the consideration of one amendment between the Houses—an amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The question is on agreeing to the amendment.

The amendment (No. 2736) was agreed to.

AMENDMENT NO. 2737

(Purpose: To strengthen America's military, to repeal the extension of tax rates for capital gains and dividends, to reduce the deficit, and for other purposes)

The PRESIDING OFFICER. The Senator from Rhode Island and the Providence Plantation.

Mr. REED. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. REED], for himself, Ms. STABENOW, Mr. LAUTENBERG, Mrs. CLINTON, and Mr. KERRY, proposes an amendment numbered 2737.

(The amendment is printed in today's RECORD under "Text of amendments.")

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, our Army and Marines face a critical problem: $47 billion worth of equipment which they have used in Iraq and Afghanistan needs to be repaired and reconditioned. They call it reset recapitalization. We have to do this. This equipment is not new equipment, it is not transformational, it is the equipment they need. I commanded a paratrooper company in the 82nd Airborne Division. I can tell you the worst thing for morale is to have soldiers with poor and inadequate equipment. We owe it to them.

My amendment would be the responsible way to do it, pay for it, by taking capital gains cuts that are proposed, dividend cuts and others that are proposed, and other loopholes. It is essentially very simple. Are we going to give a dividend to the wealthiest citizens or are we going to give a dividend to our troops, our soldiers, and marines? And that dividend is equipment that will work, not only today but in the future.

This is particularly important for the National Guard. Every one of your National Guard units has equipment they have left overseas or has been run into the ground. If we do not act responsibly—not just act but act responsibly, then we will not be able to assure our soldiers and marines that the equipment they have is the best equipment, that it works, and it will be reconditioned and refit and work in the future.

I urge passage of this amendment.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Again, I raise a budget point of order on this amendment.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. I move to waive all provisions of the Budget Act and budget resolutions necessary for the consideration of the pending amendment to this bill and for the inclusion of the language of the pending amendment in the consideration of an amendment between the Houses.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I ask unanimous consent to speak to this issue for 2 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. REED. Reserving my right to object, if the Senator has 2 minutes, can I have an additional 2 minutes?

Mr. GREGG. I just want to explain the parliamentary situation for the record.

Mr. President, these last two amendments are totally outside the traditional process of reconciliation. But the practical effects of the motion to waive, which the Senator from Iowa has made on his amendments, is that neither amendment can survive conference. I think it is important to understand that reconciliation cannot include spending under this bill, and that we would be doing fundamental damage to the process were either of these amendments to survive conference. And, therefore, I support the motion on this point of order and hope we proceed the same way we have with the other points of order.

Mr. REED. I ask unanimous consent for 1 minute.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The Senator from Rhode Island and the Providence Plantation is accorded the floor.

Mr. REED. I have great respect for the procedures and rules of the Senate, but we have come too many times to issues—I can recall back when we were talking about armored humvees when the objection was made this is not the right legislative vehicle to do this. I think we have an obligation to our soldiers and marines to help them now and pay for it now. This might be the only occasion we can do both.

I urge passage.

The PRESIDING OFFICER. Is there objection to the request to waive the Budget Act?

Mr. REED. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from New Mexico (Mr. DOMENICI) and the Senator from Wyoming (Mr. THOMAS).

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. BINGAMAN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 44, nays 53, as follows:

[Rollcall Vote No. 8 Leg.]

YEAS—44

Akaka
Baucus
Bayh
Biden
Boxer
Byrd
Cantwell
Carper
Chafee
Clinton
Conrad
Dayton
Dodd
Dorgan
Durbin
Feingold
Feinstein
Harkin
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Menendez
Mikulski
Murray
Nelson (FL)
Obama
Pryor
Reed
Reid
Rockefeller
Salazar
Sarbanes
Schumer
Stabenow
Wyden

NAYS—53

Alexander
Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Burr
Chambliss
Coburn
Cochran
Coleman
Collins
Cornyn
Craig
Crapo
DeMint
DeWine
Dole
Ensign
Enzi
Frist
Graham
Grassley
Gregg
Hagel
Hatch
Hutchison
Inhofe
Isakson
Kyl
Lott
Lugar
Martinez
McCain
McConnell
Murkowski
Nelson (NE)
Roberts
Santorum
Sessions
Shelby
Smith
Snowe
Specter
Stevens
Sununu
Talent
Thune
Vitter
Voinovich
Warner

NOT VOTING—3

Bingaman
Domenici
Thomas

The PRESIDING OFFICER (Mr. THUNE). On this vote, the yeas are 44, the nays are 53. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

Mr. GRASSLEY. Mr. President, I hope we just have one more rollcall vote—on final passage. It is my understanding that the Menendez amendment has been changed to a sense of the Senate, so that means the amendment I was going to offer on AMT will not be offered. Consequently, I am hoping we can get this amendment agreed to on a voice vote.

Mr. REID. Mr. President, Senator MENENDEZ told Members he wants a rollcall vote.

AMENDMENT NO. 2705

Mr. MENENDEZ. Mr. President, I call up amendment numbered 2705.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. MENENDEZ], for himself, Mr. SCHUMER, Mr. KERRY, Mrs. FEINSTEIN, Mrs. CLINTON, Mr. LAUTENBERG, and Ms. STABENOW, proposes an amendment numbered 2705.

The amendment is as follows:

(Purpose: To express the sense of the Senate that protecting middle-class families from the alternative minimum tax should be a higher priority for Congress in 2006 than extending a tax cut that does not expire until the end of 2008)

At the appropriate place, insert the following:

SEC. ___. SENSE OF THE SENATE REGARDING PROTECTING MIDDLE-CLASS FAMILIES FROM THE ALTERNATIVE MINIMUM TAX.

(a) FINDINGS.—The Senate finds that—

(1) the alternative minimum tax was originally enacted in 1969 as a supplemental tax on wealthy tax evaders, but has evolved into a tax on millions of middle-class working families, particularly families in which both parents work, and families with 2 or more children;

(2) by the end of the decade, the alternative minimum tax will ensnare more than 30,000,000 taxpayers, the majority of which will have adjusted gross incomes below $100,000, and the National Taxpayer Advocate has thus identified it as the most serious problem facing individual taxpayers;

(3) the alternative minimum tax is often portrayed as a tax that is most problematic for residents of States such as New York, California, Massachusetts, and New Jersey, but the truth is that many other States have a significant percentage of taxpayers affected by the alternative minimum tax, including Oregon, Maryland, Virginia, Minnesota, Ohio, Maine, Georgia, North Carolina, and Pennsylvania, so the problem is of national importance;

(4) a family with 2 children will become subject to the alternative minimum tax at about $67,500 of income in 2006, and a family with 5 children will start owing the alternative minimum tax at about $54,000 of income, if Congress fails to act;

(5) the year 2006 is the "tipping point" for the alternative minimum tax, as the number of taxpayers affected nationally will explode from 3,600,000 to 19,000,000 if Congress fails to act;

(6) in 2004, only 6.2 percent of families earning $100,000 to $200,000 a year were subject to the alternative minimum tax, and that number will explode to nearly 50 percent if Congress fails to act;

(7) if alternative minimum tax relief is extended through 2006, about two-thirds of the benefits will be realized by families earning under $200,000, with more than half of the total benefits going to families with incomes between $100,000 and $200,000;

(8) starting in 2008, the average married couple with 2 children earning $75,000 or more will find that more than half of the tax cuts they have been expecting from the various laws passed since 2001 will be "taken back" via the alternative minimum tax; and

(9) the temporary relief from the alternative minimum tax (provided in 2001 and extended twice in 2003 and 2004) expired at the end of 2005, but the tax reductions on dividends and capital gains do not expire until the end of 2008, making immediate action on those provisions a less urgent matter.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that protecting middle-class families from the alternative minimum tax should be a higher priority for Congress in 2006 than extending a tax cut that does not expire until the end of 2008.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. MENENDEZ. Mr. President, this amendment, which is a sense of the Senate, which I am offering with Senators SCHUMER, KERRY, FEINSTEIN, CLINTON, LAUTENBERG, and STABENOW, is simply a sense of the Senate to try to ensure that 17 million middle-class families do not see a tax increase next year through the alternative minimum tax. This tax was never intended to raise the taxes of average Americans but, in fact, it has—millions of Americans.

Some think this is more problematic for residents of States such as New York, California, or my home State of New Jersey. But the truth is a whole host of other States have a significant percentage of tax failures affected by the alternative minimum tax, including Oregon, Maryland, Virginia, Minnesota, Ohio, Maine, Georgia, North Carolina, and Pennsylvania. It is a problem of national importance. This is a question of whether the Senate values work and the work of honest and hard-working families who are going to be subjected to a tax not because they made more income but simply because of the way the tax is structured.

Ultimately, I urge my colleagues to support the sense of the Senate.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I dispute the presumption we have to choose between AMT hold harmless and not extending capital gains and dividends. We can do both. The presumption in this bill is that we can and we are going to be able to do that in the conference committee.

Since the amendment reflects the position of what we in the Senate previously had anticipated doing anyway, Members ought to vote for the amendment. I will vote for it.

Yesterday afternoon, I took time to respond to Senator HARKIN's statement that we have an AMT problem to a significant degree because of what the Finance Committee did in the 2001 tax bill. Importantly, he fails to recognize that we have addressed the problem for 2001 to 2005. And, now, we are trying to do the same thing for 2006—to make sure that the AMT problem is not worsened.

To the extent that Senator HARKIN suggests, like others who have looked at this issue, that the Bush tax cuts are responsible for the AMT problem, I respond in this way. Most who have reached that conclusion have done so by misusing data provided by the Joint Committee on Taxation, JCT, to distort the record on this issue. Additional analysis will demonstrate that conclusion to be erroneous. To the contrary, the analysis suggests an alternative explanation for the AMT problem—Congress's failure to index the AMT for inflation over the past 35 years.

Senator HARKIN suggests that the Bush tax cuts are responsible for the AMT problem. The conclusion is reached in error because it is based on faulty logic. Those who have done similar analyses have based their conclusions on the mistaken assumption that a reduction in Federal receipts should be interpreted as percentage causation of the AMT problem. JCT was asked to project Federal AMT revenue if the Bush tax cuts were extended, but the current-law hold-harmless provision was not extended—$1.139 trillion—and Federal AMT revenue if neither the Bush tax cuts nor the hold-harmless provision is extended—$400 billion. From that data, some erroneously concluded and publicly represented that the Bush tax cuts are responsible for 65 percent of the AMT problem—$1.139 trillion minus $400 billion divided by $1.139 trillion—and conversely, that the Bush tax cuts tripled the size of the AMT problem—$1.139 trillion divided by $400 billion.

The logic used to reach that conclusion is flawed. That is because the many variables affecting the AMT have overlapping results, and the order in which one analyzes those overlapping variables will directly impact the outcome of the analysis.

In that way, we can use the same JCT data in the analysis above to suggest that failure to index is actually the dominant cause of the AMT problem. If one were to first index the current tax system for inflation by permanently extending an indexed version of the current hold-harmless provision, Federal AMT revenue would be reduced from $1.139 trillion to $472 billion over the 10-year period. Thus, extending and indexing the current hold-harmless provision for future inflation would reduce AMT revenues by 59 percent over the same period, referred to in a JCT letter dated October 3, 2005, as "percentage of AMT effect attributable to failure to extend and index hold-harmless provision". A copy of the entire letter is attached. If we then assume that the Bush tax cuts are repealed, AMT revenue falls by an additional $302.3 billion, from $472 billion to $169.7 billion. That second drop, attributable to the repeal of the Bush tax cuts, reduces Federal revenues by only 27 percent. Thus, one could argue that failure to index is the greater cause of the AMT problem—59 percent vs. 27 percent. Using logic similar to that undertaken above would also cause us to conclude that failure to index is responsible for 59 percent of the AMT problem—$1.139 trillion minus $472 billion divided by $1.139 trillion—or alternatively, that failure to index also nearly tripled the size of the AMT problem, $1.139 trillion divided by $472 billion.

But simple logic suggests that the Bush tax cuts cannot be responsible for 65 percent of the AMT problem and failure to index responsible for 59 percent of the problem. The anomaly arises because there is overlap between the variables being analyzed. Although the analysis fairly demonstrates the amount of AMT revenue saved by making a particular change to the Federal tax system, it is inappropriate to represent that such analysis accurately isolates causation of the AMT. Because there is overlap in the variables being analyzed—in these examples, indexing and the Bush tax cuts—the order of analysis of those variables is crucial to the outcome. JCT acknowledges this point to us in a letter dated October 3, stating: "There is, however, interaction between these two contributing factors to the AMT effect. In order to avoid double counting of interactions, a stacking order is imposed. The apportionment of effects to each contributing factor will vary depending on the stacking order, even though the total effect remains constant."

To this point in time, I have not seen anything that accurately suggests that the 2001 tax cuts have worsened the AMT problem to date. It is my intention to ensure that we continue to honor that commitment and that is an important part of this tax reconciliation legislation.

I ask unanimous consent that a memorandum be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

To: Mark Prater and Christy Mistr
From: George Yin
Subject: AMT Effects

This memorandum responds to your request of September 29, 2005, for an analysis of the portion of the AMT effect (AMT liability plus credits lost due to the AMT) which can be attributed to the failure to adjust the AMT exemption amount to inflation, assuming alternatively that the EGTRRA and JGTRRA tax cuts ("tax cuts") are either permanently extended or repealed. We also explain how this information compares to information previously provided to you on August 31, 2005 and September 16, 2005.

For the purpose of this analysis, we have first assumed that the tax cuts are repealed. The first set of figures in Table 1 compares the AMT effect under this assumption if, alternatively, (1) the AMT exemption amount hold-harmless provision is not extended beyond 2005; (2) such provision is extended permanently; and (3) such provision is extended permanently and indexed after 2005. The second set of figures presents the same comparison under the assumption that the tax cuts are permanently extended. All of the information provided in this table was previously provided to you in our September 16, 2005 memo, except in a different format.

To: Mark Prater and Christy Mistr
Subject: AMT Effects

TABLE 1.

Item	AMT effect (billions of dollars)
Tax Cuts Repealed:	
(1) Hold-harmless provision not extended	399.9
(2) Hold-harmless provision extended permanently	212.0
(3) Percentage of AMT effect attributable to failure to extend hold-harmless provision (((1)–(2))/(1))	47%
(4) Hold-harmless provision extended permanently and indexed	169.7
(5) Percentage of AMT effect attributable to failure to extend and index hold-harmless provision (((1)–(4))/(1))	58%
Tax Cuts Extended Permanently:	
(6) Hold-harmless provision not extended	1,139.1
(7) Hold-harmless provision extended permanently	628.5
(8) Percentage of AMT effect attributable to failure to extend hold-harmless provision (((6)–(7))/(6))	45%
(9) Hold-harmless provision extended permanently and indexed	472.0
(10) Percentage of AMT effect attributable to failure to extend and index hold-harmless provision (((6)–(9))/(6))	59%

To: Mark Prater and Christy Mistr
Subject: AMT Effects

In the information provided to you on August 31, 2005 and September 16, 2005, we analyzed the portion of the AMT effect attributable to the tax cuts. In the analysis described above, we identify the portion of the AMT effect attributable to failure to adjust the AMT exemption amount to inflation. There is, however, interaction between these two contributing factors to the AMT effect. In order to avoid double counting of interactions, a stacking order is imposed. The apportionment of effects to each contributing factor will vary depending on the stacking order, even though the total effect remains constant.

This phenomenon is illustrated by Tables 2 and 3 below. The first two columns of Table 2 show the portion of the AMT effect attributable to the tax cuts, consistent with the information provided on August 31, 2005 and September 16, 2005. The second two columns of Table 2 show the portion of the AMT effect attributable to the failure to extend and index the hold-harmless provision, consistent with the information provided in Table 1 above. Note that if these two contributing factors were completely independent of one another, the information in Table 2 would suggest that the two factors together contribute to more than 100 percent of the AMT effect. In fact, as shown in Table 3, the two factors together contribute to only 85 percent of the AMT effect. Thus, there is substantial overlap between these two factors.

TABLE 2.

Item	AMT Effect (billions of dollars)
Baseline	1,139.1
Repeal tax cuts	399.9
Difference	739.2
Percentage of baseline	65%
Baseline	1,139.1
Extend and index AMT hold-harmless provision	472.0
Difference	667.1
Percentage of baseline	59%

To: Mark Prater and Christy Mistr
Subject: AMT Effects

TABLE 3.

Item	AMT Effect (billions of dollars)
Baseline	1,139.1
Repeal tax cuts and extend and index AMT hold-harmless provision	169.7
Difference	969.4
Percentage of baseline	85%

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant bill clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from New Mexico (Mr. DOMENICI) and the Senator from Wyoming (Mr. THOMAS).

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. BINGAMAN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 73, nays 24, as follows:

[Rollcall Vote No. 9 Leg.]

YEAS—73

Akaka
Allard
Baucus
Bayh
Bennett
Biden
Bond
Boxer
Bunning
Burns
Byrd
Cantwell
Carper
Chafee
Clinton
Cochran
Coleman
Collins
Conrad
Dayton
DeWine
Dodd
Dorgan
Durbin
Feingold
Feinstein
Graham
Grassley
Hagel
Harkin
Hatch
Hutchison
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Lott
Lugar
Martinez
McConnell
Menendez
Mikulski
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Obama
Pryor
Reed
Reid
Rockefeller
Salazar
Santorum
Sarbanes
Schumer
Shelby
Smith
Snowe
Specter
Stabenow
Stevens
Talent
Voinovich
Warner
Wyden

NAYS—24

Alexander
Allen
Brownback
Burr
Chambliss
Coburn
Cornyn
Craig
Crapo
DeMint
Dole
Ensign
Enzi
Frist
Gregg
Inhofe
Isakson
Kyl
McCain
Roberts
Sessions
Sununu
Thune
Vitter

NOT VOTING—3

Bingaman
Domenici
Thomas

The amendment (No. 2705) was agreed to.

Mr. FRIST. I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS CONSENT AGREEMENT—H.R. 4659

Mr. FRIST. Mr. President, I will have a few announcements to make, but, first, I ask unanimous consent that following the vote on passage of H.R. 4297, the Senate proceed to the immediate consideration of H.R. 4659, the PATRIOT Act extension. I further ask consent that there then be 10 minutes of debate, equally divided, and that following the use or yielding back of time, the bill be read a third time and the Senate proceed to a vote on passage, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Mr. President, reserving the right to object, and I apologize, were you referring to 10 minutes for debate on the PATRIOT Act?

Mr. FRIST. That is correct.

Mr. LEAHY. I will not object.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. FRIST. Mr. President, for the information of colleagues, we do have two remaining votes this evening. The next vote will be on passage of the Tax Relief Act. And following that vote, we will have 10 minutes of debate and a vote on passage of the PATRIOT Act extension. That will be the last vote. So, Mr. President, two more votes.

We will be in session tomorrow, but there will be no votes tomorrow. The next piece of legislation we will be considering is the asbestos legislation, and it will be necessary to file cloture on the motion to proceed to that bill.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, what we would be willing to do, if we are not in session tomorrow, we would be willing to allow the——

Mr. FRIST. If there are no votes tomorrow.

Mr. REID. Either no votes or not in session.

Mr. FRIST. All right.

Mr. REID. We would be willing to agree procedurally on a motion to proceed to the asbestos bill. You could file whatever papers necessary tonight to do that so we could have a Tuesday cloture vote.

Mr. FRIST. All right. Mr. President, we will work out on filing the motion to proceed here, and I will have an announcement. We will have no votes tomorrow. By the end of tonight, we will have Tuesday worked out. We will be debating the asbestos bill on Monday. The next vote will be on that cloture motion, and we will talk about when that would occur Tuesday. In all likelihood, if we have a vote Tuesday, it would be around 6 o'clock at night. There are a number of Members who will want to attend the funeral of Coretta Scott King, and, as I understand it, that will be at noon on Tuesday. Therefore, the next vote that we will have will be at approximately 6 o'clock on Tuesday night.

CONFLICT OF INTEREST

Mr. SPECTER. Mr. President, I would like to call the chairman's attention to a serious situation facing a Federal district judge in my State of Pennsylvania, who recently contacted me on this matter. He has an immediate problem that could be solved with an amendment to this bill. This judge was assigned as the transferee judge responsible for handling all pretrial matters in very large multidistrict litigation involving antitrust claims in the corrugated paper industry from all around the United States. He has been working on the case since 1999.

Late in this last year, a company in which the judge inherited stock over 30 years ago merged into another company which happens to be one of the plaintiffs in the case. Because of the judge's stock holdings in this company, the judge may now have to recuse himself from the case. Most of the parties would like the judge to remain on the case because of his years of experience and expertise on this case. In order to remain as the transferee judge, this judge would have to sell his holdings, which would give him a capital gain this year well into six figures.

Last March and again this past November, Ralph Mecham, as Secretary of the Judicial Conference of the United States, transmitted on behalf of the Conference a legislative proposal to you and to Senator BAUCUS that would resolve this judge's problem and similar problems for countless other Federal judges throughout the United States. It would permit a judge who must sell financial holdings in order to avoid a conflict of interest to reinvest that money in another holding and defer paying the capital gains tax until the substitute financial interest is liquidated. The taxes are not forgiven, but deferred and payable at the later date, as I just said.

This same solution to conflicts of interest is already available to executive branch officials. The proposal by the Judicial conference would simply extend it to Federal judges, as well, bringing parity to these two branches of the Federal Government.

I understand that it is too late at this time to offer the Judicial Conference proposal as an amendment. However, I would like to know if the chairman would consider taking this matter up during the conference with the House on this bill.

Mr. GRASSLEY. Mr. President, I appreciate the Senator bringing this matter to my attention and regret that it is too late to amend the bill today on the floor. I will agree with the Senator, however, to review this proposal further with the intent of taking it up in conference.

Mr. KENNEDY. Mr. President, budget reconciliation is a process adopted by Congress nearly three decades ago to facilitate the passage of legislation to reduce the deficit and to help bring the Federal budget into balance. But in recent years, under the Republican majority, that process has been repeatedly abused to enact more and more tax cuts for the wealthy that make the budget deficit even larger.

Now, they are trying to do it again, in spite of the urgent problems facing the Nation, from the ongoing war in Iraq to the devastating hurricane damage along the gulf coast. The Republicans have brought before the Senate two reconciliation bills, one now passed, that would produce a net increase in the budget deficit by billions of dollars over the next 5 years.

It sounds like deficit reduction, until you look at the tax reconciliation bill, which will cut taxes by far more than the savings in spending—$70 billion. The net result will be a substantial increase in the budget deficit—exactly the opposite of what the reconciliation process is supposed to accomplish. Billions of dollars will go from programs that assist low income families and senior citizens into the pockets of the already wealthy. It takes from the least and gives to the most. It is a breathtaking Republican scam on the Nation that can only further discredit this Congress in the eyes of the people.

From day one, the Republican plan has been to use this reconciliation process to push through a cut in the tax rate on capital gains and dividend income. These are tax cuts that overwhelmingly benefit the richest Americans. Over half the tax benefits will go to millionaires. These tax breaks were in the original mark proposed by Chairman GRASSLEY, and they are in the bill already passed by the Republican majority in the House of Representatives. While they are not in the current Senate bill, we all know these capital gains and dividend tax cuts will reappear in the conference report. Leading Republicans have made that clear. The GOP is intent on delivering those tax breaks to their wealthy supporters. They will be included in the final bill.

What is the real cost of these capital gains and dividend tax cuts? The Republicans claim the cost of these provisions is $20 billion, the real cost of extending the lower rates for another 2 years is $50 billion. This tax break is particularly unfair, because over 75 percent of the tax benefits will go to taxpayers with incomes over $200,000 a year. Over half the benefits—53 percent—will go to taxpayers with incomes over $1 million a year. The average millionaire will save over $35,000 a year from these tax breaks for capital gains and dividends.

As a result of this shameful Republican let-them-eat-cake proposal, millions of working families would pay a substantially higher tax rate on their wages than wealthy taxpayers pay on their investment income. What could be more unfair? Republicans are penalizing hard work, not rewarding it. They are giving a preference to unearned income over earned income.

The Republicans cynically claim that capital gains and dividend income deserve special treatment because they will stimulate investment. The facts do not substantiate that claim. The stock market grew much more rapidly in the early and mid-1990s when investors' income was taxed at the same rate as employers' wages than since the rates on capital gains and dividend income were cut. The overall health of the economy has much more to do with financial stability than special tax breaks for the rich. More tax cuts that America cannot afford will hurt the economy, not help it.

There are some provisions in the Senate bill that we do need to address. The alternative minimum tax was never intended to apply to middle-class families, and they deserve tax relief. In a truly outrageous move, the House Republicans took AMT relief for the middle class out of their reconciliation bill so they could fit in more tax breaks for the rich. The research and development tax credit is important to our international competitiveness and should be retained. However, those worthwhile tax cuts should be paid for by rolling back some of the extravagant tax breaks that this Republican Congress has already given to the Nation's wealthiest taxpayers. We simply cannot afford more tax cuts at a time when we are facing record deficits.

The financial mismanagement of the Bush administration has weakened our economy and placed our children's financial well-being in peril. The national debt has risen to an all time high of $8 trillion. Under President Bush, our country has borrowed more from foreign governments and foreign financial institutions than in the prior 200 years combined. We are losing control of our Nation's future, and all the Republicans offer is more of the same. More and more tax breaks further enriching the already wealthy, while working families are left to struggle on their own in an increasingly harsh economy.

If we are honest about reducing the deficit and strengthening the economy, we need to stop lavishing tax breaks on the rich and start investing in the health and well-being of all families. These families are being squeezed unmercifully between stagnant wages and ever-increasing costs for the basic necessities of life. The cost of health insurance is up 59 percent in the last 5 years. Gasoline is up 74 percent. College tuition is up 45 percent. Housing is up 44 percent. The list goes on and on, up and up—and paychecks are buying less each year. The dollars that go to pay for more tax breaks for the rich are dollars that could be used to help these families. Instead, this Republican budget plan turns a blind eye to their problems.

The economic trends are very disturbing for any who are willing to look at them objectively. The gap between rich and poor has been widening in recent years. Thirty-seven million Americans now live in poverty, up 19 percent during the Bush administration. One in five American children lives in poverty. Fourteen million children go to bed hungry each night. Wages remain stagnant while inflation drags more and more families below the poverty line. Two-point-eight million manufacturing jobs have been lost. Long-term unemployment is at historic highs.

In his second inaugural address, President Lincoln reminded us of the solemn obligation that we have to those who fight our Nation's wars. He said "let us strive on to finish the work we are in, to bind up the Nation's wounds, to care for him who shall have borne the battle [and for his widow and his orphan.]"

Over 550,000 brave men and women have served in Iraq and Afghanistan. A majority of them have served multiple tours fighting under dangerous conditions, and battling an unseen foe. We owe it to them to care for their injuries incurred in service of our Nation.

As of today, over 16,000 of our troops have been injured in battle. Of those, over 7,500 were so seriously injured that they could not return to duty. We have seen the ravages of war in the wards of Walter Reed and Bethesda. While body armor saves lives, many soldiers and Marines have lost their limbs.

Others will survive with major injuries to their spine or brain damage. This summer, the Surgeon General of the Army reported that 30 percent of U.S. troops have developed mental health problems within a few months of their return from Iraq. Twenty percent of the troops injured in Iraq have suffered head and brain injuries that require a lifetime of continual care that could cost as much as $5 million.

A recent study by the New England Journal of Medicine found that 15 to 17 percent of Iraqi vets showed signs of "major depression, generalized anxiety, or [Post Traumatic Stress Disorder]." But of those, only 23 to 40 percent are seeking help. Many of them will wind up homeless with no other options for their health care than the VA. After their service to our country, we should not leave them out on the street.

The increased use of the Guard and Reserve in this conflict has created an entirely new category of people who may now make use of the VA. The Guard and Reserve make up approximately 40 percent of the troops on the ground, and approximately 90,000 have sought care at VA hospitals.

Unfortunately, our current budgets do not reflect this reality. A recent study by Nobel Prize-winning economist Joseph Stiglitz and Harvard professor Linda Bilmes found that the costs of paying for the injured from these wars has not yet been budgeted. To our dismay, we learned that the Veterans' Administration needed an additional $2.7 billion for this fiscal year to care for the veterans returning from the war.

Stiglitz and Bilmes found that, "the military values the cost of those injured by what their medical treatment cost and disability pay; and current accounting only reflects current payments in disability" not future payments.

Based on their calculations, it could cost as much as $24.1 billion to pay for these costs over the next 5 years. Of this amount, $9.4 billion for medical care and $14.7 billion for increased disability payments.

This amendment Senator DODD and I have introduced would rectify that shortfall and keep faith with our men and women in uniform. It would be paid for by elimination of the capital gains and dividends tax breaks for taxpayers with over $1 million in annual income.

We owe it to soldiers like Sergeant Peter Damon, a son of Massachusetts who lost his arms in Iraq.

I also express my support for the amendment offered by Senator ROCKEFELLER that would provide strong tax incentives for mining companies to adopt safer practices and up-to-date safety equipment.

The recent tragedies at Sago Mine and Alma Mine in West Virginia remind us that the safety of the Nation's workers is paramount. This year, 21 miners have already been killed on the job. In early January, 12 miners died when they were trapped after an explosion at the Sago Mine. Just 2½ weeks later, two more miners died in a mine fire at the Alma mine. And tragically, yesterday, there were three more mine accidents in West Virginia, killing two more men. One miner died in an underground mine in Boone County when a wall support came loose. A second miner died when a bulldozer struck a gas line, causing a deadly fire. Miners have also died this year in Kentucky and Utah.

Our entire Nation joins the families and the communities in mourning these fallen miners. We have a continuing obligation to do everything we can to protect the safety of America's workers. It is obvious that we are not meeting that obligation.

Two weeks ago, I traveled with Senator ROCKEFELLER, Health, Education, Labor and Pensions Committee Chairman ENZI, and Subcommittee Chairman ISAKSON to meet with the family members of the miners who were killed at Sago Mine, and with coalminers, company representatives, and health and safety experts. Each of us committed to improving the Nation's mine safety laws.

A critical part of that commitment is to ensure that all of our Nation's miners have the best safety equipment available. This amendment will encourage companies to adopt up-to-date mine safety equipment by providing accelerated deductions for companies that invest in these technologies.

It encourages mines to adopt emergency communications technology and tracking devices to locate miners underground. It will also encourage coal mines to ensure that workers have access to additional stores of emergency oxygen, which will give them extra time to exit a mine or to wait for rescue. Finally, the amendment acknowledges the vital need for experienced mine rescuers who are familiar with the underground geography of a mine. By providing a tax credit to encourage the formation of mine rescue teams, we hope to ensure that mines have well-trained rescuers onsite, saving precious minutes in any rescue attempt.

These are all safety measures that could have made a difference in the terrible tragedies that occurred this year at Sago and Alma Mines. By passing this amendment, we take the first step toward preventing future such tragedies from occurring.

I have joined separately in sponsoring legislation introduced by Senator BYRD and Senator ROCKEFELLER to require the Mine Safety and Health Administration to quickly adopt needed safety standards. Both of these measures are critical to improving safety conditions in America's mines. Our Nation's miners deserve no less, and I urge my colleagues to support this amendment and the Federal Mine Safety and Health Act of 2006.

Instead of helping hard-pressed families, the budget reconciliation process is being misused to cut the programs and eliminate the services that these families need most, while granting the wealthy even more tax breaks. It is yet another opportunity squandered—another chance that this Republican Congress had to make things better. But once again, this Congress has chosen to make them worse instead. The American people deserve better.

Mr. HATCH. Mr. President, I rise to express my support for the tax reconciliation bill being debated today. I have listened to the comments of my colleagues on both sides of the aisle with much interest. Because we have heard a great deal about the wisdom or folly of extending the lower tax rate on dividends and capital gains, I would like to take this opportunity to offer a few words in defense of the extension.

It is interesting to me that so many of my colleagues have juxtaposed the capital gains and dividends provision against the provision to relieve temporarily the individual alternative minimum tax. Listening to some of my colleagues, it seems they believe that we either must include the alternative minimum tax fix or extend the capital gains and dividends provision, but not both. My strong belief is that we can—and must—do both.

The reduced rate of tax on dividends and capital gains has been attacked repeatedly as being a costly sop to the rich and not much else, with little recognition given to its beneficial impact on the economy. The simple fact is that the data and basic economics tell us the cost of the lower tax rates on dividends and capital gains has been minor, and the benefits immense.

There is ample evidence that clearly shows the lower tax rates on capital income have stimulated saving. Alicia Munnell, an economist at Boston College and a former official in the Clinton Treasury Department, finds that working age households saved significantly more in 2003, the year the tax reductions on capital gains and dividends passed the Congress, than they did in 2002. Incidentally, Munnell's work also shows that the recently announced savings rate of zero is misleading—she reports that working families, and by that I mean families with breadwinners who have yet to reach retirement age, are indeed putting money aside. However, looking at our broad, economy-wide measure of net saving, the dissaving done by retired households obscures this fact.

There are other benefits from a lower tax rate on investment income besides increased saving. With lower tax rates, capital becomes more fluid, making it easier for it to flow to projects with higher rates of return. Families lock in much less capital for fear of the taxman. The Government gets a lower percentage of each sale of stock, but it gets more opportunities to tax the money.

And, Uncle Sam is getting more cracks at it. The amount of capital gains realized in 2005 was twice that in 2002. The stock market's value has not doubled since then, and we are not twice as wealthy as we were then—people are just responding to incentives and they are holding their assets for a bit less time. There is nothing necessarily wrong with that. If capital is used more wisely, this ultimately benefits not just the investors but also the workers, who see their productivity increase. When productivity goes up, wages must follow.

The amount of revenue collected from taxes on capital gains and dividends has increased significantly since the reduction in tax rates passed. In 2005, capital gains tax revenues amounted to $80 billion, 60 percent higher than in 2002.

Now, I am not about to claim that this or any other tax cut "pays for itself," but the revenue lost from the lower rates on capital gains and dividends is relatively minor precisely because of the increased economic activity the lower taxes generate. The jump in revenues collected from the two taxes is manifest proof of this.

The beneficiaries of lower taxes on investment income are not just those who own stocks and bonds either, and I would like to point out that it is not just the rich who have investments. I hear from retired Utahns who are living modestly on a Social Security check, a small pension, and their savings. They might not have a lot of money invested, and their dividends are not going to buy them a new car or luxury condominium, but every little bit helps, they tell me.

In reality, everyone benefits from lower taxes on dividends and capital gains—even those with little or no savings. The primary reason for lower tax rates on investment income is that it stimulates the economy. This is not a radical idea by any means—Nobel Prize-winning economists Robert Lucas and Ed Prescott have argued vehemently in favor of this. The logic is simple: Low taxes on the income we receive from our savings means we will save more. That ends up making more capital available for firms to invest in new plant and equipment, increasing productivity as well as wages.

The strong economic conditions of the 1990s are owed to a number of factors, but the most important factor was undoubtedly the resumption of high productivity growth in the middle of the decade. It was in the latter years of the expansion, when unemployment dropped below 5 percent, that we finally saw the elusive gains in income of low-skilled workers. I believe that the low tax rate on capital gains and dividends is an essential ingredient in creating more new jobs and maintaining healthy economic growth.

Some of my colleagues may say they agree that the benefits of lower rates are real and ought to be continued, but they do not see the need to renew a provision that does not expire until 2008. The simple answer is that we need to create some degree of certainty and stability for investors. Investors in 2006 care about what the tax rate on a long-term investment is going to be in 3 years. If they believe that Congress will allow tax rates on dividends and capital gains to increase to their previously higher rates, they will be less inclined to make those investments. That money will go instead to less productive, shorter term investments or will simply not be saved at all. The end result is that we'll have less capital available and lower economic growth.

We must acknowledge that the budget deficit is a problem—it is obvious we need to get our economic house in order soon. The baby boom generation is starting to retire and making our budget mess a lot worse. However, increasing the taxes on dividends and capital gains is not the answer to our budget morass, either in the short or the long run. We need every single bit of economic growth we can get for the next decade to help fund our obligations, and allowing the tax rates on dividends and capital gains to go back up would be a tax increase that would reduce growth.

When we seek to raise revenue by taxing the accumulation of wealth, we are essentially punishing a virtuous activity, namely saving. We should be doing all we can to encourage families to set aside money, to invest, to patiently prepare for the future. Allowing the low tax rate on dividends and capital gains to expire would do more than reduce productivity and economic growth; it would send a signal that we do not value savings in this country. At this point in time, we can afford neither.

Some of my colleagues believe that low tax rates on dividends and capital gains benefit solely the rich and no one else and feel that they cannot countenance a continuation of the low rates at the expense of programs more targeted to low-income households. I do not fault my colleagues for their concern, but I believe that the lower rates helps everyone in our country. It costs us relatively little in terms of lost tax revenue, since the lower rates have resulted in higher dividends, higher stock prices, and more sales of stock, with more revenue created by each activity. At the same time, every single working family in this country benefits from the higher savings engendered by the lower tax rates via the improved productivity, wages, economic growth, and the number of jobs available. High growth and economic prosperity are not the cure to every problem that ails the country, but it can make any solution much more attainable. Supporting low tax rates on dividends and capital gains is the right thing to do.

The PRESIDING OFFICER. Are there further amendments to the first-degree amendment?

If not, without objection, the first-degree amendment, as amended, is agreed to.

The amendment (No. 2707), as amended, was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. FRIST. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The bill having been read the third time, the question is, Shall the bill pass? The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from New Mexico (Mr. DOMENICI) and the Senator from Wyoming (Mr. THOMAS).

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. BINGAMAN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 66, nays 31, as follows:

[Rollcall Vote No. 10 Leg.]

YEAS—66

Alexander
Allard
Allen
Baucus
Bennett
Bond
Brownback
Bunning
Burns
Cantwell
Carper
Chambliss
Clinton
Cochran
Coleman
Collins
Cornyn
Craig
Crapo
Dayton
DeMint
DeWine
Dole
Ensign
Enzi
Feinstein
Frist
Graham
Grassley
Gregg
Hagel
Hatch
Hutchison
Inhofe
Isakson
Johnson
Kyl
Landrieu
Lincoln
Lott
Lugar
Martinez
McCain
McConnell
Menendez
Murkowski
Nelson (FL)
Nelson (NE)
Pryor
Roberts
Rockefeller
Salazar
Santorum
Schumer
Sessions
Shelby
Smith
Snowe
Specter
Stabenow
Stevens
Sununu
Talent
Thune
Vitter
Warner

NAYS—31

Akaka
Bayh
Biden
Boxer
Burr
Byrd
Chafee
Coburn
Conrad
Dodd
Dorgan
Durbin
Feingold
Harkin
Inouye
Jeffords
Kennedy
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Mikulski
Murray
Obama
Reed
Reid
Sarbanes
Voinovich
Wyden

NOT VOTING—3

Bingaman Domenici Thomas

The bill (H.R. 4297), as amended, was passed, as follows:

(The bill will be printed in a future edition of the RECORD.)

USA PATRIOT ACT EXTENSION

The PRESIDING OFFICER. Under the previous order, the clerk will report H.R. 4659.

The legislative clerk read as follows:

A bill (H.R. 4659) to amend the USA PATRIOT Act to extend the sunset of certain provisions of such Act.

The PRESIDING OFFICER. There are now 10 minutes equally divided for debate. Who yields time?

The Senator from Vermont.

Mr. LEAHY. Mr. President, the Republican leadership of the House and the Senate has proposed a second extension of the PATRIOT Act to last another 5 weeks until March 10. I support that. I support it because it is basically what Senator SUNUNU and I proposed in December in the bipartisan S. 2082, cosponsored by 47 Senators from both sides of the aisle. I hope this will allow us to make the final improvements necessary so that the final PATRIOT Act can be passed.

I support H.R. 4659, a bill by Chairman SENSENBRENNER. I hope all Senators from both sides of the aisle will. I say this because—notwithstanding the fact that the Senate doesn't even have a modicum of order. I would note, I am prepared to yield back the rest of my time if the place would just hush a tiny bit—it is a vital debate. The terrorist threat to American security is very real. It is vital that we have the tools to protect American security. That is why I coauthored the PATRIOT Act 5 years ago. That is why it passed with broad bipartisan support. I didn't believe it was a perfect piece of legislation, but I thought it was a good piece of legislation.

And then the Republican leader in the House, Dick Armey, and I put certain sunset provisions in it so that we would actually look at this again. I think we have done that. We are close to having a final product. After all, our Nation is a democracy. It is based on the principles of a balanced government, which requires something that we have not seen enough of lately—checks and balances. We can do that in this act.

I noted earlier this week that I was concerned that the Republican congressional leadership had not even proposed to the Senate Democratic leadership or to that of the Judiciary Committee that action be taken to ensure that certain sunsetting provisions of the USA PATRIOT Act not be allowed simply to expire at the end of this week. Thereafter, action was finally considered. Yesterday the House passed a bill to extend the sunsetting provisions until March 10, 2006. I support H.R. 4659, Chairman SENSENBRENNER's bill.

Those of us working constructively and in a bipartisan way to extend the USA PATRIOT Act with improvements have repeatedly offered to meet to work out the remaining differences. Regrettably, the Senate leadership has not made the effort to work through the remaining concerns or to bring us together. I was concerned because as recently as last week leading Republicans were indicating that they opposed another short-term extension that could be used to work out improvements that can lead to longer term Senate reauthorization.

I was concerned that the demagoguery we had witnessed from the White House and House Republicans would be repeated, but that this time it would have real consequences. Last December, even though a majority of Senators—Republicans and Democrats, those who voted against cloture on the conference report that failed to pass the Senate and those who voted for it urged the Republican leader to act on a short-term, 3-month extension before the end of the last session. At that time the President had said that he would not approve a short-term extension, and House Republicans had said that they would not allow a short-term extension. Those who threatened to let it expire were playing a dangerous political game. Fortunately, common sense prevailed, and in the waning days of the last session, just before adjournment for Christmas, the House approved a short-term extension until February 3, and the President reversed his earlier position and signed it into law.

Now the Republican leadership of the House and Senate is proposing a second extension that will last for another 5 weeks, until March 10. That is in line with the initial bipartisan proposal that Senator SUNUNU and I made in S. 2082, back on December 12, that came to be cosponsored by 47 Senators. It is my hope that this will allow us the opportunity to work out improvements to the reauthorization legislation to better protect the liberties and rights of ordinary Americans. We should do our best to get it right for all Americans.

I have continued meeting and talking with interested Republican and Democratic Senators. Senate staff has finally gotten together this week in a bipartisan meeting. I have joined in a bipartisan request to the majority leader that he bring together key interested Senators to work out a bipartisan compromise that improves the failed conference report.

Contrary to the false claims and misrepresentations by some, there was no effort on either side of the aisle to do away with the PATRIOT Act. That is simply and profoundly not true. Along with others in the Senate, I am seeking to mend and extend the PATRIOT Act, not to end it. There is no reason why the American people cannot have a PATRIOT Act that is both effective and that adequately protects their rights and their privacy. The only people who ever threatened an expiration of the PATRIOT Act were the President and House Republicans. As I noted on December 21, the administration and the Republican congressional leadership were those who were objecting to extending the act and threatening its expiration. That was wrong. That made no sense. They came to their senses in the days that followed.

In his State of the Union speech this week the President said only that reauthorizing the PATRIOT Act was needed to provide the same tools we provide to law enforcement authorities to fight drug trafficking and organized crime. I have worked with others to provide additional tools in the fight against terrorism. With others on both sides of the aisle, I also want to protect the liberties of ordinary and law-abiding Americans from overreaching and unchecked Government intrusion. Permanent gag orders and conclusive presumptions in favor of the Government, when intrusive demands for library records or personal medical records are being made by agents without court approval, smack of a police state, not the United States.

Republican and Democratic Senators joined together last month to say we can do better to protect Americans' liberties while ensuring that our national security is as strong as it can be. In the days after 9/11, the Senate Democratic majority joined with Republicans and the administration in bipartisan action. Unfortunately, the President's political adviser Karl Rove and other Republican partisans have sought to make the PATRIOT Act a partisan issue. I urge them, instead, to join with our bipartisan coalition and work with us to provide a better balance to protect the rights of ordinary Americans.

Every single Senator—Republican and Democratic—voted last July to mend and extend the PATRIOT Act. That bipartisan solution was cast aside by the Bush administration and Republican congressional leaders when they hijacked the conference report, rewrote the bill in ways that fell short in protecting basic civil liberties, and then tried to ram it through Congress as an all-or-nothing proposition. I have joined with Senators of both parties in an effort to work to improve the bill. Some of us are working hard to protect the security and liberty of Americans. What is wrong is for the White House to seek to manipulate this into a partisan fight for its partisan political advantage. Instead of playing partisan politics, the Bush administration and Republican congressional leadership should join in trying to improve the law. Especially when security and liberty are at issue, why not make the extra effort to produce a consensus bill that can deserve the confidence of the American people?

This is a vital debate. The terrorist threat to America's security is very real, and it is vital that we be armed with the tools needed to protect Americans' security. At the same time, the threat to civil liberties is also very real in America today. The question is not whether the Government should have the tools it needs to protect the American people. Of course it should. That is why I coauthored the PATRIOT Act 5 years ago, and that is why that act passed with broad bipartisan support. When I voted for the PATRIOT Act, I did not think it was an ideal piece of legislation, and I knew that it would need careful oversight and, in due course, reform. This is about how to reconcile two fundamental goals—ensuring the safety of the American people and protecting their liberty by means of a system of checks and balances that keeps the Government—their Government—accountable. Those goals should not be the goals of any particular party or ideology, they are shared American goals.

Our Nation is a democracy, founded on the principles of balanced government. We need to restore checks and balances in this country to protect us all and all that we hold dear. Our Congress and our courts provide checks on the abuse of executive authority and should protect our liberties. We need to write the law so that Congress has provided its check in the law and so that courts can play their role, as well. All Americans need to take notice and demand that their liberties and security be properly and effectively maintained.

I see the senior Senator, my good friend from Pennsylvania, on the floor. I will yield back the rest of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. LEAHY. Mr. President, first, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. SPECTER. Mr. President, we need the PATRIOT Act. I am prepared to work on it further to improve it. I support the bill, and I yield back 4 minutes 45 seconds of my 5 minutes.

The PRESIDING OFFICER. The question is on third reading and passage of the bill.

The bill (H.R. 4659) was ordered to a third reading and was read the third time.

The PRESIDING OFFICER. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from New Mexico (Mr. DOMENICI), the Senator from Wyoming (Mr. THOMAS), and the Senator from Mississippi (Mr. LOTT).

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. BINGAMAN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 95, nays 1, as follows:

[Rollcall Vote No. 11 Leg.]

YEAS—95

Akaka
Alexander
Allard
Allen
Baucus
Bayh
Bennett
Biden
Bond
Boxer
Brownback
Bunning
Burns
Burr
Byrd
Cantwell
Carper
Chafee
Chambliss
Clinton
Coburn
Cochran
Coleman
Collins
Conrad
Cornyn
Craig
Crapo
Dayton
DeMint
DeWine
Dodd
Dole
Dorgan
Durbin
Ensign
Enzi
Feinstein
Frist
Graham
Grassley
Gregg
Hagel
Harkin
Hatch
Hutchison
Inhofe
Inouye
Isakson
Jeffords
Johnson
Kennedy
Kerry
Kohl
Kyl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Lugar
Martinez
McCain
McConnell
Menendez
Mikulski
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Obama
Pryor
Reed
Reid
Roberts
Rockefeller
Salazar
Santorum
Sarbanes
Schumer
Sessions
Shelby
Smith
Snowe
Specter
Stabenow
Stevens
Sununu
Talent
Thune
Vitter
Voinovich
Warner
Wyden

NAYS—1

Feingold

NOT VOTING—4

Bingaman
Domenici
Lott
Thomas

The bill (H.R. 4659) was passed.

Mr. FRIST. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FREE TRADE AGREEMENT—REPUBLIC OF KOREA

Mr. STEVENS. Mr. President, I ask unanimous consent that the attached letter from the United States Trade Representative be entered into the RECORD. It serves as notification to Congress that the President intends to initiate negotiations for a free trade agreement, FTA, with the Republic of Korea.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXECUTIVE OFFICE OF THE PRESIDENT, THE UNITED STATES TRADE REPRESENTATIVE,
Washington, DC, February 2, 2006.

Hon. TED STEVENS,
President pro tempore, U.S. Senate, Washington, DC.

DEAR SENATOR STEVENS: In accordance with section 2104(a)(1) of the Trade Act of 2002 (the Trade Act), and pursuant to authority delegated to me by the President, I am pleased to notify the Congress that the President intends to initiate negotiations for a free trade agreement (FTA) with the Republic of Korea. We expect these negotiations to commence in May 2006. We will be consulting closely with the Congress regarding these negotiations, as required by the Trade Act.

The Administration is committed to concluding trade agreements that benefit our farmers, workers, businesses, and families by opening markets around the world. With the continued help of Congress, we will continue to advance America's trade interests.

An FTA with Korea will help foster economic growth and create higher paying jobs in the United States by reducing and eliminating barriers to trade and investment between Korea and the United States. An FTA will enable American companies to increase their exports of goods and services to Korea. The FTA will require Korea to eliminate its tariffs on U.S. industrial and agricultural goods, remove any unjustified sanitary and phytosanitary (SPS) measures, improve the transparency of its regulatory and licensing procedures, and lower its barriers to U.S. service providers.

The United States has much to gain through an FTA with Korea. Korea already is our seventh largest trading partner with $72.6 billion in total bilateral trade during 2004. An FTA promises to increase trade still further across a wide range of goods and services and thereby promote economic growth and the creation of better paying jobs in both countries. An FTA will also level the playing field for U.S. exports in Korea by providing U.S. products treatment comparable to that which Korea has offered its other FTA partners, such as Chile, Singapore, and the European Free Trade Association countries (Iceland, Norway, Switzerland, and Liechtenstein).

An FTA with Korea will provide benefits for U.S. agricultural producers. In 2005, based on eleven month annualized data, Korea was the sixth largest export market for U.S. farm and ranch products. Under an FTA, Korea will eliminate duties on U.S. agricultural goods and reduce other barriers in Korea's agricultural sector, thus creating new opportunities for U.S. farmers in this major market. U.S. negotiators will work hard to ensure that the FTA facilitates further market access for U.S. food and other agricultural exports to Korea and addresses the full range of trade barriers that U.S. agriculture exports currently face in Korea, including unjustified SPS measures. We will consult closely with Congress and the U.S. agriculture community in developing our positions on agricultural issues during the negotiations.

The FTA will also promote exports of U.S. industrial goods by eliminating Korea's tariffs on U.S. products and reducing its nontariff barriers. U.S. industry groups have consistently cited Korea as a potential FTA partner because of the significant opportunities an FTA will provide for new U.S. industrial goods exports. FTA negotiations will also provide an opportunity to reduce or eliminate restrictions that make it difficult for U.S. service providers to operate in the Korean market.

In recent years, U.S. industry has repeatedly pointed out deficiencies in Korea's efforts to protect intellectual property. The Administration has held extensive, detailed discussions on this subject with Korea since 2001, and Korea has made progress on important issues, including improved protection for sound recordings transmitted over the Internet and better enforcement against software and textbook piracy. FTA negotiations will provide a unique opportunity to improve further the protection that Korea affords to intellectual property, including strengthened measures in Korea against the illegal online distribution and transmission of copyrighted works.

We also recognize the concerns raised by U.S. industry about the close interaction between the Korean government and business in some sectors of the economy and the insufficient transparency in Korea's regulatory processes. In order to address these concerns, we will seek to ensure that the FTA provides for regulatory transparency in trade and investment matters, including a public comment period, the publication of general administrative actions, and other appropriate provisions.

An FTA with Korea will also promote bilateral investment. U.S. companies are already the largest source of foreign investment in Korea, while Korea is a growing source of investment in the United States. Additional bilateral investment holds the potential of adding to the many jobs that current high levels of bilateral investment support.

An FTA will also help strengthen Korea's cooperation with the United States in multilateral and regional trade fora. Korea is already a close partner in the Asia-Pacific Economic Cooperation (APEC) and in the Doha Round of negotiations in the World Trade Organization (WTO). As host country for the APEC Leaders Meeting in November 2005, Korea played a leadership role in securing a call by all 21 APEC Leaders for an ambitious conclusion to the WTO Doha Development Agenda. It similarly played a constructive role in the recent Hong Kong Ministerial meeting. Concluding an FTA will help ensure that there continues to be a commonality of interest and close cooperation between the United States and Korea in all international trade fora.

In addition to complementing our cooperative efforts with Korea on global and regional trade issues, an FTA will further enhance the strong United States-Korea regional partnership, which is a force for stability and development in Asia. An FTA will reinforce the shared interests of the United States and Korea and promote common values, facilitating our efforts to work together on a wide range of issues. Korea is a key ally in the region on military and security matters. We are partners in the global war on terrorism, and the extensive ties between the U.S. and Korean armed forces bolster U.S. strategic interests in the region.

While we see substantial benefits in pursuing an FTA with Korea, we are also giving careful consideration to concerns that some members of Congress have raised regarding Korea's trade policies. We will continue to consult closely with Congress as we consider how to address these issues in the context of FTA negotiations.

Initial consultations with the Congressional Oversight Group (COG) on September 8, 2005 and with other Members of Congress regarding potential FTA negotiations with Korea have been positive, and our decision to move ahead with negotiations with Korea was strongly influenced by the bipartisan expressions of interest we have received from members of Congress and U.S. industry. The Administration will continue to consult closely with the Congress, including the COG, throughout the negotiation process on the full range of issues.

Our specific objectives for negotiations with Korea are as follows:

Trade in Goods

Seek to eliminate tariffs and other duties and charges on trade between Korea and the United States on the broadest possible basis, subject to reasonable adjustment periods for import-sensitive products.

Seek to eliminate non-tariff barriers in Korea to U.S. exports, including permit and licensing barriers on agricultural and other products, restrictive administration of tariff-rate quotas, unjustified trade restrictions that affect new U.S. technologies, and other trade restrictive measures that U.S. exporters identify.

Seek to eliminate government practices that adversely affect U.S. exports of perishable or cyclical agricultural products, while providing for improved U.S. import relief mechanisms as appropriate.

Pursue a mechanism with Korea that will support achieving the U.S. objective in the WTO negotiations of eliminating all export subsidies on agricultural products, while maintaining the right to provide bona fide food aid and preserving U.S. agricultural market development and export credit programs.

Pursue fully reciprocal access to the Korean market for U.S. textile and apparel products.

Customs Matters, Rules of Origin, and Enforcement Cooperation

Seek specific and trade facilitative customs commitments to ensure that Korea's customs operations are conducted with transparency, efficiency, and predictability, and that Korea's customs laws, regulations, decisions, and rulings are applied in a manner that facilitates the efficient and timely release of goods, and prevents unwarranted procedural obstacles to international trade.

Seek rules of origin, procedures for applying these rules, and provisions to address circumvention matters that will ensure that preferential duty rates under an FTA with Korea apply only to goods eligible to receive such treatment, without creating unnecessary obstacles to trade.

Seek terms for cooperative efforts with Korea regarding enforcement of customs and related issues, including in the area of trade in textiles and apparel.

Sanitary and Phytosanitary (SPS) Measures

Seek to have Korea reaffirm its WTO commitments on SPS measures and eliminate any unjustified SPS restrictions.

Seek to strengthen cooperation between U.S. and Korean SPS authorities.

Seek to strengthen collaboration with Korea in implementing the WTO SPS Agreement and to enhance cooperation with Korea in relevant international bodies on developing international SPS standards, guidelines, and recommendations.

Technical Barriers to Trade (TBT)

Seek to have Korea reaffirm its WTO TBT commitments and eliminate any unjustified TBT measures.

Seek to strengthen collaboration with Korea in implementing the WTO TBT Agreement and create a procedure for exchanging information with Korea on TBT-related issues.

Intellectual Property Rights

Seek to establish standards to be applied in Korea that build on the foundations established in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and other international intellectual property agreements, such as the World Intellectual Property Organization (WIPO) Copyright Treaty, the WIPO Performances and Phonograms Treaty, and the Patent Cooperation Treaty.

In areas such as patent protection and protection of undisclosed information, seek to have Korea apply levels of protection and practices more in line with U.S. law and practices, including appropriate flexibility.

Seek to strengthen Korea's laws and procedures to enforce intellectual property rights, such as by ensuring that Korean authorities seize suspected pirated and counterfeit goods, equipment used to make such goods or to transmit pirated goods, and documentary evidence.

Seek to strengthen measures in Korea that provide for compensation of right holders for infringements of intellectual property rights and to provide for criminal penalties under Korean law that are sufficient to have a deterrent effect on piracy and counterfeiting.

Trade in Services

Pursue disciplines to address discriminatory and other barriers to trade in Korea's services market, and pursue a comprehensive approach to market access, including any necessary improvements in access to the telecommunications, financial services, professional services, or other sectors.

Seek improved transparency and predictability of Korean regulatory procedures, specialized disciplines for financial services, and additional disciplines for telecommunications and other service sectors, as necessary.

Investment

Seek to establish rules that reduce or eliminate artificial or trade-distorting barriers to U.S. investment in Korea, while ensuring that Korean investors in the United States are not accorded greater substantive rights with respect to investment protections than U.S. investors in the United States, and to secure for U.S. investors in Korea important rights comparable to those that would be available under U.S. legal principles and practice.

Seek to ensure that U.S. investors receive treatment as favorable as that accorded to domestic or other foreign investors in Korea and to address unjustified barriers to the establishment and operation of U.S. investments in Korea.

Provide procedures to resolve disputes between U.S. investors and the Korean government that are in keeping with the Trade Promotion Authority goals of being expeditious, fair, and transparent.

Electronic Commerce

Seek to have Korea affirm that it will allow products and services to be delivered electronically and will not unjustifiably discriminate among those products and services.

Seek to affirm that Korea does not apply customs duties to digital products that are delivered electronically.

Seek to ensure that Korea determines the dutiable value of digital products contained on carrier media based on the value of the media, not their content.

Government Procurement

Seek to expand on Korea's commitments in the WTO Government Procurement Agreement (GPA), thus providing greater opportunities for U.S. firms to secure construction and supply contracts with the Korean government, particularly by allowing U.S. suppliers to compete for smaller contracts that are not currently open to U.S. bidders or goods.

Transparency/Anti-Corruption/Regulatory Reform

Seek to make Korea's administration of its trade and investment regime more transparent, and pursue rules that will permit timely and meaningful public comment before Korea adopts trade- and investment-related measures.

Seek to eliminate Korean government regulation or other measures that discriminate against or deny full market access for U.S. exporters or investors.

Seek to ensure that Korea applies high standards prohibiting corrupt practices affecting international trade and investment and enforces such prohibitions.

Competition

Address anticompetitive business conduct, designated monopolies, state enterprises, and other competition-related issues, as appropriate.

Seek provisions that foster cooperation on competition law and policy and that provide for consultations on specific competition issues that may arise.

Trade Remedies

Provide a safeguard mechanism during the transition period to allow a temporary revocation of tariff preferences if increased imports from Korea are a substantial cause of serious injury or threat of serious injury to the domestic industry.

Make no changes to U.S. antidumping and countervailing duty laws.

Environment

Seek to promote trade and environment policies that are mutually supportive.

Seek an appropriate commitment by Korea to effectively enforce its environmental laws.

Establish that Korea will strive to ensure that it will not, as an encouragement for trade or investment, weaken or reduce the protections provided for in its environmental laws.

Seek to develop ways to work with Korea, including through consultative mechanisms, to promote sustainable development and address environmental issues of mutual interest.

Labor

Seek an appropriate commitment by Korea to effectively enforce its labor laws.

Establish that Korea will strive to ensure that it will not, as an encouragement for trade or investment, weaken or reduce the protections provided for in its labor laws.

Based upon review and analysis of Korea's labor law and practices, establish procedures for consultations and cooperative activities with Korea to strengthen its capacity to promote respect for core labor standards, including compliance with ILO Convention 182 on the worst forms of child labor.

State-to-State Dispute Settlement

Encourage the early identification and settlement of disputes through consultation.

Seek to establish fair, transparent, timely, and effective procedures to settle disputes arising under the agreement.

In addition, the FTA with Korea will take into account other legitimate U.S. objectives including, but not limited to, the protection of health, safety, environment, essential security, and consumer interests.

We are committed to concluding these negotiations with timely and substantive results for U.S. workers, consumers, businesses, and farmers, and will pursue these specific objectives, keeping in mind the overall and principal U.S. negotiating objectives and priorities that the Congress has identified. We look forward to continuing to work with the Congress as negotiations with Korea begin, and we commit to work with you as we bring them to a successful conclusion.

Sincerely,

ROB PORTMAN.

REMEMBERING CORETTA SCOTT KING

Mr. SANTORUM. Mr. President, I rise today to honor the life of Coretta Scott King and express my condolences on her passing. Mrs. King carried the message of nonviolence and the dream of racial equality around our great nation and throughout the world. She led goodwill missions in Africa, Latin America, Europe, and Asia. Mrs. King traveled throughout the world advocating racial justice, religious freedom, and helping those in need.

Coretta Scott was born in Marion, AL, on April 27, 1927. In a world where neither women nor minorities pursued an education, she graduated as valedictorian of her high school class and attended Antioch College in Yellow Springs, OH. She received a bachelor of arts in music and education and then studied concert singing at the New England Conservatory of Music in Boston, MA.

While in Boston, she met Martin Luther King, Jr., and the two forged a unique relationship that led to the raising of their four children and an endeavor to find racial equality throughout our country. She was not just the wife of one of our great civil rights leaders. She was a great civil rights leader in her own right. She became the first woman to deliver the Class Day address at Harvard, and the first woman to preach at a statutory service at St. Paul's Cathedral in London.

Just days after the death of Martin Luther King, Jr., Mrs. King carried out her husband's dream by leading a march on behalf of sanitation workers in Memphis, TN. Mrs. King continued to speak publicly and write nationally syndicated columns. As founding president, chair, and chief executive officer of the Martin Luther King, Jr. Center for Nonviolent Social Change, she dedicated herself to providing local, national, and international programs that have trained tens of thousands of people in Dr. King's philosophy and methods. In 1983, she led an effort that brought more than a half million demonstrators to Washington, DC, to commemorate the 20th anniversary of the 1963 March on Washington for Jobs and Freedom, where King delivered his famous "I Have a Dream" speech.

Mrs. King was also an instrumental part in establishing Dr. King's birthday, January 15, as a national holiday in the United States. By an act of Congress, the first national observance of the holiday took place in 1986. Dr. King's birthday is now marked by annual celebrations in over 100 countries.

Mrs. King has received honorary doctorates from over 60 colleges and universities and was the author of three books. She served on, or helped create, dozens of organizations, and has met with various heads of state to address the issues of racial inequality and fighting poverty.

As a nation, we owe Mrs. King a debt of gratitude for her strength and perseverance throughout her lifelong pursuit of equality for all Americans. She and her husband inspired generations of Americans to work towards freedom and equality. Their legacy will live on and their quest for civil rights will never be forgotten.

HONORING OUR ARMED FORCES

PRIVATE FIRST CLASS BRIAN J. SCHOFF

Mr. BAYH. Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave young man who was born in Michigan City. Brian Schoff, 22 years old, died on January 29 when a roadside bomb exploded near his humvee during a combat operation. With his entire life before him, Brian risked everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

Although Brian moved to Tennessee when he was young, his valor over the course of his service in Iraq is proof that he was a Hoosier at heart. He joined the Army in 2003, a year after he graduated from high school, because he wanted to serve his country. Brian enjoyed the military, but he intended to return to Indiana in May to join his father working at Sullair Corporation. His father described his son to local media outlets as an adventurous, active person who enjoyed hunting, fishing and sports.

Brian was killed while serving his country in Operation Iraqi Freedom. He was a member of the 101st Airborne Division based at Fort Campbell, KY. This brave young soldier leaves behind his father, Brian L. Schoff, and his mother, Cathy Odle of Manchester, TN.

Today, I join Brian's family and friends in mourning his death. While we struggle to bear our sorrow over this loss, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is his courage and strength of character that people will remember when they think of Brian, a memory that will burn brightly during these continuing days of conflict and grief.

Brian was known for his dedication to his family and his love of country. Today and always, Brian will be remembered by family members, friends and fellow Hoosiers as a true American hero, and we honor the sacrifice he made while dutifully serving his country.

As I search for words to do justice in honoring Brian's sacrifice, I am reminded of President Lincoln's remarks as he addressed the families of the fallen soldiers in Gettysburg: "We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here." This statement is just as true today as it was nearly 150 years ago, as I am certain that the impact of Brian's actions will live on far longer that any record of these words.

It is my sad duty to enter the name of Brian J. Schoff in the official RECORD of the U.S. Senate for his service to this country and for his profound commitment to freedom, democracy and peace. When I think about this just cause in which we are engaged, and the unfortunate pain that comes with the loss of our heroes, I hope that families like Brian's can find comfort in the words of the prophet Isaiah who said, "He will swallow up death in victory: and the Lord God will wipe away tears from off all faces."

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Brian.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress, I have come to the floor to highlight a separate hate crime that has occurred in our country.

On February 1, 2006, in New Bedford, MA, a man walked into Puzzles Lounge and asked someone at the bar if it was a gay bar. The man then opened fire with a handgun, wounding at least three people. Two of the victims were flown to Boston hospitals for treatment, while the third person was taken to St. Luke's hospital in New Bedford.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT

Mr. ALEXANDER. Mr. President, I rise today to express my support for the Fairness in Asbestos Injury Resolution Act sponsored by Senators SPECTER and LEAHY. The FAIR Act is a bill about American jobs. It will have a substantial effect on a number of jobs at Tennessee manufacturers such as Nissan, Saturn, and Eastman as well as hundreds of their Tennessee suppliers. That is because while it means faster, more efficient resolution of claims for those harmed by asbestos exposure, it also means certainty for manufacturers so that they can spend more of their money investing in their businesses and creating more American jobs.

Americans injured by asbestos are waiting too long and paying too much to adjudicate these claims. According to estimates from the RAND Institute, of the $70 billion expended on asbestos litigation through 2002, nearly 60 percent was spent on attorneys' fees and other transaction costs. Put another way, asbestos victims are only getting a little more than 40 cents of every dollar that is being paid out on asbestos claims. In addition, in many cases, these claimants are waiting more 3 years to collect this compensation as their cases wind their way through the tort system. As a result, many of these victims are not able to cover the costs of medical treatments that cannot be delayed. The FAIR Act will help claimants by capping attorneys' fees at 5 percent—and thereby putting 95 percent of the compensation paid out into the pockets of the victims. It will also ensure that victims get a ruling on their claim within 90 to 180 days from the Department of Labor—not 3 years or more.

Since the 1980s, the number of companies defending themselves from asbestos claims has risen from 300 to more than 8,400. More than 70 companies have gone bankrupt, resulting in more than 60,000 workers losing their jobs and retirees seeing their retirement funds shrink. In Tennessee, according to the 2002 Economic Census, more than 400,000 jobs are in the manufacturing sector. Without this bill, tens of thousands of those jobs may be shipped overseas as companies struggle to afford the enormous payouts that result under the current system.

The Senate Judiciary Committee has considered this issue for more than 20 years. Senator SPECTER and Senator HATCH before him held numerous meetings with stakeholders and members of the Judiciary Committee. The bill has gone through numerous revisions to accommodate issues raised by parties on all sides. Senator SPECTER and Senator LEAHY have been cooperative, accommodating, flexible, and generous with their time. And they have produced a bill that has garnered support from a broad spectrum of manufacturers, insurers, and claimants.

The FAIR Act may not be perfect, but it will start us on the road toward achieving two critical goals: it allow people injured by asbestos to receive compensation quickly and efficiently, without spending years tied up in the courts and losing a large chunk of their award to attorneys' fees; and it will save jobs by giving American companies certainty with regard to the costs of compensating claimants.

I urge my colleagues to support this important legislation.

ILLEGAL EXPORT OF DANGEROUS FIREARMS TO MEXICO

Mr. LEVIN. Mr. President, several recent published reports indicate that lax gun safety laws here in the United States may be resulting in the trafficking of thousands of firearms across the border into Mexico and contributing to a surge in violence and crime in that country.

Many firearms are illegal in Mexico. In fact, there are apparently less than 2,500 licensed gun owners in the entire country. This is because such licenses take a year or more to process, cost nearly $2,000, and must be renewed every 2 years. In addition, Mexican authorities say they confiscate more than 250 illegal firearms every day from crime suspects. U.S. and Mexican law enforcement officials estimate that as much as 95 percent of these guns can be traced back to the United States.

Mexican law enforcement officials have made several major illegal weapons seizures in the last few months alone. In December, 20 assault rifles were seized in Tijuana, just across the border from California. In another seizure, police recovered a cache of weapons that included seven assault rifles and several semiautomatic handguns in the Mexican border town of Nuevo Laredo. It also should be noted that in the last year alone more than 100 people were shot to death by suspected drug cartel members in Nuevo Laredo. According to Mexican and U.S. officials, these drug smuggling operations are frequently the end users of guns illegally trafficked from the United States.

Reportedly, weak U.S. gun regulations are being exploited to help arm criminals in Mexico. One way of doing this is through the use of a "straw purchaser" who buys firearms legally in the United States on behalf of a Mexican gun trafficker. In one reported case last year, a handgun recovered in Reynosa, Mexico, was traced back to a Texas man who had reportedly bought more than 150 guns for criminals in Mexico. In another case, more than 80 guns were traced to a Mexican national who apparently paid Texas residents to purchase them for him. According to Mexican authorities, guns recovered in Mexico are often traced to original buyers in Texas, where "straw purchasers" can buy guns and ammunition in unlimited quantities.

Law enforcement authorities in Mexico say assault rifles are the most sought-after weapons by Mexican criminals. Unfortunately, these dangerous weapons are in plentiful supply here in the United States due to Congress's failure to reauthorize or strengthen the 1994 Assault Weapons Ban. On September 13, 2004, this legislation expired, allowing 19 previously banned assault weapons, as well as firearms that can accept detachable magazines and have more than one of several specific military features, such as a folding/telescoping stock, protruding pistol grip, bayonet mount, threaded muzzle or flash suppressor, barrel shroud or grenade launcher to be legally sold again. These dangerous weapons are being bought in the United States and trafficked into Mexico, where they are frequently used in violent crime, conflicts between rival drug cartels, and shootouts with Mexican law enforcement authorities.

Apparently, law enforcement officials are also concerned about the prevalence of .50-caliber firearms, which are turning up more frequently in Mexico in recent years. These high-powered weapons fire thumb-sized bullets that come in armor-piercing, incendiary, and explosive varieties and can easily punch through aircraft fuselages, fuel tanks, and engines. Under current U.S. law, .50-caliber sniper rifles can be purchased by private individuals with only minimal federal regulation. In fact, these dangerous weapons are treated the same as other long rifles including shotguns, hunting rifles, and smaller target rifles.

I am a cosponsor of the Fifty-Caliber Sniper Weapon Regulation Act introduced by Senator FEINSTEIN. This bill would reclassify .50-caliber rifles under the National Firearms Act, NFA, treating them the same as other high-powered or especially lethal firearms like machineguns and sawed off shotguns. Among other things, reclassification of .50-caliber sniper rifles under the NFA would subject them to new requirements, including registration with federal authorities. These additional requirements would help law enforcement officials identify "straw purchasers" and other sources of illegally trafficked .50-caliber rifles recovered in Mexico more easily.

The United States has a responsibility to do what it can to help prevent the illegal export of dangerous firearms outside of our borders. By enacting commonsense legislation, like the Fifty-Caliber Sniper Weapon Regulation Act and the Assault Weapons Ban, we can improve the security of communities in the United States, as well as those in neighboring countries.

FEDERAL DEPOSIT INSURANCE CORPORATION

Mr. JOHNSON. Mr. President, last year, I joined with Senators ENZI, HAGEL and ALLARD to introduce S. 1562, the Safe and Fair Deposit Insurance Act of 2005, legislation to overhaul and reform this country's deposit insurance system. I also wish to thank Senator BEN NELSON for joining us as a cosponsor.

I have been closely tied to deposit insurance reform for many years, and I am pleased to see that my strong commitment to this issue will result in the enactment of critical reforms that will provide tangible benefits to financial institutions and their customers. Many of my colleagues on the Banking Committee will recall when I first introduced the Main Street Act back in 2000. We have come a long way since then. The legislation that is now making its way to President Bush's desk is the result of many years of debate and careful deliberation, and has garnered strong bipartisan support along the way.

The enactment of this legislation will mark a notable milestone in the history of banking and financial services in this country. Deposit insurance is one of the cornerstones of our country's financial system, and it is especially critical to our Nation's smaller financial institutions and community banks.

I am pleased that we are giving the Federal Deposit Insurance Corporation and the National Credit Union Administration the requisite tools to appropriately operate and manage the newly merged deposit insurance fund and assess premiums based on the risks that institutions pose to the system. These reforms were long overdue. It is imperative that the framework of deposit insurance that was established to promote the stability and soundness of our banking system not fall victim to the political process or become static but rather be appropriately reformed and dynamic enough to keep pace with the evolution of that system.

The key reforms embodied in the legislation will promote depositor confidence by ensuring that depositors' hard-earned money, from the funds that cover daily living expenses to funds they are saving for retirement and a rainy day, will continue to be insured against risks over which they have no control.

By merging the bank insurance fund with the savings association insurance fund, we create a stronger and more diversified fund, and eliminate the possibility for disparities in premiums between banks and thrifts. Implementing a system of risk-based insurance premiums will ensure that banks pay based on the risk they pose to the system, and the FDIC will be able to price insurance premiums accordingly. By increasing the level of coverage for retirement accounts to $250,000, we are adjusting for the real value of coverage, and will promote financial stability for individual retirees. In the current environment, with the uncertainty surrounding Social Security and pension benefits, it is critical that we provide appropriate coverage for the hard-working Americans who have saved for their retirement and long-term needs.

I would again like to recognize the banking community in South Dakota for the invaluable and critical role they have played in this process over the past 5 years. I truly appreciate the input and recommendations that I have received from the industry overall. I would also like to thank Chairman SHELBY, and Ranking Member SARBANES for their leadership, Senators ENZI, HAGEL and ALLARD for the many hours of hard work, and former FDIC Chairman Don Powell for his commitment to deposit insurance reform and tremendous leadership.

ADDITIONAL STATEMENTS

RECOGNIZING THE COMMISSION ON INDEPENDENT COLLEGES AND UNIVERSITIES

• Mrs. CLINTON. Mr. President, I want to take this opportunity to recognize a remarkable organization, the Commission on Independent Colleges and Universities, cIcu, with which I have had the pleasure of working closely in the years since I was elected to the U.S. Senate. I am delighted to announce that this year cIcu is celebrating its 50th anniversary. In 50 years of service, cIcu has been at the forefront of every major issue facing postsecondary education in New York. With Abe Lackman's leadership, cIcu has been a powerful champion for college access, helping to increase opportunities for thousands upon thousands of New Yorkers.

cIcu's more than 100 members—private, nonprofit colleges and universities in New York—offer an exceptional educational experience, with personalized attention, and world-class faculty. New York is home to more of the Nation's top 100 colleges and universities than any other State and a leading destination for students attending college out of State. Because of the hard work and commitment of the people at cIcu and throughout the independent sector, cIcu member campuses have been pioneers in expanding access to higher education in New York, serving more low-income and minority students than many public higher education institutions. New York's independent colleges and universities are also a robust economic engine, generating innovative ideas and sustaining thousands of jobs—a fact that Abe would never allow me to forget.

cIcu schools enroll 452,000 students, including 300,000 New Yorkers, employ 131,000 people with an annual payroll of $6 billion, and generate $40 billion of annual economic impact. From major research universities to small faith-based institutions. cIcu's schools are shaping the future of individual students' lives and New York's economy. So happy birthday cIcu. May your second 50 years be as successful and productive as your first 50.•

IN MEMORY OF WILLIAM MATTHEW BYRNE, JR.

• Mrs. FEINSTEIN. Mr. President, I would like to offer a few words in observance of the passing of U.S. District Judge William Matthew Byrne, Jr., a great legal mind and ambassador of justice who nobly served our country for over 30 years on the Federal bench.

I extend my deepest sympathy to the family of Judge Byrne, his many friends and colleagues, and the members of the legal community everywhere who had come to know his talent and charm. A giant in his field, Judge Byrne tirelessly traveled the globe teaching and promoting the rule of law. His efforts touched countless individuals and left an immeasurable impact on legal systems on an international scale.

After honorably serving our Nation in the U.S. Air Force and amassing an unparalleled 96 percent conviction record as a U.S. attorney in Los Angeles, Judge Byrne was named head of the Commission on Campus Unrest by President Nixon. As head of the Commission, Judge Byrne sought to bridge the growing cultural divide that had developed as a result of the war in Vietnam.

The Commission's report revealed Judge Byrne's unassailable judgment and great courage. Bravely stepping into the middle of the fray, he found fault with students and police alike. Judge Byrne's work on the Commission played an important role in reuniting the country around our shared values. His contribution was recognized in 1971, when he was confirmed to a Federal judgeship at the age of 40, making him at that time the youngest man in America's history to rise to this prominent position.

Although he dealt with many high-profile cases, Judge Byrne was most remembered for his courageous handling of the trial of Daniel Ellsberg, the man charged with releasing classified documents in the infamous Pentagon Papers case. The Government, he ruled, did not have a case, and a mistrial was declared.

In a time of rampant government scandal and deep-seated corruption at the highest levels of power, Judge Byrne courageously stood up for his convictions, sending the powerful message that nobody was above the law.

"The totality of the circumstances in this case," Judge Byrne ruled, "offend a sense of justice." It is for this sense of justice that Judge Byrne will always be remembered.

Throughout his long and remarkable career, Judge Byrne distinguished himself as a man of sound jurisprudence, honor, and integrity. His lasting legacy of sensible legal adjudication serves as an inspiration to all Americans.

Once again, my heart goes out to Judge Byrne's family and all those who knew him.

He will truly be missed.•

THE RETIREMENT OF TOM CAMPBELL

• Mr. ROBERTS. Mr. President, I rise to recognize the life work of Mr. Tom Campbell as he retires from Dow Agrosciences after more than 40 years of dedicated service. Tom will leave a legacy of leadership and a belief in the unlimited potential of American agriculture.

Mr. Campbell joined the Dow Chemical Company agriculture division in 1965 as a field representative servicing corn and soybean producers in Illinois and Missouri. From there, he transferred to Louisiana to work with producers of sugar cane, rice, soybeans, sweet potatoes, cotton, strawberries, timber, and livestock. He moved to Hawaii in 1973 as manager for the company's Hawaii operations where he worked with sugar cane, pineapple, and fresh fruit producers as well as customers of product groups Dow served. In 1975, Mr. Campbell was moved to Midland, MI, to manage the market introduction of a new insecticide into the cotton and corn markets in North America. Transferring to Dallas, TX, he then managed product sales for Texas, Oklahoma, New Mexico, Montana, North and South Dakota, Wyoming, and Colorado. He then returned to Michigan to manage the marketing of agricultural products serving the rangeland and industrial vegetation markets of North America.

In 1989, he became the Federal Government Affairs manager, based in Washington, DC. In this capacity, Mr. Campbell has been responsible for Federal legislative activities, interfacing with governmental agencies on regulatory matters, continued involvement and cooperation with domestic trade associations, and support to business development in other countries. Mr. Campbell held this position until his retirement on December 31, 2005.

On the home front, Tom and his wife Lynda have raised two sons, been members of the St. John's Episcopal Church of McLean, VA, and are active in numerous community groups and boards, from the Langley High School Boosters Club to their local homeowners association.

In this business, there are people who tell you what you want to hear and people who tell you what you need to hear. Tom Campbell has always been someone who tells me and other Members of Congress what we need to hear, and I thank him for that.

The reason that I mention all these things, the reason that Mr. Campbell has had such a long and rich career, of course can be traced back to his roots on a wheat and cattle farm in Mitchell County, KS, and the bachelor's degree in animal science he earned at Kansas State University. Kansans join me in celebrating the many accomplishments of Tom Campbell.•

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5520. A communication from the Assistant Attorney General for Administration, Department of Justice, transmitting, pursuant to law, the Department's Fiscal Year 2005 Competitive Sourcing Report; to the Committee on the Judiciary.

EC–5521. A communication from the Principal Deputy Director of National Intelligence, transmitting, pursuant to law, a report entitled "Information Sharing Environment Interim Implementation Plan"; to the Select Committee on Intelligence.

EC–5522. A communication from the Deputy Chief for National Forest System, Forest Service, Department of Agriculture, transmitting, pursuant to law, the 2004 Report for the Granite Watershed Enhancement and Protection Stewardship Project; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5523. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Treatment of Fruits and Vegetables" (Doc. No. 03–077–2) received on January 28, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5524. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Tuberculosis in Cattle and Bison; State and Zone Designations: Minnesota" (Doc. No. 6–004–1) received on January 31, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5525. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Add Argentina to the List of Regions Considered Free of Exotic Newcastle Disease" (Doc. No. 04–083–3) received on January 31, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5526. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the Report to Congress on Adoption and Other Permanency Outcomes for Children in Foster Care: Focus on Older Children; to the Committee on Health, Education, Labor, and Pensions.

EC–5527. A communication from the Assistant Secretary for Civil Rights, Department of Education, transmitting, pursuant to law, the Department's Office for Civil Rights Fiscal Year 2004 Annual Report; to the Committee on Health, Education, Labor, and Pensions.

EC–5528. A communication from the Secretary of Education, transmitting, pursuant to law, the Department's Fiscal Year 2005

Competitive Sourcing Report; to the Committee on Health, Education, Labor, and Pensions.

EC-5529. A communication from the Deputy Director of Communications and Legislative Affairs, Equal Employment Opportunity Commission, transmitting, pursuant to law, the Commission's Fiscal Year 2005 Competitive Sourcing Report; to the Committee on Health, Education, Labor, and Pensions.

EC–5530. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to the Case-Zablocki Act, 1 U.S.C. 112b, as amended, the report of the texts and background statements of international agreements, other than treaties (List 06-09-06-20; to the Committee on Foreign Relations.

EC-5531. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled "Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Accreditation of Agencies; Approval of Persons" (RIN1400–AA88) received on January 28, 2006; to the Committee on Foreign Relations.

EC-5532. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled "Intercountry Adoption—Preservation of Convention Records" (RIN1400-AB69) received on January 28, 2006; to the Committee on Foreign Relations.

EC–5533. A communication from the Assistant Administrator, Bureau for Legislative and Public Affairs, Agency for International Development, transmitting, pursuant to law, a report relative to competitive sourcing programs; to the Committee on Foreign Relations.

EC–5534. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report relating to post-liberation Iraq under Section 7 of the Iraq Liberation Act of 1998 for the August 15, 2005 through October 15, 2005 period; to the Committee on Foreign Relations.

EC-5535. A communication from the Under Secretary of Defense, Acquisition, Technology and Logistics, transmitting, pursuant to law, a report relating to the report on the amount of Department of Defense purchases from foreign entities in fiscal year 2005; to the Committee on Armed Services.

EC-5536. A communication from the Under Secretary of Defense, Comptroller, transmitting, pursuant to law, the report on the account balance in the Defense Cooperation Account as of December 31, 2005 and a listing of personal property contributed by coalition partners to the Global War on Terrorism for the quarter ending December 31, 2005; to the Committee on Armed Services.

EC-5537. A communication from the Team Chief, Department of the Army, transmitting, pursuant to law, the report of a rule entitled "Personnel Review Board" received on January 26, 2006; to the Committee on Armed Services.

EC–5538. A communication from the Acting Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Contracting by Negotiation" (DFARS Case 2003–D077) received on January 31, 2006; to the Committee on Armed Services.

EC-5539. A communication from the Acting Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Simplified Acquisition Procedures" (DFARS Case 2003–D075) received on January 31, 2006; to the Committee on Armed Services.

EC-5540. A communication from the Acting Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Utility Rates Established by Regulatory Bodies" (DFARS Case 2003-D096) received on January 31, 2006; to the Committee on Armed Services.

EC–5541. A communication from the Acting Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Acquisition of Utility Services" (DFARS Case 2003–D069) received on January 31, 2006; to the Committee on Armed Services.

EC-5542. A communication from the Acting, Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Specialized Service Contracting" (DFARS Case 2003-D041) received on January 31, 2006; to the Committee on Armed Services.

EC–5543. A communication from the Acting Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Department of Defense Mentor-Protege Program" (DFARS Case 2004–D028) received on January 31, 2006; to the Committee on Armed Services.

EC-5544. A communication from the Chairman, Medicare Payment Advisory Commission, transmitting, pursuant to law, a report entitled "Effects of Medicare Payment Changes on Oncology Services"; to the Committee on Finance.

EC–5545. A communication from the Assistant Secretary for Import Administration, Alternate Chairman, Department of Commerce, transmitting, pursuant to law, the Fiscal Year 2004 Foreign-Trade Zones Board Report; to the Committee on Finance.

EC-5546. A communication from the Regulations Officer, Social Security Administration, transmitting, pursuant to law, the report of a rule entitled "Revised Medical Criteria for Evaluating Cardiovascular Impairments" (RIN0960-AD48) received on January 31, 2006; to the Committee on Finance.

EC-5547. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program; Payment for Respiratory Assist Devices With Bi-level Capability and a Backup Date" (RIN0938-AN02) received on January 31, 2006; to the Committee on Finance.

EC–5548. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Bureau of Labor Statistics Price Indexes for Department Stores—November 2005" (Rev. Rul. 2006-6) received on January 31, 2006; to the Committee on Finance.

EC–5549. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Allocation and Apportionment of Expenses; Alternative Method for Determining Tax Book Value of Assets" (TD9247) received on January 31, 2006; to the Committee on Finance.

EC-5550. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Clarification of Definitions" ((RIN1545-BD37)(TD9246)) received on January 31, 2006; to the Committee on Finance.

EC-5551. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Provisions Regarding Cross-border Transactions" ((RIN1545–BA65)(TD9243)) received on January 31, 2006; to the Committee on Finance.

EC–5552. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report relative to the construction of a hurricane and storm damage reduction project for the Dare County Beaches, North Carolina; to the Committee on Environment and Public Works.

EC–5553. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report relative to the Indian River Lagoon—South, ecosystem restoration project, which is located in Martin, St. Lucie, and Lake Okeechobee Counties, Florida; to the Committee on Environment and Public Works.

EC-5554. A communication from the Chairman, Nuclear Regulatory Commission, transmitting, pursuant to law, the Commission's November 2005 monthly report on the status of its licensing and regulatory duties; to the Committee on Environment and Public Works.

EC-5555. A communication from the General Manager, Defense Nuclear Facilities Safety Board, transmitting, pursuant to law, the Board's Fiscal Year 2005 Competitive Sourcing Report; to the Committee on Energy and Natural Resources.

EC-5556. A communication from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting, pursuant to law, the report of a draft joint resolution entitled "Approving the Location of a Dwight D. Eisenhower Memorial in the Nation's Capital"; to the Committee on Energy and Natural Resources.

EC–5557. A communication from the Administrator and Chief Executive Officer, Department of Energy, transmitting, pursuant to law, the Bonneville Power Administration's 2005 Annual Report; to the Committee on Energy and Natural Resources.

EC-5558. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled "Solar and Wind Technologies for Hydrogen Production"; to the Committee on Energy and Natural Resources.

EC–5559. A communication from the Chief Human Capital Officer/Director, Human Resources, Department of Energy, transmitting, pursuant to law, the report of action on a nomination for the position of Assistant Secretary, Fossil Energy , received on January 31, 2006; to the Committee on Energy and Natural Resources.

EC-5560. A communication from the General Counsel, Federal Energy Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled "Transactions Subject to FPA Section 203" (Docket No. RM05-34-000) received on January 31, 2006; to the Committee on Energy and Natural Resources.

EC–5561. A communication from the Acting Deputy Chief Financial Officer, Department of Housing and Urban Development, transmitting, pursuant to law, the Department's

Fiscal Year 2005 Competitive Sourcing Report: to the Committee on Banking, Housing, and Urban Affairs.

EC–5562. A communication from the Acting Director, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, a report that funding for the State of Florida as a result of Tropical Storm Rita on September 18—October 23, 2005, has exceeded $5,000,000; to the Committee on Banking, Housing, and Urban Affairs.

EC–5563. A communication from the Secretary of Commerce, transmitting, pursuant to law, the Department's 2006 Report on Foreign Policy-Based Export Controls; to the Committee on Banking , Housing, and Urban Affairs.

EC–5564. A communication from the Secretary of Commerce, transmitting, pursuant to law, the Department's annual report on the Emergency Oil and Gas Guaranteed Loan Program; to the Committee on Banking, Housing, and Urban Affairs.

EC–5565. A communication from the Secretary of Commerce, transmitting, pursuant to law, the Department's annual report on the Emergency Steel Loan Guarantee Program; to the Committee on Banking, Housing, and Urban Affairs.

EC–5566. A communication from the Associate General Counsel for Legislation and Regulations, Office of Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled "Renewal of Expiring Section 8 Project-Based Assistance Contracts" ((RIN2502–AH47)(FR–4551–F–01)) received on January 31, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5567. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Suspension of Community Eligibility" (FEMA–7903) received on January 31, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5568. A communication from the General Counsel, National Credit Union Administration, transmitting, pursuant to law, the report of a rule entitled "Post-Employment Restrictions for Certain NCUA Examiners" (12 CFR Part 796) received on January 31, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5569. A communication from the Acting Senior Procurement Executive, General Service Administration, transmitting, pursuant to law, the report of a rule entitled "Federal Acquisition Regulation; Federal Acquisition Circular 2005–07" (FAC2005–07) received on January 31, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5570. A communication from the Director, Trade and Development Agency, transmitting, pursuant to law, the report on the amount of acquisitions made by the agency from entities that manufacture the articles, materials,or supplies outside of the United States during fiscal years 2004 and 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5571. A communication from the Chairman, National Labor Relations Board, transmitting, pursuant to law, the report on the amount of acquisitions made by the agency from entities that manufacture the articles, materials, or supplies outside of the United States for fiscal year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5572. A communication from the Federal Co-Chair, Appalachian Regional Commission, transmitting, pursuant to law, the report on the amount of acquisitions made by the agency from entities that manufacture the articles, materials, or supplies outside of the United States for fiscal years 2003, 2004, 2005, and 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5573. A communication from the Chairman, Postal Rate Commission, transmitting, pursuant to law, the Commission's Report required by the Government in the Sunshine Act for calendar year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5574. A communication from the Chairman, Occupational Safety and Health Review Commission, transmitting, pursuant to law, the report on the amount of acquisitions made by the agency from entities that manufacture the articles, materials, or supplies outside of the United States for fiscal year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5575. A communication from the Colonel, Corps of Engineers and Secretary, Mississippi River Commission, transmitting, pursuant to law, the Commission's report as required by the Government in the Sunshine Act for calendar year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5576. A communication from the Chairman, Broadcasting Board of Governors, transmitting, pursuant to law, the report on the amount of acquisitions made by the agency from entities that manufacture the articles, materials, or supplies outside of the United States for fiscal year 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–5577. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, the Administrations report as required by the Government in the Sunshine Act for calendar year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5578. A communication from the Comptroller General, Government Accountability Office, transmitting, pursuant to law, a report concerning GAO's Performance and Accountability Highlights for fiscal year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5579. A communication from the Chairman, Federal Maritime Commission, transmitting, pursuant to law, the Commission's Fiscal Year 2005 Competitive Sourcing Efforts Report; to the Committee on Commerce, Science, and Transportation.

EC–5580. A communication from the Acting Deputy Director, Bureau of Transportation Statistics, Department of Transportation , transmitting, pursuant to law, the Bureau's Transportation Statistics Annual Report; to the Committee on Commerce, Science, and Transportation.

EC–5581. A communication from the Acting Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Northeastern United States; Atlantic Bluefish and Summer Flounder Fisheries" (RIN0648–AT50) received on January 31, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5582. A communication from the Deputy Assistant Administrator for Operations, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Cape Sarichef Research Restriction Area Opening for the Groundfish Fisheries of the Bering Sea and Aleutian Islands Management Area" ((RIN0648–AT54)(I.D. 100705C)) received on January 31, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5583. A communication from the Acting Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels 60 feet (18.3 Meters) Length Overall and Longer Using Hook-and-line Gear in the Bering Sea and Aleutian Islands Management Area" (I.D. 120705A) received on January 31, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5584. A communication from the Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Temporary Rule, Inseason Retention Limit Adjustment" (I.D.010406B) received on January 31, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5585. A communication from the Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Northeastern United States; Tilefish Fishery; Adjustment to the Fishing Year 2006 Tilefish Full-time Tier 1 Permit Category Commercial Quota" (I.D. 122905B) received on January 31, 2006; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ENZI, from the Committee on Health, Education, Labor, and Pensions, without amendment:

S. 265. A bill to amend the Public Health Service Act to add requirements regarding trauma care, and for other purposes (Rept. No. 109–215).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. LEVIN (for himself and Ms. STABENOW):

S. 2240. A bill to amend title XVIII to reform the Medicare prescription drug program; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 2241. A bill for the relief of Carmen Shahrzad Kulcsar; to the Committee on the Judiciary.

By Mr. VITTER:

S. 2242. A bill to establish the policy of the United States with respect to the deployment of missile defense systems capable of defending allies of the United States against ballistic missile attack; to the Committee on Foreign Relations.

By Mr. MENENDEZ:

S. 2243. A bill to make college more affordable by expanding and enhancing financial aid options for students and their families and providing loan forgiveness opportunities for public service employees, and for other purposes; to the Committee on Finance.

By Mr. MENENDEZ (for himself, Mr. LAUTENBERG, and Mr. DURBIN):

S. 2244. A bill to provide funding and incentives for caregiver support and long-term care assistance; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LOTT (for himself and Mrs. FEINSTEIN):

S. Res. 365. A resolution to provide a 60 vote point of order against out of scope material in conference reports and open the process of earmarks in the Senate; to the Committee on Rules and Administration.

By Mr. INHOFE (for himself, Mr. COLEMAN, Mr. SANTORUM, Mr. DEMINT, Mrs. HUTCHISON, Mr. DEWINE, Mr. MARTINEZ, Mr. BOND, Mr. CHAMBLISS, Mr. KYL, Mr. SPECTER, Mr. SMITH, Mr. ROBERTS, Mr. ALLARD, Mr. BURNS, Mr. BUNNING, Mr. ENSIGN, Mr. MCCAIN, Mr. SESSIONS, Mr. HATCH, Mr. ENZI, Mr. BENNETT, Mr. GRASSLEY, Mr. CRAIG, Mr. MCCONNELL, Mr. COBURN, Mr. FRIST, Mr. BROWNBACK, Mr. VITTER, Mr. NELSON of Florida, Ms. MIKULSKI, Mr. AKAKA, Mr. PRYOR, Mr. CARPER, Mrs. LINCOLN, Mr. DAYTON, Mr. JEFFORDS, Ms. LANDRIEU, Mr. ROCKEFELLER, Mr. SALAZAR, Mr. NELSON of Nebraska, Mr. FEINGOLD, Mr. KENNEDY, and Mr. LAUTENBERG):

S. Res. 366. A resolution affirming the importance of increased international action and a national week of prayer for the Ugandan victims of Joseph Kony's Lord's Resistance Army, and expressing the sense of the Senate that Sudan, Uganda, and the international community bring justice and humanitarian assistance to Northern Uganda and that February 2 through 9, 2006 should be designated as a national week of prayer and reflection for the people of Uganda; considered and agreed to.

ADDITIONAL COSPONSORS

S. 368

At the request of Mr. LAUTENBERG, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 368, a bill to provide assistance to reduce teen pregnancy, HIV/AIDS, and other sexually transmitted diseases and to support healthy adolescent development.

S. 424

At the request of Mr. BOND, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 424, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 438

At the request of Mr. ENSIGN, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 438, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 537

At the request of Mr. BINGAMAN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 537, a bill to increase the number of well-trained mental health service professionals (including those based in schools) providing clinical mental health care to children and adolescents, and for other purposes.

S. 709

At the request of Mr. DEWINE, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 709, a bill to amend the Public Health Service Act to establish a grant program to provide supportive services in permanent supportive housing for chronically homeless individuals, and for other purposes.

S. 908

At the request of Mr. MCCONNELL, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 908, a bill to allow Congress, State legislatures, and regulatory agencies to determine appropriate laws, rules, and regulations to address the problems of weight gain, obesity, and health conditions associated with weight gain or obesity.

S. 1086

At the request of Mr. BYRD, his name was added as a cosponsor of S. 1086, a bill to improve the national program to register and monitor individuals who commit crimes against children or sex offenses.

S. 1215

At the request of Mr. GREGG, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1215, a bill to authorize the acquisition of interests in underdeveloped coastal areas in order better to ensure their protection from development.

S. 1217

At the request of Mr. BINGAMAN, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 1217, a bill to amend title II of the Social Security Act to phase out the 24-month waiting period for disabled individuals to become eligible for medicare benefits, to eliminate the waiting period for individuals with life-threatening conditions, and for other purposes.

S. 1263

At the request of Mr. BOND, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 1263, a bill to amend the Small Business Act to establish eligibility requirements for business concerns to receive awards under the Small Business Innovation Research Program.

S. 1321

At the request of Mr. SANTORUM, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 1321, a bill to amend the Internal Revenue Code of 1986 to repeal the excise tax on telephone and other communications.

S. 1575

At the request of Mr. BINGAMAN, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 1575, a bill to amend the Public Health Service Act to authorize a demonstration program to increase the number of doctorally-prepared nurse faculty.

S. 1698

At the request of Mr. KERRY, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. 1698, a bill to accelerate efforts to develop vaccines for diseases primarily affecting developing countries and for other purposes.

S. 1723

At the request of Ms. COLLINS, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1723, a bill to amend the Magnuson-Stevens Fishery Conservation and Management Act to establish a grant program to ensure waterfront access for commercial fishermen, and for other purposes.

S. 1881

At the request of Mrs. FEINSTEIN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 1881, a bill to require the Secretary of the Treasury to mint coins in commemoration of the Old Mint at San Francisco otherwise known as the "Granite Lady", and for other purposes.

S. 2178

At the request of Mr. SCHUMER, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 2178, a bill to make the stealing and selling of telephone records a criminal offense.

S. 2180

At the request of Mr. DODD, his name was added as a cosponsor of S. 2180, a bill to provide more rigorous requirements with respect to disclosure and enforcement of ethics and lobbying laws and regulations, and for other purposes.

S. 2182

At the request of Mr. ISAKSON, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 2182, a bill to terminate the Internal Revenue Code of 1986, and for other purposes.

S. 2201

At the request of Mr. OBAMA, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 2201, a bill to amend title 49, United States Code, to modify the mediation and implementation requirements of section 40122 regarding changes in the Federal Aviation Administration personnel management system, and for other purposes.

S. 2231

At the request of Mr. BYRD, the names of the Senator from Illinois (Mr. OBAMA), the Senator from Iowa (Mr. HARKIN) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 2231, a bill to direct the Secretary of Labor to prescribe additional coal mine safety standards, to require additional penalties for habitual violators, and for other purposes.

S. 2235

At the request of Mr. SCHUMER, the names of the Senator from Nebraska (Mr. HAGEL), the Senator from South Carolina (Mr. GRAHAM), the Senator from Mississippi (Mr. COCHRAN) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of S. 2235, a bill to posthumously award a congressional gold medal to Constance Baker Motley.

S. CON. RES. 69

At the request of Mr. ISAKSON, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. Con. Res. 69, a concurrent resolution supporting the goals and ideals of a Day of Hearts, Congenital Heart Defect Day in order to increase awareness about congenital heart defects, and for other purposes.

S. RES. 182

At the request of Mr. COLEMAN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. Res. 182, a resolution supporting efforts to increase childhood cancer awareness, treatment, and research.

S. RES. 320

At the request of Mr. ENSIGN, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. Res. 320, a resolution calling on the President to ensure that the foreign policy of the United States reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian Genocide.

S. RES. 355

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. Res. 355, a resolution honoring the service of the National Guard and requesting consultation by the Department of Defense with Congress and the chief executive officers of the States prior to offering proposals to change the National Guard force structure.

At the request of Mr. NELSON of Nebraska, the names of the Senator from Mississippi (Mr. LOTT) and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of S. Res. 355, supra.

S. RES. 357

At the request of Mr. MCCAIN, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. Res. 357, a resolution designating January 2006 as "National Mentoring Month".

S. RES. 359

At the request of Ms. LANDRIEU, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. Res. 359, a resolution concerning the Government of Romania's ban on intercountry adoptions and the welfare of orphaned or abandoned children in Romania.

AMENDMENT NO. 2697

At the request of Mr. NELSON of Florida, the names of the Senator from South Dakota (Mr. JOHNSON), the Senator from Ohio (Mr. DEWINE) and the Senator from New Jersey (Mr. MENENDEZ) were added as cosponsors of amendment No. 2697 intended to be proposed to H.R. 4297, a bill to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006.

AMENDMENT NO. 2698

At the request of Mr. BINGAMAN, the names of the Senator from South Dakota (Mr. JOHNSON), the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from Colorado (Mr. SALAZAR) were added as cosponsors of amendment No. 2698 intended to be proposed to H.R. 4297, a bill to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006.

AMENDMENT NO. 2699

At the request of Mr. LAUTENBERG, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from Minnesota (Mr. DAYTON) and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of amendment No. 2699 intended to be proposed to H.R. 4297, a bill to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEVIN (for himself and Ms. STABENOW):

S. 2240. A bill to amend title XVIII to reform the Medicare prescription drug program; to the Committee on Finance.

Mr. LEVIN. Mr. President, today I am introducing "The Medicare Part D Reform Act of 2006." This bill is necessary to address some of the major problems in the Medicare prescription drug benefit that took effect on January 1 of this year. As we all know, the reaction of our seniors has been widespread disappointment, mass confusion and downright anger.

Let me describe some of the problems that I am hearing from people in Michigan about this new Medicare prescription drug benefit.

First, many drug companies have previously issued discount cards and are currently providing drugs to low-income people and seniors at a nominal or no cost. These are individuals usually at 200 percent of the Federal poverty level, which is 19,600 for a single person or $26,400 for a couple, while to qualify for the Medicare low-income subsidy, their income must be $14,700 for a single person or $19,800 for a couple. Many of these programs are being discontinued, and seniors are losing a vital method of obtaining low cost prescription drugs.

Second, prescription drug plans can drop a drug from its list of covered drugs with 60 days notice at any time during the calendar year. This is particularly egregious for a senior who relied on a particular medication being available and covered when the senior chose that particular plan.

Third, the situation of so-called "dual eligibles" is clearly worse now than before enactment of the prescription drug benefit. These are former Medicaid beneficiaries who are being forced into Medicare prescription drug coverage, often putting them in plans with more restrictive formularies and higher co-payments, in other words leaving them worse off.

Fourth, many Michigan residents are retirees from good paying jobs and currently have a good prescription drug plan. This has changed for the worse with the creation of the new Medicare prescription drug benefit because many companies have decided to scale back or eliminate that retiree coverage. As a result, many of those retirees are worse off than they were before the bill became law.

Fifth, Medicare is specifically barred from negotiating lower drug prices for all of its beneficiaries.

Finally, the coverage gap from $2,250-$3,600 in prescription drug expenses per year, commonly referred to as the "doughnut hole," is unconscionable. Many seniors do not yet understand that this huge coverage gap is looming in their future and that during this gap, they are still expected to pay their monthly premiums, although they are getting no prescription drug coverage assistance.

To address many of these concerns I, along with my colleague Senator STABENOW, today am introducing the Medicare Part D Reform Act of 2006, and I hope the Senate will immediately consider these positive reforms. My legislation has four goals and I will briefly outline them.

First, this legislation would prohibit prescription drug plans from removing drugs from the plan's list of covered drugs until January 1 of the following year. This will give seniors the opportunity to make an informed decision during open enrollment at the end of each year if one plan decides to remove a particular drug from the plan.

Second, my legislation clearly states that the discount cards that pharmaceutical companies are providing to our lower income seniors are permissible and that seniors should be allowed to participate in these programs. There has been some confusion as to whether companies can legally continue these programs and, if companies do continue their assistance, questions have arisen as to whether that assistance will count towards the "true-out-of-pocket" costs for that beneficiary, which plunges them into the "doughnut hole" when they reach $2,250. My legislation mandates that there will be no negative consequences for pharmaceutical companies continuing to provide discount cards to our low-income seniors.

Third, my legislation would allow former Medicaid beneficiaries now receiving their medications under Medicare to continue to receive their prescription drugs even if they cannot meet the worsened co-payment requirements.

Lastly, the legislation would specifically give the Federal Government the authority to negotiate lower prescription drug prices for our seniors. Current Medicare law prohibits the Department of Health and Human Services from negotiating lower prices, as we do for veterans in our VA health programs. As a result, Medicare beneficiaries do not have the benefit of the bargaining power of Medicare.

All of us are hearing from our constituents that we need to improve Medicare Part D. Congress needs to fulfill the promise it made that Medicare Part D would lower prescription drug prices, not increase them. This bill will help us begin to keep that promise.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2240

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicare Part D Reform Act of 2006".

SEC. 2. REMOVAL OF COVERED PART D DRUGS FROM THE PRESCRIPTION DRUG PLAN FORMULARY.

Section 1860D–4(b)(3)(E) of the Social Security Act (42 U.S.C. 1395w–104(b)(3)(E)) is amended to read as follows:

"(E) REMOVING DRUG FROM FORMULARY OR CHANGING PREFERRED OR TIER STATUS OF DRUG.—

"(i) LIMITATION ON REMOVAL OR CHANGE.—Beginning with 2006, the PDP sponsor of a prescription drug plan may not remove a covered part D drug from the plan formulary or change the preferred or tiered cost-sharing status of such a drug other than during the period beginning on September 1 and ending on October 31. Subject to clause (ii), such removal or change shall only be effective beginning on January 1 of the immediately succeeding calendar year.

"(ii) NOTICE.—Any removal or change under this subparagraph shall not take effect unless appropriate notice is made available (such as under subsection (a)(3)) to the Secretary, affected enrollees, physicians, pharmacies, and pharmacists. Such notice shall ensure that such information is made available prior to the annual, coordinated open election period described in section 1851(e)(3)(B)(iii), as applied under section 1860D–1(b)(1)(B)(iii).".

SEC. 3. PHARMACEUTICAL PATIENT ASSISTANCE PROGRAMS.

(a) PROVIDING A SAFE HARBOR FOR PHARMACEUTICAL PATIENT ASSISTANCE PROGRAMS.—Section 1128B(b)(3) of the Social Security Act (42 U.S.C. 1320a–7b(b)(3)) is amended—

(1) in subparagraph (G)—

(A) by inserting "or under a patient assistance program (including a pharmaceutical manufacturer patient assistance program)" after "Indian organizations)"; and

(B) by striking "and" at the end;

(2) in subparagraph (H), as added by section 237(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2213)—

(A) by moving such subparagraph 2 ems to the left; and

(B) by striking the period at the end and inserting "; and"; and

(3) by redesignating subparagraph (H), as added by section 431(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2287), as subparagraph (I) and moving such subparagraph 2 ems to the left.

(b) EXCLUSION OF EXPENDITURES UNDER CERTAIN PHARMACY ASSISTANCE PROGRAMS FROM TROOP.—Section 1860D–2(b)(4)(C)(ii) of such Act (42 U.S.C. 1395w–102(b)(4)(C)(ii)) is amended by inserting "under a pharmaceutical manufacturer patient assistance program," after "a group health plan,".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

SEC. 4. PROTECTION AGAINST COST-SHARING FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—Section 1860D–14(a)(1)(D)(ii) of the Social Security Act (42 U.S.C. 1395w–114(a)(1)(D)(ii)) is amended—

(1) in the heading, by striking "LOWEST INCOME";

(2) by striking "and whose income does not exceed 100 percent of the poverty line applicable to a family of the size involved"; and

(3) by adding at the end the following new sentence: "In the case of an individual who is unable to pay the copayment applicable under the preceding sentence, such copayment shall be waived."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to drugs dispensed on or after the date of enactment of this Act.

SEC. 5. NEGOTIATING FAIR PRICES FOR MEDICARE PRESCRIPTION DRUGS.

(a) IN GENERAL.—Section 1860D–11 of the Social Security Act (42 U.S.C. 1395w–111) is amended by striking subsection (i) (relating to noninterference) and by inserting the following new subsection:

"(i) AUTHORITY TO NEGOTIATE PRICES WITH MANUFACTURERS.—In order to ensure that beneficiaries enrolled under prescription drug plans and MA–PD plans pay the lowest possible price, the Secretary shall have authority similar to that of other Federal entities that purchase prescription drugs in bulk to negotiate contracts with manufacturers of covered part D drugs, consistent with the requirements and in furtherance of the goals of providing quality care and containing costs under this part.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of enactment of this Act.

By Mrs. FEINSTEIN:

S. 2241. A bill for the relief of Carmen Shahrzad Kulcsar; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I offer today private relief legislation to provide lawful permanent residence status to Carmen Shahrzad Kulcsar, a 15-year-old Australian national currently living with her aunt and uncle in San Marcos, CA.

I have decided to offer private relief legislation on Carmen's behalf because I believe that removal from the United States would not only be tragically unfair to her, but also to her aunt and uncle who have taken Carmen into their home and treated her like a daughter after the tragic events that brought her to America. Furthermore, Carmen's removal could put her aunt's, her uncle's, and her own life in grave danger.

Carmen's parents separated due to physical abuse, alcohol abuse, and allegations of affairs. In 1992, at the young age of two, Carmen witnessed her father shoot her mother point blank range in the head.

Her father—David Kulcsar—was convicted of murder and sentenced to 12 to 16 years in prison. Fortunately for Carmen, her American aunt Manieh Varner was granted sole guardianship and custody of her niece by an Australian court.

Carmen entered the United States on a temporary Visitor's Visa and has resided here for the past 13 years with her aunt and uncle.

Carmen is a model student at her high school. She takes honor classes and has worked hard to earn a cumulative grade point average of 3.5. Her report card has multiple comments regarding her outstanding citizenship and as being a pleasure to have in class.

Carmen is a member of the competitive Academic Decathlon Team. Her future can be a bright one and it is unlikely that she will become a burden on the State or Federal Government.

Carmen's aunt has always wanted to adopt her niece and begin the path to legal residency. However, there has always been one problem. Carmen's father never wanted Carmen to go with her aunt and made repeated threats for revenge against Mrs. Varner. Adopting Carmen requires notifying Mr. Kulcsar about the adoption and Mrs. Varner believed always, as she does now, that doing so would put her and Carmen's life in risk.

Mrs. Varner cannot pursue adoption now because time constraints prevent the process from being completed before Carmen's 16th birthday; thus, adoption would have no bearing for immigration purposes.

Mr. and Mrs. Varner have done their best to try and create a life for Carmen that would otherwise have been impossible for her in Australia.

Both U.S. citizens. Mr. Varner is a high school teacher while Mrs. Varner is employed by the State of California's Department of Transportation. Along with a daughter of their own, they have made the best possible situation of a horrible tragedy.

Unfortunately, if this private relief bill is not approved, the choices available to Carmen are grim. Clearly it would be impossible for her to go back to Australia.

The only memory she has of that country is the memory of her mother's murder at the hands of her father. The only family in Australia is that of her unstable, recently released from prison father. She would be forced to live illegally in the United States through no fault of her own. America is the only land she has ever known. It is her home.

Given these extraordinary and unique facts, I offer this private relief bill on behalf of Carmen Shahrzad Kulcsar. We have the opportunity to make a just and fitting solution for this wonderful family. Therefore, I ask my colleagues to support this private relief bill.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2241

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PERMANENT RESIDENCE.

Notwithstanding any other provision of law or any order, for purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Carmen Shahrzad Kulcsar shall be deemed to have been lawfully admitted to the United States for permanent residence as of the date of enactment of this Act upon the payment of the required visa fees.

SEC. 2. REDUCTION OF NUMBER OF AVAILABLE VISAS.

Upon the granting of permanent residence to Carmen Shahrzad Kulcsar under section 1, the Secretary of State shall instruct the proper officer to reduce by 1 the total number of immigrant visas available during the current fiscal year to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)).

By Mr. MENENDEZ:

S. 2243. A bill to make college more affordable by expanding and enhancing financial aid options for students and their families and providing loan forgiveness opportunities for public service employees, and for other purposes; to the Committee on Finance.

By Mr. MENENDEZ (for himself, Mr. LAUTENBERG, and Mr. DURBIN):

S. 2244. A bill to provide funding and incentives for caregiver support and long-term care assistance; to the Committee on Finance.

Mr. MENENDEZ. Mr. President, I rise today to introduce The Caregiver Assistance and Relief Effort, CARE, Act and the College Access and Affordability Act because far too many families today are squeezed by the demands of caring for aging loved ones while working to give their children what all parents want for their kids—the opportunity to go to college and be successful. As a son helping to care for a mother with Alzheimer's disease and the proud parent of two college-age kids, I know personally the intergenerational demands families are facing and the sacrifices they are making to care for their loved ones. That's exactly why my first legislative initiatives in the United States Senate are to make higher education and long-term care more affordable and more accessible for New Jersey families and families across the country.

The CARE Act would provide tax credits to those caring for ailing family members and loved ones, and encourage individuals to plan and invest in their own long-term care by offering a tax deduction for long-term care insurance. In addition, it would double the funding for the existing National Family Caregiver Support Program, which supports a wide range of important services for older persons.

There are an estimated 44.4 million caregivers in the U.S., which is 21 percent of the adult population. My home State of New Jersey has over 830,000 caregivers, ranking it 9th in the country.

Caregiving families face unique strains. They are challenged with additional costs, and often caregivers must sacrifice their job or cut back on their hours at work. Almost 6 in 10 caregivers either work or have worked while providing care, and 62 percent of caregivers report having had to make work-related adjustments ranging from going in late and leaving early to having to give up work entirely. Caregivers are also a valuable asset to keeping health care costs down. They are providing $257 billion in care annually, more than double the annual spending on home care and nursing home care combined. Their compassion, dedication, and selflessness come at a price to their families and are a benefit to the greater good of our State and Nation. This legislation is aimed at addressing their hard work, sacrifice, and contributions to society.

The other bill I'm introducing today, the College Access and Affordability Act, will help open the doors to higher education for more young people by making financial assistance more flexible for students and by expanding and enhancing existing financial aid options.

I know the difference a college education can have on a young person's life. As the first in my family to go to college, and later law school, I had opportunities that would not have been available to me had I not been able to go to college. But financing a higher education was not an easy thing for my family. Federal financial aid helped ensure that I could go to college and that I could pursue my dreams. I know firsthand the important benefits of receiving Federal aid—not only did it help me finance my dreams of college, but it also gave me the extra confidence that I needed to succeed.

So, I am committed to ensuring that other promising young people get the same chance that I did and that we, as a Nation, will be there to help everyone in this country achieve their dreams of college, regardless of background, race, language, or income level. One of the great foundations of this country is that the doors of opportunity are open to anyone who works hard. We must follow through on that promise by providing a path for young people to have access to and attend college. If we do not lead the way to ensure that our colleges are full of the brightest minds and fullest potential, we are failing to prepare our future generations and we are jeopardizing the future of our Nation.

The College Access and Affordability Act will make financial aid more flexible and accessible to more students, such as extending Pell Grant eligibility to students who attend school year-round. It will also make substantial changes to the Hope Scholarship Tax Credit, a useful tool in helping cover the costs of a higher education. Since the Credit was enacted in 1997, the maximum credit has not increased to reflect the rising cost of tuition. This bill would raise the award by $1,000 and allow the credit to be claimed for all 4 years of college, instead of the current 2 years. It will also make more families eligible for the credit by expanding the eligibility limits.

Finally, in recognizing that many of our communities are in need of qualified individuals to serve in essential public service positions, this bill would help attract dedicated college graduates who serve low-income communities in positions such as science, math, bilingual, or special education teachers; nurses; first responders; and child welfare workers.

Too many students do not pursue a college education because they think it is out of their reach. We must commit to providing sensible tools and adequate resources so that financing a college education is not more of a burden on families, and achieving the dreams of a higher education is not beyond the reach of our Nation's young people.

On any given day, families across New Jersey, and indeed, across this country, face the daunting challenges of making ends meet—putting food on the table, clothing their children, and putting a roof over their head. If that weren't enough, add the challenge of trying to pay for college or care for an aging parent, or in many cases, both, and you have what many times is an insurmountable challenge. But that's exactly what's happening to more and more people everyday. And the intergenerational demands will only increase as the baby boom generation grows older and our life expectancy increases. We need to work now to address the challenges on both fronts—from providing affordable long-term care and encouraging future retirees to plan for their own long-term care, to ensuring that anyone who is willing to work hard has the opportunity to go to college and succeed. That's what this country is all about, and that's why I've made these initiatives my first priorities in the U.S. Senate. I'm hopeful that we will be able to work in a bipartisan fashion to address these important challenges facing American families.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 365—TO PROVIDE A 60 VOTE POINT OF ORDER AGAINST OUT OF SCOPE MATERIAL IN CONFERENCE REPORTS AND OPEN THE PROCESS OF EARMARKS IN THE SENATE

Mr. LOTT (for himself and Mrs. FEINSTEIN) submitted the following resolution; which was referred to the Committee on Rules and Administration

S. RES. 365

Resolved,

SECTION 1. OUT OF SCOPE MATTERS IN CONFERENCE REPORTS .

(a) IN GENERAL.- It shall not be in order in the Senate to consider a conference report that includes any matter not committed to the conferees by either House. A point of order shall be made and voted on separately for each item in violation of this section.

(b) DISPOSITION.—If the point of order against a conference report under subsection (a) is sustained, then—

(1) the matter in such conference report shall be deemed to have been struck;

(2) when all other points of order under this section have been disposed of—

(A) the Senate shall proceed to consider the question of whether the Senate should recede from its amendment to the House bill, or its disagreement to the amendment of the House, and concur with a further amendment, which further amendment shall consist of only that portion of the conference report not deemed to have been struck;

(B) the question shall be debatable; and

(C) no further amendment shall be in order; and

(3) if the Senate agrees to the amendment, then the bill and the Senate amendment thereto shall be returned to the House for its concurrence in the amendment of the Senate.

(c) SUPERMAJORITY WAIVER AND APPEAL.—This section may be waived or suspended in the Senate only by an affirmative vote of ⅗ of the Members, duly chosen and sworn. An affirmative vote of ⅗ of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

SEC. 2. EARMARKS.

(a) HONESTY IN EARMARKS.—Rule XVI of the Standing Rules of the Senate is amended by adding at the end the following:

"10.(a) In this paragraph, the term 'earmark' means a provision that specifies the identity of an entity to receive assistance and the amount of the assistance.

"(b) It shall not be in order to consider any bill or amendment between the Houses or conference report on such a bill unless a list of—

"(1) all earmarks in such measure;

"(2) an identification of the member who proposed the earmark; and

"(3) an explanation of the essential governmental purpose for the earmark;

are available to all Members and made available to the general public by means of the Internet for at least 24 hours before its consideration..".

(b) MEMBER REQUESTS.—Prior to the consideration of a bill in the Senate, any Member who requests an earmark in the bill shall file a copy of the request with the Secretary of the Senate and the request shall be printed in the Congressional Record.

SEC. 3. AVAILABILITY OF CONFERENCE REPORTS ON THE INTERNET.

Rule XXVIII of all the Standing Rules of the Senate is amended by adding at the end the following:

"9. It shall not be in order to consider a conference report unless such report is available to all Members and made available to the general public by means of the Internet for at least 24 hours before its consideration.".

Mr. LOTT. Mr. President, I am pleased to be joined by the senior Senator from California, Senator FEINSTEIN, in submitting a bipartisan proposal to reform some of the procedures of the Senate that have caused an explosion of anonymous earmarks in conference reports.

Our proposal does not bar the longstanding practice of allowing Members to channel resources to communities in their States that need Federal resources. However, we attempt to bring a far greater degree of transparency to the process and make it nearly impossible for Members to insert items in unamendable conference reports which have not undergone thorough scrutiny by either the House or Senate.

The proposal we are submitting today would create a point of order against any item included in a conference report that had not been considered by either body. This point of order lies against all legislation, not simply appropriations bills. Thus a transportation authorization conference report that includes highway and bridge projects that were not considered by either body would be subject to this point of order, just as an earmark inserted in an appropriations conference report would be subject to a point of order. This point of order could be waived by 60 votes.

Although current Standing Rule 28 allows a point of order against items in conference reports that were not considered by either body, this point of order is almost never used. That is because if the Rule 28 point of order is sustained, the entire conference report is rejected and Senate and House Members must reconstitute a new conference where all items in the original bills must be renegotiated.

Under our approach, if a point of order against an item in the conference report is sustained, the conference report, minus the items struck by the point of order, is returned to the House for its concurrence.

Our approach is modeled after the Byrd Rule that applies in the case of reconciliation conference reports.

I believe that this new point of order will make it far less likely that Members will attempt to insert new items in conference reports that have not been thoroughly aired in debate. However, our resolution goes much further in enhancing the transparency of earmarks, especially in appropriations bills.

Our resolution requires that any Senator who requests an earmark in an appropriations bill must file a copy of the request with the Secretary of the Senate, who is then required to publish the earmark request in the CONGRESSIONAL RECORD.

Moreover, our resolution requires that all earmarks that are included in appropriations bills must be specifically identified in the Report, along with the sponsor of the earmark and an explanation of the essential government purpose of the earmark. In addition, such reports, including conference reports, must be made available to all Members, and the general public via the Internet, at least 24 hours before consideration of the measure.

There is nothing inherently wrong when a Member directs financing for a key project in his or her state. Sometimes it is necessary to get the Federal bureaucracy to focus on the needs of our constituents. However, the process needs far greater transparency, and it is my hope that this resolution will resolve some of the problems that have been associated with this process.

SENATE RESOLUTION 366—AFFIRMING THE IMPORTANCE OF INCREASED INTERNATIONAL ACTION AND A NATIONAL WEEK OF PRAYER FOR THE UGANDAN VICTIMS OF JOSEPH KONY'S LORD'S RESISTANCE ARMY, AND EXPRESSING THE SENSE OF THE SENATE THAT SUDAN, UGANDA, AND THE INTERNATIONAL COMMUNITY BRING JUSTICE AND HUMANITARIAN ASSISTANCE TO NORTHERN UGANDA AND THAT FEBRUARY 2 THROUGH 9, 2006 SHOULD BE DESIGNATED AS A NATIONAL WEEK OF PRAYER AND REFLECTION FOR THE PEOPLE OF UGANDA

Mr. INHOFE (for himself, Mr. COLEMAN, Mr. SANTORUM, Mr. DEMINT, Mrs.

HUTCHISON, Mr. DEWINE, Mr. MARTINEZ, Mr. BOND, Mr. CHAMBLISS, Mr. KYL, Mr. SPECTER, Mr. SMITH, Mr. ROBERTS, Mr. ALLARD, Mr. BURNS, Mr. BUNNING, Mr. ENSIGN, Mr. MCCAIN, Mr. SESSIONS, Mr. HATCH, Mr. ENZI, Mr. BENNETT, Mr. GRASSLEY, Mr. CRAIG, Mr. MCCONNELL, Mr. COBURN, Mr. FRIST, Mr. BROWNBACK, Mr. VITTER, Mr. NELSON OF Florida, Ms. MIKULSKI, Mr. AKAKA, Mr. PRYOR, Mr. CARPER, Mrs. LINCOLN, Mr. DAYTON, Mr. JEFFORDS, Ms. LANDRIEU, Mr. ROCKEFELLER, Mr. SALAZAR, Mr. NELSON of Nebraska, Mr. FEINGOLD, Mr. KENNEDY, and Mr. LAUTENBERG) submitted the following resolution; which was considered and agreed to:

S. RES. 366

Whereas, Joseph Kony has led the Lord's Resistance Army (LRA) since 1987, terrorizing the region of Northern Uganda;

Whereas, up to 200,000 people have been killed in violent conflict and from disease and malnutrition;

Whereas, 80 to 90 percent of Kony's fighters are enslaved children—brutalized and brainwashed to kill;

Whereas, sources estimate that between 20,000 and 50,000 children have been abducted by the LRA since 1987;

Whereas, these children are sexually abused, raped, beaten, taunted and traumatized by older soldiers in the LRA;

Whereas, these children are maliciously coerced to mutilate, rape, and murder others, even their own family members and friends;

Whereas, LRA leaders often force the friends and siblings of unsuccessful escapees to carry out vicious punishments to further the LRA's culture of fear, intimidation and guilt;

Whereas, even those children who do manage to escape are unspeakably traumatized, often infected with sexually transmitted diseases, and stigmatized by society;

Whereas, approximately 40,000 children in rural Uganda trek miles into towns each night to sleep under the protection of soldiers and attempt to avoid capture;

Whereas, more than 1.6 million people have been forced to flee their homes;

Whereas, the conflict has slowed Uganda's development efforts, costing the country at least $1.33 billion, or 3 percent of its GDP;

Whereas, starting in October 2005, the Sudan government gave Joseph Kony a three month grace period to surrender;

Resolved, That it is the sense of the Senate—

(1) that the government of Sudan continue to prosecute LRA terrorists within its borders and aid Uganda in ending the conflict;

(2) that Uganda use every available resource to end the atrocities of the LRA and bring its members to justice;

(3) that the United States and international community recognize the atrocities occurring daily in Uganda and provide necessary humanitarian assistance; and

(4) that the week of February 2 through 9, 2006 should be designated as a National Week of Prayer and Reflection for the people of Northern Uganda.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2703. Mr. TALENT submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table.

SA 2704. Mrs. BOXER (for herself, Mr. KERRY, and Mr. LAUTENBERG) submitted an amendment intended to be proposed by her to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2705. Mr. MENENDEZ (for himself, Mr. SCHUMER, Mr. KERRY, Mrs. FEINSTEIN, Mrs. CLINTON, Mr. LAUTENBERG, and Ms. STABENOW) submitted an amendment intended to be proposed to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, supra.

SA 2706. Mr. MENENDEZ (for himself, Mr. KERRY, Mr. SCHUMER, Mrs. FEINSTEIN, Mrs. CLINTON, Mr. WYDEN, and Mr. LAUTENBERG) submitted an amendment intended to be proposed by him to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2707. Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) proposed an amendment to the bill H.R. 4297, supra.

SA 2708. Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) proposed an amendment to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, supra.

SA 2709. Mr. FRIST proposed an amendment to amendment SA 2708 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, supra.

SA 2710. Mr. FRIST (for himself, Mr. GRASSLEY, and Mr. BAUCUS) proposed an amendment to the bill H.R. 4297, supra.

SA 2711. Mr. FRIST (for Mr. TALENT) proposed an amendment to amendment SA 2710 proposed by Mr. FRIST (for himself, Mr. GRASSLEY, and Mr. BAUCUS) to the bill H.R. 4297, supra.

SA 2712. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2713. Mrs. FEINSTEIN (for herself, Mr. KOHL, Mr. DORGAN, Mr. BINGAMAN, Mr. SCHUMER, Mrs. BOXER, and Mrs. CLINTON) submitted an amendment intended to be proposed by her to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2714. Mr. DURBIN (for himself, Mrs. MURRAY, Mr. LIEBERMAN, Mr. LAUTENBERG, and Mrs. CLINTON) submitted an amendment intended to be proposed by him to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2715. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2716. Mrs. CLINTON (for herself, Ms. MIKULSKI, Mr. HARKIN, Mr. LAUTENBERG, Mr. REED, Mr. SALAZAR, Mr. OBAMA, Mrs. BOXER, Ms. STABENOW, Mr. SCHUMER, Mr. DURBIN, Mrs. FEINSTEIN, Mr. FEINGOLD, Mr. CARPER, Mr. JOHNSON, Mr. LEAHY, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, supra.

SA 2717. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2718. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2719. Mr. HARKIN (for himself, Mr. KENNEDY, Mr. KOHL, and Mr. LEVIN) submitted an amendment intended to be proposed by him to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2720. Mr. BURNS (for himself and Ms. MURKOWSKI) submitted an amendment intended to be proposed by him to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2721. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2722. Mr. DORGAN (for himself, Ms. MIKULSKI, Ms. STABENOW, Mr. DURBIN, Mr. LEVIN, Mr. FEINGOLD, Mr. KOHL, Mr. LEAHY, Mr. HARKIN, Mr. KENNEDY, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2723. Mr. BIDEN submitted an amendment intended to be proposed by him to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2724. Mrs. CLINTON (for herself, Ms. MIKULSKI, Mr. HARKIN, Mr. LAUTENBERG, Mr. REED, Mr. SALAZAR, Mr. OBAMA, Mrs. BOXER, Ms. STABENOW, Mr. SCHUMER, Mr. DURBIN, Mrs. FEINSTEIN, Mr. FEINGOLD, Mr. CARPER, Mr. JOHNSON, Mr. LEAHY, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 2710 proposed by Mr. FRIST (for himself, Mr. GRASSLEY, and Mr. BAUCUS) to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2725. Mr. SPECTER submitted an amendment intended to be proposed by him to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2726. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2727. Mr. FRIST (for Mr. TALENT) proposed an amendment to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, supra.

SA 2728. Mr. BAUCUS (for Mr. BYRD (for himself, Mr. ROCKEFELLER, Mr. SANTORUM, Mr. KERRY, Mr. DURBIN, Mr. OBAMA, Mr. MCCONNELL, and Mr. BUNNING)) proposed an amendment to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, supra.

SA 2729. Mr. CONRAD (for himself and Mr. BINGAMAN) proposed an amendment to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, supra.

SA 2730. Mr. NELSON, of Florida (for himself, Mr. BINGAMAN, Mrs. CLINTON, Mr. LIEBERMAN, Mr. SCHUMER, and Mr. SALAZAR) proposed an amendment to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, supra.

SA 2731. Mr. GRASSLEY proposed an amendment to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, supra.

SA 2732. Mr. GRASSLEY proposed an amendment to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, supra.

SA 2733. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2734. Mr. MENENDEZ (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 4297, supra; which was ordered to lie on the table.

SA 2735. Mr. DODD (for himself, Mr. KENNEDY, Mr. KERRY, Mr. LAUTENBERG, Mrs.

BOXER, Ms. MIKULSKI, Mr. AKAKA, Mr. REED, and Mr. SALAZAR) proposed an amendment to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, supra.

SA 2736. Mr. GRASSLEY proposed an amendment to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, supra.

SA 2737. Mr. REED (for himself, Ms. STABENOW, Mr. LAUTENBERG, Mrs. CLINTON, Mr. KERRY, and Mr. SALAZAR) proposed an amendment to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, supra.

TEXT OF AMENDMENTS

SA 2703. Mr. TALENT submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. . PERMANENT EXTENSION OF EGTRRA PROVISIONS RELATING TO CHILD TAX CREDIT.

Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset provisions) shall not apply to the amendments made by section 201 of such Act.

SA 2704. Mrs. BOXER (for herself, Mr. KERRY, and Mr. LAUTENBERG) submitted an amendment intended to be proposed by her to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. DISCLOSURE OF WHITE HOUSE CONTACTS WITH JACK ABRAMOFF.

(a) FINDINGS.—The Senate finds the following:

(1) Public confidence in Government has been undermined by widespread reports of public corruption involving Jack Abramoff, including indictments and plea agreements that cite alleged wrongdoing by senior public officials.

(2) Public perception of a culture of corruption undermines the people's faith in their Government representatives and our system of Government.

(3) Due to the serious nature of Jack Abramoff's crimes and continuing allegations of corruption involving him, public confidence in the Government can be restored only if there is full disclosure of his contacts with the President, White House staff, and senior executive branch officials.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the White House should immediately and publicly disclose each visit and meeting between Jack Abramoff and the President, White House staff, or senior executive branch officials, which should include the date, list of attendees, purpose of the visit or meeting, any documentation associated with the visit or meeting, including any photographs, and any action taken or withheld by the Government as a result of the contact.

SA 2705. Mr. MENENDEZ (for himself, Mr. SCHUMER, Mr. KERRY, Mrs. FEINSTEIN, Mrs. CLINTON, Mr. LAUTENBERG, and Ms. STABENOW) submitted an amendment intended to be proposed to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; as follows:

At the appropriate place, insert the following:

SEC. . SENSE OF THE SENATE REGARDING PROTECTING MIDDLE-CLASS FAMILIES FROM THE ALTERNATIVE MINIMUM TAX.

(a) FINDINGS.—The Senate finds that—

(1) the alternative minimum tax was originally enacted in 1969 as a supplemental tax on wealthy tax evaders, but has evolved into a tax on millions of middle-class working families, particularly families in which both parents work, and families with 2 or more children;

(2) by the end of the decade, the alternative minimum tax will ensnare more than 30,000,000 taxpayers, the majority of which will have adjusted gross incomes below $100,000, and the National Taxpayer Advocate has thus identified it as the most serious problem facing individual taxpayers;

(3) the alternative minimum tax is often portrayed as a tax that is most problematic for residents of States such as New York, California, Massachusetts, and New Jersey, but the truth is that many other States have a significant percentage of taxpayers affected by the alternative minimum tax, including Oregon, Maryland, Virginia, Minnesota, Ohio, Maine, Georgia, North Carolina, and Pennsylvania, so the problem is of national importance;

(4) a family with 2 children will become subject to the alternative minimum tax at about $67,500 of income in 2006, and a family with 5 children will start owing the alternative minimum tax at about $54,000 of income, if Congress fails to act;

(5) the year 2006 is the "tipping point" for the alternative minimum tax, as the number of taxpayers affected nationally will explode from 3,600,000 to 19,000,000 if Congress fails to act;

(6) in 2004, only 6.2 percent of families earning $100,000 to $200,000 a year were subject to the alternative minimum tax, and that number will explode to nearly 50 percent if Congress fails to act;

(7) if alternative minimum tax relief is extended through 2006, about two-thirds of the benefits will be realized by families earning under $200,000, with more than half of the total benefits going to families with incomes between $100,000 and $200,000;

(8) starting in 2008, the average married couple with 2 children earning $75,000 or more will find that more than half of the tax cuts they have been expecting from the various laws passed since 2001 will be "taken back" via the alternative minimum tax; and

(9) the temporary relief from the alternative minimum tax (provided in 2001 and extended twice in 2003 and 2004) expired at the end of 2005, but the tax reductions on dividends and capital gains do not expire until the end of 2008, making immediate action on those provisions a less urgent matter.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that protecting middle-class families from the alternative minimum tax should be a higher priority for Congress in 2006 than extending a tax cut that does not expire until the end of 2008.

SA 2706. Mr. MENENDEZ (for himself, Mr. KERRY, Mr. SCHUMER, Mrs. FEINSTEIN, Mrs. CLINTON, Mr. WYDEN, and Mr. LAUTENBERG) submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

On page 28, after line 11, insert the following:

TITLE IV—MINIMUM TAX RELIEF AND REPEAL OF EXTENSION OF CAPITAL GAINS AND DIVIDENDS

SEC. 401. REPEAL OF EXTENSION OF TAX TREATMENT FOR CAPITAL GAINS AND DIVIDENDS.

The amendment made by section 203 of this Act is repealed.

SEC. 402. EXTENSION AND INCREASE IN MINIMUM TAX RELIEF TO INDIVIDUALS.

(a) IN GENERAL.—Section 55(d)(1) is amended—

(1) by striking "$58,000" and all that follows through "2005" in subparagraph (A) and inserting "$62,550 in the case of taxable years beginning in 2006", and

(2) by striking "$40,250" and all that follows through "2005" in subparagraph (B) and inserting "$42,500 in the case of taxable years beginning in 2006".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

TITLE V—REVENUE OFFSET PROVISIONS

Subtitle A—Provisions Designed To Curtail Tax Shelters

SEC. 501. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking "realistic possibility of being sustained on its merits" in paragraph (1) and inserting "reasonable belief that the tax treatment in such position was more likely than not the proper treatment",

(2) by striking "or was frivolous" in paragraph (3) and inserting "or there was no reasonable basis for the tax treatment of such position", and

(3) by striking "UNREALISTIC" in the heading and inserting "IMPROPER".

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking "$250" in subsection (a) and inserting "$1,000", and

(2) by striking "$1,000" in subsection (b) and inserting "$5,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to documents prepared after the date of the enactment of this Act.

SEC. 502. MODIFICATION OF EFFECTIVE DATE OF EXCEPTION FROM SUSPENSION RULES FOR CERTAIN LISTED AND REPORTABLE TRANSACTIONS.

(a) EFFECTIVE DATE MODIFICATION.—

(1) IN GENERAL.—Paragraph (2) of section 903(d) of the American Jobs Creation Act of 2004 is amended to read as follows:

"(2) EXCEPTION FOR REPORTABLE OR LISTED TRANSACTIONS.—

"(A) IN GENERAL.—The amendments made by subsection (c) shall apply with respect to interest accruing after October 3, 2004.

"(B) SPECIAL RULE FOR CERTAIN LISTED AND REPORTABLE TRANSACTIONS.—

"(i) IN GENERAL.—Except as provided in clause (ii), the amendments made by subsection (c) shall also apply with respect to interest accruing on or before October 3, 2004.

"(ii) PARTICIPANTS IN SETTLEMENT INITIATIVES.—Clause (i) shall not apply to any transaction if, as of January 23, 2006—

"(I) the taxpayer is participating in a settlement initiative described in Internal Revenue Service Announcement 2005-80 with respect to such transaction, or

"(II) the taxpayer has entered into a settlement agreement pursuant to such an initiative.

"(iii) TERMINATION OF EXCEPTION.—Clause (ii)(I) shall not apply to any taxpayer if, after January 23, 2006, the taxpayer withdraws from, or terminates, participation in the initiative or the Secretary of the Treasury or the Secretary's delegate determines that a settlement agreement will not be reached pursuant to the initiative within a reasonable period of time.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 to which it relates.

(b) TREATMENT OF AMENDED RETURNS AND OTHER SIMILAR NOTICES OF ADDITIONAL TAX OWED.—

(1) IN GENERAL.—Section 6404(g)(1) (relating to suspension) is amended by adding at the end the following new sentence: "If, after the return for a taxable year is filed, the taxpayer provides to the Secretary one or more signed written documents showing that the taxpayer owes an additional amount of tax for the taxable year, clause (i) shall be applied by substituting the date the last of the documents was provided for the date on which the return is filed.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to documents provided on or after the date of the enactment of this Act.

SEC. 503. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

"SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

"(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

"(1) such person files what purports to be a return of a tax imposed by this title but which—

"(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

"(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

"(2) the conduct referred to in paragraph (1)—

"(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

"(B) reflects a desire to delay or impede the administration of Federal tax laws.

"(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

"(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

"(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

"(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

"(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

"(ii) reflects a desire to delay or impede the administration of Federal tax laws.

"(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

"(i) a request for a hearing under—

"(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

"(II) section 6330 (relating to notice and opportunity for hearing before levy), and

"(ii) an application under—

"(I) section 6159 (relating to agreements for payment of tax liability in installments),

"(II) section 7122 (relating to compromises), or

"(III) section 7811 (relating to taxpayer assistance orders).

"(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

"(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

"(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

"(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.".

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

"(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.".

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking "(A)" and inserting "(A)(i)";

(B) by striking "(B)" and inserting "(ii)";

(C) by striking the period at the end of the first sentence and inserting "; or"; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

"(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).".

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking "under subsection (a)(3)(B)" and inserting "in writing under subsection (a)(3)(B) and states the grounds for the requested hearing".

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking "under subsection (a)(3)(B)" and inserting "in writing under subsection (a)(3)(B) and states the grounds for the requested hearing", and

(2) in subsection (c), by striking "and (e)" and inserting "(e), and (g)".

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

"(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.".

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

"Sec. 6702. Frivolous tax submissions".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 504. PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.

(a) PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.—Section 6700 (relating to promoting abusive tax shelters, etc.) is amended—

(1) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively,

(2) by striking "a penalty" and all that follows through the period in the first sentence of subsection (a) and inserting "a penalty determined under subsection (b)", and

(3) by inserting after subsection (a) the following new subsections:

"(b) AMOUNT OF PENALTY; CALCULATION OF PENALTY; LIABILITY FOR PENALTY.—

"(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall be 100 percent of the gross income derived (or to be derived) from such activity by the person or persons subject to such penalty.

"(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of an activity described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who participated in such an activity.

"(3) LIABILITY FOR PENALTY.—If more than 1 person is liable under subsection (a) with respect to such activity, all such persons shall be jointly and severally liable for the penalty under such subsection.

"(c) PENALTY NOT DEDUCTIBLE.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be considered an ordinary and necessary expense in carrying on a trade or business for purposes of this title and shall not be deductible by the person who is subject to such penalty or who makes such payment.".

(b) CONFORMING AMENDMENT.—Section 6700(a) is amended by striking the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to the activities described in paragraphs (1) and (2) of section 6700(a) of the Internal Revenue Code of 1986 and after the date of the enactment of this Act.

SEC. 505. PENALTY FOR AIDING AND ABETTING THE UNDERSTATEMENT OF TAX LIABILITY.

(a) IN GENERAL.—Section 6701(a) (relating to imposition of penalty) is amended—

(1) by inserting ", or tax liability reflected in," after "the preparation or presentation of" in paragraph (1),

(2) by inserting "aid, assistance, procurement, or advice with respect to such" before "portion" both places it appears in paragraphs (2) and (3), and

(3) by inserting "instance of aid, assistance, procurement, or advice or each such" before "document" in the matter following paragraph (3).

(b) AMOUNT OF PENALTY.—Subsection (b) of section 6701 (relating to penalties for aiding and abetting understatement of tax liability) is amended to read as follows:

"(b) AMOUNT OF PENALTY; CALCULATION OF PENALTY; LIABILITY FOR PENALTY.—

"(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall be 100 percent of the gross income derived (or to be derived) from such aid, assistance, procurement, or advice provided by the person or persons subject to such penalty.

"(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of aid, assistance, procurement, or advice described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who made such an understatement of the liability for tax.

"(3) LIABILITY FOR PENALTY.—If more than 1 person is liable under subsection (a) with respect to providing such aid, assistance, procurement, or advice, all such persons shall be jointly and severally liable for the penalty under such subsection.".

(c) PENALTY NOT DEDUCTIBLE.—Section 6701 is amended by adding at the end the following new subsection:

"(g) PENALTY NOT DEDUCTIBLE.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be considered an ordinary and necessary expense in carrying on a trade or business for purposes of this title and shall not be deductible by the person who is subject to such penalty or who makes such payment.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to the activities described in section 6701(a) of the Internal Revenue Code of 1986 after the date of the enactment of this Act.

Subtitle B—Economic Substance Doctrine

SEC. 511. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

"(1) GENERAL RULES.—

"(A) IN GENERAL.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

"(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—A transaction has economic substance only if—

"(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer's economic position, and

"(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

"(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

"(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

"(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

"(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

"(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

"(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

"(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

"(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

"(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

"(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

"(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person's liability under subtitle A.

"(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

"(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

"(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

"(I) depreciation,

"(II) any tax credit, or

"(III) any other deduction as provided in guidance by the Secretary, and

"(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

"(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 512. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

"SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

"(a) IMPOSITION OF PENALTY.—If a taxpayer has an noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

"(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

"(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

"(1) IN GENERAL.—The term 'noneconomic substance transaction understatement' means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

"(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term 'noneconomic substance transaction' means any transaction if—

"(A) there is a lack of economic substance (within the meaning of section 7701(o)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(o)(2), or

"(B) the transaction fails to meet the requirements of any similar rule of law.

"(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

"(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

"(2) Applicable rules.—The rules of paragraphs (2) and (3) of section 6707A(d) shall apply for purposes of paragraph (1).

"(e) Coordination With Other Penalties.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

"(f) Cross References.—

"(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).

"(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).".

(b) Coordination With Other Understatements and Penalties.—

(1) The second sentence of section 6662(d)(2)(A) is amended by inserting "and without regard to items with respect to which a penalty is imposed by section 6662B" before the period at the end.

(2) Subsection (e) of section 6662A is amended—

(A) in paragraph (1), by inserting "and noneconomic substance transaction understatements" after "reportable transaction understatements" both places it appears,

(B) in paragraph (2)(A), by inserting "and a noneconomic substance transaction understatement" after "reportable transaction understatement",

(C) in paragraph (2)(B), by inserting "6662B or" before "6663",

(D) in paragraph (2)(C)(i), by inserting "or section 6662B" before the period at the end,

(E) in paragraph (2)(C)(ii), by inserting "and section 6662B" after "This section",

(F) in paragraph (3), by inserting "or noneconomic substance transaction understatement" after "reportable transaction understatement", and

(G) by adding at the end the following new paragraph:

"(4) Noneconomic substance transaction understatement.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' has the meaning given such term by section 6662B(c).".

(3) Subsection (e) of section 6707A is amended—

(A) by striking "or" at the end of subparagraph (B), and

(B) by striking subparagraph (C) and inserting the following new subparagraphs:

"(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction, or

"(D) is required to pay a penalty under section 6662(h) with respect to any transaction and would (but for section 6662A(e)(2)(C)) have been subject to penalty under section 6662A at a rate prescribed under section 6662A(c) or under section 6662B.".

(c) Clerical Amendment.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

"Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.".

(d) Effective Date.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 513. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) In General.—Section 163(m) (relating to interest on unpaid taxes attributable to nondisclosed reportable transactions) is amended—

(1) by striking "attributable" and all that follows and inserting the following: "attributable to—

"(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

"(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).", and

(2) by inserting "And Noneconomic Substance Transactions" in the heading thereof after "Transactions".

(b) Effective Date.—The amendments made by this section shall apply to transactions after the date of the enactment of this Act in taxable years ending after such date.

Subtitle C—Improvements in Efficiency and Safeguards in Internal Revenue Service Collection

SEC. 521. WAIVER OF USER FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.

(a) In General.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

"(e) Waiver of User Fees for Installment Agreements Using Automated Withdrawals.—In the case of a taxpayer who enters into an installment agreement in which automated installment payments are agreed to, the Secretary shall waive the fee (if any) for entering into the installment agreement.".

(b) Effective Date.—The amendments made by this section shall apply to agreements entered into on or after the date which is 180 days after the date of the enactment of this Act.

SEC. 522. TERMINATION OF INSTALLMENT AGREEMENTS.

(a) In General.—Section 6159(b)(4) (relating to failure to pay an installment or any other tax liability when due or to provide requested financial information) is amended by striking "or" at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (E), and by inserting after subparagraph (B) the following:

"(C) to make a Federal tax deposit under section 6302 at the time such deposit is required to be made,

"(D) to file a return of tax imposed under this title by its due date (including extensions), or".

(b) Conforming Amendment.—The heading for section 6159(b)(4) is amended by striking "Failure to pay an installment or any other tax liability when due or to provide requested financial information" and inserting "Failure to make payments or deposits or file returns when due or to provide requested financial information".

(c) Effective Date.—The amendments made by this section shall apply to failures occurring on or after the date of the enactment of this Act.

SEC. 523. PARTIAL PAYMENTS REQUIRED WITH SUBMISSION OF OFFERS-IN-COMPROMISE.

(a) In General.—Section 7122 (relating to compromises), as amended by this Act, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c) Rules for Submission of Offers-in-Compromise.—

"(1) Partial payment required with submission.—

"(A) Lump-sum offers.—

"(i) In general.—The submission of any lump-sum offer-in-compromise shall be accompanied by the payment of 20 percent of amount of such offer.

"(ii) Lump-sum offer-in-compromise.—For purposes of this section, the term 'lump-sum offer-in-compromise' means any offer of payments made in 5 or fewer installments.

"(B) Periodic payment offers.—The submission of any periodic payment offer-in-compromise shall be accompanied by the payment of the amount of the first proposed installment and each proposed installment due during the period such offer is being evaluated for acceptance and has not been rejected by the Secretary. Any failure to make a payment required under the preceding sentence shall be deemed a withdrawal of the offer-in-compromise.

"(2) Rules of application.—

"(A) Use of payment.—The application of any payment made under this subsection to the assessed tax or other amounts imposed under this title with respect to such tax may be specified by the taxpayer.

"(B) No user fee imposed.—Any user fee which would otherwise be imposed under this section shall not be imposed on any offer-in-compromise accompanied by a payment required under this subsection.

"(C) Waiver authority.—The Secretary may issue regulations waiving any payment required under paragraph (1) in a manner consistent with the practices established in accordance with the requirements under subsection (d)(3).".

(b) Additional Rules Relating to Treatment of Offers.—

(1) Unprocessable offer if payment requirements are not met.—Paragraph (3) of section 7122(d) (relating to standards for evaluation of offers), as redesignated by subsection (a), is amended by striking "; and" at the end of subparagraph (A) and inserting a comma, by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) any offer-in-compromise which does not meet the requirements of subsection (c) shall be returned to the taxpayer as unprocessable.".

(2) Deemed acceptance of offer not rejected within certain period.—Section 7122, as amended by subsection (a), is amended by adding at the end the following new subsection:

"(g) Deemed Acceptance of Offer Not Rejected Within Certain Period.—Any offer-in-compromise submitted under this section shall be deemed to be accepted by the Secretary if such offer is not rejected by the Secretary before the date which is 24 months after the date of the submission of such offer (12 months for offers-in-compromise submitted after the date which is 5 years after the date of the enactment of this subsection). For purposes of the preceding sentence, any period during which any tax liability which is the subject of such offer-in-compromise is in dispute in any judicial proceeding shall not be taken in to account in determining the expiration of the 24-month period (or 12-month period, if applicable).".

(c) Effective Date.—The amendments made by this section shall apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act.

Subtitle D—Penalties and Fines

SEC. 531. INCREASE IN CRIMINAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.

(a) In General.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking "Any person who—" and inserting "(a) in general.—Any person who—", and

(2) by adding at the end the following new subsection:

"(b) Increase in Monetary Limitation for Underpayment or Overpayment of Tax Due to Fraud.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.".

(b) Increase in Penalties.—

(1) Attempt to evade or defeat tax.—Section 7201 is amended—

(A) by striking "$100,000" and inserting "$500,000",

(B) by striking "$500,000" and inserting "$1,000,000", and

(C) by striking "5 years" and inserting "10 years".

(2) Willful failure to file return, supply information, or pay tax.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking "Any person" and inserting the following:

"(a) In General.—Any person", and

(ii) by striking "$25,000" and inserting "$50,000",

(B) in the third sentence, by striking "section" and inserting "subsection", and

(C) by adding at the end the following new subsection:

"(b) Aggravated Failure to File.—

"(1) In general.—In the case of any failure described in paragraph (2), the first sentence of subsection (a) shall be applied by substituting—

"(A) 'felony' for 'misdemeanor',

"(B) '$500,000 ($1,000,000' for '$25,000 ($100,000', and

"(C) '10 years' for '1 year'.

"(2) Failure described.—A failure described in this paragraph is a failure to make a return described in subsection (a) for a period of 3 or more consecutive taxable years.".

(3) Fraud and false statements.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking "$100,000" and inserting "$500,000",

(B) by striking "$500,000" and inserting "$1,000,000", and

(C) by striking "3 years" and inserting "5 years".

(c) Effective Date.—The amendments made by this section shall apply to actions, and failures to act, occurring after the date of the enactment of this Act.

SEC. 532. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.

(a) Determination of Penalty.—

(1) In general.—Notwithstanding any other provision of law, in the case of an applicable taxpayer—

(A) the determination as to whether any interest or applicable penalty is to be imposed with respect to any arrangement described in paragraph (2), or to any underpayment of Federal income tax attributable to items arising in connection with any such arrangement, shall be made without regard to the rules of subsections (b), (c), and (d) of section 6664 of the Internal Revenue Code of 1986, and

(B) if any such interest or applicable penalty is imposed, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(2) Applicable taxpayer.—For purposes of this subsection—

(A) In general.—The term "applicable taxpayer" means a taxpayer which—

(i) has underreported its United States income tax liability with respect to any item which directly or indirectly involves—

(I) any financial arrangement which in any manner relies on the use of offshore payment mechanisms (including credit, debit, or charge cards) issued by banks or other entities in foreign jurisdictions, or

(II) any offshore financial arrangement (including any arrangement with foreign banks, financial institutions, corporations, partnerships, trusts, or other entities), and

(ii) has neither signed a closing agreement pursuant to the Voluntary Offshore Compliance Initiative established by the Department of the Treasury under Revenue Procedure 2003-11 nor voluntarily disclosed its participation in such arrangement by notifying the Internal Revenue Service of such arrangement prior to the issue being raised by the Internal Revenue Service during an examination.

(B) Authority to waive.—The Secretary of the Treasury or the Secretary's delegate may waive the application of paragraph (1) to any taxpayer if the Secretary or the Secretary's delegate determines that the use of such offshore payment mechanisms is incidental to the transaction and, in addition, in the case of a trade or business, such use is conducted in the ordinary course of the type of trade or business of the taxpayer.

(C) Issues raised.—For purposes of subparagraph (A)(ii), an item shall be treated as an issue raised during an examination if the individual examining the return—

(i) communicates to the taxpayer knowledge about the specific item, or

(ii) has made a request to the taxpayer for information and the taxpayer could not make a complete response to that request without giving the examiner knowledge of the specific item.

(b) Applicable Penalty.—For purposes of this section, the term "applicable penalty" means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(c) Effective Date.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if, as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

SEC. 533. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) In General.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

"(f) Fines, Penalties, and Other Amounts.—

"(1) In general.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

"(2) Exception for amounts constituting restitution or paid to come into compliance with law.—Paragraph (1) shall not apply to any amount which—

"(A) the taxpayer establishes—

"(i) constitutes restitution (including remediation of property) for damage or harm caused by or which may be caused by the violation of any law or the potential violation of any law, or

"(ii) is paid to come into compliance with any law which was violated or involved in the investigation or inquiry, and

"(B) is identified as restitution or as an amount paid to come into compliance with the law, as the case may be, in the court order or settlement agreement.

Identification pursuant to subparagraph (B) alone shall not satisfy the requirement under subparagraph (A). This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

"(3) Exception for amounts paid or incurred as the result of certain court orders.—Paragraph (1) shall not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (4) is a party.

"(4) Certain nongovernmental regulatory entities.—An entity is described in this paragraph if it is—

"(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

"(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.

"(5) Exception for taxes due.—Paragraph (1) shall not apply to any amount paid or incurred as taxes due.".

(b) Reporting of Deductible Amounts.—

(1) In general.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6050T the following new section:

"SEC. 6050U. INFORMATION WITH RESPECT TO CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

"(a) Requirement of Reporting.—

"(1) In general.—The appropriate official of any government or entity which is described in section 162(f)(4) which is involved in a suit or agreement described in paragraph (2) shall make a return in such form as determined by the Secretary setting forth—

"(A) the amount required to be paid as a result of the suit or agreement to which paragraph (1) of section 162(f) applies,

"(B) any amount required to be paid as a result of the suit or agreement which constitutes restitution or remediation of property, and

"(C) any amount required to be paid as a result of the suit or agreement for the purpose of coming into compliance with any law which was violated or involved in the investigation or inquiry.

"(2) Suit or agreement described.—

"(A) In general.—A suit or agreement is described in this paragraph if—

"(i) it is—

"(I) a suit with respect to a violation of any law over which the government or entity has authority and with respect to which there has been a court order, or

"(II) an agreement which is entered into with respect to a violation of any law over which the government or entity has authority, or with respect to an investigation or inquiry by the government or entity into the potential violation of any law over which such government or entity has authority, and

"(ii) the aggregate amount involved in all court orders and agreements with respect to the violation, investigation, or inquiry is $600 or more.

"(B) Adjustment of Reporting Threshold.—The Secretary may adjust the $600 amount in subparagraph (A)(ii) as necessary in order to ensure the efficient administration of the internal revenue laws.

"(3) Time of Filing.—The return required under this subsection shall be filed not later than—

"(A) 30 days after the date on which a court order is issued with respect to the suit or the date the agreement is entered into, as the case may be, or

"(B) the date specified Secretary.

"(b) Statements To Be Furnished to Individuals Involved in the Settlement.—Every person required to make a return under subsection (a) shall furnish to each person who is a party to the suit or agreement a written statement showing—

"(1) the name of the government or entity, and

"(2) the information supplied to the Secretary under subsection (a)(1).

The written statement required under the preceding sentence shall be furnished to the person at the same time the government or entity provides the Secretary with the information required under subsection (a).

"(c) Appropriate Official Defined.—For purposes of this section, the term 'appropriate official' means the officer or employee having control of the suit, investigation, or inquiry or the person appropriately designated for purposes of this section.".

(2) Conforming Amendment.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6050T the following new item:

"Sec. 6050U. Information with respect to certain fines, penalties, and other amounts.".

(c) Effective Date.—The amendments made by this section shall apply to amounts paid or incurred on or after the date of the enactment of this Act, except that such amendments shall not apply to amounts paid or incurred under any binding order or agreement entered into before such date. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained before such date.

SEC. 534. DENIAL OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) Disallowance of Deduction.—

(1) In General.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(B) by striking "If" and inserting:

"(1) Treble Damages.—If", and

(C) by adding at the end the following new paragraph:

"(2) Punitive Damages.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of, any action. This paragraph shall not apply to punitive damages described in section 104(c).".

(2) Conforming Amendment.—The heading for section 162(g) is amended by inserting "or Punitive Damages" after "Laws".

(b) Inclusion in Income of Punitive Damages Paid by Insurer or Otherwise.—

(1) In General.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end the following new section:

"SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.

"Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise by reason of the taxpayer's liability (or agreement) to pay punitive damages.".

(2) Reporting Requirements.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

"(f) Section To Apply to Punitive Damages Compensation.—This section shall apply to payments by a person to or on behalf of another person as insurance or otherwise by reason of the other person's liability (or agreement) to pay punitive damages.".

(3) Conforming Amendment.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end the following new item:

"Sec. 91. Punitive damages compensated by insurance or otherwise".

(c) Effective Date.—The amendments made by this section shall apply to damages paid or incurred on or after the date of the enactment of this Act.

SEC. 535. INCREASE IN PENALTY FOR BAD CHECKS AND MONEY ORDERS.

(a) In General.—Section 6657 (relating to bad checks) is amended—

(1) by striking "$750" and inserting "$2,000", and

(2) by striking "$15" and inserting "$40".

(b) Effective Date.—The amendments made by this section apply to checks or money orders received after the date of the enactment of this Act.

Subtitle E—Provisions To Discourage Expatriation

SEC. 541. TAX TREATMENT OF INVERTED ENTITIES.

(a) In General.—Section 7874 is amended—

(1) by striking "March 4, 2003" in subsection (a)(2)(B)(i) and in the matter following subsection (a)(2)(B)(iii) and inserting "March 20, 2002",

(2) by striking "at least 60 percent" in subsection (a)(2)(B)(ii) and inserting "more than 50 percent",

(3) by striking "80 percent" in subsection (b) and inserting "at least 80 percent",

(4) by striking "60 percent" in subsection (b) and inserting "more than 50 percent",

(5) by adding at the end of subsection (a)(2) the following new sentence: "Except as provided in regulations, an acquisition of properties of a domestic corporation shall not be treated as described in subparagraph (B) if none of the corporation's stock was readily tradeable on an established securities market at any time during the 4-year period ending on the date of the acquisition.", and

(6) by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) Special Rules Applicable to Expatriated Entities.—

"(1) Increases in Accuracy-Related Penalties.—In the case of any underpayment of tax of an expatriated entity—

"(A) section 6662(a) shall be applied with respect to such underpayment by substituting '30 percent' for '20 percent', and

"(B) if such underpayment is attributable to one or more gross valuation understatements, the increase in the rate of penalty under section 6662(h) shall be to 50 percent rather than 40 percent.

"(2) Modifications of Limitation on Interest Deduction.—In the case of an expatriated entity, section 163(j) shall be applied—

"(A) without regard to paragraph (2)(A)(ii) thereof, and

"(B) by substituting '25 percent' for '50 percent' each place it appears in paragraph (2)(B) thereof.".

(b) Effective Date.—The amendments made by this section shall apply to taxable years ending after March 20, 2002.

SEC. 542. REVISION OF TAX RULES ON EXPATRIATION OF INDIVIDUALS.

(a) In General.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

"SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.

"(a) General Rules.—For purposes of this subtitle—

"(1) Mark to Market.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

"(2) Recognition of Gain or Loss.—In the case of any sale under paragraph (1)—

"(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

"(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence.

"(3) Exclusion for Certain Gain.—

"(A) In General.—The amount which, but for this paragraph, would be includible in the gross income of any individual by reason of this section shall be reduced (but not below zero) by $600,000. For purposes of this paragraph, allocable expatriation gain taken into account under subsection (f)(2) shall be treated in the same manner as an amount required to be includible in gross income.

"(B) Cost-of-Living Adjustment.—

"(i) In General.—In the case of an expatriation date occurring in any calendar year after 2005, the $600,000 amount under subparagraph (A) shall be increased by an amount equal to—

"(I) such dollar amount, multiplied by

"(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 2004' for 'calendar year 1992' in subparagraph (B) thereof.

"(ii) Rounding Rules.—If any amount after adjustment under clause (i) is not a multiple of $1,000, such amount shall be rounded to the next lower multiple of $1,000.

"(4) Election to Continue to be Taxed as United States Citizen.—

"(A) In General.—If a covered expatriate elects the application of this paragraph—

"(i) this section (other than this paragraph and subsection (i)) shall not apply to the expatriate, but

"(ii) in the case of property to which this section would apply but for such election, the expatriate shall be subject to tax under this title in the same manner as if the individual were a United States citizen.

“(B) REQUIREMENTS.—Subparagraph (A) shall not apply to an individual unless the individual—

“(i) provides security for payment of tax in such form and manner, and in such amount, as the Secretary may require,

“(ii) consents to the waiver of any right of the individual under any treaty of the United States which would preclude assessment or collection of any tax which may be imposed by reason of this paragraph, and

“(iii) complies with such other requirements as the Secretary may prescribe.

“(C) ELECTION.—An election under subparagraph (A) shall apply to all property to which this section would apply but for the election and, once made, shall be irrevocable. Such election shall also apply to property the basis of which is determined in whole or in part by reference to the property with respect to which the election was made.

“(b) ELECTION TO DEFER TAX.—

“(1) IN GENERAL.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the payment of the additional tax attributable to such property shall be postponed until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

“(2) DETERMINATION OF TAX WITH RESPECT TO PROPERTY.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

“(3) TERMINATION OF POSTPONEMENT.—No tax may be postponed under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

“(4) SECURITY.—

“(A) IN GENERAL.—No election may be made under paragraph (1) with respect to any property unless adequate security is provided to the Secretary with respect to such property.

“(B) ADEQUATE SECURITY.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

“(i) it is a bond in an amount equal to the deferred tax amount under paragraph (2) for the property, or

“(ii) the taxpayer otherwise establishes to the satisfaction of the Secretary that the security is adequate.

“(5) WAIVER OF CERTAIN RIGHTS.—No election may be made under paragraph (1) unless the taxpayer consents to the waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

“(6) ELECTIONS.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable. An election may be made under paragraph (1) with respect to an interest in a trust with respect to which gain is required to be recognized under subsection (f)(1).

“(7) INTEREST.—For purposes of section 6601—

“(A) the last date for the payment of tax shall be determined without regard to the election under this subsection, and

“(B) section 6621(a)(2) shall be applied by substituting ‘5 percentage points’ for ‘3 percentage points’ in subparagraph (B) thereof.

“(c) COVERED EXPATRIATE.—For purposes of this section—

“(1) IN GENERAL.—Except as provided in paragraph (2), the term ‘covered expatriate’ means an expatriate.

“(2) EXCEPTIONS.—An individual shall not be treated as a covered expatriate if—

“(A) the individual—

“(i) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

“(ii) has not been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) during the 5 taxable years ending with the taxable year during which the expatriation date occurs, or

“(B)(i) the individual's relinquishment of United States citizenship occurs before such individual attains age 18½, and

“(ii) the individual has been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.

“(d) EXEMPT PROPERTY; SPECIAL RULES FOR PENSION PLANS.—

“(1) EXEMPT PROPERTY.—This section shall not apply to the following:

“(A) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the day before the expatriation date, meet the requirements of section 897(c)(2).

“(B) SPECIFIED PROPERTY.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.

“(2) SPECIAL RULES FOR CERTAIN RETIREMENT PLANS.—

“(A) IN GENERAL.—If a covered expatriate holds on the day before the expatriation date any interest in a retirement plan to which this paragraph applies—

“(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but

“(ii) an amount equal to the present value of the expatriate's nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.

“(B) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—In the case of any distribution on or after the expatriation date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the amount otherwise includible in gross income by reason of the subsequent distribution shall be reduced by the excess of the amount includible in gross income under subparagraph (A) over any portion of such amount to which this subparagraph previously applied.

“(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS BY PLAN.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan's behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.

“(D) APPLICABLE PLANS.—This paragraph shall apply to—

“(i) any qualified retirement plan (as defined in section 4974(c)),

“(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

“(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

“(e) DEFINITIONS.—For purposes of this section—

“(1) EXPATRIATE.—The term ‘expatriate’ means—

“(A) any United States citizen who relinquishes citizenship, and

“(B) any long-term resident of the United States who—

“(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

“(ii) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country.

“(2) EXPATRIATION DATE.—The term ‘expatriation date’ means—

“(A) the date an individual relinquishes United States citizenship, or

“(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

“(3) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship on the earliest of—

“(A) the date the individual renounces such individual's United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

“(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

“(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

“(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

“(4) LONG-TERM RESIDENT.—The term ‘long-term resident’ has the meaning given to such term by section 877(e)(2).

“(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES' INTERESTS IN TRUST.—

“(1) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

“(A) the individual shall not be treated as having sold such interest,

“(B) such interest shall be treated as a separate share in the trust, and

“(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share, “(ii) the separate trust shall be treated as having sold its assets on the day before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

“(iii) the individual shall be treated as having recontributed the assets to the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (C)(ii). In determining the amount of such distribution, proper adjustments shall be made for liabilities of the trust allocable to an individual's share in the trust.

“(2) SPECIAL RULES FOR INTERESTS IN QUALIFIED TRUSTS.—

“(A) IN GENERAL.—If the trust interest described in paragraph (1) is an interest in a qualified trust—

“(i) paragraph (1) and subsection (a) shall not apply, and

“(ii) in addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax in the amount determined under subparagraph (B).

“(B) AMOUNT OF TAX.—The amount of tax under subparagraph (A)(ii) shall be equal to the lesser of—

“(i) the highest rate of tax imposed by section 1(e) for the taxable year which includes the day before the expatriation date, multiplied by the amount of the distribution, or

“(ii) the balance in the deferred tax account immediately before the distribution determined without regard to any increases under subparagraph (C)(ii) after the 30th day preceding the distribution.

“(C) DEFERRED TAX ACCOUNT.—For purposes of subparagraph (B)(ii)—

“(i) OPENING BALANCE.—The opening balance in a deferred tax account with respect to any trust interest is an amount equal to the tax which would have been imposed on the allocable expatriation gain with respect to the trust interest if such gain had been included in gross income under subsection (a).

“(ii) INCREASE FOR INTEREST.—The balance in the deferred tax account shall be increased by the amount of interest determined (on the balance in the account at the time the interest accrues), for periods after the 90th day after the expatriation date, by using the rates and method applicable under section 6621 for underpayments of tax for such periods, except that section 6621(a)(2) shall be applied by substituting ‘5 percentage points’ for ‘3 percentage points’ in subparagraph (B) thereof.

“(iii) DECREASE FOR TAXES PREVIOUSLY PAID.—The balance in the tax deferred account shall be reduced—

“(I) by the amount of taxes imposed by subparagraph (A) on any distribution to the person holding the trust interest, and

“(II) in the case of a person holding a nonvested interest, to the extent provided in regulations, by the amount of taxes imposed by subparagraph (A) on distributions from the trust with respect to nonvested interests not held by such person.

“(D) ALLOCABLE EXPATRIATION GAIN.—For purposes of this paragraph, the allocable expatriation gain with respect to any beneficiary's interest in a trust is the amount of gain which would be allocable to such beneficiary's vested and nonvested interests in the trust if the beneficiary held directly all assets allocable to such interests.

“(E) TAX DEDUCTED AND WITHHELD.—

“(i) IN GENERAL.—The tax imposed by subparagraph (A)(ii) shall be deducted and withheld by the trustees from the distribution to which it relates.

“(ii) EXCEPTION WHERE FAILURE TO WAIVE TREATY RIGHTS.—If an amount may not be deducted and withheld under clause (i) by reason of the distributee failing to waive any treaty right with respect to such distribution—

“(I) the tax imposed by subparagraph (A)(ii) shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax, and

“(II) any other beneficiary of the trust shall be entitled to recover from the distributee the amount of such tax imposed on the other beneficiary.

“(F) DISPOSITION.—If a trust ceases to be a qualified trust at any time, a covered expatriate disposes of an interest in a qualified trust, or a covered expatriate holding an interest in a qualified trust dies, then, in lieu of the tax imposed by subparagraph (A)(ii), there is hereby imposed a tax equal to the lesser of—

“(i) the tax determined under paragraph (1) as if the day before the expatriation date were the date of such cessation, disposition, or death, whichever is applicable, or

“(ii) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax imposed on the other beneficiary.

“(G) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

“(i) QUALIFIED TRUST.—The term ‘qualified trust’ means a trust which is described in section 7701(a)(30)(E).

“(ii) VESTED INTEREST.—The term ‘vested interest’ means any interest which, as of the day before the expatriation date, is vested in the beneficiary.

“(iii) NONVESTED INTEREST.—The term ‘nonvested interest’ means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

“(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

“(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is part of a retirement plan to which subsection (d)(2) applies.

“(3) DETERMINATION OF BENEFICIARIES' INTEREST IN TRUST.—

“(A) DETERMINATIONS UNDER PARAGRAPH (1).—For purposes of paragraph (1), a beneficiary's interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar adviser.

“(B) OTHER DETERMINATIONS.—For purposes of this section—

“(i) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiaries for purposes of this section.

“(ii) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

“(I) the methodology used to determine that taxpayer's trust interest under this section, and

“(II) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary's trust interest under this section.

“(g) TERMINATION OF DEFERRALS, ETC.—In the case of any covered expatriate, notwithstanding any other provision of this title—

“(1) any period during which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and

“(2) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

“(h) IMPOSITION OF TENTATIVE TAX.—

“(1) IN GENERAL.—If an individual is required to include any amount in gross income under subsection (a) for any taxable year, there is hereby imposed, immediately before the expatriation date, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

“(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

“(3) TREATMENT OF TAX.—Any tax paid under paragraph (1) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

“(4) DEFERRAL OF TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

“(i) SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.—

“(1) IMPOSITION OF LIEN.—

“(A) IN GENERAL.—If a covered expatriate makes an election under subsection (a)(4) or (b) which results in the deferral of any tax imposed by reason of subsection (a), the deferred amount (including any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).

“(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate's income tax which, but for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

“(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

“(A) the liability for tax by reason of this section is satisfied or has become unenforceable by reason of lapse of time, or

“(B) it is established to the satisfaction of the Secretary that no further tax liability may arise by reason of this section.

“(3) CERTAIN RULES APPLY.—The rules set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6324A.

“(j) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.”.

(b) Inclusion in Income of Gifts and Bequests Received by United States Citizens and Residents From Expatriates.—Section 102 (relating to gifts, etc. not included in gross income) is amended by adding at the end the following new subsection:

“(d) Gifts and Inheritances From Covered Expatriates.—

“(1) In general.—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is also used in section 877A shall have the same meaning as when used in section 877A.

“(2) Exceptions for transfers otherwise subject to estate or gift tax.—Paragraph (1) shall not apply to any property if either—

“(A) the gift, bequest, devise, or inheritance is—

“(i) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

“(ii) included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate, or

“(B) no such return was timely filed but no such return would have been required to be filed even if the covered expatriate were a citizen or long-term resident of the United States.”.

(c) Definition of Termination of United States Citizenship.—Section 7701(a) is amended by adding at the end the following new paragraph:

“(49) Termination of united states citizenship.—

“(A) In general.—An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(e)(3).

“(B) Dual citizens.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.”.

(d) Ineligibility for Visa or Admission to United States.—

(1) In general.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

“(E) Former citizens not in compliance with expatriation revenue provisions.—Any alien who is a former citizen of the United States who relinquishes United States citizenship (within the meaning of section 877A(e)(3) of the Internal Revenue Code of 1986) and who is not in compliance with section 877A of such Code (relating to expatriation) is inadmissible.”.

(2) Availability of information.—

(A) In general.—Section 6103(l) (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

“(21) Disclosure to deny visa or admission to certain expatriates.—Upon written request of the Attorney General or the Attorney General's delegate, the Secretary shall disclose whether an individual is in compliance with section 877A (and if not in compliance, any items of noncompliance) to officers and employees of the Federal agency responsible for administering section 212(a)(10)(E) of the Immigration and Nationality Act solely for the purpose of, and to the extent necessary in, administering such section 212(a)(10)(E).”.

(B) Safeguards.—Section 6103(p)(4) (relating to safeguards) is amended by striking “or (20)” each place it appears and inserting “(20), or (21)”.

(3) Effective dates.—The amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(e) Conforming Amendments.—

(1) Section 877 is amended by adding at the end the following new subsection:

“(h) Application.—This section shall not apply to an expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after the date of the enactment of this subsection.”.

(2) Section 2107 is amended by adding at the end the following new subsection:

“(f) Application.—This section shall not apply to any expatriate subject to section 877A.”.

(3) Section 2501(a)(3) is amended by adding at the end the following new subparagraph:

“(C) Application.—This paragraph shall not apply to any expatriate subject to section 877A.”.

(4) Section 6039G(a) is amended by inserting “or 877A” after “section 877(b)”.

(5) The second sentence of section 6039G(d) is amended by inserting “or who relinquishes United States citizenship (within the meaning of section 877A(e)(3))” after “section 877(a))”.

(f) Clerical Amendment.—The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

“Sec. 877A. Tax responsibilities of expatriation.”.

(g) Effective Date.—

(1) In general.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) whose expatriation date (as so defined) occurs on or after the date of the enactment of this Act.

(2) Gifts and bequests.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to gifts and bequests received on or after the date of the enactment of this Act, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

(3) Due date for tentative tax.—The due date under section 877A(h)(2) of the Internal Revenue Code of 1986, as added by this section, shall in no event occur before the 90th day after the date of the enactment of this Act.

Subtitle F—Miscellaneous Provisions

SEC. 551. TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT INSTRUMENTS.

(a) In General.—Section 1275(d) (relating to regulation authority) is amended—

(1) by striking “The Secretary” and inserting the following:

“(1) In general.—The Secretary”, and

(2) by adding at the end the following new paragraph:

“(2) Treatment of contingent payment convertible debt.—

“(A) In general.—In the case of a debt instrument which—

“(i) is convertible into stock of the issuing corporation, into stock or debt of a related party (within the meaning of section 267(b) or 707(b)(1)), or into cash or other property in an amount equal to the approximate value of such stock or debt, and

“(ii) provides for contingent payments,

any regulations which require original issue discount to be determined by reference to the comparable yield of a noncontingent fixed-rate debt instrument shall be applied as if the regulations require that such comparable yield be determined by reference to a noncontingent fixed-rate debt instrument which is convertible into stock.

“(B) Special rule.—For purposes of subparagraph (A), the comparable yield shall be determined without taking into account the yield resulting from the conversion of a debt instrument into stock.”.

(b) Cross Reference.—Section 163(e)(6) (relating to cross references) is amended by adding at the end the following:

“For the treatment of contingent payment convertible debt, see section 1275(d)(2).”.

(c) Effective Date.—The amendments made by this section shall apply to debt instruments issued on or after the date of the enactment of this Act.

SEC. 552. GRANT OF TREASURY REGULATORY AUTHORITY TO ADDRESS FOREIGN TAX CREDIT TRANSACTIONS INVOLVING INAPPROPRIATE SEPARATION OF FOREIGN TAXES FROM RELATED FOREIGN INCOME.

(a) In General.—Section 901 (relating to taxes of foreign countries and of possessions of United States) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

“(m) Regulations.—The Secretary may prescribe regulations disallowing a credit under subsection (a) for all or a portion of any foreign tax, or allocating a foreign tax among 2 or more persons, in cases where the foreign tax is imposed on any person in respect of income of another person or in other cases involving the inappropriate separation of the foreign tax from the related foreign income.”.

(b) Effective Date.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 553. REPEAL OF SPECIAL PROPERTY EXCEPTION TO LEASING PROVISIONS OF THE AMERICAN JOBS CREATION ACT OF 2004.

(a) In General.—Section 849(b) of the American Jobs Creation Act of 2004 is amended by striking paragraphs (1) and (2), by redesignating paragraphs (3) and (4) as paragraphs (1) and (2), respectively.

(b) Leases to Foreign Entities.—Section 849(b) of the American Jobs Creation Act of 2004, as amended by subsection (a), is amended by adding at the end the following new paragraph:

“(3) Leases to foreign entities.—In the case of tax-exempt use property leased to a tax-exempt entity which is a foreign person or entity, the amendments made by this part shall apply to taxable years beginning after December 31, 2005, with respect to leases entered into on or before March 12, 2004.”.

(c) Effective Date.—The amendments made by this section shall take effect as if included in the enactment of the American Jobs Creation Act of 2004.

SEC. 554. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERS WHICH ARE CORPORATIONS.

(a) In General.—Section 163(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

"(8) TREATMENT OF CORPORATE PARTNERS.—Except to the extent provided by regulations, in applying this subsection to a corporation which owns (directly or indirectly) an interest in a partnership—

"(A) such corporation's distributive share of interest income paid or accrued to such partnership shall be treated as interest income paid or accrued to such corporation,

"(B) such corporation's distributive share of interest paid or accrued by such partnership shall be treated as interest paid or accrued by such corporation, and

"(C) such corporation's share of the liabilities of such partnership shall be treated as liabilities of such corporation.".

(b) ADDITIONAL REGULATORY AUTHORITY.—Section 163(j)(9) (relating to regulations), as redesignated by subsection (a), is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) regulations providing for the reallocation of shares of partnership indebtedness, or distributive shares of the partnership's interest income or interest expense, as may be appropriate to carry out the purposes of this subsection.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning on or after the date of the enactment of this Act.

SEC. 555. LIMITATION OF EMPLOYER DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES.

(a) IN GENERAL.—Paragraph (2) of section 274(e) (relating to expenses treated as compensation) is amended to read as follows:

"(2) EXPENSES TREATED AS COMPENSATION.—Expenses for goods, services, and facilities, to the extent that the expenses do not exceed the amount of the expenses which are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).".

(b) PERSONS NOT EMPLOYEES.—Paragraph (9) of section 274(e) is amended by striking "to the extent that the expenses are includible in the gross income" and inserting "to the extent that the expenses do not exceed the amount of the expenses which are includible in the gross income".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses incurred after the date of the enactment of this Act.

SEC. 556. INCREASE IN AGE OF MINOR CHILDREN WHOSE UNEARNED INCOME IS TAXED AS IF PARENT'S INCOME.

(a) IN GENERAL.—Section 1(g)(2)(A) (relating to child to whom subsection applies) is amended by striking "age 14" and inserting "age 18".

(b) TREATMENT OF DISTRIBUTIONS FROM QUALIFIED DISABILITY TRUSTS.—Section 1(g)(4) (relating to net unearned income) is amended by adding at the end the following new subparagraph:

"(C) TREATMENT OF DISTRIBUTIONS FROM QUALIFIED DISABILITY TRUSTS.—For purposes of this subsection, in the case of any child who is a beneficiary of a qualified disability trust (as defined in section 642(b)(2)(C)(ii)), any amount included in the income of such child under sections 652 and 662 during a taxable year shall be considered earned income of such child for such taxable year.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 557. LOAN AND REDEMPTION REQUIREMENTS ON POOLED FINANCING REQUIREMENTS.

(a) STRENGTHENED REASONABLE EXPECTATION REQUIREMENT.—Subparagraph (A) of section 149(f)(2) (relating to reasonable expectation requirement) is amended to read as follows:

"(A) IN GENERAL.—The requirements of this paragraph are met with respect to an issue if the issuer reasonably expects that—

"(i) as of the close of the 1-year period beginning on the date of issuance of the issue, at least 50 percent of the net proceeds of the issue (as of the close of such period) will have been used directly or indirectly to make or finance loans to ultimate borrowers, and

"(ii) as of the close of the 3-year period beginning on such date of issuance, at least 95 percent of the net proceeds of the issue (as of the close of such period) will have been so used.".

(b) WRITTEN LOAN COMMITMENT AND REDEMPTION REQUIREMENTS.—Section 149(f) (relating to treatment of certain pooled financing bonds) is amended by redesignating paragraphs (4) and (5) as paragraphs (6) and (7), respectively, and by inserting after paragraph (3) the following new paragraphs:

"(4) WRITTEN LOAN COMMITMENT REQUIREMENT.—

"(A) IN GENERAL.—The requirement of this paragraph is met with respect to an issue if the issuer receives prior to issuance written loan commitments identifying the ultimate potential borrowers of at least 50 percent of the net proceeds of such issue.

"(B) EXCEPTION.—Subparagraph (A) shall not apply with respect to any issuer which is a State (or an integral part of a State) issuing pooled financing bonds to make or finance loans to subordinate governmental units of such State or to State-created entities providing financing for water-infrastructure projects through the federally-sponsored State revolving fund program.

"(5) REDEMPTION REQUIREMENT.—The requirement of this paragraph is met if to the extent that less than the percentage of the proceeds of an issue required to be used under clause (i) or (ii) of paragraph (2)(A) is used by the close of the period identified in such clause, the issuer uses an amount of proceeds equal to the excess of—

"(A) the amount required to be used under such clause, over

"(B) the amount actually used by the close of such period,

"to redeem outstanding bonds within 90 days after the end of such period.".

(c) ELIMINATION OF DISREGARD OF POOLED BONDS IN DETERMINING ELIGIBILITY FOR SMALL ISSUER EXCEPTION TO ARBITRAGE REBATE.—Section 148(f)(4)(D)(ii) (relating to aggregation of issuers) is amended by striking subclause (II) and by redesignating subclauses (III) and (IV) as subclauses (II) and (III), respectively.

(d) CONFORMING AMENDMENTS.—

(1) Section 149(f)(1) is amended by striking "paragraphs (2) and (3)" and inserting "paragraphs (2), (3), (4), and (5)".

(2) Section 149(f)(7)(B), as redesignated by subsection (b), is amended by striking "paragraph (4)(A)" and inserting "paragraph (6)(A)".

(3) Section 54(l)(2) is amended by striking "section 149(f)(4)(A)" and inserting "section 149(f)(6)(A)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

SEC. 558. REPORTING OF INTEREST ON TAX-EXEMPT BONDS.

(a) IN GENERAL.—Section 6049(b)(2) (relating to exceptions) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(b) CONFORMING AMENDMENT.—Section 6049(b)(2)(C), as redesignated by subsection (a), is amended by striking "subparagraph (C)" and inserting "subparagraph (B)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to interest earned after December 31, 2005.

SEC. 559. MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) TAXABLE YEARS ENDING BEFORE 2006.—

(1) MODIFICATION OF PHASEOUT.—

(A) IN GENERAL.—Section 29(b)(1)(A) is amended by inserting "the calendar year preceding" before "the calendar year".

(B) CONFORMING AMENDMENTS.—Section 29(b)((2) is amended—

(i) by striking "The" and inserting "With respect to any calendar year, the", and

(ii) by striking "for the calendar year in which the sale occurs" and inserting "for such calendar year".

(2) NO INFLATION ADJUSTMENT FOR THE CREDIT AMOUNT IN 2005.—Section 29(b)(2), as amended by paragraph (1), is amended by adding at the end the following new sentence: "This paragraph shall not apply with respect to the $3 amount in subsection (a) for calendar year 2005 and the amount in effect under subsection (a) for sales in such calendar year shall be the amount which was in effect for sales in calendar year 2004.".

(b) TAXABLE YEARS ENDING AFTER 2005.—

(1) MODIFICATION OF PHASEOUT.—

(A) IN GENERAL.—Section 45K(b)(1)(A) is amended by inserting "the calendar year preceding" before "the calendar year".

(B) CONFORMING AMENDMENTS.—Section 45K(b)((2) is amended—

(i) by striking "The" and inserting "With respect to any calendar year, the", and

(ii) by striking "for the calendar year in which the sale occurs" and inserting "for such calendar year".

(2) NO INFLATION ADJUSTMENT FOR THE CREDIT AMOUNT IN 2005, 2006, AND 2007.—Section 45K(b)(2), as amended by paragraph (1), is amended by adding at the end the following new sentence: "This paragraph shall not apply with respect to the $3 amount in subsection (a) for calendar years 2005, 2006, and 2007 and the amount in effect under subsection (a) for sales in each such calendar year shall be the amount which was in effect for sales in calendar year 2004.".

(3) TREATMENT OF COKE AND COKE GAS.—

(A) NONAPPLICATION OF PHASEOUT.—Section 45K(g)(2) is amended by adding at the end the following new subparagraph:

"(D) NONAPPLICATION OF PHASEOUT.—Subsection (b)(1) shall not apply.".

(B) APPLICATION OF INFLATION ADJUSTMENT.—Section 45K(g)(2)(B) is amended by inserting "and the last sentence of subsection (b)(2) shall not apply.".

(C) CLARIFICATION OF QUALIFYING FACILITY.—Section 45K(g)(1) is amended by inserting "(other than from petroleum based products)" after "coke or coke gas".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold after December 31, 2004.

SEC. 560. MODIFICATION OF INDIVIDUAL ESTIMATED TAX SAFE HARBOR.

(a) IN GENERAL.—The table contained in section 6654(d)(1)(C) is amended by striking

"2002 or thereafter" and inserting "2002, 2003, 2004, or 2005" and by adding at the end the following new items:

"2006	120
2007 or thereafter	110".

(b) Effective Date.—The amendments made by this section shall apply with respect to any installment payment for taxable years beginning after December 31, 2005.

SEC. 561. REVALUATION OF LIFO INVENTORIES OF LARGE INTEGRATED OIL COMPANIES.

(a) General Rule.—Notwithstanding any other provision of law, if a taxpayer is an applicable integrated oil company for its last taxable year ending in calendar year 2005, the taxpayer shall—

(1) increase, effective as of the close of such taxable year, the value of each historic LIFO layer of inventories of crude oil, natural gas, or any other petroleum product (within the meaning of section 4611) by the layer adjustment amount, and

(2) decrease its cost of goods sold for such taxable year by the aggregate amount of the increases under paragraph (1).

If the aggregate amount of the increases under paragraph (1) exceed the taxpayer's cost of goods sold for such taxable year, the taxpayer's gross income for such taxable year shall be increased by the amount of such excess.

(b) Layer Adjustment Amount.—For purposes of this section—

(1) In general.—The term "layer adjustment amount" means, with respect to any historic LIFO layer, the product of—

(A) $18.75, and

(B) the number of barrels of crude oil (or in the case of natural gas or other petroleum products, the number of barrel-of-oil equivalents) represented by the layer.

(2) Barrel-of-oil equivalent.—The term "barrel-of-oil equivalent" has the meaning given such term by section 29(d)(5) (as in effect before its redesignation by the Energy Tax Incentives Act of 2005).

(c) Application of Requirement.—

(1) No change in method of accounting.—Any adjustment required by this section shall not be treated as a change in method of accounting.

(2) Underpayments of estimated tax.—o addition to the tax shall be made under section 6655 of the Internal Revenue Code of 1986 (relating to failure by corporation to pay estimated tax) with respect to any underpayment of an installment required to be paid with respect to the taxable year described in subsection (a) to the extent such underpayment was created or increased by this section.

(d) Applicable Integrated Oil Company.—For purposes of this section, the term "applicable integrated oil company" means an integrated oil company (as defined in section 291(b)(4) of the Internal Revenue Code of 1986) which has an average daily worldwide production of crude oil of at least 500,000 barels for the taxable year and which had gross receipts in excess of $1,000,000,000 for its last taxable year ending during calendar year 2005. For purposes of this subsection all persons treated as a single employer under subsections (a) and (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as 1 person and, in the case of a short taxable year, the rule under section 448(c)(3)(B) shall apply.

SEC. 562. ELIMINATION OF AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES FOR MAJOR INTEGRATED OIL COMPANIES.

(a) In General.—Section 167(h) is amended by adding at the end the following new paragraph:

"(5) Nonapplication to major integrated oil companies.—This subsection shall not apply with respect to any expenses paid or incurred for any taxable year by any integrated oil company (as defined in section 291(b)(4)) which has an average daily worldwide production of crude oil of at least 500,000 barrels for such taxable year.".

(b) Effective Date.—The amendment made by this section shall take effect as if included in the amendment made by section 1329(a) of the Energy Policy Act of 2005.

SEC. 563. VALUATION OF EMPLOYEE PERSONAL USE OF NONCOMMERCIAL AIRCRAFT.

(a) In General.—For purposes of Federal income tax inclusion, the value of any employee personal use of noncommercial aircraft shall equal the excess (if any) of—

(1) greater of—

(A) the fair market value of such use, or

(B) the actual cost of such use (including all fixed and variable costs), over

(2) any amount paid by or on behalf of such employee for such use.

(b) Effective Date.—Subsection (a) shall apply to use after the date of the enactment of this Act.

SEC. 564. APPLICATION OF FIRPTA TO REGULATED INVESTMENT COMPANIES.

(a) In General.—Subclause (II) of section 897(h)(4)(A)(i) (defining qualified investment entity) is amended by inserting "which is a United States real property holding corporation or which would be a United States real property holding corporation if the exceptions provided in subsections (c)(3) and (h)(2) did not apply to interests in any real estate investment trust or regulated investment company" after "regulated investment company".

(b) Effective Date.—The amendment made by this section shall apply to distributions with respect to taxable years beginning after December 31, 2004.

SEC. 565. TREATMENT OF DISTRIBUTIONS ATTRIBUTABLE TO FIRPTA GAINS.

(a) Qualified Investment Entity.—

(1) In general.—Section 897(h)(1) is amended—

(A) by striking "a nonresident alien individual or a foreign corporation" in the first sentence and inserting "a nonresident alien individual, a foreign corporation, or other qualified investment entity",

(B) by striking "such nonresident alien individual or foreign corporation" in the first sentence and inserting "such nonresident alien individual, foreign corporation, or other qualified investment entity", and

(C) by striking the second sentence and inserting the following new sentence: "Notwithstanding the preceding sentence, any distribution by a qualified investment entity to a nonresident alien, a foreign corporation, or other qualified investment entity with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the 1 year period ending on the date of such distribution.".

(2) Application after 2007.—Clause (ii) of section 897(h)(4)(A) is amended by adding at the end the following new sentence: "Notwithstanding the preceding sentence, an entity described in clause (i)(II) shall be treated as a qualified investment entity for purposes of applying paragraph (1) in any case in which a real estate investment trust makes a distribution to an entity described in clause (i)(II).".

(b) Treatment of Certain Distributions as Dividends.—

(1) In general.—Section 852(b)(3) (relating to capital gains) is amended by adding at the end the following new subparagraph:

"(E) Certain distributions.—In the case of a distribution to which section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount of such distribution which would be included in computing long-term capital gains for the shareholder under subparagraph (B) or (D) (without regard to this subparagraph)—

"(i) shall not be included in computing such shareholder's long-term capital gains, and

"(ii) shall be included in such shareholder's gross income as a dividend from the regulated investment company.".

(2) Conforming amendment.—Section 871(k)(2) (relating to short-term capital gain dividends) is amended by adding at the end the following new subparagraph:

"(E) Certain distributions.—In the case of a distribution to which section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be treated as a short-term capital gain dividend to the shareholder (without regard to this subparagraph)—

"(i) shall not be treated as a short-term capital gain dividend, and

"(ii) shall be included in such shareholder's gross income as a dividend from the regulated investment company.".

(c) Effective Dates.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years of qualified investment entities beginning after the date of the enactment of this Act.

(2) Dividends.—The amendments made by subsection (b) shall apply to dividends with respect to taxable years of regulated investment companies beginning after December 31, 2004.

SEC. 566. PREVENTION OF AVOIDANCE OF TAX ON INVESTMENTS OF FOREIGN PERSONS IN UNITED STATES REAL PROPERTY THROUGH WASH SALE TRANSACTIONS.

(a) In General.—Section 897(h) of the Internal Revenue Code of 1986 (relating to special rules in certain investment entities) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) Treatment of certain wash sale transactions.—

"(A) In general.—If an interest in a domestically controlled qualified investment entity is disposed of in an applicable wash sale transaction, the taxpayer shall, for purposes of this section, be treated as having gain from the sale or exchange of a United States real property interest in an amount equal to the portion of the distribution described in subparagraph (B) with respect to such interest which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1).

"(B) Applicable wash sales transaction.—For purposes of this paragraph—

"(i) In general.—The term 'applicable wash sales transaction' means any transaction (or series of transactions) under which a nonresident alien individual or foreign corporation—

"(I) disposes of an interest in a domestically controlled qualified investment entity during the 30-day period preceding a distribution which is to be made with respect to the interest and any portion of which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1), and

"(II) acquires an identical interest in such entity during the 60-day period beginning with the 1st day of the 30-day period described in subclause (I).

For purposes of subclause (II), a nonresident alien individual or foreign corporation shall be treated as having acquired any interest acquired by a person related (within the meaning of section 465(b)(3)(C)) to the individual or corporation.

"(ii) EXCEPTION WHERE DISTRIBUTION ACTUALLY RECEIVED.—A transaction shall not be treated as an applicable wash sales transaction if the nonresident alien individual or foreign corporation receives the distribution described in clause (i)(I) with respect to either the interest which was disposed of, or acquired, in the transaction.

"(iii) EXCEPTION FOR CERTAIN PUBLICLY TRADED STOCK.—A transaction shall not be treated as an applicable wash sales transaction if it involves the disposition of any class of stock in a qualified investment entity which is regularly traded on an established securities market within the United States but only if the nonresident alien individual or foreign corporation did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of the distribution described in clause (i)(I).".

(b) NO WITHHOLDING REQUIRED.—Section 1445(b) of the Internal Revenue Code of 1986 (relating to exemptions) is amended by adding at the end the following new paragraph:

"(8) APPLICABLE WASH SALES TRANSACTIONS.—No person shall be required to deduct and withhold any amount under subsection (a) with respect to a disposition which is treated as a disposition of a United States real property interest solely by reason of section 897(h)(4).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to dispositions after December 31, 2005, in taxable years ending after such date.

SEC. 567. MODIFICATIONS TO RULES RELATING TO TAXATION OF DISTRIBUTIONS OF STOCK AND SECURITIES OF A CONTROLLED CORPORATION.

(a) MODIFICATION OF ACTIVE BUSINESS DEFINITION UNDER SECTION 355.—

(1) IN GENERAL.—Section 355(b) (defining active conduct of a trade or business) is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULES RELATING TO ACTIVE BUSINESS REQUIREMENT.—

"(A) IN GENERAL.—For purposes of determining whether a corporation meets the requirement of paragraph (2)(A), all members of such corporation's separate affiliated group shall be treated as 1 corporation. For purposes of the preceding sentence, the term 'separate affiliated group' means, with respect to any corporation, the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply.

"(B) CONTROL.—For purposes of paragraph (2)(D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as 1 distributee corporation.".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (A) of section 355(b)(2) is amended to read as follows:

"(A) it is engaged in the active conduct of a trade or business,".

(B) Section 355(b)(2) of such Code is amended by striking the last sentence.

(3) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendments made by this subsection shall apply—

(i) to distributions after the date of the enactment of this Act, and before January 1, 2010, and

(ii) for purposes of determining the continued qualification under section 355(b)(2)(A) of the Internal Revenue Code of 1986 (as amended by paragraph (2)(A)) of distributions made before such date, as a result of an acquisition, disposition, or other restructuring after such date and before January 1, 2010.

(B) TRANSITION RULE.—The amendments made by this subsection shall not apply to any distribution pursuant to a transaction which is—

(i) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,

(ii) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(iii) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

(C) ELECTIONS.—

(i) OUT OF TRANSITION RELIEF.—Subparagraph (B) shall not apply if the distributing corporation elects not to have such subparagraph apply to distributions of such corporation. Any such election, once made, shall be irrevocable.

(ii) APPLICATION TO PRIOR DISTRIBUTIONS.—Subparagraph (A)(ii) shall not apply to a distributing or controlled corporation if the corporation elects not to have such subparagraph apply to such corporation. Any such election, once made, shall be irrevocable.

(b) SECTION 355 NOT TO APPLY TO DISTRIBUTIONS IF THE DISTRIBUTING OR CONTROLLED CORPORATION IS A DISQUALIFIED INVESTMENT CORPORATION.—

(1) IN GENERAL.—Section 355 (relating to distributions of stock and securities of a controlled corporation) is amended by adding at the end the following new subsection:

"(g) SECTION NOT TO APPLY TO DISTRIBUTIONS INVOLVING DISQUALIFIED INVESTMENT CORPORATIONS.—

"(1) IN GENERAL.—This section (and so much of section 356 as relates to this section) shall not apply to any distribution which is part of a transaction if—

"(A) either the distributing corporation or controlled corporation is, immediately after the transaction, a disqualified investment corporation, and

"(B) any person holds, immediately after the transaction, a 50-percent or greater interest in any disqualified investment corporation, but only if such person did not hold such an interest in such corporation immediately before the transaction.

"(2) DISQUALIFIED INVESTMENT CORPORATION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'disqualified investment corporation' means any distributing or controlled corporation if the fair market value of the investment assets of the corporation is 75 percent or more of the fair market value of all assets of the corporation.

"(B) INVESTMENT ASSETS.—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the term 'investment assets' means—

"(I) cash,

"(II) any stock or securities in a corporation,

"(III) any interest in a partnership,

"(IV) any debt instrument or other evidence of indebtedness,

"(V) any option, forward or futures contract, notional principal contract, or derivative,

"(VI) foreign currency, or

"(VII) any similar asset.

"(ii) EXCEPTION FOR ASSETS USED IN ACTIVE CONDUCT OF CERTAIN FINANCIAL TRADES OR BUSINESSES.—Such term shall not include any asset which is held for use in the active and regular conduct of—

"(I) a lending or finance business (within the meaning of section 954(h)(4)),

"(II) a banking business through a bank (as defined in section 581), a domestic building and loan association (within the meaning of section 7701(a)(19)), or any similar institution specified by the Secretary, or

"(III) an insurance business if the conduct of the business is licensed, authorized, or regulated by an applicable insurance regulatory body.

This clause shall only apply with respect to any business if substantially all of the income of the business is derived from persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the person conducting the business.

"(iii) EXCEPTION FOR SECURITIES MARKED TO MARKET.—Such term shall not include any security (as defined in section 475(c)(2)) which is held by a dealer in securities and to which section 475(a) applies.

"(iv) STOCK OR SECURITIES IN A 25-PERCENT CONTROLLED ENTITY.—

"(I) IN GENERAL.—Such term shall not include any stock and securities in, or any asset described in subclause (IV) or (V) of clause (i) issued by, a corporation which is a 25-percent controlled entity with respect to the distributing or controlled corporation.

"(II) LOOK-THRU RULE.—The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any 25-percent controlled entity.

"(III) 25-PERCENT CONTROLLED ENTITY.—For purposes of this clause, the term '25-percent controlled entity' means, with respect to any distributing or controlled corporation, any corporation with respect to which the distributing or controlled corporation owns directly or indirectly stock meeting the requirements of section 1504(a)(2), except that such section shall be applied by substituting '25 percent' for '80 percent' and without regard to stock described in section 1504(a)(4).

"(v) INTERESTS IN CERTAIN PARTNERSHIPS.—

"(I) IN GENERAL.—Such term shall not include any interest in a partnership, or any debt instrument or other evidence of indebtedness, issued by the partnership, if 1 or more of the trades or businesses of the partnership are (or, without regard to the 5-year requirement under subsection (b)(2)(B), would be) taken into account by the distributing or controlled corporation, as the case may be, in determining whether the requirements of subsection (b) are met with respect to the distribution.

"(II) LOOK-THRU RULE.—The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any partnership described in subclause (I).

"(3) 50-PERCENT OR GREATER INTEREST.—For purposes of this subsection—

"(A) IN GENERAL.—The term '50-percent or greater interest' has the meaning given such term by subsection (d)(4).

"(B) ATTRIBUTION RULES.—The rules of section 318 shall apply for purposes of determining ownership of stock for purposes of this paragraph.

"(4) TRANSACTION.—For purposes of this subsection, the term 'transaction' includes a series of transactions.

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out, or prevent the avoidance of, the purposes of this subsection, including regulations—

"(A) to carry out, or prevent the avoidance of, the purposes of this subsection in cases involving—

"(i) the use of related persons, intermediaries, pass-thru entities, options, or other arrangements, and

"(ii) the treatment of assets unrelated to the trade or business of a corporation as investment assets if, prior to the distribution, investment assets were used to acquire such unrelated assets,

"(B) which in appropriate cases exclude from the application of this subsection a distribution which does not have the character of a redemption which would be treated as a sale or exchange under section 302, and

"(C) which modify the application of the attribution rules applied for purposes of this subsection.".

(2) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendments made by this subsection shall apply to distributions after the date of the enactment of this Act.

(B) TRANSITION RULE.—The amendments made by this subsection shall not apply to any distribution pursuant to a transaction which is—

(i) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,

(ii) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(iii) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

SEC. 568. AMORTIZATION OF EXPENSES INCURRED IN CREATING OR ACQUIRING MUSIC OR MUSIC COPYRIGHTS.

(a) IN GENERAL.—Section 263A (relating to capitalization and inclusion in inventory costs of certain expenses) is amended by redesignating subsection (i) as subsection (j) and by adding after subsection (h) the following new subsection:

"(i) SPECIAL RULES FOR CERTAIN MUSICAL WORKS AND COPYRIGHTS.—

"(1) IN GENERAL.—If—

"(A) any expense is paid or incurred by the taxpayer in creating or acquiring any musical composition (including any accompanying words) or any copyright with respect to a musical composition, and

"(B) such expense is required to be capitalized under this section,

then, notwithstanding section 167(g), the amount capitalized shall be amortized ratably over the 5-year period beginning with the month in which the composition or copyright was acquired (or, in the case of expenses paid or incurred in connection with the creation of a musical composition, the 5-taxable-year period beginning with the taxable year in which the expenses were paid or incurred).

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to any expense—

"(A) which is a qualified creative expense under subsection (h),

"(B) to which a simplified procedure established under subsection (j)(2) applies,

"(C) which is an amortizable section 197 intangible (as defined in section 197(c)), or

"(D) which, without regard to this section, would not be allowable as a deduction."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred after December 31, 2005, in taxable years ending after such date.

SEC. 569. CREDIT TO HOLDERS OF RURAL RENAISSANCE BONDS.

(a) IN GENERAL.—Subpart H of part IV of subchapter A of chapter 1 (relating to credits against tax) is amended by adding at the end the following new section:

"SEC. 54A. CREDIT TO HOLDERS OF RURAL RENAISSANCE BONDS.

"(a) ALLOWANCE OF CREDIT.—In the case of a taxpayer who holds a rural renaissance bond on a credit allowance date of such bond, which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to credit allowance dates during such year on which the taxpayer holds such bond.

"(b) AMOUNT OF CREDIT.—

"(1) IN GENERAL.—The amount of the credit determined under this subsection with respect to any credit allowance date for a rural renaissance bond is 25 percent of the annual credit determined with respect to such bond.

"(2) ANNUAL CREDIT.—The annual credit determined with respect to any rural renaissance bond is the product of—

"(A) the credit rate determined by the Secretary under paragraph (3) for the day on which such bond was sold, multiplied by

"(B) the outstanding face amount of the bond.

"(3) DETERMINATION.—For purposes of paragraph (2), with respect to any rural renaissance bond, the Secretary shall determine daily or caused to be determined daily a credit rate which shall apply to the first day on which there is a binding, written contract for the sale or exchange of the bond. The credit rate for any day is the credit rate which the Secretary or the Secretary's designee estimates will permit the issuance of rural renaissance bonds with a specified maturity or redemption date without discount and without interest cost to the qualified issuer.

"(4) CREDIT ALLOWANCE DATE.—For purposes of this section, the term 'credit allowance date' means—

"(A) March 15,

"(B) June 15,

"(C) September 15, and

"(D) December 15.

Such term also includes the last day on which the bond is outstanding.

"(5) SPECIAL RULE FOR ISSUANCE AND REDEMPTION.—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

"(c) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

"(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(2) the sum of the credits allowable under this part (other than subpart C thereof, relating to refundable credits).

"(d) RURAL RENAISSANCE BOND.—For purposes of this section—

"(1) IN GENERAL.—The term 'rural renaissance bond' means any bond issued as part of an issue if—

"(A) the bond is issued by a qualified issuer,

"(B) 95 percent or more of the proceeds from the sale of such issue are to be used for capital expenditures incurred for 1 or more qualified projects,

"(C) the qualified issuer designates such bond for purposes of this section and the bond is in registered form, and

"(D) the issue meets the requirements of subsections (e) and (h).

"(2) QUALIFIED PROJECT; SPECIAL USE RULES.—

"(A) IN GENERAL.—The term 'qualified project' means 1 or more projects described in subparagraph (B) located in a rural area.

"(B) PROJECTS DESCRIBED.—A project described in this subparagraph is—

"(i) a water or waste treatment project,

"(ii) an affordable housing project,

"(iii) a community facility project, including hospitals, fire and police stations, and nursing and assisted-living facilities,

"(iv) a value-added agriculture or renewable energy facility project for agricultural producers or farmer-owned entities, including any project to promote the production, processing, or retail sale of ethanol (including fuel at least 85 percent of the volume of which consists of ethanol), biodiesel, animal waste, biomass, raw commodities, or wind as a fuel,

"(v) a distance learning or telemedicine project,

"(vi) a rural utility infrastructure project, including any electric or telephone system,

"(vii) a project to expand broadband technology,

"(viii) a rural teleworks project, and

"(ix) any project described in any preceding clause carried out by the Delta Regional Authority.

"(C) SPECIAL RULES.—For purposes of this paragraph—

"(i) any project described in subparagraph (B)(iv) for a farmer-owned entity may be considered a qualified project if such entity is located in a rural area, or in the case of a farmer-owned entity the headquarters of which are located in a nonrural area, if the project is located in a rural area, and

"(ii) any project for a farmer-owned entity which is a facility described in subparagraph (B)(iv) for agricultural producers may be considered a qualified project regardless of whether the facility is located in a rural or nonrural area.

"(3) SPECIAL USE RULES.—

"(A) REFINANCING RULES.—For purposes of paragraph (1)(B), a qualified project may be refinanced with proceeds of a rural renaissance bond only if the indebtedness being refinanced (including any obligation directly or indirectly refinanced by such indebtedness) was originally incurred after the date of the enactment of this section.

"(B) REIMBURSEMENT.—For purposes of paragraph (1)(B), a rural renaissance bond may be issued to reimburse a borrower for amounts paid after the date of the enactment of this section with respect to a qualified project, but only if—

"(i) prior to the payment of the original expenditure, the borrower declared its intent to reimburse such expenditure with the proceeds of a rural renaissance bond,

"(ii) not later than 60 days after payment of the original expenditure, the qualified issuer adopts an official intent to reimburse the original expenditure with such proceeds, and

"(iii) the reimbursement is made not later than 18 months after the date the original expenditure is paid.

"(C) TREATMENT OF CHANGES IN USE.—For purposes of paragraph (1)(B), the proceeds of an issue shall not be treated as used for a qualified project to the extent that a borrower takes any action within its control which causes such proceeds not to be used for a qualified project. The Secretary shall prescribe regulations specifying remedial actions that may be taken (including conditions to taking such remedial actions) to prevent an action described in the preceding sentence from causing a bond to fail to be a rural renaissance bond.

"(e) MATURITY LIMITATIONS.—

"(1) DURATION OF TERM.—A bond shall not be treated as a rural renaissance bond if the maturity of such bond exceeds the maximum term determined by the Secretary under paragraph (2) with respect to such bond.

"(2) MAXIMUM TERM.—During each calendar month, the Secretary shall determine the maximum term permitted under this paragraph for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of such bond. Such present value shall be determined without regard to the requirements of subsection (f)(3) and using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

"(3) RATABLE PRINCIPAL AMORTIZATION REQUIRED.—A bond shall not be treated as a rural renaissance bond unless it is part of an issue which provides for an equal amount of principal to be paid by the qualified issuer during each calendar year that the issue is outstanding.

"(f) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—

"(1) NATIONAL LIMITATION.—There is a rural renaissance bond limitation of $200,000,000.

"(2) ALLOCATION BY SECRETARY.—The Secretary shall allocate the amount described in paragraph (1) among qualified projects in such manner as the Secretary determines appropriate.

"(g) CREDIT INCLUDED IN GROSS INCOME.—Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)) and the amount so included shall be treated as interest income.

"(h) SPECIAL RULES RELATING TO EXPENDITURES.—

"(1) IN GENERAL.—An issue shall be treated as meeting the requirements of this subsection if, as of the date of issuance, the qualified issuer reasonably expects—

"(A) at least 95 percent of the proceeds from the sale of the issue are to be spent for 1 or more qualified projects within the 5-year period beginning on the date of issuance of the rural renaissance bond,

"(B) a binding commitment with a third party to spend at least 10 percent of the proceeds from the sale of the issue will be incurred within the 6-month period beginning on the date of issuance of the rural renaissance bond or, in the case of a rural renaissance bond, the proceeds of which are to be loaned to 2 or more borrowers, such binding commitment will be incurred within the 6-month period beginning on the date of the loan of such proceeds to a borrower, and

"(C) such projects will be completed with due diligence and the proceeds from the sale of the issue will be spent with due diligence.

"(2) EXTENSION OF PERIOD.—Upon submission of a request prior to the expiration of the period described in paragraph (1)(A), the Secretary may extend such period if the qualified issuer establishes that the failure to satisfy the 5-year requirement is due to reasonable cause and the related projects will continue to proceed with due diligence.

"(3) FAILURE TO SPEND REQUIRED AMOUNT OF BOND PROCEEDS WITHIN 5 YEARS.—To the extent that less than 95 percent of the proceeds of such issue are expended by the close of the 5-year period beginning on the date of issuance (or if an extension has been obtained under paragraph (2), by the close of the extended period), the qualified issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

"(i) SPECIAL RULES RELATING TO ARBITRAGE.—A bond which is part of an issue shall not be treated as a rural renaissance bond unless, with respect to the issue of which the bond is a part, the qualified issuer satisfies the arbitrage requirements of section 148 with respect to proceeds of the issue.

"(j) QUALIFIED ISSUER.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified issuer' means any not-for-profit cooperative lender which has as of the date of the enactment of this section received a guarantee under section 306 of the Rural Electrification Act and which meets the requirement of paragraph (2).

"(2) USER FEE REQUIREMENT.—The requirement of this paragraph is met if the issuer of any rural renaissance bond makes grants for qualified projects as defined under subsection (d)(2) on a semi-annual basis every year that such bond is outstanding in an annual amount equal to one-half of the rate on United States Treasury Bills of the same maturity multiplied by the outstanding principle balance of rural renaissance bonds issued by such issuer.

"(k) SPECIAL RULES RELATING TO POOL BONDS.—No portion of a pooled financing bond may be allocable to loan unless the borrower has entered into a written loan commitment for such portion prior to the issue date of such issue.

"(l) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) BOND.—The term 'bond' includes any obligation.

"(2) POOLED FINANCING BOND.—The term 'pooled financing bond' shall have the meaning given such term by section 149(f)(4)(A).

"(3) RURAL AREA.—The term 'rural area' means any area other than—

"(A) a city or town which has a population of greater than 50,000 inhabitants, or

"(B) the urbanized area contiguous and adjacent to such a city or town.

"(4) PARTNERSHIP; S CORPORATION; AND OTHER PASS-THRU ENTITIES.—

"(A) IN GENERAL.—Under regulations prescribed by the Secretary, in the case of a partnership, trust, S corporation, or other pass-thru entity, rules similar to the rules of section 41(g) shall apply with respect to the credit allowable under subsection (a).

"(B) NO BASIS ADJUSTMENT.—In the case of a bond held by a partnership or an S corporation, rules similar to the rules under section 1397E(i) shall apply.

"(5) BONDS HELD BY REGULATED INVESTMENT COMPANIES.—If any rural renaissance bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

"(6) REPORTING.—Issuers of rural renaissance bonds shall submit reports similar to the reports required under section 149(e).".

(b) REPORTING.—Subsection (d) of section 6049 (relating to returns regarding payments of interest) is amended by adding at the end the following new paragraph:

"(9) REPORTING OF CREDIT ON RURAL RENAISSANCE BONDS.—

"(A) IN GENERAL.—For purposes of subsection (a), the term 'interest' includes amounts includible in gross income under section 54(f) and such amounts shall be treated as paid on the credit allowance date (as defined in section 54(b)(4)).

"(B) REPORTING TO CORPORATIONS, ETC.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A), subsection (b)(4) shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i) of such subsection.

"(C) REGULATORY AUTHORITY.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.".

(c) CONFORMING AMENDMENT.—The table of sections for subpart H of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 54A. Credit to holders of rural renaissance bonds.".

(d) ISSUANCE OF REGULATIONS.—The Secretary of Treasury shall issue regulations required under section 54A of the Internal Revenue Code of 1986 (as added by this section) not later than 120 days after the date of the enactment of this Act.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act and before January 1, 2010.

SEC. 570. MODIFICATION OF TREATMENT OF LOANS TO QUALIFIED CONTINUING CARE FACILITIES.

(a) IN GENERAL.—Subsection (g) of section 7872 is amended to read as follows:

"(g) EXCEPTION FOR LOANS TO QUALIFIED CONTINUING CARE FACILITIES.—

"(1) IN GENERAL.—This section shall not apply for any calendar year to any below-market loan owed by a facility which on the last day of such year is a continuing care facility, if such loan was made pursuant to a continuing care contract and if the lender (or the lender's spouse) attains age 62 before the close of such year.

"(2) CONTINUING CARE CONTRACT.—For purposes of this section, the term 'continuing care contract' means a written contract between an individual and a qualified continuing care facility under which—

"(A) the individual or individual's spouse may use a qualified continuing care facility for their life or lives,

"(B) the individual or individual's spouse will be provided with housing in an independent living unit (which has additional available facilities outside such unit for the provision of meals and other personal care), an assisted living facility or a nursing facility, as is available in the continuing care facility, as appropriate for the health of such individual or individual's spouse, and

"(C) the individual or individual's spouse will be provided assisted living or nursing care as the health of such individual or individual's spouse requires, and as is available in the continuing care facility.

"(3) QUALIFIED CONTINUING CARE FACILITY.—

"(A) IN GENERAL.—For purposes of this section, the term 'qualified continuing care facility' means 1 or more facilities—

"(i) which are designed to provide services under continuing care contracts,

"(ii) that include an independent living unit, plus an assisted living or nursing facility, or both, and

"(iii) substantially all of the independent living unit residents of which are covered by continuing care contracts.

"(B) NURSING HOMES EXCLUDED.—The term 'qualified continuing care facility' shall not include any facility which is of a type which is traditionally considered a nursing home.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to loans made after December 31, 2005.

SEC. 571. MODIFICATIONS OF FOREIGN TAX CREDIT RULES APPLICABLE TO LARGE INTEGRATED OIL COMPANIES WHICH ARE DUAL CAPACITY TAXPAYERS.

(a) IN GENERAL.—Section 901 (relating to credit for taxes of foreign countries and of possessions of the United States), as amended by this Act, is amended by redesignating subsections (m) and (n) as subsections (n) and (o), respectively, and by inserting after subsection (l) the following new subsection:

"(m) SPECIAL RULES RELATING TO LARGE INTEGRATED OIL COMPANIES WHICH ARE DUAL CAPACITY TAXPAYERS.—

"(1) GENERAL RULE.—Notwithstanding any other provision of this chapter, any amount paid or accrued by a dual capacity taxpayer which is a large integrated oil company to a foreign country or possession of the United States for any period shall not be considered a tax—

"(A) if, for such period, the foreign country or possession does not impose a generally applicable income tax, or

"(B) to the extent such amount exceeds the amount (determined in accordance with regulations) which—

"(i) is paid by such dual capacity taxpayer pursuant to the generally applicable income tax imposed by the country or possession, or

"(ii) would be paid if the generally applicable income tax imposed by the country or possession were applicable to such dual capacity taxpayer.

Nothing in this paragraph shall be construed to imply the proper treatment of any such amount not in excess of the amount determined under subparagraph (B).

"(2) DUAL CAPACITY TAXPAYER.—For purposes of this subsection, the term 'dual capacity taxpayer' means, with respect to any foreign country or possession of the United States, a person who—

"(A) is subject to a levy of such country or possession, and

"(B) receives (or will receive) directly or indirectly a specific economic benefit (as determined in accordance with regulations) from such country or possession.

"(3) GENERALLY APPLICABLE INCOME TAX.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'generally applicable income tax' means an income tax (or a series of income taxes) which is generally imposed under the laws of a foreign country or possession on income derived from the conduct of a trade or business within such country or possession.

"(B) EXCEPTIONS.—Such term shall not include a tax unless it has substantial application, by its terms and in practice, to—

"(i) persons who are not dual capacity taxpayers, and

"(ii) persons who are citizens or residents of the foreign country or possession.

"(4) LARGE INTEGRATED OIL COMPANY.—For purposes of this subsection, the term 'large integrated oil company' means, with respect to any taxable year, an integrated oil company (as defined in section 291(b)(4)) which—

"(A) had gross receipts in excess of $1,000,000,000 for such taxable year, and

"(B) has an average daily worldwide production of crude oil of at least 500,000 barrels for such taxable year."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxes paid or accrued in taxable years beginning after the date of the enactment of this Act.

(2) CONTRARY TREATY OBLIGATIONS UPHELD.—The amendments made by this section shall not apply to the extent contrary to any treaty obligation of the United States.

SEC. 572. EXCLUSION OF GAIN FROM SALE OF A PRINCIPAL RESIDENCE BY CERTAIN EMPLOYEES OF THE INTELLIGENCE COMMUNITY.

(a) IN GENERAL.—Subparagraph (A) of section 121(d)(9) (relating to exclusion of gain from sale of principal residence) is amended by striking "duty" and all that follows and inserting "duty—

"(i) as a member of the uniformed services,

"(ii) as a member of the Foreign Service of the United States, or

"(iii) as an employee of the intelligence community.".

(b) EMPLOYEE OF INTELLIGENCE COMMUNITY DEFINED.—Subparagraph (C) of section 121(d)(9) is amended by redesignating clause (iv) as clause (v) and by inserting after clause (iii) the following new clause:

"(iv) EMPLOYEE OF INTELLIGENCE COMMUNITY.—The term 'employee of the intelligence community' means an employee (as defined by section 2105 of title 5, United States Code) of—

"(I) the Office of the Director of National Intelligence,

"(II) the Central Intelligence Agency,

"(III) the National Security Agency,

"(IV) the Defense Intelligence Agency,

"(V) the National Geospatial-Intelligence Agency,

"(VI) the National Reconnaissance Office,

"(VII) any other office within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs,

"(VIII) any of the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of Treasury, the Department of Energy, and the Coast Guard,

"(IX) the Bureau of Intelligence and Research of the Department of State, or

"(X) any of the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information.".

(c) SPECIAL RULE.—Subparagraph (C) of section 121(d)(9), as amended by subsection (b), is amended by adding at the end the following new clause:

"(vi) SPECIAL RULE RELATING TO INTELLIGENCE COMMUNITY.—An employee of the intelligence community shall not be treated as serving on qualified extended duty unless—

"(I) for purposes of such duty such employee has moved from 1 duty station to another, and

"(II) at least 1 of such duty stations is located outside of the Washington, District of Columbia, and Baltimore metropolitan statistical areas (as defined by the Secretary of Commerce).".

(d) CONFORMING AMENDMENT.—The heading for section 121(d)(9) is amended to read as follows: "UNIFORMED SERVICES, FOREIGN SERVICE, AND INTELLIGENCE COMMUNITY".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or exchanges after the date of the enactment of this Act.

SEC. 573. DISABILITY PREFERENCE PROGRAM FOR TAX COLLECTION CONTRACTS.

(a) IN GENERAL.—The Secretary of the Treasury shall not enter into any qualified tax collection contract after April 1, 2006, until the Secretary implements a disability preference program that meets the requirements of subsection (b).

(b) DISABILITY PREFERENCE PROGRAM REQUIREMENTS.—

(1) IN GENERAL.—A disability preference program meets the requirements of this subsection if such program requires that not less than 10 percent of the accounts of each dollar value category are awarded to persons described in paragraph (2).

(2) PERSON DESCRIBED.—For purposes of paragraph (1), a person is described in this paragraph if—

(A) as of the date any qualified tax collection contract is awarded—

(i) such person employs not less than 50 severely disabled individuals within the United States; or

(ii) not less than 30 percent of the employees of such person within the United States are severely disabled individuals;

(B) such person agrees as a condition of the qualified tax collection contract that not more than 90 days after the date such contract is awarded, not less than 35 percent of the employees of such person employed in connection with providing services under such contract shall—

(i) be hired after the date such contract is awarded; and

(ii) be severely disabled individuals; and

(C) such person is otherwise qualified to perform the services required.

(c) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED TAX COLLECTION CONTRACT.—The term "qualified tax collection contract" shall have the meaning given such term under section 6306(b) of the Internal Revenue Code of 1986.

(2) DOLLAR VALUE CATEGORY.—The term "dollar value category" means the dollar ranges of accounts for collection as determined and assigned by the Secretary under section 6306(b)(1)(B) of the Internal Revenue Code of 1986 with respect to a qualified tax collection contract.

(3) SEVERELY DISABLED INDIVIDUAL.—The term "severely disabled individual" means—

(A) a veteran of the United States armed forces with a disability of 50 percent or greater—

(i) determined by the Secretary of Veterans Affairs to be service-connected; or

(ii) deemed by law to be service-connected; or

(B) any individual who is a disabled beneficiary (as defined in section 1148(k)(2) of the Social Security Act (42 U.S.C. 1320b-19(k)(2))) or who would be considered to be such a disabled beneficiary but for having income or resources in excess of the income or resources eligibility limits established under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), respectively.

SA 2707. Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) proposed an amendment to the bill H.R.

4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Tax Relief Act of 2005".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—TAX BENEFITS FOR AREAS AFFECTED BY HURRICANES KATRINA, RITA, AND WILMA

Subtitle A—Gulf Opportunity Zone Benefits

Sec. 101. Gulf Opportunity Zone benefits.
Sec. 102. Expansion of Hope Scholarship and Lifetime Learning Credit for students in the Gulf Opportunity Zone.
Sec. 103. Extension of special rules for mortgage revenue bonds.
Sec. 104. Housing relief for individuals affected by Hurricane Katrina.

Subtitle B—Tax Benefits Related to Hurricanes Rita and Wilma

Sec. 111. Extension of certain emergency tax relief for Hurricane Katrina to Hurricanes Rita and Wilma.

TITLE II—EXTENSION OF EXPIRING PROVISIONS

Subtitle A—Multi-Year Extensions

Sec. 201. Extension of increased expensing for small business.
Sec. 202. Credit for elective deferrals and IRA contributions.
Sec. 203. Above-the-line deduction for higher education.
Sec. 204. Extension and modification of new markets tax credit.

Subtitle B—One-Year Extensions

Sec. 211. Election to deduct State and local general sales taxes.
Sec. 212. Extension and increase in minimum tax relief to individuals.
Sec. 213. Allowance of nonrefundable personal credits against regular and alternative minimum tax liability.
Sec. 214. Extension and modification of research credit.
Sec. 215. Work opportunity tax credit and welfare-to-work credit.
Sec. 216. Qualified zone academy bonds.
Sec. 217. Deduction for corporate donations of computer technology and equipment.
Sec. 218. Above-the-line deduction for certain expenses of elementary and secondary school teachers.
Sec. 219. Expensing of brownfields remediation costs.
Sec. 220. Tax incentives for investment in the District of Columbia.
Sec. 221. Indian employment tax credit.
Sec. 222. Accelerated depreciation for business property on Indian reservation.
Sec. 223. Fifteen-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant improvements.
Sec. 224. Extension of full credit for qualified electric vehicles.

Subtitle C—Application of EGTRRA Sunset

Sec. 231. Application of EGTRRA sunset to this title.

TITLE III—PROVISIONS RELATING TO CHARITABLE DONATIONS

Subtitle A—Charitable Giving Incentives

Sec. 301. Charitable deduction for nonitemizers.
Sec. 302. Tax-free distributions from individual retirement plans for charitable purposes.
Sec. 303. Modification of charitable deduction for contributions of food inventory.
Sec. 304. Basis adjustment to stock of S corporation contributing property.
Sec. 305. Modification of charitable deduction for contributions of book inventory.
Sec. 306. Modification of tax treatment of certain payments to controlling exempt organizations and public disclosure of information relating to unrelated business income.
Sec. 307. Encouragement of contributions of capital gain real property made for conservation purposes.
Sec. 308. Enhanced deduction for charitable contribution of literary, musical, artistic, and scholarly compositions.
Sec. 309. Mileage reimbursements to charitable volunteers excluded from gross income.
Sec. 310. Alternative percentage limitation for corporate charitable contributions to the mathematics and science partnership program.

Subtitle B—Reforming Charitable Organizations

PART I—GENERAL REFORMS

Sec. 311. Tax involvement by exempt organizations in tax shelter transactions.
Sec. 312. Excise tax on certain acquisitions of interests in insurance contracts in which certain exempt organizations hold an interest.
Sec. 313. Increase in penalty excise taxes on public charities, social welfare organizations, and private foundations.
Sec. 314. Reform of charitable contributions of certain easements on buildings in registered historic districts.
Sec. 315. Charitable contributions of taxidermy property.
Sec. 316. Recapture of tax benefit for charitable contributions of exempt use property not used for an exempt use.
Sec. 317. Limitation of deduction for charitable contributions of clothing and household items.
Sec. 318. Modification of recordkeeping requirements for certain charitable contributions.
Sec. 319. Contributions of fractional interests in tangible personal property.
Sec. 320. Provisions relating to substantial and gross overstatements of valuations of charitable deduction property.
Sec. 321. Additional standards for credit counseling organizations.
Sec. 322. Expansion of the base of tax on private foundation net investment income.
Sec. 323. Definition of convention or association of churches.
Sec. 324. Notification requirement for entities not currently required to file.
Sec. 325. Disclosure to State officials of proposed actions related to exempt organizations.

PART II—IMPROVED ACCOUNTABILITY OF DONOR ADVISED FUNDS

Sec. 331. Excise tax on sponsoring organizations of donor advised funds for failure to meet distribution requirements.
Sec. 332. Prohibited transactions.
Sec. 333. Treatment of charitable contribution deductions to donor advised funds.
Sec. 334. Returns of, and applications for recognition by, sponsoring organizations.

PART III—IMPROVED ACCOUNTABILITY OF SUPPORTING ORGANIZATIONS

Sec. 341. Requirements for supporting organizations.
Sec. 342. Excise tax on supporting organizations for failure to meet distribution requirements.
Sec. 343. Excess benefit transactions.
Sec. 344. Excess business holdings of supporting organizations.
Sec. 345. Treatment of amounts paid to supporting organizations by private foundations.
Sec. 346. Returns of supporting organizations.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Restructuring of New York Liberty Zone tax credits.
Sec. 402. Modification to S corporation passive investment income rules.
Sec. 403. Modification of effective date of disregard of certain capital expenditures for purposes of qualified small issue bonds.
Sec. 404. Premiums for mortgage insurance.
Sec. 405. Sense of the Senate on use of no-bid contracting by Federal Emergency Management Agency.
Sec. 406. Disability preference program for tax collection contracts.
Sec. 407. Sense of Congress regarding Doha Round.
Sec. 408. Modification of bond rule.
Sec. 409. Treatment of certain stock option plans under nonqualified deferred compensation rules.
Sec. 410. Sense of the Senate regarding the dedication of excess funds.

TITLE V—REVENUE OFFSET PROVISIONS

Subtitle A—Provisions Designed To Curtail Tax Shelters

Sec. 501. Understatement of taxpayer's liability by income tax return preparer.
Sec. 502. Modification of effective date of exception from suspension rules for certain listed and reportable transactions.
Sec. 503. Frivolous tax submissions.
Sec. 504. Penalty for promoting abusive tax shelters.
Sec. 505. Penalty for aiding and abetting the understatement of tax liability.

Subtitle B—Economic Substance Doctrine

Sec. 511. Clarification of economic substance doctrine.
Sec. 512. Penalty for understatements attributable to transactions lacking economic substance, etc.

Sec. 513. Denial of deduction for interest on underpayments attributable to noneconomic substance transactions.

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Sec. 560. Modification of individual estimated tax safe harbor.
Sec. 561. Revaluation of LIFO inventories of large integrated oil companies.
Sec. 562. Elimination of amortization of geological and geophysical expenditures for major integrated oil companies.
Sec. 563. Valuation of employee personal use of noncommercial aircraft.
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Sec. 566. Prevention of avoidance of tax on investments of foreign persons in United States real property through wash sale transactions.
Sec. 567. Modifications to rules relating to taxation of distributions of stock and securities of a controlled corporation.
Sec. 568. Amortization of expenses incurred in creating or acquiring music or music copyrights.
Sec. 569. Credit to holders of rural renaissance bonds.
Sec. 570. Modification of treatment of loans to qualified continuing care facilities.
Sec. 571. Modifications of foreign tax credit rules applicable to large integrated oil companies which are dual capacity taxpayers.
Sec. 572. Exclusion of gain from sale of a principal residence by certain employees of the intelligence community.
Sec. 573. Disability preference program for tax collection contracts.

TITLE VI—COMPLIANCE WITH CONGRESSIONAL BUDGET ACT

Sec. 601. Sunset of certain provisions and amendments.

TITLE I—TAX BENEFITS FOR AREAS AFFECTED BY HURRICANES KATRINA, RITA, AND WILMA

Subtitle A—Gulf Opportunity Zone Benefits

SEC. 101. GULF OPPORTUNITY ZONE BENEFITS.

(a) IN GENERAL.—Chapter 1 is amended by adding at the end the following new subchapter:

"Subchapter Z—Hurricane Relief Benefits

"Sec. 1400N. Definitions
"Sec. 1400O. Tax benefits for Gulf Opportunity Zone

"SEC. 1400N. DEFINITIONS.

"For purposes of this subchapter—

"(1) GULF OPPORTUNITY ZONE.—The term 'Gulf Opportunity Zone' or 'GO Zone' means that portion of the Hurricane Katrina disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Katrina.

"(2) HURRICANE KATRINA DISASTER AREA.—The term 'Hurricane Katrina disaster area' means an area with respect to which a major disaster has been declared by the President before September 14, 2005, under section 401 of such Act by reason of Hurricane Katrina.

"(3) RITA GO ZONE.—The term 'Rita GO Zone' means that portion of the Hurricane Rita disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under such Act by reason of Hurricane Rita.

"(4) HURRICANE RITA DISASTER AREA.—The term 'Hurricane Rita disaster area' means an area with respect to which a major disaster has been declared by the President before October 6, 2005, under section 401 of such Act by reason of Hurricane Rita.

"(5) WILMA GO ZONE.—The term 'Wilma GO Zone' means that portion of the Hurricane Wilma disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under such Act by reason of Hurricane Wilma.

"(6) HURRICANE WILMA DISASTER AREA.—The term 'Hurricane Wilma disaster area' means an area with respect to which a major disaster has been declared by the President before October 25, 2005, under section 401 of such Act by reason of Hurricane Wilma.

"SEC. 1400O. TAX BENEFITS FOR GULF OPPORTUNITY ZONE.

"(a) SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED AFTER AUGUST 27, 2005.—

"(1) ADDITIONAL ALLOWANCE.—In the case of any qualified Gulf Opportunity Zone property—

"(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of such property, and

"(B) the adjusted basis of the qualified Gulf Opportunity Zone property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

"(2) QUALIFIED GULF OPPORTUNITY ZONE PROPERTY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified Gulf Opportunity Zone property' means property—

"(i)(I) which is described in section 168(k)(2)(A)(i), or

"(II) which is nonresidential real property or residential rental property,

"(ii) substantially all of the use of which is in the Gulf Opportunity Zone and is in the active conduct of a trade or business by the taxpayer in such Zone,

"(iii) the original use of which in the Gulf Opportunity Zone commences with the taxpayer after August 27, 2005,

"(iv) which is acquired by the taxpayer by purchase (as defined in section 179(d)) after August 27, 2005, but only if no written binding contract for the acquisition was in effect before August 28, 2005, and

"(v) which is placed in service by the taxpayer on or before the termination date.

The term 'termination date' means December 31, 2007 (December 31, 2008, in the case of nonresidential real property and residential rental property).

"(B) EXCEPTIONS.—

"(i) ALTERNATIVE DEPRECIATION PROPERTY.—The term 'qualified Gulf Opportunity Zone property' shall not include any property described in section 168(k)(2)(D)(i).

"(ii) TAX-EXEMPT BOND-FINANCED PROPERTY.—Such term shall not include any property any portion of which is financed with the proceeds of any obligation the interest on which is exempt from tax under section 103.

"(iii) QUALIFIED REVITALIZATION BUILDINGS.—Such term shall not include any qualified revitalization building with respect to which the taxpayer has elected the application of paragraph (1) or (2) of section 1400I(a).

"(iv) ELECTION OUT.—For purposes of this subsection, rules similar to the rules of section 168(k)(2)(D)(iii) shall apply.

"(C) SPECIAL RULES.—For purposes of this subsection, rules similar to the rules of section 168(k)(2)(E) shall apply, except that—

"(i) clause (i) thereof shall be applied by substituting 'after August 27, 2005, and before the termination date (as defined in section 1400O(a)(2))' for 'after September 10, 2001, and before January 1, 2005',

"(ii) clauses (ii), (iii), and (iv) thereof shall be applied by substituting 'August 27, 2005' for 'September 10, 2001' each place it appears, and

"(iii) clause (iv) thereof shall be applied by substituting 'qualified Gulf Opportunity Zone property' for 'qualified property'.

"(D) ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX.—For purposes of this subsection, rules similar to the rules of section 168(k)(2)(G) shall apply.

"(3) Recapture.—For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified Gulf Opportunity Zone property which ceases to be qualified Gulf Opportunity Zone property.

"(b) Increase in Expensing Under Section 179.—

"(1) In general.—For purposes of section 179—

"(A) the $100,000 amount in section 179(b)(1) for the taxable year shall be increased by the lesser of—

"(i) $100,000, or

"(ii) the cost of section 179 property (as defined in section 179(d)) which is qualified Gulf Opportunity Zone property placed in service during the taxable year, and

"(B) the $400,000 amount in section 179(b)(2) for the taxable year shall be increased by the lesser of—

"(i) $600,000, or

"(ii) the cost of section 179 property (as so defined) which is qualified Gulf Opportunity Zone property placed in service during the taxable year.

"(2) Qualified gulf opportunity zone property.—For purposes of this subsection, the term 'qualified Gulf Opportunity Zone property' has the meaning given such term by subsection (a)(2).

"(3) Coordination with empowerment zones and renewal communities.—For purposes of sections 1397A and 1400J, qualified Gulf Opportunity Zone property shall not be treated as qualified zone property or qualified renewal property for any taxable year, unless the taxpayer elects not to have this subsection apply to all such qualified Gulf Opportunity Zone property placed in service by the taxpayer during the taxable year.

"(4) Recapture.—Rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified Gulf Opportunity Zone property which ceases to be Gulf Opportunity Zone property.

"(c) Tax-Exempt Bond Financing.—

"(1) In general.—For purposes of this title, any qualified Gulf Opportunity Zone Bond shall be treated as a qualified bond.

"(2) Qualified gulf opportunity zone bond.—For purposes of this subsection, the term 'qualified Gulf Opportunity Zone Bond' means any bond issued as part of an issue if—

"(A) except as provided in paragraph (4), such bond meets the applicable requirements of part IV of subchapter B of this chapter,

"(B) such bond is issued by the State of Alabama, Louisiana, or Mississippi (or any political subdivision thereof),

"(C) the Governor of such State designates such bond for purposes of this section, and

"(D) such bond is issued after the date of the enactment of this section and before January 1, 2011.

"(3) Limitation on aggregate amount of bonds designated.—The maximum aggregate face amount of bonds which may be designated under this subsection shall not exceed the product of $2,500 multiplied by the portion of the State population which is in the Gulf Opportunity Zone (as determined on the basis of the most recent census estimate of resident population released by the Bureau of Census before August 28, 2005).

"(4) Special rules.—In applying this title to any qualified Gulf Opportunity Zone Bond, the following modifications shall apply:

"(A) Section 143 (relating to mortgage revenue bonds: qualified mortgage bond and qualified veterans' mortgage bond) shall be applied—

"(i) by treating any residence in the Gulf Opportunity Zone as a targeted area residence,

"(ii) by applying subsection (f)(3) without regard to subparagraph (A) thereof, and

"(iii) by substituting '$150,000' for '$15,000' in subsection (k)(4) thereof.

"(B) Section 146 (relating to volume cap) shall not apply.

"(C) Section 57(a)(5) shall not apply.

"(5) Separate issue treatment of portions of an issue.—This subsection shall not apply to the portion of an issue which (if issued as a separate issue) would be treated as a qualified bond or as a bond that is not a private activity bond (determined without regard to paragraph (1)), if the issuer elects to so treat such portion.

"(d) Advance Refundings of Certain Tax-Exempt Bonds.—

"(1) In general.—With respect to a bond described in paragraph (2) issued as part of an issue 90 percent (95 percent in the case of a bond described in paragraph (2)(B)) or more of the net proceeds (as defined in section 150(a)(3)) of which were used to finance facilities located within the Gulf Opportunity Zone (or property which is functionally related and subordinate to facilities located within the Gulf Opportunity Zone), one additional advanced refunding after the date of the enactment of this section and before January 1, 2007, shall be allowed under the applicable rules of section 149(d) if—

"(A) the chief executive officer of the issuer of the bond designates the advance refunding bond for purposes of this subsection, and

"(B) the requirements of paragraph (3) are met.

"(2) Bonds described.—A bond is described in this paragraph if such bond was outstanding on August 27, 2005, and is—

"(A) a State or local bond (as defined in section 103(c)(1)) other than a private activity bond (as defined in section 141(a)) issued by the State of Alabama, Louisiana, or Mississippi (or any political subdivision thereof), or

"(B) a qualified 501(c)(3) bond (as defined in section 145(a)) issued by or on behalf of any such State or political subdivision.

"(3) Additional requirements.—The requirements of this paragraph are met with respect to any advance refunding of a bond described in paragraph (2) if—

"(A) no advance refundings of such bond would be allowed under any provision of law after August 27, 2005,

"(B) the advance refunding bond is the only other outstanding bond with respect to the refunded bond, and

"(C) the requirements of section 148 are met with respect to all bonds issued under this subsection.

"(e) Low-Income Housing Credit.—

"(1) Increase in state housing credit ceiling.—

"(A) In general.—In the case of the State of Alabama, Louisiana, or Mississippi—

"(i) the amount otherwise determined under subclause (I) of section 42(h)(3)(C)(ii) for each calendar year beginning after 2005 and before 2010 shall be increased by an amount equal to 3 times the dollar amount otherwise specified for such calendar year under such subclause multiplied by the State population located in the Gulf Opportunity Zone (as determined on the basis of the most recent census estimate of resident population released by the Bureau of Census before August 28, 2005), and

"(ii) the unused State housing credit ceiling for such State for any calendar year under section 42(h)(3)(C)(i) shall be determined without regard to the amount of the increase determined under clause (i).

"(B) Elective carryforward of unused increased ceiling.—

"(i) In general.—If the amount determined under section 42(h)(3)(C)(ii)(I), as increased under subparagraph (A)(i), for any calendar year for any State described in subparagraph (A) exceeds the aggregate housing credit dollar amount allocated during such calendar year by such State, such State may elect to treat as a carryforward to the following calendar year an amount equal to lesser of—

"(I) the amount of such excess, or

"(II) the amount by which the amount determined under section 42(h)(3)(C)(ii)(I) for such calendar year was increased under subparagraph (A)(i)).

"(ii) Use of carryforward.—If any State elects a carryforward under clause (i), any housing credit dollar amount allocated by such State during the calendar year following the calendar year in which the carryforward arose shall not be considered so allocated for purposes of section 42(h)(3)(C) and section 42(h)(3)(D) to the extent such housing credit dollar amount does not exceed the amount of the carryforward elected.

"(2) Difficult development area.—

"(A) In general.—For purposes of section 42—

"(i) in the case of property placed in service during 2006, 2007, or 2008, the Gulf Opportunity Zone—

"(I) shall be treated as a difficult development area designated under subclause (I) of section 42(d)(5)(C)(iii), and

"(II) shall not be taken into account for purposes of applying the limitation under subclause (II) of such section, and

"(ii) subsection (b)(2)(B) thereof shall be applied with respect to any such property placed in service in the Gulf Opportunity Zone by substituting '91 percent' and '39 percent' for '70 percent' and '30 percent', respectively.

"(B) Application.—Subparagraph (A) shall apply only to—

"(i) housing credit dollar amounts allocated during the period beginning on January 1, 2006, and ending on December 31, 2008, and

"(ii) buildings placed in service during such period to the extent that paragraph (1) of section 42(h) does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after December 31, 2005.

"(f) Treatment of Representations Regarding Income Eligibility for Purposes of Qualified Residential Rental Project Requirements.—For purposes of determining if any residential rental project meets the requirements of section 142(d)(1) and if any certification with respect to such project meets the requirements under section 142(d)(7), the operator of the project may rely on the representations of any individual applying for tenancy in such project that such individual's income will not exceed the applicable income limits of section 142(d)(1) upon commencement of the individual's tenancy if such tenancy begins during the 6-month period beginning on and after the date such individual was displaced by reason of Hurricane Katrina.

"(g) Application of New Markets Tax Credit to Investments in Community Development Entities Serving Gulf Opportunity Zone.—For purposes of section 45D—

“(1) a qualified community development entity shall be eligible for an allocation under subsection (f)(2) thereof of the increase in the new markets tax credit limitation described in paragraph (2) only if a significant mission of such entity is the recovery and redevelopment of the Gulf Opportunity Zone,

“(2) the new markets tax credit limitation otherwise determined under subsection (f)(1) thereof shall be increased by an amount equal to—

“(A) $300,000,000 for 2005 and 2006, to be allocated among qualified community development entities to make qualified low-income community investments within the Gulf Opportunity Zone, and

“(B) $400,000,000 for 2007, to be so allocated, and

“(3) subsection (f)(3) thereof shall be applied separately with respect to the amount of the increase under paragraph (2).

“(h) TREATMENT OF NET OPERATING LOSSES ATTRIBUTABLE TO GULF OPPORTUNITY ZONE LOSSES.—

“(1) IN GENERAL.—If a portion of any net operating loss of the taxpayer for any taxable year is a qualified Gulf Opportunity Zone loss, the following rules shall apply:

“(A) EXTENSION OF CARRYBACK PERIOD.—Section 172(b)(1) shall be applied with respect to such portion—

“(i) by substituting ‘5 taxable years’ for ‘2 taxable years’ in subparagraph (A)(i), and

“(ii) by not taking such portion into account in determining any eligible loss of the taxpayer under subparagraph (F) for the taxable year.

“(B) SUSPENSION OF 90 PERCENT AMT LIMITATION.—Section 56(d)(1) shall be applied by increasing the amount determined under subparagraph (A)(ii)(I) thereof by the sum of the carrybacks and carryovers of any net operating loss attributable to such portion.

“(2) QUALIFIED GULF OPPORTUNITY ZONE LOSS.—For purposes of paragraph (1), the term ‘qualified Gulf Opportunity Zone loss’ means the lesser of—

“(A) the amount of the net operating loss for the taxable year, or

“(B) the aggregate amount of the following deductions for such taxable year:

“(i) Any deduction for any qualified Gulf Opportunity Zone casualty loss.

“(ii) Any deduction for moving expenses paid or incurred after August 27, 2005, and before January 1, 2008, and allowable under this chapter to any taxpayer in connection with the employment of any individual—

“(I) whose principal place of abode was located in the Gulf Opportunity Zone before August 28, 2005,

“(II) who was unable to remain in such abode as the result of Hurricane Katrina, and

“(III) whose principal place of employment with the taxpayer after such expense is located in the Gulf Opportunity Zone.

For purposes of this clause, the term ‘moving expenses’ has the meaning given such term by section 217(b), except that the taxpayer’s former residence and new residence may be the same residence if the initial vacating of the residence was as the result of Hurricane Katrina.

“(iii) Any deduction for expenses paid or incurred after August 27, 2005, and before January 1, 2008, and allowable under this chapter to temporarily house any employee of the taxpayer whose principal place of employment is in the Gulf Opportunity Zone.

“(iv) Any deduction for depreciation (or amortization in lieu of depreciation) allowable under this chapter with respect to any qualified Gulf Opportunity Zone property (as defined in subsection (a)(2)) for the taxable year such property is placed in service.

“(v) Any deduction for repair expenses (including expenses for removal of debris) allowable under this chapter paid or incurred after August 27, 2005, and before January 1, 2008, with respect to any damage attributable to Hurricane Katrina and in connection with property which is located in the Gulf Opportunity Zone.

“(3) QUALIFIED GULF OPPORTUNITY ZONE CASUALTY LOSS.—

“(A) IN GENERAL.—For purposes of paragraph (2)(B)(i), the term ‘qualified Gulf Opportunity Zone casualty loss’ means any uncompensated section 1231 loss (as defined in section 1231(a)(3)(B)) of property located in the Gulf Opportunity Zone if—

“(i) such loss is allowed as a deduction under section 165 for the taxable year, and

“(ii) such loss is attributable to Hurricane Katrina.

“(B) REDUCTION FOR GAINS FROM INVOLUNTARY CONVERSION.—The amount of qualified Gulf Opportunity Zone casualty loss which would (but for this subparagraph) be taken into account under subparagraph (A) for any taxable year shall be reduced by the amount of any gain recognized by the taxpayer for such year from the involuntary conversion by reason of Hurricane Katrina of property located in the Gulf Opportunity Zone.

“(C) COORDINATION WITH GENERAL DISASTER LOSS RULES.—Subsection (j) and section 165(i) shall not apply to any qualified Gulf Opportunity Zone casualty loss to the extent such loss is taken into account under this subsection.

“(4) SPECIAL RULES.—For purposes of paragraph (1), rules similar to the rules of paragraphs (2) and (3) of section 172(i) shall apply with respect to such portion.

“(i) TREATMENT OF PUBLIC UTILITY PROPERTY DISASTER LOSSES.—

“(1) IN GENERAL.—Upon the election of the taxpayer, in the case of any eligible public utility property loss—

“(A) section 165(i) shall be applied by substituting ‘the fifth taxable year immediately preceding’ for ‘the taxable year immediately preceding’,

“(B) an application for a tentative carryback adjustment of the tax for any prior taxable year affected by the application of subparagraph (A) may be made under section 6411, and

“(C) section 6611 shall not apply to any overpayment attributable to such loss.

“(2) ELIGIBLE PUBLIC UTILITY PROPERTY LOSS.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘eligible public utility property loss’ means any loss with respect to public utility property located in the Gulf Opportunity Zone and attributable to Hurricane Katrina.

“(B) PUBLIC UTILITY PROPERTY.—The term ‘public utility property’ has the meaning given such term by section 168(i)(10) without regard to the matter following subparagraph (D) thereof.

“(3) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the application of paragraph (1) is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this section by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

“(j) SPECIAL RULE FOR GULF OPPORTUNITY ZONE PUBLIC UTILITY CASUALTY LOSSES.—

“(1) IN GENERAL.—The amount described in section 172(f)(1)(A) for any taxable year shall be increased by the amount of the Gulf Opportunity Zone public utility casualty loss for such year.

“(2) GULF OPPORTUNITY ZONE PUBLIC UTILITY CASUALTY LOSS.—For purposes of this subsection, the term ‘Gulf Opportunity Zone public utility casualty loss’ means any casualty loss of public utility property (as defined in section 168(i)(10)) located in the Gulf Opportunity Zone if—

“(A) such loss is allowed as a deduction under section 165 for the taxable year,

“(B) such loss is attributable to Hurricane Katrina, and

“(C) the taxpayer elects the application of this subsection with respect to such loss.

“(3) REDUCTION FOR GAINS FROM INVOLUNTARY CONVERSION.—The amount of Gulf Opportunity Zone public utility casualty loss which would (but for this paragraph) be taken into account under paragraph (1) for any taxable year shall be reduced by the amount of any gain recognized by the taxpayer for such year from the involuntary conversion by reason of Hurricane Katrina of public utility property (as so defined) located in the Gulf Opportunity Zone.

“(4) COORDINATION WITH GENERAL DISASTER LOSS RULES.—Subsection (h) and section 165(i) shall not apply to any Gulf Opportunity Zone public utility casualty loss to the extent such loss is taken into account under paragraph (1).

“(5) ELECTION.—Any election under paragraph (2)(C) shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer’s return for the taxable year of the loss. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

“(k) SPECIAL RULES FOR SMALL TIMBER PRODUCERS.—

“(1) INCREASED EXPENSING FOR QUALIFIED TIMBER PROPERTY.—In the case of qualified timber property any portion of which is located in the Gulf Opportunity Zone, in that portion of the Rita GO Zone which is not part of the Gulf Opportunity Zone, or in the Wilma GO Zone, the limitation under subparagraph (B) of section 194(b)(1) shall be increased by the lesser of—

“(A) the limitation which would (but for this subsection) apply under such subparagraph, or

“(B) the amount of reforestation expenditures (as defined in section 194(c)(3)) paid or incurred by the taxpayer with respect to such qualified timber property during the specified portion of the taxable year.

“(2) 5 YEAR NOL CARRYBACK OF CERTAIN TIMBER LOSSES.—For purposes of determining farming loss under section 172(i), income and deductions which are allocable to the specified portion of the taxable year and which are attributable to qualified timber property any portion of which is located in the Gulf Opportunity Zone, in that portion of the Rita GO Zone which is not part of the Gulf Opportunity Zone, or in the Wilma GO Zone shall be treated as attributable to farming businesses.

“(3) RULES NOT APPLICABLE TO CERTAIN ENTITIES.—Paragraphs (1) and (2) shall not apply to any taxpayer which—

“(A) is a corporation the stock of which is publicly traded on an established securities market, or

“(B) is a real estate investment trust.

“(4) RULES NOT APPLICABLE TO LARGE TIMBER PRODUCERS.—Paragraphs (1) and (2) shall not apply with respect to any qualified timber property unless—

“(A) such property was held by the taxpayer—

"(i) on August 28, 2005, in the case of qualified timber property any portion of which is located in the Gulf Opportunity Zone,

"(ii) on September 23, 2005, in the case of qualified timber property (other than property described in subclause (I)) any portion of which is located in that portion of the Rita GO Zone which is not part of the Gulf Opportunity Zone, or

"(iii) on October 23, 2005, in the case of qualified timber property (other than property described in subclause (I) or (II)) any portion of which is located in the Wilma GO Zone, and

"(B) such taxpayer held not more than 500 acres of qualified timber property on such date.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) SPECIFIED PORTION.—The term 'specified portion' means—

"(i) in the case of qualified timber property located in the Gulf Opportunity Zone, that portion of the taxable year which is on or after August 28, 2005, and before January 1, 2007,

"(ii) in the case of qualified timber property located in the Rita GO Zone and no part of which is located in the Gulf Opportunity Zone, that portion of the taxable year which is on or after September 23, 2005, and before January 1, 2007, and

"(iii) in the case of qualified timber property located in the Wilma GO Zone, that portion of the taxable year which is on or after October 23, 2005, and before January 1, 2007.

"(B) QUALIFIED TIMBER PROPERTY.—The term 'qualified timber property' has the meaning given such term in section 194(c)(1).

"(l) EXPENSING FOR CERTAIN DEMOLITION AND CLEAN-UP COSTS.—

"(1) IN GENERAL.—A taxpayer may elect to treat 50 percent of any qualified Gulf Opportunity Zone clean-up cost as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which such cost is paid or incurred.

"(2) GULF OPPORTUNITY ZONE CLEAN-UP COST.—For purposes of this subsection, the term 'Gulf Opportunity Zone clean-up cost' means any amount paid or incurred during the period beginning on August 28, 2005, and ending on December 31, 2007, for the removal of debris from, or the demolition of structures on, real property which is located in the Gulf Opportunity Zone and which is—

"(A) held by the taxpayer for use in a trade or business or for the production of income, or

"(B) property described in section 1221(a)(1) in the hands of the taxpayer.

For purposes of the preceding sentence, amounts paid or incurred shall be taken into account only to the extent that such amount would (but for paragraph (1)) be chargeable to capital account.

"(m) EXTENSION OF EXPENSING FOR ENVIRONMENTAL REMEDIATION COSTS.—With respect to any qualified environmental remediation expenditure (as defined in section 198(b)) paid or incurred on or after August 28, 2005, in connection with a qualified contaminated site located in the Gulf Opportunity Zone, section 198 (relating to expensing of environmental remediation costs) shall be applied—

"(1) by substituting 'December 31, 2007' for 'December 31, 2006' in subsection (h) thereof, and

"(2) except as provided in section 198(d)(2), by treating petroleum products (as defined in section 4612(a)(3)) as a hazardous substance.

"(n) GULF OPPORTUNITY ZONE.—For purposes of this section, the term 'Gulf Opportunity Zone' means an area—

"(1) with respect to which a major disaster has been declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act as a result of Hurricane Katrina, and

"(2) which is determined by the President to warrant individual assistance, or individual and public assistance, from the Federal Government under such Act."

(b) CLERICAL AMENDMENTS.—The table of subchapters for chapter 1 is amended by adding at the end the following new item:

"SUBCHAPTER Z—HURRICANE RELIEF BENEFITS.".

SEC. 102. EXPANSION OF HOPE SCHOLARSHIP AND LIFETIME LEARNING CREDIT FOR STUDENTS IN THE GULF OPPORTUNITY ZONE.

In the case of an individual who attends an eligible educational institution (as defined in section 25A(f)(2) of the Internal Revenue Code of 1986) located in the Gulf Opportunity Zone (as defined in section 1400N(1) of such Code) for any taxable year beginning during 2005 or 2006—

(1) in applying section 25A of the Internal Revenue Code of 1986, the term "qualified tuition and related expenses" shall include any costs which are qualified higher education expenses (as defined in section 529(e)(3) of such Code),

(2) each of the dollar amounts in effect under of subparagraphs (A) and (B) of section 25A(b)(1) of such Code shall be twice the amount otherwise in effect before the application of this subsection, and

(3) section 25A(c)(1) of such Code shall be applied by substituting "40 percent" for "20 percent".

SEC. 103. EXTENSION OF SPECIAL RULES FOR MORTGAGE REVENUE BONDS.

Section 404(d) of the Katrina Emergency Tax Relief Act of 2005 is amended by striking "December 31, 2007" and inserting "December 31, 2010".

SEC. 104. HOUSING RELIEF FOR INDIVIDUALS AFFECTED BY HURRICANE KATRINA.

(a) EXCLUSION OF EMPLOYER PROVIDED HOUSING FOR INDIVIDUAL AFFECTED BY HURRICANE KATRINA.—

(1) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, gross income of a qualified employee shall not include the value of any lodging furnished to such employee, such employee's spouse, or any of such employee's dependents by or on behalf of a qualified employer for any month during the taxable year.

(2) LIMITATION.—The amount which may be excluded under subsection (a) for any month for which lodging is furnished during the taxable year shall not exceed $600.

(3) TREATMENT OF EXCLUSION.—For purposes of the Internal Revenue Code of 1986 (other than sections 3121(a)(19) and 3306(b)(14), an exclusion under subsection (a) shall be treated as an exclusion under section 119 of such Code.

(b) EMPLOYER CREDIT FOR HOUSING EMPLOYEES AFFECTED BY HURRICANE KATRINA.—

(1) IN GENERAL.—In the case of a qualified employer, there shall be allowed as a credit against the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for any month during the taxable year an amount equal to 30 percent of any amount which is excludable from the gross income of a qualified employee of such employer under subsection (a).

(2) CERTAIN RULES TO APPLY.—For purposes of this section, rules similar to the rules of section 280C(a) of such Code shall apply.

(3) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—The credit allowed under this section shall be added to the current year business credit under section 38(b) of such Code and shall be treated as a credit allowed under subpart D of part IV of subchapter A of such Code.

(c) QUALIFIED EMPLOYEE.—For purposes of this section, the term "qualified employee" means, with respect to any month, an individual—

(1) who had a principal residence (as defined in section 121 of the Internal Revenue Code of 1986) in the GO Zone (as defined in section 1400N(1) of such Code) on August 28, 2005, and

(2) who performs not less than 80 percent of the employment services for a qualified employer in the Hurricane Katrina disaster area (as so defined).

(d) QUALIFIED EMPLOYER.—For purposes of this section, the term "qualified employer" means any employer with a trade or business located in the Hurricane Katrina disaster area (as so defined).

(e) APPLICATION OF SECTION.—This section shall apply to lodging provided—

(1) after the date of the enactment of this Act,

(2) before the date which is 6 months after the date of the enactment of this Act, and

(3) no credit with respect to such lodging shall be claimed before October 1, 2006.

Subtitle B—Tax Benefits Related to Hurricanes Rita and Wilma

SEC. 111. EXTENSION OF CERTAIN EMERGENCY TAX RELIEF FOR HURRICANE KATRINA TO HURRICANES RITA AND WILMA.

(a) IN GENERAL.—Subchapter Z of chapter 1, as added by this Act, is amended by adding at the end the following new sections:

"SEC. 1400P. SPECIAL RULES FOR MORTGAGE REVENUE BONDS.

"(a) IN GENERAL.—In the case of financing provided with respect to residences in the GO Zone, the Rita GO Zone, or the Wilma GO Zone, section 143 shall be applied—

"(1) by treating any residence in the GO Zone, the Rita GO Zone, or the Wilma GO Zone as a targeted area residence,

"(2) by applying subsection (f)(3) without regard to subparagraph (A) thereof, and

"(3) by substituting '$150,000' for '$15,000' in subsection (k)(4) thereof.

"(b) APPLICATION.—Subsection (a) shall not apply to financing provided after December 31, 2010.

"SEC. 1400Q. SPECIAL RULES FOR USE OF RETIREMENT FUNDS.

"(a) TAX-FAVORED WITHDRAWALS FROM RETIREMENT PLANS.—

"(1) IN GENERAL.—Section 72(t) shall not apply to any qualified hurricane distribution.

"(2) AGGREGATE DOLLAR LIMITATION.—

"(A) IN GENERAL.—For purposes of this subsection, the aggregate amount of distributions received by an individual which may be treated as qualified hurricane distributions for any taxable year shall not exceed the excess (if any) of—

"(i) $100,000, over

"(ii) the aggregate amounts treated as qualified hurricane distributions received by such individual for all prior taxable years.

"(B) TREATMENT OF PLAN DISTRIBUTIONS.—If a distribution to an individual would (without regard to subparagraph (A)) be a qualified hurricane distribution, a plan shall not be treated as violating any requirement of this title merely because the plan treats such distribution as a qualified hurricane distribution, unless the aggregate amount of such distributions from all plans maintained by the employer (and any member of any controlled group which includes the employer) to such individual exceeds $100,000.

"(C) CONTROLLED GROUP.—For purposes of subparagraph (B), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

"(3) AMOUNT DISTRIBUTED MAY BE REPAID.—

"(A) IN GENERAL.—Any individual who receives a qualified hurricane distribution may, at any time during the 3-year period beginning on the day after the date on which such distribution was received, make one or more contributions in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), as the case may be.

"(B) TREATMENT OF REPAYMENTS OF DISTRIBUTIONS FROM ELIGIBLE RETIREMENT PLANS OTHER THAN IRAS.—For purposes of this title, if a contribution is made pursuant to subparagraph (A) with respect to a qualified hurricane distribution from an eligible retirement plan other than an individual retirement plan, then the taxpayer shall, to the extent of the amount of the contribution, be treated as having received the qualified hurricane distribution in an eligible rollover distribution (as defined in section 402(c)(4)) and as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

"(C) TREATMENT OF REPAYMENTS FOR DISTRIBUTIONS FROM IRAS.—For purposes of this title, if a contribution is made pursuant to subparagraph (A) with respect to a qualified hurricane distribution from an individual retirement plan (as defined by section 7701(a)(37)), then, to the extent of the amount of the contribution, the qualified hurricane distribution shall be treated as a distribution described in section 408(d)(3) and as having been transferred to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) QUALIFIED HURRICANE DISTRIBUTION.—Except as provided in paragraph (2), the term 'qualified hurricane distribution' means—

"(i) any distribution from an eligible retirement plan made on or after August 25, 2005, and before January 1, 2007, to an individual whose principal place of abode on August 28, 2005, is located in the Hurricane Katrina disaster area and who has sustained an economic loss by reason of Hurricane Katrina,

"(ii) any distribution (which is not described in clause (i)) from an eligible retirement plan made on or after September 23, 2005, and before January 1, 2007, to an individual whose principal place of abode on September 23, 2005, is located in the Hurricane Rita disaster area and who has sustained an economic loss by reason of Hurricane Rita, and

"(iii) any distribution (which is not described in clause (i) or (ii)) from an eligible retirement plan made on or after October 23, 2005, and before January 1, 2007, to an individual whose principal place of abode on October 23, 2005, is located in the Hurricane Wilma disaster area and who has sustained an economic loss by reason of Hurricane Wilma.

"(B) ELIGIBLE RETIREMENT PLAN.—The term 'eligible retirement plan' shall have the meaning given such term by section 402(c)(8)(B).

"(5) INCOME INCLUSION SPREAD OVER 3-YEAR PERIOD.—

"(A) IN GENERAL.—In the case of any qualified hurricane distribution, unless the taxpayer elects not to have this paragraph apply for any taxable year, any amount required to be included in gross income for such taxable year shall be so included ratably over the 3-taxable year period beginning with such taxable year.

"(B) SPECIAL RULE.—For purposes of subparagraph (A), rules similar to the rules of subparagraph (E) of section 408A(d)(3) shall apply.

"(6) SPECIAL RULES.—

"(A) EXEMPTION OF DISTRIBUTIONS FROM TRUSTEE TO TRUSTEE TRANSFER AND WITHHOLDING RULES.—For purposes of sections 401(a)(31), 402(f), and 3405, qualified hurricane distributions shall not be treated as eligible rollover distributions.

"(B) QUALIFIED HURRICANE DISTRIBUTIONS TREATED AS MEETING PLAN DISTRIBUTION REQUIREMENTS.—For purposes this title, a qualified hurricane distribution shall be treated as meeting the requirements of sections 401(k)(2)(B)(i), 403(b)(7)(A)(ii), 403(b)(11), and 457(d)(1)(A).

"(b) RECONTRIBUTIONS OF WITHDRAWALS FOR HOME PURCHASES.—

"(1) RECONTRIBUTIONS.—

"(A) IN GENERAL.—Any individual who received a qualified distribution may, during the applicable period, make one or more contributions in an aggregate amount not to exceed the amount of such qualified distribution to an eligible retirement plan (as defined in section 402(c)(8)(B)) of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3), as the case may be.

"(B) TREATMENT OF REPAYMENTS.—Rules similar to the rules of subparagraphs (B) and (C) of subsection (a)(3) shall apply for purposes of this subsection.

"(2) QUALIFIED DISTRIBUTION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified distribution' means any qualified Katrina distribution, any qualified Rita distribution, and any qualified Wilma distribution.

"(B) QUALIFIED KATRINA DISTRIBUTION.—The term 'qualified Katrina distribution' means any distribution—

"(i) described in section 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(ii) (but only to the extent such distribution relates to financial hardship), 403(b)(11)(B), or 72(t)(2)(F),

"(ii) received after February 28, 2005, and before August 29, 2005, and

"(iii) which was to be used to purchase or construct a principal residence in the Hurricane Katrina disaster area, but which was not so purchased or constructed on account of Hurricane Katrina.

"(C) QUALIFIED RITA DISTRIBUTION.—The term 'qualified Rita distribution' means any distribution (other than a qualified Katrina distribution)—

"(i) described in section 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(ii) (but only to the extent such distribution relates to financial hardship), 403(b)(11)(B), or 72(t)(2)(F),

"(ii) received after February 28, 2005, and before September 24, 2005, and

"(iii) which was to be used to purchase or construct a principal residence in the Hurricane Rita disaster area, but which was not so purchased or constructed on account of Hurricane Rita.

"(D) QUALIFIED WILMA DISTRIBUTION.—The term 'qualified Wilma distribution' means any distribution (other than a qualified Katrina distribution or a qualified Rita distribution)—

"(i) described in section 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(ii) (but only to the extent such distribution relates to financial hardship), 403(b)(11)(B), or 72(t)(2)(F),

"(ii) received after February 28, 2005, and before October 24, 2005, and

"(iii) which was to be used to purchase or construct a principal residence in the Hurricane Wilma disaster area, but which was not so purchased or constructed on account of Hurricane Wilma.

"(3) APPLICABLE PERIOD.—For purposes of this subsection, the term 'applicable period' means—

"(A) with respect to any qualified Katrina distribution, the period beginning on August 25, 2005, and ending on February 28, 2006,

"(B) with respect to any qualified Rita distribution, the period beginning on September 23, 2005, and ending on February 28, 2006, and

"(C) with respect to any qualified Wilma distribution, the period beginning on October 23, 2005, and ending on February 28, 2006.

"(c) LOANS FROM QUALIFIED PLANS.—

"(1) INCREASE IN LIMIT ON LOANS NOT TREATED AS DISTRIBUTIONS.—In the case of any loan from a qualified employer plan (as defined under section 72(p)(4)) to a qualified individual made during the applicable period—

"(A) clause (i) of section 72(p)(2)(A) shall be applied by substituting '$100,000' for '$50,000', and

"(B) clause (ii) of such section shall be applied by substituting 'the present value of the nonforfeitable accrued benefit of the employee under the plan' for 'one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan'.

"(2) DELAY OF REPAYMENT.—In the case of a qualified individual with an outstanding loan on or after the qualified beginning date from a qualified employer plan (as defined in section 72(p)(4))—

"(A) if the due date pursuant to subparagraph (B) or (C) of section 72(p)(2) for any repayment with respect to such loan occurs during the period beginning on the qualified beginning date and ending on December 31, 2006, such due date shall be delayed for 1 year,

"(B) any subsequent repayments with respect to any such loan shall be appropriately adjusted to reflect the delay in the due date under paragraph (1) and any interest accruing during such delay, and

"(C) in determining the 5-year period and the term of a loan under subparagraph (B) or (C) of section 72(p)(2), the period described in subparagraph (A) shall be disregarded.

"(3) QUALIFIED INDIVIDUAL.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified individual' means any qualified Hurricane Katrina individual, any qualified Hurricane Rita individual, and any qualified Hurricane Wilma individual.

"(B) QUALIFIED HURRICANE KATRINA INDIVIDUAL.—The term 'qualified Hurricane Katrina individual' means an individual whose principal place of abode on August 28, 2005, is located in the Hurricane Katrina disaster area and who has sustained an economic loss by reason of Hurricane Katrina.

"(C) QUALIFIED HURRICANE RITA INDIVIDUAL.—The term 'qualified Hurricane Rita individual' means an individual (other than a qualified Hurricane Katrina individual) whose principal place of abode on September 23, 2005, is located in the Hurricane Rita disaster area and who has sustained an economic loss by reason of Hurricane Rita.

"(D) QUALIFIED HURRICANE WILMA INDIVIDUAL.—The term 'qualified Hurricane Wilma individual' means an individual (other than a qualified Hurricane Katrina individual or a qualified Hurricane Rita individual) whose principal place of abode on October 23, 2005, is located in the Hurricane Wilma disaster area and who has sustained an economic loss by reason of Hurricane Wilma.

"(4) APPLICABLE PERIOD; QUALIFIED BEGINNING DATE.—For purposes of this subsection—

"(A) HURRICANE KATRINA.—In the case of any qualified Hurricane Katrina individual—

"(i) the applicable period is the period beginning on September 24, 2005, and ending on December 31, 2006, and

"(ii) the qualified beginning date is August 25, 2005.

"(B) HURRICANE RITA.—In the case of any qualified Hurricane Rita individual—

"(i) the applicable period is the period beginning on the date of the enactment of this subsection and ending on December 31, 2006, and

"(ii) the qualified beginning date is September 23, 2005.

"(C) HURRICANE WILMA.—In the case of any qualified Hurricane Wilma individual—

"(i) the applicable period is the period beginning on the date of the enactment of this subsection and ending on December 31, 2006, and

"(ii) the qualified beginning date is October 23, 2005.

"SEC. 1400R. EMPLOYMENT RELIEF.

"(a) EMPLOYEE RETENTION CREDIT FOR EMPLOYERS AFFECTED BY HURRICANE KATRINA.—

"(1) IN GENERAL.—For purposes of section 38, in the case of an eligible employer, the Hurricane Katrina employee retention credit for any taxable year is an amount equal to 40 percent of the qualified wages with respect to each eligible employee of such employer for such taxable year. For purposes of the preceding sentence, the amount of qualified wages which may be taken into account with respect to any individual shall not exceed $6,000.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) ELIGIBLE EMPLOYER.—The term 'eligible employer' means any employer—

"(i) which conducted an active trade or business on August 28, 2005, in the Gulf Opportunity Zone, and

"(ii) with respect to whom the trade or business described in clause (i) is inoperable on any day after August 28, 2005, and before January 1, 2006, as a result of damage sustained by reason of Hurricane Katrina.

"(B) ELIGIBLE EMPLOYEE.—The term 'eligible employee' means with respect to an eligible employer an employee whose principal place of employment on August 28, 2005, with such eligible employer was in the Gulf Opportunity Zone.

"(C) QUALIFIED WAGES.—The term 'qualified wages' means wages (as defined in section 51(c)(1), but without regard to section 3306(b)(2)(B)) paid or incurred by an eligible employer with respect to an eligible employee on any day after August 28, 2005, and before January 1, 2006, which occurs during the period—

"(i) beginning on the date on which the trade or business described in subparagraph (A) first became inoperable at the principal place of employment of the employee immediately before Hurricane Katrina, and

"(ii) ending on the date on which such trade or business has resumed significant operations at such principal place of employment.

Such term shall include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

"(3) CERTAIN RULES TO APPLY.—For purposes of this subsection, rules similar to the rules of sections 51(i)(1), 52, and 280C(a) shall apply.

"(4) EMPLOYEE NOT TAKEN INTO ACCOUNT MORE THAN ONCE.—An employee shall not be treated as an eligible employee for purposes of this subsection for any period with respect to any employer if such employer is allowed a credit under section 51 with respect to such employee for such period.

"(b) EMPLOYEE RETENTION CREDIT FOR EMPLOYERS AFFECTED BY HURRICANE RITA.—

"(1) IN GENERAL.—For purposes of section 38, in the case of an eligible employer, the Hurricane Rita employee retention credit for any taxable year is an amount equal to 40 percent of the qualified wages with respect to each eligible employee of such employer for such taxable year. For purposes of the preceding sentence, the amount of qualified wages which may be taken into account with respect to any individual shall not exceed $6,000.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) ELIGIBLE EMPLOYER.—The term 'eligible employer' means any employer—

"(i) which conducted an active trade or business on September 23, 2005, in the Rita GO Zone, and

"(ii) with respect to whom the trade or business described in clause (i) is inoperable on any day after September 23, 2005, and before January 1, 2006, as a result of damage sustained by reason of Hurricane Rita.

"(B) ELIGIBLE EMPLOYEE.—The term 'eligible employee' means with respect to an eligible employer an employee whose principal place of employment on September 23, 2005, with such eligible employer was in the Rita GO Zone.

"(C) QUALIFIED WAGES.—The term 'qualified wages' means wages (as defined in section 51(c)(1), but without regard to section 3306(b)(2)(B)) paid or incurred by an eligible employer with respect to an eligible employee on any day after September 23, 2005, and before January 1, 2006, which occurs during the period—

"(i) beginning on the date on which the trade or business described in subparagraph (A) first became inoperable at the principal place of employment of the employee immediately before Hurricane Rita, and

"(ii) ending on the date on which such trade or business has resumed significant operations at such principal place of employment.

Such term shall include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

"(3) CERTAIN RULES TO APPLY.—For purposes of this subsection, rules similar to the rules of sections 51(i)(1), 52, and 280C(a) shall apply.

"(4) EMPLOYEE NOT TAKEN INTO ACCOUNT MORE THAN ONCE.—An employee shall not be treated as an eligible employee for purposes of this subsection for any period with respect to any employer if such employer is allowed a credit under subsection (a) or section 51 with respect to such employee for such period.

"(c) EMPLOYEE RETENTION CREDIT FOR EMPLOYERS AFFECTED BY HURRICANE WILMA.—

"(1) IN GENERAL.—For purposes of section 38, in the case of an eligible employer, the Hurricane Wilma employee retention credit for any taxable year is an amount equal to 40 percent of the qualified wages with respect to each eligible employee of such employer for such taxable year. For purposes of the preceding sentence, the amount of qualified wages which may be taken into account with respect to any individual shall not exceed $6,000.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) ELIGIBLE EMPLOYER.—The term 'eligible employer' means any employer—

"(i) which conducted an active trade or business on October 23, 2005, in the Wilma GO Zone, and

"(ii) with respect to whom the trade or business described in clause (i) is inoperable on any day after October 23, 2005, and before January 1, 2006, as a result of damage sustained by reason of Hurricane Wilma.

"(B) ELIGIBLE EMPLOYEE.—The term 'eligible employee' means with respect to an eligible employer an employee whose principal place of employment on October 23, 2005, with such eligible employer was in the Wilma GO Zone.

"(C) QUALIFIED WAGES.—The term 'qualified wages' means wages (as defined in section 51(c)(1), but without regard to section 3306(b)(2)(B)) paid or incurred by an eligible employer with respect to an eligible employee on any day after October 23, 2005, and before January 1, 2006, which occurs during the period—

"(i) beginning on the date on which the trade or business described in subparagraph (A) first became inoperable at the principal place of employment of the employee immediately before Hurricane Wilma, and

"(ii) ending on the date on which such trade or business has resumed significant operations at such principal place of employment.

Such term shall include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

"(3) CERTAIN RULES TO APPLY.—For purposes of this subsection, rules similar to the rules of sections 51(i)(1), 52, and 280C(a) shall apply.

"(4) EMPLOYEE NOT TAKEN INTO ACCOUNT MORE THAN ONCE.—An employee shall not be treated as an eligible employee for purposes of this subsection for any period with respect to any employer if such employer is allowed a credit under subsection (a) or section 51 with respect to such employee for such period.

"SEC. 1400S. ADDITIONAL TAX RELIEF PROVISIONS.

"(a) TEMPORARY SUSPENSION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS.—

"(1) IN GENERAL.—Except as otherwise provided in paragraph (2), section 170(b) shall not apply to qualified contributions and such contributions shall not be taken into account for purposes of applying subsections (b) and (d) of section 170 to other contributions.

"(2) TREATMENT OF EXCESS CONTRIBUTIONS.—For purposes of section 170—

"(A) INDIVIDUALS.—In the case of an individual—

"(i) LIMITATION.—Any qualified contribution shall be allowed only to the extent that the aggregate of such contributions does not exceed the excess of the taxpayer's contribution base (as defined in subparagraph (F) of section 170(b)(1)) over the amount of all other charitable contributions allowed under section 170(b)(1).

"(ii) CARRYOVER.—If the aggregate amount of qualified contributions made in the contribution year (within the meaning of section 170(d)(1)) exceeds the limitation of clause (i), such excess shall be added to the excess described in the portion of subparagraph (A) of such section which precedes clause (i) thereof for purposes of applying such section.

"(B) CORPORATIONS.—In the case of a corporation—

"(i) LIMITATION.—Any qualified contribution shall be allowed only to the extent that the aggregate of such contributions does not exceed the excess of the taxpayer's taxable income (as determined under paragraph (2) of section 170(b)) over the amount of all other charitable contributions allowed under such paragraph.

"(ii) CARRYOVER.—Rules similar to the rules of subparagraph (A)(ii) shall apply for purposes of this subparagraph.

"(3) EXCEPTION TO OVERALL LIMITATION ON ITEMIZED DEDUCTIONS.—So much of any deduction allowed under section 170 as does not exceed the qualified contributions paid during the taxable year shall not be treated as an itemized deduction for purposes of section 68.

"(4) QUALIFIED CONTRIBUTIONS.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'qualified contribution' means any charitable contribution (as defined in section 170(c)) if—

"(i) such contribution is paid during the period beginning on August 28, 2005, and ending on December 31, 2005, in cash to an organization described in section 170(b)(1)(A) (other than an organization described in section 509(a)(3)),

"(ii) in the case of a contribution paid by a corporation, such contribution is for relief efforts related to Hurricane Katrina, Hurricane Rita, or Hurricane Wilma, and

"(iii) the taxpayer has elected the application of this subsection with respect to such contribution.

"(B) EXCEPTION.—Such term shall not include a contribution if the contribution is for establishment of a new, or maintenance in an existing, segregated fund or account with respect to which the donor (or any person appointed or designated by such donor) has, or reasonably expects to have, advisory privileges with respect to distributions or investments by reason of the donor's status as a donor.

"(C) APPLICATION OF ELECTION TO PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership or S corporation, the election under subparagraph (A)(iii) shall be made separately by each partner or shareholder.

"(b) SUSPENSION OF CERTAIN LIMITATIONS ON PERSONAL CASUALTY LOSSES.—Paragraphs (1) and (2)(A) of section 165(h) shall not apply to losses described in section 165(c)(3)—

"(1) which arise in the Hurricane Katrina disaster area on or after August 25, 2005, and which are attributable to Hurricane Katrina,

"(2) which arise in the Hurricane Rita disaster area on or after September 23, 2005, and which are attributable to Hurricane Rita, or

"(3) which arise in the Hurricane Wilma disaster area on or after October 23, 2005, and which are attributable to Hurricane Wilma. In the case of any other losses, section 165(h)(2)(A) shall be applied without regard to the losses referred to in the preceding sentence.".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 38 is amended by striking "and" at the end of paragraph (25), by striking the period at the end of paragraph (26) and inserting a comma, and by adding at the end the following new paragraphs:

"(27) the Hurricane Katrina employee retention credit determined under section 1400R(a),

"(28) the Hurricane Rita employee retention credit determined under section 1400R(b), and

"(29) the Hurricane Wilma employee retention credit determined under section 1400R(c).".

(2) The table of sections for subchapter Z of chapter 1 is amended by adding at the end the following new items:

"Sec. 1400P. Special rules for mortgage revenue bonds.
"Sec. 1400Q. Special rules for use of retirement funds.
"Sec. 1400R. Employment relief.
"Sec. 1400S. Additional tax relief provisions.".

(3) The following provisions of the Katrina Emergency Tax Relief Act of 2005 are hereby repealed:

(A) Title I.

(B) Sections 202, 301, and 402.

TITLE II—EXTENSION OF EXPIRING PROVISIONS

Subtitle A—Multi-Year Extensions

SEC. 201. EXTENSION OF INCREASED EXPENSING FOR SMALL BUSINESS.

Section 179 is amended by striking "2008" each place it appears and inserting "2010".

SEC. 202. CREDIT FOR ELECTIVE DEFERRALS AND IRA CONTRIBUTIONS.

Section 25B(h) is amended by striking "2006" and inserting "2009".

SEC. 203. ABOVE-THE-LINE DEDUCTION FOR HIGHER EDUCATION.

(a) IN GENERAL.—Section 222(e) is amended by striking "2005"and inserting "2009".

(b) CONFORMING AMENDMENTS.—Section 222(b)(2)(B) is amended—

(1) by striking "a taxable year beginning in 2004 or 2005" and inserting "any taxable year beginning after 2003", and

(2) by striking **"2004 AND 2005"** and inserting **"AFTER 2003"**.

SEC. 204. EXTENSION AND MODIFICATION OF NEW MARKETS TAX CREDIT.

(a) EXTENSION.—Section 45D(f)(1)(D) is amended by striking "and 2007" and inserting ", 2007, and 2008".

(b) REGULATIONS REGARDING NON-METROPOLITAN COUNTIES.—Section 45D(i) is amended by striking "and" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", and", and by adding at the end by the following new paragraph:

"(6) which ensure that non-metropolitan counties receive a proportional allocation of qualified equity investments.".

Subtitle B—One-Year Extensions

SEC. 211. ELECTION TO DEDUCT STATE AND LOCAL GENERAL SALES TAXES.

Section 164(b)(5)(I) is amended by striking "2006" and inserting "2007".

SEC. 212. EXTENSION AND INCREASE IN MINIMUM TAX RELIEF TO INDIVIDUALS.

(a) IN GENERAL.—Section 55(d)(1) is amended—

(1) by striking "$58,000" and all that follows through "2005" in subparagraph (A) and inserting "$62,550 in the case of taxable years beginning in 2006", and

(2) by striking "$40,250" and all that follows through "2005" in subparagraph (B) and inserting "$42,500 in the case of taxable years beginning in 2006".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 213. ALLOWANCE OF NONREFUNDABLE PERSONAL CREDITS AGAINST REGULAR AND ALTERNATIVE MINIMUM TAX LIABILITY.

(a) IN GENERAL.—Paragraph (2) of section 26(a) is amended—

(1) by striking "2005" in the heading and inserting "2006", and

(2) by striking "or 2005" and inserting "2005, or 2006".

(b) CONFORMING PROVISIONS.—

(1) Section 30B(g) is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULE FOR 2006.—For purposes of any taxable year beginning during 2006, the credit allowed under subsection (a) (after the application of paragraph (1)) shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under subpart A and this subpart (other than this section and section 30C).".

(2) Section 30C(d) is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULE FOR 2006.—For purposes of any taxable year beginning during 2006, the credit allowed under subsection (a) (after the application of paragraph (1)) shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under subpart A and this subpart (other than this section).".

(3) Section 904(h) is amended by striking "or 2005" and inserting "2005, or 2006".

(4) The amendments made by sections 201(b), 202(f), and 618(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to taxable years beginning during 2006.

SEC. 214. EXTENSION AND MODIFICATION OF RESEARCH CREDIT.

(a) EXTENSION.—

(1) IN GENERAL.—Section 41(h)(1)(B) is amended by striking "2005" and inserting "2006".

(2) CONFORMING AMENDMENT.—Section 45C(b)(1)(D) is amended by striking "2005" and inserting "2006".

(b) INCREASE IN RATES OF ALTERNATIVE INCREMENTAL CREDIT.—Subparagraph (A) of section 41(c)(4) (relating to election of alternative incremental credit) is amended—

(1) by striking "2.65 percent" and inserting "3 percent",

(2) by striking "3.2 percent" and inserting "4 percent", and

(3) by striking "3.75 percent" and inserting "5 percent".

(c) ALTERNATIVE SIMPLIFIED CREDIT FOR QUALIFIED RESEARCH EXPENSES.—

(1) IN GENERAL.—Subsection (c) of section 41 (relating to base amount) is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting after paragraph (4) the following new paragraph:

"(5) ELECTION OF ALTERNATIVE SIMPLIFIED CREDIT.—

"(A) IN GENERAL.—At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to 12 percent of so much of the qualified research expenses for the taxable year as exceeds 50 percent of the average qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined.

"(B) SPECIAL RULE IN CASE OF NO QUALIFIED RESEARCH EXPENSES IN ANY OF 3 PRECEDING TAXABLE YEARS.—

"(i) TAXPAYERS TO WHICH SUBPARAGRAPH APPLIES.—The credit under this paragraph shall be determined under this subparagraph if the taxpayer has no qualified research expenses in any 1 of the 3 taxable years preceding the taxable year for which the credit is being determined.

"(ii) CREDIT RATE.—The credit determined under this subparagraph shall be equal to 6 percent of the qualified research expenses for the taxable year.

"(C) ELECTION.—An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary. An election under this paragraph may not be made for any taxable year to which an election under paragraph (4) applies.".

(2) COORDINATION WITH ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—

(A) IN GENERAL.—Section 41(c)(4)(B) (relating to election) is amended by adding at the end the following: "An election under this paragraph may not be made for any taxable year to which an election under paragraph (5) applies.".

(B) TRANSITION RULE.—In the case of an election under section 41(c)(4) of the Internal Revenue Code of 1986 which applies to the taxable year which includes the date of the enactment of this Act, such election shall be treated as revoked with the consent of the Secretary of the Treasury if the taxpayer makes an election under section 41(c)(5) of such Code (as added by subsection (a)) for such year.

(d) EXPANSION OF CREDIT TO EXPENSES OF GENERAL COLLABORATIVE RESEARCH CONSORTIA.—Section 41 is amended—

(1) by striking "an energy research consortium" in subsections (a)(3) and (b)(3)(C)(i) and inserting "a research consortium",

(2) by striking "energy" each place it appears in subsection (f)(6)(A),

(3) by inserting "or 501(c)(6)" after "section 501(c)(3)" in subsection (f)(6)(A)(i)(I), and

(4) by striking "ENERGY RESEARCH" in the heading for subsection (f)(6)(A) and inserting "RESEARCH".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 2005.

SEC. 215. WORK OPPORTUNITY TAX CREDIT AND WELFARE-TO-WORK CREDIT.

(a) IN GENERAL.—Section 51(c)(4)(B) is amended by striking "2005" and inserting "2006".

(b) ELIGIBILITY OF EX-FELONS DETERMINED WITHOUT REGARD TO FAMILY INCOME.—Paragraph (4) of section 51(d) is amended by adding "and" at the end of subparagraph (A), by striking ", and" at the end of subparagraph (B) and inserting a period, and by striking all that follows subparagraph (B).

(c) INCREASE IN MAXIMUM AGE FOR ELIGIBILITY OF FOOD STAMP RECIPIENTS.—Clause (i) of section 51(d)(8)(A) is amended by striking "25" and inserting "40".

(d) INCREASE IN MAXIMUM AGE FOR DESIGNATED COMMUNITY RESIDENTS.—

(1) IN GENERAL.—Paragraph (5) of section 51(d) is amended to read as follows:

"(5) DESIGNATED COMMUNITY RESIDENTS.—

"(A) IN GENERAL.—The term 'designated community resident' means any individual who is certified by the designated local agency—

"(i) as having attained age 18 but not age 40 on the hiring date, and

"(ii) as having his principal place of abode within an empowerment zone, enterprise community, or renewal community.

"(B) INDIVIDUAL MUST CONTINUE TO RESIDE IN ZONE OR COMMUNITY.—In the case of a designated community resident, the term 'qualified wages' shall not include wages paid or incurred for services performed while the individual's principal place of abode is outside an empowerment zone, enterprise community, or renewal community."

(2) CONFORMING AMENDMENT.—Subparagraph (D) of section 51(d)(1) is amended to read as follows:

"(D) a designated community resident,".

(e) CONSOLIDATION OF WORK OPPORTUNITY CREDIT WITH WELFARE-TO-WORK CREDIT.—

(1) IN GENERAL.—Paragraph (1) of section 51(d) is amended by striking "or" at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting ", or", and by adding at the end the following new subparagraph:

"(I) a long-term family assistance recipient."

(2) LONG-TERM FAMILY ASSISTANCE RECIPIENT.—Subsection (d) of section 51 is amended by redesignating paragraphs (10) through (12) as paragraphs (11) through (13), respectively, and by inserting after paragraph (9) the following new paragraph:

"(10) LONG-TERM FAMILY ASSISTANCE RECIPIENT.—The term 'long-term family assistance recipient' means any individual who is certified by the designated local agency—

"(A) as being a member of a family receiving assistance under a IV-A program (as defined in paragraph (2)(B)) for at least the 18-month period ending on the hiring date,

"(B)(i) as being a member of a family receiving such assistance for 18 months beginning after August 5, 1997, and

"(ii) as having a hiring date which is not more than 2 years after the end of the earliest such 18-month period, or

"(C)(i) as being a member of a family which ceased to be eligible for such assistance by reason of any limitation imposed by Federal or State law on the maximum period such assistance is payable to a family, and

"(ii) as having a hiring date which is not more than 2 years after the date of such cessation."

(3) INCREASED CREDIT FOR EMPLOYMENT OF LONG-TERM FAMILY ASSISTANCE RECIPIENTS.—Section 51 is amended by inserting after subsection (d) the following new subsection:

"(e) CREDIT FOR SECOND-YEAR WAGES FOR EMPLOYMENT OF LONG-TERM FAMILY ASSISTANCE RECIPIENTS.—

"(1) IN GENERAL.—With respect to the employment of a long-term family assistance recipient—

"(A) the amount of the work opportunity credit determined under this section for the taxable year shall include 50 percent of the qualified second-year wages for such year, and

"(B) in lieu of applying subsection (b)(3), the amount of the qualified first-year wages, and the amount of qualified second-year wages, which may be taken into account with respect to such a recipient shall not exceed $10,000 per year.

"(2) QUALIFIED SECOND-YEAR WAGES.—For purposes of this subsection, the term 'qualified second-year wages' means qualified wages—

"(A) which are paid to a long-term family assistance recipient, and

"(B) which are attributable to service rendered during the 1-year period beginning on the day after the last day of the 1-year period with respect to such recipient determined under subsection (b)(2).

"(3) SPECIAL RULES FOR AGRICULTURAL AND RAILWAY LABOR.—If such recipient is an employee to whom subparagraph (A) or (B) of subsection (h)(1) applies, rules similar to the rules of such subparagraphs shall apply except that—

"(A) such subparagraph (A) shall be applied by substituting '$10,000' for '$6,000', and

"(B) such subparagraph (B) shall be applied by substituting '$833.33' for '$500'."

(4) REPEAL OF SEPARATE WELFARE-TO-WORK CREDIT.—

(A) IN GENERAL.—Section 51A is hereby repealed.

(B) CLERICAL AMENDMENT.—The table of sections for subpart F of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 51A.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after December 31, 2005.

SEC. 216. QUALIFIED ZONE ACADEMY BONDS.

(a) IN GENERAL.—Paragraph (1) of section 1397E(e) is amended by striking "and 2005" and inserting "2005, and 2006".

(b) FORM OF PRIVATE BUSINESS CONTRIBUTIONS.—Section 1397E(d)(2)(B) is amended by striking "any contribution" and all that follows and inserting "any cash or cash equivalent contribution".

(c) SPECIAL RULES RELATING TO AMORTIZATION, EXPENDITURES, ARBITRAGE, AND REPORTING.—

(1) IN GENERAL.—Section 1397E is amended—

(A) in subsection (d)(1), by striking "and" at the end of subparagraph (C)(iii), by striking the period at the end of subparagraph (D) and inserting ", and", and by adding at the end the following new subparagraph:

"(E) the issue meets the requirements of subsections (f), (g), (h), and (i).", and

(B) by redesignating subsections (f), (g), (h), and (i) as subsection (j), (k), (l), and (m), respectively, and by inserting after subsection (e) the following new subsections:

"(f) RATABLE PRINCIPAL AMORTIZATION REQUIRED.—An issue shall be treated as meeting the requirements of this subsection if such issue provides for an equal amount of principal to be paid by the issuer during each calendar year that the issue is outstanding.

"(g) SPECIAL RULES RELATING TO EXPENDITURES.—

"(1) IN GENERAL.—An issue shall be treated as meeting the requirements of this subsection if, as of the date of issuance, the issuer reasonably expects—

"(A) at least 95 percent of the proceeds from the sale of the issue are to be spent for 1 or more qualified purposes with respect to qualified zone academies within the 5-year period beginning on the date of issuance of the qualified zone academy bond,

"(B) a binding commitment with a third party to spend at least 10 percent of the proceeds from the sale of the issue will be incurred within the 6-month period beginning on the date of issuance of the qualified zone academy bond, and

"(C) such purposes will be completed with due diligence and the proceeds from the sale of the issue will be spent with due diligence.

"(2) EXTENSION OF PERIOD.—Upon submission of a request prior to the expiration of the period described in paragraph (1)(A), the Secretary may extend such period if the issuer establishes that the failure to satisfy the 5-year requirement is due to reasonable cause and the related purposes will continue to proceed with due diligence.

"(3) FAILURE TO SPEND REQUIRED AMOUNT OF BOND PROCEEDS WITHIN 5 YEARS.—To the extent that less than 95 percent of the proceeds of such issue are expended by the close of the 5-year period beginning on the date of issuance (or if an extension has been obtained under paragraph (2), by the close of the extended period), the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

"(h) SPECIAL RULES RELATING TO ARBITRAGE.—An issue shall be treated as meeting the requirements of this subsection if the issuer satisfies the arbitrage requirements of section 148 with respect to proceeds of the issue.

"(i) REPORTING.—Issuers of qualified academy zone bonds shall submit reports similar to the reports required under section 149(e).".

(2) CONFORMING AMENDMENTS.—

(A) Section 1397E(d)(3) is amended by inserting "without regard to the requirements of subsection (f) and" after "Such present value shall be determined".

(B) Section 54(l)(3)(B) is amended by striking "section 1397E(i)" and inserting "section 1397E(l)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2005.

SEC. 217. DEDUCTION FOR CORPORATE DONATIONS OF COMPUTER TECHNOLOGY AND EQUIPMENT.

Section 170(e)(6)(G) is amended by striking "2005" and inserting "2006".

SEC. 218. ABOVE-THE-LINE DEDUCTION FOR CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.

Subparagraph (D) of section 62(a)(2) is amended by striking "or 2005" and inserting "2005, or 2006".

SEC. 219. EXPENSING OF BROWNFIELDS REMEDIATION COSTS.

(a) EXTENSION.—Subsection (h) of section 198 is amended by striking "2005" and inserting "2006".

(b) EXPANSION.—

(1) IN GENERAL.—Section 198(d)(1) (defining hazardous substance) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) any petroleum product (as defined in section 4612(a)(3)).".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to expenditures paid or incurred after December 31, 2005.

SEC. 220. TAX INCENTIVES FOR INVESTMENT IN THE DISTRICT OF COLUMBIA.

(a) DESIGNATION OF ZONE.—Subsection (f) of section 1400 is amended by striking "2005" both places it appears and inserting "2006".

(b) TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.—Subsection (b) of section 1400A is amended by striking "2005" and inserting "2006".

(c) ZERO PERCENT CAPITAL GAINS RATE.—

(1) IN GENERAL.—Subsection (b) of section 1400B is amended by striking "2006" each place it appears and inserting "2007".

(2) CONFORMING AMENDMENTS.—

(A) Section 1400B(e)(2) is amended—

(i) by striking "2010" and inserting "2011", and

(ii) by striking "2010" in the heading and inserting "2011".

(B) Section 1400B(g)(2) is amended by striking "2010" and inserting "2011".

(C) Section 1400F(d) is amended by striking "2010" and inserting "2011".

(d) FIRST-TIME HOMEBUYER CREDIT.—Subsection (i) of section 1400C is amended by striking "2006" and inserting "2007".

SEC. 221. INDIAN EMPLOYMENT TAX CREDIT.

Section 45A(f) is amended by striking "2005" and inserting "2006".

SEC. 222. ACCELERATED DEPRECIATION FOR BUSINESS PROPERTY ON INDIAN RESERVATION.

Section 168(j)(8) is amended by striking "2005" and inserting "2006".

SEC. 223. FIFTEEN-YEAR STRAIGHT-LINE COST RECOVERY FOR QUALIFIED LEASEHOLD IMPROVEMENTS AND QUALIFIED RESTAURANT IMPROVEMENTS.

Clauses (iv) and (v) of section 168(e)(3)(E) are each amended by striking "2006" and inserting "2007".

SEC. 224. EXTENSION OF FULL CREDIT FOR QUALIFIED ELECTRIC VEHICLES.

(a) IN GENERAL.—Section 30(b) (relating to limitations) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2005.

Subtitle C—Application of EGTRRA Sunset

SEC. 231. APPLICATION OF EGTRRA SUNSET TO THIS TITLE.

Each amendment made by this title shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 to the same extent and in the same manner as the provision of such Act to which such amendment relates.

TITLE III—PROVISIONS RELATING TO CHARITABLE DONATIONS

Subtitle A—Charitable Giving Incentives

SEC. 301. CHARITABLE DEDUCTION FOR NON-ITEMIZERS.

(a) IN GENERAL.—Section 170 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) DEDUCTION FOR INDIVIDUALS NOT ITEMIZING DEDUCTIONS.—In the case of an individual who does not itemize deductions for any taxable year beginning after December 31, 2005, and before January 1, 2008, there shall be taken into account as a direct charitable deduction under section 63 an amount equal to the amount allowable under subsection (a) for the taxable year for cash contributions (determined without regard to any carryover).".

(b) DIRECT CHARITABLE DEDUCTION.—

(1) IN GENERAL.—Subsection (b) of section 63 (defining taxable income) is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end the following new paragraph:

"(3) the direct charitable deduction.".

(2) DEFINITION.—Section 63 is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) DIRECT CHARITABLE DEDUCTION.—For purposes of this section, the term 'direct charitable deduction' means that portion of the amount allowable under section 170(a) which is taken as a direct charitable deduction for the taxable year under section 170(o).".

(3) CONFORMING AMENDMENT.—Subsection (d) of section 63 is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end the following new paragraph:

"(3) the direct charitable deduction.".

(c) FLOOR ON CHARITABLE CONTRIBUTIONS BY INDIVIDUALS.—Section 170(a) is amended by adding at the end the following new paragraph:

"(4) DOLLAR FLOOR ON CHARITABLE CONTRIBUTIONS BY INDIVIDUALS.—In the case of an individual, the charitable contributions of the taxpayer for any taxable year shall be taken into account for purposes of determining the deduction under paragraph (1) only to the extent that the aggregate of such contributions exceeds $210 ($420 in the case of a joint return).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2005.

SEC. 302. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT PLANS FOR CHARITABLE PURPOSES.

(a) IN GENERAL.—Subsection (d) of section 408 (relating to individual retirement accounts) is amended by adding at the end the following new paragraph:

"(8) DISTRIBUTIONS FOR CHARITABLE PURPOSES.—

"(A) IN GENERAL.—No amount shall be includible in gross income by reason of a qualified charitable distribution.

"(B) QUALIFIED CHARITABLE DISTRIBUTION.—For purposes of this paragraph, the term 'qualified charitable distribution' means any distribution from an individual retirement plan (other than a plan described in subsection (k) or (p) of section 408)—

"(i) which is made on or after the date that the individual for whose benefit the plan is maintained has attained age 70½, and

"(ii) which is made directly by the trustee—

"(I) to an organization described in section 170(c), or

"(II) to a split-interest entity.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A) and, in the case of a distribution to a split-interest entity, only if no person holds an income interest in the amounts in the split-interest entity attributable to such distribution other than one or more of the following: the individual for whose benefit such plan is maintained, the spouse of such individual, or any organization described in section 170(c).

"(C) CONTRIBUTIONS MUST BE OTHERWISE DEDUCTIBLE.—For purposes of this paragraph—

"(i) DIRECT CONTRIBUTIONS.—A distribution to an organization described in section 170(c) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsections (a)(4) and (b) thereof and this paragraph).

"(ii) SPLIT-INTEREST GIFTS.—A distribution to a split-interest entity shall be treated as a qualified charitable distribution only if a deduction for the entire value of the interest in the distribution for the use of an organization described in section 170(c) would be allowable under section 170 (determined without regard to subsections (a)(4) and (b) thereof and this paragraph).

"(D) APPLICATION OF SECTION 72.—Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts distributed from all individual retirement plans were treated as 1 contract under paragraph (2)(A) for purposes of determining the inclusion of such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

"(E) SPECIAL RULES FOR SPLIT-INTEREST ENTITIES.—

"(i) CHARITABLE REMAINDER TRUSTS.—Notwithstanding section 664(b), distributions made from a trust described in subparagraph (G)(i) shall be treated as ordinary income in the hands of the beneficiary to whom is paid the annuity described in section 664(d)(1)(A) or the payment described in section 664(d)(2)(A).

"(ii) POOLED INCOME FUNDS.—No amount shall be includible in the gross income of a pooled income fund (as defined in subparagraph (G)(ii)) by reason of a qualified charitable distribution to such fund, and all distributions from the fund which are attributable to qualified charitable distributions shall be treated as ordinary income to the beneficiary.

"(iii) CHARITABLE GIFT ANNUITIES.—Qualified charitable distributions made for a charitable gift annuity shall not be treated as an investment in the contract.

"(F) DENIAL OF DEDUCTION.—Qualified charitable distributions shall not be taken into account in determining the deduction under section 170.

"(G) SPLIT-INTEREST ENTITY DEFINED.—For purposes of this paragraph, the term 'split-interest entity' means—

"(i) a charitable remainder annuity trust or a charitable remainder unitrust (as such terms are defined in section 664(d)) which must be funded exclusively by qualified charitable distributions,

"(ii) a pooled income fund (as defined in section 642(c)(5)), but only if the fund accounts separately for amounts attributable to qualified charitable distributions, and

"(iii) a charitable gift annuity (as defined in section 501(m)(5)).".

(b) MODIFICATIONS RELATING TO INFORMATION RETURNS BY CERTAIN TRUSTS.—

(1) RETURNS.—Section 6034 (relating to returns by trusts described in section 4947(a)(2) or claiming charitable deductions under section 642(c)) is amended to read as follows:

"SEC. 6034. RETURNS BY CERTAIN TRUSTS.

"(a) SPLIT-INTEREST TRUSTS.—Every trust described in section 4947(a)(2) shall furnish such information with respect to the taxable year as the Secretary may by forms or regulations require.

"(b) TRUSTS CLAIMING CERTAIN CHARITABLE DEDUCTIONS.—

"(1) IN GENERAL.—Every trust not required to file a return under subsection (a) but claiming a deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary may by forms or regulations prescribe, including—

"(A) the amount of the deduction taken under section 642(c) within such year,

"(B) the amount paid out within such year which represents amounts for which deductions under section 642(c) have been taken in prior years,

"(C) the amount for which such deductions have been taken in prior years but which has not been paid out at the beginning of such year,

"(D) the amount paid out of principal in the current and prior years for the purposes described in section 642(c),

"(E) the total income of the trust within such year and the expenses attributable thereto, and

"(F) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to a trust for any taxable year if—

"(A) all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries, or

"(B) the trust is described in section 4947(a)(1).".

(2) INCREASE IN PENALTY RELATING TO FILING OF INFORMATION RETURN BY SPLIT-INTEREST TRUSTS.—Paragraph (2) of section 6652(c) (relating to returns by exempt organizations and by certain trusts) is amended by adding at the end the following new subparagraph:

"(C) SPLIT-INTEREST TRUSTS.—In the case of a trust which is required to file a return under section 6034(a), subparagraphs (A) and (B) of this paragraph shall not apply and paragraph (1) shall apply in the same manner as if such return were required under section 6033, except that—

"(i) the 5 percent limitation in the second sentence of paragraph (1)(A) shall not apply,

"(ii) in the case of any trust with gross income in excess of $250,000, the first sentence of paragraph (1)(A) shall be applied by substituting '$100' for '$20', and the second sentence thereof shall be applied by substituting '$50,000' for '$10,000', and

"(iii) the third sentence of paragraph (1)(A) shall be disregarded.

In addition to any penalty imposed on the trust pursuant to this subparagraph, if the person required to file such return knowingly fails to file the return, such penalty shall also be imposed on such person who shall be personally liable for such penalty.".

(3) CONFIDENTIALITY OF NONCHARITABLE BENEFICIARIES.—Subsection (b) of section 6104 (relating to inspection of annual information returns) is amended by adding at the end the following new sentence: "In the case of a trust which is required to file a return under section 6034(a), this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c).".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to distributions made in taxable years beginning after December 31, 2005, and before January 1, 2008.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to returns for taxable years beginning after December 31, 2005.

SEC. 303. MODIFICATION OF CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.

(a) IN GENERAL.—Subparagraph (C) of section 170(e)(3) (relating to special rule for certain contributions of inventory and other property), as added by section 305 of the Katrina Emergency Tax Relief Act of 2005, is amended to read as follows:

"(C) SPECIAL RULE FOR CONTRIBUTIONS OF FOOD INVENTORY.—

"(i) GENERAL RULE.—In the case of a charitable contribution of food from any trade or business of the taxpayer, this paragraph shall be applied—

"(I) without regard to whether the contribution is made by a C corporation, and

"(II) only to food that is apparently wholesome food.

"(ii) LIMITATION.—In the case of a taxpayer other than a C corporation, the aggregate amount of such contributions for any taxable year which may be taken into account under this section shall not exceed 10 percent of the taxpayer's aggregate net income for such taxable year from all trades or businesses from which such contributions were made for such year, computed without regard to this section.

"(iii) LIMITATION ON REDUCTION.—In the case of any such contribution, notwithstanding subparagraph (B), the amount of the reduction determined under paragraph (1)(A) shall not exceed the amount by which the fair market value of the apparently wholesome food exceeds twice the basis of such food.

"(iv) DETERMINATION OF BASIS.—If a taxpayer—

"(I) does not account for inventories under section 471, and

"(II) is not required to capitalize indirect costs under section 263A,

the taxpayer may elect, solely for purposes of subparagraph (B), to treat the basis of any apparently wholesome food as being equal to 25 percent of the fair market value of such food.

"(v) DETERMINATION OF FAIR MARKET VALUE.—In the case of any such contribution of apparently wholesome food which, solely by reason of internal standards of the taxpayer or lack of market, cannot or will not be sold, the fair market value of such contribution shall be determined—

"(I) without regard to such internal standards or such lack of market and

"(II) by taking into account the price at which the same or substantially the same food items (as to both type and quality) are sold by the taxpayer at the time of the contribution (or, if not so sold at such time, in the recent past).

"(vi) APPARENTLY WHOLESOME FOOD.—For purposes of this subparagraph, the term 'apparently wholesome food' has the meaning given to such term by section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the enactment of this subparagraph.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2005, and before January 1, 2008.

SEC. 304. BASIS ADJUSTMENT TO STOCK OF S CORPORATION CONTRIBUTING PROPERTY.

(a) IN GENERAL.—Paragraph (2) of section 1367(a) (relating to adjustments to basis of stock of shareholders, etc.) is amended by adding at the end the following new flush sentence:

"The decrease under subparagraph (B) by reason of a charitable contribution (as defined in section 170(c)) of property shall be the amount equal to the shareholder's pro rata share of the adjusted basis of such property.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2005, and before January 1, 2008.

SEC. 305. MODIFICATION OF CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF BOOK INVENTORY.

(a) IN GENERAL.—Subparagraph (D) of section 170(e)(3) (relating to special rule for certain contributions of inventory and other property), as added by section 305 of the Katrina Emergency Tax Relief Act of 2005, is amended to read as follows:

"(D) SPECIAL RULE FOR CONTRIBUTIONS OF BOOK INVENTORY FOR EDUCATIONAL PURPOSES.—

"(i) CONTRIBUTIONS OF BOOK INVENTORY.—In determining whether a qualified book contribution is a qualified contribution, subparagraph (A) shall be applied without regard to whether—

"(I) the donee is an organization described in the matter preceding clause (i) of subparagraph (A), and

"(II) the property is to be used by the donee solely for the care of the ill, the needy, or infants.

"(ii) AMOUNT OF REDUCTION.—Notwithstanding subparagraph (B), the amount of the reduction determined under paragraph (1)(A) shall not exceed the amount by which the fair market value of the contributed property (as determined by the taxpayer using a bona fide published market price for such book) exceeds twice the basis of such property.

"(iii) QUALIFIED BOOK CONTRIBUTION.—For purposes of this paragraph, the term 'qualified book contribution' means a charitable contribution of books, but only if the requirements of clauses (iv) and (v) are met.

"(iv) IDENTITY OF DONEE.—The requirement of this clause is met if the contribution is to an organization—

"(I) described in subclause (I) or (III) of paragraph (6)(B)(i), or

"(II) described in section 501(c)(3) and exempt from tax under section 501(a) (other than a private foundation, as defined in section 509(a), which is not an operating foundation, as defined in section 4942(j)(3)), which is organized primarily to make books available to the general public at no cost or to operate a literacy program.

"(v) CERTIFICATION BY DONEE.—The requirement of this clause is met if, in addition to the certifications required by subparagraph (A) (as modified by this subparagraph), the donee certifies in writing that—

"(I) the books are suitable, in terms of currency, content, and quantity, for use in the donee's educational programs, and

"(II) the donee will use the books in its educational programs.

"(vi) BONA FIDE PUBLISHED MARKET PRICE.—For purposes of this subparagraph, the term 'bona fide published market price' means, with respect to any book, a price—

"(I) determined using the same printing and edition,

"(II) determined in the usual market in which such a book has been customarily sold by the taxpayer, and

"(III) for which the taxpayer can demonstrate to the satisfaction of the Secretary that the taxpayer customarily sold such books in arm's length transactions within 7 years preceding the contribution of such a book.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2005, and before January 1, 2008.

SEC. 306. MODIFICATION OF TAX TREATMENT OF CERTAIN PAYMENTS TO CONTROLLING EXEMPT ORGANIZATIONS AND PUBLIC DISCLOSURE OF INFORMATION RELATING TO UNRELATED BUSINESS INCOME.

(a) MODIFICATION OF SECTION 512(B)(13).—

(1) IN GENERAL.—Paragraph (13) of section 512(b) (relating to special rules for certain amounts received from controlled entities) is amended by redesignating subparagraph (E) as subparagraph (F) and by inserting after subparagraph (D) the following new subparagraph:

"(E) PARAGRAPH TO APPLY ONLY TO EXCESS PAYMENTS.—

"(i) IN GENERAL.—Subparagraph (A) shall apply only to the portion of a specified payment received or accrued by the controlling organization that exceeds the amount which would have been paid or accrued if such payment met the requirements prescribed under section 482.

"(ii) ADDITION TO TAX FOR VALUATION MISSTATEMENTS.—The tax imposed by this chapter on the controlling organization shall be increased by an amount equal to 20 percent of the larger of—

"(I) such excess determined without regard to any amendment or supplement to a return of tax, or

"(II) such excess determined with regard to all such amendments and supplements.".

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendment made by this subsection shall apply to payments received or accrued after December 31, 2000.

(B) PAYMENTS SUBJECT TO BINDING CONTRACT TRANSITION RULE.—If the amendments made by section 1041 of the Taxpayer Relief Act of 1997 did not apply to any amount received or accrued in the first 2 taxable years beginning on or after the date of the enactment of the Taxpayer Relief Act of 1997 under any contract described in subsection (b)(2) of such section, such amendments also shall not apply to amounts received or accrued under such contract before January 1, 2001.

(b) PUBLIC AVAILABILITY OF UNRELATED BUSINESS INCOME TAX RETURNS.—

(1) IN GENERAL.—Subparagraph (A) of section 6104(d)(1) is amended by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively, and by inserting after clause (i) the following new clause:

"(ii) any annual return filed under section 6011 which relates to any tax imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc., organizations) by such organization,".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to returns filed after the date of the enactment of this Act.

(c) CERTIFICATION OF UNRELATED BUSINESS TAXABLE INCOME FOR CERTAIN ORGANIZATIONS.—

(1) IN GENERAL.—Section 6011, as amended by section 311 of this Act, is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) RETURNS OF CERTAIN ORGANIZATIONS RELATING TO UNRELATED BUSINESS TAXABLE INCOME.—

"(1) IN GENERAL.—Every applicable exempt organization shall include with the return under subsection (a) for the taxable year a statement by an independent auditor or an independent counsel which meets the requirements of paragraph (2).

"(2) STATEMENT.—A statement meets the requirement of this paragraph if the statement—

"(A) contains a certification that—

"(i) the information contained in the return—

"(I) has been reviewed by the auditor or counsel, and

"(II) to the best of the auditor's or counsel's knowledge, is accurate, and

"(ii) to the best of the auditor's or counsel's knowledge, the allocation of expenses between the unrelated trades and business of the organization and the activities related to the purpose or function constituting the basis of the organization's exemption under section 501 complies with the requirements set forth by the Secretary under section 512, and

"(B) indicates—

"(i) whether the auditor or counsel has provided a tax opinion to the organization regarding—

"(I) the classification of any trade or business of the organization as an unrelated trade or business, or

"(II) the treatment of any income as unrelated business taxable income, and

"(ii) a description of any material facts with respect to any such opinion.

"(3) APPLICABLE EXEMPT ORGANIZATION.—For purposes of this subsection, the term 'applicable exempt organization' means any organization which—

"(A) is described in section 501(c)(3),

"(B) has—

"(i) gross income and receipts of not less than $10,000,000 for the taxable year, or

"(ii) gross assets of not less than $10,000,000 on the last day of the taxable year, and

"(C) is subject to the tax imposed under section 511 for the taxable year.".

(2) PENALTY.—

(A) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by section 316 of this Act, is amended by adding at the end the following new section:

"SEC. 6720C. UNRELATED BUSINESS INCOME REQUIREMENTS.

"(a) IN GENERAL.—Any applicable exempt organization (as defined in section 6011(h)(3)) which fails to file a statement required under section 6011(h) shall pay a penalty in an amount equal to ½ percent of the gross revenue amount of such organization for the taxable year to which such statement relates.

"(b) GROSS REVENUE AMOUNT.—For purposes of subsection (a), the term 'gross revenue amount' means, with respect to any taxable year, the gross income and receipts of the organization determined without regard to any contributions or grants received by the organization.

"(c) REASONABLE CAUSE.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.".

(B) CONFORMING AMENDMENT.—The table of sections of part I of subchapter B of chapter 68, as amended by section 316 of this Act, is amended by adding after the item relating to section 6720B the following new item:

"Sec. 6720C. Unrelated business income requirements.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to returns for taxable years beginning after the date of the enactment of this Act.

SEC. 307. ENCOURAGEMENT OF CONTRIBUTIONS OF CAPITAL GAIN REAL PROPERTY MADE FOR CONSERVATION PURPOSES.

(a) IN GENERAL.—

(1) INDIVIDUALS.—Paragraph (1) of subsection 170(b) (relating to percentage limitations) is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively, and by inserting after subparagraph (D) the following new subparagraph:

"(E) CONTRIBUTIONS OF QUALIFIED CONSERVATION CONTRIBUTIONS.—

"(i) IN GENERAL.—Any qualified conservation contribution (as defined in subsection (h)(1)) to an organization described in subparagraph (A) shall be allowed to the extent the aggregate of such contributions does not exceed the excess of 50 percent of the taxpayer's contribution base over the amount of all other charitable contributions allowable under this paragraph.

"(ii) Carryover.—If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution to which clause (i) applies in each of the 15 succeeding years in order of time.

"(iii) Coordination with other subparagraphs.—For purposes of applying this subsection and subsection (d)(1), contributions described in clause (i) shall not be treated as described in subparagraph (A), (B), (C), or (D).

"(iv) Qualified farmer or rancher.—

"(I) In general.—If the individual is a qualified farmer or rancher for the taxable year in which the contribution is made, clause (i) shall be applied by substituting '100 percent' for '50 percent'.

"(II) Definition.—For purposes of subclause (I), the term 'qualified farmer or rancher' means a taxpayer whose gross income from the trade or business of farming (within the meaning of section 2032A(e)(5)) is greater than 50 percent of the taxpayer's gross income for the taxable year.".

(2) Corporations.—Paragraph (2) of section 170(b) is amended to read as follows:

"(2) Corporations.—In the case of a corporation—

"(A) In general.—The total deductions under subsection (a) for any taxable year (other than for contributions to which subparagraph (B) applies) shall not exceed 10 percent of the taxpayer's taxable income.

"(B) Qualified conservation contributions by certain corporate farmers and ranchers.—

"(i) In general.—Any qualified conservation contribution (as defined in subsection (h)(1)) made—

"(I) by a corporation which, for the taxable year during which the contribution is made, is a qualified farmer or rancher (as defined in paragraph (1)(E)(iv)(II)) and the stock of which is not readily tradable on an established securities market at any time during such year, and

"(II) to an organization described in paragraph (1)(A),

shall be allowed to the extent the aggregate of such contributions does not exceed the excess of the taxpayer's taxable income over the amount of charitable contributions allowable under subparagraph (A).

"(ii) Carryover.—If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(2)) as a charitable contribution to which clause (i) applies in each of the 15 succeeding years in order of time.

"(C) Taxable income.—For purposes of this paragraph, taxable income shall be computed without regard to—

"(i) this section,

"(ii) part VIII (except section 248),

"(iii) any net operating loss carrryback to the taxable year under section 172,

"(iv) section 199, and

"(v) any capital loss carryback to the taxable year under section 1212(a)(1).".

(b) Conforming Amendments.—

(1) The second sentence of clause (i) of section 170(b)(1)(C) is amended by striking "subparagraph (D)" and inserting "subparagraph (D) or (E)".

(2) Clause (i) of section 170(b)(1)(D) is amended by striking "subparagraph (A)" and inserting "subparagraphs (A) or (E)".

(3) Paragraph (2) of section 170(d) is amended by striking "subsection (b)(2)" each place it appears and inserting "subsection (b)(2)(A)".

(4) Section 545(b)(2) is amended by striking "and (D)" and inserting "(D), and (E)".

(c) Effective Date.—The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2005, and before January 1, 2008.

SEC. 308. ENHANCED DEDUCTION FOR CHARITABLE CONTRIBUTION OF LITERARY, MUSICAL, ARTISTIC, AND SCHOLARLY COMPOSITIONS.

(a) In General.—Subsection (e) of section 170 (relating to certain contributions of ordinary income and capital gain property), as amended by this section 33 of this Act, is amended by adding at the end the following new paragraph:

"(18) Special rule for certain contributions of literary, musical, artistic, or scholarly compositions.—

"(A) In general.—In the case of a qualified artistic charitable contribution—

"(i) the amount of such contribution taken into account under this section shall be the fair market value of the property contributed (determined at the time of such contribution), and

"(ii) no reduction in the amount of such contribution shall be made under paragraph (1).

"(B) Qualified artistic charitable contribution.—For purposes of this paragraph, the term 'qualified artistic charitable contribution' means a charitable contribution of any literary, musical, artistic, or scholarly composition, or similar property, or the copyright thereon (or both), but only if—

"(i) such property was created by the personal efforts of the taxpayer making such contribution no less than 18 months prior to such contribution,

"(ii) the taxpayer—

"(I) has received a qualified appraisal of the fair market value of such property in accordance with the regulations under this section, and

"(II) attaches to the taxpayer's income tax return for the taxable year in which such contribution was made a copy of such appraisal,

"(iii) the donee is an organization described in subsection (b)(1)(A),

"(iv) the use of such property by the donee is related to the purpose or function constituting the basis for the donee's exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described under section 501(c)),

"(v) the taxpayer receives from the donee a written statement representing that the donee's use of the property will be in accordance with the provisions of clause (iv), and

"(vi) the written appraisal referred to in clause (ii) includes evidence of the extent (if any) to which property created by the personal efforts of the taxpayer and of the same type as the donated property is or has been—

"(I) owned, maintained, and displayed by organizations described in subsection (b)(1)(A), and

"(II) sold to or exchanged by persons other than the taxpayer, donee, or any related person (as defined in section 465(b)(3)(C)).

"(C) Maximum dollar limitation; no carryover of increased deduction.—The increase in the deduction under this section by reason of this paragraph for any taxable year—

"(i) shall not exceed the artistic adjusted gross income of the taxpayer for such taxable year, and

"(ii) shall not be taken into account in determining the amount which may be carried from such taxable year under subsection (d).

"(D) Artistic adjusted gross income.—For purposes of this paragraph, the term 'artistic adjusted gross income' means that portion of the adjusted gross income of the taxpayer for the taxable year attributable to—

"(i) income from the sale or use of property created by the personal efforts of the taxpayer which is of the same type as the donated property, and

"(ii) income from teaching, lecturing, performing, or similar activity with respect to property described in clause (i).

"(E) Paragraph not to apply to certain contributions.—Subparagraph (A) shall not apply to any charitable contribution of any letter, memorandum, or similar property which was written, prepared, or produced by or for an individual while the individual is an officer or employee of any person (including any government agency or instrumentality) unless such letter, memorandum, or similar property is entirely personal.

"(F) Copyright treated as separate property for partial interest rule.—In the case of a qualified artistic charitable contribution, the tangible literary, musical, artistic, or scholarly composition, or similar property and the copyright on such work shall be treated as separate properties for purposes of this paragraph and subsection (f)(3).

"(G) Termination.—This paragraph shall not apply to contributions made after December 31, 2007.".

(b) Effective Date.—The amendment made by this section shall apply to contributions made after December 31, 2005.

SEC. 309. MILEAGE REIMBURSEMENTS TO CHARITABLE VOLUNTEERS EXCLUDED FROM GROSS INCOME.

(a) In General.—Part III of subchapter B of chapter 1 is amended by inserting after section 139A the following new section:

"SEC. 139B. MILEAGE REIMBURSEMENTS TO CHARITABLE VOLUNTEERS.

"(a) In General.—Gross income of an individual does not include amounts received, from an organization described in section 170(c), as reimbursement of operating expenses with respect to use of a passenger automobile for the benefit of such organization. The preceding sentence shall apply only to the extent that the expenses which are reimbursed would be deductible under this chapter if section 274(d) were applied—

"(1) by using the standard business mileage rate established under such section, and

"(2) as if the individual were an employee of an organization not described in section 170(c).

"(b) Application to Volunteer Services Only.—Subsection (a) shall not apply with respect to any expenses relating to the performance of services for compensation.

"(c) No Double Benefit.—A taxpayer may not claim a deduction or credit under any other provision of this title with respect to the expenses under subsection (a).

"(d) Exemption From Reporting Requirements.—Section 6041 shall not apply with respect to reimbursements excluded from income under subsection (a).

"(e) Termination.—This section shall not apply to taxable years beginning after December 31, 2007.".

(b) Clerical Amendment.—The table of sections for part III of subchapter B of chapter 1 is amended by inserting after the item relating to section 139 the following new item:

"Sec. 139A. Mileage reimbursements to charitable volunteers.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 310. ALTERNATIVE PERCENTAGE LIMITATION FOR CORPORATE CHARITABLE CONTRIBUTIONS TO THE MATHEMATICS AND SCIENCE PARTNERSHIP PROGRAM.

(a) IN GENERAL.—Section 170(b) (related to percentage limitations) is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULE FOR CORPORATE CONTRIBUTIONS TO THE MATHEMATICS AND SCIENCE PARTNERSHIP PROGRAM.—

"(A) IN GENERAL.—In the case of a corporation which makes an eligible mathematics and science contribution—

"(i) the limitation under paragraph (2) shall apply separately with respect to all such contributions and all other charitable contributions, and

"(ii) paragraph (2) shall be applied with respect to all eligible mathematics and science contributions by substituting '15 percent' for '10 percent'.

"(B) ELIGIBLE MATHEMATICS AND SCIENCE CONTRIBUTION.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'eligible mathematics and science contribution' means a charitable contribution (other than a contribution of used equipment) to a qualified partnership for the purpose of an activity described in section 2202(c) of the Elementary and Secondary Education Act of 1965.

"(ii) QUALIFIED PARTNERSHIP.—The term 'qualified partnership' means an eligible partnership (within the meaning of section 2201(b)(1) of the Elementary and Secondary Education Act of 1965), but only to the extent that such partnership does not include a person other than a person described in paragraph (1)(A).

"(C) TERMINATION.—This paragraph shall not apply to any contributions made in taxable years beginning after December 31, 2006.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2005.

Subtitle B—Reforming Charitable Organizations

PART I—GENERAL REFORMS

SEC. 311. TAX INVOLVEMENT BY EXEMPT ORGANIZATIONS IN TAX SHELTER TRANSACTIONS.

(a) IMPOSITION OF EXCISE TAX.—

(1) IN GENERAL.—Chapter 42 (relating to private foundations and certain other tax-exempt organizations) is amended by adding at the end the following new subchapter:

"Subchapter F—Tax Shelter Transactions

"Sec. 4965. Excise tax on certain tax-exempt entities entering into prohibited tax shelter transactions

"SEC. 4965. EXCISE TAX ON CERTAIN TAX-EXEMPT ENTITIES ENTERING INTO PROHIBITED TAX SHELTER TRANSACTIONS.

"(a) PARTICIPATION IN AND APPROVAL OF PROHIBITED TRANSACTIONS.—

"(1) TAX-EXEMPT ENTITY.—

"(A) IN GENERAL.—If any tax-exempt entity (other than a tax-exempt entity described in paragraph (4), (5), (6), or (7) of subsection (c)) is a party to a prohibited tax shelter transaction at any time during the taxable year and knows or has reason to know such transaction is a prohibited tax shelter transaction, such entity shall pay a tax for such taxable year in the amount determined under subsection (b)(1)(A).

"(B) POST-TRANSACTION DETERMINATION.—If any tax-exempt entity (other than a tax-exempt entity described in paragraph (4), (5), (6), or (7) of subsection (c)) is a party to a subsequently listed transaction at any time during the taxable year, such entity shall pay a tax in the amount determined under subsection (b)(1)(B).

"(2) ENTITY MANAGER.—If any entity manager of a tax-exempt entity approves such entity as (or otherwise causes such entity to be) a party to a prohibited tax shelter transaction at any time during the taxable year and knows or has reason to know that the transaction is a prohibited tax shelter transaction, such manager shall pay a tax for such taxable year in the amount determined under subsection (b)(2).

"(3) REASONABLE CAUSE EXCEPTION.—No tax shall be imposed under paragraph (1)(A) or (2) if it is shown that the participation of the tax-exempt entity in the transaction was not willful and was due to reasonable cause.

"(b) AMOUNT OF TAX.—

"(1) ENTITY.—In the case of a tax-exempt entity—

"(A) IN GENERAL.—The amount of the tax imposed under subsection (a)(1)(A) on the entity with respect to a taxable year shall be the greater of—

"(i) 100 percent of the entity's net income (after taking into account any tax imposed by this subtitle with respect to the prohibited tax shelter transaction) for such taxable year which is attributable to the prohibited tax shelter transaction, or

"(ii) 75 percent of the proceeds received by the entity which are attributable to the prohibited tax shelter transaction.

"(B) POST-TRANSACTION DETERMINATION.—The amount of the tax imposed under subsection (a)(1)(B) on the entity with respect to any taxable year shall be an amount equal to the product of—

"(i) the highest rate of tax under section 11, and

"(ii) the greater of—

"(I) the entity's net income (after taking into account any tax imposed by this subtitle with respect to the subsequently listed transaction) for such taxable year which is attributable to the subsequently listed transaction and which is properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year, or

"(II) 75 percent of the proceeds received by the entity which are attributable to the subsequently listed transaction and which are properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year.

"(2) ENTITY MANAGER.—In the case of each entity manager to whom subsection (a)(2) applies, the amount of the tax under such subsection shall be $20,000 for each approval.

"(c) TAX-EXEMPT ENTITY.—For purposes of this section, the term 'tax-exempt entity' means an entity which is—

"(1) described in section 501(c) or 501(d),

"(2) described in section 170(c) (other than an agency or instrumentality of the United States) to which paragraph (1) of this subsection does not apply,

"(3) an Indian tribal government (within the meaning of section 7701(a)(40)),

"(4) described in paragraph (1), (2), or (3) of section 4979(e),

"(5) a program described in section 529,

"(6) an eligible deferred compensation plan described in section 457(b) which is maintained by an employer described in section 4457(e)(1)(A), or

"(7) an arrangement described in section 4973(a).

"(d) ENTITY MANAGER.—For purposes of this section, the term 'entity manager' means—

"(1) with respect to a tax-exempt entity described in paragraph (3) or (4) of section 501(c)—

"(A) in the case of an entity other than a private foundation, an organization manager (as defined in section 4958(f)(2)), and

"(B) in the case of a private foundation, a foundation manager (as defined in section 4946(b)), and

"(2) in all other cases, the person with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization.

"(e) PROHIBITED TAX SHELTER TRANSACTION; SUBSEQUENTLY LISTED TRANSACTION.—For purposes of this section—

"(1) PROHIBITED TAX SHELTER TRANSACTION.—

"(A) IN GENERAL.—The term 'prohibited tax shelter transaction' means—

"(i) any listed transaction, or

"(ii) any prohibited reportable transaction if the tax-exempt entity knows or has reason to know that such transaction is a reportable transaction.

"(B) LISTED TRANSACTION.—The term 'listed transaction' has the meaning given such term by section 6707A(c)(2).

"(C) PROHIBITED REPORTABLE TRANSACTION.—The term 'prohibited reportable transaction' means any confidential transaction or any transaction with contractual protection (as defined under regulations prescribed by the Secretary) which is a reportable transaction (as defined in section 6707A(c)(1)).

"(2) SUBSEQUENTLY LISTED TRANSACTION.—The term 'subsequently listed transaction' means any transaction to which a tax-exempt entity is a party and which is determined by the Secretary to be a listed transaction at any time after the entity has entered into the transaction.

"(f) REGULATORY AUTHORITY.—The Secretary is authorized to promulgate regulations which provide guidance regarding the determination of the allocation of net income of a tax-exempt entity attributable to a transaction to various periods, including before and after the listing of the transaction or the date which is 90 days after the date of the enactment of this section.

"(g) COORDINATION WITH OTHER TAXES AND PENALTIES.—The tax imposed by this section is in addition to any other tax, addition to tax, or penalty imposed under this title.".

(2) CONFORMING AMENDMENT.—The table of subchapters of chapter 42 is amended by adding at the end the following new item:

"SUBCHAPTER F. TAX SHELTER TRANSACTIONS.".

(b) DISCLOSURE REQUIREMENTS.—

(1) DISCLOSURE BY ORGANIZATION TO THE INTERNAL REVENUE SERVICE.—

(A) IN GENERAL.—Section 6033(a) (relating to organizations required to file) is amended by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following new paragraph:

"(2) PARTICIPATION IN CERTAIN REPORTABLE TRANSACTIONS.—Every tax-exempt entity described in section 4965(c) shall file (in such form and manner and at such time as determined by the Secretary) a disclosure of—

"(A) such entity's participation in any prohibited tax shelter transaction (as defined in section 4965(e)), and

"(B) the identity of any other party participating in such transaction which is known by such tax-exempt entity.".

(B) CONFORMING AMENDMENT.—Section 6033(a)(1) is amended by striking "paragraph (2)" and inserting "paragraph (3)".

(2) DISCLOSURE BY OTHER TAXPAYERS TO THE TAX-EXEMPT ENTITY.—Section 6011 (relating to general requirement of return, statement, or list) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) DISCLOSURE OF REPORTABLE TRANSACTION TO TAX-EXEMPT ENTITY.—Any taxable party to a prohibited tax shelter transaction (as defined in section 4965(e)(1)) shall by statement disclose to any tax-exempt entity (as defined in section 4965(c)) which is a party to such transaction that such transaction is such a prohibited tax shelter transaction.".

(c) PENALTY FOR NONDISCLOSURE.—

(1) IN GENERAL.—Section 6652(c) (relating to returns by exempt organizations and by certain trusts), as amended by section 302, is amended by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) DISCLOSURE UNDER SECTION 6033.—

"(A) PENALTY ON ORGANIZATIONS.—In the case of a failure to file a disclosure required under section 6033(a)(2), there shall be paid by the tax-exempt entity (the entity manager in the case of a tax-exempt entity described in paragraph (4), (5), (6), or (7) of section 4965(c)) $100 for each day during which such failure continues. The maximum penalty under this subparagraph on failures with respect to any 1 disclosure shall not exceed $50,000.

"(B) PERSONS.—

"(i) IN GENERAL.—The Secretary may make a written demand on any tax-exempt entity subject to penalty under subparagraph (A) specifying therein a reasonable future date by which the disclosure shall be filed for purposes of this subparagraph.

"(ii) FAILURE TO COMPLY WITH DEMAND.—If any person fails to comply with any demand under clause (i) on or before the date specified in such demand, there shall be paid by such person failing to so comply $100 for each day after the expiration of the time specified in such demand during which such failure continues. The maximum penalty imposed under this subparagraph on all tax-exempt entities for failures with respect to any 1 disclosure shall not exceed $10,000.

"(C) DEFINITIONS.—Any term used in this section which is also used in section 4965 shall have the meaning given such term under section 4965.".

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 6652(c)(1) of such Code is amended by striking "6033" each place it appears in the text and heading thereof and inserting "6033(a)(1)".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transactions after the date of the enactment of this Act, except that no tax under section 4965(a) of the Internal Revenue Code of 1986 (as added by this section) shall apply with respect to income that is properly allocable to any period on or before the date which is 90 days after such date of enactment.

(2) DISCLOSURE.—The amendments made by subsections (b) and (c) shall apply to disclosures the due date for which are after the date of the enactment of this Act.

SEC. 312. EXCISE TAX ON CERTAIN ACQUISITIONS OF INTERESTS IN INSURANCE CONTRACTS IN WHICH CERTAIN EXEMPT ORGANIZATIONS HOLD AN INTEREST.

(a) IMPOSITION OF TAX.—

(1) IN GENERAL.—Subchapter F of chapter 42 (relating to tax shelter transactions), as added by this Act, is amended by adding at the end the following new section:

"SEC. 4966. EXCISE TAX ON ACQUISITION OF INTERESTS IN INSURANCE CONTRACTS IN WHICH CERTAIN EXEMPT ORGANIZATIONS HOLD AN INTEREST.

"(a) IMPOSITION OF TAX.—If there is a taxable acquisition of any interest in an applicable insurance contract, there is hereby imposed on the person acquiring the interest a tax equal to 100 percent of the acquisition costs of the interest.

"(b) TAXABLE ACQUISITION.—For purposes of this section—

"(1) IN GENERAL.—The term 'taxable acquisition' means the acquisition of any direct or indirect interest in an applicable insurance contract by—

"(A) an applicable exempt organization, or

"(B) a person other than an applicable exempt organization if such interest in the hands of such person is not an interest described in clause (i), (ii), (iii), or (iv) of paragraph (2)(B).

"(2) APPLICABLE INSURANCE CONTRACT.—

"(A) IN GENERAL.—The term 'applicable insurance contract' means any life insurance, annuity, or endowment contract with respect to which both an applicable exempt organization and a person other than an applicable exempt organization have directly or indirectly held an interest in the contract (whether or not at the same time).

"(B) EXCEPTIONS.—Such term shall not include a life insurance, annuity, or endowment contract if—

"(i) all persons directly or indirectly holding any interest in the contract (other than applicable exempt organizations) have an insurable interest in the insured under the contract independent of any interest of an applicable exempt organization in the contract,

"(ii) the sole interest in the contract of each person other than an applicable exempt organization is as a named beneficiary,

"(iii) the sole interest in the contract of each person other than an applicable exempt organization is—

"(I) as a beneficiary of a trust holding an interest in the contract, but only if the person's designation as such beneficiary was made without consideration and solely on a purely gratuitous basis, or

"(II) as a trustee who holds an interest in the contract in a fiduciary capacity solely for the benefit of applicable exempt organizations or persons otherwise described in clauses (i), (ii), and (iv) or subclause (I) of this clause, or

"(iv) except as provided in subparagraph (C), the sole interest in the contract of each person other than an applicable exempt organization is as a lender with respect to the contract and the contract covers only 1 individual and such individual is an officer, director, or employee of the applicable exempt organization with an interest in the contract.

"(C) RESTRICTIONS ON EXCEPTION FOR LENDERS.—

"(i) NUMERICAL LIMIT.—The number of contracts that may be taken into account under subparagraph (B)(iv) with respect to officers, directors, or employees of the applicable exempt organization with interests in the contracts shall not exceed the greater of—

"(I) the lesser of 5 percent of the total officers, directors, and employees of the organization or 20, or

"(II) 5.

"(ii) AGGREGATE INDEBTEDNESS.—The exception under subparagraph (B)(iv) shall apply only to the extent that the aggregate amount of the indebtedness with respect to 1 or more contracts covering a single individual does not exceed $50,000.

"(D) SECRETARIAL AUTHORITY.—The Secretary may exempt a contract from treatment as an applicable insurance contract based on specific factors, including factors such as whether the transaction is at arms length, whether economic benefits to the applicable exempt organization substantially exceed the economic benefits to all other persons with an interest in the contract (determined without regard to whether, or the extent to which, such organization has paid or contributed with respect to the contract), and the likelihood of abuse.

"(3) DEFINITION AND RULE RELATING TO ACQUISITION COSTS.—

"(A) ACQUISITION COSTS DEFINED.—The term 'acquisition costs' means the direct or indirect costs of acquiring an interest in an applicable insurance contract. Such term shall include any fees, commissions, charges, or other amounts paid in connection with the acquisition, whether or not paid to the issuer of the contract.

"(B) TIMING OF PAYMENTS.—Except as provided in regulations, if acquisition costs of any acquisition are paid or incurred in more than 1 calendar year, the tax imposed by subsection (a) with respect to the acquisition shall be imposed each time the costs are so paid or incurred.

"(4) RULES RELATING TO INTERESTS.—

"(A) IN GENERAL.—An interest in the contract includes any right with respect to the contract, whether as an owner, beneficiary, or otherwise.

"(B) INDIRECT INTERESTS.—

"(i) IN GENERAL.—Except as provided in clause (ii), an indirect interest in a contract includes an interest in an entity which directly or indirectly holds an interest in the contract.

"(ii) PORTFOLIO INVESTMENTS.—If an applicable exempt organization holds an interest in a contract solely because the organization holds, as part of a diversified investment strategy, a de minimis interest in an entity which directly or indirectly holds the interest in the contract, such indirect interest in the contract shall not be taken into account for purposes of this section.

"(C) EXCHANGED CONTRACTS.—In the case of an exchange of an applicable insurance contract on which no gain or loss is recognized under section 1035, any interest in any of the contracts involved in the exchange shall be treated as an interest in all such contracts.

"(5) INCREASE IN INTEREST.—If a person increases an interest in an applicable insurance contract, the increase shall be treated as a separate acquisition for purposes of this section.

"(6) PRIOR ACQUISITIONS.—Except as provided in regulations, if a person acquires an interest in a contract before the contract is treated as an applicable insurance contract, the acquisition shall be treated as a taxable acquisition of an interest in an applicable insurance contract as of the date the contract becomes an applicable insurance contract.

"(c) APPLICABLE EXEMPT ORGANIZATION.—For purposes of this section, the term 'applicable exempt organization' means—

"(1) an organization described in section 170(c), "(2) an organization described in section 168(h)(2)(A)(iv), or

"(3) an organization not described in paragraph (1) or (2) which is described in section 2055(a) or section 2522(a).

"(d) Tax Not Treated as Investment in the Contract.—For purposes of section 72, the tax imposed by this section shall not be included in investment in the contract.

"(e) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section. Such regulations may include regulations which—

"(1) provide, for purposes of subsection (b)(6), appropriate rules for the application of this section in any case where an interest is acquired before a contract becomes an applicable insurance contract,

"(2) prevent, in cases the Secretary determines appropriate, the imposition of more than one tax under this section if the same interest is acquired more than once, and

"(3) are designed to prevent avoidance of the purposes of this section, including through the use of intermediaries.".

(2) Conforming amendment.—The table of sections for subchapter F of chapter 42, as added by this Act, is amended by adding at the end the following new item:

"Sec. 4966. Excise tax on acquisition of interests in insurance contracts in which certain exempt organizations hold an interest.".

(b) Reporting Requirements.—

(1) In general.—Subpart B of part III of subchapter A of chapter 61 (relating to information concerning transactions with other persons), as amended by this Act, is amended by adding at the end the following new section:

"SEC. 6050V. RETURNS RELATING TO APPLICABLE INSURANCE CONTRACTS IN WHICH CERTAIN EXEMPT ORGANIZATIONS HOLD INTERESTS.

"(a) Requirements of Reporting.—

"(1) Exempt organizations.—Each—

"(A) applicable exempt organization which acquires (within the meaning of section 4966) an interest in any applicable insurance contract, and

"(B) other person which makes an acquisition of such an interest if such acquisition is taxable under section 4966,

shall make the return described in subsection (c).

"(2) Transfers.—If a person (including an applicable exempt organization) acquires an interest in an applicable insurance contract in an acquisition which is taxable under section 4966 and then transfers such interest to 1 or more other persons, each person acquiring all or a portion of such interest shall make the return described in subsection (c).

"(b) Time for Making Return.—Any organization or person required to make a return under subsection (a) shall file such return at such time as may be established by the Secretary with respect to—

"(1) in the case of a person described in subsection (a)(1), the calendar year in which the acquisition occurs, any calendar year in which acquisition costs are paid or incurred, and any other calendar years specified by the Secretary, and

"(2) in the case of a person described in subsection (a)(2), the calendar year in which the transfer occurs.

"(c) Form and Manner of Returns.—A return is described in this subsection if such return—

"(1) is in such form as the Secretary prescribes,

"(2) in the case of—

"(A) a return required under subsection (a)(1)(A), contains the name, address, and taxpayer identification number of the applicable exempt organization, the issuer of the applicable insurance contract, and any person acquiring an interest in the contract if the acquisition is taxable under section 4966,

"(B) a return required under subsection (a)(1)(B), contains the name, address, and taxpayer identification number of the person acquiring an interest in the applicable insurance contract if the acquisition is taxable under section 4966, any applicable exempt organization holding an interest in the contract, and the issuer of the contract, and

"(C) a return required under subsection (a)(2), contains the name, address, and taxpayer identification number of the transferor and transferee, and

"(3) contains such other information as the Secretary may prescribe.

"(d) Statements To Be Furnished to Persons With Respect to Whom Information Is Required.—Every person required to make a return under subsection (a) shall furnish to each person whose taxpayer identification information is required to be included in such return under subsection (c) a written statement showing—

"(1) the name and address of the person required to make such return and the telephone number of the information contact for such person, and

"(2) the taxpayer identity and other information required to be shown on the return with respect to such person.

The written statement required under the preceding sentence shall be furnished on or before the date specified by the Secretary.

"(e) Definitions.—For purposes of this section, any term used in this section which is also used in section 4966 shall have the meaning given such term by section 4966.".

(2) Penalties.—

(A) In general.—Section 6724(d) is amended—

(i) in paragraph (1)(B), by redesignating clauses (xiii) through (xviii) as clauses (xiv) through (xix) and by inserting after clause (xii) the following new clause:

"(xiii) section 6050V (relating to returns relating to applicable insurance contracts in which certain exempt organizations hold interests),", and

(ii) in paragraph (3), by striking "and" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", and", and by adding at the end the following new subparagraph:

"(E) the statement required by subsection (d) of section 6050V (relating to returns relating to applicable insurance contracts in which certain exempt organizations hold interests).".

(B) Intentional disregard.—Section 6721(e)(2) is amended by striking "or" at the end of subparagraph (B), by striking "and" at the end of subparagraph (C) and inserting "or", and by adding at the end the following new subparagraph:

"(D) in the case of a return required to be filed under section 6050V, the amount of tax imposed under section 4966 which has not been paid with respect to items required to be included on the return, and".

(3) Conforming amendment.—The table of sections for subpart B of part III of subchapter A of chapter 61, as amended by this Act, is amended by adding at the end the following new item:

"Sec. 6050V. Returns relating to applicable insurance contracts in which certain exempt organizations hold interests.".

(c) Effective Date.—

(1) In general.—The amendments made by this section shall apply to contracts issued after May 3, 2005.

(2) Reporting of existing contracts.—In the case of any life insurance, annuity, or endowment contract—

(A) which was issued on or before May 3, 2005,

(B) with respect to which an applicable exempt organization (as defined in section 4966 of the Internal Revenue Code of 1986, as added by this section) holds an interest on May 3, 2005, and

(C) which would be treated as an applicable insurance contract (as so defined) if issued after May 3, 2005,

such organization shall, not later than the date which is 1 year after the date of the enactment of this Act, report to the Secretary of the Treasury with respect to such contract. Such report shall be in such form and manner, and contain such information, as the Secretary may prescribe. The Secretary shall submit such reports, along with any recommendations for legislation as the Secretary considers appropriate, to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate within 6 months of the date such reports are required to be filed.

SEC. 313. INCREASE IN PENALTY EXCISE TAXES ON PUBLIC CHARITIES, SOCIAL WELFARE ORGANIZATIONS, AND PRIVATE FOUNDATIONS.

(a) Taxes on Self-Dealing and Excess Benefit Transactions.—

(1) In general.—Section 4941(a) (relating to initial taxes) is amended—

(A) in paragraph (1), by striking "5 percent" and inserting "10 percent", and

(B) in paragraph (2), by striking "2½ percent" and inserting "5 percent".

(2) Increase in tax if self-dealing includes compensation to disqualified person.—Section 4941(a)(1) is amended by adding at the end the following new sentence: "If the act of self-dealing includes acts described in subsection (d)(1)(D), '25 percent' shall be substituted for '10 percent', except that the Secretary may abate under section 4962 (determined without regard to the exception under subsection (b) thereof) not more than 15 percentage points of such tax.".

(3) Increased limitation for managers on self-dealing.—Section 4941(c)(2) is amended by striking "$10,000" each place it appears in the text and in the heading and inserting "$20,000".

(4) Increased limitation for managers on excess benefit transactions.—Section 4958(d)(2) is amended by striking "$10,000" and inserting "$20,000".

(b) Taxes on Failure To Distribute Income.—Section 4942(a) (relating to initial tax) is amended by striking "15 percent" and inserting "30 percent".

(c) Taxes on Excess Business Holdings.—Section 4943(a)(1) (relating to imposition) is amended by striking "5 percent" and inserting "10 percent".

(d) Taxes on Investments Which Jeopardize Charitable Purpose.—

(1) In general.—Section 4944(a) (relating to initial taxes) is amended by striking "5 percent" both places it appears and inserting "10 percent".

(2) Increased limitation for managers.—Section 4944(d)(2) is amended—

(A) by striking "$5,000," and inserting "$10,000,", and

(B) by striking "$10,000." and inserting "$20,000.".

(e) Taxes on Taxable Expenditures.—

(1) IN GENERAL.—Section 4945(a) (relating to initial taxes) is amended—

(A) in paragraph (1), by striking "10 percent" and inserting "20 percent", and

(B) in paragraph (2), by striking "2½ percent" and inserting "5 percent".

(2) INCREASED LIMITATION FOR MANAGERS.—Section 4945(c)(2) is amended—

(A) by striking "$5,000," and inserting "$10,000,", and

(B) by striking "$10,000." and inserting "$20,000.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 314. REFORM OF CHARITABLE CONTRIBUTIONS OF CERTAIN EASEMENTS ON BUILDINGS IN REGISTERED HISTORIC DISTRICTS.

(a) SPECIAL RULES WITH RESPECT TO BUILDINGS IN REGISTERED HISTORIC DISTRICTS.—

(1) IN GENERAL.—Paragraph (4) of section 170(h) (relating to definition of conservation purpose) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) SPECIAL RULES WITH RESPECT TO BUILDINGS IN REGISTERED HISTORIC DISTRICTS.—In the case of any contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in subparagraph (C)(ii), such contribution shall not be considered to be exclusively for conservation purposes unless—

"(i) such interest—

"(I) includes a restriction which preserves the entire exterior of the building (including the front, sides, rear, and height of the building), and

"(II) prohibits any change in the exterior of the building which is inconsistent with the historical character of such exterior,

"(ii) the donor and donee enter into a written agreement certifying, under penalty of perjury, that the donee—

"(I) is a qualified organization (as defined in paragraph (3)) with a purpose of environmental protection, land conservation, open space preservation, or historic preservation, and

"(II) has the resources to manage and enforce the restriction and a commitment to do so, and

"(iii) in the case of any contribution made in a taxable year beginning after the date of the enactment of this subparagraph, the taxpayer includes with the taxpayer's return for the taxable year of the contribution—

"(I) a qualified appraisal (within the meaning of subsection (f)(11)(E)) of the qualified property interest,

"(II) photographs of the entire exterior of the building, and

"(III) a description of all restrictions on the development of the building.".

(b) DISALLOWANCE OF DEDUCTION FOR STRUCTURES AND LAND IN REGISTERED HISTORIC DISTRICTS.—Subparagraph (C) of section 170(h)(4), as redesignated by subsection (a), is amended—

(1) by striking "any building, structure, or land area which",

(2) by inserting "any building, structure, or land area which" before "is listed" in clause (i), and

(3) by inserting "any building which" before "is located" in clause (ii).

(c) FILING FEE FOR CERTAIN CONTRIBUTIONS.—Subsection (f) of section 170 (relating to disallowance of deduction in certain cases and special rules) is amended by inserting at the end the following new paragraph:

"(13) CONTRIBUTIONS OF CERTAIN INTERESTS IN BUILDINGS LOCATED IN REGISTERED HISTORIC DISTRICTS.—

"(A) IN GENERAL.—No deduction shall be allowed with respect to any contribution described in subparagraph (B) unless the taxpayer includes with the return for the taxable year of the contribution a $500 filing fee.

"(B) CONTRIBUTION DESCRIBED.—A contribution is described in this subparagraph if such contribution is a qualified conservation contribution (as defined in subsection (h)) which is a restriction with respect to the exterior of a building described in subsection (h)(4)(C)(ii) and for which a deduction is claimed in excess of the greater of—

"(i) 3 percent of the fair market value of the building (determined immediately before such contribution), or

"(ii) $10,000.

"(C) DEDICATION OF FEE.—Any fee collected under this paragraph shall be used for the enforcement of the provisions of subsection (h).".

(d) EFFECTIVE DATE.—

(1) SPECIAL RULES FOR BUILDINGS IN REGISTERED HISTORIC DISTRICTS.—The amendments made by subsection (a) shall apply to contributions made after November 15, 2005.

(2) DISALLOWANCE OF DEDUCTION FOR STRUCTURES AND LAND.—The amendments made by subsection (b) shall apply to contributions made after the date of the enactment of this Act.

(3) FILING FEE.—The amendment made by subsection (c) shall apply to contributions made 180 days after the date of the enactment of this Act.

SEC. 315. CHARITABLE CONTRIBUTIONS OF TAXIDERMY PROPERTY.

(a) IN GENERAL.—Subsection (f) of section 170, as amended by section 314 of this Act, is amended by adding at the end the following new paragraph:

"(14) CONTRIBUTIONS OF TAXIDERMY PROPERTY.—

"(A) CONTRIBUTIONS OF MORE THAN $500.—In the case of any contribution of taxidermy property for which a deduction of more than $500 is claimed, no deduction shall be allowed under subsection (a) unless the donor includes with the return for the taxable year in which the contribution is made a photograph of the taxidermy property and data with respect to the sales prices of similar taxidermy property.

"(B) CONTRIBUTIONS OF MORE THAN $5,000.—In the case of any contribution of taxidermy property for which a deduction of more than $5,000 is claimed, no deduction shall be allowed under subsection (a) unless the donor—

"(i) notifies the Internal Revenue Service of such deduction, and

"(ii) includes with the return for the taxable year in which the contribution is made—

"(I) a statement of value from the Internal Revenue Service, or

"(II) a request for a statement of value from the Internal Revenue Service and a $500 fee.

"(C) TAXIDERMY PROPERTY.—For purposes of this section, the term 'taxidermy property' means a mounted work of art which contains any part of a dead animal.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after November 15, 2005.

SEC. 316. RECAPTURE OF TAX BENEFIT FOR CHARITABLE CONTRIBUTIONS OF EXEMPT USE PROPERTY NOT USED FOR AN EXEMPT USE.

(a) RECAPTURE OF DEDUCTION ON CERTAIN SALES OF EXEMPT USE PROPERTY.—

(1) IN GENERAL.—Clause (i) of section 170(e)(1)(B) (related to certain contributions of ordinary income and capital gain property) is amended to read as follows:

"(i) of tangible personal property—

"(I) if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)), or

"(II) which is applicable property (as defined in paragraph (7)(C)) which is sold, exchanged, or otherwise disposed of by the donee before the last day of the taxable year in which the contribution was made and with respect to which the donee has not made a certification in accordance with paragraph (7)(D),".

(2) DISPOSITIONS AFTER CLOSE OF TAXABLE YEAR.—Section 170(e) is amended by adding at the end the following new paragraph:

"(7) RECAPTURE OF DEDUCTION ON CERTAIN DISPOSITIONS OF EXEMPT USE PROPERTY.—

"(A) IN GENERAL.—In the case of an applicable disposition of applicable property, there shall be included in the income of the donor of such property for the taxable year of such donor in which the applicable disposition occurs an amount equal to the excess (if any) of—

"(i) the amount of the deduction allowed to the donor under this section with respect to such property, over

"(ii) the donor's basis in such property at the time such property was contributed.

"(B) APPLICABLE DISPOSITION.—For purposes of this paragraph, the term 'applicable disposition' means any sale, exchange, or other disposition by the donee of applicable property—

"(i) after the last day of the taxable year of the donor in which such property was contributed, and

"(ii) before the last day of the 3-year period beginning on the date of the contribution of such property,

unless the donee makes a certification in accordance with subparagraph (D).

"(C) APPLICABLE PROPERTY.—For purposes of this paragraph, the term 'applicable property' means charitable deduction property (as defined in section 6050L(a)(2)(A))—

"(i) which is tangible personal property the use of which is identified by the donee as related to the purpose or function constituting the basis of the donee's exemption under section 501, and

"(ii) for which a deduction in excess of the donor's basis is allowed.

"(D) CERTIFICATION.—A certification meets the requirements of this subparagraph if it is a written statement which is signed under penalty of perjury by an officer of the donee organization and—

"(i) which—

"(I) certifies that the use of the property by the donee was related to the purpose or function constituting the basis for the donee's exemption under section 501, and

"(II) describes how the property was used and how such use furthered such purpose or function, or

"(ii) which—

"(I) states the intended use of the property by the donee at the time of the contribution, and

"(II) certifies that such intended use has become impossible or infeasible to implement.".

(b) REPORTING REQUIREMENTS.—Paragraph (1) of section 6050L(a) (relating to returns relating to certain dispositions of donated property) is amended—

(1) by striking "2 years" and inserting "3 years", and

(2) by striking "and" at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting a comma, and by inserting at the end the following:

"(F) a description of the donee's use of the property, and

"(G) a statement indicating whether the use of the property was related to the purpose or function constituting the basis for the donee's exemption under section 501.

"In any case in which the donee indicates that the use of applicable property (as defined in section 170(e)(1)(C)) was related to the purpose or function constituting the basis for the exemption of the donee under section 501 under subparagraph (G), the donee shall include with the return the certification described in section 170(e)(7)(D) if such certification is required under section 170(e)(7).".

(c) Penalty.—

(1) In general.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6720A the following new section:

"SEC. 6720B. FRAUDULENT IDENTIFICATION OF EXEMPT USE PROPERTY.

"In addition to any criminal penalty provided by law, any person who identifies applicable property (as defined in section 170(e)(7)(C)) as having a use which is related to a purpose or function constituting the basis for the donee's exemption under section 501 and who knows that such property is not intended for such a use shall pay a penalty of $10,000.".

(2) Clerical amendment.—The table of sections for part I of subchapter B of chapter 68 is amended by adding after the item relating to section 6720A the following new item:

"Sec. 6720B. Fraudulent identification of exempt use property.".

(d) Effective Date.—

(1) Recapture.—The amendments made by subsection (a) shall apply to contributions after June 1, 2006.

(2) Reporting.—The amendments made by subsection (b) shall apply to returns filed after June 1, 2006.

(3) Penalty.—The amendments made by subsection (c) shall apply to identifications made after the date of the enactment of this Act.

SEC. 317. LIMITATION OF DEDUCTION FOR CHARITABLE CONTRIBUTIONS OF CLOTHING AND HOUSEHOLD ITEMS.

(a) In General.—Subsection (f) of section 170, as amended by section 315 of this Act, is amended by adding at the end the following new paragraph:

"(15) Contributions of clothing and household items.—

"(A) In general.—In the case of an individual, partnership, or S corporation, the deduction allowed under subsection (a) for any contribution of clothing or household items with respect to which the donor has obtained a qualified appraisal shall be—

"(i) in the case of an item which is in good used condition or better, no more than the amount assigned to such item under subparagraph (B) for such year,

"(ii) except as provided by clause (iii), in the case of an item which is not in good used condition or better, no more than 20 percent of the amount assigned to such item under subparagraph (B) for such year, and

"(iii) in the case of an item which is not functional with respect to the use for which it was designed, zero.

"(B) Assigned values.—Each year the Secretary shall publish an itemized list of clothing and household items and shall assign an amount with respect to each item on the list which represents the fair market value of such item in good used condition.

"(C) Exception for items sold by the donee.—Subparagraph (A) shall not apply to any contribution of clothing or household items for which a deduction of more than $500 is claimed if—

"(i) the donee sells the clothing or household items before the earlier of—

"(I) the due date (including extensions) for filing the return of tax for the taxable year of the donor in which the contribution was made, or

"(II) the date on which such return was filed,

"(ii) the donee reports the sales price of the clothing or household items to the donor, and

"(iii) the amount claimed as a deduction with respect to such clothing or household items does not exceed the amount of the sales price reported to the donor.

"(D) Household items.—For purposes of this paragraph—

"(i) In general.—The term 'household items' includes furniture, furnishings, electronics, appliances, linens, and other similar items.

"(ii) Excluded items.—Such term does not include—

"(I) food,

"(II) paintings, antiques, and other objects of art,

"(III) jewelry and gems, and

"(IV) collections.

"(E) Special rule for pass-thru entities.—In the case of a partnership or S corporation, this paragraph shall be applied at the entity level, except that the deduction shall be denied at the partner or shareholder level.".

(b) Substantiation.—

(1) Items of $250 or more.—Subparagraph (B) of section 170(f)(8) is amended by inserting after clause (iii) the following new clause:

"(iv) In the case of a contribution consisting of clothing or household items, the number of items contributed, an indication of the condition of each item, a description of the type of item contributed, and a copy of the list published under paragraph (15)(B) or an instruction on how to obtain such list.".

(2) Items of $500 or more.—Subparagraph (B) of section 170(f)(11) is amended by inserting ", the information contained in the acknowledgment required under paragraph (8) in the case of any contribution of clothing or household items," after "a description of such property".

(c) Effective Date.—The amendments made by this section shall apply to contributions made after December 31, 2006.

SEC. 318. MODIFICATION OF RECORDKEEPING REQUIREMENTS FOR CERTAIN CHARITABLE CONTRIBUTIONS.

(a) Recordkeeping Requirement.—Subsection (f) of section 170, as amended by section 317 of this Act, is amended by adding at the end the following new paragraph:

"(16) Recordkeeping.—No deduction shall be allowed under subsection (a) for any contribution of a cash, check, or other monetary gift unless the donor maintains as a record of such contribution—

"(A) a cancelled check, or

"(B) a receipt or a letter or other written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution.".

(b) Effective Date.—The amendment made by this section shall apply to contributions made in taxable years beginning after the date of the enactment of this Act.

SEC. 319. CONTRIBUTIONS OF FRACTIONAL INTERESTS IN TANGIBLE PERSONAL PROPERTY.

(a) Income Tax.—Section 170 (relating to charitable, etc., contributions and gifts), as amended by section 301 of this Act, is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

"(q) Special Rules for Fractional Gifts.—

"(1) Valuation of subsequent gifts.—

"(A) In general.—In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

"(i) the fair market value of the property at the time of the initial fractional contribution, or

"(ii) the fair market value of the property at the time of the additional contribution.

"(B) Definitions.—For purposes of this paragraph—

"(i) Additional contribution.—The term 'additional contribution' means any charitable contribution by the taxpayer of any interest in property with respect to which the taxpayer has previously made an initial fractional contribution.

"(ii) Initial fractional contribution.—The term 'initial fractional contribution' means, with respect to any taxpayer, the first charitable contribution of an undivided portion of the taxpayer's entire interest in any tangible personal property.

"(2) Recapture of deduction in certain cases.—

"(A) In general.—The Secretary shall provide for the recapture of an amount equal to the amount of any deduction allowed under this section (plus interest) with respect to any contribution of an undivided interest of a taxpayer's entire interest in property in any case where such property is not in the physical possession of the donee during any applicable period for a period of time which bears substantially the same ratio to 1 year as—

"(i) the percentage of the undivided interest of the donee in the property (determined on the day after such contribution was made), bears to

"(ii) 100 percent.

"(B) Applicable period.—For purposes of subparagraph (A), the term 'applicable period' means any 1-year period which begins on—

"(i) in the year of the contribution, the date of the contribution, and

"(ii) in any subsequent calendar year, the date which corresponds to the date described in clause (i).

"(C) Anti-abuse rules.—The Secretary shall prescribe such regulations as necessary to prevent the avoidance of the purposes of this paragraph through the transfer of any such undivided interest to a third party controlled by the taxpayer.".

(b) Estate Tax.—Section 2055 (relating to transfers for public, charitable, and religious uses) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) Valuation of Subsequent Gifts.—

"(1) In general.—In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

"(A) the fair market value of the property at the time of the initial fractional contribution, or

"(B) the fair market value of the property at the time of the additional contribution.

"(2) Definitions.—For purposes of this paragraph—

"(A) Additional contribution.—The term 'additional contribution' means a bequest, legacy, devise, or transfer described in subsection (a) of any interest in a property with respect to which the decedent had previously made an initial fractional contribution.

"(B) Initial fractional contribution.—The term 'initial fractional contribution' means, with respect to any decedent, any charitable contribution of an undivided portion of the decedent's entire interest in any tangible personal property for which a deduction was allowed under section 170.".

(c) Gift Tax.—Section 2522 (relating to charitable and similar gifts) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) Special Rules for Fractional Gifts.—

"(1) Valuation of subsequent gifts.—

"(A) In general.—In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

"(i) the fair market value of the property at the time of the initial fractional contribution, or

"(ii) the fair market value of the property at the time of the additional contribution.

"(B) Definitions.—For purposes of this paragraph—

"(i) Additional contribution.—The term 'additional contribution' means any gift for which a deduction is allowed under subsection (a) or (b) of any interest in a property with respect to which the donor has previously made an initial fractional contribution.

"(ii) Initial fractional contribution.—The term 'initial fractional contribution' means, with respect to any donor, the first gift of an undivided portion of the donor's entire interest in any tangible personal property for which a deduction is allowed under subsection (a) or (b).

"(2) Recapture of deduction in certain cases.—

"(A) In general.—The Secretary shall provide for the recapture of an amount equal to the amount of any deduction allowed under this section (plus interest) with respect to any contribution of an undivided interest of a donor's entire interest in property in any case where such property is not in the physical possession of the donee during any applicable period for a period of time which bears substantially the same ratio to 1 year as—

"(i) the percentage of the undivided interest of the donee in the property (determined on the day after such contribution was made), bears to

"(ii) 100 percent.

"(B) Applicable period.—For purposes of subparagraph (A), the term 'applicable period' means any 1-year period which begins on—

"(i) in the year of the contribution, the date of the contribution, and

"(ii) in any subsequent calendar year, the date which corresponds to the date described in clause (i).

"(C) Anti-abuse rules.—The Secretary shall prescribe such regulations as necessary to prevent the avoidance of the purposes of this paragraph though the transfer of any such undivided interest to a third party controlled by the donor.".

(d) Effective Date.—The amendments made by this section shall apply to contributions, bequests, and gifts made after the date of the enactment of this Act.

SEC. 320. PROVISIONS RELATING TO SUBSTANTIAL AND GROSS OVERSTATEMENTS OF VALUATIONS OF CHARITABLE DEDUCTION PROPERTY.

(a) Substantial and Gross Overstatements of Valuations of Charitable Deduction Property.—

(1) In general.—Section 6662 (relating to imposition of accuracy-related penalties) is amended by adding at the end the following new subsection:

"(i) Special Rules for Charitable Deduction Property.—In the case of charitable deduction property (as defined in section 6664(c)(3)(A))—

"(1) the determination under subsection (e)(1)(A) as to whether there is a substantial valuation misstatement under chapter 1 with respect to the value of the property shall be made by substituting '150 percent' for '200 percent', and

"(2) the determination under subsection (h)(2)(A)(i) as to whether there is a gross valuation misstatement with respect to the value of the property shall be made by substituting '200 percent' for '400 percent' and by substituting '150 percent' for '200 percent' in applying subsection (e)(1)(A) for purposes of such determination.".

(2) Elimination of reasonable cause exception for gross misstatements.—Section 6664(c)(2) (relating to reasonable cause exception for underpayments) is amended by striking "paragraph (1) shall not apply unless" and inserting "paragraph (1) shall not apply. The preceding sentence shall not apply to a substantial valuation overstatement under chapter 1 if".

(b) Penalty on Appraisers Whose Appraisals Result in Substantial or Gross Valuation Misstatements.—

(1) In general.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6695 the following new section:

"SEC. 6695A. SUBSTANTIAL AND GROSS VALUATION MISSTATEMENTS ATTRIBUTABLE TO INCORRECT APPRAISALS.

"(a) Imposition of Penalty.—If—

"(1) a person prepares an appraisal of the value of property and such person knows, or reasonably should have known, that the appraisal would be used in connection with a return or a claim for refund, and

"(2) the claimed value of the property on a return or claim for refund which is based on such appraisal results in a substantial valuation misstatement under chapter 1 (within the meaning of section 6662(e)), or a gross valuation misstatement (within the meaning of section 6662(h)), with respect to such property,

then such person shall pay a penalty in the amount determined under subsection (b).

"(b) Amount of Penalty.—The amount of the penalty imposed under subsection (a) on any person with respect to an appraisal shall be equal to the lesser of—

"(1) the greater of—

"(A) 10 percent of the amount of the underpayment (as defined in section 6664(a)) attributable to the misstatement described in subsection (a)(2), or

"(B) $1.000, or

"(2) 125 percent of the gross income received by the person described in subsection (a)(1) from the preparation of the appraisal.

"(c) Exception.—No penalty shall be imposed under subsection (a) if the person establishes to the satisfaction of the Secretary that the value established in the appraisal was more likely than not the proper value.".

(2) Rules applicable to penalty.—Section 6696 (relating to rules applicable with respect to sections 6694 and 6695) is amended—

(A) by striking "6694 and 6695" each place it appears in the text and heading and inserting "6694, 6695, and 6695A", and

(B) by striking "6694 or 6695" each place it appears in the text and inserting "6694, 6695, or 6695A".

(3) Conforming amendment.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6696 and inserting the following new items:

"Sec. 6695A. Substantial and gross valuation misstatements attributable to incorrect appraisals.
"Sec. 6696. Rules applicable with respect to sections 6694, 6695, and 6695A.".

(c) Qualified Appraisers and Appraisals.—

(1) In general.—Subparagraph (E) of section 170(f)(11) is amended to read as follows:

"(E) Qualified appraisal and appraiser.—For purposes of this paragraph—

"(i) Qualified appraisal.—The term 'qualified appraisal' means, with respect to any property, an appraisal of such property which—

"(I) is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary, and

"(II) is conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed under subclause (I).

"(ii) Qualified appraiser.—Except as provided in clause (iii), the term 'qualified appraiser' means an individual who—

"(I) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary,

"(II) regularly performs appraisals for which the individual receives compensation, and

"(III) meets such other requirements as may be prescribed by the Secretary in regulations or other guidance.

"(iii) Specific appraisals.—An individual shall not be treated as a qualified appraiser with respect to any specific appraisal unless—

"(I) the individual demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and

"(II) the individual has not been prohibited from practicing before the Internal Revenue Service by the Secretary under section 330(c) of title 31, United States Code, at any time during the 3-year period ending on the date of the appraisal.".

(2) Reasonable cause exception.—Subparagraphs (B) and (C) of section 6664(c)(3) are amended to read as follows:

"(B) Qualified appraisal.—The term 'qualified appraisal' has the meaning given such term by section 170(f)(11)(E)(i).

"(C) Qualified appraiser.—The term 'qualified appraiser' has the meaning given such term by section 170(f)(11)(E)(ii).".

(d) Disciplinary Actions Against Appraisers.—Section 330(c) of title 31, United States Code, is amended by striking "with respect to whom a penalty has been assessed under section 6701(a) of the Internal Revenue Code of 1986".

(e) Effective Dates.—

(1) Misstatement penalties.—Except as provided in paragraph (3), the amendments

made by subsection (a) shall apply to returns filed after the date of the enactment of this Act.

(2) APPRAISER PROVISIONS.—Except as provided in paragraph (3), the amendments made by subsections (b), (c), and (d) shall apply to appraisals prepared with respect to returns or submissions filed after the date of the enactment of this Act.

(3) SPECIAL RULE FOR CERTAIN EASEMENTS.—In the case of a contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in section 170(h)(4)(C)(ii) of the Internal Revenue Code of 1986, and an appraisal with respect to the contribution, the amendments made by subsections (a) and (b) shall apply to returns filed after December 16, 2004.

SEC. 321. ADDITIONAL STANDARDS FOR CREDIT COUNSELING ORGANIZATIONS.

(a) IN GENERAL.—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

"(q) SPECIAL RULES FOR CREDIT COUNSELING ORGANIZATIONS.—

"(1) IN GENERAL.—An organization with respect to which the provision of credit counseling services is a substantial purpose shall not be exempt from tax under subsection (a) unless such organization is described in paragraph (3) or (4) of subsection (c) and such organization is organized and operated in accordance with the following requirements:

"(A) The organization—

"(i) provides credit counseling services tailored to the specific needs and circumstances of consumers,

"(ii) makes no loans to debtors and does not negotiate the making of loans on behalf of debtors, and

"(iii) does not promote, or charge any separate fee for, any service for the purpose of improving any consumer's credit record, credit history, or credit rating.

"(B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.

"(C) The organization establishes and implements a fee policy which—

"(i) requires that any fees charged to a consumer for services are reasonable, and

"(ii) prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.

"(D) At all times the organization has a board of directors or other governing body—

"(i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,

"(ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and

"(iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

"(E) The organization does not own more than 35 percent of—

"(i) the total combined voting power of a corporation which is in the business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services,

"(ii) the profits interest of a partnership which is in the business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services, and

"(iii) the beneficial interest of a trust or estate which is in the business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services.

"(F) The organization receives no amount for providing referrals to others for financial services (including debt management services) or credit counseling services to be provided to consumers, and pays no amount to others for obtaining referrals of consumers.

"(2) REQUIREMENTS UNDER SUBSECTION (c)(3).—In addition to the requirements under paragraph (1), an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (3) of subsection (c) shall not be exempt from tax under subsection (a) unless such organization is organized and operated in accordance with the following requirements:

"(A) The organization—

"(i) charges no fees (other than nominal fees) for debt management plan services or credit counseling services and waives any fees if the consumer is unable to pay such fees, and

"(ii) does not solicit contributions from consumers during the initial counseling process or while the consumer is receiving services from the organization.

"(B) The activities of the organization related to debt management plan services (in the aggregate) do not exceed 25 percent of the total activities of the organization activities measured by any of the following:

"(i) The time spent on activities.

"(ii) The resources dedicated to activities.

"(iii) The effort expended by the organization with respect to activities.

"(iv) The sources of revenue of the organization.

"(v) Any other measures prescribed by the Secretary.

"(3) REQUIREMENTS UNDER SUBSECTION (c)(4).—In addition to the requirements under paragraph (1), an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (4) of subsection (c) shall not be exempt from tax under subsection (a) unless such organization—

"(A) is organized and operated such that it charges no fees (other than nominal fees) for credit counseling services and waives any fees if the consumer is unable to pay such fees, and

"(B) notifies the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition as a credit counseling organization.

"(4) SECRETARIAL AUTHORITY.—The Secretary may require any organization described in paragraph (1) to submit such information as the Secretary requires to verify that such organization meets the requirements of this section.

"(5) CREDIT COUNSELING SERVICES; DEBT MANAGEMENT PLAN SERVICES.—For purposes of this subsection—

"(A) CREDIT COUNSELING SERVICES.—The term 'credit counseling services' means—

"(i) the providing of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit,

"(ii) the assisting of individuals and families with financial problems by providing them with counseling, or

"(iii) a combination of the activities described in clauses (i) and (ii).

"(B) DEBT MANAGEMENT PLAN SERVICES.—The term 'debt management plan services' means services related to the repayment, consolidation, or restructuring of a consumer's debt, and includes the negotiation with creditors of lower interest rates, the waiver or reduction of fees, and the marketing and processing of debt management plans.".

(b) DEBT MANAGEMENT PLAN SERVICES TREATED AS AN UNRELATED BUSINESS.—Section 513 (relating to unrelated trade or business) is amended by adding at the end the following:

"(j) DEBT MANAGEMENT PLAN SERVICES.—The term 'unrelated trade or business' includes—

"(1) the provision of debt management plan services (as defined in section 501(q)(4)(B)) by an organization described in section 501(q) to the extent such services are not substantially related to the provision of credit counseling services (as defined in section 501(q)(4)(A)) to a consumer, and

"(2) the provision of debt management plan services (as so defined) by any organization other than an organization which meets the requirements of section 501(q).".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

(2) TRANSITION RULE FOR EXISTING ORGANIZATIONS.—In the case of any organization described in paragraph (3) or (4) section 501(c) of the Internal Revenue Code of 1986 and with respect to which the provision of credit counseling services is a substantial purpose on the date of the enactment of this Act, the amendments made by this section shall apply to taxable years beginning after the date which is 1 year after the date of the enactment of this Act.

SEC. 322. EXPANSION OF THE BASE OF TAX ON PRIVATE FOUNDATION NET INVESTMENT INCOME.

(a) GROSS INVESTMENT INCOME.—

(1) IN GENERAL.—Paragraph (2) of section 4940(c) (relating to gross investment income) is amended by adding at the end the following new sentence: "Such term shall also include income from sources similar to those in the preceding sentence.".

(2) CONFORMING AMENDMENT.—Subsection (e) of section 509 (relating to gross investment income) is amended by adding at the end the following new sentence: "Such term shall also include income from sources similar to those in the preceding sentence.".

(b) CAPITAL GAIN NET INCOME.—Paragraph (4) of section 4940(c) (relating to capital gains and losses) is amended—

(1) in subparagraph (A), by striking "used for the production of interest, dividends, rents, and royalties" and inserting "used for the production of gross investment income (as defined in paragraph (2))", and

(2) in subparagraph (C), by inserting "or carrybacks" after "carryovers".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 323. DEFINITION OF CONVENTION OR ASSOCIATION OF CHURCHES.

Section 7701 (relating to definitions) is amended by redesignating subsection(o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) CONVENTION OR ASSOCIATION OF CHURCHES.—For purposes of this title, any organization which is otherwise a convention or association of churches shall not fail to so qualify merely because the membership of such organization includes individuals as well as churches or because individuals have voting rights in such organization.".

SEC. 324. NOTIFICATION REQUIREMENT FOR ENTITIES NOT CURRENTLY REQUIRED TO FILE.

(a) IN GENERAL.—Section 6033 (relating to returns by exempt organizations), as amended by section 346 of this Act, is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) ADDITIONAL NOTIFICATION REQUIREMENTS.—Any organization the gross receipts of which in any taxable year result in such organization being referred to in subsection (a)(3)(A)(ii) or (a)(3)(B)—

"(1) shall furnish annually, at such time and in such manner as the Secretary may by forms or regulations prescribe, information setting forth—

"(A) the legal name of the organization,

"(B) any name under which such organization operates or does business,

"(C) the organization's mailing address and Internet web site address (if any),

"(D) the organization's taxpayer identification number,

"(E) the name and address of a principal officer, and

"(F) evidence of the continuing basis for the organization's exemption from the filing requirements under subsection (a)(1), and

"(2) upon the termination of the existence of the organization, shall furnish notice of such termination.".

(b) LOSS OF EXEMPT STATUS FOR FAILURE TO FILE RETURN OR NOTICE.—Section 6033 (relating to returns by exempt organizations), as amended by subsection (a), is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) LOSS OF EXEMPT STATUS FOR FAILURE TO FILE RETURN OR NOTICE.—

"(1) IN GENERAL.—If an organization described in subsection (a)(1) or (i) fails to file an annual return or notice required under either subsection for 3 consecutive years, such organization's status as an organization exempt from tax under section 501(a) shall be considered revoked on and after the date set by the Secretary for the filing of the third annual return or notice. The Secretary shall publish and maintain a list of any organization the status of which is so revoked.

"(2) APPLICATION NECESSARY FOR REINSTATEMENT.—Any organization the tax-exempt status of which is revoked under paragraph (1) must apply in order to obtain reinstatement of such status regardless of whether such organization was originally required to make such an application.

"(3) RETROACTIVE REINSTATEMENT IF REASONABLE CAUSE SHOWN FOR FAILURE.—If upon application for reinstatement of status as an organization exempt from tax under section 501(a), an organization described in paragraph (1) can show to the satisfaction of the Secretary evidence of reasonable cause for the failure described in such paragraph, the organization's exempt status may, in the discretion of the Secretary, be reinstated effective from the date of the revocation under such paragraph.".

(c) NO DECLARATORY JUDGMENT RELIEF.—Section 7428(b) (relating to limitations) is amended by adding at the end the following new paragraph:

"(4) NONAPPLICATION FOR CERTAIN REVOCATIONS.—No action may be brought under this section with respect to any revocation of status described in section 6033(k)(1).".

(d) NO INSPECTION REQUIREMENT.—Section 6104(b) (relating to inspection of annual information returns) is amended by inserting "(other than subsection (j) thereof)" after "6033".

(e) NO DISCLOSURE REQUIREMENT.—Section 6104(d)(3) (relating to exceptions from disclosure requirements) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) NONDISCLOSURE OF ANNUAL NOTICES.—Paragraph (1) shall not require the disclosure of any notice required under section 6033(j).".

(f) NO MONETARY PENALTY FOR FAILURE TO NOTIFY.—Section 6652(c)(1) (relating to annual returns under section 6033 or 6012(a)(6)) is amended by adding at the end the following new subparagraph:

"(E) NO PENALTY FOR CERTAIN ANNUAL NOTICES.—This paragraph shall not apply with respect to any notice required under section 6033(j).".

(g) SECRETARIAL OUTREACH REQUIREMENTS.—

(1) NOTICE REQUIREMENT.—The Secretary of the Treasury shall notify in a timely manner every organization described in section 6033(j) of the Internal Revenue Code of 1986 (as added by this section) of the requirement under such section 6033(j) and of the penalty established under section 6033(k)—

(A) by mail, in the case of any organization the identity and address of which is included in the list of exempt organizations maintained by the Secretary, and

(B) by Internet or other means of outreach, in the case of any other organization.

(2) LOSS OF STATUS PENALTY FOR FAILURE TO FILE RETURN.—The Secretary of the Treasury shall publicize in a timely manner in appropriate forms and instructions and through other appropriate means, the penalty established under section 6033(k) of such Code for the failure to file a return under section 6033(a)(1) of such Code.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to notices and returns with respect to annual periods beginning after 2005.

SEC. 325. DISCLOSURE TO STATE OFFICIALS OF PROPOSED ACTIONS RELATED TO EXEMPT ORGANIZATIONS.

(a) IN GENERAL.—Subsection (c) of section 6104 is amended by striking paragraph (2) and inserting the following new paragraphs:

"(2) DISCLOSURE OF PROPOSED ACTIONS RELATED TO CHARITABLE ORGANIZATIONS.—

"(A) SPECIFIC NOTIFICATIONS.—In the case of an organization to which paragraph (1) applies, the Secretary may disclose to the appropriate State officer—

"(i) a notice of proposed refusal to recognize such organization as an organization described in section 501(c)(3) or a notice of proposed revocation of such organization's recognition as an organization exempt from taxation,

"(ii) the issuance of a letter of proposed deficiency of tax imposed under section 507 or chapter 41 or 42, and

"(iii) the names, addresses, and taxpayer identification numbers of organizations which have applied for recognition as organizations described in section 501(c)(3).

"(B) ADDITIONAL DISCLOSURES.—Returns and return information of organizations with respect to which information is disclosed under subparagraph (A) may be made available for inspection by or disclosed to an appropriate State officer.

"(C) PROCEDURES FOR DISCLOSURE.—Information may be inspected or disclosed under subparagraph (A) or (B) only—

"(i) upon written request by an appropriate State officer, and

"(ii) for the purpose of, and only to the extent necessary in, the administration of State laws regulating such organizations.

Such information may only be inspected by or disclosed to representatives of the appropriate State officer designated as the individuals who are to inspect or to receive the returns or return information under this paragraph on behalf of such officer. Such representatives shall not include any contractor or agent.

"(D) DISCLOSURES OTHER THAN BY REQUEST.—The Secretary may make available for inspection or disclose returns and return information of an organization to which paragraph (1) applies to an appropriate State officer of any State if the Secretary determines that such inspection or disclosure may facilitate the resolution of Federal or State issues relating to the tax-exempt status of such organization.

"(3) DISCLOSURE WITH RESPECT TO CERTAIN OTHER EXEMPT ORGANIZATIONS.—Upon written request by an appropriate State officer, the Secretary may make available for inspection or disclosure returns and return information of an organization described in paragraph (2), (4), (6), (7), (8), (10), or (13) of section 501(c) for the purpose of, and to the extent necessary in, the administration of State laws regulating the solicitation or administration of the charitable funds or charitable assets of such organizations. Such information may be inspected only by or disclosed only to representatives of the appropriate State officer designated as the individuals who are to inspect or to receive the returns or return information under this paragraph on behalf of such officer. Such representatives shall not include any contractor or agent.

"(4) USE IN CIVIL JUDICIAL AND ADMINISTRATIVE PROCEEDINGS.—Returns and return information disclosed pursuant to this subsection may be disclosed in civil administrative and civil judicial proceedings pertaining to the enforcement of State laws regulating such organizations in a manner prescribed by the Secretary similar to that for tax administration proceedings under section 6103(h)(4).

"(5) NO DISCLOSURE IF IMPAIRMENT.—Returns and return information shall not be disclosed under this subsection, or in any proceeding described in paragraph (4), to the extent that the Secretary determines that such disclosure would seriously impair Federal tax administration.

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) RETURN AND RETURN INFORMATION.—The terms 'return' and 'return information' have the respective meanings given to such terms by section 6103(b).

"(B) APPROPRIATE STATE OFFICER.—The term 'appropriate State officer' means—

"(i) the State attorney general,

"(ii) the State tax officer,

"(iii) in the case of an organization to which paragraph (1) applies, any other State official charged with overseeing organizations of the type described in section 501(c)(3), and

"(iv) in the case of an organization to which paragraph (3) applies, the head of an agency designated by the State attorney general as having primary responsibility for overseeing the solicitation of funds for charitable purposes.".

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 6103(p)(3) is amended by inserting "an section 6104(c)" after "section" in the first sentence.

(2) Paragraph (4) of section 6103(p) is amended—

(A) in the matter preceding subparagraph (A), by inserting ", or any appropriate State officer (as defined in section 6104(c))," before "or any other person",

(B) in subparagraph (F)(i), by inserting "or any appropriate State officer (as defined in section 6104(c))," before "or any other person", and

(C) in the matter following subparagraph (F), by inserting ", an appropriate State officer (as defined in section 6104(c))," after "including an agency" each place it appear.

(3) The heading for paragraph (1) of section 6104(c) is amended by inserting "FOR CHARITABLE ORGANIZATIONS" after "RULE".

(4) Paragraph (2) of section 7213(a) is amended by inserting "or under section 6104(c)" after "6103".

(5) Paragraph (2) of section 7213A(a) is amended by inserting "or 6104(c)" after "6103".

(6) Paragraph (2) of section 7431(a) is amended by inserting "(including any disclosure in violation of section 6014(c)" after "6103".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act but shall not apply to requests made before such date.

PART II—IMPROVED ACCOUNTABILITY OF DONOR ADVISED FUNDS

SEC. 331. EXCISE TAX ON SPONSORING ORGANIZATIONS OF DONOR ADVISED FUNDS FOR FAILURE TO MEET DISTRIBUTION REQUIREMENTS.

(a) IN GENERAL.—Chapter 42 (relating to private foundations and certain other tax-exempt organizations), as amended by section 311, is amended by adding at the end the following new subchapter:

"Subchapter G—Donor Advised Funds

"Sec. 4967. Taxes on sponsoring organizations of donor advised funds for failure to meet distributions requirements
"Sec. 4968. Taxes on prohibited distributions
"Sec. 4969. Taxes on prohibited benefits

"SEC. 4967. TAXES ON SPONSORING ORGANIZATIONS OF DONOR ADVISED FUNDS FOR FAILURE TO MEET DISTRIBUTION REQUIREMENTS.

"(a) INITIAL TAX.—There is hereby imposed on any sponsoring organization a tax equal to 30 percent of each of the following amounts:

"(1) The organization level undistributed amount of such sponsoring organization (other than any organization subject to tax under section 4942) for any taxable year which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period).

"(2) The fund level undistributed amount of any donor advised fund of such sponsoring organization for any taxable year which has not been distributed before the 181st day of the first (or any succeeding) taxable year following the applicable period (if such 181st day falls within the taxable period).

"(3) The illiquid fund undistributed amount of any illiquid asset donor advised fund of such sponsoring organization for any taxable year which has not been distributed before the 181st day of the second (or any succeeding) taxable year following such taxable year (if such 181st day falls within the taxable period).

"(b) ADDITIONAL TAX.—In any case in which an initial tax is imposed under subsection (a) on any amount, if any portion of such amount remains undistributed at the close of the taxable period, there is hereby imposed a tax equal to 100 percent of the amount remaining undistributed at such time.

"(c) ORGANIZATION LEVEL UNDISTRIBUTED AMOUNT; FUND LEVEL UNDISTRIBUTED AMOUNT; ILLIQUID FUND UNDISTRIBUTED AMOUNT.—For purposes of this section—

"(1) ORGANIZATION LEVEL UNDISTRIBUTED AMOUNT.—The term 'organization level undistributed amount' means, with respect to any sponsoring organization for any taxable year, the amount by which—

"(A) the organization level distributable amount for such taxable year, exceeds

"(B) the qualifying distributions made during such taxable year and designated for the purpose of reducing such amount.

"(2) FUND LEVEL UNDISTRIBUTED AMOUNT.—The term 'fund level undistributed amount' means, with respect to any donor advised fund of a sponsoring organization for any applicable period, the amount by which—

"(A) the fund level distributable amount for such applicable period, exceeds

"(B) the qualifying distributions made during such applicable period and designated for the purpose of reducing such amount.

"(3) ILLIQUID FUND UNDISTRIBUTED AMOUNT.—

"(A) IN GENERAL.—The term 'illiquid fund undistributed amount' means, with respect to any illiquid asset donor advised fund of a sponsoring organization for any taxable year, the amount by which—

"(i) the illiquid fund distributable amount for such taxable year, exceeds

"(ii) the qualifying distributions made during such taxable year and designated for the purpose of reducing such amount.

"(B) ILLIQUID ASSET DONOR ADVISED FUND.—The term 'illiquid asset donor advised fund' means for any taxable year a donor advised fund the value of the illiquid assets of which (as of the end of the preceding taxable year) exceeds 10 percent of the value of the total assets of such fund.

"(C) ILLIQUID ASSET.—The term 'illiquid asset' means for any taxable year any asset other than cash and marketable securities the value of which is held for the entire taxable year as such asset or any other illiquid asset.

"(d) ORGANIZATION LEVEL DISTRIBUTABLE AMOUNT; FUND LEVEL DISTRIBUTABLE AMOUNT; ILLIQUID FUND DISTRIBUTABLE AMOUNT.—For purposes of this section—

"(1) ORGANIZATION LEVEL DISTRIBUTABLE AMOUNT.—The term 'organization level distributable amount' means, with respect to any sponsoring organization for any taxable year, an amount equal to the applicable percentage of the fair market value of the aggregate assets of all donor advised funds maintained by such organization as determined on the last day of the preceding taxable year (other than such funds which have been in existence for less than 1 year as so determined).

"(2) FUND LEVEL DISTRIBUTABLE AMOUNT.—The term 'fund level distributable amount' means, with respect to any donor advised fund of any sponsoring organization for any applicable 3-consecutive taxable year period, an amount equal to the greater of—

"(A) $250, or

"(B) 2.5 percent of the greater of—

"(i) the average of the sponsoring organization's required minimum initial contribution amount for such period, or

"(ii) the average of the sponsoring organization's required minimum balance for such period,

for the type of donor with respect to such donor advised fund.

"(3) ILLIQUID FUND DISTRIBUTABLE AMOUNT.—The term 'illiquid fund distributable amount' means, with respect to any illiquid asset donor advised fund of any sponsoring organization for any taxable year, an amount equal to the applicable percentage of the value of the assets in such fund as determined at the end of the preceding taxable year.

"(4) APPLICABLE PERCENTAGE.—For purposes of paragraphs (1) and (3), the applicable percentage is—

"(A) 3 percent for the first taxable year beginning after the date of the enactment of this section,

"(B) 4 percent for the second taxable year beginning after such date, and

"(C) 5 percent for any taxable year beginning after the second taxable year beginning after such date.

"(e) QUALIFYING DISTRIBUTION.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualifying distribution' means—

"(A) any amount paid by the sponsoring organization from a donor advised fund—

"(i) to any organization described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3)) or any sponsoring organization if such amount is for maintenance in a donor advised fund), and

"(ii) notwithstanding clause (i), to any organization described section 170(f)(17)(B)(ii), but only to the extent not prohibited by regulations, and

"(B) any amount set aside in such donor advised fund for purposes, and under procedures similar to those, described in section 4942(g)(2).

Such term shall also include any amount paid during any taxable year for reasonable and necessary administrative expenses charged to a donor advised fund by a sponsoring organization.

"(2) DISTRIBUTIONS TO SPONSORING ORGANIZATIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), such term shall include any distribution to a sponsoring organization.

"(B) ORGANIZATION LEVEL DISTRIBUTIONS.—For purposes of subsection (c)(1)(B), such term shall not include any distribution to a sponsoring organization unless such distribution is designated for use in connection with a charitable program of such organization.

"(3) PURPOSE OF DISTRIBUTION.—Each qualifying distribution shall be taken into account in determining whether each of the requirements of paragraphs (1), (2), and (3) of subsection (a) are met, except that only qualifying distributions from a donor advised fund shall be taken into account in determining whether the requirements of paragraphs (2) and (3) of subsection (a) are met with respect to the fund.

“(4) DESIGNATION OF TAXABLE YEAR.—

“(A) IN GENERAL.—A sponsoring organization shall designate the taxable years or applicable periods with respect to which any qualifying distribution shall be applied for purposes of satisfying the distribution requirements of such taxable year or applicable period.

“(B) CARRYOVER OF EXCESS DISTRIBUTION DESIGNATIONS.—If a sponsoring organization designates an amount of qualifying distributions in excess of the amount necessary to meet the distribution requirements for all taxable years and all applicable periods, the sponsoring organization may designate such excess as a carryover distribution which may be applied for purposes of satisfying the distribution requirements of the succeeding 5 taxable years.

“(f) VALUATION RULES.—For purposes of determining the value of any asset held by a donor advised fund, the following rules shall apply:

“(1) Securities for which market quotations are readily available shall be valued at fair market value determined on a monthly basis.

“(2) Cash shall be determined on an average monthly basis.

“(3) Any illiquid asset transferred by a donor to a sponsoring organization for maintenance in such donor advised fund shall be valued in an amount equal to the sum of—

“(A) the value of such asset claimed by the donor for purposes of determining the donor's deduction under section 170, 2055, or 2522 with respect to such transfer and reported by the donor to the sponsoring organization (in any manner specified by the Secretary), and

“(B) an assumed annual rate of return of 5 percent of such value.

“(4) Any illiquid asset purchased by such fund shall be valued in an amount equal to—

“(A) the purchase price paid for such asset by such fund, and

“(B) an assumed annual rate of return of 5 percent of such value.

“(g) SPONSORING ORGANIZATION; DONOR ADVISED FUND.—For purposes of this subchapter—

“(1) SPONSORING ORGANIZATION.—The term ‘sponsoring organization’ means any organization which—

“(A) is described in section 170(c) (other than in paragraph (1) thereof, and without regard to paragraph (2)(A) thereof), and

“(B) maintains 1 or more donor advised funds.

“(2) DONOR ADVISED FUND.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘donor advised fund’ means a fund or account—

“(i) which is separately identified by reference to contributions of a donor or donors,

“(ii) which is owned and controlled by a sponsoring organization, and

“(iii) with respect to which a donor or any person appointed or designated by such person) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor's status as a donor.

“(B) EXCEPTION.—The term ‘donor advised fund’ shall not include any fund or account with respect to which a person described in subparagraph (A)(iii) advises as to which individuals receive grants for travel, study, or other similar purposes, but only if—

“(i) such person's advisory privileges are performed exclusively by such person in the person's capacity as a member of a committee appointed by the sponsoring organization,

“(ii) no combination of persons described in subparagraph (A)(iii) (or persons related to such persons) control, directly or indirectly, such committee, and

“(iii) all grants from such fund or account satisfy requirements similar to those described in section 4945(g) (concerning grants to individuals by private foundations).

“(C) SECRETARIAL AUTHORITY.—The Secretary may exempt a fund or account from treatment as a donor advised fund which—

“(i) is advised by committee not directly or indirectly controlled by the donor or advisor (and any related parties), or

“(ii) will benefit a single identified organization or governmental entity or a single identified charitable purpose.

“(h) OTHER DEFINITIONS.—For purposes of this section—

“(1) TAXABLE PERIOD.—The term ‘taxable period’ means, with respect to the undistributed amount for any taxable year, the period beginning with the first day of the taxable year and ending on the earlier of—

“(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212, or

“(B) the date on which the tax imposed by subsection (a) is assessed.

“(2) APPLICABLE PERIOD.—The term ‘applicable period’ means, with respect to any donor advised fund of any sponsoring organization, a 3-consecutive taxable year period determined under the following rules:

“(A) The first applicable 3-consecutive taxable year period for any donor advised fund shall begin on the first day of the first taxable year of the sponsoring organization beginning after the date such fund has been in existence for 1 year.

“(B) Any applicable 3-consecutive taxable year period after the first such period shall begin on the day after the termination of any preceding applicable 3-consecutive taxable year period with respect to such donor advised fund.

“(i) REGULATIONS.—The Secretary may issue such regulations as are necessary to carry out the purposes of this section, including regulations regarding—

“(1) the acceptable methods for calculating the organization level undistributed amount for sponsoring organizations,

“(2) the allowable adjustments in the determination of the value of any illiquid asset where the asset value has declined significantly after a contribution to, or purchase by, the donor advised fund, and

“(3) the treatment or disregard of transactions designed to avoid the application of the illiquid asset rules, such as through exchanges of illiquid assets for other assets.

“SEC. 4968. TAXES ON PROHIBITED DISTRIBUTIONS.

“(a) IMPOSITION OF TAXES.—

“(1) ON THE DONOR OR DONOR ADVISOR.—There is hereby imposed on the advice of any person described in section 4967(g)(2)(A)(iii) to have a sponsoring organization of a donor advised fund make a taxable distribution from such fund a tax equal to 20 percent of the amount thereof. The tax imposed by this paragraph shall be paid by such person who advised the sponsoring organization of the donor advised fund to make the distribution.

“(2) ON THE FUND MANAGEMENT.—There is hereby imposed on the agreement of any fund manager to the making of a distribution, knowing that it is a taxable distribution, a tax equal to 5 percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any fund manager who agreed to the making of the distribution.

“(b) JOINT AND SEVERAL LIABILITY.—For purposes of subsection (a), if more than one person is liable under subsection (a)(1) or (a)(2) with respect to the making of a taxable distribution, all such persons shall be jointly and severally liable under such paragraph with respect to such distribution.

“(c) TAXABLE DISTRIBUTION.—For purposes of this subsection—

“(1) IN GENERAL.—The term ‘taxable distribution’ means any distribution from a donor advised fund to any person other than the sponsoring organization's non donor advised funds or accounts or organizations described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any sponsoring organization if such amount is for maintenance in a donor advised fund).

“(2) EXCEPTION.—Notwithstanding paragraph (1), such term shall not include any distribution from a donor advised fund to any organization described section 170(f)(17)(B)(ii) to the extent such distribution is not prohibited under regulations.

“(d) FUND MANAGER.—For purposes of this subchapter, the term ‘fund manager’ means, with respect to any sponsoring organization of a donor advised fund—

“(1) an officer, director, or trustee of such sponsoring organization (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the sponsoring organization), and

“(2) with respect to any act (or failure to act), the employees of the sponsoring organization having authority or responsibility with respect to such act (or failure to act).

“SEC. 4969. TAXES ON PROHIBITED BENEFITS.

“(a) IMPOSITION OF TAXES.—

“(1) ON THE DONOR, DONOR ADVISOR, OR RELATED PERSON.—There is hereby imposed on the advice of any person described in subsection (c) to have a sponsoring organization of a donor advised fund make a distribution from such fund which results in such a person receiving, directly or indirectly, a more than incidental benefit as a result of such distribution, a tax equal to 25 percent of the amount of such distribution. The tax imposed by this paragraph shall be paid by such person who advised the sponsoring organization of the donor advised fund to make the distribution.

“(2) ON THE RECIPIENT OF THE BENEFIT.—There is hereby imposed on any person described in subsection (c) who receives a benefit described in paragraph (1), a tax equal to 25 percent of the amount of the distribution described in paragraph (1).

“(3) ON THE FUND MANAGEMENT.—There is hereby imposed on the agreement of any fund manager to the making of a distribution, knowing that such distribution would confer a benefit described in paragraph (1), a tax equal to 10 percent of the amount of such distribution, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any fund manager who agreed to the making of the distribution.

“(b) JOINT AND SEVERAL LIABILITY.—For purposes of subsection (a), if more than one person is liable under subsection (a)(1), (a)(2), or (a)(3) with respect to the making of a distribution described in subsection (a), all such persons shall be jointly and severally liable under such paragraph with respect to such distribution.

“(c) DONOR, DONOR ADVISOR, OR RELATED PERSON.—A person is described in this subsection if such person is described in section 4958(f)(1)(D) (determined without regard to any investment advisor).”.

(b) Abatement of Taxes Allowed.—Section 4963 is amended—

(1) by inserting "4967, 4968, 4969," after "4958," each place it appears in subsections (a) and (c),

(2) by inserting "4967," after "4958," in subsection (b),

(3) in subsection (d)(2), by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) in the case of the second tier tax imposed by section 4967(b), reducing the amount of the undistributed amount to zero.", and

(4) in subsection (e)(2), by redesignating subparagraphs (C) and (D) as subparagraphs (E) and (F), respectively, and by inserting after subparagraph (B) the following new subparagraphs:

"(C) in the case of section 4967(a)(1), on the first day of the taxable year for which there was a failure to distribute,

"(D) in the case of paragraph (2) or (3) of section 4967(a), on the 181st day of the taxable year for which there was a failure to distribute.".

(c) Conforming Amendment.—The table of subchapters of chapter 42 is amended by adding at the end the following new item:

"SUBCHAPTER G. DONOR ADVISED FUNDS.".

(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 332. PROHIBITED TRANSACTIONS.

(a) Disqualified Persons.—

(1) In general.—Paragraph (1) of section 4958(f) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding after subparagraph (C) the following new subparagraph:

"(D) any person who is described in paragraph (7) with respect to any sponsoring organization (as defined in section 4967(g)(1)).".

(2) Donors, donor advisors, and investment advisors treated as disqualified persons.—Section 4958(f) is amended by adding at the end the following new paragraph:

"(7) Donors, donor advisors, and investment advisors with respect to sponsoring organizations.—For purposes of paragraph (1)(D)—

"(A) In general.—A person is described in this paragraph if such person—

"(i) is described in section 4967(g)(2)(A)(iii),

"(ii) is an investment advisor,

"(iii) is a member of the family of an individual described in clause (i) or (ii), or

"(iv) is a 35-percent controlled entity (as defined in paragraph (3) by substituting 'persons described in clause (i), (ii), or (iii) of paragraph (7)(A)' for 'persons described in subparagraph (A) or (B) of paragraph (1)' in subparagraph (A)(i) thereof).

"(B) Investment advisor.—The term 'investment advisor' means, with respect to any sponsoring organization (as defined in section 4967(g)(1)), any person (other than an employee of such organization) compensated by such organization for managing the investment of, or providing investment advice with respect to, assets maintained in donor advised funds (as defined in section 4967(g)(2)) owned by such organization.".

(3) Donors, donor advisors, and investment advisors treated as disqualified persons with respect to a sponsoring organization which is a private foundation.—Section 4946(a)(1) is amended by striking "and" at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting ", and", and by adding at the end the following new subparagraph:

"(J) a person described in section 4958(f)(1)(D).".

(b) Certain Transactions Treated as Excess Benefit Transactions.—

(1) In general.—Section 4958(c) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) Special rules for donor advised funds owned by sponsoring organizations.—In the case of any donor advised fund (as defined in section 4967(g)(2)) of a sponsoring organization (as defined in section 4967(g)(1))—

"(A) the term 'excess benefit transaction' includes any grant, loan, compensation, or other payment from such fund to a person described in subsection (f)(1)(D) (determined without regard to any investment advisor) with respect to such fund, and

"(B) the term 'excess benefit' includes, with respect to any transaction described in subparagraph (A), the amount of any such grant, loan, compensation, or other payment.

"Notwithstanding the last sentence of subsection (e), a sponsoring organization shall be treated as an applicable tax-exempt organization to the extent necessary to carry out this paragraph.".

(2) Special rule for correction of transaction.—Section 4958(f)(6) is amended by inserting ", except that in the case of any correction of an excess benefit transaction described in subsection (c)(2), no amount repaid in a manner prescribed by the Secretary may be held in, or credited to, any donor advised fund" after "standards".

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 333. TREATMENT OF CHARITABLE CONTRIBUTION DEDUCTIONS TO DONOR ADVISED FUNDS.

(a) Income.—Section 170(f) (relating to disallowance of deduction in certain cases and special rules), as amended by section 318 of this Act, is amended by adding at the end the following new paragraph:

"(17) Contributions to donor advised funds.—

"(A) In general.—A deduction otherwise allowed under subsection (a) for any contribution to a sponsoring organization (as defined in section 4967(g)(1)) to be maintained in any donor advised fund (as defined in section 4967(g)(2)) of such organization shall only be allowed if—

"(i) such sponsoring organization is not described in paragraph (3), (4), or (5) of subsection (c) or section 509(a)(3), and

"(ii) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of paragraph (8)(C) from the sponsoring organization that such organization has exclusive legal control over the assets contributed.

"(B) Contributions to type I or type II supporting organizations.—

"(i) In general.—Notwithstanding subparagraph (A)(i), a contribution to a sponsoring organization (as so defined) described in clause (ii) to be maintained in any donor advised fund (as so defined) of such organization shall be allowed to the extent not prohibited by regulations.

"(ii) Organization described.—An organization is described in this clause if the organization meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and is—

"(I) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2) of section 509(a), or

"(II) supervised or controlled in connection with one or more such organizations.".

(b) Estate.—Section 2055(e) is amended by adding at the end the following new paragraph:

"(5) Contributions to donor advised funds.—

"(A) In general.—A deduction otherwise allowed under subsection (a) for any contribution to a sponsoring organization (as defined in section 4967(g)(1)) to be maintained in any donor advised fund (as defined in section 4967(g)(2)) of such organization shall only be allowed if—

"(i) such sponsoring organization is not described in paragraph (3) or(4) of subsection (a) or section 509(a)(3), and

"(ii) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of section 170(f)(8)(C)) from the sponsoring organization that such organization has exclusive legal control over the assets contributed.

"(B) Contributions to type I or type II supporting organizations.—

"(i) In general.—Notwithstanding subparagraph (A)(i), a contribution to a sponsoring organization (as so defined) described in clause (ii) to be maintained in any donor advised fund (as so defined) of such organization shall be allowed to the extent not prohibited by regulations.

"(ii) Organization described.—An organization is described in this clause if the organization meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and is—

"(I) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2) of section 509(a), or

"(II) supervised or controlled in connection with one or more such organizations.".

(c) Gift.—Section 2522(c) is amended by adding at the end the following new paragraph:

"(13) Contributions to donor advised funds.—

"(A) In general.—A deduction otherwise allowed under subsection (a) for any contribution to a sponsoring organization (as defined in section 4967(g)(1)) to be maintained in any donor advised fund (as defined in section 4967(g)(2)) of such organization shall only be allowed if—

"(i) such sponsoring organization is not described in paragraph (3) or (4) of subsection (a) or section 509(a)(3), and

"(ii) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of section 170(f)(8)(C)) from the sponsoring organization that such organization has exclusive legal control over the assets contributed.

"(B) Contributions to type I or type II supporting organizations.—

"(i) In general.—Notwithstanding subparagraph (A)(i), a contribution to a sponsoring organization (as so defined) described in clause (ii) to be maintained in any donor advised fund (as so defined) of such organization shall be allowed to the extent not prohibited by regulations.

"(ii) Organization described.—An organization is described in this clause if the organization meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and is—

"(I) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2) of section 509(a), or

"(II) supervised or controlled in connection with one or more such organizations.".

(d) Regulations.—The regulations prescribed under sections 170(f)(17)(B)(i), 2055(e)(5)(B)(i), 2522(c)(13)(B)(i), 4967(e)(i)(A)(ii), and 4968(c)(2) of the Internal Revenue Code of 1986 shall deny a deduction for contributions to sponsoring organizations (as defined in section 4967(g)(1) of such Code) which are described in section 170(f)(17)(B)(ii) of such Code and shall apply excise taxes to distributions from donor advised funds (as defined in section 4967(g)(2) of such Code) and sponsoring organizations (as so defined) to organizations so described in cases where the donor of the contributions or the donor or donor advisor of the amounts distributed directly or indirectly controls a supported organization (as defined in section 509(f)(3) of such Code) of such organization.

(e) Effective Date.—The amendments made by this section shall apply to contributions made after the date which is 180 days after the date of the enactment of this Act.

SEC. 334. RETURNS OF, AND APPLICATIONS FOR RECOGNITION BY, SPONSORING ORGANIZATIONS.

(a) Matters Included on Returns.—

(1) In general.—Section 6033 is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

“(h) Additional Provisions Relating to Sponsoring Organizations.—Every organization described in section 4967(g)(1) shall, on the return required under subsection (a) for the taxable year—

“(1) list the total number of donor advised funds (as defined in section 4967(g)(2)) it owns at the end of such taxable year,

“(2) indicate the aggregate value of assets held in such funds at the end of such taxable year, and

“(3) indicate the aggregate contributions to and grants made from such funds during such taxable year.”.

(2) Extension of statute of limitations.—Section 6501(c) is amended by adding at the end the following new paragraph:

“(11) Donor advised funds.—If a sponsoring organization (as defined in section 4967(g)(1)) fails to include on any return for any taxable year any information with respect to any donor advised fund of such organization which is required under section 6033(h) to be included with such return, the time for assessment of any tax imposed under subchapter G of chapter 42 with respect to any distribution from such donor advised fund shall not expire before the date which is 3 years after the date on which the secretary is furnished the information so required.”.

(3) Effective date.—The amendments made by this subsection shall apply to returns filed for taxable years ending after the date of the enactment of this Act.

(b) Matters Included on Exempt Status Application.—

(1) In general.—Section 508 is amended by adding at the end the following new subsection:

“(f) Additional Provisions Relating to Sponsoring Organizations.—Sponsoring organization (as defined in section 4967(g)(1)) shall give notice to the Secretary (in such manner as the Secretary may provide) whether such organization maintains or intends to maintain donor advised funds (as defined in section 4967(g)(2)) and the manner in which such organization plans to operate such funds.”.

(2) Effective date.—The amendment made by this subsection shall apply to organizations applying for tax-exempt status after the date of the enactment of this Act.

PART III—IMPROVED ACCOUNTABILITY OF SUPPORTING ORGANIZATIONS

SEC. 341. REQUIREMENTS FOR SUPPORTING ORGANIZATIONS.

(a) Types of Supporting Organizations.—Subparagraph (B) of section 509(a)(3) is amended to read as follows:

“(B) is—

“(i) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2),

“(ii) supervised or controlled in connection with one or more such organizations, or

“(iii) operated in connection with one or more such organizations, and”.

(b) Requirements for Supporting Organizations.—Section 509 (relating to private foundation defined) is amended by adding at the end the following new subsection:

“(f) Requirements for Supporting Organizations.—

“(1) Type III supporting organizations.—For purposes of subsection (a)(3)(B)(iii), an organization shall not be considered to be operated in connection with any organization described in paragraph (1) or (2) of subsection (a) unless such organization meets the following requirements:

“(A) Application requirement.—The organization provides to the Secretary, as a part of any notification filed under section 508(a) after the date of the enactment of this subsection, a letter from each supported organization acknowledging that the supported organization has been designated by such organization as a supported organization.

“(B) Responsiveness.—For each taxable year beginning after the date of the enactment of this subsection, the organization provides to each supported organization such information as the Secretary may require to ensure that such organization is responsive to the needs or demands of the supported organization.

“(C) Supported organizations.—

“(i) In general.—The organization—

“(I) is not operated in connection with more than 5 supported organizations, and

“(II) is not operated in connection with any supported organization that is not organized in the United States on any date after the date which is 180 days after the date of the enactment of this subsection.

“(ii) Special rule for existing organizations.—If the organization is operated in connection with more than 5 supported organizations on the date of the enactment of this subsection—

“(I) clause (i)(I) shall not apply, and

“(II) the organization may not be operated in connection with any other organization after such date unless the total number of supported organizations is 5 or less.

“(D) Contributions to donor advised funds.—The organization makes no contributions to or for the use of any donor advised fund (as defined in section 4967(g)(2)).

“(2) Organizations controlled by donors.—

“(A) In general.—For purposes of subsection (a)(3)(B), an organization shall not be considered to be—

“(i) operated, supervised, or controlled by any organization described in paragraph (1) or (2) of subsection (a), or

“(ii) operated in connection with any organization described in paragraph (1) or (2) of subsection (a),

if such organization accepts any gift or contribution from any person described in subparagraph (B).

“(B) Person described.—A person is described in this subparagraph if such person is—

“(i) a person (other than an organization described in paragraph (1), (2), or (4) of section 509(a)) who controls, directly or indirectly, either alone or together with persons described in clauses (ii) and (iii), the governing body of a supported organization,

“(ii) a member of the family (determined under section 4958(f)(4)) of an individual described in clause (i), or

“(iii) a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting ‘persons described in clause (i) or (ii) of section 509(f)(2)(B)’ for ‘persons described in subparagraph (A) or (B) of paragraph (1)’ in subparagraph (A)(i) thereof).

“(3) Supported organization.—For purposes of this subsection, the term ‘supported organization’ means, with respect to an organization described in subsection (a)(3), an organization described in paragraph (1) or (2) of subsection (a)—

“(A) for whose benefit the organization described in subsection (a)(3) is organized and operated, or

“(B) with respect to which the organization performs the functions of, or carries out the purposes of.”.

(c) Charitable Trusts Which Are Type III Supporting Organizations.—For purposes of section 509(a)(3)(B)(iii) of the Internal Revenue Code of 1986, an organization which is a trust shall not be considered to be operated in connection with any organization described in paragraph (1) or (2) of section 509(a) of such Code solely because—

(1) it is a charitable trust under State law,

(2) the supported organization (as defined in section 509(f)(3) of such Code) is a beneficiary of such trust, and

(3) the supported organization (as so defined) has the power to enforce the trust and compel an accounting.

(d) Effective Date.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 342. EXCISE TAX ON SUPPORTING ORGANIZATIONS FOR FAILURE TO MEET DISTRIBUTION REQUIREMENTS.

(a) In General.—Subchapter D of chapter 42 (relating to failure by certain charitable organizations to meet certain qualification requirements) is amended by adding at the end the following new section:

“SEC. 4959. TAXES ON CERTAIN SUPPORTING ORGANIZATIONS FAILING TO MEET DISTRIBUTION REQUIREMENTS.

“(a) Initial Tax.—There is hereby imposed on the undistributed income of any type III supporting organization for any taxable year, which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period), a tax equal to 30 percent of the amount of such income remaining undistributed at the beginning of such second (or succeeding) taxable year.

“(b) Additional Tax.—In any case in which an initial tax is imposed under subsection (a) on the undistributed income of a type III supporting organization for any taxable year, if any portion of such income remains undistributed at the close of the taxable period, there is hereby imposed a tax equal to 100 percent of the amount remaining undistributed at such time.

“(c) Undistributed Income.—For purposes of this section, the term ‘undistributed income’ means, with respect to any type III supporting organization for any taxable year as of any time, the amount by which—

“(1) the distributable amount for such taxable year, exceeds

“(2) the qualifying distributions made before such time out of such distributable amount.

"(d) DISTRIBUTABLE AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—the term 'distributable amount' means, with respect to any type III supporting organization for any taxable year, an amount equal to the sum of—

"(A) the greater of—

"(i) 85 percent of the adjusted net income (as defined in section 4942(f)) of the type III supporting organization for the preceding taxable year, or

"(ii) the applicable percentage of the fair market value of the aggregate assets of such organization (other than assets used or held to perform the functions of, or carry out the purposes of, a supported organization) on the last day of the preceding taxable year, and

"(B) any amount received during the preceding taxable year which is a repayment of amounts paid by the organization in any prior taxable year to a supported organization exclusively for the benefit of such supported organization or to perform the functions of, or carry out the purposes of such supported organization.

"(2) INVESTMENT ASSETS.—For purposes of paragraph (1)(A)(ii), assets held for investment or for the operation of an unrelated trade or business shall not be considered as assets used or held to perform the functions of, or carry out the purposes of, a supported organization.

"(3) APPLICABLE PERCENTAGE.—For purposes of paragraph (1)(A)(ii), the applicable percentage is—

"(A) 3 percent for the first taxable year beginning after the date of the enactment of this section,

"(B) 4 percent for the second taxable year beginning after such date, and

"(C) 5 percent for any taxable year beginning after the second taxable year beginning after such date.

"(e) QUALIFYING DISTRIBUTION.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualifying distribution' means amounts paid by the type III supporting organization to or for the use of a supported organization.

"(2) ADMINISTRATIVE AND OPERATING EXPENSES.—Reasonable and necessary administrative expenses of a type III supporting organization shall be treated as a qualifying distribution to a supported organization.

"(f) TREATMENT OF QUALIFYING DISTRIBUTIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), any qualifying distribution made during a taxable year shall be treated as made—

"(A) first out of the undistributed income of the immediately preceding taxable year (if the type III supporting organization was subject to the tax imposed by this section for such preceding taxable year) to the extent thereof, and

"(B) second out of the undistributed income for the taxable year to the extent thereof.

For purposes of this paragraph, distributions shall be taken into account in the order of time in which made.

"(2) CORRECTION OF DEFICIENT DISTRIBUTIONS FOR PRIOR TAXABLE YEARS, ETC.—In the case of any qualifying distribution which (under paragraph (1)) is not treated as made out of the undistributed income of the immediately preceding taxable year, the type III supporting organization may elect to treat any portion of such distribution as made out of the undistributed income of a designated prior taxable year. The election shall be made by the type III supporting organization at such time and in such manner as the Secretary shall by regulations prescribe.

"(g) ADJUSTMENT OF DISTRIBUTABLE AMOUNT WHERE DISTRIBUTIONS DURING PRIOR YEARS HAVE EXCEEDED INCOME.—

"(1) IN GENERAL.—If, for the taxable years in the adjustment period for which an organization is a type III supporting organization—

"(A) the aggregate qualifying distributions treated (under subsection (f)) as made out of the undistributed income for such taxable years, exceed

"(B) the distributable amounts for such taxable years (determined without regard to this subsection),

then, for purposes of this section (other than subsection (f)), the distributable amount for the taxable year shall be reduced by an amount equal to such excess.

"(2) TAXABLE YEARS IN ADJUSTMENT PERIOD.—For purposes of paragraph (1), with respect to any taxable year of a type III supporting organization, the taxable years in the adjustment period are the taxable years (not exceeding 5) beginning after the date of the enactment of this section and immediately preceding the taxable year.

"(h) OTHER DEFINITIONS.—For purposes of this section—

"(1) TAXABLE PERIOD.—The term 'taxable period' means, with respect to the undistributed income for any taxable year, the period beginning with the first day of the taxable year and ending on the earlier of—

"(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212, or

"(B) the date on which the tax imposed by subsection (a) is assessed.

"(2) TYPE III SUPPORTING ORGANIZATION.—The term 'type III supporting organization' means an organization which meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and which is operated in connection with one or more organizations described in paragraph (1) or (2) of section 509(a).

"(3) SUPPORTED ORGANIZATION.—The term 'supported organization' has the meaning given such term under section 509(f)(3).".

(b) CONFORMING AMENDMENT.—The table of section for subchapter D of chapter 42 is amended by inserting after the item relating to section 4958 the following new item:

"Sec. 4959. Taxes on certain supporting organizations failing to meet distribution requirements.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 343. EXCESS BENEFIT TRANSACTIONS.

(a) IN GENERAL.—Section 4958(c), as amended by section 332 of this Act, is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) SPECIAL RULES FOR SUPPORTING ORGANIZATIONS.—

"(A) IN GENERAL.—In the case of any organization described in section 509(a)(3)—

"(i) the term 'excess benefit transaction' includes—

"(I) any grant, loan, compensation, or other payment provided by such organization to a person described in subparagraph (B), and

"(II) any loan provided by such organization to a disqualified person (other than an organization described in paragraph (1), (2), or (4) of section 509(a)), and

"(ii) the term 'excess benefit' includes, with respect to any transaction described in clause (i), the amount of any such grant, loan, compensation, or other payment.

"(B) PERSON DESCRIBED.—A person is described in this subparagraph if such person is—

"(i) a substantial contributor to such organization,

"(ii) a member of the family (determined under section 4958(f)(4)) of an individual described in clause (i), or

"(iii) a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting 'persons described in clause (i) or (ii) of section 4958(c)(3)(B)' for 'persons described in subparagraph (A) or (B) of paragraph (1)' in subparagraph (A)(i) thereof).

"(C) SUBSTANTIAL CONTRIBUTOR.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'substantial contributor' means any person who contributed or bequeathed an aggregate amount of more than $5,000 to the organization, if such amount is more than 2 percent of the total contributions and bequests received by the organization before the close of the taxable year of the organization in which the contribution or bequest is received by the organization from such person. In the case of a trust, such term also means the creator of the trust.

"(ii) EXCEPTION.—Such term shall not include any organization described in paragraph (1), (2), or (4) of section 509(a).".

(b) DISQUALIFIED PERSONS.—Paragraph (1) of section 4958(f), as amended by section 332 of this Act, is amended by striking "and" at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting ", and", and by adding after subparagraph (D) the following new subparagraph:

"(E) any person who is described in subparagraph (A), (B), or (C) with respect to an organization described in section 509(a)(3) which is organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the applicable tax-exempt organization.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions occurring after the date of the enactment of this Act.

SEC. 344. EXCESS BUSINESS HOLDINGS OF SUPPORTING ORGANIZATIONS.

(a) IN GENERAL.—Section 4943 is amended by adding at the end the following new subsection:

"(e) APPLICATION OF TAX TO SUPPORTING ORGANIZATIONS.—

"(1) IN GENERAL.—For purposes of this section, a qualified supporting organization shall be treated as a private foundation.

"(2) EXCEPTION.—The Secretary may exempt any qualified supporting organization from the application of this subsection if the Secretary determines that the excess business holdings of such organization are consistent with the purpose or function constituting the basis for its exemption under section 501.

"(3) QUALIFIED SUPPORTING ORGANIZATION.—For purposes of this subsection, the term 'qualified supporting organization' means any—

"(A) type III supporting organization (as defined in section 4959(h)(2)), or

"(B) organization which meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and which is supervised or controlled in connection with or one or more organizations described in paragraph (1) or (2) of section 509(a), but only if such organization accepts any gift or contribution from any person described in section 509(f)(2)(B).

"(4) DISQUALIFIED PERSON.—

"(A) IN GENERAL.—In applying this section to any organization described in section

509(a)(3), the term 'disqualified person' means, with respect to the organization—

"(i) any person who was, at any time during the 5-year period ending on date described in subsection (a)(2)(A), in a position to exercise substantial influence over the affairs of the organization,

"(ii) any member of the family (determined under section 4958(f)(4)) of an individual described in clause (i),

"(iii) any 35-percent controlled entity (as defined in section 4958(f)(3) by substituting 'persons described in clause (i) or (ii) of section 4943(e)(2)(A)' for 'persons described in subparagraph (A) or (B) of paragraph (1)' in subparagraph (A)(i) thereof),

"(iv) any person described in section 4958(c)(3)(B), and

"(v) any organization—

"(I) which is effectively controlled (directly or indirectly) by the same person or persons who control the organization in question, or

"(II) substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in subparagraph (B) or a member of their family (within the meaning of section 4946(d)) who made (directly or indirectly) substantially all of the contributions to the organization in question.

"(B) PERSONS DESCRIBED.—A person is described in this subparagraph if such person is—

"(i) a substantial contributor to the organization (as defined in section 4958(c)(3)(C)),

"(ii) an officer, director, or trustee of the organization (or an individual having powers or responsibilities similar to those officers, directors, or trustees of the organization), or

"(iii) an owner of more than 20 percent of—

"(I) the total combined voting power of a corporation,

"(II) the profits interest of a partnership, or

"(III) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor (as so defined) to the organization.

"(5) SPECIAL RULE FOR CERTAIN HOLDINGS OF TYPE III SUPPORTING ORGANIZATIONS.—For purposes of this subsection, the term 'excess business holdings' shall not include any holdings of a type III supporting organization (as defined in section 4959(h)(2)) in any business enterprise if the holdings are held for the benefit of the community pursuant to the direction of a State attorney general or a State official with jurisdiction over the type III supporting organization.

"(6) PRESENT HOLDINGS.—For purposes of this subsection, rules similar to the rules of paragraphs (4), (5), and (6) of subsection (c) shall apply to organizations described in section 509(a)(3), except that—

"(A) 'the date of the enactment of this subsection' shall be substituted for 'May 26, 1969' each place it appears in paragraphs (4), (5), and (6), and

"(B) 'January 1, 2007' shall be substituted for 'January 1, 1970' in paragraph (4)(E).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 345. TREATMENT OF AMOUNTS PAID TO SUPPORTING ORGANIZATIONS BY PRIVATE FOUNDATIONS.

(a) QUALIFYING DISTRIBUTIONS.—Paragraph (4) of section 4942(g) is amended to read as follows:

"(4) LIMITATION ON DISTRIBUTIONS BY NONOPERATING PRIVATE FOUNDATIONS TO SUPPORTING ORGANIZATIONS.—For purposes of this section, the term 'qualifying distribution' shall not include any amount paid by a private foundation which is not an operating foundation to an organization described in section 509(a)(3).".

(b) TAXABLE EXPENDITURES.—

(1) IN GENERAL.—Subsection (d) of section 4945 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) to an organization described in section 509(a)(3),".

(2) CONFORMING AMENDMENTS.—

(A) Section 4945(d)(5), as redesignated by subparagraph (A), is amended—

(i) by striking "a grant to an organization" and inserting "a grant to any other organization", and

(ii) by striking "paragraph (1), (2), or (3) of section 509(a)" in subparagraph (A) and inserting "paragraph (1) or (2) of section 509(a)".

(B) Section 4945(f) is amended by striking "Subsection (d)(4)" in the last sentence thereof and inserting "Subsection (d)(5)".

(C) Section 4945(h) is amended by striking "subsection (d)(4)" and inserting "subsection (d)(5)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions and expenditures after the date of the enactment of this Act.

SEC. 346. RETURNS OF SUPPORTING ORGANIZATIONS.

(a) REQUIREMENT TO FILE RETURN.—Subparagraph (B) of section 6033(a)(3), as redesignated by section 311, is amended by inserting "(other than an organization described in section 509(a)(3))" after "paragraph (1)".

(b) MATTERS INCLUDED ON RETURNS.—Section 6033, as amended by section 334 of this Act, is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) ADDITIONAL PROVISIONS RELATING TO SUPPORTING ORGANIZATIONS.—

"(1) IN GENERAL.—Every organization described in section 509(a)(3) shall, on the return required under subsection (a)—

"(A) list the organizations described in section 509(a)(3)(A) with respect to which such organization provides support,

"(B) indicate whether the organization meets the requirements of clause (i), (ii), or (iii) of section 509(a)(3)(B), and

"(C) certify that the organization meets the requirements of section 509(a)(3)(C).

"(2) TYPE III SUPPORTING ORGANIZATIONS.—Every type III supporting organization (as defined in section 4959(h)(2)) shall indicate on the return required under subsection (a) for the taxable year whether the organization has received a letter from each supported organization (as defined in section 509(f)(3)) during the taxable year which—

"(A) acknowledges that the supporting organization has designated such organization as a supported organization,

"(B) details the type of support provided by the supporting organization, and

"(C) explains how such support furthers the charitable purpose of the supported organization.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns filed for taxable years ending after the date of the enactment of this Act.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. RESTRUCTURING OF NEW YORK LIBERTY ZONE TAX CREDITS.

(a) IN GENERAL.—Subchapter Y of chapter 1 is amended by adding at the end the following new section:

"SEC. 1400M. NEW YORK LIBERTY ZONE TAX CREDITS.

"(a) IN GENERAL.—There shall be allowed as a credit against any taxes imposed by this title (other than by section 3111(a), section 3403, or subtitle D) paid or incurred by any governmental unit of the State of New York and the City of New York, New York (including any agency or instrumentality thereof) for any calendar year an amount equal to the lesser of—

"(1) the total expenditures during such year by such governmental unit for qualifying projects, or

"(2) the amount allocated to such governmental unit for such calendar year under subsection (b)(2).

"(b) QUALIFYING PROJECT.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualifying project' means any transportation infrastructure project, including highways, mass transit systems, railroads, airports, ports, and waterways, in or connecting with the New York Liberty Zone (as defined in section 1400L(h)), which is designated as a qualifying project under this section jointly by the Governor of the State of New York and the Mayor of the City of New York, New York.

"(2) DOLLAR LIMITATION.—

"(A) IN GENERAL.—The Governor of the State of New York and the Mayor of the City of New York, New York, shall jointly allocate to a governmental unit the amount of expenditures which may be taken into account under subsection (a) for any calendar year in the credit period with respect to a qualifying project.

"(B) AGGREGATE LIMIT.—The aggregate amount which may be allocated under subparagraph (A) for all calendar years in the credit period shall not exceed $2,000,000,000.

"(C) ANNUAL LIMIT.—The aggregate amount which may be allocated under subparagraph (A) for any calendar year in the credit period shall not exceed the sum of—

"(i) $200,000,000, plus

"(ii) the aggregate amount authorized to be allocated under this paragraph for all preceding calendar years in the credit period which was not so allocated.

"(D) UNALLOCATED AMOUNTS AT END OF CREDIT PERIOD.—If, as of the close of the credit period, the amount under subparagraph (B) exceeds the aggregate amount allocated under subparagraph (A) for all calendar years in the credit period, the Governor of the State of New York and the Mayor of the City of New York, New York, may jointly allocate for any calendar year following the credit period for expenditures with respect to qualifying projects which may be taken into account under subsection (a) an amount equal to such excess, reduced by the aggregate amount allocated under this subparagraph for all preceding calendar years.

"(c) CARRYOVER OF UNUSED ALLOCATIONS.—

"(1) IN GENERAL.—If the amount allocated under subsection (b)(2) to a governmental unit for any calendar year exceeds the total expenditures for such year by such governmental unit for qualifying projects, the allocation of such governmental unit for the succeeding calendar year shall be increased by the amount of such excess.

"(2) REALLOCATION.—If a governmental unit does not use an amount allocated to it under subsection (b)(2) within the time prescribed by the Governor of the State of New York and the Mayor of the City of New York, New York, then such amount shall after such time be treated for purposes of subsection (b)(2) in the same manner as if it had never been allocated.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) CREDIT PERIOD.—The term 'credit period' means the 10-year period beginning on January 1, 2006.

"(2) TREATMENT OF FUNDS.—Any expenditure for a qualifying project taken into account for purposes of the credit under this section shall be considered State and local funds for the purpose of any Federal program.

"(e) REGULATIONS.—The Secretary may prescribe such regulations as are necessary to ensure compliance with the purposes of this section.".

(b) TERMINATION OF CERTAIN NEW YORK LIBERTY ZONE BENEFITS.—

(1) SPECIAL ALLOWANCE AND EXPENSING.—Section 1400L(b)(2)(A)(v) is amended by striking "the termination date" and inserting "the date of the enactment of the Tax Relief Act of 2005 or the termination date if pursuant to a binding contract in effect on such enactment date".

(2) LEASEHOLD.—Section 1400L(c)(2)(B) is amended by striking "before January 1, 2007" and inserting "on or before the date of the enactment of the Tax Relief Act of 2005 or before January 1, 2007, if pursuant to a binding contract in effect on such enactment date".

SEC. 402. MODIFICATION TO S CORPORATION PASSIVE INVESTMENT INCOME RULES.

(a) INCREASED PERCENTAGE LIMIT.—Paragraph (2) of section 1375(a) is amended by striking "25 percent" and inserting "60 percent".

(b) REPEAL OF EXCESSIVE PASSIVE INCOME AS A TERMINATION EVENT.—

(1) IN GENERAL.—Section 1362(d) is amended by striking paragraph (3).

(2) CONFORMING AMENDMENT.—Subsection (b) of section 1375 is amended by striking paragraphs (3) and (4) and inserting the following new paragraph:

"(3) PASSIVE INVESTMENT INCOME DEFINED.—

"(A) Except as otherwise provided in this paragraph, the term 'passive investment income' means gross receipts derived from royalties, rents, dividends, interest, and annuities.

"(B) EXCEPTION FOR INTEREST ON NOTES FROM SALES OF INVENTORY.—The term 'passive investment income' shall not include interest on any obligation acquired in the ordinary course of the corporation's trade or business from its sale of property described in section 1221(a)(1).

"(C) TREATMENT OF CERTAIN LENDING OR FINANCE COMPANIES.—If the S corporation meets the requirements of section 542(c)(6) for the taxable year, the term 'passive investment income' shall not include gross receipts for the taxable year which are derived directly from the active and regular conduct of a lending or finance business (as defined in section 542(d)(1)).

"(D) TREATMENT OF CERTAIN DIVIDENDS.—If an S corporation holds stock in a C corporation meeting the requirements of section 1504(a)(2), the term 'passive investment income' shall not include dividends from such C corporation to the extent such dividends are attributable to the earnings and profits of such C corporation derived from the active conduct of a trade or business.

"(E) EXCEPTION FOR BANKS, ETC.—In the case of a bank (as defined in section 581), a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a))), or a financial holding company (within the meaning of section 2(p) of such Act), the term 'passive investment income' shall not include—

"(i) interest income earned by such bank or company, or

"(ii) dividends on assets required to be held by such bank or company, including stock in the Federal Reserve Bank, the Federal Home Loan Bank, or the Federal Agricultural Mortgage Bank or participation certificates issued by a Federal Intermediate Credit Bank.

"(F) COORDINATION WITH SECTION 1374.—The amount of passive investment income shall be determined by not taking into account any recognized built-in gain or loss of the S corporation for any taxable year in the recognition period. Terms used in the preceding sentence shall have the same respective meanings as when used in section 1374.".

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (J) of section 26(b)(2) is amended by striking "25 percent" and inserting "60 percent".

(2) Clause (i) of section 1042(c)(4)(A) is amended by striking "section 1362(d)(3)(C)" and inserting "section 1375(b)(3)".

(3) Subparagraph (B) of section 1362(f)(1) is amended by striking "or (3)".

(4) Clause (i) of section 1375(b)(1)(A) is amended by striking "25 percent" and inserting "60 percent".

(5) Subsection (d) of section 1375 is amended by striking "subchapter C" both places it appears and inserting "accumulated".

(6) The heading for section 1375 is amended by striking "25 percent" and inserting "60 percent".

(7) The item relating to section 1375 in the table of sections for part III of subchapter S of chapter 1 is amended by striking "25 percent" and inserting "60 percent".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 403. MODIFICATION OF EFFECTIVE DATE OF DISREGARD OF CERTAIN CAPITAL EXPENDITURES FOR PURPOSES OF QUALIFIED SMALL ISSUE BONDS.

(a) IN GENERAL.—Section 144(a)(4)(G) is amended by striking "September 30, 2009" and inserting "December 31, 2006".

(b) CONFORMING AMENDMENT.—Section 144(a)(4)(F) is amended by striking "September 30, 2009" and inserting "December 31, 2006".

SEC. 404. PREMIUMS FOR MORTGAGE INSURANCE.

(a) IN GENERAL.—Section 163(h)(3) (relating to qualified residence interest) is amended by adding at the end the following new subparagraph:

"(E) MORTGAGE INSURANCE PREMIUMS TREATED AS INTEREST.—

"(i) IN GENERAL.—Premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness with respect to a qualified residence of the taxpayer shall be treated for purposes of this section as interest which is qualified residence interest.

"(ii) PHASEOUT.—The amount otherwise treated as interest under clause (i) shall be reduced (but not below zero) by 10 percent of such amount for each $1,000 ($500 in the case of a married individual filing a separate return) (or fraction thereof) that the taxpayer's adjusted gross income for the taxable year exceeds $100,000 ($50,000 in the case of a married individual filing a separate return).".

(b) DEFINITION AND SPECIAL RULES.—Section 163(h)(4) (relating to other definitions and special rules) is amended by adding at the end the following new subparagraphs:

"(E) QUALIFIED MORTGAGE INSURANCE.—The term 'qualified mortgage insurance' means—

"(i) mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration, and

"(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subparagraph).

"(F) SPECIAL RULES FOR PREPAID QUALIFIED MORTGAGE INSURANCE.—Any amount paid by the taxpayer for qualified mortgage insurance that is properly allocable to any mortgage the payment of which extends to periods that are after the close of the taxable year in which such amount is paid shall be chargeable to capital account and shall be treated as paid in such periods to which so allocated. No deduction shall be allowed for the unamortized balance of such account if such mortgage is satisfied before the end of its term. The preceding sentences shall not apply to amounts paid for qualified mortgage insurance provided by the Veterans Administration or the Rural Housing Administration.".

(c) INFORMATION RETURNS RELATING TO MORTGAGE INSURANCE.—Section 6050H (relating to returns relating to mortgage interest received in trade or business from individuals) is amended by adding at the end the following new subsection:

"(h) RETURNS RELATING TO MORTGAGE INSURANCE PREMIUMS.—

"(1) IN GENERAL.—The Secretary may prescribe, by regulations, that any person who, in the course of a trade or business, receives from any individual premiums for mortgage insurance aggregating $600 or more for any calendar year, shall make a return with respect to each such individual. Such return shall be in such form, shall be made at such time, and shall contain such information as the Secretary may prescribe.

"(2) STATEMENT TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under paragraph (1) shall furnish to each individual with respect to whom a return is made a written statement showing such information as the Secretary may prescribe. Such written statement shall be furnished on or before January 31 of the year following the calendar year for which the return under paragraph (1) was required to be made.

"(3) SPECIAL RULES.—For purposes of this subsection—

"(A) rules similar to the rules of subsection (c) shall apply, and

"(B) the term 'mortgage insurance' means—

"(i) mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration, and

"(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subsection).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or accrued during the period beginning after December 31, 2006, and before January 1, 2008, and properly allocable to such period, with respect to mortgage insurance contracts issued after December 31, 2006.

SEC. 405. SENSE OF THE SENATE ON USE OF NO-BID CONTRACTING BY FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) FINDINGS.—The Senate finds that—

(1) on September 8, 2005, the Federal Emergency Management Agency announced that it had awarded 4 contracts for emergency housing relief following Hurricane Katrina to The Shaw Group of Baton Rouge, Louisiana, Fluor Corporation of Aliso Viejo, California, Bechtel National of San Francisco, California, and CH2M Hill of Denver, Colorado;

(2) these contracts were awarded with no competition from other capable firms, and up to $100,000,000 in taxpayer funds were authorized for each of these contracts;

(3) in the midst of concerns about abusive and irresponsible spending of taxpayer funds, the Federal Emergency Management Agency pledged to re-bid these noncompetitive contracts, with Acting Under Secretary of Emergency Preparedness and Response, R. David Paulison, stating before the Committee on Homeland Security and Government Affairs of the Senate that "[a]ll of these no-bid contracts, we are going to go back and re-bid";

(4) the Federal Emergency Management Agency has yet to reopen these 4 contracts to competitive bidding, and declared on November 11, 2005, that these contracts would not be reopened for bidding until February 2006;

(5) by February 2006, the majority of the contracts will have been completed and the majority of taxpayer funds will have been spent;

(6) large and politically-connected firms continue to benefit from no-bid and limited-competition contracts, and contracts are not being awarded to capable, local companies;

(7) according to an analysis in the Washington Post, companies outside the States most affected by Hurricane Katrina have received more than 90 percent of the Federal contracts for recovery and reconstruction;

(8) the monitoring of Federal contracting practices remains difficult, with a report by the San Jose Mercury News stating "The database of contracts is incomplete. Information released by Federal agencies is spotty and sporadic. And disclosure of many no-bid contracts isn't required by law"; and

(9)(A) there is currently no Chief Financial Officer charged with monitoring the flow of all funds to the affected areas; and

(B) the task of financial management is spread across disparate Federal departments and agencies with inadequate oversight of taxpayer funds.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Federal Emergency Management Agency should—

(1) immediately rebid noncompetitive contracts entered into following Hurricane Katrina, consistent with the commitment of the Agency made on October 6, 2005, before millions of taxpayer dollars are wasted on irresponsible and inefficient spending;

(2)(A) immediately implement the planned competitive contracting strategy of the Agency for recovery work in all current and future reconstruction efforts; and

(B) in carrying out that strategy, should prioritize local and small disadvantaged businesses in the contracting and subcontracting process; and

(3) immediately after the awarding of a contract, publicly disclose the amount and competitive or noncompetitive nature of the contract.

SEC. 406. DISABILITY PREFERENCE PROGRAM FOR TAX COLLECTION CONTRACTS.

(a) IN GENERAL.—The Secretary of the Treasury shall not enter into any qualified tax collection contract after April 1, 2006, until the Secretary implements a disability preference program that meets the requirements of subsection (b).

(b) DISABILITY PREFERENCE PROGRAM REQUIREMENTS.—

(1) IN GENERAL.—A disability preference program meets the requirements of this subsection if such program requires that not less than 10 percent of the accounts of each dollar value category are awarded to persons described in paragraph (2).

(2) PERSON DESCRIBED.—For purposes of paragraph (1), a person is described in this paragraph if—

(A) as of the date any qualified tax collection contract is awarded—

(i) such person employs not less than 50 severely disabled individuals within the United States; or

(ii) not less than 30 percent of the employees of such person within the United States are severely disabled individuals;

(B) such person agrees as a condition of the qualified tax collection contract that not more than 90 days after the date such contract is awarded, not less than 35 percent of the employees of such person employed in connection with providing services under such contract shall—

(i) be hired after the date such contract is awarded; and

(ii) be severely disabled individuals; and

(C) such person is otherwise qualified to perform the services required.

(c) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED TAX COLLECTION CONTRACT.—The term "qualified tax collection contract" shall have the meaning given such term under section 6306(b) of the Internal Revenue Code of 1986.

(2) DOLLAR VALUE CATEGORY.—The term "dollar value category" means the dollar ranges of accounts for collection as determined and assigned by the Secretary under section 6306(b)(1)(B) of the Internal Revenue Code of 1986 with respect to a qualified tax collection contract.

(3) SEVERELY DISABLED INDIVIDUAL.—The term "severely disabled individual" means—

(A) a veteran of the United States armed forces with a disability of 50 percent or greater—

(i) determined by the Secretary of Veterans Affairs to be service-connected; or

(ii) deemed by law to be service-connected; or

(B) any individual who is a disabled beneficiary (as defined in section 1148(k)(2) of the Social Security Act (42 U.S.C. 1320b–19(k)(2))) or who would be considered to be such a disabled beneficiary but for having income or resources in excess of the income or resources eligibility limits established under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), respectively.

SEC. 407. SENSE OF CONGRESS REGARDING DOHA ROUND.

(a) FINDINGS.—The Congress makes the following findings:

(1) Members of the World Trade Organization (WTO) are currently engaged in a round of trade negotiations known as the Doha Development Agenda (Doha Round).

(2) The Doha Round includes negotiations aimed at clarifying and improving disciplines under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement) and the Agreement on Subsidies and Countervailing Measures (Subsidies Agreement).

(3) The WTO Ministerial Declaration adopted on November 14, 2001 (WTO Paper No. WT/MIN(01)/DEC/1) specifically provides that the Doha Round negotiations are to preserve the "basic concepts, principles and effectiveness" of the Antidumping Agreement and the Subsidies Agreement.

(4) In section 2102(b)(14)(A) of the Bipartisan Trade Promotion Authority Act of 2002, the Congress mandated that the principal negotiating objective of the United States with respect to trade remedy laws was to "preserve the ability of the United States to enforce rigorously its trade laws . . . and avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies".

(5) The countries that have been the most persistent and egregious violators of international fair trade rules are engaged in an aggressive effort to significantly weaken the disciplines provided in the Antidumping Agreement and the Subsidies Agreement and undermine the ability of the United States to effectively enforce its trade remedy laws.

(6) Chronic violators of fair trade disciplines have put forward proposals that would substantially weaken United States trade remedy laws and practices, including mandating that unfair trade orders terminate after a set number of years even if unfair trade and injury are likely to recur, mandating that trade remedy duties reflect less than the full margin of dumping or subsidization, mandating higher de minimis levels of unfair trade, making cumulation of the effects of imports from multiple countries more difficult in unfair trade investigations, outlawing the critical practice of "zeroing" in antidumping investigations, mandating the weighing of causes, and mandating other provisions that make it more difficult to prove injury.

(7) United States trade remedy laws have already been significantly weakened by numerous unjust and activist WTO dispute settlement decisions which have created new obligations to which the United States never agreed.

(8) Trade remedy laws remain a critical resource for American manufacturers, agricultural producers, and aquacultural producers in responding to closed foreign markets, subsidized imports, and other forms of unfair trade, particularly in the context of the challenges currently faced by these vital sectors of the United States economy.

(9) The United States had a current account trade deficit of approximately $668,000,000,000 in 2004, including a trade deficit of almost $162,000,000,000 with China alone, as well as a trade deficit of $40,000,000,000 in advanced technology.

(10) United States manufacturers have lost over 3,000,000 jobs since June 2000, and United States manufacturing employment is currently at its lowest level since 1950.

(11) Many industries critical to United States national security are at severe risk from unfair foreign competition.

(12) The Congress strongly believes that the proposals put forward by countries seeking to undermine trade remedy disciplines in the Doha Round would result in serious harm to the United States economy, including significant job losses and trade disadvantages.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States should not be a signatory to any agreement or protocol with respect to the Doha Development Round of the World Trade Organization negotiations, or any other bilateral or multilateral trade negotiations, that—

(A) adopts any proposal to lessen the effectiveness of domestic and international disciplines on unfair trade or safeguard provisions, including proposals—

(i) mandating that unfair trade orders terminate after a set number of years even if unfair trade and injury are likely to recur;

(ii) mandating that trade remedy duties reflect less than the full margin of dumping or subsidization;

(iii) mandating higher de minimis levels of unfair trade;

(iv) making cumulation of the effects of imports from multiple countries more difficult in unfair trade investigations;

(v) outlawing the critical practice of "zeroing" in antidumping investigations; or

(vi) mandating the weighing of causes or other provisions making it more difficult to prove injury in unfair trade cases; and

(B) would lessen in any manner the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws;

(2) the United States trade laws and international rules appropriately serve the public interest by offsetting injurious unfair trade, and that further "balancing modifications" or other similar provisions are unnecessary and would add to the complexity and difficulty of achieving relief against injurious unfair trade practices; and

(3) the United States should ensure that any new agreement relating to international disciplines on unfair trade or safeguard provisions fully rectifies and corrects decisions by WTO dispute settlement panels or the Appellate Body that have unjustifiably and negatively impacted, or threaten to negatively impact, United States law or practice, including a law or practice with respect to foreign dumping or subsidization.

SEC. 408. MODIFICATION OF BOND RULE.

In the case of bonds issued after the date of the enactment of this Act and before August 31, 2009—

(1) the requirement of paragraph (1) of section 648 of the Deficit Reduction Act of 1984 (98 Stat. 941) shall be treated as met with respect to the securities or obligations referred to in such section if such securities or obligations are held in a fund the annual distributions from which cannot exceed 7 percent of the average fair market value of the assets held in such fund except to the extent distributions are necessary to pay debt service on the bond issue,

(2) paragraph (3) of such section shall be applied by substituting "distributions from" for "the investment earnings of" both places it appears, and

(3) Paragraph (4) of such section shall be applied by substituting "March 1, 1985" for "October 9, 1969".

SEC. 409. TREATMENT OF CERTAIN STOCK OPTION PLANS UNDER NONQUALIFIED DEFERRED COMPENSATION RULES.

(a) In General.—The Secretary of the Treasury shall modify the regulations under section 409A of the Internal Revenue Code of 1986 to extend to applicable foreign option plans the exception under such section for incentive stock options under section 422 of such Code and options granted under an employee stock purchase plan meeting the requirements of section 423 of such Code. Such extension shall be subject to such terms and conditions as may be prescribed in such regulations.

(b) Applicable Foreign Option Plans.—For purposes of subsection (a)—

(1) In general.—The term "applicable foreign option plan" means a plan providing for the issuance of employee stock options—

(A) which is established under the laws of a foreign jurisdiction, and

(B) which, under such laws or the terms of the plan (or both), is subject to requirements substantially similar to the requirements under section 422 or 423 of such Code.

(2) Substantially similar.—A plan shall not be treated as subject to substantially similar requirements under paragraph (1)(B) unless—

(A) the plan is required to cover substantially all employees,

(B) in the case of an option under an employee stock purchase plan, the plan is required to provide an option price which is not less than the amount specified in section 423(b)(6) of such Code, except that such section shall be applied by substituting "80 percent" for "85 percent" each place it appears,

(C) the plan is required to provide coverage of individuals who, but for the exception of the application of section 409A of such Code by reason of this section, would be subject to tax under such section with respect to the plan, and

(D) the plan meets such other requirements as the Secretary of the Treasury prescribes in the regulations under subsection (a).

SEC. 410. SENSE OF THE SENATE REGARDING THE DEDICATION OF EXCESS FUNDS.

It is the sense of the Senate that any increases in revenues to the Treasury as a result of this Act and the amendments made by this Act that exceed the amounts specified in the reconciliation instructions shall be dedicated to the Low-Income Home Energy Assistance Program, in an amount not to exceed the amount which is $2,900,000,000 more than the funding levels established for such Program for fiscal year 2005.

TITLE V—REVENUE OFFSET PROVISIONS

Subtitle A—Provisions Designed To Curtail Tax Shelters

SEC. 501. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) Standards Conformed to Taxpayer Standards.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking "realistic possibility of being sustained on its merits" in paragraph (1) and inserting "reasonable belief that the tax treatment in such position was more likely than not the proper treatment",

(2) by striking "or was frivolous" in paragraph (3) and inserting "or there was no reasonable basis for the tax treatment of such position", and

(3) by striking "Unrealistic" in the heading and inserting "Improper".

(b) Amount of Penalty.—Section 6694 is amended—

(1) by striking "$250" in subsection (a) and inserting "$1,000", and

(2) by striking "$1,000" in subsection (b) and inserting "$5,000".

(c) Effective Date.—The amendments made by this section shall apply to documents prepared after the date of the enactment of this Act.

SEC. 502. MODIFICATION OF EFFECTIVE DATE OF EXCEPTION FROM SUSPENSION RULES FOR CERTAIN LISTED AND REPORTABLE TRANSACTIONS.

(a) Effective Date Modification.—

(1) In general.—Paragraph (2) of section 903(d) of the American Jobs Creation Act of 2004 is amended to read as follows:

"(2) Exception for reportable or listed transactions.—

"(A) In general.—The amendments made by subsection (c) shall apply with respect to interest accruing after October 3, 2004.

"(B) Special rule for certain listed and reportable transactions.—

"(i) In general.—Except as provided in clause (ii), the amendments made by subsection (c) shall also apply with respect to interest accruing on or before October 3, 2004.

"(ii) Participants in settlement initiatives.—Clause (i) shall not apply to any transaction if, as of January 23, 2006—

"(I) the taxpayer is participating in a settlement initiative described in Internal Revenue Service Announcement 2005-80 with respect to such transaction, or

"(II) the taxpayer has entered into a settlement agreement pursuant to such an initiative.

"(iii) Termination of exception.—Clause (ii)(I) shall not apply to any taxpayer if, after January 23, 2006, the taxpayer withdraws from, or terminates, participation in the initiative or the Secretary of the Treasury or the Secretary's delegate determines that a settlement agreement will not be reached pursuant to the initiative within a reasonable period of time.".

(2) Effective date.—The amendment made by this subsection shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 to which it relates.

(b) Treatment of Amended Returns and Other Similar Notices of Additional Tax Owed.—

(1) In general.—Section 6404(g)(1) (relating to suspension) is amended by adding at the end the following new sentence: "If, after the return for a taxable year is filed, the taxpayer provides to the Secretary one or more signed written documents showing that the taxpayer owes an additional amount of tax for the taxable year, clause (i) shall be applied by substituting the date the last of the documents was provided for the date on which the return is filed.".

(2) Effective date.—The amendment made by this subsection shall apply to documents provided on or after the date of the enactment of this Act.

SEC. 503. FRIVOLOUS TAX SUBMISSIONS.

(a) Civil Penalties.—Section 6702 is amended to read as follows:

"SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

"(a) Civil Penalty for Frivolous Tax Returns.—A person shall pay a penalty of $5,000 if—

"(1) such person files what purports to be a return of a tax imposed by this title but which—

"(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

"(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

"(2) the conduct referred to in paragraph (1)—

"(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

"(B) reflects a desire to delay or impede the administration of Federal tax laws.

"(b) Civil Penalty for Specified Frivolous Submissions.—

"(1) Imposition of penalty.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

"(2) Specified frivolous submission.—For purposes of this section—

"(A) Specified frivolous submission.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

"(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

"(ii) reflects a desire to delay or impede the administration of Federal tax laws.

"(B) Specified submission.—The term 'specified submission' means—

"(i) a request for a hearing under—

"(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

"(II) section 6330 (relating to notice and opportunity for hearing before levy), and

"(ii) an application under—

"(I) section 6159 (relating to agreements for payment of tax liability in installments),

"(II) section 7122 (relating to compromises), or

"(III) section 7811 (relating to taxpayer assistance orders).

"(3) Opportunity to withdraw submission.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

"(c) Listing of Frivolous Positions.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

"(d) Reduction of Penalty.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

"(e) Penalties in Addition to Other Penalties.—The penalties imposed by this section shall be in addition to any other penalty provided by law.".

(b) Treatment of Frivolous Requests for Hearings Before Levy.—

(1) Frivolous requests disregarded.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

"(g) Frivolous Requests for Hearing, Etc.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.".

(2) Preclusion from raising frivolous issues at hearing.—Section 6330(c)(4) is amended—

(A) by striking "(A)" and inserting "(A)(i)";

(B) by striking "(B)" and inserting "(ii)";

(C) by striking the period at the end of the first sentence and inserting "; or"; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

"(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).".

(3) Statement of grounds.—Section 6330(b)(1) is amended by striking "under subsection (a)(3)(B)" and inserting "in writing under subsection (a)(3)(B) and states the grounds for the requested hearing".

(c) Treatment of Frivolous Requests for Hearings Upon Filing of Notice of Lien.—Section 6320 is amended—

(1) in subsection (b)(1), by striking "under subsection (a)(3)(B)" and inserting "in writing under subsection (a)(3)(B) and states the grounds for the requested hearing", and

(2) in subsection (c), by striking "and (e)" and inserting "(e), and (g)".

(d) Treatment of Frivolous Applications for Offers-in-Compromise and Installment Agreements.—Section 7122 is amended by adding at the end the following new subsection:

"(e) Frivolous Submissions, Etc.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.".

(e) Clerical Amendment.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

"Sec. 6702. Frivolous tax submissions.".

(f) Effective Date.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 504. PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.

(a) Penalty for Promoting Abusive Tax Shelters.—Section 6700 (relating to promoting abusive tax shelters, etc.) is amended—

(1) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively,

(2) by striking "a penalty" and all that follows through the period in the first sentence of subsection (a) and inserting "a penalty determined under subsection (b)", and

(3) by inserting after subsection (a) the following new subsections:

"(b) Amount of Penalty; Calculation of Penalty; Liability for Penalty.—

"(1) Amount of penalty.—The amount of the penalty imposed by subsection (a) shall be 100 percent of the gross income derived (or to be derived) from such activity by the person or persons subject to such penalty.

"(2) Calculation of penalty.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of an activity described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who participated in such an activity.

"(3) Liability for penalty.—If more than 1 person is liable under subsection (a) with respect to such activity, all such persons shall be jointly and severally liable for the penalty under such subsection.

"(c) Penalty Not Deductible.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be considered an ordinary and necessary expense in carrying on a trade or business for purposes of this title and shall not be deductible by the person who is subject to such penalty or who makes such payment.".

(b) Conforming Amendment.—Section 6700(a) is amended by striking the last sentence.

(c) Effective Date.—The amendments made by this section shall apply to the activities described in paragraphs (1) and (2) of section 6700(a) of the Internal Revenue Code of 1986 and after the date of the enactment of this Act.

SEC. 505. PENALTY FOR AIDING AND ABETTING THE UNDERSTATEMENT OF TAX LIABILITY.

(a) In General.—Section 6701(a) (relating to imposition of penalty) is amended—

(1) by inserting ", or tax liability reflected in," after "the preparation or presentation of" in paragraph (1),

(2) by inserting "aid, assistance, procurement, or advice with respect to such" before "portion" both places it appears in paragraphs (2) and (3), and

(3) by inserting "instance of aid, assistance, procurement, or advice or each such" before "document" in the matter following paragraph (3).

(b) Amount of Penalty.—Subsection (b) of section 6701 (relating to penalties for aiding and abetting understatement of tax liability) is amended to read as follows:

"(b) Amount of Penalty; Calculation of Penalty; Liability for Penalty.—

"(1) Amount of penalty.—The amount of the penalty imposed by subsection (a) shall be 100 percent of the gross income derived (or to be derived) from such aid, assistance, procurement, or advice provided by the person or persons subject to such penalty.

"(2) Calculation of penalty.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of aid, assistance, procurement, or advice described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who made such an understatement of the liability for tax.

"(3) Liability for penalty.—If more than 1 person is liable under subsection (a) with respect to providing such aid, assistance, procurement, or advice, all such persons shall be jointly and severally liable for the penalty under such subsection.".

(c) Penalty Not Deductible.—Section 6701 is amended by adding at the end the following new subsection:

"(g) Penalty Not Deductible.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be considered an ordinary and necessary expense in carrying on a trade or business for purposes of this title and shall not be deductible by the person who is subject to such penalty or who makes such payment.".

(d) Effective Date.—The amendments made by this section shall apply to the activities described in section 6701(a) of the Internal Revenue Code of 1986 after the date of the enactment of this Act.

Subtitle B—Economic Substance Doctrine

SEC. 511. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) In General.—Section 7701 is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) Clarification of Economic Substance Doctrine; Etc.—

"(1) General rules.—

"(A) In general.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

"(B) Definition of economic substance.—For purposes of subparagraph (A)—

"(i) In general.—A transaction has economic substance only if—

"(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer's economic position, and

"(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

"(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

"(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

"(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

"(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

"(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

"(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

"(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

"(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

"(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

"(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

"(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person's liability under subtitle A.

"(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

"(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

"(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

"(I) depreciation,

"(II) any tax credit, or

"(III) any other deduction as provided in guidance by the Secretary, and

"(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

"(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 512. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

"SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

"(a) IMPOSITION OF PENALTY.—If a taxpayer has an noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

"(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

"(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

"(1) IN GENERAL.—The term 'noneconomic substance transaction understatement' means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

"(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term 'noneconomic substance transaction' means any transaction if—

"(A) there is a lack of economic substance (within the meaning of section 7701(o)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(o)(2), or

"(B) the transaction fails to meet the requirements of any similar rule of law.

"(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

"(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

"(2) APPLICABLE RULES.—The rules of paragraphs (2) and (3) of section 6707A(d) shall apply for purposes of paragraph (1).

"(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

"(f) CROSS REFERENCES.—

"(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).

"(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).".

(b) COORDINATION WITH OTHER UNDERSTATEMENTS AND PENALTIES.—

(1) The second sentence of section 6662(d)(2)(A) is amended by inserting "and without regard to items with respect to which a penalty is imposed by section 6662B" before the period at the end.

(2) Subsection (e) of section 6662A is amended—

(A) in paragraph (1), by inserting "and noneconomic substance transaction understatements" after "reportable transaction understatements" both places it appears,

(B) in paragraph (2)(A), by inserting "and a noneconomic substance transaction understatement" after "reportable transaction understatement",

(C) in paragraph (2)(B), by inserting "6662B or" before "6663",

(D) in paragraph (2)(C)(i), by inserting "or section 6662B" before the period at the end,

(E) in paragraph (2)(C)(ii), by inserting "and section 6662B" after "This section",

(F) in paragraph (3), by inserting "or noneconomic substance transaction understatement" after "reportable transaction understatement", and

(G) by adding at the end the following new paragraph:

"(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' has the meaning given such term by section 6662B(c).".

(3) Subsection (e) of section 6707A is amended—

(A) by striking "or" at the end of subparagraph (B), and

(B) by striking subparagraph (C) and inserting the following new subparagraphs:

"(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction, or

"(D) is required to pay a penalty under section 6662(h) with respect to any transaction and would (but for section 6662A(e)(2)(C)) have been subject to penalty under section 6662A at a rate prescribed under section 6662A(c) or under section 6662B.".

(c) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

"Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 513. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) In General.—Section 163(m) (relating to interest on unpaid taxes attributable to nondisclosed reportable transactions) is amended—

(1) by striking "attributable" and all that follows and inserting the following: "attributable to—

"(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

"(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).", and

(2) by inserting "and Noneconomic Substance Transactions" in the heading thereof after "Transactions".

(b) Effective Date.—The amendments made by this section shall apply to transactions after the date of the enactment of this Act in taxable years ending after such date.

Subtitle C—Improvements in Efficiency and Safeguards in Internal Revenue Service Collection

SEC. 521. WAIVER OF USER FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.

(a) In General.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

"(e) Waiver of User Fees for Installment Agreements Using Automated Withdrawals.—In the case of a taxpayer who enters into an installment agreement in which automated installment payments are agreed to, the Secretary shall waive the fee (if any) for entering into the installment agreement.".

(b) Effective Date.—The amendments made by this section shall apply to agreements entered into on or after the date which is 180 days after the date of the enactment of this Act.

SEC. 522. TERMINATION OF INSTALLMENT AGREEMENTS.

(a) In General.—Section 6159(b)(4) (relating to failure to pay an installment or any other tax liability when due or to provide requested financial information) is amended by striking "or" at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (E), and by inserting after subparagraph (B) the following:

"(C) to make a Federal tax deposit under section 6302 at the time such deposit is required to be made,

"(D) to file a return of tax imposed under this title by its due date (including extensions), or".

(b) Conforming Amendment.—The heading for section 6159(b)(4) is amended by striking "Failure to pay an installment or any other tax liability when due or to provide requested financial information" and inserting "Failure to make payments or deposits or file returns when due or to provide requested financial information".

(c) Effective Date.—The amendments made by this section shall apply to failures occurring on or after the date of the enactment of this Act.

SEC. 523. PARTIAL PAYMENTS REQUIRED WITH SUBMISSION OF OFFERS-IN-COMPROMISE.

(a) In General.—Section 7122 (relating to compromises), as amended by this Act, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c) Rules for Submission of Offers-in-Compromise.—

"(1) Partial payment required with submission.—

"(A) Lump-sum offers.—

"(i) In general.—The submission of any lump-sum offer-in-compromise shall be accompanied by the payment of 20 percent of amount of such offer.

"(ii) Lump-sum offer-in-compromise.—For purposes of this section, the term 'lump-sum offer-in-compromise' means any offer of payments made in 5 or fewer installments.

"(B) Periodic payment offers.—The submission of any periodic payment offer-in-compromise shall be accompanied by the payment of the amount of the first proposed installment and each proposed installment due during the period such offer is being evaluated for acceptance and has not been rejected by the Secretary. Any failure to make a payment required under the preceding sentence shall be deemed a withdrawal of the offer-in-compromise.

"(2) Rules of application.—

"(A) Use of payment.—The application of any payment made under this subsection to the assessed tax or other amounts imposed under this title with respect to such tax may be specified by the taxpayer.

"(B) No user fee imposed.—Any user fee which would otherwise be imposed under this section shall not be imposed on any offer-in-compromise accompanied by a payment required under this subsection.

"(C) Waiver authority.—The Secretary may issue regulations waiving any payment required under paragraph (1) in a manner consistent with the practices established in accordance with the requirements under subsection (d)(3).".

(b) Additional Rules Relating to Treatment of Offers.—

(1) Unprocessable offer if payment requirements are not met.—Paragraph (3) of section 7122(d) (relating to standards for evaluation of offers), as redesignated by subsection (a), is amended by striking "; and" at the end of subparagraph (A) and inserting a comma, by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) any offer-in-compromise which does not meet the requirements of subsection (c) shall be returned to the taxpayer as unprocessable.".

(2) Deemed acceptance of offer not rejected within certain period.—Section 7122, as amended by subsection (a), is amended by adding at the end the following new subsection:

"(g) Deemed Acceptance of Offer Not Rejected Within Certain Period.—Any offer-in-compromise submitted under this section shall be deemed to be accepted by the Secretary if such offer is not rejected by the Secretary before the date which is 24 months after the date of the submission of such offer (12 months for offers-in-compromise submitted after the date which is 5 years after the date of the enactment of this subsection). For purposes of the preceding sentence, any period during which any tax liability which is the subject of such offer-in-compromise is in dispute in any judicial proceeding shall not be taken in to account in determining the expiration of the 24-month period (or 12-month period, if applicable).".

(c) Effective Date.—The amendments made by this section shall apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act.

Subtitle D—Penalties and Fines

SEC. 531. INCREASE IN CRIMINAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.

(a) In General.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking "Any person who—" and inserting "(a) **IN GENERAL.**—Any person who—", and

(2) by adding at the end the following new subsection:

"(b) Increase in Monetary Limitation for Underpayment or Overpayment of Tax Due to Fraud.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.".

(b) Increase in Penalties.—

(1) Attempt to evade or defeat tax.—Section 7201 is amended—

(A) by striking "$100,000" and inserting "$500,000",

(B) by striking "$500,000" and inserting "$1,000,000", and

(C) by striking "5 years" and inserting "10 years".

(2) Willful failure to file return, supply information, or pay tax.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking "Any person" and inserting the following:

"(a) In General.—Any person", and

(ii) by striking "$25,000" and inserting "$50,000",

(B) in the third sentence, by striking "section" and inserting "subsection", and

(C) by adding at the end the following new subsection:

"(b) Aggravated Failure to File.—

"(1) In general.—In the case of any failure described in paragraph (2), the first sentence of subsection (a) shall be applied by substituting—

"(A) 'felony' for 'misdemeanor',

"(B) '$500,000 ($1,000,000' for '$25,000 ($100,000', and

"(C) '10 years' for '1 year'.

"(2) Failure described.—A failure described in this paragraph is a failure to make a return described in subsection (a) for a period of 3 or more consecutive taxable years.".

(3) Fraud and false statements.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking "$100,000" and inserting "$500,000",

(B) by striking "$500,000" and inserting "$1,000,000", and

(C) by striking "3 years" and inserting "5 years".

(c) Effective Date.—The amendments made by this section shall apply to actions, and failures to act, occurring after the date of the enactment of this Act.

SEC. 532. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.

(a) Determination of Penalty.—

(1) In general.—Notwithstanding any other provision of law, in the case of an applicable taxpayer—

(A) the determination as to whether any interest or applicable penalty is to be imposed with respect to any arrangement described in paragraph (2), or to any underpayment of Federal income tax attributable to items arising in connection with any such arrangement, shall be made without regard to the rules of subsections (b), (c), and (d) of section 6664 of the Internal Revenue Code of 1986, and

(B) if any such interest or applicable penalty is imposed, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(2) APPLICABLE TAXPAYER.—For purposes of this subsection—

(A) IN GENERAL.—The term "applicable taxpayer" means a taxpayer which—

(i) has underreported its United States income tax liability with respect to any item which directly or indirectly involves—

(I) any financial arrangement which in any manner relies on the use of offshore payment mechanisms (including credit, debit, or charge cards) issued by banks or other entities in foreign jurisdictions, or

(II) any offshore financial arrangement (including any arrangement with foreign banks, financial institutions, corporations, partnerships, trusts, or other entities), and

(ii) has neither signed a closing agreement pursuant to the Voluntary Offshore Compliance Initiative established by the Department of the Treasury under Revenue Procedure 2003-11 nor voluntarily disclosed its participation in such arrangement by notifying the Internal Revenue Service of such arrangement prior to the issue being raised by the Internal Revenue Service during an examination.

(B) AUTHORITY TO WAIVE.—The Secretary of the Treasury or the Secretary's delegate may waive the application of paragraph (1) to any taxpayer if the Secretary or the Secretary's delegate determines that the use of such offshore payment mechanisms is incidental to the transaction and, in addition, in the case of a trade or business, such use is conducted in the ordinary course of the type of trade or business of the taxpayer.

(C) ISSUES RAISED.—For purposes of subparagraph (A)(ii), an item shall be treated as an issue raised during an examination if the individual examining the return—

(i) communicates to the taxpayer knowledge about the specific item, or

(ii) has made a request to the taxpayer for information and the taxpayer could not make a complete response to that request without giving the examiner knowledge of the specific item.

(b) APPLICABLE PENALTY.—For purposes of this section, the term "applicable penalty" means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if, as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

SEC. 533. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) IN GENERAL.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

"(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

"(2) EXCEPTION FOR AMOUNTS CONSTITUTING RESTITUTION OR PAID TO COME INTO COMPLIANCE WITH LAW.—Paragraph (1) shall not apply to any amount which—

"(A) the taxpayer establishes—

"(i) constitutes restitution (including remediation of property) for damage or harm caused by or which may be caused by the violation of any law or the potential violation of any law, or

"(ii) is paid to come into compliance with any law which was violated or involved in the investigation or inquiry, and

"(B) is identified as restitution or as an amount paid to come into compliance with the law, as the case may be, in the court order or settlement agreement.

Identification pursuant to subparagraph (B) alone shall not satisfy the requirement under subparagraph (A). This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

"(3) EXCEPTION FOR AMOUNTS PAID OR INCURRED AS THE RESULT OF CERTAIN COURT ORDERS.—Paragraph (1) shall not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (4) is a party.

"(4) CERTAIN NONGOVERNMENTAL REGULATORY ENTITIES.—An entity is described in this paragraph if it is—

"(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

"(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.

"(5) EXCEPTION FOR TAXES DUE.—Paragraph (1) shall not apply to any amount paid or incurred as taxes due.".

(b) REPORTING OF DEDUCTIBLE AMOUNTS.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6050T the following new section:

"SEC. 6050U. INFORMATION WITH RESPECT TO CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

"(a) REQUIREMENT OF REPORTING.—

"(1) IN GENERAL.—The appropriate official of any government or entity which is described in section 162(f)(4) which is involved in a suit or agreement described in paragraph (2) shall make a return in such form as determined by the Secretary setting forth—

"(A) the amount required to be paid as a result of the suit or agreement to which paragraph (1) of section 162(f) applies,

"(B) any amount required to be paid as a result of the suit or agreement which constitutes restitution or remediation of property, and

"(C) any amount required to be paid as a result of the suit or agreement for the purpose of coming into compliance with any law which was violated or involved in the investigation or inquiry.

"(2) SUIT OR AGREEMENT DESCRIBED.—

"(A) IN GENERAL.—A suit or agreement is described in this paragraph if—

"(i) it is—

"(I) a suit with respect to a violation of any law over which the government or entity has authority and with respect to which there has been a court order, or

"(II) an agreement which is entered into with respect to a violation of any law over which the government or entity has authority, or with respect to an investigation or inquiry by the government or entity into the potential violation of any law over which such government or entity has authority, and

"(ii) the aggregate amount involved in all court orders and agreements with respect to the violation, investigation, or inquiry is $600 or more.

"(B) ADJUSTMENT OF REPORTING THRESHOLD.—The Secretary may adjust the $600 amount in subparagraph (A)(ii) as necessary in order to ensure the efficient administration of the internal revenue laws.

"(3) TIME OF FILING.—The return required under this subsection shall be filed not later than—

"(A) 30 days after the date on which a court order is issued with respect to the suit or the date the agreement is entered into, as the case may be, or

"(B) the date specified Secretary.

"(b) STATEMENTS TO BE FURNISHED TO INDIVIDUALS INVOLVED IN THE SETTLEMENT.—Every person required to make a return under subsection (a) shall furnish to each person who is a party to the suit or agreement a written statement showing—

"(1) the name of the government or entity, and

"(2) the information supplied to the Secretary under subsection (a)(1).

The written statement required under the preceding sentence shall be furnished to the person at the same time the government or entity provides the Secretary with the information required under subsection (a).

"(c) APPROPRIATE OFFICIAL DEFINED.—For purposes of this section, the term 'appropriate official' means the officer or employee having control of the suit, investigation, or inquiry or the person appropriately designated for purposes of this section.".

(2) CONFORMING AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6050T the following new item:

"Sec. 6050U. Information with respect to certain fines, penalties, and other amounts.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred on or after the date of the enactment of this Act, except that such amendments shall not apply to amounts paid or incurred under any binding order or agreement entered into before such date. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained before such date.

SEC. 534. DENIAL OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) DISALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(B) by striking "If" and inserting:

"(1) TREBLE DAMAGES.—If", and

(C) by adding at the end the following new paragraph:

"(2) PUNITIVE DAMAGES.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of any action. This paragraph shall not apply to punitive damages described in section 104(c).".

(2) CONFORMING AMENDMENT.—The heading for section 162(g) is amended by inserting "OR PUNITIVE DAMAGES" after "LAWS".

(b) INCLUSION IN INCOME OF PUNITIVE DAMAGES PAID BY INSURER OR OTHERWISE.—

(1) IN GENERAL.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end the following new section:

"SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.

"Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise by reason of the taxpayer's liability (or agreement) to pay punitive damages.".

(2) REPORTING REQUIREMENTS.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

"(f) SECTION TO APPLY TO PUNITIVE DAMAGES COMPENSATION.—This section shall apply to payments by a person to or on behalf of another person as insurance or otherwise by reason of the other person's liability (or agreement) to pay punitive damages.".

(3) CONFORMING AMENDMENT.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end the following new item:

"Sec. 91. Punitive damages compensated by insurance or otherwise"..

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to damages paid or incurred on or after the date of the enactment of this Act.

SEC. 535. INCREASE IN PENALTY FOR BAD CHECKS AND MONEY ORDERS.

(a) IN GENERAL.—Section 6657 (relating to bad checks) is amended—

(1) by striking "$750" and inserting "$2,000", and

(2) by striking "$15" and inserting "$40".

(b) EFFECTIVE DATE.—The amendments made by this section apply to checks or money orders received after the date of the enactment of this Act.

Subtitle E—Provisions To Discourage Expatriation

SEC. 541. TAX TREATMENT OF INVERTED ENTITIES.

(a) IN GENERAL.—Section 7874 is amended—

(1) by striking "March 4, 2003" in subsection (a)(2)(B)(i) and in the matter following subsection (a)(2)(B)(iii) and inserting "March 20, 2002",

(2) by striking "at least 60 percent" in subsection (a)(2)(B)(ii) and inserting "more than 50 percent",

(3) by striking "80 percent" in subsection (b) and inserting "at least 80 percent",

(4) by striking "60 percent" in subsection (b) and inserting "more than 50 percent",

(5) by adding at the end of subsection (a)(2) the following new sentence: "Except as provided in regulations, an acquisition of properties of a domestic corporation shall not be treated as described in subparagraph (B) if none of the corporation's stock was readily tradeable on an established securities market at any time during the 4-year period ending on the date of the acquisition.", and

(6) by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) SPECIAL RULES APPLICABLE TO EXPATRIATED ENTITIES.—

"(1) INCREASES IN ACCURACY-RELATED PENALTIES.—In the case of any underpayment of tax of an expatriated entity—

"(A) section 6662(a) shall be applied with respect to such underpayment by substituting '30 percent' for '20 percent', and

"(B) if such underpayment is attributable to one or more gross valuation understatements, the increase in the rate of penalty under section 6662(h) shall be to 50 percent rather than 40 percent.

"(2) MODIFICATIONS OF LIMITATION ON INTEREST DEDUCTION.—In the case of an expatriated entity, section 163(j) shall be applied—

"(A) without regard to paragraph (2)(A)(ii) thereof, and

"(B) by substituting '25 percent' for '50 percent' each place it appears in paragraph (2)(B) thereof.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after March 20, 2002.

SEC. 542. REVISION OF TAX RULES ON EXPATRIATION OF INDIVIDUALS.

(a) IN GENERAL.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

"SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.

"(a) GENERAL RULES.—For purposes of this subtitle—

"(1) MARK TO MARKET.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

"(2) RECOGNITION OF GAIN OR LOSS.—In the case of any sale under paragraph (1)—

"(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

"(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence.

"(3) EXCLUSION FOR CERTAIN GAIN.—

"(A) IN GENERAL.—The amount which, but for this paragraph, would be includible in the gross income of any individual by reason of this section shall be reduced (but not below zero) by $600,000. For purposes of this paragraph, allocable expatriation gain taken into account under subsection (f)(2) shall be treated in the same manner as an amount required to be includible in gross income.

"(B) COST-OF-LIVING ADJUSTMENT.—

"(i) IN GENERAL.—In the case of an expatriation date occurring in any calendar year after 2005, the $600,000 amount under subparagraph (A) shall be increased by an amount equal to—

"(I) such dollar amount, multiplied by

"(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 2004' for 'calendar year 1992' in subparagraph (B) thereof.

"(ii) ROUNDING RULES.—If any amount after adjustment under clause (i) is not a multiple of $1,000, such amount shall be rounded to the next lower multiple of $1,000.

"(4) ELECTION TO CONTINUE TO BE TAXED AS UNITED STATES CITIZEN.—

"(A) IN GENERAL.—If a covered expatriate elects the application of this paragraph—

"(i) this section (other than this paragraph and subsection (i)) shall not apply to the expatriate, but

"(ii) in the case of property to which this section would apply but for such election, the expatriate shall be subject to tax under this title in the same manner as if the individual were a United States citizen.

"(B) REQUIREMENTS.—Subparagraph (A) shall not apply to an individual unless the individual—

"(i) provides security for payment of tax in such form and manner, and in such amount, as the Secretary may require,

"(ii) consents to the waiver of any right of the individual under any treaty of the United States which would preclude assessment or collection of any tax which may be imposed by reason of this paragraph, and

"(iii) complies with such other requirements as the Secretary may prescribe.

"(C) ELECTION.—An election under subparagraph (A) shall apply to all property to which this section would apply but for the election and, once made, shall be irrevocable. Such election shall also apply to property the basis of which is determined in whole or in part by reference to the property with respect to which the election was made.

"(b) ELECTION TO DEFER TAX.—

"(1) IN GENERAL.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the payment of the additional tax attributable to such property shall be postponed until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

"(2) DETERMINATION OF TAX WITH RESPECT TO PROPERTY.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

"(3) TERMINATION OF POSTPONEMENT.—No tax may be postponed under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

"(4) SECURITY.—

"(A) IN GENERAL.—No election may be made under paragraph (1) with respect to any property unless adequate security is provided to the Secretary with respect to such property.

"(B) ADEQUATE SECURITY.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

"(i) it is a bond in an amount equal to the deferred tax amount under paragraph (2) for the property, or

"(ii) the taxpayer otherwise establishes to the satisfaction of the Secretary that the security is adequate.

"(5) WAIVER OF CERTAIN RIGHTS.—No election may be made under paragraph (1) unless the taxpayer consents to the waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

"(6) ELECTIONS.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable. An election may be made under paragraph (1) with respect to an interest in a trust with respect to which gain is required to be recognized under subsection (f)(1).

"(7) INTEREST.—For purposes of section 6601—

"(A) the last date for the payment of tax shall be determined without regard to the election under this subsection, and

"(B) section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

"(c) COVERED EXPATRIATE.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'covered expatriate' means an expatriate.

"(2) EXCEPTIONS.—An individual shall not be treated as a covered expatriate if—

"(A) the individual—

"(i) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

"(ii) has not been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) during the 5 taxable years ending with the taxable year during which the expatriation date occurs, or

"(B)(i) the individual's relinquishment of United States citizenship occurs before such individual attains age 18½, and

"(ii) the individual has been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.

"(d) EXEMPT PROPERTY; SPECIAL RULES FOR PENSION PLANS.—

"(1) EXEMPT PROPERTY.—This section shall not apply to the following:

"(A) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the day before the expatriation date, meet the requirements of section 897(c)(2).

"(B) SPECIFIED PROPERTY.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.

"(2) SPECIAL RULES FOR CERTAIN RETIREMENT PLANS.—

"(A) IN GENERAL.—If a covered expatriate holds on the day before the expatriation date any interest in a retirement plan to which this paragraph applies—

"(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but

"(ii) an amount equal to the present value of the expatriate's nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.

"(B) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—In the case of any distribution on or after the expatriation date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the amount otherwise includible in gross income by reason of the subsequent distribution shall be reduced by the excess of the amount includible in gross income under subparagraph (A) over any portion of such amount to which this subparagraph previously applied.

"(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS BY PLAN.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan's behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.

"(D) APPLICABLE PLANS.—This paragraph shall apply to—

"(i) any qualified retirement plan (as defined in section 4974(c)),

"(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

"(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

"(e) DEFINITIONS.—For purposes of this section—

"(1) EXPATRIATE.—The term 'expatriate' means—

"(A) any United States citizen who relinquishes citizenship, and

"(B) any long-term resident of the United States who—

"(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

"(ii) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country.

"(2) EXPATRIATION DATE.—The term 'expatriation date' means—

"(A) the date an individual relinquishes United States citizenship, or

"(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

"(3) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship on the earliest of—

"(A) the date the individual renounces such individual's United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

"(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

"(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

"(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

"(4) LONG-TERM RESIDENT.—The term 'long-term resident' has the meaning given to such term by section 877(e)(2).

"(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES' INTERESTS IN TRUST.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

"(A) the individual shall not be treated as having sold such interest,

"(B) such interest shall be treated as a separate share in the trust, and

"(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

"(ii) the separate trust shall be treated as having sold its assets on the day before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

"(iii) the individual shall be treated as having recontributed the assets to the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (C)(ii). In determining the amount of such distribution, proper adjustments shall be made for liabilities of the trust allocable to an individual's share in the trust.

"(2) SPECIAL RULES FOR INTERESTS IN QUALIFIED TRUSTS.—

"(A) IN GENERAL.—If the trust interest described in paragraph (1) is an interest in a qualified trust—

"(i) paragraph (1) and subsection (a) shall not apply, and

"(ii) in addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax in the amount determined under subparagraph (B).

"(B) AMOUNT OF TAX.—The amount of tax under subparagraph (A)(ii) shall be equal to the lesser of—

"(i) the highest rate of tax imposed by section 1(e) for the taxable year which includes the day before the expatriation date, multiplied by the amount of the distribution, or

"(ii) the balance in the deferred tax account immediately before the distribution determined without regard to any increases under subparagraph (C)(ii) after the 30th day preceding the distribution.

"(C) DEFERRED TAX ACCOUNT.—For purposes of subparagraph (B)(ii)—

"(i) OPENING BALANCE.—The opening balance in a deferred tax account with respect to any trust interest is an amount equal to the tax which would have been imposed on the allocable expatriation gain with respect to the trust interest if such gain had been included in gross income under subsection (a).

"(ii) INCREASE FOR INTEREST.—The balance in the deferred tax account shall be increased by the amount of interest determined (on the balance in the account at the time the interest accrues), for periods after the 90th day after the expatriation date, by using the rates and method applicable under section 6621 for underpayments of tax for such periods, except that section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

"(iii) DECREASE FOR TAXES PREVIOUSLY PAID.—The balance in the tax deferred account shall be reduced—

"(I) by the amount of taxes imposed by subparagraph (A) on any distribution to the person holding the trust interest, and

"(II) in the case of a person holding a nonvested interest, to the extent provided in regulations, by the amount of taxes imposed by subparagraph (A) on distributions from the trust with respect to nonvested interests not held by such person.

"(D) ALLOCABLE EXPATRIATION GAIN.—For purposes of this paragraph, the allocable expatriation gain with respect to any beneficiary's interest in a trust is the amount of gain which would be allocable to such beneficiary's vested and nonvested interests in the trust if the beneficiary held directly all assets allocable to such interests.

"(E) TAX DEDUCTED AND WITHHELD.—

"(i) IN GENERAL.—The tax imposed by subparagraph (A)(ii) shall be deducted and withheld by the trustees from the distribution to which it relates.

"(ii) EXCEPTION WHERE FAILURE TO WAIVE TREATY RIGHTS.—If an amount may not be deducted and withheld under clause (i) by reason of the distributee failing to waive any treaty right with respect to such distribution—

"(I) the tax imposed by subparagraph (A)(ii) shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax, and

"(II) any other beneficiary of the trust shall be entitled to recover from the distributee the amount of such tax imposed on the other beneficiary.

"(F) DISPOSITION.—If a trust ceases to be a qualified trust at any time, a covered expatriate disposes of an interest in a qualified trust, or a covered expatriate holding an interest in a qualified trust dies, then, in lieu of the tax imposed by subparagraph (A)(ii), there is hereby imposed a tax equal to the lesser of—

"(i) the tax determined under paragraph (1) as if the day before the expatriation date were the date of such cessation, disposition, or death, whichever is applicable, or

"(ii) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax imposed on the other beneficiary.

"(G) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

"(i) QUALIFIED TRUST.—The term 'qualified trust' means a trust which is described in section 7701(a)(30)(E).

"(ii) VESTED INTEREST.—The term 'vested interest' means any interest which, as of the day before the expatriation date, is vested in the beneficiary.

"(iii) NONVESTED INTEREST.—The term 'nonvested interest' means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

"(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

"(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is part of a retirement plan to which subsection (d)(2) applies.

"(3) DETERMINATION OF BENEFICIARIES' INTEREST IN TRUST.—

"(A) DETERMINATIONS UNDER PARAGRAPH (1).—For purposes of paragraph (1), a beneficiary's interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar adviser.

"(B) OTHER DETERMINATIONS.—For purposes of this section—

"(i) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiaries for purposes of this section.

"(ii) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

"(I) the methodology used to determine that taxpayer's trust interest under this section, and

"(II) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary's trust interest under this section.

"(g) TERMINATION OF DEFERRALS, ETC.—In the case of any covered expatriate, notwithstanding any other provision of this title—

"(1) any period during which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and

"(2) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

"(h) IMPOSITION OF TENTATIVE TAX.—

"(1) IN GENERAL.—If an individual is required to include any amount in gross income under subsection (a) for any taxable year, there is hereby imposed, immediately before the expatriation date, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

"(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

"(3) TREATMENT OF TAX.—Any tax paid under paragraph (1) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

"(4) DEFERRAL OF TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

"(i) SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.—

"(1) IMPOSITION OF LIEN.—

"(A) IN GENERAL.—If a covered expatriate makes an election under subsection (a)(4) or (b) which results in the deferral of any tax imposed by reason of subsection (a), the deferred amount (including any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).

"(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate's income tax which, but for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

"(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

"(A) the liability for tax by reason of this section is satisfied or has become unenforceable by reason of lapse of time, or

"(B) it is established to the satisfaction of the Secretary that no further tax liability may arise by reason of this section.

"(3) CERTAIN RULES APPLY.—The rules set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6324A.

"(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.".

(b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Section 102 (relating to gifts, etc. not included in gross income) is amended by adding at the end the following new subsection:

"(d) GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.—

"(1) IN GENERAL.—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is also used in section 877A shall have the same meaning as when used in section 877A.

"(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1) shall not apply to any property if either—

"(A) the gift, bequest, devise, or inheritance is—

"(i) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

"(ii) included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate, or

"(B) no such return was timely filed but no such return would have been required to be filed even if the covered expatriate were a citizen or long-term resident of the United States.".

(c) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) is amended by adding at the end the following new paragraph:

"(49) TERMINATION OF UNITED STATES CITIZENSHIP.—

"(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(e)(3).

"(B) DUAL CITIZENS.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.".

(d) INELIGIBILITY FOR VISA OR ADMISSION TO UNITED STATES.—

(1) IN GENERAL.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

"(E) FORMER CITIZENS NOT IN COMPLIANCE WITH EXPATRIATION REVENUE PROVISIONS.—Any alien who is a former citizen of the United States who relinquishes United States citizenship (within the meaning of section 877A(e)(3) of the Internal Revenue Code of 1986) and who is not in compliance with section 877A of such Code (relating to expatriation) is inadmissible.".

(2) AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—Section 6103(l) (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

"(21) DISCLOSURE TO DENY VISA OR ADMISSION TO CERTAIN EXPATRIATES.—Upon written request of the Attorney General or the Attorney General's delegate, the Secretary shall disclose whether an individual is in compliance with section 877A (and if not in compliance, any items of noncompliance) to officers and employees of the Federal agency responsible for administering section 212(a)(10)(E) of the Immigration and Nationality Act solely for the purpose of, and to the extent necessary in, administering such section 212(a)(10)(E).".

(B) SAFEGUARDS.—Section 6103(p)(4) (relating to safeguards) is amended by striking "or (20)" each place it appears and inserting "(20), or (21)".

(3) EFFECTIVE DATES.—The amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(e) CONFORMING AMENDMENTS.—

(1) Section 877 is amended by adding at the end the following new subsection:

"(h) APPLICATION.—This section shall not apply to an expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after the date of the enactment of this subsection.".

(2) Section 2107 is amended by adding at the end the following new subsection:

"(f) APPLICATION.—This section shall not apply to any expatriate subject to section 877A.".

(3) Section 2501(a)(3) is amended by adding at the end the following new subparagraph:

"(C) APPLICATION.—This paragraph shall not apply to any expatriate subject to section 877A.".

(4) Section 6039G(a) is amended by inserting "or 877A" after "section 877(b)".

(5) The second sentence of section 6039G(d) is amended by inserting "or who relinquishes United States citizenship (within the meaning of section 877A(e)(3))" after "section 877(a))".

(f) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

"Sec. 877A. Tax responsibilities of expatriation.".

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) whose expatriation date (as so defined) occurs on or after the date of the enactment of this Act.

(2) GIFTS AND BEQUESTS.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to gifts and bequests received on or after the date of the enactment of this Act, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

(3) DUE DATE FOR TENTATIVE TAX.—The due date under section 877A(h)(2) of the Internal Revenue Code of 1986, as added by this section, shall in no event occur before the 90th day after the date of the enactment of this Act.

Subtitle F—Miscellaneous Provisions

SEC. 551. TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT INSTRUMENTS.

(a) IN GENERAL.—Section 1275(d) (relating to regulation authority) is amended—

(1) by striking "The Secretary" and inserting the following:

"(1) IN GENERAL.—The Secretary", and

(2) by adding at the end the following new paragraph:

"(2) TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT.—

"(A) IN GENERAL.—In the case of a debt instrument which—

"(i) is convertible into stock of the issuing corporation, into stock or debt of a related party (within the meaning of section 267(b) or 707(b)(1)), or into cash or other property in an amount equal to the approximate value of such stock or debt, and

"(ii) provides for contingent payments,

any regulations which require original issue discount to be determined by reference to the comparable yield of a noncontingent fixed-rate debt instrument shall be applied as if the regulations require that such comparable yield be determined by reference to a noncontingent fixed-rate debt instrument which is convertible into stock.

"(B) SPECIAL RULE.—For purposes of subparagraph (A), the comparable yield shall be determined without taking into account the yield resulting from the conversion of a debt instrument into stock.".

(b) CROSS REFERENCE.—Section 163(e)(6) (relating to cross references) is amended by adding at the end the following:

"For the treatment of contingent payment convertible debt, see section 1275(d)(2).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued on or after the date of the enactment of this Act.

SEC. 552. GRANT OF TREASURY REGULATORY AUTHORITY TO ADDRESS FOREIGN TAX CREDIT TRANSACTIONS INVOLVING INAPPROPRIATE SEPARATION OF FOREIGN TAXES FROM RELATED FOREIGN INCOME.

(a) IN GENERAL.—Section 901 (relating to taxes of foreign countries and of possessions of United States) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) REGULATIONS.—The Secretary may prescribe regulations disallowing a credit under subsection (a) for all or a portion of any foreign tax, or allocating a foreign tax among 2 or more persons, in cases where the foreign tax is imposed on any person in respect of income of another person or in other cases involving the inappropriate separation of the foreign tax from the related foreign income.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 553. REPEAL OF SPECIAL PROPERTY EXCEPTION TO LEASING PROVISIONS OF THE AMERICAN JOBS CREATION ACT OF 2004.

(a) IN GENERAL.—Section 849(b) of the American Jobs Creation Act of 2004 is amended by striking paragraphs (1) and (2), by redesignating paragraphs (3) and (4) as paragraphs (1) and (2), respectively.

(b) LEASES TO FOREIGN ENTITIES.—Section 849(b) of the American Jobs Creation Act of 2004, as amended by subsection (a), is amended by adding at the end the following new paragraph:

"(3) LEASES TO FOREIGN ENTITIES.—In the case of tax-exempt use property leased to a tax-exempt entity which is a foreign person or entity, the amendments made by this part shall apply to taxable years beginning after December 31, 2005, with respect to leases entered into on or before March 12, 2004.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the American Jobs Creation Act of 2004.

SEC. 554. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERS WHICH ARE CORPORATIONS.

(a) IN GENERAL.—Section 163(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

"(8) TREATMENT OF CORPORATE PARTNERS.—Except to the extent provided by regulations, in applying this subsection to a corporation which owns (directly or indirectly) an interest in a partnership—

"(A) such corporation's distributive share of interest income paid or accrued to such partnership shall be treated as interest income paid or accrued to such corporation,

"(B) such corporation's distributive share of interest paid or accrued by such partnership shall be treated as interest paid or accrued by such corporation, and

"(C) such corporation's share of the liabilities of such partnership shall be treated as liabilities of such corporation.".

(b) ADDITIONAL REGULATORY AUTHORITY.—Section 163(j)(9) (relating to regulations), as redesignated by subsection (a), is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) regulations providing for the reallocation of shares of partnership indebtedness, or distributive shares of the partnership's interest income or interest expense, as may be appropriate to carry out the purposes of this subsection.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning on or after the date of the enactment of this Act.

SEC. 555. LIMITATION OF EMPLOYER DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES.

(a) IN GENERAL.—Paragraph (2) of section 274(e) (relating to expenses treated as compensation) is amended to read as follows:

"(2) EXPENSES TREATED AS COMPENSATION.—Expenses for goods, services, and facilities, to the extent that the expenses do not exceed the amount of the expenses which are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).".

(b) PERSONS NOT EMPLOYEES.—Paragraph (9) of section 274(e) is amended by striking "to the extent that the expenses are includible in the gross income" and inserting "to the extent that the expenses do not exceed the amount of the expenses which are includible in the gross income".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses incurred after the date of the enactment of this Act.

SEC. 556. INCREASE IN AGE OF MINOR CHILDREN WHOSE UNEARNED INCOME IS TAXED AS IF PARENT'S INCOME.

(a) IN GENERAL.—Section 1(g)(2)(A) (relating to child to whom subsection applies) is amended by striking "age 14" and inserting "age 18".

(b) TREATMENT OF DISTRIBUTIONS FROM QUALIFIED DISABILITY TRUSTS.—Section 1(g)(4) (relating to net unearned income) is amended by adding at the end the following new subparagraph:

"(C) TREATMENT OF DISTRIBUTIONS FROM QUALIFIED DISABILITY TRUSTS.—For purposes of this subsection, in the case of any child who is a beneficiary of a qualified disability trust (as defined in section 642(b)(2)(C)(ii)), any amount included in the income of such child under sections 652 and 662 during a taxable year shall be considered earned income of such child for such taxable year.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 557. LOAN AND REDEMPTION REQUIREMENTS ON POOLED FINANCING REQUIREMENTS.

(a) Strengthened Reasonable Expectation Requirement.—Subparagraph (A) of section 149(f)(2) (relating to reasonable expectation requirement) is amended to read as follows:

"(A) In general.—The requirements of this paragraph are met with respect to an issue if the issuer reasonably expects that—

"(i) as of the close of the 1-year period beginning on the date of issuance of the issue, at least 50 percent of the net proceeds of the issue (as of the close of such period) will have been used directly or indirectly to make or finance loans to ultimate borrowers, and

"(ii) as of the close of the 3-year period beginning on such date of issuance, at least 95 percent of the net proceeds of the issue (as of the close of such period) will have been so used.".

(b) Written Loan Commitment and Redemption Requirements.—Section 149(f) (relating to treatment of certain pooled financing bonds) is amended by redesignating paragraphs (4) and (5) as paragraphs (6) and (7), respectively, and by inserting after paragraph (3) the following new paragraphs:

"(4) Written loan commitment requirement.—

"(A) In general.—The requirement of this paragraph is met with respect to an issue if the issuer receives prior to issuance written loan commitments identifying the ultimate potential borrowers of at least 50 percent of the net proceeds of such issue.

"(B) Exception.—Subparagraph (A) shall not apply with respect to any issuer which is a State (or an integral part of a State) issuing pooled financing bonds to make or finance loans to subordinate governmental units of such State or to State-created entities providing financing for water-infrastructure projects through the federally-sponsored State revolving fund program.

"(5) Redemption requirement.—The requirement of this paragraph is met if to the extent that less than the percentage of the proceeds of an issue required to be used under clause (i) or (ii) of paragraph (2)(A) is used by the close of the period identified in such clause, the issuer uses an amount of proceeds equal to the excess of—

"(A) the amount required to be used under such clause, over

"(B) the amount actually used by the close of such period,

"to redeem outstanding bonds within 90 days after the end of such period.".

(c) Elimination of Disregard of Pooled Bonds in Determining Eligibility for Small Issuer Exception to Arbitrage Rebate.—Section 148(f)(4)(D)(ii) (relating to aggregation of issuers) is amended by striking subclause (II) and by redesignating subclauses (III) and (IV) as subclauses (II) and (III), respectively.

(d) Conforming Amendments.—

(1) Section 149(f)(1) is amended by striking "paragraphs (2) and (3)" and inserting "paragraphs (2), (3), (4), and (5)".

(2) Section 149(f)(7)(B), as redesignated by subsection (b), is amended by striking "paragraph (4)(A)" and inserting "paragraph (6)(A)".

(3) Section 54(l)(2) is amended by striking "section 149(f)(4)(A)" and inserting "section 149(f)(6)(A)".

(e) Effective Date.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

SEC. 558. REPORTING OF INTEREST ON TAX-EXEMPT BONDS.

(a) In General.—Section 6049(b)(2) (relating to exceptions) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(b) Conforming Amendment.—Section 6049(b)(2)(C), as redesignated by subsection (a), is amended by striking "subparagraph (C)" and inserting "subparagraph (B)".

(c) Effective Date.—The amendments made by this section shall apply to interest earned after December 31, 2005.

SEC. 559. MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) Taxable Years Ending Before 2006.—

(1) Modification of phaseout.—

(A) In general.—Section 29(b)(1)(A) is amended by inserting "the calendar year preceding" before "the calendar year".

(B) Conforming amendments.—Section 29(b)((2) is amended—

(i) by striking "The" and inserting "With respect to any calendar year, the", and

(ii) by striking "for the calendar year in which the sale occurs" and inserting "for such calendar year".

(2) No inflation adjustment for the credit amount in 2005.—Section 29(b)(2), as amended by paragraph (1), is amended by adding at the end the following new sentence: "This paragraph shall not apply with respect to the $3 amount in subsection (a) for calendar year 2005 and the amount in effect under subsection (a) for sales in such calendar year shall be the amount which was in effect for sales in calendar year 2004.".

(b) Taxable Years Ending After 2005.—

(1) Modification of phaseout.—

(A) In general.—Section 45K(b)(1)(A) is amended by inserting "the calendar year preceding" before "the calendar year".

(B) Conforming amendments.—Section 45K(b)((2) is amended—

(i) by striking "The" and inserting "With respect to any calendar year, the", and

(ii) by striking "for the calendar year in which the sale occurs" and inserting "for such calendar year".

(2) No inflation adjustment for the credit amount in 2005, 2006, and 2007.—Section 45K(b)(2), as amended by paragraph (1), is amended by adding at the end the following new sentence: "This paragraph shall not apply with respect to the $3 amount in subsection (a) for calendar years 2005, 2006, and 2007 and the amount in effect under subsection (a) for sales in each such calendar year shall be the amount which was in effect for sales in calendar year 2004.".

(3) Treatment of coke and coke gas.—

(A) Nonapplication of phaseout.—Section 45K(g)(2) is amended by adding at the end the following new subparagraph:

"(D) Nonapplication of phaseout.—Subsection (b)(1) shall not apply.".

(B) Application of inflation adjustment.—Section 45K(g)(2)(B) is amended by inserting "and the last sentence of subsection (b)(2) shall not apply.".

(C) Clarification of qualifying facility.—Section 45K(g)(1) is amended by inserting "(other than from petroleum based products)" after "coke or coke gas".

(c) Effective Date.—The amendments made by this section shall apply to fuel sold after December 31, 2004.

SEC. 560. MODIFICATION OF INDIVIDUAL ESTIMATED TAX SAFE HARBOR.

(a) In General.—The table contained in section 6654(d)(1)(C) is amended by striking "2002 or thereafter" and inserting "2002, 2003, 2004, or 2005" and by adding at the end the following new items:

"2006	120
2007 or thereafter	110".

(b) Effective Date.—The amendments made by this section shall apply with respect to any installment payment for taxable years beginning after December 31, 2005.

SEC. 561. REVALUATION OF LIFO INVENTORIES OF LARGE INTEGRATED OIL COMPANIES.

(a) General Rule.—Notwithstanding any other provision of law, if a taxpayer is an applicable integrated oil company for its last taxable year ending in calendar year 2005, the taxpayer shall—

(1) increase, effective as of the close of such taxable year, the value of each historic LIFO layer of inventories of crude oil, natural gas, or any other petroleum product (within the meaning of section 4611) by the layer adjustment amount, and

(2) decrease its cost of goods sold for such taxable year by the aggregate amount of the increases under paragraph (1).

If the aggregate amount of the increases under paragraph (1) exceed the taxpayer's cost of goods sold for such taxable year, the taxpayer's gross income for such taxable year shall be increased by the amount of such excess.

(b) Layer Adjustment Amount.—For purposes of this section—

(1) In general.—The term "layer adjustment amount" means, with respect to any historic LIFO layer, the product of—

(A) $18.75, and

(B) the number of barrels of crude oil (or in the case of natural gas or other petroleum products, the number of barrel-of-oil equivalents) represented by the layer.

(2) Barrel-of-oil equivalent.—The term "barrel-of-oil equivalent" has the meaning given such term by section 29(d)(5) (as in effect before its redesignation by the Energy Tax Incentives Act of 2005).

(c) Application of Requirement.—

(1) No change in method of accounting.—Any adjustment required by this section shall not be treated as a change in method of accounting.

(2) Underpayments of estimated tax.—0 addition to the tax shall be made under section 6655 of the Internal Revenue Code of 1986 (relating to failure by corporation to pay estimated tax) with respect to any underpayment of an installment required to be paid with respect to the taxable year described in subsection (a) to the extent such underpayment was created or increased by this section.

(d) Applicable Integrated Oil Company.—For purposes of this section, the term "applicable integrated oil company" means an integrated oil company (as defined in section 291(b)(4) of the Internal Revenue Code of 1986) which has an average daily worldwide production of crude oil of at least 500,000 barels for the taxable year and which had gross receipts in excess of $1,000,000,000 for its last taxable year ending during calendar year 2005. For purposes of this subsection all persons treated as a single employer under subsections (a) and (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as 1 person and, in the case of a short taxable year, the rule under section 448(c)(3)(B) shall apply.

SEC. 562. ELIMINATION OF AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES FOR MAJOR INTEGRATED OIL COMPANIES.

(a) In General.—Section 167(h) is amended by adding at the end the following new paragraph:

"(5) Nonapplication to major integrated oil companies.—This subsection shall not apply with respect to any expenses paid or incurred for any taxable year by any integrated oil company (as defined in section 291(b)(4)) which has an average daily worldwide production of crude oil of at least 500,000 barrels for such taxable year.".

(b) Effective Date.—The amendment made by this section shall take effect as if included in the amendment made by section 1329(a) of the Energy Policy Act of 2005.

SEC. 563. VALUATION OF EMPLOYEE PERSONAL USE OF NONCOMMERCIAL AIRCRAFT.

(a) In General.—For purposes of Federal income tax inclusion, the value of any employee personal use of noncommercial aircraft shall equal the excess (if any) of—

(1) greater of—

(A) the fair market value of such use, or

(B) the actual cost of such use (including all fixed and variable costs), over

(2) any amount paid by or on behalf of such employee for such use.

(b) Effective Date.—Subsection (a) shall apply to use after the date of the enactment of this Act.

SEC. 564. APPLICATION OF FIRPTA TO REGULATED INVESTMENT COMPANIES.

(a) In General.—Subclause (II) of section 897(h)(4)(A)(i) (defining qualified investment entity) is amended by inserting "which is a United States real property holding corporation or which would be a United States real property holding corporation if the exceptions provided in subsections (c)(3) and (h)(2) did not apply to interests in any real estate investment trust or regulated investment company" after "regulated investment company".

(b) Effective Date.—The amendment made by this section shall apply to distributions with respect to taxable years beginning after December 31, 2004.

SEC. 565. TREATMENT OF DISTRIBUTIONS ATTRIBUTABLE TO FIRPTA GAINS.

(a) Qualified Investment Entity.—

(1) In general.—Section 897(h)(1) is amended—

(A) by striking "a nonresident alien individual or a foreign corporation" in the first sentence and inserting "a nonresident alien individual, a foreign corporation, or other qualified investment entity",

(B) by striking "such nonresident alien individual or foreign corporation" in the first sentence and inserting "such nonresident alien individual, foreign corporation, or other qualified investment entity", and

(C) by striking the second sentence and inserting the following new sentence: "Notwithstanding the preceding sentence, any distribution by a qualified investment entity to a nonresident alien, a foreign corporation, or other qualified investment entity with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the 1 year period ending on the date of such distribution.".

(2) Application after 2007.—Clause (ii) of section 897(h)(4)(A) is amended by adding at the end the following new sentence: "Notwithstanding the preceding sentence, an entity described in clause (i)(II) shall be treated as a qualified investment entity for purposes of applying paragraph (1) in any case in which a real estate investment trust makes a distribution to an entity described in clause (i)(II).".

(b) Treatment of Certain Distributions as Dividends.—

(1) In general.—Section 852(b)(3) (relating to capital gains) is amended by adding at the end the following new subparagraph:

"(E) Certain distributions.—In the case of a distribution to which section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount of such distribution which would be included in computing long-term capital gains for the shareholder under subparagraph (B) or (D) (without regard to this subparagraph)—

"(i) shall not be included in computing such shareholder's long-term capital gains, and

"(ii) shall be included in such shareholder's gross income as a dividend from the regulated investment company.".

(2) Conforming amendment.—Section 871(k)(2) (relating to short-term capital gain dividends) is amended by adding at the end the following new subparagraph:

"(E) Certain distributions.—In the case of a distribution to which section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be treated as a short-term capital gain dividend to the shareholder (without regard to this subparagraph)—

"(i) shall not be treated as a short-term capital gain dividend, and

"(ii) shall be included in such shareholder's gross income as a dividend from the regulated investment company.".

(c) Effective Dates.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years of qualified investment entities beginning after the date of the enactment of this Act.

(2) Dividends.—The amendments made by subsection (b) shall apply to dividends with respect to taxable years of regulated investment companies beginning after December 31, 2004.

SEC. 566. PREVENTION OF AVOIDANCE OF TAX ON INVESTMENTS OF FOREIGN PERSONS IN UNITED STATES REAL PROPERTY THROUGH WASH SALE TRANSACTIONS.

(a) In General.—Section 897(h) of the Internal Revenue Code of 1986 (relating to special rules in certain investment entities) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) Treatment of certain wash sale transactions.—

"(A) In general.—If an interest in a domestically controlled qualified investment entity is disposed of in an applicable wash sale transaction, the taxpayer shall, for purposes of this section, be treated as having gain from the sale or exchange of a United States real property interest in an amount equal to the portion of the distribution described in subparagraph (B) with respect to such interest which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1).

"(B) Applicable wash sales transaction.—For purposes of this paragraph—

"(i) In general.—The term 'applicable wash sales transaction' means any transaction (or series of transactions) under which a nonresident alien individual or foreign corporation—

"(I) disposes of an interest in a domestically controlled qualified investment entity during the 30-day period preceding a distribution which is to be made with respect to the interest and any portion of which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1), and

"(II) acquires an identical interest in such entity during the 60-day period beginning with the 1st day of the 30-day period described in subclause (I).

For purposes of subclause (II), a nonresident alien individual or foreign corporation shall be treated as having acquired any interest acquired by a person related (within the meaning of section 465(b)(3)(C)) to the individual or corporation.

"(ii) Exception where distribution actually received.—A transaction shall not be treated as an applicable wash sales transaction if the nonresident alien individual or foreign corporation receives the distribution described in clause (i)(I) with respect to either the interest which was disposed of, or acquired, in the transaction.

"(iii) Exception for certain publicly traded stock.—A transaction shall not be treated as an applicable wash sales transaction if it involves the disposition of any class of stock in a qualified investment entity which is regularly traded on an established securities market within the United States but only if the nonresident alien individual or foreign corporation did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of the distribution described in clause (i)(I).".

(b) No Withholding Required.—Section 1445(b) of the Internal Revenue Code of 1986 (relating to exemptions) is amended by adding at the end the following new paragraph:

"(8) Applicable wash sales transactions.—No person shall be required to deduct and withhold any amount under subsection (a) with respect to a disposition which is treated as a disposition of a United States real property interest solely by reason of section 897(h)(4).".

(c) Effective Date.—The amendments made by this section shall apply to dispositions after December 31, 2005, in taxable years ending after such date.

SEC. 567. MODIFICATIONS TO RULES RELATING TO TAXATION OF DISTRIBUTIONS OF STOCK AND SECURITIES OF A CONTROLLED CORPORATION.

(a) Modification of Active Business Definition Under Section 355.—

(1) In general.—Section 355(b) (defining active conduct of a trade or business) is amended by adding at the end the following new paragraph:

"(3) Special rules relating to active business requirement.—

"(A) In general.—For purposes of determining whether a corporation meets the requirement of paragraph (2)(A), all members of such corporation's separate affiliated group shall be treated as 1 corporation. For purposes of the preceding sentence, the term 'separate affiliated group' means, with respect to any corporation, the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply.

"(B) Control.—For purposes of paragraph (2)(D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as 1 distributee corporation.".

(2) Conforming amendments.—

(A) Subparagraph (A) of section 355(b)(2) is amended to read as follows:

"(A) it is engaged in the active conduct of a trade or business,".

(B) Section 355(b)(2) of such Code is amended by striking the last sentence.

(3) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendments made by this subsection shall apply—

(i) to distributions after the date of the enactment of this Act, and before January 1, 2010, and

(ii) for purposes of determining the continued qualification under section 355(b)(2)(A) of the Internal Revenue Code of 1986 (as amended by paragraph (2)(A)) of distributions made before such date, as a result of an acquisition, disposition, or other restructuring after such date and before January 1, 2010.

(B) TRANSITION RULE.—The amendments made by this subsection shall not apply to any distribution pursuant to a transaction which is—

(i) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,

(ii) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(iii) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

(C) ELECTIONS.—

(i) OUT OF TRANSITION RELIEF.—Subparagraph (B) shall not apply if the distributing corporation elects not to have such subparagraph apply to distributions of such corporation. Any such election, once made, shall be irrevocable.

(ii) APPLICATION TO PRIOR DISTRIBUTIONS.—Subparagraph (A)(ii) shall not apply to a distributing or controlled corporation if the corporation elects not to have such subparagraph apply to such corporation. Any such election, once made, shall be irrevocable.

(b) SECTION 355 NOT TO APPLY TO DISTRIBUTIONS IF THE DISTRIBUTING OR CONTROLLED CORPORATION IS A DISQUALIFIED INVESTMENT CORPORATION.—

(1) IN GENERAL.—Section 355 (relating to distributions of stock and securities of a controlled corporation) is amended by adding at the end the following new subsection:

"(g) SECTION NOT TO APPLY TO DISTRIBUTIONS INVOLVING DISQUALIFIED INVESTMENT CORPORATIONS.—

"(1) IN GENERAL.—This section (and so much of section 356 as relates to this section) shall not apply to any distribution which is part of a transaction if—

"(A) either the distributing corporation or controlled corporation is, immediately after the transaction, a disqualified investment corporation, and

"(B) any person holds, immediately after the transaction, a 50-percent or greater interest in any disqualified investment corporation, but only if such person did not hold such an interest in such corporation immediately before the transaction.

"(2) DISQUALIFIED INVESTMENT CORPORATION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'disqualified investment corporation' means any distributing or controlled corporation if the fair market value of the investment assets of the corporation is 75 percent or more of the fair market value of all assets of the corporation.

"(B) INVESTMENT ASSETS.—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the term 'investment assets' means—

"(I) cash,

"(II) any stock or securities in a corporation,

"(III) any interest in a partnership,

"(IV) any debt instrument or other evidence of indebtedness,

"(V) any option, forward or futures contract, notional principal contract, or derivative,

"(VI) foreign currency, or

"(VII) any similar asset.

"(ii) EXCEPTION FOR ASSETS USED IN ACTIVE CONDUCT OF CERTAIN FINANCIAL TRADES OR BUSINESSES.—Such term shall not include any asset which is held for use in the active and regular conduct of—

"(I) a lending or finance business (within the meaning of section 954(h)(4)),

"(II) a banking business through a bank (as defined in section 581), a domestic building and loan association (within the meaning of section 7701(a)(19)), or any similar institution specified by the Secretary, or

"(III) an insurance business if the conduct of the business is licensed, authorized, or regulated by an applicable insurance regulatory body.

This clause shall only apply with respect to any business if substantially all of the income of the business is derived from persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the person conducting the business.

"(iii) EXCEPTION FOR SECURITIES MARKED TO MARKET.—Such term shall not include any security (as defined in section 475(c)(2)) which is held by a dealer in securities and to which section 475(a) applies.

"(iv) STOCK OR SECURITIES IN A 25-PERCENT CONTROLLED ENTITY.—

"(I) IN GENERAL.—Such term shall not include any stock and securities in, or any asset described in subclause (IV) or (V) of clause (i) issued by, a corporation which is a 25-percent controlled entity with respect to the distributing or controlled corporation.

"(II) LOOK-THRU RULE.—The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any 25-percent controlled entity.

"(III) 25-PERCENT CONTROLLED ENTITY.—For purposes of this clause, the term '25-percent controlled entity' means, with respect to any distributing or controlled corporation, any corporation with respect to which the distributing or controlled corporation owns directly or indirectly stock meeting the requirements of section 1504(a)(2), except that such section shall be applied by substituting '25 percent' for '80 percent' and without regard to stock described in section 1504(a)(4).

"(v) INTERESTS IN CERTAIN PARTNERSHIPS.—

"(I) IN GENERAL.—Such term shall not include any interest in a partnership, or any debt instrument or other evidence of indebtedness, issued by the partnership, if 1 or more of the trades or businesses of the partnership are (or, without regard to the 5-year requirement under subsection (b)(2)(B), would be) taken into account by the distributing or controlled corporation, as the case may be, in determining whether the requirements of subsection (b) are met with respect to the distribution.

"(II) LOOK-THRU RULE.—The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any partnership described in subclause (I).

"(3) 50-PERCENT OR GREATER INTEREST.—For purposes of this subsection—

"(A) IN GENERAL.—The term '50-percent or greater interest' has the meaning given such term by subsection (d)(4).

"(B) ATTRIBUTION RULES.—The rules of section 318 shall apply for purposes of determining ownership of stock for purposes of this paragraph.

"(4) TRANSACTION.—For purposes of this subsection, the term 'transaction' includes a series of transactions.

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out, or prevent the avoidance of, the purposes of this subsection, including regulations—

"(A) to carry out, or prevent the avoidance of, the purposes of this subsection in cases involving—

"(i) the use of related persons, intermediaries, pass-thru entities, options, or other arrangements, and

"(ii) the treatment of assets unrelated to the trade or business of a corporation as investment assets if, prior to the distribution, investment assets were used to acquire such unrelated assets,

"(B) which in appropriate cases exclude from the application of this subsection a distribution which does not have the character of a redemption which would be treated as a sale or exchange under section 302, and

"(C) which modify the application of the attribution rules applied for purposes of this subsection.".

(2) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendments made by this subsection shall apply to distributions after the date of the enactment of this Act.

(B) TRANSITION RULE.—The amendments made by this subsection shall not apply to any distribution pursuant to a transaction which is—

(i) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,

(ii) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(iii) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

SEC. 568. AMORTIZATION OF EXPENSES INCURRED IN CREATING OR ACQUIRING MUSIC OR MUSIC COPYRIGHTS.

(a) IN GENERAL.—Section 263A (relating to capitalization and inclusion in inventory costs of certain expenses) is amended by redesignating subsection (i) as subsection (j) and by adding after subsection (h) the following new subsection:

"(i) SPECIAL RULES FOR CERTAIN MUSICAL WORKS AND COPYRIGHTS.—

"(1) IN GENERAL.—If—

"(A) any expense is paid or incurred by the taxpayer in creating or acquiring any musical composition (including any accompanying words) or any copyright with respect to a musical composition, and

"(B) such expense is required to be capitalized under this section,

then, notwithstanding section 167(g), the amount capitalized shall be amortized ratably over the 5-year period beginning with the month in which the composition or copyright was acquired (or, in the case of expenses paid or incurred in connection with the creation of a musical composition, the 5-taxable-year period beginning with the taxable year in which the expenses were paid or incurred).

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to any expense—

"(A) which is a qualified creative expense under subsection (h),

"(B) to which a simplified procedure established under subsection (j)(2) applies,

"(C) which is an amortizable section 197 intangible (as defined in section 197(c)), or

"(D) which, without regard to this section, would not be allowable as a deduction."

(b) Effective Date.—The amendments made by this section shall apply to expenses paid or incurred after December 31, 2005, in taxable years ending after such date.

SEC. 569. CREDIT TO HOLDERS OF RURAL RENAISSANCE BONDS.

(a) In General.—Subpart H of part IV of subchapter A of chapter 1 (relating to credits against tax) is amended by adding at the end the following new section:

“SEC. 54A. CREDIT TO HOLDERS OF RURAL RENAISSANCE BONDS.

“(a) Allowance of Credit.—In the case of a taxpayer who holds a rural renaissance bond on a credit allowance date of such bond, which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to credit allowance dates during such year on which the taxpayer holds such bond.

“(b) Amount of Credit.—

“(1) In general.—The amount of the credit determined under this subsection with respect to any credit allowance date for a rural renaissance bond is 25 percent of the annual credit determined with respect to such bond.

“(2) Annual credit.—The annual credit determined with respect to any rural renaissance bond is the product of—

“(A) the credit rate determined by the Secretary under paragraph (3) for the day on which such bond was sold, multiplied by

“(B) the outstanding face amount of the bond.

“(3) Determination.—For purposes of paragraph (2), with respect to any rural renaissance bond, the Secretary shall determine daily or caused to be determined daily a credit rate which shall apply to the first day on which there is a binding, written contract for the sale or exchange of the bond. The credit rate for any day is the credit rate which the Secretary or the Secretary's designee estimates will permit the issuance of rural renaissance bonds with a specified maturity or redemption date without discount and without interest cost to the qualified issuer.

“(4) Credit allowance date.—For purposes of this section, the term ‘credit allowance date’ means—

“(A) March 15,

“(B) June 15,

“(C) September 15, and

“(D) December 15.

Such term also includes the last day on which the bond is outstanding.

“(5) Special rule for issuance and redemption.—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

“(c) Limitation Based on Amount of Tax.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

“(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

“(2) the sum of the credits allowable under this part (other than subpart C thereof, relating to refundable credits).

“(d) Rural Renaissance Bond.—For purposes of this section—

“(1) In general.—The term ‘rural renaissance bond’ means any bond issued as part of an issue if—

“(A) the bond is issued by a qualified issuer,

“(B) 95 percent or more of the proceeds from the sale of such issue are to be used for capital expenditures incurred for 1 or more qualified projects,

“(C) the qualified issuer designates such bond for purposes of this section and the bond is in registered form, and

“(D) the issue meets the requirements of subsections (e) and (h).

“(2) Qualified project; special use rules.—

“(A) In general.—The term ‘qualified project’ means 1 or more projects described in subparagraph (B) located in a rural area.

“(B) Projects described.—A project described in this subparagraph is—

“(i) a water or waste treatment project,

“(ii) an affordable housing project,

“(iii) a community facility project, including hospitals, fire and police stations, and nursing and assisted-living facilities,

“(iv) a value-added agriculture or renewable energy facility project for agricultural producers or farmer-owned entities, including any project to promote the production, processing, or retail sale of ethanol (including fuel at least 85 percent of the volume of which consists of ethanol), biodiesel, animal waste, biomass, raw commodities, or wind as a fuel,

“(v) a distance learning or telemedicine project,

“(vi) a rural utility infrastructure project, including any electric or telephone system,

“(vii) a project to expand broadband technology,

“(viii) a rural teleworks project, and

“(ix) any project described in any preceding clause carried out by the Delta Regional Authority.

“(C) Special rules.—For purposes of this paragraph—

“(i) any project described in subparagraph (B)(iv) for a farmer-owned entity may be considered a qualified project if such entity is located in a rural area, or in the case of a farmer-owned entity the headquarters of which are located in a nonrural area, if the project is located in a rural area, and

“(ii) any project for a farmer-owned entity which is a facility described in subparagraph (B)(iv) for agricultural producers may be considered a qualified project regardless of whether the facility is located in a rural or nonrural area.

“(3) Special use rules.—

“(A) Refinancing rules.—For purposes of paragraph (1)(B), a qualified project may be refinanced with proceeds of a rural renaissance bond only if the indebtedness being refinanced (including any obligation directly or indirectly refinanced by such indebtedness) was originally incurred after the date of the enactment of this section.

“(B) Reimbursement.—For purposes of paragraph (1)(B), a rural renaissance bond may be issued to reimburse a borrower for amounts paid after the date of the enactment of this section with respect to a qualified project, but only if—

“(i) prior to the payment of the original expenditure, the borrower declared its intent to reimburse such expenditure with the proceeds of a rural renaissance bond,

“(ii) not later than 60 days after payment of the original expenditure, the qualified issuer adopts an official intent to reimburse the original expenditure with such proceeds, and

“(iii) the reimbursement is made not later than 18 months after the date the original expenditure is paid.

“(C) Treatment of changes in use.—For purposes of paragraph (1)(B), the proceeds of an issue shall not be treated as used for a qualified project to the extent that a borrower takes any action within its control which causes such proceeds not to be used for a qualified project. The Secretary shall prescribe regulations specifying remedial actions that may be taken (including conditions to taking such remedial actions) to prevent an action described in the preceding sentence from causing a bond to fail to be a rural renaissance bond.

“(e) Maturity Limitations.—

“(1) Duration of term.—A bond shall not be treated as a rural renaissance bond if the maturity of such bond exceeds the maximum term determined by the Secretary under paragraph (2) with respect to such bond.

“(2) Maximum term.—During each calendar month, the Secretary shall determine the maximum term permitted under this paragraph for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of such bond. Such present value shall be determined without regard to the requirements of subsection (f)(3) and using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

“(3) Ratable principal amortization required.—A bond shall not be treated as a rural renaissance bond unless it is part of an issue which provides for an equal amount of principal to be paid by the qualified issuer during each calendar year that the issue is outstanding.

“(f) Limitation on Amount of Bonds Designated.—

“(1) National limitation.—There is a rural renaissance bond limitation of $200,000,000.

“(2) Allocation by secretary.—The Secretary shall allocate the amount described in paragraph (1) among qualified projects in such manner as the Secretary determines appropriate.

“(g) Credit Included in Gross Income.—Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)) and the amount so included shall be treated as interest income.

“(h) Special Rules Relating to Expenditures.—

“(1) In general.—An issue shall be treated as meeting the requirements of this subsection if, as of the date of issuance, the qualified issuer reasonably expects—

“(A) at least 95 percent of the proceeds from the sale of the issue are to be spent for 1 or more qualified projects within the 5-year period beginning on the date of issuance of the rural renaissance bond,

“(B) a binding commitment with a third party to spend at least 10 percent of the proceeds from the sale of the issue will be incurred within the 6-month period beginning on the date of issuance of the rural renaissance bond or, in the case of a rural renaissance bond, the proceeds of which are to be loaned to 2 or more borrowers, such binding commitment will be incurred within the 6-month period beginning on the date of the loan of such proceeds to a borrower, and

“(C) such projects will be completed with due diligence and the proceeds from the sale of the issue will be spent with due diligence.

"(2) Extension of period.—Upon submission of a request prior to the expiration of the period described in paragraph (1)(A), the Secretary may extend such period if the qualified issuer establishes that the failure to satisfy the 5-year requirement is due to reasonable cause and the related projects will continue to proceed with due diligence.

"(3) Failure to spend required amount of bond proceeds within 5 years.—To the extent that less than 95 percent of the proceeds of such issue are expended by the close of the 5-year period beginning on the date of issuance (or if an extension has been obtained under paragraph (2), by the close of the extended period), the qualified issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

"(i) Special Rules Relating to Arbitrage.—A bond which is part of an issue shall not be treated as a rural renaissance bond unless, with respect to the issue of which the bond is a part, the qualified issuer satisfies the arbitrage requirements of section 148 with respect to proceeds of the issue.

"(j) Qualified Issuer.—For purposes of this section—

"(1) In general.—The term 'qualified issuer' means any not-for-profit cooperative lender which has as of the date of the enactment of this section received a guarantee under section 306 of the Rural Electrification Act and which meets the requirement of paragraph (2).

"(2) User fee requirement.—The requirement of this paragraph is met if the issuer of any rural renaissance bond makes grants for qualified projects as defined under subsection (d)(2) on a semi-annual basis every year that such bond is outstanding in an annual amount equal to one-half of the rate on United States Treasury Bills of the same maturity multiplied by the outstanding principle balance of rural renaissance bonds issued by such issuer.

"(k) Special Rules Relating to Pool Bonds.—No portion of a pooled financing bond may be allocable to loan unless the borrower has entered into a written loan commitment for such portion prior to the issue date of such issue.

"(l) Other Definitions and Special Rules.—For purposes of this section—

"(1) Bond.—The term 'bond' includes any obligation.

"(2) Pooled financing bond.—The term 'pooled financing bond' shall have the meaning given such term by section 149(f)(4)(A).

"(3) Rural area.—The term 'rural area' means any area other than—

"(A) a city or town which has a population of greater than 50,000 inhabitants, or

"(B) the urbanized area contiguous and adjacent to such a city or town.

"(4) Partnership; S corporation; and other pass-thru entities.—

"(A) In general.—Under regulations prescribed by the Secretary, in the case of a partnership, trust, S corporation, or other pass-thru entity, rules similar to the rules of section 41(g) shall apply with respect to the credit allowable under subsection (a).

"(B) No basis adjustment.—In the case of a bond held by a partnership or an S corporation, rules similar to the rules under section 1397E(i) shall apply.

"(5) Bonds held by regulated investment companies.—If any rural renaissance bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

"(6) Reporting.—Issuers of rural renaissance bonds shall submit reports similar to the reports required under section 149(e).".

(b) Reporting.—Subsection (d) of section 6049 (relating to returns regarding payments of interest) is amended by adding at the end the following new paragraph:

"(9) Reporting of credit on rural renaissance bonds.—

"(A) In general.—For purposes of subsection (a), the term 'interest' includes amounts includible in gross income under section 54(f) and such amounts shall be treated as paid on the credit allowance date (as defined in section 54(b)(4)).

"(B) Reporting to corporations, etc.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A), subsection (b)(4) shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i) of such subsection.

"(C) Regulatory authority.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.".

(c) Conforming Amendment.—The table of sections for subpart H of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 54A. Credit to holders of rural renaissance bonds.".

(d) Issuance of Regulations.—The Secretary of Treasury shall issue regulations required under section 54A of the Internal Revenue Code of 1986 (as added by this section) not later than 120 days after the date of the enactment of this Act.

(e) Effective Date.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act and before January 1, 2010.

SEC. 570. MODIFICATION OF TREATMENT OF LOANS TO QUALIFIED CONTINUING CARE FACILITIES.

(a) In General.—Subsection (g) of section 7872 is amended to read as follows:

"(g) Exception for Loans to Qualified Continuing Care Facilities.—

"(1) In general.—This section shall not apply for any calendar year to any below-market loan owed by a facility which on the last day of such year is a continuing care facility, if such loan was made pursuant to a continuing care contract and if the lender (or the lender's spouse) attains age 62 before the close of such year.

"(2) Continuing care contract.—For purposes of this section, the term 'continuing care contract' means a written contract between an individual and a qualified continuing care facility under which—

"(A) the individual or individual's spouse may use a qualified continuing care facility for their life or lives,

"(B) the individual or individual's spouse will be provided with housing in an independent living unit (which has additional available facilities outside such unit for the provision of meals and other personal care), an assisted living facility or a nursing facility, as is available in the continuing care facility, as appropriate for the health of such individual or individual's spouse, and

"(C) the individual or individual's spouse will be provided assisted living or nursing care as the health of such individual or individual's spouse requires, and as is available in the continuing care facility.

"(3) Qualified continuing care facility.—

"(A) In general.—For purposes of this section, the term 'qualified continuing care facility' means 1 or more facilities—

"(i) which are designed to provide services under continuing care contracts,

"(ii) that include an independent living unit, plus an assisted living or nursing facility, or both, and

"(iii) substantially all of the independent living unit residents of which are covered by continuing care contracts.

"(B) Nursing homes excluded.—The term 'qualified continuing care facility' shall not include any facility which is of a type which is traditionally considered a nursing home.".

(b) Effective Date.—The amendment made by this section shall apply to loans made after December 31, 2005.

SEC. 571. MODIFICATIONS OF FOREIGN TAX CREDIT RULES APPLICABLE TO LARGE INTEGRATED OIL COMPANIES WHICH ARE DUAL CAPACITY TAXPAYERS.

(a) In General.—Section 901 (relating to credit for taxes of foreign countries and of possessions of the United States), as amended by this Act, is amended by redesignating subsections (m) and (n) as subsections (n) and (o), respectively, and by inserting after subsection (l) the following new subsection:

"(m) Special Rules Relating To Large Integrated Oil Companies Which Are Dual Capacity Taxpayers.—

"(1) General rule.—Notwithstanding any other provision of this chapter, any amount paid or accrued by a dual capacity taxpayer which is a large integrated oil company to a foreign country or possession of the United States for any period shall not be considered a tax—

"(A) if, for such period, the foreign country or possession does not impose a generally applicable income tax, or

"(B) to the extent such amount exceeds the amount (determined in accordance with regulations) which—

"(i) is paid by such dual capacity taxpayer pursuant to the generally applicable income tax imposed by the country or possession, or

"(ii) would be paid if the generally applicable income tax imposed by the country or possession were applicable to such dual capacity taxpayer.

Nothing in this paragraph shall be construed to imply the proper treatment of any such amount not in excess of the amount determined under subparagraph (B).

"(2) Dual capacity taxpayer.—For purposes of this subsection, the term 'dual capacity taxpayer' means, with respect to any foreign country or possession of the United States, a person who—

"(A) is subject to a levy of such country or possession, and

"(B) receives (or will receive) directly or indirectly a specific economic benefit (as determined in accordance with regulations) from such country or possession.

"(3) Generally applicable income tax.—For purposes of this subsection—

"(A) In general.—The term 'generally applicable income tax' means an income tax (or a series of income taxes) which is generally imposed under the laws of a foreign country or possession on income derived from the conduct of a trade or business within such country or possession.

"(B) Exceptions.—Such term shall not include a tax unless it has substantial application, by its terms and in practice, to—

"(i) persons who are not dual capacity taxpayers, and

"(ii) persons who are citizens or residents of the foreign country or possession.

"(4) LARGE INTEGRATED OIL COMPANY.—For purposes of this subsection, the term 'large integrated oil company' means, with respect to any taxable year, an integrated oil company (as defined in section 291(b)(4)) which—

"(A) had gross receipts in excess of $1,000,000,000 for such taxable year, and

"(B) has an average daily worldwide production of crude oil of at least 500,000 barrels for such taxable year."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxes paid or accrued in taxable years beginning after the date of the enactment of this Act.

(2) CONTRARY TREATY OBLIGATIONS UPHELD.—The amendments made by this section shall not apply to the extent contrary to any treaty obligation of the United States.

SEC. 572. EXCLUSION OF GAIN FROM SALE OF A PRINCIPAL RESIDENCE BY CERTAIN EMPLOYEES OF THE INTELLIGENCE COMMUNITY.

(a) IN GENERAL.—Subparagraph (A) of section 121(d)(9) (relating to exclusion of gain from sale of principal residence) is amended by striking "duty" and all that follows and inserting "duty—

"(i) as a member of the uniformed services,

"(ii) as a member of the Foreign Service of the United States, or

"(iii) as an employee of the intelligence community.".

(b) EMPLOYEE OF INTELLIGENCE COMMUNITY DEFINED.—Subparagraph (C) of section 121(d)(9) is amended by redesignating clause (iv) as clause (v) and by inserting after clause (iii) the following new clause:

"(iv) EMPLOYEE OF INTELLIGENCE COMMUNITY.—The term 'employee of the intelligence community' means an employee (as defined by section 2105 of title 5, United States Code) of—

"(I) the Office of the Director of National Intelligence,

"(II) the Central Intelligence Agency,

"(III) the National Security Agency,

"(IV) the Defense Intelligence Agency,

"(V) the National Geospatial-Intelligence Agency,

"(VI) the National Reconnaissance Office,

"(VII) any other office within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs,

"(VIII) any of the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of Treasury, the Department of Energy, and the Coast Guard,

"(IX) the Bureau of Intelligence and Research of the Department of State, or

"(X) any of the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information.".

(c) SPECIAL RULE.—Subparagraph (C) of section 121(d)(9), as amended by subsection (b), is amended by adding at the end the following new clause:

"(vi) SPECIAL RULE RELATING TO INTELLIGENCE COMMUNITY.—An employee of the intelligence community shall not be treated as serving on qualified extended duty unless—

"(I) for purposes of such duty such employee has moved from 1 duty station to another, and

"(II) at least 1 of such duty stations is located outside of the Washington, District of Columbia, and Baltimore metropolitan statistical areas (as defined by the Secretary of Commerce).".

(d) CONFORMING AMENDMENT.—The heading for section 121(d)(9) is amended to read as follows: "UNIFORMED SERVICES, FOREIGN SERVICE, AND INTELLIGENCE COMMUNITY".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or exchanges after the date of the enactment of this Act.

SEC. 573. DISABILITY PREFERENCE PROGRAM FOR TAX COLLECTION CONTRACTS.

(a) IN GENERAL.—The Secretary of the Treasury shall not enter into any qualified tax collection contract after April 1, 2006, until the Secretary implements a disability preference program that meets the requirements of subsection (b).

(b) DISABILITY PREFERENCE PROGRAM REQUIREMENTS.—

(1) IN GENERAL.—A disability preference program meets the requirements of this subsection if such program requires that not less than 10 percent of the accounts of each dollar value category are awarded to persons described in paragraph (2).

(2) PERSON DESCRIBED.—For purposes of paragraph (1), a person is described in this paragraph if—

(A) as of the date any qualified tax collection contract is awarded—

(i) such person employs not less than 50 severely disabled individuals within the United States; or

(ii) not less than 30 percent of the employees of such person within the United States are severely disabled individuals;

(B) such person agrees as a condition of the qualified tax collection contract that not more than 90 days after the date such contract is awarded, not less than 35 percent of the employees of such person employed in connection with providing services under such contract shall—

(i) be hired after the date such contract is awarded; and

(ii) be severely disabled individuals; and

(C) such person is otherwise qualified to perform the services required.

(c) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED TAX COLLECTION CONTRACT.—The term "qualified tax collection contract" shall have the meaning given such term under section 6306(b) of the Internal Revenue Code of 1986.

(2) DOLLAR VALUE CATEGORY.—The term "dollar value category" means the dollar ranges of accounts for collection as determined and assigned by the Secretary under section 6306(b)(1)(B) of the Internal Revenue Code of 1986 with respect to a qualified tax collection contract.

(3) SEVERELY DISABLED INDIVIDUAL.—The term "severely disabled individual" means—

(A) a veteran of the United States armed forces with a disability of 50 percent or greater—

(i) determined by the Secretary of Veterans Affairs to be service-connected; or

(ii) deemed by law to be service-connected; or

(B) any individual who is a disabled beneficiary (as defined in section 1148(k)(2) of the Social Security Act (42 U.S.C. 1320b–19(k)(2))) or who would be considered to be such a disabled beneficiary but for having income or resources in excess of the income or resources eligibility limits established under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), respectively.

TITLE VI—COMPLIANCE WITH CONGRESSIONAL BUDGET ACT

SEC. 601. SUNSET OF CERTAIN PROVISIONS AND AMENDMENTS.

The provisions of, and amendments made by, title I, title II, subtitle A of title III, and title IV shall not apply to taxable years beginning after September 30, 2010, and the Internal Revenue Code of 1986 shall be applied and administered to such years as if such provisions and amendments had never been enacted.

SA 2708. Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) proposed an amendment to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and BAUCUS)) to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; as follows:

Strike all after the first word and insert the following:

1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Tax Relief Act of 2005".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—EXTENSION OF EXPIRING PROVISIONS

Sec. 101. Extension of increased expensing for small business.
Sec. 102. Credit for elective deferrals and IRA contributions.
Sec. 103. Above-the-line deduction for higher education.
Sec. 104. Extension and modification of new markets tax credit.
Sec. 105. Election to deduct State and local general sales taxes.
Sec. 106. Extension and increase in minimum tax relief to individuals.
Sec. 107. Allowance of nonrefundable personal credits against regular and alternative minimum tax liability.
Sec. 108. Extension and modification of research credit.
Sec. 109. Work opportunity tax credit and welfare-to-work credit.
Sec. 110. Qualified zone academy bonds.
Sec. 111. Deduction for corporate donations of computer technology and equipment.
Sec. 112. Above-the-line deduction for certain expenses of elementary and secondary school teachers.
Sec. 113. Expensing of brownfields remediation costs.
Sec. 114. Tax incentives for investment in the District of Columbia.
Sec. 115. Indian employment tax credit.
Sec. 116. Accelerated depreciation for business property on Indian reservation.
Sec. 117. Fifteen-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant improvements.
Sec. 118. Extension of full credit for qualified electric vehicles.
Sec. 119. Application of EGTRRA sunset to this title.

TITLE II—PROVISIONS RELATING TO CHARITABLE DONATIONS

Subtitle A—Charitable Giving Incentives

Sec. 201. Charitable deduction for nonitemizers.

Sec. 202. Tax-free distributions from individual retirement plans for charitable purposes.
Sec. 203. Modification of charitable deduction for contributions of food inventory.
Sec. 204. Basis adjustment to stock of S corporation contributing property.
Sec. 205. Modification of charitable deduction for contributions of book inventory.
Sec. 206. Modification of tax treatment of certain payments to controlling exempt organizations and public disclosure of information relating to unrelated business income.
Sec. 207. Encouragement of contributions of capital gain real property made for conservation purposes.
Sec. 208. Enhanced deduction for charitable contribution of literary, musical, artistic, and scholarly compositions.
Sec. 209. Mileage reimbursements to charitable volunteers excluded from gross income.
Sec. 210. Alternative percentage limitation for corporate charitable contributions to the mathematics and science partnership program.

Subtitle B—Reforming Charitable Organizations

PART I—GENERAL REFORMS

Sec. 211. Tax involvement by exempt organizations in tax shelter transactions.
Sec. 212. Excise tax on certain acquisitions of interests in insurance contracts in which certain exempt organizations hold an interest.
Sec. 213. Increase in penalty excise taxes on public charities, social welfare organizations, and private foundations.
Sec. 214. Reform of charitable contributions of certain easements on buildings in registered historic districts.
Sec. 215. Charitable contributions of taxidermy property.
Sec. 216. Recapture of tax benefit for charitable contributions of exempt use property not used for an exempt use.
Sec. 217. Limitation of deduction for charitable contributions of clothing and household items.
Sec. 218. Modification of recordkeeping requirements for certain charitable contributions.
Sec. 219. Contributions of fractional interests in tangible personal property.
Sec. 220. Provisions relating to substantial and gross overstatements of valuations of charitable deduction property.
Sec. 221. Additional standards for credit counseling organizations.
Sec. 222. Expansion of the base of tax on private foundation net investment income.
Sec. 223. Definition of convention or association of churches.
Sec. 224. Notification requirement for entities not currently required to file.
Sec. 225. Disclosure to State officials of proposed actions related to exempt organizations.

PART II—IMPROVED ACCOUNTABILITY OF DONOR ADVISED FUNDS

Sec. 231. Excise tax on sponsoring organizations of donor advised funds for failure to meet distribution requirements.
Sec. 232. Prohibited transactions.
Sec. 233. Treatment of charitable contribution deductions to donor advised funds.
Sec. 234. Returns of, and applications for recognition by, sponsoring organizations.

PART III—IMPROVED ACCOUNTABILITY OF SUPPORTING ORGANIZATIONS

Sec. 241. Requirements for supporting organizations.
Sec. 242. Excise tax on supporting organizations for failure to meet distribution requirements.
Sec. 243. Excess benefit transactions.
Sec. 244. Excess business holdings of supporting organizations.
Sec. 245. Treatment of amounts paid to supporting organizations by private foundations.
Sec. 246. Returns of supporting organizations.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Restructuring of New York Liberty Zone tax credits.
Sec. 302. Modification to S corporation passive investment income rules.
Sec. 303. Modification of effective date of disregard of certain capital expenditures for purposes of qualified small issue bonds.
Sec. 304. Premiums for mortgage insurance.
Sec. 305. Sense of the Senate on use of no-bid contracting by Federal Emergency Management Agency.
Sec. 306. Sense of Congress regarding Doha Round.
Sec. 307. Modification of bond rule.
Sec. 308. Treatment of certain stock option plans under nonqualified deferred compensation rules.
Sec. 309. Sense of the Senate regarding the dedication of excess funds.
Sec. 310. Modification of treatment of loans to qualified continuing care facilities.
Sec. 311. Exclusion of gain from sale of a principal residence by certain employees of the intelligence community.

TITLE IV—REVENUE OFFSET PROVISIONS

Subtitle A—Provisions Designed to Curtail Tax Shelters

Sec. 401. Understatement of taxpayer's liability by income tax return preparer.
Sec. 402. Frivolous tax submissions.
Sec. 403. Penalty for promoting abusive tax shelters.
Sec. 404. Penalty for aiding and abetting the understatement of tax liability.

Subtitle B—Economic Substance Doctrine

Sec. 411. Clarification of economic substance doctrine.
Sec. 412. Penalty for understatements attributable to transactions lacking economic substance, etc.
Sec. 413. Denial of deduction for interest on underpayments attributable to noneconomic substance transactions.

Subtitle C—Improvements in Efficiency and Safeguards in Internal Revenue Service Collection

Sec. 421. Waiver of user fee for installment agreements using automated withdrawals.
Sec. 422. Termination of installment agreements.
Sec. 423. Partial payments required with submission of offers-in-compromise.

Subtitle D—Penalties and Fines

Sec. 431. Increase in criminal monetary penalty limitation for the underpayment or overpayment of tax due to fraud.
Sec. 432. Doubling of certain penalties, fines, and interest on underpayments related to certain offshore financial arrangements.
Sec. 433. Denial of deduction for certain fines, penalties, and other amounts.
Sec. 434. Denial of deduction for punitive damages.
Sec. 435. Increase in penalty for bad checks and money orders.

Subtitle E—Provisions to Discourage Expatriation

Sec. 441. Tax treatment of inverted entities.
Sec. 442. Revision of tax rules on expatriation of individuals.

Subtitle F—Miscellaneous Provisions

Sec. 451. Treatment of contingent payment convertible debt instruments.
Sec. 452. Grant of Treasury regulatory authority to address foreign tax credit transactions involving inappropriate separation of foreign taxes from related foreign income.
Sec. 453. Repeal of special property exception to leasing provisions of the American Jobs Creation Act of 2004.
Sec. 454. Application of earnings stripping rules to partners which are corporations.
Sec. 455. Limitation of employer deduction for certain entertainment expenses.
Sec. 456. Increase in age of minor children whose unearned income is taxed as if parent's income.
Sec. 457. Loan and redemption requirements on pooled financing requirements.
Sec. 458. Reporting of interest on tax-exempt bonds.
Sec. 459. Modification of credit for producing fuel from a nonconventional source.
Sec. 460. Modification of individual estimated tax safe harbor.
Sec. 461. Revaluation of LIFO inventories of large integrated oil companies.
Sec. 462. Elimination of amortization of geological and geophysical expenditures for major integrated oil companies.
Sec. 463. Valuation of employee personal use of noncommercial aircraft.
Sec. 464. Application of FIRPTA to regulated investment companies.
Sec. 465. Treatment of distributions attributable to FIRPTA gains.
Sec. 466. Prevention of avoidance of tax on investments of foreign persons in United States real property through wash sale transactions.
Sec. 467. Modifications to rules relating to taxation of distributions of stock and securities of a controlled corporation.

Sec. 468. Amortization of expenses incurred in creating or acquiring music or music copyrights.
Sec. 469. Credit to holders of rural renaissance bonds.
Sec. 470. Modifications of foreign tax credit rules applicable to large integrated oil companies which are dual capacity taxpayers.
Sec. 471. Disability preference program for tax collection contracts.

TITLE V—COMPLIANCE WITH CONGRESSIONAL BUDGET ACT

Sec. 501. Sunset of certain provisions and amendments.

TITLE I—EXTENSION OF EXPIRING PROVISIONS

SEC. 101. EXTENSION OF INCREASED EXPENSING FOR SMALL BUSINESS.

Section 179 is amended by striking “2008” each place it appears and inserting “2010”.

SEC. 102. CREDIT FOR ELECTIVE DEFERRALS AND IRA CONTRIBUTIONS.

Section 25B(h) is amended by striking “2006” and inserting “2009”.

SEC. 103. ABOVE-THE-LINE DEDUCTION FOR HIGHER EDUCATION.

(a) In General.—Section 222(e) is amended by striking “2005”and inserting “2009”.

(b) Conforming Amendments.—Section 222(b)(2)(B) is amended—

(1) by striking “a taxable year beginning in 2004 or 2005” and inserting “any taxable year beginning after 2003”, and

(2) by striking “2004 AND 2005” and inserting “AFTER 2003”.

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 104. EXTENSION AND MODIFICATION OF NEW MARKETS TAX CREDIT.

(a) Extension.—Section 45D(f)(1)(D) is amended by striking “and 2007” and inserting “, 2007, and 2008”.

(b) Regulations Regarding Non-Metropolitan Counties.—Section 45D(i) is amended by striking “and” at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting “, and”, and by adding at the end by the following new paragraph:

“(6) which ensure that non-metropolitan counties receive a proportional allocation of qualified equity investments.”.

SEC. 105. ELECTION TO DEDUCT STATE AND LOCAL GENERAL SALES TAXES.

(a) In General.—Section 164(b)(5)(I) is amended by striking “2006” and inserting “2008”.

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 106. EXTENSION AND INCREASE IN MINIMUM TAX RELIEF TO INDIVIDUALS.

(a) In General.—Section 55(d)(1) is amended—

(1) by striking “$58,000” and all that follows through “2005” in subparagraph (A) and inserting “$62,550 in the case of taxable years beginning in 2006”, and

(2) by striking “$40,250” and all that follows through “2005” in subparagraph (B) and inserting “$42,500 in the case of taxable years beginning in 2006”.

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 107. ALLOWANCE OF NONREFUNDABLE PERSONAL CREDITS AGAINST REGULAR AND ALTERNATIVE MINIMUM TAX LIABILITY.

(a) In General.—Paragraph (2) of section 26(a) is amended—

(1) by striking “2005” in the heading thereof and inserting “2007”, and

(2) by striking “or 2005” and inserting “2005, 2006, or 2007”.

(b) Conforming Provisions.—

(1) Section 30B(g) is amended by adding at the end the following new paragraph:

“(3) Special rule for 2006 and 2007.—For purposes of any taxable year beginning during 2006 or 2007, the credit allowed under subsection (a) (after the application of paragraph (1)) shall not exceed the excess of—

“(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

“(B) the sum of the credits allowable under subpart A and this subpart (other than this section and section 30C).”.

(2) Section 30C(d) is amended by adding at the end the following new paragraph:

“(3) Special rule for 2006 and 2007.—For purposes of any taxable year beginning during 2006 or 2007, the credit allowed under subsection (a) (after the application of paragraph (1)) shall not exceed the excess of—

“(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

“(B) the sum of the credits allowable under subpart A and this subpart (other than this section).”.

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 108. EXTENSION AND MODIFICATION OF RESEARCH CREDIT.

(a) Extension.—

(1) In general.—Section 41(h)(1)(B) is amended by striking “2005” and inserting “2007”.

(2) Conforming amendment.—Section 45C(b)(1)(D) is amended by striking “2005” and inserting “2007”.

(3) Effective date.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2005.

(b) Increase in Rates of Alternative Incremental Credit.—Subparagraph (A) of section 41(c)(4) (relating to election of alternative incremental credit) is amended—

(1) by striking “2.65 percent” and inserting “3 percent”,

(2) by striking “3.2 percent” and inserting “4 percent”, and

(3) by striking “3.75 percent” and inserting “5 percent”.

(c) Alternative Simplified Credit for Qualified Research Expenses.—

(1) In general.—Subsection (c) of section 41 (relating to base amount) is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting after paragraph (4) the following new paragraph:

“(5) Election of alternative simplified credit.—

“(A) In general.—At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to 12 percent of so much of the qualified research expenses for the taxable year as exceeds 50 percent of the average qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined.

“(B) Special rule in case of no qualified research expenses in any of 3 preceding taxable years.—

“(i) Taxpayers to which subparagraph applies.—The credit under this paragraph shall be determined under this subparagraph if the taxpayer has no qualified research expenses in any 1 of the 3 taxable years preceding the taxable year for which the credit is being determined.

“(ii) Credit rate.—The credit determined under this subparagraph shall be equal to 6 percent of the qualified research expenses for the taxable year.

“(C) Election.—An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary. An election under this paragraph may not be made for any taxable year to which an election under paragraph (4) applies.”.

(2) Coordination with election of alternative incremental credit.—

(A) In general.—Section 41(c)(4)(B) (relating to election) is amended by adding at the end the following: “An election under this paragraph may not be made for any taxable year to which an election under paragraph (5) applies.”.

(B) Transition rule.—In the case of an election under section 41(c)(4) of the Internal Revenue Code of 1986 which applies to the taxable year which includes the date of the enactment of this Act, such election shall be treated as revoked with the consent of the Secretary of the Treasury if the taxpayer makes an election under section 41(c)(5) of such Code (as added by subsection (a)) for such year.

(d) Expansion of Credit to Expenses of General Collaborative Research Consortia.—Section 41 is amended—

(1) by striking “an energy research consortium” in subsections (a)(3) and (b)(3)(C)(i) and inserting “a research consortium”,

(2) by striking “energy” each place it appears in subsection (f)(6)(A),

(3) by inserting “or 501(c)(6)” after “section 501(c)(3)” in subsection (f)(6)(A)(i)(I), and

(4) by striking “ENERGY RESEARCH” in the heading for subsection (f)(6) and inserting “RESEARCH”.

(e) Effective Date.—Except as provided in subsection (a)(3), the amendments made by this section shall apply to taxable years ending after December 31, 2005.

SEC. 109. WORK OPPORTUNITY TAX CREDIT AND WELFARE-TO-WORK CREDIT.

(a) In General.—Section 51(c)(4)(B) is amended by striking “2005” and inserting “2007”.

(b) Eligibility of Ex-Felons Determined Without Regard to Family Income.—Paragraph (4) of section 51(d) is amended by adding “and” at the end of subparagraph (A), by striking “, and” at the end of subparagraph (B) and inserting a period, and by striking all that follows subparagraph (B).

(c) Increase in Maximum Age for Eligibility of Food Stamp Recipients.—Clause (i) of section 51(d)(8)(A) is amended by striking “25” and inserting “40”.

(d) Increase in Maximum Age for Designated Community Residents.—

(1) In general.—Paragraph (5) of section 51(d) is amended to read as follows:

“(5) Designated community residents.—

“(A) In general.—The term ‘designated community resident’ means any individual who is certified by the designated local agency—

“(i) as having attained age 18 but not age 40 on the hiring date, and

“(ii) as having his principal place of abode within an empowerment zone, enterprise community, or renewal community.

“(B) Individual must continue to reside in zone or community.—In the case of a designated community resident, the term ‘qualified wages’ shall not include wages paid or incurred for services performed while the individual’s principal place of abode is outside an empowerment zone, enterprise community, or renewal community.”

(2) CONFORMING AMENDMENT.—Subparagraph (D) of section 51(d)(1) is amended to read as follows:

"(D) a designated community resident,".

(e) CONSOLIDATION OF WORK OPPORTUNITY CREDIT WITH WELFARE-TO-WORK CREDIT.—

(1) IN GENERAL.—Paragraph (1) of section 51(d) is amended by striking "or" at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting ", or", and by adding at the end the following new subparagraph:

"(I) a long-term family assistance recipient."

(2) LONG-TERM FAMILY ASSISTANCE RECIPIENT.—Subsection (d) of section 51 is amended by redesignating paragraphs (10) through (12) as paragraphs (11) through (13), respectively, and by inserting after paragraph (9) the following new paragraph:

"(10) LONG-TERM FAMILY ASSISTANCE RECIPIENT.—The term 'long-term family assistance recipient' means any individual who is certified by the designated local agency—

"(A) as being a member of a family receiving assistance under a IV–A program (as defined in paragraph (2)(B)) for at least the 18-month period ending on the hiring date,

"(B)(i) as being a member of a family receiving such assistance for 18 months beginning after August 5, 1997, and

"(ii) as having a hiring date which is not more than 2 years after the end of the earliest such 18-month period, or

"(C)(i) as being a member of a family which ceased to be eligible for such assistance by reason of any limitation imposed by Federal or State law on the maximum period such assistance is payable to a family, and

"(ii) as having a hiring date which is not more than 2 years after the date of such cessation."

(3) INCREASED CREDIT FOR EMPLOYMENT OF LONG-TERM FAMILY ASSISTANCE RECIPIENTS.—Section 51 is amended by inserting after subsection (d) the following new subsection:

"(e) CREDIT FOR SECOND-YEAR WAGES FOR EMPLOYMENT OF LONG-TERM FAMILY ASSISTANCE RECIPIENTS.—

"(1) IN GENERAL.—With respect to the employment of a long-term family assistance recipient—

"(A) the amount of the work opportunity credit determined under this section for the taxable year shall include 50 percent of the qualified second-year wages for such year, and

"(B) in lieu of applying subsection (b)(3), the amount of the qualified first-year wages, and the amount of qualified second-year wages, which may be taken into account with respect to such a recipient shall not exceed $10,000 per year.

"(2) QUALIFIED SECOND-YEAR WAGES.—For purposes of this subsection, the term 'qualified second-year wages' means qualified wages—

"(A) which are paid to a long-term family assistance recipient, and

"(B) which are attributable to service rendered during the 1-year period beginning on the day after the last day of the 1-year period with respect to such recipient determined under subsection (b)(2).

"(3) SPECIAL RULES FOR AGRICULTURAL AND RAILWAY LABOR.—If such recipient is an employee to whom subparagraph (A) or (B) of subsection (h)(1) applies, rules similar to the rules of such subparagraphs shall apply except that—

"(A) such subparagraph (A) shall be applied by substituting '$10,000' for '$6,000', and

"(B) such subparagraph (B) shall be applied by substituting '$833.33' for '$500'."

(4) REPEAL OF SEPARATE WELFARE-TO-WORK CREDIT.—

(A) IN GENERAL.—Section 51A is hereby repealed.

(B) CLERICAL AMENDMENT.—The table of sections for subpart F of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 51A.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after December 31, 2005.

SEC. 110. QUALIFIED ZONE ACADEMY BONDS.

(a) IN GENERAL.—Paragraph (1) of section 1397E(e) is amended by striking "and 2005" and inserting "2005, 2006, and 2007".

(b) FORM OF PRIVATE BUSINESS CONTRIBUTIONS.—Section 1397E(d)(2)(B) is amended by striking "any contribution" and all that follows and inserting "any cash or cash equivalent contribution".

(c) SPECIAL RULES RELATING TO AMORTIZATION, EXPENDITURES, ARBITRAGE, AND REPORTING.—

(1) IN GENERAL.—Section 1397E is amended—

(A) in subsection (d)(1), by striking "and" at the end of subparagraph (C)(iii), by striking the period at the end of subparagraph (D) and inserting ", and", and by adding at the end the following new subparagraph:

"(E) the issue meets the requirements of subsections (f), (g), (h), and (i).", and

(B) by redesignating subsections (f), (g), (h), and (i) as subsection (j), (k), (l), and (m), respectively, and by inserting after subsection (e) the following new subsections:

"(f) RATABLE PRINCIPAL AMORTIZATION REQUIRED.—An issue shall be treated as meeting the requirements of this subsection if such issue provides for an equal amount of principal to be paid by the issuer during each calendar year that the issue is outstanding.

"(g) SPECIAL RULES RELATING TO EXPENDITURES.—

"(1) IN GENERAL.—An issue shall be treated as meeting the requirements of this subsection if, as of the date of issuance, the issuer reasonably expects—

"(A) at least 95 percent of the proceeds from the sale of the issue are to be spent for 1 or more qualified purposes with respect to qualified zone academies within the 5-year period beginning on the date of issuance of the qualified zone academy bond,

"(B) a binding commitment with a third party to spend at least 10 percent of the proceeds from the sale of the issue will be incurred within the 6-month period beginning on the date of issuance of the qualified zone academy bond, and

"(C) such purposes will be completed with due diligence and the proceeds from the sale of the issue will be spent with due diligence.

"(2) EXTENSION OF PERIOD.—Upon submission of a request prior to the expiration of the period described in paragraph (1)(A), the Secretary may extend such period if the issuer establishes that the failure to satisfy the 5-year requirement is due to reasonable cause and the related purposes will continue to proceed with due diligence.

"(3) FAILURE TO SPEND REQUIRED AMOUNT OF BOND PROCEEDS WITHIN 5 YEARS.—To the extent that less than 95 percent of the proceeds of such issue are expended by the close of the 5-year period beginning on the date of issuance (or if an extension has been obtained under paragraph (2), by the close of the extended period), the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

"(h) SPECIAL RULES RELATING TO ARBITRAGE.—An issue shall be treated as meeting the requirements of this subsection if the issuer satisfies the arbitrage requirements of section 148 with respect to proceeds of the issue.

"(i) REPORTING.—Issuers of qualified academy zone bonds shall submit reports similar to the reports required under section 149(e).".

(2) CONFORMING AMENDMENTS.—

(A) Section 1397E(d)(3) is amended by inserting "without regard to the requirements of subsection (f) and" after "Such present value shall be determined".

(B) Sections 54(l)(3)(B) and 1400N(l)(7)(B)(ii) are each amended by striking "section 1397E(i)" and inserting "section 1397E(l)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2005.

SEC. 111. DEDUCTION FOR CORPORATE DONATIONS OF COMPUTER TECHNOLOGY AND EQUIPMENT.

(a) IN GENERAL.—Section 170(e)(6)(G) is amended by striking "2005" and inserting "2007".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 112. ABOVE-THE-LINE DEDUCTION FOR CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.

(a) IN GENERAL.—Subparagraph (D) of section 62(a)(2) is amended by striking "or 2005" and inserting "2005, 2006, or 2007".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 113. EXPENSING OF BROWNFIELDS REMEDIATION COSTS.

(a) EXTENSION.—Subsection (h) of section 198 is amended by striking "2005" and inserting "2007".

(b) EXPANSION.—Section 198(d)(1) (defining hazardous substance) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) any petroleum product (as defined in section 4612(a)(3)).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures paid or incurred after December 31, 2005.

SEC. 114. TAX INCENTIVES FOR INVESTMENT IN THE DISTRICT OF COLUMBIA.

(a) DESIGNATION OF ZONE.—

(1) IN GENERAL.—Subsection (f) of section 1400 is amended by striking "2005" both places it appears and inserting "2006".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to periods beginning after December 31, 2005.

(b) TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.—

(1) IN GENERAL.—Subsection (b) of section 1400A is amended by striking "2005" and inserting "2006".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to bonds issued after December 31, 2005.

(c) ZERO PERCENT CAPITAL GAINS RATE.—

(1) IN GENERAL.—Subsection (b) of section 1400B is amended by striking "2006" each place it appears and inserting "2007".

(2) CONFORMING AMENDMENTS.—

(A) Section 1400B(e)(2) is amended—

(i) by striking "2010" and inserting "2011", and

(ii) by striking "2010" in the heading thereof and inserting "2011".

(B) Section 1400B(g)(2) is amended by striking "2010" and inserting "2011".

(C) Section 1400F(d) is amended by striking "2010" and inserting "2011".

(3) Effective dates.—

(A) Extension.—The amendments made by paragraph (1) shall apply to acquisitions after December 31, 2005.

(B) Conforming amendments.—The amendments made by paragraph (2) shall take effect on the date of the enactment of this Act.

(d) First-Time Homebuyer Credit.—

(1) In general.—Subsection (i) of section 1400C is amended by striking "2006" and inserting "2007".

(2) Effective date.—The amendment made by this subsection shall apply to property purchased after December 31, 2005.

SEC. 115. INDIAN EMPLOYMENT TAX CREDIT.

(a) In General.—Section 45A(f) is amended by striking "2005" and inserting "2007".

(b) Effective Date.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 116. ACCELERATED DEPRECIATION FOR BUSINESS PROPERTY ON INDIAN RESERVATION.

(a) In General.—Section 168(j)(8) is amended by striking "2005" and inserting "2007".

(b) Effective Date.—The amendment made by this section shall apply to property placed in service after December 31, 2005.

SEC. 117. FIFTEEN-YEAR STRAIGHT-LINE COST RECOVERY FOR QUALIFIED LEASEHOLD IMPROVEMENTS AND QUALIFIED RESTAURANT IMPROVEMENTS.

(a) In General.—Clauses (iv) and (v) of section 168(e)(3)(E) are each amended by striking "2006" and inserting "2008".

(b) Effective Date.—The amendments made by this section shall apply to property placed in service after December 31, 2005.

SEC. 118. EXTENSION OF FULL CREDIT FOR QUALIFIED ELECTRIC VEHICLES.

(a) In General.—Section 30(e) is amended by striking "2006" and inserting "2007".

(b) Repeal of Phaseout.—Section 30(b) (relating to limitations) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 119. APPLICATION OF EGTRRA SUNSET TO THIS TITLE.

Each amendment made by this title shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 to the same extent and in the same manner as the provision of such Act to which such amendment relates.

TITLE II—PROVISIONS RELATING TO CHARITABLE DONATIONS

Subtitle A—Charitable Giving Incentives

SEC. 201. CHARITABLE DEDUCTION FOR NON-ITEMIZERS.

(a) In General.—Section 170 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) Deduction for Individuals Not Itemizing Deductions.—In the case of an individual who does not itemize deductions for any taxable year beginning after December 31, 2005, and before January 1, 2008, there shall be taken into account as a direct charitable deduction under section 63 an amount equal to the amount allowable under subsection (a) for the taxable year for cash contributions (determined without regard to any carryover).".

(b) Direct Charitable Deduction.—

(1) In general.—Subsection (b) of section 63 (defining taxable income) is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end the following new paragraph:

"(3) the direct charitable deduction.".

(2) Definition.—Section 63 is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) Direct Charitable Deduction.—For purposes of this section, the term 'direct charitable deduction' means that portion of the amount allowable under section 170(a) which is taken as a direct charitable deduction for the taxable year under section 170(o).".

(3) Conforming amendment.—Subsection (d) of section 63 is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end the following new paragraph:

"(3) the direct charitable deduction.".

(c) Floor on Charitable Contributions by Individuals.—Section 170(a) is amended by adding at the end the following new paragraph:

"(4) Dollar floor on charitable contributions by individuals.—In the case of an individual, for any taxable year beginning after December 31, 2005, and before January 1, 2008, the amount otherwise allowed as a deduction under paragraph (1) shall be allowed only to the extent that such amount exceeds $210 ($420 in the case of a joint return).".

(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 202. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT PLANS FOR CHARITABLE PURPOSES.

(a) In General.—Subsection (d) of section 408 (relating to individual retirement accounts) is amended by adding at the end the following new paragraph:

"(8) Distributions for charitable purposes.—

"(A) In general.—No amount shall be includible in gross income by reason of a qualified charitable distribution.

"(B) Qualified charitable distribution.—For purposes of this paragraph, the term 'qualified charitable distribution' means any distribution from an individual retirement plan (other than a plan described in subsection (k) or (p))—

"(i) which is made directly by the trustee—

"(I) to an organization described in section 170(c), or

"(II) to a split-interest entity, and

"(ii) which is made on or after—

"(I) in the case of any distribution described in clause (i)(I), the date that the individual for whose benefit the plan is maintained has attained age 70½, and

"(II) in the case of any distribution described in clause (i)(II), the date that such individual has attained age 59½.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A) and, in the case of a distribution to a split-interest entity, only if no person holds an income interest in the amounts in the split-interest entity attributable to such distribution other than one or more of the following: the individual for whose benefit such plan is maintained, the spouse of such individual, or any organization described in section 170(c).

"(C) Contributions must be otherwise deductible.—For purposes of this paragraph—

"(i) Direct contributions.—A distribution to an organization described in section 170(c) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsections (a)(4) and (b) thereof and this paragraph).

"(ii) Split-interest gifts.—A distribution to a split-interest entity shall be treated as a qualified charitable distribution only if a deduction for the entire value of the interest in the distribution for the use of an organization described in section 170(c) would be allowable under section 170 (determined without regard to subsections (a)(4) and (b) thereof and this paragraph).

"(D) Application of section 72.—Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts distributed from all individual retirement plans were treated as 1 contract under paragraph (2)(A) for purposes of determining the inclusion of such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

"(E) Special rules for split-interest entities.—

"(i) Charitable remainder trusts.—Notwithstanding section 664(b), distributions made from a trust described in subparagraph (G)(i) shall be treated as ordinary income in the hands of the beneficiary to whom is paid the annuity described in section 664(d)(1)(A) or the payment described in section 664(d)(2)(A).

"(ii) Pooled income funds.—No amount shall be includible in the gross income of a pooled income fund (as defined in subparagraph (G)(ii)) by reason of a qualified charitable distribution to such fund, and all distributions from the fund which are attributable to qualified charitable distributions shall be treated as ordinary income to the beneficiary.

"(iii) Charitable gift annuities.—Qualified charitable distributions made for a charitable gift annuity shall not be treated as an investment in the contract.

"(F) Denial of deduction.—Qualified charitable distributions shall not be taken into account in determining the deduction under section 170.

"(G) Split-interest entity defined.—For purposes of this paragraph, the term 'split-interest entity' means—

"(i) a charitable remainder annuity trust or a charitable remainder unitrust (as such terms are defined in section 664(d)) which must be funded exclusively by qualified charitable distributions,

"(ii) a pooled income fund (as defined in section 642(c)(5)), but only if the fund accounts separately for amounts attributable to qualified charitable distributions, and

"(iii) a charitable gift annuity (as defined in section 501(m)(5)).

"(H) Termination.—This paragraph shall not apply to distributions made in taxable years beginning after December 31, 2007.".

(b) Modifications Relating to Information Returns by Certain Trusts.—

(1) Returns.—Section 6034 (relating to returns by trusts described in section 4947(a)(2)

or claiming charitable deductions under section 642(c)) is amended to read as follows:

"SEC. 6034. RETURNS BY CERTAIN TRUSTS.

"(a) SPLIT-INTEREST TRUSTS.—Every trust described in section 4947(a)(2) shall furnish such information with respect to the taxable year as the Secretary may by forms or regulations require.

"(b) TRUSTS CLAIMING CERTAIN CHARITABLE DEDUCTIONS.—

"(1) IN GENERAL.—Every trust not required to file a return under subsection (a) but claiming a deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary may by forms or regulations prescribe, including—

"(A) the amount of the deduction taken under section 642(c) within such year,

"(B) the amount paid out within such year which represents amounts for which deductions under section 642(c) have been taken in prior years,

"(C) the amount for which such deductions have been taken in prior years but which has not been paid out at the beginning of such year,

"(D) the amount paid out of principal in the current and prior years for the purposes described in section 642(c),

"(E) the total income of the trust within such year and the expenses attributable thereto, and

"(F) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to a trust for any taxable year if—

"(A) all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries, or

"(B) the trust is described in section 4947(a)(1).".

(2) INCREASE IN PENALTY RELATING TO FILING OF INFORMATION RETURN BY SPLIT-INTEREST TRUSTS.—Paragraph (2) of section 6652(c) (relating to returns by exempt organizations and by certain trusts) is amended by adding at the end the following new subparagraph:

"(C) SPLIT-INTEREST TRUSTS.—In the case of a trust which is required to file a return under section 6034(a), subparagraphs (A) and (B) of this paragraph shall not apply and paragraph (1) shall apply in the same manner as if such return were required under section 6033, except that—

"(i) the 5 percent limitation in the second sentence of paragraph (1)(A) shall not apply,

"(ii) in the case of any trust with gross income in excess of $250,000, the first sentence of paragraph (1)(A) shall be applied by substituting '$100' for '$20', and the second sentence thereof shall be applied by substituting '$50,000' for '$10,000', and

"(iii) the third sentence of paragraph (1)(A) shall be disregarded.

In addition to any penalty imposed on the trust pursuant to this subparagraph, if the person required to file such return knowingly fails to file the return, such penalty shall also be imposed on such person who shall be personally liable for such penalty.".

(3) CONFIDENTIALITY OF NONCHARITABLE BENEFICIARIES.—Subsection (b) of section 6104 (relating to inspection of annual information returns) is amended by adding at the end the following new sentence: "In the case of a trust which is required to file a return under section 6034(a), this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c).".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to distributions made in taxable years beginning after December 31, 2005.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to returns for taxable years beginning after December 31, 2005.

SEC. 203. MODIFICATION OF CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.

(a) IN GENERAL.—Subparagraph (C) of section 170(e)(3) (relating to special rule for certain contributions of inventory and other property) is amended to read as follows:

"(C) SPECIAL RULE FOR CONTRIBUTIONS OF FOOD INVENTORY.—

"(i) GENERAL RULE.—In the case of a charitable contribution of food from any trade or business of the taxpayer, this paragraph shall be applied—

"(I) without regard to whether the contribution is made by a C corporation, and

"(II) only to food that is apparently wholesome food.

"(ii) LIMITATION.—In the case of a taxpayer other than a C corporation, the aggregate amount of such contributions for any taxable year which may be taken into account under this section shall not exceed 10 percent of the taxpayer's aggregate net income for such taxable year from all trades or businesses from which such contributions were made for such year, computed without regard to this section.

"(iii) LIMITATION ON REDUCTION.—In the case of any such contribution, notwithstanding subparagraph (B), the amount of the reduction determined under paragraph (1)(A) shall not exceed the amount by which the fair market value of the apparently wholesome food exceeds twice the basis of such food.

"(iv) DETERMINATION OF BASIS.—If a taxpayer—

"(I) does not account for inventories under section 471, and

"(II) is not required to capitalize indirect costs under section 263A,

the taxpayer may elect, solely for purposes of subparagraph (B), to treat the basis of any apparently wholesome food as being equal to 25 percent of the fair market value of such food.

"(v) DETERMINATION OF FAIR MARKET VALUE.—In the case of any such contribution of apparently wholesome food which, solely by reason of internal standards of the taxpayer or lack of market, cannot or will not be sold, the fair market value of such contribution shall be determined—

"(I) without regard to such internal standards or such lack of market and

"(II) by taking into account the price at which the same or substantially the same food items (as to both type and quality) are sold by the taxpayer at the time of the contribution (or, if not so sold at such time, in the recent past).

"(vi) APPARENTLY WHOLESOME FOOD.—For purposes of this subparagraph, the term 'apparently wholesome food' has the meaning given to such term by section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the enactment of this subparagraph.

"(vii) TERMINATION.—This subparagraph shall not apply to contributions made after December 31, 2007.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after December 31, 2005.

SEC. 204. BASIS ADJUSTMENT TO STOCK OF S CORPORATION CONTRIBUTING PROPERTY.

(a) IN GENERAL.—Paragraph (2) of section 1367(a) (relating to adjustments to basis of stock of shareholders, etc.) is amended by adding at the end the following new flush sentence:

"The decrease under subparagraph (B) by reason of a charitable contribution (as defined in section 170(c)) of property shall be the amount equal to the shareholder's pro rata share of the adjusted basis of such property. The preceding sentence shall not apply to contributions made in taxable years beginning after December 31, 2007.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2005.

SEC. 205. MODIFICATION OF CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF BOOK INVENTORY.

(a) IN GENERAL.—Subparagraph (D) of section 170(e)(3) (relating to special rule for certain contributions of inventory and other property) is amended to read as follows:

"(D) SPECIAL RULE FOR CONTRIBUTIONS OF BOOK INVENTORY FOR EDUCATIONAL PURPOSES.—

"(i) CONTRIBUTIONS OF BOOK INVENTORY.—In determining whether a qualified book contribution is a qualified contribution, subparagraph (A) shall be applied without regard to whether—

"(I) the donee is an organization described in the matter preceding clause (i) of subparagraph (A), and

"(II) the property is to be used by the donee solely for the care of the ill, the needy, or infants.

"(ii) AMOUNT OF REDUCTION.—Notwithstanding subparagraph (B), the amount of the reduction determined under paragraph (1)(A) shall not exceed the amount by which the fair market value of the contributed property (as determined by the taxpayer using a bona fide published market price for such book) exceeds twice the basis of such property.

"(iii) QUALIFIED BOOK CONTRIBUTION.—For purposes of this paragraph, the term 'qualified book contribution' means a charitable contribution of books, but only if the requirements of clauses (iv) and (v) are met.

"(iv) IDENTITY OF DONEE.—The requirement of this clause is met if the contribution is to an organization—

"(I) described in subclause (I) or (III) of paragraph (6)(B)(i), or

"(II) described in section 501(c)(3) and exempt from tax under section 501(a) (other than a private foundation, as defined in section 509(a), which is not an operating foundation, as defined in section 4942(j)(3)), which is organized primarily to make books available to the general public at no cost or to operate a literacy program.

"(v) CERTIFICATION BY DONEE.—The requirement of this clause is met if, in addition to the certifications required by subparagraph (A) (as modified by this subparagraph), the donee certifies in writing that—

"(I) the books are suitable, in terms of currency, content, and quantity, for use in the donee's educational programs, and

"(II) the donee will use the books in its educational programs.

"(vi) BONA FIDE PUBLISHED MARKET PRICE.—For purposes of this subparagraph, the term 'bona fide published market price' means, with respect to any book, a price—

"(I) determined using the same printing and edition, "(II) determined in the usual market in which such a book has been customarily sold by the taxpayer, and

"(III) for which the taxpayer can demonstrate to the satisfaction of the Secretary that the taxpayer customarily sold such books in arm's length transactions within 7 years preceding the contribution of such a book.

"(vii) Termination.—This subparagraph shall not apply to contributions made after December 31, 2007.".

(b) Effective Date.—The amendment made by this section shall apply to contributions made after December 31, 2005.

SEC. 206. MODIFICATION OF TAX TREATMENT OF CERTAIN PAYMENTS TO CONTROLLING EXEMPT ORGANIZATIONS AND PUBLIC DISCLOSURE OF INFORMATION RELATING TO UNRELATED BUSINESS INCOME.

(a) Modification of Section 512(B)(13).—

(1) In general.—Paragraph (13) of section 512(b) (relating to special rules for certain amounts received from controlled entities) is amended by redesignating subparagraph (E) as subparagraph (F) and by inserting after subparagraph (D) the following new subparagraph:

"(E) Paragraph to apply only to excess payments.—

"(i) In general.—Subparagraph (A) shall apply only to the portion of a specified payment received or accrued by the controlling organization that exceeds the amount which would have been paid or accrued if such payment met the requirements prescribed under section 482.

"(ii) Addition to tax for valuation misstatements.—The tax imposed by this chapter on the controlling organization shall be increased by an amount equal to 20 percent of the larger of—

"(I) such excess determined without regard to any amendment or supplement to a return of tax, or

"(II) such excess determined with regard to all such amendments and supplements.".

(2) Effective date.—

(A) In general.—The amendment made by this subsection shall apply to payments received or accrued after December 31, 2000.

(B) Payments subject to binding contract transition rule.—If the amendments made by section 1041 of the Taxpayer Relief Act of 1997 did not apply to any amount received or accrued in the first 2 taxable years beginning on or after the date of the enactment of the Taxpayer Relief Act of 1997 under any contract described in subsection (b)(2) of such section, such amendments also shall not apply to amounts received or accrued under such contract before January 1, 2001.

(b) Public Availability of Unrelated Business Income Tax Returns.—

(1) In general.—Subparagraph (A) of section 6104(d)(1) is amended by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively, and by inserting after clause (i) the following new clause:

"(ii) any annual return filed under section 6011 which relates to any tax imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc., organizations) by such organization, but only if such organization is described in section 501(c)(3),".

(2) Effective date.—The amendments made by this subsection shall apply to returns filed after the date of the enactment of this Act.

(c) Certification of Unrelated Business Taxable Income for Certain Organizations.—

(1) In general.—Section 6011 is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) Returns of Certain Organizations Relating to Unrelated Business Taxable Income.—

"(1) In general.—Every applicable exempt organization shall include with the return under subsection (a) for the taxable year a statement by an independent auditor or an independent counsel which meets the requirements of paragraph (2).

"(2) Statement.—A statement meets the requirement of this paragraph if the statement—

"(A) contains a certification that—

"(i) the information contained in the return—

"(I) has been reviewed by the auditor or counsel, and

"(II) to the best of the auditor's or counsel's knowledge, is accurate, and

"(ii) to the best of the auditor's or counsel's knowledge, the allocation of expenses between the unrelated trades and business of the organization and the activities related to the purpose or function constituting the basis of the organization's exemption under section 501 complies with the requirements set forth by the Secretary under section 512, and

"(B) indicates—

"(i) whether the auditor or counsel has provided a tax opinion to the organization regarding—

"(I) the classification of any trade or business of the organization as an unrelated trade or business, or

"(II) the treatment of any income as unrelated business taxable income, and

"(ii) a description of any material facts with respect to any such opinion.

"(3) Applicable exempt organization.—For purposes of this subsection, the term 'applicable exempt organization' means any organization which—

"(A) is described in section 501(c)(3),

"(B) has—

"(i) gross income and receipts of not less than $10,000,000 for the taxable year, or

"(ii) gross assets of not less than $10,000,000 on the last day of the taxable year, and

"(C) is subject to the tax imposed under section 511 for the taxable year.".

(2) Penalty.—

(A) In general.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end the following new section:

"SEC. 6720B. UNRELATED BUSINESS INCOME REQUIREMENTS.

"(a) In General.—Any applicable exempt organization (as defined in section 6011(g)(3)) which fails to file a statement required under section 6011(g) shall pay a penalty in an amount equal to ½ percent of the gross revenue amount of such organization for the taxable year to which such statement relates.

"(b) Gross Revenue Amount.—For purposes of subsection (a), the term 'gross revenue amount' means, with respect to any taxable year, the gross income and receipts of the organization determined without regard to any contributions or grants received by the organization.

"(c) Reasonable Cause.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.".

(B) Conforming amendment.—The table of sections of part I of subchapter B of chapter 68 is amended by adding after the item relating to section 6720A the following new item:

"Sec. 6720B. Unrelated business income requirements.".

(3) Effective date.—The amendments made by this subsection shall apply to returns for taxable years beginning after the date of the enactment of this Act.

SEC. 207. ENCOURAGEMENT OF CONTRIBUTIONS OF CAPITAL GAIN REAL PROPERTY MADE FOR CONSERVATION PURPOSES.

(a) In General.—

(1) Individuals.—Paragraph (1) of subsection 170(b) (relating to percentage limitations) is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively, and by inserting after subparagraph (D) the following new subparagraph:

"(E) Contributions of qualified conservation contributions.—

"(i) In general.—Any qualified conservation contribution (as defined in subsection (h)(1)) to an organization described in subparagraph (A) shall be allowed to the extent the aggregate of such contributions does not exceed the excess of 50 percent of the taxpayer's contribution base over the amount of all other charitable contributions allowable under this paragraph.

"(ii) Carryover.—If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution to which clause (i) applies in each of the 15 succeeding years in order of time.

"(iii) Coordination with other subparagraphs.—For purposes of applying this subsection and subsection (d)(1), contributions described in clause (i) shall not be treated as described in subparagraph (A), (B), (C), or (D) and such subparagraphs shall apply without regard to such contributions.

"(iv) Qualified farmer or rancher.—

"(I) In general.—If the individual is a qualified farmer or rancher for the taxable year in which the contribution is made, clause (i) shall be applied by substituting '100 percent' for '50 percent'.

"(II) Definition.—For purposes of subclause (I), the term 'qualified farmer or rancher' means a taxpayer whose gross income from the trade or business of farming (within the meaning of section 2032A(e)(5)) is greater than 50 percent of the taxpayer's gross income for the taxable year.

"(v) Termination.—This subparagraph shall not apply to any contribution made in taxable years beginning after December 31, 2007.".

(2) Corporations.—Paragraph (2) of section 170(b) is amended to read as follows:

"(2) Corporations.—In the case of a corporation—

"(A) In general.—The total deductions under subsection (a) for any taxable year (other than for contributions to which subparagraph (B) applies) shall not exceed 10 percent of the taxpayer's taxable income.

"(B) Qualified conservation contributions by certain corporate farmers and ranchers.—

"(i) In general.—Any qualified conservation contribution (as defined in subsection (h)(1)) made—

"(I) by a corporation which, for the taxable year during which the contribution is made, is a qualified farmer or rancher (as defined in paragraph (1)(E)(iv)(II)) and the stock of which is not readily tradable on an established securities market at any time during such year, and

"(II) to an organization described in paragraph (1)(A), shall be allowed to the extent the aggregate of such contributions does not exceed the excess of the taxpayer's taxable income over the amount of charitable contributions allowable under subparagraph (A).

"(ii) CARRYOVER.—If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(2)) as a charitable contribution to which clause (i) applies in each of the 15 succeeding years in order of time.

"(iii) TERMINATION.—This subparagraph shall not apply to any contribution made in taxable years beginning after December 31, 2007.

"(C) TAXABLE INCOME.—For purposes of this paragraph, taxable income shall be computed without regard to—

"(i) this section,

"(ii) part VIII (except section 248),

"(iii) any net operating loss carrryback to the taxable year under section 172,

"(iv) section 199, and

"(v) any capital loss carryback to the taxable year under section 1212(a)(1).".

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 170(d) is amended by striking "subsection (b)(2)" each place it appears and inserting "subsection (b)(2)(A)".

(2) Section 545(b)(2) is amended by striking "and (D)" and inserting "(D), and (E)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2005.

SEC. 208. ENHANCED DEDUCTION FOR CHARITABLE CONTRIBUTION OF LITERARY, MUSICAL, ARTISTIC, AND SCHOLARLY COMPOSITIONS.

(a) IN GENERAL.—Subsection (e) of section 170 (relating to certain contributions of ordinary income and capital gain property) is amended by adding at the end the following new paragraph:

"(7) SPECIAL RULE FOR CERTAIN CONTRIBUTIONS OF LITERARY, MUSICAL, ARTISTIC, OR SCHOLARLY COMPOSITIONS.—

"(A) IN GENERAL.—In the case of a qualified artistic charitable contribution—

"(i) the amount of such contribution taken into account under this section shall be the fair market value of the property contributed (determined at the time of such contribution), and

"(ii) no reduction in the amount of such contribution shall be made under paragraph (1).

"(B) QUALIFIED ARTISTIC CHARITABLE CONTRIBUTION.—For purposes of this paragraph, the term 'qualified artistic charitable contribution' means a charitable contribution of any literary, musical, artistic, or scholarly composition, or similar property, or the copyright thereon (or both), but only if—

"(i) such property was created by the personal efforts of the taxpayer making such contribution no less than 18 months prior to such contribution,

"(ii) the taxpayer—

"(I) has received a qualified appraisal of the fair market value of such property in accordance with the regulations under this section, and

"(II) attaches to the taxpayer's income tax return for the taxable year in which such contribution was made a copy of such appraisal,

"(iii) the donee is an organization described in subsection (b)(1)(A),

"(iv) the use of such property by the donee is related to the purpose or function constituting the basis for the donee's exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described under section 501(c)),

"(v) the taxpayer receives from the donee a written statement representing that the donee's use of the property will be in accordance with the provisions of clause (iv), and

"(vi) the written appraisal referred to in clause (ii) includes evidence of the extent (if any) to which property created by the personal efforts of the taxpayer and of the same type as the donated property is or has been—

"(I) owned, maintained, and displayed by organizations described in subsection (b)(1)(A), and

"(II) sold to or exchanged by persons other than the taxpayer, donee, or any related person (as defined in section 465(b)(3)(C)).

"(C) MAXIMUM DOLLAR LIMITATION; NO CARRYOVER OF INCREASED DEDUCTION.—

"(i) IN GENERAL.—Subsections (b) and (d) shall not apply to the amount by which any charitable contribution is increased by reason of this paragraph and such increased contribution shall not be taken into account for purposes of applying subparagraphs (A) through (D) of subsection (b)(1) and subsection (d).

"(ii) CONTRIBUTION BASE LIMITATION.—The increased contributions shall be allowed to the extent the aggregate of such contributions do not exceed the excess of 50 percent of the contribution base (as defined in subparagraph (F) of subsection (b)(1)) over the amount of all other charitable contributions allowable under subparagraphs (A) through (D) of subsection (b)(1).

"(iii) ARTISTIC ADJUSTED GROSS INCOME.—The aggregate increase in the charitable contributions by reason of this paragraph for any taxable year shall not exceed the artistic adjusted gross income of the taxpayer for such taxable year.

"(D) ARTISTIC ADJUSTED GROSS INCOME.—For purposes of this paragraph, the term 'artistic adjusted gross income' means that portion of the adjusted gross income of the taxpayer for the taxable year attributable to—

"(i) income from the sale or use of property created by the personal efforts of the taxpayer which is of the same type as the donated property, and

"(ii) income from teaching, lecturing, performing, or similar activity with respect to property described in clause (i).

"(E) PARAGRAPH NOT TO APPLY TO CERTAIN CONTRIBUTIONS.—Subparagraph (A) shall not apply to any charitable contribution of any letter, memorandum, or similar property which was written, prepared, or produced by or for an individual while the individual is an officer or employee of any person (including any government agency or instrumentality) unless such letter, memorandum, or similar property is entirely personal.

"(F) COPYRIGHT TREATED AS SEPARATE PROPERTY FOR PARTIAL INTEREST RULE.—In the case of a qualified artistic charitable contribution, the tangible literary, musical, artistic, or scholarly composition, or similar property and the copyright on such work shall be treated as separate properties for purposes of this paragraph and subsection (f)(3).

"(G) TERMINATION.—This paragraph shall not apply to contributions made after December 31, 2007.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after December 31, 2005.

SEC. 209. MILEAGE REIMBURSEMENTS TO CHARITABLE VOLUNTEERS EXCLUDED FROM GROSS INCOME.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 is amended by inserting after section 139A the following new section:

"SEC. 139B. MILEAGE REIMBURSEMENTS TO CHARITABLE VOLUNTEERS.

"(a) IN GENERAL.—Gross income of an individual does not include amounts received, from an organization described in section 170(c), as reimbursement of operating expenses with respect to use of a passenger automobile for the benefit of such organization. The preceding sentence shall apply only to the extent that the expenses which are reimbursed would be deductible under this chapter if section 274(d) were applied—

"(1) by using the standard business mileage rate established under such section, and

"(2) as if the individual were an employee of an organization not described in section 170(c).

"(b) APPLICATION TO VOLUNTEER SERVICES ONLY.—Subsection (a) shall not apply with respect to any expenses relating to the performance of services for compensation.

"(c) NO DOUBLE BENEFIT.—A taxpayer may not claim a deduction or credit under any other provision of this title with respect to the expenses under subsection (a).

"(d) EXEMPTION FROM REPORTING REQUIREMENTS.—Section 6041 shall not apply with respect to reimbursements excluded from income under subsection (a).

"(e) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 2007.".

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 is amended by inserting after the item relating to section 139A the following new item:

"Sec. 139B. Mileage reimbursements to charitable volunteers.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 210. ALTERNATIVE PERCENTAGE LIMITATION FOR CORPORATE CHARITABLE CONTRIBUTIONS TO THE MATHEMATICS AND SCIENCE PARTNERSHIP PROGRAM.

(a) IN GENERAL.—Section 170(b) (related to percentage limitations) is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULE FOR CORPORATE CONTRIBUTIONS TO THE MATHEMATICS AND SCIENCE PARTNERSHIP PROGRAM.—

"(A) IN GENERAL.—In the case of a corporation which makes an eligible mathematics and science contribution—

"(i) the limitation under paragraph (2) shall apply separately with respect to all such contributions and all other charitable contributions, and

"(ii) paragraph (2)(A) shall be applied by substituting for '10 percent of the taxpayer's taxable income' the following: 'the sum of (i) the lesser of all eligible mathematics and science contributions or 15 percent of the taxpayer's taxable income, plus (ii) the lesser of the contributions (other than eligible mathematics and science contributions and contributions to which subparagraph (B) applies) or 10 percent of the taxpayer's taxable income reduced by all eligible mathematics and science contributions'.

"(B) ELIGIBLE MATHEMATICS AND SCIENCE CONTRIBUTION.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'eligible mathematics and science contribution' means a charitable contribution (other than a contribution of used equipment) to a qualified partnership for the purpose of an activity described in section 2202(c) of the Elementary and Secondary Education Act of 1965.

"(ii) Qualified partnership.—The term 'qualified partnership' means an eligible partnership (within the meaning of section 2201(b)(1) of the Elementary and Secondary Education Act of 1965), but only to the extent that such partnership does not include a person other than a person described in paragraph (1)(A).

"(C) Termination.—This paragraph shall not apply to any contributions made in taxable years beginning after December 31, 2006.".

(b) Effective Date.—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2005.

Subtitle B—Reforming Charitable Organizations

PART I—GENERAL REFORMS

SEC. 211. TAX INVOLVEMENT BY EXEMPT ORGANIZATIONS IN TAX SHELTER TRANSACTIONS.

(a) Imposition of Excise Tax.—

(1) In general.—Chapter 42 (relating to private foundations and certain other tax-exempt organizations) is amended by adding at the end the following new subchapter:

"Subchapter F—Tax Shelter Transactions

"Sec. 4965. Excise tax on certain tax-exempt entities entering into prohibited tax shelter transactions.

"SEC. 4965. EXCISE TAX ON CERTAIN TAX-EXEMPT ENTITIES ENTERING INTO PROHIBITED TAX SHELTER TRANSACTIONS.

"(a) Participation in and Approval of Prohibited Transactions.—

"(1) Tax-exempt entity.—

"(A) In general.—If any tax-exempt entity (other than a tax-exempt entity described in paragraph (4), (5), (6), or (7) of subsection (c)) is a party to a prohibited tax shelter transaction at any time during the taxable year and knows or has reason to know such transaction is a prohibited tax shelter transaction, such entity shall pay a tax for such taxable year in the amount determined under subsection (b)(1)(A).

"(B) Post-transaction determination.—If any tax-exempt entity (other than a tax-exempt entity described in paragraph (4), (5), (6), or (7) of subsection (c)) is a party to a subsequently listed transaction at any time during the taxable year, such entity shall pay a tax in the amount determined under subsection (b)(1)(B).

"(2) Entity manager.—If any entity manager of a tax-exempt entity approves such entity as (or otherwise causes such entity to be) a party to a prohibited tax shelter transaction at any time during the taxable year and knows or has reason to know that the transaction is a prohibited tax shelter transaction, such manager shall pay a tax for such taxable year in the amount determined under subsection (b)(2).

"(3) Reasonable cause exception.—No tax shall be imposed under paragraph (1)(A) or (2) if it is shown that the participation of the tax-exempt entity in the transaction was not willful and was due to reasonable cause.

"(b) Amount of Tax.—

"(1) Entity.—In the case of a tax-exempt entity—

"(A) In general.—The amount of the tax imposed under subsection (a)(1)(A) on the entity with respect to a taxable year shall be the greater of—

"(i) 100 percent of the entity's net income (after taking into account any tax imposed by this subtitle with respect to the prohibited tax shelter transaction) for such taxable year which is attributable to the prohibited tax shelter transaction, or

"(ii) 75 percent of the proceeds received by the entity which are attributable to the prohibited tax shelter transaction.

"(B) Post-transaction determination.—The amount of the tax imposed under subsection (a)(1)(B) on the entity with respect to any taxable year shall be an amount equal to the product of—

"(i) the highest rate of tax under section 11, and

"(ii) the greater of—

"(I) the entity's net income (after taking into account any tax imposed by this subtitle with respect to the subsequently listed transaction) for such taxable year which is attributable to the subsequently listed transaction and which is properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year, or

"(II) 75 percent of the proceeds received by the entity which are attributable to the subsequently listed transaction and which are properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year.

"(2) Entity manager.—In the case of each entity manager to whom subsection (a)(2) applies, the amount of the tax under such subsection shall be $20,000 for each approval.

"(c) Tax-Exempt Entity.—For purposes of this section, the term 'tax-exempt entity' means an entity which is—

"(1) described in section 501(c) or 501(d),

"(2) described in section 170(c) (other than an agency or instrumentality of the United States) to which paragraph (1) of this subsection does not apply,

"(3) an Indian tribal government (within the meaning of section 7701(a)(40)),

"(4) described in paragraph (1), (2), or (3) of section 4979(e),

"(5) a program described in section 529,

"(6) an eligible deferred compensation plan described in section 457(b) which is maintained by an employer described in section 4457(e)(1)(A), or

"(7) an arrangement described in section 4973(a).

"(d) Entity Manager.—For purposes of this section, the term 'entity manager' means—

"(1) with respect to a tax-exempt entity described in paragraph (3) or (4) of section 501(c)—

"(A) in the case of an entity other than a private foundation, an organization manager (as defined in section 4958(f)(2)), and

"(B) in the case of a private foundation, a foundation manager (as defined in section 4946(b)), and

"(2) in all other cases, the person with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization.

"(e) Prohibited Tax Shelter Transaction; Subsequently Listed Transaction.—For purposes of this section—

"(1) Prohibited tax shelter transaction.—

"(A) In general.—The term 'prohibited tax shelter transaction' means—

"(i) any listed transaction, or

"(ii) any prohibited reportable transaction if the tax-exempt entity knows or has reason to know that such transaction is a reportable transaction.

"(B) Listed transaction.—The term 'listed transaction' has the meaning given such term by section 6707A(c)(2).

"(C) Prohibited reportable transaction.—The term 'prohibited reportable transaction' means any confidential transaction or any transaction with contractual protection (as defined under regulations prescribed by the Secretary) which is a reportable transaction (as defined in section 6707A(c)(1)).

"(2) Subsequently listed transaction.—The term 'subsequently listed transaction' means any transaction to which a tax-exempt entity is a party and which is determined by the Secretary to be a listed transaction at any time after the entity has entered into the transaction.

"(f) Regulatory Authority.—The Secretary is authorized to promulgate regulations which provide guidance regarding the determination of the allocation of net income of a tax-exempt entity attributable to a transaction to various periods, including before and after the listing of the transaction or the date which is 90 days after the date of the enactment of this section.

"(g) Coordination With Other Taxes and Penalties.—The tax imposed by this section is in addition to any other tax, addition to tax, or penalty imposed under this title.".

(2) Conforming amendment.—The table of subchapters for chapter 42 is amended by adding at the end the following new item:

"SUBCHAPTER F. TAX SHELTER TRANSACTIONS.".

(b) Disclosure Requirements.—

(1) Disclosure by organization to the Internal Revenue Service.—

(A) In general.—Section 6033(a) (relating to organizations required to file) is amended by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following new paragraph:

"(2) Participation in certain reportable transactions.—Every tax-exempt entity described in section 4965(c) shall file (in such form and manner and at such time as determined by the Secretary) a disclosure of—

"(A) such entity's participation in any prohibited tax shelter transaction (as defined in section 4965(e)), and

"(B) the identity of any other party participating in such transaction which is known by such tax-exempt entity.".

(B) Conforming amendment.—Section 6033(a)(1) is amended by striking "paragraph (2)" and inserting "paragraph (3)".

(2) Disclosure by other taxpayers to the tax-exempt entity.—Section 6011 (relating to general requirement of return, statement, or list), as amended by this Act, is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) Disclosure of Reportable Transaction to Tax-Exempt Entity.—Any taxable party to a prohibited tax shelter transaction (as defined in section 4965(e)(1)) shall by statement disclose to any tax-exempt entity (as defined in section 4965(c)) which is a party to such transaction that such transaction is such a prohibited tax shelter transaction.".

(c) Penalty for Nondisclosure.—

(1) In general.—Section 6652(c) (relating to returns by exempt organizations and by certain trusts), as amended by this Act, is amended by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) Disclosure under section 6033.—

"(A) Penalty on organizations.—In the case of a failure to file a disclosure required under section 6033(a)(2), there shall be paid by the tax-exempt entity (the entity manager in the case of a tax-exempt entity described in paragraph (4), (5), (6), or (7) of section 4965(c)) $100 for each day during which such failure continues. The maximum penalty under this subparagraph on failures with respect to any 1 disclosure shall not exceed $50,000.

"(B) Persons.—

"(i) In general.—The Secretary may make a written demand on any tax-exempt entity subject to penalty under subparagraph (A) specifying therein a reasonable future date by which the disclosure shall be filed for purposes of this subparagraph.

"(ii) Failure to comply with demand.—If any person fails to comply with any demand under clause (i) on or before the date specified in such demand, there shall be paid by such person failing to so comply $100 for each day after the expiration of the time specified in such demand during which such failure continues. The maximum penalty imposed under this subparagraph on all tax-exempt entities for failures with respect to any 1 disclosure shall not exceed $10,000.

"(C) Definitions.—Any term used in this section which is also used in section 4965 shall have the meaning given such term under section 4965.".

(2) Conforming amendment.—Subparagraph (A) of section 6652(c)(1) of such Code is amended by striking "6033" each place it appears in the text and heading thereof and inserting "6033(a)(1)".

(d) Effective Dates.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply to transactions after the date of the enactment of this Act, except that no tax under section 4965(a) of the Internal Revenue Code of 1986 (as added by this section) shall apply with respect to income that is properly allocable to any period on or before the date which is 90 days after such date of enactment.

(2) Disclosure.—The amendments made by subsections (b) and (c) shall apply to disclosures the due date for which are after the date of the enactment of this Act.

SEC. 212. EXCISE TAX ON CERTAIN ACQUISITIONS OF INTERESTS IN INSURANCE CONTRACTS IN WHICH CERTAIN EXEMPT ORGANIZATIONS HOLD AN INTEREST.

(a) Imposition of Tax.—

(1) In general.—Subchapter F of chapter 42 (relating to tax shelter transactions), as added by this Act, is amended by adding at the end the following new section:

"SEC. 4966. EXCISE TAX ON ACQUISITION OF INTERESTS IN INSURANCE CONTRACTS IN WHICH CERTAIN EXEMPT ORGANIZATIONS HOLD AN INTEREST.

"(a) Imposition of Tax.—If there is a taxable acquisition of any interest in an applicable insurance contract, there is hereby imposed on the person acquiring the interest a tax equal to 100 percent of the acquisition costs of the interest.

"(b) Taxable Acquisition.—For purposes of this section—

"(1) In general.—The term 'taxable acquisition' means the acquisition of any direct or indirect interest in an applicable insurance contract by—

"(A) an applicable exempt organization, or

"(B) a person other than an applicable exempt organization if such interest in the hands of such person is not an interest described in clause (i), (ii), (iii), or (iv) of paragraph (2)(B).

"(2) Applicable insurance contract.—

"(A) In general.—The term 'applicable insurance contract' means any life insurance, annuity, or endowment contract with respect to which both an applicable exempt organization and a person other than an applicable exempt organization have directly or indirectly held an interest in the contract (whether or not at the same time).

"(B) Exceptions.—Such term shall not include a life insurance, annuity, or endowment contract if—

"(i) all persons directly or indirectly holding any interest in the contract (other than applicable exempt organizations) have an insurable interest in the insured under the contract independent of any interest of an applicable exempt organization in the contract,

"(ii) the sole interest in the contract of each person other than an applicable exempt organization is as a named beneficiary,

"(iii) the sole interest in the contract of each person other than an applicable exempt organization is—

"(I) as a beneficiary of a trust holding an interest in the contract, but only if the person's designation as such beneficiary was made without consideration and solely on a purely gratuitous basis, or

"(II) as a trustee who holds an interest in the contract in a fiduciary capacity solely for the benefit of applicable exempt organizations or persons otherwise described in clauses (i), (ii), and (iv) or subclause (I) of this clause, or

"(iv) except as provided in subparagraph (C), the sole interest in the contract of each person other than an applicable exempt organization is as a lender with respect to the contract and the contract covers only 1 individual and such individual is an officer, director, or employee of the applicable exempt organization with an interest in the contract.

"(C) Restrictions on exception for lenders.—

"(i) Numerical limit.—The number of contracts that may be taken into account under subparagraph (B)(iv) with respect to officers, directors, or employees of the applicable exempt organization with interests in the contracts shall not exceed the greater of—

"(I) the lesser of 5 percent of the total officers, directors, and employees of the organization or 20, or

"(II) 5.

"(ii) Aggregate indebtedness.—The exception under subparagraph (B)(iv) shall apply only to the extent that the aggregate amount of the indebtedness with respect to 1 or more contracts covering a single individual does not exceed $50,000.

"(D) Secretarial authority.—The Secretary may exempt a contract from treatment as an applicable insurance contract based on specific factors, including factors such as whether the transaction is at arms length, whether economic benefits to the applicable exempt organization substantially exceed the economic benefits to all other persons with an interest in the contract (determined without regard to whether, or the extent to which, such organization has paid or contributed with respect to the contract), and the likelihood of abuse.

"(3) Definition and rule relating to acquisition costs.—

"(A) Acquisition costs defined.—The term 'acquisition costs' means the direct or indirect costs of acquiring an interest in an applicable insurance contract. Such term shall include any fees, commissions, charges, or other amounts paid in connection with the acquisition, whether or not paid to the issuer of the contract.

"(B) Timing of payments.—Except as provided in regulations, if acquisition costs of any acquisition are paid or incurred in more than 1 calendar year, the tax imposed by subsection (a) with respect to the acquisition shall be imposed each time the costs are so paid or incurred.

"(4) Rules relating to interests.—

"(A) In general.—An interest in the contract includes any right with respect to the contract, whether as an owner, beneficiary, or otherwise.

"(B) Indirect interests.—

"(i) In general.—Except as provided in clause (ii), an indirect interest in a contract includes an interest in an entity which directly or indirectly holds an interest in the contract.

"(ii) Portfolio investments.—If an applicable exempt organization holds an interest in a contract solely because the organization holds, as part of a diversified investment strategy, a de minimis interest in an entity which directly or indirectly holds the interest in the contract, such indirect interest in the contract shall not be taken into account for purposes of this section.

"(C) Exchanged contracts.—In the case of an exchange of an applicable insurance contract on which no gain or loss is recognized under section 1035, any interest in any of the contracts involved in the exchange shall be treated as an interest in all such contracts.

"(5) Increase in interest.—If a person increases an interest in an applicable insurance contract, the increase shall be treated as a separate acquisition for purposes of this section.

"(6) Prior acquisitions.—Except as provided in regulations, if a person acquires an interest in a contract before the contract is treated as an applicable insurance contract, the acquisition shall be treated as a taxable acquisition of an interest in an applicable insurance contract as of the date the contract becomes an applicable insurance contract.

"(c) Applicable Exempt Organization.—For purposes of this section, the term 'applicable exempt organization' means—

"(1) an organization described in section 170(c),

"(2) an organization described in section 168(h)(2)(A)(iv), or

"(3) an organization not described in paragraph (1) or (2) which is described in section 2055(a) or section 2522(a).

"(d) Tax Not Treated as Investment in the Contract.—For purposes of section 72, the tax imposed by this section shall not be included in investment in the contract.

"(e) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section. Such regulations may include regulations which—

"(1) provide, for purposes of subsection (b)(6), appropriate rules for the application of this section in any case where an interest is acquired before a contract becomes an applicable insurance contract,

"(2) prevent, in cases the Secretary determines appropriate, the imposition of more than one tax under this section if the same interest is acquired more than once, and

"(3) are designed to prevent avoidance of the purposes of this section, including through the use of intermediaries.".

(2) Conforming amendment.—The table of sections for subchapter F of chapter 42, as added by this Act, is amended by adding at the end the following new item:

"Sec. 4966. Excise tax on acquisition of interests in insurance contracts in which certain exempt organizations hold an interest.".

(b) Reporting Requirements.—

(1) In general.—Subpart B of part III of subchapter A of chapter 61 (relating to information concerning transactions with other persons) is amended by adding at the end the following new section:

"SEC. 6050U. RETURNS RELATING TO APPLICABLE INSURANCE CONTRACTS IN WHICH CERTAIN EXEMPT ORGANIZATIONS HOLD INTERESTS.

"(a) Requirements of Reporting.—

"(1) Exempt organizations.—Each—

"(A) applicable exempt organization which acquires (within the meaning of section 4966) an interest in any applicable insurance contract, and

"(B) other person which makes an acquisition of such an interest if such acquisition is taxable under section 4966,

shall make the return described in subsection (c).

"(2) Transfers.—If a person (including an applicable exempt organization) acquires an interest in an applicable insurance contract in an acquisition which is taxable under section 4966 and then transfers such interest to 1 or more other persons, each person acquiring all or a portion of such interest shall make the return described in subsection (c).

"(b) Time for Making Return.—Any organization or person required to make a return under subsection (a) shall file such return at such time as may be established by the Secretary with respect to—

"(1) in the case of a person described in subsection (a)(1), the calendar year in which the acquisition occurs, any calendar year in which acquisition costs are paid or incurred, and any other calendar years specified by the Secretary, and

"(2) in the case of a person described in subsection (a)(2), the calendar year in which the transfer occurs.

"(c) Form and Manner of Returns.—A return is described in this subsection if such return—

"(1) is in such form as the Secretary prescribes,

"(2) in the case of—

"(A) a return required under subsection (a)(1)(A), contains the name, address, and taxpayer identification number of the applicable exempt organization, the issuer of the applicable insurance contract, and any person acquiring an interest in the contract if the acquisition is taxable under section 4966,

"(B) a return required under subsection (a)(1)(B), contains the name, address, and taxpayer identification number of the person acquiring an interest in the applicable insurance contract if the acquisition is taxable under section 4966, any applicable exempt organization holding an interest in the contract, and the issuer of the contract, and

"(C) a return required under subsection (a)(2), contains the name, address, and taxpayer identification number of the transferor and transferee, and

"(3) contains such other information as the Secretary may prescribe.

"(d) Statements To Be Furnished to Persons With Respect to Whom Information Is Required.—Every person required to make a return under subsection (a) shall furnish to each person whose taxpayer identification information is required to be included in such return under subsection (c) a written statement showing—

"(1) the name and address of the person required to make such return and the telephone number of the information contact for such person, and

"(2) the taxpayer identity and other information required to be shown on the return with respect to such person.

The written statement required under the preceding sentence shall be furnished on or before the date specified by the Secretary.

"(e) Definitions.—For purposes of this section, any term used in this section which is also used in section 4966 shall have the meaning given such term by section 4966.".

(2) Penalties.—

(A) In general.—Section 6724(d) is amended—

(i) in paragraph (1)(B), by redesignating clauses (xiii) through (xviii) as clauses (xiv) through (xix) and by inserting after clause (xii) the following new clause:

"(xiii) section 6050U (relating to returns relating to applicable insurance contracts in which certain exempt organizations hold interests),", and

(ii) in paragraph (3), by striking "and" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", and", and by adding at the end the following new subparagraph:

"(E) the statement required by subsection (d) of section 6050U (relating to returns relating to applicable insurance contracts in which certain exempt organizations hold interests).".

(B) Intentional disregard.—Section 6721(e)(2) is amended by striking "or" at the end of subparagraph (B), by striking "and" at the end of subparagraph (C) and inserting "or", and by adding at the end the following new subparagraph:

"(D) in the case of a return required to be filed under section 6050U, the amount of tax imposed under section 4966 which has not been paid with respect to items required to be included on the return, and".

(3) Conforming amendment.—The table of sections for subpart B of part III of subchapter A of chapter 61is amended by adding at the end the following new item:

"Sec. 6050U. Returns relating to applicable insurance contracts in which certain exempt organizations hold interests.".

(c) Effective Date.—

(1) In general.—The amendments made by this section shall apply to contracts issued after May 3, 2005.

(2) Reporting of existing contracts.—In the case of any life insurance, annuity, or endowment contract—

(A) which was issued on or before May 3, 2005,

(B) with respect to which an applicable exempt organization (as defined in section 4966 of the Internal Revenue Code of 1986, as added by this section) holds an interest on May 3, 2005, and

(C) which would be treated as an applicable insurance contract (as so defined) if issued after May 3, 2005,

such organization shall, not later than the date which is 1 year after the date of the enactment of this Act, report to the Secretary of the Treasury with respect to such contract. Such report shall be in such form and manner, and contain such information, as the Secretary may prescribe. The Secretary shall submit such reports, along with any recommendations for legislation as the Secretary considers appropriate, to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate within 6 months of the date such reports are required to be filed.

SEC. 213. INCREASE IN PENALTY EXCISE TAXES ON PUBLIC CHARITIES, SOCIAL WELFARE ORGANIZATIONS, AND PRIVATE FOUNDATIONS.

(a) Taxes on Self-Dealing and Excess Benefit Transactions.—

(1) In general.—Section 4941(a) (relating to initial taxes) is amended—

(A) in paragraph (1), by striking "5 percent" and inserting "10 percent", and

(B) in paragraph (2), by striking "2½ percent" and inserting "5 percent".

(2) Increase in tax if self-dealing includes compensation to disqualified person.—Section 4941(a)(1) is amended by adding at the end the following new sentence: "If the act of self-dealing includes acts described in subsection (d)(1)(D), '25 percent' shall be substituted for '10 percent', except that the Secretary may abate under section 4962 (determined without regard to the exception under subsection (b) thereof) not more than 15 percentage points of such tax.".

(3) Increased limitation for managers on self-dealing.—Section 4941(c)(2) is amended by striking "$10,000" each place it appears in the text and heading thereof and inserting "$20,000".

(4) Increased limitation for managers on excess benefit transactions.—Section 4958(d)(2) is amended by striking "$10,000" and inserting "$20,000".

(b) Taxes on Failure To Distribute Income.—Section 4942(a) (relating to initial tax) is amended by striking "15 percent" and inserting "30 percent".

(c) Taxes on Excess Business Holdings.—Section 4943(a)(1) (relating to imposition) is amended by striking "5 percent" and inserting "10 percent".

(d) Taxes on Investments Which Jeopardize Charitable Purpose.—

(1) In general.—Section 4944(a) (relating to initial taxes) is amended by striking "5 percent" both places it appears and inserting "10 percent".

(2) Increased limitation for managers.—Section 4944(d)(2) is amended—

(A) by striking "$5,000," and inserting "$10,000,", and

(B) by striking "$10,000." and inserting "$20,000.".

(e) Taxes on Taxable Expenditures.—

(1) In general.—Section 4945(a) (relating to initial taxes) is amended—

(A) in paragraph (1), by striking "10 percent" and inserting "20 percent", and

(B) in paragraph (2), by striking "2½ percent" and inserting "5 percent".

(2) Increased limitation for managers.—Section 4945(c)(2) is amended—

(A) by striking "$5,000," and inserting "$10,000,", and

(B) by striking "$10,000." and inserting "$20,000.".

(f) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 214. REFORM OF CHARITABLE CONTRIBUTIONS OF CERTAIN EASEMENTS ON BUILDINGS IN REGISTERED HISTORIC DISTRICTS.

(a) Special Rules With Respect to Buildings in Registered Historic Districts.—

(1) In general.—Paragraph (4) of section 170(h) (relating to definition of conservation purpose) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) Special rules with respect to buildings in registered historic districts.—In the case of any contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in subparagraph (C)(ii), such contribution shall not be considered to be exclusively for conservation purposes unless—

"(i) such interest—

"(I) includes a restriction which preserves the entire exterior of the building (including the front, sides, rear, and height of the building), and

"(II) prohibits any change in the exterior of the building which is inconsistent with the historical character of such exterior,

"(ii) the donor and donee enter into a written agreement certifying, under penalty of perjury, that the donee—

"(I) is a qualified organization (as defined in paragraph (3)) with a purpose of environmental protection, land conservation, open space preservation, or historic preservation, and

"(II) has the resources to manage and enforce the restriction and a commitment to do so, and

"(iii) in the case of any contribution made in a taxable year beginning after the date of the enactment of this subparagraph, the taxpayer includes with the taxpayer's return for the taxable year of the contribution—

"(I) a qualified appraisal (within the meaning of subsection (f)(11)(E)) of the qualified property interest,

"(II) photographs of the entire exterior of the building, and

"(III) a description of all restrictions on the development of the building.".

(b) DISALLOWANCE OF DEDUCTION FOR STRUCTURES AND LAND IN REGISTERED HISTORIC DISTRICTS.—Subparagraph (C) of section 170(h)(4), as redesignated by subsection (a), is amended—

(1) by striking "any building, structure, or land area which",

(2) by inserting "any building, structure, or land area which" before "is listed" in clause (i), and

(3) by inserting "any building which" before "is located" in clause (ii).

(c) FILING FEE FOR CERTAIN CONTRIBUTIONS.—Subsection (f) of section 170 (relating to disallowance of deduction in certain cases and special rules) is amended by inserting at the end the following new paragraph:

"(13) CONTRIBUTIONS OF CERTAIN INTERESTS IN BUILDINGS LOCATED IN REGISTERED HISTORIC DISTRICTS.—

"(A) IN GENERAL.—No deduction shall be allowed with respect to any contribution described in subparagraph (B) unless the taxpayer includes with the return for the taxable year of the contribution a $500 filing fee.

"(B) CONTRIBUTION DESCRIBED.—A contribution is described in this subparagraph if such contribution is a qualified conservation contribution (as defined in subsection (h)) which is a restriction with respect to the exterior of a building described in subsection (h)(4)(C)(ii) and for which a deduction is claimed in excess of the greater of—

"(i) 3 percent of the fair market value of the building (determined immediately before such contribution), or

"(ii) $10,000.

"(C) DEDICATION OF FEE.—Any fee collected under this paragraph shall be used for the enforcement of the provisions of subsection (h).".

(d) EFFECTIVE DATE.—

(1) SPECIAL RULES FOR BUILDINGS IN REGISTERED HISTORIC DISTRICTS.—The amendments made by subsection (a) shall apply to contributions made after November 15, 2005.

(2) DISALLOWANCE OF DEDUCTION FOR STRUCTURES AND LAND.—The amendments made by subsection (b) shall apply to contributions made after the date of the enactment of this Act.

(3) FILING FEE.—The amendment made by subsection (c) shall apply to contributions made 180 days after the date of the enactment of this Act.

SEC. 215. CHARITABLE CONTRIBUTIONS OF TAXIDERMY PROPERTY.

(a) IN GENERAL.—Subsection (f) of section 170, as amended by this Act, is amended by adding at the end the following new paragraph:

"(14) CONTRIBUTIONS OF TAXIDERMY PROPERTY.—

"(A) CONTRIBUTIONS OF MORE THAN $500.—In the case of any contribution of taxidermy property for which a deduction of more than $500 is claimed, no deduction shall be allowed under subsection (a) unless the donor includes with the return for the taxable year in which the contribution is made a photograph of the taxidermy property and data with respect to the sales prices of similar taxidermy property.

"(B) CONTRIBUTIONS OF MORE THAN $5,000.—In the case of any contribution of taxidermy property for which a deduction of more than $5,000 is claimed, no deduction shall be allowed under subsection (a) unless the donor—

"(i) notifies the Internal Revenue Service of such deduction, and

"(ii) includes with the return for the taxable year in which the contribution is made—

"(I) a statement of value from the Internal Revenue Service, or

"(II) a request for a statement of value from the Internal Revenue Service and a $500 fee.

"(C) TAXIDERMY PROPERTY.—For purposes of this section, the term 'taxidermy property' means a mounted work of art which contains any part of a dead animal.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after November 15, 2005.

SEC. 216. RECAPTURE OF TAX BENEFIT FOR CHARITABLE CONTRIBUTIONS OF EXEMPT USE PROPERTY NOT USED FOR AN EXEMPT USE.

(a) RECAPTURE OF DEDUCTION ON CERTAIN SALES OF EXEMPT USE PROPERTY.—

(1) IN GENERAL.—Clause (i) of section 170(e)(1)(B) (related to certain contributions of ordinary income and capital gain property) is amended to read as follows:

"(i) of tangible personal property—

"(I) if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)), or

"(II) which is applicable property (as defined in paragraph (8)(C)) which is sold, exchanged, or otherwise disposed of by the donee before the last day of the taxable year in which the contribution was made and with respect to which the donee has not made a certification in accordance with paragraph (8)(D),".

(2) DISPOSITIONS AFTER CLOSE OF TAXABLE YEAR.—Section 170(e), as amended by this Act, is amended by adding at the end the following new paragraph:

"(8) RECAPTURE OF DEDUCTION ON CERTAIN DISPOSITIONS OF EXEMPT USE PROPERTY.—

"(A) IN GENERAL.—In the case of an applicable disposition of applicable property, there shall be included in the income of the donor of such property for the taxable year of such donor in which the applicable disposition occurs an amount equal to the excess (if any) of—

"(i) the amount of the deduction allowed to the donor under this section with respect to such property, over

"(ii) the donor's basis in such property at the time such property was contributed.

"(B) APPLICABLE DISPOSITION.—For purposes of this paragraph, the term 'applicable disposition' means any sale, exchange, or other disposition by the donee of applicable property—

"(i) after the last day of the taxable year of the donor in which such property was contributed, and

"(ii) before the last day of the 3-year period beginning on the date of the contribution of such property,

unless the donee makes a certification in accordance with subparagraph (D).

"(C) APPLICABLE PROPERTY.—For purposes of this paragraph, the term 'applicable property' means charitable deduction property (as defined in section 6050L(a)(2)(A))—

"(i) which is tangible personal property the use of which is identified by the donee as related to the purpose or function constituting the basis of the donee's exemption under section 501, and

"(ii) for which a deduction in excess of the donor's basis is allowed.

"(D) CERTIFICATION.—A certification meets the requirements of this subparagraph if it is a written statement which is signed under penalty of perjury by an officer of the donee organization and—

"(i) which—

"(I) certifies that the use of the property by the donee was related to the purpose or function constituting the basis for the donee's exemption under section 501, and

"(II) describes how the property was used and how such use furthered such purpose or function, or

"(ii) which—

"(I) states the intended use of the property by the donee at the time of the contribution, and

"(II) certifies that such intended use has become impossible or infeasible to implement.".

(b) REPORTING REQUIREMENTS.—Paragraph (1) of section 6050L(a) (relating to returns relating to certain dispositions of donated property) is amended—

(1) by striking "2 years" and inserting "3 years", and

(2) by striking "and" at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting a comma, and by inserting at the end the following:

"(F) a description of the donee's use of the property, and

"(G) a statement indicating whether the use of the property was related to the purpose or function constituting the basis for the donee's exemption under section 501.

In any case in which the donee indicates that the use of applicable property (as defined in section 170(e)(1)(C)) was related to the purpose or function constituting the basis for the exemption of the donee under section 501 under subparagraph (G), the donee shall include with the return the certification described in section 170(e)(8)(D) if such certification is required under section 170(e)(8).".

(c) PENALTY.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by this Act, is amended by inserting after section 6720B the following new section:

"SEC. 6720C. FRAUDULENT IDENTIFICATION OF EXEMPT USE PROPERTY.

"In addition to any criminal penalty provided by law, any person who identifies applicable property (as defined in section 170(e)(8)(C)) as having a use which is related to a purpose or function constituting the basis for the donee's exemption under section 501 and who knows that such property is not intended for such a use shall pay a penalty of $10,000.”.

(2) Clerical Amendment.—The table of sections for part I of subchapter B of chapter 68, as amended by this Act, is amended by adding after the item relating to section 6720B the following new item:

“Sec. 6720C. Fraudulent identification of exempt use property.”.

(d) Effective Date.—

(1) Recapture.—The amendments made by subsection (a) shall apply to contributions after June 1, 2006.

(2) Reporting.—The amendments made by subsection (b) shall apply to returns filed after June 1, 2006.

(3) Penalty.—The amendments made by subsection (c) shall apply to identifications made after the date of the enactment of this Act.

SEC. 217. LIMITATION OF DEDUCTION FOR CHARITABLE CONTRIBUTIONS OF CLOTHING AND HOUSEHOLD ITEMS.

(a) In General.—Subsection (f) of section 170, as amended by this Act, is amended by adding at the end the following new paragraph:

“(15) Contributions of clothing and household items.—

“(A) In general.—In the case of an individual, partnership, or S corporation, the deduction allowed under subsection (a) for any contribution of clothing or household items with respect to which the donor has not obtained a qualified appraisal shall be—

“(i) in the case of an item which is in good used condition or better, no more than the amount assigned to such item under subparagraph (B) for such year,

“(ii) except as provided by clause (iii), in the case of an item which is not in good used condition or better, no more than 20 percent of the amount assigned to such item under subparagraph (B) for such year, and

“(iii) in the case of an item which is not functional with respect to the use for which it was designed, zero.

“(B) Assigned values.—Each year the Secretary shall publish an itemized list of clothing and household items and shall assign an amount with respect to each item on the list which represents the fair market value of such item in good used condition.

“(C) Exception for items sold by the donee.—Subparagraph (A) shall not apply to any contribution of clothing or household items for which a deduction of more than $500 is claimed if—

“(i) the donee sells the clothing or household items before the earlier of—

“(I) the due date (including extensions) for filing the return of tax for the taxable year of the donor in which the contribution was made, or

“(II) the date on which such return was filed,

“(ii) the donee reports the sales price of the clothing or household items to the donor, and

“(iii) the amount claimed as a deduction with respect to such clothing or household items does not exceed the amount of the sales price reported to the donor.

“(D) Household items.—For purposes of this paragraph—

“(i) In general.—The term ‘household items’ includes furniture, furnishings, electronics, appliances, linens, and other similar items.

“(ii) Excluded items.—Such term does not include—

“(I) food,

“(II) paintings, antiques, and other objects of art,

“(III) jewelry and gems, and

“(IV) collections.

“(E) Special rule for pass-thru entities.—In the case of a partnership or S corporation, this paragraph shall be applied at the entity level, except that the deduction shall be denied at the partner or shareholder level.”.

(b) Substantiation.—

(1) Items of $250 or more.—Subparagraph (B) of section 170(f)(8) is amended by inserting after clause (iii) the following new clause:

“(iv) In the case of a contribution consisting of clothing or household items, the number of items contributed, an indication of the condition of each item, a description of the type of item contributed, and a copy of the list published under paragraph (15)(B) or an instruction on how to obtain such list.”.

(2) Items of $500 or more.—Subparagraph (B) of section 170(f)(11) is amended by inserting “, the information contained in the acknowledgment required under paragraph (8) in the case of any contribution of clothing or household items,” after “a description of such property”.

(c) Effective Date.—The amendments made by this section shall apply to contributions made after December 31, 2006.

SEC. 218. MODIFICATION OF RECORDKEEPING REQUIREMENTS FOR CERTAIN CHARITABLE CONTRIBUTIONS.

(a) Recordkeeping Requirement.—Subsection (f) of section 170, as amended by this Act, is amended by adding at the end the following new paragraph:

“(16) Recordkeeping.—No deduction shall be allowed under subsection (a) for any contribution of a cash, check, or other monetary gift unless the donor maintains as a record of such contribution—

“(A) a cancelled check, or

“(B) a receipt or a letter or other written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution.”.

(b) Effective Date.—The amendment made by this section shall apply to contributions made in taxable years beginning after the date of the enactment of this Act.

SEC. 219. CONTRIBUTIONS OF FRACTIONAL INTERESTS IN TANGIBLE PERSONAL PROPERTY.

(a) Income Tax.—Section 170 (relating to charitable, etc., contributions and gifts), as amended by this Act, is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

“(p) Special Rules for Fractional Gifts.—

“(1) Valuation of subsequent gifts.—

“(A) In general.—In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

“(i) the fair market value of the property at the time of the initial fractional contribution, or

“(ii) the fair market value of the property at the time of the additional contribution.

“(B) Definitions.—For purposes of this paragraph—

“(i) Additional contribution.—The term ‘additional contribution’ means any charitable contribution by the taxpayer of any interest in property with respect to which the taxpayer has previously made an initial fractional contribution.

“(ii) Initial fractional contribution.—The term ‘initial fractional contribution’ means, with respect to any taxpayer, the first charitable contribution of an undivided portion of the taxpayer’s entire interest in any tangible personal property.

“(2) Recapture of deduction in certain cases.—

“(A) In general.—The Secretary shall provide for the recapture of an amount equal to the amount of any deduction allowed under this section (plus interest) with respect to any contribution of an undivided interest of a taxpayer’s entire interest in property in any case where such property is not in the physical possession of the donee during any applicable period for a period of time which bears substantially the same ratio to 1 year as—

“(i) the percentage of the undivided interest of the donee in the property (determined on the day after such contribution was made), bears to

“(ii) 100 percent.

“(B) Applicable period.—For purposes of subparagraph (A), the term ‘applicable period’ means any 1-year period which begins on—

“(i) in the year of the contribution, the date of the contribution, and

“(ii) in any subsequent calendar year, the date which corresponds to the date described in clause (i).

“(C) Anti-abuse rules.—The Secretary shall prescribe such regulations as necessary to prevent the avoidance of the purposes of this paragraph through the transfer of any such undivided interest to a third party controlled by the taxpayer.”.

(b) Estate Tax.—Section 2055 (relating to transfers for public, charitable, and religious uses) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

“(g) Valuation of Subsequent Gifts.—

“(1) In general.—In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

“(A) the fair market value of the property at the time of the initial fractional contribution, or

“(B) the fair market value of the property at the time of the additional contribution.

“(2) Definitions.—For purposes of this paragraph—

“(A) Additional contribution.—The term ‘additional contribution’ means a bequest, legacy, devise, or transfer described in subsection (a) of any interest in a property with respect to which the decedent had previously made an initial fractional contribution.

“(B) Initial fractional contribution.—The term ‘initial fractional contribution’ means, with respect to any decedent, any charitable contribution of an undivided portion of the decedent’s entire interest in any tangible personal property for which a deduction was allowed under section 170.”.

(c) Gift Tax.—Section 2522 (relating to charitable and similar gifts) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

“(e) Special Rules for Fractional Gifts.—

“(1) Valuation of subsequent gifts.—

“(A) In general.—In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

“(i) the fair market value of the property at the time of the initial fractional contribution, or

“(ii) the fair market value of the property at the time of the additional contribution.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) ADDITIONAL CONTRIBUTION.—The term 'additional contribution' means any gift for which a deduction is allowed under subsection (a) or (b) of any interest in a property with respect to which the donor has previously made an initial fractional contribution.

"(ii) INITIAL FRACTIONAL CONTRIBUTION.—The term 'initial fractional contribution' means, with respect to any donor, the first gift of an undivided portion of the donor's entire interest in any tangible personal property for which a deduction is allowed under subsection (a) or (b).

"(2) RECAPTURE OF DEDUCTION IN CERTAIN CASES.—

"(A) IN GENERAL.—The Secretary shall provide for the recapture of an amount equal to the amount of any deduction allowed under this section (plus interest) with respect to any contribution of an undivided interest of a donor's entire interest in property in any case where such property is not in the physical possession of the donee during any applicable period for a period of time which bears substantially the same ratio to 1 year as—

"(i) the percentage of the undivided interest of the donee in the property (determined on the day after such contribution was made), bears to

"(ii) 100 percent.

"(B) APPLICABLE PERIOD.—For purposes of subparagraph (A), the term 'applicable period' means any 1-year period which begins on—

"(i) in the year of the contribution, the date of the contribution, and

"(ii) in any subsequent calendar year, the date which corresponds to the date described in clause (i).

"(C) ANTI-ABUSE RULES.—The Secretary shall prescribe such regulations as necessary to prevent the avoidance of the purposes of this paragraph though the transfer of any such undivided interest to a third party controlled by the donor.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions, bequests, and gifts made after the date of the enactment of this Act.

SEC. 220. PROVISIONS RELATING TO SUBSTANTIAL AND GROSS OVERSTATEMENTS OF VALUATIONS OF CHARITABLE DEDUCTION PROPERTY.

(a) SUBSTANTIAL AND GROSS OVERSTATEMENTS OF VALUATIONS OF CHARITABLE DEDUCTION PROPERTY.—

(1) IN GENERAL.—Section 6662 (relating to imposition of accuracy-related penalties) is amended by adding at the end the following new subsection:

"(i) SPECIAL RULES FOR CHARITABLE DEDUCTION PROPERTY.—In the case of charitable deduction property (as defined in section 6664(c)(3)(A))—

"(1) the determination under subsection (e)(1)(A) as to whether there is a substantial valuation misstatement under chapter 1 with respect to the value of the property shall be made by substituting '150 percent' for '200 percent', and

"(2) the determination under subsection (h)(2)(A)(i) as to whether there is a gross valuation misstatement with respect to the value of the property shall be made by substituting '200 percent' for '400 percent' and by substituting '150 percent' for '200 percent' in applying subsection (e)(1)(A) for purposes of such determination.".

(2) ELIMINATION OF REASONABLE CAUSE EXCEPTION FOR GROSS MISSTATEMENTS.—Section 6664(c)(2) (relating to reasonable cause exception for underpayments) is amended by striking "paragraph (1) shall not apply unless" and inserting "paragraph (1) shall not apply. The preceding sentence shall not apply to a substantial valuation overstatement under chapter 1 if".

(b) PENALTY ON APPRAISERS WHOSE APPRAISALS RESULT IN SUBSTANTIAL OR GROSS VALUATION MISSTATEMENTS.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6695 the following new section:

"SEC. 6695A. SUBSTANTIAL AND GROSS VALUATION MISSTATEMENTS ATTRIBUTABLE TO INCORRECT APPRAISALS.

"(a) IMPOSITION OF PENALTY.—If—

"(1) a person prepares an appraisal of the value of property and such person knows, or reasonably should have known, that the appraisal would be used in connection with a return or a claim for refund, and

"(2) the claimed value of the property on a return or claim for refund which is based on such appraisal results in a substantial valuation misstatement under chapter 1 (within the meaning of section 6662(e)), or a gross valuation misstatement (within the meaning of section 6662(h)), with respect to such property,

then such person shall pay a penalty in the amount determined under subsection (b).

"(b) AMOUNT OF PENALTY.—The amount of the penalty imposed under subsection (a) on any person with respect to an appraisal shall be equal to the lesser of—

"(1) the greater of—

"(A) 10 percent of the amount of the underpayment (as defined in section 6664(a)) attributable to the misstatement described in subsection (a)(2), or

"(B) $1,000, or

"(2) 125 percent of the gross income received by the person described in subsection (a)(1) from the preparation of the appraisal.

"(c) EXCEPTION.—No penalty shall be imposed under subsection (a) if the person establishes to the satisfaction of the Secretary that the value established in the appraisal was more likely than not the proper value.".

(2) RULES APPLICABLE TO PENALTY.—Section 6696 (relating to rules applicable with respect to sections 6694 and 6695) is amended—

(A) by striking "6694 and 6695" each place it appears in the text and heading thereof and inserting "6694, 6695, and 6695A", and

(B) by striking "6694 or 6695" each place it appears in the text and inserting "6694, 6695, or 6695A".

(3) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6696 and inserting the following new items:

"Sec. 6695A. Substantial and gross valuation misstatements attributable to incorrect appraisals.
"Sec. 6696. Rules applicable with respect to sections 6694, 6695, and 6695A.".

(c) QUALIFIED APPRAISERS AND APPRAISALS.—

(1) IN GENERAL.—Subparagraph (E) of section 170(f)(11) is amended to read as follows:

"(E) QUALIFIED APPRAISAL AND APPRAISER.—For purposes of this paragraph—

"(i) QUALIFIED APPRAISAL.—The term 'qualified appraisal' means, with respect to any property, an appraisal of such property which—

"(I) is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary, and

"(II) is conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed under subclause (I).

"(ii) QUALIFIED APPRAISER.—Except as provided in clause (iii), the term 'qualified appraiser' means an individual who—

"(I) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary,

"(II) regularly performs appraisals for which the individual receives compensation, and

"(III) meets such other requirements as may be prescribed by the Secretary in regulations or other guidance.

"(iii) SPECIFIC APPRAISALS.—An individual shall not be treated as a qualified appraiser with respect to any specific appraisal unless—

"(I) the individual demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and

"(II) the individual has not been prohibited from practicing before the Internal Revenue Service by the Secretary under section 330(c) of title 31, United States Code, at any time during the 3-year period ending on the date of the appraisal.".

(2) REASONABLE CAUSE EXCEPTION.—Subparagraphs (B) and (C) of section 6664(c)(3) are amended to read as follows:

"(B) QUALIFIED APPRAISAL.—The term 'qualified appraisal' has the meaning given such term by section 170(f)(11)(E)(i).

"(C) QUALIFIED APPRAISER.—The term 'qualified appraiser' has the meaning given such term by section 170(f)(11)(E)(ii).".

(d) DISCIPLINARY ACTIONS AGAINST APPRAISERS.—Section 330(c) of title 31, United States Code, is amended by striking "with respect to whom a penalty has been assessed under section 6701(a) of the Internal Revenue Code of 1986".

(e) EFFECTIVE DATES.—

(1) MISSTATEMENT PENALTIES.—Except as provided in paragraph (3), the amendments made by subsection (a) shall apply to returns filed after the date of the enactment of this Act.

(2) APPRAISER PROVISIONS.—Except as provided in paragraph (3), the amendments made by subsections (b), (c), and (d) shall apply to appraisals prepared with respect to returns or submissions filed after the date of the enactment of this Act.

(3) SPECIAL RULE FOR CERTAIN EASEMENTS.—In the case of a contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in section 170(h)(4)(C)(ii) of the Internal Revenue Code of 1986, and an appraisal with respect to the contribution, the amendments made by subsections (a) and (b) shall apply to returns filed after December 16, 2004.

SEC. 221. ADDITIONAL STANDARDS FOR CREDIT COUNSELING ORGANIZATIONS.

(a) IN GENERAL.—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

"(q) SPECIAL RULES FOR CREDIT COUNSELING ORGANIZATIONS.—

"(1) IN GENERAL.—An organization with respect to which the provision of credit counseling services is a substantial purpose shall not be exempt from tax under subsection (a) unless such organization is described in paragraph (3) or (4) of subsection (c) and such organization is organized and operated in accordance with the following requirements:

"(A) The organization—

"(i) provides credit counseling services tailored to the specific needs and circumstances of consumers,

"(ii) makes no loans to debtors and does not negotiate the making of loans on behalf of debtors, and

"(iii) does not promote, or charge any separate fee for, any service for the purpose of improving any consumer's credit record, credit history, or credit rating.

"(B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.

"(C) The organization establishes and implements a fee policy which—

"(i) requires that any fees charged to a consumer for services are reasonable, and

"(ii) prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.

"(D) At all times the organization has a board of directors or other governing body—

"(i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,

"(ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and

"(iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

"(E) The organization does not own more than 35 percent of—

"(i) the total combined voting power of a corporation which is in the business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services,

"(ii) the profits interest of a partnership which is in the business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services, and

"(iii) the beneficial interest of a trust or estate which is in the business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services.

"(F) The organization receives no amount for providing referrals to others for financial services (including debt management services) or credit counseling services to be provided to consumers, and pays no amount to others for obtaining referrals of consumers.

"(2) Requirements under subsection (c)(3).—In addition to the requirements under paragraph (1), an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (3) of subsection (c) shall not be exempt from tax under subsection (a) unless such organization is organized and operated in accordance with the following requirements:

"(A) The organization—

"(i) charges no fees (other than nominal fees) for debt management plan services or credit counseling services and waives any fees if the consumer is unable to pay such fees, and

"(ii) does not solicit contributions from consumers during the initial counseling process or while the consumer is receiving services from the organization.

"(B) The activities of the organization related to debt management plan services (in the aggregate) do not exceed 25 percent of the total activities of the organization activities measured by any of the following:

"(i) The time spent on activities.

"(ii) The resources dedicated to activities.

"(iii) The effort expended by the organization with respect to activities.

"(iv) The sources of revenue of the organization.

"(v) Any other measures prescribed by the Secretary.

"(3) Requirements under subsection (c)(4).—In addition to the requirements under paragraph (1), an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (4) of subsection (c) shall not be exempt from tax under subsection (a) unless such organization—

"(A) is organized and operated such that it charges no fees (other than nominal fees) for credit counseling services and waives any fees if the consumer is unable to pay such fees, and

"(B) notifies the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition as a credit counseling organization.

"(4) Secretarial authority.—The Secretary may require any organization described in paragraph (1) to submit such information as the Secretary requires to verify that such organization meets the requirements of this section.

"(5) Credit counseling services; debt management plan services.—For purposes of this subsection—

"(A) Credit counseling services.—The term 'credit counseling services' means—

"(i) the providing of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit,

"(ii) the assisting of individuals and families with financial problems by providing them with counseling, or

"(iii) a combination of the activities described in clauses (i) and (ii).

"(B) Debt management plan services.—The term 'debt management plan services' means services related to the repayment, consolidation, or restructuring of a consumer's debt, and includes the negotiation with creditors of lower interest rates, the waiver or reduction of fees, and the marketing and processing of debt management plans.".

(b) Debt Management Plan Services Treated as an Unrelated Business.—Section 513 (relating to unrelated trade or business) is amended by adding at the end the following:

"(j) Debt Management Plan Services.—The term 'unrelated trade or business' includes—

"(1) the provision of debt management plan services (as defined in section 501(q)(4)(B)) by an organization described in section 501(q) to the extent such services are not substantially related to the provision of credit counseling services (as defined in section 501(q)(4)(A)) to a consumer, and

"(2) the provision of debt management plan services (as so defined) by any organization other than an organization which meets the requirements of section 501(q).".

(c) Effective Date.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

(2) Transition rule for existing organizations.—In the case of any organization described in paragraph (3) or (4) section 501(c) of the Internal Revenue Code of 1986 and with respect to which the provision of credit counseling services is a substantial purpose on the date of the enactment of this Act, the amendments made by this section shall apply to taxable years beginning after the date which is 1 year after the date of the enactment of this Act.

SEC. 222. EXPANSION OF THE BASE OF TAX ON PRIVATE FOUNDATION NET INVESTMENT INCOME.

(a) Gross Investment Income.—

(1) In general.—Paragraph (2) of section 4940(c) (relating to gross investment income) is amended by adding at the end the following new sentence: "Such term shall also include income from sources similar to those in the preceding sentence.".

(2) Conforming amendment.—Subsection (e) of section 509 (relating to gross investment income) is amended by adding at the end the following new sentence: "Such term shall also include income from sources similar to those in the preceding sentence.".

(b) Capital Gain Net Income.—Paragraph (4) of section 4940(c) (relating to capital gains and losses) is amended—

(1) in subparagraph (A), by striking "used for the production of interest, dividends, rents, and royalties" and inserting "used for the production of gross investment income (as defined in paragraph (2))", and

(2) in subparagraph (C), by inserting "or carrybacks" after "carryovers".

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 223. DEFINITION OF CONVENTION OR ASSOCIATION OF CHURCHES.

Section 7701 (relating to definitions) is amended by redesignating subsection(o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) Convention or Association of Churches.—For purposes of this title, any organization which is otherwise a convention or association of churches shall not fail to so qualify merely because the membership of such organization includes individuals as well as churches or because individuals have voting rights in such organization.".

SEC. 224. NOTIFICATION REQUIREMENT FOR ENTITIES NOT CURRENTLY REQUIRED TO FILE.

(a) In General.—Section 6033 (relating to returns by exempt organizations) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) Additional Notification Requirements.—Any organization the gross receipts of which in any taxable year result in such organization being referred to in subsection (a)(3)(A)(ii) or (a)(3)(B)—

"(1) shall furnish annually, at such time and in such manner as the Secretary may by forms or regulations prescribe, information setting forth—

"(A) the legal name of the organization,

"(B) any name under which such organization operates or does business,

"(C) the organization's mailing address and Internet web site address (if any),

"(D) the organization's taxpayer identification number,

"(E) the name and address of a principal officer, and

"(F) evidence of the continuing basis for the organization's exemption from the filing requirements under subsection (a)(1), and

"(2) upon the termination of the existence of the organization, shall furnish notice of such termination.".

(b) Loss of Exempt Status for Failure To File Return or Notice.—Section 6033 (relating to returns by exempt organizations), as amended by subsection (a), is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) Loss of Exempt Status for Failure To File Return or Notice.—

"(1) In general.—If an organization described in subsection (a)(1) or (k) fails to file an annual return or notice required under either subsection for 3 consecutive years, such organization's status as an organization exempt from tax under section 501(a) shall be considered revoked on and after the date set by the Secretary for the filing of the third annual return or notice. The Secretary shall publish and maintain a list of any organization the status of which is so revoked.

"(2) Application necessary for reinstatement.—Any organization the tax-exempt status of which is revoked under paragraph (1) must apply in order to obtain reinstatement of such status regardless of whether such organization was originally required to make such an application.

"(3) Retroactive reinstatement if reasonable cause shown for failure.—If upon application for reinstatement of status as an organization exempt from tax under section 501(a), an organization described in paragraph (1) can show to the satisfaction of the Secretary evidence of reasonable cause for the failure described in such paragraph, the organization's exempt status may, in the discretion of the Secretary, be reinstated effective from the date of the revocation under such paragraph.".

(c) No Declaratory Judgment Relief.—Section 7428(b) (relating to limitations) is amended by adding at the end the following new paragraph:

"(4) Nonapplication for certain revocations.—No action may be brought under this section with respect to any revocation of status described in section 6033(i)(1).".

(d) No Inspection Requirement.—Section 6104(b) (relating to inspection of annual information returns), as amended by this Act, is amended by inserting "(other than subsection (h) thereof)" after "6033".

(e) No Disclosure Requirement.—Section 6104(d)(3) (relating to exceptions from disclosure requirements) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) Nondisclosure of annual notices.—Paragraph (1) shall not require the disclosure of any notice required under section 6033(h).".

(f) No Monetary Penalty for Failure To Notify.—Section 6652(c)(1) (relating to annual returns under section 6033 or 6012(a)(6)) is amended by adding at the end the following new subparagraph:

"(E) No penalty for certain annual notices.—This paragraph shall not apply with respect to any notice required under section 6033(h).".

(g) Secretarial Outreach Requirements.—

(1) Notice requirement.—The Secretary of the Treasury shall notify in a timely manner every organization described in section 6033(h) of the Internal Revenue Code of 1986 (as added by this section) of the requirement under such section 6033(h) and of the penalty established under section 6033(i) of such Code—

(A) by mail, in the case of any organization the identity and address of which is included in the list of exempt organizations maintained by the Secretary, and

(B) by Internet or other means of outreach, in the case of any other organization.

(2) Loss of status penalty for failure to file return.—The Secretary of the Treasury shall publicize in a timely manner in appropriate forms and instructions and through other appropriate means, the penalty established under section 6033(i) of such Code for the failure to file a return under section 6033(a)(1) of such Code.

(h) Effective Date.—The amendments made by this section shall apply to notices and returns with respect to annual periods beginning after 2005.

SEC. 225. DISCLOSURE TO STATE OFFICIALS OF PROPOSED ACTIONS RELATED TO EXEMPT ORGANIZATIONS.

(a) In General.—Subsection (c) of section 6104 is amended by striking paragraph (2) and inserting the following new paragraphs:

"(2) Disclosure of proposed actions related to charitable organizations.—

"(A) Specific notifications.—In the case of an organization to which paragraph (1) applies, the Secretary may disclose to the appropriate State officer—

"(i) a notice of proposed refusal to recognize such organization as an organization described in section 501(c)(3) or a notice of proposed revocation of such organization's recognition as an organization exempt from taxation,

"(ii) the issuance of a letter of proposed deficiency of tax imposed under section 507 or chapter 41 or 42, and

"(iii) the names, addresses, and taxpayer identification numbers of organizations which have applied for recognition as organizations described in section 501(c)(3).

"(B) Additional disclosures.—Returns and return information of organizations with respect to which information is disclosed under subparagraph (A) may be made available for inspection by or disclosed to an appropriate State officer.

"(C) Procedures for disclosure.—Information may be inspected or disclosed under subparagraph (A) or (B) only—

"(i) upon written request by an appropriate State officer, and

"(ii) for the purpose of, and only to the extent necessary in, the administration of State laws regulating such organizations.

Such information may only be inspected by or disclosed to a person other than the appropriate State officer if such person is an officer or employee of the State and is designated by the appropriate State officer to receive the returns or return information under this paragraph on behalf of the appropriate State officer.

"(D) Disclosures other than by request.—The Secretary may make available for inspection or disclose returns and return information of an organization to which paragraph (1) applies to an appropriate State officer of any State if the Secretary determines that such inspection or disclosure may facilitate the resolution of Federal or State issues relating to the tax-exempt status of such organization.

"(3) Disclosure with respect to certain other exempt organizations.—Upon written request by an appropriate State officer, the Secretary may make available for inspection or disclosure returns and return information of an organization described in paragraph (2), (4), (6), (7), (8), (10), or (13) of section 501(c) for the purpose of, and to the extent necessary in, the administration of State laws regulating the solicitation or administration of the charitable funds or charitable assets of such organizations. Such information may only be inspected by or disclosed to a person other than the appropriate State officer if such person is an officer or employee of the State and is designated by the appropriate State officer to receive the returns or return information under this paragraph on behalf of the appropriate State officer.

"(4) Use in civil judicial and administrative proceedings.—Returns and return information disclosed pursuant to this subsection may be disclosed in civil administrative and civil judicial proceedings pertaining to the enforcement of State laws regulating such organizations in a manner prescribed by the Secretary similar to that for tax administration proceedings under section 6103(h)(4).

"(5) No disclosure if impairment.—Returns and return information shall not be disclosed under this subsection, or in any proceeding described in paragraph (4), to the extent that the Secretary determines that such disclosure would seriously impair Federal tax administration.

"(6) Definitions.—For purposes of this subsection—

"(A) Return and return information.—The terms 'return' and 'return information' have the respective meanings given to such terms by section 6103(b).

"(B) Appropriate State officer.—The term 'appropriate State officer' means—

"(i) the State attorney general,

"(ii) the State tax officer,

"(iii) in the case of an organization to which paragraph (1) applies, any other State official charged with overseeing organizations of the type described in section 501(c)(3), and

"(iv) in the case of an organization to which paragraph (3) applies, the head of an agency designated by the State attorney general as having primary responsibility for overseeing the solicitation of funds for charitable purposes.".

(b) Conforming Amendments.—

(1) Subparagraph (A) of section 6103(p)(3) is amended by inserting "an section 6104(c)" after "section" in the first sentence.

(2) Paragraph (4) of section 6103(p) is amended—

(A) in the matter preceding subparagraph (A), by inserting ", or any appropriate State officer (as defined in section 6104(c))," before "or any other person",

(B) in subparagraph (F)(i), by inserting "or any appropriate State officer (as defined in section 6104(c))," before "or any other person", and

(C) in the matter following subparagraph (F), by inserting ", an appropriate State officer (as defined in section 6104(c))," after "including an agency" each place it appears.

(3) The heading for paragraph (1) of section 6104(c) is amended by inserting "FOR CHARITABLE ORGANIZATIONS" after "RULE".

(4) Paragraph (2) of section 7213(a) is amended by inserting "or under section 6104(c)" after "6103".

(5) Paragraph (2) of section 7213A(a) is amended by inserting "or 6104(c)" after "6103".

(6) Paragraph (2) of section 7431(a) is amended by inserting "(including any disclosure in violation of section 6014(c)" after "6103".

(c) Effective Date.—The amendments made by this section shall take effect on the date of the enactment of this Act but shall not apply to requests made before such date.

PART II—IMPROVED ACCOUNTABILITY OF DONOR ADVISED FUNDS

SEC. 231. EXCISE TAX ON SPONSORING ORGANIZATIONS OF DONOR ADVISED FUNDS FOR FAILURE TO MEET DISTRIBUTION REQUIREMENTS.

(a) In General.—Chapter 42 (relating to private foundations and certain other tax-exempt organizations), as amended by this Act, is amended by adding at the end the following new subchapter:

"Subchapter G—Donor Advised Funds

"Sec. 4967. Taxes on sponsoring organizations of donor advised funds for failure to meet distributions requirements.
"Sec. 4968. Taxes on prohibited distributions.
"Sec. 4969. Taxes on prohibited benefits.

"SEC. 4967. TAXES ON SPONSORING ORGANIZATIONS OF DONOR ADVISED FUNDS FOR FAILURE TO MEET DISTRIBUTION REQUIREMENTS.

"(a) Initial Tax.—There is hereby imposed on any sponsoring organization a tax equal to 30 percent of each of the following amounts:

"(1) The organization level undistributed amount of such sponsoring organization (other than any organization subject to tax under section 4942) for any taxable year which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period).

"(2) The fund level undistributed amount of any donor advised fund of such sponsoring organization for any taxable year which has not been distributed before the 181st day of the first (or any succeeding) taxable year following the applicable period (if such 181st day falls within the taxable period).

"(3) The illiquid fund undistributed amount of any illiquid asset donor advised fund of such sponsoring organization for any taxable year which has not been distributed before the 181st day of the second (or any succeeding) taxable year following such taxable year (if such 181st day falls within the taxable period).

"(b) Additional Tax.—In any case in which an initial tax is imposed under subsection (a) on any amount, if any portion of such amount remains undistributed at the close of the taxable period, there is hereby imposed a tax equal to 100 percent of the amount remaining undistributed at such time.

"(c) Organization Level Undistributed Amount; Fund Level Undistributed Amount; Illiquid Fund Undistributed Amount.—For purposes of this section—

"(1) Organization level undistributed amount.—The term 'organization level undistributed amount' means, with respect to any sponsoring organization for any taxable year, the amount by which—

"(A) the organization level distributable amount for such taxable year, exceeds

"(B) the qualifying distributions made during such taxable year and designated for the purpose of reducing such amount.

"(2) Fund level undistributed amount.—The term 'fund level undistributed amount' means, with respect to any donor advised fund of a sponsoring organization for any applicable period, the amount by which—

"(A) the fund level distributable amount for such applicable period, exceeds

"(B) the qualifying distributions made during such applicable period and designated for the purpose of reducing such amount.

"(3) Illiquid fund undistributed amount.—

"(A) In general.—The term 'illiquid fund undistributed amount' means, with respect to any illiquid asset donor advised fund of a sponsoring organization for any taxable year, the amount by which—

"(i) the illiquid fund distributable amount for such taxable year, exceeds

"(ii) the qualifying distributions made during such taxable year and designated for the purpose of reducing such amount.

"(B) Illiquid asset donor advised fund.—The term 'illiquid asset donor advised fund' means for any taxable year a donor advised fund the value of the illiquid assets of which (as of the end of the preceding taxable year) exceeds 10 percent of the value of the total assets of such fund.

"(C) Illiquid asset.—The term 'illiquid asset' means for any taxable year any asset other than cash and marketable securities the value of which is held for the entire taxable year as such asset or any other illiquid asset.

"(d) Organization Level Distributable Amount; Fund Level Distributable Amount; Illiquid Fund Distributable Amount.—For purposes of this section—

"(1) Organization level distributable amount.—The term 'organization level distributable amount' means, with respect to any sponsoring organization for any taxable year, an amount equal to the applicable percentage of the fair market value of the aggregate assets of all donor advised funds maintained by such organization as determined on the last day of the preceding taxable year (other than such funds which have been in existence for less than 1 year as so determined).

"(2) Fund level distributable amount.—The term 'fund level distributable amount' means, with respect to any donor advised fund of any sponsoring organization for any applicable 3-consecutive taxable year period, an amount equal to the greater of—

"(A) $250, or

"(B) 2.5 percent of the greater of—

"(i) the average of the sponsoring organization's required minimum initial contribution amount for such period, or

"(ii) the average of the sponsoring organization's required minimum balance for such period,

for the type of donor with respect to such donor advised fund.

"(3) Illiquid fund distributable amount.—The term 'illiquid fund distributable amount' means, with respect to any illiquid asset donor advised fund of any sponsoring organization for any taxable year, an amount equal to the applicable percentage of the value of the assets in such fund as determined at the end of the preceding taxable year.

"(4) Applicable percentage.—For purposes of paragraphs (1) and (3), the applicable percentage is—

"(A) 3 percent for the first taxable year beginning after the date of the enactment of this section,

"(B) 4 percent for the second taxable year beginning after such date, and

"(C) 5 percent for any taxable year beginning after the second taxable year beginning after such date.

"(e) Qualifying Distribution.—For purposes of this section—

"(1) In general.—The term 'qualifying distribution' means—

"(A) any amount paid by the sponsoring organization from a donor advised fund—

"(i) to any organization described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any sponsoring organization if such amount is for maintenance in a donor advised fund), and

"(ii) notwithstanding clause (i), to any organization described section 170(f)(17)(B)(ii), but only to the extent not prohibited by regulations, and

"(B) any amount set aside in such donor advised fund for purposes, and under procedures similar to those, described in section 4942(g)(2).

Such term shall also include any amount paid during any taxable year for reasonable and necessary administrative expenses charged to a donor advised fund by a sponsoring organization.

"(2) Distributions to sponsoring organizations.—

"(A) In general.—Except as provided in subparagraph (B), such term shall include any distribution to a sponsoring organization.

"(B) Organization level distributions.—For purposes of subsection (c)(1)(B), such term shall not include any distribution to a sponsoring organization unless such distribution is designated for use in connection with a charitable program of such organization.

"(3) Purpose of distribution.—Each qualifying distribution shall be taken into account in determining whether each of the requirements of paragraphs (1), (2), and (3) of subsection (a) are met, except that only qualifying distributions from a donor advised fund shall be taken into account in determining whether the requirements of paragraphs (2) and (3) of subsection (a) are met with respect to the fund.

"(4) Designation of taxable year.—

"(A) In general.—A sponsoring organization shall designate the taxable years or applicable periods with respect to which any qualifying distribution shall be applied for purposes of satisfying the distribution requirements of such taxable year or applicable period.

"(B) Carryover of excess distribution designations.—If a sponsoring organization designates an amount of qualifying distributions in excess of the amount necessary to meet the distribution requirements for all taxable years and all applicable periods, the sponsoring organization may designate such excess as a carryover distribution which may be applied for purposes of satisfying the distribution requirements of the succeeding 5 taxable years.

"(f) Valuation Rules.—For purposes of determining the value of any asset held by a donor advised fund, the following rules shall apply:

"(1) Securities for which market quotations are readily available shall be valued at fair market value determined on a monthly basis.

"(2) Cash shall be determined on an average monthly basis.

"(3) Any illiquid asset transferred by a donor to a sponsoring organization for maintenance in such donor advised fund shall be valued in an amount equal to the sum of—

"(A) the value of such asset claimed by the donor for purposes of determining the donor's deduction under section 170, 2055, or 2522 with respect to such transfer and reported by the donor to the sponsoring organization (in any manner specified by the Secretary), and

"(B) an assumed annual rate of return of 5 percent of such value.

"(4) Any illiquid asset purchased by such fund shall be valued in an amount equal to—

"(A) the purchase price paid for such asset by such fund, and

"(B) an assumed annual rate of return of 5 percent of such value.

"(g) SPONSORING ORGANIZATION; DONOR ADVISED FUND.—For purposes of this subchapter—

"(1) SPONSORING ORGANIZATION.—The term 'sponsoring organization' means any organization which—

"(A) is described in section 170(c) (other than in paragraph (1) thereof, and without regard to paragraph (2)(A) thereof), and

"(B) maintains 1 or more donor advised funds.

"(2) DONOR ADVISED FUND.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'donor advised fund' means a fund or account—

"(i) which is separately identified by reference to contributions of a donor or donors,

"(ii) which is owned and controlled by a sponsoring organization, and

"(iii) with respect to which a donor or any person appointed or designated by such person) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor's status as a donor.

"(B) EXCEPTION.—The term 'donor advised fund' shall not include any fund or account with respect to which a person described in subparagraph (A)(iii) advises as to which individuals receive grants for travel, study, or other similar purposes, but only if—

"(i) such person's advisory privileges are performed exclusively by such person in the person's capacity as a member of a committee appointed by the sponsoring organization,

"(ii) no combination of persons described in subparagraph (A)(iii) (or persons related to such persons) control, directly or indirectly, such committee, and

"(iii) all grants from such fund or account satisfy requirements similar to those described in section 4945(g) (concerning grants to individuals by private foundations).

"(C) SECRETARIAL AUTHORITY.—The Secretary may exempt a fund or account from treatment as a donor advised fund which—

"(i) is advised by committee not directly or indirectly controlled by the donor or advisor (and any related parties), or

"(ii) will benefit a single identified organization or governmental entity or a single identified charitable purpose.

"(h) OTHER DEFINITIONS.—For purposes of this section—

"(1) TAXABLE PERIOD.—The term 'taxable period' means, with respect to the undistributed amount for any taxable year, the period beginning with the first day of the taxable year and ending on the earlier of—

"(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212, or

"(B) the date on which the tax imposed by subsection (a) is assessed.

"(2) APPLICABLE PERIOD.—The term 'applicable period' means, with respect to any donor advised fund of any sponsoring organization, a 3-consecutive taxable year period determined under the following rules:

"(A) The first applicable 3-consecutive taxable year period for any donor advised fund shall begin on the first day of the first taxable year of the sponsoring organization beginning after the date such fund has been in existence for 1 year.

"(B) Any applicable 3-consecutive taxable year period after the first such period shall begin on the day after the termination of any preceding applicable 3-consecutive taxable year period with respect to such donor advised fund.

"(i) REGULATIONS.—The Secretary may issue such regulations as are necessary to carry out the purposes of this section, including regulations regarding—

"(1) the acceptable methods for calculating the organization level undistributed amount for sponsoring organizations,

"(2) the allowable adjustments in the determination of the value of any illiquid asset where the asset value has declined significantly after a contribution to, or purchase by, the donor advised fund, and

"(3) the treatment or disregard of transactions designed to avoid the application of the illiquid asset rules, such as through exchanges of illiquid assets for other assets.

"SEC. 4968. TAXES ON PROHIBITED DISTRIBUTIONS.

"(a) IMPOSITION OF TAXES.—

"(1) ON THE DONOR OR DONOR ADVISOR.—There is hereby imposed on the advice of any person described in section 4967(g)(2)(A)(iii) to have a sponsoring organization of a donor advised fund make a taxable distribution from such fund a tax equal to 20 percent of the amount thereof. The tax imposed by this paragraph shall be paid by such person who advised the sponsoring organization of the donor advised fund to make the distribution.

"(2) ON THE FUND MANAGEMENT.—There is hereby imposed on the agreement of any fund manager to the making of a distribution, knowing that it is a taxable distribution, a tax equal to 5 percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any fund manager who agreed to the making of the distribution.

"(b) JOINT AND SEVERAL LIABILITY.—For purposes of subsection (a), if more than one person is liable under subsection (a)(1) or (a)(2) with respect to the making of a taxable distribution, all such persons shall be jointly and severally liable under such paragraph with respect to such distribution.

"(c) TAXABLE DISTRIBUTION.—For purposes of this subsection—

"(1) IN GENERAL.—The term 'taxable distribution' means any distribution from a donor advised fund to any person other than the sponsoring organization's non donor advised funds or accounts or organizations described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any sponsoring organization if such amount is for maintenance in a donor advised fund).

"(2) EXCEPTION.—Notwithstanding paragraph (1), such term shall not include any distribution from a donor advised fund to any organization described in section 170(f)(17)(B)(ii) to the extent such distribution is not prohibited under regulations.

"(d) FUND MANAGER.—For purposes of this subchapter, the term 'fund manager' means, with respect to any sponsoring organization of a donor advised fund—

"(1) an officer, director, or trustee of such sponsoring organization (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the sponsoring organization), and

"(2) with respect to any act (or failure to act), the employees of the sponsoring organization having authority or responsibility with respect to such act (or failure to act).

"SEC. 4969. TAXES ON PROHIBITED BENEFITS.

"(a) IMPOSITION OF TAXES.—

"(1) ON THE DONOR, DONOR ADVISOR, OR RELATED PERSON.—There is hereby imposed on the advice of any person described in subsection (c) to have a sponsoring organization of a donor advised fund make a distribution from such fund which results in such a person receiving, directly or indirectly, a more than incidental benefit as a result of such distribution, a tax equal to 25 percent of the amount of such distribution. The tax imposed by this paragraph shall be paid by such person who advised the sponsoring organization of the donor advised fund to make the distribution.

"(2) ON THE RECIPIENT OF THE BENEFIT.—There is hereby imposed on any person described in subsection (c) who receives a benefit described in paragraph (1), a tax equal to 25 percent of the amount of the distribution described in paragraph (1).

"(3) ON THE FUND MANAGEMENT.—There is hereby imposed on the agreement of any fund manager to the making of a distribution, knowing that such distribution would confer a benefit described in paragraph (1), a tax equal to 10 percent of the amount of such distribution, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any fund manager who agreed to the making of the distribution.

"(b) JOINT AND SEVERAL LIABILITY.—For purposes of subsection (a), if more than one person is liable under subsection (a)(1), (a)(2), or (a)(3) with respect to the making of a distribution described in subsection (a), all such persons shall be jointly and severally liable under such paragraph with respect to such distribution.

"(c) DONOR, DONOR ADVISOR, OR RELATED PERSON.—A person is described in this subsection if such person is described in section 4958(f)(1)(D) (determined without regard to any investment advisor).".

(b) ABATEMENT OF TAXES ALLOWED.—Section 4963 is amended—

(1) by inserting "4967, 4968, 4969," after "4958," each place it appears in subsections (a) and (c),

(2) by inserting "4967," after "4958," in subsection (b),

(3) in subsection (d)(2), by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) in the case of the second tier tax imposed by section 4967(b), reducing the amount of the undistributed amount to zero.", and

(4) in subsection (e)(2), by redesignating subparagraphs (C) and (D) as subparagraphs (E) and (F), respectively, and by inserting after subparagraph (B) the following new subparagraphs:

"(C) in the case of section 4967(a)(1), on the first day of the taxable year for which there was a failure to distribute,

"(D) in the case of paragraph (2) or (3) of section 4967(a), on the 181st day of the taxable year for which there was a failure to distribute,".

(c) CONFORMING AMENDMENTS.—

(1) The table of subchapters for chapter 42, as amended by this Act, is amended by adding at the end the following new item:

"SUBCHAPTER G. DONOR ADVISED FUNDS.".

(2) Section 6213(e) is amended by inserting "4967 (relating to taxes on sponsoring organizations of donor advised funds for failure to meet distribution requirements)," after "benefit),".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 232. PROHIBITED TRANSACTIONS.

(a) DISQUALIFIED PERSONS.—

(1) IN GENERAL.—Paragraph (1) of section 4958(f) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding after subparagraph (C) the following new subparagraph:

"(D) any person who is described in paragraph (7) with respect to any sponsoring organization (as defined in section 4967(g)(1)).".

(2) DONORS, DONOR ADVISORS, AND INVESTMENT ADVISORS TREATED AS DISQUALIFIED PERSONS.—Section 4958(f) is amended by adding at the end the following new paragraph:

"(7) DONORS, DONOR ADVISORS, AND INVESTMENT ADVISORS WITH RESPECT TO SPONSORING ORGANIZATIONS.—For purposes of paragraph (1)(D)—

"(A) IN GENERAL.—A person is described in this paragraph if such person—

"(i) is described in section 4967(g)(2)(A)(iii),

"(ii) is an investment advisor,

"(iii) is a member of the family of an individual described in clause (i) or (ii), or

"(iv) is a 35-percent controlled entity (as defined in paragraph (3) by substituting 'persons described in clause (i), (ii), or (iii) of paragraph (7)(A)' for 'persons described in subparagraph (A) or (B) of paragraph (1)' in subparagraph (A)(i) thereof).

"(B) INVESTMENT ADVISOR.—The term 'investment advisor' means, with respect to any sponsoring organization (as defined in section 4967(g)(1)), any person (other than an employee of such organization) compensated by such organization for managing the investment of, or providing investment advice with respect to, assets maintained in donor advised funds (as defined in section 4967(g)(2)) owned by such organization.".

(3) DONORS, DONOR ADVISORS, AND INVESTMENT ADVISORS TREATED AS DISQUALIFIED PERSONS WITH RESPECT TO A SPONSORING ORGANIZATION WHICH IS A PRIVATE FOUNDATION.—Section 4946(a)(1) is amended by striking "and" at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting ", and", and by adding at the end the following new subparagraph:

"(J) a person described in section 4958(f)(1)(D).".

(b) CERTAIN TRANSACTIONS TREATED AS EXCESS BENEFIT TRANSACTIONS.—

(1) IN GENERAL.—Section 4958(c) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) SPECIAL RULES FOR DONOR ADVISED FUNDS OWNED BY SPONSORING ORGANIZATIONS.—In the case of any donor advised fund (as defined in section 4967(g)(2)) of a sponsoring organization (as defined in section 4967(g)(1))—

"(A) the term 'excess benefit transaction' includes any grant, loan, compensation, or other payment from such fund to a person described in subsection (f)(1)(D) (determined without regard to any investment advisor) with respect to such fund, and

"(B) the term 'excess benefit' includes, with respect to any transaction described in subparagraph (A), the amount of any such grant, loan, compensation, or other payment.

Notwithstanding the last sentence of subsection (e), a sponsoring organization shall be treated as an applicable tax-exempt organization to the extent necessary to carry out this paragraph.".

(2) SPECIAL RULE FOR CORRECTION OF TRANSACTION.—Section 4958(f)(6) is amended by inserting ", except that in the case of any correction of an excess benefit transaction described in subsection (c)(2), no amount repaid in a manner prescribed by the Secretary may be held in, or credited to, any donor advised fund" after "standards".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 233. TREATMENT OF CHARITABLE CONTRIBUTION DEDUCTIONS TO DONOR ADVISED FUNDS.

(a) INCOME.—Section 170(f) (relating to disallowance of deduction in certain cases and special rules), as amended by this Act, is amended by adding at the end the following new paragraph:

"(17) CONTRIBUTIONS TO DONOR ADVISED FUNDS.—

"(A) IN GENERAL.—A deduction otherwise allowed under subsection (a) for any contribution to a sponsoring organization (as defined in section 4967(g)(1)) to be maintained in any donor advised fund (as defined in section 4967(g)(2)) of such organization shall only be allowed if—

"(i) such sponsoring organization is not described in paragraph (3), (4), or (5) of subsection (c) or section 509(a)(3), and

"(ii) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of paragraph (8)(C) from the sponsoring organization that such organization has exclusive legal control over the assets contributed.

"(B) CONTRIBUTIONS TO TYPE I OR TYPE II SUPPORTING ORGANIZATIONS.—

"(i) IN GENERAL.—Notwithstanding subparagraph (A)(i), a contribution to a sponsoring organization (as so defined) described in clause (ii) to be maintained in any donor advised fund (as so defined) of such organization shall be allowed to the extent not prohibited by regulations.

"(ii) ORGANIZATION DESCRIBED.—An organization is described in this clause if the organization meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and is—

"(I) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2) of section 509(a), or

"(II) supervised or controlled in connection with one or more such organizations.".

(b) ESTATE.—Section 2055(e) is amended by adding at the end the following new paragraph:

"(5) CONTRIBUTIONS TO DONOR ADVISED FUNDS.—

"(A) IN GENERAL.—A deduction otherwise allowed under subsection (a) for any contribution to a sponsoring organization (as defined in section 4967(g)(1)) to be maintained in any donor advised fund (as defined in section 4967(g)(2)) of such organization shall only be allowed if—

"(i) such sponsoring organization is not described in paragraph (3) or (4) of subsection (a) or section 509(a)(3), and

"(ii) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of section 170(f)(8)(C)) from the sponsoring organization that such organization has exclusive legal control over the assets contributed.

"(B) CONTRIBUTIONS TO TYPE I OR TYPE II SUPPORTING ORGANIZATIONS.—

"(i) IN GENERAL.—Notwithstanding subparagraph (A)(i), a contribution to a sponsoring organization (as so defined) described in clause (ii) to be maintained in any donor advised fund (as so defined) of such organization shall be allowed to the extent not prohibited by regulations.

"(ii) ORGANIZATION DESCRIBED.—An organization is described in this clause if the organization meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and is—

"(I) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2) of section 509(a), or

"(II) supervised or controlled in connection with one or more such organizations.".

(c) GIFT.—Section 2522(c) is amended by adding at the end the following new paragraph:

"(13) CONTRIBUTIONS TO DONOR ADVISED FUNDS.—

"(A) IN GENERAL.—A deduction otherwise allowed under subsection (a) for any contribution to a sponsoring organization (as defined in section 4967(g)(1)) to be maintained in any donor advised fund (as defined in section 4967(g)(2)) of such organization shall only be allowed if—

"(i) such sponsoring organization is not described in paragraph (3) or (4) of subsection (a) or section 509(a)(3), and

"(ii) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of section 170(f)(8)(C)) from the sponsoring organization that such organization has exclusive legal control over the assets contributed.

"(B) CONTRIBUTIONS TO TYPE I OR TYPE II SUPPORTING ORGANIZATIONS.—

"(i) IN GENERAL.—Notwithstanding subparagraph (A)(i), a contribution to a sponsoring organization (as so defined) described in clause (ii) to be maintained in any donor advised fund (as so defined) of such organization shall be allowed to the extent not prohibited by regulations.

"(ii) ORGANIZATION DESCRIBED.—An organization is described in this clause if the organization meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and is—

"(I) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2) of section 509(a), or

"(II) supervised or controlled in connection with one or more such organizations.".

(d) REGULATIONS.—The regulations prescribed under sections 170(f)(17)(B)(i), 2055(e)(5)(B)(i), 2522(c)(13)(B)(i), 4967(e)(i)(A)(ii), and 4968(c)(2) of the Internal Revenue Code of 1986 shall deny a deduction for contributions to sponsoring organizations (as defined in section 4967(g)(1) of such Code) which are described in section 170(f)(17)(B)(ii) of such Code and shall apply excise taxes to distributions from donor advised funds (as defined in section 4967(g)(2) of such Code) and sponsoring organizations (as so defined) to organizations so described in cases where the donor of the contributions or the donor or donor advisor of the amounts distributed directly or indirectly controls a supported organization (as defined in section 509(f)(3) of such Code) of such organization.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after the date which is 180 days after the date of the enactment of this Act.

SEC. 234. RETURNS OF, AND APPLICATIONS FOR RECOGNITION BY, SPONSORING ORGANIZATIONS.

(a) MATTERS INCLUDED ON RETURNS.—

(1) IN GENERAL.—Section 6033, as amended by this Act, is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) ADDITIONAL PROVISIONS RELATING TO SPONSORING ORGANIZATIONS.—Every organization described in section 4967(g)(1) shall, on the return required under subsection (a) for the taxable year—

"(1) list the total number of donor advised funds (as defined in section 4967(g)(2)) it owns at the end of such taxable year,

"(2) indicate the aggregate value of assets held in such funds at the end of such taxable year, and

"(3) indicate the aggregate contributions to and grants made from such funds during such taxable year.".

(2) EXTENSION OF STATUTE OF LIMITATIONS.—Section 6501(c) is amended by adding at the end the following new paragraph:

"(11) DONOR ADVISED FUNDS.—If a sponsoring organization (as defined in section 4967(g)(1)) fails to include on any return for any taxable year any information with respect to any donor advised fund of such organization which is required under section 6033(j) to be included with such return, the time for assessment of any tax imposed under subchapter G of chapter 42 with respect to any distribution from such donor advised fund shall not expire before the date which is 3 years after the date on which the secretary is furnished the information so required.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to returns filed for taxable years ending after the date of the enactment of this Act.

(b) MATTERS INCLUDED ON EXEMPT STATUS APPLICATION.—

(1) IN GENERAL.—Section 508 is amended by adding at the end the following new subsection:

"(f) ADDITIONAL PROVISIONS RELATING TO SPONSORING ORGANIZATIONS.—A sponsoring organization (as defined in section 4967(g)(1)) shall give notice to the Secretary (in such manner as the Secretary may provide) whether such organization maintains or intends to maintain donor advised funds (as defined in section 4967(g)(2)) and the manner in which such organization plans to operate such funds.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to organizations applying for tax-exempt status after the date of the enactment of this Act.

PART III—IMPROVED ACCOUNTABILITY OF SUPPORTING ORGANIZATIONS

SEC. 241. REQUIREMENTS FOR SUPPORTING ORGANIZATIONS.

(a) TYPES OF SUPPORTING ORGANIZATIONS.—Subparagraph (B) of section 509(a)(3) is amended to read as follows:

"(B) is—

"(i) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2),

"(ii) supervised or controlled in connection with one or more such organizations, or

"(iii) operated in connection with one or more such organizations, and".

(b) REQUIREMENTS FOR SUPPORTING ORGANIZATIONS.—Section 509 (relating to private foundation defined) is amended by adding at the end the following new subsection:

"(f) REQUIREMENTS FOR SUPPORTING ORGANIZATIONS.—

"(1) TYPE III SUPPORTING ORGANIZATIONS.—For purposes of subsection (a)(3)(B)(iii), an organization shall not be considered to be operated in connection with any organization described in paragraph (1) or (2) of subsection (a) unless such organization meets the following requirements:

"(A) APPLICATION REQUIREMENT.—The organization provides to the Secretary, as a part of any notification filed under section 508(a) after the date of the enactment of this subsection, a letter from each supported organization acknowledging that the supported organization has been designated by such organization as a supported organization.

"(B) RESPONSIVENESS.—For each taxable year beginning after the date of the enactment of this subsection, the organization provides to each supported organization such information as the Secretary may require to ensure that such organization is responsive to the needs or demands of the supported organization.

"(C) SUPPORTED ORGANIZATIONS.—

"(i) IN GENERAL.—The organization—

"(I) is not operated in connection with more than 5 supported organizations, and

"(II) is not operated in connection with any supported organization that is not organized in the United States on any date after the date which is 180 days after the date of the enactment of this subsection.

"(ii) SPECIAL RULE FOR EXISTING ORGANIZATIONS.—If the organization is operated in connection with more than 5 supported organizations on the date of the enactment of this subsection—

"(I) clause (i)(I) shall not apply, and

"(II) the organization may not be operated in connection with any other organization after such date unless the total number of supported organizations is 5 or less.

"(D) CONTRIBUTIONS TO DONOR ADVISED FUNDS.—The organization makes no contributions to or for the use of any donor advised fund (as defined in section 4967(g)(2)).

"(2) ORGANIZATIONS CONTROLLED BY DONORS.—

"(A) IN GENERAL.—For purposes of subsection (a)(3)(B), an organization shall not be considered to be—

"(i) operated, supervised, or controlled by any organization described in paragraph (1) or (2) of subsection (a), or

"(ii) operated in connection with any organization described in paragraph (1) or (2) of subsection (a),

if such organization accepts any gift or contribution from any person described in subparagraph (B).

"(B) PERSON DESCRIBED.—A person is described in this subparagraph if such person is—

"(i) a person (other than an organization described in paragraph (1), (2), or (4) of section 509(a)) who controls, directly or indirectly, either alone or together with persons described in clauses (ii) and (iii), the governing body of a supported organization,

"(ii) a member of the family (determined under section 4958(f)(4)) of an individual described in clause (i), or

"(iii) a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting 'persons described in clause (i) or (ii) of section 509(f)(2)(B)' for 'persons described in subparagraph (A) or (B) of paragraph (1)' in subparagraph (A)(i) thereof).

"(3) SUPPORTED ORGANIZATION.—For purposes of this subsection, the term 'supported organization' means, with respect to an organization described in subsection (a)(3), an organization described in paragraph (1) or (2) of subsection (a)—

"(A) for whose benefit the organization described in subsection (a)(3) is organized and operated, or

"(B) with respect to which the organization performs the functions of, or carries out the purposes of.".

(c) CHARITABLE TRUSTS WHICH ARE TYPE III SUPPORTING ORGANIZATIONS.—For purposes of section 509(a)(3)(B)(iii) of the Internal Revenue Code of 1986, an organization which is a trust shall not be considered to be operated in connection with any organization described in paragraph (1) or (2) of section 509(a) of such Code solely because—

(1) it is a charitable trust under State law,

(2) the supported organization (as defined in section 509(f)(3) of such Code) is a beneficiary of such trust, and

(3) the supported organization (as so defined) has the power to enforce the trust and compel an accounting.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 242. EXCISE TAX ON SUPPORTING ORGANIZATIONS FOR FAILURE TO MEET DISTRIBUTION REQUIREMENTS.

(a) IN GENERAL.—Subchapter D of chapter 42 (relating to failure by certain charitable organizations to meet certain qualification requirements) is amended by adding at the end the following new section:

"SEC. 4959. TAXES ON CERTAIN SUPPORTING ORGANIZATIONS FAILING TO MEET DISTRIBUTION REQUIREMENTS.

"(a) INITIAL TAX.—There is hereby imposed on the undistributed income of any type III supporting organization for any taxable year, which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period), a tax equal to 30 percent of the amount of such income remaining undistributed at the beginning of such second (or succeeding) taxable year.

"(b) ADDITIONAL TAX.—In any case in which an initial tax is imposed under subsection (a) on the undistributed income of a type III supporting organization for any taxable year, if any portion of such income remains undistributed at the close of the taxable period, there is hereby imposed a tax equal to 100 percent of the amount remaining undistributed at such time.

"(c) UNDISTRIBUTED INCOME.—For purposes of this section, the term 'undistributed income' means, with respect to any type III supporting organization for any taxable year as of any time, the amount by which—

"(1) the distributable amount for such taxable year, exceeds

"(2) the qualifying distributions made before such time out of such distributable amount.

"(d) DISTRIBUTABLE AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—the term 'distributable amount' means, with respect to any type III supporting organization for any taxable year, an amount equal to the sum of—

"(A) the greater of—

"(i) 85 percent of the adjusted net income (as defined in section 4942(f)) of the type III supporting organization for the preceding taxable year, or

"(ii) the applicable percentage of the fair market value of the aggregate assets of such organization (other than assets used or held to perform the functions of, or carry out the purposes of, a supported organization) on the last day of the preceding taxable year, and

"(B) any amount received during the preceding taxable year which is a repayment of amounts paid by the organization in any prior taxable year to a supported organization exclusively for the benefit of such supported organization or to perform the functions of, or carry out the purposes of such supported organization.

"(2) INVESTMENT ASSETS.—For purposes of paragraph (1)(A)(ii), assets held for investment or for the operation of an unrelated trade or business shall not be considered as assets used or held to perform the functions of, or carry out the purposes of, a supported organization.

"(3) APPLICABLE PERCENTAGE.—For purposes of paragraph (1)(A)(ii), the applicable percentage is—

"(A) 3 percent for the first taxable year beginning after the date of the enactment of this section,

"(B) 4 percent for the second taxable year beginning after such date, and

"(C) 5 percent for any taxable year beginning after the second taxable year beginning after such date.

"(e) QUALIFYING DISTRIBUTION.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualifying distribution' means amounts paid by the type III supporting organization to or for the use of a supported organization.

"(2) ADMINISTRATIVE AND OPERATING EXPENSES.—Reasonable and necessary administrative expenses of a type III supporting organization shall be treated as a qualifying distribution to a supported organization.

"(f) TREATMENT OF QUALIFYING DISTRIBUTIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), any qualifying distribution made during a taxable year shall be treated as made—

"(A) first out of the undistributed income of the immediately preceding taxable year (if the type III supporting organization was subject to the tax imposed by this section for such preceding taxable year) to the extent thereof, and

"(B) second out of the undistributed income for the taxable year to the extent thereof.

For purposes of this paragraph, distributions shall be taken into account in the order of time in which made.

"(2) CORRECTION OF DEFICIENT DISTRIBUTIONS FOR PRIOR TAXABLE YEARS, ETC.—In the case of any qualifying distribution which (under paragraph (1)) is not treated as made out of the undistributed income of the immediately preceding taxable year, the type III supporting organization may elect to treat any portion of such distribution as made out of the undistributed income of a designated prior taxable year. The election shall be made by the type III supporting organization at such time and in such manner as the Secretary shall by regulations prescribe.

"(g) ADJUSTMENT OF DISTRIBUTABLE AMOUNT WHERE DISTRIBUTIONS DURING PRIOR YEARS HAVE EXCEEDED INCOME.—

"(1) IN GENERAL.—If, for the taxable years in the adjustment period for which an organization is a type III supporting organization—

"(A) the aggregate qualifying distributions treated (under subsection (f)) as made out of the undistributed income for such taxable years, exceeds

"(B) the distributable amounts for such taxable years (determined without regard to this subsection),

then, for purposes of this section (other than subsection (f)), the distributable amount for the taxable year shall be reduced by an amount equal to such excess.

"(2) TAXABLE YEARS IN ADJUSTMENT PERIOD.—For purposes of paragraph (1), with respect to any taxable year of a type III supporting organization, the taxable years in the adjustment period are the taxable years (not exceeding 5) beginning after the date of the enactment of this section and immediately preceding the taxable year.

"(h) OTHER DEFINITIONS.—For purposes of this section—

"(1) TAXABLE PERIOD.—The term 'taxable period' means, with respect to the undistributed income for any taxable year, the period beginning with the first day of the taxable year and ending on the earlier of—

"(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212, or

"(B) the date on which the tax imposed by subsection (a) is assessed.

"(2) TYPE III SUPPORTING ORGANIZATION.—The term 'type III supporting organization' means an organization which meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and which is operated in connection with one or more organizations described in paragraph (1) or (2) of section 509(a).

"(3) SUPPORTED ORGANIZATION.—The term 'supported organization' has the meaning given such term under section 509(f)(3).".

(b) CONFORMING AMENDMENT.—The table of sections for subchapter D of chapter 42 is amended by inserting after the item relating to section 4958 the following new item:

"Sec. 4959. Taxes on certain supporting organizations failing to meet distribution requirements.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 243. EXCESS BENEFIT TRANSACTIONS.

(a) IN GENERAL.—Section 4958(c), as amended by this Act, is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) SPECIAL RULES FOR SUPPORTING ORGANIZATIONS.—

"(A) IN GENERAL.—In the case of any organization described in section 509(a)(3)—

"(i) the term 'excess benefit transaction' includes—

"(I) any grant, loan, compensation, or other payment provided by such organization to a person described in subparagraph (B), and

"(II) any loan provided by such organization to a disqualified person (other than an organization described in paragraph (1), (2), or (4) of section 509(a)), and

"(ii) the term 'excess benefit' includes, with respect to any transaction described in clause (i), the amount of any such grant, loan, compensation, or other payment.

"(B) PERSON DESCRIBED.—A person is described in this subparagraph if such person is—

"(i) a substantial contributor to such organization,

"(ii) a member of the family (determined under section 4958(f)(4)) of an individual described in clause (i), or

"(iii) a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting 'persons described in clause (i) or (ii) of section 4958(c)(3)(B)' for 'persons described in subparagraph (A) or (B) of paragraph (1)' in subparagraph (A)(i) thereof).

"(C) SUBSTANTIAL CONTRIBUTOR.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'substantial contributor' means any person who contributed or bequeathed an aggregate amount of more than $5,000 to the organization, if such amount is more than 2 percent of the total contributions and bequests received by the organization before the close of the taxable year of the organization in which the contribution or bequest is received by the organization from such person. In the case of a trust, such term also means the creator of the trust.

"(ii) EXCEPTION.—Such term shall not include any organization described in paragraph (1), (2), or (4) of section 509(a).".

(b) DISQUALIFIED PERSONS.—Paragraph (1) of section 4958(f), as amended by this Act, is amended by striking "and" at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting ", and", and by adding after subparagraph (D) the following new subparagraph:

"(E) any person who is described in subparagraph (A), (B), or (C) with respect to an organization described in section 509(a)(3) which is organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the applicable tax-exempt organization.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions occurring after the date of the enactment of this Act.

SEC. 244. EXCESS BUSINESS HOLDINGS OF SUPPORTING ORGANIZATIONS.

(a) IN GENERAL.—Section 4943 is amended by adding at the end the following new subsection:

"(e) APPLICATION OF TAX TO SUPPORTING ORGANIZATIONS.—

"(1) IN GENERAL.—For purposes of this section, a qualified supporting organization shall be treated as a private foundation.

"(2) EXCEPTION.—The Secretary may exempt any qualified supporting organization from the application of this subsection if the Secretary determines that the excess business holdings of such organization are consistent with the purpose or function constituting the basis for its exemption under section 501.

"(3) QUALIFIED SUPPORTING ORGANIZATION.—For purposes of this subsection, the term 'qualified supporting organization' means any—

"(A) type III supporting organization (as defined in section 4959(h)(2)), or

"(B) organization which meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and which is supervised or controlled in connection with or one or more organizations described in paragraph (1) or (2) of section 509(a), but only if such organization accepts any gift or contribution from any person described in section 509(f)(2)(B).

"(4) DISQUALIFIED PERSON.—

"(A) IN GENERAL.—In applying this section to any organization described in section 509(a)(3), the term 'disqualified person' means, with respect to the organization—

"(i) any person who was, at any time during the 5-year period ending on date described in subsection (a)(2)(A), in a position to exercise substantial influence over the affairs of the organization,

"(ii) any member of the family (determined under section 4958(f)(4)) of an individual described in clause (i),

"(iii) any 35-percent controlled entity (as defined in section 4958(f)(3) by substituting 'persons described in clause (i) or (ii) of section 4943(e)(2)(A)' for 'persons described in subparagraph (A) or (B) of paragraph (1)' in subparagraph (A)(i) thereof),

"(iv) any person described in section 4958(c)(3)(B), and "(v) any organization—

"(I) which is effectively controlled (directly or indirectly) by the same person or persons who control the organization in question, or

"(II) substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in subparagraph (B) or a member of their family (within the meaning of section 4946(d)) who made (directly or indirectly) substantially all of the contributions to the organization in question.

"(B) PERSONS DESCRIBED.—A person is described in this subparagraph if such person is—

"(i) a substantial contributor to the organization (as defined in section 4958(c)(3)(C)),

"(ii) an officer, director, or trustee of the organization (or an individual having powers or responsibilities similar to those officers, directors, or trustees of the organization), or

"(iii) an owner of more than 20 percent of—

"(I) the total combined voting power of a corporation,

"(II) the profits interest of a partnership, or

"(III) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor (as so defined) to the organization.

"(5) SPECIAL RULE FOR CERTAIN HOLDINGS OF TYPE III SUPPORTING ORGANIZATIONS.—For purposes of this subsection, the term 'excess business holdings' shall not include any holdings of a type III supporting organization (as defined in section 4959(h)(2)) in any business enterprise if the holdings are held for the benefit of the community pursuant to the direction of a State attorney general or a State official with jurisdiction over the type III supporting organization.

"(6) PRESENT HOLDINGS.—For purposes of this subsection, rules similar to the rules of paragraphs (4), (5), and (6) of subsection (c) shall apply to organizations described in section 509(a)(3), except that—

"(A) 'the date of the enactment of this subsection' shall be substituted for 'May 26, 1969' each place it appears in paragraphs (4), (5), and (6), and

"(B) 'January 1, 2007' shall be substituted for 'January 1, 1970' in paragraph (4)(E).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 245. TREATMENT OF AMOUNTS PAID TO SUPPORTING ORGANIZATIONS BY PRIVATE FOUNDATIONS.

(a) QUALIFYING DISTRIBUTIONS.—Paragraph (4) of section 4942(g) is amended to read as follows:

"(4) LIMITATION ON DISTRIBUTIONS BY NONOPERATING PRIVATE FOUNDATIONS TO SUPPORTING ORGANIZATIONS.—For purposes of this section, the term 'qualifying distribution' shall not include any amount paid by a private foundation which is not an operating foundation to an organization described in section 509(a)(3).".

(b) TAXABLE EXPENDITURES.—

(1) IN GENERAL.—Subsection (d) of section 4945 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) to an organization described in section 509(a)(3).".

(2) CONFORMING AMENDMENTS.—

(A) Section 4945(d)(5), as redesignated by subparagraph (A), is amended—

(i) by striking "a grant to an organization" and inserting "a grant to any other organization", and

(ii) by striking "paragraph (1), (2), or (3) of section 509(a)" in subparagraph (A) and inserting "paragraph (1) or (2) of section 509(a)".

(B) Section 4945(f) is amended by striking "Subsection (d)(4)" in the last sentence thereof and inserting "Subsection (d)(5)".

(C) Section 4945(h) is amended by striking "subsection (d)(4)" and inserting "subsection (d)(5)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions and expenditures after the date of the enactment of this Act.

SEC. 246. RETURNS OF SUPPORTING ORGANIZATIONS.

(a) REQUIREMENT TO FILE RETURN.—Subparagraph (B) of section 6033(a)(3), as redesignated by this Act, is amended by inserting "(other than an organization described in section 509(a)(3))" after "paragraph (1)".

(b) MATTERS INCLUDED ON RETURNS.—Section 6033, as amended by this Act, is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) ADDITIONAL PROVISIONS RELATING TO SUPPORTING ORGANIZATIONS.—

"(1) IN GENERAL.—Every organization described in section 509(a)(3) shall, on the return required under subsection (a)—

"(A) list the organizations described in section 509(a)(3)(A) with respect to which such organization provides support,

"(B) indicate whether the organization meets the requirements of clause (i), (ii), or (iii) of section 509(a)(3)(B), and

"(C) certify that the organization meets the requirements of section 509(a)(3)(C).

"(2) TYPE III SUPPORTING ORGANIZATIONS.—Every type III supporting organization (as defined in section 4959(h)(2)) shall indicate on the return required under subsection (a) for the taxable year whether the organization has received a letter from each supported organization (as defined in section 509(f)(3)) during the taxable year which—

"(A) acknowledges that the supporting organization has designated such organization as a supported organization,

"(B) details the type of support provided by the supporting organization, and

"(C) explains how such support furthers the charitable purpose of the supported organization.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns filed for taxable years ending after the date of the enactment of this Act.

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. RESTRUCTURING OF NEW YORK LIBERTY ZONE TAX CREDITS.

(a) IN GENERAL.—Subchapter Y of chapter 1 is amended by adding at the end the following new section:

"SEC. 1400M. NEW YORK LIBERTY ZONE TAX CREDITS.

"(a) IN GENERAL.—There shall be allowed as a credit against any taxes imposed by this title (other than by section 3111(a), section 3403, or subtitle D) paid or incurred by any governmental unit of the State of New York and the City of New York, New York (including any agency or instrumentality thereof) for any calendar year an amount equal to the lesser of—

"(1) the total expenditures during such year by such governmental unit for qualifying projects, or

"(2) the amount allocated to such governmental unit for such calendar year under subsection (b)(2).

"(b) QUALIFYING PROJECT.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualifying project' means any transportation infrastructure project, including highways, mass transit systems, railroads, airports, ports, and waterways, in or connecting with the New York Liberty Zone (as defined in section 1400L(h)), which is designated as a qualifying project under this section jointly by the Governor of the State of New York and the Mayor of the City of New York, New York.

"(2) DOLLAR LIMITATION.—

"(A) IN GENERAL.—The Governor of the State of New York and the Mayor of the City of New York, New York, shall jointly allocate to a governmental unit the amount of expenditures which may be taken into account under subsection (a) for any calendar year in the credit period with respect to a qualifying project.

"(B) AGGREGATE LIMIT.—The aggregate amount which may be allocated under subparagraph (A) for all calendar years in the credit period shall not exceed $2,000,000,000.

"(C) ANNUAL LIMIT.—The aggregate amount which may be allocated under subparagraph (A) for any calendar year in the credit period shall not exceed the sum of—

"(i) $200,000,000, plus

"(ii) the aggregate amount authorized to be allocated under this paragraph for all preceding calendar years in the credit period which was not so allocated.

"(D) UNALLOCATED AMOUNTS AT END OF CREDIT PERIOD.—If, as of the close of the credit period, the amount under subparagraph (B) exceeds the aggregate amount allocated under subparagraph (A) for all calendar years in the credit period, the Governor of the State of New York and the Mayor of the City of New York, New York, may jointly allocate for any calendar year following the credit period for expenditures with respect to qualifying projects which may be taken into account under subsection (a) an amount equal to such excess, reduced by the aggregate amount allocated under this subparagraph for all preceding calendar years.

"(c) CARRYOVER OF UNUSED ALLOCATIONS.—

"(1) IN GENERAL.—If the amount allocated under subsection (b)(2) to a governmental unit for any calendar year exceeds the total expenditures for such year by such governmental unit for qualifying projects, the allocation of such governmental unit for the succeeding calendar year shall be increased by the amount of such excess.

"(2) REALLOCATION.—If a governmental unit does not use an amount allocated to it under subsection (b)(2) within the time prescribed by the Governor of the State of New York and the Mayor of the City of New York, New York, then such amount shall after such time be treated for purposes of subsection (b)(2) in the same manner as if it had never been allocated.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) CREDIT PERIOD.—The term 'credit period' means the 10-year period beginning on January 1, 2006.

"(2) TREATMENT OF FUNDS.—Any expenditure for a qualifying project taken into account for purposes of the credit under this section shall be considered State and local funds for the purpose of any Federal program.

"(e) REGULATIONS.—The Secretary may prescribe such regulations as are necessary to ensure compliance with the purposes of this section.".

(b) TERMINATION OF CERTAIN NEW YORK LIBERTY ZONE BENEFITS.—

(1) SPECIAL ALLOWANCE AND EXPENSING.—Section 1400L(b)(2)(A)(v) is amended by

striking "the termination date" and inserting "the date of the enactment of the Tax Relief Act of 2005 or the termination date if pursuant to a binding contract in effect on such enactment date".

(2) Leasehold.—Section 1400L(c)(2)(B) is amended by striking "before January 1, 2007" and inserting "on or before the date of the enactment of the Tax Relief Act of 2005 or before January 1, 2007, if pursuant to a binding contract in effect on such enactment date".

SEC. 302. MODIFICATION TO S CORPORATION PASSIVE INVESTMENT INCOME RULES.

(a) Increased Percentage Limit.—Paragraph (2) of section 1375(a) is amended by striking "25 percent" and inserting "60 percent".

(b) Other Provisions.—

(1) Repeal of excessive passive income as a termination event.—Section 1362(d) is amended by striking paragraph (3).

(2) Capital gain not treated as passive investment income.—Subsection (b) of section 1375 is amended by striking paragraphs (3) and (4) and inserting the following new paragraph:

"(3) Passive investment income defined.—

"(A) Except as otherwise provided in this paragraph, the term 'passive investment income' means gross receipts derived from royalties, rents, dividends, interest, and annuities.

"(B) Exception for interest on notes from sales of inventory.—The term 'passive investment income' shall not include interest on any obligation acquired in the ordinary course of the corporation's trade or business from its sale of property described in section 1221(a)(1).

"(C) Treatment of certain lending or finance companies.—If the S corporation meets the requirements of section 542(c)(6) for the taxable year, the term 'passive investment income' shall not include gross receipts for the taxable year which are derived directly from the active and regular conduct of a lending or finance business (as defined in section 542(d)(1)).

"(D) Treatment of certain dividends.—If an S corporation holds stock in a C corporation meeting the requirements of section 1504(a)(2), the term 'passive investment income' shall not include dividends from such C corporation to the extent such dividends are attributable to the earnings and profits of such C corporation derived from the active conduct of a trade or business.

"(E) Exception for banks, etc.—In the case of a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)), the term 'passive investment income' shall not include—

"(i) interest income earned by such bank or company, or

"(ii) dividends on assets required to be held by such bank or company, including stock in the Federal Reserve Bank, the Federal Home Loan Bank, or the Federal Agricultural Mortgage Bank or participation certificates issued by a Federal Intermediate Credit Bank.

"(F) Coordination with section 1374.—The amount of passive investment income shall be determined by not taking into account any recognized built-in gain or loss of the S corporation for any taxable year in the recognition period. Terms used in the preceding sentence shall have the same respective meanings as when used in section 1374.".

(c) Conforming Amendments.—

(1) Subparagraph (J) of section 26(b)(2) is amended by striking "25 percent" and inserting "60 percent".

(2) Clause (i) of section 1042(c)(4)(A) is amended by striking "section 1362(d)(3)(C)" and inserting "section 1375(b)(3)".

(3) Subparagraph (B) of section 1362(f)(1) is amended by striking "or (3)".

(4) Clause (i) of section 1375(b)(1)(A) is amended by striking "25 PERCENT" and inserting "60 PERCENT".

(5) The heading for section 1375 is amended by striking "25 PERCENT" and inserting "60 PERCENT".

(6) The item relating to section 1375 in the table of sections for part III of subchapter S of chapter 1 is amended by striking "25 percent" and inserting "60 percent".

(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006 and before October 2, 2009.

SEC. 303. MODIFICATION OF EFFECTIVE DATE OF DISREGARD OF CERTAIN CAPITAL EXPENDITURES FOR PURPOSES OF QUALIFIED SMALL ISSUE BONDS.

(a) In General.—Section 144(a)(4)(G) is amended by striking "September 30, 2009" and inserting "December 31, 2006".

(b) Conforming Amendment.—Section 144(a)(4)(F) is amended by striking "September 30, 2009" and inserting "December 31, 2006".

SEC. 304. PREMIUMS FOR MORTGAGE INSURANCE.

(a) In General.—Section 163(h)(3) (relating to qualified residence interest) is amended by adding at the end the following new subparagraph:

"(E) Mortgage insurance premiums treated as interest.—

"(i) In general.—Premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness with respect to a qualified residence of the taxpayer shall be treated for purposes of this section as interest which is qualified residence interest.

"(ii) Phaseout.—The amount otherwise treated as interest under clause (i) shall be reduced (but not below zero) by 10 percent of such amount for each $1,000 ($500 in the case of a married individual filing a separate return) (or fraction thereof) that the taxpayer's adjusted gross income for the taxable year exceeds $100,000 ($50,000 in the case of a married individual filing a separate return).".

(b) Definition and Special Rules.—Section 163(h)(4) (relating to other definitions and special rules) is amended by adding at the end the following new subparagraphs:

"(E) Qualified mortgage insurance.—The term 'qualified mortgage insurance' means—

"(i) mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration, and

"(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subparagraph).

"(F) Special rules for prepaid qualified mortgage insurance.—Any amount paid by the taxpayer for qualified mortgage insurance that is properly allocable to any mortgage the payment of which extends to periods that are after the close of the taxable year in which such amount is paid shall be chargeable to capital account and shall be treated as paid in such periods to which so allocated. No deduction shall be allowed for the unamortized balance of such account if such mortgage is satisfied before the end of its term. The preceding sentences shall not apply to amounts paid for qualified mortgage insurance provided by the Veterans Administration or the Rural Housing Administration.".

(c) Information Returns Relating to Mortgage Insurance.—Section 6050H (relating to returns relating to mortgage interest received in trade or business from individuals) is amended by adding at the end the following new subsection:

"(h) Returns Relating to Mortgage Insurance Premiums.—

"(1) In general.—The Secretary may prescribe, by regulations, that any person who, in the course of a trade or business, receives from any individual premiums for mortgage insurance aggregating $600 or more for any calendar year, shall make a return with respect to each such individual. Such return shall be in such form, shall be made at such time, and shall contain such information as the Secretary may prescribe.

"(2) Statement to be furnished to individuals with respect to whom information is required.—Every person required to make a return under paragraph (1) shall furnish to each individual with respect to whom a return is made a written statement showing such information as the Secretary may prescribe. Such written statement shall be furnished on or before January 31 of the year following the calendar year for which the return under paragraph (1) was required to be made.

"(3) Special rules.—For purposes of this subsection—

"(A) rules similar to the rules of subsection (c) shall apply, and

"(B) the term 'mortgage insurance' means—

"(i) mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration, and

"(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subsection).".

(d) Effective Date.—The amendments made by this section shall apply to amounts paid or accrued during the period beginning after December 31, 2006, and before January 1, 2008, and properly allocable to such period, with respect to mortgage insurance contracts issued after December 31, 2006.

SEC. 305. SENSE OF THE SENATE ON USE OF NO-BID CONTRACTING BY FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) Findings.—The Senate finds that—

(1) on September 8, 2005, the Federal Emergency Management Agency announced that it had awarded 4 contracts for emergency housing relief following Hurricane Katrina to The Shaw Group of Baton Rouge, Louisiana, Fluor Corporation of Aliso Viejo, California, Bechtel National of San Francisco, California, and CH2M Hill of Denver, Colorado;

(2) these contracts were awarded with no competition from other capable firms, and up to $100,000,000 in taxpayer funds were authorized for each of these contracts;

(3) in the midst of concerns about abusive and irresponsible spending of taxpayer funds, the Federal Emergency Management Agency pledged to re-bid these noncompetitive contracts, with Acting Under Secretary of Emergency Preparedness and Response, R.

David Paulison, stating before the Committee on Homeland Security and Government Affairs of the Senate that "[a]ll of these no-bid contracts, we are going to go back and re-bid";

(4) the Federal Emergency Management Agency has yet to reopen these 4 contracts to competitive bidding, and declared on November 11, 2005, that these contracts would not be reopened for bidding until February 2006;

(5) by February 2006, the majority of the contracts will have been completed and the majority of taxpayer funds will have been spent;

(6) large and politically-connected firms continue to benefit from no-bid and limited-competition contracts, and contracts are not being awarded to capable, local companies;

(7) according to an analysis in the Washington Post, companies outside the States most affected by Hurricane Katrina have received more than 90 percent of the Federal contracts for recovery and reconstruction;

(8) the monitoring of Federal contracting practices remains difficult, with a report by the San Jose Mercury News stating "The database of contracts is incomplete. Information released by Federal agencies is spotty and sporadic. And disclosure of many no-bid contracts isn't required by law"; and

(9)(A) there is currently no Chief Financial Officer charged with monitoring the flow of all funds to the affected areas; and

(B) the task of financial management is spread across disparate Federal departments and agencies with inadequate oversight of taxpayer funds.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Federal Emergency Management Agency should—

(1) immediately rebid noncompetitive contracts entered into following Hurricane Katrina, consistent with the commitment of the Agency made on October 6, 2005, before millions of taxpayer dollars are wasted on irresponsible and inefficient spending;

(2)(A) immediately implement the planned competitive contracting strategy of the Agency for recovery work in all current and future reconstruction efforts; and

(B) in carrying out that strategy, should prioritize local and small disadvantaged businesses in the contracting and subcontracting process; and

(3) immediately after the awarding of a contract, publicly disclose the amount and competitive or noncompetitive nature of the contract.

SEC. 306. SENSE OF CONGRESS REGARDING DOHA ROUND.

(a) FINDINGS.—The Congress makes the following findings:

(1) Members of the World Trade Organization (WTO) are currently engaged in a round of trade negotiations known as the Doha Development Agenda (Doha Round).

(2) The Doha Round includes negotiations aimed at clarifying and improving disciplines under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement) and the Agreement on Subsidies and Countervailing Measures (Subsidies Agreement).

(3) The WTO Ministerial Declaration adopted on November 14, 2001 (WTO Paper No. WT/MIN(01)/DEC/1) specifically provides that the Doha Round negotiations are to preserve the "basic concepts, principles and effectiveness" of the Antidumping Agreement and the Subsidies Agreement.

(4) In section 2102(b)(14)(A) of the Bipartisan Trade Promotion Authority Act of 2002, the Congress mandated that the principal negotiating objective of the United States with respect to trade remedy laws was to "preserve the ability of the United States to enforce rigorously its trade laws . . . and avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies".

(5) The countries that have been the most persistent and egregious violators of international fair trade rules are engaged in an aggressive effort to significantly weaken the disciplines provided in the Antidumping Agreement and the Subsidies Agreement and undermine the ability of the United States to effectively enforce its trade remedy laws.

(6) Chronic violators of fair trade disciplines have put forward proposals that would substantially weaken United States trade remedy laws and practices, including mandating that unfair trade orders terminate after a set number of years even if unfair trade and injury are likely to recur, mandating that trade remedy duties reflect less than the full margin of dumping or subsidization, mandating higher de minimis levels of unfair trade, making cumulation of the effects of imports from multiple countries more difficult in unfair trade investigations, outlawing the critical practice of "zeroing" in antidumping investigations, mandating the weighing of causes, and mandating other provisions that make it more difficult to prove injury.

(7) United States trade remedy laws have already been significantly weakened by numerous unjust and activist WTO dispute settlement decisions which have created new obligations to which the United States never agreed.

(8) Trade remedy laws remain a critical resource for American manufacturers, agricultural producers, and aquacultural producers in responding to closed foreign markets, subsidized imports, and other forms of unfair trade, particularly in the context of the challenges currently faced by these vital sectors of the United States economy.

(9) The United States had a current account trade deficit of approximately $668,000,000,000 in 2004, including a trade deficit of almost $162,000,000,000 with China alone, as well as a trade deficit of $40,000,000,000 in advanced technology.

(10) United States manufacturers have lost over 3,000,000 jobs since June 2000, and United States manufacturing employment is currently at its lowest level since 1950.

(11) Many industries critical to United States national security are at severe risk from unfair foreign competition.

(12) The Congress strongly believes that the proposals put forward by countries seeking to undermine trade remedy disciplines in the Doha Round would result in serious harm to the United States economy, including significant job losses and trade disadvantages.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States should not be a signatory to any agreement or protocol with respect to the Doha Development Round of the World Trade Organization negotiations, or any other bilateral or multilateral trade negotiations, that—

(A) adopts any proposal to lessen the effectiveness of domestic and international disciplines on unfair trade or safeguard provisions, including proposals—

(i) mandating that unfair trade orders terminate after a set number of years even if unfair trade and injury are likely to recur;

(ii) mandating that trade remedy duties reflect less than the full margin of dumping or subsidization;

(iii) mandating higher de minimis levels of unfair trade;

(iv) making cumulation of the effects of imports from multiple countries more difficult in unfair trade investigations;

(v) outlawing the critical practice of "zeroing" in antidumping investigations; or

(vi) mandating the weighing of causes or other provisions making it more difficult to prove injury in unfair trade cases; and

(B) would lessen in any manner the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws;

(2) the United States trade laws and international rules appropriately serve the public interest by offsetting injurious unfair trade, and that further "balancing modifications" or other similar provisions are unnecessary and would add to the complexity and difficulty of achieving relief against injurious unfair trade practices; and

(3) the United States should ensure that any new agreement relating to international disciplines on unfair trade or safeguard provisions fully rectifies and corrects decisions by WTO dispute settlement panels or the Appellate Body that have unjustifiably and negatively impacted, or threaten to negatively impact, United States law or practice, including a law or practice with respect to foreign dumping or subsidization.

SEC. 307. MODIFICATION OF BOND RULE.

In the case of bonds issued after the date of the enactment of this Act and before August 31, 2009—

(1) the requirement of paragraph (1) of section 648 of the Deficit Reduction Act of 1984 (98 Stat. 941) shall be treated as met with respect to the securities or obligations referred to in such section if such securities or obligations are held in a fund the annual distributions from which cannot exceed 7 percent of the average fair market value of the assets held in such fund except to the extent distributions are necessary to pay debt service on the bond issue,

(2) paragraph (3) of such section shall be applied by substituting "distributions from" for "the investment earnings of" both places it appears, and

(3) Paragraph (4) of such section shall be applied by substituting "March 1, 1985" for "October 9, 1969".

SEC. 308. TREATMENT OF CERTAIN STOCK OPTION PLANS UNDER NONQUALIFIED DEFERRED COMPENSATION RULES.

(a) IN GENERAL.—The Secretary of the Treasury shall modify the regulations under section 409A of the Internal Revenue Code of 1986 to extend to applicable foreign option plans the exception under such section for incentive stock options under section 422 of such Code and options granted under an employee stock purchase plan meeting the requirements of section 423 of such Code. Such extension shall be subject to such terms and conditions as may be prescribed in such regulations.

(b) APPLICABLE FOREIGN OPTION PLANS.—For purposes of subsection (a)—

(1) IN GENERAL.—The term "applicable foreign option plan" means a plan providing for the issuance of employee stock options—

(A) which is established under the laws of a foreign jurisdiction, and

(B) which, under such laws or the terms of the plan (or both), is subject to requirements substantially similar to the requirements under section 422 or 423 of such Code.

(2) SUBSTANTIALLY SIMILAR.—A plan shall not be treated as subject to substantially

similar requirements under paragraph (1)(B) unless—

(A) the plan is required to cover substantially all employees,

(B) in the case of an option under an employee stock purchase plan, the plan is required to provide an option price which is not less than the amount specified in section 423(b)(6) of such Code, except that such section shall be applied by substituting "80 percent" for "85 percent" each place it appears,

(C) the plan is required to provide coverage of individuals who, but for the exception of the application of section 409A of such Code by reason of this section, would be subject to tax under such section with respect to the plan, and

(D) the plan meets such other requirements as the Secretary of the Treasury prescribes in the regulations under subsection (a).

SEC. 309. SENSE OF THE SENATE REGARDING THE DEDICATION OF EXCESS FUNDS.

It is the sense of the Senate that any increases in revenues to the Treasury as a result of this Act and the amendments made by this Act that exceed the amounts specified in the reconciliation instructions shall be dedicated to the Low-Income Home Energy Assistance Program, in an amount not to exceed the amount which is $2,900,000,000 more than the funding levels established for such Program for fiscal year 2005.

SEC. 310. MODIFICATION OF TREATMENT OF LOANS TO QUALIFIED CONTINUING CARE FACILITIES.

(a) IN GENERAL.—Subsection (g) of section 7872 is amended to read as follows:

"(g) EXCEPTION FOR LOANS TO QUALIFIED CONTINUING CARE FACILITIES.—

"(1) IN GENERAL.—This section shall not apply for any calendar year to any below-market loan owed by a facility which on the last day of such year is a continuing care facility, if such loan was made pursuant to a continuing care contract and if the lender (or the lender's spouse) attains age 62 before the close of such year.

"(2) CONTINUING CARE CONTRACT.—For purposes of this section, the term 'continuing care contract' means a written contract between an individual and a qualified continuing care facility under which—

"(A) the individual or individual's spouse may use a qualified continuing care facility for their life or lives,

"(B) the individual or individual's spouse will be provided with housing in an independent living unit (which has additional available facilities outside such unit for the provision of meals and other personal care), an assisted living facility or a nursing facility, as is available in the continuing care facility, as appropriate for the health of such individual or individual's spouse, and

"(C) the individual or individual's spouse will be provided assisted living or nursing care as the health of such individual or individual's spouse requires, and as is available in the continuing care facility.

"(3) QUALIFIED CONTINUING CARE FACILITY.—

"(A) IN GENERAL.—For purposes of this section, the term 'qualified continuing care facility' means 1 or more facilities—

"(i) which are designed to provide services under continuing care contracts,

"(ii) that include an independent living unit, plus an assisted living or nursing facility, or both, and

"(iii) substantially all of the independent living unit residents of which are covered by continuing care contracts.

"(B) NURSING HOMES EXCLUDED.—The term 'qualified continuing care facility' shall not include any facility which is of a type which is traditionally considered a nursing home.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to loans made after December 31, 2005.

SEC. 311. EXCLUSION OF GAIN FROM SALE OF A PRINCIPAL RESIDENCE BY CERTAIN EMPLOYEES OF THE INTELLIGENCE COMMUNITY.

(a) IN GENERAL.—Subparagraph (A) of section 121(d)(9) (relating to exclusion of gain from sale of principal residence) is amended by striking "duty" and all that follows and inserting "duty—

"(i) as a member of the uniformed services,

"(ii) as a member of the Foreign Service of the United States, or

"(iii) as an employee of the intelligence community.".

(b) EMPLOYEE OF INTELLIGENCE COMMUNITY DEFINED.—Subparagraph (C) of section 121(d)(9) is amended by redesignating clause (iv) as clause (v) and by inserting after clause (iii) the following new clause:

"(iv) EMPLOYEE OF INTELLIGENCE COMMUNITY.—The term 'employee of the intelligence community' means an employee (as defined by section 2105 of title 5, United States Code) of—

"(I) the Office of the Director of National Intelligence,

"(II) the Central Intelligence Agency,

"(III) the National Security Agency,

"(IV) the Defense Intelligence Agency,

"(V) the National Geospatial-Intelligence Agency,

"(VI) the National Reconnaissance Office,

"(VII) any other office within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs,

"(VIII) any of the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of Treasury, the Department of Energy, and the Coast Guard,

"(IX) the Bureau of Intelligence and Research of the Department of State, or

"(X) any of the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information.".

(c) SPECIAL RULE.—Subparagraph (C) of section 121(d)(9), as amended by subsection (b), is amended by adding at the end the following new clause:

"(vi) SPECIAL RULE RELATING TO INTELLIGENCE COMMUNITY.—An employee of the intelligence community shall not be treated as serving on qualified extended duty unless—

"(I) for purposes of such duty such employee has moved from 1 duty station to another, and

"(II) at least 1 of such duty stations is located outside of the Washington, District of Columbia, and Baltimore metropolitan statistical areas (as defined by the Secretary of Commerce).".

(d) CONFORMING AMENDMENT.—The heading for section 121(d)(9) is amended by striking "MEMBERS OF UNIFORMED SERVICES AND FOREIGN SERVICE" and inserting "UNIFORMED SERVICES, FOREIGN SERVICE, AND INTELLIGENCE COMMUNITY".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or exchanges after the date of the enactment of this Act.

TITLE IV—REVENUE OFFSET PROVISIONS

Subtitle A—Provisions Designed to Curtail Tax Shelters

SEC. 401. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking "realistic possibility of being sustained on its merits" in paragraph (1) and inserting "reasonable belief that the tax treatment in such position was more likely than not the proper treatment",

(2) by striking "or was frivolous" in paragraph (3) and inserting "or there was no reasonable basis for the tax treatment of such position", and

(3) by striking "UNREALISTIC" in the heading thereof and inserting "IMPROPER".

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking "$250" in subsection (a) and inserting "$1,000", and

(2) by striking "$1,000" in subsection (b) and inserting "$5,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to documents prepared after the date of the enactment of this Act.

SEC. 402. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

"SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

"(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

"(1) such person files what purports to be a return of a tax imposed by this title but which—

"(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

"(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

"(2) the conduct referred to in paragraph (1)—

"(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

"(B) reflects a desire to delay or impede the administration of Federal tax laws.

"(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

"(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

"(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

"(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

"(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

"(ii) reflects a desire to delay or impede the administration of Federal tax laws.

"(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

"(i) a request for a hearing under—

"(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

"(II) section 6330 (relating to notice and opportunity for hearing before levy), and

"(ii) an application under—

"(I) section 6159 (relating to agreements for payment of tax liability in installments),

"(II) section 7122 (relating to compromises), or

"(III) section 7811 (relating to taxpayer assistance orders).

"(3) Opportunity to withdraw submission.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

"(c) Listing of Frivolous Positions.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

"(d) Reduction of Penalty.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

"(e) Penalties in Addition to Other Penalties.—The penalties imposed by this section shall be in addition to any other penalty provided by law.".

(b) Treatment of Frivolous Requests for Hearings Before Levy.—

(1) Frivolous requests disregarded.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

"(g) Frivolous Requests for Hearing, Etc.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.".

(2) Preclusion from raising frivolous issues at hearing.—Section 6330(c)(4) is amended—

(A) by striking "(A)" and inserting "(A)(i)";

(B) by striking "(B)" and inserting "(ii)";

(C) by striking the period at the end of the first sentence and inserting "; or"; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

"(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).".

(3) Statement of grounds.—Section 6330(b)(1) is amended by striking "under subsection (a)(3)(B)" and inserting "in writing under subsection (a)(3)(B) and states the grounds for the requested hearing".

(c) Treatment of Frivolous Requests for Hearings Upon Filing of Notice of Lien.—Section 6320 is amended—

(1) in subsection (b)(1), by striking "under subsection (a)(3)(B)" and inserting "in writing under subsection (a)(3)(B) and states the grounds for the requested hearing", and

(2) in subsection (c), by striking "and (e)" and inserting "(e), and (g)".

(d) Treatment of Frivolous Applications for Offers-in-Compromise and Installment Agreements.—Section 7122 is amended by adding at the end the following new subsection:

"(e) Frivolous Submissions, Etc.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.".

(e) Clerical Amendment.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

"Sec. 6702. Frivolous tax submissions.".

(f) Effective Date.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 403. PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.

(a) Penalty for Promoting Abusive Tax Shelters.—Section 6700 (relating to promoting abusive tax shelters, etc.) is amended—

(1) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively,

(2) by striking "a penalty" and all that follows through the period in the first sentence of subsection (a) and inserting "a penalty determined under subsection (b)", and

(3) by inserting after subsection (a) the following new subsections:

"(b) Amount of Penalty; Calculation of Penalty; Liability for Penalty.—

"(1) Amount of penalty.—The amount of the penalty imposed by subsection (a) shall be 100 percent of the gross income derived (or to be derived) from such activity by the person or persons subject to such penalty.

"(2) Calculation of penalty.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of an activity described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who participated in such an activity.

"(3) Liability for penalty.—If more than 1 person is liable under subsection (a) with respect to such activity, all such persons shall be jointly and severally liable for the penalty under such subsection.

"(c) Penalty Not Deductible.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be considered an ordinary and necessary expense in carrying on a trade or business for purposes of this title and shall not be deductible by the person who is subject to such penalty or who makes such payment.".

(b) Conforming Amendment.—Section 6700(a) is amended by striking the last sentence.

(c) Effective Date.—The amendments made by this section shall apply to the activities described in paragraphs (1) and (2) of section 6700(a) of the Internal Revenue Code of 1986 and after the date of the enactment of this Act.

SEC. 404. PENALTY FOR AIDING AND ABETTING THE UNDERSTATEMENT OF TAX LIABILITY.

(a) In General.—Section 6701(a) (relating to imposition of penalty) is amended—

(1) by inserting ", or tax liability reflected in," after "the preparation or presentation of" in paragraph (1),

(2) by inserting "aid, assistance, procurement, or advice with respect to such" before "portion" both places it appears in paragraphs (2) and (3), and

(3) by inserting "instance of aid, assistance, procurement, or advice or each such" before "document" in the matter following paragraph (3).

(b) Amount of Penalty.—Subsection (b) of section 6701 (relating to penalties for aiding and abetting understatement of tax liability) is amended to read as follows:

"(b) Amount of Penalty; Calculation of Penalty; Liability for Penalty.—

"(1) Amount of penalty.—The amount of the penalty imposed by subsection (a) shall be 100 percent of the gross income derived (or to be derived) from such aid, assistance, procurement, or advice provided by the person or persons subject to such penalty.

"(2) Calculation of penalty.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of aid, assistance, procurement, or advice described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who made such an understatement of the liability for tax.

"(3) Liability for penalty.—If more than 1 person is liable under subsection (a) with respect to providing such aid, assistance, procurement, or advice, all such persons shall be jointly and severally liable for the penalty under such subsection.".

(c) Penalty Not Deductible.—Section 6701 is amended by adding at the end the following new subsection:

"(g) Penalty Not Deductible.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be considered an ordinary and necessary expense in carrying on a trade or business for purposes of this title and shall not be deductible by the person who is subject to such penalty or who makes such payment.".

(d) Effective Date.—The amendments made by this section shall apply to the activities described in section 6701(a) of the Internal Revenue Code of 1986 after the date of the enactment of this Act.

Subtitle B—Economic Substance Doctrine

SEC. 411. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) In General.—Section 7701 is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) Clarification of Economic Substance Doctrine; Etc.—

"(1) General rules.—

"(A) In general.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

"(B) Definition of economic substance.—For purposes of subparagraph (A)—

"(i) In general.—A transaction has economic substance only if—

"(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer's economic position, and

"(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

"(ii) Special rule where taxpayer relies on profit potential.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

"(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

"(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

"(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

"(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

"(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

"(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

"(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

"(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

"(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

"(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person's liability under subtitle A.

"(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

"(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

"(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

"(I) depreciation,

"(II) any tax credit, or

"(III) any other deduction as provided in guidance by the Secretary, and

"(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

"(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 412. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

"SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

"(a) IMPOSITION OF PENALTY.—If a taxpayer has an noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

"(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

"(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

"(1) IN GENERAL.—The term 'noneconomic substance transaction understatement' means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

"(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term 'noneconomic substance transaction' means any transaction if—

"(A) there is a lack of economic substance (within the meaning of section 7701(o)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(o)(2), or

"(B) the transaction fails to meet the requirements of any similar rule of law.

"(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

"(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

"(2) APPLICABLE RULES.—The rules of paragraphs (2) and (3) of section 6707A(d) shall apply for purposes of paragraph (1).

"(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

"(f) CROSS REFERENCES.—

"(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).

"(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).".

(b) COORDINATION WITH OTHER UNDERSTATEMENTS AND PENALTIES.—

(1) The second sentence of section 6662(d)(2)(A) is amended by inserting "and without regard to items with respect to which a penalty is imposed by section 6662B" before the period at the end.

(2) Subsection (e) of section 6662A is amended—

(A) in paragraph (1), by inserting "and noneconomic substance transaction understatements" after "reportable transaction understatements" both places it appears,

(B) in paragraph (2)(A), by inserting "and a noneconomic substance transaction understatement" after "reportable transaction understatement",

(C) in paragraph (2)(B), by inserting "6662B or" before "6663",

(D) in paragraph (2)(C)(i), by inserting "or section 6662B" before the period at the end,

(E) in paragraph (2)(C)(ii), by inserting "and section 6662B" after "This section",

(F) in paragraph (3), by inserting "or noneconomic substance transaction understatement" after "reportable transaction understatement", and

(G) by adding at the end the following new paragraph:

"(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' has the meaning given such term by section 6662B(c).".

(3) Subsection (e) of section 6707A is amended—

(A) by striking "or" at the end of subparagraph (B), and

(B) by striking subparagraph (C) and inserting the following new subparagraphs:

"(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction, or

"(D) is required to pay a penalty under section 6662(h) with respect to any transaction and would (but for section 6662A(e)(2)(C)) have been subject to penalty under section 6662A at a rate prescribed under section 6662A(c) or under section 6662B,".

(c) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

"Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 413. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) IN GENERAL.—Section 163(m) (relating to interest on unpaid taxes attributable to nondisclosed reportable transactions) is amended—

(1) by striking "attributable" and all that follows and inserting the following: "attributable to—

"(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

"(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).", and

(2) by inserting "AND NONECONOMIC SUBSTANCE TRANSACTIONS" in the heading thereof after "TRANSACTIONS".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions after the date of the enactment of this Act in taxable years ending after such date.

Subtitle C—Improvements in Efficiency and Safeguards in Internal Revenue Service Collection

SEC. 421. WAIVER OF USER FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.

(a) In General.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

"(e) Waiver of User Fees for Installment Agreements Using Automated Withdrawals.—In the case of a taxpayer who enters into an installment agreement in which automated installment payments are agreed to, the Secretary shall waive the fee (if any) for entering into the installment agreement.".

(b) Effective Date.—The amendments made by this section shall apply to agreements entered into on or after the date which is 180 days after the date of the enactment of this Act.

SEC. 422. TERMINATION OF INSTALLMENT AGREEMENTS.

(a) In General.—Section 6159(b)(4) (relating to failure to pay an installment or any other tax liability when due or to provide requested financial information) is amended by striking "or" at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (E), and by inserting after subparagraph (B) the following:

"(C) to make a Federal tax deposit under section 6302 at the time such deposit is required to be made,

"(D) to file a return of tax imposed under this title by its due date (including extensions), or".

(b) Conforming Amendment.—The heading for section 6159(b)(4) is amended by striking "FAILURE TO PAY AN INSTALLMENT OR ANY OTHER TAX LIABILITY WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION" and inserting "FAILURE TO MAKE PAYMENTS OR DEPOSITS OR FILE RETURNS WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION".

(c) Effective Date.—The amendments made by this section shall apply to failures occurring on or after the date of the enactment of this Act.

SEC. 423. PARTIAL PAYMENTS REQUIRED WITH SUBMISSION OF OFFERS-IN-COMPROMISE.

(a) In General.—Section 7122 (relating to compromises), as amended by this Act, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c) Rules for Submission of Offers-in-Compromise.—

"(1) Partial payment required with submission.—

"(A) Lump-sum offers.—

"(i) In general.—The submission of any lump-sum offer-in-compromise shall be accompanied by the payment of 20 percent of amount of such offer.

"(ii) Lump-sum offer-in-compromise.—For purposes of this section, the term 'lump-sum offer-in-compromise' means any offer of payments made in 5 or fewer installments.

"(B) Periodic payment offers.—The submission of any periodic payment offer-in-compromise shall be accompanied by the payment of the amount of the first proposed installment and each proposed installment due during the period such offer is being evaluated for acceptance and has not been rejected by the Secretary. Any failure to make a payment required under the preceding sentence shall be deemed a withdrawal of the offer-in-compromise.

"(2) Rules of application.—

"(A) Use of payment.—The application of any payment made under this subsection to the assessed tax or other amounts imposed under this title with respect to such tax may be specified by the taxpayer.

"(B) No user fee imposed.—Any user fee which would otherwise be imposed under this section shall not be imposed on any offer-in-compromise accompanied by a payment required under this subsection.

"(C) Waiver authority.—The Secretary may issue regulations waiving any payment required under paragraph (1) in a manner consistent with the practices established in accordance with the requirements under subsection (d)(3).".

(b) Additional Rules Relating to Treatment of Offers.—

(1) Unprocessable offer if payment requirements are not met.—Paragraph (3) of section 7122(d) (relating to standards for evaluation of offers), as redesignated by subsection (a), is amended by striking "; and" at the end of subparagraph (A) and inserting a comma, by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) any offer-in-compromise which does not meet the requirements of subsection (c) shall be returned to the taxpayer as unprocessable.".

(2) Deemed acceptance of offer not rejected within certain period.—Section 7122, as amended by subsection (a), is amended by adding at the end the following new subsection:

"(g) Deemed Acceptance of Offer Not Rejected Within Certain Period.—Any offer-in-compromise submitted under this section shall be deemed to be accepted by the Secretary if such offer is not rejected by the Secretary before the date which is 24 months after the date of the submission of such offer. For purposes of the preceding sentence, any period during which any tax liability which is the subject of such offer-in-compromise is in dispute in any judicial proceeding shall not be taken in to account in determining the expiration of the 24-month period.".

(c) Effective Date.—The amendments made by this section shall apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act.

Subtitle D—Penalties and Fines

SEC. 431. INCREASE IN CRIMINAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.

(a) In General.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking "Any person who—" and inserting "(a) In General.—Any person who—", and

(2) by adding at the end the following new subsection:

"(b) Increase in Monetary Limitation for Underpayment or Overpayment of Tax Due to Fraud.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.".

(b) Increase in Penalties.—

(1) Attempt to evade or defeat tax.—Section 7201 is amended—

(A) by striking "$100,000" and inserting "$500,000",

(B) by striking "$500,000" and inserting "$1,000,000", and

(C) by striking "5 years" and inserting "10 years".

(2) Willful failure to file return, supply information, or pay tax.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking "Any person" and inserting the following:

"(a) In General.—Any person", and

(ii) by striking "$25,000" and inserting "$50,000",

(B) in the third sentence, by striking "section" and inserting "subsection", and

(C) by adding at the end the following new subsection:

"(b) Aggravated Failure to File.—

"(1) In general.—In the case of any failure described in paragraph (2), the first sentence of subsection (a) shall be applied by substituting—

"(A) 'felony' for 'misdemeanor',

"(B) '$500,000 ($1,000,000' for '$25,000 ($100,000', and

"(C) '10 years' for '1 year'.

"(2) Failure described.—A failure described in this paragraph is a failure to make a return described in subsection (a) for a period of 3 or more consecutive taxable years.".

(3) Fraud and false statements.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking "$100,000" and inserting "$500,000",

(B) by striking "$500,000" and inserting "$1,000,000", and

(C) by striking "3 years" and inserting "5 years".

(c) Effective Date.—The amendments made by this section shall apply to actions, and failures to act, occurring after the date of the enactment of this Act.

SEC. 432. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.

(a) Determination of Penalty.—

(1) In general.—Notwithstanding any other provision of law, in the case of an applicable taxpayer—

(A) the determination as to whether any interest or applicable penalty is to be imposed with respect to any arrangement described in paragraph (2), or to any underpayment of Federal income tax attributable to items arising in connection with any such arrangement, shall be made without regard to the rules of subsections (b), (c), and (d) of section 6664 of the Internal Revenue Code of 1986, and

(B) if any such interest or applicable penalty is imposed, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(2) Applicable taxpayer.—For purposes of this subsection—

(A) In general.—The term "applicable taxpayer" means a taxpayer which—

(i) has underreported its United States income tax liability with respect to any item which directly or indirectly involves—

(I) any financial arrangement which in any manner relies on the use of offshore payment mechanisms (including credit, debit, or charge cards) issued by banks or other entities in foreign jurisdictions, or

(II) any offshore financial arrangement (including any arrangement with foreign banks, financial institutions, corporations, partnerships, trusts, or other entities), and

(ii) has neither signed a closing agreement pursuant to the Voluntary Offshore Compliance Initiative established by the Department of the Treasury under Revenue Procedure 2003-11 nor voluntarily disclosed its participation in such arrangement by notifying the Internal Revenue Service of such arrangement prior to the issue being raised by the Internal Revenue Service during an examination.

(B) AUTHORITY TO WAIVE.—The Secretary of the Treasury or the Secretary's delegate may waive the application of paragraph (1) to any taxpayer if the Secretary or the Secretary's delegate determines that the use of such offshore payment mechanisms is incidental to the transaction and, in addition, in the case of a trade or business, such use is conducted in the ordinary course of the type of trade or business of the taxpayer.

(C) ISSUES RAISED.—For purposes of subparagraph (A)(ii), an item shall be treated as an issue raised during an examination if the individual examining the return—

(i) communicates to the taxpayer knowledge about the specific item, or

(ii) has made a request to the taxpayer for information and the taxpayer could not make a complete response to that request without giving the examiner knowledge of the specific item.

(b) APPLICABLE PENALTY.—For purposes of this section, the term "applicable penalty" means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if, as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

SEC. 433. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) IN GENERAL.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

"(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

"(2) EXCEPTION FOR AMOUNTS CONSTITUTING RESTITUTION OR PAID TO COME INTO COMPLIANCE WITH LAW.—Paragraph (1) shall not apply to any amount which—

"(A) the taxpayer establishes—

"(i) constitutes restitution (including remediation of property) for damage or harm caused by or which may be caused by the violation of any law or the potential violation of any law, or

"(ii) is paid to come into compliance with any law which was violated or involved in the investigation or inquiry, and

"(B) is identified as restitution or as an amount paid to come into compliance with the law, as the case may be, in the court order or settlement agreement.

Identification pursuant to subparagraph (B) alone shall not satisfy the requirement under subparagraph (A). This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

"(3) EXCEPTION FOR AMOUNTS PAID OR INCURRED AS THE RESULT OF CERTAIN COURT ORDERS.—Paragraph (1) shall not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (4) is a party.

"(4) CERTAIN NONGOVERNMENTAL REGULATORY ENTITIES.—An entity is described in this paragraph if it is—

"(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

"(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.

"(5) EXCEPTION FOR TAXES DUE.—Paragraph (1) shall not apply to any amount paid or incurred as taxes due.".

(b) REPORTING OF DEDUCTIBLE AMOUNTS.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61, as amended by this Act, is amended by inserting after section 6050U the following new section:

"SEC. 6050V. INFORMATION WITH RESPECT TO CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

"(a) REQUIREMENT OF REPORTING.—

"(1) IN GENERAL.—The appropriate official of any government or entity which is described in section 162(f)(4) which is involved in a suit or agreement described in paragraph (2) shall make a return in such form as determined by the Secretary setting forth—

"(A) the amount required to be paid as a result of the suit or agreement to which paragraph (1) of section 162(f) applies,

"(B) any amount required to be paid as a result of the suit or agreement which constitutes restitution or remediation of property, and

"(C) any amount required to be paid as a result of the suit or agreement for the purpose of coming into compliance with any law which was violated or involved in the investigation or inquiry.

"(2) SUIT OR AGREEMENT DESCRIBED.—

"(A) IN GENERAL.—A suit or agreement is described in this paragraph if—

"(i) it is—

"(I) a suit with respect to a violation of any law over which the government or entity has authority and with respect to which there has been a court order, or

"(II) an agreement which is entered into with respect to a violation of any law over which the government or entity has authority, or with respect to an investigation or inquiry by the government or entity into the potential violation of any law over which such government or entity has authority, and

"(ii) the aggregate amount involved in all court orders and agreements with respect to the violation, investigation, or inquiry is $600 or more.

"(B) ADJUSTMENT OF REPORTING THRESHOLD.—The Secretary may adjust the $600 amount in subparagraph (A)(ii) as necessary in order to ensure the efficient administration of the internal revenue laws.

"(3) TIME OF FILING.—The return required under this subsection shall be filed not later than—

"(A) 30 days after the date on which a court order is issued with respect to the suit or the date the agreement is entered into, as the case may be, or

"(B) the date specified Secretary.

"(b) STATEMENTS TO BE FURNISHED TO INDIVIDUALS INVOLVED IN THE SETTLEMENT.—Every person required to make a return under subsection (a) shall furnish to each person who is a party to the suit or agreement a written statement showing—

"(1) the name of the government or entity, and

"(2) the information supplied to the Secretary under subsection (a)(1).

The written statement required under the preceding sentence shall be furnished to the person at the same time the government or entity provides the Secretary with the information required under subsection (a).

"(c) APPROPRIATE OFFICIAL DEFINED.—For purposes of this section, the term 'appropriate official' means the officer or employee having control of the suit, investigation, or inquiry or the person appropriately designated for purposes of this section.".

(2) CONFORMING AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61, as amended by this Act, is amended by inserting after the item relating to section 6050U the following new item:

"Sec. 6050V. Information with respect to certain fines, penalties, and other amounts.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred on or after the date of the enactment of this Act, except that such amendments shall not apply to amounts paid or incurred under any binding order or agreement entered into before such date. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained before such date.

SEC. 434. DENIAL OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) DISALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(B) by striking "If" and inserting:

"(1) TREBLE DAMAGES.—If", and

(C) by adding at the end the following new paragraph:

"(2) PUNITIVE DAMAGES.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of, any action. This paragraph shall not apply to punitive damages described in section 104(c).".

(2) CONFORMING AMENDMENT.—The heading for section 162(g) is amended by inserting "OR PUNITIVE DAMAGES" after "LAWS".

(b) INCLUSION IN INCOME OF PUNITIVE DAMAGES PAID BY INSURER OR OTHERWISE.—

(1) IN GENERAL.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end the following new section:

"SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.

"Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise by reason of the taxpayer's liability (or agreement) to pay punitive damages.".

(2) REPORTING REQUIREMENTS.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

"(f) SECTION TO APPLY TO PUNITIVE DAMAGES COMPENSATION.—This section shall apply to payments by a person to or on behalf of another person as insurance or otherwise by reason of the other person's liability (or agreement) to pay punitive damages.".

(3) Conforming amendment.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end the following new item:

"Sec. 91. Punitive damages compensated by insurance or otherwise.".

(c) Effective Date.—The amendments made by this section shall apply to damages paid or incurred on or after the date of the enactment of this Act.

SEC. 435. INCREASE IN PENALTY FOR BAD CHECKS AND MONEY ORDERS.

(a) In General.—Section 6657 (relating to bad checks) is amended—

(1) by striking "$750" and inserting "$2,000", and

(2) by striking "$15" and inserting "$40".

(b) Effective Date.—The amendments made by this section apply to checks or money orders received after the date of the enactment of this Act.

Subtitle E—Provisions to Discourage Expatriation

SEC. 441. TAX TREATMENT OF INVERTED ENTITIES.

(a) In General.—Section 7874 is amended—

(1) by striking "March 4, 2003" in subsection (a)(2)(B)(i) and in the matter following subsection (a)(2)(B)(iii) and inserting "March 20, 2002",

(2) by striking "at least 60 percent" in subsection (a)(2)(B)(ii) and inserting "more than 50 percent",

(3) by striking "80 percent" in subsection (b) and inserting "at least 80 percent",

(4) by striking "60 percent" in subsection (b) and inserting "more than 50 percent",

(5) by adding at the end of subsection (a)(2) the following new sentence: "Except as provided in regulations, an acquisition of properties of a domestic corporation shall not be treated as described in subparagraph (B) if none of the corporation's stock was readily tradeable on an established securities market at any time during the 4-year period ending on the date of the acquisition.", and

(6) by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) Special Rules Applicable to Expatriated Entities.—

"(1) Increases in accuracy-related penalties.—In the case of any underpayment of tax of an expatriated entity—

"(A) section 6662(a) shall be applied with respect to such underpayment by substituting '30 percent' for '20 percent', and

"(B) if such underpayment is attributable to one or more gross valuation understatements, the increase in the rate of penalty under section 6662(h) shall be to 50 percent rather than 40 percent.

"(2) Modifications of limitation on interest deduction.—In the case of an expatriated entity, section 163(j) shall be applied—

"(A) without regard to paragraph (2)(A)(ii) thereof, and

"(B) by substituting '25 percent' for '50 percent' each place it appears in paragraph (2)(B) thereof.".

(b) Effective Date.—The amendments made by this section shall apply to taxable years ending after March 20, 2002.

SEC. 442. REVISION OF TAX RULES ON EXPATRIATION OF INDIVIDUALS.

(a) In General.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

"SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.

"(a) General Rules.—For purposes of this subtitle—

"(1) Mark to market.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

"(2) Recognition of gain or loss.—In the case of any sale under paragraph (1)—

"(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

"(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence.

"(3) Exclusion for certain gain.—

"(A) In general.—The amount which, but for this paragraph, would be includible in the gross income of any individual by reason of this section shall be reduced (but not below zero) by $600,000. For purposes of this paragraph, allocable expatriation gain taken into account under subsection (f)(2) shall be treated in the same manner as an amount required to be includible in gross income.

"(B) Cost-of-living adjustment.—

"(i) In general.—In the case of an expatriation date occurring in any calendar year after 2005, the $600,000 amount under subparagraph (A) shall be increased by an amount equal to—

"(I) such dollar amount, multiplied by

"(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 2004' for 'calendar year 1992' in subparagraph (B) thereof.

"(ii) Rounding rules.—If any amount after adjustment under clause (i) is not a multiple of $1,000, such amount shall be rounded to the next lower multiple of $1,000.

"(4) Election to continue to be taxed as United States citizen.—

"(A) In general.—If a covered expatriate elects the application of this paragraph—

"(i) this section (other than this paragraph and subsection (i)) shall not apply to the expatriate, but

"(ii) in the case of property to which this section would apply but for such election, the expatriate shall be subject to tax under this title in the same manner as if the individual were a United States citizen.

"(B) Requirements.—Subparagraph (A) shall not apply to an individual unless the individual—

"(i) provides security for payment of tax in such form and manner, and in such amount, as the Secretary may require,

"(ii) consents to the waiver of any right of the individual under any treaty of the United States which would preclude assessment or collection of any tax which may be imposed by reason of this paragraph, and

"(iii) complies with such other requirements as the Secretary may prescribe.

"(C) Election.—An election under subparagraph (A) shall apply to all property to which this section would apply but for the election and, once made, shall be irrevocable. Such election shall also apply to property the basis of which is determined in whole or in part by reference to the property with respect to which the election was made.

"(b) Election To Defer Tax.—

"(1) In general.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the payment of the additional tax attributable to such property shall be postponed until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

"(2) Determination of tax with respect to property.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

"(3) Termination of postponement.—No tax may be postponed under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

"(4) Security.—

"(A) In general.—No election may be made under paragraph (1) with respect to any property unless adequate security is provided to the Secretary with respect to such property.

"(B) Adequate security.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

"(i) it is a bond in an amount equal to the deferred tax amount under paragraph (2) for the property, or

"(ii) the taxpayer otherwise establishes to the satisfaction of the Secretary that the security is adequate.

"(5) Waiver of certain rights.—No election may be made under paragraph (1) unless the taxpayer consents to the waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

"(6) Elections.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable. An election may be made under paragraph (1) with respect to an interest in a trust with respect to which gain is required to be recognized under subsection (f)(1).

"(7) Interest.—For purposes of section 6601—

"(A) the last date for the payment of tax shall be determined without regard to the election under this subsection, and

"(B) section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

"(c) Covered Expatriate.—For purposes of this section—

"(1) In general.—Except as provided in paragraph (2), the term 'covered expatriate' means an expatriate.

"(2) Exceptions.—An individual shall not be treated as a covered expatriate if—

"(A) the individual—

"(i) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and “(ii) has not been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) during the 5 taxable years ending with the taxable year during which the expatriation date occurs, or

“(B)(i) the individual's relinquishment of United States citizenship occurs before such individual attains age 18½, and

“(ii) the individual has been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.

“(d) Exempt Property; Special Rules for Pension Plans.—

“(1) Exempt property.—This section shall not apply to the following:

“(A) United states real property interests.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the day before the expatriation date, meet the requirements of section 897(c)(2).

“(B) Specified property.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.

“(2) Special rules for certain retirement plans.—

“(A) In general.—If a covered expatriate holds on the day before the expatriation date any interest in a retirement plan to which this paragraph applies—

“(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but

“(ii) an amount equal to the present value of the expatriate's nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.

“(B) Treatment of subsequent distributions.—In the case of any distribution on or after the expatriation date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the amount otherwise includible in gross income by reason of the subsequent distribution shall be reduced by the excess of the amount includible in gross income under subparagraph (A) over any portion of such amount to which this subparagraph previously applied.

“(C) Treatment of subsequent distributions by plan.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan's behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.

“(D) Applicable plans.—This paragraph shall apply to—

“(i) any qualified retirement plan (as defined in section 4974(c)),

“(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

“(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

“(e) Definitions.—For purposes of this section—

“(1) Expatriate.—The term ‘expatriate’ means—

“(A) any United States citizen who relinquishes citizenship, and

“(B) any long-term resident of the United States who—

“(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

“(ii) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country.

“(2) Expatriation date.—The term ‘expatriation date’ means—

“(A) the date an individual relinquishes United States citizenship, or

“(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

“(3) Relinquishment of citizenship.—A citizen shall be treated as relinquishing United States citizenship on the earliest of—

“(A) the date the individual renounces such individual's United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

“(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

“(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

“(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

“(4) Long-term resident.—The term ‘long-term resident’ has the meaning given to such term by section 877(e)(2).

“(f) Special Rules Applicable to Beneficiaries' Interests in Trust.—

“(1) In general.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

“(A) the individual shall not be treated as having sold such interest,

“(B) such interest shall be treated as a separate share in the trust, and

“(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

“(ii) the separate trust shall be treated as having sold its assets on the day before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

“(iii) the individual shall be treated as having recontributed the assets to the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (C)(ii). In determining the amount of such distribution, proper adjustments shall be made for liabilities of the trust allocable to an individual's share in the trust.

“(2) Special rules for interests in qualified trusts.—

“(A) In general.—If the trust interest described in paragraph (1) is an interest in a qualified trust—

“(i) paragraph (1) and subsection (a) shall not apply, and

“(ii) in addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax in the amount determined under subparagraph (B).

“(B) Amount of tax.—The amount of tax under subparagraph (A)(ii) shall be equal to the lesser of—

“(i) the highest rate of tax imposed by section 1(e) for the taxable year which includes the day before the expatriation date, multiplied by the amount of the distribution, or

“(ii) the balance in the deferred tax account immediately before the distribution determined without regard to any increases under subparagraph (C)(ii) after the 30th day preceding the distribution.

“(C) Deferred tax account.—For purposes of subparagraph (B)(ii)—

“(i) Opening balance.—The opening balance in a deferred tax account with respect to any trust interest is an amount equal to the tax which would have been imposed on the allocable expatriation gain with respect to the trust interest if such gain had been included in gross income under subsection (a).

“(ii) Increase for interest.—The balance in the deferred tax account shall be increased by the amount of interest determined (on the balance in the account at the time the interest accrues), for periods after the 90th day after the expatriation date, by using the rates and method applicable under section 6621 for underpayments of tax for such periods, except that section 6621(a)(2) shall be applied by substituting ‘5 percentage points’ for ‘3 percentage points’ in subparagraph (B) thereof.

“(iii) Decrease for taxes previously paid.—The balance in the tax deferred account shall be reduced—

“(I) by the amount of taxes imposed by subparagraph (A) on any distribution to the person holding the trust interest, and

“(II) in the case of a person holding a nonvested interest, to the extent provided in regulations, by the amount of taxes imposed by subparagraph (A) on distributions from the trust with respect to nonvested interests not held by such person.

“(D) Allocable expatriation gain.—For purposes of this paragraph, the allocable expatriation gain with respect to any beneficiary's interest in a trust is the amount of gain which would be allocable to such beneficiary's vested and nonvested interests in the trust if the beneficiary held directly all assets allocable to such interests.

“(E) Tax deducted and withheld.—

“(i) In general.—The tax imposed by subparagraph (A)(ii) shall be deducted and withheld by the trustees from the distribution to which it relates.

“(ii) Exception where failure to waive treaty rights.—If an amount may not be deducted and withheld under clause (i) by reason of the distributee failing to waive any treaty right with respect to such distribution—

“(I) the tax imposed by subparagraph (A)(ii) shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax, and

“(II) any other beneficiary of the trust shall be entitled to recover from the distributee the amount of such tax imposed on the other beneficiary.

“(F) Disposition.—If a trust ceases to be a qualified trust at any time, a covered expatriate disposes of an interest in a qualified trust, or a covered expatriate holding an interest in a qualified trust dies, then, in lieu of the tax imposed by subparagraph (A)(ii), there is hereby imposed a tax equal to the lesser of—

“(i) the tax determined under paragraph (1) as if the day before the expatriation date were the date of such cessation, disposition, or death, whichever is applicable, or

"(ii) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax imposed on the other beneficiary.

"(G) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

"(i) QUALIFIED TRUST.—The term 'qualified trust' means a trust which is described in section 7701(a)(30)(E).

"(ii) VESTED INTEREST.—The term 'vested interest' means any interest which, as of the day before the expatriation date, is vested in the beneficiary.

"(iii) NONVESTED INTEREST.—The term 'nonvested interest' means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

"(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

"(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is part of a retirement plan to which subsection (d)(2) applies.

"(3) DETERMINATION OF BENEFICIARIES' INTEREST IN TRUST.—

"(A) DETERMINATIONS UNDER PARAGRAPH (1).—For purposes of paragraph (1), a beneficiary's interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar adviser.

"(B) OTHER DETERMINATIONS.—For purposes of this section—

"(i) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiaries for purposes of this section.

"(ii) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

"(I) the methodology used to determine that taxpayer's trust interest under this section, and

"(II) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary's trust interest under this section.

"(g) TERMINATION OF DEFERRALS, ETC.—In the case of any covered expatriate, notwithstanding any other provision of this title—

"(1) any period during which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and

"(2) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

"(h) IMPOSITION OF TENTATIVE TAX.—

"(1) IN GENERAL.—If an individual is required to include any amount in gross income under subsection (a) for any taxable year, there is hereby imposed, immediately before the expatriation date, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

"(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

"(3) TREATMENT OF TAX.—Any tax paid under paragraph (1) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

"(4) DEFERRAL OF TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

"(i) SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.—

"(1) IMPOSITION OF LIEN.—

"(A) IN GENERAL.—If a covered expatriate makes an election under subsection (a)(4) or (b) which results in the deferral of any tax imposed by reason of subsection (a), the deferred amount (including any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).

"(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate's income tax which, but for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

"(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

"(A) the liability for tax by reason of this section is satisfied or has become unenforceable by reason of lapse of time, or

"(B) it is established to the satisfaction of the Secretary that no further tax liability may arise by reason of this section.

"(3) CERTAIN RULES APPLY.—The rules set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6324A.

"(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.".

(b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Section 102 (relating to gifts, etc. not included in gross income) is amended by adding at the end the following new subsection:

"(d) GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.—

"(1) IN GENERAL.—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is also used in section 877A shall have the same meaning as when used in section 877A.

"(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1) shall not apply to any property if either—

"(A) the gift, bequest, devise, or inheritance is—

"(i) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

"(ii) included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate, or

"(B) no such return was timely filed but no such return would have been required to be filed even if the covered expatriate were a citizen or long-term resident of the United States.".

(c) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) is amended by adding at the end the following new paragraph:

"(49) TERMINATION OF UNITED STATES CITIZENSHIP.—

"(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(e)(3).

"(B) DUAL CITIZENS.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.".

(d) INELIGIBILITY FOR VISA OR ADMISSION TO UNITED STATES.—

(1) IN GENERAL.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

"(E) FORMER CITIZENS NOT IN COMPLIANCE WITH EXPATRIATION REVENUE PROVISIONS.—Any alien who is a former citizen of the United States who relinquishes United States citizenship (within the meaning of section 877A(e)(3) of the Internal Revenue Code of 1986) and who is not in compliance with section 877A of such Code (relating to expatriation) is inadmissible.".

(2) AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—Section 6103(l) (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

"(21) DISCLOSURE TO DENY VISA OR ADMISSION TO CERTAIN EXPATRIATES.—Upon written request of the Attorney General or the Attorney General's delegate, the Secretary shall disclose whether an individual is in compliance with section 877A (and if not in compliance, any items of noncompliance) to officers and employees of the Federal agency responsible for administering section 212(a)(10)(E) of the Immigration and Nationality Act solely for the purpose of, and to the extent necessary in, administering such section 212(a)(10)(E).".

(B) SAFEGUARDS.—Section 6103(p)(4) (relating to safeguards) is amended by striking "or (20)" each place it appears and inserting "(20), or (21)".

(3) EFFECTIVE DATES.—The amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(e) CONFORMING AMENDMENTS.—

(1) Section 877 is amended by adding at the end the following new subsection:

"(h) APPLICATION.—This section shall not apply to an expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after the date of the enactment of this subsection.".

(2) Section 2107 is amended by adding at the end the following new subsection:

"(f) APPLICATION.—This section shall not apply to any expatriate subject to section 877A.".

(3) Section 2501(a)(3) is amended by adding at the end the following new subparagraph:

"(C) APPLICATION.—This paragraph shall not apply to any expatriate subject to section 877A.".

(4) Section 6039G(a) is amended by inserting "or 877A" after "section 877(b)".

(5) The second sentence of section 6039G(d) is amended by inserting "or who relinquishes United States citizenship (within the meaning of section 877A(e)(3))" after "section 877(a))".

(f) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

"Sec. 877A. Tax responsibilities of expatriation.".

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) whose expatriation date (as so defined) occurs on or after the date of the enactment of this Act.

(2) GIFTS AND BEQUESTS.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to gifts and bequests received on or after the date of the enactment of this Act, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

(3) DUE DATE FOR TENTATIVE TAX.—The due date under section 877A(h)(2) of the Internal Revenue Code of 1986, as added by this section, shall in no event occur before the 90th day after the date of the enactment of this Act.

Subtitle F—Miscellaneous Provisions

SEC. 451. TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT INSTRUMENTS.

(a) IN GENERAL.—Section 1275(d) (relating to regulation authority) is amended—

(1) by striking "The Secretary" and inserting the following:

"(1) IN GENERAL.—The Secretary", and

(2) by adding at the end the following new paragraph:

"(2) TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT.—

"(A) IN GENERAL.—In the case of a debt instrument which—

"(i) is convertible into stock of the issuing corporation, into stock or debt of a related party (within the meaning of section 267(b) or 707(b)(1)), or into cash or other property in an amount equal to the approximate value of such stock or debt, and

"(ii) provides for contingent payments,

any regulations which require original issue discount to be determined by reference to the comparable yield of a noncontingent fixed-rate debt instrument shall be applied as if the regulations require that such comparable yield be determined by reference to a noncontingent fixed-rate debt instrument which is convertible into stock.

"(B) SPECIAL RULE.—For purposes of subparagraph (A), the comparable yield shall be determined without taking into account the yield resulting from the conversion of a debt instrument into stock.".

(b) CROSS REFERENCE.—Section 163(e)(6) (relating to cross references) is amended by adding at the end the following:

"For the treatment of contingent payment convertible debt, see section 1275(d)(2).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued on or after the date of the enactment of this Act.

SEC. 452. GRANT OF TREASURY REGULATORY AUTHORITY TO ADDRESS FOREIGN TAX CREDIT TRANSACTIONS INVOLVING INAPPROPRIATE SEPARATION OF FOREIGN TAXES FROM RELATED FOREIGN INCOME.

(a) IN GENERAL.—Section 901 (relating to taxes of foreign countries and of possessions of United States) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) REGULATIONS.—The Secretary may prescribe regulations disallowing a credit under subsection (a) for all or a portion of any foreign tax, or allocating a foreign tax among 2 or more persons, in cases where the foreign tax is imposed on any person in respect of income of another person or in other cases involving the inappropriate separation of the foreign tax from the related foreign income.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 453. REPEAL OF SPECIAL PROPERTY EXCEPTION TO LEASING PROVISIONS OF THE AMERICAN JOBS CREATION ACT OF 2004.

(a) IN GENERAL.—Section 849(b) of the American Jobs Creation Act of 2004 is amended by striking paragraphs (1) and (2), by redesignating paragraphs (3) and (4) as paragraphs (1) and (2), respectively.

(b) LEASES TO FOREIGN ENTITIES.—Section 849(b) of the American Jobs Creation Act of 2004, as amended by subsection (a), is amended by adding at the end the following new paragraph:

"(3) LEASES TO FOREIGN ENTITIES.—In the case of tax-exempt use property leased to a tax-exempt entity which is a foreign person or entity, the amendments made by this part shall apply to taxable years beginning after December 31, 2005, with respect to leases entered into on or before March 12, 2004.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the American Jobs Creation Act of 2004.

SEC. 454. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERS WHICH ARE CORPORATIONS.

(a) IN GENERAL.—Section 163(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

"(8) TREATMENT OF CORPORATE PARTNERS.—Except to the extent provided by regulations, in applying this subsection to a corporation which owns (directly or indirectly) an interest in a partnership—

"(A) such corporation's distributive share of interest income paid or accrued to such partnership shall be treated as interest income paid or accrued to such corporation,

"(B) such corporation's distributive share of interest paid or accrued by such partnership shall be treated as interest paid or accrued by such corporation, and

"(C) such corporation's share of the liabilities of such partnership shall be treated as liabilities of such corporation.".

(b) ADDITIONAL REGULATORY AUTHORITY.—Section 163(j)(9) (relating to regulations), as redesignated by subsection (a), is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) regulations providing for the reallocation of shares of partnership indebtedness, or distributive shares of the partnership's interest income or interest expense, as may be appropriate to carry out the purposes of this subsection.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning on or after the date of the enactment of this Act.

SEC. 455. LIMITATION OF EMPLOYER DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES.

(a) IN GENERAL.—Paragraph (2) of section 274(e) (relating to expenses treated as compensation) is amended to read as follows:

"(2) EXPENSES TREATED AS COMPENSATION.—Expenses for goods, services, and facilities, to the extent that the expenses do not exceed the amount of the expenses which are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).".

(b) PERSONS NOT EMPLOYEES.—Paragraph (9) of section 274(e) is amended by striking "to the extent that the expenses are includible in the gross income" and inserting "to the extent that the expenses do not exceed the amount of the expenses which are includible in the gross income".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses incurred after the date of the enactment of this Act.

SEC. 456. INCREASE IN AGE OF MINOR CHILDREN WHOSE UNEARNED INCOME IS TAXED AS IF PARENT'S INCOME.

(a) IN GENERAL.—Section 1(g)(2)(A) (relating to child to whom subsection applies) is amended by striking "age 14" and inserting "age 18".

(b) TREATMENT OF DISTRIBUTIONS FROM QUALIFIED DISABILITY TRUSTS.—Section 1(g)(4) (relating to net unearned income) is amended by adding at the end the following new subparagraph:

"(C) TREATMENT OF DISTRIBUTIONS FROM QUALIFIED DISABILITY TRUSTS.—For purposes of this subsection, in the case of any child who is a beneficiary of a qualified disability trust (as defined in section 642(b)(2)(C)(ii)), any amount included in the income of such child under sections 652 and 662 during a taxable year shall be considered earned income of such child for such taxable year.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 457. LOAN AND REDEMPTION REQUIREMENTS ON POOLED FINANCING REQUIREMENTS.

(a) STRENGTHENED REASONABLE EXPECTATION REQUIREMENT.—Subparagraph (A) of section 149(f)(2) (relating to reasonable expectation requirement) is amended to read as follows:

"(A) IN GENERAL.—The requirements of this paragraph are met with respect to an issue if the issuer reasonably expects that—

"(i) as of the close of the 1-year period beginning on the date of issuance of the issue, at least 50 percent of the net proceeds of the issue (as of the close of such period) will have been used directly or indirectly to make or finance loans to ultimate borrowers, and

"(ii) as of the close of the 3-year period beginning on such date of issuance, at least 95 percent of the net proceeds of the issue (as of the close of such period) will have been so used.".

(b) Written Loan Commitment and Redemption Requirements.—Section 149(f) (relating to treatment of certain pooled financing bonds) is amended by redesignating paragraphs (4) and (5) as paragraphs (6) and (7), respectively, and by inserting after paragraph (3) the following new paragraphs:

"(4) Written loan commitment requirement.—

"(A) In general.—The requirement of this paragraph is met with respect to an issue if the issuer receives prior to issuance written loan commitments identifying the ultimate potential borrowers of at least 50 percent of the net proceeds of such issue.

"(B) Exception.—Subparagraph (A) shall not apply with respect to any issuer which is a State (or an integral part of a State) issuing pooled financing bonds to make or finance loans to subordinate governmental units of such State or to State-created entities providing financing for water-infrastructure projects through the federally-sponsored State revolving fund program.

"(5) Redemption requirement.—The requirement of this paragraph is met if to the extent that less than the percentage of the proceeds of an issue required to be used under clause (i) or (ii) of paragraph (2)(A) is used by the close of the period identified in such clause, the issuer uses an amount of proceeds equal to the excess of—

"(A) the amount required to be used under such clause, over

"(B) the amount actually used by the close of such period,

"to redeem outstanding bonds within 90 days after the end of such period.".

(c) Elimination of Disregard of Pooled Bonds in Determining Eligibility for Small Issuer Exception to Arbitrage Rebate.—Section 148(f)(4)(D)(ii) (relating to aggregation of issuers) is amended by striking subclause (II) and by redesignating subclauses (III) and (IV) as subclauses (II) and (III), respectively.

(d) Conforming Amendments.—

(1) Section 149(f)(1) is amended by striking "paragraphs (2) and (3)" and inserting "paragraphs (2), (3), (4), and (5)".

(2) Section 149(f)(7)(B), as redesignated by subsection (b), is amended by striking "paragraph (4)(A)" and inserting "paragraph (6)(A)".

(3) Section 54(l)(2) is amended by striking "section 149(f)(4)(A)" and inserting "section 149(f)(6)(A)".

(e) Effective Date.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

SEC. 458. REPORTING OF INTEREST ON TAX-EXEMPT BONDS.

(a) In General.—Section 6049(b)(2) (relating to exceptions) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(b) Conforming Amendment.—Section 6049(b)(2)(C), as redesignated by subsection (a), is amended by striking "subparagraph (C)" and inserting "subparagraph (B)".

(c) Effective Date.—The amendments made by this section shall apply to interest earned after December 31, 2005.

SEC. 459. MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) Taxable Years Ending Before 2006.—

(1) Modification of phaseout.—

(A) In general.—Section 29(b)(1)(A) is amended by inserting "the calendar year preceding" before "the calendar year".

(B) Conforming amendments.—Section 29(b)((2) is amended—

(i) by striking "The" and inserting "With respect to any calendar year, the", and

(ii) by striking "for the calendar year in which the sale occurs" and inserting "for such calendar year".

(2) No inflation adjustment for the credit amount in 2005.—Section 29(b)(2), as amended by paragraph (1), is amended by adding at the end the following new sentence: "This paragraph shall not apply with respect to the $3 amount in subsection (a) for calendar year 2005 and the amount in effect under subsection (a) for sales in such calendar year shall be the amount which was in effect for sales in calendar year 2004.".

(b) Taxable Years Ending After 2005.—

(1) Modification of phaseout.—

(A) In general.—Section 45K(b)(1)(A) is amended by inserting "the calendar year preceding" before "the calendar year".

(B) Conforming amendments.—Section 45K(b)((2) is amended—

(i) by striking "The" and inserting "With respect to any calendar year, the", and

(ii) by striking "for the calendar year in which the sale occurs" and inserting "for such calendar year".

(2) No inflation adjustment for the credit amount in 2005, 2006, and 2007.—Section 45K(b)(2), as amended by paragraph (1), is amended by adding at the end the following new sentence: "This paragraph shall not apply with respect to the $3 amount in subsection (a) for calendar years 2005, 2006, and 2007 and the amount in effect under subsection (a) for sales in each such calendar year shall be the amount which was in effect for sales in calendar year 2004.".

(3) Treatment of coke and coke gas.—

(A) Nonapplication of phaseout.—Section 45K(g)(2) is amended by adding at the end the following new subparagraph:

"(D) Nonapplication of phaseout.—Subsection (b)(1) shall not apply.".

(B) Application of inflation adjustment.—Section 45K(g)(2)(B) is amended by inserting "and the last sentence of subsection (b)(2) shall not apply.".

(C) Clarification of qualifying facility.—Section 45K(g)(1) is amended by inserting "(other than from petroleum based products)" after "coke or coke gas".

(c) Effective Date.—The amendments made by this section shall apply to fuel sold after December 31, 2004.

SEC. 460. MODIFICATION OF INDIVIDUAL ESTIMATED TAX SAFE HARBOR.

(a) In General.—Clause (i) of section 6654(d)(1)(C) is amended by striking "substituting" and all that follows through "1997." and inserting "substituting '110 percent (120 percent if the preceding taxable year begins in 2005)' for '100 percent'.".

(b) Effective Date.—The amendment made by this section shall apply with respect to any installment payment for taxable years beginning after December 31, 2005.

SEC. 461. REVALUATION OF LIFO INVENTORIES OF LARGE INTEGRATED OIL COMPANIES.

(a) General Rule.—Notwithstanding any other provision of law, if a taxpayer is an applicable integrated oil company for its last taxable year ending in calendar year 2005, the taxpayer shall—

(1) increase, effective as of the close of such taxable year, the value of each historic LIFO layer of inventories of crude oil, natural gas, or any other petroleum product (within the meaning of section 4611) by the layer adjustment amount, and

(2) decrease its cost of goods sold for such taxable year by the aggregate amount of the increases under paragraph (1).

If the aggregate amount of the increases under paragraph (1) exceed the taxpayer's cost of goods sold for such taxable year, the taxpayer's gross income for such taxable year shall be increased by the amount of such excess.

(b) Layer Adjustment Amount.—For purposes of this section—

(1) In general.—The term "layer adjustment amount" means, with respect to any historic LIFO layer, the product of—

(A) $18.75, and

(B) the number of barrels of crude oil (or in the case of natural gas or other petroleum products, the number of barrel-of-oil equivalents) represented by the layer.

(2) Barrel-of-oil equivalent.—The term "barrel-of-oil equivalent" has the meaning given such term by section 29(d)(5) (as in effect before its redesignation by the Energy Tax Incentives Act of 2005).

(c) Application of Requirement.—

(1) No change in method of accounting.—Any adjustment required by this section shall not be treated as a change in method of accounting.

(2) Underpayments of estimated tax.—o addition to the tax shall be made under section 6655 of the Internal Revenue Code of 1986 (relating to failure by corporation to pay estimated tax) with respect to any underpayment of an installment required to be paid with respect to the taxable year described in subsection (a) to the extent such underpayment was created or increased by this section.

(d) Applicable Integrated Oil Company.—For purposes of this section, the term "applicable integrated oil company" means an integrated oil company (as defined in section 291(b)(4) of the Internal Revenue Code of 1986) which has an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year and which had gross receipts in excess of $1,000,000,000 for its last taxable year ending during calendar year 2005. For purposes of this subsection all persons treated as a single employer under subsections (a) and (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as 1 person and, in the case of a short taxable year, the rule under section 448(c)(3)(B) shall apply.

SEC. 462. ELIMINATION OF AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES FOR MAJOR INTEGRATED OIL COMPANIES.

(a) In General.—Section 167(h) is amended by adding at the end the following new paragraph:

"(5) Nonapplication to major integrated oil companies.—This subsection shall not apply with respect to any expenses paid or incurred for any taxable year by any integrated oil company (as defined in section 291(b)(4)) which has an average daily worldwide production of crude oil of at least 500,000 barrels for such taxable year.".

(b) Effective Date.—The amendment made by this section shall take effect as if included in the amendment made by section 1329(a) of the Energy Policy Act of 2005.

SEC. 463. VALUATION OF EMPLOYEE PERSONAL USE OF NONCOMMERCIAL AIRCRAFT.

(a) In General.—For purposes of Federal income tax inclusion, the value of any employee personal use of noncommercial aircraft shall equal the excess (if any) of—

(1) greater of—

(A) the fair market value of such use, or

(B) the actual cost of such use (including all fixed and variable costs), over

(2) any amount paid by or on behalf of such employee for such use.

(b) EFFECTIVE DATE.—Subsection (a) shall apply to use after the date of the enactment of this Act.

SEC. 464. APPLICATION OF FIRPTA TO REGULATED INVESTMENT COMPANIES.

(a) IN GENERAL.—Subclause (II) of section 897(h)(4)(A)(i) (defining qualified investment entity) is amended by inserting "which is a United States real property holding corporation or which would be a United States real property holding corporation if the exceptions provided in subsections (c)(3) and (h)(2) did not apply to interests in any real estate investment trust or regulated investment company" after "regulated investment company".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions with respect to taxable years beginning after December 31, 2004.

SEC. 465. TREATMENT OF DISTRIBUTIONS ATTRIBUTABLE TO FIRPTA GAINS.

(a) QUALIFIED INVESTMENT ENTITY.—

(1) IN GENERAL.—Section 897(h)(1) is amended—

(A) by striking "a nonresident alien individual or a foreign corporation" in the first sentence and inserting "a nonresident alien individual, a foreign corporation, or other qualified investment entity",

(B) by striking "such nonresident alien individual or foreign corporation" in the first sentence and inserting "such nonresident alien individual, foreign corporation, or other qualified investment entity", and

(C) by striking the second sentence and inserting the following new sentence: "Notwithstanding the preceding sentence, any distribution by a qualified investment entity to a nonresident alien, a foreign corporation, or other qualified investment entity with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the 1 year period ending on the date of such distribution.".

(2) APPLICATION AFTER 2007.—Clause (ii) of section 897(h)(4)(A) is amended by adding at the end the following new sentence: "Notwithstanding the preceding sentence, an entity described in clause (i)(II) shall be treated as a qualified investment entity for purposes of applying paragraph (1) in any case in which a real estate investment trust makes a distribution to an entity described in clause (i)(II).".

(b) TREATMENT OF CERTAIN DISTRIBUTIONS AS DIVIDENDS.—

(1) IN GENERAL.—Section 852(b)(3) (relating to capital gains) is amended by adding at the end the following new subparagraph:

"(E) CERTAIN DISTRIBUTIONS.—In the case of a distribution to which section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount of such distribution which would be included in computing long-term capital gains for the shareholder under subparagraph (B) or (D) (without regard to this subparagraph)—

"(i) shall not be included in computing such shareholder's long-term capital gains, and

"(ii) shall be included in such shareholder's gross income as a dividend from the regulated investment company.".

(2) CONFORMING AMENDMENT.—Section 871(k)(2) (relating to short-term capital gain dividends) is amended by adding at the end the following new subparagraph:

"(E) CERTAIN DISTRIBUTIONS.—In the case of a distribution to which section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be treated as a short-term capital gain dividend to the shareholder (without regard to this subparagraph)—

"(i) shall not be treated as a short-term capital gain dividend, and

"(ii) shall be included in such shareholder's gross income as a dividend from the regulated investment company.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years of qualified investment entities beginning after the date of the enactment of this Act.

(2) DIVIDENDS.—The amendments made by subsection (b) shall apply to dividends with respect to taxable years of regulated investment companies beginning after December 31, 2004.

SEC. 466. PREVENTION OF AVOIDANCE OF TAX ON INVESTMENTS OF FOREIGN PERSONS IN UNITED STATES REAL PROPERTY THROUGH WASH SALE TRANSACTIONS.

(a) IN GENERAL.—Section 897(h) of the Internal Revenue Code of 1986 (relating to special rules in certain investment entities) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) TREATMENT OF CERTAIN WASH SALE TRANSACTIONS.—

"(A) IN GENERAL.—If an interest in a domestically controlled qualified investment entity is disposed of in an applicable wash sale transaction, the taxpayer shall, for purposes of this section, be treated as having gain from the sale or exchange of a United States real property interest in an amount equal to the portion of the distribution described in subparagraph (B) with respect to such interest which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1).

"(B) APPLICABLE WASH SALES TRANSACTION.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'applicable wash sales transaction' means any transaction (or series of transactions) under which a nonresident alien individual or foreign corporation—

"(I) disposes of an interest in a domestically controlled qualified investment entity during the 30-day period preceding a distribution which is to be made with respect to the interest and any portion of which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1), and

"(II) acquires an identical interest in such entity during the 60-day period beginning with the 1st day of the 30-day period described in subclause (I).

For purposes of subclause (II), a nonresident alien individual or foreign corporation shall be treated as having acquired any interest acquired by a person related (within the meaning of section 465(b)(3)(C)) to the individual or corporation.

"(ii) EXCEPTION WHERE DISTRIBUTION ACTUALLY RECEIVED.—A transaction shall not be treated as an applicable wash sales transaction if the nonresident alien individual or foreign corporation receives the distribution described in clause (i)(I) with respect to either the interest which was disposed of, or acquired, in the transaction.

"(iii) EXCEPTION FOR CERTAIN PUBLICLY TRADED STOCK.—A transaction shall not be treated as an applicable wash sales transaction if it involves the disposition of any class of stock in a qualified investment entity which is regularly traded on an established securities market within the United States but only if the nonresident alien individual or foreign corporation did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of the distribution described in clause (i)(I).".

(b) NO WITHHOLDING REQUIRED.—Section 1445(b) of the Internal Revenue Code of 1986 (relating to exemptions) is amended by adding at the end the following new paragraph:

"(8) APPLICABLE WASH SALES TRANSACTIONS.—No person shall be required to deduct and withhold any amount under subsection (a) with respect to a disposition which is treated as a disposition of a United States real property interest solely by reason of section 897(h)(4).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to dispositions after December 31, 2005, in taxable years ending after such date.

SEC. 467. MODIFICATIONS TO RULES RELATING TO TAXATION OF DISTRIBUTIONS OF STOCK AND SECURITIES OF A CONTROLLED CORPORATION.

(a) MODIFICATION OF ACTIVE BUSINESS DEFINITION UNDER SECTION 355.—

(1) IN GENERAL.—Section 355(b) (defining active conduct of a trade or business) is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULES RELATING TO ACTIVE BUSINESS REQUIREMENT.—

"(A) IN GENERAL.—For purposes of determining whether a corporation meets the requirement of paragraph (2)(A), all members of such corporation's separate affiliated group shall be treated as 1 corporation. For purposes of the preceding sentence, the term 'separate affiliated group' means, with respect to any corporation, the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply.

"(B) CONTROL.—For purposes of paragraph (2)(D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as 1 distributee corporation.".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (A) of section 355(b)(2) is amended to read as follows:

"(A) it is engaged in the active conduct of a trade or business,".

(B) Section 355(b)(2) of such Code is amended by striking the last sentence.

(3) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendments made by this subsection shall apply—

(i) to distributions after the date of the enactment of this Act, and before January 1, 2010, and

(ii) for purposes of determining the continued qualification under section 355(b)(2)(A) of the Internal Revenue Code of 1986 (as amended by paragraph (2)(A)) of distributions made before such date, as a result of an acquisition, disposition, or other restructuring after such date and before January 1, 2010.

(B) TRANSITION RULE.—The amendments made by this subsection shall not apply to any distribution pursuant to a transaction which is—

(i) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,

(ii) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(iii) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

(C) ELECTIONS.—

(i) OUT OF TRANSITION RELIEF.—Subparagraph (B) shall not apply if the distributing corporation elects not to have such subparagraph apply to distributions of such corporation. Any such election, once made, shall be irrevocable.

(ii) APPLICATION TO PRIOR DISTRIBUTIONS.—Subparagraph (A)(ii) shall not apply to a distributing or controlled corporation if the corporation elects not to have such subparagraph apply to such corporation. Any such election, once made, shall be irrevocable.

(b) SECTION 355 NOT TO APPLY TO DISTRIBUTIONS IF THE DISTRIBUTING OR CONTROLLED CORPORATION IS A DISQUALIFIED INVESTMENT CORPORATION.—

(1) IN GENERAL.—Section 355 (relating to distributions of stock and securities of a controlled corporation) is amended by adding at the end the following new subsection:

"(g) SECTION NOT TO APPLY TO DISTRIBUTIONS INVOLVING DISQUALIFIED INVESTMENT CORPORATIONS.—

"(1) IN GENERAL.—This section (and so much of section 356 as relates to this section) shall not apply to any distribution which is part of a transaction if—

"(A) either the distributing corporation or controlled corporation is, immediately after the transaction, a disqualified investment corporation, and

"(B) any person holds, immediately after the transaction, a 50-percent or greater interest in any disqualified investment corporation, but only if such person did not hold such an interest in such corporation immediately before the transaction.

"(2) DISQUALIFIED INVESTMENT CORPORATION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'disqualified investment corporation' means any distributing or controlled corporation if the fair market value of the investment assets of the corporation is 75 percent or more of the fair market value of all assets of the corporation.

"(B) INVESTMENT ASSETS.—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the term 'investment assets' means—

"(I) cash,

"(II) any stock or securities in a corporation,

"(III) any interest in a partnership,

"(IV) any debt instrument or other evidence of indebtedness,

"(V) any option, forward or futures contract, notional principal contract, or derivative,

"(VI) foreign currency, or

"(VII) any similar asset.

"(ii) EXCEPTION FOR ASSETS USED IN ACTIVE CONDUCT OF CERTAIN FINANCIAL TRADES OR BUSINESSES.—Such term shall not include any asset which is held for use in the active and regular conduct of—

"(I) a lending or finance business (within the meaning of section 954(h)(4)),

"(II) a banking business through a bank (as defined in section 581), a domestic building and loan association (within the meaning of section 7701(a)(19)), or any similar institution specified by the Secretary, or

"(III) an insurance business if the conduct of the business is licensed, authorized, or regulated by an applicable insurance regulatory body.

This clause shall only apply with respect to any business if substantially all of the income of the business is derived from persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the person conducting the business.

"(iii) EXCEPTION FOR SECURITIES MARKED TO MARKET.—Such term shall not include any security (as defined in section 475(c)(2)) which is held by a dealer in securities and to which section 475(a) applies.

"(iv) STOCK OR SECURITIES IN A 25-PERCENT CONTROLLED ENTITY.—

"(I) IN GENERAL.—Such term shall not include any stock and securities in, or any asset described in subclause (IV) or (V) of clause (i) issued by, a corporation which is a 25-percent controlled entity with respect to the distributing or controlled corporation.

"(II) LOOK-THRU RULE.—The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any 25-percent controlled entity.

"(III) 25-PERCENT CONTROLLED ENTITY.—For purposes of this clause, the term '25-percent controlled entity' means, with respect to any distributing or controlled corporation, any corporation with respect to which the distributing or controlled corporation owns directly or indirectly stock meeting the requirements of section 1504(a)(2), except that such section shall be applied by substituting '25 percent' for '80 percent' and without regard to stock described in section 1504(a)(4).

"(v) INTERESTS IN CERTAIN PARTNERSHIPS.—

"(I) IN GENERAL.—Such term shall not include any interest in a partnership, or any debt instrument or other evidence of indebtedness, issued by the partnership, if 1 or more of the trades or businesses of the partnership are (or, without regard to the 5-year requirement under subsection (b)(2)(B), would be) taken into account by the distributing or controlled corporation, as the case may be, in determining whether the requirements of subsection (b) are met with respect to the distribution.

"(II) LOOK-THRU RULE.—The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any partnership described in subclause (I).

"(3) 50-PERCENT OR GREATER INTEREST.—For purposes of this subsection—

"(A) IN GENERAL.—The term '50-percent or greater interest' has the meaning given such term by subsection (d)(4).

"(B) ATTRIBUTION RULES.—The rules of section 318 shall apply for purposes of determining ownership of stock for purposes of this paragraph.

"(4) TRANSACTION.—For purposes of this subsection, the term 'transaction' includes a series of transactions.

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out, or prevent the avoidance of, the purposes of this subsection, including regulations—

"(A) to carry out, or prevent the avoidance of, the purposes of this subsection in cases involving—

"(i) the use of related persons, intermediaries, pass-thru entities, options, or other arrangements, and

"(ii) the treatment of assets unrelated to the trade or business of a corporation as investment assets if, prior to the distribution, investment assets were used to acquire such unrelated assets,

"(B) which in appropriate cases exclude from the application of this subsection a distribution which does not have the character of a redemption which would be treated as a sale or exchange under section 302, and

"(C) which modify the application of the attribution rules applied for purposes of this subsection.".

(2) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendments made by this subsection shall apply to distributions after the date of the enactment of this Act.

(B) TRANSITION RULE.—The amendments made by this subsection shall not apply to any distribution pursuant to a transaction which is—

(i) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,

(ii) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(iii) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

SEC. 468. AMORTIZATION OF EXPENSES INCURRED IN CREATING OR ACQUIRING MUSIC OR MUSIC COPYRIGHTS.

(a) IN GENERAL.—Section 263A (relating to capitalization and inclusion in inventory costs of certain expenses) is amended by redesignating subsection (i) as subsection (j) and by adding after subsection (h) the following new subsection:

"(i) SPECIAL RULES FOR CERTAIN MUSICAL WORKS AND COPYRIGHTS.—

"(1) IN GENERAL.—If—

"(A) any expense is paid or incurred by the taxpayer in creating or acquiring any musical composition (including any accompanying words) or any copyright with respect to a musical composition, and

"(B) such expense is required to be capitalized under this section,

then, notwithstanding section 167(g), the amount capitalized shall be amortized ratably over the 5-year period beginning with the month in which the composition or copyright was acquired (or, in the case of expenses paid or incurred in connection with the creation of a musical composition, the 5-taxable-year period beginning with the taxable year in which the expenses were paid or incurred).

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to any expense—

"(A) which is a qualified creative expense under subsection (h),

"(B) to which a simplified procedure established under subsection (j)(2) applies,

"(C) which is an amortizable section 197 intangible (as defined in section 197(c)), or

"(D) which, without regard to this section, would not be allowable as a deduction."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred after December 31, 2005, in taxable years ending after such date.

SEC. 469. CREDIT TO HOLDERS OF RURAL RENAISSANCE BONDS.

(a) IN GENERAL.—Subpart H of part IV of subchapter A of chapter 1 (relating to credits against tax) is amended by adding at the end the following new section:

"SEC. 54A. CREDIT TO HOLDERS OF RURAL RENAISSANCE BONDS.

"(a) ALLOWANCE OF CREDIT.—In the case of a taxpayer who holds a rural renaissance bond on a credit allowance date of such bond, which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to credit allowance dates during such year on which the taxpayer holds such bond.

"(b) AMOUNT OF CREDIT.—

"(1) IN GENERAL.—The amount of the credit determined under this subsection with respect to any credit allowance date for a rural renaissance bond is 25 percent of the annual credit determined with respect to such bond.

“(2) ANNUAL CREDIT.—The annual credit determined with respect to any rural renaissance bond is the product of—

“(A) the credit rate determined by the Secretary under paragraph (3) for the day on which such bond was sold, multiplied by

“(B) the outstanding face amount of the bond.

“(3) DETERMINATION.—For purposes of paragraph (2), with respect to any rural renaissance bond, the Secretary shall determine daily or caused to be determined daily a credit rate which shall apply to the first day on which there is a binding, written contract for the sale or exchange of the bond. The credit rate for any day is the credit rate which the Secretary or the Secretary's designee estimates will permit the issuance of rural renaissance bonds with a specified maturity or redemption date without discount and without interest cost to the qualified issuer.

“(4) CREDIT ALLOWANCE DATE.—For purposes of this section, the term ‘credit allowance date’ means—

“(A) March 15,

“(B) June 15,

“(C) September 15, and

“(D) December 15.

Such term also includes the last day on which the bond is outstanding.

“(5) SPECIAL RULE FOR ISSUANCE AND REDEMPTION.—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

“(c) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

“(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

“(2) the sum of the credits allowable under this part (other than subpart C).

“(d) RURAL RENAISSANCE BOND.—For purposes of this section—

“(1) IN GENERAL.—The term ‘rural renaissance bond’ means any bond issued as part of an issue if—

“(A) the bond is issued by a qualified issuer,

“(B) 95 percent or more of the proceeds from the sale of such issue are to be used for capital expenditures incurred for 1 or more qualified projects,

“(C) the qualified issuer designates such bond for purposes of this section and the bond is in registered form, and

“(D) the issue meets the requirements of subsections (e) and (h).

“(2) QUALIFIED PROJECT; SPECIAL USE RULES.—

“(A) IN GENERAL.—The term ‘qualified project’ means 1 or more projects described in subparagraph (B) located in a rural area.

“(B) PROJECTS DESCRIBED.—A project described in this subparagraph is—

“(i) a water or waste treatment project,

“(ii) an affordable housing project,

“(iii) a community facility project, including hospitals, fire and police stations, and nursing and assisted-living facilities,

“(iv) a value-added agriculture or renewable energy facility project for agricultural producers or farmer-owned entities, including any project to promote the production, processing, or retail sale of ethanol (including fuel at least 85 percent of the volume of which consists of ethanol), biodiesel, animal waste, biomass, raw commodities, or wind as a fuel,

“(v) a distance learning or telemedicine project,

“(vi) a rural utility infrastructure project, including any electric or telephone system,

“(vii) a project to expand broadband technology,

“(viii) a rural teleworks project, and

“(ix) any project described in any preceding clause carried out by the Delta Regional Authority.

“(C) SPECIAL RULES.—For purposes of this paragraph—

“(i) any project described in subparagraph (B)(iv) for a farmer-owned entity may be considered a qualified project if such entity is located in a rural area, or in the case of a farmer-owned entity the headquarters of which are located in a nonrural area, if the project is located in a rural area, and

“(ii) any project for a farmer-owned entity which is a facility described in subparagraph (B)(iv) for agricultural producers may be considered a qualified project regardless of whether the facility is located in a rural or nonrural area.

“(3) SPECIAL USE RULES.—

“(A) REFINANCING RULES.—For purposes of paragraph (1)(B), a qualified project may be refinanced with proceeds of a rural renaissance bond only if the indebtedness being refinanced (including any obligation directly or indirectly refinanced by such indebtedness) was originally incurred after the date of the enactment of this section.

“(B) REIMBURSEMENT.—For purposes of paragraph (1)(B), a rural renaissance bond may be issued to reimburse a borrower for amounts paid after the date of the enactment of this section with respect to a qualified project, but only if—

“(i) prior to the payment of the original expenditure, the borrower declared its intent to reimburse such expenditure with the proceeds of a rural renaissance bond,

“(ii) not later than 60 days after payment of the original expenditure, the qualified issuer adopts an official intent to reimburse the original expenditure with such proceeds, and

“(iii) the reimbursement is made not later than 18 months after the date the original expenditure is paid.

“(C) TREATMENT OF CHANGES IN USE.—For purposes of paragraph (1)(B), the proceeds of an issue shall not be treated as used for a qualified project to the extent that a borrower takes any action within its control which causes such proceeds not to be used for a qualified project. The Secretary shall prescribe regulations specifying remedial actions that may be taken (including conditions to taking such remedial actions) to prevent an action described in the preceding sentence from causing a bond to fail to be a rural renaissance bond.

“(e) MATURITY LIMITATIONS.—

“(1) DURATION OF TERM.—A bond shall not be treated as a rural renaissance bond if the maturity of such bond exceeds the maximum term determined by the Secretary under paragraph (2) with respect to such bond.

“(2) MAXIMUM TERM.—During each calendar month, the Secretary shall determine the maximum term permitted under this paragraph for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of such bond. Such present value shall be determined without regard to the requirements of subsection (f)(3) and using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

“(3) RATABLE PRINCIPAL AMORTIZATION REQUIRED.—A bond shall not be treated as a rural renaissance bond unless it is part of an issue which provides for an equal amount of principal to be paid by the qualified issuer during each calendar year that the issue is outstanding.

“(f) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—

“(1) NATIONAL LIMITATION.—There is a rural renaissance bond limitation of $200,000,000.

“(2) ALLOCATION BY SECRETARY.—The Secretary shall allocate the amount described in paragraph (1) among qualified projects in such manner as the Secretary determines appropriate.

“(g) CREDIT INCLUDED IN GROSS INCOME.—Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)) and the amount so included shall be treated as interest income.

“(h) SPECIAL RULES RELATING TO EXPENDITURES.—

“(1) IN GENERAL.—An issue shall be treated as meeting the requirements of this subsection if, as of the date of issuance, the qualified issuer reasonably expects—

“(A) at least 95 percent of the proceeds from the sale of the issue are to be spent for 1 or more qualified projects within the 5-year period beginning on the date of issuance of the rural renaissance bond,

“(B) a binding commitment with a third party to spend at least 10 percent of the proceeds from the sale of the issue will be incurred within the 6-month period beginning on the date of issuance of the rural renaissance bond or, in the case of a rural renaissance bond, the proceeds of which are to be loaned to 2 or more borrowers, such binding commitment will be incurred within the 6-month period beginning on the date of the loan of such proceeds to a borrower, and

“(C) such projects will be completed with due diligence and the proceeds from the sale of the issue will be spent with due diligence.

“(2) EXTENSION OF PERIOD.—Upon submission of a request prior to the expiration of the period described in paragraph (1)(A), the Secretary may extend such period if the qualified issuer establishes that the failure to satisfy the 5-year requirement is due to reasonable cause and the related projects will continue to proceed with due diligence.

“(3) FAILURE TO SPEND REQUIRED AMOUNT OF BOND PROCEEDS WITHIN 5 YEARS.—To the extent that less than 95 percent of the proceeds of such issue are expended by the close of the 5-year period beginning on the date of issuance (or if an extension has been obtained under paragraph (2), by the close of the extended period), the qualified issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

“(i) SPECIAL RULES RELATING TO ARBITRAGE.—A bond which is part of an issue shall not be treated as a rural renaissance bond unless, with respect to the issue of which the bond is a part, the qualified issuer satisfies the arbitrage requirements of section 148 with respect to proceeds of the issue.

"(j) QUALIFIED ISSUER.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified issuer' means any not-for-profit cooperative lender which has as of the date of the enactment of this section received a guarantee under section 306 of the Rural Electrification Act and which meets the requirement of paragraph (2).

"(2) USER FEE REQUIREMENT.—The requirement of this paragraph is met if the issuer of any rural renaissance bond makes grants for qualified projects as defined under subsection (d)(2) on a semi-annual basis every year that such bond is outstanding in an annual amount equal to one-half of the rate on United States Treasury Bills of the same maturity multiplied by the outstanding principle balance of rural renaissance bonds issued by such issuer.

"(k) SPECIAL RULES RELATING TO POOL BONDS.—No portion of a pooled financing bond may be allocable to loan unless the borrower has entered into a written loan commitment for such portion prior to the issue date of such issue.

"(l) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) BOND.—The term 'bond' includes any obligation.

"(2) POOLED FINANCING BOND.—The term 'pooled financing bond' shall have the meaning given such term by section 149(f)(4)(A).

"(3) RURAL AREA.—The term 'rural area' means any area other than—

"(A) a city or town which has a population of greater than 50,000 inhabitants, or

"(B) the urbanized area contiguous and adjacent to such a city or town.

"(4) PARTNERSHIP; S CORPORATION; AND OTHER PASS-THRU ENTITIES.—

"(A) IN GENERAL.—Under regulations prescribed by the Secretary, in the case of a partnership, trust, S corporation, or other pass-thru entity, rules similar to the rules of section 41(g) shall apply with respect to the credit allowable under subsection (a).

"(B) NO BASIS ADJUSTMENT.—In the case of a bond held by a partnership or an S corporation, rules similar to the rules under section 1397E(l) shall apply.

"(5) BONDS HELD BY REGULATED INVESTMENT COMPANIES.—If any rural renaissance bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

"(6) REPORTING.—Issuers of rural renaissance bonds shall submit reports similar to the reports required under section 149(e).".

(b) REPORTING.—Subsection (d) of section 6049 (relating to returns regarding payments of interest) is amended by adding at the end the following new paragraph:

"(9) REPORTING OF CREDIT ON RURAL RENAISSANCE BONDS.—

"(A) IN GENERAL.—For purposes of subsection (a), the term 'interest' includes amounts includible in gross income under section 54(f) and such amounts shall be treated as paid on the credit allowance date (as defined in section 54(b)(4)).

"(B) REPORTING TO CORPORATIONS, ETC.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A), subsection (b)(4) shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i) of such subsection.

"(C) REGULATORY AUTHORITY.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.".

(c) CONFORMING AMENDMENTS.—

(1) The table of sections for subpart H of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 54A. Credit to holders of rural renaissance bonds.".

(2) Section 54(c)(2) is amended by inserting ", section 54A," after "subpart C".

(d) ISSUANCE OF REGULATIONS.—The Secretary of Treasury shall issue regulations required under section 54A of the Internal Revenue Code of 1986 (as added by this section) not later than 120 days after the date of the enactment of this Act.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act and before January 1, 2010.

SEC. 470. MODIFICATIONS OF FOREIGN TAX CREDIT RULES APPLICABLE TO LARGE INTEGRATED OIL COMPANIES WHICH ARE DUAL CAPACITY TAXPAYERS.

(a) IN GENERAL.—Section 901 (relating to credit for taxes of foreign countries and of possessions of the United States), as amended by this Act, is amended by redesignating subsections (m) and (n) as subsections (n) and (o), respectively, and by inserting after subsection (l) the following new subsection:

"(m) SPECIAL RULES RELATING TO LARGE INTEGRATED OIL COMPANIES WHICH ARE DUAL CAPACITY TAXPAYERS.—

"(1) GENERAL RULE.—Notwithstanding any other provision of this chapter, any amount paid or accrued by a dual capacity taxpayer which is a large integrated oil company to a foreign country or possession of the United States for any period shall not be considered a tax—

"(A) if, for such period, the foreign country or possession does not impose a generally applicable income tax, or

"(B) to the extent such amount exceeds the amount (determined in accordance with regulations) which—

"(i) is paid by such dual capacity taxpayer pursuant to the generally applicable income tax imposed by the country or possession, or

"(ii) would be paid if the generally applicable income tax imposed by the country or possession were applicable to such dual capacity taxpayer.

Nothing in this paragraph shall be construed to imply the proper treatment of any such amount not in excess of the amount determined under subparagraph (B).

"(2) DUAL CAPACITY TAXPAYER.—For purposes of this subsection, the term 'dual capacity taxpayer' means, with respect to any foreign country or possession of the United States, a person who—

"(A) is subject to a levy of such country or possession, and

"(B) receives (or will receive) directly or indirectly a specific economic benefit (as determined in accordance with regulations) from such country or possession.

"(3) GENERALLY APPLICABLE INCOME TAX.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'generally applicable income tax' means an income tax (or a series of income taxes) which is generally imposed under the laws of a foreign country or possession on income derived from the conduct of a trade or business within such country or possession.

"(B) EXCEPTIONS.—Such term shall not include a tax unless it has substantial application, by its terms and in practice, to—

"(i) persons who are not dual capacity taxpayers, and

"(ii) persons who are citizens or residents of the foreign country or possession.

"(4) LARGE INTEGRATED OIL COMPANY.—For purposes of this subsection, the term 'large integrated oil company' means, with respect to any taxable year, an integrated oil company (as defined in section 291(b)(4)) which—

"(A) had gross receipts in excess of $1,000,000,000 for such taxable year, and

"(B) has an average daily worldwide production of crude oil of at least 500,000 barrels for such taxable year."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxes paid or accrued in taxable years beginning after the date of the enactment of this Act.

(2) CONTRARY TREATY OBLIGATIONS UPHELD.—The amendments made by this section shall not apply to the extent contrary to any treaty obligation of the United States.

SEC. 471. DISABILITY PREFERENCE PROGRAM FOR TAX COLLECTION CONTRACTS.

(a) IN GENERAL.—The Secretary of the Treasury shall not enter into any qualified tax collection contract after April 1, 2006, until the Secretary implements a disability preference program that meets the requirements of subsection (b).

(b) DISABILITY PREFERENCE PROGRAM REQUIREMENTS.—

(1) IN GENERAL.—A disability preference program meets the requirements of this subsection if such program requires that not less than 10 percent of the accounts of each dollar value category are awarded to persons described in paragraph (2).

(2) PERSON DESCRIBED.—For purposes of paragraph (1), a person is described in this paragraph if—

(A) as of the date any qualified tax collection contract is awarded—

(i) such person employs not less than 50 severely disabled individuals within the United States; or

(ii) not less than 30 percent of the employees of such person within the United States are severely disabled individuals;

(B) such person agrees as a condition of the qualified tax collection contract that not more than 90 days after the date such contract is awarded, not less than 35 percent of the employees of such person employed in connection with providing services under such contract shall—

(i) be hired after the date such contract is awarded; and

(ii) be severely disabled individuals; and

(C) such person is otherwise qualified to perform the services required.

(c) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED TAX COLLECTION CONTRACT.—The term "qualified tax collection contract" shall have the meaning given such term under section 6306(b) of the Internal Revenue Code of 1986.

(2) DOLLAR VALUE CATEGORY.—The term "dollar value category" means the dollar ranges of accounts for collection as determined and assigned by the Secretary under section 6306(b)(1)(B) of the Internal Revenue Code of 1986 with respect to a qualified tax collection contract.

(3) SEVERELY DISABLED INDIVIDUAL.—The term "severely disabled individual" means—

(A) a veteran of the United States armed forces with a disability of 50 percent or greater—

(i) determined by the Secretary of Veterans Affairs to be service-connected; or

(ii) deemed by law to be service-connected; or

(B) any individual who is a disabled beneficiary (as defined in section 1148(k)(2) of the

Social Security Act (42 U.S.C. 1320b-19(k)(2))) or who would be considered to be such a disabled beneficiary but for having income or resources in excess of the income or resources eligibility limits established under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), respectively.

TITLE V—COMPLIANCE WITH CONGRESSIONAL BUDGET ACT

SEC. 501. SUNSET OF CERTAIN PROVISIONS AND AMENDMENTS.

The provisions of, and amendments made by, title I, subtitle A of title II, and title III shall not apply to taxable years beginning after September 30, 2010, and the Internal Revenue Code of 1986 shall be applied and administered to such years as if such provisions and amendments had never been enacted.

SA 2709. Mr. FRIST proposed an amendment to amendment SA 2708 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; as follows:

At the end of the amendment add the following:

"This section shall become effective 1 day after enactment."

SA 2710. Mr. FRIST (for himself, Mr. GRASSLEY and Mr. BAUCUS) proposed an amendment to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Tax Relief Act of 2005".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—EXTENSION OF EXPIRING PROVISIONS

Sec. 101. Extension of increased expensing for small business.
Sec. 102. Credit for elective deferrals and IRA contributions.
Sec. 103. Above-the-line deduction for higher education.
Sec. 104. Extension and modification of new markets tax credit.
Sec. 105. Election to deduct State and local general sales taxes.
Sec. 106. Extension and increase in minimum tax relief to individuals.
Sec. 107. Allowance of nonrefundable personal credits against regular and alternative minimum tax liability.
Sec. 108. Extension and modification of research credit.
Sec. 109. Work opportunity tax credit and welfare-to-work credit.
Sec. 110. Qualified zone academy bonds.
Sec. 111. Deduction for corporate donations of computer technology and equipment.
Sec. 112. Above-the-line deduction for certain expenses of elementary and secondary school teachers.
Sec. 113. Expensing of brownfields remediation costs.
Sec. 114. Tax incentives for investment in the District of Columbia.
Sec. 115. Indian employment tax credit.
Sec. 116. Accelerated depreciation for business property on Indian reservation.
Sec. 117. Fifteen-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant improvements.
Sec. 118. Extension of full credit for qualified electric vehicles.
Sec. 119. Application of EGTRRA sunset to this title.

TITLE II—PROVISIONS RELATING TO CHARITABLE DONATIONS

Subtitle A—Charitable Giving Incentives

Sec. 201. Charitable deduction for nonitemizers.
Sec. 202. Tax-free distributions from individual retirement plans for charitable purposes.
Sec. 203. Modification of charitable deduction for contributions of food inventory.
Sec. 204. Basis adjustment to stock of S corporation contributing property.
Sec. 205. Modification of charitable deduction for contributions of book inventory.
Sec. 206. Modification of tax treatment of certain payments to controlling exempt organizations and public disclosure of information relating to unrelated business income.
Sec. 207. Encouragement of contributions of capital gain real property made for conservation purposes.
Sec. 208. Enhanced deduction for charitable contribution of literary, musical, artistic, and scholarly compositions.
Sec. 209. Mileage reimbursements to charitable volunteers excluded from gross income.
Sec. 210. Alternative percentage limitation for corporate charitable contributions to the mathematics and science partnership program.

Subtitle B—Reforming Charitable Organizations

PART I—GENERAL REFORMS

Sec. 211. Tax involvement by exempt organizations in tax shelter transactions.
Sec. 212. Excise tax on certain acquisitions of interests in insurance contracts in which certain exempt organizations hold an interest.
Sec. 213. Increase in penalty excise taxes on public charities, social welfare organizations, and private foundations.
Sec. 214. Reform of charitable contributions of certain easements on buildings in registered historic districts.
Sec. 215. Charitable contributions of taxidermy property.
Sec. 216. Recapture of tax benefit for charitable contributions of exempt use property not used for an exempt use.
Sec. 217. Limitation of deduction for charitable contributions of clothing and household items.
Sec. 218. Modification of recordkeeping requirements for certain charitable contributions.
Sec. 219. Contributions of fractional interests in tangible personal property.
Sec. 220. Provisions relating to substantial and gross overstatements of valuations of charitable deduction property.
Sec. 221. Additional standards for credit counseling organizations.
Sec. 222. Expansion of the base of tax on private foundation net investment income.
Sec. 223. Definition of convention or association of churches.
Sec. 224. Notification requirement for entities not currently required to file.
Sec. 225. Disclosure to State officials of proposed actions related to exempt organizations.

PART II—IMPROVED ACCOUNTABILITY OF DONOR ADVISED FUNDS

Sec. 231. Excise tax on sponsoring organizations of donor advised funds for failure to meet distribution requirements.
Sec. 232. Prohibited transactions.
Sec. 233. Treatment of charitable contribution deductions to donor advised funds.
Sec. 234. Returns of, and applications for recognition by, sponsoring organizations.

PART III—IMPROVED ACCOUNTABILITY OF SUPPORTING ORGANIZATIONS

Sec. 241. Requirements for supporting organizations.
Sec. 242. Excise tax on supporting organizations for failure to meet distribution requirements.
Sec. 243. Excess benefit transactions.
Sec. 244. Excess business holdings of supporting organizations.
Sec. 245. Treatment of amounts paid to supporting organizations by private foundations.
Sec. 246. Returns of supporting organizations.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Restructuring of New York Liberty Zone tax credits.
Sec. 302. Modification to S corporation passive investment income rules.
Sec. 303. Modification of effective date of disregard of certain capital expenditures for purposes of qualified small issue bonds.
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Sec. 501. Sunset of certain provisions and amendments.

TITLE I—EXTENSION OF EXPIRING PROVISIONS

SEC. 101. EXTENSION OF INCREASED EXPENSING FOR SMALL BUSINESS.

Section 179 is amended by striking "2008" each place it appears and inserting "2010".

SEC. 102. CREDIT FOR ELECTIVE DEFERRALS AND IRA CONTRIBUTIONS.

Section 25B(h) is amended by striking "2006" and inserting "2009".

SEC. 103. ABOVE-THE-LINE DEDUCTION FOR HIGHER EDUCATION.

(a) IN GENERAL.—Section 222(e) is amended by striking "2005"and inserting "2009".

(b) CONFORMING AMENDMENTS.—Section 222(b)(2)(B) is amended—

(1) by striking "a taxable year beginning in 2004 or 2005" and inserting "any taxable year beginning after 2003", and

(2) by striking "2004 AND 2005" and inserting "AFTER 2003".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 104. EXTENSION AND MODIFICATION OF NEW MARKETS TAX CREDIT.

(a) EXTENSION.—Section 45D(f)(1)(D) is amended by striking "and 2007" and inserting ", 2007, and 2008".

(b) REGULATIONS REGARDING NON-METROPOLITAN COUNTIES.—Section 45D(i) is amended by striking "and" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", and", and by adding at the end by the following new paragraph:

"(6) which ensure that non-metropolitan counties receive a proportional allocation of qualified equity investments.".

SEC. 105. ELECTION TO DEDUCT STATE AND LOCAL GENERAL SALES TAXES.

(a) IN GENERAL.—Section 164(b)(5)(I) is amended by striking "2006" and inserting "2008".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 106. EXTENSION AND INCREASE IN MINIMUM TAX RELIEF TO INDIVIDUALS.

(a) IN GENERAL.—Section 55(d)(1) is amended—

(1) by striking "$58,000" and all that follows through "2005" in subparagraph (A) and inserting "$62,550 in the case of taxable years beginning in 2006", and

(2) by striking "$40,250" and all that follows through "2005" in subparagraph (B) and inserting "$42,500 in the case of taxable years beginning in 2006".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 107. ALLOWANCE OF NONREFUNDABLE PERSONAL CREDITS AGAINST REGULAR AND ALTERNATIVE MINIMUM TAX LIABILITY.

(a) IN GENERAL.—Paragraph (2) of section 26(a) is amended—

(1) by striking "2005" in the heading thereof and inserting "2007", and

(2) by striking "or 2005" and inserting "2005, 2006, or 2007".

(b) CONFORMING PROVISIONS.—

(1) Section 30B(g) is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULE FOR 2006 AND 2007.—For purposes of any taxable year beginning during 2006 or 2007, the credit allowed under subsection (a) (after the application of paragraph (1)) shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under subpart A and this subpart (other than this section and section 30C).".

(2) Section 30C(d) is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULE FOR 2006 AND 2007.—For purposes of any taxable year beginning during 2006 or 2007, the credit allowed under subsection (a) (after the application of paragraph (1)) shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under subpart A and this subpart (other than this section).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 108. EXTENSION AND MODIFICATION OF RESEARCH CREDIT.

(a) EXTENSION.—

(1) IN GENERAL.—Section 41(h)(1)(B) is amended by striking "2005" and inserting "2007".

(2) CONFORMING AMENDMENT.—Section 45C(b)(1)(D) is amended by striking "2005" and inserting "2007".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2005.

(b) INCREASE IN RATES OF ALTERNATIVE INCREMENTAL CREDIT.—Subparagraph (A) of section 41(c)(4) (relating to election of alternative incremental credit) is amended—

(1) by striking "2.65 percent" and inserting "3 percent",

(2) by striking "3.2 percent" and inserting "4 percent", and

(3) by striking "3.75 percent" and inserting "5 percent".

(c) Alternative Simplified Credit for Qualified Research Expenses.—

(1) In general.—Subsection (c) of section 41 (relating to base amount) is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting after paragraph (4) the following new paragraph:

"(5) Election of alternative simplified credit.—

"(A) In general.—At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to 12 percent of so much of the qualified research expenses for the taxable year as exceeds 50 percent of the average qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined.

"(B) Special rule in case of no qualified research expenses in any of 3 preceding taxable years.—

"(i) Taxpayers to which subparagraph applies.—The credit under this paragraph shall be determined under this subparagraph if the taxpayer has no qualified research expenses in any 1 of the 3 taxable years preceding the taxable year for which the credit is being determined.

"(ii) Credit rate.—The credit determined under this subparagraph shall be equal to 6 percent of the qualified research expenses for the taxable year.

"(C) Election.—An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary. An election under this paragraph may not be made for any taxable year to which an election under paragraph (4) applies.".

(2) Coordination with election of alternative incremental credit.—

(A) In general.—Section 41(c)(4)(B) (relating to election) is amended by adding at the end the following: "An election under this paragraph may not be made for any taxable year to which an election under paragraph (5) applies.".

(B) Transition rule.—In the case of an election under section 41(c)(4) of the Internal Revenue Code of 1986 which applies to the taxable year which includes the date of the enactment of this Act, such election shall be treated as revoked with the consent of the Secretary of the Treasury if the taxpayer makes an election under section 41(c)(5) of such Code (as added by subsection (a)) for such year.

(d) Expansion of Credit to Expenses of General Collaborative Research Consortia.—Section 41 is amended—

(1) by striking "an energy research consortium" in subsections (a)(3) and (b)(3)(C)(i) and inserting "a research consortium",

(2) by striking "energy" each place it appears in subsection (f)(6)(A),

(3) by inserting "or 501(c)(6)" after "section 501(c)(3)" in subsection (f)(6)(A)(i)(I), and

(4) by striking "Energy research" in the heading for subsection (f)(6) and inserting "Research".

(e) Effective Date.—Except as provided in subsection (a)(3), the amendments made by this section shall apply to taxable years ending after December 31, 2005.

SEC. 109. WORK OPPORTUNITY TAX CREDIT AND WELFARE-TO-WORK CREDIT.

(a) In General.—Section 51(c)(4)(B) is amended by striking "2005" and inserting "2007".

(b) Eligibility of Ex-Felons Determined Without Regard to Family Income.—Paragraph (4) of section 51(d) is amended by adding "and" at the end of subparagraph (A), by striking ", and" at the end of subparagraph (B) and inserting a period, and by striking all that follows subparagraph (B).

(c) Increase in Maximum Age for Eligibility of Food Stamp Recipients.—Clause (i) of section 51(d)(8)(A) is amended by striking "25" and inserting "40".

(d) Increase in Maximum Age for Designated Community Residents.—

(1) In general.—Paragraph (5) of section 51(d) is amended to read as follows:

"(5) Designated community residents.—

"(A) In general.—The term 'designated community resident' means any individual who is certified by the designated local agency—

"(i) as having attained age 18 but not age 40 on the hiring date, and

"(ii) as having his principal place of abode within an empowerment zone, enterprise community, or renewal community.

"(B) Individual must continue to reside in zone or community.—In the case of a designated community resident, the term 'qualified wages' shall not include wages paid or incurred for services performed while the individual's principal place of abode is outside an empowerment zone, enterprise community, or renewal community."

(2) Conforming amendment.—Subparagraph (D) of section 51(d)(1) is amended to read as follows:

"(D) a designated community resident,".

(e) Consolidation of Work Opportunity Credit With Welfare-To-Work Credit.—

(1) In general.—Paragraph (1) of section 51(d) is amended by striking "or" at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting ", or", and by adding at the end the following new subparagraph:

"(I) a long-term family assistance recipient."

(2) Long-term family assistance recipient.—Subsection (d) of section 51 is amended by redesignating paragraphs (10) through (12) as paragraphs (11) through (13), respectively, and by inserting after paragraph (9) the following new paragraph:

"(10) Long-term family assistance recipient.—The term 'long-term family assistance recipient' means any individual who is certified by the designated local agency—

"(A) as being a member of a family receiving assistance under a IV–A program (as defined in paragraph (2)(B)) for at least the 18-month period ending on the hiring date,

"(B)(i) as being a member of a family receiving such assistance for 18 months beginning after August 5, 1997, and

"(ii) as having a hiring date which is not more than 2 years after the end of the earliest such 18-month period, or

"(C)(i) as being a member of a family which ceased to be eligible for such assistance by reason of any limitation imposed by Federal or State law on the maximum period such assistance is payable to a family, and

"(ii) as having a hiring date which is not more than 2 years after the date of such cessation."

(3) Increased credit for employment of long-term family assistance recipients.—Section 51 is amended by inserting after subsection (d) the following new subsection:

"(e) Credit for Second-Year Wages for Employment of Long-Term Family Assistance Recipients.—

"(1) In general.—With respect to the employment of a long-term family assistance recipient—

"(A) the amount of the work opportunity credit determined under this section for the taxable year shall include 50 percent of the qualified second-year wages for such year, and

"(B) in lieu of applying subsection (b)(3), the amount of the qualified first-year wages, and the amount of qualified second-year wages, which may be taken into account with respect to such a recipient shall not exceed $10,000 per year.

"(2) Qualified second-year wages.—For purposes of this subsection, the term 'qualified second-year wages' means qualified wages—

"(A) which are paid to a long-term family assistance recipient, and

"(B) which are attributable to service rendered during the 1-year period beginning on the day after the last day of the 1-year period with respect to such recipient determined under subsection (b)(2).

"(3) Special rules for agricultural and railway labor.—If such recipient is an employee to whom subparagraph (A) or (B) of subsection (h)(1) applies, rules similar to the rules of such subparagraphs shall apply except that—

"(A) such subparagraph (A) shall be applied by substituting '$10,000' for '$6,000', and

"(B) such subparagraph (B) shall be applied by substituting '$833.33' for '$500'."

(4) Repeal of separate welfare-to-work credit.—

(A) In general.—Section 51A is hereby repealed.

(B) Clerical amendment.—The table of sections for subpart F of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 51A.

(f) Effective Date.—The amendments made by this section shall apply to individuals who begin work for the employer after December 31, 2005.

SEC. 110. QUALIFIED ZONE ACADEMY BONDS.

(a) In General.—Paragraph (1) of section 1397E(e) is amended by striking "and 2005" and inserting "2005, 2006, and 2007".

(b) Form of Private Business Contributions.—Section 1397E(d)(2)(B) is amended by striking "any contribution" and all that follows and inserting "any cash or cash equivalent contribution".

(c) Special Rules Relating to Amortization, Expenditures, Arbitrage, and Reporting.—

(1) In general.—Section 1397E is amended—

(A) in subsection (d)(1), by striking "and" at the end of subparagraph (C)(iii), by striking the period at the end of subparagraph (D) and inserting ", and", and by adding at the end the following new subparagraph:

"(E) the issue meets the requirements of subsections (f), (g), (h), and (i).", and

(B) by redesignating subsections (f), (g), (h), and (i) as subsection (j), (k), (l), and (m), respectively, and by inserting after subsection (e) the following new subsections:

"(f) Ratable Principal Amortization Required.—An issue shall be treated as meeting the requirements of this subsection if such issue provides for an equal amount of principal to be paid by the issuer during each calendar year that the issue is outstanding.

"(g) Special Rules Relating to Expenditures.—

"(1) In general.—An issue shall be treated as meeting the requirements of this subsection if, as of the date of issuance, the issuer reasonably expects—

"(A) at least 95 percent of the proceeds from the sale of the issue are to be spent for 1 or more qualified purposes with respect to qualified zone academies within the 5-year period beginning on the date of issuance of the qualified zone academy bond, "(B) a binding commitment with a third party to spend at least 10 percent of the proceeds from the sale of the issue will be incurred within the 6-month period beginning on the date of issuance of the qualified zone academy bond, and

"(C) such purposes will be completed with due diligence and the proceeds from the sale of the issue will be spent with due diligence.

"(2) Extension of period.—Upon submission of a request prior to the expiration of the period described in paragraph (1)(A), the Secretary may extend such period if the issuer establishes that the failure to satisfy the 5-year requirement is due to reasonable cause and the related purposes will continue to proceed with due diligence.

"(3) Failure to spend required amount of bond proceeds within 5 years.—To the extent that less than 95 percent of the proceeds of such issue are expended by the close of the 5-year period beginning on the date of issuance (or if an extension has been obtained under paragraph (2), by the close of the extended period), the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

"(h) Special Rules Relating to Arbitrage.—An issue shall be treated as meeting the requirements of this subsection if the issuer satisfies the arbitrage requirements of section 148 with respect to proceeds of the issue.

"(i) Reporting.—Issuers of qualified academy zone bonds shall submit reports similar to the reports required under section 149(e).".

(2) Conforming amendments.—

(A) Section 1397E(d)(3) is amended by inserting "without regard to the requirements of subsection (f) and" after "Such present value shall be determined".

(B) Sections 54(l)(3)(B) and 1400N(l)(7)(B)(ii) are each amended by striking "section 1397E(i)" and inserting "section 1397E(l)".

(d) Effective Date.—The amendments made by this section shall apply to obligations issued after December 31, 2005.

SEC. 111. DEDUCTION FOR CORPORATE DONATIONS OF COMPUTER TECHNOLOGY AND EQUIPMENT.

(a) In General.—Section 170(e)(6)(G) is amended by striking "2005" and inserting "2007".

(b) Effective Date.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 112. ABOVE-THE-LINE DEDUCTION FOR CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.

(a) In General.—Subparagraph (D) of section 62(a)(2) is amended by striking "or 2005" and inserting "2005, 2006, or 2007".

(b) Effective Date.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 113. EXPENSING OF BROWNFIELDS REMEDIATION COSTS.

(a) Extension.—Subsection (h) of section 198 is amended by striking "2005" and inserting "2007".

(b) Expansion.—Section 198(d)(1) (defining hazardous substance) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) any petroleum product (as defined in section 4612(a)(3)).".

(c) Effective Date.—The amendments made by this section shall apply to expenditures paid or incurred after December 31, 2005.

SEC. 114. TAX INCENTIVES FOR INVESTMENT IN THE DISTRICT OF COLUMBIA.

(a) Designation of Zone.—

(1) In general.—Subsection (f) of section 1400 is amended by striking "2005" both places it appears and inserting "2006".

(2) Effective date.—The amendments made by this subsection shall apply to periods beginning after December 31, 2005.

(b) Tax-Exempt Economic Development Bonds.—

(1) In general.—Subsection (b) of section 1400A is amended by striking "2005" and inserting "2006".

(2) Effective date.—The amendment made by this subsection shall apply to bonds issued after December 31, 2005.

(c) Zero Percent Capital Gains Rate.—

(1) In general.—Subsection (b) of section 1400B is amended by striking "2006" each place it appears and inserting "2007".

(2) Conforming amendments.—

(A) Section 1400B(e)(2) is amended—

(i) by striking "2010" and inserting "2011", and

(ii) by striking "2010" in the heading thereof and inserting "2011".

(B) Section 1400B(g)(2) is amended by striking "2010" and inserting "2011".

(C) Section 1400F(d) is amended by striking "2010" and inserting "2011".

(3) Effective dates.—

(A) Extension.—The amendments made by paragraph (1) shall apply to acquisitions after December 31, 2005.

(B) Conforming amendments.—The amendments made by paragraph (2) shall take effect on the date of the enactment of this Act.

(d) First-Time Homebuyer Credit.—

(1) In general.—Subsection (i) of section 1400C is amended by striking "2006" and inserting "2007".

(2) Effective date.—The amendment made by this subsection shall apply to property purchased after December 31, 2005.

SEC. 115. INDIAN EMPLOYMENT TAX CREDIT.

(a) In General.—Section 45A(f) is amended by striking "2005" and inserting "2007".

(b) Effective Date.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 116. ACCELERATED DEPRECIATION FOR BUSINESS PROPERTY ON INDIAN RESERVATION.

(a) In General.—Section 168(j)(8) is amended by striking "2005" and inserting "2007".

(b) Effective Date.—The amendment made by this section shall apply to property placed in service after December 31, 2005.

SEC. 117. FIFTEEN-YEAR STRAIGHT-LINE COST RECOVERY FOR QUALIFIED LEASEHOLD IMPROVEMENTS AND QUALIFIED RESTAURANT IMPROVEMENTS.

(a) In General.—Clauses (iv) and (v) of section 168(e)(3)(E) are each amended by striking "2006" and inserting "2008".

(b) Effective Date.—The amendments made by this section shall apply to property placed in service after December 31, 2005.

SEC. 118. EXTENSION OF FULL CREDIT FOR QUALIFIED ELECTRIC VEHICLES.

(a) In General.—Section 30(e) is amended by striking "2006" and inserting "2007".

(b) Repeal of Phaseout.—Section 30(b) (relating to limitations) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 119. APPLICATION OF EGTRRA SUNSET TO THIS TITLE.

Each amendment made by this title shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 to the same extent and in the same manner as the provision of such Act to which such amendment relates.

TITLE II—PROVISIONS RELATING TO CHARITABLE DONATIONS

Subtitle A—Charitable Giving Incentives

SEC. 201. CHARITABLE DEDUCTION FOR NON-ITEMIZERS.

(a) In General.—Section 170 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) Deduction for Individuals Not Itemizing Deductions.—In the case of an individual who does not itemize deductions for any taxable year beginning after December 31, 2005, and before January 1, 2008, there shall be taken into account as a direct charitable deduction under section 63 an amount equal to the amount allowable under subsection (a) for the taxable year for cash contributions (determined without regard to any carryover).".

(b) Direct Charitable Deduction.—

(1) In general.—Subsection (b) of section 63 (defining taxable income) is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end the following new paragraph:

"(3) the direct charitable deduction.".

(2) Definition.—Section 63 is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) Direct Charitable Deduction.—For purposes of this section, the term 'direct charitable deduction' means that portion of the amount allowable under section 170(a) which is taken as a direct charitable deduction for the taxable year under section 170(o).".

(3) Conforming amendment.—Subsection (d) of section 63 is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end the following new paragraph:

"(3) the direct charitable deduction.".

(c) Floor on Charitable Contributions by Individuals.—Section 170(a) is amended by adding at the end the following new paragraph:

"(4) Dollar floor on charitable contributions by individuals.—In the case of an individual, for any taxable year beginning after December 31, 2005, and before January 1, 2008, the amount otherwise allowed as a deduction under paragraph (1) shall be allowed only to the extent that such amount exceeds $210 ($420 in the case of a joint return).".

(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 202. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT PLANS FOR CHARITABLE PURPOSES.

(a) In General.—Subsection (d) of section 408 (relating to individual retirement accounts) is amended by adding at the end the following new paragraph:

"(8) Distributions for charitable purposes.—

"(A) In general.—No amount shall be includible in gross income by reason of a qualified charitable distribution.

"(B) Qualified charitable distribution.—For purposes of this paragraph, the term 'qualified charitable distribution' means any distribution from an individual retirement plan (other than a plan described in subsection (k) or (p))—

"(i) which is made directly by the trustee—

"(I) to an organization described in section 170(c), or

"(II) to a split-interest entity, and

"(ii) which is made on or after—

"(I) in the case of any distribution described in clause (i)(I), the date that the individual for whose benefit the plan is maintained has attained age 70½, and

"(II) in the case of any distribution described in clause (i)(II), the date that such individual has attained age 59½.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A) and, in the case of a distribution to a split-interest entity, only if no person holds an income interest in the amounts in the split-interest entity attributable to such distribution other than one or more of the following: the individual for whose benefit such plan is maintained, the spouse of such individual, or any organization described in section 170(c).

"(C) CONTRIBUTIONS MUST BE OTHERWISE DEDUCTIBLE.—For purposes of this paragraph—

"(i) DIRECT CONTRIBUTIONS.—A distribution to an organization described in section 170(c) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsections (a)(4) and (b) thereof and this paragraph).

"(ii) SPLIT-INTEREST GIFTS.—A distribution to a split-interest entity shall be treated as a qualified charitable distribution only if a deduction for the entire value of the interest in the distribution for the use of an organization described in section 170(c) would be allowable under section 170 (determined without regard to subsections (a)(4) and (b) thereof and this paragraph).

"(D) APPLICATION OF SECTION 72.—Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts distributed from all individual retirement plans were treated as 1 contract under paragraph (2)(A) for purposes of determining the inclusion of such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

"(E) SPECIAL RULES FOR SPLIT-INTEREST ENTITIES.—

"(i) CHARITABLE REMAINDER TRUSTS.—Notwithstanding section 664(b), distributions made from a trust described in subparagraph (G)(i) shall be treated as ordinary income in the hands of the beneficiary to whom is paid the annuity described in section 664(d)(1)(A) or the payment described in section 664(d)(2)(A).

"(ii) POOLED INCOME FUNDS.—No amount shall be includible in the gross income of a pooled income fund (as defined in subparagraph (G)(ii)) by reason of a qualified charitable distribution to such fund, and all distributions from the fund which are attributable to qualified charitable distributions shall be treated as ordinary income to the beneficiary.

"(iii) CHARITABLE GIFT ANNUITIES.—Qualified charitable distributions made for a charitable gift annuity shall not be treated as an investment in the contract.

"(F) DENIAL OF DEDUCTION.—Qualified charitable distributions shall not be taken into account in determining the deduction under section 170.

"(G) SPLIT-INTEREST ENTITY DEFINED.—For purposes of this paragraph, the term 'split-interest entity' means—

"(i) a charitable remainder annuity trust or a charitable remainder unitrust (as such terms are defined in section 664(d)) which must be funded exclusively by qualified charitable distributions,

"(ii) a pooled income fund (as defined in section 642(c)(5)), but only if the fund accounts separately for amounts attributable to qualified charitable distributions, and

"(iii) a charitable gift annuity (as defined in section 501(m)(5)).

"(H) TERMINATION.—This paragraph shall not apply to distributions made in taxable years beginning after December 31, 2007.".

(b) MODIFICATIONS RELATING TO INFORMATION RETURNS BY CERTAIN TRUSTS.—

(1) RETURNS.—Section 6034 (relating to returns by trusts described in section 4947(a)(2) or claiming charitable deductions under section 642(c)) is amended to read as follows:

"SEC. 6034. RETURNS BY CERTAIN TRUSTS.

"(a) SPLIT-INTEREST TRUSTS.—Every trust described in section 4947(a)(2) shall furnish such information with respect to the taxable year as the Secretary may by forms or regulations require.

"(b) TRUSTS CLAIMING CERTAIN CHARITABLE DEDUCTIONS.—

"(1) IN GENERAL.—Every trust not required to file a return under subsection (a) but claiming a deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary may by forms or regulations prescribe, including—

"(A) the amount of the deduction taken under section 642(c) within such year,

"(B) the amount paid out within such year which represents amounts for which deductions under section 642(c) have been taken in prior years,

"(C) the amount for which such deductions have been taken in prior years but which has not been paid out at the beginning of such year,

"(D) the amount paid out of principal in the current and prior years for the purposes described in section 642(c),

"(E) the total income of the trust within such year and the expenses attributable thereto, and

"(F) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to a trust for any taxable year if—

"(A) all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries, or

"(B) the trust is described in section 4947(a)(1).".

(2) INCREASE IN PENALTY RELATING TO FILING OF INFORMATION RETURN BY SPLIT-INTEREST TRUSTS.—Paragraph (2) of section 6652(c) (relating to returns by exempt organizations and by certain trusts) is amended by adding at the end the following new subparagraph:

"(C) SPLIT-INTEREST TRUSTS.—In the case of a trust which is required to file a return under section 6034(a), subparagraphs (A) and (B) of this paragraph shall not apply and paragraph (1) shall apply in the same manner as if such return were required under section 6033, except that—

"(i) the 5 percent limitation in the second sentence of paragraph (1)(A) shall not apply,

"(ii) in the case of any trust with gross income in excess of $250,000, the first sentence of paragraph (1)(A) shall be applied by substituting '$100' for '$20', and the second sentence thereof shall be applied by substituting '$50,000' for '$10,000', and

"(iii) the third sentence of paragraph (1)(A) shall be disregarded.

In addition to any penalty imposed on the trust pursuant to this subparagraph, if the person required to file such return knowingly fails to file the return, such penalty shall also be imposed on such person who shall be personally liable for such penalty.".

(3) CONFIDENTIALITY OF NONCHARITABLE BENEFICIARIES.—Subsection (b) of section 6104 (relating to inspection of annual information returns) is amended by adding at the end the following new sentence: "In the case of a trust which is required to file a return under section 6034(a), this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c).".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to distributions made in taxable years beginning after December 31, 2005.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to returns for taxable years beginning after December 31, 2005.

SEC. 203. MODIFICATION OF CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.

(a) IN GENERAL.—Subparagraph (C) of section 170(e)(3) (relating to special rule for certain contributions of inventory and other property) is amended to read as follows:

"(C) SPECIAL RULE FOR CONTRIBUTIONS OF FOOD INVENTORY.—

"(i) GENERAL RULE.—In the case of a charitable contribution of food from any trade or business of the taxpayer, this paragraph shall be applied—

"(I) without regard to whether the contribution is made by a C corporation, and

"(II) only to food that is apparently wholesome food.

"(ii) LIMITATION.—In the case of a taxpayer other than a C corporation, the aggregate amount of such contributions for any taxable year which may be taken into account under this section shall not exceed 10 percent of the taxpayer's aggregate net income for such taxable year from all trades or businesses from which such contributions were made for such year, computed without regard to this section.

"(iii) LIMITATION ON REDUCTION.—In the case of any such contribution, notwithstanding subparagraph (B), the amount of the reduction determined under paragraph (1)(A) shall not exceed the amount by which the fair market value of the apparently wholesome food exceeds twice the basis of such food.

"(iv) DETERMINATION OF BASIS.—If a taxpayer—

"(I) does not account for inventories under section 471, and

"(II) is not required to capitalize indirect costs under section 263A,

the taxpayer may elect, solely for purposes of subparagraph (B), to treat the basis of any apparently wholesome food as being equal to 25 percent of the fair market value of such food.

"(v) DETERMINATION OF FAIR MARKET VALUE.—In the case of any such contribution of apparently wholesome food which, solely by reason of internal standards of the taxpayer or lack of market, cannot or will not be sold, the fair market value of such contribution shall be determined—

"(I) without regard to such internal standards or such lack of market and

"(II) by taking into account the price at which the same or substantially the same food items (as to both type and quality) are sold by the taxpayer at the time of the contribution (or, if not so sold at such time, in the recent past).

"(vi) APPARENTLY WHOLESOME FOOD.—For purposes of this subparagraph, the term 'apparently wholesome food' has the meaning given to such term by section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the enactment of this subparagraph.

"(vii) TERMINATION.—This subparagraph shall not apply to contributions made after December 31, 2007.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after December 31, 2005.

SEC. 204. BASIS ADJUSTMENT TO STOCK OF S CORPORATION CONTRIBUTING PROPERTY.

(a) IN GENERAL.—Paragraph (2) of section 1367(a) (relating to adjustments to basis of stock of shareholders, etc.) is amended by adding at the end the following new flush sentence:

"The decrease under subparagraph (B) by reason of a charitable contribution (as defined in section 170(c)) of property shall be the amount equal to the shareholder's pro rata share of the adjusted basis of such property. The preceding sentence shall not apply to contributions made in taxable years beginning after December 31, 2007.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2005.

SEC. 205. MODIFICATION OF CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF BOOK INVENTORY.

(a) IN GENERAL.—Subparagraph (D) of section 170(e)(3) (relating to special rule for certain contributions of inventory and other property) is amended to read as follows:

"(D) SPECIAL RULE FOR CONTRIBUTIONS OF BOOK INVENTORY FOR EDUCATIONAL PURPOSES.—

"(i) CONTRIBUTIONS OF BOOK INVENTORY.—In determining whether a qualified book contribution is a qualified contribution, subparagraph (A) shall be applied without regard to whether—

"(I) the donee is an organization described in the matter preceding clause (i) of subparagraph (A), and

"(II) the property is to be used by the donee solely for the care of the ill, the needy, or infants.

"(ii) AMOUNT OF REDUCTION.—Notwithstanding subparagraph (B), the amount of the reduction determined under paragraph (1)(A) shall not exceed the amount by which the fair market value of the contributed property (as determined by the taxpayer using a bona fide published market price for such book) exceeds twice the basis of such property.

"(iii) QUALIFIED BOOK CONTRIBUTION.—For purposes of this paragraph, the term 'qualified book contribution' means a charitable contribution of books, but only if the requirements of clauses (iv) and (v) are met.

"(iv) IDENTITY OF DONEE.—The requirement of this clause is met if the contribution is to an organization—

"(I) described in subclause (I) or (III) of paragraph (6)(B)(i), or

"(II) described in section 501(c)(3) and exempt from tax under section 501(a) (other than a private foundation, as defined in section 509(a), which is not an operating foundation, as defined in section 4942(j)(3)), which is organized primarily to make books available to the general public at no cost or to operate a literacy program.

"(v) CERTIFICATION BY DONEE.—The requirement of this clause is met if, in addition to the certifications required by subparagraph (A) (as modified by this subparagraph), the donee certifies in writing that—

"(I) the books are suitable, in terms of currency, content, and quantity, for use in the donee's educational programs, and

"(II) the donee will use the books in its educational programs.

"(vi) BONA FIDE PUBLISHED MARKET PRICE.—For purposes of this subparagraph, the term 'bona fide published market price' means, with respect to any book, a price—

"(I) determined using the same printing and edition,

"(II) determined in the usual market in which such a book has been customarily sold by the taxpayer, and

"(III) for which the taxpayer can demonstrate to the satisfaction of the Secretary that the taxpayer customarily sold such books in arm's length transactions within 7 years preceding the contribution of such a book.

"(vii) TERMINATION.—This subparagraph shall not apply to contributions made after December 31, 2007.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after December 31, 2005.

SEC. 206. MODIFICATION OF TAX TREATMENT OF CERTAIN PAYMENTS TO CONTROLLING EXEMPT ORGANIZATIONS AND PUBLIC DISCLOSURE OF INFORMATION RELATING TO UNRELATED BUSINESS INCOME.

(a) MODIFICATION OF SECTION 512(B)(13).—

(1) IN GENERAL.—Paragraph (13) of section 512(b) (relating to special rules for certain amounts received from controlled entities) is amended by redesignating subparagraph (E) as subparagraph (F) and by inserting after subparagraph (D) the following new subparagraph:

"(E) PARAGRAPH TO APPLY ONLY TO EXCESS PAYMENTS.—

"(i) IN GENERAL.—Subparagraph (A) shall apply only to the portion of a specified payment received or accrued by the controlling organization that exceeds the amount which would have been paid or accrued if such payment met the requirements prescribed under section 482.

"(ii) ADDITION TO TAX FOR VALUATION MISSTATEMENTS.—The tax imposed by this chapter on the controlling organization shall be increased by an amount equal to 20 percent of the larger of—

"(I) such excess determined without regard to any amendment or supplement to a return of tax, or

"(II) such excess determined with regard to all such amendments and supplements.".

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendment made by this subsection shall apply to payments received or accrued after December 31, 2000.

(B) PAYMENTS SUBJECT TO BINDING CONTRACT TRANSITION RULE.—If the amendments made by section 1041 of the Taxpayer Relief Act of 1997 did not apply to any amount received or accrued in the first 2 taxable years beginning on or after the date of the enactment of the Taxpayer Relief Act of 1997 under any contract described in subsection (b)(2) of such section, such amendments also shall not apply to amounts received or accrued under such contract before January 1, 2001.

(b) PUBLIC AVAILABILITY OF UNRELATED BUSINESS INCOME TAX RETURNS.—

(1) IN GENERAL.—Subparagraph (A) of section 6104(d)(1) is amended by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively, and by inserting after clause (i) the following new clause:

"(ii) any annual return filed under section 6011 which relates to any tax imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc., organizations) by such organization, but only if such organization is described in section 501(c)(3),".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to returns filed after the date of the enactment of this Act.

(c) CERTIFICATION OF UNRELATED BUSINESS TAXABLE INCOME FOR CERTAIN ORGANIZATIONS.—

(1) IN GENERAL.—Section 6011 is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) RETURNS OF CERTAIN ORGANIZATIONS RELATING TO UNRELATED BUSINESS TAXABLE INCOME.—

"(1) IN GENERAL.—Every applicable exempt organization shall include with the return under subsection (a) for the taxable year a statement by an independent auditor or an independent counsel which meets the requirements of paragraph (2).

"(2) STATEMENT.—A statement meets the requirement of this paragraph if the statement—

"(A) contains a certification that—

"(i) the information contained in the return—

"(I) has been reviewed by the auditor or counsel, and

"(II) to the best of the auditor's or counsel's knowledge, is accurate, and

"(ii) to the best of the auditor's or counsel's knowledge, the allocation of expenses between the unrelated trades and business of the organization and the activities related to the purpose or function constituting the basis of the organization's exemption under section 501 complies with the requirements set forth by the Secretary under section 512, and

"(B) indicates—

"(i) whether the auditor or counsel has provided a tax opinion to the organization regarding—

"(I) the classification of any trade or business of the organization as an unrelated trade or business, or

"(II) the treatment of any income as unrelated business taxable income, and

"(ii) a description of any material facts with respect to any such opinion.

"(3) APPLICABLE EXEMPT ORGANIZATION.—For purposes of this subsection, the term 'applicable exempt organization' means any organization which—

"(A) is described in section 501(c)(3),

"(B) has—

"(i) gross income and receipts of not less than $10,000,000 for the taxable year, or

"(ii) gross assets of not less than $10,000,000 on the last day of the taxable year, and

"(C) is subject to the tax imposed under section 511 for the taxable year.".

(2) PENALTY.—

(A) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end the following new section:

"SEC. 6720B. UNRELATED BUSINESS INCOME REQUIREMENTS.

"(a) In General.—Any applicable exempt organization (as defined in section 6011(g)(3)) which fails to file a statement required under section 6011(g) shall pay a penalty in an amount equal to ½ percent of the gross revenue amount of such organization for the taxable year to which such statement relates.

"(b) Gross Revenue Amount.—For purposes of subsection (a), the term 'gross revenue amount' means, with respect to any taxable year, the gross income and receipts of the organization determined without regard to any contributions or grants received by the organization.

"(c) Reasonable Cause.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.".

(B) Conforming amendment.—The table of sections of part I of subchapter B of chapter 68 is amended by adding after the item relating to section 6720A the following new item:

"Sec. 6720B. Unrelated business income requirements.".

(3) Effective date.—The amendments made by this subsection shall apply to returns for taxable years beginning after the date of the enactment of this Act.

SEC. 207. ENCOURAGEMENT OF CONTRIBUTIONS OF CAPITAL GAIN REAL PROPERTY MADE FOR CONSERVATION PURPOSES.

(a) In General.—

(1) Individuals.—Paragraph (1) of subsection 170(b) (relating to percentage limitations) is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively, and by inserting after subparagraph (D) the following new subparagraph:

"(E) Contributions of qualified conservation contributions.—

"(i) In general.—Any qualified conservation contribution (as defined in subsection (h)(1)) to an organization described in subparagraph (A) shall be allowed to the extent the aggregate of such contributions does not exceed the excess of 50 percent of the taxpayer's contribution base over the amount of all other charitable contributions allowable under this paragraph.

"(ii) Carryover.—If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution to which clause (i) applies in each of the 15 succeeding years in order of time.

"(iii) Coordination with other subparagraphs.—For purposes of applying this subsection and subsection (d)(1), contributions described in clause (i) shall not be treated as described in subparagraph (A), (B), (C), or (D) and such subparagraphs shall apply without regard to such contributions.

"(iv) Qualified farmer or rancher.—

"(I) In general.—If the individual is a qualified farmer or rancher for the taxable year in which the contribution is made, clause (i) shall be applied by substituting '100 percent' for '50 percent'.

"(II) Definition.—For purposes of subclause (I), the term 'qualified farmer or rancher' means a taxpayer whose gross income from the trade or business of farming (within the meaning of section 2032A(e)(5)) is greater than 50 percent of the taxpayer's gross income for the taxable year.

"(v) Termination.—This subparagraph shall not apply to any contribution made in taxable years beginning after December 31, 2007.".

(2) Corporations.—Paragraph (2) of section 170(b) is amended to read as follows:

"(2) Corporations.—In the case of a corporation—

"(A) In general.—The total deductions under subsection (a) for any taxable year (other than for contributions to which subparagraph (B) applies) shall not exceed 10 percent of the taxpayer's taxable income.

"(B) Qualified conservation contributions by certain corporate farmers and ranchers.—

"(i) In general.—Any qualified conservation contribution (as defined in subsection (h)(1)) made—

"(I) by a corporation which, for the taxable year during which the contribution is made, is a qualified farmer or rancher (as defined in paragraph (1)(E)(iv)(II)) and the stock of which is not readily tradable on an established securities market at any time during such year, and

"(II) to an organization described in paragraph (1)(A),

shall be allowed to the extent the aggregate of such contributions does not exceed the excess of the taxpayer's taxable income over the amount of charitable contributions allowable under subparagraph (A).

"(ii) Carryover.—If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(2)) as a charitable contribution to which clause (i) applies in each of the 15 succeeding years in order of time.

"(iii) Termination.—This subparagraph shall not apply to any contribution made in taxable years beginning after December 31, 2007.

"(C) Taxable income.—For purposes of this paragraph, taxable income shall be computed without regard to—

"(i) this section,

"(ii) part VIII (except section 248),

"(iii) any net operating loss carrryback to the taxable year under section 172,

"(iv) section 199, and

"(v) any capital loss carryback to the taxable year under section 1212(a)(1).".

(b) Conforming Amendments.—

(1) Paragraph (2) of section 170(d) is amended by striking "subsection (b)(2)" each place it appears and inserting "subsection (b)(2)(A)".

(2) Section 545(b)(2) is amended by striking "and (D)" and inserting "(D), and (E)".

(c) Effective Date.—The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2005.

SEC. 208. ENHANCED DEDUCTION FOR CHARITABLE CONTRIBUTION OF LITERARY, MUSICAL, ARTISTIC, AND SCHOLARLY COMPOSITIONS.

(a) In General.—Subsection (e) of section 170 (relating to certain contributions of ordinary income and capital gain property) is amended by adding at the end the following new paragraph:

"(7) Special rule for certain contributions of literary, musical, artistic, or scholarly compositions.—

"(A) In general.—In the case of a qualified artistic charitable contribution—

"(i) the amount of such contribution taken into account under this section shall be the fair market value of the property contributed (determined at the time of such contribution), and

"(ii) no reduction in the amount of such contribution shall be made under paragraph (1).

"(B) Qualified artistic charitable contribution.—For purposes of this paragraph, the term 'qualified artistic charitable contribution' means a charitable contribution of any literary, musical, artistic, or scholarly composition, or similar property, or the copyright thereon (or both), but only if—

"(i) such property was created by the personal efforts of the taxpayer making such contribution no less than 18 months prior to such contribution,

"(ii) the taxpayer—

"(I) has received a qualified appraisal of the fair market value of such property in accordance with the regulations under this section, and

"(II) attaches to the taxpayer's income tax return for the taxable year in which such contribution was made a copy of such appraisal,

"(iii) the donee is an organization described in subsection (b)(1)(A),

"(iv) the use of such property by the donee is related to the purpose or function constituting the basis for the donee's exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described under section 501(c)),

"(v) the taxpayer receives from the donee a written statement representing that the donee's use of the property will be in accordance with the provisions of clause (iv), and

"(vi) the written appraisal referred to in clause (ii) includes evidence of the extent (if any) to which property created by the personal efforts of the taxpayer and of the same type as the donated property is or has been—

"(I) owned, maintained, and displayed by organizations described in subsection (b)(1)(A), and

"(II) sold to or exchanged by persons other than the taxpayer, donee, or any related person (as defined in section 465(b)(3)(C)).

"(C) Maximum dollar limitation; no carryover of increased deduction.—

"(i) In general.—Subsections (b) and (d) shall not apply to the amount by which any charitable contribution is increased by reason of this paragraph and such increased contribution shall not be taken into account for purposes of applying subparagraphs (A) through (D) of subsection (b)(1) and subsection (d).

"(ii) Contribution base limitation.—The increased contributions shall be allowed to the extent the aggregate of such contributions do not exceed the excess of 50 percent of the contribution base (as defined in subparagraph (F) of subsection (b)(1)) over the amount of all other charitable contributions allowable under subparagraphs (A) through (D) of subsection (b)(1).

"(iii) Artistic adjusted gross income.—The aggregate increase in the charitable contributions by reason of this paragraph for any taxable year shall not exceed the artistic adjusted gross income of the taxpayer for such taxable year.

"(D) Artistic adjusted gross income.—For purposes of this paragraph, the term 'artistic adjusted gross income' means that portion of the adjusted gross income of the taxpayer for the taxable year attributable to—

"(i) income from the sale or use of property created by the personal efforts of the taxpayer which is of the same type as the donated property, and

"(ii) income from teaching, lecturing, performing, or similar activity with respect to property described in clause (i).

"(E) Paragraph not to apply to certain contributions.—Subparagraph (A) shall not apply to any charitable contribution of any letter, memorandum, or similar property which was written, prepared, or produced by or for an individual while the individual is an officer or employee of any person (including any government agency or instrumentality) unless such letter, memorandum, or similar property is entirely personal.

"(F) COPYRIGHT TREATED AS SEPARATE PROPERTY FOR PARTIAL INTEREST RULE.—In the case of a qualified artistic charitable contribution, the tangible literary, musical, artistic, or scholarly composition, or similar property and the copyright on such work shall be treated as separate properties for purposes of this paragraph and subsection (f)(3).

"(G) TERMINATION.—This paragraph shall not apply to contributions made after December 31, 2007.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after December 31, 2005.

SEC. 209. MILEAGE REIMBURSEMENTS TO CHARITABLE VOLUNTEERS EXCLUDED FROM GROSS INCOME.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 is amended by inserting after section 139A the following new section:

"SEC. 139B. MILEAGE REIMBURSEMENTS TO CHARITABLE VOLUNTEERS.

"(a) IN GENERAL.—Gross income of an individual does not include amounts received, from an organization described in section 170(c), as reimbursement of operating expenses with respect to use of a passenger automobile for the benefit of such organization. The preceding sentence shall apply only to the extent that the expenses which are reimbursed would be deductible under this chapter if section 274(d) were applied—

"(1) by using the standard business mileage rate established under such section, and

"(2) as if the individual were an employee of an organization not described in section 170(c).

"(b) APPLICATION TO VOLUNTEER SERVICES ONLY.—Subsection (a) shall not apply with respect to any expenses relating to the performance of services for compensation.

"(c) NO DOUBLE BENEFIT.—A taxpayer may not claim a deduction or credit under any other provision of this title with respect to the expenses under subsection (a).

"(d) EXEMPTION FROM REPORTING REQUIREMENTS.—Section 6041 shall not apply with respect to reimbursements excluded from income under subsection (a).

"(e) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 2007.".

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 is amended by inserting after the item relating to section 139A the following new item:

"Sec. 139B. Mileage reimbursements to charitable volunteers.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 210. ALTERNATIVE PERCENTAGE LIMITATION FOR CORPORATE CHARITABLE CONTRIBUTIONS TO THE MATHEMATICS AND SCIENCE PARTNERSHIP PROGRAM.

(a) IN GENERAL.—Section 170(b) (related to percentage limitations) is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULE FOR CORPORATE CONTRIBUTIONS TO THE MATHEMATICS AND SCIENCE PARTNERSHIP PROGRAM.—

"(A) IN GENERAL.—In the case of a corporation which makes an eligible mathematics and science contribution—

"(i) the limitation under paragraph (2) shall apply separately with respect to all such contributions and all other charitable contributions, and

"(ii) paragraph (2)(A) shall be applied by substituting for '10 percent of the taxpayer's taxable income' the following: 'the sum of (i) the lesser of all eligible mathematics and science contributions or 15 percent of the taxpayer's taxable income, plus (ii) the lesser of the contributions (other than eligible mathematics and science contributions and contributions to which subparagraph (B) applies) or 10 percent of the taxpayer's taxable income reduced by all eligible mathematics and science contributions'.

"(B) ELIGIBLE MATHEMATICS AND SCIENCE CONTRIBUTION.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'eligible mathematics and science contribution' means a charitable contribution (other than a contribution of used equipment) to a qualified partnership for the purpose of an activity described in section 2202(c) of the Elementary and Secondary Education Act of 1965.

"(ii) QUALIFIED PARTNERSHIP.—The term 'qualified partnership' means an eligible partnership (within the meaning of section 2201(b)(1) of the Elementary and Secondary Education Act of 1965), but only to the extent that such partnership does not include a person other than a person described in paragraph (1)(A).

"(C) TERMINATION.—This paragraph shall not apply to any contributions made in taxable years beginning after December 31, 2006.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2005.

Subtitle B—Reforming Charitable Organizations

PART I—GENERAL REFORMS

SEC. 211. TAX INVOLVEMENT BY EXEMPT ORGANIZATIONS IN TAX SHELTER TRANSACTIONS.

(a) IMPOSITION OF EXCISE TAX.—

(1) IN GENERAL.—Chapter 42 (relating to private foundations and certain other tax-exempt organizations) is amended by adding at the end the following new subchapter:

"Subchapter F—Tax Shelter Transactions

"Sec. 4965. Excise tax on certain tax-exempt entities entering into prohibited tax shelter transactions

"SEC. 4965. EXCISE TAX ON CERTAIN TAX-EXEMPT ENTITIES ENTERING INTO PROHIBITED TAX SHELTER TRANSACTIONS.

"(a) PARTICIPATION IN AND APPROVAL OF PROHIBITED TRANSACTIONS.—

"(1) TAX-EXEMPT ENTITY.—

"(A) IN GENERAL.—If any tax-exempt entity (other than a tax-exempt entity described in paragraph (4), (5), (6), or (7) of subsection (c)) is a party to a prohibited tax shelter transaction at any time during the taxable year and knows or has reason to know such transaction is a prohibited tax shelter transaction, such entity shall pay a tax for such taxable year in the amount determined under subsection (b)(1)(A).

"(B) POST-TRANSACTION DETERMINATION.—If any tax-exempt entity (other than a tax-exempt entity described in paragraph (4), (5), (6), or (7) of subsection (c)) is a party to a subsequently listed transaction at any time during the taxable year, such entity shall pay a tax in the amount determined under subsection (b)(1)(B).

"(2) ENTITY MANAGER.—If any entity manager of a tax-exempt entity approves such entity as (or otherwise causes such entity to be) a party to a prohibited tax shelter transaction at any time during the taxable year and knows or has reason to know that the transaction is a prohibited tax shelter transaction, such manager shall pay a tax for such taxable year in the amount determined under subsection (b)(2).

"(3) REASONABLE CAUSE EXCEPTION.—No tax shall be imposed under paragraph (1)(A) or (2) if it is shown that the participation of the tax-exempt entity in the transaction was not willful and was due to reasonable cause.

"(b) AMOUNT OF TAX.—

"(1) ENTITY.—In the case of a tax-exempt entity—

"(A) IN GENERAL.—The amount of the tax imposed under subsection (a)(1)(A) on the entity with respect to a taxable year shall be the greater of—

"(i) 100 percent of the entity's net income (after taking into account any tax imposed by this subtitle with respect to the prohibited tax shelter transaction) for such taxable year which is attributable to the prohibited tax shelter transaction, or

"(ii) 75 percent of the proceeds received by the entity which are attributable to the prohibited tax shelter transaction.

"(B) POST-TRANSACTION DETERMINATION.—The amount of the tax imposed under subsection (a)(1)(B) on the entity with respect to any taxable year shall be an amount equal to the product of—

"(i) the highest rate of tax under section 11, and

"(ii) the greater of—

"(I) the entity's net income (after taking into account any tax imposed by this subtitle with respect to the subsequently listed transaction) for such taxable year which is attributable to the subsequently listed transaction and which is properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year, or

"(II) 75 percent of the proceeds received by the entity which are attributable to the subsequently listed transaction and which are properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year.

"(2) ENTITY MANAGER.—In the case of each entity manager to whom subsection (a)(2) applies, the amount of the tax under such subsection shall be $20,000 for each approval.

"(c) TAX-EXEMPT ENTITY.—For purposes of this section, the term 'tax-exempt entity' means an entity which is—

"(1) described in section 501(c) or 501(d),

"(2) described in section 170(c) (other than an agency or instrumentality of the United States) to which paragraph (1) of this subsection does not apply,

"(3) an Indian tribal government (within the meaning of section 7701(a)(40)),

"(4) described in paragraph (1), (2), or (3) of section 4979(e),

"(5) a program described in section 529,

"(6) an eligible deferred compensation plan described in section 457(b) which is maintained by an employer described in section 4457(e)(1)(A), or

"(7) an arrangement described in section 4973(a).

"(d) ENTITY MANAGER.—For purposes of this section, the term 'entity manager' means—

"(1) with respect to a tax-exempt entity described in paragraph (3) or (4) of section 501(c)—

"(A) in the case of an entity other than a private foundation, an organization manager (as defined in section 4958(f)(2)), and

"(B) in the case of a private foundation, a foundation manager (as defined in section 4946(b)), and

"(2) in all other cases, the person with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization.

"(e) Prohibited Tax Shelter Transaction; Subsequently Listed Transaction.—For purposes of this section—

"(1) Prohibited tax shelter transaction.—

"(A) In general.—The term 'prohibited tax shelter transaction' means—

"(i) any listed transaction, or

"(ii) any prohibited reportable transaction if the tax-exempt entity knows or has reason to know that such transaction is a reportable transaction.

"(B) Listed transaction.—The term 'listed transaction' has the meaning given such term by section 6707A(c)(2).

"(C) Prohibited reportable transaction.—The term 'prohibited reportable transaction' means any confidential transaction or any transaction with contractual protection (as defined under regulations prescribed by the Secretary) which is a reportable transaction (as defined in section 6707A(c)(1)).

"(2) Subsequently listed transaction.—The term 'subsequently listed transaction' means any transaction to which a tax-exempt entity is a party and which is determined by the Secretary to be a listed transaction at any time after the entity has entered into the transaction.

"(f) Regulatory Authority.—The Secretary is authorized to promulgate regulations which provide guidance regarding the determination of the allocation of net income of a tax-exempt entity attributable to a transaction to various periods, including before and after the listing of the transaction or the date which is 90 days after the date of the enactment of this section.

"(g) Coordination With Other Taxes and Penalties.—The tax imposed by this section is in addition to any other tax, addition to tax, or penalty imposed under this title.".

(2) Conforming amendment.—The table of subchapters for chapter 42 is amended by adding at the end the following new item:

"SUBCHAPTER F. TAX SHELTER TRANSACTIONS.".

(b) Disclosure Requirements.—

(1) Disclosure by organization to the Internal Revenue Service.—

(A) In general.—Section 6033(a) (relating to organizations required to file) is amended by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following new paragraph:

"(2) Participation in certain reportable transactions.—Every tax-exempt entity described in section 4965(c) shall file (in such form and manner and at such time as determined by the Secretary) a disclosure of—

"(A) such entity's participation in any prohibited tax shelter transaction (as defined in section 4965(e)), and

"(B) the identity of any other party participating in such transaction which is known by such tax-exempt entity.".

(B) Conforming amendment.—Section 6033(a)(1) is amended by striking "paragraph (2)" and inserting "paragraph (3)".

(2) Disclosure by other taxpayers to the tax-exempt entity.—Section 6011 (relating to general requirement of return, statement, or list), as amended by this Act, is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) Disclosure of Reportable Transaction to Tax-Exempt Entity.—Any taxable party to a prohibited tax shelter transaction (as defined in section 4965(e)(1)) shall by statement disclose to any tax-exempt entity (as defined in section 4965(c)) which is a party to such transaction that such transaction is such a prohibited tax shelter transaction.".

(c) Penalty for Nondisclosure.—

(1) In general.—Section 6652(c) (relating to returns by exempt organizations and by certain trusts), as amended by this Act, is amended by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) Disclosure under section 6033.—

"(A) Penalty on organizations.—In the case of a failure to file a disclosure required under section 6033(a)(2), there shall be paid by the tax-exempt entity (the entity manager in the case of a tax-exempt entity described in paragraph (4), (5), (6), or (7) of section 4965(c)) $100 for each day during which such failure continues. The maximum penalty under this subparagraph on failures with respect to any 1 disclosure shall not exceed $50,000.

"(B) Persons.—

"(i) In general.—The Secretary may make a written demand on any tax-exempt entity subject to penalty under subparagraph (A) specifying therein a reasonable future date by which the disclosure shall be filed for purposes of this subparagraph.

"(ii) Failure to comply with demand.—If any person fails to comply with any demand under clause (i) on or before the date specified in such demand, there shall be paid by such person failing to so comply $100 for each day after the expiration of the time specified in such demand during which such failure continues. The maximum penalty imposed under this subparagraph on all tax-exempt entities for failures with respect to any 1 disclosure shall not exceed $10,000.

"(C) Definitions.—Any term used in this section which is also used in section 4965 shall have the meaning given such term under section 4965.".

(2) Conforming amendment.—Subparagraph (A) of section 6652(c)(1) of such Code is amended by striking "6033" each place it appears in the text and heading thereof and inserting "6033(a)(1)".

(d) Effective Dates.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply to transactions after the date of the enactment of this Act, except that no tax under section 4965(a) of the Internal Revenue Code of 1986 (as added by this section) shall apply with respect to income that is properly allocable to any period on or before the date which is 90 days after such date of enactment.

(2) Disclosure.—The amendments made by subsections (b) and (c) shall apply to disclosures the due date for which are after the date of the enactment of this Act.

SEC. 212. EXCISE TAX ON CERTAIN ACQUISITIONS OF INTERESTS IN INSURANCE CONTRACTS IN WHICH CERTAIN EXEMPT ORGANIZATIONS HOLD AN INTEREST.

(a) Imposition of Tax.—

(1) In general.—Subchapter F of chapter 42 (relating to tax shelter transactions), as added by this Act, is amended by adding at the end the following new section:

"SEC. 4966. EXCISE TAX ON ACQUISITION OF INTERESTS IN INSURANCE CONTRACTS IN WHICH CERTAIN EXEMPT ORGANIZATIONS HOLD AN INTEREST.

"(a) Imposition of Tax.—If there is a taxable acquisition of any interest in an applicable insurance contract, there is hereby imposed on the person acquiring the interest a tax equal to 100 percent of the acquisition costs of the interest.

"(b) Taxable Acquisition.—For purposes of this section—

"(1) In general.—The term 'taxable acquisition' means the acquisition of any direct or indirect interest in an applicable insurance contract by—

"(A) an applicable exempt organization, or

"(B) a person other than an applicable exempt organization if such interest in the hands of such person is not an interest described in clause (i), (ii), (iii), or (iv) of paragraph (2)(B).

"(2) Applicable insurance contract.—

"(A) In general.—The term 'applicable insurance contract' means any life insurance, annuity, or endowment contract with respect to which both an applicable exempt organization and a person other than an applicable exempt organization have directly or indirectly held an interest in the contract (whether or not at the same time).

"(B) Exceptions.—Such term shall not include a life insurance, annuity, or endowment contract if—

"(i) all persons directly or indirectly holding any interest in the contract (other than applicable exempt organizations) have an insurable interest in the insured under the contract independent of any interest of an applicable exempt organization in the contract,

"(ii) the sole interest in the contract of each person other than an applicable exempt organization is as a named beneficiary,

"(iii) the sole interest in the contract of each person other than an applicable exempt organization is—

"(I) as a beneficiary of a trust holding an interest in the contract, but only if the person's designation as such beneficiary was made without consideration and solely on a purely gratuitous basis, or

"(II) as a trustee who holds an interest in the contract in a fiduciary capacity solely for the benefit of applicable exempt organizations or persons otherwise described in clauses (i), (ii), and (iv) or subclause (I) of this clause, or

"(iv) except as provided in subparagraph (C), the sole interest in the contract of each person other than an applicable exempt organization is as a lender with respect to the contract and the contract covers only 1 individual and such individual is an officer, director, or employee of the applicable exempt organization with an interest in the contract.

"(C) Restrictions on exception for lenders.—

"(i) Numerical limit.—The number of contracts that may be taken into account under subparagraph (B)(iv) with respect to officers, directors, or employees of the applicable exempt organization with interests in the contracts shall not exceed the greater of—

"(I) the lesser of 5 percent of the total officers, directors, and employees of the organization or 20, or

"(II) 5.

"(ii) Aggregate indebtedness.—The exception under subparagraph (B)(iv) shall apply only to the extent that the aggregate amount of the indebtedness with respect to 1 or more contracts covering a single individual does not exceed $50,000.

“(D) SECRETARIAL AUTHORITY.—The Secretary may exempt a contract from treatment as an applicable insurance contract based on specific factors, including factors such as whether the transaction is at arms length, whether economic benefits to the applicable exempt organization substantially exceed the economic benefits to all other persons with an interest in the contract (determined without regard to whether, or the extent to which, such organization has paid or contributed with respect to the contract), and the likelihood of abuse.

“(3) DEFINITION AND RULE RELATING TO ACQUISITION COSTS.—

“(A) ACQUISITION COSTS DEFINED.—The term ‘acquisition costs’ means the direct or indirect costs of acquiring an interest in an applicable insurance contract. Such term shall include any fees, commissions, charges, or other amounts paid in connection with the acquisition, whether or not paid to the issuer of the contract.

“(B) TIMING OF PAYMENTS.—Except as provided in regulations, if acquisition costs of any acquisition are paid or incurred in more than 1 calendar year, the tax imposed by subsection (a) with respect to the acquisition shall be imposed each time the costs are so paid or incurred.

“(4) RULES RELATING TO INTERESTS.—

“(A) IN GENERAL.—An interest in the contract includes any right with respect to the contract, whether as an owner, beneficiary, or otherwise.

“(B) INDIRECT INTERESTS.—

“(i) IN GENERAL.—Except as provided in clause (ii), an indirect interest in a contract includes an interest in an entity which directly or indirectly holds an interest in the contract.

“(ii) PORTFOLIO INVESTMENTS.—If an applicable exempt organization holds an interest in a contract solely because the organization holds, as part of a diversified investment strategy, a de minimis interest in an entity which directly or indirectly holds the interest in the contract, such indirect interest in the contract shall not be taken into account for purposes of this section.

“(C) EXCHANGED CONTRACTS.—In the case of an exchange of an applicable insurance contract on which no gain or loss is recognized under section 1035, any interest in any of the contracts involved in the exchange shall be treated as an interest in all such contracts.

“(5) INCREASE IN INTEREST.—If a person increases an interest in an applicable insurance contract, the increase shall be treated as a separate acquisition for purposes of this section.

“(6) PRIOR ACQUISITIONS.—Except as provided in regulations, if a person acquires an interest in a contract before the contract is treated as an applicable insurance contract, the acquisition shall be treated as a taxable acquisition of an interest in an applicable insurance contract as of the date the contract becomes an applicable insurance contract.

“(c) APPLICABLE EXEMPT ORGANIZATION.—For purposes of this section, the term ‘applicable exempt organization’ means—

“(1) an organization described in section 170(c),

“(2) an organization described in section 168(h)(2)(A)(iv), or

“(3) an organization not described in paragraph (1) or (2) which is described in section 2055(a) or section 2522(a).

“(d) TAX NOT TREATED AS INVESTMENT IN THE CONTRACT.—For purposes of section 72, the tax imposed by this section shall not be included in investment in the contract.

“(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section. Such regulations may include regulations which—

“(1) provide, for purposes of subsection (b)(6), appropriate rules for the application of this section in any case where an interest is acquired before a contract becomes an applicable insurance contract,

“(2) prevent, in cases the Secretary determines appropriate, the imposition of more than one tax under this section if the same interest is acquired more than once, and

“(3) are designed to prevent avoidance of the purposes of this section, including through the use of intermediaries.”.

(2) CONFORMING AMENDMENT.—The table of sections for subchapter F of chapter 42, as added by this Act, is amended by adding at the end the following new item:

“Sec. 4966. Excise tax on acquisition of interests in insurance contracts in which certain exempt organizations hold an interest.”.

(b) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 (relating to information concerning transactions with other persons) is amended by adding at the end the following new section:

“SEC. 6050U. RETURNS RELATING TO APPLICABLE INSURANCE CONTRACTS IN WHICH CERTAIN EXEMPT ORGANIZATIONS HOLD INTERESTS.

“(a) REQUIREMENTS OF REPORTING.—

“(1) EXEMPT ORGANIZATIONS.—Each—

“(A) applicable exempt organization which acquires (within the meaning of section 4966) an interest in any applicable insurance contract, and

“(B) other person which makes an acquisition of such an interest if such acquisition is taxable under section 4966,

shall make the return described in subsection (c).

“(2) TRANSFERS.—If a person (including an applicable exempt organization) acquires an interest in an applicable insurance contract in an acquisition which is taxable under section 4966 and then transfers such interest to 1 or more other persons, each person acquiring all or a portion of such interest shall make the return described in subsection (c).

“(b) TIME FOR MAKING RETURN.—Any organization or person required to make a return under subsection (a) shall file such return at such time as may be established by the Secretary with respect to—

“(1) in the case of a person described in subsection (a)(1), the calendar year in which the acquisition occurs, any calendar year in which acquisition costs are paid or incurred, and any other calendar years specified by the Secretary, and

“(2) in the case of a person described in subsection (a)(2), the calendar year in which the transfer occurs.

“(c) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

“(1) is in such form as the Secretary prescribes,

“(2) in the case of—

“(A) a return required under subsection (a)(1)(A), contains the name, address, and taxpayer identification number of the applicable exempt organization, the issuer of the applicable insurance contract, and any person acquiring an interest in the contract if the acquisition is taxable under section 4966,

“(B) a return required under subsection (a)(1)(B), contains the name, address, and taxpayer identification number of the person acquiring an interest in the applicable insurance contract if the acquisition is taxable under section 4966, any applicable exempt organization holding an interest in the contract, and the issuer of the contract, and

“(C) a return required under subsection (a)(2), contains the name, address, and taxpayer identification number of the transferor and transferee, and

“(3) contains such other information as the Secretary may prescribe.

“(d) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each person whose taxpayer identification information is required to be included in such return under subsection (c) a written statement showing—

“(1) the name and address of the person required to make such return and the telephone number of the information contact for such person, and

“(2) the taxpayer identity and other information required to be shown on the return with respect to such person.

The written statement required under the preceding sentence shall be furnished on or before the date specified by the Secretary.

“(e) DEFINITIONS.—For purposes of this section, any term used in this section which is also used in section 4966 shall have the meaning given such term by section 4966.”.

(2) PENALTIES.—

(A) IN GENERAL.—Section 6724(d) is amended—

(i) in paragraph (1)(B), by redesignating clauses (xiii) through (xviii) as clauses (xiv) through (xix) and by inserting after clause (xii) the following new clause:

“(xiii) section 6050U (relating to returns relating to applicable insurance contracts in which certain exempt organizations hold interests),”, and

(ii) in paragraph (3), by striking “and” at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting “, and”, and by adding at the end the following new subparagraph:

“(E) the statement required by subsection (d) of section 6050U (relating to returns relating to applicable insurance contracts in which certain exempt organizations hold interests).”.

(B) INTENTIONAL DISREGARD.—Section 6721(e)(2) is amended by striking “or” at the end of subparagraph (B), by striking “and” at the end of subparagraph (C) and inserting “or”, and by adding at the end the following new subparagraph:

“(D) in the case of a return required to be filed under section 6050U, the amount of tax imposed under section 4966 which has not been paid with respect to items required to be included on the return, and”.

(3) CONFORMING AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61is amended by adding at the end the following new item:

“Sec. 6050U. Returns relating to applicable insurance contracts in which certain exempt organizations hold interests.”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to contracts issued after May 3, 2005.

(2) REPORTING OF EXISTING CONTRACTS.—In the case of any life insurance, annuity, or endowment contract—

(A) which was issued on or before May 3, 2005,

(B) with respect to which an applicable exempt organization (as defined in section 4966 of the Internal Revenue Code of 1986, as added by this section) holds an interest on May 3, 2005, and

(C) which would be treated as an applicable insurance contract (as so defined) if issued after May 3, 2005,

such organization shall, not later than the date which is 1 year after the date of the enactment of this Act, report to the Secretary of the Treasury with respect to such contract. Such report shall be in such form and manner, and contain such information, as the Secretary may prescribe. The Secretary shall submit such reports, along with any recommendations for legislation as the Secretary considers appropriate, to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate within 6 months of the date such reports are required to be filed.

SEC. 213. INCREASE IN PENALTY EXCISE TAXES ON PUBLIC CHARITIES, SOCIAL WELFARE ORGANIZATIONS, AND PRIVATE FOUNDATIONS.

(a) Taxes on Self-Dealing and Excess Benefit Transactions.—

(1) In general.—Section 4941(a) (relating to initial taxes) is amended—

(A) in paragraph (1), by striking "5 percent" and inserting "10 percent", and

(B) in paragraph (2), by striking "2½ percent" and inserting "5 percent".

(2) Increase in tax if self-dealing includes compensation to disqualified person.—Section 4941(a)(1) is amended by adding at the end the following new sentence: "If the act of self-dealing includes acts described in subsection (d)(1)(D), '25 percent' shall be substituted for '10 percent', except that the Secretary may abate under section 4962 (determined without regard to the exception under subsection (b) thereof) not more than 15 percentage points of such tax.".

(3) Increased limitation for managers on self-dealing.—Section 4941(c)(2) is amended by striking "$10,000" each place it appears in the text and heading thereof and inserting "$20,000".

(4) Increased limitation for managers on excess benefit transactions.—Section 4958(d)(2) is amended by striking "$10,000" and inserting "$20,000".

(b) Taxes on Failure To Distribute Income.—Section 4942(a) (relating to initial tax) is amended by striking "15 percent" and inserting "30 percent".

(c) Taxes on Excess Business Holdings.—Section 4943(a)(1) (relating to imposition) is amended by striking "5 percent" and inserting "10 percent".

(d) Taxes on Investments Which Jeopardize Charitable Purpose.—

(1) In general.—Section 4944(a) (relating to initial taxes) is amended by striking "5 percent" both places it appears and inserting "10 percent".

(2) Increased limitation for managers.—Section 4944(d)(2) is amended—

(A) by striking "$5,000," and inserting "$10,000,", and

(B) by striking "$10,000." and inserting "$20,000.".

(e) Taxes on Taxable Expenditures.—

(1) In general.—Section 4945(a) (relating to initial taxes) is amended—

(A) in paragraph (1), by striking "10 percent" and inserting "20 percent", and

(B) in paragraph (2), by striking "2½ percent" and inserting "5 percent".

(2) Increased limitation for managers.—Section 4945(c)(2) is amended—

(A) by striking "$5,000," and inserting "$10,000,", and

(B) by striking "$10,000." and inserting "$20,000.".

(f) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 214. REFORM OF CHARITABLE CONTRIBUTIONS OF CERTAIN EASEMENTS ON BUILDINGS IN REGISTERED HISTORIC DISTRICTS.

(a) Special Rules With Respect to Buildings in Registered Historic Districts.—

(1) In general.—Paragraph (4) of section 170(h) (relating to definition of conservation purpose) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) Special rules with respect to buildings in registered historic districts.—In the case of any contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in subparagraph (C)(ii), such contribution shall not be considered to be exclusively for conservation purposes unless—

"(i) such interest—

"(I) includes a restriction which preserves the entire exterior of the building (including the front, sides, rear, and height of the building), and

"(II) prohibits any change in the exterior of the building which is inconsistent with the historical character of such exterior,

"(ii) the donor and donee enter into a written agreement certifying, under penalty of perjury, that the donee—

"(I) is a qualified organization (as defined in paragraph (3)) with a purpose of environmental protection, land conservation, open space preservation, or historic preservation, and

"(II) has the resources to manage and enforce the restriction and a commitment to do so, and

"(iii) in the case of any contribution made in a taxable year beginning after the date of the enactment of this subparagraph, the taxpayer includes with the taxpayer's return for the taxable year of the contribution—

"(I) a qualified appraisal (within the meaning of subsection (f)(11)(E)) of the qualified property interest,

"(II) photographs of the entire exterior of the building, and

"(III) a description of all restrictions on the development of the building.".

(b) Disallowance of Deduction for Structures and Land in Registered Historic Districts.—Subparagraph (C) of section 170(h)(4), as redesignated by subsection (a), is amended—

(1) by striking "any building, structure, or land area which",

(2) by inserting "any building, structure, or land area which" before "is listed" in clause (i), and

(3) by inserting "any building which" before "is located" in clause (ii).

(c) Filing Fee for Certain Contributions.—Subsection (f) of section 170 (relating to disallowance of deduction in certain cases and special rules) is amended by inserting at the end the following new paragraph:

"(13) Contributions of certain interests in buildings located in registered historic districts.—

"(A) In general.—No deduction shall be allowed with respect to any contribution described in subparagraph (B) unless the taxpayer includes with the return for the taxable year of the contribution a $500 filing fee.

"(B) Contribution described.—A contribution is described in this subparagraph if such contribution is a qualified conservation contribution (as defined in subsection (h)) which is a restriction with respect to the exterior of a building described in subsection (h)(4)(C)(ii) and for which a deduction is claimed in excess of the greater of—

"(i) 3 percent of the fair market value of the building (determined immediately before such contribution), or

"(ii) $10,000.

"(C) Dedication of fee.—Any fee collected under this paragraph shall be used for the enforcement of the provisions of subsection (h).".

(d) Effective Date.—

(1) Special rules for buildings in registered historic districts.—The amendments made by subsection (a) shall apply to contributions made after November 15, 2005.

(2) Disallowance of deduction for structures and land.—The amendments made by subsection (b) shall apply to contributions made after the date of the enactment of this Act.

(3) Filing fee.—The amendment made by subsection (c) shall apply to contributions made 180 days after the date of the enactment of this Act.

SEC. 215. CHARITABLE CONTRIBUTIONS OF TAXIDERMY PROPERTY.

(a) In General.—Subsection (f) of section 170, as amended by this Act, is amended by adding at the end the following new paragraph:

"(14) Contributions of taxidermy property.—

"(A) Contributions of more than $500.—In the case of any contribution of taxidermy property for which a deduction of more than $500 is claimed, no deduction shall be allowed under subsection (a) unless the donor includes with the return for the taxable year in which the contribution is made a photograph of the taxidermy property and data with respect to the sales prices of similar taxidermy property.

"(B) Contributions of more than $5,000.—In the case of any contribution of taxidermy property for which a deduction of more than $5,000 is claimed, no deduction shall be allowed under subsection (a) unless the donor—

"(i) notifies the Internal Revenue Service of such deduction, and

"(ii) includes with the return for the taxable year in which the contribution is made—

"(I) a statement of value from the Internal Revenue Service, or

"(II) a request for a statement of value from the Internal Revenue Service and a $500 fee.

"(C) Taxidermy property.—For purposes of this section, the term 'taxidermy property' means a mounted work of art which contains any part of a dead animal.".

(b) Effective Date.—The amendment made by this section shall apply to contributions made after November 15, 2005.

SEC. 216. RECAPTURE OF TAX BENEFIT FOR CHARITABLE CONTRIBUTIONS OF EXEMPT USE PROPERTY NOT USED FOR AN EXEMPT USE.

(a) Recapture of Deduction on Certain Sales of Exempt Use Property.—

(1) In general.—Clause (i) of section 170(e)(1)(B) (related to certain contributions of ordinary income and capital gain property) is amended to read as follows:

"(i) of tangible personal property—

"(I) if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)), or

"(II) which is applicable property (as defined in paragraph (8)(C)) which is sold, exchanged, or otherwise disposed of by the donee before the last day of the taxable year in which the contribution was made and with respect to which the donee has not made a certification in accordance with paragraph (8)(D).".

(2) DISPOSITIONS AFTER CLOSE OF TAXABLE YEAR.—Section 170(e), as amended by this Act, is amended by adding at the end the following new paragraph:

"(8) RECAPTURE OF DEDUCTION ON CERTAIN DISPOSITIONS OF EXEMPT USE PROPERTY.—

"(A) IN GENERAL.—In the case of an applicable disposition of applicable property, there shall be included in the income of the donor of such property for the taxable year of such donor in which the applicable disposition occurs an amount equal to the excess (if any) of—

"(i) the amount of the deduction allowed to the donor under this section with respect to such property, over

"(ii) the donor's basis in such property at the time such property was contributed.

"(B) APPLICABLE DISPOSITION.—For purposes of this paragraph, the term 'applicable disposition' means any sale, exchange, or other disposition by the donee of applicable property—

"(i) after the last day of the taxable year of the donor in which such property was contributed, and

"(ii) before the last day of the 3-year period beginning on the date of the contribution of such property,

unless the donee makes a certification in accordance with subparagraph (D).

"(C) APPLICABLE PROPERTY.—For purposes of this paragraph, the term 'applicable property' means charitable deduction property (as defined in section 6050L(a)(2)(A))—

"(i) which is tangible personal property the use of which is identified by the donee as related to the purpose or function constituting the basis of the donee's exemption under section 501, and

"(ii) for which a deduction in excess of the donor's basis is allowed.

"(D) CERTIFICATION.—A certification meets the requirements of this subparagraph if it is a written statement which is signed under penalty of perjury by an officer of the donee organization and—

"(i) which—

"(I) certifies that the use of the property by the donee was related to the purpose or function constituting the basis for the donee's exemption under section 501, and

"(II) describes how the property was used and how such use furthered such purpose or function, or

"(ii) which—

"(I) states the intended use of the property by the donee at the time of the contribution, and

"(II) certifies that such intended use has become impossible or infeasible to implement.".

(b) REPORTING REQUIREMENTS.—Paragraph (1) of section 6050L(a) (relating to returns relating to certain dispositions of donated property) is amended—

(1) by striking "2 years" and inserting "3 years", and

(2) by striking "and" at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting a comma, and by inserting at the end the following:

"(F) a description of the donee's use of the property, and

"(G) a statement indicating whether the use of the property was related to the purpose or function constituting the basis for the donee's exemption under section 501.

In any case in which the donee indicates that the use of applicable property (as defined in section 170(e)(1)(C)) was related to the purpose or function constituting the basis for the exemption of the donee under section 501 under subparagraph (G), the donee shall include with the return the certification described in section 170(e)(8)(D) if such certification is required under section 170(e)(8).".

(c) PENALTY.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by this Act, is amended by inserting after section 6720B the following new section:

"SEC. 6720C. FRAUDULENT IDENTIFICATION OF EXEMPT USE PROPERTY.

"In addition to any criminal penalty provided by law, any person who identifies applicable property (as defined in section 170(e)(8)(C)) as having a use which is related to a purpose or function constituting the basis for the donee's exemption under section 501 and who knows that such property is not intended for such a use shall pay a penalty of $10,000.".

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68, as amended by this Act, is amended by adding after the item relating to section 6720B the following new item:

"Sec. 6720C. Fraudulent identification of exempt use property.".

(d) EFFECTIVE DATE.—

(1) RECAPTURE.—The amendments made by subsection (a) shall apply to contributions after June 1, 2006.

(2) REPORTING.—The amendments made by subsection (b) shall apply to returns filed after June 1, 2006.

(3) PENALTY.—The amendments made by subsection (c) shall apply to identifications made after the date of the enactment of this Act.

SEC. 217. LIMITATION OF DEDUCTION FOR CHARITABLE CONTRIBUTIONS OF CLOTHING AND HOUSEHOLD ITEMS.

(a) IN GENERAL.—Subsection (f) of section 170, as amended by this Act, is amended by adding at the end the following new paragraph:

"(15) CONTRIBUTIONS OF CLOTHING AND HOUSEHOLD ITEMS.—

"(A) IN GENERAL.—In the case of an individual, partnership, or S corporation, the deduction allowed under subsection (a) for any contribution of clothing or household items with respect to which the donor has not obtained a qualified appraisal shall be—

"(i) in the case of an item which is in good used condition or better, no more than the amount assigned to such item under subparagraph (B) for such year,

"(ii) except as provided by clause (iii), in the case of an item which is not in good used condition or better, no more than 20 percent of the amount assigned to such item under subparagraph (B) for such year, and

"(iii) in the case of an item which is not functional with respect to the use for which it was designed, zero.

"(B) ASSIGNED VALUES.—Each year the Secretary shall publish an itemized list of clothing and household items and shall assign an amount with respect to each item on the list which represents the fair market value of such item in good used condition.

"(C) EXCEPTION FOR ITEMS SOLD BY THE DONEE.—Subparagraph (A) shall not apply to any contribution of clothing or household items for which a deduction of more than $500 is claimed if—

"(i) the donee sells the clothing or household items before the earlier of—

"(I) the due date (including extensions) for filing the return of tax for the taxable year of the donor in which the contribution was made, or

"(II) the date on which such return was filed,

"(ii) the donee reports the sales price of the clothing or household items to the donor, and

"(iii) the amount claimed as a deduction with respect to such clothing or household items does not exceed the amount of the sales price reported to the donor.

"(D) HOUSEHOLD ITEMS.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'household items' includes furniture, furnishings, electronics, appliances, linens, and other similar items.

"(ii) EXCLUDED ITEMS.—Such term does not include—

"(I) food,

"(II) paintings, antiques, and other objects of art,

"(III) jewelry and gems, and

"(IV) collections.

"(E) SPECIAL RULE FOR PASS-THRU ENTITIES.—In the case of a partnership or S corporation, this paragraph shall be applied at the entity level, except that the deduction shall be denied at the partner or shareholder level.".

(b) SUBSTANTIATION.—

(1) ITEMS OF $250 OR MORE.—Subparagraph (B) of section 170(f)(8) is amended by inserting after clause (iii) the following new clause:

"(iv) In the case of a contribution consisting of clothing or household items, the number of items contributed, an indication of the condition of each item, a description of the type of item contributed, and a copy of the list published under paragraph (15)(B) or an instruction on how to obtain such list.".

(2) ITEMS OF $500 OR MORE.—Subparagraph (B) of section 170(f)(11) is amended by inserting ", the information contained in the acknowledgment required under paragraph (8) in the case of any contribution of clothing or household items," after "a description of such property".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after December 31, 2006.

SEC. 218. MODIFICATION OF RECORDKEEPING REQUIREMENTS FOR CERTAIN CHARITABLE CONTRIBUTIONS.

(a) RECORDKEEPING REQUIREMENT.—Subsection (f) of section 170, as amended by this Act, is amended by adding at the end the following new paragraph:

"(16) RECORDKEEPING.—No deduction shall be allowed under subsection (a) for any contribution of a cash, check, or other monetary gift unless the donor maintains as a record of such contribution—

"(A) a cancelled check, or

"(B) a receipt or a letter or other written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made in taxable years beginning after the date of the enactment of this Act.

SEC. 219. CONTRIBUTIONS OF FRACTIONAL INTERESTS IN TANGIBLE PERSONAL PROPERTY.

(a) INCOME TAX.—Section 170 (relating to charitable, etc., contributions and gifts), as amended by this Act, is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

"(p) Special Rules for Fractional Gifts.—

"(1) Valuation of subsequent gifts.—

"(A) In general.—In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

"(i) the fair market value of the property at the time of the initial fractional contribution, or

"(ii) the fair market value of the property at the time of the additional contribution.

"(B) Definitions.—For purposes of this paragraph—

"(i) Additional contribution.—The term 'additional contribution' means any charitable contribution by the taxpayer of any interest in property with respect to which the taxpayer has previously made an initial fractional contribution.

"(ii) Initial fractional contribution.—The term 'initial fractional contribution' means, with respect to any taxpayer, the first charitable contribution of an undivided portion of the taxpayer's entire interest in any tangible personal property.

"(2) Recapture of deduction in certain cases.—

"(A) In general.—The Secretary shall provide for the recapture of an amount equal to the amount of any deduction allowed under this section (plus interest) with respect to any contribution of an undivided interest of a taxpayer's entire interest in property in any case where such property is not in the physical possession of the donee during any applicable period for a period of time which bears substantially the same ratio to 1 year as—

"(i) the percentage of the undivided interest of the donee in the property (determined on the day after such contribution was made), bears to

"(ii) 100 percent.

"(B) Applicable period.—For purposes of subparagraph (A), the term 'applicable period' means any 1-year period which begins on—

"(i) in the year of the contribution, the date of the contribution, and

"(ii) in any subsequent calendar year, the date which corresponds to the date described in clause (i).

"(C) Anti-abuse rules.—The Secretary shall prescribe such regulations as necessary to prevent the avoidance of the purposes of this paragraph through the transfer of any such undivided interest to a third party controlled by the taxpayer.".

(b) Estate Tax.—Section 2055 (relating to transfers for public, charitable, and religious uses) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) Valuation of Subsequent Gifts.—

"(1) In general.—In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

"(A) the fair market value of the property at the time of the initial fractional contribution, or

"(B) the fair market value of the property at the time of the additional contribution.

"(2) Definitions.—For purposes of this paragraph—

"(A) Additional contribution.—The term 'additional contribution' means a bequest, legacy, devise, or transfer described in subsection (a) of any interest in a property with respect to which the decedent had previously made an initial fractional contribution.

"(B) Initial fractional contribution.—The term 'initial fractional contribution' means, with respect to any decedent, any charitable contribution of an undivided portion of the decedent's entire interest in any tangible personal property for which a deduction was allowed under section 170.".

(c) Gift Tax.—Section 2522 (relating to charitable and similar gifts) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) Special Rules for Fractional Gifts.—

"(1) Valuation of subsequent gifts.—

"(A) In general.—In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

"(i) the fair market value of the property at the time of the initial fractional contribution, or

"(ii) the fair market value of the property at the time of the additional contribution.

"(B) Definitions.—For purposes of this paragraph—

"(i) Additional contribution.—The term 'additional contribution' means any gift for which a deduction is allowed under subsection (a) or (b) of any interest in a property with respect to which the donor has previously made an initial fractional contribution.

"(ii) Initial fractional contribution.—The term 'initial fractional contribution' means, with respect to any donor, the first gift of an undivided portion of the donor's entire interest in any tangible personal property for which a deduction is allowed under subsection (a) or (b).

"(2) Recapture of deduction in certain cases.—

"(A) In general.—The Secretary shall provide for the recapture of an amount equal to the amount of any deduction allowed under this section (plus interest) with respect to any contribution of an undivided interest of a donor's entire interest in property in any case where such property is not in the physical possession of the donee during any applicable period for a period of time which bears substantially the same ratio to 1 year as—

"(i) the percentage of the undivided interest of the donee in the property (determined on the day after such contribution was made), bears to

"(ii) 100 percent.

"(B) Applicable period.—For purposes of subparagraph (A), the term 'applicable period' means any 1-year period which begins on—

"(i) in the year of the contribution, the date of the contribution, and

"(ii) in any subsequent calendar year, the date which corresponds to the date described in clause (i).

"(C) Anti-abuse rules.—The Secretary shall prescribe such regulations as necessary to prevent the avoidance of the purposes of this paragraph though the transfer of any such undivided interest to a third party controlled by the donor.".

(d) Effective Date.—The amendments made by this section shall apply to contributions, bequests, and gifts made after the date of the enactment of this Act.

SEC. 220. PROVISIONS RELATING TO SUBSTANTIAL AND GROSS OVERSTATEMENTS OF VALUATIONS OF CHARITABLE DEDUCTION PROPERTY.

(a) Substantial and Gross Overstatements of Valuations of Charitable Deduction Property.—

(1) In general.—Section 6662 (relating to imposition of accuracy-related penalties) is amended by adding at the end the following new subsection:

"(i) Special Rules for Charitable Deduction Property.—In the case of charitable deduction property (as defined in section 6664(c)(3)(A))—

"(1) the determination under subsection (e)(1)(A) as to whether there is a substantial valuation misstatement under chapter 1 with respect to the value of the property shall be made by substituting '150 percent' for '200 percent', and

"(2) the determination under subsection (h)(2)(A)(i) as to whether there is a gross valuation misstatement with respect to the value of the property shall be made by substituting '200 percent' for '400 percent' and by substituting '150 percent' for '200 percent' in applying subsection (e)(1)(A) for purposes of such determination.".

(2) Elimination of reasonable cause exception for gross misstatements.—Section 6664(c)(2) (relating to reasonable cause exception for underpayments) is amended by striking "paragraph (1) shall not apply unless" and inserting "paragraph (1) shall not apply. The preceding sentence shall not apply to a substantial valuation overstatement under chapter 1 if".

(b) Penalty on Appraisers Whose Appraisals Result in Substantial or Gross Valuation Misstatements.—

(1) In general.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6695 the following new section:

"SEC. 6695A. SUBSTANTIAL AND GROSS VALUATION MISSTATEMENTS ATTRIBUTABLE TO INCORRECT APPRAISALS.

"(a) Imposition of Penalty.—If—

"(1) a person prepares an appraisal of the value of property and such person knows, or reasonably should have known, that the appraisal would be used in connection with a return or a claim for refund, and

"(2) the claimed value of the property on a return or claim for refund which is based on such appraisal results in a substantial valuation misstatement under chapter 1 (within the meaning of section 6662(e)), or a gross valuation misstatement (within the meaning of section 6662(h)), with respect to such property,

then such person shall pay a penalty in the amount determined under subsection (b).

"(b) Amount of Penalty.—The amount of the penalty imposed under subsection (a) on any person with respect to an appraisal shall be equal to the lesser of—

"(1) the greater of—

"(A) 10 percent of the amount of the underpayment (as defined in section 6664(a)) attributable to the misstatement described in subsection (a)(2), or

"(B) $1,000, or

"(2) 125 percent of the gross income received by the person described in subsection (a)(1) from the preparation of the appraisal.

"(c) Exception.—No penalty shall be imposed under subsection (a) if the person establishes to the satisfaction of the Secretary that the value established in the appraisal was more likely than not the proper value.".

(2) Rules applicable to penalty.—Section 6696 (relating to rules applicable with respect to sections 6694 and 6695) is amended—

(A) by striking "6694 and 6695" each place it appears in the text and heading thereof and inserting "6694, 6695, and 6695A", and

(B) by striking "6694 or 6695" each place it appears in the text and inserting "6694, 6695, or 6695A".

(3) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6696 and inserting the following new items:

"Sec. 6695A. Substantial and gross valuation misstatements attributable to incorrect appraisals.
"Sec. 6696. Rules applicable with respect to sections 6694, 6695, and 6695A.".

(c) QUALIFIED APPRAISERS AND APPRAISALS.—

(1) IN GENERAL.—Subparagraph (E) of section 170(f)(11) is amended to read as follows:

"(E) QUALIFIED APPRAISAL AND APPRAISER.—For purposes of this paragraph—

"(i) QUALIFIED APPRAISAL.—The term 'qualified appraisal' means, with respect to any property, an appraisal of such property which—

"(I) is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary, and

"(II) is conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed under subclause (I).

"(ii) QUALIFIED APPRAISER.—Except as provided in clause (iii), the term 'qualified appraiser' means an individual who—

"(I) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary,

"(II) regularly performs appraisals for which the individual receives compensation, and

"(III) meets such other requirements as may be prescribed by the Secretary in regulations or other guidance.

"(iii) SPECIFIC APPRAISALS.—An individual shall not be treated as a qualified appraiser with respect to any specific appraisal unless—

"(I) the individual demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and

"(II) the individual has not been prohibited from practicing before the Internal Revenue Service by the Secretary under section 330(c) of title 31, United States Code, at any time during the 3-year period ending on the date of the appraisal.".

(2) REASONABLE CAUSE EXCEPTION.—Subparagraphs (B) and (C) of section 6664(c)(3) are amended to read as follows:

"(B) QUALIFIED APPRAISAL.—The term 'qualified appraisal' has the meaning given such term by section 170(f)(11)(E)(i).

"(C) QUALIFIED APPRAISER.—The term 'qualified appraiser' has the meaning given such term by section 170(f)(11)(E)(ii).".

(d) DISCIPLINARY ACTIONS AGAINST APPRAISERS.—Section 330(c) of title 31, United States Code, is amended by striking "with respect to whom a penalty has been assessed under section 6701(a) of the Internal Revenue Code of 1986".

(e) EFFECTIVE DATES.—

(1) MISSTATEMENT PENALTIES.—Except as provided in paragraph (3), the amendments made by subsection (a) shall apply to returns filed after the date of the enactment of this Act.

(2) APPRAISER PROVISIONS.—Except as provided in paragraph (3), the amendments made by subsections (b), (c), and (d) shall apply to appraisals prepared with respect to returns or submissions filed after the date of the enactment of this Act.

(3) SPECIAL RULE FOR CERTAIN EASEMENTS.—In the case of a contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in section 170(h)(4)(C)(ii) of the Internal Revenue Code of 1986, and an appraisal with respect to the contribution, the amendments made by subsections (a) and (b) shall apply to returns filed after December 16, 2004.

SEC. 221. ADDITIONAL STANDARDS FOR CREDIT COUNSELING ORGANIZATIONS.

(a) IN GENERAL.—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

"(q) SPECIAL RULES FOR CREDIT COUNSELING ORGANIZATIONS.—

"(1) IN GENERAL.—An organization with respect to which the provision of credit counseling services is a substantial purpose shall not be exempt from tax under subsection (a) unless such organization is described in paragraph (3) or (4) of subsection (c) and such organization is organized and operated in accordance with the following requirements:

"(A) The organization—

"(i) provides credit counseling services tailored to the specific needs and circumstances of consumers,

"(ii) makes no loans to debtors and does not negotiate the making of loans on behalf of debtors, and

"(iii) does not promote, or charge any separate fee for, any service for the purpose of improving any consumer's credit record, credit history, or credit rating.

"(B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.

"(C) The organization establishes and implements a fee policy which—

"(i) requires that any fees charged to a consumer for services are reasonable, and

"(ii) prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.

"(D) At all times the organization has a board of directors or other governing body—

"(i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,

"(ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and

"(iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

"(E) The organization does not own more than 35 percent of—

"(i) the total combined voting power of a corporation which is in the business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services,

"(ii) the profits interest of a partnership which is in the business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services, and

"(iii) the beneficial interest of a trust or estate which is in the business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services.

"(F) The organization receives no amount for providing referrals to others for financial services (including debt management services) or credit counseling services to be provided to consumers, and pays no amount to others for obtaining referrals of consumers.

"(2) REQUIREMENTS UNDER SUBSECTION (c)(3).—In addition to the requirements under paragraph (1), an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (3) of subsection (c) shall not be exempt from tax under subsection (a) unless such organization is organized and operated in accordance with the following requirements:

"(A) The organization—

"(i) charges no fees (other than nominal fees) for debt management plan services or credit counseling services and waives any fees if the consumer is unable to pay such fees, and

"(ii) does not solicit contributions from consumers during the initial counseling process or while the consumer is receiving services from the organization.

"(B) The activities of the organization related to debt management plan services (in the aggregate) do not exceed 25 percent of the total activities of the organization activities measured by any of the following:

"(i) The time spent on activities.

"(ii) The resources dedicated to activities.

"(iii) The effort expended by the organization with respect to activities.

"(iv) The sources of revenue of the organization.

"(v) Any other measures prescribed by the Secretary.

"(3) REQUIREMENTS UNDER SUBSECTION (c)(4).—In addition to the requirements under paragraph (1), an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (4) of subsection (c) shall not be exempt from tax under subsection (a) unless such organization—

"(A) is organized and operated such that it charges no fees (other than nominal fees) for credit counseling services and waives any fees if the consumer is unable to pay such fees, and

"(B) notifies the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition as a credit counseling organization.

"(4) SECRETARIAL AUTHORITY.—The Secretary may require any organization described in paragraph (1) to submit such information as the Secretary requires to verify that such organization meets the requirements of this section.

"(5) CREDIT COUNSELING SERVICES; DEBT MANAGEMENT PLAN SERVICES.—For purposes of this subsection—

"(A) CREDIT COUNSELING SERVICES.—The term 'credit counseling services' means—

“(i) the providing of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit,

“(ii) the assisting of individuals and families with financial problems by providing them with counseling, or

“(iii) a combination of the activities described in clauses (i) and (ii).

“(B) DEBT MANAGEMENT PLAN SERVICES.—The term ‘debt management plan services’ means services related to the repayment, consolidation, or restructuring of a consumer's debt, and includes the negotiation with creditors of lower interest rates, the waiver or reduction of fees, and the marketing and processing of debt management plans.”.

(b) DEBT MANAGEMENT PLAN SERVICES TREATED AS AN UNRELATED BUSINESS.—Section 513 (relating to unrelated trade or business) is amended by adding at the end the following:

“(j) DEBT MANAGEMENT PLAN SERVICES.—The term ‘unrelated trade or business’ includes—

“(1) the provision of debt management plan services (as defined in section 501(q)(4)(B)) by an organization described in section 501(q) to the extent such services are not substantially related to the provision of credit counseling services (as defined in section 501(q)(4)(A)) to a consumer, and

“(2) the provision of debt management plan services (as so defined) by any organization other than an organization which meets the requirements of section 501(q).”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

(2) TRANSITION RULE FOR EXISTING ORGANIZATIONS.—In the case of any organization described in paragraph (3) or (4) section 501(c) of the Internal Revenue Code of 1986 and with respect to which the provision of credit counseling services is a substantial purpose on the date of the enactment of this Act, the amendments made by this section shall apply to taxable years beginning after the date which is 1 year after the date of the enactment of this Act.

SEC. 222. EXPANSION OF THE BASE OF TAX ON PRIVATE FOUNDATION NET INVESTMENT INCOME.

(a) GROSS INVESTMENT INCOME.—

(1) IN GENERAL.—Paragraph (2) of section 4940(c) (relating to gross investment income) is amended by adding at the end the following new sentence: “Such term shall also include income from sources similar to those in the preceding sentence.”.

(2) CONFORMING AMENDMENT.—Subsection (e) of section 509 (relating to gross investment income) is amended by adding at the end the following new sentence: “Such term shall also include income from sources similar to those in the preceding sentence.”.

(b) CAPITAL GAIN NET INCOME.—Paragraph (4) of section 4940(c) (relating to capital gains and losses) is amended—

(1) in subparagraph (A), by striking “used for the production of interest, dividends, rents, and royalties” and inserting “used for the production of gross investment income (as defined in paragraph (2))”, and

(2) in subparagraph (C), by inserting “or carrybacks” after “carryovers”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 223. DEFINITION OF CONVENTION OR ASSOCIATION OF CHURCHES.

Section 7701 (relating to definitions) is amended by redesignating subsection(o) as subsection (p) and by inserting after subsection (n) the following new subsection:

“(o) CONVENTION OR ASSOCIATION OF CHURCHES.—For purposes of this title, any organization which is otherwise a convention or association of churches shall not fail to so qualify merely because the membership of such organization includes individuals as well as churches or because individuals have voting rights in such organization.”.

SEC. 224. NOTIFICATION REQUIREMENT FOR ENTITIES NOT CURRENTLY REQUIRED TO FILE.

(a) IN GENERAL.—Section 6033 (relating to returns by exempt organizations) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

“(h) ADDITIONAL NOTIFICATION REQUIREMENTS.—Any organization the gross receipts of which in any taxable year result in such organization being referred to in subsection (a)(3)(A)(ii) or (a)(3)(B)—

“(1) shall furnish annually, at such time and in such manner as the Secretary may by forms or regulations prescribe, information setting forth—

“(A) the legal name of the organization,

“(B) any name under which such organization operates or does business,

“(C) the organization's mailing address and Internet web site address (if any),

“(D) the organization's taxpayer identification number,

“(E) the name and address of a principal officer, and

“(F) evidence of the continuing basis for the organization's exemption from the filing requirements under subsection (a)(1), and

“(2) upon the termination of the existence of the organization, shall furnish notice of such termination.”.

(b) LOSS OF EXEMPT STATUS FOR FAILURE TO FILE RETURN OR NOTICE.—Section 6033 (relating to returns by exempt organizations), as amended by subsection (a), is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

“(i) LOSS OF EXEMPT STATUS FOR FAILURE TO FILE RETURN OR NOTICE.—

“(1) IN GENERAL.—If an organization described in subsection (a)(1) or (k) fails to file an annual return or notice required under either subsection for 3 consecutive years, such organization's status as an organization exempt from tax under section 501(a) shall be considered revoked on and after the date set by the Secretary for the filing of the third annual return or notice. The Secretary shall publish and maintain a list of any organization the status of which is so revoked.

“(2) APPLICATION NECESSARY FOR REINSTATEMENT.—Any organization the tax-exempt status of which is revoked under paragraph (1) must apply in order to obtain reinstatement of such status regardless of whether such organization was originally required to make such an application.

“(3) RETROACTIVE REINSTATEMENT IF REASONABLE CAUSE SHOWN FOR FAILURE.—If upon application for reinstatement of status as an organization exempt from tax under section 501(a), an organization described in paragraph (1) can show to the satisfaction of the Secretary evidence of reasonable cause for the failure described in such paragraph, the organization's exempt status may, in the discretion of the Secretary, be reinstated effective from the date of the revocation under such paragraph.”.

(c) NO DECLARATORY JUDGMENT RELIEF.—Section 7428(b) (relating to limitations) is amended by adding at the end the following new paragraph:

“(4) NONAPPLICATION FOR CERTAIN REVOCATIONS.—No action may be brought under this section with respect to any revocation of status described in section 6033(i)(1).”.

(d) NO INSPECTION REQUIREMENT.—Section 6104(b) (relating to inspection of annual information returns), as amended by this Act, is amended by inserting “(other than subsection (h) thereof)” after “6033”.

(e) NO DISCLOSURE REQUIREMENT.—Section 6104(d)(3) (relating to exceptions from disclosure requirements) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

“(B) NONDISCLOSURE OF ANNUAL NOTICES.—Paragraph (1) shall not require the disclosure of any notice required under section 6033(h).”.

(f) NO MONETARY PENALTY FOR FAILURE TO NOTIFY.—Section 6652(c)(1) (relating to annual returns under section 6033 or 6012(a)(6)) is amended by adding at the end the following new subparagraph:

“(E) NO PENALTY FOR CERTAIN ANNUAL NOTICES.—This paragraph shall not apply with respect to any notice required under section 6033(h).”.

(g) SECRETARIAL OUTREACH REQUIREMENTS.—

(1) NOTICE REQUIREMENT.—The Secretary of the Treasury shall notify in a timely manner every organization described in section 6033(h) of the Internal Revenue Code of 1986 (as added by this section) of the requirement under such section 6033(h) and of the penalty established under section 6033(i) of such Code—

(A) by mail, in the case of any organization the identity and address of which is included in the list of exempt organizations maintained by the Secretary, and

(B) by Internet or other means of outreach, in the case of any other organization.

(2) LOSS OF STATUS PENALTY FOR FAILURE TO FILE RETURN.—The Secretary of the Treasury shall publicize in a timely manner in appropriate forms and instructions and through other appropriate means, the penalty established under section 6033(i) of such Code for the failure to file a return under section 6033(a)(1) of such Code.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to notices and returns with respect to annual periods beginning after 2005.

SEC. 225. DISCLOSURE TO STATE OFFICIALS OF PROPOSED ACTIONS RELATED TO EXEMPT ORGANIZATIONS.

(a) IN GENERAL.—Subsection (c) of section 6104 is amended by striking paragraph (2) and inserting the following new paragraphs:

“(2) DISCLOSURE OF PROPOSED ACTIONS RELATED TO CHARITABLE ORGANIZATIONS.—

“(A) SPECIFIC NOTIFICATIONS.—In the case of an organization to which paragraph (1) applies, the Secretary may disclose to the appropriate State officer—

“(i) a notice of proposed refusal to recognize such organization as an organization described in section 501(c)(3) or a notice of proposed revocation of such organization's recognition as an organization exempt from taxation,

“(ii) the issuance of a letter of proposed deficiency of tax imposed under section 507 or chapter 41 or 42, and

“(iii) the names, addresses, and taxpayer identification numbers of organizations which have applied for recognition as organizations described in section 501(c)(3).

"(B) Additional disclosures.—Returns and return information of organizations with respect to which information is disclosed under subparagraph (A) may be made available for inspection by or disclosed to an appropriate State officer.

"(C) Procedures for disclosure.—Information may be inspected or disclosed under subparagraph (A) or (B) only—

"(i) upon written request by an appropriate State officer, and

"(ii) for the purpose of, and only to the extent necessary in, the administration of State laws regulating such organizations.

Such information may only be inspected by or disclosed to a person other than the appropriate State officer if such person is an officer or employee of the State and is designated by the appropriate State officer to receive the returns or return information under this paragraph on behalf of the appropriate State officer.

"(D) Disclosures other than by request.—The Secretary may make available for inspection or disclose returns and return information of an organization to which paragraph (1) applies to an appropriate State officer of any State if the Secretary determines that such inspection or disclosure may facilitate the resolution of Federal or State issues relating to the tax-exempt status of such organization.

"(3) Disclosure with respect to certain other exempt organizations.—Upon written request by an appropriate State officer, the Secretary may make available for inspection or disclosure returns and return information of an organization described in paragraph (2), (4), (6), (7), (8), (10), or (13) of section 501(c) for the purpose of, and to the extent necessary in, the administration of State laws regulating the solicitation or administration of the charitable funds or charitable assets of such organizations. Such information may only be inspected by or disclosed to a person other than the appropriate State officer if such person is an officer or employee of the State and is designated by the appropriate State officer to receive the returns or return information under this paragraph on behalf of the appropriate State officer.

"(4) Use in civil judicial and administrative proceedings.—Returns and return information disclosed pursuant to this subsection may be disclosed in civil administrative and civil judicial proceedings pertaining to the enforcement of State laws regulating such organizations in a manner prescribed by the Secretary similar to that for tax administration proceedings under section 6103(h)(4).

"(5) No disclosure if impairment.—Returns and return information shall not be disclosed under this subsection, or in any proceeding described in paragraph (4), to the extent that the Secretary determines that such disclosure would seriously impair Federal tax administration.

"(6) Definitions.—For purposes of this subsection—

"(A) Return and return information.—The terms 'return' and 'return information' have the respective meanings given to such terms by section 6103(b).

"(B) Appropriate State officer.—The term 'appropriate State officer' means—

"(i) the State attorney general,

"(ii) the State tax officer,

"(iii) in the case of an organization to which paragraph (1) applies, any other State official charged with overseeing organizations of the type described in section 501(c)(3), and

"(iv) in the case of an organization to which paragraph (3) applies, the head of an agency designated by the State attorney general as having primary responsibility for overseeing the solicitation of funds for charitable purposes.".

(b) Conforming Amendments.—

(1) Subparagraph (A) of section 6103(p)(3) is amended by inserting "an section 6104(c)" after "section" in the first sentence.

(2) Paragraph (4) of section 6103(p) is amended—

(A) in the matter preceding subparagraph (A), by inserting ", or any appropriate State officer (as defined in section 6104(c))," before "or any other person",

(B) in subparagraph (F)(i), by inserting "or any appropriate State officer (as defined in section 6104(c))," before "or any other person", and

(C) in the matter following subparagraph (F), by inserting ", an appropriate State officer (as defined in section 6104(c))," after "including an agency" each place it appears.

(3) The heading for paragraph (1) of section 6104(c) is amended by inserting "FOR CHARITABLE ORGANIZATIONS" after "RULE".

(4) Paragraph (2) of section 7213(a) is amended by inserting "or under section 6104(c)" after "6103".

(5) Paragraph (2) of section 7213A(a) is amended by inserting "or 6104(c)" after "6103".

(6) Paragraph (2) of section 7431(a) is amended by inserting "(including any disclosure in violation of section 6014(c)" after "6103".

(c) Effective Date.—The amendments made by this section shall take effect on the date of the enactment of this Act but shall not apply to requests made before such date.

PART II—IMPROVED ACCOUNTABILITY OF DONOR ADVISED FUNDS

SEC. 231. EXCISE TAX ON SPONSORING ORGANIZATIONS OF DONOR ADVISED FUNDS FOR FAILURE TO MEET DISTRIBUTION REQUIREMENTS.

(a) In General.—Chapter 42 (relating to private foundations and certain other tax-exempt organizations), as amended by this Act, is amended by adding at the end the following new subchapter:

"Subchapter G—Donor Advised Funds

"Sec. 4967. Taxes on sponsoring organizations of donor advised funds for failure to meet distributions requirements.
"Sec. 4968. Taxes on prohibited distributions.
"Sec. 4969. Taxes on prohibited benefits.

"SEC. 4967. TAXES ON SPONSORING ORGANIZATIONS OF DONOR ADVISED FUNDS FOR FAILURE TO MEET DISTRIBUTION REQUIREMENTS.

"(a) Initial Tax.—There is hereby imposed on any sponsoring organization a tax equal to 30 percent of each of the following amounts:

"(1) The organization level undistributed amount of such sponsoring organization (other than any organization subject to tax under section 4942) for any taxable year which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period).

"(2) The fund level undistributed amount of any donor advised fund of such sponsoring organization for any taxable year which has not been distributed before the 181st day of the first (or any succeeding) taxable year following the applicable period (if such 181st day falls within the taxable period).

"(3) The illiquid fund undistributed amount of any illiquid asset donor advised fund of such sponsoring organization for any taxable year which has not been distributed before the 181st day of the second (or any succeeding) taxable year following such taxable year (if such 181st day falls within the taxable period).

"(b) Additional Tax.—In any case in which an initial tax is imposed under subsection (a) on any amount, if any portion of such amount remains undistributed at the close of the taxable period, there is hereby imposed a tax equal to 100 percent of the amount remaining undistributed at such time.

"(c) Organization Level Undistributed Amount; Fund Level Undistributed Amount; Illiquid Fund Undistributed Amount.—For purposes of this section—

"(1) Organization level undistributed amount.—The term 'organization level undistributed amount' means, with respect to any sponsoring organization for any taxable year, the amount by which—

"(A) the organization level distributable amount for such taxable year, exceeds

"(B) the qualifying distributions made during such taxable year and designated for the purpose of reducing such amount.

"(2) Fund level undistributed amount.—The term 'fund level undistributed amount' means, with respect to any donor advised fund of a sponsoring organization for any applicable period, the amount by which—

"(A) the fund level distributable amount for such applicable period, exceeds

"(B) the qualifying distributions made during such applicable period and designated for the purpose of reducing such amount.

"(3) Illiquid fund undistributed amount.—

"(A) In general.—The term 'illiquid fund undistributed amount' means, with respect to any illiquid asset donor advised fund of a sponsoring organization for any taxable year, the amount by which—

"(i) the illiquid fund distributable amount for such taxable year, exceeds

"(ii) the qualifying distributions made during such taxable year and designated for the purpose of reducing such amount.

"(B) Illiquid asset donor advised fund.—The term 'illiquid asset donor advised fund' means for any taxable year a donor advised fund the value of the illiquid assets of which (as of the end of the preceding taxable year) exceeds 10 percent of the value of the total assets of such fund.

"(C) Illiquid asset.—The term 'illiquid asset' means for any taxable year any asset other than cash and marketable securities the value of which is held for the entire taxable year as such asset or any other illiquid asset.

"(d) Organization Level Distributable Amount; Fund Level Distributable Amount; Illiquid Fund Distributable Amount.—For purposes of this section—

"(1) Organization level distributable amount.—The term 'organization level distributable amount' means, with respect to any sponsoring organization for any taxable year, an amount equal to the applicable percentage of the fair market value of the aggregate assets of all donor advised funds maintained by such organization as determined on the last day of the preceding taxable year (other than such funds which have been in existence for less than 1 year as so determined).

"(2) Fund level distributable amount.—The term 'fund level distributable amount' means, with respect to any donor advised fund of any sponsoring organization for any applicable 3-consecutive taxable year period, an amount equal to the greater of—

“(A) $250, or

“(B) 2.5 percent of the greater of—

“(i) the average of the sponsoring organization's required minimum initial contribution amount for such period, or

“(ii) the average of the sponsoring organization's required minimum balance for such period,

for the type of donor with respect to such donor advised fund.

“(3) ILLIQUID FUND DISTRIBUTABLE AMOUNT.—The term ‘illiquid fund distributable amount’ means, with respect to any illiquid asset donor advised fund of any sponsoring organization for any taxable year, an amount equal to the applicable percentage of the value of the assets in such fund as determined at the end of the preceding taxable year.

“(4) APPLICABLE PERCENTAGE.—For purposes of paragraphs (1) and (3), the applicable percentage is—

“(A) 3 percent for the first taxable year beginning after the date of the enactment of this section,

“(B) 4 percent for the second taxable year beginning after such date, and

“(C) 5 percent for any taxable year beginning after the second taxable year beginning after such date.

“(e) QUALIFYING DISTRIBUTION.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualifying distribution’ means—

“(A) any amount paid by the sponsoring organization from a donor advised fund—

“(i) to any organization described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any sponsoring organization if such amount is for maintenance in a donor advised fund), and

“(ii) notwithstanding clause (i), to any organization described section 170(f)(17)(B)(ii), but only to the extent not prohibited by regulations, and

“(B) any amount set aside in such donor advised fund for purposes, and under procedures similar to those, described in section 4942(g)(2).

Such term shall also include any amount paid during any taxable year for reasonable and necessary administrative expenses charged to a donor advised fund by a sponsoring organization.

“(2) DISTRIBUTIONS TO SPONSORING ORGANIZATIONS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), such term shall include any distribution to a sponsoring organization.

“(B) ORGANIZATION LEVEL DISTRIBUTIONS.—For purposes of subsection (c)(1)(B), such term shall not include any distribution to a sponsoring organization unless such distribution is designated for use in connection with a charitable program of such organization.

“(3) PURPOSE OF DISTRIBUTION.—Each qualifying distribution shall be taken into account in determining whether each of the requirements of paragraphs (1), (2), and (3) of subsection (a) are met, except that only qualifying distributions from a donor advised fund shall be taken into account in determining whether the requirements of paragraphs (2) and (3) of subsection (a) are met with respect to the fund.

“(4) DESIGNATION OF TAXABLE YEAR.—

“(A) IN GENERAL.—A sponsoring organization shall designate the taxable years or applicable periods with respect to which any qualifying distribution shall be applied for purposes of satisfying the distribution requirements of such taxable year or applicable period.

“(B) CARRYOVER OF EXCESS DISTRIBUTION DESIGNATIONS.—If a sponsoring organization designates an amount of qualifying distributions in excess of the amount necessary to meet the distribution requirements for all taxable years and all applicable periods, the sponsoring organization may designate such excess as a carryover distribution which may be applied for purposes of satisfying the distribution requirements of the succeeding 5 taxable years.

“(f) VALUATION RULES.—For purposes of determining the value of any asset held by a donor advised fund, the following rules shall apply:

“(1) Securities for which market quotations are readily available shall be valued at fair market value determined on a monthly basis.

“(2) Cash shall be determined on an average monthly basis.

“(3) Any illiquid asset transferred by a donor to a sponsoring organization for maintenance in such donor advised fund shall be valued in an amount equal to the sum of—

“(A) the value of such asset claimed by the donor for purposes of determining the donor's deduction under section 170, 2055, or 2522 with respect to such transfer and reported by the donor to the sponsoring organization (in any manner specified by the Secretary), and

“(B) an assumed annual rate of return of 5 percent of such value.

“(4) Any illiquid asset purchased by such fund shall be valued in an amount equal to—

“(A) the purchase price paid for such asset by such fund, and

“(B) an assumed annual rate of return of 5 percent of such value.

“(g) SPONSORING ORGANIZATION; DONOR ADVISED FUND.—For purposes of this subchapter—

“(1) SPONSORING ORGANIZATION.—The term ‘sponsoring organization’ means any organization which—

“(A) is described in section 170(c) (other than in paragraph (1) thereof, and without regard to paragraph (2)(A) thereof), and

“(B) maintains 1 or more donor advised funds.

“(2) DONOR ADVISED FUND.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘donor advised fund’ means a fund or account—

“(i) which is separately identified by reference to contributions of a donor or donors,

“(ii) which is owned and controlled by a sponsoring organization, and

“(iii) with respect to which a donor or any person appointed or designated by such person) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor's status as a donor.

“(B) EXCEPTION.—The term ‘donor advised fund’ shall not include any fund or account with respect to which a person described in subparagraph (A)(iii) advises as to which individuals receive grants for travel, study, or other similar purposes, but only if—

“(i) such person's advisory privileges are performed exclusively by such person in the person's capacity as a member of a committee appointed by the sponsoring organization,

“(ii) no combination of persons described in subparagraph (A)(iii) (or persons related to such persons) control, directly or indirectly, such committee, and

“(iii) all grants from such fund or account satisfy requirements similar to those described in section 4945(g) (concerning grants to individuals by private foundations).

“(C) SECRETARIAL AUTHORITY.—The Secretary may exempt a fund or account from treatment as a donor advised fund which—

“(i) is advised by committee not directly or indirectly controlled by the donor or advisor (and any related parties), or

“(ii) will benefit a single identified organization or governmental entity or a single identified charitable purpose.

“(h) OTHER DEFINITIONS.—For purposes of this section—

“(1) TAXABLE PERIOD.—The term ‘taxable period’ means, with respect to the undistributed amount for any taxable year, the period beginning with the first day of the taxable year and ending on the earlier of—

“(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212, or

“(B) the date on which the tax imposed by subsection (a) is assessed.

“(2) APPLICABLE PERIOD.—The term ‘applicable period’ means, with respect to any donor advised fund of any sponsoring organization, a 3-consecutive taxable year period determined under the following rules:

“(A) The first applicable 3-consecutive taxable year period for any donor advised fund shall begin on the first day of the first taxable year of the sponsoring organization beginning after the date such fund has been in existence for 1 year.

“(B) Any applicable 3-consecutive taxable year period after the first such period shall begin on the day after the termination of any preceding applicable 3-consecutive taxable year period with respect to such donor advised fund.

“(i) REGULATIONS.—The Secretary may issue such regulations as are necessary to carry out the purposes of this section, including regulations regarding—

“(1) the acceptable methods for calculating the organization level undistributed amount for sponsoring organizations,

“(2) the allowable adjustments in the determination of the value of any illiquid asset where the asset value has declined significantly after a contribution to, or purchase by, the donor advised fund, and

“(3) the treatment or disregard of transactions designed to avoid the application of the illiquid asset rules, such as through exchanges of illiquid assets for other assets.

“SEC. 4968. TAXES ON PROHIBITED DISTRIBUTIONS.

“(a) IMPOSITION OF TAXES.—

“(1) ON THE DONOR OR DONOR ADVISOR.—There is hereby imposed on the advice of any person described in section 4967(g)(2)(A)(iii) to have a sponsoring organization of a donor advised fund make a taxable distribution from such fund a tax equal to 20 percent of the amount thereof. The tax imposed by this paragraph shall be paid by such person who advised the sponsoring organization of the donor advised fund to make the distribution.

“(2) ON THE FUND MANAGEMENT.—There is hereby imposed on the agreement of any fund manager to the making of a distribution, knowing that it is a taxable distribution, a tax equal to 5 percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any fund manager who agreed to the making of the distribution.

“(b) JOINT AND SEVERAL LIABILITY.—For purposes of subsection (a), if more than one person is liable under subsection (a)(1) or (a)(2) with respect to the making of a taxable distribution, all such persons shall be jointly and severally liable under such paragraph with respect to such distribution.

"(c) Taxable Distribution.—For purposes of this subsection—

"(1) In general.—The term 'taxable distribution' means any distribution from a donor advised fund to any person other than the sponsoring organization's non donor advised funds or accounts or organizations described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any sponsoring organization if such amount is for maintenance in a donor advised fund).

"(2) Exception.—Notwithstanding paragraph (1), such term shall not include any distribution from a donor advised fund to any organization described in section 170(f)(17)(B)(ii) to the extent such distribution is not prohibited under regulations.

"(d) Fund Manager.—For purposes of this subchapter, the term 'fund manager' means, with respect to any sponsoring organization of a donor advised fund—

"(1) an officer, director, or trustee of such sponsoring organization (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the sponsoring organization), and

"(2) with respect to any act (or failure to act), the employees of the sponsoring organization having authority or responsibility with respect to such act (or failure to act).

"SEC. 4969. TAXES ON PROHIBITED BENEFITS.

"(a) Imposition of Taxes.—

"(1) On the donor, donor advisor, or related person.—There is hereby imposed on the advice of any person described in subsection (c) to have a sponsoring organization of a donor advised fund make a distribution from such fund which results in such a person receiving, directly or indirectly, a more than incidental benefit as a result of such distribution, a tax equal to 25 percent of the amount of such distribution. The tax imposed by this paragraph shall be paid by such person who advised the sponsoring organization of the donor advised fund to make the distribution.

"(2) On the recipient of the benefit.—There is hereby imposed on any person described in subsection (c) who receives a benefit described in paragraph (1), a tax equal to 25 percent of the amount of the distribution described in paragraph (1).

"(3) On the fund management.—There is hereby imposed on the agreement of any fund manager to the making of a distribution, knowing that such distribution would confer a benefit described in paragraph (1), a tax equal to 10 percent of the amount of such distribution, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any fund manager who agreed to the making of the distribution.

"(b) Joint and Several Liability.—For purposes of subsection (a), if more than one person is liable under subsection (a)(1), (a)(2), or (a)(3) with respect to the making of a distribution described in subsection (a), all such persons shall be jointly and severally liable under such paragraph with respect to such distribution.

"(c) Donor, Donor Advisor, or Related Person.—A person is described in this subsection if such person is described in section 4958(f)(1)(D) (determined without regard to any investment advisor).".

(b) Abatement of Taxes Allowed.—Section 4963 is amended—

(1) by inserting "4967, 4968, 4969," after "4958," each place it appears in subsections (a) and (c),

(2) by inserting "4967," after "4958," in subsection (b),

(3) in subsection (d)(2), by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) in the case of the second tier tax imposed by section 4967(b), reducing the amount of the undistributed amount to zero.", and

(4) in subsection (e)(2), by redesignating subparagraphs (C) and (D) as subparagraphs (E) and (F), respectively, and by inserting after subparagraph (B) the following new subparagraphs:

"(C) in the case of section 4967(a)(1), on the first day of the taxable year for which there was a failure to distribute,

"(D) in the case of paragraph (2) or (3) of section 4967(a), on the 181st day of the taxable year for which there was a failure to distribute,".

(c) Conforming Amendments.—

(1) The table of subchapters for chapter 42, as amended by this Act, is amended by adding at the end the following new item:

"SUBCHAPTER G. DONOR ADVISED FUNDS.".

(2) Section 6213(e) is amended by inserting "4967 (relating to taxes on sponsoring organizations of donor advised funds for failure to meet distribution requirements)," after "benefit),".

(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 232. PROHIBITED TRANSACTIONS.

(a) Disqualified Persons.—

(1) In general.—Paragraph (1) of section 4958(f) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding after subparagraph (C) the following new subparagraph:

"(D) any person who is described in paragraph (7) with respect to any sponsoring organization (as defined in section 4967(g)(1)).".

(2) Donors, donor advisors, and investment advisors treated as disqualified persons.—Section 4958(f) is amended by adding at the end the following new paragraph:

"(7) Donors, donor advisors, and investment advisors with respect to sponsoring organizations.—For purposes of paragraph (1)(D)—

"(A) In general.—A person is described in this paragraph if such person—

"(i) is described in section 4967(g)(2)(A)(iii),

"(ii) is an investment advisor,

"(iii) is a member of the family of an individual described in clause (i) or (ii), or

"(iv) is a 35-percent controlled entity (as defined in paragraph (3) by substituting 'persons described in clause (i), (ii), or (iii) of paragraph (7)(A)' for 'persons described in subparagraph (A) or (B) of paragraph (1)' in subparagraph (A)(i) thereof).

"(B) Investment advisor.—The term 'investment advisor' means, with respect to any sponsoring organization (as defined in section 4967(g)(1)), any person (other than an employee of such organization) compensated by such organization for managing the investment of, or providing investment advice with respect to, assets maintained in donor advised funds (as defined in section 4967(g)(2)) owned by such organization.".

(3) Donors, donor advisors, and investment advisors treated as disqualified persons with respect to a sponsoring organization which is a private foundation.—Section 4946(a)(1) is amended by striking "and" at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting ", and", and by adding at the end the following new subparagraph:

"(J) a person described in section 4958(f)(1)(D).".

(b) Certain Transactions Treated as Excess Benefit Transactions.—

(1) In general.—Section 4958(c) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) Special rules for donor advised funds owned by sponsoring organizations.—In the case of any donor advised fund (as defined in section 4967(g)(2)) of a sponsoring organization (as defined in section 4967(g)(1))—

"(A) the term 'excess benefit transaction' includes any grant, loan, compensation, or other payment from such fund to a person described in subsection (f)(1)(D) (determined without regard to any investment advisor) with respect to such fund, and

"(B) the term 'excess benefit' includes, with respect to any transaction described in subparagraph (A), the amount of any such grant, loan, compensation, or other payment.

Notwithstanding the last sentence of subsection (e), a sponsoring organization shall be treated as an applicable tax-exempt organization to the extent necessary to carry out this paragraph.".

(2) Special rule for correction of transaction.—Section 4958(f)(6) is amended by inserting ", except that in the case of any correction of an excess benefit transaction described in subsection (c)(2), no amount repaid in a manner prescribed by the Secretary may be held in, or credited to, any donor advised fund" after "standards".

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 233. TREATMENT OF CHARITABLE CONTRIBUTION DEDUCTIONS TO DONOR ADVISED FUNDS.

(a) Income.—Section 170(f) (relating to disallowance of deduction in certain cases and special rules), as amended by this Act, is amended by adding at the end the following new paragraph:

"(17) Contributions to donor advised funds.—

"(A) In general.—A deduction otherwise allowed under subsection (a) for any contribution to a sponsoring organization (as defined in section 4967(g)(1)) to be maintained in any donor advised fund (as defined in section 4967(g)(2)) of such organization shall only be allowed if—

"(i) such sponsoring organization is not described in paragraph (3), (4), or (5) of subsection (c) or section 509(a)(3), and

"(ii) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of paragraph (8)(C) from the sponsoring organization that such organization has exclusive legal control over the assets contributed.

"(B) Contributions to type I or type II supporting organizations.—

"(i) In general.—Notwithstanding subparagraph (A)(i), a contribution to a sponsoring organization (as so defined) described in clause (ii) to be maintained in any donor advised fund (as so defined) of such organization shall be allowed to the extent not prohibited by regulations.

"(ii) Organization described.—An organization is described in this clause if the organization meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and is—

“(I) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2) of section 509(a), or

“(II) supervised or controlled in connection with one or more such organizations.”.

(b) ESTATE.—Section 2055(e) is amended by adding at the end the following new paragraph:

“(5) CONTRIBUTIONS TO DONOR ADVISED FUNDS.—

“(A) IN GENERAL.—A deduction otherwise allowed under subsection (a) for any contribution to a sponsoring organization (as defined in section 4967(g)(1)) to be maintained in any donor advised fund (as defined in section 4967(g)(2)) of such organization shall only be allowed if—

“(i) such sponsoring organization is not described in paragraph (3) or (4) of subsection (a) or section 509(a)(3), and

“(ii) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of section 170(f)(8)(C)) from the sponsoring organization that such organization has exclusive legal control over the assets contributed.

“(B) CONTRIBUTIONS TO TYPE I OR TYPE II SUPPORTING ORGANIZATIONS.—

“(i) IN GENERAL.—Notwithstanding subparagraph (A)(i), a contribution to a sponsoring organization (as so defined) described in clause (ii) to be maintained in any donor advised fund (as so defined) of such organization shall be allowed to the extent not prohibited by regulations.

“(ii) ORGANIZATION DESCRIBED.—An organization is described in this clause if the organization meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and is—

“(I) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2) of section 509(a), or

“(II) supervised or controlled in connection with one or more such organizations.”.

(c) GIFT.—Section 2522(c) is amended by adding at the end the following new paragraph:

“(13) CONTRIBUTIONS TO DONOR ADVISED FUNDS.—

“(A) IN GENERAL.—A deduction otherwise allowed under subsection (a) for any contribution to a sponsoring organization (as defined in section 4967(g)(1)) to be maintained in any donor advised fund (as defined in section 4967(g)(2)) of such organization shall only be allowed if—

“(i) such sponsoring organization is not described in paragraph (3) or (4) of subsection (a) or section 509(a)(3), and

“(ii) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of section 170(f)(8)(C)) from the sponsoring organization that such organization has exclusive legal control over the assets contributed.

“(B) CONTRIBUTIONS TO TYPE I OR TYPE II SUPPORTING ORGANIZATIONS.—

“(i) IN GENERAL.—Notwithstanding subparagraph (A)(i), a contribution to a sponsoring organization (as so defined) described in clause (ii) to be maintained in any donor advised fund (as so defined) of such organization shall be allowed to the extent not prohibited by regulations.

“(ii) ORGANIZATION DESCRIBED.—An organization is described in this clause if the organization meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and is—

“(I) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2) of section 509(a), or

“(II) supervised or controlled in connection with one or more such organizations.”.

(d) REGULATIONS.—The regulations prescribed under sections 170(f)(17)(B)(i), 2055(e)(5)(B)(i), 2522(c)(13)(B)(i), 4967(e)(i)(A)(ii), and 4968(c)(2) of the Internal Revenue Code of 1986 shall deny a deduction for contributions to sponsoring organizations (as defined in section 4967(g)(1) of such Code) which are described in section 170(f)(17)(B)(ii) of such Code and shall apply excise taxes to distributions from donor advised funds (as defined in section 4967(g)(2) of such Code) and sponsoring organizations (as so defined) to organizations so described in cases where the donor of the contributions or the donor or donor advisor of the amounts distributed directly or indirectly controls a supported organization (as defined in section 509(f)(3) of such Code) of such organization.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after the date which is 180 days after the date of the enactment of this Act.

SEC. 234. RETURNS OF, AND APPLICATIONS FOR RECOGNITION BY, SPONSORING ORGANIZATIONS.

(a) MATTERS INCLUDED ON RETURNS.—

(1) IN GENERAL.—Section 6033, as amended by this Act, is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

“(j) ADDITIONAL PROVISIONS RELATING TO SPONSORING ORGANIZATIONS.—Every organization described in section 4967(g)(1) shall, on the return required under subsection (a) for the taxable year—

“(1) list the total number of donor advised funds (as defined in section 4967(g)(2)) it owns at the end of such taxable year,

“(2) indicate the aggregate value of assets held in such funds at the end of such taxable year, and

“(3) indicate the aggregate contributions to and grants made from such funds during such taxable year.”.

(2) EXTENSION OF STATUTE OF LIMITATIONS.—Section 6501(c) is amended by adding at the end the following new paragraph:

“(11) DONOR ADVISED FUNDS.—If a sponsoring organization (as defined in section 4967(g)(1)) fails to include on any return for any taxable year any information with respect to any donor advised fund of such organization which is required under section 6033(j) to be included with such return, the time for assessment of any tax imposed under subchapter G of chapter 42 with respect to any distribution from such donor advised fund shall not expire before the date which is 3 years after the date on which the secretary is furnished the information so required.”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to returns filed for taxable years ending after the date of the enactment of this Act.

(b) MATTERS INCLUDED ON EXEMPT STATUS APPLICATION.—

(1) IN GENERAL.—Section 508 is amended by adding at the end the following new subsection:

“(f) ADDITIONAL PROVISIONS RELATING TO SPONSORING ORGANIZATIONS.—A sponsoring organization (as defined in section 4967(g)(1)) shall give notice to the Secretary (in such manner as the Secretary may provide) whether such organization maintains or intends to maintain donor advised funds (as defined in section 4967(g)(2)) and the manner in which such organization plans to operate such funds.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to organizations applying for tax-exempt status after the date of the enactment of this Act.

PART III—IMPROVED ACCOUNTABILITY OF SUPPORTING ORGANIZATIONS

SEC. 241. REQUIREMENTS FOR SUPPORTING ORGANIZATIONS.

(a) TYPES OF SUPPORTING ORGANIZATIONS.—Subparagraph (B) of section 509(a)(3) is amended to read as follows:

“(B) is—

“(i) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2),

“(ii) supervised or controlled in connection with one or more such organizations, or

“(iii) operated in connection with one or more such organizations, and”.

(b) REQUIREMENTS FOR SUPPORTING ORGANIZATIONS.—Section 509 (relating to private foundation defined) is amended by adding at the end the following new subsection:

“(f) REQUIREMENTS FOR SUPPORTING ORGANIZATIONS.—

“(1) TYPE III SUPPORTING ORGANIZATIONS.—For purposes of subsection (a)(3)(B)(iii), an organization shall not be considered to be operated in connection with any organization described in paragraph (1) or (2) of subsection (a) unless such organization meets the following requirements:

“(A) APPLICATION REQUIREMENT.—The organization provides to the Secretary, as a part of any notification filed under section 508(a) after the date of the enactment of this subsection, a letter from each supported organization acknowledging that the supported organization has been designated by such organization as a supported organization.

“(B) RESPONSIVENESS.—For each taxable year beginning after the date of the enactment of this subsection, the organization provides to each supported organization such information as the Secretary may require to ensure that such organization is responsive to the needs or demands of the supported organization.

“(C) SUPPORTED ORGANIZATIONS.—

“(i) IN GENERAL.—The organization—

“(I) is not operated in connection with more than 5 supported organizations, and

“(II) is not operated in connection with any supported organization that is not organized in the United States on any date after the date which is 180 days after the date of the enactment of this subsection.

“(ii) SPECIAL RULE FOR EXISTING ORGANIZATIONS.—If the organization is operated in connection with more than 5 supported organizations on the date of the enactment of this subsection—

“(I) clause (i)(I) shall not apply, and

“(II) the organization may not be operated in connection with any other organization after such date unless the total number of supported organizations is 5 or less.

“(D) CONTRIBUTIONS TO DONOR ADVISED FUNDS.—The organization makes no contributions to or for the use of any donor advised fund (as defined in section 4967(g)(2)).

“(2) ORGANIZATIONS CONTROLLED BY DONORS.—

“(A) IN GENERAL.—For purposes of subsection (a)(3)(B), an organization shall not be considered to be—

“(i) operated, supervised, or controlled by any organization described in paragraph (1) or (2) of subsection (a), or

“(ii) operated in connection with any organization described in paragraph (1) or (2) of subsection (a),

if such organization accepts any gift or contribution from any person described in subparagraph (B).

“(B) PERSON DESCRIBED.—A person is described in this subparagraph if such person is—

"(i) a person (other than an organization described in paragraph (1), (2), or (4) of section 509(a)) who controls, directly or indirectly, either alone or together with persons described in clauses (ii) and (iii), the governing body of a supported organization,

"(ii) a member of the family (determined under section 4958(f)(4)) of an individual described in clause (i), or

"(iii) a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting 'persons described in clause (i) or (ii) of section 509(f)(2)(B)' for 'persons described in subparagraph (A) or (B) of paragraph (1)' in subparagraph (A)(i) thereof).

"(3) Supported organization.—For purposes of this subsection, the term 'supported organization' means, with respect to an organization described in subsection (a)(3), an organization described in paragraph (1) or (2) of subsection (a)—

"(A) for whose benefit the organization described in subsection (a)(3) is organized and operated, or

"(B) with respect to which the organization performs the functions of, or carries out the purposes of.".

(c) Charitable Trusts Which Are Type III Supporting Organizations.—For purposes of section 509(a)(3)(B)(iii) of the Internal Revenue Code of 1986, an organization which is a trust shall not be considered to be operated in connection with any organization described in paragraph (1) or (2) of section 509(a) of such Code solely because—

(1) it is a charitable trust under State law,

(2) the supported organization (as defined in section 509(f)(3) of such Code) is a beneficiary of such trust, and

(3) the supported organization (as so defined) has the power to enforce the trust and compel an accounting.

(d) Effective Date.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 242. EXCISE TAX ON SUPPORTING ORGANIZATIONS FOR FAILURE TO MEET DISTRIBUTION REQUIREMENTS.

(a) In General.—Subchapter D of chapter 42 (relating to failure by certain charitable organizations to meet certain qualification requirements) is amended by adding at the end the following new section:

"SEC. 4959. TAXES ON CERTAIN SUPPORTING ORGANIZATIONS FAILING TO MEET DISTRIBUTION REQUIREMENTS.

"(a) Initial Tax.—There is hereby imposed on the undistributed income of any type III supporting organization for any taxable year, which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period), a tax equal to 30 percent of the amount of such income remaining undistributed at the beginning of such second (or succeeding) taxable year.

"(b) Additional Tax.—In any case in which an initial tax is imposed under subsection (a) on the undistributed income of a type III supporting organization for any taxable year, if any portion of such income remains undistributed at the close of the taxable period, there is hereby imposed a tax equal to 100 percent of the amount remaining undistributed at such time.

"(c) Undistributed Income.—For purposes of this section, the term 'undistributed income' means, with respect to any type III supporting organization for any taxable year as of any time, the amount by which—

"(1) the distributable amount for such taxable year, exceeds

"(2) the qualifying distributions made before such time out of such distributable amount.

"(d) Distributable Amount.—For purposes of this section—

"(1) In general.—the term 'distributable amount' means, with respect to any type III supporting organization for any taxable year, an amount equal to the sum of—

"(A) the greater of—

"(i) 85 percent of the adjusted net income (as defined in section 4942(f)) of the type III supporting organization for the preceding taxable year, or

"(ii) the applicable percentage of the fair market value of the aggregate assets of such organization (other than assets used or held to perform the functions of, or carry out the purposes of, a supported organization) on the last day of the preceding taxable year, and

"(B) any amount received during the preceding taxable year which is a repayment of amounts paid by the organization in any prior taxable year to a supported organization exclusively for the benefit of such supported organization or to perform the functions of, or carry out the purposes of such supported organization.

"(2) Investment assets.—For purposes of paragraph (1)(A)(ii), assets held for investment or for the operation of an unrelated trade or business shall not be considered as assets used or held to perform the functions of, or carry out the purposes of, a supported organization.

"(3) Applicable percentage.—For purposes of paragraph (1)(A)(ii), the applicable percentage is—

"(A) 3 percent for the first taxable year beginning after the date of the enactment of this section,

"(B) 4 percent for the second taxable year beginning after such date, and

"(C) 5 percent for any taxable year beginning after the second taxable year beginning after such date.

"(e) Qualifying Distribution.—For purposes of this section—

"(1) In general.—The term 'qualifying distribution' means amounts paid by the type III supporting organization to or for the use of a supported organization.

"(2) Administrative and operating expenses.—Reasonable and necessary administrative expenses of a type III supporting organization shall be treated as a qualifying distribution to a supported organization.

"(f) Treatment of Qualifying Distributions.—

"(1) In general.—Except as provided in paragraph (2), any qualifying distribution made during a taxable year shall be treated as made—

"(A) first out of the undistributed income of the immediately preceding taxable year (if the type III supporting organization was subject to the tax imposed by this section for such preceding taxable year) to the extent thereof, and

"(B) second out of the undistributed income for the taxable year to the extent thereof.

For purposes of this paragraph, distributions shall be taken into account in the order of time in which made.

"(2) Correction of deficient distributions for prior taxable years, etc.—In the case of any qualifying distribution which (under paragraph (1)) is not treated as made out of the undistributed income of the immediately preceding taxable year, the type III supporting organization may elect to treat any portion of such distribution as made out of the undistributed income of a designated prior taxable year. The election shall be made by the type III supporting organization at such time and in such manner as the Secretary shall by regulations prescribe.

"(g) Adjustment of Distributable Amount Where Distributions During Prior Years Have Exceeded Income.—

"(1) In general.—If, for the taxable years in the adjustment period for which an organization is a type III supporting organization—

"(A) the aggregate qualifying distributions treated (under subsection (f)) as made out of the undistributed income for such taxable years, exceeds

"(B) the distributable amounts for such taxable years (determined without regard to this subsection),

then, for purposes of this section (other than subsection (f)), the distributable amount for the taxable year shall be reduced by an amount equal to such excess.

"(2) Taxable years in adjustment period.—For purposes of paragraph (1), with respect to any taxable year of a type III supporting organization, the taxable years in the adjustment period are the taxable years (not exceeding 5) beginning after the date of the enactment of this section and immediately preceding the taxable year.

"(h) Other Definitions.—For purposes of this section—

"(1) Taxable period.—The term 'taxable period' means, with respect to the undistributed income for any taxable year, the period beginning with the first day of the taxable year and ending on the earlier of—

"(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212, or

"(B) the date on which the tax imposed by subsection (a) is assessed.

"(2) Type III supporting organization.—The term 'type III supporting organization' means an organization which meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and which is operated in connection with one or more organizations described in paragraph (1) or (2) of section 509(a).

"(3) Supported organization.—The term 'supported organization' has the meaning given such term under section 509(f)(3).".

(b) Conforming Amendment.—The table of sections for subchapter D of chapter 42 is amended by inserting after the item relating to section 4958 the following new item:

"Sec. 4959. Taxes on certain supporting organizations failing to meet distribution requirements.".

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 243. EXCESS BENEFIT TRANSACTIONS.

(a) In General.—Section 4958(c), as amended by this Act, is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) Special rules for supporting organizations.—

"(A) In general.—In the case of any organization described in section 509(a)(3)—

"(i) the term 'excess benefit transaction' includes—

"(I) any grant, loan, compensation, or other payment provided by such organization to a person described in subparagraph (B), and

"(II) any loan provided by such organization to a disqualified person (other than an organization described in paragraph (1), (2), or (4) of section 509(a)), and

"(ii) the term 'excess benefit' includes, with respect to any transaction described in clause (i), the amount of any such grant, loan, compensation, or other payment.

"(B) PERSON DESCRIBED.—A person is described in this subparagraph if such person is—

"(i) a substantial contributor to such organization,

"(ii) a member of the family (determined under section 4958(f)(4)) of an individual described in clause (i), or

"(iii) a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting 'persons described in clause (i) or (ii) of section 4958(c)(3)(B)' for 'persons described in subparagraph (A) or (B) of paragraph (1)' in subparagraph (A)(i) thereof).

"(C) SUBSTANTIAL CONTRIBUTOR.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'substantial contributor' means any person who contributed or bequeathed an aggregate amount of more than $5,000 to the organization, if such amount is more than 2 percent of the total contributions and bequests received by the organization before the close of the taxable year of the organization in which the contribution or bequest is received by the organization from such person. In the case of a trust, such term also means the creator of the trust.

"(ii) EXCEPTION.—Such term shall not include any organization described in paragraph (1), (2), or (4) of section 509(a).".

(b) DISQUALIFIED PERSONS.—Paragraph (1) of section 4958(f), as amended by this Act, is amended by striking "and" at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting ", and", and by adding after subparagraph (D) the following new subparagraph:

"(E) any person who is described in subparagraph (A), (B), or (C) with respect to an organization described in section 509(a)(3) which is organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the applicable tax-exempt organization.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions occurring after the date of the enactment of this Act

SEC. 244. EXCESS BUSINESS HOLDINGS OF SUPPORTING ORGANIZATIONS.

(a) IN GENERAL.—Section 4943 is amended by adding at the end the following new subsection:

"(e) APPLICATION OF TAX TO SUPPORTING ORGANIZATIONS.—

"(1) IN GENERAL.—For purposes of this section, a qualified supporting organization shall be treated as a private foundation.

"(2) EXCEPTION.—The Secretary may exempt any qualified supporting organization from the application of this subsection if the Secretary determines that the excess business holdings of such organization are consistent with the purpose or function constituting the basis for its exemption under section 501.

"(3) QUALIFIED SUPPORTING ORGANIZATION.—For purposes of this subsection, the term 'qualified supporting organization' means any—

"(A) type III supporting organization (as defined in section 4959(h)(2)), or

"(B) organization which meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and which is supervised or controlled in connection with or one or more organizations described in paragraph (1) or (2) of section 509(a), but only if such organization accepts any gift or contribution from any person described in section 509(f)(2)(B).

"(4) DISQUALIFIED PERSON.—

"(A) IN GENERAL.—In applying this section to any organization described in section 509(a)(3), the term 'disqualified person' means, with respect to the organization—

"(i) any person who was, at any time during the 5-year period ending on date described in subsection (a)(2)(A), in a position to exercise substantial influence over the affairs of the organization,

"(ii) any member of the family (determined under section 4958(f)(4)) of an individual described in clause (i),

"(iii) any 35-percent controlled entity (as defined in section 4958(f)(3) by substituting 'persons described in clause (i) or (ii) of section 4943(e)(2)(A)' for 'persons described in subparagraph (A) or (B) of paragraph (1)' in subparagraph (A)(i) thereof),

"(iv) any person described in section 4958(c)(3)(B), and

"(v) any organization—

"(I) which is effectively controlled (directly or indirectly) by the same person or persons who control the organization in question, or

"(II) substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in subparagraph (B) or a member of their family (within the meaning of section 4946(d)) who made (directly or indirectly) substantially all of the contributions to the organization in question.

"(B) PERSONS DESCRIBED.—A person is described in this subparagraph if such person is—

"(i) a substantial contributor to the organization (as defined in section 4958(c)(3)(C)),

"(ii) an officer, director, or trustee of the organization (or an individual having powers or responsibilities similar to those officers, directors, or trustees of the organization), or

"(iii) an owner of more than 20 percent of—

"(I) the total combined voting power of a corporation,

"(II) the profits interest of a partnership, or

"(III) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor (as so defined) to the organization.

"(5) SPECIAL RULE FOR CERTAIN HOLDINGS OF TYPE III SUPPORTING ORGANIZATIONS.—For purposes of this subsection, the term 'excess business holdings' shall not include any holdings of a type III supporting organization (as defined in section 4959(h)(2)) in any business enterprise if the holdings are held for the benefit of the community pursuant to the direction of a State attorney general or a State official with jurisdiction over the type III supporting organization.

"(6) PRESENT HOLDINGS.—For purposes of this subsection, rules similar to the rules of paragraphs (4), (5), and (6) of subsection (c) shall apply to organizations described in section 509(a)(3), except that—

"(A) 'the date of the enactment of this subsection' shall be substituted for 'May 26, 1969' each place it appears in paragraphs (4), (5), and (6), and

"(B) 'January 1, 2007' shall be substituted for 'January 1, 1970' in paragraph (4)(E).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 245. TREATMENT OF AMOUNTS PAID TO SUPPORTING ORGANIZATIONS BY PRIVATE FOUNDATIONS.

(a) QUALIFYING DISTRIBUTIONS.—Paragraph (4) of section 4942(g) is amended to read as follows:

"(4) LIMITATION ON DISTRIBUTIONS BY NONOPERATING PRIVATE FOUNDATIONS TO SUPPORTING ORGANIZATIONS.—For purposes of this section, the term 'qualifying distribution' shall not include any amount paid by a private foundation which is not an operating foundation to an organization described in section 509(a)(3).".

(b) TAXABLE EXPENDITURES.—

(1) IN GENERAL.—Subsection (d) of section 4945 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) to an organization described in section 509(a)(3),".

(2) CONFORMING AMENDMENTS.—

(A) Section 4945(d)(5), as redesignated by subparagraph (A), is amended—

(i) by striking "a grant to an organization" and inserting "a grant to any other organization", and

(ii) by striking "paragraph (1), (2), or (3) of section 509(a)" in subparagraph (A) and inserting "paragraph (1) or (2) of section 509(a)".

(B) Section 4945(f) is amended by striking "Subsection (d)(4)" in the last sentence thereof and inserting "Subsection (d)(5)".

(C) Section 4945(h) is amended by striking "subsection (d)(4)" and inserting "subsection (d)(5)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions and expenditures after the date of the enactment of this Act.

SEC. 246. RETURNS OF SUPPORTING ORGANIZATIONS.

(a) REQUIREMENT TO FILE RETURN.—Subparagraph (B) of section 6033(a)(3), as redesignated by this Act, is amended by inserting "(other than an organization described in section 509(a)(3))" after "paragraph (1)".

(b) MATTERS INCLUDED ON RETURNS.—Section 6033, as amended by this Act, is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) ADDITIONAL PROVISIONS RELATING TO SUPPORTING ORGANIZATIONS.—

"(1) IN GENERAL.—Every organization described in section 509(a)(3) shall, on the return required under subsection (a)—

"(A) list the organizations described in section 509(a)(3)(A) with respect to which such organization provides support,

"(B) indicate whether the organization meets the requirements of clause (i), (ii), or (iii) of section 509(a)(3)(B), and

"(C) certify that the organization meets the requirements of section 509(a)(3)(C).

"(2) TYPE III SUPPORTING ORGANIZATIONS.—Every type III supporting organization (as defined in section 4959(h)(2)) shall indicate on the return required under subsection (a) for the taxable year whether the organization has received a letter from each supported organization (as defined in section 509(f)(3)) during the taxable year which—

"(A) acknowledges that the supporting organization has designated such organization as a supported organization,

"(B) details the type of support provided by the supporting organization, and

"(C) explains how such support furthers the charitable purpose of the supported organization.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns filed for taxable years ending after the date of the enactment of this Act.

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. RESTRUCTURING OF NEW YORK LIBERTY ZONE TAX CREDITS.

(a) IN GENERAL.—Subchapter Y of chapter 1 is amended by adding at the end the following new section:

"SEC. 1400M. NEW YORK LIBERTY ZONE TAX CREDITS.

"(a) In General.—There shall be allowed as a credit against any taxes imposed by this title (other than by section 3111(a), section 3403, or subtitle D) paid or incurred by any governmental unit of the State of New York and the City of New York, New York (including any agency or instrumentality thereof) for any calendar year an amount equal to the lesser of—

"(1) the total expenditures during such year by such governmental unit for qualifying projects, or

"(2) the amount allocated to such governmental unit for such calendar year under subsection (b)(2).

"(b) Qualifying Project.—For purposes of this section—

"(1) In general.—The term 'qualifying project' means any transportation infrastructure project, including highways, mass transit systems, railroads, airports, ports, and waterways, in or connecting with the New York Liberty Zone (as defined in section 1400L(h)), which is designated as a qualifying project under this section jointly by the Governor of the State of New York and the Mayor of the City of New York, New York.

"(2) Dollar limitation.—

"(A) In general.—The Governor of the State of New York and the Mayor of the City of New York, New York, shall jointly allocate to a governmental unit the amount of expenditures which may be taken into account under subsection (a) for any calendar year in the credit period with respect to a qualifying project.

"(B) Aggregate limit.—The aggregate amount which may be allocated under subparagraph (A) for all calendar years in the credit period shall not exceed $2,000,000,000.

"(C) Annual limit.—The aggregate amount which may be allocated under subparagraph (A) for any calendar year in the credit period shall not exceed the sum of—

"(i) $200,000,000, plus

"(ii) the aggregate amount authorized to be allocated under this paragraph for all preceding calendar years in the credit period which was not so allocated.

"(D) Unallocated amounts at end of credit period.—If, as of the close of the credit period, the amount under subparagraph (B) exceeds the aggregate amount allocated under subparagraph (A) for all calendar years in the credit period, the Governor of the State of New York and the Mayor of the City of New York, New York, may jointly allocate for any calendar year following the credit period for expenditures with respect to qualifying projects which may be taken into account under subsection (a) an amount equal to such excess, reduced by the aggregate amount allocated under this subparagraph for all preceding calendar years.

"(c) Carryover of Unused Allocations.—

"(1) In general.—If the amount allocated under subsection (b)(2) to a governmental unit for any calendar year exceeds the total expenditures for such year by such governmental unit for qualifying projects, the allocation of such governmental unit for the succeeding calendar year shall be increased by the amount of such excess.

"(2) Reallocation.—If a governmental unit does not use an amount allocated to it under subsection (b)(2) within the time prescribed by the Governor of the State of New York and the Mayor of the City of New York, New York, then such amount shall after such time be treated for purposes of subsection (b)(2) in the same manner as if it had never been allocated.

"(d) Definitions and Special Rules.—For purposes of this section—

"(1) Credit period.—The term 'credit period' means the 10-year period beginning on January 1, 2006.

"(2) Treatment of funds.—Any expenditure for a qualifying project taken into account for purposes of the credit under this section shall be considered State and local funds for the purpose of any Federal program.

"(e) Regulations.—The Secretary may prescribe such regulations as are necessary to ensure compliance with the purposes of this section.".

(b) Termination of Certain New York Liberty Zone Benefits.—

(1) Special allowance and expensing.—Section 1400L(b)(2)(A)(v) is amended by striking "the termination date" and inserting "the date of the enactment of the Tax Relief Act of 2005 or the termination date if pursuant to a binding contract in effect on such enactment date".

(2) Leasehold.—Section 1400L(c)(2)(B) is amended by striking "before January 1, 2007" and inserting "on or before the date of the enactment of the Tax Relief Act of 2005 or before January 1, 2007, if pursuant to a binding contract in effect on such enactment date".

SEC. 302. MODIFICATION TO S CORPORATION PASSIVE INVESTMENT INCOME RULES.

(a) Increased Percentage Limit.—Paragraph (2) of section 1375(a) is amended by striking "25 percent" and inserting "60 percent".

(b) Other Provisions.—

(1) Repeal of excessive passive income as a termination event.—Section 1362(d) is amended by striking paragraph (3).

(2) Capital gain not treated as passive investment income.—Subsection (b) of section 1375 is amended by striking paragraphs (3) and (4) and inserting the following new paragraph:

"(3) Passive investment income defined.—

"(A) Except as otherwise provided in this paragraph, the term 'passive investment income' means gross receipts derived from royalties, rents, dividends, interest, and annuities.

"(B) Exception for interest on notes from sales of inventory.—The term 'passive investment income' shall not include interest on any obligation acquired in the ordinary course of the corporation's trade or business from its sale of property described in section 1221(a)(1).

"(C) Treatment of certain lending or finance companies.—If the S corporation meets the requirements of section 542(c)(6) for the taxable year, the term 'passive investment income' shall not include gross receipts for the taxable year which are derived directly from the active and regular conduct of a lending or finance business (as defined in section 542(d)(1)).

"(D) Treatment of certain dividends.—If an S corporation holds stock in a C corporation meeting the requirements of section 1504(a)(2), the term 'passive investment income' shall not include dividends from such C corporation to the extent such dividends are attributable to the earnings and profits of such C corporation derived from the active conduct of a trade or business.

"(E) Exception for banks, etc.—In the case of a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)), the term 'passive investment income' shall not include—

"(i) interest income earned by such bank or company, or

"(ii) dividends on assets required to be held by such bank or company, including stock in the Federal Reserve Bank, the Federal Home Loan Bank, or the Federal Agricultural Mortgage Bank or participation certificates issued by a Federal Intermediate Credit Bank.

"(F) Coordination with section 1374.—The amount of passive investment income shall be determined by not taking into account any recognized built-in gain or loss of the S corporation for any taxable year in the recognition period. Terms used in the preceding sentence shall have the same respective meanings as when used in section 1374.".

(c) Conforming Amendments.—

(1) Subparagraph (J) of section 26(b)(2) is amended by striking "25 percent" and inserting "60 percent".

(2) Clause (i) of section 1042(c)(4)(A) is amended by striking "section 1362(d)(3)(C)" and inserting "section 1375(b)(3)".

(3) Subparagraph (B) of section 1362(f)(1) is amended by striking "or (3)".

(4) Clause (i) of section 1375(b)(1)(A) is amended by striking "25 percent" and inserting "60 percent".

(5) The heading for section 1375 is amended by striking "**25 PERCENT**" and inserting "**60 PERCENT**".

(6) The item relating to section 1375 in the table of sections for part III of subchapter S of chapter 1 is amended by striking "25 percent" and inserting "60 percent".

(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006 and before October 1, 2009.

SEC. 303. MODIFICATION OF EFFECTIVE DATE OF DISREGARD OF CERTAIN CAPITAL EXPENDITURES FOR PURPOSES OF QUALIFIED SMALL ISSUE BONDS.

(a) In General.—Section 144(a)(4)(G) is amended by striking "September 30, 2009" and inserting "December 31, 2006".

(b) Conforming Amendment.—Section 144(a)(4)(F) is amended by striking "September 30, 2009" and inserting "December 31, 2006".

SEC. 304. PREMIUMS FOR MORTGAGE INSURANCE.

(a) In General.—Section 163(h)(3) (relating to qualified residence interest) is amended by adding at the end the following new subparagraph:

"(E) Mortgage insurance premiums treated as interest.—

"(i) In general.—Premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness with respect to a qualified residence of the taxpayer shall be treated for purposes of this section as interest which is qualified residence interest.

"(ii) Phaseout.—The amount otherwise treated as interest under clause (i) shall be reduced (but not below zero) by 10 percent of such amount for each $1,000 ($500 in the case of a married individual filing a separate return) (or fraction thereof) that the taxpayer's adjusted gross income for the taxable year exceeds $100,000 ($50,000 in the case of a married individual filing a separate return).".

(b) Definition and Special Rules.—Section 163(h)(4) (relating to other definitions and special rules) is amended by adding at the end the following new subparagraphs:

"(E) Qualified mortgage insurance.—The term 'qualified mortgage insurance' means—

"(i) mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration, and

"(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subparagraph).

"(F) SPECIAL RULES FOR PREPAID QUALIFIED MORTGAGE INSURANCE.—Any amount paid by the taxpayer for qualified mortgage insurance that is properly allocable to any mortgage the payment of which extends to periods that are after the close of the taxable year in which such amount is paid shall be chargeable to capital account and shall be treated as paid in such periods to which so allocated. No deduction shall be allowed for the unamortized balance of such account if such mortgage is satisfied before the end of its term. The preceding sentences shall not apply to amounts paid for qualified mortgage insurance provided by the Veterans Administration or the Rural Housing Administration.".

(c) INFORMATION RETURNS RELATING TO MORTGAGE INSURANCE.—Section 6050H (relating to returns relating to mortgage interest received in trade or business from individuals) is amended by adding at the end the following new subsection:

"(h) RETURNS RELATING TO MORTGAGE INSURANCE PREMIUMS.—

"(1) IN GENERAL.—The Secretary may prescribe, by regulations, that any person who, in the course of a trade or business, receives from any individual premiums for mortgage insurance aggregating $600 or more for any calendar year, shall make a return with respect to each such individual. Such return shall be in such form, shall be made at such time, and shall contain such information as the Secretary may prescribe.

"(2) STATEMENT TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under paragraph (1) shall furnish to each individual with respect to whom a return is made a written statement showing such information as the Secretary may prescribe. Such written statement shall be furnished on or before January 31 of the year following the calendar year for which the return under paragraph (1) was required to be made.

"(3) SPECIAL RULES.—For purposes of this subsection—

"(A) rules similar to the rules of subsection (c) shall apply, and

"(B) the term 'mortgage insurance' means—

"(i) mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration, and

"(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subsection).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or accrued during the period beginning after December 31, 2006, and before January 1, 2008, and properly allocable to such period, with respect to mortgage insurance contracts issued after December 31, 2006.

SEC. 305. SENSE OF THE SENATE ON USE OF NO-BID CONTRACTING BY FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) FINDINGS.—The Senate finds that—

(1) on September 8, 2005, the Federal Emergency Management Agency announced that it had awarded 4 contracts for emergency housing relief following Hurricane Katrina to The Shaw Group of Baton Rouge, Louisiana, Fluor Corporation of Aliso Viejo, California, Bechtel National of San Francisco, California, and CH2M Hill of Denver, Colorado;

(2) these contracts were awarded with no competition from other capable firms, and up to $100,000,000 in taxpayer funds were authorized for each of these contracts;

(3) in the midst of concerns about abusive and irresponsible spending of taxpayer funds, the Federal Emergency Management Agency pledged to re-bid these noncompetitive contracts, with Acting Under Secretary of Emergency Preparedness and Response, R. David Paulison, stating before the Committee on Homeland Security and Government Affairs of the Senate that "[a]ll of these no-bid contracts, we are going to go back and re-bid";

(4) the Federal Emergency Management Agency has yet to reopen these 4 contracts to competitive bidding, and declared on November 11, 2005, that these contracts would not be reopened for bidding until February 2006;

(5) by February 2006, the majority of the contracts will have been completed and the majority of taxpayer funds will have been spent;

(6) large and politically-connected firms continue to benefit from no-bid and limited-competition contracts, and contracts are not being awarded to capable, local companies;

(7) according to an analysis in the Washington Post, companies outside the States most affected by Hurricane Katrina have received more than 90 percent of the Federal contracts for recovery and reconstruction;

(8) the monitoring of Federal contracting practices remains difficult, with a report by the San Jose Mercury News stating "The database of contracts is incomplete. Information released by Federal agencies is spotty and sporadic. And disclosure of many no-bid contracts isn't required by law"; and

(9)(A) there is currently no Chief Financial Officer charged with monitoring the flow of all funds to the affected areas; and

(B) the task of financial management is spread across disparate Federal departments and agencies with inadequate oversight of taxpayer funds.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Federal Emergency Management Agency should—

(1) immediately rebid noncompetitive contracts entered into following Hurricane Katrina, consistent with the commitment of the Agency made on October 6, 2005, before millions of taxpayer dollars are wasted on irresponsible and inefficient spending;

(2)(A) immediately implement the planned competitive contracting strategy of the Agency for recovery work in all current and future reconstruction efforts; and

(B) in carrying out that strategy, should prioritize local and small disadvantaged businesses in the contracting and subcontracting process; and

(3) immediately after the awarding of a contract, publicly disclose the amount and competitive or noncompetitive nature of the contract.

SEC. 306. SENSE OF CONGRESS REGARDING DOHA ROUND.

(a) FINDINGS.—The Congress makes the following findings:

(1) Members of the World Trade Organization (WTO) are currently engaged in a round of trade negotiations known as the Doha Development Agenda (Doha Round).

(2) The Doha Round includes negotiations aimed at clarifying and improving disciplines under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement) and the Agreement on Subsidies and Countervailing Measures (Subsidies Agreement).

(3) The WTO Ministerial Declaration adopted on November 14, 2001 (WTO Paper No. WT/MIN(01)/DEC/1) specifically provides that the Doha Round negotiations are to preserve the "basic concepts, principles and effectiveness" of the Antidumping Agreement and the Subsidies Agreement.

(4) In section 2102(b)(14)(A) of the Bipartisan Trade Promotion Authority Act of 2002, the Congress mandated that the principal negotiating objective of the United States with respect to trade remedy laws was to "preserve the ability of the United States to enforce rigorously its trade laws . . . and avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies".

(5) The countries that have been the most persistent and egregious violators of international fair trade rules are engaged in an aggressive effort to significantly weaken the disciplines provided in the Antidumping Agreement and the Subsidies Agreement and undermine the ability of the United States to effectively enforce its trade remedy laws.

(6) Chronic violators of fair trade disciplines have put forward proposals that would substantially weaken United States trade remedy laws and practices, including mandating that unfair trade orders terminate after a set number of years even if unfair trade and injury are likely to recur, mandating that trade remedy duties reflect less than the full margin of dumping or subsidization, mandating higher de minimis levels of unfair trade, making cumulation of the effects of imports from multiple countries more difficult in unfair trade investigations, outlawing the critical practice of "zeroing" in antidumping investigations, mandating the weighing of causes, and mandating other provisions that make it more difficult to prove injury.

(7) United States trade remedy laws have already been significantly weakened by numerous unjust and activist WTO dispute settlement decisions which have created new obligations to which the United States never agreed.

(8) Trade remedy laws remain a critical resource for American manufacturers, agricultural producers, and aquacultural producers in responding to closed foreign markets, subsidized imports, and other forms of unfair trade, particularly in the context of the challenges currently faced by these vital sectors of the United States economy.

(9) The United States had a current account trade deficit of approximately $668,000,000,000 in 2004, including a trade deficit of almost $162,000,000,000 with China alone, as well as a trade deficit of $40,000,000,000 in advanced technology.

(10) United States manufacturers have lost over 3,000,000 jobs since June 2000, and United States manufacturing employment is currently at its lowest level since 1950.

(11) Many industries critical to United States national security are at severe risk from unfair foreign competition.

(12) The Congress strongly believes that the proposals put forward by countries seeking to undermine trade remedy disciplines in the Doha Round would result in serious harm to the United States economy, including significant job losses and trade disadvantages.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States should not be a signatory to any agreement or protocol with respect to the Doha Development Round of the World Trade Organization negotiations, or any other bilateral or multilateral trade negotiations, that—

(A) adopts any proposal to lessen the effectiveness of domestic and international disciplines on unfair trade or safeguard provisions, including proposals—

(i) mandating that unfair trade orders terminate after a set number of years even if unfair trade and injury are likely to recur;

(ii) mandating that trade remedy duties reflect less than the full margin of dumping or subsidization;

(iii) mandating higher de minimis levels of unfair trade;

(iv) making cumulation of the effects of imports from multiple countries more difficult in unfair trade investigations;

(v) outlawing the critical practice of "zeroing" in antidumping investigations; or

(vi) mandating the weighing of causes or other provisions making it more difficult to prove injury in unfair trade cases; and

(B) would lessen in any manner the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws;

(2) the United States trade laws and international rules appropriately serve the public interest by offsetting injurious unfair trade, and that further "balancing modifications" or other similar provisions are unnecessary and would add to the complexity and difficulty of achieving relief against injurious unfair trade practices; and

(3) the United States should ensure that any new agreement relating to international disciplines on unfair trade or safeguard provisions fully rectifies and corrects decisions by WTO dispute settlement panels or the Appellate Body that have unjustifiably and negatively impacted, or threaten to negatively impact, United States law or practice, including a law or practice with respect to foreign dumping or subsidization.

SEC. 307. MODIFICATION OF BOND RULE.

In the case of bonds issued after the date of the enactment of this Act and before August 31, 2009—

(1) the requirement of paragraph (1) of section 648 of the Deficit Reduction Act of 1984 (98 Stat. 941) shall be treated as met with respect to the securities or obligations referred to in such section if such securities or obligations are held in a fund the annual distributions from which cannot exceed 7 percent of the average fair market value of the assets held in such fund except to the extent distributions are necessary to pay debt service on the bond issue,

(2) paragraph (3) of such section shall be applied by substituting "distributions from" for "the investment earnings of" both places it appears, and

(3) Paragraph (4) of such section shall be applied by substituting "March 1, 1985" for "October 9, 1969".

SEC. 308. TREATMENT OF CERTAIN STOCK OPTION PLANS UNDER NONQUALIFIED DEFERRED COMPENSATION RULES.

(a) IN GENERAL.—The Secretary of the Treasury shall modify the regulations under section 409A of the Internal Revenue Code of 1986 to extend to applicable foreign option plans the exception under such section for incentive stock options under section 422 of such Code and options granted under an employee stock purchase plan meeting the requirements of section 423 of such Code. Such extension shall be subject to such terms and conditions as may be prescribed in such regulations.

(b) APPLICABLE FOREIGN OPTION PLANS.—For purposes of subsection (a)—

(1) IN GENERAL.—The term "applicable foreign option plan" means a plan providing for the issuance of employee stock options—

(A) which is established under the laws of a foreign jurisdiction, and

(B) which, under such laws or the terms of the plan (or both), is subject to requirements substantially similar to the requirements under section 422 or 423 of such Code.

(2) SUBSTANTIALLY SIMILAR.—A plan shall not be treated as subject to substantially similar requirements under paragraph (1)(B) unless—

(A) the plan is required to cover substantially all employees,

(B) in the case of an option under an employee stock purchase plan, the plan is required to provide an option price which is not less than the amount specified in section 423(b)(6) of such Code, except that such section shall be applied by substituting "80 percent" for "85 percent" each place it appears,

(C) the plan is required to provide coverage of individuals who, but for the exception of the application of section 409A of such Code by reason of this section, would be subject to tax under such section with respect to the plan, and

(D) the plan meets such other requirements as the Secretary of the Treasury prescribes in the regulations under subsection (a).

SEC. 309. SENSE OF THE SENATE REGARDING THE DEDICATION OF EXCESS FUNDS.

It is the sense of the Senate that any increases in revenues to the Treasury as a result of this Act and the amendments made by this Act that exceed the amounts specified in the reconciliation instructions shall be dedicated to the Low-Income Home Energy Assistance Program, in an amount not to exceed the amount which is $2,900,000,000 more than the funding levels established for such Program for fiscal year 2005.

SEC. 310. MODIFICATION OF TREATMENT OF LOANS TO QUALIFIED CONTINUING CARE FACILITIES.

(a) IN GENERAL.—Subsection (g) of section 7872 is amended to read as follows:

"(g) EXCEPTION FOR LOANS TO QUALIFIED CONTINUING CARE FACILITIES.—

"(1) IN GENERAL.—This section shall not apply for any calendar year to any below-market loan owed by a facility which on the last day of such year is a continuing care facility, if such loan was made pursuant to a continuing care contract and if the lender (or the lender's spouse) attains age 62 before the close of such year.

"(2) CONTINUING CARE CONTRACT.—For purposes of this section, the term 'continuing care contract' means a written contract between an individual and a qualified continuing care facility under which—

"(A) the individual or individual's spouse may use a qualified continuing care facility for their life or lives,

"(B) the individual or individual's spouse will be provided with housing in an independent living unit (which has additional available facilities outside such unit for the provision of meals and other personal care), an assisted living facility or a nursing facility, as is available in the continuing care facility, as appropriate for the health of such individual or individual's spouse, and

"(C) the individual or individual's spouse will be provided assisted living or nursing care as the health of such individual or individual's spouse requires, and as is available in the continuing care facility.

"(3) QUALIFIED CONTINUING CARE FACILITY.—

"(A) IN GENERAL.—For purposes of this section, the term 'qualified continuing care facility' means 1 or more facilities—

"(i) which are designed to provide services under continuing care contracts,

"(ii) that include an independent living unit, plus an assisted living or nursing facility, or both, and

"(iii) substantially all of the independent living unit residents of which are covered by continuing care contracts.

"(B) NURSING HOMES EXCLUDED.—The term 'qualified continuing care facility' shall not include any facility which is of a type which is traditionally considered a nursing home.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to loans made after December 31, 2005.

SEC. 311. EXCLUSION OF GAIN FROM SALE OF A PRINCIPAL RESIDENCE BY CERTAIN EMPLOYEES OF THE INTELLIGENCE COMMUNITY.

(a) IN GENERAL.—Subparagraph (A) of section 121(d)(9) (relating to exclusion of gain from sale of principal residence) is amended by striking "duty" and all that follows and inserting "duty—

"(i) as a member of the uniformed services,

"(ii) as a member of the Foreign Service of the United States, or

"(iii) as an employee of the intelligence community.".

(b) EMPLOYEE OF INTELLIGENCE COMMUNITY DEFINED.—Subparagraph (C) of section 121(d)(9) is amended by redesignating clause (iv) as clause (v) and by inserting after clause (iii) the following new clause:

"(iv) EMPLOYEE OF INTELLIGENCE COMMUNITY.—The term 'employee of the intelligence community' means an employee (as defined by section 2105 of title 5, United States Code) of—

"(I) the Office of the Director of National Intelligence,

"(II) the Central Intelligence Agency,

"(III) the National Security Agency,

"(IV) the Defense Intelligence Agency,

"(V) the National Geospatial-Intelligence Agency,

"(VI) the National Reconnaissance Office,

"(VII) any other office within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs,

"(VIII) any of the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of Treasury, the Department of Energy, and the Coast Guard,

"(IX) the Bureau of Intelligence and Research of the Department of State, or

"(X) any of the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information.".

(c) SPECIAL RULE.—Subparagraph (C) of section 121(d)(9), as amended by subsection (b), is amended by adding at the end the following new clause:

"(vi) SPECIAL RULE RELATING TO INTELLIGENCE COMMUNITY.—An employee of the intelligence community shall not be treated as serving on qualified extended duty unless—

"(I) for purposes of such duty such employee has moved from 1 duty station to another, and

"(II) at least 1 of such duty stations is located outside of the Washington, District of Columbia, and Baltimore metropolitan statistical areas (as defined by the Secretary of Commerce).".

(d) Conforming Amendment.—The heading for section 121(d)(9) is amended by striking "MEMBERS OF UNIFORMED SERVICES AND FOREIGN SERVICE" and inserting "UNIFORMED SERVICES, FOREIGN SERVICE, AND INTELLIGENCE COMMUNITY".

(e) Effective Date.—The amendments made by this section shall apply to sales or exchanges after the date of the enactment of this Act.

TITLE IV—REVENUE OFFSET PROVISIONS

Subtitle A—Provisions Designed to Curtail Tax Shelters

SEC. 401. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) Standards Conformed to Taxpayer Standards.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking "realistic possibility of being sustained on its merits" in paragraph (1) and inserting "reasonable belief that the tax treatment in such position was more likely than not the proper treatment",

(2) by striking "or was frivolous" in paragraph (3) and inserting "or there was no reasonable basis for the tax treatment of such position", and

(3) by striking "UNREALISTIC" in the heading thereof and inserting "IMPROPER".

(b) Amount of Penalty.—Section 6694 is amended—

(1) by striking "$250" in subsection (a) and inserting "$1,000", and

(2) by striking "$1,000" in subsection (b) and inserting "$5,000".

(c) Effective Date.—The amendments made by this section shall apply to documents prepared after the date of the enactment of this Act.

SEC. 402. FRIVOLOUS TAX SUBMISSIONS.

(a) Civil Penalties.—Section 6702 is amended to read as follows:

"SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

"(a) Civil Penalty for Frivolous Tax Returns.—A person shall pay a penalty of $5,000 if—

"(1) such person files what purports to be a return of a tax imposed by this title but which—

"(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

"(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

"(2) the conduct referred to in paragraph (1)—

"(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

"(B) reflects a desire to delay or impede the administration of Federal tax laws.

"(b) Civil Penalty for Specified Frivolous Submissions.—

"(1) Imposition of penalty.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

"(2) Specified frivolous submission.—For purposes of this section—

"(A) Specified frivolous submission.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

"(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

"(ii) reflects a desire to delay or impede the administration of Federal tax laws.

"(B) Specified submission.—The term 'specified submission' means—

"(i) a request for a hearing under—

"(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

"(II) section 6330 (relating to notice and opportunity for hearing before levy), and

"(ii) an application under—

"(I) section 6159 (relating to agreements for payment of tax liability in installments),

"(II) section 7122 (relating to compromises), or

"(III) section 7811 (relating to taxpayer assistance orders).

"(3) Opportunity to withdraw submission.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

"(c) Listing of Frivolous Positions.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

"(d) Reduction of Penalty.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

"(e) Penalties in Addition to Other Penalties.—The penalties imposed by this section shall be in addition to any other penalty provided by law.".

(b) Treatment of Frivolous Requests for Hearings Before Levy.—

(1) Frivolous requests disregarded.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

"(g) Frivolous Requests for Hearing, Etc.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.".

(2) Preclusion from raising frivolous issues at hearing.—Section 6330(c)(4) is amended—

(A) by striking "(A)" and inserting "(A)(i)";

(B) by striking "(B)" and inserting "(ii)";

(C) by striking the period at the end of the first sentence and inserting "; or"; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

"(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).".

(3) Statement of grounds.—Section 6330(b)(1) is amended by striking "under subsection (a)(3)(B)" and inserting "in writing under subsection (a)(3)(B) and states the grounds for the requested hearing".

(c) Treatment of Frivolous Requests for Hearings Upon Filing of Notice of Lien.—Section 6320 is amended—

(1) in subsection (b)(1), by striking "under subsection (a)(3)(B)" and inserting "in writing under subsection (a)(3)(B) and states the grounds for the requested hearing", and

(2) in subsection (c), by striking "and (e)" and inserting "(e), and (g)".

(d) Treatment of Frivolous Applications for Offers-in-Compromise and Installment Agreements.—Section 7122 is amended by adding at the end the following new subsection:

"(e) Frivolous Submissions, Etc.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.".

(e) Clerical Amendment.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

"Sec. 6702. Frivolous tax submissions.".

(f) Effective Date.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 403. PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.

(a) Penalty for Promoting Abusive Tax Shelters.—Section 6700 (relating to promoting abusive tax shelters, etc.) is amended—

(1) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively,

(2) by striking "a penalty" and all that follows through the period in the first sentence of subsection (a) and inserting "a penalty determined under subsection (b)", and

(3) by inserting after subsection (a) the following new subsections:

"(b) Amount of Penalty; Calculation of Penalty; Liability for Penalty.—

"(1) Amount of penalty.—The amount of the penalty imposed by subsection (a) shall be 100 percent of the gross income derived (or to be derived) from such activity by the person or persons subject to such penalty.

"(2) Calculation of penalty.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of an activity described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who participated in such an activity.

"(3) Liability for penalty.—If more than 1 person is liable under subsection (a) with respect to such activity, all such persons shall be jointly and severally liable for the penalty under such subsection.

"(c) Penalty Not Deductible.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be considered an ordinary and necessary expense in carrying on a trade or business for purposes of this title and shall not be deductible by the person who is subject to such penalty or who makes such payment.".

(b) Conforming Amendment.—Section 6700(a) is amended by striking the last sentence.

(c) Effective Date.—The amendments made by this section shall apply to the activities described in paragraphs (1) and (2) of section 6700(a) of the Internal Revenue Code of 1986 and after the date of the enactment of this Act.

SEC. 404. PENALTY FOR AIDING AND ABETTING THE UNDERSTATEMENT OF TAX LIABILITY.

(a) In General.—Section 6701(a) (relating to imposition of penalty) is amended—

(1) by inserting ", or tax liability reflected in," after "the preparation or presentation of" in paragraph (1),

(2) by inserting "aid, assistance, procurement, or advice with respect to such" before "portion" both places it appears in paragraphs (2) and (3), and

(3) by inserting "instance of aid, assistance, procurement, or advice or each such" before "document" in the matter following paragraph (3).

(b) AMOUNT OF PENALTY.—Subsection (b) of section 6701 (relating to penalties for aiding and abetting understatement of tax liability) is amended to read as follows:

"(b) AMOUNT OF PENALTY; CALCULATION OF PENALTY; LIABILITY FOR PENALTY.—

"(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall be 100 percent of the gross income derived (or to be derived) from such aid, assistance, procurement, or advice provided by the person or persons subject to such penalty.

"(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of aid, assistance, procurement, or advice described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who made such an understatement of the liability for tax.

"(3) LIABILITY FOR PENALTY.—If more than 1 person is liable under subsection (a) with respect to providing such aid, assistance, procurement, or advice, all such persons shall be jointly and severally liable for the penalty under such subsection.".

(c) PENALTY NOT DEDUCTIBLE.—Section 6701 is amended by adding at the end the following new subsection:

"(g) PENALTY NOT DEDUCTIBLE.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be considered an ordinary and necessary expense in carrying on a trade or business for purposes of this title and shall not be deductible by the person who is subject to such penalty or who makes such payment.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to the activities described in section 6701(a) of the Internal Revenue Code of 1986 after the date of the enactment of this Act.

Subtitle B—Economic Substance Doctrine

SEC. 411. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

"(1) GENERAL RULES.—

"(A) IN GENERAL.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

"(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—A transaction has economic substance only if—

"(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer's economic position, and

"(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

"(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

"(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

"(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

"(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

"(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

"(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

"(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

"(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

"(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

"(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

"(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person's liability under subtitle A.

"(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

"(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

"(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

"(I) depreciation,

"(II) any tax credit, or

"(III) any other deduction as provided in guidance by the Secretary, and

"(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

"(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 412. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

"SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

"(a) IMPOSITION OF PENALTY.—If a taxpayer has an noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

"(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

"(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

"(1) IN GENERAL.—The term 'noneconomic substance transaction understatement' means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

"(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term 'noneconomic substance transaction' means any transaction if—

"(A) there is a lack of economic substance (within the meaning of section 7701(o)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(o)(2), or

"(B) the transaction fails to meet the requirements of any similar rule of law.

"(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

"(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

"(2) APPLICABLE RULES.—The rules of paragraphs (2) and (3) of section 6707A(d) shall apply for purposes of paragraph (1).

"(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

"(f) Cross References.—

"(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).

"(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).".

(b) Coordination With Other Understatements and Penalties.—

(1) The second sentence of section 6662(d)(2)(A) is amended by inserting "and without regard to items with respect to which a penalty is imposed by section 6662B" before the period at the end.

(2) Subsection (e) of section 6662A is amended—

(A) in paragraph (1), by inserting "and noneconomic substance transaction understatements" after "reportable transaction understatements" both places it appears,

(B) in paragraph (2)(A), by inserting "and a noneconomic substance transaction understatement" after "reportable transaction understatement",

(C) in paragraph (2)(B), by inserting "6662B or" before "6663",

(D) in paragraph (2)(C)(i), by inserting "or section 6662B" before the period at the end,

(E) in paragraph (2)(C)(ii), by inserting "and section 6662B" after "This section",

(F) in paragraph (3), by inserting "or noneconomic substance transaction understatement" after "reportable transaction understatement", and

(G) by adding at the end the following new paragraph:

"(4) Noneconomic substance transaction understatement.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' has the meaning given such term by section 6662B(c).".

(3) Subsection (e) of section 6707A is amended—

(A) by striking "or" at the end of subparagraph (B), and

(B) by striking subparagraph (C) and inserting the following new subparagraphs:

"(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction, or

"(D) is required to pay a penalty under section 6662(h) with respect to any transaction and would (but for section 6662A(e)(2)(C)) have been subject to penalty under section 6662A at a rate prescribed under section 6662A(c) or under section 6662B.".

(c) Clerical Amendment.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

"Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.".

(d) Effective Date.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 413. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) In General.—Section 163(m) (relating to interest on unpaid taxes attributable to nondisclosed reportable transactions) is amended—

(1) by striking "attributable" and all that follows and inserting the following: "attributable to—

"(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

"(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).", and

(2) by inserting "and Noneconomic Substance Transactions" in the heading thereof after "Transactions".

(b) Effective Date.—The amendments made by this section shall apply to transactions after the date of the enactment of this Act in taxable years ending after such date.

Subtitle C—Improvements in Efficiency and Safeguards in Internal Revenue Service Collection

SEC. 421. WAIVER OF USER FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.

(a) In General.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

"(e) Waiver of User Fees for Installment Agreements Using Automated Withdrawals.—In the case of a taxpayer who enters into an installment agreement in which automated installment payments are agreed to, the Secretary shall waive the fee (if any) for entering into the installment agreement.".

(b) Effective Date.—The amendments made by this section shall apply to agreements entered into on or after the date which is 180 days after the date of the enactment of this Act.

SEC. 422. TERMINATION OF INSTALLMENT AGREEMENTS.

(a) In General.—Section 6159(b)(4) (relating to failure to pay an installment or any other tax liability when due or to provide requested financial information) is amended by striking "or" at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (E), and by inserting after subparagraph (B) the following:

"(C) to make a Federal tax deposit under section 6302 at the time such deposit is required to be made,

"(D) to file a return of tax imposed under this title by its due date (including extensions), or".

(b) Conforming Amendment.—The heading for section 6159(b)(4) is amended by striking "Failure to pay an installment or any other tax liability when due or to provide requested financial information" and inserting "Failure to make payments or deposits or file returns when due or to provide requested financial information".

(c) Effective Date.—The amendments made by this section shall apply to failures occurring on or after the date of the enactment of this Act.

SEC. 423. PARTIAL PAYMENTS REQUIRED WITH SUBMISSION OF OFFERS-IN-COMPROMISE.

(a) In General.—Section 7122 (relating to compromises), as amended by this Act, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c) Rules for Submission of Offers-in-Compromise.—

"(1) Partial payment required with submission.—

"(A) Lump-sum offers.—

"(i) In general.—The submission of any lump-sum offer-in-compromise shall be accompanied by the payment of 20 percent of amount of such offer.

"(ii) Lump-sum offer-in-compromise.—For purposes of this section, the term 'lump-sum offer-in-compromise' means any offer of payments made in 5 or fewer installments.

"(B) Periodic payment offers.—The submission of any periodic payment 'offer-in-compromise shall be accompanied by the payment of the amount of the first proposed installment and each proposed installment due during the period such offer is being evaluated for acceptance and has not been rejected by the Secretary. Any failure to make a payment required under the preceding sentence shall be deemed a withdrawal of the offer-in-compromise.

"(2) Rules of application.—

"(A) Use of payment.—The application of any payment made under this subsection to the assessed tax or other amounts imposed under this title with respect to such tax may be specified by the taxpayer.

"(B) No user fee imposed.—Any user fee which would otherwise be imposed under this section shall not be imposed on any offer-in-compromise accompanied by a payment required under this subsection.

"(C) Waiver authority.—The Secretary may issue regulations waiving any payment required under paragraph (1) in a manner consistent with the practices established in accordance with the requirements under subsection (d)(3).".

(b) Additional Rules Relating to Treatment of Offers.—

(1) Unprocessable offer if payment requirements are not met.—Paragraph (3) of section 7122(d) (relating to standards for evaluation of offers), as redesignated by subsection (a), is amended by striking "; and" at the end of subparagraph (A) and inserting a comma, by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) any offer-in-compromise which does not meet the requirements of subsection (c) shall be returned to the taxpayer as unprocessable.".

(2) Deemed acceptance of offer not rejected within certain period.—Section 7122, as amended by subsection (a), is amended by adding at the end the following new subsection:

"(g) Deemed Acceptance of Offer Not Rejected Within Certain Period.—Any offer-in-compromise submitted under this section shall be deemed to be accepted by the Secretary if such offer is not rejected by the Secretary before the date which is 24 months after the date of the submission of such offer. For purposes of the preceding sentence, any period during which any tax liability which is the subject of such offer-in-compromise is in dispute in any judicial proceeding shall not be taken in to account in determining the expiration of the 24-month period.".

(c) Effective Date.—The amendments made by this section shall apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act.

Subtitle D—Penalties and Fines

SEC. 431. INCREASE IN CRIMINAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.

(a) In General.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking "Any person who—" and inserting "(a) In General.—Any person who—", and

(2) by adding at the end the following new subsection:

"(b) Increase in Monetary Limitation for Underpayment or Overpayment of Tax Due

TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.".

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 is amended—

(A) by striking "$100,000" and inserting "$500,000",

(B) by striking "$500,000" and inserting "$1,000,000", and

(C) by striking "5 years" and inserting "10 years".

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking "Any person" and inserting the following:

"(a) IN GENERAL.—Any person", and

(ii) by striking "$25,000" and inserting "$50,000",

(B) in the third sentence, by striking "section" and inserting "subsection", and

(C) by adding at the end the following new subsection:

"(b) AGGRAVATED FAILURE TO FILE.—

"(1) IN GENERAL.—In the case of any failure described in paragraph (2), the first sentence of subsection (a) shall be applied by substituting—

"(A) 'felony' for 'misdemeanor',

"(B) '$500,000 ($1,000,000' for '$25,000 ($100,000', and

"(C) '10 years' for '1 year'.

"(2) FAILURE DESCRIBED.—A failure described in this paragraph is a failure to make a return described in subsection (a) for a period of 3 or more consecutive taxable years.".

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking "$100,000" and inserting "$500,000",

(B) by striking "$500,000" and inserting "$1,000,000", and

(C) by striking "3 years" and inserting "5 years".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions, and failures to act, occurring after the date of the enactment of this Act.

SEC. 432. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.

(a) DETERMINATION OF PENALTY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, in the case of an applicable taxpayer—

(A) the determination as to whether any interest or applicable penalty is to be imposed with respect to any arrangement described in paragraph (2), or to any underpayment of Federal income tax attributable to items arising in connection with any such arrangement, shall be made without regard to the rules of subsections (b), (c), and (d) of section 6664 of the Internal Revenue Code of 1986, and

(B) if any such interest or applicable penalty is imposed, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(2) APPLICABLE TAXPAYER.—For purposes of this subsection—

(A) IN GENERAL.—The term "applicable taxpayer" means a taxpayer which—

(i) has underreported its United States income tax liability with respect to any item which directly or indirectly involves—

(I) any financial arrangement which in any manner relies on the use of offshore payment mechanisms (including credit, debit, or charge cards) issued by banks or other entities in foreign jurisdictions, or

(II) any offshore financial arrangement (including any arrangement with foreign banks, financial institutions, corporations, partnerships, trusts, or other entities), and

(ii) has neither signed a closing agreement pursuant to the Voluntary Offshore Compliance Initiative established by the Department of the Treasury under Revenue Procedure 2003–11 nor voluntarily disclosed its participation in such arrangement by notifying the Internal Revenue Service of such arrangement prior to the issue being raised by the Internal Revenue Service during an examination.

(B) AUTHORITY TO WAIVE.—The Secretary of the Treasury or the Secretary's delegate may waive the application of paragraph (1) to any taxpayer if the Secretary or the Secretary's delegate determines that the use of such offshore payment mechanisms is incidental to the transaction and, in addition, in the case of a trade or business, such use is conducted in the ordinary course of the type of trade or business of the taxpayer.

(C) ISSUES RAISED.—For purposes of subparagraph (A)(ii), an item shall be treated as an issue raised during an examination if the individual examining the return—

(i) communicates to the taxpayer knowledge about the specific item, or

(ii) has made a request to the taxpayer for information and the taxpayer could not make a complete response to that request without giving the examiner knowledge of the specific item.

(b) APPLICABLE PENALTY.—For purposes of this section, the term "applicable penalty" means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if, as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

SEC. 433. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) IN GENERAL.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

"(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

"(2) EXCEPTION FOR AMOUNTS CONSTITUTING RESTITUTION OR PAID TO COME INTO COMPLIANCE WITH LAW.—Paragraph (1) shall not apply to any amount which—

"(A) the taxpayer establishes—

"(i) constitutes restitution (including remediation of property) for damage or harm caused by or which may be caused by the violation of any law or the potential violation of any law, or

"(ii) is paid to come into compliance with any law which was violated or involved in the investigation or inquiry, and

"(B) is identified as restitution or as an amount paid to come into compliance with the law, as the case may be, in the court order or settlement agreement.

Identification pursuant to subparagraph (B) alone shall not satisfy the requirement under subparagraph (A). This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

"(3) EXCEPTION FOR AMOUNTS PAID OR INCURRED AS THE RESULT OF CERTAIN COURT ORDERS.—Paragraph (1) shall not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (4) is a party.

"(4) CERTAIN NONGOVERNMENTAL REGULATORY ENTITIES.—An entity is described in this paragraph if it is—

"(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

"(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.

"(5) EXCEPTION FOR TAXES DUE.—Paragraph (1) shall not apply to any amount paid or incurred as taxes due.".

(b) REPORTING OF DEDUCTIBLE AMOUNTS.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61, as amended by this Act, is amended by inserting after section 6050U the following new section:

"SEC. 6050V. INFORMATION WITH RESPECT TO CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

"(a) REQUIREMENT OF REPORTING.—

"(1) IN GENERAL.—The appropriate official of any government or entity which is described in section 162(f)(4) which is involved in a suit or agreement described in paragraph (2) shall make a return in such form as determined by the Secretary setting forth—

"(A) the amount required to be paid as a result of the suit or agreement to which paragraph (1) of section 162(f) applies,

"(B) any amount required to be paid as a result of the suit or agreement which constitutes restitution or remediation of property, and

"(C) any amount required to be paid as a result of the suit or agreement for the purpose of coming into compliance with any law which was violated or involved in the investigation or inquiry.

"(2) SUIT OR AGREEMENT DESCRIBED.—

"(A) IN GENERAL.—A suit or agreement is described in this paragraph if—

"(i) it is—

"(I) a suit with respect to a violation of any law over which the government or entity has authority and with respect to which there has been a court order, or

"(II) an agreement which is entered into with respect to a violation of any law over which the government or entity has authority, or with respect to an investigation or inquiry by the government or entity into the potential violation of any law over which such government or entity has authority, and

"(ii) the aggregate amount involved in all court orders and agreements with respect to the violation, investigation, or inquiry is $600 or more.

"(B) ADJUSTMENT OF REPORTING THRESHOLD.—The Secretary may adjust the $600 amount in subparagraph (A)(ii) as necessary in order to ensure the efficient administration of the internal revenue laws.

"(3) TIME OF FILING.—The return required under this subsection shall be filed not later than—

"(A) 30 days after the date on which a court order is issued with respect to the suit or the date the agreement is entered into, as the case may be, or

"(B) the date specified Secretary.

"(b) STATEMENTS TO BE FURNISHED TO INDIVIDUALS INVOLVED IN THE SETTLEMENT.—Every person required to make a return under subsection (a) shall furnish to each person who is a party to the suit or agreement a written statement showing—

"(1) the name of the government or entity, and

"(2) the information supplied to the Secretary under subsection (a)(1).

The written statement required under the preceding sentence shall be furnished to the person at the same time the government or entity provides the Secretary with the information required under subsection (a).

"(c) APPROPRIATE OFFICIAL DEFINED.—For purposes of this section, the term 'appropriate official' means the officer or employee having control of the suit, investigation, or inquiry or the person appropriately designated for purposes of this section.".

(2) CONFORMING AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61, as amended by this Act, is amended by inserting after the item relating to section 6050U the following new item:

"Sec. 6050V. Information with respect to certain fines, penalties, and other amounts.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred on or after the date of the enactment of this Act, except that such amendments shall not apply to amounts paid or incurred under any binding order or agreement entered into before such date. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained before such date.

SEC. 434. DENIAL OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) DISALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(B) by striking "If" and inserting:

"(1) TREBLE DAMAGES.—If", and

(C) by adding at the end the following new paragraph:

"(2) PUNITIVE DAMAGES.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of, any action. This paragraph shall not apply to punitive damages described in section 104(c).".

(2) CONFORMING AMENDMENT.—The heading for section 162(g) is amended by inserting "OR PUNITIVE DAMAGES" after "LAWS".

(b) INCLUSION IN INCOME OF PUNITIVE DAMAGES PAID BY INSURER OR OTHERWISE.—

(1) IN GENERAL.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end the following new section:

"SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.

"Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise by reason of the taxpayer's liability (or agreement) to pay punitive damages.".

(2) REPORTING REQUIREMENTS.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

"(f) SECTION TO APPLY TO PUNITIVE DAMAGES COMPENSATION.—This section shall apply to payments by a person to or on behalf of another person as insurance or otherwise by reason of the other person's liability (or agreement) to pay punitive damages.".

(3) CONFORMING AMENDMENT.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end the following new item:

"Sec. 91. Punitive damages compensated by insurance or otherwise.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to damages paid or incurred on or after the date of the enactment of this Act.

SEC. 435. INCREASE IN PENALTY FOR BAD CHECKS AND MONEY ORDERS.

(a) IN GENERAL.—Section 6657 (relating to bad checks) is amended—

(1) by striking "$750" and inserting "$2,000", and

(2) by striking "$15" and inserting "$40".

(b) EFFECTIVE DATE.—The amendments made by this section apply to checks or money orders received after the date of the enactment of this Act.

Subtitle E—Provisions to Discourage Expatriation

SEC. 441. TAX TREATMENT OF INVERTED ENTITIES.

(a) IN GENERAL.—Section 7874 is amended—

(1) by striking "March 4, 2003" in subsection (a)(2)(B)(i) and in the matter following subsection (a)(2)(B)(iii) and inserting "March 20, 2002",

(2) by striking "at least 60 percent" in subsection (a)(2)(B)(ii) and inserting "more than 50 percent",

(3) by striking "80 percent" in subsection (b) and inserting "at least 80 percent",

(4) by striking "60 percent" in subsection (b) and inserting "more than 50 percent",

(5) by adding at the end of subsection (a)(2) the following new sentence: "Except as provided in regulations, an acquisition of properties of a domestic corporation shall not be treated as described in subparagraph (B) if none of the corporation's stock was readily tradeable on an established securities market at any time during the 4-year period ending on the date of the acquisition.", and

(6) by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) SPECIAL RULES APPLICABLE TO EXPATRIATED ENTITIES.—

"(1) INCREASES IN ACCURACY-RELATED PENALTIES.—In the case of any underpayment of tax of an expatriated entity—

"(A) section 6662(a) shall be applied with respect to such underpayment by substituting '30 percent' for '20 percent', and

"(B) if such underpayment is attributable to one or more gross valuation understatements, the increase in the rate of penalty under section 6662(h) shall be to 50 percent rather than 40 percent.

"(2) MODIFICATIONS OF LIMITATION ON INTEREST DEDUCTION.—In the case of an expatriated entity, section 163(j) shall be applied—

"(A) without regard to paragraph (2)(A)(ii) thereof, and

"(B) by substituting '25 percent' for '50 percent' each place it appears in paragraph (2)(B) thereof.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after March 20, 2002.

SEC. 442. REVISION OF TAX RULES ON EXPATRIATION OF INDIVIDUALS.

(a) IN GENERAL.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

"SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.

"(a) GENERAL RULES.—For purposes of this subtitle—

"(1) MARK TO MARKET.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

"(2) RECOGNITION OF GAIN OR LOSS.—In the case of any sale under paragraph (1)—

"(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

"(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence.

"(3) EXCLUSION FOR CERTAIN GAIN.—

"(A) IN GENERAL.—The amount which, but for this paragraph, would be includible in the gross income of any individual by reason of this section shall be reduced (but not below zero) by $600,000. For purposes of this paragraph, allocable expatriation gain taken into account under subsection (f)(2) shall be treated in the same manner as an amount required to be includible in gross income.

"(B) COST-OF-LIVING ADJUSTMENT.—

"(i) IN GENERAL.—In the case of an expatriation date occurring in any calendar year after 2005, the $600,000 amount under subparagraph (A) shall be increased by an amount equal to—

"(I) such dollar amount, multiplied by

"(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 2004' for 'calendar year 1992' in subparagraph (B) thereof.

"(ii) ROUNDING RULES.—If any amount after adjustment under clause (i) is not a multiple of $1,000, such amount shall be rounded to the next lower multiple of $1,000.

"(4) ELECTION TO CONTINUE TO BE TAXED AS UNITED STATES CITIZEN.—

"(A) IN GENERAL.—If a covered expatriate elects the application of this paragraph—

"(i) this section (other than this paragraph and subsection (i)) shall not apply to the expatriate, but

"(ii) in the case of property to which this section would apply but for such election, the expatriate shall be subject to tax under this title in the same manner as if the individual were a United States citizen.

"(B) REQUIREMENTS.—Subparagraph (A) shall not apply to an individual unless the individual—

"(i) provides security for payment of tax in such form and manner, and in such amount, as the Secretary may require,

"(ii) consents to the waiver of any right of the individual under any treaty of the United States which would preclude assessment or collection of any tax which may be imposed by reason of this paragraph, and “(iii) complies with such other requirements as the Secretary may prescribe.

“(C) ELECTION.—An election under subparagraph (A) shall apply to all property to which this section would apply but for the election and, once made, shall be irrevocable. Such election shall also apply to property the basis of which is determined in whole or in part by reference to the property with respect to which the election was made.

“(b) ELECTION TO DEFER TAX.—

“(1) IN GENERAL.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the payment of the additional tax attributable to such property shall be postponed until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

“(2) DETERMINATION OF TAX WITH RESPECT TO PROPERTY.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

“(3) TERMINATION OF POSTPONEMENT.—No tax may be postponed under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

“(4) SECURITY.—

“(A) IN GENERAL.—No election may be made under paragraph (1) with respect to any property unless adequate security is provided to the Secretary with respect to such property.

“(B) ADEQUATE SECURITY.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

“(i) it is a bond in an amount equal to the deferred tax amount under paragraph (2) for the property, or

“(ii) the taxpayer otherwise establishes to the satisfaction of the Secretary that the security is adequate.

“(5) WAIVER OF CERTAIN RIGHTS.—No election may be made under paragraph (1) unless the taxpayer consents to the waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

“(6) ELECTIONS.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable. An election may be made under paragraph (1) with respect to an interest in a trust with respect to which gain is required to be recognized under subsection (f)(1).

“(7) INTEREST.—For purposes of section 6601—

“(A) the last date for the payment of tax shall be determined without regard to the election under this subsection, and

“(B) section 6621(a)(2) shall be applied by substituting ‘5 percentage points’ for ‘3 percentage points’ in subparagraph (B) thereof.

“(c) COVERED EXPATRIATE.—For purposes of this section—

“(1) IN GENERAL.—Except as provided in paragraph (2), the term ‘covered expatriate’ means an expatriate.

“(2) EXCEPTIONS.—An individual shall not be treated as a covered expatriate if—

“(A) the individual—

“(i) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

“(ii) has not been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) during the 5 taxable years ending with the taxable year during which the expatriation date occurs, or

“(B)(i) the individual's relinquishment of United States citizenship occurs before such individual attains age 18½, and

“(ii) the individual has been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.

“(d) EXEMPT PROPERTY; SPECIAL RULES FOR PENSION PLANS.—

“(1) EXEMPT PROPERTY.—This section shall not apply to the following:

“(A) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the day before the expatriation date, meet the requirements of section 897(c)(2).

“(B) SPECIFIED PROPERTY.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.

“(2) SPECIAL RULES FOR CERTAIN RETIREMENT PLANS.—

“(A) IN GENERAL.—If a covered expatriate holds on the day before the expatriation date any interest in a retirement plan to which this paragraph applies—

“(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but

“(ii) an amount equal to the present value of the expatriate's nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.

“(B) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—In the case of any distribution on or after the expatriation date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the amount otherwise includible in gross income by reason of the subsequent distribution shall be reduced by the excess of the amount includible in gross income under subparagraph (A) over any portion of such amount to which this subparagraph previously applied.

“(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS BY PLAN.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan's behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.

“(D) APPLICABLE PLANS.—This paragraph shall apply to—

“(i) any qualified retirement plan (as defined in section 4974(c)),

“(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

“(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

“(e) DEFINITIONS.—For purposes of this section—

“(1) EXPATRIATE.—The term ‘expatriate’ means—

“(A) any United States citizen who relinquishes citizenship, and

“(B) any long-term resident of the United States who—

“(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

“(ii) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country.

“(2) EXPATRIATION DATE.—The term ‘expatriation date’ means—

“(A) the date an individual relinquishes United States citizenship, or

“(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

“(3) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship on the earliest of—

“(A) the date the individual renounces such individual's United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

“(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)-(4)),

“(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

“(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

“(4) LONG-TERM RESIDENT.—The term ‘long-term resident’ has the meaning given to such term by section 877(e)(2).

“(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES' INTERESTS IN TRUST.—

“(1) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

“(A) the individual shall not be treated as having sold such interest,

“(B) such interest shall be treated as a separate share in the trust, and

“(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

“(ii) the separate trust shall be treated as having sold its assets on the day before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

“(iii) the individual shall be treated as having recontributed the assets to the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (C)(ii). In determining the amount of such distribution, proper adjustments shall be made for liabilities of the trust allocable to an individual's share in the trust.

"(2) SPECIAL RULES FOR INTERESTS IN QUALIFIED TRUSTS.—

"(A) IN GENERAL.—If the trust interest described in paragraph (1) is an interest in a qualified trust—

"(i) paragraph (1) and subsection (a) shall not apply, and

"(ii) in addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax in the amount determined under subparagraph (B).

"(B) AMOUNT OF TAX.—The amount of tax under subparagraph (A)(ii) shall be equal to the lesser of—

"(i) the highest rate of tax imposed by section 1(e) for the taxable year which includes the day before the expatriation date, multiplied by the amount of the distribution, or

"(ii) the balance in the deferred tax account immediately before the distribution determined without regard to any increases under subparagraph (C)(ii) after the 30th day preceding the distribution.

"(C) DEFERRED TAX ACCOUNT.—For purposes of subparagraph (B)(ii)—

"(i) OPENING BALANCE.—The opening balance in a deferred tax account with respect to any trust interest is an amount equal to the tax which would have been imposed on the allocable expatriation gain with respect to the trust interest if such gain had been included in gross income under subsection (a).

"(ii) INCREASE FOR INTEREST.—The balance in the deferred tax account shall be increased by the amount of interest determined (on the balance in the account at the time the interest accrues), for periods after the 90th day after the expatriation date, by using the rates and method applicable under section 6621 for underpayments of tax for such periods, except that section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

"(iii) DECREASE FOR TAXES PREVIOUSLY PAID.—The balance in the tax deferred account shall be reduced—

"(I) by the amount of taxes imposed by subparagraph (A) on any distribution to the person holding the trust interest, and

"(II) in the case of a person holding a nonvested interest, to the extent provided in regulations, by the amount of taxes imposed by subparagraph (A) on distributions from the trust with respect to nonvested interests not held by such person.

"(D) ALLOCABLE EXPATRIATION GAIN.—For purposes of this paragraph, the allocable expatriation gain with respect to any beneficiary's interest in a trust is the amount of gain which would be allocable to such beneficiary's vested and nonvested interests in the trust if the beneficiary held directly all assets allocable to such interests.

"(E) TAX DEDUCTED AND WITHHELD.—

"(i) IN GENERAL.—The tax imposed by subparagraph (A)(ii) shall be deducted and withheld by the trustees from the distribution to which it relates.

"(ii) EXCEPTION WHERE FAILURE TO WAIVE TREATY RIGHTS.—If an amount may not be deducted and withheld under clause (i) by reason of the distributee failing to waive any treaty right with respect to such distribution—

"(I) the tax imposed by subparagraph (A)(ii) shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax, and

"(II) any other beneficiary of the trust shall be entitled to recover from the distributee the amount of such tax imposed on the other beneficiary.

"(F) DISPOSITION.—If a trust ceases to be a qualified trust at any time, a covered expatriate disposes of an interest in a qualified trust, or a covered expatriate holding an interest in a qualified trust dies, then, in lieu of the tax imposed by subparagraph (A)(ii), there is hereby imposed a tax equal to the lesser of—

"(i) the tax determined under paragraph (1) as if the day before the expatriation date were the date of such cessation, disposition, or death, whichever is applicable, or

"(ii) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax imposed on the other beneficiary.

"(G) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

"(i) QUALIFIED TRUST.—The term 'qualified trust' means a trust which is described in section 7701(a)(30)(E).

"(ii) VESTED INTEREST.—The term 'vested interest' means any interest which, as of the day before the expatriation date, is vested in the beneficiary.

"(iii) NONVESTED INTEREST.—The term 'nonvested interest' means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

"(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

"(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is part of a retirement plan to which subsection (d)(2) applies.

"(3) DETERMINATION OF BENEFICIARIES' INTEREST IN TRUST.—

"(A) DETERMINATIONS UNDER PARAGRAPH (1).—For purposes of paragraph (1), a beneficiary's interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar adviser.

"(B) OTHER DETERMINATIONS.—For purposes of this section—

"(i) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiaries for purposes of this section.

"(ii) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

"(I) the methodology used to determine that taxpayer's trust interest under this section, and

"(II) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary's trust interest under this section.

"(g) TERMINATION OF DEFERRALS, ETC.—In the case of any covered expatriate, notwithstanding any other provision of this title—

"(1) any period during which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and

"(2) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

"(h) IMPOSITION OF TENTATIVE TAX.—

"(1) IN GENERAL.—If an individual is required to include any amount in gross income under subsection (a) for any taxable year, there is hereby imposed, immediately before the expatriation date, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

"(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

"(3) TREATMENT OF TAX.—Any tax paid under paragraph (1) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

"(4) DEFERRAL OF TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

"(i) SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.—

"(1) IMPOSITION OF LIEN.—

"(A) IN GENERAL.—If a covered expatriate makes an election under subsection (a)(4) or (b) which results in the deferral of any tax imposed by reason of subsection (a), the deferred amount (including any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).

"(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate's income tax which, but for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

"(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

"(A) the liability for tax by reason of this section is satisfied or has become unenforceable by reason of lapse of time, or

"(B) it is established to the satisfaction of the Secretary that no further tax liability may arise by reason of this section.

"(3) CERTAIN RULES APPLY.—The rules set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6324A.

"(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.".

(b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Section 102 (relating to gifts, etc. not included in gross income) is amended by adding at the end the following new subsection:

"(d) GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.—

"(1) IN GENERAL.—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is also used in section 877A shall have the same meaning as when used in section 877A.

"(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1) shall not apply to any property if either—

"(A) the gift, bequest, devise, or inheritance is—

"(i) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

"(ii) included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate, or

"(B) no such return was timely filed but no such return would have been required to be filed even if the covered expatriate were a citizen or long-term resident of the United States.".

(c) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) is amended by adding at the end the following new paragraph:

"(49) TERMINATION OF UNITED STATES CITIZENSHIP.—

"(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(e)(3)

"(B) DUAL CITIZENS.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.".

(d) INELIGIBILITY FOR VISA OR ADMISSION TO UNITED STATES.—

(1) IN GENERAL.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

"(E) FORMER CITIZENS NOT IN COMPLIANCE WITH EXPATRIATION REVENUE PROVISIONS.—Any alien who is a former citizen of the United States who relinquishes United States citizenship (within the meaning of section 877A(e)(3) of the Internal Revenue Code of 1986) and who is not in compliance with section 877A of such Code (relating to expatriation) is inadmissible.".

(2) AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—Section 6103(l) (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

"(21) DISCLOSURE TO DENY VISA OR ADMISSION TO CERTAIN EXPATRIATES.—Upon written request of the Attorney General or the Attorney General's delegate, the Secretary shall disclose whether an individual is in compliance with section 877A (and if not in compliance, any items of noncompliance) to officers and employees of the Federal agency responsible for administering section 212(a)(10)(E) of the Immigration and Nationality Act solely for the purpose of, and to the extent necessary in, administering such section 212(a)(10)(E).".

(B) SAFEGUARDS.—Section 6103(p)(4) (relating to safeguards) is amended by striking "or (20)" each place it appears and inserting "(20), or (21)".

(3) EFFECTIVE DATES.—The amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(e) CONFORMING AMENDMENTS.—

(1) Section 877 is amended by adding at the end the following new subsection:

"(h) APPLICATION.—This section shall not apply to an expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after the date of the enactment of this subsection.".

(2) Section 2107 is amended by adding at the end the following new subsection:

"(f) APPLICATION.—This section shall not apply to any expatriate subject to section 877A.".

(3) Section 2501(a)(3) is amended by adding at the end the following new subparagraph:

"(C) APPLICATION.—This paragraph shall not apply to any expatriate subject to section 877A.".

(4) Section 6039G(a) is amended by inserting "or 877A" after "section 877(b)".

(5) The second sentence of section 6039G(d) is amended by inserting "or who relinquishes United States citizenship (within the meaning of section 877A(e)(3))" after "section 877(a))".

(f) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

"Sec. 877A. Tax responsibilities of expatriation.".

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) whose expatriation date (as so defined) occurs on or after the date of the enactment of this Act.

(2) GIFTS AND BEQUESTS.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to gifts and bequests received on or after the date of the enactment of this Act, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

(3) DUE DATE FOR TENTATIVE TAX.—The due date under section 877A(h)(2) of the Internal Revenue Code of 1986, as added by this section, shall in no event occur before the 90th day after the date of the enactment of this Act.

Subtitle F—Miscellaneous Provisions

SEC. 451. TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT INSTRUMENTS.

(a) IN GENERAL.—Section 1275(d) (relating to regulation authority) is amended—

(1) by striking "The Secretary" and inserting the following:

"(1) IN GENERAL.—The Secretary", and

(2) by adding at the end the following new paragraph:

"(2) TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT.—

"(A) IN GENERAL.—In the case of a debt instrument which—

"(i) is convertible into stock of the issuing corporation, into stock or debt of a related party (within the meaning of section 267(b) or 707(b)(1)), or into cash or other property in an amount equal to the approximate value of such stock or debt, and

"(ii) provides for contingent payments,

any regulations which require original issue discount to be determined by reference to the comparable yield of a noncontingent fixed-rate debt instrument shall be applied as if the regulations require that such comparable yield be determined by reference to a noncontingent fixed-rate debt instrument which is convertible into stock.

"(B) SPECIAL RULE.—For purposes of subparagraph (A), the comparable yield shall be determined without taking into account the yield resulting from the conversion of a debt instrument into stock.".

(b) CROSS REFERENCE.—Section 163(e)(6) (relating to cross references) is amended by adding at the end the following:

"For the treatment of contingent payment convertible debt, see section 1275(d)(2).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued on or after the date of the enactment of this Act.

SEC. 452. GRANT OF TREASURY REGULATORY AUTHORITY TO ADDRESS FOREIGN TAX CREDIT TRANSACTIONS INVOLVING INAPPROPRIATE SEPARATION OF FOREIGN TAXES FROM RELATED FOREIGN INCOME.

(a) IN GENERAL.—Section 901 (relating to taxes of foreign countries and of possessions of United States) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) REGULATIONS.—The Secretary may prescribe regulations disallowing a credit under subsection (a) for all or a portion of any foreign tax, or allocating a foreign tax among 2 or more persons, in cases where the foreign tax is imposed on any person in respect of income of another person or in other cases involving the inappropriate separation of the foreign tax from the related foreign income.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 453. REPEAL OF SPECIAL PROPERTY EXCEPTION TO LEASING PROVISIONS OF THE AMERICAN JOBS CREATION ACT OF 2004.

(a) IN GENERAL.—Section 849(b) of the American Jobs Creation Act of 2004 is amended by striking paragraphs (1) and (2), by redesignating paragraphs (3) and (4) as paragraphs (1) and (2), respectively.

(b) LEASES TO FOREIGN ENTITIES.—Section 849(b) of the American Jobs Creation Act of 2004, as amended by subsection (a), is amended by adding at the end the following new paragraph:

"(3) LEASES TO FOREIGN ENTITIES.—In the case of tax-exempt use property leased to a tax-exempt entity which is a foreign person or entity, the amendments made by this part shall apply to taxable years beginning after December 31, 2005, with respect to leases entered into on or before March 12, 2004.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the American Jobs Creation Act of 2004.

SEC. 454. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERS WHICH ARE CORPORATIONS.

(a) IN GENERAL.—Section 163(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

"(8) TREATMENT OF CORPORATE PARTNERS.—Except to the extent provided by regulations, in applying this subsection to a corporation which owns (directly or indirectly) an interest in a partnership—

"(A) such corporation's distributive share of interest income paid or accrued to such partnership shall be treated as interest income paid or accrued to such corporation,

"(B) such corporation's distributive share of interest paid or accrued by such partnership shall be treated as interest paid or accrued by such corporation, and

"(C) such corporation's share of the liabilities of such partnership shall be treated as liabilities of such corporation.".

(b) ADDITIONAL REGULATORY AUTHORITY.—Section 163(j)(9) (relating to regulations), as redesignated by subsection (a), is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) regulations providing for the reallocation of shares of partnership indebtedness, or distributive shares of the partnership's interest income or interest expense, as may be appropriate to carry out the purposes of this subsection.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning on or after the date of the enactment of this Act.

SEC. 455. LIMITATION OF EMPLOYER DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES.

(a) IN GENERAL.—Paragraph (2) of section 274(e) (relating to expenses treated as compensation) is amended to read as follows:

"(2) EXPENSES TREATED AS COMPENSATION.—Expenses for goods, services, and facilities, to the extent that the expenses do not exceed the amount of the expenses which are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).".

(b) PERSONS NOT EMPLOYEES.—Paragraph (9) of section 274(e) is amended by striking "to the extent that the expenses are includible in the gross income" and inserting "to the extent that the expenses do not exceed the amount of the expenses which are includible in the gross income".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses incurred after the date of the enactment of this Act.

SEC. 456. INCREASE IN AGE OF MINOR CHILDREN WHOSE UNEARNED INCOME IS TAXED AS IF PARENT'S INCOME.

(a) IN GENERAL.—Section 1(g)(2)(A) (relating to child to whom subsection applies) is amended by striking "age 14" and inserting "age 18".

(b) TREATMENT OF DISTRIBUTIONS FROM QUALIFIED DISABILITY TRUSTS.—Section 1(g)(4) (relating to net unearned income) is amended by adding at the end the following new subparagraph:

"(C) TREATMENT OF DISTRIBUTIONS FROM QUALIFIED DISABILITY TRUSTS.—For purposes of this subsection, in the case of any child who is a beneficiary of a qualified disability trust (as defined in section 642(b)(2)(C)(ii)), any amount included in the income of such child under sections 652 and 662 during a taxable year shall be considered earned income of such child for such taxable year.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 457. LOAN AND REDEMPTION REQUIREMENTS ON POOLED FINANCING REQUIREMENTS.

(a) STRENGTHENED REASONABLE EXPECTATION REQUIREMENT.—Subparagraph (A) of section 149(f)(2) (relating to reasonable expectation requirement) is amended to read as follows:

"(A) IN GENERAL.—The requirements of this paragraph are met with respect to an issue if the issuer reasonably expects that—

"(i) as of the close of the 1-year period beginning on the date of issuance of the issue, at least 50 percent of the net proceeds of the issue (as of the close of such period) will have been used directly or indirectly to make or finance loans to ultimate borrowers, and

"(ii) as of the close of the 3-year period beginning on such date of issuance, at least 95 percent of the net proceeds of the issue (as of the close of such period) will have been so used.".

(b) WRITTEN LOAN COMMITMENT AND REDEMPTION REQUIREMENTS.—Section 149(f) (relating to treatment of certain pooled financing bonds) is amended by redesignating paragraphs (4) and (5) as paragraphs (6) and (7), respectively, and by inserting after paragraph (3) the following new paragraphs:

"(4) WRITTEN LOAN COMMITMENT REQUIREMENT.—

"(A) IN GENERAL.—The requirement of this paragraph is met with respect to an issue if the issuer receives prior to issuance written loan commitments identifying the ultimate potential borrowers of at least 50 percent of the net proceeds of such issue.

"(B) EXCEPTION.—Subparagraph (A) shall not apply with respect to any issuer which is a State (or an integral part of a State) issuing pooled financing bonds to make or finance loans to subordinate governmental units of such State or to State-created entities providing financing for water-infrastructure projects through the federally-sponsored State revolving fund program.

"(5) REDEMPTION REQUIREMENT.—The requirement of this paragraph is met if to the extent that less than the percentage of the proceeds of an issue required to be used under clause (i) or (ii) of paragraph (2)(A) is used by the close of the period identified in such clause, the issuer uses an amount of proceeds equal to the excess of—

"(A) the amount required to be used under such clause, over

"(B) the amount actually used by the close of such period,

"to redeem outstanding bonds within 90 days after the end of such period.".

(c) ELIMINATION OF DISREGARD OF POOLED BONDS IN DETERMINING ELIGIBILITY FOR SMALL ISSUER EXCEPTION TO ARBITRAGE REBATE.—Section 148(f)(4)(D)(ii) (relating to aggregation of issuers) is amended by striking subclause (II) and by redesignating subclauses (III) and (IV) as subclauses (II) and (III), respectively.

(d) CONFORMING AMENDMENTS.—

(1) Section 149(f)(1) is amended by striking "paragraphs (2) and (3)" and inserting "paragraphs (2), (3), (4), and (5)".

(2) Section 149(f)(7)(B), as redesignated by subsection (b), is amended by striking "paragraph (4)(A)" and inserting "paragraph (6)(A)".

(3) Section 54(l)(2) is amended by striking "section 149(f)(4)(A)" and inserting "section 149(f)(6)(A)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

SEC. 458. REPORTING OF INTEREST ON TAX-EXEMPT BONDS.

(a) IN GENERAL.—Section 6049(b)(2) (relating to exceptions) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(b) CONFORMING AMENDMENT.—Section 6049(b)(2)(C), as redesignated by subsection (a), is amended by striking "subparagraph (C)" and inserting "subparagraph (B)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to interest earned after December 31, 2005.

SEC. 459. MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) TAXABLE YEARS ENDING BEFORE 2006.—

(1) MODIFICATION OF PHASEOUT.—

(A) IN GENERAL.—Section 29(b)(1)(A) is amended by inserting "the calendar year preceding" before "the calendar year".

(B) CONFORMING AMENDMENTS.—Section 29(b)((2) is amended—

(i) by striking "The" and inserting "With respect to any calendar year, the", and

(ii) by striking "for the calendar year in which the sale occurs" and inserting "for such calendar year".

(2) NO INFLATION ADJUSTMENT FOR THE CREDIT AMOUNT IN 2005.—Section 29(b)(2), as amended by paragraph (1), is amended by adding at the end the following new sentence: "This paragraph shall not apply with respect to the $3 amount in subsection (a) for calendar year 2005 and the amount in effect under subsection (a) for sales in such calendar year shall be the amount which was in effect for sales in calendar year 2004.".

(b) TAXABLE YEARS ENDING AFTER 2005.—

(1) MODIFICATION OF PHASEOUT.—

(A) IN GENERAL.—Section 45K(b)(1)(A) is amended by inserting "the calendar year preceding" before "the calendar year".

(B) CONFORMING AMENDMENTS.—Section 45K(b)((2) is amended—

(i) by striking "The" and inserting "With respect to any calendar year, the", and

(ii) by striking "for the calendar year in which the sale occurs" and inserting "for such calendar year".

(2) NO INFLATION ADJUSTMENT FOR THE CREDIT AMOUNT IN 2005, 2006, AND 2007.—Section 45K(b)(2), as amended by paragraph (1), is amended by adding at the end the following new sentence: "This paragraph shall not apply with respect to the $3 amount in subsection (a) for calendar years 2005, 2006, and 2007 and the amount in effect under subsection (a) for sales in each such calendar year shall be the amount which was in effect for sales in calendar year 2004.".

(3) TREATMENT OF COKE AND COKE GAS.—

(A) NONAPPLICATION OF PHASEOUT.—Section 45K(g)(2) is amended by adding at the end the following new subparagraph:

"(D) NONAPPLICATION OF PHASEOUT.—Subsection (b)(1) shall not apply.".

(B) APPLICATION OF INFLATION ADJUSTMENT.—Section 45K(g)(2)(B) is amended by inserting "and the last sentence of subsection (b)(2) shall not apply.".

(C) CLARIFICATION OF QUALIFYING FACILITY.—Section 45K(g)(1) is amended by inserting "(other than from petroleum based products)" after "coke or coke gas".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold after December 31, 2004.

SEC. 460. MODIFICATION OF INDIVIDUAL ESTIMATED TAX SAFE HARBOR.

(a) IN GENERAL.—Clause (i) of section 6654(d)(1)(C) is amended by striking "substituting" and all that follows through "1997," and inserting "substituting '110 percent (120 percent if the preceding taxable year begins in 2005)' for '100 percent'.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to any installment payment for taxable years beginning after December 31, 2005.

SEC. 461. REVALUATION OF LIFO INVENTORIES OF LARGE INTEGRATED OIL COMPANIES.

(a) General Rule.—Notwithstanding any other provision of law, if a taxpayer is an applicable integrated oil company for its last taxable year ending in calendar year 2005, the taxpayer shall—

(1) increase, effective as of the close of such taxable year, the value of each historic LIFO layer of inventories of crude oil, natural gas, or any other petroleum product (within the meaning of section 4611) by the layer adjustment amount, and

(2) decrease its cost of goods sold for such taxable year by the aggregate amount of the increases under paragraph (1).

If the aggregate amount of the increases under paragraph (1) exceed the taxpayer's cost of goods sold for such taxable year, the taxpayer's gross income for such taxable year shall be increased by the amount of such excess.

(b) Layer Adjustment Amount.—For purposes of this section—

(1) In general.—The term “layer adjustment amount” means, with respect to any historic LIFO layer, the product of—

(A) $18.75, and

(B) the number of barrels of crude oil (or in the case of natural gas or other petroleum products, the number of barrel-of-oil equivalents) represented by the layer.

(2) Barrel-of-oil equivalent.—The term “barrel-of-oil equivalent” has the meaning given such term by section 29(d)(5) (as in effect before its redesignation by the Energy Tax Incentives Act of 2005).

(c) Application of Requirement.—

(1) No change in method of accounting.—Any adjustment required by this section shall not be treated as a change in method of accounting.

(2) Underpayments of estimated tax.—o addition to the tax shall be made under section 6655 of the Internal Revenue Code of 1986 (relating to failure by corporation to pay estimated tax) with respect to any underpayment of an installment required to be paid with respect to the taxable year described in subsection (a) to the extent such underpayment was created or increased by this section.

(d) Applicable Integrated Oil Company.—For purposes of this section, the term “applicable integrated oil company” means an integrated oil company (as defined in section 291(b)(4) of the Internal Revenue Code of 1986) which has an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year and which had gross receipts in excess of $1,000,000,000 for its last taxable year ending during calendar year 2005. For purposes of this subsection all persons treated as a single employer under subsections (a) and (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as 1 person and, in the case of a short taxable year, the rule under section 448(c)(3)(B) shall apply.

SEC. 462. ELIMINATION OF AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES FOR MAJOR INTEGRATED OIL COMPANIES.

(a) In General.—Section 167(h) is amended by adding at the end the following new paragraph:

“(5) Nonapplication to major integrated oil companies.—This subsection shall not apply with respect to any expenses paid or incurred for any taxable year by any integrated oil company (as defined in section 291(b)(4)) which has an average daily worldwide production of crude oil of at least 500,000 barrels for such taxable year.”.

(b) Effective Date.—The amendment made by this section shall take effect as if included in the amendment made by section 1329(a) of the Energy Policy Act of 2005.

SEC. 463. VALUATION OF EMPLOYEE PERSONAL USE OF NONCOMMERCIAL AIRCRAFT.

(a) In General.—For purposes of Federal income tax inclusion, the value of any employee personal use of noncommercial aircraft shall equal the excess (if any) of—

(1) greater of—

(A) the fair market value of such use, or

(B) the actual cost of such use (including all fixed and variable costs), over

(2) any amount paid by or on behalf of such employee for such use.

(b) Effective Date.—Subsection (a) shall apply to use after the date of the enactment of this Act.

SEC. 464. APPLICATION OF FIRPTA TO REGULATED INVESTMENT COMPANIES.

(a) In General.—Subclause (II) of section 897(h)(4)(A)(i) (defining qualified investment entity) is amended by inserting “which is a United States real property holding corporation or which would be a United States real property holding corporation if the exceptions provided in subsections (c)(3) and (h)(2) did not apply to interests in any real estate investment trust or regulated investment company” after “regulated investment company”.

(b) Effective Date.—The amendment made by this section shall apply to distributions with respect to taxable years beginning after December 31, 2004.

SEC. 465. TREATMENT OF DISTRIBUTIONS ATTRIBUTABLE TO FIRPTA GAINS.

(a) Qualified Investment Entity.—

(1) In general.—Section 897(h)(1) is amended—

(A) by striking “a nonresident alien individual or a foreign corporation” in the first sentence and inserting “a nonresident alien individual, a foreign corporation, or other qualified investment entity”,

(B) by striking “such nonresident alien individual or foreign corporation” in the first sentence and inserting “such nonresident alien individual, foreign corporation, or other qualified investment entity”, and

(C) by striking the second sentence and inserting the following new sentence: “Notwithstanding the preceding sentence, any distribution by a qualified investment entity to a nonresident alien, a foreign corporation, or other qualified investment entity with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the 1 year period ending on the date of such distribution.”.

(2) Application after 2007.—Clause (ii) of section 897(h)(4)(A) is amended by adding at the end the following new sentence: “Notwithstanding the preceding sentence, an entity described in clause (i)(II) shall be treated as a qualified investment entity for purposes of applying paragraph (1) in any case in which a real estate investment trust makes a distribution to an entity described in clause (i)(II).”.

(b) Treatment of Certain Distributions as Dividends.—

(1) In general.—Section 852(b)(3) (relating to capital gains) is amended by adding at the end the following new subparagraph:

“(E) Certain distributions.—In the case of a distribution to which section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount of such distribution which would be included in computing long-term capital gains for the shareholder under subparagraph (B) or (D) (without regard to this subparagraph)—

“(i) shall not be included in computing such shareholder's long-term capital gains, and

“(ii) shall be included in such shareholder's gross income as a dividend from the regulated investment company.”.

(2) Conforming amendment.—Section 871(k)(2) (relating to short-term capital gain dividends) is amended by adding at the end the following new subparagraph:

“(E) Certain distributions.—In the case of a distribution to which section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be treated as a short-term capital gain dividend to the shareholder (without regard to this subparagraph)—

“(i) shall not be treated as a short-term capital gain dividend, and

“(ii) shall be included in such shareholder's gross income as a dividend from the regulated investment company.”.

(c) Effective Dates.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years of qualified investment entities beginning after the date of the enactment of this Act.

(2) Dividends.—The amendments made by subsection (b) shall apply to dividends with respect to taxable years of regulated investment companies beginning after December 31, 2004.

SEC. 466. PREVENTION OF AVOIDANCE OF TAX ON INVESTMENTS OF FOREIGN PERSONS IN UNITED STATES REAL PROPERTY THROUGH WASH SALE TRANSACTIONS.

(a) In General.—Section 897(h) of the Internal Revenue Code of 1986 (relating to special rules in certain investment entities) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

“(4) Treatment of certain wash sale transactions.—

“(A) In general.—If an interest in a domestically controlled qualified investment entity is disposed of in an applicable wash sale transaction, the taxpayer shall, for purposes of this section, be treated as having gain from the sale or exchange of a United States real property interest in an amount equal to the portion of the distribution described in subparagraph (B) with respect to such interest which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1).

“(B) Applicable wash sales transaction.—For purposes of this paragraph—

“(i) In general.—The term ‘applicable wash sales transaction’ means any transaction (or series of transactions) under which a nonresident alien individual or foreign corporation—

“(I) disposes of an interest in a domestically controlled qualified investment entity during the 30-day period preceding a distribution which is to be made with respect to the interest and any portion of which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1), and

“(II) acquires an identical interest in such entity during the 60-day period beginning with the 1st day of the 30-day period described in subclause (I).

For purposes of subclause (II), a nonresident alien individual or foreign corporation shall be treated as having acquired any interest acquired by a person related (within the meaning of section 465(b)(3)(C)) to the individual or corporation.

"(ii) EXCEPTION WHERE DISTRIBUTION ACTUALLY RECEIVED.—A transaction shall not be treated as an applicable wash sales transaction if the nonresident alien individual or foreign corporation receives the distribution described in clause (i)(I) with respect to either the interest which was disposed of, or acquired, in the transaction.

"(iii) EXCEPTION FOR CERTAIN PUBLICLY TRADED STOCK.—A transaction shall not be treated as an applicable wash sales transaction if it involves the disposition of any class of stock in a qualified investment entity which is regularly traded on an established securities market within the United States but only if the nonresident alien individual or foreign corporation did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of the distribution described in clause (i)(I).".

(b) NO WITHHOLDING REQUIRED.—Section 1445(b) of the Internal Revenue Code of 1986 (relating to exemptions) is amended by adding at the end the following new paragraph:

"(8) APPLICABLE WASH SALES TRANSACTIONS.—No person shall be required to deduct and withhold any amount under subsection (a) with respect to a disposition which is treated as a disposition of a United States real property interest solely by reason of section 897(h)(4).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to dispositions after December 31, 2005, in taxable years ending after such date.

SEC. 467. MODIFICATIONS TO RULES RELATING TO TAXATION OF DISTRIBUTIONS OF STOCK AND SECURITIES OF A CONTROLLED CORPORATION.

(a) MODIFICATION OF ACTIVE BUSINESS DEFINITION UNDER SECTION 355.—

(1) IN GENERAL.—Section 355(b) (defining active conduct of a trade or business) is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULES RELATING TO ACTIVE BUSINESS REQUIREMENT.—

"(A) IN GENERAL.—For purposes of determining whether a corporation meets the requirement of paragraph (2)(A), all members of such corporation's separate affiliated group shall be treated as 1 corporation. For purposes of the preceding sentence, the term 'separate affiliated group' means, with respect to any corporation, the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply.

"(B) CONTROL.—For purposes of paragraph (2)(D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as 1 distributee corporation.".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (A) of section 355(b)(2) is amended to read as follows:

"(A) it is engaged in the active conduct of a trade or business,".

(B) Section 355(b)(2) of such Code is amended by striking the last sentence.

(3) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendments made by this subsection shall apply—

(i) to distributions after the date of the enactment of this Act, and before January 1, 2010, and

(ii) for purposes of determining the continued qualification under section 355(b)(2)(A) of the Internal Revenue Code of 1986 (as amended by paragraph (2)(A)) of distributions made before such date, as a result of an acquisition, disposition, or other restructuring after such date and before January 1, 2010.

(B) TRANSITION RULE.—The amendments made by this subsection shall not apply to any distribution pursuant to a transaction which is—

(i) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,

(ii) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(iii) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

(C) ELECTIONS.—

(i) OUT OF TRANSITION RELIEF.—Subparagraph (B) shall not apply if the distributing corporation elects not to have such subparagraph apply to distributions of such corporation. Any such election, once made, shall be irrevocable.

(ii) APPLICATION TO PRIOR DISTRIBUTIONS.—Subparagraph (A)(ii) shall not apply to a distributing or controlled corporation if the corporation elects not to have such subparagraph apply to such corporation. Any such election, once made, shall be irrevocable.

(b) SECTION 355 NOT TO APPLY TO DISTRIBUTIONS IF THE DISTRIBUTING OR CONTROLLED CORPORATION IS A DISQUALIFIED INVESTMENT CORPORATION.—

(1) IN GENERAL.—Section 355 (relating to distributions of stock and securities of a controlled corporation) is amended by adding at the end the following new subsection:

"(g) SECTION NOT TO APPLY TO DISTRIBUTIONS INVOLVING DISQUALIFIED INVESTMENT CORPORATIONS.—

"(1) IN GENERAL.—This section (and so much of section 356 as relates to this section) shall not apply to any distribution which is part of a transaction if—

"(A) either the distributing corporation or controlled corporation is, immediately after the transaction, a disqualified investment corporation, and

"(B) any person holds, immediately after the transaction, a 50-percent or greater interest in any disqualified investment corporation, but only if such person did not hold such an interest in such corporation immediately before the transaction.

"(2) DISQUALIFIED INVESTMENT CORPORATION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'disqualified investment corporation' means any distributing or controlled corporation if the fair market value of the investment assets of the corporation is 75 percent or more of the fair market value of all assets of the corporation.

"(B) INVESTMENT ASSETS.—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the term 'investment assets' means—

"(I) cash,

"(II) any stock or securities in a corporation,

"(III) any interest in a partnership,

"(IV) any debt instrument or other evidence of indebtedness,

"(V) any option, forward or futures contract, notional principal contract, or derivative,

"(VI) foreign currency, or

"(VII) any similar asset.

"(ii) EXCEPTION FOR ASSETS USED IN ACTIVE CONDUCT OF CERTAIN FINANCIAL TRADES OR BUSINESSES.—Such term shall not include any asset which is held for use in the active and regular conduct of—

"(I) a lending or finance business (within the meaning of section 954(h)(4)),

"(II) a banking business through a bank (as defined in section 581), a domestic building and loan association (within the meaning of section 7701(a)(19)), or any similar institution specified by the Secretary, or

"(III) an insurance business if the conduct of the business is licensed, authorized, or regulated by an applicable insurance regulatory body.

This clause shall only apply with respect to any business if substantially all of the income of the business is derived from persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the person conducting the business.

"(iii) EXCEPTION FOR SECURITIES MARKED TO MARKET.—Such term shall not include any security (as defined in section 475(c)(2)) which is held by a dealer in securities and to which section 475(a) applies.

"(iv) STOCK OR SECURITIES IN A 25-PERCENT CONTROLLED ENTITY.—

"(I) IN GENERAL.—Such term shall not include any stock and securities in, or any asset described in subclause (IV) or (V) of clause (i) issued by, a corporation which is a 25-percent controlled entity with respect to the distributing or controlled corporation.

"(II) LOOK-THRU RULE.—The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any 25-percent controlled entity.

"(III) 25-PERCENT CONTROLLED ENTITY.—For purposes of this clause, the term '25-percent controlled entity' means, with respect to any distributing or controlled corporation, any corporation with respect to which the distributing or controlled corporation owns directly or indirectly stock meeting the requirements of section 1504(a)(2), except that such section shall be applied by substituting '25 percent' for '80 percent' and without regard to stock described in section 1504(a)(4).

"(v) INTERESTS IN CERTAIN PARTNERSHIPS.—

"(I) IN GENERAL.—Such term shall not include any interest in a partnership, or any debt instrument or other evidence of indebtedness, issued by the partnership, if 1 or more of the trades or businesses of the partnership are (or, without regard to the 5-year requirement under subsection (b)(2)(B), would be) taken into account by the distributing or controlled corporation, as the case may be, in determining whether the requirements of subsection (b) are met with respect to the distribution.

"(II) LOOK-THRU RULE.—The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any partnership described in subclause (I).

"(3) 50-PERCENT OR GREATER INTEREST.—For purposes of this subsection—

"(A) IN GENERAL.—The term '50-percent or greater interest' has the meaning given such term by subsection (d)(4).

"(B) ATTRIBUTION RULES.—The rules of section 318 shall apply for purposes of determining ownership of stock for purposes of this paragraph.

"(4) TRANSACTION.—For purposes of this subsection, the term 'transaction' includes a series of transactions.

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out, or prevent the avoidance of, the purposes of this subsection, including regulations—

"(A) to carry out, or prevent the avoidance of, the purposes of this subsection in cases involving—

"(i) the use of related persons, intermediaries, pass-thru entities, options, or other arrangements, and

"(ii) the treatment of assets unrelated to the trade or business of a corporation as investment assets if, prior to the distribution, investment assets were used to acquire such unrelated assets,

"(B) which in appropriate cases exclude from the application of this subsection a distribution which does not have the character of a redemption which would be treated as a sale or exchange under section 302, and

"(C) which modify the application of the attribution rules applied for purposes of this subsection.".

(2) Effective dates.—

(A) In general.—The amendments made by this subsection shall apply to distributions after the date of the enactment of this Act.

(B) Transition rule.—The amendments made by this subsection shall not apply to any distribution pursuant to a transaction which is—

(i) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,

(ii) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(iii) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

SEC. 468. AMORTIZATION OF EXPENSES INCURRED IN CREATING OR ACQUIRING MUSIC OR MUSIC COPYRIGHTS.

(a) In General.—Section 263A (relating to capitalization and inclusion in inventory costs of certain expenses) is amended by redesignating subsection (i) as subsection (j) and by adding after subsection (h) the following new subsection:

"(i) Special Rules for Certain Musical Works and Copyrights.—

"(1) In general.—If—

"(A) any expense is paid or incurred by the taxpayer in creating or acquiring any musical composition (including any accompanying words) or any copyright with respect to a musical composition, and

"(B) such expense is required to be capitalized under this section,

then, notwithstanding section 167(g), the amount capitalized shall be amortized ratably over the 5-year period beginning with the month in which the composition or copyright was acquired (or, in the case of expenses paid or incurred in connection with the creation of a musical composition, the 5-taxable-year period beginning with the taxable year in which the expenses were paid or incurred).

"(2) Exceptions.—Paragraph (1) shall not apply to any expense—

"(A) which is a qualified creative expense under subsection (h),

"(B) to which a simplified procedure established under subsection (j)(2) applies,

"(C) which is an amortizable section 197 intangible (as defined in section 197(c)), or

"(D) which, without regard to this section, would not be allowable as a deduction."

(b) Effective Date.—The amendments made by this section shall apply to expenses paid or incurred after December 31, 2005, in taxable years ending after such date.

SEC. 469. CREDIT TO HOLDERS OF RURAL RENAISSANCE BONDS.

(a) In General.—Subpart H of part IV of subchapter A of chapter 1 (relating to credits against tax) is amended by adding at the end the following new section:

"SEC. 54A. CREDIT TO HOLDERS OF RURAL RENAISSANCE BONDS.

"(a) Allowance of Credit.—In the case of a taxpayer who holds a rural renaissance bond on a credit allowance date of such bond, which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to credit allowance dates during such year on which the taxpayer holds such bond.

"(b) Amount of Credit.—

"(1) In general.—The amount of the credit determined under this subsection with respect to any credit allowance date for a rural renaissance bond is 25 percent of the annual credit determined with respect to such bond.

"(2) Annual credit.—The annual credit determined with respect to any rural renaissance bond is the product of—

"(A) the credit rate determined by the Secretary under paragraph (3) for the day on which such bond was sold, multiplied by

"(B) the outstanding face amount of the bond.

"(3) Determination.—For purposes of paragraph (2), with respect to any rural renaissance bond, the Secretary shall determine daily or caused to be determined daily a credit rate which shall apply to the first day on which there is a binding, written contract for the sale or exchange of the bond. The credit rate for any day is the credit rate which the Secretary or the Secretary's designee estimates will permit the issuance of rural renaissance bonds with a specified maturity or redemption date without discount and without interest cost to the qualified issuer.

"(4) Credit allowance date.—For purposes of this section, the term 'credit allowance date' means—

"(A) March 15,

"(B) June 15,

"(C) September 15, and

"(D) December 15.

Such term also includes the last day on which the bond is outstanding.

"(5) Special rule for issuance and redemption.—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

"(c) Limitation Based on Amount of Tax.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

"(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(2) the sum of the credits allowable under this part (other than subpart C).

"(d) Rural Renaissance Bond.—For purposes of this section—

"(1) In general.—The term 'rural renaissance bond' means any bond issued as part of an issue if—

"(A) the bond is issued by a qualified issuer,

"(B) 95 percent or more of the proceeds from the sale of such issue are to be used for capital expenditures incurred for 1 or more qualified projects,

"(C) the qualified issuer designates such bond for purposes of this section and the bond is in registered form, and

"(D) the issue meets the requirements of subsections (e) and (h).

"(2) Qualified project; special use rules.—

"(A) In general.—The term 'qualified project' means 1 or more projects described in subparagraph (B) located in a rural area.

"(B) Projects described.—A project described in this subparagraph is—

"(i) a water or waste treatment project,

"(ii) an affordable housing project,

"(iii) a community facility project, including hospitals, fire and police stations, and nursing and assisted-living facilities,

"(iv) a value-added agriculture or renewable energy facility project for agricultural producers or farmer-owned entities, including any project to promote the production, processing, or retail sale of ethanol (including fuel at least 85 percent of the volume of which consists of ethanol), biodiesel, animal waste, biomass, raw commodities, or wind as a fuel,

"(v) a distance learning or telemedicine project,

"(vi) a rural utility infrastructure project, including any electric or telephone system,

"(vii) a project to expand broadband technology,

"(viii) a rural teleworks project, and

"(ix) any project described in any preceding clause carried out by the Delta Regional Authority.

"(C) Special rules.—For purposes of this paragraph—

"(i) any project described in subparagraph (B)(iv) for a farmer-owned entity may be considered a qualified project if such entity is located in a rural area, or in the case of a farmer-owned entity the headquarters of which are located in a nonrural area, if the project is located in a rural area, and

"(ii) any project for a farmer-owned entity which is a facility described in subparagraph (B)(iv) for agricultural producers may be considered a qualified project regardless of whether the facility is located in a rural or nonrural area.

"(3) Special use rules.—

"(A) Refinancing rules.—For purposes of paragraph (1)(B), a qualified project may be refinanced with proceeds of a rural renaissance bond only if the indebtedness being refinanced (including any obligation directly or indirectly refinanced by such indebtedness) was originally incurred after the date of the enactment of this section.

"(B) Reimbursement.—For purposes of paragraph (1)(B), a rural renaissance bond may be issued to reimburse a borrower for amounts paid after the date of the enactment of this section with respect to a qualified project, but only if—

"(i) prior to the payment of the original expenditure, the borrower declared its intent to reimburse such expenditure with the proceeds of a rural renaissance bond,

"(ii) not later than 60 days after payment of the original expenditure, the qualified issuer adopts an official intent to reimburse the original expenditure with such proceeds, and

"(iii) the reimbursement is made not later than 18 months after the date the original expenditure is paid.

"(C) Treatment of changes in use.—For purposes of paragraph (1)(B), the proceeds of an issue shall not be treated as used for a qualified project to the extent that a borrower takes any action within its control which causes such proceeds not to be used for a qualified project. The Secretary shall prescribe regulations specifying remedial actions that may be taken (including conditions to taking such remedial actions) to prevent an action described in the preceding sentence from causing a bond to fail to be a rural renaissance bond.

"(e) Maturity Limitations.—

"(1) Duration of term.—A bond shall not be treated as a rural renaissance bond if the maturity of such bond exceeds the maximum term determined by the Secretary under paragraph (2) with respect to such bond.

"(2) Maximum term.—During each calendar month, the Secretary shall determine the maximum term permitted under this paragraph for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of such bond. Such present value shall be determined without regard to the requirements of subsection (f)(3) and using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

"(3) Ratable principal amortization required.—A bond shall not be treated as a rural renaissance bond unless it is part of an issue which provides for an equal amount of principal to be paid by the qualified issuer during each calendar year that the issue is outstanding.

"(f) Limitation on Amount of Bonds Designated.—

"(1) National limitation.—There is a rural renaissance bond limitation of $200,000,000.

"(2) Allocation by secretary.—The Secretary shall allocate the amount described in paragraph (1) among qualified projects in such manner as the Secretary determines appropriate.

"(g) Credit Included in Gross Income.—Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)) and the amount so included shall be treated as interest income.

"(h) Special Rules Relating to Expenditures.—

"(1) In general.—An issue shall be treated as meeting the requirements of this subsection if, as of the date of issuance, the qualified issuer reasonably expects—

"(A) at least 95 percent of the proceeds from the sale of the issue are to be spent for 1 or more qualified projects within the 5-year period beginning on the date of issuance of the rural renaissance bond,

"(B) a binding commitment with a third party to spend at least 10 percent of the proceeds from the sale of the issue will be incurred within the 6-month period beginning on the date of issuance of the rural renaissance bond or, in the case of a rural renaissance bond, the proceeds of which are to be loaned to 2 or more borrowers, such binding commitment will be incurred within the 6-month period beginning on the date of the loan of such proceeds to a borrower, and

"(C) such projects will be completed with due diligence and the proceeds from the sale of the issue will be spent with due diligence.

"(2) Extension of period.—Upon submission of a request prior to the expiration of the period described in paragraph (1)(A), the Secretary may extend such period if the qualified issuer establishes that the failure to satisfy the 5-year requirement is due to reasonable cause and the related projects will continue to proceed with due diligence.

"(3) Failure to spend required amount of bond proceeds within 5 years.—To the extent that less than 95 percent of the proceeds of such issue are expended by the close of the 5-year period beginning on the date of issuance (or if an extension has been obtained under paragraph (2), by the close of the extended period), the qualified issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

"(i) Special Rules Relating to Arbitrage.—A bond which is part of an issue shall not be treated as a rural renaissance bond unless, with respect to the issue of which the bond is a part, the qualified issuer satisfies the arbitrage requirements of section 148 with respect to proceeds of the issue.

"(j) Qualified Issuer.—For purposes of this section—

"(1) In general.—The term 'qualified issuer' means any not-for-profit cooperative lender which has as of the date of the enactment of this section received a guarantee under section 306 of the Rural Electrification Act and which meets the requirement of paragraph (2).

"(2) User fee requirement.—The requirement of this paragraph is met if the issuer of any rural renaissance bond makes grants for qualified projects as defined under subsection (d)(2) on a semi-annual basis every year that such bond is outstanding in an annual amount equal to one-half of the rate on United States Treasury Bills of the same maturity multiplied by the outstanding principle balance of rural renaissance bonds issued by such issuer.

"(k) Special Rules Relating to Pool Bonds.—No portion of a pooled financing bond may be allocable to loan unless the borrower has entered into a written loan commitment for such portion prior to the issue date of such issue.

"(l) Other Definitions and Special Rules.—For purposes of this section—

"(1) Bond.—The term 'bond' includes any obligation.

"(2) Pooled financing bond.—The term 'pooled financing bond' shall have the meaning given such term by section 149(f)(4)(A).

"(3) Rural area.—The term 'rural area' means any area other than—

"(A) a city or town which has a population of greater than 50,000 inhabitants, or

"(B) the urbanized area contiguous and adjacent to such a city or town.

"(4) Partnership; s corporation; and other pass-thru entities.—

"(A) In general.—Under regulations prescribed by the Secretary, in the case of a partnership, trust, S corporation, or other pass-thru entity, rules similar to the rules of section 41(g) shall apply with respect to the credit allowable under subsection (a).

"(B) No basis adjustment.—In the case of a bond held by a partnership or an S corporation, rules similar to the rules under section 1397E(l) shall apply.

"(5) Bonds held by regulated investment companies.—If any rural renaissance bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

"(6) Reporting.—Issuers of rural renaissance bonds shall submit reports similar to the reports required under section 149(e).".

(b) Reporting.—Subsection (d) of section 6049 (relating to returns regarding payments of interest) is amended by adding at the end the following new paragraph:

"(9) Reporting of credit on rural renaissance bonds.—

"(A) In general.—For purposes of subsection (a), the term 'interest' includes amounts includible in gross income under section 54(f) and such amounts shall be treated as paid on the credit allowance date (as defined in section 54(b)(4)).

"(B) Reporting to corporations, etc.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A), subsection (b)(4) shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i) of such subsection.

"(C) Regulatory authority.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.".

(c) Conforming Amendments.—

(1) The table of sections for subpart H of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 54A. Credit to holders of rural renaissance bonds.".

(2) Section 54(c)(2) is amended by inserting ", section 54A," after "subpart C".

(d) Issuance of Regulations.—The Secretary of Treasury shall issue regulations required under section 54A of the Internal Revenue Code of 1986 (as added by this section) not later than 120 days after the date of the enactment of this Act.

(e) Effective Date.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act and before January 1, 2010.

SEC. 470. MODIFICATIONS OF FOREIGN TAX CREDIT RULES APPLICABLE TO LARGE INTEGRATED OIL COMPANIES WHICH ARE DUAL CAPACITY TAXPAYERS.

(a) In General.—Section 901 (relating to credit for taxes of foreign countries and of possessions of the United States), as amended by this Act, is amended by redesignating subsections (m) and (n) as subsections (n) and (o), respectively, and by inserting after subsection (l) the following new subsection:

"(m) Special Rules Relating To Large Integrated Oil Companies Which Are Dual Capacity Taxpayers.—

"(1) General rule.—Notwithstanding any other provision of this chapter, any amount paid or accrued by a dual capacity taxpayer which is a large integrated oil company to a foreign country or possession of the United States for any period shall not be considered a tax—

"(A) if, for such period, the foreign country or possession does not impose a generally applicable income tax, or

"(B) to the extent such amount exceeds the amount (determined in accordance with regulations) which—

"(i) is paid by such dual capacity taxpayer pursuant to the generally applicable income tax imposed by the country or possession, or

"(ii) would be paid if the generally applicable income tax imposed by the country or possession were applicable to such dual capacity taxpayer.

Nothing in this paragraph shall be construed to imply the proper treatment of any such amount not in excess of the amount determined under subparagraph (B).

"(2) Dual capacity taxpayer.—For purposes of this subsection, the term 'dual capacity taxpayer' means, with respect to any foreign country or possession of the United States, a person who—

"(A) is subject to a levy of such country or possession, and

"(B) receives (or will receive) directly or indirectly a specific economic benefit (as determined in accordance with regulations) from such country or possession.

"(3) GENERALLY APPLICABLE INCOME TAX.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'generally applicable income tax' means an income tax (or a series of income taxes) which is generally imposed under the laws of a foreign country or possession on income derived from the conduct of a trade or business within such country or possession.

"(B) EXCEPTIONS.—Such term shall not include a tax unless it has substantial application, by its terms and in practice, to—

"(i) persons who are not dual capacity taxpayers, and

"(ii) persons who are citizens or residents of the foreign country or possession.

"(4) LARGE INTEGRATED OIL COMPANY.—For purposes of this subsection, the term 'large integrated oil company' means, with respect to any taxable year, an integrated oil company (as defined in section 291(b)(4)) which—

"(A) had gross receipts in excess of $1,000,000,000 for such taxable year, and

"(B) has an average daily worldwide production of crude oil of at least 500,000 barrels for such taxable year."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxes paid or accrued in taxable years beginning after the date of the enactment of this Act.

(2) CONTRARY TREATY OBLIGATIONS UPHELD.—The amendments made by this section shall not apply to the extent contrary to any treaty obligation of the United States.

SEC. 471. DISABILITY PREFERENCE PROGRAM FOR TAX COLLECTION CONTRACTS.

(a) IN GENERAL.—The Secretary of the Treasury shall not enter into any qualified tax collection contract after April 1, 2006, until the Secretary implements a disability preference program that meets the requirements of subsection (b).

(b) DISABILITY PREFERENCE PROGRAM REQUIREMENTS.—

(1) IN GENERAL.—A disability preference program meets the requirements of this subsection if such program requires that not less than 10 percent of the accounts of each dollar value category are awarded to persons described in paragraph (2).

(2) PERSON DESCRIBED.—For purposes of paragraph (1), a person is described in this paragraph if—

(A) as of the date any qualified tax collection contract is awarded—

(i) such person employs not less than 50 severely disabled individuals within the United States; or

(ii) not less than 30 percent of the employees of such person within the United States are severely disabled individuals;

(B) such person agrees as a condition of the qualified tax collection contract that not more than 90 days after the date such contract is awarded, not less than 35 percent of the employees of such person employed in connection with providing services under such contract shall—

(i) be hired after the date such contract is awarded; and

(ii) be severely disabled individuals; and

(C) such person is otherwise qualified to perform the services required.

(c) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED TAX COLLECTION CONTRACT.—The term "qualified tax collection contract" shall have the meaning given such term under section 6306(b) of the Internal Revenue Code of 1986.

(2) DOLLAR VALUE CATEGORY.—The term "dollar value category" means the dollar ranges of accounts for collection as determined and assigned by the Secretary under section 6306(b)(1)(B) of the Internal Revenue Code of 1986 with respect to a qualified tax collection contract.

(3) SEVERELY DISABLED INDIVIDUAL.—The term "severely disabled individual" means—

(A) a veteran of the United States armed forces with a disability of 50 percent or greater—

(i) determined by the Secretary of Veterans Affairs to be service-connected; or

(ii) deemed by law to be service-connected; or

(B) any individual who is a disabled beneficiary (as defined in section 1148(k)(2) of the Social Security Act (42 U.S.C. 1320b-19(k)(2))) or who would be considered to be such a disabled beneficiary but for having income or resources in excess of the income or resources eligibility limits established under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), respectively.

TITLE V—COMPLIANCE WITH CONGRESSIONAL BUDGET ACT

SEC. 501. SUNSET OF CERTAIN PROVISIONS AND AMENDMENTS.

The provisions of, and amendments made by, title I, subtitle A of title II, and title III shall not apply to taxable years beginning after September 30, 2010, and the Internal Revenue Code of 1986 shall be applied and administered to such years as if such provisions and amendments had never been enacted.

SA 2711. Mr. FRIST (for Mr. TALENT) proposed an amendment to amendment SA 2710 proposed by Mr. FRIST (for himself, Mr. GRASSLEY, and Mr. BAUCUS) to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; as follows:

At the end of the amendment add the following:

SEC. . PERMANENT EXTENSION OF EGTRRA PROVISIONS RELATING TO CHILD TAX CREDIT.

Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset provisions) shall not apply to the amendments made by section 201 of such Act.

SA 2712. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE — MEDICARE REFORM

SECTION _01. SHORT TITLE.

This title may be cited as the "Medicare Part D Reform Act of 2006".

SEC. 02. REMOVAL OF COVERED PART D DRUGS FROM THE PRESCRIPTION DRUG PLAN FORMULARY.

Section 1860D–4(b)(3)(E) of the Social Security Act (42 U.S.C. 1395w–104(b)(3)(E)) is amended to read as follows:

"(E) REMOVING DRUG FROM FORMULARY OR CHANGING PREFERRED OR TIER STATUS OF DRUG.—

"(i) LIMITATION ON REMOVAL OR CHANGE.—Beginning with 2006, the PDP sponsor of a prescription drug plan may not remove a covered part D drug from the plan formulary or change the preferred or tiered cost-sharing status of such a drug other than during the period beginning on September 1 and ending on October 31. Subject to clause (ii), such removal or change shall only be effective beginning on January 1 of the immediately succeeding calendar year.

"(ii) NOTICE.—Any removal or change under this subparagraph shall not take effect unless appropriate notice is made available (such as under subsection (a)(3)) to the Secretary, affected enrollees, physicians, pharmacies, and pharmacists. Such notice shall ensure that such information is made available prior to the annual, coordinated open election period described in section 1851(e)(3)(B)(iii), as applied under section 1860D–1(b)(1)(B)(iii).".

SEC. _03. PHARMACEUTICAL PATIENT ASSISTANCE PROGRAMS.

(a) PROVIDING A SAFE HARBOR FOR PHARMACEUTICAL PATIENT ASSISTANCE PROGRAMS.—Section 1128B(b)(3) of the Social Security Act (42 U.S.C. 1320a–7b(b)(3)) is amended—

(1) in subparagraph (G)—

(A) by inserting "or under a patient assistance program (including a pharmaceutical manufacturer patient assistance program)" after "Indian organizations)"; and

(B) by striking "and" at the end;

(2) in subparagraph (H), as added by section 237(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2213)—

(A) by moving such subparagraph 2 ems to the left; and

(B) by striking the period at the end and inserting "; and"; and

(3) by redesignating subparagraph (H), as added by section 431(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2287), as subparagraph (I) and moving such subparagraph 2 ems to the left.

(b) EXCLUSION OF EXPENDITURES UNDER CERTAIN PHARMACY ASSISTANCE PROGRAMS FROM TROOP.—Section 1860D–2(b)(4)(C)(ii) of such Act (42 U.S.C. 1395w–102(b)(4)(C)(ii)) is amended by inserting "under a pharmaceutical manufacturer patient assistance program," after "a group health plan,".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

SEC. 04. PROTECTION AGAINST COST-SHARING FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—Section 1860D–14(a)(1)(D)(ii) of the Social Security Act (42 U.S.C. 1395w–114(a)(1)(D)(ii)) is amended—

(1) in the heading, by striking "LOWEST INCOME";

(2) by striking "and whose income does not exceed 100 percent of the poverty line applicable to a family of the size involved"; and

(3) by adding at the end the following new sentence: "In the case of an individual who is unable to pay the copayment applicable under the preceding sentence, such copayment shall be waived."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to drugs dispensed on or after the date of enactment of this Act.

SEC. _05. NEGOTIATING FAIR PRICES FOR MEDICARE PRESCRIPTION DRUGS.

(a) IN GENERAL.—Section 1860D–11 of the Social Security Act (42 U.S.C. 1395w–111) is amended by striking subsection (i) (relating to noninterference) and by inserting the following new subsection:

"(i) Authority To Negotiate Prices With Manufacturers.—In order to ensure that beneficiaries enrolled under prescription drug plans and MA–PD plans pay the lowest possible price, the Secretary shall have authority similar to that of other Federal entities that purchase prescription drugs in bulk to negotiate contracts with manufacturers of covered part D drugs, consistent with the requirements and in furtherance of the goals of providing quality care and containing costs under this part.".

(b) Effective Date.—The amendment made by this section shall take effect on the date of enactment of this Act.

SA 2713. Mrs. FEINSTEIN (for herself, Mr. Kohl, Mr. Dorgan, Mr. Bingaman, Mr. Schumer, Mrs. Boxer, and Mrs. Clinton) submitted an amendment intended to be proposed by her to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . REMOVAL OF COVERED PART D DRUGS FROM THE PRESCRIPTION DRUG PLAN FORMULARY.

(a) Limitation on Removal or Change of Covered Part D Drugs From the Prescription Drug Plan Formulary.—Section 1860D–4(b)(3)(E) of the Social Security Act (42 U.S.C. 1395w–104(b)(3)(E)) is amended to read as follows:

"(E) Removing drug from formulary or changing preferred or tier status of drug.—

"(i) Limitation on removal or change.—

"(I) In general.—Subject to subclause (II) and clause (ii), beginning with 2006, the PDP sponsor of a prescription drug plan may not remove a covered part D drug from the plan formulary or change the preferred or tiered cost-sharing status of such a drug other than at the beginning of each plan year except as the Secretary may permit to take into account new therapeutic uses and newly covered part D drugs.

"(II) Special rule for newly enrolled individuals.—Subject to clause (ii), in the case of an individual who enrolls in a prescription drug plan on or after the date of enactment of this subparagraph, the PDP sponsor of such plan may not remove a covered part D drug from the plan formulary or change the preferred or tiered cost-sharing status of such a drug during the period beginning on the date of such enrollment and ending on December 31 of the immediately succeeding plan year except as the Secretary may permit to take into account new therapeutic uses and newly covered part D drugs.

"(ii) Exceptions to limitation on removal.—Clause (i) shall not apply with respect to a covered part D drug that—

"(I) is a brand name drug for which there is a generic drug approved under section 505(j) of the Food and Drug Cosmetic Act (21 U.S.C. 355(j)) that is placed on the market during the period in which there are limitations on removal or change in the formulary under subclause (I) or (II) of clause (i);

"(II) is a brand name drug that goes off-patent during such period;

"(III) is a drug for which the Commissioner of Food and Drugs issues a clinical warning that imposes a restriction or limitation on the drug during such period; or

"(IV) has been determined to be ineffective during such period.

"(iii) Notice of removal under application of exception to limitation.—The PDP sponsor of a prescription drug plan shall provide appropriate notice (such as under subsection (a)(3)) of any removal or change under clause (ii) to the Secretary, affected enrollees, physicians, pharmacies, and pharmacists.".

(b) Notice for Change in Formulary and Other Restrictions or Limitations on Coverage.—

(1) In general.—Section 1860D–4(a) of such Act (42 U.S.C. 1395w-104(a)) is amended by adding at the end the following new paragraph:

"(5) Annual notice of changes in formulary and other restrictions or limitations on coverage.—Each PDP sponsor offering a prescription drug plan shall furnish to each enrollee at the time of each annual coordinated election period (referred to in section 1860D–1(b)(1)(B)(iii)) for a plan year a notice of any changes in the formulary or other restrictions or limitations on coverage of a covered part D drug under the plan that will take effect for the plan year.".

(2) Effective date.—The amendment made by paragraph (1) shall apply to annual coordinated election periods beginning after the date of the enactment of this Act.

SA 2714. Mr. DURBIN (for himself, Mrs. Murray, Mr. Lieberman, Mr. Lautenberg, and Mrs. Clinton) submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

On page 19, strike lines 19 through 22 and insert the following:

SEC. 203. ELIGIBILITY OF ALL UNINSURED CHILDREN FOR SCHIP.

(a) In General.—Section 2110(b) of the Social Security Act (42 U.S.C. 1397jj(b)) is amended—

(1) in paragraph (1)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(2) in paragraph (2)—

(A) by striking "include" and all that follows through "a child who is an" and inserting "include a child who is an"; and

(B) by striking the semicolon and all that follows through the period and inserting a period; and

(3) by striking paragraph (4).

(b) No Exclusion of Children With Access to High-Cost Coverage.—Section 2110(b)(3) of the Social Security Act (42 U.S.C. 1397jj(b)(3)) is amended—

(1) in the paragraph heading, by striking "rule" and inserting "rules";

(2) by striking "A child shall not be considered to be described in paragraph (1)(C)" and inserting the following:

"(A) Certain non federally funded coverage.—A child shall not be considered to be described in paragraph (1)(C)"; and

(3) by adding at the end the following:

"(B) No exclusion of children with access to high-cost coverage.—A State may include a child as a targeted vulnerable child if the child has access to coverage under a group health plan or health insurance coverage and the total annual aggregate cost for premiums, deductibles, cost sharing, and similar charges imposed under the group health plan or health insurance coverage with respect to all targeted vulnerable children in the child's family exceeds 5 percent of such family's income for the year involved.".

(c) Conforming Amendments.—

(1) Titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 et seq.; 1397aa et. seq.) are amended by striking "targeted low-income" each place it appears and inserting "targeted vulnerable".

(2) Section 2101(a) of such Act (42 U.S.C. 1397aa(a)) is amended by striking "uninsured, low-income" and inserting "low-income".

(3) Section 2102(b)(3)(C) of such Act (42 U.S.C. 1397bb(b)(3)(C)) is amended by inserting ", particularly with respect to children whose family income exceeds 200 percent of the poverty line" before the semicolon.

(4) Section 2102(b)(3)(E), section 2105(a)(1)(D)(ii), paragraphs (1)(C) and (2) of section 2107, and subsections (a)(1) and (d)(1)(B) of section 2108 of such Act (42 U.S.C. 1397bb(b)(3)(E); 1397ee(a)(1)(D)(ii); 1397gg; 1397hh) are amended by striking "low-income" each place it appears.

(5) Section 2110(a)(27) of such Act (42 U.S.C. 1397jj(a)(27)) is amended by striking "eligible low-income individuals" and inserting "targeted vulnerable individuals".

(d) Effective Date.—The amendments made by this section take effect on October 1, 2006.

SEC. 203A. INCREASE IN FEDERAL FINANCIAL PARTICIPATION UNDER SCHIP AND MEDICAID FOR STATES WITH SIMPLIFIED ENROLLMENT AND RENEWAL PROCEDURES FOR CHILDREN.

(a) SCHIP.—Section 2105(c)(2) of the Social Security Act (42 U.S.C. 1397ee(c)(2)) is amended by adding at the end the following:

"(C) Nonapplication of limitation and increase in federal payment for states with simplified enrollment and renewal procedures.—

"(i) In general.—Notwithstanding subsection (a)(1) and subparagraph (A)—

"(I) the limitation under subparagraph (A) on expenditures for items described in subsection (a)(1)(D) shall not apply with respect to expenditures incurred to carry out any of the outreach strategies described in clause (ii), but only if the State carries out the same outreach strategies for children under title XIX; and

"(II) the enhanced FMAP for a State for a fiscal year otherwise determined under subsection (b) shall be increased by 5 percentage points (without regard to the application of the 85 percent limitation under that subsection) with respect to such expenditures.

"(ii) Outreach strategies described.—For purposes of clause (i), the outreach strategies described in this clause are the following:

"(I) Presumptive eligibility.—The State provides for presumptive eligibility for children under this title and under title XIX.

"(II) Adoption of 12-month continuous eligibility.—The State provides that eligibility for children shall not be redetermined more often than once every year under this title or under title XIX.

"(III) Elimination of asset test.—The State does not apply any asset test for eligibility under this title or title XIX with respect to children.

"(IV) Passive renewal.—The State provides for the automatic renewal of the eligibility of children for assistance under this title and under title XIX if the family of which such a child is a member does not report any changes to family income or other relevant circumstances, subject to verification of information from State databases.".

(b) MEDICAID.—

(1) IN GENERAL.—Section 1902(l) of the Social Security Act (42 U.S.C. 1396a(l)) is amended—

(A) in paragraph (3), by inserting "subject to paragraph (5)", after "Notwithstanding subsection (a)(17),"; and

(B) by adding at the end the following:

"(5)(A) Notwithstanding the first sentence of section 1905(b), with respect to expenditures incurred to carry out any of the outreach strategies described in subparagraph (B) for individuals under 19 years of age who are eligible for medical assistance under subsection (a)(10)(A), the Federal medical assistance percentage is equal to the enhanced FMAP described in section 2105(b) and increased under section 2105(c)(2)(C)(i)(II), but only if the State carries out the same outreach strategies for children under title XXI.

"(B) For purposes of subparagraph (A), the outreach strategies described in this subparagraph are the following:

"(i) PRESUMPTIVE ELIGIBILITY.—The State provides for presumptive eligibility for such individuals under this title and title XXI.

"(ii) ADOPTION OF 12-MONTH CONTINUOUS ELIGIBILITY.—The State provides that eligibility for such individuals shall not be redetermined more often than once every year under this title or under title XXI.

"(iii) ELIMINATION OF ASSET TEST.—The State does not apply any asset test for eligibility under this title or title XXI with respect to such individuals.

"(iv) PASSIVE RENEWAL.—The State provides for the automatic renewal of the eligibility of such individuals for assistance under this title and under title XXI if the family of which such an individual is a member does not report any changes to family income or other relevant circumstances, subject to verification of information from State databases.".

(2) CONFORMING AMENDMENT.—The first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) is amended by striking "section 1933(d)" and inserting "sections 1902(l)(5) and 1933(d)".

(c) EFFECTIVE DATE.—The amendments made by this section take effect on October 1, 2006.

SEC. 203B. LIMITATION ON PAYMENTS TO STATES THAT HAVE AN ENROLLMENT CAP BUT HAVE NOT EXHAUSTED THE STATE'S AVAILABLE ALLOTMENTS.

(a) IN GENERAL.—Section 2105 of the Social Security Act (42 U.S.C. 1397ee) is amended by adding at the end the following:

"(h) LIMITATION ON PAYMENTS TO STATES THAT HAVE AN ENROLLMENT CAP BUT HAVE NOT EXHAUSTED THE STATE'S AVAILABLE ALLOTMENTS.—

"(1) IN GENERAL.—Notwithstanding any other provision of this section, payment shall not be made to a State under this section if the State has an enrollment freeze, enrollment cap, procedures to delay consideration of, or not to consider, submitted applications for child health assistance, or a waiting list for the submission or consideration of such applications or for such assistance, and the State has not fully expended the amount of all allotments available with respect to a fiscal year for expenditure by the State, including allotments for prior fiscal years that remain available for expenditure during the fiscal year under subsection (c) or (g) of section 2104 or that were redistributed to the State under subsection (f) or (g) of section 2104.

"(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed as prohibiting a State from establishing regular open enrollment periods for the submission of applications for child health assistance.".

(b) EFFECTIVE DATE.—The amendments made by this section take effect on October 1, 2006.

SEC. 203C. ADDITIONAL ENHANCEMENT TO FMAP TO PROMOTE EXPANSION OF COVERAGE TO ALL UNINSURED CHILDREN UNDER MEDICAID AND SCHIP.

(a) IN GENERAL.—Title XXI (42 U.S.C. 1397aa et seq.) is amended by adding at the end the following:

"SEC. 2111. ADDITIONAL ENHANCEMENT TO FMAP TO PROMOTE EXPANSION OF COVERAGE TO ALL UNINSURED CHILDREN UNDER MEDICAID AND SCHIP.

"(a) IN GENERAL.—Notwithstanding subsection (b) of section 2105 (and without regard to the application of the 85 percent limitation under that subsection), the enhanced FMAP with respect to expenditures in a quarter for providing child health assistance to uninsured children whose family income exceeds 200 percent of the poverty line, shall be increased by 5 percentage points.

"(b) UNINSURED CHILD DEFINED.—

"(1) IN GENERAL.—For purposes of subsection (a), subject to paragraph (2), the term 'uninsured child' means an uncovered child who has been without creditable coverage for a period determined by the Secretary, except that such period shall not be less than 6 months.

"(2) SPECIAL RULE FOR NEWBORN CHILDREN.—In the case of a child 12 months old or younger, the period determined under paragraph (1) shall be 0 months and such child shall be considered uninsured upon birth.

"(3) SPECIAL RULE FOR CHILDREN LOSING MEDICAID OR SCHIP COVERAGE DUE TO INCREASED FAMILY INCOME.—In the case of a child who, due to an increase in family income, becomes ineligible for coverage under title XIX or this title during the period beginning on the date that is 12 months prior to the date of enactment of the All Kids Health Insurance Coverage Act of 2005 and ending on the date of enactment of such Act, the period determined under paragraph (1) shall be 0 months and such child shall be considered uninsured upon the date of enactment of the All Kids Health Insurance Coverage Act of 2005.

"(4) MONITORING AND ADJUSTMENT OF PERIOD REQUIRED TO BE UNINSURED.—The Secretary shall—

"(A) monitor the availability and retention of employer-sponsored health insurance coverage of dependent children; and

"(B) adjust the period determined under paragraph (1) as needed for the purpose of promoting the retention of private or employer-sponsored health insurance coverage of dependent children and timely access to health care services for such children.".

(b) COST-SHARING FOR CHILDREN IN FAMILIES WITH HIGH FAMILY INCOME.—Section 2103(e)(3) of the Social Security Act (42 U.S.C. 1397cc(e)(3)) is amended by adding at the end the following new subparagraph:

"(C) CHILDREN IN FAMILIES WITH HIGH FAMILY INCOME.—

"(i) IN GENERAL.—For children not described in subparagraph (A) whose family income exceeds 400 percent of the poverty line for a family of the size involved, subject to paragraphs (1)(B) and (2), the State shall impose a premium that is not less than the cost of providing child health assistance to children in such families, and deductibles, cost sharing, or similar charges shall be imposed under the State child health plan (without regard to a sliding scale based on income), except that the total annual aggregate cost-sharing with respect to all such children in a family under this title may not exceed 5 percent of such family's income for the year involved.

"(ii) INFLATION ADJUSTMENT.—The dollar amount specified in clause (i) shall be increased, beginning with fiscal year 2008, from year to year based on the percentage increase in the consumer price index for all urban consumers (all items; United States city average). Any dollar amount established under this clause that is not a multiple of $100 shall be rounded to the nearest multiple of $100.".

(c) ADDITIONAL ALLOTMENTS FOR STATES PROVIDING COVERAGE TO ALL UNINSURED CHILDREN IN THE STATE.—

(1) IN GENERAL.—Section 2104 of the Social Security Act (42 U.S.C. 1397dd) is amended by inserting after subsection (c) the following:

"(d) ADDITIONAL ALLOTMENTS FOR STATES PROVIDING COVERAGE TO ALL UNINSURED CHILDREN IN THE STATE.—

"(1) APPROPRIATION; TOTAL ALLOTMENT.—For the purpose of providing additional allotments to States to provide coverage of all uninsured children (as defined in section 2111(b)) in the State under the State child health plan, there is appropriated, out of any money in the Treasury not otherwise appropriated—

"(A) for fiscal years 2007, 2008, and 2009, $3,000,000,000;

"(B) for fiscal year 2010, $5,000,000,000; and

"(C) for fiscal year 2011, $7,000,000,000.

"(2) STATE AND TERRITORIAL ALLOTMENTS.—

"(A) IN GENERAL.—In addition to the allotments provided under subsections (b) and (c), subject to subparagraph (B) and paragraphs (3) and (4), of the amount available for the additional allotments under paragraph (1) for a fiscal year, the Secretary shall allot to each State with a State child health plan that provides coverage of all uninsured children (as so defined) in the State approved under this title—

"(i) in the case of such a State other than a commonwealth or territory described in subsection (ii), the same proportion as the proportion of the State's allotment under subsection (b) (determined without regard to subsection (f)) to 98.95 percent of the total amount of the allotments under such section for such States eligible for an allotment under this subparagraph for such fiscal year; and

"(ii) in the case of a commonwealth or territory described in subsection (c)(3), the same proportion as the proportion of the commonwealth's or territory's allotment under subsection (c) (determined without regard to subsection (f)) to 1.05 percent of the total amount of the allotments under such section for commonwealths and territories eligible for an allotment under this subparagraph for such fiscal year.

"(B) MINIMUM ALLOTMENT.—

"(i) IN GENERAL.—No allotment to a State for a fiscal year under this subsection shall be less than 50 percent of the amount of the allotment to the State determined under subsections (b) and (c) for the preceding fiscal year.

"(ii) PRO RATA REDUCTIONS.—The Secretary shall make such pro rata reductions to the allotments determined under this subsection as are necessary to comply with the requirements of clause (i).

"(C) AVAILABILITY AND REDISTRIBUTION OF UNUSED ALLOTMENTS.—In applying subsections (e) and (f) with respect to additional allotments made available under this subsection, the procedures established under such subsections shall ensure such additional allotments are only made available to States which have elected to provide coverage under section 2111.

"(3) USE OF ADDITIONAL ALLOTMENT.—Additional allotments provided under this subsection are not available for amounts expended before October 1, 2005. Such amounts are available for amounts expended on or after such date for child health assistance for uninsured children (as defined in section 2111(b)).

"(4) REQUIRING ELECTION TO PROVIDE COVERAGE.—No payments may be made to a State under this title from an allotment provided under this subsection unless the State has made an election to provide child health assistance for all uninsured children (as so defined) in the State, including such children whose family income exceeds 200 percent of the poverty line.".

(2) CONFORMING AMENDMENTS.—Section 2104 of the Social Security Act (42 U.S.C. 1397dd) is amended—

(A) in subsection (a), by inserting "subject to subsection (d)," after "under this section,";

(B) in subsection (b)(1), by inserting "and subsection (d)" after "Subject to paragraph (4)"; and

(C) in subsection (c)(1), by inserting "subject to subsection (d)," after "for a fiscal year,".

(d) EFFECTIVE DATE.—The amendments made by this section take effect on October 1, 2006.

SA 2715. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

On page 19, strike lines 19 through 22 and insert the following:

SEC. 203. REDUCED TAXES FOR PATRIOT EMPLOYERS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new section:

"SEC. 45N. REDUCTION IN TAX OF PATRIOT EMPLOYERS.

"(a) IN GENERAL.—In the case of any taxable year beginning after December 31, 2005, and before January 1, 2011, with respect to which a taxpayer is certified by the Secretary as a Patriot employer, the Patriot employer credit determined under this section for purposes of section 38 shall be equal to 1 percent of the taxable income of the taxpayer which is properly allocable to all trades or businesses with respect to which the taxpayer is certified as a Patriot employer for the taxable year.

"(b) PATRIOT EMPLOYER.—For purposes of subsection (a), the term 'Patriot employer' means, with respect to any taxable year, any taxpayer which—

"(1) maintains its headquarters in the United States if the taxpayer has ever been headquartered in the United States,

"(2) pays at least 60 percent of each employee's health care premiums,

"(3) if such taxpayer employs at least 50 employees on average during the taxable year—

"(A) maintains or increases the number of full-time workers in the United States relative to the number of full-time workers outside of United States,

"(B) compensates each employee of the taxpayer at an hourly rate (or equivalent thereof) not less than an amount equal to the Federal poverty level for a family of three for the calendar year in which the taxable year begins divided by 2,080,

"(C) provides either a defined benefit plan or a defined contribution plan which fully matches at least 5 percent of each employee's contributions to the plan, and

"(D) provides full differential salary and insurance benefits for all National Guard and Reserve employees who are called for active duty, and

"(4) if such taxpayer employs less than 50 employees on average during the taxable year, either—

"(A) compensates each employee of the taxpayer at an hourly rate (or equivalent thereof) not less than an amount equal to the Federal poverty level for a family of 3 for the calendar year in which the taxable year begins divided by 2,080, or

"(B) provides either a defined benefit plan or a defined contribution plan which fully matches at least 5 percent of each employee's contributions to the plan.".

(b) ALLOWANCE AS GENERAL BUSINESS CREDIT.—Section 38(b) is amended by striking "and" at the end of paragraph (25), by striking the period at the end of paragraph (26) and inserting ", and", and by adding at the end the following:

"(27) the Patriot employer credit determined under section 45N.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SA 2716. Mrs. CLINTON (for herself, Ms. MIKULSKI, Mr. HARKIN, Mr. LAUTENBERG, Mr. REED, Mr. SALAZAR, Mr. OBAMA, Mrs. BOXER, Ms. STABENOW, Mr. SCHUMER, Mr. DURBIN, Mrs. FEINSTEIN, Mr. FEINGOLD, Mr. CARPER, Mr. JOHNSON, Mr. LEAHY, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; as follows:

At the end of the amendment, insert the following:

TITLE ___—KATRINA COMMISSION

SEC. _01. ESTABLISHMENT OF COMMISSION.

There is established in the legislative branch the Katrina Commission (in this title referred to as the "Commission").

SEC. 02. COMPOSITION OF COMMISSION.

(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(1) 1 member shall be appointed by the President, who shall serve as chairman of the Commission;

(2) 1 member shall be appointed by the leader of the Senate (majority or minority leader, as the case may be) of the Democratic Party, in consultation with the leader of the House of Representatives (majority or minority leader, as the case may be) of the Democratic Party, who shall serve as vice chairman of the Commission;

(3) 2 members shall be appointed by the senior member of the Senate leadership of the Democratic Party;

(4) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Republican Party;

(5) 2 members shall be appointed by the senior member of the Senate leadership of the Republican Party; and

(6) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Democratic Party.

(b) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens who represent a diverse range of citizens and enjoy national recognition and significant depth of experience in such professions as governmental service, emergency preparedness, mitigation planning, cataclysmic planning and response, intergovernmental management, resource planning, recovery operations and planning, Federal coordination, military coordination, and other extensive natural disaster and emergency response experience.

(4) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be appointed on or before October 1, 2005.

(5) INITIAL MEETING.—The Commission shall meet and begin the operations of the Commission as soon as practicable.

(c) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the chairman or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

SEC. 03. DUTIES.

The duties of the Commission are to—

(1) examine and report upon the Federal, State, and local response to the devastation wrought by Hurricane Katrina in the Gulf Region of the United States of America especially in the States of Louisiana, Mississippi, Alabama, and other areas impacted in the aftermath;

(2) ascertain, evaluate, and report on the information developed by all relevant governmental agencies regarding the facts and circumstances related to Hurricane Katrina prior to striking the United States and in the days and weeks following;

(3) build upon concurrent and prior investigations of other entities, and avoid unnecessary duplication concerning information related to existing vulnerabilities;

(4) make a full and complete accounting of the circumstances surrounding the approach of Hurricane Katrina to the Gulf States, and the extent of the United States government's preparedness for, and response to, the hurricane;

(5) planning necessary for future cataclysmic events requiring a significant marshaling of Federal resources, mitigation, response, and recovery to avoid significant loss of life;

(6) an analysis as to whether any decisions differed with respect to response and recovery for different communities, neighborhoods, parishes, and locations and what problems occurred as a result of a lack of a common plan, communication structure, and centralized command structure; and

(7) investigate and report to the President and Congress on its findings, conclusions, and recommendations for immediate corrective measures that can be taken to prevent problems with Federal response that occurred in the preparation for, and in the

aftermath of. Hurricane Katrina so that future cataclysmic events are responded to adequately.

SEC. _04. FUNCTIONS OF COMMISSION.

(a) IN GENERAL.—The functions of the Commission are to—

(1) conduct an investigation that—

(A) investigates relevant facts and circumstances relating to the catastrophic impacts that Hurricane Katrina exacted upon the Gulf Region of the United States especially in New Orleans and surrounding parishes, and impacted areas of Mississippi and Alabama; and

(B) shall include relevant facts and circumstances relating to—

(i) Federal emergency response planning and execution at the Federal Emergency Management Agency, the Department of Homeland Security, the White House, and all other Federal entities with responsibility for assisting during, and responding to, natural disasters;

(ii) military and law enforcement response planning and execution;

(iii) Federal mitigation plans, programs, and policies including prior assessments of existing vulnerabilities and exercises designed to test those vulnerabilities;

(iv) Federal, State, and local communication interoperability successes and failures;

(v) past, present, and future Federal budgetary provisions for preparedness, mitigation, response, and recovery;

(vi) the Federal Emergency Management Agency's response capabilities as an independent agency and as part of the Department of Homeland Security;

(vii) the role of congressional oversight and resource allocation;

(viii) other areas of the public and private sectors determined relevant by the Commission for its inquiry; and

(ix) long-term needs for people impacted by Hurricane Katrina and other forms of Federal assistance necessary for large-scale recovery;

(2) identify, review, and evaluate the lessons learned from Hurricane Katrina including coordination, management policies, and procedures of the Federal Government, State and local governments, and nongovernmental entities, relative to detection, planning, mitigation, asset prepositioning, and responding to cataclysmic natural disasters such as Hurricane Katrina; and

(3) submit to the President and Congress such reports as are required by this title containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

SEC. 05. POWERS OF COMMISSION.

(a) IN GENERAL.—

(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this title—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) subject to paragraph (2)(A), require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(2) SUBPOENAS.—

(A) ISSUANCE.—

(i) IN GENERAL.—A subpoena may be issued under this subsection only—

(I) by the agreement of the chairman and the vice chairman; or

(II) by the affirmative vote of 6 members of the Commission.

(ii) SIGNATURE.—Subject to clause (i), subpoenas issued under this subsection may be issued under the signature of the chairman or any member designated by a majority of the Commission, and may be served by any person designated by the chairman or by a member designated by a majority of the Commission.

(B) ENFORCEMENT.—

(i) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under subsection (a), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) ADDITIONAL ENFORCEMENT.—In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(b) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(c) INFORMATION FROM FEDERAL AGENCIES.—

(1) IN GENERAL.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government, information, suggestions, estimates, and statistics for the purposes of this Act. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the chairman, the chairman of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(2) RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.—Information shall only be received, handled, stored, and disseminated by members of the Commission and its staff consistent with all applicable statutes, regulations, and Executive orders.

(d) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States may provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(e) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(f) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

SEC. 06. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

(a) IN GENERAL.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(b) PUBLIC MEETINGS AND RELEASE OF PUBLIC VERSIONS OF REPORTS.—The Commission shall—

(1) hold public hearings and meetings to the extent appropriate; and

(2) release public versions of the reports required under section _10.

(c) PUBLIC HEARINGS.—Any public hearings of the Commission shall be conducted in a manner consistent with the protection of information provided to or developed for or by the Commission as required by any applicable statute, regulation, or Executive order.

SEC. 07. STAFF OF COMMISSION.

(a) IN GENERAL.—

(1) APPOINTMENT AND COMPENSATION.—The chairman, in consultation with the vice chairman, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(b) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

SEC. _08. COMPENSATION AND TRAVEL EXPENSES.

(a) COMPENSATION.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

SEC. 09. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

The appropriate Federal agencies or departments shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances to the extent possible pursuant to existing procedures and requirements, except that no person shall be provided with access to classified information under this title without the appropriate security clearances.

SEC. 10. REPORTS OF COMMISSION; TERMINATION.

(a) INTERIM REPORTS.—The Commission may submit to the President and Congress interim reports containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) FINAL REPORT.—Not later than 6 months after the date of the enactment of this Act, the Commission shall submit to the President and Congress a final report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(c) TERMINATION.—

(1) IN GENERAL.—The Commission, and all the authorities of this Act, shall terminate 61 days after the date on which the final report is submitted under subsection (b).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the final report.

SEC. _11. FUNDING.

(a) EMERGENCY APPROPRIATION OF FUNDS.—There are authorized to be appropriated $3,000,000 for purposes of the activities of the Commission under this title and such funding is designated as emergency spending under section 402 of H. Con. Res. 95 (109th Congress).

(b) DURATION OF AVAILABILITY.—Amounts made available to the Commission under subsection (a) shall remain available until the termination of the Commission.

SA 2717. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

On page 2, line 3, strike "Tax Relief Extension Reconciliation Act of 2005" and insert "More Tax Breaks for the Rich and More Debt for Our Grandchildren Deficit Expansion Reconciliation Act of 2006".

SA 2718. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . SENSE OF THE SENATE REGARDING THE MEDICARE PART D PRESCRIPTION DRUG PROGRAM.

(a) FINDINGS.—The Senate finds the following:

(1) It is not acceptable that startup issues under the new Medicare prescription drug program have resulted in some of our Nation's most vulnerable citizens having difficulties getting their prescription drugs covered under the program, and these issues must be addressed and resolved.

(2) The Department of Health and Human Services and the Centers for Medicare & Medicaid Services are working tirelessly to address these startup issues and have taken numerous steps to smooth the transition process.

(3) All prescription drug plans under part D of title XVIII of the Social Security Act and MA–PD plans under part C of such title (in this section referred to as "Medicare prescription drug plans") already have a "first fill" policy in place that provides a new enrollee with coverage for prescription drugs during at least the first 30 days of enrollment regardless of whether the particular prescription drug is on the plan's formulary, and the Centers for Medicare & Medicaid Services is enforcing this requirement.

(4) Under current law, full-benefit dual eligible individuals (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1395u–5(c)(6)) are already automatically enrolled into Medicare prescription drug coverage so no change in law is necessary.

(5) Medicare prescription drug plans are already responsible for covering the cost of covered prescriptions filled for enrollees, including short term transition prescriptions.

(6) Medicare prescription drug plans are already responsible for reimbursing any enrollee, including full-benefit dual eligible individuals, for any out-of-pocket costs incurred by the enrollee that should have been covered by the plan.

(7) The Centers for Medicare & Medicaid Services is already reimbursing States for the reasonable administrative costs incurred by States that have temporarily covered some claims for prescription drug coverage during the transition period.

(8) Enrollment is exceeding projections, with at least 24,000,000 Medicare beneficiaries who now have drug coverage and another 90,000 are enrolling each day in the Medicare prescription drug program;

(9) In addition, the Secretary of Health and Human Services has taken many other actions to smooth the implementation of the Medicare prescription drug program, including the following:

(A) Establishing processes to ensure that full-benefit dual eligible individuals are not overcharged for their prescriptions and to require Medicare prescription drug plans to refund overcharges to such individuals.

(B) Establishing a reconciliation process to ensure that Medicare prescription drug plans reimburse pharmacies for costs incurred by pharmacies that are payable by such plans.

(C) Conducting extensive and continuing outreach to pharmacies and pharmacy associations on the implementation of the Medicare prescription drug benefit, particularly with respect to full-benefit dual eligible individuals, as well as establishing a special pharmacy telephone help line.

(D) Requiring Medicare prescription drug plans to have comprehensive formularies and procedures for enrollees to rapidly secure an exception to the limitation of coverage of a prescription drug when medical necessity is demonstrated.

(E) Permitting full-benefit dual eligible individuals to switch Medicare prescription drug plan under the Medicare prescription drug benefit at any time, for any reason, and improving data flows and communication with plans to ensure that plan switches by such individuals become fully effective as quickly as possible.

(F) Partnering with national, State, and local groups that work with full-benefit dual eligible individuals to educate such individuals about the Medicare prescription drug program, and assisting in their transition to, and enrollment under, such program.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Secretary of Health and Human Services is making significant progress in smoothing the implementation of the new Medicare prescription drug program, legislation changing the program is not needed at this time, and legislation at this time would also likely complicate implementation of the program and confuse beneficiaries;

(2) each of the implementation problems identified under the Medicare prescription drug program will be resolved more quickly through administrative actions, which the Secretary of Health and Human Services already has the authority to take under current law, rather than through Congressional action followed by administrative action;

(3) the Senate fully supports the efforts of the Secretary of Health and Human Services, Medicare prescription drug plans, pharmacists, and others to implement the Medicare prescription drug program and to resolve problems that have occurred during the implementation of the program; and

(4) the pace of enrollment in the Medicare prescription drug benefit indicates that extending the six-month enrollment period is not warranted and, by contrast, such an action could exacerbate implementation issues under the program.

SA 2719. Mr. HARKIN (for himself, Mr. KENNEDY, Mr. KOHL, and Mr. LEVIN) submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . RESTORATION OF THE PHASEOUT OF PERSONAL EXEMPTIONS AND THE OVERALL LIMITATION ON ITEMIZED DEDUCTION; EXPANSION OF CHILD AND DEPENDANT CARE CREDIT.

(a) RESTORATION OF THE PHASEOUT OF PERSONAL EXEMPTIONS AND THE OVERALL LIMITATION ON ITEMIZED DEDUCTIONS.—

(1) RESTORATION OF PHASEOUT OF PERSONAL EXEMPTIONS.—

(A) IN GENERAL.—Paragraph (3) of section 151(d) (relating to exemption amount) is amended by striking subparagraphs (E) and (F).

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall apply to taxable years beginning after December 31, 2005.

(2) RESTORATION OF PHASEOUT OF OVERALL LIMITATION ON ITEMIZED DEDUCTIONS.—

(A) IN GENERAL.—Section 68 is amended by striking subsections (f) and (g).

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall apply to taxable years beginning after December 31, 2005.

(b) Expansion of Child and Dependant Care Credit.—

(1) Increase in credit.—Paragraph (2) of section 21(a) (relating to credit for expenses for household and dependent care services necessary for gainful employment) is amended to read as follows:

"(2) Applicable percentage defined.—For purposes of paragraph (1), the term 'applicable percentage' means 35 percent reduced (but not below 20 percent) by 1 percentage point for each $3,000 (or fraction thereof) by which the taxpayer's adjusted gross income exceeds $60,000.".

(2) Increase in maximum amount creditable.—

(A) In general.—Section 21(c) (relating to dollar limit on amount creditable) is amended—

(i) in paragraph (1), by striking "$3,000" and inserting "$5,000"; and

(ii) in paragraph (2), by striking "$6,000 " and inserting "$10,000".

(B) Phase-out for taxpayers with adjusted gross income in excess of $50,000.—

(i) In general.—Section 21(c) is amended by adding at the end the following new paragraph:

"(2) Limitation based on adjusted gross income.—If the taxpayer's adjusted gross income for the taxable year exceeds $50,000, the dollar amounts under paragraph (1) shall be reduced as follows:

"(A) The $5,000 amount under paragraph (1)(A) shall be reduced (but not below $3,000) by $50 for each $1,000 (or fraction thereof) of such excess.

"(B) The $10,000 amount under paragraph (1)(B) shall be reduced (but not below $6,000) by $100 for each $1,000 (or fraction thereof) of such excess.".

(3) Conforming amendments.—Section 21(c), as amended by paragraph (2), is amended—

(A) by striking "The amount" and inserting:

"(1) In general.—The amount";

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(C) by striking "paragraph (1) or (2)" and inserting "subparagraph (A) or (B)".

(4) Effective date.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2006, and before January 1, 2010.

SA 2720. Mr. BURNS (for himself and Ms. MURKOWSKI) submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. NONREFUNDABLE CREDIT FOR CERTAIN PRIMARY HEALTH SERVICES PROVIDERS SERVING HEALTH PROFESSIONAL SHORTAGE AREAS.

(a) In General.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25D the following new section:

"SEC. 25E. PRIMARY HEALTH SERVICES PROVIDERS SERVING HEALTH PROFESSIONAL SHORTAGE AREAS.

"(a) Allowance of Credit.—In the case of an individual who is a qualified primary health services provider for any month during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to $1,000 for each month during such taxable year—

"(1) which is part of the eligible service period of such individual, and

"(2) for which such individual is a qualified primary health services provider.

"(b) Qualified Primary Health Services Provider.—For purposes of this section, the term 'qualified primary health services provider' means, with respect to any month, any physician who is certified for such month by the Bureau to be a primary health services provider or a licensed mental health provider who—

"(1) is providing primary health services full time and substantially all of whose primary health services are provided in a health professional shortage area,

"(2) is not receiving during the calendar year which includes such month a scholarship under the National Health Service Corps Scholarship Program or the Indian health professions scholarship program or a loan repayment under the National Health Service Corps Loan Repayment Program or the Indian Health Service Loan Repayment Program,

"(3) is not fulfilling service obligations under such Programs, and

"(4) has not defaulted on such obligations. Such term shall not include any individual who is described in paragraph (1) with respect to any of the 3 most recent months ending before the date of the enactment of this section.

"(c) Eligible Service Period.—For purposes of this section, the term 'eligible service period' means the period of 60 consecutive calendar months beginning with the first month the taxpayer is a qualified primary health services provider.

"(d) Other Definitions and Special Rule.—For purposes of this section—

"(1) Bureau.—The term 'Bureau' means the Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration of the United States Public Health Service.

"(2) Physician.—The term 'physician' has the meaning given to such term by section 1861(r) of the Social Security Act.

"(3) Primary health services provider.—The term 'primary health services provider' means a provider of basic health services (as described in section 330(b)(1)(A)(i) of the Public Health Service Act).

"(4) Health professional shortage area.—

"(A) In general.—The term 'health professional shortage area' means any area located in 1 or more qualifying counties which, as of the beginning of the eligible service period, is a health professional shortage area (as defined in section 332(a)(1) of the Public Health Service Act) taking into account only the category of health services provided by the qualified primary health services provider.

"(B) Qualifying county.—The term 'qualifying county' means any county which—

"(i) is outside a metropolitan statistical area (defined as such by the Office of Management and Budget), and

"(B) during the 20-year period ending with the calendar year preceding the date of enactment of this Act, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

"(5) Only 60 months taken into account.—In no event shall more than 60 months be taken into account under subsection (a) by any individual for all taxable years."

(b) Clerical Amendment.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25D the following new item:

"Sec. 25E. Primary health services providers serving health professional shortage areas.".

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SA 2721. Ms. LANDRIEU submitted an amendment to be proposed by her to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. MODIFICATION OF HOUSING CREDIT FOR THE GULF OPPORTUNITY ZONE.

(a) In General.—Section 1400N(c) is amended by redesignating paragraphs (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) Special rule for determining low-income unit.—For purposes of section 42—

"(A) In general.—In the case of property place in service during 2006, 2007, or 2008 in the Gulf Opportunity Zone, the term 'low-income unit' means any unit in a building if—

"(i) such unit is rent restricted (as defined in section 42 (g)(2)), and

"(ii) the individuals occupying such unit have an income of 100 percent or less of—

"(I) in the case of a unit located in a nonmetropolitan area (as defined in section 42(d)(5)(C)(iv)(IV), the nonmetropolitan area median gross income (determined under rules similar to the rules of section 142(d)(2)(B)), and

"(II) in the case of any other unit, the area median gross income (determined under the rules of section 142(d)(2)(B)).

"(B) Exceptions and special rules.—For purposes of subparagraph (A), the rules of subparagraphs (B), (C), (D), and (E) of section 42(i)(3) shall apply.".

(b) Effective Date.—The amendments made by this section shall take effect as if included in section 101 of the Gulf Opportunity Zone Act of 2005.

SA 2722. Mr. DORGAN (for himself, Ms. MIKULSKI, Ms. STABENOW, Mr. DURBIN, Mr. LEVIN, Mr. FEINGOLD, Mr. KOHL, Mr. LEAHY, Mr. HARKIN, Mr. KENNEDY, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. ___. TAXATION OF INCOME OF CONTROLLED FOREIGN CORPORATIONS ATTRIBUTABLE TO IMPORTED PROPERTY.

(a) General Rule.—Subsection (a) of section 954 (defining foreign base company income) is amended by striking "and" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", and", and by adding at the end the following new paragraph:

"(6) imported property income for the taxable year (determined under subsection (j) and reduced as provided in subsection (b)(5)).".

(b) DEFINITION OF IMPORTED PROPERTY INCOME.—Section 954 is amended by adding at the end the following new subsection:

"(j) IMPORTED PROPERTY INCOME.—

"(1) IN GENERAL.—For purposes of subsection (a)(6), the term 'imported property income' means income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with—

"(A) manufacturing, producing, growing, or extracting imported property;

"(B) the sale, exchange, or other disposition of imported property; or

"(C) the lease, rental, or licensing of imported property.

Such term shall not include any foreign oil and gas extraction income (within the meaning of section 907(c)) or any foreign oil related income (within the meaning of section 907(c)).

"(2) IMPORTED PROPERTY.—For purposes of this subsection—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'imported property' means property which is imported into the United States by the controlled foreign corporation or a related person.

"(B) IMPORTED PROPERTY INCLUDES CERTAIN PROPERTY IMPORTED BY UNRELATED PERSONS.—The term 'imported property' includes any property imported into the United States by an unrelated person if, when such property was sold to the unrelated person by the controlled foreign corporation (or a related person), it was reasonable to expect that—

"(i) such property would be imported into the United States; or

"(ii) such property would be used as a component in other property which would be imported into the United States.

"(C) EXCEPTION FOR PROPERTY SUBSEQUENTLY EXPORTED.—The term 'imported property' does not include any property which is imported into the United States and which—

"(i) before substantial use in the United States, is sold, leased, or rented by the controlled foreign corporation or a related person for direct use, consumption, or disposition outside the United States; or

"(ii) is used by the controlled foreign corporation or a related person as a component in other property which is so sold, leased, or rented.

"(3) DEFINITIONS AND SPECIAL RULES.—

"(A) IMPORT.—For purposes of this subsection, the term 'import' means entering, or withdrawal from warehouse, for consumption or use. Such term includes any grant of the right to use intangible property (as defined in section 936(h)(3)(B)) in the United States.

"(B) UNITED STATES.—For purposes of this subsection, the term 'United States' includes the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(C) UNRELATED PERSON.—For purposes of this subsection, the term 'unrelated person' means any person who is not a related person with respect to the controlled foreign corporation.

"(D) COORDINATION WITH FOREIGN BASE COMPANY SALES INCOME.—For purposes of this section, the term 'foreign base company sales income' shall not include any imported property income.".

(c) SEPARATE APPLICATION OF LIMITATIONS ON FOREIGN TAX CREDIT FOR IMPORTED PROPERTY INCOME.—

(1) BEFORE 2007.—

(A) IN GENERAL.—Paragraph (1) of section 904(d) (relating to separate application of section with respect to certain categories of income), as in effect for taxable years beginning before January 1, 2007, is amended by striking "and" at the end of subparagraph (H), by redesignating subparagraph (I) as subparagraph (J), and by inserting after subparagraph (H) the following new subparagraph:

"(I) imported property income, and".

(B) IMPORTED PROPERTY INCOME DEFINED.—Paragraph (2) of section 904(d), as so in effect, is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

"(H) IMPORTED PROPERTY INCOME.—The term 'imported property income' means any income received or accrued by any person which is of a kind which would be imported property income (as defined in section 954(j)).".

(C) LOOK-THRU RULES TO APPLY.—Subparagraph (F) of section 904(d)(3), as so in effect, is amended by striking "or (D)" and inserting "(D), or (I)".

(2) AFTER 2006.—

(A) IN GENERAL.—Paragraph (1) of section 904(d) (relating to separate application of section with respect to certain categories of income), as in effect for taxable years beginning after December 31, 2006, is amended by striking "and" at the end of subparagraph (A), by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following new subparagraph:

"(B) imported property income, and".

(B) IMPORTED PROPERTY INCOME DEFINED.—Paragraph (2) of section 904(d), as so in effect, is amended by redesignating subparagraphs (I) and (J) as subparagraphs (J) and (K), respectively, and by inserting after subparagraph (H) the following new subparagraph:

"(I) IMPORTED PROPERTY INCOME.—The term 'imported property income' means any income received or accrued by any person which is of a kind which would be imported property income (as defined in section 954(j)).".

(C) CONFORMING AMENDMENT.—Clause (ii) of section 904(d)(2)(A), as so in effect, is amended by inserting "or imported property income" after "passive category income".

(d) TECHNICAL AMENDMENTS.—

(1) Clause (iii) of section 952(c)(1)(B) (relating to certain prior year deficits may be taken into account) is amended—

(A) by redesignating subclauses (II), (III), (IV), and (V) as subclauses (III), (IV), (V), and (VI), and

(B) by inserting after subclause (I) the following new subclause:

"(II) imported property income,".

(2) Paragraph (5) of section 954(b) (relating to deductions to be taken into account) is amended by striking "and the foreign base company oil related income" and inserting "the foreign base company oil related income, and the imported property income".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (1), the amendments made by this section shall apply to taxable years of foreign corporations beginning after the date of the enactment of this Act, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end.

(2) SUBSECTION (c).—The amendments made by subsection (c)(1) shall apply to taxable years beginning after the date of the enactment of this Act and before January 1, 2007, and the amendments made by subsection (c)(2) shall apply to taxable years beginning after December 31, 2006.

SA 2723. Mr. BIDEN submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

On page 28, after line 11, insert the following:

TITLE IV—HOMELAND SECURITY

Subtitle A—Appropriations

SEC. 401. HOMELAND SECURITY APPROPRIATIONS.

There are appropriated—

(1) $140,000,000 for each of fiscal years 2006 through 2015, to the Federal Bureau of Investigation to hire additional agents to ensure that the Federal Bureau of Investigation can perform its dual capabilities of investigating crimes and preventing terrorism;

(2) $1,100,000,000 for fiscal year 2006, to the Secretary of Transportation for security upgrades for Amtrak passenger and freight rail and transit;

(3) $18,300,000 for each of fiscal years 2006 through 2015, to the Secretary of Transportation to provide a raise of 25 percent to Amtrak police officers and to hire 200 Amtrak police officers, including 40 canine officers;

(4) $1,100,000,000 for fiscal year 2006, to the Office of Community Oriented Policing Services to make grants for the hiring of officers to—

(A) provide security at high threat targets; and

(B) conduct joint operations with the Federal Bureau of Investigation on terrorism cases;

(5) $2,600,000,000 for each of fiscal years 2006 through 2015, to the Department of Homeland Security for—

(A) the Emergency Management Performance Grant program;

(B) the fire grant programs authorized by sections 33 and 34 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229, 2229a);

(C) the Law Enforcement Terrorism Prevention program;

(D) State and local training programs through the Office of State and Local Government Coordination and Preparedness; and

(E) the Metropolitan Medical Response System;

(6) $5,000,000,000 for fiscal year 2006, to the Department of Homeland Security to ensure interoperable communications for emergency response providers (as that term is defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)) that allow emergency response providers to communicate in the event of an emergency;

(7) $70,000,000 for fiscal year 2006, to the Department of Homeland Security to enhance security at chemical plants;

(8) $80,000,000 for fiscal year 2006, to the Department of Homeland Security to conduct a threat assessment that shall address threats and vulnerabilities in the sectors of—

(A) telecommunications;

(B) energy;

(C) financial services;

(D) manufacturing;

(E) water;

(F) agriculture;

(G) transportation;

(H) health care; and

(I) emergency services;

(9) $50,000,000 for fiscal year 2006, to the Department of Homeland Security for the integration of terrorist watch lists;

(10) $175,000,000 for fiscal year 2006, to the Department of Justice to ensure the appropriate dissemination of information regarding threats to homeland security and investigations of terrorism;

(11) $55,000,000 for fiscal year 2006, to the Department of Homeland Security for screening of checked baggage and cargo on commercial airplanes;

(12) $5,000,000,000 for fiscal year 2006, to the Department of Homeland Security to enhance port security; and

(13) $10,800,000 for each of fiscal years 2006 through 2015, to the Department of Homeland Security for screening of shipping containers at ports.

Subtitle B—Provisions Relating to Tax Shelters

SEC. 411. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) In General.—Section 7701 is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) Clarification of Economic Substance Doctrine; Etc.—

"(1) General rules.—

"(A) In general.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

"(B) Definition of economic substance.—For purposes of subparagraph (A)—

"(i) In general.—A transaction has economic substance only if—

"(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer's economic position, and

"(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

"(ii) Special rule where taxpayer relies on profit potential.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

"(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

"(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

"(C) Treatment of fees and foreign taxes.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

"(2) Special rules for transactions with tax-indifferent parties.—

"(A) Special rules for financing transactions.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

"(B) Artificial income shifting and basis adjustments.—The form of a transaction with a tax-indifferent party shall not be respected if—

"(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

"(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

"(3) Definitions and special rules.—For purposes of this subsection—

"(A) Economic substance doctrine.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

"(B) Tax-indifferent party.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person's liability under subtitle A.

"(C) Exception for personal transactions of individuals.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

"(D) Treatment of lessors.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

"(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

"(I) depreciation,

"(II) any tax credit, or

"(III) any other deduction as provided in guidance by the Secretary, and

"(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

"(4) Other common law doctrines not affected.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

"(5) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.".

(b) Effective Date.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 412. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) In General.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

"SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

"(a) Imposition of Penalty.—If a taxpayer has an noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

"(b) Reduction of Penalty for Disclosed Transactions.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

"(c) Noneconomic Substance Transaction Understatement.—For purposes of this section—

"(1) In general.—The term 'noneconomic substance transaction understatement' means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

"(2) Noneconomic substance transaction.—The term 'noneconomic substance transaction' means any transaction if—

"(A) there is a lack of economic substance (within the meaning of section 7701(o)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(o)(2), or

"(B) the transaction fails to meet the requirements of any similar rule of law.

"(d) Rules Applicable to Compromise of Penalty.—

"(1) In general.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

"(2) Applicable rules.—The rules of paragraphs (2) and (3) of section 6707A(d) shall apply for purposes of paragraph (1).

"(e) Coordination With Other Penalties.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

"(f) Cross References.—

"(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e)

"(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e)".

(b) Coordination With Other Understatements and Penalties.—

(1) The second sentence of section 6662(d)(2)(A) is amended by inserting "and without regard to items with respect to which a penalty is imposed by section 6662B" before the period at the end.

(2) Subsection (e) of section 6662A is amended—

(A) in paragraph (1), by inserting "and noneconomic substance transaction understatements" after "reportable transaction understatements" both places it appears,

(B) in paragraph (2)(A), by inserting "and a noneconomic substance transaction understatement" after "reportable transaction understatement",

(C) in paragraph (2)(B), by inserting "6662B or" before "6663",

(D) in paragraph (2)(C)(i), by inserting "or section 6662B" before the period at the end,

(E) in paragraph (2)(C)(ii), by inserting "and section 6662B" after "This section",

(F) in paragraph (3), by inserting "or noneconomic substance transaction understatement" after "reportable transaction understatement", and

(G) by adding at the end the following new paragraph:

"(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' has the meaning given such term by section 6662B(c).".

(3) Subsection (e) of section 6707A is amended—

(A) by striking "or" at the end of subparagraph (B), and

(B) by striking subparagraph (C) and inserting the following new subparagraphs:

"(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction, or

"(D) is required to pay a penalty under section 6662(h) with respect to any transaction and would (but for section 6662A(e)(2)(C)) have been subject to penalty under section 6662A at a rate prescribed under section 6662A(c) or under section 6662B,".

(c) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

"Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 413. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) IN GENERAL.—Section 163(m) (relating to interest on unpaid taxes attributable to nondisclosed reportable transactions) is amended—

(1) by striking "attributable" and all that follows and inserting the following: "attributable to—

"(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

"(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).", and

(2) by inserting "AND NONECONOMIC SUBSTANCE TRANSACTIONS" in the heading thereof after "TRANSACTIONS".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions after the date of the enactment of this Act in taxable years ending after such date.

SEC. 414. MODIFICATIONS OF EFFECTIVE DATES OF LEASING PROVISIONS OF THE AMERICAN JOBS CREATION ACT OF 2004.

(a) IN GENERAL.—Section 849(b) of the American Jobs Creation Act of 2004 is amended by striking paragraphs (1) and (2), by redesignating paragraphs (3) and (4) as paragraphs (1) and (2), respectively, and by adding at the end the following new paragraph:

"(3) LEASES TO FOREIGN ENTITIES.—In the case of tax-exempt use property leased to a tax-exempt entity which is a foreign person or entity, the amendments made by this part shall apply to taxable years beginning after December 31, 2004, with respect to leases entered into on or before March 12, 2004.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the American Jobs Creation Act of 2004.

SEC. 415. REVALUATION OF LIFO INVENTORIES OF LARGE INTEGRATED OIL COMPANIES.

(a) GENERAL RULE.—Notwithstanding any other provision of law, if a taxpayer is an applicable integrated oil company for its last taxable year ending in calendar year 2005, the taxpayer shall—

(1) increase, effective as of the close of such taxable year, the value of each historic LIFO layer of inventories of crude oil, natural gas, or any other petroleum product (within the meaning of section 4611) by the layer adjustment amount, and

(2) decrease its cost of goods sold for such taxable year by the aggregate amount of the increases under paragraph (1).

If the aggregate amount of the increases under paragraph (1) exceed the taxpayer's cost of goods sold for such taxable year, the taxpayer's gross income for such taxable year shall be increased by the amount of such excess.

(b) LAYER ADJUSTMENT AMOUNT.—For purposes of this section—

(1) IN GENERAL.—The term "layer adjustment amount" means, with respect to any historic LIFO layer, the product of—

(A) $18.75, and

(B) the number of barrels of crude oil (or in the case of natural gas or other petroleum products, the number of barrel-of-oil equivalents) represented by the layer.

(2) BARREL-OF-OIL EQUIVALENT.—The term "barrel-of-oil equivalent" has the meaning given such term by section 29(d)(5) (as in effect before its redesignation by the Energy Tax Incentives Act of 2005).

(c) APPLICATION OF REQUIREMENT.—

(1) NO CHANGE IN METHOD OF ACCOUNTING.—Any adjustment required by this section shall not be treated as a change in method of accounting.

(2) UNDERPAYMENTS OF ESTIMATED TAX.—No addition to the tax shall be made under section 6655 of the Internal Revenue Code of 1986 (relating to failure by corporation to pay estimated tax) with respect to any underpayment of an installment required to be paid with respect to the taxable year described in subsection (a) to the extent such underpayment was created or increased by this section.

(d) APPLICABLE INTEGRATED OIL COMPANY.—For purposes of this section, the term "applicable integrated oil company" means an integrated oil company (as defined in section 291(b)(4) of the Internal Revenue Code of 1986) which—

(1) had gross receipts in excess of $1,000,000,000 for its last taxable year ending during calendar year 2005, and

(2) uses the last-in, first-out (LIFO) method of accounting with respect to its crude oil inventories for such taxable year.

For purposes of paragraph (1), all persons treated as a single employer under subsections (a) and (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as 1 person and, in the case of a short taxable year, the rule under section 448(c)(3)(B) shall apply.

SEC. 416. MODIFICATION OF EFFECTIVE DATE OF EXCEPTION FROM SUSPENSION RULES FOR CERTAIN LISTED AND REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Paragraph (2) of section 903(d) of the American Jobs Creation Act of 2004 is amended to read as follows:

"(2) EXCEPTION FOR REPORTABLE OR LISTED TRANSACTIONS.—

"(A) IN GENERAL.—The amendments made by subsection (c) shall apply with respect to interest accruing after October 3, 2004.

"(B) SPECIAL RULE FOR CERTAIN LISTED AND REPORTABLE TRANSACTIONS.—

"(i) IN GENERAL.—Except as provided in clause (ii), the amendments made by subsection (c) shall also apply with respect to interest accruing on or before October 3, 2004.

"(ii) PARTICIPANTS IN SETTLEMENT INITIATIVES.—Clause (i) shall not apply to any transaction if, as of January 23, 2006—

"(I) the taxpayer is participating in a settlement initiative described in Internal Revenue Service Announcement 2005-80 with respect to such transaction, or

"(II) the taxpayer has entered into a settlement agreement pursuant to such an initiative.

"(iii) TERMINATION OF EXCEPTION.—Clause (ii)(I) shall not apply to any taxpayer if, after January 23, 2006, the taxpayer withdraws from, or terminates, participation in the initiative or the Secretary of the Treasury or the Secretary's delegate determines that a settlement agreement will not be reached pursuant to the initiative within a reasonable period of time.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 to which it relates.

SEC. 417. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.

(a) DETERMINATION OF PENALTY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, in the case of an applicable taxpayer—

(A) the determination as to whether any interest or applicable penalty is to be imposed with respect to any arrangement described in paragraph (2), or to any underpayment of Federal income tax attributable to items arising in connection with any such arrangement, shall be made without regard to the rules of subsections (b), (c), and (d) of section 6664 of the Internal Revenue Code of 1986, and

(B) if any such interest or applicable penalty is imposed, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(2) APPLICABLE TAXPAYER.—For purposes of this subsection—

(A) IN GENERAL.—The term "applicable taxpayer" means a taxpayer which—

(i) has underreported its United States income tax liability with respect to any item which directly or indirectly involves—

(I) any financial arrangement which in any manner relies on the use of offshore payment mechanisms (including credit, debit, or charge cards) issued by banks or other entities in foreign jurisdictions, or

(II) any offshore financial arrangement (including any arrangement with foreign banks, financial institutions, corporations, partnerships, trusts, or other entities), and

(ii) has neither signed a closing agreement pursuant to the Voluntary Offshore Compliance Initiative established by the Department of the Treasury under Revenue Procedure 2003-11 nor voluntarily disclosed its participation in such arrangement by notifying the Internal Revenue Service of such arrangement prior to the issue being raised by the Internal Revenue Service during an examination.

(B) AUTHORITY TO WAIVE.—The Secretary of the Treasury or the Secretary's delegate may waive the application of paragraph (1) to any taxpayer if the Secretary or the Secretary's delegate determines that the use of such offshore payment mechanisms is incidental to the transaction and, in addition, in the case of a trade or business, such use is conducted in the ordinary course of the type of trade or business of the taxpayer.

(C) ISSUES RAISED.—For purposes of subparagraph (A)(ii), an item shall be treated as an issue raised during an examination if the individual examining the return—

(i) communicates to the taxpayer knowledge about the specific item, or

(ii) has made a request to the taxpayer for information and the taxpayer could not make a complete response to that request without giving the examiner knowledge of the specific item.

(b) DEFINITIONS AND RULES.—For purposes of this section—

(1) APPLICABLE PENALTY.—The term "applicable penalty" means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(2) FEES AND EXPENSES.—The Secretary of the Treasury may retain and use an amount not in excess of 25 percent of all additional interest, penalties, additions to tax, and fines collected under this section to be used for enforcement and collection activities of the Internal Revenue Service. The Secretary shall keep adequate records regarding amounts so retained and used. The amount credited as paid by any taxpayer shall be determined without regard to this paragraph.

(c) REPORT BY SECRETARY.—The Secretary shall each year conduct a study and report to Congress on the implementation of this section during the preceding year, including statistics on the number of taxpayers affected by such implementation and the amount of interest and applicable penalties asserted, waived, and assessed during such preceding year.

(d) EFFECTIVE DATE.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if, as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

SEC. 418. PENALTY FOR AIDING AND ABETTING THE UNDERSTATEMENT OF TAX LIABILITY.

(a) IN GENERAL.—Section 6701(a) (relating to imposition of penalty) is amended—

(1) by inserting "the tax liability or" after "respect to," in paragraph (1),

(2) by inserting "aid, assistance, procurement, or advice with respect to such" before "portion" both places it appears in paragraphs (2) and (3), and

(3) by inserting "instance of aid, assistance, procurement, or advice or each such" before "document" in the matter following paragraph (3).

(b) AMOUNT OF PENALTY.—Subsection (b) of section 6701 (relating to penalties for aiding and abetting understatement of tax liability) is amended to read as follows:

"(b) AMOUNT OF PENALTY; CALCULATION OF PENALTY; LIABILITY FOR PENALTY.—

"(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall not exceed 100 percent of the gross income derived (or to be derived) from such aid, assistance, procurement, or advice provided by the person or persons subject to such penalty.

"(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of aid, assistance, procurement, or advice described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who made such an understatement of the liability for tax.

"(3) LIABILITY FOR PENALTY.—If more than 1 person is liable under subsection (a) with respect to providing such aid, assistance, procurement, or advice, all such persons shall be jointly and severally liable for the penalty under such subsection.".

(c) PENALTY NOT DEDUCTIBLE.—Section 6701 is amended by adding at the end the following new subsection:

"(g) PENALTY NOT DEDUCTIBLE.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be deductible by the person who is subject to such penalty or who makes such payment.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to activities after the date of the enactment of this Act.

Subtitle C—Provisions to Close Corporate and Individual Loopholes

SEC. 421. TAX TREATMENT OF INVERTED ENTITIES.

(a) IN GENERAL.—Section 7874 is amended—

(1) by striking "March 4, 2003" in subsection (a)(2)(B)(i) and in the matter following subsection (a)(2)(B)(iii) and inserting "March 20, 2002",

(2) by striking "at least 60 percent" in subsection (a)(2)(B)(ii) and inserting "more than 50 percent",

(3) by striking "80 percent" in subsection (b) and inserting "at least 80 percent",

(4) by striking "60 percent" in subsection (b) and inserting "more than 50 percent",

(5) by adding at the end of subsection (a)(2) the following new sentence: "Except as provided in regulations, an acquisition of properties of a domestic corporation shall not be treated as described in subparagraph (B) if none of the corporation's stock was readily tradeable on an established securities market at any time during the 4-year period ending on the date of the acquisition.", and

(6) by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) SPECIAL RULES APPLICABLE TO EXPATRIATED ENTITIES.—

"(1) INCREASES IN ACCURACY-RELATED PENALTIES.—In the case of any underpayment of tax of an expatriated entity—

"(A) section 6662(a) shall be applied with respect to such underpayment by substituting '30 percent' for '20 percent', and

"(B) if such underpayment is attributable to one or more gross valuation understatements, the increase in the rate of penalty under section 6662(h) shall be to 50 percent rather than 40 percent.

"(2) MODIFICATIONS OF LIMITATION ON INTEREST DEDUCTION.—In the case of an expatriated entity, section 163(j) shall be applied—

"(A) without regard to paragraph (2)(A)(ii) thereof, and

"(B) by substituting '25 percent' for '50 percent' each place it appears in paragraph (2)(B) thereof.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after March 20, 2002.

SEC. 422. GRANT OF TREASURY REGULATORY AUTHORITY TO ADDRESS FOREIGN TAX CREDIT TRANSACTIONS INVOLVING INAPPROPRIATE SEPARATION OF FOREIGN TAXES FROM RELATED FOREIGN INCOME.

(a) IN GENERAL.—Section 901 (relating to taxes of foreign countries and of possessions of United States) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) REGULATIONS.—The Secretary may prescribe regulations disallowing a credit under subsection (a) for all or a portion of any foreign tax, or allocating a foreign tax among 2 or more persons, in cases where the foreign tax is imposed on any person in respect of income of another person or in other cases involving the inappropriate separation of the foreign tax from the related foreign income.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 423. TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT INSTRUMENTS.

(a) IN GENERAL.—Section 1275(d) (relating to regulation authority) is amended—

(1) by striking "The Secretary" and inserting the following:

"(1) IN GENERAL.—The Secretary", and

(2) by adding at the end the following new paragraph:

"(2) TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT.—

"(A) IN GENERAL.—In the case of a debt instrument which—

"(i) is convertible into stock of the issuing corporation, into stock or debt of a related party (within the meaning of section 267(b) or 707(b)(1)), or into cash or other property in an amount equal to the approximate value of such stock or debt, and

"(ii) provides for contingent payments,

any regulations which require original issue discount to be determined by reference to the comparable yield of a noncontingent fixed-rate debt instrument shall be applied as if the regulations require that such comparable yield be determined by reference to a noncontingent fixed-rate debt instrument which is convertible into stock.

"(B) SPECIAL RULE.—For purposes of subparagraph (A), the comparable yield shall be determined without taking into account the yield resulting from the conversion of a debt instrument into stock.".

(b) CROSS REFERENCE.—Section 163(e)(6) (relating to cross references) is amended by adding at the end the following:

"For the treatment of contingent payment convertible debt, see section 1275(d)(2).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued on or after the date of the enactment of this Act.

SEC. 424. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERS WHICH ARE CORPORATIONS.

(a) IN GENERAL.—Section 163(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

"(8) Treatment of corporate partners.—Except to the extent provided by regulations, in applying this subsection to a corporation which owns (directly or indirectly) an interest in a partnership—

"(A) such corporation's distributive share of interest income paid or accrued to such partnership shall be treated as interest income paid or accrued to such corporation,

"(B) such corporation's distributive share of interest paid or accrued by such partnership shall be treated as interest paid or accrued by such corporation, and

"(C) such corporation's share of the liabilities of such partnership shall be treated as liabilities of such corporation.".

(b) Additional Regulatory Authority.—Section 163(j)(9) (relating to regulations), as redesignated by subsection (a), is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) regulations providing for the reallocation of shares of partnership indebtedness, or distributive shares of the partnership's interest income or interest expense, as may be appropriate to carry out the purposes of this subsection.".

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning on or after the date of the enactment of this Act.

SEC. 425. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) In General.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

"(f) Fines, Penalties, and Other Amounts.—

"(1) In general.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

"(2) Exception for amounts constituting restitution or paid to come into compliance with law.—Paragraph (1) shall not apply to any amount which—

"(A) the taxpayer establishes—

"(i) constitutes restitution (including remediation of property) for damage or harm caused by or which may be caused by the violation of any law or the potential violation of any law, or

"(ii) is paid to come into compliance with any law which was violated or involved in the investigation or inquiry, and

"(B) is identified as restitution or as an amount paid to come into compliance with the law, as the case may be, in the court order or settlement agreement.

Identification pursuant to subparagraph (B) alone shall not satisfy the requirement under subparagraph (A). This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

"(3) Exception for amounts paid or incurred as the result of certain court orders.—Paragraph (1) shall not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (4) is a party.

"(4) Certain nongovernmental regulatory entities.—An entity is described in this paragraph if it is—

"(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

"(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.

"(5) Exception for taxes due.—Paragraph (1) shall not apply to any amount paid or incurred as taxes due.".

(b) Reporting of Deductible Amounts.—

(1) In general.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6050T the following new section:

"SEC. 6050U. INFORMATION WITH RESPECT TO CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

"(a) Requirement of Reporting.—

"(1) In general.—The appropriate official of any government or entity which is described in section 162(f)(4) which is involved in a suit or agreement described in paragraph (2) shall make a return in such form as determined by the Secretary setting forth—

"(A) the amount required to be paid as a result of the suit or agreement to which paragraph (1) of section 162(f) applies,

"(B) any amount required to be paid as a result of the suit or agreement which constitutes restitution or remediation of property, and

"(C) any amount required to be paid as a result of the suit or agreement for the purpose of coming into compliance with any law which was violated or involved in the investigation or inquiry.

"(2) Suit or agreement described.—

"(A) In general.—A suit or agreement is described in this paragraph if—

"(i) it is—

"(I) a suit with respect to a violation of any law over which the government or entity has authority and with respect to which there has been a court order, or

"(II) an agreement which is entered into with respect to a violation of any law over which the government or entity has authority, or with respect to an investigation or inquiry by the government or entity into the potential violation of any law over which such government or entity has authority, and

"(ii) the aggregate amount involved in all court orders and agreements with respect to the violation, investigation, or inquiry is $600 or more.

"(B) Adjustment of reporting threshold.—The Secretary may adjust the $600 amount in subparagraph (A)(ii) as necessary in order to ensure the efficient administration of the internal revenue laws.

"(3) Time of filing.—The return required under this subsection shall be filed not later than—

"(A) 30 days after the date on which a court order is issued with respect to the suit or the date the agreement is entered into, as the case may be, or

"(B) the date specified Secretary.

"(b) Statements to Be Furnished to Individuals Involved in the Settlement.—Every person required to make a return under subsection (a) shall furnish to each person who is a party to the suit or agreement a written statement showing—

"(1) the name of the government or entity, and

"(2) the information supplied to the Secretary under subsection (a)(1).

The written statement required under the preceding sentence shall be furnished to the person at the same time the government or entity provides the Secretary with the information required under subsection (a).

"(c) Appropriate Official Defined.—For purposes of this section, the term 'appropriate official' means the officer or employee having control of the suit, investigation, or inquiry or the person appropriately designated for purposes of this section.".

(2) Conforming amendment.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6050T the following new item:

"Sec. 6050U. Information with respect to certain fines, penalties, and other amounts.".

(c) Effective Date.—The amendments made by this section shall apply to amounts paid or incurred on or after the date of the enactment of this Act, except that such amendments shall not apply to amounts paid or incurred under any binding order or agreement entered into before such date. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained before such date.

SEC. 426. DISALLOWANCE OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) Disallowance of Deduction.—

(1) In general.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(B) by striking "If" and inserting:

"(1) Treble damages.—If", and

(C) by adding at the end the following new paragraph:

"(2) Punitive damages.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of, any action. This paragraph shall not apply to punitive damages described in section 104(c).".

(2) Conforming amendment.—The heading for section 162(g) is amended by inserting "or Punitive Damages" after "Laws".

(b) Inclusion in Income of Punitive Damages Paid by Insurer or Otherwise.—

(1) In general.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end the following new section:

"SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.

"Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise by reason of the taxpayer's liability (or agreement) to pay punitive damages.".

(2) Reporting requirements.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

"(f) Section to Apply to Punitive Damages Compensation.—This section shall apply to payments by a person to or on behalf of another person as insurance or otherwise by reason of the other person's liability (or agreement) to pay punitive damages.".

(3) Conforming amendment.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end the following new item:

"Sec. 91. Punitive damages compensated by insurance or otherwise.".

(c) Effective Date.—The amendments made by this section shall apply to damages paid or incurred on or after the date of the enactment of this Act.

SEC. 427. LIMITATION OF EMPLOYER DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES.

(a) In General.—Paragraph (2) of section 274(e) (relating to expenses treated as compensation) is amended to read as follows:

"(2) Expenses treated as compensation.—Expenses for goods, services, and facilities, to the extent that the expenses do not exceed the amount of the expenses which are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).".

(b) Persons Not Employees.—Paragraph (9) of section 274(e) is amended by striking "to the extent that the expenses are includible in the gross income" and inserting "to the extent that the expenses do not exceed the amount of the expenses which are includible in the gross income".

(c) Effective Date.—The amendments made by this section shall apply to expenses incurred after the date of the enactment of this Act.

SEC. 428. IMPOSITION OF MARK-TO-MARKET TAX ON INDIVIDUALS WHO EXPATRIATE.

(a) In General.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

"SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.

"(a) General Rules.—For purposes of this subtitle—

"(1) Mark to market.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

"(2) Recognition of gain or loss.—In the case of any sale under paragraph (1)—

"(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

"(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence.

"(3) Exclusion for certain gain.—

"(A) In general.—The amount which, but for this paragraph, would be includible in the gross income of any individual by reason of this section shall be reduced (but not below zero) by $600,000. For purposes of this paragraph, allocable expatriation gain taken into account under subsection (f)(2) shall be treated in the same manner as an amount required to be includible in gross income.

"(B) Cost-of-living adjustment.—

"(i) In general.—In the case of an expatriation date occurring in any calendar year after 2005, the $600,000 amount under subparagraph (A) shall be increased by an amount equal to—

"(I) such dollar amount, multiplied by

"(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 2004' for 'calendar year 1992' in subparagraph (B) thereof.

"(ii) Rounding rules.—If any amount after adjustment under clause (i) is not a multiple of $1,000, such amount shall be rounded to the next lower multiple of $1,000.

"(4) Election to continue to be taxed as United States citizen.—

"(A) In general.—If a covered expatriate elects the application of this paragraph—

"(i) this section (other than this paragraph and subsection (i)) shall not apply to the expatriate, but

"(ii) in the case of property to which this section would apply but for such election, the expatriate shall be subject to tax under this title in the same manner as if the individual were a United States citizen.

"(B) Requirements.—Subparagraph (A) shall not apply to an individual unless the individual—

"(i) provides security for payment of tax in such form and manner, and in such amount, as the Secretary may require,

"(ii) consents to the waiver of any right of the individual under any treaty of the United States which would preclude assessment or collection of any tax which may be imposed by reason of this paragraph, and

"(iii) complies with such other requirements as the Secretary may prescribe.

"(C) Election.—An election under subparagraph (A) shall apply to all property to which this section would apply but for the election and, once made, shall be irrevocable. Such election shall also apply to property the basis of which is determined in whole or in part by reference to the property with respect to which the election was made.

"(b) Election to Defer Tax.—

"(1) In general.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the payment of the additional tax attributable to such property shall be postponed until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

"(2) Determination of tax with respect to property.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

"(3) Termination of postponement.—No tax may be postponed under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

"(4) Security.—

"(A) In general.—No election may be made under paragraph (1) with respect to any property unless adequate security is provided to the Secretary with respect to such property.

"(B) Adequate security.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

"(i) it is a bond in an amount equal to the deferred tax amount under paragraph (2) for the property, or

"(ii) the taxpayer otherwise establishes to the satisfaction of the Secretary that the security is adequate.

"(5) Waiver of certain rights.—No election may be made under paragraph (1) unless the taxpayer consents to the waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

"(6) Elections.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable. An election may be made under paragraph (1) with respect to an interest in a trust with respect to which gain is required to be recognized under subsection (f)(1).

"(7) Interest.—For purposes of section 6601—

"(A) the last date for the payment of tax shall be determined without regard to the election under this subsection, and

"(B) section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

"(c) Covered Expatriate.—For purposes of this section—

"(1) In general.—Except as provided in paragraph (2), the term 'covered expatriate' means an expatriate.

"(2) Exceptions.—An individual shall not be treated as a covered expatriate if—

"(A) the individual—

"(i) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

"(ii) has not been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) during the 5 taxable years ending with the taxable year during which the expatriation date occurs, or

"(B)(i) the individual's relinquishment of United States citizenship occurs before such individual attains age 18½, and

"(ii) the individual has been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.

"(d) Exempt Property; Special Rules for Pension Plans.—

"(1) Exempt property.—This section shall not apply to the following:

"(A) United States real property interests.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the day before the expatriation date, meet the requirements of section 897(c)(2).

"(B) Specified property.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.

"(2) Special rules for certain retirement plans.—

"(A) In general.—If a covered expatriate holds on the day before the expatriation date any interest in a retirement plan to which this paragraph applies—

"(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but

"(ii) an amount equal to the present value of the expatriate's nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.

"(B) Treatment of subsequent distributions.—In the case of any distribution on or after the expatriation date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the amount otherwise includible in gross income by reason of the subsequent distribution shall be reduced by the excess of the amount includible in gross income under subparagraph (A) over any portion of such amount to which this subparagraph previously applied.

“(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS BY PLAN.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan's behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.

“(D) APPLICABLE PLANS.—This paragraph shall apply to—

“(i) any qualified retirement plan (as defined in section 4974(c)),

“(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

“(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

“(e) DEFINITIONS.—For purposes of this section—

“(1) EXPATRIATE.—The term ‘expatriate’ means—

“(A) any United States citizen who relinquishes citizenship, and

“(B) any long-term resident of the United States who—

“(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

“(ii) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country.

“(2) EXPATRIATION DATE.—The term ‘expatriation date’ means—

“(A) the date an individual relinquishes United States citizenship, or

“(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

“(3) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship on the earliest of—

“(A) the date the individual renounces such individual's United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

“(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)-(4)),

“(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

“(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

“(4) LONG-TERM RESIDENT.—The term ‘long-term resident’ has the meaning given to such term by section 877(e)(2).

“(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES' INTERESTS IN TRUST.—

“(1) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

“(A) the individual shall not be treated as having sold such interest,

“(B) such interest shall be treated as a separate share in the trust, and

“(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

“(ii) the separate trust shall be treated as having sold its assets on the day before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

“(iii) the individual shall be treated as having recontributed the assets to the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (C)(ii). In determining the amount of such distribution, proper adjustments shall be made for liabilities of the trust allocable to an individual's share in the trust.

“(2) SPECIAL RULES FOR INTERESTS IN QUALIFIED TRUSTS.—

“(A) IN GENERAL.—If the trust interest described in paragraph (1) is an interest in a qualified trust—

“(i) paragraph (1) and subsection (a) shall not apply, and

“(ii) in addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax in the amount determined under subparagraph (B).

“(B) AMOUNT OF TAX.—The amount of tax under subparagraph (A)(ii) shall be equal to the lesser of—

“(i) the highest rate of tax imposed by section 1(e) for the taxable year which includes the day before the expatriation date, multiplied by the amount of the distribution, or

“(ii) the balance in the deferred tax account immediately before the distribution determined without regard to any increases under subparagraph (C)(ii) after the 30th day preceding the distribution.

“(C) DEFERRED TAX ACCOUNT.—For purposes of subparagraph (B)(ii)—

“(i) OPENING BALANCE.—The opening balance in a deferred tax account with respect to any trust interest is an amount equal to the tax which would have been imposed on the allocable expatriation gain with respect to the trust interest if such gain had been included in gross income under subsection (a).

“(ii) INCREASE FOR INTEREST.—The balance in the deferred tax account shall be increased by the amount of interest determined (on the balance in the account at the time the interest accrues), for periods after the 90th day after the expatriation date, by using the rates and method applicable under section 6621 for underpayments of tax for such periods, except that section 6621(a)(2) shall be applied by substituting ‘5 percentage points’ for ‘3 percentage points’ in subparagraph (B) thereof.

“(iii) DECREASE FOR TAXES PREVIOUSLY PAID.—The balance in the tax deferred account shall be reduced—

“(I) by the amount of taxes imposed by subparagraph (A) on any distribution to the person holding the trust interest, and

“(II) in the case of a person holding a nonvested interest, to the extent provided in regulations, by the amount of taxes imposed by subparagraph (A) on distributions from the trust with respect to nonvested interests not held by such person.

“(D) ALLOCABLE EXPATRIATION GAIN.—For purposes of this paragraph, the allocable expatriation gain with respect to any beneficiary's interest in a trust is the amount of gain which would be allocable to such beneficiary's vested and nonvested interests in the trust if the beneficiary held directly all assets allocable to such interests.

“(E) TAX DEDUCTED AND WITHHELD.—

“(i) IN GENERAL.—The tax imposed by subparagraph (A)(ii) shall be deducted and withheld by the trustees from the distribution to which it relates.

“(ii) EXCEPTION WHERE FAILURE TO WAIVE TREATY RIGHTS.—If an amount may not be deducted and withheld under clause (i) by reason of the distributee failing to waive any treaty right with respect to such distribution—

“(I) the tax imposed by subparagraph (A)(ii) shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax, and

“(II) any other beneficiary of the trust shall be entitled to recover from the distributee the amount of such tax imposed on the other beneficiary.

“(F) DISPOSITION.—If a trust ceases to be a qualified trust at any time, a covered expatriate disposes of an interest in a qualified trust, or a covered expatriate holding an interest in a qualified trust dies, then, in lieu of the tax imposed by subparagraph (A)(ii), there is hereby imposed a tax equal to the lesser of—

“(i) the tax determined under paragraph (1) as if the day before the expatriation date were the date of such cessation, disposition, or death, whichever is applicable, or

“(ii) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax imposed on the other beneficiary.

“(G) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

“(i) QUALIFIED TRUST.—The term ‘qualified trust’ means a trust which is described in section 7701(a)(30)(E).

“(ii) VESTED INTEREST.—The term ‘vested interest’ means any interest which, as of the day before the expatriation date, is vested in the beneficiary.

“(iii) NONVESTED INTEREST.—The term ‘nonvested interest’ means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

“(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

“(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is part of a retirement plan to which subsection (d)(2) applies.

“(3) DETERMINATION OF BENEFICIARIES' INTEREST IN TRUST.—

“(A) DETERMINATIONS UNDER PARAGRAPH (1).—For purposes of paragraph (1), a beneficiary's interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar adviser.

“(B) OTHER DETERMINATIONS.—For purposes of this section—

"(i) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiaries for purposes of this section.

"(ii) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

"(I) the methodology used to determine that taxpayer's trust interest under this section, and

"(II) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary's trust interest under this section.

"(g) TERMINATION OF DEFERRALS, ETC.—In the case of any covered expatriate, notwithstanding any other provision of this title—

"(1) any period during which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and

"(2) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

"(h) IMPOSITION OF TENTATIVE TAX.—

"(1) IN GENERAL.—If an individual is required to include any amount in gross income under subsection (a) for any taxable year, there is hereby imposed, immediately before the expatriation date, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

"(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

"(3) TREATMENT OF TAX.—Any tax paid under paragraph (1) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

"(4) DEFERRAL OF TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

"(i) SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.—

"(1) IMPOSITION OF LIEN.—

"(A) IN GENERAL.—If a covered expatriate makes an election under subsection (a)(4) or (b) which results in the deferral of any tax imposed by reason of subsection (a), the deferred amount (including any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).

"(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate's income tax which, but for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

"(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

"(A) the liability for tax by reason of this section is satisfied or has become unenforceable by reason of lapse of time, or

"(B) it is established to the satisfaction of the Secretary that no further tax liability may arise by reason of this section.

"(3) CERTAIN RULES APPLY.—The rules set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6324A.

"(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.".

(b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Section 102 (relating to gifts, etc. not included in gross income) is amended by adding at the end the following new subsection:

"(d) GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.—

"(1) IN GENERAL.—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is also used in section 877A shall have the same meaning as when used in section 877A.

"(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1) shall not apply to any property if either—

"(A) the gift, bequest, devise, or inheritance is—

"(i) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

"(ii) included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate, or

"(B) no such return was timely filed but no such return would have been required to be filed even if the covered expatriate were a citizen or long-term resident of the United States.".

(c) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) is amended by adding at the end the following new paragraph:

"(49) TERMINATION OF UNITED STATES CITIZENSHIP.—

"(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(e)(3).

"(B) DUAL CITIZENS.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.".

(d) INELIGIBILITY FOR VISA OR ADMISSION TO UNITED STATES.—

(1) IN GENERAL.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

"(E) FORMER CITIZENS NOT IN COMPLIANCE WITH EXPATRIATION REVENUE PROVISIONS.—Any alien who is a former citizen of the United States who relinquishes United States citizenship (within the meaning of section 877A(e)(3) of the Internal Revenue Code of 1986) and who is not in compliance with section 877A of such Code (relating to expatriation).".

(2) AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—Section 6103(l) (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

"(21) DISCLOSURE TO DENY VISA OR ADMISSION TO CERTAIN EXPATRIATES.—Upon written request of the Attorney General or the Attorney General's delegate, the Secretary shall disclose whether an individual is in compliance with section 877A (and if not in compliance, any items of noncompliance) to officers and employees of the Federal agency responsible for administering section 212(a)(10)(E) of the Immigration and Nationality Act solely for the purpose of, and to the extent necessary in, administering such section 212(a)(10)(E).".

(B) SAFEGUARDS.—Section 6103(p)(4) (relating to safeguards) is amended by striking "or (20)" each place it appears and inserting "(20), or (21)".

(3) EFFECTIVE DATES.—The amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(e) CONFORMING AMENDMENTS.—

(1) Section 877 is amended by adding at the end the following new subsection:

"(h) APPLICATION.—This section shall not apply to an expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after the date of the enactment of this subsection.".

(2) Section 2107 is amended by adding at the end the following new subsection:

"(f) APPLICATION.—This section shall not apply to any expatriate subject to section 877A.".

(3) Section 2501(a)(3) is amended by adding at the end the following new subparagraph:

"(C) APPLICATION.—This paragraph shall not apply to any expatriate subject to section 877A.".

(4) Section 6039G(a) is amended by inserting "or 877A" after "section 877(b)".

(5) The second sentence of section 6039G(d) is amended by inserting "or who relinquishes United States citizenship (within the meaning of section 877A(e)(3))" after "section 877(a))".

(f) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

"Sec. 877A. Tax responsibilities of expatriation.".

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) whose expatriation date (as so defined) occurs on or after the date of the enactment of this Act.

(2) GIFTS AND BEQUESTS.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to gifts and bequests received on or after the date of the enactment of this Act, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

(3) DUE DATE FOR TENTATIVE TAX.—The due date under section 877A(h)(2) of the Internal Revenue Code of 1986, as added by this section, shall in no event occur before the 90th day after the date of the enactment of this Act.

SEC. 429. MODIFICATION OF EXCLUSION FOR CITIZENS LIVING ABROAD.

(a) INFLATION ADJUSTMENT OF FOREIGN EARNED INCOME LIMITATION.—Clause (ii) of section 911(b)(2)(D) (relating to inflation adjustment) is amended—

(1) by striking "2007" and inserting "2005", and

(2) by striking "2006" in subclause (II) and inserting "2004".

(b) MODIFICATION OF HOUSING COST AMOUNT.—

(1) MINIMUM AMOUNT.—Clause (i) of section 911(c)(1)(B) is amended to read as follows:

"(i) 16 percent of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which such taxable year begins, multiplied by".

(2) MAXIMUM AMOUNT OF EXCLUSION.—

(A) IN GENERAL.—Subparagraph (A) of section 911(c)(1) is amended by inserting "to the extent such expenses do not exceed the amount determined under paragraph (2)" after "the taxable year".

(B) LIMITATION.—Subsection (c) of section 911 is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) LIMITATION.—The amount determined under this paragraph is an amount equal to the product of—

"(A) 30 percent of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which the taxable year of the individual begins, multiplied by

"(B) the number of days of such taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1).".

(C) CONFORMING AMENDMENTS.—

(i) Section 911(d)(4) is amended by striking "and (c)(1)(B)(ii)" and inserting ", (c)(1)(B)(ii), and (c)(2)(B)"

(ii) Section 911(d)(7) is amended by striking "subsection (c)(3)" and inserting "subsection (c)(4)".

(c) RATES OF TAX APPLICABLE TO NONEXCLUDED INCOME.—Section 911 (relating to exclusion of certain income of citizens and residents of the United States living abroad) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) DETERMINATION OF TAX LIABILITY ON NONEXCLUDED AMOUNTS.—If any amount is excluded from the gross income of a taxpayer under subsection (a) for any taxable year, then, notwithstanding section 1 or 55—

"(1) the tax imposed by section 1 on the taxpayer for such taxable year shall be equal to the excess (if any) of—

"(A) the tax which would be imposed by section 1 for the taxable year if the taxpayer's taxable income were equal to the sum of—

"(i) the taxpayer's taxable income for the taxable year (determined without regard to this subsection), plus

"(ii) the amount excluded under subsection (a) for the taxable year, over

"(B) the tax which would be imposed by section 1 for the taxable year if the taxpayer's taxable income were equal to the amount excluded under subsection (a) for the taxable year, and

"(2) the tax imposed by section 55 for such taxable year shall be equal to the excess (if any) of—

"(A) the amount which would be the tentative minimum tax under section 55 for the taxable year if the taxpayer's alternative minimum taxable income were equal to the sum of—

"(i) the taxpayer's alternative minimum taxable income for the taxable year (determined without regard to this subsection), plus

"(ii) the amount excluded under subsection (a) for the taxable year, over

"(B) the sum of—

"(i) the amount which would be the tentative minimum tax under section 55 for the taxable year if the taxpayer's alternative minimum taxable income were equal to the amount excluded under subsection (a) for the taxable year, plus

"(ii) the amount which would be the regular tax for the taxable year if the tax imposed by section 1 were the tax computed under paragraph (1).

For purposes of this subsection, the amount excluded under subsection (a) shall be reduced by the aggregate amount of any deductions or exclusions disallowed under subsection (d)(6) with respect to such excluded amount.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 430. LIMITATION ON ANNUAL AMOUNTS WHICH MAY BE DEFERRED UNDER NONQUALIFIED DEFERRED COMPENSATION ARRANGEMENTS.

(a) IN GENERAL.—Section 409A (relating to inclusion of gross income under nonqualified deferred compensation plans) is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c) ANNUAL LIMITATION ON AGGREGATE DEFERRED AMOUNTS.—

"(1) LIMITATION.—If the aggregate amount of compensation which—

"(A) is deferred for any taxable year with respect to a participant under 1 or more nonqualified deferred compensation plans maintained by the same employer, and

"(B) is not otherwise includible in gross income of the participant for the taxable year, exceeds the applicable dollar amount for the taxable year, then such excess shall be included in the participant's gross income for the taxable year.

"(2) INCLUSION OF EARNINGS.—If—

"(A) an amount is includible under paragraph (1) in the gross income of a participant for any taxable year, and

"(B) any portion of any assets set aside in a trust or other arrangement under a nonqualified deferred compensation plan are properly allocable to such amount,

then any increase in value in, or earnings with respect to, such portion for the taxable year or any succeeding taxable year shall be included in gross income of the participant for such taxable year or succeeding taxable year.

"(3) APPLICABLE DOLLAR AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'applicable dollar amount' means, with respect to any participant, the lesser of—

"(i) the average annual compensation which—

"(I) was payable during the base period to the participant by the employer described in paragraph (1)(A), and

"(II) was includible in the participant's gross income for taxable years in the base period, or

"(ii) $1,000,000.

"(B) BASE PERIOD.—The term 'base period' means, with respect to any computation year, the 5-taxable year period ending with the taxable year preceding the taxable year in which the election described in subsection (a)(4)(B) is made by the participant to have compensation for services performed in the computation year deferred under a nonqualified deferred compensation plan, except that if the election is made after the beginning of the computation year, such period shall be the 5-taxable year period ending with the taxable year preceding the computation year. For purposes of this subparagraph, the term 'computation year' means any taxable year of the participant for which the limitation under paragraph (1) is being determined.".

(b) CONFORMING AMENDMENTS.—Sections 6041(g)(1) and 6051(a)(13) are each amended by striking "409A(d)" and inserting "409A(e)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005, except that taxable years beginning on or before such date shall be taken into account in determining the average annual compensation of a participant during any base period for purposes of section 409A(c)(2) of the Internal Revenue Code of 1986 (as added by such amendments).

SEC. 431. INCREASE IN AGE OF MINOR CHILDREN WHOSE UNEARNED INCOME IS TAXED AS IF PARENT'S INCOME.

(a) IN GENERAL.—Section 1(g)(2)(A) (relating to child to whom subsection applies) is amended by striking "age 14" and inserting "age 18".

(b) TREATMENT OF DISTRIBUTIONS FROM QUALIFIED DISABILITY TRUSTS.—Section 1(g)(4) (relating to net unearned income) is amended by adding at the end the following new subparagraph:

"(C) TREATMENT OF DISTRIBUTIONS FROM QUALIFIED DISABILITY TRUSTS.—For purposes of this subsection, in the case of any child who is a beneficiary of a qualified disability trust (as defined in section 642(b)(2)(C)(ii)), any amount included in the income of such child under sections 652 and 662 during a taxable year shall be considered earned income of such child for such taxable year.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

Subtitle D—Oil and Gas Provisions

SEC. 441. EXTENSION OF SUPERFUND TAXES.

(a) EXCISE TAXES.—Section 4611(e) is amended to read as follows:

"(e) APPLICATION OF HAZARDOUS SUBSTANCE SUPERFUND FINANCING RATE.—The Hazardous Substance Superfund financing rate under this section shall apply after December 31, 1986, and before January 1, 1996, and after December 31, 2005, and before January 1, 2015."

(b) CORPORATE ENVIRONMENTAL INCOME TAX.—Section 59A(e) is amended to read as follows:

"(e) APPLICATION OF TAX.—The tax imposed by this section shall apply to taxable years beginning after December 31, 1986, and before January 1, 1996, and to taxable years beginning after December 31, 2005, and before January 1, 2015."

(c) EFFECTIVE DATES.—

(1) EXCISE TAXES.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) INCOME TAX.—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 2005.

SEC. 442. MODIFICATIONS OF FOREIGN TAX CREDIT RULES APPLICABLE TO DUAL CAPACITY TAXPAYERS.

(a) IN GENERAL.—Section 901 (relating to credit for taxes of foreign countries and of possessions of the United States) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) SPECIAL RULES RELATING TO DUAL CAPACITY TAXPAYERS.—

"(1) GENERAL RULE.—Notwithstanding any other provision of this chapter, any amount paid or accrued by a dual capacity taxpayer to a foreign country or possession of the United States for any period shall not be considered a tax—

"(A) if, for such period, the foreign country or possession does not impose a generally applicable income tax, or

"(B) to the extent such amount exceeds the amount (determined in accordance with regulations) which—

"(i) is paid by such dual capacity taxpayer pursuant to the generally applicable income tax imposed by the country or possession, or

"(ii) would be paid if the generally applicable income tax imposed by the country or possession were applicable to such dual capacity taxpayer.

Nothing in this paragraph shall be construed to imply the proper treatment of any such amount not in excess of the amount determined under subparagraph (B).

"(2) Dual capacity taxpayer.—For purposes of this subsection, the term 'dual capacity taxpayer' means, with respect to any foreign country or possession of the United States, a person who—

"(A) is subject to a levy of such country or possession, and

"(B) receives (or will receive) directly or indirectly a specific economic benefit (as determined in accordance with regulations) from such country or possession.

"(3) Generally applicable income tax.—For purposes of this subsection—

"(A) In general.—The term 'generally applicable income tax' means an income tax (or a series of income taxes) which is generally imposed under the laws of a foreign country or possession on income derived from the conduct of a trade or business within such country or possession.

"(B) Exceptions.—Such term shall not include a tax unless it has substantial application, by its terms and in practice, to—

"(i) persons who are not dual capacity taxpayers, and

"(ii) persons who are citizens or residents of the foreign country or possession."

(b) Effective Date.—

(1) In general.—The amendments made by this section shall apply to taxes paid or accrued in taxable years beginning after the date of the enactment of this Act.

(2) Contrary treaty obligations upheld.—The amendments made by this section shall not apply to the extent contrary to any treaty obligation of the United States.

SEC. 443. RULES RELATING TO FOREIGN OIL AND GAS INCOME.

(a) Separate Basket for Foreign Tax Credit.—

(1) Separate basket.—

(A) Years before 2007.—Paragraph (1) of section 904(d) (relating to separate application of section with respect to certain categories of income), as in effect for years beginning before 2007, is amended by striking "and" at the end of subparagraph (H), by redesignating subparagraph (I) as subparagraph (J), and by inserting after subparagraph (H) the following new subparagraph:

"(I) foreign oil and gas income, and".

(B) 2007 and after.—Paragraph (1) of section 904(d), as in effect for years beginning after 2006, is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following:

"(C) foreign oil and gas income."

(2) Definition.—

(A) Years before 2007.—Paragraph (2) of section 904(d), as in effect for years beginning before 2007, is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

"(H) Foreign oil and gas income.—The term 'foreign oil and gas income' has the meaning given such term by section 954(g)."

(B) 2007 and after.—Section 904(d)(2), as in effect for years after 2006, is amended by redesignating subparagraphs (J) and (K) as subparagraphs (K) and (L) and by inserting after subparagraph (I) the following:

"(J) Foreign oil and gas income.—For purposes of this section—

"(i) In general.—The term 'foreign oil and gas income' has the meaning given such term by section 954(g).

"(ii) Coordination.—Passive category income and general category income shall not include foreign oil and gas income (as so defined)."

(3) Conforming amendments.—

(A) Section 904(d)(3)(F)(i) is amended by striking "or (E)" and inserting "(E), or (I)".

(B) Section 907(a) is hereby repealed.

(C) Section 907(c)(4) is hereby repealed.

(D) Section 907(f) is hereby repealed.

(4) Effective dates.—

(A) In general.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

(B) Years after 2006.—The amendments made by paragraphs (1)(B) and (2)(B) shall apply to taxable years beginning after December 31, 2006.

(C) Transitional rules.—

(i) Separate basket treatment.—Any taxes paid or accrued in a taxable year beginning on or before the date of the enactment of this Act, with respect to income which was described in subparagraph (I) of section 904(d)(1) of such Code (as in effect on the day before the date of the enactment of this Act), shall be treated as taxes paid or accrued with respect to foreign oil and gas income to the extent the taxpayer establishes to the satisfaction of the Secretary of the Treasury that such taxes were paid or accrued with respect to foreign oil and gas income.

(ii) Carryovers.—Any unused oil and gas extraction taxes which under section 907(f) of such Code (as so in effect) would have been allowable as a carryover to the taxpayer's first taxable year beginning after the date of the enactment of this Act (without regard to the limitation of paragraph (2) of such section 907(f) for first taxable year) shall be allowed as carryovers under section 904(c) of such Code in the same manner as if such taxes were unused taxes under such section 904(c) with respect to foreign oil and gas extraction income.

(iii) Losses.—The amendment made by paragraph (3)(C) shall not apply to foreign oil and gas extraction losses arising in taxable years beginning on or before the date of the enactment of this Act.

(b) Elimination of Deferral for Foreign Oil and Gas Extraction Income.—

(1) General rule.—Paragraph (1) of section 954(g) (defining foreign base company oil related income) is amended to read as follows:

"(1) In general.—Except as otherwise provided in this subsection, the term 'foreign oil and gas income' means any income of a kind which would be taken into account in determining the amount of—

"(A) foreign oil and gas extraction income (as defined in section 907(c)), or

"(B) foreign oil related income (as defined in section 907(c))."

(2) Conforming amendments.—

(A) Subsections (a)(5), (b)(5), and (b)(6) of section 954, and section 952(c)(1)(B)(ii)(I), are each amended by striking "base company oil related income" each place it appears (including in the heading of subsection (b)(8)) and inserting "oil and gas income".

(B) Subsection (b)(4) of section 954 is amended by striking "base company oil-related income" and inserting "oil and gas income".

(C) The subsection heading for subsection (g) of section 954 is amended by striking "Foreign Base Company Oil Related Income" and inserting "Foreign Oil and Gas Income".

(D) Subparagraph (A) of section 954(g)(2) is amended by striking "foreign base company oil related income" and inserting "foreign oil and gas income".

(3) Effective date.—The amendments made by this subsection shall apply to taxable years of foreign corporations beginning after the date of the enactment of this Act, and to taxable years of United States shareholders ending with or within such taxable years of foreign corporations.

SEC. 444. MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) Taxable Years Ending Before 2006.—

(1) Modification of phaseout.—

(A) In general.—Section 29(b)(1)(A) is amended by inserting "the calendar year preceding" before "the calendar year".

(B) Conforming amendments.—Section 29(b)((2) is amended—

(i) by striking "The" and inserting "With respect to any calendar year, the", and

(ii) by striking "for the calendar year in which the sale occurs" and inserting "for such calendar year".

(2) No inflation adjustment for the credit amount in 2005.—Section 29(b)(2), as amended by paragraph (1), is amended by adding at the end the following new sentence: "This paragraph shall not apply with respect to the $3 amount in subsection (a) for calendar year 2005 and the amount in effect under subsection (a) for sales in such calendar year shall be the amount which was in effect for sales in calendar year 2004.".

(b) Taxable Years Ending After 2005.—

(1) Modification of phaseout.—

(A) In general.—Section 45K(b)(1)(A) is amended by inserting "the calendar year preceding" before "the calendar year".

(B) Conforming amendments.—Section 45K(b)((2) is amended—

(i) by striking "The" and inserting "With respect to any calendar year, the", and

(ii) by striking "for the calendar year in which the sale occurs" and inserting "for such calendar year".

(2) No inflation adjustment for the credit amount in 2005, 2006, and 2007.—Section 45K(b)(2), as amended by paragraph (1), is amended by adding at the end the following new sentence: "This paragraph shall not apply with respect to the $3 amount in subsection (a) for calendar years 2005, 2006, and 2007 and the amount in effect under subsection (a) for sales in each such calendar year shall be the amount which was in effect for sales in calendar year 2004.".

(3) Treatment of coke and coke gas.—

(A) Nonapplication of phaseout.—Section 45K(g)(2) is amended by adding at the end the following new subparagraph:

"(D) Nonapplication of phaseout.—Subsection (b)(1) shall not apply.".

(B) Application of inflation adjustment.—Section 45K(g)(2)(B) is amended by inserting "and the last sentence of subsection (b)(2) shall not apply.".

(C) Clarification of qualifying facility.—Section 45K(g)(1) is amended by inserting "(other than from petroleum based products)" after "coke or coke gas".

(c) Effective Date.—The amendments made by this section shall apply to fuel sold after December 31, 2004.

SEC. 445. ELIMINATION OF AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES FOR MAJOR INTEGRATED OIL COMPANIES.

(a) IN GENERAL.—Section 167(h) is amended by adding at the end the following new paragraph:

"(5) NONAPPLICATION TO MAJOR INTEGRATED OIL COMPANIES.—This subsection shall not apply with respect to any expenses paid or incurred for any taxable year by any integrated oil company (as defined in section 291(b)(4)) which has an average daily worldwide production of crude oil of at least 500,000 barrels for such taxable year.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendment made by section 1329(a) of the Energy Policy Act of 2005.

Subtitle E—Tax Administration Provisions

SEC. 451. IMPOSITION OF WITHHOLDING ON CERTAIN PAYMENTS MADE BY GOVERNMENT ENTITIES.

(a) IN GENERAL.—Section 3402 is amended by adding at the end the following new subsection:

"(t) EXTENSION OF WITHHOLDING TO CERTAIN PAYMENTS MADE BY GOVERNMENT ENTITIES.—

"(1) GENERAL RULE.—The Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies) making any payment for goods and services which is subject to withholding shall deduct and withhold form such payment a tax in an amount equal to 3 percent of such payment.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to any payment—

"(A) except as provided in subparagraph (B), which is subject to withholding under any other provision of this chapter or chapter 3,

"(B) which is subject to withholding under section 3406 and from which amounts are being withheld under such section,

"(C) of interest,

"(D) for real property,

"(E) to any tax-exempt entity, foreign government, or other entity subject to the requirements of paragraph (1),

"(F) made pursuant to a classified or confidential contract (as defined in section 6050M(e)(3)), and

"(G) made by a political subdivision of a State (or any instrumentality thereof) which makes less than $100,000,000 of such payments annually.

"(3) COORDINATION WITH OTHER SECTIONS.—For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except section 7205) as relates to this chapter, payments to any person of any payment for goods and services which is subject to withholding shall be treated as if such payments were wages paid by an employer to an employee.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2005.

SEC. 452. INCREASE IN CERTAIN CRIMINAL PENALTIES.

(a) IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking "Any person who—" and inserting "(a) IN GENERAL.—Any person who—", and

(2) by adding at the end the following new subsection:

"(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.".

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 is amended—

(A) by striking "$100,000" and inserting "$500,000",

(B) by striking "$500,000" and inserting "$1,000,000", and

(C) by striking "5 years" and inserting "10 years".

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking "Any person" and inserting the following:

"(a) IN GENERAL.—Any person", and

(ii) by striking "$25,000" and inserting "$50,000",

(B) in the third sentence, by striking "section" and inserting "subsection", and

(C) by adding at the end the following new subsection:

"(b) AGGRAVATED FAILURE TO FILE.—

"(1) IN GENERAL.—In the case of any failure described in paragraph (2), the first sentence of subsection (a) shall be applied by substituting—

"(A) 'felony' for 'misdemeanor',

"(B) '$500,000 ($1,000,000' for '$25,000 ($100,000', and

"(C) '10 years' for '1 year'.

"(2) FAILURE DESCRIBED.—A failure described in this paragraph is a failure to make a return described in subsection (a) for a period of 3 or more consecutive taxable years.".

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking "$100,000" and inserting "$500,000",

(B) by striking "$500,000" and inserting "$1,000,000", and

(C) by striking "3 years" and inserting "5 years".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions, and failures to act, occurring after the date of the enactment of this Act.

SEC. 453. REPEAL OF SUSPENSION OF INTEREST AND CERTAIN PENALTIES WHERE SECRETARY FAILS TO CONTACT TAXPAYER.

(a) IN GENERAL.—Section 6404 (relating to abatements) is amended by striking subsection (g) and by redesignating subsections (h) and (i) as subsections (g) and (h), respectively.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to returns of tax filed after December 31, 2005.

SEC. 454. INCREASE IN PENALTY FOR BAD CHECKS AND MONEY ORDERS.

(a) IN GENERAL.—Section 6657 (relating to bad checks) is amended—

(1) by striking "$750" and inserting "$1,250", and

(2) by striking "$15" and inserting "$25".

(b) EFFECTIVE DATE.—The amendments made by this section apply to checks or money orders received after the date of the enactment of this Act.

SEC. 455. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

"SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

"(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

"(1) such person files what purports to be a return of a tax imposed by this title but which—

"(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

"(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

"(2) the conduct referred to in paragraph (1)—

"(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

"(B) reflects a desire to delay or impede the administration of Federal tax laws.

"(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

"(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

"(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

"(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

"(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

"(ii) reflects a desire to delay or impede the administration of Federal tax laws.

"(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

"(i) a request for a hearing under—

"(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

"(II) section 6330 (relating to notice and opportunity for hearing before levy), and

"(ii) an application under—

"(I) section 6159 (relating to agreements for payment of tax liability in installments),

"(II) section 7122 (relating to compromises), or

"(III) section 7811 (relating to taxpayer assistance orders).

"(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

"(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

"(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

"(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.".

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

"(g) Frivolous Requests for Hearing, Etc.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.".

(2) Preclusion from raising frivolous issues at hearing.—Section 6330(c)(4) is amended—

(A) by striking "(A)" and inserting "(A)(i)";

(B) by striking "(B)" and inserting "(ii)";

(C) by striking the period at the end of the first sentence and inserting "; or"; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

"(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).".

(3) Statement of grounds.—Section 6330(b)(1) is amended by striking "under subsection (a)(3)(B)" and inserting "in writing under subsection (a)(3)(B) and states the grounds for the requested hearing".

(c) Treatment of Frivolous Requests for Hearings Upon Filing of Notice of Lien.—Section 6320 is amended—

(1) in subsection (b)(1), by striking "under subsection (a)(3)(B)" and inserting "in writing under subsection (a)(3)(B) and states the grounds for the requested hearing", and

(2) in subsection (c), by striking "and (e)" and inserting "(e), and (g)".

(d) Treatment of Frivolous Applications for Offers-in-Compromise and Installment Agreements.—Section 7122 is amended by adding at the end the following new subsection:

"(e) Frivolous Submissions, Etc.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.".

(e) Clerical Amendment.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

"Sec. 6702. Frivolous tax submissions.".

(f) Effective Date.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 456. PARTIAL PAYMENTS REQUIRED WITH SUBMISSION OF OFFERS-IN-COMPROMISE.

(a) In General.—Section 7122 (relating to compromises), as amended by this Act, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c) Rules for Submission of Offers-in-Compromise.—

"(1) Partial payment required with submission.—

"(A) Lump-sum offers.—

"(i) In general.—The submission of any lump-sum offer-in-compromise shall be accompanied by the payment of 20 percent of amount of such offer.

"(ii) Lump-sum offer-in-compromise.—For purposes of this section, the term 'lump-sum offer-in-compromise' means any offer of payments made in 5 or fewer installments.

"(B) Periodic payment offers.—The submission of any periodic payment offer-in-compromise shall be accompanied by the payment of the amount of the first proposed installment and each proposed installment due during the period such offer is being evaluated for acceptance and has not been rejected by the Secretary. Any failure to make a payment required under the preceding sentence shall be deemed a withdrawal of the offer-in-compromise.

"(2) Rules of application.—

"(A) Use of payment.—The application of any payment made under this subsection to the assessed tax or other amounts imposed under this title with respect to such tax may be specified by the taxpayer.

"(B) No user fee imposed.—Any user fee which would otherwise be imposed under this section shall not be imposed on any offer-in-compromise accompanied by a payment required under this subsection.

"(C) Waiver authority.—The Secretary may issue regulations waiving any payment required under paragraph (1) in a manner consistent with the practices established in accordance with the requirements under subsection (d)(3).".

(b) Additional Rules Relating to Treatment of Offers.—

(1) Unprocessable offer if payment requirements are not met.—Paragraph (3) of section 7122(d) (relating to standards for evaluation of offers), as redesignated by subsection (a), is amended by striking "; and" at the end of subparagraph (A) and inserting a comma, by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) any offer-in-compromise which does not meet the requirements of subsection (c) shall be returned to the taxpayer as unprocessable.".

(2) Deemed acceptance of offer not rejected within certain period.—Section 7122, as amended by subsection (a), is amended by adding at the end the following new subsection:

"(g) Deemed Acceptance of Offer Not Rejected Within Certain Period.—Any offer-in-compromise submitted under this section shall be deemed to be accepted by the Secretary if such offer is not rejected by the Secretary before the date which is 24 months after the date of the submission of such offer (12 months for offers-in-compromise submitted after the date which is 5 years after the date of the enactment of this subsection). For purposes of the preceding sentence, any period during which any tax liability which is the subject of such offer-in-compromise is in dispute in any judicial proceeding shall not be taken in to account in determining the expiration of the 24-month period (or 12-month period, if applicable).".

(c) Effective Date.—The amendments made by this section shall apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act.

SEC. 457. WAIVER OF USER FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.

(a) In General.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

"(e) Waiver of User Fees for Installment Agreements Using Automated Withdrawals.—In the case of a taxpayer who enters into an installment agreement in which automated installment payments are agreed to, the Secretary shall waive the fee (if any) for entering into the installment agreement.".

(b) Effective Date.—The amendments made by this section shall apply to agreements entered into on or after the date which is 180 days after the date of the enactment of this Act.

SEC. 458. TERMINATION OF INSTALLMENT AGREEMENTS.

(a) In General.—Section 6159(b)(4) (relating to failure to pay an installment or any other tax liability when due or to provide requested financial information) is amended by striking "or" at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (E), and by inserting after subparagraph (B) the following:

"(C) to make a Federal tax deposit under section 6302 at the time such deposit is required to be made,

"(D) to file a return of tax imposed under this title by its due date (including extensions), or".

(b) Conforming Amendment.—The heading for section 6159(b)(4) is amended by striking "FAILURE TO PAY AN INSTALLMENT OR ANY OTHER TAX LIABILITY WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION" and inserting "FAILURE TO MAKE PAYMENTS OR DEPOSITS OR FILE RETURNS WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION".

(c) Effective Date.—The amendments made by this section shall apply to failures occurring on or after the date of the enactment of this Act.

Subtitle F—Additional Provisions

SEC. 461. MODIFICATION OF INDIVIDUAL ESTIMATED TAX SAFE HARBOR.

(a) In General.—The table contained in section 6654(d)(1)(C) is amended by striking "2002 or thereafter" and inserting "2002, 2003, 2004, or 2005" and by adding at the end the following new items:

"2006	111
2007 or thereafter	110".

(b) Effective Date.—The amendments made by this section shall apply with respect to any installment payment for taxable years beginning after December 31, 2005.

SEC. 462. LOAN AND REDEMPTION REQUIREMENTS ON POOLED FINANCING REQUIREMENTS.

(a) Strengthened Reasonable Expectation Requirement.—Subparagraph (A) of section 149(f)(2) (relating to reasonable expectation requirement) is amended to read as follows:

"(A) In general.—The requirements of this paragraph are met with respect to an issue if the issuer reasonably expects that—

"(i) as of the close of the 1-year period beginning on the date of issuance of the issue, at least 50 percent of the net proceeds of the issue (as of the close of such period) will have been used directly or indirectly to make or finance loans to ultimate borrowers, and

"(ii) as of the close of the 3-year period beginning on such date of issuance, at least 95 percent of the net proceeds of the issue (as of the close of such period) will have been so used.".

(b) Written Loan Commitment and Redemption Requirements.—Section 149(f) (relating to treatment of certain pooled financing bonds) is amended by redesignating paragraphs (4) and (5) as paragraphs (6) and (7), respectively, and by inserting after paragraph (3) the following new paragraphs:

"(4) Written loan commitment requirement.—

"(A) IN GENERAL.—The requirement of this paragraph is met with respect to an issue if the issuer receives prior to issuance written loan commitments identifying the ultimate potential borrowers of at least 50 percent of the net proceeds of such issue.

"(B) EXCEPTION.—Subparagraph (A) shall not apply with respect to any issuer which is a State (or an integral part of a State) issuing pooled financing bonds to make or finance loans to subordinate governmental units of such State or to State-created entities providing financing for water-infrastructure projects through the federally-sponsored State revolving fund program.

"(5) REDEMPTION REQUIREMENT.—The requirement of this paragraph is met if to the extent that less than the percentage of the proceeds of an issue required to be used under clause (i) or (ii) of paragraph (2)(A) is used by the close of the period identified in such clause, the issuer uses an amount of proceeds equal to the excess of—

"(A) the amount required to be used under such clause, over

"(B) the amount actually used by the close of such period,

to redeem outstanding bonds within 90 days after the end of such period.".

(c) ELIMINATION OF DISREGARD OF POOLED BONDS IN DETERMINING ELIGIBILITY FOR SMALL ISSUER EXCEPTION TO ARBITRAGE REBATE.—Section 148(f)(4)(D)(ii) (relating to aggregation of issuers) is amended by striking subclause (II) and by redesignating subclauses (III) and (IV) as subclauses (II) and (III), respectively.

(d) CONFORMING AMENDMENTS.—

(1) Section 149(f)(1) is amended by striking "paragraphs (2) and (3)" and inserting "paragraphs (2), (3), (4), and (5)".

(2) Section 149(f)(7)(B), as redesignated by subsection (b), is amended by striking "paragraph (4)(A)" and inserting "paragraph (6)(A)".

(3) Section 54(l)(2) is amended by striking "section 149(f)(4)(A)" and inserting "section 149(f)(6)(A)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

SEC. 463. REPORTING OF INTEREST ON TAX-EXEMPT BONDS.

(a) IN GENERAL.—Section 6049(b)(2) (relating to exceptions) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(b) CONFORMING AMENDMENT.—Section 6049(b)(2)(C), as redesignated by subsection (a), is amended by striking "subparagraph (C)" and inserting "subparagraph (B)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to interest earned after December 31, 2005.

SA 2724. Mrs. CLINTON (for herself, Ms. MIKULSKI, Mr. HARKIN, Mr. LAUTENBERG, Mr. REED, Mr. SALAZAR, Mr. OBAMA, Mrs. BOXER, Ms. STABENOW, Mr. SCHUMER, Mr. DURBIN, Mrs. FEINSTEIN, Mr. FEINGOLD, Mr. CARPER, Mr. JOHNSON, Mr. LEAHY, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 2710 proposed by Mr. FRIST (for himself, Mr. GRASSLEY, and Mr. BAUCUS) to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the end of the amendment, insert the following:

TITLE —KATRINA COMMISSION

SEC. _01. ESTABLISHMENT OF COMMISSION.

There is established in the legislative branch the Katrina Commission (in this title referred to as the "Commission").

SEC. 02. COMPOSITION OF COMMISSION.

(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(1) 1 member shall be appointed by the President, who shall serve as chairman of the Commission;

(2) 1 member shall be appointed by the leader of the Senate (majority or minority leader, as the case may be) of the Democratic Party, in consultation with the leader of the House of Representatives (majority or minority leader, as the case may be) of the Democratic Party, who shall serve as vice chairman of the Commission;

(3) 2 members shall be appointed by the senior member of the Senate leadership of the Democratic Party;

(4) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Republican Party;

(5) 2 members shall be appointed by the senior member of the Senate leadership of the Republican Party; and

(6) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Democratic Party.

(b) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens who represent a diverse range of citizens and enjoy national recognition and significant depth of experience in such professions as governmental service, emergency preparedness, mitigation planning, cataclysmic planning and response, intergovernmental management, resource planning, recovery operations and planning, Federal coordination, military coordination, and other extensive natural disaster and emergency response experience.

(4) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be appointed on or before October 1, 2005.

(5) INITIAL MEETING.—The Commission shall meet and begin the operations of the Commission as soon as practicable.

(c) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the chairman or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

SEC. _03. DUTIES.

The duties of the Commission are to—

(1) examine and report upon the Federal, State, and local response to the devastation wrought by Hurricane Katrina in the Gulf Region of the United States of America especially in the States of Louisiana, Mississippi, Alabama, and other areas impacted in the aftermath;

(2) ascertain, evaluate, and report on the information developed by all relevant governmental agencies regarding the facts and circumstances related to Hurricane Katrina prior to striking the United States and in the days and weeks following;

(3) build upon concurrent and prior investigations of other entities, and avoid unnecessary duplication concerning information related to existing vulnerabilities;

(4) make a full and complete accounting of the circumstances surrounding the approach of Hurricane Katrina to the Gulf States, and the extent of the United States government's preparedness for, and response to, the hurricane;

(5) planning necessary for future cataclysmic events requiring a significant marshaling of Federal resources, mitigation, response, and recovery to avoid significant loss of life;

(6) an analysis as to whether any decisions differed with respect to response and recovery for different communities, neighborhoods, parishes, and locations and what problems occurred as a result of a lack of a common plan, communication structure, and centralized command structure; and

(7) investigate and report to the President and Congress on its findings, conclusions, and recommendations for immediate corrective measures that can be taken to prevent problems with Federal response that occurred in the preparation for, and in the aftermath of, Hurricane Katrina so that future cataclysmic events are responded to adequately.

SEC. _04. FUNCTIONS OF COMMISSION.

(a) IN GENERAL.—The functions of the Commission are to—

(1) conduct an investigation that—

(A) investigates relevant facts and circumstances relating to the catastrophic impacts that Hurricane Katrina exacted upon the Gulf Region of the United States especially in New Orleans and surrounding parishes, and impacted areas of Mississippi and Alabama; and

(B) shall include relevant facts and circumstances relating to—

(i) Federal emergency response planning and execution at the Federal Emergency Management Agency, the Department of Homeland Security, the White House, and all other Federal entities with responsibility for assisting during, and responding to, natural disasters;

(ii) military and law enforcement response planning and execution;

(iii) Federal mitigation plans, programs, and policies including prior assessments of existing vulnerabilities and exercises designed to test those vulnerabilities;

(iv) Federal, State, and local communication interoperability successes and failures;

(v) past, present, and future Federal budgetary provisions for preparedness, mitigation, response, and recovery;

(vi) the Federal Emergency Management Agency's response capabilities as an independent agency and as part of the Department of Homeland Security;

(vii) the role of congressional oversight and resource allocation;

(viii) other areas of the public and private sectors determined relevant by the Commission for its inquiry; and

(ix) long-term needs for people impacted by Hurricane Katrina and other forms of Federal assistance necessary for large-scale recovery;

(2) identify, review, and evaluate the lessons learned from Hurricane Katrina including coordination, management policies, and procedures of the Federal Government, State and local governments, and nongovernmental entities, relative to detection, planning, mitigation, asset prepositioning, and

responding to cataclysmic natural disasters such as Hurricane Katrina; and

(3) submit to the President and Congress such reports as are required by this title containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

SEC. _05. POWERS OF COMMISSION.

(a) In General.—

(1) Hearings and evidence.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this title—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) subject to paragraph (2)(A), require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(2) Subpoenas.—

(A) Issuance.—

(i) In general.—A subpoena may be issued under this subsection only—

(I) by the agreement of the chairman and the vice chairman; or

(II) by the affirmative vote of 6 members of the Commission.

(ii) Signature.—Subject to clause (i), subpoenas issued under this subsection may be issued under the signature of the chairman or any member designated by a majority of the Commission, and may be served by any person designated by the chairman or by a member designated by a majority of the Commission.

(B) Enforcement.—

(i) In general.—In the case of contumacy or failure to obey a subpoena issued under subsection (a), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) Additional enforcement.—In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(b) Contracting.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(c) Information From Federal Agencies.—

(1) In general.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government, information, suggestions, estimates, and statistics for the purposes of this Act. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the chairman, the chairman of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(2) Receipt, handling, storage, and dissemination.—Information shall only be received, handled, stored, and disseminated by members of the Commission and its staff consistent with all applicable statutes, regulations, and Executive orders.

(d) Assistance From Federal Agencies.—

(1) General services administration.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) Other departments and agencies.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States may provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(e) Gifts.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(f) Postal Services.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

SEC. 06. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

(a) In General.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(b) Public Meetings and Release of Public Versions of Reports.—The Commission shall—

(1) hold public hearings and meetings to the extent appropriate; and

(2) release public versions of the reports required under section _10.

(c) Public Hearings.—Any public hearings of the Commission shall be conducted in a manner consistent with the protection of information provided to or developed for or by the Commission as required by any applicable statute, regulation, or Executive order.

SEC. 07. STAFF OF COMMISSION.

(a) In General.—

(1) Appointment and compensation.—The chairman, in consultation with the vice chairman, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) Personnel as federal employees.—

(A) In general.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) Members of commission.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(b) Detailees.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) Consultant Services.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

SEC. 08. COMPENSATION AND TRAVEL EXPENSES.

(a) Compensation.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) Travel Expenses.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

SEC. _09. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

The appropriate Federal agencies or departments shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances to the extent possible pursuant to existing procedures and requirements, except that no person shall be provided with access to classified information under this title without the appropriate security clearances.

SEC. 10. REPORTS OF COMMISSION; TERMINATION.

(a) Interim Reports.—The Commission may submit to the President and Congress interim reports containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) Final Report.—Not later than 6 months after the date of the enactment of this Act, the Commission shall submit to the President and Congress a final report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(c) Termination.—

(1) In general.—The Commission, and all the authorities of this Act, shall terminate 61 days after the date on which the final report is submitted under subsection (b).

(2) Administrative activities before termination.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the final report.

SEC. 11. FUNDING.

(a) Emergency Appropriation of Funds.—There are authorized to be appropriated $3,000,000 for purposes of the activities of the Commission under this title and such funding is designated as emergency spending under section 402 of H. Con. Res. 95 (109th Congress).

(b) DURATION OF AVAILABILITY.—Amounts made available to the Commission under subsection (a) shall remain available until the termination of the Commission.

SA 2725. Mr. SPECTER submitted an amendment intended to be proposed by her to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

On page 28, after line 11, insert the following:

SEC. 307. SALE OF PROPERTY BY JUDICIAL OFFICERS AND EMPLOYEES.

Section 1043(b) of the Internal Revenue Code of 1986 (relating to the sale of property to comply with conflict-of-interest requirements) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by inserting “or the judicial branch” after “an officer or employee of the executive branch”; and

(B) in subparagraph (B), by inserting “judicial canon,” after “any statute, regulation, rule,”;

(2) in paragraph (2)—

(A) in subparagraph (A), by inserting “judicial canon,” after “any Federal conflict of interest statute, regulation, rule,”; and

(B) in subparagraph (B), by inserting after “the Director of the Office of Government Ethics,” the following: “in the case of executive branch officers or employees, or by the Judicial Conference of the United States (or its designee), in the case of judicial branch officers and employees,”; and

(3) in paragraph (5)(B), by inserting “judicial canon,” after “any statute, regulation, rule,”.

SA 2726. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

On page 19 of the bill, strike lines 19 through 22, and insert the following:

SEC. 203. REPEAL OF STATE OPTIONS FOR ALTERNATIVE PREMIUMS AND COST SHARING AND FLEXIBILITY IN BENEFIT PACKAGES UNDER THE MEDICAID PROGRAM.

(a) REPEAL OF STATE OPTION FOR ALTERNATIVE PREMIUMS AND COST SHARING.—

(1) REPEAL.—Section 1916A of the Social Security Act, as added by sections 6041(a), 6042(a), and 6043(a) of the Deficit Reduction Act of 2005, is repealed.

(2) CONFORMING AMENDMENTS.—

(A) Subsection (y) of section 1903 of the Social Security Act (42 U.S.C. 1396b), as added by section 6043(b) of the Deficit Reduction Act of 2005, is repealed.

(B) Section 1916 of the Social Security Act (42 U.S.C. 1396o) is amended—

(i) in subsection (f), by striking “and section 1916A” after “(b)(3)”; and

(ii) by striking subsection (h).

(C) Section 1938(c) of the Social Security Act, as added by section 6082 of the Deficit Reduction Act of 2005, is amended—

(i) in paragraph (3), by striking “and 1916A”; and

(ii) in paragraph (5), by striking “sections 1916 and 1916A” and inserting “section 1916”.

(b) REPEAL OF STATE OPTION OF PROVIDING BENCHMARK BENEFIT PACKAGES.—

(1) REPEAL.—Section 1937 of the Social Security Act, as added by section 6044(a) of the Deficit Reduction Act of 2005, is repealed.

(2) CONFORMING AMENDMENTS.—

(A) Sections 1938 and 1939 of the Social Security Act, as added and redesignated, respectively, by section 6082 of the Deficit Reduction Act of 2005, are redesignated as sections 1937 and 1938, respectively, of the Social Security Act.

(B) 1937(b)(3) of the Social Security Act, as redesignated by subparagraph (A), is amended by inserting “(as added by section 6044(a) of S. 1932 of the 109th Congress, as passed by the Senate on December 21, 2005)”.

(c) EFFECTIVE DATE.—The repeals and amendments made by subsections (a) and (b) shall take effect as if included in the enactment of the Deficit Reduction Act of 2005.

SEC. 203A. ADDITIONAL FUNDING FOR THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM.

(a) IN GENERAL.—Section 2104(a) of the Social Security Act (42 U.S.C. 1397dd(a)) is amended—

(1) in paragraph (9), by striking “$4,050,000,000” and inserting “$6,550,000,000”; and

(2) in paragraph (10), by striking “$5,000,000,000” and inserting “$7,500,000,000”.

(b) FUNDS IN ADDITION TO FUNDS PROVIDED TO ELIMINATE FISCAL YEAR 2006 SHORTFALLS.—The Secretary of Health and Human Services shall carry out subsection (d) of section 2104 of the Social Security Act (42 U.S.C. 1397dd(d)), as added by section 6101(a) of the Deficit Reduction Act of 2005, (including the determination of a State's allotment for fiscal year 2006 under paragraph (2)(C) of that subsection), without regard to the amendment made by subsection (a)(1) providing increased funding for State allotments for fiscal year 2006.

SA 2727. Mr. FRIST (for Mr. TALENT) proposed an amendment to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; as follows:

At the appropriate place insert the following:

SEC. ___. SENSE OF THE SENATE REGARDING THE PERMANENT EXTENSION OF EGTRRA AND JGTRRA PROVISIONS RELATING TO CHILD TAX CREDIT.

It is the sense of the Senate that the conferees for the Tax Relief Act of 2006 should strive to permanently extend the amendments to the child tax credit under section 24 of the Internal Revenue Code of 1986 made by the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Jobs and Growth Tax Relief Reconciliation Act of 2003.

SA 2728. Mr. BAUCUS (for Mr. BYRD (for himself, Mr. ROCKEFELLER, Mr. SANTORUM, Mr. KERRY, Mr. DURBIN, Mr. OBAMA, Mr. MCCONNELL, and Mr. BUNNING)) proposed an amendment to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; as follows:

At the appropriate place insert the following:

SEC. ___. PARTIAL EXPENSING FOR ADVANCED MINE SAFETY EQUIPMENT.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 is amended by inserting after section 179D the following new section:

“SEC. 179E. ELECTION TO EXPENSE ADVANCED MINE SAFETY EQUIPMENT.

“(a) TREATMENT AS EXPENSES.—A taxpayer may elect to treat 50 percent of the cost of any qualified advanced mine safety equipment property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the qualified advanced mine safety equipment property is placed in service.

“(b) ELECTION.—

“(1) IN GENERAL.—An election under this section for any taxable year shall be made on the taxpayer's return of the tax imposed by this chapter for the taxable year. Such election shall specify the advanced mine safety equipment property to which the election applies and shall be made in such manner as the Secretary may by regulations prescribe.

“(2) ELECTION IRREVOCABLE.—Any election made under this section may not be revoked except with the consent of the Secretary.

“(c) QUALIFIED ADVANCED MINE SAFETY EQUIPMENT PROPERTY.—For purposes of this section, the term ‘qualified advanced mine safety equipment property’ means any advanced mine safety equipment property for use in any underground mine located in the United States—

“(1) the original use of which commences with the taxpayer, and

“(2) which is placed in service by the taxpayer after the date of the enactment of this section.

“(d) ADVANCED MINE SAFETY EQUIPMENT PROPERTY.—For purposes of this section, the term ‘advanced mine safety equipment property’ means any of the following:

“(1) Emergency communication technology or device which is used to allow a miner to maintain constant communication with an individual who is not in the mine.

“(2) Electronic identification and location device which allows an individual who is not in the mine to track at all times the movements and location of miners working in or at the mine.

“(3) Emergency oxygen-generating, self-rescue device which provides oxygen for at least 90 minutes.

“(4) Pre-positioned supplies of oxygen which (in combination with self-rescue devices) can be used to provide each miner on a shift, in the event of an accident or other event which traps the miner in the mine or otherwise necessitates the use of such a self-rescue device, the ability to survive for at least 48 hours.

“(5) Comprehensive atmospheric monitoring system which monitors the levels of carbon monoxide, methane, and oxygen that are present in all areas of the mine and which can detect smoke in the case of a fire in a mine.

“(e) SPECIAL RULES.—

“(1) COORDINATION WITH SECTION 179.—No expenditures shall be taken into account under subsection (a) with respect to the portion of the cost of any property specified in an election under section 179.

“(2) BASIS REDUCTION.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

“(f) REPORTING.—No deduction shall be allowed under subsection (a) to any taxpayer for any taxable year unless such taxpayer files with the Secretary a report containing such information with respect to the operation of the mines of the taxpayer as the Secretary shall require.

"(g) TERMINATION.—This section shall not apply to property placed in service after the date which is 3 years after the date of the enactment of this section.".

(b) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1) is amended by striking "or" at the end of subparagraph (J), by striking the period at the end of subparagraph (K) and inserting ", or", and by inserting after subparagraph (K) the following new subparagraph:

"(L) expenditures for which a deduction is allowed under section 179E.".

(2) Section 312(k)(3)(B) is amended by striking "or 179D" each place it appears in the heading and text thereof and inserting "179D, or 179E".

(3) Section 1016(a) is amended by striking "and" at the end of paragraph (36), by striking the period at the end of paragraph (37) and inserting ", and", and by adding at the end the following new paragraph:

"(38) to the extent provided in section 179E(e)(2).".

(4) Section 1245(a)(2)(C) is amended by inserting "179E," after "179D,".

(5) The table of sections for part VI of subchapter B of chapter 1 is amended by inserting after the item relating to section 179D the following new item:

"Sec. 179E. Election to expense advanced mine safety equipment.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to costs paid or incurred after the date of the enactment of this Act.

SEC. ___. MINE RESCUE TEAM TRAINING TAX CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end the following new section:

"SEC. 45N. MINE RESCUE TEAM TRAINING CREDIT.

"(a) AMOUNT OF CREDIT.—For purposes of section 38, the mine rescue team training credit determined under this section with respect to any eligible employer for any taxable year is an amount equal to the lesser of—

"(1) 20 percent of the amount paid or incurred by the taxpayer during the taxable year with respect to the training program costs of each qualified mine rescue team employee (including wages of such employee while attending such program), or

"(2) $10,000.

"(b) QUALIFIED MINE RESCUE TEAM EMPLOYEE.—For purposes of this section, the term 'qualified mine rescue team employee' means with respect to any taxable year any full-time employee of the taxpayer who is—

"(1) a miner eligible for more than 6 months of such taxable year to serve as a mine rescue team member as a result of completing, at a minimum, an initial 20-hour course of instruction as prescribed by the Mine Safety and Health Administration's Office of Educational Policy and Development, or

"(2) a miner eligible for more than 6 months of such taxable year to serve as a mine rescue team member by virtue of receiving at least 40 hours of refresher training in such instruction.

"(c) ELIGIBLE EMPLOYER.—For purposes of this section, the term 'eligible employer' means any taxpayer which employs individuals as miners in underground mines in the United States.

"(d) WAGES.—For purposes of this section, the term 'wages' has the meaning given to such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section).

"(e) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 2008.".

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) is amended by striking "and" at the end of paragraph (25), by striking the period at the end of paragraph (26) and inserting ", and", and by adding at the end the following new paragraph:

"(27) the mine rescue team training credit determined under section 45N(a).".

(c) NO DOUBLE BENEFIT.—Section 280C is amended by adding at the end the following new subsection:

"(e) MINE RESCUE TEAM TRAINING CREDIT.—No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45N(a).".

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 45N. Mine rescue team training credit.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SA 2729. Mr. CONRAD (for himself and Mr. BINGAMAN) proposed an amendment to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; as follows:

Strike all of Title V and insert the following:

TITLE V—REVENUE PROVISIONS

Subtitle A—Provisions Relating to Tax Shelters

SEC. 401. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

"(1) GENERAL RULES.—

"(A) IN GENERAL.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

"(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—A transaction has economic substance only if—

"(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer's economic position, and

"(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

"(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

"(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

"(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

"(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

"(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

"(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

"(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

"(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

"(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

"(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

"(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person's liability under subtitle A.

"(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

"(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

"(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

"(I) depreciation,

"(II) any tax credit, or

"(III) any other deduction as provided in guidance by the Secretary, and

"(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

"(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 402. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

"SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

"(a) IMPOSITION OF PENALTY.—If a taxpayer has an noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

"(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

"(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

"(1) IN GENERAL.—The term 'noneconomic substance transaction understatement' means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

"(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term 'noneconomic substance transaction' means any transaction if—

"(A) there is a lack of economic substance (within the meaning of section 7701(o)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(o)(2), or

"(B) the transaction fails to meet the requirements of any similar rule of law.

"(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

"(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

"(2) APPLICABLE RULES.—The rules of paragraphs (2) and (3) of section 6707A(d) shall apply for purposes of paragraph (1).

"(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

"(f) CROSS REFERENCES.—

"(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e)

"(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e)".

(b) COORDINATION WITH OTHER UNDERSTATEMENTS AND PENALTIES.—

(1) The second sentence of section 6662(d)(2)(A) is amended by inserting "and without regard to items with respect to which a penalty is imposed by section 6662B" before the period at the end.

(2) Subsection (e) of section 6662A is amended—

(A) in paragraph (1), by inserting "and noneconomic substance transaction understatements" after "reportable transaction understatements" both places it appears,

(B) in paragraph (2)(A), by inserting "and a noneconomic substance transaction understatement" after "reportable transaction understatement",

(C) in paragraph (2)(B), by inserting "6662B or" before "6663",

(D) in paragraph (2)(C)(i), by inserting "or section 6662B" before the period at the end,

(E) in paragraph (2)(C)(ii), by inserting "and section 6662B" after "This section",

(F) in paragraph (3), by inserting "or noneconomic substance transaction understatement" after "reportable transaction understatement", and

(G) by adding at the end the following new paragraph:

"(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' has the meaning given such term by section 6662B(c).".

(3) Subsection (e) of section 6707A is amended—

(A) by striking "or" at the end of subparagraph (B), and

(B) by striking subparagraph (C) and inserting the following new subparagraphs:

"(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction, or

"(D) is required to pay a penalty under section 6662(h) with respect to any transaction and would (but for section 6662A(e)(2)(C)) have been subject to penalty under section 6662A at a rate prescribed under section 6662A(c) or under section 6662B.".

(c) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

"Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 403. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) IN GENERAL.—Section 163(m) (relating to interest on unpaid taxes attributable to nondisclosed reportable transactions) is amended—

(1) by striking "attributable" and all that follows and inserting the following: "attributable to—

"(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

"(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).", and

(2) by inserting "AND NONECONOMIC SUBSTANCE TRANSACTIONS" in the heading thereof after "TRANSACTIONS".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions after the date of the enactment of this Act in taxable years ending after such date.

SEC. 404. MODIFICATIONS OF EFFECTIVE DATES OF LEASING PROVISIONS OF THE AMERICAN JOBS CREATION ACT OF 2004.

(a) IN GENERAL.—Section 849(b) of the American Jobs Creation Act of 2004 is amended by striking paragraphs (1) and (2), by redesignating paragraphs (3) and (4) as paragraphs (1) and (2), respectively, and by adding at the end the following new paragraph:

"(3) LEASES TO FOREIGN ENTITIES.—In the case of tax-exempt use property leased to a tax-exempt entity which is a foreign person or entity, the amendments made by this part shall apply to taxable years beginning after December 31, 2004, with respect to leases entered into on or before March 12, 2004.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the American Jobs Creation Act of 2004.

SEC. 405. REVALUATION OF LIFO INVENTORIES OF LARGE INTEGRATED OIL COMPANIES.

(a) GENERAL RULE.—Notwithstanding any other provision of law, if a taxpayer is an applicable integrated oil company for its last taxable year ending in calendar year 2005, the taxpayer shall—

(1) increase, effective as of the close of such taxable year, the value of each historic LIFO layer of inventories of crude oil, natural gas, or any other petroleum product (within the meaning of section 4611) by the layer adjustment amount, and

(2) decrease its cost of goods sold for such taxable year by the aggregate amount of the increases under paragraph (1).

If the aggregate amount of the increases under paragraph (1) exceed the taxpayer's cost of goods sold for such taxable year, the taxpayer's gross income for such taxable year shall be increased by the amount of such excess.

(b) LAYER ADJUSTMENT AMOUNT.—For purposes of this section—

(1) IN GENERAL.—The term "layer adjustment amount" means, with respect to any historic LIFO layer, the product of—

(A) $18.75, and

(B) the number of barrels of crude oil (or in the case of natural gas or other petroleum products, the number of barrel-of-oil equivalents) represented by the layer.

(2) BARREL-OF-OIL EQUIVALENT.—The term "barrel-of-oil equivalent" has the meaning given such term by section 29(d)(5) (as in effect before its redesignation by the Energy Tax Incentives Act of 2005).

(c) APPLICATION OF REQUIREMENT.—

(1) NO CHANGE IN METHOD OF ACCOUNTING.—Any adjustment required by this section shall not be treated as a change in method of accounting.

(2) UNDERPAYMENTS OF ESTIMATED TAX.—No addition to the tax shall be made under section 6655 of the Internal Revenue Code of 1986 (relating to failure by corporation to pay estimated tax) with respect to any underpayment of an installment required to be paid with respect to the taxable year described in subsection (a) to the extent such

underpayment was created or increased by this section.

(d) APPLICABLE INTEGRATED OIL COMPANY.—For purposes of this section, the term “applicable integrated oil company” means an integrated oil company (as defined in section 291(b)(4) of the Internal Revenue Code of 1986) which—

(1) had gross receipts in excess of $1,000,000,000 for its last taxable year ending during calendar year 2005, and

(2) uses the last-in, first-out (LIFO) method of accounting with respect to its crude oil inventories for such taxable year.

For purposes of paragraph (1), all persons treated as a single employer under subsections (a) and (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as 1 person and, in the case of a short taxable year, the rule under section 448(c)(3)(B) shall apply.

SEC. 406. MODIFICATION OF EFFECTIVE DATE OF EXCEPTION FROM SUSPENSION RULES FOR CERTAIN LISTED AND REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Paragraph (2) of section 903(d) of the American Jobs Creation Act of 2004 is amended to read as follows:

“(2) EXCEPTION FOR REPORTABLE OR LISTED TRANSACTIONS.—

“(A) IN GENERAL.—The amendments made by subsection (c) shall apply with respect to interest accruing after October 3, 2004.

“(B) SPECIAL RULE FOR CERTAIN LISTED AND REPORTABLE TRANSACTIONS.—

“(i) IN GENERAL.—Except as provided in clause (ii), the amendments made by subsection (c) shall also apply with respect to interest accruing on or before October 3, 2004.

“(ii) PARTICIPANTS IN SETTLEMENT INITIATIVES.—Clause (i) shall not apply to any transaction if, as of January 23, 2006—

“(I) the taxpayer is participating in a settlement initiative described in Internal Revenue Service Announcement 2005-80 with respect to such transaction, or

“(II) the taxpayer has entered into a settlement agreement pursuant to such an initiative.

“(iii) TERMINATION OF EXCEPTION.—Clause (ii)(I) shall not apply to any taxpayer if, after January 23, 2006, the taxpayer withdraws from, or terminates, participation in the initiative or the Secretary of the Treasury or the Secretary's delegate determines that a settlement agreement will not be reached pursuant to the initiative within a reasonable period of time.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 to which it relates.

SEC. 407. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.

(a) DETERMINATION OF PENALTY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, in the case of an applicable taxpayer—

(A) the determination as to whether any interest or applicable penalty is to be imposed with respect to any arrangement described in paragraph (2), or to any underpayment of Federal income tax attributable to items arising in connection with any such arrangement, shall be made without regard to the rules of subsections (b), (c), and (d) of section 6664 of the Internal Revenue Code of 1986, and

(B) if any such interest or applicable penalty is imposed, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(2) APPLICABLE TAXPAYER.—For purposes of this subsection—

(A) IN GENERAL.—The term “applicable taxpayer” means a taxpayer which—

(i) has underreported its United States income tax liability with respect to any item which directly or indirectly involves—

(I) any financial arrangement which in any manner relies on the use of offshore payment mechanisms (including credit, debit, or charge cards) issued by banks or other entities in foreign jurisdictions, or

(II) any offshore financial arrangement (including any arrangement with foreign banks, financial institutions, corporations, partnerships, trusts, or other entities), and

(ii) has neither signed a closing agreement pursuant to the Voluntary Offshore Compliance Initiative established by the Department of the Treasury under Revenue Procedure 2003-11 nor voluntarily disclosed its participation in such arrangement by notifying the Internal Revenue Service of such arrangement prior to the issue being raised by the Internal Revenue Service during an examination.

(B) AUTHORITY TO WAIVE.—The Secretary of the Treasury or the Secretary's delegate may waive the application of paragraph (1) to any taxpayer if the Secretary or the Secretary's delegate determines that the use of such offshore payment mechanisms is incidental to the transaction and, in addition, in the case of a trade or business, such use is conducted in the ordinary course of the type of trade or business of the taxpayer.

(C) ISSUES RAISED.—For purposes of subparagraph (A)(ii), an item shall be treated as an issue raised during an examination if the individual examining the return—

(i) communicates to the taxpayer knowledge about the specific item, or

(ii) has made a request to the taxpayer for information and the taxpayer could not make a complete response to that request without giving the examiner knowledge of the specific item.

(b) DEFINITIONS AND RULES.—For purposes of this section—

(1) APPLICABLE PENALTY.—The term “applicable penalty” means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(2) FEES AND EXPENSES.—The Secretary of the Treasury may retain and use an amount not in excess of 25 percent of all additional interest, penalties, additions to tax, and fines collected under this section to be used for enforcement and collection activities of the Internal Revenue Service. The Secretary shall keep adequate records regarding amounts so retained and used. The amount credited as paid by any taxpayer shall be determined without regard to this paragraph.

(c) REPORT BY SECRETARY.—The Secretary shall each year conduct a study and report to Congress on the implementation of this section during the preceding year, including statistics on the number of taxpayers affected by such implementation and the amount of interest and applicable penalties asserted, waived, and assessed during such preceding year.

(d) EFFECTIVE DATE.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if, as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

SEC. 408. PENALTY FOR AIDING AND ABETTING THE UNDERSTATEMENT OF TAX LIABILITY.

(a) IN GENERAL.—Section 6701(a) (relating to imposition of penalty) is amended—

(1) by inserting “the tax liability or” after “respect to,” in paragraph (1),

(2) by inserting “aid, assistance, procurement, or advice with respect to such” before “portion” both places it appears in paragraphs (2) and (3), and

(3) by inserting “instance of aid, assistance, procurement, or advice or each such” before “document” in the matter following paragraph (3).

(b) AMOUNT OF PENALTY.—Subsection (b) of section 6701 (relating to penalties for aiding and abetting understatement of tax liability) is amended to read as follows:

“(b) AMOUNT OF PENALTY; CALCULATION OF PENALTY; LIABILITY FOR PENALTY.—

“(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall not exceed 100 percent of the gross income derived (or to be derived) from such aid, assistance, procurement, or advice provided by the person or persons subject to such penalty.

“(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of aid, assistance, procurement, or advice described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who made such an understatement of the liability for tax.

“(3) LIABILITY FOR PENALTY.—If more than 1 person is liable under subsection (a) with respect to providing such aid, assistance, procurement, or advice, all such persons shall be jointly and severally liable for the penalty under such subsection.”.

(c) PENALTY NOT DEDUCTIBLE.—Section 6701 is amended by adding at the end the following new subsection:

“(g) PENALTY NOT DEDUCTIBLE.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be deductible by the person who is subject to such penalty or who makes such payment.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to activities after the date of the enactment of this Act.

Subtitle B—Provisions to Close Corporate and Individual Loopholes

SEC. 411. TAX TREATMENT OF INVERTED ENTITIES.

(a) IN GENERAL.—Section 7874 is amended—

(1) by striking “March 4, 2003” in subsection (a)(2)(B)(i) and in the matter following subsection (a)(2)(B)(iii) and inserting “March 20, 2002”,

(2) by striking “at least 60 percent” in subsection (a)(2)(B)(ii) and inserting “more than 50 percent”,

(3) by striking “80 percent” in subsection (b) and inserting “at least 80 percent”,

(4) by striking “60 percent” in subsection (b) and inserting “more than 50 percent”,

(5) by adding at the end of subsection (a)(2) the following new sentence: “Except as provided in regulations, an acquisition of properties of a domestic corporation shall not be treated as described in subparagraph (B) if none of the corporation's stock was readily tradeable on an established securities market at any time during the 4-year period ending on the date of the acquisition.”, and

(6) by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) Special Rules Applicable to Expatriated Entities.—

"(1) Increases in accuracy-related penalties.—In the case of any underpayment of tax of an expatriated entity—

"(A) section 6662(a) shall be applied with respect to such underpayment by substituting '30 percent' for '20 percent', and

"(B) if such underpayment is attributable to one or more gross valuation understatements, the increase in the rate of penalty under section 6662(h) shall be to 50 percent rather than 40 percent.

"(2) Modifications of limitation on interest deduction.—In the case of an expatriated entity, section 163(j) shall be applied—

"(A) without regard to paragraph (2)(A)(ii) thereof, and

"(B) by substituting '25 percent' for '50 percent' each place it appears in paragraph (2)(B) thereof.".

(b) Effective Date.—The amendments made by this section shall apply to taxable years ending after March 20, 2002.

SEC. 412. GRANT OF TREASURY REGULATORY AUTHORITY TO ADDRESS FOREIGN TAX CREDIT TRANSACTIONS INVOLVING INAPPROPRIATE SEPARATION OF FOREIGN TAXES FROM RELATED FOREIGN INCOME.

(a) In General.—Section 901 (relating to taxes of foreign countries and of possessions of United States) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) Regulations.—The Secretary may prescribe regulations disallowing a credit under subsection (a) for all or a portion of any foreign tax, or allocating a foreign tax among 2 or more persons, in cases where the foreign tax is imposed on any person in respect of income of another person or in other cases involving the inappropriate separation of the foreign tax from the related foreign income.".

(b) Effective Date.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 413. TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT INSTRUMENTS.

(a) In General.—Section 1275(d) (relating to regulation authority) is amended—

(1) by striking "The Secretary" and inserting the following:

"(1) In general.—The Secretary", and

(2) by adding at the end the following new paragraph:

"(2) Treatment of contingent payment convertible debt.—

"(A) In general.—In the case of a debt instrument which—

"(i) is convertible into stock of the issuing corporation, into stock or debt of a related party (within the meaning of section 267(b) or 707(b)(1)), or into cash or other property in an amount equal to the approximate value of such stock or debt, and

"(ii) provides for contingent payments,

any regulations which require original issue discount to be determined by reference to the comparable yield of a noncontingent fixed-rate debt instrument shall be applied as if the regulations require that such comparable yield be determined by reference to a noncontingent fixed-rate debt instrument which is convertible into stock.

"(B) Special rule.—For purposes of subparagraph (A), the comparable yield shall be determined without taking into account the yield resulting from the conversion of a debt instrument into stock.".

(b) Cross Reference.—Section 163(e)(6) (relating to cross references) is amended by adding at the end the following:

"For the treatment of contingent payment convertible debt, see section 1275(d)(2).".

(c) Effective Date.—The amendments made by this section shall apply to debt instruments issued on or after the date of the enactment of this Act.

SEC. 414. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERS WHICH ARE CORPORATIONS.

(a) In General.—Section 163(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

"(8) Treatment of corporate partners.—Except to the extent provided by regulations, in applying this subsection to a corporation which owns (directly or indirectly) an interest in a partnership—

"(A) such corporation's distributive share of interest income paid or accrued to such partnership shall be treated as interest income paid or accrued to such corporation,

"(B) such corporation's distributive share of interest paid or accrued by such partnership shall be treated as interest paid or accrued by such corporation, and

"(C) such corporation's share of the liabilities of such partnership shall be treated as liabilities of such corporation.".

(b) Additional Regulatory Authority.—Section 163(j)(9) (relating to regulations), as redesignated by subsection (a), is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) regulations providing for the reallocation of shares of partnership indebtedness, or distributive shares of the partnership's interest income or interest expense, as may be appropriate to carry out the purposes of this subsection.".

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning on or after the date of the enactment of this Act.

SEC. 415. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) In General.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

"(f) Fines, Penalties, and Other Amounts.—

"(1) In general.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

"(2) Exception for amounts constituting restitution or paid to come into compliance with law.—Paragraph (1) shall not apply to any amount which—

"(A) the taxpayer establishes—

"(i) constitutes restitution (including remediation of property) for damage or harm caused by or which may be caused by the violation of any law or the potential violation of any law, or

"(ii) is paid to come into compliance with any law which was violated or involved in the investigation or inquiry, and

"(B) is identified as restitution or as an amount paid to come into compliance with the law, as the case may be, in the court order or settlement agreement.

Identification pursuant to subparagraph (B) alone shall not satisfy the requirement under subparagraph (A). This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

"(3) Exception for amounts paid or incurred as the result of certain court orders.—Paragraph (1) shall not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (4) is a party.

"(4) Certain nongovernmental regulatory entities.—An entity is described in this paragraph if it is—

"(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

"(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.

"(5) Exception for taxes due.—Paragraph (1) shall not apply to any amount paid or incurred as taxes due.".

(b) Reporting of Deductible Amounts.—

(1) In general.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6050T the following new section:

"SEC. 6050U. INFORMATION WITH RESPECT TO CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

"(a) Requirement of Reporting.—

"(1) In general.—The appropriate official of any government or entity which is described in section 162(f)(4) which is involved in a suit or agreement described in paragraph (2) shall make a return in such form as determined by the Secretary setting forth—

"(A) the amount required to be paid as a result of the suit or agreement to which paragraph (1) of section 162(f) applies,

"(B) any amount required to be paid as a result of the suit or agreement which constitutes restitution or remediation of property, and

"(C) any amount required to be paid as a result of the suit or agreement for the purpose of coming into compliance with any law which was violated or involved in the investigation or inquiry.

"(2) Suit or agreement described.—

"(A) In general.—A suit or agreement is described in this paragraph if—

"(i) it is—

"(I) a suit with respect to a violation of any law over which the government or entity has authority and with respect to which there has been a court order, or

"(II) an agreement which is entered into with respect to a violation of any law over which the government or entity has authority, or with respect to an investigation or inquiry by the government or entity into the potential violation of any law over which such government or entity has authority, and

"(ii) the aggregate amount involved in all court orders and agreements with respect to the violation, investigation, or inquiry is $600 or more.

"(B) Adjustment of reporting threshold.—The Secretary may adjust the $600 amount in subparagraph (A)(ii) as necessary in order to ensure the efficient administration of the internal revenue laws.

"(3) Time of filing.—The return required under this subsection shall be filed not later than—

“(A) 30 days after the date on which a court order is issued with respect to the suit or the date the agreement is entered into, as the case may be, or

“(B) the date specified Secretary.

“(b) Statements to Be Furnished to Individuals Involved in the Settlement.—Every person required to make a return under subsection (a) shall furnish to each person who is a party to the suit or agreement a written statement showing—

“(1) the name of the government or entity, and

“(2) the information supplied to the Secretary under subsection (a)(1).

The written statement required under the preceding sentence shall be furnished to the person at the same time the government or entity provides the Secretary with the information required under subsection (a).

“(c) Appropriate Official Defined.—For purposes of this section, the term ‘appropriate official’ means the officer or employee having control of the suit, investigation, or inquiry or the person appropriately designated for purposes of this section.”.

(2) Conforming amendment.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6050T the following new item:

“Sec. 6050U. Information with respect to certain fines, penalties, and other amounts.”.

(c) Effective Date.—The amendments made by this section shall apply to amounts paid or incurred on or after the date of the enactment of this Act, except that such amendments shall not apply to amounts paid or incurred under any binding order or agreement entered into before such date. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained before such date.

SEC. 416. DISALLOWANCE OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) Disallowance of Deduction.—

(1) In general.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(B) by striking “If” and inserting:

“(1) Treble damages.—If”, and

(C) by adding at the end the following new paragraph:

“(2) Punitive damages.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of, any action. This paragraph shall not apply to punitive damages described in section 104(c).”.

(2) Conforming amendment.—The heading for section 162(g) is amended by inserting “or Punitive Damages” after “Laws”.

(b) Inclusion in Income of Punitive Damages Paid by Insurer or Otherwise.—

(1) In general.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end the following new section:

“SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.

“Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise by reason of the taxpayer's liability (or agreement) to pay punitive damages.”.

(2) Reporting requirements.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

“(f) Section to Apply to Punitive Damages Compensation.—This section shall apply to payments by a person to or on behalf of another person as insurance or otherwise by reason of the other person's liability (or agreement) to pay punitive damages.”.

(3) Conforming amendment.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end the following new item:

“Sec. 91. Punitive damages compensated by insurance or otherwise.”.

(c) Effective Date.—The amendments made by this section shall apply to damages paid or incurred on or after the date of the enactment of this Act.

SEC. 417. LIMITATION OF EMPLOYER DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES.

(a) In General.—Paragraph (2) of section 274(e) (relating to expenses treated as compensation) is amended to read as follows:

“(2) Expenses treated as compensation.—Expenses for goods, services, and facilities, to the extent that the expenses do not exceed the amount of the expenses which are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).”.

(b) Persons Not Employees.—Paragraph (9) of section 274(e) is amended by striking “to the extent that the expenses are includible in the gross income” and inserting “to the extent that the expenses do not exceed the amount of the expenses which are includible in the gross income”.

(c) Effective Date.—The amendments made by this section shall apply to expenses incurred after the date of the enactment of this Act.

SEC. 418. IMPOSITION OF MARK-TO-MARKET TAX ON INDIVIDUALS WHO EXPATRIATE.

(a) In General.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.

“(a) General Rules.—For purposes of this subtitle—

“(1) Mark to market.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

“(2) Recognition of gain or loss.—In the case of any sale under paragraph (1)—

“(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

“(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence.

“(3) Exclusion for certain gain.—

“(A) In general.—The amount which, but for this paragraph, would be includible in the gross income of any individual by reason of this section shall be reduced (but not below zero) by $600,000. For purposes of this paragraph, allocable expatriation gain taken into account under subsection (f)(2) shall be treated in the same manner as an amount required to be includible in gross income.

“(B) Cost-of-living adjustment.—

“(i) In general.—In the case of an expatriation date occurring in any calendar year after 2005, the $600,000 amount under subparagraph (A) shall be increased by an amount equal to—

“(I) such dollar amount, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting ‘calendar year 2004’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(ii) Rounding rules.—If any amount after adjustment under clause (i) is not a multiple of $1,000, such amount shall be rounded to the next lower multiple of $1,000.

“(4) Election to continue to be taxed as United States citizen.—

“(A) In general.—If a covered expatriate elects the application of this paragraph—

“(i) this section (other than this paragraph and subsection (i)) shall not apply to the expatriate, but

“(ii) in the case of property to which this section would apply but for such election, the expatriate shall be subject to tax under this title in the same manner as if the individual were a United States citizen.

“(B) Requirements.—Subparagraph (A) shall not apply to an individual unless the individual—

“(i) provides security for payment of tax in such form and manner, and in such amount, as the Secretary may require,

“(ii) consents to the waiver of any right of the individual under any treaty of the United States which would preclude assessment or collection of any tax which may be imposed by reason of this paragraph, and

“(iii) complies with such other requirements as the Secretary may prescribe.

“(C) Election.—An election under subparagraph (A) shall apply to all property to which this section would apply but for the election and, once made, shall be irrevocable. Such election shall also apply to property the basis of which is determined in whole or in part by reference to the property with respect to which the election was made.

“(b) Election to Defer Tax.—

“(1) In general.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the payment of the additional tax attributable to such property shall be postponed until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

“(2) Determination of tax with respect to property.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

“(3) Termination of postponement.—No tax may be postponed under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

“(4) Security.—

“(A) In general.—No election may be made under paragraph (1) with respect to any property unless adequate security is provided to the Secretary with respect to such property.

"(B) ADEQUATE SECURITY.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

"(i) it is a bond in an amount equal to the deferred tax amount under paragraph (2) for the property, or

"(ii) the taxpayer otherwise establishes to the satisfaction of the Secretary that the security is adequate.

"(5) WAIVER OF CERTAIN RIGHTS.—No election may be made under paragraph (1) unless the taxpayer consents to the waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

"(6) ELECTIONS.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable. An election may be made under paragraph (1) with respect to an interest in a trust with respect to which gain is required to be recognized under subsection (f)(1).

"(7) INTEREST.—For purposes of section 6601—

"(A) the last date for the payment of tax shall be determined without regard to the election under this subsection, and

"(B) section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

"(c) COVERED EXPATRIATE.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'covered expatriate' means an expatriate.

"(2) EXCEPTIONS.—An individual shall not be treated as a covered expatriate if—

"(A) the individual—

"(i) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

"(ii) has not been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) during the 5 taxable years ending with the taxable year during which the expatriation date occurs, or

"(B)(i) the individual's relinquishment of United States citizenship occurs before such individual attains age 18, and

"(ii) the individual has been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.

"(d) EXEMPT PROPERTY; SPECIAL RULES FOR PENSION PLANS.—

"(1) EXEMPT PROPERTY.—This section shall not apply to the following:

"(A) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the day before the expatriation date, meet the requirements of section 897(c)(2).

"(B) SPECIFIED PROPERTY.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.

"(2) SPECIAL RULES FOR CERTAIN RETIREMENT PLANS.—

"(A) IN GENERAL.—If a covered expatriate holds on the day before the expatriation date any interest in a retirement plan to which this paragraph applies—

"(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but

"(ii) an amount equal to the present value of the expatriate's nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.

"(B) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—In the case of any distribution on or after the expatriation date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the amount otherwise includible in gross income by reason of the subsequent distribution shall be reduced by the excess of the amount includible in gross income under subparagraph (A) over any portion of such amount to which this subparagraph previously applied.

"(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS BY PLAN.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan's behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.

"(D) APPLICABLE PLANS.—This paragraph shall apply to—

"(i) any qualified retirement plan (as defined in section 4974(c)),

"(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

"(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

"(e) DEFINITIONS.—For purposes of this section—

"(1) EXPATRIATE.—The term 'expatriate' means—

"(A) any United States citizen who relinquishes citizenship, and

"(B) any long-term resident of the United States who—

"(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

"(ii) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country.

"(2) EXPATRIATION DATE.—The term 'expatriation date' means—

"(A) the date an individual relinquishes United States citizenship, or

"(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

"(3) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship on the earliest of—

"(A) the date the individual renounces such individual's United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

"(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

"(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

"(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

"(4) LONG-TERM RESIDENT.—The term 'long-term resident' has the meaning given to such term by section 877(e)(2).

"(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES' INTERESTS IN TRUST.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

"(A) the individual shall not be treated as having sold such interest,

"(B) such interest shall be treated as a separate share in the trust, and

"(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

"(ii) the separate trust shall be treated as having sold its assets on the day before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

"(iii) the individual shall be treated as having recontributed the assets to the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (C)(ii). In determining the amount of such distribution, proper adjustments shall be made for liabilities of the trust allocable to an individual's share in the trust.

"(2) SPECIAL RULES FOR INTERESTS IN QUALIFIED TRUSTS.—

"(A) IN GENERAL.—If the trust interest described in paragraph (1) is an interest in a qualified trust—

"(i) paragraph (1) and subsection (a) shall not apply, and

"(ii) in addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax in the amount determined under subparagraph (B).

"(B) AMOUNT OF TAX.—The amount of tax under subparagraph (A)(ii) shall be equal to the lesser of—

"(i) the highest rate of tax imposed by section 1(e) for the taxable year which includes the day before the expatriation date, multiplied by the amount of the distribution, or

"(ii) the balance in the deferred tax account immediately before the distribution determined without regard to any increases under subparagraph (C)(ii) after the 30th day preceding the distribution.

"(C) DEFERRED TAX ACCOUNT.—For purposes of subparagraph (B)(ii)—

"(i) OPENING BALANCE.—The opening balance in a deferred tax account with respect to any trust interest is an amount equal to the tax which would have been imposed on the allocable expatriation gain with respect to the trust interest if such gain had been included in gross income under subsection (a).

"(ii) INCREASE FOR INTEREST.—The balance in the deferred tax account shall be increased by the amount of interest determined (on the balance in the account at the time the interest accrues), for periods after the 90th day after the expatriation date, by using the rates and method applicable under section 6621 for underpayments of tax for such periods, except that section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

"(iii) DECREASE FOR TAXES PREVIOUSLY PAID.—The balance in the tax deferred account shall be reduced—

"(I) by the amount of taxes imposed by subparagraph (A) on any distribution to the person holding the trust interest, and

"(II) in the case of a person holding a nonvested interest, to the extent provided in regulations, by the amount of taxes imposed by subparagraph (A) on distributions from the trust with respect to nonvested interests not held by such person.

"(D) ALLOCABLE EXPATRIATION GAIN.—For purposes of this paragraph, the allocable expatriation gain with respect to any beneficiary's interest in a trust is the amount of gain which would be allocable to such beneficiary's vested and nonvested interests in the trust if the beneficiary held directly all assets allocable to such interests.

"(E) TAX DEDUCTED AND WITHHELD.—

"(i) IN GENERAL.—The tax imposed by subparagraph (A)(ii) shall be deducted and withheld by the trustees from the distribution to which it relates.

"(ii) EXCEPTION WHERE FAILURE TO WAIVE TREATY RIGHTS.—If an amount may not be deducted and withheld under clause (i) by reason of the distributee failing to waive any treaty right with respect to such distribution—

"(I) the tax imposed by subparagraph (A)(ii) shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax, and

"(II) any other beneficiary of the trust shall be entitled to recover from the distributee the amount of such tax imposed on the other beneficiary.

"(F) DISPOSITION.—If a trust ceases to be a qualified trust at any time, a covered expatriate disposes of an interest in a qualified trust, or a covered expatriate holding an interest in a qualified trust dies, then, in lieu of the tax imposed by subparagraph (A)(ii), there is hereby imposed a tax equal to the lesser of—

"(i) the tax determined under paragraph (1) as if the day before the expatriation date were the date of such cessation, disposition, or death, whichever is applicable, or

"(ii) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax imposed on the other beneficiary.

"(G) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

"(i) QUALIFIED TRUST.—The term 'qualified trust' means a trust which is described in section 7701(a)(30)(E).

"(ii) VESTED INTEREST.—The term 'vested interest' means any interest which, as of the day before the expatriation date, is vested in the beneficiary.

"(iii) NONVESTED INTEREST.—The term 'nonvested interest' means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

"(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

"(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is part of a retirement plan to which subsection (d)(2) applies.

"(3) DETERMINATION OF BENEFICIARIES' INTEREST IN TRUST.—

"(A) DETERMINATIONS UNDER PARAGRAPH (1).—For purposes of paragraph (1), a beneficiary's interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar adviser.

"(B) OTHER DETERMINATIONS.—For purposes of this section—

"(i) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiaries for purposes of this section.

"(ii) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

"(I) the methodology used to determine that taxpayer's trust interest under this section, and

"(II) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary's trust interest under this section.

"(g) TERMINATION OF DEFERRALS, ETC.—In the case of any covered expatriate, notwithstanding any other provision of this title—

"(1) any period during which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and

"(2) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

"(h) IMPOSITION OF TENTATIVE TAX.—

"(1) IN GENERAL.—If an individual is required to include any amount in gross income under subsection (a) for any taxable year, there is hereby imposed, immediately before the expatriation date, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

"(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

"(3) TREATMENT OF TAX.—Any tax paid under paragraph (1) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

"(4) DEFERRAL OF TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

"(i) SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.—

"(1) IMPOSITION OF LIEN.—

"(A) IN GENERAL.—If a covered expatriate makes an election under subsection (a)(4) or (b) which results in the deferral of any tax imposed by reason of subsection (a), the deferred amount (including any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).

"(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate's income tax which, but for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

"(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

"(A) the liability for tax by reason of this section is satisfied or has become unenforceable by reason of lapse of time, or

"(B) it is established to the satisfaction of the Secretary that no further tax liability may arise by reason of this section.

"(3) CERTAIN RULES APPLY.—The rules set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6324A.

"(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.".

(b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Section 102 (relating to gifts, etc. not included in gross income) is amended by adding at the end the following new subsection:

"(d) GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.—

"(1) IN GENERAL.—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is also used in section 877A shall have the same meaning as when used in section 877A.

"(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1) shall not apply to any property if either—

"(A) the gift, bequest, devise, or inheritance is—

"(i) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

"(ii) included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate, or

"(B) no such return was timely filed but no such return would have been required to be filed even if the covered expatriate were a citizen or long-term resident of the United States.".

(c) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) is amended by adding at the end the following new paragraph:

"(49) TERMINATION OF UNITED STATES CITIZENSHIP.—

"(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(e)(3).

"(B) DUAL CITIZENS.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.".

(d) INELIGIBILITY FOR VISA OR ADMISSION TO UNITED STATES.—

(1) IN GENERAL.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

"(E) FORMER CITIZENS NOT IN COMPLIANCE WITH EXPATRIATION REVENUE PROVISIONS.—Any alien who is a former citizen of the United States who relinquishes United States citizenship (within the meaning of section 877A(e)(3) of the Internal Revenue Code of 1986) and who is not in compliance with section 877A of such Code (relating to expatriation).".

(2) Availability of information.—

(A) In general.—Section 6103(l) (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

"(21) Disclosure to deny visa or admission to certain expatriates.—Upon written request of the Attorney General or the Attorney General's delegate, the Secretary shall disclose whether an individual is in compliance with section 877A (and if not in compliance, any items of noncompliance) to officers and employees of the Federal agency responsible for administering section 212(a)(10)(E) of the Immigration and Nationality Act solely for the purpose of, and to the extent necessary in, administering such section 212(a)(10)(E).".

(B) Safeguards.—Section 6103(p)(4) (relating to safeguards) is amended by striking "or (20)" each place it appears and inserting "(20), or (21)".

(3) Effective dates.—The amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(e) Conforming Amendments.—

(1) Section 877 is amended by adding at the end the following new subsection:

"(h) Application.—This section shall not apply to an expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after the date of the enactment of this subsection.".

(2) Section 2107 is amended by adding at the end the following new subsection:

"(f) Application.—This section shall not apply to any expatriate subject to section 877A.".

(3) Section 2501(a)(3) is amended by adding at the end the following new subparagraph:

"(C) Application.—This paragraph shall not apply to any expatriate subject to section 877A.".

(4) Section 6039G(a) is amended by inserting "or 877A" after "section 877(b)".

(5) The second sentence of section 6039G(d) is amended by inserting "or who relinquishes United States citizenship (within the meaning of section 877A(e)(3))" after "section 877(a))".

(f) Clerical Amendment.—The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

"Sec. 877A. Tax responsibilities of expatriation.".

(g) Effective Date.—

(1) In general.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) whose expatriation date (as so defined) occurs on or after the date of the enactment of this Act.

(2) Gifts and bequests.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to gifts and bequests received on or after the date of the enactment of this Act, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

(3) Due date for tentative tax.—The due date under section 877A(h)(2) of the Internal Revenue Code of 1986, as added by this section, shall in no event occur before the 90th day after the date of the enactment of this Act.

SEC. 419. TAX TREATMENT OF CONTROLLED FOREIGN CORPORATIONS ESTABLISHED IN TAX HAVENS.

(a) In General.—Subchapter C of chapter 80 (relating to provisions affecting more than one subtitle) is amended by adding at the end the following new section:

"SEC. 7875. CONTROLLED FOREIGN CORPORATIONS IN TAX HAVENS TREATED AS DOMESTIC CORPORATIONS.

"(a) General Rule.—If a controlled foreign corporation is a tax-haven CFC, then, notwithstanding section 7701(a)(4), such corporation shall be treated for purposes of this title as a domestic corporation.

"(b) Tax-Haven CFC.—For purposes of this section—

"(1) In general.—The term 'tax-haven CFC' means, with respect to any taxable year, a foreign corporation which—

"(A) was created or organized under the laws of a tax-haven country, and

"(B) is a controlled foreign corporation (determined without regard to this section) for an uninterrupted period of 30 days or more during the taxable year.

"(2) Exception.—The term 'tax-haven CFC' does not include a foreign corporation for any taxable year if substantially all of its income for the taxable year is derived from the active conduct of trades or businesses within the country under the laws of which the corporation was created or organized.

"(c) Tax-Haven Country.—For purposes of this section—

"(1) In general.—The term 'tax-haven country' means any of the following:

"Andorra
Anguilla
Antigua and Barbuda
Aruba
Commonwealth of the Bahamas
Bahrain
Barbados
Belize
Bermuda
British Virgin Islands
Cayman Islands
Cook Islands
Cyprus
Commonwealth of the Dominica
Gibraltar
Grenada
Guernsey
Isle of Man
Jersey
Liberia
Principality of Liechtenstein
Republic of the Maldives
Malta
Republic of the Marshall Islands
Mauritius
Principality of Monaco
Montserrat
Republic of Nauru
Netherlands Antilles
Niue
Panama
Samoa
San Marino
Federation of Saint Christopher and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Republic of the Seychelles
Tonga
Turks and Caicos
Republic of Vanuatu

"(2) Secretarial authority.—The Secretary may remove or add a foreign jurisdiction from the list of tax-haven countries under paragraph (1) if the Secretary determines such removal or addition is consistent with the purposes of this section.".

(b) Conforming Amendment.—The table of sections for subchapter C of chapter 80 is amended by adding at the end the following new item:

"Sec. 7875. Controlled foreign corporations in tax havens treated as domestic corporations.".

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

SEC. 420. MODIFICATION OF EXCLUSION FOR CITIZENS LIVING ABROAD.

(a) Inflation Adjustment of Foreign Earned Income Limitation.—Clause (ii) of section 911(b)(2)(D) (relating to inflation adjustment) is amended—

(1) by striking "2007" and inserting "2005", and

(2) by striking "2006" in subclause (II) and inserting "2004".

(b) Modification of Housing Cost Amount.—

(1) Minimum amount.—Clause (i) of section 911(c)(1)(B) is amended to read as follows:

"(i) 16 percent of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which such taxable year begins, multiplied by".

(2) Maximum amount of exclusion.—

(A) In general.—Subparagraph (A) of section 911(c)(1) is amended by inserting "to the extent such expenses do not exceed the amount determined under paragraph (2)" after "the taxable year".

(B) Limitation.—Subsection (c) of section 911 is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) Limitation.—The amount determined under this paragraph is an amount equal to the product of—

"(A) 30 percent of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which the taxable year of the individual begins, multiplied by

"(B) the number of days of such taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1).".

(C) Conforming amendments.—

(i) Section 911(d)(4) is amended by striking "and (c)(1)(B)(ii)" and inserting ", (c)(1)(B)(ii), and (c)(2)(B)"

(ii) Section 911(d)(7) is amended by striking "subsection (c)(3)" and inserting "subsection (c)(4)".

(c) Rates of Tax Applicable to Nonexcluded Income.—Section 911 (relating to exclusion of certain income of citizens and residents of the United States living abroad) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) Determination of Tax Liability on Nonexcluded Amounts.—If any amount is excluded from the gross income of a taxpayer under subsection (a) for any taxable year, then, notwithstanding section 1 or 55—

"(1) the tax imposed by section 1 on the taxpayer for such taxable year shall be equal to the excess (if any) of—

"(A) the tax which would be imposed by section 1 for the taxable year if the taxpayer's taxable income were equal to the sum of—

"(i) the taxpayer's taxable income for the taxable year (determined without regard to this subsection), plus

"(ii) the amount excluded under subsection (a) for the taxable year, over

"(B) the tax which would be imposed by section 1 for the taxable year if the taxpayer's taxable income were equal to the amount excluded under subsection (a) for the taxable year, and

"(2) the tax imposed by section 55 for such taxable year shall be equal to the excess (if any) of—

"(A) the amount which would be the tentative minimum tax under section 55 for the taxable year if the taxpayer's alternative minimum taxable income were equal to the sum of—

"(i) the taxpayer's alternative minimum taxable income for the taxable year (determined without regard to this subsection), plus

"(ii) the amount excluded under subsection (a) for the taxable year, over

"(B) the sum of—

"(i) the amount which would be the tentative minimum tax under section 55 for the taxable year if the taxpayer's alternative minimum taxable income were equal to the amount excluded under subsection (a) for the taxable year, plus

"(ii) the amount which would be the regular tax for the taxable year if the tax imposed by section 1 were the tax computed under paragraph (1).

For purposes of this subsection, the amount excluded under subsection (a) shall be reduced by the aggregate amount of any deductions or exclusions disallowed under subsection (d)(6) with respect to such excluded amount.".

(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 421. LIMITATION ON ANNUAL AMOUNTS WHICH MAY BE DEFERRED UNDER NONQUALIFIED DEFERRED COMPENSATION ARRANGEMENTS.

(a) In General.—Section 409A (relating to inclusion of gross income under nonqualified deferred compensation plans) is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c) Annual Limitation on Aggregate Deferred Amounts.—

"(1) Limitation.—If the aggregate amount of compensation which—

"(A) is deferred for any taxable year with respect to a participant under 1 or more nonqualified deferred compensation plans maintained by the same employer, and

"(B) is not otherwise includible in gross income of the participant for the taxable year, exceeds the applicable dollar amount for the taxable year, then such excess shall be included in the participant's gross income for the taxable year.

"(2) Inclusion of earnings.—If—

"(A) an amount is includible under paragraph (1) in the gross income of a participant for any taxable year, and

"(B) any portion of any assets set aside in a trust or other arrangement under a nonqualified deferred compensation plan are properly allocable to such amount,

then any increase in value in, or earnings with respect to, such portion for the taxable year or any succeeding taxable year shall be included in gross income of the participant for such taxable year or succeeding taxable year.

"(3) Applicable dollar amount.—For purposes of this subsection—

"(A) In general.—The term 'applicable dollar amount' means, with respect to any participant, the lesser of—

"(i) the average annual compensation which—

"(I) was payable during the base period to the participant by the employer described in paragraph (1)(A), and

"(II) was includible in the participant's gross income for taxable years in the base period, or

"(ii) $1,000,000.

"(B) Base period.—The term 'base period' means, with respect to any computation year, the 5-taxable year period ending with the taxable year preceding the taxable year in which the election described in subsection (a)(4)(B) is made by the participant to have compensation for services performed in the computation year deferred under a nonqualified deferred compensation plan, except that if the election is made after the beginning of the computation year, such period shall be the 5-taxable year period ending with the taxable year preceding the computation year. For purposes of this subparagraph, the term 'computation year' means any taxable year of the participant for which the limitation under paragraph (1) is being determined.".

(b) Conforming Amendments.—Sections 6041(g)(1) and 6051(a)(13) are each amended by striking "409A(d)" and inserting "409A(e)".

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005, except that taxable years beginning on or before such date shall be taken into account in determining the average annual compensation of a participant during any base period for purposes of section 409A(c)(2) of the Internal Revenue Code of 1986 (as added by such amendments).

SEC. 422. INCREASE IN AGE OF MINOR CHILDREN WHOSE UNEARNED INCOME IS TAXED AS IF PARENT'S INCOME.

(a) In General.—Section 1(g)(2)(A) (relating to child to whom subsection applies) is amended by striking "age 14" and inserting "age 18".

(b) Treatment of Distributions From Qualified Disability Trusts.—Section 1(g)(4) (relating to net unearned income) is amended by adding at the end the following new subparagraph:

"(C) Treatment of distributions from qualified disability trusts.—For purposes of this subsection, in the case of any child who is a beneficiary of a qualified disability trust (as defined in section 642(b)(2)(C)(ii)), any amount included in the income of such child under sections 652 and 662 during a taxable year shall be considered earned income of such child for such taxable year.".

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

Subtitle C—Oil and Gas Provisions

SEC. 431. EXTENSION OF SUPERFUND TAXES.

(a) Excise Taxes.—Section 4611(e) is amended to read as follows:

"(e) Application of Hazardous Substance Superfund Financing Rate.—The Hazardous Substance Superfund financing rate under this section shall apply after December 31, 1986, and before January 1, 1996, and after December 31, 2005, and before January 1, 2015."

(b) Corporate Environmental Income Tax.—Section 59A(e) is amended to read as follows:

"(e) Application of Tax.—The tax imposed by this section shall apply to taxable years beginning after December 31, 1986, and before January 1, 1996, and to taxable years beginning after December 31, 2005, and before January 1, 2015."

(c) Effective Dates.—

(1) Excise taxes.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) Income tax.—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 2005.

SEC. 432. MODIFICATIONS OF FOREIGN TAX CREDIT RULES APPLICABLE TO DUAL CAPACITY TAXPAYERS.

(a) In General.—Section 901 (relating to credit for taxes of foreign countries and of possessions of the United States) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) Special Rules Relating To Dual Capacity Taxpayers.—

"(1) General rule.—Notwithstanding any other provision of this chapter, any amount paid or accrued by a dual capacity taxpayer to a foreign country or possession of the United States for any period shall not be considered a tax—

"(A) if, for such period, the foreign country or possession does not impose a generally applicable income tax, or

"(B) to the extent such amount exceeds the amount (determined in accordance with regulations) which—

"(i) is paid by such dual capacity taxpayer pursuant to the generally applicable income tax imposed by the country or possession, or

"(ii) would be paid if the generally applicable income tax imposed by the country or possession were applicable to such dual capacity taxpayer.

Nothing in this paragraph shall be construed to imply the proper treatment of any such amount not in excess of the amount determined under subparagraph (B).

"(2) Dual capacity taxpayer.—For purposes of this subsection, the term 'dual capacity taxpayer' means, with respect to any foreign country or possession of the United States, a person who—

"(A) is subject to a levy of such country or possession, and

"(B) receives (or will receive) directly or indirectly a specific economic benefit (as determined in accordance with regulations) from such country or possession.

"(3) Generally applicable income tax.—For purposes of this subsection—

"(A) In general.—The term 'generally applicable income tax' means an income tax (or a series of income taxes) which is generally imposed under the laws of a foreign country or possession on income derived from the conduct of a trade or business within such country or possession.

"(B) Exceptions.—Such term shall not include a tax unless it has substantial application, by its terms and in practice, to—

"(i) persons who are not dual capacity taxpayers, and

"(ii) persons who are citizens or residents of the foreign country or possession."

(b) Effective Date.—

(1) In general.—The amendments made by this section shall apply to taxes paid or accrued in taxable years beginning after the date of the enactment of this Act.

(2) CONTRARY TREATY OBLIGATIONS UPHELD.—The amendments made by this section shall not apply to the extent contrary to any treaty obligation of the United States.

SEC. 433. RULES RELATING TO FOREIGN OIL AND GAS INCOME.

(a) SEPARATE BASKET FOR FOREIGN TAX CREDIT.—

(1) SEPARATE BASKET.—

(A) YEARS BEFORE 2007.—Paragraph (1) of section 904(d) (relating to separate application of section with respect to certain categories of income), as in effect for years beginning before 2007, is amended by striking "and" at the end of subparagraph (H), by redesignating subparagraph (I) as subparagraph (J), and by inserting after subparagraph (H) the following new subparagraph:

"(I) foreign oil and gas income, and".

(B) 2007 AND AFTER.—Paragraph (1) of section 904(d), as in effect for years beginning after 2006, is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following:

"(C) foreign oil and gas income."

(2) DEFINITION.—

(A) YEARS BEFORE 2007.—Paragraph (2) of section 904(d), as in effect for years beginning before 2007, is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

"(H) FOREIGN OIL AND GAS INCOME.—The term 'foreign oil and gas income' has the meaning given such term by section 954(g)."

(B) 2007 AND AFTER.—Section 904(d)(2), as in effect for years after 2006, is amended by redesignating subparagraphs (J) and (K) as subparagraphs (K) and (L) and by inserting after subparagraph (I) the following:

"(J) FOREIGN OIL AND GAS INCOME.—For purposes of this section—

"(i) IN GENERAL.—The term 'foreign oil and gas income' has the meaning given such term by section 954(g).

"(ii) COORDINATION.—Passive category income and general category income shall not include foreign oil and gas income (as so defined)."

(3) CONFORMING AMENDMENTS.—

(A) Section 904(d)(3)(F)(i) is amended by striking "or (E)" and inserting "(E), or (I)".

(B) Section 907(a) is hereby repealed.

(C) Section 907(c)(4) is hereby repealed.

(D) Section 907(f) is hereby repealed.

(4) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

(B) YEARS AFTER 2006.—The amendments made by paragraphs (1)(B) and (2)(B) shall apply to taxable years beginning after December 31, 2006.

(C) TRANSITIONAL RULES.—

(i) SEPARATE BASKET TREATMENT.—Any taxes paid or accrued in a taxable year beginning on or before the date of the enactment of this Act, with respect to income which was described in subparagraph (I) of section 904(d)(1) of such Code (as in effect on the day before the date of the enactment of this Act), shall be treated as taxes paid or accrued with respect to foreign oil and gas income to the extent the taxpayer establishes to the satisfaction of the Secretary of the Treasury that such taxes were paid or accrued with respect to foreign oil and gas income.

(ii) CARRYOVERS.—Any unused oil and gas extraction taxes which under section 907(f) of such Code (as so in effect) would have been allowable as a carryover to the taxpayer's first taxable year beginning after the date of the enactment of this Act (without regard to the limitation of paragraph (2) of such section 907(f) for first taxable year) shall be allowed as carryovers under section 904(c) of such Code in the same manner as if such taxes were unused taxes under such section 904(c) with respect to foreign oil and gas extraction income.

(iii) LOSSES.—The amendment made by paragraph (3)(C) shall not apply to foreign oil and gas extraction losses arising in taxable years beginning on or before the date of the enactment of this Act.

(b) ELIMINATION OF DEFERRAL FOR FOREIGN OIL AND GAS EXTRACTION INCOME.—

(1) GENERAL RULE.—Paragraph (1) of section 954(g) (defining foreign base company oil related income) is amended to read as follows:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'foreign oil and gas income' means any income of a kind which would be taken into account in determining the amount of—

"(A) foreign oil and gas extraction income (as defined in section 907(c)), or

"(B) foreign oil related income (as defined in section 907(c))."

(2) CONFORMING AMENDMENTS.—

(A) Subsections (a)(5), (b)(5), and (b)(6) of section 954, and section 952(c)(1)(B)(ii)(I), are each amended by striking "base company oil related income" each place it appears (including in the heading of subsection (b)(8)) and inserting "oil and gas income".

(B) Subsection (b)(4) of section 954 is amended by striking "base company oil-related income" and inserting "oil and gas income".

(C) The subsection heading for subsection (g) of section 954 is amended by striking "FOREIGN BASE COMPANY OIL RELATED INCOME" and inserting "FOREIGN OIL AND GAS INCOME".

(D) Subparagraph (A) of section 954(g)(2) is amended by striking "foreign base company oil related income" and inserting "foreign oil and gas income".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years of foreign corporations beginning after the date of the enactment of this Act, and to taxable years of United States shareholders ending with or within such taxable years of foreign corporations.

SEC. 434. MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) TAXABLE YEARS ENDING BEFORE 2006.—

(1) MODIFICATION OF PHASEOUT.—

(A) IN GENERAL.—Section 29(b)(1)(A) is amended by inserting "the calendar year preceding" before "the calendar year".

(B) CONFORMING AMENDMENTS.—Section 29(b)((2) is amended—

(i) by striking "The" and inserting "With respect to any calendar year, the", and

(ii) by striking "for the calendar year in which the sale occurs" and inserting "for such calendar year".

(2) NO INFLATION ADJUSTMENT FOR THE CREDIT AMOUNT IN 2005.—Section 29(b)(2), as amended by paragraph (1), is amended by adding at the end the following new sentence: "This paragraph shall not apply with respect to the $3 amount in subsection (a) for calendar year 2005 and the amount in effect under subsection (a) for sales in such calendar year shall be the amount which was in effect for sales in calendar year 2004.".

(b) TAXABLE YEARS ENDING AFTER 2005.—

(1) MODIFICATION OF PHASEOUT.—

(A) IN GENERAL.—Section 45K(b)(1)(A) is amended by inserting "the calendar year preceding" before "the calendar year".

(B) CONFORMING AMENDMENTS.—Section 45K(b)((2) is amended—

(i) by striking "The" and inserting "With respect to any calendar year, the", and

(ii) by striking "for the calendar year in which the sale occurs" and inserting "for such calendar year".

(2) NO INFLATION ADJUSTMENT FOR THE CREDIT AMOUNT IN 2005, 2006, AND 2007.—Section 45K(b)(2), as amended by paragraph (1), is amended by adding at the end the following new sentence: "This paragraph shall not apply with respect to the $3 amount in subsection (a) for calendar years 2005, 2006, and 2007 and the amount in effect under subsection (a) for sales in each such calendar year shall be the amount which was in effect for sales in calendar year 2004.".

(3) TREATMENT OF COKE AND COKE GAS.—

(A) NONAPPLICATION OF PHASEOUT.—Section 45K(g)(2) is amended by adding at the end the following new subparagraph:

"(D) NONAPPLICATION OF PHASEOUT.—Subsection (b)(1) shall not apply.".

(B) APPLICATION OF INFLATION ADJUSTMENT.—Section 45K(g)(2)(B) is amended by inserting "and the last sentence of subsection (b)(2) shall not apply.".

(C) CLARIFICATION OF QUALIFYING FACILITY.—Section 45K(g)(1) is amended by inserting "(other than from petroleum based products)" after "coke or coke gas".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold after December 31, 2004.

SEC. 435. ELIMINATION OF AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES FOR MAJOR INTEGRATED OIL COMPANIES.

(a) IN GENERAL.—Section 167(h) is amended by adding at the end the following new paragraph:

"(5) NONAPPLICATION TO MAJOR INTEGRATED OIL COMPANIES.—This subsection shall not apply with respect to any expenses paid or incurred for any taxable year by any integrated oil company (as defined in section 291(b)(4)) which has an average daily worldwide production of crude oil of at least 500,000 barrels for such taxable year.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendment made by section 1329(a) of the Energy Policy Act of 2005.

Subtitle D—Tax Administration Provisions

SEC. 441. IMPOSITION OF WITHHOLDING ON CERTAIN PAYMENTS MADE BY GOVERNMENT ENTITIES.

(a) IN GENERAL.—Section 3402 is amended by adding at the end the following new subsection:

"(t) EXTENSION OF WITHHOLDING TO CERTAIN PAYMENTS MADE BY GOVERNMENT ENTITIES.—

"(1) GENERAL RULE.—The Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies) making any payment for goods and services which is subject to withholding shall deduct and withhold form such payment a tax in an amount equal to 3 percent of such payment.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to any payment—

"(A) except as provided in subparagraph (B), which is subject to withholding under any other provision of this chapter or chapter 3,

"(B) which is subject to withholding under section 3406 and from which amounts are being withheld under such section.

"(C) of interest,

"(D) for real property,

"(E) to any tax-exempt entity, foreign government, or other entity subject to the requirements of paragraph (1),

"(F) made pursuant to a classified or confidential contract (as defined in section 6050M(e)(3)), and

"(G) made by a political subdivision of a State (or any instrumentality thereof) which makes less than $100,000,000 of such payments annually.

"(3) COORDINATION WITH OTHER SECTIONS.—For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except section 7205) as relates to this chapter, payments to any person of any payment for goods and services which is subject to withholding shall be treated as if such payments were wages paid by an employer to an employee.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2005.

SEC. 442. INCREASE IN CERTAIN CRIMINAL PENALTIES.

(a) IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking "Any person who—" and inserting "(a) IN GENERAL.—Any person who—", and

(2) by adding at the end the following new subsection:

"(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.".

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 is amended—

(A) by striking "$100,000" and inserting "$500,000",

(B) by striking "$500,000" and inserting "$1,000,000", and

(C) by striking "5 years" and inserting "10 years".

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking "Any person" and inserting the following:

"(a) IN GENERAL.—Any person", and

(ii) by striking "$25,000" and inserting "$50,000",

(B) in the third sentence, by striking "section" and inserting "subsection", and

(C) by adding at the end the following new subsection:

"(b) AGGRAVATED FAILURE TO FILE.—

"(1) IN GENERAL.—In the case of any failure described in paragraph (2), the first sentence of subsection (a) shall be applied by substituting—

"(A) 'felony' for 'misdemeanor',

"(B) '$500,000 ($1,000,000' for '$25,000 ($100,000', and

"(C) '10 years' for '1 year'.

"(2) FAILURE DESCRIBED.—A failure described in this paragraph is a failure to make a return described in subsection (a) for a period of 3 or more consecutive taxable years.".

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking "$100,000" and inserting "$500,000",

(B) by striking "$500,000" and inserting "$1,000,000", and

(C) by striking "3 years" and inserting "5 years".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions, and failures to act, occurring after the date of the enactment of this Act.

SEC. 443. REPEAL OF SUSPENSION OF INTEREST AND CERTAIN PENALTIES WHERE SECRETARY FAILS TO CONTACT TAXPAYER.

(a) IN GENERAL.—Section 6404 (relating to abatements) is amended by striking subsection (g) and by redesignating subsections (h) and (i) as subsections (g) and (h), respectively.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to returns of tax filed after December 31, 2005.

SEC. 444. INCREASE IN PENALTY FOR BAD CHECKS AND MONEY ORDERS.

(a) IN GENERAL.—Section 6657 (relating to bad checks) is amended—

(1) by striking "$750" and inserting "$1,250", and

(2) by striking "$15" and inserting "$25".

(b) EFFECTIVE DATE.—The amendments made by this section apply to checks or money orders received after the date of the enactment of this Act.

SEC. 445. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

"SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

"(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

"(1) such person files what purports to be a return of a tax imposed by this title but which—

"(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

"(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

"(2) the conduct referred to in paragraph (1)—

"(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

"(B) reflects a desire to delay or impede the administration of Federal tax laws.

"(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

"(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

"(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

"(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

"(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

"(ii) reflects a desire to delay or impede the administration of Federal tax laws.

"(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

"(i) a request for a hearing under—

"(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

"(II) section 6330 (relating to notice and opportunity for hearing before levy), and

"(ii) an application under—

"(I) section 6159 (relating to agreements for payment of tax liability in installments),

"(II) section 7122 (relating to compromises), or

"(III) section 7811 (relating to taxpayer assistance orders).

"(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

"(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

"(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

"(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.".

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

"(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.".

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking "(A)" and inserting "(A)(i)";

(B) by striking "(B)" and inserting "(ii)";

(C) by striking the period at the end of the first sentence and inserting "; or"; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

"(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).".

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking "under subsection (a)(3)(B)" and inserting "in writing under subsection (a)(3)(B) and states the grounds for the requested hearing".

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking "under subsection (a)(3)(B)" and inserting "in writing under subsection (a)(3)(B) and states the grounds for the requested hearing", and

(2) in subsection (c), by striking "and (e)" and inserting "(e), and (g)".

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

"(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.".

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

"Sec. 6702. Frivolous tax submissions.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 446. PARTIAL PAYMENTS REQUIRED WITH SUBMISSION OF OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—Section 7122 (relating to compromises), as amended by this Act, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RULES FOR SUBMISSION OF OFFERS-IN-COMPROMISE.—

"(1) PARTIAL PAYMENT REQUIRED WITH SUBMISSION.—

"(A) LUMP-SUM OFFERS.—

"(i) IN GENERAL.—The submission of any lump-sum offer-in-compromise shall be accompanied by the payment of 20 percent of amount of such offer.

"(ii) LUMP-SUM OFFER-IN-COMPROMISE.—For purposes of this section, the term 'lump-sum offer-in-compromise' means any offer of payments made in 5 or fewer installments.

"(B) PERIODIC PAYMENT OFFERS.—The submission of any periodic payment offer-in-compromise shall be accompanied by the payment of the amount of the first proposed installment and each proposed installment due during the period such offer is being evaluated for acceptance and has not been rejected by the Secretary. Any failure to make a payment required under the preceding sentence shall be deemed a withdrawal of the offer-in-compromise.

"(2) RULES OF APPLICATION.—

"(A) USE OF PAYMENT.—The application of any payment made under this subsection to the assessed tax or other amounts imposed under this title with respect to such tax may be specified by the taxpayer.

"(B) NO USER FEE IMPOSED.—Any user fee which would otherwise be imposed under this section shall not be imposed on any offer-in-compromise accompanied by a payment required under this subsection.

"(C) WAIVER AUTHORITY.—The Secretary may issue regulations waiving any payment required under paragraph (1) in a manner consistent with the practices established in accordance with the requirements under subsection (d)(3).".

(b) ADDITIONAL RULES RELATING TO TREATMENT OF OFFERS.—

(1) UNPROCESSABLE OFFER IF PAYMENT REQUIREMENTS ARE NOT MET.—Paragraph (3) of section 7122(d) (relating to standards for evaluation of offers), as redesignated by subsection (a), is amended by striking "; and" at the end of subparagraph (A) and inserting a comma, by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) any offer-in-compromise which does not meet the requirements of subsection (c) shall be returned to the taxpayer as unprocessable.".

(2) DEEMED ACCEPTANCE OF OFFER NOT REJECTED WITHIN CERTAIN PERIOD.—Section 7122, as amended by subsection (a), is amended by adding at the end the following new subsection:

"(g) DEEMED ACCEPTANCE OF OFFER NOT REJECTED WITHIN CERTAIN PERIOD.—Any offer-in-compromise submitted under this section shall be deemed to be accepted by the Secretary if such offer is not rejected by the Secretary before the date which is 24 months after the date of the submission of such offer (12 months for offers-in-compromise submitted after the date which is 5 years after the date of the enactment of this subsection). For purposes of the preceding sentence, any period during which any tax liability which is the subject of such offer-in-compromise is in dispute in any judicial proceeding shall not be taken in to account in determining the expiration of the 24-month period (or 12-month period, if applicable).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act.

SEC. 447. WAIVER OF USER FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.

(a) IN GENERAL.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

"(e) WAIVER OF USER FEES FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.—In the case of a taxpayer who enters into an installment agreement in which automated installment payments are agreed to, the Secretary shall waive the fee (if any) for entering into the installment agreement.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date which is 180 days after the date of the enactment of this Act.

SEC. 448. TERMINATION OF INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—Section 6159(b)(4) (relating to failure to pay an installment or any other tax liability when due or to provide requested financial information) is amended by striking "or" at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (E), and by inserting after subparagraph (B) the following:

"(C) to make a Federal tax deposit under section 6302 at the time such deposit is required to be made,

"(D) to file a return of tax imposed under this title by its due date (including extensions), or".

(b) CONFORMING AMENDMENT.—The heading for section 6159(b)(4) is amended by striking "FAILURE TO PAY AN INSTALLMENT OR ANY OTHER TAX LIABILITY WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION" and inserting "FAILURE TO MAKE PAYMENTS OR DEPOSITS OR FILE RETURNS WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to failures occurring on or after the date of the enactment of this Act.

Subtitle E—Additional Provisions

SEC. 451. MODIFICATION OF INDIVIDUAL ESTIMATED TAX SAFE HARBOR.

(a) IN GENERAL.—The table contained in section 6654(d)(1)(C) is amended by striking "2002 or thereafter" and inserting "2002, 2003, 2004, or 2005" and by adding at the end the following new items:

"2006	111
2007 or thereafter	110".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any installment payment for taxable years beginning after December 31, 2005.

SEC. 452. LOAN AND REDEMPTION REQUIREMENTS ON POOLED FINANCING REQUIREMENTS.

(a) STRENGTHENED REASONABLE EXPECTATION REQUIREMENT.—Subparagraph (A) of section 149(f)(2) (relating to reasonable expectation requirement) is amended to read as follows:

"(A) IN GENERAL.—The requirements of this paragraph are met with respect to an issue if the issuer reasonably expects that—

"(i) as of the close of the 1-year period beginning on the date of issuance of the issue, at least 50 percent of the net proceeds of the issue (as of the close of such period) will have been used directly or indirectly to make or finance loans to ultimate borrowers, and

"(ii) as of the close of the 3-year period beginning on such date of issuance, at least 95 percent of the net proceeds of the issue (as of the close of such period) will have been so used.".

(b) WRITTEN LOAN COMMITMENT AND REDEMPTION REQUIREMENTS.—Section 149(f) (relating to treatment of certain pooled financing bonds) is amended by redesignating paragraphs (4) and (5) as paragraphs (6) and (7), respectively, and by inserting after paragraph (3) the following new paragraphs:

"(4) WRITTEN LOAN COMMITMENT REQUIREMENT.—

"(A) IN GENERAL.—The requirement of this paragraph is met with respect to an issue if the issuer receives prior to issuance written loan commitments identifying the ultimate potential borrowers of at least 50 percent of the net proceeds of such issue.

"(B) EXCEPTION.—Subparagraph (A) shall not apply with respect to any issuer which is a State (or an integral part of a State) issuing pooled financing bonds to make or finance loans to subordinate governmental units of such State or to State-created entities providing financing for water-infrastructure projects through the federally-sponsored State revolving fund program.

"(5) REDEMPTION REQUIREMENT.—The requirement of this paragraph is met if to the extent that less than the percentage of the proceeds of an issue required to be used under clause (i) or (ii) of paragraph (2)(A) is used by the close of the period identified in such clause, the issuer uses an amount of proceeds equal to the excess of—

"(A) the amount required to be used under such clause, over

"(B) the amount actually used by the close of such period,

to redeem outstanding bonds within 90 days after the end of such period.".

(c) ELIMINATION OF DISREGARD OF POOLED BONDS IN DETERMINING ELIGIBILITY FOR SMALL ISSUER EXCEPTION TO ARBITRAGE REBATE.—Section 148(f)(4)(D)(ii) (relating to aggregation of issuers) is amended by striking subclause (II) and by redesignating subclauses (III) and (IV) as subclauses (II) and (III), respectively.

(d) CONFORMING AMENDMENTS.—

(1) Section 149(f)(1) is amended by striking "paragraphs (2) and (3)" and inserting "paragraphs (2), (3), (4), and (5)".

(2) Section 149(f)(7)(B), as redesignated by subsection (b), is amended by striking "paragraph (4)(A)" and inserting "paragraph (6)(A)".

(3) Section 54(l)(2) is amended by striking "section 149(f)(4)(A)" and inserting "section 149(f)(6)(A)".

(e) Effective Date.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

SEC. 453. REPORTING OF INTEREST ON TAX-EXEMPT BONDS.

(a) In General.—Section 6049(b)(2) (relating to exceptions) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(b) Conforming Amendment.—Section 6049(b)(2)(C), as redesignated by subsection (a), is amended by striking "subparagraph (C)" and inserting "subparagraph (B)".

(c) Effective Date.—The amendments made by this section shall apply to interest earned after December 31, 2005.

SA 2730. Mr. NELSON of Florida (for himself, Mr. Bingaman, Mrs. Clinton, Mr. Lieberman, Mr. Schumer, and Mr. Salazar) proposed an amendment to amendment SA 2707 proposed by Mr. Frist (for Mr. Grassley (for himself and Mr. Baucus)) to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; as follows:

At the appropriate place, insert the following:

SEC. . TRANSITION REQUIREMENTS.

(a) Requirement.—

(1) In general.—Section 1860D-4(b) of the Social Security Act (42 U.S.C. 1395w–104(b)) is amended by adding at the end the following new paragraph:

"(4) Formulary transition.—The sponsor of a prescription drug plan is required to provide at least a 30-day supply of any drug that a new enrollee in the plan was taking prior to enrolling in such plan. For individuals residing in a long-term care setting, the sponsor of a prescription drug plan is required to provide at least a 90-day supply of any drug such individual was taking prior to enrolling in such plan. A formulary transition supply provided under this section shall be made by the sponsor of a prescription drug plan without imposing any prior authorization requirements or other access restrictions for individuals stabilized on a course of treatment and at the dosage previously prescribed by a physician or recommended by a physician going forward.

"(5) Customer service.—The sponsor of a prescription drug plan is required to provide—

"(A) accessible and trained customer service representatives available for full business hours from coast to coast to provide knowledgeable assistance to individuals seeking help with Medicare Part D including, but not limited to, beneficiaries, caseworkers, SHIP counselors, pharmacists, doctors, and caregivers;

"(B) at least one dedicated phone line for pharmacists with sufficient staff to reduce wait times for pharmacists seeking Medicare Part D assistance to no more than 20 minutes; and

"(C) sufficient staff to reduce wait times for all Medicare Part D-related calls to plan phone lines to no more than 20 minutes.".

(2) Application.—The requirements under paragraphs (4) and (5) of section 1860D–4(b) of the Social Security Act (42 U.S.C. 1395w–104(b)), as added by subsection (a), shall apply to the plan serving as the national point of sale contractor under part D of title XVIII of such Act.

(b) Effective Date and Enforcement.—

(1) Effective date.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

(2) Enforcement.—The Secretary may impose a civil monetary penalty in an amount not to exceed $15,000 for conduct that a sponsor of a prescription drug plan or an organization offering an MA-PD plan knows or should know is a violation of the provisions of paragraph (4) or (5) of section 1860D–4(b) of the Social Security Act (42 U.S.C. 1395w–104(b)), as added by subsection (a). The provisions of section 1128A of the Social Security Act (42 U.S.C. a–7a), other than subsections (a) and (b) and the second sentence of subsection (f), shall apply to a civil monetary penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under subsection (a) of such section 1128A(a).

SEC. . FEDERAL FALLBACK FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS FOR 2006.

(a) In General.—

(1) In general.—If a full-benefit dual eligible individual (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396u–5(c)(6))), or an individual who is presumed to be such an individual pursuant to subsection (b), presents a prescription for a covered part D drug (as defined in section 1860D–2(e) of such Act (42 U.S.C. 1395w–102(e))) at a pharmacy in 2006 and the pharmacy is unable to locate or verify the individual's enrollment through a reasonable effort, including the use of the pharmacy billing system or by calling an official Medicare hotline, or to bill for the prescription through the plan serving as the national point of sale contractor, the pharmacy may provide a 30-day supply of the drug to the individual.

(2) Refill.—The pharmacy may provide an additional 30-day supply of a drug if the pharmacy continues to be unable to locate the individual's enrollment through such reasonable efforts or to bill for the prescription through the plan serving as the national point of sale contractor when a prescription is presented on or after the date that a prescription refill is appropriate, but in no case after December 31, 2006.

(3) Cost-sharing.—The cost-sharing for a prescription filled pursuant to this subsection shall be cost-sharing provided for under section 1860D–14(a) of the Social Security Act (42 U.S.C. 1395w–114(a)).

(b) Presumptive Eligibility.—An individual shall be presumed to be a full-benefit dual eligible individual (as so defined) if the individual presents at the pharmacy with—

(1) a government issued picture identification card;

(2) reliable evidence of Medicaid enrollment, such as a Medicaid card, recent history of Medicaid billing in the pharmacy patient profile, or a copy of a current Medicaid award letter; and

(3) reliable evidence of Medicare enrollment, such as a Medicare identification card, a Medicare enrollment approval letter, a Medicare Summary Notice, or confirmation from an official Medicare hotline.

(c) Payments to Pharmacists.—

(1) In general.—The Secretary of Health and Human Services shall reimburse pharmacists, to the extent that such pharmacists are not otherwise reimbursed by States or plans, for the costs incurred in complying with the requirements under subsection (a), including acquisition costs, dispensing costs, and other overhead costs. Such payments shall be made in a timely manner from the Medicare Prescription Drug Account under section 1860D–16 of the Social Security Act (42 U.S.C. 1395w–116) and shall be deemed to be payments from such Account under subsection (b) of such section.

(2) Retroactive application to beginning of 2006.—The costs incurred by a pharmacy which may be reimbursed under paragraph (1) shall include costs incurred during the period beginning on January 1, 2006, and before the date of enactment of this Act.

(d) Recovery of Costs From Plans by Secretary Not Pharmacies.—The Secretary of Health and Human Services shall establish a process for recovering the costs described in subsection (c)(1) from prescription drug plans (as defined in section 1860D–1(a)(3)(C) of the Social Security Act (42 U.S.C. 1394w–101(a)(3)(C))) and MA–PD plans (as defined in section 1860D–41(a)(14) of such Act (42 U.S.C. 1395w–151(a)(14))) if the Secretary determines that such plans should have incurred such costs. Amounts recovered pursuant to the preceding sentence shall be deposited in the Medicare Prescription Drug Account described in subsection (c)(1).

SEC. _____. ENSURING THAT FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS ARE NOT OVERCHARGED.

(a) In General.—Section 1860D–14 of the Social Security Act (42 U.S.C. 1395w–114) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

"(d) Ensuring Full-Benefit Dual Eligible Individuals Are Not Overcharged.—

"(1) In general.—The Secretary shall, as soon a possible after the date of enactment of this subsection, establish processes for the following:

"(A) Tracking inappropriate payments.—The Secretary shall track full-benefit dual eligible individuals enrolled in a prescription drug plan or an MA–PD plan to determine whether such individuals were inappropriately subject under the plan to a deductible or cost-sharing that is greater than is required under section 1860D–14.

"(B) Reduction in payments to plans and refunds to individuals.—If the Secretary determines under subparagraph (A) that an individual was overcharged, the Secretary shall—

"(i) reduce payments to the sponsor of the prescription drug plan under section 1860D–15 or to the organization offering the MA–PD plan under section 1853 that inappropriately charged the individual by an amount equal to the inappropriate charges; and

"(ii) refund such amount to the individual within 60 days of the determination that the individual was inappropriately charged.

If the Secretary does not provide for the refund under clause (i) within the 60 days provided for under such clause, interest at the rate established under section 6621(a)(1) of the Internal Revenue Code of 1986 shall be payable from the end of such 60-day period until the date of the refund.

"(2) Requirement.—The processes established under paragraph (1) shall provide for the ability of an individual to notify the Secretary if the individual believes that they were inappropriately subject under the plan to a deductible or cost-sharing that is greater than is required under section 1860D–14.".

(b) Report to Congress.—Not later than January 1, 2007, the Secretary of Health and Human Services shall submit a report to Congress on the implementation of the processes established under subsection (d) of section 1860D–14 of the Social Security Act (42 U.S.C. 1395w–114), as added by subsection (a).

SEC. _____. REIMBURSEMENT OF STATES FOR 2006 TRANSITION COSTS.

(a) Reimbursement.—

(1) In general.—Notwithstanding section 1935(d) of the Social Security Act (42 U.S.C. 1396u–5(d) or any other provision of law, the Secretary of Health and Human Services shall reimburse States for 100 percent of the costs incurred by the State during 2006 for covered part D drugs (as defined in section 1860D–2(e) of such Act (42 U.S.C. 1395w–102(e))) for part D eligible individuals (as defined in section 1860D–1(a)(3)(A) of the Social Security Act (42 U.S.C. 1394w–101(a)(3)(A))) which the State reasonably expected would have been covered under such part but were not because the individual was unable to access on a timely basis prescription drug benefits to which they were entitled under such part. Such payments shall be made from the Medicare Prescription Drug Account under section 1860D–16 of the Social Security Act (42 U.S.C. 1395w–116) and shall be deemed to be payments from such Account under subsection (b) of such section.

(2) Retroactive application to beginning of 2006.—The costs incurred by a State which may be reimbursed under paragraph (1) shall include costs incurred during the period beginning on January 1, 2006, and before the date of enactment of this Act.

(b) Recovery of Costs From Plans by Secretary Not States.—The Secretary of Health and Human Services shall establish a process for recovering the costs described in subsection (a)(1) from prescription drug plans (as defined in section 1860D–1(a)(3)(C) of the Social Security Act (42 U.S.C. 1394w–101(a)(3)(C))) and MA–PD plans (as defined in section 1860D–41(a)(14) of such Act (42 U.S.C. 1395w–151(a)(14))) if the Secretary determines that such plans should have incurred such costs. Amounts recovered pursuant to the preceding sentence shall be deposited in the Medicare Prescription Drug Account described in subsection (a)(1).

(c) State.—For purposes of this section, the term "State" includes the District of Columbia.

SEC. _____. FACILITATION OF IDENTIFICATION AND ENROLLMENT THROUGH PHARMACIES OF FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS IN THE MEDICARE PART D DRUG PROGRAM.

(a) In General.—The Secretary of Health and Human Services shall provide for outreach and education to every pharmacy that has participated in the Medicaid program under title XIV of the Social Security Act, particularly independent pharmacies, on the following:

(1) The needs of full-benefit dual eligible individuals and the challenges of meeting those needs.

(2) The processes for the transition from Medicaid prescription drug coverage to coverage under such part D for such individuals.

(3) The processes established by the Secretary to facilitate, at point of sale, identification of drug plan assignment of such population or enrollment of previously unidentified or new full-benefit dual eligible individuals into Medicare part D prescription drug coverage, including how pharmacies can use such processes to help ensure that such population makes a successful transition to Medicare part D without a lapse in prescription drug coverage.

(b) Holding Pharmacies Harmless for Certain Costs.—

(1) In general.—The Secretary of Health and Human Services shall provide for such payments to pharmacies as may be necessary to reimburse pharmacies fully for—

(A) transaction fees associated with the point-of-sale facilitated identification and enrollment processes referred to in subsection (a)(3); and

(B) costs associated with technology or software upgrades necessary to make any identification and enrollment inquiries as part of the processes under subsection (a)(3).

(2) Time.—Payments under paragraph (1) shall be made with respect to fees and costs incurred during the period beginning on December 1, 2005, and ending on June 1, 2006.

(3) Payments from account.—Payments under paragraph (1) shall be made from the Medicare Prescription Drug Account under section 1860D–16 of the Social Security Act (42 U.S.C. 1395w–116) and shall be deemed to be payments from such Account under subsection (b) of such section.

SEC. _____. STATE COVERAGE OF NON-FORMULARY PRESCRIPTION DRUGS FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS DURING 2006.

(a) State Coverage of Non-Formulary Prescription Drugs for Full-Benefit Dual Eligible Individuals During 2006.—For prescriptions filled during 2006, notwithstanding section 1935(d) of the Social Security Act (42 U.S.C. 1396v(d)), a State (as defined for purposes of title XIX of such Act) may provide (and receive Federal financial participation for) medical assistance under such title with respect to prescription drugs provided to a full-benefit dual eligible individual (as defined in section 1935(c)(6) of such Act (42 U.S.C. 1396v(c)(6)) that are not on the formulary of the prescription drug plan under part D or the MA–PD plan under part C of title XVIII of such Act in which such individual is enrolled.

(b) Application.—

(1) Medicare as primary payer.—Nothing in subsection (a) shall be construed as changing or affecting the primary payer status of a prescription drug plan under part D or an MA–PD plan under part C of title XVIII of the Social Security Act with respect to prescription drugs furnished to any full-benefit dual eligible individual (as defined in section 1935(c)(6) of such Act (42 U.S.C. 1396v(c)(6)) during 2006.

(2) Third party liability.—Nothing in subsection (a) shall be construed as limiting the authority or responsibility of a State under section 1902(a)(25) of the Social Security Act (42 U.S.C. 1396a(a)(25)) to seek reimbursement from a prescription drug plan, an MA–PD plan, or any other third party, of the costs incurred by the State in providing prescription drug coverage during 2006.

SEC. . PROTECTION FOR MEDICARE BENEFICIARIES WHO ENROLL IN THE PRESCRIPTION DRUG BENEFIT DURING 2006.

(a) Extended Period of Open Enrollment During All of 2006 Without Late Enrollment Penalty.—Section 1851(e)(3)(B) of the Social Security Act (42 U.S.C. 1395w–21(e)(3)(B)) is amended—

(1) in clause (iii), by striking "May 15, 2006" and inserting "December 31, 2006"; and

(2) by adding at the end the following new sentence:

"An individual making an election during the period beginning on November 15, 2006, and ending on December 15, 2006, shall specify whether the election is to be effective with respect to 2006 or with respect to 2007 (or both).".

(b) One-Time Change of Plan Enrollment for Medicare Prescription Drug Benefit During All of 2006.—

(1) In general.—Section 1851(e) of the Social Security Act (42 U.S.C. 1395w–21(e)) is amended—

(A) in paragraph (2)(B)—

(i) in the heading, by striking "for first 6 months";

(ii) in clause (i), by striking "the first 6 months of 2006," and all that follows through "is a Medicare+Choice eligible individual," and inserting "2006,"; and

(iii) in clause (ii), by inserting "(other than during 2006)" after "paragraph (3)"; and

(B) in paragraph (4), by striking "2006" and inserting "2007" each place it appears.

(2) Conforming amendment.—Section 1860D–1(b)(1)(B)(iii) of the Social Security Act (42 U.S.C. 1395w–101(b)(1)(B)(iii)) is amended by striking "subparagraphs (B) and (C) of paragraph (2)" and inserting "paragraph (2)(C)".

(c) Effective Date.—The amendments made by this section shall take effect as if included in the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173).

SA 2731. Mr. GRASSLEY proposed an amendment to amendment SA 2707 proposed by Mr. Frist (for Mr. Grassley (for himself and Mr. Baucus)) to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; as follows:

At the appropriate place, insert the following:

SEC. . SENSE OF THE SENATE REGARDING THE MEDICARE PART D PRESCRIPTION DRUG PROGRAM.

(a) Findings.—The Senate finds the following:

(1) It is not acceptable that startup issues under the new Medicare prescription drug program have resulted in some of our Nation's most vulnerable citizens having difficulties getting their prescription drugs covered under the program, and these issues must be addressed and resolved.

(2) The Department of Health and Human Services and the Centers for Medicare & Medicaid Services are working tirelessly to address these startup issues and have taken numerous steps to smooth the transition process.

(3) All prescription drug plans under part D of title XVIII of the Social Security Act and MA–PD plans under part C of such title (in this section referred to as "Medicare prescription drug plans") already have a "first fill" policy in place that provides a new enrollee with coverage for prescription drugs during at least the first 30 days of enrollment regardless of whether the particular prescription drug is on the plan's formulary, and the Centers for Medicare & Medicaid Services is enforcing this requirement.

(4) Under current law, full-benefit dual eligible individuals (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1395u–5(c)(6)) are already automatically enrolled into Medicare prescription drug coverage so no change in law is necessary.

(5) Medicare prescription drug plans are already responsible for covering the cost of covered prescriptions filled for enrollees, including short term transition prescriptions.

(6) Medicare prescription drug plans are already responsible for reimbursing any enrollee, including full-benefit dual eligible individuals, for any out-of-pocket costs incurred by the enrollee that should have been covered by the plan.

(7) The Centers for Medicare & Medicaid Services is already reimbursing States for the reasonable administrative costs incurred by States that have temporarily covered some claims for prescription drug coverage during the transition period.

(8) Enrollment is exceeding projections, with at least 24,000,000 Medicare beneficiaries who now have drug coverage and another 90,000 are enrolling each day in the Medicare prescription drug program;

(9) In addition, the Secretary of Health and Human Services has taken many other actions to smooth the implementation of the Medicare prescription drug program, including the following:

(A) Establishing processes to ensure that full-benefit dual eligible individuals are not overcharged for their prescriptions and to require Medicare prescription drug plans to refund overcharges to such individuals.

(B) Establishing a reconciliation process to ensure that Medicare prescription drug plans reimburse pharmacies for costs incurred by pharmacies that are payable by such plans.

(C) Conducting extensive and continuing outreach to pharmacies and pharmacy associations on the implementation of the Medicare prescription drug benefit, particularly with respect to full-benefit dual eligible individuals, as well as establishing a special pharmacy telephone help line.

(D) Requiring Medicare prescription drug plans to have comprehensive formularies and procedures for enrollees to rapidly secure an exception to the limitation of coverage of a prescription drug when medical necessity is demonstrated.

(E) Permitting full-benefit dual eligible individuals to switch Medicare prescription drug plan under the Medicare prescription drug benefit at any time, for any reason, and improving data flows and communication with plans to ensure that plan switches by such individuals become fully effective as quickly as possible.

(F) Partnering with national, State, and local groups that work with full-benefit dual eligible individuals to educate such individuals about the Medicare prescription drug program, and assisting in their transition to, and enrollment under, such program.

(b) Sense of the Senate.—It is the sense of the Senate that—

(1) the Secretary of Health and Human Services is making significant progress in smoothing the implementation of the new Medicare prescription drug program, legislation changing the program is not needed at this time, and legislation at this time would also likely complicate implementation of the program and confuse beneficiaries;

(2) each of the implementation problems identified under the Medicare prescription drug program will be resolved more quickly through administrative actions, which the Secretary of Health and Human Services already has the authority to take under current law, rather than through Congressional action followed by administrative action;

(3) the Senate fully supports the efforts of the Secretary of Health and Human Services, Medicare prescription drug plans, pharmacists, and others to implement the Medicare prescription drug program and to resolve problems that have occurred during the implementation of the program; and

(4) the pace of enrollment in the Medicare prescription drug benefit indicates that extending the six-month enrollment period is not warranted at this time, and, by contrast, such an action could exacerbate implementation issues under the program.

SA 2732. Mr. GRASSLEY proposed an amendment to amendment SA 2707 proposed by Mr. Frist (for Mr. Grassley (for himself and Mr. Baucus)) to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; as follows:

At the appropriate place, insert the following:

SEC. . FUNDING FOR VETERANS HEALTH CARE AND DISABILITY COMPENSATION AND HOSPITAL INFRASTRUCTURE FOR VETERANS.

(a) Funding for Medical Services.—

(1) Authorization of appropriations.—There is hereby authorized to be appropriated for the Department of Veterans Affairs for the Veterans Health Administration for Medical Care amounts as follows:

(A) $900,000,000 for fiscal year 2006.

(B) $1,300,000,000 for fiscal year 2007.

(C) $1,500,000,000 for fiscal year 2008.

(D) $1,600,000,000 for fiscal year 2009.

(E) $1,600,000,000 for fiscal year 2010.

(2) Supplement not supplant.—The amounts authorized to be appropriated by this subsection are in addition to any other amounts authorized to be appropriated for the Veterans Health Administration for Medical Care under any other provisions of law.

(b) Funding for Disability Compensation Benefits.—

(1) Authorization of appropriations.—There is hereby authorized to be appropriated for the Department of Veterans Affairs for the Veterans Benefits Administration for Compensation and Pensions amounts as follows:

(A) $2,300,000,000 for fiscal year 2006.

(B) $2,700,000,000 for fiscal year 2007.

(C) $3,000,000,000 for fiscal year 2008.

(D) $3,000,000,000 for fiscal year 2009.

(E) $3,000,000,000 for fiscal year 2010.

(2) Supplement not supplant.—The amounts authorized to be appropriated by this subsection are in addition to any other amounts authorized to be appropriated for the Veterans Benefits Administration for Compensation and Pensions under any other provisions of law.

(c) Funding for Infrastructure Improvements for Hospitals Providing Health Care and Services to Veterans.—

(1) Establishment of fund.—There is hereby established on the books of the Treasury an account to be known as the "Veterans Hospital Improvement Fund" (in this subsection referred to as the "Fund").

(2) Elements.—The Fund shall consist of the following:

(A) $1,000,000,000, which shall be deposited in the Fund upon the enactment of this subsection.

(B) Any other amounts authorized for transfer to or deposit in the Fund by law.

(3) Administration.—The Funds shall be administered by the Secretary of Veterans Affairs.

(4) Use of funds.—

(A) In general.—Amounts in the Fund shall be available expenditures for improvements of health facilities treating veterans, including military medical treatment facilities, medical centers and other facilities administered by the Secretary of Veterans Affairs for the provision of medical care and services to veterans, and other State, local, and private facilities providing medical care and services to veterans.

(B) Application for funds.—A non-Federal health facility seeking amounts from the Fund shall submit to the Secretary of Veterans Affairs an application therefor setting forth such information as the Secretary shall require.

(C) Availability.—Amounts in the Fund shall remain available until expended.

SA 2733. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

On page 19 of the bill, strike lines 19 through 22, and insert the following:

SEC. 203. REPEAL OF STATE OPTIONS FOR ALTERNATIVE PREMIUMS AND COST SHARING AND FLEXIBILITY IN BENEFIT PACKAGES UNDER THE MEDICAID PROGRAM.

(a) Repeal of State Option for Alternative Premiums and Cost Sharing.—

(1) Repeal.—Section 1916A of the Social Security Act, as added by sections 6041(a), 6042(a), and 6043(a) of the Deficit Reduction Act of 2005, is repealed.

(2) Conforming amendments.—

(A) Subsection (y) of section 1903 of the Social Security Act (42 U.S.C. 1396b), as added by section 6043(b) of the Deficit Reduction Act of 2005, is repealed.

(B) Section 1916 of the Social Security Act (42 U.S.C. 1396o) is amended—

(i) in subsection (f), by striking "and section 1916A" after "(b)(3)"; and

(ii) by striking subsection (h).

(C) Section 1938(c) of the Social Security Act, as added by section 6082 of the Deficit Reduction Act of 2005, is amended—

(i) in paragraph (3), by striking "and 1916A"; and

(ii) in paragraph (5), by striking "sections 1916 and 1916A" and inserting "section 1916".

(b) Repeal of State Option of Providing Benchmark Benefit Packages.—

(1) Repeal.—Section 1937 of the Social Security Act, as added by section 6044(a) of the Deficit Reduction Act of 2005, is repealed.

(2) Conforming amendments.—

(A) Sections 1938 and 1939 of the Social Security Act, as added and redesignated, respectively, by section 6082 of the Deficit Reduction Act of 2005, are redesignated as sections 1937 and 1938, respectively, of the Social Security Act.

(B) 1937(b)(3) of the Social Security Act, as redesignated by subparagraph (A), is amended by inserting "(as added by section 6044(a) of S. 1932 of the 109th Congress, as passed by the Senate on December 21, 2005)".

(c) Effective Date.—The repeals and amendments made by subsections (a) and (b) shall take effect as if included in the enactment of the Deficit Reduction Act of 2005.

SEC. 203A. ADDITIONAL FUNDING FOR THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM.

(a) In General.—Section 2104(a) of the Social Security Act (42 U.S.C. 1397dd(a)) is amended—

(1) in paragraph (9), by striking "$4,050,000,000" and inserting "$6,550,000,000"; and

(2) in paragraph (10), by striking "$5,000,000,000" and inserting "$7,500,000,000".

(b) Funds in Addition to Funds Provided to Eliminate Fiscal Year 2006 Shortfalls.—The Secretary of Health and Human Services shall carry out subsection (d) of section 2104 of the Social Security Act (42 U.S.C. 1397dd(d)), as added by section 6101(a) of the Deficit Reduction Act of 2005, (including the determination of a State's allotment for fiscal year 2006 under paragraph (2)(C) of that subsection), without regard to the amendment made by subsection (a)(1) providing increased funding for State allotments for fiscal year 2006.

SA 2734. Mr. MENENDEZ (for himself and Mr. Kennedy) submitted an amendment intended to be proposed by him to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. HOPE SCHOLARSHIP CREDIT EXPANDED TO COVER EXPENSES FOR OTHER EDUCATIONAL EXPENSES.

(a) EXPANSION OF CREDIT.—

(1) IN GENERAL.—Sections 25A(b) is amended by striking "qualified tuition and related expenses" each place it appears and inserting "qualified higher education expenses".

(2) CONFORMING AMENDMENTS.—

(A) Subsections (e) and (g)(1) of section 25A are each amended by inserting "or the qualified higher education expenses" after "the qualified tuition and related expenses" each place it appears.

(B) Paragraphs (2) and (3)(B) of section 25A(g) are each amended by inserting "and qualified higher education expenses" after "qualified tuition and related expenses" each place it appears.

(C) Subsection (g)(4) of section 25A is amended by inserting "or qualified higher education expenses" after "qualified tuition and related expenses".

(D) Section 6050S is amended by inserting "and qualified higher education expenses" after "qualified tuition and related expenses" each place it appears.

(b) QUALIFIED HIGHER EDUCATION EXPENSES.—Section 25A(f) is amended by adding at the end the following new paragraph:

"(3) QUALIFIED HIGHER EDUCATION EXPENSES.—

"(A) IN GENERAL.—The term 'qualified higher education expenses' means the tuition, fees, books, supplies, and equipment required for the enrollment or attendance of—

"(i) the taxpayer,

"(ii) the taxpayer's spouse, or

"(iii) any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151,

at an eligible educational institution for courses of instruction of such individual at such institution.

"(B) SPECIAL NEEDS SERVICES.—In the case of an individual described in subparagraph (A) with special needs, such term includes expenses for special needs services which are incurred in connection with such enrollment or attendance.

"(C) ROOM AND BOARD.—

"(i) IN GENERAL.—Such term shall also include reasonable costs for such period incurred by an individual described in subparagraph (A) for room and board while attending such institution.

"(ii) LIMITATION.—The amount treated as qualified higher education expenses by reason of clause (i) shall not exceed—

"(I) the allowance (applicable to the individual) for room and board included in the cost of attendance (as defined in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll), as in effect on the date of the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001) as determined by the eligible educational institution for such period, or

"(II) if greater, the actual invoice amount the student residing in housing owned or operated by the eligible educational institution is charged by such institution for room and board costs for such period.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid after December 31, 2005, (in taxable years ending after such date) for education furnished in academic periods beginning after such date.

SEC. ___. MODIFICATION OF EFFECTIVE DATE OF LEASING PROVISIONS OF THE AMERICAN JOBS CREATION ACT OF 2004 FOR FOREIGN ENTITITES .

(a) IN GENERAL.—Section 849(b)(3) of the American Jobs Creation Act of 2004, as amended by this Act, is amended by striking "December 31, 2005" and inserting "December 31, 2004".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the enactment of the American Jobs Creation Act of 2004.

SA 2735. Mr. DODD (for himself, Mr. KENNEDY, Mr. KERRY, Mr. LAUTENBERG, Mrs. BOXER, Ms. MIKULSKI, Mr. AKAKA, Mr. REED, and Mr. SALAZAR) proposed an amendment to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; as follows:

At the appropriate place, insert the following:

SEC. ___. FUNDING FOR VETERANS HEALTH CARE AND DISABILITY COMPENSATION AND HOSPITAL INFRASTRUCTURE FOR VETERANS.

(a) FUNDING FOR MEDICAL SERVICES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated for the Department of Veterans Affairs for the Veterans Health Administration for Medical Care amounts as follows:

(A) $900,000,000 for fiscal year 2006.

(B) $1,300,000,000 for fiscal year 2007.

(C) $1,500,000,000 for fiscal year 2008.

(D) $1,600,000,000 for fiscal year 2009.

(E) $1,600,000,000 for fiscal year 2010.

(2) SUPPLEMENT NOT SUPPLANT.—The amounts authorized to be appropriated by this subsection are in addition to any other amounts authorized to be appropriated for the Veterans Health Administration for Medical Care under any other provisions of law.

(b) FUNDING FOR DISABILITY COMPENSATION BENEFITS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated for the Department of Veterans Affairs for the Veterans Benefits Administration for Compensation and Pensions amounts as follows:

(A) $2,300,000,000 for fiscal year 2006.

(B) $2,700,000,000 for fiscal year 2007.

(C) $3,000,000,000 for fiscal year 2008.

(D) $3,000,000,000 for fiscal year 2009.

(E) $3,000,000,000 for fiscal year 2010.

(2) SUPPLEMENT NOT SUPPLANT.—The amounts authorized to be appropriated by this subsection are in addition to any other amounts authorized to be appropriated for the Veterans Benefits Administration for Compensation and Pensions under any other provisions of law.

(c) FUNDING FOR INFRASTRUCTURE IMPROVEMENTS FOR HOSPITALS PROVIDING HEALTH CARE AND SERVICES TO VETERANS.—

(1) ESTABLISHMENT OF FUND.—There is hereby established on the books of the Treasury an account to be known as the "Veterans Hospital Improvement Fund" (in this subsection referred to as the "Fund").

(2) ELEMENTS.—The Fund shall consist of the following:

(A) $1,000,000,000, which shall be deposited in the Fund upon the enactment of this subsection.

(B) Any other amounts authorized for transfer to or deposit in the Fund by law.

(3) ADMINISTRATION.—The Funds shall be administered by the Secretary of Veterans Affairs.

(4) USE OF FUNDS.—

(A) IN GENERAL.—Amounts in the Fund shall be available expenditures for improvements of health facilities treating veterans, including military medical treatment facilities, medical centers and other facilities administered by the Secretary of Veterans Affairs for the provision of medical care and services to veterans, and other State, local, and private facilities providing medical care and services to veterans.

(B) APPLICATION FOR FUNDS.—A non-Federal health facility seeking amounts from the Fund shall submit to the Secretary of Veterans Affairs an application therefor setting forth such information as the Secretary shall require.

(C) AVAILABILITY.—Amounts in the Fund shall remain available until expended.

(d) OFFSET THROUGH MODIFICATION OF TAX RATES ON CAPITAL GAINS AND DIVIDENDS FOR INDIVIDUALS WITH $1,000,000 OR MORE OF TAXABLE INCOME.—

(1) IN GENERAL.—Section 1(h) is amended by adding at the end the following new paragraph:

"(12) MODIFIED RATES FOR INDIVIDUALS WITH $1,000,000 OR MORE OF TAXABLE INCOME.—If a taxpayer has taxable income of $1,000,000 or more for any taxable year—

"(A) paragraph (11) (relating to dividends taxed as capital gain) shall not apply to any qualified dividend income of the taxpayer for the taxable year, and

"(B) paragraph (1)(C) shall be applied by substituting '20 percent' for '15 percent' with respect to the adjusted net capital gain of the taxpayer for the taxable year, determined by only taking into account gain or loss properly allocable to the portion of the taxable year after December 31, 2006."

(2) APPLICATION TO MINIMUM TAX.—Section 55(b)(3) is amended by adding at the end the following new sentence: "In the case of a taxpayer with alternative minimum taxable income of $1,000,000 or more for any taxable year, the rules of section 1(h)(12) shall apply for purposes of this paragraph."

(3) EFFECTIVE DATES.—

(A) CAPITAL GAINS.—Section 1(h)(12)(B) of the Internal Revenue Code of 1986 (as added by paragraph (1)) shall apply to taxable years beginning after December 31, 2006.

(B) DIVIDEND RATES.—Section 1(h)(12)(A) of such Code (as added by paragraph (1)) shall apply to dividends received after December 31, 2006.

(4) APPLICATION OF JGTRRA SUNSET.—The amendments made by this subsection shall be subject to section 303 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 to the same extent and in the same manner as the provision of such Act to which such amendment relates.

SA 2736. Mr. GRASSLEY proposed an amendment to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; as follows:

At the appropriate place:

TITLE IV—STRENGTHENING AMERICA'S MILITARY

SEC. 401. SHORT TITLE.

This title may be cited as the "Strengthening America's Military Act".

Subtitle A—Military Funding

SEC. 402. FUNDING FOR MILITARY OPERATIONS.

There is appropriated, out of any money in the Treasury which is not otherwise appropriated, for the fiscal years 2006 through 2010, the following amounts, to be used for resetting and recapitalizing equipment being used in theaters of operations:

(1) **$16,900,000,000** for operations and maintenance of the Army.

(2) **$1,800,000,000** for aircraft for the Army.

(3) **$6,300,000,000** for other Army procurement.

(4) **$10,000,000,000** for wheeled and tracked combat vehicles for the Army.

(5) **$467,000,000** for the Army working capital fund.

(6) **$6,000,000** for missiles for the Department of Defense.

(7) **$100,000,000** for defense wide procurement for the Department of Defense.

(8) **$4,500,000,000** for Marine Corps procurement.

(9) **$4,500,000,000** for operations and maintenance of the Marine Corps.

(10) **$2,700,000,000** for Navy aircraft procurement.

SA 2737. Mr. REED (for himself, Ms. STABENOW, Mr. LAUTENBERG, Mrs. CLINTON, Mr. KERRY, and Mr. SALAZAR) proposed an amendment to amendment SA 2707 proposed by Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006; as follows:

On page 28, after line 11, insert the following:

TITLE IV—STRENGTHENING AMERICA'S MILITARY

SEC. 401. SHORT TITLE.

This title may be cited as the "Strengthening America's Military Act".

Subtitle A—Military Funding

SEC. 411. FUNDING FOR MILITARY OPERATIONS.

There is appropriated, out of any money in the Treasury which is not otherwise appropriated, for the fiscal years 2006 through 2010, the following amounts, to be used for resetting and recapitalizing equipment being used in theaters of operations:

(1) **$16,900,000,000** for operations and maintenance of the Army.

(2) **$1,800,000,000** for aircraft for the Army.

(3) **$6,300,000,000** for other Army procurement.

(4) **$10,000,000,000** for wheeled and tracked combat vehicles for the Army.

(5) **$467,000,000** for the Army working capital fund.

(6) **$6,000,000** for missiles for the Department of Defense.

(7) **$100,000,000** for defense wide procurement for the Department of Defense.

(8) **$4,500,000,000** for Marine Corps procurement.

(9) **$4,500,000,000** for operations and maintenance of the Marine Corps.

(10) **$2,700,000,000** for Navy aircraft procurement.

Subtitle B—Repeal of Extension of Tax Rate for Capital Gains and Dividends

SEC. 421. REPEAL OF EXTENSION OF TAX RATE FOR CAPITAL GAINS AND DIVIDENDS.

The amendment made by section 203 of this Act is repealed.

Subtitle C—Provisions Relating to Tax Shelters

SEC. 431. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

"(1) GENERAL RULES.—

"(A) IN GENERAL.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

"(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—A transaction has economic substance only if—

"(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer's economic position, and

"(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

"(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

"(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

"(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

"(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

"(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

"(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

"(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

"(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

"(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

"(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

"(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person's liability under subtitle A.

"(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

"(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

"(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

"(I) depreciation,

"(II) any tax credit, or

"(III) any other deduction as provided in guidance by the Secretary, and

"(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

"(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 432. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

"SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

"(a) IMPOSITION OF PENALTY.—If a taxpayer has an noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

"(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

"(c) Noneconomic Substance Transaction Understatement.—For purposes of this section—

"(1) In general.—The term 'noneconomic substance transaction understatement' means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

"(2) Noneconomic substance transaction.—The term 'noneconomic substance transaction' means any transaction if—

"(A) there is a lack of economic substance (within the meaning of section 7701(o)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(o)(2), or

"(B) the transaction fails to meet the requirements of any similar rule of law.

"(d) Rules Applicable to Compromise of Penalty.—

"(1) In general.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

"(2) Applicable rules.—The rules of paragraphs (2) and (3) of section 6707A(d) shall apply for purposes of paragraph (1).

"(e) Coordination With Other Penalties.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

"(f) Cross References.—

"(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e)

"(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e)".

(b) Coordination With Other Understatements and Penalties.—

(1) The second sentence of section 6662(d)(2)(A) is amended by inserting "and without regard to items with respect to which a penalty is imposed by section 6662B" before the period at the end.

(2) Subsection (e) of section 6662A is amended—

(A) in paragraph (1), by inserting "and noneconomic substance transaction understatements" after "reportable transaction understatements" both places it appears,

(B) in paragraph (2)(A), by inserting "and a noneconomic substance transaction understatement" after "reportable transaction understatement",

(C) in paragraph (2)(B), by inserting "6662B or" before "6663",

(D) in paragraph (2)(C)(i), by inserting "or section 6662B" before the period at the end,

(E) in paragraph (2)(C)(ii), by inserting "and section 6662B" after "This section",

(F) in paragraph (3), by inserting "or noneconomic substance transaction understatement" after "reportable transaction understatement", and

(G) by adding at the end the following new paragraph:

"(4) Noneconomic substance transaction understatement.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' has the meaning given such term by section 6662B(c).".

(3) Subsection (e) of section 6707A is amended—

(A) by striking "or" at the end of subparagraph (B), and

(B) by striking subparagraph (C) and inserting the following new subparagraphs:

"(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction, or

"(D) is required to pay a penalty under section 6662(h) with respect to any transaction and would (but for section 6662A(e)(2)(C)) have been subject to penalty under section 6662A at a rate prescribed under section 6662A(c) or under section 6662B.".

(c) Clerical Amendment.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

"Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc".

(d) Effective Date.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 433. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) In General.—Section 163(m) (relating to interest on unpaid taxes attributable to nondisclosed reportable transactions) is amended—

(1) by striking "attributable" and all that follows and inserting the following: "attributable to—

"(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

"(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).", and

(2) by inserting "And Noneconomic Substance Transactions" in the heading thereof after "Transactions".

(b) Effective Date.—The amendments made by this section shall apply to transactions after the date of the enactment of this Act in taxable years ending after such date.

SEC. 434. MODIFICATIONS OF EFFECTIVE DATES OF LEASING PROVISIONS OF THE AMERICAN JOBS CREATION ACT OF 2004.

(a) In General.—Section 849(b) of the American Jobs Creation Act of 2004 is amended by striking paragraphs (1) and (2), by redesignating paragraphs (3) and (4) as paragraphs (1) and (2), respectively, and by adding at the end the following new paragraph:

"(3) Leases to foreign entities.—In the case of tax-exempt use property leased to a tax-exempt entity which is a foreign person or entity, the amendments made by this part shall apply to taxable years beginning after December 31, 2004, with respect to leases entered into on or before March 12, 2004.".

(b) Effective Date.—The amendments made by this section shall take effect as if included in the enactment of the American Jobs Creation Act of 2004.

SEC. 435. REVALUATION OF LIFO INVENTORIES OF LARGE INTEGRATED OIL COMPANIES.

(a) General Rule.—Notwithstanding any other provision of law, if a taxpayer is an applicable integrated oil company for its last taxable year ending in calendar year 2005, the taxpayer shall—

(1) increase, effective as of the close of such taxable year, the value of each historic LIFO layer of inventories of crude oil, natural gas, or any other petroleum product (within the meaning of section 4611) by the layer adjustment amount, and

(2) decrease its cost of goods sold for such taxable year by the aggregate amount of the increases under paragraph (1).

If the aggregate amount of the increases under paragraph (1) exceed the taxpayer's cost of goods sold for such taxable year, the taxpayer's gross income for such taxable year shall be increased by the amount of such excess.

(b) Layer Adjustment Amount.—For purposes of this section—

(1) In general.—The term "layer adjustment amount" means, with respect to any historic LIFO layer, the product of—

(A) $18.75, and

(B) the number of barrels of crude oil (or in the case of natural gas or other petroleum products, the number of barrel-of-oil equivalents) represented by the layer.

(2) Barrel-of-oil equivalent.—The term "barrel-of-oil equivalent" has the meaning given such term by section 29(d)(5) (as in effect before its redesignation by the Energy Tax Incentives Act of 2005).

(c) Application of Requirement.—

(1) No change in method of accounting.—Any adjustment required by this section shall not be treated as a change in method of accounting.

(2) Underpayments of estimated tax.—No addition to the tax shall be made under section 6655 of the Internal Revenue Code of 1986 (relating to failure by corporation to pay estimated tax) with respect to any underpayment of an installment required to be paid with respect to the taxable year described in subsection (a) to the extent such underpayment was created or increased by this section.

(d) Applicable Integrated Oil Company.—For purposes of this section, the term "applicable integrated oil company" means an integrated oil company (as defined in section 291(b)(4) of the Internal Revenue Code of 1986) which—

(1) had gross receipts in excess of $1,000,000,000 for its last taxable year ending during calendar year 2005, and

(2) uses the last-in, first-out (LIFO) method of accounting with respect to its crude oil inventories for such taxable year.

For purposes of paragraph (1), all persons treated as a single employer under subsections (a) and (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as 1 person and, in the case of a short taxable year, the rule under section 448(c)(3)(B) shall apply.

SEC. 436. MODIFICATION OF EFFECTIVE DATE OF EXCEPTION FROM SUSPENSION RULES FOR CERTAIN LISTED AND REPORTABLE TRANSACTIONS.

(a) In General.—Paragraph (2) of section 903(d) of the American Jobs Creation Act of 2004 is amended to read as follows:

"(2) Exception for reportable or listed transactions.—

"(A) In general.—The amendments made by subsection (c) shall apply with respect to interest accruing after October 3, 2004.

"(B) Special rule for certain listed and reportable transactions.—

"(i) In general.—Except as provided in clause (ii), the amendments made by subsection (c) shall also apply with respect to interest accruing on or before October 3, 2004.

"(ii) Participants in settlement initiatives.—Clause (i) shall not apply to any transaction if, as of January 23, 2006—

"(I) the taxpayer is participating in a settlement initiative described in Internal Revenue Service Announcement 2005-80 with respect to such transaction, or

"(II) the taxpayer has entered into a settlement agreement pursuant to such an initiative.

"(iii) Termination of exception.—Clause (ii)(I) shall not apply to any taxpayer if, after January 23, 2006, the taxpayer withdraws from, or terminates, participation in the initiative or the Secretary of the Treasury or the Secretary's delegate determines that a settlement agreement will not be reached pursuant to the initiative within a reasonable period of time.".

(b) Effective Date.—The amendment made by this section shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 to which it relates.

SEC. 437. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.

(a) Determination of Penalty.—

(1) In general.—Notwithstanding any other provision of law, in the case of an applicable taxpayer—

(A) the determination as to whether any interest or applicable penalty is to be imposed with respect to any arrangement described in paragraph (2), or to any underpayment of Federal income tax attributable to items arising in connection with any such arrangement, shall be made without regard to the rules of subsections (b), (c), and (d) of section 6664 of the Internal Revenue Code of 1986, and

(B) if any such interest or applicable penalty is imposed, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(2) Applicable taxpayer.—For purposes of this subsection—

(A) In general.—The term "applicable taxpayer" means a taxpayer which—

(i) has underreported its United States income tax liability with respect to any item which directly or indirectly involves—

(I) any financial arrangement which in any manner relies on the use of offshore payment mechanisms (including credit, debit, or charge cards) issued by banks or other entities in foreign jurisdictions, or

(II) any offshore financial arrangement (including any arrangement with foreign banks, financial institutions, corporations, partnerships, trusts, or other entities), and

(ii) has neither signed a closing agreement pursuant to the Voluntary Offshore Compliance Initiative established by the Department of the Treasury under Revenue Procedure 2003-11 nor voluntarily disclosed its participation in such arrangement by notifying the Internal Revenue Service of such arrangement prior to the issue being raised by the Internal Revenue Service during an examination.

(B) Authority to waive.—The Secretary of the Treasury or the Secretary's delegate may waive the application of paragraph (1) to any taxpayer if the Secretary or the Secretary's delegate determines that the use of such offshore payment mechanisms is incidental to the transaction and, in addition, in the case of a trade or business, such use is conducted in the ordinary course of the type of trade or business of the taxpayer.

(C) Issues raised.—For purposes of subparagraph (A)(ii), an item shall be treated as an issue raised during an examination if the individual examining the return—

(i) communicates to the taxpayer knowledge about the specific item, or

(ii) has made a request to the taxpayer for information and the taxpayer could not make a complete response to that request without giving the examiner knowledge of the specific item.

(b) Definitions and Rules.—For purposes of this section—

(1) Applicable penalty.—The term "applicable penalty" means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(2) Fees and expenses.—The Secretary of the Treasury may retain and use an amount not in excess of 25 percent of all additional interest, penalties, additions to tax, and fines collected under this section to be used for enforcement and collection activities of the Internal Revenue Service. The Secretary shall keep adequate records regarding amounts so retained and used. The amount credited as paid by any taxpayer shall be determined without regard to this paragraph.

(c) Report by Secretary.—The Secretary shall each year conduct a study and report to Congress on the implementation of this section during the preceding year, including statistics on the number of taxpayers affected by such implementation and the amount of interest and applicable penalties asserted, waived, and assessed during such preceding year.

(d) Effective Date.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if, as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

SEC. 438. PENALTY FOR AIDING AND ABETTING THE UNDERSTATEMENT OF TAX LIABILITY.

(a) In General.—Section 6701(a) (relating to imposition of penalty) is amended—

(1) by inserting "the tax liability or" after "respect to," in paragraph (1),

(2) by inserting "aid, assistance, procurement, or advice with respect to such" before "portion" both places it appears in paragraphs (2) and (3), and

(3) by inserting "instance of aid, assistance, procurement, or advice or each such" before "document" in the matter following paragraph (3).

(b) Amount of Penalty.—Subsection (b) of section 6701 (relating to penalties for aiding and abetting understatement of tax liability) is amended to read as follows:

"(b) Amount of Penalty; Calculation of Penalty; Liability for Penalty.—

"(1) Amount of penalty.—The amount of the penalty imposed by subsection (a) shall not exceed 100 percent of the gross income derived (or to be derived) from such aid, assistance, procurement, or advice provided by the person or persons subject to such penalty.

"(2) Calculation of penalty.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of aid, assistance, procurement, or advice described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who made such an understatement of the liability for tax.

"(3) Liability for penalty.—If more than 1 person is liable under subsection (a) with respect to providing such aid, assistance, procurement, or advice, all such persons shall be jointly and severally liable for the penalty under such subsection.".

(c) Penalty Not Deductible.—Section 6701 is amended by adding at the end the following new subsection:

"(g) Penalty Not Deductible.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be deductible by the person who is subject to such penalty or who makes such payment.".

(d) Effective Date.—The amendments made by this section shall apply to activities after the date of the enactment of this Act.

Subtitle D—Provisions to Close Corporate and Individual Loopholes

SEC. 441. TAX TREATMENT OF INVERTED ENTITIES.

(a) In General.—Section 7874 is amended—

(1) by striking "March 4, 2003" in subsection (a)(2)(B)(i) and in the matter following subsection (a)(2)(B)(iii) and inserting "March 20, 2002",

(2) by striking "at least 60 percent" in subsection (a)(2)(B)(ii) and inserting "more than 50 percent",

(3) by striking "80 percent" in subsection (b) and inserting "at least 80 percent",

(4) by striking "60 percent" in subsection (b) and inserting "more than 50 percent",

(5) by adding at the end of subsection (a)(2) the following new sentence: "Except as provided in regulations, an acquisition of properties of a domestic corporation shall not be treated as described in subparagraph (B) if none of the corporation's stock was readily tradeable on an established securities market at any time during the 4-year period ending on the date of the acquisition.", and

(6) by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) Special Rules Applicable to Expatriated Entities.—

"(1) Increases in accuracy-related penalties.—In the case of any underpayment of tax of an expatriated entity—

"(A) section 6662(a) shall be applied with respect to such underpayment by substituting '30 percent' for '20 percent', and

"(B) if such underpayment is attributable to one or more gross valuation understatements, the increase in the rate of penalty under section 6662(h) shall be to 50 percent rather than 40 percent.

"(2) Modifications of limitation on interest deduction.—In the case of an expatriated entity, section 163(j) shall be applied—

"(A) without regard to paragraph (2)(A)(ii) thereof, and

"(B) by substituting '25 percent' for '50 percent' each place it appears in paragraph (2)(B) thereof.".

(b) Effective Date.—The amendments made by this section shall apply to taxable years ending after March 20, 2002.

SEC. 442. GRANT OF TREASURY REGULATORY AUTHORITY TO ADDRESS FOREIGN TAX CREDIT TRANSACTIONS INVOLVING INAPPROPRIATE SEPARATION OF FOREIGN TAXES FROM RELATED FOREIGN INCOME.

(a) In General.—Section 901 (relating to taxes of foreign countries and of possessions of United States) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) Regulations.—The Secretary may prescribe regulations disallowing a credit under subsection (a) for all or a portion of any foreign tax, or allocating a foreign tax among 2 or more persons, in cases where the foreign tax is imposed on any person in respect of income of another person or in other cases involving the inappropriate separation of the foreign tax from the related foreign income.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 443. TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT INSTRUMENTS.

(a) IN GENERAL.—Section 1275(d) (relating to regulation authority) is amended—

(1) by striking "The Secretary" and inserting the following:

"(1) IN GENERAL.—The Secretary", and

(2) by adding at the end the following new paragraph:

"(2) TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT.—

"(A) IN GENERAL.—In the case of a debt instrument which—

"(i) is convertible into stock of the issuing corporation, into stock or debt of a related party (within the meaning of section 267(b) or 707(b)(1)), or into cash or other property in an amount equal to the approximate value of such stock or debt, and

"(ii) provides for contingent payments,

any regulations which require original issue discount to be determined by reference to the comparable yield of a noncontingent fixed-rate debt instrument shall be applied as if the regulations require that such comparable yield be determined by reference to a noncontingent fixed-rate debt instrument which is convertible into stock.

"(B) SPECIAL RULE.—For purposes of subparagraph (A), the comparable yield shall be determined without taking into account the yield resulting from the conversion of a debt instrument into stock.".

(b) CROSS REFERENCE.—Section 163(e)(6) (relating to cross references) is amended by adding at the end the following:

"For the treatment of contingent payment convertible debt, see section 1275(d)(2).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued on or after the date of the enactment of this Act.

SEC. 444. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERS WHICH ARE CORPORATIONS.

(a) IN GENERAL.—Section 163(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

"(8) TREATMENT OF CORPORATE PARTNERS.—Except to the extent provided by regulations, in applying this subsection to a corporation which owns (directly or indirectly) an interest in a partnership—

"(A) such corporation's distributive share of interest income paid or accrued to such partnership shall be treated as interest income paid or accrued to such corporation,

"(B) such corporation's distributive share of interest paid or accrued by such partnership shall be treated as interest paid or accrued by such corporation, and

"(C) such corporation's share of the liabilities of such partnership shall be treated as liabilities of such corporation.".

(b) ADDITIONAL REGULATORY AUTHORITY.—Section 163(j)(9) (relating to regulations), as redesignated by subsection (a), is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) regulations providing for the reallocation of shares of partnership indebtedness, or distributive shares of the partnership's interest income or interest expense, as may be appropriate to carry out the purposes of this subsection.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning on or after the date of the enactment of this Act.

SEC. 445. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) IN GENERAL.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

"(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

"(2) EXCEPTION FOR AMOUNTS CONSTITUTING RESTITUTION OR PAID TO COME INTO COMPLIANCE WITH LAW.—Paragraph (1) shall not apply to any amount which—

"(A) the taxpayer establishes—

"(i) constitutes restitution (including remediation of property) for damage or harm caused by or which may be caused by the violation of any law or the potential violation of any law, or

"(ii) is paid to come into compliance with any law which was violated or involved in the investigation or inquiry, and

"(B) is identified as restitution or as an amount paid to come into compliance with the law, as the case may be, in the court order or settlement agreement.

Identification pursuant to subparagraph (B) alone shall not satisfy the requirement under subparagraph (A). This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

"(3) EXCEPTION FOR AMOUNTS PAID OR INCURRED AS THE RESULT OF CERTAIN COURT ORDERS.—Paragraph (1) shall not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (4) is a party.

"(4) CERTAIN NONGOVERNMENTAL REGULATORY ENTITIES.—An entity is described in this paragraph if it is—

"(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

"(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.

"(5) EXCEPTION FOR TAXES DUE.—Paragraph (1) shall not apply to any amount paid or incurred as taxes due.".

(b) REPORTING OF DEDUCTIBLE AMOUNTS.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6050T the following new section:

"SEC. 6050U. INFORMATION WITH RESPECT TO CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

"(a) REQUIREMENT OF REPORTING.—

"(1) IN GENERAL.—The appropriate official of any government or entity which is described in section 162(f)(4) which is involved in a suit or agreement described in paragraph (2) shall make a return in such form as determined by the Secretary setting forth—

"(A) the amount required to be paid as a result of the suit or agreement to which paragraph (1) of section 162(f) applies,

"(B) any amount required to be paid as a result of the suit or agreement which constitutes restitution or remediation of property, and

"(C) any amount required to be paid as a result of the suit or agreement for the purpose of coming into compliance with any law which was violated or involved in the investigation or inquiry.

"(2) SUIT OR AGREEMENT DESCRIBED.—

"(A) IN GENERAL.—A suit or agreement is described in this paragraph if—

"(i) it is—

"(I) a suit with respect to a violation of any law over which the government or entity has authority and with respect to which there has been a court order, or

"(II) an agreement which is entered into with respect to a violation of any law over which the government or entity has authority, or with respect to an investigation or inquiry by the government or entity into the potential violation of any law over which such government or entity has authority, and

"(ii) the aggregate amount involved in all court orders and agreements with respect to the violation, investigation, or inquiry is $600 or more.

"(B) ADJUSTMENT OF REPORTING THRESHOLD.—The Secretary may adjust the $600 amount in subparagraph (A)(ii) as necessary in order to ensure the efficient administration of the internal revenue laws.

"(3) TIME OF FILING.—The return required under this subsection shall be filed not later than—

"(A) 30 days after the date on which a court order is issued with respect to the suit or the date the agreement is entered into, as the case may be, or

"(B) the date specified by the Secretary.

"(b) STATEMENTS TO BE FURNISHED TO INDIVIDUALS INVOLVED IN THE SETTLEMENT.—Every person required to make a return under subsection (a) shall furnish to each person who is a party to the suit or agreement a written statement showing—

"(1) the name of the government or entity, and

"(2) the information supplied to the Secretary under subsection (a)(1).

The written statement required under the preceding sentence shall be furnished to the person at the same time the government or entity provides the Secretary with the information required under subsection (a).

"(c) APPROPRIATE OFFICIAL DEFINED.—For purposes of this section, the term 'appropriate official' means the officer or employee having control of the suit, investigation, or inquiry or the person appropriately designated for purposes of this section.".

(2) CONFORMING AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6050T the following new item:

"Sec. 6050U. Information with respect to certain fines, penalties, and other amounts.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred on or after the date of the enactment of this Act, except that such amendments shall not apply to amounts paid or incurred under any binding order or agreement entered into before such date. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained before such date.

SEC. 446. DISALLOWANCE OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) Disallowance of Deduction.—

(1) In general.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(B) by striking "If" and inserting:

"(1) Treble damages.—If", and

(C) by adding at the end the following new paragraph:

"(2) Punitive damages.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of, any action. This paragraph shall not apply to punitive damages described in section 104(c).".

(2) Conforming amendment.—The heading for section 162(g) is amended by inserting "or Punitive Damages" after "Laws".

(b) Inclusion in Income of Punitive Damages Paid by Insurer or Otherwise.—

(1) In general.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end the following new section:

"SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.

"Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise by reason of the taxpayer's liability (or agreement) to pay punitive damages.".

(2) Reporting requirements.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

"(f) Section to Apply to Punitive Damages Compensation.—This section shall apply to payments by a person to or on behalf of another person as insurance or otherwise by reason of the other person's liability (or agreement) to pay punitive damages.".

(3) Conforming amendment.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end the following new item:

"Sec. 91. Punitive damages compensated by insurance or otherwise.".

(c) Effective Date.—The amendments made by this section shall apply to damages paid or incurred on or after the date of the enactment of this Act.

SEC. 447. LIMITATION OF EMPLOYER DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES.

(a) In General.—Paragraph (2) of section 274(e) (relating to expenses treated as compensation) is amended to read as follows:

"(2) Expenses treated as compensation.—Expenses for goods, services, and facilities, to the extent that the expenses do not exceed the amount of the expenses which are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).".

(b) Persons Not Employees.—Paragraph (9) of section 274(e) is amended by striking "to the extent that the expenses are includible in the gross income" and inserting "to the extent that the expenses do not exceed the amount of the expenses which are includible in the gross income".

(c) Effective Date.—The amendments made by this section shall apply to expenses incurred after the date of the enactment of this Act.

SEC. 448. IMPOSITION OF MARK-TO-MARKET TAX ON INDIVIDUALS WHO EXPATRIATE.

(a) In General.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

"SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.

"(a) General Rules.—For purposes of this subtitle—

"(1) Mark to market.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

"(2) Recognition of gain or loss.—In the case of any sale under paragraph (1)—

"(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

"(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence.

"(3) Exclusion for certain gain.—

"(A) In general.—The amount which, but for this paragraph, would be includible in the gross income of any individual by reason of this section shall be reduced (but not below zero) by $600,000. For purposes of this paragraph, allocable expatriation gain taken into account under subsection (f)(2) shall be treated in the same manner as an amount required to be includible in gross income.

"(B) Cost-of-living adjustment.—

"(i) In general.—In the case of an expatriation date occurring in any calendar year after 2005, the $600,000 amount under subparagraph (A) shall be increased by an amount equal to—

"(I) such dollar amount, multiplied by

"(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 2004' for 'calendar year 1992' in subparagraph (B) thereof.

"(ii) Rounding rules.—If any amount after adjustment under clause (i) is not a multiple of $1,000, such amount shall be rounded to the next lower multiple of $1,000.

"(4) Election to continue to be taxed as United States citizen.—

"(A) In general.—If a covered expatriate elects the application of this paragraph—

"(i) this section (other than this paragraph and subsection (i)) shall not apply to the expatriate, but

"(ii) in the case of property to which this section would apply but for such election, the expatriate shall be subject to tax under this title in the same manner as if the individual were a United States citizen.

"(B) Requirements.—Subparagraph (A) shall not apply to an individual unless the individual—

"(i) provides security for payment of tax in such form and manner, and in such amount, as the Secretary may require,

"(ii) consents to the waiver of any right of the individual under any treaty of the United States which would preclude assessment or collection of any tax which may be imposed by reason of this paragraph, and

"(iii) complies with such other requirements as the Secretary may prescribe.

"(C) Election.—An election under subparagraph (A) shall apply to all property to which this section would apply but for the election and, once made, shall be irrevocable. Such election shall also apply to property the basis of which is determined in whole or in part by reference to the property with respect to which the election was made.

"(b) Election to Defer Tax.—

"(1) In general.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the payment of the additional tax attributable to such property shall be postponed until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

"(2) Determination of tax with respect to property.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

"(3) Termination of postponement.—No tax may be postponed under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

"(4) Security.—

"(A) In general.—No election may be made under paragraph (1) with respect to any property unless adequate security is provided to the Secretary with respect to such property.

"(B) Adequate security.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

"(i) it is a bond in an amount equal to the deferred tax amount under paragraph (2) for the property, or

"(ii) the taxpayer otherwise establishes to the satisfaction of the Secretary that the security is adequate.

"(5) Waiver of certain rights.—No election may be made under paragraph (1) unless the taxpayer consents to the waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

"(6) Elections.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable. An election may be made under paragraph (1) with respect to an interest in a trust with respect to which gain is required to be recognized under subsection (f)(1).

"(7) Interest.—For purposes of section 6601—

"(A) the last date for the payment of tax shall be determined without regard to the election under this subsection, and

"(B) section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

"(c) Covered Expatriate.—For purposes of this section—

"(1) In general.—Except as provided in paragraph (2), the term 'covered expatriate' means an expatriate.

"(2) Exceptions.—An individual shall not be treated as a covered expatriate if—

"(A) the individual—

"(i) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

"(ii) has not been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) during the 5 taxable years ending with the taxable year during which the expatriation date occurs, or

"(B)(i) the individual's relinquishment of United States citizenship occurs before such individual attains age 18½, and

"(ii) the individual has been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.

"(d) EXEMPT PROPERTY; SPECIAL RULES FOR PENSION PLANS.—

"(1) EXEMPT PROPERTY.—This section shall not apply to the following:

"(A) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the day before the expatriation date, meet the requirements of section 897(c)(2).

"(B) SPECIFIED PROPERTY.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.

"(2) SPECIAL RULES FOR CERTAIN RETIREMENT PLANS.—

"(A) IN GENERAL.—If a covered expatriate holds on the day before the expatriation date any interest in a retirement plan to which this paragraph applies—

"(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but

"(ii) an amount equal to the present value of the expatriate's nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.

"(B) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—In the case of any distribution on or after the expatriation date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the amount otherwise includible in gross income by reason of the subsequent distribution shall be reduced by the excess of the amount includible in gross income under subparagraph (A) over any portion of such amount to which this subparagraph previously applied.

"(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS BY PLAN.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan's behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.

"(D) APPLICABLE PLANS.—This paragraph shall apply to—

"(i) any qualified retirement plan (as defined in section 4974(c)),

"(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

"(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

"(e) DEFINITIONS.—For purposes of this section—

"(1) EXPATRIATE.—The term 'expatriate' means—

"(A) any United States citizen who relinquishes citizenship, and

"(B) any long-term resident of the United States who—

"(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

"(ii) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country.

"(2) EXPATRIATION DATE.—The term 'expatriation date' means—

"(A) the date an individual relinquishes United States citizenship, or

"(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

"(3) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship on the earliest of—

"(A) the date the individual renounces such individual's United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

"(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)-(4)),

"(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

"(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

"(4) LONG-TERM RESIDENT.—The term 'long-term resident' has the meaning given to such term by section 877(e)(2).

"(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES' INTERESTS IN TRUST.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

"(A) the individual shall not be treated as having sold such interest,

"(B) such interest shall be treated as a separate share in the trust, and

"(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

"(ii) the separate trust shall be treated as having sold its assets on the day before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

"(iii) the individual shall be treated as having recontributed the assets to the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (C)(ii). In determining the amount of such distribution, proper adjustments shall be made for liabilities of the trust allocable to an individual's share in the trust.

"(2) SPECIAL RULES FOR INTERESTS IN QUALIFIED TRUSTS.—

"(A) IN GENERAL.—If the trust interest described in paragraph (1) is an interest in a qualified trust—

"(i) paragraph (1) and subsection (a) shall not apply, and

"(ii) in addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax in the amount determined under subparagraph (B).

"(B) AMOUNT OF TAX.—The amount of tax under subparagraph (A)(ii) shall be equal to the lesser of—

"(i) the highest rate of tax imposed by section 1(e) for the taxable year which includes the day before the expatriation date, multiplied by the amount of the distribution, or

"(ii) the balance in the deferred tax account immediately before the distribution determined without regard to any increases under subparagraph (C)(ii) after the 30th day preceding the distribution.

"(C) DEFERRED TAX ACCOUNT.—For purposes of subparagraph (B)(ii)—

"(i) OPENING BALANCE.—The opening balance in a deferred tax account with respect to any trust interest is an amount equal to the tax which would have been imposed on the allocable expatriation gain with respect to the trust interest if such gain had been included in gross income under subsection (a).

"(ii) INCREASE FOR INTEREST.—The balance in the deferred tax account shall be increased by the amount of interest determined (on the balance in the account at the time the interest accrues), for periods after the 90th day after the expatriation date, by using the rates and method applicable under section 6621 for underpayments of tax for such periods, except that section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

"(iii) DECREASE FOR TAXES PREVIOUSLY PAID.—The balance in the tax deferred account shall be reduced—

"(I) by the amount of taxes imposed by subparagraph (A) on any distribution to the person holding the trust interest, and

"(II) in the case of a person holding a nonvested interest, to the extent provided in regulations, by the amount of taxes imposed by subparagraph (A) on distributions from the trust with respect to nonvested interests not held by such person.

"(D) ALLOCABLE EXPATRIATION GAIN.—For purposes of this paragraph, the allocable expatriation gain with respect to any beneficiary's interest in a trust is the amount of gain which would be allocable to such beneficiary's vested and nonvested interests in the trust if the beneficiary held directly all assets allocable to such interests.

"(E) TAX DEDUCTED AND WITHHELD.—

"(i) IN GENERAL.—The tax imposed by subparagraph (A)(ii) shall be deducted and withheld by the trustees from the distribution to which it relates.

"(ii) EXCEPTION WHERE FAILURE TO WAIVE TREATY RIGHTS.—If an amount may not be deducted and withheld under clause (i) by reason of the distributee failing to waive any treaty right with respect to such distribution—

"(I) the tax imposed by subparagraph (A)(ii) shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax, and

"(II) any other beneficiary of the trust shall be entitled to recover from the distributee the amount of such tax imposed on the other beneficiary.

"(F) DISPOSITION.—If a trust ceases to be a qualified trust at any time, a covered expatriate disposes of an interest in a qualified trust, or a covered expatriate holding an interest in a qualified trust dies, then, in lieu of the tax imposed by subparagraph (A)(ii), there is hereby imposed a tax equal to the lesser of—

"(i) the tax determined under paragraph (1) as if the day before the expatriation date were the date of such cessation, disposition, or death, whichever is applicable, or

"(ii) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax imposed on the other beneficiary.

"(G) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

"(i) QUALIFIED TRUST.—The term 'qualified trust' means a trust which is described in section 7701(a)(30)(E).

"(ii) VESTED INTEREST.—The term 'vested interest' means any interest which, as of the day before the expatriation date, is vested in the beneficiary.

"(iii) NONVESTED INTEREST.—The term 'nonvested interest' means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

"(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

"(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is part of a retirement plan to which subsection (d)(2) applies.

"(3) DETERMINATION OF BENEFICIARIES' INTEREST IN TRUST.—

"(A) DETERMINATIONS UNDER PARAGRAPH (1).—For purposes of paragraph (1), a beneficiary's interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar adviser.

"(B) OTHER DETERMINATIONS.—For purposes of this section—

"(i) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiaries for purposes of this section.

"(ii) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

"(I) the methodology used to determine that taxpayer's trust interest under this section, and

"(II) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary's trust interest under this section.

"(g) TERMINATION OF DEFERRALS, ETC.—In the case of any covered expatriate, notwithstanding any other provision of this title—

"(1) any period during which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and

"(2) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

"(h) IMPOSITION OF TENTATIVE TAX.—

"(1) IN GENERAL.—If an individual is required to include any amount in gross income under subsection (a) for any taxable year, there is hereby imposed, immediately before the expatriation date, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

"(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

"(3) TREATMENT OF TAX.—Any tax paid under paragraph (1) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

"(4) DEFERRAL OF TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

"(i) SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.—

"(1) IMPOSITION OF LIEN.—

"(A) IN GENERAL.—If a covered expatriate makes an election under subsection (a)(4) or (b) which results in the deferral of any tax imposed by reason of subsection (a), the deferred amount (including any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).

"(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate's income tax which, but for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

"(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

"(A) the liability for tax by reason of this section is satisfied or has become unenforceable by reason of lapse of time, or

"(B) it is established to the satisfaction of the Secretary that no further tax liability may arise by reason of this section.

"(3) CERTAIN RULES APPLY.—The rules set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6324A.

"(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.".

(b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Section 102 (relating to gifts, etc. not included in gross income) is amended by adding at the end the following new subsection:

"(d) GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.—

"(1) IN GENERAL.—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is also used in section 877A shall have the same meaning as when used in section 877A.

"(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1) shall not apply to any property if either—

"(A) the gift, bequest, devise, or inheritance is—

"(i) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

"(ii) included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate, or

"(B) no such return was timely filed but no such return would have been required to be filed even if the covered expatriate were a citizen or long-term resident of the United States.".

(c) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) is amended by adding at the end the following new paragraph:

"(49) TERMINATION OF UNITED STATES CITIZENSHIP.—

"(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(e)(3).

"(B) DUAL CITIZENS.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.".

(d) INELIGIBILITY FOR VISA OR ADMISSION TO UNITED STATES.—

(1) IN GENERAL.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

"(E) FORMER CITIZENS NOT IN COMPLIANCE WITH EXPATRIATION REVENUE PROVISIONS.—Any alien who is a former citizen of the United States who relinquishes United States citizenship (within the meaning of section 877A(e)(3) of the Internal Revenue Code of 1986) and who is not in compliance with section 877A of such Code (relating to expatriation).".

(2) AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—Section 6103(l) (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

"(21) DISCLOSURE TO DENY VISA OR ADMISSION TO CERTAIN EXPATRIATES.—Upon written request of the Attorney General or the Attorney General's delegate, the Secretary shall disclose whether an individual is in compliance with section 877A (and if not in compliance, any items of noncompliance) to officers and employees of the Federal agency responsible for administering section 212(a)(10)(E) of the Immigration and Nationality Act solely for the purpose of, and to the extent necessary in, administering such section 212(a)(10)(E).".

(B) SAFEGUARDS.—Section 6103(p)(4) (relating to safeguards) is amended by striking "or (20)" each place it appears and inserting "(20), or (21)".

(3) EFFECTIVE DATES.—The amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(e) CONFORMING AMENDMENTS.—

(1) Section 877 is amended by adding at the end the following new subsection:

"(h) APPLICATION.—This section shall not apply to an expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after the date of the enactment of this subsection.".

(2) Section 2107 is amended by adding at the end the following new subsection:

"(f) APPLICATION.—This section shall not apply to any expatriate subject to section 877A.".

(3) Section 2501(a)(3) is amended by adding at the end the following new subparagraph:

"(C) APPLICATION.—This paragraph shall not apply to any expatriate subject to section 877A.".

(4) Section 6039G(a) is amended by inserting "or 877A" after "section 877(b)".

(5) The second sentence of section 6039G(d) is amended by inserting "or who relinquishes United States citizenship (within the meaning of section 877A(e)(3))" after "section 877(a))".

(f) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

"Sec. 877A. Tax responsibilities of expatriation.".

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) whose expatriation date (as so defined) occurs on or after the date of the enactment of this Act.

(2) GIFTS AND BEQUESTS.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to gifts and bequests received on or after the date of the enactment of this Act, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

(3) DUE DATE FOR TENTATIVE TAX.—The due date under section 877A(h)(2) of the Internal Revenue Code of 1986, as added by this section, shall in no event occur before the 90th day after the date of the enactment of this Act.

SEC. 449. MODIFICATION OF EXCLUSION FOR CITIZENS LIVING ABROAD.

(a) INFLATION ADJUSTMENT OF FOREIGN EARNED INCOME LIMITATION.—Clause (ii) of section 911(b)(2)(D) (relating to inflation adjustment) is amended—

(1) by striking "2007" and inserting "2005", and

(2) by striking "2006" in subclause (II) and inserting "2004".

(b) MODIFICATION OF HOUSING COST AMOUNT.—

(1) MINIMUM AMOUNT.—Clause (i) of section 911(c)(1)(B) is amended to read as follows:

"(i) 16 percent of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which such taxable year begins, multiplied by".

(2) MAXIMUM AMOUNT OF EXCLUSION.—

(A) IN GENERAL.—Subparagraph (A) of section 911(c)(1) is amended by inserting "to the extent such expenses do not exceed the amount determined under paragraph (2)" after "the taxable year".

(B) LIMITATION.—Subsection (c) of section 911 is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) LIMITATION.—The amount determined under this paragraph is an amount equal to the product of—

"(A) 30 percent of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which the taxable year of the individual begins, multiplied by

"(B) the number of days of such taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1).".

(C) CONFORMING AMENDMENTS.—

(i) Section 911(d)(4) is amended by striking "and (c)(1)(B)(ii)" and inserting ", (c)(1)(B)(ii), and (c)(2)(B)"

(ii) Section 911(d)(7) is amended by striking "subsection (c)(3)" and inserting "subsection (c)(4)".

(c) RATES OF TAX APPLICABLE TO NONEXCLUDED INCOME.—Section 911 (relating to exclusion of certain income of citizens and residents of the United States living abroad) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) DETERMINATION OF TAX LIABILITY ON NONEXCLUDED AMOUNTS.—If any amount is excluded from the gross income of a taxpayer under subsection (a) for any taxable year, then, notwithstanding section 1 or 55—

"(1) the tax imposed by section 1 on the taxpayer for such taxable year shall be equal to the excess (if any) of—

"(A) the tax which would be imposed by section 1 for the taxable year if the taxpayer's taxable income were equal to the sum of—

"(i) the taxpayer's taxable income for the taxable year (determined without regard to this subsection), plus

"(ii) the amount excluded under subsection (a) for the taxable year, over

"(B) the tax which would be imposed by section 1 for the taxable year if the taxpayer's taxable income were equal to the amount excluded under subsection (a) for the taxable year, and

"(2) the tax imposed by section 55 for such taxable year shall be equal to the excess (if any) of—

"(A) the amount which would be the tentative minimum tax under section 55 for the taxable year if the taxpayer's alternative minimum taxable income were equal to the sum of—

"(i) the taxpayer's alternative minimum taxable income for the taxable year (determined without regard to this subsection), plus

"(ii) the amount excluded under subsection (a) for the taxable year, over

"(B) the sum of—

"(i) the amount which would be the tentative minimum tax under section 55 for the taxable year if the taxpayer's alternative minimum taxable income were equal to the amount excluded under subsection (a) for the taxable year, plus

"(ii) the amount which would be the regular tax for the taxable year if the tax imposed by section 1 were the tax computed under paragraph (1).

For purposes of this subsection, the amount excluded under subsection (a) shall be reduced by the aggregate amount of any deductions or exclusions disallowed under subsection (d)(6) with respect to such excluded amount.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 450. LIMITATION ON ANNUAL AMOUNTS WHICH MAY BE DEFERRED UNDER NONQUALIFIED DEFERRED COMPENSATION ARRANGEMENTS.

(a) IN GENERAL.—Section 409A (relating to inclusion of gross income under nonqualified deferred compensation plans) is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c) ANNUAL LIMITATION ON AGGREGATE DEFERRED AMOUNTS.—

"(1) LIMITATION.—If the aggregate amount of compensation which—

"(A) is deferred for any taxable year with respect to a participant under 1 or more nonqualified deferred compensation plans maintained by the same employer, and

"(B) is not otherwise includible in gross income of the participant for the taxable year, exceeds the applicable dollar amount for the taxable year, then such excess shall be included in the participant's gross income for the taxable year.

"(2) INCLUSION OF EARNINGS.—If—

"(A) an amount is includible under paragraph (1) in the gross income of a participant for any taxable year, and

"(B) any portion of any assets set aside in a trust or other arrangement under a nonqualified deferred compensation plan are properly allocable to such amount,

then any increase in value in, or earnings with respect to, such portion for the taxable year or any succeeding taxable year shall be included in gross income of the participant for such taxable year or succeeding taxable year.

"(3) APPLICABLE DOLLAR AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'applicable dollar amount' means, with respect to any participant, the lesser of—

"(i) the average annual compensation which—

"(I) was payable during the base period to the participant by the employer described in paragraph (1)(A), and

"(II) was includible in the participant's gross income for taxable years in the base period, or

"(ii) $1,000,000.

"(B) BASE PERIOD.—The term 'base period' means, with respect to any computation year, the 5-taxable year period ending with the taxable year preceding the taxable year in which the election described in subsection (a)(4)(B) is made by the participant to have compensation for services performed in the computation year deferred under a nonqualified deferred compensation plan, except that if the election is made after the beginning of the computation year, such period shall be the 5-taxable year period ending with the taxable year preceding the computation year. For purposes of this subparagraph, the term 'computation year' means any taxable year of the participant for which the limitation under paragraph (1) is being determined.".

(b) CONFORMING AMENDMENTS.—Sections 6041(g)(1) and 6051(a)(13) are each amended by striking "409A(d)" and inserting "409A(e)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005, except that taxable years beginning on or before such date shall be taken into account in determining the average annual compensation of a participant during any base period for purposes of section 409A(c)(2) of the Internal Revenue Code of 1986 (as added by such amendments).

SEC. 451. INCREASE IN AGE OF MINOR CHILDREN WHOSE UNEARNED INCOME IS TAXED AS IF PARENT'S INCOME.

(a) IN GENERAL.—Section 1(g)(2)(A) (relating to child to whom subsection applies) is amended by striking "age 14" and inserting "age 18".

(b) TREATMENT OF DISTRIBUTIONS FROM QUALIFIED DISABILITY TRUSTS.—Section 1(g)(4) (relating to net unearned income) is amended by adding at the end the following new subparagraph:

"(C) TREATMENT OF DISTRIBUTIONS FROM QUALIFIED DISABILITY TRUSTS.—For purposes of this subsection, in the case of any child who is a beneficiary of a qualified disability trust (as defined in section 642(b)(2)(C)(ii)), any amount included in the income of such child under sections 652 and 662 during a taxable year shall be considered earned income of such child for such taxable year.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

Subtitle E—Oil and Gas Provisions

SEC. 461. EXTENSION OF SUPERFUND TAXES.

(a) EXCISE TAXES.—Section 4611(e) is amended to read as follows:

"(e) APPLICATION OF HAZARDOUS SUBSTANCE SUPERFUND FINANCING RATE.—The Hazardous Substance Superfund financing rate under this section shall apply after December 31, 1986, and before January 1, 1996, and after December 31, 2005, and before January 1, 2015."

(b) CORPORATE ENVIRONMENTAL INCOME TAX.—Section 59A(e) is amended to read as follows:

"(e) APPLICATION OF TAX.—The tax imposed by this section shall apply to taxable years beginning after December 31, 1986, and before January 1, 1996, and to taxable years beginning after December 31, 2005, and before January 1, 2015."

(c) EFFECTIVE DATES.—

(1) EXCISE TAXES.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) INCOME TAX.—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 2005.

SEC. 462. MODIFICATIONS OF FOREIGN TAX CREDIT RULES APPLICABLE TO DUAL CAPACITY TAXPAYERS.

(a) IN GENERAL.—Section 901 (relating to credit for taxes of foreign countries and of possessions of the United States) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) SPECIAL RULES RELATING TO DUAL CAPACITY TAXPAYERS.—

"(1) GENERAL RULE.—Notwithstanding any other provision of this chapter, any amount paid or accrued by a dual capacity taxpayer to a foreign country or possession of the United States for any period shall not be considered a tax—

"(A) if, for such period, the foreign country or possession does not impose a generally applicable income tax, or

"(B) to the extent such amount exceeds the amount (determined in accordance with regulations) which—

"(i) is paid by such dual capacity taxpayer pursuant to the generally applicable income tax imposed by the country or possession, or

"(ii) would be paid if the generally applicable income tax imposed by the country or possession were applicable to such dual capacity taxpayer.

Nothing in this paragraph shall be construed to imply the proper treatment of any such amount not in excess of the amount determined under subparagraph (B).

"(2) DUAL CAPACITY TAXPAYER.—For purposes of this subsection, the term 'dual capacity taxpayer' means, with respect to any foreign country or possession of the United States, a person who—

"(A) is subject to a levy of such country or possession, and

"(B) receives (or will receive) directly or indirectly a specific economic benefit (as determined in accordance with regulations) from such country or possession.

"(3) GENERALLY APPLICABLE INCOME TAX.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'generally applicable income tax' means an income tax (or a series of income taxes) which is generally imposed under the laws of a foreign country or possession on income derived from the conduct of a trade or business within such country or possession.

"(B) EXCEPTIONS.—Such term shall not include a tax unless it has substantial application, by its terms and in practice, to—

"(i) persons who are not dual capacity taxpayers, and

"(ii) persons who are citizens or residents of the foreign country or possession."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxes paid or accrued in taxable years beginning after the date of the enactment of this Act.

(2) CONTRARY TREATY OBLIGATIONS UPHELD.—The amendments made by this section shall not apply to the extent contrary to any treaty obligation of the United States.

SEC. 463. RULES RELATING TO FOREIGN OIL AND GAS INCOME.

(a) SEPARATE BASKET FOR FOREIGN TAX CREDIT.—

(1) SEPARATE BASKET.—

(A) YEARS BEFORE 2007.—Paragraph (1) of section 904(d) (relating to separate application of section with respect to certain categories of income), as in effect for years beginning before 2007, is amended by striking "and" at the end of subparagraph (H), by redesignating subparagraph (I) as subparagraph (J), and by inserting after subparagraph (H) the following new subparagraph:

"(I) foreign oil and gas income, and".

(B) 2007 AND AFTER.—Paragraph (1) of section 904(d), as in effect for years beginning after 2006, is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following:

"(C) foreign oil and gas income."

(2) DEFINITION.—

(A) YEARS BEFORE 2007.—Paragraph (2) of section 904(d), as in effect for years beginning before 2007, is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

"(H) FOREIGN OIL AND GAS INCOME.—The term 'foreign oil and gas income' has the meaning given such term by section 954(g)."

(B) 2007 AND AFTER.—Section 904(d)(2), as in effect for years after 2006, is amended by redesignating subparagraphs (J) and (K) as subparagraphs (K) and (L) and by inserting after subparagraph (I) the following:

"(J) FOREIGN OIL AND GAS INCOME.—For purposes of this section—

"(i) IN GENERAL.—The term 'foreign oil and gas income' has the meaning given such term by section 954(g).

"(ii) COORDINATION.—Passive category income and general category income shall not include foreign oil and gas income (as so defined)."

(3) CONFORMING AMENDMENTS.—

(A) Section 904(d)(3)(F)(i) is amended by striking "or (E)" and inserting "(E), or (I)".

(B) Section 907(a) is hereby repealed.

(C) Section 907(c)(4) is hereby repealed.

(D) Section 907(f) is hereby repealed.

(4) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

(B) YEARS AFTER 2006.—The amendments made by paragraphs (1)(B) and (2)(B) shall apply to taxable years beginning after December 31, 2006.

(C) TRANSITIONAL RULES.—

(i) SEPARATE BASKET TREATMENT.—Any taxes paid or accrued in a taxable year beginning on or before the date of the enactment of this Act, with respect to income which was described in subparagraph (I) of section 904(d)(1) of such Code (as in effect on the day before the date of the enactment of this Act), shall be treated as taxes paid or accrued with respect to foreign oil and gas income to the extent the taxpayer establishes to the satisfaction of the Secretary of the Treasury that such taxes were paid or accrued with respect to foreign oil and gas income.

(ii) CARRYOVERS.—Any unused oil and gas extraction taxes which under section 907(f) of such Code (as so in effect) would have been allowable as a carryover to the taxpayer's first taxable year beginning after the date of the enactment of this Act (without regard to the limitation of paragraph (2) of such section 907(f) for first taxable year) shall be allowed as carryovers under section 904(c) of such Code in the same manner as if such taxes were unused taxes under such section 904(c) with respect to foreign oil and gas extraction income.

(iii) LOSSES.—The amendment made by paragraph (3)(C) shall not apply to foreign oil and gas extraction losses arising in taxable years beginning on or before the date of the enactment of this Act.

(b) ELIMINATION OF DEFERRAL FOR FOREIGN OIL AND GAS EXTRACTION INCOME.—

(1) GENERAL RULE.—Paragraph (1) of section 954(g) (defining foreign base company oil related income) is amended to read as follows:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'foreign oil and gas income' means any income of a kind which would be taken into account in determining the amount of—

"(A) foreign oil and gas extraction income (as defined in section 907(c)), or

"(B) foreign oil related income (as defined in section 907(c))."

(2) CONFORMING AMENDMENTS.—

(A) Subsections (a)(5), (b)(5), and (b)(6) of section 954, and section 952(c)(1)(B)(ii)(I), are each amended by striking "base company oil related income" each place it appears (including in the heading of subsection (b)(8)) and inserting "oil and gas income".

(B) Subsection (b)(4) of section 954 is amended by striking "base company oil-related income" and inserting "oil and gas income".

(C) The subsection heading for subsection (g) of section 954 is amended by striking "FOREIGN BASE COMPANY OIL RELATED INCOME" and inserting "FOREIGN OIL AND GAS INCOME".

(D) Subparagraph (A) of section 954(g)(2) is amended by striking "foreign base company oil related income" and inserting "foreign oil and gas income".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years of foreign corporations beginning after the date of the enactment of this Act, and to taxable years of United States shareholders ending with or within such taxable years of foreign corporations.

SEC. 464. MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) TAXABLE YEARS ENDING BEFORE 2006.—

(1) MODIFICATION OF PHASEOUT.—

(A) IN GENERAL.—Section 29(b)(1)(A) is amended by inserting "the calendar year preceding" before "the calendar year".

(B) CONFORMING AMENDMENTS.—Section 29(b)((2) is amended—

(i) by striking "The" and inserting "With respect to any calendar year, the", and

(ii) by striking "for the calendar year in which the sale occurs" and inserting "for such calendar year".

(2) NO INFLATION ADJUSTMENT FOR THE CREDIT AMOUNT IN 2005.—Section 29(b)(2), as amended by paragraph (1), is amended by adding at the end the following new sentence: "This paragraph shall not apply with respect to the $3 amount in subsection (a) for calendar year 2005 and the amount in effect under subsection (a) for sales in such calendar year shall be the amount which was in effect for sales in calendar year 2004.".

(b) TAXABLE YEARS ENDING AFTER 2005.—

(1) MODIFICATION OF PHASEOUT.—

(A) IN GENERAL.—Section 45K(b)(1)(A) is amended by inserting "the calendar year preceding" before "the calendar year".

(B) CONFORMING AMENDMENTS.—Section 45K(b)((2) is amended—

(i) by striking "The" and inserting "With respect to any calendar year, the", and

(ii) by striking "for the calendar year in which the sale occurs" and inserting "for such calendar year".

(2) NO INFLATION ADJUSTMENT FOR THE CREDIT AMOUNT IN 2005, 2006, AND 2007.—Section 45K(b)(2), as amended by paragraph (1), is amended by adding at the end the following new sentence: "This paragraph shall not apply with respect to the $3 amount in subsection (a) for calendar years 2005, 2006, and 2007 and the amount in effect under subsection (a) for sales in each such calendar year shall be the amount which was in effect for sales in calendar year 2004.".

(3) TREATMENT OF COKE AND COKE GAS.—

(A) NONAPPLICATION OF PHASEOUT.—Section 45K(g)(2) is amended by adding at the end the following new subparagraph:

"(D) NONAPPLICATION OF PHASEOUT.—Subsection (b)(1) shall not apply.".

(B) APPLICATION OF INFLATION ADJUSTMENT.—Section 45K(g)(2)(B) is amended by inserting "and the last sentence of subsection (b)(2) shall not apply.".

(C) CLARIFICATION OF QUALIFYING FACILITY.—Section 45K(g)(1) is amended by inserting "(other than from petroleum based products)" after "coke or coke gas".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold after December 31, 2004.

SEC. 465. ELIMINATION OF AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES FOR MAJOR INTEGRATED OIL COMPANIES.

(a) IN GENERAL.—Section 167(h) is amended by adding at the end the following new paragraph:

"(5) NONAPPLICATION TO MAJOR INTEGRATED OIL COMPANIES.—This subsection shall not apply with respect to any expenses paid or incurred for any taxable year by any integrated oil company (as defined in section 291(b)(4)) which has an average daily worldwide production of crude oil of at least 500,000 barrels for such taxable year.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendment made by section 1329(a) of the Energy Policy Act of 2005.

Subtitle F—Tax Administration Provisions

SEC. 471. IMPOSITION OF WITHHOLDING ON CERTAIN PAYMENTS MADE BY GOVERNMENT ENTITIES.

(a) IN GENERAL.—Section 3402 is amended by adding at the end the following new subsection:

"(t) EXTENSION OF WITHHOLDING TO CERTAIN PAYMENTS MADE BY GOVERNMENT ENTITIES.—

"(1) GENERAL RULE.—The Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies) making any payment for goods and services which is subject to withholding shall deduct and withhold from such payment a tax in an amount equal to 3 percent of such payment.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to any payment—

"(A) except as provided in subparagraph (B), which is subject to withholding under any other provision of this chapter or chapter 3,

"(B) which is subject to withholding under section 3406 and from which amounts are being withheld under such section,

"(C) of interest,

"(D) for real property,

"(E) to any tax-exempt entity, foreign government, or other entity subject to the requirements of paragraph (1),

"(F) made pursuant to a classified or confidential contract (as defined in section 6050M(e)(3)), and

"(G) made by a political subdivision of a State (or any instrumentality thereof) which makes less than $100,000,000 of such payments annually.

"(3) COORDINATION WITH OTHER SECTIONS.—For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except section 7205) as relates to this chapter, payments to any person of any payment for goods and services which is subject to withholding shall be treated as if such payments were wages paid by an employer to an employee.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2005.

SEC. 472. INCREASE IN CERTAIN CRIMINAL PENALTIES.

(a) IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking "Any person who—" and inserting "(a) IN GENERAL.—Any person who—", and

(2) by adding at the end the following new subsection:

"(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.".

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 is amended—

(A) by striking "$100,000" and inserting "$500,000",

(B) by striking "$500,000" and inserting "$1,000,000", and

(C) by striking "5 years" and inserting "10 years".

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking "Any person" and inserting the following:

"(a) IN GENERAL.—Any person", and

(ii) by striking "$25,000" and inserting "$50,000",

(B) in the third sentence, by striking "section" and inserting "subsection", and

(C) by adding at the end the following new subsection:

"(b) AGGRAVATED FAILURE TO FILE.—

"(1) IN GENERAL.—In the case of any failure described in paragraph (2), the first sentence of subsection (a) shall be applied by substituting—

"(A) 'felony' for 'misdemeanor',

"(B) '$500,000 ($1,000,000' for '$25,000 ($100,000', and

"(C) '10 years' for '1 year'.

"(2) FAILURE DESCRIBED.—A failure described in this paragraph is a failure to make a return described in subsection (a) for a period of 3 or more consecutive taxable years.".

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking "$100,000" and inserting "$500,000",

(B) by striking "$500,000" and inserting "$1,000,000", and

(C) by striking "3 years" and inserting "5 years".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions, and failures to act, occurring after the date of the enactment of this Act.

SEC. 473. REPEAL OF SUSPENSION OF INTEREST AND CERTAIN PENALTIES WHERE SECRETARY FAILS TO CONTACT TAXPAYER.

(a) IN GENERAL.—Section 6404 (relating to abatements) is amended by striking subsection (g) and by redesignating subsections (h) and (i) as subsections (g) and (h), respectively.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to returns of tax filed after December 31, 2005.

SEC. 474. INCREASE IN PENALTY FOR BAD CHECKS AND MONEY ORDERS.

(a) IN GENERAL.—Section 6657 (relating to bad checks) is amended—

(1) by striking "$750" and inserting "$1,250", and

(2) by striking "$15" and inserting "$25".

(b) EFFECTIVE DATE.—The amendments made by this section apply to checks or money orders received after the date of the enactment of this Act.

SEC. 475. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

"SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

"(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

"(1) such person files what purports to be a return of a tax imposed by this title but which—

"(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

"(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

"(2) the conduct referred to in paragraph (1)—

"(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

"(B) reflects a desire to delay or impede the administration of Federal tax laws.

"(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

"(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

"(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

"(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

“(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

“(ii) reflects a desire to delay or impede the administration of Federal tax laws.

“(B) SPECIFIED SUBMISSION.—The term ‘specified submission’ means—

“(i) a request for a hearing under—

“(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

“(II) section 6330 (relating to notice and opportunity for hearing before levy), and

“(ii) an application under—

“(I) section 6159 (relating to agreements for payment of tax liability in installments),

“(II) section 7122 (relating to compromises), or

“(III) section 7811 (relating to taxpayer assistance orders).

“(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

“(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

“(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

“(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.”.

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

“(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.”.

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking “(A)” and inserting “(A)(i)”;

(B) by striking “(B)” and inserting “(ii)”;

(C) by striking the period at the end of the first sentence and inserting “; or”; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

“(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).”.

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking “under subsection (a)(3)(B)” and inserting “in writing under subsection (a)(3)(B) and states the grounds for the requested hearing”.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking “under subsection (a)(3)(B)” and inserting “in writing under subsection (a)(3)(B) and states the grounds for the requested hearing”, and

(2) in subsection (c), by striking “and (e)” and inserting “(e), and (g)”.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

“(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.”.

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

“Sec. 6702. Frivolous tax submissions.”.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 476. PARTIAL PAYMENTS REQUIRED WITH SUBMISSION OF OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—Section 7122 (relating to compromises), as amended by this Act, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

“(c) RULES FOR SUBMISSION OF OFFERS-IN-COMPROMISE.—

“(1) PARTIAL PAYMENT REQUIRED WITH SUBMISSION.—

“(A) LUMP-SUM OFFERS.—

“(i) IN GENERAL.—The submission of any lump-sum offer-in-compromise shall be accompanied by the payment of 20 percent of amount of such offer.

“(ii) LUMP-SUM OFFER-IN-COMPROMISE.—For purposes of this section, the term ‘lump-sum offer-in-compromise’ means any offer of payments made in 5 or fewer installments.

“(B) PERIODIC PAYMENT OFFERS.—The submission of any periodic payment offer-in-compromise shall be accompanied by the payment of the amount of the first proposed installment and each proposed installment due during the period such offer is being evaluated for acceptance and has not been rejected by the Secretary. Any failure to make a payment required under the preceding sentence shall be deemed a withdrawal of the offer-in-compromise.

“(2) RULES OF APPLICATION.—

“(A) USE OF PAYMENT.—The application of any payment made under this subsection to the assessed tax or other amounts imposed under this title with respect to such tax may be specified by the taxpayer.

“(B) NO USER FEE IMPOSED.—Any user fee which would otherwise be imposed under this section shall not be imposed on any offer-in-compromise accompanied by a payment required under this subsection.

“(C) WAIVER AUTHORITY.—The Secretary may issue regulations waiving any payment required under paragraph (1) in a manner consistent with the practices established in accordance with the requirements under subsection (d)(3).”.

(b) ADDITIONAL RULES RELATING TO TREATMENT OF OFFERS.—

(1) UNPROCESSABLE OFFER IF PAYMENT REQUIREMENTS ARE NOT MET.—Paragraph (3) of section 7122(d) (relating to standards for evaluation of offers), as redesignated by subsection (a), is amended by striking “; and” at the end of subparagraph (A) and inserting a comma, by striking the period at the end of subparagraph (B) and inserting “, and”, and by adding at the end the following new subparagraph:

“(C) any offer-in-compromise which does not meet the requirements of subsection (c) shall be returned to the taxpayer as unprocessable.”.

(2) DEEMED ACCEPTANCE OF OFFER NOT REJECTED WITHIN CERTAIN PERIOD.—Section 7122, as amended by subsection (a), is amended by adding at the end the following new subsection:

“(g) DEEMED ACCEPTANCE OF OFFER NOT REJECTED WITHIN CERTAIN PERIOD.—Any offer-in-compromise submitted under this section shall be deemed to be accepted by the Secretary if such offer is not rejected by the Secretary before the date which is 24 months after the date of the submission of such offer (12 months for offers-in-compromise submitted after the date which is 5 years after the date of the enactment of this subsection). For purposes of the preceding sentence, any period during which any tax liability which is the subject of such offer-in-compromise is in dispute in any judicial proceeding shall not be taken in to account in determining the expiration of the 24-month period (or 12-month period, if applicable).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act.

SEC. 477. WAIVER OF USER FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.

(a) IN GENERAL.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

“(e) WAIVER OF USER FEES FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.—In the case of a taxpayer who enters into an installment agreement in which automated installment payments are agreed to, the Secretary shall waive the fee (if any) for entering into the installment agreement.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date which is 180 days after the date of the enactment of this Act.

SEC. 478. TERMINATION OF INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—Section 6159(b)(4) (relating to failure to pay an installment or any other tax liability when due or to provide requested financial information) is amended by striking “or” at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (E), and by inserting after subparagraph (B) the following:

“(C) to make a Federal tax deposit under section 6302 at the time such deposit is required to be made,

“(D) to file a return of tax imposed under this title by its due date (including extensions), or”.

(b) CONFORMING AMENDMENT.—The heading for section 6159(b)(4) is amended by striking “FAILURE TO PAY AN INSTALLMENT OR ANY OTHER TAX LIABILITY WHEN DUE OR TO PROVIDE

REQUESTED FINANCIAL INFORMATION" and inserting "FAILURE TO MAKE PAYMENTS OR DEPOSITS OR FILE RETURNS WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to failures occurring on or after the date of the enactment of this Act.

Subtitle G—Additional Provisions

SEC. 481. MODIFICATION OF INDIVIDUAL ESTIMATED TAX SAFE HARBOR.

(a) IN GENERAL.—The table contained in section 6654(d)(1)(C) is amended by striking "2002 or thereafter" and inserting "2002, 2003, 2004, or 2005" and by adding at the end the following new items:

"2006 111
2007 or thereafter .... 110".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any installment payment for taxable years beginning after December 31, 2005.

SEC. 482. LOAN AND REDEMPTION REQUIREMENTS ON POOLED FINANCING REQUIREMENTS.

(a) STRENGTHENED REASONABLE EXPECTATION REQUIREMENT.—Subparagraph (A) of section 149(f)(2) (relating to reasonable expectation requirement) is amended to read as follows:

"(A) IN GENERAL.—The requirements of this paragraph are met with respect to an issue if the issuer reasonably expects that—

"(i) as of the close of the 1-year period beginning on the date of issuance of the issue, at least 50 percent of the net proceeds of the issue (as of the close of such period) will have been used directly or indirectly to make or finance loans to ultimate borrowers, and

"(ii) as of the close of the 3-year period beginning on such date of issuance, at least 95 percent of the net proceeds of the issue (as of the close of such period) will have been so used.".

(b) WRITTEN LOAN COMMITMENT AND REDEMPTION REQUIREMENTS.—Section 149(f) (relating to treatment of certain pooled financing bonds) is amended by redesignating paragraphs (4) and (5) as paragraphs (6) and (7), respectively, and by inserting after paragraph (3) the following new paragraphs:

"(4) WRITTEN LOAN COMMITMENT REQUIREMENT.—

"(A) IN GENERAL.—The requirement of this paragraph is met with respect to an issue if the issuer receives prior to issuance written loan commitments identifying the ultimate potential borrowers of at least 50 percent of the net proceeds of such issue.

"(B) EXCEPTION.—Subparagraph (A) shall not apply with respect to any issuer which is a State (or an integral part of a State) issuing pooled financing bonds to make or finance loans to subordinate governmental units of such State or to State-created entities providing financing for water-infrastructure projects through the federally-sponsored State revolving fund program.

"(5) REDEMPTION REQUIREMENT.—The requirement of this paragraph is met if to the extent that less than the percentage of the proceeds of an issue required to be used under clause (i) or (ii) of paragraph (2)(A) is used by the close of the period identified in such clause, the issuer uses an amount of proceeds equal to the excess of—

"(A) the amount required to be used under such clause, over

"(B) the amount actually used by the close of such period,

to redeem outstanding bonds within 90 days after the end of such period.".

(c) ELIMINATION OF DISREGARD OF POOLED BONDS IN DETERMINING ELIGIBILITY FOR SMALL ISSUER EXCEPTION TO ARBITRAGE REBATE.—Section 148(f)(4)(D)(ii) (relating to aggregation of issuers) is amended by striking subclause (II) and by redesignating subclauses (III) and (IV) as subclauses (II) and (III), respectively.

(d) CONFORMING AMENDMENTS.—

(1) Section 149(f)(1) is amended by striking "paragraphs (2) and (3)" and inserting "paragraphs (2), (3), (4), and (5)".

(2) Section 149(f)(7)(B), as redesignated by subsection (b), is amended by striking "paragraph (4)(A)" and inserting "paragraph (6)(A)".

(3) Section 54(l)(2) is amended by striking "section 149(f)(4)(A)" and inserting "section 149(f)(6)(A)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

SEC. 483. REPORTING OF INTEREST ON TAX-EXEMPT BONDS.

(a) IN GENERAL.—Section 6049(b)(2) (relating to exceptions) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(b) CONFORMING AMENDMENT.—Section 6049(b)(2)(C), as redesignated by subsection (a), is amended by striking "subparagraph (C)" and inserting "subparagraph (B)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to interest earned after December 31, 2005.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. LOTT. Mr. President, I wish to announce that the Committee on Rules and Administration will meet on Wednesday, February 8, 2006, at 2 p.m., to conduct a hearing to examine procedures to bring greater transparency to the legislative process.

For further information regarding this hearing, please contact Susan Wells at the Rules and Administration Committee on 224–6352.

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. COLEMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs will hold a field hearing in St. Paul, MN, entitled "Volatility in the Natural Gas Market: The Impact of High Natural Gas Prices on American Consumers," regarding the subcommittee's investigations into the natural gas market and allegations that price and supply manipulation have caused increasingly high and volatile natural gas prices. The subcommittee intends to hold a hearing to examine the impact higher prices have on the economy, business, and families, and the government's role in ensuring that natural gas prices are determined in a competitive and informed marketplace.

The subcommittee hearing is scheduled for Friday, February 10, 2006, at 10 a.m., at the James J. Hill Reference Library at 80 West 4th Street in St. Paul, MN. For further information, please contact Raymond V. Shepherd, III, staff director and chief counsel to the Permanent Subcommittee on Investigations, at 224–3721.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on February 2, 2006, at 10 a.m., to conduct a hearing on "Proposals to Reform the National Flood Insurance Program."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, February 2, 2006, at 9:30 a.m., to hold a hearing on tax treaties.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, February 2, 2006, at 2:30 p.m., to hold a hearing on nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental affairs be authorized to meet on Thursday, February 2, 2006, at 10 a.m. for a hearing titled, "Hurricane Katrina: The Role of the Governors in Managing the Catastrophe."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on "Executive Nominations" on Thursday, February 2, 2006 at 10 a.m. in Hart Senate Office Building, Room 226.

Panel I: Members of Congress TBA

Panel II: Paul J. McNulty to be Deputy Attorney General

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON VETERANS' AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Thursday, February 2, 2006, for a committee hearing titled "The Jobs for Veterans Act Three Years Later: Are VETS' Employment Programs Working for Veterans?"

The hearing will take place in room 418 of the Russell Senate Office Building at 10:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on February 2, 2006 at 10 a.m. to hold an open hearing on the World Threat.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on February 2, 2006 at 2:30 p.m. to hold a closed hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SPECIAL COMMITTEE ON AGING

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet tomorrow, February 2, 2006 from 10 a.m.–12 p.m. in Hart 216 for the purpose of conducting a hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. DORGAN. Mr. President, on behalf of Senator SCHUMER, I ask unanimous consent that Tovah Calderon, a detailee from the Department of Justice, be granted the privilege of the floor during today's session.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL WEEK OF PRAYER FOR UGANDA

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 366, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 366) affirming the importance of increased international action and a national week of prayer for the Ugandan victims of Joseph Kony's Lord's Resistance Army, and expressing the sense of the Senate that Sudan, Uganda, and the international community bring justice and humanitarian assistance to Northern Uganda and that February 2 through 9, 2006 should be designated as a national week of prayer and reflection for the people of Uganda.

There being no objection, the Senate proceeded to consider the resolution.

Mr. INHOFE. Mr. President, I want to speak about a matter of urgency and extreme concern to me that is going on right now in Uganda.

As my colleagues may know, I have spent much time in Africa, particularly in Uganda, talking with President Museveni.

The major issue that he and I discussed is the ongoing terrorist tragedy in his country. The Lord's Resistance Army, LRA, is a rebel paramilitary group formed in 1987 operating mainly in northern Uganda and southern Sudan. The group is engaged in an armed rebellion against the Ugandan Government in what is now one of Africa's longest-running conflicts.

It is led by a man named Joseph Kony who claims to be a spiritual medium and uses his influence to kidnap and murder thousands of innocent civilians, most of them children. Because of this twisted man and his army, the region has become one of the darkest spots of human atrocities worldwide.

Between 20,000 and 50,000 children have been kidnapped by the LRA for use as soldiers and sex slaves.

More than 1.6 million people have been forced to flee their homes, living in Internally Displaced People, IDP, camps. Every week 1,000 people die in the camps from the appalling conditions.

Though the Internally Displaced People camps were meant to provide security against the LRA attacks, they are now where most abductions take place.

It is estimated 40,000 children flee every night to bigger towns, seeking the safety in numbers, sleeping on street corners and in other public spaces. I recently saw a documentary on this titled "Invisible Children."

Up to 200,000 people have been killed in the violence, with many more dying from disease and malnutrition as a direct result of the conflict.

The conflict continues to retard Uganda's development efforts, costing the poor country's economy a cumulative total of at least $1.33 billion, which is equivalent to 3 percent of Uganda's GDP.

Last night, in his State of the Union address, President Bush declared we must, "take the offensive by encouraging economic progress, and fighting disease, and spreading hope in hopeless lands." He is absolutely right. We can no longer allow these atrocities in Uganda to go unnoticed and unaddressed; we must become more involved.

To that end I am supporting a resolution, S. Res. 366.

Further, I will include for the RECORD a letter to Secretary of State Rice signed by 34 organizations. This letter urges high-level attention to the situation in northern Uganda.

I will also include the text of United Nations Security Council, UNSC, Resolution 1653 dated January 27, 2006. This resolution "strongly condemns" the activities of the Lord's Resistance Army. The Resolution also reiterates the Security Council's demand "that all such armed groups lay down their arms and engage voluntarily and without any delay or preconditions in their disarmament and in their repatriation and resettlement."

UNSC Resolution 1653 "[r]equests the Secretary-General to make recommendations to the Council, as appropriate, on how best to support efforts by States in the region to put an end to the activities of illegal armed groups, and to recommend how United Nations agencies and missions—the United Nations Mission in the Sudan (UNMIS), MONUC and ONUB—can help, including through further support for the efforts of the governments concerned to ensure protection of, and humanitarian assistance to, civilians in need."

These words are long overdue, and are only the beginning. Thus far the action of the United Nations has been woefully inadequate. Words are not nearly enough. We need more action from the UN. If the United Nations is to be useful for the peoples of the world, this sort of problem is its highest and best use.

As for the role of the United States, I suggest that Secretary Rice and Permanent Representative Bolton actively engage in drafting the aforementioned recommendations to the Security Council.

I also strongly suggest to President Bush and our administration that they examine every aspect of his executive authority to relieve this suffering, including the new authorities Congress provided under Section 1206 of Public Law 109–163, the train-and-equip legislation.

I believe these will be significant steps toward shedding light into the darkness that has cloaked the ongoing Ugandan tragedy, ending the conflict, and drawing the region into a positive future. I ask members for their support and thank the dozens of Senators who have joined me as cosponsors of this bipartisan resolution.

Let us pray for a cessation of the horrors and evils in Uganda and the Sudan.

I ask unanimous consent to print the above-referenced documents in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JANUARY 30, 2006.

Re Crisis in Northern Uganda

Dr. CONDOLEEZZA RICE,
Secretary of State, Department of State,
Washington, DC.

DEAR SECRETARY RICE: We, the undersigned organizations call on the U.S. government to dedicate high-level attention to the situation in northern Uganda in order to help bring an end to the intractable conflict and catastrophic humanitarian conditions.

As you know, for the past 20 years, the people of northern Ugandan have endured a conflict involving the rebel Lord's Resistance

Army (LRA) and the Government of Uganda. More than 1.7 million people—eighty percent of the population—are displaced and forced to live in squalid internally displaced persons (IDP) camps. These camps remain largely unprotected and vulnerable to LRA attacks and abductions. The LRA has kidnapped more than 30,000 children from their homes—holding them hostage as soldiers, sex slaves, and bondservants. An estimated 35,000 children commute nightly to sleep in town centers in order to avoid violence and abduction. Nonetheless, these children, known as "night commuters", remain vulnerable to exploitation and sexual and physical abuse.

This deplorable humanitarian and human rights situation is the result of an ongoing conflict that continues to be a cause of instability in southern Sudan and, now, the broader Great Lakes. Threats to regional security are growing: the LRA has expanded its area of operation deeper into southern Sudan and, for the first time, into the Democratic Republic of the Congo (DRC). LRA attacks against southern Sudanese civilians threaten implementation of the Comprehensive Peace Agreement (CPA), and recent LRA incursions into the DRC have heightened existing tensions between the Ugandan and Congolese governments. Within this context of increasing regional instability, multiple actors regrettably continue to provide covert support to the LRA.

Establishing a secure environment requires urgent leadership from the U.S. Government to put in place a comprehensive regional approach that addresses LRA cross-border movements and prioritizes a resolution to the conflict, while simultaneously ensuring civilian protection, humanitarian access, and the reintegration of former combatants. To reduce civilian suffering, help consolidate peace in Sudan, and prevent further destabilization of the region, our organizations recommend the following actions:

United Nations Security Council Action

The continued presence of the Lord's Resistance Army in southern Sudan and its recent expansion into the DRC underscores the urgency for United Nations Security Council (UNSC) engagement. Under Secretary-General Jan Egeland's December 19, 2005 briefing on the humanitarian situation and the passage of UNSC Res. 1653 are welcome first steps towards engaging the Security Council on this issue, but greater action is required. We urge the US to take a leadership role at the United Nations to place northern Uganda on the UNSC agenda. The February 2006 US presidency of the UNSC would be an opportune time to galvanize action on this important issue. Specifically, the UN should do the following:

Continued encouragement and support for a regional solution to disarming groups within eastern DRC, Uganda, and southern Sudan. With the UNMIS mandate up for renewal in March, the United States should call on all relevant actors to accelerate the deployment of UNMIS and ensure that threats to civilians and disruption of humanitarian aid addresses the destabilizing presence of the LRA. Continued consideration should be given to the recommendations of the regional Tripartite Commission on Disarming groups in eastern DRC.

Appoint a Special UN Envoy for Northern Uganda who will work collaboratively with all local, regional, and international stakeholders to help mediate between all parties to end the conflict.

Create a panel of experts to investigate and monitor the activities of the LRA, as well as the networks supporting the LRA, and its impact on regional peace and security.

Call on all parties to declare an immediate ceasefire; encourage greater international diplomatic and financial support for ongoing mediation efforts, while ensuring a coordinated response to LRA activity in the area.

Call on the government of Uganda, in accordance with its national IDP policy, to adopt a security strategy that focuses on protection rather than confrontation, prioritizes civilian and aid convoy protection, and holds protection personnel accountable for crimes they commit.

Direct U.S. Support for Mediation

After 20 years of conflict, military victory is unlikely. Recent overtures made by the LRA leadership to negotiate are promising and greater international political pressure on all parties is needed to explore a peaceful solution. Approximately ninety percent of the LRA is comprised of children; further military aggression against the LRA only serves to inflict more violence upon these children. Former Ugandan Government Minister Betty Bigombe's mediation efforts deserve greater U.S. support. Accordingly, we strongly recommend that the State Department appoint a senior level advisor to coordinate efforts within the U.S. government, among the donors, and ensure that greater resources and material support are available for Bigombe as a negotiation strategy is developed.

Protection for Civilians and Humanitarian Workers

Efforts to protect civilians have languished and high-level involvement by the international community is needed. Eighty percent of the population is displaced and primarily dependent on limited international food assistance and services. The delegation of civilian protection and humanitarian worker security to local defense units (LDUs) both hinders humanitarian access and leaves IDPs vulnerable to LRA attacks. For example, at times LDU personnel have been inebriated while escorting humanitarian agencies, or sometimes have refused to provide escort unless provided with food. This gap in protection significantly hinders relief efforts and the population's ability to access employment, basic healthcare and education. Through US leadership, donor governments must work with the Ugandan government to devise a security strategy that prioritizes civilian protection instead of confrontational operations. This strategy must expand the area of protection around IDP camps to allow for greater civilian movement, so that the displaced can gain access to basic services and income generating opportunities.

Disarmament, Demobilization & Reintegration (DDR) Enhancement

In coordination with the government of Uganda, donors must develop and enact a comprehensive plan to draw LRA fighters out of this conflict and back into the community. Donors must provide adequate funding for DDR, including support for communities and children abducted by the LRA.

To conclude, we firmly believe that high-level engagement and sustained leadership by the United States will help bring an end to this conflict, which traps millions of children and families in despair and threatens ongoing peaceful transitions in Sudan and the DRC. We look forward to hearing from you about the Administration's plans to address this conflict.

Sincerely,

Africa Action, Africa Faith and Justice Network, Africare, Air Serv International, American Refugee Committee, CARE USA, Christian Children's Fund, Comboni Missionaries, Concern Worldwide US, Credo International, Evangelical Lutheran Church of America, Washington Office, Franciscans International, Friends Committee on National Legislation (Quakers), Gulu Walk International, Human Rights Watch, International Medical Corps, International Rescue Committee, Joan B. Kroc Institute for Peace and Justice, University of San Diego, Lutheran World Relief, MAP International, Maryknoll Office for Global Concerns, Mercy Corps, Missionary Oblates, The NAME Campaign, National Association of Evangelicals, National Jesuit Conference, Oxfam America, Refugees International, Save the Children, Today's Urban Renewal Network, Uganda Conflict Action Network, US Catholic Mission Association, Women's Commission for Refugee Women and Children, World Vision.

Resolution 1653 (2006)—Adopted by the United Nations Security Council at Its 5359th Meeting, on 27 January 2006

The Security Council, Recalling its resolutions and the statements by its President on the Great Lakes region of Africa and concerning the situation in the Democratic Republic of the Congo and in Burundi, and in particular resolutions 1649 and 1650 of 21 December 2005,

Recalling its resolution 1625 (2005) on strengthening the effectiveness of the Security Council and the role of civil society in the prevention and resolution of armed conflict, particularly in Africa,

Further recalling its resolution 1631 (2005) on cooperation between the United Nations and regional organizations and General Assembly resolution 59/213 (2004) on cooperation between the United Nations and the African Union,

Reaffirming its respect for the sovereignty, territorial integrity, unity and political independence of all States in the region, and recalling the importance of the principles of good-neighbourliness, non-interference and cooperation in the relations among States in the region,

Reiterating its condemnation of the genocide in Rwanda of 1994 and the armed conflicts which have plagued the Great Lakes region of Africa in the past decade and expressing its profound concern at the violations of human rights and international humanitarian law resulting in wide scale loss of life, human suffering and destruction of property,

Aware that the link between the illegal exploitation of natural resources, the illicit trade in those resources and the proliferation and trafficking of arms is one of the factors fuelling and exacerbating conflicts in the Great Lakes region of Africa, and especially in the Democratic Republic of the Congo,

Expressing its deep concern at the devastating impact of conflict and insecurity on the humanitarian situation throughout the Great Lakes region and their implications for regional peace and security, especially where arms and armed groups move across borders, such as the long-running and brutal insurgency by the Lord's Resistance Army (LRA) in northern Uganda which has caused the death, abduction and displacement of thousands of innocent civilians in Uganda, the Sudan and the Democratic Republic of the Congo,

Welcoming the efforts undertaken by the Tripartite Plus Joint Commission comprising Burundi, the Democratic Republic of the Congo, Rwanda and Uganda as a significant contribution to heightened dialogue between the countries of the Great Lakes,

Recalling its previous resolutions that reaffirmed the importance of holding an international conference on peace, security and stability in the Great Lakes region and recognizing the continued ownership of the process by the countries of the region with the facilitation of the United Nations, the African Union, the Group of Friends and all others concerned,

Taking note with satisfaction of the holding of the First International Conference on Peace, Security, Democracy and Development in the Great Lakes Region, in Dar es Salaam, on 19 and 20 November 2004,

Recognizing the "Good Neighbourly Declaration" of September 2003 by the representatives of Burundi, the Democratic Republic of the Congo, Rwanda and Uganda and the Dar es Salaam Declaration of 2004 adopted by the first Summit of the International Conference on the Great Lakes Region,

Recognizing the significant achievements and progress in the peace processes in the Great Lakes region, the recent installation of a democratically elected government in Burundi and progress in the transition to democratic institutions in the Democratic Republic of the Congo,

Expressing its gratitude to the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and to the United Nations Operation in Burundi (ONUB) for their significant contribution to peace in the region,

Paying tribute to the donor community for the assistance it is providing to the countries in the region, and encouraging it to maintain that assistance,

Welcoming General Assembly resolution 60/1 on the 2005 World Summit Outcome and in particular the commitment to address the special needs of Africa,

1. Commends the positive role played by the Secretary-General, the African Union, the Group of Friends of the Great Lakes region and other stakeholders in organizing and participating in the First Summit of the International Conference on Peace, Security, Democracy and Development in the Great Lakes Region of Africa;

2. Urges the countries of the Great Lakes region to continue in their collective efforts to develop a subregional approach for promoting good relations, peaceful coexistence, peaceful resolution of disputes as envisaged in the Dar es Salaam Declaration and encourages them, in partnership with the Special Representative of the Secretary-General and other stakeholders, to finalize the preparations for the second Summit to be held in Nairobi, including a clear focus on peace and security issues, with a view to adopting a Security, Stability and Development Pact for the countries of the Great Lakes region;

3. Calls upon the countries of the region to agree on confidence-building measures based on effective and concrete actions;

4. Encourages and supports the countries of the Great Lakes region, individually and collectively, to strengthen and institutionalize respect for human rights and humanitarian law, including respect for women's rights and protection of children affected by armed conflict, good governance, rule of law, democratic practices as well as development cooperation;

5. Encourages the development of the prevailing goodwill and relations among the countries of the region which have positively influenced the successful transition in Burundi and the course of the ongoing democratic transition in the Democratic Republic of the Congo;

6. Urges all States concerned to take action to bring to justice perpetrators of grave violations of human rights and international humanitarian law and to take appropriate measures of international cooperation and judicial assistance in this regard;

7. Expresses its support for the efforts by States in the region to build independent and reliable national judicial institutions in order to put an end to impunity;

8. Strongly condemns the activities of militias and armed groups operating in the Great Lakes region such as the Forces Démocratiques de Libération du Rwanda (FDLR), the Palipehutu-Forces Nationales de Liberation (FNL) and the Lord's Resistance Army (LRA) which continue to attack civilians and United Nations and humanitarian personnel and commit human rights abuses against local populations and threaten the stability of individual States and the region as a whole and reiterates its demand that all such armed groups lay down their arms and engage voluntarily and without any delay or preconditions in their disarmament and in their repatriation and resettlement;

9. Stresses the need for the States in the region, within their respective territories, to disarm, demobilize and cooperate in the repatriation or resettlement, as appropriate, of foreign armed groups and local militias, and commends in this regard the robust action of MONUC, acting in accordance with its mandate, in support of the Forces Armées de la République Démocratique du Congo (FARDC) in the eastern part of the Democratic Republic of the Congo;

10. Underscores that the governments in the region have a primary responsibility to protect their populations, including from attacks by militias and armed groups and stresses the importance of ensuring the full, safe and unhindered access of humanitarian workers to people in need in accordance with international law;

11. Calls upon all States in the region to deepen their cooperation with a view to putting an end to the activities of illegal armed groups, and underlines that these States must abide by their obligations under the Charter of the United Nations to refrain from the threat or use of force against the territorial integrity or political independence of their neighbours;

12. Urges the international community, non-governmental organizations and civil society to increase humanitarian assistance to civilians affected by displacements and violence from years of protracted conflicts in the Great Lakes region;

13. Commends the efforts of the United Nations Organization Missions in the region in accordance with their respective mandates, to protect civilians, including humanitarian personnel, to enable delivery of humanitarian aid and to create the necessary conditions for the voluntary return of refugees and internally displaced persons;

14. Requests the Secretary-General to make recommendations to the Council, as appropriate, on how best to support efforts by States in the region to put an end to the activities of illegal armed groups, and to recommend how United Nations agencies and missions—the United Nations Mission in the Sudan (UNMIS), MONUC and ONUB—can help, including through further support for the efforts of the governments concerned to ensure protection of, and humanitarian assistance to, civilians in need;

15. Calls upon the countries of the region to continue in their efforts to create conducive conditions for voluntary repatriation, safe and durable integration of refugees and former combatants in their respective countries of origin. In this regard, calls for commensurate international support for refugees and reintegration and reinsertion of returnees, internally displaced persons and former combatants;

16. Calls upon the countries of the region to reinforce their cooperation with the Security Council's Committee and with the Group of Experts established by resolution 1533 (2004) in enforcing the arms embargo in the Democratic Republic of the Congo and to combat cross-border trafficking of illicit small arms, light weapons and illicit natural resources as well as the movement of combatants, and reiterates its demand that the Governments of Uganda, Rwanda, the Democratic Republic of the Congo and Burundi take measures to prevent the use of their respective territories in support of the activities of armed groups present in the region;

17. Urges the governments concerned in the region to enhance their cooperation to promote lawful and transparent exploitation of natural resources among themselves and in the region;

18. Welcomes the establishment of the Peacebuilding Commission and underlines its potential importance to the work of the Security Council in this region;

19. Invites the international community, including regional organizations, international financial institutions and relevant bodies of the United Nations system, to support and complement the peacebuilding and development initiatives required to sustain peace, security and stability in the countries of the Great Lakes region;

20. Decides to remain seized of the matter.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 366) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 366

Whereas, Joseph Kony has led the Lord's Resistance Army (LRA) since 1987, terrorizing the region of Northern Uganda;

Whereas, up to 200,000 people have been killed in violent conflict and from disease and malnutrition;

Whereas, 80 to 90 percent of Kony's fighters are enslaved children—brutalized and brainwashed to kill;

Whereas, sources estimate that between 20,000 and 50,000 children have been abducted by the LRA since 1987;

Whereas, these children are sexually abused, raped, beaten, taunted and traumatized by older soldiers in the LRA;

Whereas, these children are maliciously coerced to mutilate, rape, and murder others, even their own family members and friends;

Whereas, LRA leaders often force the friends and siblings of unsuccessful escapees to carry out vicious punishments to further the LRA's culture of fear, intimidation and guilt;

Whereas, even those children who do manage to escape are unspeakably traumatized, often infected with sexually transmitted diseases, and stigmatized by society;

Whereas, approximately 40,000 children in rural Uganda trek miles into towns each night to sleep under the protection of soldiers and attempt to avoid capture;

Whereas, more than 1.6 million people have been forced to flee their homes;

Whereas, the conflict has slowed Uganda's development efforts, costing the country at least $1.33 billion, or 3 percent of its GDP;

Whereas, starting in October 2005, the Sudan government gave Joseph Kony a three month grace period to surrender;

Resolved, That it is the sense of the Senate—

(1) That the government of Sudan continue to prosecute LRA terrorists within its borders and aid Uganda in ending the conflict;

(2) That Uganda use every available resource to end the atrocities of the LRA and bring its members to justice;

(3) That the United States and international community recognize the atrocities occurring daily in Uganda and provide necessary humanitarian assistance;

(4) That the week of February 2 through 9, 2006 should be designated as a National Week of Prayer and Reflection for the people of Northern Uganda.

ORDER FOR SIGNING AUTHORITY

Mr. FRIST. Mr. President, I ask unanimous consent that during the adjournment of the Senate, the majority leader and the majority whip be authorized to sign duly enrolled bills or joint resolutions.

The PRESIDING OFFICER. Without objection, it is so ordered.

GEORGE WASHINGTON'S FAREWELL ADDRESS

Mr. FRIST. Mr. President, I ask unanimous consent that notwithstanding the resolution of the Senate of January 24, 1901, the traditional reading of Washington's Farewell Address take place on February 17 at a time to be determined by the majority leader in consultation with the Democratic leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR MONDAY, FEBRUARY 6, 2006

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 2 p.m. on Monday, February 6. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then proceed to a period for the transaction of morning business, with Senators allowed to speak for up to 10 minutes each. I further ask that if a cloture motion is filed during Monday's session on the motion to proceed to S. 852, the asbestos bill, and notwithstanding the provisions of rule XXII, that vote occur at 6 p.m. on Tuesday, February 7, with the mandatory live quorum waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, it has been a very long day, but a very productive day with the ultimate passage of the Tax Relief Act by a vote of 66 to 31. In addition, just a short time ago, we passed the temporary extension of a very important bill, the PATRIOT Act. We will start debate on the motion to proceed to the asbestos legislation on Monday. A cloture vote on the motion to proceed will occur on Tuesday at 6 p.m. We do have Members who will be attending the funeral of Coretta Scott King on Tuesday; therefore, we are postponing that vote until 6 p.m.

ADDITIONAL COSPONSOR

Mr. FRIST. Mr. President, I ask unanimous consent that Senator BUNNING be added as a cosponsor to the Rockefeller amendment adopted earlier.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL MONDAY, FEBRUARY 6, 2006, AT 2 P.M.

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 10:28 p.m., adjourned until Monday, February 6, 2006, at 2 p.m.

SENATE—*Monday, February 6, 2006*

The Senate met at 2 p.m. and was called to order by the PRESIDENT pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O God, the center of our joy, we find our delight in You. Thank You for giving us the desire to commit our lives to You and to trust You to fulfill Your purposes for creating us. Cleanse our hearts and thoughts so that we will be worthy to live in Your presence.

Bless our lawmakers. Give them confidence in You that will free them from fear of an uncertain future. May they live lives that boldly proclaim that You are at work in our world. Remind them of their accountability to You and that to whom much is given, much is expected.

Help us all to love others with the kind of love we have received from You. Lead us from blindness to sight and from illusion to reality. Make us grateful and faithful stewards of Your blessings, as we rejoice to be Your sons and daughters.

Today, we again remember Your daughter, Coretta Scott King.

We pray in Your loving Name.

Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this afternoon we have scheduled a period of morning business. I mentioned at the close of business last week that it had been my intention to begin consideration today of the bipartisan asbestos legislation. Unfortunately, we are unable to start consideration of the bill itself today because of an objection that has come forth from the other side of the aisle. Therefore, it will be necessary to file a cloture motion on the motion to proceed to the asbestos bill. Unfortunately, this will delay starting the bill, but I hope cloture will be invoked and we will be able to discuss the substance of that bill.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005—MOTION TO PROCEED

Mr. FRIST. Mr. President, I now move to proceed to Calendar No. 131, S. 852, the Fairness in Asbestos Injury Resolution Act.

Further, I ask unanimous consent that the motion be set aside until 3 p.m. today. Before the Chair rules, we expect Chairman SPECTER to begin the debate at 3, and we welcome additional speakers to come down this afternoon on the topic of asbestos reform.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FRIST. Mr. President, I will have more to say on the significance of this bill in a few minutes. We will be filing the necessary cloture motion prior to adjourning today. Under the order from last week, that vote will occur at 6 p.m. tomorrow night. I will be leading a bipartisan Senate delegation attending the funeral of Coretta Scott King tomorrow, and we delayed that vote to accommodate the travel of those Senators. So that vote will be at 6 o'clock tomorrow night.

For the remainder of the week, we expect to be on the asbestos bill and to make progress on consideration of that important piece of legislation by considering relevant amendments. Senators can expect votes each day as we debate and vote on those amendments.

We also may have to revisit the Tax Increase Prevention Act, the Tax Relief Act, this week once again when we receive the House message on the bill. We passed that bill last week by a vote of 66 to 31. We discussed a whole range of amendments and voted on the amendments at the end of last week. It is time to get that bill to conference. I hope that we can work together to come to an agreement and arrangement to get that bill to conference without much of a delay. I will be talking to the Democratic leader as we determine how to expedite that process.

I encourage Members to come to the floor this afternoon to discuss the asbestos litigation that we will begin formally on Tuesday, if allowed by the motion to proceed. For this piece of legislation, it is now or never. I said months ago we would be considering the asbestos litigation or asbestos reform early on, and that time has now come.

CHICKAMAUGA LOCK IN TENNESSEE

Mr. FRIST. Mr. President, on another issue, I rise to briefly address an issue that is of critical importance to Tennessee, to the region around Tennessee, and to economic development.

Every year, millions of tons of cargo pass through Chickamauga Lock in my home State of Tennessee. This critical structure is the commercial gateway to more than 300 miles of navigable waterways that serve 16 States in the region. Workers, small business owners, and communities all across that region depend on the lock to work smoothly every day, around the clock.

But all of this is at risk. All of this is in danger. After 65 years, Chickamauga Lock needs to be replaced. It is being destroyed by a chemical reaction known as "concrete growth." The lock is crumbling and engineering experts tell us that it is only a matter of time before the lock fails, and we cannot let that happen.

That is why I want to draw attention to the President's request today, which came out in the budget, to fund continued construction of the new lock. It is the first White House budget proposal to contain construction funding since Congress authorized that new lock in 2003. I thank the President for his attention to this pressing issue.

I have held countless conversations with the administration on the importance of constructing the new lock, and I appreciate the President and the administration taking this bold action.

America's transportation system is the lifeblood of our economy. Without airports and railways and seaports and highways, our products would never have the opportunity to be moved, goods would never be exchanged in the global marketplace, and commerce would simply come to a halt.

One of the most overlooked elements of America's transportation network is our inland waterway system. Commerce literally flows over and through a vast network of more than 12,000 miles of inland and coastal waterways. Water transportation is often the most efficient, inexpensive, and environmentally friendly method of shipping cargo over long distances.

In 2003, with my support, Congress authorized the construction of a new lock that would meet the region's economic needs. I fought hard to provide the necessary Federal funding to begin work on this project and worked closely with the administration to ensure adequate funding is available to get the job done.

Today's budget request of $27 million represents a major investment, and we

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

are all working together as a team to make it a success.

I am tremendously proud of all the hard work that has taken place to reserve this vital economic corridor. Moving forward with this construction is important to our transportation infrastructure, and my colleagues and I have worked hard to make sure that new lock is built.

In fact, I particularly thank Congressman ZACH WAMP for his tremendous leadership in this endeavor.

While there is a lot more to be done in replacing that Chickamauga Lock, it is a major priority to me, and I will continue to work with my colleagues at the local, State, and Federal levels to make this project a success.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The Senator from West Virginia is recognized.

MINE DISASTERS

Mr. BYRD. Mr. President, it has been 36 days since 12 coal miners perished at the Sago Mine in Upshur County, WV. One died from the explosion that ripped through the underground mine. The other 11 succumbed to carbon monoxide poisoning.

It has been 18 days since two coal miners perished in an underground fire at the Aracoma Alma in Logan County, WV. It has been 5 days since two miners perished in separate mine accidents in Boone County, WV.

Sixteen coal miners dead, in four separate accidents, in only 36 days.

These deaths have shaken communities across the State of West Virginia and alarmed a nation. Three additional coal mine fatalities in the States of Utah and Kentucky in the last 28 days confirm that this series of accidents is national in scope and demands swift action.

Mr. President, after years of delay, the Coal Mine Safety and Health Administration at last acknowledges the need to reassess some technology and regulations but cannot give any definite timetable about when the action will be taken. I, for one, do not want to see more delay. This Federal Government, which is empowered by our Constitution to "promote the general welfare"—and that applies to our Nation's coalfields as well as anywhere else—must not wait.

The West Virginia congressional delegation has introduced legislation outlining a series of actions that can be taken immediately to make America's coal mines safer. We know, for example, that technology exists right now to improve mine rescue communications. We know that additional emergency breathing devices can be stored in the mines. We can do these things today, right now. The Senate could pass the West Virginia delegation bill today to implement these requirements in the mines.

I have asked the Republican and Democratic leadership to schedule immediate action on this matter. The Democratic leadership has pledged to do everything it can, and the Republican leadership has been very positive in its response. A bipartisan and growing coalition of Senators from mining and nonmining States has asked to be added as cosponsors to our legislation. They recognize its importance and the need for its immediate passage.

I have spoken with the chairman and with the ranking member of the Senate Health, Education, Labor, and Pensions Committee, and they fully understand the urgency driving this legislation. They not only organized a committee trip to Sago Mine in January, but they also committed to reviewing the West Virginia delegation bill within hours of its introduction. These Senators are on our side.

I am confident they will do all they can do to ensure quick action. I am happy to work with all Members of the Senate to expedite passage of this bill. With quick work, I see no reason why this Senate cannot move expeditiously. We should and, in fact, we must. Every day we delay increases the risk for coal miners in the field.

While four deadly accidents in the past 36 days occurred in West Virginia, any State in the Union with coal mines could be next. Today it is my State of West Virginia and the States of Kentucky and Utah that mourn the tragic loss of life in our coal mines. Tomorrow it could be Pennsylvania, Alabama, Indiana, Virginia, Ohio, or Illinois. Who knows.

I was at the memorial service for the miners who died in the Sago mine disaster. I saw their families. I saw their grief. I saw their pain. I have no desire to see more. The longer we wait to approve this legislation, the more likely it is that additional miners will die. If more miners die, more mines could be closed and for longer periods of time in order to ensure safety. Mine closures not only will put families out of work but will also disrupt coal and energy production, with the economic effects rippling across the national economy.

We must never forget that a coal miner has the legal right to walk out of an unsafe coal mine. A miner cannot be forced to work if he or she feels their life is threatened. Today when coal provides such an important part of this Nation's energy supply and our Nation is dangerously dependent upon foreign oil, we must keep our coal mines open and operating, but first we must make them safe.

For the sake of America's coal miners, for the sake of their families and their communities, and for the sake of the energy security of our Nation, I urge that this much-needed legislation be approved as soon as possible. There is a moral imperative to act, and we must not delay.

Mr. President, I ask unanimous consent that Senators SPECTER, KERRY, and CLINTON be added as cosponsors of S. 2231, the Federal Mine Safety and Health Act of 2006.

The PRESIDING OFFICER (Mr. SUNUNU). Without objection, it is so ordered.

Mr. BYRD. Mr. President, I thank the Senate, and I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I commend my friend and colleague from West Virginia for once again giving focus to this issue of national proportion and importance. I know he recognizes that those extraordinary mine tragedies at Sago struck the heart and soul of all Americans. I had the opportunity to visit with the families from that community. I want him to know that as a member of the HELP Committee, which has some jurisdiction over the measure he introduced, we are going to work closely with him to ensure, to the greatest extent possible, safety for miners.

We have seen an example of what has been done in Canada with the 36 or 37 miners who were locked in the bowels of a mine for several days and they walked out because they had oxygen available. We have seen other miners who have been saved in other parts of the world, such as Australia, because they had communications which permitted them to be warned about the dangers of mines.

He raises an issue that is of central importance, not just to the people of West Virginia but to all who care about those families who make such a difference not only to their communities but to our country and to our energy needs. I thank him and look forward to working with him.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Massachusetts, Mr. KENNEDY. He is always sensitive to the problems that occur in West Virginia. He is always mindful of the coal miners and their problems, their sorrows.

I thank him for being such a steadfast partner with the two West Virginia Senators and such a steadfast friend throughout the years to our fellow West Virginians. I thank the Senator.

Mr. KENNEDY. Mr. President, at the present time, the Judiciary Committee is meeting with the Attorney General. I am necessarily absent from that meeting so I can make comments on the asbestos legislation which is now pending. I will return.

As I understand it, Senators SPECTER and LEAHY and others involved will have a chance to speak. I ask unanimous consent to speak in morning business for 25 minutes, if there is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

ASBESTOS

Mr. KENNEDY. Mr. President, the real crisis which confronts us is not an asbestos litigation crisis, it is an asbestos-induced disease crisis. Asbestos is the most lethal substance ever widely used in the workplace. Between 1940 and 1980, there were 27 million workers in this country who were exposed to asbestos on the job, and nearly 19 million of them had high levels of exposure over long periods of time. That exposure changed many of their lives. Each year, more than 10,000 of them died from lung cancer and other diseases caused by asbestos. Each year hundreds of thousands of them suffer from lung conditions which make breathing so difficult that they cannot function at all. Even more have become unemployable due to their medical condition, and because of the long latency period of these diseases, all of them live with fear of premature death due to asbestos-induced disease. These are the real victims. They deserve to be the first and foremost focus of our concern.

As this chart indicates, asbestos mortality will likely peak around 2015, reflecting the heavy exposures in the 1970s. We are going to see this is not an issue that is going to diminish, in terms of the impact on the workers, workers' lives, their families, and their communities, but is actually going to increase in terms of those who are going to be adversely impacted and affected.

All too often the tragedy these workers and their families are enduring becomes lost in a complex debate about the economic impact of asbestos litigation. We cannot allow that to happen. The litigation did not create these costs; exposure to asbestos created them. They are the costs of medical care, the lost wages of incapacitated workers, and the cost of providing for the families of workers who died years before their time. Those costs are real. No legislative proposal can make them disappear. All legislation can do is shift those costs from one party to another. Any proposal which would shift more of the financial burden on to the backs of injured workers is unacceptable to me and should be unacceptable to every one of us.

I have consistently said throughout the long debate on asbestos legislation that I would support a properly designed and adequately funded trust fund bill. That legislation would have to fairly compensate all the victims of asbestos-induced disease in a timely way. It would put more money into the pockets of these injured workers than the current system of reducing transaction costs. This is not such a bill.

Senators SPECTER and LEAHY have devoted an enormous amount of time and effort to this asbestos trust fund legislation. They deserve great credit for their work. But the bill before us contains fundamental flaws which make it both unfair and unworkable. It does not provide a reliable guarantee of just compensation to the enormous number of workers who are suffering from asbestos-induced disease.

The argument that there are serious inadequacies in the way asbestos cases are adjudicated today does not mean any legislation is better than the current system. Our first obligation is to do no harm. We should not be supporting legislation that excludes many seriously ill victims from receiving compensation and that fails to provide a guarantee of adequate funding to make sure injured workers will actually receive what the bill promises them. This bill will do harm.

The problem is that powerful corporate interests responsible for the asbestos epidemic have fought throughout this process to escape full accountability for the harm they have inflicted and, as a result, the focus has shifted from what these companies should pay victims to what they are willing to pay victims. That is preventing the Senate from enacting trust fund legislation that will truly help the workers who have been seriously injured by this industrial plague.

The Senate should not be proceeding to this asbestos bill at this time. Despite all the work Senators SPECTER and LEAHY and other supporters have done, S. 852 is simply not ready for floor consideration. There are too many unanswered questions, and the numbers do not add up.

This legislation does not provide sufficient funding to keep the promises of compensation it makes to those asbestos victims it purports to cover. Even if the entire $140 billion the sponsors anticipate raising is paid to the fund, it will not be sufficient to fully compensate the projected number of eligible victims, and it is extremely unlikely the full amount will ever be paid.

The formula in the bill is based on highly questionable estimates of the number of companies that would be required to contribute and how much each one would pay, contained in a secret list known only to the asbestos study group, the key lobbyists for the bill. None of the relevant information has ever been made public. There is reason to believe far fewer companies would be contributing than the ASG projects. There will also be serious court challenges brought against the new law that are certain to at least significantly delay statutorily mandated payments and could result in the loss of substantial anticipated revenue.

Because of these problems, seriously ill victims are likely to wait for years in legal limbo, unable to proceed in court and unable to obtain compensation from the trust fund if this bill passes.

The legislation also fails to permit victims to quickly return to the court system should the trust fund become insolvent. Victims are the losers at both ends.

These problems are far too complex to be fixed on the Senate floor with a few last-minute amendments. If they could not be resolved in the 3 years that the many Senators have worked on this bill, they cannot be corrected in a few days. S. 852 is the legislative version of the famous Spruce Goose—an ill-conceived plan too complex and cumbersome to ever get off the ground. As designed, it simply will not work. It is not a reliable vehicle for compensating the victims of asbestos disease. It should be sent back to the drawing board.

The list of serious flaws of S. 852 is, unfortunately, a long one. I will focus my remarks on several of the most egregious.

First, the financial inadequacy. Experts tell us that the asbestos trust fund created by this legislation is seriously underfunded. The funding plan in this bill relies on very substantial borrowing in the early years as the only way to pay the flood of claims. The result will be a huge debt service cost over the life of the trust that could reduce the $140 billion intended to pay claims by as much as $30 billion or $40 billion. The amount remaining would be far too little to pay claims to cover all those who are entitled to compensation under the terms.

In addition, there is a strong constitutional argument that the existing bankruptcy trusts cannot be forced to turnover all their assets, which will place $7.6 billion of the projected funding in jeopardy. Many companies are also likely to challenge their obligation to finance the asbestos trust. It is not at all clear how much will actually be available to pay eligible victims what the legislation promises they will receive.

CBO's analysis of S. 852 raises serious concerns about the adequacy of funding. The report states:

> CBO expects that the value of valid claims likely to be submitted to the fund over the next 50 years could be between $120 and $150 billion, not including possible financing (debt services) costs and administrative expenses. The maximum actual revenues collected under the bill would be around $140 billion, but could be significantly less. Consequently, the fund may have sufficient resources to pay all asbestos claims over the

> next 50 years, but depending on claim rates, borrowing, and other factors, its resources may be insufficient to pay all such claims.

There is likely to be a serious shortfall in the early years, when nearly 300,000 pending cases will be transferred to trust for payment. Studies show the trust will not have the resources to pay those claims in a timely manner. Payments to critically ill people may be delayed for years.

One way to reduce the enormous financial burden on the fund in the early years would be to leave many of those cases in the tort system, especially cases which were close to resolution. That would be fair to the parties in those cases and it would greatly improve the financial viability of the fund. Unfortunately, that proposal has been repeatedly rejected by the sponsors of the bill. As a result, there will be a serious mismatch between the number of claims the trust fund will face when its doors open and the payments begin coming into the fund. That will force major borrowing in the first 5 years. The debt service resulting from that borrowing will financially cripple the trust.

In its report, CBO recognizes the seriousness of this debt-service problem, explaining:

> Because expenses would exceed revenues in many of the early years of the fund's operations, the Administrator would need to borrow funds to make up the shortfall. The interest cost of this borrowing would add significantly to the long-term costs faced by the fund and contributes to the possibility that the fund might become insolvent.

This is only one of several major financing problems with S. 852 that experts have identified. There are also major questions about the projections of pending and future claims that further cloud the trust fund's financial viability.

For example, there has been a significant increase in the number of mesothelioma cases in recent years. The only known cause of mesothelioma is asbestos exposure. This new information suggests that the CBO cost estimate may understate the cost of the mesothelioma claims that the trust fund will incur by more than $15 billion. This is by no means the only instance where there is strong evidence to suggest that the number of eligible claimants will substantially exceed CBO estimates.

If S. 852 is enacted, the United States Government will be making a commitment to compensate hundreds of thousands of seriously ill asbestos victims but will not have ensured that adequate dollars are available to honor its commitment. That will precipitate a genuine asbestos crisis, and this Congress will bear the responsibility for it.

The legislation before us would close the courthouse doors to asbestos victims on the day it passes, long before the trust fund will be able to pay their claims. Their cases will be stayed immediately. Seriously ill workers will be forced into a legal limbo for up to 2 years. Their need for compensation to cover medical expenses and basic family necessities will remain, but they will have nowhere to turn for relief.

Under the legislation, even exigent health claims currently pending in the courts will be automatically be stayed for 9 months as of the date of enactment. An exigent health claim is one in which the victim has been diagnosed "as being terminally ill from an asbestos-related illness and having a life expectancy of less than one year."

By definition, these cases all involve people who have less than a year to live due to mesothelioma or some other disease caused by asbestos exposure. Their cases would all be stayed for 9 months. Nine months is an eternity for someone with less than a year to live. Many of them will die without receiving either their day in court or compensation from the trust fund.

The stay language is written so broadly that it would even stop all forward movement of a case in the court system. A trial about to begin would be halted. An appellate ruling about to be issued would be barred. Even the deposition of a dying witness could not be taken to preserve his testimony. The stay would deprive victims of their last chance at justice. I cannot believe that the authors of this bill intended such a harsh result, but that is what the legislation does.

The bill does contain language allowing an "offer of judgment" to be made during the period of the stay in the hope of producing a settlement. However, this provision is unlikely to resolve many cases because it requires the agreement of the defendants. There is no incentive for defendants to agree to a settlement when the case has been stayed. Those who have tried cases know that it is only the imminence of judicial action which produces a settlement in most cases. Delay is the defendant's best ally; and under this bill, the case is at least delayed for 9 months and may never be allowed to resume if the fund becomes operational. If, however, these exigent cases were not stayed, and judicial proceedings could continue, there would be far more likelihood of cases settling under the offer of judgment process.

I strongly believe that, at a minimum, all exigent cases should be exempted from the automatic stay in the legislation. Victims with less than a year to live certainly should be allowed to continue their cases in court uninterrupted until the trust fund became operational. Their ability to recover compensation in the court should not be halted until the trust fund is operational and they are able to receive compensation from that Fund. It is grossly unfair to leave these dying victims in a legal limbo. For them, the old adage is especially true—justice delayed is justice denied.

Under the legislation, defendants would receive a credit against what they must contribute to the trust fund for whatever payments they make to these dying victims; so they would not be "paying twice," as some have claimed.

Allowing the exigent cases to go forward in the courts without interruption is a matter of simple fairness. Staying the cases of victims who have less than a year to live is bureaucratic insensitivity at its worst. Most of these victims will not live to see the doors of the trust fund open.

We should not deprive them of their last chance—their only chance—to receive some measure of justice before asbestos-induced disease silences them. They should be allowed to receive compensation in their final months to ease their suffering. They should be allowed to die knowing that their families are financially provided for. S. 852 in its current form takes that last chance away from them.

The way the legislation is written, victims will lose out at the back end of the process as well, should the trust fund run out of money after several years of operation.

If the trust fund does become insolvent, a very real possibility, workers will not have an automatic right to immediately return to the court system. The process outlined in the current bill could take years. Workers could end up trapped in the trust with reduced benefits and long delays in receiving their payments. There needs to be a clear, objective trigger—inability of the trust to pay a certain percentage of claims within a set period of time—that will automatically allow victims to pursue their claims in court if the trust runs out of money. The Judiciary Committee's 2003 legislation contained such a provision, but this bill does not. We cannot allow seriously injured workers with valid claims who are not paid in a timely manner by the trust to be denied their day in court. That would be a shameful injustice.

The asbestos trust is being presented as an alternative source of compensation for victims suffering from asbestos-induced disease. If that alternative runs out of money and can no longer compensate those victims in a full and timely manner, their right to seek compensation through the judicial system should be immediately restored with no strings attached. No principle is more basic. Yet, this bill violates that principle.

I am particularly upset by the way lung cancer victims are treated in this bill. Under the medical criteria adopted by the Judiciary Committee overwhelmingly 2 years ago, all lung cancer victims who had at least 15 years of weighted exposure to asbestos were eligible to receive compensation from the fund. However, that was changed in S. 852. Under this bill, lung cancer victims who have had very substantial exposure to asbestos over long periods of time are denied any compensation unless they can show asbestos scarring on their lungs. The committee heard expert medical testimony that prolonged asbestos exposure dramatically increases the probability that a person will get lung cancer even if they do not have scarring on their lungs. Deleting this category will deny compensation to more than forty thousand victims suffering with asbestos-related lung cancers. Under the legislation as now drafted, these victims are losing their right to go to court, but are receiving nothing from the fund. How can any of us support such an unconscionable provision?

Since we began considering asbestos legislation, no aspect has concerned me more than the treatment of lung cancer victims. My top priority has been to make sure that these severely ill workers receive just and fair compensation, and I have not been alone. A number of other members have spoken out about the importance of adequately providing for lung cancer victims who have been exposed to substantial amounts of asbestos over long periods of time.

Now we find that these victims, many of whom will have their lives cut short because of asbestos-induced disease, will not receive one penny in compensation from the trust fund. They are losing their right to go to court, but are also being denied any right to compensation under the fund. They are, in essence, being told to suffer in a legally imposed silence with no recourse whatsoever.

One of the arguments we hear most frequently in favor of creating an asbestos trust fund is that in the current system, too much money goes to people who are not really sick and too little goes to those who are seriously ill. Well, lung cancer victims who have years of exposure to asbestos are the ones who are seriously ill. They are the ones this legislation is supposed to be helping. Yet, they are being completely excluded.

The committee heard extensive testimony from distinguished medical experts—Dr. Laura Welsh and Dr. Philip Landrigan—that prolonged exposure to asbestos can cause lung cancer even if the victim does not also have markers of nonmalignant asbestos disease. They cited numerous medical authorities supporting their position. They even described treating lung cancer victims whose disease was clearly caused by asbestos but who had neither pleural thickening or asbestosis.

In a situation where people are undeniably severely ill and undeniably had 15 or more years of weighted exposure to asbestos, it is wrong to completely exclude them from compensation under the trust fund. Some of the proponents of S. 852 have attempted to justify excluding them by claiming that smoking probably caused their lung cancers. But, the evidence refutes this contention.

First, even those lung cancer victims with 15 or more weighted years of exposure to asbestos who had never smoked were removed from eligibility for compensation under the trust fund. So, this is about more than just the relationship between asbestos and smoking.

Second, regarding the smoking issue, Dr. Landrigan testified that smokers who have substantial exposure to asbestos have 55 times the background risk of developing lung cancer, while smokers who were not exposed to asbestos have 10 times the background risk of developing lung cancer. Clearly, the asbestos exposure makes a huge difference.

There is a powerful synergistic effect between asbestos and tobacco in the causation of lung cancer. Both are substantial contributing factors to the disease. The smoker with substantial asbestos exposure should receive less compensation from the trust fund than the nonsmoker with lung cancer. That principle appears throughout the bill. But smoking is not a reason to exclude the smoker from all compensation.

Asbestos and tobacco are analogous to joint tortfeasors. Each is partly responsible and each should pay a proportionate share of the compensation. Without prolonged exposure to asbestos, the smoker would have been far less likely to contract lung cancer. It is a gross injustice to completely exclude these severely ill workers.

This bill also tampers with the agreed-upon medical criteria carefully negotiated between representatives of business and labor by raising the standard of proof for each disease category. The language in S. 852 requires the workers to prove that asbestos was "a substantial contributing factor" to their disease, instead of just "a contributing factor."

This is a major increase in the burden workers must overcome to receive compensation. It is significantly higher than most states currently require in a court of law. Rather than having to show that asbestos exposure contributed to their illness, they will now have to address the relative impact of asbestos and other potential factors. This change is a serious step in the wrong direction, raising the bar even higher on injured workers.

Another major shortcoming of this legislation is its failure to compensate the residents of areas that have experienced large-scale asbestos contamination. S. 852 simply pretends that this problem does not exist. It fails to compensate the victims of all asbestos-induced diseases, other than mesothelioma, whose exposure was not directly tied to their work. There is very substantial scientific evidence showing that the men, women and children who lived in the vicinity of asbestos-contaminated sites, such as mining operations and processing plants, can and do contract asbestos-induced disease.

The reason that this legislation needs a special provision to compensate the residents of Libby, MT, is because it does not compensate victims of community contamination generally. The residents of Libby are certainly entitled to compensation, but so are the residents who lived near the many processing plants from Massachusetts to California that received the lethal ore from the Libby mine. The deadly dust from Libby, MT was spread across America. W.R. Grace shipped almost 10 billion pounds of Libby ore to its processing facilities between the 1960s and the mid 1990s. One of the places it was shipped was to the Town of Easthampton, MA, where the operations of an expanding plant spread the asbestos to the surrounding environment, into the air and onto the soil. I intend to discuss this problem in great detail as the debate moves forward.

I raise it now as a dramatic example of one of the major injustices caused by the arbitrary exclusion of a large number of asbestos victims from compensation under the trust fund.

The red spots on this chart show where these other communities were contaminated. The larger the spot, the more shipments. We can see these spots all over the country. Yet these communities are not compensated for it, although one community is; other communities are not.

The problem of (community contamination is not limited to the sites receiving ore from Libby. Community asbestos contamination can result from many different sources. For example, medical experts believe it may result from exposure to asbestos after the collapse of the World Trade Center. Because of the long latency period, we often do not learn about community asbestos contamination until long after it occurs. Certainly these victims of asbestos are entitled to fair treatment as well. They should not be arbitrarily excluded from compensation as if their suffering is somehow less worthy of recognition than the suffering of other asbestos victims. Yet, that is what S.852 does.

This is a bill that shifts more of the financial burden of asbestos-induced disease to injured workers by unfairly and arbitrarily limiting the liability of defendants. It does not establish a fair and reliable system that will compensate all those who are seriously ill due to asbestos. It lacks a dependable funding stream which can ensure that all who are entitled to compensation actually receive full and timely payment. These are very basic shortcomings.

We cannot allow what justice requires to be limited by what the wrongdoers are willing to pay. I intend to vote "no" and I urge my colleagues to do the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, I ask unanimous consent to address the Senate until 3 p.m.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ALEXANDER. Thank you, Mr. President. The Presiding Officer will be relieved because I am to preside at 3 p.m.

NUCLEAR POWER

Mr. ALEXANDER. Mr. President, today, President Bush made an announcement of something he calls the Global Nuclear Energy Partnership. It is part of the President's 2007 budget for the U.S. Department of Energy. In that budget, at a time when there is not much extra money, there is $250 million to deal with the objectives of the Global Nuclear Energy Partnership.

Part of the initiative we have heard about before. It calls for advanced technology for nuclear reactors—reactors from which we can produce clean energy, reactors which are smaller than the reactors that we have today that produce about 20 percent of all the electricity we use in the United States. But I want to call attention to a part of the President's proposal which we have not heard much about before—at least from him—that is the part about reprocessing and recycling the fuel that is used in nuclear reactors. That has been something we haven't been doing in the United States for a long time, except in limited cases, and it is something that requires a great deal of attention. My hope is that, while it is a small part of a large budget, the idea of reprocessing and recycling spent fuel from nuclear reactors would have a significant, measured, and careful bipartisan discussion on the floor of the Senate.

Even though it is a small part of the big budget, dealing with the issue of reprocessing spent fuel can make a big difference in the solution to a number of large problems.

For example, whether we are able to deal with global warming within a generation, the only technology we have, of which I am aware, which will produce large amounts of carbon-free energy which would permit the United States and the world to reasonably hope to deal with global warming in this generation is nuclear power.

Even though it is 20 percent of our electricity in the United States today, it produces 70 percent of the carbon-free electricity.

Solving the reprocessing and recycling problem which deals with the issue of energy independence—and it has been talked a lot about on both sides of the aisle—if we want to be independent of other countries, we have to have ways to produce large amounts of energy in a clean way. And other than conservation and efficiency, nuclear power, in my judgment, is the only way to do that today.

A third area has to do with clean air. We have other forms of energy production such as coal, a very important form, but coal still produces large amounts of sulfur and nitrogen pollution. It produces mercury. The idea of recapturing the carbon and the integrated gasification process of making that coal-produced electricity clean is something we still have a lot of work to do on.

Dealing with reprocessing will have a lot to do with solving the problems of proliferation concerns that we have about other countries getting hold of spent fuel and turning it into material that can produce nuclear weapons. We read about it every day in terms of Iran and North Korea. It has to do with a balance of payments in the United States.

Some country is going to produce these advanced nuclear technology powerplants. Russia, for example, might produce 30 or 40 of these. When it does, it will have the technology available to sell those powerplants to India, China, and other parts of the world where they need large amounts of energy which is clean. The United States will be left behind if we are not a part of that process.

I have mentioned all of these issues as if they were American issues—global warming, energy independence, clean air, proliferation, balance of payments. These are worldwide issues. By one account, 30 percent of pollution in the Los Angeles basin comes from Asia. If India and China aren't able to deal with the global warming issue, with the clean air issues, and with the proliferation issue, every American will be affected.

Today, there are about 430 nuclear reactors in the world being used to produce electricity. About 100 are in the United States. We have a classified number—maybe it is about the same—of them which have been used in our nuclear Navy since the 1950s. It is not difficult to imagine a world with 1,000 nuclear reactors. There are 124 nuclear reactors on the drawing board today, or under construction. Until recently, none of those were in the United States. We haven't built one new nuclear powerplant from scratch since the 1970s. It is very odd because we have a large demand in this country for large amounts of low-cost, clean energy. We invented the technology. We have used it in our Navy since the 1950s without a single incident.

France is now about 80 percent reliant on electricity from nuclear powers. And Japan, which suffered under our use of nuclear weapons, has used nuclear power to produce electricity.

Things though are changing. While nuclear power has some problems, so does every other alternative for producing the large amounts of energy that we and the world needs.

Coal, which I mentioned, produces pollutants, and no one has yet produced a way to deal with all of the carbon that is produced by coal to make it the strategy for future.

Many environmental groups—I am one of those persons who is hopeful about that—but the idea of recapturing such large amounts of carbon and putting it underground is something we haven't able to do yet.

Drilling for new oil produces lots of arguments in this body and close votes. Importing oil produces many resolutions and arguments in this body as well.

Wind energy is appealing to some, but you would have to cover up the whole State of Massachusetts to produce what one or two nuclear powerplants would be able to produce.

Today, solar energy is less than one-tenth of 1 percent of what we use in America.

So we need nuclear power. In order to have nuclear power, we are going to have to deal with the problem of where we put the spent fuel and what we do about proliferation.

I am glad that the President suggested in his budget today the Global Nuclear Energy Partnership. I am glad he put $250 million in it to advance the idea of processing and recycling.

First, we should move ahead with the advanced technology and loan guarantees, the investment tax credits, the risk assurance that was enacted in the Energy bill in July.

Second, we should move ahead with research and discussion of reprocessing and recycling so that we can reduce by 90 percent the amount of waste that we would have to store at Yucca Mountain, or similar facilities, and reduce by more than that the heat in that spent fuel.

And finally, we should discuss an international protocol so that while other countries such as the United States, Russia, and others might invent the technology for small, new nuclear powerplants, there would be some sort of international protocol that would lease the spent fuel, supervise its processing, and supervise its permanent storage so that we and the world in this generation can deal with global warming, energy independence, clean air, and a variety of other issues that deal with our lives.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER (Mr. ALEXANDER). The Democratic leader.

ASBESTOS

Mr. REID. Mr. President, if the American people want to know what is wrong with Washington, they should take a look at what is being debated in the Senate this week—asbestos legislation.

I have said on a number of occasions that Lord Acton, whom I studied when I was in college, is right—power tends to corrupt, and absolute power tends to corrupt absolutely. Look what we have on the Senate floor today—asbestos legislation, legislation that, of course, is not ready to be here, but it is being brought here because of tremendous pressure by the folks downtown.

What do I mean by folks downtown? Washington has been run by the lobbyists. The Jack Abramoff scandal is no surprise to people who have been watching this. The K Street Project and other such things came about as a result of too much concentration of power.

Why do I say that this is an example of why we need lobbying reform in Washington today? This legislation is on the floor for one reason: 15 companies that are pushing this legislation. Thousands of companies oppose it.

The 15 companies that support this legislation spent $144.5 million on lobbying in 2 years.

Actually, I am wrong; 13 companies spent $144.5 million in 2 years on lobbying.

Why is this legislation on the floor today? Why are we not doing something about education?

My friend from Tennessee talked about another very important issue—whether this country should move to nuclear power.

Wouldn't it be nice if we had a debate on the Senate floor about that? Or about wind energy? Or about why we don't have tax credits for wind, for Sun, for geothermal, and for biomass that last more than 2 or 3 years?

Why we are not taking a look at nuclear energy? That would be good. We could have a debate on this floor about these topics and spend a couple days very profitably.

But we are not doing that. Instead we are talking about asbestos because 13 companies spent $144.5 million in 2 years lobbying to get it here. For the 13 companies, I guess that was money well spent because they are going to save billions if this legislation passes.

It would be nice if we spent some time on the Senate floor talking about why this country is going into financial bankruptcy because of its spending these last 5 years.

Remember, during the last years of the Clinton administration we paid down the debt by $.5 trillion. Not this administration. We are going to be asked in a few days to increase the debt ceiling above $8.2 trillion.

As I said, it would be nice if we had a debate on the Senate floor about education.

I know my friend, the Presiding Officer, has been working in conjunction with the distinguished Senator from New Mexico, the junior Senator from New Mexico, JEFF BINGAMAN, about why this country is falling behind scientifically in this country. It would be nice if we had a debate on that.

However, these folks who Senator ALEXANDER and Senator BINGAMAN are talking to about increased funding for research cannot afford to spend $144.5 million in 2 years for lobbyists to get the goods. So we will spend time the Senate does not have on this piece of legislation that is flawed, flawed, flawed. Later I will explain what is wrong with it.

We will spend valuable time on the Senate floor because the lobbyists won. Chalk one up for the lobbyists. Do we need lobbying reform? Yes. For example, we do not even know all the companies involved in this so-called asbestos study group. ASG would have to disclose their membership under the lobby-reform legislation we have proposed. They would not be able to do it in secret, then pay their money under the plan.

I bet they are jumping with joy today—some of whom we do not know who they are—because they were able to buy their way into the Senate, paying for a bunch of lobbyists.

These 13 companies employed 168 lobbyists. It is pretty easy to figure out what is going on.

I am going to vote opposing the motion to proceed. Rarely do I do that. It is so important that I do it here. I don't know if we have enough votes to stop it from going forward, but for the good of the American people, I hope so. If we do not, there are a lot of other ways we can fight this very bad piece of legislation.

The Super Bowl was last night. The underdog, Pittsburgh Steelers, won. However, turning from football to lobbying, the lobbyists are not underdogs when they are given $144.5 million to bring a bill to the Senate. They are on the winning side. $144.5 million was paid to lobbyists by 13 companies. That is why we are here today. That is why we need lobbying reform. With reform we would at least know all the companies involved in the so-called ASG, asbestos study group. Talk about a blight on legislative standards, bringing this bill to the Senate and leaving real problems to someone else another day.

This bill is anything but fair. But like a lot of things around here, we still call it the Fairness in Asbestos Injury Resolution Act. This is part of the Orwellian world we live in here, where the Clear Skies Initiative pollutes the skies, where the Healthy Forests Initiative ruins our forests, where the Leave No Child Behind Act leaves children behind, where the Budget Deficit Reduction Act increases the deficit. Now, we are going to be asked to deal with the Fairness in Asbestos Resolution Act, which is anything but fair.

It is unfair to victims of asbestos exposure. It is unfair to small businesses. It is unfair to thousands of businesses in this country. It is unfair to the American taxpayer. If this goes through, they likely will have to bail out the trust fund created under the bill. It is unfair to organized labor. It is unfair to the insurance industry. It is unfair to veterans.

As I said, I don't lightly oppose a motion to proceed. I recognize that generally it is the prerogative of the majority leader to set the agenda. In this case, however, opposing this motion is absolutely justified. This is a terrible piece of legislation to bring before the Senate with the state of the legislative calendar that we have. I wish the Government Operations Committee, led by Senators Lieberman and Collins, would get Congress some lobbying reform. That is what we need to do. That would be more important than this.

This bill is not ready for consideration. It is not even a close call. There are so many unanswered questions raised by the current bill, too many questions about solvency and adequacy of the trust fund, too many questions about the impact of this bill on the lives of countless Americans with asbestos-related illnesses. This alone should disqualify this legislation from being on the Senate floor.

The Senate could debate this bill for the next 60 legislative days, and we still could not fix the structural flaws of this trust fund. The only reasonable approach is to take it back to the Judiciary Committee and find a better approach.

This bill should also be referred to the Senate Committee on the Budget before the Senate debates it. Senator CONRAD and Senator GREGG have said it is not ready for the Senate floor. They have written a letter to me and to Senator FRIST asking for more time to review the massive fiscal impact of this program.

Asbestos companies, it is estimated—and it is not much of an estimate but pretty certain—will save over $20 billion with this legislation. Fortune 500 companies will have dramatic reductions in their asbestos liability. The sad part about this is that companies who are responsible for exposing victims to asbestos could see the harmful effects coming. Way back in the 1960s, for example, Dow Chemical knew the hazards of asbestos. They had done research and they said "asbestos has long been known to be capable of causing asbestosis." They did not mention mesothelioma.

Three decades before Dow Chemical recognized this, in 1938, a report by the U.S. Public Health Service, which DOW received, described how asbestos textile factory workers were exposed to asbestos fibers, which led to the development of diseases that killed them. In 1951, companies were reporting that exposure to asbestos would kill you. We know from reading—pick any book you want—the book titled "Libby, Montana," W.R. Grace knew that what they were doing was killing their workers. They knew about it. It is documented.

Is it any wonder that some are asking why we are here? When we consider the $144.5 million and 2 years spent for lobbyists, we begin to understand why we are here. If these numbers do not add up, and they don't, wouldn't it be well advised to have the Committee on the Budget involved in crafting this legislation? There is a need for legislation that improves the way victims of asbestos exposure receive compensation, but this is not it.

Since this bill was initiated, there have been reforms at the State level that have been credible and important in advancing the cause of the victims. Our best hope of achieving whatever Federal reforms may be appropriate rests with further deliberation at the committee level, not in the Senate. I hope my colleagues seriously consider joining me in voting no on the motion to proceed. There are just too many problems with this bill.

Let me first focus on people whom this is supposed to be all about, the victims of asbestosis and mesothelioma, diseases that come about as a result of being exposed to asbestos. If you get mesothelioma, you die. Once that disease is diagnosed, no one has ever survived. You die. With asbestosis you might continue to live but likely will have a long, slow, advance toward death. Sometimes it kills quicker than others. People have lived for some time with asbestosis but never mesothelioma. The average life expectancy after discovery is less than a year and a half. Asbestos is one of the most lethal substances ever used in the workplace, and it was unleashed knowingly on communities all over our country. More than 27.5 million workers have been exposed to asbestos. They were exposed while they were working with the stuff. However, countless others were exposed because this work was going on in their neighborhoods. Asbestos was used in schoolyards. And as we have come to learn, a worker coming home and having his wife wash his clothes exposed her and the family to asbestos-related diseases. And these spouses have died. Children who hugged their father, after coming home from work carrying his lunch bucket, have gotten these diseases and have died. Hundreds of thousands are gravely ill as we speak, hundreds of thousands of people.

The diseases caused by asbestos exposure are painful, debilitating, and, as I have indicated, mostly incurable. Every State in America has been touched by this scourge. In the relatively sparsely populated State of Nevada, Margie Urnberg, Carson City, wrote a letter. She lost her father, Ronald. Will Glienke's father died of mesothelioma. Kellie Appleton-Hultz lost her husband due to asbestos poisoning and is still coping with this as I speak.

This problem has affected me on a personal level. My three brothers and I had no place to live when high school started, so we lived with other families or acquaintances. My older brother, Don, lived in Henderson, NV, with the Hansen family, a wonderful family. They took in my brother so he could go to high school. One of the Hansens who played football with my brother, Don, was named Harold. My brother and Harold were both halfbacks on the football team. Harold went away to college and later became a mechanical engineer. He worked for the State of Nevada all of his life. He hung around the State employee workshop. He learned less than a year ago that he had mesothelioma. He is dead now. He never worked with asbestos, but in the workshop where he spent some of his time, they replaced brakes and brake linings containing asbestos. Harold Hansen is dead because of this.

I see in the Chamber the assistant Democratic leader, my friend, the distinguished senior Senator from Illinois. He and I served in the House of Representatives together. I can remember another man who was so helpful to me while I was in the House of Representatives. I had been a Member of the House for just a short period of time, and this man and I were walking down the aisle to vote. He said: You know, I love Nevada. I want to help you get a national park. We did not have a national park in Nevada at the time. He was the subcommittee chair of the then-called Interior Committee of National Parks. His name was Bruce Vento. Oh, what a great guy he was. I worked out at the same time he did in the House gym for many years.

He was probably 6 foot 1 or 2, but really a strong man. He had been in Congress for more than 20 years. He practiced law before that. He never worked with his hands except once, when he was a very young man, around 20 years old. He worked for a while at summer jobs, like we all had. He obviously was exposed to asbestos. And just like that, he was diagnosed with mesothelioma. He died within 6 months.

Bruce Vento—and we have a national park in Nevada now; much of it due to Bruce Vento's advocacy; the Great Basin National Park, a wonderful national park; the only one we have in Nevada—dead because of mesothelioma.

Tomorrow I am going to introduce a resolution designating April 1 of this year as Asbestos Disease Awareness Day. The purpose of this resolution is to raise awareness that asbestos exposure is still prevalent, that asbestos-related diseases continue to kill many Americans each year, and that more needs to be done to protect Americans from this lethal substance.

A truly fair asbestos reform bill should meet the unmet needs of asbestos victims. This bill does not. Every major asbestos victims group opposes this legislation—every one. In an open letter to the Senate, dated February 1 of this year, the Committee to Protect Mesothelioma Victims, the Asbestos Disease Awareness Organization, the Asbestos Victims Organization, the White Lung Association, and the White Lung Asbestos Information Center wrote that they oppose this legislation. Specifically, they wrote:

> We do not want this proposed government policy forced upon us. We believe the program will fail to treat victims fairly, while benefitting the very companies that caused the problem.

And that is what has happened here. But we have these companies that spent $144.5 million for 2 years to get lobbyists down here to push this bill. I forget the number, about 170 or so lobbyists, as indicated in a report by Public Citizen. I will bet they are watching TV right now, in their Gucci shoes, having just piled out of their limousines, bragging about what they did: bringing the asbestos bill to the floor. They have a lot of other important things to do, but what are they doing? Because they are good at what they do, we have this bill on the Senate floor. Lobbying reform is what we really need.

An asbestos bill that faces such widespread opposition from the victims of asbestos disease is obviously the wrong approach to this national problem. The problem seems to be that the so-called FAIR Act—remember, that is what this is called in this Orwellian world we live in—places the needs of a few large companies with asbestos liability above the needs of those suffering from asbestos-related illnesses. This is the fundamental flaw of this legislation.

But to show what these lobbyists have done, we need only look at what they have done to fool the veterans. These big companies, of course, are paying veterans to come back to Washington. They have convinced a few of the veterans this legislation is good for them. Not true. But if you have this much money to spend, you can pass it around.

This asbestos study group is claiming that victims who are veterans are not recovering under the present system. Unfortunately, the facts do not support their claim. Many veterans will be completely shut out of all means of compensation if this trust fund proposed under this legislation becomes law.

These false claims about veterans seem to be another effort to ensure that corporations receive the more than $20 billion bailout they seek on the backs of veterans. It does not matter because the lobbyists have done their job. They have this bill and they have a few veterans straggling in to talk about what a good thing this is for them.

If this asbestos bill wins, the corporations win and the veterans lose. Today, veterans can and do use the court system every day to get help with the health and financial consequences of the diseases they have.

Tragically, it is true that many veterans are victims of asbestos disease. Much of it came from Navy ships before the 1970s that contained high levels of asbestos. Thirty percent of the mesothelioma victims are veterans. World War II, as I have indicated, is where most of these veterans got exposed to asbestos—World War II. The average age of the World War II veteran is about 80. About 1,500 World War II veterans are dying every day.

This legislation will stop some of them from recovering the compensation they are owed. If they now have pending trial dates or pending settlements, those will be eviscerated if this legislation passes. They immediately have their causes of action stayed and would become part of the queue of over 600,000 claimants waiting for the proposed fund to become operational. Most of them will die before recovering the money owed to them.

Veterans receive no priority status or special protection under this bill. They will be tossed into an untested and underfunded bureaucracy with all other claimants even though every independent analyst says the fund is destined to fail. I repeat, every major asbestos victims organization opposes this bill because it is underfunded and unfair to all victims, including veterans.

Veterans are recovering under the current system but will have a much harder time recovering if this bill becomes law.

Though veterans cannot sue the Government for compensation for asbestos poisoning, they have successfully sued manufacturers of asbestos products, like other claimants have done. This right will be stripped from them under S. 852. Thousands and thousands of veterans have successfully sued asbestos companies. And, frankly, it has been shown that veterans who are dying of mesothelioma and these other serious cancers generally receive greater compensations through the courts than is provided under S. 852.

Under this fund, the awards will be one size fits all. In many cases, veterans' asbestos exposure as civilians is far greater than their exposure in the military. Lester M. Cable, who lives in Bridgeport, CT, is a typical case. He was exposed to asbestos as a boilerman in the Navy in 1950 and 1951, and also in civilian life doing home construction and repair projects working with asbestos-containing household appliances and heating systems.

He suffers from malignant mesothelioma and has a trial date set for this July as an accelerated living mesothelioma case in the Bridgeport Superior Court. If the proposed asbestos legislation is enacted, his case would be wiped out immediately, forcing him to start all over again under the proposed trust fund. He will not live that long.

It is no wonder that asbestos victims oppose a bill that deprives them of their legal rights in the traditional civil justice system and offers them instead a trust fund that is inadequate and will likely become insolvent. Numerous experts have concluded that the cost of the program will exceed the amount allotted for the trust fund. Mr. President, $140 billion sounds like a lot of money, but, remember, 27.5 million American workers have been exposed to asbestos. This does not include, as I have indicated, people living in the neighborhoods, the spouses, children.

The Congressional Budget Office has estimated the program could generate at least $10 billion more in claims than the trust fund is designed for. But even that figure understates the problem because the bill does not adequately take into account the trust fund's borrowing costs, further depleting the compensation available to victims. And that is what they are, victims. The Congressional Budget Office estimates that approximately $8 billion would be required in the first decade, an amount that will saddle the fund with a huge debt over the life of the program.

Other experts, though, say the bill is on even less solid fiscal footing. For instance, the Bates White economic consulting firm has concluded that the program will cost at least $300 billion, and with certain contingencies could cost as much as $600 billion. The General Accounting Office has recently issued a report describing how at least four other Federal trust fund compensation systems that were smaller in scope than this had trouble funding the shortfalls.

But even if the $140 billion were adequate—and it is not—there is no guarantee the fund would raise that amount of revenue. The actual amount of revenue available to victims depends on the number of companies that actually contribute. Yet there is no definitive information available to Senators on the number or identity of the participating companies. We have talked about that before. Supporters of this legislation have asserted that there will be between 8,000 and 10,000 such companies, but the Congressional Budget Office could identify only 1,700 participants. As a result, less than $140 billion will be available for this fund. If revenues from the private sector are insufficient to fully fund the program, the only options for maintaining solvency of the fund will be to reduce compensation to injured victims or supplement the privately raised funds with tax dollars.

There is a long list of companies that have contacted Senators saying: Please, don't do this. But let me just give an example of a few. These are companies that are really old, some of them more than 100 years old. For example, there is a company called Okonite. They are the only company that makes wire in the country anymore. They have a few manufacturing plants around the country. The chief executive officer said: We'll go bankrupt. If you pass that legislation, there won't be an American company making wire anymore.

Hopeman Brothers, they are ship joiners. They work on big ships. They do finishing work on big ships. They said: We'll drop out. We'll go bankrupt.

Foster Wheeler is an engineering and construction firm: If you sign this into law, we go out of business. They have asbestos claims. They can handle them. One of the companies said: We budget every year what we are going to spend on asbestos claims. We can handle that. But we cannot handle this legislation. We'll go bankrupt.

There is a good argument that the Federal Government should contribute to the fund, since a large number of U.S. servicemen were exposed to asbestos. But that has not happened here. This bill does not tap Federal tax dollars in an honest, straightforward way. But that is what is going to happen if the trust fund is not sufficient. It establishes a private trust fund that will almost certainly become insolvent. As a practical matter, the Federal Government will be left holding the bag when things go wrong. A Federal bailout of a program of this magnitude would have enormous adverse consequences to the Federal budget. But with President Bush holding the records for the highest deficits in the history of the country, maybe we should not be concerned about this.

The structural problems with the trust fund relate to one of the bill's most fundamental flaws: its lack of transparency. From the outset, members of the Judiciary Committee and others asked for full disclosure of the names of companies that will be required to pay into the fund. According to press reports, the major lobbying firms that helped draft the bill possess documents listing the contributing companies and how much each would be required to pay. But this information remains unavailable to Senators and, of course, to the general public.

The Senate is entitled to such relevant information before debate begins, but we are not going to get it. There is no reason to waste the time of the full Senate debating a bill with so many loose ends and so many unanswered questions and, I am frank to admit, a lot of answered questions. The budgetary concerns are reason enough to defeat the motion to proceed.

I have been contacted by five courageous members of the majority who are going to vote against the motion to proceed because they know this is a budget buster. And maybe others will come along. I have only been contacted by five. First, let me say this: Even if the trust funds were adequately funded, the system set up here is flawed for a number of reasons in compensating the poor, unfortunate individuals who get these diseases. Let me talk about a few of them.

The startup provisions provide that as soon as the bill is enacted, the ability of asbestos victims to obtain compensation in the court system is cut off. It also requires that bankruptcy trusts established to pay victims' claims be shut down, even before the fund is operational. The bill attempts to provide a mechanism through which terminally ill claimants will obtain payments in this interim period, but all other claimants, no matter how serious their illness or disability, would be left without a remedy for an indefinite period of time.

Second, the bill is unfair to victims with pending or settled court cases. I talked a little bit about that. Rather than permit asbestos claims to continue in court while the fund is being established, the bill imposes an immediate 2-year stay on nearly all asbestos cases. This is unfair. Exigent cases are no exception to a stay. They will be automatically stayed for 9 months from the date of enactment. The bill's language is so broad that a trial about to begin would be stopped, and an appellate ruling about to be handed down would be barred.

Third, the sunset process under the legislation leaves too much uncertainty for victims. If the fund fails to operate as promised, instead of allowing victims to return to court, S. 852 allows the administrator of the fund to recommend any number of measures to salvage the program. This means that victims may receive even less compensation or become subject to more stringent medical criteria to have their claims successfully approved.

Fourth, the bill requires some victims to prove that asbestos was a substantial contributing factor to their disease—a higher burden than victims must meet in court, where it is sufficient to show that asbestos exposure was a contributing factor, no matter how substantial a factor. The whole concept of a no-fault trust fund is that it is nonadversarial, but this higher burden of proof creates the potential for endless litigation and a high number of rejected claims.

Finally, I have serious concerns about the manner in which the FAIR Act treats lung cancer and silica diseases victims. Under this bill, an entire category of lung cancer victims who were exposed to asbestos for 15 years or more cannot bring a claim. This bill would deny these victims their right to recover damages in court for their exposure and deny them benefits under the fund as well. This is an unacceptable affront to the rights of an entire class of asbestos victims.

As for the suffering from silica disease, this act limits recovery by individuals who have both asbestos disease and silica-related diseases. I know something about silicosis. My dad had it. He worked in the mines. I thought all kids' dads coughed the way my dad did, but they didn't. My dad was exposed to what we called at the time quartz silica. It is well known in Nevada, at the Tonopah mining camp, they would only hire, as they referred to it at the time, "foreigners" because they knew if they hired people who were nonforeigners in Tonopah, they would die. It was the worst of any place in the country. It was bad all over Nevada, so I know something about silica.

This legislation prevents someone who has both silica and asbestos exposure from going forward with their claim. The only recourse for victims of both diseases will be to seek compensation for their asbestos disease from the asbestos fund, but victims of silica-related disease, including those who have asbestos disease, should also have a right to seek redress in the courts. They should be able to do it because of their silica disease, silicosis. This is a particular problem in Nevada where many miners have contracted both silicosis and asbestosis.

In this and so many other ways, this bill does not meet the needs of my constituents or of the American people in general. I predict the bill's sponsors will attempt to answer my concerns and those of other Senators, as I have heard, by telling us there is going to be a managers' amendment to cure all of the problems of the bill. There will be so many problems with this bill that this managers' amendment will effectively be a substitute bill. I am reminded of the old English proverb—I don't know if it is an old English proverb—don't buy a pig in a poke. The sponsors of the bill should make the text of that managers' amendment available before we vote on the motion to proceed. The Senate should not vote to proceed on this asbestos bill and find itself debating a different asbestos bill.

Let's move the process along, some have said. We will fix the problems in conference with the House. Boy, we have heard that a lot of times. Some of us have been around here long enough to know that doesn't work. That gambit should be rejected. If the Senate decides to debate this bill, it should be one where we confront the tough questions now and get them right before the bill leaves the Senate.

I am convinced, unfortunately, that we are not ready to face these tough questions at this time. The committee-reported bill is too deeply flawed. We don't have sufficient information to address these flaws through the amendment process. We owe asbestos victims and their families a better bill and a better process. The only proper course at this time is to defeat the motion to proceed.

I would say this: Again, the winners today are the 13 companies that paid $144.5 million to take the much needed time of the Senate to debate these issues. But we are going to be wasting time on this very flawed piece of legislation.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. Under the previous order, the motion to proceed to S. 852 is now pending.

The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I take strong offense to the statements made by the Senator from Nevada. His accusation that lobbyists are buying their way into the Senate is an outrageous violation of rule XIX, which provides that no Senator in debate shall directly or indirectly, by any form of words, impute to another Senator or to other Senators any conduct or motive unworthy or unbecoming a Senator.

To say that this bill, which Senator LEAHY and I have led for the better part of the last 3 years, is the result of lobbyists "buying their way into the Senate" is slanderous. That is a violation of rule XIX. It may be that the Senator from Nevada is used to slander, is used to libel, because that is what he did recently to 33 Senators. Regrettably, nobody has challenged him under rule XIX.

Rule XIX relates to what is done on the floor of the Senate, but in this day and age of debates outside the Senate, of debates on television and radio and in the newspaper, 33 Senators were victimized by the Senator from Nevada, who then scribbled out a form apology letter which was meaningless in the context of what was done. And to talk about lobbyists buying their way onto the Senate floor is an outrageous distortion of what has happened on this bill.

The fact is, over the course of the last 2½ years, there have been 36 meetings held in my office, attended by people who have an interest in this legislation or their representatives. The AFL–CIO was there. Trial lawyers were there. Representatives of the manufacturers and representatives of the insurers and anybody else who wanted to come in were welcome. I didn't see the Senator from Nevada there once.

He has talked about the bill in a rambling, disconnected way, which proves only one thing, and that is that he doesn't know anything, really, about the bill. He talks about how the Congressional Budget Office has issued a report saying that it would cost between $120 and $135 billion. Under certain contingencies, it might go to $150 billion—unlikely. The figure really established was $132 billion.

He talked about the Bates White report which includes people without any exposure. He wasn't in attendance at the hearing we had during which the CBO came in and filed a supplemental report on the adequacy of the $140 billion. That figure is not a concoction of ARLEN SPECTER; that figure was negotiated by Senator DASCHLE and by Senator FRIST because they concluded that figure was the accurate figure to take care of these claims.

When the Senator from Nevada talks about all of the other subjects which could be taken up, he suddenly became interested in LIHEAP, importuning Senators from cold States that LIHEAP should be taken up instead of the asbestos bill. And when he talks about wind power and the debt and every subject virtually under the sun—no real interest in LIHEAP until it is a diversion from the asbestos bill. I have been around here a while, a little longer than the Senator from Nevada, and I never saw so many red herrings at one time. It could fill an entire aquarium.

What he is seeking to do is to obstruct. He has had a lot of practice at that. If he is successful in obstructing this bill from going forward, it will be a great travesty for the American people, for asbestos victims who are now not able to collect because their companies are bankrupt.

Not a word on what the Senator from Nevada had to say about 77 companies which have gone into bankruptcy. He talks about people with mesothelioma, fakes showing some concern while they and their dependents are going penniless because there is nobody to pay their claims. He says one size fits all. The great problem is, the Senator from Nevada doesn't know anything about the bill.

There has been a very carefully structured schedule of payments. When he says the veterans are against it, he is wrong. When he says labor is against it, we have a long list of labor unions. Senator LEAHY and I sat down with the leaders of the AFL–CIO and are working out the few remaining objections they have to the bill. When he talks about the managers' package, that is acceptance of amendments. We went through exhaustive and extensive hearings.

In regards to the 36 meetings which have been held in my office, we brought in a distinguished senior Federal judge, Edward R. Becker, who had been the chief judge of the Third Circuit, who accepted my request to mediate. Our meetings started in his chambers in August of 2003, right after the bill was reported out of the Judiciary Committee during the 108th Congress. And we have had, as I said, 36 meetings. I don't think Judge Becker can tell you how many meetings he has held individually because he can't count that high. I certainly can't tell you how many meetings I have had. But I have talked to individual Senators repeatedly, probably some 60 or 70 in this body, and when they hear what the bill is about, they are interested.

The one Senator whom I talked to who had absolutely no interest in the bill was the Senator from Nevada. All he wants to do is to block the bill. When he says this bill is not ready, this bill has been subjected to more analysis and more investigation and more consideration than any legislation I have seen in my 25 years here, and I think it is fair to say more analysis and more consideration than any piece of legislation that has been considered in the history of the U.S. Senate. Let me put it a different way: I challenge the Senator from Nevada or anybody else to cite a piece of legislation which has had more analysis and more consideration.

This bill is more than ready to come to the floor. The difficulty was that when we reported it out last May 26, the business of the Senate was stacked sky high.

And try as he might, the distinguished majority leader, Senator FRIST, could not find time to bring it up. He put it on the agenda as the first legislative consideration of the 109th Congress in the second session. That is why we are here.

The arguments—the rambling statements made by the Senator from Nevada—I should not call them arguments. They don't rise to the level of being arguments. He talks about transparency. We know the individual companies in these various groups. We had to subpoena them to get them, but we have subpoenaed them. We do have the records.

When he talks about the lobbyists writing the bill, what an outrageous statement to make in the context of what Judge Becker and I and Senator LEAHY and others have done on this bill. To accuse us of being the pawns of the lobbyists is beyond slander, beyond insult. It is beyond outrage that those words should come from the mouth of the leader of the Democrats in this body.

When he talks about silicosis, the rights to sue for silicosis are maintained. It is a very rare situation where someone has both silicosis and an asbestos-related problem. But when you go to court and you make a claim under our tort system, you have to prove, in any case, whether you claim it is silica, or whatever the cause is, that there is not some other cause that is the causative factor of the ailment in question. We had a hearing on silicosis. I am sorry to hear about the family of the Senator from Nevada who suffered from silicosis. We had a very involved hearing on the matter. Do you know who wasn't there? The Senator from Nevada—just as he was AWOL every other time when serious issues were under consideration.

Mr. President, I would like to stay here longer this afternoon. I will put the full text of a statement in the RECORD, which is an extensive analysis of this bill. Our phenomenal staff has been at work on this matter for months, led by two very fine lawyers, Seema Singh and Harold Kim, and by many on the Judiciary Committee. This statement I recommend to my colleagues to read if they want to understand the bill.

I would not spend too much time reading the CONGRESSIONAL RECORD on what the Senator from Nevada has had to say because there is no substance to anything he has had to say. When the charges are made here about the lobbyists buying their way into the Senate, Senator LEAHY is on the floor and he is the cosponsor of the bill. Senator KOHL and Senator FEINSTEIN voted the bill out of committee. I had heard this ridiculous talk about this being a product of K Street. Well, this Senator is not a product of K Street; neither is Senator LEAHY, neither is Senator FEINSTEIN. As far as Senator KOHL is concerned, he could buy and sell K Street himself without any sweat. So to talk about us being in the pocket of the lobbyists, I have not been treated like that since I came to the Senate. In fact, I have never been treated like that. I resent it. I call it a violation of rule XIX.

I hope the Senator from Nevada will abandon these tactics. There is enough objection and controversy and dissent in this body that we don't need personal attacks. I have to excuse myself, Mr. President, because——

Mr. REID. Mr. President——

Mr. SPECTER. Mr. President, I have the floor.

Mr. REID. I thought you were finished.

Mr. SPECTER. Again you thought wrong. You are in the habit of thinking wrong. I am in mid-sentence, but I am not surprised to be interrupted.

We have other business we are taking care of. I have to soon excuse myself to go to the Judiciary Committee hearing, where we are taking up the question of electronic surveillance, where we have been in session listening to the Attorney General since 9:30 this morning.

When the Judiciary Committee had taken up this bill, we took it up under very difficult circumstances. We started last year with the immediate job of confirming the Attorney General. The Senate went into session on the 109th

Congress on a Tuesday, and we had the Attorney General in on Thursday and confirmed him in short order. Then we moved through the bankruptcy bill and the class action bill. Then we tackled the very tough problem of the filibusters, which had delayed the confirmation of circuit judges. We worked through that problem.

Then in the midst of all that, we had a series of hearings on a wide variety of issues: Miller, the New York Times reporter who was kept, and the business about identity theft. We worked through hearings on the tough immigration problem. Then we took up the issue of the confirmation of Chief Justice Roberts, where the staff of the committee worked through the month of August; then we took up the question of the confirmation of Justice Alito. We worked through the months of December and January. While people were globe trotting around the world, we were at work on those matters. And through it all, we have produced a bill that is solid. It is a bill which is designed to compensate thousands of victims of asbestos.

One thing the Senator from Nevada was right about: Mesothelioma is a killer. But the thing he is wrong about is that his position will allow these people to be killed without compensation, because their companies have gone bankrupt, some 77 of them. We have moved to this trust fund after decades and decades of work. I first saw this issue when Senator Gary Hart brought Johns Manville into my office in the early 1980s, 1982 or 1983, and this asbestos problem has defied solution, just defied solution—until Senator HATCH came up with the concept of this trust fund. Then the trust fund was increased in size from about $90 billion to $140 billion.

I didn't hear the Senator from Nevada object when the former Democratic leader, Senator Daschle, agreed with Senator FRIST that $140 billion was the accurate figure. I didn't hear him object at all. The only time I hear him object is when there is some chance—and it is an uphill fight; I am prepared to concede that, but I am used to them. I am used to uphill fights. I might even say I enjoy them. But this is the first time this issue has come to the floor of the Senate. It has been languishing for decades, and I talked to no one who denies the basic fact that there is a problem that ought to be addressed. I think even the Senator from Nevada, with his vitriol and slander, implicitly concedes it is a major problem that ought to be addressed.

Now, a motion to proceed takes up the issue as to whether you ought to consider the bill. If the Senator from Nevada has valid amendments, I would like to see them. If he has a better bill, I would like to see that. I would vote for anybody's bill that is better than this one because we have to address the issue. When he talks about the Budget Committee, there are some technical problems here because the money goes through the Department of Labor, so it is a Federal expenditure, but it is not Government money; it is money contributed by the insurers and the manufacturers. There is no impact on the budget.

This bill is ironclad to eliminate any possibility of Federal funding. But if you want to use obstructionist tactics and filibuster—the Senator from Nevada is good at that—if you want to use 60 votes to try to kill it on a motion to proceed, so be it. I know what the rules are here. But there is no reason not to proceed, and there is every reason to proceed. If you want to use the 60-vote technicality to sustain a budget point of order, you can do that, too. But there is no adverse impact on the Federal budget.

I regret I cannot stay and engage in this colloquy. I do have to get back to the Judiciary Committee.

I ask unanimous consent that the text of my full statement be printed in the RECORD.

Mr. President, again, this is S. 852, the Fairness in Asbestos Injury Resolution Act of 2005, FAIR Act, the successor to S. 1125 and S. 2290, the FAIR Acts of 2003 and 2004. My colleagues, Senator FRIST, Senator HATCH and Senator LEAHY, deserve enormous credit for the drafting of these acts and for the development of this legislation. There is a will in the Senate to enact legislation to end the ongoing rash of bankruptcies; to prevent the diversion of resources from those who are truly sick; to preserve jobs and pensions; and to solve the worst litigation crisis in the history of the American judicial system. The Senate plainly wants a more rational asbestos claims system, and I believe that this legislation offers a realistic prospect of accomplishing that result.

This legislation provides substantial assurances of acceptable compensation to asbestos victims and substantial assurances to manufacturers and insurers to resolve, with finality, asbestos claims. Over the past three decades, a solution to the asbestos crisis has eluded Congress and the courts. Some 77 companies have gone bankrupt, thousands of individuals who have been exposed to asbestos have deadly diseases—mesothelioma and other such ailments—and are not being compensated or because of the unfairness of the current system, see little of the awards they do win. A May 10, 2005, report released by the RAND Institute for Civil Justice estimates that nonmalignants make up about 90 percent of the litigation and most are unimpaired. According to RAND, the number of claims continues to rise, with over 730,000 claims filed already and some 200,000 pending. The number of asbestos defendants also has risen sharply, from about 300 in the 1980s, to more than 8,400 today and most are users of the product, not its manufacturers. These companies represent 85 percent of the U.S. economy and nearly every U.S. industry; including automakers, ship builders, textile mills, retailers, insurers, electric utilities and virtually any company involved in manufacturing or construction in the last 30 years.

Asbestos leaves many victims in its wake. First and foremost, the sick and their families have suffered and do not receive fair compensation in the tort system. Asbestos victims filing claims receive an average of 42 cents for every $1 spent on asbestos litigation. Today, 31 cents of every $1 have gone to defense costs, and 27 cents have gone to plaintiffs' attorneys and other related costs.

The flawed asbestos litigation system not only hurts the sick and their chances of receiving fair compensation but also claims other victims. These include employees, retirees and shareholders of affected companies whose jobs, savings and retirement plans are jeopardized by the tide of asbestos cases. With asbestos litigation affecting so many companies, this also impacts the overall economy, including jobs, pensions, stock prices, tax revenues and insurance costs. According to a 2002 study by Nobel laureate Joseph Stiglitz, asbestos bankruptcies have cost nearly 60,000 workers their jobs and $200 million in lost wages. Employees' retirement funds have shrunken by 25 percent.

In July 2003, the Judiciary Committee voted out S. 1125, a bill with numerous problems, largely along party lines, 10 yeas, 8 nays, 1 pass, in an effort to move the legislation. S. 1125 created the basic structure of the legislation, and made huge strides in working out the medical criteria. However, the bill foundered on other issues. In August, at my request, Judge Edward R. Becker, a Federal judge for 34 years, convened in his chambers in Philadelphia the so-called stakeholders; namely, manufacturers, labor, AFL-CIO, insurers and trial lawyers—to determine if some common ground could be found. Until the preceding May, Judge Becker had been the Chief Judge of the Third Circuit Court of Appeals and wrote the opinion in the asbestos class action suit that was affirmed by the U.S. Supreme Court.

From September 2003 through January 2005, there were some 36 stakeholder meetings held in my conference room, with Judge Becker as a pro-bono mediator, usually attended by 25 to 40 representatives with sometimes over 75 people present. I have also met 61 times since January 2005 with various officials from the administration, members of the Senate Judiciary Committee and their staffs, the Senate leadership and other Senators all in an effort to move this bill forward. Judge Becker and I have sought an equitable bill which took into account, to the maximum extent possible, the concerns of the stakeholders and to get their input on drafting of the bill. After analysis and deliberation, we found we could accommodate many of the competing interests.

This process commenced with the blessing of then-Chairman HATCH and Ranking Member LEAHY of the Judiciary Committee. This extended process allowed the stakeholders an extraordinary "hearing" process and really amounted to the longest "mark-up" in Senate history although not in the customary framework. We have had the cooperation of many Senators. Senators HATCH and LEAHY have had representatives at all the meetings. The majority leader, Senator HATCH, and Senator LEAHY have addressed this "working group" at our meetings. Senator HATCH's and Senator LEAHY's representatives have been active participants at every meeting, as well as the members of the staffs of Senators BAUCUS, BIDEN, BROWNBACK, BURNS, CARPER, CHAFEE, CHAMBLISS, COBURN, CORNYN, CRAIG, DEWINE, DODD, DURBIN, FEINGOLD, FEINSTEIN, GRAHAM, GRASSLEY, HAGEL, KENNEDY, KOHL, KYL, LANDRIEU, LEVIN, LINCOLN, MURRAY, BEN NELSON, PRYOR, SCHUMER, SESSIONS, SNOWE, STABENOW, and VOINOVICH.

In 1997, the Supreme Court commented for the first time on the growing asbestos problem by stating, in the context of holding that asbestos litigation was not susceptible to class action treatment:

> The most objectionable aspects of this asbestos litigation can be briefly summarized: dockets in both federal and state courts continue to grow; long delays are routine; trials are too long; the same issues are litigated over and over; transaction costs exceed the victims' recovery by nearly two to one; exhaustion of assets threatens and distorts the process; and future claimants may lose altogether. . . .

In the ensuing years with asbestos litigation increasingly choking the courts, the Supreme Court has repeatedly called upon Congress to act through national legislation:

In one case, the Court observed "the elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation."

A concurrence in the same decision found that the asbestos crisis "cries out for a legislative solution."

As recently as 2003, the Supreme Court reminded us that it had "recognized the danger that no compensation will be available for those with severe injuries caused by asbestos. . . It is only a matter of time before inability to pay for real illness comes to pass."

Even though he dissented from the majority holding in that 2003 case, Justice Breyer observed: "Members of this Court have indicated that Congress should enact legislation to help resolve the asbestos problem. Congress has not responded."

The FAIR Act of 2005 is a response to the Supreme Court's many calls for national legislation to fix a broken asbestos litigation system. It is the product of these extensive negotiations among the key stakeholders. Throughout this process, the stakeholders reached important compromises that are now embodied in S. 852. The Judiciary Committee also spent a month marking up the bill last May during which time the committee accepted 75 amendments from both Republican and Democratic members. After extensive deliberation, the committee reported the bill favorably on May 26, 2005 on a strong bipartisan vote of 13–5.

The concept of a trust fund is an outstanding idea. Senator HATCH deserves great credit for moving the legislation in the direction of a trust fund with a schedule of payments analogous to workers' compensation so the cases would not have to go through the litigation process. Under this proposal, the Federal Government would establish a national trust fund privately financed by asbestos defendant companies and insurers. No taxpayer money would be involved. Asbestos victims would simply submit their claims to the fund. Claimants would be fairly compensated if they meet medical criteria for asbestos induced illnesses and show past asbestos exposure. The trust fund would guarantee compensation for impaired victims.

Through a series of meetings with Judge Becker, we have wrestled with and have been able to solve a number of very complex issues. The size of the trust fund was always a principal issue of dispute, starting at $108 billion. The manufacturers/insurers raised their offer to $140 billion. In October 2004, Majority Leader FRIST and then-Democratic Leader Daschle agreed to $140 billion. When Senator FRIST and Senator Daschle, in an adversarial context, agreed to the adequacy of the $140 billion figure, it is difficult to exceed it even though the AFL–CIO did not contemporaneously agree.

It is not possible to say definitely what figure would be adequate because it depends on the uncertainty of how many claims will be filed. There is support for the adequacy of the $140 billion figure from reputable projections, including the Congressional Budget Office cost estimate.

Since this bill was discharged from this committee in May, new reports analyzing the bill have been published—such as the CBO report and the Bates White report. In late August 2005, the non-partisan Congressional Budget Office issued its analysis of the bill. In its report, the CBO predicted that asbestos claims and award values could fall anywhere between $120 to $150 billion, and as a middle of the road assessment, concluded that the fund would likely payout $132 billion over the life of the fund. It was reassuring to see CBO project $132 billion as adequate to pay the claims in a contest where there are so many variables that do not lend themselves to precise projections or predictions. Even in the range of that uncertainty, the CBO has estimated that claims could be as low as $120 billion and no higher than $150 billion so that our legislation with $140 billion is reasonable and realistically calculated to cover the claims, especially in the context with the provisions for review of medical criteria and award values to reduce expenditures or increase contributions in the trust fund.

In September 2005, the analysis by the Bates White firm concluded the proposed fund would face claims of between $301 billion and $561 billion, projecting that claimants with lung and other cancers, would inundate the fund. A hearing on this issue was held by the Judiciary Committee on November 17, 2005. During the hearing we heard testimony on both sides of the issue. The Bates White study proved to be fatally flawed for reasons detailed at that hearing. Thus, in December 2005, CBO confirmed its original cost estimate, reaffirming that $140 billion would be sufficient to cover claims filed for compensation under the trust fund.

The real safety valve, if the fund is unable to pay claims, is for the injured to have the ability to go back to court if the system is not operational and able to pay exigent health claims within 9 months after enactment, and all other valid claims within 24 months of enactment. Upon reversion to the tort system, the bill provides that claimants may file suits either in Federal Court or State Court in the State in which the plaintiff resides or State courts where the asbestos exposure took place. Forum shopping has been eliminated.

The claimants object to any hiatus between access to the courts and an operating system; but the reality is that court delays are customarily longer than the delay structured in this system. The defendants and insurers object saying it is too short a time frame, but they have the power to expedite the process by promptly paying their assessments. Leaders of the Manville Trust and the RAND Institute study provide a solid factual basis that the volume of claims can be efficiently administered by the fund administrator using a technique developed by the Manville Trust and other similar claims facilities that have processed asbestos claims for many years. The Manville Trust has processed as many as 150,000 claims per year. The number of exigent claims anticipated in the first 9 months of the fund is vastly smaller and even the total number of claims anticipated in the first 24 months is significantly less that which the Manville Trust has handled in a comparable period. Additionally, the bill provides the administrator with the option to contract out the exigent claims to a claims facility for expedited processing under the standards of the fund on a voluntary basis. The short time frame will prod the system to become operative at an early date. The bill sends the claims back to the fund as soon as it is certified operational with a credit for any payment of the scheduled amount.

Similarly, the defendants seek a commitment that the legislation will bar return to the courts for at least 7½ years. It is hard to see how the substantial fund would be expended in a lesser period. Here again, the legislation gives the defendant substantial assurances that the system will last at least 7½ years. If it collapses, the claimants should not bear the burden, but should reclaim their constitutional right to a jury trial. However, sunset cannot take place before there is an extensive and rigorous "program review." This would give the administrator an opportunity to refashion the program to compensate for any major shortcomings.

The claimants sought $60 billion in startup contributions within 5 years and the defendants countered with a maximum of $40 billion. The fund's borrowing power should enable it to borrow at least the balance of $20 billion because of the defendants continuing substantial financial commitments. Here again, the bill meets the standard of substantial assurances that $60 billion will be in hand within the first 5 years.

A key issue for the claimant has been that of workers' compensation subrogation. This issue is important because the value of an award to the claimant depends on whether the claimant may have to pay a substantial amount of it to others. While the precise picture is different from State to State, in general, workers' compensation laws give employers, and their insurance carriers, subrogation rights against third-party tortfeasors and a lien on the injured employee's recovery from a third-part tortfeasor. This is a big issue because workers' compensation covers the employees' medical costs.

We closely examined and considered including a proposal that would have called for a so-called workers' compensation "holiday." Such a proposal would have provided for a "holiday" from worker's compensation payments during the period of receipt of payments from trust fund except to the extent that the compensation would exceed them, with a waiver of past and future subrogation. However, as each State has different workers' compensation laws, we concluded that such a proposal could go beyond the practice in a number of States, leaving some claimants with a significantly reduced award.

Furthermore, claimants assert, with a substantial basis that the award values in the bill were designed with the understanding that there would be no liens or rights of subrogation against the claimants based on workers' compensation awards and health insurance payments.

Therefore, after substantial analysis, we have determined that to be fair to victims, claimants should be allowed to retain both their fund awards and workers' compensation payments. It is important that the bill must extinguish any liens or rights of subrogation that other parties might assert against the claimants based on workers' compensation awards and health insurance payments.

Another key issue for the claimants has been the legislation's treatment of asbestos disease claims under the Federal Employers' Liability Act, FELA, the workers' compensation system for rail workers. Earlier versions of the bill would have preempted FELA claims for asbestos-related diseases, limiting victim's recovery to compensation under a national asbestos trust fund. Rail labor asserts that such an approach is unfair to rail workers, since for all other workers, the bill maintains workers' compensation rights. Alternative approaches to dealing with the FELA issue have been proposed, including providing for a supplemental payment, in addition to awards under the bill, to provide compensation to rail workers for work-related asbestos diseases. The AFL–CIO's affiliates which represent workers in the rail industry have been engaged in discussions with industry on this issue, and a fair resolution has been reached. The bill provides for a principled compromise that would allow for a special adjustment for railroad workers so that the compensation award would be structured in a manner that would allow for corollary benefits—similar benefits for workers under FELA and workers compensation. It also clarifies that this legislation intends to deal solely with asbestos claims and does not in any manner impact FELA.

In these marathon discussions, plus four committee hearings on the issue in 2005, we understand the deep concerns expressed by the stakeholder representatives on more concessions for their clients. On the state of the 20-year record, this choice is not between this bill and one which would give their clients more concessions. The choice is between this bill and the continuation of the present chaotic system which leaves uncompensated thousands of victims suffering from deadly diseases and litigation driving more companies into bankruptcy.

We considered at length the manufacturers/insurers objections to medical screening, but concluded such a provision was necessary as an offset to the reduced role of claimant's attorney. With the previous potential of a substantial contingent fee, claimants' attorneys identified those damaged by exposure to asbestos. Absent that motivation, with the attorneys' fees capped at 5 percent, it is reasonable to have routine examinations for people who would not be expected to go for such checkups on their own; so as a matter of basic fairness, such screening is provided. By establishing a program with rigorous standards, as we have done in this bill, unmeritorious claims can be avoided with the fair determination of those entitled to compensation under the statutory standard.

The legislation has closely examined the issues of so-called "leakage" in the fund and has provided that all asbestos claims pending on the date of enactment, except for non-consolidated cases actually on trial, and except cases subject to a verdict or final order or final judgment, will be brought into the asbestos trust fund. Furthermore, only written settlement agreements, executed prior to date of enactment, between a defendant and a specifically identifiable plaintiff will be preserved outside of the fund; the settlement agreement must contain an express obligation by the settling defendant to make a future monetary payment to the individual plaintiff, but gives the plaintiff 30 days to fulfill all conditions of the settlement agreement.

We have also included in the legislation language designed to ensure prompt judicial review of a variety of regulatory actions and to ensure that any constitutional uncertainties with regard to the legislation are resolved as quickly as possible. Specifically, it provides that any action challenging the constitutionality of any provision of the act must be brought in the United States District Court for the District of Columbia. The bill also authorizes direct appeal to the Supreme Court on an expedited basis. An action under this section is to be filed within 60 days after the date of enactment or 60 days after the final action of the administrator or the commission giving rise to the action, whichever is later. The District Court and Supreme Court are required to expedite to the greatest possible extent the disposition of the action and appeal.

Claimants also expressed the need for assurances on the manufacturers payment into the fund. Therefore, S. 852 requires enhanced "transparency" of the payments by the defendants and insurers into the fund. The proposal provides that 20 days after the end of such 60-day period, the administrator shall publish in the Federal Register a list of such submissions, including the name of such persons or ultimate parents and the likely tier to which such persons or affiliated groups may be assigned.

After publication of such list, any person may submit to the administrator information on the identity of any other person that may have obligations under the fund. In addition, there are enhanced notice and disclosure requirements included in the legislation. It also provides that within 60 days after the date of enactment, any person who, acting in good faith, has knowledge that such person or such person's affiliated group would result in placement in the top tiers, shall submit to the administrator either the name of such person or such person's ultimate parent; and the likely tier to which such person or affiliated group may be assigned under this act.

As I have mentioned previously, this legislation deals with a number of very complex issues, one of them being that of "mixed-dust." We held a hearing in the Judiciary Committee on this issue on February 2, 2005. The manufacturers fear that many asbestos claims will be "repackaged" as silica claims in the tort system. Evidence adduced at the hearing reflects that this has been happening in a number of jurisdictions. If a claim is due to asbestos exposure at all, the program should be the exclusive means of compensation. The stakeholders agree that this is an asbestos bill, designed to dispose of all asbestos claims but that workers with genuine silica exposure disease ought to be able to pursue their claims in the tort system. The problem is that with those claims where the point of demarcation is unclear. Silica/asbestos defendants are worried that they will find themselves in court with the burden of proving that the plaintiffs injury is due to asbestos rather than silica. S. 852 makes clear that pure silica claims are not preempted, but claims involving asbestos disease are preempted. A claimant must provide rigorous medical evidence establishing by a preponderance of evidence that their functional impairment was caused by exposure to silica, and asbestos exposure was not a significant contributing factor. Although this does impose the burden on the claimant, this is no different than the burden the plaintiff or any party advancing a position has in producing medical evidence in any case that the physician will state that a disease was caused by some condition or exposure or that it was not caused by some condition or exposure. In addition, the testimony given at the February hearing on the issue established that asbestos and silica are easily distinguishable on x ray and that asbestos and silica rarely are found in the same patient.

Another very complicated issue I have addressed in my legislation, at the request of the claimants, is that of providing for award adjustments for exceptional mesothelioma cases based on age and the number of dependents of the claimant. For example, a mesothelioma victim who is 40 years old with two children will be able to get an upwards adjustment in his award amount as compared to a 80 years mesothelioma victim with no dependents. The impact of such adjustments to the fund will remain revenue-neutral.

There has been a strong concern that this bill should not become a "smokers" bill rather than an asbestos bill—that thousands of smokers will claim to be in the level VII compensation tier in order to get money even if asbestos had nothing to do with their disease. After long discussions with the various sides, it has been decided to remove level VII cases from the fund, cases which had the potential to bring down the entire fund.

There has also been a concern with the legitimacy of the level VI compensation tier. We requested that the Institute of Medicine, IOM, commence a study to assess the medical evidence so as to determine whether colorectal, laryngeal, esophageal, pharyngeal or stomach cancer can be caused by asbestos exposure. The IOM will conclude its study of level VI causation by April 2006. With a 270-day stay on exigent cases and 2-year stay of all other cases, this has the practical impact of the IOM study results being conclusive on inclusion or exclusion of level VI prior to any claim being filed.

Therefore, the bill retains the level VI tier pending the IOM study conclusions but continues to provide extensive safeguards to the fund against those individuals with these diseases making claims against the Asbestos Trust Fund. Any level VI claim must be based on findings by a board-certified pathologist accompanied by evidence of a bilateral asbestos-related nonmalignant disease; evidence of 15 or more weighted years of substantial occupations exposure to asbestos; and supporting medical documentation establishing asbestos exposure as a contributing factor in causing the cancer in question. The claim must also be referred to a physicians panel for a determination that it is more probable than not that asbestos exposure was a substantial contributing factor in causing the other cancer in question. Further, the bill mandates that the physicians panel review the claimants smoking history as opposed to "claimant may request."

The FAIR Act is a complicated bill, but one that is both integrated and comprehensive and reflective of a remarkable will to enact legislation. If this bill is rejected, I do not see the agenda of this Senate Judiciary Committee revisiting the issue. I cannot conceive of a more strenuous effort being directed to this subject that has been done over the past 2½ years. This is the last best chance.

I remain confident that during debate on the Senate floor, we can forge and enact a bill that is fair to the claimants and to business and that will put an end once and for all to this nightmare chapter in American legal, economic and social history. If we can summon the legislative will in a bipartisan spirit, it can be done. Anything less would preserve the injustices of a system that even the highest Court of this country has called upon the Congress to fix.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. REID. Mr. President, I want to make sure the record reflects that I have the highest regard for PAT LEAHY and ARLEN SPECTER. If I in any way embarrassed them or hurt their feelings, I am sorry I did that. Certainly, it was nothing I said that indicated they did anything that was unbecoming regarding this legislation. That is how I feel. But that doesn't take away from the fact that I think it is outrageous that these 13 companies spent $144.5 million lobbying this legislation. I will not get away from that.

We need lobby reform in this country. We need to start on that right now. I want to make sure the record reflects this also. The week before last, my communications center put out a piece of mail I didn't see. It went out—and that is not much of an excuse, but it is true. The minute I learned about it, I wrote a letter. It was as close as anything I could do from my heart. What I did in not reading that letter before it went out from my office is wrong. I take full blame for that. But anything in that letter—I mean, to show you, Mr. President, there was a derogatory statement about my friend from Nevada, Senator ENSIGN. As everyone knows here, I would never say anything negative about him. We may disagree on legislation, but I would never say anything in a negative way about him. He was one of the 33 mentioned in that letter. So I apologized to him and to all 32 others. I meant that. It was wrong what I did, but I have said that.

I am sorry my friend from Pennsylvania raised that. I did the best I could in resolving that as an issue, putting that to each of those Senators, saying I am sorry. I received phone calls from a number of Senators and I have had personal meetings with them. They accepted my apology.

Also, we should not do things on a personal basis here, and I didn't do that. I complained bitterly about this legislation. I cannot stand this legislation, and contrary to what my friend from Pennsylvania says, I pretty well understand it. Maybe I don't understand it as well as he does, but I understand it. Everything I said about this legislation in my remarks is meant by me. I meant every word I said.

For the Senator to disparage me because I didn't attend the Judiciary Committee hearing, I am not a member of the committee. If I spent my time, or the Presiding Officer did, going to committees we don't belong on, it would make for a very difficult scene around here.

I disagree with my friend, the Senator from Vermont, Senator LEAHY, on this legislation. I think it is misguided legislation. But he did it and I have talked to him personally about how I think it is bad. He told me where he thinks it is good. We disagree. I asked the assistant Democratic leader, Senator DURBIN, to be the floor manager on this because he and I and the vast majority of the Democrats oppose this legislation.

I am sorry the Senator from Pennsylvania thought my remarks were rambling and disconnected. I guess it is up to the people who watch this—not my friend from Pennsylvania—to determine whether it is rambling and disconnected. If the Senator thinks I was in some way disparaging him, I certainly didn't mean it. I am disparaging this legislation. I think it is bad legislation, and I think the people it hurts more than anybody else are the victims.

The distinguished Senator from Pennsylvania said I have no interest in this legislation. Why would I be here if I have no interest in the legislation? I have an interest. It is different than his. He says I fake concern about this. I am sorry he feels that way. I am concerned about this legislation.

For the reasons I have enumerated in my opening statement, I think this is a bad piece of legislation that is not good for the American people.

The bankrupt companies—of course, I am concerned these companies went bankrupt. For example, U.S. Gypsum is out of bankruptcy. It has made a settlement. It has settled with all the claimants for under $1 billion. But it is interesting. They have said, coming out of bankruptcy and their settlement, if this legislation passes, they will have to contribute $3 billion to this fund. I would rather U.S. Gypsum contributed money to any trust fund than all these many companies I talked about, three of whom have been in business for many years and have said they are going to go into bankruptcy.

I believe, as far as saying some unions favor this legislation, there are a few—very few, such as the United Auto Workers. I have a letter, which I ask unanimous consent be printed in the RECORD, from the AFL–CIO. They oppose this legislation.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, DC, February 2, 2006.

DEAR SENATOR: I am writing to outline the AFL–CIO's concerns about the Fairness in Asbestos Injury Resolution Act of 2005 (S. 852), legislation that will have a direct impact on millions of workers exposed to asbestos.

On May 24, 2005 we wrote to Senators to express our view that S. 852 contained important deficiencies that would deny fair and timely compensation to tens of thousands of asbestos victims. With the bill headed to the floor, perhaps as early as next week, I am writing to restate these objections with the hope that they will be addressed before the Senate completes action on the bill. Though several AFL–CIO affiliates have recently expressed support for the bill, a majority continue to feel that unless these issues are satisfactorily resolved, the asbestos trust fund will fall short of its promise to fairly compensate the victims of this devastating disease.

First, we remain deeply dismayed about the bill's start-up provisions, where the interests of defendants who are responsible for the disease crisis have become paramount and the needs of victims have become a secondary consideration. Addressing the so-called "leakage" to the tort system has become more important than ensuring just compensation for those who are sick.

As currently amended, S. 852 places the burdens and risks of the fund's start-up squarely on the shoulders of those who are sick. If S. 852 becomes law, by any realistic estimate it will take more than a year—and very possibly several years—to put in place the procedures, and retain and train the personnel necessary to properly administer not only the new claims procedure, but also the complex mechanism established under the bill for assessing and collecting contributions from defendants and insurers. As recent experience has amply demonstrated, the infrastructure necessary to properly operate a major new program of this magnitude simply cannot be created overnight. Under S. 852, however, the ability of asbestos victims to obtain compensation through the current system is cut off immediately upon enactment. Not only are provisions eliminating access to the courts for asbestos victims effective as soon as the bill becomes law, the bill also provides for immediate shutdown of the so-called "524(g)" bankruptcy trusts established by companies like Halliburton and Johns Manville to pay asbestos claims—trusts that are currently providing compensation to tens of thousands of asbestos victims per year, using funds specifically set aside in bankruptcy proceedings expressly for the purpose of paying asbestos claims.

The bill attempts to provide a mechanism through which terminally ill claimants will be able to obtain payments during the period before the new fund is fully operational, but all other claimants, no matter how serious their illness or disability, can be left without a remedy for an indefinite period of time. If the fund is still not operational after 24 months, the bill ostensibly gives those claimants the right to pursue their claims in court. But that right is in fact illusory, since if and when the fund does become operational the right to proceed in court will again be extinguished, making it impractical for claimants to pursue that option. And because the bankruptcy trusts are eliminated as of enactment, that remedy will remain unavailable. Thus, the practical effect of the bill will be to leave non-exigent claimants with nowhere to go to obtain compensation for their illness until such time as the fund is able to process their claims, no matter how long that takes. Using CBO estimates, by 2008 the number of sick claimants in this situation could number more than 110,000.

In our view, it is unfair to leave victims with serious illnesses without any remedy in this manner. The uncertainty associated with the start-up of the fund should be borne by those responsible for the asbestos disease crisis—the defendant companies—not asbestos disease victims. At a minimum, the bill should permit the asbestos bankruptcy trusts to remain in place to pay all impaired claimants who qualify under those trusts, until the national trust fund is fully operational.

Second, S. 852 unfairly restricts the legal rights of victims with silica disease. It establishes medical criteria for lawsuits by individuals who have both asbestos-related disease and silica-related disease, which will bar many of them from seeking compensation for their silica-related injury. The only recourse for victims of both diseases will be to seek compensation for their asbestos disease from the asbestos fund—which in most cases will be limited to $25,000 for Level II "mixed disease." This legislation should not be a tort reform bill for silica disease. All victims with silica-related disease, including those who also have asbestos disease, should have the right to seek redress in the courts for their silica injury, with any damages limited to the injury attributable to their silica exposure.

Third, the sunset provisions of the bill are also problematic and unclear. While the bill provides for a return to the tort system in the event the trust fund has insufficient funds, as drafted the bill does not provide for an orderly process for anticipating and working to correct identified problems before reaching the point where the fund would be forced to shut down. In addition, in the event of reversion, some claimants would be barred from returning to court due to problems with provisions on post-sunset statute of limitations and language limiting the legal venue where claims may be brought. A provision added at mark-up that relieves insurers of their guaranteed funding obligation creates another major problem. This provision undermines the funding formula, borrowing authority, and sunset determination and may leave the fund with a shortfall it cannot make up.

Fourth, the bill completely cancels legal and otherwise binding settlements unless (a) they are signed by the individual plaintiff and the "settling defendant" before the enactment date and

(b) within 30 days after enactment, all parties complete all required performance, except making payments. Because nothing requires the "settling defendant" to sign the agreement or to complete performance, this permits defendants to void their commitments. These settlements are legal commitments by defendants to provide compensation, in exchange for which plaintiffs have given up their legal rights. There is no justification for enabling defendants to abrogate those agreements, cancel payments to victims, many of whom have been waiting for years, and require the claimants to go back to square one and start a whole new process in the fund.

Fifth, we remain deeply concerned about the bill's overly broad definition of an asbestos claim. S. 852 is intended to provide an alternative remedy for personal injury claims related to asbestos, and preempts these claims from being pursued in the tort system. But rather than limit the bill's application to such claims, the bill defines asbestos claim very broadly, to include virtually any civil action that is directly or indirectly related to the health effects of exposure to asbestos, and then includes a list of the specific types of claims that are excluded. This overly broad definition of asbestos claim will have the unintended effect of preempting many civil actions related to asbestos that have nothing to do with personal injury claims. The definition of asbestos claim should be clear and limited to personal injury claims, which is the only type of claim for which the Fund will be providing compensation.

Sixth, while we support limits on attorneys fees, we believe that the hard 5 percent cap for all claims may not be sufficient for claimants with complex cases to obtain adequate legal representation, and that a different type of cap/fee limitation is needed for the Level I claims that do not have a monetary award. The AFL-CIO believes that the fee limitation should be applied to claims involving monetary awards and that the Administrator should be given the discretion to increase the attorneys' fee limit if experience shows that it is impeding the ability of claimants to secure compensation under the Act.

In addition to these long-standing issues, in the past several months new important information about potential claims and costs has become available from the Manville Trust and others that suggests that future mesothelioma cases, as well as the number of pending claims, maybe significantly higher than previously estimated. The Congressional Budget Office should conduct a full review of this new information so the Senate can have the most up-to-date cost analysis as it considers this legislation.

Throughout the legislative process, our goal has been to arrive at a bill that provides fair and timely compensation to victims through an efficient and workable process. We acknowledge that important improvements to S. 852 have been made, but more needs to be done before the bill can fulfill its promise to provide fair and timely compensation to the victims of asbestos disease.

Sincerely,

JOHN J. SWEENEY,
President.

Mr. REID. Mr. President, the final point I would like to say, through the Chair to the senior Senator from Pennsylvania, is I didn't mention LIHEAP in my statement. I didn't mention it at all, although it is something we need to take up, but for reasons I was discussing with Senator FRIST, I decided not to do that.

The other issues I meant to bring up but I didn't mention LIHEAP. That didn't come from my mouth. LIHEAP is something we are obligated to do and do it as soon as we can. There has been a commitment made by the majority leader and me to a Senator from the majority that we would do something about that. But I didn't mention LIHEAP.

I know the Senator spent a lot of time on this. One of his friends, a classmate—I don't know what the relationship is, but it goes back many decades—Judge Becker, they spent a lot of time on this. I know this legislation means a lot to the Senator from Pennsylvania.

But just because this legislation means a lot to him doesn't mean I have to support it.

As much as I think of the Senator from Pennsylvania, which is a lot—I have had admiration for him and told him on many occasions. I am one of the few people who read his book, and I enjoyed reading his book. If I hurt the Senator's feelings—maybe that is the wrong word—I apologize.

Certainly, the Senator from Vermont and I know each other very well. I would never, ever intentionally do anything to embarrass or hurt his feelings. I say, through the Chair to my friend from Vermont, I don't like this legislation. It is bad, and I am going to do everything I can to stop this bill from going through. If I can't do it, then I am a big guy, and I understand a lot of times you don't win around here. But that doesn't take away my obligation of doing the very best I can to talk about this legislation. I am going to continue doing that. I don't like this legislation for the reasons set forth.

A final thing I would like to say is that I have given these estimates as to what is wrong with the bill from a dollar perspective. There are parts that I have read. I think I am right, and I think time will prove, without question, that $140 billion is wrong, no matter if Senator FRIST or Senator Daschle, or whoever, agreed to this amount. Where the number came from, I don't know, but it certainly is not enough. Looking back a couple years ago when Senator Daschle was involved in this issue, maybe he at that time thought it was the right amount. I have disagreed, and I disagree now.

Again, so the record is clear, I don't mean to violate rule XIX, but I am going to continue pushing for reform. When legislation such as this requires 13 companies to spend $144.5 million on lobbying activities, that is too much.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, very briefly, my feelings are not hurt. My feelings are an irrelevancy. If they were relevant, they still have not been hurt. My concern is for the feelings of the people who have been victimized by asbestos and have no one from which to collect.

I don't make any point about having done a lot of work on this bill. I don't do piecework around here. I do work on a lot of bills. I do not personalize it at all. My thrust is strictly on the merits, on a way to fairly compensate victims, on a way to stop more companies from going into bankruptcy, on a way to stop the hemorrhaging of job losses, and a way to stimulate the economy. I make the submission of this bill strictly on the merits.

I compliment Senator LEAHY on what he has done on this bill, as well as his staff, in coming together and structuring the bill, again, in meeting after meeting and in discussion after discussion. What we asked our colleagues to do is to take a look at the merits. Don't be concerned about the work that we put into it, don't be concerned about our feelings; be concerned about the problem and about our suggested solution and about our openness to make changes. If anybody has amendments, we will consider them. If somebody has a better bill, we will consider that.

I yield the floor.

The PRESIDING OFFICER. The Senator in Vermont.

Mr. LEAHY. Mr. President, both the distinguished senior Senator from Pennsylvania and I have been tied up much of today in a matter involving wiretapping of Americans and other issues. We will be going back to that. I know the Senator from Pennsylvania is returning to the committee.

I am going to ask unanimous consent that the Senator from Illinois be able to have the floor for up to 30 minutes following me.

Before I make that request, if I may have the attention of the Senator from Pennsylvania or the Senator from Tennessee. I am going to make the request that the Senator from Illinois, Mr. DURBIN—we are all at the same hearing—that the Senator from Illinois, Mr. DURBIN, who has a position different to that of mine and the Senator from Pennsylvania, that he be recognized for up to 30 minutes once I complete my comments, unless, of course, either of the leaders object.

The PRESIDING OFFICER (Mr. BURR). Is there objection?

Mr. FRIST. Reserving the right to object.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I have a statement to make following the remarks of Senator LEAHY.

Mr. LEAHY. Mr. President, I ask unanimous consent then that after the distinguished Republican leader, the distinguished Senator from Illinois be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, there has been some question about—and I think I am fortunate—comments suggesting motivation of veterans who support this legislation. A lot of veterans support this legislation. A lot of veterans have been badly damaged by exposure to asbestos, and they have no way of seeking compensation except in this legislation.

A lot of labor unions feel the same way. These are not the so-called K Street lobbyists, these are not special interests; these are people who care about those they represent, the veterans they represent, the workers they represent.

I ask unanimous consent that these letters of recommendations be printed in the RECORD, and I will name them:

A letter from the Military Order of the Purple Heart, another signed by the Air Force Sergeant Association, American Ex-Prisoners of War, Blinded American Veterans Foundation, Blinded Veterans Association, Fleet Reserve

Association, Jewish War Veterans of the USA, Marine Corps League—my son is a former marine—Military Officers Association of America, National Association of Black Veterans, Noncommissioned Officers Association, National Association of Uniformed Services, National Association of State Directors of Veterans Affairs, Paralyzed Veterans of America, Pearl Harbor Survivors Association, Retired Enlisted Association, Veterans of the Vietnam War, Inc., Veterans of Foreign Wars of the United States, Women in Military Service for America, Memorial Foundation, Inc., the U.S. Submarine Veterans, Inc., Lockwood Internet Base, U.S. Submarine Veterans of World War II, U.S. Submarine Veterans Base Rhode Island, U.S. Submarine Veterans World War II Thames River Chapter, U.S. Submarine Veterans World War II Central Connecticut Chapter, the UAW, the Heat & Frost Insulators & Asbestos Workers International, the International Union of Painters and Allied Trades, the Governors of Alaska, Arkansas, Michigan, Mississippi, Missouri, Montana, Ohio, Utah, and Vermont, and the National Federation of Independent Business, NFIB. Those are among some of those.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

INTERNATIONAL UNION OF
PAINTERS AND ALLIED TRADES,
Washington, DC, August 17, 2005.

Re: S. 852, the "Fairness in Asbestos Injury Resolution Act of 2005 (FAIR Act)"

Hon. ARLEN SPECTER,
U.S. Senate,
Washington, DC
Hon. PATRICK LEAHY,
U.S. Senate,
Washington, DC

DEAR SENATORS SPECTER AND LEAHY: I write you today in regard to S. 852, the "Fairness in Asbestos Injury Resolution Act of 2005 (FAIR Act)". On behalf of 140,000 families represented by the International Union of Painters and Allied Trades, IUPAT, I would like to express our strong support for S. 852 in its current form and your continued efforts toward a bipartisan bill that will ensure true, just and fair compensation to current and future victims of asbestos exposure.

We appreciate all efforts to incorporate a number of key provisions and safeguards that have been advocated on behalf of workers who have been harmed by exposure to asbestos and who have been adversely affecred by a current asbestos compensation system that is slow, costly, unfair and arbitrary. However, the IUPAT remains concerned about potentially hostile amendments that may be offered on the Senate or House floor that would effectively undermine key provisions of the bill dealing with funding, medical criteria, awards, and other issues. We will continue to urge you, along with other Senate and House members, to reject any such amendments. Should any amendments be adopted that would undercut the progress made on this complex issue the IUPAT will have no other choice but to withdraw our support for the bill.

We feel the trust fund model is the best solution for addressing the asbestos comopensation crisis workers and business currently face. After years of numerous stakeholder meetings, we are confident that our members' and all affected workers' interests are best protected by key provisions in your legislation as presently drafted. Of particular interest to us are provisions contained within your legislation that ensures fair compensation to asbestos victims with mesothelioma, lung cancer, or those victims who have impairment from asbesotosis or asbestos exposure that includes objective medical evidence or markers of asbestos exposure that includes CT scan review; no delay for victims' access to the tort system in state or federal court if the trust fund becomes insolvent; protection for victims from insurance subrogation; a ban of asbestos in the United States; a medical screening program for high risk workers; and enforcement provisions to prevent needless exposure to asbestos by uninformed and unsuspecting workers.

It is our hope that the International Union of Painters and Allied Trades' support for S. 852, along with other labor organizations, businesses, employer associations, and victims' groups, will allow this bipartisan bill to receive strong backing in the Senate on final passage and will therefore assure that the Senate passed bill with the aforementioned key provisions is accepted and passed by the House of Representatives.

Thank you for your continued efforts in dealing with this important issue.

Sincerely and fraternally,

JAMES A. WILLIAMS,
General President.

OCTOBER 7, 2005.

Hon. BILL FRIST,
Majority Leader, U.S. Senate, Washington, DC.
Hon. HARRY REID,
Minority Leader, U.S. Senate, Washington, DC.

DEAR MAJORITY LEADER FRIST AND MINORITY LEADER REID: On July 18, the National Governors' Association approved a revised policy on Asbestos Litigation Reform. This policy calls for legislative action to address this continuing problem affecting states in a variety of ways.

America faces a crisis from asbestos litigation that continues to take its toll on the sick, their families, and our economy. Today there are hundreds of thousands of asbestos claims in the courts with tens of thousands of new claims filed each year. This is a unique legal situation that requires congressional action to alleviate this logjam of cases.

In addition to those who have become sick from asbestos exposure, the impact of the claims also hurts employees, retirees, shareholders, and customers of defendant companies, whose jobs and savings are jeopardized or lost. Our national economy also is hurt in the areas of jobs, pensions, stock prices, tax revenues, and insurance costs. We believe that this is truly a national crisis. Without a solution, more companies will be forced into bankruptcy, delaying and reducing resources available to pay those who are now sick or may become sick in the future.

We believe that it is time for Congress to respond to the Supreme Court's repeated calls for a legislation solution to this crisis. Congressional enactment of legislation is imperative to ensure that those ill from exposure to asbestos-containing products and their facilities are fairly compensated and that defendant companies are financially secure so that they can pay present and future claims.

We understand S. 852, the "Fairness in Asbestos Injury Resolution Act of 2005," was voted out of the Judiciary Committee with a bipartisan 13-5 majority and is ready for action on the Senate floor. We urge you to schedule debate on this critical legislation as soon as possible.

Sincerely,

Governor Frank H. Murkowski, Alaska; Governor Mike Huckabee, Arkansas; Governor Jennifer M. Granholm, Michigan; Governor Haley Barbour, Mississippi; Governor Matt Blunt, Missouri; Governor Brian Schweitzer, Montana; Governor Bob Taft, Ohio; Governor Jon Huntsman Jr., Utah; Governor Jim Douglas, Vermont.

NATIONAL FEDERATION
OF INDEPENDENT BUSINESS,
Washington, DC, February 6, 2006

Hon. ARLEN SPECTER,
U.S. Senate, Hart Senate Office Building,
Washington, DC.

DEAR SENATOR SPECTER: On behalf of the 600,000 members of the National Federation of Independent Business, I am writing to express our support for S. 852, "The Fairness in Asbestos Injury Resolution (FAIR) Act of 2005." The FAIR Act will help protect innocent small-business owners from the asbestos litigation crisis that now threatens their business.

Asbestos lawsuits against small businesses are on the rise. After years of suing large corporations for multi-million dollar damage awards, "traditional" asbestos manufacturers and defendants are mostly bankrupt. As a result, asbestos litigation now targets companies far removed from any potential wrongdoing, including small businesses. This relatively untapped pool of defendants is an attractive target for trial lawyers since small-business owners and their insurers can be forced to pay millions of dollars in damages. Horrifying for a small-business owner is the prospect that they can be hauled into court without having any relationship to asbestos or the plaintiff. Many small businesses are forced to settle because they don't have the money or time to be away from their businesses. Not only do they face the stigma of having to settle, and the loss of time and money, but they will likely also experience higher insurance rates.

By creating an alternative compensation system to resolve asbestos claims, S. 852 will fix a badly broken system that is not working and, in the process, compensate victims faster. In addition to lawsuit relief, the legislation relieves small businesses with either low or no asbestos liability from having to pay into the compensation fund. No business that meets the Small Business Administration description of a small business can be required to pay a penny into the fund. Nor will any small business that has carried less than $1 million in asbestos expenditures before December 31, 2002 have to pay into the fund.

This legislation will help prevent small businesses from having to spend the time and money to defend themselves in asbestos lawsuits. It takes a significant step towards fixing part of our litigation crisis that hurts business, big and small, and ultimately keeps the victim from receiving compensation.

Thank you for your support of small business.

Sincerely,

DAN DANNER,
Executive Vice President,
Public Policy and Political.

MILITARY ORDER OF THE
PURPLE HEART,
Springfield, VA, December 13, 2005.

Hon. PATRICK LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: On behalf of The Military Order of the Purple Heart (MOPH), I ask you to join our organization and roughly a dozen other national veteran service organizations and support passage of S. 852, the Fairness in Asbestos Injury Resolution (FAIR) Act.

Years after serving in the military, many veterans are now discovering they suffer from terrible diseases related to the asbestos they were exposed to during their time in the U.S. military. The government used asbestos materials in a number of facilities and crafts, affecting the health of the men and women serving before and after the Second World War.

The FAIR Act offers sick veterans a way to receive the compensation they deserve. Right now, it is difficult for veterans to turn to the courts for help with their asbestos-related medical costs. Veterans are barred by law from suing their employer (the federal government) for compensation. But by taking asbestos claims out of the court system, the FAIR Act will ensure veterans will have a speedy and just avenue for receiving compensation.

Senator Bill Frist, with bipartisan support; recently asserted that he will make the FAIR Act a top priority for the Senate in January. He clearly understands that the FAIR Act is the only viable solution for sick veterans. Passage of this bill would provide immediate and ample aid to veterans as well as other victims of asbestos exposure.

Please vote yes on the FAIR Act and help relieve the suffering and financial burden of our veterans.

Respectfully,

JAMES D. RANDLES,
National Commander.

JANUARY 31, 2006.

Hon. HARRY REID,
Democratic Leader, U.S. Senate,
Washington, DC.

DEAR SENATOR REID: Veterans across the country who are afflicted with asbestos-related diseases would at last get compensation and relief under the Fairness in Asbestos Injury Resolution (FAIR) Act. But according to a number recent media reports, you have labelled the FAIR Act as a bill that caters to special interests and have informed Majority Leader Frist in writing that you will oppose this critical legislation. In all frankness, your words and actions are extremely disappointing to veterans across this nation—surely you do not consider sick veterans to be a "special interest"?

The FAIR Act will provide proper compensation to sick men and women who volunteered to fight for our country—compensation they simply can't get under the current system. The military used asbestos throughout its facilities, bases, and ships during and after World War II, and countless veterans were exposed to this deadly material. But because the U.S. government has asserted sovereign immunity, these sick veterans are unble to seek compensation from the government through the courts.

The FAIR Act's victims' trust fund would open a door for veterans that has been closed for years.

We are disappointed that you are trying to keep that door closed and stop veterans from receiving the compensation they deserve. Sick veterans—and indeed, all victims—deserve better than political gamesmanship on this critical issue. We urge you not to stand in the way of full Senate consideration of this vital legislation.

The FAIR Act is more than overdue. The Senate has been debating these reforms for years. Sick victims, including sick veterans, shouldn't be forced to wait for help any longer.

Sincerely,

Air Force Sergeant Association.
American Ex-Prisoners of War
Blinded American Veterans Foundation.
Blinded Veterans Association.
Fleet Reserve Association.
Jewish War Veterans of the USA.
Marine Corps League.
Military Officers Association of America.
Military Order of the Purple Heart.
National Association of Black Veterans.
Non Commissioned Officers Association.
National Association of Uniformed Services.
National Association of State Directors of Veterans Affairs
Paralyzed Veterans of America.
Pearl Harbor Survivors Association.
Tbe Retired Enlisted Association.
Veterans of the Vietnam War, Inc.
Veterans of Foreign Wars of the US.
Women in Military Service for America.
Memorial Foundation, Inc.
U.S. Submarine Veterans, Inc.
U.S. Submarine Veteran, Inc Lockwood Internet Base.
U.S. Submarine Veterans of World War II.
U.S. Submarine Veterans Base Rhode Island.
U.S. Submarine Veterans World War II Thames River Chapter.
U.S. Submarine Veterans World War II Central Connecticut Chapter.

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA—UAW,
Washington, DC, February 3, 2006.

DEAR SENATOR: Next week the Senate is scheduled to take up the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005 (S. 852), sponsored by Senators Specter and Leahy. The UAW strongly supports this legislation. We urge you to support this critically important legislation, and to support cloture both on the motion to proceed and on the bill itself.

The UAW supports S. 852 because we are firmly convinced it would be far superior to the current tort system in compensating the victims of asbestos-related diseases. Under the existing tort system, many victims receive little or no compensation because those responsible for the asbestos exposure are bankrupt, immune from liability or can't be identified. Even when victims do receive some award, the litigation takes far too long, and the amounts are highly unpredictable. Far too much money is wasted on attorney fees and other litigation costs, or dispersed to individuals who are not impaired.

The Specter-Leahy bill would solve these problems by establishing a $140 billion federal trust fund to compensate the victims of asbestos-related diseases through a streamlined, no-fault administrative system. This system will provide much speedier compensation to victims according to a predictable schedule of payments for specified disease levels that focuses compensation on those who have the most serious impairments. It will also guarantee that victims can receive adequate compensation, regardless of whether those responsible for the asbestos exposure are bankrupt or otherwise immune from liability.

The UAW strongly supports the provision in the Specter-Leahy bill that does not permit any subrogation against worker compensation or health care payments received by asbestos victims. We believe this provision is essential to ensure that victims receive adequate compensation, and do not have their awards largely offset by other payments. We strongly urge you to oppose any amendment that would undermine victims' compensation by allowing subrogation.

The UAW also urges you to reject any other amendments that would reduce or restrict eligibility for compensation for the victims of asbestos-related diseases. This includes any amendments that would strike medical monitoring or eliminate Level VI awards.

The UAW supports the provisions in S. 852 that require broad sections of the business and insurance industries to make contributions to finance the $140 billion federal trust fund. We believe this broad-based, predictable financing mechanism is vastly preferable to the current tort system, which has already driven many companies into bankruptcy, and is threatening the economic health of other companies that used products containing asbestos, including the major auto manufacturers. Continuation of the existing tort system will inevitably lead to more bankruptcies, resulting in more lost jobs and wage and benefit cut backs for workers and retirees. However, to ensure that the financing mechanism in S. 852 remains equitable and workable, the UAW believes it is essential that the Senate reject any amendments that would severely narrow or cap the financing base and jeopardize the guarantee that $140 billion will be made available to compensate asbestos victims.

The UAW recognizes that a number of specific concerns have been raised by other labor organizations about various provisions in S. 852. We are continuing to work for improvements in the legislation, and are hopeful that Senators Specter and Leahy will largely address these concerns in a manager's amendment.

However, the UAW does not agree with those who have taken exception to the 5 percent cap on attorney fees for monetary claimants. This cap ensures that asbestos victims will be adequately compensated, and not see their awards severely reduced by exorbitant attorney fees. This cap will not impede the ability of claimants to get adequate legal representation. Because S. 852 establishes a non-adversarial, no-fault administrative system, the difficulties and costs involved in bringing asbestos claims will be greatly reduced. Indeed, much of the work can be done by paralegals. We also believe that labor unions and other groups can help provide free or lower cost representation for asbestos victims by hiring staff attorneys and other professionals to process the claims under the no-fault administrative system. Through such mechanisms, asbestos victims can receive competent representation with little or no attorney fees being deducted from their awards.

Finally, the UAW recognizes that questions have been raised about the projections for asbestos claims and the solvency of the trust fund. We would note that most stakeholders agreed to $140 billion in financing early last year. Although all of the projections are subject to some element of uncertainty, the UAW believes that the $140 billion in financing is sufficient to enable the trust fund to compensate asbestos victims for a lengthy period of time. It is also important to remember that S. 852 provides for reversion of asbestos claims to the tort system in the event the federal trust fund should ever have insufficient funds to pay all claims. While we hope these reversion provisions will never be triggered, they do provide assurance that victims will always have some recourse for seeking compensation.

It is easy for critics to point out shortcomings in S. 852. The UAW submits, however, that it is abundantly clear the asbestos compensation system established by the Specter-Leahy bill would be far preferable to the existing tort system. It would do a much better job of providing prompt, equitable compensation to asbestos victims. And it would finance this compensation through a rationale system that does not lead to bankruptcies that threaten the jobs, wages and benefits of thousands of workers.

For all of these reasons, the UAW strongly supports the FAIR Act, S. 852. We urge you to vote for this legislation, and to support efforts to invoke cloture on the motion to proceed and on the bill itself.

Thank you for considering our views on this vital issue.

Sincerely,

ALAN REUTHER,
Legislative Director.

INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS & ASBESTOS WORKERS,
Lanham, MD, February 6, 2006.

DEAR SENATOR, We strongly support the courageous and bi-partisan work of Senator Arlen Specter (R.) and Senator Patrick Leahy (D.), co-sponsors of the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005 (S. 852) which comes to the Senate Floor this week.

We support the Bill as presently drafted. We ask that you support the Bill as well.

Our U.S. Supreme Court has held that federal legislation is necessary to solve the asbestos compensation crisis—and we agree. Currently, only 42 cents of every dollar spent in this broken system goes to victims, their widows and kids.

I recently wrote our membership across the country to advise them of our support for this Bill, and to urge them to contact you in support of S. 852. I advised our membership that this Bill is not perfect. But nothing ever is when problems of this magnitude are addressed.

We believe S. 852 offers the best hope of providing fair and equitable compensation on a national basis for those who have suffered, or will suffer from the devastating effects of asbestos exposure in decades to come.

We urge you to reject amendments of special interest groups on either side of the issue that would change the core provisions of the Bill.

Such amendments can only be hostile to the interests of fundamental fairness and equity. We have promised our membership that we would fight vigorously to oppose any change that would make this Bill unfair or inequitable.

Very truly yours,

JAMES A. GROGAN,
General President.

INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS & ASBESTOS WORKERS,
Lanham, MD, January 31, 2006.

DEAR BROTHERS AND SISTERS: The Fairness in Asbestos Injury Resolution Act of 2005 (Asbestos Bill S. 852) is scheduled to be brought to the floor of the United States Senate in early February of this year.

Bi-Partisan Co-Sponsors of S. 852: Senator Arlen Specter (R.) and Senator Patrick Leahy (D.): Nobody has worked harder than Senate Judiciary Chairman Arlen Specter (R.) of Pennsylvania and Ranking Minority Member Senator Patrick Leahy (D.) of Vermont in trying to get a fair and equitable and bi-partisan Bill that helps those who have suffered the devastating effects of exposure to asbestos. These two courageous Senators have worked tirelessly during the last three years—to craft changes to the Bill after listening to reasonable suggestions from Labor, Business and Insurance negotiators.

Special interest groups on both sides of the issue have tried to derail their good work. But Senators Specter and Leahy have stood tall in search of an equitable legislative solution.

This office has actively participated in the negotiating process of this Bill over the last three years: Your International has been actively involved in extended and complicated negotiations to bring about this legislative solution. Our U.S. Supreme Court has held that legislation is necessary to solve the asbestos compensation crisis—and we agree.

Let us begin by stating that this Bill is not perfect. Nothing ever is. For the last 10–20 years the current asbestos compensation system has produced inequitable and unfair results. Tens of billions of dollars have gone to people who are not sick. This is wrong. The current system is broken, notwithstanding what special interest groups may claim. We believe this Bill offers the best hope of providing equitable compensation while expediting the compensation and review process on a national basis, regardless of where you live, or who your attorney might be.

Over 300,000 pending or current asbestos claims cry out for a fair legislative solution from Congress: Currently it is estimated that there are more than 300,000 pending asbestos-related claims. In a recent study by RAND, it was determined that only $0.42 (42 cents) of every dollar spent on litigation is awarded to the actual victims, their widows and kids. A majority of the funds is paid to transaction costs, including lawyers' fees for corporations and claimants.

$140,000,000,000 ($140 Billion) trust fund for victims of asbestos induced mesothelioma, lung cancer and asbestosis under a no-fault system with set awards based on severity of disease: This Bill would establish a $140 billion Trust Fund to compensate victims who are truly sick from asbestos exposure under a no-fault compensation system administered by the Department of Labor. Objective medical criteria that will rule in asbestos induced disease, and will rule out disease not caused by asbestos exposure has been negotiated and approved by us and medical experts we have retained. This legislation will offer the following expedited settlements:

Mesothehoma: $1,100,000 per case: Lung Cancer with Asbestosis, $600,000–975,000 per case, Lung Cancer with Asbestos Pleural Markers, $300,000–725,000 per case, Disabling Asbestosis (not cancerous), $850,000 per case, Asbestosis with Some Impairment, $100,000–400,000 per case.

Attorneys' fees have been limited to 5 percent under the legislation. It is to be expected that lawyers who have received tens of millions of dollars in asbestos fees might voice some objection to the Bill. Insurance companies who will have to pay hundreds of millions of dollars into the Trust are likewise objecting to this courageous attempt by Senators Specter and Leahy to solve the asbestos compensation crisis.

The Pipefitters, Painters and United Auto Workers have joined with us: The leadership of the Plumbers and Pipefitters (the UA), the Painters (IUPAT) and the United Auto Workers (UAW), have joined with us in supporting this Asbestos Bill, S. 852. We believe the leadership of other trade unions will come to join us in the weeks ahead in support of this Bill.

Funding: We are aware of those who, in good faith, question whether $140,000,000,000 ($140 Billion) will be sufficient to fund the Trust to compensate all American victims of asbestos induced cancer and asbestosis.We share their good faith concern.

But there have been too many bankruptcies as a result of the current asbestos litigation crisis. If funding mandated under the Bill proves insufficient, the Bill provides that individuals may return to the court system and pursue a lawsuit in their State or Federal Court before a jury of their peers. This was a hard fought and fair compromise.

Let me close by saying that this International Union remains deeply committed to supporting a meaningful, comprehensive solution to our national asbestos litigation crisis. Be assured if we become aware of changes or amendments to this Bill that will be to the detriment of workers and their families, we will fight them, and will not hesitate to change our position if needed.

We urge you to contact your Senators to gain their full support for this legislation. Attached is a complete listing of Senators and their contact information for your convenience.

Fraternally yours,

JAMES A. GROGAN,
General President.
TERRY LYNCH,
Political Director.
JAMES P. MCCOURT,
General Secretary-Treasurer.

Mr. LEAHY. Mr. President, I am pleased to join Senator SPECTER, who is chairman of the Judiciary Committee, Senator FEINSTEIN, and others in urging my colleagues to move to this bipartisan bill.

Speaking of asbestos-related diseases, it is time for us to solve this dire situation. Victims have been waiting long enough for a comprehensive national solution. We have looked at this. The Senator from Nevada spoke of those who have suffered from silicosis. If we are going to talk about families, my grandfather, Patrick J. Leahy, a stonecutter in Barre, VT, died of silicosis of the lungs long before I was born. I never got to know my grandfather. My other grandfather, Pietro Zambon, immigrated to this country from Italy. He died of the same disease. We are not neglectful in that. We are well aware of it. We have designed this bill in such a way that those victims are not shut out.

This legislation is a product of years of difficult, conscientious negotiation. Built on what was done last Congress under former Chairman ORRIN HATCH, we have crafted a fair and efficient plan that is going to ensure adequate compensation of thousands of victims of exposure, but it also gives due consideration to the businesses that should and will provide that compensation.

Asbestos has wreaked havoc on the lives of many, but it has also overwhelmed our Nation's court systems as it tries to compensate them.

We can talk about who gives and who doesn't. The fact of the matter is, the victims are the ones we should be most concerned about, and many of the victims—thousands of the victims in this country will get nothing unless this bill passes.

Senator SPECTER rightly calls this one of the most complex issues we have ever tackled. Look around the Chamber of the Senate. Of those who are here, I have been here the longest. Actually, only six Members of the current Senate have been here longer than I. I have not seen in that 31 years anything more complex.

Does that mean this is the bill I would have written? No. And it is not the bill Senator SPECTER would have written. It is a bill, though, that had to bring enough people together to pass. It should not surprise anyone to hear the interested groups, including labor, some of the businesses contributing to the trust fund, and their insurers, and the trial bar are each less than pleased with one part or the other. But that is the essence of legislative compromise, something I have learned in three decades.

We have kept the ultimate goal of fair compensation to the victims as the lodestar of our efforts. We have all had to make compromises on a variety of subsidiary issues to get this far, but we have achieved a significant and needed step toward a more efficient and more equitable method to compensate these victims. Right now, the fact is that only 42 cents out of every dollar spent on the burgeoning dockets of litigation in this area actually goes to the victims. That is a national disgrace. We can and must do better for all involved in this crisis. America can do better.

These victims need our help, and they need it now. This is, after all, one of the most lethal substances ever to be widely used in the workplace. Between 1940, when I was born, and 1980, more than 27.5 million workers were exposed to asbestos, and nearly 19 million of them had high levels of exposure over long periods of time. We know of some people who suffer from this illness because they washed the clothes of their loved ones who worked in these areas. They have been ravaged.

The economic harm caused by this, and the resulting bankruptcies, are a different kind of tragedy for everybody—for the workers and retirees, for shareholders, but also for the families who built these companies. In my home State of Vermont, the Rutland Fire and Clay Company is among the more than 70 companies that have declared bankruptcy due to asbestos liabilities. Do you think those victims are going to recover anything without this legislation?

The late Chief Justice Rehnquist declared the elephantine mass of cases cries out for a legislative solution. In additional opinions written by Justice Ginsburg, the Supreme Court has repeatedly called on Congress to act because "a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims."

I agree. Our committee chairman agrees. The Judiciary Committee members on both sides of the aisle agree, and we hope others in the Senate will agree.

I am worried when I hear veterans being criticized for supporting this. They are brave. They are concerned that they have been badly injured, and they know this legislation will help them. Why shouldn't they support it? These brave veterans know they are not going to get any help otherwise.

Does business support it? The 600,000 members of the National Federation of Independent Businesses do, as well as hundreds of larger companies which are going to have to contribute.

Senator SPECTER has spoken of this, but think what we do in our bill. It is a distinct improvement over previous bills. We provide higher compensation awards for victims, with $1.1 million awards for victims of mesothelioma, $300,000 to $1.1 million to lung cancer victims, $200,000 for victims of other cancers caused by asbestos, $100,000 to $85,000 for asbestosis, and $25,000 for what we call mixed-disease cases, as well as medical monitoring and all the things he spoke of.

I am going to speak further on this as we go on. I suspect there will be more talk on it. But I hope Senators will allow this bill to go forward, will allow us to have a vote on it. As the Senator from Pennsylvania noted, we have other major things going on. I have been involved in that all day. I must admit, though, to the distinguished majority leader, if the Chair will permit me to note, I may have other things going on. We have other things going on in our family at this moment. I hope we are about to enlarge our family at this moment.

With that, I hope neither of our leaders will mind, but the senior Senator from Vermont is going to go home and hopefully sometime in the next few hours be together with the latest member of the Jackson and Leahy family.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, to my distinguished colleague, I know things will go well as a new member of the family is about to enter. It is a very special time in all of our lives when that happens.

I did want to come to the floor to give some perspective to what we have really seen play out over the last hour and a half with regard to addressing an issue that is important to the American people in ways they probably do not fully realize. It is the importance of taking up and addressing with full debate and amendment on the floor of this body the issue of reforming an asbestos system which is out of control. We have victims of cancer, victims of mesothelioma, victims of asbestosis, who are not being fairly compensated, who are struggling for that last breath before justice and fairness is carried out. That is because of a system which is broken, a system which has called out for fixing, not just in this Congress or the last Congress or the Congress before that but really over the last 15 years.

There has been some question on the floor today of why leadership has elected to bring this bill to the floor as the first major piece of legislation that really was not unfinished business before our last recess, and the reason is for these victims.

Yes, this bill is a jobs issue. It was stated earlier that over 150,000 people have lost their jobs because of this broken system; that over 77 companies have gone bankrupt, which means, yes, loss of those jobs but also loss of pensions for all the other employees of those companies. But I have to say that in part because I have had that opportunity to take care of mesothelioma patients as a physician and to operate on mesothelioma patients. It is a tough operation because you know you cannot cure mesothelioma, you can only treat it and make someone's life better. The sad thing is, although those victims deserve to be compensated and compensated in a timely way—nobody argues that—justice is not being realized today.

It is worth stepping back. We had a wonderful exchange, I believe, through the Democratic leader—who is opposed to allowing that bill to come to the floor to be fully debated and amended to address this significant, critical problem facing people today and one which will face them in the future—and the chairman of the Judiciary Committee, joined by the ranking member, the Democratic ranking member, who believe strongly there is time to address this bill and address it now. If we do not address it now—and it is important for our colleagues to understand—it will not be addressed in this Congress. This is a fairly short period running up to the elections, and we have a lot of work to do. It is either now or never.

I say there is a long history to this. It was 15 years ago that Chief Justice Rehnquist at the time first called attention to the asbestos litigation crisis. It is a crisis, as I will spell out in a few moments. Today, 15 years later, we are on the cusp. After working a bill through committee, passing it out of committee in a bipartisan way—strongly supported by the Republican chairman of that committee and the Democratic ranking member—it is now time to consider it on the floor of the U.S. Senate. We are on the cusp of a fair and a just and a bipartisan solution.

Because of partisan election year politics, it may be, from what we heard from the Democratic leader, that an effort under the Democratic leadership is underway—we are hearing that this bill may be blocked. Remember, what we are debating now is just bringing that bill to the floor, this motion to proceed. What that does is put off relief. It puts off to sometime in the future, if we do not even allow that bill to come to the floor, it puts off relief for thousands and thousands of those victims who deserve just treatment and fair treatment and treatment for their cancer and treatment for their mesothelioma and treatment for their asbestosis. And we are not going to do it.

We are going to bring it to the floor, we are going to debate it, open it to amendment, and fix what people do not like in the bill. But to think we have Democrats today who want to object to even bringing it to the floor—to me, that is wrong. It is something we cannot let happen.

The asbestos crisis is real. Nearly $74 billion has been lost on the inefficient and disastrous asbestos litigation system, with the trial lawyers, of that $74 billion, pocketing almost $30 billion. That is $74 billion that should be going to the victims in a timely way, but about 42 cents out of every dollar doesn't get to the victim, it gets to the trial lawyers. It gets to the system itself. And that is what is fixed in this bill.

The costs have already bankrupted 77 companies, destroyed 150,000 American jobs, and caused workers to lose over $200 million in wages. Victims with real injuries are left with no recourse, spending years awaiting a trial without getting the justice they deserve.

As I said, it was 15 years ago that Chief Justice Rehnquist first drew attention to the problem. In 1991, he warned that courts are "ill-equipped" to effectively address the asbestos situation which has reached—and again I quote, using his words—"critical dimensions and is getting worse."

The Chief Justice at the time—again, this is 1991—went on to say, and I use his words:

> We have . . . a crisis for many Americans. However, the worst is yet to come. . . . it [is] inevitable that, unless Congress acts to formulate a national solution, with the present rate of dissipation of the funds of defendant producers . . . all resources for payment of these claims will be exhausted in a few years. That will leave many thousands of severely damaged Americans with no recourse at all.

Those are the former Chief Justice's words.

After that initial report, in three separate opinions the Supreme Court called on Congress to address the asbestos litigation crisis. Justice Ginsburg specifically called on Congress to create a national trust fund. Her words:

> The argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure.

In 1998, Congressman HYDE was the first Member in Congress to introduce a bill with that recommendation.

Many trust fund bills were subsequently introduced in both Chambers, but it was not until Senator ORRIN HATCH decided to work on the issue that the Senate really began to debate in earnest the merits of a trust fund bill. In 2003, then-Chairman HATCH held six hearings on the proposal in the Judiciary Committee, and in July of that year, 2003, Chairman HATCH passed his trust fund bill out of Judiciary.

The next year, in 2004, I brought that bill to the floor, fought for a vote. Unfortunately, because of partisan and I guess it was election year politics at the time, the bill was filibustered by the Democrats. It was blocked by the Democrats.

After that failed cloture vote, 11 sitting Democrats wrote me and expressed their desire to keep working on the bill, to keep working on an asbestos trust fund to provide necessary relief to victims and businesses. As has been mentioned earlier, I worked closely with Senator Daschle's office to try to construct a compromise at the leadership level. But, again because of partisan, election year politics, negotiations stalled.

Over the course of the following year, Chairman SPECTER took it upon himself to keep that momentum going. We heard a lot of that outlined a few moments ago on the floor of the Senate. He held 36 separate meetings with stakeholders on the topic—the business community, the unions, the trial lawyers, the insurance companies; meeting after meeting. He held a total of six hearings on the matter.

In May of 2005, the Judiciary Committee voted out, in a bipartisan way—the vote was 13 to 5—the bipartisan FAIR Act, the bill we are considering today.

They were finally able to hammer out—it was bipartisan, drawing upon both sides of the aisle—a fair solution to the crisis.

In that July letter of 2004 which was written to me by the 11 Democrats, they summed it up best:

> With each passing day, more and more victims face serious illness and even death, and more and more workers and companies face the threat of bankruptcy.
>
> While creating a national asbestos trust fund is unquestionably an extraordinarily complex undertaking, too much progress has been made to let this issue go unaddressed in this Congress.

That was July of 2004. They were right then, and they are right now. That is why several months ago I told both sides of the aisle that the leadership was going to bring this bill to the floor at this point in time. It is time for us to act. If we don't seize this opportunity, it is simply not going to happen. The asbestos litigation crisis is crippling our economy and it is endangering our fellow citizens who suffer from asbestosis, mesothelioma, and cancer.

It comes back to the victims themselves, with real injuries today, who are offered almost no recourse, spending years awaiting a trial without getting the justice they deserve. It has been 15 years since Chief Justice Rehnquist sounded the alarms. Congress has invested 7 years working through the trust fund solution. Resolution of the asbestos crisis is simply overdue. A vote against cloture to proceed to address asbestos reform is a vote against solving this problem.

As mentioned earlier today, there will be the opportunity to vote at 6 o'clock tomorrow night on this issue. The timing of that is determined by schedules of people. We should have everyone back for that vote. That vote is not going to be on passage of the bill; it is not going to be on amendments to the bill; it is simply going to be a clear-cut vote among our colleagues as to whether we consider it important to look at fairness and justice for the victims who today are suffering. It is a motion to proceed.

Months ago, we said we were going to address it. The time has come, and if we don't act now, this issue will have to be put on the back burner. Thousands of victims will continue to be left without the medical treatment they need and the justice they deserve.

CLOTURE MOTION

Mr. FRIST. Mr. President, I now send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

> We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 131, S. 852: A bill to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.
>
> Bill Frist, Arlen Specter, Jeff Sessions, Pat Roberts, Lamar Alexander, Lisa Murkowski, Johnny Isakson, Richard M. Burr, Wayne Allard, Mitch McConnell, Mike DeWine, George V. Voinovich, Jim Talent, David Vitter, Bob Bennett, Mel Martinez, Ted Stevens.

Mr. FRIST. Mr. President, under the order entered on Thursday, this vote will occur at 6 p.m. on Tuesday. We will continue with debate on the motion to proceed today and through tomorrow. I hope cloture will be invoked and we will then be able to begin debate on this important underlying legislation.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, pending before the Senate is a bill, S. 852, the Fairness in Asbestos Injury Resolution Act of 2005. This bill has been a long time in coming. I was first elected to the U.S. House of Representatives over 20 years ago. In the first year that I served, I was approached, in 1983, 23 years ago, by a representative of Johns Manville, one of the largest asbestos manufacturers in America. This person said he wanted to talk to me about the asbestos issue 23 years ago. He knew then that his company was in trouble, maybe headed for bankruptcy, and he wanted to know if there was another way to approach it.

He could not have imagined the reach of asbestos poisoning and contamination in America. I don't know the number of potential victims of asbestos poisoning and contamination. I am sure it reaches into the hundreds of thousands, maybe into the millions. But there is one thing I do know for sure: not a single victim of asbestos that I have ever heard of or met voluntary exposed themselves to this dangerous and toxic mineral.

We know some people who were almost innocent in their lifestyle, with very little, if any, exposure to asbestos, turned out to be some of its most painful victims. People with mesothelioma contracted because a wife did her husband's work clothes with the laundry each week, shaking out his dirty work clothes, and asbestos fiber flew into the air, invisible to her eyes. She breathed it in, and a timebomb started ticking. That kind of situation was repeated over and over again—for the millions of men and women who were workers in the shipbuilding industry during World War II and since; for others who worked in occupations that you never thought would lead to asbestos exposure; people who bought plants and plant fertilizers, not realizing that the vermiculite included in the plants bought at the grocery store was tainted with asbestos and endangered them; people who worked on putting brake linings into cars; putting insulation in homes; putting shingles on houses; people putting flooring tiles on the floor, never realizing that as they were cutting these products and working with them, they were exposing themselves to something very deadly.

It turns out the people who made these products knew a long time ago that asbestos was dangerous. Maybe as far back as 85 years ago, they had the first evidence that people working around asbestos were getting sick and dying. What did they do? They covered it up because it was bad news. It hurt the bottom line. That coverup went on for decades.

Now we know a lot more about asbestos. Some of the companies that made the most money with asbestos products have gone out of business because they have been sued by their customers and their workers. The argument has been made that the ordinary court system of America can't handle this; there will be too many claimants. So the proposal in this bill is to set up a trust fund, a $140 billion trust fund. Where did that figure come from? Senator SPECTER of Pennsylvania said earlier that it was a figure that was brought up by former Senator Daschle of South Dakota several years ago, and Senator FRIST. I don't know where it came from. I don't know the circumstances under which it was suggested. But today it has become absolutely a doctrine of faith that $140 billion is all we are going to need to pay off all the victims of asbestos.

When we asked during the course of the committee consideration, let's figure out how many people are sick, how much we are going to pay them, and what it is really going to cost, we got the runaround. We couldn't get the information that led to this calculation of $140 billion for the trust fund. So the starting point of this legislation is fatally flawed.

Then comes the second point. Who is going to pay the money into the trust fund? Nominally it will be existing trust funds from asbestos-type companies, other companies across America with some exposure because they have been involved in the use of asbestos, and their insurance companies. So the idea was they would pay into the trust fund and then escape all liability in court.

But we have asked, who are these companies? What are their names? How much will they pay in? Once again, there has been a refusal to provide this most basic information. A $140 billion trust fund, a figure no one can basically explain, coming from thousands of businesses across America which no one can name, does that give you peace of mind? If you are someone who thinks maybe in the distant future someone in your family may need to turn to this trust fund to be paid, is that a good starting point? I don't think it is.

Then comes the question about victims. I will concede there have been numerous hearings on this bill. We have brought in people from all walks of life but very few victims. That is what troubles me. I have met with some of them. I have met with men and women who are literally dying from exposure to asbestos. It is a sad and painful death. Some say it is one of the most painful ways to die, mesothelioma, asbestosis.

I know in my family, my father died of lung cancer. I stood next to his bedside. I was a high school student at the time. I watched this poor man suffocate because of his addiction to tobacco. I can only imagine that asbestos deaths are similar, a painful experience for the victim and a tragic experience for the families.

Look at the amount of money that is being provided. Some of it sounds absolutely grandiose. One million for a mesothelioma victim. Mesothelioma victims, no one even questions, are victims of asbestos exposure. And their diagnosis is almost always—maybe always—a fatal one. So they were people who would recover in court once this diagnosis is made.

The amount of $1 million for a mesothelioma victim may sound like a large amount of money until you take a look at the medical bills and take a look at the lost wages and consider that some of these mesothelioma victims are fathers of children, two and three children, and their entire life's worth from this asbestos tragedy is translated into $1 million.

And over the course of debating this bill, medical treatment of mesothelioma has changed. There was a time when it was flatout a death sentence. There was no place to turn. Then people started trying radical surgeries and treatments to buy a few more months of life. Well, they do; they live a little longer. But, sadly, it costs a ton of money and a million dollars is gone.

What do you think about a victim, a mesothelioma victim—let's not quibble about whether it is asbestos or a serious victim—what do you think about a mesothelioma victim who has been working 2 years, first realizing they had exposure, wondering if they were sick and discovering they had mesothelioma, now they are pushing forward in court, and they have spent time, and they are ready, the trial is about to begin, and this law passes?

Except in the most extreme cases where we carve out an exception, for most of them it means they start over. For asbestosis, in particular, they start over. It means that all the work that was put in by the family, the doctors, the lawyers, to get them ready for their day in court to make their appeal for just compensation is wasted.

I know that lawyers are not a favored class when it comes to this legislation. In fact, if you can imagine, this trust fund says to the victims: if you want legal representation, go right ahead, but you cannot pay more than 5 percent of whatever you recover to the lawyer.

I made a living as a lawyer, and I can tell you there were many times I cut my fee because I felt sorry for my clients, and I think a lot of lawyers do the same thing. But 5 percent is a virtual guarantee that few victims under the trust fund will ever have an attorney at their side or somebody who will tell them what their real rights would be. That is unfortunate. Workers' compensation, which has been on the books for decades across America, provides a reduced standard, a predictable percentage for a lawyers fee. It doesn't go for the moon, and it should not. These are hurt workers, injured workers. They could have done the same thing here, but they did not.

So you look at this from the perspective of workers, you find there are two or three unions supporting this bill. If I am not mistaken, it is the Sheet Metal Union, the Asbestos Union, and the United Auto Workers Union that are the three main unions supporting the bill. You might understand the asbestos and the sheet metal workers. Why the United Auto Workers? It has a lot to do with the fact that many work for automobile companies that are struggling to survive. I bet you a nickel—though they have never told me as much—that when they sit down with the GMs and the Fords of the world, these corporate executives say: take your pick, we can either pay these victims of asbestos or we can pay your pensions.

I hope it has not come to that. I hope that what it comes to is an understanding that we can do the right thing: we can provide an avenue for compensation for victims of asbestos exposure and do it in a sensible way. The States of Texas and Illinois have already moved in this direction. In Illinois, we have what is called the plural registry. It means that if you have been exposed to asbestos, you can sign up—you don't have to file a lawsuit, unless you are sick, but you can sign up and protect your right to bring a lawsuit some day if you become sick. Maybe, God willing, that will never happen. But if, God forbid, it does, you have protected your right to file a lawsuit. I think that is sensible. In Texas, they have established medical criteria for what brings you to court. Once in court, how can you recover? They worked it out within the State of Texas between the trial bar, the attorneys who represent victims, and the legislators and the businesses and insurance companies. They reached an agreement that doesn't create a trust fund, that doesn't say to a person we are slamming the courthouse door but an agreement that gives them their day in court under circumstances and laws that have been agreed to by business and labor and the lawyers and the victims.

Why isn't this bill modeled after that? That seems more sensible. Rather than putting our future in a trust fund with an amount we cannot even rationalize, that assesses companies that we cannot even name, closing off the possibility of going through a court suit to protect your right in court, I think there is a much more sensible way to approach this. I hope that when it is all said and done, all of my colleagues in the Senate will have the same experience I have had—sit down with these families, the families of victims, and understand that is what this is all about. We spent so little time talking about the victims during the course of preparing this bill. I hope, during the course of this debate we will think about it long and hard.

Earlier this afternoon, my colleague, Senator REID of Nevada, spoke on the floor about one of our mutual friends, Bruce Vento of Minnesota. He was a Congressman from St. Paul. He worked in the shipbuilding industry when he was a young man. He went on to have a good public life, being elected to Congress and rising to a position of leadership. I used to see him down at the House gym. He was very conscious of his health. He worked out regularly. He was in good health and was proud of it. Then lightning struck. Those fibers that he ingested in his lungs decades ago created the mesothelioma which spread quickly through his body and took his life. I met with his wife. We talked about Bruce and what his last days were like.

That is a reminder to me that what we are talking about in this bill is not just about formulas and companies, and contributions, and trust funds, we are talking about real people and real lives. I sincerely hope that at the end of the day, after my colleagues have taken a close look, they will say this bill should not pass, that it is not fair, it is unfair to so many people. It is more important for us to step back now and decide what is reasonable. Follow many State examples, such as Texas and Illinois, that have found ways to deal with this issue in a humane, sensible way, to bring it under control. I think we can do that.

I don't take anything away from Senator SPECTER or Senator LEAHY, the ranking member, who support it. They put in many hours in preparation. But I have to tell them at the end of the day, despite all their best efforts, there are fatal flaws in this bill which I hope will lead to its defeat.

I will vote against the motion to proceed. I hope my colleagues will look at it long and hard because this is not just a matter of passing another bill. This is a bill that would touch the lives of many innocent people, many innocent families, and many victims who will be denied their day in court, their chance for just compensation.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ALLEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRESIDENT RONALD REAGAN'S 95TH BIRTHDAY

Mr. ALLEN. Mr. President, I rise late in the afternoon, early evening, in remembrance of a great patriotic leader, a person who I think was America's greatest leader of the 20th century and one of history's alltime adherence advocates and leaders for freedom, individual freedom, liberty, and the advancement of security for free and just societies. The gentleman I am talking about would have been 95 years old today, and that is Ronald Wilson Reagan.

I would hope, actually, on future birthdays, the date of the birth of Ronald Wilson Reagan, some Senator will stand in this Chamber and remind Americans and remember Ronald Reagan, his words, his ideas, and his inspiration.

Ronald Reagan was one who motivated me to get involved in organized politics, and there are literally tens of thousands of others. There are certain people, though, if one looks through history, whose words are ones you can use; they are just enduring principles. I think of Thomas Jefferson, John Locke, George Washington, James Madison, Benjamin Franklin, Mark Twain—all those great quotes from Mark Twain—even Will Rogers. But in our day, the person for inspiration, to help us decide how to meet the challenges of our day, was Ronald Reagan.

President Reagan did leave the White House 17 years ago. For some young people, this seems like a long time ago.

President Reagan's words and deeds are still so applicable today.

He left our world 2 years ago, but we are still living in the wake of the Reagan era. It was Ronald Reagan, let's remember, along with Margaret Thatcher and Pope John Paul II, who fundamentally changed all the dynamics of the Cold War, to bury communism and advance human liberty. While many in those days accepted the perpetual menace of communism and the perpetual servitude of millions of men and women locked behind the Iron Curtain, Ronald Reagan did not. His philosophy toward the Cold War was radically different from the elite sages of the establishment. As Governor of California and then also as President, he offered very clear and refreshing ideas. He was asked one time:

> Mr. Reagan, what is your strategy on the Cold War?

He declared:

> About the Cold War, my view is that we win and they lose.

He came into office as President. In his inaugural address in 1981, he called for an era of national renewal, and this was something very important after the years of malaise that we had in the late 1970s. That is exactly what his 8-year Presidency turned out to be—an era of national renewal for security, for opportunity, and for foundational values. The Reagan revolution reversed the high unemployment, high inflation, economic policies of the 1970s and unleashed the greatest economic boom in American history.

His policies proved that low taxes are good for the taxpayers, and they are also good for the economy, with more investment and more jobs and, for those who care about it, generating more revenue for the Government. After his tax cuts started to impact the economy in 1983, the wheels of American commerce started to move again. We saw an explosion of job creation, innovation, and investment.

In foreign affairs, President Reagan scrapped the policy of coexistence. He made the advancement of freedom, not containment, into the foundational principle of America's foreign policy. He rebuilt America's military strength. He started and initiated the Strategic Defense Initiative which put unprecedented strains on the Soviet economy and their ability to finance their military.

He refused to be cowed into silence when talking about our enemy or the evils of communism. He called the Soviet Union an evil empire. Oh, they criticized him, but, indeed, that was an accurate description. He was a vocal, tireless champion for freedom. He went to Brandenburg Gate in 1987 and boldly said, "Mr. Gorbachev, tear down this wall." He was criticized, but 2 years later, the Berlin Wall was gone, and 2 years after, the Soviet Union itself was gone, discarded into the "ash heap of history," as Ronald Reagan prophesied during the depths of the Cold War.

Today, because of Ronald Reagan, there are literally hundreds of millions of people who were once locked behind the Iron Curtain living in countries we now know as free countries—Lithuania, Latvia, Estonia, former East Germany, Poland, the Czech Republic, Slovakia, Hungary, Romania, Bulgaria, and added countries such as Ukraine and Georgia, which are now tasting that sweet nectar of liberty as opposed to being behind the Iron Curtain. It is because Ronald Reagan provided us with a perseverance—he persevered, our allies persevered, particularly in Western Europe, and freedom has prevailed.

Five years after he left office in 1994, we were all crushed to learn about Ronald Reagan being diagnosed with Alzheimer's disease. He concluded his farewell address and letter to the American people by writing:

> Now I begin the journey that will lead me into the sunset of my life. I know that for America there will always be a bright new dawn ahead.

As always, Ronald Reagan was right. Despite new and numerous challenges, this blessed country, America, has stood strong for freedom, extending the blessings of liberty and prosperity to a whole new generation of Americans and sharing those blessings with even more people who live here in this world.

When Ronald Reagan passed away on June 5, 2004, I know you, Mr. President—and I see Senator HATCH from Utah here—and all of America grieved and mourned. He was my political hero. But I also felt grateful, grateful for our country, for America, that we and, indeed, the world were blessed to have had Ronald Reagan's commonsense leadership and unwavering commitment to the ideals of freedom throughout the world.

Today, on what would have been his 95th birthday, I reflect on everything Ronald Reagan accomplished during his extraordinary life. If you want to measure a person's greatness and what he or she did in their life, you kind of determine it by the number of people who were positively impacted by their efforts, their deeds, and their life—in Ronald Reagan's case, as I said, the hundreds of millions of people in Central and Eastern Europe who were liberated from the tyranny of communism, but we also have Americans, now over 300 million strong, who have been enriched by the peace and prosperity that resulted from Ronald Reagan's courageous commitment to foundational ideals.

There are many such as myself—and really too many to count—who were inspired by meeting Ronald Reagan in person, who were touched by his great character and integrity, his unfailing optimism and patriotism, his genuine good will and sense of humor, and his words that applied the philosophy of our Founders, whether it is George Washington in his peace-through-strength approach or James Madison in understanding our representative democracy or the spirit of this country as written by Thomas Jefferson in our Declaration of Independence.

Everyone remembers meeting Ronald Reagan. I met him first when I was in high school. We moved out to California when my father became head coach of the L.A. Rams. Ronald Reagan that year was elected Governor and used to come to practices. One thing I really remember about Ronald Reagan is that he didn't just talk about ideals and principles; as Governor and as President, he put them into action. He realized we are all put here on Earth to do something, and we cheat ourselves or others if we do not advocate and advance those ideas.

President Reagan gave my father in the 1980s a plaque which bore his famous quote: "If not us, who? If not now, when?" My father kept that plaque on his desk. When my father passed away, my mother gave it to me, saying I should have it. I had it on my mantel as Governor of Virginia in the capitol designed by Thomas Jefferson. I keep that plaque, "If not us, who? If not now, when?" on my mantel in the U.S. Senate.

Ronald Reagan was a man of action. He was one who produced many great quotes over the years. In fact, a whole industry has sprung up around them. I share with my colleagues and American people my very favorites:

> No weapon in the arsenals of the world is so formidable as the will and moral courage of free men and women. It is a weapon our adversaries in today's world do not have.

Here is another great quote which is the essence of my philosophy:

> Every dollar the government does not take from us, every decision the government does not make for us will make our economy stronger, our lives more abundant, and our future more free.

He also understood our country:

> In America, our origins matter less than our destination, and that is what democracy is all about.

Today, we face challenges. We have a war on terror. I believe our mission in this present war on terror can find us constructive examples from President Reagan's administration. We are making progress in Iraq and Afghanistan. In the coming years, there will be both breakthroughs and setbacks in both countries as we lead this generational struggle against the forces of Islamic terrorism and fascism. But let's remember Ronald Reagan. The Cold War lasted for nearly 50 years, and he persevered. Let's keep and remember Ronald Reagan's legacy of strong leadership as a guiding example to ourselves as we adapt and protect America in this war on terror.

In the area of our economy, we want to make sure the United States is the world capital of innovation, a land of opportunity for all, and is more competitive. If we do so, we need to keep Ronald Reagan in mind as we choose our country's economic policies.

I mentioned earlier Ronald Reagan's tax cuts in the 1980s and the positive impact that had for jobs, investment, and economic progress in our country. When I came to the Senate in 2001, this country was actually in the midst of an economic slowdown. Over the next 3 years, we passed three rounds of tax cuts, and as a result we have an economic growth in this country which is very good, with rising income, more jobs, more investment, and record home ownership. We have even had record tax revenue for the Government because more people are working, investing, and creating more jobs.

However, Americans are going to be hit with tax increases in the next 2 years if we do not prevent tax increases, which would put a damper on our economy, create less investment, make our country less competitive and, in fact, have fewer jobs for the men and women of our country.

President Reagan showed us how tax relief can revitalize and recharge the American economy. Let's not hurt American jobs and American people and competitiveness by raising taxes. We should take action this year to prevent tax increases, and the Federal Government actually ought to be looking to reduce taxes to make our country more competitive for investment, jobs, and opportunity.

People are concerned, as I am, about fiscal accountability. Again, let's look to Ronald Reagan for guidance. I point out that in President Reagan's farewell address to the American people as President, he said that he was "still sounding off about those things I didn't get accomplished while I was President. First, I'm out there stumping to help future Presidents—Republican or Democrat—get those tools they need to bring the budget under control. And those tools are a line-item veto and a constitutional amendment to balance the budget."

Today, the bloated cost of Government has become indefensible. We need to bring fiscal accountability to Washington. The Federal Government needs to spend smarter and learn to do more with less. And that starts, in my view, with reviving a pair of ideas Ronald Reagan shared in his farewell address: the line-item veto and the balanced budget amendment.

When I was Governor, I had the power of the line-item veto. Forty-six Governors have that power. Let me tell you, it is useful. It is a way of knocking out wasteful, undesirable expenditures and policies. You don't have to use it too much after you use it a few times, and the message is understood.

I want the President to have the same power I had as Governor, and so, together with Senator JIM TALENT of Missouri, we have introduced a constitutional amendment to provide the President the line-item veto so that the President and the Congress can be held accountable for nonessential Government spending.

I will also be proposing a constitutional amendment that will require the President and the Congress to balance the budget every year. That is important because if deficits continue, we will end up with higher interest rates. Higher interest rates result in fewer and fewer Americans, especially young people, able to afford their own home. Owning one's own home is the American dream. It is also a question of fairness and opportunity. So to prevent interest rates from rising, we do need the institutional mechanism to get this deficit under control and we need to wrestle it down with a change of the Constitution.

Taken together, I believe lower taxes on the taxpayers, coupled with both the line-item veto and a balanced budget amendment, will restore fiscal accountability and common sense to Washington, and be a fitting capstone to the Reagan legacy.

Ronald Reagan is no longer with us in body, but he is surely with us in spirit. On his 95th birthday, my thoughts are with him and his family, particularly his wonderful bride and wife Nancy, who exhibited such grace and dignity as First Lady and later in caring for her husband during his very long goodbye.

My thoughts are also on America, this land Ronald Reagan loved so much and led so well, a land that has been continually blessed by God with great patriots such as President Reagan, who possessed strong character, integrity, and commitment to enduring values and principles.

I am going to close with this observation by President Reagan, which I believe is still true.

> We have every right to dream heroic dreams. Those who say we're in a time where there are no heroes, they just don't know where to look.

There are heroes all across this country. There are heroes serving this country on ships. They are serving us in Iraq.

Mr. President, President Reagan: Happy birthday. Your dream lives on. It warms the hearts and it cheers the spirit of freedom-loving people throughout the world.

I yield the floor.

Mr. HATCH. Mr. President, I compliment my distinguished friend, the Senator from Virginia, for the remarks he just finished with regard to President Reagan and Mrs. Reagan. It is very fitting and appropriate the distinguished Senator speak here today because he reminds me a lot of Ronald Reagan—in the philosophy he has, the guts he has, the ability to move people in so many other ways. I have to say, I believe I was one of the few, maybe the only person Ronald Reagan ever preprimary endorsed. It was a great thrill for me.

In 1980, I went to multiple States as one of his two major surrogates who spoke for him all over the country. I will never forget the Reagan campaign team did not want him to go to the first—what they call cattle show—in New Hampshire. So they asked me to go in his place and appear with the other seven or eight Presidential candidates. My date for that evening was none other than Nancy Reagan. She was so beautiful—she was such a beautiful person. It was such an honor to be able to speak for the President, for the then Governor Reagan. He meant so much to me and I am grateful that the distinguished Senator from Virginia has spoken for all of us on this subject. I hope and pray Mrs. Reagan has everything that will make life worthwhile, even though Ronald Reagan is now gone.

We love both of them. We revere the memories we have of both of them. Of course, we look forward to continuing to meet with Mrs. Reagan as time goes on.

HEALTH SAVINGS ACCOUNTS

Mr. HATCH. Mr. President, last week the President of the United States came to us with an ambitious domestic policy agenda for the next year. There were many noble goals outlined in that speech. But in my opinion, one of the most important and most necessary is his proposal to expand health savings accounts, or HSAs.

There is not a single person in this institution who fails to recognize the ever-growing problem of health care expenses for ordinary Americans. For at least a decade now, this debate has been front and center in American politics. The American people are fed up and are telling us they want solutions to this crisis.

In the last 30 years we have seen true revolutions in the way consumers do business in this country. Informed American consumers are increasingly involved in a direct way in making decisions on issues that affect their lives and that of their families. As an individual:

It is easier to invest today.

And it is easier to bank today.

There is more choice in education. And there are more opportunities in the workplace.

But almost uniquely in the American economy, our health care system is becoming more expensive and more difficult for individuals to make personal choices regarding their care. Because of the current structure of insurance plans, most consumers do not have the information they need with regard to the cost or the quality of health care that they receive. Information is readily available to make a value-driven decision on purchasing a television or a cell phone, but when it comes to health care, the consumer has little basis on which to make a rational quality and cost-based decision. What separates our increasingly complex and expensive health care system from other sectors of our economy that have become more user-friendly in the last 30 years is a lack of adequate information and a lack of direct consumer decision making.

I think that health savings accounts provide an incredible opportunity for real progress toward health care reform.

Health savings accounts were established in the Medicare Modernization Act of 2003. These accounts allow Americans to save tax-free dollars to pay for their everyday health care expenses on their own terms. At the same time, these accounts are coupled with high-deductible comprehensive insurance policies to cover larger medical bills and also provide specific coverage for preventive care.

This makes sense. HSAs allow individuals to save tax free for everyday medical expenses, while preserving insurance for major health care needs. With HSAs, individuals have unprecedented choice in their health care and are still protected from the high costs of serious illness. The result is predictable. Insurance becomes less expensive if it is used only for major medical expenses, and consumers make value-based choices in their routine medical care.

And, as we all know, the high cost of health insurance is the real problem that we face in providing health care coverage to all Americans. The current low-deductible plans so common in the workplace are increasingly costly for businesses and result in lower wages for workers and reduced employment. More and more small businesses are opting not to offer a health care insurance benefit at all. For the unemployed and/or the uninsured, health insurance premiums are far too expensive.

Health savings accounts are proving themselves to be one important part of the solution to our health care crisis. Americans certainly think so. Since January 2004, over 3 million Americans have enrolled in HSAs.

As innovative and popular as HSAs are proving to be, however, they are far from perfect. By improving and expanding them, health savings accounts could be even more effective in helping us reach our objectives.

I believe we need to create more incentives for employers to offer these plans and for individuals to enroll in them. Incentives can be designed to assure adequate coverage and enrollment of those with chronic illnesses.

The President has made it clear that we need to make these plans fairer and available to a larger number of Americans. Individuals that purchase HSAs on their own should have the same tax advantages as those with employer-sponsored insurance. To achieve this, premiums for HSA-compatible insurance policies should be deductible from income taxes and an income tax credit provided to offset payroll taxes paid on premiums for HSA policies. All taxes on out of pocket spending through HSAs should be eliminated. HSA insurance policies should be portable between employers and across State lines. To allow for better individual healthcare decisions, information on price and quality of healthcare must be transparent and readily available. Acceleration of the implementation of an integrated health information technology system will be critical to these efforts. The President's budget outlines several proposals designed to improve HSAs and to make them more attractive to employers and employees. The employer community also has developed a set of proposals designed to improve HSAs. The Senate should give serious consideration to all good ideas to make health savings accounts work better.

These are important goals.

Health savings accounts are a good thing for our citizens, and they are a good thing for the economy.

HSAs will make health insurance less expensive in the long run, which is the best thing we can do to tackle the problem of the uninsured in this country.

They will make the health care sector of our economy more user-friendly and more efficient.

They will give workers more choice and more flexibility in their choice of plans and in deciding where they want to work.

In short, they would help to bring our health care system into the new economy.

In 1980, most people in this country had rabbit ears on their televisions and a choice of three channels.

Today, we have the internet. We have cell phones. We have ATMs on every block.

Yet, in some ways, our system of employer-provided health care is a dinosaur. It dates back to a policy decision made to assist employers during World War II and it is not aging well. There are too many Americans without employer-provided health insurance, and those with it are routinely frustrated with the level of customer service.

The Bush administration estimates that under current law, the number of Americans with HSAs will grow to 14 million by 2010. By improving the program, however, we could see this number go as high as 21 million.

As a member of the Finance Committee, I am deeply interested in working with my colleagues to help improve HSAs in the coming months and years. The President's proposal represents a unique opportunity to make health care in this country more equitable, more affordable, and more cost-effective.

I urge my colleagues on both sides of the aisle to join me in these efforts.

I believe we would all be better off if we would do so.

HONORING OUR ARMED FORCES

FIRST LIEUTENANT GARRISON AVERY

Mr. HAGEL. Mr. President, I rise to express my sympathy over the loss of Army 1LT Garrison Avery, from Nebraska. Lieutenant Avery died of wounds he suffered when an improvised explosive device detonated near his military vehicle while on patrol in Baghdad, Iraq on February 1. He was 23 years old.

Lieutenant Avery grew up in Lincoln and graduated from Lincoln High School in 2000. He received his parents permission to enlist in the Army at age 17 and graduated from the U.S. Military Academy in 2004. During his junior year at the academy, Lieutenant Avery established an organization called, "Light by Morning," to aid Iraqi orphans. After graduating from West Point, he successfully completed the U.S. Army Ranger School and the Sapper Leaders Course and was assigned to the 1st Battalion, 502nd Infantry Regiment, 101st Airborne Division in Fort Campbell, KY. He was deployed to Iraq in October 2005. Lieutenant Avery will be remembered as a loyal soldier who had a strong sense of duty, honor, and love of country. Thousands of brave Americans like Lieutenant Avery are currently serving in Iraq.

Lieutenant Avery is survived by his wife, Kayla; parents, Susan and Gary Avery; brothers, Clinton and Johnathan; and sister, Elizabeth. Our thoughts and prayers are with them at this difficult time. America is proud of Lieutenant Avery's heroic service and mourns his loss.

I ask my colleagues to join me and all Americans in honoring 1LT Garrison Avery.

DEFICIT REDUCTION ACT OF 2005

Mr. GRASSLEY. Mr. President, I am pleased that the House of Representatives has passed S. 1932, the Deficit Reduction Act of 2005, DRA. This is a relatively modest deficit-reduction bill that represents just one-fourth of 1 percent of what Congress would otherwise spend during the next 5 years.

It has been 8 years since Congress last passed legislation to reduce mandatory spending. The kinds of Medicaid changes made in the conference report are a fraction of what Governors across the country—Republican and Democrat—asked Congress for to help State governments keep their Medicaid programs afloat for the millions of people who rely on Medicaid. Beneficiaries and taxpayers both deserve to get the highest value for every dollar that is spent on Medicaid, Medicare, and other safety-net programs.

It is especially rewarding to have included in this overall package a bill I first authored in 1999. The Family Opportunity Act, which I have pushed for year after year with Senator KENNEDY, was inspired by an Iowa family struggling to access health care services for a disabled child. Melissa Arnold, the mother, didn't give up, and today's legislative victory is a tribute to her kind of determination. The measure will let States create options for families that have children with multiple medical needs to buy into Medicaid while continuing to work. It is a pro-work initiative because it lets parents work without losing their children's health coverage. It is pro-family because it encourages parents to work and build a better life for their children, rather than being forced to impoverish themselves to access health care. And it is pro-taxpayer because it means more parents continue to earn money, pay taxes and pay their own way for Medicaid coverage for their children.

In addition to this expansion of the Medicaid program, the comprehensive legislation includes $400 million in child-support payments that will go directly to welfare families, along with grants to promote healthy marriages and responsible fatherhood, $100 million to improve the handling of court cases involving foster care, a $200 million increase for a Safe and Stable Families program to help keep troubled families together and support adoption, and $1 billion to help parents pay for child care when they leave welfare and join the workforce.

On Medicaid, some partisan critics and their allies will probably continue to distort the bill's intent and effect. I am repeating this—the provisions on benefit flexibility and cost sharing are clear and unambiguous. The Congressional Budget Office and the Centers for Medicare and Medicaid Services agree. The conferees agreed to language that clearly provides early periodic screening, diagnosis and treatment as a guaranteed benefit to all children on Medicaid. The conferees also agreed to language that clearly exempts individuals with incomes of less than 100 percent of the Federal Poverty Limit from any increased cost-sharing. I fought hard for these provisions and I will take appropriate actions to prevent any misreading of them to occur down the road.

FAMILY OPPORTUNITY ACT AND WELFARE REFORM

Mr. GRASSLEY. Mr. President, on Wednesday, February 1, 2006, the House of Representatives passed the Deficit Reduction Act of 2005, DRA, clearing the way for the President to sign this bill into law. This legislation was the product of a great deal of work on the part of Members and our dedicated staff and the experts who work in the congressional support agencies.

I would like to highlight two provisions in the DRA: the Family Opportunity Act and the reauthorization of the Temporary Assistance for Needy Families and pay special tribute to the Members and staff who worked so hard on them over many years.

Mr. President, I am particularly pleased that after years and years, the Family Opportunity Act is about to become law. This legislation has been something of a crusade of mine. This legislation extends Medicaid eligibility to families with a severely disabled child that are faced with either staying poor in order to continue to qualify for Medicaid or, worse, relinquishing a child to the State so that the child can receive the services that the child needs.

The introduction of the Family Opportunity Act was motivated by the circumstances of individual families, the Melissa Arnold Family and the Dylan Lee Family. I offer my heartfelt thanks to these families for sharing their struggles with me and for being the inspiration for this legislation.

I pay special tribute to my partner in this endeavor, Senator EDWARD KENNEDY, who is a tireless champion on behalf of children and those with disabilities. During the many years we worked side by side on this bill, Senator KENNEDY was most ably assisted by Connie Garner, of his staff.

On my own staff, I would like to single out the efforts of Hope Cooper who worked for many years on the Family Opportunity Act and whose knowledge and compassion were invaluable assets in developing the bill.

I also appreciate the work done by policy leads, Leah Kegler, Becky Shipp; health policy director, Mark Hayes; deputy staff director, Ted Totman, and staff director for the Finance Committee, Kolan Davis.

I am grateful for the work done by Jeanne De Sa and Eric Rollins at the Congressional Budget Office and Ruth Ernst at the Office of Legislative Counsel, especially for their patience in analyzing and drafting the many different versions of the legislation.

Mr. President, the reauthorization of the Temporary Assistance for Needy Families, TANF, has been a long and very difficult process, spanning three Congresses. Everyone who has worked on this reauthorization has been guided by a fundamental principle: helping those in deep and persistent poverty achieve the economic self sufficiency needed to overcome that poverty. We may disagree on some of the best ways to overcome poverty, but everyone who devoted their labor to this program did so out of the best of intentions.

I particularly thank my friend and partner on the Senate Finance Committee, Senator MAX BAUCUS, for his work on this program over the past 5 years. We didn't always agree, but we kept working together until we finally got to a compromise that satisfied us both. I hope at some point we can revisit some of the common themes we developed together in the PRIDE bill.

I thank Senator BAUCUS's staff who worked on this issue over the past 5 years, Doug Steiger, Kate Kahan, and Liz Fowler. They are passionate, knowledgeable, and care deeply about low-income programs and the individuals who rely upon them.

Other Members and their staff who contributed to the policy and the process include, the initial "Tripartisan" members: Senator John Breaux and his staff, Sara Triagle and Michelle Easton; Senator ORRIN HATCH and his staff, Becky Shipp; Senator JAY ROCKEFELLER and his staff, Barbara Pryor; Senator OLYMPIA SNOWE and her staff, Carolyn Holmes; Senator JAMES JEFFORDS and his staff, Justin King; Senator BLANCHE LINCOLN and her staff, Elizabeth MacDonald and Mike Anzick.

Other critical Members and staff include: Majority Leader BILL FRIST and his staff, Eric Ueland and Libby Jarvis; Minority Leader Tom Daschle, and his staff, Joan Huffer; Senator RICK SANTORUM and his staff, Randy Brandt; Senator CHRISTOPHER DODD and his staff, Grace Reef; and Megan Hauck, who contributed as a advisor to Senator Don Nickles, as well as working at the Department of Health and Human Services Office of Legislation and the White House.

Throughout much of the process, Members and staff were indebted to the expertise of the Director of the Office of Family Assistance at the Administration of Children and Families, Andrew Bush and the Assistant Secretary for Human Service Policy in the Office of the Assistant Secretary for Planning and Evaluation, Don Winstead.

The Congress simply could not do our work, were it not for the incredibly talented and hardworking individuals serving in the congressional support agencies. We owe a substantial debt of gratitude for the work done by Gene Falk, Melinda Gish, and Carmen Soloman Fears at the Congressional Research Service; Shelia Dacey at the Congressional Budget Office; and Ruth Ernst at the Office of the Legislative Council.

As ranking member and then chairman of the Senate Finance Committee, I was well served by policy leads, Hope Cooper and Becky Shipp; health policy director, Mark Hayes; deputy staff director, Ted Totman; and staff director for the Finance Committee, Kolan Davis.

ADDITIONAL STATEMENTS

TRIBUTE TO WENDY WASSERSTEIN

• Mrs. CLINTON. Mr. President, on Monday, January 30, our country lost, all too prematurely, Wendy Wasserstein, a daughter of New York and one of our Nation's great playwrights and essayists.

Wendy Wasserstein grew up in Brooklyn and Manhattan and was educated at Mount Holyoke College, the City College of New York, and Yale University School of Drama. She is best known for her 1989 Pulitzer Prize and Tony Award-winning play, "The Heidi Chronicles" and Tony-nominated play, "The Sisters Rosensweig". She wrote most recently, "Third", a play that opened in October at Lincoln Center for the Performing Arts. Her first novel, "Elements of Style", will be coming out in April.

Throughout Wendy Wasserstein's career, she wrote with wit and an acute sensitivity to the challenges facing women negotiating the social changes of the last 40 years. She had the courage to dig deeply into her own experiences to write thoughtfully and compassionately about women, New York, and her Jewish roots.

Wendy Wasserstein is best known for her work in the theater and literary world, but she cared deeply about progressive politics, advocacy for the arts, and worked to create richer opportunities for women in the theater. Having grown up attending theater and ballet performances on a weekly basis with her family, she also believed that all children should have the opportunity to be exposed to the arts. She gave back to the city that shaped her as an artist by making the theater accessible to New York's inner-city students through a program she instigated which is now called Open Doors. Through this program, she mentored students at the Young Women's Leadership School, a college prep public school in Harlem. She wrote of the program, ". . . if a city is fortunate enough to house an entire theater district, shouldn't access to the stage life within it be what makes coming of age in New York different from any other American city?"

On a personal level, she was described by her friend, New York Times editorial page editor Gail Collins, as: ". . . a charter member of the company of nice women, a river of accommodating humanity that flows through Manhattan just as it flows through Des Moines and Oneonta, N.Y., organizing library fund-raisers, running day care centers, ordering prescriptions for elderly parents, buying all the birthday presents and giving career counseling to the nephew of a very remote acquaintance who is trying to decide between making it big on Broadway and dentistry."

We can only imagine what future gifts to the theater, journalism, literature and her community Wendy Wasserstein might have made. I am grateful for having known her, and I extend my condolences to her young daughter Lucy Jane and to the entire Wasserstein family. We have lost someone who loved New York with a big, big heart, and New York and our Nation loved her back.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

BUDGET OF THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2007—PM 36

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred jointly, pursuant to the order of January 30, 1975 as modified by the order of April 11, 1986; to the Committees on the Budget; and Appropriations.

America's economy is growing at a healthy pace, and more Americans are working than ever. In the face of a series of challenges, including most recently devastating natural disasters, Americans have stood firm, and America's economy has demonstrated its strength and resilience time and again.

My Administration has focused the Nation's resources on our highest priority: protecting our citizens and our homeland. Working with Congress, we have given our men and women on the frontlines in the War on Terror the funding they need to defeat the enemy and detect, disrupt, and dismantle terrorist plots and operations. We continue to help emerging democracies in Afghanistan and Iraq stand on their own. As the Afghan and Iraqi peoples assume greater responsibility for their own security and for defeating the terrorists, our troops will come home with the honor they have earned.

My Administration has responded to major economic challenges by following this vital principle: The American economy grows when people are allowed to keep more of what they earn, to save and spend as they see fit. The results are clear.

Since May 2003, when I signed into law major tax relief, America has added more than four and a half million new jobs. Productivity is high, disposable income is up, household wealth is at record levels, consumer confidence has climbed, small businesses are expanding, and more Americans own their homes than at any time in our Nation's history.

Our economy is the envy of the industrialized world. To build and maintain our competitive edge, my Administration has a broad agenda to promote America's long-term economic strength. We are opening new markets to American-made goods and services through trade agreements. We are proposing reforms to prevent needless litigation and burdensome regulations. Through major reforms of our public schools, we are preparing our children to compete and succeed in the global economy. And my Budget includes an American Competitiveness Initiative that targets funding to advance technology, better prepare American children in math and science, develop and train a high-tech workforce, and further strengthen the environment for private-sector innovation and entrepreneurship.

In our efforts to keep our economy strong and competitive, we will resist calls to raise taxes on America's workers, families, and businesses. Unless we act to make tax relief permanent, income tax rates eventually will rise, the marriage penalty will climb, the child tax credit will be cut, savers and investors will be hit with higher taxes, and the death tax will come back to life.

With a growing economy, tax receipts are on the rise, helping to bring down the deficit in 2005. To stay on track to meet my goal of cutting the deficit in half by 2009, we must maintain our pro-growth policies and insist on spending restraint.

Last year, I proposed to hold overall discretionary spending growth below the rate of inflation—and Congress delivered on that goal. Last year, I proposed that we focus our resources on defense and homeland security and cut elsewhere—and Congress delivered on that goal. And also last year, my Budget proposed major cuts in or eliminations of 154 programs that were not getting results and not fulfilling essential priorities. Thanks to the work of Congress, we delivered savings to the taxpayer of $6.5 billion on 89 of my Administration's recommendations.

The 2007 Budget builds on these efforts. Again, I am proposing to hold overall discretionary spending below the rate of inflation and to cut spending in non-security discretionary programs below 2006 levels. My Administration has identified 141 programs that should be terminated or significantly reduced in size. To help bring greater accountability and transparency to the budget process, my Budget proposes reforms so that firm spending limits are put in place, and public funds are used for the best purposes with the broadest benefits.

The 2007 Budget also continues our efforts to improve performance and make sure the taxpayers get the most for their money. My Administration expects to be held accountable for significantly improving the way the Government works. In every program, and in every agency, we are measuring success not by good intentions or by dollars spent, but rather by results achieved.

In the long term, the biggest challenge to our Nation's fiscal health comes from unsustainable growth in entitlement spending. Entitlement programs such as Social Security and Medicare are growing faster than our ability to pay for them, faster than the economy, faster than the rate of inflation, and faster than the population. As more baby boomers retire and collect their benefits, our deficits are projected to grow. There will be fewer people paying into the system, and more retirees collecting benefits. These unfunded liabilities will put an increasing burden on our children and our grandchildren. We do not need to cut these programs, but we do need to slow their growth. We can solve this problem and still meet our Nation's commitment to the elderly, disabled, and poor.

Acting on my recommendations, both houses of Congress have taken an important first step, passing legislation that would produce $40 billion in savings from mandatory programs and entitlement reforms—the first such savings in nearly a decade. My Budget builds on this progress by proposing $65 billion more in savings in entitlement programs.

My Budget also includes proposals to address the longer-term challenge arising from unsustainable growth in Medicare, while ensuring modern health care for our seniors. In addition, I will continue to call on Congress to enact comprehensive reform of Social Security for future generations, so that we return the system to firm financial footing, protect the benefits of today's retirees and near-retirees, provide the opportunity for today's young workers to build a secure nest egg they can call their own, and assure our children and grandchildren a retirement benefit that is as good as is available today.

As this Budget shows, we have set clear priorities that meet the most pressing needs of the American people while addressing the long-term challenges that lie ahead. The 2007 Budget will ensure that future generations of Americans have the opportunity to live in a Nation that is more prosperous and more secure. With this Budget, we are protecting our highest ideals and building a brighter future for all.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 6, 2006.*

MESSAGE FROM THE HOUSE DURING ADJOURNMENT

ENROLLED BILLS SIGNED

Under authority of the order of the Senate of January 4, 2005, the Secretary of the Senate, on February 3, 2006, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills:

H.R. 4519. An act to amend the Public Heath Service Act to extend funding for the operation of State high risk health insurance pools.

H.R. 4659. An act to amend the USA PATRIOT Act to extend the sunset of certain provisions of such Act.

Under authority of the order of the Senate of January 4, 2005, the enrolled bills were signed by the President pro tempore (Mr. STEVENS) during the adjournment of the Senate, on February 3, 2006.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-254. A resolution adopted by the Senate of the State of Michigan relative to providing the states with authority to regulate the flow and importation of solid waste from outside the country; to the Committee on Energy and Natural Resources.

SENATE RESOLUTION NO. 43

Whereas, For the past seven years, the amount of solid waste coming into Michigan for disposal has increased from 5.6 million cubic yards to over 15 million cubic yards each year. Carefully planned landfill space, intended to be used for solid waste generated in Michigan, is being quickly filled by waste from other states and Canada. Michigan has enacted several laws to control the solid waste stream coming into the state in an attempt to protect our environment, water, and public health; and

Whereas, The United States Supreme Court limited the state's ability to further restrict out-of-state waste when it ruled in Fort Gratiot Sanitary Landfill v. Michigan Department of Natural Resources that the states do not have authority to regulate or ban the importation of solid waste. The court further ruled that Congress can provide states with such authority by enacting appropriate legislation; and

Whereas, United States Representative Mike Rogers has introduced legislation, H.R. 593, to allow Michigan and other states to control the flow of solid waste coming from other countries into their states. Specifically, H.R. 593 would allow Michigan to enact legislation banning or restricting the disposal of Canadian waste in Michigan landfills. Although supported by members of Congress on both sides of the aisle, bills on this topic introduced in prior congressional sessions did not pass the House of Representatives; now, therefore, be it

Resolved by the Senate, That we memorialize the Congress of the United States to enact H.R. 593 to provide the states with authority to regulate the flow and importation of solid waste from outside the country; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM-255. A concurrent resolution adopted by the Senate of the State of Michigan relative to implementing the Action Plan to Restore and Protect the Great Lakes; to the Committee on Environment and Public Works.

SENATE CONCURRENT RESOLUTION NO. 34

Whereas, Over 40 percent of the Great Lakes are under Michigan's jurisdiction and the Great Lakes contain 95 percent of North America's fresh surface water; and

Whereas, The Great Lakes affect all aspects of life in Michigan and are inextricably linked to Michigan's history, culture, and economy. The Great Lakes have for thousands of years supported native communities' culture and way of life; and

Whereas, The Great Lakes fuel Michigan's tourism and recreation industry. Recreational fishing alone adds $1.4 billion annually to the state's economy; and

Whereas, The state of Michigan has historically been a leader in protecting the Great Lakes, including efforts to regulate ballast water discharges that could harbor invasive species and to eliminate the disposal of dangerous contaminants in the Great Lakes; and

Whereas, Despite Michigan's efforts, the Great Lakes are ailing from a multitude of stressors, including aquatic invasive species, toxic contamination of river and lake sediments, partially or inadequately treated sewage discharges, pollution from nonpoint sources, and coastal habitat loss. Combined, these stressors will have long-lasting effects on the Great Lakes, Michigan's economy, and our way of life; and

Whereas, There has been an unprecedented collaborative effort on the part of 1,500 people representing federal, state, and local governments, Native American tribes, nongovernmental entities, and private citizens to develop an Action Plan to Restore and Protect the Great Lakes; and

Whereas, Implementation of the Action Plan can restore the ecology of the Great Lakes and avert impending environmental threats to the region; and

Whereas, A recent report by the federal Great Lakes Interagency Task Force has, at the eleventh hour, attempted to change the rules that the Regional Collaboration operated under by recommending that the strategy be constrained by current budget projections; and

Whereas, The action plan previously developed through the Regional Collaboration includes recommendations that call on the states and federal government to take substantial new steps jointly in the restoration and protection of the Great Lakes; now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That we urge the Great Lakes Regional Collaboration and the United States Congress to take prompt action to finalize, endorse, implement, and invest in the Action Plan to Restore and Protect the Great Lakes; and be it further

Resolved, That we urge the United States Congress to adopt legislation to implement and fully invest in the Action Plan; and be it further

Resolved, That we intend for the state of Michigan to continue its proud tradition of Great Lakes stewardship and fulfill its commitment to restoring the Great Lakes by taking substantial steps and, whenever practical, match federal funding to implement the Action Plan to Restore and Protect the Great Lakes; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the members of the Michigan congressional delegation, the Great Lakes Commission, the Great Lakes Legislative Caucus, the International Joint Commission, the Great Lakes Fishery Commission, the Michigan Office of the Great Lakes, the Michigan Department of Environmental Quality, and the Michigan Department of Natural Resources.

POM-256. A resolution adopted by the House of Representatives of the State of Michigan relative to implementing the Action Plan to Restore and Protect the Great Lakes; to the Committee on Environment and Public Works.

HOUSE RESOLUTION NO. 143

Whereas, Over 40 percent of the Great Lakes are under Michigan's jurisdiction and the Great Lakes contain 95 percent of North America's fresh surface water; and

Whereas, The Great Lakes affect all aspects of life in Michigan and are inextricably linked to Michigan's history, culture, and economy. The Great Lakes have for thousands of years supported native communities' culture and way of life; and

Whereas, The Great Lakes fuel Michigan's tourism and recreation industry. Recreational fishing alone adds $1.4 billion annually to the state's economy; and

Whereas, The state of Michigan has historically been a leader in protecting the Great Lakes, including efforts to regulate ballast water discharges that could harbor invasive species and to eliminate the disposal of dangerous contaminants in the Great Lakes;

Whereas, Despite Michigan's efforts, the Great Lakes are ailing from a multitude of stressors, including aquatic invasive species, toxic contamination of river and lake sediments, partially or inadequately treated sewage discharges, pollution from nonpoint sources, and coastal habitat loss. Combined, these stressors will have long-lasting effects on the Great Lakes, Michigan's economy, and our way of life; and

Whereas, There has been an unprecedented collaborative effort on the part of 1,500 people representing federal, state, and local governments, Native American tribes, nongovernmental entities, and private citizens to develop an Action Plan to Restore and Protect the Great Lakes; and

Whereas, Implementation of the Action Plan can restore the ecology of the Great Lakes and avert impending environmental threats to the region; and

Whereas, A recent report by the federal Great Lakes Interagency Task Force has, at the eleventh hour, attempted to change the rules that the Regional Collaboration operated under by recommending that the strategy be constrained by current budget projections; and

Whereas, The action plan previously developed through the Regional Collaboration includes recommendations that call on the states and federal government to take substantial new steps jointly in the restoration and protection of the Great Lakes: Now, therefore, be it

Resolved by the House of Representatives, That we urge the Great Lakes Regional Collaboration and the United States Congress to take prompt action to finalize, endorse, implement, and invest in the Action Plan to Restore and Protect the Great Lakes; and be it further

Resolved, That we urge the United States Congress to adopt legislation to implement and fully invest in the Action Plan; and be it further

Resolved, That we intend for the state of Michigan to continue its proud tradition of Great Lakes stewardship and fulfill its commitment to restoring the Great Lakes by taking substantial steps and, whenever practical, match federal funding to implement the Action Plan to Restore and Protect the Great Lakes; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the members of the Michigan congressional delegation, the Great Lakes Commission, the Great Lakes Legislative Caucus, the International Joint Commission, the Great Lakes Fishery Commission, the Michigan Office of the Great Lakes, the Michigan Department of Environmental Quality, and the Michigan Department of Natural Resources.

POM-257. A concurrent resolution adopted by the House of Representatives of the General Assembly of the State of Ohio relative to reforming the Medicaid program to ensure the program's solvency for future generations; to the Committee on Finance.

CONCURRENT RESOLUTION NO. 13

Whereas, The Ohio Medicaid program plays a vital role in preserving the health and safety of disabled and working low-income Ohioans, providing essential health care services for nearly one in every six Ohioans, including one of every three Ohio births, and funds 70 per cent of all nursing home care provided in Ohio; and

Whereas, Ohio's Medicaid program is growing at a rate of almost twice that of state revenues despite efforts to contain escalating program costs: since 2001, the program's case load has increased 34 per cent; and

Whereas, Currently, Ohio Medicaid program expenditures represent 38 per cent of expenditures from the state's General Revenue Fund; and

Whereas, Remarkably, 72 per cent of Ohio's Medicaid spending is directed toward the provision of long-term care for elderly and disabled Ohioans—who comprise only 25 per cent of the program's caseload of over 1.7 million Ohioans; and

Whereas, To increase the efficiency of the Medicaid program, Ohio has instituted care management programs for certain populations, including those with chronic disease, and has implemented long-term care reform measures; and

Whereas, The Ohio Medicaid program provides invaluable assistance to the mentally retarded and developmentally disabled (MR/DD) community. In an effort to maintain this support, the program is seeking to develop strategies that allow the state to continue to use local funds to finance MR/DD services; and

Whereas, The overall strength of Ohio's Medicaid program is predicated on the existing financial partnership between the state and federal government; however, should caps on reimbursement rates or cuts in federal funding be imposed, the partnership may be negatively impacted; and

Whereas, The federal government and state Medicaid programs must increase collaboration to manage health care benefits and their costs; in Ohio, services for "dually eligible" Medicaid recipients—those who are eligible to receive benefits from both Medicaid and Medicare—constitute approximately 44 per cent of Ohio's total Medicaid costs, while the dually eligible population comprises a mere 10 per cent of Ohio's Medicaid recipients; and

Whereas, The federal government could provide the Ohio Medicaid program with access to its Medicare payment information, which would help Ohio increase the effectiveness of its Enhanced Care Management project and provide more effective care to Ohio's aged, blind, and disabled Medicaid recipients; and

Whereas, Medicaid recipients have benefited greatly from Ohio's commitment to expand significantly its capacity to provide Medicaid services by providing care through home and community-based services waiver programs; and

Whereas, Despite Medicaid recipients' preference for home and community-based care and the cost-effectiveness of home and community-based services, federal regulations require the provision of services in an institutional setting, while home and community-based services may be provided only under restricted waiver programs; and

Whereas, If the federal government eliminated the institutional bias in long-term care system design and allowed states to detach Medicaid waivers from the nursing home level of care, all Medicaid recipients nationwide would benefit from the ability to choose their care setting; and

Whereas, Private financing for both institutional and community-based long-term care services should be encouraged to mitigate the Ohio Medicaid program's existing role as a purchaser of long-term care services; and

Whereas, If reinstated by the United States Congress, the Long Term Care Insurance Partnership would also greatly reduce the American public's reliance on publicly funded long-term care services and support; and

Whereas, With regard to nursing home care, Ohio is pursuing regulatory reform initiatives and recently applied to the Centers for Medicare and Medicaid Services (CMS) for consideration of a nursing facility survey pilot program to allow the Ohio Department of Health to focus on facilities that provide substandard care, thereby improving facility residents' health and the overall quality of care delivered in Ohio; and

Whereas, Partnership with CMS in the Medicare/Medicaid data matching project empowered Ohio to more aggressively pursue fraud and abuse among providers that charge both programs for services; and

Whereas, The Ohio Medicaid program would benefit greatly from federal Medicaid policies that honor any approved state Medicaid plan amendments (rather than requiring the interpretation of policy on a case-by-case basis); and

Whereas, Federal regulations governing findings for recovery adversely impact the Ohio Medicaid program: the regulations require the state to reimburse the federal government for the service in question within 60 days—regardless of whether the program has recovered the costs itself posing the potential for significant cash flow disruptions within the program; and

Whereas, The State of Ohio believes that under the Medicare Modernization Act, the United States Secretary of Health and Human Services has sufficient flexibility to work with states to implement the changes made by the Act and that there exists the need to exercise that authority to mitigate the fiscal impact of Medicare Part D in Ohio, as the implementation of Medicare Part D under the Act will likely have a negative fiscal impact on Ohio's Medicaid program, requiring the program to increase spending for its pharmacy program; and

Whereas, The Ohio Medicaid program has enacted measures to more efficiently manage pharmacy benefit costs, but if the program were authorized to determine which drugs are included in the program formulary in a manner similar to that provided under Medicare Part D, the program could manage costs even more effectively; and

Whereas, Ohio encourages continued federal support and investment in new technologies that improve the state's ability to manage the Medicaid program and control program costs; and

Whereas, In an ongoing effort to encourage behavior changes in Medicaid recipients and to prompt recipients to manage their own benefits, the Ohio Medicaid program seeks authority, on behalf of all state Medicaid programs, to charge Medicaid recipients enforceable copayments for services: Now therefore, be it

Resolved, That we, the members of the 126th General Assembly of the State of Ohio, acting on behalf of the citizens of Ohio, strongly urge the Congress of the United

States and the United States Secretary of Health and Human Services to respond to the specific concerns delineated in this resolution by reforming the Medicaid program to increase Ohio's authority to design Medicaid coverage and services and ensure the program's solvency for future generations; and be it further

Resolved, That the Clerk of the House of Representatives transmit duly authenticated copies of this resolution to the President of the United States, to the Speaker and the Clerk of the United States House of Representatives, to the President Pro Tempore and the Secretary of the United States Senate, to the members of the Ohio Congressional delegation, to the United States Secretary of Health and Human Services, and to the news media of Ohio.

POM-258. A concurrent resolution adopted by the Senate of the Legislature of the State of Louisiana relative to changing the coastal line by which the state receives tax and mineral revenue from three miles to twelve miles to be consistent with the states of Texas and Mississippi as it relates to the receipt of federal tax and mineral revenue; to the Committee on Finance.

SENATE CONCURRENT RESOLUTION NO. 41

Whereas, the state of Louisiana receives a portion of taxes collected by the United States government on oil extracted in the Gulf of Mexico within three miles from the coast of Louisiana; and

Whereas, the states of Texas and Mississippi receive a portion of taxes collected by the U.S. government on oil extracted in the Gulf of Mexico within twelve miles from their respective coast lines; and

Whereas, fairness and equity dictate that Louisiana should be treated in the same manner as Texas and Mississippi as it relates to the receipt of federal tax and mineral revenue: Therefore, be it

Resolved, That the Legislature of Louisiana does hereby request the Congress of the United States to change the coastal line by which the state receives tax and mineral revenue from three miles to twelve miles to be consistent with Texas and Mississippi as it relates to the receipt of federal mineral revenue; be it further

Resolved, That a copy of this Resolution be transmitted to the Congress of the United States.

POM-259. A resolution adopted by the House of Representatives of the Legislature of the State of Michigan relative to supporting policies that protect and encourage the cultural autonomy of the people of Macedonia; to the Committee on Foreign Relations.

HOUSE RESOLUTION NO. 165

Whereas, In 1991, 95 percent of the voters of Macedonia voted for independence from Yugoslavia; and

Whereas, In 1993, the Republic of Macedonia became a member of the United Nations; and

Whereas, In 1994, the United States of America recognized the Republic of Macedonia as a sovereign state, and the Republic of Macedonia was recently cited and honored by President Bush and the United States Department of State for its support in the war with Iraq; and

Whereas, There is a large contingency of Macedonians living throughout the United States; and

Whereas, Macedonians began to immigrate to Michigan in the late 1800s and continue to relocate and flourish here with a strong community ethic; and

Whereas, There are more than 60,000 Macedonians now living throughout Michigan; and

Whereas, The first, second, third, and fourth generation Macedonians living in Michigan are a positive force contributing to the economic, cultural, and educational basis of this state; now, therefore, be it

Resolved by the House of Representatives, That we memorialize the President and the Congress of the United States to support policies that protect and encourage the cultural autonomy of the people of Macedonia, including the rights of Macedonians living throughout the Balkans to speak their language, to attend schools and churches offered in their language, to practice their customs, to be able to call themselves Macedonians, and to be granted all the civil and human rights required by international law; and be it further

Resolved, That copies of this resolution be presented to the Office of the President of the United States, the Speaker of the House of Representatives, the President of the United States Senate, and the members of the Michigan congressional delegation.

POM-260. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to amending the provision of law requiring applicants for hunting and fishing licenses to provide their Social Security numbers or other identifying numbers by exempting applicants age 16 and under; to the Committee on the Judiciary.

HOUSE RESOLUTION NO. 529

Whereas, Statutory requirements that applications for recreational licenses must include individuals' Social Security numbers or other identifying numbers were enacted by the Congress of the United States in 1997 as part of the Balanced Budget Act of 1997 (Public Law 105-33, 111 Stat. 251); and

Whereas, the Commonwealth of Pennsylvania implemented this Federal mandate through the act of December 16, 1997 (P.L.549, No.58), entitled "An act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for alimony, for information to consumer reporting agency, for cooperation of government and nongovernment agencies and for general administration of support matters; providing for duties of Title IV-D attorney; further providing for order of support, for mandatory inclusion of child medical support, for commencement of support actions or proceedings, for expedited procedure, for paternity, for attachment of income, for costs and fees, for continuing jurisdiction over support orders, for duty to report and for denial or suspension of licenses; providing for Title IV-D program and related matters; further providing for acknowledgment and claim of paternity, for responsibilities of law enforcement agencies, for court-ordered relief, for continuing exclusive jurisdiction, for recognition of child support orders, for duties of initiating tribunal, for duties and powers of responding tribunal, for inappropriate tribunal, for duties of support enforcement agency, for supervisory duty, for duties of the Department of Public Welfare and for income-withholding order of another state; providing for compliance with multiple income-withholding orders, for immunity from civil liability, for penalties for noncompliance and for contest by obligor; further providing for notice of registration of order, for procedure to contest validity or enforcement of registered order and for modification of child support order of another state; providing for jurisdiction to modify child support order of another state and for notice to issuing tribunal of modification; further providing for supervisory duty and for definitions; making repeals; and making editorial changes"; and

Whereas, Criminal identity theft and threats to the personal and financial privacy and security of Pennsylvanians are on the rise; and

Whereas, Procedures for the collection of Social Security numbers now in use by licensing agents of the Pennsylvania Game Commission and the Pennsylvania Fish and Boat Commission necessitate the collection and storage of vital information in a manner which may jeopardize confidentiality of those numbers; and

Whereas, Criticism of the procedures used to gather and safeguard Social Security numbers of applicants has grown steadily, in some cases resulting in applicants simply forgoing the purchase of a license rather than submitting vital personal data to the archaic system now in use by both commissions; and

Whereas, The Commonwealth of Pennsylvania strongly supports all effective mechanisms to encourage payment of child support obligations; and

Whereas, Requiring applicants for hunting and fishing licenses who are age 16 and under to provide their Social Security numbers or other identifying numbers does not enhance effective enforcement of child support obligations inasmuch as these applicants are highly unlikely to be in arrears on child support payments; and

Whereas, It is unlikely that the Congress of the United States intended to require applicants for hunting and fishing licenses age 16 and under to be included in this requirement; therefore be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania urge the President and the Congress of the United States to amend the provision of law requiring applicants for hunting and fishing licenses to provide Social Security numbers or other identifying numbers by exempting applicants age 16 and under; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, to the presiding officers of each House of Congress and to each member of Congress from Pennsylvania.

POM-261. A resolution adopted by the Board of Commissioners of Ferry County, State of Washington, relative to supporting county custom, culture, and heritage in decision making on federal lands in Ferry County, State of Washington; to the Committee on Environment and Public Works.

POM-262. A resolution adopted by the City Commission of the City of Lauderdale Lakes of the State of Florida relative to encouraging Congress to pass the Debris Removal Act of 2005; to the Committee on Homeland Security and Governmental Affairs.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DORGAN (for himself, Mr. CONRAD, Mr. BINGAMAN, Ms. MURKOWSKI, Mr. MCCAIN, Mr. JOHNSON, and Mr. SMITH):

S. 2245. A bill to establish an Indian youth telemental health demonstration project; to the Committee on Indian Affairs.

By Mr. SCHUMER:

S. 2246. A bill to establish within the United States Marshals Service a short term State witness protection program to provide assistance to State and local district attorneys to protect their witnesses in homicide and major violent crime cases and to provide Federal grants for such protection; to the Committee on the Judiciary.

By Mr. REID (for Mr. OBAMA):

S. 2247. A bill to promote greater use of information technology in the Federal Employees Health Benefits Program under chapter 89 of title 5, United States Code, to increase efficiency and reduce costs; to the Committee on Homeland Security and Governmental Affairs.

ADDITIONAL COSPONSORS

S. 424

At the request of Mr. BOND, the names of the Senator from Pennsylvania (Mr. SANTORUM) and the Senator from Rhode Island (Mr. CHAFEE) were added as cosponsors of S. 424, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 537

At the request of Mr. BINGAMAN, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 537, a bill to increase the number of well-trained mental health service professionals (including those based in schools) providing clinical mental health care to children and adolescents, and for other purposes.

S. 627

At the request of Mr. HATCH, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 627, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, to increase the rates of the alternative incremental credit, and to provide an alternative simplified credit for qualified research expenses.

S. 840

At the request of Mr. HARKIN, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 840, a bill to amend the Fair Labor Standards Act of 1938 to prohibit discrimination in the payment of wages on account of sex, race, or national origin, and for other purposes.

S. 841

At the request of Mrs. CLINTON, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 841, a bill to amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

S. 852

At the request of Mr. SPECTER, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 852, a bill to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

S. 1172

At the request of Mr. SPECTER, the names of the Senator from Nebraska (Mr. HAGEL) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors of S. 1172, a bill to provide for programs to increase the awareness and knowledge of women and health care providers with respect to gynecologic cancers.

S. 1436

At the request of Mr. DEWINE, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1436, a bill to award grants to eligible entities to enable the entities to reduce the rate of underage alcohol use and binge drinking among students at institutions of higher education.

S. 1723

At the request of Ms. COLLINS, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 1723, a bill to amend the Magnuson-Stevens Fishery Conservation and Management Act to establish a grant program to ensure waterfront access for commercial fisherman, and for other purposes.

S. 1841

At the request of Mr. NELSON of Florida, the names of the Senator from Arkansas (Mr. PRYOR), the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. 1841, a bill to amend title XVIII of the Social Security Act to provide extended and additional protection to Medicare beneficiaries who enroll for the Medicare prescription drug benefit during 2006.

S. 1923

At the request of Ms. SNOWE, the name of the Senator from South Dakota (Mr. THUNE) was added as a cosponsor of S. 1923, a bill to address small business investment companies licensed to issue participating debentures, and for other purposes.

S. 2115

At the request of Ms. STABENOW, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 2115, a bill to amend the Public Health Service Act to improve provisions relating to Parkinson's disease research.

S. 2134

At the request of Mr. SMITH, the names of the Senator from South Dakota (Mr. JOHNSON), the Senator from Massachusetts (Mr. KERRY) and the Senator from Maine (Ms. SNOWE) were added as cosponsors of S. 2134, a bill to strengthen existing programs to assist manufacturing innovation and education, to expand outreach programs for small and medium-sized manufacturers, and for other purposes.

S. 2199

At the request of Mr. BINGAMAN, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 2199, a bill to amend the Internal Revenue Code of 1986 to provide tax incentives to promote research and development, innovation, and continuing education.

S. 2231

At the request of Mr. BYRD, the names of the Senator from Pennsylvania (Mr. SPECTER), the Senator from Massachusetts (Mr. KERRY) and the Senator from New York (Mrs. CLINTON) were added as cosponsors of S. 2231, a bill to direct the Secretary of Labor to prescribe additional coal mine safety standards, to require additional penalties for habitual violators, and for other purposes.

S.J. RES. 25

At the request of Mr. TALENT, the name of the Senator from South Dakota (Mr. THUNE) was added as a cosponsor of S.J. Res. 25, a joint resolution proposing an amendment to the Constitution of the United States to authorize the President to reduce or disapprove any appropriation in any bill presented by Congress.

S. RES. 313

At the request of Ms. CANTWELL, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. Res. 313, a resolution expressing the sense of the Senate that a National Methamphetamine Prevention Week should be established to increase awareness of methamphetamine and to educate the public on ways to help prevent the use of that damaging narcotic.

At the request of Mr. HAGEL, his name was added as a cosponsor of S. Res. 313, supra.

S. RES. 365

At the request of Mrs. FEINSTEIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. Res. 365, a resolution to provide a 60 vote point of order against out-of-scope material in conference reports and open the process of earmarks in the Senate.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DORGAN (for himself, Mr. CONRAD, Mr. BINGAMAN, Ms. MURKOWSKI, Mr. MCCAIN, Mr. JOHNSON, and Mr. SMITH):

S. 2245. A bill to establish an Indian youth telemental health demonstration project; to the Committee on Indian Affairs.

Mr. DORGAN. Mr. President, I rise today to introduce legislation which would deal in a small but, I hope, meaningful way, with the crisis of youth suicide in Indian Country. On the reservations of the Northern Great Plains, the rate of Indian youth suicide is 10 times higher than it is anywhere else in the country. This needless loss of young boys and girls whose whole lives lay ahead of them is a very serious problem.

I am pleased that last year, the Senate Indian Affairs Committee held two hearings on the tragic issue of teen suicide and the urgent need for prevention, intervention and treatment services. We heard the testimony of youth and family members, representatives of the Indian Health Service and other agencies of the Department of Health and Human Services, and Indian professionals who work with young people. We continue to sift through their recommendations to find possible solutions that could be proposed in legislation.

I believe it is urgent that solutions be put forward now to deal with this troubling problem. Following the Committee's second hearing on Indian youth suicide last summer, several more Indian young people attempted suicide on the Standing Rock Reservation in North and South Dakota. Thankfully, their lives were spared and their attempts not completed. But time is running out for addressing this tragic issue.

When the Indian Affairs Committee marked up legislation to amend and reauthorize the Indian Health Care Improvement Act last October, I offered, with Senators CONRAD and SMITH, an amendment which had three components, all of which were presented as ideas at the Committee's hearing in Washington, DC, on June 15, 2005, on Indian youth suicide. I am very pleased that my amendment was unanimously adopted.

The legislation which I introduce today parallels one part of that amendment to the Indian health reauthorization bill, and would authorize the Indian Youth Telemental Health Demonstration Project. The Secretary of Health and Human Services would award grants under this 4-year demonstration project to five Indian Tribes and Tribal Organizations that have telehealth capabilities. Grantees would provide services through telemental health for such purposes as counseling of Indian youth for suicide prevention, intervention and treatment; providing medical advice and other assistance to frontline tribal health providers; training for tribal community members, elected officials, tribal educators and health workers and others who work with Indian youth; developing culturally-sensitive materials on suicide prevention and intervention; and data collection and reporting.

My proposal has been revised since it was adopted as an amendment to the Indian health reauthorization bill in response to Administration concerns about expanding new health care programs or services to Native Americans living in urban areas. I will leave the Federal Government's obligation to provide health care to urban Indians—most of whom are in urban areas because they or their parents or relatives were relocated from their reservations or Alaska Native communities under federal policy—to be discussed another day.

Many Indian reservations and Native villages in Alaska are in remote locations and quite isolated, and experience much more limited access to mental health services than in our nation's cities. The testimony received by the Indian Affairs Committee showed that it is particularly in these communities that there is a crisis among the youth. Accordingly, the bill I propose today is intended to provide services for counseling, medical advice and training and educational materials under this new demonstration project to Indian youth living on reservations and in Native villages.

I thank my colleagues who have joined me in this initiative and who have added thoughtful insights for ways to address this crisis that deprives many tribal communities of one of the richest resources, our youth. I look forward to continuing our efforts and developing a more comprehensive legislative proposal on this sensitive and very important issue. I urge my colleagues to support this legislation.

I ask unanimous consent that the text of the bill as introduced be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2245

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Youth Telemental Health Demonstration Project Act of 2006".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) suicide for Indians and Alaska Natives is 2 ½ times higher than the national average and the highest for all ethnic groups in the United States, at a rate of more than 16 per 100,000 males of all age groups, and 27.9 per 100,000 for males aged 15 through 24, according to data for 2002;

(2) according to national data for 2002, suicide was the second-leading cause of death for Indians and Alaska Natives aged 15 through 34 and the fourth-leading cause of death for Indians and Alaska Natives aged 10 through 14;

(3) the suicide rates of Indian and Alaska Native males aged 15 through 24 are nearly 4 times greater than suicide rates of Indian and Alaska Native females of that age group;

(4)(A) 90 percent of all teens who die by suicide suffer from a diagnosable mental illness at the time of death; and

(B) more than ½ of the people who commit suicide in Indian Country have never been seen by a mental health provider;

(5) death rates for Indians and Alaska Natives are statistically underestimated;

(6) suicide clustering in Indian Country affects entire tribal communities; and

(7) since 2003, the Indian Health Service has carried out a National Suicide Prevention Initiative to work with Service, tribal, and urban Indian health programs.

(b) PURPOSE.—The purpose of this Act is to authorize the Secretary to carry out a demonstration project to test the use of telemental health services in suicide prevention, intervention, and treatment of Indian youth, including through—

(1) the use of psychotherapy, psychiatric assessments, diagnostic interviews, therapies for mental health conditions predisposing to suicide, and alcohol and substance abuse treatment;

(2) the provision of clinical expertise to, consultation services with, and medical advice and training for frontline health care providers working with Indian youth;

(3) training and related support for community leaders, family members and health and education workers who work with Indian youth;

(4) the development of culturally-relevant educational materials on suicide; and

(5) data collection and reporting.

SEC. 3. DEFINITIONS.

In this Act:

(1) DEMONSTRATION PROJECT.—The term "demonstration project" means the Indian youth telemental health demonstration project authorized under section 4(a).

(2) DEPARTMENT.—The term "Department" means the Department of Health and Human Services.

(3) INDIAN.—The term "Indian" means any individual who is a member of an Indian tribe or is eligible for health services under the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

(4) INDIAN TRIBE.—The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(6) SERVICE.—The term "Service" means the Indian Health Service.

(7) TELEMENTAL HEALTH.—The term "telemental health" means the use of electronic information and telecommunications technologies to support long distance mental health care, patient and professional-related education, public health, and health administration.

(8) TRADITIONAL HEALTH CARE PRACTICES.—The term "traditional health care practices" means the application by Native healing practitioners of the Native healing sciences (as opposed or in contradistinction to Western healing sciences) that—

(A) embody the influences or forces of innate Tribal discovery, history, description, explanation and knowledge of the states of wellness and illness; and

(B) call upon those influences or forces in the promotion, restoration, preservation, and maintenance of health, well-being, and life's harmony.

(9) TRIBAL ORGANIZATION.—The term "tribal organization" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

SEC. 4. INDIAN YOUTH TELEMENTAL HEALTH DEMONSTRATION PROJECT.

(a) AUTHORIZATION.—

(1) IN GENERAL.—The Secretary is authorized to carry out a demonstration project to award grants for the provision of telemental health services to Indian youth who—

(A) have expressed suicidal ideas;

(B) have attempted suicide; or

(C) have mental health conditions that increase or could increase the risk of suicide.

(2) ELIGIBILITY FOR GRANTS.—Grants described in paragraph (1) shall be awarded to Indian tribes and tribal organizations that operate 1 or more facilities—

(A) located in Alaska and part of the Alaska Federal Health Care Access Network;

(B) reporting active clinical telehealth capabilities; or

(C) offering school-based telemental health services relating to psychiatry to Indian youth.

(3) GRANT PERIOD.—The Secretary shall award grants under this section for a period of up to 4 years.

(4) MAXIMUM NUMBER OF GRANTS.—Not more than 5 grants shall be provided under paragraph (1), with priority consideration given to Indian tribes and tribal organizations that—

(A) serve a particular community or geographic area in which there is a demonstrated need to address Indian youth suicide;

(B) enter into collaborative partnerships with Service or other tribal health programs or facilities to provide services under this demonstration project;

(C) serve an isolated community or geographic area which has limited or no access to behavioral health services; or

(D) operate a detention facility at which Indian youth are detained.

(b) USE OF FUNDS.—An Indian tribe or tribal organization shall use a grant received under subsection (a) for the following purposes:

(1) To provide telemental health services to Indian youth, including the provision of—

(A) psychotherapy;

(B) psychiatric assessments and diagnostic interviews, therapies for mental health conditions predisposing to suicide, and treatment; and

(C) alcohol and substance abuse treatment.

(2) To provide clinician-interactive medical advice, guidance and training, assistance in diagnosis and interpretation, crisis counseling and intervention, and related assistance to Service or tribal clinicians and health services providers working with youth being served under the demonstration project.

(3) To assist, educate, and train community leaders, health education professionals and paraprofessionals, tribal outreach workers, and family members who work with the youth receiving telemental health services under the demonstration project, including with identification of suicidal tendencies, crisis intervention and suicide prevention, emergency skill development, and building and expanding networks among those individuals and with State and local health services providers.

(4) To develop and distribute culturally-appropriate community educational materials on—

(A) suicide prevention;

(B) suicide education;

(C) suicide screening;

(D) suicide intervention; and

(E) ways to mobilize communities with respect to the identification of risk factors for suicide.

(5) To conduct data collection and reporting relating to Indian youth suicide prevention efforts.

(c) APPLICATIONS.—To be eligible to receive a grant under subsection (a), an Indian tribe or tribal organization shall prepare and submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require, including—

(1) a description of the project that the Indian tribe or tribal organization will carry out using the funds provided under the grant;

(2) a description of the manner in which the project funded under the grant would—

(A) meet the telemental health care needs of the Indian youth population to be served by the project; or

(B) improve the access of the Indian youth population to be served to suicide prevention and treatment services;

(3) evidence of support for the project from the local community to be served by the project;

(4) a description of how the families and leadership of the communities or populations to be served by the project would be involved in the development and ongoing operations of the project;

(5) a plan to involve the tribal community of the youth who are provided services by the project in planning and evaluating the mental health care and suicide prevention efforts provided, in order to ensure the integration of community, clinical, environmental, and cultural components of the treatment; and

(6) a plan for sustaining the project after Federal assistance for the demonstration project has terminated.

(d) TRADITIONAL HEALTH CARE PRACTICES.—The Secretary, acting through the Service, shall ensure that the demonstration project involves the use and promotion of the traditional health care practices of the Indian tribes of the youth to be served.

(e) COLLABORATION.—The Secretary, acting through the Service, shall encourage Indian tribes and tribal organizations receiving grants under this section to collaborate to enable comparisons about best practices across projects.

(f) ANNUAL REPORT.—Each grant recipient shall submit to the Secretary an annual report that—

(1) describes the number of telemental health services provided:

(2) includes any other information that the Secretary may require.

(g) REPORT TO CONGRESS.—Not later than 270 days after the date of termination of the demonstration project, the Secretary shall submit to the Committee on Indian Affairs of the Senate and the Committee on Resources and the Committee on Energy and Commerce of the House of Representatives a final report that—

(1) describes the results of the projects funded by grants awarded under this section, including any data available that indicate the number of attempted suicides;

(2) evaluates the impact of the telemental health services funded by the grants in reducing the number of completed suicides among Indian youth;

(3) evaluates whether the demonstration project should be—

(A) expanded to provide more than 5 grants; and

(B) designated a permanent program; and

(4) evaluates the benefits of expanding the demonstration project to include urban Indian organizations.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $1,500,000 for each of fiscal years 2007 through 2010.

By Mr. REID (for Mr. OBAMA):

S. 2247. A bill to promote greater use of information technology in the Federal Employees Health Benefits Program under chapter 89 of title 5, United States Code, to increase efficiency and reduce costs; to the Committee on Homeland Security and Governmental Affairs.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

Mr. OBAMA. Mr. President, the American people are facing two. major health care crises—lack of health insurance and the soaring costs of medical care. Nearly 46 million Americans are uninsured, and the number one reason is because they can't afford it. Even those with health insurance are struggling to pay their medical bills. Family incomes can't keep up with rising health costs—health premiums alone have increased 73 percent over the past 5 years, while wages have only risen 15 percent. Unfortunately, we can't fix either of these crises without addressing the other. As health care costs rise, more employers will drop coverage for their employees. As the number of uninsured rise, the cost of their care is subsidized by those individuals that have insurance. It's a vicious cycle, and the longer we wait to act, the more difficult it will be to successfully intervene.

There are many drivers of health care costs, but perhaps the easiest one to tackle is the wasteful, administrative costs associated with health care. Health care is one of the least efficient industries in America. Processing a single transaction in health care can cost as much as $25, whereas banks and brokerages spend less than a penny per transaction. Indeed, administrative costs account for 31 percent of total health care spending, or roughly $465 billion each and every year.

Today, I am introducing a bill that would help to reduce health care administrative costs in the Nation's largest employer-sponsored health insurance program, the Federal Employees Health Benefit Program. FEHBP serves over 8 million Federal Government employees, retirees, and their families, who can choose from over 200 health plan options. The FEHBP Efficiency Act of 2006 would require all health plans participating in FEHBP to develop systems for hospitals and doctors to submit their bills electronically within 4 years.

Ken Thorpe, a health economist at Emory University, has reported that if all FEHBP participating health plans switched to electronic systems for submission of bills, the program could save up to 2 percent of the $31 billion in total premiums, or over $600 million every year. That is a tremendous amount of savings—money that could be used to expand FEHBP benefits, increase the number of eligible employees, or lower premiums for FEHBP beneficiaries. Using its tremendous purchasing power, the Federal Government could help spur the health care industry to move to a completely paperless system for processing transactions in all government health programs as well as the private sector.

I urge my colleagues to join me in this effort to increase efficiency and reduce costs. Every American should have access to affordable health care, and this bill is one step towards making that a reality.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been rescheduled before the Committee on Energy and Natural Resources.

The hearing originally scheduled for Thursday, February, 9, 2006 at 2:30 p.m. in room SD–366 of the Dirksen Senate Office Building will now be held on Tuesday, February 14, 2006 at 10 a.m. in the same room.

The purpose of the hearing is to discuss the Energy Information Administration's 2006 Annual Energy Outlook on trends and issues affecting the United States' energy market.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

For further information, please contact Lisa Epifani 202–224–5269 or Shannon Ewan at 202–224–7555.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will be held on Tuesday, February 14, 2006 at 2:30 p.m. in room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony regarding S. 2197, to improve the global competitiveness of the United States in science and energy technology, to strengthen basic research programs at the Department of Energy, and to provide support for mathematics and science education at all levels through the resources available through the Department of Energy, including at the National Laboratories.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

For further information, please contact Kathryn Clay (202) 224–6224 or Steve Waskiewicz at (202) 228–6195.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Monday, February 6, 2006, at 2 p.m. for a hearing titled, "Hurricane Katrina: Managing Law Enforcement and Communications in a Catastrophe."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on "Executive Nominations" on Monday, February 6, 2006 at 9:30 a.m. in Hart Senate Office Building Room 226. The hearing is expected to continue throughout the afternoon.

Witness list

Panel I: The Honorable Alberto Gonzales, Attorney General, U.S. Department of Justice, Washington, DC.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. KENNEDY. Mr. President, I ask unanimous consent that Jesse Wald, a fellow on my staff, be granted the privilege of the floor for the remainder of debate on S. 852, the Fairness in Asbestos Injury Resolution Act of 2005.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR TUESDAY, FEBRUARY 7, 2006

Mr. HATCH. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:45 a.m. on Tuesday, February 7. I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate proceed to a period of morning business for up to 60 minutes, with the first 30 minutes under the control of the Democratic leader or his designee and the second 30 minutes under the control of the majority leader or his designee, and that the Senate then resume consideration of the motion to proceed to S. 852, the asbestos bill.

I further ask that the Senate stand in recess from 12:30 until 2:15 p.m. to accommodate the weekly party luncheon.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. HATCH. Mr. President, tomorrow the Senate will continue to debate the motion to proceed to S. 852, the asbestos bill. A few minutes ago we filed cloture on the motion to proceed, and that vote will occur at 6 p.m. tomorrow. There will be no rollcall votes until 6 p.m. tomorrow to accommodate those Senators traveling to Georgia for the funeral service of Coretta Scott King.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

Mr. HATCH. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:14 p.m., adjourned until Tuesday, February 7, 2006, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate February 6, 2006:

DEPARTMENT OF DEFENSE

BENEDICT S. COHEN, OF THE DISTRICT OF COLUMBIA, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF THE ARMY, VICE STEVEN JOHN MORELLO, SR., RESIGNED.

SECURITIES INVESTOR PROTECTION CORPORATION

ARMANDO J. BUCELO, JR., OF FLORIDA, TO BE A DIRECTOR OF THE SECURITIES INVESTOR PROTECTION CORPORATION FOR A TERM EXPIRING DECEMBER 31, 2008. (REAPPOINTMENT)

TODD S. FARHA, OF FLORIDA, TO BE A DIRECTOR OF THE SECURITIES INVESTOR PROTECTION CORPORATION FOR THE REMAINDER OF THE TERM EXPIRING DECEMBER 31, 2006, VICE WILLIAM ROBERT TIMKEN, JR., RESIGNED.

TODD S. FARHA, OF FLORIDA, TO BE A DIRECTOR OF THE SECURITIES INVESTOR PROTECTION CORPORATION FOR A TERM EXPIRING DECEMBER 31, 2009. (REAPPOINTMENT)

FEDERAL COMMUNICATIONS COMMISSION

ROBERT M. MCDOWELL, OF VIRGINIA, TO BE A MEMBER OF THE FEDERAL COMMUNICATIONS COMMISSION FOR A TERM OF FIVE YEARS FROM JULY 1, 2004, VICE KATHLEEN Q. ABERNATHY, RESIGNED.

DEPARTMENT OF JUSTICE

MAURICIO J. TAMARGO, OF FLORIDA, TO BE CHAIRMAN OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES FOR A TERM EXPIRING SEPTEMBER 30, 2009. (REAPPOINTMENT)

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIG. GEN. GLENN F. SPEARS, 2012

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIG. GEN. DENNIS G. LUCAS, 9054

To be judge advocate general of the United States

MAJ. GEN. JACK L. RIVES, 0540

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE REGULAR AIR FORCE OF THE UNITED STATES TO THE POSITION AND GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 8037:

To be major general and to be the deputy judge advocate general of the United States Air Force

BRIG. GEN. CHARLES J. DUNLAP, JR., 5759

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. STEVEN J. LEPPER, 1477

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS RESERVE TO THE GRADE INDICATED UNDER TITLE 10 U.S.C., SECTION 12203:

To be brigadier general

COL. TRACY L. MORK, 7668

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED UNDER TITLE 10, U.S.C. SECTION 624:

To be brigadier general

COLONEL RONALD L BAILEY, 2330
COLONEL MICHAEL M BROGAN, 2241
COLONEL JON M DAVIS, 8884
COLONEL TIMOTHY C HANIFEN, 3096
COLONEL JAMES A KESSLER, 4042
COLONEL JAMES B LASTER, 4280
COLONEL ANGELA SALINAS, 8578
COLONEL PETER J TALLERI, 9793
COLONEL JOHN A TOOLAN, JR, 4023
COLONEL ROBERT S WALSH, 8100

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral

REAR ADM. (LH) DAVID J. DORSETT, 6326

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral

REAR ADM. (LH) ELIZABETH A. HIGHT, 7307

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral

REAR ADM. (LH) MARK D. HARNITCHEK, 5185

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral

REAR ADM. (LH) RICHARD E. CELLON, 1250
REAR ADM. (LH) WAYNE G. SHEAR, JR., 3891

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral

REAR ADM. (LH) JOHN M. BIRD, 4297
REAR ADM. (LH) JOHN T. BLAKE, 9104
REAR ADM. (LH) FRANK M. DRENNAN, 9259
REAR ADM. (LH) MARK E. FERGUSON III, 0136
REAR ADM. (LH) JOHN W. GOODWIN, 7120
REAR ADM. (LH) RICHARD W. HUNT, 0833
REAR ADM. (LH) ARTHUR J. JOHNSON, JR., 1756
REAR ADM. (LH) MARK W. KENNY, 5645
REAR ADM. (LH) JOSEPH F. KILKENNY, 3925
REAR ADM. (LH) WILLIAM E. LANDAY III, 9427
REAR ADM. (LH) DOUGLAS L. MCCLAIN, 4212
REAR ADM. (LH) WILLIAM H. MCRAVEN, 3730
REAR ADM. (LH) KEVIN M. QUINN, 3457
REAR ADM. (LH) RAYMOND A. SPICER, 7586
REAR ADM. (LH) PETER J. WILLIAMS, 1065

THE FOLLOWING NAMED OFFICER FOR PROMOTION IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral (lower half)

CAPT. SEAN F. CREAN, 2112

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

ANDREW H. N. KIM, 5435

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

RENDELL G. CHILTON, 6614
RICHARD L. COUFAL, 4134
GEORGE J. DESIMONE, 8988
MICHAEL L. ERNST, 7425
JOHN R. FLANAGAN, 2966
JOHN J. HALLORAN, JR., 1644
LEE F. KNIGHT, 5280
DOUGLAS W. LANE, 4258
LLOYD D. OAKS, 2763
DAVID J. OSINSKI, 2195

EXTENSIONS OF REMARKS

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, February 7, 2006 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

FEBRUARY 8

9:30 a.m.

Environment and Public Works

To hold hearings to examine pending nominations.

SD–628

Foreign Relations

To hold hearings to examine Iraq stabilization and reconstruction.

SH–216

Indian Affairs

To hold oversight hearings to examine Indian tribes and the Federal Election Campaign Act.

SD–106

10 a.m.

Finance

To hold hearings to examine implementation of the new Medicare drug benefit.

SD–215

2 p.m.

Rules and Administration

To hold hearings to examine procedures to bring greater transparency to the legislative process.

SR–301

2:30 p.m.

Commerce, Science, and Transportation

Consumer Affairs, Product Safety, and Insurance Subcommittee

To hold hearings to examine protecting consumers' phone records.

SD–562

Intelligence

To receive a closed briefing on intelligence matters.

SH–219

3 p.m.

Commission on Security and Cooperation in Europe

To hold hearings to examine the current situation and future prospects for human rights, civil society, and democratic governance in Russia.

SD–226

4:30 p.m.

Foreign Relations

To hold hearings to examine the nominations of Janice L. Jacobs, of Virginia, to be Ambassador to the Republic of Senegal, and to serve concurrently and without additional compensation as Ambassador to the Republic of Guinea-Bissau, and Jeanine E. Jackson, of Wyoming, to be Ambassador to Burkina Faso.

SD–419

FEBRUARY 9

9:30 a.m.

Environment and Public Works

Clean Air, Climate Change, and Nuclear Safety Subcommittee

To hold hearings to examine the impact of clean air regulations on natural gas prices.

SD–628

Foreign Relations

To hold hearings to examine new initiatives in cooperative threat reduction.

SD–419

10 a.m.

Commerce, Science, and Transportation

To hold an oversight hearing to examine commercial aviation security, focusing on Transportation Security Administration's aviation passenger screening programs, Secure Flight and Registered Traveler, to discuss issues that have prevented these programs from being launched, and to determine their future.

SD–562

Energy and Natural Resources

To hold hearings to examine the President's proposed budget request for fiscal year 2007 for the Department of Energy.

SD–366

Finance

To hold hearings to examine the President's proposed budget request for fiscal year 2007 for the Department of Health and Human Services.

SD–215

Health, Education, Labor, and Pensions

To hold hearings to examine the role of education in global competitiveness.

SD–106

Homeland Security and Governmental Affairs

To resume hearings to examine Hurricane Katrina response issues, focusing on the Defense Department's role in the response.

SD–342

Intelligence

To hold closed hearings to examine certain intelligence matters.

SH–219

FEBRUARY 10

9:30 a.m.

Homeland Security and Governmental Affairs

To continue hearings to examine Hurricane Katrina response issues, focusing on the roles of the Department of Homeland Security and the Federal Emergency Management Agency leadership.

SD–342

FEBRUARY 13

10 a.m.

Homeland Security and Governmental Affairs

To resume hearings to examine Hurricane Katrina response issues, focusing on waste, fraud, and abuse during the disaster.

SD–342

FEBRUARY 14

9:30 a.m.

Armed Services

To resume hearings to examine the defense authorization request for fiscal year 2007 and the future years defense program.

SD–106

10 a.m.

Energy and Natural Resources

To hold hearings to examine the Energy Information Administration's 2006 annual energy outlook on trends and issues affecting the United States' energy market.

SD–366

Foreign Relations

To hold hearings to examine the President's proposed budget request for fiscal year 2007 for foreign affairs.

SH–216

Veterans' Affairs

To hold hearings to examine the President's proposed budget request for fiscal year 2007 for the Department of Veterans Affairs.

SR–418

2:30 p.m.

Energy and Natural Resources

To hold hearings to examine S. 2197, to improve the global competitiveness of the United States in science and energy technology, to strengthen basic research programs at the Department of Energy, and to provide support for mathematics and science education at all levels through the resources available through the Department of Energy, including at the National Laboratories.

SD–366

Indian Affairs

To hold oversight hearings to examine the President's proposed budget request for fiscal year 2007 for Indian programs.

SR–485

FEBRUARY 15

10 a.m.

Commerce, Science, and Transportation

To hold hearings to examine video franchising.

SD–562

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

11 a.m.
Energy and Natural Resources
Business meeting to consider the President's views and estimates to be submitted to the Committee on the Budget.
SD–366

2 p.m.
Budget
To continue hearings to examine the President's fiscal year 2007 budget proposal.
SD–608

2:30 p.m.
Commerce, Science, and Transportation
To hold hearings to examine developments in nanotechnology.
SD–562

Energy and Natural Resources
Public Lands and Forests Subcommittee
To hold hearings to review the progress made on the development of interim and long-term plans for use of fire retardant aircraft in Federal wildfire suppression operations.
SD–366

FEBRUARY 16

9:30 a.m.
Armed Services
To hold hearings to examine priorities and plans for the atomic energy defense activities of the Department of Energy and to review the President's proposed budget request for fiscal year 2007 for atomic energy defense activities of the Department of Energy and the National Nuclear Security Administration.
SD–106

2:30 p.m.
Commerce, Science, and Transportation
To hold hearings to examine NOAA budget.
SD–562

FEBRUARY 28

9:30 a.m.
Indian Affairs
To hold oversight hearings to examine Indian gaming activities.
SR–485

2 p.m.
Veterans' Affairs
To hold hearings to examine legislative presentation of the Disabled American Veterans.
SD–106

2:30 p.m.
Energy and Natural Resources
Water and Power Subcommittee
To hold hearings to examine the Bureau of Reclamation Reuse and Recycling Program (Title XVI of Public Law 102–575).
SD–366

MARCH 1

9:30 a.m.
Indian Affairs
To hold joint hearings with the House Committee on Resources to examine the settlement of Cobell v. Norton.
SH–216

2:30 p.m.
Commerce, Science, and Transportation
Disaster Prevention and Prediction Subcommittee
To hold hearings to examine winter storms.
SD–562

MARCH 7

9:30 a.m.
Armed Services
To hold hearings to examine military strategy and operational requirements in review of the Defense Authorization Request for fiscal year 2007 and the future years defense program.
SD–106

MARCH 9

10 a.m.
Commerce, Science, and Transportation
To hold hearings to examine aviation security and the Transportation Security Administration.
SD–562

MARCH 13

3 p.m.
Armed Services
To hold a closed briefing on an update from the Joint Improvised Explosive Device Defeat Organization.
SR–222

MARCH 14

9:30 a.m.
Armed Services
To hold hearings to examine military strategy and operational requirements in review of the Defense Authorization Request for fiscal year 2007 and the future years defense program.
SH–216

MARCH 16

10 a.m.
Commerce, Science, and Transportation
Disaster Prevention and Prediction Subcommittee
To hold hearings to examine impacts on aviation regarding volcanic hazards.
SD–562

MARCH 30

10 a.m.
Commerce, Science, and Transportation
Disaster Prevention and Prediction Subcommittee
To hold an oversight hearing to examine National Polar-Orbiting Operational Environmental Satellite System.
SD–562

POSTPONEMENTS

FEBRUARY 8

10 a.m.
Commerce, Science, and Transportation
National Ocean Policy Study Subcommittee
To hold hearings to examine S. 1215, to authorize the acquisition of interests in underdeveloped coastal areas in order better to ensure their protection from development.
SD–562

FEBRUARY 9

2:30 p.m.
Commerce, Science, and Transportation
To continue oversight hearings to examine commercial aviation security, focusing on physical screening of airline passengers, including issues pertaining to Transportation Security Administration's Federal passenger screener force, TSA procurement policy, air cargo screening, and the deployment of explosive detection technology.
SD–562

HOUSE OF REPRESENTATIVES—*Tuesday, February 7, 2006*

The House met at 2 p.m. and was called to order by the Speaker pro tempore (Mr. CAMPBELL of California).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
February 7, 2006.

I hereby appoint the Honorable JOHN CAMPBELL to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord God, our Savior and source of our peace, be with Your beloved community as it mourns the loss of Coretta Scott King.

Many Members of Congress have joined her family and her friends from around the world gathered today in Atlanta, Georgia. Today we join them as they gather to praise Your holy name and thank You for this custodian of civil rights, witness of courage, and gracious leader. Grant to all Your people consolation and peace.

Lord, reward now all her efforts to give voice to those who suffer from poverty or injustice anywhere on Earth. Bless her efforts to breathe forth into the soul of this Nation equal justice under the law and peaceful harmony among diverse peoples.

Lord, grant Your servant eternal peace as she is greeted by her husband, Dr. Martin Luther King, and enters into Your presence forever more. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from California (Mr. DREIER) come forward and lead the House in the Pledge of Allegiance.

Mr. DREIER led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 2, 2006.

Hon. J. DENNIS HASTERT,
The Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on February 2, 2006, at 9:15 pm:

That the Senate agreed to without amendment H. Con. Res. 332.

That the Senate passed without amendment H.R. 4519.

That the Senate passed S. 1219.

That the Senate agreed to S. Con. Res. 79.

With best wishes, I am

Sincerely,

KAREN L. HAAS,
Clerk of the House.

HOUR OF MEETING ON TOMORROW

Mr. DREIER. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 2 p.m. tomorrow.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 3, 2006.

Hon. J. DENNIS HASTERT,
The Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on February 3, 2006, at 9:12 am:

That the Senate passed without amendment H.R. 4659.

With best wishes, I am

Sincerely,

KAREN L. HAAS,
Clerk of the House.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 6, 2006.

Hon. J. DENNIS HASTERT,
The Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on February 6, 2006, at 5:56 pm:

That the Senate passed with amendment H.R. 4297.

With best wishes, I am

Sincerely,

KAREN L. HAAS,
Clerk of the House.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 4 of rule I, the Speaker signed the following enrolled bills on Friday, February 3, 2006:

H.R. 4519, to amend the Public Health Service Act to extend funding for the operation of State high risk health insurance pools;

H.R. 4659, to amend the USA PATRIOT Act to extend the sunset of certain provisions of such act.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 6, 2006.

Hon. J. DENNIS HASTERT,
The Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, I have the honor to transmit a sealed envelope received from the White House on February 6, 2006, at 2 p.m. and said to contain a message from the President whereby he submits his Budget of the United States Government for Fiscal Year 2007.

With best wishes, I am

Sincerely,

KAREN L. HAAS,
Clerk of the House.

BUDGET OF THE UNITED STATES FOR FISCAL YEAR 2007—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 109–79)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Appropriations and ordered to be printed:

THE BUDGET MESSAGE OF THE PRESIDENT

America's economy is growing at a healthy pace, and more Americans are working than ever. In the face of a series of challenges, including most recently devastating natural disasters, Americans have stood firm, and America's economy has demonstrated its strength and resilience time and again.

My Administration has focused the Nation's resources on our highest priority: protecting our citizens and our homeland. Working with Congress, we have given our men and women on the frontlines in the War on Terror the funding they need to defeat the enemy and detect, disrupt, and dismantle terrorist plots and operations. We continue to help emerging democracies in Afghanistan and Iraq stand on their own. As the Afghan and Iraqi peoples assume greater responsibility for their own security and for defeating the terrorists, our troops will come home with the honor they have earned.

My Administration has responded to major economic challenges by following this vital principle: the American economy grows when people are allowed to keep more of what they earn, to save and spend as they see fit. The results are clear.

Since May 2003, when I signed into law major tax relief, America has added more than four and a half million new jobs. Productivity is high, disposable income is up, household wealth is at record levels, consumer confidence has climbed, small businesses are expanding, and more Americans own their homes than at any time in our Nation's history.

Our economy is the envy of the industrialized world. To build and maintain our competitive edge, my Administration has a broad agenda to promote America's long-term economic strength. We are opening new markets to American-made goods and services through trade agreements. We are proposing reforms to prevent needless litigation and burdensome regulations. Through major reforms of our public schools, we are preparing our children to compete and succeed in the global economy. And my Budget includes an American Competitiveness Initiative that targets funding to advance technology, better prepare American children in math and science, develop and train a high-tech workforce, and further strengthen the environment for private-sector innovation and entrepreneurship.

In our efforts to keep our economy strong and competitive, we will resist calls to raise taxes on America's workers, families, and businesses. Unless we act to make tax relief permanent, income tax rates eventually will rise, the marriage penalty will climb, the child tax credit will be cut, savers and investors will be hit with higher taxes, and the death tax will come back to life.

With a growing economy, tax receipts are on the rise, helping to bring down the deficit in 2005. To stay on track to meet my goal of cutting the deficit in half by 2009, we must maintain our pro-growth policies and insist on spending restraint.

Last year, I proposed to hold overall discretionary spending growth below the rate of inflation—and Congress delivered on that goal. Last year, I proposed that we focus our resources on defense and homeland security and cut elsewhere—and Congress delivered on that goal. And also last year, my Budget proposed major cuts in or eliminations of 154 programs that were not getting results and not fulfilling essential priorities. Thanks to the work of Congress, we delivered savings to the taxpayer of $6.5 billion on 89 of my Administration's recommendations.

The 2007 Budget builds on these efforts. Again, I am proposing to hold overall discretionary spending below the rate of inflation and to cut spending in non-security discretionary programs below 2006 levels. My Administration has identified 141 programs that should be terminated or significantly reduced in size. To help bring greater accountability and transparence to the budget process, my Budget proposed reforms so that firm spending limits are put in place, and public funds are used for the best purposes with the broadest benefits.

The 2007 Budget also continues our efforts to improve performance and make sure the taxpayers get the most for their money. My Administration expects to be held accountable for significantly improving the way the Government works. In every program, and in every agency, we are measuring success not by good intentions or by dollars spent, but rather by results achieved.

In the long term, the biggest challenge to our Nation's fiscal health comes from unsustainable growth in entitlement spending. Entitlement programs such as Social Security and Medicare are growing faster than our ability to pay for them, faster than the economy, faster than the rate of inflation, and faster than the population. As more baby boomers retire and collect their benefits, our deficits are projected to grow. There will be fewer people paying into the system, and more retirees collecting benefits. These unfunded liabilities will put an increasing burden on our children and our grandchildren. We do not need to cut these programs, but we do need to slow their growth. We can solve this problem and still meet our Nation's commitment to the elderly, disabled, and poor.

Acting on my recommendations, both houses of Congress have taken an important first step, passing legislation that would produce $40 billion in savings from mandatory programs and entitlement reforms—the first such savings in nearly a decade. My budget builds on this progress by proposing $65 billion more in savings in entitlement programs.

My Budget also includes proposals to address the longer-term challenge arising from unsustainable growth in Medicare, while ensuring modern health care for our seniors. In addition, I will continue to call on Congress to enact comprehensive reform of Social Security for future generations, so that we return the system to firm financial footing, protect the benefits of today's retirees and near-retirees, provide the opportunity for today's young workers to build a secure nest egg they can call their own, and assure our children and grandchildren a retirement benefit that is as good as is available today.

As this budget shows, we have set clear priorities that meet the most pressing needs of the American people while addressing the long-term challenges that lie ahead. The 2007 Budget will ensure that future generations of Americans have the opportunity to live in a Nation that is more prosperous and more secure. With this Budget, we are protecting our highest ideals and building a brighter future for all.

GEORGE W. BUSH, *February 6, 2006.*

RESIGNATION AS CHAIRMAN OF COMMITTEE ON EDUCATION AND THE WORKFORCE

The SPEAKER pro tempore laid before the House the following resignation as chairman of the Committee on Education and the Workforce:

COMMITTEE ON EDUCATION AND THE WORKFORCE, HOUSE OF REPRESENTATIVES,
Washington, DC, February 6, 2006.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: As a result of my election Thursday as Majority Leader, this letter is to inform you that I resign as Chairman of the Committee on Education and the Workforce and from further service on that Committee. During my five years of service as Chairman on the Committee on Education and the Workforce, the Committee has overseen and enacted 131 public laws designed to improve the lives of all Americans.

I also resign from the Committee on Agriculture on which I have served since being elected to Congress. I would ask that Conference Rule 2 be invoked with respect to my status on both Committees. I am humbled by my peers' decision to elect me as our Majority Leader and I look forward to working with you in that capacity.

Sincerely,

JOHN A. BOEHNER,
Chairman.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

COMMUNICATION FROM DISTRICT DIRECTOR OF THE HONORABLE DENNIS MOORE, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from Julie Merz, District Director of the Honorable DENNIS MOORE, Member of Congress:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 1, 2006.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a subpoena, issued by the District Court of Johnson County, Kansas, for testimony in a criminal case.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

JULIE MERZ,
District Director.

ADMINISTRATION CUTS OFF FEDERAL FUNDS TO OSU STUDY

(Mr. INSLEE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. INSLEE. Mr. Speaker, we have another concern today arising about the administration's potential abuse of the scientific process in making policy.

Today, the Associated Press reported that the Bureau of Land Management under this administration has suspended funding for the final year of a study from Oregon State University on the impact of logging in national forests burned by wildfires.

Findings of these studies were published last month in the magazine Science, and they suggested that the administration's stance on salvage logging runs counter to the real goals regarding forest regeneration and fire prevention. I am concerned in this case that we have seen yet another situation where funding may have been frozen to punish scientific results legitimately conducted at Oregon State University, and that is why I have called on the Interior Department's inspector general today to investigate whether or not this in fact has occurred.

Did Daniel Donato and his research team from OSU lose funding because of this cause? Is this another punishment situation? We need to find out. We have got to respect science and use it accordingly.

RESIGNATION AS MEMBER OF COMMITTEE ON ENERGY AND COMMERCE

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Energy and Commerce:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 7, 2006.

Hon. J. DENNIS HASTERT,
Speaker, House of the Representatives,
Washington, DC.

DEAR MR. SPEAKER: I hereby respectfully resign my seat on the House Energy and Commerce Committee effective February 7, 2006. I would like to express my deep gratitude to you and Chairman Barton for the opportunity to serve and look forward to continuing to work with you in the future.

Sincerely,

J. GRESHAM BARRETT,
Member of Congress.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

SENATE BILLS REFERRED

A bill and a concurrent resolution of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 1219. An act to authorize certain tribes in the State of Montana to enter into a lease or other temporary conveyance of water rights to meet the water needs of the Dry Prairie Rural Water Association, Inc.; to the Committee on Resources.

S. Con. Res. 79. Concurrent resolution expressing the sense of Congress that no United States assistance should be provided directly to the Palestinian Authority if any representative political party holding a majority of parliamentary seats within the Palestinian Authority maintains a position calling for the destruction of Israel; to the Committee on International Relations.

ENROLLED BILLS SIGNED

Mrs. Haas, Clerk of the House, reported and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 4519. An act to amend the Public Health Service Act to extend funding for the operation of State high risk health insurance pools.

H.R. 4659. An act to amend the USA PATRIOT Act to extend the sunset of certain provisions of such act.

BILLS PRESENTED TO THE PRESIDENT

Karen L. Haas, Clerk of the House, reports that on February 3, 2006, she presented to the President of the United States, for his approval, the following bills.

H.R. 4519. To amend the Public Health Service Act to extend funding for the operation of State high risk health insurance pools.

H.R. 4659. To amend the USA PATRIOT Act to extend the sunset of certain provisions of such act.

ADJOURNMENT

Mr. DREIER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 2 o'clock and 11 minutes p.m.), under its previous order, the House adjourned until tomorrow, Wednesday, February 8, 2006, at 2 p.m.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

[The following action occurred on February 3, 2006]

Mr. THOMAS: Committee on Ways and Means. H.R. 1631. A bill to provide for the financing of high-speed rail infrastructure, and for other purposes; with an amendment (Rept. 109–314 Pt. 2). Referred to the Committee of the Whole House on the State of the Union, and ordered to be printed.

DISCHARGE OF COMMITTEE

Pursuant to clause 2 of rule XII the Committee on Resources discharged from further consideration. H.R. 3699 committed to the Committee of the Whole House on the State of the Union and ordered to be printed.

SUBSEQUENT ACTION ON REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. JOE BARTON of Texas: Committee on Energy and Commerce. H.R. 3699. A bill to provide for the sale, acquisition, conveyance, and exchange of certain real property in the District of Columbia to facilitate the utilization, development, and redevelopment of such property, and for other purposes; with amendments (Rept. 109–316 Pt. 3). Referred to the Committee of the Whole House on the State of the Union.

TIME LIMITATION OF REFERRED BILL

Pursuant to clause 2 of rule XII the following action was taken by the Speaker:

H.R. 921. Referral to the Committee on Education and the Workforce extended for a period ending not later than March 3, 2006.

H.R. 2829. Referral to the Committee on the Judiciary, Energy and Commerce, Intelligence (Permanent Select), and Education and the Workforce extended for a period ending not later than March 3, 2006.

H.R. 3505. Referral to the Committee on the Judiciary extended for a period ending not later than February 24, 2006.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. CHABOT:

H.R. 4701. A bill to amend the Ethics in Government Act of 1978 (5 U.S.C. App.) to extend the authorization of appropriations for the Office of Government Ethics through fiscal year 2011; to the Committee on Government Reform, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. FRANK of Massachusetts:

H.R. 4702. A bill to amend title II of the Social Security Act to eliminate the time limitation for corrections to wage and self-employment income records; to the Committee on Ways and Means.

By Mr. GINGREY (for himself and Mr. TIERNEY):

H.R. 4703. A bill to provide meaningful civil remedies for victims of the sexual exploitation of children; to the Committee on the Judiciary.

By Mr. LANGEVIN (for himself, Mr. WELDON of Pennsylvania, and Mr. RAMSTAD):

H.R. 4704. A bill to address the needs of individuals with disabilities in emergency planning requirements and relief efforts in the event of a major disaster, to increase the accessibility of replacement housing built with Federal funds following Hurricane Katrina and other major disasters, and for other purposes; to the Committee on Transportation and Infrastructure, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SAXTON:

H.R. 4705. A bill to establish the Math and Science Teaching Corps; to the Committee on Education and the Workforce.

By Mr. STARK (for himself, Mr. EMANUEL, Mr. DeFAZIO, Mr. DOGGETT, Mr. HINCHEY, and Mr. McDERMOTT):

H.R. 4706. A bill to amend the Internal Revenue Code of 1986 to deny any deduction for certain gifts and benefits provided to physicians by prescription drug manufacturers; to the Committee on Ways and Means.

By Mr. MURPHY (for himself and Ms. HART):

H. Res. 670. A resolution congratulating the National Football League champion Pittsburgh Steelers for winning Super Bowl XL and completing one of the greatest postseason runs in professional sports history; to the Committee on Government Reform.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 198: Mr. FATTAH and Mr. BACHUS.

H.R. 200: Mr. FATTAH.

H.R. 356: Mr. FORTENBERRY, Mr. BOEHNER, and Mr. LINCOLN DIAZ-BALART of Florida.

H.R. 389: Mrs. CUBIN and Mr. NEUGEBAUER.

H.R. 1026: Mr. ROGERS of Michigan.

H.R. 1130: Mr. MEEHAN.

H.R. 1143: Mr. MILLER of Florida.

H.R. 1262: Mr. FATTAH.

H.R. 1290: Mr. FATTAH.

H.R. 1470: Mr. GONZALEZ.

H.R. 1498: Mr. AL GREEN of Texas and Mr. DAVIS of Tennessee.

H.R. 1578: Mr. BROWN of Ohio, Mr. GORDON, Mr. GUTKNECHT, Ms. HERSETH, Mr. KNOLLENBERG, and Mr. SCHWARZ of Michigan.

H.R. 1849: Mr. PETERSON of Minnesota.

H.R. 2089: Mr. BURTON of Indiana.

H.R. 2193: Mr. KING of New York.

H.R. 2206: Mr. HINCHEY and Mrs. BONO.

H.R. 2230: Ms. WASSERMAN SCHULTZ.

H.R. 2389: Mr. MORAN of Kansas.

H.R. 2716: Mr. FATTAH.

H.R. 2970: Mr. WALSH and Mrs. KELLY.

H.R. 3196: Mr. MICHAUD.

H.R. 3198: Ms. HOOLEY.

H.R. 3427: Mr. LANGEVIN.

H.R. 3590: Mr. HAYWORTH.

H.R. 3641: Mrs. McCARTHY and Mr. GUTIERREZ.

H.R. 3642: Ms. LORETTA SANCHEZ of California.

H.R. 3762: Mr. ANDREWS, Mr. MEEHAN, Ms. ZOE LOFGREN of California, and Mr. ROTHMAN.

H.R. 3883: Mrs. NORTHUP and Mr. TERRY.

H.R. 3940: Mrs. JO ANN DAVIS of Virginia.

H.R. 4025: Mr. CLAY.

H.R. 4059: Mr. LaHOOD, Mr. WEINER, Mr. KING of New York, and Mr. REYES.

H.R. 4072: Mrs. DRAKE.

H.R. 4073: Mr. FATTAH.

H.R. 4099: Mr. ALEXANDER.

H.R. 4197: Mr. REYES, Mr. KILDEE, Ms. BERKLEY, and Mr. MELANCON.

H.R. 4202: Ms. McKINNEY.

H.R. 4217: Mr. KOLBE.

H.R. 4238: Mr. ALEXANDER.

H.R. 4239: Mr. WILSON of South Carolina.

H.R. 4242: Mr. CLAY.

H.R. 4347: Mr. WEXLER.

H.R. 4395: Mr. McNULTY and Ms. WOOLSEY.

H.R. 4408: Mr. MILLER of Florida.

H.R. 4474: Mr. RANGEL, Mr. DOGGETT, Mr. HOYER, and Mr. BROWN of Ohio.

H.R. 4547: Mr. YOUNG of Alaska, Mr. WICKER, Mr. BURTON of Indiana, Mr. SCHWARZ of Michigan and Mr. MILLER of Florida.

H.R. 4548: Mr. SHERMAN.

H.R. 4551: Mr. SESSIONS.

H.R. 4606: Mr. FATTAH.

H.R. 4619: Mr. ENGEL and Mr. CAPUANO.

H.R. 4646: Ms. LEE, Mr. McINTYRE, Mr. CARDOZA, Ms. WATSON, Ms. HARMAN, Mr. LEWIS of California, Mrs. NAPOLITANO, Ms. LINDA T. SÁNCHEZ of California, Mr. SCHIFF, Mr. WAXMAN, Mr. BERMAN, Mrs. CAPPS, Mr. FARR, Mr. FILNER, Ms. KILPATRICK of Michigan, Mr. LANTOS, Mr. BECERRA, Ms. ZOE LOFGREN of California, Ms. MILLENDER-McDONALD, Mr. GEORGE MILLER of California, Mr. RYAN of Ohio, Ms. ROYBAL-ALLARD, Mr. DOOLITTLE, Mrs. TAUSCHER, Mr. THOMPSON of California, Mr. STARK, Mr. SANDERS, Mr. BACA, Ms. ESHOO, Mr. BARROW, Mr. BROWN of Ohio, Mr. BUTTERFIELD, Mr. ENGEL, Mr. GALLEGLY, Mrs. McCARTHY, Mr. POMEROY, Mr. RANGEL, Mr. SNYDER, Mr. WYNN, Mr. CLAY, Mr. MEEK of Florida, Mr. MORAN of Virginia, Mr. PETERSON of Pennsylvania, Mr. SERRANO, and Mr. CLEAVER.

H.R. 4662: Mr. WESTMORELAND, Mrs. MYRICK, Mr. PITTS, Mr. BROWN of South Carolina, Mr. KUHL of New York, Mr. BARRETT of South Carolina, Mr. GOODE, Mr. COLE of Oklahoma, Mr. FRANKS of Arizona, Mr. FORTUÑO, and Ms. FOXX.

H.R. 4665: Mr. KUCINICH, Mr. BOREN, Mr. CARDOZA, Mr. REYES, Mr. ALLEN, Ms. WASSERMAN SCHULTZ, and Mr. LANGEVIN.

H.R. 4668: Mr. KENNEDY of Minnesota, Mr. PORTER, and Mr. WEXLER.

H.R. 4672: Mr. BURGESS.

H. Con. Res. 282: Mr. KUCINICH.

H. Con. Res. 317: Mr. KUCINICH.

H. Con. Res. 318: Mr. KUCINICH and Mr. McGOVERN.

H. Con. Res. 331: Mr. MURPHY and Mr. OWENS.

H. Res. 495: Mr. FOSSELLA.

H. Res. 507: Mr. ENGLISH of Pennsylvania.

H. Res. 556: Ms. JACKSON-LEE of Texas, Mr. OSBORNE, Mr. ETHERIDGE, Mr. CHANDLER, Mr. MATHESON, and Mr. OTTER.

H. Res. 593: Ms. McCOLLUM of Minnesota.

H. Res. 635: Ms. McKINNEY, Mr. HINCHEY, Mrs. MALONEY, Mr. LEWIS of Georgia, and Mr. FARR.

H. Res. 636: Mr. HINCHEY, Mrs. MALONEY, and Mr. FARR.

H. Res. 637: Mr. HINCHEY, Mrs. MALONEY, and Mr. FARR.

H. Res. 643: Mr. INSLEE and Mr. HINCHEY.

H. Res. 662: Mr. EHLERS, Mr. FEENEY, Mr. FORTENBERRY, Mr. GARRETT of New Jersey, Mr. GOODE, Ms. HARRIS, Mr. HOSTETTLER, Mr. INGLIS of South Carolina, Mr. KELLER, Mr. KUHL of New York, Mrs. MYRICK, Mr. TERRY, Mr. WESTMORELAND, and Mr. SENSENBRENNER.

SENATE—*Tuesday, February 7, 2006*

The Senate met at 9:45 a.m. and was called to order by the Honorable LAMAR ALEXANDER, a Senator from the State of Tennessee.

PRAYER

The PRESIDING OFFICER. Today's prayer will be offered by the Chief of Staff to the Senate Chaplain, Alan N. Keiran.

The guest Chaplain offered the following prayer:

Let us pray:

Lord God, King and Creator of the heavens and the Earth, we pause to offer our praise and thanksgiving for the joys of life. You have blessed us with friends and family, freedom and faith. You have given us religious liberty and have challenged us to seek Your eternal wisdom as we plot the course of our lives. You have blessed our Nation with praying leaders whose hearts are inclined toward You.

We ask Your blessing on all our Nation's leaders and citizens. Bless our President, our Representatives, our Senators, their families, and their staffs. May each experience a deep sense of Your love and mercy. Grant them good health, safe travel, and ample rest as they serve our great Nation.

Be with the members of our Armed Forces and their families. Grant those in harm's way the light of Your presence. Bless and protect all guardians of liberty at home and deployed. And bless all who are attending Mrs. Coretta Scott King's funeral today.

We pray in Your glorious Name.

Amen.

PLEDGE OF ALLEGIANCE

The Honorable LAMAR ALEXANDER led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read as follows:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 7, 2006.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable LAMAR ALEXANDER, a Senator from the State of Tennessee, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. ALEXANDER thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for up to 60 minutes. The first half of the time will be under the control of the Democratic leader or his designee, and the second half of the time will be under the control of the majority leader or his designee.

RECOGNITION OF THE ASSISTANT MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The assistant majority leader is recognized.

SCHEDULE

Mr. McCONNELL. As the occupant of the chair indicated, this morning, we will have a period of morning business for up to 60 minutes, and that is equally divided.

Following that time, the Senate will resume consideration of the motion to proceed to S. 852, the asbestos bill. Yesterday, the majority leader filed cloture on the motion to proceed to the asbestos bill and that cloture vote is scheduled for 6 p.m. today.

We have a Senate delegation attending the funeral of Coretta Scott King in Georgia today. Tonight's vote at 6 will be the first vote of the day.

ORDER OF PROCEDURE

I ask unanimous consent that debate on the motion to proceed be equally divided between the two leaders or their designees. I further ask that the last 20 minutes be allocated as follows: The Democratic leader or his designee for 10 minutes, to be followed by the majority leader or his designee for the final 10 minutes.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. McCONNELL. Mr. President, it is our hope that we will be able to invoke cloture today and start debate on the substance of this very important piece of legislation. If cloture is invoked, I believe the chairman would be ready tonight or early tomorrow to begin work on the bill, and we can discuss the timing of that later in the day.

As the leader announced, we expect to be on the asbestos bill for the remainder of this week. We would like to make progress on asbestos-related amendments throughout this current week.

I also remind our colleagues that we will continue to work on executive nominations this week. There are a number of executive nominations on the calendar. They are ready for consideration and should be considered. Members should expect votes on those nominations as well.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. MURRAY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

IMPACT OF THE BUDGET PROCESS

Mrs. MURRAY. Mr. President, a week ago we all listened as the President laid out his priorities in the State of the Union.

At the time, I noted that what he says in his speech is a lot less important than what he does in his budget.

Yesterday, he sent us his budget, and I am deeply concerned about what it means for our country, our people and our future.

Later today, I will raise some of my concerns directly with the budget director, and I will come back here to the floor time and again to talk about what we should be doing.

But this morning, I want to step back and take a broad look at the significance of the budget and the choices before us.

I want to remind my colleagues that what we do now will affect us, and the American people, months from now.

The budget decisions we make now will either empower us, or tie our hands, when we turn to write the appropriations bills.

I am speaking on the floor today to warn my colleagues that you cannot vote for an unrealistic budget in the spring and then act surprised in the summer and fall when painful cuts are required.

At the end of every year, Congress crams several important pieces of legislation through in a rush to head home for the holidays. This past year was no different. In a matter of days, we finished appropriations bills, authorization bills, and even spending cuts.

Unfortunately, the logjam we experienced at the end of last year was not a surprise to many of us who work closely on the budget process.

Starting in March, many of us began raising concerns that we were headed in the wrong direction. We knew that there was no way we could honor our commitment to America's working families, enact huge cuts in entitlement programs like Medicare and Medicaid, enact another round of tax cuts, and continue to cut our Nation's deficit.

When you add in the growing cost of war and Hurricane Katrina, the legislative train wreck was entirely predictable.

But no matter what the hurry, make no mistake these bills have serious consequences, and their impact will be felt for years to come.

They set funding levels, cut and grow programs, and set important policy for agencies and programs touching nearly every American.

But it is more than that. Collectively, they represent our priorities and reflect our values.

They provide the direction we intend to lead the country. And what too few Americans know—and too few Senators seem to remember—is that one single document serves as the blueprint for these additions, subtractions and everything in between each year.

I'm speaking, of course, about the Federal budget resolution.

Every year, with much fanfare and even more detail, the administration sends Congress a spending and revenue plan for the next 5 years. Congress is required to draft a similar spending and revenue plan.

Our work begins on the day we receive the President's budget and is supposed to be completed by April 15. From early February, until April we debate, mark up, and offer a multitude of amendments.

Most of the time, we complete this process and move to the next phase of the budget process on May 1. The congressional budget resolution sets the tone for the entire budget process, including appropriations.

I have served on the Budget Committee for my entire Senate career. It's a very important committee, one that I take great pride in working on. But its work is not often considered newsworthy or particularly interested for the press and public.

While this process may not always draw front-page coverage, its importance could not be greater.

This one document is more than numbers and charts. From health care to energy, security to the economy, this one document is the vehicle that allows us to act on each and every priority the Government will have for an entire year.

The Federal budget is the statement of our priorities as a people. It should be a moral, thoughtful document.

It should carefully consider its impact on the Nation's best-off and worst-off.

Too often, I fear, this impact is overlooked in all the details and process. Its impact is lost in the time from the budget's passage to the enactment of the final appropriations bills.

That is why this year, with the benefit of our action at the end of 2005, with upcoming votes on left-over items from last year, and with the President's new budget, I wanted to come here to the floor to ensure that we all know the stakes of this great debate.

And I intend to be back, saying much the same, I fear, in the weeks and months ahead.

This year's budget, and the priorities it enacts, will not be lost to time, if I have anything to say about it. It is simply too important to forget.

As I listened to the President's State of the Union, I felt a real disconnect between his priorities and the challenges facing working families in Washington State, Americans across our country, and those fighting for our freedom abroad.

We all want America to be strong again and that means we must invest in our people and in our infrastructure. What the President said last week matters much less than what he does in his budget.

That budget is a document of values, and it will tell us if he is really intent on creating a brighter future for America or just giving us more of the same.

It is time to put the needs of America's working families first. We need a government that reflects our values and provides real economic incentives to encourage job creation.

We can do that by investing in our infrastructure, providing affordable, accessible healthcare, supporting energy independence, providing education for all of our children, and protecting our ports and borders.

These are the priorities that will make our Union and our families strong. We also have a moral obligation to ensure that our troops who serve and protect all of us have the resources they need on the battlefield and when they return home.

Unfortunately, if last year's budget and this year's speech are any indication, the President's priorities are simply not in line with those of the American public.

Almost exactly 1 year ago, the President previewed his FY 2006 budget in the State of the Union Address. He said:

> My budget substantially reduces or eliminates more than 150 Government programs that are not getting results, or duplicate current efforts, or do not fulfill essential priorities. The principle here is clear: Taxpayer dollars must be spent wisely, or not at all.

A week later, we received a budget from President Bush that slashed health care programs, punished veterans, cut education aid, and increased the long-term financial obligation we'll leave to the next generation. His "nonessential priorities" were made quite clear.

In choosing to vote against that budget, I said:

> Families in Washington State and across the country are concerned about the security of their jobs, their communities, access to affordable health care and a quality education. Unfortunately, rather than inspiring confidence, the budget we are voting on tonight leaves too many Americans questioning the future.
>
> On issue after issue, this budget falls short of what our communities and our country need to move forward.
>
> I know what responsible budgets look like because I've worked with chairmen of both parties to create them.
>
> Unfortunately, this Republican budget fails to create jobs, improve security and meet our country's needs.

Mr. President, last year's budget proposal was a disaster. It cut Medicaid—the health care for our most vulnerable. It cut education. It cut veterans funding. And incredibly, once again, it increased the deficit.

The President has rightly been focused on our Nation's security, but his budget didn't reflect the type of priorities that keep Americans safe. Speeches are one thing, but they ring hollow if not matched with a real commitment of funding.

In fact, in his budget proposal last year, the President tried to cut firefighter grants, funding for U.S. search and rescue, and the port security grants that help keep cities such as Seattle and Tacoma safe. If we are serious about our security, then each of these should be priority for this President.

And after that budget passed—by the slimmest of margins, I might add—we felt the pain it inflicted. In appropriations debate after appropriations debate Democrats, and in some cases even some Republicans, fought to provide the basic funding for services that make a difference in every American's life—the most important programs needed.

Several times Republicans invoked the budget, saying we couldn't provide the necessary dollars because of its constraints.

The budget and the Bush priorities were taking their toll.

As if these painful cuts weren't enough, the Bush team actually used the budget to ensure more hardship for the least among us, while handing out more perks to the best-off.

Through reconciliation, Republicans "saved" billions of dollars on the backs of the poor. Again, by the slimmest of margins in each Chamber, they cut Medicaid, Agriculture, and retirement security programs.

Reconciliation is intended as a tool for reducing the deficit. Unfortunately, the Republican leadership has pushed reconciliation bills that actually make the deficit worse and pass the burden of tax cuts for the wealthy and the cost of the war on the backs of poor children, the disabled, and our Nation's seniors.

I will say again what I said when they brought this immoral bill to our committee: At a time when communities along our gulf coast are hurting, when we are facing the implementation of a confusing new prescription drug law, when our roads and bridges and railways are aging, when millions of Americans are concerned about how they are going to pay for heat in their homes this winter, and when the men and women who have sacrificed to serve us overseas cannot find health care or jobs when they return home, we should be focused on protecting our most vulnerable, not handing them further burdens.

There is one particular area that warrants mentioning because we have heard a lot about it in recent days, and that is health care. We heard the President talk about his health care priorities in his State of the Union Address last week. But every American knows that actions speak louder than words.

One of the most serious challenges facing all working families today is the escalating cost of health care. Instead of addressing the increasing cost of health care and its impact on the uninsured, last year's failed budget strategy only made this situation worse.

In the reconciliation package the House approved, half of the cuts come from Medicare and Medicaid. We know from a recent CBO report that an estimated 65,000 enrollees in Medicaid will lose coverage under the Republican budget reconciliation bill.

The reconciliation bill shifts greater costs to working families and could reduce Washington State's share of Medicaid funding by $185 million. The package requires higher copayments and premiums for low-income children. It eliminates the focus on prevention benefits and early screening for children.

Medicaid is an essential safety net program for seniors, for the disabled, and for our children. Without Medicaid, there are very few options available for receiving care. Nationwide, in fact, 40 percent of all births are paid for by Medicaid. Where will these people go for care? Who is going to pay? The reconciliation bill cuts $35 billion from services that make America stronger and make our communities more secure, all while burdening our children with massive debt.

Rather than being good stewards of taxpayers' dollars and helping our Nation become stronger and more secure, and rather than paying down the debt, Republicans are back to the same game: They want to keep shoveling money right back out the door in the form of billions of dollars in tax breaks for the wealthiest Americans.

My colleagues on the other side of the aisle like to point out that they cut spending by $40 billion, but they did so by cutting student aid, cutting health care for the poor, and cutting other programs that are critical to working families, and they did it all while increasing the deficit.

As our outgoing Federal Reserve Chairman Alan Greenspan once said:

> If you are going to lower taxes, you should not be borrowing essentially the tax cut. That over the long run is not a stable fiscal situation.

I agree. Imposing painful cuts on hard-working families to pay for more tax cuts and then passing the cost on to our children is clearly wrong. We can and we must do better. And let's not forget higher deficits also mean a larger debt. It is no surprise that we soon will be asked to raise the borrowing authority yet again for the Federal Government to over $8 trillion. That is going to mean less capital for small businesses to expand and it means higher interest rates for every working family.

Once again the budget and Bush priorities will take their toll.

As I look at the challenges facing our country and as I listen to the people in my home State of Washington, it is pretty clear that the top priority now must be making America strong again. And to do that, we need to invest here at home. That means taking care of education, health care, infrastructure, housing, safety, and security, and on each of these fronts, the Bush priorities have been time and again misguided, adrift, and downright painful for millions of Americans.

I believe that in order to make America strong, we need to make investments here at home in our people, in our infrastructure, and in our communities. Everywhere I travel in Washington State, I hear from families who are struggling to find a safe and affordable place to live. Whether it is a young couple looking for their first home or a family searching for rental housing close to their job or a senior citizen who wants to find better access to social services, it is harder than ever in this country to find affordable housing.

Across the country, public housing agencies and nonprofit organizations are working to help families find a place they can call home. At the same time, they are contributing to community revitalization efforts that will bring new jobs and opportunities. But a lack of funding threatens those achievements that have been made and the work that is yet to be done.

It is also critical that we continue to invest in our Nation's infrastructure. Recent cuts in transportation spending threaten to weaken airline safety, impose new transportation costs on American businesses, and cost tens of thousands of construction jobs. Investing in our Nation's transportation infrastructure will help reduce congestion, improve safety, and support continued economic growth. I urge this President to support these critical investments and put action behind his good rhetoric.

When I am home in my State of Washington and here in DC, I hear a lot of concern from the business community, from local governments, and families over the United States losing its global competitiveness. In fact, we heard a lot from President Bush the other night on this very subject. But last year's budget set us on a path that weakened education programs at all levels, and the new budget that was sent to us yesterday does the very same thing.

Last year's budget so constrained our education programs that the Labor-HHS appropriations bill failed once in the House and almost did not pass at all. In the end, programs faced one last hit again, a 1-percent-across-the-board cut that further hindered education at every level.

In a time when our schools are facing increasing requirements under the No Child Left Behind Act and families are facing rising college tuition costs, this is no time to be shortchanging education.

Last year's budget resulted in funding levels that represented the smallest increase in education in a decade, and this year the President is proposing the largest cut to education in 26 years.

This year, $12.7 billion is proposed to be cut from student loans that help low-income and middle-income families pay for college. Seventy percent of those cuts will be paid for by students and their families. Those cuts will not go for balancing the budget either; they are going to go for tax cuts for those who need them the least.

Tuition and fees increased this year by 7.1 percent for 4-year public universities and 5.9 percent for private universities. Not only is cutting student aid the wrong priority for our country today, but it will cost our Nation dearly in the long term.

Today only one-third of the U.S. workforce has a postsecondary education, and it is estimated that 60 percent of the new jobs in the 21st century will require college education. Workers who have attended college have higher incomes and lower rates of unemployment than those who do not. And those with a college education are more likely to have jobs with benefits, such as health care and retirement and pension plans.

We should be helping to break down the barriers to a college education, not building them up with this budget plan.

I want to talk about veterans funding because with so many of our brave men and women fighting for us overseas. I believe our most fundamental priority has to be to take care of those who sacrificed so much for all of us.

I have said time and again that actions speak louder than words, but it was, nevertheless, very troubling to me when President Bush failed to even mention our veterans in the State of the Union Address. I hope he will not forget them in the budget process.

I am concerned that the President's fiscal year 2007 budget that was just sent to us is not based on real numbers and does not reflect the real demand for VA services. I am convinced that without real budgets based on real numbers, the VA is going to face a shortfall again this year and more veterans are going to be denied the care they have earned.

The rising utilization rates, increasing costs of medical care, and the influx of veterans from Afghanistan and Iraq are going to require more VA funding.

In addition, the new Medicare prescription drug program has added more demands on the VA. Many seniors who are veterans are now being told they should go to the VA for their prescription drugs. Surely, this influx of new VA patients will have a major impact on the VA system and will inevitably delay access for veterans.

Finally, much of the increased demand on the VA system is due to the nationwide health care crisis. As veterans lose their health care coverage from their own employers, they are coming by the thousands to the VA to get care for the first time. The longer the health care crisis continues to grow, the more the demands will be on the VA to take care of the veterans population.

As my colleagues will remember, last year I was told the VA didn't need any more funding. The administration told me everything was fine and that they could handle the demands brought about by the Iraq war. I tried time and again to increase funding for the VA to maintain veterans' access to the health care they were told they would get, and I was fought at every level. Then finally in June, Secretary Nicholson announced the VA was, indeed, facing a $1 billion shortfall in fiscal year 2005 and that the VA miscalculated demands in the VA by over $3 billion between fiscal year 2005 and 2006.

In June, when I asked whether the administration had adequately planned for the impact of the war, I was told the VA underestimated the number of Iraq war veterans by over 300 percent.

I finally was able to work with my colleagues to attach $1.5 billion in emergency funding for the VA on the fiscal year 2006 Interior appropriations bill and another $1.2 billion in the fiscal year 2006 military construction bill to finally cover this shortfall.

Since the war in Iraq began, there have been 2,245 casualties and 16,548 wounded soldiers, sailors, airmen, and marines. Our men and women in uniform—past, present, and future—will time and again answer the call to duty, and at the very least they deserve a budget that fulfills our commitment to them and to their families.

I look forward to debating the President's budget this week. I truly believe it is one of the most important actions that we take every year because it sets the tone for everything else we do.

Tuesday night last week the President told Congress and all Americans that:

> In this decisive year, you and I will make choices that determine both the future and the character of our country.

I couldn't agree with him more. Our future and our character are at stake. A budget reflects our priorities and our values. Let's make sure our budget for the coming year reflects the best of both, and let's remember that the decisions we make now will tie our hands months from now.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRAHAM). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COLEMAN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRESS OF THE ECONOMY

Mr. COLEMAN. Mr. President, I wish to spend a little time today talking about the economy. When I was mayor of St. Paul, people would say: Mayor, what are you doing for kids? My response would be: The best thing I can do for kids is make sure mom and dad have a job. The best welfare program is a job. The best housing program is a job. Access to health care most often comes through a job. So that was always my goal—jobs, jobs, jobs.

I want to talk about the economy, but I want to touch briefly on the budget. The President submitted his budget. There will be a lot of debate. It is the beginning of a conversation. The President submits a budget and then we take a look at that budget and we weigh a number of options and ultimately it concludes. It is the beginning of a conversation.

One of the things I find somewhat frustrating is that my colleagues on the other side of the aisle talk about the deficit. We are all concerned about the deficit. We do not want to pass on debt to our kids. We don't want to put obligations on them from what we do today. We need to be more responsible. So we hear concern about the deficit, about which we are all concerned. Then anytime the President says we have to keep a lid on spending, our friends on the other side of the aisle complain that we are cutting too much. You cannot be so passionate about the deficit if you are not willing to do something about it. It is not enough to complain. It is not enough just to be against.

What the President has done is say: OK, we are going to cut the deficit in half by 2009. We are going to have to make some tough choices. We will have to make some very tough choices. But the answer is not simply raising taxes. The answer is not more spending. We are going to have to do the hard act of governing. It is not enough just to complain. It is not enough to say what you are against. What is your alternative? What are you for?

The President has laid on the table a budget with the hope of continuing progrowth policies, restraining spending, cutting the deficit and, perhaps most importantly, dealing with the long-term danger, the challenges we face with close to 70 percent of our budget going to things that are mandated. So we have to look at Social Security and Medicaid, and we have to do the right thing—do the right thing for our seniors, do the right thing for those in need. We have to have the courage to look at those things and act. You can't just complain. You can't keep complaining about the deficit and every time there is an opportunity to put a lid on spending you are against that. It doesn't make sense. It doesn't add up.

I wish to talk a little about where we are today and what has happened with what we have done in the past. We passed some tax relief. Mr. President, you and I together had the opportunity to be here during consideration of a number of proposals which have actually cut taxes. What has been the result? Let us look a little bit at the numbers.

The President's tax relief has produced more than 4.7 million new jobs since November 2003 when he signed the legislation accelerating broad-based income tax reductions and provided capital gains and income tax relief. Today the unemployment rate is 4.7 percent, lower than the average of the last three decades, and the lowest in 4 years.

Home ownership has reached an all-time high. This economic growth would not be possible without the President's tax relief. Recall when we had the tech bubble burst during the last administration—a bubble that should never have been allowed to inflate so high. We had corporate scandals that were nonpartisan but certainly were encouraged by the get-rich-quick ethic of the 1990s. We had the attack of September 11, and now we have the daily war on terror. The President's tax relief, which was fully implemented in 2003, has been critical in helping the economy recover from the recession and the terrorist attacks of 2001. Things such as small business expensing, capital gains tax relief, bonus depreciation—all helped to get this economy back on its feet and helped the economy continue expanding, despite the hurricanes and high prices of 2005.

So on September 11, 2001, we faced a recession. We faced the end of the tech bubble. We faced hurricanes and high energy prices. With the tax relief provisions fully implemented in 2003, tax receipts also responded accordingly. In fact, receipts jumped by a remarkable $274 billion or 14.5 percent, the largest increase in the last 24 years.

These recent gains in receipts confirm that a strong economy is the most important factor in reducing the deficit. You want to reduce the deficit? Grow the economy. Keep a lid on spending and grow the economy but don't advocate more spending and higher taxes. That is not a way in which you grow an economy. If you compare the economy with the same point in previous business cycles, in many respects the current expansion is even stronger than the growth of the early and mid-1990s. We look back to the mid-1990s, the Clinton years, as the halcyon days of the economy. Boy, things were great 10 years ago. Let me run some comparisons.

For example, in April 1995 the unemployment rate was 5.8 percent. Today it is 4.7 percent. The African-American unemployment rate was 10.7 percent. Today it is 8.9 percent. This is a key figure: Productivity growth in 2005, the key to raising our standard of living, is at 3.1 percent compared to 0.3 percent in 1995—10 times today the productivity increase than it was in the halcyon days, the glory days of the nineties. Economic growth averaged 3.5 percent in 2005, while in 1995 it was 2.5 percent. If that picture had been drawn for us 5 years ago, how many would have predicted the economy would be in as good shape as it is today?

The reason is sound monetary policy and tax relief that were well timed and sized to stimulate the economy when it needed it the most. Unfortunately, in a scene reminiscent of the movie "Groundhog Day," many on the other side are arguing that we should let this tax relief expire. In other words, we should raise taxes. If you let tax relief expire, you are saying we should raise taxes. This is the wrong prescription for the American people and for the fiscal purse. We are not an undertaxed society. By rejecting tax increases on family and small businesses, we will help keep the economy on a continuing course of job creation and strengthen the foundation for long-term economic growth.

For example, a closer look shows that the capital gains and dividends tax relief packages actually paid for themselves. The latest statistics on capital gains tax collections were recently released by the nonpartisan Congressional Budget Office, and receipts are not way down but receipts are way up—by 45 percent, by the way, to be exact. Recall, one of the things Congress did was to reduce the tax on capital gains from 20 percent to 15 percent. Opponents predicted, as ever, that this would reduce revenue. In other words, since we have lowered the percentage of taxes we are getting on capital gains from 20 to 15 percent, the opponents say you will not bring in as much money; you lower the tax we are taking.

It is not even close. The 25-percent reduction actually triggered a doubling of capital gains revenues to over a half billion dollars in 2005 to $269 billion in 2002. In addition, a new report from the American Shareholders Association finds that actual capital gains revenues were $62 billion higher than what was predicted over the 3-year period—$62 billion higher. While this may seem counterintuitive to some, it makes perfect sense to me and confirms that capital gains tax relief increased economic activity, leading to more revenue for the Treasury.

When I was mayor of St. Paul I didn't raise taxes in 8 years, and we grew the economy and grew jobs because it was a better place to do business and more moms and dads were working and putting money in their pockets and food on the table and taking care of their families.

What we have here is Punxsutawney Phil coming again. My friends on the other side of the aisle again argue that only the rich benefit from this relief. This ignores the fact that capital gains and dividend relief has played an essential role in creating over 4 million new jobs over the past couple of years, in 32 straight months of positive economic growth. Taxes on dividends and capital gains are impediments to capital formation. If you tax too much, you impede capital formation. You have less money going into the economy to grow jobs. They impede entrepreneurial activity, the wellspring of economic growth and wealth creation. Americans across all levels of household income have benefited from these lower rates.

Nearly 60 percent of those paying capital gains earn less than $50,000 a year, and 85 percent of all capital gains taxpayers earn less than $100,000 a year, according to the Joint Economic Committee.

I know many express concerns regarding the budget deficit. There is no doubt that Congress needs to do all it can to responsibly control the rate at which we spend on mandatory programs—on which we spend on programs. But some advocate that raising taxes is the key to opening the door to fiscal discipline. I am afraid instead of opening the door to prosperity, higher taxes will shut the door on innovation, entrepreneurship, and greater economic growth.

I recognize the uneasiness and uncertainty in America today regarding our economic future. But if one looks at the data, it is clear that the economy remains solid. Productivity is strong, employment growth remains robust. Both retail sales and the housing market remain on a path of remarkable growth. The American economy is highly flexible, and thanks to that we have been able to absorb natural disasters and high energy costs that would have easily thrown the economies of other nations into economic recession.

To ensure the economy's continued momentum, we must make the President's tax relief permanent or else small businesses, teachers, college students, and hard-working moms and dads will see their taxes go up.

Yet tax policy is not the only key to economic growth. As I said before, we face challenges. I know my neighbors and folks in my community in Minnesota are worried about what is happening in India and China. They are worried about the prospect of losing their jobs. Certainly, Mr. President, you are very sensitive to what is happening to the global economy and the impact it has on the good people of South Carolina.

We have to understand that we are not going to win the low-wage jobs.

There is a recent study by the National Science Foundation entitled "Rising Above the Gathering Storm." The President did not mention it directly in his State of the Union, but he is recognizing that we produced 70,000 engineers last year. China produced 600,000; India produced 350,000.

For the cost of one engineer or one chemist in the United States, a company can hire five chemists in China or 11 engineers in India.

Of 120 chemical plants being built around the world with price tags of $1 billion or more, one is in the United States and 50 are in China.

I could go on and on and on. We face some challenges out there.

We rank 17th in the proportion of college-age kids earning science and engineering degrees, down from third place a couple of decades ago.

We are making progress. The President is setting the pace. We have bipartisan legislation that follows up on that.

There are a number of things we need to do. In addition to that, we need to reduce our dependence on foreign oil. We need to reform our legal system, including completing our work on the asbestos bill that is before the Senate. We need to continue to work toward opening foreign markets to American goods and services. What we do not need to do is to apply the brakes on the economy by raising taxes on hard-working moms and dads, small businesses, college students, and teachers across the country. That is not the prescription for continued economic growth. I have said this many times, but the fact is by cutting taxes you grow jobs. We have been through a recession, national emergency, corporate scandals, and a war. Yet because the President has stepped forward with an economic plan based on the commonsense belief that we should put money back into the pockets of ordinary Americans, the economy is going strong. By providing businesses with incentives such as bonus depreciation and expensing, they will be able to reinvest in their operation, purchase more goods, and hire more employees. That translates into jobs, economic growth, and opportunity for all Americans.

Given the good news on the economy, even the most persistent critic must concede that the President's economic program boosted the economy's performance and played a crucial role in helping the economy to rebound from the recession that began during the final months of the Clinton Presidency.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

ASBESTOS

Mr. KYL. Mr. President, when the Judiciary committee reported an asbestos-trust fund bill in 2003, I proposed three criteria for evaluating such a bill: the trust fund must be fair to people with asbestos injuries; its cost must be reasonable; and it must provide a permanent solution to the asbestos-litigation crisis. Last year, I voted to report this bill out of committee because I believe that the bill does meet or has the potential to meet each of these criteria. I also voted for the bill in no small part out of appreciation for the chairman's extensive efforts to address my concerns about the bill. I particularly appreciate his assistance in adding to the bill a gatekeeper mechanism for certifying exigent claims seeking an early settlement. Any start-up provision that threatens to prematurely return the trust fund to court is bad for victims, bad for participant businesses, and bad for the U.S. Government. Once this fund is started, it need to work—we cannot shift victims back and forth between the tort system and the fund, especially those victims with malignant conditions, who likely do not have long to live.

The need for this bill is obvious. Current asbestos litigation practices have been accurately described by Professor Lester Brickman as a "massively fraudulent enterprise fit to take its place among the pantheon of American scandals." Typically, trial lawyers consolidate thousands of claims and file them against a series of defendants. These claims are generated by mass-screening recruitment companies that ignore all scientific standards for identifying asbestos disease and employ corrupt physicians who will say that anyone has asbestosis if the fee is right.

In the perverse rules, plaintiffs' lawyers have a de facto veto over confirming the bankruptcy trust and can thus dictate its terms.

The results are predictable: even for asbestos bankruptcy trusts amounting to billions of dollars, the plaintiffs' lawyers take 40 percent off the top. These recoveries inevitably compensate lawyers in an amount several orders of magnitude greater than anything resembling a reasonable hourly rate. And all for bringing claims that no honest doctor would ever describe as legitimate cases of asbestos injury. It is easy to see where a well-crafted trust fund could improve on this system—how it could cut our the trial lawyer middle man and preserve recoveries for actual victims of asbestos disease.

Nevertheless, when I voted for this bill in the committee, I expressed reservations about the final product. One concern about this bill looms above all others, and it directly threatens all three of the above-stated criteria for evaluating the bill: solvency. I remain deeply concerned that this fund will run out of money and prove unable to pay all qualifying claimants. Allow me to explain why I am concerned about the fund's finances.

Here are a couple of reasons why. First, look to the bankruptcy trust funds previously existing and that have existed in the past. What has our experience been? Not very good.

In written questions to Dr. Francine Rabinovitz, who has been retained by trust fund bankers to estimate future claims under the fund, I asked her about the experience under the asbestos bankruptcy funds. Those funds are about the closest analog to what we are doing here—no-fault funds that compensate all claimants who meet particular exposure and medical criteria. Indeed, the criteria for this fund explicitly are borrowed from the latest version of the Johns Manville bankruptcy fund, which is part of her study. I appreciate her candor. Here is what she had to say:

> To my knowledge, none of the bankruptcy trusts created prior to 2002 have been able to pay over the life anywhere close to 50 percent of the liquidated value of qualifying claims. Of the current generation of bankruptcy trusts, the expected payout of those trusts, to my knowledge, ranges from a low of 5 percent (Manville) to a high of 31.7 percent (Western McArthur). The only current operating Trust to pay 100 percent of its scheduled values in the Mid-Valley Trust. These percentages are sensitive, of course, to the eligibility criteria the trusts apply. Under its original eligibility criteria, Manville was forced to drop its initial 100 percent payout first to 10 percent and then 5 percent of liquidated value. There will be a reevaluation of Manville's ability to pay a higher percentage in the near future by virtue of the impact of its recently imposed more stringent eligibility criteria.

These figures should disturb us all.

We are legislating a $140 billion trust—one that must work, because the costs of failure would be catastrophic. And yet the model for this fund is one that has failed every time that it has been tried. The miserable performance of the bankruptcy trusts should, at the very least, make us very cautious in proceeding down the same no-fault trust-fund path. While I recognize that this Fund is not exactly like the bankruptcy trusts—that it is designed better in some ways—in other ways the compensation criteria employed by this Fund are a change for the worse.

Another example that ought to give us some pause is the black lung fund, which is designed to compensate miners with CWP, a coal-mining-induced lung disease. That fund is now $8.7 billion in debt. It is now finally bringing in enough revenue to pay current claimants, but it is unable to service its debt. Each year's interest is simply added to the total debt. This is no way to run a trust fund.

It is telling to read the story of the black lung fund and hear why it has become so overburdened. The narrative should sound familiar to anyone who has closely followed the committee proceedings for the asbestos fund. There is a June 12, 2002 report from the Congressional Research Service. I wanted to quote from part of it, but the bottom line is that the crafters of the black lung fund ignored medical science when they set up the fund's compensation criteria. As is predictable for Congress, criteria were developed in the spirit of political compromise rather than under the guidance of hard science. The results have been very unfavorable.

The report basically said:

> Virtually all of the expectations for the Black Lung Benefits Act when it was enacted in 1969, e.g., the numbers of claims submitted or approved, were contradicted by subsequent experience. Corrective legislation was adopted in 1972, 1977, and 1981, including the establishment of trust fund financing in 1977, but results have continued to be at variance with expectations. As a consequence, the trust fund has perennially been in a position of growing deficit.

In other words, even at a time when the black lung fund's liberal compensation criteria were generating a surplus of claims, political pressures nevertheless pushed Congress to further liberalize those criteria and further bankrupt the fund.

In the asbestos arena, I fear that we already have repeated the first part of the black lung fund story. Our concern is that as we continue down this path, we risk repeating the rest of the story as well.

But this fund is different from black lung in one key respect: it is much, much more expensive. This fund has the potential to burn through scores of billions of dollars, rack up $30 billion in debt, and throw us back into the tort system—all within one decade. Such a result truly would make the black lung fiasco seem insignificant. It would be an utter disaster. We cannot let it happen.

I wish that the Judiciary Committee had learned more from the black lung experience—that we could at least recognize that a no-fault trust fund must be run as a tight ship, with rigorous compensation criteria and no leakage of claims. Unfortunately, that does not describe the bill that has been produced by the Judiciary Committee.

In his recent testimony before this committee, Dr. James Crapo described how we are repeating the same mistake made in the black lung fund: we are compensating diseases that are not caused by occupational exposure to asbestos. Dr. Crapo criticized the fund's compensation of persons with pleural reactions, which are not regarded as a disease and are not even a predictor of future disease. He also criticized the fund's claim level for persons with colorectal, stomach, and other cancers, noting that it would "result in large compensation to large numbers of individuals who develop a cancer for which there is no established causal relationship to asbestos exposure."

And just as was the case with black lung, despite the asbestos fund's use of criteria that are far more liberal than what can be justified by medical science, we already are hearing arguments that the fund should go further, that its compensation criteria should be even more liberal. For example, the medical literature strongly demonstrates that the only marker for asbestos-related lung cancer is clinically significant asbestosis. The cohort studies overwhelmingly show that unless a person has at least some asbestosis, asbestos exposure played no role in his lung cancer. But in this bill, we go further than compensating lung cancer in the presence of asbestosis. We also compensate lung cancer with pleural plaques. Pleural plaques are evidence of asbestos exposure but are not a valid marker for asbestos-related lung cancer.

And yet, even this has not satisfied some fund critics. This committee was even forced to vote several times on an amendment that would have obligated the fund to pay compensation for lung cancer when the claimant did not even have pleural plaques. The committee did defeat that amendment by a vote of more than 2 to 1, showing some respect for medical science. Nevertheless, the amendment is a harbinger of the political pressures that this Fund ultimately will face over its life.

Several other aspects of this bill also cause me concern. Let me summarize some of those.

For example, the sunset: The bill still contains a provision that would prematurely terminate the fund and return all claims to State and Federal court, with no mechanism for fixing problems even if the reason that the fund is running out of money is because it is paying non-meritorious claims. Once the fund is started, it must work. Going back to court is not a realistic option. As the bill now stands, the fund would borrow $30 billion prior to any sunset. Once companies are back in court defending against asbestos claims, they would also be paying down this debt. This would require full trust fund assessments for at least a decade. These payments, combined with renewed litigation and no, or heavily eroded, insurance policies, would be unaffordable for many companies. The effects of such a sunset likely would be so devastating that companies would demand that the Federal Government begin directly subsidizing the fund. This is a prospect that we should do all that we can to avoid. The fund should have a self-correction mechanism that makes sure that a sunset will never happen.

Another problem is allocation. This is an emerging problem, the scope of which we are only gradually becoming aware of, and, frankly, one to which I will devote my primary attention. The bill requires companies to pay into the fund based on their past asbestos expenditures, judgments, settlements, and litigation costs, even if those payments in the past were all absorbed by insurance. Companies' insurance will not cover their trust fund payments; insurers pay into the fund separately. The fact that the bill effectively invalidates the company's insurance contracts creates colorable takings claims against the fund. It also creates some serious inequities. Companies that found their asbestos liabilities to be manageable will find themselves facing unaffordable fund assessments. I am going to insist we have language in this bill that will address these inequities.

Another problem is startup. Much progress was made during the last days of markup toward fixing the so-called startup provisions. Nevertheless, the fund still ultimately allows claims to return to court if there are delays in startup, with no limits on award and no offsets in future fund payments for participants. Other, much simpler trust funds, such as those for radiation workers, have taken 18 months to start functioning. We cannot dismiss the possibility that this fund will require more than 2 years to begin paying all claims. Without an offset in limits, such a startup reversion would be disastrous for many companies.

Another issue relates to pending claims. The fund allows claims that already have advanced to trial to remain in the tort system with no offsets and no limits on damages. Already, some trial lawyers have begun seeking acceleration of their trial dates in order to take advantage of this provision. For the same reasons as applied to the startup provisions, such continued litigation could be very damaging.

A final problem is the problem of medical criteria which I alluded to earlier. Although improved over the 2003 committee bill, especially with regard to removal of level VII smokers, the fund still pays people with very common diseases that were not caused by exposure to asbestos. Credible medical experts had expressed the view to the committee that these problems will bankrupt the fund. These flaws in the bill would be less severe if the fund contains some self-correction mechanism that allowed tightening the million-dollar criteria in the event of insolvency caused by nonmeritorious claims, but it currently contains no such mechanism.

In summary, the bottom line is this is a bill which remains very much a work in progress. I am committed to addressing its problems as the bill advances through the Congress. I want to see it advance through the Congress. The bill is so important to so many people: the asbestos victims seeking compensation—at least it might help take care of their families, the businesses with only marginal connections to asbestos that nevertheless face bankruptcy through litigation, and workers and pensioners who see their jobs and retirement accounts destroyed by the litigation juggernaut. This bill is important. I look forward to working on the legislation with the chairman of the committee, the ranking member, and others who are supporting it. I will support the cloture motion and motion to proceed to the consideration of the bill.

The PRESIDING OFFICER. The Senator from Kentucky.

REMEMBERING CORETTA SCOTT KING

Mr. McCONNELL. Mr. President, with the passing of Coretta Scott King, we have lost the First Lady of America's civil rights movement. She and her husband, the Rev. Dr. Martin Luther King Jr., helped awaken the Nation to a dream of an America where each person, to use Dr. King's beautifully profound formulation, is judged by the content of his character, not the color of his skin. Ms. King continued to sustain the dream after her husband's death. We can take comfort in the hope that, 38 years after his tragic death, this couple has been reunited at last.

Because of Coretta Scott King, Dr. King's legacy is still alive. Her tireless efforts led to the establishment of Martin Luther King Day on the third Monday of January every year beginning in 1986 to mark Dr. King birthday.

Because of Ms. King, Americans everywhere can explore Dr. King life and vision through the King Center in Atlanta. Established in 1968, the King Center attracts over 650,000 visitors annually.

Born in poverty in Heiberger, AL, in 1927, Coretta Scott grew up in the midst of segregation, walking to a one-room schoolhouse every day as a school bus full of white children passed her by. But these harsh surroundings did not extinguish her spirit.

As a girl, she enjoyed singing and had the talent to attend Boston's New England Conservatory of Music to train as a classical singer. She would later lend her gift to the civil rights cause, singing at over 30 Freedom Concerts to raise money for the movement.

It was while in Boston, in February, 1952, that Coretta first met a 23-year-old Martin Luther King, who was pursuing his doctorate in theology at Boston University. As a lonely southerner in a northern town, he asked a mutual friend if she knew any nice young ladies he could meet. She mentioned the name Coretta Scott, and described her as "pretty and intelligent."

The young King persuaded the friend to give him Ms. Scott's number and asked if she'd put in a good word for him. Soon, he called for a date. Displaying a bit of verbal flair, he said, "You know, every Napoleon has his Waterloo. I'm like Napoleon at Waterloo before your charms."

"Why, that's absurd. You haven't seen me yet," Coretta replied.

Undeterred, he finally convinced her to let me take her out for lunch between classes. "I have a green Chevy that usually takes 10 minutes to make the trip from Boston University," he told her. "But tomorrow, I'll do it in 7."

That was 1952. They were married in 1953.

Ms. King once said, "I was married to the man whom I loved, but I was also married to the movement." Her entire life was intertwined with the fight to stamp out the injustices of racism and inequality.

After her husband's life was tragically cut short, Ms. King persevered, raising four young children on her own. It must have been a lonely struggle . . . but her dignity and grace inspired a nation.

A few days ago, Ms. King became the first African-American to lie in honor in the Georgia State Capitol rotunda. Today she will be laid to rest alongside her husband, at the King Center in Atlanta, and for all time they will be reunited.

Martin Luther King once said of his wife, "I think on many points, she educated me." Now, at the end of her celebrated life, many of us feel the same way. Dr. and Mrs. King helped educate America by forcing it to look itself in the mirror, face up to its failings, and recommit itself to its founding ideals.

So today, Coretta Scott King will be laid to rest in her beloved Georgia, next to the husband she lost 38 years ago. As the whole Nation reflects today on her incalculable contributions to human progress, I am reminded of Dr. King's own simple wish:

> I don't know how long I'll live, and I'm not concerned about that—but I hope I can live so well that the preacher can get up and say, "He was faithful." That's all, that's enough. That's the sermon I'd like to hear: "Well done my good and faithful servant."

Ms. MIKULSKI. Mr. President, I rise to salute the life and legacy of Coretta Scott King. She earned a place not just in our history but in our hearts. She was a true trailblazer for women, for the African-American community. She was an inspiration for all Americans. I feel privileged to have known Mrs. King throughout much of my political career. Her family is in my thoughts and prayers.

Mrs. King's courage and faith were remarkable. She insisted that she had her own voice in the civil rights movement at a time when women were often not recognized for their own talents and merit. Not only was she resolute, but she was feisty—someone after my own heart.

Mrs. King's life story was remarkable—even before she met Dr. King. She was born into rural poverty in Alabama and grew up in a two-room house that her father built. She came from a hard-working family. Her father hauled timber, owned a country store, and worked as a barber. Her mother drove a schoolbus. Growing up in the segregated South, Coretta Scott King saw the injustices of racial discrimination. Yet she saw the value in working hard and fighting for her dreams. She attended college and the New England Conservatory, where she trained as a classical musician.

It was while studying music in Boston that she met Martin Luther King, Jr. From the beginning of their marriage, Coretta Scott King maintained her own identity and voice. She was Dr. King's true partner marching by his side and speaking out on her own. At the same time, she was a mother, raising four children. The entire family lived with threats and intimidation.

We all remember those tragic days after the assassination of Martin Luther King. She comforted a nation that was torn apart. She is the reason we have a national holiday that honors Dr. King.

She fought for equality before the law, for economic justice, and for lifting people out of poverty. Her vision was put to action when she founded the King Center for Nonviolent Social Change and saw to it that the center became deeply involved with the issues that she believed breed violence—hunger, unemployment, voting right, and racism.

Coretta Scott King took her message of nonviolence to every corner of this country and to almost every corner of the world. She led missions to Africa, Latin America, Europe, and Asia. She was the first woman to give a class-day address at Harvard and the first woman to preach at the statutory service at St. Paul's Cathedral in London, England.

Coretta Scott King will be remembered throughout American history for her grace, strength, and belief that all people should be treated with dignity and equality. We must honor her legacy not just with words but with actions. We must recommit ourselves to the principles she stood for—opportunity, equality, and empowerment.

Mr. ALEXANDER. Mr. President, I rise today to speak about the life and contributions of an American civil rights icon, Mrs. Coretta Scott King.

Many people know Mrs. King as the wife of one of America's greatest citizens, Dr. Martin Luther King, Jr. Dr. King's enduring legacy of nonviolence and his quest for racial equality permanently altered the social fabric of America. Mrs. King will always be remembered as a part of Dr. King's life and legacy that are rightfully celebrated across our great land and throughout the world. However, Dr. King's towering accomplishments should not obscure the fact that Mrs. King held her own historic place in our Nation's struggle for equal opportunity.

I am reminded of the time some 20 years ago when Mrs. King came to see me when I was Governor of Tennessee. We were working to establish a holiday in honor of her late husband. It was harder work than it should have been, and I am reminded of how far we have come even since that time.

Mrs. King was the founding president of the Martin Luther King, Jr. Center for Nonviolent Social Change which continued to promote the noble philosophies of Dr. King. In addition to promoting the memory of her husband and his great work, Mrs. King created her own legacy as she traveled throughout America and across the globe to champion racial equality, women's rights, religious freedom, health care, and education.

We all know that Mrs. King was born in a time when America was very different than it is today. Little Black boys and girls could not go to school with little White boys and girls. Plessy v. Ferguson had not yet been overruled, so "separate but equal" was the law of the land. Lynchings were common and in many places the Ku Klux Klan terrorized Black communities, often operating with near impunity. As we look back on the amazing progress we have made since then, we remember those who were responsible for helping America turn away from the sins of injustice and inequality.

As a wife, a mother, and a leader of the civil rights movement, Mrs. King showed strength and dignity. With quiet determination, she preserved her husband's legacy and created her own place in the history of our Nation's struggle for equal opportunity.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 852, which the clerk will report.

The assistant legislative clerk read as follows:

> Motion to proceed to S. 852, a bill to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Mr. SPECTER. Mr. President, in addressing the motion to proceed where we are scheduled to have a vote at 6 o'clock this evening, the question is whether the problem of asbestos, causing thousands of people to have deadly diseases and forcing many companies into bankruptcy and resulting in a situation where people with the deadly diseases have no one to claim against, the issue is whether we have a problem which is worthy of the attention of the Senate. That is an easy question to answer; it is yes. That has been authenticated by the Supreme Court of the United States on several occasions where the Court has said the matter should be addressed by the Congress. That came up in a context where there were class action suits attempting to find the modality for dealing with the issue, and the Federal courts—ultimately, the Supreme Court—said class actions were not appropriate and it was a matter for the Congress of the United States.

This problem has been intractable. It has been studied. There have been proposals for more than three decades. I first saw this issue soon after I came to the Senate after the 1980 election when Senator Gary Hart came to see me as a junior member of the Judiciary Committee on behalf of his constituent, Johns Manville. We have wrestled with this problem for decades.

Finally, on an idea conceived by Senator HATCH to have a trust fund, the bill was reported out of the Judiciary Committee in July of 2003. But the bill had many problems. I then solicited the assistance of Federal Judge Edward Becker, a senior judge who had been the Chief Judge of the Court of Appeals for the Third Circuit, and in August of 2003, Judge Becker convened a meeting in his chambers in Philadelphia attended by stakeholders. That is the name we gave to the various groups which had key interests in the asbestos bill. One stakeholder was the AFL-CIO, representing labor; another stakeholder was the manufacturers; another, the insurers; another, the trial lawyers. Even though the trial lawyers have been opposed to the bill because it has a major impact on their financial status—and I understand that—we included the trial lawyers in every step of the proceeding, trying to accommodate as many interests as we could. Even though someone was going to be opposed to the bill, we wanted to consider what they had to say. We wanted to produce a bill which was as good as we could possibly produce.

Following those initial meetings in August of 2003 in Judge Becker's chambers, there have been meetings in my conference room—totaling 36—attended by varying groups, from 20 to as many as 60, pouring out into the boundaries of the office from the conference room. What we have done has been to seek to accommodate every issue which has come up. We are still talking to Senators and still talking to companies and interested parties to find answers to their problems.

One of the major issues has been the impact on small companies. That has been addressed by a number of Senators. Senator KYL has taken the lead, and a proposal has been worked out to cap the contribution by smaller companies which have gross revenues below a certain figure. In addition, there is a fund of some $300 million annually for the administrator to take care of hardship cases so that no one, for example, should be driven into bankruptcy by what they have to pay. We have taken that into account.

The figure of $140 billion was worked out by Senator FRIST and Senator Daschle about a year and a half ago. It is a figure that grows from that originally put into the trust fund to that figure where CBO has given us the assurance that the range of cost will be somewhere between $120 billion and $135 billion. Under one contingency, it could go to $150 billion, but that is unlikely.

We have within the structure of the bill a provision that the administrator can make a reevaluation, going through certain preconditions, so that if it looks as if we are going to exceed $140 billion, we can make modifications in the medical standards and criteria to stay within the $140 billion.

One factor is emphatically plain, and that is that there is no obligation by the Federal Government to spend a dime. There were three amendments directed during the committee process to make sure of that.

There are possible technical points of order which may be raised, and we are in the process of trying to restructure the bill to eliminate them. At this point, I am not sure whether we can, but we are trying to do that, and we may be successful.

But if a point of order is raised on the merits, it ought to be examined by Senators because there is no impact on the Federal budget. Technically, the expenditures are made by the Federal Government because the funds go through the Department of Labor, but they are only a conduit. There is no Federal money. So if you want to use 60 votes to defeat the bill, the point of order may be available, as I say, or may not be. But substantively there is nothing to the point of order because this bill does not have any impact on the Federal budget because there is no Federal money. The Department of Labor is just, plain and simple, a conduit.

Similarly, if you want to defeat the bill on an obstructionist tactic, which is what is being undertaken now on a filibuster on the motion to proceed, the 60 votes can be used. Senator REID was on the floor yesterday, and we had a disagreement. You might call it a disagreement. But the one thing that he did talk about involved the problems of people suffering from mesothelioma and other asbestos problems. So there is no doubt that the leader of the opposition, obstructionist No. 1, the Senator from Nevada, concedes the problem, concedes that we have a major problem. Now, that ought to be sufficient to proceed to see if we can solve the problem. Occasionally around here we ought to deal with a pending matter, whether it is a point of order or a motion to proceed, on the merits. What is involved in a motion to proceed is a decision by the Senate that we ought to consider legislation on this issue. If somebody has amendments, we are open. We have accepted more than 70 amendments in the committee. If somebody has a problem with constituents, I invite them to come to see me, my staff, or Senator LEAHY.

We have bipartisan support for this bill. Senator LEAHY, Senator KOHL, and Senator FEINSTEIN voted the bill out of committee. We have other support among Democrats. And I am talking to Senators on an individual basis and have visited with many of them in their offices and am available to do more.

But the issue on a motion to proceed is whether you have problem, which we certainly do, and whether legislation ought to be considered. And if somebody has amendments, if somebody has a constituent who thinks the constituent company is being asked to pay more than a fair share which is jeopardizing the company, come to us. We have been considering individual cases, and we have been solving them in many instances. We are open for business.

The distinguished Senator from Montana is going to address a problem in Libby, MT, where they have had environmental problems. Asbestos was used in a reckless, disgraceful, criminal manner by W.R. Grace & Company, and we are working to accommodate Libby, MT. There may be more that we can do for that issue. There are other so-called hot spots around the country, and we are taking them up.

There have been issues raised about our medical criteria. We have studies by the Institute of Medicine. If you have a problem, we want to solve it. We want this bill to go forward.

But on the narrow issue we are voting on at 6 o'clock this evening, any Senator who votes not to proceed is saying to his constituents, is saying to people suffering from mesothelioma, people suffering from asbestos exposure—anybody who votes no on the motion to proceed is saying there is no problem. Well, I think that is a pretty tough vote to explain, a pretty tough vote to explain that there is no problem, and it ought not to be considered by the Senate.

Yesterday, in the discussions—you might call them that—with Senator REID, I said this was certainly the most complex bill I have seen in the time I have been in the Senate. And I think it is fair and accurate to say it is the most complex piece of legislation ever considered by a legislative body. I know that is a pretty grandiose statement, and I do not know all the legislation considered by legislative bodies, but I think it is accurate.

I challenge anybody to bring to my attention, to the attention of the Senate, any legislative proposal which has ever been undertaken and analyzed that is more complicated than this one, that has received more attention than we had in 36 meetings in my conference room, in dozens—dozens—literally hundreds of meetings involving Judge Becker and myself and Senators.

Enormous work has been done by Senator LEAHY. I owe him a debt of gratitude for his cooperation and his leadership. Senator FEINSTEIN has had innovative proposals on startup. As I say, Senator LEAHY, Senator FEINSTEIN, and Senator KOHL are cosponsors.

So if anybody has an issue, I invite them to come forward. But I think it is an unconscionable vote to vote no on the motion to proceed.

I yield the floor.

The PRESIDING OFFICER (Mr. THOMAS). Who yields time?

The Senator from Montana.

Mr. BURNS. Mr. President, today I rise on this subject and first of all I want to congratulate—maybe that is not the word—the chairman of the Judiciary Committee, for tackling this important problem. I can't think of a time or a piece of legislation that has been so complicated and so important to my State of Montana. So I want to tell the chairman of the Judiciary Committee that the statement he made is right on target. Some of us that have been impacted by asbestos and asbestos-related diseases take this very seriously. We need to vote to proceed.

I want to tell you why I am involved in this and there are a couple of other issues that are also burning in our office right now that need my personal attention. When you go to Libby, MT, it is a little town in northwest Montana on the Kootenai River, and the W.R. Grace Company had a mine up there. And if you are not torn on this issue, both sides of it, the statement of Eva Thomson from up there I will just read her statement. That is why I am giving my statement with regard to Libby, because it is an isolated case.

Eva Thomson said:

> I have two sons, both them and I have asbestos-related disease. But they are not eligible by the standards in the existing bill as it is today. If the bill cannot be done right to protect us victims, please don't pass it at all. We place 225 crosses in the cemetery this Memorial Day in remembrance of asbestos victims. There are more than 20 new crosses this year. We need help, real help, and she thanks me.

Yet I have another one from Charlotte Wade, who says:

> Please don't forget us. I watched my Dad Jack die in 2002 and my mother Margaret die and suffocate from asbestos in 2004. I'm next. I've been on oxygen since the year 2000. My three grown children, no doubt, will follow.

Jim Davidson, long time resident of Libby, MT. He has been diagnosed with mesothelioma:

> Because of the short time I have left, I'm vitally interested in seeing that a compromise is reached to allow passage of some type of relief to me and all others affected by asbestos and worse. As you know, there's no other avenue left to those of us in Libby, Montana, because of the bankruptcy of W.R. Grace. So I urge to you work for some type of help for us.

Those are just three of hundreds in Libby, MT, that makes it a special place and harbors a special place in this piece of legislation. So I rise today to ask the Members of the Senate to remember the plight of the residents of this small town as this debate over the asbestos bill continues. I know a lot of folks have taken issue with the assertion that the Libby residents deserve special consideration. Well, I am here today to reiterate why this consideration is needed.

The asbestos contamination in Libby is as widespread as any area in the country. Though a sparsely populated town, the residents of that city have been profoundly affected by this spread of asbestos-related diseases. The asbestos exposure in Libby is unlike any other place in the United States. While I know my colleagues lament that they have similar situations in their own States, I ask them to simply listen.

The scope of asbestos exposure in Libby, MT, may never be known, but let me assure, you, Mr. President, that it is significant.

When Governor Martz of Montana executed the so-called silver bullet under CERCLA, she triggered a fast track listing of Libby on the National Priorities List. There has only been one other time when the silver bullet has been triggered due to asbestos. But that case in Arizona was limited to 17 square acres, not the contamination of an entire town. And unlike the case in Globe, AZ, the asbestos in Libby, MT, can't simply be covered in a filter fabric and soil and rock, fenced to keep everyone out. Unfortunately we can't control the exposure in that way. And the people in Montana—in Libby—don't want that.

So I challenge anyone—anyone—from any State to identify a town anywhere else in the country that has these kind of situations. I just want to show you right behind me is the vermiculite mine that was opened in 1924. By the 1950, cases of previously diagnosed as tuberculosis were instead cases of asbestos exposure. The town of Libby is located in a valley where the W.R. Grace processed ore from the contaminated mine, more than a half million pounds of asbestos a day was processed.

The Libby case is not an isolated case to the exposure within the confines of a factory. Instead, asbestos was everywhere. Community exposure was rampant. Contaminated properties including everything from the Libby community boat dock to the high school—the high school track. I want to put up this next picture. This is important. This is more than just a family hugging a mine worker after coming home and complaining of exposure. This is about asbestos exposure so significant that asbestos fibers fell like snow from the sky.

This is not very far from the mine. It is not very far from their loading and processing areas. This is the baseball field in Libby, MT. Children played on piles of vermiculite and all around town finding humor in taking a match to a fiber which would ignite.

Houses all over town were insulated with asbestos-contaminated in insulation. So my point is this morning, I invite anybody to visit this small town in northwest Montana, though I doubt my colleagues will take me up on the offer. In the summer, maybe when fishing is pretty good I could probably lure some of you out there but this is extremely important that other Senators understand the vast difference between this town of Montana and various processing plants that were located around the country. They were in isolated and enclosed areas.

This was free to the wind, to the winds of the vermiculite and one cannot just sit here and try to draw a mental picture of the impact that it had.

It is extremely important that Senators during this debate understand this is a special place, a special circumstance, and special people who still live there. I want to thank the chairman of the Judiciary Committee. Senator SPECTER has done marvelous work on this. And to tackle this issue, as big as it is, and though we may have some disagreements on the size of the trust fund, who pays into the trust fund, how much they pay, the formulas, all of this, but I am sort of on the other side of this. Mine is the protection of people who have seriously been impacted by this thing we call asbestos since 1924.

Walk through the cemeteries and see those families, and to have people come to your town hall meeting short of breath, being suffocated by this disease, or any disease related to asbestos.

I only hope we can continue to work together not only to safeguard these Libby provisions, but to improve them as well.

And again I want to thank the chairman. He is a man of great bravery to take this issue on. And it is troubling. It is complex. But I will tell you, it is important.

And I thank the chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from Montana for those important comments. I commend him for his diligence in looking after his constituents with special reference to what has gone on in Libby, MT. He has outlined the problem, walking through the cemeteries, seeing the people who have been smitten since the 1920s. He underscores and emphasizes, in graphic and forceful terms, the problem. I hear him when he talks about Libby, MT. We have been addressing it with a special provision. We will do more if we possibly can. I have talked to Senator BURNS off the floor on many occasions and heard the serious problems the people of Montana face in Libby. And I have heard the problem that these hotspots create around the country. We will do everything we can. I compliment the Senator from Montana for his thoughtful statement and thank him for his support on the motion to proceed.

Again, anybody who has listened to Senator BURNS, who doesn't think we ought to proceed and take up this problem, simply has his or her head in the sand. It would be unconscionable to vote against the motion to proceed.

Senator SANTORUM was in the Chamber a few moments ago. He proposes to speak on the Steelers' great victory. I am due at the swearing in of the Ambassador to Finland so I will have to leave the floor in a few moments.

(The remarks of Mr. SPECTER and Mr. SANTORUM are printed in today's RECORD under "Morning Business.")

Mr. SPECTER. In the absence of any other Senator in the Chamber, let me say I again invite any Senator or any constituent who has a problem with this bill to come see me. I know Senator LEAHY feels the same way. With all the outstanding work he has done, and our staffs, we want to do what we can to answer all of the problems. As we get ready for the vote on the motion to proceed this afternoon, we have certainly outlined the seriousness of the issue.

Since I spoke earlier, I have been reviewing the testimony or the argument yesterday of Senator DURBIN who spoke about the problem. No doubt there is a problem that has to be addressed. That is the issue on the motion to proceed. Senator DURBIN made a comment that he didn't know how the $140 billion was arrived at. It was arrived at by his leader, then-Senator Daschle, in collaboration with Senator FRIST. He said he hadn't been able to find out where the money is coming from. He could if he would make an inquiry. We had to subpoena the records, but there is transparency. We know where the money is coming from. I haven't had a chance to read his statement in full, but I will no doubt have more to say about it.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I have been asked by representatives of leadership to ask unanimous consent that the time be charged equally to both sides. I am reluctant to make that request in the absence of any Senators representing the Democrats so I will not make it, but I would ask—I have heard from the leader of the Democrats saying it is OK. So I ask unanimous consent that the time under the quorum call be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ALLARD. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

WAR ON TERROR: PROGRESS AND OUTLOOK

Mr. ALLARD. Mr. President, as the U.S. Senate gets started for the second legislative session of the 109th Congress, I would like to take this opportunity and concentrate our attention on the milestones achieved in the global war on terror and take a look at the road ahead.

Since the attacks of September 11, 2001, we and many others in the international community have been united in our effort to defeat terrorism wherever it has taken hold in the world. September 11 proved without a doubt that a network of extremists preaching hate and oppression were determined to cause our Nation great harm. It is clear these extremists were and continue to be committed to nothing less than the total destruction of our Nation and our way of life. This network of terrorism is embedded in many countries. It has penetrated hard working communities, valued institutions of education, and sacred places of worship.

As in any previous world conflicts, the global war on terror cannot be successfully prosecuted without extensive cooperation of the members of the international community. Given the potential catastrophic consequences of terrorist attacks, President Bush worked with our international partners and allies to identify terrorist networks, reduce their ability to communicate and coordinate their plans, and disrupt attacks before they occur.

With America in the lead, a full scale international campaign began in 2001. A total of 136 countries, including members of the European Union, Russia, Pakistan, Saudi Arabia, Australia, countries of Asia and Africa provided and, in many instances, still continue to provide a range of intelligence and/or military assistance. As a result of this unprecedented multilateral cooperation, we have been able to kill or capture more than one half of the known al Qaida leaders and prevent possible terrorist attacks both in the U.S. and abroad.

Despite the many difficulties in this war, our Nation has not retreated nor walked away in the face of adversity. We sought out terrorists, cut off their funding, and disrupted their plans. Under the steadfast leadership of President Bush our country has taken the battle to the enemy and achieved significant successes.

In October 2001, the coalition forces launched a military campaign against the Taliban regime in Afghanistan. The regime was successfully removed from power and all known al Qaida training camps were destroyed.

With the help from the international community, the people of Afghanistan, many for the first time in the history of their nation, tasted the initial seeds of freedom. Let me pause here for a second. For the first time in history millions of people in Afghanistan are now able to express their opinions without a fear of retribution or punishment.

After several national elections, the people of Afghanistan adopted a new constitution, elected a president and held successful parliamentary elections. Efforts to revitalize Afghanistan's economy and education system have already produced significant results. Agricultural production, which is a way of life for 70 percent of Afghanistan's people, has nearly doubled. New roads are being built. Teachers are being trained and an increasing number of people, including women, have access to education.

Afghanistan was devastated by decades of war and neglect and is now being turned into a young democracy that will be an example to others in the troubled region.

A year after September 11, the President challenged the United Nations to confront another protector of terror: Saddam Hussein. Saddam Hussein failed to comply with more than a dozen of United Nations Security Council resolutions and he gave every appearance of continuing to hide large stockpiles of weapons of mass destruction.

Based on Saddam's reported weapons of mass destruction and support for terrorism, Iraq represented a dangerous nexus that the international community could no longer ignore. President Bush bravely made the decision to liberate Iraq from the most brutal regime in the country's history and plant the seeds of freedom in the land that had only known decades of tyranny and oppression.

It is clear today that the terrorists view Iraq as the major battleground against the coalition forces, against the rule of law, and against peace and prosperity. During the last 2 years they have tried to derail the democratic process and threatened to kill those participating in it. Undeterred, the majority of the Iraqi people have bravely ignored this threat and joined the emerging Iraqi political process.

By the millions, Iraqis lined up to choose a transitional government that drafted the most democratic constitution in the Arab world. By the millions, Iraqis approved that constitution in a national referendum. And by the millions, Iraqis elected a new Iraqi government under the Iraqi-written constitution for the Iraqi people. Let there be no doubt about it: the establishment of a meaningful political process and lasting democratic institutions will decide Iraq's future.

We can be proud of the fact that each national vote in Iraq has experienced less violence and produced bigger and broader voter turnout. President Bush put it best when he stated:

> In all three aspects of our strategy—democracy, security and reconstruction—we are learning from our experiences, and we are fixing what hasn't worked. . . . we have witnessed a transformation in Iraq that is virtually without precedent.

Iraqi security forces continue to show improvements in defending their fellow countrymen. In October of last year, Iraqi police and army personnel secured polling sites around the country, quickly suppressing any incidents of violence.

Growing in size and strength, Iraqi military units have become more capable and able to defend their country's emerging democracy. Today, Iraqi security battalions have assumed control over entire sectors of Iraq. These accomplishments demonstrate the willingness of Iraqis to stand up to insurgents and protect their fellow countrymen. Iraqis are gradually taking over the frontline in defense of their communities.

With each Iraqi soldier trained and equipped to carry out the mission, Iraq draws closer to being able to stand on its own and protect its own freedom.

A free society cannot exist without an independent and impartial judicial system. With slow but steady progress on all fronts, the Iraqi people are carefully building one of the country's most important institutions: its judiciary. With the help from the international community, the Iraqi people have begun the trial of one of the most brutal dictators in history, Saddam Hussein. Although none of Hussein's victims had a luxury of due process, the new Iraqi government decided to adhere to the highest standard of the rule of law and allowed its former dictator to stand trial by his peers.

None of these successes would have been possible if not for the sacrifice of America's finest men and women in uniform. Their pride, patriotism and perseverance have been the deciding factor on the battlefields far away from home. They have answered the call of duty in a noble but difficult task. Some have made the ultimate sacrifice. Their families will always be in our thoughts and prayers. We should honor their lives by defeating the terrorists.

The successful strategy for prosecuting the global war on terror set forth by President Bush is steadily moving forward. The road ahead will require additional sacrifice from America's leaders, members of the military and the American people. We must continue to unite behind our Commander-In-Chief, make the necessary adjustments, and move forward on the path of complete victory. The Global War on Terror demands nothing less.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURR). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. In my capacity as a Senator from North Carolina, I ask unanimous consent that the order for the quorum call be rescinded.

Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. The Senate now stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:18 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. BOND).

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The Chair, in its capacity as a Senator from Missouri, suggests the absence of a quorum. The time will be charged equally.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CARPER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CARPER. Mr. President, I yield myself such time as I may consume.

The PRESIDING OFFICER. The Senator is recognized.

Mr. CARPER. Mr. President, later this afternoon, in fact about 3½ hours, we will gather in the Senate to vote on a motion to proceed to take up and begin debate on legislation that is designed—imperfect legislation but well intended—to ensure that people who have been exposed to asbestos who become sick, whose breathing is impaired from that sickness, will have an opportunity to be compensated for their impairment. As their impairment worsens, if it does, they would be in a position to be compensated further. The legislation also is intended to try to ensure that more money that is paid—if you go by defendants and insurance companies—ends up in the pockets of those victims and of their families.

The question is, Why are we taking this up now? One of the reasons we are taking this up now is because the Supreme Court has been saying, at least since 1997, with Justices including, I believe, Justice Ginsburg and maybe more recently Justice Souter, that the issue of asbestos litigation is one that needs to be resolved by Congress, not by the Court. It is appropriate that finally we are taking this on.

My own experience and involvement with asbestos litigation reform goes back to 2001, when I was called upon by an old friend who had ended up becoming a CEO of a company I had never heard of called Federal-Mogul. Federal-Mogul is a company headquartered in Michigan that manufactures, among other things, Champion spark plugs and a lot of other products. He had become CEO in 2001 and was in Washington and told me about it. I congratulated him and said good luck, and said if I can be of service, let me know. He called me back in about 6 months. He said: Remember, you said if I could ever be of assistance to let you know. We have a problem at Federal-Mogul. And he came back to explain what it was all about.

Apparently, Federal-Mogul acquired a number of years before, long before my friend became CEO, a British company that had an exposure to asbestos, and because of that exposure, Federal-

Mogul was drawn into asbestos litigation lawsuits by folks whose health had been damaged, I believe, by the British subsidiary that I think was owned and sold by Federal-Mogul in a relatively short period of time.

At the time, I took my friend around to meet with the two Senators from Michigan, Senator LEVIN and Senator STABENOW. They were good enough to meet with him. I also took him over to meet with the then-chairman of the Senate Judiciary Committee, PATRICK LEAHY of Vermont, and asked Chairman LEAHY to meet with the CEO from Federal-Mogul. He did. The long and short of it is Federal-Mogul went into bankruptcy. They have come out of bankruptcy, but a lot of the shareholders who owned stock in the company lost a good deal. Folks who had been employees, pensioners who had their money in 401(k) plans, lost a fair amount of their money if it was invested in company stock. The company ended up with fewer employees than it had in the first place.

Along about the same time I had another visit, this from a trial lawyer who represented, and I presume still represents, people who have been exposed to asbestos in their work and have developed a fatal disease called mesothelioma. This attorney came to say that the system, as it existed in either 2001 or 2002, was not working, and the folks he represented who were sick and dying, many who die within a year or so, were not receiving the help they and their families needed—at least not promptly. And a good deal of the moneys paid by defendants ended up in the pockets of people such as him, the attorney.

He said people who are sick and dying ought to get the money they need, generously; they should get it now. The folks who have been exposed to asbestos but who are not sick and do not have an impairment should not get anything now and folks such as I, maybe, should get a little bit less in terms of the moneys paid by defendants to victims.

That was how I was introduced to this issue. I did not come to the Senate to be involved in civil justice reform or particularly asbestos litigation reform, but I did come with a number of core values. I think we all did. Among the core values I brought was to try to figure out what is the right thing to do: Try to treat other people the way I want to be treated, try to use a little bit of common sense.

We have been joined in the Senate by Senator HATCH, who preceded and later succeeded Senator LEAHY as chairman of the Judiciary Committee. He has worked, as has Senator LEAHY, and as has the current chairman, Senator SPECTER of the Judiciary Committee, to try to improve the legislation that was introduced years ago, maybe even before I came here in 2001, initially.

What was originally introduced was not a static use of legislation. It was not the Ten Commandments. It was not carved into stone. It was a legislative proposal. Over time, it has been changed and has been improved and, frankly, I believe it can be improved further. I will talk a little bit about some of the improvements that have been made over time to the earlier legislation and some further changes I would like to see made and would expect to support those changes.

Before I do that, let me back up for a moment and say some Members worked on class action reform legislation which was enacted and signed by the President early last year. Again, Senator HATCH was a leader in that effort. I was involved, to some extent, along with some of my colleagues, including Senators DODD, SCHUMER, and KOHL, among others on our side, working with our colleagues on the Republican side.

The history of class action reform goes back to the 1990s. The idea behind class action reform legislation was to try to come up with a legislative approach to make sure, when little people are harmed by big companies or by small companies—harmed not that they lose their arm, leg or eyesight but harmed in a material way—that those little people have the opportunity to be made whole but, at the same time, to make sure, when the class action lawsuit is filed by a group of people that are drawn into a plaintiff class, the defendants have the opportunity to be defended or have their case heard in a courtroom or before a judge so the defendant, as well as the plaintiff, can be given a fair shake.

That legislation was introduced in the 1990s, reintroduced in subsequent Congresses, debated in committee, voted on in committee, and reported out of committee. Class action literally came to the floor, I think, on at least two occasions where we were unable to get the votes for cloture to end debate and to go on to final debate and passage with an up-or-down vote on the bill.

That process, though, where legislation is introduced, maybe over several Congresses, is debated within the appropriate committees, voted on in those committees, amended in those committees, reported out to the Senate, and debated here, amended here, I call that regular order. That is what we call regular order.

When the final compromise was agreed to on class action, including the bipartisan group I alluded to a few minutes ago, we struck an agreement amongst ourselves, an agreement with the House of Representatives that if we would not amend or change that compromise that we struck on class action, the House would accept our proposal, the House would not change one word. As a result, we, the drafters, if you will, of the final compromise on class action reform opposed, for the most part, all amendments. I think I supported one offered by Senator FEINGOLD. But no amendments were approved. No amendments were attached to the bill. The bill passed with a bipartisan majority and was sent to the House of Representatives. They adopted it lock, stock, and barrel.

What I want to see happen on asbestos litigation legislation is that we proceed with regular order. In fact, we have been proceeding with regular order. But there is a difference between asbestos litigation on the floor and class action on this Senate floor a year or so ago. Here is the difference: There is no agreement amongst the bipartisan group that I talked about earlier to pass an unamended bill. As I said a few moments ago, this is not a perfect bill, it is an imperfect bill, but it is a whole lot better than it was when it started out. In my view, it can be made better still.

I would like to see us soon—we vote today at 6 o'clock on the motion to proceed to the bill. My hope is Democrats and Republicans, a majority of us, 60 or more, will vote to proceed to the bill, to debate the bill, offer amendments, debate those amendments, vote on those amendments, and then to see how the bill takes shape during the course of the debate in the week or so ahead.

Let me mention, briefly, some of the improvements that have been made in the bill over what was introduced maybe back in the late 1990s or the earlier part of this decade.

First of all, serious questions were raised, and are still raised, about the size of the trust fund that will be created. Moneys paid into it by defendant companies, roughly $90 billion; by insurers, about $46 billion; by trust funds and others, $4 billion—adding up to, roughly, about $140 billion. That is almost 50 percent more in the trust fund than I think was originally anticipated just a few years ago. So I would suggest one of the improvements that has been made in this bill is just the adequacy of the trust fund.

There is a second thing that I would suggest has been an improvement made in this bill over maybe an earlier version. Now, $140 billion is a lot of money, but there is a history of the trust funds set up to help asbestos victims, there is a history of them, in some cases, running out of money. So what happens if we have a trust fund that is set up where everybody who, in the future, wants to file a claim has to go to the trust fund for an administrative solution and the fund runs out of money? What do we do then?

What we do then is really take the path suggested by Senator DIANNE FEINSTEIN of California. In anticipation of just that kind of problem down the road, she offered language, which was adopted and made part of this bill. which says if the trust fund runs out of money at some point down the line and it does not look as if we are going to have enough money in the trust fund any time soon to pay victims' claims. then those victims can return to the tort system. They can go back into court in the State in which they live. They can go back into court in the State where they were injured. Or they can go back into the tort system in Federal courts.

Another area where I think improvement has been made deals with folks who have been injured, where they have been receiving workers' compensation, and now they will, in the coming months or years—if we establish this fund—have the opportunity to file a claim with the asbestos trust fund. The question was: Well, can a person receive money out of the trust fund and also have received previously workers' comp or currently receive workers' compensation funds? Or do they have to pay that back somehow out of the money they receive from the trust fund?

I think the authors of the bill, wisely, and the committee, wisely, said no. If the person is receiving workers' comp from a separate source of funds, they can keep that. It does not have to be reclaimed or repaid. And the claimant, the victim, can then also receive the moneys from the trust fund that we would set up, establish under this legislation.

If you look at the legislation, a fourth improvement deals with something called medical monitoring. But if you look at the legislation, there are a number of levels of impairment, starting with level I, and I think going up to level IX. And there may be some various gradations within each of those levels.

Level I is something called medical monitoring. It has been a matter of some contention. Some of the companies, some of the defendants, some of the insurance companies were very skittish and reluctant, understandably so, given the history of some of the ways people were recruited to file some, not all but some, asbestos claims in the past. They were concerned the medical monitoring might be an effort to recruit all kinds of people to file claims on the trust fund.

But medical monitoring is included as level I for impairment. And level I means a person has been exposed to asbestos—maybe in their work or another part of their environment—but they do not have an impairment, there is no discernible impairment that we can attribute to asbestos. But by establishing medical monitoring, what we say to those who have been exposed, who do not have an impairment, at least we acknowledge you could have a problem down the road, and we are going to provide, every year or two, for the opportunity for someone—a health professional who really does know their business—to examine that victim and see whether any impairment has developed. If so, they can go through other levels and become eligible for sums of money, from several tens of thousands of dollars to over $1 million in the worst cases.

A fifth improvement I think has been made deals with what are called exigent claims. Those are claims filed traditionally by people who have mesothelioma, the disease I talked about earlier, caused by asbestos, solely by asbestos exposure. We know mesothelioma victims, folks, are going to die, unfortunately, and not a pleasant death, and die fairly soon, generally within less than a year.

For exigent claims like that, or other people who are believed by doctors to be in a terminal situation where their lifespan is less than a year, those claims, under this improved version of the bill, will be treated on an expedited basis. I believe that is an improvement.

There are other improvements. I mention one: silica claims. There are mixed death claims that are not just asbestos. They might be silica. A good thing that happened last year during the course of the committee's hearings is they brought in medical experts and actually talked to them and listened to the medical experts talk about: What do the x rays look like for people who have been exposed to asbestos as opposed to those who have been exposed to silica?

We know people can die from both, do die from both. But as it turns out, if we establish an asbestos trust fund, and someone has been exposed maybe to asbestos but does not have the markings from asbestos, and someone has been exposed to silica, and they have the impairment that relates to silica, can they come to the trust fund and be made whole out of the asbestos trust fund? The answer is no. The silica victims are welcome to go back into the tort system, to stay in the tort system. Again, there is apparently a real difference in the appearance of the x rays of the lungs of people who have been exposed to asbestos who have asbestosis and those who have lung disease that has been caused by silica.

Those are some of the improvements that have been made to the bill. I want to mention maybe one or two others that I think ought to be made and have been drawn to my attention, and I suspect to most of our colleagues' attention as well.

One deals with the startup provisions and the steps we need to take to help ensure the trust fund is set up and running quickly and efficiently. We are on a tight time period, a tight timeframe. There is a whole lot of work that is going to be done that we have not done, at least not with asbestos. It is going to be a real challenge to the Department of Labor getting the right people to run this operation and assembling the money quickly and putting in place a system that is user friendly and will actually provide relief to a lot of victims.

I believe there are some further steps we will debate on the floor and, hopefully, be able to adopt.

Some folks from the insurance industry have shared with me, and I am sure shared with others, the concern they have about potential leakage issues, as people file claims in the tort system for alleging impairment of breathing from exposure to asbestos. And the question is, At what point do we say to the victim, to the plaintiff, you have to go into the trust fund or you may continue through the tort system? There are concerns raised by the insurance industry that we, frankly, have not done the kind of job that needs to be done with respect to what they call leakage in the system. That is one we want to revisit and consider.

I am not an attorney. We all know people who are. I have a concern, and I know it is a concern shared by others, that if we cap it at 5 percent, the amount of money that can go to an attorney, in some cases that is adequate. This is a system that is not designed to, frankly, need a whole lot of assistance. And, hopefully, some people will be able to go through this system and apply for money from the trust fund and receive their claim, their payment without the assistance of an attorney or anybody else.

But in some cases you are going to have an attorney who has worked for not just months but maybe a couple of years to help prepare a case to be heard in a court, only to find that before they could actually bring the case to a judge and jury and have a verdict, they are cut off because of the establishment of this trust fund. In that case, where you may have had attorneys work for months or a couple years, to say that person can only receive a 5-percent payment out of the payment from the fund, I think, is just unfair.

Again, it goes back to one of my core values I talked about earlier: treat other people the way we want to be treated. If I were the attorney and I had actually done work for a couple of years, I would want to be paid more than 5 percent of, say, a million dollars for the work I had done. Attorneys today, not uncommonly, get 25, 30, 35, 40 percent in attorney's fees for the work they do in conjunction with these victims. I am not suggesting we have those kinds of payments to attorneys, but I would suggest maybe the better part of valor is to say that the attorneys could receive 5 percent, and in cases where they have done work give the administrator of the fund the discretion to provide something in addition, something on top of, above the 5-percent cap—at the discretion of the administrator. And maybe we want to cap it at 20 percent or something like that. But I would suggest that is a fair thing to do and a just thing to do, particularly where an attorney has done a great deal of work.

Let me close by saying this. I came here, like I think all my colleagues, because I wanted to get things done. I want to right wrongs and try to help people as best we can. Sometimes it is best for people who are hurt to take those grievances to the courts, and to address, through the judicial system, the wrongs they believe they have incurred. The highest Court in our land, the Supreme Court, has said on several occasions in the last decade, we have a problem with asbestos litigation that needs the attention of the Congress and the President and we should try to improve on a situation that is flawed.

I am an old Navy guy and spent a number of years of my life as a naval officer, and not as much time on ships. I spent a little time on ships. I know a lot of folks served in the military—and a lot of them were in the Navy who served on ships—who were exposed to asbestos, had their breathing impaired, and, in a number of cases, died.

They are not in a position to go into court and sue the Federal Government to be made whole. They can get some help through the VA system, and they have, but they are not in a position to receive the kind of payments and recovery of damages that others have been able to in the courts because private sector employers have been sued as defendants by victims, and those victims cannot sue the Federal Government. Under this legislation, a veteran from any part of the armed services who is precluded from receiving much in the way of damages will now have the opportunity to go into the same trust fund and apply for the same dollar payments that any other person who has been injured could apply for. As a veteran, that is especially noteworthy. It goes a long way to explaining why so many veterans groups strongly support this legislation.

Again, what is our goal? Our goal is to try to make sure that when people have been exposed to asbestos for an extended period of time, when their health has been damaged, that they have an opportunity to receive some compensation for that harm, to try to do so in a way that is prompt and where the amounts of money they can receive actually vary from fairly modest, when the impairment is slight, to rather substantial when the impairment is substantial or maybe life threatening. We want to do this in a way where we put more money in the pockets of victims and their families and in a way that acknowledges the work that is done by attorneys when they have done a considerable amount of work in preparing for a case that then ends up in the trust fund.

Is this bill perfect as it comes to us today? We have been joined on the floor by the chairman of the committee. I thank him and those with whom he serves, certainly Senator LEAHY. I also want to say a word about Judge Becker, former chief judge of the Third Circuit, who has worked very hard as a mediator to try to help us get to a better place with this legislation. I have met a lot of people in my life, but here is a man who suffers from very serious health problems himself. He has non-Hodgkins lymphoma and is in his early seventies. He travels from Philadelphia on the train, pays for his own way. When he spends a night here, he stays in a hotel and pays his own way. He pays for his own meals. He does all this work because he believes it is the right thing do to—and it is.

For all who have been working on this for a lot longer than I have to get us to this point in time, we need to vote at 6 o'clock to proceed to the bill, debate it, change the parts we think need to be changed, and go forth from there.

I yield the floor.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Utah.

Mr. HATCH. I thank my colleague for his remarks on this bill, for his comments on Senators SPECTER and LEAHY, and for his willingness to invoke cloture this afternoon. We need to proceed to this bill and debate it in on the Senate floor. It is that important.

Before proceeding with my remarks, I would like to reserve 15 minutes for my colleague from Ohio, Senator DEWINE.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I rise to speak in favor of S. 862, the bipartisan Fairness in Asbestos Injury Resolution Act. More specifically, I rise in favor of debating S. 852. It is a bill worth our time.

The crisis of asbestos exposure impacts not only the lives of sick and dying workers and retirees, but also the lives of workers in every corner of the American economy. The litigation that these workplace injuries spawned now threatens to deprive the workers who need compensation for their injuries of their due rewards, while crushing businesses large and small in every State.

I find it surprising that there are those in those body who do not wish to address our Nation's asbestos crisis. They do not even want to have this debate. So they are filibustering even a motion to proceed to the bill. It is funny how things change. This summer, when some of the Members of this body were filibustering judicial nominations, we were told that the filibuster was a privilege central to the Senate's deliberative character. The right to speak and debate had to be preserved. But through this filibuster, they do not seek to promote debate. They are seeking to prevent it. For the life of me, I do not fully understand this type of reasoning.

The public health calamity caused by occupational exposure to asbestos is something that we should be debating. It is precisely the type of situation that cries out for comprehensive bipartisan legislation. For what it is worth, it is precisely the type of well-documented crisis that I would expect my colleagues to want to talk about. Instead this filibuster shows that they would rather close their eyes to this crisis.

The consequences of asbestos exposure are tragic and well-documented. It has devastated the families of hard-working American men and women. And it is not an equal opportunity hazard. It frequently targets veterans. It targets those who took their lunch to work, who gave a full day's work for a full day's pay, and who came home with dirt under their fingernails.

Each and every year 10,000 individuals will die from mesothelioma, a cancer closely linked to asbestos exposure. Ten thousand moms and dads and grandparents. Think about it. And because of the asbestos fibers they would bring home from work, sometimes even the spouses and children of these workers become sick. Thousands and thousands more will be afflicted with debilitating lung conditions that make it hard to breathe, sapping the joy from what should be a person's golden years.

This is a public health crisis of the highest magnitude. And this public health crisis is made more pressing by a related litigation crisis. Nobody in this body believes, especially those of us who support this bill, that individuals who become sick as a result of asbestos exposure should be denied compensation. Let me be clear about this. They are owed compensation. Here is the problem: Who is supposed to pay? Most of the companies that originally produced this stuff have long since gone out of business or have been put out of business. They now exist in bankruptcy merely to pay out claims to the extent that they can, which amounts to a very small number of pennies on a dollar.

What are the victims actually getting from their settlement? Pennies on the dollar. The actual damage done by exposure to these fibers might be worth hundreds of thousands of dollars, but most people will never see that money, money that could go to pay medical bills or take care of loved ones, because the companies do not have the money to pay the number of claims.

Of course, this has not proven to be an obstacle to the innovative trial bar. These attorneys are going after corporations, not surprisingly ones with very deep pockets that have inherited their asbestos liabilities by acquiring companies that once produced or used asbestos. I remember one company in particular that acquired another company for $10 million. They have paid well over $100 million out in asbestos-related claims because of that acquisition.

So not content with a public health crisis, a group of committed attorneys have set out to bankrupt some of our Nation's greatest companies, creating an economic crisis as well. And many of them have only had some collateral relationship with asbestos.

Playing fast and loose with the actual exposure of their clients, there has been an explosion of litigation in recent years. As a result, at least 73 companies have had to declare bankruptcy due to their asbestos-related liabilities.

Do those who have actually been harmed by asbestos benefit by this litigation? No. They wind up in years of litigation only to find that they get a mere 42 cents out of every dollar. By the time the attorneys take their fees and add on transaction costs, the poor person who has been injured gets only 42 cents out of every dollar recovered.

The status quo does not do justice to those injured by asbestos exposure. I am a conservative. I do not believe the Federal Government should attempt to fix every social or economic problem faced by the country. However, there are certain crises, because of their size, because of the number of persons impacted, and because of their detrimental impact on the American economy, that call out for national legislation. This is just such a bill.

Asbestos exposure has cause a far-reaching public health disaster of the highest order, one that is now compounded by an unprecedented litigation crisis. I am hardly alone in thinking this. The Supreme Court of the United States has called on Congress on three separate occasions to address this particular problem. In 1999, the Justices told the Nation that "the elephantine mass of asbestos cases . . . defies customary judicial adminstration and calls for national legislation." So we answered the call.

We are hardly springing this bill on the Senate. We have been debating a solution to the asbestos crisis since the 107th Congress. This is the 109th Congress. When I was chairman of the Judiciary Committee, we held hearing after hearing. We had weeks of markups. We did our best to achieve some sort of compromise. Yet when it came time to debate this bill on the floor, it was filibustered. The Senate was prevented from giving its final up-or-down vote. That was April of 2004.

Then we heard the bill was not ready for prime time. We were rushing the issue, jamming the opposition. We have not considered the issues carefully enough, they said. If only we had more time.

Now it is almost 2 years later. The chairman of the Judiciary Committee, my colleague from Pennsylvania, Senator SPECTER, has again held hearing after hearing. Again, we have had week after week of markups. He and his staff have been tireless and fair in their negotiations. Judge Becker, a federal judge on the Third Circuit Court of Appeals, has worked to craft a solution.

Over the last 3 years, there have been 36 meetings hosted by the chairman where any group, including labor unions, trial lawyers, and any other interested parties, was welcome. And those efforts have borne fruit. Most notably my colleague from Vermont, ranking member of the committee, came to support this bill. We work a good deal on intellectual property issues together, but this bill is a different animal. This is a bill that impacts the rights of workers and the rights of the sick. On those types of issues, there is, unfortunately, not enough bipartisanship around here.

The fact that the distinguished Senator from Vermont, Mr. LEAHY, is a cosponsor of this bill is very important. It is a testament to both the scope of the problem it addresses and the depth of good faith compromises that have been made along the way.

There are many criticisms made about this bill. Some have suggested that even debating it demonstrates the triumph of corruption. I wonder what their colleagues from Vermont, California, and Montana think about that? All this time they thought they were working to make this a better bill. As it turns out, they were just tools of the special interests. Give me a break.

I will tell you who the special interests are in this debate. They are the law firms that specialize in much of the bogus asbestos litigation that is driving this crisis. They are the lawyers who file suits for people who are not sick, just hoping that some company will decide to settle rather than go to court. They are the lawyers who promise the truly sick a jackpot but give them instead years of litigation and then take for themselves fully 60 percent of any settlement. I would call it "jackpot justice." But for the workers impacted by asbestos exposure, there is no jackpot, and this sure is not justice.

These lawyers have gotten rich litigating these cases.

They do not like the prospect for reform. Why not? Because it is going to turn off the golden spigot. It will create an easy, no-fault, and quick administrative process that will enable those made sick by asbestos to obtain compensation without the middle man.

In other words, if this bill becomes law, these lawyers are going to have to find some other industry to bilk. The other side of this debate should take a good, long look in the mirror before going down the road of accusing the bill's supporters of promoting special interest legislation.

In addition, it is beyond ridiculous to suggest, as we heard yesterday from opponents, that this bill is being rushed. That is absolutely ridiculous. How is it that a bill that was debated on the floor nearly 2 years ago, reported favorably out of the Judiciary Committee twice—on a bipartisan basis this time—and was subject to countless amendments is somehow not even ready for debate today?

We have been at this for years. This bill addresses a recognized public health tragedy. Yet it is not even worthy of debate on the Senate floor?

For those not steeped in Senate procedure, it is worth noting what is being suggested by this objection to the motion to proceed.

When a bill is filibustered after hours and even days of debate in order to prevent a vote on final passage, the message sent is that there has not been enough debate. The issues are so difficult and complex that more debate is required before this body could responsibly move to final passage.

Filibusters are not always justified, but they are sometimes understandable. When you filibuster a motion to proceed, you are saying this bill is not even worthy of a debate on the floor. This is an insult. I know this is not a perfect bill. Few bills are. The FAIR Act, however, is most certainly a bill worthy of debate.

We have a limited number of days in any given year to do the people's business. We only take up bills on the floor when there is a pressing public need. And in the opinion of not only the majority leader but the Republican caucus and even some Democrats, this is a bill worthy of our attention and time. Frankly, it is ludicrous to suggest otherwise.

Nineteen members of the Senate have cosponsored this legislation. It is supported by the chairman and ranking member of the Judiciary Committee. It has bipartisan support. I do not think there is a person in this body who doubts the severity of the problems it is designed to address. So something must be done. This bill is a sound and reasonable attempt to do something to help these sick workers get the compensation they deserve.

The asbestos trust fund created through this legislation deserves a debate. I urge my colleagues to vote for cloture on the motion to proceed and to give this bill the attention it is owed.

Mr. President, this is an important bill. I pay tribute to Senators SPECTER and LEAHY for the work they have done in committee and in bringing this bill to the floor. They deserve accolades from everybody in this body.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I come to the Chamber this afternoon to support the asbestos reform bill, S. 852.

This bill is simply about helping victims. It is about doing the right thing for extremely sick individuals. It is about doing the right thing for very sick people by compensating them quickly and fairly.

As we know, this bill addresses the asbestos litigation crisis by removing most cases from the court system and paying claims from a national trust fund, using money contributed by company defendants and insurance companies.

Let me say up front that removing cases from our court system is not something we should ever do lightly. Our civil justice system usually works well. Our State and Federal courts are a vital part of our system of government. That is where cases should normally be. Our court system, as a rule, ensures a level of fairness and justice for our citizens that is second to none, and I don't like removing cases from that system.

But our justice system is not perfect. Unfortunately, we all know that our justice system, in this case, has failed to deal with the asbestos crisis. The system is not adequately protecting the rights of victims, nor is it adequately protecting the rights of defendants. In fact, the system has been overwhelmed by asbestos litigation.

The numbers tell the story. The sheer volume of claims is staggering. More than 750,000 individuals have made claims for asbestos exposure, and approximately 300,000 of those claims are still pending. The most recent Rand study estimates that anywhere between 2.5 million and 3.3 million individuals could make claims in the future.

Part of the problem is the unusual nature of the illnesses caused by exposure to asbestos. Specifically, there is a long latency period between exposure to asbestos and the actual illness or impairment. In other words, people can be exposed to asbestos for long periods of time but usually don't show symptoms of illness for 25 or 30 years. Not everybody exposed to asbestos gets sick, but our tort system requires a potential victim to file a claim for injury within a year or two of discovering the potential harm. So a vast majority of people who are filing claims are not actually sick at that time, and many may not ever get sick, but to protect their legal rights, they file suit.

This enormous volume of lawsuits—again, many from people who are not ill at that time—crowds court dockets, slows the decisionmaking on claims from those who are sick, and imposes huge costs on defendants. As more and more defendants are pushed toward bankruptcy, actual payments to victims are diminished.

Perversely, the process creates a greater incentive to sue immediately because someone who has been exposed to asbestos—even if he or she has no symptoms—may decide to sue now or take the risk that nobody will be left to pay a claim down the road. This increases the problem, and the cycle of excessive litigation and decreasing payments to victims continues.

As a result, justice is not being served. Many victims wind up with no one to sue and receive pennies on the dollar for their claims from asbestos bankruptcy trusts. That is not right. That is not just. That is not fair to these victims. We have to do something about that. On the other extreme, a few victims receive huge awards or settlements that are, frankly, sometimes out of proportion to their injuries.

The bottom line is that very few people are compensated fairly, and more and more victims face a risk of never being compensated at all for asbestos-related illnesses. It is our responsibility in the Senate to deal with this crisis. We simply must not wait any longer to act. We must take steps to help the victims of asbestos exposure, and the bill we have in front of us today does just that.

There is another critical problem we have to address with regard to asbestos, and that is the issue of jobs. Not only is the current mass of litigation hurting victims, but it is also causing tremendous problems for the business community and, subsequently, of course, for the creation and retention of jobs, which hurts workers. As more and more businesses are drawn into this endless cycle of litigation, more and more money is being spent on legal fees. These costs, and the uncertainty that engulfs these businesses, make it harder to invest in improving their companies and creating new jobs. In fact, asbestos liability is actually bankrupting many potential defendants. It has gotten to the point where claims are now being brought against businesses that have a very remote connection with the manufacture of asbestos. So the impact of asbestos claims today is simply overwhelming—not just to some of our Nation's largest companies but to our small businesses as well.

This is not just some abstract or academic problem. When businesses are harmed, workers are harmed, too. Tens of thousands of workers—real people employed by these businesses—are today being affected. Many employees and their families—people who never had any exposure to asbestos at all—are feeling the effects in lost wages, lost jobs, and diminished pensions.

The impact in my home State of Ohio is particularly severe. Ohio is one of the top States in which asbestos litigants choose to file their suits. In fact, literally thousands of companies have been named as defendants in Ohio courts. Out of the more than 8,000 firms that have been named as defendants nationwide, over 7,000 of these businesses have been named in cases filed in Ohio. Of the almost 80 companies that have filed bankruptcy because of asbestos-related liability, more than 20 of those companies are headquartered or have significant facilities in the State of Ohio.

Let me be clear: I believe companies should be held accountable for their conduct. That is a basic principle of American jurisprudence. But most of the companies that manufacture asbestos are today now bankrupt. The legal system already has decided their liability, and they are paying their liability through asbestos trusts.

I am concerned, however, about the many companies that now find themselves held responsible for the actions of other companies. These companies have little to do with asbestos production or use, but they employ thousands of people who contribute to our economy and to our tax base. No one, including the victims of asbestos, is helped when these companies are punished.

I believe it is clear, bluntly, that we have a legal disaster—yes, a disaster—on our hands. The court system is clogged with claims by people who are not ill and may never get ill, and victims who are ill must wait a long time for sometimes very little compensation. Employers are at risk even when they have had little to do with asbestos, and their current employees and retired workers as well are paying the price.

Anyone who looks at this honestly has to conclude that the current system does not work for anyone involved. In fact, the Supreme Court on three separate occasions has called for a national solution, has called on Congress to take a look at this issue.

We have to do something about this crisis. We need to protect the rights of victims, and we need to provide business—the group of businesses which will provide compensation to those victims—with some way to predict how much this crisis will cost so they can plan for it and figure out a way to stay in business while they pay for it. The FAIR Act—this bill—provides that needed protection to victims and provides that needed predictability to businesses so they can continue to provide for their employees and retirees.

We know, of course, that no bill is perfect. This bill is not perfect. Many people believe it must be amended. As a matter of fact, I have heard from a number of Ohio companies that they are not happy about some of the provisions in this bill. Not surprisingly, some think the bill goes too far and some think it doesn't go far enough. We have spent a great deal of time discussing and modifying this bill over the years. I believe it has improved the process. During this whole process, I think we have simply improved it as a result of the work that has been conducted in the Judiciary Committee.

As we debate this bill in the Senate, I plan to work with Chairman SPECTER and many others to make some additional refinements to the bill. It truly is a work in progress. But the bottom line is that we must move forward and we must move forward now. The status quo is simply not acceptable. It is not fair to the victims, and it is not fair to the companies.

We all know this bill is not perfect and, in fact, this issue is so complicated that no bill could ever be perfect. But the bill we have before us is far better than the current situation. We must move forward.

I would like to conclude my remarks with a story that illustrates why we need to vote for this legislation. A fellow Ohioan came to my office recently and explained that he is very ill from asbestos exposure. He has retained a lawyer and has a trial date scheduled. He was worried that this bill would remove his ability to sue without giving him enough compensation to take care of his family and provide for their future and not give him the compensation he deserves.

After discussing the details of his case and explaining how the FAIR Act would apply to him, it was clear that the bill, if enacted, would likely provide him with more money much more quickly than he likely will get if he pursues his claim in court, although, of course, litigation is notoriously difficult to predict. Even though this Ohioan still has a difficult road to walk in dealing with his illness, he is now reassured that this bill, if it becomes law, will provide his family with hope for the future and provide him with some just compensation.

Nothing can ever be fair. Nothing can ever provide a victim with what would be considered just, but I think he was assured and felt better after my staff was able to discuss this bill with him, and the details of it.

As I have said, this bill is not perfect, but it will help the victims of this asbestos crisis. It will help the real people most at risk, and it will help save countless jobs. That is why I am supporting it. It simply is the right thing to do.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from California.

Mrs. FEINSTEIN. Mr. President, I rise to speak on the asbestos bill and to indicate my support for the cloture motion which will be voted on at 6 o'clock this afternoon.

For over 15 years now, believe it or not, the U.S. Supreme Court has repeatedly urged Congress to create a solution to this asbestos crisis. In 1997, in a case called Amchen Products v. Windsor, Justice Ginsburg wrote this:

> The argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure.

This is exactly what we are trying to do in this effort. It is true it is not easy to do. It is true it has taken many years of hearings in the Judiciary Committee, and it is true efforts to draft this legislation have been ongoing for many years, but I would like to take this opportunity to commend the chairman and ranking member of our committee, Senator SPECTER and Senator LEAHY, for their tireless efforts to develop a true bipartisan compromise, and I know it hasn't been easy.

Before discussing the specifics of this legislation, I think it is important to remember what has brought us here and why so many of us have spent hundreds of hours working through the complex issues in trying to develop a no-fault administrative solution. As has been stated, the pivotal question before this body is, Will a victim be better off in a trust fund, or will they be better off in the tort system? I believe that overall a victim will be better off in this trust fund.

Up to this point, more than 70 American companies have filed for bankruptcy caused by asbestos liability. This has cost the American economy up to 60,000 jobs. Each displaced worker from a bankrupt company will lose on average an estimated $25,000 to $50,000 in wages over his or her career because of periods of unemployment and the likelihood of having to take a new job paying a lower salary.

This impact is not limited to workers who lose their jobs. For the workers who are able to keep their jobs at these companies, they can expect an average 25-percent reduction in the value of their pensions. And for every 10 jobs lost to an asbestos bankruptcy, a community will lose 8 additional jobs.

At least four companies headquartered in my home State of California have been bankrupted from asbestos lawsuits. Additionally, 41 companies with current or former operations in California have been sued or are currently facing lawsuits. They include: Allwood Door Company; Ashland; Atlas Corporation; Bechtel; Bethlehem Steel; California Portland Cement Company; Celotex; Dow Chemical; Exxon Mobil; Federal Mogul; Flintkote; Gencorp; Georgia Pacific; Goodrich Aerospace; Hill Brothers Chemical Company; Honeywell; Jacuzzi Brands; JM A/C Pipe Corporation; Kaiser Cement; Kelly Moore Paint; Metalclad Insulation; National Gypsum; National Steel and Shipbuilding Company; Norton and Sons of California; Occidental Petroleum; Owens-Illinois California Container; Owens Corning Fiberglas; Pacific Gas and Electric; Pittsburgh Corning; Plant Insulation Company; Polyone; Raymark Industries; Reinhold Industries; RPM; The Scotts Company; Southern California Edison Company; Todd Shipyards; Tyler Pipe Industries; Walter Industries; Unocal; U.S. Gypsum; and Viacom.

One of those companies, Celotex, had three plants and two regional sales offices in California. In 1987, Celotex employed 325 people there, with a payroll of $7 million. They were forced into bankruptcy and today they operate in the United Kingdom. This is one impact of what has been happening.

According to a study done by the RAND Institute for Civil Justice, in 1980, 300 companies were being sued for asbestos claims. This grew so much that by 2002, 8,400 companies had been named as defendants.

RAND also concluded that litigation has spread beyond the asbestos and building products industries to the point that companies now being sued cover 75 out of 83 different types of industries in the United States. And, just through 2002, $70 billion had been paid out to 730,000 personal injury claims.

So again, the question is whether a victim is better off in a no-fault trust where they automatically recover if they meet the criteria or in the tort system with high transaction costs that often eat up 50 to 60 percent of a judgment.

It is true that bankruptcies have tragic consequences, not just for the businesses, but also for their employees who lose their jobs, lose their savings, and for the victims whose settlements are frequently reduced even more by bankruptcy trusts until they are receiving pennies on the dollar.

I think the most startling and most egregious example of the asbestos tragedy is what occurred in Libby, MT. Candidly, this is what put it on my radar screen big time. This small community has been devastated because of the callous and potentially criminal actions of one company, W.R. Grace.

The asbestos found in Libby, MT, tremolite asbestos, has demonstrated an unusually high level of toxicity, as compared with chrysotile asbestos. Diseases contracted from tremolite asbestos are unique and they are highly progressive, which means they move quickly. So far 192 residents from this small community have died and 1,400 are suffering from asbestos-related diseases.

In addition, W.R. Grace not only sent its workers into the earth to mine asbestos without proper protection, it also pumped asbestos out of its factory and into the community of Libby. W.R. Grace provided asbestos materials to high schools and parks. It even put out piles for children to play in. For decades, there was an unprecedented 24-hour-per-day contamination of this community.

Based on this and other actions, a Federal grand jury in February of last year indicted W.R. Grace on multiple criminal counts. The indictment charges that W.R. Grace was aware of several studies that demonstrated the dangers of asbestos exposure and concealed this information from the people of Libby and from the Environmental Protection Agency. The prosecutor is quoted in the press as saying W.R. Grace's treatment of workers and residents is "a human and environmental tragedy."

Sadly, while the situation in Libby is extraordinarily unique and our legislation recognizes this, the harm caused by asbestos is far reaching.

In California, we have had shipments of asbestos from Libby in 35 locations. Our shipyards became hotspots for asbestos-related diseases because the shipping industry used asbestos to insulate boilers, steam pipes, hot water pipes, and incinerators. In fact, according to the data compiled from the National Center for Health Statistics, between 1979 and 2002, 4,618 Californians died because of asbestos-related diseases.

Statistics do not adequately tell the full story of this tragedy. The day after Father's Day in 2003, Alan Reinstein of Redondo Beach, CA, first learned about the devastating effect asbestos can have. After months of ineffective and inaccurate testing to diagnose his health problems that Mr. Reinstein was experiencing in his lungs, doctors finally determined that he was suffering from mesothelioma. Mesothelioma is a debilitating and aggressive form of cancer that has been directly linked to asbestos exposure.

After learning the correct diagnosis, Mr. Reinstein had to have major surgery to remove his left lung, his diaphragm, and the lining around his heart. The surgery to save his life was so extensive it nearly killed him. He and his wife Linda today face his continued health problems from mesothelioma. As a matter of fact, he is a very rare case and the only person I know of who has survived for more than 1 year with mesothelioma.

Billy Speicher from Ontario, CA, spoke of his experience with mesothelioma before the Judiciary Committee around this time last year. He discussed how he was exposed to asbestos while serving as an aircraft mechanic for the Marine Corps in the late 1950s and again as a pipefitter from 1965 to 1999. He stated that in his jobs:

> Asbestos was everywhere. It was all over me and all over everyone who worked near me . . . At first the doctors I was seeing for two years kept telling me I had asthma—even though I had CAT scans that showed my lungs were scarred. But finally the fluid built up so much in my lungs they realized I had mesothelioma.
>
> Now I'm living with a lot of pain—and I can barely get my breath. [I] can't hardly sleep at night either. You know that mesothelioma is a death sentence.

These stories illustrate the personal tragedies asbestos has caused. Unfortunately, these two men are not alone. So the question is what to do, and many people think: Just leave it up to the tort system. I looked at that. But then you also hear cases of people who receive pennies on their judgment, and the question arises, Is it not possible to protect victims and not bankrupt companies and have a no-fault system whereby medical people can make the judgments and people can be paid a fair sum? That is what this legislation is all about.

Compromises have been made. What I have tried to do, on the Judiciary Committee, is ensure that there are strong provisions in place to protect individuals who were struck with terminal asbestos-related diseases.

There are some important provisions that I would like to highlight. The bill we are now considering contains higher awards values for victims than the version that was before the Senate in the 108th Congress. A broader definition of asbestos has been included to address the potential threat of naturally occurring asbestos that has been discovered in California and other parts of the country.

During the startup period, the bill incorporates a process so mesothelioma victims and other terminally ill victims will have their claims resolved and paid within 9 months or else they will be allowed to take their case to court. So either they get prompt payment or they can go to court. I have insisted on that. Thanks to Senator SPECTER and Senator LEAHY, that is in the bill.

The committee also adopted an amendment that provides accelerated payments for terminally ill victims so they can get their awards quickly, once the fund becomes operational. The bill protects cases that have a verdict, final judgment, or final order issued by a trial court and cases in trial or those that have an enforceable settlement so that victims who have had their claims resolved are not suddenly uprooted.

And this legislation prevents subrogation of awards, ensuring that victims' awards cannot be reduced.

As everybody has said, this bill is not perfect. However, given the current state, I think it is an important solution to help provide relief to both victims and businesses. My understanding is that the chairman will have a managers' package that will further clarify and make improvements to the bill as well. I urge my colleagues to look carefully at that managers' package because many improvements have in fact been made.

During this huge undertaking, there have been many concerns raised and criticisms levied against the bill. At every step, Senators SPECTER and LEAHY have attempted to address any flaws or ambiguities. This has not been a "take it or leave it" piece of legislation. I know of no chairman or ranking member who have been more receptive to looking at changes and evaluating them.

Several concerns have been expressed regarding how quickly money will come into the fund and whether the trust fund will be able to process the immediate flood of claims that are currently pending in court. The so-called upfront funding has been increased throughout the process, so now the fund will have $42 billion in the first 5 years to pay claims. In addition, the committee adopted an amendment to speed up the initial contributions by insurers, defendant companies, and bankruptcy trusts so that the administrator can pay claims quickly.

The bill also provides the administrator of the trust fund with borrowing authority, so if the upfront funding of $42 billion proves to be inadequate, he or she may borrow funds to cover any shortfall.

Next, the bill includes a streamlined process to settle claims of terminally ill individuals immediately upon enactment of the legislation. This provision ensures that terminally ill individuals will have their claims processed quickly, and it should resolve some of the most pressing claims before the trust is up and running so there would not be an overwhelming flood of claims filed with the trust on day one.

Finally, Senator SPECTER included language in the statute of limitations to give individuals sufficient time to file their claims—5 years—so there will not be a need to rush to the fund for fear of being cut off.

Another concern that has been expressed, and I want to address it, is that the legislation will harm small businesses by requiring payments to the fund that are well beyond the means of these small businesses. Under this bill, small businesses, as defined under section 3 of the Small Business Act, are explicitly exempt from having to contribute to the fund.

Let me repeat that. Under this bill, small businesses, as defined under section 3 of the Small Business Act, are explicitly exempt from having to contribute to the fund. At the same time, these companies will receive the protections provided under the legislation. They don't have to contribute, and they will receive the protections provided under the legislation—meaning they cannot be sued.

For example, manufacturing companies that have fewer than 500 employees will qualify as a small business. Some categories of manufacturing, including chemical manufacturing, will qualify if they have fewer than 750 employees.

It is also important to remember that companies are only required to pay if they have already expended money on asbestos claims. They only pay if they have already expended money on asbestos claims. Smaller companies that had not incurred asbestos liability-related costs of $1 million or more before December 31, 2002, are exempt from having to contribute to the fund.

In addition, for those companies which are not exempt from having to contribute to the fund, the bill tiers companies by size and amount of liability. The current tort system provides no protections for small businesses and allows any company of any size, no matter how small, to be sued into bankruptcy.

Another argument made against the bill is that there is inadequate funding to cover all future asbestos claims. Trying to project how many individuals will make claims is clearly an inexact science—if you can each call it a "science." Even the Manville Trust, an almost 20-year-old trust that was created after the bankruptcy filing of the Johns-Manville Corporation, has had to alter its projections time and time again. Since we do not know how many people have been exposed to asbestos and, of those, who will develop a disease, we must rely on protections based on sound calculations and real-world experiences of other trust funds. The size of the fund is based on the strongest statistical data and economic models available. A leading actuary with Tillinghast-Towers Perrin testified before the committee on June 4, 2003, that "$108 billion appears to be more than adequate," while RAND Corporation estimates the remaining future cost of asbestos-related loss and expense at $130 billion.

By using a no-fault administrative system, the fund will significantly reduce the substantial transaction costs of the current tort system, costs that most experts agree consume more than half of the total amount being expended. Of the $130 billion of future asbestos-related costs, it is estimated—and listen to this carefully—it is estimated that approximately $28 billion, or 21.5 percent, is attributable to defendant costs and approximately $41 billion, or 40 percent, will go to plaintiffs' attorneys. So there you have 61.5 percent going to lawyers.

I understand how lawyers feel, but 61.5 percent of the total amount going to lawyers means that amount of money is not going to victims. Because of these transaction costs, if we continue in the current system, less than 40 percent of the $130 billion estimate of future asbestos-related loss and expense—less than 40 percent will be paid to asbestos victims.

This legislation provides for $140 billion to come into the fund over 30 years without the transaction costs of the legal system, allowing for more money to go to victims. The bill, as amended, obligates defendant and insurer participants to contribute $136 billion to the fund, and at least $4 billion more would be contributed from confirmed bankruptcy and other asbestos compensation trust funds.

As an added protection against the risk of insufficient funding, the legislation gives the administrator of the fund the authority to borrow from commercial and government lending institutions.

Finally, if the projections are wrong and the amount of money available proves to be insufficient in the long run, victims will be allowed to return to the courts.

With this safety net, carefully thought out and eagerly debated, this legislation ensures that no one is left without an avenue for recourse.

Another argument opponents of the bill make is that victims will be forced to wait years before they receive compensation.

While California has a system to provide expedited trials when a victim is terminally ill, victims in most States across the country are forced to wait years before they can have their cases brought before a judge or a jury. And often, even after the case is heard and decided, or a settlement is reached, payments can still be stretched out for several months or even years.

Due to the long delays in other States, I have fought throughout this process to ensure that the fund follows California's example and resolves claims of terminal individuals as quickly as possible.

An amendment was adopted in committee that ensures once the trust fund becomes operational, individuals who have mesothelioma are paid in one lump sum within 30 days after their claims are approved, or within 6 months after their claims are filed, whichever is shorter.

Let me repeat that because that is important.

Mesothelioma victims are paid in one lump sum within 30 days after their claims are approved, or within 6 months after their claims are filed, whichever is shorter. What we are trying to do is prevent the delay in payment to someone who is terminally ill.

Other terminally ill claimants, individuals who have been diagnosed with less than a year to live, must be paid within 6 months after their claims are approved, or 1 year after their claims are filed, whichever is shorter.

During the committee consideration of the bill, we also adopted an amendment to speed up payments to terminally ill individuals while the administrator is attempting to get the fund up and running. This amendment provides for a process whereby terminally ill victims can receive a settlement directly from the administrator or claims facility even before the fund is operational. So the first people to be served before the fund is operational are terminally ill victims.

If, for whatever reason, the administrator or claims facility is unable to process or pay these claims during the startup period, the companies or the insurers will be required to make a settlement offer directly to the individual.

We cover that possibility as well.

If the offer is rejected because it is less than the individual would have received under the fund—in other words, the company makes an offer but it is a low offer—the companies have 20 days to make a new offer or else they are penalized.

Under these settlement agreements, claims are to be paid to mesothelioma victims, with 50 percent of the claim to be paid within 30 days after the settlement is accepted, and the other 50 percent within 6 months after the settlement is accepted.

Other terminal victims are to be paid 50 percent of the claim to be paid within 6 months after settlement is accepted, and 50 percent within 1 year after settlement is accepted.

If after 9 months, as I said, the terminally ill individual has still not had their claim processed or fully paid, then they may return to the court.

This has been hard fought for, and this is the fail-safe in this legislation. I think it is fair to say that the companies would like to avoid this. I don't know if Senator SPECTER would agree with that, but I found that to be true. And, therefore, this ability to go back into court if you are terminally ill and you are not paid right away is an added protection that you will get paid.

Finally, I want to address the argument that this bill creates a new entitlement program and will cost the people millions of dollars. This is simply untrue.

According to the Congressional Research Service, entitlement programs are a form of mandatory spending, which "require the payment of benefits to persons . . . if specific criteria established in the authorizing law are met," and they are not subject to discretionary appropriations from Congress. Entitlement payments are legal obligations of the Federal Government, and beneficiaries can sue to compel full payment.

That is not the case here. The fund created by this legislation will be privately funded. The money collected for the fund comes from businesses and insurance companies—not from the U.S. Treasury.

Although the program will be housed in the Department of Labor, the bill ensures that all expenses, including administrative expenses, are paid by the moneys collected from businesses and insurers.

In addition, as an extra protection, it is expressly stated several times throughout the bill that nothing in the act shall be construed to create any obligation of funding from the United States or to require the United States to satisfy any claims if the amounts in the fund are inadequate. If anyone doubts that, they can look up section 406(b) of the bill.

Some have argued that the Government's liability is derived from the provision that allows borrowing from the Federal financing bank.

In response to an inquiry from former Senator Don Nickles on a previous version of this bill, the GAO stated that "[t]o ensure that the government incurs no liability for repayment of borrowing under the act, Congress may wish to explicitly state that repayment of borrowing is limited solely to amounts available in the fund."

That is what Senator SPECTER did.

The bill expressly provides that "[r]epayment of moneys borrowed by the administrator . . . is limited solely to amounts available in the [Fund]."

It also states that "Nothing in this Act shall be construed to create any obligation of funding from the United States Government, including any borrowing authorized . . . "

With these explicit statements throughout the bill, it is abundantly clear that this legislation would not be a burden on the U.S. Treasury.

In conclusion, from the beginning it has been clear that creating a national asbestos trust fund is an extraordinarily complex undertaking. This has been a compromise effort and there are numerous issues where competing interest groups have come together, such as the creation of a no-fault administrative system, the equitable allocation of contributions, the establishment of reasonable medical standards, the resolution of pending claims and settlements, fair compensation values, and transparency of the system to both victim and corporate stakeholders alike. That is very important.

However, I must say it often seemed that with every solution and compromise, more concerns and problems would arise. In the end, there are some provisions I think all sides would like to change, but compared to the shortfalls in the current system, this is a strong solution and a good compromise.

I hope Members will vote to close off debate and that we will be able to pass this important piece of legislation.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from California for the comments which she has made. They are thoughtful, they are profound, they go to the heart of the question, and they illustrate the need for legislation. I thank her even more for the great contribution she has made to the bill as it has moved through the committee process. She has devised some of the key sections of the bill, starting with the handling of exigent claims to see to it that people with mesothelioma and other deadly diseases are handled at a very early stage in the proceeding.

We have worked together countless hours in her office, in my office, with many other Senators in the committee process, and she has done a great job in committee generally on many items, including the one identifying victims whose identities are stolen, legislation we are trying to bring to the floor now. But I think the speech she just made was a fine hour, perhaps her finest hour, in identifying their very serious problems.

Mrs. FEINSTEIN. I thank the Senator very much.

Mr. SPECTER. Mr. President, the crux of what Senator FEINSTEIN has had to say is proof positive that we ought to proceed. There is no doubting the problem. The only issue is whether we ought to take up the bill and work on it. Anybody who votes against taking up this bill will be casting, in my opinion—it is a tough word, a tough term—an unconscionable vote, considering how many thousands of people have suffered from deadly diseases and how many companies have gone bankrupt—at least to proceed to take it up. I haven't seen any Senator who has addressed the issue on the floor who hasn't at least faced up to the fact that we have a problem that ought to be addressed. Occasionally, we do consider the merits of a pending motion. The merit of a motion to proceed is whether there is a problem which ought to be taken up. If somebody has a better bill, let them come to it.

I am going to speak very briefly because our distinguished colleague from Alabama, Senator SESSIONS, is on the floor. He, too, has been a major contributor.

First, I wish to thank Senator CARPER for his speech in support of the motion to proceed earlier. I think there is Democratic support. Senator LEAHY, of course, is a cosponsor, Senator KOHL is a cosponsor, Senator FEINSTEIN has spoken, Senator CARPER has spoken, and others have stated their intention to move to take up and consider the bill. Senator HATCH's comments were very important. He is the author of the trust fund concept, and chaired the Judiciary Committee before term limits called for a shift in chairmanship. He did a great job. Senator DEWINE has spoken in a very important way.

I want to put into the RECORD a couple of newspaper articles which I think are very germane.

Senator REID and I had a conversation about the bill yesterday, with Senator REID making the accusation that lobbyists paved the way for this bill to come to the floor. On the floor, in his presence, I challenged him as violating rule XIX which bars a Senator from making derogatory comments about another Senator.

This morning, in the Hill publication there was the disclosure of a fascinating document which the Hill obtained from a coalition opposing the bill. This document, which is published at some length in the Hill, points out that nearly 20 corporations paid a total of about $3 million to defeat the asbestos legislation.

The document obtained says this bill's "defeat could bring an end to the trust fund as a viable political option for addressing the asbestos litigation crisis. Therefore, coalition activities leading up to that vote should be commensurate with the opportunity presented to us to defeat the trust fund once and for all."

This coalition document then specifies how they are laying out $2.78 million for defeating the bill, allocating $1.34 million for coalition operations and $1.44 million for advertising.

Then there is a specification as to the companies that are trying to defeat the bill, such as American International Group, Allstate, American Re, a reinsurance provider, the Chubb Corporation, Hartford Insurance, Liberty Mutual, Nationwide Insurance, and Zurich Financial. Each has received bills, according to this document, for $134,250. ExxonMobil paid $73.000 to the coalition.

I shall not read any further, but I ask unanimous consent that it be printed in the RECORD at the conclusion of my comments.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SPECTER. Mr. President, I also think it is relevant to note an editorial in the New York Times today which is solidly in support of this bill. The Times editorial refers to the efforts of Senator LEAHY, the distinguished ranking member and principal cosponsor with me, and says:

> That makes it a 21st century rarity: a thoughtful, bipartisan compromise on a vexing national problem. It would create a trust fund to pay awards to those who are already sick, using detailed medical criteria to determine eligibility and awards. Under this no-fault system, akin to workers' compensation, those exposed to asbestos at work but not ill would be entitled to free medical screening every three years.

And the Times editorial goes on to point out:

> Lobbyists for the trial lawyers, at various companies, insurers and union interests that feel aggrieved by some aspect of the complex package are trying to round up lawmakers to block the bill. A key test is to come today, when the majority leader, Bill Frist, has scheduled a vote to allow the Senate to begin formal consideration of the bill. Mr. Reid is trying to derail the measure even before the debate begins in earnest, and Democrats who want to see asbestos victims treated fairly should not support him.
>
> There are other dangers ahead, including the possibility of a "poison pill" amendment that would expand to other communities a special provision that would make residents of Libby, Mont., a town uniquely affected by asbestos contamination, eligible for a guaranteed level of compensation without a need to show occupational exposure. Another worry is that some Republicans will try to amend provisions or medical criteria in ways that would be unfair to victims.

The New York Times editorial concludes, saying:

No one can be sure that $140 billion will cover all current and future claims. But the bill would give victims the option of going to court should the trust fund run out. It would be a vast improvement over the present method of dealing with the claims of asbestos victims, which is to clog the courts and bankrupt companies while depriving many victims a measure of justice.

I ask unanimous consent that the full text of this editorial be printed at the conclusion of my comments.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. SPECTER. Mr. President, in order to make other documents available, I ask unanimous consent that a series of letters be printed in the RECORD. I think it important that these be available in the RECORD for Senators and their staffs and for the public to see the kind of support this bill has.

Yesterday, Senator REID and I had a few words about a number of groups who are for the bill and who are against the bill. This letter is from many veterans groups urging Senator REID not to filibuster the bill. They say:

> We urge you not to stand in the way of full Senate consideration of this vital legislation.

And the number of veterans groups is enormously impressive, including the Veterans of Foreign Wars, the Paralyzed Veterans of America, The Retired Enlisted Association, the Blinded American Veterans Foundation, the Jewish War Veterans of the USA, and quite a number of veterans organizations which will appear in the RECORD.

I also have printed letters of support from the NFIB and a letter signed by manufacturers, labor groups, small business, and 25 additional veterans groups.

I ask that these documents be printed in the RECORD so colleagues can see the kind of support this bill has. By doing this, they get into the CONGRESSIONAL RECORD, and the people note the support.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 3.)

Mr. SPECTER. My distinguished colleague from Alabama has been waiting. In advance, I thank Senator SESSIONS for his outstanding work on this committee generally but especially on this bill.

EXHIBIT 1

[From The Hill, Feb. 7, 2006]

AIMING AT ASBESTOS BILL

(By Alexander Bolton)

Nearly 20 corporations have paid a total of about $3 million to defeat the asbestos trust-fund bill, which Senate Majority Leader Bill Frist (R-Tenn.) has designated his first priority in 2006, according to a coalition planning document obtained by The Hill.

The Senate will consider the bill, which establishes a $140 billion trust fund to compensate the victims of asbestos exposure, over the next two weeks, leading up to the Presidents Day recess. Strategists leading the opposition view the debate as an opportunity to defeat the creation of such a trust fund permanently.

"Majority Leader Frist's agreement with Chairman [Arlen] Specter [R-Pa.] to put S. 852 on the Senate floor for a vote, in the face of opposition from the Judiciary Committee conservatives and Budget Committee leadership, has increased the stakes of that vote beyond its important role in the legislative process," Kieran Mahoney, a strategist with Mercury Public Affairs, wrote in a private memo to the Coalition for Asbestos Reform. The firm Fleishman-Hillard is also coordinating the lobbying effort.

"This has become a do-or-die opposition for the advocates of the Trust Fund, and its defeat could bring an end to the Trust Fund as a viable political option for addressing the asbestos litigation crisis," Mahoney wrote. "Therefore coalition activities leading up to that vote should be commensurate with the opportunity presented to us—to defeat the Trust Fund once and for all."

The memo was contained in a 22-page internal planning document detailing the Coalition for Asbestos Reform's strategy. The bill is sponsored by Specter and cosponsored by Sen. Pat Leahy (Vt.), the ranking Democrat on the Judiciary Committee. The document, crafted at the end of last year, is available on The Hill's website, http://img.thehill.com/img/news/020706/asbestos.pdf

It lays out a $2.78 million budget for defeating the bill, allocating $1.34 million for coalition operations and $1.44 million for advertising.

Fleishman-Hillard and Mercury Public Affairs are charging $510,000 in fees and $80,000 in expenses for their work over the first four months of the year, according to the document.

In his memo, Mahoney writes that the advertising campaign will be built around "creating political will inside three audiences—moderate/conservative Democrat Senators who are deemed persuadable, conservative Democrat Senators who are deemed persuadable, conservative Republican senators whose current opposition needs to be turned into a "no" vote, and DC opinion leaders who collectively make up conventional wisdom.

Opinion leaders are being targeted by advertising through national cable networks, D.C. broadcast stations and Capitol Hill print outlets.

Senators are being targeted through TV and print ads in select markets in key states.

The business groups are leaving the persuasion of liberal-leaning senators to trial lawyers and unions.

"Separately, the Coalition needs to ensure that the trial bar and related advocacy groups are preparing a similar strategy that targets liberal Democratic Senators," the Mercury Public Affairs memorandum stated.

The campaign appears to have gained traction, as Senate Minority Leader Harry Reid (Nev.) has vowed to filibuster it and conservative Republicans on the Judiciary Committee such as Sens. John Cornyn (R-Texas) and Tom Coburn (R-Okla.) have voiced concerns over the bill.

It passed out of the Judiciary Committee with the support of all Republican members and Sens. Leahy, Dianne Feinstein (D-Calif.) and Herb Kohl (D-Wis.).

Manufacturing and insurance companies have long sought a trust fund to pay asbestos-related medical claims and to avoid costly lawsuits. Partisan wrangling over the best way to pay asbestos-related claims and to settle a blizzard of ongoing and potential lawsuits that has dragged on for years.

The bipartisan proposal has garnered opposition from groups of labor unions, trial attorneys, midsize manufacturing companies and insurance companies. Unions have pushed for more money in the trust fund and trial attorneys oppose the concept because it curbs litigation. Midsize companies have balked at how much they must pay into the fund, and insurance companies are worried about their liability if it runs out of money.

But a significant portion of the business community supports Specter and Leahy's efforts.

"There are numerous supporters of the trust fund," said Matt Webb, vice president of the U.S. Chamber of Commerce's Institute for Legal Reform, which has not taken a position on the bill.

"It's impossible to say how many are in each camp, it depends on each individual company's financial situation and legal situation."

The coalition's document includes a list of member companies and how much they've been asked to contribute to the opposition effort.

Donors such as American International Group; Allstate; American Re, a reinsurance provider; Chubb Corp.; Hartford Insurance; Liberty Mutual; Nationwide Insurance; and Zurich Financial have each received bills for $134,250 to pay for operating and advertising costs, according to the document.

Oglebay Norton, an industrial-minerals company, and Okonite Co., an electrical-wire manufacturer, have received bills for $55,000. Bills for varying amounts have been sent to other member companies.

Exxon Mobil paid $73,000 to the coalition but is not a member, said Thomas O'Brien, chairman of the coalition, who will receive $100,000 for his work over January, February, March and April, according to the document

O'Brien declined in a phone interview to discuss what other companies have joined the coalition or if the billing records accurately represent the contributions of coalition members to date.

"Things change every day," he said during the interview in which Bill Fay of Fleishman-Hillard also participated. "That was a planning document. As Bill said, that document was not for public dissemination, I wouldn't comment on it."

O'Brien and Fay said that the time for Congress to act was several years ago but that states such as Texas have now taken steps to deal with the slew of medical claims. They said that the Senate bill would wreck those efforts.

EXHIBIT 2

[From the New York Times, Feb. 7, 2006]

JUSTICE FOR ASBESTOS VICTIMS

Just last week, the Democrats' Senate leader, Harry Reid of Nevada, failed to muster the gumption to try to stop the nomination of a right-wing ideologue to a lifetime seat on the Supreme Court. So it's shocking to hear Mr. Reid threatening now to block a bipartisan bill that would finally bring justice and compensation to victims of asbestos-related diseases. We can't imagine what Mr. Reid is trying to achieve, other than showing fealty to the trial lawyers who have been so generous to his party.

The Senate should approve the bill, which would replace the current morass of asbestos litigation with a $140 billion fund to pay the claims of victims of asbestos exposure. The fund would be financed by makers of asbestos, a carcinogenic material, and manufacturers that used it, and their insurers.

It is the product of an assiduous effort by Senator Arlen Specter, the Republican who is chairman of the Judiciary Committee, and Senator Patrick Leahy, the committee's senior Democrat. That makes it a 21st-century rarity: a thoughtful bipartisan compromise on a vexing national problem. It would create a fund to pay awards to those who are already sick, using detailed medical criteria to determine eligibility and the awards. Under this no-fault system, akin to workers' compensation, those exposed to asbestos at work but not ill would be entitled to free medical screening every three years.

Lobbyists for trial lawyers, and various companies, insurers and union interests that feel aggrieved by some aspect of the complex package, are trying to round up lawmakers to block the bill. A key test is to come today, when the majority leader, Bill Frist, has scheduled a vote to allow the Senate to begin formal consideration of the bill. Mr. Reid is trying to derail the measure even before the debate begins in earnest, and Democrats who want to see asbestos victims treated fairly should not support him.

There are other dangers ahead, including the possibility of a "poison pill" amendment that would expand to other communities a special provision that would make residents of Libby, Mont., a town uniquely affected by asbestos contamination, eligible for a guaranteed level of compensation without a need to show occupational exposure. Another worry is that some Republicans will try to amend the payment provisions or medical criteria in ways that would be unfair to victims.

No one can be sure that $140 billion would cover all current and future claims. But the bill would give victims the option of going to court should the trust fund run out. It would be a vast improvement over the present method of dealing with the claims of asbestos victims, which is to clog the courts and bankrupt companies while still depriving many victims a measure of justice.

EXHIBIT 3

JANUARY 31, 2006.

Hon. HARRY REID,
Democratic Leader, U.S. Senate,
Washington, DC.

DEAR SENATOR REID: Veterans across the country who are afflicted with asbestos-related diseases would at last get compensation and relief under the Fairness in Asbestos Injury Resolution (FAIR) Act. But according to a number recent media reports, you have labeled the FAIR Act as a bill that caters to special interests and have informed Majority Leader Frist in writing that you will oppose this critical legislation. In all frankness, your words and actions are extremely disappointing to veterans across this nation—surely you do not consider sick veterans to be a "special interest"?

The FAIR Act will provide proper compensation to sick men and women who volunteered to fight for our country—compensation they simply can't get under the current system. The military used asbestos throughout its facilities, bases, and ships during and after World War II, and countless veterans were exposed to this deadly material. But because the U.S. government has asserted sovereign immunity, these sick veterans are unable to seek compensation from the government through the courts.

The FAIR Act's victims' trust fund would open a door for veterans that has been closed for years.

We are disappointed that you are trying to keep that door closed and stop veterans from receiving the compensation they deserve. Sick veterans—and indeed, all victims—deserve better than political gamesmanship on this critical issue. We urge you not to stand in the way of full Senate consideration of this vital legislation.

The FAIR Act is more than overdue. The Senate has been debating these reforms for years. Sick victims, including sick veterans, shouldn't be forced to wait for help any longer.

Sincerely,

Air Force Sergeant Association.
American Ex-Prisoners of War.
Blinded American Veterans Foundation.
Blinded Veterans Association.
Fleet Reserve Association.
Jewish War Veterans of the USA.
Marine Corps League.
Military Officers Association of America.
Military Order of the Purple Heart.
National Association of Black Veterans.
Non Commissioned Officers Association.
National Association of Uniformed Services.
National Association of State Directors of Veterans Affairs.
Paralyzed Veterans of America.
Pearl Harbor Survivors Association.
The Retired Enlisted Association.
Veterans of the Vietnam War, Inc.
Veterans of Foreign Wars of the US.
Women in Military Service for America.
Memorial Foundation, Inc.
U.S. Submarine Veterans, Inc.
U.S. Submarine Veteran, Inc., Lockwood Internet Base.
U.S. Submarine Veterans of World War II.
U.S. Submarine Veterans Base Rhode Island.
U.S. Submarine Veterans World War II Thames River Chapter.
U.S. Submarine Veterans World War II Central Connecticut Chapter.

NATIONAL FEDERATION
OF INDEPENDENT BUSINESS,
Washington, DC, February 6, 2006.

Hon. ARLEN SPECTER,
U.S. Senate, Hart Senate Office Building,
Washington, DC.

DEAR SENATOR SPECTER: On behalf of the 600,000 members of the National Federation of Independent Business, I am writing to express our support for S. 852, "The Fairness in Asbestos Injury Resolution (FAIR) Act of 2005." The FAIR Act will help protect innocent small business owners from the asbestos litigation crisis that now threatens their business.

Asbestos lawsuits against small businesses are on the rise. After years of suing large corporations for multi-million dollar damage awards, "traditional" asbestos manufacturers and defendants are mostly bankrupt. As a result, asbestos litigation now targets companies far removed from any potential wrongdoing, including small businesses. This relatively untapped pool of defendants is an attractive target for trial lawyers since small-business owners and their insurers can be forced to pay millions of dollars in damages. Horrifying for a small-business owner is the prospect that they can be hauled into court without having any relationship to asbestos or the plaintiff. Many small businesses are forced to settle because they don't have the money or time to be away from their businesses. Not only do they face the stigma of having to settle, and the loss of time and money, but they will likely also experience higher insurance rates.

By creating an alternative compensation system to resolve asbestos claims, S. 852 will fix a badly broken system that is not working and, in the process, compensate victims faster. In addition to lawsuit relief, the legislation relieves small businesses with either low or no asbestos liability from having to pay into the compensation fund. No business that meets the Small Business Administration description of a small business can be required to pay a penny into the fund. Nor will any small business that has carried less than $1 million in asbestos expenditures before December 31, 2002 have to pay into the fund.

This legislation will help prevent small businesses from having to spend the time and money to defend themselves in asbestos lawsuits. It takes a significant step towards fixing part of our litigation crisis that hurts business, big and small, and ultimately keeps the victim from receiving compensation.

Thank you for your support of small business.

Sincerely,

DAN DANNER,
Executive Vice President,
Public Policy and Political.

JANUARY 26, 2006.

Hon. BILL FRIST,
Majority Leader, U.S. Senate, Capitol Building,
Washington, DC.
Hon. HARRY REID,
Minority Leader, U.S. Senate, Capitol Building,
Washington, DC.

DEAR MAJORITY LEADER FRIST AND MINORITY LEADER REID: We, the undersigned, urge you to bring the Fairness in Asbestos Injury Resolution Act of 2005 (the FAIR Act—S. 852) to the floor of the United States Senate for debate and consideration. Although we all come from a variety of perspectives, we agree it is time for Congress to enact meaningful asbestos reform through establishment of a well-constructed federal trust fund.

Our country faces an asbestos litigation crisis with claims rising exponentially and the backlog of cases ever increasing. To date, 74 companies have gone bankrupt due to asbestos litigation with 60,000 jobs lost and the cost to the U.S. economy estimated at $343 billion. The continuing costs and uncertainties of the current situation are harmful not only to the asbestos victims with legitimate claims, but also to employees, retirees, shareholders, customers of defendant companies and insurers and to U.S. consumers.

The FAIR Act will go a long way toward solving many of the injustices of the current system. First, and most importantly, a well-constructed trust fund will provide sick victims of asbestos exposure with the fast, certain, and fair compensation they deserve. Such a trust fund will provide compensation to many sick veterans who are barred from seeking compensation through the courts. Additionally, the legislation includes significant protections for small businesses.

Indeed, our nation's governors working through the National Governors Association called for federal legislative action on the asbestos crisis in a resolution adopted at their annual meeting in July, 2005. S. 852 is a bipartisan compromise approved overwhelmingly by the Senate Judiciary Committee by a 13 to 5 vote. We believe that the time is now for the Senate's consideration of this important legislation that will lead to the meaningful reform our country needs and deserves.

Please move forward on S. 852. It is a solution to the asbestos litigation crisis that will ensure fair and timely compensation for victims and certainty and finality for businesses, workers, and the US. economy. All

Americans stand to benefit from the resolution of the asbestos crisis.

Sincerely,

A&I Parts Center.
Air Force Sergeant Association.
Alabama Voters Against Lawsuit Abuse.
Albina Fuel.
Alma Chamber, NE.
American Architectural Manufacturers Association.
American Boiler Manufacturers Association.
American Ex-Prisoners of War.
American Small Business Association.
AMVETS, Albuquerque, NM, Post 7.
AMVETS, Post 15, Los Ojos, NM.
The Asbestos Alliance.
Asbestos Study Group.
AMT—The Association for Manufacturing Technology.
Arizona Association of Industries.
Associated Industries of Florida.
Associated Industries of Kentucky.
Associated Industries of Massachusetts.
Associated Industries of Missouri.
Associated Oregon Industries.
Association of Builders and Contractors, NM Chapter.
Association of Builders and Contractors, LA.
Association of Washington Business.
Austin Gene Rater.
Automotive Parts and Service Association, TX.
Banner Healthcare.
Beatrice Chamber.
Blinded American Veterans Foundation.
Blinded Veterans Association.
Brave Services.
W.T. Butcher & Associates.
California Manufacturers & Technology Association.
Capital Home Realty.
CBS Corporation.
Center for Individual Freedom.
Century Insurance.
Cheyenne County Chamber, NE.
Council for Citizens Against Government Waste.
Crane Co.
Crown Cork and Seal.
CS Property Brokerage.
Delta Mechanical.
The Dow Chemical Company.
H.E. Everson Company.
Fleet Reserve Association.
FMC Corporation.
Freemont Area Chamber, NE.
Ford Motor Company.
S.A. Foster Lumber.
G-I Holdings, Inc.
Gage County Economic Development, Inc., NE.
The Gasoline & Automotive Service Dealers of America, Inc.
General Electric Company.
General Motors Corporation.
Georgia Industry Association.
Grand Island Area Economic Development Corporation.
Great American Insurance Company.
Greater North Dakota Chamber of Commerce.
Hanna Prime, Inc.
Hedahls, Inc.
Honeywell International Inc.
Hurley Auto Parts.
Illinois Manufacturers Association.
Indiana Manufacturers Association.
Industrial Fasteners Institute.
International Association of Heat & Frost Insulators & Asbestos Workers.
International Association of Plastics Distributors.
International Union of Painters and Allied Trades.
International Union, United Automobile, Aerospace & Agricultural Implement Workers of America-UAW.
Irex Corporation.
Jewish War Veterans of the USA.
The Kansas Chamber of Commerce.
Kent Bork Consulting.
Lane McFerrin Partners.
Lansing Regional Chamber of Commerce, MI.
Les Schwab Tire Centers.
Linen King.
Louisiana Association of Business & Industry.
Louisiana Pulp and Paper Association.
Lumber Dealers Association of Connecticut.
MacDonald Direct Marketing, Inc.
McDermott International.
Marine Corps League.
Marketing and Promotion, Inc.
MetLife, Inc.
Michael Jordan Realty.
Michaels Menagerie.
Michigan Manufacturers Association.
Michigan Tooling Association.
Military Officers Association of America.
Military Order of the Purple Heart.
Motor Parts Distributors of Modesto, CA.
Nabholz Appraisal.
National Alliance of Wholesaler-Distributors.
National Association of Black Veterans.
National Association of State Directors of Veterans Affairs.
National Association of Uniformed Services.
National Black Chamber of Commerce.
Nebraska Chamber of Commerce & Industry.
Nebraska Lumber Dealers Association.
Nevada Manufacturers Association.
New Jersey Business & Industry Association.
Non-Commissioned Officers Association.
North Dakota National Federation of Independent Business.
Northern Colorado Legislative Alliance.
Ogallala/Keith Chamber, NE.
Ohio Manufacturers' Association.
Oregonians for Jobs and Power.
Owens-Illinois, Inc.
Pfizer Inc.
Paralyzed Veterans of America.
Paralyzed Veterans of America, Mid-America Chapter.
Pearl Harbor Survivors Association.
Pennsylvania Manufacturers' Association.
People Dynamics, Inc.
The Plumbers Association, AR.
Plumbing-Heating-Cooling Contractors Association of Nebraska.
Pneumo Abex LLC.
Preferred Utilities.
Realty Executives.
Red Drum Investments.
RPM International.
The Retired Enlisted Association.
RetireSafe.
River Country Economic Development, NE.
Sack Lumber.
Saint-Gobain Corporation.
Santa Fe Chamber of Commerce, NM.
Saulsbury Industries.
The Seniors Coalition.
Shreveport Rubber and Gasket.
Small Business & Entrepreneurship Council.
South Carolina Chamber of Commerce.
State Chamber of Oklahoma.
Steel Manufacturers Association.
Sterling Heights Area Chamber of Commerce, MI.
Tennessee Chamber of Commerce.
Textile Care Allied Trades Association.
USG Corporation.
U.S. Submarine Veterans, Inc.
U.S. Submarine Veterans Inc., RI Base.
U.S. Submarine Veterans WWII, Thames River Chapter.
U.S. Submarine Veterans WWII, Central CT Chapter.
U.S. Submarine Veterans, Inc., Groton Base.
Utah Manufacturers Association.
Veterans of Foreign Wars of the United States.
Veterans of the Vietnam War, Inc.
Wahoo Chamber, NE.
Waterloo Lending.
Whalen's Furniture.
Women Construction Owners & Executives, USA.
Women Entrepreneurs, Inc.
Women Impacting Public Policy.
Women in Military Service for America Memorial Foundation, Inc.
Wunderworks.

Mr. SESSIONS. Mr. President, I appreciate very much the leadership of the chairman. We have been working on this idea for quite a few years. I believe more strongly than ever that it is time to fix this broken system. I will talk about that more.

If the chairman does not mind, our colleague, Senator BEN NELSON from Nebraska, wanted 2 minutes.

I yield the floor, and I ask unanimous consent I be recognized after Senator NELSON.

The PRESIDING OFFICER (Mr. MARTINEZ). Without objection, it is so ordered.

(The remarks of Mr. NELSON are printed in today's RECORD under "Morning Business.")

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, the asbestos litigation in America today is out of control. We have been working on fixing it for years. In a previous life, I represented two plaintiffs, people who were injured from asbestos, seriously injured, and adversely affected in their health. I was embarrassed by how long it took, and by how many fees and costs came out of those cases. I have been embarrassed over the years to see this spasm in our legal system continue daily, not dispensing justice in a fair and legitimate way.

We know from a Rand study and from our own experience that 58 percent of the money paid out by these defendants does not go to the people who are sick; it goes to lawyers. Somebody made an interesting point—I believe it was Senator DURBIN—that actually a slightly higher percentage of money goes to defense lawyers than to the plaintiffs' lawyers. Regardless which side receives the money, over half of it is going to lawyers.

If you are sued for $50 million and your corporation hires the best legal team possible and spends all this money, and there are court costs and depositions and fees for experts, it eats you up. When the judgments come out, often after years of work, very little money goes to the victim. It is not right. It is the worst performance by the legal system, in my view—other than discrimination based on race in our past—since the founding of the Republic. This cannot be justified, although it is happening this very day in courts all over America.

Over 700,000 individuals have filed asbestos claims, and as many as 300,000 of those claims are pending today. The number of asbestos defendants started out at 300. These defendants were the people who made the asbestos, who shipped it out, who at some point became aware that asbestos was damaging to their health—they put no warnings on it—and just sent it out. Those people were the original asbestos defendants. The original plaintiffs were directly harmed by their actions. For example, my client was in a submarine, sawing asbestos with an electric saw in that confined space, breathing untold amounts of asbestos. By his early fifties, he was on oxygen. That is reality. That happened.

Today, we have people who worked in a repair shop who claim somehow the brakes had asbestos in them and are now responsible for a disease they may have. And it may not be true. The damage is much less in many of these instances than it was for my client and others like him. Yet under the current system, these shaky claims get compensated. We need to sift through this mess and create a system that will work.

Mr. President, $70 billion has been spent today to resolve asbestos-related claims. Of course, less than half of that $70 billion got to the victims. Companies are settling claims filed by people who are not sick because they cannot afford to litigate. It is just that simple. People who are not sick now are getting money as almost a nuisance or extortion payment because the lawyers are filing so many of these cases. It has been driving companies into bankruptcy at an alarming rate.

There were 19 asbestos bankruptcies filed in the 1980s. Seventeen were filed in the 1990s. Between 2000 and mid-2004, there were an astonishing 36 asbestos-related bankruptcy filings, amounting to more filings in the first half of this decade than in the prior two decades combined.

We hear a lot of people saying: I would rather sue and go through the court system than have this national fund. But there may not be a defendant to sue at this rate because 77 companies have gone bankrupt. With those bankruptcies, American workers have lost 60,000 jobs, costing up to $200 million in lost wages.

The money, as I indicated, is not getting to the victims. Some beneficiaries of the Manville asbestos trust fund received as little as 5 cents on the dollar for their claims. If there is a $1 million verdict and you get 5 cents on the dollar, how fair is that?

In my hometown of Mobile, AL, the Mobile Register, which has done a considerable, superb investigative effort into some of the abuses in this system which are prominent along the gulf coast because we have a lot of asbestos exposure in the shipyard industry, said:

> The biggest beneficiaries of the asbestos-related lawsuits tend not to be people with health problems, but the lawyers and the for-profit lung testing companies they hire.

There has been a tremendous scandal over that. One courageous Federal judge has blown the whistle on it and perhaps broken that system up. But it is just one more example of the many abuses in the current system.

Now, the U.S. Supreme Court has seen this matter from the perspective of the legal system. They are looking down at the 300,000 claims that are pending all over America. They are seeing that things are not going as they should. So in 1991, the Judicial Conference Committee—this is the judges' committee that represents all the Federal judges in America, appointed by the Chief Justice of the United States—said the asbestos situation had "reached critical dimensions." Then they went on to say that the courts were "ill-equipped" to address these mass claims in any effective manner. This statement was significant because the Judicial Conference Committee does not write us very often about things like this.

In AmChem Products v. Windsor, in 1997, Justice Ginsburg, writing for the Supreme Court—I will note parenthetically that Justice Ginsburg, who was an ACLU lawyer, one of the more activist members of the Court, and certainly not a shill for the business industry—said this:

> The argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure. Congress, however, has not adopted such a solution.

The Supreme Court has in essence issued what is a challenge, a plea to us, really.

In Ortiz v. Fibreboard Corp., Justice Souter, on the Supreme Court, said this:

> The elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation. . . .

S. 852 is a response to the Supreme Court's concerns. The bill establishes a $140 billion trust fund, privately funded, for the purpose of directing compensation to the individuals suffering identifiable injuries as they result from asbestos exposure. Instead of waiting years for their claims to go through the tort system, the trust fund will allow legitimate asbestos victims to be compensated faster and on a no-fault basis, meaning that the claimants no longer have to go into court and have a trial to prove that their injuries are the result of negligence or fault on another party; they just make a claim and get paid based on the severity of injury. They do not have to prove causation or negligence.

For asbestos victims who are the most ill, like those with mesothelioma, the bill provides for an expedited claims process and payment system. It is really expedited. Fifty percent of the $1.1 million a person with meso will be entitled to receive will be paid within 30 days, and the rest in 6 months.

Now, we have seen in the paper, we have heard here on the floor, and we have heard from people who have come to the Hill, like widows of persons who have died from mesothelioma, just how long it takes to get compensation under the tort system. Meso is a deadly disease that is, indeed, connected to asbestos. Of that I think there is little dispute. That is why this legislation says that if you have mesothelioma and you have been exposed to asbestos, you walk in with a doctor and they will pay you $1.1 million, and you do not even need a lawyer. You get all of your compensation, and you do not have 60 percent of the money taken out for fees and costs, and the money will be paid promptly. Isn't that the way the system should work?

But we have had these widows and other victims coming here, telling us how long it takes to get their money. I began to think about it a little bit—I know Senator SPECTER has had the opportunity to deal with this issue, too—and how sad it is to see people who have been widowed as a result of asbestos. Let me say this. Widows are coming here asking for payment as the result of the death of a loved one because they have not yet gotten their money. Why haven't they been paid? Because it takes years in the current system to bring the case to judgment, and then there is only partial judgment. Some defendants settle, some do not settle, and the cases go on. And the people with fatal diseases such as mesothelioma die before the case is ever concluded. I am telling you that is the way it works in the real world. That will end with this process.

We have the ability to create in this Senate a legal scheme for handling these cases that will end a system where the real victims get pennies on the dollar and individuals with no real injuries clog up the system or get windfalls. It will end a system where lawyers are the big winners, often walking away with more than half the proceeds.

The FAIR Act will provide greater certainty to victims, defendant companies, and insurers. Under the fund, victims will be paid on a set schedule, according to their proven illness. Defendant companies and insurers will contribute a set amount of money to the fund on a predetermined timetable, allowing them to move forward and plan for their financial future. The money will go to victims, not to overhead and attorneys.

The Democratic leader has said this is some sort of corrupt process, and those who want to fix this system are somehow coming here with less than clean hands, that their judgment is clouded by K Street or money. I would ask the Democratic leader to defend this system, if you will. Come here and justify what is going on in the courts of America.

Dickey Scruggs, who lives not too far from my hometown of Mobile, AL, was the architect of the asbestos litigation. He started the cases, and he established the legal principles that led to all of these suits around the country. He came with Senator SPECTER the other day and said it is time to bring it to an end, that this is not a legitimate legal process anymore. It is not working effectively. It is an embarrassment to us all.

It is an embarrassment to me that Congress cannot fix a system where billions of dollars are being paid out, billions of dollars—$70 billion already, and 60 percent of it does not go to the victims. What kind of legal system is that?

Now, we have a lot of businesses that are opposing the legislation. I would suspect their views are that they have gotten a calculator out and they have had their accountants and lawyers get together, and they have calculated that they may not pay as much under the current system as under this bill, so they do not want the bill to pass.

We have plaintiffs' lawyers who are out there making millions of dollars every day on this system. And there are defense lawyers also making millions of dollars on this system. They object to the legislation because they have a special interest in it.

But we are Senators. We represent the public interest. We have a duty and an obligation to defend this American legal system, and to make sure the legal system has integrity. We are entitled and have a responsibility to superintend it. When we see things in the system that are plainly wrong, it is our responsibility to fix them. That is what we are setting about to do with this bill. It is not easy. I do not deny that.

We will continue to listen to the legitimate complaints of those who feel somehow this system will not be fair to them, and continue to make adjustments.

Senator SPECTER, Senator LEAHY, and others have—we have all promised to do that, to try to, in good faith, work in that way. But, again, our responsibility is not to plaintiffs' lawyers, who poured millions of dollars in campaign contributions to one side or another in these races, or businesses that pour out large contributions. What is that? Our responsibility is to integrity and to propriety and to justice. Justice is not being done in these cases. Dickey Scruggs himself says it should end. He supports this legislation. Does anybody say he does not care about victims? He has represented thousands of them, tens of thousands of them.

I am glad to work with Chairman SPECTER and the others in support of this bill. I believe his work on it comes from the highest motives, the purest motives. We can disagree on the tactics, but it is offensive to me that we have Senators on this floor suggesting that an effort to end this abusive and unjust system is somehow, in itself, a corrupt act. That is not true.

Senator SPECTER and Judge Becker of the Third Circuit Court of Appeals, a senior judge and capable person, have had meetings all over this country, listening to everybody who has an interest in this matter. Senator SPECTER has spent hours in these meetings—days, weeks, months, even. Senator HATCH, as chairman of the Judiciary Committee before Senator SPECTER, has also worked tirelessly to accommodate concerns.

For years we have been working on this legislation. It is an open process. The bill is out there. If it needs to be improved, I support that and will listen to that effort. But I do not think we need to drop the ball now. We are moving forward toward the goal line. We have an opportunity to provide relief to victims in a way that cannot help but be helpful to them, but they may not know that.

I am getting calls from victims, and they are saying things with written messages their trial lawyers have given them to say. It breaks my heart. To think, I used to be representing victims, so I know a little bit about this matter. I am sympathetic to them. They do not know. They have no idea this system is going to provide more money for victims, quicker and faster, with less cost than the current system. They are hearing it only from one side—their lawyer's.

So it is up to us to do the right thing and not play politics, not lose our nerve at this point in history.

I am glad to see Senator SPECTER here. If he would allow me, I wish to take a couple minutes at this point to say a few words on the passing of Coretta Scott King.

I say to Chairman SPECTER, if you wish to comment, I did want to have a few minutes to express my thoughts on the funeral today of Coretta Scott King.

Mr. SPECTER. Mr. President, if the Senator from Alabama will yield to me for a very brief comment about his presentation before moving on, I wish to thank him for those comments. I think he has accurately described the serious problem caused by asbestos in this country in terms of injuring workers, injuring people who are exposed to asbestos who are not workers but from materials carried home, the tremendous impact on the economy, the bankruptcies.

He has addressed in a very forceful way the spurious, unmeritorious allegation about lobbyists having bought their way on to the floor with this bill. I appreciated all of his speech, but I especially appreciated the passion there.

I ask unanimous consent that the printed RECORD reflect the passion. The printer is going to have to figure out some way to reflect the passion.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Is that unanimous consent request granted, Mr. President?

The PRESIDING OFFICER. I took it as such, and I granted it.

Mr. SPECTER. Good. But it was a terrific speech, I say to Senator SESSIONS, and I thank you for it and thank you for your leadership on this bill generally and for your strenuous, hard work and leadership on the Judiciary Committee.

Mr. SESSIONS. Thank you, I say to Senator SPECTER. You put your heart and soul into this effort. Nobody should think the effort you have gone forward with, and that Senator HATCH and Senator LEAHY and Judge Becker and others have gone forward with, is for any other purpose than trying to make this system better. We absolutely can improve the system. It is within our grasp to do so. If we cannot pass legislation that takes the 58 percent of compensation that is currently not getting to the victims and allow those victims to have larger amounts of money, it is our fault. We are pretty incompetent.

CORETTA SCOTT KING

Mr. SESSIONS. Mr. President, I want to take a moment to express some thoughts about the death of Coretta Scott King. She grew up in Perry County, AL. Her father ran a country store as did mine.

Mrs. King, in so many ways, epitomized the good background that she had and where she was raised. She carried those values forward throughout her life. She graduated from Lincoln High School in Marion, AL. It was an all-Black high school that educated the offspring of former slaves from 1867 and 1970. The late Jean Childs Young, wife of former Atlanta Mayor Andrew Young, was another distinguished Lincoln graduate.

After high school, where she was valedictorian of the Class of 1945, Mrs. King accepted a scholarship to Antioch College in Ohio, where she studied the violin, singing, and piano. After graduating from Antioch, she accepted a scholarship to attend the New England Conservatory of Music in Boston, where she met her future husband Martin, who was also a student in Boston.

They got married in 1953 and the very next year, they were at Dexter Avenue

Baptist Church, within sight of the State Capitol of the State of Alabama. It was at this time that she and Dr. King came to know Rosa Parks, whose refusal to give up her seat on a Montgomery bus led to the civil rights movement. Rosa Parks was arrested and the Montgomery bus boycott ensued, sparking a movement to ensure that all citizens were treated equally under the law.

Dr. and Mrs. King and Rosa Parks truly changed a system that could not be defended. It was a system that treated people, because of the color of their skin, as second-class citizens and not equal. It was not a defensible system morally or legally.

Judge Frank Johnson got the bus boycott case, and he ruled that the equal protection clause of the U.S. Constitution said people should be treated equally. Requiring someone to go to the back of the bus, despite a State statute to the contrary, did not represent equality. It was unconstitutional. The Supreme Court agreed, and that gave a real boost to the civil rights movement.

During her 78 years, Mrs. King represented the kind of character and integrity and commitment to right living that should inspire us all. And she has given her best full measure. She has seen the toils and snares of life. She moved through them through her full and complete time on this Earth. She has run the race and is fully entitled to the rewards of that successful race.

It is my honor and privilege to express, on behalf of the people of Alabama, my sympathy to the King family, to wish them well and to say to them how our State, our Nation, and, indeed, the world is better off for the courage they displayed.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I associate myself with the eloquent remarks of the Senator from Alabama with respect to Coretta Scott King. I appreciate the opportunity to listen.

WARRANTLESS WIRETAPS

Mr. FEINGOLD. Last week the President of the United States gave his State of the Union Address, where he spoke of America's leadership in the world and called on all of us to "lead this world toward freedom." Again and again, he invoked the principle of freedom and how it can transform nations and empower people around the world.

Almost in the same breath, the President openly acknowledged that he has ordered the Government to spy on Americans on American soil without the warrants required by law. The President issued a call to spread freedom throughout the world, and then he admitted he has deprived Americans of one of their most basic freedoms under the fourth amendment—to be free from unjustified Government intrusion.

The President was blunt. He said he had authorized the NSA's domestic spying program, and he made a number of misleading arguments to defend himself. His words got rousing applause from Republicans and I think even from some Democrats.

The President was blunt so I will be blunt. This program is breaking the law, and this President is breaking the law. Not only that, he is misleading the American people in his efforts to justify this program.

How is that worthy of applause? Since when do we celebrate our Commander in Chief violating our most basic freedoms and misleading the American people in the process? When did we start to stand up and cheer for breaking the law? In that moment at the State of the Union, I felt ashamed.

Congress has lost its way if we don't hold this President accountable for his actions. The President, of course, suggested that anyone who criticizes his illegal wiretapping program doesn't understand the threat we face. But we do. Every single one of us is committed to stopping the terrorists who threaten us and threaten our families. Defeating the terrorists is our top national priority. And we all agree that we need to wiretap them to do it. We all agree on that. In fact, it would be irresponsible not to wiretap terrorists. But we have yet to see any reason at all why we have to trample the laws of the United States to do it.

The President's decision that he can break the law says far more about his attitude toward the rule of law than it does about the laws themselves. This goes way beyond party and way beyond politics. What the President has done is to break faith with the American people.

In the State of the Union, he also said that we must always be clear in our principles "to get support from our friends and allies that we need to fight terrorism."

So let's be clear about a basic American principle: When someone breaks the law, when someone misleads the public in an attempt to justify their actions, they need to be held accountable. The President of the United States has broken the law. The President of the United States is trying to mislead the American people, and he needs to be held accountable.

Unfortunately, the President refuses to provide any real details about this domestic spying program. Not even the full Intelligence Committees know the details, and they were specifically set up to review classified information and oversee the intelligence activities of our Government. Instead, the President says, basically: Trust me.

Unfortunately, this is not the first time we have heard this. In the lead up to the Iraq war, the administration went on the offensive to get the American public, the Congress, and the international community to believe its theory that Saddam Hussein was developing weapons of mass destruction and even that he had close ties to al-Qaida and was somehow involved in 9/11. The President painted a dire and inaccurate picture of Saddam Hussein's capability and intent, and we invaded Iraq on that basis. To make matters worse, the administration misled the country about what it would take to stabilize and reconstruct Iraq after the conflict. We were led to believe that this was going to be a short endeavor and that our troops would be home soon.

We all recall the President's "mission accomplished" banner on the aircraft carrier on May 1, 2003. In fact, the mission was not even close to being complete. More than 2,100 total deaths have occurred after the President declared an end to major combat operations in May of 2003, and over 16,600 American troops have been wounded in Iraq. The President misled the American people and grossly miscalculated the true challenge of stabilizing and rebuilding Iraq.

In December, we found out that the President has authorized wiretaps of Americans without court orders required by law. He says he is only wiretapping people with links to terrorists. But how do we know? How do we know? We don't. The President is unwilling to let a neutral judge make sure that that is the case. He will not submit this program to an independent branch of Government to make sure he is not violating the rights of law-abiding Americans.

I don't want to hear again that this administration has somehow shown that it can be trusted. It hasn't. That is exactly why the law requires a judge to review these wiretaps. It is up to the Congress to hold the President to account. We held a hearing on the domestic spying program in the Judiciary Committee yesterday, where Attorney General Gonzalez was a witness. We expect there will be other hearings. That is a start. But it will take more than hearings to get the job done. We know that, in part, because the President's Attorney General has already shown a willingness to mislead Congress.

At the hearing yesterday, I reminded the Attorney General about his testimony during his confirmation hearings in January 2005, when I asked him whether the President had the power to authorize warrantless wiretaps in violation of criminal law. We didn't know it then, but the President had authorized the NSA program 3 years before, when the Attorney General was the White House counsel. At his confirmation hearing, the Attorney General first tried to dismiss my question as "hypothetical." He then testified that "it is not the policy or the agenda of the President to authorize actions that would be in contravention of our criminal statutes."

Wiretapping American citizens on American soil without the required warrant is in direct contravention of our criminal statutes. The Attorney General knew that, and he knew about the NSA program when he sought the Senate's approval for his nomination to be Attorney General. He wanted the Senate and the American people to think that the President had not acted on the extreme legal theory that the President has the power, as Commander in Chief, to disobey the criminal laws of this country. But he had.

The Attorney General had some explaining to do, and he didn't do it yesterday. Instead, he parsed words, argued that what he said was truthful because he didn't believe that the President's actions violated the law.

The Attorney General knew what I was asking. He knew he was misleading the committee in his response. If he had been straightforward, he would have told the committee that in his opinion, the President has the authority to authorize warrantless wiretaps. My question wasn't about whether such illegal wiretapping was going on. Similar to almost everybody else in Congress, I didn't know about the program then. It was a question about how the nominee to be the Attorney General of the United States viewed the law. This nominee wanted to be confirmed. So he let a misleading statement about one of the central issues of his confirmation, his view of Executive power, stay on the record until the New York Times revealed the program.

The rest of the Attorney General's performance at yesterday's hearing certainly did not give me any comfort either. He continued to push the administration's weak legal arguments, continued to insinuate that anyone who questions this program doesn't want to fight terrorism, and he refused to answer basic questions about what powers this administration is claiming.

We still need a lot of answers from this administration. Let's put aside the Attorney General for now. The burden is not just on him to come clean. The President himself has some explaining to do. The President's defense of his actions is deeply cynical, deeply misleading, and deeply troubling. To find out that the President of the United States has violated the basic rights of the American people is chilling. And then to see him publicly embrace his actions and to see so many Members of Congress cheer him on is appalling.

The President has broken the law. He has made it clear that he will continue to do so. But the President is not a king, and the Congress is not a king's court. Our job is not to stand up and cheer when the President breaks the law. Our job is to stand up and demand accountability, stand up and check the power of an out-of-control executive branch.

That is one of the reasons the Framers put us here—to ensure balance between the branches of Government, not to act as a professional cheering section. We need answers, because no one—not the President, not the Attorney General, and not any of their defenders in this body have been able to explain why it is necessary to break the law to defend against terrorism. I think that is because they cannot explain it.

Instead, this administration reacts to anybody who questions this illegal program by saying that those of us who demand the truth and stand up for our rights and freedoms have a pre-9/11 view of the world. In fact, the President has a pre-1776 view of the world. That is the problem. Our Founders lived in dangerous times, and they risked everything for freedom. Patrick Henry said, "Give me liberty or give me death." The President's pre-1776 mentality is hurting America. It is fracturing the foundation on which our country has stood for 230 years.

The President cannot just bypass two branches of Government and obey only those laws he wants to obey, deciding unilaterally which freedoms still apply in the war against terrorism. That is unacceptable and needs to be stopped immediately.

Let's examine some of the President's attempts to defend his actions. His arguments have changed over time because none of them hold up even under casual scrutiny. So he cannot rely on one single explanation. As each argument crumbles beneath him, he moves on to a new one, until that is, too, debunked, and on and on he goes.

In the State of the Union, the President referred to Presidents in American history who cited executive authority to order warrantless surveillance. But of course those past Presidents, as Wilson and Roosevelt, were acting before the Supreme Court decided in 1967 that our communications are protected by the fourth amendment, and before Congress decided in 1978 that the executive branch can no longer unilaterally decide which Americans to wiretap. The Attorney General yesterday was unable to give me one example of a President who, since 1978 when FISA was passed, has authorized warrantless wiretaps outside of FISA.

So that argument is baseless, and it's deeply troubling that the President of the United States would so obviously mislead the Congress and American public. That hardly honors the Founders' idea that the President should address the Congress on the state of our union.

The Foreign Intelligence Surveillance Act was passed in 1978 to create a secret court, made up of judges who develop national security expertise, to issue warrants for surveillance of terrorists and spies. These are the judges from whom the Bush administration has obtained thousands of warrants since 9/11. The administration has almost never had a warrant request rejected by those judges. They have used the FISA Court thousands of times, but at the same time they assert that FISA is an "old law" or "out of date" and they can't comply with it. Clearly, they can and do comply with it except when they don't. Then they just arbitrarily decide to go around these judges, around the law.

The administration has said that it ignored FISA because it takes too long to get a warrant under that law. But we know that in an emergency, where the Attorney General believes that surveillance must begin before a court order can be obtained, FISA permits the wiretap to be executed immediately as long as the Government goes to the court within 72 hours. The Attorney General has complained that the emergency provision does not give him enough flexibility, he has complained that getting a FISA application together or getting the necessary approvals takes too long. But the problems he has cited are bureaucratic barriers that the executive branch put in place and could easily remove if it wanted.

FISA also permits the Attorney General to authorize unlimited warrantless electronic surveillance in the United States during the 15 days following a declaration of war, to allow time to consider any amendments to FISA required by a wartime emergency. That is the time period that Congress specified. Yet the President thinks that he can do this indefinitely.

In the state of the union, the President also argued that Federal courts had approved the use of Presidential authority that he was invoking. But that turned out to be misleading as well. When I asked the Attorney General about this, he could point me to no court—not the Supreme Court or any other court—that has considered whether, after FISA was enacted, the President nonetheless had the authority to bypass it and authorize warrantless wiretaps. Not one court. The administration's effort to find support for what it has done in snippets of other court decisions would be laughable if this issue were not so serious.

The President knows that FISA makes it a crime to wiretap Americans in the United States without a warrant or a court order. Why else would he have assured the public, over and over again, that he was getting warrants before engaging in domestic surveillance?

Here's what the President said on April 20, 2004:

> Now, by the way, any time you hear the United States Government talking about wiretap, it requires—a wiretap requires a court order. Nothing has changed, by the way. When we're talking about chasing down terrorists, we're talking about getting a court order before we do so.

And again, on July 14, 2004: "The Government can't move on wiretaps or roving wiretaps without getting a court order."

The President was understandably eager in these speeches to make it clear that under his administration, law enforcement was using the FISA Court to obtain warrants before wiretapping. That is understandable, since wiretapping Americans on American soil without a warrant is against the law.

And listen to what the President said on June 9, 2005:

> Law enforcement officers need a Federal judge's permission to wiretap a foreign terrorist's phone, a Federal judge's permission to track his calls, or a Federal judge's permission to search his property. Officers must meet strict standards to use any of these tools. And these standards are fully consistent with the Constitution of the U.S.

Now that the public knows about the domestic spying program, he has had to change course. He has looked around for arguments to cloak his actions. And all of them are completely threadbare.

The President has argued that Congress gave him authority to wiretap Americans on U.S. soil without a warrant when it passed the authorization for use of military force after September 11, 2001. Mr. President, that is ridiculous. Members of Congress did not think this resolution gave the President blanket authority to order these warrantless wiretaps. We all know that. Anyone in this body who would tell you otherwise either wasn't here at the time or isn't telling the truth. We authorized the President to use military force in Afghanistan, a necessary and justified response to September 11. We did not authorize him to wiretap American citizens on American soil without going through the process that was set up nearly three decades ago precisely to facilitate the domestic surveillance of terrorists—with the approval of a judge. That is why both Republicans and Democrats have questioned this theory that somehow the Afghanistan resolution permitted this sort of thing.

This particular claim is further undermined by congressional approval of the PATRIOT Act just a few weeks after we passed the authorization for the use of military force. The PATRIOT Act made it easier for law enforcement to conduct surveillance on suspected terrorists and spies, while maintaining FISA's baseline requirement of judicial approval for wiretaps of Americans in the U.S. It is ridiculous to think that Congress would have negotiated and enacted all the changes to FISA in the PATRIOT Act if it thought it had just authorized the President to ignore FISA in the AUMF.

In addition, in the intelligence authorization bill passed in December 2001, we extended the emergency authority in FISA, at the administration's request, from 24 to 72 hours. Why do that if the President has the power to ignore FISA? That makes no sense at all.

The President has also said that his inherent executive power gives him the power to approve this program. But here the President is acting in direct violation of a criminal statute. That means his power is, as Justice Jackson said in the steel seizure cases half a century ago, "at its lowest ebb." A recent letter from a group of law professors and former executive branch officials points out that "every time the Supreme Court has confronted a statute limiting the Commander-in-Chief's authority, it has upheld the statute." The Senate reports issued when FISA was enacted confirm the understanding that FISA overrode any pre-existing inherent authority of the President. As the 1978 Senate Judiciary Committee report stated, FISA "recognizes no inherent power of the president in this area." And "Congress has declared that this statute, not any claimed presidential power, controls." Contrary to what the President told the country in the State of the Union, no court has ever approved warrantless surveillance in violation of FISA.

The President's claims of inherent executive authority, and his assertions that the courts have approved this type of activity, are baseless.

The President has argued that periodic internal executive branch review provides an adequate check on the program. He has even characterized this periodic review as a safeguard for civil liberties. But we don't know what this check involves. And we do know that Congress explicitly rejected this idea of unilateral executive decisionmaking in this area when it passed FISA.

Finally, the President has tried to claim that informing a handful of congressional leaders, the so-called Gang of Eight, somehow excuses breaking the law. Of course, several of these Members said they weren't given the full story. And all of them were prohibited from discussing what they were told. So the fact that they were informed under these extraordinary circumstances does not constitute congressional oversight, and it most certainly does not constitute congressional approval of the program. Indeed, it doesn't even comply with the National Security Act, which requires the entire memberships of the House and Senate Intelligence Committee to be "fully and currently informed of the intelligence activities of the United States."

In addition, we now know that some of these Members expressed concern about the program. The administration ignored their protests. Just last week, one of the eight Members of Congress who has been briefed about the program, Congresswoman JANE HARMAN, ranking member of the House Intelligence Committee, said she sees no reason why the administration cannot accomplish its goals within the law as currently written.

None of the President's arguments explains or excuses his conduct or the NSA's domestic spying program. Not one. It is hard to believe that the President has the audacity to claim that they do. It is a strategy that really hinges on the credibility of the office of the Presidency itself. If you just insist that you didn't break the law, you haven't broken the law. It reminds me of what Richard Nixon said after he had left office: "Well, when the President does it that means that it is not illegal." But that is not how our constitutional democracy works. Making those kinds of arguments is damaging the credibility of the Presidency.

And what's particularly disturbing is how many Members of Congress have responded. They stood up and cheered. They stood up and cheered.

Justice Louis Brandeis once wrote:

> Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

The President's actions are indefensible. Freedom is an enduring principle. It is not something to celebrate in one breath, and ignore the next. Freedom is at the heart of who we are as a Nation, and as a people. We cannot be a beacon of freedom for the world unless we protect our own freedoms here at home.

The President was right about one thing. In his address, he said "We love our freedom, and we will fight to keep it."

Yes, Mr. President. We do love our freedom, and we will fight to keep it. We will fight to defeat the terrorists who threaten the safety and security of our families and loved ones. And we will fight to protect the rights of law-abiding Americans against intrusive Government power.

As the President said, we must always be clear in our principles. So let us be clear. We cherish the great and noble principle of freedom. We will fight to keep it, and we will hold this President and anyone who violates those freedoms accountable for their actions.

In a nation built on freedom, the President is not a king, and no one is above the law.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, there is a compelling need to reform the current asbestos litigation process. This process is not fair to workers, including many who have become ill through exposure to asbestos. There are people who are not impaired who have received compensation, and there are many claimants that have been injured by asbestos exposure who have not received compensation. It is not fair to businesses for a host of reasons. The status quo is not acceptable.

I do have several substantive issues with S. 852, The FAIR Act. I have spent a great deal of time over the past few months working with the sponsors of S. 852, including Senators SPECTER and LEAHY, seeking to make changes that would improve the bill from my perspective.

For instance, I wanted to see more money go to mesothelioma victims who have dependents and to ensure that in a budget neutral manner, the money didn't come from other terminally ill victims. The sponsors of the bill have agreed to support the following language to address my concerns:

> The Administrator may increase awards for Level IX claimants who have dependent children so long as this provision is cost neutral. Such increased awards shall be paid for by decreasing awards for claimants other than Level IX, so long as no award levels are decreased more than 10 percent.

Another issue for me was to protect companies that might be required to contribute to an asbestos trust fund, and have their insurers contribute, but that have no assurance that the company's own claims will be satisfied. The sponsors have agreed to an added criteria which would allow a company to apply for a decreased payment for their annual assessment into the trust to protect again that outcome. That criteria would be:

> When measured against the likely cost of past and potential future claims in the absence of the Act.

A third problem I wanted to see addressed related to companies that should not be required to participate in the asbestos trust fund because they have disposed of all of their known previous claims. The sponsors of the bill have agreed to support the following language to address my concern:

> . . . subject to the discretion of the Administrator, [a company may] be exempt from any payment obligation if such defendant participant establishes with the Administrator that it has satisfied all past claims and that there is no reasonable likelihood in the absence of the Act of any future claims for whose costs the defendant participant might be responsible. . . .

A fourth issue that concerns me is in the area of attorney's fees in both (a) past cases that are moved into the trust fund from the tort system and (b) new administrative claims in the asbestos trust fund. The former situation could be highly unfair and even confiscatory while in the case of the latter the fee is so low as to constitute as a deterrent to both filing future claims and appeals. The sponsors of the bill have agreed to language relative to (b) that reads in part that attorneys will be able to "obtain a reasonable attorney's fee, which shall be calculated by multiplying a reasonable hourly rate by the number of hours reasonably expended on the individual's claim." My concern relative to (a) remains unaddressed.

I have additional concerns about S. 852. I am concerned about the current severability provision in the bill. There are many contentious issues in S. 852 that many observers expect will be litigated including the constitutionality of incorporating existing asbestos trust funds into this one. There are also restrictions on tort cases in this bill, which if triggered by the fund's nonviability will limit the possible venues for filing future asbestos claims. The availability of such restrictions may lead companies to resist payments to the fund, thereby contributing to its nonviability because they obtain restrictions on tort claims in that event. That is not a wise incentive. Therefore, I support a nonseverability clause for certain sections of the bill and the sponsors have indicated a willingness to consider it.

There are other issues that have been raised by a number of colleagues with this bill. Some of those issues include the constitutional issues involved in the of "taking" the existing asbestos trust funds; the lack of a contribution structure for the $46 billion of insurance industry contributions; the special consideration given in this bill to the residents of one community; the lack of an adequate startup provision which would trigger a return to the tort system if the trust fund never gets going and the lack of an appropriate sunset trigger which would also provide for the fund to dissolve if claims go unpaid and allow people to go back to court.

Based on my discussions with the managers, I will support the motion to proceed to S. 852. My future position on the legislation will depend on the content of the bill after it is amended.

Mr. LEAHY. Mr. President, this evening, Senators will finally have the opportunity to vote to consider legislation which has been publicly debated and considered for several years. It is a bipartisan bill that is the product of lengthy and conscientious negotiation. We have held dozens of public hearings and committee markups. It has been an exemplary process.

I see the distinguished Senator from Pennsylvania in the Chamber. He has arranged—I have lost count of the number of meetings where people from across the spectrum, political and otherwise, have had a chance to be heard—businesses, victims, labor, industry, everybody. It has been a great process. But with every day we delay consideration of this bill, victims are dying and more companies are going bankrupt. Both are tragedies for the families and victims, as well as for the workers and retirees and for the families who built these companies.

The time has now come to pass this legislation. Victims have been waiting long enough for a comprehensive national solution. I hope all Senators will support the motion to proceed to this legislation. It has earned the support of many organizations that represent the victims of serious asbestos exposures.

Asbestos disease has tragically weighed heavily on one group in particular—our Nation's war veterans. These brave veterans are unable to receive compensation under our current system, and they have asked Members of Congress—both parties—over and over again for help. The Military Order of the Purple Heart noted in its last letter of support that "the FAIR Act is the only viable solution for sick veterans."

We all speak of our support of veterans, as we should; all Americans should. That should not be partisan. But here is one way to help a class of veterans who are not going to get any help otherwise.

More than 30 organizations representing veterans, as I noted on the floor yesterday, have supported this piece of legislation. But we have also received renewed letters of support from the International Association of Heat and Frost Insulators and Asbestos Workers Union, the International Union of United Automobile, Aerospace and Agricultural Implement Workers, otherwise known as the UAW, and the International Union of Painters and Allied Trades. They represent literally hundreds of thousands of families who have suffered. They support this because, as they say, they are "firmly convinced it would be far superior to the current tort system in compensating the victims of asbestos-related diseases."

It has not been easy getting to this point. It has taken years and years of work. It is not line for line the bill I would have written; it is not line for line the bill the distinguished Senator from Pennsylvania, Mr. SPECTER, would have written. Both of us went in with the idea that we would find a bill that would get the broadest support possible but also a bill that would help as many victims as possible. I believe this does it.

Think of what is going to happen if you are going to have thousands of people who never get help and dozens more companies go bankrupt on top of the 70 that have already gone bankrupt.

Supreme Court Justices as diverse in philosophy as the late Chief Justice William Rehnquist and Justice Ruth Bader Ginsburg have pled, publicly pled with the Congress to come up with legislation to solve this problem. Right now, litigation—many times—helps only those litigators, both defense and plaintiff, and very little help to the companies or the victims.

The problems we are addressing are complex. This bill necessarily reflects these complexities. Drafting was not easy. The compromises we had to make were difficult but necessary to ensure that we created a trust fund that would provide adequate compensation to the thousands of workers who have suffered and continue to suffer the devastating health effects of asbestos.

The tragic history of asbestos use in our country has to come to an end. We Senators first and the other body next have the chance to bring this to an end. The President has said he would sign such legislation if we can pass it. This is not a Democratic or Republican issue; this is an issue for all Americans.

I join with the President, I join with my Republican colleagues, and I join with my Democratic colleagues who have supported this. In fact, under a provision authored by Senator MURRAY of Washington State which we have included, which was accepted during the last Congress by the Judiciary Committee, this bill will ban the maintenance and distribution of asbestos. This whole thing can come to an end so victims can get help.

We have to halt the harm asbestos creates, and we have to ameliorate the harm it has already caused. The industrial and insurer participants in the trust fund will gain the benefits of financial certainty and relief from the stresses of litigation in the tort system, and victims will have a quicker and more efficient path to recovery.

Chairman SPECTER, Senator FEINSTEIN, Senator BAUCUS, and my colleagues from both sides of the aisle on the Judiciary Committee are working hard with me on this bipartisan legislation. Let this go forward today. Let us bring this to a halt. Help us bring surety.

I urge Senators to let us move toward solving this problem by considering our bipartisan bill to at long last help solve the asbestos problem by providing fair compensation to victims of asbestos exposure.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from Vermont, the ranking member on the Judiciary Committee, for his comments. I compliment him on his comments and on his work on the asbestos bill—on his entire career in the U.S. Senate, 31 years, but especially in the past year and 1 month, 13 months, where he and I have been ranking member and chairman of the Judiciary Committee, and the cooperation which we have had. We have had some disagreements, but very few, and when there have been disagreements, they have been on matters of policy as opposed to anything to undercut the collegiality of the work of the Judiciary Committee. I can think of some votes—there are bound to be differences on votes—but I think we have carried the committee a long way with class action, bankruptcy, and moving through the disagreements and filibuster versus the nuclear option on the circuit judges and Chief Justice Roberts and Justice Alito not all agreements but in large measure—and then coming to the asbestos bill, which has been as tough as any legislation I have ever seen.

I made a statement yesterday which may have been a little excessively sweeping, but the asbestos bill is a complicated bill.

The ACTING PRESIDENT pro tempore. Under the previous order, the time between 5:40 and 5:50 is reserved for the Democratic leader, and 5:50 until 6:00 is reserved for the majority.

Mr. SPECTER. Mr. President, I ask unanimous consent that I have the last 10 minutes as the surrogate of the majority leader. I will yield and conclude my comments when my time comes.

Mr. LEAHY. Mr. President, will the distinguished Democratic leader allow me 20 seconds to refer to what the distinguished Senator from Pennsylvania just said?

Mr. President, the distinguished Senator from Pennsylvania is my friend—a friend from the days when we were prosecutors together. I am very touched by what he said. The Judiciary Committee handles some of the most difficult issues there are. I enjoy working with him because of his own ability and because of that friendship.

The ACTING PRESIDENT pro tempore. The Democratic leader.

Mr. REID. Mr. President, will my 10 minutes start running from this time?

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. Mr. President, we have a crisis facing the American people, a crisis which causes the death of 10,000 people each year. In addition to the 10,000 deaths each year, hundreds of thousands of people are suffering from lung conditions that are most debilitating.

The crisis which confronts us is not an asbestos litigation crisis; it is an asbestos-induced disease crisis. We are told by experts that the problem will get worse, not better. It will peak about 10 years from now. Litigation has not caused the deaths, the pain, the suffering, the lost wages, the medical bills; asbestos has caused the deaths and the suffering.

I have said on a number of occasions—I say it today—that of course I would support a fair and equitable piece of legislation, legislation which would favor the victims, not a few very large corporations.

Senators LEAHY and SPECTER have worked very hard on this legislation and on things they do on the Judiciary Committee. I understand that. But hard work doesn't always lead to good legislation.

I have served in Congress 24 years. There may be an occasion when Senator LEAHY and I have voted opposite one another; I just do not remember when that was. We virtually agree on everything we do. So I am sorry that on this piece of legislation we must disagree.

Powerful corporate interests have fought throughout this process to escape responsibility—a paradigm shift from what they should pay to what they are willing to pay. This is not the American way. The bill before us is based on faulty and questionable guesses, not estimates. To make it even worse, little relevant information has been made public.

The legislation before the Senate is unfair to the victims, to the veterans—they would be much better off without this legislation—to the insurance industry, most businesses, the American taxpayer, and, of course, our judicial system. I rise again to express my strong opposition to the asbestos bill before the Senate. As I have just said, it is unfair to victims, veterans, the insurance industry, most businesses, and, of course, the American taxpayers.

I oppose this legislation because it will not buy justice regarding asbestos exposure. It deprives victims of their legal rights and gives them a trust fund that will not work and will not provide adequate compensation. One would have to search long and hard to find a bill, in my opinion, as bad as this.

Asbestos disease kills thousands of Americans every year—10,000 to be exact. The cases of disease and death caused by asbestos exposure are not abstractions. I have received countless letters from victims of asbestos-related diseases and their families. Each shares another story of loss and pain.

All the leading organizations representing asbestos victims oppose this bill—the Committee to Protect Mesothelioma Victims, asbestos disease awareness organizations, the Asbestos Victims Organization. The White Lung Association wrote a letter February 1 to me and to Senator FRIST. It said:

> We do not want this proposed government policy forced upon us. We believe the program will fail to treat victims fairly while

benefitting the very companies that cause the problem.

It was for the sake of these victims that today I introduced a Senate resolution designating April 1 of this year as National Asbestos Awareness Day. Introducing this resolution was one small step in an effort to raise awareness of this dangerous substance and the painful effects that exposure to asbestos has caused throughout the country.

It is my hope that designating another National Asbestos Awareness Day will serve as a reminder that exposure to asbestos remains a very bad problem in this country. Asbestos-induced illnesses continue to kill or disable Americans at alarming rates. Our resolve to adequately protect the rights of these victims must not falter.

One thing we should do for asbestos victims is to defeat the flawed legislation now before the Senate. Approximately 150,000 individual victims of asbestos exposure and their families have petitioned the Senate to communicate their opposition to this legislation. I have a few of the 150,000 names. We have boxes and boxes of these petitions. These petitions say:

We, the undersigned, hereby petition the United States Senate on behalf of the victims of asbestos poisoning.

We are the victims of asbestos poisoning and families and friends of the victims who are opposed to Senate bill 852, the "FAIR ACT."

Although the Bill's Senate sponsors intend to help victims, this bill only helps a few large companies at the expense of the victims of asbestos poisoning and most businesses.

In addition to our opposition, we observe that the bill is also opposed by most insurance companies, numerous businesses, and most labor unions.

The reasons we oppose S. 852 are as follows:

(1) The bill does not provide a reliable mechanism for providing compensation quickly to the victims of asbestos poisoning. If anything, the Bill backtracks on protections already promised by the Senate in an earlier version which passed in the Judiciary Committee with substantial bipartisan support.

(2) If the Trust Fund runs out of money, as predicted by some experts, the Bill does not contain reliable sunset provisions. Victims will be left in limbo.

(3) In many instances, the compensation for victims is far less than victims' actual damages and far less than we currently receive in the judicial system.

(4) The Bill allows companies to renege on settlement commitments and settlement trust amounts already promised and set aside for victims and their families.

(5) The Bill does not have reliable, transparent funding mechanisms. Instead, it sets up a complex system of administrative challenges and court challenges that will allow companies to contest their funding obligations.

(6) Contrary to prior Senate commitments contained in earlier versions of the Bill, this Bill will stop the current system of compensation before an up and running reliable system is established to take its place.

(7) This Bill was written to benefit a group of companies who have spent a fortune lobbying for its passage to the detriment of other companies and insurers who have promised to fight the Bill in the courts. This will result in further delays all to the further detriment of all victims of asbestos poisoning.

Mr. President, there are 150,000 signatures with their names and addresses. I will not ask it be made part of the record, of course.

I will use leader time now. I mentioned yesterday on the Senate floor that there were some businesses that were not being treated fairly. I mentioned them by name, and I will run over a couple of them again: Foster Wheeler Company, an international engineering and construction company with 4,000 U.S. employees, has stated in recent SEC filings the company does not expect to fund any asbestos-related costs from the company's cash flow. Yet as a Tier II defendant participant would be required to pay at least $19.5 million per annum into the trust fund. This requirement, along with the separation of the company from its insurance assets, jeopardizes its long-term financial viability.

The A.W. Chesterton Company, founded in 1884, would also file bankruptcy. They have 2,000 employees.

Hopeman Brothers, in Waynesboro, VA, is still privately owned by the Hopeman family. It has finished the interiors and outfitted ships since it first worked in Sun Shipyard in Chester, PA, in 1916. Hopeman bought significant liability insurance, much of which remains unused today. Stripping Hopeman of its insurance coverage and then imposing a cash-pay obligation will drive the company into bankruptcy.

Okonite Company, founded in 1876, is the only company in America that makes wire. They will be forced to file bankruptcy if this bill passes.

These are only four of hundreds and hundreds of companies that will be forced into bankruptcy.

Each one of the 150,000 signatories on these petitions are a real concern. Each one of the 10,000 Americans who will die from asbestos exposure this year have tragic stories. Each will leave behind a family which will never be whole again. Each one is counting on us in the Senate to preserve their right to obtain compensation for the harm caused to them and their families by asbestos exposure, just as these companies want fairness.

Opposition to the FAIR Act is not limited to individual victims. Many workers have been exposed to asbestos, as I outlined yesterday, and their unions have been fighting to ensure fair treatment for them. Virtually every major union has concluded that this bill does not meet the needs of their workers: The AFL–CIO, the Change to Win Federation, Steelworkers, International Brotherhood of Boilermakers, Laborers International, and on and on.

Beyond unions, most small- and medium-sized businesses oppose this bill, as do the vast majority of insurance companies. They know it will not work.

This bill deprives victims of their legal rights and replaces the tort system with a trust fund that is doomed to failure. Experts who have reviewed the bill conclude that the trust fund will be underfunded and will quickly become insolvent.

This morning, the Bates White Research Firm, a prominent, eminent consulting firm offering services to Fortune 500 companies and government agencies—Dr. Bates developed a computer model of the incidence of asbestos-related diseases. Without going into their resume, I ask unanimous consent it be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

BATES WHITE

Bates White, LLC (Bates White) is a national consulting firm offering services in economics, finance, and business analytics to leading law firms, **FORTUNE** 500 companies, and government agencies.

Their Environmental & Product Liability (EPL) practice offers economic consulting, litigation support, class certification, and liability estimation services. The business is based on the use of analytical tools to help clients understand and quantify potential liabilities. They have extensive experience in asbestos and provide expert testimony in both bankruptcy and coverage litigation, as well as expert opinions with regard to insurance valuation, due diligence evaluations, and financial reporting services. Through the course of this work, Bates White has seen claims data from numerous defendants and insurance companies. The knowledge gained across all of those matters has been invaluable in assessing the financial viability of S. 852.

As part of our work in asbestos-related matters, Bates White has led the development of several highly sophisticated, customized analytical tools that estimate clients' future asbestos liability from personal injury and property damage lawsuits. In the early 1990s, Dr. Charles Bates developed a computer model of the incidence of asbestos-related malignant diseases. Over the years, Bates White has performed ongoing research to improve this model. This state-of-the-art model became the industry standard. More recently, Bates White has pioneered research on the recruitment of non-malignant claimants, and challenged epidemiological-based forecasts of future non-malignant claims.

In addition to research on asbestos matters, Bates White has analyzed the historical U.S. usage of tobacco from 1920 through 2002. This research provides us the smoking history of potential lung cancer patients who could qualify under S. 852.

Mr. REID. They found that the CBO underestimated the number of cancer victims who will likely file claims with the fund. Based on this and other factors, Bates White concluded that the real cost estimate for the trust fund should be double what it now is.

During floor debate this morning, the distinguished senior Senator from Pennsylvania, the chairman of the Judiciary Committee, explained what will happen if the trust fund runs out of money. He said:

> We have within the structure of the bill a vision that the administrator can make a re-evaluation going through certain preconditions so if it looks like we will exceed the $140 billion we can make modifications in medical standards and criteria and stay within the $140 billion.

In other words, if the fund runs short, fewer victims are eligible or those who are eligible will get less money. So there are real consequences to this underfunded trust fund. It will hurt victims. The only alternative is that taxpayers will be left to fund the shortfall.

Even if the trust fund was adequately funded, the claim system established by the FAIR Act is fraught with defects that would prevent many victims from recovering what they deserve.

First, startup provisions are unfair. As soon as the bill is enacted, the ability of asbestos victims to claim compensation in the court system is cut off. There is no better example of this than what happens to veterans. Also, the bankruptcy court trust funds that are now compensating victims will be shut down, depriving victims of needed compensation.

Second, the bill is unfair to victims with pending or settled court cases. Rather than permit asbestos claims to continue in court while the fund is being established, the bill imposes an immediate 2-year stay of nearly all asbestos cases. The bill's language is so broad that a trial about to begin would be stopped and an appellate ruling about to be handed down would be barred.

Third, the sunset process under the legislation leaves too much uncertainty. If the fund fails to operate as promised, instead of allowing victims to return to court, this legislation allows the administrator of the fund to allow or recommend any number of measures he feels important to salvage the program. As Senator SPECTER said this morning, this means that fewer victims may recover.

Fourth, the bill requires some victims to prove that asbestos was a "substantial contributing factor" to their disease, a higher burden than victims must meet in court, where it is sufficient to show that asbestos exposure was a contributing factor, no matter how substantial a factor.

I want to make sure Senator SPECTER has time to complete his statement, so I ask the time for the vote, which is now set for 6 o'clock, not begin at that time so Senator SPECTER is allowed time to finish his statement.

The ACTING PRESIDENT pro tempore. That is the result of the Senator using his leader time.

Mr. REID. I want to make sure the Senator from Pennsylvania understood that.

The whole concept of no-fault trust fund is that it is nonadversarial, but the higher burden of proof creates the very likely potential for endless litigation and a high number of rejected cases.

These are a few of the problems that make the FAIR Act—and again, as I said yesterday, the FAIR Act? We should be used to these Orwellian terms after naming legislation "Leave No Child Behind," "The Clear Skies Initiative," "Healthy Forests," "Budget Deficit Reduction Act," all of which do the opposite of what they say. It is my opinion, to which I am entitled, that the FAIR Act is part of that, again.

I have always favored improvements in the way asbestos victims were compensated. This bill does not accomplish that goal.

We have heard a lost talk about the managers' amendment to this bill. Apparently, the sponsors are telling Senators that we will take care of your concerns in the managers' amendment. The problem with this approach is that no one except the sponsors can know how the pieces of the managers' amendment will fit together. Since the sponsors are trying to satisfy Senators with conflicting concerns, there is every reason to believe that different elements of the managers' amendment will move in different directions.

For example, one Senator may want to expand eligibility under the trust fund for compensating asbestos victims. A different Senator may want to limit the amount of money paid into the trust fund. The first part of the managers' amendment may expand the number of victims, but the second part may limit the amount of money available to all victims. Both Senators may have their language included, but the final result may be completely unworkable and unsatisfactory.

This is not the right way to legislate. These amendments should be offered individually so that all Senators can evaluate them on their individual merits, and after all the amendments are offered and voted on, Members can evaluate the total product when they vote on final passage. Certainly, Members should not commit their support to the final bill until they see how the conflicting pieces to the managers' amendment fit together.

I believe it has been good for the Senate to spend time debating the motion to proceed. We focused attention on what some believe are flaws in the process leading to the Senate consideration of the bill and the flaws of the bill itself. Now we are ready to debate the bill on its merits. I welcome that debate.

I offered to vitiate this vote and begin consideration of amendments to the bill on Thursday. This was rejected. I will now support cloture and encourage Senators to do the same.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I note the Senator from Nevada has spoken for 18 minutes, taking some leader time, and the 10 minutes allocated under the unanimous consent. I ask unanimous consent Senator McCONNELL and I may be accorded the same amount of time.

Mr. REID. No objection.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. That is together, not individually—not 36 minutes?

Mr. McCONNELL. Right.

Mr. REID. No problem.

Mr. SPECTER. Mr. President, when I yielded the floor as 5:40 arrived, I was in the middle of commenting about the work which the distinguished ranking member, Senator LEAHY, and I had done on this bill and the spirit of collegiality and the spirit of bipartisanship which has characterized the work of the Judiciary Committee the past 13 months.

Senator LEAHY and I have worked together as ranking member and as chairman. This bill represents very substantial work and analysis as to how we have gotten there.

When the Senator from Nevada talks about the debate being useful up to the present time, I tabulate three Senators who spoke in opposition to the bill. And a good bit of what they have had to say is in error factually on the merits.

This bill has been subjected to more analysis, more discussions—I was saying before I yielded the floor when time had arrived for the minority leader—than any bill in the history of legislation. I acknowledge that as a very grandiose statement because I do not know all of the legislative bills that have been considered in the history of the legislative process. But I make that assertion based upon what has been done, which I detailed yesterday, with Judge Becker, a senior Federal judge, and I hosting some 36 meetings, attended by 20, 30, 40, sometimes as many as 60 people, and the numerous meetings which Judge Becker has had on a volunteer basis, and the many meetings I have had with individual Senators.

I have talked to many Senators, several dozen Senators, perhaps a majority of the Senators, on an individual basis, either visiting in their offices or on the Senate floor or in the corridors, in order to acquaint Senators with what is going on.

The assertions which have been made simply are not factual. I am pleased to note the Senator from Nevada has stated his intention to vote for cloture and that we are going to be going on to debate the bill on the merits. Yesterday, the Senator from Nevada was more than firm in his opposition to the bill. And I think it fair to say I was at least equally firm in what I had to say by way of response. But there are the votes present without the vote of the Senator from Nevada to invoke cloture and to proceed to a discussion on the merits. When we do proceed to a discussion on the merits, we will have a chance to answer in detail the misunderstandings which have been articulated in the debate so far.

One Senator who spoke in opposition to the bill talked about secrecy, that nobody knew who was going to pay the money. The language—there was a quote—"contained in a secret list known only to the asbestos study group. . . ." "None of the relevant information has ever been made public." Well, factually that is just not correct.

The Judiciary Committee had to issue a subpoena, but we know who is paying how much money. That is a matter that can be looked at by Senators or by their staffs. But it has been retained on a confidential basis because there could be a problem for the companies if these factors were disclosed.

Then another comment made by one of the three Senators who spoke in opposition to the bill, that the "United States Government will be making a commitment to compensate hundreds of thousands of seriously ill asbestos victims. . . ." Well, that is factually just not correct.

This bill is airtight that the Federal Government has no financial obligation, and that if there is an effort to impose a budget point of order, and it is considered on the merits, that it will not impede the movement of this bill forward. The budget point of order will not be sustained because there is no Federal money. Technically, it goes through the Department of Labor, so it is calculated as a Federal expenditure, but there is no Federal money involved.

The Senator from Nevada has gone through a list of objections he has, and as we are now moving to debate—after this evening's vote—the bill on the merits, we will have a chance to explore those in detail.

When the Senator from Nevada talks about Foster Wheeler, illustratively, I personally have met with Foster Wheeler on a number of occasions, as recently as 10 days ago. And we are still seeing if we can accommodate the concerns of Foster Wheeler.

We have gone a long way to see to it that companies will not be adversely affected financially, on exclusion of small business, a matter detailed at some length by Senator FEINSTEIN in her comments on the floor today, and on a hardship fund of some $300 million a year, and by an amendment which we are in the final stages of negotiation to limit the amount of money that companies with lesser gross revenues will have to pay, all of which is directed——

The ACTING PRESIDENT pro tempore. The Senate is not in order. The Senator from Pennsylvania.

The Senate will be in order.

Mr. SPECTER. I am not going to ask for any additional time, Mr. President, because of the interruptions and the disorder—all of which is directed—to finish my sentence—to the companies which sustained financial hardship.

I made a repeated offer, yesterday and today, in speaking about the bill, inviting any Senator who has a constituent who has a problem to come talk to us. We will try to work to a solution of the problem. And you do not have to have a Senator if you are a constituent. If anybody is watching these proceedings on C-SPAN2, come to my office. My staff and I, Senator LEAHY and his staff, and the Judiciary Committee generally, will try to find an accommodation and an answer.

The Senator from Vermont is back on the floor. I am glad he has come back because I wanted to make this comment about the bipartisanship of the Judiciary Committee, what we have accomplished, as a sign for what this body can do.

It is an open secret that the rancor and the partisanship and the bickering is at an all-time high in the Senate—an all-time high. And there is much talk about the good old days when there was comity and there was collegiality in the Senate.

Well, Senator LEAHY and I have restored that to the Judiciary Committee. And we have produced this bipartisan bill on asbestos reform. We do not make any representation that it is a perfect bill or that it is a bill which cannot be improved. We are open for business to improve and change the bill.

But that brings me to a New York Times editorial which I think is of note as to what PAT LEAHY and ARLEN SPECTER have accomplished with our committee and what this body can accomplish. This is what the New York Times had to say. In a complimentary line, they refer to the assiduous effort that PAT LEAHY and ARLEN SPECTER made, and then say: That makes it a 21st-century rarity: a thoughtful bipartisan compromise on a vexing national problem.

I think it is a sad day for the Senate, a very sad day, when it is a 21st century rarity that there is a thoughtful, bipartisan compromise on a vexing national problem.

We have a great many vexing national problems. I believe they can be solved on a bipartisan effort so it does not become a 21st century rarity. I am glad to see that however we have gotten there, that the votes were present by mid-afternoon to shut off this filibuster and that we can now go forward to debate on the merits so the American people can see our analysis of the problems and our proposed solutions and our openness to modifications to produce the best possible bill because the system which we have at the present time is an anathema and a travesty and unworthy of the American judicial system.

I thank the Chair and yield to my distinguished colleague, the assistant majority leader.

The ACTING PRESIDENT pro tempore. The assistant majority leader.

Mr. MCCONNELL. Mr. President, we are about to have the cloture vote, and it is going to take a minute to thank Senator SPECTER and Senator LEAHY for this extraordinary compliment from the New York Times. I do not think it is an experience the Senator from Kentucky has ever had.

This cloture vote is going to be approved. We learned about an hour ago that the Democratic leader has decided to support the cloture vote, and I think that is good. We would prefer to have been on this bill last Friday. Senator SPECTER was here and ready to work, ready to process amendments last Friday. But here we are on Tuesday night.

So let me say I think it is good for the Senate that this cloture is going to be invoked. We are ready to get on the bill. I heard the Democratic leader offer to begin tomorrow. I think that is a good idea. Senator SPECTER will be here in the hopes that amendments will be offered and processed. We are prepared to deal with that tomorrow and through the days until we can reach a point of conclusion.

So, Mr. President, I do not know how much time I have remaining, but so that we may move forward and vote, I am prepared to yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. All time is yielded back.

Under the previous order, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 131, S. 852: A bill to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Bill Frist, Arlen Specter, Jeff Sessions, Pat Roberts, Lamar Alexander, Lisa Murkowski, Johnny Isakson, Richard M. Burr, Wayne Allard, Mitch McConnell, Mike DeWine, George V. Voinovich, Jim Talent, David Vitter, Bob Bennett, Mel Martinez, Ted Stevens.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 852, the Fairness in Asbestos Injury Resolution Act of 2005, shall be brought to a close? The yeas and nays are mandatory under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. The following Senator was necessarily absent: the Senator from Oklahoma (Mr. COBURN).

The PRESIDING OFFICER (Mr. CHAMBLISS). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 98, nays 1. as follows:

[Rollcall Vote No. 12 Leg.]

YEAS—98

Akaka
Alexander
Allard
Allen
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Brownback
Bunning
Burns
Burr
Byrd
Cantwell
Carper
Chafee
Chambliss
Clinton
Cochran
Coleman
Collins
Conrad
Cornyn
Craig
Crapo
Dayton
DeMint
DeWine
Dodd
Dole
Domenici
Dorgan
Durbin
Ensign
Enzi
Feingold
Feinstein
Frist
Graham
Grassley
Gregg
Hagel
Harkin
Hatch
Hutchison
Inouye
Isakson
Jeffords
Johnson
Kennedy
Kerry
Kohl
Kyl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Lott
Lugar
Martinez
McCain
McConnell
Menendez
Mikulski
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Obama
Pryor
Reed
Reid
Roberts
Rockefeller
Salazar
Santorum
Sarbanes
Schumer
Sessions
Shelby
Smith
Snowe
Specter
Stabenow
Stevens
Sununu
Talent
Thomas
Thune
Vitter
Voinovich
Warner
Wyden

NAYS—1

Inhofe

NOT VOTING—1

Coburn

The PRESIDING OFFICER. On this vote, the yeas are 98, the nays are 1. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. LOTT. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LOTT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MARTINEZ). Without objection, it is so ordered.

Mr. NELSON of Florida. Mr. President, although I voted to proceed to the bill I have strong concerns with this legislation.

I am concerned that this bill will take away the rights of asbestos victims to have their day in court while providing no guarantees that they will receive fair and prompt compensation. This bill and its payment structure could bankrupt small businesses, with many of them shouldering a larger financial burden under the bill then they currently do in the court system. Many of these small businesses are not the evildoers here, but due to the payment structure of the bill, they will find themselves shouldering a large portion of the liability.

I support the concept of a nonadversarial process to provide compensation to victims but a process that is fair to all the parties involved. I believe that this bill falls short, and while I voted for cloture I intend to vote against final passage of this bill unless significant changes are made.

THE FUNERAL OF CORETTA SCOTT KING

Mr. FRIST. Mr. President, in a few moments, we will be closing down for the evening. But I did want to comment very briefly upon the wonderful experience that I and nine other of our colleagues had over the course of today as we attended the funeral of Coretta Scott King at the New Birth Missionary Baptist Church, down right just outside of Atlanta.

We had a bipartisan delegation that left early this morning, joined by a House delegation, joined also, as most people know, by the President and the First Lady and three prior Presidents, for what was, indeed, a memorial service in many ways but, in truth, a great celebration for a great woman. She leaves a legacy of leading with grace. Few people have ever had the opportunity of knowing someone like that. That was reflected in many comments over the course of the day at the funeral.

As a wife, as a mother, as a civil rights leader, Mrs. King joins this large pantheon of great Americans whose courage and whose dignity, whose boldness, whose tireless pursuit of social justice transformed not only a generation but the dreams and expectations of generations to follow. Over the course of the statements and having the opportunity to circulate among people who attended, the real global impact of this woman, as I said, leading by grace, focused on freedom and opportunity and social justice, was so apparent.

Born in April of 1927 on a family farm down in Marion, AL, she grew up during the Depression in the segregated South and early on experienced firsthand the unfairness and the racial injustice that had coursed through American life.

As a child—and we learned through many stories over the course of today—she would walk miles every day to attend a poor, one-room elementary school where her neighbors, White neighbors, road the bus in comfort to an all-White school that was close by. She was walking 5 miles a day.

But as Coretta herself would say in later years, before she was a King, she was a Scott, Coretta Scott King. As a Scott growing up in segregated Alabama, her parents taught her strength, taught her boldness, sharing that wisdom with her. It was this strength translated through great dignity over the course of her life that came to define her and to radiate from her from the very beginning and throughout her life.

There was much discussion and reflection on her faith, her inate strength and graciousness, all of which supported her through times, as many of the speakers and presenters today talked about, of extraordinary trials and suffering.

Today, while millions of people around the world watched, there were four U.S. Presidents, I believe there were 13 colleagues—14 Senators, 13 of my colleagues—dozens of Congressmen, clergy, community leaders, thousands of admirers, people from around the world, from South Africa, who spoke today, also celebrating the life and contributions of Coretta Scott King, the first lady of the civil rights movement and, as we heard from South Africa, the first international lady of the civil rights movement.

I think all of us who went, and many people who shared this service on their televisions today, were humbled by her example. You can't help but to be lifted by her spirit. Oprah Winfrey observed yesterday at the Ebenezer Baptist Church in Atlanta—and I did have the opportunity to share one Martin Luther King Day with the King family and with Coretta Scott King; I believe it was 3 years ago, at the Ebenezer Baptist Church—that the great Reverend Martin Luther King, Jr., often preached that Mrs. King, "leaves us all a better America than the America of her childhood."

She leaves behind a tremendous legacy and a great challenge to all of us; that is, to lead our lives—and very much the thematic today was a real celebration but what are we all going to be doing tomorrow? Are all our thoughts going to be similar to what her thoughts were the day after her husband was assassinated, that bold decision to go up to Memphis and to return there 3 days later to be with her people? That as we look ahead, how do we translate all this so that we all look to our own lives to be led with courage and with grace and with the boldness and dignity that she has shown, and to realize the dream to which she and her husband devoted their lives: that one day, one day soon, in their words, "this Nation will rise up and live out the true meaning of its creed"—"that all men are," indeed "created equal."

ASBESTOS

Mr. FRIST. Mr. President, we had a very important vote today on asbestos, and we will be proceeding to that bill tomorrow. It is a bill that I feel passionately about, a bill—as I shared with my colleagues who were with me earlier today in Atlanta at the funeral—that reflects, to me, the very best of what this body should be reflecting; that is, compassion for those victims who today are not being compensated, who suffer from asbestos exposure with mesothelioma, with lung cancer, with asbestosis; who today are not getting taken care of. In a sense, they are not getting appropriate compensation, just compensation, either in terms of time in which the decisions are made or in the amount of resources that are to be directed to them.

So now is the time for us to address this important issue. It is a jobs issue. We talk about 150,000 people who have lost their jobs. We talk about the 77 companies that have gone bankrupt—not as companies but as employers. And when they go bankrupt, thousands and thousands of people lose their pensions and the jobs are lost. Now is our opportunity.

Just yesterday, I know there were a lot of statements made by those on the other side of the aisle that we should stop this bill; it is a bad bill; we should not be addressing it and using postponing procedural moves and delay. But we just can't delay anymore.

I am delighted with the outcome of the vote today which shows that this body is ready to take up this important issue. We will be going to that issue tomorrow, and I look forward to addressing, through debate and amendments, an issue that will have a huge impact on people's lives both right now and well into the future.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

HONORING OUR ARMED FORCES

DUSTIN L. KENDALL

Mrs. LINCOLN. Mr. President, I rise today to honor a young man from Arkansas who recently lost his life while heroically serving our Nation in uniform. SPC Dustin Kendall will be remembered by those who knew him as a charming and charismatic young man, who was beloved by his friends and family and had a special gift for bringing smiles to the faces of everyone he met.

Growing up with a brother and four sisters, Specialist Kendall spent his childhood as many children do: playing sports, causing mischief, and enjoying the company of his family and friends. As the son of missionaries, he spent his childhood in a variety of places and wherever he ended up, his outgoing and friendly nature was sure to follow. These qualities allowed him to make friends quickly and adapt to new surroundings, and that was certainly the case when his family moved to Bryant, an Arkansas town just south of Little Rock, in 2002. In Bryant, Specialist Kendall worked at a local restaurant, where he became a favorite of the regular customers, while he finished his schooling. Later, when his parents moved to Europe to continue their missionary work, he stayed in Arkansas to continue classes at the University of Central Arkansas in nearby Conway. At UCA, he studied business but was considering following one of his passions and pursuing a career in golf, possibly in golf-course design.

As a student, Specialist Kendall joined the U.S. Army Reserve for primarily financial reasons but, over time, came to enjoy his military life and was ultimately considering a career in the Army. Upon signing up for active duty last summer, he was stationed at Fort Carson, CO, before being deployed with his unit to Iraq in November of 2005. In Iraq, Specialist Kendall served with the 68th Armor Regiment of the 3rd Heavy Brigade Combat Team, where he served with distinction, most recently as a bodyguard for an Army colonel. Tragically, he was killed on January 15 in Baqouba, Iraq, when his military humvee was accidentally struck by an American Abrams tank. He was 21 years old.

A memorial service was held for Specialist Kendall on January 21, in Summerville, SC. Many of his friends and his family gathered to remember the charming young man with the infectious smile and to honor the brave soldier who had given his life in the fight for freedom. Although words cannot convey the sorrow felt by his loved ones, I hope they may find some solace remembering the way he lived his life and knowing that he touched the lives of so many others. My thoughts and prayers go out to his parents, Brandi Lee and Penelope Jean, his brother and his sisters, and to all those who knew and loved him. His time with us was far too short but his spirit will live on in us forever.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

In February, 2004 in Durham, NC, Sean Ethan Owen, a 23-year-old gay man, was shot to death. According to police, three men wanted to steal a car and targeted Owen on a gay chat line. They then coaxed Owen to meet them for a date, then beat him, shot him, and threw him into the Eno River.

Matthew Lawrence Taylor, Shelton Deangelo Epps, and Derrick Arness Maiden beat their victim before attempting to rob him of anything. According to pathologists, Owen probably died relatively slowly by drowning in the river.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

POSTAL REFORM

Mr. BOND. Mr. President, I rise to engage the chairman of the Homeland Security and Governmental Affairs Committee in a colloquy regarding a provision contained within the manager's amendment to S. 662, the Postal Accountability and Enhancement Act.

The manager's amendment offered by Senator COLLINS changes the language of section 3622 concerning rate and service complaints that are brought to the Postal Regulatory Commission. I ask the Senator to explain the purpose and intent of this change. I particularly want to be sure that this amendment to the bill is not intended to, and does not deprive the Postal Regulatory Commission of its power to consider complaints relating to rates and the provision of postal services.

Ms. COLLINS. I thank the gentleman from Missouri. He is correct. The amendment I propose to section 3622 does not and is not intended to preclude any interested party from securing a hearing before the Postal Regulatory Commission if it believes that the rates being charged or the manner in which services being provided to that mailer or mailer group violates the act. It is my hope that in conference that we can work to assure that the Postal Regulatory Commission does not become embroiled in attempts to resolve disputes as to internal affairs or purely operational decisions of the Postal Service. This provision is intended to protect the rights of the mailing public against the potential for monopoly abuse or other unjust or unfair conduct by the Postal Service in terms of rates charged or the nature of service provided.

Mr. BOND. I thank the chairman.

VOTE EXPLANATION

Mr. INHOFE. Mr. President, on February 2, 2006, I was absent for the rollcall vote on the motion to waive the Congressional Budget Act on Conrad amendment No. 2729 to Senate amendment 2702 to H.R. 4297. Tax Relief Extension Reconciliation Act of 2005. My absence was due to a previously scheduled speaking engagement at the Africa Dinner in conjunction with the National Prayer Breakfast. Had I been present, I would have voted nay on the motion to waive. Additionally, I would like to note that this absence did not affect the final outcome of the vote.

ADDITIONAL STATEMENTS

TRIBUTE TO WILLIAM "BILL" TALLMAN

• Mr. THUNE. Mr. President, today I rise to honor William "Bill" Tallman. Bill was the meteorologist in charge at the Aberdeen office of the National Weather Service. At the time of his death, Bill was on a voluntary, temporary assignment with the Federal Emergency Management Agency helping with the relief efforts in the gulf coast region that was devastated by hurricanes this last season.

Bill was successful in many endeavors. While in Aberdeen he transitioned a small office to a large weather forecasting site responsible for providing severe weather warnings to 28 counties. One of Bill's most notable accomplishments was founding the "Women in Science" conference. This conference introduces high-school aged girls to the many exciting career opportunities available in the science field. Bill started this conference in 2002 with only one class held in Aberdeen. This year the conference will be held in five different locations around the State of South Dakota.

Bill Tallman was a retired Air Force major, having served 20 years in the Air Force as a meteorologist. Bill also taught high school math before enlisting in the service. He is survived by his wife Julie; two children, Jeff and Sarah; four grandchildren; his mother, three brothers, and two sisters. Today I rise with Bill Tallman's friends and family in remembering his selfless dedication and service to those who had the pleasure to meet him and to the United States of America.•

CONGRATULATIONS TO MR. CRAIG WILLIAMS

• Mr. BUNNING. Mr. President. I would like to congratulate Mr. Craig Williams, recipient of the Richmond Chamber of Commerce 2006 Community Service Award. Mr. Williams, the executive director of the Kentucky Environmental Foundation and the Chemical Weapons Working Group, has dedicated over two decades of service to the chemical demilitarization project at Kentucky's Bluegrass Army Depot. The continued progress of this project reflects Mr. William's tremendous commitment to protecting the health and safety of the public, the depot workers, and the local environment.

Mr. William's has engineered a program which benefits the entire community by fostering public/private partnerships between environmental and business interests in order to create jobs and clean up the environment. With these efforts, Mr. Williams has demonstrated a real commitment to the improvement of Central Kentucky.

I would like to take this opportunity to thank Mr. Craig Williams for his service to the Kentucky Environmental Foundation and the Chemical Weapons Working Group. Kentucky is lucky to have had such a dedicated community member.•

MESSGE FROM THE HOUSE

ENROLLED BILL SIGNED

At 4:39 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 1932. An act to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95).

The enrolled bill was signed subsequently by the President pro tempore (Mr. STEVENS).

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, February 7, 2006, she had presented to the President of the United States the following enrolled bill:

S. 1932. An act to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (R. Con. Res. 95).

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5586. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Air Quality Implementation Plans; Maine; Nitrogen Oxides Exemption Request for Northern Maine" (FRL No. 8027-5) received on February 3, 2006; to the Committee on Environment and Public Works.

EC–5587. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; Wisconsin; General and Registration Permit Programs" (FRL No. 8020-1) received on February 3, 2006; to the Committee on Environment and Public Works.

EC–5588. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Final Rule Making Findings of Failure to Submit Required State Implementation Plans for Phase II of the NO_x SIP Call" (FRL No. 8028–8) received on February 3, 2006; to the Committee on Environment and Public Works.

EC–5589. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Interim Final Determination to Stay and/or Defer Sanctions, Yolo-Solano Air Quality Management District" (FRL No. 8024-9) received on February 3, 2006; to the Committee on Environment and Public Works.

EC–5590. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List" (FRL No. 8028–9) received on February 3, 2006; to the Committee on Environment and Public Works.

EC–5591. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Protection of Stratospheric Ozone: The 2006 Critical Use Exemption from the Phaseout of Methyl Bromide" ((RIN2060–AN18)(FRL No. 8028–2)) received on February 3, 2006; to the Committee on Environment and Public Works.

EC–5592. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Protections for Subjects in Human Research" ((RIN2070–AD57)(FRL No. 7759–8)) received on February 3, 2006; to the Committee on Environment and Public Works.

EC–5593. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District, Yolo-Solano Air Quality Management District" (FRL No. 8025–2) received on February 3, 2006; to the Committee on Environment and Public Works.

EC–5594. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Imazethapyr; Pesticide Tolerance" (FRL No. 7755–8) received on February 3, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5595. A communication from the Under Secretary of Defense for Personnel and Readiness, transmitting, a report on the approved retirement of Vice Admiral David L. Brewer III. United States Navy, and his advancement to the grade of vice admiral on the retired list; to the Committee on Armed Services.

EC–5596. A communication from the Commissioner, Social Security Administration, transmitting, pursuant to law, the Administration's new Agency Strategic Plan (ASP) covering the period Fiscal Year 2006 through Fiscal Year 2011; to the Committee on Finance.

EC–5597. A communication from the Senior Vice President, Congressional Affairs, Export-Import Bank of the United States, transmitting, pursuant to law, the Bank's 2005 Sub-Saharan Africa Report; to the Committee on Banking, Housing, and Urban Affairs.

EC–5598. A communication from the General Counsel, National Credit Union Administration, transmitting, pursuant to law, the report of a rule entitled "Member Business Loans" (12 CFR Part 723) received on February 3, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5599. A communication from the Director, National Institute of Standards and Technology, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Summer Undergraduate Research Fellowships (SURF) Gaithersburg and Boulder Programs: Availability of Funds" (RIN0693–ZA66) received on February 3, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5600. A communication from the Chairman, Federal Energy Regulatory Commission, transmitting, pursuant to law, a report describing the progress made in licensing and constructing the Alaska natural gas pipeline and describing any issue impeding that progress; to the Committee on Energy and Natural Resources.

EC–5601. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the Office of Personnel Management's Federal Equal Opportunity Recruitment Program Report for Fiscal Year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5602. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–249, "Brentwood Retail Center Real Property Tax Exemption Act of 2006"; to the Committee on Homeland Security and Governmental Affairs.

EC–5603. A communication from the Chief Financial Officer, Department of Energy, transmitting, pursuant to law, the report of a delay in the issuance of a report entitled "Report on Carryover Balances"; to the Committee on Energy and Natural Resources.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. SCHUMER:

S. 2248. A bill to establish the Math and Science Teaching Corps; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SANTORUM:

S. 2249. A bill to eliminate the requirement that States collect Social Security numbers from applicants for recreational licenses; to the Committee on Finance.

By Mr. GRASSLEY (for himself and Mr. HARKIN):

S. 2250. A bill to award a Congressional Gold Medal to Dr. Norman E. Borlaug; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. WYDEN:

S. 2251. A bill to amend the Energy Policy Act of 2005 to repeal the ultra-deepwater and unconventional onshore natural gas and other petroleum research and development program; to the Committee on Energy and Natural Resources.

By Mr. ENZI (for himself and Mr. THOMAS):

S. 2252. A bill to designate the National Museum of Wildlife Art, located at 2820 Rungius Road, Jackson, Wyoming, as the National Museum of Wildlife Art of the United States; to the Committee on Energy and Natural Resources.

By Mr. DOMENICI (for himself, Mr. BINGAMAN, Mr. TALENT, and Mr. DORGAN):

S. 2253. A bill to require the Secretary of the Interior to offer the 181 Area of the Gulf of Mexico for oil and gas leasing; to the Committee on Energy and Natural Resources.

By Mr. DOMENICI:

S. 2254. A bill to authorize the Secretary of the Army to carry out restoration projects along the Middle Rio Grande; to the Committee on Environment and Public Works.

By Mr. STEVENS (for himself, Mr. INOUYE, Mr. ROBERTS, Mr. REED, and Mr. BROWNBACK):

S.J. Res. 28. A joint resolution approving the location of the commemorative work in the District of Columbia honoring former President Dwight D. Eisenhower; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SANTORUM (for himself and Mr. SPECTER):

S. Res. 367. A resolution congratulating the Pittsburgh Steelers for their victory in Super Bowl XL; considered and agreed to.

By Mr. REID:

S. Res. 368. A resolution to designate April 1, 2006, as "National Asbestos Awareness Day."; to the Committee on the Judiciary.

By Ms. STABENOW (for herself, Mr. COLEMAN, Mr. COCHRAN, and Mr. FEINGOLD):

S. Res. 369. A resolution congratulating the American Dental Association for sponsoring the 4th annual "Give Kids a Smile" program, which emphasizes the need to improve access to dental care for children, and thanking dentists for volunteering their time to help provide needed dental care; considered and agreed to.

ADDITIONAL COSPONSORS

S. 366

At the request of Mr. GREGG, the names of the Senator from Indiana (Mr. LUGAR) and the Senator from Missouri (Mr. TALENT) were added as cosponsors of S. 366, a bill to improve women's access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the delivery of obstetrical and gynecological services.

S. 381

At the request of Mr. SMITH, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 381, a bill to amend the Internal Revenue Code of 1986 to encourage guaranteed lifetime income payments from annuities and similar payments of life insurance proceeds at dates later than death by excluding from income a portion of such payments.

S. 828

At the request of Mr. HARKIN, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 828, a bill to enhance and further research into paralysis and to improve rehabilitation and the quality of life for persons living with paralysis and other physical disabilities, and for other purposes.

S. 908

At the request of Mr. MCCONNELL, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 908, a bill to allow Congress, State legislatures, and regulatory agencies to determine appropriate laws, rules, and regulations to address the problems of weight gain, obesity, and health conditions associated with weight gain or obesity.

S. 914

At the request of Mr. ALLARD, the names of the Senator from Hawaii (Mr. INOUYE) and the Senator from Ohio (Mr. DEWINE) were added as cosponsors of S. 914, a bill to amend the Public Health Service Act to establish a competitive grant program to build capacity in veterinary medical education and expand the workforce of veterinarians engaged in public health practice and biomedical research.

S. 1112

At the request of Mr. GRASSLEY, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 1112, a bill to make permanent the enhanced educational savings provisions for qualified tuition programs enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001.

S. 1116

At the request of Mrs. CLINTON, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 1116, a bill to amend the Older Americans Act of 1965 to provide for mental health screening and treatment services, to amend the Public Health Service Act to provide for integration of mental health services and mental health treatment outreach teams, and for other purposes.

S. 1479

At the request of Mr. DODD, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 1479, a bill to provide for the expansion of Federal efforts concerning the prevention, education, treatment, and research activities related to Lyme and other tick-borne diseases, including the establishment of a Tick-Borne Diseases Advisory Committee.

S. 1607

At the request of Mr. LAUTENBERG, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1607, a bill to amend section 10501 of title 49, United States Code, to exclude solid waste disposal from the jurisdiction of the Surface Transportation Board.

S. 2039

At the request of Mr. DURBIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2039, a bill to provide for loan repayment for prosecutors and public defenders.

S. 2115

At the request of Ms. STABENOW, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 2115, a bill to amend the Public Health Service Act to improve provisions relating to Parkinson's disease research.

S. 2134

At the request of Mr. SMITH, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 2134, a bill to strengthen existing programs to assist manufacturing innovation and education, to expand outreach programs for small and medium-sized manufacturers, and for other purposes.

S. 2178

At the request of Mr. SCHUMER, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 2178, a bill to make the stealing and selling of telephone records a criminal offense.

S. 2201

At the request of Mr. OBAMA, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from New Jersey (Mr. MENENDEZ) were added as cosponsors of S. 2201, a bill to amend title 49, United States Code, to modify the mediation and implementation requirements of section 40122 regarding changes in the Federal Aviation Administration personnel management system, and for other purposes.

S. 2231

At the request of Mr. BYRD, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 2231, a bill to direct the Secretary of Labor to prescribe additional coal mine safety standards, to require additional penalties for habitual violators, and for other purposes.

S. 2235

At the request of Mr. SCHUMER, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2235, a bill to posthumously award a congressional gold medal to Constance Baker Motley.

S. CON. RES. 78

At the request of Ms. COLLINS, her name was added as a cosponsor of S. Con. Res. 78, a concurrent resolution condemning the Government of Iran for violating its international nuclear nonproliferation obligations and expressing support for efforts to report Iran to the United Nations Security Counsel.

S. RES. 180

At the request of Mr. SCHUMER, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. Res. 180, a resolution supporting the goals and ideals of a National Epidermolysis Bullosa Awareness Week to raise public awareness and understanding of the disease and to foster understanding of the impact of the disease on patients and their families.

S. RES. 313

At the request of Ms. CANTWELL, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. Res. 313, a resolution expressing the sense of the Senate that a National Methamphetamine Prevention Week should be established to increase awareness of methamphetamine and to educate the public on ways to help prevent the use of that damaging narcotic.

S. RES. 365

At the request of Mr. HAGEL, his name was added as a cosponsor of S. Res. 365, a resolution to provide a 60 vote point of order against out-of-scope material in conference reports and open the process of earmarks in the Senate.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SANTORUM:

S. 2249. A bill to eliminate the requirement that States collect Social Security numbers from applicants for recreational licenses; to the Committee on Finance.

Mr. SANTORUM. Mr. President, I rise to introduce the "Sportsmen's Privacy Protection Act" to address a number or privacy concerns I have heard from my constituents. When I worked with my colleagues to pass the 1996 welfare reform law, we made sure that we created a system to hold parents accountable for supporting their children. A provision included in that law obligated States to implement new requirements to encourage payment of child support that cross-referenced Social Security Numbers of applicants for drivers' licenses, professional licenses, occupational licenses and recreational licenses. States that failed to implement these requirements would have faced the loss of Federal welfare funding.

Under current state law, Pennsylvania is required to revoke or deny recreational licenses, including hunting and fishing licenses of parents who are behind on child support payments. As a result, any individual that applies or renews a driver's, occupational or recreational license must include their Social Security Number on their application form. And it is the application that is the problem. In Pennsylvania and many other States, the drivers', professional and occupational records are automated or computerized, while the recreational licenses remain in a paper book often with multiple entries on a page. In my view, there are significant privacy concerns to continuing this provision as it relates to recreational licenses such as hunting and fishing.

In preparing this bill we asked the Congressional Research Service, CRS, about the effectiveness of this provision. CRS spoke with the Pennsylvania Child Support Program, PACSP, regarding the effectiveness of retracting or denying individuals hunting and fishing licensees. CRS indicated to my staff that there have been very few instances where individuals have been denied hunting and fishing licenses for falling behind in child support payments. In the overwhelming majority of the instances where they have been denied, the custodial parent will tip-off PACSP of the non-custodial parent's interest in obtaining a hunting and fishing license. PACSP can then notify the PA Hunting and Gaming Commission to deny the non-custodial parent a license.

I have heard from a lot of hunters about their legitimate concerns in giving their Social Security Number when applying for a hunting license. This bill will repeal the Federal mandate that requires States to collect Social Security Numbers for recreational licenses. The requirement for drivers', professional and occupational licenses would remain in place. My home State colleague, Representative English, has introduced a companion bill in the House of Representatives. I urge my colleagues to consider cosponsoring this legislation that restores the privacy rights of recreational hunters and fisherman, while maintaining an effective system of child support enforcement.

By Mr. GRASSLEY (for himself and Mr. HARKIN):

S. 2250. A bill to award a congressional gold medal to Dr. Norman E. Borlaug; to the Committee on Banking, Housing, and Urban Affairs.

Mr. GRASSLEY. Mr. President, I am calling upon Congress to honor Dr. Norman E. Borlaug, the man of whom it is often said "has saved more lives than any other person who has ever lived," with the Congressional Gold Medal.

Dr. Borlaug is commonly known in the agricultural world and beyond as the father of the Green Revolution. His accomplishments in terms of bringing radical change to world agriculture and uplifting humanity are without parallel.

Named by TIME Magazine as one of the 100 most influential minds of the

20th Century. Norman E. Borlaug is one of the great stories of our time. Norm, as he is known to all who work with him, was born in 1914 to Norwegian-American parents outside the town of Cresco in northeast Iowa near the Iowa/Minnesota border. His boyhood was spent on a Norman Rockwellesque farm and in a one-room schoolhouse. Eventually Norm found his way to the University of Minnesota where he became a star in Big Ten Wrestling and earned a Ph.D. in Plant Pathology.

Following World War II, he spent 20 years working in the poorest areas of rural Mexico. It was there that Dr. Borlaug made his breakthrough achievement in developing a strand of wheat that could exponentially increase yields while actively resisting disease.

With the strong support of the governments involved, Dr. Borlaug's Green Revolution uplifted hundreds of thousands of the rural poor in Mexico and saved hundreds of millions from famine and outright starvation in India and Pakistan. His approach to wheat production next spread throughout the Middle East and was then adapted to rice growing, increasing the number of lives saved to more than one billion people.

In 1970 Norman E. Borlaug was awarded the Nobel Peace Prize, the only person working in agriculture to ever be so honored, for a lifetime of work to feed a hungry world. Since then, he has received numerous honors and awards including the Presidential Medal of Freedom, The National Academy of Sciences' highest honor—the Public Service Medal, and the Rotary International Award for World Understanding and Peace.

At age 91, Dr. Borlaug continues to alleviate poverty and malnutrition. He currently serves as president of Sasakawa Global 2000 Africa Project, which seeks to extend the benefits of agricultural development to the 800 million people still mired in poverty and malnutrition in Sub-Saharan Africa.

Finally, Dr. Borlaug continues as Chairman of the Council of Advisors for the World Food Prize, an organization he created in 1986 to be the "Nobel Prize for Food and Agriculture".

The World Food Prize presents $250,000 award each October at an international ceremony in Des Moines, IA, to the Laureate who has made an exceptional achievement similar to Dr. Borlaug's breakthrough forty years ago. Beyond recognizing these people for their personal accomplishments, Borlaug saw the World Food Prize as a means of establishing role models who would inspire others.

In the 20 years of its existence, the World Food Prize has honored Laureates from Bangladesh, India, China, Mexico, Denmark, Sierra Leone, Switzerland, the United Kingdom and the United States.

While Dr. Borlaug was born in Iowa, he is truly a citizen of all of America and, indeed, of all the world. The State of Minnesota has enacted a special day of recognition in his honor; He continues as a teacher, serving as a Distinguished Professor at Texas A&M University; and he has received honorary degrees from colleges and universities in virtually every state of the union.

Reflecting this fact, a year ago the U.S. Senate passed a resolution designating October 16 as World Food Prize Day in America in honor of Dr. Borlaug. Beyond that, his name is widely recognized in Mexico, India, Pakistan and the Middle East reflecting his great humanitarian achievements in those countries. And he continues to be honored throughout South Asia and Africa, for his ongoing efforts to expand the benefits of the Green Revolution to the hundreds of millions of people still suffering from chronic hunger and malnutrition.

Dr. Borlaug's achievements are in keeping with the recent presentation of Congressional Gold Medals.

For over a half century, the scientific and humanitarian achievements of Dr. Norman E. Borlaug have kept starvation at bay for millions of people in third world countries. Through the passage of this legislation, the United States Senate can recognize the humanitarian contributions Dr. Borlaug has made to the entire world. The man who has saved more lives than any other person who has ever lived certainly deserves the highest honor the Congress can bestow.

As the only working farmer in the U.S. Senate, I am proud and honored to introduce this important bill, and I call upon my colleagues to support this noble legislation. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2250

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Congressional Tribute to Dr. Norman E. Borlaug Act of 2006".

SEC. 2. FINDINGS.

Congress finds as follows:

(1) Dr. Norman E. Borlaug, was born in Iowa where he grew up on a family farm, and received his primary and secondary education.

(2) Dr. Borlaug attended the University of Minnesota where he received his B.A. and Ph.D. degrees and was also a star NCAA wrestler.

(3) For the past 20 years, Dr. Borlaug has lived in Texas where he is a member of the faculty of Texas A&M University.

(4) Dr. Borlaug also serves as President of the Sasakawa Africa Association.

(5) Dr. Borlaug's accomplishments in terms of bringing radical change to world agriculture and uplifting humanity are without parallel.

(6) In the immediate aftermath of World War II, Dr. Borlaug spent 20 years working in the poorest areas of rural Mexico. It was there that Dr. Borlaug made his breakthrough achievement in developing a strand of wheat that could exponentially increase yields while actively resisting disease.

(7) With the active support of the governments involved, Dr. Borlaug's "green revolution" uplifted hundreds of thousands of the rural poor in Mexico and saved hundreds of millions from famine and outright starvation in India and Pakistan.

(8) Dr. Borlaug's approach to wheat production next spread throughout the Middle East. Soon thereafter his approach was adapted to rice growing, increasing the number of lives Dr. Borlaug has saved to more than a billion people.

(9) In 1970, Dr. Borlaug received the Nobel Prize, the only person working in agriculture to ever be so honored. Since then he has received numerous honors and awards including the Presidential Medal of Freedom, the Public Service Medal, the National Academy of Sciences' highest honor, and the Rotary International Award for World Understanding and Peace.

(10) At age 91, Dr. Borlaug continues to work to alleviate poverty and malnutrition. He currently serves as president of Sasakawa Global 2000 Africa Project, which seeks to extend the benefits of agricultural development to the 800,000,000 people still mired in poverty and malnutrition in sub-Saharan Africa.

(11) Dr. Borlaug continues to serve as Chairman of the Council of Advisors of the World Food Prize, an organization he created in 1986 to be the "Nobel Prize for Food and Agriculture" and which presents a $250,000 prize each October at a Ceremony in Des Moines, Iowa, to the Laureate who has made an exceptional achievement similar to Dr. Borlaug's breakthrough 40 years ago. In the almost 20 years of its existence, the World Food Prize has honored Laureates from Bangladesh, India, China, Mexico, Denmark, Sierra Leone, Switzerland, the United Kingdom, and the United States.

(12) Dr. Borlaug has saved more lives than any other person who has ever lived, and likely has saved more lives in the Islamic world than any other human being in history.

(13) Due to a lifetime of work that has led to the saving and preservation of an untold amount of lives, Dr. Norman E. Borlaug is deserving of America's highest civilian award: the congressional gold medal.

SEC. 3. CONGRESSIONAL GOLD MEDAL.

(a) PRESENTATION AUTHORIZED.—The President Pro Tempore of the Senate and the Speaker of the House of Representatives are authorized to make appropriate arrangements for the presentation, on behalf of Congress, of a gold medal of appropriate design, to Dr. Norman E. Borlaug, in recognition of his enduring contributions to the United States and the world.

(b) DESIGN AND STRIKING.—For the purpose of the presentation referred to in subsection (a), the Secretary of the Treasury (in this Act referred to as the "Secretary") shall strike a gold medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

SEC. 4. DUPLICATE MEDALS.

Under such regulations as the Secretary may prescribe, the Secretary may strike and sell duplicates in bronze of the gold medal struck under section 3 at a price sufficient to cover the cost thereof, including labor, materials, dies, use of machinery, and overhead expenses, and the cost of the gold medal.

SEC. 5. STATUS AS NATIONAL MEDALS.

(a) NATIONAL MEDAL.—The medal struck under this Act is a national medal for purposes of chapter 51 of title 31, United States Code.

(b) NUMISMATIC ITEMS.—For purposes of section 5134 of title 31, United States Code, all duplicate medals struck under this Act shall be considered to be numismatic items.

SEC. 6. AUTHORITY TO USE FUND AMOUNTS; PROCEEDS OF SALE.

(a) AUTHORITY TO USE FUND AMOUNTS.—There are authorized to be charged against the United States Mint Public Enterprise Fund, such sums as may be necessary to pay for the cost of the medals struck under this Act.

(b) PROCEEDS OF SALE.—Amounts received from the sale of duplicate bronze medals under section 4 shall be deposited in the United States Mint Public Enterprise Fund.

By Mr. ENZI (for himself and Mr. THOMAS):

S. 2252. A bill to designate the National Museum of Wildlife Art, located at 2820 Rungius Road, Jackson, Wyoming, as the National Museum of Wildlife of the United States; to the Committee on Energy and Natural Resources.

Mr. ENZI. Mr. President, I am privileged to introduce a bill today that provides a national designation to the National Museum of Wildlife Art in Jackson, WY. As it should, a national designation signifies something unique that belongs to all the people of our Nation. Just as President Theodore Roosevelt recognized the uniqueness of Devils Tower in Wyoming when he proclaimed it to be the first national monument, my bill recognizes the uniqueness of the National Museum of Wildlife Art in Jackson, WY. Wildlife museums are not unusual in the United States. Art museums are not unusual in the United States. This museum, however, sets itself apart from all the others as it focuses on wildlife art. This interdisciplinary approach fosters education as the museum uses art to teach people about wildlife and encourages wildlife lovers to explore art. The museum's educational focus is clear in their motto "bringing people, wildlife and fine art together."

The person responsible for bringing National Museum of Wildlife Art to my attention is Margaret, Maggie, Webster Scarlett. Given her involvement and accomplishments in the museum world, Maggie knows a worthy museum when she sees it. In 2002, the Senate confirmed Maggie as a member of the National Museum and Library Services Board. This 24-member advisory body includes 20 Presidentially appointed and Senate-confirmed members of the general public who have demonstrated expertise in, or commitment to, library or museum services. She also is currently a member and past president of the board of trustees of the National Museum of Wildlife Art.

The National Museum of Wildlife Art was founded in 1987 with a private gift of a collection of art and is accredited with the American Association of Museums. The National Museum of Wildlife Art features a collection of over 2,000 pieces of art portraying wildlife. Dating from 2000 B.C. to the present, the collection chronicles much of the history of wildlife in art, focusing primarily on European and American painting and sculpture. The collection of American art from the 19th and 20th centuries is particularly strong, recording European exploration of the American West. Many of these works predate photography, making them vital representations of the frontier era in the history of the United States.

Using the collection as a base, the central themes to the museum's programming are connections between people, wildlife, and fine art. Even before this designation, people from across the United States had discovered the National Museum of Wildlife Art. Since its inception, it has become an American West destination attraction with an annual attendance of 92,000 visitors from all over the world and an award-winning Web site that receives more than 10,000 visits per week.

These visitors find wildlife on the walls of the museum but also outside of its doors. The National Museum of Wildlife Art is housed in an architecturally significant and award-winning 51,000 square foot facility that overlooks the 28,000 acre National Elk Refuge and is adjacent to the Grand Teton National Park. The museum displays and interprets this wildlife art in one of the few remaining areas of the United States where native wildlife roams abundantly.

The works in the museum are united by their subject and their quality. The permanent collection of the National Museum of Wildlife Art has grown to more than 3,000 works by important historic American artists including Edward Hicks, Anna Hyatt Huntington, Charles M. Russell, William Merritt Chase, and Alexander Calder, as well as contemporary American artists Steve Kestrel, Bart Walter, Nancy Howe, John Nieto, Jamie Wyeth, and others.

The National Museum of Wildlife Art seeks to educate a diverse audience through collecting fine art focused on wildlife, presenting exceptional exhibitions, providing community, regional, national, and international outreach, and presenting extensive educational programming for adults and children. A national designation presents a great opportunity to use the invaluable resources of the National Museum of Wildlife Art to teach the Nation's school children, through on-site visits, traveling exhibits, classroom curriculum, on-line distance learning, and other educational initiatives.

I look forward to officially recognizing the renown of the National Museum of Wildlife Art through this bill.

By Mr. DOMENICI (for himself, Mr. BINGAMAN, Mr. TALENT, and Mr. DORGAN):

S. 2253. A bill to require the Secretary of the Interior to offer the 181 Area of the Gulf of Mexico for oil and gas leasing; to the Committee on Energy and Natural Resources.

Mr. DOMENICI. Mr. President, today, I introduce a bill to direct the Secretary of the Interior to hold a lease sale within one year in the area known as 181. This bill does not in any way alter the moratorium law on the OCS. The areas covered under this bill are not under executive or congressional moratorium. Furthermore, this bill protects a 100 mile buffer from the coastline of the State of Florida and it protects the prerogative of the United States armed forces to perform military activities in the Eastern Gulf of Mexico. These protections are explicit in the bill and can not be disputed.

But more than that, this bill seeks to protect the American people from the rising cost of heating their homes. Only six years ago, the price of natural gas in the U.S. was $2 per million btu. In the past few months, we have witnessed the price of natural gas rise above as much as $14 per million btu. This morning, amidst a winter of above-average temperatures throughout much of the United States, the price of natural gas was over $8 per million btu. In countries competing for our jobs, the price of the same commodity is substantially cheaper than that, in some cases one or two dollars per million btu. This increase in cost and volatility in the price of natural gas in the United States should have the immediate attention of our Nation's policy makers.

The effects of the rising price of natural gas cut across every major sector of our Nation's economy. Natural gas is used as a major source for electricity generation, home heating, cooling and cooking, and as an essential feedstock for the production of ammonia for use in fertilizer production. It is necessary to the manufacturing of fabrics, glass, steel, plastics and paint. In short, affordable natural gas is of relevance to every region and each State in this country and it is essential to maintaining our Nation's long-term sustained economic growth. Think of the one-two punch that will be dealt to the American consumer if the U.S. housing market fails to sustain its unprecedented growth of the last few years and energy costs continue to rise. The Federal Reserve estimated that in 2004, the American people had approximately $600 billion in their pockets from refinancing and home equity loans. But an increasing amount of that money is going right back out to pay the added costs of heating those homes. Over a six year period, America's natural gas bill has risen from $50 billion to $200 billion.

That is $150 billion less that the American people have to spend, save and invest. And it serves as an additional burden on the businesses that drive this nation's economy. This burden acts as a tax on the American people and only serves to stymie growth.

With this bill we seek to alleviate some of that burden. We direct the Department of the Interior to lease an area that holds a potential of nearly 5 tcf of gas. That is enough natural gas to heat and cool approximately five million homes for a period of 15 years. The natural gas from this area will have a real, substantial effect on the market and thus on the American consumer. Opening up this area will send an immediate signal to the natural gas market that Congress is pushing to quickly open up an area for production with great potential for a significant new supply of natural gas. The area is close to existing infrastructure in the Gulf of Mexico and is the best hope for a large infusion of natural gas on the market in the near term.

This bill presents a choice between affordable natural gas versus burying our heads in the sand while American people foot the bill and manufacturing jobs head overseas. There is certainly bipartisan support for the idea of relieving the energy costs of the American consumer, and I think that opening Lease Sale 181 helps us achieve this goal.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2253

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. OFFSHORE OIL AND GAS LEASING IN 181 AREA OF GULF OF MEXICO.

(a) DEFINITIONS.—In this section:

(1) 181 AREA.—The term "181 Area" means the area identified in map 15, page 58, of the Proposed Final Outer Continental Shelf Oil and Gas Leasing Program for 1997-2002 of the Minerals Management Service.

(2) MILITARY MISSION LINE.—The term "Military Mission Line" means the north-south line at 86°41′ W. longitude.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior, acting through the Minerals Management Service.

(b) LEASE SALE.—Except as otherwise provided in this section, the Secretary shall offer the 181 Area for oil and gas leasing pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) as soon as practicable, but not later than 1 year, after the date of enactment of this Act.

(c) EXCLUDED AREAS.—In carrying out subsection (b), the Secretary shall not offer for oil and gas leasing—

(1) any area east of the Military Mission Line, unless the Secretary of Defense agrees in writing before the area is offered for lease that the area can be developed in a manner that will not interfere with military activities; or

(2) any area that is within 100 miles of the coastline of the State of Florida.

(d) LEASING PROGRAM.—The 181 Area shall be offered for lease under this section notwithstanding the omission of the 181 Area from any outer Continental Shelf leasing program under section 18 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344).

Mr. BINGAMAN. Mr. President, I am pleased to cosponsor the bill offered by the chairman of the Energy and Natural Resources Committee. This legislation would require the Secretary of the Interior to offer for oil and gas lease certain lands within the original Lease Sale 181 Area in the Eastern Gulf of Mexico Planning Area. The lease sale is to be conducted within 1 year after the date of enactment of the legislation.

The original Lease Sale 181 Area was proposed in 1997 by the Clinton administration after negotiations with the late Governor Lawton Chiles. The area to be leased under the bill includes only a portion of the original sale area, and does nothing to affect areas currently under congressional moratoria or Presidential withdrawal. No part of the area to be leased under the bill is closer than 100 miles from the Florida coastline. The so-called "stovepipe" portion of the original lease sale area is not included in the area to be leased under the bill. Leasing east of the Military Mission line under the bill can occur only with the prior written agreement of the Secretary of Defense that such area can be developed in a manner that will not interfere with military activities.

The area to be leased under the bill is estimated to contain some 6.03Tcf of natural gas and 0.93 billion barrels of oil. In this time of record high oil and gas prices, these energy resources can make a significant contribution to our domestic energy supply. Much of the necessary energy infrastructure is already in place in this region, so production can come online and be marketed in the near term.

The lease sale is to take place within a year after the date of enactment of the provision. This time frame is intended to allow full compliance with all applicable environmental laws. It is our expectation that expeditious, but complete, environmental compliance will be undertaken by the relevant agencies.

I regret that large portions of this sale area were previously made off limits by the current administration. In 2001, Secretary Norton reduced the size of the area to be offered in Lease Sale 181 from 5.9 million acres to 1.5 million acres. This action took off the table over 61 percent of the gas resources, some 7 Tcf, and 5-percent of the oil resources, about a billion barrels, estimated to be in the original area.

Directing the Secretary to offer for lease these additional portions of the Lease Sale 181 Area is one thing that the Congress can do to address our energy situation in the near term. It is past time to proceed with leasing the area that would be made available by the bill. I ask my colleagues to join me in supporting this legislation.

By Mr. DOMENICI:

S. 2254. A bill to authorize the Secretary of the Army to carry out restoration projects along the Middle Rio Grande; to the Committee on Environment and Public Works.

Mr. DOMENICI. Mr. President, we get few opportunities to help usher in visionary projects that can potentially transform communities, both of man and of nature. I rise today to talk about such a project—one that has been discussed before on this floor when I helped unveil a vision that would rehabilitate and restore New Mexico's Bosque. I return here today to implement that vision that concerns this long neglected treasure of the Southwest.

According to an old Chinese Proverb, "if you are thinking one year ahead, sow seed. If you are thinking ten years ahead, plant a tree. If you are thinking 100 years ahead, educate the people." The bill I am introducing today encompasses the wisdom of that proverb.

The Albuquerque metropolitan area is the largest concentration of people in New Mexico. It is also the home to the irreplaceable riparian forest which runs through the heart of the city and surrounding towns that is the Bosque. It is the largest continuous cottonwood forest in the Southwest, and one of the last of its kind in the world.

Unfortunately, mismanagement, neglect, and the effects of upstream development have severely degraded the Bosque. The list of its woes is long: it has been overrun by non-native vegetation; graffiti and trash mar locations along its length; the drought and build up of hazardous fuel have contributed to fires. As a result, public access is problematical and crucial habitat for scores of species is threatened.

Yet the Middle Rio Grande Bosque remains one of the most biologically diverse ecosystems in the Southwest. My goal is to restore the Bosque and create a space that is open and attractive to the public.

This is a grand undertaking to be sure; but I want to ensure that this extraordinary corridor of the Southwestern desert is preserved for generations to come—not only for generations of humans, but for the diverse plant and animal species that reside in the Bosque as well.

The rehabilitation of this ecosystem leads to greater protection for threatened and endangered species; it means more migratory birds, healthier habitat for fish, and greater numbers of towering cottonwood trees. This project can increase the quality of life for a city while assuring the health and stability of an entire ecosystem. Where trash is now strewn, paths and trails will run. Where jetty jacks and discarded rubble lie, cottonwoods will grow. The dead trees and underbrush that threaten devastating fire will be replaced by healthy groves of trees. School children will be able to study and maybe catch sight of a bald eagle. The chance to help build a dynamic public space like this does not come around often, and I would like to see Congress embrace that chance on this occasion.

Having grown up along the Rio Grande in Albuquerque, the Bosque is something I treasure, and I lament the degradation that has occurred. Because of this, I have been involved in Bosque restoration since 1991, and I commend the efforts of groups like the Bosque Coalition for the work they have done, and will continue to do, along the river. I propose to build on their efforts with the legislation I am introducing today.

I remain grateful to each of the parties who has been involved with this idea since its inception. Each one contributes a very critical component of the project. The Middle Rio Grande Conservancy District (the "MRGCD") owns the vital part of the Bosque which runs from the National Hispanic Cultural Center north to the Paseo Del Norte Bridge. The MRGCD has proven to be a valuable local partner that has worked with all parties to provide options on how the Bosque can be preserved, protected and enjoyed by everyone. Additionally, the Army Corps of Engineers is developing a preliminary restoration plan for the Bosque along the Albuquerque corridor.

My bill authorizes $10 million dollars in Fiscal Year 2007 and such sums as are necessary for the following nine years to complete projects, activities, substantial ecosystem restoration, preservation, protection, and recreation facilities along the Middle Rio Grande. I urge my fellow members to help preserve this rare and diverse ecosystem and to aid the city of Albuquerque and the State of New Mexico in building a place to treasure.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2254

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress finds that—

(1) the Middle Rio Grande bosque is—

(A) a unique riparian forest along the Middle Rio Grande in New Mexico;

(B) the largest continuous cottonwood forest in the Southwest;

(C) 1 of the oldest continuously inhabited areas in the United States;

(D) home to portions of 6 pueblos; and

(E) a critical flyway and wintering ground for migratory birds;

(2) the portion of the Middle Rio Grande adjacent to the Middle Rio Grande bosque provides water to many people in the State of New Mexico;

(3) the Middle Rio Grande bosque should be maintained in a manner that protects endangered species and the flow of the Middle Rio Grande while making the Middle Rio Grande bosque more accessible to the public;

(4) environmental restoration is an important part of the mission of the Corps of Engineers; and

(5) the Corps of Engineers should reestablish, where feasible, the hydrologic connection between the Middle Rio Grande and the Middle Rio Grande bosque to ensure the permanent healthy growth of vegetation native to the Middle Rio Grande bosque.

SEC. 2. DEFINITIONS.

In this Act:

(1) MIDDLE RIO GRANDE.—The term "Middle Rio Grande" means the portion of the Rio Grande from Cochiti Dam to the headwaters of Elephant Butte Resevoir, in the State of New Mexico.

(2) RESTORATION PROJECT.—The term "restoration project" means a project carried out under this Act that will produce, consistent with other Federal programs, projects, and activities, immediate and substantial ecosystem restoration, preservation, recreation, and protection benefits.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Army.

SEC. 3. MIDDLE RIO GRANDE RESTORATION.

(a) RESTORATION PROJECTS.—The Secretary shall carry out restoration projects along the Middle Rio Grande.

(b) PROJECT SELECTION.—

(1) IN GENERAL.—The Secretary may select restoration projects in the Middle Rio Grande based on feasibility studies.

(2) USE OF EXISTING STUDIES AND PLANS.—In carrying out subsection (a), the Secretary shall use, to the maximum extent practicable, studies and plans in existence on the date of enactment of this Act to identify the needs and priorities for restoration projects.

(c) LOCAL PARTICIPATION.—In carrying out this Act, the Secretary shall consult with—

(1) the Middle Rio Grande Endangered Species Act Collaborative Program; and

(2) the Bosque Improvement Group of the Middle Rio Grande Bosque Initiative.

(d) COST SHARING.—

(1) COST-SHARING AGREEMENT.—Before carrying out any restoration project under this Act, the Secretary shall enter into an agreement with the non-Federal interests that shall require the non-Federal interests—

(A) to pay 25 percent of the total costs of the restoration project through in-kind services or direct cash contributions, including the cost of providing necessary land, easements, rights-of-way, relocations, and disposal sites;

(B) to pay 100 percent of the operation, maintenance, repair, replacement, and rehabilitation costs associated with the restoration project that are incurred after the date of enactment of this Act; and

(C) to hold the United States harmless for any claim or damage that may arise from the negligence of the Federal Government or a contractor of the Federal Government.

(2) NON-FEDERAL INTERESTS.—Notwithstanding section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b), a non-Federal interest carrying out a restoration project under this Act may include a nonprofit entity.

(3) RECREATIONAL FEATURES.—

(A) IN GENERAL.—Any recreational features included as part of a restoration project shall comprise not more that 30 percent of the total project cost.

(B) NON-FEDERAL FUNDING.—The full cost of any recreational features included as part of a restoration project in excess of the amount described in subparagraph (A) shall be paid by the non-Federal interests.

(4) CREDIT.—The non-Federal interests shall receive credit toward the non-Federal share of the cost of design or construction activities carried out by the non-Federal interests (including activities carried out before the execution of the cooperation agreement for a restoration project) if the Secretary determines that the work performed by the non-Federal interest is integral to the project.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act—

(1) $10,000,000 for fiscal year 2006; and

(2) such sums as are necessary for each of fiscal years 2007 through 2015.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 367—CONGRATULATING THE PITTSBURGH STEELERS FOR THEIR VICTORY IN SUPER BOWL XL

Mr. SANTORUM (for himself and Mr. SPECTER) submitted the following resolution; which was considered and agreed to:

S. RES. 367

Whereas, on Sunday, February 5, 2006, the Pittsburgh Steelers defeated the Seattle Seahawks by a score of 21–10, in Detroit, Michigan;

Whereas that victory marks the 5th Super Bowl Championship for the Steelers organization, tying Pittsburgh with the San Francisco 49ers and the Dallas Cowboys for the most Super Bowl wins in the history of the National Football League;

Whereas, after losing a game to Cincinnati on December 4, and dropping their record to 7 wins and 5 losses, the Steelers won 8 consecutive games, the last of which earned the team an overall record of 15–5 and the right to be named Super Bowl Champions;

Whereas the path of the Steelers to the Super Bowl included road victories against the Cincinnati Bengals, the Indianapolis Colts, and the Denver Broncos, making the Steelers the 2nd team in NFL history to win 3 playoff games on the road;

Whereas Bill Cowher, a Pittsburgh native and the longest tenured head coach in the NFL, was a steady presence throughout the season and earned his 1st Super Bowl victory after 14 seasons at the helm of the Steelers team;

Whereas Jerome Bettis, who is affectionately known as "The Bus," and is the 5th leading rusher in NFL history, was the emotional leader of the Steelers team and was able to return to his hometown of Detroit to participate in his 1st Super Bowl, after which he announced his retirement from the game of football;

Whereas Hines Ward, who caught 5 passes for 123 yards and 1 touchdown, was named Most Valuable Player of Super Bowl XL, joining Franco Harris, Lynn Swann, and Terry Bradshaw as the only Steelers to earn that prestigious award;

Whereas, at the age of 23, Pittsburgh quarterback Ben Roethlisberger was the youngest starting quarterback ever to win a Super Bowl;

Whereas the defense of the Steelers, led by Pro-Bowl performers Troy Polamalu, Joey

Porter, and Casey Hampton, held the highest scoring team in the NFL, the Seattle Seahawks, to more than 18 points below their season average of 28.3 points per game; and

Whereas the Rooney family, who have owned the Pittsburgh Steelers since the founding of the team in 1933, have provided the Steelers organization with a level of stability and commitment to community that is unmatched in the modern sports environment and have created a team that is as beloved by its hometown as any in the world; Now, therefore, be it

Resolved, That the Senate congratulates the Pittsburgh Steelers on their hard-fought, well-deserved victory in Super Bowl XL.

SENATE RESOLUTION 368—TO DESIGNATE APRIL 1, 2006, AS "NATIONAL ASBESTOS AWARENESS DAY."

Mr. REID submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 368

Whereas deadly asbestos fibers are invisible and cannot be smelled or tasted;

Whereas when airborne asbestos fibers are inhaled or swallowed, the damage can be permanent and irreversible;

Whereas those fibers can cause mesothelioma, asbestosis, lung cancer, and pleural diseases;

Whereas asbestos-related diseases can take 10 to 50 years to manifest themselves;

Whereas the expected survival rate of those diagnosed with mesothelioma is between 6 and 24 months;

Whereas little is known about late-stage treatment of, and there is no cure for, asbestos-related diseases;

Whereas early detection of asbestos-related diseases would give patients increased treatment options and often improve their prognosis;

Whereas asbestos is a toxic and dangerous substance and must be disposed of properly;

Whereas nearly half of the more than 1,000 screened firefighters, police officers, rescue workers, and volunteers who responded to the World Trade Center attacks on September 11, 2001, have new and persistent respiratory problems;

Whereas the industry groups with the highest incidence rates of asbestos-related diseases, based on 2000 to 2002 data, were shipyard workers, vehicle body builders (including rail vehicles), pipefitters, carpenters and electricians, and workers in the construction (including insulation work and stripping), extraction, energy and water supply, and manufacturing industries;

Whereas the United States imports more than 30,000,000 pounds of asbestos used in products throughout the United States;

Whereas asbestos-related diseases kill 10,000 people in the United States each year;

Whereas asbestos exposure is responsible for 1 in every 125 deaths of men over the age of 50;

Whereas safety and prevention will reduce asbestos exposure and asbestos-related diseases;

Whereas asbestos has been the largest single cause of occupational cancer;

Whereas asbestos is still a hazard for 1,300,000 workers in the United States;

Whereas asbestos-related deaths have greatly increased in the last 20 years;

Whereas 30 percent of all asbestos-related disease victims were exposed to asbestos on naval ships and in shipyards;

Whereas asbestos was used in the construction of virtually all office buildings, public schools, and homes built before 1975; and

Whereas the establishment of a "National Asbestos Awareness Day" would raise public awareness about the prevalence of asbestos-related diseases and the dangers of asbestos exposure: Now, therefore, be it

Resolved, That the Senate designates April 1, 2006, as "National Asbestos Awareness Day".

Mr. REID. Mr. President, I rise to submit a resolution to designate April 1, 2006, as "National Asbestos Awareness Day." Submitting this resolution is one small step in an effort to raise awareness of this dangerous substance and the painful effects that exposure to asbestos has caused throughout this country. Last year the Senate unanimously passed a similar resolution. It is my hope that designating another National Asbestos Awareness Day will serve as a reminder that exposure to asbestos remains a significant problem in this country, asbestos-induced illnesses continue to kill or disable Americans at an alarming clip, and our resolve to adequately protect the rights of these victims must not falter.

There is no safe level of exposure to asbestos. Despite this fact, the substance still routinely manifests itself in too many work environments. According to the Occupational Safety and Health Administration (OSHA), 1.3 million Americans still face significant asbestos exposure in their workplaces. Some estimate that more than 27.5 million workers have been exposed to asbestos while on the job.

We know too well that the effect of exposure can be deadly. Diseases caused by asbestos include cancers of the lung, digestive tract, colon, larynx, esophagus, kidney and some types of lymphoma; pleural disease; asbesostis; and, of course, mesothelioma. For many of the more serious, asbestos-related diseases, there is no cure.

These devastating illnesses take the lives of thirty Americans each day and ten thousand Americans each year. Countless others were exposed in their neighborhoods, in school yards and at home. Hundreds of thousands of men and women have died or become severely ill due to asbestos exposure.

The cases of disease and death caused by asbestos exposure are not abstractions. Real lives are affected and destroyed by this dreadful substance. I have received countless letters from victims of asbestos-related diseases and their families. Each one shares another story of loss and of pain, of sickness and of tragedy.

Adrienne Zapponi of Wellington, NV witnessed firsthand what asbestos does to the human body. Her husband suffers from asbestos exposure. In her letter she wrote, "[My husband] cannot enjoy a single day of life because he has 40% lung capacity. This means that he can't walk for any distance, he can't do simple jobs around the house such as mow the lawn, he can't remember things such as when to take his medication, he can't drive because he is drowsy and can't concentrate on the road."

Margy Urnberg from Carson City, NV had a father, Ronald Johnson, who died from asbestos exposure. He worked in a vermiculite mine and second-hand exposure from living in Libby, MT. Alan Reinstein, the Cofounder and Director of Communications of the Asbestos Disease Awareness Organization, is suffering from acute mesothelioma. Alan is fighting bravely and has responded to his illness as a call to action.

Yesterday I mentioned our brave veterans who have been exposed to asbestos, and the difficulty they have encountered in seeking compensation for that exposure. Steven Mitchell served ten years in the U.S. Navy as a boiler man. He worked in the engine and boiler rooms on several ships handling asbestos insulation on a daily basis. After leaving the Navy, he returned to work on his family farm raising wheat.

Steven was diagnosed with mesothelioma and spent his last days in a V.A. Nursing Home. Due to the intense pain, he was constantly administered morphine. Just before he died, he no longer even recognized his daughter.

We have seen the case of Philip Schreyer, who began helping his country with the war effort in 1942 at the Ford Motor Company's Willow Run B-24 bomber plant. This plant was producing a bomber an hour during its peak operation, and many asbestos products went into each section of the bombers. Later that year, Mr. Schreyer joined the Navy serving as a radio man aboard the USS *Wyoming* until 1946. The USS *Wyoming* shot off more rounds than any other ship during War World II. Every time around was fired dust would come down off the insulated pipes like "snow". Little did Mr. Schreyer know that this dust falling on him was deadly asbestos.

Phil survived World War II, an injury aboard a warship that ended his Navy career, and a hunting accident that cost him his leg. He did not survive asbestos exposure. In 2002 he learned he had mesothelioma and was told by his doctors that he would not survive this disease. The doctors were right. On January 20, 2005, Phil Schreyer, who had survived so much, lost his final battle with mesothelioma and died.

Each one of the ten thousand Americans who will die from asbestos exposure this year will have a similar story. Each one will leave behind a family that will never be whole again. Each one is counting on us here in the Senate to ensure they have the means necessary to pursue their rightful claim for the damages asbestos exposure has caused them and their families.

The so-called FAIR Act will not provide these protections and that is why I oppose it. As I have explained, this legislation attempts to set up an alternative system for recovery that is doomed to failure and will unacceptably impair the rights of victims. We in the Senate need to remind ourselves that our best efforts must always be directed toward meeting the needs of victims, and the FAIR Act falls short.

SENATE RESOLUTION 369—CONGRATULATING THE AMERICAN DENTAL ASSOCIATION FOR SPONSORING THE 4TH ANNUAL "GIVE KIDS A SMILE" PROGRAM, WHICH EMPHASIZES THE NEED TO IMPROVE ACCESS TO DENTAL CARE FOR CHILDREN, AND THANKING DENTISTS FOR VOLUNTEERING THEIR TIME TO HELP PROVIDE NEEDED DENTAL CARE

Ms. STABENOW (for herself, Mr. COLEMAN, Mr. COCHRAN, and Mr. FEINGOLD) submitted the following resolution; which was considered and agreed to:

S. RES. 369

Whereas access to dental care for children is a vital element of overall health care and development;

Whereas dental caries (more commonly known as tooth decay) is the most common chronic childhood disease;

Whereas untreated tooth decay results in thousands of children experiencing poor eating and sleeping patterns, suffering decreased attention spans at school, and being unable to smile;

Whereas due to a confluence of factors, children eligible for Medicaid and the State children's health insurance program are 3 to 5 times more likely than other children to experience and suffer from untreated tooth decay;

Whereas dentists provide an estimated $1,700,000,000 annually in non-reimbursed dental care;

Whereas nearly 11,000 dentists provided approximately $33,000,000 of free care to almost 500,000 children in the 3rd annual "Give Kids a Smile" program held on February 4, 2005;

Whereas the participation of dentists in the 4th annual "Give Kids a Smile" program, established and sponsored by the American Dental Association and held on February 3, 2006, serves to remind people in the United States about the need to end untreated childhood dental disease; and

Whereas the generous support of numerous corporations, such as Crest Healthy Smiles, Sullivan-Schein Dental, and DEXIS Digital X-ray Systems, helps make the "Give Kids a Smile" program a success: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the American Dental Association for establishing and continuing its sponsorship of the "Give Kids a Smile" program;

(2) emphasizes the need to improve access to dental care for children;

(3) thanks the thousands of dentists, dental hygienists, dental assistants, and others who volunteered their time to bring a smile to the faces of hundreds of thousands of children on February 3, 2006;

AMENDMENTS SUBMITTED AND PROPOSED

SA 2738. Mr. BURNS (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2738. Mr. BURNS (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 72, line 18, strike "TLC or FVC" and insert "TLC, FVC, or DLCO".

On page 123, line 3, strike "TLC or FVC" and insert "TLC, FVC, or DLCO".

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been rescheduled before the Committee on Energy and Natural Resources to consider the President's Proposed Budget for FY 2007 for the Department of Energy.

The hearing originally scheduled for Thursday, February 9 at 10 a.m. in Room SD-366 of the Dirksen Senate Office Building will now be held at 9:30 a.m. on the same day, in the same room.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD-364 Dirksen Senate Office Building, Washington, DC 20510-6150.

For further information, please contact Elizabeth Abrams at 202-224-0537.

SUBCOMMITTEE ON NATIONAL PARKS

Mr. THOMAS. Mr. President, I would like to announce for the information of the Senate and the public that the following hearing has been scheduled before the Subcommittee on National Parks of the Committee on Energy and Natural Resources:

The hearing will be held on Thursday, February 16, 2006, at 2:30 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, D.C.

The purpose of the hearing is to receive testimony on the following bills: S. 1870, a bill to clarify the authorities for the use of certain National Park Service properties, within Golden Gate National Recreation Area and San Francisco Maritime National Historical Park, and for other purposes; S. 1913, a bill to authorize the Secretary of the Interior to lease a portion of the Dorothy Buell Memorial Visitor Center for use as a visitor center for the Indiana Dunes National Lakeshore, and for other purposes; S. 1970, a bill to amend the National Trails System Act to update the feasibility and suitability study originally prepared for the Trail of Tears National Historic Trail and provide for the inclusion of new trail segments, land components, and campgrounds associated with that trail, and for other purposes; H.R. 562, a bill to authorize the Government of Ukraine to establish a memorial on Federal land in the District of Columbia to honor the victims of the manmade famine that occurred in Ukraine in 1932-1933; and H.R. 318, a bill to authorize the Secretary of the Interior to study the suitability and feasibility of designating Castle Nugent Farms located on St. Croix, Virgin Islands, as a unit of the National Park System, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD-364 Dirksen Senate Office Building, Washington, D.C. 20510-6150.

For further information, please contact Tom Lillie at (202) 224-5161 or David Szymanski at (202) 224-6293.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on March 7, 2006, at 9:30 a.m., to receive testimony from combatant commanders on their military strategy and operational requirements, in review of the Defense Authorization Request for fiscal year 2007 and the Future Years Defense Program.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, February 7, 2006, at 10 a.m., on Net Neutrality.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, February 7, 2006, at 2:30 p.m., on Nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Tuesday, February 7, 2006, at 10 a.m., in 215 Dirksen Senate Office Building, to hear testimony on "The President's Fiscal Year 2007 Budget Proposal." The following witness is scheduled to testify: The Honorable John W. Snow, Secretary, U.S. Department of the Treasury.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATION

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on the Foreign Relations be authorized to meet during the session of the Senate on Tuesday, February 7, 2006 at 2 p.m., to hold a hearing on NATO.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. ALLARD. Mr President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on "Judicial Nominations" on Tuesday, February 7, 2006 at 4 p.m., in the Dirksen Senate Office Building Room 226.

Panel I: The Honorable Luis G. Fortuno, United States Representative, Puerto Rico, Resident Commissioner.

Panel II: Timothy C. Batten, Sr. to be United States District Judge for the Northern District of Georgia, Thomas E. Johnston to be United States District Judge for the Southern District of West Virginia, Leo Maury Gordon to be a Judge of the United States Court of the International Trade, Aida M. Delgado Colon to be United States District Judge for the District of Puerto Rico.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, AND INTERNATIONAL SECURITY

Mr. ALLARD. Mr. President, I ask unanimous consent that the Subcommittee on Federal Financial Management, Government Information, and International Security be authorized to meet on Tuesday, February 7, 2006, at 3 p.m., for a field hearing regarding "Federal Agencies and Conference Spending."

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON READINESS AND MANAGEMENT SUPPORT

Mr. ALLARD. Mr. President, I ask unanimous consent that the Subcommittee on Readiness and Management Support be authorized to meet during the session of the Senate on February 7, 2006, at 2:30 p.m., in open session to receive testimony on contracting issues in Iraq, in review of the Defense authorization request for fiscal year 2007 and the future years Defense program.

The PRESIDING OFFICER. Without objection, it is so ordered.

HONORING THE SERVICE OF THE NATIONAL GUARD

Mr. FRIST. Mr. President, I ask unanimous consent that the Armed Services Committee be discharged from further consideration of S. Res. 355, and the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

> A resolution (S. Res. 355) honoring the service of the National Guard and requesting consultation by the Department of Defense with Congress and the chief executive officers of the States prior to offering proposals to change the National Guard force structure.

There being no objection, the Senate proceeded to consider the resolution.

Mr. NELSON of Nebraska. Mr. President, I thank my colleagues for this opportunity to speak on S. Res. 355 regarding the budget for the National Guard, a resolution which Senator LINDSEY GRAHAM and I have cosponsored.

Last week, a total of 75 Senators, including myself, signed a letter to Defense Secretary Rumsfeld opposing the plan that proposes changes to the standing force structure of the National Guard. This plan has raised serious concerns.

Senator FRIST, the majority leader, said last week on a national morning news program that he would oppose cuts to the National Guard.

Nebraska National Guard General Roger Lempke, president of the Adjunct Generals Association, has aggressively questioned the proposed changes to the Guard. General Lempke and I share another concern about the Guard; that is, the increasing problem it has with equipment shortages as a result of the war, damage, total destruction, and the fact that much of the equipment is most likely going to be left in Iraq.

Earlier this year, General Lempke briefed me on equipment shortages faced by the Nebraska National Guard. I learned firsthand that the Guard in Nebraska is facing shortages of $35 million in equipment, from trucks to body armor, from humvees to night-vision goggles.

This prompted me, along with my colleague, Senator LINDSEY GRAHAM, to introduce a resolution on the National Guard that essentially does two things: First, it asks the Pentagon to fully fund the Guard to restore lost and destroyed equipment; second, it seeks consultation with Congress and the Nation's Governors on any potential force structure changes. In a briefing today before the Senate Committee on Armed Services, General Schoomaker assured members he has already begun this process of talking to the Nation's Governors and seeking more consultation with affected Members of the Congress.

This resolution was cleared by the Committee on Armed Services and sent to the Senate last week. It has 54 cosponsors, including myself. It is bipartisan. It is direct. I urge my colleagues and the majority leader to ensure that this resolution be passed today. We cannot wait any longer. We must assure the Department of Defense, that Congress has spoken, and that we will be heard on this issue.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating thereto be printed in the RECORD, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 355) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 355

Whereas the Army National Guard and Air National Guard of the United States, representing all 50 States, Guam, Puerto Rico, the United States Virgin Islands, and the District of Columbia, have played an indispensable role in the defense of our country;

Whereas during one phase of the Global War on Terrorism, Army National Guard soldiers comprised nearly half of the United States combat forces in Iraq;

Whereas National Guard personnel are currently deployed in Afghanistan, Bosnia, Kosovo, and more than 40 other countries around the world;

Whereas 90 percent of the troops on the ground in Louisiana and Mississippi responding to Hurricane Katrina were members of the National Guard;

Whereas while performing these critical missions, the National Guard continues to experience significant equipment shortages, especially vehicle and radio shortages;

Whereas members of the National Guard are not "weekend warriors", but citizen-soldiers and airmen who serve full-time when their country needs them to do so;

Whereas the National Guard is a resource shared by the chief executive officers of the States and the President;

Whereas the National Guard is America's militia;

Whereas deployment to fight terrorism on two fronts overseas, while protecting our homeland, has stretched the National Guard thin;

Whereas the future of the National Guard could be determined by the Quadrennial Defense Review (QDR) currently underway;

Whereas the Army and Air Force could recommend changes in the force structure of the National Guard;

Whereas reductions in force structure could impact numerous Army National

Guard armories and Air National Guard wings;

Whereas reductions in force structure combined with the lack of adequate equipment for the National Guard threaten its capacity to discharge its missions and its ability to respond in emergencies;

Whereas homeland defense is the most important mission of the Department of Defense; and

Whereas the National Guard is the force best suited to defend the homeland and therefore the element from which resources should not be cut: Now, therefore, be it

Resolved, That the Senate—

(1) supports the vital Federal and State missions of the Army National Guard of the United States and the Air National Guard of the United States, including support of ongoing missions in Iraq and Afghanistan and homeland defense and disaster assistance and relief efforts;

(2) recommends that the Department of Defense propose fully funding the equipment needs of the National Guard;

(3) believes that the Department of Defense should, as soon as possible, consult with the chief executive officers of the States, as well as Congress, on any proposed changes to the National Guard force structure;

(4) requests that any plan of the Department of Defense regarding the National Guard force structure take into account the role of the National Guard role in homeland defense and other State missions as defined by the chief executive officers of the States;

(5) requests that the Department of Defense prepare budget projections that detail cost savings from any changes in National Guard force structure, as well as projected costs in the event large personnel increases are necessary to respond to a national emergency; and

(6) requests that the Department of Defense assure Congress and the chief executive officers of the States that potential changes in the National Guard force structure will not impact the safety and security of the United States people.

DAY OF HEARTS. CONGENITAL HEART DEFECT DAY

Mr. FRIST. Mr. President, I ask unanimous consent that the HELP Committee be discharged from further consideration of and the Senate proceed to S. Con. Res. 69.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 69) supporting the goals and ideals of a Day of Hearts, Congenital Heart Defect Day in order to increase awareness about congenital heart defects.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 69) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 69

Whereas congenital heart defects are structural problems with the heart that are present at birth;

Whereas such defects range in severity from simple problems, such as "holes" between chambers of the heart, to very severe malformations, such as the complete absence of one or more chambers or valves of the heart;

Whereas more than one million Americans have some form of a congenital heart defect and such defect is the number one cause of death in infants;

Whereas out of 1000 births, eight babies will have some form of a congenital heart disorder, and approximately 35,000 babies are born with such defects each year;

Whereas twice as many children die each year from congenital heart disease compared with childhood cancers, yet funding for pediatric cancer research is five times higher than such funding for congenital heart disease;

Whereas cardiovascular disease is the Nation's leading killer in both men and women among all racial and ethnic groups;

Whereas the United States has a severe shortage of cardiac centers that are fully equipped to provide care for adults living with complex heart defects;

Whereas almost one million Americans die of cardiovascular disease each year, resulting in up to 42 percent of all deaths in the United States;

Whereas the presence of a serious congenital heart defect often results in an enormous emotional and financial strain on young families who are already in a vulnerable stage of their lives;

Whereas severe congenital heart disease requires that families dedicate extensive financial resources for assistance and care both within and outside of a hospital environment;

Whereas congenial heart defects exceed more than $2.2 million a year for inpatient surgery alone; and

Whereas February 14, 2006, would be an appropriate day to recognize A Day for Hearts: Congenital Heart Defect Awareness Day: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress supports the goals and ideals of A Day of Hearts: Congenital Heart Defect Awareness Day to—

(1) increase awareness about congenital heart defects;

(2) encourage research with respect to the disease; and

(3) support the millions of Americans who are affected by this disease.

CONGRATULATING THE PITTSBURGH STEELERS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to consideration of S. Res. 367 submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 367) congratulating the Pittsburgh Steelers for their victory in Super Bowl XL.

There being no objection, the Senate proceeded to consider the resolution.

Mr. SANTORUM. Mr. President, it is an honor for me to be here today to speak on behalf of a great organization and a great group of men who accomplished the heights of their profession. The Pittsburgh Steelers were victorious in Super Bowl XL on Sunday. As I speak right now, there is a parade going through downtown Pittsburgh of our warriors, our champions who have brought back the Super Bowl trophy, the Lombardi trophy, to Pittsburgh for the fifth time, which ties a record with the San Francisco 49ers and the Dallas Cowboys, having won five Super Bowls.

During the 1970s, we won four and got comfortable with the fact that Pittsburgh was a city of champions, winning both football titles and two World Series titles in 1972 and 1979; and in 1979 we won both the Super Bowl and the World Series. It has been a long time—26 years—since we were able to get, as the saying goes in Pittsburgh, "one for the thumb." We didn't yet have the one for the thumb. But the time for the one for the thumb has come. We have, in fact, gotten over the hump, and we have a lot more to look forward to, in my view, in the years to come with this great squad.

I congratulate, obviously, the team. I also congratulate some other folks who I think deserve particular recognition—and, by the way, Senator SPECTER and I have put forth a congratulatory resolution, which we brought down to the floor and I am sure will be cleared and we will be able to get that passed today.

I congratulate the Rooney family. This is a family enterprise that has been, since 1933, running the Steelers. I don't know of any other team in the NFL that has had the kind of stable ownership and closeness with the community that the Rooney ownership has brought over the past 73 years. They are a great Pittsburgh family. Art Rooney, who bought the team back in 1933, was one of the founders of the NFL. For years and years and years, he was one of the great men of football but never won a championship for over 40 years being in the league, and then they had a great run in the 1970s.

After his passing, Dan, his son, took it over, and has been a tremendous pillar of the Pittsburgh community. This is a man who is as humble as any man I have ever met. In contrast with some of the high-flying owners of the NFL, this is a man who still flies around in a little single-engine plane. They have a training camp well out of town, so instead of having to drive from his home, he takes this little plane and flies out to the airport near St. Vincent College. He still remembers his roots and does so much for the community. One of the things he does most for the community is he keeps the beloved Steelers a local community team, a team that is good to its players and good to the community and puts the community first. That is one of the reasons the Steelers are so beloved in Pittsburgh—because they are so much a fabric in the city because they participate in community organizations, and their players have great relationships throughout the Pittsburgh area and make a difference in the community. That is really what professional sports should be more about.

We have true role models in people like Jerome Bettis who have added so much to the texture of Pittsburgh. Over the years, we have had many great players in and out, and because of the leadership of the Rooney family and the stability of the coaching ranks, from Chuck Knoll to Bill Cowher, we have seen that stability, that bond with the city that has been transferred to the players. They feel that special relationship and obligation to be role models in the community. Overwhelmingly, they have lived up to that.

So it is a very proud moment, not only because they won a football game—in fact, they won four improbable games against worthy opponents—they were a team that barely made the playoffs, but they went through and not only got to a championship game and won the AFC championship, they then won the Super Bowl. They are truly a remarkable team, inspired by this great family, the Rooney family, and a great coach, Bill Cowher, who has been, again, another important piece of the Pittsburgh family now for better than a dozen years. He continues to show that a hometown boy can come back, somebody who wasn't a star in the league but a solid guy from Pittsburgh who understands the importance of the Steelers to the community and lives by that ethic and the code the Rooneys have established very well and makes Pittsburgh a better place as a result.

It is great to see Coach Cowher get a Super Bowl, it is great to see the team back on top, and it is great to see Pittsburgh, a town that has gone through a lot in the steel industry in the 1970s—they have seen pretty dark times in the 1980s in particular as a community. We have been going through a renaissance in Pittsburgh in the last 10, 12 years, a tremendous transformation of that city. It is nice to see that the Steelers put a punctuation mark which, hopefully, draws some attention and makes us feel better about ourselves because not only have we made the transformation, but we have a winning team and a good, positive attitude about how we go forward.

So I am proud to be a Pittsburgher, and I am proud particularly to be a Pittsburgh Steeler fan today. I congratulate the entire organization and all of the people in Pittsburgh for the tremendous support you continue to give the Steelers and the great attitude you bring to our fair city.

Mr. SPECTER. Mr. President, I rise to compliment the Pittsburgh Steelers on a phenomenal season and a great Super Bowl victory. I regret I could not go to Detroit to see the game. But a session had been scheduled many weeks ago to bring in Attorney General Gonzales on the electronic surveillance issue at 9:30 yesterday morning. I checked it out, and the earliest I could have gotten back to Washington would have been the middle of the night. I thought it more sensible to attend to those important duties for the hearing with the Attorney General and to watch the game on television.

I was very heartened to see that game, to see that 75-yard run, the longest in Super Bowl history, to see that phenomenal catch, practically a "hail Mary," on the 3-yard line, to see the young quarterback Ben Roethlisberger carry it over on the replay and the great dispute about whether there was a touchdown, and it was a touchdown. The earlier touchdown was nullified when a Seattle receiver had pushed off and been called with an infraction. And then when the Steelers were driving at 14 to 3 toward a putaway touchdown, the intercepted pass and long runback, and the Seahawks came within 14 to 10. Then the Seahawks mounted a drive and were closing in on a touchdown which would have put them ahead 17 to 14, and then came the Steelers' interception. So, it was phenomenal and thrilling game. To have the Steelers, from a wild-card position, go on the road and beat Cincinnati and then go on the road and beat Denver and Indianapolis and that phenomenal tackle made by Roethlisberger, which may be as important in Steelers' lore as the "immaculate reception" by Franco Harris many years ago—as you can tell, I am a diehard football fan.

The Steelers have brought great credit to Pennsylvania with their victory, great credit to America with their sportsmanship and accomplishments.

A special tribute to the Rooney family which owns the Pittsburgh Steelers. I had the privilege of knowing Mr. Art Rooney, who bought the Steelers in about 1933 for reputedly $2,500. I have had occasion to work with his son Dan Rooney, who is now the family patriarch, and his grandson Art Rooney. They are a wonderful family.

Bill Cowher is the coach. I know him, to some extent. It is a great tribute.

I have taken these few moments to comment about the great victory and to offer congratulations. I am sorry that I couldn't be in Pittsburgh today to attend the parade. But we have a parade on the Senate floor which takes my attention. I don't think I will be missed in that crowd.

Mr. FRIST. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 367) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 367

Whereas, on Sunday, February 5, 2006, the Pittsburgh Steelers defeated the Seattle Seahawks by a score of 21-10, in Detroit, Michigan;

Whereas that victory marks the 5th Super Bowl Championship for the Steelers organization, tying Pittsburgh with the San Francisco 49ers and the Dallas Cowboys for the most Super Bowl wins in the history of the National Football League;

Whereas, after losing a game to Cincinnati on December 4, and dropping their record to 7 wins and 5 losses, the Steelers won 8 consecutive games, the last of which earned the team an overall record of 15-5 and the right to be named Super Bowl Champions;

Whereas the path of the Steelers to the Super Bowl included road victories against the Cincinnati Bengals, the Indianapolis Colts, and the Denver Broncos, making the Steelers the 2nd team in NFL history to win 3 playoff games on the road;

Whereas Bill Cowher, a Pittsburgh native and the longest tenured head coach in the NFL, was a steady presence throughout the season and earned his 1st Super Bowl victory after 14 seasons at the helm of the Steelers team;

Whereas Jerome Bettis, who is affectionately known as "The Bus," and is the 5th leading rusher in NFL history, was the emotional leader of the Steelers team and was able to return to his hometown of Detroit to participate in his 1st Super Bowl, after which he announced his retirement from the game of football;

Whereas Hines Ward, who caught 5 passes for 123 yards and 1 touchdown, was named Most Valuable Player of Super Bowl XL, joining Franco Harris, Lynn Swann, and Terry Bradshaw as the only Steelers to earn that prestigious award;

Whereas, at the age of 23, Pittsburgh quarterback Ben Roethlisberger was the youngest starting quarterback ever to win a Super Bowl;

Whereas the defense of the Steelers, led by Pro-Bowl performers Troy Polamalu, Joey Porter, and Casey Hampton, held the highest scoring team in the NFL, the Seattle Seahawks, to more than 18 points below their season average of 28.3 points per game; and

Whereas the Rooney family, who have owned the Pittsburgh Steelers since the founding of the team in 1933, have provided the Steelers organization with a level of stability and commitment to community that is unmatched in the modern sports environment and have created a team that is as beloved by its hometown as any in the world: Now, therefore, be it

Resolved, That the Senate congratulates the Pittsburgh Steelers on their hard-fought, well-deserved victory in Super Bowl XL.

CONGRATULATING THE AMERICAN DENTAL ASSOCIATION

Mr. FRIST. I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 369, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 369) congratulating the American Dental Association for sponsoring the 4th annual "Give Kids a Smile" program which emphasizes the need to improve access to dental care for children, and thanking dentists for volunteering their time to help provide needed dental care.

There being no objection, the Senate proceeded to consider the resolution.

Ms. STABENOW. Mr. President, today I wish to speak about a resolution to congratulate the American Dental Association for establishing the "Give Kids a Smile" Program. I am pleased to be joined by my colleagues, Senators COLEMAN, COCHRAN, and FEINGOLD in recognizing this annual event.

This Friday is the fourth "Give Kids a Smile" day, which emphasizes the need to improve dental care access for children. Tooth decay is the most common chronic childhood disease and can be the cause of poor eating and sleeping patterns, decreased attention spans at school, and sadly, children not being able to smile. Children who are eligible for Medicaid and the State Children's Health Insurance Program are three to five times more likely than other children to have untreated tooth decay.

I also want to thank the members of the American Dental Association for participating in this program. I am especially proud of all of the dentists in Michigan who took the time to make the annual "Give Kids a Smile" day such a great success. Last year, more than 330 dentists in Michigan volunteered their valuable services for "Give Kids a Smile" events across the State. These dentists, along with more than 1,000 staff members and volunteers, provided dental treatment and oral health information to more than 17,430 needy children.

Mr. FRIST. Mr. President, I ask unanimous consent the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 369) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, was agreed to as follows:

S. RES. 369

Whereas access to dental care for children is a vital element of overall health care and development;

Whereas dental caries (more commonly known as tooth decay) is the most common chronic childhood disease;

Whereas untreated tooth decay results in thousands of children experiencing poor eating and sleeping patterns, suffering decreased attention spans at school, and being unable to smile;

Whereas due to a confluence of factors, children eligible for Medicaid and the State children's health insurance program are 3 to 5 times more likely than other children to experience and suffer from untreated tooth decay;

Whereas dentists provide an estimated $1,700,000,000 annually in non-reimbursed dental care;

Whereas nearly 11,000 dentists provided approximately $33,000,000 of free care to almost 500,000 children in the 3rd annual "Give Kids a Smile" program held on February 4, 2005;

Whereas the participation of dentists in the 4th annual "Give Kids a Smile" program, established and sponsored by the American Dental Association and held on February 3, 2006, serves to remind people in the United States about the need to end untreated childhood dental disease; and

Whereas the generous support of numerous corporations, such as Crest Healthy Smiles, Sullivan-Schein Dental, and DEXIS Digital X-ray Systems, helps make the "Give Kids a Smile" program a success: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the American Dental Association for establishing and continuing its sponsorship of the "Give Kids a Smile" program;

(2) emphasizes the need to improve access to dental care for children;

(3) thanks the thousands of dentists, dental hygienists, dental assistants, and others who volunteered their time to bring a smile to the faces of hundreds of thousands of children on February 3, 2006;

APPOINTMENT TO READ WASHINGTON'S FAREWELL ADDRESS

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to the order of the Senate of January 24, 1901, as modified by the order of February 2, 2006, appoints the Senator from Colorado, Mr. SALAZAR, to read Washington's Farewell Address on Friday, February 17, 2006.

ORDERS FOR WEDNESDAY, FEBRUARY 8, 2006

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:45 a.m. on Wednesday, February 8. I further ask that following the prayer and pledge, the morning hour be deemed expired and the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then begin a period of morning business for up to 1 hour, with the first 30 minutes under the control of the majority leader or his designee and the second 30 minutes under the control of the Democratic leader or his designee. I further ask the Senate begin consideration of S. 852 for debate only during Wednesday's session; further, that the Senate recess from 12:30 p.m. until 2:15 p.m. for the Democratic Party luncheon.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, tomorrow following morning business, the Senate will begin consideration of the bipartisan asbestos bill. Senators should come to the Senate to debate the substance of the legislation. Although no amendments are in order to the bill during tomorrow's session, Senators will be able to discuss their amendments. I encourage Senators to do so. We should make tomorrow a full day of discussion on asbestos. There will be a number of amendments to be considered beginning Thursday morning. It is important we begin those discussions tomorrow so we can use our time efficiently on Thursday and Friday.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:20 p.m., adjourned until Wednesday, February 8, 2006, at 9:45 a.m.

EXTENSIONS OF REMARKS

REMEMBERING ROGER GROSSMAN

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 7, 2006

Ms. WOOLSEY. Mr. Speaker, I rise with sadness today on the occasion of the death of my friend and constituent, Roger Grossman of Mill Valley, California, who died January 26, 2006, after an extended battle with prostate cancer.

Roger was relatively new to Marin County, arriving 5 years ago as the new publisher for the Marin Independent Journal, the IJ, the daily paper for thousands of residents. He quickly established himself as a forceful, astute leader and a caring contributor to the community, both as an individual and in his role as newspaper publisher.

Originally from Seattle where he got his start with the Seattle Post-Intelligencer, Roger also worked at several radio stations, held publishing posts in San Diego and Michigan, and wrote, "Eleven Steps to Advertising Success." In 1989 he joined MediaNews Group, the parent company of the Marin IJ.

One of Roger's best-known activities was his crusade to bring attention to the issue of workforce housing. Realizing that the high cost of housing in Marin County was hurting the economy by driving workers farther and farther away, he ran a hard-hitting series highlighting the issue and championed the creation of the Marin Workforce Housing Trust by the County's large employers. He also spoke out on Marin's high rates of both breast cancer and prostate cancer, important public health issues.

A frequent presence at so many events that an IJ editorial opined that he "seemed to be everywhere," Roger's visibility was enhanced by his imposing physical stature, vibrant energy, and warmth of spirit. As an advocate for the many nonprofits that are the fabric of the community, he supported causes ranging from the arts to health care to youth services. He served on many boards including Dominican University of California, Big Brothers Big Sisters, Marin Ballet, the Novato Chamber of Commerce, United Way, the California Film Institute, and the School to Career Partnership and won several awards including Heart of Marin.

He is survived by his wife Cheryl and children Erik, Stephanie, Trent, and Elliott.

Mr. Speaker, Roger Grossman's passing will leave a hole in the fabric of Marin County. His compassion, resolve, and buoyant energy leave a legacy for us in how one person can make a difference to his community, his colleagues, his family, and his many friends.

HONORING JUDGE MARIO J. ROSSETTI

HON. THOMAS M. REYNOLDS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 7, 2006

Mr. REYNOLDS. Mr. Speaker, it is with great pride that I rise today to honor a respected jurist, a dedicated public servant and a trusted friend upon the occasion of his retirement from the New York State Court of Claims.

Born in Worcester, Massachusetts, to proud immigrant parents, a long-time resident of Buffalo and Williamsville, New York, Judge Mario J. Rossetti began his public service when he joined the Niagara Frontier Port Authority early in his legal career. Rossetti also served as a confidential lawyer to the Erie County Surrogate's Court through 1981.

Judge Rossetti's dedication to public service culminated when he was nominated by Governor Mario Cuomo, and confirmed by the New York State Senate, as a New York State Court of Claims Judge in 1987. The day Judge Rossetti swore the oath of office was one of the proudest days of his life, though he lamented that his deceased father could not witness it. Upon reappointment to the post by Governor George E. Pataki, Judge Rossetti has served as a Court of Claims Judge and Acting Supreme Court Justice since 1987.

Mr. Speaker, in the cases that have come before him, Judge Rossetti has dispensed justice with great compassion and firmness of judgment. Judge Rossetti's deep love of the law and his regard for the highest potential of the legal profession deepened his sense of fulfillment while on the Court. Attorneys practicing before Judge Rossetti often remarked that they enjoyed trying cases before him because he let them try their cases as the advocates that they are supposed to be, with the Judge enforcing the rules of the court.

Mr. Speaker, Mario Rossetti's involvement in a variety of civic and community organizations have made their mark on the community. Most of those endeavors also bore the unmistakable mark of Helen Rossetti, nee Pacini, Mario's dear wife who passed away in June. Married in Buffalo in 1958, the couple had six children, Michael, Thomas, Ann Marie, Barbara, David and Renee.

Mr. Speaker, in recognition of and in gratitude for his service, leadership and patriotism, I ask that this honorable body join me in honoring Judge Mario J. Rossetti upon the occasion of his retirement, and wish him great health and happiness in the days and years ahead.

TRIBUTE TO REPRESENTATIVE COOPER EVANS

HON. JIM NUSSLE

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 7, 2006

Mr. NUSSLE. Mr. Speaker, I rise to pay tribute to Representative Cooper Evans, who passed away on December 22.

Representative Evans served in the Iowa General Assembly from 1975 to 1979 and continued his service to Iowans in this Chamber representing from 1980 until 1986. He was a friend and colleague to many Members who still serve in the U.S. House of Representatives today.

One of the reasons I made the decision to enter public service was because of Cooper Evans. As a young student at Luther College volunteering for Congressman Evans, I was able to see firsthand his dedication to improving the lives of Iowans.

Following his service in Congress, he served as a policy advisor to President George H.W. Bush beginning in 1991. In that capacity, Representative Evans continued his service to Iowa by bringing his agriculture experience and offering his voice as a Midwesterner within the administration.

Representative Evans led an impressive life. He served our country during World War II in the Army Corps of Engineers, using skills he learned at Iowa State University. When the United States began to strive for its goal to land an astronaut on the Moon, Cooper Evans continued his work as an engineer, as NASA's Director of Lunar Missions.

In more recent years, Representative Evans worked to promote agriculture throughout the world and bring food to those in need through his work with Volunteers in Overseas Cooperative Assistance. This effort helped bring better nutrition and stability to those living in the former Soviet republics.

Mr. Speaker, I am pleased to pay my respects to Cooper Evans. He led a life of service to the people of Iowa. My thoughts are with Jean Evans and her family and friends, as they grieve for their loss, but also celebrate the life of Cooper Evans.

ARTICLE BY RABBI ISRAEL ZOBERMAN

HON. THELMA D. DRAKE

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 7, 2006

Mrs. DRAKE. Mr. Speaker, I am pleased to share the following article written by a constituent, Rabbi Israel Zoberman.

This is a time of critical crossroads. Israel's Prime Minister Sharon's serious health condition would have been a cause for concern, nationally and internationally, at any time. The current timing, however, is bound to offer a host of challenges.

Having just recently formed a new centrist political party, Kadima (Forward), Sharon's popularity in the Israeli public has initially catapulted it in the polls to the top of the March 28 scheduled elections with 40 representatives in Israel's 120 seat Knesset (Parliament). It is doubtful now that presumably in Sharon's absence of active participation, Kadima will muster such commanding influence.

This reality allows the Likkud party, created by Sharon back in 1973 and decimated by his defection due to its hard-line vis-à-vis the Palestinians and Sharon's changed posture, to reemerge as a potent power under Netanyahu's present leadership. The door has also been opened to potential gains by Labor with its head and rising star, Peretz, who defeated long-enduring Peres.

An unsettled and unsettling Israeli scene is bound to have repercussions, at least temporarily, for the peace process which has finally gathered momentum given the disengagement from Gaza and the northern West Bank. A breakthrough move masterminded by Sharon's single-mindedness and quite smoothly facilitated with the aid of Israel's responsive democracy. The Palestinians and Arab rejectionists might be tempted to take advantage of the temporary vacuum left by Sharon though the government is fully functioning, and test the waters, inviting increased tension in a volatile context.

Sharon's lasting legacy which can not be denied nor hopefully diminished but only enhanced, is his crowning and courageous transformation from a right winger vehemently opposed to Rabin's Oslo initiative to a responsible leader who upon becoming Prime Minister painfully appreciated the need for a peaceful Palestinian state next to a secure Israel. I recall being in Sharon's company years ago when as the architect of West Bank settlements, he zealously displayed dotted maps. Thus his radically revised course was met with disbelief and hostility by long time friends and supporters, turning him into possibly the most guarded man on earth, traveling by helicopter rather than car.

I will cherish my memorable encounter with Sharon in December 2000 in Jerusalem, exactly two months before first elected Prime Minister. It was during a solidarity mission following the outbreak of the Second Intifiada, triggered by Sharon's explosive visit to the Temple Mount and his nemesis Arafat taking advantage of it, unleashing unremitting violence against Israeli citizens while denying former Prime Minister Barak's far-reaching negotiating concessions. I found Sharon approaching my row and seating next to me. He was chairman of the Likkud and I saw no bodyguards around him. After he addressed our delegation I had the gumption to ask him if he would had visited the Temple Mount had he known how the Palestinians would exploit it. He simply responded, "They always have excuses." He did express sympathy for the Palestinians' plight. His searching eyes of down-to-earth humanity yet steeled determination will remain with me.

Just like Rabin the General he too was transformed into both visionary and realist, struggling for that elusive yet essential peace. A war hero who was badly wounded in Israel's 1948 War of Independence and distinguished himself in the 1967 and 1973 wars, he was deeply disappointed when not appointed the military chief of staff. Sharon received a black eye from the official inquiry commission following the tragic events of the Sabra and Shatila refugee camps during the 1982 war in Lebanon. Consequently he was forced to resign from his Defense Minister post with a bleak public future. He also experienced family adversity, losing two wives and an eleven year old son killed in a gun accident.

A colorful man of charisma and charm, conflict and controversy, Sharon nonetheless succeeded in gaining his nation's confidence as Prime Minister due in large measure to Palestinian terror and his tough aura though his response to Palestinian provocation of suicide bombings has been quite cautious, partly because, I believe, of his desire to rehabilitate his past tarnished image. His insistence on erecting the security-barrier in face of outside opposition substantially reduced terrorist attacks. Nicknamed the "bulldozer" who does not stop at a red light with negative and positive attributes, he proved to be "the comeback kid" exhibiting remarkable skills in Israel's political minefield.

The last of Israel's grandfatherly figures inspiring awe, turning from politician into statesman, he enjoys a close working relationship with President Bush who highly values his Israeli partner in pursuit of common goals in a terrorism threatened world. However, the basic bond between the two intimately linked allied countries will persist with whoever is Israel's leader or America's. Even as we pray for Sharon's well-being we traumatically learned of the fateful impact one man with a crushing burden of duty can make, and of the human boundaries of even great historical personalities. In health and sickness, Sharon has come to symbolize an embattled Israel on the fronts of war and peace fighting to prevail.

HONORING JAMES E. PFEIFFER

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 7, 2006

Ms. WOOLSEY. Mr. Speaker, I rise today to honor James E. Pfeiffer of Sausalito, California, who died January 14, 2006, while hiking on the Marin County trails that he loved. Jim will be remembered for his contributions to his community and the youth of California as well as for the leadership he provided to the Foundation of the State Bar of California.

Born in St. Louis, Missouri, in 1945, Jim earned a B.A. from Wesleyan College in Iowa and an M.A. from George Washington University in Washington, DC. He worked for the YMCA in New York and Connecticut before relocating to California in 1976 as Program Director of the Sonoma County YMCA.

Jim also served stints at the YMCA in Los Gatos, the Diocese of San Jose, the Japanese American Community Center, and the Charles Armstrong School, before becoming the first Director of the Foundation of the State Bar of California upon its establishment in 1990. He later became its first employee as well as continuing to manage a volunteer board of directors.

Founded to fund law-related education and public service and to provide scholarships to law students, the organization under Jim's leadership raised corporate sponsorships of several hundred thousand dollars per year. Due to his guidance, it now supports the development and promotion of peer courts for first-time youthful offenders who commit a misdemeanor; awards 40 grants annually to causes such as "Kids in the Law" and "When You're Over 18" publications; and offers scholarships and internships to applicants from all over the State.

Jim also spearheaded the creation of the Legal Heritage Institute which sends a high school student to Sacramento for a week to experience the courts and legal issues in the Capitol and for several years served as executive director of the California Supreme Court Historical Society where he focused on the recovery and promotion of the State's judicial history. He retired from the foundation in 2003 due to advancing Parkinson's disease.

Jim's community service includes volunteering as lay eucharistic minister for the San Quentin Prison Ministry, developing and guiding historical walking tours of San Rafael for the Marin Historical Society, and working with youth as recreation director for St. Andrew Church in Marin City's Vacation Bible School. He also walked precincts for political candidates Faye d'Opal, Sharon Jackson, and John Kerry. And Jim was a great supporter of mine.

Mr. Speaker, James Pfeiffer will be sorely missed by his many friends and colleagues and especially by his devoted wife, Bonnie Hough. His courage, spirit, and warmth were an inspiration to all of us who knew him and are a continual reminder not only of what we have lost, but also of what we can achieve.

CONGRATULATIONS TO HOWARD FRIEDMAN

HON. BENJAMIN L. CARDIN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 7, 2006

Mr. CARDIN. Mr. Speaker, it is with great honor that I rise today to congratulate Howard Friedman on becoming the new President of the American Israel Public Affairs Committee, AIPAC. Howard Friedman is one of the most dedicated and talented individuals I know, and AIPAC will be in good hands under his leadership.

Howard is a resident of Baltimore. He also is the Managing Partner of Lanx Capital, a hedge fund advisory firm, and is the co-founder and Vice Chairman of Circa Group, an investment group. In addition to his success in the business world, Howard has a longstanding commitment to Jewish communal affairs. He has served as the Campaign Chairman of the Associated Jewish Community Federation of Baltimore and as President of the Baltimore Jewish Council. He also serves on numerous boards, including 1st Mariner Bank, AIPAC and Sinai Hospital.

In assuming the helm of AIPAC, Howard knows these are difficult times for Israel and the peace process. But he also knows that Israel is an island of democracy and freedom in a sea of totalitarian, repressive regimes. As the President of AIPAC, Howard will work to continue to strengthen the U.S.-Israel relationship. Israel is the only Western democracy in the Middle East and it's vital that our bond remains unshakable.

The enemies of Israel are strong, and AIPAC is an important ally in combating those who seek the destruction of Israel.

Mr. Speaker, I urge my colleagues in the U.S. House of Representatives to congratulate Howard Friedman on his new role as President of AIPAC, and affirm our support for the State of Israel.

HONORING THE MEMORY OF JUDGE ART DANNER

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 7, 2006

Mr. FARR. Mr. Speaker, I rise today to honor the memory of my dear friend, the late Judge Art Danner. Art died unexpectedly on Saturday the 28th of January, leaving a void in both the legal community and the community at large. As a friend, experienced lawyer, Superior Court Judge and respected public servant, Art heavily impacted Santa Cruz County, and it is fitting that we honor him today. Art is survived by his wife, Betty Danner; his parents, Arthur Danner Jr. and Marie Danner; and his sons, Arthur and Andrew Danner.

Art was revered in Santa Cruz for his commitment to justice and the strength of his personal convictions. Art built a reputation for tenacity as the district attorney for Santa Cruz County, as each of his cases was debated with patience and fortitude. This determination was characteristic of Art throughout his career as a prosecutor. As district attorney, he was known for his tireless pursuit of justice and was acutely aware of his responsibility to the public as the chief law enforcement officer in the County. This sense of responsibility and service resonated throughout the community, instilling public confidence in the judiciary and the Judge himself.

Art retained these qualities as a jurist, proving to be dynamic in approach and pragmatic in his application of the law. In the courtroom, he applied himself with imagination and fervor, showing himself to be a considerate and pensive judge, ensuring that every case before him was decided in accordance with established law and the principles of justice, liberty and equality.

As a member of the society, he was held in the same high regard. Community groups have recognized Art for his tireless work as a prosecutor, judge and active citizen. For all that knew him, both in his professional and personal capacity, he was an inspiration and is regarded as a man of integrity and unrelenting diligence. Today we honor the memory and cherish the legacy of Judge Art Danner.

HONORING JUDGE SHARON S. TOWNSEND

HON. THOMAS M. REYNOLDS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 7, 2006

Mr. REYNOLDS. Mr. Speaker, it is with great pride that I rise today to honor a respected jurist, a dedicated public servant and a trusted friend upon the occasion of her selection as recipient of the Susan B. Anthony Award from the Interclub Council of Western New York.

Judge Sharon S. Townsend is most deserving of this award, as she exemplifies the spirit and character of Susan B. Anthony by her record of professionalism, community service and achievements. Judge Townsend was the first woman in the Eighth Judicial District to be appointed Administrative Judge, a position she assumed in January 2003.

This fine judge's career is marked by her election to the New York State Supreme Court in November 2003, and she was previously elected to the Family Court in 1992 and reelected to a second 10-year term in November 2001. Judge Townsend's community service also includes seven years as Justice in the Village of Williamsville.

Mr. Speaker, Judge Townsend's involvement in a variety of civic and community organizations have made their mark on the community. She serves on the Board of Trustees and was a model court lead judge for the National Council of Juvenile and Family Court Judges. In 1995, she was appointed a member of the Permanent Judicial Commission on Justice for Children. Since 2003, she has served as a member of Chief Judge Kaye's Adoption Now Task Force, and she served as chair of the Family Court Advisory and Rules Committee for the New York State Office of Court Administration for four years.

Her community activities reflect this dedication to Western New York. Her activities, among others, include, YWCA Public Leadership Alumnae Network, Governor's Commission on Child Abuse and Neglect, Bryn-Lyn Community Hospital Advisory Board, Millard Fillmore Suburban Hospital and Gates Circle Operating Boards, Erie Community College North Advisory Board, and served as an adjunct professor at Medaille College.

Her efforts have not gone unnoticed. Judge Townsend was recipient of the Erie County Court Appointed Special Advocates Light of Hope Award, the Outstanding Jurist of the Year Award from the Erie County Judges and Police Conference, and the Erie County Bar Association named her Jurist of the Year in 2001. In March 2004, she was recognized as one of the Women Making History in Erie County, and the next year she received from the Women's Bar Association of the State of New York, Western Chapter, the Lady Justice A ward, named in memory of Judge Townsend's mentor, the Honorable M. Dolores Denman.

Mr. Speaker, in recognition of and in gratitude for her service, leadership and patriotism, I ask that this honorable body join me in honoring Judge Sharon S. Townsend upon receiving the Susan B. Anthony Award from the Interclub Council of Western New York.

HONORING THE PEOTONE FIREMEN FOR 125 YEARS OF SERVICE

HON. JERRY WELLER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 7, 2006

Mr. WELLER. Mr. Speaker, I rise today to honor the Peotone Firemen who are celebrating 125 years of service to the Village of Peotone and the surrounding area. The Peotone Fire Protection District lies wholly within the 11th Congressional District in Illinois.

In 1881, the Village of Peotone purchased its first fire truck and the first drill for the volunteer firemen was held on April 15, 1881 under the command of Captain John Fedde. In 1924 a Model T Fire Truck was purchased. The Rural Fire District was formed in 1940 and a tanker was purchased in 1953 that could carry 1,000 gallons of water. In 1975, the Fire District purchased an ambulance and had the first operational paramedics in will County.

1978 was a banner year for the Fire District. The voters passed a resolution to support an ambulance service, the Peotone Fire Protection District was established and the Peotone Fire Protection District accepted the Peotone Fire Department as the organization to protect the residents of the district from fire; promote fire protection and prevention; and to provide emergency medical services to district residents. A new fire station broke ground in March 1992 and was dedicated to the memory of Trustee Gerald Borchardt in 1993.

Today, the Peotone Fire Protection District has approximately 50-volunteer and part-time dedicated personnel under the direction of Fire Chief John Young. The district maintains a modern and well-equipped station at 7550 West Joliet Road in Peotone and also operates two Advanced Life Support ambulances. Residents in the entire Peotone area can rest assured they are well protected by firemen from the Peotone Fire Protection District.

Mr. Speaker, I urge this body to identify and recognize other individuals in their own districts whose actions have so greatly benefitted and strengthened America's families and communities.

HONORING HOWARD T. PAGE

HON. ROBERT E. ANDREWS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 7, 2006

Mr. ANDREWS. Mr. Speaker, I rise today to recognize and honor Tom Page for his many years of service to his community. Starting in 1958, Mr. Page devoted 30 years of his life to the Barrington Police Department, climbing the ranks from patrolman to chief. His service did not end there. He went on to represent Barrington, New Jersey, as a councilman for a total of 7 years, with a term as mayor in between.

Mr. Page took time out of his busy schedule to coach in and manage the Barrington Little League and Girl's Softball League. He is a past member of the Barrington Ambulance

Corps., the PBA Local 328, and a past associate member of the Barrington Fire Co. Tom is retired from the International Association of Chiefs of Police and NJ State Association of Chiefs of Police, as well as the ex-president of Camden County Police Chiefs Assoc. Currently, Tom Page works for Camden County Department of Corrections as a training officer.

Tom Page is a pillar in my community, and he has served us well for 43 years. I express my sincere gratitude to Mr. Page for over four decades of service to his community.

STATEMENT IN SUPPORT OF CATHOLIC SCHOOLS WEEK

HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 7, 2006

Mr. HIGGINS. Mr. Speaker, I rise today in strong support of House Resolution 657, which has been offered by Mr. KENNEDY from Minnesota. I thank my colleague for introducing this resolution during Catholic Schools Week 2006.

Catholic Schools Week is an annual national celebration of the important role that Catholic elementary and secondary schools across the country play in providing quality education for American youth. The mission of these institutions—to build solid foundations for lives of confidence, faith, and service—has had a tremendous impact in shaping family values and community life across the country, and particularly in my community in Western New York.

In my hometown, neighborhoods are often known by the names of their Catholic Schools and Parishes, and the many families that are active in Catholic schools are enriched by the values they espouse. Indeed, I have spent my life as a first-hand witness to the beneficial work of Catholic schools. My mother was a teacher at Our Lady of Perpetual Help, and my two children, John and Maeve, are enrolled at St. Martin of Tours Catholic School in South Buffalo. My family and I are personally grateful for the contributions that America's Catholic schools have been making to families like ours, and American society at large, for more than four centuries.

Today, more than 7,700 Catholic schools and 160,000 Catholic school teachers nationwide are making valuable contributions to education and are playing an integral role in shaping a brighter, stronger future for our nation. Together, they will teach 2.4 million students, an astounding 99 percent of which will graduate and 97 percent of those graduates will go on to college. As these students become adults, their intelligence and character will benefit communities in Western New York and throughout the nation.

I thank the National Catholic Educational Association and the United States Conference of Catholic Bishops for cosponsoring this week-long event and for helping to increase awareness for Catholic education across this great country.

Mr. Speaker, I am pleased to join with my colleagues in supporting this resolution, and I thank my colleague Mr. KENNEDY for his leadership on this issue.

STEPHEN AND MARY PETRILLA: GET WELL SOON

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 7, 2006

Mr. SMITH of New Jersey. Mr. Speaker, I rise today to honor two very special people while offering my prayers and warmest wishes for their quick return to full health.

Stephen and Mary Petrilla are 50 year residents of Hamilton Township—the largest municipality in my congressional district in central New Jersey. As teachers, parents and local residents, they live quiet but influential lives, earning the respect and devotion of their students, neighbors, and fellow parishioners at Saints Peter and Paul Parish in Trenton, New Jersey. Their family and friends are inspired by their faith, kindness and commitment to helping others.

Mr. Stephen Petrilla is a veteran of the United States Army and was injured while serving his country in the line of duty. He is a member of the American Legion, the DAV and the Elks.

For nearly 75 years, Mr. Petrilla dedicated his life to the field of education, helping children in either a teaching or administrative capacity. A former administrator for two training schools in New Jersey, his expertise and passion focused on special education, helping children with mental retardation and working to ensure that State and local governments did more to meet the needs of our precious children who face special challenges.

Mr. Petrilla organized and directed shelter workshops for challenged children across the State and later worked as a special education teacher in Lawrence Township and at Sister Georgine's Learning Center in Trenton. His inspiring commitment to helping children has been recognized through various honors including being named a Fellow in the American Association of Mental Deficiency and being featured in various Who's Who publications including Who's Who in the East, 1979, and Who's Who in Child Development Professionals, 1976.

Mrs. Mary Petrilla has been a constant source of love and support for her husband and her children, while also distinguishing herself in the teaching profession. After receiving her bachelor of arts degree at St. Joseph's, Mrs. Petrilla began working as a teacher eventually advancing her way to become one of the first female elementary school principals in the Pennsbury School District. She also taught adult education classes in Trenton while serving as a private tutor. For 20 years, Mrs. Petrilla served as a home instructor for Ewing Township Schools, helping children with illnesses who were physically or medically unable to go to school. She also served as a supplemental teacher for "English as a Second Language" and Basic Skills Instructor until her retirement in 1994.

Lots of children have benefited from the hard work, commitment, love and compassion the Petrillas each exuded on the job, in their careers in education. And it is important to note, that that same love, generosity, empathy, nurturing and mentoring was and remains a hallmark of the Petrilla home. They are the proud parents of five children and eight grandchildren and their family feels abundantly blessed. They have shared with me inspiring stories that truly capture their parent's extraordinary example of reaching out and helping others throughout their lives.

We join with their family and friends in thanking the Petrillas for dedicating themselves to successfully helping our community, and we offer our continued prayers for their comfort and full recovery.

INTRODUCTION OF THE PRESCRIPTION DRUG SAFETY AND AFFORDABILITY ACT

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 7, 2006

Mr. STARK. Mr. Speaker, I rise today to introduce legislation that will bring some sanity back to prescription drug marketing, and help bring down the astronomical costs of prescription drugs. The Prescription Drug Safety and Affordability Act will force manufacturers to educate physicians instead of spending billions of dollars wining and dining them.

As Congress begins to investigate its own ethics, we should also shed some light on the immoral relationships between the pharmaceutical industry and physicians. Golf trips and lavish meals aren't just for Members of Congress. Though its hard to imagine, physicians may actually get more lobbying perks from the drug industry than Members of Congress do.

For far too long, the pharmaceutical industry has jeopardized patient safety and inflated prescription drug prices by using tax-deductible dollars to underwrite their so-called "physician education" efforts. According to a recent report in the Journal of the American Medical Association, JAMA, there is a clear conflict of interest when doctors become too cozy with pharmaceutical companies.

Drug companies annually spend about $10,000 on every single physician in the United States trying to entice doctors to prescribe their drugs. That adds up to nearly $8 billion in annual spending by drug companies marketing their products to physicians. It is not unusual for doctors to receive lavish meals, all expense paid "educational" trips to posh resorts, and lucrative consulting deals from pharmaceutical manufacturers. Every single dollar spent on these unnecessary gifts is tax deductible for the drug industry as a general business expense.

The Pharmaceutical Research and Manufacturers of America, PhRMA, pretended to discourage these improper marketing ploys by issuing conflict-of-interest guidelines in April 2002. After announcing the guidelines with fanfare, they then paid the American Medical Association to "educate" their members on these guidelines—that is, they gave doctors financial incentives to promote ethical guidelines that called for an end to financial incentives! It is obvious that PhRMA is not serious about ending the practice of giving financial incentives to doctors.

Regardless of what PhRMA may say, the marketing tactics are still working. It is clear from the JAMA study that self-policing won't work. "Although physician groups, manufacturers, and the federal government have instituted self-regulation of marketing . . . current controls will not satisfactorily protect the interests of patients."

Doctors swayed to prescribe a certain drug because of their financial ties to drug companies put their own personal interest above the health and safety of their patients.

This must stop now. My legislation will curb unnecessary spending physician gifts to the benefit of all patients.

The Prescription Drug Safety and Affordability Act is a simple way to ensure pharmaceutical companies' behavior matches their rhetoric. This bill eliminates the tax-deduction that pharmaceutical companies currently receive for spending on physician gifts. The bill specifically exempts free drug samples, as that is often the only means by which uninsured patients can get medications.

Unnecessary physician gifts from the drug industry unduly influence prescribing, increase drug prices and corporate profits, and endanger patients who get the wrong prescriptions for the wrong reasons. By removing incentives for pharmaceutical companies to lavish gifts of dubious public value on physicians, I hope that pharmaceutical companies will either redirect those funds toward research and development of lifesaving drugs or reduce the prices of prescription drugs for seniors and all Americans.

The American Medical Student Association has endorsed the Prescription Drug Safety and Affordability Act. This group of future doctors—not yet beholden to the drug industry—recognizes the importance of this bill and the problems physician gifts cause in the doctor-patient relationship. I am pleased to submit their attached letter of support for inclusion in the CONGRESSIONAL RECORD.

I urge my colleagues to join me in support of the Prescription Drug Safety and Affordability Act. Prohibiting the drug industry from lavishing unnecessary gifts on physicians is a nonpartisan issue that should receive bipartisan support. If we can clean up Congress there is no reason we shouldn't clean up health care. It is time to stop using taxpayer dollars to fund marketing campaigns that put profits above patients.

AMERICAN MEDICAL STUDENT
ASSOCIATION FOUNDATION,
Reston, VA, February 1, 2006.

Hon. PETE STARK,
House of Representatives, Cannon House Office Building, Washington, DC.

DEAR REPRESENTATIVE STARK: On behalf of the 60,000 physician-in-training members of the American Medical Student Association (AMSA), we would like to offer our strong support for the Prescription Drug Safety and Affordability Act. The impact of pharmaceutical marketing on the professional behavior of physicians is very concerning to the future physicians of America. AMSA has long advocated for physicians to protect their independence from the pharmaceutical industry.

We applaud the Prescription Drug Safety and Affordability Act as a way to reduce the financial incentives for promoting drugs. The pharmaceutical companies spent $7.3 billion on detailing to doctors in 2004, more than twice what was spent in 1997. These gifts to physicians contribute to the high cost of medications for our patients. Taxpayers should not further subsidize this behavior through the deductibility of drug company promotions to physicians.

Gifts from the pharmaceutical industry have an eroding effect on the doctor-patient relationship. Numerous studies have documented how those gifts influence the prescribing behavior of physicians, often in ways that deviate from the recommended treatment guidelines. However, the most obvious evidence that gifts influence physicians in the fact that drug companies would not spend billions of dollars on pens, meals and honorarium if it didn't work.

Since 2002 AMSA has been entirely independent of funding from drug companies in our meetings and publications, and we have called for other physician groups to follow our lead. Last month the Journal of the American Medical Association published recommendations from leading academicians that academic medical centers—where physicians are trained—should be entirely free of pharmaceutical representatives, industry sponsored meals and free samples. We applaud the institutions of medical education for taking this step.

AMSA's PharmFree Campaign (www.amsa.org/prof/pharmfree.cfm) has been cited in major medical journals, making AMSA a leader in removing the pharmaceutical companies' influence in the practice of medicine. In 2005, AMSA launched the Counterdetailing Campaign where medical students teach physicians to use non-biased sources of information about prescription drugs. Time magazine and USA Today have featured AMSA and our Counterdetailing Campaign. Through AMSA, medical students continue to lead the drive to protect the doctor-patient relationship from outside influences.

The Prescription Drug Safety and Affordability Act will remove the unhealthy influence of the drug industry from the practice of medicine. AMSA is proud to support your efforts and leadership in this issue. If we can help in any way, please contact Chris McCoy, Legislative Affairs Director at 703-620-6600 x 211.

Sincerely,

LEANA S. WEN,
National President.
CHRISTOPHER P. MCCOY,
Legislative Affairs Director.

TRIBUTES TO BARBARA JAEHNE, TRACY BRAINARD, CATHY BOUDREAU, CELIA SZELWACH AND KENDALL JONES

HON. KATHERINE HARRIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 7, 2006

Ms. HARRIS. Mr. Speaker, I rise today to recognize five extraordinary women whose diligence and determination have led them to pinnacles of their chosen professions. Despite their numerous successes, it often is the case that their contributions are never recognized.

One goal of my Women In Business Initiatives is to highlight positive role models, engage them in the community and applaud their worthy contributions. To achieve this end, I asked my constituents to nominate a business woman whom they believed deserved recognition.

A woman whose compassion and charity has been invaluable in lifting others to greater heights. These women represent the very best our State and Nation has to offer. It truly is an honor and a pleasure to serve as their Representative in Congress.

Woven from unique backgrounds, their histories share a common thread—a refusal to allow obstacles placed in their way by outdated thinking or unpredictable circumstance to delay the pursuit of their dreams.

A wife, a mother, a medical professional, and an active member of the community, Barbara Jaehne could have found equal success as a juggler if her passions had not led into the field of medicine. Currently, Jaehne serves as chairman of the board of speech language in the Department of Pathology and Audiology at the Florida Department of Health.

Her work managing two offices in Venice and Englewood and her involvement with initiatives to improve the lives of the hearing impaired have not confined Jaehne to professional pursuits. The Republican Executive Committee of Sarasota County, as well as the Manatee Community College, is one of the varied organizations on whose behalf she volunteers her energy and her time.

Tracy Brainard is literally the ground-breaker of this distinguished group. In her role as office manager, Brainard is an integral member of the team at Coastal Construction Southwest, a construction company owned and administered by women. Coastal Construction President Evelyn Treworgy has made note of her "most unbelievable work ethic," an invaluable quality in any field.

Recognizing the indispensable role she holds within the company, Treworgy has stated that Brainard is "respected, trusted and absolutely depended upon by not only the principals but also fellow employees."

It has been said of Cathy Boudreau that she "works until all of her duties are completed" and her tasks are "always handled with complete professionalism." If there were a key to Cathy's success, it certainly is the single-minded commitment she brings to every endeavor. From the front desk, where Boudreau began her career at the Palm Island Resort, to the office of the President, Boudreau has earned the high praise and respect of her colleagues and peers.

Another individual not content to limit her horizons, Cathy also functions as event and group planner and assistant to the director of sales and marketing.

In 2000, when Celia Szelwach launched her own company—Creative Collaborations Consulting—there were no surprised faces to be found. After graduating in 1990 from West Point, Celia earned distinction as a senior parachutist and subsequently, her captain's bars while she led relief missions in the aftermath of Hurricane Andrew.

The skills which served her as a logistics specialist in the Army were an asset in her various roles with the Tropicana Corporation. Determined to positively impact others, Celia shares her entrepreneurial vision through her column for The Maddox Business Report, a Tampa Bay business magazine with a focus on diversity.

More importantly, Celia recognizes the power of her position as a role model within the Hispanic community. This commitment earned her recognition by the Girl Scouts Gulf Coast of Florida branch, which awarded her the President's Merit Award for service above and beyond expectations, particularly in the area of Hispanic outreach. It has been said of Celia that she possesses "tremendous personal strength and unlimited potential," qualities which have sustained her through difficult life challenges.

Kendall Jones. In the words of her business partner, Anand Pallegar, Jones is "driven by the love of this community and a desire to make it better." As editor of the S2 Report, the only free digital daily business news report in Sarasota and Manatee counties, Jones recognizes that the business community is hungry for information, yet starved for time. Her success in reaching a balance is evident in the publication's growing readership, not to mention the first-place award she received from the Gulf Coast Business Review for in-depth writing.

The audience Jones places the greatest priority on reaching is an audience of one—her daughter, whom she single-handedly raises. When she is not keeping the business community up to speed on events, Jones is busily trying to keep up with her daughter's Brownie troop.

As separate and distinct as the stories of these five successful business women may be, all serve to illustrate the power of the individual to reach a goal, the value of hard work and the necessity to never give in or give up. It is a pleasure to honor these five extraordinary women and to highlight their contributions to their businesses, their neighbors and their communities.

TRIBUTE TO HARRY AND DARLA WYENO, CITIZENS OF THE YEAR

HON. MARILYN N. MUSGRAVE

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 7, 2006

Mrs. MUSGRAVE. Mr. Speaker, I rise today to honor Harry and Darla Wyeno who were recently honored with the Crowley County Chamber of Commerce Citizen of the Year Award. The Wyenos were described as making community service a labor of love. They have worked tirelessly for the benefit and promotion of Crowley County.

The Olney Springs couple was recognized for the volunteer work they do within the county, but especially for the work they do as members of the Crowley Heritage Society.

Although Darla is retired, she continues serving as the Town Clerk. Harry, who is also retired, still continues to work part time at the First National Bank of Ordway.

Whenever they are not working these jobs, they can be found volunteering. Darla is probably best known for her work as the President and Chief Procurer of Crowley County. She continues to gather, archive, and present the county's history. Through her efforts, grants for the Crowley Heritage Center have been procured so much of the historical collection can be catalogued and protected for future generations to enjoy.

As President of the society Darla has made certain that all cultural and ethnic groups in the region are recognized in the local museum. The couple has also been very involved in the Chamber of Commerce for many years.

In addition, the Wyenos can be found volunteering for their church, where among other things, they have been faithful choir members for over 50 years at the United Methodist Church of Ordway.

Harry and Darla Wyeno are two people whose strengths of love, devotion and community service are wonderful examples for all of us to follow. As a Member of Congress I am proud to represent such fine citizens from Colorado's Fourth Congressional District.

HONORING THE LIFE OF ROSE NADER

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 7, 2006

Mr. CONYERS. Mr. Speaker, I rise to honor the life of Rose Nader, who at age 99 died on Tuesday, January 24, 2006, of congestive heart failure. As you can see, Mrs. Nader indeed lived an honorable life.

Below is a reprint of her obituary that appeared in the Washington Post on January 26, 2006:

> Mrs. Nader, who jousted with politicians and complacency as a small-town activist and was the mother of consumer advocate Ralph Nader.
>
> Mrs. Nader developed a certain civic renown in 1955 when she confronted Sen. Prescott Bush (R–Conn.), the father and grandfather of presidents. When Senator Bush visited Winsted, following a catastrophic flood, he was approached by Mrs. Nader at a public gathering. When he offered his hand in an obligatory fashion, Mrs. Nader latched on and refused to free him until he promised to help a dry-dam proposal move forward. This was fulfilled.
>
> Later, she advocated building a community center for children, forming a speakers club that would bring worldly lecturers to the town, and expanding and preserving a local hospital.
>
> At home, she could be implacable, particularly about food. She emphasized homemade items over packaged goods whose contents she found bewildering. She prohibited hot dogs and later beef because of the presence of a growth-stimulating hormone linked to cancer.
>
> She sweetened food with honey, not sugar, and pushed her children to eat chickpeas instead of candy bars on their way to school. When news of this was publicized during Ralph Nader's rise to prominence, the Wall Street Journal editorial page likened his mother to a Puritan.
>
> This characterization was laughed at by her children, even as they promoted the story involving her distrustful relationship with chocolate.
>
> Mrs. Nader later said: "When the children convinced me that chocolate-frosted birthday cakes were what all the other children wanted, I frosted the cake, but after the candles were blown out and before they cut into the cake, I removed the frosting. Some people might say I was severe, but it became a family joke."
>
> She later wrote a cookbook.
>
> Rose Bouziane was born in Zahle, Lebanon, on Feb. 7, 1906, to a sheep broker and a teacher. She taught high school French and Arabic before her marriage in 1925 to businessman Nathra Nader.
>
> After immigrating to the United States, they settled in Connecticut, where his Main Street bakery-restaurant-general store in Winsted, in the northwestern corner of the state, became a redoubt for residents bemoaning actions or inactions at the town hall.
>
> On occasion, Mrs. Nader used newspaper opinion pages to express her views.
>
> Writing in the New York Times in 1982, she denounced the use of "credibility phrases," such as "frankly," "to tell you the truth" and "in all honesty," that sometimes preceded a political statement or sales pitch. They gave her "the pervasive feeling that distrust is so widespread that people need to use such language to be believed."
>
> In another editorial, she embraced mass mailings from issue groups that are commonly dismissed as "junk mail." She wrote that they often come from people "who care about their times."
>
> Her husband died in 1991. A son, Shafeek Nader, died in 1986.
>
> Besides Ralph Nader of Washington, survivors include two daughters, Claire Nader of Washington and Winsted and Laura Nader of Berkeley, Calif.; a sister; three grandchildren; and three great-grandchildren.
>
> Ralph Nader once said his mother "took us out in the yard one day and asked us if we knew the price of eggs, of apples, of bananas. Then she asked us to put a price on clean air, the sunshine, the song of birds—and we were stunned."

CONGRATULATIONS TO MOORE RUBLE YUDELL ARCHITECTS & PLANNERS

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 7, 2006

Mr. FARR. Mr. Speaker, I rise today to congratulate Moore Ruble Yudell Architects & Planners, a Californian firm that has recently been awarded the 2006 Architecture Firm Award by the American Institute of Architects, the AIA. The AIA Firm Award is the highest honor bestowed by the AIA, recognizing firms that have continued to produce distinguished work for at least 10 years. The firm has contributed largely to institutional and cultural design and it is fitting that we mention them today, in particular the founding members Charles Moore, John Ruble and Buzz Yudell.

The firm was born from the founding members' dedication to habitation and the intersection of people, place and culture. Moore Ruble Yudell's early residential work evolved into a broad spectrum of private and public projects, projects that are rarely mentioned without a sense of wonderment. Their competition winning design for The American Embassy in Berlin, nearing completion, represents American democratic values abroad.

This progressive firm has been at the forefront of architectural design while retaining its commitment to the fundamental principles of humanism. The firm has remained committed to the notion of social and environmental responsibility in their designs.

Moore Ruble Yudell has completed projects of social and cultural importance and it is fitting that they have been awarded the AIA Architecture Firm Award, recognizing their illustrious body of work from the past 28 years. Together with the AIA and members of the United States Congress, I welcome you to our Nation's capital and in recognizing the importance of good design and good planning, join in congratulating Moore Ruble Yudell for their achievement and thank them for their contributions to American culture.

REMEMBERING CORETTA SCOTT KING

HON. TAMMY BALDWIN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 7, 2006

Ms. BALDWIN. Mr. Speaker, I rise today in great sadness as our Nation mourns the passing of Coretta Scott King—the First Lady of the Civil Rights Movement.

Coretta Scott was preparing for a career in music when she met her future husband, the Reverend Martin Luther King, Jr., while studying concert vocals at the New England Conservatory of Music. Coretta Scott became Martin Luther King, Jr.'s partner in life and in the movement.

After the assassination of her husband in Memphis, on April 4, 1968, Coretta Scott King never lost sight of the dream that Dr. King had so powerfully articulated. She dedicated her life to seeing that her husband's work was continued and his legacy protected—all while raising four children. She established the King Center, a living memorial in Atlanta, and successfully worked to establish a Federal holiday in King's honor.

I have always admired Coretta Scott King's remarkable strength and grace. I am inspired by the depth of her commitment to equality and peace. Coretta Scott King did not waiver in her quest for justice even in the face of violence—as when the King's Montgomery home was bombed. Because of her strength and tenacity, she leaves this world a better place.

We have lost one of our great leaders. The thought of a joyous reunion of partners separated far too soon, softens our sadness.

HOUSE OF REPRESENTATIVES—*Wednesday, February 8, 2006*

The House met at 2 p.m.

The Reverend John Appel, Senior Pastor, Frederick Seventh-day Adventist Church, Frederick, Maryland, offered the following prayer:

By Your grace we are citizens of this great Nation. Forgive us when we fail to do our part to keep this democracy healthy. Guide us as we work for its well-being. Guard our lips from inflammatory rhetoric which produces much heat, but very little light. Cleanse us from bigotry and self-centeredness in the pursuit of our own narrow interests in the public arena. Your word teaches that the long-term security of all depends on the strength of each. Strengthen, then, our resolve that we may exercise our precious votes for what is right, not just for what is personally advantageous.

Show us how to carry out Your will in the public arena, that we may respectfully and intelligently develop opportunities of liberty and justice for all. Purify our hearts and minds, that we may learn to renounce exploitation and prejudice in all its forms, and so contribute to the well-being of the community in which we live. For we pray this in Jesus' name. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from South Carolina (Mr. WILSON) come forward and lead the House in the Pledge of Allegiance.

Mr. WILSON of South Carolina led the Pledge of Allegiance as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

INTRODUCING PASTOR JOHN APPEL

(Mr. BARTLETT of Maryland asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARTLETT of Maryland. Mr. Speaker, Pastor Appel's ministry extends beyond his congregation to embrace the entire Frederick community, as well as missions abroad. He is currently serving as the president of the Ministerial Association of Frederick County, Maryland. This organization is composed of all of the ministers in the county. It meets monthly to engage in fellowship, dialogue, and to promote interfaith cooperation and activities to meet the spiritual needs of Frederick County residents.

Pastor Appel is also an active supporter of the Adventist Church's Hope for Humanity projects in southern Africa in response to the HIV/AIDS epidemic. Pastor Appel explained: "Hope for Humanity is coming to this program saying, 'Here are some challenges, here are some needs. We are a world church. We just can't stay focused congregationally. We've got to start thinking about our brothers and sisters around the world who need our help.' "

Mr. Speaker, today's prayer continues a tradition that began when Benjamin Franklin spoke during a moment of crisis at the Constitutional Convention, and these are his words: "In the days of our contest with Great Britain when we were sensible of danger, we had daily prayer in this room for divine protection. Our prayers, sir, were heard and they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of superintending providence in our favor. To that kind providence we owe this happy opportunity to establish our Nation. And have we now forgotten that powerful friend? Do we imagine that we no longer need His assistance? I have lived, sir, a long time, and the longer I live, the more convincing proofs I see of this truth, that God governs in the affairs of men.

"If a sparrow cannot fall to the ground without his notice, is it probable that a new Nation can rise without his aid? We have been assured, sir, in the sacred writings that except the Lord build the house, they labor in vain that build it. I therefore beg leave to move that henceforth prayers imploring the assistance of heaven and its blessings on our deliberations be held in this assembly every morning before we proceed to any business."

Mr. Speaker, I am really honored that my pastor, Pastor John Appel, senior pastor of the Frederick Seventh-day Adventist Church and currently serving as the president of the Ministerial Association of Frederick County, is here today to continue this precedent followed by both the House of Representatives and the Senate.

2006 WILL BUILD ON LEGISLATIVE SUCCESSES OF 2005

(Mrs. BLACKBURN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BLACKBURN. Mr. Speaker, in the past several weeks we have all been back at home spending time in our districts talking with constituents, and I cannot even begin to tell you how energizing that has been. We have talked about tax policy. We have talked about the war or terrorism. We have talked about the ways we can reduce government spending. There are a lot of great ideas out there. And we have discussed the border security issue.

Last year, we enacted several spending cuts. Great work for us. Our men and women in uniform eliminated key al Qaeda figures, and we eliminated or cut some duplicative and wasteful government programs. We have a lot more to do. And we also passed legislation to work on our illegal immigration problem.

Mr. Speaker, this is going to be a great year. We are going to build on the successes of 2005, and we are going to act on the issues that matter to our constituents. Let's get to work.

MEDICARE PART D AND THE DONUT HOLE

(Mr. DEFAZIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DEFAZIO. Well, the gentlewoman was energized in talking to her constituents and encouraged by it, but I guess she didn't talk to any seniors about Medicare part D.

I have the unfortunate privilege of probably representing the first victim in the United States of America of the so-called donut hole. You don't know what the donut hole is? They wanted to pretend that you could preclude Medicare from negotiating lower drug prices, subsidize the pharmaceutical and insurance industries, and do all this for $400 billion. Of course, it turns out it will be more like $800 billion; but in order to get there, they had to create this weird construct. After you pay your payments, your premiums, and all that, you get to a certain point, around $2,000 or so, where you have to pay everything for the next $2,850.

This constituent doesn't have $2,850. The pharmaceutical companies eliminated the compassionate drug programs because they said, hey, these people can get this great Federal benefit. This means, in all likelihood, if we can't get this woman some help, she will die. Medicare part D. I guess she didn't talk to her constituents about that.

RADICAL ZEALOT

(Mr. POE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. POE. Mr. Speaker, the Iranian president is up to his old tricks again, recently claiming that God has put him on a divine mission to have nuclear weapons. This bizarre banter comes from the same sinister man who called for the destruction and devastation of Israel. This is more than disturbing. Iran's commander in chief is obviously a saber-rattling zealot who puts world security in turmoil.

Mr. Speaker, the President of Iran is defiant and determined to lead his country in a dangerous direction. He supports organizations that kill Americans, like the Palestinian Islamic Jihad, Hezbollah, and encourages the use of violence against Israel. Hopefully, the people of Iran see the destructive behavior of their president and want to bring about a free and stable Iran that wants to be a part of the community of nations.

A nuclear-armed Iran is a dangerous and deadly threat to the Middle East and all of the Free World. We must keep America as well as the rest of the world safe from this radical reactionary outlaw with his ridiculous ambitions. This is a matter of world security.

That's just the way it is.

FISCAL YEAR 2007 BUDGET

(Ms. SOLIS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. SOLIS. Mr. Speaker, today I rise because I believe working-class Americans deserve a Federal budget which is compassionate, decent, and provides hope to the American public.

President Bush's budget for fiscal year 2007 fails on all counts and provides insufficient funding for one of our Nation's greatest investments: its health.

Despite the confusing and poorly implemented new Medicare prescription drug benefit program, President Bush's budget cuts Medicare by $35 billion in the next 5 years, it cuts funding for public health programs by $126 million, and puts more families at risk of food and security by cutting more than $706 million in assistance.

Even with the growing problem of health care disparities and lack of insurance for communities of color, the budget slashes the Office of Minority Health Programs by 20 percent.

To our children, to those battling high health care costs, and to the uninsured, this budget, in my opinion, is not compassionate and it doesn't provide the American public with hope.

Americans deserve better. We must not inflict this pain on the most vulnerable populations in our country.

WAR ON TERROR AND BUDGET REQUEST

(Ms. ROS-LEHTINEN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. ROS-LEHTINEN. Mr. Speaker, as my stepson, Douglas Lehtinen, and his fiancee, Lindsay Nelson, wrap up their mission in Iraq, where they have been serving as Marine officers flying F-18s, I want to thank all of the brave men and women who wear our Nation's uniform for their commitment and the service that they are performing. I am pleased that the President's budget submitted to Congress this week provides more funding for the protection of our troops overseas.

The budget also provides the necessary funds to win the war on terror and enables our troops in Iraq and Afghanistan to defeat the enemy and protect our liberties. The budget calls for funding that will help our military transform itself to face current and emerging challenges.

Whether conventional military threats to our security interests or unconventional ones from terrorists and their supporters, we must be prepared for what tomorrow brings. Thank you, Mr. President, for supporting our troops.

FISCAL YEAR 2007 BUDGET

(Mr. DAVIS of Illinois asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DAVIS of Illinois. Mr. Speaker, I have always been told that budgets are a way of reflecting priorities. And if that is the case, then the budget documents that I have seen are indeed frightening.

The proposed budget I have seen will serve to widen the gap between the rich and the poor, cut vital health services for people who need them the most, and increase the cost of higher education.

I had hoped that the budget this year was going to be something different, but I am afraid it is the same old soup warmed over, the same old lemon with a new twist, and same old trickle-down theory of economics. I hope that we will tear it apart and send it back.

SALUTING THE SOUTH CAROLINA LEUKEMIA AND LYMPHOMA SOCIETY

(Mr. WILSON of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILSON of South Carolina. Mr. Speaker, in 2006, over 1,850 South Carolinians will be diagnosed with leukemia, lymphoma, Hodgkin's disease, or melanoma. Unfortunately, this devastating statistic is reflected in communities throughout our Nation.

While families struggle to cope with these serious diseases, the South Carolina Leukemia and Lymphoma Society is fighting to find cures and improve the quality of life for patients and their families. By focusing their resources on research, patient services, professional education and advocacy, a dedicated group of volunteers and staff are making tremendous progress every day.

Today, I am honored to recognize the South Carolina Leukemia and Lymphoma Society for its service. As blood cancers continue to threaten the lives of our family members and friends, I would like to encourage my colleagues and all Americans to join in this important fight.

In conclusion, God bless our troops, and we will never forget September 11.

PRESIDENT'S BUDGET CUTS FEDERAL FUNDING FOR METHAMPHETAMINE PROGRAMS

(Mr. BAIRD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BAIRD. Mr. Speaker, I rise today on behalf of local communities in my State and throughout this country that are fighting a terrible battle against methamphetamine, its production and use. And I rise to express grave concern about the impact of our President's budget proposal on that fight.

Let me share with you some troubling figures. The President of the United States has proposed to cut COPS funding by $376 million, he has proposed to cut the Meth Hot Spots program by $23.5 million, the Safe and Drug-Free Schools program by $353 million, and he has proposed to completely eliminate Byrne grants.

Now, I can tell you that when I go back home and I talk to my sheriffs and police officers and treatment specialists, they tell me meth is a catastrophe in our communities and we must fight it. Regrettably, this President's budget cuts the funds we need to prevail in that fight.

We need to restore those funds, and we need to emphasize to this administration that we have terrorists operating right here at home in our communities, and methamphetamine is their weapon of choice.

HONORING CONTRIBUTIONS OF CATHOLIC SCHOOLS

(Ms. FOXX asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. FOXX. Mr. Speaker, I rise today in strong support of H. Res. 657, honoring the contributions of our country's nearly 8,000 Catholic schools. Catholic schools provide an invaluable service to our country and offer excellent academic instruction to their students.

Take, for example, St. Leo the Great Catholic School in Winston-Salem, North Carolina. St. Leo was recently named a No Child Left Behind nationally recognized blue ribbon school for its academic superiority. It was one of just 10 North Carolina schools to receive this award and was the only school in the entire State to achieve this recognition.

Not only do Catholic schools provide excellent academic preparation, but they also mold students into upstanding citizens who are strongly dedicated to their faith, values, families, and communities.

For this, I am proud to join many of my colleagues in congratulating our Nation's Catholic schools, students, parents, and faculty for the key role they play in promoting a brighter and stronger future for America.

□ 1415

FISCAL YEAR 2007 BUDGET

(Mr. MORAN of Virginia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MORAN of Virginia. Mr. Speaker, the budget the President unveiled this week takes from the poor, gives to the rich, and leaves all of us in a worse fiscal mess.

At a time of war, when our soldiers are risking their lives halfway across the world, where is the call for shared sacrifice? Do millionaires deserve $50 billion in tax cuts, paid for by reducing services for the lowest-income families? Can we afford to extend tax breaks for the wealthiest 1 percent when our fiscal obligations include spending over $1 billion a week in Iraq, the rebuilding of the gulf coast, and protecting the homeland from terrorist threats?

Instead of responsibly budgeting for these costs, we are in a fiscal free-fall, giving breaks to those who need it the least while slapping away the hands of those who need help the most.

This administration is the most fiscally irresponsible in U.S. history, responsible for the four largest annual deficits ever. We have gone from a projected 10-year surplus of $5.6 trillion in 2001 to a projected deficit of $3.3 trillion, a reversal of $9 trillion.

Mr. Speaker, this budget lacks compassion, is fiscally irresponsible, and does not reflect the priorities of this great Nation.

THE PRESIDENT'S FISCAL YEAR 2007 BUDGET

(Mr. WELDON of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WELDON of Florida. Mr. Speaker, I rise to discuss the President's budget. As a physician who used to take care of a lot of Medicare patients prior to my election in 1994, one of the first things I look at in the budget are the Medicare numbers, after I look at the NASA numbers and a couple of other things.

Members of this body need to know, and the American public, that the President's budget calls for a 15 percent increase in Medicare spending. You may be surprised to hear that because the press is talking about Medicare cuts. Indeed, Democrats are talking about Medicare cuts. You even heard that on the floor today.

It is projected to go from $396 billion to $457 billion in 2007, and by 2011 to grow to $587 billion. Where is the cut? There is no cut. The President is trying to slow the growth of this entitlement program, which is unsustainable in the future unless we can enact significant reforms. God bless us if we are unable to do that.

This is, in my opinion, the right thing to do for the President, and he needs to be commended. And for those who mischaracterize this as a cut, they need to start telling the truth.

THE BUDGET

(Ms. KAPTUR asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. KAPTUR. Mr. Speaker, red ink, record budget deficits mount every year. On top of it, America has also been racking up record trade deficits this year, more imports than exports every single day. These twin deficits are stifling real economic growth for our country as we sink deeper and deeper into debt.

Every year, with all the unfair trade agreements that have been signed, the red ink just keeps getting deeper. We are hemorrhaging America's good jobs, with fewer people working at good jobs to create real wealth. It is no surprise we have fewer resources to pay off our debts.

At the same time, the United States becomes more and more beholding to foreign interests that are financing these deficits. We are not only giving them our money, we are giving them our future and paying them hundreds of billions a year in interest. Is it any surprise that retailing of foreign goods is now America's biggest business?

Federal Reserve's former chairman Alan Greenspan warned that this relentless deficit growth cannot persist. How long will it be before we put a foreclosure sign on our U.S. Department of the Treasury? What an embarrassment for a Nation founded in independence.

THE BUDGET

(Mr. BARRETT of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARRETT of South Carolina. Mr. Speaker, I applaud the President for submitting a budget proposal that will meet America's needs while maintaining fiscal accountability and responsibility. He understands that if you are going to ask everybody to tighten up the purse strings, you have to be at the front of the line.

The American people don't expect us to agree on everything, but as Members of this great body they expect us to stop complaining about the issues before us and start working together to find solutions for our children and our grandchildren.

I hope someday I am down here debating the Government Waste Reduction Act, which would slow the growth of government by 5 percent and reduce the deficit by an estimated $510 billion over 5 years. But until then, I will look forward to working with my colleagues on the Budget Committee, Republicans and Democrats alike, as we move through this process.

In submitting this budget, President Bush has set the tone and given Congress a great starting point. It is now up to us to act.

TRIBUTE TO FORMER CONGRESSWOMAN VIRGINIA SMITH

(Mr. OSBORNE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OSBORNE. Mr. Speaker, this last month, former Congresswoman Virginia Smith died in Sun City, Arizona, at the age of 94. She served the Third District of Nebraska for 16 years through eight terms. It is a very large district. It covers 80 percent of the State of Nebraska, with 69 counties and 64,000 square miles. She and her husband, Haven, drove county to county, city to city, weekend after weekend; and there was no one who was more faithful in covering that area and being loyal and faithful to her constituents than Virginia Smith.

She served on the Appropriations Committee for several years and was responsible for an animal research center in Clay Center, Nebraska, which really is of worldwide renown. She was tenacious, she was aggressive, and she was very strong in constituent services. Nebraska was very well served by Virginia Smith, and she will be greatly missed.

THE PRESIDENT'S BUDGET

(Mr. PRICE of Georgia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PRICE of Georgia. Mr. Speaker, last week, in this Chamber, the President shared with the American people a reasoned and measured agenda for the future, an agenda that will lead us to meet the challenges of today and seize the opportunity of tomorrow.

The issues that the President addressed are not just his concerns; they are not just Republican concerns. They are the concerns of the American people. We must provide for the reform of our health care system that fixes the problems, not bandages them up, immigration reform that respects our sovereignty, and embrace a policy that will result in energy independence.

The American people want leadership. They want direction, and they want to know that their government is working for them, protecting them and providing a framework that preserves the ideal of the pursuit of happiness for all.

We in Congress have an obligation to our citizens and to the great history of our Nation to provide leadership that is equal to the task at hand. Our Nation, its security, its vitality, its health care and its livelihood depend on it. I urge all of my colleagues to embrace this responsibility together.

ADULT STEM CELL ADVANCES

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, there has been a lot of news coming from the field of stem cell research lately, but it is all just a new variation on an old theme: Ethical or "adult stem cell" research is working. Research that kills embryos, embryonic stem cell research, is not. While embryonic stem cell research's leading scientist has been disgraced for his research fabrications, adult stem cell researchers are announcing new breakthroughs.

One research group recently announced the development of a machine capable of taking adult stem cells from fat tissue and adapting them to treat other tissue damaged by heart disease and heart attacks. In a different study released recently, researchers have been able to turn adult muscle stem cells into cartilage, and in animal studies this regenerated cartilage has been used to treat damage caused by arthritis.

These studies add to the ever-growing list of treatments and cures that come from noncontroversial adult stem cells. Meanwhile, stem cell research involving the destruction of human embryos continues to be plagued by tumors, rejection, and research scandals.

As we address this issue this year, we would do well to keep this in mind, what is working and what is not.

ADOPT HEALTH IT ACT

(Mr. GINGREY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINGREY. Mr. Speaker, I rise today to praise President Bush for his State of the Union remarks on health information technology, which he rightly noted will help control costs and reduce dangerous medical errors.

I would also like to encourage my colleagues to support health IT legislation that I have introduced, H.R. 4641, the ADOPT HIT Act.

Consider this: I can go to Antarctica and get cash from an ATM without a glitch, but should I fall ill during my travels, a hospital there could not access my medical records or know what medications I am on.

Right now the health care sector is woefully behind in using modern technology to reduce errors and save money, and that is why I introduced H.R. 4641. It provides increased tax breaks for physicians who invest in new health information technology.

As a physician, I know many doctors want to utilize new technology, but they find the cost prohibitive. Doctors will be more likely to adopt this technology if our Tax Code helps offset the substantial initial cost. By adopting the ADOPT HIT Act, by passing that act, we can move one step closer to a health care system that saves time, money and, most importantly, lives.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore (Mr. GINGREY) laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 8, 2006.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on February 8, 2006, at 9:30 a.m.:

That the Senate passed without amendment H.R. 4636.

That the Senate agreed to S. Con. Res. 69.

With best wishes, I am

Sincerely,

KAREN L. HAAS,
Clerk of the House.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 4 of rule I, the Speaker signed the following enrolled bill on Tuesday, February 7, 2006:

S. 1932, to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95).

RESIGNATION AS MEMBER OF COMMITTEE ON THE BUDGET

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on the Budget:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 8, 2006.

DEAR SPEAKER HASTERT: I respectfully resign my seat on the House Budget Committee effective immediately. Thank you very much for giving me the opportunity to serve on this important committee.

Sincerely,

ILEANA ROS-LEHTINEN,
Member of Congress.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken after 6:30 p.m. today.

☐ 1430

CONGRATULATING THE PITTSBURGH STEELERS FOR WINNING SUPER BOWL XL

Ms. FOXX. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 670) congratulating the National Football League champion Pittsburgh Steelers for winning Super Bowl XL and completing one of the greatest postseason runs in professional sports history.

The Clerk read as follows:

H. RES. 670

Whereas the Pittsburgh Steelers won Super Bowl XL by defeating the Seattle Seahawks 21–10 in Detroit, Michigan, on February 5, 2006;

Whereas, with this victory, the Pittsburgh Steelers franchise has tied the San Francisco 49ers, and the Dallas Cowboys for the most Super Bowl championships in National Football League history with 5 each;

Whereas the Steelers became the first 6th-seed in the playoffs to not only reach the Super Bowl, but to win the Super Bowl;

Whereas the Steelers closed their season by winning 8 consecutive games, including the Super Bowl, and became the first team to win 3 playoff games and the Super Bowl away from their home field;

Whereas the Steelers' path to the championship required defeating the top 3 teams in the American Football Conference—the Cincinnati Bengals, the Indianapolis Colts and the Denver Broncos—at their respective home fields;

Whereas finally, in the Super Bowl, the Steelers faced and overcame the National Football Conference champion Seahawks and the year's Most Valuable Player in the National Football League, Shaun Alexander;

Whereas team owner Dan Rooney and team president Art Rooney II, the son and grandson, respectively, of Pittsburgh Steelers' founder Art Rooney, have remarkable loyalty to Steelers fans and the City of Pittsburgh, and have assembled a tremendous team of coaches, players, and staff that made achieving the championship victory possible;

Whereas head coach Bill Cowher won his first Super Bowl in 14 seasons of leading the Pittsburgh Steelers, and brought the Vince Lombardi Trophy back to his hometown of Pittsburgh;

Whereas defensive coordinator Dick LeBeau orchestrated a defensive unit including stars Troy Polamalu, Deshea Townsend, Chris Hope, Ike Taylor, Joey Porter, Larry Foote, Clark Haggans, James Farrior, Kimo von Oelhoffen, Aaron Smith, and Casey Hampton, that personified the blue-collar work ethic of Pittsburghers;

Whereas offensive coordinator Ken Whisenhunt's creativity and attention to detail helped the Steelers' offense, featuring starters Ben Roethlisberger—the youngest starting quarterback ever to win a Super Bowl—Dan Kreider, Willie Parker, Heath Miller, Max Starks, Kendall Simmons, Jeff Hartings, Alan Faneca, Marvel Smith, and Antwaan Randle El, to take the team to unexpected success;

Whereas the Most Valuable Player of the Super Bowl, Hines Ward, led the offense during the championship game by catching 5 passes for 123 yards and 1 touchdown;

Whereas running back Jerome Bettis, one of the National Football League's all-time leading rushers, returned to his hometown of Detroit to win his first Super Bowl, and then announced his retirement following the game;

Whereas the Steeler Nation is comprised of the greatest fans in professional football; and

Whereas for 73 years, the people of the City of Pittsburgh have seen themselves in the grit, tenacity, and achievement of the Pittsburgh Steelers franchise, and they proudly celebrate the team's 5th Super Bowl championship: Now, therefore, be it

Resolved, That the House of Representatives congratulates the National Football League champion Pittsburgh Steelers for winning Super Bowl XL and completing one of the greatest postseason runs in professional sports history.

The SPEAKER pro tempore (Mr. GINGREY). Pursuant to the rule, the gentlewoman from North Carolina (Ms. FOXX) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentlewoman from North Carolina (Ms. FOXX).

GENERAL LEAVE

Ms. FOXX. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from North Carolina?

There was no objection.

Ms. FOXX. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 670, offered by the distinguished gentleman from Pennsylvania (Mr. MURPHY), would congratulate the Pittsburgh Steelers on winning the 2006 National Football League title.

For the city of Pittsburgh, winning Super Bowl XL filled its residents with pride, the kind of pride that is only shared with two other teams in history. The Pittsburgh Steelers have joined the ranks of the elite. Only the San Francisco 49ers, the Dallas Cowboys, and now the Steelers have succeeded in winning five Super Bowl titles.

The Steelers had one of the most impressive runs through the postseason in NFL history by claiming victory as a sixth seed, having to play three consecutive games away from home. In doing so, the Steelers beat the top three teams in the AFC: the Cincinnati Bengals, the Indianapolis Colts, and finally the Denver Broncos. However, these contests seemed far in the past on February 5 as they geared up to tackle the Seattle Seahawks for the NFL title. In a fight to the end, the Steelers claimed the victory of 21–10 and clinched, surprisingly, the first Super Bowl win for each and every member of the team.

I urge all Members to come together to honor the Pittsburgh Steelers in overcoming the odds to become the champions of the National Football League.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

On February 5, 2006, the Pittsburgh Steelers beat the odds as they defeated the Seattle Seahawks to win "one for the thumb" by becoming only the third team in National Football League history to take a fifth Super Bowl championship home to its fans.

The greatest tribute to possibly the most loyal fans in professional football is a franchise and owners who have great respect for the hometown. The Rooney family has owned the Steelers from the beginning and is respected throughout professional football as being among the most honorable, ethical, and successful owners in the history of the game. It is no surprise that the Steelers are one of the most beloved sporting franchises in the country, and you would be hard pressed to find a community in this vast land that does not claim at least a few avid Steelers fans.

Despite the support of the fans and the Rooney family, the Steelers' eventual Super Bowl championship was far from a foregone conclusion. Going into their December 11 game against Chicago, the Steelers were faced with the reality that they would have to win their four remaining games to have any chance of making the playoffs. Coach Bill Cowher inspired his players to win those four games and to win three more games on the road to the Super Bowl. Of course, all Chicagoans were disheartened when the Chicago Bears gave them the impetus that they needed to be successful.

These victories were not only impressive; they were achieved as the team traveled the most difficult road any team has traveled to a Super Bowl championship in the 40-year history of the championship game. When the team arrived in Detroit, the Steelers still had to contend with the best team in the National Football Conference, the Seattle Seahawks. The Seahawks came into the game with the most prolific offense in the NFL. They scored the most points during the regular season and featured the NFL's Most Valuable Player as their starting running back.

Despite these challenges and many predictions to the contrary, the Steelers walked away champions and the first sixth-seeded team to win the Super Bowl. They add this Super Bowl victory to the many great moments that have made up the storied 73-year history of the Steelers franchise.

I certainly take this opportunity to congratulate the Pittsburgh Steelers on their against-all-odds accomplishment and Super Bowl victory. I encourage the House to adopt H. Res. 670.

Mr. Speaker, I reserve the balance of my time.

Ms. FOXX. Mr. Speaker, before I yield to my colleague from Pennsylvania, I want to note that Willie Parker, who is an alum of my alma matter, UNC Chapel Hill, had the longest run in Super Bowl history, and I want to congratulate him on that.

Mr. Speaker, I yield as much time as he may consume to my distinguished colleague from the Commonwealth of Pennsylvania (Mr. MURPHY).

Mr. MURPHY. The super Steelers, Mr. Speaker, are super again. And as Myron Cope would say, yoi and double yoi. For Sunday night, the Steelers won Super Bowl XL, otherwise in town we call it Super Bowl extra large, over the Seattle Seahawks by a score of 21–10.

This monumental win was the fifth National Football League championship for the Steelers franchise, tied now for the most in pro football history. And as we say in the 'Burgh, this win signified one for the thumb as it provided Pittsburgh with a fifth championship ring for their last finger on the city's collective hand.

The amazing Steelers finished their season by winning their final eight games, including the Super Bowl. And when the Steelers had a 7–5 record during the regular season, it looked like they might miss the playoffs completely unless they won each of their final four regular season games. But this team, like this city, does not give up. And the fans of the Steeler nation never give up on them. So the Steelers won their final four games. Then after clinching the sixth and final AFC playoff seed, the Steelers became the first team to win three road playoff games and then the Super Bowl.

And they were confronted with the toughest possible road to get there. The Steelers had to beat the top three teams in the AFC, the Cincinnati Bengals, the Indianapolis Colts and the Denver Broncos, each on their respective home fields.

No other team ever did this. No sixth-seeded playoff team ever made it to the Super Bowl. But then again, no other team is the Pittsburgh Steelers.

In the Super Bowl the Steelers faced the mighty Seattle Seahawks who possessed the highest scoring offense in the league, the NFL Most Valuable Player, running back Shaun Alexander. The Steelers' dominant defense, however, led by Troy Polamalu and Joey Porter limited the prolific Seahawks to just 10 points.

The Steelers offense was led by Super Bowl MVP Hines Ward who is here on the cover of the Tribune Review.

Mr. Speaker, you might be interested to know, as you probably already do, that Hines Ward is a graduate from the University of Georgia. He caught five passes for 123 yards and one touchdown which was thrown by wide receiver Antwaan Randle-El on a classic reverse pass.

Running back Willie Parker scored a Super Bowl record 75-yard run. Quarterback Ben Roethlisberger started the scoring with the second-quarter touchdown, was also known as having that play called the "tackle against the Colts," which kept the Steelers' dream alive.

This was a remarkable fifth Super Bowl victory for a team that personifies grit, tenacity, and excellence with the city of Pittsburgh and members of the Steeler nation from around the world. It was a particularly great accomplishment for a team that was originally purchased by founder Art Rooney in 1933 for $2,500. At that time the Steelers were one of 10 charter members of the National Football League.

Today, the Steelers are operated by team owner Dan Rooney, his son and team president Art Rooney II, all from the offspring of Art Rooney.

Congratulations also go to head coach Bill Cowher who finally made it to the top of the mountain, as Dan Rooney says, for this win of the Vince Lombardi Trophy to bring it back to his hometown of Pittsburgh.

I know every coach from defensive coordinator Dick LeBeau, offensive coordinator Ken Whisenhunt, to the training staff and every front office staff member is reveling in this win, as they should.

Congratulations to running back and fan favorite Jerome Bettis. The Bus, the fifth leading rusher in NFL history, went out on top in story-book fashion, winning his first Super Bowl in his hometown of Detroit in the final game of his 13-year career. The Steelers kept their promise to him and brought him back to his hometown.

And finally, congratulations to the millions of Steelers fans from throughout the world that make up the Steeler nation. They were there, we were there at every home game and every away game, every household waving our terrible towels here. When I was over in Iraq and I was over in Afghanistan, there they were with their Myron Cope official terrible towels as well. They were there 250,000 strong at a parade Monday in Pittsburgh to welcome the team back. The fans were there over the years, thick and thin, like the Steelers, believing in the best, always strong, never satisfied with just being there. And now, as Dan Rooney has said, now that we have one for the thumb and the ring let us start on the next hand. Congratulations to the super Steelers, and let us make it another one for the next hand next year.

Mr. DAVIS of Illinois. Mr. Speaker, I yield such time as he may consume to an avid patron of the game, the gentleman from American Samoa (Mr. FALEOMAVAEGA).

Mr. FALEOMAVAEGA. Mr. Speaker, I rise today to support House Resolution 670, congratulating the Pittsburgh Steelers for winning Super Bowl XL in Detroit, Michigan. On February 5, 2006, the Pittsburgh Steelers defeated the Seattle Seahawks by a score of 21–10. And by winning their impressive fifth Super Bowl, the Steelers tied the Dallas Cowboys and the San Francisco 49ers in the record books for the most Super Bowl championship wins in NFL history.

On Super Bowl Sunday, the Pittsburgh Steelers exemplified their blue-collar style of play that represents the great city of Pittsburgh. The Steelers completed the successful season utilizing their resilient defense and tenacious defense. They accomplished a tremendous feat by being the fourth wild-card playoff team to ever win a Super Bowl especially after defeating the top teams of the Cincinnati Bengals, the Indianapolis Colts, and the Denver Broncos.

Now, Mr. Speaker, I also want to congratulate the efforts of the Seattle Seahawks for making it to the Super Bowl after going through a very tough season.

Mr. Speaker, I also want to personally congratulate the efforts of the seven Asian Pacific Americans who are Polynesians and were participants in this year's Super Bowl: Lota Tatupu, Itula Mili, Wayne Hunter of the Seattle Seahawks and Troy Polamalu, Shaun Nua, Chris Kemoeatu and Kimo von Oelhoffen of the Pittsburgh Steelers. I want to emphasize how much they have accomplished in life by overcoming such a great feat in succeeding in the National Football League.

It is also interesting to note, Mr. Speaker, that from a population of approximately 300 million of our fellow Americans, there are 600,000 Polynesians living in the United States today of Tongan, native Hawaiian and Samoan descent; and 35 currently play in the National Football League. It is interesting to know that of the 35 players that currently play in the National Football League, Mr. Speaker, 24 are Samoans, four Tongans and seven Native Hawaiians.

It is amazing, Mr. Speaker, that from a population, as I noted earlier, in our country today that out of this 35 and interesting to note too that the 24 Samoans who currently play in the NFL, five are high school graduates from my humble district of American Samoa. And of the 24 Samoans that currently play in the NFL, Mr. Speaker, five are graduates from my alma mater, my humble high school Kahuku High School in Hawaii. And, Mr. Speaker, I want to especially commend my fellow Samoan, Pittsburgh Steeler player Troy Polamalu, and fellow Native Hawaiian Kimo von Oelhoffen for their outstanding performance at the Super Bowl. I also want to commend my fellow Samoan, linebacker with the Seattle Seahawks, Lota Tatupu. Again, I offer my congratulations to the Pittsburgh Steelers for winning their fifth Super Bowl game.

Ms. FOXX. Mr. Speaker, I yield as much time as she may consume to my distinguished colleague from the Commonwealth of Pennsylvania (Ms. HART).

Ms. HART. Mr. Speaker, I also rise in support of House Resolution 670 as a native Pittsburgher and still a Pittsburgher. I am fortunate to represent six of the counties around Pittsburgh and many Steeler fans.

□ 1445

It is with great honor that I stand here today to salute my hometown Super Bowl XL champion Pittsburgh Steelers. In fact, they won their first four Super Bowls when I was much younger, and the chant I have heard most of my life is, "Let's win one for the thumb." Arguably, that is what we did on Sunday. They won their first four Super Bowls, though, with a very different team than the team that they won with this year, but in a lot of ways the teams are related.

First, the same owners have continued to be the owners of the Steelers from the very beginning. I salute the Rooney family, Art Rooney, Art Rooney II, for their dedication to this team: the entire Steelers organization, which has been committed to this team like the owners of no other professional football organization. In fact, I think they have been more committed to this team than any other pro sports ownership family.

I also rise to congratulate the team, especially Jerome Bettis, also known as the "Bus," for achieving a much deserved championship. Few could write a storybook ending as good as the one provided for Jerome Bettis. Jerome is a consummate professional and a refreshing example of what an athlete should be, even taking pay cuts over the last 2 years just to be a part of his beloved Steelers team to help them win their Super Bowl championship.

I also want to thank the city of Detroit, Jerome Bettis' hometown, where he got to win his Super Bowl ring. It was almost like a home game for everyone that watched the game, watching the Terrible Towels in the stands. The Steelers clearly felt very much at home.

Like Detroit, Pittsburgh is a football town. Our Steelers have been a source of identity and cohesion for a community that has gone through ups and downs in recent years. In the good times and in bad, though, the Steelers have always been a uniting force for the people of the Pittsburgh region.

I congratulate our young quarterback Ben Roethlisberger, who played even through a broken thumb toward the end of the season in some very tough games to come out on top.

I also congratulate the Most Valuable Player, Hines Ward, who received that award very deservedly. My mom identified him as the Most Valuable Player by the end of the first half.

There is a whole list of wonderful coaches, but I especially want to congratulate my constituent Coach Bill Cowher for finally being able to hoist the Vince Lombardi trophy after 14 seasons as head coach of the Steelers, where he maintains the distinction of being the longest-tenured head coach in the league and ranks fourth amongst active coaches in wins and winning percentage. He is a committed coach and family man. And all Bill Cowher wanted to do when they handed him the Lombardi trophy was to share it with Dan Rooney, the Steelers' owner.

Finally and most importantly of all, I salute the city of Pittsburgh and the fans of "Steelers Nation." For those who are not aware of it, you are probably aware of it now. Steelers Nation extends from coast to coast and around the world. Unfortunately, because we had tough economic times, a lot of Pittsburghers do not live in Pittsburgh anymore, but they are all still Steeler fans. And after this weekend, there is really no question why. The grittiness, the strength, the cohesion, the humility, all the things that make Pittsburghers so wonderful translate very well into what these folks are around the country: committed, dedicated hometown people.

It is an honor to salute this team. They have overcome the longest odds in history to win the Super Bowl. They had their backs up against the wall, but they showed that Pittsburgh grit and that Pittsburgh tenacity, and I am really honored to be a Pittsburgher, especially today.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

I will simply reiterate my congratulations to both Seattle and to Pittsburgh and suggest that next year I hope to see the Chicago Bears here. But if not, then we congratulate these two outstanding teams.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Ms. FOXX. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from the Commonwealth of Pennsylvania (Mr. SHUSTER).

Mr. SHUSTER. Mr. Speaker, I thank the gentlewoman from North Carolina for yielding.

First I want to start off by saying thank you to the city of Detroit for hosting the Super Bowl. I attended the Super Bowl with my 14-year-old son, and I can tell you it felt like we were in Pittsburgh. Not only were there Terrible Towels everywhere, but the weather felt like Pittsburgh weather, cold blustery weather. So I thank Detroit for making us feel so welcome and so at home, and thanks for ordering up that western Pennsylvania weather for us.

But I rise today to congratulate the Pittsburgh Steelers on an incredible season, an exciting road through the playoffs and a fantastic Super Bowl victory. I want to applaud the hard work of everybody on the team. They deserve that applause and respect.

I also want to congratulate the entire Rooney family. They are a great football family, and today they carry that tradition not just as one of the founding families of the National Football League, but as one of the leading families in western Pennsylvania who continue to give back to their community.

I would also like to take this opportunity to highlight the hard work and dedication and achievement of one of the unsung heroes of the Pittsburgh Steelers, and that is Coach Dick Hoak. Dick Hoak's name is not a household name, but he is one of the keys to the success of the Steelers over the years. Dick Hoak is the longest-tenured coach in NFL history, I might add. For the last 35 years, he has been a fixture on the Steelers sidelines and on the practice fields. In 1992, Bill Cowher named him the running backs coach, and he was the only coach retained from the previous staff. Over his 13 seasons under Cowher, Hoak's backfield has been able to compile over 28,000 rushing yards, which is the most in the NFL, and puts the Steelers alone at the top again as the only team to surpass the 28,000 rushing yard threshold.

Hoak's history with the Steelers started even earlier, though, growing up in the shadows of Pittsburgh in Jeannette, Pennsylvania. In 1961, he was the Steelers seventh-round draft pick as a Nittany Lion from Penn State. He went on to spend 10 seasons in Pittsburgh's backfield, earning a spot on the Pro-Bowl. Dick has been producing for the Steelers for over 45 years.

This Super Bowl victory is a great accomplishment for all those involved, and we are proud of our Steelers. Western Pennsylvanians can be proud of their native son Dick Hoak. And I know of three little guys who are especially proud of Dick Hoak, and they are my nephews and Dick Hoak's grandsons, Michael, Jonathan, and Daniel Shuster. Now they can all look to their grandfather, and he can literally put five rings on that one hand and get ready for the sixth one next year, because Dick Hoak literally does have five Super Bowl rings and one for the thumb.

So to the Steelers organization, congratulations. We are all very proud of everybody on that team and in the organization.

Ms. FOXX. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from the State of Ohio (Mr. OXLEY).

Mr. OXLEY. Mr. Speaker, some folks may wonder why I am up here with the distinguished delegation from the Pittsburgh area, and that deserves some explanation.

The fine young quarterback for the Steelers, who became the youngest quarterback to win a Super Bowl, Ben Roethlisberger, is from my hometown of Findlay and also a graduate of Miami University, my alma mater, the cradle of coaches. And we are very proud of Ben's accomplishments, not only what he has meant to Findlay and our community and to the State of Ohio, Miami University, and the great record that he had at Miami, but, of course, now with Pittsburgh. There are a lot of Cleveland Browns fans who are very frustrated about the fact that the Browns chose one before Pittsburgh, the Browns chose somebody else besides the native son of Ohio, and the winner of that, of course, was Pittsburgh and the Steelers, and they stand to gain by winning a fantastic Super Bowl.

So I want to thank my good friend Congressman MURPHY for adding me as a cosponsor to this legislation, making me part of this great celebration, and truly honor this fine young man who is such a great role model for the kids in Findlay and Pittsburgh and really all over the country to show that a classy young guy at 23 can lead a distinguished team to a Super Bowl victory. It is an honor to be here and to bask in the glory, really, of the team, the coaching staff, the Rooney family, and, of course, the great contribution that this 23-year-old young man from Findlay, Ohio and Miami University made. Ben Roethlisberger. Congratulations to all.

Ms. FOXX. Mr. Speaker, I yield the balance of my time to the distinguished gentleman from the Commonwealth of Pennsylvania (Mr. MURPHY).

Mr. MURPHY. Mr. Speaker, I thank the gentlewoman for yielding to me, allowing me to wrap up here.

As we congratulate this new generation of Steelers who we are excited about, it is a good time to also remember those who got us so many memories in the past: Terry Bradshaw; Lynn Swann; Joe Greene; Franco Harris; Blount; Lambert; Wagner; and, of course, the great coach Chuck Noll. They built a team, along with the Rooneys, in which the dynasty was set. And it is an exciting time for Pittsburgh to celebrate, Pittsburghers and everywhere around the world in the Steelers Nation to celebrate the new generation of Steelers. As a Congress we take our hats off to all of the NFL players who work so hard and maintain that tenacity and dignity on and off the field and show what America is about.

As I talked to soldiers overseas and saw Steelers banners hanging there as well as many other NFL banners, it was always fascinating for me to see how people from overseas still clung to the hopes that their hometown teams gave them. Indeed, it is a message that goes to people all throughout the world for the Steelers Nation of what it means to be a team that was counted down and out but ended up on top. It is something of a lesson we can all remember as Americans of what this great team, the Super Steelers, have taught us.

Ms. FOXX. Mr. Speaker, I urge all Members to support H. Res. 670, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GINGREY). The question is on the motion offered by the gentlewoman from North Carolina (Ms. FOXX) that the House suspend the rules and agree to the resolution, H. Res. 670.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. CHABOT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

The point of no quorum is considered withdrawn.

HATTIE CARAWAY STATION

Ms. FOXX. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4456) to designate the facility of the United States Postal Service located at 2404 Race Street in Jonesboro, Arkansas, as the "Hattie Caraway Station," as amended.

The Clerk read as follows:

H.R. 4456

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. HATTIE W. CARAWAY STATION.

(a) DESIGNATION.—The facility of the United States Postal Service located at 2404 Race Street in Jonesboro, Arkansas, shall be known and designated as the "Hattie W. Caraway Station".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the "Hattie W. Caraway Station".

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from North Carolina (Ms. FOXX) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentlewoman from North Carolina (Ms. FOXX).

GENERAL LEAVE

Ms. FOXX. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from North Carolina?

There was no objection.

Ms. FOXX. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 4456, offered by the distinguished gentleman from Arkansas (Mr. BERRY), would designate the post office building in Jonesboro, Arkansas, as the "Hattie Caraway Station." All members of the Arkansas delegation have cosponsored this legislation.

Hattie Wyatt Caraway was born on February 1, 1878, near Bakerville, Tennessee. After marrying her husband Thaddeus Caraway, the couple moved on to Jonesboro, Arkansas, where Thaddeus started his political career by being elected into the U.S. House of Representatives. He served as a Democrat in the House from 1912 until 1921, when he successfully ran for the Senate. He served in that capacity until he passed away in 1931.

In the same year, Arkansas Governor Harvey Parnell appointed Hattie Caraway to serve out the rest of her late husband's term. She was confirmed by a special election on January 12, 1932, becoming the first woman elected to the United States Senate.

□ 1500

While serving as a Senator in 1933, Caraway became the first woman to chair a Senate committee; and in 1943, she became the first woman to take up the gavel on the Senate floor as the Senate's presiding officer.

When Caraway was defeated in her reelection efforts in 1944 by William Fulbright, her fellow Senators honored her with a standing ovation on the Senate floor. Her service to our country did not go unnoticed, and her groundbreaking accomplishments paved the way for women everywhere. At this time in our history, women had won the right to vote only 25 years earlier.

I ask all Members to join me in honoring this courageous woman who helped shape our Nation's history by passing H.R. 4456.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, it is my pleasure to yield such time as he might consume to the gentleman from Arkansas (Mr. BERRY), the sponsor of this legislation.

Mr. BERRY. Mr. Speaker, I think it is fitting and proper that we are here today to proceed with naming a post office in Jonesboro, Arkansas, for Senator Hattie Caraway. She obviously was the first to do a lot of things.

She was the first woman ever elected to the United States Senate in her own right. She was the first woman to chair a Senate committee, the first woman to take up the gavel on the Senate floor.

She was said to be called "Silent Hattie" by her colleagues in the Senate; and when asked why she avoided making speeches, and those of us that serve in this distinguished body I am sure can identify with this, she said, "The men have left nothing unsaid."

She might have gotten very tired sometimes of hearing it said over and over again, but she served with great distinction, not only the State of Arkansas but this wonderful Nation that we all represent, and broke the way for many people to do some good things.

She also was said to drink a beer occasionally, but she would never fill the glass higher than what her hand reached. I guess to be sure that she did not have too much. I think that is an interesting fact that has been included in the information about Senator Caraway.

She was a resident of Jonesboro, Arkansas, for nearly 50 years. She reared her family there, attended church, and actively participated in the Jonesboro community and civic organizations. Her husband, of course, was a United States Senator and was responsible for getting the post office set up on the Arkansas State University campus. The

Caraways were great friends with V.C. Kays, the founding president of Arkansas State University. One year at Christmas, when Thad was dressed as Santa, Hattie supposedly jokingly locked him out of the party.

She made history again recently by becoming the first Arkansasan to ever appear on a stamp. On February 21, 2001, in Little Rock, the 76 cent Hattie Caraway definitive stamp was unveiled, which was the third in the Distinguished Americans series.

The new Hattie Caraway station will be an expansion of delivery services for the postal service in Jonesboro, Arkansas. It will be presided over by the postmaster, Hillrey Adams, who will do a wonderful job of expanding these services; and, again, it is fitting and proper that we name this station after Senator Hattie Caraway and congratulate her and those that have come after her for the wonderful job that she did.

Ms. FOXX. Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, it is my pleasure to yield such time as he might consume to the gentleman from Arkansas (Mr. SNYDER).

Mr. SNYDER. Mr. Speaker, the history of Senator Caraway is a wonderful history, and I keep learning more things about her.

There is a wonderful book that was written by former State Senator David Malone from Arkansas called "Hattie and Huey," and it tells this remarkable story when Senator Huey Long came up to Arkansas to campaign for Senator Caraway. They basically barnstormed all around the small towns of Arkansas, the two of them together: Ms. Caraway, Silent Hattie; and Senator Long. It is just a remarkable and colorful story.

One of the things I just recently learned in the last couple of days about Senator Caraway is that her maiden name was Wyatt, W-Y-A-T-T. Well, I have one of my favorite relatives, my uncle Dick Wyatt, who lives in Medford, Oregon, who had a stroke over the weekend and is doing well but has got a lot of recovery and rehabilitation ahead of him; but I have now got to figure out, well, is my Uncle Dick somehow related to Hattie Wyatt Caraway.

One of my favorite stories about Senator Caraway was she was appointed to the seat after her husband passed away and then they had this election which essentially ratified the appointment, but it was not expected that she would run for reelection for a full regular term herself. She was trying to make up her mind what to do. I think she was with her son in her own home, and they were trying to decide what to do with a group of her advisers. Somebody said, well, let us flip a coin; and so they flipped a coin, and it came up that she should not run. It got real quiet, no one said anything, and then she said, let us go two out of three. That is when they knew she had the fire in her belly and that she wanted to run. They actually flipped the coin. It came up twice that she should run.

I think this is a very fitting tribute to Senator Caraway. She has been a tremendous role model for women in America, and I appreciate the gentleman from Arkansas (Mr. BERRY) for sponsoring this legislation.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

I suspect that we have exhausted our requests for time, but let me just say that I am pleased to join with both these gentlemen from the State of Arkansas in supporting this legislation.

As a former resident of the State of Arkansas, I thought I knew about its history, but this is one that had actually escaped me. I did not know that Hattie Wyatt Caraway was the first woman elected to the United States Senate. I did not know that Arkansas had been the recipient of that act and of that action, and I certainly want to join with my colleagues in suggesting that it is indeed fitting and proper that we name the post office at Jonesboro, Arkansas, after Senator Hattie Caraway.

Mr. Speaker, I yield back the balance of my time.

Ms. FOXX. Mr. Speaker, I, along with my colleague, find that one of the great benefits of serving in the House is learning a lot of history, and I, too, have learned a lot today. I want to urge all Members to support the passage of H.R. 4456, as amended.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GUTKNECHT). The question is on the motion offered by the gentlewoman from North Carolina (Ms. FOXX) that the House suspend the rules and pass the bill, H.R. 4456, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to designate the facility of the United States Postal Service located at 2404 Race Street in Jonesboro, Arkansas, as the 'Hattie W. Caraway Station'.".

A motion to reconsider was laid on the table.

SUPPORTING THE GOALS AND IDEALS OF THE YEAR OF THE MUSEUM

Ms. FOXX. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 389) supporting the goals and ideals of The Year of the Museum.

The Clerk read as follows:

H. RES. 389

Whereas museums are institutions of public service and education that foster exploration, study, observation, critical thinking, contemplation and dialogue to advance a greater public knowledge, understanding, and appreciation of history, science, the arts, and the natural world;

Whereas Americans, according to survey data, view museums as one of the most important resources for educating our children; and museums have a long-standing tradition of inspiring curiosity in our Nation's schoolchildren by devoting more than $1 billion and more than 18 million instructional hours annually for elementary and secondary education programs in communities across America through creative partnerships with schools; and by involving professional development for teachers, bringing traveling exhibits to local schools, digitizing materials for access nationwide, creating electronic and printed educational materials that use local and State curriculum standards; and by and hosting interactive school field trips;

Whereas museums serve as community landmarks that contribute to the livability and economic vitality of communities through expanding tourism; and that museums rank in the top three family vacation destinations; revitalize downtowns, often with signature buildings; attract relocating businesses, by enhancing quality of life; provide shared community experiences and meeting places; and serve as a repository and resource for each community's unique history, culture, achievements, and values;

Whereas the Nation's more than 16,000 museums found in 9 out of every 10 counties in the United States receive approximately 865,000,000 visits annually from people of all ages and backgrounds, with attendance being free at more than half of these museums;

Whereas research indicates Americans view museums as one of the most trustworthy sources of objective information and believe that authentic artifacts in history museums and historic sites are second only to their family in significance to creating a strong connection to the past;

Whereas museums enhance the public's ability to engage as citizens, through developing a deeper sense of identity and a broader judgment about the world, and by holding more than 750 million objects and living specimens in the public trust to preserve and protect our cultural and natural heritage for our current and future generations;

Whereas museums are increasingly entering into new partnerships with community educational institutions that include schools, universities, libraries, public broadcasting, and 21st Century Community Learning Centers, which then, as partners, reach across community boundaries to provide broader impact and synergy for their educational programming;

Whereas supporting the goals and ideals of The Year of the Museum would give Americans the opportunity to celebrate the contributions museums have made to American culture and life over the past 100 years; and

Whereas in 2006, American museums are celebrating 100 years of cooperation as a profession and their collective contribution to our communities: Now, therefore, be it

Resolved, That the House of Representatives—

(1) supports the goals and ideals of The Year of the Museum; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe such a year with appropriate programs and activities.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from

North Carolina (Ms. FOXX) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentlewoman from North Carolina (Ms. FOXX).

GENERAL LEAVE

Ms. FOXX. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H. Res. 389, the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from North Carolina?

There was no objection.

Ms. FOXX. Mr. Speaker, I yield myself as much time as I may consume.

Mr. Speaker, House Resolution 389 offered by the distinguished gentlewoman from New York (Ms. SLAUGHTER) would support the goals and ideals of The Year of the Museum in 2006.

America's museums, some of the Nation's premier cultural learning centers, have for decades educated both young and old on the history of our being. From artistic displays to archaeological artifacts, to science and the natural earth, museums help preserve the past and help us to understand our roles in the modern world.

Museums play a very important supplemental educational role, which is central to their service to the public. People of all ages and backgrounds have traditionally gathered to learn from their exhibits and programs. A recent national survey shows that Americans view museums as one of the most important resources for education and one of the most trusted sources for objective information.

Along with the educational benefits, museums continue to influence travel and tourism. They provide a common experience that families can share and experience across generations. In fact, museums rank in the top three family vacation destinations. American families from all income and education ranges visit museums each year. According to the American Association of Museums, there are 2.3 million museum visits a day, adding up to 865 million visits per year in the United States.

In conclusion, I urge all Members to come together in support of this important and timely resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I might consume.

Mr. Speaker, I rise in support of H. Res. 389 and join with my fellow colleagues in celebrating the more than 11,000 museums located in communities across this country.

Museums inspire us to dream, to examine the world around us and beyond, and to discover new and exciting things. Museums enable us, and especially our children, to explore everything from the smallest form to the infinite, from microscopic plants to the vast expanses of the universe.

Museums foster our most basic desire to understand what, where, when, why, and how. They also are a great educational resource that enrich our children's learning by complementing what they experience in school. Children learn best when inspired to think abstractly and creatively, and there is no better place outside of our schools for that to occur.

Museum staffs go to great lengths to consult State educational curricula and guidelines when designing exhibits, thereby further enhancing the quality and relevance of the museum experience. Each year, museums spend over $1 billion to create and stage educational exhibits and special programs.

Those of us here in Washington, D.C., are lucky enough to be close to the Smithsonian Institution, which is comprised of some of the best museums in the world. In the blocks between the Capitol and the Washington Monument, anybody with a desire to learn or explore can visit a tropical rain forest, step back to the time of the Civil War, see art from different cultures and periods, examine spacecraft that have been launched into space, touch a Moon rock, and learn about prehistoric animals.

So I rise in support of this bill because museums are an indispensable part of our education system and nurture our desire to discover what we do not yet know.

I live in a museum-rich environment. My congressional district has the Alder Planetarium and Astronomy Museum, the Chicago Center for Black Music Research Library, Chicago Children's Museum, the Chicago Historical Society, the Ernest Hemingway Museum, the Field Museum of Natural History, the Frank Lloyd Wright Home and Studio, the Garfield Park Conservatory, the Hellenic Museum and Cultural Center, the Hull House Jane Addams Museum, the Illinois Labor History Society, the Museum of Broadcast Communications, Museum of Contemporary Art, Museum of Contemporary Photography, National Vietnam Veterans Art Museum, the Peace Museum, the John G. Shedd Aquarium, the Spertus Museum, the Terra Museum of American Art, and the Ukrainian National Museum of Chicago.

So my colleagues can see, Mr. Speaker, there is no way that I could not be supportive of museums.

Mr. Speaker, I yield back the balance of my time.

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Ms. FOXX. Mr. Speaker, I yield as much time as he may consume to my distinguished colleague from the State of Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Speaker, I thank the gentlewoman for yielding me time.

Mr. Speaker, I am pleased to join with my colleague and cochairman of the bipartisan Congressional Arts Caucus, the gentlewoman from New York (Ms. SLAUGHTER) in cosponsoring House Resolution 389 to recognize 2006 as The Year of the Museum.

Today on the occasion of the 100th anniversary of the American Association of Museums, we recognize the importance of museums, which have been serving the American public since 1773, encouraging curiosity and providing a source of enjoyment and education for every generation.

Our resolution recognizes The Year of the Museum as a celebration of great American culture, history and traditions. Having grown up in an arts family, my mom and dad met in the theater and had a lifelong commitment to the arts. I was fortunate to have the opportunity to experience the value of the arts and humanities throughout my childhood.

Today, families in southwest Connecticut enjoy a wide range of institutions like the Barnum Museum, the Discovery Museum and Museum of Art in Bridgeport, the Bruce Museum of Arts and Science in Greenwich, and the Aldrich Museum of Contemporary Art in Ridgefield, to name some.

Nearly all of us in the House of Representatives are fortunate enough to have at least one museum, obviously many more in our district. Think of the impact museums have across our country, providing environments for learning and sharing where children, their parents and their grandparents can work together to connect ideas and experiences in direct, vivid and meaningful ways.

Museums teach the stories of the struggles and accomplishments of different cultures and unfamiliar people and achieve a deeper understanding of their own families, neighborhoods, the country in which they live, and the world at large.

I obviously urge my colleagues to join us in recognizing the vast public service provided by the museums in their own communities by supporting The Year of the Museum Resolution.

Ms. FOXX. Mr. Speaker, I urge all Members to support the adoption of H. Res. 389.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in support of H. Res. 389, supporting the goals and ideals of the Year of the Museum.

Museums are one of the most important educational tools that our society has to offer. Museums can teach us about history, art, science, literature, and any number of other subjects. From the great Smithsonian museums of Washington, DC, to the Houston Children's Museum or the Houston Fire Museum, these institutions enrich our society by enhancing our knowledge about the world in a way that is more personal and more affecting than one can find in a book.

The Year of the Museum will help to reinforce to all Americans how important museums are to our culture. It will introduce people to museums they did not even know existed, and hopefully, it will encourage people to go back to a museum they have not visited in many years.

Education can be the silver bullet in our society. Study after study has proven that the more education a person has, the less likely that person is to lead a life of crime, or do drugs, or go on welfare.

Museums will help to improve the educational system in this country by increasing our knowledge of our world and of our culture. There are more than 30 museums in the city of Houston, and I would encourage my fellow Houstonians to go and visit all of them.

Mr. Speaker, the Year of the Museum is long overdue, and I appreciate the Distinguished Lady from New York for introducing this excellent piece of legislation.

I strongly support H. Res. 389, and I encourage my colleagues to do the same.

Ms. SLAUGHTER. Mr. Speaker, I rise today in support of H. Res. 389, a resolution celebrating the Year of the Museum. This resolution recognizes the importance of museums which have served the American public since this country was founded and include every type of institution from A, art to Z, zoo. From arboretums, botanical gardens, zoos, historic presidential homes and libraries to science centers and art and children's museums, they encourage curiosity, they provide a source of enjoyment as well as education, and they preserve our country's great history for every generation.

I'm sure there is not a person among us who does not have a cherished memory of a visit to a museum. Museums are unique places in our communities. They come in every variety and size. Their collections and the ideas they share cover the broad spectrum of human endeavors—science, history, nature and art. There is a museum to satisfy and peak the interests of everyone of us.

Museums are public forums. They provide an environment rich with opportunity for intergenerational learning and sharing among children, parents, and grandparents. Museum visitors can come to know the struggles and accomplishments of different cultures and achieve a deeper understanding of their own family's, community's and country's history. But most importantly, museums are fun places to visit.

I have always loved museums and have been fortunate to have a number of world-renowned museums in my own district: the Buffalo Museum of Science, the Martin House Restoration Corporation, the Italian Heritage Museum & Cultural Center of Western NY, the Baker-Cederberg Museum and Archives, the George Eastman House, Landmark Society of Western New York, the Memorial Art Gallery at the University of Rochester, Rochester Historical Society, Rochester Museum & Science Center, the Strong Museum and the Susan B. Anthony House. These museums are so diverse; clearly any person could find the perfect museum in which to explore a unique interest.

But it is not just my constituents that have benefited from the presence of museums. All Americans do, because there are museums in nearly every Congressional District across this country. And they help our economy. Museums play an important role in promoting travel and tourism and driving economic development. They bring heightened local and national visibility to communities and their artists, scientists, and educators, and they spend $5.2 billion a year serving the American public. Most museums operate as small or mid-sized community institutions, offer free or reduced admissions at least one day a week, work with local schools to enhance curriculum and education of students and families, and employ paid staff and dedicated volunteers.

In addition to educating and entertaining, museums undertake the immense task of preserving and protecting the more than 750 million objects in their collections, ensuring that they are publicly available to our citizens for this and future generations.

H. Res. 389 recognizes "The Year of the Museum" as a celebration of great American cultural, history and traditions. I urge my colleagues to join me in recognizing the vast public service provided by the museums in their own communities by supporting this resolution.

Mr. HOLT. Mr. Speaker, I rise today to support H. Res. 389, supporting the goals and ideals of the Year of the Museum. This year marks the centennial of the American Association of Museums, and in turn we celebrate the museums throughout our nation that educate, entertain, and enrich local communities. I am proud to say I am a cosponsor of this resolution.

There are more than 16,000 museums in the United States that protect and share our cultural heritage. Museums help us understand who we are and where we came from. They preserve our history, our artifacts, and our art, and they display it in ways that increase our understanding of familiar and foreign cultures and of the universe itself.

History comes to life for the millions of children who visit museums every year. 11,000 American museums have educational programs for schoolchildren of all ages. Museums annually spend more than $1 billion and 18 million hours to educate children through school programs such as guided field trips, traveling exhibits, and professional development for teachers.

The 12th District of New Jersey is home many diverse museums, including the New Jersey State Museum in Trenton. In addition to exhibits on local history, the State Museum offers a wide array of educational opportunities to children, including family oriented educational workshops and a planetarium. From the vast fine arts collection of the Princeton University Art Museum, to the learning opportunities available at the Vietnam Era Educational Center, I am proud of the benefits that all of the 12th District's museums provide to our community.

I support the goals of the Year of the Museum and I am proud to join my colleagues in supporting this resolution.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GUTKNECHT). The question is on the motion offered by the gentlewoman from North Carolina (Ms. FOXX) that the House suspend the rules and agree to the resolution, H. Res. 389.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

SUPPORTING THE GOALS AND IDEALS OF NATIONAL MENTORING MONTH

Mr. OSBORNE. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 660) supporting the goals and ideals of National Mentoring Month.

The Clerk read as follows:

H. RES. 660

Whereas youth mentoring is a centuries-old concept, through which a dependable adult provides guidance, support, and encouragement to help a young person become a responsible, productive adult;

Whereas mentoring, when done well, helps young people stay in school and improve academically, boosts self-esteem and communication skills, and improves the chances of going on to higher education;

Whereas there are thousands of mentoring programs in communities of all sizes across the United States, focused on building strong, effective relationships between caring and responsible adults and young people who need positive adult role models;

Whereas in spite of the great benefits mentoring provides, America has a serious mentoring gap, with more than 15 million young people currently in need of caring adult role models;

Whereas the demand for mentoring far exceeds the current capacity of local mentoring programs and the number of adults who currently volunteer as mentors;

Whereas on December 22, 2005, the President designated January 2006 as National Mentoring Month to focus the Nation's attention on the essential role mentoring plays in the lives of young people;

Whereas the month-long celebration of mentoring will encourage more individuals and organizations, including schools, businesses, nonprofit organizations, faith institutions, and foundations, to become engaged in mentoring; and

Whereas National Mentoring Month will, most importantly, build awareness of mentoring and recruit more individuals to become mentors, helping close our Nation's mentoring gap: Now, therefore, be it

Resolved, That the House of Representatives—

(1) supports the goals and ideals of National Mentoring Month;

(2) acknowledges the hard work of individuals and groups who promote mentoring and who are observing the month with appropriate ceremonies and activities that promote awareness of and volunteer involvement with youth mentoring; and

(3) recognizes with gratitude the contributions of the millions of caring adults who are already serving as mentors and encourages more adults to volunteer as mentors.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Nebraska (Mr. OSBORNE) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentleman from Nebraska (Mr. OSBORNE).

GENERAL LEAVE

Mr. OSBORNE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H. Res. 660.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

Mr. OSBORNE. Mr. Speaker, I yield myself such time as I might consume.

Mr. Speaker, I am pleased to rise today in honor of National Mentoring Month, which actually was celebrated in January, but we were not here in January, so we are doing it a month late. I would like to honor the contributions of the thousands of mentors and mentoring programs across the country that work so hard to provide young people with support and assistance.

And I would like to make a personal reference here, Mr. Speaker, in that I spent most of my previous career, 36 years, working with young people, and I saw many changes during that period of time, certainly great changes in the family. The out-of-wedlock birth rate was 5 percent in 1960; today it is about 35 percent. So a huge increase.

And at the time that I first started my coaching career, the number of children living with both biological parents was 90 percent. Today it is roughly 50 percent. And we currently have 22 million fatherless children in the United States today. And I worked with many young people who were without fathers, and I saw the devastation that this lack of a father caused in their lives.

I also witnessed many cultural changes during that 36-year period. We have become the most violent Nation in the developed countries for young people, currently lead the world among developed nations in suicide and homicide rates. Certainly drug and alcohol abuse has increased dramatically. And, of course, gang activity, many people are aware of the increase there.

And also some of the influences of the media have not all been that positive. Some of the television, some of the movies, some of the Internet activities, some video games certainly have been somewhat pernicious and not been helpful to our young people.

So if we look at history, we realize that most great civilizations decline and fall due to internal factors, not external consequences. And so if we look at Rome, to some degree the British Empire, Soviet Union, we see some of those things occurring. And I think it is important that we not be caught off guard here in the United States.

It is difficult to legislate or mandate solutions to some of the problems that I have outlined briefly here, but I would like to remind the fact that mentoring does work. An adult who has no vested interest in a young person, who is not a parent, not a grandparent not a teacher, no one who is paid to come and spend time with that child, makes a tremendous impact on that child's life if they simply care enough to show up and spend time, because it indicates to that young person that they are worth something, that they are worthwhile. And so we see some dramatic changes.

My wife and I have been involved with a mentoring program which currently mentors 2,900 young people, mostly in the State of Nebraska. We have done some research through Gallup, the polling company, and they have found that absenteeism, in a good mentoring program, is reduced by 80 percent, absenteeism from school. We find that discipline referrals go down by about 70 percent, grades improve by 40 percent, and also pregnancy rates go down significantly. Substance abuse is decreased by 40 to 50 percent. Gang activity is reduced substantially.

And some things improve and increase. Graduation rates go up. And personal hygiene and personal relationships with parents and peers also tends to improve.

So a mentor is someone who cares. And we have so many young people in our country today who simply do not have an adult in their life that they can count on, somebody that cares about them unequivocally and will always be there for them.

A mentor is also someone who affirms, who says, I believe in you. I see some talent, I see some possibility. A mentor is someone who provides a vision of what might be possible. So mentoring is critical. Mentoring does work.

And Congress has responded. We had an amendment to No Child Left Behind called Mentoring For Success, which I was able to introduce. In the last 5 years we have provided $184 million of support for mentoring programs around the country. This is supported, of course, by Chairman BOEHNER.

Another mentoring program was funded to the tune of $168 million, and this is for children of prisoners. It was through HHS and supported by the President. And currently it costs about $500 per mentoring match, and so we reach undoubtedly 600,000, 700,000 children through these programs.

Mentoring is cost-effective. It costs $500 to mentor a child. It costs $25,000 to $30,000 to lock someone up in prison. And the average meth addict will cost the State that it resides in roughly $47,500 if they are addicted to meth because of crimes committed and other abuses.

So at the present time, Mr. Speaker, it is estimated that we need roughly 18 million mentors in the United States, children who badly need somebody in their life. We currently are able to supply roughly 3 million, so we are 15 million short. And what we have done in Congress is helped; certainly been a step in the right direction.

So I am pleased that we can at least acknowledge what has been done, and National Mentoring Month has certainly increased awareness and shown the importance of mentoring and the need for more mentors across the country.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to thank my colleague from Nebraska for his leadership in bringing this resolution recognizing National Mentoring Month to the floor today. Since he arrived in Congress, the coach, as he is so often called, has worked to make youth issues a priority both on and off the field, and this resolution is another example of his dedication to this effort.

As we celebrate mentoring today, I am reminded of the words of Coretta Scott King when she said: I am fulfilled in what I do. I never thought that a lot of money, nor fine clothes, the finer things in life would make you happy.

Mentoring is not a material good. It does not involve lots of heavy spending or working long hours to achieve monetary greatness, but mentoring truly is one of the finer things in life. It is a valuable activity that gives all involved a sense of happiness and connection that material things cannot.

A mentor, of course, is often an adult, who, along with parents, provides young people support, counsel, friendship, and a constructive example. The average mentor spends 8 to 10 hours a month with his or her mentee on activities such as reading a good book aloud, visiting museums or going to the playground.

When a young person is matched with a caring, responsible individual, this relationship often makes a positive difference in the quality of life for that young person.

For much too long we have focused on providing remedies to problems that only address negative behavior, rather than looking at ways to promote the positive and healthy development of our young people. This resolution directs us to focus on what children need in order to grow into healthy, safe and well-educated adults, making sure that children have access to a caring and responsible adult relationship.

Mentoring opens young people's eyes to a brighter future, and every young person deserves that opportunity. Unfortunately at this time there are simply not enough mentors to go around. Only about 1,000 of the more than 1 million school-aged children in the Chicago area are fortunate enough to have a mentor. Nationally more than 15 million young people currently are in need of a caring adult role model.

In Chicago and across the country, it is clear that the mentoring framework is in place. Now we just need more people to volunteer their time to help change the life of a child. Research shows that young people who are mentored have a stronger attachment to school, higher graduation rates, and decreased involvement with drugs, gangs and violence.

This bill recognizes these positive outcomes and acknowledges the hard work of individuals and groups who promote mentoring. Mentoring is a strong investment in our children and in the future of our country. Therefore, Mr. Speaker, I am indeed pleased to join with Representative OSBORNE and my colleagues in celebrating the essential role that mentoring plays in the lives of our young people.

Again, I commend the gentleman from Nebraska for his outstanding leadership in bringing these kinds of issues to the forefront and to the attention of the Members of this body.

Mr. Speaker, I reserve the balance of my time.

Mr. OSBORNE. Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield such time as she may consume to the gentlewoman from California (Mrs. DAVIS).

□ 1530

Mrs. DAVIS of California. Mr. Speaker, I rise in strong support of House Resolution 660. I want to thank my colleague from Nebraska for his work stressing the need for mentoring in our Nation. It has been a pleasure to work with Congressman OSBORNE over the years to emphasize this great need for mentors.

Just yesterday a young woman from my San Diego community dropped by my office to share her story of how a mentoring program changed her life. She came from a difficult family situation as a teenager and sought help from the Turning Point program at the YMCA Youth and Family Services in San Diego. There she found the help and the guidance of mentors who helped her in turning her life around for the best and eventually enrolling in college and setting some very ambitious personal goals. With the help of mentors, she learned the skills and confidence needed to make it in life, including how to communicate and how to build self-esteem. And she also learned practical skills in the 18-month program such as how to budget finances and how to approach job interviews.

Mr. Speaker, her story is a perfect example of the power and impact of mentoring. Those who receive the help and the support of a mentor are likely to help others and to do good. As an adult she now works as a staff member of the Turning Point program, returning the gift of mentoring to young at-risk youth who face similar circumstances. Her experience also shows that mentoring is not only about helping people facing difficulties, but giving them the strength and the drive to chart their own course and to discover their own strength and talents. Her talent now is helping others change their lives for the better.

We are hearing a lot right now about the need to make our young people competitive and to push academic standards, but let us also guide our children and give them the self-esteem and the courage to face the world and all its obstacles, particularly those young people who face substantial obstacles. Our children need the wisdom and strength of someone who cares. And I know as a school board member I would often run into teachers and principals who came from what we would call tough neighborhoods, and I would ask them what made the difference, because they would share with me that a lot of children they grew up with were in jail, and some had died, young people, and they shared that the one person, that one teacher that showed an interest, that one community member who always looked out for them, that one member who really would not let them get away with things growing up. It is always important to have that special someone there who cares.

As a proud sponsor to H.R. 660, I want to urge my colleagues to support the resolution before us today and to recognize the need to promote mentoring.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in support of the proposed bill, H. Res. 660, "Supporting the goals and ideals of National Mentoring Month."

In 2002, January was deemed National Mentoring Month to recognize the importance that mentoring has on our Nation's youth. The demand for mentors stems from the growing need of our Nation's youth to have positive role models in their life that can provide them with the critical support and guidance necessary for them to succeed.

Without external support they are less likely to graduate from high school, and more likely to engage in criminal behavior. In contrast, youth matched in mentoring programs are 46 percent less likely to use illegal drugs and 37 percent less likely to skip a day of class. Additionally, youth in mentoring programs show increased self-esteem, self-confidence and self-worth.

The benefits of mentoring do not stop with the youth. Research by the Commonwealth Fund shows that 83 percent of adult mentors "learned or gained something personally from their mentoring experience," suggesting that mentoring is a positive experience for the both the mentor and the youth.

Further, by involving individuals and organizations, such as non-profits, faith-based institutions and businesses, we strengthen our communities—something that each of us works diligently to accomplish on a daily basis.

In my district in Houston, we have worked to foster this relationship through several mentoring programs. Two key institutions are the Volunteer Houston Mentoring Institute and the National Big Brothers, Big Sisters Program, both of which are working with area schools to administer successful programs. Volunteer Houston and the Houston Independent School District entered into a partnership to ensure that at-risk high school students have mentors to help them achieve academic success. Last year, the national Big Brothers, Big Sisters Program matched 225,000 youth with mentors, 1,500 of which are in the Houston program.

Both of these programs illustrate that significant progress has been made, but there is still much to be done. Nationally, there are as many as 15 million young people that make up what is known as the mentoring gap, or youth in need of mentors. In my district this is of particularly grave concern, as 5,300 youth displaced by hurricane Katrina are enrolled in the Houston Independent School District. They have sustained both psychological and emotional burdens, and could immediately benefit from a mentoring program.

In order to extend the great benefits of mentoring to all of those in need of services it is important to recruit new volunteers and expand the scope of operations.

With that said, I join my colleagues in supporting the goals and ideals of National Mentoring Month, recognize the need for increased awareness, and stand to recognize those selfless individuals and organizations that make mentoring a priority, often without the praise they deserve.

Mr. LEVIN. Mr. Speaker, I am so glad to be here with my colleagues Supporting Goals and Ideals of National Mentoring Month.

As House Resolution 660 so accurately states, "mentoring is a centries-old concept, through which a dependable adult provides guidance, support, and encouragement to help a young become a responsible, productive adult." It goes on to conclude that when properly carried out mentoring "helps young people stay in school and improve academically, boosts self-esteem and communication skills, and improves the chances of going on to higher education." I could not agree more.

In Michigan, we proudly recognize the contributions made by Mentor Michigan, led by Governor Jennifer Granholm, and the First Gentleman Dan Mulhern. Two individuals who lead by example and serve as mentors themselves. I was recently privileged to join the First Gentleman at a presentation on mentoring at the First Presbyterian Church in Mt. Clemens, Michigan where he spoke passionately and effectively not only about the meaning of mentoring in his own life but the broader impact it has for our Michigan community.

This program exemplifies what happens when government and community actively work to make certain all of our youth develop lasting relationships with individuals who are stable and caring. By developing a state-wide network of mentoring programs, Mentor Michigan has fostered support and unity among programs that accomplish what so often gets overlooked, encouragement and guidance of youth. Mentoring programs throughout the state are work in conjunction with Mentor Michigan to promote three simple values.

First, that every child has the right to a stable, caring adult in his or her life. It is so easy to take this for granted. In Michigan, over 237 programs connect youth with high quality mentors that are dedicated to helping children reach their aspirations and guiding them through fulfilling their needs. Mentor Michigan recruits and connects dedicated mentors with effective programs.

Second, everyone is responsible for the well being of our children including individuals, businesses, nonprofit and faith-based organizations, education institutions, and government. "It takes a village to raise a child," says an old African proverb, and Mentor Michigan knows that a safe, well developed network of resources is a vital way to show that community involvement matters in shaping the way young people see the world. Mentors satisfy needs and programs that value mentors such as Mentor Michigan should be commended.

Third, volunteering is a significant way for people to enrich their lives by giving of themselves to children in their community. Youth energize the world around them and working with youth energizes the individuals who take up the challenge. Over 99 percent of Michigan's mentors have recommended mentoring to others. Mentor Michigan programs provide Americans the opportunity to develop young leaders of tomorrow.

Michigan is the only state with such a focus on tracking and assessing its mentoring programs. It is estimated that over 30,000 Michigan youth benefitted from having a mentor in 2005. I feel privileged to know such outstanding devotion to the generation of tomorrow and very proud to honor it today.

Mr. Speaker, I ask that my colleagues join me in recognizing the great contributions mentoring programs make every day to a better America of tomorrow.

Ms. McCOLLUM of Minnesota. Mr. Speaker, as co-chair of the Congressional Mentoring Caucus I rise today in strong support for National Mentoring Month.

Millions of individuals across the country serve as mentors to young men and women—encouraging and promoting the development of strong characters and identities for youth who may not have a strong adult presence in their lives.

In my own State of Minnesota, there are over 350 mentoring programs that connect youth with positive role models. One valuable mentoring program is Big Brothers Big Sisters. In the St. Paul/Minneapolis region alone, more than 3,700 children benefit from this mentoring program with the time and energy of more than 3,200 volunteers.

Minnesota is also home to the Mentoring Partnership of Minnesota, which formed in 1994 as a community initiative to promote mentoring for Minnesota youth, particularly those who are at risk and may lack positive role models in their lives.

A mentor can be a friend, a listener, a coach, a tutor, or a confidant. A mentor simply cares enough to be a good listener, and they often open doors to new worlds—offering encouragement and support along the way. Mentoring programs create opportunities and encourage successes that can last a lifetime.

I would like to thank the sponsor of this bill, Mr. OSBORNE from Nebraska, whose cousin—the Honorable Kathleen Vellenga—was a mentor of mine when I served in the Minnesota State House of Representatives.

I encourage all of my colleagues to support this resolution and to look for opportunities to be a mentor themselves.

Mr. CUELLAR. Mr. Speaker, I rise today to honor the important contributions of mentoring programs such as the One Star Foundation, an initiative established by the State of Texas, and the program HOSTS, Helping One Student to Succeed, in the Laredo Independent School District, which help students who are at risk of failing reading and or math by mentoring them with members of the community, and the Big Brothers Big Sisters of South Texas program. The National Mentoring Month is important, and it serves as a guide to us in our communities to reach out to youth, to show them there is another way, that they should not give into despair, but instead give into the hope of a better future.

Every time you reach out and mentor a child, you provide that child with a positive example of what an adult role model should be. Mentoring can be an invaluable resource for single-parent families, and low-income families, and it helps give the children the ability to succeed in school. There are over 156 mentoring programs in the State of Texas, and over 50 mentoring programs in my district working to give hope to children in urban and rural communities. These are excellent examples of how communities should come together to ensure that children have the best chance to succeed in their lives.

Mr. Speaker, I am proud to have had this opportunity to honor the value of H.R. 660, which supports the goals and ideals of National Mentoring Month.

Mr. DAVIS of Illinois. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. OSBORNE. Mr. Speaker, I urge support of H. Res. 660. I want to thank Mr. DAVIS of Illinois for his support.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GUTKNECHT). The question is on the motion offered by the gentleman from Nebraska (Mr. OSBORNE) that the House suspend the rules and agree to the resolution, H. Res. 660.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

HONORING THE CONTRIBUTIONS OF CATHOLIC SCHOOLS

Mr. CASTLE. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 657) honoring the contributions of Catholic schools.

The Clerk read as follows:

H. RES. 657

Whereas America's Catholic schools are internationally acclaimed for their academic excellence, but provide students more than a superior scholastic education;

Whereas Catholic schools ensure a broad, values-added education emphasizing the lifelong development of moral, intellectual, physical, and social values in America's young people;

Whereas the total Catholic school student enrollment for the 2005-2006 academic year is about 2.5 million and the student-teacher ratio is 15 to 1;

Whereas Catholic schools teach a diverse group of students;

Whereas more than 27 percent of school children enrolled in Catholic schools are from minority backgrounds, and nearly 14 percent are non-Catholics;

Whereas Catholic schools produce students strongly dedicated to their faith, values, families, and communities by providing an intellectually stimulating environment rich in spiritual, character, and moral development;

Whereas in the 1972 pastoral message concerning Catholic education, the National Conference of Catholic Bishops stated: "Education is one of the most important ways by which the Church fulfills its commitment to the dignity of the person and building of community. Community is central to education ministry, both as a necessary condition and an ardently desired goal. The educational efforts of the Church, therefore, must be directed to forming persons-in-community; for the education of the individual Christian is important not only to his solitary destiny, but also the destinies of the many communities in which he lives."; and

Whereas January 29 to February 4, 2006, has been designated as Catholic Schools Week by the National Catholic Educational Association and the United States Conference of Catholic Bishops: Now, therefore, be it

Resolved, That the House of Representatives—

(1) supports the goals of Catholic Schools Week, an event co-sponsored by the National Catholic Educational Association and the United States Conference of Catholic Bishops and established to recognize the vital contributions of America's thousands of Catholic elementary and secondary schools; and

(2) congratulates Catholic schools, students, parents, and teachers across the Nation for their ongoing contributions to education, and for the key role they play in promoting and ensuring a brighter, stronger future for this Nation.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Delaware (Mr. CASTLE) and the gentleman from Michigan (Mr. KILDEE) each will control 20 minutes.

The Chair recognizes the gentleman from Delaware (Mr. CASTLE).

GENERAL LEAVE

Mr. CASTLE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H. Res. 657.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Delaware?

There was no objection.

Mr. CASTLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of House Resolution 657 offered by the gentleman from Minnesota. This resolution increases the awareness of Catholic education while honoring the contributions of America's Catholic schools.

January 29 through February 4, 2006, has been designated Catholic Schools Week, an annual tradition in its 32nd year and jointly sponsored by the National Catholic Education Association, as well as the United States Conference of Catholic Bishops.

With this resolution we recognize the vital role Catholic elementary and secondary schools play in providing a values-added education with high standards of quality and excellence to the over 2.4 million students enrolled in Catholic schools across the country. In just my home State of Delaware, there are over 30 Catholic schools.

According to the U.S. Conference of Catholic Bishops, Catholic schools have a graduation rate of over 98 percent, and about 97 percent of Catholic high school graduates go to postsecondary training at 4-year colleges, community colleges or technical schools. This success could be also attributed to the importance Catholic educators place on character and morals. By making the development of moral and social values an integral part of the curriculum, Catholic schools are ensuring that their students are not only good academically, but also good citizens.

The theme for Catholic Schools Week 2006 is "Character, Compassion, Values." This theme resonates with the Catholic schools this academic year in particular. Catholic schools demonstrated an enormous amount of character and compassion in their response to the devastating hurricanes that hit the gulf coast last year. In the wake of this national disaster, more than 300,000 students were displaced from their homes, schools and communities. Catholic schools opened their doors and hearts and welcomed these students into their classrooms. They provided these children with the opportunity to continue their studies without stopping to consider how to cover the costs of that education. Instead, the Catholic schools knew their first priority was to educate these children, and, second, figure out how to cover the greater costs they incurred.

In addition, the Catholic schools in New Orleans proved to be the most resilient by becoming some of the first schools in the hurricane-damaged area to reopen their doors to students.

I appreciate the great work being done by Catholic schools, their administrators, and teachers, as well as their parents and volunteers. Catholic schools carry out their servant mission by building the academic achievement, character, and values of their students.

I again commend the gentleman from Minnesota (Mr. KENNEDY) for introducing this resolution, and I urge my colleagues to support it.

Mr. Speaker, I reserve the balance of my time.

Mr. KILDEE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this resolution recognizing the contributions Catholic schools make to our society.

Both public and Catholic schools provide a strong foundation for our Nation's children. While our public schools educate the vast majority of our children, our Catholic schools provide an excellent and enriching alternative.

I have attended Catholic schools myself. I received a high-quality education from these schools and have benefited greatly. Sister Jean and Sister Jerome taught me to read and master phonics. Sister Hilary taught me Latin, which I in turn taught also. They were the greatest influence outside of my family. They not only challenged me intellectually, but forced me to examine my own personal formation.

At St. Mary's I learned the greatness of God and the dignity of humanity. In Congress, my basic principle is that government's role is to promote, protect, defend and enhance human dignity. I examine every bill on these principles of human dignity that I learned at St. Mary's. Children across America have benefited from the same positive influence a Catholic education had on me. H. Res. 657 recognizes and celebrates our Catholic schools for this contribution.

I believe that one of the greatest aspects of the American education system is its diversity. The goal of American education is to provide anyone with the opportunity to succeed. Catholic schools are a critical part of that equation, teaching critical values and providing their students with beneficial and life-enriching experiences.

The contributions which Catholic schools make to our Nation and our children strengthen our society and our place in the world. Our children have more opportunities because both Catholic and public schools can provide them with a high-quality education. Together these two sectors of our education system will work to ensure our excellence in the world.

Mr. Speaker, I reserve the balance of my time.

Mr. CASTLE. Mr. Speaker, I yield 5 minutes to the gentleman from Minnesota (Mr. KENNEDY), the sponsor who has undertaken to pursue this resolution.

Mr. KENNEDY of Minnesota. Mr. Speaker, I thank the gentleman from Delaware and the others who are speaking on behalf of this resolution. I am pleased to be here to honor the contributions of Catholic schools.

My first real encounter with Catholic elementary and secondary students was my interaction with graduates from Catholic schools that I met at St. John's University. These students impressed me. They were not only well prepared for college, but they were courteous, kind, respectful, caring and friendly to me. They say you can tell a tree by its fruit. By this measure I assume Catholic schools must be great.

I remember a conversation I had while in college with a few graduates of Catholic high schools reminiscing on their high school experience. One of these students was so cynical about his Catholic education that I resolved never to send my children to Catholic schools. Well, it turns out the cynical student became a priest, so I changed my mind. Catholic schools really do nurture one's faith.

My wife Debbie and I have four wonderful children. They have been able to experience the best of both worlds. They all graduated from Watertown Mayer Public Middle School, and they all chose to attend Catholic high schools, not just to get a great education, but to be able to talk about how God influences history and the world around us.

We are pleased to see that they have been nurtured in the Catholic spirit of helping others. They participate in many programs to help those in need. For example, my daughter Emily organized a food drive for Mary's Place, an outreach center for the needy, while she was at Holy Family Catholic High School. She collected enough food from her fellow students to fill up a van and feed many in need.

I have so much faith in Catholic schools because they consistently provide a great education for 2.5 million students across America and have a student-teacher ratio that averages 15-1.

I can attest to the quality education with two of our children now attending the University of Notre Dame. Catholic schools have done an extraordinary job of reaching out to the disadvantaged youth throughout our country. More than 27 percent of students enrolled in Catholic schools are from minority backgrounds, and nearly 14 percent of them are non-Catholics.

Mr. Speaker, Catholic schools make fantastic contributions to education in this country, but every school must recognize that there is more that can be done. Well, at St. John's Prep my son's physics teacher was a former engineer at 3M. My son, his classmates, and likely hundreds or thousands of other students were not only able to benefit from his invaluable real-world experience, but they also gained an understanding of the success that can be achieved by those who study math and science.

That is why I introduced the Teachers for Tomorrow's Career Act, H.R. 4622, with my Democrat colleague, the gentleman from New Jersey (Mr. HOLT). This legislation will bring down barriers so that math and science professionals can make the transition into teaching and offer real-world experience to the critical task of teaching math and science to our children.

The Kennedy-Holt legislation goes a long way toward fulfilling President

Bush's new proposal of bringing 30,000 math and science professionals to teach in our classrooms, and make sure our children are competitive in the 21st century no matter what kind of school they attend.

Mr. Speaker, last week was Catholic Schools Week. The theme was "Catholic Schools: Character, Compassion, Values."

I urge my colleagues to join Mr. LIPINSKI and I in supporting this resolution to commend our Catholic schools and their teachers, the parents, and religious communities that support them in their service to our Nation's youth.

Mr. KILDEE. Mr. Speaker, I yield 5 minutes to the gentleman from Illinois (Mr. LIPINSKI).

Mr. LIPINSKI. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise today in support of H. Res. 657, honoring National Catholic Schools Week and the tremendous contributions that Catholic schools have made to our country.

Since 1974, Catholic Schools Week has celebrated the important role that Catholic schools play in American education, and their excellent reputation for providing a strong academic and moral education, as well as teaching social responsibility.

□ 1545

This year's theme of Catholic Schools Week is: "Catholic Schools: Character. Compassion. Values." These words embody the mission of Catholic education beyond providing top-notch academic training. Compassion is at the heart of the Catholic faith. It teaches so many young men and women the strength of character and the strong convictions that they need to be successful adults and to contribute to our society.

My wife and I are each products of 12 years of Catholic elementary and secondary school: my wife in Johnstown, Pennsylvania, at Saint Patrick's grade school and Bishop McCourt High School; myself in Chicago at Saint Symphorosa Grammar School and Saint Ignatius College Prep. Like so many others, I understand how important Catholic schools are in providing a spiritual, moral, and intellectual foundation. My 12 years of Catholic education provided me with the knowledge, discipline, and the love of learning that enabled me to go on and earn my Ph.D. and become a teacher before I came to Congress.

As we recognize Catholic Schools Week, we must pay special tribute to the dedicated teachers and administrators who sacrifice so much, usually getting paid less than they could elsewhere, to dedicate their lives to teaching at Catholic schools. I have fond memories of my teachers, who taught me not only the value of a good education but also the values of faith and service. Although it was almost 35 years ago, I can still remember Sister Mildred, my first grade teacher; Miss Ivers, my second grade teacher. And the memories go on.

I will never forget Sister Diane, who was my student congress coach when I was in high school. To this day, when I speak in front of crowds, I still envision Sister Diane sitting there, nodding, giving me confidence when I was a nervous young kid trying to make my first public speeches. I related these memories while attending a celebration at Saint Richard's School last week. After the celebration, many people came up to me with similar memories, memories of teachers who gave their heart and soul and made such a big difference in the lives of their students.

To thank these men and women and their tireless contributions and service, I held a breakfast last week at Saint Lawrence High School during Catholic Schools Week. We talked about the successes of Catholic schools and also the challenges that they face. Nationally, more than 2.4 million young people are enrolled in nearly 8,000 Catholic schools. These schools have more than 160,000 full-time professional staff, boasting a student-teacher ratio of 15–1.

The Chicago archdiocese has had one of the most successful school systems. Today, more than 106,000 students attend 276 schools. In my district alone, there are 34 grammar schools and five high schools. The success of students in the Chicago archdiocese is phenomenal. The high schools have an amazing graduation rate of 99 percent, and about 95 percent of those graduates go on to college. This is clearly a record to be proud of.

Mr. Speaker, as an important complement to our public schools and other private institutions, Catholic schools contribute a great deal to America. They have made a big difference in my life and a big difference in the lives of countless others. They deserve our praise and our support; and I urge my colleagues to pass this resolution, the Kennedy resolution, honoring Catholic schools during this Catholic Schools Week.

Mr. CASTLE. Mr. Speaker, I yield 2 minutes to the gentlewoman from Pittsburgh, Pennsylvania, who turns out to be a Pittsburgh Steelers fan, which is a real insult to Philadelphia Eagles fans like myself.

Ms. HART. Mr. Speaker, I also rise in support of this resolution recognizing Catholic schools throughout the country. In particular, I would like to recognize those in the Fourth Congressional District of Pennsylvania, with several of whom I celebrated National Catholic Schools Week.

National Catholic Schools Week is an annual celebration, as mentioned by my colleagues; and I am very pleased to have been a part of it in the communities I represent. It is inspiring to see the students focus, students who are very lively, normal students, but who also focus on service and on faith and on commitment.

The young people that I encountered last week were just like any other student, but in one way very different. They were able to express for me their moral commitment to service, their commitment to their fellow man in a way that obviously is a further expression of their faith. These are the students who I expect will grow up to be public servants in the future, to be the teachers of the future, to be those who become missionaries in the future, and those who will make our world a better place.

I know firsthand the benefits of a Catholic education that emphasizes that intellectual, spiritual, moral, physical and social values in students, having attended Saint Richard's School in North Olmstead, Ohio; St. Mary's in Glenshaw, Pennsylvania; and finally graduating from the sixth grade at Saint Alexis in Wexford, Pennsylvania, which is currently my parish.

I have also had the opportunity, as I mentioned earlier, of visiting many schools throughout the six counties I represent in Pennsylvania District Four. One thing I learned when I was a State senator was that these schools not only provide all of these advantages for students but they provide a significant advantage to the taxpayers of the Commonwealth of Pennsylvania. For every student who attends a Catholic school, the taxpayers of the commonwealth save a significant amount of money that would have been spent in the public school system. So financially, a benefit; socially, a benefit.

I congratulate the Catholic schools, the teachers, and the parents for sending their kids to these schools and making the United States's future much brighter.

Mr. KILDEE. Mr. Speaker, I yield 4 minutes to the gentleman from Illinois (Mr. DAVIS).

Mr. DAVIS of Illinois. Mr. Speaker, I want to thank the gentleman from Michigan for yielding me this time, and I rise to recognize the contributions of Catholic schools to Chicago and to the Nation.

Children all across America have benefited from Catholic education. I applaud these schools for their long commitment to education, to a value system and character development, and to developing the kind of lifestyles that students as well as adults need to seek.

There are almost 8,000 Catholic schools nationwide. Illinois is one of the 10 States with the highest enrollment of Catholic students, with over 181,000 students in 538 schools in the State. In Chicago, as in other urban areas, Catholic schools play an important role in providing quality academic training for children and youth.

Indeed, the archdiocese of Chicago is the second largest Catholic school system in the Nation. There are 34 outstanding Catholic schools in my congressional district, and I recognize all of them as being outstanding, as a matter of fact, some of the very best schools in the Nation, such as Saint Ignatius Prep, known nationally as an outstanding school. But all of them are outstanding schools. They do an exceptional job.

Catholic schools, however, like all other components of education, Mr. Speaker, are facing difficult times. And almost every time I meet with residents and students and staff, we are all trying to figure out how do we keep the resources available to keep these educational institutions intact. So I would hope that as the year goes on and as we discuss and debate education, that we will find ways to put as much resources into education as we possibly can, knowing that the investment will pay off in the end.

Again, I salute the Catholic schools for their outstanding contributions, and I would like to recite for the RECORD those in my district, which are as follows:

Chicago Jesuit Academy, Divine Infant Jesus School, Divine Providence School, St. Bernardine School, St. Edmund School, St. Jerome School, St. Stanislaus Kostka, St. Elizabeth School, St. Helen School, Children of Peace School, Santa Lucia School, St. Pius V School, St. Therese School, Visitation School, St. Domitilla School, Ascension School, St. Giles School, St. Luke School.

St. Vincent Ferrer School, Old St. Mary's, St. Angela School, St. Malachy School, St. Nicholas Cathedral, San Miguel-Comer Campus, Frances Xavier Warde, Our Lady of the Westside, St. Catherine/St. Lucy, Immaculate Conception School, Archbishop Quigley Preparatory, Fenwick High School, Holy Trinity High School, St. Ignatius College Prep., St. Joseph High School, Trinity High School.

Mr. CASTLE. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. MURPHY), alas another Steelers fan.

Mr. MURPHY. Mr. Speaker, I thank the gentleman for yielding me this time, and I am pleased to join my colleagues in support of this resolution to recognize the students, teachers, faculty, and graduates of Catholic schools. At Catholic schools across my State of Pennsylvania and the Nation, students will receive the highest-quality teaching in all academic subjects. But perhaps more important, beyond reading, writing, and arithmetic, students will be exposed to well-rounded, values-based curricula that teach the mind, the heart, the body, and the soul. Indeed, Catholic schools don't shy a away from matters of right and wrong.

The late Pope John Paul II, himself a great advocate for education, challenged Catholic schools to "foster in your students a social consciousness which will move them to meet the needs of their neighbors and to discern and to seek to remove the sources of injustice in society." I believe Catholic schools do promote social awareness and help make the world a better place to live.

Last week, as we know, was Catholic Schools Week, and the theme was "Catholic Schools: Character, Compassion, and Values." As a young student at St. Barnabas Elementary School myself and Walsh Jesuit High School, I was taught these traits at early ages. I greatly value my Catholic school education, as I do my public school education.

The 18th Congressional District of Pennsylvania has this diversity of many Catholic schools, 67 in Allegheny County alone, five in Washington County, 19 in Westmoreland County. With over 183,000 students educated in Catholic schools across the Commonwealth of Pennsylvania, the impact is huge. Eighty percent of Catholic school students go on to college, and Catholic schools saved more than $1 billion last year in taxpayer funds in Pennsylvania alone by a reduction of the dropout rate to less than 3 percent.

Mr. Speaker, I am pleased to be a cosponsor of this legislation. I commend the authors and all those who teach and are students of Catholic schools.

Mr. KILDEE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. CASTLE. Mr. Speaker, I yield 2 minutes to the gentleman from South Carolina (Mr. WILSON).

Mr. WILSON of South Carolina. Mr. Speaker, as the National Conference of Catholic Bishops once stated, "Education fosters the dignity of a person and the building of a community." Today, I am honored to thank my friend, Congressman MARK KENNEDY, for his leadership in recognizing America's Catholic schools for their continued commitment to education, and I appreciate Congressman MIKE CASTLE for his managing of the resolution.

I know firsthand of the effectiveness of Catholic schools from my school visits in the Second District of South Carolina to the elementary schools of St. Mary Help of Christians in Aiken; St. Peter in Beaufort; St. John Newmann of Columbia; and St. Joseph of Columbia, where I have two godsons, Jackson Gossett and Joseph Fisera; St. Martin DePorres of Columbia; St. Peter of Columbia; and additionally, St. Francis by the Sea of Hilton Head Island, along with Cardinal Newman High School in Forest Acres, South Carolina.

□ 1600

For generations these schools have served as an origin of opportunity for millions of Americans by teaching a broad, values-added education. Catholic schools play a pivotal role in helping American children develop into responsible and productive members of society. Today, almost 8,000 Catholic schools are educating nearly 2.5 million students. Because of their excellent curriculum and strong emphasis upon values, these schools consistently outperform other public and private schools. Ninety-nine percent of Catholic high school students graduate, and 97 percent attend some form of postsecondary schooling.

Catholic schools also serve willingly in our communities. After Hurricane Katrina and Hurricane Rita, Catholic schools in almost every State graciously welcomed displaced children from devastated areas without charging them for tuition, uniforms, books and supplies. Their recent generosity is simply another example of Catholic schools faithfully following the Gospel message. As we celebrate Catholic Schools Week, I join my colleagues in supporting the resolution expressing our sincere appreciation for America's Catholic schools.

In conclusion, God bless our troops. We will never forget September 11.

Mr. KILDEE. Mr. Speaker, I ask unanimous consent to reclaim the balance of my time.

The SPEAKER pro tempore (Mr. GUTKNECHT). Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. KILDEE. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. GEORGE MILLER).

Mr. GEORGE MILLER of California. Mr. Speaker, I thank the gentleman for yielding me this time and for offering this resolution recognizing the contributions of Catholic schools to our communities and to our Nation, and join in the remarks of those who have spoken before me on this measure.

Clearly, as we travel our congressional districts and we recount our own life experiences with Catholics schools, both in attending them and in interacting with them in our congressional roles, the magnificent and incredible contribution they make to our communities and to building the lives of young people in the fullest sense of the word, not just the academic performance of these young people, but the efforts that they make to integrate them into the community in terms of community service and building their character and building their moral values and building their recognition of the community in which young people live, and the diversity of that community and understanding the need to be accepting of that community, these are characteristics, these are values, these are principles that we hold dear as a Nation, and Catholic schools have been fundamental to building those within the young people that attend these schools.

I had the honor of attending Catholic high school, but only for 1 year, Bellermine High School in San Jose, and I just wanted to express my support of this resolution and the continuation of the contribution of Catholic schools to our Nation's education system and the character-building of our young people.

Mr. CASTLE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Pennsylvania (Mr. FITZPATRICK).

Mr. FITZPATRICK of Pennsylvania. Mr. Speaker, I rise today to lend my support to House Resolution 657, which honors the contributions of Catholic schools on America's youth, and more than this, their contribution in enhancing the social framework of our Nation.

Mr. Speaker, 25 years ago President Reagan's Secretary of Education, Secretary Bennett, remarked that during the first 150 years in the history of this Nation, that education was not just about the development of the mind, it was also considered to be the architect of the soul, and Catholic schools have never forgotten that second, most important, part of the mission of education.

As someone who has benefited greatly from Catholic education, I can say unequivocally that the values taught to me by the Catholic school system prepared me for the challenges and the opportunities I have met during my lifetime. My Catholic education prepared me to stand up and make the hard decisions in life with the comfort of having complete confidence in who I am as a person, and the deep understanding of human dignity that is so easily forgotten in today's overly commercialized, media-driven society.

My education taught me the value of developing not only my mind, but my commitment to my family, my community and my faith. The sisters, priests and teachers of Bishop Egan High School in Fairless Hills, Pennsylvania, and my professors at St. Thomas University in Florida helped me develop those core values, and for that I will be forever in their debt. Therefore, I call on my colleagues to join with me in strong support of this resolution, to show their support for Catholic school systems, educators, students, and contributors.

Mr. PASCRELL. Mr. Speaker, I wish to submit these comments for extension of remarks.

I would like to speak in strong support of H. Res. 657, a resolution honoring the contributions of Catholic Schools and thank Mr. KENNEDY for his good work.

As a proud graduate of St. George's Elementary School, St. John the Baptist High School, and Fordham University, I know firsthand the great value of a Catholic School education.

Catholic school has been a longstanding tradition in my family. My three sons graduated from Catholic schools prepared for the challenges they have faced in their professional and personal lives.

As we celebrate the 32nd Annual Catholic Schools Week, I am proud to report that Catholic schools continue to play a vibrant and integral role in the educational and cultural life of our Nation.

Today, nearly 2.5 million children attend Catholic elementary, middle and high schools. Minority enrollment is nearly 30 percent and non-Catholic enrollment is over 13 percent of the total.

There are nearly 400 Catholic schools in my home State of New Jersey alone, serving nearly 130,000 students, and many of these schools serve our urban districts.

Impressively, the student/teacher ratio in Catholic schools is 15:1, a ratio which provides teachers the opportunity to truly get to know the individual needs and strengths of the student body.

Catholic schools provide a disciplined, multifaceted educational experience for children.

A Catholic education merges critical thinking and knowledge-based learning with a spirit of tolerance, empathy and service to others. This unique approach is exemplified in the theme of this year's Catholic Schools Week: Character. Compassion. Values.

Teaching students to serve their communities and to develop fundamental human values enhances self-esteem and enthusiasm, brings abstract subjects to life, and empowers students to think about worlds beyond their own.

It may also have a significant salutary effect on academic performance. Recent studies have demonstrated that Catholic students consistently perform up to a very high standard on tests assessing reading, writing, math and science abilities.

What transpires during the education of each and every child has repercussions beyond the classroom: It will shape the character of the country that we will become.

That is why I would like to thank the Catholic Schools of America for the tremendous success they have had in producing a student body well educated and well prepared to take an active role in strengthening our society.

This is perfectly illustrated in the generous response that Catholic schools students have had toward students devastated by the recent hurricane in Louisiana, Mississippi, and Alabama.

Catholic students delivered more than $1 million to Katrina students and opened their hearts and schools to thousands of victims. After the hurricane, New Orleans, with its deep Catholic roots, had 52,000 displaced students enroll in Catholic schools around the Nation, and Biloxi and Mobile had thousands more.

This is only one example of the contributions that Catholic Schools are making to our society. I am pleased to add my voice to the chorus of those who celebrate and honor the achievements of these valuable institutions.

Mr. FOLEY. Mr. Speaker, I rise to recognize the importance of America's Catholic schools and share my support for House Resolution 657.

As a product of Sacred Heart School in Lake Worth, Catholic parochial education was a major part of my life and that of my family. My father first attended Sacred Heart himself as a teacher and then moved on to Cardinal Newman High School to work as coach and science teacher.

At Sacred Heart, I was taught how to be a better citizen because of their focus on discipline and moral values. I often fall back on lessons learned during my formative years—especially in the case of November 22, 1963. I was in 4th grade and our teachers asked us to pray for our Nation and for our assassinated President. Though the shock of the tragedy could have easily given way to anger among the faculty at Sacred Heart, it instead encouraged us to focus on a compassionate tone by praying for our country and the Kennedy family.

I am and have always been a strong proponent of public education. But by the virtue of its very nature—publicly funded schools cannot offer the type of spiritual education that Catholic schools have long provided. In search of a complete education with the ideals of trust, faith, understanding and compassion, many families are turning to the structure, discipline and academic standards of Catholic schools. Parochial schools in the United States are also responsible for educating students from a wide range of ethnic backgrounds, including many who are non-Catholic.

I think one of the unique aspects of Catholic school education is the opportunity to care for the material and intellectual needs of the child in a community atmosphere. By offering an education centered on values, the faculty in Catholic schools can create an interactive setting between parents and students that is geared toward long-term healthy character and scholastic development for all enrolled children.

Please join me and my colleagues as we celebrate the contributions of Catholic schools following National Catholic Schools Week.

Mr. REYES. Mr. Speaker, I rise today in support of H. Res. 657, a resolution honoring the contributions of Catholic schools across America, including those in my congressional district of El Paso, Texas.

On September 21, 2005, with representatives of the school watching from the House gallery, I proudly rose to recognize the 80th anniversary of Cathedral High School in my district. Cathedral and other Catholic schools in El Paso and throughout our country offer a quality education and produce men and women committed to a broader idea of learning—one that extends beyond just textbooks.

Catholic schools offer—in more than one sense—a value-added approach to education. They instill in their students a moral compass, a sense of purpose, and a commitment to service. Indeed, many of the men and women who inspired me to spend my life in public service were themselves encouraged to enter that field by the virtues conveyed through Catholic education. I count among that group Ambassador Raymond Telles, the first Hispanic mayor of El Paso, an American ambassador, an advisor to presidents, and a man whose success in life was built in large part upon the ideals he learned at Cathedral High School.

Today, Catholic schools teach 2.5 million young Americans, almost 15 percent of whom are not Catholics. This resolution reaffirms the House of Representatives' support for the countless Catholic school teachers and administrators who dedicate their lives to a particular vision of education, and for the values of love, charity, and hope that are tenets of a Catholic education.

Again, Mr. Speaker, I wholeheartedly support H. Res. 657 and urge my colleagues to join me in voting in favor of this important resolution.

Ms. BORDALLO. Mr. Speaker, I rise today in strong support of H. Res. 657. This resolution honors the contributions that Catholic schools make to our communities and, in particular, recognizes the annual Catholic Schools Week, celebrated from January 29–February 4 this year. I thank Mr. KENNEDY of Minnesota for introducing H. Res. 657, for recognizing Catholic Schools Week, and for his ongoing support for Catholic schools nationwide.

Catholic Schools Week is an event co-sponsored by the National Catholic Educational Association and the United States Conference of Catholic Bishops. Honored during the Week are Catholic schools, students, parents, and teachers across the Nation for their ongoing contributions to education. The Catholic schools community has a significant role in promoting and ensuring a brighter, stronger future for our communities, our country and, most of all, for our children.

Guam's association with the Roman Catholic Church dates back to Ferdinand Magellan's arrival on our island in 1521. Guam became an important port-of-call along trade routes through the Pacific sailed by Spanish Galleons. Padre Diego Luis de San Vitores, a Spanish Jesuit missionary, arrived in Guam in 1662 during his journey from Mexico to the Philippines. Padre San Vitores vowed to return to Guam upon leaving the island.

Three years later, through his close ties to the royal court, he persuaded King Philip IV of Spain and Queen Maria Ana of Austria to order the establishment of a Catholic mission in Guam. Padre San Vitores established a mission in the village of Agaña which later became the site of the island's first Catholic Church. It is now the seat of the Metropolitan Archdiocese of Agaña, canonically erected in 1911, elevated to a Diocese in 1965—300 years after Padre Diego Luis de San Vitores kept his promise to return to the island. The Diocese was further elevated in 1984 to a Metropolitan Diocese. Today it enjoys a congregation of 101,000 strong throughout Oceania.

The Roman Catholic faith grew strong on Guam over the years. This strength is represented in the quality of Catholic school education on the island. Our island has four nursery schools, six elementary and middle schools, and three high schools that teach the Catholic faith in addition to academic curriculum.

The Catholic school tradition on Guam began with Bishop Appollinaris Baumgartner. He recognized our island's need for quality education inspired by the Catholic faith. In 1946, he invited the Three Sisters of Mercy from North Carolina to Guam. They established The Academy of Our Lady, the first all girls' Catholic high school on Guam. This school remains in operation today. Also, Bishop Baumgartner invited the School Sisters of Notre Dame of La Crosse, Wisconsin to come to Guam in 1949. Soon after arriving on the island the Sisters founded Notre Dame High School, a Catholic co-educational high school. Notre Dame High School also remains operational today. Father Duenas Memorial High School is the third Catholic high school on Guam. Its namesake, Father Jesus Baza Dueñas, was executed on July 11, 1944, by the Japanese forces occupying Guam. Father Dueñas, a resistance figure on the island, was executed along with his nephew because he would not betray the location of an American sailor hiding on the island. Father Dueñas Memorial High School continues his legacy of courage and integrity. All three schools offer rigorous curricula to prepare students for college while instilling strong moral values and an understanding of the Catholic faith.

Bishop Baumgartner initiated a strong tradition of Catholic elementary and middle school education on Guam, as well as providing advanced theological study opportunities for the island's faithful in minor seminary.

Bishop Baumgartner's legacy of shaping the character of Guam's faithful by promoting Catholic education opportunities on the island was continued by Archbishop Felixberto Camacho Flores, Guam's first Chamorro Bishop, when he became Titular Bishop of Stonj in 1970. The number of Catholic schools on Guam increased under his leadership. He expanded their programs and improved school facilities.

Today, the Roman Catholic Archdiocese of Agaña remains committed to serving the people of Guam. Under the direction of the Most Reverend Anthony Sablan Apuron, OFM Cap, DD, Metropolitan Archbishop of Agaña, Catholic educational institutions on Guam provide quality academic instruction to students. The contributions of the Catholic school system to the people of Guam are reflected in our local leaders in the clergy, government, and private-sector who are alumni of the Catholic schools. The dedication shown by the Archdiocese of Agaña to the quality of Catholic school education on our island strongly reflects the theme for Catholic Schools Week: Character. Compassion. Values.

Guam has a long history of Catholicism and enjoys a strong tradition of educational institutions grounded in the teachings of the Catholic Church. I recognize and commend the Catholic schools in Guam for their commitment to instilling the principles of academic rigor, sound moral values, and respect and understanding for the Catholic faith in our children's daily lives. In honor of Catholic Schools Week, I want to recognize dedication and achievements made by the students, parents, teachers and administrators of Catholic schools in Guam and across the Nation. Their contributions to our society, both inside and outside of the classroom are significant. It is my hope that the tradition of Catholic schools education on Guam and around the United States will remain strong for generations to come.

Mr. AKIN. Mr. Speaker, I rise today to join my colleagues in honoring the important role that Catholic schools play in educating the children of America, including in my hometown of St. Louis. Catholic schools not only teach our kids how to think, but also teach them how to live.

Catholic schools have always been known for their high academic standards and excellent teachers, but I would like to draw your attention to their ability to provide more than just an excellent academic education. The Catholic schools in my district are a perfect example of this—providing children from a young age with a moral foundation which leads them to serve their community through out their lives.

It was strong religious and moral beliefs that drove our Nation's Founders to develop a country where individual freedom is coupled with individual responsibility. Catholic schools across our great Nation continue to produce students who understand their responsibility and act accordingly. The values imparted and the strong faith that Catholic schools develop in their students produces citizens who understand the importance of service and diligently work for the good of our country.

I am honored to represent a district where numerous Catholic schools provide a rigorous academic education and a moral compass to guide students through their lives. Catholic schools in Missouri's Second Congressional District and throughout the St. Louis region produce well-rounded and morally grounded members of our community. The teachers, administrators, parents, and students of Catholic schools deserve this recognition for the tremendously positive impact they have on our Nation. These schools will continue to play a significant role in developing responsible American citizens for our future generations.

Mr. LARSON of Connecticut. Mr. Speaker, I rise today in strong support of H. Res. 657, a resolution honoring the contributions made by Catholic schools nationwide. These schools provide students with an education that instills a lifelong development of moral, intellectual, and social values in America's young people.

Our Nation's Catholic schools provide excellent opportunities for learning. Today, nearly 50 percent of students enrolled in U.S. private schools attend Catholic schools. In Connecticut, over 39,000 students are enrolled at 148 Catholic schools throughout the State. Catholic schools provide educational opportunities to a broad cross-section of our society. With over 7,000 schools and current matriculating classes of greater than 2.5 million students, it is estimated that about 27 percent of students enrolled are minorities. Catholic schools also encourage greater levels of student-teacher interaction through their small class-size ratio. The 160,000 faculty that teach at these schools provide students with both an intellectually stimulating and values-based education.

As a former student of St. Rose's School in East Hartford, Connecticut, I would like to praise the outstanding efforts of the Sisters of Notre Dame for providing students with strong academic and moral values. The Catholic education I received at St. Rose's School has guided me throughout my career in public service. At St. Rose, I was taught the valuable lessons of good works toward others and society's special obligation to consider first the needs of the poor. The Catholic teachings have given me a valuable framework for life, and have enabled me to achieve personal and professional goals.

Again, I am proud to support H. Res. 657. As we celebrate Catholic Schools Week, we must honor the role these schools play in promoting and ensuring a brighter, stronger future for this Nation. I am proud that these schools continue to nurture students dedicated to their faith, to their values, to their communities and to their families. These schools develop the leaders of tomorrow with effective leadership and character.

Mr. BOUSTANY. Mr. Speaker, I rise today as a proud cosponsor of H. Res. 657, a resolution to honor the contributions of Catholic schools and recognize Catholic Schools Week. I want to thank my colleagues on the Education and the Workforce Committee as well as the sponsor of this resolution, the gentleman from Minnesota, Mr. KENNEDY, for their work.

Like many of my colleagues, I too am a product of Catholic schools. My upbringing is a testament to the quality education and dedicated efforts of Catholic educators to produce students, whether they are Catholic or not, dedicated to improving themselves, their community, and our Nation.

At Cathedral Carmel School in Lafayette, Louisiana, I developed a lifelong love of learning and reading. Through college and medical school, the lessons I learned in high school helped me to work through classes and assignments. Even throughout my professional career as a heart surgeon and now in Congress, I find myself relying on the personal development and classroom lessons from high school.

The Seventh District of Louisiana contains a strong Catholic school system; and I have met with many students, parents, and educators who believe these schools are helping to create students and young adults who will stay in Louisiana and become productive members of our community.

As we recover from the devastating effects of Hurricanes Katrina and Rita, Louisiana Catholic schools have played an integral role in our relief and recovery, taking in thousands of displaced students. Keeping our students in Louisiana is a big part of restoring our state's economy. These young adults provide entrepreneurship, creativity, workforce, and ingenuity to build businesses and create jobs.

Again, I congratulate the Catholic schools of our great Nation and look forward to continuing to support them in my community and in Congress.

Ms. PELOSI. Mr. Speaker, President John F. Kennedy said in his Inaugural Address: "With a good conscience our only sure reward, with history the final judge of our deeds, let us go forth to lead the land we love, asking His blessing and His help, but knowing that here on earth, God's work must truly be our own." I rise today to thank our Catholic schools for doing God's work here on earth for generation after generation.

More than 163,000 educators teach in nearly 8,000 Catholic schools in America, and they educate nearly 2.5 million students every year. My husband and I and our five children have attended over 100 years of Catholic school education. Needless to say, we support our Nation's Catholic educational system.

I can tell you firsthand that Catholic schools provide exceptional education. They contribute to a student's intellectual, ethical and spiritual development. As a devout Roman Catholic and the product of Catholic schools, I rely every day on the values and the sense of responsibility that were deepened for me by my Catholic education.

The theme of this year's Catholic Schools Week is "Character. Compassion. Values." Education is about more than reading, writing, and arithmetic, although it's certainly about that. But it is also about teaching each child to live and work with integrity and in a way that serves others.

My Catholic education helped me appreciate that we all contain a spark of divinity, to recognize that spark of divinity in every person, and to respond to that spark with humility and awe, even when it's found in "the least of these."

Catholic schools teach their students that our personal faith means public obligation. Simply put, faith means we have work to do. My Catholic education taught me that to minister to the needs of God's creation is an act of worship. To ignore those needs is to dishonor the God who made us. That lesson should inform every debate we have here in Congress, whether it is education, health care, job creation, or the budget, which should be a statement of our national values.

Our Catholic schools truly do God's work here on earth, and they deserve our Nation's gratitude. I join my colleagues in thanking all of the teachers, parents, and students of Catholic schools who bring our Nation closer to the "beloved community" it was meant to be.

Ms. HART. Mr. Speaker, I would like to take this opportunity to recognize the Catholic schools of Pittsburgh. Catholic schools around the country will celebrate National Catholic School's Week from January 29 until February 4, 2006.

National Catholic School's Week is a week to promote Catholic schools. Every year there is a theme for the week, and schools hold special events for the students and their families. This year about 8,200 schools nationally will be participating in and celebrating the theme, "Catholic Schools: Character, Compassion, Values."

I ask my colleagues in the United States House of Representatives to join me in honoring National Catholic School's Week. It is an honor to represent the Fourth Congressional District of Pennsylvania and a pleasure to salute the Catholic schools of Pittsburgh.

Mr. SMITH of New Jersey. Mr. Speaker, I would like to express my strong support for H. Res. 657, a resolution recognizing the valuable contribution of Catholic Schools.

Last week marked the 32nd annual Catholic Schools Week, a week dedicated to honor the achievements and successes of Catholic Schools throughout the U.S. More than 2.4 million children are enrolled in the 7,799 Catholic schools in our country. In addition, 720,000 students are enrolled in the 212 Catholic Colleges and Universities nationwide.

In my home State of New Jersey, 129,232 students are enrolled in Catholic schools. In fact, New Jersey has the sixth largest enrollment of students in Catholic Schools out of all 50 States.

Of course, children do not form their core values on the sole basis of what schools teach them. Learning a respect for life and respect for the rights of others is not the purview of schools alone; it begins and is nurtured in the home. Accordingly, the Catholic school curriculum recognizes parents and family as primary educators and seeks to foster a shared vision between the school and family. As the father of four children who have attended Catholic schools, I know that Catholic school educators strive to work hand-in-hand reinforcing family values, ethical behavior, social responsibility, and academic achievement.

Placing a premium on both academic standards and moral responsibility has proven to be a successful formula for Catholic Schools. Catholic secondary schools have a 99 percent graduation rate and moreover, 97 percent of graduates continue their education.

Learning in a religious setting is not for everyone and America's public school system is critical to providing educational opportunities for all. We must continue to vigorously support our public schools at both the federal and local levels. At the same time, however, we should support those who seek the benefits of Catholic school and choose a religious setting as the best educational environment for their children. The contribution of Catholic schools to our Nation extends beyond the classroom. Catholic elementary and secondary schools save the government and taxpayers of the U.S. up to $20 billion a year.

In effect, parents of Catholic school children pay twice—they pay their fair share of taxes necessary to support the public school system and they pay tuition at the school their children attend. In order to address this issue, I have introduced H.R. 441, the Education, Achievement and Opportunity Act. This bill provides refundable tax credits for the educational expenses incurred by parents for elementary and secondary school. Most significantly, the tax credit is used for private school tuition, however, it can also be used for other educational needs such as computers, tutoring or transportation fees. Thus, parents sending their children to public school can also benefit from this legislation.

A Catholic education challenges students through a combination of high standards, strong motivation, effective discipline and an emphasis on personal responsibility. It is an education that goes beyond preparation for a secular life; it is an education that prepares students for a Christian life.

Mr. Speaker, I ask that all Members lend their support to H. Res. 657, and pass it unanimously.

Mr. HOLT. Mr. Speaker, I rise in support of H. Res. 657, legislation that supports the goals of Catholic Schools Week, and acknowledges the crucial role that Catholic schools play in serving and strengthening our communities.

I am proud to be a cosponsor of this resolution. Catholic schools have an impact far beyond the confines of the classroom. Values such as devotion to faith, family, community, and character development, are the foundations of Catholic education. These values promote a respect for the dignity of individuals, and encourage outstanding civic participation.

Catholic schools are also scholastic standard bearers. With a student-to-teacher ratio of

15 to 1, they are committed to smaller class sizes. Smaller classes correlate with more accomplished students which in turn leads to the global competitiveness of American students in the 21st century.

In the 12th District of New Jersey, Catholic schools continue to work to serve communities. Corpus Christi School, a Catholic elementary school in the town of South River, at one time struggled to keep its doors open. However, through the efforts of concerned parents, alumni, and prodigious fundraising, the school was able to remain open. Corpus Christi now provides assistance to the whole community, offering a pre-kindergarten program for 3- and 4-year-old children. During Catholic Schools Week, Corpus Christi will be offering reduced tuition rates. Other schools in the 12th district will be celebrating Catholic Schools Week, including the Immaculate Conception in Spotswood, which will be using its activities to raise money for St. Jude's Hospital for Children.

These schools, and Catholic schools in general, advance ideals that we all hold dear. They enrich our communities, and I am proud to join with my colleagues in supporting this resolution.

Mr. SHAYS. Mr. Speaker, I rise in support of H. Res. 657 to honor the contributions of Catholic schools. Catholic schools provide students with a wonderful education and, in many cases, a quality alternative to overburdened public schools.

I am grateful for the work of the 39 Catholic schools which serve 10,395 students from diverse backgrounds, run by the Diocese of Bridgeport. These schools offer elementary and secondary education, as well as afterschool programs. They provide a wonderful environment for learning and a strong sense of faith and discipline.

I commend the teachers, administrators, students and parents for their role in Catholic education, and the key role they play in creating a brighter, better-educated nation.

Ms. MCCOLLUM of Minnesota. Mr. Speaker, I rise today in support of this resolution to honor America's Catholic elementary and secondary schools and to recognize Catholic Schools Week.

America's Catholic schools provide a well-rounded education to the millions of children who attend them. More than 27 percent of the students are from minority groups and nearly 14 percent are non-Catholics. With a strong tradition of social justice, Catholic schools combine strong academic rigor and moral development to prepare young people for life. Graduates of Catholic schools go on to make valuable contributions to our communities through their work, further education, and civic activities. It is important that we take this time to acknowledge the important role that Catholic schools play in educating students and supporting the communities in which they exist.

The Catholic tradition continues to acknowledge the importance of reaching out to the most vulnerable in our society and Catholic schools follow that lead by incorporating moral development, civic engagement, and service learning in their curriculum. In this time of difficult decisions and budget priorities, the Catholic community reminds us of our commitment to all members of our society, especially the most vulnerable.

I am very proud to honor the thousands of Catholic elementary and secondary schools all across the Nation for their vital contributions to the education of children and young people. Attending an all-day Catholic kindergarten gave me a strong start in my own life. Later, while attending the College of St. Catherine, I had the opportunity to student teach at St. Luke's Catholic School in St. Paul and saw teachers who worked so hard to enrich students' lives through academics and spiritual development.

It is with gratitude for their commitment and efforts that I rise to thank Catholic schools, teachers, parents, and students for their valuable contributions to our Nation.

Ms. LORETTA SANCHEZ of California. Mr. Speaker, I rise today to support H. Res. 657, a resolution honoring the contributions of Catholic schools to our Nation.

I rise today in support of this resolution and in recognition of the teachers, parents, and schools administrations who dedicate themselves to the difficult task of creating a strong learning environment for students in Catholic schools everywhere.

I have dedicated my time in Congress to the issue of education and have worked to try to improve our educational system by supporting such initiatives as the creation of incentives for new teachers and increased funding for preschool programs.

It is in honor of this same pursuit by the Catholic schools of this Nation that I rise today. These schools are charged with the most important responsibility in our society: Educating our children. The pursuit of excellence in education and opportunities for students in the area of music and the arts put these schools and educators in a class of their own.

The future of the American educational system is tenuous. To quote the former Chair of the Federal Reserve Bank Alan Greenspan in a recent congressional hearing regarding solving the education problem in this country, "if you don't solve it, nothing else is going to matter."

Many thanks to the Catholic school system for all it does to help meet this challenge and I call on my colleagues in Congress to join me in working to put the education of our children at the top of our legislative priorities.

Mr. KILDEE. Mr. Speaker, I yield back the balance of my time.

Mr. CASTLE. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. BONNER). The question is on the motion offered by the gentleman from Delaware (Mr. CASTLE) that the House suspend the rules and agree to the resolution, H. Res. 657.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. CASTLE. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

HONORING SACRIFICE AND COURAGE OF WEST VIRGINIA COAL MINERS

Mrs. DRAKE. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 331) honoring the sacrifice and courage of the 12 coal miners killed and the stamina and courage of the one who survived the mine disaster in Sago, West Virginia, and the sacrifice and courage of the two coal miners killed in the Aracoma Alma mine disaster, and recognizing the rescue crews for their outstanding efforts in the aftermath of the tragedies, as amended.

The Clerk read as follows:

H. CON. RES. 331

Whereas coal generates more than half of domestic electricity, providing millions of Americans with energy for their homes and businesses;

Whereas West Virginia is the Nation's second largest coal producing State;

Whereas an average of 7,600 pounds of coal per person per year is used in the United States;

Whereas the United States has an estimated 275,000,000,000 tons of recoverable coal reserves representing about 95 percent of all fossil fuel reserves in the Nation;

Whereas coal continues to be the economic engine for many communities;

Whereas coal miners are among the most productive of all American workers, producing 7 tons of coal per miner per day, which results in coal consistently being the most cost-effective choice for generating electricity in the United States;

Whereas during the last century over 100,000 coal miners have been killed in mining accidents in the Nation's coal mines;

Whereas the Nation is greatly indebted to coal miners for the difficult and dangerous work they perform to provide the fuel needed to operate the Nation's industries and to provide energy to homes and businesses;

Whereas 13 West Virginia miners were trapped 260 feet below the surface in the Sago mine for over 40 hours following an explosion on January 2, 2006;

Whereas Federal, State, and local rescue crews worked relentlessly in an attempt to save the miners;

Whereas many residents of Upshur County, West Virginia, and the surrounding areas came together at the Sago Baptist Church to support the miners' families;

Whereas 12 miners, Thomas Anderson, Alva Martin Bennett, Jim Bennett, Jerry Groves, George Hamner Jr., Terry Helms, David Lewis, Martin Toler, Fred Ware Jr., Jack Weaver, Jesse Jones, and Marshall Winans, lost their lives on January 3, 2006;

Whereas only one miner, Randal McCloy, was safely rescued;

Whereas 2 West Virginia miners were trapped by a fire in the Aracoma Alma Mine on January 19, 2006;

Whereas Don Israel Bragg and Ellery "Elvis" Hatfield lost their lives in the Aracoma Alma Mine;

Whereas 2 West Virginia miners lost their lives in separate incidents in Boone County on February 1, 2006; and

Whereas Edmund Vance perished in the Long Branch No. 18 Mine and Paul Moss perished at the Elk Run Black Castle mine: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That Congress—

(1) recognizes Thomas Anderson, Alva Martin Bennett, Jim Bennett, Jerry Groves, George Hamner Jr., Terry Helms, David Lewis, Martin Toler, Fred Ware Jr., Jack Weaver, Jesse Jones, and Marshall Winans for their sacrifice in the Sago, West Virginia, coal mine;

(2) recognizes Don Israel Bragg and Ellery "Elvis" Hatfield for their sacrifice in the Aracoma Alma, West Virginia coal mine;

(3) recognizes Edmund Vance and Paul Moss for their sacrifice in the Boone County, West Virginia, coal mines;

(4) extends the deepest condolences of the Nation to the families of these men;

(5) recognizes Randal McCloy for his stamina and courage that enabled him to survive in severe conditions for over 40 hours;

(6) recognizes the rescue crews for their outstanding effort resulting in the safe rescue of Randal McCloy; and

(7) recognizes the many volunteers who provided support for the miners' families during the rescue operations.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Virginia (Mrs. DRAKE) and the gentleman from California (Mr. GEORGE MILLER) each will control 20 minutes.

The Chair recognizes the gentlewoman from Virginia (Mrs. DRAKE).

GENERAL LEAVE

Mrs. DRAKE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H. Con. Res. 331.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Virginia?

There was no objection.

Mrs. DRAKE. Mr. Speaker, I yield such time as she may consume to the gentlewoman from West Virginia (Mrs. CAPITO).

Mrs. CAPITO. Mr. Speaker, I rise today as the sponsor of House Concurrent Resolution 331 to honor the now 16 West Virginia miners who have lost their lives in coal-mining accidents this year.

I want to thank the Nation, I want to thank the Nation for their outpouring of concerns, prayers, and sympathy. You have fortified us as West Virginians.

On the morning of January 2, an explosion rocked the Sago Mine in Upshur County, West Virginia. Thirteen men were trapped 260 feet below the surface. One, Randal McCloy, suffered serious injuries resulting from a lack of oxygen, yet he miraculously survived. Twelve other miners, Tom Anderson, Alva M. Bennett, James Bennett, Jerry Groves, Junior Hamner, Terry Helms, Jesse Jones, Dave Lewis, Martin Toler, Fred Ware, Jackie Weaver, and Marshall Winans were killed in that tragedy.

Only 2 weeks later, another accident struck at the Aracoma Alma Mine in Logan County, West Virginia, taking the lives of Don Israel Bragg and Elvis Hatfield. Sadly, just last week, Edmund Vance and Paul Moss were killed in separate mining accidents in Boone County, West Virginia.

These men made the ultimate sacrifice doing a job that is vital to our Nation. Over 50 percent of America's electricity comes from coal, and our West Virginia veins run with an abundance of coal. Mining is the profession most closely identified with West Virginia, not only because of our State's abundant supply of the resource, but because of the character of our people. Coal is in our blood; whether we work in the mines or not, our heritage and our souls are coal-fired. West Virginians are proud and hard-working people with a deep devotion to our country.

Martin Toler, one of the Sago miners wrote to his family while he lay dying in the mine, and I quote, "It wasn't bad. I just went to sleep. Tell all I see them on the other side. I love you." Simple, powerful words with great meaning. The valor of these miners is, in fact was, with them until the end.

The 16 miners who died over the past 5 weeks in our State mines knew the dangers of their work. They knew that over the past century over 100,000 men have lost their lives in coal mining, but they performed their jobs with reliability and a sense of duty to their families, indeed our country. Miners know just how important their jobs are. They know how important it is to our economy across the Nation, and they sacrifice for us.

Author Homer Hickam of Rocket Boys fame, who himself grew up the son of a West Virginia coal miner, wrote and delivered what I thought was an incredible eulogy to the Sago miners. He listed a philosophy of life that exemplifies coal miners and, I think, all West Virginians:

We are proud of who we are.
We stand up for what we believe.
We keep our families together.
We trust in God.
We do what needs to be done.
We are not afraid.

Most of the time we are not thinking of coal miners when we turn on the lights or sit down to watch television. It is easy to take for granted the constant supply of relatively inexpensive electricity we have in this country. It is easy to forget that somebody gave of themselves and risked injury or death to mine the coal that powers the Nation's economy.

Today in the wake of the terrible tragedy at Sago and the death of the miners at the Aracoma Alma and Boone County mines, we as a Congress pause to remember the coal miners. We remember their hard work and sacrifice. We remember that each one of these men was a husband, a grandfather, a father, a brother and a son, and we pray for each of their families as they cope with the loss of a loved one. And we pray for Randal McCloy, who, despite improvements, faces a long road to recovery from his injuries.

This resolution also stands to honor the mine rescue teams who were willing to sacrifice themselves to save others. Rescuers of Sago were eager to enter even before it was safe to do so. Once in the mine, these rescuers demonstrated tremendous courage. And without their work, it is doubtful that Randal McCloy would be with us today.

West Virginia's communities came together during these tragedies, as they always do, to support their friends and neighbors. You see, in West Virginia, we are all family with a special closeness and respect for one another.

During this time I sat and talked with the families at the Sago Baptist Church as we awaited news from their rescuers. The prayers and support of people from across the Upshur County area and the Nation was overwhelming at the church, and this resolution honors the commitment and friendship shown by these folks.

I know that this commitment of community and family not only occurred in Sago, about also in Logan and Boone Counties because, as I said, in West Virginia, we are family.

Through our sorrow, we recognize our duty to do our part to improve safety for our miners. Sixteen West Virginians have been lost this year. While this resolution honors their loss, their legacy must be safe mines. It is important that Congress, State governments, MSHA, mine operators, and miners themselves work in a concerted effort to improve mine health and safety.

The West Virginia delegation has introduced on a bipartisan basis the Federal Mine Safety Act of 2006. I hope my colleagues will support this effort to bring enhanced technology to the mines, improve rescue teams, and ultimately save lives.

We all recognize the dangers of the mining profession, but we must do everything in our power to make underground mining safe. I have seen the pain and suffering in West Virginia at Sago, Logan, and at Boone County, and I do not want to see that suffering again. We must act to prevent similar accidents.

May God bless the lost West Virginia coal miners and their families and friends.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield such time as he may consume to the gentleman from West Virginia (Mr. RAHALL).

Mr. RAHALL. Mr. Speaker, I thank the gentleman from California for yielding me this time, and thank him for his leadership and expertise in helping us on mine safety legislation.

Mr. Speaker, I rise and associate myself totally with the comments just made by the gentlewoman from West Virginia (Mrs. CAPITO), and I commend her for the very eloquent manner and touching manner in which those comments were made.

It is with sorrow that we rise today to express the heaviness in West Virginians' hearts. Grief hangs a misty veil across our mountains. Since just the beginning of this year, West Virginia has lost 16 brave coal miners in a nightmarish series of mine tragedies. Sixteen sons gone in the span of a month. 16 souls that too soon slipped the bonds of Earth. These were good and decent men, God-fearing men, brave citizens, caring fathers, loving husbands, loyal friends, and generous neighbors who worked hard to earn an honest wage. They walked in the wake of risk to provide for their families.

□ 1615

These were tough men, made strong not merely by the labor of digging coal, but also by the work of building a Nation.

Coal has long been the lifeblood of America's industrial engine. It has fueled our economic growth. It has reinforced our military might.

But none of this would be possible without the labor of coal miners, who have served our Nation quietly and faithfully for generations, but with precious little thanks. To these men, we owe so much.

Mr. Speaker, in the spirit of gratitude, I join with my West Virginia colleagues in offering this resolution and, again, commend the gentlewoman from West Virginia (Mrs. CAPITO) for bringing it to the floor. Today we celebrate the courage and stamina of Randal McCloy whose miraculous survival in the Sago mines was a glorious gift. We thank the teams of rescuers who in recent weeks have risked their own lives to save the lives of others in our coal fields. And we honor the memories of these 16 men: Thomas Anderson, Alva Martin Bennett, Jim Bennett, Jerry Groves, George Hamner, Jr., Terry Helms, David Lewis, Martin Toler, Fred Ware, Jr., Jack Weaver, Jesse Jones, Marshall Winans, the two from my congressional district, Don Israel Bragg, Ellery "Elvis" Hatfield, whose families I sat with for close to 40 hours in the Melville Freewill Baptist Church as we sang, as we prayed together for a miracle that never happened.

And to the latest two, also from my congressional district, Edmund Vance and Paul Moss. We honor their memories. These brave men have now joined the ranks of so many miners before them who went to their daily shift anticipating the warm and loving hugs of family at day's end, but who emerged instead into the outstretched arms of heaven. May God bless them, their families and their brothers and sisters, still in the mines, who continue to walk in the wake of risk in service to our great Nation.

Mr. Speaker, it is with sorrow that I rise today to express the heaviness of West Virginia's heart.

Grief hangs a misty veil across our mountains.

Since just the beginning of this year, West Virginia has lost 16 coal miners in a nightmarish series of mine tragedies; 16 sons gone in the span of a month; 16 souls that too soon slipped the bonds of Earth.

These were good and decent men—God-fearing men, brave citizens, caring fathers, loving husbands, loyal friends, generous neighbors—who worked hard to earn an honest wage.

They walked in the wake of risk to provide for their families. These were tough men made strong not merely by the labor of digging coal, but also by the work of building a nation.

Coal has long been the lifeblood of America's industrial engine. It has fueled our economic growth. It has reinforced our military might.

But none of this would be possible without the labor of coal miners who have served our Nation quietly and faithfully for generations, but with precious little thanks. To these men we owe so much.

Mr. Speaker, in that spirit of gratitude, I join with my West Virginia colleagues in offering this resolution.

Together we celebrate the courage and stamina of Randal McCloy, whose miraculous survival in the Sago mines was a glorious gift. We thank the teams of rescuers who, in recent weeks, have risked their own lives to save the lives of others in our coalfields.

And we honor the memories of these 16 men: Thomas Anderson, Alva Martin Bennett, Jim Bennett, Jerry Groves, George Hamner, Jr., Terry Helms, David Lewis, Martin Toler, Fred Ware, Jr., Jack Weaver, Jesse Jones, Marshall Winans, Don Israel Bragg, Ellery "Elvis" Hatfield, Edmund Vance, and Paul Moss.

These brave men have now joined the ranks of so many miners before them, who went to their daily shift, anticipating the warm and loving hugs of family at day's end, but who emerged, instead, into the outstretched arms of Heaven.

May God bless them, their families, and their brothers and sisters still in the mines who continue to walk in the wake of risk in service to our Nation.

Mrs. DRAKE. Mr. Speaker, I yield myself such time as I may consume.

This year, 21 miners have lost their lives in mining accidents. Our thoughts and prayers are with their families. Today, we honor the 16 men who have died in West Virginia's coal mines and the lone survivor of the Sago mine accident. We also recognize members of the mine rescue teams who put their own lives on the line to try to save their fellow miners.

On January 2, 2006, the Nation watched, waited, hoped and prayed that 13 men trapped in the Sago mine would return to the surface alive. Then the Nation was stunned when we learned that 12 men had died. Only one survivor, Randal McCloy, returned to the surface alive. Two more miners were lost at the Alma mine, despite the courageous efforts of the mine rescue teams. And just last week, two more miners died in Boone County.

The first 6 weeks of 2006 have seen an unprecedented loss of life in West Virginia's recent mining history. Working with the State of West Virginia, the Mine Safety and Health Administration has begun investigations into these accidents. The agency also has announced an internal review to ensure that all the regulations and procedures under the Mine Safety and Health Act were followed.

In response to concern about MSHA's Freedom of Information Act policy, Chairmen BOEHNER and NORWOOD and Representative CAPITO wrote to Secretary of Labor Chao to secure changes that would provide for greater disclosure of important information. Prior to this action, inspectors' notes and other information related to MSHA citations would not have been disclosed until a case exhausted all appeals. This important change will allow miners and their families better and quicker access to information regarding citations and inspectors' notes.

Only a thorough investigation will pinpoint the cause of these tragic events. Congress must ensure the investigation proceeds as efficiently as possible, and then consider any proposed changes to our Federal mine safety laws and regulations that will help ensure that tragedies of this kind do not happen again in the future.

Mr. Speaker, along with the rest of the Nation, we extend our condolences to the impacted families in West Virginia.

Mr. Speaker, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. OWENS).

Mr. OWENS. Mr. Speaker, the resolution before us today is one that demands our attention, and I hope it is attention in more than just a ceremonial memorial way. It demands our attention for future action.

This resolution pays tribute to 17 courageous and hardworking West Virginia miners and their families, as well as the many rescue team members mobilized to save them in the face of last month's lethal accident at Sago mine, a subsequent fire at the Aracoma Alma mine, and 2 other mine incidents. Despite intense rescue efforts, 12 brave miners were killed at Sago, as we all know. We honor them with this resolution, and we grieve with their families, friends, and neighbors who will miss them terribly. We also honor the sole survivor of those miners trapped by the Sago explosion, commending his courage and perseverance. We wish him and his extended family all the best throughout the long and arduous recovery process that he faces.

We also honor the 2 miners killed in the Aracoma Alma fire and 2 other killed in sepatate incidents in WV coal mines. All of the miners I just spoke of, and you heard their names read earlier, are referenced by name in this resolution. It is our hope that the family members and descendents of these hardworking men will find this resolution and our statements in their honor a source of solace as well as inspiration for many years to come. For we intend that their names and personal histories will be immortalized, so to speak, inscribed within a public law that Americans may read and refer to from this year forward.

But Members of Congress are not poets by nature, nor should we be. In addition to enacting this commemorative resolution, we must do far more to honor these West Virginia mine workers. We must take critical and immediate steps to ensure that all of the other mine workers from West Virginia and throughout the Nation get the safe workplace environments they need and deserve.

One speaker has already pointed out that a large percentage, about half of the electricity produced in America, is produced by coal. Throughout the world, coal is a major fuel producing electricity. Huge mines in Russia and China, and elsewhere, in many of these places their mines are perhaps often not as safe as ours. But there are some places obviously with mines that are safe, safer than ours. There are obviously technologies available which will avoid the kind of catastrophe we experienced here or at least minimize that kind of catastrophe.

I hope that all of us have read about the accident in the Pot Ash mine in Canada where a number of workers were trapped in an explosion and they all got out safely. It was pointed out that while they were waiting to be rescued, there were some cubicles or little cubby holes that they were able to go into and there they found extra oxygen, they found sandwiches and food and a number of things were stored there. And it had all been prepared ahead of time in case an accident should happen.

I doubt if the bottom lines of the profits for the coal mines were greatly affected by preparing those kinds of emergency arrangements. I think that we ought to take a hard look at the fact that there is technology available, there are techniques available to save miners' lives. There are places in the world where mine safety is made a priority. But nobody should be ahead of America. No worker should be treated better than our workers in the effort to provide safety.

Congressional committees must conduct the requisite oversight hearings to determine whether Federal funding shortfalls or staffing shortfalls or rulemaking snafus at the Mine Safety and Health Administration, MSHA, played any role in the two WV mine tragedies. And if that is the case, then we must fix any such problems without delay. For such subsequent congressional action will serve equally as a fitting and altogether appropriate tribute to the West Virginia men and their families, as well as rescue team members we honor today.

Thus, I urge my colleagues both to pass this resolution and to undertake all other congressional actions, from oversight to authorizing and appropriations legislation, essential to protecting America's hardworking miners and their families.

Mr. Speaker, the resolution before us today is one that demands our attention. It pays tribute to 17 courageous and hard-working West Virginia miners and their families, as well as to the many rescue team members mobilized to save them in the face of last month's lethal explosion at Sago Mine, the subsequent fire at the Aracoma Alma Mine and two incidents at other WV mines. Despite intense rescue efforts, twelve brave miners were killed in the Sago disaster, Thomas Anderson, Alva Martin Bennett, Jim Bennett, Jerry Groves, George Hamner Jr., Terry Helms, David Lewis, Martin Toler, Fred Ware, Jr., Jack Weaver, Jesse Jones, and Marshall Winans, and two brave miners at Aracoma Alma, Don Israel Bragg and Ellery "Elvis" Hatfield. Also, two other miners, Edmund Vance and Paul Moss, were killed at other WV mines. We honor them with this resolution and grieve with their families, friends and neighbors who will miss them terribly. We also honor the sole survivor of those miners trapped by the Sago explosion—Randal McCloy—commending his courage and perseverance. We wish Mr. McCloy and his extended family all the best throughout the long and arduous recovery process he faces.

All the miners I just spoke of are referenced by name in this resolution, which I am very pleased to cosponsor. It is our hope that family members and descendants of these hardworking men will find this resolution and our statements in their honor a source of solace as well as inspiration for many years to come. For we intend that their names and personal histories will be immortalized so to speak, inscribed within a public law that Americans may read and refer to, from this year forward.

But Members of Congress are not poets by nature, nor should we be. In addition to enacting this commemorative resolution, we must do far more to honor these West Virginian mineworkers. We must take critical and immediate steps to ensure that all the other mineworkers, from West Virginia and throughout the nation, get the safe workplace environments they need and deserve. We must ensure that the appropriate Congressional committees conduct the requisite oversight hearings to determine whether federal funding shortfalls, staffing shortages, or rulemaking snafus at the Mine Safety and Health Administration (MSHA) played any role in the Sago, Aracoma Alma, and other mine tragedies. And if that is the case, then we must fix any such problems without delay. For such subsequent Congressional action will serve equally as a fitting and altogether appropriate tribute to the West Virginia men and their families, as well as rescue team members we honor today. Thus, I urge my colleagues both to pass this resolution and to undertake all other Congressional actions—from oversight to authorizing and appropriations legislation—essential to protecting America's hardworking miners and their families.

Mrs. DRAKE. Mr. Speaker, I yield as much time as he may consume to the gentleman from Pennsylvania (Mr. MURPHY).

Mr. MURPHY. Mr. Speaker, I rise to solemnly support House Concurrent Resolution 331 that mourns the loss of so many coal miners from the Sago and Alma mine disasters and, quite frankly, it is a time for us to remember so many other coal mining disasters. The victims as well as the rescue crews who fought bravely to get them to safety ought to be recognized in the aftermath of this tragedy. But now our deepest sympathies are with the families and friends whose lives have passed.

I feel a special affinity to these miners, my own great-grandfather having been a coal miner in Pennsylvania, and while I was a student at Wheeling Jesuit University in Wheeling, I spent so much time working in towns and volunteer work in mining towns in West Virginia, among them being Mann, West Virginia where the great Buffalo Creek flood disaster hit when a dam from a coal mine collapsed and wiped out so many people in that town.

It is a rough life for coal miners and coal mining towns, for the families, the wives and loved ones who sit and wait each time the elevator goes down into the shaft. The struggles and the hard scrabble life is so often immortalized in songs and folk songs over the years. And they are true, indeed, for the life is difficult for men and women who work in the mines and recognize the dangers and the constant safety that the mine operators must attend to.

It is also time to recognize that there are teams of people out there who did so much and responded so quickly, in particular Consol Energy, which had all five of their West Virginia teams and three Pennsylvania teams first on the site to try and help. We wished and we prayed so much that this would not have ended as it did. Instead, we had hoped that perhaps it would have been what happened at Cue Creek mine disaster of a couple of years ago in Pennsylvania when we all waited and watched with our eyes glued to our televisions as nine miners emerged from the mine late at night.

We wished for that. We prayed for that. Sadly that did not happen. And sadly, there may be other disasters of this type, but we must work hard to set the goal that it never happens again. We know that coal is a vital part of American energy. We know that coal and all the things that come out of manufacturing related to coal are a vital part of our country's economy. And the men and women who continue to work in the mines down below or on the surface are all part of that dedication and their willingness through their courage to give so much every day.

And then finally, perhaps, what we have to make sure we do, as the gentlewoman from West Virginia was saying, is work very hard with rescue teams and strong safety regulations for mines and enforcement of those regulations to prevent these tragedies from happening again. It is only through such actions that we would fittingly remember those who have come before us and died, and those who may come in the future and be suffering as well. That is the very least we owe their families. And as we honor those who have lost, we need to work towards that safety for those miners and their families for the future.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, and Members of the House, I am honored to join in support of this resolution offered by our colleagues from West Virginia and to join our colleagues in paying tribute to these 16 brave miners who lost their lives last month in West Virginia, and also to the miner who lost his life in Pike County, Kentucky, who died during the mine roof collapse, and to express the condolences to their families and to their friends who have lost loved ones.

We continue to hope and pray for the full recovery of Randal McCloy who lived through this ordeal at the Sago mine disaster, and wish him well. I join, I am sure, our entire Nation in recognizing the sacrifice of these individuals. And I want to salute the efforts of dozens of brave rescue workers who volunteered to risk their own lives to save others and the efforts of citizens of the affected communities who continue to help and to support the families of victims and to deal with their loss.

□ 1630

Despite a half century of improvements in mine safety, the truth still remains that underground mining continues to be one of our country's most dangerous occupations. It is also an occupation that we recognize many people would have a very difficult decision to make to join this occupation. It is one of the reasons we talk about the bravery, the courage, and the sacrifice of these workers and those who entered the mines after the disaster to join them, because we recognize that many of us would not want to do this.

But we also understand that just a week ago the President was here telling us the importance that coal would make if we really want to achieve energy independence for this Nation for a whole host of reasons that are very good for this Nation. Then we continue to need to have the sacrifice and the courage and the bravery of the mining community and of these communities to send their young men and women into the mines. But if it is about their bravery and their courage and their sacrifice, then our obligation is to meet their bravery with the duty of care.

There is no question that our progress in making mining a safer and healthier occupation than it has been in the past has been remarkable, but the Sago tragedy shows us that our job is not done. Death, injuries, and serious illnesses remain a very real part of those who go down into the mines and to their families and their communities and the brave men and women who help when the safeguards fail.

The men and women who need the solid incomes provided by mining jobs face difficult choices every morning before they go to work and see their loved ones at the door. I think the way that we truly honor their courage, their sacrifice, and their bravery, and these miners who have lost their lives and the volunteers who helped out and the grieving families and the communities, is to make the promise, as the gentlewoman from West Virginia said, that part of their legacy is safer mines and a safer occupation and a safer future for their children and their grandchildren and others who will go down into the mines. That means that we must meet our duty of care to these miners to make sure that we fully understand where the failures took place, where the improvements can be made, and where the risk is unacceptable.

Mr. RAHALL and his West Virginia colleagues have already introduced legislation that deserves immediate consideration to make certain improvements in standards and operations of the Mine Health and Safety Administration. I am delighted that they already received a partial response to that with the Agency engaging in emergency temporary standards to require coal operators to maintain additional self-contained, self-rescue devices in storage areas within underground coal mines, and to require coal operators to notify the Agency within 15 minutes of an accident. This is quite properly done on an urgent and emergency basis. I have urged the Education and the Workforce Committee to immediately commence oversight hearings to help us to determine the actions that would help strengthen the agency so that it can carry out the important responsibilities we have vested in it and what they owe the workers in the mines.

Next week, Monday, February 13, my colleagues and I are sponsoring a mine safety forum. We have invited the miners and their families and mine safety experts to share their views on how Congress and the Department of Labor can make mine safety enforcement more vigorous and effective.

It seems clear to me that there are serious questions regarding this administration's track record on mine safety that the employees and families of the Sago and Aracoma Alma mines have a right to know. I think we have to know the impact of the changes in the regulations and the regulations that were withdrawn in 2001 and the regulations that were implemented in their place. What was the margin of safety? Was there a change in that margin of safety, and did they have impact on the overall mine safety in the mine? We know that some of those regulations that were withdrawn at that time are now seen as urgently needed, as I just recited, from the response to the West Virginia delegation by the mining agency, safety standards for oxygen and breathing devices, standards for flame-resistant conveyor belts that Mr. RAHALL has raised, and that their withdrawal may have undermined the safety at Sago and Aracoma Alma mines.

We want to know what is the relationship between the drop in maximum fines and the usage of fines. Are fines helpful? Do they deter bad behavior? Do they, in fact, make for improvements to take place?

What is the relationship between the mines and those who are repeat offenders of serious violations of the current mine safety regulations and the protections that are put in place for those miners? Should they be dealt with in a different fashion? Do we fully understand the voluntary compliance assistance program that is currently in place? Should that continue to be extended to those mine owners that, again, repeatedly violate the law?

What is the relationship between the voluntary nature of the program and the compliance and the margins of safety that we expect for these miners?

Does the administration have the right people in the right place for the running of this Agency? Are their qualifications commensurate with the duties that they have to the miners in the field, and are we sure that we have the best people to continue the downward trend of mine fatalities in the mine, but also the general safety environment within the mines?

And we want to make sure that, in fact, the Department of Labor has kept pace with existing mine safety technologies, such as electronic tracking and communications devices and reserve oxygen chambers, technologies used in other countries, in some cases in other mines in this country, but clearly are not mandated. But we now see, as we start to do the forensics of what took place here, that maybe these things, had they been in place, these miners would have had the opportunity to walk out of that mine. These miners may have had a chance to shelter in place until rescuers could have gotten to them if they did not understand their ability to work their way around the danger that presented itself.

So these are the questions that the miners and their families will address in the forum. These are the questions that must be addressed by the administration, and these are the questions that must be addressed by this Congress, and must be addressed by this Congress in an independent fashion.

I am not sure I entirely agree with my colleagues on the other side that we must await the administration's doing its own investigation and hearings prior to our embarking upon that effort. I think that we ought to ask these people to come before the Congress and to explain the situation that we see.

Again, this is about the legacy of these miners' lives. It is about the future of mining in this country. It is about our responsibility to these individuals, to their families, to these communities. Again, it has been made clear that coal is going to play an evermore important role in our energy future, so we must understand that these individuals were patriots in that effort to achieve energy independence in this country. And I would hope that we would understand that as we pay tribute to their courage, to their sacrifice, and to their bravery to go down in these mines, that we inherit on their behalf and on behalf of their families a duty of care to these individuals and a responsibility to make sure that we have done all that we can do, as the government, in assuring their safety and making sure that they are working under the best safe environment that is possible for them and their colleagues.

Again, I thank the members of the West Virginia delegation for bringing this resolution to the floor and urge the support of it by all of our colleagues in the House.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in support of H. Con. Res. 331, "Honoring the sacrifice and courage of 12 coal miners killed and stamina and courage of one who survived the mine disaster in Sago, West Virginia and the sacrifice and courage of the two coal miners killed in the Aracoma Alma mine disaster and recognizing the rescue crews for their outstanding effort in the aftermath of tragedies."

I would first like to commend the West Virginia delegation including my good friend Mr. RAHALL, for introducing this resolution honoring those who lost their lives and the dedicated rescue crews who worked tirelessly during the crises. This resolution proposes recognition of our brave citizens who gave their lives for their work. West Virginia is the Nation's second largest coal producing State that generates more than half of domestic electricity and provide millions of Americans with energy for their homes and businesses. The United States has an estimated 275 billion tons of recoverable coal reserves representing about 95 percent of all fossil fuel reserves in the Nation, meaning that the average of 7,600 pounds of coal per person per year is used in the United States.

Moreover the coal miners are extremely productive American workers in the face of grueling conditions, producing 7 tons of coal per miner per day.

During the last century over 100,000 coal miners have been killed in mining accidents in the Nation's coal mines. The Nation is greatly indebted to coal miners for the difficult and dangerous work they perform to provide one of the sources of fuel needed to operate the country's industries and to provide energy to homes and businesses.

There were 12 miners, Thomas Anderson, Alva Martin Bennett, Jim Bennett, Jerry Groves, George Hammer, Jr., Terry Helms, David Lewis, Martin Toler, Fred Ware, Jr., Jack Weaver, Jesse Jones, and Marshall Winans, that lost their lives on January 3, 2006, but fortunately one miner was rescued, Randal McCloy. I also recognize the two miners that lost their lives early this year in a fire in Aracoma Alma Mine on January 19, 2006. These men were Don Israel Bragg and Ellery "Elvis" Hatfield.

It is a burden on all of our hearts when hard working citizens of this country perish, especially while on the job. My prayers go out to the friends and families of those who have lost their lives.

I support H. Con. Res 331 and I urge my colleagues to follow suit. I thank you for your consideration and yield the reminder of my time.

Mr. DAVIS of Illinois. Mr. Speaker, last month, America witnessed the tragedy of the Sago and Aracoma Alma mine deaths. We saw terrible things happen to good people, and the Nation was saddened by the events that unfolded.

I join with my colleagues in honoring these hard-working Americans who died or were injured while laboring to support their families. We also recognize the individuals who worked so hard to save them.

Our thoughts and prayers are with the friends, family, and neighbors of each of the, miners affected.

Mr. COSTELLO. Mr. Speaker, I rise today in support of H. Con. Res. 331, a resolution honoring the 16 extraordinary miners who lost their lives in the recent West Virginia coal mine accidents and recognizing the courage of Randal McCloy who survived. Further, I join my colleagues in extending our condolences to the families of these miners, and recognize the brave efforts of the rescue crews and volunteers during this time.

I represent southwestern and southern Illinois, a region with a rich coal mining history. Coal mining has played a significant role in transforming and developing the region since the mid-1800s when substantial coal mining in Illinois began. In 2006, the coal industry continues to be a vital component of our economy, and one we are working to strengthen for the future. Improving mine safety standards is an important part of this process in Illinois, West Virginia, and other coal producing States.

These unfortunate coal mining fatalities in West Virginia have highlighted the pressing need to revise the national coal mine health and safety standards to ensure miners are equipped with state of the art technologies and tracking devices, and sufficient emergency supplies of oxygen. I am pleased West Virginia legislators acted quickly to enact a state law requiring coal companies to give employees electronic tracking devices and to store oxygen supplies underground. Precautionary measures are needed to protect the health and safety of our coal miners and penalties for flagrant violations of the law and regulations must be enforced. To this end, I have joined my colleagues in the House as a cosponsor of H.R. 4695, the Federal Coal Mine Safety and Health Act of 2006.

Mr. Speaker, I know my colleagues join me in honoring the West Virginia coal miners for their courage and sacrifice and expressing our deepest condolences to their families.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield back the balance of my time.

Mrs. DRAKE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. BONNER). The question is on the motion offered by the gentlewoman from Virginia (Mrs. DRAKE) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 331, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution, as amended, was agreed to.

The title of the concurrent resolution was amended so as to read: "Concurrent resolution honoring the sacrifice and courage of the 16 coal miners killed in various mine disasters in West Virginia, and recognizing the rescue crews for their outstanding efforts in the aftermath of the tragedies.".

A motion to reconsider was laid on the table.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the House by Ms. Wanda Evans, one of his secretaries.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 4 o'clock and 40 minutes p.m.), the House stood in recess subject to the call of the Chair.

□ 1712

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. REHBERG) at 5 o'clock and 12 minutes p.m.

APPOINTMENT OF CONFEREES ON H.R. 4297, TAX RELIEF EXTENSION RECONCILIATION ACT OF 2005

Mr. THOMAS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4297) to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006, with a Senate amendment thereto, disagree to the Senate amendment, and request a conference with the Senate thereon.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

MOTION TO INSTRUCT OFFERED BY MR. NEAL OF MASSACHUSETTS

Mr. NEAL of Massachusetts. Mr. Speaker, I offer a motion to instruct conferees.

The Clerk read as follows:

> Mr. Neal of Massachusetts moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 4297 be instructed as follows:
>
> (1) The House conferees shall agree to the provisions of section 106 of the Senate amendment (relating to extension and increase in minimum tax relief to individuals).
>
> (2) The House conferees shall recede from the provisions of the House bill that extend the lower tax rate on dividends and capital gains that would otherwise terminate at the close of 2008.
>
> (3) To the maximum extent possible within the scope of conference, the House conferees shall insist on a conference report that would not increase the Federal deficit for any year.

The SPEAKER pro tempore. Pursuant to clause 7 of rule XXII, the gentleman from Massachusetts (Mr. NEAL) and the gentlemen from California (Mr. THOMAS) each will control 30 minutes.

The Chair recognizes the gentleman from Massachusetts (Mr. NEAL).

Mr. NEAL of Massachusetts. Mr. Speaker, we all know that perhaps more important than anything else we do here, we set and we establish priorities. Our motion to instruct sets forth the priorities that I believe should be followed in the conference on this legislation.

The priorities of the Republican majority are clear: Large tax cuts that disproportionately benefit the wealthiest in our society, while slashing initiatives that protect the most vulnerable in our society. Even in normal times, these priorities would be wrong, but these are not normal times.

America is currently involved in two wars, one in Iraq and one in Afghanistan. These are the first wars in our country's history where only those in the military and the poor are being asked to sacrifice.

Hurricane Katrina forced America to see poverty and its consequences. And let me compliment former President Jimmy Carter for his remarks yesterday at Mrs. King's funeral when he spoke of that very issue.

□ 1715

The administration has converted surpluses into an enormous budget deficit, but has done nothing to prepare programs like Social Security and Medicare for the future other than to threaten privatization. The most significant fiscal turnaround in the history of America has occurred on the watch of the Republican majority here in the Congress.

What I think is interesting, and I say this with great confidence, during these past few years we have almost doubled defense spending, we are fighting two wars, we have created a Department of Homeland Security, we have witnessed the national principle play out during Hurricane Katrina, and we have done all of this with six tax cuts. There is not anybody who is watching at home tonight in America who could run their personal lives on that basis. They could never hope to balance the ledger of trying to raise a family if they attempted to copy the model utilized by this Congress.

Our motion to instruct sets forth different priorities. First, it instructs the House conferees to follow the Senate bill and extend alternative minimum tax relief. Now, I must say that during my time as being one of the leaders here, it even was acknowledged by one of my friends on the other side, in the area of alternative minimum tax, that seldom have I had any issue in my time where I spoke of an issue more earnestly, received more congratulations from Members of both parties, and seen less extensive action than in the area of alternative minimum tax. This should be one of our first priorities. Without an extension of this relief, over 17 million Americans will face a tax increase in 2006, and the size of that tax increase could be as large as $3,640. Many middle-income families, largely married couples with children, simply are going to face higher taxes. That should be the priorities that we entertain.

Second, our motion to instruct would require the House conferees to drop any extension of the tax benefits for dividend and capital gains. Those benefits do not terminate until the end of 2008, so there is time to extend these benefits in the future if it is to be determined that they are appropriate as we seek balance in the ledger. Almost half of those benefits would be enjoyed by the wealthiest one-fifth of one percent of individuals, or better understood as individuals with annual incomes over $1 million.

Third, our motion requires the House conferees to develop a conference report with the view to not further increasing the Federal deficit. The administration projects a Federal deficit of over $400 billion for this fiscal year.

By the way, we have been told for the last 5 years that those numbers were going to come down substantially. The administration is proposing large deductions in education and health programs using the large deficit as an excuse, the very deficit they have created by their actions. Many of us on both sides of the aisle will oppose those misguided spending reductions. And once we get to the real battle here in the coming year over Medicare and Medicaid, my suspicion is that they will see all the action that Social Security saw in the past year. Further tax cuts for the superwealthy would jeopardize the remaining safety net for our children, for the disabled, and for other vulnerable individuals in the future.

Mr. Speaker, I would hope that we would have an open conference where the views of all parties might be expressed. After all, that ought to be one of the cornerstones of our democracy.

Mr. Speaker, I reserve the balance of my time.

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I do have to say this is one of the oddest motions to instruct that I have seen in my multiple decades in the House for basically one reason: just a few short days ago the House passed by a vote of 234 to 197, a tax reconciliation package which extended the dividend reductions and the capital gains reductions. On the same day, the House passed, outside of reconciliation, the alternative minimum tax assistance that the gentleman has pleaded for by a vote of 414 Members of the House of Representatives, I believe, to 9 in opposition. That was the substantive action of the House on the floor.

This motion to instruct, which is nonbinding, requests that the House completely reverse itself from the vote we had just a few days ago, and that is, we do not include dividends in capital gains in tax reconciliation, but we include the alternative minimum tax which was voted outside of reconciliation. And I guess I would just ask my Members whether or not it is more important to hang on to the substantive action of the House or the symbolic gesture on the part of the Democrats. That is not the only strange thing about this motion to instruct.

You heard my colleague from Massachusetts and you will soon hear from other Members of very large urban States asking for tax relief for the very richest Americans. After all, by definition, the alternative minimum tax is not applied to the lowest. It is not applied to the 10 percent bracket. It is not applied to the 15 percent bracket. It is applied to the richest among us. And although it is refreshing, it is just ironic that we are going to have Democrats going to the floor pleading to relieve the wealthiest among us from an alternative tax burden. And to do that, they want to deny, the number 17 million was mentioned, as those who were affected by this. That is everyone who has even a dollar affected, as opposed to 14 million who would get total relief on the basis of this if it were substantive, which it is not.

But what my colleague fails to recognize, or chooses not to mention, is that with the reduction for dividends and capital gains, we also provide for significant tax relief in the investment aspect of dividend in capital gains for those in the 10 and 15 percent bracket going to zero before it expires. On capital gains that benefits 14 million alone; on the dividends, that benefits 27 million Americans.

They want to take those people who want to invest, who are in the 10 and 15 percent bracket, and deny them the opportunity to bootstrap themselves so they can give the richest among us a little bit of relief because large States that have high State income taxes and high State sales tax want to live off the rest of the Federal taxpayers in getting relief from alternative minimum tax.

And let me say about the gentleman's example about how we do not seem to be able to figure out how individuals can live if they followed the Federal example of tax cuts, it is very simple. The alternative minimum tax that they ask for in terms of relief are dollars to the richest among us who will spend, who will spend it on consumption. You get a one-time benefit on consumption. In that example, there is no question that American families could never survive tax cut after tax cut if all you did with the money was feed consumption. But what the history of the investment of dividends and capital gains meant is that people were able to invest money going to jobs and to productivity which has given us a bonus back.

And if the individual family took that money and invested it, that is the smartest thing, deferring current gratification for future reward. That is exactly what we are doing with the dividends and capital gains. So I am a little startled that my colleagues are bewildered, the difference between a consumption-insisting tax or an investment insisting tax. One consumes, the other one grows. That is why we are able to continue to see the economy improve as we continue to cut taxes. It depends on which taxes you cut, where you cut them, and how you cut them.

What my colleagues are asking for in this motion to instruct is to give more money to rich people to spend and deny those people even in the 10 and 15 percent tax bracket a chance to invest and grow wealth. One is the American way. I do not know what the other one is.

So all I would tell my colleagues is, please, we acted substantively. We passed tax reconciliation. I know this motion is not binding, but please make sure you understand what you are doing. You would be reversing investment in favor of consumption. If you come from a rich urban State, it probably makes sense to you. If you are from the rest of America, it certainly does not.

Mr. Speaker, I reserve the balance of my time.

Mr. NEAL of Massachusetts. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the chairman said that this is one of the oddest motions to instruct that he has come across, but let me say I think that everybody would agree the most peculiar moment we have had in the last few years was the prescription drug bill. If you want to talk about a peculiarity that will be with all of us forever and how that was done at 4 o'clock in the morning, now that is peculiar. That is odd. What we are offering here is a sensible solution.

Mr. Speaker, I yield 4 minutes to the gentleman from New York (Mr. RANGEL).

Mr. RANGEL. Mr. Speaker, my friend, Mr. THOMAS, the chairman of the awesome and powerful Ways and Means Committee, has normally presented brilliant arguments, many of those I have opposed; but I have really never seen such creative thinking as he has done on the alternative minimum tax. I would hope the whole world, and that is at least those in New York and around the country, will hear who he is describing as the richest people in the world. I mean, coming from California there may be some distorted thinking about incomes, but from all of the statistics, they say that over half of the people are between the incomes of 100 and $200,000, they would be getting the relief.

And then if we were talking about, I do not want to start a class war because I do not want to offend any on the other side, but over 50 percent of the relief under the interest in the capital gains would go to people above a million dollars.

And so I do not think we would call the 100 to $200,000, certainly as it relates to the Nation, that is high income, but it certainly does not compare to the recipients of those in the categories that will receive capital gains and corporate dividends.

But more importantly, I beseech Mr. THOMAS to deal with the question of equity. When we are trying to help somebody in terms of taxes or to take away some benefits from somebody, it may be done in the back room, but ultimately the public will know which group are the beneficiaries.

Now, there is no way that you can contradict that nobody in this Congress or the Ways and Means Committee or the Finance Committee ever thought that the people that we were going after to make certain that they paid a minimum tax would find themselves being pushed in the category where they would be paying out thousands of dollars in taxes which we never intended for them to have, they just got pushed into this by inflation. We owe them more than new people that would benefit, some kind of relief. Now, this whole idea that we did it outside of reconciliation means that you did not do it at all. We know that when the House and the Senate conferees go to conference, that is when Democrats are invited to go but whether we are there or not, that we try to find out what is the best in both of the bills.

□ 1730

So it would seem to me that the only thing that we truly have that was passed by both the House and the Senate was relief for the alternative minimum tax. True, the Republican-controlled House did not put in any reconciliation, but those who were invited to go to conference would at least know that the Senate had it in their reconciliation bill and the House overwhelmingly passed it.

So it would seem to me, in equity and fairness, if you are talking about the intent of the House and the Senate, since they never included in their reconciliation bill the concept of the tax relief being given to capital gains and to corporate dividends, that in good conscience you could come back to the House and report that you followed the instructions.

It just seems to me, Mr. Chairman of the full committee, that you already knew that you were not going to give relief to the AMT; and now, instead of saying that we are sorry that we never responded to an equitable need, we never intended to throw these people into this category, instead of that, you have made them the richest people in the world.

Well, it is getting close to the election; and since the economy is doing so well, we will stick by that. If Republicans say they are the richest people in the world, Democrats would support that you said it.

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

We actually could solve a lot of our problems if we would tax all the people in the world. Clearly, what I said was the people in the United States. Those of us among us.

I cannot speak for the gentleman in terms of how he casts votes. I know he was on the losing side when we voted to extend the dividends and capital gains relief in the tax reconciliation package that just a few days ago passed the House with 239 votes. My vote in insisting for alternative minimum tax outside of reconciliation was an honest vote, and I intend to help those people.

Reconciliation is a process that is used by the Senate, not by the House. In terms of the number of votes necessary to pass legislation, the House always passes legislation by a majority vote, and it is always permanent. What we did with the minimum alternative tax vote, which with the help of the gentleman from New York passed by

414 votes, is exactly the same thing as far as the House is concerned that we did with the dividends and cap gains under tax reconciliation.

It is the Senate that utilizes reconciliation to pass measures by only 51 votes, albeit not permanently, for only a decade; and it is the Senate that needs 60 votes to make things permanent. So far as the institution of the House and the rules of the House and the votes that were cast, both on tax reconciliation and on the alternative minimum tax vote, the effective result of the House vote is absolutely the same.

All I am pointing out about the strangeness of this motion to instruct is that it is a request for the House to reverse itself, albeit nonbinding, from the very vote that we took, and that is that the gentleman from New York and others who were on the losing side on the vote for tax reconciliation want to be on the winning side by offering a motion to instruct. I guess it is okay. I will trade substance for appearance any day of the week. But Members need to know what they are voting on, and what they are voting on is to reverse themselves from the substantive decision they made earlier. I have never seen a motion to instruct that completely flips the legislation that had been presented. That is what I meant by strangeness.

And the argument that the gentleman from New York has just made in terms of the comparisons kind of equals that level as well. It is pretty simple. The economy is moving because we are investing in the economy through the reduction of tax on dividends and capital gains. If you were to give money to people, although the consumer helps, you simply do not get the benefit. And the people who make the most money, who are subject to the alternative minimum tax, deserve help. They do not deserve help in reconciliation, which the Senate needs to be able to make law.

Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania (Mr. ENGLISH), a valuable member of the committee.

Mr. ENGLISH of Pennsylvania. I thank the chairman for yielding me this time; and I will say one thing, Mr. Speaker, and I think the gentleman from Massachusetts had it right when he said this is about priorities. This motion is definitely about priorities, and it is about maintaining or not maintaining the current economic policies that make it a priority to encourage economic growth and encourage job creation.

In 2005, we created 2 million jobs in our country, and since 2003 our GDP has seen its fastest growth rate in 20 years, averaging a robust 4.4 percent per quarter. That growth is attributable at least in part to the competitive rates that we have set on capital gains and dividends, the seed corn of our economy. And it is precisely here that their instruction proposes to impose a tax increase, a tax increase on the most dynamic sector of the economy and on the most sensitive part of our Tax Code.

They do not say tax increase. They couch it in terms of withholding or withdrawing a tax cut. But in fact the markets for years have now taken into account a tax rate on capital gains and a tax treatment of dividends which encourages economic growth. They want to raise taxes.

At a time when our economy is facing pressure from globalization and facing pressure from high energy costs, now is not the time to be raising taxes on dividends. Now is not the time to be raising taxes on capital gains. I realize they desperately want to spend more money and they desperately want to raise taxes, but we cannot permit that to happen.

If we are serious about maintaining America's economic growth rate, if we are serious about maintaining a competitive position in the world, it is essential that we send the right message and that we look to make permanent the current rates on capital gains and the current tax treatment of dividends that are so important a part of our competitive position.

I am surprised to see the other side coming forward with such a naked and clear attempt to raise taxes. But be that as it may. I think the time has come for us to reaffirm our message and to send a clear message to the markets that we are prepared to maintain current policies to encourage economic growth and to maintain the strong points of our current economic policy.

I call on my colleagues to turn down this instruction and do so decisively.

Mr. NEAL of Massachusetts. Mr. Speaker, there were 22 million jobs created during the Clinton years.

Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. THOMPSON).

Mr. THOMPSON of California. Mr. Speaker, at the end of last year we came to the floor, as was pointed out, to vote on the tax reconciliation bill. That bill extended tax cuts that did not expire for years, and it ignored tax relief that was expiring within days, relief from the alternative minimum tax, or the AMT.

Now, just this past Monday, the President released his annual budget; and it was, with apologies to Yogi Berra, deja vu all over again. He called on Congress to make permanent $1.4 trillion in tax cuts. Some of those do not expire for years to come. And he called on Congress to make permanent relief from the AMT only through fundamental reforms of the Tax Code. Unfortunately, his budget did not call for fundamental tax reform.

So that is the naked tax increase that was alluded to. If it is not fixed, this creates 17 million new taxpayers, a tax on 17 million new people.

If our friends on the other side of the aisle tell us, as they do often enough, that the budget is a document outlining the priorities of the President, then we can only deduct that paying down the debt is not a priority of this administration; that managing our money so that we no longer have to mortgage our future to countries like Japan and China is not a priority of this administration; and permanent AMT relief for working and middle-class families is just not a priority of this administration.

Mr. Speaker, these are priorities for everyday Americans and for those of us on the Democratic side of the aisle. I urge my colleagues to support this motion to instruct which reflects the priorities of Americans and calls upon the conferees to provide immediate and fiscally responsible relief from the alternative minimum tax, which is going to tax 17 million new people.

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

If it is going to tax 17 million new people, why do they call it the alternative minimum tax? These people are already being taxed. It is an alternative way to tax them and was actually put in place when my colleagues on the other side of the aisle were in the majority.

The gentleman from Napa Valley, in pleading for some of the richest Americans to get some relief from an alternative system of taxation they put in place when they were a majority and could have dealt with it, literally wants to take money from the 10 and 15 percent bracket, people who are trying to invest and grow a nest egg so that they can have a piece of America like the people in Napa Valley.

The people in the 10 and 15 percent bracket for the first time actually can figure out a way to invest in America, to grow a nest egg, and to see the ability to have a better tomorrow. But they want to take the money from these people and ease taxes on those people in the upper tax brackets who have now triggered the alternative minimum tax.

I said I am in favor of helping relieve the alternative minimum tax, but the plan we have proposed is not trading one for the other. It is not denying the 10 and 15 percent bracket a piece of America. We passed assistance to the alternative minimum tax. It was outside of tax reconciliation. What they want to do is shove that nest egg-building approach out of tax reconciliation and move the alternative minimum tax in its place. That is what we are opposed to.

We are not opposed to assisting the alternative minimum tax. We are opposed to denying the 10 and 15 percent bracket a chance to invest in America at the lowest possible cost. That is what this is about.

Mr. THOMPSON of California. Mr. Speaker, will the gentleman yield?

Mr. THOMAS. I yield to the gentleman from California.

Mr. THOMPSON of California. Thank you, Mr. Chairman, for yielding to me; and I just want to point out that I represent seven counties, and I have people that are going to get caught in this AMT tax just like you do and just like every one of our colleagues across the country.

This was a tax, as you point out, to make sure people did not get out of their tax liability. But it was never indexed; and now it has crept up to catch all those good, hardworking people in the middle. And, Mr. Chairman, you know that our State pays 25 percent of the AMT that comes to the Federal Government.

Mr. THOMAS. Reclaiming my time, Mr. Speaker, the gentleman and his party had every opportunity when they were in the majority to index that. And in fact they had every opportunity to remove the credits and deductions which allowed those people not to pay any taxes. Instead, they took the easy way out of offering an alternative minimum, and you have gotten bitten.

I find it is ironic that the people in New York, New York City, and other areas are now asking relief for very wealthy people. I do not have a problem with that. We passed 414-4 relief for that on the floor. At the same time, within tax reconciliation, a structure which assists the Senate, we placed our highest priority, investment to creating nest eggs for the 10 and 15 percent brackets. That is where we decided to place our priorities. Your attempt here is to reverse that.

Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan (Mr. CAMP), the chairman of the Select Revenue Committee of the Ways and Means Committee.

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Mr. CAMP of Michigan. Mr. Speaker, I thank the gentleman for yielding me this time.

I rise in opposition to this motion to instruct. This motion is really based on a flawed rationale and flawed thinking. They are saying that we drop the 2-year extension on reduced rates for capital gains and dividends, somehow thinking that is going to help the deficit. First of all, that would be a tax increase on all those investors. As we have seen with employee stock ownership and employee-owned companies on the rise, stock ownership on the rise, more Americans participating in the stock market and investments than ever before, more than half, this would be a huge problem and tax increase for them.

Not only that, as we have seen when President Clinton was President in 1997 and signed a reduction in capital gains rates from 28 to 20 percent, we saw that then increased revenue to the government because of the economic growth that came out of that increased investment. We have seen the same with our recent capital gains and dividend reductions.

For example, the Congressional Budget Office says that receipts to the government have not declined, but have increased significantly by 45 percent, and that is by reducing the capital gain rates from 20 to 15 percent because not only did that double the realization of gains, and one reason was there was a higher return on investment as that tax declined, but also there was this unlocking effect where investors could sell their assets and move into other investments that then grew more rapidly. So we had this growth and dynamic aspect of the economy that took over that is so critical.

The CBO also found that tax collections from what they call nonwithheld tax receipts also jumped dramatically by 32 percent. We have seen dividend payouts from American companies virtually triple as a result of this reduction. So we have seen that this is tremendous benefit for the American people as their investments grow and they become more well off, and this is all income levels. Anybody who is part of an employee-owned company can participate, anybody can participate in the market, it is not just the high-income people, and we have seen lower and lower income levels participating in the stock market over times because of these changes.

So I think it is critical that we not approve this motion to instruct, that we reject it for the reasons that to create economic growth, increase prosperity and give every American a shot at the American dream, we must extend the reduction in capital gains and dividends.

Mr. THOMAS. Mr. Speaker, I yield the remainder of my time to the gentleman from Michigan (Mr. CAMP) and ask unanimous consent that the gentleman from Michigan control the remainder of my time.

The SPEAKER pro tempore (Mr. REHBERG). Is there objection to the request of the gentleman from California?

There was no objection.

Mr. CAMP of Michigan. Mr. Speaker, I reserve the balance of my time.

Mr. NEAL of Massachusetts. Mr. Speaker, I yield 3 minutes to the gentleman from Washington (Mr. MCDERMOTT).

Mr. MCDERMOTT. Mr. Speaker, as we stand out here and argue this sort of arcane piece of tax policy here today, the chairman tells us we are better off than we ever were before. Anybody who has looked at where the national debt is knows that is not true. Whatever this tax policy they are pushing is about, it is driving us deeper and deeper into debt.

In addition, today the President presents a budget to us that says nothing about the war and what it is costing. It is probably going to cost us a trillion dollars by the time it is all done, if we ever get out of it, stagnant wages in this country, and 500,000 more people in poverty.

Now the chairman says we want to have everybody have a shot at the American dream. Well, let me tell you something, this is a shot like a shot at the moon for most of them with a shotgun. It is not going to come anywhere near it. We do not want any more tax holidays for the rich.

The fact that you are trying to get rid of the AMT by letting it drift down further and further and further into the tax-paying people in this country is very obvious. You want there to be an uprising that says let us get rid of the AMT. You know why it was put there. You said yourself. They put the AMT because there were rich people in this country paying nothing. We could have kept it at that level, but in 2001 you decided we have got to balance the budget. Let us not do anything about the AMT. We told you over and over and over again in the Ways and Means Committee that is what you were doing. And yet you now say, oh, well, it is somebody else's problem.

You are driving this country over the edge. You think you are sending a market message. You are sending a message to the market with the kind of debt this country is in. If you take the credit card debt and the amount people have borrowed against their homes to keep up their level of income, you have a country seriously in debt. Now you say we do not care who has to figure their taxes twice, we will let it go down to $50,000, $60,000, whatever the number is going to be. That is of no consequence to you at all because you are dedicated to only one group in this society, and that is the people on the top.

This whole construction that you put together over the last 4 years, and I welcome you back to the well, I think you might have a couple of things to say to me, but bringing this tax bill to where we are today was a deliberate attack on the middle class. That reconciliation bill that the President signed took away the money that people would use to educate their children. You gave the banks big breaks so they could take more out of the hides of the kids. This is a good motion, and it ought to be adopted.

Mr. CAMP of Michigan. Mr. Speaker, I yield myself such time as I may consume.

I note that the House voted 414-4 to move the alternative minimum tax outside of reconciliation to pass alternative minimum tax relief. I was sincere in my vote. I would just inquire whether those on the other side of the aisle who voted for this bill were sincere in their votes.

Mr. NEAL of Massachusetts. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. DOGGETT).

Mr. DOGGETT. Mr. Speaker, I thank the gentleman for yielding me this time.

A budget is indeed about choices about picking winners and losers. And there is a certain consistency in the approach that we have seen in this Republican Congress.

Each year this administration targets the same losers and rewards the same winners. Each year it offers more tax breaks for those at the top, the wealthiest few, and it insists that the deficits that are thereby created be paid for in part by cutting aid to working families, to students and to our seniors. Each year it sacrifices long-term fiscal responsibility at the altar of short-term political gratification, escalating the national debt to subsidize private fortunes.

The administration's budget does not just crunch numbers, however, it crunches people.

Only last week the same folks that are here today demanding more and more tax breaks for those at the very top were here saying they had billions in what they called "savings" to help finance these tax cuts. But if you were a family caring for an abused and neglected child, that savings meant no support.

If you were a single mom relying on Federal child support enforcement to get a deadbeat dad to pay their monthly child support payments, it meant no child support.

For many a student relying on Federal student financial assistance, it meant an inability to get aid to go to school. And the health cuts, the same burdens imposed on the most vulnerable.

This Republican-controlled Congress continues to make these cuts to the vulnerable while offering high tax cuts for million-dollar-a-year-income folks. Extending these tax breaks today will put over $32,000 in the hands of people who earn a million dollars or more every year. While true that some of the 64 percent of families who earn less than $50,000 a year will get a tax cut, too, it will amount to only about $11 a year. So it is the difference between giving a new car to some of the privileged few and a car wash to the 64 percent.

The difference that they propose today is the difference between tuition at some fancy private school to the few, but only a pack of pencils to the many. It is the difference between a down payment on another vacation villa for the wealthy and some Lincoln logs or Legos for most everyone else.

At the very moment we are now debating this, the Office of Management and Budget is over here at the Capitol whacking away again at what they claim are unnecessary programs. But there are more programs that they propose to eliminate or significantly reduce in the Education Department than in any other department in the Federal government. Such unfortunate actions by the Republicans create another kind of deficit, an "opportunity deficit," where young people and some not so young are not able to obtain the resources needed to achieve their full, God-given potential.

I think it is wrong to add to that opportunity deficit in our communities, just as it is wrong to build a national deficit that those future generations will be asked to pay. There is no balance in the budget these folks are offering to us today, and there is no equity either. It ought to be rejected.

Mr. CAMP of Michigan. Mr. Speaker, I reserve the balance of my time.

Mr. NEAL of Massachusetts. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. STARK).

Mr. STARK. Mr. Speaker, I would just like to correct, if I may, the chairman's assertions. He has suggested that the Senate's relief is more focused at the rich, and that is not true. It is true that both the House and the Senate would give about 90 percent of their benefits to the top 20 percent, but at the very high end, the difference is amazing. More than half of the House's capital gain and dividend tax cut goes to the best 1 percent of taxpayers, and that 1 percent, those people earning more than $1.2 million a year would receive an average reduction of $26,500 apiece. That is where half of the Republican House bill goes.

The Senate's bill, on the other hand, would give the AMT relief, would give that same 1 percent merely 2.5 percent of their AMT relief, or an average of $600 apiece.

The other thing that is missing, and I do not suppose it is untrue to say things are missing, you cannot find weapons of mass destruction, did we lie about the war, I do not know, but to look at the fact that the Senate has paid for a good bit of their relief, and if we look at the subsequent 5 years, it is true in the first 5 years the House bill loses $56 billion, and the Senate loses $57 billion, but that is only the tip of the iceberg because in the second 5 years the Senate bill picks up $20 billion because it has not recklessly given away revenue through reduction of capital gains and dividend income. The House, on the other hand, in the second 5 years loses another $30 billion. So while the grand total in 10 years for the Senate is only $37 billion, less than it is in 5 years, it is $80 billion for the House bill over 10 years, a difference of $43 billion.

Come on, folks, that $43 billion would pay for the education and health care and housing and rebuilding from Hurricane Katrina, and a whole host of things that the Republicans tend to ignore because the rich people that the Republicans represent already have that. They are turning their backs on the children and the middle class by capriciously and recklessly giving away our Federal revenues to the very richest in this country, and that is obscene.

Mr. Speaker, I would first like to thank Leader PELOSI for appointing me to this conference committee, and I rise in support of this motion to instruct.

I strongly believe tax cuts are unnecessary, irresponsible, and morally reprehensible at the present time. If allowed in the room, as Democrats rarely are these days, I will work hard on the conference committee to make sure that any tax cuts adopted be targeted to the middle-class rather than to millionaires.

I will argue for fiscal responsibility. I will insist with my colleagues in the Senate that the tax reconciliation bill protect middle-class families from the Alternative Minimum Tax. I will work to strike the extension of capital gains and dividend tax cuts that benefit the wealthy few at the expense of the hard working many.

In short, I will fight for Americans the President in his budget left behind.

The President in the document released Monday clearly illustrates the course he prefers for tax reconciliation—more tax cuts for the wealthy at the expense of vital domestic programs on which many Americans depend.

The President wants to cut Medicare by more than $100 billion, eliminate Social Security benefits for many older children whose parents have died, and severely cut state funding for child care. His proposal to expand Health Savings Accounts takes direct aim at the more than 160 million workers and their families who have job-based health coverage.

These cuts aren't necessary. Neither are the $21 billion in extensions of capital gains and dividend tax breaks for the top 1 percent of Americans put forth by Republicans in the House in their ill-conceived tax reconciliation bill.

A vote against this motion to instruct is a vote against working families and in favor of millionaires. Voters won't forget that in November.

I urge all my colleagues to support this motion to instruct.

Mr. CAMP of Michigan. Mr. Speaker, I yield myself such time as I may consume.

I would just say for the RECORD, the will of the House by a vast majority extended both kinds of AMT relief we have been discussing today without raising taxes as the Senate did.

I just want to say that one in five taxpayers, or 20 percent with capital gains, and one in four taxpayers, 25 percent of the taxpayers with dividends, have incomes below $50,000, so this clearly is an opportunity for Americans to begin to become part of the American dream by investing and growing that income. To not extend the tax relief would be to raise taxes, which would be the wrong thing to do.

Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. BRADY), a distinguished member of the Ways and Means Committee.

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Mr. BRADY of Texas. Mr. Speaker, there is actually bipartisan support for reducing taxes in the AMT on American families. If I could go back in time and stop that Congress from ever creating it, I would have because the principle of it has always been so wrong. The principle was our Tax Code is so complex, it is so full of loopholes that it really is not fair anymore. So rather than fix the problem, let us just create a second type of tax, make people create second books, second type of accounts and then try to catch them another way.

It was a terrible principle to begin with; and because it was not put in place, it was put in place for the wrong reasons, in the wrong way and now affecting more and more of our American taxpayers who should never have to fool with this.

The question today is, how do we do it? Do we do it as proposed in this issue, to raise taxes to pay for it? Or as Chairman CAMP has said, this House has voted overwhelmingly to provide tax relief to these families the right way, by just exempting them and not raising their taxes to pay for it. That is exactly the right way to do it.

And another, I think, bad side effect of this proposal that we are debating today is that we take away the tax savings on capital gains and dividends. That is very important to America's seniors, very important to seniors in Texas. And what I especially appreciate is that since this Republican Congress lowered taxes on dividends and capital gains, more and more people, especially seniors, are investing for their retirement, and more companies are not just promoting their stock value. They are actually returning money to dividends to our investors, to our neighbors. And so they are not just saying we have got a great company. They are actually showing it, showing us the money through dividend relief.

That is very important in a time where you just saw last week that America has a negative savings rate, a negative. We are going in the hole more and more each year. American families are. We ought to encourage savings. We ought to encourage dividends. We ought to encourage investment, and we ought not raise their taxes in order to provide relief from AMT. And I respectfully oppose this and urge us to work in a bipartisan measure to do this the right way.

Mr. NEAL of Massachusetts. One thing I agree with the previous speaker on, that the American people are going more in the hole; and when they feel what is happening to student aid and cutbacks in scholarship money because of the Republican majority, they are going to know what being in the hole is really about.

Mr. Speaker, I yield 3½ minutes to the gentleman from Michigan (Mr. LEVIN).

Mr. LEVIN. Mr. Speaker, this issue was put so squarely, and I think clearly, in the answer of Secretary Snow when he testified in the Senate. He was asked why the White House had put a higher priority on the investment tax breaks than relief from an alternative minimum tax. His answer, and I quote, "because lower taxes on dividends and capital gains more broadly benefit taxpayers than AMT relief." That is the position of the administration. So what they are saying is that tax relief dividends and capital gains, we are talking now about 2009 and 2010, not this year, next year or the year thereafter, that that is more important when over 50 percent of the benefit goes to people making a million dollars a year, that is more important than the impact of the AMT not in 2009, 2010, but this year, on 19 million taxpayers. That is really the issue.

Now, we hear all kinds of arguments. Mr. THOMAS kind of says, well, those AMT people are kind of wealthy people. A lot of them are not, nowhere near the million bucks made by the people who are the 53 percent who gain in 2009 and 2010.

And then, well, it said, okay. More taxpayers receive capital gains in dividend reduction, that is true, most of them are in lower middle income brackets, but most of the money goes to people making a million bucks a year. That has never been challenged.

Well, then the answer is, Mr. CAMP, we are going to do both. Tell us how you are going to do both. Tell us. Stand up now and tell us. How are you going to pay for both?

Mr. CAMP of Michigan. Mr. Speaker, will the gentleman yield?

Mr. LEVIN. I yield to the gentleman from Michigan.

Mr. CAMP of Michigan. Well, because your whole assumption is based on the flawed principle that if we reduce investment taxes, revenues to the government decline.

Mr. LEVIN. Mr. Speaker, I take back my time.

How are you going to pay for both? The Senate said they could not pay for both and that is why they put the AMT in. We voted for AMT relief, the 400-some, because we wanted the issue to stay alive and for the conference committee to act responsibly, civilly and to have the AMT in there. How are you going to pay for both? Tell me how you are going to pay for both.

Mr. CAMP of Michigan. Well, we are certainly not going to raise taxes like the Senate did.

Mr. LEVIN. No, no. Do not tell me what you will not do. Tell me what you will do.

Mr. CAMP of Michigan. Well, because the investment taxes actually increase.

Mr. LEVIN. Tell me. I think the answer is, Mr. CAMP, that you do not intend to pay for both. What you hope to do is to have some AMT relief, later on, unpaid for, in addition to 2009 and 2010 provisions on capital gains and the like. You do not have any intention to pay for both because you cannot do it. This is a further example of the fiscal irresponsibility of the majority in this Congress.

Mr. CAMP of Michigan. Mr. Speaker, first let me say, we are certainly not going to pay for it by raising taxes as our friends in the Senate did by including AMT in reconciliation. And let me just say that we have seen since we reduced investment taxes in 2003, we have seen a doubling of capital gains realizations, meaning, a huge increase in the amount of revenue generated by capital gains sales and a huge 45 percent increase in tax receipts as a result. This is part of the revenue that I hear from the other side.

And so what happens when investment taxes are reduced is revenues to the government increase. That occurred in 1997 when President Clinton signed a bill that reduced investment taxes, that occurred in 2003 when President Bush signed a bill reducing investment taxes. And so one of the things that you have seen from the investment community is that even though we have seen dramatic, positive revenues to the government as a result of decreasing these taxes, a lot of people in the investment community say that if we do not enact an extension, that would be a very negative signal for Wall Street.

Others have said you really will not even see the full potential of realization from the effects of lower rates on investment taxes until they are perceived to be permanent. And that is from the Congressional Budget Office. So the threat of these taxes expiring will affect business decisions well before they do expire and personal investment decisions. So that is why it is important we act now. So, again, I urge Members to reject this motion to instruct.

Mr. Speaker, I reserve the balance of my time.

Mr. NEAL of Massachusetts. Mr. Speaker, I yield 2 minutes to the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. Mr. Speaker, the distinguished chairman arguing the other side has voted to raise the debt limit three times. You know, all of this new revenue is coming in. You have got to wonder how come we have to keep borrowing more because of our deficit and national debt getting deeper and deeper and deeper.

With this motion we say we ought to address first things first. What is the threat that American taxpayers will pay higher taxes in 2006 and 2007?

Well, millions will pay higher income taxes through application of the alternative minimum tax in 2006 and 2007. Under existing law, no one, not one American will pay a higher capital gains rate or higher corporate dividends rate than they do now. That is established in present law. So if we have got a problem with the alternative minimum tax and we do not have a problem with the capital gains and corporate dividends tax, it seems to me you ought to address the 2006 and 2007 problem. And it is a big problem. In 2005, 1.1 percent of taxpayers in the 75,000 to $100,000 income range paid alternative minimum tax. In 2006 it will be 30 percent. 30 percent will pay a higher income tax in that bracket. Only 7 percent in the 100,000 and up bracket got hit with the AMT last year. It will be two-thirds in 2006. Do not increase income taxes through AMT. Fix it.

And so this resolution that they are supporting, the motion to recommit that they are opposing, it makes no sense. It places all the emphasis on 2008 and 2009. Guess what, Chairman CAMP? We can do that later. Let us deal with the problem that is right before us, the alternative minimum tax income tax increase that faces millions of our households.

I urge a "yes" vote on the motion to recommit.

Mr. CAMP of Michigan. Mr. Speaker, I would just say briefly that the threat of these expiring will have an effect on business and individuals from investment decisions well before midnight on December 31, 2008. So it is important that we act now while we can, because that will send a very strong signal that these reductions in investment taxes are here to stay, which will continue to encourage the kind of investment and growth that has created the job relief that the gentleman from Pennsylvania (Mr. ENGLISH), or job creation that the gentleman from Pennsylvania (Mr. ENGLISH), mentioned, over 2 million jobs. And it is so important that we continue to do that.

Mr. Speaker, I reserve the balance of my time.

Mr. NEAL of Massachusetts. Mr. Speaker, I yield 2 minutes to the gentleman from Maryland (Mr. CARDIN).

Mr. CARDIN. Mr. Speaker, let me urge my colleagues to support this motion and point out that this motion makes it clear that if we work together, Democrats and Republicans, that we can get through a reconciliation bill that deals with expiring tax provisions that need to be dealt with, including the R&D tax credit and other provisions, but we need to do this in a financially responsible way. You cannot extend all of these tax provisions and fix the alternative minimum tax and not worry about the impact it is going to have on the Federal deficit. And I think that is a point Mr. NEAL and others on this side of the aisle have been making. We are talking about trying to reduce the Federal deficit. The first thing you do is stop getting greater and deeper in debt.

So last week we cut programs for our students. We cut programs in health care. We cut programs for those who are the most vulnerable, and we said we were doing it to help reduce the deficit. But, no, we are using every dollar of those dollars for tax cuts. That is not what we should be doing.

We have lots of unmet needs, including rebuilding from Katrina and dealing with the financing of No Child Left Behind. So we have unmet needs. You cannot have these large tax cuts and try to deal with the unmet needs without further increasing the Federal deficit, and that is what this motion is about. This motion is about, yes, there are areas we need to move forward in the Tax Code, and, yes, there are additional investments that need to be made; but if we do it in a reasonable manner, we can reduce the Federal deficit.

Without us paying attention to what is in this motion, we are going to be digging a deeper hole and making it more difficult for us to get out. So I just urge my colleagues to support this motion, but more importantly, support action in this body that will bring us together and not have extensions of tax cuts that are going to make it more difficult for us to balance the budget. Support the motion.

Mr. CAMP of Michigan. Mr. Speaker, I yield myself such time as I may consume. First let me just say that lowering tax rates on capital gains and dividends helps contribute to the long-run economic growth and expansion of this country. Sixty percent of the people who realize capital gains have incomes below $100,000. Twenty-five percent of the people who have dividend income have incomes below $50,000. Capital gains tax receipts have been increasing since the 2003 tax cut. More companies have been offering dividends since the 2003 tax cut. These pro-growth policies are getting America moving again. In the past 12 months, 2 million jobs were created, and the unemployment rate is at its lowest level since July 2001. Do not derail or reverse that growth.

Second, I would say the House voted 414 to 4 to move the alternative minimum tax outside of reconciliation. The House voted in a majority vote just a few days ago to include capital gains relief inside of reconciliation.

□ 1815

This motion to instruct is a clear attempt not to instruct the conferees, but to reverse what the will of the House has voted just a short time ago.

I urge Members to vote "no" on this motion to instruct.

Mr. Speaker, I yield back the balance of my time.

Mr. NEAL of Massachusetts. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, it is okay every once in a while if the Sheriff of Nottingham does not win. Addressing the issue of alternative minimum tax ought to be the priority here. Speaking to those 19 million Americans who are going to get caught in this again is where we ought to be.

Once again, Katrina; two wars; doubling defense spending; the creation of Homeland Security; and although the President did not mention it the other night, he has planned a trip to Mars for NASA.

The point is very simple. We cannot continue going down this road of shaving revenue all the time for the strongest among us. It always has to be more for the powerful, more for the strongest. And on the point that was raised by the gentleman from Michigan about job growth, this has been, by the 5-year standard, anemic job growth. It is the weakest performance in 70 years. Twenty-two million jobs were created during the Clinton years.

Ms. JACKSON-LEE of Texas. Mr. Speaker, we have before us a very important piece of legislation, H.R. 4297, the "Tax Relief Extension Reconciliation Act." It is very important to understand this piece of legislation within the big picture the Republicans are painting here. Just last week, the Republicans passed a bill called "The Deficit Reduction Act." This was a spending cut bill that slashed funding to many vital programs my constituents depend on, including Medicaid, Medicare, student loans, food stamps, and child support programs. The Republicans lectured us on the need to make sacrifices to control the national debt. By passing the spending cut bill, the Republicans actually asked the poor, the downtrodden, the disabled and the young to sacrifice on behalf of the rest of the country.

Now we are faced with the Tax Reconciliation Act, which will add billions, if not trillions, to the deficit over the next 10 years. One source estimates that if all of President Bush's expiring tax cuts are extended, including the Alternative Minimum Tax (AMT) relief, it will cost this country $3.3 Trillion over the next 10 years.

Last year, both the House and the Senate passed our respective versions of the Tax Reconciliation Bill. The major difference between the two bills involves AMT and the low rate on dividends and capital gains. The Senate version extends the temporary AMT relief for one year, while the House bill extends the 15 percent tax rate for dividends and capital gains for 2 years.

CAPITAL GAINS AND DIVIDENDS

The House bill contains language that will further extend the contentious capital gains and dividends tax cuts. We shouldn't even have to debate this right now, because these tax cuts don't expire until 2008. If passed, the capital gains and dividends tax cuts will cost almost $51 billion over the next 10 years. These tax cuts will be enjoyed by the ultra wealthy, with those earning more than $1 million a year saving an average of $32,000 in taxes. According to the Center on Budget and Policy Priorities:

Over half—54 percent—of all capital gains and dividend income flows to the 0.2 percent of households with annual incomes over $1 million. More than three-quarters—78 percent—of this income goes to those households with income over $200,000, which account for about 3 percent of all households.

In contrast, only 11 percent of capital gains and dividend income goes to the 86 percent of households with incomes of less than $100,000. Only 4 percent of this income flows to the 64 percent of households that have income of less than $50,000.

ALTERNATIVE MINIMUM TAX (AMT) RELIEF

If the Senate AMT provision is not adopted, over 17 million middle class Americans will face a tax increase next year from the Alternative Minimum Tax, the AMT. The AMT was enacted over 35 years ago to ensure that the richest Americans would pay their fair share of income tax. Unfortunately, when the AMT was enacted, Congress neglected to index the tax rates to inflation. The AMT has now begun to add an extra burden to middle class taxpayers at an alarming rate. I urge the conferees to recognize the need for continued AMT relief and include that language in the conference report.

KATRINA TAX RELIEF

In the House bill, unbelievably, there are no tax benefits for areas affected by last year's devastating hurricanes; Katrina, Rita, and Wilma. The Senate version of this bill contains language similar to language Congress already passed, providing a few billion dollars over the next 2 years. The economy of the gulf coast has been set back decades, and it is going to take years to rebuild. Congress should provide even more supportive tax laws for the region so that both businesses and individuals can get themselves back on their feet. I again urge the conferees to include language further providing tax relief to the areas affected by last year's hurricanes.

MISGUIDED PRIORITIES

Last month, Republicans in Congress couldn't find the money to spare the elderly from Medicaid cuts, to spare the students from loan increases, or to spare our children from child care cuts. They can't seem to find the money to properly rebuild the gulf coast or get New Orleans back on its feet. They are having trouble finding this money because they are choosing to extend the dividend and capital gains tax cuts for the richest in our country. As such, they are making the choice to pass the burden of paying for these tax cuts on to our children in the form of a huge deficit.

This is NOT how we take care of our own in Texas, and this is not how we do things in the United States. The Republicans are launching an unabashed attack on the American way by ignoring the neediest in our country to give tax cuts to the richest.

DEMOCRATIC SUBSTITUTE

At the time of the last vote, the Democrats offered an amendment in the form of the substitute that is much more fiscally responsible and equitable. The Democratic Substitute extended for one year all temporary tax provisions that expire at the end of this year, similar to the Majority's bill. The major difference, however, is that the Democratic substitute addresses the problem of the AMT by eliminating all liabilities for middle class individuals. Further, this $45 billion provision would be fully offset by rolling back a portion of the tax cuts that would otherwise go to those with annual incomes of over $1 million for joint returns and $500,000 for other returns. I again urge the conferees to seek fiscally responsible options and point out that there are other options to alleviate tax burden on the middle and lower class without lining the pockets of the ultra-wealthy.

CONCLUSION

Mr. Speaker, the priorities in the Republican bill are misguided. Congress should not be providing additional tax breaks for the rich less than a month after enacting huge spending cuts aimed at the most vulnerable. In the end, this tax bill will either exacerbate our already large Federal deficits, or will force even deeper cuts in critically important domestic programs. I am strongly opposed to this legislation in its current form, and I implore the conferees to seek more fiscally responsible options.

The SPEAKER pro tempore (Mr. REHBERG). All time for debate has expired.

Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from Massachusetts (Mr. NEAL).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. NEAL of Massachusetts. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

GENERAL LEAVE

Mr. CAMP of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 4297.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

RESIGNATION AS MEMBER OF COMMITTEE ON FINANCIAL SERVICES

The Chair laid before the House the following resignation as a member of the Committee on Financial Services:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 8, 2006.

Hon. J. DENNIS HASTERT,
Speaker of the House,
Washington, DC.

DEAR SPEAKER HASTERT: I hereby respectfully resign my seat on the Committee on Financial Services, effective immediately. Thank you for the opportunity to serve on this important committee.

Sincerely,

PETER T. KING,
Member of Congress.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

BLOCKING PROPERTY OF CERTAIN PERSONS CONTRIBUTING TO THE CONFLICT IN CÔTE D'IVOIRE—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 109–88)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed:

To the Congress of the United States:

Consistent with subsection 204(b) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(b) (IEEPA), and section 301 of the National Emergencies Act, 50 U.S.C. 1631 (NEA), I hereby report that I have issued an Executive Order (the "order") blocking the property of certain persons contributing to the conflict in Côte d'Ivoire. In that order, I declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by that conflict, as described below.

The United Nations Security Council, in Resolution 1572 of November 15, 2004, expressed deep concern over the resumption of hostilities in Côte d'Ivoire, the public incitement of hatred and violence, and the repeated violations of the ceasefire agreement of May 3, 2003. United Nations Security Council Resolution (UNSCR) 1572 determined that the situation in Côte d'Ivoire poses a threat to international peace and security in the region and called on member States to take certain measures against persons responsible for the continuing conflict. The United Nations Security Council has continued to express serious concern at the persistence of the crisis in Côte d'Ivoire and of obstacles to the peace and national reconciliation process from all sides in UNSCRs 1643 of December 15, 2005, and 1652 of January 24, 2006.

Despite the intervention and efforts of the international community, there have been massacres of large numbers of civilians, widespread human rights abuses, significant political violence and unrest, and attacks against international peacekeeping forces in Côte d'Ivoire. Such activity includes the killing of large numbers of civilians in Korhogo in June 2004, and in Abidjan in March 2004; significant violence and unrest, including public incitements to violence, in Abidjan in November 2004; human rights violations, including extrajudicial killings, in western Côte d'Ivoire in April and June 2005; attacks on a police station and prison in July 2005 in Anyama and Agboville, and violent protests in Abidjan and attacks on

U.N. and international nongovernmental organization facilities in western Côte d'Ivoire in January 2006. Also, notwithstanding the Linas-Marcoussis Agreement signed by the Ivorian political forces on January 24, 2003, the related ceasefire agreement of May 3, 2003, the Accra III Agreement of July 30, 2004, the Pretoria Agreement of April 6, 2005, and the Declaration on the Implementation of the Pretoria Agreement of June 29, 2005, consolidating the implementation of the Linas-Marcoussis peace and national reconciliation process, Ivorian parties have continued to engage in military operations and attacks against peacekeeping forces in Côte d'Ivoire leading to fatalities.

Pursuant to the IEEPA and the NEA, I have determined that these actions and circumstances constitute an unusual and extraordinary threat to the national security and foreign policy of the United States and declared a national emergency to deal with that threat and have issued an Executive Order to deal with the threat to U.S. national security and foreign policy posed by the situation in or in relation to Côte d'Ivoire.

The order blocks the property and interests in property in the United States, or in the possession or control of United States persons, of the persons listed in the Annex to the order, as well as of any person determined by the Secretary of the Treasury, after consultation with the Secretary of State, to constitute a threat to the peace and national reconciliation process in Côte d'Ivoire, such as by blocking the implementation of the Linas-Marcoussis, Accra III, and Pretoria Agreements; to be responsible for serious violations of international law in Côte d'Ivoire; to have directly or indirectly supplied, sold or transferred to Côte d'Ivoire arms or any related materiel or any assistance, advice, or training related to military activities; or to have publicly incited violence and hatred contributing to the conflict in Côte d'Ivoire.

The designation criteria will be applied in accordance with applicable domestic law, including where appropriate, the First Amendment to the United States Constitution.

The order also authorizes the Secretary of the Treasury, after consultation with the Secretary of State, to designate for blocking any person determined to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the activities listed above or any person listed in or designated pursuant to the order. I further authorized the Secretary of the Treasury, after consultation with the Secretary of State, to designated for blocking any person determined to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person listed in or designated pursuant to the order. The Secretary of the Treasury, after consultation with the Secretary of State, is also authorized to remove any persons from the Annex to the order as circumstances warrant.

I delegated to the Secretary of the Treasury, after consultation with the Secretary of State, the authority to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by the IEEPA and the United Nations Participation Act, as may be necessary to carry out the purposes of the order. All executive agencies are directed to take all appropriate measures within their authority to carry out the provisions of the order.

The order, a copy of which is enclosed, became effective at 12:01 a.m. eastern standard time on February 8, 2006.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 8, 2006.*

2006 NATIONAL DRUG CONTROL STRATEGY—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Education and the Workforce, Committee on Energy and Commerce, Committee on Government Reform, Committee on Homeland Security, Committee on International Relations, Committee on the Judiciary, Committee on Transportation and Infrastructure, and the Permanent Select Committee on Intelligence:

To the Congress of the United States:

I am pleased to transmit the 2006 National Drug Control Strategy prepared by my Administration, consistent with the Office of National Drug Control Reauthorization Act of 1998 (21 U.S.C. 1705).

Four years ago, my Administration issued its first National Drug Control Strategy. That Strategy set out an ambitious, balanced plan to reduce drug use in our Nation. Since 2001, drug use by 8th, 10th, and 12th graders has dropped by 19 percent, translating to nearly 700,000 fewer young people using drugs.

I appreciate the support the Congress has given for previous Strategies. I look forward to your continued support as we work together on this critical endeavor.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 8, 2006.*

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on questions previously postponed.

Votes will be taken in the following order:

H. Res. 670, de novo;

H. Res. 657, by the yeas and nays;

Motion to instruct on H.R. 4297, by the yeas and nays.

The first and third electronic votes will be conducted as 15-minute votes. The second vote in this series will be a 5-minute vote.

CONGRATULATING THE PITTSBURGH STEELERS FOR WINNING SUPER BOWL XL

The SPEAKER pro tempore. The pending business is the question of suspending the rules and agreeing to the resolution, H. Res. 670.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from North Carolina (Ms. FOXX) that the House suspend the rules and agree to the resolution, H. Res. 670.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. HOEKSTRA. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 384, nays 0, answered "present" 10, not voting 38, as follows:

[Roll No. 5]

YEAS—384

Abercrombie
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Becerra
Berkley
Berry
Biggert
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Boozman
Boren
Boswell
Boucher
Boustany
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Calvert
Camp (MI)
Campbell (CA)
Cantor
Capito
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Case
Castle
Chandler
Chocola
Clay
Cleaver
Clyburn
Coble
Cole (OK)
Conaway
Conyers
Cooper
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
Delahunt
DeLauro
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dingell
Doggett
Doolittle

Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Evans
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Forbes
Ford
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Garrett (NJ)
Gerlach
Gibbons
Gillmor
Gingrey
Gohmert
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inglis (SC)
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
Langevin
Lantos
Larson (CT)
Latham
LaTourette
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCotter
McCrery
McGovern
McHenry
McHugh
McIntyre
McKeon
McKinney
McMorris
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Skelton
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Souder
Spratt
Stark
Stearns
Strickland
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Walden (OR)
Walsh
Wasserman Schultz
Waters
Watson
Watt
Weiner
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Young (AK)
Young (FL)

ANSWERED "PRESENT"—10

Chabot
Dicks
Hastings (WA)
Inslee
Larsen (WA)
McDermott
Otter
Pence
Schmidt
Simpson

NOT VOTING—38

Ackerman
Berman
Bilirakis
Blumenauer
Bono
Boyd
Buyer
Cannon
Capps
Costa
Costello
DeGette
Doyle
Everett
Foley
Gallegly
Gilchrest
Gonzalez
Goode
Hinchey
Hooley
Istook
Jenkins
LaHood
Lee
Lewis (GA)
McCollum (MN)
Miller, Gary
Moran (KS)
Rush
Shaw
Slaughter
Stupak
Sullivan
Visclosky
Wamp
Waxman
Woolsey

☐ 1853

Mr. HYDE changed his vote from "nay" to "yea."

Mr. SIMPSON changed his vote from "nay" to "present."

Mr. INSLEE changed his vote from "yea" to "present."

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Ms. SLAUGHTER. Mr. Speaker, I was unavoidably detained and missed rollcall vote 5. Had I been present, I would have voted "yea."

HONORING THE CONTRIBUTIONS OF CATHOLIC SCHOOLS

The SPEAKER pro tempore (Mr. REHBERG). The pending business is the question of suspending the rules and agreeing to the resolution, H. Res. 657.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Delaware (Mr. CASTLE) that the House suspend the rules and agree to the resolution, H. Res. 657, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 392, nays 0, not voting 40, as follows:

[Roll No. 6]

YEAS—392

Abercrombie
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Becerra
Berkley
Berry
Biggert
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Boozman
Boren
Boswell
Boucher
Boustany
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cantor
Capito
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Cleaver
Clyburn
Coble
Cole (OK)
Conaway
Conyers
Cooper
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
Delahunt
DeLauro
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Evans
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Forbes
Ford
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Garrett (NJ)
Gerlach
Gibbons
Gillmor
Gingrey
Gohmert
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutierrez
Gutknecht
Hall
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inglis (SC)
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McKinney
McMorris
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schmidt
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shays
Sherman

Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Souder
Spratt
Stark
Stearns
Strickland
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Walden (OR)
Walsh
Wasserman Schultz
Waters
Watson
Watt
Weiner
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—40

Ackerman
Berman
Bilirakis
Blumenauer
Bono
Boyd
Cannon
Capps
Costa
Costello
DeGette
Doyle
Everett
Foley
Gallegly
Gilchrest
Gonzalez
Goode
Harman
Hinchey
Hooley
Istook
Jenkins
LaHood
Lee
Lewis (GA)
McCollum (MN)
Miller, Gary
Moran (KS)
Peterson (MN)
Rush
Shaw
Slaughter
Stupak
Sullivan
Visclosky
Wamp
Waxman
Wolf
Woolsey

☐ 1904

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Ms. SLAUGHTER. Mr. Speaker, I was unavoidably detained and missed rollcall vote 6. Had I been present, I would have voted "yea."

MAJORITY LEADER

Ms. PRYCE of Ohio. Mr. Speaker, as chairman of the Republican Conference, I am directed by that conference to notify the House officially that the Republican Members have selected as Majority Leader the gentleman from Ohio, the Honorable JOHN A. BOEHNER.

MAJORITY LEADER OF THE PEOPLE'S HOUSE

(Mr. BOEHNER asked and was given permission to address the House for 1 minute.)

Mr. BOEHNER. Let me thank my colleagues for their support and for this big job, and it is a big job.

I think all of the Members who I have worked with over the years know how I operate. I am a Republican. I believe in Republican principles. But this is the people's House. It is to represent all of the people. And while I want my party to win every day, I want us to win fairly and honestly. And so I will say to all of you, I am going to do my best for the people's House. You may not agree with every decision we make every day, but I think all of you know in the marrow of my bones I believe in fairness.

As I have said before, when you have 11 brothers and sisters and your dad owned a bar, you have learned a lot of lessons along the way.

APPOINTMENT OF CONFEREES ON H.R. 4297, TAX RELIEF EXTENSION RECONCILIATION ACT OF 2005

MOTION TO INSTRUCT OFFERED BY MR. NEAL OF MASSACHUSETTS

The SPEAKER. The pending business is the vote on the motion to instruct on H.R. 4297 offered by the gentleman from Massachusetts (Mr. NEAL) on which the yeas and nays are ordered.

The Clerk will designate the motion.

The Clerk designated the motion.

The SPEAKER. The question is on the motion to instruct.

The vote was taken by electronic device, and there were—yeas 185, nays 207, not voting 40, as follows:

[Roll No. 7]

YEAS—185

Abercrombie
Allen
Andrews
Baca
Baird
Baldwin
Barrow
Becerra
Berkley
Berry
Bishop (GA)
Bishop (NY)
Boehlert
Boswell
Boucher
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Chandler
Clay
Cleaver
Clyburn
Conyers
Cooper
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
Delahunt
DeLauro
Dicks
Dingell
Doggett
Edwards
Emanuel
Emerson
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinojosa
Holden
Holt
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Levin
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Shuster
Skelton
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Wasserman Schultz
Waters
Watson
Watt
Weiner
Weldon (PA)
Wexler
Whitfield
Wilson (NM)
Wu
Wynn

NAYS—207

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Biggert
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Boozman
Boren
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Cramer
Crenshaw
Cubin
Culberson
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Ehlers
English (PA)
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Garrett (NJ)
Gerlach
Gibbons
Gillmor
Gingrey
Gohmert
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shays
Sherwood
Shimkus
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Walden (OR)
Walsh
Weldon (FL)
Weller
Westmoreland
Wicker
Wilson (SC)
Young (AK)
Young (FL)

NOT VOTING—40

Ackerman
Berman
Bilirakis
Blumenauer
Bono
Boyd
Cannon
Capps
Costa
Costello
DeGette
Doyle
Everett
Foley
Gallegly
Gilchrest
Gonzalez
Goode
Hinchey
Honda
Hooley
Istook
Jenkins
LaHood
Lee
Lewis (GA)
McCollum (MN)
Miller, Gary
Moran (KS)
Osborne
Rush
Shaw
Slaughter
Stupak
Sullivan
Visclosky
Wamp
Waxman
Wolf
Woolsey

□ 1924

Mr. GRAVES and Mr. KENNEDY of Minnesota changed their vote from "yea" to "nay."

So the motion to instruct was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Ms. SLAUGHTER. Mr. Speaker, I was unavoidably detained and missed rollcall vote 7. Had I been present, I would have voted "yea."

PERSONAL EXPLANATION

Mr. BILIRAKIS. Mr. Speaker, I missed rollcall votes numbered 5, 6 and 7. Had I been present, I would have voted "yea" on rollcall votes 5 and 6 and "nay" on rollcall vote 7.

The SPEAKER pro tempore (Mr. REHBERG). Without objection, the Chair appoints the following conferees: Messrs. THOMAS, MCCRERY, CAMP of Michigan, RANGEL, and STARK.

There was no objection.

ELECTION OF MEMBERS TO STANDING COMMITTEES OF THE HOUSE

Mr. GINGREY. Mr. Speaker, I offer a resolution (H. Res. 671) and I ask unanimous consent for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 671

Resolved, That the following Members be and are hereby elected to the following standing committees of the House of Representatives:

Committee on Appropriations: Mr. DeLay to rank after Mr. Wolf.

Committee on the Budget: Mr. Campbell of California.

Committee on Energy and Commerce: Mr. Blunt to rank after Mr. Fossella.

Committee on Financial Services: Mr. Campbell of California.

Committee on Veterans' Affairs: Mr. Campbell of California.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. GINGREY. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

A CALL FOR RELIGIOUS TOLERANCE AND PEACE IN THE WORLD

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, we have values in this country. We believe in the First Amendment that appreciates and celebrates freedom of the press and freedom of speech and freedom of religion and freedom of association. But it is important to note that with all of the trauma that we are experiencing around the world there should be something called religious appreciation.

I do understand that the Danish Government believes that the First Amendment is prime and a priority, but I also believe there is something for the government to say to the Muslim world, and that is that we do not condemn a religion that we do not understand and that we do have religious tolerance and religious appreciation. I call for tolerance and peace.

I ask those who have expressed themselves in violence to find other ways of expressing their opposition to the characterization of their religion through cartoons. I, too, find it to be an outrage, and I offer a sense of sympathy and appreciation for the dignity of the Muslim religion, of Islam. Because Islam is not terrorism, as the President of the United States has said.

So I hope that we will find a way and the Danish Government will find a way to not stand only on the principles of freedom of press, but that they will stand on the principle of religious tolerance, religious appreciation and respect. As we respect all faiths of this Nation, we should likewise respect the faiths of the many peoples of the world.

PROPOSAL TO CUT DEATH BENEFIT UNDER SOCIAL SECURITY

(Mr. DOGGETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DOGGETT. Mr. Speaker, I was amazed a few minutes ago to have the Office of Management and Budget Director tell me in a committee hearing that the administration is eliminating the $255 death benefit available to widows and widowers under Social Security as a part of its great budget savings; justified, he told me, because that death benefit is anachronistic, to use his term.

Well, as far as I know, death is still occurring across America. There are poor widows and widowers for whom $255 is an important contribution toward the cost of a burial. The fault has been in not keeping that $255 benefit with the purchasing power it had for a widow or widower in the 1950s.

A benefit that goes back to 1939 under Social Security is one of the benefits that the President and this Republican Congress in their budget propose now to eliminate. It is wrong and I hope this House will reject this unfortunate move.

□ 1930

SPECIAL ORDERS

The SPEAKER pro tempore (Mr. CAMPBELL of California). Under the Speaker's announced policy of January 4, 2005, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

MILITARY CHAPLAINS SHOULD BE ABLE TO PRAY ACCORDING TO THEIR FAITH

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. JONES) is recognized for 5 minutes.

Mr. JONES of North Carolina. Mr. Speaker, I have read reports, received letters, and seen documentation which verifies that suppression of religious freedom throughout our Armed Forces is a pervasive problem, affecting military chaplains from all denominations and religions.

Of particular concern is an incident involving Army Captain Chaplain Jonathan Stertzbach. This chaplain who is serving our troops in harm's way in Iraq was asked by another unit, whose chaplain had to return home to start chemotherapy after cancer was discovered, to serve the spiritual needs of the unit's soldiers in weekly movement to an undisclosed FOB (Forward Operating Base). During a mission, tragically, one of the soldiers was killed in action. The unit's Commanding Officer asked this chaplain to perform the memorial ceremony because he had bravely served the soldiers and risked his own life.

Before the memorial ceremony, the chaplain submitted two prayers for review. The Brigade Chaplain attempted to remove the chaplain from praying at the memorial ceremony because he concluded his prayer in the name of Jesus Christ. The chaplain, adhering to his conscience and faith tradition, said he would not strike the words Jesus Christ.

The unit's Commanding Officer intervened, explaining that Chaplain Stertzbach volunteered to serve a different unit outside of his assigned unit and placed his life in harm's way to provide for the needs of the unit's soldiers. The Commanding Officer instructed that Chaplain Stertzbach would pray according to his faith tradition.

After the incident, Chaplain Stertzbach's story reached the media. Consequently, his answers to the media and the incident surrounding the memorial ceremony resulted in Chaplain Stertzbach's removal from his chapel. This is unacceptable!

Since the beginning of our nation's military, chaplains have played an integral role, fulfilling the spiritual and emotional needs of the brave men and women who serve—and they have always prayed according to their faith tradition. It is in the best interest of our Armed Services and this nation to guarantee the constitutional right of military chaplains to pray according to their faith.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 6, 2006.
LTG STANLEY E. GREEN,
Department of the Army, The Inspector General, Army Pentagon, Washington, DC.

DEAR LTG STANLEY GREEN: It has come to my attention that in all branches of the military it is increasingly difficult for chaplains to pray in adherence to their faith. I have read reports, received letters, and seen documentation which verifies that suppression of religious freedom throughout our Armed Forces is a pervasive problem, affecting military chaplains from all denominations and religions. Of particular concern is an incident involving Army Captain Chaplain Jonathan Stertzbach of the 3-6 FA HHB in Iraq. I am writing to request that the Army Inspector General investigate whether Chaplain Stertzbach was illegally removed from his chapel.

This chaplain who is serving our troops in harm's way in Iraq was asked by another unit, whose chaplain had to return home to start chemotherapy after cancer was discovered, to serve the spiritual needs of the unit's soldiers in weekly movement to an undisclosed FOB (Forward Operating Base) as well as his own battalion. During one of the missions, tragically, one of the soldiers was killed in action. The unit's Commanding Officer asked this chaplain to perform the Memorial Ceremony because he had bravely served the soldiers, and gone to the risk of convoying to the FOB (Forward Operating Base) weekly.

Before the Memorial Ceremony, the chaplain submitted two prayers and a meditation for the Division Chaplain and his direct supervising chaplain to review and was approved. The Brigade Chaplain, having just arrived from Fort Drum, attempted to remove the chaplain from administering the prayers of the Memorial Ceremony because he concluded his prayer in the name of Jesus Christ in a public forum. The chaplain, adhering to his conscience and faith tradition, said he would not strike the words Jesus Christ.

The unit's Commanding Officer intervened, explaining that Chaplain Stertzbach volunteered to serve a different unit outside of his assigned unit and placed his life in harm's way to provide for the needs of the unit's soldiers. The Commanding Officer instructed that Chaplain Stertzbach would pray according to his faith tradition and the prayers that he had already submitted. The Brigade Chaplain told him to qualify his prayer at the beginning with "Please pray according to your faith tradition, as I pray according to mine" and then close the prayer with "in thy name we pray, and in Jesus' name I pray." Chaplain Stertzbach delivered the Memorial Meditation and prayers for the fallen hero, but still followed orders with the 'qualifier' remaining in place.

After the incident, Chaplain Stertzbach's story reached the media. The chaplain was directly contacted by the Washington Times and referenced in a Washington Times January story. Chaplain Stertzbach's incident was not printed, but he was quoted as saying the following:

"You need to allow people to pray according to their faith group. Many faith groups do not pray in general and generic terms . . . For Christian groups, the name of Jesus is from where all the power comes."

I believe Chaplain Stertzbach answered questions fairly, accurately, and within his legal rights. Consequently, his answers to the media and the incident surrounding the memorial ceremony resulted in Chaplain Stertzbach's removal from his chapel.

I am concerned that Chaplain Stertzbach was removed without justification. Again, I am requesting that you investigate this incident and provide an explanation.

Sincerely,

WALTER B. JONES,
Member of Congress.

REMEMBERING STAFF SERGEANT MICHAEL DURBIN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. POE) is recognized for 5 minutes.

Mr. POE. Mr. Speaker, he was buried yesterday in the National Cemetery in Houston, Texas. Monday I met with his parents, Jerry and Teresa, in their home in Humble, Texas, and I am talking about Army Staff Sergeant Michael Durbin. He was born on July 6, 1979, in Houston, Texas. He grew up in Spring, Texas, and attended Nimitz High School where he earned the nickname "Iceman." He excelled in sports and was the quarterback on the football team. He also ran track and played on the baseball team. He was the oldest of five kids, and his father said, "When he entered a room, he drew everyone's attention."

He attended Kingwood College before deciding to enlist in the Army in 2001 at the age of 21. His goal in life was to someday work for the CIA, and he enlisted in the hopes that the military would be a quick route toward that goal.

He met his wife Janelle while working together at a Houston computer store. They were married in 2001 and had a son Austin and a daughter Alyssa together. By the age of 26, Michael had already become staff sergeant in an air assault unit, and had bold aspirations of becoming a member of the elite and daring Delta Force.

Staff Sergeant Durbin had already served two tours of duty in the Middle East and was deployed for his third tour of duty in September 2005. Family members said he lived to serve his country, and 2 weeks ago during combat operations in Baghdad, Michael became the 194th Texan killed since the start of the war. He was killed when a homemade bomb exploded while he was on patrol. Michael was assigned to the 2nd Battalion, 502nd Infantry Regiment, 2nd Brigade Combat Team of the 101st Airborne Division, Fort Campbell, Kentucky. By the way, Mr. Speaker, 1 out of every 10 Americans wearing the uniform tonight is from the State of Texas.

I have a photograph of Staff Sergeant Michael Durbin taken shortly before he received another stripe on his left sleeve. Several days before he was killed in Iraq, he sent his wife Janelle a bouquet of flowers, and she talked with him the morning he died. He called her to tell her that he was leaving for a mission, and he loved her and would be back in a few days. He loved playing with his kids and being in love with his wife. They would have celebrated their fifth wedding anniversary next month.

Michael will be remembered by his family and friends for his passion for computers. He was a gifted artist with a special talent for original cartoon characters and superheroes. He actually designed his platoon's boot camp T-shirt when he entered the Army.

With his entire life before him, and his aspirations to serve Americans, Michael risked everything to fight for the values and freedoms we as Americans enjoy this day and every day. He was fighting so the Iraqis can enjoy these freedoms as well.

With the death of Michael Durbin, this Nation lost a freedom fighter, a loving father, and, as his dad said, a perfect son.

I would like to extend my prayers and condolences to his parents, Jerry and Teresa; to his family, relatives and friends in Spring, Texas, and Fort Campbell, Kentucky; his wife Janelle; and his children Alyssa, Austin and Hayley. Michael touched the lives of many people in his 26 years, and our hearts are filled with gratitude for brave soldiers like Staff Sergeant Michael Durbin.

In the words of country singer Randy Travis in his song "America Will Always Stand," he sings the following lyrics about the American soldier: "Walking through the fires of danger, there are those who gave their lives. They're the world's greatest heroes, and we won't forget their sacrifice. So raise the banner called Old Glory. Let us join our fellow man. History will tell this story, America will always stand."

Mr. Speaker, history will tell the story of all the brave soldiers like Staff Sergeant Michael Durbin who walked through the fires of danger for freedom for Americans.

That's just the way it is.

SRI LANKA PEACE PROCESS RESOLUTION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. PALLONE) is recognized for 5 minutes.

Mr. PALLONE. Mr. Speaker, I rise this evening to ask that my colleagues join me in supporting a resolution I introduced today that urges the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam to engage positively in peace talks. I am deeply concerned about the ongoing violence caused by terrorism in Sri Lanka. The Liberation Tigers of Tamil, also known as the Tamil Tigers, is a group designated by the United States State Department as a terrorist organization. I hope this body can express its disapproval of the violence and instead voice full support for the resumption of constructive peace talks between both sides.

For over two decades, there has been armed strife between the Government of Sri Lanka and the Tamil Tigers, costing an estimated 65,000 lives. In a breakthrough agreement brokered by Norway back in 2002, the Government of Sri Lanka and the Tamil Tigers signed a cease-fire. Unfortunately, the Tamil Tigers have committed a number of violations, and the peace process has broken down.

On August 12, 2005, Sri Lanka's Foreign Minister was brutally assassinated by a sniper, and it has been widely acknowledged that the LTTE members had targeted him for some time. Though LTTE has denied any involvement, past history demonstrates that the group never claims responsibility for their crimes. There is now clear evidence, for example, that the Tamil Tigers ordered assassinations of India's Prime Minister Rajiv Gandhi, President R. Premadasa, and others. These patterns indicate that the Tamil Tigers were likely involved in Mr. Kadirgamar's assassination.

In addition to the death of Sri Lanka's Foreign Minister, the Sri Lanka Monitoring Mission has recorded over 3,000 violations of the cease-fire agreement by the Tamil Tigers. These violations include assassinations and abductions, particularly the forcible abduction of children for armed combat and kidnapping individuals for ransom.

This past December marked the bloodiest month since the cease-fire agreement came into effect in 2002. Nearly 70 people, about 40 of them from the Sri Lanka Army and Navy, have been killed as a result of the Tamil Tigers' guerilla actions. The Tamil Tigers continue to follow their past policy of denying any responsibility for these actions.

Mr. Speaker, it is important that the U.S. continue to reject the actions and violent tactics of the Tamil Tigers and apply international pressure to request that they begin conducting themselves in a responsible and credible manner. We must insist that the Tamil Tigers demonstrate a willingness to change, abstain from violence, and establish their commitment to the peace process.

The recent pledge to continue peace talks in February in Geneva, Switzerland, is encouraging, but it must include positive engagement by both parties. It is necessary that the Government of Sri Lanka and the Tamil Tigers renegotiate a cease-fire agreement and implement the agreement in a productive and successful manner so the hostilities do not resume. Without progress at the negotiating table, there is a real threat of another armed conflict.

Mr. Speaker, Sri Lanka is Asia's oldest democracy and remains a close friend of the United States. As the founder and current cochair of the Congressional Caucus on Sri Lanka, I encourage the Bush administration to take the steps necessary to support Sri Lanka during these trying times and continue to strengthen ties between the United States and Sri Lanka.

Mr. Speaker, I ask that my colleagues join me in cosponsoring this resolution. Congress must convey the importance of a constructive peace process and urge both parties to cooperative in good faith in order to find a fair and lasting resolution to Sri Lanka's armed conflict. It is time we ensure peace in Sri Lanka as well as greater stability throughout the South Asia region.

URGING RELEASE OF DR. GONZALEZ-MEJIAS AND DR. DARIAS-MESA

Mr. MACK. Mr. Speaker, I ask unanimous consent to claim the time of the gentleman from Nebraska (Mr. OSBORNE).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. MACK) is recognized for 5 minutes.

Mr. MACK. Mr. Speaker, I rise today to call attention to a great humanitarian injustice facing two Cuban refugee doctors and their families.

On April 10, 2002, Dr. David Gonzalez-Mejias and Dr. Marialis Darias-Mesa were notified by the U.S. Government that they had been awarded documents that would allow them to immigrate to America and begin a new life in freedom.

Unfortunately, the Cuban Government denied these doctors permission to leave Cuba with their spouses and children. They were told because they were doctors, they would have to remain in Cuba for another 3 years. However, their families were permitted to leave and now reside in Florida.

Three years later, in April 2005, the doctors again sought permission to leave Cuba. That permission was once again denied, and they were told they would have to remain in Cuba. Fearing the Castro regime would continue to block their exodus to freedom and reunification with their families, the doctors copied their original United States parole papers and made a desperate attempt to escape tyranny.

While on a boat fleeing Cuba, they were picked up by the United States Coast Guard and turned over to the Bahamian Government along with 17 other Cuban nationals at Cay Sal in the Bahamas. Unlike the other refugees, Dr. Gonzalez-Mejias and Dr. Darias-Mesa had been awarded an authorization for parole of an alien allowing them to enter the United States, and they should not have been turned over to the Bahamian Government. But they were, and since then they have been detained in the Bahamas in deplorable conditions.

Since June, the United States Government has actively sought the release of the doctors to U.S. custody and to prevent their repatriation to Cuba. However, despite numerous official requests for their release and meetings between our governments, including a meeting I had with the Bahamian Ambassador to the United States, the Bahamian Government continues to debate, deliberate and drag its feet about releasing these doctors to our custody.

Mr. Speaker, the time is past due for the Bahamian Government to release these doctors to the United States. Our two countries have always enjoyed strong relations, and we all want that friendship to continue without question or concern. But in this matter, the Bahamian Government is not acting as friends should. They are denying liberty to two refugees who were awarded freedom by the United States.

This past weekend I spent nearly 2 hours with the families of these doctors. I was moved by their incredible strength and faith that their family would one day be reunited. I was also saddened by their long and needless separation, and outraged by the course of events that have torn their lives apart.

Mr. Speaker, I urge the Bahamian Government in the strongest possible terms to release Dr. Gonzalez-Mejias and Dr. Darias-Mesa to our custody, and I hope my colleagues will join me in this important humanitarian endeavor.

PRESIDENT'S BUDGET HURTS PEOPLE

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

Ms. KAPTUR. Mr. Speaker, this administration will go down as the most antilife in modern history. The President's budget is a moral document. It should promote life. Yet the President's new budget released Monday makes the wrong choices. It irresponsibly hurts future generations and saddles them with gigantic debt. It hurts them, it hurts people. It is irresponsible.

Let us start with health care. The President's budget will hurt people. It is a health care budget that is antilife. The Bush budget carves out over $36 billion through 2011 from Medicare. Despite the fact that people cannot afford prescription drugs and costs are exploding, why is he forcing across-the-board cuts to future Medicare payments?

The chaos surrounding the new prescription drug benefit has already caused undue anxiety and lack of medication to thousands of our citizens too sick and too ill to fight back in lines at drugstores around our country. Seniors 80 years old with Parkinson's disease are being forced to go into drugstores confused without the help that they need. The President's budget is antilife.

At the same time, the President's new budget slashes our lead agencies to fight disease. They shortchange veterans' health care. Apparently, the Bush administration's idea of honoring service to our country is to make millions of veterans pay huge increases for health care costs that they have earned.

□ 1945

The President's budget proposal includes legislation that would raise veterans' premiums to over 100 percent on prescription drugs. Additionally, the Bush administration has shortchanged the Department of Veterans Affairs, leaving it short of needed funds to take care of the expected influx of tens of thousands of injured and disabled veterans returning from Afghanistan and the Iraq war. His veterans budget is anti-life.

The Bush budget offers words only and no substance to thrust our Nation into a new era of energy independence. For hard-hit consumers, he has offered nothing. His policies, however, allow the huge oil giants to rack up even more profits. Take ExxonMobil that just racked up the largest profit of any corporation in U.S. history, $36 billion in profits in just 1 year. Their profits in 1 year were larger than the entire budget of the U.S. Department of Energy. It is interesting to note that Exxon's windfall lifted the combined profits of the 2005 oil giants to $63 billion, three times the size of the entire Department of Energy. His energy budget is anti-life.

There are people freezing and getting flu around this country because they have to set their thermostats down. His budget is anti-life. He refuses to see those people.

If the President was serious about helping people, he would be committed to making our Nation energy independent. He would have made new fuels a centerpiece of his State of the Union address. Instead, his budget eliminates all funding for new fuels to help expand the production of ethanol and biodiesel. His budget cuts renewable energy loans, bioenergy support value-added to help small companies get a start up. By almost $100 million he shortchanges them.

And yet if we look at oil company profits, they have allowed CEOs in those firms to double their salaries and drive up their political contributions by a staggering $450 million in the past 6 years. They know how to cash in. But what a great injustice to the vast majority of people. Their heating bills are going up. They are paying for gasoline. They do not have any sweetheart deals in this town to cut their taxes.

If you look at the weatherization program, the President is reducing funds there. If you look at the winter heating assistance program, the people applying have reached a 12-year high, but his budget is over $2 billion short, $2 billion short of what is needed just to take care of the people that we needed to take care of last year. But the oil companies have a $63 billion profit, just the top three companies. What is wrong with this picture?

He has cut first responders. We know he has not gotten help to people affected by Katrina and Rita in the gulf.

And this says nothing about how his budget is anti-life against the youth of our country and children by causing tuition to go up at all of our schools. The Bush budget fails the moral test. It fails the ill. It fails our youth. It fails the future. It is the most anti-life budget in American history.

IN HONOR OF THE BIRTHDAY OF MRS. HELEN GINGREY

Mr. GINGREY. Mr. Speaker, I ask unanimous consent to speak out of order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. GINGREY) is recognized for 5 minutes.

Mr. GINGREY. Mr. Speaker, I would like to take my time this evening to address the House regarding a very important person, someone who has meant so much to me and without whom I could not be here today. Mrs. Helen Gingrey turned 88 today, February 8, 2006. I know that you, Mr. Speaker, along with all Members of this Chamber, Republicans and Democrats, will want to join me in wishing Mom a happy birthday.

It is important in this day and age for children to grow up in a strong family environment like the one my parents provided for me. And I would hope that as I continue my time in the United States House of Representatives representing the people of Georgia's 11th Congressional District, that my colleagues and I would always keep an eye on how our actions will affect the American families who are struggling to raise their children and to make ends meet.

Mr. Speaker, my mother has had a great life and has been a blessing to both her community of Kalmia Landing and Aiken, South Carolina and her family. Helen Gannon Gingrey is the daughter of Irish and Scottish immigrants. She was born in New York. She grew up in Astoria, Queens before marrying my father and moving to Edgefield, South Carolina.

My father, James Franklin Gingrey, Jimmy, a native South Carolinian, had moved to New York as an impoverished 16-year-old with little means of support. Several years later he had the good fortune of meeting my mom while he was working his way through New York City night school, and they married 8 months later. Shortly thereafter, Mom and Dad headed south with my 3-month-old brother in tow. While neither of my parents had the opportunity to obtain a college education, they worked hard in several small family businesses to assure that each of their three sons, myself, my brothers, Bill and James, got that college education.

Mr. Speaker, my dad and my mother were married for 44 years until his death in 1980. The ideals my parents instilled in me are ones of hard work, good education, personal responsibility, respect for others, love of family and country, and love of God. These are not only good principles for rearing a child, but they are also good guidelines for the initiatives we will continue to work on here in this 109th Congress.

Therefore, Mr. Speaker, I urge the House to use the example and the principles of Mrs. Helen Gannon Gingrey and all loving mothers like her to set an agenda that will work to strengthen and support the most vital components of our great Nation, the American family.

FREEDOM OF EXPRESSION

Mr. FRANK of Massachusetts. Mr. Speaker, I ask unanimous consent to speak in the gentleman from California's place.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. FRANK) is recognized for 5 minutes.

Mr. FRANK of Massachusetts. Mr. Speaker, many of us want to join in wishing Mrs. Gingrey a happy birthday. And I guess we would say it is 8 o'clock, and she knows where her son is tonight at least.

Mr. Speaker, I am troubled by the assault on freedom of expression that we are seeing in the world today. I want to be very clear. The newspaper in Denmark, the name of which I will not even try to pronounce, had every right to print the cartoon. That does not mean the cartoon was not offensive or disrespectful. Free speech, freedom of expression means nothing if it does not mean the right to be mean and disrespectful and obnoxious. It is easy to be for free speech when it is polite and civil and when you agree with it.

One of the dangers that comes to free speech are those who say, well, yes, we believe in freedom of speech, but it should be respectful. We believe in freedom of speech, but it has to be reined in. No it does not. Freedom of expression means that as long as you are speaking or writing, as long as you are not acting, you are free to exercise what you think you need to say, what you think you need to write. Now, people who are offended by that writing have every right in return to be very critical and, indeed, even to boycott the organ that printed it.

But we see something today that is terribly frightening that goes far beyond it. First of all, we see this extraordinarily disproportionate violent reaction. I am struck that in parts of the Middle East and elsewhere, people who were apparently not moved to action by death and destruction and murder and famine, are moved to violence because somebody printed a cartoon. The values of people who put a cartoon ahead of serious damage to individuals as a cause of outrage are seriously deficient.

But it is also wrong when people say they are going to put pressure on the entire nation of Denmark because it will not censor a newspaper. Again, people have a right to boycott the newspaper. People who exercise their free speech have to expect there might be a response. But what we are being told is that people are going to punish the entire nation of Denmark because that government will not censor a newspaper. That is a terrible threat to free speech. It would be a grave error for the country of Denmark to give in. When I read that people are going to boycott Danish goods, I am myself moved to try to go out and buy some Danish food. I wish some of it was not quite so fattening, from what I look at.

But we must repudiate the notion that it is legitimate to punish the government and the country of that government because it will not censor a newspaper. That is a terrible threat to free speech. It is a threat to free speech again when people defend the newspaper in such a halfhearted way or when people say, well, they should not have printed that, and we understand why people are doing this. And freedom of speech must be tempered by respect for the views of others. No, it must not.

And I speak as someone who has espoused that principle in a variety of categories. I am Jewish and I believe that the Nazis had a legal right to march in Skokie, as despicable as I thought that was, as much as I thought people ought to have expressed their disagreement. I am a patriotic American, but I would not vote to put you in prison if you burned the American flag. And I must say, let us have some consistency here. People who are for jailing those who disrespect the American flag seem to me ought to be thinking about what kind of reaction they are seeing now because people dishonored the prophet Mohammed.

There are people who put their religion ahead of their country. That is not necessarily an irrational or an immoral thing to do. Let us be very careful. And by the way, I think that newspapers in the Arab world have a legal right to print vicious anti-Semitic cartoons that deny the Holocaust, that talk about "The Protocols of the Elders of Zion."

Again, let us have some consistency here. The consistency ought to be this: people have a right to write or say whatever they wish. People who are offended by that writing or that speech are entitled to retaliate, nonviolently, but by boycotts, by criticism from the person who expresses it. But when we see this kind of violence, when it is suggested that a cartoon justifies violence, when people are halfhearted in condemning the violence, when we have people say that it is legitimate to punish a government, not for publishing a cartoon, but for failing to censor the publication of that cartoon, then free speech is in danger.

So I think it is very important for us to say that people may have whatever view they have about the cartoon, but we must speak up against what is a growing systematic campaign of intimidation that will result in a diminution of those important freedoms.

HONORING THE LIFE OF NORTH CAROLINA SENATOR HAM HORTON

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from North Carolina (Ms. FOXX) is recognized for 5 minutes.

Ms. FOXX. Mr. Speaker, last week the State of North Carolina lost one of its finest citizens, North Carolina Senator Hamilton "Ham" Horton. I had the great privilege of serving with Ham for 10 years in the North Carolina senate. I considered him to be not only a great role model and mentor but a trusted friend.

Mr. Speaker, I rise today to honor Senator Ham Horton for leading a rich life of service to others. I rise in trepidation because Senator Horton was such a wonderful orator and my skills are so inferior to his in intellect and expression.

Hamilton Cowles Horton, Jr., was born in Winston-Salem, North Carolina, on August 6, 1931. He was the great-grandson of Calvin Josiah Cowles, who represented Wilkes County in the United States Congress and the great-grandson of William Woods Holden, who was the Governor of North Carolina following the War Between the States. Obviously, public service was in Ham's blood from the start.

Ham went on to receive his bachelor's and law degrees from the University of North Carolina at Chapel Hill. He served nine terms in the general assembly, one in the House, and the remainder in the State senate.

During his time in the general assembly, Ham gave impassioned and eloquent floor speeches on a wide range of topics. Whenever he took to the senate floor, Ham commanded the respect of everyone in his presence, Republicans and Democrats alike. I often said he was like E.F. Hutton: when he spoke, everyone listened. Ham had a strong sense of justice and doing what was right. He was an ardent supporter of the individual liberties bestowed by our Founding Fathers.

I will never forget when State inspectors tried to shut down a Winston-Salem market because it sold slices of country ham. Ham promptly introduced the Country Ham Preservation Act to exempt small markets from regulation on meat preparation. After all, he said, the only difference between tasting wine and tasting ham is that you spit out the wine and no one has been known to spit out the ham.

In all of my years in the senate, I have never seen a bill move so quickly. The senate passed the bill just 2 days after Ham filed it. Then the State House passed it the following day.

□ 2000

Ham had a gift of bringing people together, despite partisan differences, to do what was best for our State. The North Carolina Senate Republican leader Phil Berger once said that Ham "harkened back to another age in the Senate, an age when there was debate that focused greatly on the merits of the issues rather than politics and personality." Likewise, the editorial page of the Winston Salem Journal wrote, "If only America could have more political leaders like Ham Horton. Smart, talented, intellectual, yet in touch with every man. A staunch conservative who saw liberals as his opponents, not his enemies. A man who understood that politics is the art of working with others . . . In an era of politicians who rage with anger, questioning the morality, patriotism, and goodness of those with whom they disagree, Horton never had a disagreeable thing to say to anyone. He just took their arguments apart the way a chef carves a turkey."

At Ham's funeral at Calvary Moravian Church last week, the Reverend Lane A. Sapp noted that Ham acknowledged his Lord with a life of unselfish service, whether he was "serving as someone's lawyer, representing his constituents in Raleigh, serving on a church board or agency, or helping someone in need." Ham cared about helping others more than he cared about helping himself. Despite his difficult fight with cancer, he recently asked his daughter Rosalie to drive him to Raleigh for a Senate committee meeting. When asked why he did not stay home and rest. Ham responded, "I took an oath to serve my constituents and I must fulfill it."

Reverend Sapp put it eloquently when he said, Ham Horton was a man who took to heart Jesus' parable of the talents, using the blessings given by God, not hiding or squandering them for his own use, but using his gifts in service to others, whether it was caring for his wife Evelyn and daughter Rosalie; serving his beloved Moravian Church, his Nation, or the State of North Carolina. Ham Horton was a good steward of all he had been given, and he never became too important that he forgot the call to humble service. In this he emulated his Master, who once told his quarreling disciples that "whoever would be great among you must be your servant," Matthew 20:26.

As I said, Ham was my mentor and someone for whom I had the utmost respect. Anytime I had the privilege to be with him, I went away as a better person because of him. He was a great calming influence on me, and I will miss his wise counsel more than I have words to express.

Mr. Speaker, my thoughts and prayers are with Ham's wife Evelyn, and daughter Rosalie and his extended family. May God bless them and comfort them during this difficult time. The State of North Carolina is fortunate to have been served by Senator Hamilton Horton. He was truly a blessing to everyone whose life he touched, and there were many. Ham Horton will be sorely missed.

FOLIC ACID AWARENESS

The SPEAKER pro tempore (Mr. CAMPBELL of California). Under a previous order of the House, the gentlewoman from California (Ms. ROYBAL-ALLARD) is recognized for 5 minutes.

Ms. ROYBAL-ALLARD. Mr. Speaker, every year in the United States, thousands of babies are born with serious, preventable birth defects of the brain and spine.

Spina bifida, the most common neural tube defect, is the leading cause of childhood paralysis. Anencephaly, a neural tube defect of the brain, is always fatal.

To bring attention to this preventable tragedy, we highlighted National Folic Acid Awareness Week as part of January's National Birth Defects Prevention Month. Since we were not in session at the time, I will take this opportunity to focus on the public health significance of folic acid and the important role it plays in the prevention of these devastating neural tube birth defects.

The value of folic acid became clear in 1991 when absolute scientific evidence showed that a daily supplement of synthetic folic acid could prevent spina bifida and anencephaly in most pregnancies. In 1992, the finding led the United States Public Health Service to recommend that women, beginning at puberty and continuing through their childbearing years, take a daily dose of 400 micrograms of folic acid.

It was in response to the Public Health Service recommendation that I authored the Folic Acid Promotion and Birth Defects Prevention Act. This act authorized the CDC to develop programs to educate health professionals and the public about the importance of folic acid consumption. I am very pleased that this bill became law as part of the Children's Health Act of 2000.

The Food and Drug Administration also responded to the need to increase consumption in the general population by requiring the addition of folic acid to enriched grain products like bread and cereal. It is important to note, however, that new evidence has found that the current fortification level of grains is not adequate for full protection against birth defects. Nevertheless, over the past 10 years, our efforts have succeeded in increasing the consumption of folic acid. This has resulted in a considerable decline in the rate of spina bifida and anencephaly.

The fact remains, however, that last year approximately 3,000 babies in the United States were born with preventable neural tube defects. Recent studies show that despite our efforts, only 40 percent of women ages 18 to 45 take a daily vitamin with the recommended level of folic acid. And Latino women, who have almost double the likelihood of delivering a baby with a neural tube defect, have the lowest reported folic acid consumption of any racial or ethnic group.

Mr. Speaker, there is no doubt we have considerable work ahead of us in order to adequately protect our newborn babies from preventable neural tube birth defects. It is therefore our duty and our obligation to, first, increase our efforts to inform all women of childbearing age of the essential role folic acid plays in protecting their babies from spina bifida and anencephaly; second, to increase the required concentration of folic acid in enriched grain products as recommended by the American Academy of Pediatrics, the CDC, and the March of Dimes.

And, finally, it is our duty and our obligation to encourage manufacturers to fortify cornmeal products with amounts of folic acid that meet the FDA requirements. This recommendation is especially critical to our Latino communities, which consume large amounts of the unfortified corn flour sold in the United States.

Mr. Speaker, we have the knowledge and the ability to prevent the majority of neural tube defects in this country. It will be a tragedy if we choose to ignore this compelling public health challenge.

I urge my colleagues to work with me in the 109th Congress to support policies that enrich our foods with sufficient folic acid and to strengthen CDC's national folic acid education campaign. By working together, we can and will save thousands of babies and families from the suffering and the pain of neural tube defects.

THE BUSH ADMINISTRATION'S EPA BUDGET

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. SOLIS) is recognized for 5 minutes.

Ms. SOLIS. Mr. Speaker, today I rise because I believe that working Americans deserve a Federal budget which is compassionate, decent, hopeful, and accountable to their needs. Yet the budget shortchanges many environmental programs designed to protect public health and improve our communities' quality of life. It cuts funding for environmental justice programs by 28 percent and cuts funding for clean water infrastructure by $199 million. It also fails to address the more than $300 billion gap in drinking water infrastructure, funds for brownfields cleanup and redevelopment at less than 20 percent of what Congress has authorized, and zeroes out funding to bring more green space to our communities.

These cuts, Mr. Speaker, have very real implications on the quality of our health and our communities. Let us first consider the 28 percent cut in funding for environmental justice. For decades minority and low-income communities have lived in close proximity to industrial zones, power plants, toxic waste sites. These are the communities nationwide whose health and quality of life are negatively impacted most by environmental injustices. For example, 5.5 million Latinos live within a 10-mile radius of a power plant, and 68 percent of all African Americans live within 30 miles, the range where health impacts are most severe. Over 70 percent of all African Americans and Latinos live in counties that violate the Federal air pollution standards, compared to 58 percent for nonminorities.

The administration is allegedly committed to protecting low-income and minority communities; yet the budget is just one of several actions taken recently which puts this commitment in doubt. Last year the Bush administration proposed removing race and income as considerations of environmental justice. Removing these considerations, in my opinion, would significantly disadvantage those communities which are already disproportionately affected by environmental toxins and the least able to defend and empower themselves.

Most recently the Bush administration proposed changing toxic reporting requirements to benefit polluting industries at the expense of the health of this Nation's communities. In California, the State I represent, this would include nearly 60 ZIP codes, over half of which have at least 45 percent minority residents and large proportions of people living well below the poverty line.

This budget also shortchanges our water infrastructure and water providers. It cuts funding for the Clean Water Revolving Fund by $199 million and funds safe drinking water infrastructure at 10 percent below last year's level. Yet our water infrastructure needs at least $300 billion invested just to maintain current services.

President Bush's budget fails to adequately address the more than 119,000 confirmed releases at underground storage tanks, like the more than 1,000 in my congressional district alone, and that is in Los Angeles. In the interim the onerous burden of shoring up our water infrastructure and protecting supplies falls on our cities, our States, and ultimately the water providers.

The budget fails the one in four Americans that live within 4 miles of a Superfund site, including 10 million children under the age of 12. There are three such sites in my own community. In fact, EPA itself admitted publicly the serious problems facing Superfund site cleanup. On December 2, 2004, then Assistant Administrator Thomas Dunne noted: "For the last 3 years, we haven't started cleanup at some new sites. If we assume that EPA's budget will remain flat for the foreseeable future, construction funding could be delayed at more and more sites. Within a few years, unfunded cleanup work could total several hundred million dollars."

Yet President Bush's budget is $100 million less than the request which was made in 2004 and $20 million less than the fiscal year 2005 request.

Ultimately, the budget forces our country to continue to fall behind in its commitment to clean water, further disadvantages environmental justice communities like the one I live in, and passes the buck to our States. The Bush administration is putting its own policies above science, above the needs of public health, the environment, and our communities, and yet this administration is not being held accountable. Not once in the last 6 years has the Bush administration defended its budget in front of the Energy and Commerce Committee. Not once. It is well past time for this administration to defend its policies on environmental justice, water infrastructure, brownfields, and Superfund sites, where failures such as these will be even more costly for our country.

MESSAGE FROM THE SENATE

A message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate has agreed to a concurrent resolution of the following title in which the concurrence of the House is requested:

S. Con. Res. 80. Concurrent resolution relating to the enrollment of S. 1932.

□ 2015

THE ECONOMY

The SPEAKER pro tempore (Mr. CAMPBELL of California). Under the Speaker's announced policy of January 4, 2005, the gentleman from California (Mr. DREIER) is recognized for 60 minutes as the designee of the majority leader.

Mr. DREIER. Mr. Speaker, I have taken out this Special Order this evening because in the past several weeks and months we have seen a wide range of public opinion polls, including one that came out just recently from ABC News and The Washington Post showing that an overwhelming majority of the American people believe that we have an economy that is, if not in recession, in deep, deep trouble. For some reason, there is a perception that the U.S. economy is in the tank.

Today, in the East Room of the White House, President Bush signed the budget reconciliation bill, the first time since 1997 the Congress tackled a measure to reduce by $39 billion the so-called entitlement spending which goes on without interruption unless the Congress takes action, and we did so in this body. It took, unfortunately, only Republican votes in both the House and the Senate to do it, but we were able to rein in the spiraling increase in spending. More needs to be done, but we took that first step.

Today, in the East Room, as the President prepared to sign that measure, he began talking, Mr. Speaker, about the tremendous improvement that we have seen in our economy. We all know that everyone is entitled to their own opinion, but no one is entitled to their own facts. So for that reason, Mr. Speaker, I feel compelled to offer some prepared remarks about the state of our economy, the challenges that lie ahead, and the work that we have done and the work that we need to continue to do.

It was just last Tuesday night, a week ago last night, that President Bush stood right behind where I am here and addressed a joint session of Congress, delivering his State of the Union address. Since 1934, Presidents have delivered such a speech following the first of every year.

In much that same way that we Americans take stock every new year, assessing the present and looking forward to the future, the President came here to this Chamber to describe where we stand as a Nation and where his leadership will be focused in the coming year. President Bush spoke about the strength of our Nation, our economy, our troops, our resolve. He also spoke about the challenges we face, the war on terror, maintaining our leadership in the global economy; but despite these challenges, we face a very promising future.

As President Bush said, and I quote: "And so we move forward, optimistic about our country, faithful to its cause, and confident of the victories to come."

During the speech, Mr. Speaker, I was reminded of the optimism of Ronald Reagan when his Presidency began exactly 25 years ago last month. As my colleagues surely remember, pessimism in January of 1981 would have been well-founded. Economic growth was erratic, inflation was out of control, unemployment was abysmally high, interest rates were soaring through the roof, and communism, as we all know, was a global menace. Violence and chaos were spreading throughout Central America, right in our own backyard, in this hemisphere. Yet, Mr. Speaker, President Reagan was optimistic because he believed in the American spirit.

In his inaugural address on January 20, 1981, again 25 years ago just this past month, he said, and I quote: "If we look for the answer as to why for so many years we achieved so much, prospered as no other people on Earth, it was because here in this land, we unleashed the energy and individual genius of man to a greater extent than has ever been done before."

Mr. Speaker, Ronald Reagan knew that when Americans are freed from the burdens of an intrusive government and are empowered to work hard and achieve success, we prosper. That is why Ronald Reagan embarked on an 8-year crusade of cutting taxes, reducing burdensome regulation, and opening up new global opportunities through free trade.

When we look at everything that has been accomplished in the 25 years since Ronald Reagan spoke those words, we see clearly that he was right to be optimistic, to have faith in the American spirit. But while Ronald Reagan had little more to go on than that faith, today we do have facts.

If we take a look at all the indicators of the strength of our economy, it is clear that we face a very promising future. I would like to take the opportunity to review these positive indicators, examine the policies that got us here, refute our economic nay-sayers, and outline our path to an even brighter future.

As the Wall Street Journal recently reported, over the past 277 months, our economy has been in recession for only 15 of those 277 months. Ninety-five percent of the time our economy has been growing and creating wealth. The 25 years since Reagan's first inaugural address have brought us 43 million new jobs and $23 trillion in new wealth. There can be no question that when Americans are not held back by government we fulfill our own best hopes for the future.

Today, with over 143 million Americans working, more than ever before in our history, it is very important to note that. Over 2 million payroll jobs were created last year, according to the payroll survey. The household survey demonstrated even stronger job growth than that, with over 2.6 million new jobs created in 2005 alone. This strong pace of job creation has resulted in an unemployment rate of 4.7 percent, the lowest rate in 4½ years, and below the average of the 1970s, the 1980s, and the 1990s.

Not only are more Americans working than ever before, but more of our fellow Americans own homes than ever before in our Nation's history. Greater household wealth and rising living standards have resulted in a homeownership rate of nearly 70 percent. These gains have been achieved across a broad demographic range, as minority homeownership is also at an all-time high of over 51 percent. Household income and wealth are at all-time highs. Household net worth grew 11 percent in the last year alone. Real hourly compensation is steadily rising. Real after-tax income has grown 7.2 percent since the 2003 tax cuts were put into place.

America's working families are experiencing greater prosperity, greater financial autonomy, and an ever-improving quality of life. Growth in gross domestic product, the broadest measure of economic strength, tells the same story.

The GDP grew at 3.5 percent in 2005, as the President pointed out today in the East Room of the White House. Despite a dip in the fourth-quarter growth, the annual rate was very strong, and analysts predict a growth rate as high as 4 percent or more in the first quarter of this year. This robust growth is responsible for tax revenues surging to their highest levels ever. Total tax receipts were up 12 percent in December as the Treasury Department announced the first monthly budget surplus in years.

Perhaps the most telling and significant indicator of our economy's strength is productivity growth. Since the end of 2001, the recession that existed in 2001, productivity has increased at the fastest rate since World War II. Averaging at a pace of 3.4 percent growth annually, workers are now over 17 percent more productive than they were in 2001. Let me say that again: productivity, one of the most important gauges of success, is up to the point where workers today are 17 percent more productive than they were just 5 years ago.

These numbers are so important because no factor is more critical to long-term sustainable growth and increasing standards of living than improved productivity. It is essential to maintaining steady creation of increasingly better paying, better quality jobs.

Let me continue in my presentation in which we are talking about the level of productivity which has surged in the past several years and is such an important, important gauge of the kind of economic success that we are enjoying.

It is amazing. Given the storms of our economy, what we have weathered since the stock market bubble burst back in 2000, this level of strength and vitality that we have seen in productivity is truly astounding. In order to give the numbers some additional context, I think it is very useful to compare our current economic circumstances with the same point in the previous business cycle just over a decade ago.

In April of 1995, we were 4 years out of the recession that existed in the early 1990s, just as we are today 4 years out of this past recession. Mr. Speaker, by virtually every measure, our current expansion economy is stronger and more promising than the expansion economy of the spring of 1995.

Today, we have an unemployment rate of 4.7 percent, as I said earlier. In April of 1995, unemployment was more than a full percentage point higher at 5.8 percent. Furthermore, employment is stronger today across minority demographics.

The current unemployment rate for African Americans is 8.9 percent. In April of 1995, a little more than a decade ago as we were 4 years out of economic recession, this rate was at that point nearly two points higher for African Americans than it is today. It was 10.7 percent versus the 8.9 percent unemployment rate for African Americans today.

The improvement for Hispanics is even greater. Today, the unemployment rate for Hispanics is 5.8 percent. At this point during the last expansion, April of 1995, the rate was 8.9 percent. That is 8.9 percent Hispanic unemployment at that point. Today, Hispanic unemployment is at 5.8 percent, a difference of almost three full percentage points.

Clearly, minority workers, as well as the workforce at large, are facing a much brighter economic outlook. This pattern holds throughout nearly every major economic indicator.

The homeownership rate is nearly four points higher today than it was in April of 1995. Minority homeownership is 7.7 percentage points higher today than it was in 1995, as I say, at record levels of homeownership and minority homeownership. Annual growth in household net worth over the past year is nearly 3 points higher than it was.

Mr. Speaker, real hourly compensation is now growing at a rate of 1.2 percent versus an actual decline in April of 1995 of seven-tenths of 1 percent, that is, actually a decline took place 4 years out of the last economic recession that we reemerged from in the mid-1990s to today, real hourly compensation growing at 1.2 percent today.

Today, that all-important investor class, those who have investments, has grown to include 56.9 million American families as the stock ownership rate for Americans has risen to nearly 60 percent of all households, or 19 percentage points greater than it was in April of 1995. Again, that investor class, Democrats and Republicans, all the way across the economic spectrum, has grown dramatically. GDP growth is 1.3 percentage points higher than it was in April 1995, again, when we were 4 years out of economic recession.

Mr. Speaker, annual productivity growth, which is so fundamental, as I said earlier, to sustaining rising living standards is a staggering 10 times greater than it was at this same point in the previous expansion. The rate of growth over the past 4 years at 3.4 percent is not only impressive for an expansion economy; it significantly outpaces historic rates.

□ 2030

From 1973 to 1995, productivity grew at 1.4 percent; 1973 to 1995, 1.4 percent. At that rate it would take 50 years to double the standard of living. But stronger growth has now put us on the path to double living standards twice as quickly as it did from that period of time between 1973 and 1995, that 22-year period.

We recently witnessed a symbolic reminder of the 1990s economy as the Dow Jones Industrial Average broke through the 11,000 mark on January 9, closing above 11,000, pierced a barrier that had not been surpassed since June of 2001 when our economy was several months into a decline that had become a recession.

And we obviously should not gauge the markets on a daily basis. Today we saw the Dow Jones Industrial Average up by over 100 points.

A great deal of fanfare accompanied the return of the stratospheric level of the late 1990s when the Dow hit 11,000. But this milestone was significant not only for the symbolism. Whereas what was called by Alan Greenspan, the former Chairman of the Federal Reserve, as irrational exuberance, it played a great deal in driving the Dow up to this level before, back in the 1990s, this time the Dow hitting 11,000, up 100 points today, as I said, was soundly grounded in sound economic and market principles.

Several years of strong, steady growth, rising incomes, more jobs, and a growing and increasingly prosperous investor class have led to sustainable gains in the stock market. We did not reach this level of economic strength by accident or by chance.

Many people talk about the cycle. I was listening to the radio this morning, and some people were saying, regardless of policies, we still see these surges take place in the economy, whether you have had tax increases or tax cuts. That is just plain wrong. Our economic strength is the direct and predictable result of an aggressive Republican agenda of progrowth policies, decreasing tax and regulatory burdens, expanding free trade and opening new markets around the world. Empowering entrepreneurs and small business owners to innovate, adapt and grow is critical to sustaining this kind of success.

These policies have created an environment that has increased the prosperity of Americans, created new opportunities, and brought about all of the positive economic news that I have discussed from job creation to home ownership. Perhaps the starkest illustration of cause and effect comes from those 2003 tax cuts.

The day the Senate passed those tax cuts, the Dow Jones Industrial Average was at 8,601. Again, the Dow was at 8,601 the day that the Senate passed those 2003 tax cuts. Today, as I have said, we have seen the Dow once again surpass 11,000, up 100 points today. It has remained close to that 11,000 mark.

During that time, the bull market propelled by our booming economy, since we put into place the 2003 cuts, has created $5 trillion in new shareholder wealth. The total return to stock investors since the tax cuts were enacted has been 41.3 percent.

Now, remember, that is not simply the rich. With nearly 60 percent of American families now members of the investor class, the total return to stock investors since those 2003 tax cuts has been, as I said, 41.3 percent.

We have seen the same direct benefit to job creation. Following the 2001 recession, the payroll jobs number hit its lowest point the very month the 2003 tax cuts were enacted. Since that time our economy has added nearly 5 million new payroll jobs. And as I have already cited, real after-tax income has increased by 7.2 percent over that same period of time.

Furthermore, we accomplished all of this while increasing Federal tax revenues. Revenues to the Federal Treasury have increased as a byproduct of implementing those 2003 tax cuts. Total receipts in 2005 were up nearly 15 percent. In all, tax receipts for last year totaled $2.2 trillion, the largest margin, the largest amount of revenues ever collected, ever collected in a 12-month period, $2.2 trillion. And that has all happened since we put tax cuts into place.

And I remember vividly debating my colleagues on program after program when they would say that if we put into place these tax cuts, we would see the U.S. economy go right into the tank, and we would see a great reduction in the flow of revenues to the Federal Treasury. The exact opposite is the case. In fact, tax receipts have been at record highs since last August when the previous 12-month record of $2.1 trillion was broken.

So, Mr. Speaker, let us review. By every major economic indicator, our economy is booming. Gains are being made by the economy at large, and by individuals of all demographics. Across the board the American people are benefiting. Our economic strength is remarkable by any standard, but it is even more impressive when compared to the same point, as I said, that previous postexpansion period, in April of 1995, 4 years out of the economic recession. The markets are returning to their bubble-era levels, but this time these levels are solidly grounded, as I said, in real growth.

And, finally, Mr. Speaker, all of those tremendous gains have been achieved through the Republican commitment to a progrowth agenda of lower taxes and greater economic freedom.

And yet incredibly, my colleagues on the other side of the aisle deny this good economic news. I have listened to the Special Orders that they have taken out here on the House floor, and I can understand if the American people simply listen to that message why they believe the economy is in the tank. And even more incredibly, they claim that our progrowth agenda is actually hurting our economy and bankrupting the Federal Treasury.

Now, it is one thing to predict failure at the outset. It is one thing to predict failure as they did when we were looking at implementing these tax cuts in 2001 and 2003. It is quite another to claim that our agenda has failed amid clear and overwhelming evidence of its success.

Mr. Speaker, our economy has recovered from the bursting stock market bubble, a recession, terrorist attacks, and corporate scandals. Our economy has weathered storms, literally and figuratively, such as Hurricane Katrina, high oil prices and stagnating growth that is existing for some of our trading partners in their economies.

Our economy, Mr. Speaker, has increased the prosperity of Americans, and all the while the rhetoric that we hear from the leadership on the Democratic side has remained constant. But we in the majority have worked, sometimes in a bipartisan way, but unfortunately not in concert with the Democratic leadership.

Well, we have worked to ensure everyone has the opportunity to pursue and potentially achieve the American dream. They have worked only to advance the myth of, you remember this line, two Americas. They have tried to instill that standard old but failed argument of us versus them, the class warfare mentality that disregards the truth, and tragically, Mr. Speaker, it greatly divides our country.

Now, Mr. Speaker, when perpetuating this myth that only a privileged few have access to the American dream, my colleagues on the other side of the aisle will frequently invoke the threat of outsourcing. Do you remember that word, outsourcing? You could not turn on cable television news without hearing that word outsourcing.

That is a term that you do not hear all that often anymore. Frankly, whenever they tried to explain away all of the positive economic news of the past few years, American jobs moving to places like China and India were usually held up as Exhibit A. They are still talking about it. They tell us of struggling plants such as the Paper Converting Machine Company in Green Bay, Wisconsin.

They tell us about how this company, PCMC, the Paper Converting Machine Company, and its workers faced some very, very difficult times. We are told that first the recession was bad for business, and then one of its biggest customers demanded drastically reduced prices, encouraging PCMC to outsource, to move production to China. And then when things could hardly get worse, PCMC was acquired by another company that cut workers and cut pay. Throughout this whole process, sales for PCMC plummeted by 40 percent, and jobs were slashed from 2,000 American jobs to 1,100 jobs. Times were indeed very hard.

But, unfortunately, Mr. Speaker, what my Democratic colleagues, when they hold up that example of PCMC of Green Bay, Wisconsin, they do not tell the rest of the story. The story of PCMC does not end with lost jobs and plunging sales. They at PCMC had a strategy for reversing these losses and prospering once again, and it included the process of outsourcing to India.

They saw that they were losing orders because of the limits in their engineering department. So their chief engineer developed plans to utilize an engineering center in Chennai, India. Because U.S. and Indian engineers can now collaborate around the clock, PCMC has been able to expand their engineering services while making the whole process more cost-effective.

The result has been a strengthened U.S.-based company that continues to grow in Green Bay, Wisconsin. The CEO, Robert Chapman says and I quote, we can compete and create great American jobs, but not without offshoring or outsourcing.

This is the true story, Mr. Speaker, of the American economy. It is not a story of the haves and have-nots. It is not a story of doom and gloom. Mr. Speaker, the American economy thrives and grows, because when entrepreneurs face adversity, they have the freedom and flexibility to innovate.

pursue new strategies and prosper. Allowing business owners to tap into the vast resources of the global economy is essential to our continued economic strength right here at home.

But you do not have to just take my word based on one anecdote of PCMC and their success. If all the positive economic data demonstrating the strength and vitality of the U.S. economy is not enough, the Information Technology Association of America, the ITAA, recently conducted a study on the direct impact of trade in services, otherwise known as offshoring or outsourcing. The study looked specifically at outsourcing in the IT field, the information technology field, and it found that trade in IT services is a clear net benefit for our economy. The new economic activity generated by increased trade in services ripples throughout the economy, creating jobs, boosting growth and increasing exports.

Specifically, this study that the ITAA did found that offshore outsourcing resulted in the creation of 257,000 net new jobs in 2005. Let me say that again, Mr. Speaker, because I realize it is counterintuitive. I was actually talking to the President today about this study, and I know that people have a difficult time understanding this. Offshoring, outsourcing, actually in 2005 created a net new job increase of 257,000 jobs, meaning if we had taken action here and somehow tried to stop that, it would have cost 257,000 new jobs that were created right here. And more than 337,000 net new jobs are expected to be created within the next 5 years, just from this issue of outsourcing.

It is true that greater engagement in the global economy contributes to a considerable churn in our workforce and accelerates the rate of change. And I am not going to stand here and claim that there has been no American who has been detrimentally impacted from this change. But we all know that change is inevitable, and we also know that the net increase in jobs that has taken place because of so-called outsourcing or offshoring has been dramatic, in excess of a quarter of a million net new jobs created in the last calendar year alone.

□ 2045

But as we saw with the manufacturer in Green Bay, PCMC, it creates new opportunities for American workers and ultimately leads to stronger job growth right here at home. Again, remember, we have a 4.7 percent unemployment rate, Mr. Speaker. So all of those people who predicted that outsourcing was going to wipe out the U.S. economy have got to recognize that we have the lowest unemployment rate that we have had in 4½ years, lower than the average for the 1970s, the 1980s, and the 1990s.

The study also demonstrates overall gains in economic growth. ITAA estimates that IT offshore outsourcing contributed an additional $68.7 billion in real GDP growth in 2005; $68.7 billion in real GDP growth right here in the United States of America because of so-called outsourcing, offshoring. Greater global engagement in IT services is expected to create another $147.4 billion in real GDP growth by 2010, within the next 5 years, 4 years now I guess.

Exports are boosted as well, Mr. Speaker, with an additional $5.1 billion in exports in 2005 and another $9.7 billion predicted by 2010. Again, $5.1 billion in new exports that have been a byproduct of policies that have included offshoring. These gains are an obvious and direct benefit to the workers who gain jobs and the business owners who boost both sales and revenue.

But the increased efficiencies and economic activities spread throughout the economy at large. These disbursed benefits, as I said to everyone, by lowering inflation, increasing productivity, and helping to keep interest rates low, the economic benefits of greater engagement impact every single one of us. We as Americans reap the benefits through higher wages, new opportunities, and rising living standards.

Opponents of open trade and a policy of global economic engagement paint outsourcing as an effort by, and you will recall this term that was used in the 2004 Presidential campaign, "Benedict Arnold CEOs" who supposedly exploit cheap labor overseas while American workers are suffering. But as I discussed, Mr. Speaker, the empirical as well as the anecdotal evidence proves precisely the opposite. When American entrepreneurs are free to leverage all of the world's resources, the result is new and better opportunities for workers right here in the good old United States of America.

The benefits of being free to globally engage are just further demonstration of what has always been true of the American economy: our strength lies in our ability to innovate. Change has always been an inescapable part of the American economy. We have grown from an agrarian economy, as we all know, to an industrial economy, to what is today's 21st century high-tech Information Age economy. We prosper not because we have resisted change. We prosper because we have used change as an opportunity to innovate, to think creatively, to adapt, and to grow. Outsourcing simply presents a new opportunity for the United States to maintain its role as the world's leading innovator.

The cost savings of outsourcing have enabled businesses to remain competitive and have spurred new economic activity. But business analysts agree that the real power of outsourcing is in enabling companies to innovate and transform themselves. The new buzz word in the business world is "transformational outsourcing."

Business Week recently noted: "Many executives are discovering offshoring is really about corporate growth, making better use of skilled U.S. staff, and even job creation in the United States, not just cheap wages abroad." They go on to say: "True, the labor savings from global sourcing can still be substantial, but it's peanuts compared to the enormous gains in efficiency, productivity, quality and revenues that can be achieved by fully leveraging offshore talents." Meaning that we can take advantage right here at home of utilization of offshoring.

Mr. Speaker, outsourcing provides an opportunity for businesses to stage 24-hour-a-day, 7-day-a-week operations. U.S. workers can collaborate with other skilled workers around the world. New solutions to old challenges can be explored. Limited resources can be shifted from routine low-tech processes to higher value-added activity. By tapping into all the resources the global economy offers, American entrepreneurs have the opportunity to revitalize struggling businesses, spur innovation, and develop new projects that would otherwise be impossible.

All of this potential has led many business analysts to believe that U.S. companies are on the cusp of a new burst of productivity, driven by this transformational outsourcing. We saw this worked for that manufacturing company that I have used as anecdotal evidence, PCMC, in Green Bay, Wisconsin.

Now let me go close to home for me. IndyMac Bancorp, Inc., which is a Pasadena, California-based financial services company, is an example of a 21st-century services company that has made offshore outsourcing an integral part of its business model, and it is thriving.

Three years ago, IndyMac was the 22nd largest mortgage issuer in the United States. Today, Mr. Speaker, it is number nine and I believe moving up. IndyMac's consumer banking CEO credits its success in large part to their strategy of aggressive outsourcing. He has said that outsourcing has made IndyMac "more productive, cost efficient and flexible than our competitors with better consumer service."

Now, Mr. Speaker, by working with an Indian firm, IndyMac is developing new software platforms and applications that it expects will boost efficiency another 20 percent at least over the next 2 years. They have also moved 33 back-office functions offshore. Thirty-three of those back-office functions have moved offshore. And what has been the impact on job creation right here in the United States?

Mr. Speaker, by moving 33 of their operations offshore, IndyMac has doubled its American workforce to almost

6,000 in the past 4 years, and at this moment they continue to hire more Americans. All of this is possible because of the openness and flexibility of our wonderful U.S. economy.

Now, Mr. Speaker, our goal as Republicans is to reduce the burdens on workers and business owners and increase their access to the global economy.

Now, I mention the fact that Democrats have assailed, they talk about Benedict Arnold CEOs, they would say the CEO of the consumer bank operation, IndyMac, is some sort of Benedict Arnold CEO I am sure. And, of course, Democrats have proposed a massive tax increase and barriers to innovation and entrepreneurship. We as Republicans have pursued greater engagement. We have cut taxes, regulation, and other market barriers of entry. We have continued a policy of greater trade liberalization. We have worked to reduce the size and scope of government so that Americans are increasingly free to prosper.

In short, Mr. Speaker, we have continued the Ronald Reagan vision of hope and optimism in the American spirit. We have carried Ronald Reagan's legacy of empowerment and prosperity through greater economic freedom. Mr. Speaker, I wish that President Reagan could have seen last year's great milestone in the fulfillment of his vision, the passage of the Dominican Republic-Central American Free Trade Agreement. He had envisioned, as we all know, and announced it on November 6 of 1979 when he proposed his candidacy, he put forward his candidacy to be President of United States, he at that point did something that many thought was heresy. He proposed a free trade area of the Americas stretching from the Arctic to Tierra del Fuego, as President Reagan used to love to say.

When he first spoke, as I said, of this FTAA when announcing his candidacy, the idea seemed even more far-fetched than his optimism for the U.S. economy at his first inaugural address 25 years ago last month. Much of the Americas at that time, particularly Central America, as we all will remember, was ravaged by violence and dictatorship; and yet these last 25 years have seen the birth and growth of democracy and free markets in the region.

The passage of DR–CAFTA last year was hugely significant in pursuing that ultimate goal and vision that President Reagan put forward: first, as a further commitment to the region of greater political and economic freedom and liberalization; and, second, as a major stepping stone, as I said, towards implementation of that vision of the FTAA.

There may still be those who believe the idea of a free trade area of the Arctic to Tierra del Fuego to be far-fetched, and it is being undermined, we all know, by some leaders in this hemisphere; but Ronald Reagan and the continued Republican legacy have proved that any people can prosper when given the freedom to do so. We have seen this demonstrated right here at home throughout this region and, Mr. Speaker, in this hemisphere when we have seen improvements in trade opportunities developed.

We have seen it demonstrated worldwide, Mr. Speaker. Every year Canada's Fraser Institute publishes a report on economic freedom throughout the global, documenting the direct link between economic freedom and quality of life. The 2005 report finds that economic freedom continues to be determinative in individual well-being and opportunity. The report's authors at the Fraser Institute, in conjunction with nearly 70 public policy organizations from around the world, found that life expectancy in the world's economically freest countries is more than 25 years longer than in countries with the least economic freedom.

Freer countries have lower unemployment; those living in the poorest 10 percent demographic have much higher incomes and a much better standard of living in countries with high economic freedom than in those countries that are most restrictive.

Corruption in public office goes down as freedom goes up. Political rights, political stability, and civil liberties all go hand in hand with increased economic freedom. Year after year, the economic freedom of the World Annual Report finds the same thing. Everyone experiences greater prosperity with greater economic freedom while the world's poorest gain the most. By pursuing greater liberalization abroad through free trade, we help to increase prosperity for our allies and our neighbors. By reducing taxes, regulation and other economic burdens here at home, we increase the prosperity of Americans. And as we all engage in the global marketplace, we prosper together.

Ronald Reagan knew this to be true and then went on and proved it. President Bush and our Republican majority have built on this success by continuing to liberalize our own economy as we encourage our trading partners to do the same.

□ 2100

The result has been a strong and growing economy, new job opportunities, and a rapidly rising standard of living.

So when we look to the coming year, what is the path that we will choose? First and foremost, Mr. Speaker, we must remain committed to the agenda that gave us this tremendous success. This Republican Congress will continue to reduce the tax burden on America's working families. We will continue to reduce the size and scope of the Federal Government, as was evidenced today by the President's signing of that $39 billion reduction by signing the budget reconciliation package. We will work hard to reduce the size and scope of government, as I said, and to rein in the reach of the government by minimizing regulation and decreasing the bureaucratic red tape that strangles job creation. And we will continue to liberalize our trade relationships. We will continue to pursue more free trade agreements.

This agenda will not only continue to increase our prosperity; it will enable us to maintain our global competitive edge through innovation. The lesson of trade and outsourcing has been that global engagement has helped us to remain competitive. President Bush spoke a great deal about competitiveness at the State of the Union address. He spoke about it today when he announced, first here and again he is continuing to talk about this moving across the country, referring to his American Competitiveness Initiative. The President's plan will contribute an additional $136 billion to scientific research and the promotion of math and science education.

By strengthening the fundamentals of education, research, and with a well-educated, highly skilled workforce, we can ensure that we will continue our global competitiveness far into the future. As President Bush said when he stood right here in this Chamber last week, Mr. Speaker: "The American economy is preeminent, but we cannot afford to be complacent." The President said: "In a dynamic world economy, we are seeing new competitors. To keep America competitive, one commitment is necessary above all. We must continue to lead the world in human talent and creativity."

Now, Mr. Speaker, in the coming months and years, this Republican majority remains committed not only to expanding economic freedom at home and abroad. We are fully committed to an agenda of competitiveness and innovation. As we begin this new legislative year, it is important that we recognize where we are and how we got here, and look optimistically, as Ronald Reagan did, to the future.

I am very proud of the fact that we have achieved such economic success. As I said, everyone is entitled to their own opinion, but no one is entitled to their own facts. I am even prouder of what we have been able to achieve through our Republican pro-growth, pro-economic freedom agenda. And, Mr. Speaker, as Ronald Reagan said so well, he believed that the American spirit has the ultimate potential when it is unleashed, and that is why I join that spirit of Ronald Reagan, as I know President Bush and our Republican colleagues do, and we certainly welcome Democrats to join in this effort as we look optimistically, hopefully, and very confidently to our future.

As I said, Mr. Speaker, it is very important for us to note that many people have tried their darnedest to claim that somehow the U.S. economy is in the tank. I hope that what I have shared over the past few minutes, which provides both anecdotal, through companies like PCMC in Green Bay, Wisconsin, and IndyMac Bank in Southern California, that that anecdotal information shows the success that we are enjoying.

I also hope that the empirical studies done by the Information Technology Association of America, the ITAA, showing that a net 257,000 new jobs were created in 2005 because of so-called outsourcing and offshoring, and that the Fraser Institute study from Canada demonstrating that when you unleash potential through greater economic liberalization, standards of living grow, and even those at the lowest end of the economic spectrum in those countries have higher standards of living than those who live in restrictive societies, that those facts are understood by the American people so that the American people will have an understanding that the gloom and doom negativism consists of nothing but words, because the facts belie them.

THE PEAKING OF WORLD OIL

The SPEAKER pro tempore (Mr. CAMPBELL of California). Under the Speaker's announced policy of January 4, 2005, the gentleman from Maryland (Mr. BARTLETT) is recognized for 60 minutes.

Mr. BARTLETT of Maryland. Mr. Speaker, sometime ago, our Department of Energy commissioned a study with SAIC, Science Applications International Corporation, to do a study on the peaking of world oil production, impacts mitigation, and risk management. This very prestigious scientific organization took some time to complete this study; and when they completed it, they made a recommendation to the Congress and to the Department of Energy. Part of what they said in their recommendation is included here:

"The peaking of world oil production presents the U.S. and the world with an unprecedented risk management problem."

That is quite an adjective to use. No risk problem like this ever in the history of the world is what they are saying: ". . . unprecedented risk management problem. As peaking is approached, liquid fuel prices and price volatility will increase dramatically. And without timely mitigation, the economic, social, and political cost will be unprecedented."

Again, Mr. Speaker, they are pointing out, and they will use these words in a chart I will have a little later, that the world has never faced a problem like this.

"Viable mitigation options exist on both the supply and demand side, but to have substantial impact they must be initiated more than a decade in advance of peaking."

When will peaking occur? Do we have a decade? And they are saying if we do not have a decade, we're going to have problems. Dealing with world oil production peaking will be extremely complex, involve literally trillions of dollars, and require many years of intense effort.

Our next chart, which speaks to the same phenomenon, inspired 30 of our leaders, Boyden Gray, McFarland, James Woolsey, and about 27 others, many of them four-star retired admirals and generals, to write a letter to the President. In that letter they said, Mr. President, the fact that we have only 2 percent of the world oil reserves, that we use 25 percent of the world's oil, and we import almost two-thirds of what we use represents a totally unacceptable national security risk. Mr. President, we need to do something about that.

Two other numbers here are of significance. We represent a bit less actually than 5 percent of the world's population, about one person out of 22. And in spite of the fact that we have only 2 percent of the world oil reserves, we produce about 8 percent of the world's oil. We need to keep this in mind for some of the later charts we are going to show, because what this means is that we are pumping our little reserves, only 2 percent, four times faster than the rest of the world.

If we were pumping it as fast, with 2 percent of the reserves, we would be producing 2 percent of the production; but we are producing 8 percent. So if the world is going to run into trouble with decreasing amounts of oil, Mr. Speaker, we are going to get there first because we are pumping our oil more rapidly.

How did we get here? The next chart speaks to that, and we need to go back about six decades. There was a scientist by the name of M. King Hubbert, who worked for the Shell Oil Company; and he noted the exploitation and exhaustion of individual oil fields. We would find an oil field, we would start pumping, and the oil field would reach a maximum production. And then after the maximum production, at about half of its total ultimate production, it would start falling off. No matter how hard they pumped, it would produce less and less oil, until finally the field petered out.

He rationalized that if he knew how many oil fields there were in the United States and roughly what their reserves were, and if he could predict how many new oil fields the United States would find, he could then add up all these little bell curves and he would get a big bell curve which would tell him when the United States was going to peak in oil production. So he did that in a paper in 1956, and he wrote in that paper that with this analysis he predicted that the United States would peak, and that was the lower 48 at that time, that the United States would peak in oil production and consumption of our own oil about 1970.

Right on schedule, and some authorities will say 1970 and some will say 1971, but as this chart shows, the smooth green curve here was his prediction peaking about 1970, and the more ragged large green symbols represent the actual production, which pretty much followed his curve. And it did peak, as you can see, at about 1970; and it has been downhill since then.

By 1980, we knew very well that we were downhill, and the early Reagan years provided a lot of incentives for drilling. There were a lot of oil wells drilled in our country. Notice the tiny increase from that. It simply brought us back to the curve that had been predicted by M. King Hubbert.

Now, the red curve here is the curve for the Soviet Union. They had more oil than we, and they peaked higher than we. And when the Soviet Union fell apart, you see that they broke away from the predicted decline. They are now going to have a second little peak here, and then it will be falling off. They will never get back to their earlier peak of oil production.

The next chart shows some detail about where our oil has come from through the years. And if you are looking only at the lower 48, you are going to be following this curve. And if you add to it the liquids that we are getting from gas, you will see that it still followed Hubbert's curve. It peaked in 1970 and then fall off.

But we found a lot of oil in Alaska. As a matter of fact, I have been there, Mr. Speaker, at mile zero, at Dead Horse, Prudhoe Bay. And through that pipeline has come for the last several years a fourth of all of our domestic production. But notice that in spite of that enormous find of oil in Prudhoe Bay, there was just a little blip on the downside of Hubbert's peak.

This yellow here on the chart is very interesting. That, you may remember, Mr. Speaker, was the fabled Gulf of Mexico oil discoveries. I remember how that was hyped. That was going to save us. There was plenty of oil there.

That was all it did, Mr. Speaker. It hardly slowed us down. In terms of the total amount that we were producing, you can hardly see any effect of the Gulf of Mexico oil discovery.

We were thinking about that discovery and those wells in the recent hurricane. There are 4,000 wells in the Gulf of Mexico. By the way, Mr. Speaker, that is about 10 times as many wells as there are in all of Saudi Arabia. We have about 530,000 oil wells in our country, about 80 percent of all the oil wells drilled in all the world. Maybe that is why we are able to produce oil from our reserves relatively four times faster than the rest of the world.

The next chart looks back through history, and it shows two things. It shows two curves, one superimposed on the other. One of the curves is the discovery curve, and this shows when we found the big oil fields starting way back in the 1930s, and then a lot of them in the 1940s, and some big oil fields found in the 1950s. But notice that this follows kind of a curve like so, and it peaks at about 1970, and it has been falling off ever since that. In spite of very large profits from the oil companies, they are not finding much more oil.

I might note, Mr. Speaker, that the profits for the oil companies was inevitable. They do not set the price of oil. Chevron and BP and ExxonMobil, they do not set the price of oil. The price of oil is set by you and me and all the other roughly 7 billion people in the world who use oil.

☐ 2115

We set the price by our demand relative to the supply. As supply has fallen off in the last several years, the price has gone up. Oil companies that were making money at $25 a barrel, how much more money do you think they will make when oil is $65 a barrel? We should not be carping about how much money they make; what we should be looking at is how responsibly they use the profits they make.

Some of those profits need to be invested in finding new oil fields, but the experts do not think there is much more to find.

Several Congresses ago I was chairman of the Energy Subcommittee on Science, and I wanted to determine the dimensions of the problem. We had the world's experts in to talk about how much oil is out there that we can realistically pump. There was general agreement, quite surprising agreement, that it is roughly 1,000 gigabarrels. Giga is used because in Europe a billion is not our billion so if you say billion, not everybody will understand it. So giga means a billion, and it means the same thing around the world.

A thousand gigabarrels is about a trillion barrels of oil. That may sound like a lot, but it is about the amount of oil that we have pumped so far in all of history. If you divide the 84 billion barrels a day that we are using today into that trillion barrels of oil, it comes out to about 40 years. Most of the experts believe we have found about 95 percent of all of the oil we will find. We now have very sophisticated seismic techniques with 3-D computer modeling. This is what they believe will be found, this gray-shaded area over here. It is not going to follow that smooth curve, but on average that is how much they think we will find.

The solid black line here represents the amount of oil we have been using. Up until about 1980, we always found more oil than we were using. There was always a big reserve out there. Since 1980, we have found less and less oil, and we have been using more and more oil. We have been able to do that because we are now using up some of these reserves we found before.

All of the oil that we can use has to be all the oil that is there. If you have not found it, you cannot pump it. So you make your own judgment how much oil you think we are going to find in the future, then you add that to the reserves back here. That is going to be the area under this curve from now on.

By the way, this 40 years that I mentioned, that is not a plateau. You do not plateau out for 40 years and then fall off a cliff. It is going to follow that typical bell curve of every oil field. By the way, 33 of the top 45 oil-producing countries have now peaked. It is only a few that have not peaked.

What will this curve look like from here on? We can change the shape. If we use some of our good recovery enhancement techniques, we can pump oil a little faster, and we may pump a little more, so we may get a little more out of these fields than depicted here. This is not all of the oil in the fields because probably half of the oil there will not get pumped because it is so difficult to get, it is going to cost more energy to get the oil than you get out of the oil. So you get to the point of you stop getting the oil. As the old farmer said, at that point "the juice ain't worth the squeezing," so we stop trying to get oil at that point.

The next chart shows a simple schematic that depicts the problem and where we are. Everybody may not agree this is where we are. Most of the people that have thought about peak oil think we are here or will shortly be here. This is a 2 percent growth curve. With 2 percent growth, that doubles in 35 years. This point is twice that point, and so this is a 35-year period from here to here.

Notice what this chart points out is that you start having a problem before peaking because the exponential use curve, the demand curve keeps going up like this, whereas when we reach peak oil, it will of necessity level off, and then no matter what we do, it will inexorably go downhill after that. It does for individual oil fields. It has for the United States.

By the way, the same M. King Hubbard that predicted we would peak in about 1970, he was right on. He predicted that the world would peak about now. If he was right about the United States, maybe he is right about the world, and maybe we should have been paying some attention to that.

I would submit that we have now, in common parlance, we have blown 25 years when we knew very well M. King Hubbard was right about the United States. If he was right about the United States, would not it have been prudent to recognize that maybe he just might be right about the world? If he is right about the world, the world is about to peak in oil production now, then we should have been doing something during these last 25 years so this would be a smoother transition.

The next chart shows us the alternatives. As the world peaks in oil production, we are going to have to, first of all, turn to some finite resources, and we are now doing that. I will chat for a moment about those. And those will not last forever. They are finite, as the word implies, except for nuclear, which is kind of different. The only nuclear that is finite is light water reactors that use fissionable uranium. If we go to breeder reactors, as the term implies, you make more fuel than you are using, and that could go on and on. You have to accept the problems you buy there with the enrichment and moving fuel around that could make bombs and so forth.

Of course, the one thing that gets us home free is nuclear fusion. If we could harness the kind of energy that the sun sends down to us every day, we are home free. But, Mr. Speaker, the odds of our doing that are a bit like you or me solving our personal economic problems by winning the lottery. That would be nice, and by the way, I do not play the lottery, but I do not think that rational people count on solving their economic problems by winning the lottery, and neither do I think that we should count on solving our energy problems of the future by nuclear fusion. That does not mean I do not support it. I vote every year for all of the money, $250 million or so, that we put into that, because we have to try. If we do not successfully harness nuclear fusion, we have a really challenging road ahead.

Let us look at these finite resources and what kind of potential we can expect from them. There is a lot of suggestion today about the tar sands up in Alberta, Canada. There are enormous reserves there. The reserves there are at least as large of all of the oil reserves in all of the world. Then what we are worrying about? Well, because it is there does not necessarily mean that we can harness it in enough quantities or soon enough to really make a big contribution.

As an example, Mr. Speaker, every day the Moon goes around the Earth roughly in a day, and it lifts the oceans about 2 feet. That is an incredible amount of energy. I carry two gallon buckets of water and lift them up, that is a lot of energy. If we could harness the energy of the tides, we would be home free. There is an old adage that says energy to be effective must be concentrated, and because those tides are spread out over all of the oceans of all of the world, it is difficult to harness them.

The tar sands are a little like that. There is an incredible amount of energy there, and the Canadians are working very hard at harnessing that. Let me see if I can remember the numbers. I think they have a shovel in Alberta, Canada, that lifts 100 tons at a time and dumps it into a truck that carries 400 tons, and I think those are the right numbers. It carries them to a place where they are cooked, because the oil in those tar sands is a bit better, but kind of like the oil in your asphalt road. If you put a blow torch on an asphalt road and mix it with some lighter fuels, it will flow. That is kind of like what we are doing with the tar sands. They are working very hard, and they are producing a million barrels a day. We will talk in just a moment about energy profit ratio. They are making a lot of dollars doing that because it costs them less than $30 a barrel to make it. The oil is now bringing $60-some a barrel, so the dollar-profit ratio is up there. They are using, I have heard, maybe more energy from natural gas to produce the oil than they are getting out of the oil. That makes good sense for them because they have natural gas there, and it is hard to ship, and it is relatively cheap, and the oil is easy to ship and in high demand at $60-some a barrel.

Mr. Speaker, by the end of the day, we really need to be thinking about energy profit ratio because that is what will be telling. They are now producing a million barrels a day, and if they work real hard, they will be producing 2 million barrels a day in 5 years. Big deal.

The world today is using 84 million barrels a day, and if they work really hard, 10 years from now they will be producing 3 times as much as today, 3 million barrels a day, but the world would like to be using another 40 million barrels a day. I do not think it will be there, but if you project our current demand for those 10 years, we would like to be using another 40 million barrels of oil, and they will be producing another 2 million barrels of oil, 1/20 of the additional oil the world would like to use. Although there is a lot of energy there, and I am sure that we will find techniques to get it out that have some energy profit ratio so there will be energy there for a long time, but it is not going to be available anywhere near the quantities needed to meet the needs of contending with the crisis that will occur with peak oil.

Now, the oil shales in our country are very much the same thing. Recently you may have read of an experiment out in Colorado. I think it was Shell Oil Company that devised a new technique for getting the oil out of the oil shales, which is like the oil in the tar sands. It is very thick and will not flow.

What they did to avoid polluting the groundwater was drill a series of holes in a circle, and then they froze the ground because the oil will not move through frozen ground. Inside that frozen vessel, if you will, they cooked and cooked it for a year. They put steam down and cooked it for a year. After that year, they started sucking on the oil, and for another year they cooked and they sucked, and they got a pretty meaningful amount of oil out of that.

There is an awful lot of oil in the oil shales, maybe about as much as in the tar sands, but the scale, scaling up for this is incredibly difficult. I am not sure what the energy profit ratio is, because if you have to freeze the perimeter of that big vessel, if that is what you want to call it, and then you have to cook it for a couple of years, obviously you are putting a lot of energy in. They believe they got more energy out than they put in. But still, the energy profit ratio is not going to be enormous. Even if you can make that attractive, you still have the problem of scale. With the world using 84 billion barrels of oil a day, you have to have a lot of a million here, a million there before it adds up to what we are using.

Coal, you may hear people do not worry about energy, we have 500 years of coal. That is not true. At current use rates, we have about 250 years of coal. That is a long time, so why are we worrying? If we have 250 years of coal at current use rates, and obviously you can do with coal what we do with oil. Hitler did it. When we denied him access to oil, he made oil out of coal. When I was a little boy, the lamps that we call kerosene lamps today, we called them coal oil lamps because they were filled with oil, made from oil. So if you must use coal, if you have greater demand than we use today, that 250 years quickly shrinks. I have a chart a little later that shows that. But it quickly shrinks to about 85 years, and if you have to use some of the energy to convert the coal since you cannot have a trunkload of coal in your car, the energy to do that now shrinks that supply. There is only a 2 percent growth rate, and I think we will have to use it at much more than 2 percent growth rate, and it shrinks it to 50 years. So we have to husband that resource very wisely.

We have already chatted briefly about nuclear fission and nuclear fusion. Today we produce 20 percent of our electricity from nuclear. France produces 75 or 80. If you have some concerns about nuclear power, when you drive tonight note that every fifth business and every fifth house would be dark if were not for nuclear energy.

□ 2130

One-fifth, 20 percent, of all the electricity in our country comes from nuclear. Well, once these are gone, and they will be gone, except nuclear breeder reactors, as many of those as we want to have and maybe, maybe if we are lucky nuclear fusion. But we will transition, Mr. Speaker, whether we like it or not, as the world runs out of oil, we will transition to the renewables. What are they? They are solar and wind and geothermal. Geothermal is when we tap into the molten core of the Earth when we are close enough to that that you can get some heat from that. If you go to Iceland, there is not a chimney there because all of their energy comes from geothermal.

We are trying very hard, as I mentioned previously, to tap into ocean energy. It is not just the tides. It is the waves. It is the thermal gradients in the ocean, the cold water at the depths, the warmer water on top, kind of a thermal couple effect that you can get there.

Then there is lots and lots of talk about getting energy from agriculture. Soy diesel, bio diesel, ethanol, methanol, biomass. The President mentioned it in his State of the Union. He said we are hooked on oil and have got to wean ourselves from that, and technology will do it. And he talked about some exciting technology, about taking some biomass like soybean stubble and corn stalks and switch grass. What is switch grass? Switch grass is prairie grass, and a lot of it grows. Of the prairie that we did not plow up and let that return to switch grass, it is a big crop every year. And they are talking about harvesting that and using something like culling cellulosic ethanol. We bioengineered a little organism that can split cellulose into its requisite glucose molecules. It is made of sugar. Sure does not taste like sugar. See, because the human's molecules are so closely tied together that the enzymes in our body cannot split them. But these little bioengineered organisms can do that, so we break cellulose down to glucose, and then we ferment the glucose, and we get ethanol from it. And there is a lot of talk about that.

And biomass. Waste energy. Burning waste. There is a plant not far from here in Montgomery County, I would be proud to have it by my church. It looks like an office building. You do not even know it is an incinerator burning trash and producing electricity. They bring the trash in by truck or train in containers. You do not even see it until it is inside the building and then they dump it. Really interesting to watch it because that trash comes in with all sorts of things in it. They have a crane there that picks it up and drops it to see if there is something evil in it like a tank of propane. You would not want to put that in the fire. It might explode. And if they drop it and there is nothing evil-looking in it, they pick it up again and drop it over into the fire. It is really worth a trip there. And we now get a meaningful amount of energy, as a later chart will show from waste to energy.

Then hydrogen. Many people think that we do not have to worry about energy because we have got hydrogen. Hydrogen, Mr. Speaker, is not an energy source. Hydrogen is simply a way of transferring energy from one point to another. It will always cost more energy to make hydrogen than you will get out of the hydrogen. I can say that with some confidence because just as sure as there will never be a perpetual motion machine, we will never suspend the second law of thermodynamics. And that says that when you transfer energy from one form to another, you will always loose some energy in that transfer. Why are we so enthusiastic about hydrogen if that is true? It is because hydrogen has some incredible capabilities. When you burn it, you get water. That is really not very polluting, is it? And further more, hydrogen is a great thing to put in a fuel cell. And a fuel cell gets twice the efficiency of a reciprocating engine. So I am not depreciating the value of looking at hydrogen. I am simply pointing out that hydrogen is little more than a battery which takes energy from one place to another place. As a matter of fact, in a recent hearing, we had three experts on hydrogen, and there are three ways that you could transport hydrogen. One is as a liquid. It must be really, really cold, several hundred degrees below zero to keep it as a liquid, which means you have to have a lot of insulation, and even then it is going to boil off, so you have got to use it faster than that boils off.

The other way to carry it is as a gas. Well, hydrogen is the lightest element we have. Those gas molecules are really trying to get apart from each other, so it takes a really high pressure vessel to contain hydrogen.

The third way to transport hydrogen is in solid state. You adhere the hydrogen either by some adhesion or by some chemical process. You carry it in a solid state. That is very much like the way we carry electrons in what we call a battery. Hydrogen is a proton plus an electron; and so, and I asked the question, is a hydrogen battery inherently going to be more efficient than an electron battery? Well, we really need to look at hydrogen, but it is not a salvation to our problems.

The next chart looks at the characteristics that we are going to want to find in whatever alternative we turn to, and here we have on the ordinate the energy profit ratio. I have talked about energy profit ratio. That is how much energy you put in compared to how much energy you get out. And our big oil fields here, you see, they are up at 60 to one. As a matter of fact, the charts were even higher. Some of those were more than 100 to one. By the way, there were none of those in our country. They exist only in the Middle East and most in the big Darwar oil field. The granddaddy of all oil fields is in Saudi Arabia.

And the energy profit ratio is 60. You put in one unit of energy, one Btu, and you get out 60 Btus. The abscissa here is economic effectiveness in transport, that is, how handy is it to use. And we are talking primarily about transportation and liquid fuels, how handy is it to use. Well, oil of course is the handiest thing to use. It is way over here on the right. And it had an enormous energy profit ratio if it came from the giant oil fields. In 1970, when we peaked, our energy profit ratio was down here. Now it is harder and harder to get our oil, and so by 1985 the energy profit ratio had slid down to here. Notice where the energy profit ratio is for tar sands and ethanol and that sort of source: way down here, just about zero. In fact, some people think that the energy profit ratio for ethanol, the way that it is frequently made, is below zero here, that more energy goes into making ethanol from the fossil fuels that made the tractor and plows field and makes the fertilizer and so forth than you get out of the ethanol.

Well, here we have some of the other things: hydro, coal fired, nuclear, photovoltaics. They now are getting much better. They are moving up in energy profit ratio. Wind machines should be on here too, and they would be about in this same category. So whatever alternative energy source we use, to see how useful it is going to be, we need to put it on this chart: does it have a high energy profit ratio, and is it really convenient to use for transportation.

The next chart is one which really has the long look. I like this chart because it is kind of humbling. It kind of puts us and oil and our whole history into perspective. Here we have only about 400 years, a little less than 400 years out of 5,000 years of recorded history. But for the first 4,600 years not a whole lot happened. And so if you extended this back 4,600 years, it would look very much the same. Very little energy produced. Here you see it. Wood. And then we learned how to use it more effectively. The Industrial Revolution started here in the early 1800s. We denuded the hills of New England to send charcoal to England to make steel. There is a little historic place called Catoctin Furnace up in Frederick County, and we denuded our hills up there to make charcoal for Catoctin Furnace. And then we found coal.

Oh, the ordinate here is quadrillion Btus, how much energy you are producing. And then we found coal. And boy, look what happened. Look what happened. We really took off. The coal was very limited in what it could do compared with gas and oil, and the red curve here is gas and oil. And look what happened. It just took off and was reaching for the sky. Notice here the worldwide recession after the Arab-induced oil price spike hikes, worldwide recession, and we did use less oil. So we can economize. We can be more efficient. We can use less.

I might point out, Mr. Speaker, that the world's population has pretty much followed this. Just this afternoon I was looking at a chart of world population. Half a billion, a billion people for way back as far as we can look in history. And then we start the Industrial Revolution, and the world's population took off and it mirrors this. From a half a million, half a billion to a billion people up to now nearly seven billion people.

If, in fact we are at peak oil, and almost nobody denies, the most optimistic estimate I have ever seen is that we will reach peak oil at about 2035 or 2036. You know, that is not forever in the future. Most authorities believe that we are either here or it is very imminent. But if we have reached peak oil, we are about halfway through the age of oil. That is incredible. Out of 5,000 years of recorded history, 150 years now we are into the age of oil. In another 150 years we will be through the age of oil. Our great grandchildren will live then. What will their world be like? We face a lot of really serious challenges.

Mr. Speaker, when I think back, and someone asked me the other day how long I have been thinking about this subject, and maybe it is because I am a scientist. I knew that the fossil fuels could not be forever and so maybe 30, 40 years ago, when I was teaching school and doing research, I started asking myself that question, what does that mean, not forever? Do we have another 10 years, a hundred years, a thousand years? Obviously, it is not going to last forever. But what does that mean? And so I have been following this for 30, 40 years now.

The next chart looks at something that I have spoken briefly about and that is coal. And some will tell you, and I have heard a lot of people who ought to know better say, do not worry, we have got 250 years of coal. That is true, at current use rates. But if you start increasing coal only 2 percent a year, you know, Albert Einstein was asked after the discovery of nuclear energy, what is next? What is the most powerful force in the universe, Dr. Einstein? You know what his response was? The power of compound interest. That is exponential growth. Compound interest.

And if you grow only 2 percent a year, that 250 years now immediately shrinks to about, what, 85 years here? And obviously you cannot fill your trunk up with coal. You are going to have to convert it to a gas or a liquid. And so when you have used some energy to convert it to a gas or a liquid, after conversion you have got about 50 years left. That is a long time. And it is a meaningful resource. But it is not forever. And by the way, there are one of two penalties you are going to pay for burning coal. Either you are going to pay a big environmental penalty if you do not clean it up. And every year we vote some billions of dollars for clean coal technology. And still we have too much CO_2, too much pollution from coal.

And by the way, Mr. Speaker, the use of coal is not without its price. We have had, what, 16 miners killed in West Virginia in the last couple of weeks in producing coal.

When was the last time you heard that a worker in a nuclear power plant was killed or injured? The answer is, never in this country. It just has not happened. I lived through the Three Mile Island disaster. I was not very far from it in Frederick, Maryland. There was a lot of hoopla about that. Very little actual effects of that. I have some friends who have been avidly antinuclear. When they are considering the alternative of shivering in the dark as we run down the other side of Hubbert's peak, they are wisely taking a new look at nuclear.

Our next chart is a very interesting one. We have talked about the potential from agriculture. Let me make two generalizations as a caution. We are barely able to feed the world. Tonight, 20 percent of the world or so will go to bed hungry. How much food can we convert to energy and still feed the world, particularly if we permit the world's population to increase as it is today?

The other caution is, how much biomass can we take from our land and still have topsoil? With all of our good techniques today, no till farming and so forth, every bushel of corn we grow in Iowa is accompanied by three bushels of topsoil that go down the Mississippi River.

Now, topsoil is topsoil, rather than subsoil simply because it has organic matter in it. And that organic matter, the humus comes from decaying organic material. And if you are taking all that organic material off to burn or to ferment or whatever you are going to do with it, I am not certain how long we can maintain the quality of our topsoil so that we can continue to produce the food and fiber that we need and that the world needs.

On the top here are shown two depictions. One is the amount of energy you get out of petroleum. Obviously, you do not get all the energy in your car. It takes energy to drill the wells, to pump it out, to transport it, to refine it, to haul it to the gas station and so forth.

□ 2145

So when we get out 1 million Btus, there are probably, they estimate, it took 1.23 million Btus input. So you do not get it all in your car. You would not expect to.

Now, what about the energy profit ratio here of ethanol? And here we are getting a lot of energy from the sun. What does that mean in terms of the final product? And I am told by some this is a pretty optimistic assessment here. But even if we reach this, you have put in .74 million Btus. Almost three-fourths of the energy you get out of ethanol is represented by the energy that went into producing ethanol. There is an energy profit ratio, although some have disputed that. There is a doctor in the East here and one in the West, and they have done what they say is a very good analysis of all the energy, and it is hard to keep track of that, Mr. Speaker. It is not just the diesel fuel they use in the tractors. How much energy does it take to make the tractor? Every automobile tire has the equivalent of 6 gallons of oil in it. As you burn the tire, you get some sense that that is probably pretty close to the truth.

These two scientists believe that today in the way that some ethanol is made, it takes more energy from fossil fuels to make the ethanol that we get out of the ethanol. Even if that is true, there is a good byproduct remaining, all the fat and all the protein. Tofu is a protein, by the way. That is the protein from soybeans. We get a similar protein from corn. So we can use that as animal food or human food.

The bottom chart here shows some of the challenge of getting energy from corn. This is a pie chart which shows the total amount of energy that goes into producing a bushel of corn. And notice, Mr. Speaker, that almost half of that total energy comes from nitrogen. That is because nitrogen fertilizer is made from natural gas. Before we learned how to do that, the only source of nitrogen fertilizer was barnyard manure and what we call guano. Guano is the droppings of bats and birds for very long periods of time, hundreds of years, maybe thousands of years, and it accumulated on the tropical islands, and in the case of bats, we mined that to get guano. That is gone. If we wait another 10-, 20-, 30,000 years, there will be some more. But it takes a very long time to accumulate that.

This is all the other energy that goes into producing a bushel of corn. Potash was mined using fossil fuels. Phosphate was mined using fossil fuels. The lime was quarried using fossil fuels. Here is the diesel fuel that ran the tractor and the combine, the gasoline that is used in some of the farm equipment, liquid gas, electricity, all of which is produced by fossil fuels, most of it by fossil fuels, some by nuclear, 20 percent by nuclear. The custom work, the diesel that went into doing the work, the energy, the fossil energy it took to build the tractor and so forth. And many of the chemicals we use in agriculture are made from oil. The water is pumped using energy. The hauling, the seed, fossil fuel energy goes into producing all of this.

Mr. Speaker, how will we feed the world once we run down the other side of Hubbert's peak?

The next chart, this is a really interesting one. I use an analogy here that helps me to understand this. I imagine a young couple that has just gotten married, and their grandparents died and left them a pretty big inheritance. So they have now established a lifestyle where 85 percent of all the money they spend comes from their grandparents' inheritance and only 15 percent from their income. And they look at the amount they are spending and at the size of the grandparents' inheritance and say, gee, this is not going to last until we retire. So obviously they have got to do one or both of two things: Either they have got to spend less money, or they have got to earn more money.

I use that 85–15. Others may use 86–14. The 85 or the 86 is the percentage of energy in our economy that we get from the fossil fuels, natural gas and petroleum and coal. Only 15 percent in this depiction do we get from nonfossil fuel sources. A bit more than half of that, nuclear energy, 8 percent, that is, 8 of 15, a bit more than half, comes from nuclear. That is 20 percent of electricity, but 8 percent of our total energy use heating buildings and manufacturing and so forth. Seven percent of it comes from renewables. Remember that previous chart? Ultimately we will transition to these renewables, with the exception of what we will get from nuclear. When we are through the age of oil, it will all be renewables.

What are they? Solar. This is a 2000 chart. We are better today. In 2000, solar represented 1 percent of 7 percent. That is .07 percent. It has been growing at 30 percent a year. That doubles in about 3 years. So now, big deal, it is .28 percent of our total energy.

Wood, 38 percent. Not the West Virginia hillbilly, but this is the timber industry and the paper industry wisely using a waste product, what would otherwise be a waste product.

I mentioned waste before. That is 8 percent of our total renewable energy. We ought to be producing a lot more of that. Landfills are pretty silly when you think that you could be producing electricity with that rather than worrying about the methane that is produced there. They do harvest some of that, by the way, and use it.

Wind, another 1 percent. By the way, wind and solar are essentially the same energy source. The wind blows because of the differential heating of the sun; so they both go back to the sun. We can now produce electricity from wind at 2½ cents a kilowatt hour. That is really competitive. Why are we not producing more of it? Wind farms are growing. You may see them. Some people do not like the look of those. I think that the big wind machines are pretty handsome. That is about where solar is today, about .28 percent of our total energy.

How long will it take us to get to any meaningful percentage there? Because that is increasingly what we are going to have to rely on in the future.

Conventional hydro, almost half of all of our renewables comes from an energy source that is not going to grow in our country. We have dammed every river that should be dammed and probably a few that should not; so that is not likely to grow.

Now we are down here to agriculture, alcohol fuels and so forth. Again, almost in the noise level. And geothermal, where we are close enough to the molten core of the Earth, we really should tap into that. That is free. It is forever if you use it properly.

The next chart shows us something very interesting. Mr. Speaker, I would like to get some input from statisticians on this because everybody knows the jargon of something which is statistically significant. There is a 95 percent probability, there is a 5 percent probability, and so forth. And here they have done something which I find very strange. If you are looking at the path that a hurricane is going to take, you notice it starts out very narrow. It could get pretty good for the next few hours, but when it gets out to hours and days, it gets broader and broader. Now, the hurricane maybe will go down the middle, but there is just as big a chance it will go to the left as there is that it will go to the right. And what these folk are doing and what they are using here is statistical jargon. They are saying a high 5 percent probability, low 95 percent, and the mean is what is in the middle. Now, that could just as well be a whole lot less as that much more. So the real peak is probably going to occur about right here.

This is where we are now. This is the 2000 chart. We are about right here. They are using this mean here. No one that I know of believes that the ultimate recovery, 1 billion barrels of oil, is 3 trillion. But even if you use the 3 trillion, that takes you only to this point. It pushes peak oil out only to 2016.

The next one is a really interesting one. If you assume that you are going to get it faster and move the peak out to 2037, look what happens after that. You fall off a cliff.

So we need to be careful about this enhanced oil recovery, because if there is only so much to pump, and you pump it sooner rather than later, later you are going to have less to pump.

Back to Robert Hirsch and the study done by SAIC. They say on Page 64, "World oil peaking is going to happen." And down here he says that oil peaking presents a unique challenge. The world has never faced a problem like this without massive mitigation, more than a decade before the fact. And remember, Mr. Speaker, very few authorities believe that peak oil is more than a decade from now. So we are pretty much here.

The next chart points out something very interesting, and that is that this really is a worldwide problem. We are all in the same boat on this little planet Earth traveling through space. There is only so much oil. There are about 7 billion people, and clearly we would do better to engage the nations of the world in a competition to achieve sustainability instead of a consumption contest, which is now what we are doing: Who can use the most oil to grow their economy the fastest?

The next chart shows ideally what we need to be about.

By the way, Mr. Speaker, I think that if we do not have a national and indeed international program which kind of has the breadth of putting a man on the Moon and the intensity of the Manhattan Project, I think we are in for a pretty rough landing.

First of all, there is voluntarily conservation, and we can do that. We can conserve. California did. They had no rolling blackouts because they voluntarily reduced their electricity use by 11 percent in a single year. That is big. We start out with voluntary conservation, ride with two in the car, turn our thermostat down, put a sweater on. To organize voluntary conservation, working together to provide for the van pools and so forth, then the government can provide some monetary incentives, giving you the incentive to do the right thing. And then efficiency, of course. These were two words that were absent from the President's very good message on energy, conservation and efficiency.

I am a conservative. My wife says she thinks that there ought to be some relationship between conservation and conservatives. Does that make sense, Mr. Speaker?

The next chart we are going back again to the Hirsch report. That was such a great study. They said on page 24, "We cannot conceive of any affordable government-sponsored crash program to accelerate normal replacement schedules so as to incorporate higher energy efficiency technologies into the private-owned transportation sector. Significant improvements in energy efficiency will thus be inherently time-consuming of the order of a decade or so."

For instance, if everyone was to drive a hybrid car, which gets two or three times the mileage of an ordinary car, it takes one or two decades to turn over the motor fleet; 28 years, I think, for the big trucks; much less than that for the vanity of cars and so forth.

The next chart, this is something that we are doing out in Frederick. We wanted to demonstrate that it was possible to be totally self-sufficient, so we have proposed, and we have funding to do it thanks to the generosity of the taxpayers, that we are going to build a welcome center coming down into Frederick that is totally energy self-sufficient. We will get all of our water from the rain. We will handle all of our waste without putting anything into the ground, with composting toilets and constructed wetlands and so forth. We will produce all of our energy with wind machines and solar panels and so forth. This should in the next couple of years be existing. If you go up 270 into Frederick and start down the hill where you look over the Frederick Valley and see the city there, on your right will be the Goodloe Byron Overlook. If you pull in there, you will be at this welcome center, which will have a lot of what we call benign technologies.

In the few minutes remaining, I would like to use the *Apollo 13* as an example of the challenge that we have. You may remember the *Apollo 13*. They had an explosion in one of their oxygen tanks. They had two oxygen tanks. And that explosion caused the other oxygen tank to leak. So not only were they going to be short of oxygen for themselves if they were not careful, they were going to be short of energy because they were using that oxygen to combine with hydrogen in a fuel cell to produce energy.

□ 2200

What they had available to them was the module, the lunar lander. They turned around, as you may know. They had to evaluate what they had to work with, and that is all they had to work with, what was in that little spacecraft out there. What could they do with that? They had a big challenge of CO_2 buildup and what they were going to do to manage that so that they could get back. They had a very narrow window.

There are a lot of analogies between the *Apollo 13* and where we are today. They had a challenge not of their choosing. We did not choose to reach peak oil at this time, but they were faced with the inevitable decision of either making the right choices or not making it through, and we are faced with very much that same kind of a dilemma. We have some choices to make now, and the next chart points to the kinds of choices that we have and what I think we need to be doing.

I want to refer you to an earlier chart which, by the way, we had that bell curve and we had the consumption going up like so, and there is a gap there.

A lot of people are trying to fill the gap. Here is that chart. Put that in front of this one. We will talk about that in just a moment. A lot of people are talking about filling the gap so that we continue on this course and use ever more and more.

I would suggest, Mr. Speaker, it is not what our challenge should be. As a matter of fact, to get alternative energy sources, we are going to have to invest three things. Money, we will not worry about that. We will borrow that from our kids and our grandkids. I am sorry to say; but we cannot borrow time from them, and you cannot borrow energy from them. We have run out of time. We are using all the oil that is available. If there was more oil than we would like to use, it would not be a sixty-couple dollars a barrel, would it? So in order to have any energy to invest in the alternative, we have to reduce our demand for oil so we have something to invest.

Trying to fill the gap just puts off the inevitable. If, in fact, we are able to do that momentarily, since there is not going to be much more oil found out there, the experts believe all you are doing now is setting yourself up for a bigger fall later. The old adage, in a hole, stop digging, the corollary to that is you are climbing a hill and you are going to fall off the other side, the higher you climb, the further you fall. This is pretty much where we are with oil. Let us go back now about the choices before us now.

Like *Apollo 13*, we have got to develop those contingency plans. What will we do? We need to prepare proactively. We have almost run out of time to do that. We must reduce energy consumption to make some energy available. That will buy some time. By the way, the cheapest oil is the oil you do not use. We have bought some time so we can make investments now in more efficiency, first of all, and then in these alternatives which we will increasingly turn to.

The ultimate goal is to achieve sustainable growth. By the way, Mr. Speaker, there is no such thing as sustainable growth, whether short term you may make it appear to be so; but ultimately there is no such thing as continued forever sustainable growth. We are going to have to learn to be happy with being satisfied with what we have got.

I think, Mr. Speaker, we have some really, really great times ahead of us. I can imagine nothing more than all Americans feeling really good about contributing to a solution to this problem.

What we really need is leadership that the American people understand that they really can contribute. We have enormous creativity and entrepreneurship. We need to harness that. The next big burst in economic efficiency and growth can be in developing these alternatives and more efficient ways of doing things.

The ultimate goal, and we will get to that goal, we will transition. When the age of oil is finished and there is no more oil that can be gotten without paying more for the oil than you get out of it, we will have been transitioned to the renewables. What will life be like then? What will life be like in that transition?

This is really a good-news story. The sooner we start to address this problem, the less traumatic will be the transition. I like to think, Mr. Speaker, that if we harness the creativity and the energy of the American people, there is nothing that will make sleep so refreshing other than just knowing you really contributed something that day.

Mr. Speaker, I think that we have a bright future ahead of us. Unless we recognize, we probably are approaching peak oil. I would encourage, Mr. Speaker, that you go do a Google search for peak oil, pull up the articles on peak oil or do Hubbert's peak, you will find essentially the same articles there. There is a lot of information out there.

The average person is so consumed with the necessities of life, the tyranny of the urgent that pushes the important off the table: you really need to change the diapers; you really do need to be responsible; you also need to be thinking about tomorrow. We think about our next election. The board of directors thinks about the next quarterly report. Who is looking 5 years from now, 10 years from now?

Mr. Speaker, I think we have a great future ahead of us. The American people will respond if properly challenged.

30-SOMETHING WORKING GROUP

The SPEAKER pro tempore (Mr. CAMPBELL of California). Under the Speaker's announced policy of January 4, 2005, the gentleman from Ohio (Mr. RYAN) is recognized for 60 minutes as the designee of the minority leader.

Mr. RYAN of Ohio. Mr. Speaker, I appreciate the opportunity to be here, and let me first say to the gentleman regarding his presentation here tonight regarding alternative energy sources, not only was it impressive and thorough, but I think he hit the nail right on the head. I think this is an issue that the next generation is going to have to deal with, and I know that our 30-something Working Group is very interested in working with the gentleman for alternative energy sources and figuring out what we are going to do.

Our topic tonight, Mr. Speaker, is what is going on here at home regarding the budget and regarding the budget deficit that the Republican Congress has run on an annual basis, but also the national debt.

The President will be coming back to the Congress to ask the Republican Congress to raise the debt ceiling, the debt limit. This is deja vu all over again. This Republican Congress continues to borrow and borrow and borrow and spend and spend and spend, really, like drunken sailors, like there is no end in sight; and our country cannot continue to go down this irresponsible path. We would like to talk a little bit about it tonight.

In order to borrow money, the Congress needs to pass legislation and the President needs to sign legislation that will allow the U.S. Treasury to borrow money; and the more deficits we run on an annual basis, the more we have to borrow. So the debt ceiling gets lifted.

The Republicans went out, borrowed more and more money till they hit that ceiling and had to pass legislation to raise that ceiling again to allow the Treasury to borrow even more money. That is what is happening right now.

To give you some perspective here, Mr. Speaker, when President Clinton came into office in January of 1993, we were running tremendous budget deficits. In 1993, a Democratic Congress and President Clinton passed a budget without one Republican vote and passed the budget that led to the greatest economic expansion in the history of the United States of America, created over 20 million new jobs. The stock market went crazy. There were benefits for everyone in our society because of the tough decisions; and quite frankly, Mr. Speaker, several Members in the Democratic Caucus lost their seats over that tough vote. They made very difficult decisions in the early stages of President Clinton's Presidency in order to balance the budget and do the right thing; but even though they made this difficult decision, we were still running tremendous budget deficits early in the 1990s, mid-1990s.

So President Clinton came to this Congress in his 8 years, and as we can see here as President Clinton came in, running budget deficits and then eventually running surplus into the later years of his Presidency, but President Clinton early on, because of the deficits that were run up through the Reagan administration, through the first George Bush administration, and then into the Clinton administration, President Clinton had to come to Congress and ask to raise the debt ceiling.

Just to give you some perspective, Mr. Speaker, in 8 years, President Clinton asked the Congress to raise the debt ceiling twice, two times, in order to fix this problem. Then we had economic growth, we had balanced budgets, we had surplus money, and we had arguments in this Chamber about where the money was going to be spent. Two times in 8 years President Clinton early on asked to raise the debt ceiling.

President Bush, current President Bush, has asked this Congress to raise the debt ceiling five times already, five times, because there is runaway spending from this Congress. I am joined by my friend, the gentlewoman from Florida (Ms. WASSERMAN SCHULTZ). Five times, because of the runaway spending, the corporate welfare, time and time and time again to the pharmaceutical industry, to the HMOs, to the energy companies the gentleman from Maryland (Mr. BARTLETT) was talking about earlier. We continue to give this corporate welfare, and with a blatant and reckless disregard for the fiscal responsibilities that we have here.

We all know now that we are borrowing the money from the Chinese Government and Japanese Government, the Saudi Arabian family, the house of Saud. So we are not going to the Second National or Sky Bank or Bank of America to get the money. This Congress and this President are going to the Chinese Government to get it.

I would be happy to yield to the gentlewoman from Florida (Ms. WASSERMAN SCHULTZ), my friend.

Ms. WASSERMAN SCHULTZ. Mr. Speaker, I thank so much my good friend from Ohio. I am particularly struck by your comments and your laying out of the real significance of the problem we are facing here.

I have only been here a year now. I am a new Member, and I came from 12 previous years in the Florida legislature. The whole concept, I mean, I certainly understand what the debt limit is and the debt ceiling, and I have watched the President's brother, Governor Bush, do the exact same thing in Florida and asked repeatedly for our debt limit to be extended. So there is clearly a pattern running through this family.

But what is so foreign to me as a State legislator, and I know we have many former State legislators in this Chamber, is the whole concept of debt and operating in the red to begin with. Most States cannot deficit spend. Most States have to adopt a budget that balances. You do not borrow against next year. You spend what you have, just like the concept of PAYGO that the Democrats in the Congress have supported for years and continue to support, and then for some reason we cannot get the Republican leadership here to go back to that concept.

It is mindboggling. How does a party and a group of people who supposedly pride themselves on their fiscal responsibility not support the concept of paying as you go? I do not understand. I mean, those two concepts are opposites. Fiscal responsibility, yet five increases in the debt limit in the debt ceiling. It is really tough for me to understand.

We are borrowing away our children's future, and it is a concept that I have not been able to get my mind around. We want to make sure that we reduce the deficit, but the President talks about it in his State of the Union address. You constantly hear Republican Members of Congress profess that they have an interest in cutting the deficit in half or eliminating the deficit. Yet, the budget that the President submitted does no such thing. In fact, over the next 10 years it ensures that the deficit continues to stay significantly high, does not even come close to cutting it in half; and, actually, he presented us a budget on Monday that includes no assumption that we would spend no money on the war in Iraq after next year.

I mean, to me, I analogize the reality of the budget the President gave us on Monday to one that my first graders might sit down and write because they have about the same similarity in terms of likelihood of success here in this Chamber, the same similarity that my first graders would write to the ability to actually meet the needs of the people in the country.

□ 2215

You know what it really boils down to? It boils down to hypocrisy, because the same people who accuse Democrats of being tax and spend liberals, you know, and I am loathe to repeat that misnomer because it is so insulting, but if we are tax and spend liberals, they are borrow and spend. They are borrow and spend.

Because if we say that we do not think tax and spend is a good idea, which I think universally Republicans and Democrats would say taxing and spending as a way to solve our problems is not a set of solutions for the future of this country, how is borrowing and spending any different?

I mean, you are mortgaging our children's future, and that, you know, I think if we had some semblance of bipartisan here that some people profess to be supportive of, I would love to sit down around a table. Maybe Mr. BOEHNER, the new majority leader, will be different, I am certainly hopeful. But I would love to sit down around a table with a bipartisan group of Members and find a way to pay as we go.

I will yield.

Mr. RYAN of Ohio. I think the pay as you go is basic common sense. It is the same thing that people have to do at home. You get the checkbook out, you take in so much, you can only spend so much, or you have to end up borrowing money or putting it on your credit card, and we know that is definitely a downward spiral.

But exactly what you were saying, I think the President signed it into law today, the Deficit Reduction Act, which is hysterical, because it actually increases the deficit. Now, our Republican friends are saying, well, it cuts $39 billion, the deficit by $39 billion, or there is $39 billion in cuts, but at the same time, they gave $70 billion, or close to it, in tax cuts that went primarily to people who make more than 4- or 5- or $600,000 a year. So it is very simple math to realize that, well, you may cut tell by 39, but if you are reducing your revenues by $70 billion, that there is still a deficit increase. And that is basically what happened.

Now, you can check the rolls here as far as what Democrats have voted for. Time and time again, the Democrats have supported middle-class tax cuts. We have supported tax cuts for small businesses. We supported tax cuts and credits for college tuition. But I am not ashamed to say that we are going to ask Bill Gates and Warren Buffett to pay their fair share in taxes, because right now they are getting a free ride. And I am not afraid to say, and the 30-something Working Group is not afraid to say, that we do not want to give public tax dollars to the tune of $16 billion to the energy companies. You got to be kidding me.

I mean, you know, Mr. Speaker, people who may be watching this in the Chamber or Members in their offices should be startled that we are going to go out and collect tax dollars from the public. Average people making minimum wage, or 10 bucks or 15 bucks an hour, send money down here to us, and the Republican majority is taking that money and giving it to the energy companies when, you know, Exxon-Mobil is making $39 billion in a quarter, and all of the other oil companies are doing extremely well.

Or we are going to take that money, Ms. WASSERMAN SCHULTZ, we are going to take the public money, and we are going to give it to the HMOs, or we are going to make sure that we are wasting it and giving it to the pharmaceutical companies, without any kind of price controls.

Ms. WASSERMAN SCHULTZ. Essentially what that is is a manifestation of the culture of corruption. I mean, that is how you translate the culture of corruption which shows itself in individual Members in some cases, and people who are under suspicion and investigation, although not charged. And that is how you take it, or that is how they take it a step further and translate it into policy.

I mean, when we are providing significant tax dollars for energy companies, when we are essentially ensuring that special interests have their pockets lined via people 's tax dollars, then that is the manifestation of the culture of corruption and how it impacts people in terms of the policymaking that goes on here.

And we talking about third-party validators. It would be easy for us to just say what we think standing on this floor. But, you know, it would be very easy for us to lay out, you know, progressive liberal Democratic organizations to validate what we are saying here.

I am going to read you a few third-party validators who laid out their opinion of the President's budget in the last several days. Goldman Sachs, for example. They said that the deficit forecasts that were laid out in the President's budget this week were unrealistic.

Bush's budget proposal assumes that the Federal deficit would jump from $318 billion last year to $423 billion in

2006, then slide back down to $183 billion in 2010. Those factors led Goldman Sachs economists to tell clients yesterday that the deficit forecasts are unrealistic.

Mr. RYAN of Ohio. Goldman Sachs is not a liberal organization?

Ms. WASSERMAN SCHULTZ. No. And also not a liberal organization is the Heritage Foundation, who says that the budget does not deal with retirees. Brian Riedl, budget analyst for the conservative Heritage Foundation, said that Bush's budget is clearly not enough to feasibly solve the most important economic challenge of our era, how to deal with 77 million baby-boomer retirees.

The Concord Coalition, also not a liberal bastion, said the White House was working off very unrealistic assumptions. Robert Bixby, executive director of the Concord Coalition, said of the Bush budget, when you look at the bottom line that they are putting out, it is important then to look at the assumptions. And I think there are some very unrealistic assumptions there that would probably keep the deficit much higher than the administration is showing.

When I say that my first-graders could sit down and write a similar budget that bears the same resemblance to reality, I am really not kidding.

You know, I am not just being tongue in cheek here. The President owes the American people the responsibility that he has taken when he took his oath to uphold the Constitution, a budget with realistic projections that does not just paint the rosiest picture possible so that he can coast through the rest of his term.

Mr. RYAN of Ohio. Right. This is not a game. This is not a game that needs to be played. We switch the numbers here, and we switch them here. This is important, because as of February 8, which I believe is today, $8,200,380,327,202 is the national debt. And we will have a chart next week that is updating this. And the President is going to come and ask to rise the debt ceiling so that we can go out and borrow more money. But your share of the national debt, Ms. WASSERMAN SCHULTZ, is $27,518. That is what you owe, the debt you owe to the United States Treasury.

Ms. WASSERMAN SCHULTZ. Now, Mr. RYAN, is that just adults?

Mr. RYAN of Ohio. No. That is yours, your kids'; each one of your kids, every citizen in the United States owes $27,000 for the national debt. And the President is going to ask Congress for the ability to go out and borrow even more so that each citizen can owe even more.

Now, what we are trying to say here in the 30-something Group is that we have got to be responsible, we have got to balance the budget. We have got to make sure that we stop borrowing money from the Chinese Government, because ultimately it is going to lead to each citizen having to pay more of their paycheck in taxes to fund the debt, and we do not want that to happen.

So our friends on the other side can talk about tax cuts all they want, but as they continue to go out and borrow money with the full faith and credit of the United States Government behind it, it means our taxpayers are good for it. So if you are home, you are good for it. We can count on you to raise your taxes so that you can give the Republican majority more money so that they can pay the bills.

Now, would not it be nice, you know, if you are at home and you get your credit card statement, your credit card only allows you to borrow $10,000. Whew. Boy. I am at $10,000. I am at $9,990. Would it not be nice if I could just call up the credit card company and say, you know, I realize I am not making any more money, I am probably making less, I realize that health care costs have doubled, tuition and everything else, can you give me another $10,000 so I can borrow more?

And really the worst thing that can happen is the credit card companies says, yes, go ahead. Then you owe them more. And you owe more interest. It is this downward spiral that we are in right now. It is ultimately robbing the future of our country.

I want to kick it to you, but I just want to share one more statistic here that we have been using that I think is astonishing, astonishing. In the first 224 years of this country, from 1776 to 2000, we borrowed as a country $1 trillion from foreign interests. Okay. They were foreign holdings of U.S. debt, $1 trillion dollars in 224 years.

President Bush and the Republican House and the Republican Senate in the last 4 years have borrowed $1.05 trillion. They borrowed more money from the Chinese, the Japanese, the Saudi Arabians in 4 years than this country has borrowed in 224 years.

That is unbelievable to think that our friends on the other side, who many of them are friends, can say with a straight face, we are fiscally responsible. We are the party of fiscal responsibility. We want to cut taxes and reduce government burden. Reduce government burden? My goodness gracious. Borrowing money from the Chinese Government is somehow being fiscally responsible to the tune of $1 trillion?

So this all adds up to a real cost of the kind of corruption that we have down here, because you give tax cuts to your rich friends, you give subsidies to the energy companies, you give subsidies to the pharmaceutical companies, but you are borrowing the money on the backs of your kids.

Ms. WASSERMAN SCHULTZ. To take that a step further, and, Mr. RYAN, before I do that, we have used this chart repeatedly because it is so illustrative of the stark ineptitude, for lack of a better term, of this administration, you know, compared to all of the other previous administrations combined.

I am wondering, sometimes people catch this Special Order hour, and sometimes they do not. I know we have a Website, and we have recently revamped it, and my understanding is that the charts that we use are going to be available on our Website in the event that people want to go and look at them more closely. Is that right?

Mr. RYAN of Ohio. That is correct: www.housedemocrats.gov/30something. And this will be the Web page that pops up, 30-something Working Group. Then you go to the bottom and it says, our posters. So you will be able to get to our posters here.

Ms. WASSERMAN SCHULTZ. They can peruse them at the their leisure.

Mr. RYAN of Ohio. Yeah. And they are really good, because we have taken all of the information that Tom Manatos here, who is our go-to guy with the 30-something Working Group, kind of boiled it down, and you will be able to see our third-party validators.

Now, for example, this poster here, now we have added the pictures, obviously, to help make our points to see that this is President Bush, he is responsible for the last 4 years, and all of those pictures of all of the other Presidents, Andrew Jackson, President Kennedy, there is Taft, Lincoln, they are all here. But at the bottom it says, source, where we cite our source, is U.S. Treasury. We are not making those numbers up. So go to the Website and you will be able to see this poster that our crack staff has put together.

Ms. WASSERMAN SCHULTZ. We have sort of interchangeably been talking about two different things. There is the debt, and then there is the deficit. Both things are startling when it comes to this administration's record. Under this President the deficit and the national debt are out of control.

Mr. RYAN of Ohio. The deficit is the annual.

Ms. WASSERMAN SCHULTZ. Right. The deficit is the annual ongoing difference between the revenue we take in and the money we spend. And then the debt is what we have to borrow in order to stay afloat.

Over the last 5 years, it is clear that President Bush has lost control of both. Under this President we have gone from a projected 10-year surplus of $5.6 trillion to a projected deficit over the same period of $3.3 trillion, which is an $8.9 trillion reversal.

Under President Bush's budget, when omitted costs are included, we have deficits for as far as the eye can see. You have a projected rise in the deficit to $556 billion by 2016. And when we talk about omitted costs, people might say, what do you mean by omitted costs? Like the fact that this budget does not include any spending on the war in Iraq and Afghanistan after next year.

Now, I wish, oh, were that to be true, that we would now be in a position where Iraq would be, and the Iraqi people would be, able to sustain themselves without our assistance. Unfortunately, we have created a situation in which that continues to be impossible, and it is a virtual certainty that we are going to need to spend money after next year in Iraq and Afghanistan, despite the President's claims.

When omitted costs are included, the President's budget does not cut the deficit in half by 2009 as he continues to claim that it will.

□ 2230

What continues to be mind-boggling is that we could fix this if you go back to the pay as you go rules of the 1990s, which is what turned the deficits into surpluses, tough votes that people took. Like you said, there were Members that lost their seats, but at the end of the day, it has to be more important to do the right thing than to continue to be here for each one of us, and that is something that we have to internalize. This is a good job. This is a job that we all really enjoy. I have not met a Member of Congress who does not like the job a lot, and that is why many of us, most of us, fight hard to keep it every election cycle. But at the end of the day, you have to be willing to look yourself in the mirror and say you did the right thing and be willing to walk out of this Chamber and know that you may not come back after you did the right thing.

Unfortunately, we do not have enough people who serve in this body that are willing to do that. And unfortunately, it appears to be a little lopsided when it comes to the partisan breakdown of that willingness.

This is literally the worst reversal, the worst fiscal reversal, in American history. We have never had the kind of turnaround from a record surplus to a record deficit like the one we have had. And the national debt, as you said, continues to skyrocket. They have had to raise the debt limit five times, but total combined it was $2.2 trillion that the debt had to be raised since President Bush took office. I mean, it really is astonishing.

Mr. RYAN of Ohio. What is interesting about the $2.2 trillion is that is more money than this country borrowed from the inception of the country to the beginning of Ronald Reagan's Presidency. So just in the Bush administration alone we have had to raise it $2.2 trillion, which is more than whatever the math would be from Reagan back to George Washington. This Republican Congress is setting records here on this issue.

Ms. WASSERMAN SCHULTZ. There is something else I want to bring up, if you do not mind. I think it is important to compare words and deeds. And we both sat in this Chamber during the State of the Union and listened to the President lay out his vision for America. I want to read out from one of the paragraphs from the State of the Union and compare it to a couple of weeks later when he introduced his budget.

He said in the State of the Union that "our economy is healthy and vigorous and growing faster than other major industrialized nations. In the last 2½ years America has created 4.6 million new jobs, more than Japan and the European Union combined. Even in the face of high energy prices and natural disasters, the American people have turned in an economic performance that is the envy of the world."

Now, during my time in the legislature, and I spent a little bit of time in leadership in the statehouse in Florida, one of the things that the party leadership generally engages in is choosing words carefully. You choose the words as carefully as you can so that what comes out actually reflects the reality on the ground. Now, I can see why the President would have chosen to say that our economy is growing faster than other major industrialized nations, because he probably could come as close to the accuracy as possible when it comes to the economy.

But just take this AP story, again, a third-party validator that we like to use, just from January 27, which talked about the economy grows at slowest pace in 3 years. The economy grows by just a 1.1 percent pace in fourth quarter, slowest in 3 years. The annual rate in the fourth quarter of last year was 1.1 percent amid belt-tightening by consumers facing spiraling energy costs. The 1.1 percent growth rate in the fourth quarter marked a considerable loss of momentum from the third quarter's brisk 4.1 percent pace. The fourth quarter's performance was even weaker than many analysts were forecasting. Before the release of the report, they were predicting the GDP to clock in at a 2.8 percent pace. The weakness in the final quarter of last year reflected consumers pulling back, cuts in government spending, and businesses being more restrained in their capital spending.

This is not a columnist that wrote this. This is an actual story that is reporting facts on the ground.

I just feel resentful when I sit in this Chamber and I listen to the President respectfully, and I expect on behalf of my constituents to hear accurate statements, to hear a true reflection of the state of our Nation. And instead what I felt like we got was a lot of partisan rhetoric, a lot of rhetoric that was not matched up with action as I would have liked to have seen it reflected in the budget.

He turned in a budget that actually gives us $36 billion in Medicare cuts. I mean, in a State like mine, I represent the State of Florida, as you know, that is going to significantly disproportionately impact a vulnerable senior citizen population when they are already reeling in the midst of this disastrous Medicare Part D prescription drug benefit that was handed to them by this Republican leadership.

So it is just kind of one insult after another. When is it going to stop? When are we going to actually have some true commitment to back up the words?

Mr. RYAN of Ohio. Absolutely.

Just to continue to reinforce your point on the PAYGO, on the fiscal responsibility. We call it PAYGO. It means pay as you go, which means you have to have the money to pay for it. If you have a program, you either have to raise taxes or cut the money from somewhere else to pay for it. Cut the energy subsidy if you need $14 billion or whatever to pay for Medicaid; find a way to control spending with the prescription drug program that is $700 billion and not doing anything to control the costs by allowing reimportation or allowing the Secretary of Health and Human Services to negotiate down the drug prices for the Medicare program and take that money and pay for what you want to pay, whether it is some of the Medicaid cuts that came up, or whether it was some of the college PELL grants or students loan cuts that were made in this recent budget.

But just to reinforce the PAYGO, the Democrats have supported PAYGO, period, and we have tried to get it reinstated time and time again. We will talk to our staff to make sure this gets up on our new Website. March 30, 2004, Representative MIKE THOMPSON, a Democrat from California, tried to instruct the budget conferees to include pay as you go requirements in the 2006 budget resolution. The Republicans voted, almost in lockstep to a number, 209 to 209, which I think every Democrat voted for it, to block it and to reject the pay as you go requirements to be included to instruct the budget conferees, it is a lot of mumbo jumbo. But Democrats were for pay as you go; the Republicans blocked it. That was March 30, 2004.

On May 5, 2004, Republicans voted by a vote of 208 to 215 to reject a motion by Representative DENNIS MOORE, a Democrat from Kansas. Again, we tried to get PAYGO established in the budget. Vote number 145. Then on November 18 of 2004, Republicans voted to block consideration of Mr. Stenholm's amendment from Texas to the debt limit increase. Last time they tried to get the debt increased, we wanted to say that if you are going to increase the debt, you better put the PAYGO requirements in. That was in 2004, and that was vote number 534. Three times

Democrats have tried to institute fiscal discipline in this Chamber, and it has been rejected every time from the Republican majority.

So, Mr. Speaker, if you hear a Republican come up here, although there is a handful that have been supportive, but the leadership on the Republican side has time and time again rejected our amendments, Democratic amendments, to try to put in place fiscal restraint on this runaway spending that is going on, mortgaging our children's future by borrowing the money from the Chinese Government in order to fund their huge and their runaway spending, and we are trying to fix this.

We are just asking for an opportunity to implement some of these restraints that, as you stated earlier, were implemented in the '90s. I think George Herbert Walker Bush implemented them; Clinton; the Democratic Congress; the Republican Congress earlier that actually believed in fiscal discipline. This is a different outfit that we are dealing with now.

Ms. WASSERMAN SCHULTZ. And it is not like there are not Members on both sides of the aisle who have not lived under this before. I am not sure if it is the majority, but there is a significant plurality of Members in this Chamber who served in their State legislatures. And you talk to any Governor, talk to anyone currently serving in the State legislature, that is what they live every day.

Really, it is like you get to Congress, and you become a drunken sailor. You are suddenly freed from the restraints of fiscal conservatism. You do not have to think about operating in the black anymore. You can spend to your heart's content and not think about fiscal restraint and not think about how you are going to pay for it. It is essentially like, oh, I get to Congress, and I get this humongous Visa or Mastercard, and I get to do whatever I want with it. Well, that is not how it works for the American people on an everyday basis. If it does, they end up ultimately declaring bankruptcy.

Do we want to continue to travel down that path in the United States of America and be in a position where we cannot pay our debt one day? I mean, I am raising little kids. That is literally the future that we are planning for right now for the next generation.

Again, I want to draw some comparisons to words and deeds here, if you do not mind. The President again, as I said, talked about how our economy was healthy and vigorous. I do not know how you have a debt like this, bigger than any combined in the last 224 years, just in the last 4 years, and say that the economy is healthy and vigorous, but I guess we all use a different dictionary from time to time of health and vigor.

The President said that in the State of the Union, and let us just detail some facts related to the economy. President Bush, despite what he says about the 4.6 million new jobs that were created, still has the worst record on jobs since President Herbert Hoover. He added 108,000 jobs in December. He has lost a total of 2.8 million manufacturing jobs, 2.8 million manufacturing jobs. At this point in the last recovery, the economy had created about 5 million more jobs than we have seen in this supposed recovery, and millions of Americans who want to work still do not have jobs.

Now, last week I was sitting at home. I was on my couch watching CNN, and I saw the head of the Ford Motor Company announce plans to cut up to 30,000 jobs and close 14 plants. I was dumbfounded. I had just heard from the President not 10 days before that the state of our economy is healthy and vigorous, and he created 4.6 million jobs, and now Ford Motor Company is cutting 30,000. General Motors just announced plans to eliminate their set of 30,000 jobs. Adelphia, now in bankruptcy, is asking workers to accept a 55 percent pay cut. Verizon is phasing out its defined benefits and pension plans for about 50,000 management employees. We are not talking about management employees who are on the high end of the pay scale; management employees like middle management, regular people, people who are living close to if not paycheck to paycheck every single day. And IBM recently announced it would freeze pension benefits for its 117,000 U.S. workers.

In 2005, U.S. employers announced more than a million job cuts, which marks the first time since 2001 that annual job cuts increased. Now, like I said, I understand that leaders often use the words that paint the rosiest picture or paint the picture that they would like to see or that they would like people to perceive. I think it is pretty clear that the jobs record, the health of our economy, the vigor of our economy, the debt we are saddling our children with, the deficit that continues to balloon compared to the surplus that we had just 3½ short years ago, there is no resemblance to the reality that President Bush has painted and the reality that our constituents are living every single day. None. It is wrong.

Mr. RYAN of Ohio. And I just found out, too, today Wal-Mart is going to open another 1,500 stores. Now, Wal-Mart one way or the other. Now, that is not economic development. That is not economic growth, Wal-Mart jobs. Now, they may have a place in our society. You can argue it one way or another. That is not what we are talking about.

□ 2245

We are talking about this President saying that we are having real economic growth; and Wal-Mart is opening up 1,500 stores is not, to average Americans, actual economic growth.

And as you stated with the budget and the deficits, let's just look at what this President has done. We saw the numbers here, that he has borrowed more than the previous 200 years. He has run up the four largest deficits in the history of the United States of America, an annual deficit of $378 billion in 2003, a deficit of $413 billion in 2004, a deficit of $318 billion in 2005, and a projected deficit this year of $423 billion.

We are going to be spending more than we are taking in, and we are borrowing the money from the Chinese Government. Now, we are putting ourselves in a very difficult position, not only because we are borrowing money and we have to pay interest on it, which is reckless as could be, but strategically trying to deal with the Chinese Government, how can you be firm in your foreign policy when the Chinese Government is your bank? You can't go to your banker and negotiate from a position of weakness. If you have a lot of money and then you want to borrow some, you are in a good position. But if you go and you owe and you owe and you owe the bank, eventually the bank has the knife at your throat and you have got to deal on their terms, not on your terms. If you really need the money, well, then, the rate is going to go up because, hey, you're a little risky here. It is a risky loan to make.

My point is that although we may have good credit, the more we borrow from the Chinese Government, then the weaker our positioning is when we need to deal with the nuclear situation in North Korea or we need help in Iraq or we need to deal with the Russians or we need to work on the human rights violations that are going on in China, as they are totally suppressing freedom of speech and they are arresting journalists, with Google and a lot of our American companies helping them. There is religious persecution in China. No human rights, no labor rights, no environmental protections in China. They are just dumping things in the river, like we did 30 or 40 or 50 years ago.

So all of this borrowing is putting us in a real weak position to negotiate on a lot of other fronts.

So we are weakening ourselves at home and weakening our position abroad. And if we want to be helpful in the world, we have to be strong at home. A stronger America starts right here in the United States.

Ms. WASSERMAN SCHULTZ. I am just looking at some of the facts and figures that our staff has put together for us, and sometimes I have difficulty thinking about the size and scope of what it means to have the largest deficit in American history and a debt that combined with the previous 224 years is greater than the debt from those years. It is easier to deal with that information in nuggets, so let us talk about debt and its impact on individuals for a moment.

And since this is the 30-something Working Group and we often try to highlight the difficulty our generation is having or what our generation lives through, let us just go through some facts and figures comparatively for our generation through the years.

Since 1992–93, the average college grad student loan debt has grown from $12,100 to $19,300 in 2003, just 10 years. Over 25 percent of college graduates in 2003 had a student loan debt higher than $25,000, which is a 7 percent increase from 10 years ago. In 2002, 14 percent of young adults reported that student loans caused them to delay marriage, which is up from 7 percent in 1991. One in five said their debt had caused them to delay having children, up from 12 percent in 1991. Forty percent reported they delayed buying a home because of their loans, compared with 25 percent in 1991. And 17 percent significantly changed careers because of their debt, about the same as 1991.

The policy decisions that are made here, Mr. RYAN, the culture of corruption that translates into special interests and the wealthiest few being at the top of the heap here as opposed to the average working family or the average hardworking recent college graduate being put first or being considered at least on the same level has caused real strife, real difficulty.

Imagine being in love, finding the person you want to spend the rest of your life with, knowing you want to have children, knowing that you could potentially buy that house that you would love to live in and have the dream of homeownership, essentially the American Dream, and you have so much debt that you are saddled with because your government, your Congress did not at least provide the ability for you to get a higher education because it was more important to provide tax cuts to the wealthiest few; more important to provide tax breaks for Big Oil and for pharmaceutical companies and ensure that they are first in line. That is real life. Those are the real-life decisions that real people, our people, have to make. It is just so wrong.

I used to think about this in the legislature, too. You come up to Tallahassee in Florida, which is our capital, and Washington here, and we make policy in this body thousands of miles from our constituents, most of us, except those who live right around here. Sometimes I think that is really a significant cause of the insensitivity that clearly goes on in Washington. Because we are so disconnected from our constituents when we make policy.

It is not like a city council people, who has to deal with the in-your-face aspect of that type of governing. You know, if there is a dead dog on someone's driveway, that city council person knows about it and they will have to deal with that person in the supermarket or you are right up in their face in the dais. We cannot talk to the people that come here and are sitting in the gallery, and so we are insulated from making those decisions. And perhaps that is wrong. As a result, we make decisions where the people who can get access to us, the people who have the money to pay to get in front of us, they get to be first in line; and I think that really ruins lives for people.

Mr. RYAN of Ohio. Absolutely. And when you talk about investment and the result of the ripple effect of investment in education, the shortsightedness in making these cuts that Republicans have made, increasing student loans, or a 50 percent increase in interest rates in college loans, where rates will increase from 4.1 percent to 6.8 percent in dealing with the college loans, if you look at what countries like Ireland have done as part of a reform package which included some tax cuts, which we are for, but we have to do them in a targeted responsible way. But one of the things they did in Ireland was they made college education free. Everybody goes. There are no barriers.

I think, why is it so complicated to figure out what the student loan process is like? Why can't we just have a form for student loans and it says how much you make, how much you get, and sign on the dotted line? This should be readily available. Because we know now that investing in a kid's education is the best investment we could possibly make in the return that we get. Because with a high school diploma you make $20,000 a year, $25,000 a year. With a college diploma, you make $40,000. With a master's degree you make $60,000. You are paying back more in taxes. So let us make the initial investment and make sure these students get through college, make sure there are no barriers, and long term we will get money back.

I have used this statistic before: the University of Akron did a study a few years back that said in Ohio for every dollar the State of Ohio invested in higher education, they got $2 back in tax money, for the very reason that people with college degrees make more money and, therefore, pay more in taxes back to the State. So it is a great investment to make.

Right now, Ms. WASSERMAN SCHULTZ, we are really being very shortsighted in what we are doing. Here is a chart that you can find on our Web page. The number, by the thousands of students that will graduate with engineering degrees this year. In an economy where we want to create jobs, you need engineers in order to create the kind of wealth that we need. In China, they will graduate 600,000 engineers. In India, they are going to graduate 350,000 engineers. In the United States, 70,000 engineers.

Now, I recognize that there are some population differences here, but the United States needs to compete with these folks in these other countries. And if we don't focus on making sure we reduce the barriers to college education so that everyone gets involved, create incentives for our students to get involved in engineering and chemistry and computer programming and the new high-tech jobs that are going to drive the economy and create wealth and lead to addressing some of the issues that Mr. BARTLETT was talking about with alternative energy sources, we are not going to be able to compete.

You can't have a tier-one military if you don't have a tier-one economy. So these investments that we want to make in education lead to economic growth, which expands the economy, which means we are going to be able to keep our military a tier-one military and a leader in the world. And it puts us in a position of strength, because as we grow the economy, we can stop borrowing money from the Chinese Government in order to fund our deficits; and then we will be in a stronger fiscal position here at home and then better able to deal with the problems that we have abroad.

We need to begin to do the kinds of things we are talking about, investing in education and at the same time not just throwing money at the problem but making sure that parents and teachers and principals and superintendents and local communities are held accountable. This isn't going to be we are just going to throw money at the problem like our Republican friends are doing. They want to curry favor with the senior citizens, they throw money at a $700 billion prescription drug program and they do not do anything to contain the costs. They do not allow reimportation from Canada to drop the price down, and they do not allow the Secretary of Health and Human Services to negotiate down the drug prices. You can't just throw money at the problem like our Republican friends want to do without having any accountability.

So the Democrats are looking for opportunities and have ideas to make sure we fund these programs. We do it in a responsible way, knowing that in the end the long-term growth is going to lead to budget surpluses like it did in the 1990s.

Ms. WASSERMAN SCHULTZ. I want to jump off from what you are saying in terms of America lagging behind global education standards with more emblematic examples of the difference between their rhetoric and their deeds.

The President, again in the State of the Union, talked about our one commitment being necessary above all in that we must continue to lead the world in human talent and creativity. Our greatest advantage in the world, he says, has always been our educated, hardworking, ambitious people and we are going to keep that edge. That evening he announced what he calls the American Competitiveness Initiative to encourage innovation throughout our economy and to give our Nation's children a firm grounding in math and science. He proposed doubling the Federal commitment to the most critical basic research programs and the physical sciences over the next 10 years and a number of other really lofty goals.

Let us match the rhetoric with the reality. Republicans have consistently, consistently failed to even come close to matching the rhetoric that the President laid out in the State of the Union in their deeds and actions in terms of making those words reality. Last year, Republicans provided less than one-third of the promised investment in the Math and Science Partnerships program, which is designed to increase student academic achievement in grades K through 12 in math and science. They have shortchanged the Tech Talent Act, which strengthens postsecondary education to increase the number of degrees in math, science, and engineering, by nearly 33 percent.

This comes at a time when only 36 percent of fourth graders and 30 percent of eighth graders tested proficient in math, but our twelfth graders scored at or near the bottom of math and science compared to other countries.

□ 2300

We could listen to the President say it until he is blue in the face, but until the Republican leadership here and the Members of Congress match what the President is saying with their votes, until he proposes a budget that actually reflects what his words said in the State of the Union, why should people believe them? They should not. They should not believe them because this is another example of how a pervasive culture of corruption and cronyism permeates itself all the way through the process and results in the reality on the ground in a budget that does the exact opposite in terms of producing the competitive talent that the President talked about in the State of the Union, because that cannot happen if you are slashing and burning the programs that accomplish that.

The American people are not stupid. They understand the difference between saying it and doing it. When I have traveled across the country, I hear from people that want to believe the things that their politicians tell them. They want to believe in us, and their confidence in this body, in Congress, in the government is so badly shaken by everything that has gone on through the culture of corruption that has gone on here. It has shaken the confidence that people have in this institution to its foundation. We have to do something about it. We have an opportunity to do something about it later this year. I hope that in my second term that I hope to serve in this Congress that things will change.

Mr. RYAN of Ohio. If you look at what the Democrats are offering, they say the Democrats do not have any ideas. That may sound good, but we are the party of ideas. We are beginning to communicate them, I think, in a way that is effective. If you look at Ms. PELOSI's innovation agenda that we came up with in our caucus by meeting with high-tech companies and asking them what they want, if you look at our competitiveness agenda that we have, investments in research and development, R&D funding has stayed flat under the President's watch, and it is way below what it was 20 years ago. If we are going to be competitive, we have to make some investments in research and development. We are blowing money by giving subsidies to the energy companies when we should invest it in basic research.

I was in Israel in November. They are doing some fantastic things with venture capital and business incubators and research and development, and the Israeli companies have just surpassed Canada on the NASDAQ, and I asked one of the top dogs over there, what do we need to do in America to try to imitate what you are doing here?

He said the biggest mistake you are making in the United States is not making investment in research and development, because of the tremendous impact that has leading to new innovations. So cutting this funding, flat-lining the research and development funding is the wrong thing to do, where the Democrats are saying we need to make targeted investments into research and development, targeted investments in education, targeted investments into broadband penetration. Everybody in the country should have access to broadband in the next 5 years.

The President wants to do alternative energy, and he says we are going to become energy competitive, and this is typical of the kind of leadership we are getting from this President. We are going to make this country energy-independent by 75 percent in the next 20 years.

It is like, come on, Mr. President, let us go. We want to get things rolling in the country. We want to get things moving. We need your help, we need your leadership, and the country is dying for an alternative energy program; not to say we are going to be 75 percent in 2025. That is not the kind of leadership we need.

Democrats have a plan to do it in 10 years. This is the broadband penetration I was talking about that is going on. These are broadband subscribers per 100 inhabitants as of January 1 of last year. This is Korea, almost 25 percent; Hong Kong-China, almost 21 percent; Iceland, 15.5 percent; U.S., only 11 percent.

If we want every child to have an access to education, we need to make sure that they are not getting left behind technologically, which is what happens in many of these neighborhoods and many of these rural areas. Kids and families who do not have access to these kinds of things.

Ms. WASSERMAN SCHULTZ. Again, I want to highlight where words did not match deeds. The candidate President George W. Bush said before the election that we would have "universal, affordable access to broadband technology by the year 2007." Well, the Bush administration has had no national policy to develop a universal broadband access even though building a robust, nationwide network would expand employment by 1.2 million new permanent jobs in our country.

This is the House Democrats' innovation agenda, which is available on HouseDemocrats.gov. We have a plan laid out how, which includes how we would get to universal broadband access within 5 years, and that we would make sure that we grow the math and science and engineers that we need in this country and make sure that we can match our rhetoric with action.

DEMOCRATIC AGENDA

The SPEAKER pro tempore (Mr. CAMPBELL of California). Under the Speaker's announced policy of January 4, 2005, the gentlewoman from Florida (Ms. WASSERMAN SCHULTZ) is recognized for the remainder of the time until midnight.

Ms. WASSERMAN SCHULTZ. Mr. Speaker, we again want to thank Leader NANCY PELOSI for the opportunity to talk about the things that are important to the American people. Again, we have laid out our vision for America's competitiveness into the future and how we can keep America number one and actually match rhetoric with what the President laid out in his State of the Union with action and deeds. You can get a copy of this, you can peruse a copy of our innovation agenda, which was developed not in Washington, not sitting around a conference table in a hearing room in the Nation's Capital, but out in the country, in the high-tech centers around this country, with bipartisan input, with the leaders and CEOs of some of the major technologically advanced corporations across this country that can be viewed at HouseDemocrats.gov. That is our Web site where you can get a copy of this.

Again, in addition to broadband access, we are the ones that laid out our commitment to growing a new generation of innovators. We committed in this document to educate 100,000 new scientists, engineers and mathematicians in the next 4 years by proposing a new initiative by working with States, businesses, and universities to provide scholarships to qualified students who commit to working in the fields of innovation.

But the Republicans could not say that they were going to do that because in every successive budget, they have cut student financial aid. You cannot make sure that you expand access to higher education in the math and sciences and in areas that are significantly underrepresented now unless you provide the aid that these students are going to need.

It is not that we do not have the students in these programs because there is a bumper crop of wealthy kids that are just not going into the math and sciences; it is to make sure that we go into the communities across this country and encourage and nurture the desire from the smallest children and the youngest ages and across the cultural and ethnic spectrum to ensure that people of all colors, of all economic walks of life choose to pursue math and science and engineering.

I read something earlier this morning that talked about China graduating 600,000 engineers. I think the number is right, that we graduated 50,000. I believe that it is that drastic a difference in terms of the proportion.

We have always been known as the innovators in the world. Every major accomplishment scientifically, at least in my lifetime, in our lifetime, has been achieved by Americans. But we are slowly but surely not going to be the leaders in those areas of science and math unless we go back to our traditional financial commitment to ensuring that kids can get access to education.

☐ 2310

Mr. RYAN of Ohio. Will the gentlewoman yield?

Ms. WASSERMAN SCHULTZ. Absolutely.

Mr. RYAN of Ohio. One of the interesting things when I was over in China in August, they were talking about the engineers. And they have this tremendous advantage on us as far as numbers go. And so we were asking what is the advantage that the U.S. engineers have. And they were saying, well, U.S. engineers they are just the best in the world, they are the most creative in the world, and they work in teams better than any other engineer, any other country. And it is funny, because this week, and we have talked about this before, but this week we had the school board associations down here. And wouldn't you know, the programs that are getting cut because of lack of funding, No Child Left Behind, the burden that is being pushed, the bonds that need to be noted and the funding that needs to be gathered at a local level in order to fund the local public schools across the country, the programs that are being cut are those programs that teach our kids how to be more creative and how to work in teams better.

You hear a lot about the art programs getting cut, the music programs getting cut, the visual arts getting cut, the performing arts getting cut, language arts getting cut in a lot of these schools because they do not have the resources they need, or the school districts or the school systems are not organized the way they need to be organized.

And then you also see a lot of pay-to-play: $350. Well, a lot of families do not have an extra $350 to get their kids in activities. And if you have two or three kids, you are talking about a thousand bucks. That is a lot of money, I hate to break it to a lot of our friends on the other side who do not seem to understand this. So the very advantage that we have, we are cutting off our nose to spite our face. And those are the kinds of investments that we need to make, not only invest, but restructure and reorganize the way that our education system runs today. And I think if we do a couple of these things and have the courage to lead, I think we are going to be able to do it.

Part of this, too, we need the parents involved; we need the parents to be accountable. We need the parents to be there with their kids. We need to make sure that the parents know that their kids have to do the homework. This is going to be a team effort. This is going to be us doing our job, the parents doing their job, the local school district doing their job, everybody coming together if we are going to be competitive in the 21st century. That is the only way this is going to happen.

And I think it is important, one final point here. I think it is important that if we are going to ask kids to get involved in the math and science and engineering and chemistry and all these things and areas of studies that we need them to get involved in, there needs to be a goal. And I think, really, the goal for the next generation is what Mr. BARTLETT was talking about a little while back, about what are we going to do with the alternative energy realm; who is going to develop the new and the latest technologies? Is this going to be a national effort? Not in 2025, Mr. President. Now.

You know, we went to the Moon in less than a decade. And it is going to take us 20 years to figure out how we are going to become energy independent so we can get out of these entanglements that we find ourselves in in the Middle East and in other countries.

Ms. WASSERMAN SCHULTZ. And I mean, forgive me. But, come on, am I the only one that felt it was a little disingenuous to hear from this President that America is addicted to oil and we need to end that addiction? I mean, come on. Where has the commitment to that been? In the two energy bills that we were asked to vote on in the last year since I have been here, where we were basically giving away the store to the energy and oil companies? I mean, where is the financial commitment? Where has it been to exploring alternative energy sources? Has there been a miraculous transformation in the White House that I am not aware of?

I just do not understand how the administration could not see that you have to, in order to get the American people to believe what you say and to have faith and restore their confidence and belief in you, you have to do what you say you are going to do. And that just does not seem to happen on almost any score, particularly not when it comes to energy independence and exploring alternative energy sources.

And you know, I am proud to be a member of the Democratic Caucus, because when we say something, we mean it. But when we lay out a goal, we back it up with how we might do it were we in charge. You know, we would make a funding commitment to exploring alternative energy resources. We would invest our energy and effort into the Midwest so that not only can we become foreign-oil independent, we can become independent from oil, period.

You know, I am from a State where I do not want to see drilling off the coast of my shoreline. None of my constituents want to see it either. So we need to explore other ways of generating energy in this country that are not dedicated solely to the production of oil, whether it is developed here or in another country. But we actually have to have a plan that would do that, and have Members who actually cast votes in favor of that plan, which just has not happened by any stretch of the imagination here that I have seen.

Mr. RYAN of Ohio. No.

Ms. WASSERMAN SCHULTZ. Mr. Speaker, we spent a great deal of time tonight talking about the challenges that are facing our country, and the thing that I have noticed that is the most frustrating for me, Mr. RYAN, is in the short time that I have been here, you know, I was hopeful that just like when I was in the Florida senate, I was able to work effectively across the aisle and on the major issues that were important to our State, just like I was hopeful that we would be able to do here for the important issues in our country.

I was hopeful that I could come to the Congress and sit down, and I was ready to continue to work with Members on the other side on the major issues, not the issues on the margins, because, you know, you are able to find individual Members who you can work with one on one or in small groups on various issues, but on the hot-button issues, on education, on health care, on energy, on prescription drugs, on any of the issues that are really significant to the American people.

It is like those issues are radioactive somehow, and there seems to be an impenetrable wall around the Republican Conference, where it is virtually impossible to get any Member from the other side of the aisle to sit down with a group on our side of the aisle and try to hammer out compromise.

I just do not come from a place where I was used to dealing with my-way-or-the-highway rules of engagement. And you know, maybe now that there is new leadership in the Republican Conference, things will change. Certainly we are hearing words to that effect. It remains to be seen whether those words will be backed up by action. And I look forward to that possibility. I know you do too.

Do you want to talk about the Web site and tell people how they can get in touch with us and reach out to us?

Mr. RYAN of Ohio. Absolutely, I do.

Ms. WASSERMAN SCHULTZ. We have a new Web site, Mr. RYAN. We revamped it, and it has a lot of new cool bells and whistles.

Mr. RYAN of Ohio. Yeah. We are getting really high-tech here. www.housedemocrats.gov/30something. The innovation agenda that you mentioned will be available so you can hear the new ideas that the Democrats are coming up with. And I think if you look through this, I mean, this is exciting stuff. And you know, I am not just toeing the party line here. I am very, very excited about what we are offering and what we get to talk about over the course of the next year. As we ask the people of this country who put us in charge of the House of Representatives for oversight purposes, with the war, and everything else that is going on, we need to make sure that there is balance in government, and I think that the folks at home and the folks, Members of Congress and their offices, will be able to come to the Web site, see what we are talking about.

www.housedemocrats.gov/30something. You go to the bottom, you can see all the posters that we have up. You can see our innovation agenda. We have got a lot of really good things going on, and we are going to keep plugging away over the course of the next year to try to let the people know at home that we have good ideas that we want to help move this country forward.

And one final point that I would like to make regarding all of this is that the country of China has 1.3 billion people. The country of India has over a billion people. And we have 300 million in this country. The Democratic agenda, whether we are talking about energy, investments, education, health care, we are about pulling our country together as a community, as a family and moving forward and knowing that you cannot compete against that many people and not be unified. And what the Democratic innovation agenda, our agenda on health care, energy independence, whatever it may be, is about pulling everybody together, making sure that every kid in the country has a quality education, has health care, has an opportunity to live and work and create wealth in the United States and live the American Dream as they see it. So, again, www.housedemocrats.gov/30something.

Got to give a shout out to our guy from Florida who was not able to make it here tonight, Mr. MEEK. It is never the same without him. Sometimes it is never the same good, sometimes it is never the same bad.

□ 2320

But we miss him here tonight.

Ms. WASSERMAN SCHULTZ. Thank you. We do miss our good friend from the great State of Florida, who is in the neighboring district next to me.

I do want to point out to people who might have seen this tonight that they not only can find all of the posters that we use usually on the next day once we have first introduced one on the floor, but they can also submit questions and comments to us through our Website. We want to make this as interactive as possible and get their feedback and input, and we want to know what their concerns are.

The leader has given us this opportunity to speak to the American people, and our generation is often underrepresented in terms of the things that we care about in this country. And it is a privilege to serve in this body with you, Mr. RYAN, and under the leadership of NANCY PELOSI.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. ACKERMAN (at the request of Ms. PELOSI) for today on account of business in the district.

Mr. BLUMENAUER (at the request of Ms. PELOSI) for today.

Mr. COSTA (at the request of Ms. PELOSI) for today.

Mr. HINCHEY (at the request of Ms. PELOSI) for today on account of illness.

Ms. MCCOLLUM of Minnesota (at the request of Ms. PELOSI) for today.

Mr. STUPAK (at the request of Ms. PELOSI) for today.

Ms. WOOLSEY (at the request of Ms. PELOSI) for today.

Mr. GARY G. MILLER of California (at the request of Mr. BOEHNER) for today on account of illness.

Mr. WAMP (at the request of Mr. BOEHNER) for today and the balance of the week on account of family illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. PALLONE) to revise and extend their remarks and include extraneous material:)

Mr. PALLONE, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Mr. SCHIFF, for 5 minutes, today.

Mr. FRANK of Massachusetts, for 5 minutes, today.

Ms. ROYBAL-ALLARD, for 5 minutes, today.

Ms. SOLIS, for 5 minutes, today.

Mr. EMANUEL, for 5 minutes, today.

Ms. JACKSON-LEE of Texas, for 5 minutes, today.

Mr. WYNN, for 5 minutes, today.

Mrs. MALONEY, for 5 minutes, today.

(The following Members (at the request of Mr. GINGREY) to revise and extend their remarks and include extraneous material:)

Mr. OSBORNE, for 5 minutes, today.

Mr. SMITH of New Jersey, for 5 minutes, today.

Mr. POE, for 5 minutes, today.

Mr. MACK, for 5 minutes, today.

Mr. GINGREY, for 5 minutes, today.

Ms. FOXX, for 5 minutes, today.

Mr. ENGLISH of Pennsylvania, for 5 minutes, February 14.

Mr. JONES of North Carolina, for 5 minutes, February 14 and 15.

ENROLLED BILL SIGNED

Mrs. Haas, Clerk of the House, reported and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 4636. An act to enact the technical and conforming amendments necessary to implement the Federal Deposit Insurance Reform Act of 2005, and for other purposes.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 1932. An act to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95).

ADJOURNMENT

Ms. WASSERMAN SCHULTZ. Mr. Speaker, pursuant to House Concurrent Resolution 332, 109th Congress, I move that the House do now adjourn.

The motion was agreed to.

The SPEAKER pro tempore (Mr. CAMPBELL of California). Accordingly, pursuant to House Concurrent Resolution 332, 109th Congress, the House stands adjourned until 2 p.m. on Tuesday, February 14, 2006.

Thereupon (at 11 o'clock and 21 minutes p.m.), pursuant to House Concurrent Resolution 332, the House adjourned until Tuesday, February 14, 2006, at 2 p.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

[Omitted from the Record of February 7, 2006]

6080. A letter from the Under Secretary for Personnel and Readiness, Department of Defense, transmitting a letter on the approved retirement of General Lance W. Lord, United States Air Force, and his advancement to the grade of general on the retired list; to the Committee on Armed Services.

6081. A letter from the Secretary, Department of Defense, transmitting a letter on the approved retirement of Lieutenant General Philip R. Kensinger, Jr., United States Army, and his advancement to the grade of lieutenant general on the retired list; to the Committee on Armed Services.

6082. A letter from the Under Secretary for Personnel and Readiness, Department of Defense, transmitting authorization of Colonel John D. Johnson, United States Army,to wear the insignia of the grade of brigadier general in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

6083. A letter from the Under Secretary for Personnel and Readiness, Department of Defense, transmitting authorization of Major General Gary D. Speer, United States Army, to wear the insignia of the grade of lieutenant general in accordance with title 10 United States Code, section 777; to the Committee on Armed Services.

6084. A letter from the Legal Advisor to the Bureau Chief, MB, Federal Communications Commission, transmitting the Commission's final rule—Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Wheatland, Rock River, Lusk, Gillette, Moorcroft, Pine Haven, Upton, Wyoming, and Edgemont, Custer, Murdo, Wall and Ellsworth AFB, South Dakota) [MB Docket No. 05-98] (RM-11187; RM-11252; RM-11253) received January 20, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6085. A letter from the Principal Deputy General Counsel, Federal Energy Regulatory Commission, transmitting the Commission's final rule—Accounting and Financial Reporting for Public Utilities Including RTOs [Docket No. RM04-12-000; Order No. 668] received January 17, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6086. A letter from the Regulations Coordinator, Food and Drug Administration, transmitting the Administration's final rule—Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products [Docket No. 2000N-1269] (formerly Docket No. 00N-1269) (RIN: 0910-AA94) received January 24, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6087. A letter from the Secretary, Department of the Treasury, transmitting as required by section 401(c) of the National Emergency Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), and pursuant to Executive Order 13313 of July 31, 2003, a six-month periodic report on the national emergency with respect to terrorists who threaten to disrupt the Middle East peace process that was declared in Executive Order 12947 of January 23, 1995, pursuant to 50 U.S.C. 1641(c); to the Committee on International Relations.

6088. A letter from the Secretary, Department of Commerce, transmitting a six-month report prepared by the Department of Commerce's Bureau of Industry and Security on the national emergency declared by Executive Order 13222 of August 17, 2001, and continued on August 14, 2002, August 7, 2003,and August 6, 2004 to deal with the threat to the national security, foreign policy, and economy of the United States caused by the lapse of the Export Administration Act of 1979, pursuant to 50 U.S.C. 1641(c); to the Committee on International Relations.

6089. A letter from the Director, International Cooperation, Department of Defense, transmitting pursuant to Section 27(f) of the Arms Export Control Act and Section 1(f) of Executive Order 11958, a copy of Transmittal No. 01-06 which informs of an intent to sign a Memorandum of Agreement (MOA) between the United States and the United Kingdom concerning Joint U.S./UK Sea-Ballistic Missile Defense Studies, pursuant to 22 U.S.C. 2767(f); to the Committee on International Relations.

6090. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a six-month periodic report on the national emergency with respect to the proliferation of weapons of mass destruction that was declared in Executive Order 12938 of November 14, 1994, pursuant to 50 U.S.C. 1641(c); to the Committee on International Relations.

6091. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on International Relations.

6092. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on International Relations.

6093. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on International Relations.

6094. A letter from the Secretary, Department of the Treasury, transmitting as required by section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), and pursuant to Executive Order 13313 of July 31, 2003, a six-month periodic report of the national emergency with respect to the Western Balkans that was declared in Executive Order 13219 of June 26, 2001; to the Committee on International Relations.

6095. A letter from the Secretary, Department of the Treasury, transmitting as required by section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Economic Powers Act, 50 U.S.C. 1703(c), and pursuant to Executive Order 13313 of July 31, 2003, a six-month periodic report on the national emergency with respect to the risk of nuclear proliferation created by the accumulation of weapons-usable fissile material in the territory of the Russian Federation that was declared in Executive Order 13159 of June 21, 2000; to the Committee on International Relations.

6096. A letter from the Secretary, Department of Commerce, transmitting consistent with the resolution of advice and consent to ratification of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction, adopted by the Senate of the United States on April 24, 1997, and Executive Order 13346 of July 8, 2004, certification for calendar year 2005; to the Committee on International Relations.

6097. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a Memorandum of Justification for a drawdown to support the Transitional Islamic State of Afghanistan, pursuant to Section 202 and other relevant provisions of the Afghanistan Freedom Support Act (Pub. L. 107-327, as amended) and Sections 506 and 652 of the Foreign Assistance Act of 1961, as amended; to the Committee on International Relations.

6098. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting consistent with the resolution of advice and consent to ratification of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction, adopted by the Senate of the United States on April 24, 1997, and Executive Order 13346 of July 8, 2004, certification pursuant to Condition 7(C)(i), Effectiveness of the Australia Group; to the Committee on International Relations.

6099. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the Department's final rule—Amendment to the International Traffic in Arms Regulations: Registration Fee Change (RIN: 1400-AB97) received January 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on International Relations.

6100. A letter from the U.S. Global AIDS Coordinator, Department of State, transmitting on behalf of the President, the report, "the President's Emergency Plan for AIDS Relief: Annual Report on the Global Fund to Fight AIDS, Tuberculosis, and Malaria," pursuant to Public Law 108-25; to the Committee on International Relations.

6101. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the Department's report entitled, "Report on Congress on Arms Control, Nonproliferation and Disarmament Studies," pursuant to 31 U.S. 1113 note; to the Committee on International Relations.

6102. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-270, "Parkside Terrace Economic Development Act of 2006," pursuant to D.C. Code section 1-233(c)(1); to the Committee on Government Reform.

6103. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-266, "Terrorism Prevention in Hazardous Materials Transportation Act of 2006" pursuant to D.C. Code section 1-233(c)(1); to the Committee on Government Reform.

6104. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-267, "Nuisance Abatement Reform Amendment Act of 2006," pursuant to D.C. Code section 1-233(c)(1); to the Committee on Government Reform.

6105. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-276, "Department of Health Functions Clarification Amendment Act of 2006," pursuant to D.C. Code section 1-233(c)(1); to the Committee on Government Reform.

6106. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16-275, "Office of Gay, Lesbian, Bisexual, and Transgender Affairs Act of 2006,'' pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6107. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16–274, ''Low-Emissions Motor Vehicle Tax Exemption Temporary Amendment Act of 2006,'' pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6108. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16–272, ''Contracting and Procurement Reform Task Force Establishment Temporary Act of 2006,'' pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6109. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16–273, ''Uniform Mediation Act of 2006,'' pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6110. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16–271, ''Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Temporary Amendment Act of 2006,'' pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6111. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16–269, ''Office of Administrative Hearings Term Amendment Act of 2006,'' pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6112. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16–265, ''Domestic Partnership Equality Amendment Act of 2006,'' pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6113. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16–264, ''Library Enhancement, Assessment, and Development Amendment Act of 2006,'' pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6114. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16–251, ''New Columbia Community Land Trust 22nd and Channing Streets, N.E. Tax Exemption Temporary Act of 2006,'' pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6115. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16–253, ''DC–USA Economic Development Temporary Act of 2006,'' pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6116. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16–250, ''Washington Convention Center Authority Advisory Committee Continuity Second Temporary Amendment Act of 2006,'' pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6117. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 16–268, ''Health Care Benefits Expansion Amendment Act of 2006,'' pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

6118. A letter from the Chief Human Capital Officer/Director, HR, Department of Energy, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

6119. A letter from the American Legion, transmitting the financial statement and independent audit of The American Legion proceedings of the 87th annual National Convention of the American Legion, held in Honolulu, Hawaii from August 23, 24, and 25, 2006 and a report on the Organization's activities for the year preceding the Convention, pursuant to 36 U.S.C. 49; (H. Doc. No. 109–87); to the Committee on Veterans' Affairs and ordered to be printed.

[Submitted on February 8, 2006]

6120. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report on U.S. military personnel and U.S. individual civilians retained as contractors involved in supporting Plan Colombia, pursuant to Public Law 106–246, section 3204(f) (114 Stat. 577); to the Committee on Armed Services.

6121. A letter from the Secretary, Department of Health and Human Services, transmitting as required by Sections 913(b)(2) and Section 902(g) of the Healthcare Research and Quality Act of 1999 (Pub. L. 106–129), reports entitled ''The National Healthcare Quality Report 2005'' (NHQR) and ''The National Healthcare Disparities Report 2005'' (NHDR); to the Committee on Energy and Commerce.

6122. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report pursuant to the Cooperative Threat Reduction Act of 1993 and the FREEDOM Support Act, pursuant to Public Law 103–160, section 1203(d) of Title XII Public Law 102–511, section 502; to the Committee on International Relations.

6123. A letter from the Secretary, Department of Housing and Urban Development, transmitting the Inspector General's semiannual report for the period April 1, 2005 through September 30, 2005, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform.

6124. A letter from the White House Liaison, Department of Education, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

6125. A letter from the White House Liaison, Department of Education, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

6126. A letter from the White House Liaison, Department of Education, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

6127. A letter from the White House Liaison, Department of Education, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

6128. A letter from the White House Liaison, Department of Education, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

6129. A letter from the White House Liaison, Department of Education, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

6130. A letter from the Assistant Attorney General for Administration, Department of Justice, transmitting in accordance with Section 647(b) of Division F of the Consolidated Appropriations Act, FY 2004, Pub. L. 108–199, and the Office of Management and Budget Memorandum 05–01, the Department's report on competitive sourcing efforts for FY 2005; to the Committee on Government Reform.

6131. A letter from the Deputy Director of Communications and Legislative Affairs, Equal Employment Opportunity Commission, transmitting in accordance with Section 647(b) of Title VI of the Consolidated Appropriations Act, FY 2004, Pub. L. 108–199, the Commission's Report to Congress on FY 2005 Competitive Sourcing Efforts; to the Committee on Government Reform.

6132. A letter from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting the FY 2005 annual report under the Federal Managers' Financial Integrity Act (FMFIA), pursuant to 31 U.S.C. 3512(c)(3); to the Committee on Government Reform.

6133. A letter from the Acting Chief of Staff, Federal Mediation and Conciliation Service, transmitting the FY 2005 annual report under the Federal Managers' Financial Integrity Act (FMFIA) of 1982, pursuant to 31 U.S.C. 3512(c)(3); to the Committee on Government Reform.

6134. A letter from the Acting Administrator, General Services Administration, transmitting in accordance with Section 647(b) of Division F of the Consolidated Appropriations Act, FY 2004, Pub. L. 108–199, the Administration's report on competitive sourcing efforts for FY 2005; to the Committee on Government Reform.

6135. A letter from the President and CEO, Inter-American Foundation, transmitting in accordance with Section 647(b) of Title VI of the Consolidated Appropriations Act, FY 2004, Pub. L. 108–199, the Foundation's Report to Congress on FY 2005 Competitive Sourcing Efforts; to the Committee on Government Reform.

6136. A letter from the Director, National Gallery of Art, transmitting in accordance with Section 647(b) of Division F of the Consolidated Appropriations Act, FY 2004, Pub. L. 108–199, the Gallery's report on competitive sourcing efforts for FY 2003 and 2004; to the Committee on Government Reform.

6137. A letter from the Chairman, Occupational Safety and Health Review Commission, transmitting in accordance with Section 647(b) of Division F of the Consolidated Appropriations Act, FY 2004, Pub. L. 108–199, the Commission's Report to Congress on FY 2005 Competitive Sourcing Activities; to the Committee on Government Reform.

6138. A letter from the Executive Secretary/Chief of Staff, U.S. Agency for International Development, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

6139. A letter from the Assistant Administrator, Bureau for Legislative and Public Affairs, U.S. Agency for International Development, transmitting in accordance with Section 647(b) of Division F of the Consolidated Appropriations Act, FY 2004, Pub. L. 108–199, the Agency's report on competitive sourcing efforts for FY 2005; to the Committee on Government Reform.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calender, as follows:

Mr. SENSENBRENNER: Committee on the Judiciary. H.R. 3729. A bill to provide emergency authority to delay or toll judicial proceedings in the United States district and circuit courts; with the amendment (Rept. 109–371). Referred to the Committee of the Whole House on the State of the Union.

Mr. SENSENBRENNER: Committee on the Judiciary. H.R. 2791. A bill to amend title 35, United States Code, with respect to patent fees, and for other purposes (Rept. 109-372). Referred to the Committee of the Whole House on the State of the Union.

Mr. SENSENBRENNER: Committee on the Judiciary. H.R. 4093. A bill to provide for the appointment of additional Federal circuit and district judges, to improve the administration of justice, and for other purposes; with an amendment (Rept. 109-373). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. ENGLISH of Pennsylvania:

H.R. 4707. A bill to amend the Internal Revenue Code of 1986 to restructure and replace the income tax system of the United States to meet national priorities, and for other purposes; to the Committee on Ways and Means.

By Mr. RANGEL (for himself, Ms. DELAURO, Mr. JEFFERSON, Mr. EMANUEL, and Mr. MELANCON):

H.R. 4708. A bill to increase the refundable amount of the child credit in the case of taxpayers who had a primary residence in the Hurricane Katrina disaster area on August 28, 2005; to the Committee on Ways and Means.

By Mr. SMITH of Texas (for himself, Mr. CONYERS, Mr. GOODLATTE, Mr. SCOTT of Virginia, Mr. CANNON, Ms. ZOE LOFGREN of California, Mr. WILSON of South Carolina, Ms. HERSETH, and Mr. REICHERT):

H.R. 4709. A bill to amend title 18, United States Code, to strengthen protections for law enforcement officers and the public by providing criminal penalties for the fraudulent acquisition or unauthorized disclosure of phone records; to the Committee on the Judiciary.

By Mr. SENSENBRENNER (for himself and Mr. SMITH of Texas):

H.R. 4710. A bill to amend title 28, United States Code, to improve the delivery of Federal judicial services by requiring the equitable and rational calculation of rent to be paid to the General Services Administration; to the Committee on Transportation and Infrastructure, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. FALEOMAVAEGA:

H.R. 4711. A bill to establish a Federal District Court of American Samoa; to the Committee on the Judiciary.

By Mr. BAIRD:

H.R. 4712. A bill to amend the Surface Transportation Assistance Act of 1982 to clarify that the Buy America provision applies to an entire bridge project, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. BOSWELL:

H.R. 4713. A bill to amend the Packers and Stockyards Act, 1921, to make it unlawful for a packer to own, feed, or control livestock intended for slaughter; to the Committee on Agriculture.

By Mr. BOSWELL:

H.R. 4714. A bill to make the sale or fraudulent transfer of telephone records a criminal offense; to the Committee on the Judiciary.

By Mr. BRADLEY of New Hampshire (for himself, Mr. JEFFERSON, Mr. GOODE, and Mr. SCOTT of Georgia):

H.R. 4715. A bill to amend title XVIII of the Social Security Act to extend the 2006 annual coordinated election period for Medicare prescription drug plans through August 15, 2006; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. COLE of Oklahoma (for himself, Mr. REHBERG, Mr. GOODE, Mr. UDALL of Colorado, Mr. CONAWAY, Mr. SANDERS, Mr. CASE, Mr. GILLMOR, and Mr. LUCAS):

H.R. 4716. A bill to amend the Internal Revenue Code of 1986 to provide credits for individuals and businesses for the installation of certain wind energy property; to the Committee on Ways and Means.

By Mrs. CUBIN:

H.R. 4717. A bill to designate the National Museum of Wildlife Art, located at 2820 Rungius Road, Jackson, Wyoming, as the National Museum of Wildlife Art of the United States; to the Committee on Resources.

By Mr. DEFAZIO:

H.R. 4718. A bill to require prescription drug manufacturers, packers, and distributors to disclose certain gifts provided in connection with detailing, promotional, or other marketing activities, and for other purposes; to the Committee on Energy and Commerce.

By Mr. DINGELL (for himself, Mr. WAXMAN, Mr. RANGEL, Mr. STARK, and Mr. BROWN of Ohio):

H.R. 4719. A bill to amend titles XVIII and XIX of the Social Security Act to make improvements to payments to Medicare Advantage plans and to reinstate protections in the Medicaid program for working families, their children, and the disabled against excessive out-of-pocket costs, inadequate benefits, and health care coverage loss; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. DOOLITTLE:

H.R. 4720. A bill to designate the facility of the United States Postal Service located at 200 Gateway Drive in Lincoln, California, as the "Beverly J. Wilson Post Office Building"; to the Committee on Government Reform.

By Mr. EMANUEL (for himself and Ms. DELAURO):

H.R. 4721. A bill to require the Secretary of Health and Human Services to provide Federal Medicaid funding for State costs associated with ensuring access to prescription drug benefits to part D eligible individuals; to the Committee on Energy and Commerce.

By Mr. ENGEL (for himself, Mr. BROWN of Ohio, Mr. WAXMAN, Mr. BOUCHER, Mr. TOWNS, Mr. PALLONE, Mr. RUSH, Mr. STUPAK, Mr. STRICKLAND, Ms. DEGETTE, Mrs. CAPPS, Mr. ALLEN, Ms. SCHAKOWSKY, Mr. MCNULTY, Mr. JEFFERSON, Mr. EMANUEL, and Mr. KENNEDY of Rhode Island):

H.R. 4722. A bill to amend title XVIII of the Social Security Act to eliminate cost-sharing under part D of such title for certain full-benefit dual eligible individuals; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. FORD:

H.R. 4723. A bill to amend title XVIII of the Social Security Act to extend the 2006 open enrollment period for Medicare prescription drug plans and MA-PD plans through September 30, 2006; to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. INSLEE (for himself and Mr. GILCHREST):

H.R. 4724. A bill to establish requirements with respect to the transfer of oil to or from an onshore or offshore facility, or a vessel with a capacity of over 250 barrels in United States waters, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. GOODLATTE (for himself, Mr. PETERSON of Minnesota, Mr. NEUGEBAUER, Mrs. JO ANN DAVIS of Virginia, Mr. TANCREDO, Mr. HEFLEY, Mr. BARTLETT of Maryland, Mrs. BIGGERT, Mr. GOODE, Mr. MICA, Mr. SENSENBRENNER, Mr. TIAHRT, Mr. BARRETT of South Carolina, Mr. CHOCOLA, Mr. BONNER, and Mr. HOSTETTLER):

H.R. 4725. A bill to terminate the Internal Revenue Code of 1986; to the Committee on Ways and Means.

By Mr. ISSA:

H.R. 4726. A bill to enhance the adoption of a nationwide interoperable health information technology system and to improve the quality and reduce the costs of health care in the United States; to the Committee on Energy and Commerce.

By Mr. FARR (for himself, Mr. ABERCROMBIE, Mr. BISHOP of Georgia, Mr. BILIRAKIS, Mr. BOSWELL, Mr. BURTON of Indiana, Ms. CARSON, Mr. CONYERS, Mr. CASE, Mr. DOGGETT, Mr. EVANS, Mr. FILNER, Mr. AL GREEN of Texas, Mr. GRIJALVA, Ms. HERSETH, Mr. HIGGINS, Mr. HONDA, Mr. HOLT, Mrs. MALONEY, Ms. MATSUI, Ms. MCCOLLUM of Minnesota, Mr. PETERSON of Minnesota, Mr. SCHIFF, Mr. SPRATT, Mr. UDALL of New Mexico, Ms. WASSERMAN SCHULTZ, Mr. WAXMAN, Mr. NEY, Mr. RANGEL, Mr. SKELTON, Ms. SCHAKOWSKY, and Mr. KENNEDY of Rhode Island):

H.R. 4727. A bill to amend the Internal Revenue Code of 1986 to provide for an extension of the period of limitation to file claims for refunds on account of disability determinations by the Department of Veterans Affairs; to the Committee on Ways and Means.

By Ms. EDDIE BERNICE JOHNSON of Texas (for herself and Mr. MARCHANT):

H.R. 4728. A bill to authorize the Director of the Federal Emergency Management Agency to provide caseworker assistance to persons evacuated from their homes as a result of Hurricane Katrina or Hurricane Rita; to the Committee on Transportation and Infrastructure.

By Mr. LATOURETTE (for himself, Mr. MEEHAN, Mr. BROWN of Ohio, Mr. RYAN of Ohio, Mr. MCCOTTER, Mr. TIBERI, Mr. NEY, Mr. SIMMONS, Mr. RUSH, Mr. DOYLE, Mr. EVANS, Mr.

McHugh, Mrs. Miller of Michigan, Mrs. Jones of Ohio, Mr. Reynolds, and Mr. Kucinich):

H.R. 4729. A bill to provide a refundable tax credit for certain home energy costs; to the Committee on Ways and Means.

By Mr. LEWIS of Kentucky:

H.R. 4730. A bill to amend title 37, United States Code, to require the phased recovery of overpayments of pay and allowances made to members of the uniformed services, to delay the start of overpayment recovery from members who are wounded or injured, or who incur an illness, in a combat operation or combat zone, and for other purposes; to the Committee on Armed Services.

By Mr. MARKEY:

H.R. 4731. A bill to require owners of Internet websites to destroy obsolete data containing personal information; to the Committee on Energy and Commerce.

By Mr. PORTER:

H.R. 4732. A bill to amend title 18, United States Code, to provide Federal penalties for killing federally funded public safety officers; to the Committee on the Judiciary.

By Mr. RANGEL (for himself, Mr. Cardin, Mr. Stark, Mr. Levin, Mr. McDermott, Mr. Neal of Massachusetts, Mr. McNulty, Mr. Becerra, Mr. Pomeroy, and Mr. Davis of Alabama):

H.R. 4733. A bill to establish the Office of the Congressional Trade Enforcer, and for other purposes; to the Committee on Ways and Means, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. REYES:

H.R. 4734. A bill to establish a comprehensive education program to bolster the economic competitiveness and national security of the United States by promoting science, technology, engineering, and math education, careers, and capacity, as well as foreign language acquisition; to the Committee on Education and the Workforce, and in addition to the Committee on Science, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ROYCE:

H.R. 4735. A bill to create a national commission, modeled after the successful Defense Base Closure and Realignment Commission, to establish a timely, independent, and fair process for realigning or closing outdated, ineffective, or inefficient executive agencies; to the Committee on Government Reform.

By Mr. SIMMONS (for himself, Mr. Moore of Kansas, Mrs. Biggert, Mr. Kirk, Mr. Oberstar, Mr. Ryan of Ohio, Mr. Michaud, and Mr. Snyder):

H.R. 4736. A bill to amend the Foreign Assistance Act of 1961 to authorize assistance to provide contraceptives in developing countries in order to prevent unintended pregnancies, abortions, and the transmission of sexually transmitted infections, including HIV/AIDS; to the Committee on International Relations.

By Mr. THOMPSON of California (for himself, Mr. Rangel, Mr. Stark, Mr. Brown of Ohio, Mr. Waxman, Mr. Levin, Mr. Cardin, Mr. McDermott, Mr. Lewis of Georgia, Mr. Neal of Massachusetts, Mr. McNulty, Mr. Jefferson, Mr. Tanner, Mr. Becerra, Mr. Doggett, Mr. Pomeroy, Mrs. Jones of Ohio, Mr. Larson of Connecticut, Mr. Emanuel, Mr. Taylor of Mississippi, Mr. Case, Mr. Abercrombie, Mr. Moore of Kansas, Mr. Cardoza, Mr. Boswell, Ms. Woolsey, Mr. McGovern, Mrs. Tauscher, Mr. Cooper, Mr. Melancon, Mr. Schiff, Ms. Herseth, Mr. Boyd, Mr. Bishop of Georgia, Mr. Barrow, Mr. Berry, and Mr. Salazar):

H.R. 4737. A bill to provide additional funding for State health insurance counseling programs for Medicare part D enrollment; to the Committee on Appropriations, and in addition to the Committees on Ways and Means, and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. UDALL of Colorado:

H.R. 4738. A bill to establish a commission to strengthen confidence in Congress; to the Committee on House Administration.

By Mr. WEXLER (for himself, Mr. Foley, and Mr. Evans):

H.R. 4739. A bill to provide compensation to individuals who, during the Vietnam conflict, were employees of the Federal Government or contractor employees of the Department of Defense and suffered disability or death from exposure to Agent Orange; to the Committee on the Judiciary.

By Mr. STEARNS:

H.J. Res. 77. A joint resolution proposing an amendment to the Constitution of the United States to authorize the President to reduce or disapprove any appropriation or authorization of new direct spending in any bill presented by Congress; to the Committee on the Judiciary.

By Mr. MORAN of Kansas (for himself, Mr. Moore of Kansas, Mr. Thornberry, Mr. Boswell, Mr. Ryun of Kansas, Mr. Tiahrt, and Mr. Dingell):

H.J. Res. 78. A joint resolution approving the location of the commemorative work in the District of Columbia honoring former President Dwight D. Eisenhower; to the Committee on Resources.

By Mr. FILNER:

H. Con. Res. 334. Concurrent resolution commending the persons who were inducted for service in the United States Armed Forces during World War II; to the Committee on Armed Services.

By Mr. AL GREEN of Texas (for himself, Mr. Hyde, Mr. Butterfield, Mr. Cleaver, Ms. Corrine Brown of Florida, Ms. Carson, Mr. Jefferson, Ms. Eddie Bernice Johnson of Texas, Mr. Cummings, Mr. Meeks of New York, Ms. Norton, Ms. Jackson-Lee of Texas, Mr. Hastings of Florida, Mr. Thompson of Mississippi, Mr. Wynn, Mr. Scott of Georgia, Mr. Clay, Mr. Payne, Mr. Towns, Mr. Scott of Virginia, Mr. Holt, Mr. Van Hollen, Mr. McDermott, Mr. Fattah, Mr. Grijalva, Ms. Schakowsky, Mr. Serrano, Mr. Honda, Mr. Doggett, Ms. McCollum of Minnesota, Mr. Israel, Mr. Kucinich, Mr. Sabo, Mr. Farr, Mr. Watt, Mr. Crowley, Ms. Waters, Mr. Melancon, Ms. Solis, Mr. Brown of Ohio, Mr. Price of North Carolina, Mr. Moore of Kansas, Mr. Nadler, Mr. Capuano, and Ms. Watson):

H. Con. Res. 335. Concurrent resolution honoring and praising the National Association for the Advancement of Colored People on the occasion of its 97th anniversary; to the Committee on the Judiciary.

By Mr. HOLT (for himself and Mr. Markey):

H. Con. Res. 336. Concurrent resolution commending the Bulletin of the Atomic Scientists on the 60th anniversary of publication; to the Committee on Government Reform.

By Mr. RADANOVICH (for himself, Mr. Ford, Mr. Aderholt, Mr. Bachus, Mr. Barrett of South Carolina, Mr. Bartlett of Maryland, Mr. Bass, Mrs. Biggert, Mr. Bilirakis, Mr. Bishop of Utah, Mr. Blunt, Mr. Boehner, Mrs. Bono, Mr. Boozman, Mr. Boustany, Mr. Brady of Texas, Ms. Ginny Brown-Waite of Florida, Mr. Burton of Indiana, Mr. Calvert, Mr. Cannon, Mr. Cantor, Mrs. Capito, Mr. Cardoza, Mr. Carter, Mr. Castle, Mr. Chabot, Mr. Coble, Mr. Cole of Oklahoma, Mr. Conaway, Mr. Costa, Mr. Culberson, Mr. Deal of Georgia, Mr. Dent, Mr. Lincoln Diaz-Balart of Florida, Mr. Mario Diaz-Balart of Florida, Mr. Doolittle, Mr. Dreier, Mr. Duncan, Mr. Everett, Ms. Foxx, Mr. Frelinghuysen, Mr. Garrett of New Jersey, Mr. Gerlach, Mr. Gilchrest, Mr. Gillmor, Mr. Gingrey, Mr. Green of Wisconsin, Ms. Hart, Mr. Hayes, Mr. Hayworth, Mr. Hefley, Mr. Herger, Mr. Hostettler, Mr. Hulshof, Mr. Inglis of South Carolina, Mr. Issa, Mr. Istook, Mr. Jones of North Carolina, Mr. Keller, Mr. Kingston, Mr. Kolbe, Mr. LaHood, Mr. Latham, Mr. Gary G. Miller of California, Mr. Miller of Florida, Mr. Pitts, Mr. Rehberg, Mr. Renzi, Mr. Sessions, Mr. Shadegg, Mr. Shuster, Mr. Souder, Mr. Tiberi, Mr. Weldon of Pennsylvania, Mr. Brown of South Carolina, Mr. Franks of Arizona, Mr. Gutknecht, Mr. Whitfield, Mr. Wicker, and Mr. Wilson of South Carolina):

H. Con. Res. 337. Concurrent resolution encouraging all Americans to increase their charitable giving, with the goal of increasing the annual amount of charitable giving in the United States by one percent; to the Committee on Ways and Means.

By Ms. ROS-LEHTINEN (for herself, Mr. Lantos, Mr. Burton of Indiana, and Mr. Chabot):

H. Con. Res. 338. Concurrent resolution expressing the sense of Congress regarding the activities of Islamist terrorist organizations in the Western Hemisphere; to the Committee on International Relations.

By Mr. GINGREY:

H. Res. 671. A resolution electing Members to certain standing committees of the House of Representatives; considered and agreed to.

By Mr. PALLONE:

H. Res. 672. A resolution urging the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam to engage positively in the forthcoming peace talks and prevent a return to armed conflict in Sri Lanka; to the Committee on International Relations.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 25: Mr. Tiahrt.
H.R. 111: Mr. Cardin.
H.R. 115: Mr. Schwarz of Michigan.
H.R. 202: Mr. McGovern.
H.R. 282: Mr. Frank of Massachusetts, Mrs. Jones of Ohio, and Mr. Fossella.

H.R. 390: Mr. BISHOP of Georgia, Mr. CROWLEY, and Mr. RUPPERSBERGER.

H.R. 398: Mr. MCGOVERN, Ms. MCCOLLUM of Minnesota, Mr. COSTELLO, and Mr. LARSON of Connecticut.

H.R. 503: Ms. PRYCE of Ohio.

H.R. 517: Mr. PEARCE, Mr. YOUNG of Alaska, Mr. POE and Mr. LUCAS.

H.R. 547: Mr. MEEHAN.

H.R. 550: Mr. MURPHY.

H.R. 551: Ms. MATSUI and Mrs. CAPPS.

H.R. 552: Mr. BISHOP of Utah and Mr. RYAN of Wisconsin.

H.R. 591: Mr. FOSSELLA and Mr. TANCREDO.

H.R. 654: Mr. FARR.

H.R. 676: Ms. ROYBAL-ALLARD.

H.R. 698: Mr. ADERHOLT.

H.R. 759: Mr. PALLONE.

H.R. 761: Mr. MEEHAN.

H.R. 769: Mr. LYNCH.

H.R. 799: Mr. OWENS, Mr. GRIJALVA, and Mr. BRADY of Pennsylvania.

H.R. 910: Mr. KENNEDY of Rhode Island.

H.R. 916: Mr. MELANCON.

H.R. 964: Mr. CAPUANO, Mr. JEFFERSON, Mr. CASE, Ms. BALDWIN, Mr. GOODLATTE, Mr. MORAN of Virginia, Mr. MICHAUD, and Mr. CHANDLER.

H.R. 995: Mr. TANCREDO.

H.R. 997: Mr. MICA and Mr. MCCOTTER.

H.R. 999: Mr. BACHUS and Mr. MICHAUD.

H.R. 1053: Mr. PASCRELL.

H.R. 1106: Mr. REYES.

H.R. 1107: Mr. HIGGINS.

H.R. 1227: Mr. BARTLETT of Maryland and Mr. GALLEGLY.

H.R. 1245: Mr. SIMPSON, Mrs. NAPOLITANO, Mr. ROSS, Mr. SCHWARZ of Michigan, Mr. OBERSTAR, Ms. HOOLEY, and Mr. VISCLOSKY.

H.R. 1259: Mr. WALSH, Mr. STEARNS, Mr. GILCHREST, Mr. FORBES, Mr. LEWIS of Kentucky, Mr. TIERNEY, Mr. JOHNSON of Illinois, Mr. REICHERT, Mr. FORTENBERRY, Mr. MCKEON, Mr. EHLERS, Mr. BOEHLERT, Mr. WOLF, Mr. KNOLLENBERG, Mr. CAMP of Michigan, Mr. FRELINGHUYSEN, Mr. GOODE, Mr. HULSHOF, Mr. ROGERS of Michigan, Mr. THOMAS, Mr. HOBSON, Mrs. KELLY, Mr. SWEENEY, Ms. HARRIS, Mr. GERLACH, Mr. DREIER, Mr. HYDE, Mr. PRICE of Georgia, Mr. BURGESS, and Mr. GILLMOR.

H.R. 1264: Mr. BOSWELL, Mr. PICKERING, and Mr. MCGOVERN.

H.R. 1277: Mr. SHERMAN.

H.R. 1310: Ms. ZOE LOFGREN of California.

H.R. 1317: Mr. BOUCHER.

H.R. 1322: Mr. DELAHUNT.

H.R. 1356: Mr. COOPER.

H.R. 1360: Mr. WELDON of Pennsylvania.

H.R. 1366: Mr. MILLER of Florida.

H.R. 1375: Mr. MILLER of Florida.

H.R. 1384: Mr. HERGER.

H.R. 1554: Mr. MEEHAN and Mr. HALL.

H.R. 1558: Mr. MORAN of Virginia.

H.R. 1561: Mr. MORAN of Virginia, Mr. BARROW, Mr. SIMMONS, Mr. ROTHMAN, and Mr. SNYDER.

H.R. 1562: Mr. ALEXANDER.

H.R. 1632: Mr. FATTAH.

H.R. 1642: Mr. BEAUPREZ, Mr. BACHUS, Mrs. MYRICK, Mr. DANIEL E. LUNGREN of California, Mr. RADANOVICH, Ms. BORDALLO, Ms. HARRIS, Ms. NORTON, Mr. MORAN of Kansas, Ms. ESHOO, and Mr. DEFAZIO.

H.R. 1646: Mr. TIERNEY.

H.R. 1652: Mr. LEVIN.

H.R. 1696: Mr. BOYD and Mr. BUTTERFIELD.

H.R. 1749: Mr. CHOCOLA.

H.R. 1807: Mr. CUMMINGS, Ms. MOORE of Wisconsin, Mr. HONDA, Mr. EVANS, Mrs. MCCARTHY, Mr. MEEKS of New York, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. NADLER, Mr. HINCHEY, and Mr. AL GREEN of Texas.

H.R. 1951: Mr. SPRATT and Mr. HALL.

H.R. 2014: Mr. SWEENEY.

H.R. 2063: Mr. OTTER and Mr. PITTS.

H.R. 2071: Mr. WYNN.

H.R. 2355: Mr. PLATTS.

H.R. 2369: Mr. NEAL of Massachusetts, Mr. OSBORNE, Mr. PAYNE, Mr. PAUL, Mr. SANDERS, Ms. SCHWARTZ of Pennsylvania, Mr. WEINER, Mr. WHITFIELD, Mr. WOLF, Mr. THOMPSON of Mississippi, Mr. ALEXANDER, Mr. BACHUS, Mr. BUTTERFIELD, Mr. CONYERS, Mr. GRIJALVA, Ms. MATSUI, Mr. MCGOVERN, Mr. NEY, Ms. NORTON, Mr. OWENS, Mr. PETERSON of Minnesota, Ms. ROYBAL-ALLARD, Mr. SALAZAR, Mr. SENSENBRENNER, Ms. BERKLEY, Ms. CARSON, Mr. DOYLE, Mr. FOSSELLA, Mr. HONDA, Ms. JACKSON-LEE of Texas, Mr. MEEKS of New York, Mr. MILLER of Florida, Mrs. MCCARTHY, Mr. RYAN of Ohio, Mr. GEORGE MILLER of California, Mr. LEWIS of Georgia, Mr. LYNCH, Mrs. MALONEY, Mr. HINCHEY, Ms. MILLENDER-MCDONALD, Mr. MCDERMOTT, Mr. LIPINSKI, Mr. CUMMINGS, Mr. BISHOP of Georgia, Mr. BOSWELL, Ms. CORRINE BROWN of Florida, Mr. BERRY, Mr. ACKERMAN, Mr. ABERCROMBIE, Mr. CASE, Mr. CAPUANO, Mr. WELLER, and Mr. SERRANO.

H.R. 2389: Mr. TANCREDO.

H.R. 2533: Mr. SIMMONS.

H.R. 2561: Mr. REYES.

H.R. 2642: Mr. SCOTT of Georgia and Ms. JACKSON-LEE of Texas.

H.R. 2669: Ms. PRYCE of Ohio.

H.R. 2671: Mr. FATTAH.

H.R. 2694: Mrs. MCCARTHY, Mr. EVANS, and Mr. HOLDEN.

H.R. 2730: Mr. SCHWARZ of Michigan and Mr. RAMSTAD.

H.R. 2828: Mr. LANTOS.

H.R. 2861: Mr. PICKERING, Mr. CHANDLER, Ms. ROYBAL-ALLARD, and Mr. FATTAH.

H.R. 2869: Mr. WEXLER.

H.R. 2872: Ms. EDDIE BERNICE JOHNSON of Texas, Mr. ROGERS of Kentucky, Mr. CUELLAR, Mr. BOUCHER, Mr. PETRI, Mr. KING of Iowa, Mr. EDWARDS, Ms. MATSUI, Ms. ZOE LOFGREN of California, Mr. DAVIS of Tennessee, Mr. INGLIS of South Carolina, Mr. GALLEGLY, Ms. ESHOO, Mrs. NORTHUP, Mr. CLAY, Mr. REYNOLDS, Mr. WU, Mr. LATHAM, Mr. TAYLOR of North Carolina, Mr. COBLE, and Mr. STEARNS.

H.R. 2943: Mr. RUSH, Mr. SMITH of Washington, Mrs. EMERSON, Mr. BERRY, Mr. DENT, Mr. MCCOTTER, and Mr. FITZPATRICK of Pennsylvania.

H.R. 2962: Mr. ALLEN and Mr. GRIJALVA.

H.R. 3006: Mr. DOYLE and Mr. MCGOVERN.

H.R. 3038: Mr. GONZALEZ.

H.R. 3052: Mr. ROTHMAN.

H.R. 3072: Mr. OWENS and Ms. MCKINNEY.

H.R. 3127: Mrs. TAUSCHER, Mr. KIRK, Mr. DENT, Ms. MOORE of Wisconsin, Mr. BROWN of Ohio, and Mr. BAIRD.

H.R. 3137: Mr. GOODLATTE.

H.R. 3142: Ms. BALDWIN.

H.R. 3145: Mr. OWENS, Mr. CLEAVER, Mr. CASE, Ms. LEE, Mr. ETHERIDGE, and Mr. INSLEE.

H.R. 3162: Mr. CARNAHAN.

H.R. 3195: Mr. HINOJOSA.

H.R. 3255: Mr. OWENS, Mrs. BLACKBURN, and Mr. DAVIS of Kentucky.

H.R. 3307: Mr. SIMMONS, Mr. MICHAUD, Mr. STARK, and Mr. ABERCROMBIE.

H.R. 3334: Mr. MELANCON, Mr. MICHAUD, Mr. CASE, and Mr. SCOTT of Virginia.

H.R. 3337: Mr. CONYERS.

H.R. 3352: Ms. CARSON.

H.R. 3358: Mr. VAN HOLLEN and Mr. EVANS.

H.R. 3373: Mr. BRADLEY of New Hampshire and Mrs. BIGGERT.

H.R. 3379: Mr. MOORE of Kansas.

H.R. 3380: Mr. MOORE of Kansas.

H.R. 3449: Mr. GRIJALVA.

H.R. 3468: Mr. ABERCROMBIE.

H.R. 3470: Mr. MOORE of Kansas.

H.R. 3471: Mr. MOORE of Kansas.

H.R. 3476: Mr. SESSIONS, Mr. HENSARLING, Mr. BRADLEY of New Hampshire, Mr. GERLACH, and Ms. GRANGER.

H.R. 3499: Mrs. MYRICK.

H.R. 3559: Mr. MCNULTY, Mr. OWENS, Mr. HIGGINS, Mr. ISRAEL, Mr. LAHOOD, Ms. SLAUGHTER, Mr. SOUDER, Mr. GRIJALVA, and Ms. PRYCE of Ohio.

H.R. 3565: Mr. EMANUEL.

H.R. 3601: Mr. MEEHAN.

H.R. 3760: Ms. VELÁZQUEZ.

H.R. 3858: Mr. KENNEDY of Rhode Island, Mr. SAXTON, Mr. WEINER, and Ms. PRYCE of Ohio.

H.R. 3876: Ms. HERSETH.

H.R. 3933: Mr. KIRK, Mr. ANDREWS, and Mr. ALLEN.

H.R. 3940: Mr. JEFFERSON.

H.R. 3944: Ms. MCKINNEY.

H.R. 4005: Mr. GALLEGLY, Ms. BERKLEY, Mr. SERRANO, Mr. CUMMINGS, and Mr. CARDOZA.

H.R. 4019: Mr. FORBES, Mr. BAKER, and Mr. BOUCHER.

H.R. 4023: Mr. EVANS and Mr. MORAN of Kansas.

H.R. 4030: Mr. GONZALEZ.

H.R. 4033: Mr. FRANK of Massachusetts and Ms. LORETTA SANCHEZ of California.

H.R. 4042: Mr. SESSIONS, Mr. MILLER of Florida, and Mr. MICHAUD.

H.R. 4045: Mr. EVANS.

H.R. 4071: Mr. MILLER of Florida.

H.R. 4091: Mr. REHBERG.

H.R. 4098: Mr. BURTON of Indiana and Mr. BOOZMAN.

H.R. 4129: Mr. MCCOTTER.

H.R. 4156: Mr. LIPINSKI.

H.R. 4229: Mr. WEXLER.

H.R. 4264: Mr. JONES of North Carolina.

H.R. 4272: Mr. FATTAH.

H.R. 4304: Mr. EVANS.

H.R. 4315: Mr. KILDEE.

H.R. 4318: Mrs. CAPITO, Mr. SODREL, Mr. MCCAUL of Texas, Mr. GRAVES, Mr. CAMP of Michigan, and Mr. ROSS.

H.R. 4350: Mr. EVANS.

H.R. 4357: Mr. FITZPATRICK of Pennsylvania.

H.R. 4361: Mr. FATTAH, Mr. GENE GREEN of Texas, and Ms. JACKSON-LEE of Texas.

H.R. 4366: Mrs. MCCARTHY, Mr. ISRAEL, Ms. HARRIS, Mr. FEENEY, and Mr. KNOLLENBERG.

H.R. 4399: Mrs. JO ANN DAVIS of Virginia.

H.R. 4447: Mr. FATTAH.

H.R. 4448: Mr. RANGEL and Mr. KUCINICH.

H.R. 4450: Mrs. BLACKBURN and Mr. INGLIS of South Carolina.

H.R. 4452: Mr. MURPHY, Mr. GEORGE MILLER of California, Mr. MICHAUD, Mr. STARK, Mr. BOSWELL, Mr. RENZI, and Ms. LEE.

H.R. 4472: Mr. REICHERT, Mr. SMITH of Texas, Mr. SESSIONS, Mr. BURTON of Indiana, Mr. BOSWELL, Mr. BAKER, and Mr. SMITH of New Jersey.

H.R. 4507: Mr. OWENS.

H.R. 4535: Mr. FOLEY.

H.R. 4542: Mr. WEINER, Ms. DELAURO, Ms. BALDWIN, Mrs. KELLY, Mr. MCGOVERN, Ms. MATSUI, MR. CARDOZA, Mr. JONES of North Carolina, Ms. SOLIS, Mr. NADLER, Mr. THOMPSON of Mississippi, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. PELOSI, Mr. WEXLER, Mr. STARK, and Mr. DINGELL.

H.R. 4547: Mr. NEY.

H.R. 4550: Mr. BERMAN, Mr. FATTAH, Mr. GERLACH, Mr. MCNULTY, Mr. OBERSTAR, Mr. WU, Mr. TOM DAVIS of Virginia, Mr. FITZPATRICK of Pennsylvania, Mr. MCDERMOTT, Mr. OWENS, and Mr. WAXMAN.

H.R. 4565: Mr. OWENS, Mr. FALEOMAVAEGA, Ms. KILPATRICK of Michigan, Mr. ENGEL, Mr. WYNN, and Mr. BROWN of Ohio.

H.R. 4573: Mr. COSTELLO and Mr. EVANS.

H.R. 4597: Mr. COLE of Oklahoma.

H.R. 4604: Ms. SCHWARTZ of Pennsylvania.

H.R. 4608: Mr. SIMMONS, Mr. MICA, Mr. BOYD, Mr. CASE, Mr. ABERCROMBIE, Mr. GOODE, and Mr. SHAYS.

H.R. 4619: Mr. SERRANO.

H.R. 4622: Mr. OWENS, Mr. PAYNE, and Mr. McINTYRE.

H.R. 4623: Mrs. McCARTHY, Mr. GRAVES, and Mr. EVANS.

H.R. 4629: Mr. EVANS.

H.R. 4650: Mr. HERGER.

H.R. 4662: Mr. McDERMOTT.

H.R. 4663: Mr. MILLER of Florida.

H.R. 4665: Ms. McCOLLUM of Minnesota.

H.R. 4666: Mr. SHUSTER and Mr. WELDON of Pennsylvania.

H.R. 4668: Mr. ANDREWS.

H.R. 4672: Mr. TERRY.

H.R. 4677: Mr. HERGER.

H.R. 4681: Mr. DOOLITTLE, Mr. McNULTY, Mr. REYNOLDS, Mr. WILSON of South Carolina, Mr. SHAYS, Mr. GERLACH, Mr. SCOTT of Georgia, Mr. TERRY, Mr. KING of Iowa, Mr. NORWOOD, Mrs. MILLER of Michigan, Mr. McHENRY, Mr. CUELLAR, Mr. PRICE of Georgia, Mr. HASTINGS of Florida, Mr. LINCOLN DIAZ-BALART of Florida, and Mr. CULBERSON.

H.R. 4682: Mr. NEAL of Massachusetts.

H.R. 4683: Mr. GRIJALVA.

H.R. 4685: Mr. STRICKLAND, Mr. McDERMOTT, Mr. STUPAK, Mr. JEFFERSON, Mr. FARR, Mr. DeFAZIO, Ms. DeLAURO, Mr. WYNN, Mr. LANGEVIN, Mr. McGOVERN, and Mr. GRIJALVA.

H.R. 4695: Mr. DAVIS of Alabama, Mrs. CAPPS, Ms. KAPTUR, Mr. DOYLE, Mr. CAPUANO, Mr. STRICKLAND, Mr. BROWN of Ohio, Mr. OWENS, Mr. GEORGE MILLER of California, Mr. LARSON of Connecticut, Mr. COSTELLO, and Mr. EVANS.

H.R. 4697: Mr. McNULTY and Mr. PASTOR.

H.R. 4704: Mr. WOLF, Mr. OWENS, Mr. McDERMOTT, and Mr. VAN HOLLEN.

H.J. Res. 67: Mr. GOODE, Mr. ALEXANDER, and Mr. ROYCE.

H.J. Res. 71: Mr. MILLER of Florida, Mr. SENSENBRENNER, and Mr. SCHWARZ of Michigan.

H. Con. Res. 42: Mr. HALL and Mr. RAHALL.

H. Con. Res. 197: Ms. BALDWIN, Mr. LYNCH, Mr. JEFFERSON, Mr. MEEKS of New York, and Ms. HOOLEY.

H. Con. Res. 235: Mr. WYNN and Mr. PITTS.

H. Con. Res. 323: Ms. LORETTA SANCHEZ of California and Mr. MILLER of Florida.

H. Res. 85: Mr. SHIMKUS and Mr. BISHOP of Georgia.

H. Res. 222: Mr. ROTHMAN and Mr. PASTOR.

H. Res. 477: Mr. SABO.

H. Res. 498: Mr. OSBORNE, Mr. CALVERT, Ms. DeLAURO, and Mr. NEAL of Massachusetts.

H. Res. 518: Mr. WAMP, Mr. ADERHOLT, Mr. VAN HOLLEN, and Mr. KILDEE.

H. Res. 521: Mr. SCOTT of Virginia and Mrs. CAPPS.

H. Res. 556: Mrs. BIGGERT and Mr. SMITH of Washington.

H. Res. 566: Mr. FORTENBERRY, Mr. BISHOP of Georgia, Mr. DAVIS of Tennessee, and Mr. MICHAUD.

H. Res. 573: Mr. EVANS.

H. Res. 593: Mr. DELAHUNT and Mr. PAYNE.

H. Res. 600: Mrs. MALONEY, Ms. BERKLEY, Mrs. LOWEY, and Mrs. McCARTHY.

H. Res. 608: Ms. ROS-LEHTINEN, Mr. SOUDER, Mr. BURTON of Indiana, Mr. ROHRABACHER, Mr. BARTLETT of Maryland, Mr. ROGERS of Michigan, Mr. ANDREWS, Mr. TANCREDO, Mr. CHABOT, Mr. McNULTY, and Ms. JACKSON-LEE of Texas.

H. Res. 628: Mr. EVANS.

H. Res. 635: Mr. HONDA.

H. Res. 636: Mr. HONDA.

H. Res. 637: Mr. HONDA.

H. Res. 642: Mr. McGOVERN, Mr. BERMAN, Mr. PAYNE, Mr. ACKERMAN, Mr. MEEKS of New York, Ms. WOOLSEY, Mr. KUCINICH, Mr. STARK, Mr. HONDA, Mr. GRIJALVA, Mr. DeFAZIO, Mr. EVANS, and Mr. ENGEL.

H. Res. 657: Mr. NUSSLE, Ms. ROYBAL-ALLARD, Ms. MOORE of Wisconsin, Mr. TIBERI, Mr. AKIN, and Mr. OSBORNE.

H. Res. 660: Mr. FORD, Mrs. JONES of Ohio, Mr. OWENS, Mr. RUSH, Mr. MARSHALL, Ms. BORDALLO, and Mrs. DAVIS of California.

H. Res. 665: Mrs. CAPITO.

H. Res. 670: Mr. PETERSON of Pennsylvania, Mr. SHUSTER, Mr. DOYLE, and Mr. OXLEY.

SENATE—*Wednesday, February 8, 2006*

The Senate met at 9:45 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer.

Let us pray.

Be exalted, God of peace and love above the heavens. Let Your glory fill the Earth, for You are holy.

Thank You for the gift of today, for borrowed heartbeats. Give us pure hearts, so we may see you clearly. With the eyes of faith, empower us to accomplish Your purposes.

Make us bold in our striving to help the lost, the lonely, and the least. Inspire our Senators as they labor for liberty. Keep their feet on the right path. Give them the courage to refuse to deviate from integrity and the determination to do Your will.

Remind us that You will never leave us even when we walk through the valley of the shadow of death. Take from us the worries which distract us and give us more trust.

We pray in Your holy Name.

Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. CHAMBLISS. Mr. President, we will begin today's session with a period of morning business for up to 1 hour. At the conclusion of morning business, we will begin consideration of S. 852, the asbestos legislation. Last night, we were able to invoke cloture on the motion to proceed to the asbestos bill. The order last night allows us to proceed to the bill for debate only. Even though amendments will not be in order today, the majority leader hopes we will use the time today constructively and Members will come to the floor to talk on the bill or their submitted amendments.

We expect to move this bill forward this week by making progress on amendments. There is plenty of time this week to consider amendments and vote on various proposals. Having said that, a number of colleagues have asked about Friday. The leader reminds everybody that Friday will be a working day and Senators can expect rollcall votes.

In addition to this bill, we have other issues to consider, including executive nominations that have yet to clear the calendar.

RECOGNITION OF THE DEMOCRATIC LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

ASBESTOS VICTIMS

Mr. REID. Mr. President, as of this morning, 2,262 American soldiers have died in Iraq and 17,000, 18,000 have been injured, wounded; over 16,000 have been wounded so seriously that they could not return to battle. Each of these deaths and every one of these individuals who have been wounded, many of whom have been maimed, is a national tragedy. Yesterday, I was speaking to one of my friends with whom I came to Washington in 1982. We keep in touch with each other. He now lives in Santa Rosa, CA. He said, "Harry, you know, we just lost our sixth soldier in this little community."

I have attended funerals of Nevada servicemen who have been killed. I want to make sure we do everything we can so that fewer of our loyal, patriotic men and women are not killed in Iraq. I want to make sure they have all the equipment—anything they need.

As we speak, there are other tragedies in America, one of which deals with the legislation that is on the floor today. This year, 2006, 10,000 people will die from asbestos-related diseases. That is the case every year. These people did nothing wrong. They were simply exposed to a substance that corporate America knew would make them sick and cause them to die. But because of corporate America's willingness to exchange the lives of these men and women, they went ahead and did this. People were exposed to this at work, at home by hugging their father or husband when he came home from work, or in a schoolyard where asbestos equipment was, in their neighborhoods, in trucks hauling this substance all over America, and people got sick. They die painful, slow, horrible deaths. So there is a debate going on today dealing with asbestos.

This is not a fair bill. Look, I believe we need legislation to compensate the victims, but this is not it. I have said—and I don't have the experience in the legislature of the President pro tempore, but I have been in legislative bodies a long time; more than 30 years I have served in legislatures. This is the worst piece of legislation I have ever seen in the 30-plus years I have been serving in legislatures.

I don't doubt how hard Senator SPECTER has worked and how badly he wants this done, but that doesn't make the legislation good; it is bad. Perhaps because he has tried so hard, he doesn't see the trees for the forest, as they say.

To show the strength of corporate America, 13 companies that will benefit greatly from this legislation have paid lobbyists, within a 2-year period of time, $144.5 million. That should send a message to everyone. This legislation is not good for asbestos victims. It strips victims of their legal right to obtain compensation in the court system and puts them in an administrative trust fund that is underfunded and doomed to fail. That is why all the leading asbestos victims organizations oppose this bill.

Here is a letter from the Asbestos Victims Group United, dated February 1, 2006, written to me and to Senator FRIST. I will read parts of it:

> We represent a diverse group of national asbestos victims' groups. We are writing this letter as a matter of urgency to ask Members to vote against S. 852. This legislation is not primarily intended, nor is it good, for victims. In fact, in its current form, the legislation would make recovery of compensation dramatically worse for victims. It would deny whole classes of cancer-ridden victims, who, today, are able to recover compensation for their injuries, any ability to be compensated.
>
> . . . We oppose this legislation. We do not want this proposed government policy forced upon us. We believe the program will fail to treat victims fairly, while benefiting the very companies that caused the problem. We have said it before and now we say it louder.
>
> . . . We have said it before and now we say it louder: We believe it would be wholly irresponsible for Congress to proceed with consideration and passage of this legislation. Please do not allow the families who already have lost so much to be victimized once again.

The first signatory on this letter is Susan Vento, the wife of a man I served in Congress with, who never worked around asbestos—or so he thought. But he did work around it as a young man during a summer job while in school, and he got this disease. He was a big, strong man who worked out in the gym every day, and he died within a year, a slow, agonizing death. So the first signatory on this letter is Susan Vento, Chairperson, Committee to Protect Mesothelioma Victims.

I ask unanimous consent that this letter be printed in the RECORD.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ASBESTOS VICTIMS GROUPS UNITED,
February 1, 2006.

Hon. WILLIAM FRIST,
Majority Leader, U.S. Senate, Washington, DC.
Hon. HARRY REID,
Democratic Leader, U.S. Senate,
Washington, DC.

DEAR LEADERS FRIST AND REID: We represent a diverse group of national asbestos victims' groups. We are writing this letter as a matter of urgency to ask Members to vote against S. 852. This legislation is not primarily intended, nor is it good, for victims. In fact, in its current form, the legislation would make recovery of compensation dramatically worse for victims. It would deny whole classes of cancer-ridden victims, who, today, are able to recover compensation for their injuries, any ability to be compensated.

If we have not made our position clear in our previous letters, we would like to make it very clear here: We oppose this legislation. We do not want this proposed government policy forced upon us. We believe the program will fail to treat victims fairly, while benefiting the very companies that caused the problem. We may not have the power of these corporations, but we have a voice, and we intend to use our voice to its maximum volume to defeat this bill.

And, if it passes, we plan to use our voice to inform the American people in every state and every district of this tragic fate of justice and to urge every victim to demand their right of compensation from the federal government.

We have listed below the specific substantive reasons we oppose S. 852:

It removes the fundamental right to a trial by jury and replaces it with an untried and unsound entitlement program that, we believe, is set to fail on day one.

Victims will face long delays in receiving compensation while the fund is set up and the bill is challenged on constitutional grounds. Many victims, especially those with mesothelioma, will die during that time period.

$140 billion is too low and has been, at best, deemed a questionable minimum by the CBO. For the victim, this means the fund could leave them empty-handed. (For the taxpayer, it could mean excessive Federal borrowing).

Thousands of victims will fail to qualify because of newer more restrictive legal and medical standards—this is not a "no-fault" system. Despite not being allowed into the system, victims will likely be locked out of the trial system.

The bill excludes thousands who worked at, or lived near, hundreds of addresses around the country where Libby vermiculite was shipped.

The bill is structured to make it nearly impossible for victims who were exposed to asbestos in their own homes, and who did not live with an asbestos worker, to prove their exposure and eligibility for compensation. Assurances that these people will be taken care of via the "medical exceptions panel" are false promises given thousands would fall into this category and the fund will not be able to handle that many cases.

Trust funds have a dismal history: most have failed, all have been bogged down at the start-up and all have underestimated the amount of claims by large margins, as was shown in the recent GAO Report: Federal Compensation Programs.

Future victims of asbestos exposure, notably those exposed during 9/11 and Hurricanes Rita and Katrina, will receive no compensation and have no access to the court system.

Many asbestos victims with lung cancer, particularly smokers, are excluded despite the medical consensus that people with heavy asbestos exposure are at a substantially increased risk of cancer.

There is no automatic sunset provision—if the fund is not paying claims, victims must be able to gain access back into the courts without relying on the administrator's discretion.

The bill does not account for those who may have been exposed to naturally occurring asbestos.

Before allowing this legislation to move to the floor, please consider these questions:

Will the proposed funding be sufficient to compensate all victims?

How many victims will be left out from being compensated for asbestos injuries?

How much will the fund be forced to borrow from the federal government?

How many companies will contribute and how much will each be assessed?

Can the bill, if enacted, withstand the numerous legal and constitutional challenges already threatened by a wide range of parties?

We have said it before and now we say it louder: We believe it would be wholly irresponsible for Congress to proceed with consideration and passage of this legislation. Please do not allow the families who already have lost so much to be victimized once again.

Sincerely,

Susan Vento, Chairperson, Committee to Protect Mesothelioma Victims, Washington, DC.

Linda Reinstein, Co-Founder and Executive Director, Asbestos Disease Awareness Organization, Redondo Beach, CA.

Michael Bowker, Founder and Executive Director, Asbestos Victims Organization; Author, Fatal Deception: The Untold Story of Asbestos: Why It Is Still Legal and Why It Is Still Killing Us, Placerville, CA.

Jim Fite, National Secretary, White Lung Association, Baltimore, MD.

Barbara Zeluck, Secretary, White Lung Asbestos Information Center, New York, NY.

Mr. REID. Mr. President, I had placed in the RECORD yesterday one of the petitions. We have 150,000 signatures on that—150,000 signatures here in the Capitol in boxes. We debate this bill. There is a lot of technical talk about startups, sunsets, and payment tiers. But let's not lose sight of what this debate is about. It is about whether the Senate will keep faith with the victims of a disease which they had no opportunity to avoid.

The problem in America today, as it relates to what is going on on the Senate floor, is not a crisis created by the legal system; it is a crisis created by the people who expose these people to asbestos. If there were ever a cry for fairness and equity and justice, it is this. We cannot let corporate America do what they are trying to do to these innocent men and women.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business for up to 1 hour, with the first half of time under the control of the majority leader or his designee, and the second half of the time controlled by the Democratic leader or his designee.

The Senator from Georgia is recognized.

NSA TERRORIST SURVEILLANCE PROGRAM

Mr. CHAMBLISS. Mr. President, several weeks ago, after a highly classified program was leaked to the media, the President described certain activities of the National Security Agency that he authorized in the weeks following our Nation coming under direct attack on our own soil by Osama bin Laden's al-Qaida terrorists.

As described by the President, the Vice President, the Attorney General, and experts from the Department of Justice and the intelligence community, the terrorist surveillance program at NSA targets very specific international communications of suspected and known al-Qaida operatives in a foreign country who are communicating with associates around the world and, occasionally, in a limited way, with individuals inside the United States. The purpose of the program is to collect foreign intelligence in an effort to identify and prevent another devastating attack on our homeland.

As we have learned, the terrorist surveillance program is designed with the goal of preventing terrorist attacks in the United States and protecting the lives of Americans. Given the imperative to reliably and immediately detect and disrupt the plots of international terrorists who are intent on killing Americans, the President is acting well within his constitutional authorities.

The Foreign Intelligence Surveillance Act has been, and continues to be, a valuable tool in protecting our national security interests in many cases. However, the world changed on September 11, 2001, demonstrating the importance that the President have the power and authority to protect the American people from future attacks of terrorism. Both the Constitution and the Congress grant the President that authority. FISA lacks the speed and agility necessary to fight the war on terror, and its bureaucratic requirements prevent the "hot pursuit" of international communications necessary to prevent attacks.

As vitally important as it is to protect American lives, it is also important that Americans' rights are protected. That is exactly why the administration has put in place a system of responsible measures to ensure our civil liberties are also protected. In doing so, congressional leaders from both parties have been kept informed about the program from the start. Furthermore, this program is reauthorized approximately every 45 days to ensure it is still necessary, and that it is being used properly, and the activities conducted within this program are thoroughly reviewed by lawyers within the National Security Agency and the Department of Justice to ensure the program is only collecting the international communications of suspected terrorists here in the United States and elsewhere.

Their oversight includes assuring an aggressive program is in place to assist the highly trained intelligence professionals at NSA verify that all activities are consistent with minimization procedures that weed out the identities of ordinary Americans and preserve civil liberties.

I note that FISA, which has been the alternative that the critics of this program have looked to as the real program that should be used, requires a reauthorization every 90 days. Here the President and the administration have taken an additional precaution to protect the privacy rights of Americans by reauthorizing this program approximately every 45 days.

On September 11, 2001, terrorists operating covertly inside the United States, and in contact with al-Qaida members overseas, perpetrated the worst attack on domestic soil in American history. Osama bin Laden recently reiterated publicly al-Qaida's intention to attack us again with operatives hiding within our borders.

Congress identified al-Qaida as an enemy of this country by passing the authorization for the use of force, authorizing the President to use all necessary and appropriate force to protect our homeland.

When the enemy is behind your lines, you must use every lawful tool at your disposal to find and stop them. That is why the President has authorized the terrorist surveillance program.

As the 9/11 Commission pointed out, and as also the joint House-Senate Intelligence Committee investigation, as well as the report from the Subcommittee on Terrorism and Homeland Security in the House, which was filed in July of 2002, reported, two of the terrorist hijackers who flew a jet into the Pentagon, Nawaf al Hamzi and Khalid al Mihdhar, were communicating with members of al-Qaida overseas while they were inside the United States preparing for the deadly attack of September 11.

Regrettably, we did not know this until it was too late. GEN Mike Hayden, the former Director of the National Security Agency and the Deputy Director of National Intelligence, indicated that had this program been in place before 9/11, these terrorists could have been detected and identified.

Unfortunately, as a result of the public disclosure of this highly classified program, our enemies have learned information they should not have. Our national security has been damaged and Americans have been put at greater risk.

In our recent Intelligence Committee open hearing, CIA Director Porter Goss commented that as a consequence of leaks in general, damage has been very severe to our capabilities to carry out our mission. General Hayden observed that our intelligence capabilities are not immune to leaks in the public domain.

It is clear that this is an important program necessary to address the previous flaws in our early warning system that allowed at least two of the 9/11 murderers to live among us while they plotted our destruction. This vital program makes it more likely that terrorists will be identified and located in time to prevent another disaster. In fact, that may have already happened. It is a program that is conducted within the President's constitutional authority and is subject to review and oversight.

It is also clear that continued leaks over this program are degrading our ability to continue to protect the lives of Americans.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. VITTER). The Senator from Kentucky is recognized.

DEFENSE OF NSA TERRORIST SURVEILLANCE PROGRAM

Mr. McCONNELL. Mr. President, today America is at war. We were awakened to this war on September 11, 2001, even though our enemies had been waging it against us for a number of years. The enemy, of course, is al-Qaida, a treacherous terrorist group whose goal is simply to kill as many Americans as possible and to strike such fear into civilized nations that freedom itself is forced into retreat.

To combat this deadly threat, the President has rightly—rightly—asserted his constitutional authority to use every tool at his disposal to fight the war on terror. One of those tools is the NSA's terrorist surveillance program.

Yet despite the grave terrorist threat, I fear too many have forgotten that we are, indeed, a nation at war, and so have forgotten the vital need for the terrorist surveillance program. Perhaps it is because we have not seen another attack on American soil since September 11, despite, I might add, the terrorists' best efforts.

But there can be no doubt that al-Qaida terrorists are still plotting brutal attacks against this country and other freedom-loving countries. For proof of this, look no further than a recent audiotape made by Osama bin Laden himself. In a tape aired on Al-Jazeera television last month, bin Laden said this:

> The mujahadeen, with God's grace, have managed repeatedly to penetrate all security measures adopted by the unjust allied countries. The proof of that is the explosions you have seen in the capitals of the European nations who are in this aggressive coalition.

He went on:

> Similar operations happening in America. . . . are under preparation, and you will see them in your homes the minute they are through.

A not-so-veiled threat for another attack here at home. It couldn't be any clearer than that: "Similar operations," so Osama bin Laden said, "are under preparation, and you will see them in your homes the minute they are through."

At this very moment, al-Qaida operatives in America, right here at home—madmen such as Mohamed Atta—may be plotting attacks. What kinds of attacks could they be hatching? Here is one example.

In 2003, authorities apprehended a man named Iyman Faris for assisting al-Qaida in plotting and planning a terrorist attack. Faris is an American citizen. He lived in Ohio before being taken into Federal custody.

In 2002, Faris traveled to Pakistan where he met with known members of al-Qaida. The terrorists told him they were planning attacks in New York and here in Washington, and asked if he would help.

So Faris elected to return to America, visit New York City, and reconnoiter the Brooklyn Bridge with the intent of finding the best means to destroy it. He even went so far as to research how to sever the cables supporting the bridge. Approximately 135,000 vehicles cross the Brooklyn Bridge every day.

According to the Washington Post, Government officials have privately credited Faris's arrest to the President's terrorist surveillance program. Faris has since pleaded guilty to having plotted to destroy the Brooklyn Bridge, a direct result of the terrorism surveillance program.

This time the terrorists did not succeed, but as we all know, while our goal is to stop them every time, their goal is to succeed just once.

Let me repeat that. We have to stop them every time. They only have to succeed once.

To uncover and disrupt attacks such as this, the President must aggressively use every tool at his disposal to exercise his authority under the Constitution to protect America. To do any less would be a dereliction of duty.

A major part of the war on terror is the terrorist surveillance program. This very narrowly tailored program intercepts international communications—not domestic, even though that word has been used a lot in error—

international communications by members of al-Qaida or other suspected terrorist groups outside America into this country, or by those terrorists' allies in this country out to terrorists in foreign lands. So the universe is international communications. Public mischaracterizations have portrayed this terrorist surveillance program as something ominous, as if the Government is listening in to domestic phone calls made by average, law-abiding Americans. That is flat out wrong, and those mischaracterizations ought to cease.

If someone is calling from Tora Bora, they are not calling to order a pizza. Let me repeat: If someone is calling from Tora Bora, they are not calling to order a pizza.

The NSA is only interested in al-Qaida sleeper agents in the United States, men such as Iyman Faris, the Brooklyn Bridge bomber, who call or receive calls from known agents of al-Qaida or affiliated terrorist groups abroad with instructions for their next deadly mission.

The NSA terrorist surveillance program is not only entirely necessary, it is entirely lawful. The President enjoys broad authority under the Constitution to protect all Americans. And the Foreign Intelligence Surveillance Court of Review, the court charged with reviewing the legality of measures such as the terrorism surveillance program, has confirmed that the President has broad powers with respect to foreign intelligence gathering.

The court wrote in 2002 that, with respect to conducting searches without warrants in order to obtain foreign intelligence information:

> We take for granted that the President does have that authority, and, assuming that is so, FISA could not encroach upon the President's constitutional power.

That could not be more clear. That is the Foreign Intelligence Surveillance Court of Review saying:

> We take for granted that the President does have that authority, and, assuming that is so, FISA could not encroach upon the President's constitutional power.

If that is not enough legal authority, here is more. Congress delegated broad war powers to the President when it authorized the war on terror in 2001. The Senate passed that authorization 98 to 0 with the support of many of the same Democrats who vehemently speak against the program today.

That authorization empowered the President to "use all necessary and appropriate force" to fight terror. It did not say "some force." It did not say "all force except when it comes to international communications intercepts." It did not even say "all force now, less later, depending on the political landscape." It said "all force," and "all force" means "all force."

However, opponents of the terrorism surveillance program apparently do not want to allow the President to use all the force at his disposal to fight terror. Howard Dean, the chairman of the Democratic Party, recently expressed his strong disapproval, and this is how he put it:

> President Bush's secret program to spy on the American people reminds Americans of the abuse of power during the days of President Nixon and Vice President Agnew.

That is Howard Dean's appraisal of the terrorism surveillance program. That is from the leader of the Democratic Party. Obviously, he completely misses the point.

The terrorist surveillance program intercepts calls between known al-Qaida terrorists and their affiliates overseas and the al-Qaida terrorist accomplices here in America. As the President has said, if you are calling al-Qaida, we want to know why.

The only conclusion one can draw from statements such as Governor Dean's—statements that explicitly compare programs that stop terrorists who want to destroy the Brooklyn Bridge to illegal activity from a generation ago—is that he opposes the program and wants it stopped.

We cannot fight the war on terror with one hand tied behind our backs. That is exactly the wrong direction we need to take in the war on terror. After more than 4 years since the devastating attack of September 11, this is still a hard-fought battle. Al-Qaida's leader, Osama bin Laden himself, has bragged—has bragged—about impending attacks.

If anyone doubts the death-crazed tenacity of our enemies, let them hear these words, also from the bin Laden audiotape I quoted from earlier. Here is what he had to say further:

> We will seek revenge all our lives. The nights and days will not pass without us taking vengeance, like on September 11, God permitting. Your minds will be troubled and your lives embittered.

Clearly our enemy is cunning and our enemy is cruel. We must be aggressive about using every tool at our disposal to fight the war on terror.

I applaud the President for doing just that, and for remaining unbowed in the face of loud criticism from a few as he continues to carry out his duty to protect America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

THE PRESIDENT'S INTELLIGENCE PROGRAM

Mr. ALLARD. Mr. President, I want to take just a moment to say a few words in support of the President's intelligence program and associate myself with the comments that have been made both by the Senator from Georgia as well as the Senator from Kentucky. They focused a lot on the legal arguments, but I thought perhaps I would approach this from what is best for the security of this country and how the American people are reacting to the President's intelligence program. I will have to base my observations on town meetings I have recently held in Colorado. I had several town meetings. I think they help me better understand the issues of importance to my constituents, and I think my constituents in Colorado are a cross-section, pretty much, of the United States.

Interestingly enough, the top issues facing most Coloradans at those town meetings had to do with the war in Iraq, whether we should be in the conflict or not; the Federal deficit—we had a lot of discussion about getting the debt in order, getting the deficit in order—and obviously, because we are a cold weather State, there was a lot of talk about the cost of energy and our continued reliance on foreign energy resources.

The National Security Agency surveillance program was not a top issue. Indeed, it was hardly mentioned. This tells me a couple of things. First, it tells me that Coloradans are not particularly alarmed by the use of those tools that seem to be used by the President which are creating so much objection from the other side of the aisle. I think most Coloradans view this as just a commonsense thing. They know it is important to national security and we have to conduct such a program. They understand that we need to protect this country. I think they understand this Nation is at war. It is at war with terrorism. And I think they are beginning to understand, as I am beginning to understand, that this didn't start with 9/11, it started in the 1990s—maybe even as far back as 1979 when we began to have terrorist attacks on embassies and ships and planes and various symbols of prosperity in the Western World. Unfortunately, it took a devastating attack such as 9/11 for us to really begin to realize that this war is a war to the finish.

In the 9/11 attack there were more people killed than at Pearl Harbor. This was a serious assault on America. It was an attack on America. We began to realize that al-Qaida is not interested in talking about peace. As a group of extremists, they are not interested in conducting diplomatic relations. They don't want to compromise. They are fanatics who only want to kill, maim, and destroy.

Al-Qaida is a very sophisticated enemy that operates in dozens of countries, including the United States. They have global reach, as seen by their bombings in London, Madrid, and Jordan. This organization works clandestinely, in the shadows, and is very hard to track much less to stop. Most Americans realize that. We have been fortunate that we have not been attacked again since September 11. We all know those attacks could come at any time, but that does not make these attacks inevitable. These terrorists can be stopped. We have the tools at our disposal that we can and must use to defeat al-Qaida. The President's use of the National Security Agency program has to be one of those.

Let's be clear. The President promised after September 11 that he would direct every resource at his command—whether it is diplomatic, intelligence, or military tools—to disrupt and defeat the global network of terror. Americans all over stood up and praised him for stepping forward. The media praised him for stepping forward because we all realized this was unprecedented in American history, and it could not be ignored. It had to be addressed immediately.

The terrorist surveillance program is a very important tool in that effort. The program is narrowly focused. It only targets communications when one party is outside the United States and the reasonable information suggests that at least one party is a member of al-Qaida or an affiliated terrorist group. This program is not being used to listen in on communications of innocent Americans. Those people who want to put a slant against this program, they call it a domestic program. It is not a domestic spy program. It is an extension of our information gathering outside the borders of the United States. It just so happens that we have people in the United States who have aligned themselves with those terrorist groups to harm American citizens.

I think most Americans understand that if they want to have a secure home, if they want to have security for their families, these individuals have to be followed and we have to do what we can to prevent these catastrophic, terrorist-driven events from occurring.

The President takes full responsibility for moving forward. He even mentioned it in his State of the Union Address. But he has done it in a responsible way. He has followed the reauthorization process every 45 days to ensure that innocent Americans are not being targeted and that the program is working successfully. Republican and Democratic leaders of the Congress have been briefed on this program more than a dozen times since 2001, and no Member of Congress, Republican or Democrat, expressed any concern about this program until it was reported publicly in the press last December.

Here is a problem that this brings up: so many times reports about these intelligence programs, when they come out in the press, are wrong. I have served on the Intelligence Committee. I have taken the opportunity to be briefed on these intelligence programs. But most of what shows up in the press out there is wrong. Those of us who really know the story and would respond cannot respond because in the process of response you may actually validate the fact that it is an intelligence program—which you don't want al-Qaida or the terrorists to know. And the other thing is, if you respond to those accusations that are made in those news articles that are wrong, you have to bring out the facts which just fully discloses what our intelligence program is. With full disclosure, then you tip off the terrorists as to what we are up to.

I think it has been reported time and time again in the testimony before our committees that it is hurting our intelligence program. We are not gathering the information that we were gathering before because, in effect, the terrorists have simply shut down because they have realized what has happened and what our capabilities are in gathering this intelligence. At times, with disclosure of some of these intelligence programs, we have actually had Americans who are in the process of collecting information die as a result—perhaps individuals overseas who are acting on behalf of the United States.

We need to protect this tool because we all know that the enemy listens. They have not stopped their intelligence gathering and would love nothing better than for us to begin a discussion about the operational aspects of these sensitive programs. Compounding this difficulty is the fact that many of the press reports, according to Attorney General Gonzales, have in almost every case—and he confirms what I just said—been misinformed, inaccurate, or just outright wrong.

I support the President. I believe it is a responsible tool to use in the war against terrorism. If we do not use it, we are going to lose our ability to secure the homes of Americans. I think most Americans understand that. We must use these tools provided by law to combat our continued threat. We cannot sit and hope that terrorists will not attack us again.

We should not play into the hands of the terrorists. We now see the danger in front of us. We see what must be done. We simply must go out and do it and do it in a responsible way. The President's intelligence-gathering program is effective and it is responsible to support him if we want to have security for our families and our homes.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, I ask unanimous consent I may have 15 minutes to speak as in morning business.

The PRESIDING OFFICER. The Senator has that right, so he may proceed without objection.

EXPANDING EDUCATIONAL OPPORTUNITIES

Mr. AKAKA. Mr. President, the time has come to put our money into action and expand educational opportunities in science, math, and foreign languages.

I began my professional career as an educator. Fighting to ensure a prosperous future for our country and for Hawaii's children is why I am in Congress today. I hope this year we will see real progress by the enactment of legislation to make a real difference, for both the short- and long-term, in science, math, and foreign language education.

I applaud President Bush's call in his State of the Union Address for increasing the number of teachers in math and science and making college-level courses more available to low income high school students. It is unfortunate that the budget reconciliation bill recently passed by the House cut $12 billion from the Federal student loan program, while the tax reconciliation bill we considered last week provides $70 billion in tax cuts for the wealthy. I know I am not alone when I say supporting college level courses in high school is no substitute for going to college. We need both and more of each.

Robbing Peter to pay Paul robs our youth of their future.

We need to make a sustained commitment to addressing critical educational issues in science, math, and foreign languages. The President is correct that America's ability to compete in global markets, and to defend ourselves against foreign threats, depend on our ability to educate future generations.

Four years ago, Senator DURBIN and I joined forces with a bipartisan group of Senators to introduce legislation to strengthen national security by encouraging the development and expansion of programs to meet critical needs in science, math, and foreign languages at the elementary, secondary, and higher education levels. I also introduced legislation to strengthen education opportunities for Federal employees in these critical areas, and improve the government's recruitment and retention of individuals possessing these skills. Last year, Senators COCHRAN, DODD, and I introduced legislation to develop a national foreign language strategy.

Some of our proposals have become law. Others were passed by the Senate, but the House refused to consider them. The Intelligence Reform Act of 2004 established two things promoted in our legislation. First, a rotation program to help mid-level Federal employees in the intelligence community improve their skills; and second, a scholarship program for individuals who possess critical skills, especially those in science, math, and foreign language, in exchange for service with the Federal Government.

Still, America should rightly ask: why has it been so hard to make even these modest improvements? Especially when there have been numerous national studies and commissions that conclude we need to do better at educating Americans.

In 2001, the Hart-Rudman Commission said that America needs a workforce skilled in science, math, computer science, and engineering. They said that the failure to foster these skills was jeopardizing America's position as a global leader. The commission also found that the maintenance of American power in the world depends upon the quality of U.S. Government personnel. It requires employees with more expertise in more countries, regions, and issues. This includes a commitment to language education.

Legislation that I introduced along with my colleagues, some of which dates back to 2001, contains vital components that should be considered as we debate the President's proposed education initiatives.

Some of these programs include: Funding the Federal Government's student loan repayment program for positions critical to national security and for staff with science and foreign language skills; providing financial incentives, including subsidized loans, for students earning degrees in science, mathematics, engineering, or a foreign language; establishing grant programs for local educational agencies that engage in public-private partnerships to improve science and math education; awarding fellowships to students who agree to work for the Federal Government and to Federal workers who wish to develop skills in critical national security fields; encouraging early foreign language study in our elementary and secondary schools by establishing foreign language partnerships for teacher training; promoting innovative foreign language programs through grants to higher education institutions; and establishing a National Foreign Language Coordination Council and language director to develop and oversee the implementation of a national language strategy that reflects input from all sectors of society.

The intent of these programs is to support a revitalized, re-energized educational system in these critical areas from elementary through graduate school and improve the skills of our current labor force.

Some of the programs would enhance certain skills of our Nation's teachers at all levels while providing them with the tools they need to sustain the development of our Nation's youth.

For example, one program would develop foreign language partnerships between local schools and higher education foreign language departments to enhance teacher training and develop appropriate foreign language curricula.

If we want to ensure America's future competitiveness in global markets, we need to engage America's industry in assisting our youth to develop the skills industry needs to compete.

Another program proposed in our legislation establishes public-private partnerships to encourage the donation of scientific laboratory equipment, provide internship and mentoring opportunities, and to award scholarship funds for students in critical areas.

To survive in a diverse world, Americans need to harness their natural diversity and expand linkages to their larger community. Education must be seen as a community effort.

We must think more broadly when it comes to foreign languages. The program that Senator DURBIN and I envisioned includes immersion programs where students take a science or technology related class in a non-English speaking country, or a cultural awareness program in which foreign language students study the science and technology issues of that country. It is important to understand what other countries are doing in science and technology before foreign innovations surpass our own.

I am glad that President Bush has recognized that action must be taken to improve education in these critical areas by calling for increasing the ranks of advanced placement and international baccalaureate teachers and expanding access to AP and IB classes. I also thank him for finally taking steps to strengthen foreign language education in the U.S. with the National Security Language Initiative.

However, real commitments need to be made.

If we do not see education as a continual process for both the student and the teacher, a process designed to engage younger and older generations alike, then we will have created a product of only limited duration—a band-aid for our intellectual security.

We need to think beyond high school and college level work. We need to engage all levels of schooling and, beyond that, we need to enhance our current workforce. We cannot afford to neglect today's workforce if we want to be successful building our future.

I yield the remainder of my time. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I understand there is 12 minutes remaining on our side in morning business and then we will go to the bill itself.

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. Mr. President, I yield 12 minutes, and then I ask for recognition because I intend to speak on the bill.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 852, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 852) to create a fair and efficient system to resolve claims of victims of bodily injury caused by asbestos exposure, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary, with amendments.

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 852

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Fairness in Asbestos Injury Resolution Act of 2005" or the "FAIR Act of 2005".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purpose.
Sec. 3. Definitions.

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Office of Asbestos Disease Compensation

Sec. 101. Establishment of Office of Asbestos Disease Compensation.
Sec. 102. Advisory Committee on Asbestos Disease Compensation.
Sec. 103. Medical Advisory Committee.
Sec. 104. Claimant assistance.
Sec. 105. Physicians Panels.
Sec. 106. Program startup.
Sec. 107. Authority of the Administrator.

Subtitle B—Asbestos Disease Compensation Procedures

Sec. 111. Essential elements of eligible claim.
Sec. 112. General rule concerning no-fault compensation.
Sec. 113. Filing of claims.
Sec. 114. Eligibility determinations and claim awards.
Sec. 115. Medical evidence auditing procedures.

Subtitle C—Medical Criteria

Sec. 121. Medical criteria requirements.

Subtitle D—Awards

Sec. 131. Amount.
Sec. 132. Medical monitoring.
Sec. 133. Payment.
[Sec. 134. Reduction in benefit payments for collateral sources.]
Sec. 134. Setoffs for collateral source compensation and prior awards.
Sec. 135. Certain claims not affected by payment of awards.

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

Sec. 201. Definitions.

Sec. 202. Authority and tiers.
Sec. 203. Subtiers.
Sec. 204. Assessment administration.
Sec. 205. Stepdowns and funding holidays.
Sec. 206. Accounting treatment.

Subtitle B—Asbestos Insurers Commission

Sec. 210. Definition.
Sec. 211. Establishment of Asbestos Insurers Commission.
Sec. 212. Duties of Asbestos Insurers Commission.
Sec. 213. Powers of Asbestos Insurers Commission.
Sec. 214. Personnel matters.
Sec. 215. Termination of Asbestos Insurers Commission.
Sec. 216. Expenses and costs of Commission.

Subtitle C—Asbestos Injury Claims Resolution Fund

Sec. 221. Establishment of Asbestos Injury Claims Resolution Fund.
Sec. 222. Management of the Fund.
Sec. 223. Enforcement of payment obligations.
Sec. 224. Interest on underpayment or nonpayment.
Sec. 225. Education, consultation, screening, and monitoring.
Sec. 226. National Mesothelioma Research and Treatment Program.

TITLE III—JUDICIAL REVIEW

Sec. 301. Judicial review of rules and regulations.
Sec. 302. Judicial review of award decisions.
Sec. 303. Judicial review of participants' assessments.
Sec. 304. Other judicial challenges.
Sec. 305. Stays, exclusivity, and constitutional review.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. False information.
Sec. 402. Effect on bankruptcy laws.
Sec. 403. Effect on other laws and existing claims.
Sec. 404. Effect on insurance and reinsurance contracts.
Sec. 405. Annual report of the Administrator and sunset of the Act.
Sec. 406. Rules of construction relating to liability of the United States Government.
Sec. 407. Rules of construction.
Sec. 408. Violation of environmental health and safety requirements.
Sec. 409. Nondiscrimination of health insurance.

TITLE V—ASBESTOS BAN

Sec. 501. Prohibition on asbestos containing products.
Sec. 502. Naturally occurring asbestos.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Millions of Americans have been exposed to forms of asbestos that can have devastating health effects.

(2) Various injuries can be caused by exposure to some forms of asbestos, including pleural disease and some forms of cancer.

(3) The injuries caused by asbestos can have latency periods of up to 40 years, and even limited exposure to some forms of asbestos may result in injury in some cases.

(4) Asbestos litigation has had a significant detrimental effect on the country's economy, driving companies into bankruptcy, diverting resources from those who are truly sick, and endangering jobs and pensions.

(5) The scope of the asbestos litigation crisis cuts across every State and virtually every industry.

(6) The United States Supreme Court has recognized that Congress must act to create a more rational asbestos claims system. In 1991, a Judicial Conference Ad Hoc Committee on Asbestos Litigation, appointed by Chief Justice William Rehnquist, found that the "ultimate solution should be legislation recognizing the national proportions of the problem . . . and creating a national asbestos dispute resolution scheme . . .". The Court found in 1997 in Amchem Products Inc. v. Windsor, 521 U.S. 591, 595 (1997), that "[t]he argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure." In 1999, the Court in Ortiz v. Fibreboard Corp., 527 U.S. 819, 821 (1999), found that the "elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation." That finding was again recognized in 2003 by the Court in Norfolk & Western Railway Co. v. Ayers, 123 S. Ct. 1210 (2003).

(7) This crisis, and its significant effect on the health and welfare of the people of the United States, on interstate and foreign commerce, and on the bankruptcy system, compels Congress to exercise its power to regulate interstate commerce and create this legislative solution in the form of a national asbestos injury claims resolution program to supersede all existing methods to compensate those injured by asbestos, except as specified in this Act.

(8) This crisis has also imposed a deleterious burden upon the United States bankruptcy courts, which have assumed a heavy burden of administering complicated and protracted bankruptcies with limited personnel.

(9) This crisis has devastated many communities across the country, but hardest hit has been Libby, Montana, where tremolite asbestos, 1 of the most deadly forms of asbestos, was contained in the vermiculite ore mined from the area and despite ongoing cleanup by the Environmental Protection Agency, many still suffer from the deadly dust.

(10) The asbestos found in Libby, Montana, tremolite asbestos, has demonstrated an unusually high level of toxicity, as compared to chrysotile asbestos. Diseases contracted from this tremolite asbestos are unique and highly progressive. These diseases typically manifest in a characteristic pleural disease pattern, and often result in severe impairment or death without radiographic interstitial disease or typical chrysotile markers of radiographic severity. According to the Agency for Toxic Substances and Disease Registry previous studies by the National Institutes of Occupational Safety and Health document significantly increased rates of pulmonary abnormalities and disease (asbestosis and lung cancer) among former workers.

(11) In Libby, Montana, exposure pathways are and were not limited to the workplace, rather, for decades there has been an unprecedented 24 hour per day contamination of the community's homes, playgrounds, gardens, and community air, such that the entire community of Libby, Montana, has been designated a Superfund site and is listed on the Environmental Protection Agency's National Priorities List.

(12) These multiple exposure pathways have caused severe asbestos disease and death not only in former workers at the mine and milling facilities, but also in the workers' spouses and children, and in community members who had no direct contact with the mine. According to the Environmental Protection Agency, some potentially important alternative pathways for past asbestos exposure include elevated concentrations of asbestos in ambient air and recreational exposures from children playing in piles of vermiculite. Furthermore, the Environmental Protection Agency has determined that current potential pathways of exposure include vermiculite placed in walls and attics as thermal insulation, vermiculite or ore used as road bed material, ore used as ornamental landscaping, and vermiculite or concentrated ore used as a soil and garden amendment or aggregate in driveways.

(13) The Environmental Protection Agency also concluded, "Asbestos contamination exists in a number of potential source materials at multiple locations in and around the residential and commercial area of Libby.... While data are not yet sufficient to perform reliable human-health risk evaluations for all sources and all types of disturbance, it is apparent that releases of fiber concentrations higher than Occupational Safety and Health Administration standards may occur in some cases ... and that screening-level estimates of lifetime excess cancer risk can exceed the upper-bound risk range of 1E-04 usually used by the Environmental Protection Agency for residents under a variety of exposure scenarios. The occurrence of non-occupational asbestos-related disease that has been observed among Libby residents is extremely unusual, and has not been associated with asbestos mines elsewhere, suggesting either very high and prolonged environmental exposures and/or increased toxicity of this form of amphibole asbestos.".

(14) According to a November 2003 article from the Journal Environmental Health Perspectives titled, Radiographic Abnormalities and Exposure to Asbestos-Contaminated Vermiculite in the Community of Libby, Montana, USA, Libby residents who have evidence of "no apparent exposure", i.e., did not work with asbestos, were not a family member of a former worker, etc., had a greater rate of pleural abnormalities (6.7 percent) than did those in control groups or general populations found in other studies from other states (which ranged from 0.2 percent to 4.6 percent). "Given the ubiquitous nature of vermiculite contamination in Libby, along with historical evidence of elevated asbestos concentrations in the air, it would be difficult to find participants who could be characterized as unexposed.".

(b) PURPOSE.—The purpose of this Act is to—

(1) create a privately funded, publicly administered fund to provide the necessary resources for a fair and efficient system to resolve asbestos injury claims that will provide compensation for legitimate present and future claimants of asbestos exposure as provided in this Act;

(2) provide compensation to those present and future victims based on the severity of their injuries, while establishing a system flexible enough to accommodate individuals whose conditions worsens;

(3) relieve the Federal and State courts of the burden of the asbestos litigation; and

(4) increase economic stability by resolving the asbestos litigation crisis that has bankrupted companies with asbestos liability, diverted resources from the truly sick, and endangered jobs and pensions.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Office of Asbestos Disease Compensation appointed under section 101(b).

(2) ASBESTOS.—The term "asbestos" includes—

(A) chrysotile;

(B) amosite;

(C) crocidolite;

(D) tremolite asbestos;

(E) winchite asbestos;

(F) richterite asbestos;

(G) anthophyllite asbestos;

(H) actinolite asbestos;

[(I) amphibole asbestos;]

(I) asbestiform amphibole minerals;

(J) any of the minerals listed under subparagraphs (A) through (I) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof; and

(K) asbestos-containing material, such as asbestos-containing products, automotive or industrial parts or components, equipment, improvements to real property, and any other material that contains asbestos in any physical or chemical form.

(3) ASBESTOS CLAIM.—

(A) IN GENERAL.—The term "asbestos claim" means any claim, premised on any theory, allegation, or cause of action for damages or other relief presented in a civil action or bankruptcy proceeding, directly, indirectly, or derivatively arising out of, based on, or related to, in whole or part, the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any derivative claim made by, or on behalf of, any exposed person or any representative, spouse, parent, child, or other relative of any exposed person.

(B) EXCLUSION.—The term does not include—

(i) claims alleging damage or injury to tangible property;

(ii) claims for benefits under a workers' compensation law or veterans' benefits program;

(iii) claims arising under any governmental or private health, welfare, disability, death or compensation policy, program or plan;

(iv) claims arising under any employment contract or collective bargaining agreement; or

(v) claims arising out of medical malpractice.

(4) ASBESTOS CLAIMANT.—The term "asbestos claimant" means an individual who files a claim under section 113.

(5) CIVIL ACTION.—The term "civil action" means all suits of a civil nature in State or Federal court, whether cognizable as cases at law or in equity or in admiralty, but does not include an action relating to any workers' compensation law, or a proceeding for benefits under any veterans' benefits program.

(6) COLLATERAL SOURCE COMPENSATION.—The term "collateral source compensation" means the compensation that the claimant received, or is entitled to receive, from a defendant or an insurer of that defendant, or compensation trust as a result of a final judgment or settlement for an asbestos-related injury that is the subject of a claim filed under section 113.

(7) ELIGIBLE DISEASE OR CONDITION.—The term "eligible disease or condition" means the extent that an illness meets the medical criteria requirements established under subtitle C of title I.

(8) EMPLOYERS' LIABILITY ACT.—The term "Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employer's Liability Act" shall, for all purposes of this Act, include the Act of June 5, 1920 (46 U.S.C. App. 688), commonly known as the Jones Act, and the related phrase "operations as a common carrier by railroad" shall include operations as an employer of seamen.

(9) FUND.—The term "Fund" means the Asbestos Injury Claims Resolution Fund established under section 221.

(10) INSURANCE RECEIVERSHIP PROCEEDING.—The term "insurance receivership proceeding" means any State proceeding with respect to a financially impaired or insolvent insurer or reinsurer including the liquidation, rehabilitation, conservation, supervision, or ancillary receivership of an insurer under State law.

(11) LAW.—The term "law" includes all law, judicial or administrative decisions, rules, regulations, or any other principle or action having the effect of law.

(12) PARTICIPANT.—

(A) IN GENERAL.—The term "participant" means any person subject to the funding requirements of title II, including—

(i) any defendant participant subject to liability for payments under subtitle A of that title;

(ii) any insurer participant subject to a payment under subtitle B of that title; and

(iii) any successor in interest of a participant.

(B) EXCEPTION.—

(i) IN GENERAL.—A defendant participant shall not include any person protected from any asbestos claim by reason of an injunction entered in connection with a plan of reorganization under chapter 11 of title 11, United States Code, that has been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(ii) APPLICABILITY.—Clause (i) shall not apply to a person who may be liable under subtitle A of title II based on prior asbestos expenditures related to asbestos claims that are not covered by an injunction described under clause (i).

(13) PERSON.—The term "person"—

(A) means an individual, trust, firm, joint stock company, partnership, association, insurance company, reinsurance company, or corporation; and

(B) does not include the United States, any State or local government, or subdivision thereof, including school districts and any general or special function governmental unit established under State law.

(14) STATE.—The term "State" means any State of the United States and also includes the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the entities under this paragraph.

(15) SUBSTANTIALLY CONTINUES.—The term "substantially continues" means that the business operations have not been significantly modified by the change in ownership.

(16) SUCCESSOR IN INTEREST.—The term "successor in interest" means any person that [acquires assets], *in 1 or a series of transactions, acquires all or substantially all of the assets and properties (including, without limitation, under section 363(b) or 1123(b)(4) of title 11, United States Code)*, and substantially continues the business operations, of a participant. The factors to be considered in determining whether a person is a successor in interest include—

(A) retention of the same facilities or location;

(B) retention of the same employees;

(C) maintaining the same job under the same working conditions;

(D) retention of the same supervisory personnel;

(E) continuity of assets;

(F) production of the same product or offer of the same service;

(G) retention of the same name;

(H) maintenance of the same customer base;

(I) identity of stocks, stockholders, and directors between the asset seller and the purchaser; or

(J) whether the successor holds itself out as continuation of previous enterprise, but expressly does not include whether the person actually knew of the liability of the participant under this Act.

(17) VETERANS' BENEFITS PROGRAM.—The term "veterans' benefits program" means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.

(18) WORKERS' COMPENSATION LAW.—The term "workers' compensation law"—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

(B) includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) and chapter 81 of title 5, United States Code; and

(C) does not include the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or damages recovered by any employee in a liability action against an employer.

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Office of Asbestos Disease Compensation

SEC. 101. ESTABLISHMENT OF OFFICE OF ASBESTOS DISEASE COMPENSATION.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—There is established within the Department of Labor the Office of Asbestos Disease Compensation (hereinafter referred to in this Act as the "Office"), which shall be headed by an Administrator.

(2) PURPOSE.—The purpose of the Office is to provide timely, fair compensation, in the amounts and under the terms specified in this Act, on a no-fault basis and in a non-adversarial manner, to individuals whose health has been adversely affected by exposure to asbestos.

[(3) EXPENSES.—There shall be available from the Asbestos Injury Claims Resolution Fund to the Administrator such sums as are necessary for the administrative expenses of the Office, including the sums necessary for conducting the studies provided for in section 121(e).]

(3) TERMINATION OF THE OFFICE.—The Office of Asbestos Disease Compensation shall terminate effective not later than 12 months following certification by the Administrator that the Fund has neither paid a claim in the previous 12 months nor has debt obligations remaining to pay.

(4) EXPENSES.—There shall be available from the Fund to the Administrator such sums as are necessary for any and all expenses associated with the Office of Asbestos Disease Compensation and necessary to carry out the purposes of this Act. Expenses covered should include—

(A) management of the Fund;

(B) personnel salaries and expenses, including retirement and similar benefits;

(C) the sums necessary for conducting the studies provided for in section 121(e);

(D) all administrative and legal expenses; and

(E) any other sum that could be attributable to the Fund.

(b) APPOINTMENT OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator of the Office of Asbestos Disease Compensation

shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall serve for a term of 5 years.

(2) Reporting.—The Administrator shall report directly to the Assistant Secretary of Labor for the Employment Standards Administration.

(c) Duties of Administrator.—

(1) In general.—The Administrator shall be responsible for—

(A) processing claims for compensation for asbestos-related injuries and paying compensation to eligible claimants under the criteria and procedures established under title I;

(B) determining, levying, and collecting assessments on participants under title II;

(C) appointing or contracting for the services of such personnel, making such expenditures, and taking any other actions as may be necessary and appropriate to carry out the responsibilities of the Office, including entering into cooperative agreements with other Federal agencies or State agencies and entering into contracts with nongovernmental entities;

(D) conducting such audits and additional oversight as necessary to assure the integrity of the program;

(E) managing the Asbestos Injury Claims Resolution Fund established under section 221, including—

(i) administering, in a fiduciary capacity, the assets of the Fund for the [exclusive] *primary* purpose of providing benefits to asbestos claimants and their beneficiaries;

(ii) defraying the reasonable expenses of administering the Fund;

(iii) investing the assets of the Fund in accordance with section 222(b);

(iv) retaining advisers, managers, and custodians who possess the necessary facilities and expertise to provide for the skilled and prudent management of the Fund, to assist in the development, implementation and maintenance of the Fund's investment policies and investment activities, and to provide for the safekeeping and delivery of the Fund's assets; and

(v) borrowing amounts authorized by section 221(b) on appropriate terms and conditions, including pledging the assets of or payments to the Fund as collateral;

(F) promulgating such rules, regulations, and procedures as may be necessary and appropriate to implement the provisions of this Act;

(G) making such expenditures as may be necessary and appropriate in the administration of this Act;

(H) excluding evidence and disqualifying or debarring any attorney, physician, provider of medical or diagnostic services, including laboratories and others who provide evidence in support of a claimant's application for compensation where the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by such individuals or entities; and

(I) having all other powers incidental, necessary, or appropriate to carrying out the functions of the Office.

(2) Certain enforcements.—For each infraction relating to paragraph (1)(H), the Administrator also may impose a civil penalty not to exceed $10,000 on any person or entity found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall prescribe appropriate regulations to implement paragraph (1)(H).

(3) Selection of deputy administrators.—The Administrator shall select a Deputy Administrator for Claims Administration to carry out the Administrator's responsibilities under this title and a Deputy Administrator for Fund Management to carry out the Administrator's responsibilities under title II of this Act. The Deputy Administrators shall report directly to the Administrator and shall be in the Senior Executive Service.

(d) Expeditious Determinations.—The Administrator shall prescribe rules to expedite claims for asbestos claimants with exigent circumstances in order to expedite the payment of such claims as soon as possible after startup of the Fund. The Administrator shall contract out the processing of such claims.

(e) Audit and Personnel Review Procedures.—The Administrator shall establish audit and personnel review procedures for evaluating the accuracy of eligibility recommendations of agency and contract personnel.

(f) Application of FOIA.—

(1) In general.—Section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) shall apply to the Office of Asbestos Disease Compensation and the Asbestos Insurers Commission.

[(2) Confidentiality.—Any person may designate any record submitted under this section as a confidential commercial or financial record for purposes of section 552 of title 5, United States Code. The Administrator and the Chairman of the Asbestos Insurers Commission shall adopt procedures for designating such records as confidential. Information on reserves and asbestos-related liabilities submitted by any participant for the purpose of the allocation of payments under subtitles A and B of title II shall be deemed to be confidential financial records.]

(2) Confidentiality of financial records.—

(A) In general.—Any person may label any record submitted under this section as a confidential commercial or financial record for the purpose of requesting exemption from disclosure under section 552(b)(4) of title 5, United States Code.

(B) Duties of Administrator and Chairman of the Asbestos Insurers Commission.—The Administrator and Chairman of the Asbestos Insurers Commission—

(i) shall adopt procedures for—

(I) handling submitted records marked confidential; and

(II) protecting from disclosure records they determine to be confidential commercial or financial information exempt under section 552(b)(4) of title 5, United States Code; and

(ii) may establish a pre-submission determination process to protect from disclosure records on reserves and asbestos-related liabilities submitted by any defendant participant that is exempt under section 552(b)(4) of title 5, United States Code.

(C) Review of complaints.—Nothing in this section shall supersede or preempt the de novo review of complaints filed under 552(b)(4) of title 5, United States Code.

(3) Confidentiality of medical records.—Any claimant may designate any record submitted under this section as a confidential personnel or medical file for purposes of section 552 of title 5, United States Code. The Administrator and the Chairman of the Asbestos Insurers Commission shall adopt procedures for designating such records as confidential.

SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE COMPENSATION.

(a) Establishment.—

(1) In general.—Not later than 120 days after the date of enactment of this Act, the Administrator shall establish an Advisory Committee on Asbestos Disease Compensation (hereinafter the "Advisory Committee").

(2) Composition and appointment.—The Advisory Committee shall be composed of 24 *20* members, appointed as follows—

(A) The Majority and Minority Leaders of the Senate, the Speaker of the House, and the Minority Leader of the House shall each appoint 4 members. Of the 4—

(i) 2 shall be selected to represent the interests of claimants, at least 1 of whom shall be selected from among individuals recommended by recognized national labor federations; and

(ii) 2 shall be selected to represent the interests of participants, 1 of whom shall be selected to represent the interests of the insurer participants and 1 of whom shall be selected to represent the interests of the defendant participants.

(B) The Administrator shall appoint [8] *4* members, who shall be individuals with qualifications and expertise in occupational or pulmonary medicine, occupational health, workers' compensation programs, financial administration, investment of funds, program auditing, or other relevant fields.

(3) Qualifications.—All of the members described in paragraph (2) shall have expertise or experience relevant to the asbestos compensation program, including experience or expertise in diagnosing asbestos-related diseases and conditions, assessing asbestos exposure and health risks, filing asbestos claims, administering a compensation or insurance program, or as actuaries, auditors, or investment managers. None of the members described in paragraph (2)(B) shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

(b) Duties.—The Advisory Committee shall advise the Administrator on—

(1) claims filing and claims processing procedures;

(2) claimant assistance programs;

(3) audit procedures and programs to ensure the quality and integrity of the compensation program;

(4) the development of a list of industries, occupations and time periods for which there is a presumption of substantial occupational exposure to asbestos;

(5) recommended analyses or research that should be conducted to evaluate past claims and to project future claims under the program;

(6) the annual report required to be submitted to Congress under section 405; and

(7) such other matters related to the implementation of this Act as the Administrator considers appropriate.

(c) Operation of the Committee.—

(1) Each member of the Advisory Committee shall be appointed for a term of 3 years, except that, of the members first appointed—

(A) 8 shall be appointed for a term of 1 year;

(B) 8 shall be appointed for a term of 2 years; and

(C) 8 shall be appointed for a term of 3 years, as determined by the Administrator at the time of appointment.

(2) Any member appointed to fill a vacancy occurring before the expiration of the term shall be appointed only for the remainder of such term.

(3) The Administrator shall designate a Chairperson and Vice Chairperson from among members of the Advisory Committee appointed under subsection (a)(2)(B).

(4) The Advisory Committee shall meet at the call of the Chairperson or the majority of its members, and at a minimum shall meet at least 4 times per year during the first 5 years of the asbestos compensation program, and at least 2 times per year thereafter.

(5) The Administrator shall provide to the Committee such information as is necessary and appropriate for the Committee to carry out its responsibilities under this section. The Administrator may, upon request of the Advisory Committee, secure directly from any Federal, State, or local department or agency such information as may be necessary and appropriate to enable the Advisory Committee to carry out its duties under this section. Upon request of the Administrator, the head of such department or agency shall furnish such information to the Advisory Committee.

(6) The Administrator shall provide the Advisory Committee with such administrative support as is reasonably necessary to enable it to perform its functions.

(d) EXPENSES.—Members of the Advisory Committee, other than full-time employees of the United States, while attending meetings of the Advisory Committee or while otherwise serving at the request of the Administrator, and while serving away from their homes or regular places of business, shall be allowed travel and meal expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government serving without pay.

SEC. 103. MEDICAL ADVISORY COMMITTEE.

(a) IN GENERAL.—The Administrator shall establish a Medical Advisory Committee to provide expert advice regarding medical issues arising under the statute.

(b) QUALIFICATIONS.—None of the members of the Medical Advisory Committee shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

SEC. 104. CLAIMANT ASSISTANCE.

(a) ESTABLISHMENT.—Not later than 180 days after the enactment of this Act, the Administrator shall establish a comprehensive asbestos claimant assistance program to—

(1) publicize and provide information to potential claimants about the availability of benefits for eligible claimants under this Act, and the procedures for filing claims and for obtaining assistance in filing claims;

(2) provide assistance to potential claimants in preparing and submitting claims, including assistance in obtaining the documentation necessary to support a claim;

(3) respond to inquiries from claimants and potential claimants;

(4) provide training with respect to the applicable procedures for the preparation and filing of claims to persons who provide assistance or representation to claimants; and

(5) provide for the establishment of a website where claimants may access all relevant forms and information.

(b) RESOURCE CENTERS.—The claimant assistance program shall provide for the establishment of resource centers in areas where there are determined to be large concentrations of potential claimants. These centers shall be located, to the extent feasible, in facilities of the Department of Labor or other Federal agencies.

(c) CONTRACTS.—The claimant assistance program may be carried out in part through contracts with labor organizations, community-based organizations, and other entities which represent or provide services to potential claimants, except that such organizations may not have a financial interest in the outcome of claims filed with the Office.

(d) LEGAL ASSISTANCE.—

(1) IN GENERAL.—As part of the program established under subsection (a), the Administrator shall establish a legal assistance program to provide assistance to asbestos claimants concerning legal representation issues.

(2) LIST OF QUALIFIED ATTORNEYS.—As part of the program, the Administrator shall maintain a roster of qualified attorneys who have agreed to provide pro bono services to asbestos claimants under rules established by the Administrator. The claimants shall not be required to use the attorneys listed on such roster.

(3) NOTICE.—

(A) NOTICE BY ADMINISTRATOR.—The Administrator shall provide asbestos claimants with notice of, and information relating to—

(i) pro bono services for legal assistance available to those claimants; and

(ii) any limitations on attorneys fees for claims filed under this title.

(B) NOTICE BY ATTORNEYS.—Before a person becomes a client of an attorney with respect to an asbestos claim, that attorney shall provide notice to that person of pro bono services for legal assistance available for that claim.

(e) ATTORNEY'S FEES.—

(1) IN GENERAL.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual under the Fund, more than 5 percent of a final award made (whether by the Administrator initially or as a result of administrative review) under the Fund on such claim.

(2) PENALTY.—Any representative of an asbestos claimant who violates this subsection shall be fined not more than the greater of—

(A) $5,000; or

(B) twice the amount received by the representative for services rendered in connection with each such violation.

SEC. 105. PHYSICIANS PANELS.

(a) APPOINTMENT.—The Administrator shall, in accordance with section 3109 of title 5, United States Code, appoint physicians with experience and competency in diagnosing asbestos-related diseases to be available to serve on Physicians Panels, as necessary to carry out this Act.

(b) FORMATION OF PANELS.—

(1) IN GENERAL.—The Administrator shall periodically determine—

(A) the number of Physicians Panels necessary for the efficient conduct of the medical review process under section 121;

(B) the number of Physicians Panels necessary for the efficient conduct of the exceptional medical claims process under section 121; and

(C) the particular expertise necessary for each panel.

(2) EXPERTISE.—Each Physicians Panel shall be composed of members having the particular expertise determined necessary by the Administrator, randomly selected from among the physicians appointed under subsection (a) having such expertise.

(3) PANEL MEMBERS.—

[(A) In general].—Except as provided under subparagraph (B), each Physicians Panel shall consist of 3 physicians, 2 of whom shall be designated to participate in each case submitted to the Physicians Panel, and the third of whom shall be consulted in the event of disagreement.

[(B) WAIVER.—The Administrator may waive the provisions of subparagraph (A) and may provide for panels of less than 3 physicians, if the Administrator determines that—

(i) there is a shortage of qualified physicians available for service on panels; and

(ii) such shortage will result in administrative delay in the claims process.]

(c) QUALIFICATIONS.—To be eligible to serve on a Physicians Panel under subsection (a), a person shall be—

(1) a physician licensed in any State;

(2) board-certified in pulmonary medicine, occupational medicine, internal medicine, oncology, or pathology; and

(3) an individual who, for each of the 5 years before and during his or her appointment to a Physicians Panel, has earned not more than 15 percent of his or her income as an employee of a participating defendant or insurer or a law firm representing any party in asbestos litigation or as a consultant or expert witness in matters related to asbestos litigation.

(d) DUTIES.—Members of a Physicians Panel shall—

(1) make such medical determinations as are required to be made by Physicians Panels under section 121; and

(2) perform such other functions as required under this Act.

(e) COMPENSATION.—Notwithstanding any limitation otherwise established under section 3109 of title 5, United States Code, the Administrator shall be authorized to pay members of a Physician Panel such compensation as is reasonably necessary to obtain their services.

(f) FEDERAL ADVISORY COMMITTEE ACT.—A Physicians Panel established under this section shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App. 2).

SEC. 106. PROGRAM STARTUP.

(a) INTERIM REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Administrator shall promulgate interim regulations and procedures for the processing of claims under title I and the operation of the Fund under title II, including procedures for the expediting of exigent health claims, *and processing of claims through the claims facility*.

(b) INTERIM PERSONNEL.—The Secretary of Labor and the Assistant Secretary of Labor for the Employment Standards Administration may make available to the Administrator on a temporary basis such personnel and other resources as may be necessary to facilitate the expeditious startup of the program. The Administrator may in addition contract with individuals or entities having relevant experience to assist in the expeditious startup of the program. Such relevant experience shall include, but not be limited to, experience with the review of workers' compensation, occupational disease, or similar claims and with financial matters relevant to the operation of the program.

(c) EXIGENT HEALTH CLAIMS.—

(1) IN GENERAL.—The Administrator shall develop procedures to provide for an expedited process to categorize, evaluate, and pay exigent health claims. Such procedures shall include, pending promulgation of final regulations, adoption of interim regulations as needed for processing of exigent health claims.

(2) ELIGIBLE EXIGENT HEALTH CLAIMS.—A claim shall qualify for treatment as an exigent health claim if [the claimant is living and the claimant provides]—

(A) *the claimant is living and provides* a diagnosis of mesothelioma meeting the requirements of section 121(d)(10); [or]

(B) *the claimant is living and provides* a declaration or affidavit, from a physician who has examined the claimant within 120 days before the date of such declaration or affidavit, that the physician has diagnosed the claimant as being terminally ill from an asbestos-related illness and having a life expectancy of less than 1 year.*; or*

(C) the claimant is the spouse or child of an eligible exigent health claimant who—

(i) was living when the claim was filed with the Fund, or if before the implementation of interim regulations for the filing of claims with the Fund, on the date of enactment of this Act;

(ii) has since died from an asbestos-related disease or condition; and

(iii) has not received compensation from the Fund for the disease or condition for which the claim was filed.

(3) ADDITIONAL EXIGENT HEALTH CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as exigent health claims under this subsection.

(4) CLAIMS FACILITY.—To facilitate the prompt payment of exigent health claims, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, may enter into settlements with claimants. [In the absence of an offer of judgment as provided under section 106(f)(2), the claimant may submit a claim to that claims facility. The claims facility shall receive the claimant's submissions and evaluate the claim in accordance with subtitles B and C. The claims facility shall then submit the file to the Administrator for payment in accordance with subtitle D. This subsection shall not apply to exceptional medical claims under section 121(f). A claimant may appeal any decision at a claims facility with the Administrator in accordance with section 114.] *The processing and payment of claims shall be subject to regulations promulgated under this Act.*

(5) AUTHORIZATION FOR CONTRACTS WITH CLAIMS FACILITIES.—The Administrator may enter into contracts with [claims facilities] *a claims facility* for the processing of claims (except for exceptional medical claims) in accordance with this title.

(d) EXTREME FINANCIAL HARDSHIP CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis as a result of extreme financial hardship.

(e) INTERIM ADMINISTRATOR.—Until an Administrator is appointed and confirmed under section 101(b), the responsibilities of the Administrator under this Act shall be performed by the Assistant Secretary of Labor for the Employment Standards Administration, who shall have all the authority conferred by this Act on the Administrator and who shall be deemed to be the Administrator for purposes of this Act. Before final regulations being promulgated relating to claims processing, the Interim Administrator may prioritize claims processing, without regard to the time requirements prescribed in subtitle B of this title, based on severity of illness and likelihood that [the illness in question was caused by exposure to asbestos.] *exposure to asbestos was a substantial contributing factor for the illness in question.*

[(f) STAY OF CLAIMS; RETURN TO TORT SYSTEM.—

[(1) STAY OF CLAIMS.—Notwithstanding any other provision of this Act, any asbestos claim pending as of the date of enactment of this Act, other than a claim to which section 403(d)(2)(A) applies, shall be subject to a stay.

[(2) EXIGENT HEALTH CLAIMS.—

[(A) PROCEDURES FOR SETTLEMENT OF EXIGENT HEALTH CLAIMS.—

[(i) IN GENERAL.—Any person that has filed a timely exigent health claim seeking a judgment or order for monetary damages in any Federal or State court before or after the date of enactment of this Act, may immediately seek an offer of judgment of such claim in accordance with this subparagraph.

[(ii) FILING.—

[(I) IN GENERAL.—The claimant shall file with the Administrator and serve upon all defendants in the pending court action an election to pursue an offer of judgment—

[(aa) within 60 days after the date of enactment of this Act, if the claim was filed in a Federal or State court before such date of enactment; and

[(bb) within 60 days after the date of the filing of the claim, if the claim is filed in a Federal or State court on or after the date of enactment of this Act.

[(II) STAY.—If the claimant fails to file and serve a timely election under this clause, the stay under subparagraph (B) shall remain in effect.

[(iii) INFORMATION.—A claimant who has filed a timely election under clause (ii) shall within 60 days after filing provide to each defendant and to the Administrator—

[(I) the amount received or due to be received as a result of all settlements that would qualify as a collateral source under section 134, together with copies of all settlement agreements and related documents sufficient to show the accuracy of that amount;

[(II) all information that the claimant would be required to provide to the Administrator in support of a claim under sections 115 and 121; and

[(III) a certification by the claimant that the information provided is true and complete.

[(iv) CERTIFICATION.—The certification provided under clause (iii) shall be subject to the same penalties for false or misleading statements that would be applicable with regard to information provided to the Administrator in support of a claim.

[(v) OFFER OF JUDGMENT.—Within 30 days after service of a complete set of the information described in clause (iii), any defendant may file and serve on all parties a good faith offer of judgment in an aggregate amount not to exceed the total amount to which the claimant may be entitled under section 131 after adjustment for collateral sources under section 134. If the aggregate amount offered by all defendants exceeds the limitation in this clause, all offers shall be deemed reduced pro-rata until the aggregate amount equals the amount provided under section 131.

[(vi) ACCEPTANCE OR REJECTION.—Within 20 days after the service of the last offer of judgment, the claimant shall either accept or reject such offers. If the amount of the offer made by any defendant individually, or by any defendants jointly, equals or exceeds 100 percent of what the claimant would receive under the Fund, the claimant shall accept such offer and release any outstanding asbestos claims.

[(vii) LUMP SUM PAYMENT.—Any accepted offer of judgment shall be payable within 30 days and in 1 lump sum in order to settle the pending claim.

[(viii) RECOVERY OF COSTS.—Any defendant whose offer of judgment is accepted and has settled an asbestos claim under clauses (vi) and (vii) may recover the cost of such settlement by deducting from its next and subsequent contributions to the Fund for the full amount of the payment made by such defendant to the exigent health claimant, unless the Administrator finds, on the basis of clear and convincing evidence, that—

[(I) the claimant did not meet the requirements of an exigent health claim; and

[(II) the defendant's offer was collusive or otherwise not in good faith.

[(ix) INDEMNIFICATION.—In any case in which the Administrator refuses to grant full indemnification under clause (viii), the Administrator may provide such partial indemnification as may be fair and just in the circumstances. If Administrator denies indemnification, the defendant may seek contribution from other non-settling defendants, as well as reimbursement under the defendant's applicable insurance policies. If the Administrator refuses to grant full or partial indemnification based on collusive action, the defendant may pursue any available remedy against the claimant.

[(x) REFUSAL TO MAKE OFFER.—If a defendant refuses to make an offer of judgment, the claimant may continue to seek a judgment or order for monetary damages from the court where the case is

[currently pending in an amount not to exceed 150 percent of what the claimant would receive if the claimant had filed a claim with the Fund. Such a judgment or order may also provide an award for claimant's attorneys' fees and the costs of litigation.

[(xi) REJECTION OF OFFER.—If the claimant rejects the offer as less than what the claimant would qualify to receive under section 131, the claimant may immediately pursue the claim in court where the claimant shall demonstrate, in addition to all other essential elements of the claimant's claim against any defendant, that the claimant meets the requirements of section 121.

[(B) PURSUAL OF EXIGENT HEALTH CLAIMS.—

[(i) STAY.—If a claimant does not elect to seek an offer of judgment under subparagraph (A), the pending claim is stayed for 9 months after the date of enactment of this Act.

[(ii) DEFENDANT OFFER.—If a claimant does not elect to seek an offer of judgment under subparagraph (A), the defendant may elect to make an offer according to the provisions of this paragraph, except that a claimant shall not be required to accept that offer. The claimant shall accept or reject the offer within 20 days.

[(iii) CLAIMS FACILITY.—If a claimant does not elect to seek an offer of judgment under subparagraph (A), the claimant may seek an award from the Fund through the claims facility under section 106 (c)(4).

[(iv) CONTINUANCE OF CLAIMS.—If, after 9 months after the date of enactment of this Act, the Administrator cannot certify to Congress that the Fund is operational and paying exigent health claims at a reasonable rate, each person that has filed an exigent health claim before such date of enactment and stayed under this paragraph may continue their exigent health claims in the court where the case was pending on the date of enactment of this Act. For exigent claims filed after the date of enactment of this Act, by claimants who do not elect to seek an offer of judgment under subparagraph (A), the pending claim is stayed for 9 months after the date the claim is filed, unless during that period the Administrator can certify to Congress that the Fund is operational and paying valid claims at a reasonable rate.

[(C) CREDIT OF CLAIM AND EFFECT OF OPERATIONAL FUND.—If an asbestos claim is pursued in Federal or State court in accordance with this paragraph, any recovery by the claimant shall be a collateral source compensation for purposes of section 134.

[(3) PURSUAL OF ASBESTOS CLAIMS IN FEDERAL OR STATE COURT.—

[(A) IN GENERAL.—Notwithstanding any other provision of this Act, if, not later than 24 months after the date of enactment of this Act, the Administrator cannot certify to Congress that the Fund is operational and paying all valid claims at a reasonable rate, any person with a non-exigent asbestos claim stayed under this paragraph, except for any person whose claim does not exceed a Level I claim, may pursue that claim in the Federal district court or State court located within—

[(i) the State of residence of the claimant; or

[(ii) the State in which the asbestos exposure arose.

[(B) DEFENDANTS NOT FOUND.—If any defendant cannot be found in the State described in clause (i) or (ii) of subparagraph (A), the claim may be pursued in the Federal district court or State court located within any State in which the defendant may be found.

[(C) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the asbestos exposure occurred in more than 1 county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subparagraph.]

[(D) STATE VENUE REQUIREMENTS.—Nothing in this paragraph shall preempt or supersede any State's law relating to venue requirements within that State which are more restrictive.

[(E) CREDIT OF CLAIM AND EFFECT OF OPERATIONAL OR NONOPERATIONAL FUND.—

[(i) CREDIT OF CLAIM.—If an asbestos claim is pursued in Federal or State court in accordance with this paragraph, any recovery by the claimant shall be a collateral source compensation for purposes of section 134.

[(ii) OPERATIONAL FUND.—If the Administrator subsequently certifies to Congress that the Fund has become operational and paying all valid asbestos claims at a reasonable rate, any claim in a civil action in Federal or State court that is not actually on trial before a jury which has been impaneled and presentation of evidence has commenced, but before its deliberation, or before a judge and is at the presentation of evidence, may, at the option of the claimant, be deemed a reinstated claim against the Fund and the civil action before the Federal or State court shall be null and void.

[(iii) NONOPERATIONAL FUND.—Notwithstanding any other provision of this Act, if the Administrator subsequently certifies to Congress that the Fund cannot become operational and paying all valid asbestos claims at a reasonable rate, all asbestos claims that have a stay may be filed or reinstated.]

(f) STAY OF CLAIMS; RETURN TO TORT SYSTEM.—

(1) STAY OF CLAIMS.—Notwithstanding any other provision of this Act, any asbestos claim pending on the date of enactment of this Act, other than a claim to which section 403(d)(2) applies, shall be subject to a stay.

(2) EXIGENT HEALTH CLAIMS.—

(A) PROCEDURES FOR SETTLEMENT OF EXIGENT HEALTH CLAIMS.—

(i) IN GENERAL.—Any person that has filed an exigent health claim, as provided under subsection (c)(2), seeking a judgment or order for monetary damages in any Federal or State court before the date of the enactment of this Act, may seek a settlement in accordance with this paragraph. Any person with an exigent health claim, as provided under subsection (c)(2),.that arises after such date of enactment may seek a settlement offer in accordance with this paragraph.

(ii) FILING.—

(I) IN GENERAL.—At any time before the Fund or claims facility being certified as operational and paying exigent health claims at a reasonable rate, any person with an exigent health claim as described under clause (i) shall file a notice of their intent to seek a settlement or shall file their exigent health claim with the Administrator or claims facility. Filing of an exigent health claim with the Administrator or claims facility may serve as notice of intent to seek a settlement.

(II) STAY.—If the claimant fails to file under this clause, the stay shall remain in effect except as provided under subparagraph (B).

(iii) EXIGENT HEALTH CLAIM INFORMATION.—To file an exigent health claim, each individual shall provide all of the following information:

(I) The amount received or entitled to be received as a result of all settlements that would qualify as a collateral source under section 134, and copies of all settlement agreements and related documents sufficient to show the accuracy of that amount.

(II) All information that the claimant would be required to provide to the Administrator in support of a claim under sections 113 and 121.

(III) A certification by the claimant that the information provided is true and complete. The certification provided under this subclause shall be subject to the same penalties for false or misleading statements that would be applicable with regard to information provided to the Administrator or claims facility in support of a claim.

(IV) For exigent health claims arising after the date of enactment of this Act, the claimant shall identify each defendant that would be an appropriate defendant in a civil action seeking damages for the asbestos claim of the claimant. The identification of a defendant under this subclause shall be required to comply with rule 11 of the Federal Rules of Civil Procedure.

(iv) TIMING.—A claimant who has filed a notice of their intent to seek a settlement under clause (ii) shall within 60 days after filing notice provide to the Administrator or claims facility, and all affected defendants the information required under clause (iii). If a claimant has filed an exigent health claim under clause (ii) the Administrator shall provide all affected defendants the information required under clause (iii).

(v) ADMINISTRATOR OR CLAIMS FACILITY CERTIFICATION OF SETTLEMENT.—

(I) DETERMINATION.—Within 60 days after the information under clause (iii) is provided, the Administrator or claims facility shall determine whether or not the claim meets the requirements of an exigent health claim.

(II) REQUIREMENTS MET.—If the Administrator or claims facility determines that the claim meets the requirements of an exigent health claim, the Administrator or claims facility shall immediately—

(aa) issue and serve on all parties a certification of eligibility of such claim;

(bb) determine the value of such claim under the Fund by subtracting from the amount in section 131 the total amount of collateral source compensation received by the claimant; and

(cc) pay the award of compensation to the claimant under clause (xi).

(III) REQUIREMENTS NOT MET.—If the requirements under clause (iii) are not met, the claimant shall have 30 days to perfect the claim. If the claimant fails to perfect the claim within that 30-day period or the Administrator or claims facility determines that the claim does not meet the requirements of an exigent health claim, the claim shall not be eligible to proceed under this paragraph. A claimant may appeal any decision issued by a claims facility with the Administrator in accordance with section 114.

(vi) FAILURE TO CERTIFY.—If the Administrator or claims facility is unable to process the claim and does not make a determination regarding the certification of the claim as required under clause (v), the Administrator or claims facility shall within 10 days after the end of the 60-day period referred to under clause (v)(I) provide notice of the failure to act to the claimant and the defendants in the pending Federal or State court action or the defendants identified under clause (iii)(IV). If the Administrator or claims facility fails to provide such notice within 10 days, the claimant may elect to provide the notice to the affected defendants to prompt a settlement offer.

(vii) FAILURE TO PAY.—If the Administrator or claims facility does not pay the award as required under clause (xi), the Administrator shall refer the certified claim within 10 days as a certified exigent health claim to the defendants in the pending Federal and State court action or to the potential defendants identified under clause (iii)(IV) for exigent claims arising after the date of enactment of this Act.

(viii) SETTLEMENT OFFER.—Any defendant or defendants may, within 30 days after receipt of such notice as provided under clause (vi) or (vii), file and serve on all parties and the Administrator a good faith settlement offer in an aggregate amount not to exceed the total amount to which the claimant may be entitled under section 131. If the aggregate amount offered by all defendants exceeds the award determined by the Administrator, all offers shall be deemed reduced pro-rata until the aggregate amount equals the award amount. An acceptance of such settlement offer in a pending court action shall be subject to approval by the trial judge or authorized magistrate in the court where the claim is pending. The court shall approve any such accepted offer within 20 days after a request, unless there is evidence of bad faith or fraud. No court approval is necessary if the exigent health claim was certified by the Administrator or claims facility under clause (v).

(ix) OPPORTUNITY TO CURE.—If the settlement offer is rejected for being less than what the claimant was entitled to under the Fund, the defendants shall have 10 business days to make an amended offer. If the amended offer equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement offer in writing. If the settlement offer is again rejected as less than what the claimant is entitled to under the Fund or if defendants fail to make an amended offer, the claimant shall be entitled to recover 150 percent of what the claimant would receive under the Fund before the stay being lifted under subparagraph (B). If the amount of the amended settlement offer made by the Administrator, claims facility, or defendants equals 150 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(x) ACCEPTANCE OR REJECTION.—Within 20 days after receipt of the settlement offer, or the amended settlement offer, the claimant shall either accept or reject such offer in writing. If the amount of the settlement offer made by the Administrator, claims facility, or defendants equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xi) PAYMENT SCHEDULE.—

(I) MESOTHELIOMA CLAIMANTS.—For mesothelioma claimants—

(aa) an initial payment of 50 percent shall be made within 30 days after the date the settlement is accepted and the second and final payment shall be made 6 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the defendant, the payments may be extended 50 percent in 6 months and 50 percent 11 months after the date the settlement offer is accepted.

(II) OTHER EXIGENT CLAIMANTS.—For other exigent claimants, as defined under section 106(c)(2)(B and (C)—

(aa) the initial payment of 50 percent shall be made within 6 months after the date the settlement is accepted and the second and final payment shall be made 12 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the defendants, the payments may be extended 50 percent within 1 year after the date the settlement offer is accepted and 50 percent in 2 years after date the settlement offer is accepted.

(III) RELEASE.—Once a claimant has received final payment of the accepted settlement offer the claimant shall release any outstanding asbestos claims.

(xii) RECOVERY OF COSTS.—

(I) IN GENERAL.—Any defendant whose settlement offer is accepted may recover the cost of such settlement by deducting from the defendant's next and subsequent contributions to the Fund the full amount of the payment made by such defendant to the exigent health claimant, unless the Administrator finds, on the basis of clear and convincing evidence, that the defendant's offer is not in good faith. Any such payment shall be considered a payment to the Fund for purposes of section 404(e)(1) and in response to the payment obligations imposed on defendant and insurer participants in title II.

(II) REIMBURSEMENT.—Notwithstanding subclause (I), if the deductions from the defendant participant's next and subsequent contributions to the Fund do not fully recover the cost of such payments on or before its third annual contribution to the Fund, the Fund shall reimburse such defendant for such remaining cost not later than 6 months after the date of the third scheduled Fund contribution.

(xiii) FAILURE TO MAKE OFFER.—If defendants fail to make a settlement offer within the 30-day period described under clause (viii) or make amended offers within the 10 business day cure period described under clause (ix), the claimant shall be entitled to recover 150 percent of what the claimant would receive under the Fund before the stay being lifted under subparagraph (B).

(xiv) FAILURE TO PAY.—If defendants fail to pay an accepted settlement offer within the payment schedule under clause (xi), the claimant shall be entitled to recover 150 percent of what the claimant would receive under the Fund before the stay being lifted under subparagraph (B). If the stay is lifted under subparagraph (B) the claimant may seek a judgment or order for monetary damages from the court where the case is currently pending or the appropriate Federal or State court for claims arising after the date of enactment of this Act.

(B) CONTINUATION OF EXIGENT HEALTH CLAIMS.—If 9 months after an exigent health claim has been filed under subparagraph (A)(ii), a claimant has not received a settlement under subparagraph (A)(xi) and the Administrator has not certified to Congress that the Fund or claims facility is operational and paying exigent health claims at a reasonable rate, such exigent health claimant, may seek a judgment or order for monetary damages from the court where the case is currently pending or the appropriate Federal or State court for claims arising after the date of enactment of this Act.

(C) CREDIT OF CLAIM AND EFFECT OF OPERATIONAL FUND.—

(i) COLLATERAL SOURCE.—If an asbestos claim is pursued in Federal or State court in accordance with this paragraph, any recovery by the claimant shall be a collateral source compensation for purposes of section 134.

(ii) RECOVERY OF COSTS.—Any defendant may recover the cost of any claim continued in court for up to the amount the claimant would receive under the Fund by deducting from the defendant's next and subsequent contributions to the Fund for the full amount of the payment made by such defendant to the exigent health claimant.

(3) PURSUAL OF NON-EXIGENT ASBESTOS CLAIMS IN FEDERAL OR STATE COURT.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, if not later than 24 months after the date of enactment of this Act, the Administrator cannot certify to Congress that the Fund is operational and paying all valid claims at a reasonable rate, any person with a non-exigent asbestos claim stayed, except for any person whose claim does not exceed a Level I claim, may pursue that claim in the Federal district court or State court located within—

(i) the State of residence of the claimant; or

(ii) the State in which the asbestos exposure occurred.

(B) DEFENDANTS NOT FOUND.—If any defendant cannot be found in the State described under subparagraph (A) (i) or (ii), the claim may be pursued in the Federal district court or State court located within any State in which the defendant may be found.

(C) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the asbestos exposure occurred in more than 1 county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subparagraph.

(D) STATE VENUE REQUIREMENTS.—Nothing in this paragraph shall preempt or supersede any State law relating to venue requirements within that State which are more restrictive.

(E) CREDIT OF CLAIM AND EFFECT OF OPERATIONAL OR NONOPERATIONAL FUND.—

(i) CREDIT OF CLAIM.—If an asbestos claim is pursued in Federal or State court in accordance with this paragraph, any recovery by the claimant shall be a collateral source compensation for purposes of section 134.

(ii) OPERATIONAL CERTIFICATION.—Operational certification shall be a filing in the Federal Register confirming that the Fund is operational and paying all valid asbestos claims at a reasonable rate.

(iii) OPERATIONAL PRECONDITIONS.—

(I) The Administrator may not issue a operational certification until—

(aa) 60 days after the funding allocation information required under section 221(e) has been published in the Federal Register; and

(bb) insurers subject to section 212(a)(3) submit their names and information to the Administrator within 30 days after the date of enactment of this Act and 60 days after the Administrator publishes such information in the Federal Register.

(iv) OPERATIONAL FUND.—If the Administrator issues an operational certification and notifies Congress that the Fund has become operational and paying all valid asbestos claims at a reasonable rate, any nonexigent asbestos claim in a civil action in Federal or State court that is not on trial before a jury which has been impaneled and presentation of evidence has commenced, but before its deliberation, or before a judge and is at the presentation of evidence shall be deemed a reinstated claim against the Fund and the civil action before the Federal or State court shall be null and void.

(v) NONOPERATIONAL FUND.—Notwithstanding any other provision of this Act, if the Administrator subsequently issues a nonoperational certification and notifies Congress that the Fund is unable to become operational and pay all valid asbestos claims at a reasonable rate, all asbestos claims that have a stay may be filed or reinstated.

SEC. 107. AUTHORITY OF THE ADMINISTRATOR.

The Administrator, on any matter within the jurisdiction of the Administrator under this Act, may—

(1) issue subpoenas for and compel the attendance of witnesses within a radius of 200 miles;

(2) administer oaths;

(3) examine witnesses;

(4) require the production of books, papers, documents, and other evidence; and

(5) request assistance from other Federal agencies with the performance of the duties of the Administrator under this Act.

Subtitle B—Asbestos Disease Compensation Procedures

SEC. 111. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.

To be eligible for an award under this Act for an asbestos-related disease or injury, an individual shall—

(1) file a claim in a timely manner in accordance with section 113; and

(2) prove, by a preponderance of the evidence, that the claimant suffers from an eligible disease or condition, as demonstrated by evidence that meets the requirements established under subtitle C.

SEC. 112. GENERAL RULE CONCERNING NO-FAULT COMPENSATION.

An asbestos claimant shall not be required to demonstrate that the asbestos-related injury for which the claim is being made resulted from the negligence or other fault of any other person.

SEC. 113. FILING OF CLAIMS.

(a) WHO MAY SUBMIT.—

(1) IN GENERAL.—Any individual who has suffered from a disease or condition that is believed to meet the requirements established under subtitle C (or the personal representative of the individual, if the individual is deceased or incompetent) may file a claim with the Office for an award with respect to such injury.

(2) DEFINITION.—In this Act, the term "personal representative" shall have the same meaning as that term is defined in section 104.4 of title 28 of the Code of Federal Regulations, as in effect on December 31, 2004.

(3) LIMITATION.—A claim may not be filed by any person seeking contribution or indemnity.

(4) EFFECT OF MULTIPLE INJURIES.—

(A) IN GENERAL.—A claimant who receives an award for an eligible disease or condition shall not be precluded from submitting claims for and receiving additional awards under this title for any higher disease level for which the claimant becomes eligible, subject to appropriate setoffs as provided under section 134.

(B) LIBBY, MONTANA CLAIMS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), if a Libby, Montana claimant worsens in condition, as measured by pulmonary function tests, such that a claimant qualifies for a higher nonmalignant level, the claimant shall be eligible for an additional award, at the appropriate level, offset by any award previously paid under this Act, such that a claimant would qualify for Level IV if the claimant satisfies section 121(f)(8), and would qualify for Level V if the claimant provides—

(I) a diagnosis of bilateral asbestos related nonmalignant disease;

(II) evidence of TLC or FVC less than 60 percent; and

(III) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(ii) SUBSEQUENT MALIGNANT DISEASE.—If a Libby, Montana, claimant develops malignant disease, such that the claimant qualifies for Level VI, VII, VIII, or IX, subparagraph (A) shall apply.

(b) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—[Except as otherwise provided in this subsection, if an individual fails to file a claim with the Office under this section within 5 years after the date on which the individual first—

[(A) received a medical diagnosis of an eligible disease or condition as provided for under this subtitle and subtitle C; or

[(B) discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to an eligible disease or condition,

[any claim relating to that injury, and any other asbestos claim related to that injury.] *If a claim is not filed with the Office within the limitations period specified in this subsection for that category of claim, such claim* shall be extinguished, and any recovery thereon shall be prohibited.

(2) INITIAL CLAIMS.—An initial claim for an award under this Act shall be filed within 5 years after the date on which the claimant first received a medical diagnosis and medical test results sufficient to satisfy the criteria for the disease level for which the claimant is seeking compensation.

(3) CLAIMS FOR ADDITIONAL AWARDS.—

(A) NON-MALIGNANT DISEASES.—If a claimant has previously filed a timely initial claim for compensation for any non-malignant disease level, there shall be no limitations period applicable to the filing of claims by the claimant for additional awards for higher disease levels based on the progression of the non-malignant disease.

(B) MALIGNANT DISEASES.—Regardless of whether the claimant has previously filed a claim for compensation for any other disease level, a claim for compensation for a malignant disease level shall be filed within 5 years after the claimant first obtained a medical diagnosis and medical test results sufficient to satisfy the criteria for the malignant disease level for which the claimant is seeking compensation.

[(2) EXCEPTION.—The statute of limitations in paragraph (1) does not apply to the progression of nonmalignant diseases once the initial claim has been filed.]

[(3)] *(4)* EFFECT ON PENDING CLAIMS.—

(A) IN GENERAL.—If, on the date of enactment of this Act, an asbestos claimant has any timely filed asbestos claim that is preempted under section 403(e), such claimant shall file a claim under this section within 5 years after such date of enactment, or any claim relating to that injury, and any other asbestos claim related to that injury shall be extinguished, and recovery there shall be prohibited.

(B) SPECIAL RULE.—For purposes of this paragraph, a claim shall not be treated as pending with a trust established under title 11, United States Code, solely because a claimant whose claim was previously compensated by the trust has or alleges—

(i) a non-contingent right to the payment of future installments of a fixed award; or

(ii) a contingent right to recover some additional amount from the trust on the occurrence of a future event, such as the reevaluation of the trust's funding adequacy or projected claims experience.

[(4) EFFECT OF MULTIPLE INJURIES.—

(A) IN GENERAL.—An asbestos claimant who receives an award under this title for an eligible disease or condition, and who subsequently develops another such injury, shall be eligible for additional awards under this title (subject to appropriate setoffs for such prior recovery of any award under this title and from any other collateral source) and the statute of limitations under paragraph (1) shall not begin to run with respect to such subsequent injury until such claimant obtains a medical diagnosis of such other injury or discovers facts that would have led a reasonable person to obtain such a diagnosis.

(B) SETOFFS.—Except as provided in subparagraph (C), any amounts paid or to be paid for a prior award under this Act shall be deducted as a setoff against amounts payable for the second injury claim.

(C) EXCEPTION.—Any amounts paid or to be paid for a prior claim for a nonmalignant disease (Levels I through V) filed against the Fund shall not be deducted as a setoff against amounts payable for the second injury claim for a malignant disease (Levels VI through IX), unless the malignancy was diagnosed, or the asbestos claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis, before the date on which the nonmalignancy claim was compensated.]

(c) REQUIRED INFORMATION.—A claim filed under subsection (a) shall be in such form, and contain such information in such detail, as the Administrator shall by regulation prescribe. At a minimum, a claim shall include—

(1) the name, social security number, gender, date of birth, and, if applicable, date of death of the claimant;

(2) information relating to the identity of dependents and beneficiaries of the claimant;

(3) an employment history sufficient to establish required asbestos exposure, accompanied by social security or other payment records or a signed release permitting access to such records;

(4) a description of the asbestos exposure of the claimant, including, to the extent known, information on the site, or location of exposure, and duration and intensity of exposure;

(5) a description of the tobacco product use history of the claimant, including frequency and duration;

(6) an identification and description of the asbestos-related diseases or conditions of the claimant, accompanied by a written report by the claimant's physician with medical diagnoses and x-ray films, and other test results necessary to establish eligibility for an award under this Act;

(7) a description of any prior or pending civil action or other claim brought by the claimant for asbestos-related injury or any other pulmonary, parenchymal, or pleural injury, including an identification of any recovery of compensation or damages through settlement, judgment, or otherwise; and

(8) for any claimant who asserts that he or she is a nonsmoker or an ex-smoker, as defined in section 131, for purposes of an award under Malignant Level VI, Malignant Level VII, or Malignant Level VIII, evidence to support the assertion of nonsmoking or ex-smoking, including relevant medical records.

(d) DATE OF FILING.—A claim shall be considered to be filed on the date that the claimant mails the claim to the Office, as determined by postmark, or on the date that the claim is received by the Office, whichever is the earliest determinable date.

(e) INCOMPLETE CLAIMS.—If a claim filed under subsection (a) is incomplete, the Administrator shall notify the claimant of the information necessary to complete the claim and inform the claimant of such services as may be available through the Claimant Assistance Program established under section 104 to assist the claimant in completing the claim. Any time periods for the processing of the claim shall be suspended until such time as the claimant submits the information necessary to complete the claim. If such information is not received within 1 year after the date of such notification, the claim shall be dismissed.

SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM AWARDS.

(a) IN GENERAL.—

(1) REVIEW OF CLAIMS.—The Administrator shall, in accordance with this section, determine whether each claim filed under the Fund or claims facility satisfies the requirements for eligibility for an award under this Act and, if so, the value of the award. In making such determinations, the Administrator shall consider the claim presented by the claimant, the factual and medical evidence submitted by the claimant in support of the claim, the medical determinations of any Physicians Panel to which a claim is referred under section 121, and the results of such investigation as the Administrator may deem necessary to determine whether the claim satisfies the criteria for eligibility established by this Act.

(2) ADDITIONAL EVIDENCE.—The Administrator may request the submission of medical evidence in addition to the minimum requirements of section 113(c) if necessary or appropriate to make a determination of eligibility for an award, in which case the cost of obtaining such additional information or testing shall be borne by the Office.

(b) PROPOSED DECISIONS.—Not later than 90 days after the filing of a claim, the Administrator shall provide to the claimant (and the claimant's representative) a proposed decision accepting or rejecting the claim in whole or in part and specifying the amount of the proposed award, if any. The proposed decision shall be in writing, shall contain findings of fact and conclusions of law, and shall contain an explanation of the procedure for obtaining review of the proposed decision.

(c) PAYMENTS IF NO TIMELY PROPOSED DECISION.—If the Administrator has received a complete claim and has not provided a proposed decision to the claimant under subsection (b) within 180 days after the filing of the claim, the claim shall be deemed accepted and the claimant shall be entitled to payment under section 133(a)(2). If the Administrator subsequently rejects the claim the claimant shall receive no further payments under section 133. If the Administrator subsequently rejects the claim in part, the Administrator shall adjust future payments due the claimant under section 133 accordingly. In no event may the Administrator recover amounts properly paid under this section from a claimant.

(d) Review of Proposed Decisions.—

(1) Right to hearing.—

(A) In general.—Any claimant not satisfied with a proposed decision of the Administrator under subsection (b) shall be entitled, on written request made within 90 days after the date of the issuance of the decision, to a hearing on the claim of that claimant before a representative of the Administrator. At the hearing, the claimant shall be entitled to present oral evidence and written testimony in further support of that claim.

(B) Conduct of hearing.—When practicable, the hearing will be set at a time and place convenient for the claimant. In conducting the hearing, the representative of the Administrator shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 554 of title 5, United States Code, except as provided by this Act, but shall conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the representative shall receive such relevant evidence as the claimant adduces and such other evidence as the representative determines necessary or useful in evaluating the claim.

(C) Request for subpoenas.—

(i) In general.—A claimant may request a subpoena but the decision to grant or deny such a request is within the discretion of the representative of the Administrator. The representative may issue subpoenas for the attendance and testimony of witnesses, and for the production of books, records, correspondence, papers, or other relevant documents. Subpoenas are issued for documents only if such documents are relevant and cannot be obtained by other means, and for witnesses only where oral testimony is the best way to ascertain the facts.

(ii) Request.—A claimant may request a subpoena only as part of the hearing process. To request a subpoena, the requester shall—

(I) submit the request in writing and send it to the representative as early as possible, but no later than 30 days after the date of the original hearing request; and

(II) explain why the testimony or evidence is directly relevant to the issues at hand, and a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the documents or testimony could have been obtained.

(iii) Fees and mileage.—Any person required by such subpoena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. Such fees and mileage shall be paid from the Fund.

(2) Review of written record.—In lieu of a hearing under paragraph (1), any claimant not satisfied with a proposed decision of the Administrator shall have the option, on written request made within 90 days after the date of the issuance of the decision, of obtaining a review of the written record by a representative of the Administrator. If such review is requested, the claimant shall be afforded an opportunity to submit any written evidence or argument which the claimant believes relevant.

(e) Final Decisions.—

(1) In general.—If the period of time for requesting review of the proposed decision expires and no request has been filed, or if the claimant waives any objections to the proposed decision, the Administrator shall issue a final decision. If such decision materially differs from the proposed decision, the claimant shall be entitled to review of the decision under subsection (d).

(2) Time and content.—If the claimant requests review of all or part of the proposed decision the Administrator shall issue a final decision on the claim not later than 180 days after the request for review is received, if the claimant requests a hearing, or not later than 90 days after the request for review is received, if the claimant requests review of the written record. Such decision shall be in writing and contain findings of fact and conclusions of law.

(f) Representation.—A claimant may authorize an attorney or other individual to represent him or her in any proceeding under this Act.

SEC. 115. MEDICAL EVIDENCE AUDITING PROCEDURES.

(a) In General.—

(1) Development.—The Administrator shall develop methods for auditing and evaluating the medical evidence submitted as part of [a claim] *the claims process*. The Administrator may develop additional methods for auditing and evaluating other types of evidence or information received by the Administrator.

(2) Refusal to consider certain evidence.—

(A) In general.—If the Administrator determines that an audit conducted in accordance with the methods developed under paragraph (1) demonstrates that the medical evidence submitted by a specific physician or medical facility is not consistent with prevailing medical practices or the applicable requirements of this Act, any medical evidence from such physician or facility shall be unacceptable for purposes of establishing eligibility for an award under this Act.

(B) Notification.—Upon a determination by the Administrator under subparagraph (A), the Administrator shall notify the physician or medical facility involved of the results of the audit. Such physician or facility shall have a right to appeal such determination under procedures issued by the Administrator.

(b) Review of Certified B-Readers.—

[(1) In general.—At a minimum, the Administrator shall prescribe procedures to randomly assign claims for evaluation by an independent certified B-reader of x-rays submitted in support of a claim, the cost of which shall be borne by the Office.]

(1) In General.—The Administrator shall prescribe procedures to randomly evaluate the x-rays submitted in support of a statistically significant number of claims by independent certified B-readers, the cost of which shall be paid by the Fund.

(2) Disagreement.—If an independent certified B-reader assigned under paragraph (1) disagrees with the quality grading or ILO level assigned to an x-ray submitted in support of a claim, the Administrator shall require a review of such x-rays by a second independent certified B-reader.

(3) Effect on claim.—If neither certified B-reader under paragraph (2) agrees with the quality grading and the ILO grade level assigned to an x-ray as part of the claim, the Administrator shall take into account the findings of the 2 independent B readers in making the determination on such claim.

(4) Certified b-readers.—The Administrator shall maintain a list of a minimum of 50 certified B-readers eligible to participate in the independent reviews, chosen from all certified B-readers. When an x-ray is sent for independent review, the Administrator shall choose the certified B-reader at random from that list.

(c) Smoking Assessment.—

(1) In general.—

(A) Records and documents.—To aid in the assessment of the accuracy of claimant representations as to their smoking status for purposes of determining eligibility and amount of award under Malignant Level VI, Malignant Level VII, or Malignant Level VIII, and exceptional medical claims, the Administrator shall have the authority to obtain relevant records and documents, including—

(i) records of past medical treatment and evaluation;

(ii) affidavits of appropriate individuals;

(iii) applications for insurance and supporting materials; and

(iv) employer records of medical examinations.

(B) Consent.—The claimant shall provide consent for the Administrator to obtain such records and documents where required.

(2) Review.—The frequency of review of records and documents submitted under paragraph (1)(A) shall be at the discretion of the Administrator, but shall address at least 5 percent of the claimants asserting status as nonsmokers or ex-smokers.

[(3) Consent.—The Administrator may require the performance of blood tests or any other appropriate medical test, such as serum cotinine screening, where claimants assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, Malignant Level VII, or Malignant Level VIII, or as an exceptional medical claim, the cost of which shall be borne by the Office.]

(3) Consent.—

(A) In general.—The Administrator may require the performance of blood tests or any other appropriate medical test, where claimants assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, VII, or VIII, or as an exceptional medical claim, the cost of which shall be paid by the Fund.

(B) Serum cotinine screening.—The Administrator shall require the performance of serum cotinine screening on all claimants who assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, VII, or VIII, or as an exceptional medical claim, the cost of which shall be paid by the Fund.

(4) Penalty for false statements.—Any false information submitted under this subsection shall be subject to criminal prosecution or civil penalties as provided under section 1348 of title 18, United States Code (as added by this Act) and section 101(c)(2).

(d) Pulmonary Function Testing.—The Administrator shall develop auditing procedures for pulmonary function test results submitted as part of a claim, to ensure that such tests are conducted in accordance with American Thoracic Society Criteria, as defined under section 121(a)(13).

Subtitle C—Medical Criteria

SEC. 121. MEDICAL CRITERIA REQUIREMENTS.

(a) Definitions.—In this section, the following definitions shall apply:

(1) Asbestosis determined by pathology.—The term "asbestosis determined by pathology" means indications of asbestosis based on the pathological grading system for asbestosis described in the Special Issues of the Archives of Pathology and Laboratory Medicine, "Asbestos-associated Diseases", Vol. 106, No. 11, App. 3 (October 8, 1982).

(2) Bilateral asbestos-related nonmalignant disease.—The term "bilateral asbestos-related nonmalignant disease" means a diagnosis of bilateral asbestos-related nonmalignant disease based on—

(A) an x-ray reading of 1/0 or higher based on the ILO grade scale;

(B) bilateral pleural plaques;

(C) bilateral pleural thickening; or

(D) bilateral pleural calcification.

(3) BILATERAL PLEURAL DISEASE OF B2.—The term "bilateral pleural disease of B2" means a chest wall pleural thickening or plaque with a maximum width of at least 5 millimeters and a total length of at least ¼ of the projection of the lateral chest wall.

(4) CERTIFIED B-READER.—The term "certified B-reader" means an individual who is certified by the National Institute of Occupational Safety and Health and whose certification by the National Institute of Occupational Safety and Health is up to date.

(5) DIFFUSE PLEURAL THICKENING.—The term "diffuse pleural thickening" means blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening.

(6) DLCO.—The term "DLCO" means the single-breath diffusing capacity of the lung (carbon monoxide) technique used to measure the volume of carbon monoxide transferred from the alveoli to blood in the pulmonary capillaries for each unit of driving pressure of the carbon monoxide.

(7) FEV1.—The term "FEV1" means forced expiratory volume (1 second), which is the maximal volume of air expelled in 1 second during performance of the spirometric test for forced vital capacity.

(8) FVC.—The term "FVC" means forced vital capacity, which is the maximal volume of air expired with a maximally forced effort from a position of maximal inspiration.

(9) ILO GRADE.—The term "ILO grade" means the radiological ratings for the presence of lung changes as determined from a chest x-ray, all as established from time to time by the International Labor Organization.

(10) LOWER LIMITS OF NORMAL.—The term "lower limits of normal" means the fifth percentile of healthy populations as defined in the American Thoracic Society statement on lung function testing (Amer. Rev. Resp. Disease 1991, 144:1202–1218) and any future revision of the same statement.

(11) NONSMOKER.—The term "nonsmoker" means a claimant who—

(A) never smoked; or

(B) has smoked fewer than 100 cigarettes or the equivalent amount of other tobacco products during the claimant's lifetime.

(12) PO_2.—The term "PO_2" means the partial pressure (tension) of oxygen, which measures the amount of dissolved oxygen in the blood.

(13) PULMONARY FUNCTION TESTING.—The term "pulmonary function testing" means spirometry testing that is in material compliance with the quality criteria established by the American Thoracic Society and is performed on equipment which is in material compliance with the standards of the American Thoracic Society for technical quality and calibration.

(14) SUBSTANTIAL OCCUPATIONAL EXPOSURE TO ASBESTOS.—

(A) IN GENERAL.—The term "substantial occupational exposure" means employment in an industry and an occupation where for a substantial portion of a normal work year for that occupation, the claimant—

(i) handled raw asbestos fibers;

(ii) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed to raw asbestos fibers;

(iii) altered, repaired, or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or

(iv) worked in close proximity to other workers engaged in the activities described under clause (i), (ii), or (iii), such that the claimant was exposed on a regular basis to asbestos fibers.

(B) REGULAR BASIS.—In this paragraph, the term "on a regular basis" means on a frequent or recurring basis.

(15) TLC.—The term "TLC" means total lung capacity, which is the total volume of air in the lung after maximal inspiration.

(16) WEIGHTED OCCUPATIONAL EXPOSURE.—

(A) IN GENERAL.—The term "weighted occupational exposure" means exposure for a period of years calculated according to the exposure weighting formula under subparagraphs (B) through (E).

(B) MODERATE EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved working in areas immediate to where asbestos-containing products were being installed, repaired, or removed under circumstances that involved regular airborne emissions of asbestos fibers, shall count as 1 year of substantial occupational exposure.

(C) HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved the direct installation, repair, or removal of asbestos-containing products such that the person was exposed on a regular basis to asbestos fibers, shall count as 2 years of substantial occupational exposure.

(D) VERY HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, was in primary asbestos manufacturing, a World War II shipyard, or the asbestos insulation trades, such that the person was exposed on a regular basis to asbestos fibers, shall count as 4 years of substantial occupational exposure.

(E) DATES OF EXPOSURE.—Each year of exposure calculated under subparagraphs (B), (C), and (D) that occurred before 1976 shall be counted at its full value. Each year from 1976 to 1986 shall be counted as ½ of its value. Each year after 1986 shall be counted as ⅒ of its value.

(F) OTHER CLAIMS.—Individuals who do not meet the provisions of subparagraphs (A) through (E) and believe their post-1976 or post-1986 exposures exceeded the Occupational Safety and Health Administration standard may submit evidence, documentation, work history, or other information to substantiate noncompliance with the Occupational Safety and Health Administration standard (such as lack of engineering or work practice controls, or protective equipment) such that exposures would be equivalent to exposures before 1976 or 1986, or to documented exposures in similar jobs or occupations where control measures had not been implemented. Claims under this subparagraph shall be evaluated on an individual basis by a Physicians Panel.

(b) MEDICAL EVIDENCE.—

(1) LATENCY.—Unless otherwise specified, all diagnoses of an asbestos-related disease for a level under this section shall be accompanied by—

(A) a statement by the physician providing the diagnosis that at least 10 years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis; or

(B) a history of the claimant's exposure that is sufficient to establish a 10-year latency period between the date of first exposure to asbestos or asbestos-containing products and the diagnosis.

(2) DIAGNOSTIC GUIDELINES.—All diagnoses of asbestos-related diseases shall be based upon—

(A) for disease Levels I through V, in the case of a claimant who was living at the time the claim was filed—

(i) a physical examination of the claimant by the physician providing the diagnosis;

(ii) an evaluation of smoking history and exposure history before making a diagnosis;

(iii) an x-ray reading by a certified B-reader; and

(iv) pulmonary function testing in the case of disease Levels III, IV, and V;

(B) for disease Levels I through V, in the case of a claimant who was deceased at the time the claim was filed, a report from a physician based upon a review of the claimant's medical records which shall include—

(i) pathological evidence of the nonmalignant asbestos-related disease; or

(ii) an x-ray reading by a certified B-reader;

(C) for disease Levels VI through IX, in the case of a claimant who was living at the time the claim was filed—

(i) a physical examination by the claimant's physician providing the diagnosis; or

(ii) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

(D) for disease Levels VI through IX, in the case of a claimant who was deceased at the time the claim was filed—

(i) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

(ii) a report from a physician based upon a review of the claimant's medical records.

(3) CREDIBILITY OF MEDICAL EVIDENCE.—To ensure the medical evidence provided in support of a claim is credible and consistent with recognized medical standards, a claimant under this title may be required to submit—

(A) x-rays or computerized tomography;

(B) detailed results of pulmonary function tests;

(C) laboratory tests;

(D) tissue samples;

(E) results of medical examinations;

(F) reviews of other medical evidence; and

(G) medical evidence that complies with recognized medical standards regarding equipment, testing methods, and procedure to ensure the reliability of such evidence as may be submitted.

(c) EXPOSURE EVIDENCE.—

(1) IN GENERAL.—To qualify for any disease level, the claimant shall demonstrate—

(A) a minimum exposure to asbestos or asbestos-containing products;

(B) the exposure occurred in the United States, its territories or possessions, or while a United States citizen, while an employee of an entity organized under any Federal or State law regardless of location, or while a United States citizen while serving on any United States flagged or owned ship, provided the exposure results from such employment or service; and

(C) any additional asbestos exposure requirement under this section.

(2) PROOF OF EXPOSURE.—

(A) AFFIDAVITS.—Exposure to asbestos sufficient to satisfy the exposure requirements for any disease level may be established by an affidavit of—

(i) the claimant; or

(ii) if the claimant is deceased, a co-worker or a family member, if the affidavit of the claimant, co-worker, or family member is found in proceedings under this title to be reasonably reliable, attesting to the claimant's exposure; and is credible and is not contradicted by other evidence.

(B) OTHER PROOF.—Exposure to asbestos may alternatively be established by invoices, construction or other similar records, or any other reasonably reliable evidence.

(3) TAKE-HOME EXPOSURE.—

(A) IN GENERAL.—A claimant may alternatively satisfy the medical criteria requirements of this section where a claim is filed by a person who alleges their exposure to asbestos was the result of living with a person who, if the claim had been filed by that person, would have met the exposure criteria for the given disease level, and the claimant lived with such person for the time period necessary to satisfy the exposure requirement, for the claimed disease level.

(B) REVIEW.—Except for claims for disease Level IX (mesothelioma), all claims alleging take-home exposure shall be submitted as an exceptional medical claim under section 121[(f)]*(g)* for review by a Physicians Panel.

(4) WAIVER FOR WORKERS AND RESIDENTS OF LIBBY, MONTANA.—Because of the unique nature of the asbestos exposure related to the vermiculite mining and milling operations in Libby, Montana, the Administrator shall waive the exposure requirements under this subtitle for individuals who worked at the vermiculite mining and milling facility in Libby, Montana, or lived or worked within a 20-mile radius of Libby, Montana, for at least 12 consecutive months before December 31, 2004. Claimants under this section shall provide such supporting documentation as the Administrator shall require.

(5) EXPOSURE PRESUMPTIONS.—

(A) IN GENERAL.—The Administrator shall prescribe rules identifying specific industries, occupations within such industries, and time periods in which workers employed in those industries or occupations typically had substantial occupational exposure to asbestos as defined under section 121(a). Until 5 years after the Administrator certifies that the Fund is paying claims at a reasonable rate, the industries, occupations and time periods identified by the Administrator shall at a minimum include those identified in the 2002 Trust Distribution Process of the Manville Personal Injury Settlement Trust as of January 1, 2005, as industries, occupations and time periods in which workers were presumed to have had significant occupational exposure to asbestos. Thereafter, the Administrator may by rule modify or eliminate those exposure presumptions required to be adopted from the Manville Personal Injury Settlement Trust, if there is evidence that demonstrates that the typical exposure for workers in such industries and occupations during such time periods did not constitute substantial occupational exposure in asbestos.

(B) CLAIMANTS ENTITLED TO PRESUMPTIONS.—Any claimant who demonstrates through meaningful and credible evidence that such claimant was employed during relevant time periods in industries or occupations identified under subparagraph (A) shall be entitled to a presumption that the claimant had substantial occupational exposure to asbestos during those time periods. That presumption shall not be conclusive, and the Administrator may find that the claimant does not have substantial occupational exposure if other information demonstrates that the claimant did not in fact have substantial occupational exposure during any part of the relevant time periods.

(C) CRITERIA REQUIREMENTS.—Nothing in subparagraphs (A) or (B) shall negate the exposure or medical criteria requirements in section 121, for the purpose of receiving compensation from the Fund.

(6) PENALTY FOR FALSE STATEMENT.—Any false information submitted under this subsection shall be subject to section 1348 of title 18, United States Code (as added by this Act).

(d) ASBESTOS DISEASE LEVELS.—

(1) NONMALIGNANT LEVEL I.—To receive Level I compensation, a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease; and

(B) evidence of 5 years cumulative occupational exposure to asbestos.

(2) NONMALIGNANT LEVEL II.—To receive Level II compensation, a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater, and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening of at least grade B2 or greater, or bilateral pleural disease of grade B2 or greater;

(B) evidence of TLC less than 80 percent or FVC less than the lower limits of normal, and FEV1/FVC ratio less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, *such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)*, establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question.

(3) NONMALIGNANT LEVEL III.—To receive Level III compensation a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/0 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

(B) evidence of TLC less than 80 percent, FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent, or evidence of a decline in FVC of 20 percent or greater, after allowing for the expected decrease due to aging, and an FEV1/FVC ratio greater than or equal to 65 percent documented with a second spirometry;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, *such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—*

(i) establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes of that pulmonary condition.

(4) NONMALIGNANT LEVEL IV.—To receive Level IV compensation a claimant shall provide—

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

(B) evidence of TLC less than 60 percent or FVC less than 60 percent, and FEV1/FVC ratio greater than or equal to 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos before diagnosis; and

(D) supporting medical documentation, *such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—*

(i) establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes of that pulmonary condition.

(5) NONMALIGNANT LEVEL V.—To receive Level V compensation a claimant shall provide—

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

(B)(i) evidence of TLC less than 50 percent or FVC less than 50 percent, and FEV1/FVC ratio greater than or equal to 65 percent;

(ii) DLCO less than 40 percent of predicted, plus a FEV1/FVC ratio not less than 65 percent; or

(iii) PO_2 less than 55 mm/Hg, plus a FEV1/FVC ratio not less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, *such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—*

(i) establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes of that pulmonary condition.

(6) MALIGNANT LEVEL VI.—

(A) IN GENERAL.—To receive Level VI compensation a claimant shall provide—

(i) a diagnosis of a primary colorectal, laryngeal, esophageal, pharyngeal, or stomach cancer on the basis of findings by a board certified pathologist;

(ii) evidence of a bilateral asbestos-related nonmalignant disease;

(iii) evidence of 15 or more weighted years of substantial occupational exposure to asbestos; and

(iv) supporting medical documentation, *such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)*, establishing asbestos exposure as a substantial contributing factor in causing the cancer in question.

(B) REFERRAL TO PHYSICIANS PANEL.—All claims filed with respect to Level VI under this paragraph shall be referred to a Physicians Panel for a determination that it is more probable than not that asbestos exposure was a substantial contributing factor in causing the other cancer in question. If the claimant meets the requirements of subparagraph (A), there shall be a presumption of eligibility for the scheduled value of compensation unless there is evidence determined by the Physicians Panel that rebuts that presumption. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(7) MALIGNANT LEVEL VII.—

(A) IN GENERAL.—To receive Level VII compensation, a claimant shall provide—

(i) a diagnosis of a primary lung cancer disease on the basis of findings by a board certified pathologist;

(ii) evidence of bilateral pleural plaques or bilateral pleural thickening or bilateral pleural calcification *by chest x-ray or such diagnostic methodology supported by the findings of the Institute of Medicine under subsection (f)*;

(iii) evidence of 12 or more weighted years of substantial occupational exposure to asbestos; and

(iv) supporting medical documentation, *such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)*, establishing asbestos exposure as a substantial contributing factor in causing the lung cancer in question.

(B) PHYSICIANS PANEL.—A claimant filing a claim relating to Level VII under this paragraph may request that the claim be referred to a Physicians Panel for a determination of whether the claimant qualifies for the disease category and relevant smoking status. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(8) MALIGNANT LEVEL VIII.—

(A) IN GENERAL.—To receive Level VIII compensation, a claimant shall provide a diagnosis—

(i) of a primary lung cancer disease on the basis of findings by a board certified pathologist;

(ii)(I) of—

(aa) asbestosis based on a chest x-ray of at least 1/0 on the ILO scale and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones; and

(bb) 10 or more weighted years of substantial occupational exposure to asbestos;

(II) of—

(aa) asbestosis based on a chest x-ray of at least 1/1 on the ILO scale and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones; and

(bb) 8 or more weighted years of substantial occupational exposure to asbestos;

(III) asbestosis determined by pathology and 10 or more weighted years of substantial occupational exposure to asbestos; or

(IV) asbestosis as determined by CT Scan, the cost of which shall not be borne by the Fund. The CT Scan must be interpreted by a board certified radiologist and confirmed by a board certified radiologist; and

(iii) supporting medical documentation, *such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)*, establishing asbestos exposure as a substantial contributing factor in causing the lung cancer in question; and 10 or more weighted years of substantial occupational exposure to asbestos.

(B) PHYSICIANS PANEL.—A claimant filing a claim with respect to Level VIII under this paragraph may request that the claim be referred to a Physicians Panel for a determination of whether the claimant qualifies for the disease category and relevant smoking status. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(9) MALIGNANT LEVEL IX.—To receive Level IX compensation, a claimant shall provide—

(A) a diagnosis of malignant mesothelioma disease on the basis of findings by a board certified pathologist; and

(B) credible evidence of identifiable exposure to asbestos resulting from—

(i) occupational exposure to asbestos;

(ii) exposure to asbestos fibers brought into the home of the claimant by a worker occupationally exposed to asbestos;

(iii) exposure to asbestos fibers resulting from living or working in the proximate vicinity of a factory, shipyard, building demolition site, or other operation that regularly released asbestos fibers into the air due to operations involving asbestos at that site; or

(iv) other identifiable exposure to asbestos fibers, in which case the claim shall be reviewed by a Physicians Panel under [section 121(f)] *subsection (g)* for a determination of eligibility.

(e) INSTITUTE OF MEDICINE STUDY.—Not later than April 1, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health [of the] *to determine whether there is a* causal link between asbestos exposure and other cancers, including colorectal, laryngeal, esophageal, pharyngeal, and stomach cancers, except for mesothelioma and lung cancers. The Institute of Medicine shall issue a report on its findings on causation, which shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels. The Institute of Medicine report shall be binding on the Administrator and the Physicians Panels for purposes of determining whether asbestos exposure is a substantial contributing factor [under section 121(d)(6)(B).] *in causing the other cancerous disease in question under subsection (d)(6). If asbestos is not a substantial contributing factor to the particular cancerous disease under subsection (d)(6), subsection (d)(6) shall not apply with respect to that disease and no claim may be filed with, or award paid from, the Fund with respect to that disease under malignant Level VI.*

(f) INSTITUTE OF MEDICINE STUDY ON CT SCANS.—

(1) IN GENERAL.—Not later than April 1, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health of the use of CT scans as a diagnostic tool for bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification.

(2) FINDINGS.—The Institute of Medicine shall make and issue findings based on the study required under paragraph (1) on whether—

(A) CT scans are generally accepted in the medical profession to detect bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification; and

(B) professional standards of practice exist to allow for the Administrator's reasonable reliance on such as evidence of bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification under the Fund.

(3) REPORT.—The Institute of Medicine shall issue a report on the findings required under paragraph (2), which shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels.

(4) REPORT BINDING ON THE ADMINISTRATOR.—The Institute of Medicine report required under paragraph (3) shall be binding on the Administrator and the Physicians Panels for purposes of determining reliable and acceptable evidence that may be submitted for a Level VII claim under subsection (d)(7).

[(f)]*(g)* EXCEPTIONAL MEDICAL CLAIMS.—

(1) IN GENERAL.—A claimant who does not meet the medical criteria requirements under this section may apply for designation of the claim as an exceptional medical claim.

(2) APPLICATION.—When submitting an application for review of an exceptional medical claim, the claimant shall—

(A) state that the claim does not meet the medical criteria requirements under this section; or

(B) seek designation as an exceptional medical claim within 60 days after a determination that the claim is ineligible solely for failure to meet the medical criteria requirements under subsection (d).

(3) REPORT OF PHYSICIAN.—

(A) IN GENERAL.—Any claimant applying for designation of a claim as an exceptional medical claim shall support an application filed under paragraph (1) with a report from a physician meeting the requirements of this section.

(B) CONTENTS.—A report filed under subparagraph (A) shall include—

(i) a complete review of the claimant's medical history and current condition;

(ii) such additional material by way of analysis and documentation as shall be prescribed by rule of the Administrator; and

(iii) a detailed explanation as to why the claim meets the requirements of paragraph (4)(B).

(4) REVIEW.—

(A) IN GENERAL.—The Administrator shall refer all applications and supporting documentation submitted under paragraph (2) to a Physicians Panel for review for eligibility as an exceptional medical claim.

(B) STANDARD.—A claim shall be designated as an exceptional medical claim if the claimant, for reasons beyond the control of the claimant, cannot satisfy the requirements under this section, but is able, through comparably reliable evidence that meets the standards under this section, to show that the claimant has an asbestos-related condition that is substantially comparable to that of a medical condition that would satisfy the requirements of a category under this section.

(C) ADDITIONAL INFORMATION.—A Physicians Panel may request additional reasonable testing to support the claimant's application.

(D) CT SCAN.—A claimant may submit a CT Scan in addition to an x-ray.

(5) APPROVAL.—

(A) IN GENERAL.—If the Physicians Panel determines that the medical evidence is sufficient to show a comparable asbestos-related condition, it shall issue a certificate of medical eligibility designating the category of asbestos-related injury under this section for which the claimant shall be eligible to seek compensation.

(B) REFERRAL.—Upon the issuance of a certificate under subparagraph (A), the Physicians Panel shall submit the claim to the Administrator, who shall give due consideration to the recommendation of the Physicians Panel in determining whether the claimant meets the requirements for compensation under this Act.

(6) RESUBMISSION.—Any claimant whose application for designation as an exceptional medical claim is rejected may resubmit an application if new evidence becomes available. The application shall identify any prior applications and state the new evidence that forms the basis of the resubmission.

(7) RULES.—The Administrator shall promulgate rules governing the procedures for seeking designation of a claim as an exceptional medical claim.

(8) LIBBY, MONTANA.—

(A) IN GENERAL.—A Libby, Montana[,] claimant may elect to have the claimant's claims designated as exceptional medical claims and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by a Libby, Montana claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in Libby, Montana, including the nature of the pleural disease related to asbestos exposure in Libby, Montana.

(B) CLAIMS.—For all claims for Levels II through IV filed by Libby, Montana claimants, as described under subsection (c)(4), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to a Libby, Montana claimant, and notwithstanding the disease category designated in the certificate or the eligible disease or condition established in accordance with this section, or the value of the award determined in accordance with section 114, the Libby, Montana claimant shall be entitled to an award that is not less than that awarded to claimants who suffer from asbestosis, Level IV. For all malignant claims filed by Libby, Montana claimants, the Libby, Montana claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

(C) EVALUATION OF CLAIMS.—For purposes of evaluating exceptional medical claims from Libby, Montana, a claimant shall be deemed to have a comparable asbestos-related condition to an asbestos disease category Level IV, and shall be deemed to qualify for compensation at Level IV, if the claimant provides—

(i) a diagnosis of bilateral asbestos related nonmalignant disease;

(ii) evidence of TLC or FVC less than 80 percent; and

(iii) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(9) STUDY OF VERMICULITE PROCESSING FACILITIES.—

(A) IN GENERAL.—As part of the ongoing National Asbestos Exposure Review (in this section referred to as "NAER") being conducted by the Agency for Toxic Substances and Disease Registry (in this section referred to as "ATSDR") of facilities that received vermiculite ore from Libby, Montana, the ATSDR shall conduct a study of all Phase 1 sites where—

(i) the Environmental Protection Agency has mandated further action at the site on the basis of current contamination; or

(ii) the site was an exfoliation facility that processed roughly 100,000 tons or more of vermiculite from the Libby mine.

(B) STUDY BY ATSDR.—The study by the ATSDR shall evaluate the facilities identified under subparagraph (A) and compare—

(i) the levels of asbestos emissions from such facilities;

(ii) the resulting asbestos contamination in areas surrounding such facilities;

(iii) the levels of exposure to residents living in the vicinity of such facilities;

(iv) the risks of asbestos-related disease to the residents living in the vicinity of such facilities; and

(v) the risk of asbestos-related mortality to residents living in the vicinity of such facilities,

to the emissions, contamination, exposures, and risks resulting from the mining of vermiculite ore in Libby, Montana.

(C) RESULTS OF STUDY.—The results of the study required under this paragraph shall be transmitted to the Administrator. If the ATSDR finds as a result of such study that, for any particular facility, the levels of emissions from, the resulting contamination caused by, the levels of exposure to nearby residents from, and the risks of asbestos-related disease and asbestos-related mortality to nearby residents from such facility are substantially equivalent to those of Libby, Montana, then the Administrator shall treat claims from residents surrounding such facilities the same as claims of residents of Libby, Montana, and such residents shall have all the rights of residents of Libby, Montana, under this Act. As part of the results of its study, the ATSDR shall prescribe for any such facility the relevant geographic and temporal criteria under which the exposures and risks to the surrounding residents are substantially equivalent to those of residents of Libby, Montana, and therefore qualify for treatment under this paragraph.

(10) NATURALLY OCCURRING ASBESTOS.—A claimant who has been exposed to naturally occurring asbestos may file an exceptional medical claim with the Fund.

(h) GUIDELINES FOR CT SCANS.—The Administrator shall commission the American College of Radiology to develop, in consultation with the American Thoracic Society, American College of Chest Physicians, and Institute of Medicine, guidelines and a methodology for the use of CT scans as a diagnostic tool for bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification under the Fund. After development, such guidelines and methodology shall be used for diagnostic purposes under the Fund.

Subtitle D—Awards

SEC. 131. AMOUNT.

(a) IN GENERAL.—An asbestos claimant who meets the requirements of section 111 shall be entitled to an award in an amount determined by reference to the benefit table and the matrices developed under subsection (b).

(b) BENEFIT TABLE.—

(1) IN GENERAL.—An asbestos claimant with an eligible disease or condition established in accordance with section 121 shall be eligible for an award as determined under this subsection. The award for all asbestos claimants with an eligible disease or condition established in accordance with section 121 shall be according to the following schedule:

Level	Scheduled Condition or Disease	Scheduled Value
I	Asbestosis/Pleural Disease A	Medical Monitoring
II	Mixed Disease With Impairment	$25,000
III	Asbestosis/Pleural Disease B	$100,000
IV	Severe Asbestosis	$400,000
V	Disabling Asbestosis	$850,000
VI	Other Cancer	$200,000
VII	Lung Cancer With Pleural Disease	smokers, $300,000; ex-smokers, $725,000; non-smokers, $800,000
VIII	Lung Cancer With Asbestosis	smokers, $600,000; ex-smokers, $975,000; non-smokers, $1,100,000
IX	Mesothelioma	$1,100,000

(2) DEFINITIONS.—In this section—

(A) the term "nonsmoker" means a claimant who—

(i) never smoked; or

(ii) has smoked fewer than 100 cigarettes or the equivalent of other tobacco products during the claimant's lifetime; and

(B) the term "ex-smoker" means a claimant who has not smoked during any portion of the 12-year period preceding the diagnosis of lung cancer.

(3) LEVEL IX ADJUSTMENTS.—

(A) IN GENERAL.—If the Administrator determines that the impact of all adjustments under this paragraph on the Fund is cost neutral, the Administrator may—

(i) increase awards for Level IX claimants who are less than 51 years of age with dependent children; and

(ii) decrease awards for Level IX claimants who are at least 65 years of age, but in no case shall an award for Level IX be less than $1,000,000.

(B) IMPLEMENTATION.—Before making adjustments under this paragraph, the Administrator shall publish in the Federal Register notice of, and a plan for, making such adjustments.

(4) SPECIAL ADJUSTMENT FOR FELA CASES.—

(A) IN GENERAL.—A claimant who would be eligible to bring a claim under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, but for section 403 of this Act, shall be eligible for a special adjustment under this paragraph.

(B) REGULATIONS.—

(i) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall promulgate regulations relating to special adjustments under this paragraph.

(ii) JOINT PROPOSAL.—Not later than 45 days after the date of enactment of this Act, representatives of railroad management and representatives of railroad labor shall submit to the Administrator a joint proposal for regulations describing the eligibility for and amount of special adjustments under this paragraph. If a joint proposal is submitted, the Administrator shall promulgate regulations that reflect the joint proposal.

(iii) ABSENCE OF JOINT PROPOSAL.—If railroad management and railroad labor are unable to agree on a joint proposal within 45 days after the date of enactment of this Act, the benefits prescribed in subparagraph (E) shall be the benefits available to claimants, and the Administrator shall promulgate regulations containing such benefits.

(iv) REVIEW.—The parties participating in the arbitration may file in the United States District Court for the District of Columbia a petition for review of the Administrator's order. The court shall have jurisdiction to affirm the order of the Administrator, or to set it aside, in whole or in part, or it may remand the proceedings to the Administrator for such further action as it may direct. On such review, the findings and order of the Administrator shall be conclusive on the parties, except that the order of the Administrator may be set aside, in whole or in parts or remanded to the Administrator, for failure of the Administrator to comply with the requirements of this section, for failure of the order to conform, or confine itself, to matters within the scope of the Administrator's jurisdiction, or for fraud or corruption.

(C) ELIGIBILITY.—An individual eligible to file a claim under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be eligible for a special adjustment under this paragraph if such individual meets the criteria set forth in subparagraph (F).

(D) AMOUNT.—

(i) IN GENERAL.—The amount of the special adjustment shall be based on the type and severity of asbestos disease, and shall be 110 percent of the average amount an injured individual with a disease caused by asbestos, as described in section 121(d) of this Act, would have received, during the 5-year period before the enactment of this Act, adjusted for inflation. This adjustment shall be in addition to any other award for which the claimant is eligible under this Act. The amount of the special adjustment shall be reduced by an amount reasonably calculated to take into account all expenses of litigation normally borne by plaintiffs, including attorney's fees.

(ii) LIMITATION.—The amount under clause (i) may not exceed the amount the claimant is eligible to receive before applying the special adjustment under that clause.

(E) ARBITRATED BENEFITS.—If railroad management and railroad labor are unable to agree on a joint proposal within 45 days after the date of enactment of this Act, the Administrator shall appoint an arbitrator to determine the benefits under subparagraph (D). The Administrator shall appoint an arbitrator who shall be acceptable to both railroad management and railroad labor. Railroad management and railroad labor shall each designate their representatives to participate in the arbitration. The arbitrator shall submit the benefits levels to the Administrator not later than 30 days after appointment and such benefits levels shall be based on information provided by rail labor and rail management. The information submitted to the arbitrator by railroad management and railroad labor shall be considered confidential and shall be disclosed to the other party upon execution of an appropriate confidentiality agreement. Unless the submitting party provides written consent, neither the arbitrator nor either party to the arbitration shall divulge to any third party any information or data, in any form, submitted to the arbitrator under this section. Nor shall either party use such information or data for any purpose other than participation in the arbitration proceeding, and each party shall return to the other any information it has received from the other party as soon the arbitration is concluded. Information submitted to the arbitrator may not be admitted into evidence, nor discovered, in any civil litigation in Federal or State court. The nature of the information submitted to the arbitrator shall be within the sole discretion of the submitting party, and the arbitrator may not require a party to submit any particular information, including information subject to a prior confidentiality agreement.

(F) DEMONSTRATION OF ELIGIBILITY.—

(i) IN GENERAL.—A claimant under this paragraph shall be required to demonstrate—

(I) employment of the claimant in the railroad industry;

(II) exposure of the claimant to asbestos as part of that employment; and

(III) the nature and severity of the asbestos-related injury.

(ii) MEDICAL CRITERIA.—In order to be eligible for a special adjustment a claimant shall meet the criteria set forth in section 121 that would qualify a claimant for a payment under Level II or greater.

(5) MEDICAL MONITORING.—An asbestos claimant with asymptomatic exposure, based on the criteria under section 121(d)(1), shall only be eligible for medical monitoring reimbursement as provided under section 132.

(6) COST-OF-LIVING ADJUSTMENT.—

(A) IN GENERAL.—Beginning January 1, 2007, award amounts under paragraph (1) shall be annually increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment, rounded to the nearest $1,000 increment.

(B) CALCULATION OF COST-OF-LIVING ADJUSTMENT.—For the purposes of subparagraph (A), the cost-of-living adjustment for any calendar year shall be the percentage, if any, by which the consumer price index for the succeeding calendar year exceeds the consumer price index for calendar year 2005.

(C) CONSUMER PRICE INDEX.—

(i) IN GENERAL.—For the purposes of subparagraph (B), the consumer price index for any calendar year is the average of the consumer price index as of the close of the 12-month period ending on August 31 of such calendar year.

(ii) DEFINITION.—For purposes of clause (i), the term "consumer price index" means the consumer price index published by the Department of Labor. The consumer price index series to be used for award escalations shall include the consumer price index used for all-urban consumers, with an area coverage of the United States city average, for all items, based on the 1982–1984 index based period, as published by the Department of Labor.

SEC. 132. MEDICAL MONITORING.

(a) RELATION TO STATUTE OF LIMITATIONS.—The filing of a claim under this Act that seeks reimbursement for medical monitoring shall not be considered as evidence that the claimant has discovered facts that would otherwise commence the period applicable for purposes of the statute of limitations under section 113(b).

(b) COSTS.—Reimbursable medical monitoring costs shall include the costs of a claimant not covered by health insurance for an examination by the claimant's physician, x-ray tests, and pulmonary function tests every 3 years.

(c) REGULATIONS.—The Administrator shall promulgate regulations that establish—

(1) the reasonable costs for medical monitoring that is reimbursable; and

(2) the procedures applicable to asbestos claimants.

SEC. 133. PAYMENT.

(a) STRUCTURED PAYMENTS.—

(1) IN GENERAL.—An asbestos claimant who is entitled to an award should receive the amount of the award through structured payments from the Fund, made over a period of 3 years, and in no event more than 4 years after the date of final adjudication of the claim.

(2) PAYMENT PERIOD AND AMOUNT.—There shall be a presumption that any award paid under this subsection shall provide for payment of—

(A) 40 percent of the total amount in year 1;

(B) 30 percent of the total amount in year 2; and

(C) 30 percent of the total amount in year 3.

(3) EXTENSION OF PAYMENT PERIOD.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for the payment period of an award under subsection (a) to be extended to a 4-year period if such action is warranted in order to preserve the overall solvency of the Fund. Such guidelines shall include reference to the number of claims made to the Fund and the awards made and scheduled to be paid from the Fund as provided under section 405.

(B) LIMITATIONS.—In no event shall less than 50 percent of an award be paid in the first 2 years of the payment period under this subsection.

(4) **[**ACCELERATED**]** *LUMP-SUM* payments.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for **[**accelerated payments**]** *1 lump-sum payment* to asbestos claimants who are mesothelioma victims and who are alive on the date on which the Administrator receives notice of the eligibility of the claimant. **[**Such payments shall be credited against the first regular payment under the structured payment plan for the claimant.**]**

(B) TIMING OF PAYMENTS.—Lump-sum payments shall be made within the shorter of—

(i) not later than 30 days after the date the claim is approved by the Administrator; or

(ii) not later than 6 months after the date the claim is filed.

(C) TIMING OF PAYMENTS TO BE ADJUSTED WITH RESPECT TO SOLVENCY OF THE FUND.—If the Administrator determines that solvency of the Fund would be severely harmed by the timing of the payments required under subparagraph (B), the time for such payments may be extended to the shorter of—

(i) not later than 6 months after the date the claim is approved by the Administrator; or

(ii) not later than 11 months after the date the claim is filed.

(5) EXPEDITED PAYMENTS.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for expedited payments to asbestos claimants in cases of exigent **[**circumstances or extreme hardship caused by asbestos-related injury.**]** *health claims as described under section 106(c)(2)(B) and (C).*

(B) TIMING OF PAYMENTS.—Total payments shall be made within the shorter of—

(i) not later than 6 months after the date the claim is approved by the Administrator; or

(ii) not later than 1 year after the date the claim is filed.

(C) TIMING OF PAYMENTS TO BE ADJUSTED WITH RESPECT TO SOLVENCY OF THE FUND.— If the Administrator determines that solvency of the Fund would be severely harmed by the timing of the payments required under subparagraph (B), the time for such payments may be extended to the shorter of—

(i) not later than 1 year after the date the claim is approved by the Administrator; or

(ii) not later than 2 years after the date the claim is filed.

(6) ANNUITY.—An asbestos claimant may elect to receive any payments to which that claimant is entitled under this title in the form of an annuity.

(b) LIMITATION ON TRANSFERABILITY.—A claim filed under this Act shall not be assignable or otherwise transferable under this Act.

(c) CREDITORS.—An award under this title shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, and such exemption may not be waived.

(d) MEDICARE AS SECONDARY PAYER.—No award under this title shall be deemed a payment for purposes of section 1862 of the Social Security Act (42 U.S.C. 1395y).

(e) EXEMPT PROPERTY IN ASBESTOS CLAIMANT'S BANKRUPTCY CASE.—If an asbestos claimant files a petition for relief under section 301 of title 11, United States Code, no award granted under this Act shall be treated as property of the bankruptcy estate of the asbestos claimant in accordance with section 541(b)(6) of title 11, United States Code.

(f) EFFECT OF PAYMENT.—The full payment of an asbestos claim under this section shall be in full satisfaction of such claim and shall be deemed to operate as a release to such claim. No claimant with an asbestos claim that has been fully paid under this section may proceed in the tort system with respect to such claim.

SEC. 134. [REDUCTION IN BENEFIT PAYMENTS FOR COLLATERAL SOURCES.] *SETOFFS FOR COLLATERAL SOURCE COMPENSATION AND PRIOR AWARDS.*

(a) IN GENERAL.—The amount of an award otherwise available to an asbestos claimant under this title shall be reduced by the amount of *any* collateral source compensation *and by any amounts paid or to be paid to the claimant for a prior award under this Act*.

(b) EXCLUSIONS.—

(1) COLLATERAL SOURCE COMPENSATION.—In no case shall statutory benefits under workers' compensation laws, special adjustments made under section 131(b)(3), occupational or total disability benefits under the Railroad Retirement Act (45 U.S.C. 201 et seq.), sickness benefits under the Railroad Unemployment Insurance Act (45 U.S.C 351 et seq.), and veterans' benefits programs be deemed as collateral source compensation for purposes of this section.

(2) PRIOR AWARD PAYMENTS.—Any amounts paid or to be paid for a prior claim for a nonmalignant disease (Levels I through V) filed against the Fund shall not be deducted as a setoff against amounts payable for the second injury claims for a malignant disease (Levels VI through IX), unless the malignancy was diagnosed before the date on which the nonmalignancy claim was compensated.

SEC. 135. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT OF AWARDS.

(a) IN GENERAL.—The payment of an award under section 106 or 133 shall not be considered a form of compensation or reimbursement for a loss for purposes of imposing liability on any asbestos claimant receiving such payment to repay any—

(1) insurance carrier for insurance payments; or

(2) person or governmental entity on account of worker's compensation, health care, or disability payments.

(b) NO EFFECT ON CLAIMS.—The payment of an award to an asbestos claimant under section 106 or 133 shall not affect any claim of an asbestos claimant against—

(1) an insurance carrier with respect to insurance; or

(2) against any person or governmental entity with respect to worker's compensation, healthcare, or disability.

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

SEC. 201. DEFINITIONS.

In this subtitle, the following definitions shall apply:

(1) AFFILIATED GROUP.—The term "affiliated group"—

(A) means a defendant participant that is an ultimate parent and any person whose entire beneficial interest is directly or indirectly owned by that ultimate parent on the date of enactment of this Act; and

(B) shall not include any person that is a debtor or any direct or indirect majority-owned subsidiary of a debtor.

(2) CLASS ACTION TRUST.—The term "class action trust" means a trust or similar entity established to hold assets for the payment of asbestos claims asserted against a debtor or participating defendant, under a settlement that—

(A) is a settlement of class action claims under rule 23 of the Federal Rules of Civil Procedure; and

(B) has been approved by a final judgment of a United States district court before the date of enactment of this Act.

(3) DEBTOR.—The term "debtor"—

(A) means—

(i) a person that is subject to a case pending under a chapter of title 11, United States Code, on the date of enactment of this Act or at any time during the 1-year period immediately preceding that date, irrespective of whether the debtor's case under that title has been dismissed; and

(ii) all of the direct or indirect majority-owned subsidiaries of a person described under clause (i), regardless of whether any such majority-owned subsidiary has a case pending under title 11, United States Code; and

(B) shall not include an entity—

(i) subject to chapter 7 of title 11, United States Code, if a final decree closing the estate shall have been entered before the date of enactment of this Act; or

(ii) subject to chapter 11 of title 11, United States Code, if a plan of reorganization for such entity shall have been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(4) INDEMNIFIABLE COST.—The term "indemnifiable cost" means a cost, expense, debt, judgment, or settlement incurred with respect to an asbestos claim that, at any time before December 31, 2002, was or could have been subject to indemnification, contribution, surety, or guaranty.

(5) INDEMNITEE.—The term "indemnitee" means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance or reinsurance.

(6) INDEMNITOR.—The term "indemnitor" means a person who has paid under a written agreement at any time before December 31, 2002, a sum in settlement, judgment, defense, or indemnity to or on behalf of any person defending against an asbestos claim, in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, except that payments by an insurer or reinsurer under a contract of insurance or reinsurance shall not make the insurer or reinsurer an indemnitor for purposes of this subtitle.

(7) PRIOR ASBESTOS EXPENDITURES.—The term "prior asbestos expenditures"—

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims against that person;

(B) includes payments made by insurance carriers to or for the benefit of such person or on such person's behalf with respect to such asbestos claims, except as provided in section 204(g);

(C) shall not include any payment made by a person in connection with or as a result of changes in insurance reserves required by contract or any activity or dispute related to insurance coverage matters for asbestos-related liabilities; and

(D) shall not include any payment made by or on behalf of persons who are or were common carriers by railroad for asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad, including settlement, judgment, defense, or indemnity costs associated with these claims.

(8) TRUST.—The term "trust" means any trust, as described in sections 524(g)(2)(B)(i) or 524(h) of title 11, United States Code, or established in conjunction with an order issued under section 105 of title 11, United States Code, established or formed under the terms of a chapter 11 plan of reorganization, which in whole or in part provides compensation for asbestos claims.

(9) ULTIMATE PARENT.—The term "ultimate parent" means a person—

(A) that owned, as of December 31, 2002, the entire beneficial interest, directly or indirectly, of at least 1 other person; and

(B) whose entire beneficial interest was not owned, on December 31, 2002, directly or indirectly, by any other single person (other than a natural person).

SEC. 202. AUTHORITY AND TIERS.

(a) LIABILITY FOR PAYMENTS TO THE FUND.—

(1) IN GENERAL.—Defendant participants shall be liable for payments to the Fund in accordance with this section based on tiers and subtiers assigned to defendant participants.

(2) AGGREGATE PAYMENT OBLIGATIONS LEVEL.—The total payments required of all defendant participants over the life of the Fund shall not exceed a sum equal to $90,000,000,000 less any bankruptcy trust credits under section 222[(e)]*(d)*. The Administrator shall have the authority to allocate the payments required of the defendant participants among the tiers as provided in this title.

(3) ABILITY TO ENTER REORGANIZATION.—Notwithstanding any other provision of this Act, all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures less than $1,000,000 may proceed with the filing, solicitation, and confirmation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction under section 524(g) of title 11, United States Code. Any asbestos claim made in conjunction with a plan of reorganization allowable under the preceding sentence shall be subject to section 403(d) of this Act.

(b) TIER I.—Tier I shall include all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures greater than $1,000,000.

(c) TREATMENT OF TIER I BUSINESS ENTITIES IN BANKRUPTCY.—

(1) DEFINITION.—

(A) IN GENERAL.—In this subsection, the term "bankrupt business entity" means a person that is not a natural person that—

(i) filed a petition for relief under chapter 11, of title 11, United States Code, before January 1, 2003;

(ii) has not substantially consummated, as such term is defined under section 1101(2) of title 11, United States Code, a plan of reorganization as of the date of enactment of this Act; and

(iii) the bankruptcy court presiding over the business entity's case determines, after notice and a hearing upon motion filed by the entity within 30 days after the date of enactment of this Act, that asbestos liability was not the sole or precipitating cause of the entity's chapter 11 filing.

(B) MOTION AND RELATED MATTERS.—A motion under subparagraph (A)(iii) shall be supported by—

(i) an affidavit or declaration of the chief executive officer, chief financial officer, or chief legal officer of the business entity; and

(ii) copies of the entity's public statements and securities filings made in connection with the entity's filing for chapter 11 protection.

Notice of such motion shall be as directed by the bankruptcy court, and the hearing shall be limited to consideration of the question of whether or not asbestos liability was the sole or precipitating cause of the entity's chapter 11 filing. The bankruptcy court shall hold a hearing and make its determination with respect to the motion within 60 days after the date the motion is filed. In making its determination, the bankruptcy court shall take into account the affidavits, public statements, and securities filings, and other information, if any, submitted by the entity and all other facts and circumstances presented by an objecting party. Any review of this determination shall be an expedited appeal and limited to whether the decision was against the weight of the evidence. Any appeal of a determination shall be an expedited review to the United States Circuit Court of Appeals for the circuit in which the bankruptcy is filed.

(2) PROCEEDING WITH REORGANIZATION PLAN.—A bankrupt business entity may proceed with the filing, solicitation, confirmation, and consummation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction described in section 524(g) of title 11, United States Code, notwithstanding any other provisions of this Act, if the bankruptcy court makes a favorable determination under paragraph (1)(B), unless the bankruptcy court's determination is overruled on appeal and all appeals are final. Such a bankrupt business entity may continue to so proceed, if—

(A) on request of a party in interest or on a motion of the court, and after a notice and a hearing, the bankruptcy court presiding over the chapter 11 case of the bankrupt business entity determines that[—

[(i) confirmation is necessary to permit the reorganization of that entity and assure that all creditors and that entity are treated fairly and equitably; and

[(ii) confirmation is clearly favored by the balance of the equities; and]

such confirmation is required to avoid the liquidation or the need for further financial reorganization of that entity; and

(B) an order confirming the plan of reorganization is entered by the bankruptcy court within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown.

(3) APPLICABILITY.—If the bankruptcy court does not make the determination required under paragraph (2), or if an order confirming the plan is not entered within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown, the provisions of this Act shall apply to the bankrupt business entity notwithstanding the certification. Any timely appeal under title 11, United States Code, from a confirmation order entered during the applicable time period shall automatically extend the time during which this Act is inapplicable to the bankrupt business entity, until the appeal is fully and finally resolved.

(4) OFFSETS.—

(A) PAYMENTS BY INSURERS.—To the extent that a bankrupt business entity or debtor successfully confirms a plan of reorganization, including a trust, and channeling injunction that involves payments by insurers who are otherwise subject to this Act as described under section 524(g) of title 11, United States Code, an insurer who makes payments to the trust shall obtain a dollar-for-dollar reduction in the amount otherwise payable by that insurer under this Act to the Fund.

(B) CONTRIBUTIONS TO FUND.—Any cash payments by a bankrupt business entity, if any, to a trust described under section 524(g) of title 11, United States Code, may be counted as a contribution to the Fund.

(d) TIERS II THROUGH VI.—Except as provided in section 204 and subsection (b) of this section, persons or affiliated groups are included in Tier II, III, IV, V, or VI, according to the prior asbestos expenditures paid by such persons or affiliated groups as follows:

(1) Tier II: $75,000,000 or greater.

(2) Tier III: $50,000,000 or greater, but less than $75,000,000.

(3) Tier IV: $10,000,000 or greater, but less than $50,000,000.

(4) Tier V: $5,000,000 or greater, but less than $10,000,000.

(5) Tier VI: $1,000,000 or greater, but less than $5,000,000.

(e) TIER PLACEMENT AND COSTS.—

(1) PERMANENT TIER PLACEMENT.—After a defendant participant or affiliated group is assigned to a tier and subtier under section 204(i)(6), the participant or affiliated group shall remain in that tier and subtier throughout the life of the Fund, regardless of subsequent events, including—

(A) the filing of a petition under a chapter of title 11, United States Code;

(B) a discharge of debt in bankruptcy;

(C) the confirmation of a plan of reorganization; or

(D) the sale or transfer of assets to any other person or affiliated group, unless the Administrator finds that the information submitted by the participant or affiliated group to support its inclusion in that tier was inaccurate.

(2) COSTS.—Payments to the Fund by all persons that are the subject of a case under a chapter of title 11, United States Code, after the date of enactment of this Act—

(A) shall constitute costs and expenses of administration of the case under section 503 of title 11, United States Code, and shall be payable in accordance with the payment provisions under this subtitle notwithstanding the pendency of the case under that title 11;

(B) shall not be stayed or affected as to enforcement or collection by any stay or injunction power of any court; and

(C) shall not be impaired or discharged in any current or future case under title 11, United States Code.

(f) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—All of the following shall be superseded in their entireties by this Act:

(A) The treatment of any asbestos claim in any plan of reorganization with respect to any debtor included in Tier I.

(B) Any asbestos claim against any debtor included in Tier I.

(C) Any agreement, understanding, or undertaking by any such debtor or any third party with respect to the treatment of any asbestos claim filed in a debtor's bankruptcy case or with respect to a debtor before the date of enactment of this Act, whenever such debtor's case is either still pending, if such case is pending under a chapter other than chapter 11 of title 11, United States Code, or subject to confirmation or substantial consummation of a plan of reorganization under chapter 11 of title 11, United States Code.

(2) PRIOR AGREEMENTS OF NO EFFECT.—Notwithstanding section 403(c)(3), any plan of reorganization, agreement, understanding, or undertaking by any debtor (including any pre-petition agreement, understanding, or undertaking that requires future performance) or any third party under paragraph (1), and any agreement, understanding, or undertaking entered into in anticipation, contemplation, or furtherance of a plan of reorganization, to the extent it relates to any asbestos claim, shall be of no force or effect, and no person shall have any right or claim with respect to any such agreement, understanding, or undertaking.

SEC. 203. SUBTIERS.

(a) IN GENERAL.—

(1) SUBTIER LIABILITY.—Except as otherwise provided under subsections (b), (d), and (l) of section 204, persons or affiliated groups shall be included within Tiers I through VII and shall pay amounts to the Fund in accordance with this section.

(2) REVENUES.—

(A) IN GENERAL.—For purposes of this section, revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as revenues in the annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) for the most recent fiscal year ending on or before December 31, 2002. If the defendant participant or affiliated group does not file reports with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant or affiliated group would have reported as revenues under the rules of the Securities and Exchange Commission in the event that it had been required to file.

(B) INSURANCE PREMIUMS.—Any portion of revenues of a defendant participant that is derived from insurance premiums shall not be used to calculate the payment obligation of that defendant participant under this subtitle.

(C) DEBTORS.—Each debtor's revenues shall include the revenues of the debtor and all of the direct or indirect majority-owned subsidiaries of that debtor, except that the pro forma revenues of a person that is included in Subtier 2 of Tier I shall not be included in calculating the revenues of any debtor that is a direct or indirect majority owner of such Subtier 2 person. If a debtor or affiliated group includes a person in respect of whose liabilities for asbestos claims a class action trust has been established, there shall be excluded from the 2002 revenues of such debtor or affiliated group—

(i) all revenues of the person in respect of whose liabilities for asbestos claims the class action trust was established; and

(ii) all revenues of the debtor and affiliated group attributable to the historical business operations or assets of such person, regardless of whether such business operations or assets were owned or conducted during the year 2002 by such person or by any other person included within such debtor and affiliated group.

(b) TIER I SUBTIERS.—

(1) IN GENERAL.—Each debtor in Tier I shall be included in subtiers and shall pay

amounts to the Fund as provided under this section.

(2) SUBTIER 1.—

(A) IN GENERAL.—All persons that are debtors with prior asbestos expenditures of $1,000,000 or greater, shall be included in Subtier 1.

(B) PAYMENT.—

(i) IN GENERAL.—Each debtor included in Subtier 1 shall pay on an annual basis 1.67024 percent of the debtor's 2002 revenues.

(ii) EXCEPTION TO PAYMENT PERCENTAGE.—Notwithstanding clause (i), a debtor in Subtier 1 shall pay, on an annual basis, $500,000 if—

(I) such debtor, including its direct or indirect majority-owned subsidiaries, has less than $10,000,000 in prior asbestos expenditures;

(II) at least 95 percent of such debtors revenues derive from the provision of engineering and construction services; and

(III) such debtor, including its direct or indirect majority-owned subsidiaries, never manufactured, sold, or distributed asbestos-containing products in the stream of commerce.

(C) OTHER ASSETS.—The Administrator, at the sole discretion of the Administrator, may allow a Subtier 1 debtor to satisfy its funding obligation under this paragraph with assets other than cash if the Administrator determines that requiring an all-cash payment of the debtor's funding obligation would render the debtor's reorganization infeasible.

(D) LIABILITY.—

(i) IN GENERAL.—If a person who is subject to a case pending under a chapter of title 11, United States Code, as defined in section 201(3)(A)(i), does not pay when due any payment obligation for the debtor, the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the debtor may be liable under sections 223 and 224) from any of the direct or indirect majority-owned subsidiaries under section 201(3)(A)(ii).

(ii) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within a debtor under section 201(3)(A) (i) and (ii) with respect to the payment obligations under this Act.

(iii) RIGHT OF CONTRIBUTION.—

(I) IN GENERAL.—Notwithstanding any other provision of this Act, if a direct or indirect majority-owned foreign subsidiary of a debtor participant (with such relationship to the debtor participant as determined on the date of enactment of this Act) is or becomes subject to any foreign insolvency proceedings, and such foreign direct or indirect-majority owned subsidiary is liquidated in connection with such foreign insolvency proceedings (or if the debtor participant's interest in such foreign subsidiary is otherwise canceled or terminated in connection with such foreign insolvency proceedings), the debtor participant shall have a claim against such foreign subsidiary or the estate of such foreign subsidiary in an amount equal to the greater of—

(aa) the estimated amount of all current and future asbestos liabilities against such foreign subsidiary; or

(bb) the foreign subsidiary's allocable share of the debtor participant's funding obligations to the Fund as determined by such foreign subsidiary's allocable share of the debtor participant's 2002 gross revenue.

(II) DETERMINATION OF CLAIM AMOUNT.—The claim amount under subclause (I) (aa) or (bb) shall be determined by a court of competent jurisdiction in the United States.

(III) EFFECT ON PAYMENT OBLIGATION.—The right to, or recovery under, any such claim shall not reduce, limit, delay, or otherwise affect the debtor participant's payment obligations under this Act.

(iv) MAXIMUM ANNUAL PAYMENT OBLIGATION.—Subject to any payments under sections 204(l) and 222[(d)]*(c)*, and paragraphs (3), (4), and (5) of this subsection, the annual payment obligation by a debtor under subparagraph (B) of this paragraph shall not exceed $80,000,000.

(3) SUBTIER 2.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors that have no material continuing business operations, *other than class action trusts under paragraph (6)*, but hold cash or other assets that have been allocated or earmarked for the settlement of asbestos claims shall be included in Subtier 2.

(B) ASSIGNMENT OF ASSETS.—Not later than 90 days after the date of enactment of this Act, each person included in Subtier 2 shall assign all of its *unencumbered* assets to the Fund.

(4) SUBTIER 3.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors other than those included in Subtier 2, which have no material continuing business operations and no cash or other assets allocated or earmarked for the settlement of any asbestos claim, shall be included in Subtier 3.

(B) ASSIGNMENT OF UNENCUMBERED ASSETS.—Not later than 90 days after the date of enactment of this Act, each person included in Subtier 3 shall contribute an amount equal to 50 percent of its total unencumbered assets.

[(C) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance-related assets, less—

(i) all allowable administrative expenses;

(ii) allowable priority claims under section 507 of title 11, United States Code; and

(iii) allowable secured claims.]

(5) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance-related assets, jointly held, in trust or otherwise, with a defendant participant, less—

(A) all allowable administrative expenses;

(B) allowable priority claims under section 507 of title 11, United States Code; and

(C) allowable secured claims.

[(5)]*(6)* CLASS ACTION TRUST.—The assets of any class action trust that has been established in respect of the liabilities for asbestos claims of any person included within a debtor and affiliated group that has been included in Tier I (exclusive of any assets needed to pay previously incurred expenses and asbestos claims within the meaning of section 403(d)(1), before the date of enactment of this Act) shall be transferred to the Fund not later than [6 months] *60 days* after the date of enactment of this Act.

(c) TIER II SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier II shall be included in 1 of the 5 subtiers of Tier II, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $27,500,000.

(B) Subtier 2: $24,750,000.

(C) Subtier 3: $22,000,000.

(D) Subtier 4: $19,250,000.

(E) Subtier 5: $16,500,000.

(d) TIER III SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier III shall be included in 1 of the 5 subtiers of Tier III, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $16,500,000.

(B) Subtier 2: $13,750,000.

(C) Subtier 3: $11,000,000.

(D) Subtier 4: $8,250,000.

(E) Subtier 5: $5,500,000.

(e) TIER IV SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier IV shall be included in 1 of the 4 subtiers of Tier IV, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be included in Subtier 2 and the rest in Subtier 3.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $3,850,000.

(B) Subtier 2: $2,475,000.

(C) Subtier 3: $1,650,000.

(D) Subtier 4: $550,000.

(f) TIER V SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier V shall be included in 1 of the 3 subtiers of Tier V, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $1,000,000.

(B) Subtier 2: $500,000.

(C) Subtier 3: $200,000.

(g) TIER VI SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VI shall be included in 1 of the 3 subtiers of Tier VI, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated

groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $500,000.

(B) Subtier 2: $250,000.

(C) Subtier 3: $100,000.

(3) OTHER PAYMENT FOR CERTAIN PERSONS AND AFFILIATED GROUPS.—

(A) IN GENERAL.—Notwithstanding any other provision of this subsection, and if an adjustment authorized by this subsection does not impair the overall solvency of the Fund, any person or affiliated group within Tier VI whose required subtier payment in any given year would exceed such person's or group's average annual expenditure on settlements, and judgments of asbestos disease-related claims over the 8 years before the date of enactment of this Act shall make the payment required of the immediately lower subtier or, if the person's or group's average annual expenditures on settlements and judgments over the 8 years before the date of enactment of this Act is less than $100,000, shall not be required to make a payment under this Act.

(B) NO FURTHER ADJUSTMENT.—Any person or affiliated group that receives an adjustment under this paragraph shall not be eligible to receive any further adjustment under section 204(d).

(h) TIER VII.—

(1) IN GENERAL.—Notwithstanding prior asbestos expenditures that might qualify a person or affiliated group to be included in Tiers II, III, IV, V, or VI, a person or affiliated group shall also be included in Tier VII, if the person or affiliated group—

(A) is or has at any time been subject to asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad; and

(B) has paid (including any payments made by others on behalf of such person or affiliated group) not less than $5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims.

(2) ADDITIONAL AMOUNT.—The payment requirement for persons or affiliated groups included in Tier VII shall be in addition to any payment requirement applicable to such person or affiliated group under Tiers II through VI.

(3) SUBTIER 1.—Each person or affiliated group in Tier VII with revenues of $6,000,000,000 or more is included in Subtier 1 and shall make annual payments of $11,000,000 to the Fund.

(4) SUBTIER 2.—Each person or affiliated group in Tier VII with revenues of less than $6,000,000,000, but not less than $4,000,000,000 is included in Subtier 2 and shall make annual payments of $5,500,000 to the Fund.

(5) SUBTIER 3.—Each person or affiliated group in Tier VII with revenues of less than $4,000,000,000, but not less than $500,000,000 is included in Subtier 3 and shall make annual payments of $550,000 to the Fund.

(6) JOINT VENTURE REVENUES AND LIABILITY.—

(A) REVENUES.—For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The joint venture shall not be responsible for a contribution amount under this subsection.

(B) LIABILITY.—For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a payment amount under this provision.

SEC. 204. ASSESSMENT ADMINISTRATION.

(a) IN GENERAL.—Each defendant participant or affiliated group shall pay to the Fund in the amounts provided under this subtitle as appropriate for its tier and subtier each year until the earlier to occur of the following:

(1) The participant or affiliated group has satisfied its obligations under this subtitle during the 30 annual payment cycles of the operation of the Fund.

(2) The amount received by the Fund from defendant participants, excluding any amounts rebated to defendant participants under ⟦subsection (d)⟧ *subsections (d) and (m)*, equals the maximum aggregate payment obligation of section 202(a)(2).

(b) SMALL BUSINESS EXEMPTION.—Notwithstanding any other provision of this subtitle, a person or affiliated group that is a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), on December 31, 2002, is exempt from any payment requirement under this subtitle and shall not be included in the subtier allocations under section 203.

(c) PROCEDURES.—The Administrator shall prescribe procedures on how amounts payable under this subtitle are to be paid, including, to the extent the Administrator determines appropriate, procedures relating to payment in installments.

(d) ADJUSTMENTS.—

(1) IN GENERAL.—Under expedited procedures established by the Administrator, a defendant participant may seek adjustment of the amount of its payment obligation based on severe financial hardship or demonstrated inequity. The Administrator may determine whether to grant an adjustment and the size of any such adjustment, in accordance with this subsection. A defendant participant has a right to obtain a rehearing of the Administrator's determination under this subsection under the procedures prescribed in subsection (i)(10). The Administrator may adjust a defendant participant's payment obligations under this subsection, either by forgiving the relevant portion of the otherwise applicable payment obligation or by providing relevant rebates from the defendant hardship and inequity adjustment account created under subsection (j) after payment of the otherwise applicable payment obligation, at the discretion of the Administrator.

(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant may apply for an adjustment based on financial hardship at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such adjustment by demonstrating that the amount of its payment obligation under the statutory allocation would constitute a severe financial hardship.

(B) TERM.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), a financial hardship adjustment under this subsection shall have a term of 3 years.

(C) RENEWAL.—After an initial hardship adjustment is granted under this paragraph, a defendant participant may renew its hardship adjustment by demonstrating that it remains justified.

(D) REINSTATEMENT.—Following the expiration of the hardship adjustment period provided for under this section and during the funding period prescribed under subsection (a), the Administrator shall annually determine whether there has been a material change in the financial condition of the defendant participant such that the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate under terms and conditions established by the Administrator any part or all of the defendant participant's payment obligation under the statutory allocation that was not paid during the hardship adjustment term.

(3) INEQUITY ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant—

(i) may qualify for an adjustment based on inequity by demonstrating that the amount of its payment obligation under the statutory allocation is exceptionally inequitable—

(I) when measured against the amount of the likely cost to the defendant participant net of insurance of its future liability in the tort system in the absence of the Fund;

(II) when compared to the median payment rate for all defendant participants in the same tier; or

(III) when measured against the percentage of the prior asbestos expenditures of the defendant that were incurred with respect to claims that neither resulted in an adverse judgment against the defendant, nor were the subject of a settlement that required a payment to a plaintiff by or on behalf of that defendant;

(ii) shall qualify for a two-tier main tier and a two-tier subtier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such person's prior asbestos expenditures arose from claims related to the manufacture and sale of railroad locomotives and related products, so long as such person's manufacture and sale of railroad locomotives and related products is temporally and causally remote, and for purposes of this clause, a person's manufacture and sale of railroad locomotives and related products shall be deemed to be temporally and causally remote if the asbestos claims historically and generally filed against such person relate to the manufacture and sale of railroad locomotives and related products by an entity dissolved more than 25 years before the date of enactment of this Act; and

(iii) shall be granted a two-tier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such participant's prior asbestos expenditures arose from asbestos claims based on successor liability arising from a merger to which the participant or its predecessor was a party that occurred at least 30 years before the date of enactment of this Act, and that such prior asbestos expenditures exceed the inflation-adjusted value of the assets of the company from which such liability was derived in such merger, and upon such demonstration the Administrator shall grant such adjustment for the life of the Fund and amounts paid by such defendant participant prior to such adjustment in excess of its adjusted payment obligation under this clause shall be credited against next succeeding required payment obligations.

(B) PAYMENT RATE.—For purposes of subparagraph (A), the payment rate of a defendant participant is the payment amount of the defendant participant as a percentage of such defendant participant's gross revenues for the year ending December 31, 2002.

(C) TERM.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), an inequity adjustment under this subsection shall have a term of 3 years.

(D) RENEWAL.—A defendant participant may renew an inequity adjustment every 3 years by demonstrating that the adjustment remains justified.

(E) REINSTATEMENT.—

(i) IN GENERAL.—Following the termination of an inequity adjustment under subparagraph (A), and during the funding period prescribed under subsection (a), the Administrator shall annually determine whether there has been a material change in conditions which would support a finding that the amount of the defendant participant's payment under the statutory allocation was not inequitable. Based on this determination, the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate any or all of the payment obligations of the defendant participant as if the inequity adjustment had not been granted for that 3-year period.

(ii) TERMS AND CONDITIONS.—In the event of a reinstatement under clause (i), the Administrator may require the defendant participant to pay any part or all of amounts not paid due to the inequity adjustment on such terms and conditions as established by the Administrator.

(4) LIMITATION ON ADJUSTMENTS.—The aggregate total of financial hardship adjustments under paragraph (2) and inequity adjustments under paragraph (3) in effect in any given year shall not exceed $300,000,000, except to the extent *that*—

(A) additional monies are available for such adjustments as a result of carryover of prior years' funds under subsection (j)(3) or as a result of monies being made available in that year under subsection (k)(1)(A)[.]*; or*

(B) the Administrator determines that the $300,000,000 is insufficient and additional adjustments as provided under paragraph (5) are needed to address situations in which a defendant participant would otherwise be rendered insolvent by its payment obligations without such adjustment.

(5) BANKRUPTCY RELIEF.—

(A) IN GENERAL.—Any defendant participant may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such adjustment by demonstrating, to a reasonable degree of certainty, evidence that the amount of its payment obligation would render the defendant participant insolvent, as defined under section 101 of title 11, United States Code, and unable to pay its debts as they become due.

(B) INFORMATION REQUIRED.—Any defendant participant seeking an adjustment or renewal of an adjustment under this paragraph shall provide the Administrator with the information required under section 521(1) of title 11 of the United States Code.

(C) LIMITATION.—Any adjustment granted by the Administrator under subparagraph (A) shall be limited to the extent reasonably necessary to prevent insolvency of a defendant participant.

(D) TERM.—To the extent the Administrator grants any relief under this paragraph, such adjustments shall have a term of 1 year. An adjustment may be renewed or modified on an annual basis upon the defendant participant demonstrating that the adjustment or modification remains justified under this paragraph.

(E) REINSTATEMENT.—During the funding period prescribed under subparagraph (A), the Administrator shall annually determine whether there has been a material change in the financial condition of any defendant participant granted an adjustment under this paragraph such that the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate under terms and conditions established by the Administrator any part or all of the defendant participant's payment obligation under the statutory allocation that was not paid during the adjustment term.

[(5)]*(6)* ADVISORY PANELS.—

(A) APPOINTMENT.—The Administrator shall appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise the Administrator in carrying out this subsection.

(B) MEMBERSHIP.—The membership of the panels appointed under subparagraph (A) may overlap.

(C) COORDINATION.—The panels appointed under subparagraph (A) shall coordinate their deliberations and advice.

(e) LIMITATION ON LIABILITY.—The liability of each defendant participant to pay to the Fund shall be limited to the payment obligations under this Act, and, except as provided in subsection (f) and section 203(b)(2)(D), no defendant participant shall have any liability for the payment obligations of any other defendant participant.

(f) CONSOLIDATION OF PAYMENTS.—

(1) IN GENERAL.—For purposes of determining the payment levels of defendant participants, any affiliated group including 1 or more defendant participants may irrevocably elect, as part of the submissions to be made under paragraphs (1) and (3) of subsection (i), to report on a consolidated basis all of the information necessary to determine the payment level under this subtitle and pay to the Fund on a consolidated basis.

(2) ELECTION.—If an affiliated group elects consolidation as provided in this subsection—

(A) for purposes of this Act other than this subsection, the affiliated group shall be treated as if it were a single participant, including with respect to the assessment of a single annual payment under this subtitle for the entire affiliated group;

(B) the ultimate parent of the affiliated group shall prepare and submit each submission to be made under subsection (i) on behalf of the entire affiliated group and shall be solely liable, as between the Administrator and the affiliated group only, for the payment of the annual amount due from the affiliated group under this subtitle, except that, if the ultimate parent does not pay when due any payment obligation for the affiliated group, the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the affiliated group may be liable under sections 223 and 224) from any member of the affiliated group;

(C) all members of the affiliated group shall be identified in the submission under subsection (i) and shall certify compliance with this subsection and the Administrator's regulations implementing this subsection; and

(D) the obligations under this subtitle shall not change even if, after the date of enactment of this Act, the beneficial ownership interest between any members of the affiliated group shall change.

(3) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within an affiliated group with respect to the payment obligations under this Act.

(g) DETERMINATION OF PRIOR ASBESTOS EXPENDITURES.—

(1) IN GENERAL.—For purposes of determining a defendant participant's prior asbestos expenditures, the Administrator shall prescribe such rules as may be necessary or appropriate to assure that payments by indemnitors before December 31, 2002, shall be counted as part of the indemnitor's prior asbestos expenditures, rather than the indemnitee's prior asbestos expenditures, in accordance with this subsection.

(2) INDEMNIFIABLE COSTS.—If an indemnitor has paid or reimbursed to an indemnitee any indemnifiable cost or otherwise made a payment on behalf of or for the benefit of an indemnitee to a third party for an indemnifiable cost before December 31, 2002, the amount of such indemnifiable cost shall be solely for the account of the indemnitor for purposes under this Act.

(3) INSURANCE PAYMENTS.—When computing the prior asbestos expenditures with respect to an asbestos claim, any amount paid or reimbursed by insurance shall be solely for the account of the indemnitor, even if the indemnitor would have no direct right to the benefit of the insurance, if—

(A) such insurance has been paid or reimbursed to the indemnitor or the indemnitee, or paid on behalf of or for the benefit of the indemnitee; and

(B) the indemnitor has either, with respect to such asbestos claim or any similar asbestos claim, paid or reimbursed to its indemnitee any indemnifiable cost or paid to any third party on behalf of or for the benefit of the indemnitee any indemnifiable cost.

(4) TREATMENT OF CERTAIN EXPENDITURES.—Notwithstanding any other provision of this Act, where—

(A) an indemnitor entered into a stock purchase agreement in 1988 that involved the sale of the stock of businesses that produced friction and other products; and

(B) the stock purchase agreement provided that the indemnitor indemnified the indemnitee and its affiliates for losses arising from various matters, including asbestos claims—

(i) asserted before the date of the agreement; and

(ii) filed after the date of the agreement and prior to the 10-year anniversary of the stock sale,

then the prior asbestos expenditures arising from the asbestos claims described in clauses (i) and (ii) shall not be for the account of either the indemnitor or indemnitee.

(h) MINIMUM ANNUAL PAYMENTS.—

(1) IN GENERAL.—The aggregate annual payments of defendant participants to the Fund shall be at least $3,000,000,000 for each calendar year in the first 30 years of the Fund, or until such shorter time as the condition set forth in subsection (a)(2) is attained.

(2) GUARANTEED PAYMENT ACCOUNT.—To the extent payments in accordance with sections 202 and 203 [(as modified by subsections (b), (d), (f) and (g) of this section)] *(as modified by subsections (b), (d), (f), (g), and (m) of this section)* fail in any year to raise at least $3,000,000,000 [net of any adjustments under subsection (d)], *after applicable reductions or adjustments have been taken according to subsections (d) and (m),* the balance needed to meet this required minimum aggregate annual payment shall be obtained from the defendant guaranteed payment account established under subsection (k).

(3) GUARANTEED PAYMENT SURCHARGE.—To the extent the procedure set forth in paragraph (2) is insufficient to satisfy the required minimum aggregate annual payment [net of any adjustments under subsection (d)], *after applicable reductions or adjustments*

have been taken according to subsections (d) and (m), the Administrator [may] *shall unless the Administrator implements a funding holiday under section 205(b)*, assess a guaranteed payment surcharge under subsection (l).

(i) Procedures for Making Payments.—

(1) Initial year: tiers II–VI.—

(A) In general.—Not later than [120] *90* days after enactment of this Act, each defendant participant that is included in Tiers II, III, IV, V, or VI shall file with the Administrator—

(i) a statement of whether the defendant participant irrevocably elects to report on a consolidated basis under subsection (f);

(ii) a good-faith estimate of its prior asbestos expenditures;

(iii) a statement of its 2002 revenues, determined in accordance with section 203(a)(2); [and]

(iv) payment in the amount specified in section 203 for the lowest subtier of the tier within which the defendant participant falls, except that if the defendant participant, or the affiliated group including the defendant participant, had 2002 revenues exceeding $3,000,000,000, it or its affiliated group shall pay the amount specified for Subtier 3 of Tiers II, III, or IV or Subtier 2 of Tiers V or VI, depending on the applicable Tier[.]; *and*

(v) a signature page personally verifying the truth of the statements and estimates described under this subparagraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(B) Relief.—

(i) In general.—The Administrator shall establish procedures to grant a defendant participant relief from its initial payment obligation if the participant shows that—

(I) the participant is likely to qualify for a financial hardship adjustment; and

(II) failure to provide interim relief would cause severe irreparable harm.

(ii) Judicial relief.—The Administrator's refusal to grant relief under clause (i) is subject to immediate judicial review under section 303.

(2) Initial year: tier I.—Not later than 60 days after enactment of this Act, each debtor shall file with the Administrator—

(A) a statement identifying the bankruptcy case(s) associated with the debtor;

(B) a statement whether its prior asbestos expenditures exceed $1,000,000;

(C) a statement whether it has material continuing business operations and, if not, whether it holds cash or other assets that have been allocated or earmarked for asbestos settlements;

(D) in the case of debtors falling within Subtier 1 of Tier I—

(i) a statement of the debtor's 2002 revenues, determined in accordance with section 203(a)(2)[.] *;*

(ii) for those debtors subject to the payment requirement of section 203(b)(2)(B)(ii), a statement whether its prior asbestos expenditures do not exceed $10,000,000, and a description of its business operations sufficient to show the requirements of that section are met; and

(iii) a payment under section 203(b)(2)(B);

(E) in the case of debtors falling within Subtier 2 of Tier I, an assignment of its assets under section 203(b)(3)(B); [and]

(F) in the case of debtors falling within Subtier 3 of Tier I, a payment under section 203(b)(4)(B), and a statement of how such payment was calculated[.]; and

(G) a signature page personally verifying the truth of the statements and estimates described under this paragraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(3) Initial year: tier VII.—Not later than 90 days after enactment of this Act, each defendant participant in Tier VII shall file with the Administrator—

(A) a good-faith estimate of all payments of the type described in section 203(h)(1) (as modified by section 203(h)(6));

(B) a statement of revenues calculated in accordance with sections 203(a)(2) and 203(h); and

(C) payment in the amount specified in section 203(h).

(4) Notice to participants.—Not later than 240 days after enactment of this Act, the Administrator shall—

(A) directly notify all reasonably identifiable defendant participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund; and

(B) publish in the Federal Register a notice—

(i) setting forth the criteria in this Act, and as prescribed by the Administrator in accordance with this Act, for paying under this subtitle as a defendant participant and requiring any person who may be a defendant participant to submit such information; and

(ii) that includes a list of all defendant participants notified by the Administrator under subparagraph (A), and provides for 30 days for the submission by the public of comments or information regarding the completeness and accuracy of the list of identified defendant participants.

(5) Response required.—

(A) In general.—Any person who receives notice under paragraph (4)(A), and any other person meeting the criteria specified in the notice published under paragraph (4)(B), shall provide the Administrator with an address to send any notice from the Administrator in accordance with this Act and all the information required by the Administrator in accordance with this subsection no later than the earlier of—

(i) 30 days after the receipt of direct notice; or

(ii) 30 days after the publication of notice in the Federal Register.

(B) Certification.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(C) Consent to audit authority.—The response submitted under subparagraph (A) shall include, on behalf of the defendant participant or affiliated group, a consent to the Administrator's audit authority under section 221(d).

(6) Notice of initial determination.—

(A) In general.—

(i) Notice to individual.—Not later than 60 days after receiving a response under paragraph (5), the Administrator shall send the person a notice of initial determination identifying the tier and subtier, if any, into which the person falls and the annual payment obligation, if any, to the Fund, which determination shall be based on the information received from the person under this subsection and any other pertinent information available to the Administrator and identified to the defendant participant.

(ii) Public notice.—Not later than 7 days after sending the notification of initial determination to defendant participants, the Administrator shall publish in the Federal Register a notice listing the defendant participants that have been sent such notification, and the initial determination identifying the tier and subtier assignment and annual payment obligation of each identified participant.

(B) No response; incomplete response.—If no response in accordance with paragraph (5) is received from a defendant participant, or if the response is incomplete, the initial determination shall be based on the best information available to the Administrator.

(C) Payments.—Within 30 days of receiving a notice of initial determination requiring payment, the defendant participant shall pay the Administrator the amount required by the notice, after deducting any previous payment made by the participant under this subsection. If the amount that the defendant participant is required to pay is less than any previous payment made by the participant under this subsection, the Administrator shall credit any excess payment against the future payment obligations of that defendant participant. The pendency of a petition for rehearing under paragraph (10) shall not stay the obligation of the participant to make the payment specified in the Administrator's notice.

(7) Exemptions for information required.—

(A) Prior asbestos expenditures.—In lieu of submitting information related to prior asbestos expenditures as may be required for purposes of this subtitle, a non-debtor defendant participant may consent to be assigned to Tier II.

(B) Revenues.—In lieu of submitting information related to revenues as may be required for purposes of this subtitle, a non-debtor defendant participant may consent to be assigned to Subtier 1 of the defendant participant's applicable tier.

(8) New information.—

(A) Existing participant.—The Administrator shall adopt procedures for requiring additional payment, or refunding amounts already paid, based on new information received.

(B) Additional participant.—If the Administrator, at any time, receives information that an additional person may qualify as a defendant participant, the Administrator shall require such person to submit information necessary to determine whether that person is required to make payments, and in what amount, under this subtitle and shall make any determination or take any other act consistent with this Act based on such information or any other information available to the Administrator with respect to such person.

(9) Subpoenas.—The Administrator may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(10) Rehearing.—A defendant participant has a right to obtain rehearing of the Administrator's determination under this subsection of the applicable tier or subtier [and], of the Administrator's determination under subsection (d) of a financial hardship or inequity adjustment, *and of the Administrator's determination under subsection (m) of a distributor's adjustment*, if the request for rehearing is filed within 30 days after the defendant participant's receipt of notice from the Administrator of the determination. A defendant participant may not file an action under section 303 unless the defendant participant requests a rehearing under this

paragraph. The Administrator shall publish a notice in the Federal Register of any change in a defendant participant's tier or subtier assignment or payment obligation as a result of a rehearing.

(j) DEFENDANT HARDSHIP AND INEQUITY ADJUSTMENT ACCOUNT.—

(1) IN GENERAL.—To the extent the total payments by defendant participants in any given year exceed the minimum aggregate annual payments *required* under subsection (h), excess monies up to a maximum of $300,000,000 in any such year shall be placed in a defendant hardship and inequity adjustment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant hardship and inequity adjustment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to make up for any relief granted to a defendant participant for severe financial hardship or demonstrated inequity under subsection (d) or to reimburse any defendant participant granted such relief after its payment of the amount otherwise due; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(3) CARRYOVER OF UNUSED FUNDS.—To the extent the Administrator does not, in any given year, use all of the funds allocated to the account under paragraph (1) for adjustments granted under subsection (d), remaining funds in the account shall be carried forward for use by the Administrator for adjustments in subsequent years.

(k) DEFENDANT GUARANTEED PAYMENT ACCOUNT.—

(1) IN GENERAL.—Subject to subsections (h) and (j), if there are excess monies paid by defendant participants in any given year, including any bankruptcy trust credits that may be due under section 222**[**(e)**]***(d)*, such monies—

(A) at the discretion of the Administrator, may be used to provide additional adjustments under subsection (d), up to a maximum aggregate of $50,000,000 in such year; and

(B) to the extent not used under subparagraph (A), shall be placed in a defendant guaranteed payment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant guaranteed payment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to ensure the minimum aggregate annual payment **[**set forth in**]** *required under* subsection (h) **[**net of any adjustments under subsection (d)**]**, *after applicable reductions or adjustments have been taken according to subsections (d) and (m)* is reached each year; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(l) GUARANTEED PAYMENT SURCHARGE.—

(1) IN GENERAL.—To the extent there are insufficient monies in the defendant guaranteed payment account established in subsection (k) to attain the minimum aggregate annual payment *required under subsection (h)* **[**net of any adjustments under subsection (d)**]** in any given year, the Administrator **[**may**]** *shall, unless the Administrator implements a funding holiday under section 205(b),* impose on each defendant participant a surcharge as necessary to raise the balance required to attain the minimum aggregate annual payment *required under subsection (h)* **[**net of any adjustments under subsection (d)**]** as provided in this subsection. Any such surcharge shall be imposed on a pro rata basis, in accordance with each defendant participant's relative annual liability under sections 202 and 203 **[**(as modified by subsections (b), (d), (f), and (g) of this section)**]** *(as modified by subsections (b), (d), (f), (g), and (m) of this section).*

(2) LIMITATION.—

(A) IN GENERAL.—In no case shall the Administrator impose a surcharge under this subsection on any defendant participant included in Subtier 3 of Tiers V or VI as described under section 203.

(B) REALLOCATION.—Any amount not imposed under subparagraph (A) shall be reallocated on a pro-rata basis, in accordance with each defendant participant's (other than a defendant participant described under subparagraph (A)) relative annual liability under sections 202 and 203 (as modified by subsections (b), (d), (f), and (g) of this section).

[(2)**]***(3)* CERTIFICATION.—

(A) IN GENERAL.—Before imposing a guaranteed payment surcharge under this subsection, the Administrator shall certify that he or she has used all reasonable efforts to collect mandatory payments for all defendant participants, including by using the authority in subsection (i)(9) of this section and section 223.

(B) NOTICE AND COMMENT.—Before making a final certification under subparagraph (C), the Administrator shall publish a notice in the Federal Register of a proposed certification and provide in such notice for a public comment period of 30 days.

(C) FINAL CERTIFICATION.—

(i) IN GENERAL.—The Administrator shall publish a notice of the final certification in the Federal Register after consideration of all comments submitted under subparagraph (B).

(ii) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under clause (i), the Administrator shall provide each defendant participant with written notice of that defendant participant's payment, including the amount of any surcharge.

(m) ADJUSTMENTS FOR DISTRIBUTORS.—

(1) DEFINITION.—In this subsection, the term "distributor" means a person—

(A) whose prior asbestos expenditures arise exclusively from the sale of products manufactured by others;

(B) who did not prior to December 31, 2002, sell raw asbestos or a product containing more than 95 percent asbestos by weight;

(C) whose prior asbestos expenditures did not arise out of—

(i) the manufacture, installation, repair, reconditioning, maintaining, servicing, constructing, or remanufacturing of any product;

(ii) the control of the design, specification, or manufacture of any product; or

(iii) the sale or resale of any product under, as part of, or under the auspices of, its own brand, trademark, or service mark; and

(D) who is not subject to assignment under section 202 to Tier I, II, III or VII.

(2) TIER REASSIGNMENT FOR DISTRIBUTORS.—

(A) IN GENERAL.—Notwithstanding section 202, the Administrator shall assign a distributor to a Tier for purposes of this title under the procedures set forth in this paragraph.

(B) DESIGNATION.—After a final determination by the Administrator under section 204(i), any person who is, or any affiliated group in which every member is, a distributor may apply to the Administrator for adjustment of its Tier assignment under this subsection. Such application shall be prepared in accordance with such procedures as the Administrator shall promulgate by rule. Once the Administrator designates a person or affiliated group as a distributor under this subsection, such designation and the adjustment of tier assignment under this subsection are final.

(C) PAYMENTS.—Any person or affiliated group that seeks adjustment of its Tier assignment under this subsection shall pay all amounts required of it under this title until a final determination by the Administrator is made under this subsection. Such payments may not be stayed pending any appeal. The Administrator shall grant any person or affiliated group a refund or credit of any payments made if such adjustment results in a lower payment obligation.

(D) ADJUSTMENT.—Subject to paragraph (3), any person or affiliated group that the Administrator has designated as a distributor under this subsection shall be given an adjustment of Tier assignment as follows:

(i) A distributor that but for this subsection would be assigned to Tier IV shall be deemed assigned to Tier V.

(ii) A distributor that but for this subsection would be assigned to Tier V shall be deemed assigned to Tier VI.

(iii) A distributor that but for this subsection would be assigned to Tier VI shall be deemed assigned to no Tier and shall have no obligation to make any payment to the Fund under this Act.

(E) EXCLUSIVE TO INEQUITY ADJUSTMENT.—Any person or affiliated group designated by the Administrator as a distributor under this subsection shall not be eligible for an inequity adjustment under subsection 204(d).

(3) LIMITATION ON ADJUSTMENTS.—The aggregate total of distributor adjustments under this subsection in effect in any given year shall not exceed $50,000,000. If the aggregate total of distributors adjustments under this subsection would otherwise exceed $50,000,000, then each distributor's adjustment shall be reduced pro rata until the aggregate of all adjustments equals $50,000,000.

(4) REHEARING.—A defendant participant has a right to obtain a rehearing of the Administrator's determination on an adjustment under this subsection under the procedures prescribed in subsection (i)(10).

SEC. 205. STEPDOWNS AND FUNDING HOLIDAYS.

(a) STEPDOWNS.—

(1) IN GENERAL.—Subject to paragraph (2), the minimum aggregate annual funding obligation under section 204(h) shall be reduced by 10 percent of the initial minimum aggregate funding obligation at the end of the tenth, fifteenth, twentieth, and twenty-fifth years after the date of enactment of this Act. The reductions under this paragraph shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except with respect to defendant participants in Tier 1, Subtiers 2 and 3, and class action trusts.

(2) LIMITATION.—The Administrator shall suspend, cancel, reduce, or delay any reduction under paragraph (1) if at any time the Administrator finds, in accordance with subsection (c), that such action is necessary and appropriate to ensure that the assets of the Fund and expected future payments remain sufficient to satisfy the Fund's anticipated obligations.

(b) FUNDING HOLIDAYS.—

(1) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments, taking into consideration any reductions under subsection (a), are sufficient to satisfy the Fund's anticipated obligations

without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from defendant participants for that year.

(2) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under paragraph (1) every year.

(3) LIMITATIONS ON FUNDING HOLIDAYS.—Any reduction or waiver of the defendant participants' funding obligations shall—

(A) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(B) be applied on an equal pro rata basis to the funding obligations of all defendant participants, except with respect to defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(4) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(c) CERTIFICATION.—

(1) IN GENERAL.—Before suspending, canceling, reducing, or delaying any reduction under subsection (a) or granting or revoking a reduction or waiver under subsection (b), the Administrator shall certify that the requirements of this section are satisfied.

(2) NOTICE AND COMMENT.—Before making a final certification under this subsection, the Administrator shall publish a notice in the Federal Register of a proposed certification and a statement of the basis therefor and provide in such notice for a public comment period of 30 days.

(3) FINAL CERTIFICATION.—

(A) IN GENERAL.—The Administrator shall publish a notice of the final certification in the Federal Register after consideration of all comments submitted under paragraph (2).

(B) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under subparagraph (A), the Administrator shall provide each defendant participant with written notice of that defendant's funding obligation for that year.

SEC. 206. ACCOUNTING TREATMENT.

Defendant participants payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each defendant participant. This section shall in no way reduce the amount of monetary payments to the Fund by defendant participants as required under section 202(a)(2).

Subtitle B—Asbestos Insurers Commission

SEC. 210. DEFINITION.

In this subtitle, the term "captive insurance company" means a company—

(1) whose entire beneficial interest is owned on the date of enactment of this Act, directly or indirectly, by a defendant participant or by the ultimate parent or the affiliated group of a defendant participant;

(2) whose primary commercial business during the period from calendar years 1940 through 1986 was to provide insurance to its ultimate parent or affiliated group, or any portion of the affiliated group or a combination thereof; and

(3) that was incorporated or operating no later than December 31, 2003.

SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COMMISSION.

(a) ESTABLISHMENT.—There is established the Asbestos Insurers Commission (referred to in this subtitle as the "Commission") to carry out the duties described in section 212.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) QUALIFICATIONS.—

(A) EXPERTISE.—Members of the Commission shall have sufficient expertise to fulfill their responsibilities under this subtitle.

(B) CONFLICT OF INTEREST.—

(i) IN GENERAL.—No member of the Commission appointed under paragraph (1) may be an employee or immediate family member of an employee of an insurer participant. No member of the Commission shall be a shareholder of any insurer participant. No member of the Commission shall be a former officer or director, or a former employee or former shareholder of any insurer participant who was such an employee, shareholder, officer, or director at any time during the 2-year period ending on the date of the appointment, unless that is fully disclosed before consideration in the Senate of the nomination for appointment to the Commission.

(ii) DEFINITION.—In clause (i), the term "shareholder" shall not include a broadly based mutual fund that includes the stocks of insurer participants as a portion of its overall holdings.

(C) FEDERAL EMPLOYMENT.—A member of the Commission may not be an officer or employee of the Federal Government, except by reason of membership on the Commission.

(3) PERIOD OF APPOINTMENT.—Members shall be appointed for the life of the Commission.

(4) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(5) CHAIRMAN.—The President shall select a Chairman from among the members of the Commission.

(c) MEETINGS.—

(1) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(2) SUBSEQUENT MEETINGS.—The Commission shall meet at the call of the Chairman, as necessary to accomplish the duties under section 212.

(3) QUORUM.—No business may be conducted or hearings held without the participation of a majority of the members of the Commission.

SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.

(a) DETERMINATION OF INSURER PAYMENT OBLIGATIONS.—

(1) IN GENERAL.—

(A) DEFINITIONS.—For the purposes of this Act, the terms "insurer" and "insurer participant" shall, unless stated otherwise, include direct insurers and reinsurers, as well as any run-off entity established, in whole or in part, to review and pay asbestos claims.

(B) PROCEDURES FOR DETERMINING INSURER PAYMENTS.—The Commission shall determine the amount that each insurer participant shall be required to pay into the Fund under the procedures described in this section. The Commission shall make this determination by first promulgating a rule establishing a methodology for allocation of payments among insurer participants and then applying such methodology to determine the individual payment for each insurer participant. The methodology may include 1 or more allocation formulas to be applied to all insurer participants or groups of similarly situated participants. The Commission's rule shall include a methodology for adjusting payments by insurer participants [to make up, during any applicable payment year, any amount by which aggregate insurer payments fall below the level required in paragraph (3)(C).] *to make up, during the first 5 years of the life of the Fund and any subsequent years as provided in section 405(e) for any reduction in an insurer participant's annual allocated amount caused by the granting of a financial hardship or exceptional circumstance adjustment under this section, and any amount by which aggregate insurer payments fall below the level required under paragraph (3)(C) by reason of the failure or refusal of any insurer participant to make a required payment, or for any other reason that causes such payments to fall below the level required under paragraph (3)(C).* The Commission shall conduct a thorough study (within the time limitations under this subparagraph) of the accuracy of the reserve allocation of each insurer participant, and may request information from the Securities and Exchange Commission or any State regulatory agency. Under this procedure, not later than 120 days after the initial meeting of the Commission, the Commission shall commence a rulemaking proceeding under section 213(a) to propose and adopt a methodology for allocating payments among insurer participants. In proposing an allocation methodology, the Commission may consult with such actuaries and other experts as it deems appropriate. After hearings and public comment on the proposed allocation methodology, the Commission shall as promptly as possible promulgate a final rule establishing such methodology. After promulgation of the final rule, the Commission shall determine the individual payment of each insurer participant under the procedures set forth in subsection (b).

(C) SCOPE.—Every insurer, reinsurer, and runoff entity with asbestos-related obligations in the United States shall be subject to the Commission's and Administrator's authority under this Act, including allocation determinations, and shall be required to fulfill its payment obligation without regard as to whether it is licensed in the United States. Every insurer participant not licensed or domiciled in the United States shall, upon the first payment to the Fund, submit a written consent to the Commission's and Administrator's authority under this Act, and to the jurisdiction of the courts of the United States for purposes of enforcing this Act, in a form determined by the Administrator. Any insurer participant refusing to provide a written consent shall be subject to fines and penalties as provided in section 223.

(D) ISSUERS OF FINITE RISK POLICIES.—

(i) IN GENERAL.—The issuer of any policy of *retrospective* reinsurance purchased by an insurer participant or its affiliate after 1990 that provides for a *risk or* loss transfer to insure for [incurred] asbestos losses and other losses (both known and unknown), including those policies commonly referred to as "finite risk", "aggregate stop loss", "aggregate excess of loss", or "loss portfolio transfer" policies, shall be obligated to make payments required under this Act directly to the Fund on behalf of the insurer participant who is the beneficiary of such policy, subject to the underlying retention and the limits of liability applicable to such policy.

(ii) PAYMENTS.—Payments to the Fund required under this Act shall be treated as loss payments for asbestos bodily injury (as if such payments were incurred as liabilities imposed in the tort system) and shall not be subject to exclusion under policies described under clause (i) as a liability with respect to tax or assessment. Within 90 days after the scheduled date to make an annual payment to the Fund, the insurer participant shall, at its discretion, direct the reinsurer issuing such policy to pay all or a portion of the annual payment directly to the Fund up to the full applicable limits of liability under the policy. The reinsurer issuing such policy shall be obligated to make such payments directly to the Fund and shall be subject to the enforcement provisions under section 223. The insurer participant shall remain obligated to make payment to the Fund of that portion of the annual payment not directed to the issuer of such reinsurance policy.

(2) AMOUNT OF PAYMENTS.—

(A) AGGREGATE PAYMENT OBLIGATION.—The total payment required of all insurer participants over the life of the Fund shall be equal to $46,025,000,000, *less any bankruptcy trust credits under section 222(d)*.

(B) ACCOUNTING STANDARDS.—In determining the payment obligations of participants that are not licensed or domiciled in the United States or that are runoff entities, the Commission shall use accounting standards required for United States licensed direct insurers.

(C) CAPTIVE INSURANCE COMPANIES.—No payment to the Fund shall be required from a captive insurance company, unless and only to the extent a captive insurance company, on the date of enactment of this Act, has liability, directly or indirectly, for any asbestos claim of a person or persons other than and unaffiliated with its ultimate parent or affiliated group or pool in which the ultimate parent participates or participated, or unaffiliated with a person that was its ultimate parent or a member of its affiliated group or pool at the time the relevant insurance or reinsurance was issued by the captive insurance company.

(D) SEVERAL LIABILITY.—Unless otherwise provided under this Act, each insurer participant's obligation to make payments to the Fund is several. Unless otherwise provided under this Act, there is no joint liability, and the future insolvency by any insurer participant shall not affect the payment required of any other insurer participant.

(3) PAYMENT OF CRITERIA.—

(A) INCLUSION IN INSURER PARTICIPANT CATEGORY.—

(i) IN GENERAL.—Insurers that have paid, or been assessed by a legal judgment or settlement, at least $1,000,000 in defense and indemnity costs before the date of enactment of this Act in response to claims for compensation for asbestos injuries arising from a policy of liability insurance or contract of liability reinsurance or retrocessional reinsurance shall be insurer participants in the Fund. Other insurers shall be exempt from mandatory payments.

(ii) INAPPLICABILITY OF SECTION 202.—Since insurers may be subject in certain jurisdictions to direct action suits, and it is not the intent of this Act to impose upon an insurer, due to its operation as an insurer, payment obligations to the Fund in situations where the insurer is the subject of a direct action, no insurer subject to mandatory payments under *this* section [212] shall also be liable for payments to the Fund as a defendant participant under section 202.

(B) INSURER PARTICIPANT ALLOCATION METHODOLOGY.—

(i) IN GENERAL.—The Commission shall establish the payment obligations of individual insurer participants to reflect, on an equitable basis, the relative tort system liability of the participating insurers in the absence of this Act, considering and weighting, as appropriate (but exclusive of workers' compensation), such factors as—

(I) historic premium for lines of insurance associated with asbestos exposure over relevant periods of time;

(II) recent loss experience for asbestos liability;

(III) amounts reserved for asbestos liability;

(IV) the likely cost to each insurer participant of its future liabilities under applicable insurance policies; and

(V) any other factor the Commission may determine is relevant and appropriate.

(ii) DETERMINATION OF RESERVES.—The Commission may establish procedures and standards for determination of the asbestos reserves of insurer participants. The reserves of a United States licensed reinsurer that is wholly owned by, or under common control of, a United States licensed direct insurer shall be included as part of the direct insurer's reserves when the reinsurer's financial results are included as part of the direct insurer's United States operations, as reflected in footnote 33 of its filings with the National Association of Insurance Commissioners or in published financial statements prepared in accordance with generally accepted accounting principles.

(C) PAYMENT SCHEDULE.—The aggregate annual amount of payments by insurer participants over the life of the Fund shall be as follows:

(i) For years 1 and 2, $2,700,000,000 annually.

(ii) For years 3 through 5, $5,075,000,000 annually.

(iii) For years 6 through 27, $1,147,000,000 annually.

(iv) For year 28, $166,000,000.

(D) CERTAIN RUNOFF ENTITIES.—

[(i) IN GENERAL.—Whenever the Commission requires payments by a runoff entity that has assumed asbestos-related liabilities from a Lloyd's syndicate or names that are members of such a syndicate, the Commission shall not require payments from such syndicates and names to the extent that the runoff entity makes its required payments. In addition, such syndicates and names shall be required to make payments to the Fund in the amount of any adjustment granted to the runoff entity for severe financial hardship or exceptional circumstances.]

[(ii) INCLUDED RUNOFF ENTITIES.—Subject to clause (i), a] A runoff entity shall include any direct insurer or reinsurer whose asbestos liability reserves have been transferred, directly or indirectly, to the runoff entity and on whose behalf the runoff entity handles or adjusts and, where appropriate, pays asbestos claims.

(E) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—

(i) IN GENERAL.—Under the procedures established in subsection (b), an insurer participant may seek adjustment of the amount of its payments based on exceptional circumstances or severe financial hardship.

(ii) FINANCIAL ADJUSTMENTS.—An insurer participant may qualify for an adjustment based on severe financial hardship by demonstrating that payment of the amounts required by the Commission's methodology would jeopardize the solvency of such participant.

(iii) EXCEPTIONAL CIRCUMSTANCE ADJUSTMENT.—An insurer participant may qualify for an adjustment based on exceptional circumstances by demonstrating—

(I) that the amount of its payments under the Commission's allocation methodology is exceptionally inequitable when measured against the amount of the likely cost to the participant of its future liability in the tort system in the absence of the Fund;

(II) an offset credit as described in subparagraphs (A) and (C) of subsection (b)(4); or

(III) other exceptional circumstances.

The Commission may determine whether to grant an adjustment and the size of any [such adjustment, but adjustments shall not reduce the aggregate payment obligations] *such adjustment, but except as provided under paragraph (1)(B), subsection (f)(3), and section 405(e), any such adjustment shall not affect the aggregate payment obligations* of insurer participants specified in paragraph (2)(A) and subparagraph (C) of this paragraph.

(iv) TIME PERIOD OF ADJUSTMENT.—Except for adjustments for offset credits, adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating to the Administrator that it remains justified.

(F) FUNDING HOLIDAYS.—

(i) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from insurer participants for that year.

(ii) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under clause (i) every year.

(iii) LIMITATIONS OF FUNDING HOLIDAYS.—Any reduction or waiver of the insurer participants' funding obligations shall—

(I) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(II) be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(iv) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(b) PROCEDURE FOR NOTIFYING INSURER PARTICIPANTS OF INDIVIDUAL PAYMENT OBLIGATIONS.—

(1) NOTICE TO PARTICIPANTS.—Not later than 30 days after promulgation of the final rule establishing an allocation methodology under subsection (a)(1), the Commission shall—

(A) directly notify all reasonably identifiable insurer participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund under the allocation methodology; and

(B) publish in the Federal Register a notice—

(i) requiring any person who may be an insurer participant (as determined by criteria outlined in the notice) to submit such information; and

(ii) that includes a list of all insurer participants notified by the Commission under subparagraph (A), and provides for 30 days for the submission of comments or information regarding the completeness and accuracy of the list of identified insurer participants.

(2) RESPONSE REQUIRED BY INDIVIDUAL INSURER PARTICIPANTS.—

(A) IN GENERAL.—Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Commission with all the information requested in the notice under a schedule or by a date established by the Commission.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE TO INSURER PARTICIPANTS OF INITIAL PAYMENT DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INSURERS.—Not later than 120 days after receipt of the information required by paragraph (2), the Commission shall send each insurer participant a notice of initial determination requiring payments to the Fund, which shall be based on the information received from the participant in response to the Commission's request for information. An insurer participant's payments shall be payable over the schedule established in subsection (a)(3)(C), in annual amounts proportionate to the aggregate annual amount of payments for all insurer participants for the applicable year.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to insurer participants, the Commission shall publish in the Federal Register a notice listing the insurer participants that have been sent such notification, and the initial determination on the payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response is received from an insurer participant, or if the response is incomplete, the initial determination requiring a payment from the insurer participant shall be based on the best information available to the Commission.

(4) COMMISSION REVIEW, REVISION, AND FINALIZATION OF INITIAL PAYMENT DETERMINATIONS.—

(A) COMMENTS FROM INSURER PARTICIPANTS.—Not later than 30 days after receiving a notice of initial determination from the Commission, an insurer participant may provide the Commission with additional information to support adjustments to the required payments to reflect severe financial hardship or exceptional circumstances, including the provision of an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy judicially confirmed after May 22, 2003, but before the date of enactment of this Act.

(B) ADDITIONAL PARTICIPANTS.—If, before the final determination of the Commission, the Commission receives information that an additional person may qualify as an insurer participant, the Commission shall require such person to submit information necessary to determine whether payments from that person should be required, in accordance with the requirements of this subsection.

(C) REVISION PROCEDURES.—The Commission shall adopt procedures for revising initial payments based on information received under subparagraphs (A) and (B), including a provision requiring an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy confirmed after May 22, 2003, but before the date of enactment of this Act.

(5) EXAMINATIONS AND SUBPOENAS.—

(A) EXAMINATIONS.—The Commission may conduct examinations of the books and records of insurer participants to determine the completeness and accuracy of information submitted, or required to be submitted, to the Commission for purposes of determining participant payments.

(B) SUBPOENAS.—The Commission may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(6) ESCROW PAYMENTS.—Without regard to an insurer participant's payment obligation under this section, any escrow or similar account established before the date of enactment of this Act by an insurer participant in connection with an asbestos trust fund that has not been judicially confirmed by final order by the date of enactment of this Act shall be the property of the insurer participant and returned to that insurer participant.

(7) NOTICE TO INSURER PARTICIPANTS OF FINAL PAYMENT DETERMINATIONS.—Not later than 60 days after the notice of initial determination is sent to the insurer participants, the Commission shall send each insurer participant a notice of final determination.

(c) INSURER PARTICIPANTS VOLUNTARY ALLOCATION AGREEMENT.—

(1) IN GENERAL.—Not later than 30 days after the Commission proposes its rule establishing an allocation methodology under subsection (a)(1), direct insurer participants licensed or domiciled in the United States, other direct insurer participants, reinsurer participants licensed or domiciled in the United States, or other reinsurer participants, may submit an allocation agreement, approved by all of the participants in the applicable group, to the Commission.

(2) ALLOCATION AGREEMENT.—To the extent the participants in any such applicable group voluntarily agree upon an allocation arrangement, any such allocation agreement shall only govern the allocation of payments within that group and shall not determine the aggregate amount due from that group.

(3) CERTIFICATION.—The Commission shall determine whether an allocation agreement submitted under subparagraph (A) meets the requirements of this subtitle and, if so, shall certify the agreement as establishing the allocation methodology governing the individual payment obligations of the participants who are parties to the agreement. The authority of the Commission under this subtitle shall, with respect to participants who are parties to a certified allocation agreement, terminate on the day after the Commission certifies such agreement. Under subsection (f), the Administrator shall assume responsibility, if necessary, for calculating the individual payment obligations of participants who are parties to the certified agreement.

(d) COMMISSION REPORT.—

(1) RECIPIENTS.—Until the work of the Commission has been completed and the Commission terminated, the Commission shall submit an annual report, containing the information described under paragraph (2), to—

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on the Judiciary of the House of Representatives; and

(C) the Administrator.

(2) CONTENTS.—The report under paragraph (1) shall state the amount that each insurer participant is required to pay to the Fund, including the payment schedule for such payments.

[(e) INTERIM PAYMENTS.—

[(1) AUTHORITY OF ADMINISTRATOR.—During the period between the date of enactment of this Act and the date when the Commission issues its final determinations of payments, the Administrator shall have the authority to require insurer participants to make interim payments to the Fund to assure adequate funding by insurer participants during such period.

[(2) AMOUNT OF INTERIM PAYMENTS.—During any applicable year, the Administrator may require insurer participants to make aggregate interim payments not to exceed the annual aggregate amount specified in subsection (a)(3)(C).

[(3) ALLOCATION OF PAYMENTS.—Interim payments shall be allocated among individual insurer participants on an equitable basis as determined by the Administrator. All payments required under this subparagraph shall be credited against the participant's ultimate payment obligation to the Fund established by the Commission. If an interim payment exceeds the ultimate payment, the Fund shall pay interest on the amount of the overpayment at a rate determined by the Administrator. If the ultimate payment exceeds the interim payment, the participant shall pay interest on the amount of the underpayment at the same rate. Any participant may seek an exemption from or reduction in any payment required under this subsection under the financial hardship and exceptional circumstance standards established in subsection (a)(3)(D).

[(4) APPEAL OF INTERIM PAYMENT DECISIONS.—A decision by the Administrator to establish an interim payment obligation shall be considered final agency action and reviewable under section 303, except that the reviewing court may not stay an interim payment during the pendency of the appeal.]

(e) INTERIM PAYMENTS.—

(1) AMOUNT OF INTERIM PAYMENT.—Within 90 days after the date of enactment of this Act, insurer participants shall make an aggregate payment to the Fund not to exceed 50 percent of the aggregate funding obligation specified under subsection (a)(3)(C) for year 1.

(2) RESERVE INFORMATION.—Within 30 days after the date of enactment of this Act, each insurer participant shall submit to the Administrator a certified statement of its net held reserves for asbestos liabilities as of December 31, 2004.

(3) ALLOCATION OF INTERIM PAYMENT.—The Administrator shall allocate the interim payment among the individual insurer participants on an equitable basis using the net held asbestos reserve information provided by insurer participants under subsection (a)(3)(B). Within 60 days

after the date of enactment of this Act, the Administrator shall publish in the Federal Register the name of each insurer participant, and the amount of the insurer participant's allocated share of the interim payment. The use of net held asbestos reserves as the basis to determine an interim allocation shall not be binding on the Administrator in the determination of an appropriate final allocation methodology under this section. All payments required under this paragraph shall be credited against the participant's ultimate payment obligation to the Fund established by the Commission. If an interim payment exceeds the ultimate payment, the Fund shall pay interest on the amount of the overpayment at a rate determined by the Administrator. If the ultimate payment exceeds the interim payment, the participant shall pay interest on the amount of the underpayment at the same rate. Any participant may seek an exemption from or reduction in any payment required under this subsection under the financial hardship and exceptional circumstance standards established under subsection (a)(3)(E).

(4) APPEAL OF INTERIM PAYMENT DECISIONS.—A decision by the Administrator to establish an interim payment obligation shall be considered final agency action and reviewable under section 303, except that the reviewing court may not stay an interim payment during the pendency of the appeal.

(f) TRANSFER OF AUTHORITY FROM THE COMMISSION TO THE ADMINISTRATOR.—

(1) IN GENERAL.—Upon termination of the Commission under section 215, the Administrator shall assume all the responsibilities and authority of the Commission, except that the Administrator shall not have the power to modify the allocation methodology established by the Commission or by certified agreement or to promulgate a rule establishing any such methodology.

(2) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—Upon termination of the Commission under section 215, the Administrator shall have the authority, upon application by any insurer participant, to make adjustments to annual payments upon the same grounds as provided in subsection (a)(3)(D). Adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating that it remains justified. Upon the grant of any adjustment, the Administrator shall increase the payments, *consistent with subsection (a)(1)(B),* required of all other insurer participants so that there is no reduction in the aggregate payment required of all insurer participants for the applicable years. The increase in an insurer participant's required payment shall be in proportion to such participant's share of the aggregate payment obligation of all insurer participants.

(3) CREDITS FOR SHORTFALL ASSESSMENTS.—If insurer participants are required during the first 5 years of the life of the Fund to make up any shortfall in required insurer payments under subsection (a)(1)(B), then, beginning in year 6, the Administrator shall grant each insurer participant a credit against its annual required payments during the applicable years that in the aggregate equal the amount of shortfall assessments paid by such insurer participant during the first 5 years of the life of the Fund. The credit shall be prorated over the same number of years as the number of years during which the insurer participant paid a shortfall assessment. Insurer participants which did not pay all required payments to the Fund during the first 5 years of the life of the Fund shall not be eligible for a credit. The Administrator shall not grant a credit for shortfall assessments imposed under section 405(e).

[(3)]*(4)* FINANCIAL SECURITY REQUIREMENTS.—Whenever an insurer participant's A.M. Best's claims payment rating or Standard and Poor's financial strength rating falls below A−, and until such time as either the insurer participant's A.M. Best's Rating or Standard and Poor's rating is equal to or greater than A−, the Administrator shall have the authority to require that the participating insurer either—

(A) pay the present value of its remaining Fund payments at a discount rate determined by the Administrator; or

(B) provide an evergreen letter of credit or financial guarantee for future payments issued by an institution with an A.M. Best's claims payment rating or Standard & Poor's financial strength rating of at least A+.

(g) ACCOUNTING TREATMENT.—Insurer participants' payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each insurer participant. This subsection shall in no way reduce the amount of monetary payments to the Fund by insurer participants as required under subsection (a).

[(g)]*(h)* JUDICIAL REVIEW.—The Commission's rule establishing an allocation methodology, its final determinations of payment obligations and other final action shall be judicially reviewable as provided in title III.

SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.

(a) RULEMAKING.—The Commission shall promulgate such rules and regulations as necessary to implement its authority under this Act, including regulations governing an allocation methodology. Such rules and regulations shall be promulgated after providing interested parties with the opportunity for notice and comment.

(b) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act. The Commission shall also hold a hearing on any proposed regulation establishing an allocation methodology, before the Commission's adoption of a final regulation.

(c) INFORMATION FROM FEDERAL AND STATE AGENCIES.—The Commission may secure directly from any Federal or State department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(d) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(e) GIFTS.—The Commission may not accept, use, or dispose of gifts or donations of services or property.

(f) EXPERT ADVICE.—In carrying out its responsibilities, the Commission may enter into such contracts and agreements as the Commission determines necessary to obtain expert advice and analysis.

SEC. 214. PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMISSION.

The Commission shall terminate 90 days after the last date on which the Commission makes a final determination of contribution under section 212(b) or 90 days after the last appeal of any final action by the Commission is exhausted, whichever occurs later.

SEC. 216. EXPENSES AND COSTS OF COMMISSION.

All expenses of the Commission shall be paid from the Fund.

Subtitle C—Asbestos Injury Claims Resolution Fund

SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS RESOLUTION FUND.

(a) ESTABLISHMENT.—There is established in the Office of Asbestos Disease Compensation the Asbestos Injury Claims Resolution Fund, which shall be available to pay—

(1) claims for awards for an eligible disease or condition determined under title I;

(2) claims for reimbursement for medical monitoring determined under title I;

(3) principal and interest on borrowings under subsection (b);

(4) the remaining obligations to the asbestos trust of a debtor and the class action trust under section 405(f)(8); and

(5) administrative expenses to carry out the provisions of this Act.

(b) BORROWING AUTHORITY.—

(1) IN GENERAL.—The Administrator is authorized to borrow from time to time amounts as set forth in this subsection, for purposes of enhancing liquidity available to the Fund for carrying out the obligations of the Fund under this Act. The Administrator may authorize borrowing in such form, over such term, with such necessary disclosure to

its lenders as will most efficiently enhance the Fund's liquidity.

(2) FEDERAL FINANCING BANK.—In addition to the general authority in paragraph (1), the Administrator may borrow from the Federal Financing Bank in accordance with section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. 2285), as needed for performance of the Administrator's duties under this Act for the first 5 years.

(3) BORROWING CAPACITY.—The maximum amount that may be borrowed under this subsection at any given time is the amount that, taking into account all payment obligations related to all previous amounts borrowed in accordance with this subsection and all committed obligations of the Fund at the time of borrowing, can be repaid in full (with interest) in a timely fashion from—

(A) the available assets of the Fund as of the time of borrowing; and

(B) all amounts expected to be paid by participants during the subsequent 10 years.

[(4) REPAYMENT OBLIGATIONS.—Repayment of monies borrowed by the Administrator under this subsection is limited solely to amounts available in the Asbestos Injury Claims Resolution Fund established under this section.]

(4) REPAYMENT OBLIGATIONS.—Repayment of monies borrowed by the Administrator under this subsection shall be repaid in full by the Fund contributors and is limited solely to amounts available, present or future, in the Fund.

(c) LOCKBOX FOR SEVERE ASBESTOS-RELATED INJURY CLAIMANTS.—

(1) IN GENERAL.—Within the Fund, the Administrator shall establish the following accounts:

(A) A Mesothelioma Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IX.

(B) A Lung Cancer Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level VIII.

(C) A Severe Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level V.

(D) A Moderate Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IV.

(2) ALLOCATION.—The Administrator shall allocate to each of the 4 accounts established under paragraph (1) a portion of payments made to the Fund adequate to compensate all anticipated claimants for each account. Within 60 days after the date of enactment of this Act, and periodically during the life of the Fund, the Administrator shall determine an appropriate amount to allocate to each account after consulting appropriate epidemiological and statistical studies.

(d) AUDIT AUTHORITY.—

(1) IN GENERAL.—For the purpose of ascertaining the correctness of any information provided or payments made to the Fund, or determining whether a person who has not made a payment to the Fund was required to do so, or determining the liability of any person for a payment to the Fund, or collecting any such liability, or inquiring into any offense connected with the administration or enforcement of this title, the Administrator is authorized—

(A) to examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(B) to summon the person liable for a payment under this title, or officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable or any other person the Administrator may deem proper, to appear before the Administrator at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(C) to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(2) FALSE, FRAUDULENT, OR FICTITIOUS STATEMENTS OR PRACTICES.—If the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by persons submitting information to the Administrator or to the Asbestos Insurers Commission or any other person who provides evidence in support of such submissions for purposes of determining payment obligations under this Act, the Administrator may impose a civil penalty not to exceed $10,000 on any person found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall promulgate appropriate regulations to implement this paragraph.

(e) IDENTITY OF CERTAIN DEFENDANT PARTICIPANTS; TRANSPARENCY.—

(1) SUBMISSION OF INFORMATION.—Not later than 60 days after the date of enactment of this Act, any person who, acting in good faith, has knowledge that such person or such person's affiliated group has prior asbestos expenditures of $1,000,000 or greater, shall submit to the Administrator—

(A) either the name of such person, or such person's ultimate parent; and

(B) the likely tier to which such person or affiliated group may be assigned under this Act.

(2) PUBLICATION.—Not later than 20 days after the end of the 60-day period referred to in paragraph (1), the Administrator or Interim Administrator, if the Administrator is not yet appointed, shall publish in the Federal Register a list of submissions required by this subsection, including the name of such persons or ultimate parents and the likely tier to which such persons or affiliated groups may be assigned. After publication of such list, any person who, acting in good faith, has knowledge that any other person has prior asbestos expenditures of $1,000,000 or greater may submit to the Administrator or Interim Administrator information on the identity of that person and the person's prior asbestos expenditures.

(f) NO PRIVATE RIGHT OF ACTION.—Except as provided in sections 203(b)(2)(D)(ii) and 204(f)(3), there shall be no private right of action under any Federal or State law against any participant based on a claim of compliance or noncompliance with this Act or the involvement of any participant in the enactment of this Act.

SEC. 222. MANAGEMENT OF THE FUND.

(a) IN GENERAL.—Amounts in the Fund shall be held for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries[, including those provided in subsection (c)] and to otherwise defray the reasonable expenses of administering the Fund.

(b) INVESTMENTS.—

(1) IN GENERAL.—Amounts in the Fund shall be administered and invested with the care, skill, prudence, and diligence, under the circumstances prevailing at the time of such investment, that a prudent person acting in a like capacity and manner would use.

(2) STRATEGY.—The Administrator shall invest amounts in the Fund in a manner that enables the Fund to make current and future distributions to or for the benefit of asbestos claimants. In pursuing an investment strategy under this subparagraph, the Administrator shall consider, to the extent relevant to an investment decision or action—

(A) the size of the Fund;

(B) the nature and estimated duration of the Fund;

(C) the liquidity and distribution requirements of the Fund;

(D) general economic conditions at the time of the investment;

(E) the possible effect of inflation or deflation on Fund assets;

(F) the role that each investment or course of action plays with respect to the overall assets of the Fund;

(G) the expected amount to be earned (including both income and appreciation of capital) through investment of amounts in the Fund; and

(H) the needs of asbestos claimants for current and future distributions authorized under this Act.

[(c) MESOTHELIOMA RESEARCH AND TREATMENT CENTERS.—

[(1) IN GENERAL.—The Administrator shall provide $1,000,000 from the Fund for each of fiscal years 2005 through 2009 for each of up to 10 mesothelioma disease research and treatment centers.

[(2) REQUIREMENTS.—The Centers shall—

[(A) be chosen by the Director of the National Institutes of Health;

[(B) be chosen through competitive peer review;

[(C) be geographically distributed throughout the United States with special consideration given to areas of high incidence of mesothelioma disease;

[(D) be closely associated with Department of Veterans Affairs medical centers to provide research benefits and care to veterans who have suffered excessively from mesothelioma;

[(E) be engaged in research to provide mechanisms for detection and prevention of mesothelioma, particularly in the areas of pain management and cures;

[(F) be engaged in public education about mesothelioma and prevention, screening, and treatment;

[(G) be participants in the National Mesothelioma Registry; and

[(H) be coordinated in their research and treatment efforts with other Centers and institutions involved in exemplary mesothelioma research.

(d)]*(c)* BANKRUPTCY TRUST GUARANTEE.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, the Administrator shall have the authority to impose a pro rata surcharge on all participants under this subsection to ensure the liquidity of the Fund, if—

(A) the declared assets from 1 or more bankruptcy trusts established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, are not available to the Fund because a final judgment that has been entered by a court and is no longer subject to any appeal or review has enjoined the transfer of assets required under section 524(j)(2) of title 11, United States Code (as amended by section 402(f) of this Act); and

(B) borrowing is insufficient to assure the Fund's ability to meet its obligations under this Act such that the required borrowed amount is likely to increase the risk of termination of this Act under section 405 based on reasonable claims projections.

(2) ALLOCATION.—Any surcharge imposed under this subsection shall be imposed over a period of 5 years on a pro rata basis upon all participants, [in accordance with each participant's relative annual liability under this subtitle and subtitle B for those 5 years.] *in accordance with the relative aggregate funding obligations under sections 202(a)(2) and 212(a)(2)(A).*

(3) CERTIFICATION.—

(A) IN GENERAL.—Before imposing a surcharge under this subsection, the Administrator shall publish a notice in the Federal Register and provide in such notice for a public comment period of 30 days.

(B) CONTENTS OF NOTICE.—The notice required under subparagraph (A) shall include—

(i) information explaining the circumstances that make a surcharge necessary and a certification that the requirements under paragraph (1) are met;

(ii) the amount of the declared assets from any trust established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, that was not made, or is no longer, available to the Fund;

(iii) the total aggregate amount of the necessary surcharge; and

(iv) the surcharge amount for each tier and subtier of defendant participants and for each insurer participant.

(C) FINAL NOTICE.—The Administrator shall publish a final notice in the Federal Register and provide each participant with written notice of that participant's schedule of payments under this subsection. In no event shall any required surcharge under this subsection be due before 60 days after the Administrator publishes the final notice in the Federal Register and provides each participant with written notice of its schedule of payments.

(4) MAXIMUM AMOUNT.—In no event shall the total aggregate surcharge imposed by the Administrator exceed the lesser of—

(A) the total aggregate amount of the declared assets of the trusts established under a plan of reorganization confirmed and substantially consummated prior to July 31, 2004, that are no longer available to the Fund; or

(B) $4,000,000,000.

(5) DECLARED ASSETS.—

(A) IN GENERAL.—In this subsection, the term "declared assets" means—

(i) the amount of assets transferred by any trust established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, to the Fund that is required to be returned to that trust under the final judgment described in paragraph (1)(A); or

(ii) if no assets were transferred by the trust to the Fund, the amount of assets the Administrator determines would have been available for transfer to the Fund from that trust under section 402(f).

(B) DETERMINATION.—In making a determination under subparagraph (A)(ii), the Administrator may rely on any information reasonably available, and may request, and use subpoena authority of the Administrator if necessary to obtain, relevant information from any such trust or its trustees.

[(e)] *(d)* BANKRUPTCY TRUST CREDITS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, but subject to paragraph (2) of this subsection, the Administrator shall provide a credit toward the aggregate payment obligations under sections 202(a)(2) and 212(a)(2)(A) for assets received by the Fund from any bankruptcy trust established under a plan of reorganization confirmed and substantially consummated after July 31, 2004.

(2) ALLOCATION OF CREDITS.—The Administrator shall allocate, for each such bankruptcy trust, the credits for such assets between the defendant and insurer aggregate payment obligations as follows:

(A) DEFENDANT PARTICIPANTS.—The aggregate amount that all persons other than insurers contributing to the bankruptcy trust would have been required to pay as Tier I defendants under section 203(b) if the plan of reorganization under which the bankruptcy trust was established had not been confirmed and substantially consummated and the proceeding under chapter 11 of title 11, United States Code, that resulted in the establishment of the bankruptcy trust had remained pending as of the date of enactment of this Act.

(B) INSURER PARTICIPANTS.—The aggregate amount of all credits to which insurers are entitled to under section 202(c)(4)(A) of the Act.

SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.

(a) DEFAULT.—If any participant fails to make any payment in the amount of and according to the schedule under this Act or as prescribed by the Administrator, after demand and a 30-day opportunity to cure the default, there shall be a lien in favor of the United States for the amount of the delinquent payment (including interest) upon all property and rights to property, whether real or personal, belonging to such participant.

(b) BANKRUPTCY.—In the case of a bankruptcy or insolvency proceeding, the lien imposed under subsection (a) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the provisions of title 11, United States Code, or section 3713(a) of title 31, United States Code. The United States Bankruptcy Court shall have jurisdiction over any issue or controversy regarding lien priority and lien perfection arising in a bankruptcy case due to a lien imposed under subsection (a).

(c) CIVIL ACTION.—

(1) IN GENERAL.—In any case in which there has been a refusal or failure to pay any liability imposed under this Act, the Administrator may bring a civil action in [the United States District Court for the District of Columbia,] *any appropriate United States District Court,* or any other appropriate lawsuit or proceeding outside of the United States—

(A) to enforce the liability and any lien of the United States imposed under this section;

(B) to subject any property of the participant, including any property in which the participant has any right, title, or interest to the payment of such liability; or

(C) for temporary, preliminary, or permanent relief.

(2) ADDITIONAL PENALTIES.—In any action under paragraph (1) in which the refusal or failure to pay was willful, the Administrator may seek recovery—

(A) of punitive damages;

(B) of the costs of any civil action under this subsection, including reasonable fees incurred for collection, expert witnesses, and attorney's fees; and

(C) in addition to any other penalty, of a fine equal to the total amount of the liability that has not been collected.

(d) ENFORCEMENT AUTHORITY AS TO INSURER PARTICIPANTS.—

(1) IN GENERAL.—In addition to or in lieu of the enforcement remedies described in subsection (c), the Administrator may seek to recover amounts in satisfaction of a payment not timely paid by an insurer participant under the procedures under this subsection.

(2) SUBROGATION.—To the extent required to establish personal jurisdiction over nonpaying insurer participants, the Administrator shall be deemed to be subrogated to the contractual rights of participants to seek recovery from nonpaying insuring participants that are domiciled outside the United States under the policies of liability insurance or contracts of liability reinsurance or retrocessional reinsurance applicable to asbestos claims, and the Administrator may bring an action or an arbitration against the nonpaying insurer participants under the provisions of such policies and contracts, provided that—

(A) any amounts collected under this subsection shall not increase the amount of deemed erosion allocated to any policy or contract under section 404, or otherwise reduce coverage available to a participant; and

(B) subrogation under this subsection shall have no effect on the validity of the insurance policies or reinsurance, and any contrary State law is expressly preempted.

(3) RECOVERABILITY OF CONTRIBUTION.—For purposes of this subsection—

(A) all contributions to the Fund required of a participant shall be deemed to be sums legally required to be paid for bodily injury resulting from exposure to asbestos;

(B) all contributions to the Fund required of any participant shall be deemed to be a single loss arising from a single occurrence under each contract to which the Administrator is subrogated; and

(C) with respect to reinsurance contracts, all contributions to the Fund required of a participant shall be deemed to be payments to a single claimant for a single loss.

(4) NO CREDIT OR OFFSET.—In any action brought under this subsection, the nonpaying insurer or reinsurer shall be entitled to no credit or offset for amounts collectible or potentially collectible from any participant nor shall such defaulting participant have any right to collect any sums payable under this section from any participant.

(5) COOPERATION.—Insureds and cedents shall cooperate with the Administrator's reasonable requests for assistance in any such proceeding. The positions taken or statements made by the Administrator in any such proceeding shall not be binding on or attributed to the insureds or cedents in any other proceeding. The outcome of such a proceeding shall not have a preclusive effect on the insureds or cedents in any other proceeding and shall not be admissible against any subrogee under this section. The Administrator shall have the authority to settle or compromise any claims against a nonpaying insurer participant under this subsection.

(e) BAR ON UNITED STATES BUSINESS.—If any direct insurer or reinsurer refuses to [furnish any information requested by or to pay any contribution required by this Act, then, in addition to any other penalties imposed by this Act, the Administrator [may] *shall* issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States *unless and until it complies. If any direct insurer or reinsurer refuses to furnish any information requested by the Administrator, the Administrator may issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies.* Insurer participants or their affiliates seeking to obtain a license from any State to write any type of insurance shall be barred from obtaining any such license until payment of all contributions required as of the date of license application.

(f) Credit for Reinsurance.—If the Administrator determines that an insurer participant that is a reinsurer is in default in paying any required contribution or otherwise not in compliance with this Act, the Administrator may issue an order barring any direct insurer participant from receiving credit for reinsurance purchased from the defaulting reinsurer *after the date of the Administrator's determination of default.* Any State law governing credit for reinsurance to the contrary is preempted.

(g) Defense Limitation.—In any proceeding under this section, the participant shall be barred from bringing any challenge to any determination of the Administrator or the Asbestos Insurers Commission regarding its liability under this Act, or to the constitutionality of this Act or any provision thereof, if such challenge could have been made during the review provided under section 204(i)(10), or in a judicial review proceeding under section 303.

(h) Deposit of Funds.—

(1) In general.—Any funds collected under subsection (c)(2) (A) or (C) shall be—

(A) deposited in the Fund; and

(B) used only to pay—

(i) claims for awards for an eligible disease or condition determined under title I; or

(ii) claims for reimbursement for medical monitoring determined under title I.

(2) No effect on other liabilities.—The imposition of a fine under subsection (c)(2)(C) shall have no effect on—

(A) the assessment of contributions under subtitles A and B; or

(B) any other provision of this Act.

(i) Property of the Estate.—Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (4)(B)(ii), by striking "or" at the end;

(2) in paragraph (5), by striking "prohibition." and inserting "prohibition; or"; and

(3) by inserting after paragraph (5) and before the last undesignated sentence the following:

"(6) the value of any pending claim against or the amount of an award granted from the Asbestos Injury Claims Resolution Fund established under the Fairness in Asbestos Injury Resolution Act of 2005.".

(j) Proposed Transactions.—

(1) Notice of proposed transaction.—Any participant that has taken any action to effectuate a proposed transaction or a proposed series of transactions under which a significant portion of such participant's assets, properties or business will, if consummated as proposed, be, directly or indirectly, transferred by any means (including, without limitation, by sale, dividend, contribution to a subsidiary or split-off) to 1 or more persons other than the participant shall provide written notice to the Administrator of such proposed transaction (or proposed series of transactions). Upon the request of such participant, and for so long as the participant shall not publicly disclose the transaction or series of transactions and the Administrator shall not commence any action under paragraph (6), the Administrator shall treat any such notice as confidential commercial information under section 552 of title 5, United States Code.

(2) Timing of notice and related actions.—

(A) In general.—Any notice that a participant is required to give under paragraph (1) shall be given not later than 30 days before the date of consummation of the proposed transaction or the first transaction to occur in a proposed series of transactions.

(B) Other notifications.—

(i) In general.—Not later than the date in any year by which a participant is required to make its contribution to the Fund, the participant shall deliver to the Administrator a written certification stating that—

(I) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this subsection; or

(II) the participant was not required to provide any notice under this subsection during such period.

(ii) Summary.—The Administrator shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(C) Notice completion.—The Administrator shall not consider any notice given under paragraph (1) as given until such time as the Administrator receives substantially all the information required by this subsection.

(3) Contents of notice.—

(A) In general.—The Administrator shall determine by rule or regulation the information to be included in the notice required under this subsection, which shall include such information as may be necessary to enable the Administrator to determine whether—

(i) the person or persons to whom the assets, properties or business are being transferred in the proposed transaction (or proposed series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act, or

(ii) the proposed transaction (or proposed series of transactions) would, if consummated, be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(B) Statements.—The notice shall also include—

(i) a statement by the participant as to whether it believes any person will or has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(ii) a statement by the participant as to whether that person has acknowledged that it will or has become a successor in interest for purposes of this Act.

(4) Definition.—In this subsection, the term "significant portion of the assets, properties or business of a participant" means assets (including, without limitation, tangible or intangible assets, securities and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(f)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States generally accepted accounting principles as in effect from time to time—

(A) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(B) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(C) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(D) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(5) Consummation of transaction.—Any proposed transaction (or proposed series of transactions) with respect to which a participant is required to provide notice under paragraph (1) may not be consummated until at least 30 days after delivery to the Administrator of such notice, unless the Administrator shall earlier terminate the notice period. The Administrator shall endeavor whenever possible to terminate a notice period at the earliest practicable time.

(6) Right of action.—

(A) In general.—Notwithstanding section 221(f), if the Administrator or any participant believes that a participant proposes to engage or has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions)—

(i) involving a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant, where the status or potential status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(ii) that may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Administrator or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property or business of the participant.

(B) Relief allowed.—In any action commenced under this subsection, the Administrator or a participant, as applicable, may seek—

(i) with respect to a transaction (or series of transactions) referenced in clause (i) of subparagraph (A), a declaratory judgment regarding whether such person will or has become the successor in interest of such participant; or

(ii) with respect to a transaction (or series of transactions) referenced in clause (ii) of subparagraph (A)—

(I) a temporary restraining order or a preliminary or permanent injunction against such transaction (or series of transactions); or

(II) such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(C) Applicability.—If the Administrator or a participant wishes to challenge a statement made by a participant that a person will not or has not become a successor in interest for purposes of this Act, then this paragraph shall be the exclusive means by which the determination of whether such person will or has become a successor in interest of the participant shall be made. This paragraph shall not preempt any other rights of any person under applicable Federal or State law.

(D) Venue.—Any action under this paragraph shall be brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(7) Rules and regulations.—The Administrator may promulgate regulations to effectuate the intent of this subsection, including regulations relating to the form, timing and content of notices.

SEC. 224. INTEREST ON UNDERPAYMENT OR NONPAYMENT.

If any amount of payment obligation under this title is not paid on or before the last date prescribed for payment, the liable party shall pay interest on such amount at the Federal short-term rate determined under section 6621(b) of the Internal Revenue Code of 1986, plus 5 percentage points, for the period from such last date to the date paid.

SEC. 225. EDUCATION, CONSULTATION, SCREENING, AND MONITORING.

(a) In General.—The Administrator shall establish a program for the education, consultation, medical screening, and medical monitoring of persons with exposure to asbestos. The program shall be funded by the Fund.

(b) Outreach and Education.—

(1) In general.—Not later than 1 year after the date of enactment of this Act, the Administrator shall establish an outreach and education program, including a website designed to provide information about asbestos-related medical conditions to members of populations at risk of developing such conditions.

(2) Information.—The information provided under paragraph (1) shall include information about—

(A) the signs and symptoms of asbestos-related medical conditions;

(B) the value of appropriate medical screening programs; and

(C) actions that the individuals can take to reduce their future health risks related to asbestos exposure.

(3) Contracts.—Preference in any contract under this subsection shall be given to providers that are existing nonprofit organizations with a history and experience of providing occupational health outreach and educational programs for individuals exposed to asbestos.

(c) Medical Screening Program.—

(1) Establishment of program.—Not sooner than 18 months or later than 24 months after the Administrator certifies that the Fund is fully operational and processing claims at a reasonable rate, the Administrator shall adopt guidelines establishing a medical screening program for individuals at high risk of asbestos-related disease resulting from an asbestos-related disease. In promulgating such guidelines, the Administrator shall consider the views of the Advisory Committee on Asbestos Disease Compensation, the Medical Advisory Committee, and the public.

(2) Eligibility criteria.—

(A) In general.—The guidelines promulgated under this subsection shall establish criteria for participation in the medical screening program.

(B) Considerations.—In promulgating eligibility criteria the Administrator shall take into consideration all factors relevant to the individual's effective cumulative exposure to asbestos, including—

(i) any industry in which the individual worked;

(ii) the individual's occupation and work setting;

(iii) the historical period in which exposure took place;

(iv) the duration of the exposure;

(v) the intensity and duration of non-occupational exposures; [and]

(vi) the intensity and duration of exposure to risk levels of naturally occurring asbestos as defined by the Environmental Protection Agency; and

[(vi)]*(vii)* any other factors that the Administrator determines relevant.

(3) Protocols.—The guidelines developed under this subsection shall establish protocols for medical screening, which shall include—

(A) administration of a health evaluation and work history questionnaire;

(B) an evaluation of smoking history;

(C) a physical examination by a qualified physician with a doctor-patient relationship with the individual;

(D) a chest x-ray read by a certified B-reader as defined under section 121(a)(4); and

(E) pulmonary function testing as defined under section 121(a)(13).

(4) Frequency.—The Administrator shall establish the frequency with which medical screening shall be provided or be made available to eligible individuals, which shall be not less than every 5 years.

(5) Provision of services.—The Administrator shall provide medical screening to eligible individuals directly or by contract with another agency of the Federal Government, with State or local governments, or with private providers of medical services. The Administrator shall establish strict qualifications for the providers of such services, and shall periodically audit the providers of services under this subsection, to ensure their integrity, high degree of competence, and compliance with all applicable technical and professional standards. No provider of medical screening services may have earned more than 15 percent of their income from the provision of services of any kind in connection with asbestos litigation in any of the 3 years preceding the date of enactment of this Act. All contracts with providers of medical screening services under this subsection shall contain provisions [allowing the Administrator to terminate] *for reimbursement of screening services at a reasonable rate and termination of* such contracts for cause if the Administrator determines that the service provider fails to meet the qualifications established under this subsection.

(6) Limitation of compensation for services.—The compensation required to be paid to a provider of medical screening services for such services furnished to an eligible individual shall be limited to the amount that would be reimbursed at the time of the furnishing of such services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for similar services if[—

[(A) the individual were entitled to benefits under part A of such title and enrolled under part B of such title; and

(B)] such services are covered under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(7) Funding; periodic review.—

(A) Funding.—The Administrator shall make such funds available from the Fund to implement this section, *with a minimum of $20,000,000* but not more than $30,000,000 each year in each of the 5 years following the effective date of the medical screening program. Notwithstanding the preceding sentence, the Administrator shall suspend the operation of the program or reduce its funding level if necessary to preserve the solvency of the Fund and to prevent the sunset of the overall program under section 405(f).

(B) Review.—*The Administrator may reduce the amount of funding below $20,000,000 each year if the program is fully implemented.* The Administrator's first annual report under section 405 following the close of the 4th year of operation of the medical screening program shall include an analysis of the usage of the program, its cost and effectiveness, its medical value, and the need to continue that program for an additional 5-year period. The Administrator shall also recommend to Congress any improvements that may be required to make the program more effective, efficient, and economical, and shall recommend a funding level for the program for the 5 years following the period of initial funding referred to under subparagraph (A).

(d) Limitation.—In no event shall the total amount allocated to the medical screening program established under this subsection over the lifetime of the Fund exceed $600,000,000.

(e) Medical Monitoring Program and Protocols.—

(1) In general.—The Administrator shall establish procedures for a medical monitoring program for persons exposed to asbestos who have been approved for level I compensation under section 131.

(2) Procedures.—The procedures for medical monitoring shall include—

(A) specific medical tests to be provided to eligible individuals and the periodicity of those tests, which shall initially be provided every 3 years and include—

(i) administration of a health evaluation and work history questionnaire;

(ii) physical examinations, including blood pressure measurement, chest examination, and examination for clubbing;

(iii) AP and lateral chest x-ray; and

(iv) spirometry performed according to ATS standards;

(B) qualifications of medical providers who are to provide the tests required under subparagraph (A); and

(C) administrative provisions for reimbursement from the Fund of the costs of monitoring eligible claimants, including the costs associated with the visits of the claimants to physicians in connection with medical monitoring, and with the costs of performing and analyzing the tests.

(3) Preferences.—

(A) In general.—In administering the monitoring program under this subsection, preference shall be given to medical and program providers with—

(i) a demonstrated capacity for identifying, contacting, and evaluating populations of workers or others previously exposed to asbestos; and

(ii) experience in establishing networks of medical providers to conduct medical screening and medical monitoring examinations.

(B) Provision of lists.—Claimants that are eligible to participate in the medical monitoring program shall be provided with a list of approved providers in their geographic area at the time such claimants become eligible to receive medical monitoring.

(f) Contracts.—The Administrator may enter into contracts with qualified program providers that would permit the program providers to undertake large-scale medical screening and medical monitoring programs by means of subcontracts with a network of medical providers, or other health providers.

(g) Review.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Administrator shall review, and if necessary update, the protocols and procedures established under this section.

SEC. 226. NATIONAL MESOTHELIOMA RESEARCH AND TREATMENT PROGRAM.

(a) In General.—There is established the National Mesothelioma Research and Treatment Program (referred to in this section as the "Program") to investigate and advance the detection, prevention, treatment, and cure of malignant mesothelioma.

(b) Mesothelioma Centers.—

(1) In general.—The Administrator shall make available $1,500,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years

2006 through 2015, for the establishment of each of 10 mesothelioma disease research and treatment centers.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, in consultation with the Medical Advisory Committee, shall conduct a competitive peer review process to select sites for the centers described in paragraph (1). The Director shall ensure that sites selected under this paragraph are—

(A) geographically distributed throughout the United States with special consideration given to areas of high incidence of mesothelioma disease;

(B) closely associated with Department of Veterans Affairs medical centers, in order to provide research benefits and care to veterans who have suffered excessively from mesothelioma;

(C) engaged in exemplary laboratory and clinical mesothelioma research, including clinical trials, to provide mechanisms for effective therapeutic treatments, as well as detection and prevention, particularly in areas of palliation of disease symptoms and pain management;

(D) participants in the National Mesothelioma Registry and Tissue Bank under subsection (c) and the annual International Mesothelioma Symposium under subsection (d)(2)(E);

(E) with respect to research and treatment efforts, coordinated with other centers and institutions involved in exemplary mesothelioma research and treatment;

(F) able to facilitate transportation and lodging for mesothelioma patients, so as to enable patients to participate in the newest developing treatment protocols, and to enable the centers to recruit patients in numbers sufficient to conduct necessary clinical trials; and

(G) nonprofit hospitals, universities, or medical or research institutions incorporated or organized in the United States.

(c) MESOTHELIOMA REGISTRY AND TISSUE BANK.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, maintenance, and operation of a National Mesothelioma Registry to collect data regarding symptoms, pathology, evaluation, treatment, outcomes, and quality of life and a Tissue Bank to include the pre- and post-treatment blood (serum and blood cells) specimens as well as tissue specimens from biopsies and surgery. Not less than $500,000 of the amount made available under the preceding sentence in each fiscal year shall be allocated for the collection and maintenance of tissue specimens.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, with the advice and consent of the Medical Advisory Committee, shall conduct a competitive peer review process to select a site to administer the Registry and Tissue Bank described in paragraph (1). The Director shall ensure that the site selected under this paragraph—

(A) is available to all mesothelioma patients and qualifying physicians throughout the United States;

(B) is subject to all applicable medical and patient privacy laws and regulations;

(C) is carrying out activities to ensure that data is accessible via the Internet; and

(D) provides data and tissue samples to qualifying researchers and physicians who apply for such data in order to further the understanding, prevention, screening, diagnosis, or treatment of malignant mesothelioma.

(d) CENTER FOR MESOTHELIOMA EDUCATION.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, with the advice and consent of the Medical Advisory Committee, of a Center for Mesothelioma Education (referred to in this section as the "Center") to—

(A) promote mesothelioma awareness and education;

(B) assist mesothelioma patients and their family members in obtaining necessary information; and

(C) work with the centers established under subsection (b) in advancing mesothelioma research.

(2) ACTIVITIES.—The Center shall—

(A) educate the public about the new initiatives contained in this section through a National Mesothelioma Awareness Campaign;

(B) develop and maintain a Mesothelioma Educational Resource Center (referred to in this section as the "MERCI"), that is accessible via the Internet, to provide mesothelioma patients, family members, and front-line physicians with comprehensive, current information on mesothelioma and its treatment, as well as on the existence of, and general claim procedures for the Asbestos Injury Claims Resolution Fund;

(C) through the MERCI and otherwise, educate mesothelioma patients, family members, and front-line physicians about, and encourage such individuals to participate in, the centers established under subsection (b), the Registry and the Tissue Bank;

(D) complement the research efforts of the centers established under subsection (b) by awarding competitive, peer-reviewed grants for the training of clinical specialist fellows in mesothelioma, and for highly innovative, experimental or pre-clinical research; and

(E) conduct an annual International Mesothelioma Symposium.

(3) REQUIREMENTS.—The Center shall—

(A) be a nonprofit corporation under section 501(c)(3) of the Internal Revenue Code of 1986;

(B) be a separate entity from and not an affiliate of any hospital, university, or medical or research institution; and

(C) demonstrate a history of program spending that is devoted specifically to the mission of extending the survival of current and future mesothelioma patients, including a history of soliciting, peer reviewing through a competitive process, and funding research grant applications relating to the detection, prevention, treatment, and cure of mesothelioma.

(4) CONTRACTS FOR OVERSIGHT.—The Director of the National Institutes of Health may enter into contracts with the Center for the selection and oversight of the centers established under subsection (b), or selection of the director of the Registry and the Tissue Bank under subsection (c) and oversight of the Registry and the Tissue Bank.

(e) REPORT AND RECOMMENDATIONS.—Not later than September 30, 2015, The Director of the National Institutes of Health shall, after opportunity for public comment and review, publish and provide to Congress a report and recommendations on the results achieved and information gained through the Program, including—

(1) information on the status of mesothelioma as a national health issue, including—

(A) annual United States incidence and death rate information and whether such rates are increasing or decreasing;

(B) the average prognosis; and

(C) the effectiveness of treatments and means of prevention;

(2) promising advances in mesothelioma treatment and research which could be further developed if the Program is reauthorized; and

(3) a summary of advances in mesothelioma treatment made in the 10-year period prior to the report and whether those advances would justify continuation of the Program and whether it should be reauthorized for an additional 10 years.

(f) SEVERABILITY.—If any provision of this Act, or amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act (including this section), the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(g) REGULATIONS.—The Director of the National Institutes of Health shall promulgate regulations to provide for the implementation of this section.

TITLE III—JUDICIAL REVIEW

SEC. 301. JUDICIAL REVIEW OF RULES AND REGULATIONS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review rules or regulations promulgated by the Administrator or the Asbestos Insurers Commission under this Act.

(b) PERIOD FOR FILING PETITION.—A petition for review under this section shall be filed not later than 60 days after the date notice of such promulgation appears in the Federal Register.

(c) EXPEDITED PROCEDURES.—The United States Court of Appeals for the District of Columbia shall provide for expedited procedures for reviews under this section.

SEC. 302. JUDICIAL REVIEW OF AWARD DECISIONS.

(a) IN GENERAL.—Any claimant adversely affected or aggrieved by a final decision of the Administrator awarding or denying compensation under title I may petition for judicial review of such decision. Any petition for review under this section shall be filed within 90 days of the issuance of a final decision of the Administrator.

(b) EXCLUSIVE JURISDICTION.—A petition for review may only be filed in the United States Court of Appeals for the circuit in which the claimant resides at the time of the issuance of the final order.

(c) STANDARD OF REVIEW.—The court shall uphold the decision of the Administrator unless the court determines, upon review of the record as a whole, that the decision is not supported by substantial evidence, is contrary to law, or is not in accordance with procedure required by law.

(d) EXPEDITED PROCEDURES.—The United States Court of Appeals shall provide for expedited procedures for reviews under this section.

SEC. 303. JUDICIAL REVIEW OF PARTICIPANTS' ASSESSMENTS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review a final determination by the Administrator or the Asbestos Insurers Commission regarding the liability of any person to make a payment to the Fund, including a notice of applicable subtier assignment under section 204(i), a notice of financial hardship or inequity determination under section 204(d), *a notice of a distributor's adjustment under section 204(m)*, and a notice of insurer participant obligation under section 212(b).

(b) PERIOD FOR FILING ACTION.—A petition for review under subsection (a) shall be filed not later than 60 days after a final determination by the Administrator or the Commission giving rise to the action. Any defendant participant who receives a notice of its applicable subtier under section 204(i) [or], a notice of financial hardship or inequity determination under section 204(d), *or a notice of a distributor's adjustment under section 204(m),* shall commence any action within 30 days after a decision on rehearing under section 204(i)(10), and any insurer participant who receives a notice of a payment obligation under section 212(b) shall commence any action within 30 days after receiving such notice. The court shall give such action expedited consideration.

SEC. 304. OTHER JUDICIAL CHALLENGES.

(a) Exclusive Jurisdiction.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action for declaratory or injunctive relief challenging any provision of this Act. An action under this section shall be filed not later than 60 days after the date of enactment of this Act or 60 days after the final action by the Administrator or the Commission giving rise to the action, whichever is later.

(b) Direct Appeal.—A final decision in the action shall be reviewable on appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 30 days, and the filing of a jurisdictional statement within 60 days, of the entry of the final decision.

(c) Expedited Procedures.—It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

SEC. 305. STAYS, EXCLUSIVITY, AND CONSTITUTIONAL REVIEW.

(a) No Stays.—

(1) Payments.—No court may issue a stay of payment by any party into the Fund pending its final judgment.

(2) Legal Challenges.—No court may issue a stay or injunction pending final judicial action, including the exhaustion of all appeals, on a legal challenge to this Act or any portion of this Act.

(b) Exclusivity of Review.—An action of the Administrator or the Asbestos Insurers Commission for which review could have been obtained under section 301, 302, or 303 shall not be subject to judicial review in any other proceeding.

(c) Constitutional Review.—

[(1) In general.—Notwithstanding any other provision of law, any interlocutory or final judgment, decree, or order of a Federal court holding this Act, or any provision or application thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court.]

(1) In general.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action challenging the constitutionality of any provision or application of this Act. The following rules shall apply:

(A) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened under section 2284 of title 28, United States Code.

(B) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, after the entry of the final decision.

(C) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

[(2) Period for filing appeal.—Any such appeal shall be filed not more than 30 days after entry of such judgment, decree, or order.]

[(3)]*(2)* Repayment to asbestos trust and class action trust.—If the transfer of the assets of any asbestos trust of a debtor or any class action trust (or this Act as a whole) is held to be unconstitutional or otherwise unlawful, the Fund shall transfer the remaining balance of such assets (determined under section 405(f)(1)(A)(iii)) back to the appropriate asbestos trust or class action trust within 90 days after final judicial action on the legal challenge, including the exhaustion of all appeals.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. FALSE INFORMATION.

(a) In General.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

["§ 1348. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund

["(a) Fraud Relating to Asbestos Injury Claims Resolution Fund.—Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice to defraud the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission under title II of the Fairness in Asbestos Injury Resolution Act of 2005 shall be fined under this title or imprisoned not more than 20 years, or both.

["(b) False Statement Relating to Asbestos Injury Claims Resolution Fund.—Whoever, in any matter involving the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission, knowingly and willfully—

["(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

["(2) makes any materially false, fictitious, or fraudulent statements or representations; or

["(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the award of a claim or the determination of a participant's payment obligation under title I or II of the Fairness in Asbestos Injury Resolution Act of 2005 shall be fined under this title or imprisoned not more than 10 years, or both.".

[(b) Technical and Conforming Amendment.—The table of sections for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

["1348. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund.".]

"§ 1351. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund

"(a) Fraud Relating to Asbestos Injury Claims Resolution Fund.—Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice to defraud the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission under title II of the Fairness in Asbestos Injury Resolution Act of 2005 shall be fined under this title or imprisoned not more than 20 years, or both.

"(b) False Statement Relating to Asbestos Injury Claims Resolution Fund.—

"(1) In general.—It shall be unlawful for any person, in any matter involving the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission, to knowingly and willfully—

"(A) falsify, conceal, or cover up by any trick, scheme, or device a material fact;

"(B) make any materially false, fictitious, or fraudulent statement or representation; or

"(C) make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the award of a claim or the determination of a participant's payment obligation under title I or II of the Fairness in Asbestos Injury Resolution Act of 2005.

"(2) Penalty.—A person who violates this subsection shall be fined under this title or imprisoned not more than 10 years, or both.".

(b) Technical and Conforming Amendment.—The table of sections for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"1351. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund.".

SEC. 402. EFFECT ON BANKRUPTCY LAWS.

(a) No Automatic Stay.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking "or" at the end;

(2) in paragraph (18), by striking the period at the end and inserting "; or"; and

(3) by inserting after paragraph (18) the following:

"(19) under subsection (a) of this section of the enforcement of any payment obligations under section 204 of the Fairness in Asbestos Injury Resolution Act of 2005, against a debtor, or the property of the estate of a debtor, that is a participant (as that term is defined in section 3 of that Act).".

(b) Assumption of Executory Contract.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

"(p) If a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005), the trustee shall be deemed to have assumed all executory contracts entered into by the participant under section 204 of that Act. The trustee may not reject any such executory contract.".

(c) Allowed Administrative Expenses.—Section 503 of title 11, United States Code, is amended by adding at the end the following:

"(c)(1) Claims or expenses of the United States, the Attorney General, or the Administrator (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005) based upon the asbestos payment obligations of a debtor that is a Participant (as that term is defined in section 3 of that Act), shall be paid as an allowed administrative expense. The debtor shall not be entitled to either notice or a hearing with respect to such claims.

"(2) For purposes of paragraph (1), the term 'asbestos payment obligation' means any payment obligation under title II of the Fairness in Asbestos Injury Resolution Act of 2005.".

(d) No Discharge.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

"(f) A discharge under section 727, 1141, 1228, or 1328 of this title does not discharge any debtor that is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005) of the debtor's payment obligations assessed against the participant under title II of that Act.".

(e) Payment.—Section 524 of title 11, United States Code, is amended by adding at the end the following:

“(i) Participant Debtors.—

“(1) In general.—Paragraphs (2) and (3) shall apply to a debtor who—

“(A) is a participant that has made prior asbestos expenditures (as such terms are defined in the Fairness in Asbestos Injury Resolution Act of 2005); and

“(B) is subject to a case under this title that is pending—

“(i) on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005; or

“(ii) at any time during the 1-year period preceding the date of enactment of that Act.

“(2) Tier I debtors.—A debtor that has been assigned to Tier I under section 202 of the Fairness in Asbestos Injury Resolution Act of 2005, shall make payments in accordance with sections 202 and 203 of that Act.

“(3) Treatment of payment obligations.—All payment obligations of a debtor under sections 202 and 203 of the Fairness in Asbestos Injury Resolution Act of 2005 shall—

“(A) constitute costs and expenses of administration of a case under section 503 of this title;

“(B) notwithstanding any case pending under this title, be payable in accordance with section 202 of that Act;

“(C) not be stayed;

“(D) not be affected as to enforcement or collection by any stay or injunction of any court; and

“(E) not be impaired or discharged in any current or future case under this title.”.

(f) Treatment of Trusts.—Section 524 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

“(j) Asbestos Trusts.—

“(1) In general.—A trust shall assign a portion of the corpus of the trust to the Asbestos Injury Claims Resolution Fund (referred to in this subsection as the ‘Fund’) as established under the Fairness in Asbestos Injury Resolution Act of 2005 if the trust qualifies as a ‘trust’ under section 201 of that Act.

“(2) Transfer of trust assets.—

“(A) In general.—

“(i) Except as provided under subparagraphs (B), (C), and (E), the assets in any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005) shall be transferred to the Fund not later than [6 months] *90 days* after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005 or 30 days following funding of a trust established under a reorganization plan subject to section 202(c) of that Act. Except as provided under subparagraph (B), the Administrator of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 221 of such Act, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

“(ii) Notwithstanding any other provision of Federal or State law, no liability of any kind may be imposed on a trustee of a trust for transferring assets to the Fund in accordance with clause (i).

“(B) Authority to refuse assets.—The Administrator of the Fund may refuse to accept any asset that the Administrator determines may create liability for the Fund in excess of the value of the asset.

“(C) Allocation of trust assets.—If a trust under subparagraph (A) has beneficiaries with claims that are not asbestos claims, the assets transferred to the Fund under subparagraph (A) shall not include assets allocable to such beneficiaries. The trustees of any such trust shall determine the amount of such trust assets to be reserved for the continuing operation of the trust in processing and paying claims that are not asbestos claims. The trustees shall demonstrate to the satisfaction of the Administrator, or by clear and convincing evidence in a proceeding brought before the United States District Court for the District of Columbia in accordance with paragraph (4), that the amount reserved is properly allocable to claims other than asbestos claims.

“(D) Sale of fund assets.—The investment requirements under section 222 of the Fairness in Asbestos Injury Resolution Act of 2005 shall not be construed to require the Administrator of the Fund to sell assets transferred to the Fund under subparagraph (A).

“(E) Liquidated claims.—Except as specifically provided in this subparagraph, all asbestos claims against a trust are superseded and preempted as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005, and a trust shall not make any payment relating to asbestos claims after that date. If, in the ordinary course and the normal and usual administration of the trust consistent with past practices, a trust had before the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005, made all determinations necessary to entitle an individual claimant to a noncontingent cash payment from the trust, the trust shall (i) make any lump-sum cash payment due to that claimant, and (ii) make or provide for all remaining noncontingent payments on any award being paid or scheduled to be paid on an installment basis, in each case only to the same extent that the trust would have made such cash payments in the ordinary course and consistent with past practices before enactment of that Act. A trust shall not make any payment in respect of any alleged contingent right to recover any greater amount than the trust had already paid, or had completed all determinations necessary to pay, to a claimant in cash in accordance with its ordinary distribution procedures in effect as of June 1, 2003.

“(3) Injunction.—

“(A) In general.—Any injunction issued as part of the formation of a trust described in paragraph (1) shall remain in full force and effect. No court, Federal or State, may enjoin the transfer of assets by a trust to the Fund in accordance with this subsection pending resolution of any litigation challenging such transfer or the validity of this subsection or of any provision of the Fairness in Asbestos Injury Resolution Act of 2005, and an interlocutory order denying such relief shall not be subject to immediate appeal under section 1291(a) of title 28.

“(B) Availability of fund assets.—Notwithstanding any other provision of law, once such a transfer has been made, the assets of the Fund shall be available to satisfy any final judgment entered in such an action and such transfer shall no longer be subject to any appeal or review—

“(i) declaring that the transfer effected a taking of a right or property for which an individual is constitutionally entitled to just compensation; or

“(ii) requiring the transfer back to a trust of any or all assets transferred by that trust to the Fund.

“(4) Jurisdiction.—Solely for purposes of implementing this subsection, personal jurisdiction over every covered trust, the trustees thereof, and any other necessary party, and exclusive subject matter jurisdiction over every question arising out of or related to this subsection, shall be vested in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 1127 of this title, that court may make any order necessary and appropriate to facilitate prompt compliance with this subsection, including assuming jurisdiction over and modifying, to the extent necessary, any applicable confirmation order or other order with continuing and prospective application to a covered trust. The court may also resolve any related challenge to the constitutionality of this subsection or of its application to any trust, trustee, or individual claimant. The Administrator of the Fund may bring an action seeking such an order or modification, under the standards of rule 60(b) of the Federal Rules of Civil Procedure or otherwise, and shall be entitled to intervene as of right in any action brought by any other party seeking interpretation, application, or invalidation of this subsection. Any order denying relief that would facilitate prompt compliance with the transfer provisions of this subsection shall be subject to immediate appeal under section 304 of the Fairness in Asbestos Injury Resolution Act of 2005. Notwithstanding any other provision of this paragraph, for purposes of implementing the sunset provisions of section 402(f) of such Act which apply to asbestos trusts and the class action trust, the bankruptcy court or United States district court having jurisdiction over any such trust as of the date of enactment of such Act shall retain such jurisdiction.”.

(g) No Avoidance of Transfer.—Section 546 of title 11, United States Code, is amended by adding at the end the following:

“(h) Notwithstanding the rights and powers of a trustee under sections 544, 545, 547, 548, 549, and 550 of this title, if a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005), the trustee may not avoid a transfer made by the debtor under its payment obligations under section 202 or 203 of that Act.”.

(h) Confirmation of Plan.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

“(14) If the debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005), the plan provides for the continuation after its effective date of payment of all payment obligations under title II of that Act.”.

(i) Effect on Insurance Receivership Proceedings.—

(1) Lien.—In an insurance receivership proceeding involving a direct insurer, reinsurer or runoff participant, there shall be a lien in favor of the Fund for the amount of any assessment and any such lien shall be given priority over all other claims against the participant in receivership, except for the expenses of administration of the receivership and the perfected claims of the secured creditors. Any State law that provides for priorities inconsistent with this provision is preempted by this Act.

(2) Payment of Assessment.—Payment of any assessment required by this Act shall not be subject to any automatic or judicially entered stay in any insurance receivership proceeding. This Act shall preempt any State law requiring that payments by a direct insurer, reinsurer or runoff participant in an insurance receivership proceeding be approved by a court, receiver or other person. Payments of assessments by any direct

insurer or reinsurer participant under this Act shall not be subject to the avoidance powers of a receiver or a court in or relating to an insurance receivership proceeding.

(j) Standing in Bankruptcy Proceedings.—The Administrator shall have standing in any bankruptcy case involving a debtor participant. No bankruptcy court may require the Administrator to return property seized to satisfy obligations to the Fund.

SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.

(a) Effect on Federal and State Law.—The provisions of this Act shall supersede any Federal or State law insofar as such law may relate to any asbestos claim, including any claim described under subsection (e)(2).

(b) Effect on Silica Claims.—

(1) In general.—

(A) Rule of construction.—Nothing in this Act shall be construed to preempt, bar, or otherwise preclude any personal injury claim attributable to exposure to silica as to which the plaintiff—

(i) pleads with particularity and establishes by a preponderance of evidence either that—

(I) no claim has been asserted or filed by or with respect to the exposed person in any forum for any asbestos-related condition and the exposed person (or another claiming on behalf of or through the exposed person) is not eligible for any monetary award under this Act; or

(II)(aa) the exposed person suffers or has suffered a functional impairment that was caused by exposure to silica; and

(bb) asbestos exposure was not a substantial contributing factor to such functional impairment; and

(ii) satisfies the requirements of paragraph (2).

(B) Preemption.—Claims attributable to exposure to silica that fail to meet the requirements of subparagraph (A) shall be preempted by this Act.

(2) Required evidence.—

(A) In general.—In any claim to which paragraph (1) applies, the initial pleading (or, for claims pending on the date of enactment of this Act, an amended pleading to be filed within 60 days after such date, but not later than 60 days before trial, shall plead with particularity the elements of subparagraph (A)(i)(I) or (II) and shall be accompanied by the information described under subparagraph (B)(i) through (iv).

(B) Pleadings.—If the claim pleads the elements of paragraph (1)(A)(i)(II) and by the information described under clauses (i) through (iv) of this subparagraph if the claim pleads the elements of paragraph (1)(A)(i)(I)—

(i) admissible evidence, including at a minimum, a B-reader's report, the underlying x-ray film and such other evidence showing that the claim may be maintained and is not preempted under paragraph (1);

(ii) notice of any previous lawsuit or claim for benefits in which the exposed person, or another claiming on behalf of or through the injured person, asserted an injury or disability based wholly or in part on exposure to asbestos;

(iii) if known by the plaintiff after reasonable inquiry by the plaintiff or his representative, the history of the exposed person's exposure, if any, to asbestos; and

(iv) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(3) Statute of limitations.—In general, the statute of limitations for a silica claim shall be governed by applicable State law, except that in any case under this subsection, the statute of limitations shall only start to run when the plaintiff becomes impaired.

(c) Superseding Provisions.—

(1) In general.—Except as provided under paragraph (3) *and section 106(f)*, any agreement, understanding, or undertaking by any person or affiliated group with respect to the treatment of any asbestos claim that requires future performance by any party, insurer of such party, settlement administrator, or escrow agent shall be superseded in its entirety by this Act.

(2) No force or effect.—Except as provided under paragraph (3), any such agreement, understanding, or undertaking by any such person or affiliated group shall be of no force or effect, and no person shall have any rights or claims with respect to any such agreement, understanding, or undertaking.

(3) Exception.—

(A) In general.—Except as provided in section 202(f), nothing in this Act shall abrogate a binding and legally enforceable written settlement agreement between any defendant participant or its insurer and a specific named plaintiff with respect to the settlement of an asbestos claim of the plaintiff if—

[(i) before the date of enactment of this Act, the settlement agreement was executed directly by the settling defendant or the settling insurer and the individual plaintiff, or on behalf of the plaintiff where the plaintiff is incapacitated and the settlement agreement is signed by an authorized legal representative;]

(i) before the date of enactment of this Act, the settlement agreement was executed by—

(I) the settling defendant or the settling insurer; and

(II)(aa) the specific individual plaintiff, or the individual's immediate relatives; or

(bb) an authorized legal representative acting on behalf of the plaintiff where the plaintiff is incapacitated and the settlement agreement is signed by that authorized legal representative;

(ii) the settlement agreement contains an express obligation by the settling defendant or settling insurer to make a future direct monetary payment or payments in a fixed amount or amounts to the individual plaintiff; and

(iii) within 30 days after the date of enactment of this Act, or such shorter time period specified in the settlement agreement, all conditions to payment under the settlement agreement have been fulfilled, so that the only remaining performance due under the settlement agreement is the payment or payments by the settling defendant or the settling insurer.

(B) Bankruptcy-related agreements.—The exception set forth in this paragraph shall not apply to any bankruptcy-related agreement.

(C) Collateral source.—Any settlement payment under this section is a collateral source if the plaintiff seeks recovery from the Fund.

(D) Abrogation.—Nothing in subparagraph (A) shall abrogate a settlement agreement otherwise satisfying the requirements of that subparagraph if such settlement agreement expressly anticipates the enactment of this Act and provides for the effects of this Act.

(E) Health care insurance or expenses settlements.—Nothing in this Act shall abrogate or terminate an otherwise fully enforceable settlement agreement which was executed before the date of enactment of this Act directly by the settling defendant or the settling insurer and a specific named plaintiff to pay the health care insurance or health care expenses of the plaintiff.

(d) Exclusive Remedy.—

(1) In general.—Except as provided under paragraph (2) *and section 106(f)*, the remedies provided under this Act shall be the exclusive remedy for any asbestos claim, including any claim described in subsection (e)(2), under any Federal or State law.

(2) Civil actions at trial.—

(A) In general.—This Act shall not apply to any asbestos claim that—

(i) is a civil action filed in a Federal or State court (not including a filing in a bankruptcy court);

(ii) is not part of a consolidation of actions or a class action; and

(iii) on the date of enactment of this Act—

(I) in the case of a civil action which includes a jury trial, is before the jury after its impanelling and commencement of presentation of evidence, but before its deliberations;

(II) in the case of a civil action which includes a trial in which a judge is the trier of fact, is at the presentation of evidence at trial; or

(III) a verdict, final order, or final judgment has been entered by a trial court.

(B) Nonapplicability.—This Act shall not apply to a civil action described under subparagraph (A) throughout the final disposition of the action.

(e) Bar on Asbestos Claims.—

(1) In general.—No asbestos claim (including any claim described in paragraph (2)) may be pursued, and no pending asbestos claim may be maintained, in any Federal or State court, except as provided under subsection (d)(2) *and section 106(f)*.

(2) Certain specified claims.—

(A) In general.—Subject to section 404 (d) and (e)(3) of this Act, no claim may be brought or pursued in any Federal or State court or insurance receivership proceeding—

(i) relating to any default, confessed or stipulated judgment on an asbestos claim if the judgment debtor expressly agreed, in writing or otherwise, not to contest the entry of judgment against it and the plaintiff expressly agreed, in writing or otherwise, to seek satisfaction of the judgment only against insurers or in bankruptcy;

(ii) relating to the defense, investigation, handling, litigation, settlement, or payment of any asbestos claim by any participant, including claims for bad faith or unfair or deceptive claims handling or breach of any duties of good faith; or

(iii) arising out of or relating to the asbestos-related injury of any individual and—

(I) asserting any conspiracy, concert of action, aiding or abetting, act, conduct, statement, misstatement, undertaking, publication, omission, or failure to detect, speak, disclose, publish, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos; or

(II) asserting any conspiracy, act, conduct, statement, omission, or failure to detect, disclose, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos, asserted as or in a direct action against an insurer or reinsurer based upon any theory, statutory, contract, tort, or otherwise; or

(iv) by any third party, and premised on any theory, allegation, or cause of action, for reimbursement of healthcare costs allegedly associated with the use of or exposure to asbestos, whether such claim is asserted directly, indirectly or derivatively.

(B) EXCEPTIONS.—Subparagraph (A) (ii) and (iii) shall not apply to claims against participants by persons—

(i) with whom the participant is in privity of contract;

(ii) who have received an assignment of insurance rights not otherwise voided by this Act; or

(iii) who are beneficiaries covered by the express terms of a contract with that participant.

(3) PREEMPTION.—Any action asserting an asbestos claim (including a claim described in paragraph (2)) in any Federal or State court is preempted by this Act, except as provided under subsection (d)(2) *and section 106(f)*.

(4) DISMISSAL.—Except as provided under subsection (d)(2), no judgment other than a judgment of dismissal may be entered in any such action, including an action pending on appeal, or on petition or motion for discretionary review, on or after the date of enactment of this Act. A court may dismiss any such action on its motion. If the court denies the motion to dismiss, it shall stay further proceedings until final disposition of any appeal taken under this Act.

(5) REMOVAL.—

(A) IN GENERAL.—If an action in any State court under paragraph (3) is preempted, barred, or otherwise precluded under this Act, and not dismissed, or if an order entered after the date of enactment of this Act purporting to enter judgment or deny review is not rescinded and replaced with an order of dismissal within 30 days after the filing of a motion by any party to the action advising the court of the provisions of this Act, any party may remove the case to the district court of the United States for the district in which such action is pending.

(B) TIME LIMITS.—For actions originally filed after the date of enactment of this Act, the notice of removal shall be filed within the time limits specified in section 1441(b) of title 28, United States Code.

(C) PROCEDURES. The procedures for removal and proceedings after removal shall be in accordance with sections 1446 through 1450 of title 28, United States Code, except as may be necessary to accommodate removal of any actions pending (including on appeal) on the date of enactment of this Act.

(D) REVIEW OF REMAND ORDERS.—

(i) IN GENERAL.—Section 1447 of title 28, United States Code, shall apply to any removal of a case under this section, except that notwithstanding subsection (d) of that section, a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand an action to the State court from which it was removed if application is made to the court of appeals not less than 7 days after entry of the order.

(ii) TIME PERIOD FOR JUDGMENT.—If the court of appeals accepts an appeal under clause (i), the court shall complete all action on such appeal, including rendering judgment, not later than 60 days after the date on which such appeal was filed, unless an extension is granted under clause (iii).

(iii) EXTENSION OF TIME PERIOD.—The court of appeals may grant an extension of the 60-day period described in clause (ii) if—

(I) all parties to the proceeding agree to such extension, for any period of time; or

(II) such extension is for good cause shown and in the interests of justice, for a period not to exceed 10 days.

(iv) DENIAL OF APPEAL.—If a final judgment on the appeal under clause (i) is not issued before the end of the period described in clause (ii), including any extension under clause (iii), the appeal shall be denied.

(E) JURISDICTION.—The jurisdiction of the district court shall be limited to—

(i) determining whether removal was proper; and

(ii) determining, based on the evidentiary record, whether the claim presented is preempted, barred, or otherwise precluded under this Act.

(6) CREDITS.—

(A) IN GENERAL.—If, notwithstanding the express intent of Congress stated in this section, any court finally determines for any reason that an asbestos claim is not barred under this subsection and is not subject to the exclusive remedy or preemption provisions of this section, then any participant required to satisfy a final judgment executed with respect to any such claim may elect to receive a credit against any assessment owed to the Fund equal to the amount of the payment made with respect to such executed judgment.

(B) REQUIREMENTS.—The Administrator shall require participants seeking credit under this paragraph to demonstrate that the participant—

(i) timely pursued all available remedies, including remedies available under this paragraph to obtain dismissal of the claim; and

(ii) notified the Administrator at least 20 days before the expiration of any period within which to appeal the denial of a motion to dismiss based on this section.

(C) INFORMATION.—The Administrator may require a participant seeking credit under this paragraph to furnish such further information as is necessary and appropriate to establish eligibility for, and the amount of, the credit.

(D) INTERVENTION.—The Administrator may intervene in any action in which a credit may be due under this paragraph.

SEC. 404. EFFECT ON INSURANCE AND REINSURANCE CONTRACTS.

(a) EROSION OF INSURANCE COVERAGE LIMITS.—

(1) DEFINITIONS.—In this section, the following definitions shall apply:

(A) DEEMED EROSION AMOUNT.—The term "deemed erosion amount" means the amount of erosion deemed to occur at enactment under paragraph (2).

(B) EARLY SUNSET.—The term "early sunset" means an event causing termination of the program under section 405(f) which relieves the insurer participants of paying some portion of the aggregate payment level of $46,025,000,000 required under section 212(a)(2)(A).

(C) EARNED EROSION AMOUNT.—The term "earned erosion amount" means, in the event of any early sunset under section 405(f), the percentage, as set forth in the following schedule, depending on the year in which the defendant participants' funding obligations end, of those amounts which, at the time of the early sunset, a defendant participant has paid to the fund and remains obligated to pay into the fund.

Year After Enactment In Which Defendant Participant's Funding Obligation Ends:	Applicable Percentage:
2	67.06
3	86.72
4	96.55
5	102.45
6	90.12
7	81.32
8	74.71
9	69.58
10	65.47
11	62.11
12	59.31
13	56.94
14	54.90
15	53.14
16	51.60
17	50.24
18	49.03
19	47.95
20	46.98
21	46.10
22	45.30
23	44.57
24	43.90
25	43.28
26	42.71
27	42.18
28	40.82
29	39.42

(D) REMAINING AGGREGATE PRODUCTS LIMITS.—The term "remaining aggregate products limits" means aggregate limits that apply to insurance coverage granted under the "products hazard", "completed operations hazard", or "Products—Completed Operations Liability" in any comprehensive general liability policy issued between calendar years 1940 and 1986 to cover injury which occurs in any State, as reduced by—

(i) any existing impairment of such aggregate limits as of the date of enactment of this Act; and

(ii) the resolution of claims for reimbursement or coverage of liability or paid or incurred loss for which notice was provided to the insurer before the date of enactment of this Act.

(E) SCHEDULED PAYMENT AMOUNTS.—The term "scheduled payment amounts" means the future payment obligation to the Fund under this Act from a defendant participant in the amount established under sections 203 and 204.

(F) UNEARNED EROSION AMOUNT.—The term "unearned erosion amount" means, in the event of any early sunset under section 405(f), the difference between the deemed erosion amount and the earned erosion amount.

(2) QUANTUM AND TIMING OF EROSION.—

(A) EROSION UPON ENACTMENT.—The collective payment obligations to the Fund of the insurer and reinsurer participants as assessed by the Administrator shall be deemed as of the date of enactment of this Act to erode remaining aggregate products limits available to a defendant participant only in an amount of 38.1 percent of each defendant participant's scheduled payment amount.

(B) NO ASSERTION OF CLAIM.—No insurer or reinsurer may assert any claim against a defendant participant or captive insurer for insurance, reinsurance, payment of a deductible, or retrospective premium adjustment arising out of that insurer's or reinsurer's payments to the Fund or the erosion deemed to occur under this section.

(C) POLICIES WITHOUT CERTAIN LIMITS OR WITH EXCLUSION.—Except as provided under subparagraph (E), nothing in this section shall require or permit the erosion of any insurance policy or limit that does not contain an aggregate products limit, or that contains an asbestos exclusion.

(D) TREATMENT OF CONSOLIDATION ELECTION.—If an affiliated group elects consolidation as provided in section 204(f), the total erosion of limits for the affiliated group under paragraph (2)(A) shall not exceed [59.64] *38.1* percent of the scheduled payment amount of the single payment obligation for the entire affiliated group. The total erosion of limits for any individual defendant participant in the affiliated group shall not exceed its individual share of [59.64] *38.1* percent of the affiliated group's scheduled payment amount, as measured by the individual defendant participant's percentage share of the affiliated group's prior asbestos expenditures.

(E) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, nothing in this Act shall be deemed to erode remaining aggregate products limits of a defendant participant that can demonstrate by a reponderance of the evidence that 75 percent of its prior asbestos expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury arising exclusively from the exposure to asbestos at premises owned, rented, or controlled by the defendant participant (a "premises defendant"). In calculating such percentage, where expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury due to exposure to the defendant participant's products and to asbestos at premises owned, rented, or controlled by the defendant participant, half of such expenditures shall be deemed to be for such premises exposures. If a defendant participant establishes itself as a premises defendant, 75 percent of the payments by such defendant participant shall erode coverage limits, if any, applicable to premises liabilities under applicable law.

(3) METHOD OF EROSION.—

(A) ALLOCATION.—The amount of erosion allocated to each defendant participant shall be allocated among periods in which policies with remaining aggregate product limits are available to that defendant participant pro rata by policy period, in ascending order by attachment point.

(B) OTHER EROSION METHODS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), the method of erosion of any remaining aggregate products limits which are subject to—

(I) a coverage-in-place or settlement agreement between a defendant participant and 1 or more insurance participants as of the date of enactment; or

(II) a final and nonappealable judgment as of the date of enactment or resulting from a claim for coverage or reimbursement pending as of such date, shall be as specified in such agreement or judgment with regard to erosion applicable to such insurance participants' policies.

(ii) REMAINING LIMITS.—To the extent that a final nonappealable judgment or settlement agreement to which an insurer participant and a defendant participant are parties in effect as of the date of enactment of this Act extinguished a defendant participant's right to seek coverage for asbestos claims under an insurer participant's policies, any remaining limits in such policies shall not be considered to be remaining aggregate products limits under subsection (a)(1)(A).

(4) RESTORATION OF AGGREGATE PRODUCTS LIMITS UPON EARLY SUNSET.—

(A) RESTORATION.—In the event of an early sunset, any unearned erosion amount will be deemed restored as aggregate products limits available to a defendant participant as of the date of enactment.

(B) METHOD OF RESTORATION.—The unearned erosion amount will be deemed restored to each defendant participant's policies in such a manner that the last limits that were deemed eroded at enactment under this subsection are deemed to be the first limits restored upon early sunset.

(C) TOLLING OF COVERAGE CLAIMS.—In the event of an early sunset, the applicable statute of limitations and contractual provisions for the filing of claims under any insurance policy with restored aggregate products limits shall be deemed tolled after the date of enactment through the date 6 months after the date of early sunset.

(5) PAYMENTS BY DEFENDANT PARTICIPANT.—Payments made by a defendant participant shall be deemed to erode, exhaust, or otherwise satisfy applicable self-insured retentions, deductibles, retrospectively rated premiums, and limits issued by nonparticipating insolvent or captive insurance companies. Reduction of remaining aggregate limits under this subsection shall not limit the right of a defendant participant to collect from any insurer not a participant.

(6) EFFECT ON OTHER INSURANCE CLAIMS.—Other than as specified in this subsection, this Act does not alter, change, modify, or affect insurance for claims other than asbestos claims.

(b) DISPUTE RESOLUTION PROCEDURE.—

(1) ARBITRATION.—The parties to a dispute regarding the erosion of insurance coverage limits under this section may agree in writing to settle such dispute by arbitration. Any such provision or agreement shall be valid, irrevocable, and enforceable, except for any grounds that exist at law or in equity for revocation of a contract.

(2) TITLE 9, UNITED STATES CODE.—Arbitration of such disputes, awards by arbitrators, and confirmation of awards shall be governed by title 9, United States Code, to the extent such title is not inconsistent with this section. In any such arbitration proceeding, the erosion principles provided for under this section shall be binding on the arbitrator, unless the parties agree to the contrary.

(3) FINAL AND BINDING AWARD.—An award by an arbitrator shall be final and binding between the parties to the arbitration, but shall have no force or effect on any other person. The parties to an arbitration may agree that in the event a policy which is the subject matter of an award is subsequently determined to be eroded in a manner different from the manner determined by the arbitration in a judgment rendered by a court of competent jurisdiction from which no appeal can or has been taken, such arbitration award may be modified by any court of competent jurisdiction upon application by any party to the arbitration. Any such modification shall govern the rights and obligations between such parties after the date of such modification.

(c) EFFECT ON NONPARTICIPANTS.—

(1) IN GENERAL.—No insurance company or reinsurance company that is not a participant, other than a captive insurer, shall be entitled to claim that payments to the Fund erode, exhaust, or otherwise limit the nonparticipant's insurance or reinsurance obligations.

(2) OTHER CLAIMS.—Nothing in this Act shall preclude a participant from pursuing any claim for insurance or reinsurance from any person that is not a participant other than a captive insurer.

(d) FINITE RISK POLICIES NOT AFFECTED.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, except subject to section 212(a)(1)(D), this Act shall not alter, affect or impair any rights or obligations of—

(A) any party to an insurance contract that expressly provides coverage for governmental charges or assessments imposed to replace insurance or reinsurance liabilities in effect on the date of enactment of this Act; or

(B) subject to paragraph (2), any person with respect to any insurance [or reinsurance] purchased by a participant after December 31, 1990, that expressly (but not necessarily exclusively) provides coverage for asbestos liabilities, including those policies commonly referred to as "finite risk" policies.

(2) LIMITATION.—No person may assert that any amounts paid to the Fund in accordance with this Act are covered by any policy described under paragraph (1)(B) purchased by a defendant participant, unless such policy specifically provides coverage for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims.

(e) EFFECT ON CERTAIN INSURANCE AND REINSURANCE CLAIMS.—

(1) NO COVERAGE FOR FUND ASSESSMENTS.—[No] *Subject to section 212(a)(1)(D), no* participant or captive insurer may pursue an insurance or reinsurance claim against another participant or captive insurer for payments to the Fund required under this Act, except under a [contract] *written agreement* specifically providing insurance [or reinsurance], *reinsurance, or other reimbursement* for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims or, where applicable, under finite risk policies under subsection (d).

(2) CERTAIN INSURANCE ASSIGNMENTS VOIDED.—Any assignment of any rights to insurance coverage for asbestos claims to any person who has asserted an asbestos claim before the date of enactment of this Act, or to any trust, person, or other entity not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims which were asserted before such date of enactment, or by any Tier I defendant participant, before any sunset of this Act, shall be null and void. This subsection shall not void or affect in any way any assignments of rights to insurance coverage other than to asbestos claimants or to trusts, persons, or other entities not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims, or by Tier I defendant participants.

(3) INSURANCE CLAIMS PRESERVED.—Notwithstanding any other provision of this Act, this Act shall not alter, affect, or impair any rights or obligations of any person with respect to any insurance or reinsurance for amounts that any person pays, has paid, or becomes legally obligated to pay in respect of asbestos or other claims, *including claims filed, pursued, or revived under section 405(g),* except to the extent that—

[(A) such person pays or becomes legally obligated to pay claims that are superseded by section 403;]

(A) such claims are preempted, barred, or superseded by section 403;

(B) any such rights or obligations of such person with respect to insurance or reinsurance are prohibited by paragraph (1) or (2) of subsection (e); or

(C) the limits of insurance otherwise available to such participant in respect of asbestos claims are deemed to be eroded under subsection (a).

SEC. 405. ANNUAL REPORT OF THE ADMINISTRATOR AND SUNSET OF THE ACT.

(a) IN GENERAL.—The Administrator shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the operation of the Asbestos Injury Claims Resolution Fund within 6 months after the close of each fiscal year.

(b) CONTENTS OF REPORT.—The annual report submitted under this subsection shall include an analysis of—

(1) the claims experience of the program during the most recent fiscal year, including—

(A) the number of claims made to the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims;

(B) the number of claims denied by the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims, and a general description of the reasons for their denial;

(C) a summary of the eligibility determinations made by the Office under section 114;

(D) a summary of the awards made from the Fund, including the amount of the awards; and

(E) for each eligible condition, a statement of the percentage of asbestos claimants who filed claims during the prior calendar year and were determined to be eligible to receive compensation under this Act, who have received the compensation to which such claimants are entitled according to section 131;

(2) the administrative performance of the program, including—

(A) the performance of the program in meeting the time limits prescribed by law and an analysis of the reasons for any systemic delays;

(B) any backlogs of claims that may exist and an explanation of the reasons for such backlogs;

(C) the costs to the Fund of administering the program; and

(D) any other significant factors bearing on the efficiency of the program;

(3) the financial condition of the Fund, including—

(A) statements of the Fund's revenues, expenses, assets, and liabilities;

(B) the identity of all participants, the funding allocations of each participant, and the total amounts of all payments to the Fund;

(C) a list of all financial hardship or inequity adjustments applied for during the fiscal year, and the adjustments that were made during the fiscal year;

(D) a statement of the investments of the Fund; and

(E) a statement of the borrowings of the Fund;

(4) the financial prospects of the Fund, including—

(A) an estimate of the number and types of claims, the amount of awards, and the participant payment obligations for the next fiscal year;

(B) an analysis of the financial condition of the Fund, including an estimation of the Fund's ability to pay claims for the subsequent 5 years in full as and when required, an evaluation of the Fund's ability to retire its existing debt and assume additional debt, and an evaluation of the Fund's ability to satisfy other obligations under the program; and

(C) a report on any changes in projections made in earlier annual reports or sunset analyses regarding the Fund's ability to meet its financial obligations;

(5) any recommendations from the Advisory Committee on Asbestos Disease Compensation and the Medical Advisory Committee of the Fund to improve the diagnostic, exposure, and medical criteria so as to pay [only those claimants whose injuries are caused by exposure to asbestos] *those claimants who suffer from injuries for which exposure to asbestos was a substantial contributing factor*;

(6) a summary of the results of audits conducted under section 115; and

(7) a summary of prosecutions under section 1348 of title 18, United States Code (as added by this Act).

[(c) CLAIMS ANALYSIS.—If the Administrator concludes, on the basis of the annual report submitted under this section, that the Fund is compensating claims for injuries that are not caused by exposure to asbestos and compensating such claims may, currently or in the future, undermine the Fund's ability to compensate persons with injuries that are caused by exposure to asbestos, the Administrator shall include in the report an analysis of the reasons for the situation, a description of the range of reasonable alternatives for responding to the situation, and a recommendation as to which alternative best serves the interest of claimants and the public. The report shall include a description of changes in the diagnostic, exposure, or medical criteria of section 121 that the Administrator believes may be necessary to protect the Fund from compensating claims not caused by exposure to asbestos.]

(c) CLAIMS ANALYSIS AND VERIFICATION OF UNANTICIPATED CLAIMS.—

(1) IN GENERAL.—If the Administrator concludes, on the basis of the annual report submitted under this section, that—

(A) the average number of claims that qualify for compensation under a claim level or designation exceeds 125 percent of the number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims qualifying for compensation under the appropriate claim level or designation; or

(B) the average number of claims that qualify for compensation under a claim level or designation is less than 75 percent of the number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims deemed ineligible for compensation under the appropriate claim level or designation.

(2) DETERMINATIONS.—The Administrator shall examine the best available medical evidence and any recommendation made under subsection (b)(5) in order to determine which 1 or more of the following is true:

(A) Without a significant number of exceptions, all of the claimants who qualified for compensation under the claim level or designation suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(B) A significant number of claimants who qualified for compensation under the claim level or designation do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(C) A significant number of claimants who were denied compensation under the claim level of designation did suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(D) The Congressional Budget Office projections underestimated or overestimated the actual number of persons who suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(3) RECOMMENDATIONS CONCERNING CLAIMS CRITERIA.—If the Administrator determines that a significant number of the claimants who qualified for compensation under the claim level under review do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor, or that a significant number of the claimants who were denied compensation under the claim level under review suffered from an injury or disease for which exposure to asbestos was a substantial contributing factor, the Administrator shall recommend to Congress, under subsection (e), changes to the compensation criteria in order to ensure that the Fund provides compensation for injury or disease for which exposure to asbestos was a substantial contributing factor, but does not provide compensation to claimants who do not suffer from an injury or disease for which asbestos exposure was a substantial contributing factor.

(d) RECOMMENDATIONS OF ADMINISTRATOR AND ADVISORY COMMITTEE.—

(1) REFERRAL.—If the Administrator recommends changes to this Act under subsection (c), the recommendations and accompanying analysis shall be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 (in this subsection referred to as the "Advisory Committee").

(2) ADVISORY COMMITTEE RECOMMENDATIONS.—The Advisory Committee shall hold expedited public hearings on the alternatives and recommendations of the Administrator and make its own recommendations for reform of the program under titles I and II.

(3) TRANSMITTAL TO CONGRESS.—Not later than 90 days after receiving the recommendations of the Administrator, the Advisory Committee shall transmit the recommendations of the Administrator and the recommendations of the Advisory Committee to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

[(d)]*(e)* SHORTFALL ANALYSIS.—

(1) IN GENERAL.—

(A) ANALYSIS.—If the Administrator concludes, on the basis of the information contained in the annual report submitted under this section, that the Fund may not be able to pay claims as such claims become due at any time within the next 5 years, the Administrator shall include in the report an analysis of the reasons for the situation, an estimation of when the Fund will no longer be able to pay claims as such claims become due, a description of the range of reasonable alternatives for responding to the situation, and a recommendation as to which alternative best serves the interest of claimants and the public. The report may include a description of changes in the diagnostic, exposure, or medical criteria of section 121 that the Administrator believes may be necessary to protect the Fund.

(B) RANGE OF ALTERNATIVES.—The range of alternatives under subparagraph (A) may include—

(i) triggering the termination of this Act under subsection (f) at any time after the date of enactment of this Act; and

(ii) reform of the program set forth in titles I and II of this Act (including changes in the diagnostic, exposure, or medical criteria, changes in the enforcement or application of those criteria, changes in the timing of payments, changes in contributions by defendant participants, insurer participants (or both such participants), or changes in award values).

(C) INSURER SHORTFALL ASSESSMENTS.—Beginning in year 6 of the life of the Fund, if the Administrator determines that a shortfall in payment of the annual amounts required to be paid by insurer participants under section 212(a)(3)(C) is the substantial factor that would cause the Administrator to recommend the termination of this Act under subsection (f), then the Administrator may impose shortfall assessments on insurer participants in addition to the payments imposed under section 212, except that the Administrator shall not impose such assessments if the additional amounts would not be sufficient to permit the Administrator to avoid recommending termination of this Act. During any given year, the total of such shortfall assessments shall not exceed the amount by which, during the prior year, total payments by insurer participants fell short of the aggregate amounts required to be paid under section 212(a)(3)(C). Shortfall assessments shall be allocated among insurer participants using the methodology adopted by the Asbestos Insurers Commission under section 212(a)(1)(B).

(2) CONSIDERATIONS.—In formulating recommendations, the Administrator shall take into account the reasons for any shortfall, actual or projected, which may include—

(A) financial factors, including return on investments, borrowing capacity, interest rates, ability to collect contributions, and other relevant factors;

(B) the operation of the Fund generally, including administration of the claims processing, the ability of the Administrator to collect contributions from participants, potential problems of fraud, the adequacy of the criteria to rule out idiopathic mesothelioma, and inadequate flexibility to extend the timing of payments;

(C) the appropriateness of the diagnostic, exposure, and medical criteria, including the adequacy of the criteria to rule out idiopathic mesothelioma;

(D) the actual incidence of asbestos-related diseases, including mesothelioma, based on epidemiological studies and other relevant data;

(E) compensation of diseases with alternative causes; and

(F) other factors that the Administrator considers relevant.

(3) RECOMMENDATION OF TERMINATION.—Any recommendation of termination should include a plan for winding up the affairs of the Fund (and the program generally) within a defined period, including paying in full all claims resolved at the time the report is prepared. Any plan under this paragraph shall provide for priority in payment to the claimants with the most serious illnesses.

(4) RESOLVED CLAIMS.—For purposes of this section, a claim shall be deemed resolved when the Administrator has determined the amount of the award due the claimant, and either the claimant has waived judicial review or the time for judicial review has expired.

[(e) RECOMMENDATIONS OF ADMINISTRATOR AND COMMISSION.—

[(1) IN GENERAL.—If the Administrator recommends changes to this Act under subsection (c), the recommendations and accompanying analysis shall be referred to a special commission consisting of the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of the Treasury, and the Secretary of Commerce, or their designees. The Commission shall hold expedited public hearings on the Administrator's alternatives and recommendations and then make its own recommendations for reform of the program set forth in titles I and II of this Act. Within 180 days after receiving the Administrator's recommendations, the Commission shall transmit its own recommendations to the Congress in the same manner as set forth in subsection (a).

[(2) REFERRAL.—If the Administrator recommends changes to, or termination of, this Act under subsection (d), the recommendations and accompanying analysis shall be referred to the Commission. The Commission shall hold expedited public hearings on the Administrator's alternatives and recommendations and then make its own recommendations for reform of the program set forth in titles I and II of this Act. Within 180 days after receiving the Administrator's recommendations, the Commission shall transmit its own recommendations to Congress in the same manner as set forth in subsection (a).]

(f) SUNSET OF ACT.—

(1) IN GENERAL.—

(A) TERMINATION.—Subject to paragraph (4), titles I (except subtitle A) and II and sections 403 and 404(e)(2) shall terminate as provided under paragraph (2), if the Administrator—

(i) has begun the processing of claims; and

(ii) as part of the review conducted to prepare an annual report under this section, determines that if any additional claims are resolved, the Fund will not have sufficient resources when needed to pay 100 percent of all resolved claims while also meeting all other obligations of the Fund under this Act, including the payment of—

(I) debt repayment obligations; and

(II) remaining obligations to the asbestos trust of a debtor and the class action trust.

(B) REMAINING OBLIGATIONS.—For purposes of subparagraph (A)(ii), the remaining obligations to the asbestos trust of the debtor and the class action trust shall be determined by the Administrator by assuming that, instead of a lump-sum payment, such trust had transferred its assets to the Fund on an annual basis, taking into consideration relevant factors, including the most recent projections made by the trust's actuary before the date of enactment of this Act of the amount and timing of future claim payments and administrative and operating expenses.

(2) EFFECTIVE DATE OF TERMINATION.—A termination under paragraph (1) shall take effect 180 days after the date of a determination of the Administrator under paragraph (1) and shall apply to all asbestos claims that have not been resolved by the Fund as of the date of the determination.

(3) RESOLVED CLAIMS.—If a termination takes effect under this subsection, all resolved claims shall be paid in full by the Fund.

(4) EXTINGUISHED CLAIMS.—A claim that is extinguished under the statute of limitations provisions in section 113(b) is not revived at the time of sunset under this subsection.

(5) CONTINUED FUNDING.—If a termination takes effect under this subsection, participants will still be required to make payments as provided under subtitles A and B of title II. If the full amount of payments required by title II is not necessary for the Fund to pay claims that have been resolved as of the date of termination, pay the Fund's debt and obligations to the asbestos trusts and class action trust, and support the Fund's continued operation as needed to pay such claims, debt, and obligations, the Administrator may reduce such payments. Any such reductions shall be allocated among participants in approximately the same proportion as the liability under subtitles A and B of title II.

(6) SUNSET CLAIMS.—

(A) DEFINITIONS.—In this paragraph—

(i) the term "sunset claims" means claims filed with the Fund, but not yet resolved, when this Act has terminated; and

(ii) the term "sunset claimants" means persons asserting sunset claims.

(B) IN GENERAL.—If a termination takes effect under this subsection, the applicable statute of limitations for the filing of sunset claims under subsection (g) shall be tolled for any past or pending sunset claimants while such claimants were pursuing claims filed under this Act. For those claimants who decide to pursue a sunset claim in accordance with subsection (g), the applicable statute of limitations shall apply, except that claimants who filed a claim against the Fund under this Act before the date of termination shall have 2 years after the date of termination to file a sunset claim in accordance with subsection (g).

(7) ASBESTOS TRUSTS AND CLASS ACTION TRUST.—On and after the date of termination under this subsection, the trust distribution program of any asbestos trust and the class action trust shall be replaced with the medical criteria requirements of section 121.

(8) PAYMENT TO ASBESTOS TRUSTS AND CLASS ACTION TRUST.—The amounts determined under paragraph (1)(B) for payment to the asbestos trusts and the class action trust shall be transferred to the respective asbestos trusts of the debtor and the class action trust within 90 days.

(g) NATURE OF CLAIM AFTER SUNSET.—

(1) IN GENERAL.—

(A) RELIEF.—On and after the date of termination under subsection (f), any individual with an asbestos claim who has not previously had a claim resolved by the Fund, may in a civil action obtain relief in damages subject to the terms and conditions under this subsection and paragraph (6) of subsection (f).

(B) RESOLVED CLAIMS.—An individual who has had a claim resolved by the Fund may not pursue a court action, except that an individual who received an award for a nonmalignant disease (Levels I through V) from the Fund may assert a claim for a subsequent or progressive disease under this subsection, unless the disease was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the previous claim against the Fund was disposed.

(C) MESOTHELIOMA CLAIM.—An individual who received an award for a nonmalignant or malignant disease (except mesothelioma) (Levels I through VIII) from the Fund may assert a claim for mesothelioma under this subsection, unless the mesothelioma was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the nonmalignant or other malignant claim was disposed.

(2) EXCLUSIVE REMEDY.—As of the effective date of a termination of this Act under subsection (f), an action under paragraph (1) shall be the exclusive remedy for any asbestos claim that might otherwise exist under Federal, State, or other law, regardless of whether such claim arose before or after the date of enactment of this Act or of the termination of this Act, except that claims against the Fund that have been resolved before the date of the termination determination under subsection (f) may be paid by the Fund.

(3) VENUE.—

(A) IN GENERAL.—Actions under paragraph (1) may be brought in—

(i) any Federal district court;

(ii) any State court in the State where the claimant resides; or

(iii) any State court in a State where the asbestos exposure occurred.

(B) DEFENDANTS NOT FOUND.—If any defendant cannot be found in the State described in clause (ii) or (iii) of subparagraph (A), the claim may be pursued only against that defendant in the Federal district court or the State court located within any State in which the defendant may be found.

(C) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the asbestos exposure occurred in more than one county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subparagraph.

(D) STATE VENUE REQUIREMENTS.—Nothing in this paragraph shall preempt or supersede any State's law relating to venue requirements within that State which are more restrictive.

(4) CLASS ACTION TRUSTS.—Notwithstanding any other provision of this section—

(A) after the assets of any class action trust have been transferred to the Fund in accordance with section 203(b)(5), no asbestos claim may be maintained with respect to asbestos liabilities arising from the operations of a person with respect to whose liabilities for asbestos claims a class action trust has been established, whether such claim names the person or its successors or affiliates as defendants; and

(B) if a termination takes effect under subsection (f), the exclusive remedy for all asbestos claims (including sunset claims and claims first arising or first presented after termination of the Fund) arising from such operations will be a claim against the class action trust to which the Administrator has transferred funds under subsection (f)(8) to pay asbestos claims, if necessary in proportionally reduced amounts.

(5) EXPERT WITNESSES.—If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue in an action permitted under paragraph (1), a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if—

(A) the testimony is based upon sufficient facts or data;

(B) the testimony is the product of reliable principles and methods; and

(C) the witness has applied the principles and methods reliably to the facts of the case.

SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABILITY OF THE UNITED STATES GOVERNMENT.

(a) CAUSES OF ACTIONS.—Except as otherwise specifically provided in this Act, nothing in this Act shall be construed as creating a cause of action against the United States Government, any entity established under this Act, or any officer or employee of the United States Government or such entity.

(b) FUNDING LIABILITY.—Nothing in this Act shall be construed to—

(1) create any obligation of funding from the United States Government, [other than the funding for personnel and support as provided under this Act; or] *including any borrowing authorized under section 221(b)(2); or*

(2) obligate the United States Government to pay any award or part of an award, if amounts in the Fund are inadequate.

SEC. 407. RULES OF CONSTRUCTION.

(a) LIBBY, MONTANA CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for current and former residents of Libby, Montana. The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

(b) HEALTHCARE FROM PROVIDER OF CHOICE.—Nothing in this Act shall be construed to preclude any eligible claimant from receiving healthcare from the provider of their choice.

SEC. 408. VIOLATIONS OF ENVIRONMENTAL HEALTH AND SAFETY REQUIREMENTS.

(a) ASBESTOS IN COMMERCE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), relating to the manufacture, importation, processing, disposal, and distribution in commerce of asbestos-containing products, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible civil or criminal penalties, including those under section 17 of the Toxic Substances Control Act (15 U.S.C. 2616), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(b) ASBESTOS AS AIR POLLUTANT.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 et seq.), relating to asbestos as a hazardous air pollutant, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible criminal and civil penalties, including those under section 113 of the Clean Air Act (42 U.S.C. 7413), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(c) OCCUPATIONAL EXPOSURE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), relating to occupational exposure to asbestos, the Administrator shall refer the matter in writing within 30 days after receiving that information and refer the matter to the Secretary of Labor or the appropriate State agency with authority to enforce occupational safety and health standards, for investigation for possible civil or criminal penalties under section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666).

(d) ENHANCED CRIMINAL PENALTIES FOR WILLFUL VIOLATIONS OF OCCUPATIONAL STANDARDS FOR ASBESTOS.—Section 17(e) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656(e)) is amended—

(1) by striking "Any" and inserting "(1) Except as provided in paragraph (2), any"; and

(2) by adding at the end the following:

"(2) Any employer who willfully violates any standard issued under section 6 with respect to the control of occupational exposure to asbestos, shall upon conviction be punished by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 5 years, or both, except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 10 years, or both.".

(e) CONTRIBUTIONS TO THE ASBESTOS TRUST FUND BY EPA AND OSHA ASBESTOS VIOLATORS.—

(1) IN GENERAL.—The Administrator shall assess employers or other individuals determined to have violated asbestos statutes, standards, or regulations administered by the Department of Labor, the Environmental Protection Agency, and their State counterparts, for contributions to the Asbestos Injury Claims Resolution Fund (in this section referred to as the "Fund").

(2) IDENTIFICATION OF VIOLATORS.—Each year, the Administrator shall—

(A) in consultation with the Assistant Secretary of Labor for Occupational Safety and Health, identify all employers that, during the previous year, were subject to final orders finding that they violated standards issued by the Occupational Safety and Health Administration for control of occupational exposure to asbestos (29 C.F.R. 1910.1001, 1915.1001, and 1926.1101) or the equivalent asbestos standards issued by any State under section 18 of the Occupational Safety and Health Act (29 U.S.C. 668); and

(B) in consultation with the Administrator of the Environmental Protection Agency, identify all employers or other individuals who, during the previous year, were subject to final orders finding that they violated asbestos regulations administered by the Environmental Protection Agency (including the National Emissions Standard for Asbestos established under the Clean Air Act (42 U.S.C. 7401 et seq.), the asbestos worker protection standards established under part 763 of title 40, Code of Federal Regulations, and the regulations banning asbestos promulgated under section 501 of this Act), or equivalent State asbestos regulations.

(3) ASSESSMENT FOR CONTRIBUTION.—The Administrator shall assess each such identified employer or other individual for a contribution to the Fund for that year in an amount equal to—

(A) 2 times the amount of total penalties assessed for the first violation of occupational health and environmental statutes, standards, or regulations;

(B) 4 times the amount of total penalties for a second violation of such statutes, standards, or regulations; and

(C) 6 times the amount of total penalties for any violations thereafter.

(4) LIABILITY.—Any assessment under this subsection shall be considered a liability under this Act.

(5) PAYMENTS.—Each such employer or other individual assessed for a contribution to the Fund under this subsection shall make the required contribution to the Fund within 90 days of the date of receipt of notice from the Administrator requiring payment.

(6) ENFORCEMENT.—The Administrator is authorized to bring a civil action under section 223(c) against any employer or other individual who fails to make timely payment of contributions assessed under this section.

(f) REVIEW OF FEDERAL SENTENCING GUIDELINES FOR ENVIRONMENTAL CRIMES RELATED

TO ASBESTOS.—Under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, as appropriate, the United States Sentencing Guidelines and related policy statements to ensure that—

(1) appropriate changes are made within the guidelines to reflect any statutory amendments that have occurred since the time that the current guideline was promulgated;

(2) the base offense level, adjustments, and specific offense characteristics contained in section 2Q1.2 of the United States Sentencing Guidelines (relating to mishandling of hazardous or toxic substances or pesticides; recordkeeping, tampering, and falsification; and unlawfully transporting hazardous materials in commerce) are increased as appropriate to ensure that future asbestos-related offenses reflect the seriousness of the offense, the harm to the community, the need for ongoing reform, and the highly regulated nature of asbestos;

(3) the base offense level, adjustments, and specific offense characteristics are sufficient to deter and punish future activity and are adequate in cases in which the relevant offense conduct—

(A) involves asbestos as a hazardous or toxic substance; and

(B) occurs after the date of enactment of this Act;

(4) the adjustments and specific offense characteristics contained in section 2B1.1 of the United States Sentencing Guidelines related to fraud, deceit, and false statements, adequately take into account that asbestos was involved in the offense, and the possibility of death or serious bodily harm as a result;

(5) the guidelines that apply to organizations in chapter 8 of the United States Sentencing Guidelines are sufficient to deter and punish organizational criminal misconduct that involves the use, handling, purchase, sale, disposal, or storage of asbestos; and

(6) the guidelines that apply to organizations in chapter 8 of the United States Sentencing Guidelines are sufficient to deter and punish organizational criminal misconduct that involves fraud, deceit, or false statements against the Office of Asbestos Disease Compensation.

SEC. 409. NONDISCRIMINATION OF HEALTH INSURANCE.

(a) DENIAL, TERMINATION, OR ALTERATION OF HEALTH COVERAGE.—No health insurer offering a health plan may deny or terminate coverage, or in any way alter the terms of coverage, of any claimant or the beneficiary of a claimant, on account of the participation of the claimant or beneficiary in a medical monitoring program under this Act, or as a result of any information discovered as a result of such medical monitoring.

(b) DEFINITIONS.—In this section:

(1) HEALTH INSURER.—The term "health insurer" means—

(A) an insurance company, healthcare service contractor, fraternal benefit organization, insurance agent, third-party administrator, insurance support organization, or other person subject to regulation under the laws related to health insurance of any State;

(B) a managed care organization; or

(C) an employee welfare benefit plan regulated under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(2) HEALTH PLAN.—The term "health plan" means—

(A) a group health plan (as such term is defined in section 607 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167)), and a multiple employer welfare arrangement (as defined in section 3(4) of such Act) that provides health insurance coverage; or

(B) any contractual arrangement for the provision of a payment for healthcare, including any health insurance arrangement or any arrangement consisting of a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organizing subscriber contract.

(c) CONFORMING AMENDMENTS.—

(1) ERISA.—Section 702(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)), is amended by adding at the end the following:

"(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2005.".

(2) PUBLIC SERVICE HEALTH ACT.—Section 2702(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)) is amended by adding at the end the following:

"(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2005.".

(3) INTERNAL REVENUE CODE OF 1986.—Section 9802(a)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

"(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2005.".

TITLE V—ASBESTOS BAN

SEC. 501. PROHIBITION ON ASBESTOS CONTAINING PRODUCTS.

(a) IN GENERAL.—Title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.) is amended—

(1) by inserting before section 201 (15 U.S.C. 2641) the following:

"Subtitle A—General Provisions";

and

(2) by adding at the end the following:

"Subtitle B—Ban of Asbestos Containing Products

"SEC. 221. BAN OF ASBESTOS CONTAINING PRODUCTS.

"(a) DEFINITIONS.—In this chapter:

"(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(2) ASBESTOS.—The term 'asbestos' includes—

"(A) chrysotile;

"(B) amosite;

"(C) crocidolite;

"(D) tremolite asbestos;

"(E) winchite asbestos;

"(F) richterite asbestos;

"(G) anthophyllite asbestos;

"(H) actinolite asbestos;

"(I) [amphibole asbestos] *asbestiform amphibole minerals*; and

"(J) any of the minerals listed under subparagraphs (A) through (I) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof.

"(3) ASBESTOS CONTAINING PRODUCT.—The term 'asbestos containing product' means any product (including any part) to which asbestos is deliberately or knowingly added or used because the specific properties of asbestos are necessary for product use or function. Under no circumstances shall the term 'asbestos containing product' be construed to include products that contain de minimus levels of naturally occurring asbestos as defined by the Administrator not later than 1 year after the date of enactment of this chapter.

"(4) DISTRIBUTE IN COMMERCE.—The term 'distribute in commerce'—

"(A) has the meaning given the term in section 3 of the Toxic Substances Control Act (15 U.S.C. 2602); and

"(B) shall not include—

"(i) an action taken with respect to an asbestos containing product in connection with the end use of the asbestos containing product by a person that is an end user, or an action taken by a person who purchases or receives a product, directly or indirectly, from an end user; or

"(ii) distribution of an asbestos containing product by a person solely for the purpose of disposal of the asbestos containing product in compliance with applicable Federal, State, and local requirements.

"(b) IN GENERAL.—Subject to subsection (c), the Administrator shall promulgate—

"(1) not later than 1 year after the date of enactment of this chapter, proposed regulations that—

"(A) prohibit persons from manufacturing, processing, or distributing in commerce asbestos containing products; and

"(B) provide for implementation of subsections (c) and (d); and

"(2) not later than 2 years after the date of enactment of this chapter, final regulations that, effective 60 days after the date of promulgation, prohibit persons from manufacturing, processing, or distributing in commerce asbestos containing products.

"(c) EXEMPTIONS.—

"(1) IN GENERAL.—Any person may petition the Administrator for, and the Administrator may grant, an exemption from the requirements of subsection (b), if the Administrator determines that—

"(A) the exemption would not result in an unreasonable risk of injury to public health or the environment; and

"(B) the person has made good faith efforts to develop, but has been unable to develop, a substance, or identify a mineral that does not present an unreasonable risk of injury to public health or the environment and may be substituted for an asbestos containing product.

"(2) TERMS AND CONDITIONS.[—An] *Except for an exception authorized under paragraph (3)(A)(i), an* exemption granted under this subsection shall be in effect for such period (not to exceed 5 years) and subject to such terms and conditions as the Administrator may prescribe.

"(3) GOVERNMENTAL USE.—

["(A) IN GENERAL.—The Administrator of the Environmental Protection Agency shall provide an exemption from the requirements of subsection (b), without review or limit on duration, if such exemption for an asbestos containing product is—

["(i) sought by the Secretary of Defense and the Secretary certifies, and provides a copy of that certification to Congress, that—

["(I) use of the asbestos containing product is necessary to the critical functions of the Department;

["(II) no reasonable alternatives to the asbestos containing product exist for the intended purpose; and

["(III) use of the asbestos containing product will not result in an unreasonable risk to health or the environment; or

["(ii) sought by the Administrator of the National Aeronautics and Space Administration and the Administrator of the National Aeronautics and Space Administration certifies, and provides a copy of that certification to Congress, that—]

"(A) IN GENERAL.—

"(i) DEPARTMENT OF DEFENSE.—Nothing in this section or in the regulations promulgated by the Administrator under subsection (b) shall prohibit or limit the manufacture, processing, or distribution in commerce of asbestos containing products by or for the Department of Defense or the use of asbestos containing products by or for the Department of Defense if the Secretary of Defense certifies (or recertifies within 10 years of a prior certification), and provides a copy of the certification to Congress, that—

"(I) use of asbestos containing product is necessary to the critical functions of the Department, which includes the use of the asbestos containing product in any weaponry, equipment, aircraft, vehicles, or other classes or categories of property which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature;

"(II) no reasonably available and equivalent alternatives to the asbestos containing product exist for the intended purpose; and

"(III) use of the asbestos containing product will not result in a known unreasonable risk to health or the environment.

"(ii) NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.—The Administrator of the Environmental Protection Agency shall provide an exemption from the requirements of subsection (b), without review or limit on duration, if such exemption for an asbestos containing product is sought by the Administrator of the National Aeronautics and Space Administration and the Administrator of the National Aeronautics and Space Administration certifies, and provides a copy of that certification to Congress, that—

"(I) the asbestos containing product is necessary to the critical functions of the National Aeronautics and Space Administration;

"(II) no reasonable alternatives to the asbestos containing product exist for the intended purpose; and

"(III) the use of the asbestos containing product will not result in an unreasonable risk to health or the environment.

"(B) ADMINISTRATIVE PROCEDURE ACT.—Any certification required under subparagraph (A) shall not be subject to chapter 5 of title 5, United States Code (commonly referred to as the 'Administrative Procedure Act').

"(4) SPECIFIC EXEMPTIONS.—The following are exempted:

"(A) Asbestos diaphragms for use in the manufacture of chlor-alkali and the products and derivative therefrom.

"(B) Roofing cements, coatings, and mastics utilizing asbestos that is totally encapsulated with asphalt, subject to a determination by the Administrator of the Environmental Protection Agency under paragraph (5).

"(5) ENVIRONMENTAL PROTECTION AGENCY REVIEW.—

"(A) REVIEW IN 18 MONTHS.—Not later than 18 months after the date of enactment of this chapter, the Administrator of the Environmental Protection Agency shall complete a review of the exemption for roofing cements, coatings, and mastics utilizing asbestos that are totally encapsulated with asphalt to determine whether—

"(i) the exemption would result in an unreasonable risk of injury to public health or the environment; and

"(ii) there are reasonable, commercial alternatives to the roofing cements, coatings, and mastics utilizing asbestos that is totally encapsulated with asphalt.

"(B) REVOCATION OF EXEMPTION.—Upon completion of the review, the Administrator of the Environmental Protection Agency shall have the authority to revoke the exemption for the products exempted under paragraph (4)(B), if warranted.

"(d) DISPOSAL.—

"(1) IN GENERAL.—Except as provided in paragraph (2), not later than 3 years after the date of enactment of this chapter, each person that possesses an asbestos containing product that is subject to the prohibition established under this section shall dispose of the asbestos containing product, by a means that is in compliance with applicable Federal, State, and local requirements.

"(2) EXEMPTION.—Nothing in paragraph (1)—

"(A) applies to an asbestos containing product that—

"(i) is no longer in the stream of commerce; or

"(ii) is in the possession of an end user or a person who purchases or receives an asbestos containing product directly or indirectly from an end user; or

"(B) requires that an asbestos containing product described in subparagraph (A) be removed or replaced.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table of contents in section 1 of the Toxic Substances Control Act (15 U.S.C. prec. 2601) is amended—

(1) by inserting before the item relating to section 201 the following:

"Subtitle A—General Provisions";

and

(2) by adding at the end of the items relating to title II the following:

"Subtitle B—Ban of Asbestos Containing Products

"Sec. 221. Ban of asbestos containing products.".

SEC. 502. NATURALLY OCCURRING ASBESTOS.

(a) STUDY.—

(1) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall—

(A) conduct a study to assess the risks of exposure to naturally occurring asbestos, including the appropriateness of the existing risk assessment values for asbestos and methods of assessing exposure; and

(B) submit a report that contains a detailed statement of the findings and conclusions of such study to—

(i) the majority and minority leaders of the Senate;

(ii) the Speaker and the minority leader of the House of Representatives; and

(iii) the relevant committees of jurisdiction of the Senate and House of Representatives, including—

(I) the Environment and Public Works Committee of the Senate;

(II) the Appropriations Committee of the Senate;

(III) the Judiciary Committee of the Senate;

(IV) the Energy and Commerce Committee of the House of Representatives;

(V) the Judiciary Committee of the House of Representatives; and

(VI) the Appropriations Committee of the House of Representatives.

(2) DEVELOPMENT REQUIREMENTS.—

(A) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency, in consultation with appropriate Federal and State agencies and other interested parties after appropriate notice, shall establish dust management guidelines, and model State regulations that States can choose to adopt, for commercial and residential development, and road construction in areas where naturally occurring asbestos is present and considered a risk. Such dust management guidelines may at a minimum incorporate provisions consistent with the relevant California Code of Regulation (17 C.C.R. 93105–06).

(B) DUST MANAGEMENT GUIDELINES.—Guidelines under this paragraph shall include—

(i) site management practices to minimize the disturbance of naturally occurring asbestos and contain asbestos mobilized from the source at the development site;

(ii) air and soil monitoring programs to assess asbestos exposure levels at the development site and to determine whether asbestos is migrating from the site; and

(iii) appropriate disposal options for asbestos-containing materials to be removed from the site during development.

(b) TESTING PROTOCOLS.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency, in consultation with appropriate State agencies, shall establish comprehensive protocols for testing for the presence of naturally occurring asbestos.

(2) PROTOCOLS.—The protocols under this subsection shall address both ambient air monitoring and activity-based personal sampling and include—

(A) suggested sampling devices and guidelines to address the issues of methods comparability, sampler operation, performance specifications, and quality control and quality assurance;

(B) a national laboratory and air sampling accreditation program for all methods of analyses of air and soil for naturally occurring asbestos;

(C) recommended laboratory analytical procedures, including fiber types, fiber lengths, and fiber aspect ratios; and

(D) protocols for collecting and analyzing aggregate and soil samples for asbestos content, including proper and consistent sample preparation practices suited to the activity likely to occur on the soils of the study area.

(c) EXISTING BUILDINGS AND AREAS.—Not later than 1 year after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall issue public education materials, recommended best management practices and recommended remedial measures for areas containing naturally occurring asbestos including existing—

(1) schools and parks; and

(2) commercial and residential development.

(d) MAPPING.—The Secretary of the Interior shall—

(1) acquire infrared mapping data for naturally occurring asbestos, prioritizing California counties experiencing rapid population growth;

(2) process that data into map images; and

(3) collaborate with the California Geological Survey and any other appropriate State agencies in producing final maps of asbestos zones.

(e) RESEARCH GRANTS.—The Director of the National Institutes of Health shall administer 1 or more research grants to qualified entities for studies that focus on better understanding the health risks of exposure to naturally occurring asbestos. Grants under this subsection shall be awarded through a competitive peer-reviewed, merit-based process.

(f) TASK FORCE PARTICIPATION.—Representatives of Region IX of the United States Environmental Protection Agency, and the Agency for Toxic Substances and Disease Registry of the United States Department of Health and Human Services shall participate in any task force convened by the State of California to evaluate policies and adopt guidelines for the mitigation of risks associated with naturally occurring asbestos.

(g) MATCHING GRANTS.—The Administrator of the Environmental Protection Agency is authorized to award 50 percent matching Federal grants to States and municipalities. Not later than 4 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall establish criteria to award such grants—

(1) for monitoring and remediation of naturally occurring asbestos—

(A) at schools, parks, and other public areas; and

(B) in serpentine aggregate roads generating significant public exposure; and

(2) for development, implementation, and enforcement of State and local dust management regulations concerning naturally occurring asbestos, provided that after the Administrator has issued model State regulations under subsection (a)(2), such State and local regulations shall be at least as protective as the model regulations to be eligible for the matching grants.

(h) AVAILABILITY OF FUNDS.—An amount of $40,000,000 from the Fund shall be made available to carry out the requirements of this section, including up to $9,000,000 for the Secretary of the Interior to carry out subsection (d), up to $4,000,000 for the Director of the National Institutes of Health to carry out subsection (e), and the remainder for the Administrator of the Environmental Protection Agency, at least $15,000,000 of which shall be used for the matching grants under subsection (g).

(i) CONSTRUCTION.—

(1) GUIDELINES AND PROTOCOLS.—The guidelines and protocols issued by the Administrator of the Environmental Protection Agency under the specific authorities in subsections (a), (b), and (c) shall be construed as nonbinding best practices unless adopted as a mandatory requirement by a State or local government. Notwithstanding the preceding sentence, accreditation for testing will not be granted except in accordance with the guidelines issued under subsection (b)(2)(B).

(2) FEDERAL CAUSES OF ACTION.—This section shall not be construed as creating any new Federal cause of action for civil, criminal, or punitive damages.

(3) FEDERAL CLAIMS.—This section shall not be construed as creating any new Federal claim for injunctive or declaratory relief against a State, local, or private party.

(4) STATES AND LOCALITIES.—Nothing in this section shall limit the authority of States or localities concerning naturally occurring asbestos.

Mr. KENNEDY. Mr. President, I understand there is no time limit on speeches. Am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. Many Senators on both sides of the aisle find the concept of a trust fund to compensate the victims of asbestos-related diseases appealing. I have consistently said that I would support a properly designed and adequately funded trust fund bill that would fairly compensate all the victims of asbestos-induced disease in a timely way. The problem is that S. 852 does not meet that standard. It is not properly designed and it is not adequately funded. Many seriously ill victims of asbestos disease are completely excluded from compensation under the fund. And the legislation does not even provide adequate revenue to ensure that all the victims who are eligible for compensation under the terms of the trust fund will actually receive what the legislation promises them. These are fundamental flaws that cannot be corrected by a few last minute amendments. They go to the heart of the bill.

The problem is that powerful corporate interests responsible for the asbestos epidemic have fought throughout this process to escape full accountability for the harm they have inflicted. As a result, the focus has shifted from what these companies should pay victims to what they are willing to pay them. That is preventing the Senate from enacting trust fund legislation that will truly help the workers who have been seriously injured by this industrial plague.

This legislation was constructed backwards. The first decision made was that the size of the trust fund could not exceed $140 billion over 30 years. Why? Because that was all the corporations whose reckless conduct created the asbestos problem were willing to pay. The Asbestos Study Group, the chief lobbyists for this legislation, began this process by promising "an evergreen fund" that would provide as much money as necessary over time to fairly compensate the victims of asbestos disease. But they soon reneged on that commitment. Instead, these companies are now insisting on an absolute cap on their liability—no matter how many victims are suffering from asbestos-induced disease or how serious their illnesses. Asbestos diseases take years, sometimes decades, to develop after the exposure to asbestos fibers. Thus, no one can say for sure how many victims there will be. The companies claim that they need financial certainty to plan for the future. What about the millions of victims of asbestos exposure who live every day under the cloud of asbestos disease? What about the ability of these workers and their families to plan for their future?

Each year, more than 10,000 of them die from lung cancer and other diseases caused by asbestos. Each year, hundreds of thousands of them suffer from lung conditions which make breathing so difficult that they cannot function at all. Even more become unemployable due to their medical condition. And, because of the long latency period of these diseases, all of them live with fear of a premature death due to asbestos-induced disease. These are the real victims. Aren't they entitled to the certainty of knowing that, should the worst happen, they and their families will be fairly compensated? All S. 852 offers them is an inadequately funded trust fund that most experts believe will be insolvent within a few years.

The real crisis which confronts us is not an "asbestos litigation crisis," it is an asbestos-induced disease crisis. All too often, the tragedy these workers and their families are enduring becomes lost in a complex debate about the economic impact of asbestos litigation. We cannot allow that to happen. The litigation did not create these costs. Exposure to asbestos created them. They are the costs of medical care, the lost wages of incapacitated workers, and the cost of providing for the families of workers who died years before their time. Those costs are real. No legislative proposal can make them disappear. All legislation can do is shift those costs from one party to another. Unfortunately, S. 852 would shift more of the financial burden onto the backs of injured workers. That is unacceptable.

Senators SPECTER and LEAHY have devoted an enormous amount of time and effort to this asbestos trust fund legislation. They did not set the arbitrary $140 billion ceiling. The Republican leadership made clear that the trust fund could not exceed that amount regardless of the legitimate needs of asbestos victims. The sponsors were left with the unenviable task of deciding which worthy claims to exclude. As a result, the bill before us contains fundamental flaws, which make it both unfair and unworkable. It does not provide a reliable guarantee of just compensation to the enormous number of workers who are suffering from asbestos-induced disease.

The argument that there are serious inadequacies in the way asbestos cases are adjudicated today does not mean that any legislation is better than the current system. Our first obligation is to do no harm. We should not be supporting legislation that excludes many seriously ill victims from receiving compensation and that fails to provide a guarantee of adequate funding to make sure that these injured workers covered by the trust fund will actually receive what the bill promises them. This bill will do harm to these asbestos victims.

The list of serious flaws in S. 852 is, unfortunately, a long one. I will focus my remarks on several of the most egregious.

Experts tell us that the asbestos trust created by this legislation is seriously underfunded. The funding plan in this bill relies on very substantial borrowing in the early years as the only way to pay the flood of claims. The result will be huge debt service costs over the life of the trust that could reduce the $140 billion intended to pay claims by as much as 40 percent. The amount remaining would be far too little to pay the claims of all of those who are entitled to compensation under the terms of the bill.

In addition, there is a strong constitutional argument that the existing bankruptcy trusts cannot be forced to turn over all their assets, which will place $7.6 billion of the projected funding in jeopardy. Many companies are also likely to challenge their obligation to finance the asbestos trust. It is not at all clear how much money will actually be available to pay eligible victims what the legislation promises they will receive.

There is likely to be a serious shortfall in the early years, when nearly 300,000 pending cases will be transferred to the trust for payment. Studies show the trust will not have the resources to pay those claims in a timely manner. Payments to critically ill people may be delayed for years.

One way to reduce the enormous financial burden on the fund in the early years would be to leave many of those cases in the tort system, especially cases which were close to resolution. That would be fair to the parties in those cases and it would greatly improve the financial viability of the fund. Unfortunately, that proposal has been repeatedly rejected by the sponsors of the bill. As a result, there will be a serious mismatch between the number of claims the trust fund will face when its doors open and the payments coming into the fund. That will force major borrowing in the first 5 years. The debt service resulting from that borrowing will financially cripple the trust.

In its August report, CBO recognizes the seriousness of this debt-service problem, explaining:

> Because expenses would exceed revenues in many of the early years of the fund's operations, the Administrator would need to borrow funds to make up the shortfall. The interest cost of this borrowing would add significantly to the long-term costs faced by the fund and contributes to the possibility that the fund might become insolvent.

In a response to inquiries from Judiciary Committee members last week, CBO issued an even more dire warning about the likelihood of insolvency:

> There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, as well as debt-service and administrative costs. There is also some likelihood that the fund's revenues would be sufficient to meet those needs. The final outcome cannot be predicted with great certainty. Without a substantial increase in the resources available to the fund, there is no way to guarantee that the fund will not either revert to the court system or require additional funding.

That statement should trouble every Senator on both sides of the aisle. There is "a significant likelihood that the fund's revenues would fall short." While we may disagree on other issues regarding compensation for asbestos victims, each of us knows that it would be disastrous—for victims and businesses alike—to create a trust fund that cannot meet its financial commitment to victims and is destined for insolvency. None of us want to see that result. We cannot in good conscience ignore the warnings from the Congressional Budget Office and from other experts.

In addition to the concerns CBO has identified, there are other major problems with S. 852 related to the projections of pending and future claims that could push the trust fund even further out of balance.

For example, there has been a significant increase in the number of mesothelioma cases in recent years. The only known cause of mesothelioma is asbestos exposure. This new information suggests that the CBO cost estimate may understate the cost of the mesothelioma claims that the trust fund will incur by more than $15 billion. This is by no means the only instance where there is strong evidence to suggest that the number of eligible claimants will substantially exceed CBO estimates.

If S. 852 is enacted, the U.S. Government will be making a commitment to compensate hundreds of thousands of seriously ill asbestos victims, but will not have ensured that adequate dollars are available to honor its commitment. That will precipitate a genuine asbestos crisis, and this Congress will bear the responsibility for it. Since the trust fund will be borrowing extensively from the U.S. Treasury in its first few years of operation; if it does become insolvent, there will be a direct impact on American taxpayers.

The legislation before us would close the courthouse doors to asbestos victims on the day it passes, long before the trust fund will be able to pay their claims. Their cases will be stayed immediately. Seriously ill workers will be forced into a legal limbo for up to 2 years. Their need for compensation to cover medical expenses and basic family necessities will remain, but they will have nowhere to turn for relief.

Under the legislation, even exigent health claims currently pending in the courts will be automatically stayed for 9 months as of the date of enactment. An exigent health claim is one in which the victim has been diagnosed "as being terminally ill from an asbestos-related illness and having a life expectancy of less than one year."

By definition, these cases all involve people who have less than a year to live due to mesothelioma or some other disease caused by asbestos exposure. Their cases would all be stayed for 9 months. Nine months is an eternity for someone with less than a year to live. Many of them will die without receiving either their day in court or compensation from the trust fund.

The stay language is written so broadly that it would even stop all forward movement of a case in the court system. A trial about to begin would be halted. An appellate ruling about to be issued would be barred. Even the deposition of a dying witness could not be taken to preserve his testimony. The stay would deprive victims of their last chance at justice. I cannot believe that the authors of this bill intended such a harsh result, but that is what the legislation does.

The bill does contain language allowing an "offer of judgment" to be made during the period of the stay in the hope of producing a settlement. However, this provision is unlikely to resolve many cases because it requires the agreement of the defendants. There is no incentive for defendants to agree to a settlement when the case has been stayed. Those who have tried cases know that it is only the imminence of judicial action which produces a settlement in most cases. Delay is the defendant's best ally; and under this bill, the case is at least delayed for 9 months and may never be allowed to resume if the fund becomes operational. If, however, these exigent cases were not stayed, and judicial proceedings could continue, there would be far more likelihood of cases settling under the offer of judgment process.

I strongly believe that, at a minimum, all exigent cases should be exempted from the automatic stay in the legislation. Victims with less than a year to live certainly should be allowed to continue their cases in court uninterrupted until the trust fund became operational. Their ability to recover compensation in the court should not be halted until the trust fund is open for business and they are able to receive compensation from that fund. It is grossly unfair to leave these dying victims in a legal limbo. For them, the old adage is especially true—justice delayed is justice denied.

Under the legislation, defendants would receive a credit against what they must contribute to the trust fund for whatever payments they make to these dying victims; so they would not be "paying twice," as some have claimed.

Allowing the exigent cases to go forward in the courts without interruption is a matter of simple fairness. Staying the cases of victims who have less than a year to live is bureaucratic insensitivity at its worst. Most of these victims will not live to see the doors of the trust fund open.

We should not deprive them of their last chance—their only chance—to receive some measure of justice before asbestos-induced disease silences them. They should be allowed to receive compensation in their final months to ease their suffering. They should be allowed to die knowing that their families are financially provided for. S. 852 in its current form takes that last chance away from them.

I intend to offer an amendment to allow these severely ill victims to have their day in court.

The way the legislation is written, victims will lose out at the back end of the process as well, should the trust fund run out of money after several years of operation.

If the trust fund does become insolvent, a very real possibility, workers will not have an automatic right to immediately return to the court system. The process outlined in the current bill could take years. Workers could end up trapped in the trust with reduced benefits and long delays in receiving their payments. There needs to be a clear, objective trigger—inability of the trust to pay a certain percentage of claims within a set period of time—that will automatically allow victims to pursue their claims in court if the trust runs out of money. The Judiciary Committee's 2003 legislation contained such a provision, but this bill does not. We cannot allow seriously injured workers with valid claims who are not paid in a timely manner by the trust to be denied their day in court. That would be a shameful injustice.

The asbestos trust is being presented as an alternative source of compensation for victims suffering from asbestos-induced disease. If that alternative runs out of money and can no longer compensate those victims in a full and timely manner, their right to seek compensation through the judicial system should be immediately restored with no strings attached. No principle is more basic. Yet this bill violates that principle.

I am particularly upset by the way lung cancer victims are treated in this bill. Under the medical criteria adopted by the Judiciary Committee overwhelmingly 2 years ago, all lung cancer victims who had at least 15 years of weighted exposure to asbestos were eligible to receive compensation from the fund. However, that was changed in S. 852. Under this bill, lung cancer victims who have had very substantial exposure to asbestos over long periods of time are denied any compensation unless they can show asbestos scarring on their lungs. The committee heard expert medical testimony that prolonged asbestos exposure dramatically increases the probability that a person will get lung cancer even if they do not have scarring on their lungs. Deleting this category will deny compensation to more than 40,000 victims suffering with asbestos-related lung cancers. Under the legislation as now drafted, these victims are losing their right to go to court, but receiving nothing from the fund. How can any of us support such an unconscionable provision?

Since we began considering asbestos legislation, no aspect has concerned me more than the treatment of lung cancer victims. My top priority has been to make sure that these severely ill workers receive just and fair compensation.

And I have not been alone. A number of other Members have spoken out about the importance of adequately providing for lung cancer victims who have been exposed to substantial amounts of asbestos over long periods of time.

Now we find that these victims, many of whom will have their lives cut short because of asbestos-induced disease, will not receive one penny in compensation from the trust fund. They are losing their right to go to court, but being denied any right to compensation under the fund. They are, in essence, being told to suffer in a legally imposed silence with no recourse whatsoever.

One of the arguments we hear most frequently in favor of creating an asbestos trust fund is that in the current system, too much money goes to people who are not really sick and too little goes to those who are seriously ill. Well, lung cancer victims who have years of exposure to asbestos are the ones who are seriously ill. They are the ones this legislation is supposed to be helping. Yet they are being completely excluded.

The committee heard extensive testimony from distinguished medical experts—Dr. Laura Welsh and Dr. Philip Landrigan—that prolonged exposure to asbestos can cause lung cancer even if the victim does not also have markers of nonmalignant asbestos disease. They cited numerous medical authorities supporting their position. They even described treating lung cancer victims whose disease was clearly caused by asbestos but who had neither pleural thickening or asbestosis.

In a situation where people are undeniably severely ill and undeniably had 15 or more years of weighted exposure to asbestos, it is wrong to completely exclude them from compensation under the trust fund. Some of the proponents of S. 852 have attempted to justify excluding them by claiming that smoking probably caused their lung cancers. But, the evidence refutes this contention.

First, even those lung cancer victims with 15 or more weighted years of exposure to asbestos who had never smoked were removed from eligibility for compensation under the trust fund. So this is about more than just the relationship between asbestos and smoking.

Second, regarding the smoking issue, Dr. Landrigan testified that smokers who have substantial exposure to asbestos have 55 times the background risk of developing lung cancer, while smokers who were not exposed to asbestos have 10 times the background risk of developing lung cancer. Clearly, the asbestos exposure makes a huge difference.

There is a powerful synergistic effect between asbestos and tobacco in the causation of lung cancer. Both are substantial contributing factors to the disease. The smoker with substantial asbestos exposure should receive less compensation from the trust fund than the nonsmoker with lung cancer. That principle appears throughout the bill. But smoking is not a reason to exclude the smoker from all compensation.

Without prolonged exposure to asbestos, the smoker would have been far less likely to contract lung cancer. It is a gross injustice to completely exclude these severely ill workers.

Any person who was exposed to asbestos for 15 or more weighted years and now has lung cancer should be eligible for compensation from the trust fund. It would not be automatic. Their cases would be reviewed individually by a panel of physicians to determine whether asbestos was a "substantial contributing factor" to their lung cancer. These 40,000 victims of asbestos should not be arbitrarily excluded from receiving compensation. They were included in the original legislation, it was agreed to by medical experts for both business and labor, and that provision should be restored to the bill. I will be proposing an amendment to rectify this serious injustice.

This bill also tampers with the agreed-upon medical criteria carefully negotiated between representatives of business and labor by raising the standard of proof for each disease category. The language in S. 852 requires the workers to prove that asbestos was "a substantial contributing factor" to their disease, instead of just "a contributing factor." This is a major increase in the burden workers must overcome to receive compensation. It is significantly higher than most states currently require in a court of law. Rather than having to show that asbestos exposure contributed to their illness, they will now have to address the relative impact of asbestos and other potential factors. This change is a serious step in the wrong direction, raising the bar even higher on injured workers.

Another major shortcoming of this legislation is its failure to compensate the residents of areas that have experienced large-scale asbestos contamination. S. 852 simply pretends that this problem does not exist. It fails to compensate the victims of all asbestos-induced diseases, other than mesothelioma, whose exposure was not directly tied to their work. There is very substantial scientific evidence showing that the men, women and children who lived in the vicinity of asbestos-contaminated sites, such mining operations and processing plants, can and do contract asbestos-induced disease.

The reason that this legislation needs a special provision to compensate the residents of Libby, MT, is because it does not compensate victims of community contamination generally. The residents of Libby are certainly entitled to compensation, but so are the residents who lived near the many processing plants from Massachusetts to California that received the lethal ore from the Libby mine. The deadly dust from Libby, MT, was spread across America. W.R. Grace shipped almost 10 billion pounds of Libby ore to its processing facilities between the 1960s and the mid 1990s. One of the places it was shipped was to the town of Easthampton, MA, where the operations of an expanding plant spread the asbestos to the surrounding environment, into the air and onto the soil. I intend to discuss this problem in great detail as the debate moves forward.

I raise it now as a dramatic example of one of the major injustices caused by the arbitrary exclusion of a large number of asbestos victims from compensation under the trust fund. Nor is the problem of community contamination limited to the sites receiving ore from Libby. Community asbestos contamination can result from many different sources. For example, medical experts believe it may result from exposure to asbestos after the collapse of the World Trade Center. Because of the long latency period, we often do not learn about community asbestos contamination until long after it occurs. Certainly these victims of asbestos are entitled to fair treatment as well. They should not be arbitrarily excluded from compensation as if their suffering is somehow less worthy of recognition than the suffering of other asbestos victims. Yet that is what S. 852 does.

This is a bill that shifts more of the financial burden of asbestos-induced disease to injured workers by unfairly and arbitrarily limiting the liability of defendants. It does not establish a fair and reliable system that will compensate all those who are seriously ill due to asbestos. It lacks a dependable funding stream which can ensure that all who are entitled to compensation actually receive full and timely payment. These are very basic shortcomings.

We cannot allow what justice requires to be limited by what the wrongdoers are willing to pay. I intend to vote no and I urge my colleagues to do the same.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Utah.

Mr. HATCH. Mr. President, I rise today to speak in favor of S. 852, the bipartisan Fairness in Asbestos Injury Resolution Act of 2005. I commend the majority leader and Chairman SPECTER and Senator LEAHY for seizing the bull by the horns and proceeding with this vitally important litigation. And it is bipartisan legislation.

Make no mistake about this—this bill is not perfect. There are some things in the act that I wish were different, but that is the nature of the legislative process. It is about compromise and negotiation.

In a moment, I will speak to specific aspects of this bill. But before I do, I would like to take a moment to respond to some of the allegations that my colleagues made on the floor yesterday.

Some of them spoke of corruption. They spoke of undue influence wielded by lobbyists. And they spoke of fairness.

The truth is, this legislation is badly needed. Personal injury lawyers—some personal injury lawyers—are profiting at the expense of asbestos victims and manufacturers alike.

This bill is about fairness, justice, and certainty. It has become a bill that has tried to do away with fraud because this situation is fraught with fraud—fraud on American businesses, fraud on American consumers, and, more importantly, fraud on asbestos victims.

Let me tell you what this bill does. This bill provides real compensation to real victims with real injuries. This bill stops a rampaging personal injury trial bar. This bill fixes a broken legal system that benefits personal injury lawyers at the expense of asbestos victims. And this bill provides certainty to everyone involved.

Some of my colleagues on the other side have called S. 852 special interest legislation. If helping sick people and preventing fraud constitutes special interest action, then maybe they could get away with that charge. But I am very proud—and I think anybody who supports this bill would be proud—to support legislation that assists those special interests.

I ask my colleagues: Do you know who opposes this bill? It is the personal injury lawyers involved. They are a small cadre of the total number of American Trial Lawyers Association members. These trial lawyers have fought this legislation the same way the old gunslingers fought the law in the Wild West. Some of my colleagues have spoken of bragging lobbyists. The only people I have ever heard bragging about the scams that are going on are some of these personal injury lawyers.

Do you know when I heard them bragging? Last Congress, when we failed to invoke cloture on this bill's predecessor. It was not lobbyists or manufacturers or asbestos victims who were having some celebratory steak and champagne dinners in 2004; it was the personal injury lawyers. Why would they celebrate? They were celebrating because they successfully preserved their 40-percent payout on massive class action lawsuits and the exorbitant transaction costs that raise the amounts taken from victims to almost 60 percent, with only about 40 percent given to the victims. They were celebrating because their meal ticket was not taken away from them. Not this time.

Before I continue, I wish to point out not all personal injury lawyers are bad, certainly not all trial lawyers. I was a trial lawyer in my younger days. I know most of them are good people with good intentions. However, as they say, it only takes one bad apple to spoil the whole bushel.

We face an asbestos litigation crisis of unparalleled magnitude. Real asbestos victims with horrific injuries are receiving pennies on the dollar, while people who are not sick, or at least their lawyers, are receiving millions of dollars. American companies, businesses both large and small, many of which never produced or used asbestos fibers, are being forced into bankruptcy by fraudulent lawsuits. These bankruptcies hurt all Americans. Pensions are destroyed, jobs are lost, and all because our current legal system is vulnerable to unscrupulous trial lawyers. We have had the Supreme Court ask the Congress three times to weigh in on this and stop this mess from continuing. That is what we are trying to do with this bill.

According to the RAND Institute for Civil Justice, the asbestos crisis has been called the worst occupational health disaster in U.S. history. The personal injury bar has compounded that disaster by filing countless meritless claims that deprive the truly injured of their just and deserved compensation. The RAND Institute has found that approximately 730,000 people have filed asbestos claims through 2002. Despite the fact that asbestos claims should decrease each year due to OSHA and, to some extent, EPA actions in the 1970s and 1980s which severely curtailed national asbestos exposure, we have seen a significant increase in the number of claims, particularly nonmalignant claims, during the last 15 years. It is a gravy train for some of these lawyers. That does not dismiss the fact that there are people who are hurt by this, many of whom are not going to get a dime because a large number of their companies are bankrupt.

The large number of claims—expected to burgeon to the million-plus mark in the not-so-distant future—has resulted in 77 bankruptcies, the loss of some 60,000 jobs, or workers' privileges, and the depletion of countless pension programs. Moreover, due to the nature and number of these claims, compensation for the truly ill is often arbitrary and inequitable. According to the RAND Institute study, only 42 cents of every dollar spent on asbestos litigation actually goes to the asbestos victims; 31 cents goes to defense costs, and 27 cents goes to plaintiffs' attorneys. The situation becomes all the more deplorable when one factors in the ghastly specter of fraud. One study has shown that 41 percent of audited claims of alleged asbestosis or pleural disease were found to have either no disease or a less severe disease than alleged by the personal injury experts. That is simply unacceptable. We are trying to solve that problem.

At present there are more than 300,000 asbestos-related claims pending before this Nation's courts. Company after company has plunged into bankruptcy with disastrous results. Some victims have gone without compensation and many have nowhere to turn. Thousands have lost their jobs. The only winners in most cases are the personal injury lawyers. Asbestos trial lawyers have pulled in over $20 billion in attorney's fees. One actuarial firm estimates that personal injury lawyers are expected to filch another $40 billion before they run out of victims. I don't have any problem with lawyers getting contingent fees for legitimate cases. I don't have any problem with that. But the fact is, many of these cases are not legitimate. It is time to make a choice. That choice is between private jets for trial lawyers and meaningful compensation for asbestos victims.

Before I move on to the operational aspects of this legislation, I wish to take a moment to talk about the victims of asbestos exposure. Unfortunately, veterans comprise a large percentage of this group. I wish to make a plea on their behalf. This may be the last chance to help the men and women who served this country with such distinction and who, as a result of that service, were exposed to asbestos fibers. Time is rapidly running out for this group and many, if not most, of the companies they could turn to are now bankrupt, mainly because of these lawsuits. Even if they are not bankrupt, lawsuits take so much time and the verdicts are so uncertain that many will be cheated out of their just compensation. Even if some of these fine men and women manage to obtain a verdict against a company with sufficient assets to make good on the obligation, about 58 percent of the award would be consumed not by the victim but by trial lawyers. That is plain wrong.

Let me tell you how this bill works. S. 852 will compensate legitimate asbestos victims in a timely fashion on a no-fault basis. They are not going to have to go to court to prove their case. Claimants must demonstrate they meet certain medical criteria—and those criteria were agreed on in a bipartisan agreement—but once that threshold showing has been made, thereby assuring that only the truly sick are compensated, the claimants will receive timely compensation based upon the nature of the injury.

Some of my colleagues asserted that all claimants under this bill obtain a one-size-fits-all settlement if they meet the medical criteria requirements. As Chairman SPECTER has pointed out, that is plain wrong. There are nine tiers and corresponding awards under this bill, and it allows for further compensation if the condition worsens, meaning if a claimant had a level 2 injury that later developed into a level 8 injury or more serious injury, that individual can obtain compensation up to the level 8 or more serious tier. That makes sense to me.

It is worth pointing out that in addition to providing a no-fault and timely compensation system, the FAIR Act provides certainty to asbestos victims by taking away the whims of juries and the avarice of some of these personal injury lawyers. Under this bill, if you are sick, you will be compensated. Furthermore, this bill promotes economic stability and preserves jobs by taking the uncertain burden of direct and residual asbestos liability away from manufacturers, insurers, and others, and levying a measurable, known, and beneficial sum that will help those truly in need. In other words, they will have to pay, but it will be done on a reasonable, decent basis, so that those who are suffering will get paid in the end, where many of them will not under the current system.

For the victims, it provides meaningful compensation in a relatively short order. It is no-fault compensation for them. For the manufacturers and other defendant entities, it removes the parasitic personal injury bar from the picture and assures that asbestos dollars reach asbestos victims.

Finally, this bill contains an asbestos ban that will help lower asbestos exposure beyond what OSHA has achieved.

I was surprised to hear some opponents of this bill say S. 852 is not ready, that any action on this measure would be premature. Frankly, I am somewhat shocked by this. I will not go into the full history of the bill. In fact, I will limit my discussion of its development to the 107th Congress and beyond. But I must note that efforts in this area predate my efforts and the efforts of then-Chairman LEAHY in the 107th Congress.

Now with tremendous effort, Chairman SPECTER and Ranking Member LEAHY have worked this through in a way that has greatly improved what we were trying to do back then. The Judiciary Committee has held at least a half dozen hearings on asbestos issues, and we have held several exhaustive markups over the years. In addition, I note that Chief Judge Emeritus of the Third Circuit, Edward R. Becker, and now-Chairman SPECTER held at least 36 meetings with stakeholders to reach the compromise before us. This was a monumental effort by Senator SPECTER and Former Chief Judge Edward R. Becker. I just saw Chief Judge Becker over in the Dirksen Building. I know the sacrifices he has made to try and help us on this matter. And to have this bill called special interest legislation, when we have had people such as Judge Becker work out these details by meeting with all concerned, including the trial lawyers, including businesses and individuals and groups and so forth, I don't know when anybody has made such an effort as both Chairman SPECTER and Judge Becker.

We are currently on the third asbestos bill since the beginning of the 108th Congress. We have moved from S. 1125, which was the subject of a 4-day markup over 2 months, to S. 2290, to S. 852. Finally, after a 6-day markup, which also spanned 2 full months, the Judiciary Committee reported the current bill with a bipartisan 13-to-5 vote. That doesn't sound like special interest legislation to me. And it isn't.

With that in mind, it is hard to understand how opponents of this bill can claim with a straight face that this bill is not ready for consideration by the full Senate. That is ridiculous. Can it be amended? Surely. That is why we debate. Can we change aspects of it? Surely. That is why we debate. That is why we have this debate on the floor, if we are ever allowed to debate it.

This brings me to some of the outstanding criticisms of this legislation. First, we have heard it hurts small businesses. Since it is unclear to me what the deleterious effects on small business may be, I find it difficult to even spend time trying to refute those types of baseless charges. I would ask my colleagues who hold this belief to expound upon the allegation so we can better understand their concerns. However, before they do so, I ask my colleagues to look at the small business exception contained within S. 852, specifically section 204(b) of this act. Small businesses do not have to contribute to the fund while at the same time they receive its benefits. I have a hard time understanding why this is bad for small businesses. After all, they do get something for nothing.

The next major objection focuses on the removal of pending cases from court. Such action is unfair, they say. Well, I am puzzled by this assertion as well. First, cases that have proceeded to the evidentiary stage of the trial are not touched by this act. Secondly, the underlying premise of this bill focuses on two things: one, the uncertainty of jury trials and the ability of defendants to pay; two, the parasitical impact some of these voracious trial lawyers have on the process. This bill will provide certainty to the process, ensure those who have been injured will receive compensation, and make sure compensation so awarded goes to the victims and not to the trial bar in such dimensions as we have had so far. In fact, the trial bar will be entitled to fees under this bill; they just won't be as high because the proof is a no-fault proof. It is like rolling off a log. I ask my colleagues, how is that unfair?

The next assertion focuses on the amount of the trust fund. It is not enough to say it is not enough. That is what they say. To that I say, the CBO seems to think the amount falls within the estimated range of claims and, further, that this amount was agreed upon by Majority Leader FRIST and then-Minority Leader Daschle after extensive negotiation. Overall, it would seem some Members on the other side of the aisle want to prevent us from proceeding to this bill. While I am not surprised by obstructive tactics—we have seen them before; I saw a good deal of them during the last Congress and I know enough to be able to say with confidence that what looks like a duck and quacks like a duck is, in fact, a duck—it is obstruction. Why can't we debate this bill up and down? Why don't we get into it? If we have legitimate objections, I am sure the distinguished chairman and ranking member will consider them. That is why we debate these things. I am nonetheless disturbed by the tactics of some on the other side, given the tremendous importance of this legislation to our country.

As I say, the Supreme Court no less than three times asked us to do this—or at least to find some solution to this massive litigation crisis that is clogging our courts, hurting the country, and costing everybody an arm and a leg, without doing the justice to victims that this bill will do.

It is troubling when we consider that without the FAIR Act, more and more Americans are certain to lose their jobs, and more and more victims of asbestos exposure will go without compensation. This all goes to show that personal injury lawyers are a powerful force, and some on the other side of the aisle are willing to hear the voice of the personal injury bar over the voices of hard-working Americans who want to keep their jobs and pensions. Don't tell me about special interest legislation. We all know what special interest is driving the opponents of this bill.

The fact is that this bill continues to create a fair and efficient alternative compensation system to resolve the claims for injury caused by asbestos exposure. The fund is capitalized through private contributions from defendants and insurers, not the Government, and compensates victims under medical criteria that we reached on a bipartisan basis. I thought once we got the medical criteria, this bill should go forward. We had a lot of people on both sides saying they want to support it. Now we are here, and this is the chance to do it. If you don't like it, file amendments. I am sure the distinguished chairman and ranking member will give consideration to the amendments. The bill brings uniformity and rationality to a broken system so that resources are more effectively directed toward those who are truly sick.

I know the last asbestos bill contained no fewer than 53 compromise measures demanded by the Democrats last year. Moreover, I know this bill contains many more. Chairman SPECTER and Ranking Minority Member LEAHY are still working with the labor unions and others to improve the bill. This bill did not sneak up on anybody. It is not the instrument of a wayward group of influential lobbyists. The bipartisan FAIR Act is the product of years of negotiation and hard work—bipartisan people who are interested in solving problems, not creating them.

Not only does this bill guarantee fair compensation to victims, it guarantees faster and more certain compensation at that. We anticipate that claimants will not have to endure years of discovery battles and endless litigation before they get paid. Currently, whether some victims get paid depends on the solvency of businesses. But under the FAIR Act, these victims will no longer have to go without payment. It is time to end the current system of jackpot justice, where only some win and many lose.

Let me mention one group—the mesothelioma victims. Most of them have no chance at being fairly compensated because they work for companies that are now bankrupt. This bill takes care of them and helps them with their problem. Given that this bill is a clear net monetary gain for legitimate victims and provides payments faster and with more certainty, I am at a loss as to why anybody would object to this bill or object to a full and fair debate and a vote up or down. Quite frankly, the only entities that stands to lose under this bill are a handful of personal injury lawyers who have guzzled more than $20 billion of the costs incurred on this issue as of the end of last year. If the improved FAIR Act is passed, they will not be able to leverage unimpaired claims to squeeze a projected $40 billion more for themselves from remotely connected companies by abusing a broken system.

I support compensating attorneys for the value of their work, no question. Honest lawyers deserve to be paid. But when the lawyers get rich while diverting valuable resources away from sick victims and to people who are not victims, people who don't deserve compensation, which is going on here, something is wrong with the system. But you don't need me to tell you this; the Supreme Court, think tanks, and other nonpartisan commentators have been saying it for years.

We have a serious problem on our hands which demands this body's full attention. I applaud our majority leader, the chairman of the Judiciary Committee, Senator SPECTER, and his ranking member, Senator LEAHY, for bringing this bill to the floor. The time to act is now. I would like to see us go forward in a legitimate, honest way to try to solve these problems. If people on either side have objections to the bill or have a reason to try to change it, they can bring amendments forward, and let's battle it out. The chairman has been very open to accepting good ideas. He has consistently done that throughout this process. I don't think anybody can find fault with our chairman for the way he has operated on this bill and how hard he has worked.

We have studied this asbestos problem at length, for decades. We have held numerous hearings, considered legislative proposals, and even underwent several marathon markups in the Judiciary Committee over the years. To the extent there are issues that remain unresolved, we can openly debate them on the floor of the Senate. .

The time has come to stop talking about doing something and take decisive action. Every day that passes is a day we withhold meaningful recovery to truly sick victims. Every day that passes is a day in which hard-working Americans at companies that had little or nothing to do with asbestos face decreased pensions and an uncertain employment future. Every day that passes is a day that we deny consideration of a comprehensive solution to one of the most plaguing civil justice issues of our time.

This is step one. If we can get a bill out of the Senate, this would move forward so fast. The House would have to come up with its legislation, and we would then go to conference. I have no doubt, having watched the chairman and ranking member, that they would be working in good faith to try to accommodate and please all legitimate points of view on these very profound and difficult issues. I compliment them one more time. These folks deserve that we debate this bill fully, that we have a vote up or down on the bill in the end, and that we go through this process and hopefully continue to improve the legislation so that we can do justice in our society.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, first, let me acknowledge the obvious. A lot of work has gone into this bill. Senator SPECTER, Senator LEAHY, and members of the Judiciary Committee, including Senator HATCH, have spent hours, days, weeks, and months preparing this bill. It is a bill that should have taken a long time because it is a bill that says something very basic and fundamental and, in many ways, revolutionary: It says we can no longer trust the court system in America. It says the court system is inadequate in America to compensate victims. That is a charge not made lightly, I am sure, by the sponsor of this legislation. It is one we should not take lightly on the floor of the Senate because we have established over the course of this Nation's history some things which are generally accepted by most Americans.

It is true that Congress and legislatures write the law. The President and executive branch enforce it. And when it comes to making decisions of how that law applies to our lives, we trust the courts. The decision has been made by those who are pushing this bill that we can no longer trust the courts. The decision has been made that we have to replace our court system with something else. If we are going to step away from a time-honored institution and tradition in America to create an alternative, it is a daunting task.

Those of us who have been critical of this legislation are going to hold the sponsors to some very fundamental questions. The first: Can you provide the same level of fairness and compensation in your new system that the courts of America provide today? The answer can be found in responses from victims groups around the country. The victims of asbestos have been writing to Members of Congress saying: Don't pass this legislation. The compensation you will give to the victims and their families is inadequate and unpredictable. Those families have come to see me. They have heartbreaking stories—stories of young men and young women whose lives were snuffed out because of exposure to asbestos. In not a single case have I ever met somebody who said: I guess I knew I had it coming to me; I decided to expose myself to asbestos. I never ran into a person like that or heard a story like that.

The victims of asbestos are as surprised by the diagnosis as they can be. It is no surprise to us when we consider this insidious disease. These flaky fibers which are breathed into the lungs can sit there like a timebomb for decades. Do you recall the movie actor named Steve McQueen? He died from mesothelioma. He was exposed to asbestos at some point in his life, which later exploded into a fatal lung disease. Earlier this week on the floor, I talked about my former colleague, Bruce Vento, of Minnesota, a Congressman from St. Paul. He was a picture of health and was in the gym every morning, and then he didn't feel well. He went to the doctor, and after a chest x-ray, they said: You were somehow in your life exposed to asbestos. Now you have mesothelioma and just months to live.

Those stories are repeated over and over again about men who worked in asbestos mines who got off scot-free and never developed a problem, but their wives at home, who shook out their work clothes before putting them into the washer, breathed in the fibers and contracted asbestosis and mesothelioma and died. It is insidious.

I could spend more than an hour telling you that, since 1934, the companies which have been creating asbestos products have known how dangerous this product is. I could, and maybe I will at some point, go through the extensive evidence of deception and cover-up by these companies so that their employees did not understand the serious dangers they were exposed to in the workplace, and the dangers that many of them took home in their work clothes. These victims and their families come to visit me—lovely young women from the Chicago suburbs with beautiful children, and they show pictures of families whose husbands were lost in their early forties to mesothelioma.

This bill says that compensation for victims of asbestos is capped at $1.1 million. If you happen to be a mesothelioma victim, that's only $1.1 million for medical bills, lost wages, and to raise children. That is a figure which might have sounded pretty large to start with, but it begins to be very modest when you look at individual victims and their families. That is why the victims have come to us and said: Don't replace the court system in America with this approach. It is not fair to the victims.

Others have come to us as well and said that the way you put the money into the trust fund, which is supposed to pay the victims, is a mystery. We have repeatedly asked the chairman of the Judiciary Committee who is the sponsor of the legislation, to provide us with the documentation. Please show us how $140 billion will adequately compensate the victims of asbestos exposure over the 50-year life span of this bill. We are still waiting for the information. So we are going to replace the court system with a trust fund. We are going to say that $140 billion will be enough for 50 years, without any evidence of how that number was arrived at or whether that number will really meet the needs of the victims. I will speak in a few moments about those experts who have analyzed this bill and found that the numbers underlying the assumptions are totally wrong.

Another group that comes to us to discuss this bill are those being asked to pay into the trust fund that will be created by this bill. The argument has been made on the floor, thank goodness, that the taxpayers won't have to pay into this. These will be businesses and insurance companies which will put money in the trust fund so they don't have to pay out asbestos claims any longer in court. Well, it turns out that some businesses will do quite well. Some of them are going to receive a windfall in terms of what they have put into this fund as opposed to what they might pay in court.

U.S. Gypsum is a company that has a large legal exposure for asbestos. Because of corporate reports they made public in the last couple of weeks, we now know that, in order for the company to pay out all the existing claims filed against USG by victims of asbestos, they estimate it will cost them in the range of $4 billion. This chart is an excerpt of an article from BusinessWeek dated January 27, 2006, which says, USG is willing to cough up $4 billion to settle victims' claims. That is $4 billion of asbestos exposure for this one corporation. So if they didn't pay that amount in court settlements, and instead came into this bill, what would they pay into this trust fund? That figure is $900 million, according to USG's own corporate report.

This is a windfall. They have to be smiling and praying this bill is going to pass because if it does, the company is off the hook for over $3 billion of legal liability that they even admit to in court. And who will make up the difference? Who is going to make up the $3.1 billion this company should be paying the victims? Other companies. Companies that may never have had many lawsuits filed against them because of asbestos, and companies that have never paid out a penny in terms of asbestos claims, even if they were sued. These smaller companies will be expected to pay millions and millions of dollars into this trust fund when larger companies are walking away with a windfall.

So we asked again to the sponsor of this legislation: If you cannot tell us how you arrived at the figure of $140 billion, can you at least give us the names of the companies and how much they are expected to contribute into this trust fund? And we are still waiting.

The chairman spoke yesterday about how he was going to subpoena these records. I hope they will be produced during the course of this debate. I hope we will have a list of all the businesses with——

Mr. SPECTER. Mr. President, will the Senator from Illinois yield for a question?

Mr. DURBIN. I will be happy to yield.

Mr. SPECTER. Is the Senator from Illinois aware of the fact that the Judiciary Committee, on which he serves, issued a subpoena and has the names of the companies that are going to be contributing to the trust fund.

Mr. DURBIN. I know the chairman made that statement yesterday, and I am hoping he will share that information.

Mr. SPECTER. Mr. President, I am advised by staff, since I posed the question, in a note to the effect that Senator DURBIN's staff did come to look at the list. Is the Senator from Illinois aware of that?

Mr. DURBIN. May I respond to the chairman by stating that I understand this information on the list has been characterized as confidential information before the committee and cannot be shared publicly.

Mr. SPECTER. The pending question—and I will be glad to answer his—is, Does the Senator from Illinois know that his staff came to look at the list?

Mr. DURBIN. I am aware of the fact they reviewed it, but I am also aware of the fact this has not been made public as part of this conversation and part of this record.

Mr. SPECTER. Mr. President, with all due respect, the issue isn't whether it has been made public, the issue is whether it is in existence, and the issue beyond being in existence is whether it is available to Members who have to vote on the bill. So when the Senator from Illinois asserts that you don't know who is making contributions, it is simply not so.

The issue of confidentiality is true. It has been raised by the companies because they are concerned that if it is disclosed how much they have contributed or are proposing to contribute that they may be targets for more litigation.

I don't wish to interrupt the Senator from Illinois further. I simply wish to make the point that he is wrong when he says we don't know who is going to contribute the money, and his own staffer has taken a look at the list.

Mr. DURBIN. Let me respond, if I may. Why is this cloaked in secrecy? Why is this a secret conversation? How can we have confidence that the $140 billion figure has any validity? How can we have confidence that the businesses that will be called on are going to be able to contribute to this fund if this is cloaked in secrecy and confidentiality? Most of these lawsuits are open, public record. It is hard for me to imagine that a business is going to be sued because someone has identified them as a potential contributor to this trust fund.

Nevertheless, if we are expected to replace the court system in America with this new trust fund system, how can we do it with any confidence if all the information is not on the table? Why the secrecy? What are we concealing? What we are concealing, frankly, is the most controversial elements of this bill: a question of whether $140 billion will actually pay the victims—and I doubt that it will—a question of whether companies are going to be asked to pay into this trust fund who shouldn't be asked to pay into the trust fund and, subsequently, may be forced into bankruptcy, closing their doors because of it. These are questions of great moment. To say a staff person can have access to secret files in an office hardly gives any comfort in the midst of a public debate about an issue of this magnitude.

Mr. SPECTER. Mr. President, will the Senator from Illinois yield further?

Mr. DURBIN. I will yield for a question.

Mr. SPECTER. Is the Senator from Illinois aware, putting it in the form of a question, that he has made a shift in positions, first asserting that we don't know who is going to contribute the money, then finding out that we do know who is going to contribute the money, that, in fact, his staffer has looked at that list, and he is now raising a different issue as to what is the need for secrecy?

That is not the point about which I raised the question. When he talks about litigation, there are many confidential matters in litigation which remain confidential on a showing of cause. So my question to the Senator from Illinois is, does he realize that he has shifted his position from objecting to the status where nobody knows who is contributing, changing to why the reason for the secrecy?

Mr. DURBIN. I say to the Senator from Pennsylvania——

Mr. SPECTER. As a couple of experienced trial lawyers and debaters, or at least he is an experienced trial lawyer and debater.

Mr. DURBIN. As the Senator from Pennsylvania is as well. In response, unless and until we put this information out to be reviewed in a comprehensive and honest way, I don't believe we can stand before the American people and say this is a good replacement for the courts of America.

Let me tell the Senator what happened. A member of my staff was invited to the Senator's office to view the secret list. He was warned ahead of time not to take any notes, not to make any copies, and not to disclose the nature and substance of the secret list because they were treated as committee confidential. My staffer went to view the list and reported to me the information wasn't very helpful in answering the most basic questions about the companies, their liability, and, of course, the impact on each company and whether they can survive the contributions to the trust fund.

Under the committee confidential rule the chairman has imposed on all staff members reviewing this list, I am not sure I can say much more about this secret list on the floor, but I will say this is a highly unusual process to have secret lists, secret information, and confidentiality, when we are literally talking about people's lives and health. I don't think the Senator can come forward and meet his burden of proof, to go back to the language of trial lawyers, that we should replace the court system in America based on secret lists kept in his office. That strikes me as a far cry from the kind of public debate which we should invite for this bill.

Mr. SPECTER. Mr. President, will the Senator yield further for a question?

Mr. DURBIN. I have been more than happy to yield, and I will continue to yield.

Mr. SPECTER. How can the Senator call it a secret list when it is available for his inspection?

Mr. DURBIN. I say to the Senator, when he makes it available for the inspection of all Members and the American people, it is no longer a secret list. Mr. President, is the Senator prepared to do that? That is my question, without yielding the floor to the Senator.

Mr. SPECTER. I will review the matter with the view to see if we can make it public. I am open to any modification which is reasonable. I am not bound by any protocol, and I will go back to the providers of the list to see if it can be made available. But when the Senator from Illinois asserts that it is secret, he is simply wrong. It is not secret. He can look at it. I think he raises a good point when he says that nobody can make a copy of it.

Offhand, on horseback, on one foot, I think staffers should be able to make a copy of it. Take the copy and show it to the Senator. I think that is reasonable, with the agreement of the staffer and the Senator that if we decide to retain the confidentiality, they will respect that. I trust Senator DURBIN and I trust his staff to honor confidentiality if we stick with it.

As I say, I will review that as well. But Senator DURBIN has to make a decision. I am sure Senator DURBIN has an open mind on this question. Now that I reflect on it, I am not so sure he does have an open mind on this question, and he doesn't have to have an open mind on this question. I think he raises a good point when he says we ought to know who contributes the money. I raised hell to get the information and finally had to raise a subpoena to get the information. We have it so that it is available for those who have to make a decision.

When he carries the point further that he would like to see it made public, if I can accommodate that, I will.

Mr. DURBIN. I was happy to yield again to the Senator, whom I respect very much. I tell him, for the record, on May 25 of last year, we sent a letter to him about Goldman Sachs, asking that we have some information about the $140 billion figure, how it was arrived at, and how it will be paid for. So this is not the first time this issue has come up.

It is curious to me that we are writing a bill that is going to change the laws of all the States of America, and if we are going to close those courtrooms across America. Yet the Senator from Pennsylvania had to issue a subpoena to obtain a list of the names of the companies that are going to contribute to the trust fund. This is a very strange process.

Usually, legislation emanates from within Congress and affects the outside world. It appears that the secret list at issue emanated from the outside and whoever created it wasn't anxious to share it. So if there is skepticism by those of us critical of the bill, I think there is good reason.

We never received a reply to our May letter of last year. It is an indication to me that this whole process has been very unusual and very different from any process I have seen.

Somewhere, someone has come up with a number as to how much we need to compensate these victims, and someone has come up with a source on how that number will be arrived at, and the chairman had to go to the lengths of subpoenaing the information that was the basis for this bill that will affect hundreds of thousands of Americans and their lives.

Mr. SPECTER. Mr. President, will the Senator will yield further?

Mr. DURBIN. I will be happy to yield.

Mr. SPECTER. When he says I haven't responded to his letter, I have responded to his letter by getting him the information. The Senator from Illinois is diligent, resourceful, and raises lots of questions. I would challenge him to say I haven't responded to all of them.

Mr. DURBIN. I say to the chairman, he is the most responsive Member I can think of, and I thank him for his service and friendship. I have shared with him my concerns on this issue, and he has gone so far as to issue a subpoena.

The point I wanted to make to the chairman is raising this issue was not sua sponte. I started asking this question long ago as to why we couldn't get the most fundamental——

Mr. SPECTER. Parliamentary inquiry: Does sua sponte apply to this discussion? I withdraw the parliamentary inquiry.

When the Senator from Illinois says the chairman had to issue a subpoena, I consider it a compliment. I have had to deal with stakeholders on all sides who have been recalcitrant. We haven't—I, we, Senator LEAHY and I—haven't left any stone unturned. If people who want this bill and are obligated to provide money won't give the information I want, if they are for the bill and they are for the position I am sponsoring, I am going to get tough about it. I am going to get a subpoena so that Senator DURBIN knows what is going on, and I think the American people, through their elected representatives, will know what is going on.

Does the Senator want me to yield? If I can get wider distribution, I will.

Mr. DURBIN. Let me reclaim my time but also say to the chairman, parenthetically, what we engaged in—yielding back and forth—draws perilously close to debate on the Senate floor, which we try to avoid at any cost. I will do my best to always yield to meaningful questions and comments as those made by the chairman of the Senate Judiciary Committee. But I want to return to my comments.

This is a curious situation, where the chairman of the committee who wrote the bill had to issue a subpoena to get the information about what the bill meant. Now that is a curious situation. It leads one to believe that someone else, other than this committee, is writing the bill. Who could that possibly be? Who has enough interest in this matter to want to move forward with passing this bill outside of Capitol Hill? I gave one example earlier of one corporation which stands to gain $3.1 billion if this bill passes. Those are companies very interested in this bill.

There has been a lot of talk on the floor about the lobbying effort on behalf of this legislation. It has been huge.

(Ms. MURKOWSKI assumed the Chair.)

Mr. SPECTER. Madam President, will the Senator from Illinois yield for a question?

Mr. DURBIN. After I finish my sentence, I will yield. I concede this bill is a clash of special-interest titans on both sides. I think proponents of the bill have invested a lot more in its passage than those who oppose it. Maybe we will never know the true figures, but the interesting thing is that the first bill of this Senate session is not a bill to address the Medicare prescription drug crisis, it is not a bill to provide affordable, accessible health care to Americans, it is not a bill to deal with the energy crisis and the heating bills that are killing us in the Midwest and the Northeast, it is not a bill to deal with pension security for workers who are losing a lifetime of pension investment to a merger or a bankruptcy or corporate sleight of hand. It is a bill that is brought by lobby groups and special interests that have invested tens of millions of dollars trying to force this issue and bring this matter before us on the Senate floor.

Mr. SPECTER. Madam President, parliamentary inquiry: Has the Senator from Illinois finished that sentence?

Mr. DURBIN. I just finished. That was a period.

Mr. SPECTER. There are a lot of semicolons in that sentence, then.

Mr. DURBIN. I am not yielding the floor unless the Senator wishes to ask a question. Then I will be happy to yield.

Mr. SPECTER. There is a lot of competition for the floor. There are three of us on the floor. A lot of competition for it.

When the Senator from Illinois talks about special interest groups, there are others involved in this legislation and they are the victims. They are thousands, tens of thousands of victims who are suffering deadly diseases. Those are the people about whom this Senator is concerned.

Yesterday I put into the RECORD an article from the front page of the Hill about $3 million being spent by lobbyists to defeat this bill. Today the New York Times has a detailed story about how much money is being spent to defeat this bill.

It is true there are some who want this bill—the manufacturers and some insurance companies. But the people who really want this bill are the victims.

I take just a little umbrage at one sentence, one statement made by the Senator from Illinois when he says that because I have to subpoena material, it raises a question about who is writing the bill, that somebody else is writing the bill.

Let me assure you, Madam President, and anybody who may be watching on C–SPAN—if we had anybody, we lost them a long time ago—no special interest has written this bill. It is a non sequitur. I have to respond in some way to sua sponte. It is a non sequitur to say that because it was necessary to subpoena information that somebody else wrote the bill.

Mr. DURBIN. Without yielding the floor, would the Senator please tell us what Government agency he subpoenaed for the information to produce the secret list?

Mr. SPECTER. I will be glad to respond. I didn't subpoena any governmental agency. We subpoenaed the companies who were obligated to provide the money.

Mr. DURBIN. Without yielding the floor, would the Senator please state for the RECORD the names of the nongovernment agencies, private companies he had to subpoena to understand the underlying basis for this trust fund and how $140 billion was arrived at?

Mr. SPECTER. I didn't have to subpoena anybody to understand the underlying basis for this bill. This is my bill. I understood it when I thought it through and when I wrote it. Will I provide the names of those who are to be contributors? I do not have them at my disposal, and I certainly don't have them in my mind. But the staffer from the Senator from Illinois has already seen them and I would be glad to personally take the Senator from Illinois to look at the list.

Mr. DURBIN. Madam President, if this were a courtroom I would say the witness is not responsive. I asked the Senator a very direct question: Who did you send the subpoena to if it wasn't a government agency? And the answer, he knows, is: A private company. The obvious question is: Why are private companies writing a bill we have on the floor of the Senate today? They are writing that bill because they have a deep, personal interest in this bill. They are going to do quite well, thank you. Some companies are going to end up, as a result of this legislation, walking away from their legal liabilities in court for asbestos injury and asbestos death. These are the companies that want to see us close down the court system for these victims and create something else because they are the winners.

I hope the Senator from Pennsylvania—I don't want to create any umbrage, or raise any questions about his integrity. I am not. But I hope he will at a later point in the day come to the floor and disclose the names of the private companies that created the secret list that suggests there may be thousands of corporations across America that will have to contribute to this trust fund.

I wish to go to the most basic questions about the $140 billion. Where did we come up with $140 billion? How can we suggest that over the next 50 years or more that will be enough? It is important that it is enough. Yesterday my friend, the Senator from Pennsylvania, addressed this issue. He came to the floor and this is what Senator

SPECTER said about this $140 billion figure:

> The figure of $140 billion was worked out by Senator Frist and Senator Daschle about a year and half ago. It is a figure which rose from that which was originally put in the trust fund to that figure where CBO has given us the assurance that the range of cost will be somewhere between $120 billion and $135 billion. Under one contingency, it could go to $150 billion, but that is unlikely.

Senator SPECTER went on to say something else, and I think is a very important statement. It is a long sentence, but bear with me:

> We have within the structure of the bill a provision that the administrator can make a reevaluation going through certain preconditions so that if it looks like we're going to exceed the $140 billion, we can make modifications in the medical standards and criteria to stay within the $140 billion.

End of quote from the Senate floor. A statement by the chairman of the Judiciary committee yesterday stating there will be modifications in medical standards and criteria. Make no mistake what that means. It means less money for victims. It means if this fund runs out of money, the victims will receive even less. So the winners will be winning more, the losers losing more. And the victims will be the ultimate all-time losers in this situation.

I think it was an honest answer. I believe Chairman SPECTER was very candid in what he said. He could have said that if we exceed $140 billion in claims, that we would return all the cases to the tort system and the court system. But he knows if he said that, it would be hard to explain how we get into this trust fund for a few years, close the courthouse door, cut off all the pending lawsuits, and then declare the trust fund doesn't work. He didn't say that.

He could have said the Federal taxpayers will have to step in at that point and take care of the victims. But he knew that would cause a problem, not just on his side of the aisle but across the Senate. A Federal bailout is not viewed very positively when our Federal budget is facing the deepest deficits in the history of the United States.

So he said, and I admire his candor, we will just reduce the amounts we pay the victims. That is how we will make $140 billion work. That is a very candid and straightforward, but harrowing answer.

To say to people, if you were in the midst of a lawsuit, if you have worked around asbestos and have asbestosis and you are limited in your activities and maybe in the span of your life, and you filed a lawsuit against the company that exposed you to this asbestos, and you worked—and I know this because I used to do this for a living—worked for years to get that case into court with great sacrifices and frustrations and motions and continuances, and you are finally there—when this bill passes, if you don't have your case before a jury, you are finished. Close the door. Take your file home. You get to start all over.

Then what happens? You go into this trust fund, which on balance will probably pay you less, and you hope and pray there will be enough money there to pay you. If there is not, Senator SPECTER has said we will cut back your pay and your compensation for being injured by asbestos until we can hit this magic $140 billion number. That is the reality of this bill.

I think it is fair to ask, Is the $140 billion figure accurate? I have been through this on the Senate Judiciary Committee for several years. Senator ORRIN HATCH offered a version of this bill. He began by saying all we need is $90 billion over 50 years. Then we got into a committee debate and markups, and the figure moved up to $154 billion during the course of committee process. At that time the CBO, the Congressional Budget Office, estimated it would cost between $124 and $136 billion for anticipated claims.

Since this virtual endorsement of the trust fund bill from 3 years ago, the Congressional Budget Office has progressively but unquestionably expressed greater and greater reservations about that number, about the viability of the trust fund and whether the figure we are talking about today is an honest figure to compensate victims.

Let me share this report from the Congressional Budget Office. I will read it:

> There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, as well as debt-service and administrative costs. There is also some likelihood that the fund's revenues would be sufficient to meet those needs. The final outcome cannot be predicted with great certainty. Without a substantial increase in the resources available to the fund, there is no way to guarantee the fund will not either revert to the court system or require additional funding.

That is an honest answer. When we ask this official organization of Congress that is supposed to assess whether $140 billion is enough, their honest answer is, we can't say either way, but we certainly can't give you a guarantee that $140 billion is all that will be needed.

The Congressional Budget Office went on to say, in analyzing the bill before us:

> CBO expects the value of valid claims likely to be submitted to the fund over the next 50 years could be between $120 and $150 billion, not including possible financing (debt services) costs.

Remember those words. Because it turns out the money from companies will not come into the trust fund fast enough to pay the massive influx of claims right at the start, the trust fund is going to have to borrow that money. And in borrowing money, the trust fund has to pay interest and finance costs. And all of the lamentations on the floor here about attorney's fees notwithstanding, at the end of the day, we will find that substantial amounts of money in the trust fund will be paid in interest costs, from the borrowing to try to keep this fund afloat as legitimate asbestos victims ask for their fair compensation.

That is a reality. It is a reality that suggests the $140 billion figure cannot be substantiated. If this were an idea of Senator Daschle and Senator FRIST a year and a half ago, as much as I respect both of them, and I respect them very much, I don't know that either one of them is actuaries, nor do I know that they have the expertise to come up with a magic figure to predict the cost of this trust fund over a 50-year lifespan.

Let's take some of these concerns directly.

> The CBO states that the expected $120–$150 billion in qualified asbestos injury claims on the trust fund "does not include possible financing costs and administrative expenses. The interest cost of this borrowing [they say] would add significantly to the long-term costs faced by the fund. . . ."

What are the financing costs? We are talking about debt service, money the Federal Government has to expend in order to either lend on its own to the new trust fund or go to private capital markets. The debt service costs could reach $50 billion or more.

We would find, then, that more than a third of the money going into the trust fund would be used to pay out in interest costs, not in victim compensation. Why? Because the secret and maybe soon public list of contributions by companies and insurance companies indicates not enough will be coming into the fund to match all of the injured victims across America who are going to be turning to this new fund, which, at the same time, closes down the court system for hundreds of thousands of American citizens.

Here is more of the CBO's analysis:

> Because expenses would exceed revenues in many of the early years of the fund's operations, the administrator would need to borrow funds to make up the shortfall. The interest cost of this borrowing would add significantly to the long-term costs faced by the fund and contributes to the possibility that the fund might become insolvent.

Is it worth the gamble? Is it worth the gamble for us to pass a fund to close down the court system, to tell people who have worked for months and years to bring their case to a judge or a jury that they are now out of the system, then close the courtroom doors? Is it worth the gamble to them and their families that our calculations are right? Should we replace the court system on the possibility that we have guessed right about $140 billion, that in fact it would not become insolvent? Or should we shrug our shoulders and say, well, if we guessed wrong, what is the worst thing that could happen? According to the author of this bill, the victims will receive less money.

So when the chairman of the Judiciary Committee suggests that the chorus of voices of victims is what brings us to the floor today, I would say to him I am sure there are some who are in that chorus, but it might not be much more than a small quartet. The larger choir of victims across America has told us about their opposition to this bill. I could read that list of victims, unions, and other groups into the record. They are telling us this is the wrong thing to do. It is unjust to close the courthouse door to thousands of people across America and to say to them: Trust us, we have an idea for a trust fund. It has never been tried before, we are not quite sure of the figure, the contributors to the trust fund are on the secret list which may become public, but trust us. It is well worth your life and your health.

There is a group called Bates White which testified before the Senate Judiciary Committee, a group that has represented businesses and various organizations.

In September 2005, this economic consulting firm issued a report about this bill. I don't know why they conducted this report, but I have read it and attended a Judiciary Committee hearing where Dr. Charles Bates of that firm testified. According to the author, the report examined the viability of the fund. They focused on two primary categories of claimants who posed the greatest threat to the fund's financial viability.

First, they conclude that the bill would create entitlements for many individuals with lung and other cancers who were not compensated in the historical tort environment. The Bates White report states this entitlement likely will result in at least a tenfold increase in the number of other cancer victims relative to the cases being brought in our courts today.

Here is why. Based on epidemiological studies between 2000 and 2055, some 3.5 million people in the eligible population covered by this bill will develop lung or other cancers, not including mesothelioma. Asbestos is only one of the myriad of significant risk factors that may be causally related to lung and "other" cancers. But S. 852 would compensate all cancer claimants who have minimal pleural or lung changes based on subjective x-ray readings.

According to this study, the filing rates for the trust fund are also expected to increase substantially over the historical rates in the tort system due to the relative ease of the filing which is to be created by this trust fund bill. Thus, according to Bates White, the bill would compensate for a dramatically larger number of patients.

Second, the Bates White report concludes that the bill is going to revive what they call "dormant claims," which are asbestos injury lawsuits that have been settled with most but not all defendants. The bill allows some claimants who filed their lawsuits prior to 2000 to be eligible for payment in the trust fund if those claims have not been fully resolved. Thousands of such cases currently remain on court dockets.

This incremental entitlement for the differential between the amounts collected in such suits in settlement or judgments, and the amount awardable from the fund, they estimate, could total up to $26 billion. And if these victims seek to recover the difference, that would add significantly to the cost of the trust fund.

Let me say at the outset that I think the court system as well as the trust fund should be generous to victims. As I said earlier, I don't know of a single victim of asbestos exposure who knowingly and willingly exposed themselves. Many of them were duped by deception of corporate officers who insisted there was no danger involved.

I am not questioning the decision in the bill to extend such payments, but I do join Bates White in questioning whether the programs set forth in the bill can be paid for. What Bates White has said is, if you look at the bill as it is written, and the people who will be compensated, it is going to cost dramatically more than earlier estimates.

Based on these two factors and using very conservative economic assumptions, the Bates White study concludes the bill would create entitlement claims valued between $301 billion and $561 billion.

The bill's trust fund is capped at $140 billion. This study says the amount of payouts could be more than double, or as much as three times, or even more than that in actual payouts. That is how far we could have missed the mark when it comes to this economic analysis underlying this bill.

What this study found raises serious questions about the solvency of this fund: Saying to the thousands of victims, Close up your court case, stop working with your attorney, stop going to the courthouse, we are going to take care of you, and then we don't. We come up with a $140 billion trust fund that is inadequate to the needs of these victims.

I also want to point out that Bates White updated their study yesterday. The economists at this firm announced this week that they found a $90 billion error in the Congressional Budget Office's analysis of this same bill.

This is a serious issue. It should be serious enough to take this bill off the calendar. If the CBO's estimate is wrong by $90 billion, we have to stop where we are. We shouldn't go forward. Bates White's new analysis demonstrates this oversight.

According to the numbers the Congressional Budget Office presents in its own report, CBO asserts that 1.5 million individuals will receive compensation for nonmalignant conditions, meaning they have bilateral pleural disease and 5 or more years of exposure. Under this bill, these victims are entitled to medical monitoring.

Yet, national cancer incidence rates establish that more than 200,000 of these claimants among the 1.5 million will eventually develop lung or other cancers.

This means, if we take the CBO numbers as the baseline, there could be an additional 200,000 claimants who will qualify for lung and other cancer claims, which are paid out much higher levels of compensation in this bill. Yet the Congressional Budget Office's current estimate takes into consideration only 28,000 people in this category.

So, the new information from Bates White presents a real concern that the Congressional Budget Office may have missed at least 170,000 potential victims who weren't considered in the CBO's earlier analysis.

The Congressional Budget Office relied on an arbitrary standard assumption that only 15 percent of the population will ever file for the higher claim. These additional claimants represent more than $90 billion in additional costs to the fund.

CBO's estimate currently assumes that 85 percent of qualifying claimants who took the trouble to sign up for medical monitoring under this bill would not file the paperwork to collect their entitlement if they ever developed a more serious illness down the road. This is not a credible scenario.

After all, isn't the purpose of medical monitoring to provide early detection of these and other diseases, which means that more people rather than fewer would have the opportunity to learn about such illnesses?

As late as yesterday, there are new, fundamental questions being raised about whether this trust fund at $140 billion gives us an honest figure to work with. If it is not an honest figure, it means as the years progress, we are going to have to reduce payments to victims.

To suggest this is a victims bill is to overlook the obvious: the starting point of the bill is so flawed. Let me show you some charts about how this will be funded because I think they are a good indication of the problem that the fund faces in convincing a majority of the Senate to support this bill.

This is a chart which addresses the timing of this bill, comparing when the liabilities will arise for claims coming into the fund, versus when the revenues from the companies will come into the trust fund. As you can see, the red line shows liabilities which are very high in the earlier years, but you will notice the low green line is never adequate to meet the needs of liability.

From the outset, the fund is falling behind. Simply stated, it is not collecting enough money to compensate victims.

One of the arguments being made is we have to replace the court system because it takes so long; there are delays. What is going to happen when this fund doesn't have enough money and hundreds of thousands of Americans who are sick and dying come for compensation?

At best, we will borrow money, adding more cost to the fund dramatically, or we will tell them to wait in line until we have received enough trust fund revenue to pay them. Or, I suppose, as the chairman said yesterday, we will just say we can pay them now, but we will have to pay them less than what we promised in this bill. That appears to be the range of options based on the way we are dealing with this issue.

Take a look at this chart which shows that liabilities will greatly exceed the assets of the trust fund from the very start, and the excess—the red line—continues to build over the years. This is a 50-year period of time. You can see even with the revenue coming in that it never matches the liabilities they anticipate. This chart doesn't even include the new information from the Bates White study, which could mean there is even a greater amount of shortfall in this trust fund.

Let's talk about interest costs for a moment. The fund borrows in its early years because, obviously, all the corporations on the secret list can't come up with all the money they are supposed to produce initially. Some of them will take a period of time. In fact, some of them have told us to forget it, that this bill will end up bankrupting them. So those companies will disappear.

But in the meantime, there are still needy victims and people who would otherwise go to courts for compensation. The fund starts to borrow in its first years to meet the shortfall but realizes barely half the value of future revenue, and the other half has to be used to pay interest.

Senator HATCH was here a few moments ago speaking about attorney's fees and how that is taking money away from victims. Some would argue that without an attorney, many victims would never have their day in court or a chance to succeed in court. What we have here is the fact that we will be paying into this trust fund and almost half of the revenues will be spent on interest and administration. Out of the $140 billion in the trust fund—which may not be enough—almost half of it is going to go to pay creditors, financial institutions, banks, maybe foreign governments. I don't know who will lend money to this trust fund. We will pay out interest to them, and we will have less to pay to the victims.

This was really supposed to be an upfront, no-fault system to help victims with $140 billion compensation over 50 years. It turns out that the real steady winners are creditors of the fund. According to one analysis, as little as 52 percent of the trust fund could be used to pay the claimants and 48 percent for interest, which is almost half of the amount of money during the life of this fund.

Some suggest that we are doing a great favor by creating this trust fund. Well, it is a great favor for sure to credit institutions but to the victims, it is not. As more money is paid out in interest, less is available for the victims.

What the Senator who authored this bill said yesterday is, We will just cut the compensation. That is the way we will make up the difference. For every dollar of interest paid, we pay one dollar less to someone who is dying of mesothelioma. That is how this is being conducted.

The sponsors have put a lot of time in this bill, and it was a Herculean task to try to address something 50 years in the future. I concede to all of that. But shouldn't the people who are pushing for a change have the burden of proving that change is an improvement over status quo? Shouldn't that be the starting point of a debate?

If you want to change the current system, shouldn't you have the burden of establishing that your change is a good one, and that $140 billion is the right figure, rather than to say that Senator Daschle and Senator FRIST thought it was a good figure? Shouldn't you have the burden of showing that the input of money into the trust fund from the secret list of corporations and insurance companies is going to be adequate to meet the payouts of the victims? Shouldn't you have the responsibility of showing that $140 billion is going to go to the victims rather than to creditors and financial institutions and interest and administrative costs?

Isn't that the starting point? I think it is. Once they have met that burden of proof, then we can say: All right, we will compare the court system to your trust fund and decide which is the better way to go. But they have not met that burden of proof. They have asked us to accept on faith that this trust fund is going to treat victims fairly on a timely basis. I think many people are concerned about that.

There will be enormous amounts of claims that are expected to flood into this trust fund on day one, and by that time all the cases in court will be shut down if they are not at the jury stage. Let me repeat that important fact. If the litigants are not presenting any evidence in court, all of those cases will be shut down, according to this bill.

You know those victims are going to turn around and say: My husband is dying. My husband has limited activity and can't work. Where do I go now?

They will be told: Come to the trust fund. Come to this $140 billion trust fund.

We can expect a flood of applications in the early stages if this trust fund is created. Will the Department of Labor be able to create this new office and new bureaucracy to manage this flood of claims?

For those of you who have any doubts about the efficiency of government and its ability to respond to millions of people in need, I would suggest the following words: the Medicare prescription drug bill. You know what I mean.

This system which was created 2 years ago by the Senate and the House and signed by the President was supposed to compensate some 40 million Medicare recipients for their prescription drugs. Ask any Senator in this Chamber what they have heard back home. This is a disaster. They had 2 years to be ready. And, unfortunately, this system is fatally flawed. One critic said it is an unsalvageable fiasco and lives are at stake. Senior citizens now wonder if they can get their prescription drugs filled, and for some of those it is critical for them to just keep going on a day-to-day basis.

Now they are being told in this bill to trust us again.

We are going to create a Federal trust fund where hundreds of thousands of claims may come in initially and ask that they be compensated on a timely basis, and they will be told by the Federal Government, trust us, we will give you the money right away.

That is cold comfort for someone who has been sitting for a year or two with medical records and lawyers getting ready to present their case in court. But if they aren't among the fortunate few who have brought their case to a jury or to a judge, presented their evidence, and ended up with a verdict or settlement, then, unfortunately, everything they have done is for naught. They are tossed out of the system.

These victims deserve better than empty promises in this bill. They and the Senate deserve solid information about how this bill will work and remain solvent throughout the entire lifetime. Without such information, the Senate should reject this bill.

The PRESIDING OFFICER. The time for the recess has arrived.

Mr. DURBIN. Madam President, I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate will stand in recess until 2:15 p.m.

Thereupon, the Senate, at 12:30 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. THUNE).

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I ask unanimous consent to speak for up to 10 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO PROFESSOR THOMAS CROMBIE SCHELLING

Mr. REED. Mr. President, I rise today to recognize Professor Thomas Crombie Schelling, distinguished university professor emeritus in the Department of Economics and the School of Public Policy at the University of Maryland at College Park, recipient of the 2005 Nobel Memorial Prize in Economics for his work in game theory analysis. Professor Schelling shares this prestigious award with Robert J. Aumann of Hebrew University in Jerusalem to whom I also offer my most heartfelt congratulations.

I had the privilege and the pleasure of being one of Professor Schelling's students at the Kennedy School of Government at Harvard University in the early 1970s. Having just graduated from West Point, I was pursuing a masters degree in public policy at the Kennedy School. The public policy program, then, was a new initiative to train recent college graduates for careers in public service. The Kennedy School had assembled a stellar collection of scholars in the fields of political science, economics, quantitative methods, and statistics. Tom Schelling was already recognized as one of the preeminent economists of his generation and was a leader in the economics instruction of the public policy program.

Professor Schelling's classes were fascinating discussions about topics ranging from social costs and externalities to the incentive structures necessary to diminish conflict. Rather than being couched in jargon and equations, he was able to talk in familiar terms and used familiar examples, such as cows grazing on common areas or an informal economy based on the trading of cigarettes in a POW camp. I must confess, I was not altogether prepared for his folksy but penetrating intellect. But on reflection over many years, I have come to see it as one of the most useful and powerful courses that I have ever been fortunate to take. I realize that his point was to make us think, not just to give us some techniques. His insightful framework of analysis has been extremely useful to me in all my endeavors.

Professor Schelling's professional standing was matched by the personal regard that his colleagues and students displayed for him. I was fortunate to associate with a gentleman whose integrity and decency and kindness left a lasting impression.

Professor Schelling received the Nobel Prize "for having enhanced our understanding of conflict and cooperation through game-theory analysis." His first book: "The Strategy of Conflict," published in 1960, "set forth his vision of game theory as a unifying framework for the social sciences. Professor Schelling showed that a party can strengthen its position by overtly worsening its own options, that the capability to retaliate can be more useful than the ability to resist an attack, and that uncertain retaliation is more credible and more efficient than certain retaliation."

Professor Schelling's groundbreaking work laid the foundation for "new developments in game theory and accelerated its use and application throughout the social sciences. Notably, his analysis of strategic commitments has explained a wide range of phenomena, from the competitive strategies of firms to the delegation of political decision power."

As a result of Professor Schelling's work, the theoretical realm of game theory can now be applied to the real world. This real-world application is known as interactive decisionmaking theory and is used to explain why some individuals, organizations, and countries succeed in promoting cooperation while others suffer from conflict. His insights have proven extremely relevant in conflict resolution and efforts to avoid war.

Born on April 14, 1921, in Oakland, CA, Professor Schelling's distinguished career spans five decades. After earning a degree in economics at the University of California at Berkeley in 1944, Professor Schelling worked at the U.S. Bureau of the Budget and served in Copenhagen and Paris under the Marshall Plan. He received a Ph.D. in economics from Harvard University in 1951 and worked for the Truman administration. He later became a professor of economics at Yale University, held a position at the RAND Corporation, and, in 1958, joined the faculty of Harvard University as a professor of economics. In 1969, Professor Schelling also began to teach at Harvard's Kennedy School of Government, where he held the chair as the Lucius N. Littauer Professor of Political Economy. He left Harvard in 1990 to teach at the University of Maryland.

Professor Schelling has been elected to the National Academy of Sciences, the Institute of Medicine, the American Academy of Arts and Sciences, and was president of the American Economic Association, at which he is a distinguished fellow. He was the recipient of the Frank E. Seidman Distinguished Award in Political Economy and the National Academy of Sciences Award for Behavioral Research Relevant to the Prevention of Nuclear War. Professor Schelling has written 10 books and published extensively on military strategy and arms control, energy and environmental policy, climate change, nuclear proliferation, terrorism, organized crime, foreign aid, international trade, conflict and bargaining theory, racial segregation and integration, the military draft, health policy, tobacco and drug policy, and ethical issues in public policy and in business. His range of inquiry and his searching mind have covered a vast panorama of the issues of most concern to America over the last 50 years.

Professor Schelling is a member of a generation that has borne witness to many extraordinary events; however, in his own words "the most spectacular event of the past half century is one that did not occur. We have enjoyed fifty-eight years without any use of nuclear weapons." His work, and the work of Professor Aumann, has been guided by the desire to enhance the understanding of conflict and cooperation and deepen the world's understanding of human behavior, relationships, and motivation in an effort to prevent the catastrophe of nuclear war.

Professor Schelling, thank you for all of your contributions to the preservation of peace and, again, congratulations on your outstanding achievement.

I yield the floor.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005—Continued

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I want to spend the next 20 minutes or so talking about the asbestos reform legislation that is pending before the Senate.

During the 3 years I have been in the Senate, I have had the great honor and privilege of serving under two great chairmen of the Senate Judiciary Committee, Chairman ORRIN HATCH and Chairman ARLEN SPECTER. This bill that has come to the floor is the product of a Herculean effort, starting with Senator HATCH as chairman of the committee, and now in the able hands of Senator SPECTER. Along with our ranking member, Senator LEAHY, they are cosponsors of this bill.

I am one of 18 members of the Judiciary Committee who voted to get the product out of the committee and to the floor of the Senate because I believe it is imperative we find a solution to the scandal-ridden asbestos litigation crisis facing this Nation. But I was one of seven Senators who expressed some strong reservations about the bill in its current form, and I think I owe it to my colleagues to explain what we were thinking, what at least I was thinking, and what some of those reservations are.

First, to address the problem confronting this country when it comes to the asbestos litigation crisis, the RAND Institute has documented that out of every dollar that goes into this asbestos litigation compensation system, only 42 cents actually goes to the claimant. A person who may have mesothelioma—a terrible and fatal cancer that is caused by inhalation of asbestos fibers—gets only 42 cents on the dollar. The rest of it is consumed in what might sort of innocuously be called transaction costs; that is, the costs of a lawyer to pursue that claim in court, as well as the lawyer hired by the defendant or defendants, as the case may be, together with court costs and other associated expenses of litigation.

Well, obviously, with an override of 58 cents on every dollar paid, the transaction costs are steep indeed and cry out for some redress.

The other problem in the current system is that over the years there have been so many claims brought on behalf of individuals who may have been exposed to asbestos but who have no current impairment—in fact, may never get sick as a result of that exposure—that dozens, indeed, I think the number is somewhere in excess of 80 different companies in this country, have been bankrupted. What happens when companies get bankrupted is people lose their jobs, and retirees lose their pension benefits or may perhaps receive only pennies on the dollar for what they believe they were entitled to and which they may have expected to depend upon during their later years in life.

Because of the huge volume of claims of people who are not sick and who are not impaired but who may have been exposed, that means people who have bona fide claims that are clearly traceable to asbestos-related disease may end up undercompensated as well or even left without an adequate remedy.

In fairness, the people who have made claims and who are not presently impaired are kind of in a catch-22 scenario because under our laws, and under the laws of most States, you usually have—for example, in my State of Texas, you have 2 years—if you have been damaged, but you do not yet know the extent of your damage but you have a claim, you are required under our laws, under the statute of limitations, to bring that claim within 2 years or else you will be forever barred.

So in all fairness to those people who have brought claims, while they have been exposed but may not yet have manifestations of the disease, they are in a box with no way out unless we reform the law. And, obviously, people who are very sick and may die of asbestos-related disease, from mesothelioma or some other type of cancer related to asbestos, being left with virtually pennies on the dollar, perhaps recovered from a bankruptcy trust, is not justice either.

So this has been an issue that cries out for reform. Some have said—and I think they are correct—this is not tort reform; this is scandal reform. It is an outrage and an injustice that cries out for a solution. Indeed, the U.S. Supreme Court, on three different occasions, has said this is an issue that is beyond the power of the judiciary, to solve and asked Congress to come up with a solution to this problem.

We have worked to try to come up with a solution, but until this week no proposal has come so far as to get to the Senate floor to help address this problem. So I want to give credit where credit is due to Senator SPECTER, the chairman, and the ranking member, Senator LEAHY, and all the members of the Judiciary Committee who tried to keep this process moving so we could have a bill ultimately that we could send to the President, that we could be proud of, and that would address this terrible injustice.

My observation has been that everyone involved in this process has been, in good faith, trying to find a solution to fix this situation. But it is important to note that while Congress has debated this issue and tried to come up with a solution, a number of States, including my home State of Texas—notably, Ohio and a handful of other States—have stepped in and passed what are commonly called medical criteria bills, which, simply stated, allow people who are sick to bring their claims, and people who have been exposed but are not currently sick—have no impairment—to toll the statute of limitations so that if and when they become sick they can bring their claims to court. That seemed to have worked pretty well.

That is not what this bill does. This bill makes a different choice. I want to explain in the few minutes that follow the concerns I have about this particular bill.

Here again, Senator SPECTER has led the way, along with Senator HATCH and Senator LEAHY and others, to bring us to where we are today. This is not easy.

The bill before the Senate today is vastly better and more improved as a result of the work done in the committee and the negotiations and the services of people such as Judge Edward Becker, senior judge on the Third Circuit Court of Appeals, who has acted as a mediator among the stakeholders to come up with a solution.

My fear is that we would replace the current broken litigation system for asbestos injury claims with a complicated, expensive, and ultimately unsustainable entitlement program. Let me explain what those concerns are in particular.

Asbestos liability reform, whether it is a trust fund or medical criteria legislation such as some States have, whatever the type, requires sound medical criteria to filter out fraudulent claims. My conviction is that the criteria employed in S. 852, the current legislation before us, are faulty and would unnecessarily include payments to individuals whose illnesses are not connected to asbestos exposure. There are two examples I can think of. One has to do with cancer claims. This trust fund would purportedly compensate those with cancer claims yet without evidence of asbestos-related disease. Obviously, we know this is not designed to be a cancer trust fund; it is designed to be an asbestos trust fund. We have to have sound medical criteria which would distinguish between cancer and asbestos because if we open up the criteria too broadly, chances are the claims are going to overwhelm the fund and it will be unsustainable and unsuccessful.

My second concern, beyond the medical criteria that are not tight enough to filter out fraudulent or unrelated claims, is that the $140 billion, which is the current amount of the trust fund, will not be adequate to meet the claims. This admittedly is an area in which there is no scientific precision because we are looking out years from now and trying to estimate how many people are going to have claims, what the mix of those claims is going to be. For example, if you have more mesothelioma cases than you think, then it will drain the fund precipitously and make it unsustainable.

Chairman SPECTER and the Judiciary Committee have heard from a number of experts, including the Congressional Budget Office, as well as independent estimates, that conclude—I am sorry to say—that the $140 billion fund will likely be too small to cover the cost and, ultimately, will render the fund insolvent. The CBO estimates that the trust fund would be presented with claims totaling between $100 and $150 billion, but it also projects that total costs would be higher because the fund must also cover administrative expenses and any financing costs.

I heard the Democratic whip, Senator DURBIN, talk about the financing costs associated with the cash-flow requirements of this fund. I share some, but not all, of his concerns in that regard. The CBO makes clear that "there is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs."

It gets worse, not better. An economic consulting firm by the name of Bates White has estimated that the trust fund will generate far more claims than the tort system and the existing trust and will result in claims perhaps ranging from $300 billion to $695 billion. In other words, the trust fund proposed by this legislation would be $140 billion, but Bates White, in a different analysis, has said they think the claims could reach $695 billion, ultimately forcing the fund into insolvency and sunsetting the fund within 1 to 3 years of its inception.

Even if you agree with the CBO estimate, it is clear that $140 billion will at least, under their estimate, not satisfy the claims made on the fund in administrative costs and the like because the CBO cost estimate does not include potential dormant claims, possible take-home exposure claims by family members, exceptional medical claims, claims from people living near Libby-like sites—and I will explain what I mean by that in a moment—as well as the impact of allowing CT scans to serve as documentation of pleural abnormalities. In other words, the diagnostic test used to determine impairment from asbestos-related disease is important to screen out people who are impaired from people who are not impaired. All of these additional factors that CBO's cost estimate does not take into account could add billions of dollars of cost to the trust fund.

Even more troubling, the CBO's own analysis provides that 1.2 million claimants will be deemed to have qualified for medical monitoring. In other words, they have been exposed. They are not impaired. Yet under the trust fund, they would be monitored to see if they do become impaired and thus qualify for a claim under the fund.

Unfortunately, the CBO misses the fact that if we apply standard epidemiological statistics, as many as 200,000 of the 1.2 million claimants who qualify for medical monitoring will one day develop cancer of some form, and thus the total cost of the fund could be as much as $90 billion more than the CBO has estimated.

Just a footnote here, another problem. I don't mean to have a laundry list of criticisms of the bill because, as I said, miraculously we have reached this point, but there remains some of the hardest issues we need to find solutions to if we are going to solve this scandal that otherwise goes by the name of the asbestos litigation crisis.

This trust fund—here again, I don't know whether all of our colleagues have had a chance to look at the bill in the kind of detail I am discussing, so that is the reason I wanted to identify these concerns, to see if we can find some solution—also provides $600 million, not to pay claims, not for administrative costs, but for additional screening to find new claimants. In other words, it is basically a marketing program to go out and try to find individuals who might also make a claim to the fund rather than those who have self-identified or have been referred to the fund.

I don't have to tell my colleagues; all they have to do is read the newspaper or current court cases that are pending. For example, in the Southern District of Texas, in front of Judge Janis Jack of Corpus Christi, fraudulent medical screenings have produced an enormous number of bogus cases that have created a huge burden on the current civil justice system. It is beyond me why we would want to go out and shop, in essence, or market to try to find more claimants to the fund over and above the ones CBO or Bates White or other educated guesses estimate will be made against the fund. That is a problem, too.

My point is that with regard to the number of claims and the demands made upon the fund, one of the concerns I have is that if the trust fund sunsets in 1 to 3 years the way Bates White says it might do, or 5 years or 10 years, it forces reversion; that is, claims go back to the same broken tort system that brings us here today. So what might happen is that companies would have to pay into the fund, but the fund would be overwhelmed and thus leave people without a remedy under the fund. Then it would revert to the same broken tort system, with all of the scandal associated with it, with all of the injustice associated with the status quo.

It is also worth noting—and this ought to caution us—that previous attempts to establish national trust funds largely have failed because total costs have exceeded those originally predicted. I am thinking particularly about the General Accounting Office report on black lung and similar funds.

We know there have been many bankruptcies associated with the current asbestos litigation system. Indeed, there is currently about $7.5 billion of bankruptcy trust funds that would be swept into this bill by the Federal Government to help make the $140 billion total proceeds available under the fund. These are existing bankruptcy trust funds which are currently paying claimants, people who were exposed to asbestos fibers and who are sick. But what this fund does—this is part of the problem—in an effort to get up to the $140 billion, it basically is a Federal confiscation of existing bankruptcy trust funds to the order of $7.5 billion. Noted constitutional lawyers, whose names are very familiar to the Members of the Senate, have come to me, as I know they have others on the committee, and said: How can it be that the Federal Government can take $7.5 billion in existing funds that are currently paying claims to sick asbestos victims and scoop it into this $140 billion fund? So at minimum, we would have to concede there will be litigation, and likely successful litigation, challenging the constitutionality of this taking by the Federal Government.

I mentioned earlier that Libby-like issue. Let me explain the challenge we have. In Libby, MT, a number of residents were apparently exposed to asbestos fibers generated from a W. R. Grace plant located in that city. What the Senators from Montana have done in this bill—and I congratulate them for their advocacy on behalf of their constituents—is establish an automatic qualification and a floor of $400,000 for any individual who qualifies living within 20 miles of that town. Why is that exceptional? Most of the claimants under this fund have to be those exposed in the course and scope of their employment. The Libby exception is not an occupational exposure but one because you happen to be a resident of that town and establishes an automatic qualification of a $400,000 floor to anyone who lives within 20 miles.

Whatever the merits of that special treatment for Libby, the problem we have is that there are as many as 28 other sites in the country, including my State of Texas, that may well deserve to be eligible for the same or similar special treatment. In other words, if we say people who are exposed not occupationally but environmentally because of the release of asbestos fibers due to an asbestos company operating in their State, if we are going to say Libby, MT, residents are entitled to that, I don't know how we cannot, in fairness, say that other similarly situated persons are not entitled to the same benefit.

The challenge, though, the problem that presents is it threatens to render the fund insolvent because of the volume of claims that will be made under this provision if expanded to include other individuals in these 28 other sites. I don't know how this fund can remain solvent unless the Libby, MT, provision is removed.

The challenge the chairman has had is, every time he has someone ask for a change in the bill, he risks losing someone else who is on the bill and vice versa. So I know he has tried his best to try to balance this wobbly entity known as the asbestos trust fund. That creates an anomaly and potentially an unfairness, one which would render the trust fund asunder.

The next issue that I have concerns about is this. There is no question that some very large companies in this country that have been exposed to almost endless asbestos litigation are desperate to bring that to a conclusion, to be able to cap off their liability and be able to put that behind them and get back to work providing jobs and contributing to the engine of the American economy. So there are some companies that are desperate to bring this to a conclusion. They are so desperate, they are willing to accept this trust fund on the faith, hope, and wish that it will be made better through this process—the amendment process and in conference.

But there are others who have come forward and demonstrated to me and other Senators that if they are forced to contribute to the trust fund under the current allocation system, it exceeds the profit of their ongoing business. In other words, if forced by the

Federal Government to contribute to the trust fund at the current amount created in this allocation scheme, we will, in effect, render a number of companies—no one knows how many—bankrupt, and they will go out of business; and the people they employ, the hard-working Americans they employ, will be out of work. Potentially, the pensions of the retirees will be put in jeopardy.

Now, that is not the intention of the trust fund designers. Believe me, the work is ongoing to try to find an equitable allocation scheme. But I point out that in trying to effect a cure, we need to make sure the cure isn't worse than the underlying disease for many of the companies and individuals affected.

Let me end my remarks on a couple of other final matters that I think call out for resolution or improvement in this bill. I have told Senator SPECTER that I want to be part of the solution to this problem; I don't want to be an impediment to trying to reach some equitable and fair resolution because this scandal should not continue a minute longer than it has before we come up with some good solution to this terrible problem.

One of the things I am concerned about in this bill, as well, is that the Department of Labor would have to administer this $140 billion fund, however it works. Obviously, there are going to have to be a lot of new people hired to perform those duties, and I believe it will, in fairness, create a new Government bureaucracy, designed to administer this program in the Department of Labor.

I am wary about creating new Government bureaucracies and programs in Washington, DC. I am reminded of the quote of former President Ronald Reagan. He said: The closest thing to eternal life here on Earth is a temporary Government program. This is supposed to be a temporary Government program, but I fear that we will create a new and mammoth bureaucracy within the Department of Labor that will never go away, even after the trust fund has come and gone.

So I look forward, during the course of the debate, to have the opportunity to offer amendments in the form of alternatives, which I think may provide a better solution to the problem that we all agree exists; and failing that, to offer amendments that will, I hope, narrowly address some of the problems presented in the list of issues I have spoken about. We need to make sure our good intentions don't exacerbate the problem. In a way, I sort of look at this as a legislative or congressional Hippocratic oath. Doctors take a Hippocratic oath which says: First, do no harm. You want to make sure the cure doesn't kill the patient. Indeed, I think we need to take a congressional Hippocratic oath that also says: First, do no harm. That ought to be our initial focus, to try to find a solution to this very difficult, complicated problem.

I look forward to working with all of my colleagues in good faith, in an effort to try to find that solution, even in the form of an alternative, if necessary, or, failing that, to come up with some targeted amendments which will address some of the concerns, which will make sure that sick people get paid and people who are not sick don't get paid—to make sure we don't explode the fund by underestimating the demands made upon it—and that we have some fairness when it comes to the allocation of who pays into the fund and that we proceed to a full and final solution to the problem, not a temporary patch that, ultimately, leads then back into the ditch in which we currently find ourselves, known as the asbestos liability crisis.

I see my colleague from Alabama, with whom I proudly serve on the Judiciary Committee, who is steeped in the details and has been part of a Herculean effort to come up with a solution. At this time, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I urge everybody who has questions about this legislation and who did not hear Senator CORNYN's remarks, to get a copy and review it. I think he made some terrific points and has gone to the heart of the issue and explained a lot of what we are doing.

Mr. President, the asbestos system, as it is operating today, is fraught with misconduct and inefficiencies and unfairness. That is an absolute fact. I had been involved, as a private lawyer, many years ago—I guess in the late 1970s—with some of these cases. I wish to say that I was representing plaintiffs who were injured badly as a result of severe asbestos exposure—people inside ships and submarines, cutting asbestos with electric saws where the air was so filled with asbestos dust that they could hardly breathe. They had to leave the submarine to get fresh air, and then go back in to work. They were severely damaged and disabled as a result of that. People like the plaintiffs I represented deserve compensation, there is no doubt about it.

Since sometime in the 1970s, it has become clear that asbestos is a dangerous product and there have been complete changes in how it is handled. Asbestos today is almost treated similar to nuclear waste. We have had laws to prohibit it altogether. If you see somebody removing asbestos from a building, they have masks on, and they do all these things with the greatest of care so they are not exposed. But some exposure for most people does not result in serious illness, or any illness at all. But certain exposure can. So it is a dangerous substance, and it creates a lot of stress and concern that a person might get sick. For those who are currently sick, they deserve compensation. So I say it is rational that some people have filed lawsuits to seek recovery.

But the way these lawsuits are now proceeding through the system makes very little sense. We have 300,000 cases pending today. Plaintiff lawyers get a chunk of those fees or recoveries on a contingent basis. We have criticized them for taking their third or 40 percent, or whatever they get out of a recovery—money that on the docket sheet might look like the plaintiff got $100,000, but the truth is, right off the top comes $30,000 to $40,000 that goes to the attorneys, not to mention the cost of buying depositions and the cost of medical witnesses who testify at trial. That all comes out before the plaintiff gets any money. That is the fact, the way it works. I was never been proud of how this system worked in the asbestos cases I saw when I was involved with it. It has gotten worse today.

Groups of lawyers have made hundreds and hundreds of millions of dollars out of these cases, and they file thousands of suits. They may have 10,000 cases pending. Plaintiffs are grouped, and then are not given individual attention. The lead lawyers probably don't even know the plaintiffs' names, and probably have paralegals interview them. So the system is even worse than when it initially started.

What else has occurred with the system? We are having people who are not sick, as Senator CORNYN noted, recovering money and putting companies into bankruptcy; they may never get sick and probably will not get sick. Those cases are crowding out the cases of people who are sick. As I noted last night, there are widows of mesothelioma victims, a deadly cancer that is clearly tied to asbestos. We have those widows—some are for the bill and some are against the legislation—lobbying us. I say to those widows that the sad thing is that your husband—or it could be a wife—did not get paid before they died. Why can we not create a system in which widows are not out here trying to claim the money, but instead we have a system where money goes straight to the victims, in their days of illness, before they pass away. Isn't that a better system?

Under the national fund, if a person has mesothelioma and can show an exposure to asbestos, they can walk into the Administrator's office—the office that will receive the claims, with a doctor and a medical report that demonstrates that this person has a disease—and if it is not contested—and I don't think many mesothelioma cases would be—they get a check right there for 50 percent of the $1.1 million. And then the other 50 percent has to be paid, as I recall, within 6 months. So they get a million dollars while they are alive to take care of their last days and their families, instead of having these lawsuits out here pending literally for years while people are dying without receiving compensation. That is happening today.

These cases are not going to trial with big verdicts returned. They are clogging up the system. They are suing hundreds of defendants per plaintiff. Some defendants agreed to pay 250, others 150. The lawyer is taking out their fee, and little checks are going off to people who are sick. They never know how much they are going to end up with before it is over. They started out with 300 defendant companies, I believe, that shipped asbestos, that knew asbestos was dangerous and did not put warnings out, allowed people to breathe it and injure themselves, destroy their health. Those 300 companies were the only ones originally sued. There was a long battle over that.

Then there was the decision that said, Well, if you were one of the companies that shipped asbestos into Engel's Shipyard, and you cannot prove when you shipped it, but if you shipped it in at any time, you are jointly and severally liable with everybody else. So plaintiffs would not have to prove that they breathed this asbestos—whether it was Owens Corning or Johns Manville or anybody else; as long as the company shipped it in there, they were liable, too. So that opened things up and more cases were filed. And then good lawyers figured out a way to add more defendants and find more deep pockets with insurance. And from 300 defendants, we now have 8,400 companies that have been sued.

One of them I remember several years ago came to me and told me this story. He said: We bought a company, a subsidiary, that for 2 years had sold asbestos. They had not sold asbestos for many years before we bought them. We bought them, and now we are as liable as any company in the country. It is like they put an IV system running through the subsidiary right into the heart of another company that never was involved in shipping asbestos without warning the recipients. Yet they are responsible for funding all this.

So this is the way this issue has mushroomed. This is the way it has really happened. That is why we have thousands of companies willing to pay into this fund to get relief.

I mention the cost of the plaintiff lawyers, but think about these companies. They have lawyers, too. They have to pay them, and these are some high-paid lawyers. If you are, indeed, being sued for $100 million a person, and you have a number of claimants out there, you have to hire good lawyers to defend you.

The RAND Corporation study has concluded that 58 percent of the money actually paid out by companies that are defendants did not get to the victims but was eaten up in these kinds of costs, like fees for plaintiff and defense attorneys. It is really tremendous.

It started out with some tough litigation. Dickie Scruggs of Mississippi, a brilliant lawyer, believes these cases were justified. He thought up the cause of action. He battled these cases for years. He overcame all the legal defenses and then found the evidence that was critical to these cases. Then they found evidence that the company that shipped asbestos had known all along this was dangerous and did not tell anybody. They had a smoking-gun memorandum. That is how it started and went forward.

Dickie Scruggs, just a few days ago, appeared with Chairman ARLEN SPECTER and said: We are beyond that now. These cases ought to be settled based on the health of the person. It is not necessary to have them all in courtrooms all over America. It should not cost so much. It is a whole different ball game now.

Now the companies are willing to pay money. They are not defending on the basis of whether they should pay. They only want to pay a fair amount, and they want some certainty in how much they pay. Dickie Scruggs thought that was reasonable. He said people who are not sick are being paid and the costs are too great.

It is interesting that the real architect of these cases who represented the first plaintiffs and who battled those cases forward through all the objections and battles that occurred now says this bill is good for the plaintiffs.

Some say some businesses might pay too much. I don't know that they know how much they are going to pay and how much they should pay. We are not here as Senators to decide whether companies ought to pay more to plaintiffs, or which defendants should pay more, and how much a plaintiff really should get, except to say we need to create a system that fairly allocates the money to the people who deserve to be compensated, and that the money is fairly distributed.

There is a limited amount of money for asbestos cases. Quite a number of companies have gone into bankruptcy, and many more will follow. If they go into bankruptcy, they do not have to pay anymore. You can't get blood from a turnip. You are not going to be able to recover from bankrupt companies. Creating a system that allows the companies a chance to survive, to make money and to create wealth that they can then pay to people who are sick makes sense. That is what this bill tries to do.

Those are achievable goals. The simple matter is, when you have almost 60 percent of the money paid out by these defendant companies going to costs, why in the world can't Congress come up with a plan to take that 60 percent, not let it be eaten up in costs, and send it straight to the victims? We can do that. That is what Senator SPECTER, Senator HATCH, and others have worked for years to accomplish.

Lester Brickman, a professor of law at Yeshiva University in New York, who published an extensive article in the Pepperdine Law Review, had this to say about the asbestos litigation:

> The rules of ethics don't apply to asbestos litigation. Everything you see with asbestos is slimy. It's all under the radar screen and it's infected with self-interest and illegal behavior.

That is a pretty strong statement. I have to tell you, Mr. President, there is too much truth in it. It shouldn't be that way. We can clean it up. It is time for reform, and that is what we are about today: cleaning up what has become a haven for abuse. We need to establish a system where real victims, those truly and currently sick from asbestos exposure, can receive immediate compensation.

I know there are some who have concerns about S. 852. You can count me among those who believe this is not perfect legislation, that there are still some things that have to be done to fix it. However, it does represent a good start, and I think with certain amendments on the Senate floor and in conference it can be made better. If we work together, we can pass a bill that will help solve this current asbestos crisis.

The asbestos litigation affects our economy adversely in a significant way. It has had an undeniable impact on jobs and economic growth. Instead of spending money on increasing production, expanding jobs, research and development, companies have had to spend millions of dollars paying claimants and fending off lawsuits.

The runaway asbestos litigation system has forced many companies into bankruptcy. Seventy-seven companies are in bankruptcy or on the verge of bankruptcy because they have been the target of asbestos-related lawsuits, causing them to lay off 60,000 American workers who have in turn lost $200 million in wages. That is not a small matter.

Companies are not saying we don't have to pay anymore. In fact, they are prepared to pay $140 billion. They are saying: Give us certainty so we can go to our shareholders and plan our future over the next 30 years, and then we can provide more money to actually go to the people who are sick and less to overhead costs, lawsuits, and lawyers. We will be happy; we will take that. That is the opportunity we have today.

We must be sure that the trust fund we created preserves limited resources for the truly sick and does not pay claimants who have no real injury or whose sicknesses were not caused by asbestos. We are talking hundreds of thousands of people who have had some exposure to asbestos. Only those truly sick should be compensated.

For example, thousands of people have developed colorectal cancer. Are the asbestos companies liable for everybody who at one time worked for them or was exposed in even a slight way to an asbestos product? Are they liable for diseases unlikely to be caused by asbestos? If you get skin cancer, are they liable for that, or heart disease or throat cancer? Maybe, maybe not; it depends on what the science says.

Efforts have been made to place into this system liability requirements on defendants to pay damages for diseases that may have had no connection whatsoever to asbestos. That is the way you kill this system. We can't do that. We cannot have this fund, which has a limited amount of money—huge as it is—with these thousands of claimants—to pay people who are not sick because of asbestos—we have to be generous with victims, but we cannot be paying people whose sickness is not related to asbestos.

Again, there is very little evidence, if any, that colorectal cancer would be connected to asbestos.

As I noted, we now have 8,400 companies that are being sued as a part of this process. Many of these have a limited link, if any at all, to asbestos but are named in the lawsuit because most of the original manufacturers that were sued have gone bankrupt.

In a statement to the New York City Bar Association, U.S. District Judge Jack Weinstein—one of the most famous judges in the country, I would add—had this to say about the impact asbestos litigation was having on certain companies' ability to stay in business:

> If the acceleration of asbestos lawsuits continues unaddressed, it is not impossible that every company with even a remote connection to asbestos may be driven into bankruptcy.

These bankruptcies are not only a threat to jobs and the incomes of American workers, they threaten retirement savings. The average worker at a bankrupt asbestos-related firm with a 401(k) plan suffered $8,300 in pension losses. Of course, in a number of instances, when a person loses his job, he loses his health insurance as well. So this litigation is having an impact on real people.

Judge Weinstein said even a company with a remote connection to asbestos could go bankrupt. One could ask, How is this possible? It is like I said before; this litigation is like an IV system that goes through one person, sucking all the blood out of them, and if they can find another person that has blood in them, they will begin to suck it out of them, too. It is just that simple. Whoever has the money is who they will go to next. Whoever is left standing is the next one this litigation turns on and in an attempt to show they are liable.

We need to bring predictability to this system by creating a national trust fund. If we succeed, I believe the companies with asbestos liability will then be able to start creating jobs rather than eliminating them.

We have a lot of important issues we are going to confront as we hammer out the final language in this legislation. It would be a shame on this Congress if somehow, some way, we cannot pass solid legislation that takes 60 percent of the money that is now going to overhead and lawyer's fees and use that to create better benefits for the plaintiffs and provide certainty to the defendants so they can plan their future without going bankrupt.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Montana.

Mr. BURNS. Mr. President, I don't think we have ever seen anything as complicated as the issue before us. We have a vested interest in this issue in Libby, MT.

I ask unanimous consent to proceed as in morning business for 10 minutes, not thinking I will use all the 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. BURNS pertaining to the introduction of S. 2256 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I appreciate the comments of the Senator and his leadership on this important issue. It is certainly one important for our State and all States.

I see the Senator from New Mexico. I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, parliamentary inquiry: Is it appropriate for the Senator from New Mexico to speak as in morning business?

The PRESIDING OFFICER. It is.

Mr. DOMENICI. I yield myself 5 minutes and ask I be permitted to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEASEHOLD 181

Mr. DOMENICI. Mr. President, I rise to speak about a matter that is obviously dear to the occupant of the chair because it has to do with leasehold 181, off the coast of Florida, Alabama, Louisiana. The bill, which was introduced yesterday by Senator BINGAMAN, myself, Senator TALENT, and Senator DORGAN, seeks to permit drilling on a portion of section 181 within 1 year. The bill protects a 100-mile buffer from the coastline of the State of Florida. This bill protects a portion of 181 that the U.S. Armed Forces indicated they might someday need to perform on and use for some military purposes.

These two exceptions and protections are explicit. That is, how far from the coast of Florida and the military protection area. But more than this, this bill seeks to protect the American people from the rising cost of heating their homes and filling up their cars, and, yes, soon, cooling their homes.

Today, the price of oil is about $65 a barrel, and the price of natural gas, while lower than a few months ago, is $8.24 for a million Btu's. To put that in perspective, if you go back only 6 years, the United States in its totality was spending $50 billion on natural gas. Today, we are spending $200 billion, and rising. That means many American businesses have already gone broke because they cannot pay for the price of natural gas. It means the petrochemical industry in America is hanging on, can't grow, and certainly, where they were going to build here, they are building elsewhere. The fertilizer industry is almost bankrupt, and the manufacturing industry is suffering from many things, but they will tell you the highest priority is to get natural gas prices under control.

While we are protecting Florida, we are charged with the responsibility of doing what we can to help the American consumer.

This year, we were very lucky, although Katrina was unlucky. The price of natural gas did not stay high, as high as it was going, because we had a warm winter. It still is at an enormously high price, and I just told you about that. Many Americans had their budgets and had disposable income. They woke up when they got their natural gas bill and half of their disposable income was gone. Where? To their gas bill, because many of them went up from $100 to $200, $200 to $400.

I must say to Senators, we have been told—the Energy Committee, Senator BINGAMAN and I have been told—that the highest priority for natural gas production in the United States—not second, not third, not fourth; the highest—is Leasehold 181. It is ready. It is known. They have drilled all around it with no damage. We had Katrina and no spills. It is 100 miles from Florida, and it will produce a minimum approximating 6 trillion cubic feet. What is that? It is one-fourth of the entire natural gas use of the United States per year; 10 million houses cooled and heated for 6 years. This piece of coast, offshore land.

It seems to me that every year we come into session, we hope we can prove to the American people that we can do something. We say: Can't we prove that we can move? We are going to move this bill out of committee within 3 weeks. If the leader permits, we will bring it to the floor. We are going to tell the Senate: You can let us help the American people or you can play games; you can take 3 weeks on this bill. It doesn't require but 2 or 3 days of debate. If somebody wants to filibuster, that is learned quickly. Let us decide whether we want to kill the bill or not. At least everybody is going to know they are not all so tough, that we have to tell the American people we just can't do it, too complicated, too many committees, too much argument. Not so.

The highest supply production issue for the United States and our people today is this little bill. If we do it, we take one high-priority item off the table and we say: Well, we can do something for a change.

It is bipartisan. My good friend from my State and I have the luxury of being the only committee for many years which has two Senators from the same State being the lead Republican and the lead Democrat. We are going to bring this down here together. It was introduced together. We just had a press conference. We say the same things. We both speak differently, obviously, but we are going to do it because it brings immediate relief to millions.

That is probably 6 minutes instead of the 5 I reserved. If so, I ask consent that it be all right with the Senate.

I yield the floor.

Mr. SESSIONS. Mr. President, the Senator from New Mexico should be congratulated for his leadership on this issue. He has understood it from the beginning. He warned us about the dangers of surging natural gas prices for years and years. As a matter of fact, I can remember a host of committee hearings in which Alan Greenspan warned us that we need to do something about natural gas.

Isn't it true that we have now not only homes being heated and businesses being heated and we are using natural gas for fertilizer and other things, but electricity is using more natural gas than ever, to create our electricity? Is that the Senator's understanding?

Mr. DOMENICI. That is correct. Not only is that correct, every single new powerplant—98 percent of powerplants built in the United States in the last 15 years—is natural gas.

Mr. SESSIONS. Natural gas wells. I live in Mobile, AL, on the gulf coast. We have a lot of production right around where we live. We have never had any serious spills, to my knowledge, that amounted to real damage to the environment since the beginning. They are more safe and careful today than they have ever been, and the technology is better than it has ever been.

We are having a debate now about liquefied natural gas and building terminals where we send our money off to some foreign country that may be hostile to us, and they freeze, liquefy this natural gas at great expense, transfer it all the way over the ocean, and then they have to heat it up, which causes environmental problems, and then put it in our pipelines, and instead of the money staying in our country, it goes around the world.

When we have these huge reserves right off our own shore, doesn't it make sense to the Senator that we ought to go forward and produce? I see the smile on the Senator's lips. We have been through this before. But it is really pretty basic.

I hope the American people are beginning to understand that we can't deny ourselves. Do you know where they get the oil and gas from the Persian Gulf? They get it out in the water. If it is an environmental issue, it is as bad to get it out of the Persian Gulf, I suppose, as out of the Gulf of Mexico, and certainly economically it makes more sense, I believe.

Mr. DOMENICI. Mr. President, I guess this shouldn't get me started because I should not be here, I have something else to do, but I guess when you are in the Senate, you ought to stay in the Senate.

But on liquefied natural gas—I might as well make sure the Senate hears this—we can't get along without liquefied natural gas for the next 25 years, and when you add up demands, unless something really breaks—maybe if we had all of the Alaskan plants for natural gas down here, but it takes long enough to—I think the statement is we must have energy. But we were counting on a lot of it. It is happening, however. It is being bought in place by foreign countries.

Let me tell you that what means. Qatar, a country with huge supplies of natural gas, may very well decide that they could sell the whole natural gas field to China. There won't be any ships on the sea on which to bid. That could happen.

Right now, natural gas in the form of liquefied natural gas is not coming to America in large quantities. We need a lot more ports to get ready. But they are paying more for it to go to Spain than what we pay to bring it here because there is such a demand.

While we sit on the natural gas expecting LNG, the LNG is being bid up and going elsewhere, and we sit here wondering whether we should pass this bill to use our own, which is 100 miles offshore.

It isn't all so clear where we are going to get this natural gas, this beautiful product. It is so good that we burn it right in our kitchens. That ought to show you it is pretty safe. It is so good that we said no nuclear, no coal; let's just use it to make electricity. We decided to do that. That is when we got into this problem. I am not so sure we should have done it differently, but that is what happened.

Mr. BURNS. Mr. President, I ask the Senator from New Mexico to add me as a cosponsor of the bill.

Mr. DOMENICI. Mr. President, I ask unanimous consent that Senator BURNS be made a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, that bill was introduced yesterday. I don't have the number, but the clerk has it. Senator SESSIONS is not on that bill.

Mr. SESSIONS. Mr. President, I would be pleased to be part of it and sign onto it. I thank the Senator from New Mexico for his leadership in constantly pressing to make sure this Nation does not make a mistake. We have made a lot of them in our energy policy. We have been blessed to have the Senator there.

We are now talking in Mobile about a new LNG terminal. Some people are concerned about it. We need to be very careful about it. But it costs so much more to import liquefied natural gas and then to regasify it and ship it around our Nation than to produce it off our own shore. And when we produce it off our own shore, the money stays in the United States; it doesn't go to these foreign countries.

I believe, from an economic point of view, we have huge reserves out there. I will share, maybe, my thoughts a little later. Maybe Florida was legitimately nervous in the early days about these wells and whether they would damage their beaches. But this far offshore, production has proven now year after year after year to be safe. It is not their waters. These deep waters are not Florida waters; they are U.S. waters.

We need to begin in a careful way to examine how we deal with this and see if we can't increase our production in the gulf. Alabama has found it to be safe. It is somewhat beneficial to our Treasury.

Mr. DOMENICI. Mr. President, I wish to make two more observations while my friend from Alabama is still here, and one in a general way.

I say to Senator SESSIONS that we spoke a little bit about the Energy Policy Act which we passed last August. It is a phenomenal bill. People stopped paying attention to it. But in the proposals the President put forth, all but one of those were in the Energy bill. They are waiting to be funded. He proposed them, so we are going to fund them. But from that day that it was passed until today—on the day it was passed, there were zero applications, permit applications for nuclear powerplants. Zero. Today, there are 18. It is not in China that they want to build 20, or something like that; it is in the U.S.A. because of that bill. I am not saying all of them are going to be built, I am not saying they have turned a shovel, but clearly the strong indication from consortia and individual companies is that because of what we did in that bill, it is time to add to the diversity.

What does that mean? That means had we had those, we wouldn't have a natural gas shortage today because little of the gas would have gone into powerplants and would have been available for what we are arguing about today. We would have been able to tell Florida, although we don't think it is the case, You will never have to drill there, but that didn't happen. There are many other things that are going to happen because of that bill, but we didn't do this one, the offshore, because we were told there would be a filibuster on the bill, the big bill, and we had to make a decision. It was open and made right here. Everybody heard it. So now we have to take our one shot at a time. This is one.

My last observation would be just in advance—I know the floor is a valuable tool for every Senator. They can offer amendments, and they can delay things. We are going to work very hard to make this one, single, big consumer present all by itself. Please, if you have big ideas, we will bring another energy bill, and put it on that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. As I listened to the statement of my good friend from Texas, I thought I would clear up a few things as the debate on this asbestos bill moves forward. I know that Members have some very real concerns with the size of this trust fund and who may make claim to it. I think the Libby language that we have in the bill now is fair, and I will make the case for that because we think it is perceived to be inequitable in its treatment.

The only inequity for Libby residents will occur if their recovery in this bill is removed. The medical criteria as it currently stands are actually insufficient for Libby victims. So members of this body, in particular, my good friend from Texas, is mistaken to conclude that they confer such enormous benefits on Libby's residents. That is not really the case as I illustrated yesterday.

The bill as it is currently drafted will exclude 40 percent of the folks that live in Libby, MT. Now, to remedy that problem, I filed an amendment to strengthen the Libby provisions rather than remove them entirely. I felt I had to do that.

While I understand that my colleagues will take issue with specific medical criterion in Libby, I fail to see how the exposure in Libby is equal to the suffering in any other cities. The exposure to asbestos was limited in some of those cities into confined areas. If any community exposures existed, they were the result of a factory worker exposing his family through his clothing.

As I explained yesterday the circumstances in Libby are much worse. The main thing in Libby, MT, is that the community was exposed. The entire community was exposed by the wind from an open pit mine as opposed to communities that had enclosed facilities that processed the ore from the Libby mines. So we are talking about an entire valley, an entire city that was exposed by the wind from an open-pit mine. Not only did family members of the mine workers fall ill, but the entire town was contaminated.

Yesterday I showed a picture of a baseball field of little-guy baseball, and it was contaminated. In fact, the amounts of asbestos meant the asbestos in the playing field were as high as 15 percent in some areas. So it has been reported that concentrations as low as .001 percent in asbestos contamination generates dangerous exposures. So the children that were playing on that baseball field in 1978 are now experiencing health problems, and we believe they were caused by that exposure.

This is a unique incident. It is a unique area. And we are not talking about a structure. And we are not talking about a factory. We are talking about an entire community that was exposed to asbestos.

I think I read yesterday where this Memorial Day they will put up over 200 crosses for people who died from asbestos. They have added 20. Twenty crosses due to asbestos diseases in the last year. So I think we have a unique situation.

And also, the disease is a little bit different, we are finding now from talking to medical people who understand, and pulmonary doctors who understand this asbestos and the related diseases around it.

So I would ask my colleagues to study this very closely.

I thank my friend from Alabama, and I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I see the other Senator from Montana in the Chamber. I thank both of them for their strong advocacy on this question. Senator BURNS is, again, offering an amendment, I believe.

To carry this further, I will say this to our colleagues. Now is a good time for debate. If you have amendments, let's bring them on and discuss them. Senator SPECTER and Senator LEAHY, the chairman and ranking member of the Judiciary Committee, with bipartisanship, are committed to this legislation and trying to make it work. We are delighted to hear the debate. We cannot accept everything. But your ideas are being listened to. Some will be voted on. We will have a better bill when we complete the process.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, first of all, I thank my colleague, Senator BURNS, for helping out in our effort to help the people of Libby, MT. In all the years I have been in public service, I am hard pressed to think of any situation that has bothered me more, that has urged me more to solve, or to help people out, than the people of Libby, MT. They have been put out by so much. It is a community that has faced hardship in so many ways up in northwestern Montana. The sawmills fold up and they go under. The economy there has been extremely difficult to sustain. And on top of that, we have this problem of asbestos, a particularly vicious form of asbestos in Libby, MT, called tremolite.

I would like to help remind my colleagues what goes on in Libby and introduce Libby to those who have not paid much attention to Libby.

Libby is a very special, very small community up in a remote part of Montana, up in northwest Montana. In a valley deep in the Rocky Mountains, Libby resides on the Kootenai River.

And this is not an exaggeration: The people of Libby are struggling. They are struggling mightily day in and day out. They have been uniquely impacted by asbestos exposure. I do not know of any community in the United States that comes close to the level of suffering that the people of Libby have suffered on account of asbestos. Once you visit Libby, you realize very quickly this is a situation which is very different from other asbestos problems in other parts of our country. There is no comparison.

First, just a bit about Libby. It is surrounded by staggering natural beauty. It is up near the Cabinet Mountains, next to a divide, the Kootenai River. It is a very special part of the world. The wonder of the mountains and the beauty of the river, however, contrast dramatically to Libby's other major distinction; that is, a community suffering from the worst concentration of asbestos poisoning in America.

Many of the people of Libby do not have the luxury now, as a consequence of asbestos, of enjoying all of this natural beauty and luxury I mentioned. They cannot hike the Cabinets. They cannot go up in the mountains to hunt elk. They can no longer scale down the river bank of the Kootenai to enjoy their favorite fishing holes.

Why, might you ask, can't people do that anymore? I will tell you a very basic reason. They cannot breathe. They have such difficulty and struggle so much with the very basic human activity of breathing—breathing in, breathing out. They are just out of breath. They just cannot breathe.

So you are asking, why can't the people of Libby breathe? Why are they struggling so much to breathe? The simple answer is W.R. Grace. Until 1990, a company called W.R. Grace used to mine vermiculite from a mountain called Zonolite Mountain, just on the outskirts of there. Until the mid-1970s, W.R. Grace processed that vermiculite mined in Libby in a nearby mill.

I remember years ago when I was meeting people up in Libby, going up to that mill, I was just stunned with how dusty it was, the conditions up there. I assumed it was just a dusty mill, not poisoning the air. If it were, people would know about it. But I was wrong. The people of Libby made that same assumption. The workers made the same assumption, and they were wrong. In fact, the mill was so dusty that workers often could not see their hands when they were sweeping with their brooms.

It is hard for me to find the words to describe the situation. I can remember guys coming off the hill, coming out of the mine, getting off the bus, and it was just a dust bag, just caked with dust. I never had seen anything like it. Mill workers swept dust outside and tried to do the best they could. They dumped it. Once they swept the mill, the dust and stuff outside, what did they do with it? They just dumped it down the mountain. And the mill's ventilation stack spewed dust up into the air. The ventilation stack released 5,000 pounds of asbestos every day—5,000 pounds of asbestos every day. When the wind blew from the east, a deadly white dust would cover the town. It would just cover it with dust.

For decades, 24 hours a day, the dust fell all over Libby. It fell on Libby's gardens, fell on the homes. Dust fell on Libby's high school track, Libby's playgrounds. Everywhere there was this dust from the mine, this asbestos dust.

Now, some of the vermiculite went downtown to a plant, right next to the baseball diamond. I know right where that baseball diamond is: right next to the Kootenai River. Vermiculite is a shiny material. You heat it and it pops like popcorn. People used to pop vermiculite to make building insulation. They called that popped vermiculite Zonolite.

The plant popped the vermiculite into Zonolite, and batches of Zonolite spilled all over the plant, all around the plant.

What happened? Well, kids played in this stuff. Kids played in the Zonolite. Workers at the mine brought back bags of Zonolite to pour in their attics as insulation. They put Zonolite in their walls for insulation. They put Zonolite in their gardens. I guess it helped make things grow—they thought. They put vermiculite in road beds. Families used vermiculite and ore to build their driveways. They used to use this stuff.

But the layers of rock where people found the vermiculite contained harmful asbestos. Nobody knew it at the time. The people did not. The people did not. The company did. And the vermiculite outside Libby is laced with a particularly dangerous type of asbestos. It is called tremolite. This is not ordinary asbestos, which is bad enough. This is a very pernicious, special, terrible kind of asbestos called tremolite. The usual, more common asbestos is chrysotile asbestos. This is not chrysotile asbestos. This is tremolite.

Why is tremolite so terrible? Why is it even worse? Well, tremolite has long fibers that are barbed like fishhooks. These fibers work their way into soft lung tissue. These fibers do not come out; like fishhooks, they are stuck.

Now, the Zonolite Mountain now sits peacefully with the damage that has already been done. People in Libby are sick—very sick. They suffer from asbestos-related disease at a rate 40 to 60 times the national average—40 to 60 times the national average. People from Libby suffer from asbestos cancer. They suffer from mesothelioma, which is a form of asbestos-related cancer. And they suffer that mesothelioma at a rate 100 times the national average.

This sickness does not just affect the people who worked in the mill. W.R. Grace infected the whole town.

An article in the journal Environmental Health Perspectives concludes that based on the unique nature of vermiculite contamination in Libby, along with elevated asbestos concentrations in the air, it would be difficult to find Libby residents unexposed. They are all exposed.

Every day men from the valley went to the mountain to work in the mine and the mill. Every day, these men came home covered with the fine, deadly white powder. The powder got in their clothes. It got in their curtains. It covered their floors.

I talked to one miner. His name was Les Skramstad. And this is when I really got radicalized about this.

In talking to Les several years ago in his living room, to hear Les, a young fellow who is very ill now, he has a hard time breathing. He would come off the mine. He would go home to see his wife. His wife would embrace him. His children would jump up into his lap. They all have asbestos-related disease now, not just Les but Les's wife, his children. And the prognosis is not good.

The fine fibers of tremolite asbestos are very easy to inhale. Miners inhaled fibers in the mine. Workers inhaled the fibers in the mill. Wives inhaled the fibers when they washed their husband's clothes, and children inhaled the fibers when they played on the carpet or hugged their fathers.

The fibers are deadly. They cause respiratory disease. Those fibers caused a serious lung disease called asbestosis. Those fibers caused a serious form of cancer, mesothelioma, which infects the chest and abdominal cavities. Asbestos in Libby is tremolite asbestos. Tremolite asbestos is far different from the other chrysotile asbestos, which is the predominant cause of asbestos-related diseases. Let me explain the difference. Tremolite diseases are highly progressive and also highly deceptive. People with initial markers of chrysotile asbestos, the usual asbestos disease, have a 25-percent chance of progressive illness. Patients with initial markers of tremolite asbestos are more than 75 percent likely to develop more destructive diseases.

Because of the W.R. Grace mine and mill, hundreds of people in Libby died from asbestos-related diseases already. Hundreds of current and former area residents are now ill. Hundreds of people live in discomfort, and hundreds of people live in pain. Seventy percent of those affected with tremolite asbestos disease never worked in the mine.

Let me introduce you to some people from Libby. Arthur Bundrock worked in the mine for 19 years. He suffered from asbestosis for 21 years and his suffering was made worse from the knowledge that he carried the asbestos dust back home to his family. Arthur's son applied for work at W.R. Grace, had to get an x ray before they would hire him. The x ray showed he already had asbestosis. Grace never told him the results of the screening. The company never told him. Arthur's work in the mine affected his whole family. When Arthur died in 1998, six out of seven members of his family had asbestosis.

Then there is Toni Riley. Toni Riley never worked in the mine. But similar to many kids in Libby, she played in piles of vermiculite ore as a child. These piles were all over the town. Similar to playing in a sandbox, kids played in piles of asbestos. Toni Riley was a member of the local research and rescue team and an emergency medical technician with the Libby volunteer ambulance. She was also a reserve deputy at the sheriff's office for 5 years. In 1996, she was diagnosed with mesothelioma. Toni died on December 4, 1998. Toni is 1 of the more than 200 known cases where people from Libby have died as a result of asbestos-related disease.

W.R. Grace may have closed its doors, but the people of Libby will be plagued with asbestos for years to come. The company has closed its doors, but the people will be plagued probably forever.

These diseases can take 40 years to appear. Hundreds more will fall victim to these diseases in the future. The people of Libby must watch their neighbors struggle to tend their gardens, to walk into the cafe. They must watch their neighbors struggle to provide a future for their children, and they must wonder if they, too, will fall ill. Remember, these diseases can take up to 40 years to appear.

In 1999, the Environmental Protection Agency started to investigate. The EPA found tremolite contamination in the air around the nursery. They found it near the ballfields. They found it inside homes. Last year, we learned that trees near the Grace mine contained asbestos. Recently, a University of

Montana study revealed another example of the horrific level of contamination in Libby. In the new study, asbestos fibers were found in the bark of trees growing near Libby Middle School.

Libby is not a rich city. In 2000, the median family income of Libby was just under $30,000. That compares with just over $40,000 in the whole State of Montana and just over $50,000 in all of America. The median family income is much below the national average. Libby is working to overcome years of asbestos exposure from W.R. Grace. They have been through enough. They did not ask for this lot. That is why I have fought to make sure that asbestos bills working through the Senate address the needs of the people of Libby, MT. The good people of Libby need our help. They are dying up there. The town has risen mightily to the challenge it has faced, but they need our help. They deserve our help.

I made a commitment to the people of Libby, and I intend to work together with my colleagues to see that commitment honored. Asbestos disease has devastated many communities across the country, but tremolite asbestos hit Libby hardest of all. Libby is unique. The type of asbestos at Libby is unique. The duration of exposure at Libby is unique. The manner in which asbestos disease manifests itself in Libby is unique, and the community-wide exposure in Libby was unique. That is why the tailored solution that the committee has proposed makes sense.

I urge my colleagues to support the Libby provisions in the asbestos bill and help us right this terrible wrong. Help these hundreds of suffering people to get health care and help save the life of this town.

There are not many things that I have experienced in the last, roughly, 30 years I have been in public service that equal the tragedy which is Libby, a tragedy caused by W.R. Grace and asbestos, a particularly pernicious form of asbestos in Libby, tremolite asbestos, which is so harmful to the community. Libby is struggling mightily. Libby wants to put this chapter behind them. The people of Libby are doing all they can. They don't complain. It is a wonderful feature of westerners, generally, and especially of the people of Libby, MT. They are not crybabies. They don't whine. But they want justice. They deserve justice.

We must take advantage of this unique opportunity we have in the legislation before us to make sure that the people of Libby get their fair due. The provisions in this bill help assure that compensation is given to the people of Libby who are affected by asbestos so they can pay the medical bills, so they can somehow, some way, get back to normal lives, knowing all along that for many of them, for the indefinite future, they are still going to have a terrible infliction and difficulty breathing in and breathing out.

I implore my colleagues, please listen to the people of Libby. Please, in your heart, help the people of Libby, MT. That is the very least they deserve.

I yield the floor.

The PRESIDING OFFICER (Mr. THUNE). The Senator from Florida.

Mr. MARTINEZ. Mr. President, I ask unanimous consent to speak for 5 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. MARTINEZ are printed in today's RECORD under "Morning Business.")

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, under arrangements worked out between the leaders of the two parties, we will be open for amendments tomorrow. Senator LEAHY and I wrote to all Senators back on January 24, urging Senators to let us know what amendments they intended to offer so that we could schedule the business of the Senate. I renew that request at this time. We have a bill where, as previously announced, we are open for modification. During the some 36 negotiating sessions which Judge Becker and I have presided over during the course of the past 2½ years, we have made many modifications. We accepted many amendments in committee. Some were voted upon and defeated. But we are interested in making this the best bill we can.

We have carried the offer beyond amendments. If any companies are having special problems, we are interested to hear of the problems to see if we can find a way to accommodate them. We are dealing here with an enormously complex subject and we have limited time. In order to manage the bills, in order to conserve the time of the Senate, it is our request that Members bring forward to us amendments they want to have offered, which they intend to offer, with suggestions for time limits so we can proceed to manage the bill.

There has been extensive debate on the bill. The Washington Post reported today about the success of moving forward with the motion to proceed and, as I say, tomorrow we will be proceeding with the amendment process. The Post noted, as they put it, referring to me, that I had "a bit of an obsession with the passage of this bill." I think that is an erroneous statement. I don't have a bit of an obsession; I have a total obsession with the passage of this bill. I say that because I have been working on this bill for the entire time I have been in the Senate.

Shortly after I was elected in 1980, Senator Gary Hart came to me and was with a constituent, Johns Manville, and said there is a terrible asbestos problem. I have been a party to efforts over the course of the past two and one-half decades-plus to try to find an answer. It has been extremely elusive. Finally, Senator HATCH came up with the idea of a trust fund. When we passed the bill out of committee during the 108th Congress in July 2003, I then enlisted the aid of a senior Federal judge, Edward Becker, who had been chief judge of the Third Circuit, and who is very knowledgeable on asbestos matters. Judge Becker had written the opinion which was upheld by the Supreme Court of the United States, which said you could not use class actions on asbestos. That might have been an answer on consolidation class action status to handle the issue in the courts. The Supreme Court of the United States said that mode of procedure was not suitable for asbestos. Then the Supreme Court of the United States issued a challenge to the Congress to provide a legislative solution. That challenge has been issued by the Supreme Court on some four occasions, telling us that it was our business to come up with a solution. Judge Becker agreed to mediate and, as I say, we have had some 36 meetings in my conference room, attended by anywhere from 20 to 60 people. Stakeholders were principally involved, and that is defined as labor, AFL–CIO, which was represented ably at those meetings; we invited the trial lawyers and they attended the meetings, even though we knew there would be opposition from them because, realistically, it impacted their livelihoods; we had the manufacturers and we had the insurers.

Last week, we saw come forward a very prominent plaintiffs' lawyer in the asbestos field, Dickie Scruggs, Esq., of Mississippi. He is also Senator LOTT's brother-in-law. Senator LOTT put the two of us in touch and we talked about the matter. He was one of the originators, if not the originator, of the litigation involving asbestos. From what he has seen over the years, he came to the conclusion that it was not a good idea to keep these asbestos cases in the courts; that a better idea was to have the trust fund, and he came in and made public statements. I believe he may even be on a commercial. I don't have a chance to watch too much television, except for C-SPAN. But he pointed out that the victims are simply not being compensated. When we have had a lot of talk on the Senate floor about special interests, this is one interest group which is not a special interest; it is a general interest, and that general interest is the large group of victims who are suffering from deadly diseases—mesothelioma and lung cancer and other ailments from exposure to asbestos—who are not being compensated. It is their interest we are seeking to take care of.

When their companies go bankrupt, they don't have anybody to sue and that is why the trust fund has been created—a trust fund where the figure was established jointly by Senator FRIST on behalf of the Republicans and then-Senator Daschle on behalf of the Democrats at $140 billion.

The interested parties, the manufacturers and insurers, agreed to put up that money. The fund had started out with substantially less, but it was calculated that that would be an amount realistically calculated to take care of the problem. It is very hard when making projections to know with certainty what is going to happen. The Congressional Budget Office has made an exhaustive study and concluded it would cost in the range of $120 billion to $135 billion. They outlined one contingency which might be a little higher than $150 billion, but they said it was impossible to make the calculation, as they put it, "with great certainty."

Well, you cannot function in all cases with great certainty, but these projections are realistically calculated to do the job. If we are wrong, and when you talk about thousands of cases projected over decades, if our projections are not accurate, the claimants have the right to go back to court so that they are no worse off than they would be at the present time. They are limited to either Federal or State courts—but they cannot judge shop for special counties anywhere in the country, which is the practice today. Madison County, IL, was singled out and some counties in some other States. They have to go to the State courts where they live or where they worked. So we have a realistic plan to take care of this issue.

But if we can have a better bill, we are very anxious to have that better bill. That is why we have invited our colleagues to come forward with any amendments they may have. The three Senators from the other side of the aisle who have spoken in opposition to the bill have conceded the very grave, difficult problem. They say this bill is not right, but they don't deny the transparency of how we have worked, and they don't deny the evidence that has gone into it or the comprehensive analysis. I have said I believe this is the most complicated piece of legislation that has ever confronted a legislative body. That is a very grandiose, sweeping statement, but I believe it to be true. I repeat that I challenge anybody who knows of some legislative activity that is more complicated than the one at hand. There have been extensive hearings, extensive negotiations, extensive analyses, extensive amendments, and we are still open for the amendment process.

It is my hope we will do what the Democratic leader said yesterday, and that is go to the amendments and take them up, and that we will not face additional procedural challenges. If we do, we are prepared. There has been some talk in the cloakrooms and hallways about challenging them on a budget point of order, and we are prepared for that. The underlying merits are that there is no realistic budget problem, because there is no Federal money involved here. We have made the bill airtight that the Federal Government cannot be involved. It is all private contributions. If the plan does not succeed, we have alternative ways of dealing with the issue, but not to come back to the Federal Government. There are three possibilities of points of order. One is you cannot have legislation before there is a budget resolution. But on that situation, consulting with the experts on procedure, we can have the date of October 1 in the next fiscal year to solve that.

There is an issue about an allocation that was made at the discretion of the chairman of the Budget Committee, and we believe that will be accomplished with that allocation being released by the chairman. All of this is a bit presumptive, but I think that is how it will work out.

There is a third concern, which is that there not be more than $5 billion spent in any 10-year period between 1960 and about 40 years beyond that. So we will see what eventuates. We are working to cap expenditures so that we stay within that $5 billion limit.

Mr. President, I ask unanimous consent that three additional letters from the International Association of Heat and Frost Insulators and Asbestos Workers, the United Automobile Workers, and the International Union of Painters and Allied Trades in support of S. 852, the Fairness in Asbestos Injury Resolution Act of 2005, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS & ASBESTOS WORKERS,
Lanham, MD, February 6, 2006.

DEAR SENATOR, we strongly support the courageous and bi-partisan work of Senator Arlen Specter (R.) and Senator Patrick Leahy (D.), co-sponsors of the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005 (S. 852) which comes to the Senate Floor this week.

We support the Bill as presently drafted. We ask that you support the Bill as well.

Our U.S. Supreme Court has held that federal legislation is necessary to solve the asbestos compensation crisis—and we agree. Currently, only 42 cents of every dollar spent in this broken system goes to victims, their widows and kids.

I recently wrote our membership across the country to advise them of our support for this Bill, and to urge them to contact you in support of S. 852. I advised our membership that this Bill is not perfect. But nothing ever is when problems of this magnitude are addressed.

We believe S. 852 offers the best hope of providing fair and equitable compensation on a national basis for those who have suffered, or will suffer from the devastating effects of asbestos exposure in decades to come.

We urge you to reject amendments of special interest groups on either side of the issue that would change the core provisions of the Bill.

Such amendments can only be hostile to the interests of fundamental fairness and equity. We have promised our membership that we would fight vigorously to oppose any change that would make this Bill unfair or inequitable.

Very truly yours,
JAMES A. GROGAN
General President.

INTERNATIONAL ASSOCIATION OF
HEAT AND FROST INSULATORS & ASBESTOS WORKERS,
Lanham, MD, January 31, 2006.

To: Members of the International Association Heat and Frost Insulators and Asbestos Workers.

DEAR BROTHERS AND SISTERS: The Fairness in Asbestos Injury Resolution Act of 2005 (Asbestos Bill S. 852) is scheduled to be brought to the floor of the United States Senate in early February of this year.

Bi-Partisan Co-Sponsors of S. 852: Senator Arlen Specter (R.) and Senator Patrick Leahy (D.): Nobody has worked harder than Senate Judiciary Chairman Arlen Specter (R.) of Pennsylvania and Ranking Minority Member Senator Patrick Leahy (D.) of Vermont in trying to get a fair and equitable and bi-partisan Bill that helps those who have suffered the devastating effects of exposure to asbestos. These two courageous Senators have worked tirelessly during the last three years—to craft changes to the Bill after listening to reasonable suggestions from Labor, Business and Insurance negotiators.

Special interest groups on both sides of the issue have tried to de-rail their good work. But Senators Specter and Leahy have stood tall in search of an equitable legislative solution.

This Office Has Actively Participated in the Negotiating Process of this Bill Over the Last Three Years: Your International has been actively involved in extended and complicated negotiations to bring about this legislative is necessary to solve the asbestos compensation crisis—and we agree.

Let us begin by stating that this Bill is not perfect. Nothing ever is. For the last 10–20 years the current asbestos compensation system has produced inequitable and unfair results. Tens of Billions of dollars have gone to people who are not sick. This is wrong. The current system is broken, notwithstanding what special interest groups may claim. We believe this Bill offers the best hope of providing equitable compensation while expediting the compensation and review process on a national basis, regardless of where you live, or who your attorney might be.

Over 300,000 Pending or Current Asbestos Claims Cry out for a Fair Legislative Solution from Congress: Currently it is estimated that there are more than 300,000 pending asbestos-related claims. In a recent study by RAND, it was determined that only $0.42 (42 cents) of every dollar spent on litigation is awarded to the actual victims, their widows and kids. A majority of the funds is paid to transaction costs, including lawyers' fees for corporations and claimants.

$140,000,000,000 ($140 Billion) Trust Fund For Victims of Asbestos Induced Mesothelioma, Lung Cancer and Asbestosis under a No-Fault System with Set Awards Based on Severity of Disease: This Bill would establish a $140 Billion Trust Fund to compensate victims who are truly sick from asbestos exposure under a no-fault compensation system administered by the Department of

Labor. Objective medical criteria that will rule in asbestos induced disease, and will rule out disease not caused by asbestos exposure has been negotiated and approved by us and medical experts we have retained. This legislation will offer the following expedited settlements:

Mesothelioma: $1,100,000 per case.

Lung Cancer with Asbestosis: $600,000–975,000 per case.

Lung Cancer with Asbestos Pleural Markers: $300,000–725,000 per case.

Disabling Asbestosis (not cancerous): $850,000 per case.

Asbestosis with Some Impairment: $100,000–400,000 per case.

Attorneys' fees have been limited to 5% under the legislation. It is to be expected that lawyers who have received tens of millions of dollars in asbestos fees might voice some objection to the Bill. Insurance companies who will have to pay hundreds of millions of dollars into the Trust are likewise objecting to this courageous attempt by Senators Specter and Leahy to solve the asbestos compensation crisis.

The Pipefitters, Painters and United Auto Workers Have Joined With Us: The leadership of the Plumbers and Pipefitters (the UA), the Painters (IUPAT) and the United Auto Workers (UAW), have joined with us in supporting this Asbestos Bill S. 852. We believe the leadership of other trade unions will come to join us in the weeks ahead in support of this Bill.

Funding: We are aware of those who, in good faith, question whether $140,000,000,000 ($140 Billion) will be sufficient to fund the Trust to compensate all American victims of asbestos induced cancer and asbestosis. We share their good faith concern.

But there have been too many bankruptcies as a result of the current asbestos litigation crisis. If funding mandated under the Bill proves insufficient, the Bill provides that individuals may return to the court system and pursue a lawsuit in their State or Federal Court before a jury of their peers. This was a hard fought and fair compromise.

Let me close by saying that this International Union remains deeply committed to supporting a meaningful, comprehensive solution to our national asbestos litigation crisis. Be assured if we become aware of changes or amendments to this Bill that will be to the detriment of workers and their families, we will fight them, and will not hesitate to change our position if needed.

We urge you to contact your Senators to gain their full support for this legislation. Attached is a complete listing of Senators and their contact information for your convenience.

With kind regards, we remain,

Fraternally yours,

JAMES A. GROGAN,
General President.
TERRY LYNCH,
Political Director.
JAMES P. MCCOURT,
General Secretary-Treasurer.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
Washington, DC, February 3, 2006.

DEAR SENATOR: Next week the Senate is scheduled to take up the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005 (S. 852), sponsored by Senators Specter and Leahy. The UAW strongly supports this legislation. We urge you to support this critically important legislation, and to support cloture both on the motion to proceed and on the bill itself.

The UAW supports S. 852 because we are firmly convinced it would be far superior to the current tort system in compensating the victims of asbestos-related diseases. Under the existing tort system, many victims receive little or no compensation because those responsible for the asbestos exposure are bankrupt, immune from liability or can't be identified. Even when victims do receive some award, the litigation takes far too long, and the amounts are highly unpredictable. Far too much money is wasted on attorney fees and other litigation costs, or dispersed to individuals who are not impaired.

The Specter-Leahy bill would solve these problems by establishing a $140 billion federal trust fund to compensate the victims of asbestos-related diseases through a streamlined, no-fault administrative system. This system will provide much speedier compensation to victims according to a predictable schedule of payments for specified disease levels that focuses compensation on those who have the most serious impairments. It will also guarantee that victims can receive adequate compensation, regardless of whether those responsible for the asbestos exposure are bankrupt or otherwise immune from liability.

The UAW strongly supports the provision in the Specter-Leahy bill that does not permit any subrogation against worker compensation or health care payments received by asbestos victims. We believe this provision is essential to ensure that victims receive adequate compensation, and do not have their awards largely offset by other payments. We strongly urge you to oppose any amendment that would undermine victims' compensation by allowing subrogation.

The UAW also urges you to reject any other amendments that would reduce or restrict eligibility for compensation for the victims of asbestos-related diseases. This includes any amendments that would strike medical monitoring or eliminate Level VI awards.

The UAW supports the provisions in S. 852 that require broad sections of the business and insurance industries to make contributions to finance the $140 billion federal trust fund. We believe this broad-based, predictable financing mechanism is vastly preferable to the current tort system, which has already driven many companies into bankruptcy, and is threatening the economic health of other companies that used products containing asbestos, including the major auto manufacturers. Continuation of the existing tort system will inevitably lead to more bankruptcies, resulting in more lost jobs and wage and benefit cut backs for workers and retirees. However, to ensure that the financing mechanism in S. 852 remains equitable and workable, the UAW believes it is essential that the Senate reject any amendments that would severely narrow or cap the financing base and jeopardize the guarantee that $140 billion will be made available to compensate asbestos victims.

The UAW recognizes that a number of specific concerns have been raised by other labor organizations about various provisions in S. 852. We are continuing to work for improvements in the legislation, and are hopeful that Senators Specter and Leahy will largely address these concerns in a manager's amendment.

However, the UAW does not agree with those who have taken exception to the 5 percent cap on attorney fees for monetary claimants. This cap ensures that asbestos victims will be adequately compensated, and not see their awards severely reduced by exorbitant attorney fees. This cap will not impede the ability of claimants to get adequate legal representation. Because S. 852 establishes a non-adversarial, no-fault administrative system, the difficulties and costs involved in bringing asbestos claims will be greatly reduced. Indeed, much of the work can be done by paralegals. We also believe that labor unions and other groups can help provide free or lower cost representation for asbestos victims by hiring staff attorneys and other professionals to process the claims under the no-fault administrative system. Through such mechanisms, asbestos victims can receive competent representation with little or no attorney fees being deducted from their awards.

Finally, the UAW recognizes that questions have been raised about the projections for asbestos claims and the solvency of the trust fund. We would note that most stakeholders agreed to $140 billion in financing early last year. Although all of the projections are subject to some element of uncertainty, the UAW believes that the $140 billion in financing is sufficient to enable the trust fund to compensate asbestos victims for a lengthy period of time. It is also important to remember that S. 852 provides for reversion of asbestos claims to the tort system in the event the federal trust fund should ever have insufficient funds to pay all claims. While we hope these reversion provisions will never be triggered, they do provide assurance that victims will always have some recourse for seeking compensation.

It is easy for critics to point out shortcomings in S. 852. The UAW submits, however, that it is abundantly clear the asbestos compensation system established by the Specter-Leahy bill would be far preferable to the existing tort system. It would do a much better job of providing prompt, equitable compensation to asbestos victims. And it would finance this compensation through a rationale system that does not lead to bankruptcies that threaten the jobs, wages and benefits of thousands of workers.

For all of these reasons, the UAW strongly supports the FAIR Act (S. 852). We urge you to vote for this legislation, and to support efforts to invoke cloture on the motion to proceed and on the bill itself.

Thank you for considering our views on this vital issue.

Sincerely,

ALAN REUTHER,
Legislative Director.

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, AFL–CIO, CLC,
Washington, DC, February 7, 2006.

DEAR SENATOR: The Senate is now considering the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005 (S. 852), sponsored by Senators SPECTER and LEAHY. The International Union of Painters and Allied Trades (IUPAT) strongly supports this legislation and, as it moves forward, we urge you to support cloture on S. 852 on both the motion to proceed and the bill itself.

The IUPAT believes that S. 852 offers the best hope of providing fair and equitable compensation on a national basis for those who have suffered, or will suffer, from the devastating effects of asbestos exposure in decades to come. We believe that S. 852 and the establishment of a $140 billion federal trust fund to compensate the victims of asbestos-related diseases through a streamlined, no-fault administrative system is a vast improvement over the current tort system that all too often is unfair to victims of asbestos exposure. Under the current tort system, many victims receive little or no compensation because those responsible for the asbestos exposure are bankrupt, immune from liability or cannot be identified. If a victim is fortunate enough to secure an award, the litigation can drag on for years, the award amounts are highly unpredictable, and far too much money is wasted on attorney fees, other litigation costs, and individuals who are not impaired.

Furthermore, while this important legislation is considered on the Senate floor, we urge you to reject any amendments that would weaken core provisions of the bill. Namely, agreements reached on the issues of insurance subrogation, medical monitoring, CT scans, statute of limitations, medical criteria, awards values, $140 billion in guaranteed private funding, enforcement provisions for contributors, transparency of fund contributors and a reversion to the current tort system should the fund become insolvent. Should any amendments be adopted on the Senate floor that would weaken any of these core provisions, we will be forced to withdraw our support for S. 852. We also look forward to ongoing efforts included in a manager's amendment and during Senate floor debate that would, in our view, positively address outstanding concerns with regard to start-up and sunset provisions as well as individuals suffering from both asbestos and silica related diseases.

In dealing with a highly complex and emotional issue, S. 852 reflects years of negotiations and compromises that will undoubtedly allow critics to point out various "shortcomings" in this bill. The IUPAT recognizes that this bill is not perfect but perhaps it represents the last best chance to provide prompt, equitable compensation to asbestos victims and is undoubtedly a vast improvement over the existing tort system. The U.S. Supreme Court has held that federal legislation is necessary to solve the current asbestos compensation crisis, and we agree. We believe that S. 852 deserves your consideration and ultimate support, and for that reason, the IUPAT urges you to support cloture on both the motion to proceed and the bill itself.

Thank you for your time and attention to this critical issue.

Sincerely,

JAMES A. WILLIAMS,
General President.

Mr. SPECTER. Mr. President, I see the distinguished Senator from West Virginia, the senior Member of this body, the former President pro tempore, former chairman of the Appropriations Committee. He has held every title there is around here. We consider Senator BYRD's longevity and stature as phenomenal. He was in Congress when Harry Truman was President, so he has served with a lot of Presidents. Senator BYRD makes a key distinction between serving with and serving under. He says serving with, and I think he is right. And if you are dealing with Senator BYRD, of course, he is right.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I shall quote Alexander Pope in saying to my distinguished friend, Senator SPECTER:

> Thou art my guide, philosopher, and friend.

I thank the distinguished Senator.

Mr. President, I ask unanimous consent to proceed for not to exceed 3 minutes as in morning business for the purpose of submitting a resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from West Virginia is recognized.

Mr. BYRD. I thank the Chair.

(The remarks of Mr. BYRD pertaining to the submission of S. Res. 370 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, it is about a quarter of 5, so we still have a fair amount of time left on today's calendar. There is no Senator in the Chamber, except you and me, Mr. President. So if there are any of our colleagues who want to speak on the asbestos bill, now would be a good time to come over and speak.

There is a certain tempo about this Chamber. When there are a lot of Senators who want time, there is very limited time, fighting for the last extension of time, unanimous consent for 2 more minutes here and a little more there. Now is the time for anybody who wants to speak to come to the Senate Chamber.

I might comment that we all have a lot of other things to do, beyond any question. I have been spending a lot of my time meeting with Senators in their offices talking about the bill and also working on the issue of electronic surveillance, which is very heavy on the Judiciary Committee calendar. I am now about to go to a meeting on immigration, but I will be available if the action on the floor heats up.

Again, I urge any of my colleagues who want to speak, now is a good time. Again, I urge my colleagues to follow up on the request Senator LEAHY and I made back on January 25: If you have amendments, let us know so we can manage this bill in an efficient way.

In the absence of any Senator on the floor seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, pending before the Senate is S. 852, which is a bill that has been written to address what has become a scourge in America: asbestos-related illness and death.

We understand that as early as 1934, some of the companies that were making products out of asbestos came to realize there was a danger, that some of the employees working around this asbestos ended up developing lung problems and some of them were fatal.

Rather than protect the employees or disclose the danger, some of these companies did nothing, said nothing. In fact, there is ample evidence that they covered it up. They didn't want their employees to know the dangerous situation they were in. They didn't want to end up with liability for their employees' illness and death, and they didn't want to lose their profitability. So this secret was kept for a long time, from the 1930s onward.

Through World War II, when men and women serving this country were busy building the ships and other vehicles necessary for our troops, they were exposed to asbestos in many different forms.

Asbestos became a very common element that was used in construction and a lot of different products, from brake linings to home insulation. It was considered to be a valuable resource that was fireproof and light in weight. It was somewhat revolutionary. But during this entire period of time, the development of asbestos product, the asbestos itself, and the fibers that were floating in the air, breathed in by workers and bystanders and innocent people, were creating mini-timebombs in the lungs of the people who were exposed. They didn't know it. They didn't sign up for it. They were not warned. They only learned much later in life that they had some exposure and it ended up killing them.

I wish the story of asbestos had started and ended long ago, but it continues to this day. People still turn up with this disease, mesothelioma, the most fatal form of asbestos exposure, similar to lung cancer, but much more virulent in terms of its devastation on the human body.

The persons diagnosed with mesothelioma have limited time to live. Some of them go through harrowing, extraordinary surgical procedures to buy the possibility of a few more months of life. It can strike anybody at any time, young and old alike, men and women alike. It can strike someone in your family, Mr. President. It can strike a friend. Asbestosis, which is a form of it, is a disease which limits your activities and limits your lifespan. Mesothelioma is a killer.

So hundreds of thousands of Americans have come to learn, because of exposure to this product, that they are sick and facing huge medical bills and the prospect of illnesses of great duration or death, and they ask who is responsible.

Occasionally, they will find an employer that used asbestos. In some cases, they will find a product they purchased that ended up creating asbestos exposure, and they try to seek compensation in court.

What they are doing is very common in America. People who are guilty of wrongdoing are held accountable in court. Drunken drivers are held accountable in court. People who sell defective products are held accountable in court. People who strike other people and cause injury are held accountable in court.

So over the years these hundreds of thousands, maybe millions, of people have asked for their day in court, asked for a judge or jury to decide whether they are entitled to compensation for medical bills, for lost wages, for the family they will leave behind if they are going to die.

It is not unusual. These are the types of lawsuits filed every day in America, and we trust our system. The system says that ultimately a judge and a jury will decide what is fair and what is right. A judge and a jury of the peers of the person who is in the courtroom will decide if compensation is something that should be given. In many cases, it is clear, and large verdicts are given: in some cases, the answers are no.

So over the years, as this asbestos exposure has become better known, many of the companies that were deeply involved in making profits with asbestos have faced huge lawsuits from numerous people who have been injured. Some of these companies, because of the lawsuits and other circumstances, have gone out of business.

Johns Manville was a big name 30 years ago in America. Now it is a trust fund created to pay asbestos victims. Johns Manville made its fortune, in some part, by using asbestos. But by using asbestos and creating asbestos products, they endangered and harmed a lot of people. Courts across America said: Johns Manville, you are responsible; you have to pay. That has happened over and over.

There are many corporations that wonder if they, too, will face many lawsuits. Some already have; others have not. The victims keep coming because so many people were affected by this product. And because of the concern of some businesses as to their exposure and liability, they started coming to Congress over 20 years ago, saying we have to close the courthouse door, we can't let these people come into the courtrooms anymore because they keep winning. They are winning because no one willingly exposed themselves to asbestos. They were innocent victims and their lives were changed dramatically.

So these businesses came to Congress and said: You have to take these cases out of the courtroom; you have to create some other way to deal with it.

We have been talking about it for a long time here on Capitol Hill. Finally, this week, S. 852 has come to the Senate floor in an attempt to create a system that will replace the courtroom in America. This bill creates a trust fund that is supposed to pay the victims.

Think about these victims for a moment. There are some, when you think about them, you might be surprised to know why they died. One of them we talked about earlier today was a great colleague of mine from the State of Minnesota, Bruce Vento. What a terrific guy. I believe he was formerly mayor of St. Paul, MN. He represented St. Paul in the House of Representatives. Bruce was a terrific fellow, an outdoorsman, physically fit. I would see him in the House gym every morning. His locker was down from mine.

Then came the day when they diagnosed him with mesothelioma, and that was, sadly, a death sentence. At some point in his life, something he had done had exposed him to asbestos. It was a tough situation. His family tried to face it, get the best of medical care, but it was hopeless. As a consequence, Bruce passed away.

Here is someone certainly the older people in the audience will recognize, actor Steve McQueen. He died in 1980 from mesothelioma. Some exposure at some point in his life led to this deadly disease. This man who was so handsome, daring, and courageous in all the movies could not fight back when he was struck with mesothelioma.

Recently, singer Warren Zevon—I recall when he did his last CD. It was a big hit. He made that CD realizing it was the last one he would ever record. At some point in his life, he was exposed to asbestos. He has died.

Admiral Elmo Zumwalt, most people remember him, his service to America in the U.S. Navy during Vietnam. He is a well-known figure, spokesman. He, too, was exposed to asbestos at some point in his life and died of mesothelioma.

These are some of the big names who died of mesothelioma, but there are others.

Patricia Corona is a mesothelioma victim. I wish to tell you a little bit about her story.

Patricia, 72 years old, was diagnosed with malignant mesothelioma in the spring of 2001. Her exposure began when she was a young woman in the course of her employment as a sales manager at various automotive dealerships. They used asbestos brake linings, pads, and clutches. She was a sales manager. She frequently walked around the service area. Unknowingly, she was exposing herself to deadly asbestos fibers.

Mrs. Corona and her husband Carl, shown in this picture, have two children. After leaving the automotive dealership, Mrs. Corona decided to stay at home with her kids. While at home, she led an active life. She remodeled her entire house by adding on, painting, putting up drywall, putting in new floors, among other things, just the kind of ambitious, energetic, and talented woman you want to have in your own home. Unbeknownst to her, many of the products she used in home construction contained asbestos. Again she was exposed, unknowingly, to these deadly asbestos fibers.

When Carl and Patricia's kids were grown up, Mrs. Corona went back to work as a sales manager, and eventually bought her own custard stand. After quitting her sales manager job and selling the custard stand, she stayed home to take care of her handicapped brother.

While taking care of her brother, she did some small remodeling. In the spring of 2001, Mrs. Corona's active life came to a screeching halt. She was stricken with shortness of breath and extreme chest pains. She was diagnosed with mesothelioma in May 2001. Mrs. Corona's life, along with her husband's, changed dramatically due to the effects of the disease.

Mrs. Corona is obviously restricted in her activities and realizes that in a short period of time, she will succumb to this disease. Patricia Corona of Glen Ellyn, IL, another asbestos victim.

This is businessman John Rackow. John is from Lake Zurich, IL, grew up in Chicago and moved to the suburbs. His father Ron owned a plastics factory, and Jack helped him run it. He married and raised three kids. Along the way, he worked for a lot of different businesses. He worked in the property development business. He was athletic and active, but he recently noticed when he went out running, he would become short of breath. He was an avid golfer. Jack also noticed his golf game wasn't what it used to be. He went to see a doctor. Some routine tests revealed a mass in his body. When the biopsy was done, the doctor diagnosed him with mesothelioma.

Jack didn't believe it. He went to all kinds of specialists. He took medication to manage the pain. He continued to play golf and even entered a golf tournament. However, after a few days, he was flat on his back in the hospital. He became weaker by the day, and in less than 2 weeks from the time he entered the hospital, he passed away at the age of 64. Jack Rackow is survived by his children and grandchildren. He is another asbestos victim.

The last one I will talk about from Illinois is policeman Donald Brozych from Tinley Park. He studied for the priesthood. He eventually decided to become a police officer. While he was in school, he worked in construction. He was handy at home and worked on his own car.

After he retired, Don and his wife enjoyed traveling and spending time with their friends, but he found himself worn out all the time. During a physical exam, the doctors found some abnormalities, did some tests, and diagnosed him with malignant mesothelioma.

After diagnosis, Don has gone through numerous treatments—chemotherapy, extensive surgery. He even went into an experimental program. He lost his hair. As of the time of this writing, he has been in treatment for over 2 years. He says each day is a blessing and he doesn't know what to expect in the future. He and his wife Donna pray for a future.

When was he exposed? He doesn't know. He looks back at his life and tries to figure out was it while he was working on construction, trying to earn his way through school? Was it while he was working on his car, doing home repairs? There were so many common experiences he was involved in, never knowing he was exposed to asbestos.

I tell you these stories because people such as those I just described have cases pending in courts across America today. They are people whose lives have been shortened and whose lives have been changed dramatically because of exposure to asbestos. They want to know if they can find the party responsible for their illness, whether that party will pay to their family the cost of medical bills and do something to keep their family together when they are gone. It is not an unreasonable request, and it is a request which many times leads to a jury verdict or a judge finding, yes, they are entitled to recover.

This bill that we have before us, S. 852, is a bill which will close the courthouse doors to every one of those people. If they don't have a case being argued before a judge in trial, when this bill is signed their case will be closed. No matter how long they have worked on it, no matter how much effort they put into bringing together medical bills, bringing together all the evidence of where they worked and how they could have been exposed—despite all that effort, it is over.

Where do they turn? They will turn to this trust fund, a trust fund that has been created in this bill. How much money are we going to have in this trust fund to take care of all these asbestos victims for the next 50 years? The amount, according to the chairman and the sponsor of the bill, is $140 billion.

Repeatedly today and on previous occasions, Chairman SPECTER has been asked: Where did you come up with the number $140 billion? By what method did you calculate the number of potential victims, the amount of compensation, to come up with this number of $140 billion? Without exception, the chairman of the committee and lead sponsor of the bill, Senator SPECTER, has said he cannot explain that calculation. He cannot tell us where $140 billion came from. At best, he says, it was a figure that he heard from Senator FRIST and Senator Daschle a year or two ago. That doesn't sound like a very valid starting point to establish the amount of money you need in a trust fund to take care of some of the victims that we have talked about.

To close the courthouse door to Donald Borzych and his family, and to say to them you cannot pursue your lawsuit, you must turn to this trust fund, the starting point should be that the trust fund has enough money to take care of the victims. But, sadly, there is no way of establishing that.

In fact, today Senator KENT CONRAD, who is a colleague of mine from the State of North Dakota and is the Democratic spokesman on the Senate Budget Committee, made a presentation to our caucus lunch. By best estimate, $140 billion is grossly inadequate, totally unfair in terms of what it will cover in the future. They have turned to a variety of different groups and said: What would it really cost? The Congressional Budget Office, outside consulting groups—each and every one of them says $140 billion is not enough.

Senator SPECTER was asked yesterday: What happens if this trust fund runs out of money? What if claims of people like Donald Borzych, Patricia Corona, are still out there, or people just like them, when the fund runs out of money? Senator SPECTER was very candid. He said we will just have to cut back on the amount we have to pay the victims. Think of that for a moment. Facing deadly mesothelioma or asbestosis, losing your day in court for just compensation for your injuries, you turn to a trust fund that fails you when you need it, and you receive a token amount for having given up your life, having given up the quality of your life, having given up all that time with your family.

Over the last year or two I frequently have met with the families of these mesothelioma asbestos disease cases. Some of them are still heartbroken because in many cases that father and that husband was taken from them in a short period of time. In other cases they fought valiantly, with great pain and sacrifice, to try to beat this disease—and they failed. Just last week, in a corridor upstairs, a family came to see me. A great young little fellow there who looked like he was about 8 years old—he had a white shirt on and a bow tie—he was coming to the U.S. Capitol. He talked about losing his grandfather. He said he was glad he lived long enough to at least know him, but he lost him to asbestos.

I thought to myself at that moment: If you are going to take that family out of court, if you are going to close the courthouse door to their effort to recover at least for the medical expenses and the injuries that have been suffered, shouldn't you put them in a system that will work, a system that you can say with some confidence will compensate them?

We cannot say this about this bill—$140 billion—and no one can come to this floor and explain how that $140 billion is going to be adequate. It turns out that as soon as you close the courthouse door, if this bill passes, and you open up this trust fund, there will be a flood of people rushing to it. We know that. Some of them are on their last leg, literally, trying to get some compensation. So will there be enough money in the trust fund to get started? The answer is no, not nearly enough.

What is the trust fund going to do? It is going to turn around and borrow enough money to start to pay them over an extended period of time. And as the trust fund borrows money, it has to pay interest for the money it borrows. The best estimates are that out of $140 billion, more than a third of it is going to be paid in interest because of borrowing to start the trust fund in its earliest years. So there will not even be $100 billion to deal with all of these cases.

Where will the money come from, $140 billion? That is another good story. I yielded today several times to Senator SPECTER. We talked about this. It is still not clear what happened, but some outside group—whether a consulting group or private corporation, I don't know—was called on to figure out how you create $140 billion in a trust fund. How do you turn to businesses and insurance companies and have them pay that much money? What standards do you use? How many companies are affected? Which companies will be responsible? Which will not be?

All the time we were considering this bill in committee, many of us were asking: How did you come up with $140 billion, and who is going to pay it? We never could get an answer. In May of last year I wrote a letter to the chairman and I asked: Can you tell us the answers to those questions? This was 8 months ago. I never received a reply.

Over time, the chairman said he would provide the information, then announced that he had to issue a subpoena to get the information to explain his own bill—subpoena. Today he acknowledged it. They subpoenaed the information—not from a Government agency but from some private business, private corporation that was writing this bill, or at least writing the means by which they would fund the bill. They subpoenaed the information. So, obviously, we believed that in the interest of a real public debate that information should be public. But it is not. Somehow or another it has been characterized and classified as confidential information so that any person—the family of Donald Borzych, for example—who wants to know how this trust fund will ever be funded can't even see this. It is a secret list, a secret list of the companies that are going to fund the trust fund to $140 billion.

Is this how we write laws in America? Do we go to private companies to write the laws? And then, when you ask them to give you the information as the basis for the law, you have to subpoena it? Demand it from them? Is that what the American people expect? I don't think so.

I think they expect people, public officials and our staff, to put their best efforts into writing a bill that is not written by special interest groups, is not written by private companies. In this case, this bill clearly was, in many respects.

There are big winners in this bill. I wish I could go through the bill with some certainty and tell you what is in it, but I cannot. Standing here today, facing the prospects of voting on the bill tomorrow, I cannot tell you what we will be voting on. A lot of people think Senators do not even try. The fact is, we were given a bill, this bill here, S. 852. That is the one that was passed around here. It is on everybody's desk. But it turns out this is not the bill at all. Listen to what was printed today in Congress Daily, which is a publication on Capitol Hill:

> Senate Judiciary Chairman Specter is drafting a managers' amendment to the asbestos litigation bill with more than 40 new provisions in hopes of garnering enough votes to pass the legislation. Senator Specter said in a news conference, "There is so much of this bill that is a work in progress."

I can tell you, that means that neither this Senator nor, frankly, any Senator other than perhaps the chairman, has a clue what we will be voting on tomorrow. While the fate and lives of millions of Americans who have been exposed to asbestos hang in the balance, we are being asked to vote for a bill that will be changed so dramatically in just a few hours that no one knows what is in it. No one knows what is in it. This is what gives Congress a bad name—for us to be moving on a bill of this importance and this magnitude without knowledge as to what is included.

What is interesting is that the White House usually comments on these bills. They kind of send us a statement of administration policy, as to whether they support a bill or oppose it. What I find interesting is we received an interesting statement from the White House on the administration's approach to it. I might say, before I read it, that they could not possibly know what is in this bill because no one else knows. It is going to change overnight. A managers' amendment will bring 40 new provisions in the bill. But nevertheless, the administration, the Executive Office of the President, February 8, 2006, Statement of Administration Policy on S. 852:

> The administration supports Senate passage of S. 852.

He goes on to say asbestos related litigation has clogged up courts, deprived those with injuries of meaningful remedies, costing tens of thousands of jobs, and so forth.

Then they come down to the second paragraph in this very brief statement of policy in which they say:

> Although the administration has serious concerns about certain provisions of the bill, the administration looks forward to working with Congress in order to strengthen and improve this important legislation before it is presented to the President for his signature.

Serious concerns—well, they should have serious concerns because they have not seen the bill. Forty new provisions are going to be added tonight that no one in the White House could possibly have read before they gave this reservation of an endorsement.

Here we are in a situation with a trust fund in an amount that cannot be explained, coming from companies that are on a secret list that cannot be disclosed, as part of a bill that does not exist.

If you were out there with a member of your family exposed to asbestos, I think you would have justifiable concerns that what the Senate is about to do is nothing short of a disaster—a disaster for so many victims across the United States.

Several things ought to be said about the problems that we face with this bill. I could talk to you about the difficulties in the bill. One of them relates to Libby, MT. Libby, MT, could have been ground zero for asbestos contamination. W.R. Grace & Company was mining asbestos and their workers were being exposed to dangers on a daily basis. This company is now gone, but the lawsuits and the injuries and the deaths continue from Libby, MT.

I can recall when Peter Grace, the head of W.R. Grace, was brought to Washington during the Reagan administration to tell us how to run the Government. Peter Grace was the head of a commission to end waste and fraud and abuse in Government.

It turns out that Peter Grace's company, W.R. Grace, had been guilty of fraud on its workers for decades, concealing the dangers of asbestos. Part of this bill says we ought to give these Libby, MT, workers good treatment. I support it. I think it is a good thing to do.

But only Libby, MT. It turns out across the United States of America there are smaller examples of exactly the same thing in State after State. There are over 25 different sites around America—some in my own home State of Illinois, some in Texas, some in Louisiana, some in New York—that are just like Libby, MT. But when the chairman wrote the bill, special consideration was only given to one place in America—one place. Why? Why would you single out one place in America to give special treatment under the bill? Sadly, that is exactly what happened. And because it happened, we are going to be facing an amendment, which I believe Senator GRAHAM will offer, to make sure that there is fair treatment for many others who are going to be involved.

I hope the Senate will support it. As I said, I am not against Libby, MT, receiving their fair share. But who were the winners and losers when it gets right down to it? The list is pretty interesting.

I talked earlier about U.S. Gypsum, a company based in Illinois. They have been sued by lots of people exposed to asbestos from their products. U.S. Gypsum made an announcement last week as follows:

> We believe that we have about $4 billion in damages that we have to pay to victims of asbestos exposure from our products.

Then they went on to say that they were going to pay it, unless this bill passes. If this bill passes, U.S. Gypsum will be required to pay into the trust fund $900 million.

Think about that for a moment. One company benefits to the tune of $3.1 billion—U.S. Gypsum—because of this bill.

When it comes to the question about who wants this bill, you can bet that company wants this bill.

Honeywell is another company—estimated future asbestos payments, $2.75 billion.

How much will they pay into this trust fund? Somewhere in the range of $300 million or $400 million, about 14 percent or 15 percent of what they would otherwise pay in court. So now Honeywell wants this bill.

Dow Chemical, estimated future asbestos payments up to $2.2 billion. What is the amount of money they will pay into the asbestos trust fund? Somewhere in the range of $300 million. So they are going to do quite well.

But there are other companies that will be forced to pay into this trust fund with exactly the opposite results.

A.W. Chester, a company that has an estimated future asbestos payment in the court system, zero; never been sued, never paid. They will have to pay annually $16.5 million into this trust fund: never been sued, never paid a penny.

They have said, quite frankly—this company has been around for a long time—they are going out of business.

The same thing is true with Hopeman Brothers, no exposure; $16.5 million a year into the trust fund.

National Service Industries, estimated future asbestos payments, $11 million. They have to pay $16.5 million a year into this trust fund.

Is it any wonder that many of us have asked to come up with a list of companies that are going to be winning and losing with this asbestos bill? There are going to be some big, huge winners, and they have been working night and day to get this passed.

There was a study released by Public Citizens Congress Watch in May 2005, entitled, "Federal Asbestos Legislation: The Winners Are."

It looked at lobbying efforts behind this bill. They have been going for a long time.

I mentioned, in an earlier statement, that over 20 years ago people were talking about legislation. There has been a real intensity in that lobbying effort over the last several years.

This public citizen organization concludes the big winners will be an unknown number of Fortune 500 companies and at least 10 asbestos makers who have filed for bankruptcy.

It concludes: Some of the Nation's largest and savviest investment firms have positioned themselves to score big if the bill passes.

Everybody following this debate—especially Americans fed up with the way Washington works against the interests of the mainstream and for the interests of Wall Street—I hope they will go to the Public Citizen Web site, www.Citizen.org, and read it for yourselves. You can read their report and analysis of the lobbying effort. And you will find the money which has been spent—estimates by some are as high as $140 million—in lobbying to get this bill passed.

It sounds like a huge sum of money, until you look at one company that could win $3.1 billion if this bill passes. It means a lot to them. You can understand why that company hired 40 lobbyists to come and beg us to vote for this bill.

But I don't worry so much about the companies. I want them to stay in business, if they can. I worry most about the victims. I worry about a system that would not pay those victims.

Is this the best we can do in America? Is this what fairness has come to? This bill is called the FAIR Act. Sadly, I think it is unfair. It is unfair to the hundreds of thousands of people who, through no fault of their own, have been exposed.

Luckily, we have a lot of supporters who have come and talked to us about their support for this legislation opposition. They include many businesses that will be shortchanged, as I mentioned earlier, which include some insurance companies that feel this is fundamentally unfair. They include asbestos victims groups united to oppose this legislation and a score of major labor unions across America representing workers who may have been exposed and may need their day in court.

I am afraid that when you add up this lobbying effort that I have in my hand against the $140 million to pass this legislation, this poor group just didn't have the firepower.

That is why this legislation is on the floor today and why it will be considered very soon.

Once again, we are going to say to America, We don't trust the courts in America, we don't trust the judge, we don't trust the juries. We trust the special interest groups pushing legislation that takes the power away from the individual to have their day in court, to have their neighbors decide what they are entitled to.

Some who want to put their trust in that operation should pause and reflect.

This is the same gang who came up with the Medicare prescription drug benefit program that has become an unsalvageable fiasco across America; again, that program driven by the pharmaceutical companies, this legislation driven by a handful of corporations that will do extremely well.

I am going to close by saying that I can't think of a more important bill to be considered since I have been in Congress. I can't think of a bill that is going to have more impact on ordinary people.

It is unfortunate that special interest groups will dominate this debate. Some people say: Aren't there special interest groups on both sides? I will concede that point; business groups on both sides, trial lawyers on one side, major corporations on the other side, unions on one side. This is a clash of the special interest titans.

That is what this bill is.

The obvious question is: Why are we doing this? If you ask the American people to pick any city in America, whether it is in Nevada or Illinois, you pick it, go on the street and ask: What is the first bill the Senate should take up this year? My guess is that many of them would say: I hope it is ethics, with that culture of corruption in Washington. You had better clean that mess up before you do anything else. Someone else may say: After I sat down with my mother and tried to do that prescription drug form, I hope you will change that. Someone else might say: I hope you will do something about the cost of health insurance. That is a real issue facing businesses, families, and individuals.

In my part of the world, they would say: Have you seen your heating bill at your home lately? It is double, Senator, if you didn't notice. What are you doing about energy in this country?

Some workers who come by my office ask: What are you going to do to protect pensions which we have worked a lifetime for?

There is a long list of things we could do not driven by special interest groups. No. The first item on the agenda for the Senate is the asbestos bill, the clash of the special interest titans.

That is where we are going to spend our time.

When it is all over, I am afraid those who couldn't afford lobbyists, couldn't afford the people who stand outside the corridors with signals, hand signals, with a wink and a nod on how we are supposed to vote, those are the ones who are going to be the losers.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ENSIGN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DEMINT). Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ELECTRONIC SURVEILLANCE

Mr. SPECTER. Mr. President, on Monday, the Judiciary Committee held a hearing on the administration's electronic surveillance program and we dealt solely with the issues of law as to whether the resolution to authorize the use of force on September 14 provided authority in contradistinction to the Foreign Intelligence Surveillance Act, which flatly prohibits any kind of electronic surveillance without a court order. Then we got into the issue of the President's inherent powers under article II. It is difficult to define those powers without knowing more about the program and we do not know about the program. It was beyond the scope of our hearing, but it is something that may be taken up by the Intelligence Committee.

But I made a suggestion to the administration in a letter, in which I wrote to Attorney General Gonzales and put in the RECORD at our Judiciary Committee hearing, that the administration ought to submit this program to the Foreign Intelligence Surveillance Court. They have the expertise and they are trustworthy. It is a regrettable fact of life in Washington that there are leaks from the Congress and there are leaks from the administration, but the Foreign Intelligence Surveillance Court has been able to maintain its secrecy. The Attorney General said the administration was disinclined to do that.

In response to the letter, he wrote, a written response, he said that they would exercise all of their options. I am now in the process of drafting legislation which would call upon the Congress to exercise our article I powers under the Constitution to make it more of a matter for congressional oversight, but respecting the constitutional powers of the President under article I. The Congress has very substantial authority. The President has powers under article II; the Congress has very substantial powers under article I. In section 8, there are a series of provisions which deal with congressional authority on military operations. One which hits it right on the head is to make rules for the Government and regulations of the land and naval forces. That would comprehend what is being done now on the electronic surveillance program.

The thrust of the legislative proposal I am drafting and have talked to a number of my colleagues about, with some affirmative responses, is to require the administration to take the program to the Foreign Intelligence Surveillance Court.

I think that they ought to do it on their own because I think that there are many questions which have been raised by both the Republicans and Democrats. We want to be secure and we want the military, the administration and the President to have all the tools that they need to fight terrorism, but we also want to maintain our civil liberties. If that unease would be solved by having the Foreign Intelligence Surveillance Court tell the administration that it is constitutional, if they say that it is unconstitutional, then there ought to be a modification of it so what the administration is doing is constitutional.

This comes squarely within the often-cited concurring opinion of Justice Jackson in the Steel Seizure case about the President's authority being at its utmost when Congress backs him, on middle ground when Congress has not spoken, and weakest when Congress has acted oppositely in the field, which I think Congress has done under the Foreign Intelligence Surveillance Act because the President's congressional authority then is whatever he has minus whatever Congress has that is taken away from him.

As Justice Jackson said, what is involved is the equilibrium of the constitutional system. That is a very weighty concept—the equilibrium of the constitutional system.

The legislation I am preparing will set criteria for what ought to be done to establish what the Foreign Intelligence Surveillance Court should apply in determining whether the administration's program is constitutional. The standard of probable cause ought to be the one which the Foreign Intelligence Surveillance Court should apply now—not the criminal standard, but the one for gathering intelligence. Then they ought to weigh and balance the nature of the threat, the scope of the program, how many people are being intercepted, what is being done with the information, what is being done on minimization—which is the phrase that the information is not useful in terms of deleting it or getting rid of it—how successful the program has been, if any projected terrorist threats have been thwarted, and all factors relating to the specifics on the program—its reasons, its rationale for existence and precisely what is being undertaken, its success—and that the Foreign Intelligence Surveillance Court ought to look to this, essentially, prospectively.

The court does not have punitive powers, and I do not believe that it is of matter, except to work from this day forward as to what is being done. No one doubts—or at least I do not doubt—the good faith of the President, the Attorney General, and the administration on what they have done here. But as I said in the hearing, I said to Attorney General Gonzales, the administration may be right but, on the other hand, they may be wrong.

The Foreign Intelligence Surveillance Court ought to take a look at the program, make a determination from this day forward whether it is constitutional, and if it is constitutional, then they ought to, under the statute, report back to Congress with their determination as to whether it is constitutional.

The court ought to further make a determination as to whether it ought to be modified in some way which would be consistent with what the administration wants to accomplish but still be constitutional and not an unreasonable invasion of privacy.

The President has represented that his program is reevaluated every 45 days. That is in terms of the evaluation of the continuing threat and what ought to be done. I think a 45-day evaluation period would be in order here as well.

This question is one which is not going to go away. We had, yesterday, the comment by a Republican Member of the House of Representatives in the Intelligence Committee who chairs the subcommittee that oversees the National Security Agency. There are quite a number of people on both sides of the aisle who have expressed concerns regarding this program. It is my judgment that having it reviewed by the Foreign Intelligence Surveillance Court would accomplish all of the objectives, would maintain the secrecy of the program, would allow the President to continue it when there has been the determination by a court—that is how we determine probable cause on search warrants, on arrest warrants, on the activities, the traditional way of putting the magistrate, the judicial official between the Government and the individual whose privacy rights are being involved.

I yield the floor.

OIL AND GAS EXPLORATION IN GULF OF MEXICO

Mr. MARTINEZ. Mr. President, the Senator from New Mexico, chairman of the Energy Committee, whom I greatly admire and respect and consider a good friend, spoke about the bill he proposes to create opportunities for oil and gas exploration in the Gulf of Mexico.

I rise to point out that last week Senator NELSON and I offered a bipartisan bill that also deals with opening some aspects of lease area 181 to oil and gas exploration. The bill Senator NELSON and I propose is a bill that I believe should find favor with many Senators. It allows protection to Florida's coast of 150 miles. It is the kind of protection that Florida's economy depends upon and demands. The people of Florida fully understand the significance of this. This is what jobs in Florida are about, opportunities for people to continue to come to our State to enjoy the wonderful open air, the beaches, the great environment that we have to offer. It also protects the military mission line. This is a very important area for military training out of Eglin Air Force Base and other adjoining bases that utilize this area of the Gulf of Mexico as a primary area for training exercises.

More than that, it also gives the State of Florida permanent protection. This buffer of protection around the State, unlike all the other proposals, gives the State of Florida permanent protection. Once and for all we will define where in the Gulf of Mexico we will drill and where we will not drill, where in the Gulf of Mexico the State of Florida will find permanent protection.

The chairman's bill opens more area for drilling in lease area 181. We don't like that as well as what the Senator from Florida and I proposed, but we understand it does also conflict with what is being proposed and today was outlined by the Minerals Management Service of the Department of the Interior. The Department of the Interior today proposed the next 5-year leasing area for the Gulf of Mexico in lease area 181, and they speak of an area open for drilling that is even less than what the Senator from New Mexico is proposing. But equally flawed, this is protection for 5 years. It is another 5-year moratorium.

Five years from now, we will be right back here where we are today discussing how yet another portion of the Gulf of Mexico might be open to oil exploration. The bill Senator NELSON and I propose is the only one that opens areas in lease area 181 and a substantial portion south of lease area 181 to further oil and gas exploration but also provides the State of Florida with permanent protection, permanent protection the State of Florida ought to decide whether they wish to have. And we representatives of the State of Florida believe strongly this is important to us.

What is the rationale for this? Why must we continue this quest for more and more drilling in the gulf? We are talking about the price of gas. Since we were debating this a couple months ago, the price of gas has dropped dramatically. It is now not almost but almost 50 percent of what it was a couple of months ago. In addition, for the last 15 years, we have gone to a very inefficient way of producing electricity by generating electricity with gas. Almost 95 or 92 percent of all new generating facilities that have been built over the last 10 years or so have been powered by gas, a very inefficient way of doing it. Why? Because it was cheap. Because gas was so cheap, this was the best alternative, just as the energy companies moved in the direction of gas because it was inexpensive. As the price of gas has risen, it will dictate that they will move to other fuel sources.

I continue to believe that inefficient power, generating decisions made 10 years ago, should not inure to the detriment of the people of Florida, Florida's economy, and environment. It is fine to use the Gulf of Mexico for oil exploration in areas where it is sufficiently far away from the State of Florida. It is fine to go into lease area 181. We are willing to open up more of 181 to oil and gas exploration. What we are not willing to do is not insist that the State of Florida be provided with some permanent protection.

There is more than one bill to discuss. There is more than one way to go here. I believe that we offer a way for more gas and oil exploration in the State of Florida while at the same time providing our State with the vital permanent protection that the people of Florida expect and demand.

I yield the floor.

STAMINA, LEADERSHIP, AND RESPECT FOR THE SENATE

Mr. LEAHY. Mr. President, all of us who are friends and colleagues of the senior Senator from Pennsylvania, Senator SPECTER, are delighted with his robust recovery from a difficult illness.

Nearly a year ago Senator SPECTER announced that he had been diagnosed with Hodgkin's disease. He declared that he was going to beat it, just as he had beaten a brain tumor, heart surgery and several other challenges. We are delighted that his promise has been fulfilled, as we knew it would be.

Over the last year he underwent a regimen of grueling treatments. Throughout dozens of Judiciary Committee hearings and voting sessions on difficult topics, he and I sat side by side, month after month, as his treatments progressed. He slowly lost his hair, but he never lost his grit, his sense of fairness or his respect for the Senate and its special role in our system of Government. Nor did he lose his legislative skill, or his humor. Then, and now, he has maintained for himself, and for our committee—a brisk schedule, fueled by an energy level that would be daunting to many who are half his age.

He has all of the vigor of his earlier days, and maybe more. His hair is back, and if I may say so, he looks better than ever.

He is an inspiration to us all, and his example is a particular inspiration to millions of victims and survivors of cancer, and their families, across the Nation.

I value the partnership that he and I have forged over the years, and especially during the time that he has been our committee's chairman. One product of our partnership is the asbestos trust fund bill that is now before the Senate. Bringing this bill on its long journey to the Senate floor has required unending commitment and effort. I have been proud to work with him on this project, and I applaud him for all he has done to bring the bill to this point.

I commend to the attention of our colleagues an editorial about Senator SPECTER in today's edition of The Hill newspaper.

I ask unanimous consent that the editorial be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Hill, Feb. 8, 2006]

LOOMING SPECTER

The past year has been tumultuous for Sen. Arlen Specter (R-Pa.), but he has emerged from its trials triumphant.

It is not quite 12 months since the lawmaker announced he had been diagnosed with Hodgkin's disease, a form of cancer. In his statement disclosing his ailment and the imminent start of chemotherapy, Specter said, "I have beaten a brain tumor, bypass heart surgery and many tough political opponents, and I'm going to beat this, too."

He has been as good as his word. He lost his hair but continued to shoulder his heavy workload (and to keep in shape playing squash before he got to his desk in the morning). He was never absent, and his hair is back. At 75, Specter is looking spry.

At the time of his diagnosis, the senator had only just secured his chairmanship of the Judiciary Committee, after a tough battle against conservative Republicans who feared he would not fight hard for conservative Supreme Court justices should President Bush have the opportunity to nominate them.

Those fears have proved unfounded. There are now two new members of the high court, Chief Justice John Roberts and Justice Samuel Alito, whose conservative credentials are not in doubt. Those on the right trust and hope (just as those on the left believe and fear) that the new justices, replacing the late Chief Justice William Rehnquist and Justice Sandra Day O'Connor, will move the court toward conservative textualism and away from the "living Constitution" ideas that have produced liberal change on social issues for the past two generations.

It is Specter, a supporter of abortion rights, who has presided over these changes to the bench. And he has done so with aplomb and without any hint either of truckling to those on either his right or his left. He rejected, for example, conservative demands that Alito's confirmation hearings be brought forward in December so that the nominee would not be left hanging out as a target for too long. At the same time, he did not allow his own ideological positions to blind him to the nominees' obvious qualifications. Alito's and Roberts's critics were given ample time to air their concerns, yet both were steered swiftly and comparatively easily to confirmation.

Bush must surely be well-satisfied with his decision in 2004 to back Specter's re-election despite their obvious differences in ideology, temperament and outlook.

Specter is not resting on his laurels. His agenda is dominating Senate business. He is presiding over a Judiciary investigation of the National Security Agency's controversial terrorist surveillance program. And his asbestos reform bill, an effort to clean up a mountain of debilitating litigation, is atop the legislative calendar put together by Majority Leader Bill Frist (R-Tenn.).

People who know Specter rarely make the error of underestimating him. They are even less likely to do so following his performance in the past 12 months.

NEW MARKETS TAX CREDIT

Ms. SNOWE. Mr. President, I rise today to bring to my colleagues' attention a significant and exciting article that appeared in the Wednesday, January 25, 2006, edition of the New York Times entitled "Luring Business Developers Into Low-Income Areas," as written by Ms. Lisa Chamberlain.

I believe my colleagues will be especially interested in this article because it explains how the new markets tax credit, NMTC, can create new jobs, and economic development, in the destitute rural and urban areas. I know that sincere Members of Congress, both Republicans and Democrats alike, recognize the credit's ability to transform communities and break the poverty cycle. From the beginning, the credit's power to help communities overcome poverty has garnered strong bipartisan support for the measure.

The new markets tax credit is unique among Federal antipoverty initiatives. Its innovative approach uses the Tax Code to encourage long-term capital investments in downtrodden communities identified by the census as historically plagued by high unemployment, low levels of private investment, and stifling poverty rates.

The credit provides a modest incentive—a 39-percent credit against Federal taxes over a 7-year period—to lure new private investments to struggling communities. For this credit, developers agree to invest in projects that benefit the community and undertake measures, like charging lower rents, to encourage these projects' success.

Over the next 10 years, private investors will dedicate over $15 billion in new money to poor urban and rural areas in order to revitalize, develop, and ultimately transform these impoverished, low-income communities. The program's rate of return, as measured by increased economic development and lower poverty rates, easily justifies its modest costs to the Treasury of $4.5 billion over 10 years.

The credit's greatest innovation is its ability to create partnerships between the public and private sector that encourage and cultivate investments within a diverse range of businesses and organizations. These investments propel growth by providing funding for small business startups, enable the expansion of manufacturing facilities, and the building of retail, mixed use, commercial and housing developments. The investments also provide communities with important services by creating childcare centers, employment training facilities, charter schools, and community health care centers.

I have seen the credit's ability to reenergize and save local economies in my home State of Maine. During the 1990s, Maine's Katahdin Forest region fell on hard times. One of the areas largest employers, the Great Northern Paper Company, struggled against depressed global paper prices and low financial returns associated with owning trees. Combined, these factors made it extremely difficult to raise the capital necessary to make the mill improvements needed to keep the company competitive and retain jobs.

Because of a $31.5 million NMTC investment made by Coastal Enterprises, a community development corporation based in Wiscasset, ME, two of Great Northern Paper Company's pulp and paper mills in the Katahdin Forest area were able to stay in business and modernize. This crucial investment resulted in the direct employment of 650 people.

The credit also made it possible for Coastal Enterprises to partner with The Nature Conservancy in a ground breaking arrangement to promote the twin goals of environmental protection and economic development. The credit enabled the Nature Conservancy to purchase 41,000 acres, of Great Northern Paper Company's 341,000-acre land base, that contain critical lake and stream watershed lands. As part of this deal, Great Northern Paper Company agreed to place a perpetual conservation easement on 200,000 of the remaining 300,000 acres they retained. These projects will benefit Maine's environment, and economy, for years to come.

These Maine examples represent a few of the innovative and revolutionary ways the new markets tax credit is being used nationwide to address local economic troubles. These projects ranges from smaller loans to help local business owners become more self-sufficient by purchasing their office space to larger ventures like developing a new aircraft repair facility.

Additionally, projects also work to address community deficiencies like the building of a much needed shopping center to transform a rundown, major transit stop. Such investments enable companies located in low-income communities to add jobs, provide more people with needed goods and services, and increase the strength of their local tax base and economies.

Competition among applicants for access to the new markets tax credit program is spurring the private sector to reach beyond the minimum requirements of the law in order to secure a tax credit allotment. According to the results of a May 2005 survey conducted by the New Markets Tax Credit Coalition, investors are targeting communities to develop projects with higher poverty and unemployment rates than the law requires. These private investors are also directing capital into low income areas faster rate than required by law.

The credit enables the public and private sectors to work together in a way that is truly transforming the Nation's most impoverished communities. Through these partnerships, investors are now deploying their capital in areas where before they never would have invested because the great risks kept flexible capital from being conventionally available in these depressed areas.

The credit is seen as one of the most hopeful ways to address the devastating effects of Hurricane Katrina and Rita on the Gulf States. We in Congress overwhelmingly recognized and supported the power of the credit by dedicating $1 billion dollars in additional funding to projects along the gulf coast financed by the NMTC. Many broken Gulf State communities desperately wait for the rebuilding, and renovation, projects the credit will provide.

As a bipartisan effort to continue the credit's great successes, I am pleased to join my colleague on the Senate Finance Committee, Senator ROCKEFELLER, in sponsoring S. 1800, the New Markets Tax Credit Reauthorization Act. A companion bill, H.R. 3987, has been introduced in the House of Representatives by Congressman RON LEWIS of Kentucky.

Our legislation extends the new markets tax credit through 2012. Under current law, the credit, which was enacted in December 2000 as part of the Community Renewal Tax Relief Act, will expire on December 31, 2007. I ask my colleagues to enthusiastically support this innovative and necessary legislation.

In addition to our legislation, the Senate version of the tax reconciliation measure, S. 2020, includes a 1-year extension of the new markets tax credit through 2008. I know that my respected colleagues, both Republicans and Democrats, support the extension of this important bipartisan provision because of its impressive results fighting entrenched poverty and unemployment. I urge my colleagues to strongly support keeping this provision in the final version of the tax bill.

The new markets tax credit is able to improve the physical infrastructure of low-income communities as well as the lives of its residents by harnessing the combined talents of the public and private sectors to create jobs, foster entrepreneurialism, construct facilities, conserve the environment, and even promote greater access to health care and education. I hope my colleagues will join me assuring that the new markets tax credit program remains strong for the future.

I ask unanimous consent that Ms. Chamberlain's entire article be printed in the RECORD. I ask unanimous consent that this letter, showing the support of over 240 representatives of community development corporations and financial institutions for S. 1800, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Jan. 25, 2006]

LURING BUSINESS DEVELOPERS INTO LOW-INCOME AREAS

(By Lisa Chamberlain)

When the low-income housing tax credit was created in 1986, it took years for developers, investors and advocates to understand the program and to learn how to make the most use of it. Now it is one of the most important tools for low-income residential real estate, responsible for creating approximately 1.5 million units of affordable housing to date.

Advocates of a little-known development tool called new-market tax credits, the only federal tax credit program for commercial projects in low-income areas, believe the same thing is beginning to happen with commercial real estate. Efforts are already under way to reauthorize the program, which expires next year.

Enacted in December 2000, the new-market tax credit program is helping to create jobs and revitalize streets and even entire downtowns. Projects large and small that most financial specialists agree would never come to fruition otherwise are taking shape because of tax credits worth $500,000 to $150 million and even more.

For instance, the tax credits are currently financing the rebuilding of a butter manufacturing cooperative in New Ulm, MN, that was damaged in a fire. The loss of the cooperative put 130 people out of work, caused economic hardship for 400 family farms and indirectly affected hundreds more jobs in the low-income rural area.

Just south of the central business district in Grand Rapids, MI, is a nearly completed arts-related mixed-use redevelopment project in an area largely abandoned since the 1950's. Called Martineau Division-Oakes, the 12,000-square-foot commercial space is occupied by the art department of Calvin College and a cafe. There are also 23 spaces for artists to live and work in. Once the project got off the ground, the city committed $2 million to landscaping, repaving, new lighting, signage and sidewalk improvements in the development's neighborhood.

"It's a very flexible and powerful program," said Robert Poznanski, president of the New Markets Support Company, one of the main recipients of credits from the Treasury Department, which administers the program.

"It's driven by market forces. The federal government doesn't say, 'Use it for this type of business.' It can be used for commercial real estate, a charter school or a community center, as long as the application is competitive and the project is in a low-income area as identified by census tract data."

Tax credits make riskier projects more viable by reducing the debt associated with development costs. Private investors pay less in taxes and the developer passes the savings on to the community by, for example, lowering rent per square foot.

The federal program will allocate up to $15 billion in tax credits to community development groups over seven years to make businesses or commercial real estate projects in low-income areas more attractive to private investors. Applicants vie for the credits, and so far the process has been highly competitive. In the first three rounds of allocation, beginning in 2003, demand for the credits has outpaced supply by 10 times, according to figures provided by the Treasury Department. Though the tax credits can be used for business development, the majority are used for commercial real estate because of the way the program is structured.

The most recent allocation was completed last fall, bringing the total disbursement to $8 billion to date. Recipients have five years to use the tax credits to attract private investment, or they are withdrawn and can be reissued elsewhere through 2014.

Dennis Sturtevant, president of Dwelling Place, a nonprofit community development organization, spearheaded the Martineau Division-Oakes project in Grand Rapids. The project used historic tax credits and other grants, in addition to new-market tax credits, to generate $2.2 million in equity from National City Bank.

"When you're talking about tough neighborhoods and all the costs associated with renovating dilapidated, obsolete buildings with lead and everything else," Mr. Sturtevant said, "you need to combine all these resources to make it work."

Sean P. Welsh, regional president of National City Bank, said: "It required a lot of creativity. It's complicated, but it's really driving a lot of the urban redevelopment in this and other areas around the country."

One deal that most everyone agrees would have never happened were it not for the tax credits is Plaza Verde in South Minneapolis. Formerly an abandoned building in a low-income Hispanic neighborhood, it is now a 43,000-square-foot business incubator, with locally owned retailing on the ground floor, office space on the second level and a theater company on the top floor.

JoAnna Hicks is the director of real estate for the Neighborhood Development Center, the nonprofit organization that spearheaded Plaza Verde. Even after expenses were deducted, including legal fees, new-market tax credits created almost $1 million in equity for a project that cost $4.2 million total.

"Because it's such a complicated financial tool, it's hard for small nonprofits to use," Ms. Hicks said. "But now that we understand it better, we're able to apply it to other projects as well."

Using another allocation of the tax credits, Ms. Hicks's organization has also undertaken the development of a nearly completed public market, called Midtown Global Market, a $17 million project that will be home to more than 60 vendors selling fresh and prepared foods, as well as handmade arts and crafts.

As the program has only begun to mature, larger projects are just getting under way. Bridgeport, CT, is undertaking a major redevelopment of its downtown, with approximately 25 percent of the financing coming from new-market tax credits. The total project is estimated to cost up to $150 million.

"If structured properly, it makes a real difference between a scary development and the deal not being done at all," said Kevin Gremse, director of the National Development Council, which provides financial advice and services to municipalities.

Mr. Gremse used his organization's new-market tax credit allocation to attract a New York City-based private developer, Eric Anderson of Urban Green Builders, to take on the task of reviving downtown Bridgeport, which has suffered years of decline.

Advocates are cautiously optimistic that the program will be reauthorized in 2007. Congress recently passed a bill to assist Gulf Coast states with rebuilding efforts after Hurricanes Rita and Katrina, which included $1 billion more for the new-market tax credit program geared toward that region.

"The fact that Congress expanded the program is a good sign," said Robert Rapoza, who manages the New Market Tax Credit Coalition, an advocacy organization pushing for the program's reauthorization. "But we have work to do. This is a new tool and government-sponsored finance is relatively uncommon. We're continuing to put together data to strengthen our case."

Of course, it helps to have banks advocating for the tax credit as well. As one of the more active players in the tax credit industry, Zachary Boyers, a senior vice president of U.S. Bank in St. Louis, closed more than 50 deals involving new-market tax credits in 2005 alone.

"The banking community is behind this," Mr. Boyers said. "We are deeply involved in spreading the word. We are working on ways to quantify its impact, which is not easy to do. But other investors, including banks and large corporations, would confirm that they would never be investing in these projects without it."

NEW MARKETS TAX CREDIT COALITION

DEAR SENATOR/REPRESENTATIVE: We are writing to you to indicate our support for the New Markets Tax Credit Reauthorization Act of 2005 (S. 1800 and H.R. 3957). This legislation extends the New Markets Tax Credit through 2012.

The New Markets Tax Credit was established in the Community Renewal Tax Relief Act of 2000. The purpose of the Credit is to increase private sector investment in low income communities by providing a modest federal tax incentive. There is ample evidence that the Credit is working to do just that.

Thus far, the Department of the Treasury has finalized allocations of $6 billion in Credits. After only two years, close to $3 billion in investments in low income communities have been made. These investments have resulted in the financing of projects in economically distressed urban and rural communities including:

Creation of the first new supermarket and shopping center in a low-income community in 30 years in Cleveland;

In Baltimore, economic revitalization and thousands of jobs in an urban community where past efforts foundered;

Development of a new facility for daycare and other community services that shows the potential to lead the way for other development in Chicago;

Business expansion, job creation and opportunity in rural Oklahoma;

Revitalization of the timber industry in northern Maine.

The New Markets Tax Credit has attracted a wide range of private sector investors including private financial institutions and insurance companies. A list of investors in New Markets Tax Credits includes Bank of America, Wachovia, GE Commercial and Industrial Finance, NationalCity Bank of Ohio, Spirit Bank of Bristow, Oklahoma and TD Banknorth in Maine.

The Credit has had an important impact on the lending practices of these institutions. For example, since gaining access to New Markets Tax Credits, GMAC Commercial Holding has increased its direct investments in low-income communities by more than 20%.

For these reasons, we support reauthorization of the New Markets Tax Credit. We urge your support for this important program.

Sincerely,

(Signed by 225 Signatories).

ENERGY AND NATURAL RESOURCES

Mr. BURNS. Mr. President, today I join Senators DOMENICI, BINGAMAN, TALENT and DORGAN in sponsorship of legislation instructing the Secretary of the Interior to develop an oil and gas leasing program for Lease Area 181, located 100 miles off the coast of Florida in the Gulf of Mexico.

As oil and natural gas prices continuously increase, many Americans, especially Montanans, are feeling the strain of increased prices for energy use in their homes and businesses. Montana ag producers are particularly hard hit because the costs of fuel and fertilizer have skyrocketed. While I strongly support the idea of renewable energies, it will take years of research and development before there are practicable and affordable alternatives to oil and natural gas. Development of the American-owned offshore Lease Area 181 would provide nearly 5 trillion cubic feet of natural gas as a near term solution for our country's growing energy needs. That amount would be enough to heat 5 million homes for 15 years.

In order to strengthen American energy security, it is our obligation to use our own domestic resources whenever we can. Offshore drilling has proven to be a safe, reliable, and valuable technology for oil and gas production. Lease Area 181 is a phenomenal resource, and time after time in energy committee hearings when we ask expert witnesses for their opinions on how to best stabilize and lower natural gas prices, the answer is, "Open Lease Area 181." It is not the entire answer to our energy challenges, but it is an important step forward. I applaud the leadership of the chairman and ranking member of the Energy and Natural Resources Committee for acting on this important issue. Next, I hope we examine the potential for additional onshore resource development. I come from an energy producing state, and I can tell you, without reservation, that Montana stands ready to serve the energy needs of this country. We have oil, natural gas, more coal than any other state, and a great potential for wind energy.

I am confident that my fellow Senators will see the value in providing a supply of affordable energy from our domestic resources, and hope the Senate acts quickly on this important legislation.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, today, I speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

On January 11, 2006 in Stuart, FL, two men allegedly beat and robbed John Sprunger, a mentally handicapped man for $150. Earl Shanks called his friend Raymond Lee Dawson to the home of the victim, after trying to get Sprunger to give him money. When Dawson entered the home, he pistol-whipped Sprunger, and, assisted by Shanks, got his wallet before both men left the trailer.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

RECOGNITION OF TOBEY SCHULE

Mr. BAUCUS. Mr. President, I rise today to recognize Mr. Tobey Schule, of Kalispell, MT, for his valuable testimony today before the Senate Finance Committee.

The Senate Finance Committee played a key role in enacting Medicare drug benefits. We must be diligent in overseeing their implementation. In 2003, after years of debate, Congress added prescription drug coverage to Medicare. I was proud to help pass that law. The law was not perfect. But it has the potential to do some good.

The Medicare drug bill has the potential to make prescription drugs available to millions who could not otherwise afford them. It has the potential to make drugs available that will lessen pain. It has the potential to save lives.

Unfortunately, the administration has implemented the new law poorly. After Congress passed the law, the Centers for Medicare and Medicaid Services—CMS—had the duty to ensure that Medicare drug benefits were up and running by January 1, 2006. I appreciate CMS's efforts to implement the new law. It is a huge task. CMS worked hard. But CMS's efforts have come up short, in two major areas.

First, CMS made the new drug benefit needlessly confusing.

As part of the new law, Congress passed a temporary drug discount card, available in 2004. The card was supposed to give temporary relief from high drug costs. Seniors of modest means were eligible for a $1,200 Federal subsidy for their drug purchases.

But most Medicare beneficiaries did not sign up for the drug card. Why? They were paralyzed by the choices. CMS approved 40 Medicare drug cards in my State of Montana alone. Instead of celebrating their choices, most seniors in my State decided not to sign up.

Less than a year later, CMS was approving drug plans for the new drug benefit. I urged CMS not to repeat the mistakes that they made with the drug card. I urged CMS to approve only plans meeting the highest standards.

But CMS repeated the mistakes of the drug card. CMS approved dozens of plans for participation in the new drug program. CMS approved more than 40 drug plans in Montana. I support choice, competition, and the free market. It is great that Americans can choose from hundreds of different models when buying a new car. But when people don't know what they are buying, choice can lead to confusion. That is particularly true of health care.

Ask elderly Americans whether they prefer a four-speed automatic or a five-speed manual, and they will probably choose the automatic. Ask them whether they prefer a drug plan with a four-tiered formulary to a plan with five, and they will probably look at you with a mixture of confusion and anger.

My second concern relates to the warnings that CMS ignored. Last year, I asked the independent Government Accountability Office to report on CMS's plans for seniors eligible for both Medicaid and Medicare. I asked: What were CMS's plans for seniors whose drug coverage was moving from Medicaid to Medicare? In December 2005, GAO reported that CMS's plans were insufficient to avoid big disruptions in coverage.

CMS disagreed. CMS said: "[We have] worked diligently on the transition from Medicaid to Medicare drug coverage . . . and . . . these individuals will get effective, comprehensive prescription drug coverage . . . on January 1, 2006."

That did not happen. GAO was right. Data systems failed. Pharmacists and States were stuck with the bill for copays that should never have been charged. And some vulnerable seniors left the pharmacy without the medicines that they needed.

Today the Finance Committee heard from Tobey Schule, an independent pharmacist from Kalispell, MT. Mr. Schule is one of thousands of pharmacists who have been burdened with the failed transition from Medicaid to Medicare. I will ask that his testimony from today's hearing be submitted in the CONGRESSIONAL RECORD, next to my remarks.

Last month, Secretary Leavitt and Doctor McClellan briefed members of this committee on problems implementing the new drug program. They outlined seven specific problems. And they outlined plans to fix them. I appreciate CMS's attempts to fix the problems. But some problems remain unsolved. Dr. McClellan, I look forward to hearing how and when CMS plans to fix the problems.

In addition to ensuring that the implementation flaws are fixed, Congress should also address the problem of confusion. We can do that by learning the lessons of Medigap. In 1980, Congress enacted amendments that I offered to fix marketing abuses and consumer confusion with Medigap. The reforms required Medigap issuers to meet minimum standards and have minimum loss ratios.

Ten years later, Congress again took up Medigap reform, passing legislation to standardize Medigap policies. Ten different Medigap options would be offered, each with a basic set of benefits. This gave consumers an apples-to-apples comparison of Medigap coverage.

We should do the same with the new drug program. We should standardize the drug plans. We should make it easier for people to make good choices about which plan is best for them. I intend to introduce legislation to do just that.

I understand that the drug benefit is young. But I want this benefit to work. We simply cannot afford another round of confusion. We need broad participation. And that's not going to happen unless we make the program more accessible and understandable. I supported enactment of the Medicare drug benefit in 2003. I still support it. Health insurance needs to cover prescription drugs. But we need to make it work. And I look forward to hearing from our witnesses on how we can do so.

I thank Mr. Schule for taking time from his important work to tell the committee about his experiences with the new Medicare drug benefit.

Mr. President, I ask unanimous consent that Mr. Schule's testimony be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Chairman Grassley, Senator Baucus, members of the Committee, I appreciate the privilege and opportunity to speak about Medicare Part D and how it is affecting my patients and pharmacy.

I am the co-owner of a small independent pharmacy in Kalispell, Montana that was established in 1981. There are about 32,000 people in Kalispell and the surrounding areas; we are 200 miles from the state capitol in Helena. Our pharmacy employs two pharmacists, my son and me, and two pharmacy technicians. There are five senior apartment buildings within three blocks of the pharmacy, and we serve primarily geriatric patients. In addition, we provide weekly medication box exchange for three assisted living facilities and the mental health center in our community. About ninety percent of our walk-in patients are elderly.

Medicare Part D has become a major factor in my pharmacy. I contracted with every company offering drug plans in Montana, so I could continue to serve my patients. I would like to address my concerns with this new benefit, in the following four areas: confusion among patients and pharmacists, education and outreach, coverage of dual-eligibles, and burden on pharmacists.

The implementation of Part D has caused confusion and frustration for my patients. And it has caused confusion and frustration for me. This program doesn't need to be so complicated.

The frustration and confusion for my patients began last summer, when they started receiving information from insurance companies offering Medicare Part D coverage. With over 40 plans to choose from in Montana, my patients said they were scared and intimidated by all of the options. Many of my patients were not fortunate enough to have a family member help them through the process of deciding which plan was best for them. I work with the elderly every day, and this has been overwhelming for them. Bewildered by the complexity, some patients are choosing not to enroll.

Those patients who could make sense of the Medicare mailings faced new obstacles. They were instructed to check the internet to see if the coverage was appropriate for their individual situation. I question this approach, since the vast majority of my elderly patients do not have computers and cannot use the internet. Access to the information through the 1-800 Medicare number was not much better. The phone systems are automated, and many of my elderly patients are unable to navigate through them. Others had the ability to use the phone system but gave up because of long hold times.

Despite this enormous confusion, there were few opportunities for Kalispell patients and pharmacists to get answers. Several meetings were sponsored by the state of Montana, by insurance companies and by senior citizen advocates to help the elderly make their choices and explain Medicare Part D. After attending these sessions, many patients came back to my pharmacy saying they were even more confused. Patients received different answers from different people. They had trouble understanding the literature that they received, and felt a lawyer was necessary to make heads or tails out of it.

On top of this complexity, elderly patients feared they would select the wrong plan. At educational events, patients were instructed to focus on the formularies and pick one that had their medications on the list. But patients found only some of their drugs listed on formularies, requiring patients to choose between medications.

Education for pharmacists wasn't much better. I heard of only one event sponsored by CMS to educate pharmacists, and that was in Billings, nearly 500 miles from my store. I could not attend this meeting, although I did send a pharmacy technician to a local educational event sponsored by an insurance counselor. This seminar did not help us serve our patients enrolling in Part D. But it did help us understand why our patients were so frustrated.

With little information coming from CMS or the insurance plans, I relied on my drug wholesaler to learn how to handle patient in Part D. For instance, in mid-December I called my software vendor to ask how I would determine patients' Part D drug coverage. It was only through this call that I learned about the E-1 transaction, which shows patient plan eligibility. I now use this system many times a day when trying to figure out a patient's coverage, but I had to learn about it on my own.

Over the last few weeks, drug plans have been my only source of information describing the administrative procedures that I must follow to provide drugs and submit claims. But this information is often incomplete. I recently received a notice that patients enrolling in Part D in late January wouldn't be in the system on February 1st. So the problems we heard about at the beginning of January are happening again.

Many of my patients have both Medicaid and Medicare. These "dual-eligibles" were automatically enrolled into the new drug plans as their drug coverage was shifted from Medicaid to Medicare. Unfortunately, these plans did not always meet patients' medical needs. I found many patients' medications were not covered by their plans.

Further complicating matters, information systems did not recognize these patients as dually-eligible. They could not afford the high co-pays that the system said they should be charged. I handled each patient on a case-by-case basis, and it required a huge time commitment to sort out problems in drug plan data and information systems. Fortunately, we are a small pharmacy and we know all of our patients. So we were able to give them their medications on the spot. I cannot help but think of how many patients across the country must have gone without their medications. Now we are working through billing issues, trying to determine how we will be reimbursed.

I am very concerned for my patients because we are being forced to change their medications to match the formulary for their plan. By changing medication, I expect to see increases in physician visits, labs, and hospitalizations. This will increase costs to the program. Medicare should have a plan to track the costs associated with medication changes.

Some of the plans are offering the mail-order pharmacy, and I do not think that mail-order should even be an option for Medicare Part D. If patients are getting some medications from mail-order and others from local pharmacies there is no continuity of care. This lack of coordination between mail-order and bricks-and-mortar pharmacies increases the likelihood of adverse events and noncompliance. If a patient using mail-order pharmacy is hospitalized, it is very difficult for doctors at the hospital to get drug information when prescriptions are not filled locally. If patients need drug information about a medication and are using mail order, they must attempt to use automated phone systems. In contrast, local pharmacists are readily available to answer questions. The ordering process of mail-order is also difficult for the elderly. These patients have trouble remembering to order a medication before they run out, but if they order too soon the script will not be processed.

As a pharmacist I want to know how certain medications were picked for the formularies. An example is why is one plan using Zocor and another is using Lipitor. I would like to know why some formularies use a branded drug when a generic is available. This appears costly to the program.

As the program began on January 1st, it became apparent that the insurance companies were not prepared for the start. Patients had not received their cards or enrollment letters. When this documentation had been received, the information was often incomplete. Missing data included BIN numbers, group numbers, ID numbers and processor control numbers. When I tried to access through the E–1 system, patients would come back as not enrolled. I was not able to bill the appropriate plan.

We have spent a tremendous amount of time on the phones with the different companies getting patient billing information or prior authorization to fill. We have been on hold to talk to a representative for as long as four hours before we were able to get through. In other cases, we were simply disconnected after hours on the phone. This is unacceptable.

Drug plans are sending out lists of the pharmacies associated with their plan. While I have contracted with every plan offered in Montana, my pharmacy is not on every company's list. As a result, several of my patients have come in very upset because they think they will have to change pharmacies. I tell my patients that I can fill for them even though I am not on the list. Insurance companies should not send only a partial list of in-network pharmacies. It should be all or nothing. Also, I think that it is totally unacceptable for the drug plans to co-brand patient insurance cards with Wal-Mart, Walgreens, or other chain drug stores. It is confusing to the patient, leading them to think that they can only go to those pharmacies.

The insurance companies have created problems on the business side of my practice. There is no "negotiation" between pharmacists and drug plans on reimbursement rates. If I am going to continue serving my patients, I am forced to accept the low rates offered by insurance companies. Plans are slow to pay claims, and my drug wholesaler requires that I pay for drugs much more quickly than the plans pay me. My pharmacy has over $45,000 in unpaid claims from Medicare Part D.

Pharmacist and pharmacy technician salaries are climbing because of the shortage of available personnel. I am not sure how long independent pharmacies will be able to stay in business with the low reimbursement rates.

I wish that before this program started on January 1st that Medicare and the insurance companies would have taken the time to truly consider the elderly. If the people setting up the program had thought about the needs of their own elderly parents, I am sure this plan would be different.

Chairman Grassley, Senator Baucus and Members of the Committee, thank you again for inviting me to appear before you here today. I will now answer any questions you may have.

ADDITIONAL STATEMENTS

RECOGNITION OF THE CALIFORNIA TEAMSTERS HISPANIC CAUCUS

• Mrs. BOXER. Mr. President, I rise to recognize the important work and accomplishments of the California Teamsters Hispanic Caucus. I am also pleased to commend International Brotherhood of Teamsters, IBT, General President James P. Hoffa, and

General Secretary-Treasurer C. Thomas Keegel for their continued support of the California Teamsters Hispanic Caucus's efforts in awarding educational scholarships and conducting community improvement and community education programs.

The California Teamsters Hispanic Caucus, formed in 1989 as a nonprofit organization, has experienced phenomenal growth and success. Since the Hispanic Caucus' early beginnings, membership has grown to include more than 250 active members. The support that the caucus has provided to its members has also grown throughout the years. In nearly two decades of service, the Hispanic Caucus has increased the number of its educational scholarships from 3 to nearly 20 and has distributed more than $200,000.

Both General President Hoffa and General Secretary-Treasurer Keegel have shown tremendous support for the California Teamsters Hispanic Caucus through their involvement in increasing the availability of educational scholarship funding and participation in annual Hispanic Caucus events. Their work, in combination with the fine work of the Hispanic Caucus, has allowed the children of Teamsters to continue their education and pursue their dreams.

I invite all of my colleagues to join me in commending the California Teamsters Hispanic Caucus, International Brotherhood of Teamsters General President James P. Hoffa and General Secretary-Treasurer C. Thomas Keegel for their continued support for education, for strong communities, and for all working people.•

IN MEMORIAM OF CORETTA SCOTT KING

• Mr. CARPER. Mr. President, I rise today to honor the life of Coretta Scott King, who peacefully left this world on Monday, January 30, 2006, at the age of 78.

Coretta Scott King was born on April 27, 1927, in Marion, AL, during a time of great social injustice. Despite the many barriers that society had placed in front of her, she refused to let hate and prejudice stand in the way of her dreams. She was valedictorian of her graduating class at Lincoln High School and went on to receive a B.A. in music and education from Antioch College in Yellow Springs, OH. She also earned a degree in voice and violin at Boston University's New England Conservatory of Music. It was during this time that she met Martin Luther King, Jr., who was then studying for his doctorate in systematic theology at Boston University. They married on June 18, 1953, and began their lives together in Montgomery, AL.

As Dr. Martin Luther King, Jr., began his civil rights work, Mrs. King worked closely with him by organizing marches and arranging sit-ins at segregated restaurants to draw attention to the unfairness of Jim Crow laws. She also played a central role behind the scenes of many of the major civil rights campaigns of the 1950s and 1960s. She was by her husband's side when he received the Nobel Peace Prize in 1964 and walked by his side during the infamous march from Selma to Montgomery in 1965 that eventually led to the passage of the Voting Rights Act. Mrs. King also performed in "Freedom Concerts" where she would sing songs and read poetry to help raise money for the Southern Christian Leadership Conference, the organization that Dr. King led during the civil rights movement.

Following her husband's death on April 4, 1968, Mrs. King demonstrated remarkable strength and courage by continuing the struggle to bring equality to all Americans. She established the Atlanta-based Martin Luther King, Jr. Center for Nonviolent Social Change as a living memorial to her husband and his dream of social equality. During the 1980s, Mrs. King participated in a series of sit-in protests to highlight the inequality of South Africa's racial policies.

Mrs. King also led the campaign to establish Dr. King's birthday as a national holiday. In 1983, Congress instituted the Martin Luther King, Jr. Federal Holiday Commission, which she chaired during its duration. And on January 20, 1986, the Nation celebrated the first Martin Luther King, Jr. Federal holiday.

Mrs. King has received honorary doctorates from more than 60 colleges and universities, has authored three books and has served on, and helped found, dozens of organizations including the Black Leadership Forum, the National Black Coalition for Voter Participation, and the Black Leadership Roundtable.

I rise today to celebrate the life and accomplishments of Mrs. Coretta Scott King. As wife, mother, social activist, musician, and author, she used her words and actions to spread the message of racial equality and justice throughout the world. I hope that her vision, as well as the vision of her late husband, Dr. Martin Luther King, Jr., will continue to live on in all of us through our work and our deeds.•

A TRIBUTE TO GEORGE WEEKS

• Mr. LEVIN. Mr. President, for the past 22 years, George Weeks' column for the Detroit News has been required reading for anyone interested in Michigan politics. It has been the gold standard for fair, insightful commentary, and I am proud to have known and worked with George over these years. Our mornings—and our public life—won't be the same without him.

George Weeks' life and career have been spent in service to the people of Michigan. In a journalism career that took him to Lansing, MI; to Washington, DC; and around the world, George Weeks always put his responsibility to his readers first. And although we are honoring him today for his legendary accomplishments as a reporter and columnist, George also served his State as chief of staff to Governor William Milliken and his country in the U.S. Army.

In his work as a political columnist, it has seemed at times that George knows everything that is happening or has ever happened in Michigan. He reports on which candidate wowed the crowd—or otherwise—at a recent dinner, what issues are resonating with voters, and who he thinks has the right stuff to go all the way—or the other kind of stuff. His column is a treasure trove of political information. And not only does he have great information, he is also able to put it into perspective. George has a deep knowledge of history. He has written a history of Michigan through the lens of its governors as well as several works on Michigan's Native Americans. Although I admire his trove of knowledge, I do wish he would quit reminding me—and his readers—of how many years I have served in the Senate, a metaphor for the aging process.

George has earned both the loyalty of his readers and the respect and admiration of those he covers. His approach is impartial, issue-oriented, and assumes good faith on the part of public figures. He starts from a belief that public officials of both parties are motivated mostly by good intentions, not petty politics. He takes the view that politicians are like other people—no better and no worse—and that public service is a worthy calling. We in public life are grateful for that, believe me.

It is a great loss that George is retiring from the News because we need that attitude now more than ever. In recent years, there has been a coarsening of political life. These are meaner streets these days, with more personal attacks and sharp edges. With his civility and his moderation, George has been in the vanguard of smoothing out those rough edges.

In his farewell column, George referred to me as his "most-interviewed Senator." That is a distinction I will wear with honor, and I want to thank him for the professional way he has treated our conversations. George is a man of his word, whom you can talk to with confidence that he will get the story straight and whom you can talk to in confidence from time to time as well. I don't know if George is counting in his tally our informal chats, including annually at the Cherry Festival in his beloved Traverse City. But I do know that I have come to look forward to those talks, and I still will.

Thank you, George Weeks, for your years of service and for your magnificent, ongoing career.•

AWARD FOR EXCELLENCE IN EDUCATION

LORING COMMUNITY SCHOOL, MINNEAPOLIS, MINNESOTA

• Mr. DAYTON. Mr. President, I rise today to honor Loring Community School, in Minneapolis, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

Loring Community School is truly a model of educational success. This neighborhood elementary school, which educates children in kindergarten through fifth grade, is named for the distinguished Charles M. Loring, father of the Minneapolis Park System and first president of the Park Board.

Loring Community School prepares children for lifelong learning in a respectful environment that nurtures their growth into knowledgeable, skilled, responsible, and confident citizens capable of succeeding personally as well as professionally. The school is 45 percent African American, 29 percent white, and 22 percent Asian. Seventy-two percent of the children are from low-income families.

The school's success is firmly rooted in basic community values. Each child is treated like an important person, in the classroom and in the school, which sets high standards and expectations for all children, in order to foster growth academically, socially, and personally. Loring School also emphasizes the importance of family involvement, to encourage the educational success of their children.

Loring School goes well beyond the basics, offering a number of enrichment programs, including accelerated math and reading programs, a Math Master competition, a science fair, an art fair, band, and a fifth grade environmental camping experience. A special feature is the student-run radio station, KBEM Radio. All Loring pupils have opportunities to participate in dance, music, theater, and visual art enrichment programs.

Much of the credit for Loring School's success belongs to its principal, Jane Thompson, and her dedicated teachers. The children and staff at Loring School understand that, in order to be successful, a school must go beyond achieving academic success; it must also provide a nurturing environment where students develop the knowledge, skills, and attitudes for success throughout life. All of the faculty, staff, and students at Loring School should be very proud of their accomplishments.

I congratulate Loring Community School in Minneapolis, MN, for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.•

HERMANTOWN PUBLIC SCHOOLS, HERMANTOWN, MINNESOTA

• Mr. DAYTON. Mr. President, I rise today to honor Hermantown Public Schools, in Hermantown, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

The Hermantown Public School District is truly a model of educational success. Mr. Brad Johnson, superintendent of Hermantown Public Schools, was hired last summer to lead the district. Upon his arrival in July, he was greatly impressed that the community demonstrated such strong support for education and such tremendous pride in its schools.

The success of Hermantown Public Schools is evidenced by the large number of students from surrounding districts who have enrolled. The schools have a waiting list of additional families that would like to enroll. Further, 95 percent of the parents of students at Hermantown participate in parent-teacher conferences.

Much of the credit for Hermantown Public Schools' success belongs to its superintendent, Brad Johnson, its principals, Lois Backscheider, Dave Radovich, and Dennis Nelson, and their dedicated teachers. The students and staff at Hermantown Public Schools understand that, in order to be successful, a school must go beyond achieving academic success; it must provide a nurturing environment where students can develop knowledge, skills, and attitudes for a lifetime of success. All of the faculty, staff, and students at Hermantown Public Schools should be very proud of their accomplishments.

I congratulate Hermantown Public Schools in Hermantown, MN, for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.•

BAY VIEW ELEMENTARY SCHOOL, PROCTOR, MINNESOTA

• Mr. DAYTON. Mr. President, I rise today to honor Bay View Elementary School, in Proctor, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

Bay View Elementary School, a neighborhood school for 450 pupils in kindergarten through fifth grade, is truly a model of educational success.

Earlier this year, in their campaign to raise money to construct a boardwalk through their school's greatly prized forest, Bay View pupils collected 2,000 box tops. With the proceeds from the box tops, they were able to purchase $200 worth of lumber for the boardwalk. When someone absconded with the lumber, however, the children were not foiled by the theft; instead, turning a challenge into an opportunity, Bay View fifth-graders staged a publicity event and held placards urging the thieves to return the ill-gotten lumber. Their skillful tactic, combined with newspaper stories describing how hard the students worked to raise the money, generated an outpouring of community support. Over $5,000 in contributions from citizens and corporations streamed in; not only that, but the lumber was returned.

Bay View's school forest, which merited such avid initiative, truly offers an academic highlight, serving as an active, environmental learning laboratory for children in all grades. In January, I toured the forest and saw for myself its many opportunities for hands-on learning. Last summer, eight Bay View teachers used their own personal staff development days to take part in an Audubon Center training program, learning to integrate environmental education into their daily lessons.

Two other notable features are Bay View's artist-in-residence program and its student-run television studio, which affords opportunities to learn live-television production skills through a local, public access television production and broadcast studio. Students' daily news broadcasts are televised in classrooms throughout the school.

Much of the credit for Bay View Elementary School's success belongs to its Principal, Jon Larson, and his dedicated teachers. The children and staff at Bay View Elementary School understand that, in order to be successful, a school must go beyond achieving academic success; it must also provide a nurturing environment where students develop the knowledge, skills, and attitudes for success throughout life. All of the faculty, staff, and children at Bay View Elementary School should be very proud of their accomplishments.

I congratulate Bay View Elementary School in Proctor, Minnesota, for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.•

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

TRANSMITTING, CONSISTENT WITH THE OFFICE OF NATIONAL DRUG CONTROL REAUTHORIZATION ACT OF 1998 (21 U.S.C. 1705), THE 2006 NATIONAL DRUG CONTROL STRATEGY—PM 37

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on the Judiciary:

To the Congress of the United States:

I am pleased to transmit the 2006 National Drug Control Strategy prepared by my Administration, consistent with the Office of National Drug Control Reauthorization Act of 1998 (21 U.S.C. 1705).

Four years ago, my Administration issued its first National Drug Control Strategy. That Strategy set out an ambitious, balanced plan to reduce drug use in our Nation. Since 2001, drug use by 8th, 10th, and 12th graders has dropped by 19 percent, translating to nearly 700,000 fewer young people using drugs.

I appreciate the support the Congress has given for previous Strategies. I look forward to your continued support as we work together on this critical endeavor.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 8, 2006.*

REPORT RELATIVE TO BLOCKING PROPERTY OF CERTAIN PERSONS CONTRIBUTING TO THE CONFLICT IN CÔTE D'IVOIRE—PM 38

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

Consistent with subsection 204(b) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(b) (IEEPA), and section 301 of the National Emergencies Act, 50 U.S.C. 1631 (NEA), I hereby report that I have issued an Executive Order (the "order") blocking the property of certain persons contributing to the conflict in Côte d'Ivoire. In that order, I declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by that conflict, as described below.

The United Nations Security Council, in Resolution 1572 of November 15, 2004, expressed deep concern over the resumption of hostilities in Côte d'Ivoire, the public incitement of hatred and violence, and the repeated violations of the ceasefire agreement of May 3, 2003. United Nations Security Council Resolution (UNSCR) 1572 determined that the situation in Côte d'Ivoire poses a threat to international peace and security in the region and called on member States to take certain measures against persons responsible for the continuing conflict. The United Nations Security Council has continued to express serious concern at the persistence of the crisis in Côte d'Ivoire and of obstacles to the peace and national reconciliation process from all sides in UNSCRs 1643 of December 15, 2005, and 1652 of January 24, 2006.

Despite the intervention and efforts of the international community, there have been massacres of large numbers of civilians, widespread human rights abuses, significant political violence and unrest, and attacks against international peacekeeping forces in Côte d'Ivoire. Such activity includes the killing of large numbers of civilians in Korhogo in June 2004, and in Abidjan in March 2004; significant violence and unrest, including public incitements to violence, in Abidjan in November 2004; human rights violations, including extrajudicial killings, in western Côte d'Ivoire in April and June 2005; attacks on a police station and prison in July 2005 in Anyama and Agboville, and violent protests in Abidjan and attacks on U.N. and international nongovernmental organization facilities in western Côte d'Ivoire in January 2006. Also, notwithstanding the Linas-Marcoussis Agreement signed by the Ivorian political forces on January 24, 2003, the related ceasefire agreement of May 3, 2003, the Accra III Agreement of July 30, 2004, the Pretoria Agreement of April 6, 2005, and the Declaration on the Implementation of the Pretoria Agreement of June 29, 2005, consolidating the implementation of the Linas-Marcoussis peace and national reconciliation process, Ivorian parties have continued to engage in military operations and attacks against peacekeeping forces in Côte d'Ivoire leading to fatalities.

Pursuant to the IEEPA and the NEA, I have determined that these actions and circumstances constitute an unusual and extraordinary threat to the national security and foreign policy of the United States and declared a national emergency to deal with that threat and have issued an Executive Order to deal with the threat to U.S. national security and foreign policy posed by the situation in or in relation to Côte d'Ivoire.

The order blocks the property and interests in property in the United States, or in the possession or control of United States persons, of the persons listed in the Annex to the order, as well as of any person determined by the Secretary of the Treasury, after consultation with the Secretary of State, to constitute a threat to the peace and national reconciliation process in Côte d'Ivoire, such as by blocking the implementation of the Linas-Marcoussis, Accra III, and Pretoria Agreements; to be responsible for serious violations of international law in Côte d'Ivoire; to have directly or indirectly supplied, sold or transferred to Côte d'Ivoire arms or any related materiel or any assistance, advice, or training related to military activities; or to have publicly incited violence and hatred contributing to the conflict in Côte d'Ivoire.

The designation criteria will be applied in accordance with applicable domestic law, including where appropriate, the First Amendment to the United States Constitution.

The order also authorizes the Secretary of the Treasury, after consultation with the Secretary of State, to designate for blocking any person determined to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the activities listed above or any person listed in or designated pursuant to the order. I further authorized the Secretary of the Treasury, after consultation with the Secretary of State, to designate for blocking any person determined to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person listed in or designated pursuant to the order. The Secretary of the Treasury, after consultation with the Secretary of State, is also authorized to remove any persons from the Annex to the order as circumstances warrant.

I delegated to the Secretary of the Treasury, after consultation with the Secretary of State, the authority to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by the IEEPA and the United Nations Participation Act, as may be necessary to carry out the purposes of the order. All executive agencies are directed to take all appropriate measures within their authority to carry out the provisions of the order.

The order, a copy of which is enclosed, became effective at 12:01 a.m. eastern standard time on February 8, 2006.

GEORGE W. BUSH.

The White House, *February 8, 2006.*

MESSAGE FROM THE HOUSE

ENROLLED BILL SIGNED

At 3:10 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 4636. An act to enact the technical and conforming amendments necessary to implement the Federal Deposit Insurance Reform Act of 2005, and for other purposes.

The enrolled bill was signed subsequently by the President pro tempore (Mr. STEVENS).

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5604. A communication from the Executive Director, National Capital Planning Commission, transmitting, pursuant to law, the Commission's Fiscal Year 2005 Competitive Sourcing Report and planned competitions for Fiscal Year 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5605. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Audit of Advisory Neighborhood Commission 8B for Fiscal Years 2003 Through 2005, as of March 31, 2005"; to the Committee on Homeland Security and Governmental Affairs.

EC–5606. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–250, "Washington Convention Center Authority Advisory Committee Continuity Second Temporary Amendment Act of 2006"; to the Committee on Homeland Security and Governmental Affairs.

EC–5607. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–251, "New Columbia Community Land Trust 22nd and Channing Streets, N.E. Tax Exemption Temporary Act of 2006"; to the Committee on Homeland Security and Governmental Affairs.

EC–5608. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–252, "Tenant Evictions Temporary Amendment Act of 2006"; to the Committee on Homeland Security and Governmental Affairs.

EC–5609. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–253, "DC–USA Economic Development Temporary Act of 2006"; to the Committee on Homeland Security and Governmental Affairs.

EC–5610. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–264, "Library Enhancement, Assessment, and Development Amendment Act of 2006"; to the Committee on Homeland Security and Governmental Affairs.

EC–5611. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–265, "Domestic Partnership Equality Amendment Act of 2006"; to the Committee on Homeland Security and Governmental Affairs.

EC–5612. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–266, "Terrorism Prevention in Hazardous Materials Transportation Act of 2006"; to the Committee on Homeland Security and Governmental Affairs.

EC–5613. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–267, "Nuisance Abatement Reform Amendment Act of 2006"; to the Committee on Homeland Security and Governmental Affairs.

EC–5614. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–268, "Health Care Benefits Expansion Amendment Act of 2006"; to the Committee on Homeland Security and Governmental Affairs.

EC–5615. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–269, "Office of Administrative Hearings Term Amendment Act of 2006"; to the Committee on Homeland Security and Governmental Affairs.

EC–5616. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–270, "Parkside Terrace Economic Development Act of 2006"; to the Committee on Homeland Security and Governmental Affairs.

EC–5617. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–271, "Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Temporary Amendment Act of 2006"; to the Committee on Homeland Security and Governmental Affairs.

EC–5618. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–272, "Contracting and Procurement Reform Task Force Establishment Temporary Act of 2006"; to the Committee on Homeland Security and Governmental Affairs.

EC–5619. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–273, "Uniform Mediation Act of 2006"; to the Committee on Homeland Security and Governmental Affairs.

EC–5620. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–274, "Low-Emissions Motor Vehicle Tax Exemption Temporary Amendment Act of 2006"; to the Committee on Homeland Security and Governmental Affairs.

EC–5621. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–275, "Office of Gay, Lesbian, Bisexual, and Transgender Affairs Act of 2006"; to the Committee on Homeland Security and Governmental Affairs.

EC–5622. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–276, "Department of Health Functions Clarification Amendment Act of 2006"; to the Committee on Homeland Security and Governmental Affairs.

EC–5623. A communication from the Assistance Secretary of Defense (International Security Policy), transmitting, pursuant to law, a report entitled "Cooperative Threat Reduction Annual Report to Congress Fiscal Year 2007"; to the Committee on Armed Services.

EC–5624. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, a report relative to H.R. 1400, the "Securing Aircraft Cockpits Against Lasers Act of 2006"; to the Committee on the Judiciary.

EC–5625. A communication from the Counsel for Legislation and Regulations, Office of the Chief Procurement Officer, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled "Amendments to HUD Acquisition Regulation (HUDAR)" ((RIN2535–AA27) (FR–5010–F–01)) received on February 7, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5626. A communication from the Regulations Officer, Office of Disability and Income Security Programs, Social Security Administration, transmitting, pursuant to law, the report of a rule entitled "Work Activity of Persons Working as Members of Advisory Committees Established Under the Federal Advisory Committee Act" (RIN0960–AG07) received on February 7, 2006; to the Committee on Finance.

EC–5627. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Escrow Funds and Other Similar Funds" ((RIN1545–AR82) (TD9249)) received on February 7, 2006; to the Committee on Finance.

EC–5628. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Announcement of Rules Adopting a Reasonable Cause Standard for Section 1503(d) Filings" (Notice 2006–13) received on February 7, 2006; to the Committee on Finance.

EC–5629. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Coordinated Issue: Redemption Bogus Optional Basis Tax Shelter" (UIL NO: 9300.42–00) received on February 7, 2006; to the Committee on Finance.

EC–5630. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Residence Rules Involving U.S. Possessions" ((RIN1545–BC86) (TD9248)) received on February 7, 2006; to the Committee on Finance.

EC–5631. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Revenue Procedure: Renewal Community Depreciation Provisions" (Rev. Proc. 2006–16) received on February 7, 2006; to the Committee on Finance.

EC–5632. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Tentative Recomputed Differential Earnings Rate for 2004 under section 809" (Notice 2006–18) received on February 7, 2006; to the Committee on Finance.

EC–5633. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Extension of Safe Harbor Date for Charitable Remainder Trusts in the Case of Spousal Election Rights" (Notice 2006–15) received on February 7, 2006; to the Committee on Finance.

EC–5634. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare and Medicaid Programs; Requirements for Long Term Care Facilities; Nursing Services; Posting of Nurse Staffing Information" (RIN0938–AM55) received on February 8, 2006; to the Committee on Finance.

EC–5635. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, the Agency's proposed fiscal year 2007 budget; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5636. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Boscalid; Pesticide Tolerance" (FRL No.

7757–9) received on February 7, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5637. A communication from the Executive Director, Commodities Futures Trading Commission, transmitting, pursuant to law, the report of a rule entitled "17 CFR Parts 36, 37, 38, 39 and 40, Technical and Clarifying Amendments to Rules for Exempt Markets, Derivatives Transaction Execution Facilities and Designated Contract Markets, and Procedural Changes for Derivatives Clearing Organization Registration Applications" (RIN3038–AC23) received on February 7, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5638. A communication from the Executive Director, Commodities Futures Trading Commission, transmitting, pursuant to law, the report of a rule entitled "17 CFR Part 30, Foreign Futures and Options Transactions (70 FR 75934, December 22, 2005)" received on February 7, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5639. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Black Stem Rust; Movement Restrictions and Addition of Rust-Restraint Varieties" (Doc. No. 04–003–2) received on February 7, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5640. A communication from the Chief, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Cottonseed Payment Program" (RIN0560–AH29) received on February 7, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5641. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Increased Assessment Rate" (Docket No. FV06–905–1 IFR) received on February 8, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5642. A communication from the Assistant Secretary for Congressional and Intergovernmental Affairs, Department of Labor, transmitting, pursuant to law, the Department's final report on the National Emergency with respect to the suspension of the Davis-Bacon Act in response to Hurricane Katrina; to the Committee on Health, Education, Labor, and Pensions.

EC–5643. A communication from the Inspector General, Railroad Retirement Board, transmitting, pursuant to law, a report relative to budget request for the Office of Inspector General, Railroad Retirement Board, for fiscal year 2007; to the Committee on Health, Education, Labor, and Pensions.

EC–5644. A communication from the Assistant Secretary, Employee Benefits Security Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled "Amendment to Prohibited Transaction Exemption 84–24 (PTE 84–24) For Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, Investment Companies and Investment Company Principal Underwriters" (Exemption Application D–11069) received on February 7, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5645. A communication from the Assistant Secretary, Employee Benefits Security Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled "Amendment to Prohibited Transaction Exemption (PTE) 75–1, Exemptions from Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Certain Broker-Dealers, Reporting Dealers and Banks" (Exemption Application D–11184) received on February 7, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5646. A communication from the Assistant Secretary, Veterans' Employment and Training Service, Department of Labor, transmitting, pursuant to law, the report of a rule entitled "Uniformed Services Employment and Reemployment Rights Act of 1994" (RIN1293–AA09) received on February 7, 2007; to the Committee on Health, Education, Labor, and Pensions.

EC–5647. A communication from the Legal Advisor, Wireless Telecommunications Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, Reports and Order" (Doc. No. 05–211) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5648. A communication from the Secretary of Communication, Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled "Commission Reporting Requirements Under Section 8 of the Clayton Act" received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5649. A communication from the Secretary of Communication, Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled "Notice Announcing 2006 Adjusted Thresholds for Clayton Act 7A" (RIN3084–AA91) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5650. A communication from the Legal Advisor, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Shorter, Orrville, Selma, and Birmingham, Alabama)" (Doc. No. 04–201) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5651. A communication from the Legal Advisor, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Ringwood, Oklahoma and Taos Pueblo, New Mexico)" (Doc. No. 04–201) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5652. A communication from the Legal Advisor, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Randsburg, California and Mooreland, Oklahoma)" (Doc. No. 04–201) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5653. A communication from the Legal Advisor, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Lovelady, Texas and Oil City, Louisiana); Reclassification of License of FM Station KYKS, Lufkin, Texas" (Doc. No. 05–36 and 37) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5654. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Supplemental Oxygen; Direct Final Rule Withdrawal" ((RIN2120–AAI65)(2006–0002)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5655. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Miscellaneous Amendments (61)" ((RIN2120–AA65)(2006–0004)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5656. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Empresa Brasileira de Aeronautica SA Model EMB 120, 120ER, 120FC, 120QC, and 120RT Airplanes" ((RIN2120–AA64)(2006–0012)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5657. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Aerospatiale Model ATRE 42–200, ATR42–300, and ATR42–320 Airplanes" ((RIN2120–AA64)(2006–0013)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5658. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Airbus Model A320–111 Airplanes, and Model A320–200 Series Airplanes; Correction" ((RIN2120–AA64)(2006–0014)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5659. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Empressa Brasileira de Aeronautica SA Model EMB 135 Airplanes and Model EMB 145, 145ER, 145MR, 145LR, 145XR, and 145EP Airplanes" ((RIN2120–AA64) (2006–0015)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5660. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Raytheon Aircraft Company Model 390, Premier 1 Airplanes" ((RIN2120–AA64) (2006–0017)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5661. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa Model SZD 50–3 "Puchacz" Gliders" ((RIN2120–AA64) (2006–0018)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5662. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Shadin ADC Air Data Computers" ((RIN2120-AA64) (2006-0019)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5663. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Establishment of Class E Airspace; Arctic Village, AK" ((RIN2120-AA66) (2006-0003)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5664. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Establishment of Class E Airspace, San Luis Obispo, CA" ((RIN2120-AA66) (2006-0004)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5665. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Revision of Class E Airspace; Nenana, AK" ((RIN2120-AA66) (2006-0005)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5666. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of the Norton Sound Low Offshore Airspace Area, AK" ((RIN2120-AA66) (2006-0006)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5667. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Establishment of Class E Airspace; Nilolai, AK" ((RIN2120-AA66) (2006-0007)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5668. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class E Airspace; Kennett, MO" ((RIN2120-AA66) (2006-0008)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5669. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Revision of Class E Airspace; Egegik, AK" ((RIN2120-AA66) (2006-0009)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5670. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Establishment of Class E Airspace; Hillsboro, TX" ((RIN2120-AA66) (2006-0010)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5671. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment to Class E Airspace; Wenatchee, WA" ((RIN2120-AA66) (2006-0011)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5672. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Miscellaneous Amendments (2)" ((RIN2120-AA65) (2006-0005)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5673. A communication from the Assistant Administrator for Fisheries, Department of Commerce, and the Director, U.S. Fish and Wildlife Service, Department of the Interior, transmitting jointly, the 2005 Biennial Report on Atlantic Striped Bass Studies; to the Committee on Commerce, Science, and Transportation.

EC-5674. A communication from the Acting Chairman, National Transportation Safety Board, transmitting, pursuant to law, a Report on the Fiscal Year 2007 Budget Estimates; to the Committee on Commerce, Science, and Transportation.

EC-5675. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to the Cooperative Threat Reduction Act with respect to Armenia, Azerbaijan, Georgia, Ukraine, Kyrgyzstan, and Tajikistan; to the Committee on Foreign Relations.

EC-5676. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to the Cooperative Threat Reduction Act with respect to both the Russian Federation and Uzbekistan during fiscal year 2006; to the Committee on Foreign Relations.

EC-5677. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $50,000,000 or more to Russia; to the Committee on Foreign Relations.

EC-5678. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, (8) reports on current vacancies in covered positions within the State Department; to the Committee on Foreign Relations.

EC-5679. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to Extension of Waiver of Section 907 of the FREEDOM Support Act With Respect to Assistance to the Government of Azerbaijan; to the Committee on Foreign Relations.

EC-5680. A communication from the Executive Secretary and Chief of Staff, U. S. Agency for International Development, transmitting, pursuant to law, the report of a vacancy in the position of Administrator, received February 7, 2006; to the Committee on Foreign Relations.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. FEINSTEIN (for herself, Ms. COLLINS, Mr. DORGAN, Ms. SNOWE, Mr. BINGAMAN, Mr. CHAFEE, Mrs. CLINTON, Mr. SCHUMER, Mrs. MURRAY, and Mrs. BOXER):

S. 2255. A bill to amend title XVIII of the Social Security Act to prohibit removal of covered part D drugs from a prescription drug plan formulary during the plan year once an individual has enrolled in the plan; to the Committee on Finance.

By Mr. BURNS:

S. 2256. A bill to amend the Communications Act of 1934 to ensure the availability to all Americans of high-quality, advanced telecommunications and broadband services, technologies, and networks at just, reasonable, and affordable rates, and to establish a permanent mechanism to guarantee specific, sufficient, and predictable support for the preservation and advancement of universal service, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. OBAMA (for himself, Ms. LANDRIEU, Mr. DURBIN, and Mr. KERRY):

S. 2257. A bill to provide for an enhanced refundable credit for families who resided in the Hurricane Katrina disaster area on August 28, 2005; to the Committee on Finance.

By Mr. ISAKSON (for himself and Mr. CHAMBLISS):

S. 2258. A bill to amend the Tennessee Valley Authority Act of 1933 to increase the membership of the Board of Directors and require that each State in the service area of the Tennessee Valley Authority be represented by at least 1 member; to the Committee on Environment and Public Works.

By Mr. OBAMA:

S. 2259. A bill to establish an Office of Public Integrity in the Congress and a Congressional Ethics Enforcement Commission; to the Committee on Homeland Security and Governmental Affairs.

By Mrs. CLINTON:

S. 2260. A bill to amend titles XVIII and XIX of the Social Security Act to make improvements to payments to Medicare Advantage plans and to reinstate protections in the Medicaid program for working families, their children, and the disabled against excessive out-of-pocket costs, inadequate benefits, and health care coverage loss; to the Committee on Finance.

By Mr. OBAMA:

S. 2261. A bill to provide transparency and integrity in the earmark process; to the Committee on Rules and Administration.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BYRD (for himself, Mr. ROCKEFELLER, Mr. ENZI, and Mr. KENNEDY):

S. Res. 370. A resolution honoring the sacrifice and courage of the 16 coal miners killed in various mine disasters in West Virginia, and recognizing the rescue crews for their outstanding efforts in the aftermath of the tragedies; considered and agreed to.

By Mr. FRIST:

S. Con. Res. 80. A concurrent resolution relating to the enrollment of S. 1932; considered and agreed to.

ADDITIONAL COSPONSORS

S. 267

At the request of Mr. CRAIG, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 267, a bill to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000, and for other purposes.

S. 843

At the request of Mr. SANTORUM, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 843, a bill to amend the Public Health Service Act to combat autism through research, screening, intervention and education.

S. 854

At the request of Mr. FEINGOLD, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 854, a bill to require labeling of raw agricultural forms of ginseng, including the country of harvest, and for other purposes.

S. 1109

At the request of Mr. LOTT, the names of the Senator from Arkansas (Mrs. LINCOLN), the Senator from Colorado (Mr. SALAZAR), the Senator from California (Mrs. BOXER) and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S. 1109, a bill to amend title XVIII of the Social Security Act to provide payments to Medicare ambulance suppliers of the full cost of furnishing such services, to provide payments to rural ambulance providers and suppliers to account for the cost of serving areas with low population density, and for other purposes.

S. 1200

At the request of Mr. BUNNING, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1200, a bill to amend the Internal Revenue Code of 1986 to reduce the depreciation recovery period for certain roof systems.

S. 1358

At the request of Mr. DURBIN, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 1358, a bill to protect scientific integrity in Federal research and policymaking.

S. 1408

At the request of Mr. SMITH, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 1408, a bill to strengthen data protection and safeguards, require data breach notification, and further prevent identity theft.

S. 1791

At the request of Mr. SMITH, the names of the Senator from Alabama (Mr. SHELBY), the Senator from Maine (Ms. COLLINS) and the Senator from Alaska (Mr. STEVENS) were added as cosponsors of S. 1791, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for qualified timber gains.

S. 1841

At the request of Mr. NELSON of Florida, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1841, a bill to amend title XVIII of the Social Security Act to provide extended and additional protection to Medicare beneficiaries who enroll for the Medicare prescription drug benefit during 2006.

S. 2010

At the request of Mr. HATCH, the names of the Senator from New York (Mr. SCHUMER), the Senator from Pennsylvania (Mr. SANTORUM), the Senator from New York (Mrs. CLINTON) and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of S. 2010, a bill to amend the Social Security Act to enhance the Social Security of the Nation by ensuring adequate public-private infrastructure and to resolve to prevent, detect, treat, intervene in, and prosecute elder abuse, neglect, and exploitation, and for other purposes.

S. 2019

At the request of Mr. SMITH, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 2019, a bill to provide for a research program for remediation of closed methamphetamine production laboratories, and for other purposes.

S. 2178

At the request of Mr. SCHUMER, the names of the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of S. 2178, a bill to make the stealing and selling of telephone records a criminal offense.

S. 2235

At the request of Mr. SCHUMER, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 2235, a bill to posthumously award a congressional gold medal to Constance Baker Motley.

S. 2253

At the request of Mr. DOMENICI, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 2253, a bill to require the Secretary of the Interior to offer the 181 Area of the Gulf of Mexico for oil and gas leasing.

S. CON. RES. 69

At the request of Mr. ISAKSON, the names of the Senator from South Carolina (Mr. GRAHAM) and the Senator from North Dakota (Mr. DORGAN) were added as cosponsors of S. Con. Res. 69, a concurrent resolution supporting the goals and ideals of a Day of Hearts, Congenital Heart Defect Day in order to increase awareness about congenital heart defects, and for other purposes.

S. RES. 313

At the request of Ms. CANTWELL, the names of the Senator from Indiana (Mr. BAYH) and the Senator from Missouri (Mr. TALENT) were added as cosponsors of S. Res. 313, a resolution expressing the sense of the Senate that a National Methamphetamine Prevention Week should be established to increase awareness of methamphetamine and to educate the public on ways to help prevent the use of that damaging narcotic.

S. RES. 320

At the request of Mr. ENSIGN, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. Res. 320, a resolution calling the President to ensure that the foreign policy of the United States reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian Genocide.

S. RES. 359

At the request of Mr. DODD, his name was added as a cosponsor of S. Res. 359, a resolution concerning the Government of Romania's ban on intercountry adoptions and the welfare of orphaned or abandoned children in Romania.

S. RES. 365

At the request of Mr. LOTT, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. Res. 365, a resolution to provide a 60 vote point of order against out-of-scope material in conference reports and open the process of earmarks in the Senate.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN (for herself, Ms. COLLINS, Mr. DORGAN, Ms. SNOWE, Mr. BINGAMAN, Mr. CHAFEE, Mrs. CLINTON, Mr. SCHUMER, Mrs. MURRAY, and Mrs. BOXER):

S. 2255. A bill to amend title XVII of the Social Security Act to prohibit removal of covered part D drugs from a prescription drug plan formulary during the plan once an individual has enrolled in the plan; to the Committee on Finance.

Mrs. FEINSTEIN. Mr. President, today I am introducing legislation along with Senators COLLINS, DORGAN, SNOWE, BINGAMAN, CHAFEE, CLINTON, SCHUMER, MURRAY and BOXER to ensure that when a senior signs up for a Medicare prescription drug plan, the drugs covered by their plan cannot be removed or changed throughout that year.

Under the legislation, if you sign up for a plan in January, the drugs covered by your plan will continue to be covered the rest of that year.

If you become eligible for Medicare during the year, for instance you turn 65 in May, and you sign up for a plan, the drugs covered by your plan when you enroll in it will continue to be covered the rest of that year.

At the end of the year, if a plan wants to change its coverage, it can do that. The bill does nothing to prevent plans from changing their drug coverage for the coming year. However, that can only happen at the end of the year, at the time all Medicare beneficiaries have the option to switch plans.

Seniors deserve the peace of mind to know that the drug plan they enroll in will cover the drugs it says it will all year.

Under current law, a prescription drug plan can change its formulary as many times as it wants throughout the year so long as it gives notice to its enrollees.

However, seniors have no recourse other than going through a lengthy appeals process if their drug plan suddenly drops their medicines. At the end of that appeals process, there is still no guarantee that seniors will get their drugs.

Under current law, they have to wait until the next open enrollment period which may be as much as nine months away. That is unacceptable.

Seniors can't and shouldn't have to wait all year to obtain lifesaving and life sustaining drugs they thought would be covered by their drug plan.

The bill allows a prescription drug plan to add drugs to its formulary—for instance in cases where a new drug is approved by the FDA or a generic alternative to a brand name drug becomes available.

The bill also allows a prescription drug plan to remove a drug from its formulary if the FDA issues a clinical warning about the drug, if the FDA pulls a drug from the market like in the case of Vioxx, or if the drug has been determined to be ineffective.

But, in those instances, the prescription drug plan must notify the HHS Secretary, affected enrollees, physicians, and pharmacies of the change.

Seniors in California have an overwhelming array of prescription drug plan options. There are at least 110 drug plan options for Californians.

It can take days, if not weeks to determine which plan is best based on your drug needs and health status.

Unless this bill is approved, seniors have no guarantee that their drugs will be covered throughout the year.

I think that is wrong. This legislation will change that.

Some might argue why this bill is necessary now. We are one month into the new Medicare drug benefit and what we have witnessed throughout the Nation is widespread confusion. Seniors are being turned away at the pharmacy counters and they are being incorrectly asked to pay hundreds of dollars for their drugs.

States are absorbing the costs to provide drugs for a Federal program. So far, California has spent more than $18 million of its own money. I support efforts to reimburse States fully for the drug costs they've absorbed as a result of implementation errors by this Administration and I support transitional relief for the so-called "dual eligible" Medicare beneficiaries whose transition from Medicaid to Medicare has been disastrous.

The Administration contends that this legislation isn't necessary because plans can't change their formularies without notifying the Centers for Medicare and Medicaid Services (CMS) and enrollees first and that CMS won't allow plans to make changes to their formularies that hurt seniors.

This "just trust us" argument being used by the Administration is anything but reassuring, especially given all the major program implementation problems it has caused due to poor planning and inadequate foresight.

I believe seniors deserve more and they deserve the protections guaranteed under this legislation.

We must act now to protect all Medicare beneficiaries from the type of "bait and switch" tactics like signing up for a plan thinking you were getting certain drugs only to find out down the road that those drugs were no longer covered.

The bill is about parity for seniors. If seniors are prohibited from changing drug plans except during the annual open enrollment period, then they deserve to know that the plan they are locked in to is also locked in to covering the drugs it said it would.

I urge my colleagues to support this legislation.

Mr. DORGAN. Mr. President, I am pleased to join Senators FEINSTEIN, COLLINS and a number of my other colleagues to introduce the Medicare Drug Formulary Protection Act of 2006. This legislation will improve the new Medicare prescription drug benefit by preventing prescription drug plans from unexpectedly dropping coverage of prescription drugs that were covered when seniors enrolled in the plan.

Although seniors enrolled in the new Medicare drug program are only able to change their health plans once a year, nothing prevents insurers from dropping drugs from their plans on a whim. Under current law, prescription drug plans can change which drugs they cover as long as they provide 60 days notice to their enrollees.

It is difficult enough for seniors to navigate the confusion and complexity the Administration has built into the Medicare prescription drug benefit. They ought to be able to do so secure in the knowledge that once they have picked a plan, the plan will not change on them midstream. Seniors need the protection and certainty this legislation extends to them.

I had some hopes for this new Medicare plan, but it has become a complete and utter mess. In North Dakota, we have 41 different plans being offered by 17 different companies, and we have the highest percentage of senior citizens in the nation with no prescription drug coverage.

In North Dakota, 68 percent of seniors still do not have prescription drug coverage. With the sign-up period nearly one-third over, only 9,000 seniors in North Dakota have voluntarily signed up for the program. More than 70,000 seniors still lack coverage.

Other States in the northern Great Plains region are not far behind. Fully 67 percent of South Dakota seniors have no prescription drug coverage and in Montana 65 percent lack coverage. Wyoming also ranks high, with 61 percent of its seniors without prescription drug coverage.

I have asked Secretary Leavitt to dispatch a survey team to North Dakota and neighboring States to determine why enrollment rates in the new Medicare prescription drug program are among the lowest in the nation in our region of the country.

In the meantime, we need to enact the Medicare Drug Formulary Protection Act and other commonsense reforms like the Medicare Informed Choice Act and the Medicare State Recovery Act.

The Medicare Informed Choice Act would extend the enrollment deadline until December 31, 2006. We need to enact this legislation right away. Seniors need more time to evaluate their options. Extending the enrollment deadline will also give Congress time to address some of the problems that have kept more seniors from enrolling in the benefit.

The Medicare State Recovery Act will ensure States are reimbursed for the cost of prescriptions for low-income seniors and people with disabilities who were improperly denied coverage under Medicare.

I want this new benefit to work. That is why I urge my colleagues to support these efforts to improve the benefit and make it less confusing for seniors.

By Mr. BURNS:

S. 2256. A bill to amend the Communications Act of 1934 to ensure the availability to all Americans of high-quality, advanced telecommunications and broadband services, technologies, and networks at just, reasonable, and affordable rates, and to establish a permanent mechanism to guarantee specific, sufficient, and predictable support for the preservation and advancement of universal service, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. BURNS. Mr. President, this is a special day to those of us who serve on the Commerce Committee and have served on the Commerce Committee ever since we have been in the Senate because today is the 10th anniversary of the Telecom Act of 1996. I want to talk about a bill I am introducing today as the Internet and Universal Service Act of 1996, or the NetUSA, if you will.

When I first came here and went to work, I was very much interested in telecommunications. The big reason is in my State of Montana we have only 900,000 people but we have 148,000 square miles. I remind my colleagues, if you drew a straight line from Yaak, MT, to Alzada, MT, it is farther than it is from Chicago to Washington, DC.

So we went to work in telecommunications for the simple reason we had to do something about distances, and we did. But it took almost 6 or 7 years before we came up with a bill that overhauled the old Telco Act of 1935. What we were trying to do is deal with the 1990s technology with a 1930 law and we found it almost impossible to do, so the whole act had to be rewritten.

Since the Telecom Act, the only thing that is certain is change. With change, several trends have emerged, including the development of new technologies, industry consolidation and convergence, and product bundling.

The pace of technological change has been astounding. We have a plethora of new technologies including WiFi and WiMAX, and all new words in telecommunications—wireless Internet access, voice over Internet protocol, which we refer to now as VOIP, the telephone service using the Internet and broadband over powerline—BPL—for Internet access via electrical lines.

While the Telecom Act promised industry and technology convergence, only recently is it materializing—with telephone, cable, and wireless companies invading one another's turf. Cable companies are offering television service over the Internet, telephone companies are offering video services over their facilities. New technologies have brought consumers a variety of choices for local, long distance, video, wireless, and Internet services, and many companies are offering bundled services.

The radical transformation of the industry has led some to call for a complete rewrite to the Telecom Act. Central issues in the debate today are the reform of the Universal Service Fund—the USF, reform of intercarrier compensation, franchising issues for video providers, and net neutrality are some among a whole host of other challenges.

As Congress begins working to rewrite the telecom laws, my central focus will be encouraging broadband deployment in every corner of the U.S. and preserving and improving universal service. Broadband deployment is more vital now than ever before, and it is a key to our future. In the 21st century, how do we compete against workers who work in economies of scale and their salaries are a little bit less than ours? We ensure that U.S. workers can obtain broadband services at affordable prices no matter where they live in this great country.

The GAO recently agreed, recommending the Government make more broadband infrastructure investments to improve the U.S. workforce's human capital and skill level. I think the President talked much about this in his State of the Union.

Technology provides a greater chance to live where you want and hold a good job. If a community does not have broadband, it is at a huge competitive disadvantage. It is just that simple.

Even though the technologies were developed in the United States, we still lag behind other countries in the deployment of broadband. We need to provide incentives for companies to continue to expand their broadband facilities and to ensure all Americans have access to the Internet, regardless of where they live—particularly since, although Internet penetration has grown in rural communities, a gap still exists between them and the suburban and urban communities.

One way I will provide such incentive is to continue my support of universal service, although it may take a little bit different direction in the distribution. The nearly 100-year commitment Congress and this Nation have had to USF has been indispensable in providing the same opportunities for rural America to participate in the Nation's education and health care systems that exist for Americans in urban areas, and for every American to participate fully in the Internet economy.

Just as rural electrification in the 1930s led to the surge in economic growth and raised the living standards across rural America, universal service plays the same role in the Internet era. We didn't get electricity on my farm until early in the 1950s. I can remember when you used to go to town and that electricity seemed like a pretty special thing. Had not the Government created the REC, or the rural electrics, I contend that out on the farm we would still be watching television by candlelight.

Without universal service support, phone bills in rural areas across the country, such as Montana, would increase dramatically. Universal service also helps to ensure that schools and libraries receive access to the Internet at rates they can afford. Because of universal service, the Internet now reaches almost all school-age children, no matter where they live. Universal service helped link rural health facilities to urban medical centers, promoting telemedicine. My State of Montana is on the cutting edge of that. Many people in remote communities would not have access to health care just using the Internet. The all-important issue in Montana is where these counties do not even have a doctor. I have 13 counties that have no physician.

For those who say universal service no longer makes sense, or that it should be repealed or scaled back, I encourage them to visit my State and see the fund in action. As one official from a carrier serving a remote corner of Alaska recently commented, universal service is "more than a line item on a bill. . . . [It] provides a link to the outside world."

That is not to say that changes do not need to be made in universal service. They do need to be made. It is a different world. Technologies are different and we must respond. As the length of time that new technologies emerge shortens, we must be able to deal with them. As consumers switch to new technologies such as wireless service, e-mail, voice over IP, universal service is slowly taking in less money every year. Therein lies the problem.

At the same time, the amount of money we disburse is increasing. This situation is obviously not sustainable, nor is it acceptable to Congress.

Additionally, we need to ensure the universal service is distributed where it is needed. The Senator from Alabama understands universal service and the impact it has on rural Alabama. In revising universal service to adapt to the changing technology landscape, it is essential to maintain the commitment levels to universal service programs to foster the continued availability of telecom and advanced services in rural communities, and to strengthen and improve the overall fund.

My proposed legislation will speed up deployment of broadband in rural areas and preserve and improve universal service.

Some things my bill seeks to do are to ensure that companies that receive universal service funds will invest in deployed broadband services; to ensure that universal service support contributions are assessed in a fair and competitively neutral manner; ensuring the integrity of the Schools and Libraries Program to deter waste, fraud, and abuse by strengthening the FCC's management and oversight, including imposing sanctions on applicants or vendors who repeatedly and knowingly violate the rules. That is what my bill does, in part. Lastly, improving the effectiveness of rural health care programs. It is unbelievable what we can do for rural health care when we can move massive amounts of information.

I look forward to working with my colleagues to craft creative solutions to these issues that are so vital to our Nation's future. It is the 10th anniversary. It took us almost 50 years—in fact, a little over 50 years, to change the act in 1996. This time, we had to act a little bit quicker because emerging technologies wait for no man. They are there, they are being used, and we must deal with them as they emerge.

I thank the Senator from Alabama for allowing me this little time and I look forward to working with my colleagues on the passage of the universal bill in this body.

I yield the floor.

By Mr. OBAMA (for himself, Ms. LANDRIEU, Mr. DURBIN, and Mr. KERRY):

S. 2257. A bill to provide for an enhanced refundable credit for families who resided in the Hurricane Katrina disaster area on August 28, 2005; to the Committee on Finance.

Mr. OBAMA. Mr. President, I rise today to introduce the Hurricane

Katrina Working Family Tax Relief Act of 2006. I am proud to introduce this bill, along with Senators LANDRIEU, DURBIN, and KERRY, to keep a promise the President made to rebuild the Gulf Coast in the wake of Hurricane Katrina. Last week the Senate approved a $70 billion bill laden with tax cuts for the wealthy and well-connected. This bill, which costs less than 1 percent as much, uses a proven tool in our tax code—the child tax credit—to extend aid to low-income working families affected by Hurricane Katrina.

Currently, the child credit allows families with qualifying children to receive a credit of $1,000 per child against their Federal income tax. Unfortunately, families that earn less than $11,000 get no benefit from the refundable child credit. That means that a child is left out of the credit even if her parent works full time at minimum wage, which has not increased since 1997. And the child doesn't get the full benefit of the $1,000 credit until her parent earns close to $18,000, or even more if the child has siblings. And if her parents' income does not keep up with inflation, for any reason, the value of the credit drops or even disappears.

We all know of the devastation wrought by Hurricane Katrina. It will be a long time before families on the Gulf Coast can rebuild their lives. Many of them have seen their homes destroyed, their jobs eliminated, their families separated, and their lives irrevocably changed. Unfortunately, the Federal response so far has been inadequate to get these families effectively back on their feet. We are now learning of thousands of evacuees getting kicked out of their hotel rooms because FEMA has stopped paying the bills.

We can do better for these families. Life was hard for many of them even before Katrina hit. Prior to the hurricane, there were over 2 million people living below poverty in the affected States. In some of the affected counties and parishes, more than 1 in 4 children lived below the poverty level.

In Louisiana, Mississippi, and Alabama, for example, more than 900,000 children under 17-years-old were so poor that they got no child tax credit or only a partial credit. These States had among the highest rates in the Nation of children too poor to get the full credit.

This bill will provide necessary assistance to many of these families. The bill eliminates the income threshold that excluded all children in families with less than $11,000 of income. With this bill, the children of low-income working parents affected by Hurricane Katrina will no longer be denied the child credit.

It's simple: if you work, your kids get a benefit. This bill provides a partial credit starting with the first dollar of a parent's income for families who lived in the areas affected by Hurricane Katrina. You work, your kids get a benefit. If you don't work, no benefit.

That's a commonsense way to support families with children, especially families that have experienced the huge cost—psychological and financial—of a natural disaster.

This bill is also narrowly tailored and fiscally responsible. It provides short-term support targeted at families affected by the hurricane, and its costs can easily be absorbed within the $97 billion already committed to hurricane relief.

I urge my colleagues to support this bill, which will enable hundreds of thousands of this country's most disadvantaged children to see an increase in their credit. Katrina offered a reminder of poverty in our own country. Let's not forget so quickly. We owe it to the American people to do something to provide a chance for our neediest children to rebuild their lives with dignity, hope, and opportunity.

By Mr. OBAMA:

S. 2259. A bill to establish an Office of Public Integrity in the Congress and a Congressional Ethics Enforcement Commission; to the Committee on Homeland Security and Governmental Affairs.

Mr. OBAMA. Mr. President, today, I am introducing new legislation to build on the excellent work my colleagues began with the Honest Leadership and Open Government Act.

That bill would close the revolving door between Capitol Hill and lobbying jobs. It would end all lobbyist-funded gifts, meals, and travel, and it would shine a bright light of monitoring and public disclosure on lobbyists' operations, secret conference committee negotiations and last-minute special-interest provisions.

These are important steps forward that should be approved by this Congress and signed into law. The first bill I am introducing now builds on these steps by focusing on enforcement. We can pass all the new ethics rules in the world, but if we don't establish a body that can monitor and enforce those rules, it'll be easy to break them.

My legislation will establish a nonpartisan, independent Congressional Ethics Enforcement Commission that would investigate ethics violations and report their findings to the public.

The idea of an independent Commission to conduct initial investigations is not new. It is modeled on successful efforts in a number of States including Kentucky, Florida, and Tennessee. Similar commissions in those States have a track record of working well and making the ethics enforcement process much more effective.

My commission would be staffed with former judges and former members of Congress, and it would allow any citizen to report a possible ethics violation by lawmakers, staff, or lobbyists. It would have the authority to conduct investigations, issue subpoenas, and provide public reports to the Senate Ethics Committee or Department of Justice so that any wrongdoing can be punished accordingly.

To prevent this Commission from being manipulated for partisan political purposes, the bill establishes stiff sanctions for the filing of frivolous complaints, and prohibits the filing of complaints three months before an election.

Although, the ultimate power to reprimand members would remain with the Ethics Committees in Congress and the Department of Justice, the new Congressional Ethics Enforcement Commission would make these bodies more effective by removing political pressure from the initial fact-finding phase of ethics investigations. In addition, the Commission's independent capacity to issue public findings would encourage the Ethics Committees to act.

I am proud that this legislation has support across the political spectrum, earning the endorsement of both Common Cause and Norm Ornstein of the American Enterprise Institute. Ornstein said this about my enforcement bill: "This approach to ethics enforcement is just the kind of balanced and reasonable alternative we need. . . . It deserves strong bipartisan support."

I strongly encourage my colleagues to join me in creating this Commission to restore credibility to the body on the enforcement of ethics.

I am also introducing legislation to build on the CLEAN UP Act (S. 2179) that I introduced last month.

The CLEAN UP Act was written to provide for greater transparency in the legislative process and in conference committees in particular. It has won the support of eight of my colleagues, and I hope the Transparency and Integrity in Earmarks Act that I am introducing today will gain their support, as well as the rest of my colleagues.

The Transparency and Integrity in Earmarks Act would require that information about all earmarks, including the name of the lawmaker requesting it and a justification of why they want it, be disclosed 72 hours before they are considered by the full Senate.

The bill would also place some common-sense limits on earmarks. Members would be prohibited from advocating for an earmark if they have a financial interest in the project or its recipient. Earmarks also could not be used to secure promises from lawmakers in exchange for a vote on a bill. Finally, earmark recipients would have to disclose the amount that they spent on lobbyists in order to get their project passed. These earmark reforms won't solve every abuse, but the idea is this: if you're proud enough about an earmark to issue a press release about it, then you should be able to defend it to the public.

Several of these ideas are contained in a bill introduced by Rep. David Obey. I am grateful for his leadership on this issue in the House.

I know this is not the only proposal on earmarks before the Senate. But I believe this combines the best ideas without creating procedural roadblocks to legitimate projects in our communities. This is a balanced approach that I believe a majority of the Senate can—and should—support.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 370—HONORING THE SACRIFICE AND COURAGE OF THE 16 COAL MINERS KILLED IN VARIOUS MINE DISASTERS IN WEST VIRGINIA, AND RECOGNIZING THE RESCUE CREWS FOR THEIR OUTSTANDING EFFORTS IN THE AFTERMATH OF THE TRAGEDIES

Mr. BYRD (for himself, Mr. ROCKEFELLER, Mr. ENZI, and Mr. KENNEDY) submitted the following resolution; which was considered and agreed to:

S. RES. 370

Whereas coal generates more than half of domestic electricity, providing millions of Americans with energy for their homes and businesses;

Whereas West Virginia is the Nation's second largest coal producing State;

Whereas an average of 7,600 pounds of coal per person per year is used in the United States;

Whereas the United States has an estimated 275,000,000,000 tons of recoverable coal reserves representing about 95 percent of all fossil fuel reserves in the nation;

Whereas coal continues to be the economic engine for many communities;

Whereas coal miners are among the most productive of all American workers, producing 7 tons of coal per miner per day, which results in coal consistently being the most cost-effective choice for generating electricity in the United States;

Whereas during the last century over 100,000 coal miners have been killed in mining accidents in the Nation's coal mines;

Whereas the Nation is greatly indebted to coal miners for the difficult and dangerous work they perform to provide the fuel needed to operate the Nation's industries and to provide energy to homes and businesses;

Whereas 13 West Virginia miners were trapped 260 feet below the surface in the Sago mine for over 40 hours following an explosion on January 2, 2006;

Whereas Federal, State, and local rescue crews worked relentlessly in an attempt to save the miners;

Whereas many residents of Upshur County, West Virginia, and the surrounding areas came together at the Sago Baptist Church to support the miners' families;

Whereas 12 miners, Thomas Anderson, Alva Martin Bennett, Jim Bennett, Jerry Groves, George Hamner Jr., Terry Helms, David Lewis, Martin Toler, Fred Ware Jr., Jack Weaver, Jesse Jones, and Marshall Winans, lost their lives on January 3, 2006;

Whereas only one miner, Randal McCloy, was safely rescued;

Whereas 2 West Virginia miners were trapped by a fire in the Aracoma Alma Mine on January 19, 2006;

Whereas Don Israel Bragg and Ellery "Elvis" Hatfield lost their lives in the Aracoma Alma Mine;

Whereas 2 West Virginia miners lost their lives in separate incidents in Boone County on February 1, 2006; and

Whereas Edmund Vance perished in the Long Branch No. 18 Mine and Paul Moss perished at the Elk Run Black Castle mine: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes Thomas Anderson, Alva Martin Bennett, Jim Bennett, Jerry Groves, George Hamner Jr., Terry Helms, David Lewis, Martin Toler, Fred Ware Jr., Jack Weaver, Jesse Jones, and Marshall Winans for their sacrifice in the Sago, West Virginia, coal mine;

(2) recognizes Don Israel Bragg and Ellery "Elvis" Hatfield for their sacrifice in the Aracoma Alma, West Virginia coal mine;

(3) extends the deepest condolences of the Nation to the families of these men;

(4) recognizes Edmund Vance and Paul Moss for their sacrifice in the Boone County, West Virginia coal mines;

(5) recognizes Randal McCloy for his stamina and courage that enabled him to survive in severe conditions for over 40 hours;

(6) recognizes the rescue crews for their outstanding effort resulting in the safe rescue of Randal McCloy; and

(7) recognizes the many volunteers who provided support for the miners' families during the rescue operations.

SENATE CONCURRENT RESOLUTION 80—RELATING TO THE ENROLLMENT OF S. 1932

Mr. FRIST submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 80

Resolved by the Senate (the House of Representatives concurring), That the enrollment of the bill S. 1932 as presented to the President for his signature on February 8, 2006, is deemed the true enrollment of the bill reflecting the intent of the Congress in enacting the bill into law.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2739. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table.

SA 2740. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2741. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2742. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2743. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2744. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2739. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 364, insert before line 1, the following:

(4) LIMITATIONS ON ATTORNEY'S FEES AND APPLICATION OF MEDICAL CRITERIA.—

(A) ATTORNEY'S FEES.—

(i) DEFINITION.—In this subparagraph, the term "reasonable fees and expenses of attorneys" means fees and expenses that are based on prevailing market rates for the kind and quality of the services furnished, except that—

(I) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States Government; and

(II) attorney's fees shall not be awarded in excess of a reasonable fee, unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys, for the proceedings involved justifies a higher fee.

(ii) LIMITATION.—In any civil action described under paragraph (1)—

(I) the limitations on attorney's fees under section 104(e) shall apply; or

(II) a court may award reasonable fees and expenses of attorneys.

(B) MEDICAL CRITERIA.—In any civil action described under paragraph (1), the medical criteria under section 121(d) shall apply.

On page 364, line 1, strike "(4)" and insert "(5)".

On page 364, line 22, strike "(5)" and insert "(6)".

SA 2740. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 364, before line 1, insert the following:

(4) MEDICAL CRITERIA FOR CLAIMS.—The medical criteria under section 121(d) shall apply to any civil action described under paragraph (1).

On page 364, line 1, strike "(4)" and insert "(5)".

On page 364, line 22, strike "(5)" and insert "(6)".

SA 2741. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 364, insert before line 1, the following:

(4) LIMITATIONS ON ATTORNEY'S FEES.—

(A) LIMITATION.—In any civil action described under paragraph (1)—

(i) the limitations on attorney's fees under section 104(e) shall apply; or

(ii) a court may award reasonable fees and expenses of attorneys.

(B) DEFINITION.—In this paragraph, the term "reasonable fees and expenses of attorneys" means fees and expenses that are based on prevailing market rates for the kind and quality of the services furnished, except that—

(i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States Government; and

(ii) attorney's fees shall not be awarded in excess of a reasonable fee, unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys, for the proceedings involved justifies a higher fee.

On page 364, line 1, strike "(4)" and insert "(5)".

On page 364, line 22, strike "(5)" and insert "(6)".

SA 2742. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 315, line 22, strike "monetary".

SA 2743. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 386, line 6, strike all through page 393, line 3.

SA 2744. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 366, between lines 15 and 16, insert the following:

(c) APPLICATION OF THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT.—Employers and their insurers who pay compensation or medical benefits or who are potentially liable to their employees and other beneficiaries for compensation or medical benefits under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) shall be entitled to—

(1) a lien for compensation and medical benefits paid; or

(2) credit, recovery, or release, as such remedies are available under section 33 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 933), except that such employers and insurers may not bring actions for such remedies against third parties as is prohibited under subsections (b) and (h) of section 33 of that Act.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to hold an informational hearing February 8, 2006 at 9:30 a.m. on pending nominations. Board of Directors of the Tennessee Valley Authority; Board of Trustees of the Morris K. Udall National Environmental Policy Foundation

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Wednesday, February 8, 2006, at 10 a.m., in 215 Dirksen Senate Office Building, to hear testimony on "Implementation of the New Medicare Drug Benefit".

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, February 8, 2006, at 9:30 a.m. to hold a hearing on Iraq Stabilization and Reconstruction.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, February 8, 2006, at 4:30 p.m. to hold a hearing on Nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. CORNYN. Mr. PRESIDENT, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, February 8, 2006, at 9:30 a.m. in Room 485 of the Russell Senate Office Building to conduct an oversight hearing on Indian Tribes and the Federal Election Campaign Act. Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, February 8, 2006, at 2 p.m., to conduct a hearing to examine procedures to bring greater transparency to the legislative process.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. CORNYN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on February 8, 2006 at 2:30 p.m. to hold a closed briefing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON CONSUMER AFFAIRS, PRODUCT SAFETY, AND INSURANCE

Mr. CORNYN. Mr. PRESIDENT, I ask unanimous consent that the Subcommittee on Product Safety, and Insurance be authorized to meet on Wednesday, February 8, 2006, at 2:30 p.m., on Protecting Consumers' Phone Records.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. SESSIONS. Mr. President, I ask unanimous consent that the following Judiciary Committee interns and clerks be granted the privilege of the floor for the remainder of debate on S. 852, the Fairness in Asbestos Injury Resolution Act of 2005: Adam Adler, Jessica Kane, Robert Newell, and Raj Parekh.

The PRESIDING OFFICER. Without objection, so ordered.

EXECUTIVE SESSION

NOMINATION DISCHARGED

Mr. FRIST. As in executive session, I ask unanimous consent that Calendar No. 424, Roland Arnall, be recommited to the Committee on Foreign Relations; I further ask consent that the committee then be immediately discharged from further consideration of the nomination and the Senate proceed to its consideration; provided further that the nomination be confirmed, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination considered and confirmed is, as follows:

DEPARTMENT OF STATE

Roland Arnall, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of the Netherlands.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

ENROLLMENT OF S. 1932

Mr. FRIST. I ask unanimous consent that the Senate now proceed to the consideration of S. Con. Res. 80, which was submitted earlier today, the resolution be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 80) was considered and agreed to, as follows:

S. CON. RES. 80

Resolved by the Senate (the House of Representatives concurring), That the enrollment of the bill S. 1932 as presented to the President for his signature on February 8, 2006, is deemed the true enrollment of the bill reflecting the intent of the Congress in enacting the bill into law.

HONORING COAL MINERS AND RESCUE CREWS IN WEST VIRGINIA

Mr. FRIST. I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 370, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 370) honoring the sacrifice and courage of the 16 coal miners killed in various mine disasters in West Virginia, and recognizing the rescue crews for their outstanding efforts in the aftermath of the tragedies.

There being no objection, the Senate proceeded to consider the resolution.

Mr. BYRD. Mr. President, today, together with Senator ROCKEFELLER and the West Virginia delegation in the House, I have submitted a resolution honoring the 16 coal miners who perished this year in the State of West Virginia. They are: Tom Anderson, Alva Bennett, Jim Bennett, Jerry Groves, George Hamner, Jr., Terry Helms, Jesse Jones, David Lewis, Martin Toler, Jr., Fred Ware, Jackie Weaver, and Marshall Winans who perished in the Sago Mine in Upshur County, WV.

They are Don Bragg and Ellery Hatfield who perished in the Aracoma Alma Mine in Logan County, WV.

They are Paul Moss and Edmund Vance who perished in separate mines in Boone County, WV.

While the names of these coal miners have become known to many of us, we must not forget that there are many more coal miners whose tragic deaths are not chronicled in the national media. They die quietly in their homes of black lung disease. They die anonymously in mine accidents across the Nation. Their families mourn, their families grieve their loss without national attention.

I pay tribute to all of those who have fallen in our Nation's mines and to their families who must bear their loss. A grateful Nation owes its eternal thanks.

Mr. ROCKEFELLER. Mr. President, I wish to associate myself with the remarks of my distinguished senior senator, Mr. BYRD, and rise to ask my colleagues to take up and adopt our resolution honoring miners in West Virginia and throughout this country who work hard in dangerous situations to provide energy this Nation needs.

The attention of the world was focused on small towns in my State of West Virginia in the first two months of 2006. When 12 miners were found to have died in the Sago Mine in Upshur County in early January, the hopes and prayers of a global television audience were dashed along with those living the tragedy in the Sago Baptist Church.

Americans and our friends around the world tuned in again when miners became trapped by a belt fire in the Alma Mine in Logan County later in January. I was sitting with the families of the trapped miners when they heard the news we were all dreading. It was a profoundly sad and moving moment, one I will never forget, and an experience which I cannot do justice to here.

When tragedy struck again at two mines in Boone County it was almost more than any of us could bear. After these accidents, the Governor of my State of West Virginia, Joe Manchin, who has been a stalwart throughout these trying times, called for a temporary stand-down in West Virginia mines to reinforce and reinvigorate mine safety procedures. I was pleased to see that the Mine Safety and Health Administration, MSHA, came into West Virginia in numbers to assist State officials, and later instituted a 1-hour safety refresher for all U.S. mines under its authority. In Pennsylvania, Governor Rendell emulated Governor Manchin in calling for renewed safety training for mines throughout the Commonwealth.

Mining, as we know, is an inherently dangerous profession, but it is a vital component in our Nation's economy. Without coal from Appalachia, the Illinois Basin, the Powder River Basin, and various other regions throughout the U.S., our economy shuts down. Coal provides more than half our electricity, and coal conversion technologies will soon allow America's most abundant mineral resource to provide transportation fuels and chemical feedstocks as well. If the United States of America is ever going to lessen its dependence on foreign sources of energy, you can be sure that the miners will lead the way. These are men and women who do a job most Americans understand little about, and until tragedy periodically reminds the Nation, most Americans probably do not even think about. Coal production is increasing across the country and around the world. Coal is on the rise, and safety has to be, too.

Mine safety has been very much in the thoughts of every West Virginian these first two months of 2006. In 2005, West Virginia lost miners also, as did Alabama, Ohio, Wyoming, Pennsylvania, and Kentucky. Mr. President, 2006 has already seen mine fatalities in Kentucky and Utah. As these tragedies show, and as MSHA's nationwide action and Governor Rendell's actions in Pennsylvania suggest, mine safety is a national issue and improving it must be a national priority.

Mr. FRIST. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 370) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 370

Whereas coal generates more than half of domestic electricity, providing millions of Americans with energy for their homes and businesses;

Whereas West Virginia is the Nation's second largest coal producing State;

Whereas an average of 7,600 pounds of coal per person per year is used in the United States;

Whereas the United States has an estimated 275,000,000,000 tons of recoverable coal reserves representing about 95 percent of all fossil fuel reserves in the nation;

Whereas coal continues to be the economic engine for many communities;

Whereas coal miners are among the most productive of all American workers, producing 7 tons of coal per miner per day, which results in coal consistently being the most cost-effective choice for generating electricity in the United States;

Whereas during the last century over 100,000 coal miners have been killed in mining accidents in the Nation's coal mines;

Whereas the Nation is greatly indebted to coal miners for the difficult and dangerous work they perform to provide the fuel needed to operate the Nation's industries and to provide energy to homes and businesses;

Whereas 13 West Virginia miners were trapped 260 feet below the surface in the Sago mine for over 40 hours following an explosion on January 2, 2006;

Whereas Federal, State, and local rescue crews worked relentlessly in an attempt to save the miners;

Whereas many residents of Upshur County, West Virginia, and the surrounding areas came together at the Sago Baptist Church to support the miners' families;

Whereas 12 miners, Thomas Anderson, Alva Martin Bennett, Jim Bennett, Jerry Groves, George Hamner Jr., Terry Helms, David Lewis, Martin Toler, Fred Ware Jr., Jack Weaver, Jesse Jones, and Marshall Winans, lost their lives on January 3, 2006;

Whereas only one miner, Randal McCloy, was safely rescued;

Whereas 2 West Virginia miners were trapped by a fire in the Aracoma Alma Mine on January 19, 2006;

Whereas Don Israel Bragg and Ellery "Elvis" Hatfield lost their lives in the Aracoma Alma Mine;

Whereas 2 West Virginia miners lost their lives in separate incidents in Boone County on February 1, 2006; and

Whereas Edmund Vance perished in the Long Branch No. 18 Mine and Paul Moss perished at the Elk Run Black Castle mine:

Now, therefore, be it

Resolved, That the Senate—

(1) recognizes Thomas Anderson, Alva Martin Bennett, Jim Bennett, Jerry Groves,

George Hamner Jr., Terry Helms, David Lewis, Martin Toler, Fred Ware Jr., Jack Weaver, Jesse Jones, and Marshall Winans for their sacrifice in the Sago, West Virginia, coal mine;

(2) recognizes Don Israel Bragg and Ellery "Elvis" Hatfield for their sacrifice in the Aracoma Alma, West Virginia coal mine;

(3) extends the deepest condolences of the Nation to the families of these men;

(4) recognizes Edmund Vance and Paul Moss for their sacrifice in the Boone County, West Virginia coal mines;

(5) recognizes Randal McCloy for his stamina and courage that enabled him to survive in severe conditions for over 40 hours;

(6) recognizes the rescue crews for their outstanding effort resulting in the safe rescue of Randal McCloy; and

(7) recognizes the many volunteers who provided support for the miners' families during the rescue operations.

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I have been stating that we have been prepared to consider some of the additional nominations that are on the Executive Calendar and are available for consideration. There are a number of nominations being held up for one reason or another. But I am particularly concerned that a group of nominations is being held up for reasons unrelated to their qualifications or job responsibilities. We have several senior Department of Defense nominations and intelligence nominations that we need to consider.

We will begin the amendment process to the asbestos bill beginning tomorrow morning, and my intention is to see if we can schedule debate and votes on these nominations. If we are unable to do that, then I will file a cloture motion on the nomination, with that vote occurring Friday.

EXECUTIVE SESSION

NOMINATION OF ERIC S. EDELMAN TO BE UNDER SECRETARY OF DEFENSE

Mr. FRIST. Mr. President, I ask unanimous consent that at 9:30 a.m. on Friday, the Senate proceed to executive session and an immediate vote on the confirmation of Calendar No. 309, Eric S. Edelman to be Under Secretary of Defense, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. FRIST. Mr. President, I understand that an objection would be put forward from the other side of the aisle.

Mr. President, I move that the Senate proceed to executive session for the consideration of Calendar No. 309.

The PRESIDING OFFICER. The clerk will report the nomination.

The assistant legislative clerk read the nomination of Eric S. Edelman, of Virginia, to be Under Secretary of Defense for Policy.

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Eric S. Edelman of Virginia to be Under Secretary of Defense for Policy.

Bill Frist, Mel Martinez, Jeff Sessions, John Thune, Arlen Specter, Larry E. Craig, David Vitter, Sam Brownback, Lisa Murkowski, Richard Shelby, Pat Roberts, Richard Burr, George Allen, Jim Talent, Judd Gregg, John Ensign.

LEGISLATIVE SESSION

Mr. FRIST. I ask unanimous consent that the Senate now resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR THURSDAY, FEBRUARY 9, 2006

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Thursday, February 9. I further ask that following the prayer and the pledge, the morning hour be deemed to have expired, the Journal of the proceedings be approved to date, the time for the two leaders be reserved, and the Senate then begin a period of morning business for 30 minutes, with the first 15 minutes under the control of the Democratic leader or his designee and the second 15 minutes under the control of the majority leader or his designee; further, that the Senate then resume consideration of S. 852, the asbestos bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, tomorrow the Senate will continue to debate S. 852, the asbestos bill. Amendments are in order, and I expect Members to come forward with their related amendments. We will be prepared to debate and vote in relation to the amendments. I hope we can make progress on the bill.

We have spent the last few days debating, which is important, but now is the time to work through the underlying issues in the bill before I expect votes to occur on Thursday. As I have stated repeatedly, Friday will be a working day, and we now have a cloture vote scheduled for Friday morning on a nomination.

I also hope that we can continue to move forward on the asbestos bill on Friday as well. We have 2 more days this week, and we need to make the most of that time. Senators should be prepared for busy days for the remainder of the week.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. In my capacity as Senator from South Carolina, I ask unanimous consent that the quorum call be dispensed with.

Without objection, it is so ordered.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in adjournment until 9:30 a.m. tomorrow morning.

Thereupon the Senate, at 7:53 p.m., adjourned until Thursday, February 9, 2006, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate February 8, 2006:

DEPARTMENT OF STATE

PATRICIA P. BRISTER, OF LOUISIANA, FOR THE RANK OF AMBASSADOR DURING HER TENURE OF SERVICE AS THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA ON THE COMMISSION ON THE STATUS OF WOMEN OF THE ECONOMIC AND SOCIAL COUNCIL OF THE UNITED NATIONS.

THE JUDICIARY

SANDRA SEGAL IKUTA, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT, VICE JAMES R. BROWNING, RETIRED.

MICHAEL BRUNSON WALLACE, OF MISSISSIPPI, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT, VICE CHARLES W. PICKERING, SR., RETIRED.

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. ROBERT R. BLACKMAN, JR., 0141

IN THE COAST GUARD

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES COAST GUARD UNDER TITLE 14, U.S.C., SECTION 211:

To be lieutenant

MICHAEL W. ALBERT, 4214
DAVID J. ALDOUS, 4430
LEONARD H. ALLEN, 0928
DAVID M. ALVAREZ, 0963
SAMUEL L. ALVORD, 6368
DAVID F. AMBOS, 0287
JASON K. APPLEBERRY, 5911
SEGUNDO J. ARGUDO, 4880
REGINALD I. BAIRD, 8124
RYAN A. BARONE, 3060
SCOTT P. BARTON, 7711
ANNE M. BECKER, 0033
ROBERT W. BILBO, 2735
MICHAEL L. BOWMAN, 0311
LANCE J. BRANT, 7571
RICHARD J. BURKE, 6168
VICTOR G. BUSKIRK, 8496
ANDRES CAMARGO, 4804
DONALD B. CAMPBELL, 3717
JAMES D. CANNON, 9517
CHRISTY S. CASEY, 9504
JUSTIN M. CASSELL, 0248
JOHN T. CATANZARO, 4687

ROBERT S. CLARKE, 8990
PAUL J. COLEMAN, 3522
JEFFREY M. COLLINS, 0868
ROSS E. COMER, 0871
CARLOS M. CRESPO, 3972
PAUL J. CROOKSHANK, 8903
MARTIN J. DIETSCH, 9728
BRIAN J. DONAHUE, 3050
WILLIAM R. DUNBAR, 3078
BRYAN L. DUNLAP, 8771
CHARLES ENGBRING, 0090
TOM ENGBRING, 0194
JAY S. FAIR, 1544
PAUL A. FAWCETT, 7959
KRYSTYON N. FINCH, 2998
JASON F. FRANK, 8726
FRANK A. FUSCO, 2948
CARLOS F. GAVILANES, 9324
GREG S. GEDEMER, 4014
AARON G. GREEN, 3493
CATHARINE D. GROSS, 6216
ANTHONY D. GUILD, 1163
MARK A. HAAG, 4847
CHRISTOPHER E. HALEY, 8103
JOY E. HALL, 2194
ROBERT P. HILL, 0933
FRANK L. HINSON, 6470
GILES C. HOBACK III, 4401
MATTHEW M. HOBBIE, 0161
ROBERT E. HOLLINGER, 0295
TIMOTHY D. HOWARD, 4135
THOMAS P. HRYNYSHYN, 5519
DONALD K. ISOM, 5873
JACK W. JACKSON, 4607
THOMAS A. JACOBSON, 2569
WESTON R. JAMES, 5408
DOUGLAS A. JANNUSCH, 0307
JOHN W. KASER, 8473
RICHARD J. KAVANAUGH, 4923
TONYA G. KELLEY, 1069
RAYMOND S. KINGSLEY, 9696
ANDREW C. KIRKPATRICK, 7592
SHAWN A. LANSING, 8373
PATRICK J. LEE, 3913
JOSEPH J. LEONARD, 0609
JOHN R. LUFF, 9370
EZEKIEL J. LYONS, 0353
RICHARD A. MACH, 9782
STEVEN D. MAHANY, 1437
ROBERT J. MANNING, 5299
CHARLES MARINO, 3132
RONAYDEE M. MARQUEZ, 9661
TIMOTHY R. MARTIN, 0393
STEPHEN MATADOBRA, 8550
JAMES J. MAZEL, 7927
BRIAN K. MCCAUL, 3421
JAMES M. MCLAY, 0276
KERRI W. MERKLIN, 8680
ROBERT A. MOOMAW, 0941
DAVID J. MOORE, 0855
FERDINAND MORALES, 7256
MICHAEL J. MUNNERLYN, 7667
JOHN R. NIMS, 1165
JESSICA E. NOEL, 0945
BRYAN K. ODITT, 4344
DAVID M. OTANI, 0931
HECTOR M. PACHECO, 3844
CHARLES N. PARHAM, 0927
MICHAEL L. PARKER, 9843
JEFFREY C. PETERSON, 0216
JOSE L. RAMIREZ, 9640
CHRISTIAN P. RIGNEY, 0243
JUSTO E. RIVERA, 3304
DAVID J. ROBERTS, 6087
RICHARD D. RUSSELL, 1107
PAUL T. SANGER, 6433
BRENT R. SCHMADEKE, 0334
WILLIAM A. SCHRADE, 4854
JOHN R. SCOTT, 2880
HEATHER D. SKOWRON, 2520
SAMUEL L. SLAY, 6921
BRADLEY J. SMITH, 0853
JASON S. SMITH, 7822
LAWRENCE W. SOHL, 2458
LANE A. SOLAK, 7027
GABRIEL J. SOMMA, 0820
LANE G. STEFFENHAGEN, 5339
THOMAS M. STOKES, 0809
JOHN R. STRASBURG, 9623
RODERICK A. STROUD, 7440
JONATHAN E. SULLIVAN, 0906
CAROL M. SWINSON, 0299
JOHN K. TITCHEN, 9571
TERRY R. TRELFORD, 0228
SHAUN T. VACCARO, 0280
THOMAS C. VAUGHN, 9415
STEPHEN E. WEST, 0827
TODD C. WIGGEN, 3435
CHARLES WOJACZYK, 6729
MARCUS P. WONG, 8858
MAURICE S. YORK, 0984
STEVEN M. YOUDE, 0681
JACOB A. ZALEWSKI, 0831
PETER J. ZAUNER, 9068
PETER E. ZOHIMSKY, 0023

To be lieutenant junior grade

REGINA E. ADAMS, 5107
JEREME M. ALTENDORF, 2127
WALNER W. ALVAREZ, 9641
JENNIFER J. ANDREW, 2240
EDWARD S. APONTE, 0723
MICHAEL P. ATTANASIO, 4695
GEOFFREY M. BARELA, 0503
ELLEN P. BATT, 0702
JAMES R. BENDLE, 0912
JEFFREY S. BOGDANOVICH, 2183
THOMAS R. BOLIN, 7320
JEFFREY M. BOLLING, 5992
BARNABY W. BOSANQUET, 4639
DEVON S. BRENNAN, 6868
COLLIN R. BRONSON, 7156
MELANIE A. BURNHAM, 5564
MATTHEW A. CALVERT, 8560
MANUEL B. CAMARGO, 4478
JAMES J. CAMP, 6443
TAYLOR J. CARLISLE, 2075
LUIS O. CARMONA, 9642
CHRISTOPHER L. CARTER, 6646
TIMOTHY S. CASARES, 7536
XOCHITL L. CASTANEDA, 9964
ERIC W. CHANG, 4687
DAVID M. COBURN, 4739
HARLAN J. COPELAND, 6322
TREVOR C. COWAN, 3206
ROBERT H. CREIGH, 5236
MICHAEL CROWE, 2096
DORAIN M. DAILEY, 6981
WILLY J. DASAL, 6494
ALI W. DAVIS, 2101
KELVIN J. DAVIS, 0881
JOHN F. DEWEY, 4005
ADAM H. DREWS, 9580
GLEN R. ENZFELDER, 2100
BRYAN M. ESTELL, 8392
KERRY A. FELTNER, 6324
ALAN J. FITZGERALD, 1493
ROBERT F. FITZGERALD, 1819
DAVID L. FLANDERS, 1732
ANGELIQUE FLOOD, 0433
JASON S. FRANZ, 5355
BRETT A. FREELS, 4286
TRACY D. FUNCK, 2524
MATTHEW A. GABBIANELLI, 8395
OSCAR R. GALVEZ, 3159
LISA L. GARCEZ, 4482
JOSEPH S. GIAMMANCO, 3483
ERIN K. GILSON, 8717
CHRISTOPHER L. GROOMS, 5939
DANIELLE R. HARTLEY, 1557
JAMES R. HERRERA, 1420
JASON D. HETHERINGTON, 6069
NEAL D. HINKEL, 9754
CRIST M. HOLVECK, 3264
JASON A. HOPKINS, 2078
KENNETH C. JONES, 5643
THOMAS D. JONES, 0220
LUANN J. KEHLENBACH, 7426
STEVEN A. KOCH, 5098
MATTHEW R. KOLODICA, 3267
DUANE W. LEMMON, 2119
PRESTON O. LOGAN, 0516
JEFFREY D. LYNCH, 2087
JONATHAN M. MANGUM, 6474
EZRA L. MANUEL, 4957
ARTHUR P. MARTIN, 6386
MATTHEW K. MATSUOKA, 5918
DOREEN MCCARTHY, 5096
KEVIN J. MCDONALD, 5225
STACY L. MCNEER, 6687
JOHN M. MCWILLIAMS, 3246
NATHAN S. MENEFEE, 4778
MATTHEW J. MESKUN, 5090
ANTHONY R. MIGLIORINI, 4806
DOUGLAS J. MILLER, 4717
ROBERT S. MORRIS, 2107
MERRIDITH R. MORRISON, 2083
ERNESTO MUNIZTIRADO, 0160
WALTER L. OUZTS, 2058
JOHN G. PETERSON, 5187
TODD P. PORTER, 0444
BEAU G. POWERS, 3462
KEVIN J. RAPP, 7300
JOSEPH R. RAYMOND, 5385
JEFFREY H. RUBINI, 9446
MICHAEL K. SAFFOLD, 7009
TANYA C. SAUNDERS, 4246
KAREY J. SAYRE, 7079
RAY A. SLAPKUNAS, 4790
ADAM C. SPENCER, 3058
JON D. STEWART, 2121
MARY W. STEWART, 2066
CALVIN SUMMERS, 6289
NICHOLAS J. TABORI, 7197
DANNY M. TCHENG, 2187
MIGUEL E. TORREZ, 1043
OTIS C. TRAVERS, 2063
DOUGLAS M. TRENT, 9772
KRISTOFER A. TSAIRIS, 3196
CHRISTOPHER B. TUCKEY, 3183
MATTHEW D. VANDERBECK, 4282
KOU VANG, 7926
KRAIG L. WASHINGTON, 9367
MATTHEW G. WEBER, 4738
JUSTIN L. WESTMILLER, 8669
KEVIN S. WILKINSON, 5049
SHAY R. WILLIAMS, 0040
TIMOTHY J. WILLIAMS, 2085
CHRISTOPHER WOLFER, 9017
JOHN D. WOOD, 3780
BRETT R. WORKMAN, 4503
WARREN N. WRIGHT, 4148
BEN WROBLEWSKI, 4736
DAMIAN N. YEMMA, 6401
CHRISTOPHER J. YOUNG, 2132

CONFIRMATION

Executive nomination confirmed by the Senate Wednesday, February 8, 2006:

DEPARTMENT OF STATE

ROLAND ARNALL, OF CALIFORNIA, TO BE AMBASSADOR TO THE KINGDOM OF THE NETHERLANDS.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

EXTENSIONS OF REMARKS

ANNOUNCEMENT OF THE 2006 CONGRESS-BUNDESTAG/BUNDESRAT EXCHANGE

HON. J. DENNIS HASTERT

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. HASTERT. Mr. Speaker, since 1983, the U.S. Congress and the German Bundestag and Bundesrat have conducted an annual exchange program for staff members from both countries. The program gives professional staff the opportunity to observe and learn about each other's political institutions and interact on issues of mutual interest.

A staff delegation from the U.S. Congress will be selected to visit Germany from May 21–June 3 of this year. During this two-week exchange, the delegation will attend meetings with Bundestag/Bundesrat Members, Bundestag and Bundesrat party staff members, and representatives of numerous political, business, academic, and media agencies. Participants also will be hosted by a Bundestag Member during a district visit.

A comparable delegation of German staff members will visit the United States for two weeks July 9–22. They will attend similar meetings here in Washington and visit the districts of Members of Congress. The U.S. delegation is expected to facilitate these meetings.

The Congress-Bundestag/Bundesrat Exchange is highly regarded in Germany and the United States, and is one of several exchange programs sponsored by public and private institutions in the United States and Germany to foster better understanding of the politics and policies of both countries. This exchange is funded by the U.S. Department of State's Bureau of Educational and Cultural Affairs.

The U.S. delegation should consist of experienced and accomplished Hill staff who can contribute to the success of the exchange on both sides of the Atlantic. The Bundestag reciprocates by sending senior staff professionals to the United States.

Applicants should have a demonstrable interest in events in Europe. Applicants need not be working in the field of foreign affairs, although such a background can be helpful. The composite U.S. delegation should exhibit a range of expertise in issues of mutual concern to the United States and Germany such as, but not limited to, trade, security, the environment, economic development, health care, and other social policy issues. This year's delegation should be familiar with transatlantic relations within the context of recent world events.

In addition, U.S. participants are expected to help plan and implement the program for the Bundestag/Bundesrat staff members when they visit the United States. Participants are expected to assist in planning topical meetings in Washington, and are encouraged to host one or two staffers in their Member's district in July, or to arrange for such a visit to another Member's district.

Participants are selected by a committee composed of personnel from the Bureau of Educational and Cultural Affairs of the Department of State and past participants of the exchange.

Senators and Representatives who would like a member of their staff to apply for participation in this year's program should direct them to submit a resume and cover letter in which they state their qualifications, the contributions they can make to a successful program and some assurances of their ability to participate during the time stated.

Applications may be sent to the Office of Interparliamentary Affairs, HB-28, the Capitol, by 5 p.m. on Wednesday, March 15.

2006 ACHIEVING CAO EXCELLENCE AWARDS

HON. VERNON J. EHLERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. EHLERS. Mr. Speaker, I rise today to congratulate Rob von Gogh, Charlene Best, Ron Carrico, Chantel Greene, Matt Guilfoyle, and Tina Hanonu on their extraordinary achievements in the Office of the Chief Administrative Officer, (CAO) supporting the United States House of Representatives and their receipt of the 2006 Achieving CAO Excellence (ACE) Awards. The 2006 CAO ACE Excellence Awards acknowledge the extraordinary efforts made by these members of the CAO team. These awards exemplify the goals, values, and mission of the organization. Considered to be among the highest honors awarded to CAO staff, at the heart of these awards are customer service, commitment to delivery solutions, and high standards of excellence.

Recipients of the 2006 CAO ACE Excellence Awards represent many areas of the CAO and perform a variety of jobs. Whether working directly with customers, supporting CAO internal operations, or ensuring the technical infrastructure is operational, each serves as an exemplary role model for the entire CAO community. Collectively and individually they delivered solutions that fulfilled the CAO customer experience, ensuring full satisfaction for their customers and colleagues.

Employees nominated for an award must be in full-time status, have received at least one PACE evaluation, and have a current performance rating of excelling. Nominations for the awards are submitted by managers, supervisors, deputies and associate administrators. The nominees are then reviewed by a committee comprised of the head of each CAO business unit, the deputy CAO for operations, the deputy CAO for strategy, the administrative counsel, and other members of the CAO team.

Rob von Gogh was selected for the "CAO Excellence" award. In his role directing the CAO client services team and serving on the CAO leadership group, he has been a role model CAO employee who lives the CAO mission, vision, values, and delivers the CAO customer experience to all his customers, colleagues and employees.

Charlene Best is the 2006 recipient of the "Knowledge" award for being an employee who is dependable and gets things done across the organization by leveraging a wide range of CAO resources. Her ability to set-up and establish office space for the new House Historian in a seamless manner demonstrates her unique understanding of the House community.

Ron Carrico was chosen for the "Personalized Solutions" award. He developed a product for the CAO that met current needs and incorporated the structure for future integrations with other enterprise system solutions that are being developed in the CAO for the House Community, specifically: MicroStrategy 8, Administrative Tools, Links and Solutions—Atlas, Lawson and the Customer Solution Delivery Model. This solution will provide the capability to report "near real time" performance measures. His consistently passionate customer service, effective communication, and problem solving enable customers to meet their professional and personal roles.

Chantel Greene was selected for the "Dedicated" award for exhibiting commitment to achieving the mission of the CAO. Through adversity, Chantel was able to lead others, build consensus and live the CAO customer experience. Her positive attitude is an inspiration to others and it is the key to her success.

Matt Guilfoyle is the recipient of the "One Team" award. He is relentless in his efforts and commitment to developing the CAO customer experience. The essence of his hard work and dedication to bring the CAO together was evidenced in the success of CAOne. He consistently and significantly contributes to the CAO team as a whole, bringing the CAO customer experience to life.

Tina Hanonu was chosen for the "Simplify the Day" award. Her ability to improve CAO client services procedures during Hurricanes Katrina and Rita enabled the CAO to provide reassurance and sustain service for district offices affected by the hurricanes. Tina's energy, drive, and enthusiasm enabled the House Recovery Operations Center to support and achieve results during such demanding times.

On behalf of the entire House community, I extend congratulations to Rob von Gogh, Charlene Best, Ron Carrico, Chantel Greene, Matt Guilfoyle, and Tina Hanonu for their tireless efforts and outstanding contributions to the U.S. House of Representatives. We wish them continued success in their job endeavors.

HONORING WLTL: A RADIO STATION OWNED BY ILLINOIS DISTRICT 204 AND OPERATED BY THE STUDENTS OF LYONS TOWNSHIP HIGH SCHOOL

HON. DANIEL LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. LIPINSKI. Mr. Speaker, I rise today to honor WLTL, the radio station operated by the students of Lyons Township High School.

WLTL is a noncommercial radio station located at Lyons Township High School in LaGrange, IL approximately 15 miles west of the Chicago Loop. The radio station is owned by Illinois School District 204 and is operated by the students of Lyons Township High School. For more than 100 years, LTHS has exhibited its motto of Vita Plena or the quest for the fulfilling life by servicing students from more than 10 communities.

The radio station was first established in 1922. However, it was not officially recognized until January 5, 1968. Each year, a team of student managers is selected to operate the station under the guidance of a general manager. All students attending Lyons Township High School are welcome to join the WLTL team. The various positions include on-air disc jockeys, engineers and news broadcasters. If a student has an interest in becoming an on air personality, he or she has to complete an audition.

As one of the largest academic clubs at Lyons Township High School, WLTL received numerous awards at the 2005 John Drury Awards Ceremony. In 2004, WLTL was again named the best high school radio station in the Nation by the John Drury Awards—the first award came in 2002. The radio station has also been the winner of the Crystal Award of Excellence by the Communicator Awards for the past 8 years, a major accomplishment for any radio station. Because of the student's diligence in providing quality journalism, WLTL continues to have an impressive reputation.

I ask my colleagues to join me in praising the many accomplishments of School District 204 and the faculty and students of Lyons Township High School for the professional manner in which they operate the programming of the WLTL radio. It is my honor to bestow best wishes for the continued success of WLTL programming.

IN RECOGNITION OF THE CITY OF GLENDALE'S 100TH ANNIVERSARY

HON. ADAM B. SCHIFF

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. SCHIFF. Mr. Speaker, I rise today to congratulate the city of Glendale on its historic 100th anniversary.

Today, the city of Glendale fills a major portion of the geographical triangle formed by the Sierra Madre Foothills, the L.A. River, and the Arroyo Seco. It was these 36,400 acres of woodland, chaparral and grassland inhabited by Native Americans known as Gabrielinos that attracted the attention of CPL Jose Maria Verdugo of the Spanish army. In 1798, Corporal Verdugo established title to the Rancho San Rafael. The Rancho included most of present day Glendale, Burbank, Eagle Rock, and Highland Park. In 1831, Mr. Verdugo died and passed Rancho San Rafael to his two children. It was not until 30 years later that the children divided the Rancho between them. In 1871, a court decision known as the "Great Partition" was made dissolving Rancho San Rafael into smaller parcels. Homes and businesses began to spring up, and in 1887, the County Recorder finally registered the "Town of Glendale."

In 1906, the city of Glendale was incorporated and consisted of 1,486 acres. The Grand Central Airport and Southern Pacific train depot connected Glendale to other communities. Civic organizations were organized and churches thrived. During the 1920s, Brand Boulevard grew into a modern commercial street lined with automobile showrooms, stores, and banks. The population increased from 13,756 in 1920 to 62,736 in 1930. In the 1970s a surge of development continued to make Glendale a bustling business center. During the 1980s and 1990s, the population grew dramatically with the arrival of thousands of immigrants from all over the world. In the year 2000, the city's population was about 195,000. Today, traditional neighborhood centers are flourishing and historic residential architecture and landmarks are increasingly appreciated.

Glendale is a true jewel in the State of California. I am proud of the unique privilege I have had to represent the city of Glendale in both the State Senate and now in the U.S. Congress. I ask all Members of Congress to join me today in congratulating the city of Glendale on its centennial celebration.

RECOGNIZING UAW LOCAL 1292 WALTER REUTHER DISTINGUISHED SERVICE AWARD WINNERS

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. KILDEE. Mr. Speaker, I ask the House of Representatives to join me in recognizing the accomplishments of 4 individuals selected by UAW Local 1292 to receive the Walter Reuther Distinguished Service Award.

The Walter Reuther Distinguished Service Award is one way the United Automobile Workers acknowledges the contributions made by its members, public officials and community leaders, to the advancement of working people and their families. The achievements of each recipient are registered with the Wayne State University Labor and Urban Affairs Archives at Wayne State University creating a permanent record.

UAW Local 1292 has selected four persons to receive this prestigious award. These people exemplify the attitude of Walter Reuther and strong commitment to serving their fellow UAW members.

Russell Cummins has served the membership for over 19 years. He has held the positions of Alternate Committeeman, Trustee and Veterans Representative.

Barbara J. Eastman has served as a Trustee, a Guide, Recording Secretary, on the Education Committee, Women's Committee, the Building Committee, and the CSC for the past 19½ years.

For the past 20½ years, Ruth A. St. Pierre worked on the Women's Committee, Elections, Civil Rights, Citizenship and Legislation, Education, Union Label, and as the Retiree Recording Secretary.

Eva Thornton started her career as a Benefits Representative in 1988 and has continued in that position until the present day.

Mr. Speaker, I ask the House of Representatives to join me in congratulating these four individuals for their outstanding service to the UAW. They have exhibited the character to persevere in the fight for justice and human dignity. Working men and women have benefited by their generosity of time and courage.

IN REMEMBRANCE OF MORRIS W. KING

HON. MICHAEL N. CASTLE

OF DELAWARE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. CASTLE. Mr. Speaker, it is with great respect, admiration and much sorrow, that I rise today to remember the life of Morris W. King, the 52nd President of the Hartly Volunteer Fire Company. Mr. King, of Smyrna, Delaware, passed away at the age of 86. He made immeasurable contributions to the volunteer fire service in my home State of Delaware, as well as many of the surrounding States.

Morris King dedicated an amazing 68 years of service to various fire fighting causes during his life. For 35 years, he was a fire line officer in the Hartly Volunteer Fire Company before being elected Chief in 1971. Over the course of his service to the HVFC, Morris held every elected administrative office in the company; he was a man dedicated to protecting all members of his community. Morris oversaw the creation and implementation of the Hartly Fire Company Ambulance Corps, which he captained for many years.

After serving Hartly for so many years, Mr. King went on to hold many leadership positions within the Kent County Volunteer Firemen's Association and the Delaware Volunteer Firemen's Association. For his contributions, Morris was inducted into both the Delaware Firefighters Hall of Fame and the Del-Mar-Va Volunteer Firemen's Hall of Fame. In 1986, Mr. King was honored with the Delaware Fireman of the Year award. He was truly a man who was respected by all who knew him.

While Mr. King was a well-decorated firefighter, his contributions to his country and to local community organizations cannot be overlooked. Morris was a United States Army Air Corps veteran of World War II, serving as a member of the 17th Bomb Group. He also served as president of the Hartly town council.

Morris King's accomplishments are too numerous to name in this tribute. He was a treasure that our State and his family will miss greatly. I know that Morris' dedication to excellence and to public service will serve as an example to his family and friends that he leaves behind.

TRIBUTE TO CHARLES BILLINGTON III

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. RADANOVICH. Mr. Speaker, I would like to take this opportunity to congratulate Charles Billington III on his retirement from the Modesto Irrigation District Board of Directors. He held this position for the past twenty years.

Mr. Billington's commitment and expertise have been an asset to the Board. Since he became involved with the District in 1985, Mr. Billington was instrumental in providing leadership in the development of policies to ensure adequate supplies of water, dependable electric power, organizational efficiency and financial stability.

During his tenure, he played an instrumental role in the planning of the Modesto Regional Water Treatment Plant. This is the largest public works project undertaken in Stanislaus County during the early 1990s. In addition, Mr. Billington was a leader in forming a risk retention group which is now known as the Electric Public Power Insurance Consortium, EPPIC.

Under his leadership, and to the benefit of his constituents, the Modesto Irrigation District has prospered immensely. Charles Billington III has been a part of that important success. I wish him health and happiness in his retirement.

HONORING THE CITY OF THORTON AT ITS 50TH ANNIVERSARY

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. UDALL of Colorado. Mr. Speaker, I rise today in recognition of a great city in the Second District of Colorado, the City of Thornton—and to congratulate its citizens on the 50th Anniversary of the city's official incorporation. I am proud to represent this community in the United States Congress and to share a little of the history of this remarkable Front Range city. What began as a small development project by a local entrepreneur, Sam Hoffman, in the early 1950s—and supported famously by no less a figure (no pun intended) than Hollywood's Jane Russell, it has become one of the most attractive communities in Colorado.

In the early 1950s, a small development project north of Denver was named after Colorado Governor Dan Thornton and targeted toward soldiers returning from World War II. Sam Hoffman created a small community offering these soldiers and their families the opportunity to purchase a three-bedroom brick house for under $10,000. From that modest starting point, Thornton has grown into a community of more than 100,000 people, all of whom can be very proud of the great advancements their city has made since its incorporation on May 26, 1956.

The City of Thornton is still growing and attracting new residents. Located just 10 miles north of Denver, Thornton offers the ideal location for people hoping to experience the vibrancy of city life while still having easy access to skiing, camping, and all of Colorado's other natural wonders. With over 1000 acres dedicated to public parks and a focus on recreation programs, residents can maintain an active lifestyle and still be within driving distance to cultural events in Denver, Boulder, and the larger cities in the area.

Thornton is a perfect example of a small city that has managed tremendous growth in a short period of time. Former Thornton Mayor Margaret Carpenter shepherded the city through its most explosive growth era (the 1980s and 1990s), and today the city boasts premier recreation facilities, a strong business and commercial sector, and a diverse population.

I admire the way that the residents of Thornton have built a strong community with pride and inclusion, and ask that my colleagues join me in congratulating the City of Thornton on its 50th anniversary, and I look forward to seeing the city grow for another 50 years.

CELEBRATING THE LIFE OF ROSE NADER

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. CONYERS. Mr. Speaker, I rise to honor the life of Rose Nader, who at age 99 died on Tuesday, January 24, 2006 of congestive heart failure. Mrs. Nader was both tender and tenacious. She was a woman who taught her children the importance of service to their community, a love of the environment and concern for the well being of others. As you can see, Mrs. Nader indeed lived an honorable life.

David Halberstam captured her well when he said, "I thought she was a remarkble person who lived a remarkable life, going literally from one century to another."

She was strong, loving, hard-working and modest. All of the virtues were hers. I used to ponder how much she and her husband had seen in their lives for it was a great American story. They had come here in the twenties with little more than their hopes and their capacity for hard work, and in just one generation they had seen their own children prosper—enriching what was around them and being enriched at the same time.

What I will remember is her kindness to our family over the years, her sense of obligation to others, and a belief that citizenship demanded a daily commitment.

And of course her modesty, in the mid-sixties, back when Life Magazine was still powerful, the editors put Ralph on the cover. My mother, thrilled by this, immediately called Rose to tell her.

"Yes," said Mrs. Nader, "that's nice. I must get out and get a copy." We all loved that, the "a copy" reference.

I would also like to include a reprint of an article written by Albert Bernstein that appeared in the Washington Post on January 26, 2006:

Mrs. Nader, who jousted with politicians and complacency as a small-town activist and was the mother of consumer advocate Ralph Nader.

Mrs. Nader developed a certain civic renown in 1955 when she confronted Sen. Prescott Bush (R-Conn.), the father and grandfather of presidents. When Senator Bush visited Winsted, following a catastrophic flood, he was approached by Mrs. Nader at a public gathering public gathering. When he offered his hand in an obligatory fashion, Mrs. Nader latched on and refused to free him until he promised to help a dry-dam proposal move forward. This was fulfilled.

Later, she advocated building a community center for children, forming a speakers club that would bring worldly lecturers to the town, and expanding and preserving a local hospital.

At home, she could be implacable, particularly about food. She emphasized homemade items over packaged goods whose contents she found bewildering. She prohibited hot dogs and later beef because of the presence of a growth-stimulating hormone linked to cancer.

She sweetened food with honey, not sugar, and pushed her children to eat chickpeas instead of candy bars on their way to school. When news of this was publicized during Ralph Nader's rise to prominence, the Wall Street Journal editorial page likened his mother to a Puritan.

This characterization was laughed at by her children, even as they promoted the story involving her distrustful relationship with chocolate.

Mrs. Nader later said: "When the children convinced me that chocolate-frosted birthday cakes were what all the other children wanted, I frosted the cake, but after the candles were blown out and before they cut into the cake, I removed the frosting. Some people might say I was severe, but it became a family joke."

She later wrote a cookbook.

Rose Bouziane was born in Zahle, Lebanon, on Feb. 7, 1906, to a sheep broker and a teacher. She taught high school French and Arabic before her marriage in 1925 to businessman Nathra Nader.

After immigrating to the United States, they settled in Connecticut, where his Main Street bakery-restaurant-general store in Winsted, in the northwestern corner of the state, became a redoubt for residents bemoaning actions or inactions at the town hall.

On occasion, Mrs. Nader used newspaper opinion pages to express her views.

Writing in the New York Times in 1982, she denounced the use of "credibility phrases," such as "frankly," "to tell you the truth" and "in all honesty," that sometimes preceded a political statement or sales pitch. They gave her "the pervasive feeling that distrust is so widespread that people need to use such language to be believed."

In another editorial, she embraced mass mailings from issue groups that are commonly dismissed as "junk mail." She wrote that they often come from people "who care about their times."

Her husband died in 1991. A son, Shafeek Nader, died in 1986.

Besides Ralph Nader of Washington, survivors include two daughters, Claire Nader of Washington and Winsted and Laura Nader of Berkeley, Calif.; a sister; three grandchildren; and three great-grandchildren.

Ralph Nader once said his mother "took us out in the yard one day and asked us if we knew the price of eggs, of apples, of bananas. Then she asked us to put a price on clean air, the sunshine, the song of birds—and we were stunned."

CHINESE ANTI-SECESSION LAW

HON. VIRGINIA FOXX

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Ms. FOXX. Mr. Speaker, last spring, China passed the anti-secession law to give Chinese leaders the right to use force against Taiwan if they suspect separatist activities in Taiwan. In addition to the enactment of the antisecession law, China's rapid military buildup has given the Taiwanese people a sense of dread. China's deploying more than 700 missiles along the southeast coast indicates China still stubbornly clings to a military solution of the Taiwan issue. In response to China's provocative actions, we need to emphasize that military intimidation over Taiwan is no solution to the cross strait relations.

China must learn to respect the aspirations of Taiwan's 23 million people who want to be masters of their own land. China has no right to change the status quo either through the antisecession law or military intimidation. In the meantime, China must not block Taiwan's attempts in gaining international recognition or in returning to international organizations. Taiwan is a free and democratic nation and deserves to be treated properly and with respect by the international community.

President Chen is a man of peace who does not seek to change the status quo in the Taiwan Strait. He has reaffirmed his commitment to maintain the status quo on many occasions. In the last 6 years, he has kept his pledges and offered many goodwill gestures to China. His goal of reducing tension between Taiwan and China remains unchanged. Let's hope that China will reciprocate Chen's olive branch by renouncing the use of force against Taiwan and resume dialogue on an equal footing and without preconditions.

RELIEF FOR WORKING FAMILY VICTIMS OF HURRICANE KATRINA ACT OF 2006

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. RANGEL. Mr. Speaker, last year the United States laid eyes on one of the greatest natural disasters to ever hit our Nation. Hurricane Katrina ravaged a large part of our country, our economy, and, as a nation, our spirit. Last year Congress committed aid to the victims of this tragedy which the President signed into law. But our work and our commitment to the people of the gulf coast region cannot end there. If we turn our backs on those victims, we will only be subjecting them to another disaster, that of a government which isn't willing to support its own people.

In the months following the hurricane, news and media coverage were filled with photos and video of the effects of abject poverty leaving people in dire straits. Yet today, a short 4 months later, the faces of Katrina have all but disappeared from magazine covers or the nightly news. Make no mistake that the victims are still victims, and the journey back to rebuilding whole communities and lives is a long and difficult road.

To that end, I take pride in introducing, with my esteemed colleagues Congresswoman ROSA DELAURO, Congressman BILL JEFFERSON, Congressman RAHM EMANUEL, and Congressman CHARLIE MELANCON, the Relief for Working Family Victims of Hurricane Katrina Act of 2006. At present, thousands of families that suffered through the hurricane remain far from their homes and without adequate recourse or resources to help return their lives to normal. Over 900,000 children in the States effected by Hurricane Katrina were ineligible for the refundable child tax credit because their parents earned income level was too low, often by the smallest of margins. Current law restricts the refundable credit to families with income levels over $11,000, and more if the families have more than one child. This bill would allow working families earning $10,000 a year, just about minimum wage, to claim the full credit. I am joined in these efforts by my good friend, Senator BARACK OBAMA, who is introducing companion legislation in the Senate today.

Relief like this can carry a family miles down the road to rebuilding their lives. Congress must uphold its commitment to the victims of the hurricane. President Bush, in his State of the Union Address, remarked that, "In New Orleans and in other places, many of our fellow citizens have felt excluded from the promise of our country." It's sad that it took an epic disaster to open America's eyes to the lives of the impoverished and marginalized. The greater tragedy is if we do nothing about it.

SMALL VERMONT SCHOOL WINS NATIONAL RECOGNITION IN THE ARTS

HON. BERNARD SANDERS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. SANDERS. Mr. Speaker, I wish to speak today about an extraordinary achievement by the teachers, administration and students of a small school in Vermont.

The Robinson Elementary School of Starksboro was one of five schools in the Nation chosen to receive this year's "Creative Ticket National Schools of Distinction Award." The Creative Ticket School Awards provides national recognition "of the role individual schools play in providing a creative learning environment for outstanding student achievement" by recognizing "schools that have developed exemplary arts education programs."

The arts are a vital part of education, by connecting us through words and images and sounds to our past, by connecting us to one another in a vibrant human community, and by helping us to imagine a future where none are isolated or lonely or without hope. The wonderful work done at Robinson Elementary School is testimony that the arts are alive and flourishing—not just in, but especially, in the small towns of Vermont. And most especially, in Starksboro, a town of just under 2,000 residents.

This award is testimony to the inspired teaching which takes place at Robinson Elementary School, where art, drama, music and writing are integrated into the school curriculum. In particular, let me single out Vera Ryersbach, the art teacher at Robinson Elementary.

And of course I want to single out the students, for schools exist for their students, and the success of any program is measured by how hard and eagerly students pursue their studies. Twenty-five of the students at the 142-student school will be going to the Kennedy Center to perform on the Millennium Stage this coming March. But before that, there will be a community dance celebration in Starksboro, so all the students and community members can share in this great achievement.

Congratulations, too, to Robinson's principal Dan Noël, and to the supporting group for this endeavor, the Vermont Alliance for Arts Education and Anne Tyler, VAAE's executive director, and Elizabeth Miller, VAAE chair.

THANKING DAN HORNAK FOR HIS SERVICE TO THE HOUSE

HON. VERNON J. EHLERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. EHLERS. Mr. Speaker, on the occasion of his retirement in February 2006, I rise to thank Mr. Dan Hornak for 20 years of outstanding service to the United States House of Representatives.

Prior to his arrival in Washington, Dan graduated from Western Michigan University, taught elementary school, worked as a sheriffs deputy in Michigan, and was a television news cameraman. He joined the House Recording Studio staff in 1986 as a camera operator. Through the years he built a reputation as a team player dedicated to serving the Members of the House. He rose to the position of television director and enjoyed its challenges.

Dan has used his creativity to improve the Members' awareness of the Recording Studio services. His resourcefulness for completing special studio projects has become legendary. He has said that the greatest perk of his job has been working in the Capitol, learning its history and sharing it with others. Dan has made a point of knowing as many people working in the Capitol and in the House office buildings as possible, and he considers each of them to be his friend.

On behalf of the entire House community, I extend congratulations to Dan for his many years of dedication and outstanding contributions to the U.S. House of Representatives.

We wish him many wonderful years in fulfilling his retirement dreams.

TRIBUTE TO STUDENTS OF ST. BARNABAS CATHOLIC SCHOOL IN CHICAGO

HON. DANIEL LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. LIPINSKI. Mr. Speaker, I rise today to honor: Sarah Bush, Laura Carroll, Eileen Cullina, Sara Kochanny, Meaghan McArdle, Alexandra Nine, Jessica Perazzolo, and Patrick Vogt, all students of St. Barnabas Catholic School in Chicago. These students, competing against students from sixteen other schools, placed first in the Chicago Region of the National Engineers Week Future City Competition. They will compete at the national level in Washington, DC from February 18–22.

The National Engineers Future City Competition is a competition sponsored by Engineers Week, a consortium of major U.S. corporations, professional, and technical societies. The consortium is dedicated to ensuring a diverse and well-educated engineering work force by increasing understanding of and interest in engineering and technology careers, as well as promoting precollege literacy in math and science.

The competition encourages 7th and 8th grade students to use problem solving skills, team-work, research and presentation skills, practical math and science applications, and computer skills to present their vision of a city of the future. St. Barnabas Catholic School, an elementary school stressing hands on learning, has participated in the National Engineers Week Future City Competition for the last 7 years. Previous St. Barnabas teams have won the Chicago regional competition 3 times, the national championship in 2001, and finished fifth in 2004. The team's current advisors include engineer mentor Timothy Cullina and teacher mentor Jeanne Conway.

As a member of the House Science Committee and one of only 11 Members of Congress with an engineering degree, I am especially proud to recognize these young engineers. Their interest in and commitment to math and science education is admirable and will help our country remain a global leader in science and engineering.

It is my honor to recognize these students and their mentors for these outstanding achievements. Additionally, I commend St. Barnabas Catholic School for promoting the sound leaning atmosphere necessary to foster academic success.

IN RECOGNITION OF THE 50TH ANNIVERSARY OF MERCI

HON. ADAM B. SCHIFF

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. SCHIFF. Mr. Speaker, I rise today to recognize Merci on its 50th anniversary. Dedicated to serving the developmentally disabled members of our community, Merci has helped countless people make significant strides toward reaching their goals and achieving fulfilling lives.

Merci has its roots working with developmentally disabled children. In 1955, the Monterey Park Exchange Club determined that there was a need for a school dedicated to developmentally disabled children, and Merci was formed. Merci was incorporated as a nonprofit in 1959, and the early years were devoted to working primarily with children. In 1967, Merci was authorized by the Regional Centers of California to serve all people diagnosed with developmental disabilities. As the educational landscape changed over time, it became one of Merci's central aims to prepare developmentally disabled children for enrollment in public school special education classes; to this end, Merci added a program geared especially toward preschoolers. Merci continued to grow and thrive, and the organization expanded to include a Work Activity Center for adolescents and young adults. After a series of laws regarding handicapped children and public education passed in the 1970s, Merci's focus in 1976 shifted to working with its older clients. To this day Merci continues to provide unsurpassed service to its clients.

In keeping with its outstanding tradition of helping others, in the past few years Merci started two new programs that allow the organization to serve an even greater number of clients. As a part of one of the programs, Merci staff travel to the homes of clients with special medical needs and work with them on an individual basis. Merci has also opened its first group home, Ernie's Place, which offers 24-hour supervised care for its clients.

The Merci staff's commitment and dedication to serving the developmentally disabled members of our community is to be commended. Without Merci, many people would not be living the quality lives that they are living today.

I am proud to congratulate Merci on the occasion of its 50th anniversary. I ask all Members of Congress to join me in honoring Merci and the Merci staff for their dedication to making our community a better place in which to live.

HONORING HARRY LESTER

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. KILDEE. Mr. Speaker, I rise today to honor a man that is a giant in the United Steelworkers of America, Harry Lester. Harry is retiring from the United Steelworkers on February 10 and will be honored at a dinner that evening. With his retirement working men and women are losing a remarkable advocate.

Harry's association with the labor movement began when as a child, he witnessed the tragic death of his father in a coal mining accident in West Virginia. Thus began a lifelong commitment to social justice. Relocating to Michigan, Harry went to work for McLouth Steel Corporation and became a member of the United Steelworkers in 1954.

Working with his local, Local 2659, Harry was elected shop steward that same year. He rose through the ranks of the union and was sworn in as the District 2 Director in 1981. He has been re-elected director ever since. Harry has earned the reputation of a tough and fair negotiator. He negotiated the workplace safety and health language that was later handed down in a Supreme Court decision as the standard for all workers. Twice he has worked to keep McLouth Steel Corporation in operation, first in 1982 and the second time in 1987. At that time his ingenuity saved the company by putting together an employee buyout. The employees owned 87 percent of the company and created, for that time, the largest Employee Stock Ownership Plan in this country.

Simultaneously, as he was working to save McLouth Steel Corporation, Harry was working with the negotiating team for National Steel Corporation. He helped craft the Cooperative Partnership Agreement that gave the company's employees a say in the decisionmaking process. His efforts on behalf of the membership advanced worker input and saved their employers millions of dollars. In 1993 he was appointed chair of the United Steelworkers of America National Steel Negotiating Committee.

Harry's commitment to social justice extends beyond the workplace. He is active with numerous organizations including the Metropolitan AFL–CIO, the Michigan State AFL–CIO, United Foundation, United Way of Michigan, National Kidney Foundation, Economic Alliance of Michigan, Blue Care Network, Huron-Clinton Metropolitan Parks Authority, Citizens Advisory Committee of the University of Michigan-Dearborn, Greater Detroit Area Health Council, Michigan Economic and Environmental Roundtable and is the founder of the Annual Downriver Community Prayer Breakfast. Harry serves on the Salvation Army Board of Directors and with his wife, Mary, is a bell ringer every Christmas.

As District 2 Director, Harry believed it is essential for local union leaders to be as skilled and as educated as their company counterparts. He developed training classes and encouraged lifelong learning. In this he led by example. Harry has taken every Labor Studies class offered by the University of Michigan, Wayne State University, and Michigan State University. In May 2005 he was awarded an Honorary Doctor of Humanities degree by Michigan State University and actively works with the school's Labor Education Program on curriculum development.

Mr. Speaker, I ask the House of Representatives to join me in expressing admiration for a man that has devoted his entire life to the betterment of those around him. Through his foresight every worker in this country has benefited. I, and other Members of this body, have long sought his guidance and I have welcomed his wisdom. I wish to thank Harry Lester for his service and wish him the best as he retires from the United Steelworkers of America.

IN HONOR OF THE CATHEDRAL CHOIR SCHOOL OF DELAWARE

HON. MICHAEL N. CASTLE

OF DELAWARE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. CASTLE. Mr. Speaker, it is with great pleasure that I rise today to pay tribute to the Cathedral Choir School of Delaware, who on January 25, 2006, had the honor of singing for First Lady Laura Bush at the White House. The Cathedral Choir School of Delaware was honored as one of the 17 youth arts and humanities programs that will receive the 2005 Coming Up Taller Award from the First Lady. The Choir performed two songs, the National Anthem and a Zulu anthem.

This Award was created by the President's Committee on the Arts and the Humanities, and its recipients are chosen by members of the Institute of Museum and Library Services, the National Endowment for the Arts, and the National Endowment for the Humanities. The Cathedral Choir School of Delaware was selected from a group of over 250 well-qualified nominees.

Led by Choirmaster and Artistic Director Dr. Darryl Roland, this wonderful ensemble boasts 53 area students whose ages range from as young as 7, to as old as 17. The main objective of the choral arts program is to help these young people, many of them disadvantaged, succeed in school and other extracurricular endeavors. While singing is the central activity, it is only one of the important skills that they take away from this program.

The Cathedral Choir School of Delaware boasts an impressive list of alumni, many having been elected to leadership positions at their academic institutions and in their communities. The former Chief Justice of the Delaware Supreme Court is an example of a distinguished alumnus from the group.

I congratulate and thank the Cathedral Choir School of Delaware for their contributions to the State of Delaware and to our country. Many children who have participated in the program as well as music lovers owe the group a sincere debt of gratitude, and I am pleased to be able to vocalize their appreciation. I am thrilled that a group from my home State has been honored with such an illustrious award and I wish them many more years of continued success.

TRIBUTE TO MR. DONALD FOX

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. RADANOVICH. Mr. Speaker, I rise today to congratulate Mr. Donald Fox on his retirement from the National Park Service. Mr. Fox retired as a career appointee in the position of Landscape Architect and Pacific West Region, PWR, accessibility coordinator for the National Park Service.

Mr. Donald Fox's expertise in landscape architecture and accessibility compliance in accordance with the Americans with Disabilities Act, AGA, Accessibility Guidelines enabled his success as landscape architect and Pacific West Region, PWR, accessibility coordinator. His service to the Department of the Interior began in 1965 with his first temporary appointment and culminated in his permanent career appointment in January of 1971. Additionally, Mr. Fox served his country faithfully as a dedicated member of the United States Army before beginning his career with the National Park Service.

Mr. Fox worked for over 38 years in the National Park Service and had a long and distinguished career that was mostly spent in the service of preserving one of our country's most dramatic and beautiful National Parks. His efforts to make Yosemite accessible to all will be appreciated for decades to come by those who visit this great American landmark.

RECOGNIZING DAVID J. SHENK UPON BEING NAMED TOWN OF BOSTON "DEMOCRAT OF THE YEAR"

HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. HIGGINS. Mr. Speaker, I stand here today to recognize David J. Shenk, a man who is being recognized as town of Boston 2006 "Democrat of the Year" for his selfless dedication to his community and his country.

Mr. Shenk currently serves as the Boston town clerk, a position he first won by just three votes in 1991, at the young age of 21.

For the last 14 years Mr. Shenk has served his community well, securing 14 records management grants, streamlining efficiencies in town government, and establishing a foundation which provides grants to local nonprofit organizations.

Mr. Shenk's allegiance to his hometown is only rivaled by his commitment to this great Nation. Enlisted in the United States Army Reserve in 1988, he has served in Operation Desert Storm and Operation Iraqi Freedom. A health care specialist in the 1982nd Forward Surgical Team, his decorations include three Army Achievement Medals and an Army Commendation Medal.

Thank you, Mr. Speaker, for this opportunity to recognize David Shenk, a man I am proud to have as a colleague in Western New York government, a friend and a public servant deserving of the title "Democrat of the Year."

IN MEMORY OF FORT WORTH POLICE OFFICER HENRY "HANK" NAVA

HON. KAY GRANGER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Ms. GRANGER. Mr. Speaker, I rise today to honor a courageous police officer from my district who was slain on December 1, 2005. Fort Worth Police Officer Henry "Hank" Nava died from a gunshot wound to the head that he received on November 29 while searching for a man who was wanted by police. His loving family and many of his fellow officers were at his side when he died.

Officer Nava was a remarkable officer of the peace who was admired both by fellow officers and citizens of Fort Worth. Officer Nava, a native of central Texas, began his career in law enforcement in 1988 as an Austin, TX, park police officer. He became a Fort Worth police officer in 1992 and in the ensuing 13 years worked tirelessly to protect the citizens of Fort Worth. Officer Nava worked for the Plano, TX, police department for a brief period in 1999 but soon returned because he missed Fort Worth.

During his career, Officer Nava served as a Fort Worth patrol officer, a neighborhood patrol officer, a school resource officer and, for the last 2½ years of his career, as a member of the North Division Crime Response Team. Officer Nava quickly earned the reputation of a hard working officer who always had a smile and the officer who wore the Oakley sunglasses. Often, after his shift ended, Officer Nava would take one more call for help. He mentored young people through the Police Department Explorer Scout program. His desire to help others was exemplified when he and several members of the Fort Worth Police Department traveled to New Orleans to deliver relief supplies to the victims of Hurricane Katrina.

Officer Nava was devoted to his wife, Teresa, and his children KayLeigh, 9, and Justin, 4. He was an outstanding and loving husband as well as a friend to Teresa. Because of his love for his wife, he always took time from his work to be with her whether it was on their yearly cruise or a call home. His last call to Teresa came just minutes before he entered the home where he was fatally shot. His children were the joy of his life. He showered them with his love and attention, as only a proud father can do. Whether it was having fun around the family backyard pool or participating in an activity, Officer Nava always made certain his children had his full attention and that the moment was special for them.

Officer Nava's commitment to law enforcement, his deep love for his family and his pride in Fort Worth made him an outstanding Fort Worth police officer and citizen. I am proud to honor Officer Henry "Hank" Nava for his services to Fort Worth and its citizens. He will not be forgotten.

HONORING THE LATE HUGH THOMPSON, JR.

HON. CHARLES W. BOUSTANY, JR.

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. BOUSTANY. Mr. Speaker, I rise today to recognize and honor a man who will long be remembered for devotion to his country, his community, and his family. Hugh Thompson, Jr. of Lafayette, Louisiana, passed away after a brief illness on January 6, 2006, at the age of 62.

Born in Atlanta, Hugh joined the Navy in 1961 and left 3 years later. He continued his military service in 1966 by joining the Army and becoming a helicopter pilot. Upon completion of training, Thompson was deployed to serve in Vietnam. In 1968, he volunteered for duty that involved flying over Vietnamese forests to draw enemy fire and pinpoint the location of enemy troops.

It was on March 16, 1968, that Thompson and his crew; door-gunner Lawrence Colburn and crew chief Glenn Andreotta, came upon U.S. ground troops opening fire on Vietnamese civilians in and around the village of My Lai. After Thompson landed his helicopter in the line of fire between American troops and fleeing Vietnamese civilians, Colburn and Andreotta provided cover as he went forward to confront the leader of the U.S. forces. Thompson later coaxed civilians out of a bunker so they could be evacuated, and then landed his helicopter again to pick up a wounded child they transported to a hospital. Thompson would later say: "These people were looking at me for help and there was no way I could turn my back on them."

By the end of his tour of duty, Hugh Thompson had been hit eight times by enemy fire and lost five helicopters in combat. He left Vietnam after a combat crash broke his back, and was awarded both a Purple Heart and the Distinguished Flying Cross.

In 1998, the Army honored Thompson and his crew for their bravery at My Lai with the prestigious Soldier's Medal, the highest award for bravery not involving conflict with an enemy. "It was the ability to do the right thing even at the risk of their personal safety that guided these soldiers to do what they did," Army Maj. Gen. Michael Ackerman said at the 1998 ceremony. The three "set the standard for all soldiers to follow."

Following his service in the military, Hugh was a devoted servant in Lafayette as a Veteran's Service Officer with the Louisiana Department of Veteran's Affairs.

Mr. Speaker, the United States has lost a true hero, and the State of Louisiana has lost a devoted leader and dear friend. I want convey my heartfelt sympathy to the Thompson family. We are all humbly indebted to Hugh's service, and a grateful Nation honors his memory.

RECOGNIZING NAVAL HOSPITAL PENSACOLA FOR BEING A TOP PROVIDER OF PATIENT SATISFACTION

HON. JEFF MILLER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. MILLER of Florida. Mr. Speaker, on behalf of the United States Congress, it is an honor for me to rise today to recognize Naval Hospital Pensacola in my district for being named the best mid-sized Department of Defense hospital in the nation for patient satisfaction.

Last month, the 2006 annual TRICARE conference focused on Department of Defense health facilities that excel in providing healthcare to active service members, retirees, and their families, and I am proud to know that those who so bravely serve our country can come to Northwest Florida for quality healthcare.

I also want to commend Naval Hospital Pensacola's Commanding Officer, Captain Matt Nathan, for leading the hospital over the last 2 years and ensuring that his staff deliver the best services possible to those in need. This award reflects as much on the staff that oversee the day-to-day operation of the hospital, including patient care and follow-up. Naval Hospital Pensacola has long been a top provider of customer satisfaction because of this outstanding staff, and I am proud to see them along with Captain Nathan take the hospital to the number one spot.

I am confident that all of those who work at Naval Hospital Pensacola will continue to strive toward the best healthcare for our active and retired service members and their families well into the future. It is this kind of health care that should serve as a model for how we should take care of those who dedicate their lives toward the freedom of this great Nation and the rest of the world.

Mr. Speaker, on behalf of the United States Congress, I am proud to recognize Naval Hospital Pensacola as being the top medium-sized Department of Defense hospital in our Nation, and I wish them great success down the road.

HONORING PROVENA ST. JOSEPH MEDICAL CENTER

HON. JERRY WELLER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. WELLER. Mr. Speaker, I rise today to honor Provena St. Joseph Medical Center as they receive the "Salute To Accomplishment" award from the Joliet Region Chamber of Commerce and Industry. Provena St. Joseph Medical Center is located in Joliet, Illinois and serves my 11th District Congressional constituents.

Provena St. Joseph Medical Center was founded in 1882 and is located in downtown Joliet. In 1964, the hospital moved to its present location at 333 North Madison Street on Joliet's west side. Today, the Medical Center has a medical staff of more than 400 physicians representing over 50 medical specialties and employs over 2,200 professional, technical and support personnel.

Provena St. Joseph Medical Center has received numerous accreditations including the following departments: Ultrasound Department, Neurology Lab, Vascular Lab, Cancer Care Center, Physical Medicine and Rehabilitation Unit, Pulmonary Rehabilitation, and the CT Scan Facility. Jeff Brickman, President and CEO of Provena St. Joseph Medical Center, has stated that, "At Provena St. Joseph Medical Center we strive to provide the community with the highest quality of patient care every day." The many awards and accreditations received by Provena St. Joseph are a testimony to the truth of this statement.

Provena St. Joseph Medical Center is affiliated with the Provena Family Health Centers located in Coal City, New Lenox and Plainfield. The Medical Center is a division of Provena Health which has a history of providing health care to everyone regardless of their ability to pay for services. The heart of their mission is to "build communities of healing and hope." Provena St. Joseph Medical Center truly lives up to the standards of its founding fathers.

Mr. Speaker, I urge this body to identify and recognize other facilities in their own districts whose actions have so greatly benefitted and strengthened America's families and communities.

THANKING HELGA BROWN FOR HER SERVICE TO THE HOUSE

HON. VERNON J. EHLERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. EHLERS. Mr. Speaker, on the occasion of her retirement in February 2006, I rise to thank Ms. Helga Brown for 23 years of outstanding service to the United States House of Representatives.

A native of Bad Reichenhall, Germany, Helga has served this great institution in mail processing, sales clerk, and payment processing positions within the offices of the Doorkeeper, Clerk, and the Chief Administrative Officer. She began her career at the House on February 24, 1983 in the Folding Room, where she assisted House offices with the preparation and packaging of mail. In 1988, after 5 years of hard work in the Folding Room, she transferred to the Office Supply store, where she started as a sales clerk. Helga's knowledge, enthusiasm and friendliness endeared her to her customers and co-workers. She always went the extra mile to assist House staffers and Office Supply Store visitors with their purchases or questions. Helga moved from the Office Supply sales floor to the payment processing department, where she quickly learned the new MCBA and FFS payment processing software. She proved to be an excellent worker in this area too, doing everything necessary to provide swift and correct payments to supply vendors. In addition to making prompt and accurate payments, Helga also assisted with the reconciliation of cash sales.

After 10 years in Office Supply, Helga briefly served as receptionist at Office Systems Management within House Support Services, again providing superior service to the House community. Her outstanding work prompted Office Supply to seek her out again, and she returned there to process payments. The Vendor Management department of House Support Services also recognized her abilities, and she finally transferred permanently there on August 1, 1999. Even years after her transition from the sales floor to the accounts payable section of Office Supply and Vendor Management, customers remembered how well she had helped them in the past, and would often seek her out for guidance, or just for a friendly chat. She has managed the processing of the majority of the countless payments for office supplies ordered by House Offices through Vendor Management. She painstakingly researched delivery documentation and invoices in order to ensure accuracy and swiftness of payments. Always a cheerful volunteer for special projects, Helga eagerly went above and beyond the call of duty. One of these special projects was a temporary detail back to her old position in Office Supply to assist with daily deposits and accounts. Her standard of excellence, dedication, professionalism, and pleasant disposition have earned her the admiration and respect of all of her customers and coworkers.

Helga will be greatly missed by the many friends and acquaintances that she has made throughout the entire House community over the years. We thank her for a job well done, and we wish her many happy years of retirement.

LAW ENFORCEMENT AND PHONE PRIVACY PROTECTION ACT OF 2006

HON. LAMAR S. SMITH

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. SMITH of Texas. Mr. Speaker, today I rise to introduce the "Law Enforcement and Phone Privacy Protection Act of 2006."

This bipartisan legislation provides new, explicit, and strengthened protections for the privacy of confidential telephone records, including calling logs. It establishes specific criminal penalties for the fraudulent acquisition or disclosure of these records without consumer consent.

Few things are more personal and potentially more revealing than our phone records. The records of whom we choose to call and how long we speak with them can reveal much about our business and personal lives. A careful study of these records may reveal details of our medical or financial life. It may even disclose our physical location.

To avoid unwanted invasions of their personal privacy, millions of Americans already voluntarily list their phone numbers in the "National Do-Not-Call" registry. Many Americans also keep their telephone number unlisted.

Currently, Federal law recognizes the right of Americans to maintain this kind of privacy by providing some limited protections for the confidential information contained in calling logs. Phone companies and others who have a legitimate interest in having this information may not release it without either consumer consent or a determination that certain narrowly prescribed conditions exist.

Unfortunately, recent investigations by law enforcement authorities, including the Chicago Police Department and the FBI, and numerous media reports have shattered the notion that this data is safe.

These reports demonstrate that current Federal statutes are woefully inadequate to protect these records. They reveal that numerous companies and individuals offer to sell confidential phone records information to virtually anyone with no questions asked.

The price for selling this sensitive private information is shocking. It averages about $100. Essentially, these companies sell the confidential personal information of American citizens as a commodity. Many of these companies have operated on the Internet under a variety of names. There may be several thousand additional companies or individuals across the U.S. who traffic in these records but who do not conduct business openly on the Internet.

Alarmed at the easy access to these records, the Chicago Police Department and the FBI have reportedly warned their personnel to take steps to safeguard their phone numbers. The potential danger to undercover operatives concerns law enforcement officials.

In recent weeks, several States have taken civil enforcement action against these kinds of companies filing suits that allege violations of various State unfair and deceptive trade practices statutes. In these suits, the evidence shows that these companies typically use a variety of fraudulent devices to obtain these records from employees of phone companies. The most common method is referred to as "pretexting." A pretexter calls the phone company and poses as someone who is authorized to receive the information lawfully—perhaps the actual phone customer or another employee of the target phone company. I certainly agree this conduct is an unfair and deceptive practice. I applaud the state and federal officials who are investigating and civilly pursuing these companies.

However, I believe civil enforcement alone is not enough. New federal criminal penalties are needed to deter and punish these dishonest individuals and businesses—and to put them out of business permanently. The "Law Enforcement and Phone Privacy Protection Act of 2006" imposes serious criminal penalties—up to 20 years in prison—for anyone who knowingly and intentionally obtains or attempts to obtain the confidential phone records of a telephone company using a fraudulent scheme or device.

The bill further imposes up to 5 years imprisonment on anyone who:

First, either sells, transfers, or attempts to sell or transfer such records without authorization; or

Second, purchases such records knowing they were obtained without authorization.

Most importantly, the bill provides enhanced criminal penalties for anyone who: (1) engages in large-scale operations to violate the law; or (2) discloses or uses such fraudulently obtained information in furtherance of various crimes of violence or intimidation. This latter provision ensures that the bill targets the worst offenders.

The release of sensitive information like a phone record to an unauthorized individual can compromise a person's safety. Consider the tragic case of Amy Boyer, a young woman who was murdered in 1999.

In Ms. Boyer's case, the murderer hired Docusearch.com to conduct a search and identify Amy's Social Security Number and place of employment. Docusearch hired a subcontractor, who posed as an employee of Ms. Boyer's insurance company, called Amy, and confirmed her place of employment. Shortly thereafter, the killer drove to her workplace and gunned her down as she was leaving. For its service, Docusearch charged her murderer $109.

The unauthorized trade in this information not only assaults individual privacy but, in the wrong hands, can lead to violence and in the most extreme instances, even death. We must act to deter these acts by providing that anyone who seeks to wrongfully acquire or disclose these records faces serious criminal consequences.

I urge my colleagues to join me and the other cosponsors in supporting this bill. It is urgently needed to preserve consumer's privacy rights and to protect the personal safety of law enforcement personnel and victims of domestic violence. Enactment of this bill will send a clear and emphatic signal that these breaches of privacy will no longer be tolerated. I look forward to the House passing this legislation without delay.

PROMOTING PEACE AND STABILITY THROUGH THE REPEAL OF THE ANTISECESSION LAW

HON. PETE SESSIONS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. SESSIONS. Mr. Speaker, last spring, China passed the anti-secession law to give Chinese leaders the right to use force against Taiwan if they suspect separatist activities in Taiwan. In addition to the enactment of the anti-secession law, China's rapid military buildup has given the Taiwanese people a sense of fear. China's deployment of more than 700 missiles along the southeast coast indicates that China still stubbornly clings to a military solution of the Taiwan issue. In response to China's provocative actions, we need to emphasize that military intimidation over Taiwan is not a solution to the cross strait relations.

China must respect the aspirations of Taiwan's 23 million people who want the freedom to determine their own future. China has no justification to change the status quo either through the anti-secession law or military intimidation. Last spring, the House of Representatives went on record in expressing our grave concern over China's anti-secession law by passing H. Con. Res. 98 authored by Chairman HYDE in a vote of 424–4. I was proud to vote for this legislation, and I commend my fellow colleagues for the overwhelming decisive nature of the vote in demonstrating the House's sincere interest in preserving peace in the Taiwan Straits through the ending of the anti-secession law.

In other important issues, China must not block Taiwan's attempts to gain international recognition or return to international organizations such as the United Nations and the World Health Organization. Taiwan is a free and democratic nation and deserves to be treated properly and with respect by the international community. Taiwan's exclusion from the United Nations has deprived the identity of 23 million people.

President Chen is a man of peace and he has reaffirmed his commitment to maintain the status quo on many occasions. In the last six years, he has kept his pledges and offered many goodwill gestures to China. His goal of reducing tension between Taiwan and China remains unchanged. Let us hope that China will reciprocate Chen's olive branch by renouncing the use of force against Taiwan and resuming dialogue on an equal footing and without pre-conditions.

ELIMINATE WAREHOUSING OF CONSUMER INTERNET DATA ACT OF 2006

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. MARKEY. Mr. Speaker, I rise to introduce the Eliminate Warehousing of Consumer Internet Data Act of 2006. This act is designed to ensure that personal information about consumers and their use of the Internet that is no longer necessary for any legitimate business purpose is destroyed. The warehousing of personal information about consumers' Internet use, data which often indicate nonpublic details of their lives, should not be stored needlessly awaiting compromise by data thieves or fraudsters or disclosure through judicial fishing expeditions.

Mr. Speaker, as America's telecommunications networks continue to grow and broadband digital technologies become ever more prevalent, individuals and industries will increasingly use such networks to communicate and conduct commercial transactions. The ease of gathering and compiling personal information during such communications, both overtly and surreptitiously, is highly efficient due to advances in digital telecommunications technology and the widespread use of the Internet.

As such information is gathered and gleaned from consumers, it is important to acknowledge that consumers have an ownership interest in their personal information. Information gathered about consumers over the Internet can provide detail about some of the most intimate aspects of an individual's life, including their surfing interests, communications with other citizens, purchases, information inquiries, and political or religious interests, affiliations, or speech. Certain information from Internet searches or website visits conducted from a particular computer can be obtained and stored by websites or search engines, and can be traced back to individual computer users. Some Internet search engines, for example, today can collect information about a consumer's search request, the Internet protocol address, the consumer's browser type and browser language, the date and time of the request, as well as information regarding cookies that may uniquely identify the consumer's browser.

Mr. Speaker, I believe that in order to safeguard consumer privacy interests, companies that gather personal information that can identify individual consumers should cease to store such information after it is no longer necessary to render service to such consumers or to conduct any legitimate business practice. This is an obligation that cable operators today discharge. A cable operator, which can gather personal information about a subscriber's use of the cable system and obtain information about a consumer's video programming choices and use of their cable modem are currently required under section 631 of the Communications Act, 47 U.S.C. 551, to destroy any personal information gathered from a subscriber after it is no longer necessary for the purpose for which it was gathered and if there are no other pending legal requests for such information.

This legislation is designed to extend to consumers similar protection. It does so for websites and Internet search engines who arguably possess information about computer users which is more detailed and more personalized, than information cable operators typically gather. It does however permit such entities to utilize such data to render service to consumers in a way which does not inhibit their ability to innovate and only requires that once the entity no longer has a legitimate reason to warehouse such information to destroy it within a reasonable period of time.

I look forward to working with my colleagues on both sides of the aisle on this and other consumer privacy issues this year and in the future.

TRIBUTE TO NATIONAL BLACK HIV/AIDS AWARENESS DAY

HON. CAROLYN McCARTHY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mrs. McCARTHY. Mr. Speaker, I rise today to mark the observance of National Black HIV/AIDS Awareness Day. AIDS doesn't discriminate. It affects every race, age and gender but HIV/AIDS is the leading cause of death among African Americans ages 25–44. It has become a state of emergency.

In the United States, over 400,000 people were living with AIDS at the end of 2003 and African Americans accounted for half of these AIDS cases. The Center for Disease Control suggests that African Americans tend to be diagnosed later in life and at a more advanced stage. This explains why more blacks die sooner from AIDS related complications than any other group in the U.S.

African American women are hit the hardest. Rates of HIV/AIDS diagnosis in African American women are almost 20 times higher than white women and 5 times higher than those of Hispanic women. African American men are diagnosed at a rate of almost 7 times higher than those of white men.

Unfortunately it doesn't appear that the future is much brighter. Today, people under the age of 25 account for half of all new HIV infections each year. Within that group, African Americans account for 56 percent of new infections. No matter what age group one focuses in on, blacks are most impacted.

The President mentioned the AIDS epidemic in his State of the Union and the Federal Government must stay active in not just funding research initiatives but also in education and improving the lives of those in poverty. Nearly 1 in 4 African Americans lives in poverty. There is an association between higher AIDS cases and lower income. The socioeconomic problems associated with poverty, including limited access to high-quality health care and HIV prevention education, directly or indirectly increase HIV risk. If we can decrease poverty we can decrease the amount of African Americans with HIV/AIDS.

The Nation must take ownership and reinvigorate the response to the crisis within the African American communities and beyond. There must be a partnership between local community organizations with Federal and state agencies. Together we can combat and defeat this disease.

CONGRATULATING MARTIN D. POPKY ON THE OCCASION OF BEING HONORED BY THE SELIGMAN J. STRAUSS LODGE OF B'NAI B'RITH HOUSING FOUNDATION, INC.

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. KANJORSKI. Mr. Speaker, I rise today to ask you and my esteemed colleagues in the House of Representatives to pay tribute to Martin D. Popky, of Kingston, Pennsylvania, who is being honored for his many years of service to the Seligman J. Strauss Lodge of B'nai B'rith Housing Foundation.

Mr. Popky has served as president of the Foundation for 35 years since the establishment of the B'nai B'rith Apartment complex in Wilkes-Barre, Pennsylvania. He is also a member of the national board that operates 36 B'nai B'rith senior citizen housing projects in six countries.

The owner of a successful independent insurance agency, Mr. Popky recently celebrated 50 years with CNA Insurance Company during which time he was a high performance agent.

A member of the Masonic Lodge, Mr. Popky is also a member of the Irem Temple where he formed the Stewards Unit, serving as chief steward for more than 20 years.

A life member of Temple Israel and a member of Ohav Zedek Synagogue, Mr. Popky also served as secretary and a member of the board of directors of the Jewish Community Center. He was also a three term chairman of the United Hebrew Institute School Board and chairman of its board of trustees.

In 1993, Mr. Popky received the highest honor of the United Hebrew Institute when he received its Shofar Award.

An active volunteer in many civic activities, Mr. Popky founded the American Blind Bowlers Association; served as treasurer of GRIT; was the owner and operator of Washington Square Apartments and was treasurer of the Interfaith Council of Wyoming Valley.

Mr. Speaker, please join me in congratulating Mr. Popky on this special occasion. His commitment to community improvement has had a positive effect on the quality of life in the greater Wyoming Valley and, by his example and hard work, he has demonstrated what it means to be a true leader.

SALUTE TO BARBARA BOWES

HON. GENE GREEN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. GENE GREEN of Texas. Mr. Speaker, as we begin this Second Session of the 109th Congress, I'd like to salute a constituent of mine, Barbara Bowes of Houston, Texas, who served as Jack Fields' district coordinator for the entire 16 years that Jack represented Texas' 8th Congressional District.

Barbara served her community not only as Jack's district coordinator but worked in our Houston district office. More important, she is a personal friend and someone I have come to admire over the last several decades.

Throughout the years she served Jack and me on behalf of the men and women of the North Channel area of Houston, Texas, I admired Barbara for her commitment to public service. When Jack represented the North Channel area in Congress in the early 1980s, and I represented the same area in the Texas State Senate, Barbara was the "go to" person in Jack's district office—the one we all contacted for requests, appointments and information. As Jack's district coordinator, Barbara was the best at what she did—keeping the Congressman and his staff on schedule and serving his constituents, often satisfying impossible requests.

But Barbara did far more as Jack's district coordinator.

Barbara served as a "mother" for the 8th Congressional District of Texas. She served as a "mother" to Jack's congressional staffs both in Houston and Washington, DC—offering support and good humor to everyone who served him. I don't think Barbara would object if I suggested that much of that good humor was somewhat ribald or slightly earthy.

Barbara continues to wage a courageous battle against melanoma, and in characteristic fashion, often uses humor to comfort everyone from her doctors to her family. Jack and I continue to marvel at her strength and endurance—as do her many friends, her family members and the staff at M.D. Anderson Cancer Center. Over the last 25 years, Barbara has provided all of us with a shining example of public service and a lesson in how service should be delivered. She never sought recognition for her work, but she earned the admiration of all who were privileged to work alongside her and those she helped through the years. I would ask that you and all of my colleagues remember Barbara in our thoughts and prayers.

Mr. Speaker, if not a Texas native, Barbara certainly is a Texas original—a Long Island native who found her home in Houston, Texas, and who served her community and her fellow citizens with dedication and distinction. Texans have always welcomed such men and women to our state and offered them our love and respect. Texas and our Nation are better as a result of Barbara's service, and I appreciate this opportunity to recognize this unique Texas woman.

TRIBUTE TO SEYMORE SAILES

HON. JIM DAVIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. DAVIS of Florida. Mr. Speaker, I rise in honor of Seymore Sailes, a lifelong resident of Manatee County whose sudden passing last week is a tremendous loss to the Palmetto community.

Mr. Sailes was the first African American insurance agent to work in a white-owned agency in the State of Florida. He went on to open his own insurance and bail bonding business, which is now a fixture in the Palmetto community.

However, to the people of Palmetto, Mr. Sailes is better known for his work outside the office. Seymore dedicated his life to bettering his community and improving opportunities for young people. Where there was a need, Seymore was hard at work, determined to meet that need.

Nowhere is the fruit of his tireless labor more evident than at the Palmetto Youth Center, where Mr. Sailes mentored kids and coached football. Seymore was always convincing local business leaders to support the center's young people by sponsoring events, financing educational scholarships or supporting the center's infrastructure expansion. Thanks to Mr. Sailes and his leadership, Palmetto Youth Center has been able to reach many more young people with a variety of programs and activities, as well as connecting with the entire community through the center's annual Rev. Martin Luther King, Jr., banquet and parade.

Outside of the Palmetto Youth Center, Seymore was also active in his church, serving as the chairman of the deacon board at St. John's First Baptist Institutional Church. His many civic activities and his determination in bringing people together to improve the community earned Mr. Sailes numerous awards, as well as the respect and appreciation of the Palmetto community.

Seymore's passing leaves a void in our community's leadership, as well as in our hearts. I would like to extend my appreciation to Mr. Sailes for his service and my deepest sympathy to his family for their loss.

HONORING THE RETIREMENT OF HARRY LESTER

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. DINGELL. Mr. Speaker, I rise today to pay tribute to my dear friend Harry Lester on the occasion of his retirement from the United Steel Workers of America, USWA. Harry and I have fought and won many battles together over the past 50 years on behalf of working men and women. He is an honorable, decent, and hard-working man and I am proud to call him my friend.

As Director of District 2, representing steel workers in Michigan and Wisconsin since its establishment in 1995, Harry has shown commendable leadership and commitment to the community and to our nation's working families. Harry first became active in the Steel Workers at Local 2659 at McLouth Steel in Trenton, Michigan in 1954. In 1969, he was appointed to USWA staff where he later negotiated one of the first cooperative partnerships in the country between Dow Chemical, National Standard, Quanex, and the Detroit Steel Company. Harry was promoted to serve as the director of USWA District 29 from 1981 to 1995 before ascending to the position of Director of the newly formed District 2.

Harry has been very active in the local community throughout his career and currently serves on the board of several education, labor, political and civic organizations. His activities include participation in organizations such as the AFL–CIO, United Foundation, United Way of Michigan, National Kidney Foundation of Michigan, Economic Alliance of Michigan, Greater Detroit Area Health Council and the Michigan Economic and Environmental Roundtable. Harry has proven to be an effective leader in efforts to protect our environment and protecting the rights of working men and women across America.

As Harry enters his retirement years, I would like to extend my best wishes for a relaxing and enjoyable journey. I would like to thank him for all of his hard work and dedication to the United Steel Workers of America and to labor efforts over the years. His commitment to improving the quality of life for working families has been an inspiration to me and to everyone that he has touched in his many years of service.

Mr. Speaker, I ask that my colleagues join me in thanking Harry Lester for his many years of dedicated public service on behalf of both the United Steel Workers of America and the community at large. His heartfelt dedication to the workers of this Nation will not be forgotten.

PRESIDENT BUSH'S FY2007 BUDGET

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. CONYERS. Mr. Speaker, today I rise in opposition to the priorities set forth in the President's Budget which hides the true costs of the wars in Iraq and Afghanistan, finances tax cuts on the backs of the poor, slashes Medicare and Medicaid, and favors special interests over the interests of the American people.

Before the State of the Union address, I along with several other Members of Congress, sent President Bush a letter asking him to make sure that he tells the American people the truth. During the State of Union, President Bush said that his budget would cut the deficit in half by 2009. Unfortunately, it seems that the President did not read our letter.

The President's budget is misleading in the projected costs of the wars in Iraq and Afghanistan. Since 2001, approximately $370 billion has been provided to finance the wars and reconstruction efforts in Iraq and Afghanistan. More than $260 billion of that amount has been funneled into Iraq. In his budget, the President has set aside $50 billion in 2007 for Iraq and Afghanistan, but has not allotted any money beyond 2007. While I welcome a swift end to the war in Iraq, the assumption that this country will not spend a dime in Iraq and Afghanistan beyond 2007 is farfetched.

The President's budget is misleading in not including the 10 year costs of repairing the Alternative Minimum Tax. While the President has included a 1-year provision to mitigate the AMT's impact on the middle class, it omits the cost of the full repair to the AMT. This cost is projected to increase the deficit by $844 billion over the next 10 years.

Besides being disingenuous, this budget exacts a financial toll on our nation's disadvantaged citizens while helping to finance billions of dollars in tax cuts to the wealthiest Americans. The cost to make the President's tax cuts permanent is $1.35 trillion over the next decade. At the same time, the President's budget cuts significant social programs, including cuts in job training, education, food stamps, and environmental protection efforts.

Most alarmingly, this budget would allow the Federal Government to turn its back on those Americans who struggle to maintain their health. The President's budget cuts Medicaid by $17.2 billion over 5 years, thereby jeopardizing the care of this country's most vulnerable Americans. The budget also cuts Medicare spending by $105 billion over the next 10 years, in part by reducing payments for providers. Furthermore, the President's budget proposes real cuts to the National Institute of Health. At a time when we are making significant progress in finding cures to cancer and heart disease, and the threat of serious new diseases such as Avian flu and other pandemics loom, the President is proposing to slow scientific and medical advancement.

The President's budget also fails to reduce the cost of health care or address the rising number of uninsured Americans. At a time when there are already 46 million Americans without any health coverage, this budget is wrong for our country.

This shameful budget rewards well-connected wealthy interests at the expense of the poor. Because the President's budget promotes the wrong priorities for our country, it should be rejected.

TRIBUTE TO WILLIAM "BILL" KORR

HON. JANICE D. SCHAKOWSKY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Ms. SCHAKOWSKY. Mr. Speaker, February 7th was a very special day for a fine American who had been very special to me and my family. It is the 90th birthday of William "Bill" Korr, across-the-street neighbor and family friend throughout my childhood.

Bill was born in 1916 in Chicago. His parents, Ben and Ida Korofsky, were immigrants from Russia who arrived in the U.S. via Ellis Island near the turn of the century.

When the stock market collapsed in 1929, knocking his parents out of the real estate business they had built, Bill at age 16 essentially ran a family grocery business on the west side of the city. He graduated from Englewood High School in 1934. He also attended the University of Chicago for 2 years but was forced to leave for financial considerations due to an illness in his immediate family.

Because of health issues he was not accepted into the Armed Forces during the WWII era.

In 1948 Bill cofounded National Hobbymodel Distributors, a wholesale operation servicing independent retail hobby shops nationwide. Most importantly, he was one of the six original founders of the Hobby Industry of America, HIA, known today as the Craft & Hobby Association, CHA, an organization that caters to a multi-billion dollar industry including craft, hobby, floral and scrap-booking products among its mix and whose leadership includes top executives from numerous prestigious and publicly traded companies.

From 1961 to present, Bill was involved as the principle of the William Korr Sales Company, a manufacturer's representative firm specializing in the floral, craft and hobby industries that today has grown to an operation which has three regional offices and accounts for over $15,000,000 in annual sales. Bill continues to go into the office 4 days a week.

Bill has three sons, Jerold, 60—Sheila, Elliott, 56—Janet, and Bruce, 52—Kimberely. He was married to Florence Tirengel Korr for 54 years before her passing in 1997. He has four granddaughters, Gail, Karen, Linda, & Alexandria, and just recently became a great grandfather when Gail gave birth to Sarah Nicole Atlas on December 5, 2005.

Bill has always been active in his synagogue and community and served as a scout master, long-term board member, and contributor of both funds and wisdom.

He remarried at the ripe old age of 87. His new bride is Sally Wisper Korr.

Golden words of wisdom: "The DJIA will never go above 1,000," "My advice is worth what you're willing to pay for it," "Nixon's the one."

I remember Bill as a kind and gentle man, always nice to all the kids on the block. He lived directly across the street from me on Jarvis Avenue in the unpretentiously middleclass Chicago neighborhood of Rogers Park. It was a tight-knit block on which everybody knew everybody and the families took care of each other. The man I called "Uncle" Bill is a great example of a hardworking, honorable and honest American, loved by his family and community, and I wish him a very happy birthday.

HONORING HOPE MATSUI YASUI UPON HER RETIREMENT

HON. DORIS O. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Ms. MATSUI. Mr. Speaker, I rise today in tribute to a distinguished woman who has faithfully served the State of California for over 38 years. Hope Matsui Yasui retires this month from the State of California Employment Development Department. As her friends, family and colleagues gather to celebrate her decades of public service, I ask all of my colleagues to join me in saluting this outstanding citizen of Sacramento.

Hope began her career of public service to the State of California in 1962 with the California Department of Transportation, and then in 1967 she continued her career with the State Employment Development Department. The majority of her years of public service were with the State Employment Development Department and the California Governor's Committee on Employment of Peoples with Disabilities.

Hope successfully represented the California Governor's Committee on Employment of Peoples with Disabilities on a major California task force to work with the Social Security Administration to remove employer disincentives against hiring disabled people. While with the Committee, she was also an original co-founder of the California Model Youth Leadership Forum for Students with Disabilities. This well respected youth program led to the establishment of similar programs in over 30 States throughout the country.

Throughout her many years of employment with the State of California, Hope has established herself as an excellent role model through her career of exemplary public and community service. She has developed an impeccable reputation within Sacramento and throughout the State, as she has promoted employment opportunity for people with disabilities and for all Californians.

As a devoted public servant and community leader, she has shown compassion and understanding for those who are underprivileged in life. Her profound sense of understanding for those less fortunate was developed, in part, as a result of the injustices she faced at birth in a Japanese internment camp in Minidoka, Idaho amidst the turmoil of World War II.

Hope has maintained her commitment to the people of California and has remained dedicated to her family. Therefore, I would like to congratulate Hope Matsui Yasui for her many successes and for her well deserved retirement.

Mr. Speaker, as Hope Matsui Yasui's family, friends and colleagues gather to celebrate her career of service to Sacramento and to the State of California, I am truly privileged to congratulate one of Sacramento's most respectable citizens. The State of California has greatly benefited from having Hope Matsui Yasui's strong leadership and compassionate heart. Her dedication to people with disabilities and to the people of California has lasted a lifetime and has forever improved the lives of Californians with disabilities. I ask all of my colleagues to join with me today in wishing Hope continued success and happiness in all of her future endeavors, wherever her retirement may take her.

THANKING GARY DENICK FOR HIS SERVICE TO THE HOUSE

HON. VERNON J. EHLERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. EHLER. Mr. Speaker, on the occasion of his retirement in February 2006, I rise to thank Mr. Gary Denick for 32 years of outstanding service to the United States government, with the majority of it served here in the U.S. House of Representatives.

Gary began his government career in 1972 as a soldier in the U.S. Army after graduating from Miami University of Ohio. He was trained as a television specialist, served a tour of duty in the Republic of Korea and was honorably discharged in 1975. Three years later, in May of 1978, Gary joined the production staff of the House Recording Studio as a camera operator. The next year he was part of the original television crew that made history providing the first floor coverage of House proceedings.

Over the past 28 years Gary has risen through the ranks to become the director of the House Recording Studio. He has led not by authority, but by example. His management philosophy has been, "When you have good people just stand out of their way and let them do their job." Throughout the most difficult times his motto has been, "With faith and confidence things always work out." The House Recording Studio's record of excellent customer service to Members of the House of Representatives reflects Gary Denick's leadership and vision.

On behalf of the entire House community, I extend congratulations to Gary for his many years of dedication and outstanding contributions to the U.S. House of Representatives. We wish him many wonderful years in fulfilling his retirement dreams.

HONORING THE ARLINGTON COUNTY CIVIC FEDERATION'S 90TH ANNIVERSARY

HON. JAMES P. MORAN

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. MORAN of Virginia. Mr. Speaker, I am pleased to commend the Arlington County Civic Federation on the occasion of its 90th anniversary celebration.

Born from a handful of concerned citizens' groups devoted to creating better schools and roads, the Arlington Civic Federation has grown to over 80 organizations as the oldest and longest standing voice in the county devoted to improving residents' lives.

As the boundaries of new civic organizations that comprise the Federation have changed over the years, so too have the boundaries of issues, ideas, and actions the Federation has endorsed and successfully championed for its citizenry.

The Federation has battled for Arlington's citizens on issues ranging from school desegregation, affordable housing, operation of the airport authority, HIV/AIDS, Metro and interstate highways, as well as football and baseball stadiums. Standing up for the ordinary citizen with a non-political, nonpartisan, non-sectarian voice, the Federation continues to improve the quality of life for Arlingtonians and shape public policy from the local to Federal level.

Patrick A. Smaldore Jr., a lifelong Arlington County resident, career civil servant and Naval reservist, now serves the Federation as President.

He is joined by the leadership of Vice President—Jackie Snelling, Treasurer—Frances Finta, Secretary—Burt Bostwick, Chairman of the Executive Committee—Larry Mayer, Vice Chairman of the Executive Committee—Stan Karson and members Eileen Williams, Beth Offenbacker, and Frank Emerson. Their work, along with the 14 standing committees is responsible for engaging new issues as they arise.

With the Commonwealth's coming 400th anniversary, we are reminded of how intimate a role Arlington has played in the shaping of our Nation's history. George Washington, James Madison and George Mason all worked or owned land in the county. As the voice of its people, the Federation also reminds us of the innovation and leadership that will continue to contribute to our future.

Mr. Speaker, I take great pleasure in honoring the 90th anniversary of the Arlington County Civic Federation for its many contributions to public affairs and its ongoing commitment to the people of Arlington County.

FREEDOM OF RAFAEL IBARRA

HON. LINCOLN DIAZ-BALART

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I rise today to remind my colleagues about Rafael Ibarra, a long suffering and heroic political prisoner in totalitarian Cuba.

Mr. Ibarra heads the 30th of November Democratic Party, an island wide movement dedicated to the establishment of a democratic society, an opposition movement to the Castro tyranny. In 1995 he was sentenced to 20 years in the totalitarian gulag. In 1997, his wife Maritza Lugo, also a highly respected pro-democracy activist, was arrested and incarcerated for 2 years; leaving their 2 daughters without their parents. On multiple occasions after 1999, Maritza would continue to be arrested and harassed by the tyannical regime. Even while they were in prison at the same time, the tyrant insisted on evicting their 2 girls from their small farm house, which had become a gathering point for human rights and pro-democracy meetings.

Mr. Ibarra was one of the political prisoners who signed the Cuban flag painted on a pillow case and sent it to the United Nations Human Rights Commission in Geneva.

Maritza and her two daughters, at Mr. Ibarra's request, fled Cuba as refugees in 2002 to the United States so that the 2 girls would be able to live in freedom.

This year marks an abominable anniversary, the 11th year that Mr. Ibarra has been imprisoned. While other fathers have been able to watch and guide their daughters as they grow up, Mr. Ibarra has been incarcerated in the gulag for daring to dream of and to work on behalf of a democratic Cuba.

Rafael Ibarra is a hero, in the tradition of the great figures of Cuba's long struggle for liberty. Quintin Banderas, Carlos Manuel de Cespedes, Ignacio Agramonte, Antonio Maceo, and thousands of other Cuban heroes established a tradition of heroism that today is being continued by countless men and women who have given their best years and often their lives for the freedom of Cuba. Rafael Ibarra is a hero in that same admirable tradition.

My thoughts and prayers are with him, as is my solidarity and profound admiration. Mr. Speaker, this courageous man is locked in Castro's gulag for failing to keep silent about the nightmare that is the Castro regime. My colleagues, we must never forget those who are locked in gulags because of their desire for freedom for their countries. We must demand the immediate and unconditional release of Rafael Ibarra and every prisoner of conscience in totalitarian Cuba.

GEORGE SOROS' INFILTRATION OF CPAC

HON. MARK E. SOUDER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. SOUDER. Mr. Speaker, George Soros, the radical liberal financier who dedicated himself to defeating President George W. Bush in the last election, has taken a lesson from Jack Abramoff.

As much of Abramoff's pernicious lobbying technique has come to light, we've seen how he was adept at manipulating certain conservative organizations to pursue a decidedly anti-conservative agenda, namely the promotion of gambling. By working hand in hand with the Traditional Values Coalition, TVC, for example, he was able in 2000 to undermine conservatives' best effort to outlaw on-line gambling. Proxy organizations played a fundamental role in Abramoff's strategy.

Since 1974, the American Conservative Union has held the Conservative Political Action Conference, or CPAC, which is billed as a 3-day meeting for thousands of conservative activists and leaders to discuss current issues and policies and set the agenda for the future. I myself have addressed the conference in the past.

One can imagine a conservative's surprise to read on the CPAC 2006 agenda that a representative of the Marijuana Policy Project, MPP, is slated to moderate—yes, moderate—a panel Friday discussing drug policy. For those who are unacquainted with it, the pro-marijuana MPP has been funded by Soros in the past. Also represented on the panel is the Drug Policy Alliance, which is Soros' principal pro-drug arm. Incidentally, the moderator himself is a convicted drug dealer.

What on earth were the CPAC organizers thinking? Why would the American Conservative Union allow extremist liberals like

George Soros and Peter Lewis—who is responsible for most of MPP's funding—to access a meeting of conservatives? And, in exactly whose estimation would there be balance in a debate moderated by the MPP?

Thanks to Accuracy in Media Report Editor Cliff Kincaid, these are just a few of the questions that the CPAC organizers now face. I'd like to submit into the RECORD his article of February 7, 2006, entitled "Soros Infiltrates Conservative Movement." In exchange for a donation, is this 32-year-old conservative conference turning itself into a Soros proxy organization just like Abramoff's TVC?

Over the last number of months, we've been surprised to learn how one such as Abramoff was able to exploit conservatives for his own purposes. Surely in this environment we can't miss seeing it when it's happening once again.

[From Accuracy in Media, Feb. 7, 2006]

SOROS INFILTRATES CONSERVATIVE MOVEMENT

(By Cliff Kincaid)

Calvina Fay of the Drug Free America Foundation has pulled out as a speaker at the Conservative Political Action Conference (CPAC), which begins in Washington, D.C., on Thursday, because a "mini-debate" she was scheduled to appear in had been stacked against her. As it now stands, the event will feature two advocates of drug legalization, both of them funded by leftist billionaire and anti-Bush activist George Soros.

Having put most of the left-wing political movement and many liberal Democrats on his payroll, it is apparent that Soros is now working to manipulate the conservative movement. It is surprising that CPAC is facilitating his scheme.

A convicted inside trader who specializes in manipulating the currencies of the nations of the world, Soros is usually depicted as a "philanthropist" who believes in an "Open Society." Hence, the name of his major funding mechanism, the Open Society Institute. In the Soros view, of course, an "open society" means encouraging behavior that undermines the traditional values and culture of America. This is hardly "conservative."

In addition to promoting drug legalization, his causes include open borders, gay rights, abortion rights, opposition to the death penalty, lighter sentences for criminals, and assisted suicide. He tried almost single-handedly to buy the White House for Democrat John Kerry in the 2004 presidential election by spending over $20 million on controversial "527" organizations promoting his candidacy. On foreign policy issues, Soros is a big backer of the U.N. and opposes the Bush Administration's war in Iraq and handling of the war on terrorism.

The scheduled Friday CPAC event on "A Conservative Drug Policy" was to feature a mini-debate between Ethan Nadelmann of the Drug Policy Alliance (DPA) and Calvina Fay. The "moderator," hardly unbiased, was scheduled to be Rob Kampia of the Marijuana Policy Project (MPP). The Soros Open Society Institute has given the DPA millions of dollars, including $2.5 million in 2004 alone. MPP has been funded by Soros as well as Peter Lewis, chairman of the Progressive Corporation, who was arrested in New Zealand several years ago after customs officers found marijuana in his luggage. Lewis, who gave $340,000 to MPP in 2004, is also a major funder of the ACLU.

Court documents show that Kampia himself was convicted in 1989 and sentenced to prison for possessing and intending to distribute marijuana.

While paying thousands of dollars to appear at a conservative conference, MPP is selling $500 tickets to a March 30 fundraising "party" at the Playboy Mansion. Playboy founder Hugh Hefner provided the seed money for the drug legalization movement, which is now underwritten mostly by Soros and Lewis.

"Playmates will be available to give tours of the mansion grounds as you enjoy great music and comedy in one of America's most renowned settings," says MPP's website. A member of the "host committee" for the Playboy event is Tommy Chong, who participated in pro-marijuana movies as part of the "Cheech and Chong" team and served nine months in prison for selling drug paraphernalia. You won't need an NSA surveillance program to know what's going on in the Playboy Mansion on March 30.

When Calvina Fay saw that the CPAC "debate" had been stacked against her, she pulled out. However, her group will still have a booth at CPAC. So will the Drug Policy Alliance. Later in the day, after the "debate," Kampia's MPP will host an event for all CPAC attendees and guests on why the war on drugs should not target marijuana users. It is not known if Playmates will appear.

The Drug Policy Alliance also participated in CPAC last year, boasting that Executive Director Nadelmann was "well-received" and "appeared on several conservative radio shows coinciding with the conference."

This is troubling because DPA and MPP are part of a major deception campaign to convince people that marijuana is harmless or even has medical benefits. Accuracy in Media last year disclosed the existence of documentary evidence that the "medical marijuana" movement is a fraud that exploits sick people. Video footage of a pro-marijuana event showed Ed Rosenthal, formerly of High Times magazine, speaking to dozens of marijuana activists. "With all the talk about medical marijuana, I have to tell you that I also use marijuana medically (laughter)," he says. "I have a latent glaucoma, which has never been diagnosed (more laughter). And the reason why it has never been diagnosed is because I've been treating it (laughter). . . But there is a reason why I do use it. And that is because I like to get high. (cheers, applause). Marijuana is fun."

Another video excerpt showed Richard Cowan, former director of the National Organization for the Reform of Marijuana Laws, saying that "The key to it [legalization] is medical access because once you have hundreds of thousands of people using marijuana medically under medical supervision the whole scam is going to be blown. . . Once there's medical access and if we continue to do what we have to do—and we will—then we'll get full legalization." Not surprisingly, a Federal investigation of "medical marijuana" clubs and dispensaries in California has found they had been used as a cover for drug dealing and money laundering.

At the same time, evidence of a connection between marijuana and mental illness continues to mount. The influence of marijuana figures in the sensational murder case of Colin Roger Cotting, a 16-year-old in Alaska who allegedly raped his stepmother, beat her to death with a baseball bat, and stuffed her in a freezer. The murder resulted from a dispute when Cotting was confronted by his stepmother about his marijuana use. Cotting told police that he was too stoned on marijuana to remember what had happened.

In a case that received national attention, Joseph Smith, the convicted killer of 11-year-old Carlie Brucia, tried to blame his criminal behavior on using drugs, including cocaine and marijuana.

British newspapers are now covering a sensational case of "cannabis psychosis," involving a music producer, Lisa Voice, who "was viciously assaulted in her home by a family friend who had been made psychotic by the drug," as the London Sunday Times noted. She suffered a broken jaw, broken nose, collapsed lung, and eye injuries, and has already had 11 medical operations to rebuild her face and head. The attacker had been smoking marijuana since the age of 15 and believed he was getting subliminal messages from television.

In Britain, penalties for the use and possession of marijuana had been lowered after the drug had been reclassified. But Dr. Shahrokh Mireskandari, lawyer for Lisa Voice, was quoted in the Sunday Times as saying, "Let government ministers who say cannabis is a harmless drug come and explain that decision to Mrs. Voice and her many doctors. Cannabis should never have been reclassified and people such as Mrs. Voice now face a lifetime of pain because of the dangers of this drug."

So why is CPAC giving Nadelmann, Kampia and their ilk a platform?

EULOGY FOR CHIEF WARRANT OFFICER 3 MITCHELL "MITCH" CARVER

HON. CHARLES H. TAYLOR

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. TAYLOR of North Carolina. Mr. Speaker, many young men and women have been killed and wounded in the Iraqi conflict—more than 2,000 killed and 17,000 wounded. I'd like today to reprint my eulogy given at the funeral of CWO3 Mitchell "Mitch" Carver as a tribute not only to him and his parents, but as a reminder to all citizens of our country that "freedom is not free."

In Flanders' fields the poppies blow
Between the crosses, row on row
That mark our place, and in the sky
The larks, still bravely singing, fly
Scarce heard amid the guns below.

We are the Dead! Short days ago
We lived, felt dawn, saw sunset glow,
Loved and were loved, and now we lie
In Flanders' fields.

John McCrae wrote those words before his own death on the battlefield nearly 90 years ago. We have learned to protect the lives of our soldiers better. In the war to end all wars, more died in single battles than America has lost in all wars since. America has learned to protect our soldiers better—but not well enough for we are here to pay homage to the life of Mitch Carver. We take pride in reducing our casualties, but the sacrifice of the family is not a small percent, it is not a small loss, it is not a small number. Their sacrifice is enormous, it is total, it is all.

Mitch Carver took up "The Torch" for the country he loved. He knew who he was fighting. He was fighting the evil that plants a bomb that kills innocent women and children and families who harm no one. Murderers who kill, kidnap defenseless women and children for no reason but to show evil. He chose to do it. For it is not the press who protect our right to free speech, it is men like Mitch Carver who choose to do it. It is riot the Congress, not the government bureaucrats, who protect us from those who would enslave us. It is men like Mitch Carver who choose to do it. For another time Mitch Carver rejoined his comrades in Iraq because he knew they needed him and he believed he could, with his advanced skill, keep them safer, and perhaps lessen their danger. And that he did. We may never know how many he saved by his advanced skill.

In the 8 years I have been privileged to serve as representative on the board of our country's military academy at West Point, I have seen thousands of young men and women take the oath to protect us. Theirs is a simple pledge: "Duty, Honor, Country." In this world of being told there is no black nor white, there is only gray political correctness and "is" has to be defined, I thank God we have young men and women who have no trouble defining "Duty, Honor, Country."

The late T.B. Macaulay in his poem Horatius at the Bridge says, "To every man upon this earth death cometh soon or late. And now how can man die better than facing fearful odds, for the ashes of his fathers and the temples of his gods." Mitch Carver believed in and loved God. He knew the Bible. He could quote this verse better than I, "For God so loved the Earth that he gave his only begotten Son, that whosoever believeth in him should not perish but have everlasting life." Mitch Carver risked and gave his life to perform his duty, but as God promised, he did not perish but will remain in our hearts and memories until he meets his family in another life.

CONGRATULATING THOMAS G. BARTON

HON. TED POE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. POE. Mr. Speaker, I want to congratulate Mr. Thomas G. Barton, Jr. on his recent offer of appointment to the United States Military Academy at West Point. Thomas sought a nomination to West Point through my office, competing with a group of highly qualified applicants. He passed the evaluation process, and I am proud to have given him a Congressional nomination.

Thomas is currently enrolled in the West Point Civil Preparatory Program in Roswell, New Mexico, which speaks volumes about his passion to get into West Point. He has the military in his blood. Thomas's father and brother are both graduates of West Point's distinguished program.

A review of Thomas's life and qualities demonstrate that he should make an excellent cadet at West Point and hopefully an excellent officer. Thomas has a sense of duty to serve, as shown by the fact that he has achieved the elite rank of Eagle Scout. He has shown dedication as a member of the Kingwood High School Lacrosse Team, where he was voted captain by the rest of the team. He has held leadership positions also in the Kingwood High marching band and the Boy Scouts. He won the coveted K Award—for best in class—for Outstanding Musical Contribution.

Mr. Speaker, Thomas is a fine young man who will serve his country with distinction. He understands the challenges and the commitment that lies ahead of him because his family is steeped in military tradation. We wish him good fortune in this new chapter of his life.

Thomas Barton will make us proud. America will be better because of Thomas Barton's choice to serve our country.

CELEBRATING THE 100TH ANNIVERSARY OF TAKAHASHI MARKET

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. LANTOS. Mr. Speaker, it is with great pride that I rise today to congratulate the Takahashi family, proprietors of the Takahashi Market on the 100th anniversary of their operations in the city of San Mateo, California, which is located in my congressional district.

The history of the Takahashi Market begins with Mr. Tokutaro Takahashi, a former saltmine laborer, who recognized that recently arriving Japanese immigrants in the Peninsula were quickly becoming a burgeoning new market. According to Kenge Takahashi, son of Tokutaro Takahashi, the business began as a peddling operation, with a horse and cart, to display and carry the groceries, clothes and fishing equipment he sold to them.

Mr. Speaker, the Takahashi Market is no longer a mere push-cart shop, but has grown to become an established landmark of the Peninsula, providing groceries and community, not only to the Japanese, but to all people in the Bay Area. Having been run by three successive generations of Takahashis, the business has withstood extraordinary challenges and overcame devastating obstacles. One sad example of this, is that the market was closed for several years in the 1940s when the Takahashi family was interned in the World War II Japanese relocation camps, first in San Bruno, California, and then in Utah.

After being released from the internment camps, Kenge Takahashi joined the Army, and served honorably as an infantryman in the highly decorated, all-Japanese 422nd Regiment of United States Army, F Company. After completing his service, Kenge returned to his family business, and prepared to meet the ever-changing needs of his customers. Over the next few decades the Takahashi Market grew to meet the changing demographics of its clientele and stopped carrying fishing tackle and began stocking Hawaiian food in response to a growing population of a Hawaiian community, resulting from airline hires.

Mr. Speaker, while the Takahashi Market has occupied many storefronts at various locations on the Peninsula during its 100 year history, the store continuously maintain its extraordinary reputation as a reliable, family-owned and run business that specializes in products and foods to sustain the Japanese community, and now also the Hawaiian community. On the occasion of its centennial, Takahashi Market is remodeling to add a commercial kitchen, once again, expanding and diversifying the business to offer prepared foods for sale.

I urge all of my colleagues to join me in recognizing the Takahashi Market for its 100 years of outstanding achievements on the Peninsula and extend my hope that many more generations of Takahashis enjoy the success and community involvement of the Takahashi Market.

TRIBUTE TO THE FOX CHAPEL HIGH SCHOOL MARCHING BAND

HON. MELISSA A. HART

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Ms. HART. Mr. Speaker, I would like to take this opportunity to congratulate The Fox Chapel High School Marching Band of Pittsburgh for its success at the Gator Bowl on December 31, 2005.

The Fox Chapel High School Marching Band traveled to Jacksonville, Florida to play in the Gator Bowl. While at the game the bands' performance won nine awards. The band won five awards at the field show, including first place in Class A and also won Outstanding awards for general effect, auxiliary, marching and maneuvering and music. In addition to the five awards won on the field, the band also won four awards at the parade, including first place in Class A, as well as three Outstanding awards.

I ask my colleagues in the United States House of Representatives to join me in congratulating The Fox Chapel High School Marching Band. It is an honor to represent the Fourth Congressional District of Pennsylvania and a pleasure to salute a distinguished group like The Fox Chapel High School Marching Band.

IN RECOGNITION OF LUCY NOLES GREEN

HON. MIKE ROGERS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. ROGERS of Alabama. Mr. Speaker, I rise today to recognize Ms. Lucy Noles Green, of Randolph County, Alabama. Ms. Green had a very special birthday recently, having turned 105 years old on December 31, a day which she celebrated with family and friends in the Hawk community where she lives.

From 1900 until today, Ms. Green has lived in the Hawk community. She has enjoyed life, and fondly recalls playing the organ and sewing. She has witnessed the introduction of cars, computers, and laundry machines, wars, depressions, and peaceful times alike. She was married to Thomas Emmett Green for sixty years, and together they raised five sons. These days Ms. Green enjoys visitors and family, and her 14 grandchildren.

I am proud to recognize Ms. Green today in the House, and congratulate her on this important milestone in her life. I wish her all the best and many more enjoyable years with her family and friends.

CONGRATULATING THE GAINESVILLE FUTURE FARMERS OF AMERICA CHAPTER AT THE SOUTHWESTERN EXHIBITION AND LIVESTOCK SHOW IN FORT WORTH

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. BURGESS. Mr. Speaker, I rise today to congratulate members of the Gainesville Future Farmers of America (FFA) Chapter for their opportunity to exhibit livestock at The Southwestern Exhibition and Livestock Show in Fort Worth.

Seven members of the Gainesville FFA Chapter participated in events in late January. Among the youth project exhibited were five lambs and two goats. Marlee Bell also exhibited a first place spring heifer in the Brangus junior heifer show.

The Gainesville FFA chapter has been attending the Fort Worth Stock show for some time now, and they look forward to continuing their participation for years to come.

This is the 110th year for the show, and is billed as "the nation's oldest livestock show." Participating in the show teaches students agricultural principles along with animal husbandry and livestock judging skills.

I extend my sincere congratulations to these the youth of the Gainesville FFA Chapter for their success and participation. I wish them the best of luck in their dedicated pursuit in future opportunities.

COMMEMORATION OF BOB MARLEY'S BIRTHDAY

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. RANGEL. Mr. Speaker, today I rise to pay homage to a man who gave a voice to the voiceless first in his native Jamaica and then throughout the world. The legendary reggae singer Bob Marley would have turned 61 on Monday, February 6 and it is appropriate that we pause to recognize the extraordinary impact of his life and work. Not only did Marley define reggae music as we know it today, but he introduced it outside his native land of Jamaica, achieving international superstar status and shaping music on a global scale. His message of freedom and empowerment resonated everywhere and was an inspiration to a generation.

While evolving his sound to encompass rock and African themes, Marley never diluted his message, underpinning his music with the politics and theology of his Rastafarian beliefs and his personal struggles in Jamaica. He has inspired everyone from Stevie Wonder to The Clash with his lyrics.

His music was a social force, calling for opportunity, justice and freedom and challenging those who sought change to act to achieve it. Throughout his career, he was influenced by the gulf between haves and have-nots, a culture of oppression that was particularly evident in his poverty- and crime-ridden homeland. Reggae's mesmerizing rhythms carried an undeniable signature that rose to the fore of the music scene in the 1970s, largely through the recorded work of Marley and his group the Wailers. Some of his albums, such as Natty Dread and Rastaman Vibration endure as reggae milestones that gave a voice to the poor of Jamaica and, by extension, the world. Much of his music today aims to uplift the impoverished and powerless, instilling in them a beautiful sense of dignity in their culture, despite the hardships they encountered in their daily lives. In 1978, he received a United Nations Peace Award for his attempts to calm the warring factions of Jamaican politics and played at Zimbabwe's independence celebrations in 1980, where he came to learn that more Zimbabweans knew the lyrics of his song than they did the words of the national anthem.

Marley died prematurely at age 36 in 1981, after doctors discovered a cancerous growth on his foot haphazardly after a soccer game. Despite his death, the heartbeat reggae rhythms of the music that he left behind continue to thrive today. Moreover, Jamaica itself has been transformed by his legacy. Marley was buried on the island with full state honors on May 21, 1981. In a crowning irony, given the reviled status that Rastafarians and their music had once suffered at the hands of the Jamaican government, Marley's pacifist reggae anthem, "One Love," was adapted as a theme song by the Jamaican Tourist Board.

Bob Marley continues to live today in our hearts and minds, as does his music. With anthems such as "Get Up Stand" he continues to fight for those who feel they cannot. With such a vision, Marley continues to be worthy of recognition and remembrance.

TRIBUTE TO TERENCE W. STARZ, MD

HON. MELISSA A. HART

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Ms. HART. Mr. Speaker, I would like to take this opportunity to congratulate Terence W. Starz, M.D., who will become the 141st president of the Allegheny County Medical Society on January 28, 2006.

Dr. Starz is an internal medicine physician at University of Pittsburgh Medical Center Presbyterian Hospital. He is board-certified by the American Board of Internal Medicine, with a subspecialty in Rheumatology. He currently serves as a Delegate to the Pennsylvania Medical Society and is a member on the Allegheny County Medical Society Foundation Board.

Over the years Dr. Starz has been influential in the medical field. He was a prominent figure in the creation of the Obesity Task Force, a collaboration of medical personnel, hospitals and business affiliates, to help identify the cause of obesity and help promote healthy living and eating habits, for adults as well as for children. Dr. Starz stands firm with his view of diversity in the medical profession and disparity of treatment in minority patients.

On Saturday, January 28, 2006, Dr. Terence W. Starz will officially take the stand as the 141st president of the Allegheny County Medical Society.

I ask my colleagues in the United States House of Representatives to join me in honoring Dr. Terence W. Starz, M.D. It is an honor to represent the Fourth Congressional District of Pennsylvania and a pleasure to salute such a distinguished person like Dr. Starz.

IN RECOGNITION OF DR. GEORGE C. SMITH, SR.

HON. MIKE ROGERS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. ROGERS of Alabama. Mr. Speaker, I rise today to pay tribute to Dr. George C. Smith, Sr., of Lineville, Alabama. Dr. Smith is a highly accomplished medical doctor and public servant, and will soon be retiring from Clay County Medical Clinics.

In 1965, Dr. Smith began his career as a medical doctor. Dr. Smith was actively involved in the Medical Association of Alabama, the American and Alabama Academies of Family Physicians, as well as other state medical committees. Dr. Smith also served on the city of Lineville City Council from 1973 to 1984, as well as president of both the Alabama Cattlemen's Association from 1985 to 1986 and the Southeastern Livestock Exposition from 1994 to 1996.

Dr. Smith has spent his career helping others, both in the field of medicine and as a public servant in Clay County. His hard work and dedication in public healthcare will certainly be missed. I congratulate Dr. Smith for his many accomplishments over the years, and wish him all the best in his retirement.

IN HONOR AND REMEMBRANCE OF DANIEL D. DRAKE

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. KUCINICH. Mr. Speaker, I rise today in honor and memory of Daniel D. Drake, beloved husband, father, grandfather, outstanding educator and administrator, and friend and mentor to countless individuals, in and out of the classroom.

Equipped with a sharp mind, integrity, a kind heart and a strong work ethic, Mr. Drake forged a personal journey lined with educational and professional accomplishments that sprung from humble beginnings. His devotion to public education and community service is framed by his legacy of unwavering commitment and outreach to African-American youth of our community, a commitment that continues to guide our young women and men toward the light of academic and professional achievement. The accomplishments of Daniel D. Drake are numerous and significant. He was a football and track star at East High School in Cleveland, where he graduated in

1951. He was awarded college scholarships in football and track and excelled in both sports at Miami University, where he graduated with a degree in education in 1955. He taught at Thomas Edison School in Cleveland and then became an administrator at Collinwood High School.

Mr. Drake continued his education, earning a master's degree and a doctorate degree in educational administration from the University of Akron. He served as principal of East High School, the Cleveland School of Science and also at John F. Kennedy High School. He also served as a community superintendent with the Milwaukee Public Schools before returning to Cleveland and accepting a faculty position at Cleveland State University. Mr. Drake also founded and served as the first president of the Metropolitan Cleveland Alliance of Black School Educators, whose mission of addressing the needs of African-American students remains unwavering.

Mr. Speaker and colleagues, please join me in honor and remembrance of Daniel D. Drake, whose devotion to his family and to the youth of Cleveland remains a beacon of hope and possibility throughout our community. I offer my heartfelt condolences to his wife of 44 years, Adrienne; to his daughter, Adriana; to his sons, Darian and Daniel; to his three grandchildren, and to his extended family and many friends. Mr. Drake's inspiring vision and steadfast service continues to pave the way for educational and professional opportunities for the people of our community, young and old, and he will be remembered always.

CONGRATULATING THE COOKE COUNTY 4-H AT THE SOUTHWESTERN EXHIBITION AND LIVESTOCK SHOW IN FORT WORTH

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. BURGESS. Mr. Speaker, I rise today to congratulate members of the Cooke County 4-H for their opportunity to exhibit livestock and compete at The Southwestern Exhibition and Livestock Show in Fort Worth. Around 30 members of the Cooke County 4-H participated in events in late January.

Special congratulations are in order for additional team and individual winners at the show. Abe Fuhrmann, Garin Taylor, Crystal Fuhrmann and Erin Wyrick won first place for a senior team in the dairy cattle judging contest. Crystal Fuhrmann was also distinguished as the "high point" for an individual senior. Alyssa Smithson, Katherine Parkhill, Justin Smithson and Chris Aitchison comprised the first place team at the junior goat judging contest. Garin Taylor exhibited the "Best of Breed" and "Best Opposite of Breed Palomino" in the Youth Rabbit Show. Taylor's rabbit was also the "Best of Show" second runner-up. Cooper Alexander exhibited the "Best Opposite of Breed Holland Lop," also in the rabbit show.

There were an estimated 10,000 entries by Texas 4-H and Future Farmers of America, FFA, youth at the Fort Worth Stock Show. It is a prestige to have such success for our local youth.

This is the 110th year for the show, and is billed as "the nation's oldest livestock show." Participating in the show teaches students agricultural principles along with animal husbandry and livestock judging skills.

I extend my sincere congratulations to these the youth of the Cooke County 4-H for their success and participation. I wish them the best of luck in their dedicated pursuit in future opportunities.

TWENTY-FIFTH ANNIVERSARY OF MARVIN SCOTT AT WPIX—CHANNEL 11

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. RANGEL. Mr. Speaker, today I rise to recognize a passionate newsman, Marvin Scott of WPIX—Channel 11, who has dedicated more than 35 years to bringing accurate and unbiased news to all New Yorkers and to enter into the RECORD a Daily News article commemorating Scott's career. Last year marked a great milestone—Scott's 25-year anniversary at WPIX.

For the last quarter century, New Yorkers have welcomed Scott into their homes each evening because the Bronx-born reporter has had his finger on the pulse of the community. From a very young age, Scott wanted to be a reporter. His dream actually started when he sold a photo of a Bronx fire to the Daily News and upon return from the fire, held his first "news broadcast" to his Bronx neighbors, Scott jokingly recounts. Throughout his career, which first began in radio but then WNYW—Channel 5 before his arrival to WPIX—Channel 11, Scott has covered space shuttle launches, interviewed world and local leaders, and most recently traveled to Iraq and spent Christmas with U.S. troops. It is this type of sacrifice and sensitivity that has made Scott an informative and integral part of the New York City media.

One such story that is a testament to Scott's remarkable ability to connect with his viewers is the story of Stephanie Collado, a young girl from Brooklyn who years ago needed a heart transplant. Scott reported on her family's plight and remains in touch with Collado even today, years after the operation. As Scott says, he continues to live his dream. Hopefully, he will do so for many more years to come.

[From the New York Daily News, Nov. 28, 2005]

GREAT SCOTT! 25 YRS. AT 'PIX

(By Richard Huff)

Marvin Scott and a few close friends will gather today to mark a rare milestone in television—a quarter of a century at one station.

The Bronx-born reporter has been with WPIX/Ch. 11 for 25 years, and spent 10 years before that with WNYW/Ch. 5. He was in radio even before that.

"I had a dream of someday being able to be a reporter in New York," said Scott. "A role model of mine as a kid was Gabe Pressman [now at WNBC/Ch. 4] and now Gabe is a contemporary and a friend."

Scott's dream to be a reporter actually started when he sold a photo of a Bronx fire to the Daily News. He made $27 for the sale.

His first news broadcast, he joked, was when he returned from the fire and delivered the details to his neighbors at Mount Eden and Townsend Aves., in the Bronx.

Decades later, his audience is bigger, of course.

"I do it for the adrenaline and a love for what I do," he said. "I could not think about doing anything else. No two days are alike."

Scott's a stickler for details. Indeed, he's been keeping track of every story he's done for years. He figures he's told more than 4,600 stories in 25 years. "Sure, some are clunkers," he said. "I'll never turn down an assignment."

Scott says he's been on the front line of history. He's covered Space Shuttle launches, interviewed world leaders and spent Christmas last year with soldiers in Iraq. "I'm a story teller," he said. "Every day I tell a story that runs from a minute-and-a-half to three minutes."

One story that has stuck with him for years concerns Stephanie Collado, a young girl from Brooklyn who needed a heart transplant. He followed her story from her mother's pleas for help, to the operation and the years after. He still talks to Collado from time to time.

"It was human," he said. "It was a human story about a little girl in need. Adults would not have handled it as courageously as she did."

The key to survival is being a good writer, and being sensitive, Scott said. That's advice he gives all young journalists, including his daughter Jill Scott, a reporter for New York 1 News.

"I'm most proud of the fact that she did it on her own," Scott said. "She made her own opportunities and she got noticed. It makes me so proud."

And no, even though many of those who started out in the business when Scott did have thrown in the towel, he has no intention of stepping aside anytime soon.

"I just feel blessed," he said. "I am a kid from the Bronx and I'm continuing to fulfill my dream."

TRIBUTE TO JEFFREY SEBASTIAN

HON. MELISSA A. HART

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Ms. HART. Mr. Speaker, I would like to take this opportunity to congratulate the recipient of the 2005 Milken Family Foundation National Educator Award, Jeffrey Sebastian.

The Milken National Educator Award is the largest teacher recognition program in the U.S., and honors K-12 teachers, principals, and specialists across America with $25,000 individual awards. Milken Educators are recommended by a blue ribbon committee of education and policy leaders appointed by each state's department of education. The final selections are made in the fall by the Milken Family Foundation.

Jeffrey Sebastian, a teacher at Quaker Valley High School in Leetsdale, Pennsylvania, was one of the recipients. Having received this award, Jeffrey will participate in the annual Milken National Education Conference this spring in Washington, DC.

I ask my colleagues in the United States House of Representatives to join me in honoring Jeffrey Sebastian for all of his hard work in education. It is an honor to represent the Fourth Congressional District of Pennsylvania and a pleasure to salute such a dedicated individual like Jeffrey.

IN HONOR AND REMEMBRANCE OF GEMMA SZABO

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. KUCINICH. Mr. Speaker, I rise today in honor and remembrance of my dear friend, Gemma Szabo of North Olmsted, Ohio—loving mother, grandmother, great-grandmother, dedicated community volunteer and activist, and dear friend and mentor to many.

Family, faith and community were central to her life. A united team, Mrs. Szabo and her beloved late husband, Charles J. Sr., raised their five children: Charles Jr., Gary, Johanna, Tim and Peter, and were a consistent source of strength for them, for their grandchildren and for their great-grandchildren. For many years, Mrs. Szabo worked as a school crossing guard. Aside from her family and work, Mrs. Szabo's energy, generous heart and willingness to make a difference led her to volunteer her time and talents throughout her community. Spiritual and devout, Mrs. Szabo was a long-time member and leader within her parish, St. Richard Catholic Church, where she was an active member of the Ladies Guild.

Mrs. Szabo's endless energy, sharp mind and quick wit easily drew others to her. A staunch Democrat, Mrs. Szabo was a life-long member of the North Olmsted Democratic Club and was a Ward Leader for several years. She had the unique ability to inspire and motivate others, recruiting numerous friends and neighbors to become involved in the election process. Mrs. Szabo forged indelible bonds with civic and political leaders that extended from North Olmsted City Hall to Cleveland City Hall.

Mr. Speaker and Colleagues, please join me in honor and remembrance of Gemma Szabo. Her unwavering commitment to her family, friends and to her community framed her life and served to make a difference within the lives of countless individuals, including my own life, and Gemma Szabo will be remembered always.

IN RECOGNITION OF STEPHEN J. WHITE

HON. MIKE ROGERS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. ROGERS of Alabama. Mr. Speaker, Sergeant First Class Stephen J. White, 39, of Talladega, Alabama, died on January 5, 2006, in Iraq. Sergeant First Class White was assigned to the Third Battalion, 16th Field Artillery, Second Brigade Combat Team of the Fourth Infantry Division based in Fort Hood, Texas. According to initial reports, Sergeant White died when an improvised explosive device detonated near his convoy. His survivors include his wife and seven children.

White was a devoted husband, father, and member of the community, Mr. Speaker. Honorable service to our nation characterized his long career in the Army, which spanned 20 years and four previous tours of duty.

Words cannot express the sense of sadness we have for his family, and for the gratitude our country feels for his service. This Nation will forever hold him closely in our hearts, and remember his sacrifice and that of his family as a remembrance of his bravery and willingness to serve.

Thank you, Mr. Speaker, for the House's remembrance on this mournful day.

CONGRATULATIONS TO THE CITY OF DENTON PARKS AND RECREATION DEPARTMENT

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. BURGESS. Mr. Speaker, I rise today to recognize the City of Denton Parks and Recreation Department on their receipt of National Recreation and Park Association's 2006 "Excellence in Aquatics" award in the Class IV population category.

To receive this honor, agencies must prove a commitment to excellence in aquatics facilities and programming for the community. The programming must be comprehensive with an emphasis on aquatic recreation as a lifelong choice for personal and family recreation. The agency must also have a professional training program that assures the highest quality staffing, plus outreach programs outside its own facilities. Professional staff is also required to show involvement in aquatics activities at the local, State, regional, or national levels over the last 5 years. Facilities and programs must also be fully accessible for people with disabilities.

The award will be presented during the National Aquatic Conference at the Association's annual conference held at the Austin Convention Center in Austin, Texas on March 3, 2006.

I am honored to represent a city that truly cares for providing for its citizens the best in quality recreational activities. It is a mark of a caring community. I extend my sincere congratulations to Mayor Euline Brock and the City of Denton Parks and Recreation Department for their service to the community by maintaining a level of excellence worthy of such an award.

THE NEW MARKETS TAX CREDIT

HON. RON LEWIS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. LEWIS of Kentucky. Mr. Speaker, I commend my colleagues to an article entitled, "Luring Business Developers Into Low-Income Areas" that appeared in the New York Times on Wednesday, January 25, 2006.

The article details how the New Markets Tax Credit is transforming low-income urban and rural communities across the United States. The New Markets Tax Credit works by providing investors with a tax credit worth thirty-nine cents over seven years for every dollar in private capital they invest in economically distressed communities.

These investments flow to the low-income areas through intermediaries called Community Development Entities or CDEs. The CDEs are extremely knowledgeable about the communities they serve. They also are very experienced in providing the types of patient, flexible capital which conventional lenders and investors are unable to provide directly in that market.

The empowerment of CDEs is just one example of what sets the New Markets Tax Credit program apart from other anti-poverty initiatives. It also makes sense from a business standpoint since it helps to manage the risk to investors, many of whom had never before invested in a low income community.

In Kentucky, the Credit is being utilized to finance economic development projects, invest in new and expanding businesses, provide community services including health care and child care, and create new jobs. Since the first allocations were awarded in March 2003, seven Community Development Entities in Kentucky have been awarded a total of $153 million.

These investments are supporting a wide range of projects in Kentucky, particularly in rural areas where the need is so great. Community Ventures Corporation, a CDE based in Lexington, is using the Credit to enable a coffee company to purchase land in West Louisville, build a new 17,500 square foot facility, and renovate a 4,000 square foot structure. The new business site is located in a census tract where the poverty rate is 44.8%. This project doubled the number of employees at the company, enabling it to develop new product lines, allowing it to start a new division to refurbish coffee-brewing equipment, and even made possible the enhancement of its employee-training program.

Another Kentucky-based CDE, Kentucky Highlands Investment Corporation, was awarded $22 million in New Market Tax Credits last year. It plans to use its allocation to invest in health-related businesses and health care facilities throughout rural Eastern Kentucky where many counties are considered to be medically underserved.

In September, I introduced a bipartisan bill, H.R. 3957, which extends the Credit for five years. I hope my colleagues will take some time to read the attached article, learn more about how the program is improving economically distressed urban and rural areas across America and support our efforts in Congress to extend this program.

[From the New York Times, Jan. 25, 2006]

LURING BUSINESS DEVELOPERS INTO LOW-INCOME AREAS

(By Lisa Chamberlain)

When the low-income housing tax credit was created in 1986, it took years for developers, investors and advocates to understand the program and to learn how to make the most use of it. Now it is one of the most important tools for low-income residential real estate, responsible for creating approximately 1.5 million units of affordable housing to date.

Advocates of a little-known development tool called new-market tax credits, the only federal tax credit program for commercial projects in low-income areas, believe the same thing is beginning to happen with commercial real estate. Efforts are already under way to reauthorize the program, which expires next year.

Enacted in December 2000, the new-market tax credit program is helping to create jobs and revitalize streets and even entire downtowns. Projects large and small that most financial specialists agree would never come to fruition otherwise are taking shape because of tax credits worth $500,000 to $150 million and even more.

For instance, the tax credits are currently financing the rebuilding of a butter manufacturing cooperative in New Ulm, Minn., that was damaged in a fire. The loss of the cooperative put 130 people out of work, caused economic hardship for 400 family farms and indirectly affected hundreds more jobs in the low-income rural area.

Just south of the central business district in Grand Rapids, Mich., is a nearly completed arts-related mixed-use redevelopment project in an area largely abandoned since the 1950's. Called Martineau Division-Oakes, the 12,000-square-foot commercial space is occupied by the art department of Calvin College and a cafe. There are also 23 spaces for artists to live and work in. Once the project got off the ground, the city committed $2 million to landscaping, repaving, new lighting, signage and sidewalk improvements in the development's neighborhood.

"It's a very flexible and powerful program," said Robert Poznanski, president of the New Markets Support Company, one of the main recipients of credits from the Treasury Department, which administers the program.

"It's driven by market forces. The federal government doesn't say, 'Use it for this type of business.' It can be used for commercial real estate, a charter school or a community center, as long as the application is competitive and the project is in a low-income area as identified by census tract data."

Tax credits make riskier projects more viable by reducing the debt associated with development costs. Private investors pay less in taxes and the developer passes the savings on to the community by, for example, lowering rent per square foot.

The federal program will allocate up to $15 billion in tax credits to community development groups over seven years to make businesses or commercial real estate projects in low-income areas more attractive to private investors. Applicants vie for the credits, and so far the process has been highly competitive. In the first three rounds of allocation, beginning in 2003, demand for the credits has outpaced supply by 10 times, according to figures provided by the Treasury Department. Though the tax credits can be used for business development, the majority are used for commercial real estate because of the way the program is structured.

The most recent allocation was completed last fall, bringing the total disbursement to $8 billion to date. Recipients have five years to use the tax credits to attract private investment, or they are withdrawn and can be reissued elsewhere through 2014.

Dennis Sturtevant, president of Dwelling Place, a nonprofit community development organization, spearheaded the Martineau Division-Oakes project in Grand Rapids. The project used historic tax credits and other grants, in addition to new-market tax credits, to generate $2.2 million in equity from National City Bank.

"When you're talking about tough neighborhoods and all the costs associated with renovating dilapidated, obsolete buildings with lead and everything else," Mr. Sturtevant said, "you need to combine all these resources to make it work."

Sean P. Welsh, regional president of National City Bank, said: "It required a lot of creativity. It's complicated, but it's really driving a lot of the urban redevelopment in this and other areas around the country."

One deal that most everyone agrees would have never happened were it not for the tax credits is Plaza Verde in South Minneapolis. Formerly an abandoned building in a low-income Hispanic neighborhood, it is now a 43,000-square-foot business incubator, with locally owned retailing on the ground floor, office space on the second level and a theater company on the top floor.

JoAnna Hicks is the director of real estate for the Neighborhood Development Center, the nonprofit organization that spearheaded Plaza Verde. Even after expenses were deducted, including legal fees, new-market tax credits created almost $1 million in equity for a project that cost $4.2 million total.

"Because it's such a complicated financial tool, it's hard for small nonprofits to use," Ms. Hicks said. "But now that we understand it better, we're able to apply it to other projects as well."

Using another allocation of the tax credits, Ms. Hicks's organization has also undertaken the development of a nearly completed public market, called Midtown Global Market, a $17 million project that will be home to more than 60 vendors selling fresh and prepared foods, as well as handmade arts and crafts.

As the program has only begun to mature, larger projects are just getting under way. Bridgeport, Conn., is undertaking a major redevelopment of its downtown, with approximately 25 percent of the financing coming from new-market tax credits. The total project is estimated to cost up to $150 million.

"If structured properly, it makes a real difference between a scary development and the deal not being done at all," said Kevin Gremse, director of the National Development Council, which provides financial advice and services to municipalities.

Mr. Gremse used his organization's new-market tax credit allocation to attract a New York City-based private developer, Eric Anderson of Urban Green Builders, to take on the task of reviving downtown Bridgeport, which has suffered years of decline.

Advocates are cautiously optimistic that the program will be reauthorized in 2007. Congress recently passed a bill to assist Gulf Coast states with rebuilding efforts after Hurricanes Rita and Katrina, which included $1 billion more for the new-market tax credit program geared toward that region.

"The fact that Congress expanded the program is a good sign," said Robert Rapoza, who manages the New Market Tax Credit Coalition, an advocacy organization pushing for the program's reauthorization. "But we have work to do. This is a new tool and government-sponsored finance is relatively uncommon. We're continuing to put together data to strengthen our case."

Of course, it helps to have banks advocating for the tax credit as well. As one of the more active players in the tax credit industry, Zachary Boyers, a senior vice president of US Bank in St. Louis, closed more than 50 deals involving new-market tax credits in 2005 alone.

"The banking community is behind this," Mr. Boyers said. "We are deeply involved in spreading the word. We are working on ways to quantify its impact, which is not easy to do. But other investors, including banks and large corporations, would confirm that they would never be investing in these projects without it."

TRIBUTE TO RYAN PATTON

HON. MELISSA A. HART

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Ms. HART. Mr. Speaker, I would like to take this opportunity to congratulate and welcome home Ryan Patton from Iraq.

Sergeant Ryan Patton has returned home after spending a year serving his country patrolling the streets of Baghdad. Sergeant Patton was part of the 458 Engineers Unit of the U.S. Army Reserve, and found out he was going to be deployed to Iraq in November 2003. After months of training Sergeant Patton left for Iraq in March 2004. Sergeant Patton left his wife and two young children to defend his country.

Sergeant Patton has returned to his family life, and his old job as the assistant manager at #1 Cochran's Collision Center in Monroeville, Pennsylvania.

I ask my colleagues in the United States House of Representatives to join me in honoring Sergeant Ryan Patton for all of his work and dedication to defending our country. It is an honor to represent the Fourth Congressional District of Pennsylvania and a pleasure to salute such a dedicated soldier like Sergeant Patton.

IN RECOGNITION OF 150TH ANNIVERSARY OF AUBURN UNIVERSITY, AUBURN, ALABAMA

HON. MIKE ROGERS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. ROGERS of Alabama. Mr. Speaker, I rise today to pay tribute to Auburn University on its Sesquicentennial Celebration. On February 1, 1856, then-Governor of Alabama, John Winston, signed a charter that established the East Alabama Male College, a small, private male liberal arts college. One hundred fifty years later, Auburn University has become one of the pre-eminent research universities in the South, and most certainly one of our state's most proud and cherished institutions of higher learning.

The University was founded on a three-part mission: instruction, research and outreach. Auburn maintains this mission to this day, boasting an enrollment of over 23,000 students and employing a highly talented faculty of over 1,200. Many of its 13 schools are ranked among our nation's best, and its athletic program certainly is cause for celebration for thousands and thousands of fans and alumni every year.

I am honored today to congratulate Auburn University on its first 150 years, and am proud and humbled for the opportunity to represent its students, faculty and administrators here in the House of Representatives. I thank the House for joining me for this important occasion, and wish Auburn all the best in its next 150 years, here in the "loveliest village on the plains." War Eagle!

IN HONOR AND REMEMBRANCE OF DR. CARMELITA A. THOMAS, PRESIDENT OF TRI-C WEST

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. KUCINICH. Mr. Speaker, I rise today in honor and remembrance of Dr. Carmelita Thomas, beloved wife, mother, grandmother, sister and friend. Dr. Thomas leaves behind a remarkable legacy of leadership, accomplishment and activism on behalf of higher education and throughout our Cleveland community.

Dr. Thomas was born and raised in northern Italy. Her family emigrated to Cleveland when she was a high school senior, yet she quickly overcame the challenges of a new culture and language and graduated with her class from Warrensville Heights High School. With a steady focus on academic achievement, Dr. Thomas earned several bachelors, masters and doctoral degrees from the University of California at Los Angeles. After many years in leadership roles at the Los Angeles Community College District, Dr. Thomas brought her passion, knowledge, expertise and energy to Cleveland, where she served as the President of Cuyahoga Community College, Western Campus, where 12,000 students enroll each semester. Dr. Thomas was respected and admired by colleagues and leaders in both the public and private sectors. Her unwavering focus on improving the College is reflected throughout the Campus. Because of her direction, Tri-C's Western Campus is now a training center for digital technology for visual communication and also includes cutting-edge medical technology used to train health care professionals, such as electroneuro technology and diagnostic sonography.

Dr. Thomas' commitment to others extended beyond the campus of Tri-C. Her boundless energy and commitment to making a positive difference is evidenced within her activism and volunteer service on many local boards and organizations, including her service as a member of the Board of Trustees at St. John Westshore Hospital; the Parma Area Chamber of Commerce; the American Council on Education; and the American Council for International and Intercultural Educational Organizations. Dr. Thomas' personal interests mirrored the passion and energy she committed to her profession, and ranged in scope from travel, to cooking, to the classical arts.

Mr. Speaker and Colleagues, please join me in honor and remembrance of Dr. Carmelita A. Thomas. I offer my deepest condolences to her husband of 45 years, James E. Thomas; to her daughters, Sondra and Sonia; to her sons-in-law, Timothy and Jim; to her grandsons, Jeremy and Bradley; to her brothers and sisters; and to her extended family members and many friends. Her numerous accomplishments, marked by personal and professional integrity, served to make a positive difference in all areas of higher education throughout the Western Campus of Tri-C and throughout our entire community, and she will be remembered always.

HAPPY NEW YEAR TO THE ORGANIZATION OF CHINESE AMERICANS

HON. MELISSA A. HART

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Ms. HART. Mr. Speaker, I would like to wish the membership of the Organization of Chinese Americans a healthy and happy New Year for the year 4704, the year of the Dog.

The New Year is a time for reflection and thanksgiving for the joys of life and loved ones and I am thankful for the richness that this organization brings to my region. Chinese Americans have made great contributions of western Pennsylvania and to our nation as a whole and I am very honored for this opportunity to wish them the best year yet in 4704.

I ask my colleagues in the United States House of Representatives to join me in wishing the members of the organization of Chinese Americans a very happy and prosperous New Year.

IN RECOGNITION OF LAURA STEELE

HON. MIKE ROGERS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. ROGERS of Alabama. Mr. Speaker, it is my honor to pay tribute to Miss Laura Steele, an Auburn University student who recently led an effort to change the University's "Holiday Tree" back to its more traditional name, "Christmas Tree."

In December of 2005, Miss Steele took issue with an attempt to rename the school's traditional tree. In a widely publicized initiative, Steele, a senator-at-large and Chairwoman of the Auburn College of Republicans, introduced a resolution before the Student Government Association calling for the more traditional "Christmas Tree" name to be restored for use at Auburn.

Her campaign gathered hundreds of signatures in support of the effort, and led to more than 20,000 calls of support to student leaders. She garnered the support of our state legislators, Governor Riley, and influential leaders across our state and around the world. I was delighted to see her resolution adopted, and am pleased that next year Auburn's tree will once again be known as its Christmas Tree.

We are indeed proud of Miss Steele. Her efforts to recognize and promote the true meaning of Christmas here at Auburn should serve as a reminder for us all that our belief in the Almighty is one of the core strengths of our nation. I applaud her efforts, and congratulate her for her leadership, her courage, and abiding faith.

TRIBUTE TO HARRY LESTER

HON. SANDER M. LEVIN

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. LEVIN. Mr. Speaker, I rise today to honor the career of Harry Lester upon his retirement as the Director of District 2 of the United Steelworkers of America.

Mr. Lester has dedicated his life's work to the well-being and safety of steelworkers. The son of a West Virginia coal miner, who was tragically lost in a mining accident, Mr. Lester grew up to be a leading advocate for protecting the rights of steelworkers through the creation and preservation of decent wages, health benefits, workplace safety regulations, and education opportunities.

Mr. Lester began his career as an engineer with the McLouth Steel Corporation in Trenton, Michigan, in 1954 and rose to national attention in the 1980s for his leading role in the fight to save the company from bankruptcy and to preserve the jobs of its 3,600 steelworkers. As the USWA District Director and a member of the McLouth Steel Board of Directors, Mr. Lester orchestrated in 1988 the largest employee stock buyout of the time. While the company ultimately closed its doors in 1994, he has never ceased in his efforts to preserve the United States' steel industry and to provide for the rights of USWA members.

Notably, Mr. Lester engineered a Voluntary Employee Benefit Association plan and negotiated Cooperative Partnership Agreements between USWA members and National Steel Corporation. As steel companies consolidated, Mr. Lester worked at the negotiating table to guarantee that these protections were not lost. The language he ensured in these negotiations for workplace health and safety was recognized by the Supreme Court as the standard for workers. He has extended his championing of workers' rights into negotiations with Dow Chemical, National Standard, Quanex, and DSC, Ltd.

In addition to his commitment to his fellow workers, Mr. Lester has been a vigorous citizen of Michigan and is deeply committed to improving education and health in the State of Michigan. He and his wife established the Harry E. & Mary E. Lester Scholarship Fund for Steelworker Children to provide scholarship opportunities for the children of steelworkers in District Two. He was appointed by three governors to serve on the Huron-Clinton Metropolitan Authority's Board of Commissioners and serves as a board member to many distinguished organizations, including the United Way of Michigan, the Michigan State AFL–CIO Board, the National Kidney Foundation of Michigan, and the Greater Detroit-Area Health Council. Mr. Lester initiated and co-chairs the Annual Downriver Community Prayer Breakfast in Southgate, Michigan, and holds the rank of "Ambassador" for the Detroit Muslim Temple of the Shrine. Recently, Mr. Lester was granted an Honorary Doctorate Degree in Humanities from Michigan State University.

Harry Lester often stood at the intersection of workers' rights and public policy. He understood that federal trade policy, and especially unfair trade practices of other nations, dramatically impacted the industry in which he worked and he was tireless in his efforts to impact change in Washington, DC. He also understood the real impact of federal policies on workers and their families when it came to retirement security, pensions and health care. He was passionate and articulate both in terms of impacting legislation, and informing his membership of the importance of those policies on their work and family life.

Mr. Speaker, I have been privileged over the years to work with Harry Lester, to observe his leadership and to call him a friend, I ask my colleagues to join me in paying tribute to Harry Lester for his decades of tireless and effective service to our Nation's workers.

TRIBUTE TO ALYSSA IMLER

HON. MELISSA A. HART

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Ms. HART. Mr. Speaker, I would like to take this opportunity to congratulate Alyssa Imler, a teacher at Our Lady of the Most Blessed Sacrament in Harrison, for her 2006 Disney Teacher of the Year Award nomination.

Imler has a unique method of teaching which keeps the students engaged in learning. She was nominated for this award anonymously by one of her students. If Imler is among the 40 Teacher of the Year honorees, she will be flown to Los Angeles for a red-carpet recognition ceremony. The honorees and their principals will participate in a week long educators conference. Honorees will also receive $10,000 while their schools will receive $5,000.

I ask my colleagues in the United States House of Representatives to join me in congratulating Alyssa Imler and her 2006 Disney Teacher of the Year Award nomination. It is an honor to represent the Fourth Congressional District of Pennsylvania and a pleasure to salute such a dedicated individual such as Alyssa Imler.

VIOLA GEORGIAN BALESTRERI

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. FARR. Mr. Speaker, I rise today to honor the life of Viola Georgian Balestreri, who passed away on January 25, 2006 in Carmel, California, at the age of 92. Viola was born on September 19, 1913 in Brooklyn, New York to Amelia and Aniello Crispo and was the only girl among 11 brothers—a special child, indeed! After the death of her husband Vincent Balestreri, whom she married in 1938, she moved to Carmel in 1957. She taught at Junipero Serra School for many years while raising her two children, to whom she was devoted.

Viola was a strong woman who never criticized or said a harsh word about anyone. She was eternally optimistic and grateful for her family and the blessings in her life. She was a loving mother, mother-in-law, grandmother, sister and friend.

Her son, Ted Balestreri, owner of the famed Sardine Factory restaurant in Monterey, has been a good friend of mine and I grieve with him over the loss of his mother. I wish to extend my deepest sympathies to Ted and the entire Balestreri family on the loss of this beloved woman.

TRIBUTE TO THE SISTERS OF ST. EMMA ON THEIR 75TH ANNIVERSARY

HON. MELISSA A. HART

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Ms. HART. Mr. Speaker, I would like to take this opportunity to congratulate the Sisters of St. Emma for their 75th anniversary this month.

Many in western Pennsylvania are familiar with the Sisters of St. Emma's years of service at Saint Vincent College and Arch abbey, where until 1987 they prepared and served thousands of meals to students, the Benedictine Brothers, and even to the Pittsburgh Steelers during their Summer Training Camps at Saint Vincent. From 1987 until the present, the Sisters of St. Emma have continued to be a vibrant part of the area by operating a thriving retreat house just outside of Greensburg, PA. At the retreat house, the Sisters prepare meals, offer hospitality, and a place for hundreds of people annually who come to Saint Emma for Spiritual growth and fulfillment.

I ask my colleagues in the United States House of Representatives to join me in congratulating the Sisters of St. Emma for their 75th anniversary. It is an honor to represent the Fourth Congressional District of Pennsylvania and a pleasure to salute a dedicated community such as the Sisters of St. Emma.

IN RECOGNITION OF RUTH COTNEY

HON. MIKE ROGERS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. ROGERS of Alabama. Mr. Speaker, I rise today to pay tribute to a dedicated public servant and member of the community, Ms. Ruth Cotney, of Chambers County, Alabama. Ms. Cotney is a well-known and highly respected individual who has served her community, held public office, and is now completing her 50th year of employment at the Chambers County tax office.

In 1955, Ms. Cotney began her career at the Chambers County Courthouse in a time where most tax bills were written by hand. In 1979, Ms. Cotney was appointed by Governor Fob James to replace the retired tax collector. She completed the balance of the term, ran again, and won in 1984 for a 6-year term. She retired in 1991, but continues to work part-time at the tax collector's office.

I am proud to recognize Ms. Cotney today in the House, and congratulate her on her long and fulfilling career in service to the people of Chambers County. I wish her many more years of continued success and service.

SERGEANT HENRY PRENDES MEMORIAL ACT OF 2006 INCREASES PENALTIES FOR COP KILLERS

HON. JON C. PORTER

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. PORTER. Mr. Speaker, I am proud to introduce the Sergeant Henry Prendes Memorial Act of 2006 today. This legislation will create a new Federal criminal offense for the killing, the attempt to kill or conspiring to kill, any public safety officer for a public agency that receives Federal funding. This would include State and local police officers, judicial officers, judicial employees, and firefighters

Mr. Speaker, simply put, this legislation makes it a Federal crime to kill a public safety officer of any type. Under this legislation, a criminal convicted of the above charges will be punished by a fine and imprisonment for no less than 30 years, or for life, or sentenced to death.

I have named this vitally important piece of legislation after a constituent of mine, SGT Henry Prendes. Sergeant Prendes of the Las Vegas Metropolitan Police Department, was killed in the line of duty on Wednesday, February 1, 2006.

SGT Henry Prendes joined the Las Vegas Metropolitan Police Department on February 26, 1991. He spent his first years patrolling the east Las Vegas neighborhood surrounding Charleston and Lamb Boulevards and was quickly promoted to Field Training Officer. On January 2, 1999, after working 1 year for the narcotics office as a detective, Henry Prendes was promoted to sergeant. As a sergeant he worked for the Crimes against Youth and Family Department, and later as Patrol Sergeant in the South West Area Command.

Sergeant Prendes was a native of Nevada and graduated from Las Vegas High School where he was vice president of his senior class and captain of the football team. He is survived by his wife Dawn and two daughters from a previous marriage, Kylee and Brooke. Sergeant Prendes, along with his family, was a devoutly religious man. He engaged in bible study at home with his wife and mentored children in his spare time. Before he died, he was in the process of building a 17-acre youth camp in Montana called, Creation Camp Jesus.

SGT Henry Prendes could be described as everyone's friend, always having a smile on his face, and always helping those in need. Some help people because they are police officers, but Henry was a police officer to help people.

Mr. Speaker, the pride I feel today in introducing this vitally important piece of legislation is overshadowed by the sorry I feel for the entire Prendes family.

INTRODUCING H.R. 4710, THE JUDICIARY RENT REFORM ACT OF 2006

HON. F. JAMES SENSENBRENNER, JR.

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. SENSENBRENNER. Mr. Speaker, today I rise to introduce H.R. 4710, the "Judiciary Rent Reform Act of 2006." The purpose of this legislation is to ensure the rent paid by the Federal judiciary is rationally and equitably related to the actual costs of providing their facilities.

It may shock Members to learn that this is not the case nor has it been for some time. In fact, the Federal judiciary pays the General Services Administration (GSA) hundreds of millions of dollars more each year than the actual costs of maintaining and operating buildings. Chief Justice Roberts has characterized this practice as resulting in the judiciary being used "as a profit center for GSA."

By law, GSA is authorized to establish the rent to be paid by the judiciary. GSA's rates are supposed to approximate commercially equivalent rates. Their charges are not subject to negotiation.

Since 1986, the judiciary's annual rent payments to GSA have increased from $133 million to almost $920 million. As a percentage of the judiciary's operating budget, these payments have climbed from 15.7 percent to 20 percent. In contrast, rent for executive branch agencies averages less than one percent of their budgets and no department is charged more than 3 percent.

To cope with soaring GSA rent payments, the courts have been compelled to make difficult choices, including a decision over 18 months to reduce employee ranks by 1,850 positions—a full 8 percent of on board staffing levels.

Consider the irony: the staffing required by the Judiciary Branch is compromised because the Executive Branch charges our courts too much for rent.

In the absence of a swift Congressional response to redress this imbalance, there is little doubt that the continued budgetary pressures, which will result from constantly rising rental costs, will cause the loss of even more court personnel.

The administration of justice should not be compromised because our courts are denied the ability to contain their rental costs. The judiciary has taken available action to reign in these expenses, including adopting a 24–month moratorium on new construction and requesting rent relief from GSA. To date though, GSA has refused to work with the courts in any meaningful way to find a solution.

As Chairman of the Judiciary Committee, I believe Congress has a duty to act to ensure the fair, efficient, and equitable adjudication of all legitimate issues brought before the courts. The use of the courts as a "profit center" can no longer be tolerated.

The bill I am introducing today will put an end to this practice by replacing the "commercially-equivalent" rent calculation that GSA has used with a requirement that the courts pay only for the actual operating expenses incurred in providing space. This simple change will result in a dramatic savings in the judiciary's rent expense.

This change will also give the judiciary needed flexibility, accountability, and responsibility for balancing the requirements imposed by their capital costs, personnel, and nonsalary expenses.

The courts are best positioned to know whether the administration of justice will benefit more by hiring new personnel than by constructing a new courthouse or renovating an older one. Our courts should be empowered to make the decision that is in the public interest and that is most likely to enhance their ability to adjudicate and resolve cases.

In his inaugural year-end report on the Federal judiciary, Chief Justice Roberts addressed this issue directly:

> The disparity between the judiciary's rent and that of other government agencies, and between the cost to GSA of providing space and the amount charged to the judiciary, is unfair . . . [and] the judiciary must . . . find a long-term solution to the problem of ever-increasing rent payments that drain resources needed for the courts to fulfill their vital mission.

Mr. Speaker, the solution is for Congress to enact the "Judiciary Rent Reform Act of 2006," which will require the Administrator of General Services to charge the judiciary only the actual cost of providing space in federally-owned facilities or the actual costs of procuring and servicing leases in privately-owned space.

In addition to allowing the federal courts to better plan and control their budget, which will improve the delivery of judicial services to the public, this Act will improve the transparency associated with how the judiciary's funds are spent.

I urge my colleagues to join me in supporting this bill, which I am introducing in direct response to the plea of the Chief Justice that this issue "now warrant[s] immediate attention and action." I and the Judiciary Conference of the U.S. look forward to the House passing this legislation without delay.

TRIBUTE TO THE VOLUNTEERS OF THE McCANDLESS ROTARY CLUB

HON. MELISSA A. HART

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Ms. HART. Mr. Speaker, I would like to take this opportunity to honor the volunteers of the McCandless Rotary Club.

The Rotary Club of McCandless was founded in 1988, and will be holding its 10th annual Volunteer Recognition Dinner, Thursday, February 9, 2006. For the past 10 years this dinner has honored individuals who have given their time, talent and finances in support of churches and synagogues, human service agencies, fire and police departments and Ivan flood recovery, This year, however, will be the first year that blood and organ donors will be honored. The club also gives $10,000 to various community agencies in the are and hosts a monthly bingo game for the residents of the Regency Nursing Home.

The dinner honors the commitment of McCandless residents, including: Frank and Judy Holby, organ donors; Rev. Jean Henderson, platelet donor; Marlynn Baldo, blood and platelet donor; Patricia DiClemente, organ, platelet and blood donor; John Dauer, whole blood donor; and Edmond Olszewski, bone marrow donor. The club has recently completed a shipment of computers and pharmaceuticals to Benin. Two club members, Denny and Kathy Crawford, have participated in two Polio National Immunization Days in Africa.

I ask my colleagues in the United States House of Representatives to join me in honoring Pennsylvania American Water on receiving the Directors Award. It is an honor to represent the Fourth Congressional District of Pennsylvania and a pleasure to salute a dedicated club such as the Rotary Club of McCandless.

COMMEMORATING THE FIFTIETH ANNIVERSARY AND COMPLETION OF THE MODERNIZATION PROJECT AT HILLSDALE HIGH SCHOOL

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. LANTOS. Mr. Speaker, I am delighted to announce to my colleagues that on February 24, 2006, Hillsdale High School, in San Mateo California, which is in my Congressional District, will be commemorating its fiftieth anniversary and will be celebrating the completion of a modernization project that will ensure that Hillsdale's doors are open for students for another 50 years or more.

The San Mateo Union High School district has six outstanding high schools. Nearly 6 years the citizens of San Mateo voted for a $137.5 million bond measure to modernize these wonderful schools. Hillsdale High School determined to construct a new Student Services building as well as substantive remodeling of the library, science building, general education classrooms, the cafeteria, the theater, the auditorium, a music building, and the gym's and locker rooms. As a result of these renovations Hillsdale High School will continue to play a leading educational role in the San Mateo Union High School district.

Mr. Speaker, Hillsdale High School is truly an extraordinary learning institution. The award winning design of the school, profiled in Life Magazine when the school opened its doors 50 years ago, continues to receive praise and distinctions. Of special note is the fact that Hillsdale High School was recently recognized by the United States Department of Education as a National Blue Ribbon School of Excellence. This remarkable recognition was bestowed on only 260 schools in the United States. In addition to Hillsdale's achievements in the classroom, the school's rich athletic tradition displayed in league championships and distinguished alumni playing at the collegiate and professional levels.

Mr. Speaker, the modernization and new construction at Hillsdale High School was made possible because of the amazing dedication and work demonstrated by the Board of Trustees, community leaders, parents, school staff, the public at-large, and the now-retired Superintendent Thomas C. Mohr. Without their spectacular efforts, the modernization project would not have succeeded. I urge all my colleagues to join me in congratulating the Hillsdale High School community on the successful modernization of its facility and on its 50th anniversary.

NATIONAL SALUTE TO HOSPITALIZED VETERANS

HON. TED POE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. POE. Mr. Speaker, the National Salute to Hospitalized Veterans Week was established in 1978. It takes place every year during the week of February 14 and it is an opportunity to salute America's veterans and ensure to them that their sacrifices for their country are not forgotten. Next week, members of my district staff will visit the Michael E. DeBakey VA Medical Center in Houston.

They will pay tribute and honor to the brave soldiers there who were wounded in their valiant service to our country. They have made an enormous sacrifice to ensure that we all are able to live in freedom and we are indebted to them. This is the American people's chance to say thank you for that sacrifice. It is vitally important that we do not forget these defenders of freedom and do all that we can to help them along in their recovery.

I am proud to say that my staff will be bringing get well cards, and other tokens of appreciation, from the students of Deerwood Elementary School in Kingwood, Texas. It is a fitting tribute, from the young children to the soldiers, who have fought to guarantee the America they inherit is as free as it is today.

The entire 2nd Congressional District of Texas says thank you to these brave men and women for their service and their sacrifice. We wish them all a full and speedy recovery.

TRIBUTE TO DAVID H. SMITH

HON. JOHN T. SALAZAR

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. SALAZAR. Mr. Speaker, I rise today to congratulate David H. Smith of Rio Blanco County, as the honored recipient of the Wayne N. Aspinall Water Leader of the Year Award from the Colorado Water Congress.

The career of David H. Smith reflects his extraordinary dedication to the protection of water rights in the State of Colorado. His inspiring leadership on these very important issues is greatly appreciated by all citizens of Colorado.

Mr. Smith's passion for conservation and leadership in water issues lead to a 20-year tenure on the Colorado Water Conservation Board as well as 12 years of service as Rio Blanco County's director on the Colorado River Water Conservation Board. Mr. Smith's commitment to his community extends beyond water issues to service on the county planning commission and the local school board. Mr. Smith himself is a rancher in the region and has devoted his life to the protection and maintenance of this lifestyle.

Family and friends have been quick to praise Mr. Smith as someone who has exemplified genuine concern for the water rights of the citizens of Colorado. Mr. Smith displayed his resolve during the oil-shale boom in the 1970s and 1980s when he guaranteed the preservation of property and water rights in Western Colorado. Later, during the 2002 drought, Mr. Smith was instrumental in negotiating a water-sharing plan for White River Valley ranchers and farmers.

Even with all his public service, Mr. Smith maintains a strong family life, having been married to his wife Sue Ann for 53 years with two sons and a daughter.

Mr. Smith's story is one of compassion and commitment, not only for the protection of the rights of the ranchers and farmers in his region but also for the maintenance of a lifestyle learned from his great-grandfather, an immigrant from Scotland who introduced Mr. Smith to the ideas of irrigation. A life of service and leadership, of achievement and ambition, Mr. Smith's accomplishment is one that deserves recognition and respect by all citizens of Colorado who have benefited from his devotion.

It is a tremendous honor to stand today and publicly recognize Mr. David H. Smith for his many contributions to the community. It is my privilege to extend congratulations to Mr. Smith for the receipt of the Wayne N. Aspinall Water Leader of the Year Award.

A SALUTE TO HAM RADIO OPERATORS

HON. MIKE ROSS

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. ROSS. Mr. Speaker, I rise today to recognize the contributions of American citizens who are members of the Amateur Radio Relay League, known as HAM radio operators. Citizens throughout America dedicated to this hobby—a hobby that some people consider old fashioned or obsolete—were true heroes in the aftermath of Hurricane Katrina as they were often the only line of communication available into the storm ravaged areas.

Amateur radio operators are often overlooked in favor of flashier means of communication. As communities across the gulf coast and America learned this year, technology can be highly vulnerable. HAM radios, entirely self-contained transmitters, require no cell towers or satellites, simply a battery and a strip of wire as an antenna.

Just as after major earthquakes, tornadoes, and the terrorist attacks of 9/11, HAM operators around the country received an alert to stand by their radios to listen for calls for assistance. Following Hurricane Katrina, when cell phones and e-mail were useless, a HAM operator located in Connecticut alerted authorities about a woman trapped for 4 days without food or water and a Coast Guard Auxiliary in Cleveland arranged for a medevac for a woman in labor in New Orleans. These are just a few examples of the many lives that were saved with the critical intervention of HAM operators throughout the country.

Now more than ever, I am proud to be a licensed amateur radio operator. It is important to realize that every HAM radio operator in the Amateur Radio Emergency Service is a volunteer. This year, when disaster struck, hundreds of HAMs moved to the gulf coast to help in every way they could. Every one of which did so on a volunteer basis and their only goal was to assist in what became one of the worst natural disasters in America.

The dedication displayed by HAM radio operators in the aftermath of Hurricane Katrina sets a tremendous example for us all. The people whose lives were rescued as a result of the tireless dedication of HAM radio operators will forever be grateful to these selfless public servants.

TRIBUTE TO THE BULLETIN OF THE ATOMIC SCIENTISTS

HON. RUSH D. HOLT

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. HOLT. Mr. Speaker, as we face a world troubled by nuclear proliferation, weapons of mass destruction, potential pandemics, terrorism, space-based weaponry, and our own concern about our nation's ability to maintain its competitiveness in a changing world, it is important that we consider this resolution commending the Bulletin of the Atomic Scientists on the 60th year of its publication, whose mission to educate citizens and raise awareness on global security news and analysis as well as the appropriate roles of nuclear technology. That is why today I am introducing along with the Gentlemen from Massachusetts, Representative EDWARD MARKEY, a resolution commending the Bulletin of the Atomic Scientists for its 60 years of service to our nation and to the world.

Sixty years ago, a group of Manhattan Project scientists, who worked to create the first nuclear bombs on the mesas of Los Alamos, New Mexico, published the first issue of the Bulletin of the Atomic Scientists, to translate the realities made possible by the atomic bomb. Members of this early group include Hans Bethe, Albert Einstein, and J. Robert Oppenheimer, and the Bulletin continues to bring together some of the best minds in science and global security to provide unbiased, non-technical yet scientifically sound information critical to our survival today.

The Bulletin of the Atomic Scientists additionally created a visual representation of the humanity's potential for global destruction. It is the Doomsday Clock, ticking towards midnight, with midnight representing doomsday. The movement of the clock's hand is determined by the Bulletin's Board of Directors and Sponsors, a group of individuals who have worked on this issue for decades and include Nobel Prize winners, analysts, and others who have served in policy making decisions in both Democratic and Republican administrations.

The Doomsday Clock has moved forward and back 17 times in its 58 years of existence. Its last move was on February 27, 2002, and the clock now resides at 7 minutes to midnight, which is where the clock debuted in 1947.

The "Keepers of the Clock" stated on this last move, "Moving the clock's hands at this time reflects our growing concern that the international community has hit the "snooze" button rather than respond to the alarm."

It is now time to start waking up, and we take the lead in making the world safer, cleaner, and sustainable for our children, our grandchildren, and the generations to follow. This is the legacy that we must strive for in each action that we take.

HONORING THE WINNERS OF DEPTFORD TOWNSHIP SCHOOLS' POSTER AND ESSAY CONTEST IN REMEMBRANCE OF DR. MARTIN LUTHER KING JR. AND ROSA PARKS

HON. ROBERT E. ANDREWS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. ANDREWS. Mr. Speaker, I rise today to honor those students from Deptford Township schools who participated in a contest to honor Dr. Martin Luther King Jr. and Rosa Parks on January 11, 2006. The way in which these students portrayed their thoughts on Dr. King and Ms. Parks was touching and memorable.

During this contest, students were given the opportunity to express their thoughts on these important historical figures by creating a poster or writing an essay highlighting memorable events in the lives of these two heroic Americans. The contest corresponded with the annual celebration of Dr. King. The students whose essays and posters won are: Scott Medes, Andrea Akins, Lauren Perry, Rachel Hajna, Jimmy Kunkle, Sheena Williams, Sara Duffy, Zachary Kummer, Ashley Duffy, Danielle Hogan, Ronald Grace, Danika Atkinson, Jordan Johnson, Michael Baney, Justina Dougherty, Jared Field, Ann Mary Tullio, Nicholas Eisen, Madelyn Elliot and Sean Clason. Their works showed exceptional thought and creativity.

We have seen in the aftermath of Hurricane Katrina that Dr. King's and Mrs. Parks' message of justice for all people is still as important today as it was in the 1950's and 1960's. Although it disproportionately affected people of color, Hurricane Katrina affected anyone young enough, old enough or poor enough to be left behind. The students that participated in this contest embodied Dr. King's and Mrs. Parks' message and are truly an inspiration to all citizens of the United States of America.

The following are five of the winning essays:

MAKING A WORLD OF DIFFERENCE

(By Zachary Kummer, Grade 6)

As I sit in my classroom and look around, I see students of many different races. We are all here to learn and everyone has the same opportunity to get a good education. The teacher treats us all the same, and we use the same books, desks, fountains, and lavatories. All the students are together in the same classroom without any discrimination by race or religion. If Dr. Martin Luther King Jr. were alive today, he would see his dream fulfilled in my classroom.

Dr. Martin Luther King Jr. was a minister who believed in equality for all. He thought that the Constitution of the United States was meant for all people. His famous speech of "I Have a Dream" said that he dreamed of a time when people of all races and religions would be treated the same. Dr. King was influenced by many people. His grandfather, his father, Abraham Lincoln, and Rosa Parks were some of these people who had an influence on him.

Dr. King admired the courage Rosa Parks showed in her refusal to give up her seat on a bus. He respected her non-violent protest. Rosa Parks' action was one of the things that led to the boycott of the buses by people of color. Dr. King became involved in this peaceful action and showed that there is power when people join together in a protest.

Not only has the United States changed because of Dr. King, but the rest of the world has been influenced by his peaceful ways to bring about change in laws to give equality to all people. People of color in South Africa were influenced by Dr. King and have changed the apartheid laws.

In conclusion, the influence of Dr. Martin Luther King Jr. and Rosa Parks has greatly changed the rights of all people, especially minorities, from separation and discrimination to equality in all parts of our lives.

MAKING A WORLD OF DIFFERENCE

(By Andrea Akins, Grade 4)

Dr. Martin Luther King and Rosa Parks made a difference. For example, Dr. King was born Jan. 16, 1929 in Atlanta, Georgia. He always was thinking about solutions to solve racial prejudice. The civil rights bill ended discrimination of black Americans in 1964. One day Dr. King was shot and died.

In addition, Rosa Parks was born Feb. 4, 1913 in Alabama and was married sometime in 1932. She worked to help a lot of black people. White people always pushed her around and she was tired of it. One day Rosa Parks refused to give up her seat on a segregated bus. She was arrested and put in jail. A boycott was passed. Mr. Nixon and Dr. King got lawyers to take Rosa's case to court. The boycott worked.

Additionally, Rosa Parks and Dr. King had a lot in common. One thing they had in common was the bus boycott. Another thing they had in common was segregation. Of course they both wanted fairness.

In conclusion, Dr. King and Rosa Parks helped make a difference. They made a difference because they both wanted fairness. They helped blacks with problems and they made laws right. They made a difference.

MARTIN LUTHER KING, JR. AND ROSA PARKS—"MAKING A WORLD OF DIFFERENCE"

(By Rachel Hajna)

Martin Luther King, Jr. was born on January 15, 1929 in Atlanta, Georgia. His parents named him Michael at first, but later changed it to Martin Luther, which was his father's name. Martin had an older sister and a younger brother. Their mother always told them how special and wonderful they were. The King family was very religious.

Martin was best friends with a white boy, but when they started school the friend's Dad said they couldn't play anymore because Martin was black. The boys both cried.

Martin learned more about segregation as he got older. There were a lot of things that the black people were not allowed to do. They were not allowed to play on the beach or in the parks, they were not allowed to vote, and they could not live where they wanted. Martin knew this was unfair.

Martin graduated from Booker T. Washington High School in 1944. He was so smart that he skipped ninth and twelfth grades. He enrolled at Morehouse College when he was 15 years old. He also began preaching at Ebenezer Baptist Church where his father was the pastor and he became Reverend Martin Luther King, Jr. on February 25, 1948 when he was 19 years old.

Martin met Coretta Scott while attending Boston University. They were married on June 18, 1953 in Marion, Alabama. Martin became Dr. Martin Luther King, Jr. in 1955 after receiving his Ph.D. from Boston University.

Dr. King was one of the leaders of the Montgomery Bus Boycott. This was a huge success. Dr. King and other black leaders told the black people not to ride the buses. They did this because they learned that a woman named Rosa Parks was arrested and sent to jail on December 1, 1955 because she would not give up her bus seat to a white man. On November 13, 1956 the Supreme Court ruled that it was against the law to make black people sit at the back of the buses in Montgomery, Alabama. Now they could sit wherever they wanted.

Rosa Parks was born on February 4, 1913 in Tuskegee, Alabama. She grew up on a small farm with her brother, mother and grandparents. In 1932 she married barber and civil rights activist, Raymond Parks. Over the years, Rosa Parks received many awards and honors, including the Medal of Freedom Award, presented by President Clinton in 1996. Rosa Parks died recently on October 25, 2005 at the age of 92.

The boycott was the beginning of the Civil Rights Movement in America. On August 28, 1963 Dr. King led the March on Washington. This is where he gave his "I Have a Dream" speech. He wanted black and white people to live together in peace in America. In 1964 he received Time magazine's "Man of the Year" award. On July 2, 1964 President Johnson signed the Civil Rights bill into law, which meant that the black people could go wherever they wanted.

On December 10, 1964 Dr. King received the Nobel Peace Prize, which is one of the greatest honors any man can win. He was only 35 years old when he won the award making him youngest person to receive it.

On April 4, 1968 Dr. King went to Memphis, Tennessee to lead a march to help sanitation workers. He was shot and killed on this day. People all over the world wept. Dr. King made a difference by making black and white people get along.

I am very glad that Martin Luther King Jr. and Rosa Parks made a difference in our world.

HOW MARTIN LUTHER KING JR. CHANGED THE WORLD

(By Lauren Perry, Grade 4)

Martin Luther King Jr. and Rosa Parks changed the world from being prejudice forever.

Little did the community of Sweet Auburn, Atlanta, Georgia know that on the day of January 15, 1929, baby Martin Luther King Jr. would change the world. As Martin got older, everybody said that the last name King would suit him good.

Martin Luther King had many strong beliefs. He believed in non-segregation. Because of the time, many Americans in the South were separating the whites from the blacks. His other belief was non-violence. He solved many problems non-violently.

His parents always told him to have pride in himself. He always believed that having pride in yourself could take you various places. Believing everyone was equal and being free was the one thing that he would fight for.

He argued many times for the freedom of African Americans to go where they wanted to go and so on and so forth. But he always protested peacefully. He protested to put a stop to racial prejudice. He along with Rosa Parks boycotted many things like being prejudice.

Both African Americans thought segregation and being prejudice was injustice. Rosa Parks got arrested for, what I think, is very unfair. She got arrested for refusing to give up her seat to a white man.

After that incident, Martin Luther King Jr. knew something had to be done. Martin did many speeches, marches, and protests to bring attention to all Americans on what was going on.

On August 28, 1963 he made the one of the most memorable speeches in history. "I Have a Dream" was his speech. He dreamed that everyone would think that everyone was "brothers and sisters."

After his speech, a law was formed that no one could be prejudice or segregate. Many people's lives were changed by King's memorable speech. But things were about to change for him.

On April 4, 1968, Martin Luther King Jr. was standing on a hotel balcony talking to a friend, and suddenly . . . Boom! Martin Luther King Jr., at the age of 54, was shot and killed.

People all over the world were upset, but he will be remembered.

So, because of Martin Luther King Jr.'s pride and strength, he was shot and killed. From his strong non-violent beliefs, no segregation or being prejudice is ruining the world today.

TWO AMAZING LEADERS

(By Jimmy Kunkle, Grade 5)

Our world would be different if it weren't for two very brave people. Dr. Martin Luther King Jr. and Rosa Parks both fought for equal rights. Rosa Parks was born in 1913, and was very determined. She made a big difference because on December 1, 1955, she refused to give up her seat on a bus to a white man, and she was put in jail. This act determined many people and one of them was Dr. Martin Luther King Jr.

Dr. Martin Luther King Jr. was a very important and determined man. He led protests, marches, boycotts and all of his hard work won him the Nobel Peace Prize in 1964. On August 28, 1963, Martin made his "I Have a Dream" Speech. He dreamed that all mankind would be treated equally and that there would be no more violence. On April 4, 1968, he was shot and killed, but we still remember him, and we will never forget him.

So now you can see that two people can make a difference, and they did! They did not only make a difference, but they brought our world together. So that's how two unforgettable people made a world of difference, by not using violence.

TRIBUTE TO SISTER JEANNE O'LAUGHLIN: A COMMUNITY TREASURE AND LEGEND IN HER OWN TIME

HON. KENDRICK B. MEEK

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. MEEK of Florida. Mr. Speaker, rarely has a single person left so great a mark on a community as Sister Jeanne O'Laughlin.

When Sister Jean, as she is universally known, assumed the presidency of Barry College in 1981, it was a small all-girls institution. When she left nearly 25 years later, it was Barry University, a 9,000 student co-ed institution of higher learning, complete with a law school and a national reputation for excellence.

However, Sister Jean's achievements, as great as they are, pale when compared to the power of her personality and extraordinary impact she has had on virtually everyone she meets.

Last fall, South Florida CEO magazine did a profile of Sister Jean which I think captures some of the spirit of this remarkable woman, and I would like to share it with my colleagues.

THE NUN ON THE RUN

It is not every day you meet a nun whose license tag reads "Hugs 1" and whose sentences are punctuated with an endearing "honey." But then again, there is only one Sister Jeanne Marie O'Laughlin.

A few hugs here and a few "honeys" there—along with bulldog tenacity and a refusal to compromise her convictions—have helped O'Laughlin forge bonds with everyone from religious figures to football stars to dignitaries. Her new office at Barry University, where she recently become chancellor, is proof. The corridor is wallpapered with framed photos of O'Laughlin with the pope, presidents, sports stars and scores of other influential people.

About 100 plaques, keys to cities and the Greater Miami Chamber of Commerce's "Sand in My Shoes" award overwhelm glass-enclosed display cases. O'Laughlin says it was tough to choose from the hundreds she received during her 23-year tenure as president of Barry University.

"They just delivered the furniture today. You are my first external guest, honey," O'Laughlin, 76, says in a grandmotherly tone as she points out her private prayer closet. She proudly displays her collection of icons—artistic representations of sanctified Christians that are an integral part of worship in the Catholic faith. Directing attention to an icon of "Jesus the Teacher," O'Laughlin reveals. "With this one I look at the world through his eyes and see the humanity of children." She has a special place in her heart for children of all ages, perhaps because her own childhood, including World War II years spent in Detroit, was strained.

In 1935, when O'Laughlin was barely 6 years old, her mother died in childbirth. Her family became a single-parent household long before it was a societal norm. She describes her father, a draftsman at the Dodge car factory in Detroit, as a "good old Irish dad" who prayed the rosary every day and read the Bible to his family on Sundays. Her childhood memories are a mixture of pain, love and poverty.

"At times you had to pretty well fend for yourself. So maybe my creativity in fund-raising came out of that," O'Laughlin laughs now. "But my core values came from my father's training and education. Our family always cared for each other and loved one another. Sharing became an integral part of what we did. My dad cared. He even took in my mother's two brothers and two sisters when they got married, So I had a model even though our family was poor and motherless. I learned that family was important."

O'Laughlin's mother lived on in her imagination, stoked by her Aunt Edna's frequent recounting of stories. One tale in particular would forever direct the course of O'Laughlin's life—and arouse her passion for education.

"Aunt Edna told me that my mother valued education and that her whole desire when she died at age 29 was that her children would be educated. My dad promised her on her deathbed that we would be, and we all got college educations," O'Laughlin solemnly shares. "Missing a mother made me yearn to protect other mothers and babies."

Detroit left its impression, too, and an early experience with racism there, says O'Laughlin, led her to a lifetime of social action.

One day when she was 13 years old, a streetcar O'Laughlin was riding in suddenly jolted. Two black children fell into her lap, and she embraced them during the rest of the journey. To her surprise, when she stepped off the streetcar, a white man spit on her.

"I asked my dad why that man spit on me," recalls O'Laughlin, still obviously disturbed by the decades-old event. "He told me it was prejudice. I asked him what caused prejudice. He told me it was ignorance. I asked him how you get rid of ignorance. He said education."

The experience left O'Laughlin with a burning desire to help people—all people, and it eventually led her down the path towards joining the Dominican order of nuns. Three years later, she joined the Adrian (Mich.) Dominican Sisters, an international congregation of more than 970 vowed religious women whose roots go back to St. Dominic during the 13th century.

O'Laughlin began professing her first vows at age 17. That initial step towards becoming nun was followed by several years of exploration and training, until she became a permanent member of the order of the Dominican Sisters of Adrian. O'Laughlin took her final vows when she was 21—lying flat on her back in the midst of a battle with respiratory illness so severe her father feared it was her last breath.

After taking her final vows as a nun, O'Laughlin's next priority was getting the education that her mother had wanted for her. She earned a bachelor's degree and began her teaching career in the 1950s. She taught throughout Michigan at St. Agnes in Iron River, Detroit's Dominican High and Dearborn's St. Alphonsus. After she earned a master's degree in biology, the Archdiocese of Tucson, Ariz. hired her as a supervisor of schools. Even then, she continued to attend school, earning a doctorate in education from the University of Arizona.

A watershed moment in O'Laughlin's life was Pope John XXIII's issuance of the Vatican II documents between 1962 and 1965, which made several reforms to the Catholic church. Among the reforms were options for nuns to choose not to wear a habit, the traditional head covering and garment worn for centuries, and to have the choice of returning to their baptismal names or keeping their religious name. That is when O'Laughlin chose to exchange her religious name of Sister John Anthony for her baptismal name, and became Sister Jeanne Marie.

Shortly thereafter, in the late 1960s, O'Laughlin was appointed superintendent of the Adrian Dominican Independent School System, overseeing schools in Arizona, Nevada, New Mexico and California. The administrative position left her with the experience she would later need to build a thriving university.

"I learned a great deal about diversity during that time because I worked with Indians [Native Americans] and Hispanics. I gained a great respect for various cultures. I learned to look at sameness instead of differences," O'Laughlin says.

Along with her development as an administrator, O'Laughlin continued to evolve her concept of being a woman in the religious order. By 1970, she shed her habit, after examining the rationale of wearing it in light of Vatican II's redefining of nuns as members of the laity and not of the clergy. O'Laughlin says it seemed logical, in that light, for her to dress like the laity. Her sister helped her pick out clothes, which included the fashion of the day.

While today O'Laughlin wears business suits with sophisticated style, she says at the time it was like going from adolescence to menopause in 10 minutes as she began to understand what it meant to be a woman.

"All of a sudden my identity was not neuter. I had to worry about hair and clothing. It was a whole new experience for me. I had no idea how to dress," O'Laughlin says. "I had to learn the things most women learned in the normal maturation process from girl to woman."

She also further reexamined her relationships with non-clergy. "It was always very easy to define in the habit. I just kept my place and my distance," she says. "As part of the laity, I had to begin relating to the laity on their level as who I was as a woman."

As her career progressed, O'Laughlin became the executive assistant to the president at St. Louis University in St. Louis and also spent time as an adjunct faculty member at the University of San Francisco and Siena Heights College in Adrian before assuming the presidency at Miami Shores-based Barry University in 1981.

TRANSFORMING BARRY

When O'Laughlin first took the helm at Barry, it was a small all-girls college. When she retired in June 2005, it was a 9,000-student co-ed university with a law school, an athletics program, and a $22 million endowment.

After dropping to her knees and dedicating the school to "the Lord"—saying, she recalls, that it was His institution and He had to save it and develop it because she couldn't do it with her own strength—she set out to instill what she calls the "midnight shakes." Her goal was for Barry's mission to be so clear in the minds of the staff that if she suddenly awakened them at midnight they could recite it, nearly in their sleep.

The mission was (and still is) to offer students a quality education, assure a religious dimension to that education, offer a caring environment and provide community service. O'Laughlin saw the biggest challenge to fulfilling that mission and building Barry into Florida's fourth-largest private university was finances.

"It's easy to have dreams and visions, but you need the resources to fulfill those dreams and visions. The most awful thing was worrying at night about the people who worked here getting paid: their mortgages, their car payments, their children." O'Laughlin recalls. "When I got here the payroll was about $250,000 every two weeks and then it got up to $2.5 million every two weeks. The greatest challenge to me is to try to reward and keep the people who shared this mission and ministry with us."

O'Laughlin embarked on an exuberant fundraising campaign, often using the sheer force of her personality to fulfill what had become a true mission for her. In fact, some have described her as a cross between P.T. Barnum and Mother Theresa because of her unusual fundraising efforts, which included a lot of arm-twisting and the acceptance of a dare or two.

There was the time she took a $2 million dare to learn ballroom dancing. O'Laughlin became the first Dominican nun to debut at the US Ballroom Championships, wearing a floor-length royal blue gown. She donned a feather boa and white satin gown on a millionaire's yacht and sang "Don't Cry for Me, Argentina" for a $1.5 million donation.

O'Laughlin's 16-hour days were not only spent building Barry University, but also building the community. In 1987, when Boynton Beach-based community radio station WXEL was plagued with personnel problems, plummeting membership and donations—even a lightning strike on its transmitter, the station turned to Barry University for help, and O'Laughlin led the university's takeover of the station.

Talk of turning the community station over to a Catholic school drew its critics, but those voices were muted when O'Laughlin herself spearheaded the move to wash away the station's $2.5 million debt with the help of a single donor: Dwayne O. Andreas, retired chairman of agricultural giant Archer Daniels Midland Co. Andreas had donated the money to Barry at the urging of his wife, an alumnus. O'Laughlin asked Andreas if she could use it to save the radio station and he agreed.

O'Laughlin hired Jerry Carr, a broadcasting veteran and turnaround expert who had helped revive Miami's Channel 33 and Paxson television stations. Carr credits O'Laughlin with single-handedly rescuing WXEL from bankruptcy. Many didn't believe O'Laughlin could keep a Catholic agenda out of the station's programming, but Carr says she never told him what to air. In fact, Carr even ran a Planned Parenthood advertising campaign, a taboo subject in the Catholic church.

"I did not even have to ask Sister Jeanne for permission because I knew her heart was to do whatever was necessary to serve the community in a non-sectarian role," Carr recalls. "She always told me I should not do anything other than what was expected in the world of broadcasting. She was the greatest boss I ever had and the most wonderful lady I've ever met in my life." WXEL rebounded and revenues skyrocketed. When Barry took over, the station's net value was $354,573. It was valued at $5.93 million when O'Laughlin handed over the chair of the station to Sister Linda Bevilacqua.

O'Laughlin smiles when she talks about WXEL, but admits it wasn't quite a dream come true in every respect. "My dream was to use the radio station as an instrument to increase access to education in the community," she says. "We just didn't have the resources. But God used me as an instrument to save it, and if that's all he wanted and all he wrote, then that's OK. It's a huge success. I am proud of that."

In 1999, O'Laughlin oversaw the launch of Barry's law school in Orlando. She battled for three years to gain accreditation from the American Bar Association (ABA). Barry law professor Stanley M. Talcott, who was dean during the battle, says he will always remember O'Laughlin's determination.

"I watched Sister Jeanne as she advocated for the law school. I found her to be extraordinarily effective, well-informed, and just powerful," he says.

CHANGING THE MEANING OF "NUN"

O'Laughlin has never taken the easy path, and her life has been tinged with controversy since the Detroit streetcar incident. She proudly calls herself "the nun on the run" because she is constantly on the go and knows she has helped quash some stereotypes about Catholic religious women and women in general—things she never intended to do. As she sees it, she was just following her faith.

In a time when nuns did not typically fraternize with political potentates and influential business leaders, O'Laughlin was the first woman on Miami's influential Orange Bowl Committee and the Non-Group, an informal fraternity of local power brokers. She has served on countless boards and committees and has been urged to run for political office.

Never afraid of being outspoken, O'Laughlin has worked to do more than educate her students. She has labored to fight drug abuse, feed the homeless, assist immigrants and protect children.

"We have to understand the dignity and beauty of each human being, even though we don't agree with them because of a different tradition or history," says O'Laughlin, who has also fostered the most diverse enrollment in Barry's history, with 47 percent of its students identified as black or Latino.

Among her many exploits, O'Laughlin took responsibility for 300 Haitian immigrants when they were released from the Krome Detention Center in 1982 and placed with sponsors who provided them with food, housing, and employment; took in Romanian detainees; helped get residency for an Iranian couple and their children; and found a home for a Chinese baby.

Certainly O'Laughlin's most controversial engagement was her role in 2000's Elian Gonzalez saga. Moved by the little boy whose mother had died while they were fleeing Cuba by raft to the US, she initially acted as a neutral mediator, hosting meetings between the boy's Miami relatives and his Cuban grandmothers in their tug-of-war for custody. Hers was an unpopular position that spawned death threats, bomb threats, and plenty of hate mail.

Then, suddenly, the neutral nun became an ardent advocate for the Miami relatives, urging the government to allow Elian to stay in the US. O'Laughlin says her emotions included fear, compassion, and rejection during a period she describes as one of the most difficult in her life, but insists her faith got her through.

"When I went to bed at night, I had to tell the Lord it was in his hands, and, 'If I offended, I ask pardon. If I haven't, I sure hope you'll help me the next day,'" O'Laughlin reveals. "When I talked to [former Attorney General] Janet Reno about Elian after it was over, she quoted Truman. She said we were both searching for the truth."

Generally, O'Laughlin's disarming manner has been key to her success in helping people, say those who have worked closely with her.

"With the 'honey' here and the 'honey' there, she gets a lot of things accomplished," says Leslie Pantin Jr., chairman of Barry's board of trustees. "She continues to instill in Barry a unique, caring environment while being involved in every major cause we've had in South Florida, from the airport to rebuilding after Hurricane Andrew to the fight against drugs, and of course the Elian Gonzalez position."

O'Laughlin may be loathe to admit it, but one of her toughest fights was her personal battle with lung cancer. She underwent two lung cancer surgeries in the past few years (she never smoked) but has hardly slowed down. After stepping down as Barry's president last summer to allow a new face with a new perspective to take the university to the next level, she continued to focus on education, albeit with a slightly different twist. O'Laughlin's mission now is to teach women how to open universities in developing countries.

"It would be really great if the Lord would let me, before I turn up my toes, play a role in getting schools started and I don't care at what level—because we'll never have peace, we'll never have a legitimate fight against poverty, unless we have education," she says.

In her quasi-retired life, O'Laughlin remains involved in various South Florida organizations, and has faith that the region will become a model that the whole world will envy.

"South Florida has all the right ingredients: good people, an embracing climate, and welcoming shores," O'Laughlin says. "My vision and hope is that we continue to open our arms and caress our people and energize them to create a greater state and a greater South Florida by giving their gifts back to this great place."

TRIBUTE TO WILFRED "MICKYE" JOHNSON

HON. JIM NUSSLE

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. NUSSLE. Mr. Speaker, today I rise to recognize an Iowan who serves as a great community leader and role model for youth, Wilfred "Mickye" Johnson of Cedar Falls.

A native of eastern Iowa, Mickye has worked with the Classic Upward Bound Program at the University of Northern Iowa since 1988, and has been its director since 1994. Through his work, Mickye has helped countless students attend college and receive high-level academic instruction during their high school years.

In addition to his duties with the Upward Bound program, Mickye has had a number of volunteer roles with various groups, including the Iowa Commission on the Status of African Americans, the Iowa Community Health Leadership Institute, the Waterloo Community Development Board, the Iowa Child Support Advisory Committee, and the Methodist Church Administrative Council. Additionally, he has worked to promote business opportunities and community involvement for African-American professionals and leaders in the Cedar Valley community in Iowa.

Mickye's work on behalf of young people extends beyond the classroom. For seven years now he has been a featured speaker for my Youth Summit, which brings together students from all over eastern Iowa to learn about leadership, education, and teamwork. Mickye has served as a motivational speaker at this event, and he always gives a challenging and productive message to the students in attendance. He has often used the humor of a simple lemon as a prop to impress upon his students the importance of life skills and character education to improve their lives.

Mickye received his Bachelor of Arts degree in Political Science from the University of Northern Iowa, and also holds a Masters of Education Degree. A believer in lifelong learning, he is also pursuing a Ph.D. in Higher Education Administration from the University of Northern Iowa.

Mr. Speaker, it is my honor to recognize Mickye Johnson for his good work. His service and leadership in Iowa make him a role model for any believer in education and community service.

TRIBUTE TO MIKE REAUME

HON. KEN CALVERT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. CALVERT. Mr. Speaker, I rise today to recognize and honor Mike Reaume for his dedication and commitment to improving the community of Corona, California. On January 14, 2006, the Corona Chamber of Commerce recognized Mike for serving as the chairman of the board for the chamber during 2005.

After joining the Corona Chamber in 1999, Mike quickly became an active member of various chamber committees. His involvement included work with the Website, Ambassadors, and Corona Night with the Angels Committees. While serving on the chamber's board of directors, Mike was elected as vice president, chairman-elect, and, most recently, chairman of the board. In addition to his dedication to the chamber, Mike owns an insurance brokerage firm, Reaume Insurance Services, which specializes in employee benefits for employers and individuals.

During Mike's term as chairman, the chamber continued to grow in membership and develop new strategies to strengthen the relationships within the business community. The chamber exceeded the goals it set for the year by increasing membership up to nearly 1,150 members representing over 35,000 jobs in the region. Furthermore, the new members made an immediate impact by noticeably increasing the participation levels and attendance at chamber events.

Community-based organizations, like chambers of commerce, rely extensively on committed and dynamic individuals who take the initiative to address important issues facing their community. Mike's dedicated service epitomizes the selfless, hard-working spirit that is the backbone of communities throughout our great nation. The Corona Chamber and the community of Corona are significantly better off thanks to Mike's tireless efforts.

I want to express my appreciation for Mike's tremendous contributions on behalf of our entire community and congratulate him on the tremendous leadership he displayed as chairman of the board.

A TRIBUTE TO THE LIFE OF MAYOR WILLIAM J. COOK

HON. MIKE ROSS

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. ROSS. Mr. Speaker, I rise today to honor the life and legacy of Mayor William "Billy Joe" J. Cook of Camden, Arkansas who died Friday, December 16, 2005 at the age of 80.

A Navy veteran, Mayor Cook attended Arkansas Teachers College in Conway where he obtained a dual degree in business and mathematics. Working for ten years as a salesman for Burroughs Business Machines in Little Rock, Pine Bluff, and El Dorado, Mayor Cook decided to go into business with his father as a distributor of Texaco products in Camden.

No stranger to public service and remembered for his utmost integrity, Mayor Cook served on the Camden City Council for 7 years and as mayor of Camden for 2 years. In his free time, Mayor Cook enjoyed spending time outdoors tending to his garden and raising Tennessee Walking horses.

My heartfelt condolences go out to Mayor Cook's wife, Helen Lynch Cook; his daughter, Cindy Cook Tittle; and his sister, Weegie Watts. While Mayor Cook may no longer be with us, his legacy and his spirit will always live on in all the lives he touched.

CELEBRATING THE BIRTH OF SANJNA VIJAYA PANDIT

HON. JOE WILSON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. WILSON of South Carolina. Mr. Speaker, today I am happy to congratulate Rahul and Lavannya Pandit of Houston, Texas, on the birth of their new baby daughter. Sanjna Vijaya Pandit was born on January 12, 2006, at 2:20 a.m., weighing 7 pounds, 5 ounces and measuring 19 inches long. Sanjna has been born into a loving home, where she will be raised by parents who are devoted to her well-being and bright future. Her birth is a blessing.

TRIBUTE TO MR. GEORGE WEEKS

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. KILDEE. Mr. Speaker, I rise to honor George Weeks, who is retiring as a political columnist from The Detroit News, where he has written for over 20 years. George has been the premiere political columnist for Michigan for over two decades.

George Weeks was born in 1932 in Traverse City, MI. A graduate of Traverse City High School in 1950, Weeks stayed close to home, earning his undergraduate degree in journalism from Michigan State University just 4 years later.

George Weeks spent the first 15 years of his journalism career at United Press International, working as a Lansing staff correspondent and later Bureau chief, Detroit Bureau radio and news editor, diplomatic correspondent, and Washington foreign editor. He also entered public service as press secretary, special counsel, and executive secretary for Michigan Governor William G. Milliken, who later remarked of Weeks's character and credibility as the chief reason Weeks was able to seamlessly move from journalism to public service and back.

In 1981, Weeks resumed his studies as a Kennedy Fellow at the prestigious Harvard University Institute of Politics. However, Weeks's love for on-the-record journalism brought him back to print as a political columnist for the Detroit News in 1983, where he remained until his retirement. During that time he freelanced many articles and has written several books on Michigan. Weeks was honored for his 40 years as journalist, historian, and public servant with a well-deserved place in the Michigan Journalism Hall of Fame in 1996.

Mr. Speaker, for over 20 years, George Weeks brought a keen eye, a sharp wit and a unique perspective to Michigan and national politics. His work will be greatly missed by the people of Michigan.

HONORING THE RETIREMENT OF GEORGE WEEKS

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. DINGELL. Mr. Speaker, today I rise to pay tribute to my dear friend, George Weeks, on the occasion of his retirement from the Detroit News after 22 years of distinguished service.

A long-time Michigan resident, George graduated from Traverse City High School in 1950. He then earned a bachelor's degree from Michigan State University in 1954. In 1981, George returned to the academic world at the Harvard University Institute of Politics as a Kennedy Fellow.

George began his journalism career at United Press International in 1954. During his 15 years there his duties included Lansing staff correspondent, Detroit Bureau radio and news editor, Lansing Bureau Chief, diplomatic correspondent and Washington foreign editor. In 1969 George began his career in the staff of Governor William G. Milliken as press secretary and later became Milliken's chief of staff. After 14 years in public service, George resumed his journalism career, becoming a political columnist for The Detroit News.

Over the span of his career, George has covered the White House, State Department and Pentagon, was a panelist on "Meet the Press," and was a member of the White House Correspondents Association, the State Department Correspondents Association and Overseas Writers. He is also a recipient of the Outstanding Alumni Award of MSU's College of Communications Arts and an inductee into the Michigan Journalism Hall of Fame. A noted author, George has published "Stewards of the State: The Governors of Michigan," "Sleeping Bear: Its Lore, Legends and First People," "Sleeping Bear: Yesterday and Today," and co-authored "Michigan: Visions of Our Past."

His many accomplishments serve as a lasting example of excellence in journalism. Michigan has been well-served by George Weeks, his insight and knowledge of Michigan politics will be deeply missed.

I would like to thank George for his dedicated service both to the Detroit News and the Michigan community. As he enters his retirement years, I would ask that my colleagues join with Deborah and I to wish him and his wife, Mollie, a very happy, healthy and relaxing future.

TRIBUTE TO MR. GEORGE WEEKS

HON. FRED UPTON

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. UPTON. Mr. Speaker, I rise today to pay tribute to Mr. George Weeks, a long-time political journalist for the Detroit News, who is set to retire from writing his weekly column. Mr. Weeks has had a long and illustrious career as a journalist—evidenced by his induction into the Michigan Journalism Hall of Fame in 1996. However, his accolades and accomplishments are by no means limited to the field of journalism.

Mr. Weeks not only reported political news, but helped make some of it himself. He served as press secretary and chief of staff for Governor William G. Milliken for 14 years. Mr. Weeks used the expertise he gained in Governor Milliken's office to earn the position of a Kennedy Fellow at Harvard University.

Mr. Weeks, a native of Traverse City, MI, is a true Michiganian—an expert, not only in Michigan politics, but in Michigan culture and history as well. I would like to extend my thanks to him for all of his good work and wish him well in his retirement. The Wolverine State is better off for the contributions of George Weeks.

HONORING GEORGE WEEKS ON HIS RETIREMENT

HON. JOHN J.H. "JOE" SCHWARZ

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. SCHWARZ of Michigan. Mr. Speaker, I rise today to honor George Weeks as he retires as a columnist for The Detroit News.

George Weeks has seen it all. No one knows more about the issues that are important to Michigan than him. He's been around politics and government longer than most people I know, and as such, like few others, he can be counted on to provide insight and perspective on the news of the day. He not only tells readers what the news is, but he tells them what it means.

George began his journalism career with United Press International, covering the White House, Foggy Bottom and Capitol Hill. He rose to the post UPI's top foreign editor. After his work in Washington, George exchanged the U.S. Capitol for the State Capitol upon becoming UPI's Lansing bureau chief. Recognizing his talent, he was soon tapped by Gov. William Milliken to serve as his press secretary and rounded out his service to the administration as the governor's chief of staff.

Since that time, George has ably served The Detroit News as its political columnist. George's passion for Michigan, the Great Lakes and the environment in general is evident in every column he writes. A workhorse and not a showboat, George effectively brings attention to the most important issue facing our Nation, without making the story about himself. He has always conducted himself with the utmost dignity and integrity and it has been a pleasure to work with him.

With great pleasure I join my colleagues in honoring George Weeks, a great journalist.

HONORING DETROIT NEWS COLUMNIST GEORGE WEEKS UPON HIS RETIREMENT

HON. PETER HOEKSTRA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. HOEKSTRA. Mr. Speaker, I rise today to honor the Detroit News columnist George Weeks upon his retirement.

George Weeks, who with the support of his wife, Mollie, covered Michigan politics for the Detroit News since 1984 with depth, integrity and fairness. George Weeks is a rare professional who during his career was able to seamlessly transition from reporting on politics to serving in government to returning to his original craft.

After initially serving his country in the U.S. Army, George Weeks launched his career in journalism by working for United Press International in Lansing and Detroit. He would later become UPI's diplomatic correspondent and Washington foreign editor, positions that took him to regions spanning the globe.

He began his service in government as the press secretary to Michigan Governor William G. Milliken in 1969, and later rose to become the governor's executive secretary. In 1984, he returned to the fourth estate when he became a columnist for the Detroit News with a much broader perspective and insight into politics and government.

George Weeks is respected by his readers and his peers alike for his unique perspective on state, national and international affairs, and was recognized for his work when he was inducted into the ranks of the Michigan Journalism Hall of Fame nearly a decade ago.

Mr. Speaker, please let it be known that on this 8th day of February in 2006, that the U.S. House of Representatives acknowledges the contributions and achievements of George Weeks as he writes the next chapter of his life.

TRIBUTE TO GEORGE WEEKS

HON. DAVE CAMP

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. CAMP of Michigan. Mr. Speaker, I rise today to pay tribute to George Weeks, a distinguished resident of my district and a man whose home number is rung by American Presidents, U.S. Senators and Representatives, Governors, state legislators and local officials alike. As Michigan's foremost political columnist, a mention in George's tri-weekly submissions is courted by candidates for reasons far beyond the sheer volume of his readership. In a career that has spanned 5 decades and nearly as many continents, George's work epitomizes the fairness preached in j-schools across the country. It is no surprise that his praise is sought by both Republicans and Democrats, and it is certainly no surprise that George was inducted into the Michigan Journalism Hall of Fame long before his retirement. Michigan politics has been well served by this honored scribe. As George enters "retirement," and the Detroit News loses its Glen Arbor Bureau, his commentary will be missed, but his work will long be remembered.

On behalf of the Fourth Congressional District, I extend best wishes to George and Mollie Weeks and sincerely thank them for their service to the great state of Michigan.

CONGRATULATING DETROIT NEWS COLUMNIST GEORGE WEEKS ON HIS RETIREMENT

HON. VERNON J. EHLERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. EHLERS. Mr. Speaker, I rise today to pay my respects to a man who can be rightly described as a Michigan institution—George Weeks, who recently announced his retirement from his post as key political columnist for the Detroit News.

Since December 1983, George kept his readers well informed about federal, state and local political events in Michigan. Prior to that, George served the people of Michigan in his role as press secretary and, later, chief of staff to Governor William G. Milliken, beginning in 1969. During this time, he also worked as a consultant for the National Governors' Association. Before working for Governor Milliken, George had a successful 14-year career with United Press International, serving as a correspondent and bureau chief in Lansing, Detroit, Grand Rapids and Washington.

A native of Traverse City and a journalism graduate of Michigan State University, George is a very deserving 1996 inductee of the Michigan Journalism Hall of Fame.

I have known George Weeks professionally for many years, dating back to when I served in the Michigan Legislature in the 1980s and early 1990s. George is the only reporter that I ever dealt with who had a higher opinion of my ability than I did, and I greatly appreciate his superb insight. Seriously though, I have always found George to be eminently careful and thoughtful in his reporting and writing, and he is one of the finest journalists I have known.

I wish George all the best as he moves into this new phase of his career and life, but all of us who were his readers and the subjects of his writing will be the poorer for it.

IN RECOGNITION OF MR. GEORGE WEEKS

HON. JOE KNOLLENBERG

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. KNOLLENBERG. Mr. Speaker, I rise today to congratulate Mr. George Weeks on 40 years of outstanding service to the residents of Michigan and to the institution of American journalism.

Mr. Weeks has dedicated his life to reporting in an honest, trustworthy, and professional manner. His commitment to quality journalism and public service has been a valuable asset to the greater Detroit community and to the State of Michigan.

George Weeks' fearless pursuit of excellence has touched the lives of many. His distinctive ability, combined with his genuine concern for the community, has set the standard for journalists and public servants to come.

Although I may not have personally agreed with every commentary, Mr. Weeks has always provided unique insight and clarity on political issues and current events. His ability to communicate and his true devotion to his readers have been incredible assets to our area. His presence in our papers will be sincerely missed.

Today I rise to thank George Weeks for his lifetime of service and dedication to our community, to congratulate him on his many accomplishments, and to wish him the best in his well-earned retirement.

PAYING TRIBUTE TO GEORGE WEEKS, A MICHIGAN JOURNALIST AND AUTHOR

HON. MIKE ROGERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. ROGERS of Michigan. Mr. Speaker, I rise to honor the accomplishments of George Weeks, who is retiring after more than a quarter century of serving the people of Michigan as their journalistic eyes and ears on the comings and goings of their elected officials.

George Weeks is well-known and highly regarded in Michigan where, as a journalist, author of several books, and columnist, he has chronicled the actions of Michigan leaders in local, state and federal government.

During his career, George served in Michigan and in Washington, DC for 14 years as a reporter, bureau chief, and foreign correspondent for United Press International (UPI). In Washington, he covered the White House, State Department and Pentagon, and was a panelist on radio and television shows, including NBC's "Meet the Press."

From his days as a Michigan State University (MSU) student working as a stringer for both The Detroit News and UPI, George's career has spanned the terms of at least 7 U.S. Presidents and 5 Michigan Governors. In fact, George interrupted his journalistic career to work as press secretary and later Chief of Staff for Michigan Governor William Milliken.

Thankfully, George's love of journalism brought him back to The Detroit News as a columnist where he has become a Michigan icon, writing about politics as well as state and federal issues with insight and historical perspective. His commitment to quality journalism has made him a highly respected favorite with readers across the state.

The good news for Michigan readers and admirers of George is that while he may be stepping down as a regular Detroit News columnist, he still plans on writing occasional columns and also will be taking time to pursue some of his other writing interests.

Mr. Speaker, I ask my colleagues to join me in honoring George Weeks for the role model he is to young journalists just starting out, and for his integrity and commitment as a leader in his chosen field. He is truly deserving of our respect and admiration.

CONGRESSIONAL TRIBUTE ON THE RETIREMENT OF COLUMNIST GEORGE WEEKS

HON. BART STUPAK

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. STUPAK. Mr. Speaker, I rise today to pay tribute to a journalistic legend and a valued Michigan native, columnist Mr. George Weeks. This long time newsman, acclaimed author and Michigan historian has epitomized the ability to provoke thought and challenge ideology through his interviews and written works.

Born in 1932 in Traverse City, Michigan, a city I proudly represented for 8 of my 14 years in Congress, Mr. Weeks was exposed to the beauty of northern Michigan and the values of rural America. After graduating from Traverse City High School in 1950, Mr. Weeks attended and graduated from Michigan State University (MSU). He spent 18 months as an Army officer before beginning his lengthy career in journalism and politics.

His career in news began in 1954 when he took a job as the Lansing staff correspondent for United Press International (UPI). In the 14 years he spent with UPI, he also served as the Detroit Bureau radio and news editor, Lansing Bureau chief, diplomatic correspondent, and Washington foreign editor. While in Washington DC, Mr. Weeks became a member of the White House Correspondents Association, the State Department Correspondents Association and Overseas Writers. His coverage abroad took him to the former Soviet Union, Africa, Europe, Latin America and Asia.

The time he spent covering politics in Michigan and beyond placed him among the prestigious Who's Who in America list and served as valuable knowledge as he transitioned to Press Secretary for Michigan Governor William G. Miliken. After beginning with Governor Miliken in 1969, Mr. Weeks went on to serve as a member of the Governor's special council and then as his chief of staff.

The opportunity to work in the Miliken administration would serve as a foundation later for one of his greatest literary works. In the meantime, Mr. Weeks went on to be a Kennedy Fellow in 1981 attending Harvard University Institute of Politics. His research led him to conduct a study and subsequently write a published paper on outstanding governors of the 20th century.

Mr. Weeks then found his way back to his home state of Michigan when he took a job as the political columnist for the Detroit News in 1983. His written works on topics ranging from public affairs to political developments earned him the Outstanding Alumni Award of MSU's College of Communications Arts.

In his limited time, Mr. Weeks wrote several books on a range of topics close to his heart. These literary works included: Stewards of the State: The Governors of Michigan (1987; revised 1991), which won the Michigan Small Press "Book of the Year Award" and the achievement award from the Greater Michigan Foundation; Sleeping Bear: Its Lore, Legends and First People (1988; fifth printing in 2000); Sleeping Bear: Yesterday and Today (1990; expanded edition 2005) and MEM-KA-WEH: Dawning of the Grand Traverse Band of Ottawa and Chippewa Indians (1992). He also co-authored The Miliken Years; A Pictorial Reflection (1988) and A Handbook of African Affairs (1964) and also contributed to Michigan: Visions of our Past (1987) and The Royal Cookbook (1969).

As if writing a column as a foremost expert on politics in the state of Michigan or authoring a number of books as a foremost expert on the history of our fascinating state weren't enough, Mr. Weeks also invested time in organizations committed to causes he cherishes. Mr. Weeks has served on the Board of Directors for the Clarke Historical Library at Central Michigan University, the Sleeping Bear Dunes National Lakeshore Advisory Council, and on the planning committee for the annual observance of Michigan Week. Michigan Week, started by his father Don Weeks, is an event aimed at promoting pride throughout the state.

Mr. Speaker, George Weeks and his wife Mollie, have also raised two wonderful children, Julie and Don, along their exciting and unique journey thus far in life. Now residing in Glen Arbor, Michigan, I understand that he plans to continue his writing by imparting his wisdom and knowledge through columns in small hometown papers in northern Michigan. It also seems fitting that he plans to do what George does best by turning his endless quest for knowledge on issues he's passionate about into written works that serve as learning tools for others.

Today, I join a long list of individuals, including the Michigan Congressional Delegation, who have had the opportunity to work with, learn from or even know Mr. George Weeks in saying "Thank You". Many of us have been on the other end of the phone line with George waiting to see if his modest voice would invite a robust conversation about topics in which we shared alike thoughts or if he would ask a question that required careful and considerate thought in answering. Whether you have agreed with him or not on a topic he wrote, you respected his integrity and his ability to be fair in cracking though rhetoric to the truth of the matter.

Mr. Speaker, I ask the United States House of Representatives to join me in recognizing Mr. George Weeks for his commitment to the value of a profession that has often been equated to the fourth branch of government, for his dedication to fair and balanced reporting, for the integrity he brings to this sometimes volatile political world and for his deep, genuine appreciation for the great state of Michigan. Thank you, George!

I certainly wish George Weeks and his wife Mollie the best in retirement and I look forward to our future conversations.

TRIBUTE TO GEORGE WEEKS

HON. THADDEUS G. McCOTTER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. McCOTTER. Mr. Speaker, I rise today to acknowledge and honor George Weeks, who is retiring from his position as political columnist for the Detroit News.

In 1954, Mr. Weeks commenced his career with the Detroit News as a campus stringer at Michigan State University. After honorably serving 18 months in the United States Army, he worked for the United Press International bureaus in Lansing and Detroit; subsequently, in 1967 he became UPI's diplomatic correspondent in Washington D.C. Then, in 1969, he left journalism to serve as the press secretary and then chief of staff to Gov. William G. Milliken. After a stellar stint in public service, Mr. Weeks returned to journalism with the Detroit News as the paper's political columnist.

Mr. Weeks earned many honors and awards for his fair and balanced coverage of Michigan politics and, in 1996, he was inducted into the Michigan Journalism Hall of Fame.

Mr. Speaker, I offer my congratulations and appreciation for the excellence and integrity Mr. Weeks has displayed throughout his distinguished career, and ask my colleagues to join in honoring him.

TRIBUTE TO MR. RICHARD A. RYAN

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. KILDEE. Mr. Speaker, I rise to honor Richard A. Ryan, who is retiring from his post at The Detroit News, after 40 years as a distinguished news reporter, 37 of those years a Washington correspondent.

Dick Ryan has spent most of his life in journalism, reporting for the Muskegon Chronicle and Toledo Blade before establishing his position at the Detroit News in 1966. Ryan was at the News for the tumultuous Watergate period, ending with the historic 1974 resignation of President Richard Nixon and subsequent elevation of former Michigan Congressman Gerald Ford to the nation's highest office. Ryan watched as Ford was sworn in as the nation's 37th President, announcing the end of what he called "our long national nightmare."

In all, Dick Ryan covered the highs and lows of seven presidents, from Nixon to George W. Bush, traveling overseas with Ronald Reagan for his memorable speech in West Berlin, urging the tearing down of the Berlin Wall. He witnessed the first official visit of an Arab leader to Israel, watching a tenuous peace process initiated by Egyptian President Anwar Sadat and Israeli Prime Minister Menachem Begin, whose nations had been at war for decades. He viewed the talks that culminated in the signing of a historic peace agreement between the two nations before the world at the White House.

In addition, Dick Ryan served as President of the Washington-based National Press Club in 2000, elected to that post by his peers in journalism. After a career that has placed him in the front row of some of this country's most fascinating events, he will enjoy his retirement enjoying the company of his five grandchildren, golf, travel, and the endless pursuit of every true journalist: writing.

Mr. Speaker, I have known Richard Ryan to be a person of great professionalism and absolute integrity. He has truly brought credit to a profession which he has served so well. The Michigan Congressional delegation will certainly miss the integrity, dedication and professionalism which drove Dick to always get the story right, and the people of Michigan will miss his insightful reporting from Washington. And I will miss Dick Ryan because not only is he a consummate professional journalist, he is a very dear personal friend.

HONORING THE RETIREMENT OF RICHARD RYAN

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. DINGELL. Mr. Speaker, today I rise to pay tribute to my dear friend, Richard (Dick) Ryan, on the occasion of his retirement from the Detroit News after 40 years of distinguished service.

A Michigan native, Dick graduated from Wayne State University in 1963 with a major in journalism. Prior to joining the Detroit News in 1966, he worked at the Muskegon Chronicle and the Toledo Blade.

Over the span of his career, Dick has been an eyewitness to four decades of national politics, covering the White House, Congress and the U.S. Supreme Court. He has covered seven presidents, reporting on such historical events as the Watergate scandal, Anwar Sadat's visit to Israel and President Reagan's famous "tear down this wall" speech in Berlin.

Because of Dick's reporting skills, Detroiters were always well-informed on some of the most important events in the world.

Currently, Dick is president of the Gridiron Club, an organization of 65 Washington-based journalists. He was also the 2001 president of the National Press Club.

For all that Dick has done in Washington, he has never forgotten about where he is from and who is reading his stories. While he has become a familiar face here in Washington, he has stayed committed to the people of Detroit and southeastern Michigan.

His many accomplishments serve as a lasting example of excellence in journalism. Michigan has been well-served by Dick Ryan, his insight and knowledge of Michigan politics will be deeply missed.

I would like to thank Dick for his dedicated service both to the Detroit News and the Michigan Community. As he enters his retirement years, I would ask that my colleagues join with Deborah and I to wish him and his wife, Dorothy, a very happy, healthy and relaxing future.

PAYING TRIBUTE TO RICHARD RYAN ON HIS RETIREMENT

HON. MIKE ROGERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. ROGERS of Michigan. Mr. Speaker, I rise to honor the accomplishments of Richard (Dick) Ryan on his retirement from the Detroit News where he has spent nearly 40 years reporting on Washington, writing about Presidents, politics and the people who make this Nation tick.

For the people of Michigan, Dick Ryan was the observer and scribe of many of America's most momentous national events, and many with international impact.

Dick was there when President Reagan called on Gorbachev to "tear down" the Berlin Wall, and when President Nixon stepped down and Michigan's own, Gerald R. Ford, was sworn in as President of the United States.

It was through Dick's eyes and with his words that Detroit News readers learned about more than 36 years of Presidential political campaigns, the visits of world leaders to the White House, America's part in world events, including the peace agreement signed at Camp David in the late 1970s, and of the demise of one President under impeachment and the survival of impeachment by another.

Highly respected by his readers and his peers, Dick leaves the Detroit News with a legacy that is unparalleled. His time as, in his own words, "an eyewitness to history," is a remarkable record.

Dick Ryan's years of service to his readers and our Nation are legendary and we wish him well as he undertakes a new mission: retirement, enjoyment of his family, and an opportunity to write at his leisure.

Mr. Speaker, I ask my colleagues to join me in honoring Richard (Dick) Ryan as he begins this new adventure in life. He is truly deserving of our respect and admiration.

HONORING DETROIT NEWS SENIOR WASHINGTON CORRESPONDENT RICHARD A. RYAN UPON HIS RETIREMENT

HON. PETER HOEKSTRA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. HOEKSTRA. Mr. Speaker, I rise today to honor The Detroit News Senior Washington Correspondent, Richard A. Ryan upon his retirement.

Dick Ryan is a dedicated professional who devoted his career to journalism, beginning with the Muskegon Chronicle, a daily newspaper located in Michigan's Second Congressional District.

Dick Ryan went on to acquire nearly four decades of experience with The Detroit News, including serving 37 years in the Washington bureau as a correspondent.

His reporting on public policy and politics includes covering Congress, the U.S. Supreme Court, multiple foreign assignments and seven Presidencies beginning with President Richard Nixon.

He witnessed firsthand President Ronald Reagan's speech in 1987 at Brandenberg Gate that two years later led to the fall of the Berlin Wall, as well as Egyptian leader Anwar Sadat's historic journey to Jerusalem in 1977 to initiate a peace process.

Dick Ryan's peers have recognized his accomplishments and dedication by appointing him to such positions as president of the National Press Club and president of the legendary Gridiron Club.

Mr. Speaker, please let it be known on this eighth day of February in 2006, that the U.S. House of Representatives acknowledges the contributions and achievements of Dick Ryan and wishes him well upon his retirement.

A VOTE FOR MERCHANT MARINERS

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. FILNER. Mr. Speaker, my bill, H.R. 23, the "Belated Thank You to the Merchant Mariners of World War II Act" will correct the injustice that has been inflicted on a group of World War II veterans, the World War II United States Merchant Marines.

Senator LARRY CRAIG has posted on his Web site his views of S. 1272, the Senate companion bill to H.R. 23. His views have been addressed by the co-chairs of the Just Compensation Committee of the U.S. Merchant Marine Combat Veterans. They have requested that the Senator's views and their letter be placed into the CONGRESSIONAL RECORD.

What is Senator Craig's position on S. 1272?

Without question, the service provided by members of the U.S. Merchant Marine was invaluable to America's victory over the Axis powers during World War II. Merchant Mariners in oceangoing missions served alongside active components of the Armed Forces as they braved the Pacific and Atlantic Oceans to deliver vital supplies and manpower to the warfront. Undaunted by their difficult missions, Merchant Mariners suffered heavy casualties from enemy naval forces and land-to-sea artillery fire. To all members of the U.S. Merchant Marine who put themselves in harm's way, I say "thank you" for your service.

Civilian groups like the U.S. Merchant Marine have frequently performed the equivalent of military service throughout our nation's history. In recognition of that fact, Congress, through the enactment of Public Law 95–202 (established in 1977), a process by which civilian groups could be recognized for their service and be classified as "veterans" for purposes of all benefits administered by the Department of Veterans Affairs (VA). The Secretary of the Air Force was chosen to be the Executive Agent of the Defense Department in making decisions about granting that status. And the Air Force Secretary's decisions are informed by a review process conducted by the Civilian Military Service Review Board. Since 1977, 30 groups have been recognized as having attained veteran status. In 1988, members of the U.S. Merchant Marine who served between December 7, 1941 and August 15, 1945 were recognized.

The criteria for having civilian service equated with military service are necessarily stringent. That is as it should be; we should never water down what it means to be a veteran of the United States Armed Forces.

With that perspective in mind, I turn now to the merits of S. 1272. S. 1272, among other things, would entitle certain members of the U.S. Merchant Marine (or, if deceased, their surviving spouses) who served between December 7, 1941 and December 31, 1946, to a $1,000 monthly payment. The $1,000 monthly payment would be in addition to any other VA benefits. The following are the reasons why I do not support S. 1272:

(1) The cost of S. 1272 is considerable. Senate rules would require the Committee to identify offsets for the new entitlement spending. Assuming that just 3,000 Merchant Mariners and surviving spouses are alive today (the lowest estimate I have heard), the Committee would have to find $36 million of offsets in the first year alone. And the Committee would be limited to finding those offsets within other veterans' benefits programs and services, a task that I and other Senators undertake only under extraordinary circumstances.

(2) The precedent set by enacting S. 1272 would likely result in additional spending. For example, the Congress would have very little justification to not extend the same $1,000 monthly payment to the 29 other groups who have been recognized since 1977 as having attained veteran status. Furthermore, Congress has often granted benefits to veterans long after their service. For example, Congress did not establish presumptions of service-connection for Vietnam veterans exposed to Agent Orange until 20 years after the herbicide spraying had ceased. S. 1272 might create an expectation that retroactive payments for these, and other veterans is owed.

(3) While service in the U.S. Merchant Marine during World War II was extremely dangerous, there is little precedent for conferring a VA benefit (on top of all other benefits) on the basis of casualty rates, danger of duty, or acts of gallantry. Only Medal of Honor recipients receive such a payment. To

use a similar justification to award Merchant Mariners a $1,000 monthly payment would rightly lead to claims from others who served no less valiantly than they.

(4) As previously mentioned, members of the U.S. Merchant Marine who were in active oceangoing service between December 7, 1941 to August 15, 1945 are already veterans, entitled to full veterans' benefits from VA. However, S. 1272 would confer a veterans' benefit on individuals who served (in addition to the dates above) between August 16, 1945 and December 31, 1946. In effect, the bill seeks to grant a veteran's benefit to individuals who are not veterans.

For all of these reasons, I cannot support S. 1272. I want to make clear however, that my opposition to S. 1272 does not mean that I do not share a profound respect for the service rendered to the country by members of the U.S. Merchant Marine who served during World War II. They were rightly recognized as veterans of the Armed Forces in 1988, and the nation owes them gratitude.

The response from the Merchant Mariners:

Senator LARRY E. CRAIG,
Chairman, U.S. Senate Committee on Veterans Affairs, Washington, DC.

Mis-information is prevalent and must be rebutted when Veterans of World War II are maligned. Especially the reputations of 9,000 men who gave their lives for this country and lay for the most part in Davy Jones' locker at the bottom of the sea. There are no monuments or headstones where they lay forgotten by the millions of people who benefited from their valiant sacrifices. There are no MIA lists because the government didn't want to disclose the huge losses in the Merchant Marine during World War II.

Let's correct the Record—I am referring to the website of the U.S. Senate Committee on Veterans' Affairs. A Bill before the U.S. House of Representatives, H.R. 23—"A Belated Thank You to the Merchant Mariners of World War II Act of 2005" and its companion Bill in the U.S. Senate, S. 1272 sponsored by Senator Ben Nelson of Nebraska is under attack by Senator Larry Craig of Idaho. We would like to point out that this attack is full of misinformation.

Senator Craig is eloquent in his praise of the U.S. Merchant Marine but undermines their credibility with erroneous and false statements, possibly not intentional but nevertheless damaging to their efforts to establish their rights under the G.I. Bill that benefited all other Veterans of World War II.

(1) Senator Craig lists on his website as item No. 1 "The Cost of S. 1272 is considerable" assuming that just 3,000 Merchant Marine and the wives are alive today. Two things are wrong about that statement. Compared to the cost of lives lost on September 11th at over $1,400,000 each, the cost per surviving Merchant Marine remaining life span under S. 1272 is negligible. A truer count of remaining Merchant Marine Veterans of World War II has been estimated at close to 10,000 with an estimated 3,000 wives. This has been established by the survivors in their voluntary unincorporated association of the Just Compensation Committee members. It is hard to believe that the Veterans' Affairs Committee would be hard pressed to find $120,000,000 to fund the first year of an approximate ten year cost to compensate these Veterans for the 40 years of failure to deliver them the G.I. Bill of Rights.

(2) Senator Craig further says on his website that S. 1272 would result in additional spending on 29 other groups who have attained Veterans' status also. These 29 groups total less than 1,000 civilians under military authority, most of whom are dead today and were very far from "harm's way." The Merchant Marine had 250,000 men on armed vessels during World War II, all volunteers, who were in "harm's way" 100 percent of their service time with 81% exposed to enemy action. Senator Craig states that Congress often granted benefits to Veterans long after service. Millions and millions of dollars were granted to Veterans under the G.I. Bill of 1944. The problem is Congress has failed to pay the Merchant Marine Veterans for over 40 years.

(3) Senator Craig keeps referring to the Merchant Marine claim as similar to Medal of Honor recipients. This is not true and a distortion of facts. All other Veterans of World War II received assistance in the equivalent value of $120,000 in 1946 dollars. Adjusted for inflation, the U.S. Government owes the Merchant Marine Veterans over $1 million dollars each for their 40 years of neglectful lack of timely payment of benefits. No one covets the $1,000 per month paid to Medal of Honor recipients which the government bestows on them. A $1,000 per month for the 78- to 88-year-old Merchant Marine Veterans of World War II with an expected 3- to 5-year remaining lifetime is a bargain settlement for our government. Most of these aged Veterans subsist on Social Security payments and Medicare struggling to survive in these days of rampant inflation.

(4) Senator Craig states in his website that "In effect, the bill seeks to grant a Veterans' benefit to individuals, not Veterans." The U.S. Congress passed the Fairness Act that recognized that World War II officially ended December 31, 1946 and those who gave service up to that date were entitled to be called Veterans.

We thank Senator Craig for stating that the members of the U.S. Merchant Marine during World War II "were rightly recognized as Veterans of Armed Forces in 1988 and the nation owes them its gratitude."

I would like to refresh the recollection of the members of the House of Representatives and the U.S. Senate by setting forth the words of the most honored leaders of World War II as to their regard of the men who sailed the ships of the Merchant Marine.

The Merchant Mariners of World War II have been our forgotten heroes.

"The men and women who build the ships, the men who sail them, are making it possible to transport fighting men and supplies wherever they are needed to defeat the enemy. The Army is deeply indebted to these men and women for their unceasing effort to do everything in their power to hasten the day of victory."—General of the Army George C. Marshall, U.S. Army Chief of Staff.

"When final victory is ours there is no organization that will share its credit more deservedly than the Merchant Marine."—General of the Army Dwight D. Eisenhower, Allied Expeditionary Forces in Europe.

"The Merchant Marine . . . has repeatedly proved its right to be considered as an integral part of our fighting team."— Fleet Admiral Chester W. Nimitz, Commander-in-Chief, Pacific Theater.

"The men and ships of the Merchant Marine have participated in every landing operation by the United States Marine Corps from Guadalcanal to Iwo Jima—and we know they will be at hand with supplies and equipment when American amphibious forces hit the beaches of Japan itself . . . We of the Marine Corps salute the men of the merchant fleet."—General A.A. Vandergrift, Commander, U.S. Marine Corps.

". . . their contribution was just as important as that of the troops . . . During the Tripoli campaign I went down to the waterfront and personally thanked the men and skippers of the merchant ships for getting through with the stuff . . ."— Field Marshall Sir Bernard Montgomery.

"Because the Navy shares life and death, attack and victory, with the men of the United States Merchant Marine, we are fully aware of their contribution to the victory which must come."—Fleet Admiral Ernest J. King, Commander-in-Chief of the Fleet and Chief of Naval Operations.

"I wish to commend to you the valor of the merchant seamen participating with us in the liberation of the Philippines. With us they have shared the heaviest enemy fire. On these islands I have ordered them off their ships and into foxholes when their ships became untenable targets of attack. At our side they have suffered in bloodshed and in death . . . They have contributed tremendously to our success. I hold no branch in higher esteem than the Merchant Marine Service."—General of the Army Douglas MacArthur.

"Our growing power on the seas is not alone a war measure. As a post-war policy, American ships will retain the commanding position in world trade which we are now approaching our war effort . . ."—Vice Admiral E.S. Land USN (Ret.), War Shipping Administrator.

HONORING DAVE DONAHUE

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Ms. ROS-LEHTINEN. Mr. Speaker, I would like to take this opportunity to offer my warmest congratulations to Dave Donahue on the occasion of his retirement from Clear Channel broadcasting. I am certain that all who have had the opportunity to work with him during his illustrious career will miss him.

Dave Donahue is a recipient of the Country Music Association's "Station of the Year Award", Billboard's "Top Ten Programmers Award", and has served on the board of directors for the Country Music Hall of Fame Awards. He became the first Agenda Chairman for the Country Radio Seminar and was its first Exhibit Hall Director. He is a commissioned Kentucky Colonel and a former legislative director for the State of Tennessee House of Representatives. In 2000, Dave was inducted into the Country Music DJ Hall of Fame.

Dave Donahue has had a long and successful career that has spanned many years of outstanding service, dedication, hard work, devotion, and love for country music. I am proud to recognize Dave Donahue for his tireless dedication to the entertainment industry. I ask my colleagues to join me in congratulating Dave on his wonderful service to the community.

TRIBUTE TO SENATOR EUGENE J. McCARTHY

HON. JUANITA MILLENDER-McDONALD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Ms. MILLENDER-McDONALD. Mr. Speaker, as we resume our business I want to pause for a moment and note the death of a giant in American political history. On December 10, 2005, the Honorable Eugene Joseph McCarthy, former Representative and Senator from Minnesota, departed this life at age 89. Although many Americans, especially the young, may not know much of McCarthy's career or his role in our country's history, we are all fortunate that he chose public service and once trod the halls of this Capitol as a Member.

In the days following the Senator's death here in Washington of the effects of Parkinsonism, much has been written about him. Born on March 29, 1916, McCarthy grew up in Watkins, Minnesota, where, he once said, the culture revolved around baseball, the church, and the railroad. After earning a master's degree at the University of Minnesota, following initial diversions through study for the priesthood and a semi-professional baseball career, McCarthy became a college professor. He worked in the War Department during World War II and married, having three daughters and a son. In 1948, the historic election ultimately featuring the erroneous Chicago Tribune headline "Dewey Defeats Truman," McCarthy won a seat in the U.S. House, representing St. Paul. Taking his seat in 1949, Eugene McCarthy embarked on a solidly liberal voting record in the House, whose Members included John F. Kennedy, Gerald R. Ford, and Richard M. Nixon.

It immediately became clear that Eugene McCarthy had uncommon political courage. During his first term, another McCarthy, Republican Senator Joseph McCarthy of Wisconsin, created an uproar in a February 1950 speech in Wheeling, West Virginia, by waving around an alleged list of Communists in the State Department.

Joe McCarthy's subsequent Red-baiting rampage through the early 1950s thus began, destroying numerous peoples' careers and intimidating countless more. In 1952, Eugene McCarthy, then a second-term Congressman of the minority party, had an opportunity and the courage to confront the author of "McCarthyism" in a nationally broadcast television debate, one of the earliest of its kind. Observers of the "McCarthy vs. McCarthy" debate considered the outcome a draw—in reality, a tremendous victory for the mild-mannered Congressman from Minnesota.

After five terms in the House, during which he helped to found the Democratic Study Group, an organization committed to advancing liberal public policies, Eugene McCarthy successfully challenged the incumbent conservative Republican Senator Edward Thye. For Democrats, the 1958 election yielded spectacular results, and McCarthy joined a large class of new Senators, one of whom, the distinguished senior Senator from West Virginia, Mr. BYRD, serves to this day.

In the years to follow, the new Senator McCarthy continued his solidly liberal voting record, supporting civil rights, anti-poverty legislation, and the creation of Medicare. He decried racism and the ills of poverty, and supported most proposals of the "New Frontier" and the "Great Society" during the Kennedy and Johnson administrations.

Of course, the momentous event of Eugene McCarthy's 22 years in Congress was his courageous, insurgent campaign for the 1968 Democratic Presidential nomination, which changed the course of history for America and the world.

Like 87 other Senators, Eugene McCarthy had voted for the Tonkin Gulf Resolution in August 1964, which gave President Johnson authority to wage war in Vietnam. The climate in which that vote had occurred, a few days after an alleged attack by North Vietnamese patrol boats against two American destroyers, made the resolution virtually impossible to oppose. But Senator McCarthy, who served on the Senate Foreign Relations Committee, came to regret his vote when it became clear to him that the Johnson administration would expend vast sums and thousands of lives in a conflict that even the President himself, we now know from taped telephone conversations, doubted could be won.

McCarthy believed the war was not only unwinnable, but morally wrong. Defying the administration, he urged a new course and called for a negotiated settlement in Vietnam. By the time he announced on November 30, 1967, that he would seek the 1968 Democratic Presidential nomination, more than 15,000 American service men and women had died, along with tens of thousands of Vietnamese, with no end in sight.

Senator McCarthy's decision to challenge President Johnson shocked and divided the Democratic Party and the country. But dissatisfaction with the war policy had found a champion. Senator McCarthy argued that the billions of dollars being spent in Vietnam could be better put to work, and that withdrawal from Vietnam would not hurt American national security. He launched a campaign focusing on four States scheduled to hold Democratic primaries, beginning with New Hampshire.

In addition to others eager for change, the McCarthy campaign attracted the support of thousands of college students from across the country, many of whom flocked into the State and rang doorbells in support of the Senator, explaining the problems with the war and his vision for a rational solution. To respond to the charge that only "hippies" and "communists" opposed the war, young men shaved their beards and went "clean for Gene." Ben Shahn and other famous artists painted campaign posters, entertainers, including singers Peter, Paul and Mary, who remained the Senator's lifelong friends, wrote and performed.

In the New Hampshire Democratic primary, the Senator received an astounding 42 percent of the vote, to the President's 49 percent, leading the President to withdraw from the race later that month. The McCarthy campaign continued, exhilarated by the result. But after Senator McCarthy demonstrated the vulnerability of the President and overall dissatisfaction with the war, Senator Robert Kennedy entered the race also on an anti-war platform, and fellow Minnesotan Hubert Humphrey, the Vice President, entered as the "establishment" Democrat after President Johnson's withdrawal. Following the assassinations of Dr. Martin Luther King, who had endorsed Senator McCarthy in the California primary, and Senator Robert Kennedy, Vice President Humphrey amassed the delegates needed to win the nomination, and nearly defeated Richard Nixon in the general election.

After leaving the Senate in 1970, McCarthy remained a vital force in American politics, offering an independent point of view on issues, especially campaigns and elections. He wrote dozens of books, poetry, and continued making his unique contribution to our culture until his death.

Mr. Speaker, although the Senator's wife Abigail and their daughter Mary preceded the Senator in death, their daughters Margaret and Ellen survive, along with son Michael. In a personal note, as many of our colleagues know, daughter Ellen McCarthy serves on the Democratic staff of the Committee on House Administration. Every day, Ellen skillfully helps our Committee, other Members and their staffs to navigate the maze of rules, regulations, and other issues they confront in the course of their work here in the House. Speaking for the Committee, we are grateful that Senator McCarthy's dedication to public service led to Ellen's work with us, and we share not only her loss, but also her intense personal pride in her father's accomplishments in this world.

Mr. Speaker, all Members of this Congress, and indeed every American, should give thanks for the life and career of Eugene McCarthy. He had the wisdom to see a wrong, and the courage to act when it mattered, all at great political peril, and ultimately, sacrifice. We have too seldom seen his like before, and I fear we shall not soon see his like again.

CURRENT CROSS-STRAIT RELATIONS

HON. SCOTT GARRETT

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. GARRETT of New Jersey. Mr. Speaker, last spring, China passed the anti-secession law to give Chinese leaders the right to use force against Taiwan if they suspect separatist activities in Taiwan. The deployment of more than 700 missiles along the southeast coast indicates that China still stubbornly clings to a military solution to the Taiwan issue. Mr. Speaker, military intimidation over Taiwan is no solution to the cross-strait relations.

China must learn to respect the aspirations of Taiwan's 23 million people who want to be masters of their own land. China must not block Taiwan's attempts to gain international recognition or to return to international organizations. Taiwan is a free and democratic nation and deserves to be treated with respect by the international community.

Recently, President Chen proposed to prudently think over abolishing all ad hoc institutions under the Office of the President that were not established by law. One of those programs, the National Unification Commission (NUC), has long had its effectiveness in question and he doesn't want to see unification become the only option for the cross-straits relations.

President Chen is a man of peace who has reaffirmed his commitment to maintain the status quo in the Taiwan Strait on many occasions. His goal of reducing tension between Taiwan and China remains unchanged. It is my hope that China will reciprocate Chen's olive branch by renouncing the use of force against Taiwan and resuming dialogue on equal footing and without pre-conditions.

APPRECIATING SOUTH KOREA'S CONTRIBUTION TO THE WAR IN IRAQ

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. WELDON of Pennsylvania. Mr. Speaker, three years ago it was my privilege to lead a bipartisan delegation of my colleagues to the Korean Peninsula. At the time, we had a rare opportunity to visit Pyongyang, the capital of North Korea, as well as Seoul, the capital of South Korea, which I have had the pleasure of visiting on more than one occasion. During that trip, we gained a greater understanding and appreciation of the security challenges we face in Northeast Asia and the particular challenges faced by the Republic of Korea. Our delegation made a return trip to North Korea in January 2005.

With that in mind, Mr. Speaker, I rise today to acknowledge the seldom noted fact that our close friend and staunch ally, the Republic of Korea, has contributed the largest contingent of military personnel in Iraq, after the United States and the United Kingdom. South Korea has currently deployed 3,300 troops to Iraq, performing important functions in the northern part of the country, freeing up U.S. forces for operations elsewhere.

The South Korean government, through legislation passed by its National Assembly in December 2005, extended the time period of deployment of their troops for another year, despite political pressures to withdraw altogether. The extension of the stationing of troops is an expression of South Korea's deep and abiding support for the U.S. efforts to rebuild Iraq and establish a permanent peace there. By its actions, South Korea demonstrates its firm commitment to a rapid reconstruction of Iraq and to establishing stability as soon as possible.

Mr. Speaker, South Korean troops have been stationed in Iraq since they were first dispatched in August 2004. Named the Zaytun Division, derived from the Arabic term for "olive" and symbolizing peace, the unit has been actively involved in rehabilitating civilian infrastructure facilities for local residents and the Kurdistan Regional Government (KRG).

The South Korean National Assembly announced that there will be a gradual reduction of the Zaytun troops by one-third to 2,300 over the course of the coming year. It will be a phased reduction in close consultation with the U.S. and dependent on the Iraqi police force's readiness and the situation on the ground. It is important to note, however, that while there will be a gradual reduction in presence, the role of Zaytun will be enhanced.

In fact, the South Korean troops will soon provide security service for the Irbil Regional Office of the U.N. Assistance Mission for Iraq (UNAMI), protecting UNAMI's middle ring and its convoys. Additionally, the USAID office will now be stationed within the Zaytun compound and protected by South Korean forces.

Mr. Speaker, I am afraid that our South Korean friends have not been thanked loudly or frequently enough for this contribution to the stabilization of Iraqi society. It is a genuine shame that the news media in the U.S. missed this significant story, which was widely reported in the Korean press.

On January 18, 2006, a letter from Secretary of State Condoleezza Rice was delivered to the commander of South Korean forces in Irbil, a city in northern Iraq, expressing our country's appreciation for their peacekeeping efforts. The letter said, in part, "The humanitarian and reconstruction activities your troops have undertaken have made lasting and substantive contributions to the quality of life for the people of Irbil."

For these reasons, Mr. Speaker, I wish to express my personal appreciation to the government and people of South Korea for their lasting contribution to the coalition forces in Iraq and for their commitment to playing an important and responsible role in the international community. As a staunch ally of the United States with a mutually comprehensive alliance partnership that has spanned over fifty years and four major conflicts since the end of World War II, South Korea deserves our recognition and expression of support.

COMMEMORATING MESA VERDE'S CENTENNIAL ANNIVERSARY

HON. JOHN T. SALAZAR

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. SALAZAR. Mr. Speaker, this weekend, I will join the people of Colorado at Mesa Verde National Park to celebrate its 100th anniversary.

On June 29, 1906, Congress designated Mesa Verde as a national park unique for its archaeological treasures, spectacular views, and abundant wildlife. Located at the intersection of four states, Mesa Verde is a tremendous resource to the entire nation and a jewel in my congressional district.

Every year, 450,000 people travel to Southwest Colorado to visit the park. For those who have hiked the trails carved out by the Anasazi Indians, they know that Mesa Verde is truly a special place and one of the finest National Parks in our country. As the first cultural and historic national park in the history of the world, Mesa Verde helped spur Congress to preserve other important historical and archaeological sites.

I am proud to represent Mesa Verde National Park—Colorado's first national park—and its surrounding communities in Montezuma County here in Congress.

HONORING THE FOUR CHAPLAINS WHO SERVED ON THE U.S.S. "DORCHESTER"

HON. RAHM EMANUEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. EMANUEL. Mr. Speaker, I rise to pay tribute to the memory of the four chaplains who gave their lives in service of our nation while serving on the U.S.S. *Dorchester* during the Second World War. The *Dorchester*, known as the 'Grey Ghost' by U-boat crews, carried nearly 1 million U.S. troops to Europe during her tenure, which came to a tragic end 63 years ago today.

At 12:55 a.m. February 3, 1943, a German U-boat launched a torpedo that struck the *Dorchester*, killing many of the 902 aboard instantly, injuring hundreds of others, and creating chaos as the ship took on water.

Captain Hans J. Danielsen gave the order to abandon ship. As men struggled amid the turmoil to board life boats, the ship's four chaplains, Lt. George L. Fox, Methodist; Lt. Alexander D. Goode, Jewish; Lt. John P. Washington, Roman Catholic; and Lt. Clark V. Poling, Dutch Reformed, offered solace and counseled courage.

As the supply of life vests dwindled, each chaplain removed his own life vest and handed it to a soldier. "It was the finest thing I have seen or hope to see this side of heaven," said John Ladd, one of the 230 survivors.

Survivors recount their last glimpse of the U.S.S. *Dorchester* in the icy waters off the Newfoundland coast: The four chaplains linked arms in prayer and went down with the ship. We mark their heroism today, February 3, as "Four Chaplains Day."

I want to thank Commander of the Combined Veterans Association of Illinois Victor Cibelli and event chairman John Bigwood for arranging a tribute to the four chaplains at the Northwest Suburban Jewish Congregation in Morton Grove, Illinois.

Mr. Speaker, this tribute provides us with an opportunity to reflect on the spiritual strength, patriotism, and dedication to their fellow sailors exhibited by these four chaplains as they made ultimate sacrifice. I ask my colleagues to join me today in honoring the memory of the four chaplains of the U.S.S. *Dorchester*.

TRIBUTE TO COMMANDER STEVEN STEVENSON

HON. JOHN T. SALAZAR

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. SALAZAR. Mr. Speaker, I rise today in appreciation of Commander Steven Stevenson's 21 years of service with the Civil Engineer Corps of the United States Navy. I also wish to congratulate Commander Stevenson on his upcoming retirement.

Commander Stevenson was raised in Western Colorado and graduated from Olathe High School in 1981.

Beginning in his youth, Commander Stevenson chose to put family and country before self, attending the Naval Academy at Annapolis. Upon his graduation in 1985, Commander Stevenson was assigned to Amphibious Construction Battalion One, where he served with distinction as Assistant Bravo Company Commander and Assistant Operations Officer.

From 1987 to 1990, Stevenson served as the commander of the Construction Battalion Unit 418 and was selected for the highly competitive US Navy Ocean Facilities Program. Stevenson, displaying his characteristic level of determination and intellect, succeeded in earning a Masters of Science in Ocean Engineering.

When the Navy needed a capable leader to establish a new Construction Battalion Unit during the 1990's, it turned to Commander Stevenson. And when the Navy needed a well educated officer to bring the Seabees into the information age, once again it turned to Commander Stevenson, who went on to modernize everything from Seabee equipment to training.

Commander Stevenson's scholarly and engineering excellence is only exceeded by his devotion to his country. Stevenson represents the very definition of the famous Seabee valor having earned two Meritorious Service Medals, three Navy Commendation Medals, a Navy Achievement Medal, and the Meritorious Unit Commendation over the course of his career.

Commander Stevenson's life of service exemplifies the Seabee motto "Constrimus, Batuimus"—"We build, We Fight". He spent his career building a better and safer future for our country, all the time ready to put his life on the line for that brighter tomorrow and the ideals he has held dear.

And so today I would like to both congratulate Commander Stevenson on his retirement, and personally thank him for his 21 years of devoted service to his country.

IN LASTING MEMORY OF DR. CARL EDWARD HYMAN

HON. MIKE ROSS

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. ROSS. Mr. Speaker, I rise today to honor the legacy of Dr. Carl Edward Hyman. Born on June 29, 1924 in Pine Bluff, Arkansas, Dr. Hyman passed away on December 31, 2005 and I would like to recognize his life and achievements.

After graduating from Merrill High School in Pine Bluff, Dr. Hyman then attended Frisk University and Meharry Medical College in Tennessee. He then became a resident in Obstetrics and Gynecology at Hubbard Hospital in Nashville and completed post graduate studies at Harvard University in Cambridge, Massachusetts. In 1959, Dr. Hyman was appointed Chief Resident of Provident Hospital in Chicago.

For almost half a century, Dr. Hyman was in a private Obstetrician/Gynecology practice in Pine Bluff, where he became the first residency trained African-American specialist in the State of Arkansas. Over the course of his lifetime, Dr. Hyman earned a reputation as a generous and selfless community leader in Jefferson County. Among numerous accomplishments, he was a Fellow of the American College of Obstetrics and Gynecology, the first African-American to serve on the Pine Bluff Civil Service Commission, a lifetime member of NAACP and Alpha Phi Alpha fraternity, and a member of the Trustee Ministry at Kings Highway Missionary Baptist Church. Perhaps most notably, Dr. Hyman was appointed by Governor Bill Clinton to become the first African-American appointee to the Alcoholic Beverage Control Board, a board which he served for 28 years.

Dr. Hyman led an exemplary life both professionally and in unwavering service to his community and his state. While Dr. Hyman may no longer be with us, his spirit and legacy will live on forever in the lives he touched. My deepest sympathies and heartfelt condolences go out to his wife, Dr. Edith Hyman; his son, Dr. Carl Alta Hyman; and his extended family of brothers, sisters, nephews and grandchildren.

PATIENTS BEFORE PROFITS ACT OF 2006

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. DINGELL. Mr. Speaker, today I am introducing legislation—the Patients Before Profits Act of 2006—that will right some of the many wrongs in the budget reconciliation bill passed by Congress last week and signed by the President today. This legislation, which is also being introduced today in the Senate by Senator CLINTON, will realign our priorities to protect the healthcare coverage of working families rather than the profiteering of HMOs and private insurance companies.

The Patients Before Profits Act eliminates Government overpayments to Medicare HMOs through removal of a "slush fund" provision and ensuring these HMOs are only paid what is appropriate for the consumers they serve. This bill would then use these savings to restore protections against excessive out-of-pocket costs for necessary medical visits, prescription drugs, and emergency room care. It will also restore the benefit protections that provide medically necessary treatments under Medicaid and ensure families have adequate benefit coverage, not bare-bone packages.

The Patients Before Profits Act is needed because of the recently passed so-called Deficit Reduction Act, which the Republicans designed and the President is signing into law today. In the dark of the night, the Republicans removed provisions that transferred $32 billion in taxpayer overpayments to Medicare HMOs and insurance plans.

The Senate bill had cut $36 billion in overpayments to the HMOs in Medicare. That included $26 billion in savings by more accurately calculating their payments. But the negotiators rewrote the provision to save just $4 billion, providing a $22 billion windfall to the HMOs. The Senate bill also eliminated a $10 billion slush fund designed to entice HMOs to participate in the prescription drug program. The Republican conferees dropped this provision, providing another $10 billion gift to the HMOs for a total of $32 billion.

This bill takes back the money given to Republican-favored companies and restores to our most vulnerable citizens the needed healthcare that was cut. According to the nonpartisan Congressional Budget Office, of the $28 billion in savings from Medicaid over 10 years, about 75 percent of that amount is due to provisions that reduce the number of people who can afford to participate. It will increase the number of uninsured and under-insured by raising the copayments that people will have to pay to see their doctors, increasing premiums, cutting medically necessary treatments, and tightening access to long-term care.

By 2015, 4.5 million children will be affected by higher cost-sharing charges for healthcare services such as doctor visits. A total of 13 million people will face higher charges to access their healthcare services. Twenty million people will face higher charges to obtain needed prescription drugs. One-third of those individuals affected by the drug cost-sharing (6.6 million) will be children and half (10 million) will have incomes below the Federal poverty level (monthly incomes of less than $1,380 for a family of three). All this because of a Republican unwillingness to take back overpayments to HMOs.

Congressional Budget Office analysis also concludes that the Republican legislation assumes that the number of uninsured will increase. Twenty percent of the savings from new premium charges under this law will derive from families who are no longer able to maintain their Medicaid coverage due to increased costs. Sixty percent of those who will lose coverage due to new premium charges will be children. Again, all of this because of a Republican unwillingness to take back overpayments to HMOs.

The Patients Before Profits Act of 2006 is a good start to right some of the wrongs that the Republican-led Congress and the President have inflicted on working families, individuals with disabilities, the elderly, pregnant women, and children. I urge my colleagues to join me in this fight.

A TRIBUTE TO DAVID LAWRENCE

HON. MIKE McINTYRE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. MCINTYRE. Mr. Speaker, I rise today to pay tribute to Mr. David Lawrence of Chadbourn, North Carolina, for his outstanding contribution and years of service as a Town Councilman and Mayor Pro Tempore. David passed away on January 24, 2006, after a long battle with prostate cancer. David's tremendous leadership, dedication, and altruism as an elected official and member of the Chadbourn community will live on in the hearts and minds of generations to come.

Born in Chadbourn, David entered first grade the year that the landmark case Brown v. Board of Education was decided. David went on to graduate from West Columbus High School in 1966. During high school, David enjoyed playing in the band and singing in the choir, but he was most well-known for being a star athlete of the basketball team. In fact, David was the first African-American to play in the N.C. East-West All-Star basketball game. Well-known coach Cotton Fitzsimmons recognized David's ability and spirit and recruited him to play basketball at the college level. David went on to become a freshman starter on the Moberly Junior College National Championship Team and was named the best defensive player on the 1970 Kansas State University Big 8 Championship team.

David showed his talent and perseverance off the court as well. He received his undergraduate and Master's degrees from Kansas State University. Later, David earned a second Master's degree from North Carolina Central University in educational leadership. In 1973, David became an officer in the U.S. Army Reserve and served in that capacity for 16 years. David was elected to the Town Council in 1995, and he was elected Mayor Pro Tempore just in the last year.

David utilized the skills he learned playing basketball and the knowledge he learned in school to become a very influential educational and sports leader in Southeastern North Carolina. David truly made a difference in the lives of his students. For 16 years, David worked as an educational administrator for Columbus County schools. His most recent position was as an Assistant Principal at Williams Township School. From 1970–1988, David coached basketball at Kansas State University, Jacksonville University, Pensacola Junior College, Tate High School, and Durham High School. In 1988, David's Durham High School team was the PAC6 Tournament Champs, and he was named the Durham City County Prep Coach of the Year.

Legendary UCLA Basketball Coach John Wooden once said, "Sports do not build character. They reveal it." This statement could not be more true in the case of David Lawrence. The manner in which David played basketball as a youth and coached basketball as an adult not only revealed his leadership, but also more importantly, his unselfish commitment to others and causes greater than himself.

Mr. Speaker, dedicated service to others combined with dynamic leadership has been the embodiment of David's life. May we all use his wisdom, selflessness, and integrity as a beacon of direction and a source of true enlightenment for many years to come. indeed, may God bless to all of our memories the honored life and legacy of David Lawrence.

THE TAX CODE TERMINATION ACT

HON. BOB GOODLATTE

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. GOODLATTE. Mr. Speaker, I rise today to introduce the "Tax Code Termination Act".

This bi-partisan legislation, which I introduced with my colleague COLLIN PETERSON of Minnesota, will accomplish two goals. It will abolish the Internal Revenue Code by December 31, 2009, and call on Congress to approve a new Federal tax system by July of the same year.

The fact is our current tax system has spiraled out of control. Today's tax code is unfair, discourages against savings and investment, and is impossibly complex.

A few years ago, Money magazine asked 50 professional tax preparers to file a return for a fictional family. No one came up with the same tax total, nor did any of the preparers calculate what Money magazine thought was the correct Federal income tax. The results varied by thousands of dollars. At a time when Americans devote a total of 7 billion hours each year to comply with the tax code, we need tax simplification.

Whichever simple tax system is adopted, the key ingredients should be: a low rate for all Americans; tax relief for working people; protection of the rights of taxpayers and reduction in tax collection abuses; promotion of savings and investment; and encouragement of economic growth and job creation. Taxes may be unavoidable but they don't have to be unfair and overcomplicated.

While many questions remain about the best way to reform our tax system, I am certain that if Congress is forced to address the issue we can create a tax code that is simpler, fairer, and better for our economy than the one we are forced to comply with today. The problem is Congress won't act on such a contentious issue unless it is forced to do so. The Tax Code Termination Act will force Congress to finally debate and address fundamental tax reform.

Just like other programs that require reauthorization, the tax code must be reviewed to examine whether it is fulfilling its intended purpose and then Congress must make what changes are necessary.

There is a widespread consensus that the current system is broken, and keeping it is not in America's best interest. I urge each of my colleagues to support this important legislation.

CELEBRATING THE LIFE OF DR. LAWRENCE W. SCOTT

HON. DIANE E. WATSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Ms. WATSON. Mr. Speaker, I rise today to memorialize the life of a distinguished American, Dr. Lawrence "Bill" W. Scott, who passed away on December 20, 2005.

Throughout his illustrious life, Dr. Scott could claim many "firsts." In 1944, he was the first black student body president of Foshay Middle School. In 1947, he graduated with honors from Polytechnic High School, where he participated in track and field and also served as the first black student body president. In 1948, he attended the University of California at Berkeley and later became the student body "representative at large." After receiving his degree from Berkeley, in 1951, Dr. Scott was drafted into the U.S. Army and stationed at Fort Lewis, Washington, where he served for two years during the Korean War. He eventually attained the rank of Captain.

After his discharge from the Army, Dr. Scott enrolled in the pre-med program at the University of California at Los Angeles. In 1957, the then new UCLA School of Medicine accepted Dr. Scott as its first African American medical student. Upon graduation, Dr. Scott interned at Harbor General Hospital, ultimately specializing in obstetrics and gynecology. He subsequently opened two women's clinics in Los Angeles.

At the age of 52 and after 14 years of medical practice, Dr. Scott returned to law school and received his J.D. from Southwestern University School of Law in 1980. After passing the bar, he initially thought he would pursue missionary work; however, he worked as a forensic attorney and represented victims in malpractice suits.

Dr. Scott's achievements, honors, and awards are numerous. He was the first African American resident at Queen of Angeles Hospital in Los Angeles. At one time, he held the record for the most infants delivered at Cedars-Sinai Medical center. He also served on the Board of Governors of the UCLA Foundation in the mid-1980s.

His interest in people and his special affection for children was evident. He enjoyed sports and was an avid tennis player. He also loved music, from jazz to the classics. He will be remembered by many for his wonderful humor and his black book of jokes.

Dr. Scott is survived by his devoted wife of 8 years, Maria; his three children, Rebecca, Brian, and Onjale Scott; his sister, Darling Scott Herod; his brother, Paul Richard Scott; mother-in-law, Loretta Domer-Wilson; and other beloved family and friends.

Dr. Scott truly enjoyed this journey called life and lived it to its fullest.

IN CELEBRATION OF VIRGINIA DENTAL ASSOCIATION'S MISSION OF MERCY TO NEW ORLEANS

HON. ROBERT C. SCOTT

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. SCOTT of Virginia. Mr. Speaker, the wealth and generosity of the American people is possibly the greatest story to come from the aftermath of Hurricane Katrina. Upon seeing their fellow citizens in need, Americans pledged millions of dollars to the Red Cross and other charitable organizations. Families hosted displaced evacuees, while others welcomed strangers into their homes, schools, and houses of worship. I would like to commend one group of volunteers who have put their specialized skills to use in bringing critical services back to New Orleans.

This past Sunday, forty dentists and forty support volunteers from the Commonwealth of Virginia, in conjunction with the Virginia Dental Association, left Virginia on a Mission of Mercy. They joined with 400 medical professionals and 150 support volunteers from thirty-eight different states and transformed the New Orleans Zoo into one large health care clinic. They will spend this week staffing this clinic, providing health care free of charge to anyone who needs it. The dentists from Virginia are not just providing checkups, but are performing extractions, fillings, partial realignments, and all other procedures that one would normally receive in a dentist's office. The 500 dental patients that will be treated daily are just a portion of the 1600 patients that will be triaged through the clinic coordinated by Remote Area Medical of Knoxville, Tennessee.

The doctors and support volunteers participating in the Mission of Mercy are paying for their own transportation and lodging. On top of those costs, many of them are forced to close their own practices in their home states in order to participate in the mission.

This simple gift to the people of New Orleans is a much needed one. The image of homes flooded by Katrina's waters is prevalent in our minds. It is easy to forget that businesses, such as doctor's offices, were also destroyed. For the parts of New Orleans that weren't flooded, many still lack power and potable water. For many of the brave citizens and aid workers that still inhabit the city, health care is a creature comfort that is either unavailable or too expensive. It is a necessity that sadly takes a backseat to more immediate concerns.

The federal government has yet to fully live up to its responsibility to the citizens whose lives were ravaged by Hurricane Katrina, and until the federal government fulfills this responsibility, the job is left to private citizens to put a great city back together again. I salute the medical professionals and volunteers from around the country and especially those from the Virginia Dental Association who are giving of their time, money, and expertise to help bring normalcy back to the lives of their fellow citizens. The entire Virginia Congressional delegation salutes the Virginia Dental Association as ambassadors of goodwill and Virginia values.

DISABLED VETERANS TAX FAIRNESS ACT

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. FARR. Mr. Speaker, today Representative BILIRAKIS and I are introducing the Disabled Veterans Tax Fairness Act. This bipartisan bill serves disabled veterans who have been caught in the cross hairs of the bureaucracy at the Department of Veterans Affairs and an Internal Revenue Service statute of limitations. The Disabled Veterans Tax Fairness Act would add an exception to the IRS statute of limitations that would allow disabled military retirees whose disability claims have been pending for more than 3 years to receive back taxes for all the years that their claim was pending.

This issue was brought to my attention by a constituent who had a disability claim pending at the VA for 8 years. After he finally won his disability claim and was awarded retroactive disability compensation, he was denied 5 years of back taxes due to the IRS 3-year statute of limitations. This veteran and perhaps thousands of others are being penalized through no fault of their own.

To determine the scope of the problem, I requested a report in the FY06 TT/HUD appropriations bill directing the IRS to tell the committee how many disabled military retirees have been and will be penalized by this IRS statute of limitations. I look forward to the results in mid-March.

Those who have dedicated their lives to the security of this country should not be penalized by the IRS for bureaucratic inefficiency by the VA disability claims process. This bill is supported by the Military Officers Association of America and The Military Coalition. Please join Representative BILIRAKIS and me as a cosponsor of H.R. 4727.

PLANNED PARENTHOOD: TIME TO TAKE A SECOND LOOK AT CHILD ABUSE INC.

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. SMITH of New Jersey. Mr. Speaker, I rise tonight to set the record straight about significant misinformation that continues to be disseminated concerning an amendment I offered last summer. Planned Parenthood has refused to admit the truth about the true genesis of this amendment. Because Planned Parenthood boasts that "trust is the cornerstone of why people choose [them]," I cannot allow its lies to continue unanswered. And I believe it's time Americans take a look at Planned Parenthood on other issues as well, including abortion.

Several years ago I became aware of a devastating condition called fistula. Fistula is a terribly painful disorder that marginalizes women in many parts of the developing world, yet is relatively inexpensive to treat. I authored legislation to authorize USAID to provide much-needed assistance to women desperate for treatment. Unfortunately, with the help of organizations like Planned Parenthood, some of my colleagues tried to weaken the authorization by adding language that would have prevented crucial faith-based health care providers from helping women through this program.

Women suffering with fistula need treatment, and provisions mandating contraceptives would have prevented some health care providers most suited to provide treatment from doing so. These women need speedy treatment, not politicized language.

As the prime author of H.R. 2601—The Foreign Assistance Authorization Act of FY 06 and 07—I personally wrote the section in the bill, (Sec. 1001) that authorizes the President to establish at least 12 treatment centers to provide surgery and healing therapies for women suffering from a devastating condition known as obstetric fistula. The bill also provides for the dissemination of educational information so that women will know where to go for affordable treatment and how to protect against the occurrence of this preventable, curable condition.

Obstetric fistula is an excruciatingly painful hole or rupture in tissues surrounding a woman's birth canal, bladder, or rectum that is caused by rape, physical abuse or untreated, obstructed labor. Tragically, the constant leaking of urine and feces leads to sickness, desertion by husbands and family, extreme social isolation, and poverty.

Amazingly, for $150—$300, a woman victimized by fistula can obtain a surgical repair which gives her back her life. No woman should be denied this minimal, life-saving surgical repair. For several years now, I have asked USAID and the Congress to establish a program to assist women who suffer from obstetric fistula. According to USAID, an estimated 2 million women suffer needlessly from fistula, with 50–100 thousand new cases added every year, mostly in Africa.

USAID has begun to provide support for fistula centers, and that's great. They hoped to put $3 million into the program by the end of 2005 and they have already identified a dozen medical facilities ready to participate and help these women. My bill, which originally authorized $5 million for 2006 and $5 million in 2007, ensures that the program is properly implemented and able to aid as many women, and young girls, as possible.

During committee mark-up on H.R. 2601, Rep. JOE CROWLEY (D–NY) amended my language in H.R. 2601, to mandate that the new centers "expand access to contraception." At first blush, the language looked OK, but it became very clear that it would have had the dire consequence of excluding certain faith-based health providers who, while deeply committed to mitigating the pain of fistula, would be barred from receiving funds. For example, the Crowley language would have excluded NGOs and church-based organizations opposed to chemicals that act as abortifacients—those that prevent implantation of a newly created human life—from getting any U.S. funds. Had my amendment not succeeded, several hospitals selected by USAID as "fistula centers" would have lost funding.

The amendment I offered that passed on the floor in July corrected this problem so that the faith-based sites including those already identified for the program by USAID—and perhaps others in future—could participate and provide assistance to women in need. My amendment to my own bill also increased the funding in 2007 to $7.5 million, since it is obvious that once the centers are up and running the demand for the cure will be even greater. To participate in the program, providers must offer critical treatment care—including increased access to skilled birth attendants—and may offer information about a number of preventative practices such as abstinence education, encouraging postponement of marriage and childbearing until after teenage years, and family planning services for women whose age or health status place them at high risk of prolonged or obstructed childbirth.

Nothing in my original fistula language or my amendment adopted on the floor restricts access to family planning services. Rather, my amendment made a variety of preventative practices optional and as such is sensitive to and consistent with the values of the people—and the hospitals that serve them—in developing countries.

Despite all this, Planned Parenthood still insists on praising the people who would have killed the amendment and attacking me. The headline on its website reads: "Rep. CHRIS SMITH's Latest Political Attack on Women." The closing line of its story says, "The gentleman from New Jersey would do well—just once—to try and feel the pain of others."

I have authored numerous laws—that is to say, I am the prime sponsor of laws—that directly benefit women, including the Victims of Trafficking and Violence Prevention Act of 2000 (P.L. 106–386), the Trafficking Victims Protection Reauthorization Act of 2003 (P.L. 108–193), the Trafficking Victims Protection Reauthorization Act of 2005 (P.L. 109–164), the Results and Accountability in Microenterprise (P.L. 108–484), and the Microenterprise Enhancement Act of 2003 (P.L. 108–31),just to name a few. I helped secure the passage of the Violence Against Women Act Reauthorization in 2000 by incorporating its major provisions into my law, the Victims of Trafficking and Violence Prevention Act of 2000. I have fought for human rights and health care my entire career.

I am currently the chairman of the Subcommittee on Africa, Global Human Rights, and International Operations and the Co-Chairman of the Commission on Security and Cooperation in Europe (also known as the United States Helsinki Commission), which works to promote and foster democracy, human rights, and stability in Eastern and Central Europe. I served as the Chairman of the Veterans Affairs Committee until 2005, where I authored laws that are helping veterans to this day and will for as far as the eye can see in the areas of health care, college education, widows' benefits, and the creation of a new comprehensive program to help homeless veterans. I also presently serve as the co-chair and co-founder of the Congressional Task Force on Alzheimer's Disease, the founding co-chair of the Congressional Spina Bifida Caucus, the co-founder of the Coalition for Autism Research and Education, the co-chair and co-founder of the Congressional Refugee Caucus, and the co-chair of the Congressional Pro-Life Caucus. Having served 26 years in Congress, I could continue this list, Mr. Speaker. I set forth my dedication to these causes here not to promote myself, but to show Planned Parenthood's deceptions. Planned Parenthood's vicious attacks on me are, at best, misinformed; at worst, libel.

Sadly, this is a pattern of conduct with Planned Parenthood, seeking to discredit anyone who includes the protection of the unborn along with fundamental human rights. When one stops to consider the big business that is abortion, it is no wonder.

ABORTION AS A BUSINESS

Planned Parenthood makes millions of dollars plying its lethal trade at nearly 850 clinics in the U.S. alone. Judith Fetrow, a former Planned Parenthood worker, verifies this fact: "It is extremely difficult to watch doctors lie, clinic workers cover up, and hear terrifying stories of women dragged out of clinics to die in cars on the way to the hospital without beginning to question the party line. I began to wonder if we were really caring for these women, or if we were just working for another corporation whose only interest was the bottom line."

Tragically, the seemingly benign Planned Parenthood is in the grisly business of dismembering the fragile bodies of unborn children with sharp knives and hideous suction machines that are 25 to 30 times more powerful than a vacuum cleaner used at home. Planned Parenthood ought to be known as "Child Abuse, Incorporated," for the large number of children that it has killed and continues to kill, all the while being subsidized by American taxpayers. This is not a business of healing, nurturing, or caring—this is a business of killing.

For Planned Parenthood, business is good. Violence against children pays handsomely. In 2004, it increased the number of abortions it performed by 10,000—while abortions nationwide have declined—for a total of 255,015, a new pathetic record of kids killed even for Planned Parenthood. For "medical abortions," Planned Parenthood quotes prices from $350 to $650. For first-trimester vacuum and D&E abortions, the only type of surgical abortions for which they provide a price range, Planned Parenthood earns $350 to $700 apiece.

To put the number of child deaths in perspective, picture this: 67,500 fans filled Ford Field to watch the Super Bowl last Sunday night. Planned Parenthood performed 255,015 abortions in 2004. The number of unborn babies whose lives were taken from them before they could take their first breath by this one corporation in one year could have filled that stadium nearly four times over. Planned Parenthood is now responsible for committing nearly one out of every five abortions performed in the United States, with its numbers steadily rising while the overall totals in the U.S. have been declining. Over the course of time, Planned Parenthood's tally in the taking of innocent children's lives has exceeded the three million mark.

If the number of abortions performed alone doesn't convince you of Planned Parenthood's agenda, Mr. Speaker, just compare it with the other services it provided in the name of "family planning." Planned Parenthood—parenthood, Mr. Speaker—provided a mere 17,610 clients with prenatal care. That's a ratio of one parent to every 14 women who lost their children to abortion. Planned Parenthood referred a meager 1,414 clients to adoption services. That means it killed 180 babies for everyone it referred to be placed with a couple desperately seeking a child. To me, Mr. Speaker, this record doesn't seem to be that of an organization dedicated to preserving women's "choices."

And if that is not enough, this so-called "pro-choice" organization does everything within its power and massive budget to prevent women from knowing all their options and being certain that their choices are truly informed. Planned Parenthood both lobbies and litigates against virtually every child protection initiative at both the state and federal level, including parental and spousal notification, women's right to know laws, waiting periods, partial-birth abortion bans, unborn victims of violence laws, statutory rape reporting laws, and abortion funding bans. It inflates statistics to promote its own agenda.

One of the abortion community's own exposed them, though, when Ron Fitzsimmons, the director of the National Coalition of Abortion Providers publicly admitted that he "lied through (his) teeth" when he told a TV interviewer that partial-birth abortion was "used rarely and only on women whose lives were in danger or whose fetuses were damaged." Fitzsimmons confessed that the myth about this horrific abortion procedure was deliberately propagated by the abortion lobby—including Planned Parenthood and its research arm, the Alan Guttmacher Institute (AGI). In a 1995 letter to Members of Congress, Planned Parenthood, AGI, and other groups stated, "This surgical procedure is used only in rare cases, fewer than 500 per year. It is most often performed in the cases of wanted pregnancies gone tragically wrong, when a family learns late in pregnancy of severe fetal anomalies or a medical condition that threatens the pregnant woman's life or health." In truth, Fitzsimmons explained, the vast majority of partial-birth abortions are performed on healthy fetuses, 20 weeks or more along, with healthy mothers. The number of 500 partial-birth abortions a year that Planned Parenthood cited in its letter was also a complete falsehood. Fitzsimmons estimated that the method was used 3,000–5,000 times annually. I would argue that even this number is low—in just one New Jersey abortion mill, the Bergen Record newspaper reported that 1,500 children were killed by partial birth abortion in one year.

When Planned Parenthood can't accomplish its deadly goals through the democratic process, it turns to the courts. It files approximately 50 lawsuits a year to protect its business interests in abortion. Then, Planned Parenthood fights tooth and nail to prevent judges who recognize the inherent value of human life at every stage, as well as the constitutional protections of that life, from getting on the bench. Luckily for us, the American people and our President and Senate have seen through that propaganda blitz.

INTERNATIONAL EFFORTS

Sadly, it does exactly the same thing overseas, and many foreign governments are eventually deceived by its arguments. The Planned Parenthood Federation of America-International is leaving no stone unturned in its misguided, obsessive campaign to legalize abortion on demand. If it succeeds, millions of babies will die from the violence of abortion. We cannot add to the body count.

In Planned Parenthood's 2003–2004 annual report, the organization clearly admits its goal. It states that programs supported by Planned Parenthood Federation of America-International "guarantee the sexual and reproductive health and rights of individuals by providing. .. safe abortion and post-abortion care services. . ."

The use of family planning to cloak its real agenda—the use of family planning as a cover for permissive abortion laws—is now commonplace, and must be stopped. In over 100 countries around the world, the lives of unborn children are still protected by law. But in country after country, we find Planned Parenthood zealots partnering with well-financed NGOs from Europe to promote violence against unborn babies.

And as Planned Parenthood—the most prominent advocate, sometimes the only advocate—of legalizing abortion on demand—has said, "When abortion laws are liberalized, the number of abortions skyrocket." That is Planned Parenthood's word, skyrocket. So if we want more abortions—more dead babies and more wounded women—liberalize the laws.

TAXPAYER SUBSIDY

Over a third of Planned Parenthood's income comes from the pockets of tax-paying Americans, through local, state, and federal governments. Sure, we have the Hyde Amendment in place, thankfully, which prevents taxpayer dollars from directly funding abortions, but money is fungible. The millions of dollars we give to Planned Parenthood to provide so-called "family planning" services immediately frees up millions more to be used for the performance and promotion of abortion. Americans' hard-earned money goes to keep the lights on and pay the heat bill for this industry that is literally making a killing taking the lives of the children they'll never get the chance to meet. People who see that abortion is murder are still forced to subsidize the lawsuits and lobbying that keeps abortion legal.

Planned Parenthood's 2003–04 annual report brags about how it helped increase Title X funding, for a total of $273 million in taxpayer dollars. It also discloses that it received $265.2 million in government grants and contracts from Title X and other sources during that period.

The abortion promoters never tire of reminding us that they promote abortion with what they call "their own money," but this argument deliberately misses the point.

First, it ignores the fact that all money is fungible. When we pay an organization like Planned Parenthood millions of dollars, we cannot help but enrich and empower all of that organization's activities, all that it does, even if the organization keeps a set of books that says it uses its money for one thing and our money for something else.

We must begin to stand with the victims, both mother and child, and against the victimizers. When we subsidize and lavish Federal funds on abortion organizations, we empower the child abusers; and Planned Parenthood, make no mistake about it, both here and overseas, is "Child Abuse, Incorporated."

ABORTION CLINICS = TORTURE MILLS

Abortion mills do not nurture, they do not heal, they do not cure disease.

Abortion is violence against children. Some abortion methods dismember and rip apart the fragile bodies of children. Other methods chemically poison children. Abortionists turn children's bodies into burned corpses, a direct result of the caustic effect of poisoning and other methods of chemical abortions.

I would say to my colleagues, there is absolutely nothing benign or curing or nurturing about abortion. It is violence. It is gruesome. And yet the apologists sanitize the awful deed with soothing, misleading rhetoric. Abortion methods are particularly ugly because, under the guise of choice, they turn baby girls and baby boys into dead baby girls and dead baby boys.

I have drafted a bill that would inform women about the pain their unborn babies experience during abortions, the Unborn Child Pain Awareness Act, H.R. 356. This bipartisan bill requires that those performing abortions at or beyond the 20–week point provide the mother with certain information regarding the capacity of her unborn child to experience pain during the abortion, and offer the mother the option of having pain-reducing drugs administered directly to the unborn child to reduce his or her pain. Not surprisingly, the abortion lobby—including Planned Parenthood—has opposed informing women of this truth, though they do not deny that unborn children may feel pain after 20 weeks gestation.

CONSCIENCE

Forty-five States and the Federal Government protect the right of health care providers to decline involvement in abortion. Planned Parenthood has launched an active campaign to abolish these legal protections, arguing on its website:

"While everyone has the right to their [sic] opinions about reproductive health care, including . . . abortion . . . Health care providers who object to providing certain services still have an obligation to respect the rights of their patients and to enable them to access the health care they need."

Planned Parenthood wants to compel hospitals and health care providers of conscience to do abortions—it's that simple. Not all of the hospitals and health care providers who oppose this plan are religious. There are people who are not religious who have deep, moral convictions, and they believe that abortion takes the life of a baby. We ought to be nurturing. We should not compel our places of healing to become killing fields.

PRO-CHOICE??

Planned Parenthood reasons that every child should be a wanted child. While the implication of this goal is valiant and an ideal I share, how we go about achieving it is much, much different. I agree, every child deserves to be loved with every ounce of her parents' being—Planned Parenthood, however, would rather kill her than allow her to be born into a home that might not have planned for her or allow another loving family to adopt her. This philosophy turns children into a commodity that is owned—and if they aren't wanted, they are expendable.

Planned Parenthood also claims to promote informed choice for women, but the reality of its words and actions belies this assertion. When describing abortion procedures on its website, it consistently talks about the emptying of the uterus, and the elimination of the "products of conception." Even its clinic layouts aim to avoid the acknowledgement of the life of the unborn. One of their employees explained that "Planned Parenthood is set up so clinic workers never have to see the babies. It's set up that way because having to look at the babies bothers the workers." Although Margaret Sanger, Planned Parenthood's founder, supported abortion, she did recognize that it was murder, admitting, "Abortion was the wrong way—no matter how early it was performed it was taking a life." It is incredibly sad that the Planned Parenthood of today has entirely dismissed the humanity of the unborn, and works to delude women into doing the same.

Planned Parenthood's website states that it believes: "Information about becoming pregnant and about postponing, preventing, continuing, or terminating pregnancy should be easily available; the choice of whether or not to parent should be free and informed," and that: "People need accurate and complete information to make childbearing decisions that are appropriate for them. They want and need to know about abstinence, birth control, abortion, adoption, prenatal care, and parenting in an age-appropriate context." They say that they believe "in trusting individuals and providing them with the information they need to make well-informed decisions about sexuality, family planning, and childbearing."

If all that is true, why do the organization's actions, services, and expenditures not reflect it? Why does it lobby against and sue to overturn every informed consent provision enacted? Why does it provide so many abortions, especially when compared to so few adoption referrals and so little prenatal care?

Mr. Speaker, why would Planned Parenthood and a virtual who's who of abortion activists in America so vehemently oppose the Unborn Victims of Violence Act and promote a gutting substitute in its stead? Why would it take a position so extreme that 80 percent of Americans oppose it? The mothers of these babies have made their "choice" to have their babies, and someone else takes that decision from them. Should a mugger have unfettered access to maim or kill that baby without triggering a separate penalty for the crime?

Why would it oppose parental involvement in their daughters' pregnancy decisions, in one of the most important decisions those young girls will ever make?

Because, Mr. Chairman, Planned Parenthood is not supportive of "choice"—it is supportive of abortion, because, after all, that's how it stays in business.

PP'S TARGETS

Planned Parenthood has been very clever and self-serving in its business practices. Not only has it fought to keep abortion legal and to give it protection that is to be found nowhere in our Constitution, not only has it kept its income stream pouring in from local, state, and federal governments and from clients, but it has successfully brainwashed its target audiences so that its "services" remain in high demand.

Again, Margaret Sanger, the founder of Planned Parenthood, laid the groundwork for this business plan back in the early 1900s. In her book, Pivot of Civilization, Sanger argued, "We are paying for and even submitting to the dictates of an ever increasing, unceasingly spawning class of human beings who never should have been born at all." In Chapter 5 of that book, which is entitled the "Cruelty of Charity," she pulls no punches in condemning those of us who seek to help poor, disadvantaged pregnant women get maternal health care:

". . . Organized charity itself is the symptom of a malignant social disease.

Those vast, complex, interrelated organizations aiming to control and to diminish the spread of misery and destitution and all the menacing evils that spring out of this sinisterly fertile soil, are the surest sign that our civilization has bred, is breeding and is perpetuating constantly increasing numbers of defectives, delinquents and dependents. My criticism, therefore, is not directed at the "failure" of philanthropy, but rather at its success. . . .

But there is a special type of philanthropy or benevolence, now widely advertised and advocated, both as a federal program and as worthy of private endowment, which strikes me as being more insidiously injurious than any other. This concerns itself directly with the function of maternity, and aims to supply gratis medical and nursing facilities to slum mothers. Such women are to be visited by nurses and to receive instruction in the "hygiene of pregnancy"; to be guided in making arrangements for confinements; to be invited to come to the doctor's clinics for examination and supervision. They are, we are informed, to "receive adequate care during pregnancy, at confinement, and for one month afterward. Thus are mothers and babies to be saved, "Childbearing is to be made safe." The work of the maternity centers in the various American cities in which they have already been established and in which they are supported by private contributions and endowment, it is hardly necessary to point out, is carried on among the poor and more docile sections of the city, among mothers least able, through poverty and ignorance, to afford the care and attention necessary for successful maternity. . . . The effect of maternity endowments and maternity centers supported by private philanthropy would have, perhaps already have had, exactly the most dysgenic tendency. The new government program would facilitate the function of maternity among the very classes in which the absolute necessity is to discourage it.

Such "benevolence" is not merely superficial and nearsighted. It conceals a stupid cruelty . . . Aside from the question of the unfitness of many women to become mothers, aside from the very definite deterioration in the human stock that such programs would inevitable hasten, we may question its value even to the normal though unfortunate mother. For it is never the intention of such philanthropy to give the poor over-burdened and often undernourished mother of the slum the opportunity to make the choice herself, to decide whether she wishes time after time to bring children into the world.

. . . The most serious charge that can be brought against modem "benevolence" is that it encourages the perpetuation of defectives, delinquents and dependents."

In 1922, Margaret Sanger stated, "All our problems are the result of overbreeding among the working classes." The Planned Parenthood of today has stayed true to Sanger's school of thought, identifying its "core clients" as "young women, low-income women, and women of color." Planned Parenthood's research arm, the Alan Guttmacher Institute, has disclosed that this objective has been achieved: forty-five percent of women who have abortions are college-age, 18–24 years old. Women aged 20–24 have a higher abortion rate than any other group, followed closely by women aged 18–19. Black women are three times as likely as others to have abortions, and the numbers of poor women who have abortions are triple those of others. Since 1973, the year the unelected, lifetime-appointed justices on the Supreme Court made abortion legal on demand, at least 13.8 million minority babies have been aborted. Black and Hispanic women represent only a quarter of American women of child-bearing age, yet account for more than half of all abortions in the US.

Alveda King, the niece of the late Dr. Martin Luther King, Jr., was herself deceived by the lies of the abortion lobby in the wake of Roe v. Wade. Alveda experienced firsthand the tragic consequences abortion inflicts on women who undergo them—she had two abortions and now deeply regrets them—and to their entire families, and to society in general. Citing her uncle, who once said, "The Negro cannot win as long as he is willing to sacrifice the lives of his children for comfort and safety," Alveda asks, "How can the 'Dream' survive if we murder the children?" Today, Alveda is part of a courageous group of women, all of whom have had abortions and have come to regret that fact, called Silent No More. These amazing women help women who have had abortion find peace and reconciliation.

EFFECTS OF ABORTION ON WOMEN

Planned Parenthood also perpetuates the myth that abortion is safer than childbirth. Of course its never safer for the baby. And the CDC abortion surveillance, however, doesn't even track morbidity, so data on injury and illness from abortion is obtained from the abortion mills—talk about a conflict of interest. Mortality—death to women from abortion—is likely to be underreported. That's true, in part, because women who have had abortions, suffering serious complications, often seek assistance at hospital emergency rooms rather than the abortion mill, and the death certificates, at times, list sepsis or infection, rather than abortion, as the cause of death. Moreover, national reporting of death to women from abortion is extremely passive, thus the likelihood of underreporting.

I would encourage anyone seeking the truth on this question to ask the family and friends of Holly Patterson, who died two weeks after her eighteenth birthday from septic shock after taking RU–486, the abortion pill. Her parents had no idea what she had done until arriving at the hospital the day she died. The abortion pill was provided to her at a Planned Parenthood clinic. A state of California investigation into her death found that that clinic failed to report her death to the state Department of Health, and that it did not give her full information and education on how to take the drug.

This is not surprising, considering that Planned Parenthood was involved in the sham trials that allowed RU–486 to be approved for sale by the Clinton FDA, something that needs to be seriously reconsidered and the drug pulled off the market. Between October 1994 and September 1995, the Des Moines, Iowa, Planned Parenthood clinic participated in these trials. Based on Planned Parenthood's accounting, news reports said no problems had been experienced in the trials. One Iowa doctor watching the news was in disbelief about what he was reading. This doctor, Mark Louviere, had attended to a woman who had participated in the trials and had suffered serious side effects two weeks later, as a result of taking the abortion pill. When Dr. Louviere arrived in the emergency room, the woman had lost between half and two-thirds of her blood volume, and she was in shock. Dr. Louviere immediately took her into surgery to save her life. In his own words, "If near death due to the loss of half of one's blood volume, surgery, and a transfusion of four units of blood do not qualify as a complication, I don't know what does." Planned Parenthood responded that they only reported what happened during the immediate time period of the trial—so the fact that this woman nearly died from taking a drug that they were responsible for reporting the effects of was of no concern to them.

In challenging Planned Parenthood's assertion that abortion is safer than childbirth, I'd also look into the story of Michelle Madden, an 18-year-old college freshman who decided to have an abortion after a doctor told her that the drugs she was taking for epilepsy would cause her baby to be deformed. Michelle collapsed three days after the abortion, and at the hospital, doctors found that pieces of the baby were still inside her. Michelle died of a blood infection resulting from the abortion three days after admission to the hospital.

I would suggest reading about what happened to Mary Pena, 43 years old, the mother of five children, who died after she underwent a second-trimester abortion and bled to death on the operating table.

You might also be interested in the story of Debra Ann Lozinski, who was 16 years old when she went in for an abortion in my home state of New Jersey. Due to a lack of oxygen caused by the general anesthesia she was given for her abortion, Debra fell into a coma, where she remained for several months before developing pneumonia and then going into septic shock. Debra died 12 days after her 17th birthday.

I'd also suggest learning about 22-year-old Tamika Dowdy, who sought an abortion when she was four months pregnant so that she could finish her college education. Paramedics were called to the clinic where Tamika's baby was being aborted, because Tamika was having problems breathing. They were unable to save her.

There are many, many more heart-breaking accounts just like those of these women—and those are only the ones we know about. Multiples of these exist, but the whole story hasn't been disclosed.

Justice Blackmun, the author of Roe v. Wade, helped create the safe abortion myth, based on studies and opinions of population control advocates, who were avidly promoting liberalized abortion laws. In reality, not only can abortions immediately kill women, through hemorrhaging, septic shock, uterine perforation, cervical lacerations, etc., but there are also long-term consequences of abortion that can lead to death, including suicide and breast, cervical, and ovarian cancer.

Beyond these deaths, the impact of abortion on women, both physical and psychological, is devastating. Women suffer from many adverse post-abortion reactions, ranging from bleeding, cramping, and infection to depression and substance abuse to breast cancer and infertility. The risk of these detrimental effects of abortion is greatly multiplied in teens, one of the groups Planned Parenthood specifically targets. The brave women in the Silent No More Awareness Campaign have shown us that abortion really does hurt both babies and women, and sometimes even kills both. Abortionist Warren Hern admits, "In medical practice, there are few surgical procedures given so little attention and so underrated in its potential hazards as abortion. It is a commonly held view that complications are inevitable." This is not a simple surgical procedure, the same as any other, and the baby being killed is not a clump of cells.

Planned Parenthood downplays the physical or emotional after-effects of abortion. Their website claims, "Most women feel relief after an abortion. Serious emotional problems after abortion are much less likely than they are after giving birth." While this may be true immediately after the abortion, a new study from New Zealand has shown that the long-term psychological consequences are much greater. Women who have had abortions are, in many cases, the walking wounded.

The people pushing the safe abortion myth are the same as those who inflate the statistics about back-alley abortions. They are the same ones trying to instill a sense of pride about abortion by marketing "I had an abortion" T-shirts. These people, the people behind the propaganda machine at Planned Parenthood, are the same ones who are making millions from abortion, from killing our babies.

Planned Parenthood cannot be trusted, and it appears that even it is starting to recognize that fact. Until July of 2005, its tagline read: "Planned Parenthood Federation of America is the nation's largest and most trusted voluntary reproductive health organization." It has since dropped the reference to trust and replaced that line with this slogan: "Planned Parenthood Federation of America is the nation's leading sexual and reproductive health care advocate and provider." Mr. Speaker, the truth about Planned Parenthood's pattern of deceit and destruction of human life must at long last be brought to light. The cover-up is over.

TRIBUTE TO MARGARET HELLER

HON. JOE WILSON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. WILSON of South Carolina. Mr. Speaker, the following resolution was passed in honor of Margaret Heller Percell by the South Carolina Human Affairs Commission.

RESOLUTION HONORING MARGARET HELLER PERCELL

Whereas Margaret Heller Percell will retire on February 1, 2006, after thirty-eight years of service to the state of South Carolina and

Whereas Margaret began her service to the State of South Carolina in May, 1967, at South Carolina State University in the Career Planning and Placement Office and

Whereas Margaret became a member of the Governor's staff in August, 1968, as the first black since reconstruction serving under Governors Robert E. McNair and John C. West, respectfully, and

Whereas Margaret jointed the staff of the South Carolina Human Affairs Commission in September, 1975, as staff assistant to the Commissioner and was appointed to the position of Procurement Officer in 1978 where she has served for the past twenty-seven years and

Whereas Margaret has served as a member of the South Carolina Governmental Fleet Managers Association (SCGFMA) and the South Carolina Association of Governmental Purchasing Officers (SCAGPO), Bethune-Westside Chapter of National Council of Negro Women, the Daisy Dunn Johnson Foundation, Hope School Preservation/Restoration Committee, the Ryan Street Home Owners Association and a member of Brookland Baptist Church where she served as president of the Deaconesses for fifteen years.

It is hereby resolved that the members of the South Carolina Human Affairs Commission commend Margaret for her exemplary service to the Commission and the State of South Carolina.

A TRIBUTE TO NASHVILLE SCRAPPERS

HON. MIKE ROSS

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 8, 2006

Mr. ROSS. Mr. Speaker, it is with honor and great pride that I recognize and congratulate the Nashville Scrappers of Southwest Arkansas, whose outstanding teamwork and dedication on the football field earned the team the Class AAA State Title at War Memorial Stadium in Little Rock on December 13, 2005. The Nashville Scrappers embody the spirit of teamwork, determination, and dedication that defines a champion.

As a parent, I understand the important lifetime lessons that teamwork teaches our students in pursuit of a lifetime of success. I have long been an advocate of sports and extracurricular activities as they complement academic excellence and inspire leadership, character, and perseverance as our students face the challenges of the 21st century.

It is a tremendous honor to once again congratulate the Nashville High School football program on winning the Class AAA State Football Title. I applaud the Nashville Scrappers for their season of dedication. This victory is the result of hard work among the players, student body, coaching staff, Nashville High School faculty, and the community. I salute the coaches, parents, and players who stayed the course and rose to the occasion in becoming state champions.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, February 9, 2006 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

FEBRUARY 10

9:30 a.m.

Homeland Security and Governmental Affairs

To continue hearings to examine Hurricane Katrina response issues, focusing on the roles of the Department of Homeland Security and the Federal Emergency Management Agency leadership.

SD–342

FEBRUARY 13

10 a.m.

Homeland Security and Governmental Affairs

To resume hearings to examine Hurricane Katrina response issues, focusing on waste, fraud, and abuse during the disaster.

SD–342

FEBRUARY 14

9:30 a.m.

Armed Services

To resume hearings to examine the defense authorization request for fiscal year 2007 and the future years defense program.

SD–106

10 a.m.

Banking, Housing, and Urban Affairs

To hold hearings to examine the nominations of Randall S. Kroszner, of New Jersey, and Kevin M. Warsh, of New York, each to be a Member of the Board of Governors of the Federal Reserve System, and Edward P. Lazear, of California, to be a Member of the Council of Economic Advisers.

SD–538

Budget

To hold hearings to examine understanding the causes and solutions to addressing the Federal tax gap.

SD–608

Energy and Natural Resources

To hold hearings to examine the Energy Information Administration's 2006 annual energy outlook on trends and issues affecting the United States' energy market.

SD–366

Foreign Relations

To hold hearings to examine the President's proposed budget request for fiscal year 2007 for foreign affairs.

SH–216

Health, Education, Labor, and Pensions

To hold hearings to examine reauthorization of the Ryan White CARE Act relating to fighting the AIDS epidemic of today.

SD–430

Homeland Security and Governmental Affairs

To continue hearings to examine Hurricane Katrina response issues, focusing on the Homeland Security Department's preparation and response.

SD–342

Veterans' Affairs
To hold hearings to examine the President's proposed budget request for fiscal year 2007 for the Department of Veterans Affairs.
SR-418

2:30 p.m.
Energy and Natural Resources
To hold hearings to examine S. 2197, to improve the global competitiveness of the United States in science and energy technology, to strengthen basic research programs at the Department of Energy, and to provide support for mathematics and science education at all levels through the resources available through the Department of Energy, including at the National Laboratories.
SD-366

Indian Affairs
To hold oversight hearings to examine the President's proposed budget request for fiscal year 2007 for Indian programs.
SR-485

Health, Education, Labor, and Pensions
Retirement Security and Aging Subcommittee
To hold hearings to examine the Older Americans Act.
SD-430

Commerce, Science, and Transportation
Trade, Tourism, and Economic Development Subcommittee
To hold hearings to examine the economic impacts of the Canadian softwood lumber dispute on U.S. industries.
SD-562

FEBRUARY 15

9:30 a.m.
Armed Services
To hold hearings to examine the nominations of Preston M. Geren, of Texas, to be Under Secretary of the Army, Michael L. Dominguez, of Virginia, to be Deputy Under Secretary of Defense for Personnel and Readiness, James I. Finley, of Minnesota, to be Deputy Under Secretary of Defense for Acquisition and Technology, and Thomas P. D'Agostino, of Maryland, to be Deputy Administrator for Defense Programs, National Nuclear Security Administration.
SD-106

9:35 a.m.
Environment and Public Works
To hold hearings to examine the Environmental Protection Agency's proposed budget for fiscal year 2007.
SD-628

10 a.m.
Banking, Housing, and Urban Affairs
To hold hearings to examine rebuilding needs in Katrina-impacted areas.
SD-538

Commerce, Science, and Transportation
To hold hearings to examine video franchising.
SD-562

Health, Education, Labor, and Pensions
Employment and Workplace Safety Subcommittee
To hold hearings to examine communication and mine safety technology issues.
SD-430

Judiciary
To hold hearings to examine executive and judicial nominations.
SD-226

10:30 a.m.
Appropriations
Legislative Branch Subcommittee
To resume hearings to examine progress on the Capitol Visitor Center.
SD-138

11 a.m.
Energy and Natural Resources
Business meeting to consider the President's views and estimates to be submitted to the Committee on the Budget.
SD-366

2 p.m.
Budget
To continue hearings to examine the President's fiscal year 2007 budget proposal.
SD-608

2:30 p.m.
Commerce, Science, and Transportation
To hold hearings to examine developments in nanotechnology.
SD-562

Energy and Natural Resources
Public Lands and Forests Subcommittee
To hold hearings to review the progress made on the development of interim and long-term plans for use of fire retardant aircraft in Federal wildfire suppression operations.
SD-366

FEBRUARY 16

9:30 a.m.
Armed Services
To hold hearings to examine priorities and plans for the atomic energy defense activities of the Department of Energy and to review the President's proposed budget request for fiscal year 2007 for atomic energy defense activities of the Department of Energy and the National Nuclear Security Administration.
SD-106

10 a.m.
Banking, Housing, and Urban Affairs
To hold hearings to examine the semiannual monetary policy report to the Congress.
SD-538

10:45 a.m.
Budget
To continue hearings to examine the President's fiscal year 2007 budget proposal.
SD-608

2:30 p.m.
Commerce, Science, and Transportation
To hold hearings to examine NOAA budget.
SD-562

Energy and Natural Resources
National Parks Subcommittee
To hold hearings to examine S. 1870, to clarify the authorities for the use of certain National Park Service properties within Golden Gate National Recreation Area and San Francisco Maritime National Historical Park, S. 1913, to authorize the Secretary of the Interior to lease a portion of the Dorothy Buell Memorial Visitor Center for use as a visitor center for the Indiana Dunes National Lakeshore, S. 1970, to amend the National Trails System Act to update the feasibility and suitability study originally prepared for the Trail of Tears National Historic Trail and provide for the inclusion of new trail segments, land components, and campgrounds associated with that trail, H.R. 562, to authorize the Government of Ukraine to establish a memorial on Federal land in the District of Columbia to honor the victims of the manmade famine that occurred in Ukraine in 1932-1933, and H.R. 318, to authorize the Secretary of the Interior to study the suitability and feasibility of designating Castle Nugent Farms located on St. Croix, Virgin Islands, as a unit of the National Park System.
SD-366

FEBRUARY 28

9:30 a.m.
Indian Affairs
To hold oversight hearings to examine Indian gaming activities.
SR-485

2 p.m.
Veterans' Affairs
To hold hearings to examine legislative presentation of the Disabled American Veterans.
SD-106

2:30 p.m.
Energy and Natural Resources
Water and Power Subcommittee
To hold hearings to examine the Bureau of Reclamation Reuse and Recycling Program (Title XVI of Public Law 102-575).
SD-366

MARCH 1

9:30 a.m.
Indian Affairs
To hold joint hearings with the House Committee on Resources to examine the settlement of Cobell v. Norton.
SH-216

10:30 a.m.
Appropriations
Legislative Branch Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2007 for the Library of Congress, Open World Leadership Council, and Government Accountability Office.
SD-138

2:30 p.m.
Commerce, Science, and Transportation
Disaster Prevention and Prediction Subcommittee
To hold hearings to examine winter storms.
SD-562

MARCH 7

9:30 a.m.
Armed Services
To hold hearings to examine military strategy and operational requirements in review of the Defense Authorization Request for fiscal year 2007 and the future years defense program.
SD-106

MARCH 9

10 a.m.
Commerce, Science, and Transportation
To hold hearings to examine aviation security and the Transportation Security Administration.
SD-562

MARCH 13

3 p.m.
Armed Services
To hold a closed briefing on an update from the Joint Improvised Explosive Device Defeat Organization.
SR-222

MARCH 14

9:30 a.m.
Armed Services
To hold hearings to examine military strategy and operational requirements in review of the Defense Authorization Request for fiscal year 2007 and the future years defense program.
SH–216

MARCH 15

10:30 a.m.
Appropriations
Legislative Branch Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2007 for the the Secretary of the Senate, Architect of the Capitol, and the Capitol Visitor Center.
SD–138

MARCH 16

10 a.m.
Commerce, Science, and Transportation
Disaster Prevention and Prediction Subcommittee
To hold hearings to examine impacts on aviation regarding volcanic hazards.
SD–562

MARCH 30

10 a.m.
Commerce, Science, and Transportation
Disaster Prevention and Prediction Subcommittee
To hold an oversight hearing to examine National Polar-Orbiting Operational Environmental Satellite System.
SD–562

APRIL 5

10:30 a.m.
Appropriations
Legislative Branch Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2007 for the Sergeant at Arms and U.S. Capitol Police Board.
SD–138

APRIL 26

10:30 a.m.
Appropriations
Legislative Branch Subcommittee
To resume hearings to examine progress on the Capitol Visitor Center.
SD–138

MAY 3

10:30 a.m.
Appropriations
Legislative Branch Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2007 for the Government Printing Office, Congressional Budget Office, and Office of Compliance.
SD–138

MAY 24

10:30 a.m.
Appropriations
Legislative Branch Subcommittee
To resume hearings to examine progress on the Capitol Visitor Center.
SD–138

SENATE—*Thursday, February 9, 2006*

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Lord God, our eternal Father whose majesty fills the universe, we give thanks for Your enduring mercy and steadfast love. We are mindful that every sunrise is a gift and every day an opportunity to honor You in book, word, and deed.

Gracious Lord, we ask this morning for Your special blessing on our Nation's Senators, and those who so skillfully serve them here in our Nation's Capitol and in home districts. Grant them the wisdom, courage, discernment, and grace needed to nobly discharge their crucial duties.

Lord, may the radiant warmth of Your eternal providence shine upon this great Republic. May all citizens of this noble land know the width, length, and depth of Your life-transforming presence.

We pray this in Your holy Name.

Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, a little later this morning, after we conclude our 30 minutes of morning business, we will return to the consideration of S. 852, the asbestos legislation. When that bill is laid before us this morning, amendments will be in order. Chairman SPECTER will be ready to consider those amendments related to the underlying asbestos issue, and we expect rollcall votes during today's session.

We have had good debate up to this point, but it is finally time to begin working on the underlying issues of the asbestos bill. Therefore, we will be here ready and available into the evening to debate and vote on the amendments.

I remind everybody that last night I filed a cloture motion in relation to a Defense Department nomination on the Executive Calendar that has been held up. That vote will be tomorrow morning, and we hope we can get cloture and vote on the nomination early Friday. We have 2 days remaining this week, and Senators should have ample time to offer and debate amendments on the asbestos legislation.

RECOGNITION OF THE DEMOCRATIC LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

ASBESTOS LEGISLATION

Mr. REID. Mr. President, it is not often that you see a legislative plan with such bipartisan opposition. The asbestos bill before the Senate is an example of how you should not proceed on a piece of legislation. I have explained throughout the week, as have others, that the so-called FAIR Act is not fair. I have explained how this legislation will harm victims by trapping them in an administrative claims system that is irreparably defective and doomed to fail. It is a bill that is not only unfair to victims but to businesses, except for a few large corporations. Major industries oppose this, such as the insurance industry. It is terribly unfair to the American taxpayer, terribly unfair to the veterans.

The trust fund set up under this bill to pay for victims' claims is woefully underfunded. Expert after expert has opined that $140 billion will not be sufficient to satisfy expected claims, and it doesn't properly account for expected borrowing and administrative costs. Adding insult to injury, the mechanics of the trust fund claims system unacceptably abridge the rights of victims with unworkable startup and sunset provisions.

It is no surprise that the asbestos bill that has reached the Senate floor is in such poor shape when it is the product of such an unusual legislative process. Ordinarily, Senate deliberation on a bill is open and transparent. But consider all the ways this bill is shrouded in mystery.

First, we still do not know which companies will contribute to the asbestos trust fund and how much each company will contribute. Senator DURBIN asked for a list on the floor yesterday, and in response the distinguished manager of the bill, Senator SPECTER, said: Well, we didn't have to subpoena Government agencies. Well, they had to be private companies. Whom are they? He would not say. It is not clear that the list Chairman SPECTER obtained by subpoena even lists the contribution amounts. We don't know. For a bill such as this, not to know? Without this information, the Senate can have no confidence that the trust fund will raise $140 billion or, in fact, anything.

Second, the sponsors have promised a managers' amendment. Mr. President, as I said on the floor yesterday, I don't have the legislative experience of the distinguished President pro tempore, but I have a lot of experience—three decades of legislative experience. This is, by far, the worst piece of legislation with which I have ever had to deal. But think about this—and I want all Senators, all Democrats and all Republicans, to understand what is happening. Anyone who has a problem, they can go to Senator SPECTER and they will stick it in the managers' amendment. One of my colleagues had five concerns. Within a short period of time, it was all taken care of in the managers' amendment.

Of course, nobody can see the managers' amendment. It is composed of over 40 amendments. How could anyone vote for a piece of legislation such as that—a managers' amendment with 42 separate amendments? Now, these amendments were not put in, in a conference committee. People complain about that. But at least in a conference committee, you have people working together, sticking things in. Sometimes Democrats complain and sometimes Republicans complain—whoever is in the minority here: Well, we didn't get enough consultation; you cut us out of the process. But at least you had a group of Democrats and Republicans in the process. Here, you have one person making a decision as to what is going to be in the managers' amendment. There is no way to know what is in it. How could anyone say: OK. You have taken care of me, but I don't want to see the other 40 amendments—because with this legislation, similar to all legislation, you put something in one spot, and you have to take something out someplace else.

Well, another way this bill is shrouded in mystery is, yesterday, we received a statement of administration policy on this bill. Ordinarily, these documents contain several pages of detailed analyses of pending bills. The administration outlines its problems with the bill. This is standard procedure. It is a detailed analysis of the bill. Yesterday, the statement on this 400-page bill that some say should be $280 billion, not $140 billion, is 2 paragraphs. One of them is a short paragraph:

> Although the administration has serious concerns about certain provisions of the bill, the administration looks forward to working with Congress in order to strengthen and improve this important legislation before it is presented to the President for his signature.

Mr. President, what can we expect? What does this mean? What provisions do they not like? How are they going to work with Congress? This bill is not ready for Senate floor consideration.

The letter contains no list of which provisions raise concerns or what the concerns are, just an implicit promise that once the bill gets to conference, the White House will rewrite it to its satisfaction.

Finally, also in the mystery shroud, yesterday, we learned that the managers intend to evade a valid budget point of order by including language in the bill to prohibit more than $5 billion in payments each 10-year period, even though that would leave the program paying far less than $140 billion in claims. One of the complaints everybody has is that the trust fund will have their money stolen, in effect, with this legislation. The insurance industry, the businesses, and not the least of which are the claimants, the victims—they don't have enough money with $140 billion. Now they are going to be told that to avoid this point of order, they will limit how much money can be paid. If it is not enough, limit what the victims get. It is a terrible situation. This bill, if it weren't so serious, would be an example of how not to handle legislation, with a managers' amendment that contains more than 40 amendments, and the basis for the legislation is secret. Members of the Judiciary Committee—not someone in the Commerce Committee or the Appropriations Committee—nobody, not even members of the Judiciary Committee, are entitled, according to the manager of the bill, to see how they arrived at the $140 billion. He said that on the Senate floor.

I am not too sure the Judiciary Committee should have jurisdiction of this bill. I think maybe it should have been a joint referral to the Environment and Public Works Committee. I have not spoken to the chairman of that committee, Senator INHOFE. I have been chairman of that committee on two separate occasions. I will bet Senator INHOFE wonders why his committee hasn't had something to do with this. I have had some differences with the Senator from Oklahoma, but I have never, ever had a problem with him not telling me or anybody on the committee how they arrived at the numbers. We did over $300 billion at one time on a highway bill, and there were no secrets as to how the numbers got in there. There were computer printouts. Sometimes it took several hours for the printouts. But here we don't know where they came up with these numbers.

This is not the way to legislate. It demeans the Senate, demeans the legislative process. I recognize that people consider me partisan on a lot of occasions, and maybe they have a right to do that. I try not to do it, but sometimes things happen. But I want the record to be spread that this is not a partisan attack on this legislation. There are people who believe this legislation is unfair. I see my friend from Alabama, and he can speak for himself, as we all know, but I have understood—I have not talked to him personally, but I understand that he is concerned about the trust fund amounts that will be set up to pay the claims. They are going to be stripped of their money in this legislation.

The whole premise of this bill is flawed. It deprives Senators and the public of an opportunity to consider the bill on its merits. The Senate should operate in the spirit of transparency and candor, not secrecy. The proponents claim there is an absolute asbestos litigation crisis in this country and this crisis requires that we act on this deeply flawed legislation. There is no asbestos litigation crisis, Mr. President.

We have an asbestos disease crisis. The consumer advocacy organization Public Citizen stated:

> There is no logjam of asbestos cases in the courts. [Moreover], [t]he best obtainable statistics . . . do not support the oft-repeated contention that an avalanche of asbestos lawsuits is paralyzing state and federal courts.

Consider some of these facts. In Federal courts, which account for 20 percent of asbestos cases, new Federal filings for asbestos liability have been on the decline, both in recent years and compared to much higher levels at the start of the 1990s. Most recently, new Federal filings have declined from 9,111 in 1998 to 1,400, a drop of 84 percent, according to the U.S. Administrative Office of our courts.

Asbestos suits as a fraction of all product liability suits have fallen considerably, from two-thirds of all cases in 1990 now to 4.2 percent in 2004. The number of asbestos product liability trials in Federal courts is down sharply in recent years, from 271 in 1991 to zero in several recent years, according to the U.S. Department of Justice Bureau of Justice Statistics.

In State courts, among tort cases disposed of by trial in 2001, in the Nation's 75 largest counties—which together account for about 23 percent of the population—there were 31 asbestos trials, .4 percent of an estimated total of 7,948 cases. Among major categories of State cases, asbestos product liability cases going to trial had the shortest median period for disposition for 2001, the latest period for which data is available. While the disposition time for other cases was little changed since 1996, the disposition time for asbestos trials fell by 80 percent, from 50 months to 10 months.

Overall, the rate of growth for new asbestos claims has markedly slowed. In the mid-1980s, the number of claims for mesothelioma, other cancers, and nonmalignant cases each was growing by 25 percent annually, but now the rate of growth is down by 76 percent for mesothelioma, down by 96 percent for other cancers, and down by nearly half for nonmalignant cases.

Even the largest number of asbestos claimants in a single year, 2002—about 95,000—amounts to a little more than one-half of 1 percent of new annual State and Federal cases.

Our system of justice is unique. State courts have seen the problems and they have done something about them. I have talked to Republican Senators and Democratic Senators. Texas has a system we should take a look at here. Illinois has a great system. What they have established is what they call a pleural registry. What they do there, if you have been around asbestos and you think you might get sick—because some of these periods of dormancy can be for years and years—you give your name and the statute of limitations is tolled. If nothing happens to you, no problem. If 10, 20, 30 years later something comes up, you can go into court. It has worked great in Illinois, where a lot of cases were being filed. It protects the most serious cases, the mesothelioma and asbestosis.

There is no litigation crisis. These facts contradict any assertion there is some type of asbestos litigation crisis overwhelming the courts.

In addition, the pleural registry and the system they have in Texas and other States—take, for example, US Gypsum. My brother worked for US Gypsum his whole professional life. They had a lot of problems with asbestos. Why? Because that is what they manufacture stuff with. With US Gypsum, they set up a program and settled all their cases. Right now they have settled all their cases for about $900 million. Other companies have done the same thing. They have gotten money together: "Let's get rid of this litigation." So anyone talking about a crisis with litigation—the crisis is these big companies are trying to escape responsibility.

I read here on the floor the day before yesterday an example of four companies, hundred-year-old companies, that pay nothing in asbestos now. But one company, even though they paid not a penny for asbestos litigation, under this proposal will pay $19.5 million a year. They will go bankrupt and a 100-year-old American company is gone.

We do not need to pass this defective legislation. We should instead pass legislation to help the thousands of victims of asbestos exposure and the companies that have contributed to their injuries.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there is now a time for morning business not to exceed 30 minutes, with Senators permitted to speak therein, the first 15 minutes under the control of the Democratic leader or his designee, the second 15 minutes under the control of the majority leader or his designee.

Who seeks recognition?

Mr. BENNETT. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SUNUNU). Without objection, it is so ordered.

Mr. SESSIONS. I believe my colleagues on the other side are not going to use any of their morning business time that is remaining. A minute or less remains. I ask unanimous consent that I be able to commence my remarks at this time.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator is recognized in morning business.

NSA TERRORIST SURVEILLANCE PROGRAM

Mr. SESSIONS. Mr. President, last night I was in my office in the Russell Senate Office Building and we were evacuated to the parking deck, and following the excellent leadership of the Capitol Police, people responded professionally and well without any undue alarm and showed good discipline and good spirits.

I point that out to ask, have we forgotten there is an enemy out there who desires to attack us, desires to attack our Nation's Capitol, or any other spot in our country, desires to cause us harm, and that we are spending billions of dollars, that some of the best people in this country are working night and day, like our Capitol Police, in localities all over this country to protect us? From local sheriffs, police officers, State police officers, the FBI, the CIA, the Customs Service, the Immigration Service, to all the agencies that are involved in protecting us, they are out there working their hearts out, and sometimes I think we in this body have gotten too comfortable about this. We have been the subject of a declaration of war by al-Qaida. Bin Laden has declared war on the United States. He has asserted it is his right and, indeed, the duty of his followers to attack Americans and even civilian targets, men, women and children.

We have authorized the U.S. Government, the President, and the executive branch to exercise certain rights because it is war. It is not a criminal matter. If we capture our enemies, they are not entitled to a trial in the southern district of New York because they are prisoners of war. They are entitled to be held without trial as every prisoner of war since the beginning of the Republic and the rules of war have been instituted. They are held without trial. In the Hamdi case, the U.S. Supreme Court stated that even an American citizen engaged in the war against the United States can be held without trial as an enemy combatant against the United States because it is not a criminal matter. A state has one primary responsibility, and that is to maintain its existence against those forces that would destroy it.

I would ask if anyone thinks we would have any liberties at all if bin Laden ran this country. He would tell you what clothes to put on in the morning. We would have people not only not being free, they wouldn't be able to drive an automobile—women would not be—under his mentality.

This is a serious question, and we need to respond to the challenge to this country in an effective way consistent with our heritage of laws and liberties. There is no doubt about that.

Secretary Rumsfeld has pointed out recently something that is so obvious, but we should think about it. He said the military challenge today is to find, fix, and finish the enemy. He said there is no doubt if we target and develop a plan, we can finish them successfully. We have that military capability. There is no military in the world capable of destroying the military of this United States.

I ask you to remember what we heard after 9/11. What we heard was our intelligence is weak. What we heard was we did not have enough intelligence, that we did not have enough information to find the enemy; that they had sleeper cells in this country and those sleeper cells were activated by phone calls from Afghanistan and bin Ladin over here to encourage them to step forward to carry out the events that led to September 11. Isn't that what happened? And we had this spasm of self-flagellation about intelligence and how we operate our intelligence community. Our job unfortunately was based on the fact that there were failures and we could have done better, had we had interceptions of some of those 18 responsible for 9/11 prior to 9/11, that if we had been able to listen to those conversations, we could well possibly have taken steps to avoid that and 3,000 American citizens would have civil liberties today. Now they have none because they are no longer with us.

We have to ask those questions and go back and look at the history of our country and what is the legitimate power of the President and our forces in a time of war.

What do our intelligence leaders tell us about the capability of the National Security Agency as it has dealt with the ability to intercept international phone calls involving al-Qaida members? What do they tell us? What do all three of our top intelligence people say? The National Intelligence Director John Negroponte testified last Thursday before the Intelligence Committee and he stated:

> This was not about domestic surveillance. It was about dealing with the international terrorist threat in the most agile and effective way possible.

FBI Director Robert Mueller testified last Thursday as well, stating to the Senate Intelligence Committee:

> We get a number of leads from the NSA from a number of programs, including the program that's under discussion today.

The FBI Director is saying we get a number of leads from this program under discussion today.

> And I can say that leads from that program have been valuable in identifying would-be terrorists in the United States, individuals who were providing material support to terrorists.

Let me interject here. I was a Federal prosecutor for a long time. I dealt with a lot of drug gangs and some organized crime-type groups. They are pretty close-knit organizations. Sometimes you don't even know they exist. Then all of a sudden you have the ability to identify them and penetrate the organization and gain information against them, and all of a sudden you realize right in your own community there is a major drug-dealing gang or a major organized crime network. So one tip, one lead from an intercepted phone call, can identify a sleeper cell in any community in America. I kid you not. That is the way law enforcement works.

How do you get a warrant to surveil the sleeper cell of terrorists in the United States? Oftentimes it is this kind of intercept on a national security call from foreign sources here that causes us to have the information that leads to the identification of a group bent on destroying our country.

CIA Director Porter Goss testified to the Intelligence Committee:

> I'm sorry to tell you—

And I hope the American people listen to this—

> I'm sorry to tell you that the damage has been very severe to our capabilities to carry out our mission. . . . I use the words "very severe" intentionally. That is my belief and I think the evidence will show that.

He is talking about the revealing to the world our intelligence capabilities at NSA.

He goes on to say:

> When I start talking about the disruption to our plans, things that we have under way

> that are being disrupted because of releases to the press or public discussion; when I talk about the risk to access, the sources or methods that are no longer viable or usable or less effective by a large degree; when I talk about the erosion of confidence in our working partners overseas, I'm stung to the quick when I get questions from my professional counterparts saying, "Mr. Goss, can't you Americans keep a secret?"

How can we expect them to share intelligence with us if you pick it up in the newspapers? How can we have techniques of this kind and have them leaked to the press?

I would say it is time for us to reevaluate how we do business. It is time for us to realize that we are in a war and that we are entitled to conduct that war and to win that war. Our military and our intelligence agencies have been charged by us—indeed, they have been criticized by us for not being effective enough in this effort.

I will conclude. I see my colleague from Missouri is here, and he knows this issue very well. I would like to yield to him.

I will conclude with this thought: Please note, Americans, that our military and intelligence agencies have every right to intercept foreign phone calls between two foreign sources. That has never been in dispute. The question we have is whether the authorization of force and the inherent power of the President allows warrantless surveillance of an international call that is connected to the group we are at war with, al-Qaida, that calls into the United States. To say we can't do that will lead to this weird result.

We intercept an international phone call that has not been connected to the United States and we discover information that they are planning an attack on France, we can call France and tell them. If they have a plan that we discover that they are going to attack Canada, we can call them and warn them—or New Zealand or Mexico or any other of our allies and friends around the world. But if the call is into the United States from al-Qaida, we can't intercept that call, we can't use that capability to defend Americans.

I believe that is not logical. The American people don't agree with it. They support and expect our military to carry on these activities. I hope and I believe they will be continued.

Why do I believe they will be continued? Because despite the fact that we have told the world of this capability and severely damaged our capability, not one Member of this Congress that I know of has said we should stop it. If it is so evil and bad, why do they say it does not need to be stopped?

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I ask unanimous consent to speak as if in morning business for 8 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BOND. Mr. President, I certainly support the very powerful words of my colleague from Alabama. He has pointed out many of the compelling reasons for this program.

I rise today to discuss this vitally important program for protecting our national security, and I do so regrettably because this is an open session on the floor of the Senate. This program, of course, is known as the NSA terrorist surveillance program. I say I discuss it regrettably because it is to the detriment of our Nation that this program was leaked to the media and has now been discussed openly for months.

I submit to you that the year 2005, in intelligence and national security circles, will go down in history as the year of the leak. I will not repeat the full litany of those leaks, but we have all been continually reminded about the most damaging one.

Mr. SESSIONS. Mr. President, will the Senator yield for a question?

Mr. BOND. Yes.

Mr. SESSIONS. I would like to say how much I appreciate his leadership. I note that Senator BOND is a senior Member of this Senate and has served on the Intelligence Committee. He has a son serving in the Marine Corps in Iraq right now in harm's way defending this country. He is a brilliant lawyer, made the highest score on the constitutional law test—I happen to know this—when he was at the University of Virginia. I think the American people need to listen to what he says about this issue.

I guess that is my question. Otherwise, I yield the floor.

Mr. BOND. Mr. President, I say thank you to the Senator from Alabama.

Let me get back to the remarks.

For example, the allegation that the United States is running some secret prisons in Europe has caused European nations and other allies to question their cooperation with us on the war on terror for fear of international retribution; the barrage of books and articles disclosing alleged classified operations, like James Risen's book, "State of War," where he takes every supposed leak he can find and churns it out for profit in a book; and the NSA terrorist surveillance program which tips off terrorists to our early warning program.

On February 2, CIA Director Goss testified to Congress and the Intelligence Committee in open session about the damage to our national security. I asked him if these leaks had a significant impact on our capabilities to carry out our mission. And to quote him:

> I use the words "very severe" intentionally. That is my belief.

He went on to say that foreign leaders chide him that the United States cannot keep a secret and that we have lost the confidence of many in the world who were desiring to assist us in the global war on terror. Do those who leak classified information with reckless abandon realize they are potentially aiding and abetting the enemy by allowing the enemy advanced warning of how to avoid our defenses as we seek to prevent another 9/11?

Since so many have taken political advantage of the leak on the NSA terrorist surveillance program, the administration and those of us who agree with the concept of the program are now forced to speak openly to defend it to make sure Congress does not throw this vital program out with the bath water while reviewing it. Some say the program is illegal and even unconstitutional. How do they figure? The President has the inherent constitutional authority, so held by the courts, to conduct "warrantless" surveillance when it is reasonable for the surveillance for foreign intelligence purposes. This is a constitutional principle which has been established for centuries. Go back to the writings of our Founding Fathers, and from our first President, George Washington, to our current, President George Bush. Presidents have intercepted communications to determine the plans and intentions of our enemies.

A steady stream of Federal court cases has confirmed this Presidential authority, as Attorney General Gonzales pointed out on Monday before the Senate Judiciary Committee: In the face of overwhelming evidence for the President's authority, opponents retort that the President must then be breaking the law by violating the 1978 Foreign Intelligence Surveillance Act, known as FISA. But—and this is important—Congress cannot extinguish the President's constitutional authority by passing a law.

We in this body cannot take away the powers the Constitution gives the President. If the law is read in such a way as to encroach upon his constitutional authority, then I question whether that part of the FISA act would be constitutional.

This is not the first time a President has faced the issue of exercising his inherent constitutional powers for foreign intelligence surveillance in view of legislation that could be interpreted as infringing on that authority.

In 1940, President Roosevelt wrote to Attorney General Robert Jackson that despite section 605 of the Communications Act of 1934, and in this instance despite a Supreme Court ruling upholding the prohibition on electronic surveillance, President Roosevelt said he believed he had the inherent constitutional authority to authorize the Attorney General to "secure information by listening devices direct to the conversation or other communications of persons suspected of subversive activities against the government of the United States, including suspected spies."

So does the President have carte blanche with respect to foreign intelligence surveillance? The answer is clearly no. Under the fourth amendment to the Constitution, the surveillance has to be "reasonable," and it does not require a warrant. In the context of a war against al-Qaida and those who would do great harm by attacks on innocent American civilians within our country and with a constitutional resolution authorizing the use of "all necessary and appropriate force" to prevent attacks, who is the best to determine what is and isn't "reasonable"?

When surveying communications in real time, who is best to make that determination? A judge or a lawyer or an intelligence analyst who has spent his or her professional life observing, listening, studying, and tracking the terrorist personalities which make up groups such as al-Qaida? To me the answer is obvious: the analyst.

Consider this: If someone listened to your voice on a telephone call, who would be the best person to assess it by the voice intonation and word usage, whether it is your voice on the other end or a lawyer or someone who knows you well? Of course, the answer is the person who knows you. And I submit that the Americans who know these terrorist personalities better than anyone else are the analysts who have spent endless days over the past 4 years studying them.

Again, do the analysts have carte blanche to eavesdrop on international communications coming into or out of the United States to known suspected terrorists? No. Their decisions are reviewed by supervisors, and the program is reviewed by the NSA inspector general, the NSA general counsel, the White House Counsel, and numerous lawyers at the Justice Department who are ready to blow the whistle if they see anybody stepping out of line. The Attorney General also reviews the program, and the President reauthorizes it every 45 days with the determination that al-Qaida continues to pose a significant threat.

Did the President keep the Congress in the dark? No, he didn't. He briefed the Congress in a manner consistent with the practice of Presidents over the past century. He briefed leaders of both parties in the House and Senate and the two leaders on each Intelligence Committee, Democrats and Republicans.

These leaders were elected by their constituents to represent them in Congress and elected or appointed by their parties to serve in these incredibly important positions, so if any one of them ever questioned the legality of this program, they had the responsibility to bring the matter to the leadership, discuss it with the administration, and if necessary to cut off funding for the program through congressional authority.

The reason the President briefed the Congress was to afford them the opportunity to do exactly that. Did anyone do that? No. There was a carefully couched letter written that simply expressed concern. There was no followup, no action taken, and no mention of it at all during subsequent program briefings, according to public statements by those in attendance.

Some Members of Congress may feel slighted because they were not briefed on the program. I am on the Senate Intelligence Committee. Do I feel slighted? Absolutely not. To the contrary, I recognize that the President has to keep these very important programs top secret, which the President is doing to protect my family, my constituents, and myself. That is his responsibility.

The bottom line is that I believe congressional oversight is a vital aspect of ensuring the proper execution of matters involving national security, and I believe there was adequate oversight. We are not talking about the U.S. Government listening to phone calls from me to you or from my constituents in Missouri to their relatives in or out of State. We are talking about our best intelligence officials having the ability to assess whether al-Qaida affiliates are communicating internationally where one end of the communication takes place inside the United States and the other end takes place outside the United States, maybe discussing another attack like 9/11 on America.

These are times to stand up in arms over our civil liberties. I will do so when I believe they are infringed upon. This is not one.

I thank my colleagues for their indulgence, and I yield the floor.

Mr. BENNETT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005

The PRESIDING OFFICER (Mr. CHAFEE). Under the previous order, the Senate will resume consideration of S. 852, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 852) to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Mr. FRIST. With the authority of the majority of the Judiciary Committee, I withdraw the committee amendments, and I send a substitute amendment to the desk.

The PRESIDING OFFICER. The committee amendments are withdrawn.

AMENDMENT NO. 2746

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST], for Mr. SPECTER and Mr. LEAHY, proposes an amendment numbered 2746.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. DURBIN. I ask for the yeas and nays on the substitute amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SPECTER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2747 TO AMENDMENT NO. 2746

Mr. SPECTER. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania, [Mr. SPECTER] proposes an amendment numbered 2747 to amendment No. 2746.

Mr. SPECTER. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On the appropriate page, insert the following and number accordingly:

GUIDELINES.—In determining which defendant participants may receive inequity adjustments the administrator shall give preference in the following order:

(A) Defendant participants that have significant insurance coverage applicable to asbestos claims, such that on the date of enactment, 80 percent or more of their available primary insurance limits for asbestos claims remains available. (Note: I recognize that this may not be the most adequate indicator of insurance matching liabilities—however, it's a political reality that must be addressed).

(B) Defendant participants where, pursuant to the guidance set forth in section 404(a)(2)(E), 75% of its prior asbestos expenditures were caused by or arose from premise liability claims.

(C) Defendant participants who can demonstrate that their prior asbestos expenditures is inflated due to an unusually large, anomalous verdict and that such verdict has caused the defendant to be in a higher tier.

(D) Any other factor deemed reasonable by the administrator to have caused a serious inequity.

In determining whether a company has significant insurance coverage applicable to asbestos claims, such that on the date of enactment, 80% or more of their available primary insurance limits for asbestos claims remains available, the administrator shall inquire and duly consider:

(1) The defendant participant's expected future liability in the tort system and accordingly the adequacy of insurance available measured against future liability.

(2) Whether the insurance coverage is uncontested, or based on a final judgment or settlement.

Mr. SPECTER. Mr. President, there are a number of issues to be discussed, but the distinguished Senator from Utah has been awaiting recognition. I yield now to Senator BENNETT so he can make his comments. We managers will be here all day and can speak later and not tie up the Senate.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. I thank the Senator from Pennsylvania for his courtesy and pay tribute to him and the Judiciary Committee for their effort in dealing with this most vexatious problem.

When the asbestos problem burst into the American consciousness, everyone was concerned there would be a way to compensate those who are victims of this difficulty. Unfortunately, certain members of the trial bar developed what I would call a business plan that was based on two fundamental principles: No. 1, venue shopping; and No. 2, a deliberate pattern of overwhelming the legal system so the various cases could not be heard on their merits.

Those who adopted this business plan have been tremendously successful. They have driven 75 companies into bankruptcy. They have created enormous litigation all over the country. Unfortunately, the outcome in terms of the victims has not been what anyone would want, with the possible exception of those who were behind the creation of the business plan in the first place.

The net effect of what we have seen in the asbestos litigation is to take an American tragedy and turn it into an American disaster, with a relative pittance for the victims; an undeserved windfall for people who have no health problems; and an overwhelming bumper crop of cash for the trial lawyers who developed the plan in the first place.

There is a great uprising of demand that we do something about this. That demand is legitimate. The Congress should act. We do need a national solution, even though we have seen progress take place—not at the Federal level but at the State level. It is very interesting to watch what has been happening as various States have grappled with this challenge and done their best to deal with the two problems I have identified: the venue shopping and the strategy of overwhelming the system.

One breakthrough in this regard came from a Federal judge. Her name was Janis Jack. I am told she had something of a medical background. She was trained as a nurse. So when these cases came before her she instinctively realized there was something fundamentally wrong with the medical claims. Without going into the detail of what happened before Judge Jack, I quote the statements she made as she handed down her scathing decision:

> These diagnoses were driven by neither health nor justice, they were manufactured for money. The court finds that filing and then persisting in the prosecution of silicosis claims, while recklessly disregarding the fact there is no reliable basis for believing that every plaintiff has silicosis, constitutes an unreasonable multiplication of the proceedings.

I pause here to say she is highlighting what I talked about before, that there was a conscious business plan to overwhelm the system. She calls it "an unreasonable multiplication of the proceedings."

Continuing the quote:

> When factoring the obvious motivation, overwhelming the system to prevent examination of each individual claim, and to extract mass settlements, the behavior becomes vexatious, as well. Therefore, the court finds that the firm will be required to satisfy personally the excess costs, expenses, and attorney fees reasonably incurred because of such conduct.

I am not a lawyer, but I understand when a Federal judge uses the words "vexatious" it is probably not good for the people who are in her court listening to her. And she is requiring the law firm that brought the case to pay all of the costs of the case. That has sent a chill throughout the plaintiff's bar who thought they had a free ride with their business plan.

The other thing that has happened as various States have looked at this has been the setting up of inactive dockets, or deferral registries, two terms with which I was unfamiliar before I got into this. They make eminent good sense. All they do is say to those plaintiffs who, in fact, are not sick: We will let your claim stand, we will not dismiss it out of hand, but we will put it in an inactive docket or a deferral registry. In other words, your claim cannot be pursued until you get sick. Just because you have a doctor's certificate that says you might get sick does not mean you are entitled to damages.

Interestingly enough, the fallout from Judge Jack's ruling where she found that doctors had gone beyond medical practice in order to give these certifications that would allow people to come forward as if they were plaintiffs, means that some doctors are facing jail time and some lawyers are facing jail time as a result of the findings in Judge Jack's court.

The combination of a judge who finally says, You need to focus on whether people are ill, and State legislation that says, We will not allow the courts to be overwhelmed by the claims of those who are not ill, has begun to taper off the level of asbestos cases and has caused some people to say we have turned the corner; that the trust fund established in the bill before us is an idea whose time has gone; that it is not necessary to have a trust fund to deal with these issues. Others say: No, we have to have the trust fund. We have to have the bill before us.

One of the perplexing things to me, as I listened to people in the business community discuss this, has been to discuss how split the business community is, how there are so many companies that come to me passionate in their insistence this bill be passed, or they say there will be disaster going on uninterrupted into the unknown future.

Just as passionate are other companies who come to my office, sit down with me and say: This bill is the biggest disaster we have ever seen. You cannot allow it to happen. If this bill happens, we will go out of business.

That is not a minor gulf between the proponents and the opponents. I have tried to figure out why business men and women examining this as dispassionately as they can have come to such diametrically opposite positions. I have found, for me, what is an explanation. I have prepared two charts that will demonstrate this. Both of these are based on assumptions. We must understand that this entire debate is based on assumptions. No one really knows.

There are those who say the $140 billion called for in the trust fund will be more than enough to take care of all of the claims. There are those who say it is nowhere near enough.

There are those who say the claims will go down as a result of the trust fund, and there are those who say the claims will increase as a result of the trust fund. No matter how you slice it, every argument everybody is making, including the ones I will make, is based on an assumption that is not provable. But I have done the very best I can to come up with sources that are reliable.

So here is why I think the business community is split. It has to do with where you fall on the trust fund chart, what tier you are in, and basically how much money you have to pay.

Here is the first list that comes up, and this is compiled by a consulting firm to the bankruptcy court that looked at asbestos claims. I have summarized in this column of the chart, if there is no trust fund, the estimated liabilities of the companies listed. That means, Armstrong World Industries, according to the consulting firm, if there is no trust fund, will face a liability of roughly $2 billion. Babcock &

Wilcox will face a liability of roughly $2 billion—and so on all the way down—U.S. Gypsum, $4 billion. I will come back to U.S. Gypsum in a minute because it helps make my point. So this is the column that shows the liability of these 10 companies if the trust fund is not enacted.

Now, this is the column that shows what they will pay to the trust fund. In other words, their liability will go from this number to this number, if the trust fund is established. Here in this column is the difference. For these 10 companies, it is $20 billion.

If I were the CEO of any one of those companies, I would be very strongly for the trust fund. Now, I reject the idea this is being driven by K Street and lobbyists. This is a very logical business decision on the part of the CEOs of these companies, and I do not think any of them had anything to do with this allocation. It is the way the trust fund was structured. As they read the details, they said: This makes good sense for us. Let's be for it.

But out of this chart comes a fundamental question that I have at the bottom of the chart. If there is a $20 billion difference between their liabilities and their contributions, who will make up the difference?

So now let's go to the second chart.

On this chart is a list of companies with estimated outlays, if there is no trust fund, that will be substantially less than those on the first chart. Foster Wheeler—I understand this number may change. These are estimates. All of these numbers may change. But I have heard, just this morning: Hey, we are trying to recalculate that, Senator. We want you to be exactly accurate. It might be $79 million, but it may not. But it will be relatively low compared to the number on the next chart. So let's understand all of these.

But here is Foster Wheeler, Oglebay Norton. They will have no obligation—no obligation—if the trust fund does not pass. Why? Because they have insurance. They took precautions. They have insurance that will pay the claims. They will have no obligation. National Service Industries will have $11 million if the trust fund is not enacted, and so on.

Now, Oglebay Norton will owe the trust fund $495 million in order to be relieved of zero obligation if the trust fund does not pass. Who will make up the difference? It will be made up by companies like these, some of which earn so much lower numbers than the numbers that are here that this could very easily jeopardize their survival. Some of the companies on this chart might not survive if the trust fund is passed. You have no obligation, but you have to pay half a billion dollars over a 30-year period?

There are some companies here whose total revenue is $100 million a year, and their annual responsibility to the trust fund is $19 million. Twenty percent of their total revenues will be required, and they have no exposure or relatively no exposure. There is not a company here with exposure, no matter how high it may be, that would not be satisfied by 2 or 3 years' contribution to the trust fund, but they are going to have to make that contribution for 30 years.

The companies on the first chart will see their stocks go up dramatically as soon as this bill is passed, and I do not begrudge them that. I think that is wonderful. But the other companies that will make up the difference will not only see their stocks fall, they may disappear and see their employees put out of jobs, their employees put on the unemployment line.

I do not think there was anything sinister about the way in which the trust fund decisions were made. But I do not think it has been analyzed properly with respect to the real-world impact of those decisions. So, to me, that is why we have the split in the business community, with some companies saying this is a great idea, and other companies saying, with some irony, over our dead body, because they may be very much dealing with a dead body here.

All right. Does that argue that we should not have Federal legislation? No. The progress in the States, causing this level of litigation to level out and begin to turn down, is not even throughout the country. We need a national standard. Ohio has led the way. Ohio has bills that are causing the litigation to begin to dry up. We are seeing the pattern of venue shopping dry up. But we still do not have any action out of California or New York. And, if I may, I remember when the Governor of Utah was once asked: What is the greatest economic development agency you have in Utah? And he said: The California State Legislature.

I think we can wait a long time before the California State Legislature can be depended upon to deal with this issue. So we do need a national bill.

But the one thing everybody on either one of these charts wants is certainty.

Let's go back to the first chart and the example I was talking about with respect to U.S. Gypsum or USG. Within the last week or two, USG announced they were setting up a reserve for their asbestos liabilities. They said: We are setting up the reserve with $900 million in cash and $3 billion in contingent notes. Their stock went up 15 percent the next day because their investors said there is a degree of certainty.

Now, if you take that $3.9 billion figure they determined was the amount of their liability and you compare it to what the consultants said their liability was—$4 billion—you are very much in the ballpark with roughly the same figure. Now, the interesting thing about the contingent notes they said they would sign for the $3 billion is the contingency. The contingency was whether this bill passes. If this bill does not pass, they will then be on the hook for the $3 billion in contingent notes. If the bill does pass, they are out with only the $900 million. As we see, they are only required to pay, under the trust fund, $797 million. So as to the $900 million, they may even get a refund from that if this bill passes.

That demonstrates the value of certainty. They came up with certainty, one way or the other, and their stock went up 15 percent. We can give people certainty with the right kind of Federal bill that does not have the problems that this trust fund has.

So what do I search for in a bill? Well, the first one should be obvious from the presentation I have made: a restructuring of the liabilities in the trust fund. And if the trust fund were to go away, that would not bother me either, if we could have an understanding of how we could take the experience in the States and make it work on the Federal level.

Back to Judge Jack and her rulings and the actions of the various States, we discovered there really are only a few things that need to be done to tame this monster.

The first one is to stop the venue shopping. Well, if we pass a Federal bill, we can do that. The Judiciary Committee has worked hard in that direction, and I commend them for it.

No. 2, building on what Judge Jack discovered, we can have the right kind of medical certification. All she did was force these people to prove they were injured and the claims went away. I am not satisfied the medical certification in this bill is strong enough. I would prefer to take the kind of medical certification we have at the State level, particularly Ohio, and say if we can write that into the Federal bill, then we are on our way toward realizing Judge Jack's goal in eliminating those who are not medically certified.

The third thing we can do is adopt the position that many of the State courts have adopted, which simply says: You can file your claim if you are not sick because you think you might be, but we are going to put that claim in an inactive docket, or a deferral registry—pick whichever term of art you prefer—and it will sit there unacted upon until you can come in and prove you are sick.

If we can do those three things—stop the venue shopping, get a legitimate medical certification, and set up inactive dockets—at the Federal level, the State experience says we can solve this problem. Whether there is a role in all of that for the trust fund, I am not sure.

I am enormously respectful of the senior Senator from Pennsylvania. He is a close, personal friend and has been the entire time I have been in the Senate. I commend him and the members of the Judiciary Committee for their efforts in working on this bill. But I do have a sense that in their focus on the disaster this has been throughout our history they have crafted a solution that, like the generals in the Army, may be the solution to the last war. They may have been fighting the last war instead of addressing what has currently happened.

So I understand the Senator from Texas has an amendment, which I intend to support. I understand the Senator from Arizona, Mr. KYL, has a provision that presumably will affect this difference between people on the two lists. I am interested in that. I am not sure it is the solution, but I want to move in this direction. I think we need a bill. I want to support a bill. As the bill currently stands, I think it is in need of the kinds of changes I have outlined.

Mr. DURBIN. Mr. President, will the Senator yield for a question?

Mr. BENNETT. I am happy to yield.

Mr. DURBIN. I would like to commend the Senator from Utah. He and I come from different parts of the political spectrum, and his life experience in business and otherwise is quite different from my own life experience. But I will tell you that I agree completely with your analysis. I think you have carefully looked at the impact of this pending bill on real-life companies, real-world companies, and there are clearly winners—and big winners—and losers—and big losers—in the course of creating this trust fund.

Without assigning any motive as to why some companies do so well and others do so poorly, I think what you have suggested as an alternative is the sensible middle ground. And the sensible middle ground, which I think will soon be offered by the Senator from Texas, is to look at successful efforts in States that have changed the whole environment on asbestos litigation.

I am looking to this amendment. I want to read it carefully before making any commitment on my part, but this seems to me to be the right move to make, to capitalize on the State efforts before we create a trust fund.

I would like to ask the Senator if he has any knowledge or personal experience with the creation of other trust funds in the past in an effort to solve problems like black lung, and even in the trust funds that were created by companies like Johns Manville, and whether the initial estimates of cost turned out to be accurate in the long run.

Mr. BENNETT. I thank the Senator for his kind words. We will continue to be on opposite sides of the spectrum, but we will continue to be good friends.

In response to his specific question: Yes, the GAO has done a study of Federal trust funds and has found that as a general rule, the creation of a trust fund creates roughly twice as many claims as was anticipated at the time of their creation. This doesn't automatically mean twice as much money. In some cases, it means substantially more than twice as much money. And in one case, it means the amount of money stayed the same because the amount proclaimed was less than projected.

The one thing we can draw from that experience is what I said at the beginning of my remarks. Virtually everything we are saying about this is a guess. Everything we are assuming is based on an extrapolation based on other assumptions. We cannot, with any certainty, say that the trust fund will be sufficient or that it will not be sufficient. The one thing that we can say with certainty is, this is how much you will have to pay if the trust fund is created. That, as I say, is the reason for the split in the business community. As people have done the numbers, some say: I am better off in the tort system. Others say: I will pay anything to get out of the tort system.

The trust fund needs to be manipulated, if we are going to keep the trust fund, to make sure that there is a greater degree of fairness on the part of those who are contributing to it.

This is taxation with a vengeance on the part of the Federal Government for many of these companies. And some companies are saying: We are willing to pay that tax rate. Others are saying: Under no circumstances.

It will be very interesting if a conversation is held with those companies fighting for the bill and the proposition is made, if you really want the bill, will you increase the amount of your contribution to the trust fund so that the amount for some of these other companies will go down? That will be an interesting conversation. I understand some people are thinking about having it. I would like to be present when it is had, to see where we go with this.

Mr. DURBIN. I thank the Senator.

Mr. BENNETT. I yield the floor.

The PRESIDING OFFICER. The minority leader.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ENSIGN). Without objection, it is so ordered.

The Senator from Texas.

AMENDMENT NO. 2748 TO AMENDMENT NO. 2746

Mr. CORNYN. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Texas [Mr. CORNYN], for himself, Mr. COBURN, Mr. GRAHAM, Mr. THUNE, Mr. ENSIGN, Mr. INHOFE, Mr. MARTINEZ, Mr. CRAPO, Mr. BENNETT, Mr. SMITH, Mr. CRAIG, Mr. SUNUNU, Mr. DEMINT, Mr. THOMAS, and Mr. BUNNING, proposes an amendment numbered 2748 to amendment No. 2746.

Mr. CORNYN. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. CORNYN. Mr. President, I rise to join my colleagues in a call for asbestos reform. No other issue more readily highlights the toll that excessive litigation has placed on our society and, even more poignantly, on the lives of those who are dying with asbestos-related disease who are left with inadequate legal recourse and compensation by virtue of the massive waive of litigation, primarily by those who are not sick and who suffer no impairment as a result of their exposure to asbestos. Make no mistake about it: Today we are not just talking about liability reform, we are talking about scandal reform.

The legislation before us represents a genuine effort—I dare say, a Herculean effort—by the chairman of the Judiciary Committee and the ranking member and others who have worked together with them to try to bring us to where we are today; that is, with a good-faith proposal to address this complex problem. No one has worked harder or driven the members of the Judiciary Committee harder than our chairman, Senator SPECTER. He has tried hard to reach consensus among so many disparate parties and on so many different complicated issues.

The question before us is whether a national trust fund of the magnitude contemplated is the appropriate method to ensure victims will be compensated fairly and efficiently and that the trust fund can reasonably expect to remain solvent and viable.

After countless hours of reviewing and studying the options and hours of working with my colleagues to achieve reform, I unfortunately conclude that in its current form and with its current significant weaknesses, it is not. Rather, I believe the likelihood is far greater that the trust fund will sooner, rather than later, prove unsustainable and return us to the same broken tort system, then leaving thousands of Americans in the wake of a failed Government program, wondering where to go and why they must now go back to court. This simply cannot be the outcome.

I offer an alternative solution, a simple solution that has been tested in States around the country and a solution that would target the key causes of the asbestos liability crisis. I am pleased to offer this amendment on behalf of 14 cosponsors: Senators COBURN, GRAHAM, THUNE, ENSIGN, INHOFE, MARTINEZ, CRAPO, BENNETT, SMITH, CRAIG, SUNUNU, DEMINT, THOMAS, and BUNNING. We are working closely with our colleagues on the Democratic side who are looking for an alternative solution. I do believe, before the close of business today, we will have bipartisan cosponsorship of this amendment.

We are looking for a solution that provides a simple but effective approach and one that establishes a national floor with respect to the medical criteria required to bring a claim into court, one which tolls the statute of limitation to ensure that victims get their day in court and virtually eliminates the likelihood of fraud in the medical screening industry, which has proven to be a corrupt cottage industry.

In short, that is basically what this amendment would do. It is about 50 pages, not 400 pages. It requires no complicated administrative scheme, no complex funding formulas that require a Ph.D. in economics to understand. There are no complex constitutional questions, no litigation that will arise over the constitutionality of the proposal, and no real cost to the American taxpayer or, for that matter, to the businesses that would otherwise have to contribute to this $140 billion trust fund. There is no question about favoring one constituency differently than another constituency. Most importantly, I am confident that our solution is a system more likely to ensure that those individuals who are truly sick from exposure to asbestos will receive fair and efficient adjudication of their claims against those who were actually responsible for their injuries.

This proposal is embraced by such a diverse group as the American Bar Association that studied it. You can imagine getting lawyers to agree, with their divergent interests, on what solution to this problem would likely work best and be the least disruptive to our civil justice system. They believe this is it. Indeed, our legislation would target directly the well-documented causes of the asbestos liability scandal plaguing our civil justice system.

The oft-quoted RAND Corporation, in its research, has discovered:

> Almost all the growth in the asbestos caseload can be attributed to the growth in the number of nonmalignant claims which includes claims from people with little or no functional impairment.

In other words, these are people who are not sick. Those are the main claimants today under the asbestos liability system. Their research reveals that up to 90 percent of the plaintiffs filing claims have no physical impairment, but they have clogged our courts and delayed justice for those who are sick with asbestos disease. These claims brought by unimpaired plaintiffs often are generated through mass screenings and supported by questionable medical evidence, backed by doctors who do not claim to have a doctor-patient relationship but who will screen thousands of x-rays and who, not surprisingly, more often than not, overwhelmingly find some evidence of asbestos-related disease. When those same x-rays are given a second opinion by someone without a vested interested in finding asbestos-related disease, only a minute fraction actually are confirmed. So this is a cottage industry of fraudulent claims which has further contributed to the broken system we have today.

Under the status quo, forum shopping is rampant. For example, between 1998 and 2000, five States captured 66 percent of the filings; 66 percent of the asbestos lawsuits were filed in just five States because of rampant forum shopping. They were the States of Texas—my State—Mississippi, New York, Ohio, and West Virginia. It is not surprising that each of these States has now enacted or is seriously considering enacting asbestos liability reform at the State level. The good news is, as the Senator from Utah, Mr. BENNETT, pointed out, these State reforms appear to be working. They are working because they rightfully focus on the causes. So, too, should a national solution. Doctors and medical providers take the Hippocratic oath which says: First, do no harm. We in the Congress, particularly in the Senate, have a Hippocratic responsibility to, first, do no harm in the legislation we pass.

Notwithstanding the Herculean efforts undertaken by the chairman and the Judiciary Committee, I believe we cannot honestly take that oath and represent to the American people that we have done no harm in the proposal currently before us. We need an alternative which we have offered with this amendment.

The past several years have witnessed encouraging signs from States known to have been havens of the worst of the asbestos litigation abuses. As I mentioned, States such as Texas, Mississippi, Ohio, Florida, and Georgia are taking action. During the time that we have debated in the Nation's Capitol what to do, the States have acted.

Some States have created special dockets for unimpaired claimants, allowing only those who are sick to proceed to trial. It makes sense. The modest venue reforms and limits on consolidation have been adopted, and at least 4 States, including, last year, Texas, have enacted objective medical criteria.

The Texas bill, in the context of asbestos-related claims, allows claimants who are actually impaired to pursue their claims in the judicial system and merely defers the claims of those who are exposed but not impaired. It does this by establishing medical criteria that a claimant must meet to demonstrate some impairment before proceeding with the lawsuit. The good news for these individuals who are not impaired and have been exposed, and for the system generally, is the vast majority of them never will get sick.

Under the perverse limitations required by the statute of limitations that require you to file a lawsuit or risk being forever barred under the current system, they must file now, thus contributing to the huge clog of our court system and the bankruptcies that have racked up seemingly one after another. These State efforts are, in fact, working.

While it is difficult to assess the nationwide impact in the short time they have been implemented, anecdotal evidence indicates there has been a real impact. For example, one Texas tort reform observer, in 2006, said this:

> We are still waiting on more definitive figures, but rough estimate at this point—filings of new claimants in Texas have dropped in excess of 50 percent since the State bill passed in July. Based on the terms of the act, the time has just run for claimants to file medicals to avoid the [multi district litigation in Federal Court]. The effect will be that at least 75 percent of pending claims will be dismissed or abated. Thousands of claims from unimpaired claimants have been rendered dormant and will not proceed.

Perhaps the most important point is the ones that justifiably should proceed because they have real manifestations of asbestos-related disease will have priority, will have their day in court, and will not be left with pennies on the dollar, which many are today because of the bankruptcies that have been created by this flood of litigation.

One example of the claims history of a company in Texas—we will call it "company A" because we don't want to necessarily point out or talk about a particular company, but company A, between 1980 and 1996, had 134,000 new claims. In 1987, they had 25,000. You can see the rest of the numbers. The height of their claims experience was in 2001, when they had 56,000 claims. In 2005, after this legislation passed in Texas imposing strict medical criteria, creating a dormant docket for those who were exposed but not impaired, while letting those who are sick go to court, only 13,272 claimants came forward. There has been a 77-percent decline in new filings over the last 5 years. This is due largely to the legislation and fair enforcement of the law in States such as Florida, Mississippi, Ohio, Texas, Georgia, and Illinois.

Company B, in Mississippi, has experienced a 90-percent decrease in claims since their legislation was enacted. The point is, some might say why don't we leave this up to the States? Unfortunately, we have seen claims migrate to States that don't have similar reform legislation, thus mandating, in my opinion, a national solution. That is what this amendment proposes.

Company C reports a significant decrease in new litigation filings since September 1, 2005. This is in Texas. The mix of the claims is important because there have been zero, none, malignancy cases, and 10 mesothelioma claims—the most pernicious cancers that are caused by asbestos exposure. In terms of the other types of claims, they have dropped precipitously. So 34 new filings in 5 months, all malignancy cases, which can be adjudicated in court based upon their respective merits.

We will go through a couple more here. Company D, in 2003, experienced 32,444 filings. In 2004, that number dropped to 5,000—from 32,000 to 5,000, roughly. In 2005, it dropped to 2,415, with 6,791 dismissals.

As we can see, there have been significant declines in the number of claims, making way for people who truly are sick to have their day in court, while those who have been exposed but are unimpaired and not sick can preserve their claims for a later date, if and when they happen to get sick.

The national solution we have crafted is designed to ensure that those who truly are sick get their day in court, as I said. It establishes specific medical criteria to be used to distinguish claims between people who are physically impaired due to exposure to asbestos and the claims of people who are not experiencing any physical problems. This legislation will prioritize the claims of the truly sick through the use of reasonable, objective medical criteria. It requires physical impairment. It requires supporting documentation to verify that the claimant can demonstrate impairment based on reasonable and objective medical criteria. It requires that the diagnosing physician actually have a doctor-patient relationship with the claimant, avoiding the millions in this cottage industry doing fraudulent screenings, which has generated problems for the current system. It allows the claimant who acquires a nonmalignant condition to pursue a separate recovery if the person later develops an asbestos-related cancer.

I could go on, but I think it is clear from not only the simplicity of this approach, and due to the fact that it has broadly been embraced among organizations such as the ABA, which has both defense lawyers and plaintiff's lawyers and represents the legal profession generally, it is their considered judgment that this represents a reasonable and, in fact, a better solution to our current problem. It observes the "Hippocratic oath" that I submit should apply to legislation as much as it should to the practice of medicine, that it does no harm to the current system. In fact, it is narrowly focused on the causes of the problems that confront our system today.

The Federal trust fund may well be a fine solution to the current problem but only if structured appropriately and only if we can reasonably expect that it will proceed.

I am sorry to say that S. 852, as drafted, cannot, in my opinion, succeed. It would create an unsustainable Federal entitlement, with costs that would likely far exceed the $140 billion price tag presently contemplated. Enacting this legislation without significant modification would undermine recent State reforms and would create at least as many problems as it would solve.

I sincerely believe this alternative amendment my colleagues and I have offered today is the best hope we have of accomplishing the goal that I believe all of us operating in good faith share, and that is ensuring prompt payment for victims and allowing those exposed but not sick to have their day in court if and when they do become sick.

I invite all of my colleagues to join the 14 of us who are cosponsors to this amendment. I predict by the close of business today we will have a bipartisan amendment. We are continuing to reach out to our colleagues in the Senate, and I know this is a complex issue and many on the Judiciary Committee have spent years trying to get us to where we are today. Frankly, I applaud their efforts, as I have the leadership of our chairman. I believe, and the cosponsors of this amendment believe, this is the best approach; that is, to pass this amendment and send it to the House of Representatives so we can provide a simple and effective solution to the current asbestos scandal.

AMENDMENT NO. 2749 TO AMENDMENT NO. 2748

Mr. CORNYN. Mr. President, before I conclude, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Texas [Mr. Cornyn], for himself, Mr. Coburn, Mr. Graham, Mr. Ensign, Mr. Crapo, Mr. Inhofe, Mr. Martinez, Mr. DeMint, Mr. Thune, Mr. Bennett, Mr. Smith, Mr. Craig, Mr. Bunning, Mr. Thomas, and Mr. Sununu, proposes an amendment numbered 2749 to Amendment No. 2748.

Mr. CORNYN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's Record under "Text of Amendments.")

Mr. DURBIN. Will the Senator yield for a question?

Mr. CORNYN. Yes.

Mr. DURBIN. Mr. President, I thank the Senator for bringing this important amendment to debate. I will ask him a question or two about his amendment.

I think the Senator is on the right track in noting that several States have made significant progress in dealing with the asbestos litigation. In some States, there has been an agreement between what are usually warring and opposing parties as to how the system can be improved. I wish to ask the Senator from Texas whether the approach he has suggested to the Senate today would preempt existing State laws and standards in this area?

Mr. CORNYN. I thank the Senator for his question. It is an important one. Our intention would not be to preempt local State laws but, rather, to create a national forum, in a way that would provide uniformity and would avoid the migration of claims from those States that have reform to those that do not, thus continuing the status quo.

Mr. DURBIN. One of the more controversial parts of the amendment relates to joint and several liability, which those of us who have practiced law know a little more about than those who have not. If a State already has joint and several liability in these cases, would your amendment preempt that State's joint and several liability standard?

Mr. CORNYN. Mr. President, I appreciate the question. This amendment calls for several liability, not joint liability. The Senator raises a good question and, frankly, one I want to make sure I do a little research on and confer with him, perhaps, so I can give him a more definitive answer.

Mr. DURBIN. Mr. President, I thank the Senator for allowing me to ask a question. I thank him also for offering the amendment. It is a valuable part of the debate. Parenthetically, I concur completely with the Senator from Texas in the fact that many States are doing very positive things to deal with this issue, and I think it would be wise for us to look to their leadership in some of these areas. Secondly, I think he feels as I do, that the underlying trust fund has some fundamental flaws.

I yield the floor.

Mr. CORNYN. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, I wish to speak a little bit about the status of the points of order that have been discussed, at least in the media, relative to this bill, that arise from the Budget Act.

There are four potential issues here. One, we have not seen the final language, so many of these have not been resolved as to their applicability.

Talking about the one which has received a significant amount of attention, there is a reserve fund that was created in the last budget, the purpose of which was to allow this bill to come forward. The reserve fund has a series of conditions attached to it, and the effect of the reserve fund is that it sets up the ability of the budget chairman to release dollars—in this case an allocation—if those conditions have been met.

As Budget chairman, I find myself in what would be called a position of a referee or a fair arbiter on this issue. I have views on this bill. I don't happen to support the bill. Those views are not relevant to the decision I need to make as chairman of the Budget Committee relative to releasing a reserve fund.

The key issue on the reserve fund is whether at some point in the future taxpayers will become obligated for the claims which would be made under this asbestos claims bill.

How do I come to a conclusion as to whether taxpayers would be obligated in my role as a fair arbiter or referee? Basically, I turn to our professional, nonpartisan, fair whistle caller, sort of like the referee on the football field on an instant replay going up to the guys in the stands who just viewed the play and get their opinion. That group is the CBO, the Congressional Budget Office. They take a look at the bill, and they score whether the bill is fully paid for. If it is not fully paid for, then it is arguable, of course, the taxpayers may end up picking up some of the bill in the outyears, which would undermine the purposes of the reserve fund.

The initial response from CBO, which was sent to the chairman of the committee, Chairman SPECTER, essentially said they don't know. They estimate the potential income to the fund is about $140 billion. That is the number talked about around here. The potential administrative cost of the fund is about $10 billion, but they are not sure whether the claims will exceed $130 billion. If they exceed $130 billion, theoretically taxpayers might become liable; if not, the taxpayers would not become liable. So they essentially said they don't know. Since they are dealing with outyear numbers, it is, to some degree, guesswork.

We have not seen the final product, but the final product was delivered to CBO last night. They are now rescoring it. I don't know what they are going to say. They may come back and say, yes, it is clearly outside the revenues and, therefore, taxpayers may end up with it. They may come back and say, no, clearly it is not the final version. Or, again, they might say they really can't tell.

Again, as referee, I have to look at this information and make a decision. My inclination is that if there is no clear one-way-or-the-other call from CBO, that it either, A, is under, in which case clearly we would release, or B, it is over, in which case we clearly would not release. If they are, rather, of the opinion this is too far out and too difficult to call and are dealing in a range of $10 billion, which they were in their first letter, then it would probably be unfair—to stop this bill on that point of order—to the bill, to the manager, and to the people who believe they have a right to get a fair hearing on this bill. But that final decision has not been made.

There are three other points of order, however, that lie whether or not this point of order is made ripe. Those three other points of order are still potentially there. There has been representation that these points of order are technical. They are not. At least one of them certainly is not because it was put in place to address the issue of one Congress binding later Congresses to major programmatic activity.

We will address those as we go down the road. However, I did want to update people generally on where this specific point of order relative to the reserve fund lies because there has been a lot of representation in the press, as occasionally happens, that has been a little bit off target.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I had hoped to engage in a short colloquy with the Senator from Texas on his amendment, but I had to leave the floor for a moment or two. I want to make a couple of very brief points—and I will elaborate on them more extensively later—and that is the medical criteria bill does not do anything for the employees of companies which have gone bankrupt. There are some 77 of those, and more imminently, so that we have a large group of people suffering from mesothelioma and other deadly, serious diseases who will not be compensated.

Then we have the veterans who have had exposure to asbestos in a variety of ways, a lot through Government work, where they do not have anybody to sue. So a medical criteria bill will not help them.

Then we have basic consideration of the medical criteria bill that does not really take these cases out of the court system. It does not stop the suits from being filed. It does not stop the extensive discovery process, the depositions, the interrogatories, the medical examinations. When we deal with the question as to injury, it is subject to contest and subject to litigation. So the medical criteria bill is a diversion—I wouldn't call it a poison pill because I don't want to engage in any inflammatory language, but it does not do what the trust fund does, and that is provide a remedy for compensation for thousands of very seriously ill people.

While I am on the Senate floor, I want to take up one other point briefly while the Senator from Illinois is on the floor. He has made an argument—an extensive argument—about knowing who is going to put up the money.

When I pointed out yesterday that the lists were available to him to know who is putting up the money, that his staff, in fact, had looked at them, he then shifted his ground from not knowing who was putting up the money to the specious argument that they were secret from the public in general and that there is some effort to conceal something which, of course, is not the case.

Then on a mutation, he moves from that to a contention that these people who had to be subpoenaed have written the bill because somehow they have provided some information as to how much money is going to be put up, which goes into the bill.

I don't think I require any extensive reply to that. I think of my sister Shirley in Elizabeth, NJ, who likes the Senator from Illinois, as I do—sometimes—pointed out to me that she could see through those arguments. But not making the materials available beyond the Senator and the staff—and I can see they ought to be able to copy them—I will stand by that—so that Senator DURBIN doesn't have to look at them, his staff can look at them, copy them, and show them to Senator DURBIN, all within the range of confidentiality. But that doesn't mean there is some secret being kept from the American people, not as long as DICK DURBIN knows what they are; he will protect the American people. Frankly, so will ARLEN SPECTER protect the American people. But it doesn't mean these sinister forces have written the bill because the bill was written by the committee. Senator DURBIN is on the committee. He helped write the bill. He made amendments. I think some were even adopted. I won't swear to that. I know one was and then it was changed when we finally understood what it was. We adopted one in about 4 minutes one day—right?—and then we had to change it when we found out what it really was. We do that from time to time.

I have taken a look at the issue of confidentiality because I reserved that yesterday during the discussion. I find there are a couple of provisions that are very problematic. One is section 1905 of title 18 of the United States Code which makes it an offense—and I am not sure what, with the abbreviated version I have here, the penalties are, but it prohibits any officer or employee of the United States to divulge information—I will have this printed in the RECORD—"which information concerns or relates to trade secrets, processes, operations, style of work, or apparatus," et cetera.

It is hard to interpret it without doing some more research, but I think it may well cover this.

There is also a Senate rule, rule XXIX(5), which relates to prohibition against any Senator, officer, or employee of the Senate disclosing secret or confidential business proceedings of the Senate. It does not appear on its face to conclusively cover these kinds of records, but it may. It may be part of the records of the Senate. But I think there is more than a colorable prohibition against disclosure on confidentiality. At least at this time, I wouldn't rule it out completely. I would like to have maximum disclosure, frankly, if it can be done consistent with the law and consistent with the rules of the Senate and consistent with fairness to the companies which provided the information.

Mr. President, I ask unanimous consent that this document entitled "FAIR Act Transparency," which includes the references to which I just alluded, be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. DURBIN. Mr. President, will the Senator yield for a question?

Mr. SPECTER. I do.

Mr. DURBIN. Mr. President, is the Senator prepared today to tell us who prepared this list, the entity he had to subpoena to get the information about how the trust fund will be funded?

Mr. SPECTER. I am prepared to have the Senator told because I don't have it at my fingertips. But I am prepared to have that information given to the Senator from Illinois. Yes.

I yield the floor.

EXHIBIT 1

FAIR ACT TRANSPARENCY

Funding is guaranteed. The $140 billion in defendant participant contributions to the Fund under the FAIR Act are guaranteed by the manufacturers and industry.

Certification. The fund cannot be deemed operational until the Fund Administrator publishes a list of defendant participants and their required payments in the Federal Register.

Senator Durbin's assertions that outside groups wrote the FAIR Act is flat wrong. S. 852 creates an allocation formula whereby contributions are based directly on a manufacturers "prior asbestos expenditure" in the tort system. This was a FORMULA created and drafted by SENATORS. Our Congressional subpoena was directed at the corporations to identify, by computing their "prior asbestos expenditure" what tiers of the funding formula they would fall into.

Process. I have met with many Senators individually including, at different times, Senator Cornyn (4/12/05) and Senator Feinstein (5/10/05) on the issue of transparency. The Judiciary Committee issued three subpoenas in an effort to learn more about the companies likely to pay into the Fund created by the FAIR Act. The subpoenas were dispatched between September 30 and December 1 to groups representing companies on both sides of this bill.

These transparency efforts led to the creation of a spreadsheet with the names and anticipated tier assignments of companies. The staff came up with their estimates based upon publicly available information included in SEC filings and data gathered through hundreds of phone calls. In light of this information, Judiciary Staff held at least two transparency briefings, the first of which occurred on October 7, 2005.

All Senators and their staff can view a list compiled now. This list is confidential because it includes confidential information from businesses.

Confidentiality. In issuing the subpoenas and making telephone calls, my office informed companies that the information obtained would be held confidential pursuant to Rule XXIX of the Standing Rules of the Senate and under 18 U.S.C. 1905. Rule XXIX (5) of the Standing Rules provides:

"[a]ny Senator, officer, or employee of the Senate who shall disclose the secret or confidential business or proceedings of the Senate, including the business and proceedings of the committees, subcommittees, and offices of the Senate, shall be liable, if a Senator, to suffer expulsion from the body; and if an officer or employee, to dismissal from the service of the Senate, and to punishment for contempt."

Similarly, Section 1905 of Title 18 of the United States Code provides:

Whoever, being an officer or employee of the United States . . . divulges, discloses, or makes known in any manner . . . any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; . . . . shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

In light of the foregoing, the Senate Judiciary Committee reiterates what we have said from the beginning of this exercise: we are prepared to share the spreadsheet with any Senator or designated member of their staff. The staff may even make a copy of the spreadsheet so long as they sign an acknowledgement form indicating they understand the information is to remain confidential pursuant to Rule XXIX and 18 U.S.C. 1905.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank the Senator from Pennsylvania, and I say with genuineness that I respect him more often than not. I go beyond "sometimes" which he said of me, and say I respect him more often than not. I respect his great work on this issue. This is not easy.

What the Senator is trying to do is nothing short of revolutionary. He wants to close down the court system of America for hundreds of thousands of individuals who otherwise would go to court, to a judge or a jury, and ask for fair compensation for their injuries.

The Senator from Pennsylvania has decided that system is wrong or inadequate or broken and has suggested that we are going to do away with the court system in America for these victims and create a brand new system.

That is a daunting task. I am not sure, given the 2 or 3 years that the Senator has put into it, that I could even come up with a suggestion that I would have confidence would work.

This is what we know about the trust fund and the system we are being asked to vote for in the Senate.

First, the cost of this is being estimated over a period of 50 years. Over 50 years, what are we likely to pay to those Americans who have been injured and died from asbestos exposure? If you will follow some of the best prophets and predictors in Washington, you will find them woefully inadequate to predict what is going to happen next year, let alone in 50 years.

So I have challenged the Senator from Pennsylvania and those in his corner, including my friend, the Senator from Vermont, Mr. LEAHY, to tell me where you came up with the figure of $140 billion. The response we have been given is: Why, that is what Senators have been talking about for a long time, $140 billion.

I think that falls short of the kind of certitude that we should have before we close down the court system of America to hundreds of thousands of injured people and their families.

The second question I asked yesterday, which we again explored today, is: Who is going to pay for this? Who is going to provide the $140 billion, if it is not the taxpayers, to pay the people who were injured?

I am afraid today the Senator from Pennsylvania continues along the same line of reasoning. Someone—an undisclosed company—which he has promised he will now tell me, some undisclosed private entity decided which businesses in America would pay into this trust fund and how much they would pay. A curious thing: I don't know who contacted this private group to create this information. It is certainly essential to this concept of a trust fund. But the group that created the information was so loathe to share it with the Congress which is considering this bill that the chairman of the committee had to subpoena the information from the company that created it for his bill which we are now considering.

It is a strange process. On the one side, the chairman of the committee would rely on this private company to determine who will pay into the trust fund and how much they will pay, and then having relied on them to write this bill to close down our court system for millions of Americans exposed to asbestos, he couldn't get the information from them unless he sent them a subpoena demanding it under his power of the Judiciary Committee. At some moment in time, they produced it. Then when it came in, this information, essential to know whether this trust fund will work, it turns out it was marked "committee confidential."

I have been around the Senate for a few years. I was on the Intelligence

Committee. I know when things are marked classified and top secret and confidential, it is clear that they are secret. They are not to be shared with the public. But what is it about this bill and who is going to pay into it that is so classified and so confidential and so secret that the American people have no right to know? That is the question I asked yesterday. Because if we are going to say to millions of Americans and their families: Give up your day in court, what has been your constitutional and legal right for the 200-plus years America has been in existence; give it up, trust us, we will create a trust fund that is going to be more fair and more generous, shouldn't we share with the American people the basic information that was used to create this alternative to a day in court?

No. The chairman comes before us today and tells us he thinks it is illegal, it may be illegal, it may even violate Senate rules to share this information.

I struggle with it because I think this gets to the heart of the matter. If we cannot justify the cost of this trust fund over 50 years, if we cannot say to the American people: "Here is how it will be paid for," then I am afraid we are asking too much. We are asking them to walk away from their American-given right for redress in our courts for a trust fund that cannot be explained, a trust fund that was created by some private company that did not even want to share the information that led to its creation. That is not a confidence builder.

Despite my admiration for the chairman of the committee—and it is truly something I would say on this floor without reservation. He is a man I respect very much, in a variety of ways, for his service in the Senate. Despite that, this bill should not be passed. This bill, which will literally change the system of justice in America, should not be passed on such a flimsy foundation.

A moment ago, the Senator from New Hampshire, the chairman of the Budget Committee, came to the floor and made an interesting statement. He said he will rely on the Congressional Budget Office to determine whether this trust fund will work. But if the Congressional Budget Office comes back and says: We don't know, we can't tell you—maybe it will and maybe it will not—I think I heard the Senator from New Hampshire say that is good enough. If they say it will not work, OK. But if they are not sure, that is good enough.

Is it good enough? Is it good enough for the millions of Americans who are counting on us not to take away their rights as American citizens to go to court when a wage earner and his or her family have been exposed to asbestos, unwillingly, unknowingly exposed and now cannot breathe and has a limited amount of time left on this Earth and believes that the company that sold the asbestos product should be held responsible and accountable—is it good enough for us to say: No, we are not going to let you go to court any longer?

Is it fair for us to say to the housewife who—and this is a real case; I am not making this up—who literally had a husband who worked in the asbestos industry, brought home his work clothes, piled them up in the laundry room, and before she stuck them in the washer she shook his clothes, not knowing that she was breathing in asbestos fibers, and she contracted mesothelioma, the deadly lung disease from asbestos, simply by being exposed that much—is it wrong for us to say she should not hold a company such as W.R. Grace and Company responsible for the fact that for more than 70 years they refused to disclose the danger of this asbestos fiber to their workers and people who used their products?

I know how I feel about it. All we are asking is that that family have a chance to argue their point of view in a court and let a jury of that woman's neighbors and peers decide what is fair and what is just. That is what is at issue here; to close the courthouse door to her and her family and say, no, you can no longer go before the courts of America, the courts of your State, you have to go to a trust fund, a trust fund that may get around to considering your claim, may end up paying your claim—all of these possibilities.

I am also troubled by the fact that when you take a hard look at this trust fund of $140 billion over 50 years, you realize what is going to happen as soon as this bill passes. Should it pass, there will be a rush of people filing under the trust fund, asbestos victims. Why? Because the instant this bill is signed into law, anyone who has a claim pending in American courts is stopped. They cannot move forward. They cannot take their case any further. If they are not arguing their case in trial before a jury or a judge, they are finished; closed down and stopped. They could have the trial scheduled that they have been working for years to start next week, and they are finished the day this bill is signed.

What will they do—all that work, all that preparation, gathering all the medical records? They will start over. Sick people, dying people in America will start over, filing the paperwork for the new system. We expect a lot of them, if this bill passes, to rush in and say: Pay us, for goodness sakes. We have been working at this for years. Why wouldn't they do that?

As they do, they will swamp the system. This trust fund is not designed to collect all this money from all these corporations and insurance companies in a hurry. It collects it over a 30-year period of time. So at the outset, if the trust fund is going to actually pay the victims, they have to borrow money to do it.

We have had some calculations that if they borrow the money to pay the claims in a timely fashion, more than a third of the $140 billion trust fund will be spent on interest payments for borrowed money—more than a third: $52 billion will be spent over the life of this trust fund.

When the Senator from Pennsylvania addressed this issue the other day, he was brutally frank and candid. What would we do if we ran out of money? What would happen if $140 billion did not compensate all the asbestos victims we know are out there? I have to say over the course of the history of asbestos that we have underestimated the potential claimants time and time again. What happens if $140 billion does not work? The Senator from Pennsylvania came to the floor and said: We will adjust the payments to the victims; the medical criteria for eligibility. In layman's language, we will cut the victims' compensation.

When the Senator comes to the floor and suggests that an alternative from the Senator from Texas will leave some people in the lurch, it may not be as inclusive as the underlying bill. I hope he will recall his own words on the floor when he said if $140 billion is not enough, those same victims will be shortchanged and will receive less.

I am going to close at this moment and say, as I said at the outset, the Senator from Pennsylvania accepted a Herculean assignment to try to replace the court system in America. If you are going to do that for hundreds of thousands and maybe millions of Americans, it is a task that many Senators would never accept. I salute him for trying. But I say in all honesty that, as we stand here today, this will not work. This trust fund will fail.

It will not be the first time a legislative effort will fail. Many of our efforts do. We try our best, but we are human. Men and women try to create laws that will make America better. Sometimes they do and sometimes they don't. The Medicare prescription drug plan, Part D, is a good indication of something that doesn't work. It was passed 2 years ago by this Senate and the House, was signed by the President—2 years to get ready to get 40 million Medicare recipients into prescription drug coverage, which we all support, and we created a system which has been nothing short of a disaster, an unsalvageable fiasco. So our best efforts will leave some poor senior citizens without the drugs they need and many others completely confused and perplexed by this bureaucratic mess we created called the Medicare prescription drug plan, Part D.

I think we will learn our lesson quickly, and I hope we change that law. But think about this law. What if we get this law wrong? What if we say to thousands of American families with someone deathly ill in their home: You are finished in court. Walk away from all of your efforts for compensation. Trust us that we will create a new system that will be as just and even more fair than the court system in America.

If we are wrong on that one, if we make a mistake on that one, the human suffering and misery that will result goes far beyond what we have seen on the Medicare prescription drug plan, Part D.

I don't think it is worth the risk. I think we ought to look at this in more modest terms and honest terms and realize that a trust fund whose total amount we cannot justify, from sources that are still on a secret list that cannot be seen by the American public, is not the best way to go.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, when the Senator from Illinois talks about doing it in an honest way—we have done that. We have been honest.

When he talks about, if we make a mistake, there will be a lot of human suffering, there is a lot of human suffering right now. It would be hard to structure a substitute system which would have more human suffering than you have now. We are looking at a system which is totally debilitating and decimating, with the courts clogged and with thousands of people suffering from deadly diseases and not being compensated.

When the Senator from Illinois makes a reference to saluting me for trying, I appreciate salutes of any kind, but I am looking to the possibility of a salute for succeeding. I don't know how this debate is going to turn out or what is going to happen in the final vote. But I do know that for more than 3 decades, nobody has been able to bring a bill to the floor and nobody has been able to move past a determined effort by the minority to block this bill with a filibuster.

When that effort failed late in the afternoon on Tuesday, they wanted to withdraw the motion, and we defeated it very soundly.

The Senator from Illinois says I have undertaken a Herculean assignment. It is a Herculean problem. I wish Hercules was around to handle it. I would be glad to defer to Hercules were he here.

When the Senator from Illinois refers to cutting payments, that does not happen unless the Congress agrees. When the administrator evaluates the trust fund and finds that there may be insufficient funds to pay the claims, the administrator then reports to a committee of 20, selected by the leaders of the House and Senate, and then they make a recommendation to the Congress.

So it isn't a cut without having congressional action. As wise as we may think we are today, there will be Senators here into the indefinite future; we hope forever. They will have the wisdom, they will make a judgment, and they will have the determination as to what payments are going to be made. So it is not an automatic or easy cut in payments.

Bear in mind that the basic remedy is to go back to the tort system, to go back to court. So the claimants are no worse off under the tort system than they are today, if no plan is adopted.

The Senator from Illinois has repeatedly challenged the establishment of the trust fund of $140 billion. Yesterday, he referenced a letter which he sent to me to which he has not gotten an answer. I checked about the letter and I checked about what we did about the questions raised in the letter, and the answer was we had a briefing 2 days later. We answered the questions, not by written letter but by a more detailed statement from a briefing.

When the Senator talks about the $140 billion which was established, all the information was available in that briefing, and still is to the Senator from Illinois about projections based upon experience with asbestos.

When we talk about the Bates White report, that has been thoroughly refuted. They took into account people such as manicurists and taxi drivers who did not have an occupational exposure to asbestos.

The Congressional Budget Office came up with an analysis of Bates White, and left the Bates White report in ruins. We had a detailed hearing on that as we have had every time an issue has arisen.

The Congressional Budget Office then issued a supplemental report showing that Bates White was wrong and their initial figures were correct. On page 8 of the report submitted by the Congressional Budget Office, dated August 25, 2005, they have a chart where it supplements their analysis that there could be costs in the range of $120 billion to $150 billion, and then they come to a net conclusion of the projection at $132 billion. These are projections; they are not guesses; they are not speculations; but they are not mathematics, either. They are based upon the best information available and they are judgment calls.

In the letter from the Congressional Budget Office dated December 19, they included this statement after analyzing a great number of factors:

> The final outcome cannot be predicted with great certainty.

I don't know what can be predicted with great certainty. I know for many years I was a district attorney prosecuting criminal cases and handled first-degree murder cases. The death penalty is imposed in America is if it is proved beyond a reasonable doubt. But on a level of great certainty, that is not an attainable level, and I would say almost in any field of human endeavor. I don't want to be too expansive in that assertion, but great certainty is not something you come by in the ordinary affairs of men and government.

Mr. DURBIN. Mr. President, will the Senator yield for a question?

Mr. SPECTER. Yes.

Mr. DURBIN. Through the Chair, I wish to ask the Senator if he would agree with the following: If we can't say beyond a reasonable doubt or great certainty, if we reach the point where $140 billion is inadequate, and it cannot compensate as we called for in this bill, is it not true at that point there are only three options? One option is to go back to the businesses that contributed to the trust fund and ask for more; the second is for the Government to assume the liability; and the third is to reduce the payments to the victims as called for in the existing legislation.

Is there another option I am missing?

Mr. SPECTER. Mr. President, the answer to the first question is no. The answer to the second question is yes. OK?

Mr. DURBIN. Would the senator be kind enough to give me a few more words? I know he has a lot.

Mr. SPECTER. I do not know if it is possible for this Senator to give a few words. I will try.

The answer is no, those are not the only options. The answer is yes, there is another option. The "yes" answer is to go back to the tort system. Senator BIDEN offered that amendment in July of 2003. I am on it because it seemed to me that claimants should not bear the risk of the failure of the trust fund, and in this bill you go back to the tort system. So the claimants are no worse off than they are now.

Mr. President, these letters may be part of the RECORD, but I want to be sure they are.

I ask unanimous consent that the letters from the Congressional Budget Office, dated August 25, 2005 and December 19, 2005, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 25, 2005.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 852, the Fairness in Asbestos Injury Resolution Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mike Waters (for federal costs), Barbara Edwards (for revenues), and Paige Piper/Bach (for the private-sector impact).

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

S. 852—Fairness in Asbestos Injury Resolution Act of 2005

Summary: S. 852 would establish the Asbestos Injury Claims Resolution Fund (the

Asbestos Fund) to provide compensation to individuals whose health has been impaired by exposure to asbestos. Under the bill, the Administrator of a new Office of Asbestos Injury Claims Resolution (the Office) within the Department of Labor would administer the Asbestos Fund and manage the collection of federal assessments on certain companies that have made expenditures for asbestos injury litigation prior to enactment of this legislation. A separate Asbestos Insurers Commission would allocate other payment obligations among insurers with asbestos-related obligations in the United States. The Asbestos Fund also would absorb all private asbestos trust funds already existing at enactment. Under the bill, individuals affected by exposure to asbestos could no longer pursue awards for damages in any federal or state court and would submit claims to the Administrator, who would then evaluate such claims and award compensation according to criteria and amounts specified in the legislation.

CBO estimates that net receipts and expenditures of the Asbestos Fund would increase projected budget deficits over the 2006–2015 period by about $6.5 billion (excluding debt service costs).

We expect that sums paid into the fund would be treated in the budget as federal revenues and that amounts expended to pay claims and administer the fund would be considered new federal direct spending. During periods when surplus amounts would be collected by the fund, CBO assumes that most of its assets would be invested in nongovernmental securities. The net cash flows associated with such investments would also be direct spending.

Over the 2006–2015 period, we estimate that payments to eligible claimants, start-up costs, investment transactions, and administrative expenses would total nearly $70 billion. Over the same 10-year period, we estimate that the fund would collect about $63 billion from firms and insurance companies with past asbestos liability and certain private asbestos trust funds.

Consequently, we expect the Administrator of the fund would need to exercise the borrowing authority authorized under the bill to meet the fund's obligations during this period. Assuming enactment of S. 852 by the end of calendar year 2005, CBO estimates that almost $8 billion would be borrowed during the first 10 years.

To evaluate the long-term financial viability of the fund, CBO projected cash flows over the life of the fund—assumed to be about 50 years—using a variety of assumptions about the number, type, and timing of future claims likely to be submitted to the fund, and alternative assumptions about future inflation and interest rates. The legislation is designed to produce collections totaling about $140 billion over the first 30 years. CBO expects that the value of valid claims likely to be submitted to the fund over the next 50 years could be between $120 billion and $150 billion, not including possible financing (debt-service) costs and administrative expenses. The maximum actual revenues collected under the bill would be around $140 billion, but could be significantly less. Consequently, the fund may have sufficient resources to pay all asbestos claims over the next 50 years, but depending on claim rates, borrowing, and other factors, its resources may be insufficient to pay all such claims.

A more precise forecast of the fund's performance over the next five decades is not possible because there is little basis for predicting the volume of claims, the number that would be approved, or the pace of such approvals. Epidemiological studies of the incidence of future asbestos-related disease and the claims approval experience of private trust funds set up by bankrupt firms can be used to indicate the range of experience of the federal asbestos trust fund might face, but those sources cannot reliably indicate the financial status of the fund over such a long time period.

CBO estimates that the fund would face more than half of all anticipated claims expenses in its first 10 years, while it would receive roughly constant collections from insurers and defendant firms over its first 30 years. This conclusion is consistent with other forecasts that we have reviewed. Because expenses would exceed revenues in many of the early years of the fund's operations, the Administrator would need to borrow funds to make up the shortfall. The interest cost of this borrowing would add significantly to the long-term costs faced by the fund and contributes to the possibility that the fund might become insolvent. Under the provisions of section 405, the fund would have to stop accepting new claims (a process known as "sunset") if its current and future resources become inadequate to fulfill all existing and anticipated obligations, including its debt obligations.

Pursuant to section 407 of H. Con. Res. 95 (the Concurrent Resolution on the Budget, Fiscal Year 2006), CBO estimates that enacting S. 852 would cause an increase in direct spending greater than $5 billion in at least one 10-year period from 2016 to 2055.

S. 852 contains two intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the cost of complying with those mandates would be insignificant and well below the threshold established in that act ($62 million in 2005, adjusted annually for inflation).

S. 852 would impose new private-sector mandates, as defined in UMRA, on certain individuals filing claims for compensation for injuries caused by exposure to asbestos; certain companies with prior expenditures related to asbestos personal injury claims; certain insurance companies; trusts established to provide compensation for asbestos claims; health insurers; and persons involved in manufacturing, processing, or selling certain products containing asbestos. Based on information from academic, industry, government, and other sources, CBO concludes that the aggregate direct cost to the private sector of complying with all of the mandates in the bill would well exceed the annual threshold established by UMRA ($123 million in 2005, adjusted annually for inflation).

Estimated Cost to the Federal Government: The estimated budgetary impact of S. 852 over the 2006–2015 period is shown in Table 1. The effects of this legislation fall within budget functions 600 (income security) and 900 (interest). CBO estimates that the bill would have little net effect on the budget over the first five years but would add about $6.5 billion to deficits from 2011 through 2015. (The longterm budgetary impact of the bill is discussed in the section following the "BASIS OF ESTIMATE" section.)

Basis of Estimate: For this estimate, CBO assumes that S. 852 will be enacted by the end of calendar year 2005. Based on information from the Department of Labor, we expect that the Asbestos Fund could become fully operational during fiscal year 2007 and that certain pending exigent asbestos claims would be paid by the fund in 2006.

CBO expects that the fund's assessments on firms and insurers would be treated in the budget as revenues and that payments to satisfy claims would be considered direct federal spending. In addition, because the Administrator would be authorized to invest the fund's balances, certain cash flows associated with investments in nongovernmental financial instruments also would be reflected in the budget. Specifically, under the Administration's current procedures for budget presentation, government funds invested in nongovernmental financial instruments are recorded as expenses (outlays), and the redemption of such investments is recorded as a receipt (negative outlay). Under the bill, any noncash assets received from 4 existing private asbestos bankruptcy trust funds (such as the Manville Trust) would have no budgetary impact until they were liquidated by the Administrator. At that point, both the assets and any gains or dividends on those assets would be recorded on the budget as revenues.

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF S. 852

	By fiscal year, in billions of dollars									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN DIRECT SPENDING										
Claims and Administrative Expenditures of the Asbestos Fund:										
Estimated Budget Authority	8.7	21.9	11.1	5.3	5.3	5.3	5.0	4.9	4.7	4.6
Estimated Outlays	8.7	5.6	8.4	9.5	10.8	6.7	5.2	5.1	5.0	4.8
Investment Transactions of the Asbestos Fund:										
Estimated Budget Authority	0	1.1	0	0	-1.0	-0.2	0	0	0	0
Estimated Outlays	0	1.1	0	0	-1.0	-0.2	0	0	0	0
Total Direct Spending:										
Estimated Budget Authority	8.7	23.0	11.1	5.3	4.3	5.1	5.0	4.9	4.7	4.6
Estimated Outlays	8.7	6.7	8.4	9.5	9.8	6.5	5.2	5.1	5.0	4.8
CHANGES IN REVENUES										
Collected from Defendant Firms	2.9	2.9	2.9	2.9	2.9	2.9	2.9	2.9	2.9	2.9
Collected from Insurer Participants	1.3	4.1	5.0	5.0	5.0	1.1	1.1	1.1	1.1	1.1
Collected from Bankruptcy Trusts[1]	4.5	0	0.4	1.6	1.6	0	0	0	0	0
Total Estimated Revenues	8.7	7.0	8.4	9.5	9.6	4.0	4.0	4.0	4.0	4.0

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF S. 852—Continued

	By fiscal year, in billions of dollars									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN THE DEFICIT										
Estimated Net Increase or Decrease (-) in the Deficit from Changes in Revenues and Direct Spending	0	-0.3	0	0	0.3	2.5	1.2	1.1	0.9	0.8

[1] CBO estimates the total value of cash and financial assets of the asbestos bankruptcy trust funds would be $7.5 billion in 2006 and $8.1 billion when liquidated. The federal budget would record the cash value of those trust assets when they are liquidated by the Administrator to pay claims. CBO estimates that assets of asbestos bankruptcy trust funds would not be fully liquidated until 2010.

Note: Numbers in the table may not add up to totals because of rounding.

To estimate the cost of processing claims, CBO reviewed prior government experience with similar compensation funds and operations of privately run asbestos funds. We also discussed the potential costs of administering the fund with the Department of Labor. To estimate the number and types of claims the Asbestos Fund would receive and when they would be received, CBO reviewed a number of projections of asbestos injury claims that were prepared for different purposes by several private groups and individuals, including those developed by the Asbestos Study Group, Navigant Consulting, the National Association of Manufacturers, and Legal Analysis Systems during consideration of this bill and of similar legislation considered by the 108th Congress. In addition, we studied the history of claims paid and projections of those anticipated to be paid by the Manville Trust and considered the inaccuracy of past projections of future asbestos injury claims. Finally, to determine whether the Asbestos Fund could be expected to collect the amount of assessments from defendant companies and insurance companies that are anticipated in the legislation, CBO examined financial information for some of the public companies that would likely be contributors to the fund and the reserves held by insurance companies for asbestos claims.

Direct spending: To estimate the amount and timing of new direct spending under S. 852, CBO considered the cost of administering the Asbestos Fund and the length of time it would take following enactment for the fund to be fully operational and processing claims. We projected the number of claims that would be submitted to the fund over the 2006-2015 period, including those claims that have been filed or will be filed in federal or state courts or with existing trusts but not settled by the time the bill is enacted (these claims are known as pending claims). To estimate the cost of paying valid claims submitted to the fund, we considered the number of claims likely to be submitted by persons with malignant and nonmalignant medical conditions due to asbestos exposure. We also estimated the net disbursements and receipts associated with the fund's investment activity. Finally, we considered the borrowing that might be required in each year in order for the fund to pay claims.

Administration and Start-up of the Asbestos Fund. Based on the cost of operating existing government compensation funds, the operation of privately run asbestos trusts, and information from the Department of Labor, CBO estimates that administration of the Asbestos Fund would require a staff of over 700 employees for the 2006–2015 period, costing a total of nearly $1 billion over 10 years. Such administrative costs would be paid from the Asbestos Fund and would not require further appropriation action. For this estimate, CBO expects that the Office would start accepting claims in 2006, shortly after enactment. During the first three years of operation, CBO estimates that the Office would receive around 185,000 claims per year, but that this number would fall to an average of around 60,000 for the next seven years, once all currently pending claims are resolved by the fund.

Individuals seeking compensation from the Asbestos Fund would need to file a claim with the Office within the time specified by the legislation (five years from the date of enactment for pending claims or five years from the date of diagnosis for future claims). The Administrator would then have 90 days to present a proposed decision concerning the appropriate award according to the medical criteria and awards values specified in the legislation. If the claimant chooses to accept the award, the Administrator would issue a final decision, and the Asbestos Fund would pay the claimant over the next one to four years. A claimant could appeal a decision by the Administrator within 90 days of its issuance by requesting either a hearing or a review of the written record. In those cases, a decision on the appeal would be required within either 180 days or 90 days, respectively.

Under the bill, any claim pending on the date of enactment would be stayed, unless it were already before a court. Of the stayed claims, exigent claims (defined by S. 852 as those claims brought by a living claimant with either mesothelioma or less than one year to live, or by the spouse or child of a claimant who died after either filing of his or her claim or enactment of the bill) would receive the earliest attention by the Administrator. Within 60 days of receipt, the Administrator would be required to either approve or disapprove such a claim as exigent. The bill would require the Administrator to pay exigent claims within one year for cases of mesothelioma, and in no more than two years for all other exigent claims.

CBO expects that the fund would not be fully operational until at least a year following enactment of the legislation. Even after appointing an Administrator and Insurers Commission, this start-up period would be needed to promulgate detailed operating rules and procedures and to recruit, hire, and train personnel to process claims and manage the fund's operations. (The Energy Employees Occupational Illness Compensation Program—a similar federal fund serving a much smaller population—took slightly more than a year to become fully operational.) During this start-up period, the Administrator and the Insurers Commission would also need to collect financial information from thousands of firms and insurers that have made prior expenditures for asbestos injury claims to set appropriate assessment rates for those insurers and firms.

Payments to Claimants. To estimate the cost of paying compensation claims under the bill, CBO reviewed projections of asbestos injury claims that were presented to the Senate Committee on the Judiciary during its consideration of S. 852 and for similar legislation considered by the 108th Congress. Such projections were based on a combination of epidemiological data, projections of disease incidence for the affected population, historical experience of bankruptcy trusts, and projections of the number of injured that would apply for compensation given the bill's medical criteria and compensation award values.

S. 852 defines nine levels of medical impairment that persons exposed to asbestos have suffered and specifies a dollar amount of compensation that the fund would pay to individuals who demonstrate both adequate exposure to asbestos and specified medical conditions. Over time, those award values would be adjusted for inflation. For the lung cancer levels, the bill stipulates different awards, depending on whether a claimant, currently or in the past, does or does not smoke tobacco. (For example, claimants having lung cancer with asbestosis would qualify for compensation under level VIII; awards at this level would range from $600,000 to $1.1 million, depending on the claimant's history of tobacco use.)

To estimate the cost to the fund of compensating claimants, CBO considered four categories—future claims that would be made by individuals with malignant conditions, future claims that would be made by those with nonmalignant conditions, and claims pending on the date of enactment of the bill for both malignant and nonmalignant conditions. As detailed below, CBO used information from available projections and studies to estimate the number of claims in each category that would qualify for compensation under the medical conditions specified in the bill. Individuals who are eligible for an award would receive payments from the fund over a one- to four-year period. For this estimate, we assumed that payments for nonexigent claims would be spread equally over a four-year period. We assume that claims pending for mesothelioma at the time the bill is enacted would represent the exigent claims and would be paid in 2006.

Table 2 summarizes the number of claims and total award value for those claims that CBO projects for each category of claims under the legislation.

Pending claims. Individuals who have an outstanding claim with any firm filed in a court on the date of enactment of S. 852 would have five years to submit a claim for compensation from the fund. CBO estimates that, over the first five years that the fund is operational, more than 320,000 pending claims would receive an award from the fund.

There is no comprehensive information regarding the numbers and types of asbestos injury claims that individuals have filed in federal and state courts or with existing trusts under current law. Nor is there reliable information on the numbers and award values of such claims that are settled each year. In 2003, Navigant Consulting prepared an estimate of the number and type of asbestos injury claims then pending in federal and state courts. That information was collected to inform the consideration of legislation similar to S. 852 in the 108th Congress.

TABLE 2.—SUMMARY OF ESTIMATED ASBESTOS CLAIMS AND AWARD VALUES

	Initial 10-year period		Life of fund	
	Number of claims	Award Value of claims (in billions of dollars)	Number of claims	Award Value of claims (in billions of dollars)
Pending Claims for:				
Malignant Conditions	21,000	14	21,000	14
Nonmalignant Conditions	301,000	11	301,000	11
Total Pending Claims	322,000	25	322,000	25
Future Claims for:				
Malignant Conditions	42,000	34	78,000	74
Nonmalignant Conditions	620,000	16	1,184,000	32
Total Future Claims	662,000	51	1,262,000	106
Total for All Claims	984,000	76	1,585,000	132

For this estimate, CBO used the information collected by Navigant in 2003 and adjusted the data to reflect developments since then. Using projections about the number of claims expected to be filed in 2004 and 2005 and assumptions about the pace of settlements for asbestos injury cases, we concluded that the number of pending cases in 2006 is likely to be larger than estimated in 2003—about 7 percent larger.

For this estimate, CBO did not take into account the number of claims that are still technically pending with at least one company but have been inactive for several years. If the claimants' lawyers actively seek out those individuals to file a claim against the fund, the number of claimants seeking compensation from the fund in the first four years could be significantly higher. An award from the Asbestos Fund for such individuals would be reduced by the value of any other awards received for a given claim. CBO estimates that the average award from the fund over the 2006–2015 period for pending malignant claims would be about $650,000 and that awards for such claims would total $14 billion. We estimate that awards for pending nonmalignant claims would average around $38,000; total awards for those claims would be $11 billion over the next 10 years.

Future claims for malignant conditions. CBO examined several projections of malignancies associated with asbestos exposure. While all of those projections included claimants with asbestos exposure and lung cancer but with no evidence of pleural disease or asbestosis, such claimants would receive no compensation under S. 852. CBO assumes that the total number of claims for malignant conditions that would be compensated by the fund would be near the average of the various projections we examined (excluding those lung cancer claimants who would not be eligible for compensation). Adjusting for the time that has elapsed since the performance of the studies that we examined, those studies varied from 65,000 to 100,000 claims for malignant diseases that would be compensated by the Asbestos Fund. This estimate assumes that there would be about 78,000 such claimants. We distributed those cases across the categories of malignant diseases specified in the bill based on the various projections and on the historical distributions of such claims received by the Manville Trust. On this basis, CBO estimates that the average award for malignant conditions over the next 10 years would be $800,000 and that the total value of awards for such conditions over that period would reach $34 billion.

Future claims for nonmalignant conditions. The different projections available to CBO of the number of nonmalignant cases and their distribution among the categories specified in the bill vary greatly. CBO expects that the ratio of nonmalignant claims to malignancies under the bill would be similar to the historical ratio of claims compensated by existing bankruptcy trusts. For example, since 1995, the Manville Trust has received an average of eight claims for nonmalignant conditions for every claim for a malignant condition. Based on those historical data and because nonmalignant claimants could receive larger awards under S. 852 than those provided by existing trust funds, CBO estimates that during the first 10 years after enactment, the fund would compensate, on average, 10 new claims for nonmalignant conditions for every new malignancy (including claimants exposed to asbestos with lung cancer who would not be eligible for compensation under the bill). CBO expects that this ratio would decrease over time because of reductions in the use of and exposure to asbestos. (Other analysts have estimated the ratio of claims for nonmalignant conditions to malignancies to be as low as 7:1 or as high as 17:1.) In total, CBO anticipates about 1.2 million future claims for nonmalignant conditions.

CBO estimates that around 85 percent of claims for nonmalignant conditions filed with the Asbestos Fund would be eligible for medical monitoring reimbursement (level 1) from the fund. Such reimbursement, roughly $1,000, is the lowest rate of payment specified for nonmalignant conditions. This claims estimate is based on available research involving a sample of the exposed population with nonmalignant conditions and the history of claims filed with the Manville Trust. To evaluate the history of such claims, CBO reviewed the trust's estimate of how claims received under its 1995 trust distribution process (TDP) would have been compensated under the 2002 TDP. (The later TDP contains categories for nonmalignant conditions more similar to those under S. 852.) Overall, CBO estimates that, over the next 10 years, the average payment for nonmalignant conditions would be about $26,000 and total awards for such conditions would amount to $16 billion.

Investments of the Asbestos Fund. Section 222 would authorize the Administrator to invest amounts in the fund to ensure that there are sufficient sums to make payments to claimants. That section appears to imply that the fund's Administrator could invest surplus amounts in private securities. For this estimate, CBO assumes that the managers of the fund would keep 20 percent of the investments in Treasury securities and 80 percent in non-Treasury securities. The current budgetary treatment of federal investments in non-Treasury instruments is specified in the Office of Management and Budget's (OMB's) Circular A–11, which states that the purchases of such securities should be displayed as outlays and the sales of such securities and returns, such as dividends and interest payments, should be treated as offsetting receipts or collections.

CBO estimates that investing 80 percent of fund balances in private securities would result in net receipts of $200 million over the 2006–2015 period. The fund would make net investments in 2007, when its collections would exceed its expenditures. In subsequent years when expenditures would exceed collections, the difference would be made up by drawing down assets from the fund, starting with any assets received from other asbestos trust funds. Liquidated assets and earnings from private trust funds would be considered revenue in the federal budget, while the value of assets privately invested by the Administrator would be recorded as offsetting receipts upon liquidation.

For this estimate, CBO used its projections of the return on Treasury securities to predict investment earnings of the fund for both private securities and government securities. Although private securities may well yield higher gains over the long term, such investments carry much greater risk than government securities. The difference between projected returns on private securities and government bonds can be seen as the cost investors must be paid to bear the additional risk of holding private securities instead of government bonds. Thus, adjusted for the additional cost of risk associated with private securities, the net expected returns on private securities are the same as those on government securities.

Revenues. Receipts to the fund would come from three sources: defendant companies that have spent more than $1 million on asbestos injury litigation, insurance companies that have made more than $1 million in such payments, and existing private trust funds formed to settle asbestos claims. Over the life of the fund, defendant companies would be expected to contribute $90 billion, less any credits granted for the establishment of private bankruptcy trust funds set up after July 31, 2004 (known as bankruptcy trust credits); insurance companies would be called upon to contribute just over $46 billion, less bankruptcy trust credits. CBO is aware of one bankruptcy trust that would be eligible for such credits—the Halliburton Bankruptcy Trust. CBO estimates that the bankruptcy trust credits of defendant companies would total $2.4 billion over the 30-year period, or $80 million per year, with the credits being apportioned to all defendant companies based on their share of the total amounts of payments for the year. Insurers would have an estimated $1.5 billion in bankruptcy trust credits; those credits would go to the insurers who paid into trusts set up after July 31, 2004. All assets of existing asbestos trusts (about $7.5 billion) would be transferred to the fund.

Defendant companies. Section 202 would specify $90 billion, less any bankruptcy trust credits under section 222, as the amount to be collected from defendant companies. The minimum aggregate annual payment would be $3 billion, less any bankruptcy credits. CBO estimates that annual payments would total $2.9 billion over 30 years. For the purpose of determining each firm's contribution, each one is assigned to a tier based on its prior asbestos expenditures and whether it is in bankruptcy proceedings.

The actual amounts paid by firms might differ from that implied by their tier assignments because the bill would allow certain exemptions for small businesses and modifications of assessments, based on financial distress or inequity or based on whether a firm meets the criteria for being classified as a distributor. The bill also would allow the Administrator to increase the amount that defendants would pay if the total payments fall short of the minimum aggregate annual payment amount.

The defendants' contributions could decline over the 30-year period for two reasons. First, if more defendant companies exist and make payments than CBO estimates, the payments in the earlier years would exceed the minimum required payment. Because the aggregate payments cannot exceed $90 billion less bankruptcy credits (or a net of $87.6 billion), any excess amounts paid in earlier years would reduce the amounts needed to be paid in the future years. Second, the required total payments could decline in later years if the Administrator determines that full payment is not required, and each company's assessment would decline proportionately.

The amount the fund would collect from defendant companies depends on a number of unknown factors:

The number of subject companies and the tiers into which they would fall;

Which of those companies would be subject to exemption or modification of their contributions and whether some affiliated entities would elect to be treated separately or jointly;

The size and nature of the assets of firms in liquidation;

The number and characteristics of subject firms that may go into bankruptcy during the assessment period; and

How much funding is needed to satisfy claims and other expenses of the fund.

Some sources have indicated that as many as 8,400 firms may have paid sufficient prior asbestos claims to be covered by the legislation. CBO could not verify this figure. Based on information that CBO could obtain about firms that have incurred asbestos litigation expenses, we estimate that about 1,700 defendant firms would be required to make contributions to the fund under the bill. It was possible to determine the likely tiers for about 500 of those firms. The remaining firms were assigned equally to the two lowest tiers, based on the assumption that firms with unknown tier assignments were those with lower asbestos claims payments. No reduction in the number of firms was made for those exempt due to size. Similarly, CBO made no upward adjustment to account for defendant firms not identified.

Tier I firms are firms that have filed for bankruptcy. Revenues for tier I firms expected to emerge from bankruptcy were obtained, where possible, from public sources. No reliable information could be obtained about the possible contributions of tier I firms that are likely to liquidate. Firms that securities analysts expect to earn revenues in 2006 were assumed to make the required payments, and no reduction in contribution was made for firms that would receive hardship or inequity adjustments in their contributions or for consolidated payments made by affiliated groups.

Insurers. Section 212 would specify just over $46 billion, less any bankruptcy trust credits, as the amount to be collected from insurers over a 28-year period. In the case of insurers, no allocation or formula for payments is specified in the legislation,, although the legislation does specify how much in aggregate would be collected for each of the 28 years. The bill would create an Asbestos Insurers Commission to determine an allocation among the insurance companies. The bankruptcy trust credit would represent a dollar-for-dollar reduction in the amount of liability an insurer would pay under the bill for any contributions to bankruptcy trusts established after July 31, 2004. CBO estimates that the value of the bankruptcy trust credits would be $1.5 billion. Either the allocation determined by the Asbestos Insurers Commission or one agreed upon by the subject companies would determine how much each insurer would pay of the $46 billion total.

S. 852 would direct insurers to contribute an aggregate initial payment of no more than 50 percent of the first year's required $2.7 billion within 90 days after enactment. The bill would authorize the Administrator to calculate the initial payment obligations of insurers and handle other matters related to the collection of the funds. However, the initial payment amounts would not be considered final until the Insurers Commission has been formed, promulgated its allocation methodology, and issued its final determination of liability of the insurers. Based on the procedural steps specified in the bill, CBO expects that such determination would be made in fiscal year 2007.

The participating insurers would pay interest on any difference between their ultimate liability and the amount of the interim payment. Any insurers who paid more than their ultimate liability would receive interest on the excess amount. The bill specifies that the interest rate on any overpayments or underpayments would be the same rate. CBO estimates that the fund would be able to collect the initial payment from insurers by the end of fiscal year 2006 and that the demands on the fund for payments would prompt the Administrator to seek to collect the maximum allowed for the initial payment—50 percent of the first year obligation. CBO further assumes that the remaining 50 percent of the first year's payment would be collected in the second year with the associated interest and the second year's contribution.

Existing asbestos trust funds. Based on publicly available information, CBO determined that the existing private trust funds set up to compensate claimants currently contain about $7.5 billion in assets. Under the bill, those assets would be transferred to the new Asbestos Fund in the first year following enactment. Until that transfer occurs, we assume that claims paid by these funds would roughly equal investment income. The assets of existing trusts are invested in a variety of financial instruments, and only the cash and U.S. obligations in these trusts would be recorded in the federal budget as revenues of the government when transferred. The private securities in the trusts (together with any earnings) would be recorded as revenues only when converted to cash or U.S. obligations.

Based on the financial reports of the Manville Trust, CBO estimates that 56 percent of transferred trust assets (about $4.5 billion) would be recorded as revenues in 2006. For this estimate, we assume that the remainder of the assets would only be sold as needed to finance spending in later years. The proceeds of those sales would be recorded as revenues to the fund at that time.

Offsets and guaranteed payment surcharge. The bill would allow firms and insurers to reduce their individual assessments by the value of any asbestos claims paid after the enactment date of S. 852 and before 2007, when CBO expects the fund's full operations would start. It also would authorize certain payments by subject companies to guarantee collection of the mandated amounts. For the purpose of this estimate, CBO assumes that these provisions would have no net effect on annual payments by firms and insurers.

Offsets for exigent claims paid during start-up of the Fund. In the interim between enactment of S. 852 and the time when the fund would begin full operations, defendants and insurers may settle or face judgments on exigent asbestos claims that the fund is unable to process or pay. Firms and insurers could use those settlement amounts as a dollar-for-dollar offset against their assessments, reducing the payments required to be made to the fund.

Guaranteed payment surcharge and guaranteed payment account. The Administrator of the fund could impose on each defendant participant a surcharge to offset any shortfalls in the annual aggregate payment amounts. If the payments by defendant participants exceed the minimum aggregate annual payment of $3 billion, less bankruptcy trust credits, the excess amount, up to $300 million, would be set aside in the guaranteed payment account as a form of self-insurance by the fund, with any excess funds being carried forward to the next year. For this estimate, CBO assumed that the Administrator would assess a surcharge on all firms when necessary. If the funds in the guaranteed payment account are insufficient to ensure that the minimum annual payment is raised in any year, the Administrator of the fund would be able to levy a guaranteed payment surcharge on the defendant participants on a pro rata basis.

Secondary effects on other revenue sources. The payments made by defendants and insurers and the sums received by claimants could affect taxable income under the federal corporate and individual income tax systems. This cost estimate includes no effects of those transactions on federal income taxes paid by claimants or businesses. Those secondary effects are likely to be insignificant in any event.

Payments made into the fund would be tax-deductible and would thus reduce the corporate income tax liability of participating firms. But in the absence of this legislation, firms would have to pay asbestos damages set in the courts, which would also be tax-deductible. It is impossible to say with any confidence whether the amounts that would be paid out by defendant firms and insurers under this legislation would be higher or lower than what they would expend in its absence through the tort system. The best assumption under the circumstances is that the bill would have no significant effect on corporate taxable income or on the government's receipts from corporate income taxes.

Similarly, the tax treatment of payments received by claimants would be unchanged from what it is now—effectively excluded from taxable income and therefore having no effect on taxes paid by individuals. There might be some reduction in income tax receipts if a significantly larger proportion of payments goes to claimants rather than to their attorneys, who would pay tax on the income. But this would depend on whether more claimants think they can navigate the new system set up under the legislation without legal assistance than is the case under the existing one—a circumstance that cannot be known. CBO expects that any change in the allocation of awards between attorneys and claimants would be too small to significantly affect income tax receipts.

Budgetary impact of the Asbestos Fund after 2015: To assess the long-term financial viability of the Asbestos Fund, CBO considered several possible projections of the fund's cash flows beyond the normal 10-year estimate of the legislation's budgetary impact. When estimating such cash flows, the provisions of section 405 are critical. That section of the bill would sunset the fund's operations by directing the Administrator to reject new claims if the fund's resources (including borrowing authority) prove inadequate to pay additional obligations. Under S. 852, claimants could seek compensation in federal courts if the fund were to sunset. In determining whether or not to sunset, the Administrator would consider the unpaid costs of any approved claims and previous borrowing against future revenues. Section 405 also would require the Administrator to return remaining assets to certain nongovernmental trust funds—but only in the event of a sunset.

CBO estimates that total receipts to the Asbestos Trust Fund over its lifetime would amount to about $140 billion, including a small amount of interest earnings on its balances. We estimate that the fund would be presented with valid claims worth between $120 billion and $150 billion in addition to any financing (debt-service) costs and administrative expenses. Under the legislation, receipts to the fund would be fairly evenly distributed over its first 30 years. However, even if receipts exceed claims, CBO estimates that more than half of the fund's expenditures for claims would be paid in the first 10 years of its life. Such an imbalance between when the fund's anticipated claims payments would be made and when receipts would be collected would require the Administrator to borrow to pay claims. Under the bill, the borrowed amounts (including interest costs) would have to be repaid from the fund's own budgetary resources.

Depending upon the precise timing and value of claims presented to the fund as well as the exact revenue collected, investment returns, and interest rates, the fund might or might not have adequate resources to pay all valid claims. For example, if the value of valid claims totaled $130 billion, interest costs on the fund's borrowing might amount to $10 billion, and interest earned on investments could approach $2 billion, while administrative costs would add another $1 billion to $2 billion. If the value of such claims were significantly more than $130 billion, the fund's revenues might be inadequate to pay all claims.

Because of the uncertainty and sensitivity of the variables that affect the fund's balances, any long-term projection over five decades must be viewed with considerable caution. Operating the Asbestos Fund would be an entirely new governmental task, and CBO and other analysts have little basis for judging how the Administrator would implement the legislation. The discretion available to the Administrator and insurance commission with respect to the allocation of costs, provision of adjustments, and levying of surcharges makes the flows into and out of the fund hard to predict with much reliability. Furthermore, the projections that have been made in recent decades of the number of asbestos claims likely to be filed were, in hindsight, much too low, suggesting that there might be a significant risk of underestimating the number of future asbestos claims. In addition, receipts to the Asbestos Fund would depend on the continued viability of the firms required to pay into it, which is also uncertain.

The Asbestos Fund's operations are uncertain: Contributing to the uncertainty of the cost to resolve claims under the bill are some significant features of the claims process that would only be defined after enactment of the legislation. For instance, the bill would require the Institute of Medicine of the National Academy of Sciences to conduct a study to examine the causal link between asbestos exposure and cancers other than lung cancer or mesothelioma. If that study were to determine no causal link between asbestos exposure and any of those cancers, the number of claims for such conditions (level VI under the bill) could decline significantly. The bill would also require the Agency for Toxic Substances and Disease Registry (ATSDR) to conduct a study to determine if any other contaminated sites pose dangers similar to those observed in Libby, Montana. Because claimants from Libby would receive higher minimum awards than other claimants and because the bill would mandate similar treatment for any sites so identified, the costs could rise depending upon which sites might be judged similar to Libby and on how many claimants would be affected. Also, this estimate does not take into account the impact of approving any exceptional medical claims, which are claims that do not fit into the defined criteria but which might still receive compensation depending upon the findings of specific panels of physicians. It is difficult to assess how many such claims might be filed and how liberally those panels might rule on the claims.

Past estimates of the number and value of Asbestos claims have been inaccurate: Forecasts of asbestos claims made over the past decade have failed to accurately predict the magnitude, scope, and evolution of asbestos claims. According to one witness that testified on similar legislation previously before the committee, "in every instance where companies or trusts have attempted to project future asbestos claims, they have always seriously underestimated." Most estimates of future claims rely on a combination of epidemiological information and statistical estimation techniques using historical data. Such models contain a number of potential sources of error in forecasting.

In 1988, experts estimated that the number of future claims against the Manville Trust would range from 50,000 to 200,000. By January of 1991, the trust had already received more than 171,000 claims. Through the summer of 2005, the Manville Trust had received 690,000 claims. The most recent claims forecast performed for the trust estimated that the trust may receive up to 1.4 million additional claims.

CBO's estimates of the number and distribution of claims that would be compensated by the Asbestos Fund under S. 852 are based on forecasts similar to those that have been prepared for the Manville Trust. Therefore, it is possible that the number of claims that would be compensated under S. 852 could deviate in significant respects from our estimates in terms of cost, timing, or both.

Revenue collections are uncertain: The revenue stream that would be generated by the legislation is highly uncertain. Although the aggregate amount of the levy on defendant firms and insurers is fixed over the first 30 years, a number of factors described earlier make it difficult to project the annual receipts with much reliability.

First, identifying the defendant participants and where they would fall in the different payment tiers is difficult, if not impossible, without legislation requiring the information to be disclosed. (Tier placement directly affects the amount a defendant company would pay into the fund.) Many of the prior asbestos settlements were made outside of the court system and, as such, are not public record. This lack of information means that the number of defendant companies in each tier and the resulting payments could be either higher or lower than the numbers used in preparing this estimate.

If the number of defendants is significantly higher than assumed in this estimate and if claims remain at or about the level estimated, the likelihood of insufficient funding available to settle claims would be reduced. At the end of the first 10 years, if excess monies existed, the Administrator could decrease the payments required by the defendants by up to 10 percent.

Similar stepdowns in payments could also occur after 15, 20, and 25 years should funding exceed claims levels sufficiently to warrant such a reduction.

To determine the impact of a significantly higher number of defendant companies making payments, CBO estimated the revenues and the resulting effects on cash flow if there were an additional 650 companies in each of the two lowest tiers. This scenario would result in approximately 3,000 defendant companies paying into the fund and, assuming that the number of claims projected by CBO is correct, the fund would be able to pay all claims projected by CBO and there would be no early sunset due to lack of funds to pay claims.

Conversely, significantly fewer defendant participants who meet the criteria for payments under this bill would result in higher levies on the existing defendant participants to ensure the minimum aggregate annual payment of $3 billion less bankruptcy trust credits. This continuing drain on firms' resources could lead to more bankruptcies and even higher levies on the remaining firms.

Thirty years is a long time-span for a business. Even under ordinary conditions, economic circumstances lead many firms to liquidate over time. Normal attrition will be exacerbated by the costs of dealing with asbestos liability—either under the current system of litigation or under the legislation itself. The legislation's provisions for adjustments based on inequity or financial distress might mitigate business bankruptcies, but at the cost of even greater uncertainty in the value of the fund's future revenue stream. The legislation also would allow the Administrator to impose a surcharge to guarantee payment of amounts that some firms would be unable to pay. The success of this surcharge depends, in turn, on estimating the attrition among firms.

The bill proposes no absolute deadlines concerning the establishment of the Asbestos Insurers Commission. Some of the tasks involved in promulgating a methodology and producing final billings to the insurers are well defined and have specific time frames, while time frames for other activities are not clearly specified. CBO expects that appointing and confirming the five members and establishing the final allocation methodology for participating insurers would take at least 12 months. If the process were to take longer, it could delay the payments from insurers and possibly necessitate more borrowing than CBO has projected.

Federal liability if the trust fund's resources are inadequate to pay claims: So long as the fund's Administrator does not borrow from the U.S. Treasury beyond the means of the fund to repay such borrowing, the government's general funds would not be used to pay claims. Furthermore, section 406 states that the legislation would not obligate the federal government to pay any part of an award under the bill if amounts in the Asbestos Fund are inadequate.

Estimated long-term direct spending effects: Pursuant to section 407 of H. Con. Res. 95 (the Concurrent Resolution on the Budget, Fiscal Year 2006), CBO estimates that enacting S. 852 would cause an increase in direct spending greater than $5 billion in at least one 10-year period from 2016 to 2055.

Estimated impact on state, local, and tribal governments: S. 852 contains two intergovernmental mandates as defined in UMRA. First, it would preempt state laws relating to asbestos claims and prevent state courts from ruling on those cases. Second, the bill would require state governments to comply with requests for information from the Asbestos Insurers Commission. CBO estimates that any cost associated with this mandate would be insignificant and well below the threshold established in that act ($62 million in 2005, adjusted annually for inflation).

The bill would authorize $15 million from the Asbestos Trust Fund for state, local, and tribal governments to monitor and remedy naturally occurring asbestos. Any related costs to those governments would be incurred voluntarily as a condition of receiving federal aid.

Estimated impact on the private sector: S. 852 would impose new private-sector mandates, as defined in UMRA, on:

Certain individuals filing claims for compensation for injuries caused by exposure to asbestos;

Certain companies with prior expenditures related to asbestos personal injury claims;

Certain insurance companies; Trusts established to provide compensation for asbestos claims;

Health insurers; and

Persons involved in manufacturing, processing, or selling certain products containing asbestos.

Based on information from academic, industry, government, and other sources, CBO concludes that the aggregate direct cost to the private sector of complying with all of the mandates in the bill would well exceed the annual threshold established in UMRA ($123 million in 2005, adjusted annually for inflation) during the first five years those mandates would be in effect. CBO cannot determine the direction or magnitude of the net impact of the bill's mandates on claimants, defendant companies, or insurance companies over the long term.

Asbestos injury claims: The bill would prohibit an individual from bringing or maintaining a civil action alleging injury due to asbestos exposure. Currently, individuals can file asbestos injury claims against any number of defendants in state or federal court. Under S. 852, individuals would only be able to receive compensation for asbestos-related injury by filing a claim with the federal Asbestos Fund established by the bill. A claimant would be able to recover from the fund if that person could meet the bill's medical criteria, which are based on the severity of the asbestos-related disease. Claims pending as of the date of enactment would be stayed, except for certain pending civil actions.

Some individuals who would receive compensation under current law would not be qualified to receive compensation under the bill. Further, some individuals would receive more compensation for their asbestos injury claims under current law, while others would receive more if S. 852 is enacted. The direct cost of the mandate to claimants would be the difference between the total settlements and judgments that would be obtained under current law and the compensation that would be obtained by claimants under S. 852.

Based on information from academic, industry, and other sources, CBO assumes that claimants who would be deemed ineligible for compensation under the bill would be predominantly from the "unimpaired" category. Because comprehensive data relating to asbestos exposure, litigation, and compensation are not available, it is difficult to predict the number of claimants who would receive compensation and the amount of the settlements they would receive under current law. Unimpaired claimants historically receive multiple settlements of a few thousand dollars each from as many as half-a-dozen defendants. According to several expert sources, settlements for unimpaired claimants may range in value from $3,000 to $50,000 per claimant. Also, according to several sources, a large proportion of claims currently pending could have their settlements precluded or delayed under the bill.

Further, experts predict that many individuals would probably receive less compensation in the first five years under S. 852 than under current law. Consequently, CBO expects that the direct cost to claimants of complying with this mandate could amount to hundreds of millions of dollars over the 2006–2010 period.

Assessments on defendant companies: Section 202 would impose a new mandate on defendant participant companies, defined in the bill as certain companies with prior expenditures related to asbestos personal injury claims. Such defendant companies would be required to pay an annual assessment to the Asbestos Fund totaling a minimum of $3 billion in each of the first five years, less any bankruptcy trust credits. Defendant participants would be required to pay over the life of the fund a total of not more than $90 billion, less any credits.

Section 204 would require the Administrator of the Asbestos Fund to impose a surcharge on each participant required to pay contributions into the fund to make up for any shortfalls in a given year due to nonpayment by some participants. The amount of surcharge to be paid would be determined by the Administrator. CBO expects that the Administrator would assess a surcharge on all firms sufficient to compensate for this loss and that the surcharge would be imposed differentially on defendant companies to reflect their different risks and to maintain their roughly equivalent contributions. However, CBO expects that there would be no surcharge on defendant companies during the first five years of the mandate.

The amount the fund would receive from defendant companies would depend on a number of factors, including the number of subject companies and the tiers into which they would fall. Based on data from industry and other sources, CBO estimates that the defendant companies would pay $2.9 billion per year into the fund over the 2006–2010 period. According to industry and academic sources, defendant companies in aggregate currently pay asbestos litigation and settlement costs on an annual basis close to the amounts that would be required by the bill in the next five years. Thus, CBO estimates that the incremental costs, if any, for those companies to comply with those mandates would not be significant over the first five years the mandates would be in effect.

Assessments on insurance companies: Section 212 would impose a mandate on insurers with asbestos-related obligations. The bill would require those insurance companies to contribute to the fund, and specifies that their contribution would satisfy their contractual obligation with the defendant companies to compensate claimants for injuries caused by asbestos. The bill does not, however, specify any allocation or formula for such payments to the fund. The amount of the contribution to the fund for individual insurance participants would be determined by the Asbestos Insurers Commission established under the bill.

The aggregate contributions to the fund of all participating insurers would average $2.7 billion in the first and second year and $5 billion in years three through five. Participating insurers would be required to pay over the life of the fund a total of $46 billion, less any bankruptcy trust credits. Based on information from industry sources, CBO estimates that insurers would pay a total of about $20.4 billion into the fund during fiscal years 2006 through 2010. According to industry information on asbestos liability costs, insurance companies in aggregate would have expected costs for asbestos claims under current law close to the amounts that would be required by the bill over the next five years. Thus, CBO estimates that the incremental costs for those insurance companies to comply with the mandates would not be significant over the 2006–2010 period.

Asbestos settlement trusts: Section 402 would require asbestos settlement trusts, established to provide compensation for asbestos claims, to transfer their assets to the Asbestos Fund no later than 90 days after the enactment of the bill. Such a requirement is an enforceable duty, and therefore, a mandate under UMRA. Based on information from the trusts and industry sources, CBO expects that such trusts would transfer approximately $7.5 billion in assets to the fund in 2006. The cost to the trusts of the mandate for the trusts in that year would be the value of the assets net of amounts that the trusts would otherwise pay for compensation and administrative costs in that year.

Health insurance: Section 409 would impose a private-sector mandate by prohibiting health insurers that offer a health plan from denying, terminating, or altering coverage of any claimant or beneficiary on account of participation in a medical monitoring program under this bill or as a result of any information discovered as a result of such monitoring. This mandate would have no direct cost because such a medical monitoring program does not exist under current law.

Ban on products containing asbestos: Section 501 would prohibit persons from manufacturing, processing, or distributing in commerce certain products containing asbestos. The bill would require the Administrator of the Environmental Protection Agency, not later than two years after the enactment of the bill, to promulgate final regulations prohibiting commerce in such products (with some exceptions). In addition, the bill would require persons who possess a product for the purpose of commerce that is subject to the prohibition, not later than three years after the enactment of the bill, to dispose of that product by means that meet federal, state, and local requirements. A number of products and processes still use asbestos, including brake pads and linings, roofing materials, ceiling tiles, garden materials containing vermiculite, and cement products. According to industry and government sources, products are readily available to replace products containing asbestos, and the disposal of such asbestos products would not be difficult. Therefore, CBO expects that the direct cost of complying with this mandate would not be large.

Estimate prepared by: Federal Spending: Mike Waters and Kim Cawley. Federal Revenues: Barbara Edwards. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis. G. Thomas Woodward, Assistant Director for Tax Analysis.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 19, 2005.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, the Congressional Budget Office (CBO) has studied the report prepared by Bates White, LLC, concerning S. 852, the Fairness in Asbestos Injury Resolution Act of 2005. In particular, you asked CBO to evaluate the Bates White projection of the claims against the proposed asbestos trust fund from individuals with lung and other cancers (identified in the legislation as disease levels VII and VI). In light of that evaluation, you also asked whether CBO would modify the conclusions reached in its August 25, 2005, cost estimate for S. 852.

CBO has discussed the Bates White report with its authors and officials of that firm. It has also met or spoken with a number of other experts with varying views on the asbestos legislation, including Judge Edward Becker, trial lawyers with extensive experience in asbestos litigation, and representatives of NERA Economic Consulting, the Asbestos Study Group, the AFL-CIO, and Legal Analysis Systems. As a result of that review and assessment process, CBO has reached the following conclusions:

The Bates White report contains no new information that would cause CBO to revise its cost estimate.

The Bates White report is not a cost estimate; its results are therefore not directly comparable with those of the CBO cost estimate. Bates White estimated the value of claims that could be eligible for compensation; CBO estimated the value of claims that would receive compensation. This distinction is important because many potential claimants would probably not file claims and not all of the claims filed would be approved.

Two elements of the Bates White analysis are particularly important, and contribute significantly to its estimate of potential costs. Bates White assumes that one eligibility requirement in the legislation (weighted work-years of occupational exposure) would not constrain potential claims; Bates White also estimates a prevalence of pleural abnormalities (an eligibility requirement for claimants with lung and other cancers) that is higher than other researchers believe is likely.

The Bates White report highlights some factors that pose potential risks to the financial viability of the asbestos trust fund that S. 852 would establish—including the possibility that the financial incentives created by the bill could lead to a substantial number of claimants with disease levels VII and VI. Those risks are real, but CBO believes that claims of the magnitude suggested by Bates White are unlikely to occur.

After further reviewing S. 852, studying the Bates White report, and consulting with a wide range of experts on asbestos legislation, CBO reaffirms the findings presented in its August cost estimate:

The proposed trust fund might or might not have adequate resources to pay all valid claims. There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs. There is also some likelihood that the fund's revenues would be sufficient to meet those needs. The final outcome cannot be predicted with great certainty.

CBO projects that the proposed fund would be presented with valid claims worth between $120 billion and $150 billion, excluding certain potential costs or savings that CBO could not estimate; total costs would be higher because the fund must also cover administrative expenses and any financing costs. The revenues collected under the bill would be, at most, about $140 billion, but could be significantly less. If the value of valid claims was significantly more than $130 billion, the fund's revenues would probably be inadequate to pay all claims.

CBO could not estimate any costs or savings that might result from several features or consequences of the legislation. A number of those features could add to the cost of the legislation. In particular, CBO's estimate does not include potential claims by individuals with older, so-called dormant, asbestos claims pending in the court system, who might seek additional compensation from the fund. It also does not encompass: possible claims by family members of workers who were exposed to asbestos; the costs of any exceptional medical claims that could be made under the bill; the potential costs for residents of other areas of the country who might be deemed eligible to receive the same special treatment given to the residents of Libby, Montana, under the legislation; and the impact on costs of allowing CT scans to serve as documentation of pleural abnormalities. On the other hand, CBO's estimate does not reflect the possibility that medical studies required by the legislation might preclude individuals with certain diseases from obtaining compensation from the fund.

A more detailed discussion of CBO's review of the Bates White report is enclosed. I hope this information is helpful to you.

If you wish further details on this analysis, we would be happy to provide them. The CBO staff contact is Mike Waters.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

ANALYSIS OF POTENTIAL CLAIMS UNDER S. 852, THE FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005

As requested by Senators SPECTER, LEAHY, and FEINSTEIN, the Congressional Budget Office (CBO) has analyzed the report prepared by Bates White, LLC, concerning S. 852, the Fairness in Asbestos Injury Resolution Act of 2005, regarding the potential cost of claims against the asbestos trust fund that would be established by that act. In its cost estimate for that legislation, dated August 25, 2005, CBO estimated that the value of valid claims against the fund would total between $120 billion and $150 billion. The Bates White report, which was issued on September 19, 2005, suggested that the cost of claims could be much greater.

CBO has discussed the Bates White report with its authors and officials of that firm. It has also met or spoken with a number of other experts with varying views on the asbestos legislation, including Judge Edward Becker, trial lawyers with extensive experience in asbestos litigation, and representatives of NERA Economic Consulting, the Asbestos Study Group, the AFL-CIO, and Legal Analysis Systems. As a result of that review and assessment process, CBO has reached the following conclusions:

The Bates White report contains no new information that would cause CBO to revise its cost estimate.

The Bates White report is not a cost estimate; its results are therefore not directly comparable with those of CBO's cost estimate. Bates White estimated the value of claims that could be eligible for compensation; CBO estimated the value of claims that would receive compensation. This distinction is important because many potential claimants would probably not file claims and not all of the claims filed would be approved.

Two elements of the Bates White analysis are particularly important, and contribute significantly to its estimate of potential costs. Bates White assumes that one eligibility requirement in the legislation (weighted work-years of occupational exposure) would not constrain potential claims; Bates White also estimates a prevalence of pleural abnormalities (an eligibility requirement for claimants with lung and other cancers) that is higher than other researchers believe is likely.

The Bates White report highlights some factors that pose potential risks to the financial viability of the asbestos trust fund that S. 852 would establish—including the possibility that the financial incentives created by the bill could lead to a substantial number of claimants with disease levels VII and VI. Those risks are real, but CBO believes that claims of the magnitude suggested by Bates White are unlikely to occur.

After a careful review of the Bates White report and further analysis of the legislation, CBO reaffirms the findings presented in its August cost estimate:

The proposed trust fund might or might not have adequate resources to pay all valid claims. There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs. There is also some likelihood that the fund's revenues would be sufficient to meet those needs. The final outcome cannot be predicted with great certainty.

CBO projects that the proposed fund would be presented with valid claims worth between $120 billion and $150 billion, excluding certain potential costs or savings that CBO could not estimate; total costs would be higher because the fund must also cover administrative expenses and any financing costs. The revenues collected under the bill would be, at most, about $140 billion, but could be significantly less. If the value of valid claims was significantly more than $130 billion, the fund's revenues would probably be inadequate to pay all claims.

CBO could not estimate any costs or savings that might result from several features or consequences of the legislation. A number of those features could add to the cost of the legislation. In particular, CBO's estimate does not include potential claims by individuals with older, so-called dormant, asbestos claims pending in the court system, who might seek additional compensation from the fund. It also does not encompass: possible claims by family members of workers who were exposed to asbestos; the costs of any exceptional medical claims that could be made under the bill; the potential costs for residents of other areas of the country who might be deemed eligible to receive the same special treatment given to the residents of Libby, Montana, under the legislation; and the impact on costs of allowing CT scans to serve as documentation of pleural abnormalities. On the other hand, CBO's estimate does not reflect the possibility that medical studies required by the legislation might preclude individuals with certain diseases from obtaining compensation from the fund.

THE METHODOLOGY OF THE BATES WHITE REPORT

The Bates White analysis of S. 852 is based on an epidemiological analysis of the population employed in industries with some potential exposure to asbestos. To estimate how many claims could be presented to the fund under S. 852 by individuals with both malignant conditions and asbestos exposure, Bates White first estimated the size of the population working in industries and positions in which asbestos exposure was probable. Using estimates of the lifetime incidence for individuals of developing lung and other cancers that could be compensated under S. 852, the authors estimated how many people could make such claims under the bill by further estimating how many of those individuals would develop pleural abnormalities. Evidence of such abnormalities is one of the qualifying requirements for compensation for disease levels VII and VI under S. 852.

For one of the cost scenarios in the Bates White analysis, the authors reported that they estimated that the value of claims from all individuals that could seek compensation from the fund would sum to $300 billion over the next several decades. That figure does not include any costs or savings from most of the same features of the bill, mentioned above, that CBO could not quantify. Bates White also presented an alternative estimate that includes some of those costs, bringing the total value of potential claims to nearly $700 billion. Because the Bates White estimate of the value of claims that could be presented to the fund far exceeds the resources likely to be available to the fund, the authors concluded that the fund would have to be terminated without paying all valid claims.

The Bates White estimate includes a large number of potential claims against the asbestos trust fund from individuals suffering from lung and other cancers, many of which would not have been caused by exposure to asbestos. The report's authors believe that such claims are significantly under-represented in the experience to date in the tort system and existing asbestos trusts. Nevertheless, CBO remains convinced that the number of such claims that would be submitted to the trust fund and approved for payment under S. 852 would be far fewer than suggested by Bates White. In CBO's judgment, the historical experience of the Manville Trust and that trust's current projection of future claims against it are a more reliable basis for estimating the number of future valid claims that would be filed with the asbestos fund under S. 852.

COMPARING THE BATES WHITE REPORT ON S. 852 AND CBO'S COST ESTIMATE FOR THE BILL

The Bates White report and the CBO cost estimate cannot be directly compared because the estimates address different questions. CBO estimated the value of valid claims that would be presented to the fund's administrator. Bates White estimated the value of claims that could be presented to the administrator; its figures are not adjusted to indicate how many individuals actually would seek and receive compensation from the fund. If such adjustments were made, the Bates White cost analysis might be much more in line with other estimates of the likely cost for compensating claims for malignant conditions.

In attempting to answer different questions, the two analyses used different methodologies. CBO's estimate relies on the projections of claims from other analyses prepared with regard to S. 852 and similar legislation. Those projections are grounded, in part, on the historical experience of claims paid by the Manville Trust. That approach reflects the observation that the Manville Trust receives claims from nearly all of the individuals that have brought asbestos tort claims, and the expectation that it provides a reasonable model to use for projecting the number and types of future valid claims likely to be filed with the asbestos trust fund that would be established under S. 852—particularly claims for malignant conditions.

The Bates White analysis of S. 852 rejects the notion of using the experience of the Manville Trust to project the number of claims that could be made against the proposed fund, because the authors observe that not all individuals with malignant conditions that could make asbestos tort claims choose to do so. Bates White notes that engaging in tort litigation can be costly and burdensome, and that many individuals with potential asbestos tort claims choose not to make such claims. The authors expect that replacing the asbestos tort system with the administrative settlement process specified in S. 852 would encourage many of those individuals with malignant conditions and asbestos exposure to make claims against the federal asbestos fund. (Bates White also estimates fewer claims for nonmalignant conditions than CBO projects, but the financial impact of that decrease is much smaller than the impact of its much larger estimate of the number of claims for malignant conditions.)

EVALUATION OF THE BATES WHITE APPROACH

During the Senate Judiciary Committee's November hearing on S. 852, several witnesses voiced concerns about the Bates White estimate of the number of individuals with lung and other cancers that could make claims for compensation under S. 852. CBO has discussed many of these issues with Bates White and others who have studied the legislation, and shares some of those concerns. They include:

Bates White may have overestimated the incidence of pleural abnormalities. Pleural abnormalities are one of the conditions that claimants with lung or other cancers must exhibit under S. 852 to qualify for compensation. Although there is broad agreement about the incidence of lung and other cancers in the asbestos exposed population, there does not appear to be a consensus about the extent of pleural abnormalities within that population. The Bates White report cites several studies as the basis for its estimate that about 10 percent of its exposed population of 27 million people could be expected to have pleural abnormalities. Among the more heavily exposed population of about 9 million, however, Bates White estimated that the incidence of abnormalities would be higher—around 24 percent.

NERA presented CBO with an evaluation of the studies cited by Bates White for its estimate of the incidence of pleural abnormalities. NERA concluded that the report overstated the incidence of pleural abnormalities by at least half. The incidence among the asbestos-exposed population appears to be in dispute because the sample population used in some studies that have measured it may not be representative of the population in question. In addition, some of the studies measured the incidence of pleural abnormalities based on their presence in only one lung, whereas eligibility under the bill would require the presence of such abnormalities in both lungs. CBO has not attempted to independently estimate the incidence of pleural abnormalities in the exposed population, but a proportion that differed significantly from that estimated by Bates White would change the results of that study substantially.

The Bates White study does not explicitly account for the work-years of occupational exposure specified by the bill. Under S. 852, claimants with lung or other cancers would be required to demonstrate that they experienced asbestos exposure for a specific number of years, weighted by the intensity of exposure and when it occurred. By not accounting for the bill's weighted work-year exposure criteria, Bates White has overestimated the number of individuals that could file a successful claim under S. 852. CBO believes that a significant percentage of potential claimants might be unable to demonstrate a sufficient number of work years of exposure to asbestos to qualify for compensation under the bill.

Meeting the bill's required weighted work-years of occupational exposure to asbestos is one of the key qualifying criteria—along with exhibiting pleural abnormalities—for an award under the legislation. The Bates White study did not directly account for this requirement. The authors told CBO that most individuals in the exposed population typically had long careers in the same occupation or industry and that the presence of pleural abnormalities was likely to indicate sufficient years of asbestos exposure to meet the bill's criteria.

However, pleural abnormalities can occur in individuals with fewer years of exposure than are required to qualify for disease levels VII and VI under the bill. Consequently, applying the work-year criteria could eliminate a significant number of claimants who might otherwise qualify.

The Bates White report attempts to estimate the number of individuals that could make successful claims under S. 852, but does not attempt to estimate how many individuals would seek to do so. There is general agreement that individuals exposed to asbestos that have developed mesothelioma and asbestosis have a high propensity (probably well above 70 percent) to file tort claims and apply to the Manville Trust for compensation. There appears to be much less agreement on the propensity of individuals that have been exposed to asbestos and have developed lung or other cancers to take such actions. That is, in part, because there is no consensus on how many individuals with lung or other cancers could demonstrate that asbestos exposure was a substantial contributing factor to their disease (the basis for estimating a claiming rate). Many researchers agree that claiming rates for such individuals today are much lower—certainly less than half, perhaps much less—than for people with mesothelioma or asbestosis. Applying a claiming rate of much less than 100 percent for the Bates White estimates of level VII and VI claims would substantially reduce the costs presented in the Bates White analysis.

Bates White estimates a much larger population exposed to asbestos than most other analyses. Bates White reported that its estimate considered a working population of about 27 million that was exposed to asbestos, a much larger number than many other studies have assumed. However, the authors noted that about 9 million of those people, who had medium-to-heavy exposure to asbestos, accounted for about 90 percent ($270 billion) of the potential claims. An asbestos-exposed population of around 9 million is similar to the estimates of other researchers, and CBO does not consider the size of the exposed population to be a significant issue with the report.

How the key participants in the process—the fund's administrator, claimants, and attorneys or others who assist claimants—behave would have a significant impact on the number of successful claims filed with the proposed asbestos trust fund. The authors of the Bates White report have suggested that the behavior of claimants and attorneys under S. 852 would differ greatly from their behavior under the current system. They expect that under the no-fault administrative process outlined in the legislation, many more claimants with asbestos exposure and lung or other cancers would pursue claims than have done so or filed with the Manville Trust. They anticipate this outcome because they expect that the cost of seeking an administrative claim from the fund would be much less than pursuing litigation, and that the rewards for claimants would be much greater than those obtained from the Manville Trust (though perhaps not as large as awards obtained in some tort settlements).

CBO reaches a different conclusion—that the system specified in S. 852 bears sufficient similarity to the operations of the Manville Trust that the latter's experience is a sound basis for projecting the number of most types of claims under the bill. CBO's estimate of the number of future claims for malignant conditions expected under S. 852 is very similar to the most recent claims projection prepared for the Manville Trust.

A number of factors make that analogy appropriate. For example, whether pursuing an asbestos tort claim under current law or an administrative settlement under the legislation, a claimant would need to demonstrate that asbestos exposure was a substantial contributing factor to his or her cancer. Thus, just as under the current system, claimants could not necessarily assume that the fund's administrator under S. 852 would approve all claims. This is particularly true for level VI claims, which would be individually evaluated by a medical panel. The Manville Trust also requires applicants to demonstrate a specific number of work-years of exposure to asbestos to qualify for an award. The number of work-years needed to qualify for an award from the Manville Trust is generally less than would be required under S. 852, so in that respect, the experience of the Manville Trust could imply more claims than the federal fund might actually face. Also, CBO believes that claimants to the proposed federal asbestos fund would face costs and procedural burdens similar to those that applicants to the Manville Trust face.

Although the financial incentives for some claimants might be greater under the bill than under the current tort system, the financial incentives for attorneys to assist claimants would be weaker. Attorneys play a significant role in identifying claimants and pursuing their claims under the current system, and would probably do so under S. 852. Most claimants would probably need help preparing a claim under S. 852, and the bill would cap attorneys' fees at 5 percent of individual awards made by the fund. By contrast, under the current tort system, attorneys typically receive fees of up to 40 percent of the amount awarded. Because attorneys or others who might assist claimants would play such a key role in the claims process, the bill's cap on fees makes it less likely that the legislation would lead to a substantial influx of claims that are not represented in the current system.

Some of the attorneys whom CBO consulted suggested that asbestos tort claims have recently shifted away from relatively straightforward settlements, and that asbestos cases today involve a significant time commitment and large up-front costs to prepare for litigation, factors that may deter some individuals from pursuing claims. If so, the number of potential claimants to the fund proposed under S. 852 might be underrepresented in the current tort environment. But because asbestos litigation has been under way for many years, CBO believes that the long historical experience of the Manville Trust is the best available indicator of claimants' behavior under the bill, even if the current tort environment differs somewhat.

Mr. SPECTER. Mr. President, before yielding the floor, let me say what a constructive role Senator COBURN has played in the Judiciary Committee. Senator COBURN has been in this body since 2004. He had been in the House of Representatives. He has brought his expertise as a medical doctor and he has made great contributions.

We address some very tough medical procedures. I have said this to him privately, what a contribution he has made, and there is no reason I shouldn't say it publicly.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I want to spend a few minutes talking about the bill.

There is one thing that is an absolute certainty: There are a ton of people in this country who have bad diseases from asbestos who aren't getting treatment and aren't getting cared for. That is what certainty is. You can bet on that, that the problem is made worse because the trial bar is clogging the courts with cases of people who do not have diseases from asbestos, claiming they do. That is one of the reasons the courts want reform.

Having been on the Judiciary Committee during the process of this and voting this bill out of committee, even though I have significant reservations about this bill. Let me talk a couple of minutes about that.

It doesn't matter to me what the Congressional Budget Office says because their track record in estimating everything from the cost of Medicare to the benefits in capital gains taxes is usually 180 degrees off what actually happens. Having CBO's estimate about what is going to happen with this trust fund I don't think lends any credence or undermines it one way or the other. Because I think they do not know, and I don't think anybody can know.

There is a second problem in this bill; that is, the problem we face today is this bill will allow people who do not have injury from asbestos to receive hundreds of thousands of dollars for an asbestos claim when they do not have it. That deals with the medical criteria. It will allow smokers who have some exposure to asbestos who develop lung cancer—smoking is the No. 1 cause of lung cancer—who have no evidence of significant disease caused by asbestos causing their lung cancer to be compensated for a disease that they themselves were responsible for by smoking tobacco products.

The intended purpose of the FAIR Act is to compensate those who are truly sick from asbestos exposure, without destroying the companies and jobs and opportunities in the future. My worry with this bill is the defendants and the plaintiffs will end up back in the tort system in a very short period of time.

I am rising today to support Senator CORNYN's alternative, the Asbestos and Silica Claims Priorities Act. I am doing that because I think it addresses the real problem.

If you look at the abuse in the courts and if you look at what is wrong with this bill, it has to do with putting people in court who do not have disease from asbestos. The Cornyn Amendment has a very defined medical criteria which the courts will have to follow when making judgments about who is eligible to file a claim on this bill.

A major reason the FAIR Act won't have enough money—and the major reason people can attack the FAIR Act in terms of the amount of the trust fund—is because the medical criteria is going allow too many people to be in the process who do not have disease related to asbestos. There have not been significant changes in the medical criteria associated with this bill.

I tried to amend this in committee. I could not win. I have a significantly different level of knowledge on the committee than the rest of the members in terms of medical knowledge, having continued to be a practicing physician, and I know it is going to be very difficult to explain all those medical issues to Members of this body to try to get them changed. That is why I think Senator CORNYN's approach is a better alternative.

We have to create a fair system in the courts for allowing those who are truly sick from asbestos exposure to seek compensation from those who are truly responsible, rather than creating another Federal bureaucracy that is likely to fail.

More than 73 companies have already gone bankrupt, and many others have suffered a great deal of financial difficulty, not because many sick people have sought compensation for their injuries but because smart trial lawyers have learned to game the system and file phony claims. These aren't faceless companies with unlimited resources. And the people who are truly injured are not faceless people who didn't contribute something good to the companies they worked for. The businesses, by and large, are ready and willing to right the past wrongs. The question is, Should they be paying when nobody is injured? With the medical criteria in this bill today, a third of the claims, in my estimation, will be paid to people—$50 billion will be paid to people—who will file under the medical criteria, as written, who have no injury whatsoever from asbestos but yet these companies will be paying them for a perceived injury from asbestos.

Ninety percent of the claimants out there in the courts today who have filed claims that allege to have impairment from asbestos have no impairment. If you read the press stories about how the game has been played, how the B-Readers have falsely read, for payments from trial lawyer organizations, the chest x-rays, and the pulmonary function tests have been manipulated illegally to claim benefits from some of these companies, you can see we cannot have loose medical criteria and ever expect to have this trust fund survive.

The other thing to mention—it is not mentioned much—there is a background caseload in this country of mesothelioma, cancer of the lining of the lung, of about 800 people a year. If there had never been any asbestos, 800 people a year would develop mesothelioma.

At my age, and for most people somewhat younger who went to any public school where the ceiling tiles had asbestos components, we can qualify under this bill not because asbestos truly caused it. There is no causal effect in that low an exposure. There is no particle load count at all in terms of measuring exposure, which is what we know is important. A small amount of asbestos exposure is harmless, a large amount of asbestos exposure is terribly disease causing. When we don't look at load factors, we are going to have medical criteria that make people eligible who are truly not diseased from asbestos.

For example, there are 174,000 new cases each year in this country of lung cancer.

This is kind of a wordy chart. I don't think it is going to project well. But the important thing about that is they may have no true, actual asbestos exposure but could claim under this system asbestos exposure from environmental background exposure. Most of these people have lung cancer because they are smokers, and they are going to have lung impairment, and they are going to meet some of the requirements under the medical criteria but have no true asbestos exposure.

If you look at that, and take 10 percent of the cases based on lung cancers alone, you are talking $5 billion a year. Just lung cancer alone times 30 years, at $5 billion a year, is more than the trust fund has in it.

I will guarantee we will see an approach for compensation by anybody who has ever had any exposure or been around asbestos, and they will qualify to a certain extent more or less under this bill. What if it is 5 percent? You are still talking $78 billion. The numbers are massive.

If you are going to have a trust fund, you are going to have to have adequate medical criteria that truly reward those people and compensate those people who are truly injured. If you have good medical criteria, the trust fund system will work. If you do not have good medical criteria, if you have very loose medical criteria, the trust fund will fail. We will not have solved the problem.

Either we have to get away from a trust fund program and design medical criteria the courts will use, or we have to keep a trust fund program and tighten up the medical criteria in this bill.

The bill as written today, I believe, will fail. It will fail because it will be overwhelmed with claims against this trust fund by people who do not have asbestos-related true disease.

I will give a couple of examples. Nonmalignant level 2 under the fund allows individuals who have obstructive pulmonary disease—people with emphysema, people with chronic bronchitis—to receive compensation by the fund even when they do not have restrictive pulmonary diseases. That is what asbestos causes, a restrictive disease, not an obstructive disease. Under the criteria written in this bill, smokers who have had exposure to asbestos, who do not have a disease related to asbestos, will be compensated under this bill.

Consequently this fund allows a smoker—the No. 1 cause of obstructive airway disease, not asbestos, but smoking—asbestos causes restrictive lung disease—to receive compensation. That cannot work with the fund as we see it today.

This fund also will compensate people for cancers where there is no scientific evidence whatever that their cancers are caused by asbestos. For example, for colorectal cancer, there are 130,000 cases of colon cancer a year. There are tons of scientific studies that show there is no connection between that and asbestos, but we have this in the bill. It is dependent on an IOM study, but it should not be in the bill. If new science sometime later shows some connection between colorectal cancer, stomach cancer, or esophageal, laryngeal, and pharyngeal cancer, we can put it back. We are putting it in, when there is no science whatsoever—and the small studies on laryngeal and pharyngeal cancer that show some connection were not modified for smoking and alcohol use, the No. 1 and No. 2 causes. So it is not good science.

Therefore, we have a large group. If you take lung cancers combined with all the other cancers and put them together and you say 10 percent of those who are coming through will try to go to the trust fund, you have $267 billion that will blow this thing wide open.

This trust fund, with the medical criteria it has today, will not work. That is why having a bill that has specific medical criteria in it will work.

Let me be clear why I support the Cornyn substitute. The Cornyn substitute does not shut anyone out of the courts. If you think you have asbestos exposure, and you want to sue, you can. But you will have to meet the medical criteria for it to be related to asbestos or silicosis. There is no unreasonable requirement; there is just upfront medical criteria that must be met to have application and that requirement must apply.

It does not mean you cannot have your day in court. You can. You have to demonstrate your disease matches the medical criteria which are recognized medical criteria associated with asbestos disease.

The other thing that is good about this bill is if you have had asbestos exposure and have no disease now, this does not cut you off from the future. If you develop disease that is truly related to asbestos, you will be able to have your day in court years—30, 40 years—down the road if, in fact, you develop impairment related to asbestos within this medical criteria that the medical community and the scientific community recognize is accurate.

Under this substitute, as compared to the present bill, physicians will have to comply with strict scientifically sound requirements. There is no room for doctors and x-ray B readers to fudge the data under the Cornyn substitute. The substitute makes sense. The trust fund concept will work if we have good medical criteria. We do not, so it is not going to work.

The answer is to keep people in the court system but define the medical criteria where they can win when they truly have a disease that is caused by asbestos, and they lose when they do not have a disease caused by asbestos.

The science is not that hard. But we cannot take care of the trial lawyers and take care of all the executives who want this problem solved the way they want it. They want an answer now. The answer is, use what this country has used in the past: the judgment of courts based on sound criteria that cannot be manipulated. Then we will get this problem solved and the people who are suffering today, who cannot get into court because of false claims—hundreds of thousands of them by people who do not have asbestos-related illness—the people who are injured will get compensated.

I thank Senator CORNYN for, first, his courage to offer a substitute. He is on the Judiciary Committee. We have a great chairman. He has done a lot of hard work on this. He has brought a bipartisan bill to the Senate. The bill will fail. It takes a great deal of courage on Senator CORNYN's part to offer a commonsense alternative to this. It is my hope that the many Members in this Senate will look at the trust fund with the medical criteria as set out today, and reject it as it is written. Either modify this bill or take the Cornyn substitute and put it in its stead.

This is an issue we will spend a lot of time on. I know people are considering points of order against the legislation. In fairness to the Senate and also the public, if that is going to happen, they ought to do it so we do not continue to spend time. Part of the process around here is to make things not happen so you can have a political advantage. If people are going to offer a point of order, they ought to offer it. Let's go on to the next thing on the agenda for the American people. If they are not going to offer it, let's have a real debate, file cloture, get a vote on this bill and move on.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRAHAM). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

POSTAL ACCOUNTABILITY AND ENHANCEMENT ACT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 164, S. 662.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 662) to reform the postal laws of the United States.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Homeland Security and Governmental Affairs, with an amendment.

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 662

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

[(a) SHORT TITLE.—This Act may be cited as the "Postal Accountability and Enhancement Act".

[(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

[Sec. 1. Short title; table of contents.

[TITLE I—DEFINITIONS; POSTAL SERVICES

[Sec. 101. Definitions.
[Sec. 102. Postal services.

[TITLE II—MODERN RATE REGULATION

[Sec. 201. Provisions relating to market-dominant products.
[Sec. 202. Provisions relating to competitive products.
[Sec. 203. Provisions relating to experimental and new products.
[Sec. 204. Reporting requirements and related provisions.
[Sec. 205. Complaints; appellate review and enforcement.
[Sec. 206. Clerical amendment.

[TITLE III—MODERN SERVICE STANDARDS

[Sec. 301. Establishment of modern service standards.
[Sec. 302. Postal service plan.

[TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

[Sec. 401. Postal Service Competitive Products Fund.
[Sec. 402. Assumed Federal income tax on competitive products income.
[Sec. 403. Unfair competition prohibited.
[Sec. 404. Suits by and against the Postal Service.
[Sec. 405. International postal arrangements.

[TITLE V—GENERAL PROVISIONS

[Sec. 501. Qualification and term requirements for Governors.
[Sec. 502. Obligations.
[Sec. 503. Private carriage of letters.
[Sec. 504. Rulemaking authority.
[Sec. 505. Noninterference with collective bargaining agreements.
[Sec. 506. Bonus authority.

[TITLE VI—ENHANCED REGULATORY COMMISSION

[Sec. 601. Reorganization and modification of certain provisions relating to the Postal Regulatory Commission.
[Sec. 602. Authority for Postal Regulatory Commission to issue subpoenas.
[Sec. 603. Appropriations for the Postal Regulatory Commission.
[Sec. 604. Redesignation of the Postal Rate Commission.
[Sec. 605. Financial transparency.

[TITLE VII—EVALUATIONS

[Sec. 701. Assessments of ratemaking, classification, and other provisions.
[Sec. 702. Report on universal postal service and the postal monopoly.
[Sec. 703. Study on equal application of laws to competitive products.
[Sec. 704. Report on postal workplace safety and workplace-related injuries.
[Sec. 705. Study on recycled paper.

[TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING

[Sec. 801. Short title.
[Sec. 802. Civil Service Retirement System.
[Sec. 803. Health insurance.
[Sec. 804. Repeal of disposition of savings provision.
[Sec. 805. Effective dates.

[TITLE IX—COMPENSATION FOR WORK INJURIES

[Sec. 901. Temporary disability; continuation of pay.
[Sec. 902. Disability retirement for postal employees.

[TITLE X—MISCELLANEOUS

[Sec. 1001. Employment of postal police officers.
[Sec. 1002. Expanded contracting authority.
[Sec. 1003. Report on the United States Postal Inspection Service and the Office of the Inspector General of the United States Postal Service.
[Sec. 1004. Sense of Congress regarding Postal Service purchasing reform.

[TITLE I—DEFINITIONS; POSTAL SERVICES

[SEC. 101. DEFINITIONS.

[Section 102 of title 39, United States Code, is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a semicolon, and by adding at the end the following:

["(5) 'postal service' refers to the physical delivery of letters, printed matter, or packages weighing up to 70 pounds, including physical acceptance, collection, sorting, transportation, or other functions ancillary thereto;

["(6) 'product' means a postal service with a distinct cost or market characteristic for which a rate or rates are applied;

["(7) 'rates', as used with respect to products, includes fees for postal services;

["(8) 'market-dominant product' or 'product in the market-dominant category of mail' means a product subject to subchapter I of chapter 36; and

["(9) 'competitive product' or 'product in the competitive category of mail' means a product subject to subchapter II of chapter 36; and

["(10) 'year', as used in chapter 36 (other than subchapters I and VI thereof), means a fiscal year.".

[SEC. 102. POSTAL SERVICES.

[(a) IN GENERAL.—Section 404 of title 39, United States Code, is amended—

[(1) in subsection (a), by striking paragraph (6) and by redesignating paragraphs (7) through (9) as paragraphs (6) through (8), respectively; and

[(2) by adding at the end the following:

["(c) Except as provided in section 411, nothing in this title shall be considered to permit or require that the Postal Service provide any special nonpostal or similar services.".

[(b) CONFORMING AMENDMENTS.—(1) Section 1402(b)(1)(B)(ii) of the Victims of Crime Act of 1984 (98 Stat. 2170; 42 U.S.C. 10601(b)(1)(B)(ii)) is amended by striking "404(a)(8)" and inserting "404(a)(7)".

[(2) Section 2003(b)(1) of title 39, United States Code, is amended by striking "and nonpostal".

[TITLE II—MODERN RATE REGULATION

[SEC. 201. PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS.

[(a) IN GENERAL.—Chapter 36 of title 39, United States Code, is amended by striking sections 3621 and 3622 and inserting the following:

["§ 3621. Applicability; definitions

["(a) APPLICABILITY.—This subchapter shall apply with respect to—

["(1) first-class mail letters and sealed parcels;

["(2) first-class mail cards;

["(3) periodicals;

["(4) standard mail;

["(5) single-piece parcel post;

["(6) media mail;

["(7) bound printed matter;

["(8) library mail;

["(9) special services; and

["(10) single-piece international mail,

[subject to any changes the Postal Regulatory Commission may make under section 3642.

["(b) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

["§ 3622. Modern rate regulation

["(a) AUTHORITY GENERALLY.—The Postal Regulatory Commission shall, within 12 months after the date of enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a modern system for regulating rates and classes for market-dominant products.

["(b) OBJECTIVES.—Such system shall be designed to achieve the following objectives:

["(1) To reduce the administrative burden and increase the transparency of the ratemaking process while affording reasonable opportunities for interested parties to participate in that process.

["(2) To create predictability and stability in rates.

["(3) To maximize incentives to reduce costs and increase efficiency.

["(4) To enhance mail security and deter terrorism by promoting secure, sender-identified mail.

["(5) To allow the Postal Service pricing flexibility, including the ability to use pricing to promote intelligent mail and encourage increased mail volume during nonpeak periods.

["(6) To assure adequate revenues, including retained earnings, to maintain financial stability and meet the service standards established under section 3691.

["(7) To allocate the total institutional costs of the Postal Service equitably between market-dominant and competitive products.

["(c) FACTORS.—In establishing or revising such system, the Postal Regulatory Commission shall take into account—

["(1) the establishment and maintenance of a fair and equitable schedule for rates and classification system;

["(2) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery;

["(3) the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to each class or type of mail service plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;

["(4) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;

["(5) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;

["(6) the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;

["(7) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;

["(8) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;

["(9) the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;

["(10) the desirability of special classifications from the point of view of both the user and of the Postal Service;

["(11) the educational, cultural, scientific, and informational value to the recipient of mail matter;

["(12) the need for the Postal Service to increase its efficiency and reduce its costs, including infrastructure costs, to help maintain high quality, affordable, universal postal service; and

["(13) the policies of this title as well as such other factors as the Commission determines appropriate.

["(d) REQUIREMENTS.—

["(1) IN GENERAL.—The system for regulating rates and classes for market-dominant products shall—

["(A) require the Postal Regulatory Commission to set annual limitations on the percentage changes in rates based on the Consumer Price Index for All Urban Consumers unadjusted for seasonal variation over the 12-month period preceding the date the Postal Service proposes to increase rates;

["(B) establish a schedule whereby rates, when necessary and appropriate, would change at regular intervals by predictable amounts;

["(C) not later than 45 days before the implementation of any adjustment in rates under this section—

["(i) require the Postal Service to provide public notice of the adjustment;

["(ii) provide an opportunity for review by the Postal Regulatory Commission;

["(iii) provide for the Postal Regulatory Commission to notify the Postal Service of any noncompliance of the adjustment with the limitation under subparagraph (A); and

["(iv) require the Postal Service to respond to the notice provided under clause (iii) and describe the actions to be taken to comply with the limitation under subparagraph (A); and

["(D) notwithstanding any limitation set under subparagraphs (A) and (C), establish procedures whereby rates may be adjusted on an expedited basis due to unexpected and extraordinary circumstances.

["(2) LIMITATIONS.—

["(A) CLASSES OF MAIL.—The annual limitations under paragraph (1)(A) shall apply to a class of mail, as defined in the Domestic Mail Classification Schedule as in effect on the date of enactment of the Postal Accountability and Enhancement Act.

["(B) ROUNDING OF RATES AND FEES.—Nothing in this subsection shall preclude the Postal Service from rounding rates and fees to the nearest whole integer, if the effect of such rounding does not cause the overall rate increase for any class to exceed the Consumer Price Index for All Urban Consumers.

["(e) WORKSHARE DISCOUNTS.—

["(1) DEFINITION.—In this subsection, the term 'workshare discount' refers to rate discounts provided to mailers for the presorting, prebarcoding, handling, or transportation of mail, as further defined by the Postal Regulatory Commission under subsection (a).

["(2) REGULATIONS.—As part of the regulations established under subsection (a), the Postal Regulatory Commission shall establish rules for workshare discounts that ensure that such discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity, unless—

["(A) the discount is—

["(i) associated with a new postal service, a change to an existing postal service, or with a new workshare initiative related to an existing postal service; and

["(ii) necessary to induce mailer behavior that furthers the economically efficient operation of the Postal Service and the portion of the discount in excess of the cost that the Postal Service avoids as a result of the workshare activity will be phased out over a limited period of time;

["(B) a reduction in the discount would—

["(i) lead to a loss of volume in the affected category or subclass of mail and reduce the aggregate contribution to the institutional costs of the Postal Service from the category or subclass subject to the discount below what it otherwise would have been if the discount had not been reduced to costs avoided;

["(ii) result in a further increase in the rates paid by mailers not able to take advantage of the discount; or

["(iii) impede the efficient operation of the Postal Service;

["(C) the amount of the discount above costs avoided—

["(i) is necessary to mitigate rate shock; and

["(ii) will be phased out over time; or

["(D) the discount is provided in connection with subclasses of mail consisting exclusively of mail matter of educational, cultural, scientific, or informational value.

["(3) REPORT.—Whenever the Postal Service establishes or maintains a workshare discount, the Postal Service shall, at the time it publishes the workshare discount rate, submit to the Postal Regulatory Commission a detailed report that—

["(A) explains the Postal Service's reasons for establishing or maintaining the rate;

["(B) sets forth the data, economic analyses, and other information relied on by the Postal Service to justify the rate; and

["(C) certifies that the discount will not adversely affect rates or services provided to users of postal services who do not take advantage of the discount rate.

["(f) TRANSITION RULE.—Until regulations under this section first take effect, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of enactment of this section.".

[(b) REPEALED SECTIONS.—Sections 3623, 3624, 3625, and 3628 of title 39, United States Code, are repealed.

[(c) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect after the amendment made by section 601, but before the amendment made by section 202) is amended by striking the heading for subchapter II and inserting the following:

["SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS".

[SEC. 202. PROVISIONS RELATING TO COMPETITIVE PRODUCTS.

[Chapter 36 of title 39, United States Code, is amended by inserting after section 3629 the following:

["SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

["§ 3631. Applicability; definitions and updates

["(a) APPLICABILITY.—This subchapter shall apply with respect to—

["(1) priority mail;

["(2) expedited mail;

["(3) bulk parcel post;

["(4) bulk international mail; and

["(5) mailgrams;

[subject to subsection (d) and any changes the Postal Regulatory Commission may make under section 3642.

["(b) DEFINITION.—For purposes of this subchapter, the term 'costs attributable', as used with respect to a product, means the direct and indirect postal costs attributable to such product.

["(c) Rule of Construction.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

["(d) Limitation.—Notwithstanding any other provision of this section, nothing in this subchapter shall be considered to apply with respect to any product then currently in the market-dominant category of mail.

["§3632. Action of the Governors

["(a) Authority To Establish Rates and Classes.—The Governors, with the written concurrence of a majority of all of the Governors then holding office, shall establish rates and classes for products in the competitive category of mail in accordance with the requirements of this subchapter and regulations promulgated under section 3633.

["(b) Procedures.—

["(1) In general.—Rates and classes shall be established in writing, complete with a statement of explanation and justification, and the date as of which each such rate or class takes effect.

["(2) Public notice; review; and compliance.—Not later than 30 days before the date of implementation of any adjustment in rates under this section—

["(A) the Governors shall provide public notice of the adjustment and an opportunity for review by the Postal Regulatory Commission;

["(B) the Postal Regulatory Commission shall notify the Governors of any noncompliance of the adjustment with section 3633; and

["(C) the Governors shall respond to the notice provided under subparagraph (B) and describe the actions to be taken to comply with section 3633.

["(c) Transition Rule.—Until regulations under section 3633 first take effect, rates and classes for competitive products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were as last in effect before the date of enactment of this section.

["§3633. Provisions applicable to rates for competitive products

["(a) In General.—The Postal Regulatory Commission shall, within 180 days after the date of enactment of this section, promulgate (and may from time to time thereafter revise) regulations to—

["(1) prohibit the subsidization of competitive products by market-dominant products;

["(2) ensure that each competitive product covers its costs attributable; and

["(3) ensure that all competitive products collectively cover their share of the institutional costs of the Postal Service.

["(b) Review of Minimum Contribution.—Five years after the date of enactment of this section, and every 5 years thereafter, the Postal Regulatory Commission shall conduct a review to determine whether the institutional costs contribution requirement under subsection (a)(3) should be retained in its current form, modified, or eliminated. In making its determination, the Commission shall consider all relevant circumstances, including the prevailing competitive conditions in the market, and the degree to which any costs are uniquely or disproportionately associated with any competitive products.".

[SEC. 203. PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS.

[Subchapter III of chapter 36 of title 39, United States Code, is amended to read as follows:

["SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

["§3641. Market tests of experimental products

["(a) Authority.—

["(1) In general.—The Postal Service may conduct market tests of experimental products in accordance with this section.

["(2) Provisions waived.—A product shall not, while it is being tested under this section, be subject to the requirements of sections 3622, 3633, or 3642, or regulations promulgated under those sections.

["(b) Conditions.—A product may not be tested under this section unless it satisfies each of the following:

["(1) Significantly different product.—The product is, from the viewpoint of the mail users, significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test.

["(2) Market disruption.—The introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns (as defined under subsection (h)).

["(3) Correct categorization.—The Postal Service identifies the product, for the purpose of a test under this section, as either market-dominant or competitive, consistent with the criteria under section 3642(b)(1). Costs and revenues attributable to a product identified as competitive shall be included in any determination under section 3633(3) (relating to provisions applicable to competitive products collectively). Any test that solely affects products currently classified as competitive, or which provides services ancillary to only competitive products, shall be presumed to be in the competitive product category without regard to whether a similar ancillary product exists for market-dominant products.

["(c) Notice.—

["(1) In general.—At least 30 days before initiating a market test under this section, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register a notice—

["(A) setting out the basis for the Postal Service's determination that the market test is covered by this section; and

["(B) describing the nature and scope of the market test.

["(2) Safeguards.—For a competitive experimental product, the provisions of section 504(g) shall be available with respect to any information required to be filed under paragraph (1) to the same extent and in the same manner as in the case of any matter described in section 504(g)(1). Nothing in paragraph (1) shall be considered to permit or require the publication of any information as to which confidential treatment is accorded under the preceding sentence (subject to the same exception as set forth in section 504(g)(3)).

["(d) Duration.—

["(1) In general.—A market test of a product under this section may be conducted over a period of not to exceed 24 months.

["(2) Extension authority.—If necessary in order to determine the feasibility or desirability of a product being tested under this section, the Postal Regulatory Commission may, upon written application of the Postal Service (filed not later than 60 days before the date as of which the testing of such product would otherwise be scheduled to terminate under paragraph (1)), extend the testing of such product for not to exceed an additional 12 months.

["(e) Dollar-Amount Limitation.—

["(1) In general.—A product may only be tested under this section if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $10,000,000 in any year, subject to paragraph (2) and subsection (g).

["(2) Exemption authority.—The Postal Regulatory Commission may, upon written application of the Postal Service, exempt the market test from the limit in paragraph (1) if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $50,000,000 in any year, subject to subsection (g). In reviewing an application under this paragraph, the Postal Regulatory Commission shall approve such application if it determines that—

["(A) the product is likely to benefit the public and meet an expected demand;

["(B) the product is likely to contribute to the financial stability of the Postal Service; and

["(C) the product is not likely to result in unfair or otherwise inappropriate competition.

["(f) Cancellation.—If the Postal Regulatory Commission at any time determines that a market test under this section fails to meet 1 or more of the requirements of this section, it may order the cancellation of the test involved or take such other action as it considers appropriate. A determination under this subsection shall be made in accordance with such procedures as the Commission shall by regulation prescribe.

["(g) Adjustment for Inflation.—For purposes of each year following the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a), each dollar amount contained in this section shall be adjusted by the change in the Consumer Price Index for such year (as determined under regulations of the Commission).

["(h) Definition of a Small Business Concern.—The criteria used in defining small business concerns or otherwise categorizing business concerns as small business concerns shall, for purposes of this section, be established by the Postal Regulatory Commission in conformance with the requirements of section 3 of the Small Business Act.

["(i) Effective Date.—Market tests under this subchapter may be conducted in any year beginning with the first year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a).

["§3642. New products and transfers of products between the market-dominant and competitive categories of mail

["(a) In General.—Upon request of the Postal Service or users of the mails, or upon its own initiative, the Postal Regulatory Commission may change the list of market-dominant products under section 3621 and the list of competitive products under section 3631 by adding new products to the lists, removing products from the lists, or transferring products between the lists.

["(b) Criteria.—All determinations by the Postal Regulatory Commission under subsection (a) shall be made in accordance with the following criteria:

["(1) The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing substantial business to other firms offering similar products. The competitive category of products shall consist of all other products.

["(2) EXCLUSION OF PRODUCTS COVERED BY POSTAL MONOPOLY.—A product covered by the postal monopoly shall not be subject to transfer under this section from the market-dominant category of mail. For purposes of the preceding sentence, the term 'product covered by the postal monopoly' means any product the conveyance or transmission of which is reserved to the United States under section 1696 of title 18, subject to the same exception as set forth in the last sentence of section 409(e)(1).

["(3) ADDITIONAL CONSIDERATIONS.—In making any decision under this section, due regard shall be given to—

["(A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved;

["(B) the views of those who use the product involved on the appropriateness of the proposed action; and

["(C) the likely impact of the proposed action on small business concerns (within the meaning of section 3641(h)).

["(c) TRANSFERS OF SUBCLASSES AND OTHER SUBORDINATE UNITS ALLOWABLE.—Nothing in this title shall be considered to prevent transfers under this section from being made by reason of the fact that they would involve only some (but not all) of the subclasses or other subordinate units of the class of mail or type of postal service involved (without regard to satisfaction of minimum quantity requirements standing alone).

["(d) NOTIFICATION AND PUBLICATION REQUIREMENTS.—

["(1) NOTIFICATION REQUIREMENT.—The Postal Service shall, whenever it requests to add a product or transfer a product to a different category, file with the Postal Regulatory Commission and publish in the Federal Register a notice setting out the basis for its determination that the product satisfies the criteria under subsection (b) and, in the case of a request to add a product or transfer a product to the competitive category of mail, that the product meets the regulations promulgated by the Postal Regulatory Commission under section 3633. [The provisions of section 504(g) shall be available with respect to any information required to be filed.

["(2) PUBLICATION REQUIREMENT.—The Postal Regulatory Commission shall, whenever it changes the list of products in the market-dominant or competitive category of mail, prescribe new lists of products. The revised lists shall indicate how and when any previous lists (including the lists under sections 3621 and 3631) are superseded, and shall be published in the Federal Register.

["(e) PROHIBITION.—Except as provided in section 3641, no product that involves the physical delivery of letters, printed matter, or packages may be offered by the Postal Service unless it has been assigned to the market-dominant or competitive category of mail (as appropriate) either—

["(1) under this subchapter; or

["(2) by or under any other provision of law.".

[SEC. 204. REPORTING REQUIREMENTS AND RELATED PROVISIONS.

[(a) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect before the amendment made by subsection (b)) is amended—

[(1) by striking the heading for subchapter IV and inserting the following:

["SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW"; and

[(2) by striking the heading for subchapter V and inserting the following:

["SUBCHAPTER VI—GENERAL".

[(b) REPORTS AND COMPLIANCE.—Chapter 36 of title 39, United States Code, is amended by inserting after subchapter III the following:

["SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

["§ 3651. Annual reports by the Commission

["(a) IN GENERAL.—The Postal Regulatory Commission shall submit an annual report to the President and the Congress concerning the operations of the Commission under this title, including the extent to which regulations are achieving the objectives under sections 3622, 3633, and 3691.

["(b) INFORMATION FROM POSTAL SERVICE.—The Postal Service shall provide the Postal Regulatory Commission with such information as may, in the judgment of the Commission, be necessary in order for the Commission to prepare its reports under this section.

["§ 3652. Annual reports to the Commission

["(a) COSTS, REVENUES, RATES, AND SERVICE.—Except as provided in subsection (c), the Postal Service shall, no later than 90 days after the end of each year, prepare and submit to the Postal Regulatory Commission a report (together with such nonpublic annex to the report as the Commission may require under subsection (e))—

["(1) which shall analyze costs, revenues, rates, and quality of service in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of this title; and

["(2) which shall, for each market-dominant product provided in such year, provide—

["(A) product information, including mail volumes; and

["(B) measures of the service afforded by the Postal Service in connection with such product, including—

["(i) the level of service (described in terms of speed of delivery and reliability) provided; and

["(ii) the degree of customer satisfaction with the service provided.

[Before submitting a report under this subsection (including any annex to the report and the information required under subsection (b)), the Postal Service shall have the information contained in such report (and annex) audited by the Inspector General. The results of any such audit shall be submitted along with the report to which it pertains.

["(b) INFORMATION RELATING TO WORKSHARE DISCOUNTS.—The Postal Service shall include, in each report under subsection (a), the following information with respect to each market-dominant product for which a workshare discount was in effect during the period covered by such report:

["(1) The per-item cost avoided by the Postal Service by virtue of such discount.

["(2) The percentage of such per-item cost avoided that the per-item workshare discount represents.

["(3) The per-item contribution made to institutional costs.

["(c) SERVICE AGREEMENTS AND MARKET TESTS.—In carrying out subsections (a) and (b) with respect to service agreements and experimental products offered through market tests under section 3641 in a year, the Postal Service—

["(1) may report summary data on the costs, revenues, and quality of service by service agreement and market test; and

["(2) shall report such data as the Postal Regulatory Commission requires.

["(d) SUPPORTING MATTER.—The Postal Regulatory Commission shall have access, in accordance with such regulations as the Commission shall prescribe, to the working papers and any other supporting matter of the Postal Service and the Inspector General in connection with any information submitted under this section.

["(e) CONTENT AND FORM OF REPORTS.—

["(1) IN GENERAL.—The Postal Regulatory Commission shall, by regulation, prescribe the content and form of the public reports (and any nonpublic annex and supporting matter relating to the report) to be provided by the Postal Service under this section. In carrying out this subsection, the Commission shall give due consideration to—

["(A) providing the public with timely, adequate information to assess the lawfulness of rates charged;

["(B) avoiding unnecessary or unwarranted administrative effort and expense on the part of the Postal Service; and

["(C) protecting the confidentiality of commercially sensitive information.

["(2) REVISED REQUIREMENTS.—The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this subsection whenever it shall appear that—

["(A) the attribution of costs or revenues to products has become significantly inaccurate or can be significantly improved;

["(B) the quality of service data has become significantly inaccurate or can be significantly improved; or

["(C) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

["(f) CONFIDENTIAL INFORMATION.—

["(1) IN GENERAL.—If the Postal Service determines that any document or portion of a document, or other matter, which it provides to the Postal Regulatory Commission in a nonpublic annex under this section or under subsection (d) contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission of its determination, in writing, and describe with particularity the documents (or portions of documents) or other matter for which confidentiality is sought and the reasons therefor.

["(2) TREATMENT.—Any information or other matter described in paragraph (1) to which the Commission gains access under this section shall be subject to paragraphs (2) and (3) of section 504(g) in the same way as if the Commission had received notification with respect to such matter under section 504(g)(1).

["(g) OTHER REPORTS.—The Postal Service shall submit to the Postal Regulatory Commission, together with any other submission that the Postal Service is required to make under this section in a year, copies of its then most recent—

["(1) comprehensive statement under section 2401(e);

["(2) strategic plan under section 2802;

["(3) performance plan under section 2803; and

[“(4) program performance reports under section 2804.

[“§3653. Annual determination of compliance

[“(a) Opportunity for Public Comment.—After receiving the reports required under section 3652 for any year, the Postal Regulatory Commission shall promptly provide an opportunity for comment on such reports by users of the mails, affected parties, and an officer of the Commission who shall be required to represent the interests of the general public.

[“(b) Determination of Compliance or Noncompliance.—Not later than 90 days after receiving the submissions required under section 3652 with respect to a year, the Postal Regulatory Commission shall make a written determination as to—

[“(1) whether any rates or fees in effect during such year (for products individually or collectively) were not in compliance with applicable provisions of this chapter (or regulations promulgated thereunder); or

[“(2) whether any service standards in effect during such year were not met.

If, with respect to a year, no instance of noncompliance is found under this subsection to have occurred in such year, the written determination shall be to that effect.

[“(c) If Any Noncompliance Is Found.—If, for a year, a timely written determination of noncompliance is made under subsection (b), the Postal Regulatory Commission shall take any appropriate remedial action authorized by section 3662(c).

[“(d) Rebuttable Presumption.—A timely written determination described in the last sentence of subsection (b) shall, for purposes of any proceeding under section 3662, create a rebuttable presumption of compliance by the Postal Service (with regard to the matters described under paragraphs (1) and (2) of subsection (b)) during the year to which such determination relates.”.

[SEC. 205. COMPLAINTS; APPELLATE REVIEW AND ENFORCEMENT.

[Chapter 36 of title 39, United States Code, is amended by striking sections 3662 and 3663 and inserting the following:

[“§3662. Rate and service complaints

[“(a) In General.—Any person (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of chapter 1, 4, or 6, or this chapter (or regulations promulgated under any of those chapters) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

[“(b) Prompt Response Required.—

[“(1) In general.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a), either—

[“(A) begin proceedings on such complaint; [or

[“(B) issue an order dismissing the complaint (together with a statement of the reasons therefor).

[“(2) Treatment of complaints not timely acted on.—For purposes of section 3663, any complaint under subsection (a) on which the Commission fails to act in the time and manner required by paragraph (1) shall be treated in the same way as if it had been dismissed under an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

[“(c) Action Required If Complaint Found To Be Justified.—If the Postal Regulatory Commission finds the complaint to be justified, it shall order that the Postal Service take such action as the Commission considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance including ordering unlawful rates to be adjusted to lawful levels, ordering the cancellation of market tests, ordering the Postal Service to discontinue providing loss-making products, and requiring the Postal Service to make up for revenue shortfalls in competitive products.

[“(d) Authority To Order Fines in Cases of Deliberate Noncompliance.—In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incidence of noncompliance. Fines resulting from the provision of competitive products shall be paid out of the Competitive Products Fund established in section 2011. All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.

[“§3663. Appellate review

[“A person, including the Postal Service, adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for the District of Columbia. The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.

[“§3664. Enforcement of orders

[“The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain the Postal Service from violating, any order issued by the Postal Regulatory Commission.”.

[SEC. 206. CLERICAL AMENDMENT.

[Chapter 36 of title 39, United States Code, is amended by striking the heading and analysis for such chapter and inserting the following:

[“CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

[“SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS

[“Sec.
[“3621. Applicability; definitions.
[“3622. Modern rate regulation.
[“[3623. Repealed.]
[“[3624. Repealed.]
[“[3625. Repealed.]
[“3626. Reduced Rates.
[“3627. Adjusting free rates.
[“[3628. Repealed.]
[“3629. Reduced rates for voter registration purposes.

[“SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

[“3631. Applicability; definitions and updates.
[“3632. Action of the Governors.
[“3633. Provisions applicable to rates for competitive products.
[“3634. Assumed Federal income tax on competitive products.

[“SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

[“3641. Market tests of experimental products.
[“3642. New products and transfers of products between the market-dominant and competitive categories of mail.

[“SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

[“3651. Annual reports by the Commission.
[“3652. Annual reports to the Commission.
[“3653. Annual determination of compliance.

[“SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW

[“3661. Postal Services.
[“3662. Rate and service complaints.
[“3663. Appellate review.
[“3664. Enforcement of orders.

[“SUBCHAPTER VI—GENERAL

[“3681. Reimbursement.
[“3682. Size and weight limits.
[“3683. Uniform rates for books; films, other materials.
[“3684. Limitations.
[“3685. Filing of information relating to periodical publications.
[“3686. Bonus authority.

[“SUBCHAPTER VII—MODERN SERVICE STANDARDS

[“3691. Establishment of modern service standards.”.

[TITLE III—MODERN SERVICE STANDARDS

[SEC. 301. ESTABLISHMENT OF MODERN SERVICE STANDARDS.

[Chapter 36 of title 39, United States Code, as amended by this Act, is further amended by adding at the end the following:

[“SUBCHAPTER VII—MODERN SERVICE STANDARDS

[“§3691. Establishment of modern service standards

[“(a) Authority Generally.—Not later than 12 months after the date of enactment of this section, the Postal Service shall, in consultation with the Postal Regulatory Commission, by regulation establish (and may from time to time thereafter by regulation revise) a set of service standards for market-dominant products consistent with the Postal Service's universal service obligation as defined in sections 101 (a) and (b) and 403.

[“(b) Objectives.—Such standards shall be designed to achieve the following objectives:

[“(1) To enhance the value of postal services to both senders and recipients.

[“(2) To preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining.

[“(3) To reasonably assure Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices.

[“(4) To provide a system of objective external performance measurements for each market-dominant product as a basis for measurement of Postal Service performance.

[“(c) Factors.—In establishing or revising such standards, the Postal Service shall take into account—

[“(1) the actual level of service that Postal Service customers receive under any service guidelines previously established by the Postal Service or service standards established under this section;

[“(2) the degree of customer satisfaction with Postal Service performance in the acceptance, processing and delivery of mail;

[“(3) the needs of Postal Service customers, including those with physical impairments;

["(4) mail volume and revenues projected for future years;

["(5) the projected growth in the number of addresses the Postal Service will be required to serve in future years;

["(6) the current and projected future cost of serving Postal Service customers;

["(7) the effect of changes in technology, demographics, and population distribution on the efficient and reliable operation of the postal delivery system; and

["(8) the policies of this title and such other factors as the Commission determines appropriate.

["(d) Review.—The regulations promulgated pursuant to this section (and any revisions thereto) shall be subject to review upon complaint under sections 3662 and 3663.

[SEC. 302. POSTAL SERVICE PLAN.

[(a) In General.—Within 6 months after the establishment of the service standards under section 3691 of title 39, United States Code, as added by this Act, the Postal Service shall, in consultation with the Postal Regulatory Commission, develop and submit to Congress a plan for meeting those standards.

[(b) Contents.—The plan under this section shall—

[(1) establish performance goals;

[(2) describe any changes to the Postal Service's processing, transportation, delivery, and retail networks necessary to allow the Postal Service to meet the performance goals;

[(3) describe any changes to planning and performance management documents previously submitted to Congress to reflect new performance goals; and

[(4) contain the matters relating to postal facilities provided under subsection (c).

[(c) Postal Facilities.—

[(1) Findings.—Congress finds that—

[(A) the Postal Service has more than 400 logistics facilities, separate from its post office network;

[(B) as noted by the President's Commission on the United States Postal Service, the Postal Service has more facilities than it needs and the streamlining of this distribution network can pave the way for the potential consolidation of sorting facilities and the elimination of excess costs;

[(C) the Postal Service has always revised its distribution network to meet changing conditions and is best suited to address its operational needs; and

[(D) Congress strongly encourages the Postal Service to—

[(i) expeditiously move forward in its streamlining efforts; and

[(ii) keep unions, management associations, and local elected officials informed as an essential part of this effort and abide by any procedural requirements contained in the national bargaining agreements.

[(2) In general.—The Postal Service plan shall include a description of—

[(A) the long-term vision of the Postal Service for rationalizing its infrastructure and workforce; and

[(B) how the Postal Service intends to implement that vision.

[(3) Content of facilities plan.—The plan under this subsection shall include—

[(A) a strategy for how the Postal Service intends to rationalize the postal facilities network and remove excess processing capacity and space from the network, including estimated timeframes, criteria, and processes to be used for making changes to the facilities network, and the process for engaging policy makers and the public in related decisions;

[(B) a discussion of what impact any facility changes may have on the postal workforce and whether the Postal Service has sufficient flexibility to make needed workforce changes; and

[(C) an identification of anticipated costs, cost savings, and other benefits associated with the infrastructure rationalization alternatives discussed in the plan.

[(4) Annual reports.—

[(A) In general.—Not later than 90 days after the end of each fiscal year, the Postal Service shall prepare and submit a report to Congress on how postal decisions have impacted or will impact rationalization plans.

[(B) Contents.—Each report under this paragraph shall include—

[(i) an account of actions taken during the preceding fiscal year to improve the efficiency and effectiveness of its processing, transportation, and distribution networks while preserving the timely delivery of postal services, including overall estimated costs and cost savings;

[(ii) an account of actions taken to identify any excess capacity within its processing, transportation, and distribution networks and implement savings through realignment or consolidation of facilities including overall estimated costs and cost savings;

[(iii) an estimate of how postal decisions related to mail changes, security, automation initiatives, worksharing, information technology systems, excess capacity, consolidating and closing facilities, and other areas will impact rationalization plans;

[(iv) identification of any statutory or regulatory obstacles that prevented or will prevent or hinder the Postal Service from taking action to realign or consolidate facilities; and

[(v) such additional topics and recommendations as the Postal Service considers appropriate.

[(d) Alternate Retail Options.—The Postal Service plan shall include plans to expand and market retail access to postal services, in addition to post offices, including—

[(1) vending machines;

[(2) the Internet;

[(3) Postal Service employees on delivery routes;

[(4) retail facilities in which overhead costs are shared with private businesses and other government agencies; or

[(5) any other nonpost office access channel providing market retail access to postal services.

[(e) Reemployment Assistance and Retirement Benefits.—The Postal Service plan shall include—

[(1) a plan under which reemployment assistance shall be afforded to employees displaced as a result of the automation of any of its functions or the closing and consolidation of any of its facilities; and

[(2) a plan, developed in consultation with the Office of Personnel Management, to offer early retirement benefits.

[(f) Inspector General Report.—

[(1) In general.—Before submitting the plan under subsection (a) and each annual report under subsection (c) to Congress, the Postal Service shall submit the plan and each annual report to the Inspector General of the United States Postal Service in a timely manner to carry out this subsection.

[(2) Report.—The Inspector General shall prepare a report describing the extent to which the Postal Service plan and each annual report under subsection (c)—

[(A) are consistent with the continuing obligations of the Postal Service under title 39, United States Code;

[(B) provide for the Postal Service to meet the service standards established under section 3691 of title 39, United States Code; and

[(C) allow progress toward improving overall efficiency and effectiveness consistent with the need to maintain universal postal service at affordable rates.

[(g) Continued Authority.—Nothing in this section shall be construed to prohibit the Postal Service from implementing any change to its processing, transportation, delivery, and retail networks under any authority granted to the Postal Service for those purposes.

[TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

[SEC. 401. POSTAL SERVICE COMPETITIVE PRODUCTS FUND.

[(a) Provisions Relating to Postal Service Competitive Products Fund and Related Matters.—

[(1) In general.—Chapter 20 of title 39, United States Code, is amended by adding at the end the following:

["§ 2011. Provisions relating to competitive products

["(a)(1) In this subsection, the term 'costs attributable' has the meaning given such term by section 3631.

["(2) There is established in the Treasury of the United States a revolving fund, to be called the Postal Service Competitive Products Fund, which shall be available to the Postal Service without fiscal year limitation for the payment of—

["(A) costs attributable to competitive products; and

["(B) all other costs incurred by the Postal Service, to the extent allocable to competitive products.

["(b) There shall be deposited in the Competitive Products Fund, subject to withdrawal by the Postal Service—

["(1) revenues from competitive products;

["(2) amounts received from obligations issued by Postal Service under subsection (e);

["(3) interest and dividends earned on investments of the Competitive Products Fund; and

["(4) any other receipts of the Postal Service (including from the sale of assets), to the extent allocable to competitive products.

["(c) If the Postal Service determines that the moneys of the Competitive Products Fund are in excess of current needs, the Postal Service may request the investment of such amounts as the Postal Service determines advisable by the Secretary of the Treasury in obligations of, or obligations guaranteed by, the Government of the United States, and, with the approval of the Secretary, in such other obligations or securities as the Postal Service determines appropriate.

["(d) With the approval of the Secretary of the Treasury, the Postal Service may deposit moneys of the Competitive Products Fund in any Federal Reserve bank, any depository for public funds, or in such other places and in such manner as the Postal Service and the Secretary may mutually agree.

["(e)(1)(A) Subject to the limitations specified in section 2005(a), the Postal Service is authorized to borrow money and to issue and sell such obligations as the Postal Service determines necessary to provide for competitive products and deposit such amounts in the Competitive Products Fund.

["(B) Subject to paragraph (5), any borrowings by the Postal Service under subparagraph (A) shall be supported and serviced by—

["(i) the revenues and receipts from competitive products and the assets related to the provision of competitive products (as determined under subsection (h)); or

["(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e).

["(2) The Postal Service may enter into binding covenants with the holders of such obligations, and with any trustee under any agreement entered into in connection with the issuance of such obligations with respect to—

["(A) the establishment of reserve, sinking, and other funds;

["(B) application and use of revenues and receipts of the Competitive Products Fund;

["(C) stipulations concerning the subsequent issuance of obligations or the execution of leases or lease purchases relating to properties of the Postal Service; and

["(D) such other matters as the Postal Service, considers necessary or desirable to enhance the marketability of such obligations.

["(3) Obligations issued by the Postal Service under this subsection—

["(A) shall be in such forms and denominations;

["(B) shall be sold at such times and in such amounts;

["(C) shall mature at such time or times;

["(D) shall be sold at such prices;

["(E) shall bear such rates of interest;

["(F) may be redeemable before maturity in such manner, at such times, and at such redemption premiums;

["(G) may be entitled to such relative priorities of claim on the assets of the Postal Service with respect to principal and interest payments; and

["(H) shall be subject to such other terms and conditions,

[as the Postal Service determines.

["(4) Obligations issued by the Postal Service under this subsection—

["(A) shall be negotiable or nonnegotiable and bearer or registered instruments, as specified therein and in any indenture or covenant relating thereto;

["(B) shall contain a recital that such obligations are issued under this subsection, and such recital shall be conclusive evidence of the regularity of the issuance and sale of such obligations and of their validity;

["(C) shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of any officer or agency of the Government of the United States, and the Secretary of the Treasury or any other officer or agency having authority over or control of any such fiduciary, trust, or public funds, may at any time sell any of the obligations of the Postal Service acquired under this section;

["(D) shall not be exempt either as to principal or interest from any taxation now or hereafter imposed by any State or local taxing authority; and

["(E) except as provided in section 2006(c), shall not be obligations of, nor shall payment of the principal thereof or interest thereon be guaranteed by, the Government of the United States, and the obligations shall so plainly state.

["(5)(A) Subject to subparagraph (B), the Postal Service shall make payments of principal, or interest, or both on obligations issued under this subsection from—

["(i) revenues and receipts from competitive products and assets related to the provision of competitive products (as determined under subsection (h)); or

["(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available, including the audited statements required by section 2008(e).

["(B) Based on the audited financial statements for the most recently completed fiscal year, the total assets of the Competitive Products Fund may not be less than the amount determined by multiplying—

["(i) the quotient resulting from the total revenue of the Competitive Products Fund divided by the total revenue of the Postal Service; and

["(ii) the total assets of the Postal Service.

["(f) The receipts and disbursements of the Competitive Products Fund shall be accorded the same budgetary treatment as is accorded to receipts and disbursements of the Postal Service Fund under section 2009a.

["(g) A judgment (or settlement of a claim) against the Postal Service or the Government of the United States shall be paid out of the Competitive Products Fund to the extent that the judgment or claim arises out of activities of the Postal Service in the provision of competitive products.

["(h)(1)(A) The Secretary of the Treasury, in consultation with the Postal Service and an independent, certified public accounting firm and other advisors as the Secretary considers appropriate, shall develop recommendations regarding—

["(i) the accounting practices and principles that should be followed by the Postal Service with the objectives of—

["(I) identifying and valuing the assets and liabilities of the Postal Service associated with providing competitive products, including the capital and operating costs incurred by the Postal Service in providing such competitive products; and

["(II) subject to subsection (e)(5), preventing the subsidization of such products by market-dominant products; and

["(ii) the substantive and procedural rules that should be followed in determining the assumed Federal income tax on competitive products income of the Postal Service for any year (within the meaning of section 3634).

["(B) Not earlier than 6 months after the date of enactment of this section, and not later than 12 months after such date, the Secretary of the Treasury shall submit the recommendations under subparagraph (A) to the Postal Regulatory Commission.

["(2)(A) Upon receiving the recommendations of the Secretary of the Treasury under paragraph (1), the Commission shall give interested parties, including the Postal Service, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public, an opportunity to present their views on those recommendations through submission of written data, views, or arguments with or without opportunity for oral presentation, or in such other manner as the Commission considers appropriate.

["(B)(i) After due consideration of the views and other information received under subparagraph (A), the Commission shall by rule—

["(I) provide for the establishment and application of the accounting practices and principles which shall be followed by the Postal Service;

["(II) provide for the establishment and application of the substantive and procedural rules described under paragraph (1)(A)(ii); and

["(III) provide for the submission by the Postal Service to the Postal Regulatory Commission of annual and other periodic reports setting forth such information as the Commission may require.

["(ii) Final rules under this subparagraph shall be issued not later than 12 months after the date on which recommendations are submitted under paragraph (1) (or by such later date on which the Commission and the Postal Service may agree). The Commission may revise such rules.

["(C)(i) Reports described under subparagraph (B)(i)(III) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires.

["(ii) The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with such rules as the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service information under subparagraph (B)(i)(III) whenever it shall appear that—

["(I) the quality of the information furnished in those reports has become significantly inaccurate or can be significantly improved; or

["(II) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

["(D) A copy of each report described under subparagraph (B)(i)(III) shall be submitted by the Postal Service to the Secretary of the Treasury and the Inspector General of the United States Postal Service.

["(i)(1) The Postal Service shall submit an annual report to the Secretary of the Treasury concerning the operation of the Competitive Products Fund. The report shall address such matters as risk limitations, reserve balances, allocation or distribution of moneys, liquidity requirements, and measures to safeguard against losses.

["(2) A copy of the most recent report submitted under paragraph (1) shall be included in the annual report submitted by the Postal Regulatory Commission under section 3652(g).".

[(2) CLERICAL AMENDMENT.—The table of sections for chapter 20 of title 39, United States Code, is amended by adding after the item relating to section 2010 the following:

["2011. Provisions relating to competitive products.".

[(b) TECHNICAL AND CONFORMING AMENDMENTS.—

[(1) DEFINITION.—Section 2001 of title 39, United States Code, is amended by striking "and" at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

["(2) COMPETITIVE PRODUCTS FUND.—The term 'Competitive Products Fund' means the Postal Service Competitive Products Fund established by section 2011; and".

[(2) CAPITAL OF THE POSTAL SERVICE.—Section 2002(b) of title 39, United States Code, is amended by striking "Fund," and inserting "Fund and the balance in the Competitive Products Fund,".

[(3) POSTAL SERVICE FUND.—

[(A) PURPOSES FOR WHICH AVAILABLE.—Section 2003(a) of title 39, United States Code, is amended by striking "title." and inserting "title (other than any of the purposes, functions, or powers for which the Competitive Products Fund is available).".

[(B) DEPOSITS.—Section 2003(b) of title 39, United States Code, is amended by striking

"There" and inserting "Except as otherwise provided in section 2011, there".

[(4) RELATIONSHIP BETWEEN THE TREASURY AND THE POSTAL SERVICE.—Section 2006 of title 39, United States Code, is amended—

[(A) in subsection (a), in the first sentence, by inserting "or 2011" after "section 2005";

[(B) in subsection (b)—

[(i) in the first sentence, by inserting "under section 2005" before "in such amounts"; and

[(ii) in the second sentence, by inserting "under section 2005" before "in excess of such amount."; and

[(C) in subsection (c), by inserting "or 2011(e)(4)(E)" after "section 2005(d)(5)".

[SEC. 402. ASSUMED FEDERAL INCOME TAX ON COMPETITIVE PRODUCTS INCOME.

[Subchapter II of chapter 36 of title 39, United States Code, as amended by section 202, is amended by adding at the end the following:

["§3634. Assumed Federal income tax on competitive products income

["(a) DEFINITIONS.—For purposes of this section—

["(1) the term 'assumed Federal income tax on competitive products income' means the net income tax that would be imposed by chapter 1 of the Internal Revenue Code of 1986 on the Postal Service's assumed taxable income from competitive products for the year; and

["(2) the term 'assumed taxable income from competitive products', with respect to a year, refers to the amount representing what would be the taxable income of a corporation under the Internal Revenue Code of 1986 for the year, if—

["(A) the only activities of such corporation were the activities of the Postal Service allocable under section 2011(h) to competitive products; and

["(B) the only assets held by such corporation were the assets of the Postal Service allocable under section 2011(h) to such activities.

["(b) COMPUTATION AND TRANSFER REQUIREMENTS.—The Postal Service shall, for each year beginning with the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a)—

["(1) compute its assumed Federal income tax on competitive products income for such year; and

["(2) transfer from the Competitive Products Fund to the Postal Service Fund the amount of that assumed tax.

["(c) DEADLINE FOR TRANSFERS.—Any transfer required to be made under this section for a year shall be due on or before the January 15th next occurring after the close of such year.".

[SEC. 403. UNFAIR COMPETITION PROHIBITED.

[(a) SPECIFIC LIMITATIONS.—Chapter 4 of title 39, United States Code, is amended by adding after section 404 the following:

["§404a. Specific limitations

["(a) Except as specifically authorized by law, the Postal Service may not—

["(1) establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service;

["(2) compel the disclosure, transfer, or licensing of intellectual property to any third party (such as patents, copyrights, trademarks, trade secrets, and proprietary information); or

["(3) obtain information from a person that provides (or seeks to provide) any product, and then offer any postal service that uses or is based in whole or in part on such information, without the consent of the person providing that information, unless substantially the same information is obtained (or obtainable) from an independent source or is otherwise obtained (or obtainable).

["(b) The Postal Regulatory Commission shall prescribe regulations to carry out this section.

["(c) Any party (including an officer of the Commission representing the interests of the general public) who believes that the Postal Service has violated this section may bring a complaint in accordance with section 3662.".

[(b) CONFORMING AMENDMENTS.—

[(1) GENERAL POWERS.—Section 401 of title 39, United States Code, is amended by striking "The" and inserting "Subject to the provisions of section 404a, the".

[(2) SPECIFIC POWERS.—Section 404(a) of title 39, United States Code, is amended by striking "Without" and inserting "Subject to the provisions of section 404a, but otherwise without".

[(c) CLERICAL AMENDMENT.—The analysis for chapter 4 of title 39, United States Code, is amended by inserting after the item relating to section 404 the following:

["404a. Specific limitations.".

[SEC. 404. SUITS BY AND AGAINST THE POSTAL SERVICE.

[(a) IN GENERAL.—Section 409 of title 39, United States Code, is amended by striking subsections (d) and (e) and inserting the following:

["(d)(1) For purposes of the provisions of law cited in paragraphs (2)(A) and (2)(B), respectively, the Postal Service—

["(A) shall be considered to be a 'person', as used in the provisions of law involved; and

["(B) shall not be immune under any other doctrine of sovereign immunity from suit in Federal court by any person for any violation of any of those provisions of law by any officer or employee of the Postal Service.

["(2) This subsection applies with respect to—

["(A) the Act of July 5, 1946 (commonly referred to as the 'Trademark Act of 1946' (15 U.S.C. 1051 and following)); and

["(B) the provisions of section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair or deceptive acts or practices.

["(e)(1) To the extent that the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, engages in conduct with respect to any product which is not reserved to the United States under section 1696 of title 18, the Postal Service or other Federal agency (as the case may be)—

["(A) shall not be immune under any doctrine of sovereign immunity from suit in Federal court by any person for any violation of Federal law by such agency or any officer or employee thereof; and

["(B) shall be considered to be a person (as defined in subsection (a) of the first section of the Clayton Act) for purposes of—

["(i) the antitrust laws (as defined in such subsection); and

["(ii) section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

[For purposes of the preceding sentence, any private carriage of mail allowable by virtue of section 601 shall not be considered a service reserved to the United States under section 1696 of title 18.

["(2) No damages, interest on damages, costs or attorney's fees may be recovered, and no criminal liability may be imposed, under the antitrust laws (as so defined) from any officer or employee of the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, acting in an official capacity.

["(3) This subsection shall not apply with respect to conduct occurring before the date of enactment of this subsection.

["(f) To the extent that the Postal Service engages in conduct with respect to the provision of competitive products, it shall be considered a person for the purposes of the Federal bankruptcy laws.

["(g)(1) Each building constructed or altered by the Postal Service shall be constructed or altered, to the maximum extent feasible as determined by the Postal Service, in compliance with 1 of the nationally recognized model building codes and with other applicable nationally recognized codes. To the extent practicable, model building codes should meet the voluntary consensus criteria established for codes and standards as required in the National Technology Transfer and Advancement Act of 1995 as defined in Office of Management and Budget Circular A1190. For purposes of life safety, the Postal Service shall continue to comply with the most current edition of the Life Safety Code of the National Fire Protection Association (NFPA 101).

["(2) Each building constructed or altered by the Postal Service shall be constructed or altered only after consideration of all requirements (other than procedural requirements) of zoning laws, land use laws, and applicable environmental laws of a State or subdivision of a State which would apply to the building if it were not a building constructed or altered by an establishment of the Government of the United States.

["(3) For purposes of meeting the requirements of paragraphs (1) and (2) with respect to a building, the Postal Service shall—

["(A) in preparing plans for the building, consult with appropriate officials of the State or political subdivision, or both, in which the building will be located;

["(B) upon request, submit such plans in a timely manner to such officials for review by such officials for a reasonable period of time not exceeding 30 days; and

["(C) permit inspection by such officials during construction or alteration of the building, in accordance with the customary schedule of inspections for construction or alteration of buildings in the locality, if such officials provide to the Postal Service—

["(i) a copy of such schedule before construction of the building is begun; and

["(ii) reasonable notice of their intention to conduct any inspection before conducting such inspection.

[Nothing in this subsection shall impose an obligation on any State or political subdivision to take any action under the preceding sentence, nor shall anything in this subsection require the Postal Service or any of its contractors to pay for any action taken by a State or political subdivision to carry out this subsection (including reviewing plans, carrying out on-site inspections, issuing building permits, and making recommendations).

["(4) Appropriate officials of a State or a political subdivision of a State may make recommendations to the Postal Service concerning measures necessary to meet the requirements of paragraphs (1) and (2). Such officials may also make recommendations to the Postal Service concerning measures which should be taken in the construction or alteration of the building to take into account local conditions. The Postal Service shall give due consideration to any such recommendations.

[“(5) In addition to consulting with local and State officials under paragraph (3), the Postal Service shall establish procedures for soliciting, assessing, and incorporating local community input on real property and land use decisions.

[“(6) For purposes of this subsection, the term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

[“(h)(1) Notwithstanding any other provision of law, legal representation may not be furnished by the Department of Justice to the Postal Service in any action, suit, or proceeding arising, in whole or in part, under any of the following:

[“(A) Subsection (d) or (e) of this section.

[“(B) Subsection (f) or (g) of section 504 (relating to administrative subpoenas by the Postal Regulatory Commission).

[“(C) Section 3663 (relating to appellate review).

[The Postal Service may, by contract or otherwise, employ attorneys to obtain any legal representation that it is precluded from obtaining from the Department of Justice under this paragraph.

[“(2) In any circumstance not covered by paragraph (1), the Department of Justice shall, under section 411, furnish the Postal Service such legal representation as it may require, except that, with the prior consent of the Attorney General, the Postal Service may, in any such circumstance, employ attorneys by contract or otherwise to conduct litigation brought by or against the Postal Service or its officers or employees in matters affecting the Postal Service.

[“(3)(A) In any action, suit, or proceeding in a court of the United States arising in whole or in part under any of the provisions of law referred to in subparagraph (B) or (C) of paragraph (1), and to which the Commission is not otherwise a party, the Commission shall be permitted to appear as a party on its own motion and as of right.

[“(B) The Department of Justice shall, under such terms and conditions as the Commission and the Attorney General shall consider appropriate, furnish the Commission such legal representation as it may require in connection with any such action, suit, or proceeding, except that, with the prior consent of the Attorney General, the Commission may employ attorneys by contract or otherwise for that purpose.

[“(i) A judgment against the Government of the United States arising out of activities of the Postal Service shall be paid by the Postal Service out of any funds available to the Postal Service, subject to the restriction specified in section 2011(g).”.

[(b) TECHNICAL AMENDMENT.—Section 409(a) of title 39, United States Code, is amended by striking “Except as provided in section 3628 of this title,” and inserting “Except as otherwise provided in this title,”.

[SEC. 405. INTERNATIONAL POSTAL ARRANGEMENTS.

[(a) IN GENERAL.—Section 407 of title 39, United States Code, is amended to read as follows:

[“§ 407. International postal arrangements

[“(a) It is the policy of the United States—

[“(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

[“(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

[“(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services; and

[“(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

[“(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and shall have the power to conclude postal treaties and conventions, except that the Secretary may not conclude any postal treaty or convention if such treaty or convention would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal services, or any other person.

[“(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary—

[“(A) shall coordinate with other agencies as appropriate, and in particular, should consider the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

[“(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

[“(C) shall maintain continuing liaison with the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives;

[“(D) shall maintain appropriate liaison with both representatives of the Postal Service and representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

[“(E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

[“(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (D) of paragraph (2).

[“(c) Before concluding any postal treaty or convention that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

[“(d) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services as it deems appropriate, except that—

[“(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be binding under international law; and

[“(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

[“(e)(1) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

[“(2) In exercising the authority under subsection (b) to conclude new postal treaties and conventions related to international postal services and to renegotiate such treaties and conventions, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this paragraph.

[“(3) The provisions of this subsection shall take effect 6 months after the date of enactment of this subsection or such earlier date as the Customs Service may determine in writing.”.

[(b) EFFECTIVE DATE.—Notwithstanding any provision of the amendment made by subsection (a), the authority of the United States Postal Service to establish the rates of postage or other charges on mail matter conveyed between the United States and other countries shall remain available to the Postal Service until—

[(1) with respect to market-dominant products, the date as of which the regulations promulgated under section 3622 of title 39, United States Code (as amended by section 201(a)) take effect; and

[(2) with respect to competitive products, the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

[TITLE V—GENERAL PROVISIONS

[SEC. 501. QUALIFICATION AND TERM REQUIREMENTS FOR GOVERNORS.

[(a) QUALIFICATIONS.—

[(1) IN GENERAL.—Section 202(a) of title 39, United States Code, is amended by striking “(a)” and inserting “(a)(1)” and by striking the fourth sentence and inserting the following: “The Governors shall represent the public interest generally, and shall be chosen solely on the basis of their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size. Experience in the fields of law and accounting shall be considered in making appointments of Governors.

The Governors shall not be representatives of specific interests using the Postal Service, and may be removed only for cause.''.

[(2) APPLICABILITY.—The amendment made by paragraph (1) shall not affect the appointment or tenure of any person serving as a Governor of the United States Postal Service under an appointment made before the date of enactment of this Act however, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment. The requirement set forth in the fourth sentence of section 202(a)(1) of title 39, United States Code (as amended by subsection (a)) shall be met beginning not later than 9 years after the date of enactment of this Act.

[(b) CONSULTATION REQUIREMENT.—Section 202(a) of title 39, United States Code, is amended by adding at the end the following:

[''(2) In selecting the individuals described in paragraph (1) for nomination for appointment to the position of Governor, the President should consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate.''.

[(c) 5-YEAR TERMS.—

[(1) IN GENERAL.—Section 202(b) of title 39, United States code, is amended in the first sentence by striking ''9 years'' and inserting ''5 years''.

[(2) APPLICABILITY.—

[(A) CONTINUATION BY INCUMBENTS.—The amendment made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act and such person may continue to serve the remainder of the applicable term.

[(B) VACANCY BY INCUMBENT BEFORE 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served less than 5 years of that term, the resulting vacancy in office shall be treated as a vacancy in a 5-year term.

[(C) VACANCY BY INCUMBENT AFTER 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served 5 years or more of that term, that term shall be deemed to have been a 5-year term beginning on its commencement date for purposes of determining vacancies in office. Any appointment to the vacant office shall be for a 5-year term beginning at the end of the original 9-year term determined without regard to the deeming under the preceding sentence. Nothing in this subparagraph shall be construed to affect any action or authority of any Governor or the Board of Governors during any portion of a 9-year term deemed to be 5-year term under this subparagraph.

[(d) TERM LIMITATION.—

[(1) IN GENERAL.—Section 202(b) of title 39, United States Code, is amended—

[(A) by inserting ''(1)'' after ''(b)''; and

[(B) by adding at the end the following:

[''(2) No person may serve more than 3 terms as a Governor.''.

[(2) APPLICABILITY.—The amendments made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act with respect to the term which that person is serving on that date. Such person may continue to serve the remainder of the applicable term, after which the amendments made by paragraph (1) shall apply.

[SEC. 502. OBLIGATIONS.

[(a) PURPOSES FOR WHICH OBLIGATIONS MAY BE ISSUED.—The first sentence of section 2005(a)(1) of title 39, United States Code, is amended by striking ''title.'' and inserting ''title, other than any of the purposes for which the corresponding authority is available to the Postal Service under section 2011.''.

[(b) INCREASE RELATING TO OBLIGATIONS ISSUED FOR CAPITAL IMPROVEMENTS.—Section 2005(a)(1) of title 39, United States Code, is amended by striking the third sentence.

[(c) AMOUNTS WHICH MAY BE PLEDGED.—

[(1) OBLIGATIONS TO WHICH PROVISIONS APPLY.—The first sentence of section 2005(b) of title 39, United States Code, is amended by striking ''such obligations,'' and inserting ''obligations issued by the Postal Service under this section,''.

[(2) ASSETS, REVENUES, AND RECEIPTS TO WHICH PROVISIONS APPLY.—Subsection (b) of section 2005 of title 39, United States Code, is amended by striking ''(b)'' and inserting ''(b)(1)'', and by adding at the end the following:

[''(2) Notwithstanding any other provision of this section—

[''(A) the authority to pledge assets of the Postal Service under this subsection shall be available only to the extent that such assets are not related to the provision of competitive products (as determined under section 2011(h) or, for purposes of any period before accounting practices and principles under section 2011(h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)); and

[''(B) any authority under this subsection relating to the pledging or other use of revenues or receipts of the Postal Service shall be available only to the extent that they are not revenues or receipts of the Competitive Products Fund.''.

[SEC. 503. PRIVATE CARRIAGE OF LETTERS.

[(a) IN GENERAL.—Section 601 of title 39, United States Code, is amended by striking subsection (b) and inserting the following:

[''(b) A letter may also be carried out of the mails when—

[''(1) the amount paid for the private carriage of the letter is at least the amount equal to 6 times the rate then currently charged for the 1st ounce of a single-piece first class letter;

[''(2) the letter weighs at least 12½ ounces; or

[''(3) such carriage is within the scope of services described by regulations of the United States Postal Service (as in effect on July 1, 2001) that permit private carriage by suspension of the operation of this section (as then in effect).

[''(c) Any regulations necessary to carry out this section shall be promulgated by the Postal Regulatory Commission.''.

[(b) EFFECTIVE DATE.—This section shall take effect on the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

[SEC. 504. RULEMAKING AUTHORITY.

[Paragraph (2) of section 401 of title 39, United States Code, is amended to read as follows:

[''(2) to adopt, amend, and repeal such rules and regulations, not inconsistent with this title, as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this title;''.

[SEC. 505. NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.

[(a) LABOR DISPUTES.—Section 1207 of title 39, United States Code, is amended to read as follows:

[''§ 1207. Labor disputes

[''(a) If there is a collective-bargaining agreement in effect, no party to such agreement shall terminate or modify such agreement unless the party desiring such termination or modification serves written notice upon the other party to the agreement of the proposed termination or modification not less than 90 days prior to the expiration date thereof, or not less than 90 days prior to the time it is proposed to make such termination or modification. The party serving such notice shall notify the Federal Mediation and Conciliation Service of the existence of a dispute within 45 days after such notice, if no agreement has been reached by that time.

[''(b) If the parties fail to reach agreement or to adopt a procedure providing for a binding resolution of a dispute by the expiration date of the agreement in effect, or the date of the proposed termination or modification, the Director of the Federal Mediation and Conciliation Service shall within 10 days appoint a mediator of nationwide reputation and professional stature, and who is also a member of the National Academy of Arbitrators. The parties shall cooperate with the mediator in an effort to reach an agreement and shall meet and negotiate in good faith at such times and places that the mediator, in consultation with the parties, shall direct.

[''(c)(1) If no agreement is reached within 60 days after the expiration or termination of the agreement or the date on which the agreement became subject to modification under subsection (a) of this section, or if the parties decide upon arbitration but do not agree upon the procedures therefore, an arbitration board shall be established consisting of 3 members, 1 of whom shall be selected by the Postal Service, 1 by the bargaining representative of the employees, and the third by the 2 thus selected. If either of the parties fails to select a member, or if the members chosen by the parties fail to agree on the third person within 5 days after their first meeting, the selection shall be made from a list of names provided by the Director. This list shall consist of not less then 9 names of arbitrators of nationwide reputation and professional nature, who are also members of the National Academy of Arbitrators, and whom the Director has determined are available and willing to serve.

[''(2) The arbitration board shall give the parties a full and fair hearing, including an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel or by other representative as they may elect. Decisions of the arbitration board shall be conclusive and binding upon the parties. The arbitration board shall render its decision within 45 days after its appointment.

[''(3) Costs of the arbitration board and mediation shall be shared equally by the Postal Service and the bargaining representative.

[''(d) In the case of a bargaining unit whose recognized collective-bargaining representative does not have an agreement with the Postal Service, if the parties fail to reach the agreement within 90 days after the commencement of collective bargaining, a mediator shall be appointed in accordance with the terms in subsection (b) of this section, unless the parties have previously agreed to another procedure for a binding resolution of their differences. If the parties fail to reach agreement within 180 days after the commencement of collective bargaining, and if they have not agreed to another procedure for binding resolution, an arbitration board shall be established to provide conclusive and binding arbitration in accordance with the terms of subsection (c) of this section.”.

[(b) NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.—Except as otherwise provided by the amendment made by subsection (a), nothing in this Act shall restrict, expand, or otherwise affect any of the rights, privileges, or benefits of either employees of or labor organizations representing employees of the United States Postal Service under chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations within the United States Postal Service, or any collective bargaining agreement.

[(c) FREE MAILING PRIVILEGES CONTINUE UNCHANGED.—Nothing in this Act or any amendment made by this Act shall affect any free mailing privileges accorded under section 3217 or sections 3403 through 3406 of title 39, United States Code.

[SEC. 506. BONUS AUTHORITY.

[Chapter 36 of title 39, United States Code, is amended by inserting after section 3685 the following:

[“§ 3686. Bonus authority

[“(a) IN GENERAL.—The Postal Service may establish 1 or more programs to provide bonuses or other rewards to officers and employees of the Postal Service in senior executive or equivalent positions to achieve the objectives of this chapter.

[“(b) LIMITATION ON TOTAL COMPENSATION.—

[“(1) IN GENERAL.—Under any such program, the Postal Service may award a bonus or other reward in excess of the limitation set forth in the last sentence of section 1003(a), if such program has been approved under paragraph (2). Any such award or bonus may not cause the total compensation of such officer or employee to exceed the total annual compensation payable to the Vice President under section 104 of title 3 as of the end of the calendar year in which the bonus or award is paid.

[“(2) APPROVAL PROCESS.—If the Postal Service wishes to have the authority, under any program described in subsection (a), to award bonuses or other rewards in excess of the limitation set forth in the last sentence of section 1003(a)—

[“(A) the Postal Service shall make an appropriate request to the Board of Governors of the Postal Service in such form and manner as the Board requires; and

[“(B) the Board of Governors shall approve any such request if the Board certifies, for the annual appraisal period involved, that the performance appraisal system for affected officers and employees of the Postal Service (as designed and applied) makes meaningful distinctions based on relative performance.

[“(3) REVOCATION AUTHORITY.—If the Board of Governors of the Postal Service finds that a performance appraisal system previously approved under paragraph (2)(B) does not (as designed and applied) make meaningful distinctions based on relative performance, the Board may revoke or suspend the authority of the Postal Service to continue a program approved under paragraph (2) until such time as appropriate corrective measures have, in the judgment of the Board, been taken.

[“(c) REPORTING REQUIREMENT RELATING TO BONUSES OR OTHER REWARDS.—Included in its comprehensive statement under section 2401(e) for any period shall be—

[“(1) the name of each person receiving a bonus or other reward during such period which would not have been allowable but for the provisions of subsection (b);

[“(2) the amount of the bonus or other reward; and

[“(3) the amount by which the limitation referred to in subsection (b)(1) was exceeded as a result of such bonus or other reward.”.

[TITLE VI—ENHANCED REGULATORY COMMISSION

[SEC. 601. REORGANIZATION AND MODIFICATION OF CERTAIN PROVISIONS RELATING TO THE POSTAL REGULATORY COMMISSION.

[(a) TRANSFER AND REDESIGNATION.—Title 39, United States Code, is amended—

[(1) by inserting after chapter 4 the following:

[“CHAPTER 5—POSTAL REGULATORY COMMISSION

[“Sec.
[“501. Establishment.
[“502. Commissioners.
[“503. Rules; regulations; procedures.
[“504. Administration.
[“505. Officer of the Postal Regulatory Commission representing the general public.

[“§ 501. Establishment

[“The Postal Regulatory Commission is an independent establishment of the executive branch of the Government of the United States.

[“§ 502. Commissioners

[“(a) The Postal Regulatory Commission is composed of 5 Commissioners, appointed by the President, by and with the advice and consent of the Senate. The Commissioners shall be chosen solely on the basis of their technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration, and may be removed by the President only for cause. Each individual appointed to the Commission shall have the qualifications and expertise necessary to carry out the enhanced responsibilities accorded Commissioners under the Postal Accountability and Enhancement Act. Not more than 3 of the Commissioners may be adherents of the same political party.

[“(b) No Commissioner shall be financially interested in any enterprise in the private sector of the economy engaged in the delivery of mail matter.

[“(c) A Commissioner may continue to serve after the expiration of his term until his successor has qualified, except that a Commissioner may not so continue to serve for more than 1 year after the date upon which his term otherwise would expire under subsection (f).

[“(d) One of the Commissioners shall be designated as Chairman by, and shall serve in the position of Chairman at the pleasure of, the President.

[“(e) The Commissioners shall by majority vote designate a Vice Chairman of the Commission. The Vice Chairman shall act as Chairman of the Commission in the absence of the Chairman.

[“(f) The Commissioners shall serve for terms of 6 years.”;

[(2) by striking, in subchapter I of chapter 36 (as in effect before the amendment made by section 201(c)), the heading for such subchapter I and all that follows through section 3602;

[(3) by redesignating sections 3603 and 3604 as sections 503 and 504, respectively, and transferring such sections to the end of chapter 5 (as inserted by paragraph (1)); and

[(4) by adding after such section 504 the following:

[“§ 505. Officer of the Postal Regulatory Commission representing the general public

[“The Postal Regulatory Commission shall designate an officer of the Postal Regulatory Commission in all public proceedings who shall represent the interests of the general public.”.

[(b) APPLICABILITY.—The amendment made by subsection (a)(1) shall not affect the appointment or tenure of any person serving as a Commissioner on the Postal Regulatory Commission (as so redesignated by section 604) under an appointment made before the date of enactment of this Act or any nomination made before that date, but, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment.

[(c) CLERICAL AMENDMENT.—The analysis for part I of title 39, United States Code, is amended by inserting after the item relating to chapter 4 the following:

[“5. Postal Regulatory Commission 501”

[SEC. 602. AUTHORITY FOR POSTAL REGULATORY COMMISSION TO ISSUE SUBPOENAS.

[Section 504 of title 39, United States Code (as so redesignated by section 601) is amended by adding at the end the following:

[“(f)(1) Any Commissioner of the Postal Regulatory Commission, any administrative law judge appointed by the Commission under section 3105 of title 5, and any employee of the Commission designated by the Commission may administer oaths, examine witnesses, take depositions, and receive evidence.

[“(2) The Chairman of the Commission, any Commissioner designated by the Chairman, and any administrative law judge appointed by the Commission under section 3105 of title 5 may, with respect to any proceeding conducted by the Commission under this title or to obtain information to be used to prepare a report under this title—

[“(A) issue subpoenas requiring the attendance and presentation of testimony by, or the production of documentary or other evidence in the possession of, any covered person; and

[“(B) order the taking of depositions and responses to written interrogatories by a covered person.

[The written concurrence of a majority of the Commissioners then holding office shall, with respect to each subpoena under subparagraph (A), be required in advance of its issuance.

[“(3) In the case of contumacy or failure to obey a subpoena issued under this subsection, upon application by the Commission, the district court of the United States for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

[“(4) For purposes of this subsection, the term ‘covered person’ means an officer, employee, agent, or contractor of the Postal Service.

[“(g)(1) If the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission under a subpoena issued under subsection (f), or otherwise at the request of the Commission in connection with any proceeding or other purpose under this title, contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission, in writing, of its determination (and the reasons therefor).

["(2) Except as provided in paragraph (3), no officer or employee of the Commission may, with respect to any information as to which the Commission has been notified under paragraph (1)—

["(A) use such information for purposes other than the purposes for which it is supplied; or

["(B) permit anyone who is not an officer or employee of the Commission to have access to any such information.

["(3)(A) Paragraph (2) shall not prohibit the Commission from publicly disclosing relevant information in furtherance of its duties under this title, provided that the Commission has adopted regulations under section 553 of title 5, that establish a procedure for according appropriate confidentiality to information identified by the Postal Service under paragraph (1). In determining the appropriate degree of confidentiality to be accorded information identified by the Postal Service under paragraph (1), the Commission shall balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.

["(B) Paragraph (2) shall not prevent the Commission from requiring production of information in the course of any discovery procedure established in connection with a proceeding under this title. The Commission shall, by regulations based on rule 26(c) of the Federal Rules of Civil Procedure, establish procedures for ensuring appropriate confidentiality for information furnished to any party.".

[SEC. 603. APPROPRIATIONS FOR THE POSTAL REGULATORY COMMISSION.

[(a) AUTHORIZATION OF APPROPRIATIONS.—Subsection (d) of section 504 of title 39, United States Code (as so redesignated by section 601) is amended to read as follows:

["(d) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Postal Regulatory Commission. In requesting an appropriation under this subsection for a fiscal year, the Commission shall prepare and submit to the Congress under section 2009 a budget of the Commission's expenses, including expenses for facilities, supplies, compensation, and employee benefits.".

[(b) BUDGET PROGRAM.—

[(1) IN GENERAL.—The next to last sentence of section 2009 of title 39, United States Code, is amended to read as follows: "The budget program shall also include separate statements of the amounts which (1) the Postal Service requests to be appropriated under subsections (b) and (c) of section 2401, (2) the Office of Inspector General of the United States Postal Service requests to be appropriated, out of the Postal Service Fund, under section 8G(f) of the Inspector General Act of 1978, and (3) the Postal Regulatory Commission requests to be appropriated, out of the Postal Service Fund, under section 504(d) of this title.".

[(2) CONFORMING AMENDMENT.—Section 2003(e)(1) of title 39, United States Code, is amended by striking the first sentence and inserting the following: "The Fund shall be available for the payment of (A) all expenses incurred by the Postal Service in carrying out its functions as provided by law, subject to the same limitation as set forth in the parenthetical matter under subsection (a); (B) all expenses of the Postal Regulatory Commission, subject to the availability of amounts appropriated under section 504(d); and (C) all expenses of the Office of Inspector General, subject to the availability of amounts appropriated under section 8G(f) of the Inspector General Act of 1978.".

[(c) EFFECTIVE DATE.—

[(1) IN GENERAL.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 2002.

[(2) SAVINGS PROVISION.—The provisions of title 39, United States Code, that are amended by this section shall, for purposes of any fiscal year before the first fiscal year to which the amendments made by this section apply, continue to apply in the same way as if this section had never been enacted.

[SEC. 604. REDESIGNATION OF THE POSTAL RATE COMMISSION.

[(a) AMENDMENTS TO TITLE 39, UNITED STATES CODE.—Title 39, United States Code, is amended in sections 404, 503 and 504 (as so redesignated by section 601), 1001 and 1002, by striking "Postal Rate Commission" each place it appears and inserting "Postal Regulatory Commission";

[(b) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended in sections 104(1), 306(f), 2104(b), 3371(3), 5314 (in the item relating to Chairman, Postal Rate Commission), 5315 (in the item relating to Members, Postal Rate Commission), 5514(a)(5)(B), 7342(a)(1)(A), 7511(a)(1)(B)(ii), 8402(c)(1), 8423(b)(1)(B), and 8474(c)(4) by striking "Postal Rate Commission" and inserting "Postal Regulatory Commission".

[(c) AMENDMENT TO THE ETHICS IN GOVERNMENT ACT OF 1978.—Section 101(f)(6) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking "Postal Rate Commission" and inserting "Postal Regulatory Commission".

[(d) AMENDMENT TO THE REHABILITATION ACT OF 1973.—Section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791(b)) is amended by striking "Postal Rate Office" and inserting "Postal Regulatory Commission".

[(e) AMENDMENT TO TITLE 44, UNITED STATES CODE.—Section 3502(5) of title 44, United States Code, is amended by striking "Postal Rate Commission" and inserting "Postal Regulatory Commission".

[(f) OTHER REFERENCES.—Whenever a reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, document, or other record of the United States to the Postal Rate Commission, such reference shall be considered a reference to the Postal Regulatory Commission.

[SEC. 605. FINANCIAL TRANSPARENCY.

[(a) IN GENERAL.—Section 101 of title 39, United States Code, is amended—

[(1) by redesignating subsections (d) through (g) as subsections (e) through (h), respectively; and

[(2) by inserting after subsection (c) the following:

["(d) As an independent establishment of the executive branch of the Government of the United States, the Postal Service shall be subject to a high degree of transparency to ensure fair treatment of customers of the Postal Service's market-dominant products and companies competing with the Postal Service's competitive products.".

[(b) FINANCIAL REPORTING REQUIREMENTS AND ENFORCEMENT POWERS APPLICABLE TO POSTAL SERVICE.—Section 503 of title 39, United States Code (as so redesignated by section 601 and 604) is amended by—

[(1) inserting "(a)" before "The Postal Regulatory Commission shall promulgate"; and

[(2) adding at the end the following:

["(b)(1) Beginning with the first full fiscal year following the date of enactment of the Postal Accountability and Enhancement Act, the Postal Service shall file with the Postal Regulatory Commission—

["(A) within 35 days after the end of each fiscal quarter, a quarterly report containing the information prescribed in Form 10–Q of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form;

["(B) within 60 days after the end of each fiscal year, an annual report containing the information prescribed in Form 10–K of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form; and

["(C) periodic reports within the time frame and containing the information prescribed in Form 8–K of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form.

["(2) For purposes of preparing the reports required under paragraph (1), the Postal Service shall be deemed to be the registrant described in the Securities and Exchange Commission forms, and references contained in such forms to Securities and Exchange Commission regulations are applicable.

["(3) For purposes of preparing the reports required under paragraph (1), the Postal Service shall comply with the rules prescribed by the Securities and Exchange Commission implementing section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262; Public Law 107–204) beginning with fiscal year 2007 and in each fiscal year thereafter.

["(c)(1) The reports required under subsection (b)(1)(B) shall include, with respect to the financial obligations of the Postal Service under chapters 83, 84, and 89 of title 5 for retirees of the Postal Service—

["(A) the funded status of such obligations of the Postal Service;

["(B) components of the net change in the fund balances and obligations and the nature and cause of any significant changes;

["(C) components of net periodic costs;

["(D) cost methods and assumptions underlying the relevant actuarial valuations;

["(E) the effect of a one-percentage point increase in the assumed health care cost trend rate for each future year on the service and interest costs components of net periodic cost and the accumulated obligation of the Postal Service under chapter 89 of title 5 for retirees of the Postal Service;

["(F) actual contributions to and payments from the funds for the years presented and the estimated future contributions and payments for each of the following 5 years;

["(G) the composition of plan assets reflected in the fund balances; and

["(H) the assumed rate of return on fund balances and the actual rates of return for the years presented.

["(2)(A) Beginning with the fiscal year 2007 and in each fiscal year thereafter, for purposes of the reports required under subsection (b)(1) (A) and (B), the Postal Service shall include segment reporting.

[“(B) The Postal Service shall determine the appropriate segment reporting under subparagraph (A), after consultation with the Postal Regulatory Commission.

[“(d) For purposes of the annual reports required under subsection (b)(1)(B), the Postal Service shall obtain an opinion from an independent auditor on whether the information listed under subsection (c) is fairly stated in all material respects, either in relation to the basic financial statements as a whole or on a stand-alone basis.

[“(e) The Postal Regulatory Commission shall have access to the audit documentation and any other supporting matter of the Postal Service and its independent auditor in connection with any information submitted under subsection (b)(1)(B).

[“(f) The Postal Regulatory Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this section whenever it shall appear that the data—

[“(1) have become significantly inaccurate;

[“(2) can be significantly improved; or

[“(3) are not cost beneficial.”.

[TITLE VII—EVALUATIONS

[SEC. 701. ASSESSMENTS OF RATEMAKING, CLASSIFICATION, AND OTHER PROVISIONS.

[(a) IN GENERAL.—The Postal Regulatory Commission shall, at least every 3 years, submit a report to the President and Congress concerning—

[(1) the operation of the amendments made by this Act; and

[(2) recommendations for any legislation or other measures necessary to improve the effectiveness or efficiency of the postal laws of the United States.

[(b) POSTAL SERVICE VIEWS.—A report under this section shall be submitted only after reasonable opportunity has been afforded to the Postal Service to review the report and to submit written comments on the report. Any comments timely received from the Postal Service under the preceding sentence shall be attached to the report submitted under subsection (a).

[SEC. 702. REPORT ON UNIVERSAL POSTAL SERVICE AND THE POSTAL MONOPOLY.

[(a) REPORT BY THE POSTAL REGULATORY COMMISSION.—

[(1) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Postal Regulatory Commission shall submit a report to the President and Congress on universal postal service and the postal monopoly in the United States (in this section referred to as “universal service and the postal monopoly”), including the monopoly on the delivery of mail and on access to mailboxes.

[(2) CONTENTS.—The report under this subsection shall include—

[(A) a comprehensive review of the history and development of universal service and the postal monopoly, including how the scope and standards of universal service and the postal monopoly have evolved over time for the Nation and its urban and rural areas;

[(B) the scope and standards of universal service and the postal monopoly provided under current law (including sections 101 and 403 of title 39, United States Code), and current rules, regulations, policy statements, and practices of the Postal Service;

[(C) a description of any geographic areas, populations, communities (including both urban and rural communities), organizations, or other groups or entities not currently covered by universal service or that are covered but that are receiving services deficient in scope or quality or both; and

[(D) the scope and standards of universal service and the postal monopoly likely to be required in the future in order to meet the needs and expectations of the United States public, including all types of mail users, based on discussion of such assumptions, alternative sets of assumptions, and analyses as the Postal Service considers plausible.

[(b) RECOMMENDED CHANGES TO UNIVERSAL SERVICE AND THE MONOPOLY.—The Postal Regulatory Commission shall include in the report under subsection (a), and in all reports submitted under section 701 of this Act—

[(1) any recommended changes to universal service and the postal monopoly as the Commission considers appropriate, including changes that the Commission may implement under current law and changes that would require changes to current law, with estimated effects of the recommendations on the service, financial condition, rates, and security of mail provided by the Postal Service;

[(2) with respect to each recommended change described under paragraph (1)—

[(A) an estimate of the costs of the Postal Service attributable to the obligation to provide universal service under current law; and

[(B) an analysis of the likely benefit of the current postal monopoly to the ability of the Postal Service to sustain the current scope and standards of universal service, including estimates of the financial benefit of the postal monopoly to the extent practicable, under current law; and

[(3) such additional topics and recommendations as the Commission considers appropriate, with estimated effects of the recommendations on the service, financial condition, rates, and the security of mail provided by the Postal Service.

[SEC. 703. STUDY ON EQUAL APPLICATION OF LAWS TO COMPETITIVE PRODUCTS.

[(a) IN GENERAL.—The Federal Trade Commission shall prepare and submit to the President and Congress, and to the Postal Regulatory Commission, within 1 year after the date of enactment of this Act, a comprehensive report identifying Federal and State laws that apply differently to the United States Postal Service with respect to the competitive category of mail (within the meaning of section 102 of title 39, United States Code, as amended by section 101) and similar products provided by private companies.

[(b) RECOMMENDATIONS.—The Federal Trade Commission shall include such recommendations as it considers appropriate for bringing such legal discrimination to an end, and in the interim, to account under section 3633 of title 39, United States Code (as added by this Act), for the net economic advantages provided by those laws.

[(c) CONSULTATION.—In preparing its report, the Federal Trade Commission shall consult with the United States Postal Service, the Postal Regulatory Commission, other Federal agencies, mailers, private companies that provide delivery services, and the general public, and shall append to such report any written comments received under this subsection.

[(d) COMPETITIVE PRODUCT REGULATION.—The Postal Regulatory Commission shall take into account the recommendations of the Federal Trade Commission in promulgating or revising the regulations required under section 3633 of title 39, United States Code.

[SEC. 704. REPORT ON POSTAL WORKPLACE SAFETY AND WORKPLACE-RELATED INJURIES.

[(a) REPORT BY THE INSPECTOR GENERAL.—

[(1) IN GENERAL.—Not later than 6 months after the enactment of this Act, the Inspector General of the United States Postal Service shall submit a report to Congress and the Postal Service that—

[(A) details and assesses any progress the Postal Service has made in improving workplace safety and reducing workplace-related injuries nationwide; and

[(B) identifies opportunities for improvement that remain with respect to such improvements and reductions.

[(2) CONTENTS.—The report under this subsection shall also—

[(A) discuss any injury reduction goals established by the Postal Service;

[(B) describe the actions that the Postal Service has taken to improve workplace safety and reduce workplace-related injuries, and assess how successful the Postal Service has been in meeting its injury reduction goal; and

[(C) identify areas where the Postal Service has failed to meet its injury reduction goals, explain the reasons why these goals were not met, and identify opportunities for making further progress in meeting these goals.

[(b) REPORT BY THE POSTAL SERVICE.—

[(1) REPORT TO CONGRESS.—Not later than 6 months after receiving the report under subsection (a), the Postal Service shall submit a report to Congress detailing how it plans to improve workplace safety and reduce workplace-related injuries nationwide, including goals and metrics.

[(2) PROBLEM AREAS.—The report under this subsection shall also include plans, developed in consultation with the Inspector General and employee representatives, including representatives of each postal labor union and management association, for addressing the problem areas identified by the Inspector General in the report under subsection (a)(2)(C).

[SEC. 705. STUDY ON RECYCLED PAPER.

[(a) IN GENERAL.—Within 12 months after the date of enactment of this Act, the Government Accountability Office shall study and submit to the Congress, the Board of Governors of the Postal Service, and to the Postal Regulatory Commission a report concerning—

[(1) the economic and environmental efficacy of establishing rate incentives for mailers linked to the use of recycled paper;

[(2) a description of the accomplishments of the Postal Service in each of the preceding 5 years involving recycling activities, including the amount of annual revenue generated and savings achieved by the Postal Service as a result of its use of recycled paper and other recycled products and its efforts to recycle undeliverable and discarded mail and other materials; and

[(3) additional opportunities that may be available for the United States Postal Service to engage in recycling initiatives and the projected costs and revenues of undertaking such opportunities.

[(b) RECOMMENDATIONS.—The report shall include recommendations for any administrative or legislative actions that may be appropriate.

[TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING

[SEC. 801. SHORT TITLE.

[This title may be cited as the “Postal Civil Service Retirement and Health Benefits Funding Amendments of 2004”.

[SEC. 802. CIVIL SERVICE RETIREMENT SYSTEM.

[(a) In General.—Chapter 83 of title 5, United States Code, is amended—

[(1) in section 8334(a)(1)(B), by striking clause (ii) and inserting the following:

["(ii) In the case of an employee of the United States Postal Service, no amount shall be contributed under this subparagraph."; and

[(2) by amending section 8348(h) to read as follows:

["(h)(1) In this subsection, the term 'Postal surplus or supplemental liability' means the estimated difference, as determined by the Office, between—

["(A) the actuarial present value of all future benefits payable from the Fund under this subchapter to current or former employees of the United States Postal Service and attributable to civilian employment with the United States Postal Service; and

["(B) the sum of—

["(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;

["(ii) that portion of the Fund balance, as of the date the Postal surplus or supplemental liability is determined, attributable to payments to the Fund by the United States Postal Service and its employees, minus benefit payments attributable to civilian employment with the United States Postal Service, plus the earnings on such amounts while in the Fund; and

["(iii) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

["(2)(A) Not later than June 15, 2006, the Office shall determine the Postal surplus or supplemental liability, as of September 30, 2005. If that result is a surplus, the amount of the surplus shall be transferred to the Postal Service Retiree Health Benefits Fund established under section 8909a by June 30, 2006. If the result is a supplemental liability, the Office shall establish an amortization schedule, including a series of annual installments commencing September 30, 2006, which provides for the liquidation of such liability by September 30, 2043.

["(B) The Office shall redetermine the Postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2006, through the fiscal year ending September 30, 2038. If the result is a surplus, that amount shall remain in the Fund until distribution is authorized under subparagraph (C), and any prior amortization schedule for payments shall be terminated. If the result is a supplemental liability, the Office shall establish a new amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.

["(C) As of the close of the fiscal years ending September 30, 2015, 2025, 2035, and 2039, if the result is a surplus, that amount shall be transferred to the Postal Service Retiree Health Benefits Fund, and any prior amortization schedule for payments shall be terminated.

["(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

["(E) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.

["(3) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.".

[(b) Credit Allowed for Military Service.—In the application of section 8348(g)(2) of title 5, United States Code, for the fiscal year 2006, the Office of Personnel Management shall include, in addition to the amount otherwise computed under that paragraph, the amounts that would have been included for the fiscal years 2003 through 2005 with respect to credit for military service of former employees of the United States Postal Service as though the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) had not been enacted, and the Secretary of the Treasury shall make the required transfer to the Civil Service Retirement and Disability Fund based on that amount.

[SEC. 803. HEALTH INSURANCE.

[(a) In General.—

[(1) Funding.—Chapter 89 of title 5, United States Code, is amended—

[(A) in section 8906(g)(2)(A), by striking "shall be paid by the United States Postal Service." and inserting "shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service."; and

[(B) by inserting after section 8909 the following:

["§ 8909a. Postal Service Retiree Health Benefit Fund

["(a) There is in the Treasury of the United States a Postal Service Retiree Health Benefits Fund which is administered by the Office of Personnel Management.

["(b) The Fund is available without fiscal year limitation for payments required under section 8906(g)(2)(A).

["(c) The Secretary of the Treasury shall immediately invest, in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. Such investments shall be made in the same manner as investments for the Civil Service Retirement and Disability Fund under section 8348.

["(d)(1) Not later than June 30, 2006, and by June 30 of each succeeding year, the Office shall compute the net present value of the future payments required under section 8906(g)(2)(A) and attributable to the service of Postal Service employees during the most recently ended fiscal year.

["(2)(A) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year, the Office shall recompute the difference between—

["(i) the net present value of the excess of future payments required under section 8906(g)(2)(A) for current and future United States Postal Service annuitants as of the end of the fiscal year ending on September 30 of that year; and

["(ii)(I) the value of the assets of the Postal Retiree Health Benefits Fund as of the end of the fiscal year ending on September 30 of that year; and

["(II) the net present value computed under paragraph (1).

["(B) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year shall recompute, an amortization schedule including a series of annual installments which provide for the liquidation by September 30, 2045, or within 15 years, whichever is later, of the net present value determined under subparagraph (A), including interest at the rate used in that computation.

["(3) Not later than September 30, 2006, and by September 30 of each succeeding year, the United States Postal Service shall pay into such Fund—

["(A) the net present value computed under paragraph (1); and

["(B) the annual installment computed under paragraph (2)(B).

["(4) Computations under this subsection shall be made consistent with the assumptions and methodology used by the Office for financial reporting under subchapter II of chapter 35 of title 31.

["(5) After consultation with the United States Postal Service, the Office shall promulgate any regulations the Office determines necessary under this subsection.".

[(2) Technical and Conforming Amendment.—The table of sections for chapter 89 of title 5, United States Code, is amended by inserting after the item relating to section 8909 the following:

["8909a. Postal Service Retiree Health Benefits Fund.".

[(b) Transitional Adjustment for Fiscal Year 2006.—For fiscal year 2006, the amounts paid by the Postal Service in Government contributions under section 8906(g)(2)(A) of title 5, United States Code, for fiscal year 2006 contributions shall be deducted from the initial payment otherwise due from the Postal Service to the Postal Service Retiree Health Benefits Fund under section 8909a(d)(3) of such title as added by this section.

[SEC. 804. REPEAL OF DISPOSITION OF SAVINGS PROVISION.

[Section 3 of the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) is repealed.

[SEC. 805. EFFECTIVE DATES.

[(a) In General.—Except as provided under subsection (b), this title shall take effect on October 1, 2005.

[(b) Termination of Employer Contribution.—The amendment made by paragraph (1) of section 802(a) shall take effect on the first day of the first pay period beginning on or after October 1, 2005.

[TITLE IX—COMPENSATION FOR WORK INJURIES

[SEC. 901. TEMPORARY DISABILITY; CONTINUATION OF PAY.

[(a) Time of Accrual of Right.—Section 8117 of title 5, United States Code, is amended—

[(1) by striking "An employee" and inserting "(a) An employee other than a Postal Service employee"; and

[(2) by adding at the end the following:

["(b) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability, except as provided under paragraph (3) of subsection (a). A Postal Service employee may use annual leave, sick leave, or leave without pay during that 3-day period, except that if the disability exceeds 14 days or is followed by permanent disability, the employee may have their sick leave or annual leave reinstated or receive pay for the time spent on leave without pay under this section.".

[(b) Technical and Conforming Amendment.—Section 8118(b)(1) of title 5, United States Code, is amended to read as follows:

["(1) without a break in time, except as provided under section 8117(b), unless controverted under regulations of the Secretary".

[SEC. 902. DISABILITY RETIREMENT FOR POSTAL EMPLOYEES.

[(a) Total Disability.—Section 8105 of title 5, United States Code, is amended—

[(1) in subsection (a), by adding at the end the following: "This section applies to a Postal Service employee, except as provided under subsection (c)."; and

[(2) by adding at the end the following:

["(c)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(*l*)(1) of the Social Security Act (42 U.S.C. 416(*l*)(1)).

["(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of the Postal Accountability and Enhancement Act, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for total disability is converted to 50 percent of the monthly pay of the employee on the later of—

["(A) the date on which the injured employee reaches retirement age; or

["(B) 1 year after the employee begins receiving compensation.".

[(b) Partial Disability.—Section 8106 of title 5, United States Code, is amended—

[(1) in subsection (a), by adding at the end the following: "This section applies to a Postal Service employee, except as provided under subsection (d)."; and

[(2) by adding at the end the following:

["(d)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(*l*)(1) of the Social Security Act (42 U.S.C. 416(*l*)(1)).

["(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of this subsection, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for partial disability is converted to 50 percent of the difference between the monthly pay of an employee and the monthly wage earning capacity of the employee after the beginning of partial disability on the later of—

["(A) the date on which the injured employee reaches retirement age; or

["(B) 1 year after the employee begins receiving compensation.".

[TITLE X—MISCELLANEOUS

[SEC. 1001. EMPLOYMENT OF POSTAL POLICE OFFICERS.

[Section 404 of title 39, United States Code (as amended by this Act), is further amended by adding at the end the following:

["(d) The Postal Service may employ guards for all buildings and areas owned or occupied by the Postal Service or under the charge and control of the Postal Service, and may give such guards, with respect to such property, any of the powers of special policemen provided under section 1315 of title 40. The Postmaster General, or the designee of the Postmaster General, may take any action that the Secretary of Homeland Security may take under section 1315 of title 40, with respect to that property.

[SEC. 1002. EXPANDED CONTRACTING AUTHORITY.

[(a) Amendment to Title 39, United States Code.—

[(1) Contracts with air carriers.—Subsection (e) of section 5402 of title 39, United States Code, is amended—

[(A) by striking the matter preceding paragraph (2) and inserting the following:

["(e)(1) The Postal Service may contract with any air carrier for the transportation of mail by aircraft in interstate air transportation, including the rates for that transportation, either through negotiations or competitive bidding.";

[(B) by redesignating paragraph (2) as paragraph (4); and

[(C) by inserting after paragraph (1) the following:

["(2) Notwithstanding subsections (b) through (d), the Postal Service may contract with any air carrier or foreign air carrier for the transportation of mail by aircraft in foreign air transportation, including the rates for that transportation, either through negotiations or competitive bidding, except that—

["(A) any such contract may be awarded only to—

["(i) an air carrier holding a certificate required by section 41101 of title 49 or an exemption therefrom issued by the Secretary of Transportation;

["(ii) a foreign air carrier holding a permit required by section 41301 of title 49 or an exemption therefrom issued by the Secretary of Transportation; or

["(iii) a combination of such air carriers or foreign air carriers (or both);

["(B) mail transported under any such contract shall not be subject to any duty-to-carry requirement imposed by any provision of subtitle VII of title 49 or by any certificate, permit, or corresponding exemption authority issued by the Secretary of Transportation under that subtitle;

["(C) during the 5-year period beginning 1 year after the date of enactment of the Postal Accountability and Enhancement Act, the Postal Service may not under this paragraph—

["(i) contract for service between a pair or combination of pairs of points in foreign air transportation with—

["(I) a foreign air carrier; or

["(II) an air carrier to the extent that service provided would be offered through a code sharing arrangement in which the air carrier's designator code is used to identify a flight operated by a foreign air carrier; or

["(ii) tender mail in foreign air transportation under contracts providing for the carriage of mail in foreign air transportation over all (or substantially all, as determined by the Postal Service) of a carrier's routes or all or substantially all of a carrier's routes within a geographic area determined by the Postal Service on the basis of a common unit price per mile and a separate terminal price to—

["(I) a foreign air carrier; or

["(II) an air carrier to the extent that service provided would be offered through a code sharing arrangement in which the air carrier's designator code is used to identify a flight operated by a foreign air carrier, unless—

["(aa) with respect to clause (i) and this clause, fewer than 2 air carriers capable of providing service to the Postal Service adequate for its purposes between the pair or combination of pairs of points in foreign air transportation offer scheduled service between the pair or combination of pairs of points in foreign air transportation which are the subject of the contract or tender;

["(bb) with respect to clause (i), after competitive solicitation, the Postal Service has not received at least 2 offers from eligible air carriers capable of providing service to the Postal Service adequate for its purposes between the pair of combination of pairs of points in foreign air transportation; or

["(cc) with respect to this clause, after competitive solicitation, fewer than 2 air carriers under contract with the Postal Service offer service adequate for the Postal Service's purposes between the pair or combination of pairs of points in foreign air transportation for which tender is being made;

["(D) beginning 6 years after the date of enactment of the Postal Accountability and Enhancement Act, every contract that the Postal Service awards to a foreign air carrier under this paragraph shall be subject to the continuing requirement that air carriers shall be afforded the same opportunity to carry the mail of the country to and from which the mail is transported and the flag country of the foreign air carrier, if different, as the Postal Service has afforded the foreign air carrier; and

["(E) the Postmaster General shall consult with the Secretary of Defense concerning actions that affect the carriage of military mail transported in foreign air transportation.

["(3) Paragraph (2) shall not be interpreted as suspending or otherwise diminishing the authority of the Secretary of Transportation under section 41310 of title 49.".

[(2) Definitions.—Section 5402(a) of title 39, United States Code, is amended by striking paragraph (2) and inserting the following:

["(2) The terms 'air carrier', 'air transportation', 'foreign air carrier', 'foreign air transportation', 'interstate air transportation', and 'mail' have the meanings given such terms in section 40102(a) of title 49.".

[(b) Amendments to Title 49, United States Code.—

[(1) Authority of postal service to provide for interstate air transportation of mail.—Section 41901(a) of title 49, United States Code, is amended to read as follows:

["(a) Title 39.—The United States Postal Service may provide for the transportation of mail by aircraft in air transportation under this chapter and under chapter 54 of title 39.".

[(2) Schedules for certain transportation of mail.—Section 41902 of title 49, United States Code, is amended—

[(A) by striking subsection (b) and inserting the following:

["(b) Statements on Places and Schedules.—Every air carrier shall file with the Secretary of Transportation and the United States Postal Service a statement showing—

["(1) the places between which the carrier is authorized to transport mail in Alaska;

["(2) every schedule of aircraft regularly operated by the carrier between places described under paragraph (1) and every change in each schedule; and

["(3) for each schedule, the places served by the carrier and the time of arrival at, and departure from, each place.";

[(B) in subsection (c), by striking "(b)(3)" and inserting "(b)"; and

[(C) in subsection (d), in the first sentence, by striking "(b)(3)" and inserting "(b)".

[(3) Prices for foreign transportation of mail.—Section 41907 of title 49, United States Code, is amended—

[(A) by striking "(a) Limitations.—"; and

[(B) by striking subsection (b).

[(4) Technical and conforming amendments.—Sections 41107, 41901(b)(1), 41902(a), and 41903 (a) and (b) of title 49, United States Code, are amended by striking "in foreign air transportation or".

[(c) Effective Date.—The amendments made by this section shall take effect 1 year after the date of enactment of this Act.

[SEC. 1003. REPORT ON THE UNITED STATES POSTAL INSPECTION SERVICE AND THE OFFICE OF THE INSPECTOR GENERAL OF THE UNITED STATES POSTAL SERVICE.

[(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Government Accountability Office shall review the functions, responsibilities, and areas of possible duplication of the United States Postal Inspection Service and the Office of the Inspector General of the United States Postal Service and submit a report on the review to the Committee on Homeland Security and Governmental Affairs of the Senate.

[(b) CONTENTS.—The report under this section shall include recommendations for legislative actions necessary to clarify the roles of the United States Postal Inspection Service and the Office of the Inspector General of the United States Postal Service to strengthen oversight of postal operations.

[SEC. 1004. SENSE OF CONGRESS REGARDING POSTAL SERVICE PURCHASING REFORM.

[It is the sense of Congress that the Postal Service should—

[(1) ensure the fair and consistent treatment of suppliers and contractors in its current purchasing policies and any revision or replacement of such policies, such as through the use of competitive contract award procedures, effective dispute resolution mechanisms, and socioeconomic programs; and

[(2) implement commercial best practices in Postal Service purchasing policies to achieve greater efficiency and cost savings as recommended in July 2003 by the President's Commission on the United States Postal Service, in a manner that is compatible with the fair and consistent treatment of suppliers and contractors, as befitting an establishment in the United States Government.]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Postal Accountability and Enhancement Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—DEFINITIONS; POSTAL SERVICES

Sec. 101. Definitions.
Sec. 102. Postal services.

TITLE II—MODERN RATE REGULATION

Sec. 201. Provisions relating to market-dominant products.
Sec. 202. Provisions relating to competitive products.
Sec. 203. Provisions relating to experimental and new products.
Sec. 204. Reporting requirements and related provisions.
Sec. 205. Complaints; appellate review and enforcement.
Sec. 206. Clerical amendment.

TITLE III—MODERN SERVICE STANDARDS

Sec. 301. Establishment of modern service standards.
Sec. 302. Postal service plan.

TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

Sec. 401. Postal Service Competitive Products Fund.
Sec. 402. Assumed Federal income tax on competitive products income.
Sec. 403. Unfair competition prohibited.
Sec. 404. Suits by and against the Postal Service.
Sec. 405. International postal arrangements.

TITLE V—GENERAL PROVISIONS

Sec. 501. Qualification and term requirements for Governors.
Sec. 502. Obligations.
Sec. 503. Private carriage of letters.
Sec. 504. Rulemaking authority.
Sec. 505. Noninterference with collective bargaining agreements.
Sec. 506. Bonus authority.

TITLE VI—ENHANCED REGULATORY COMMISSION

Sec. 601. Reorganization and modification of certain provisions relating to the Postal Regulatory Commission.
Sec. 602. Authority for Postal Regulatory Commission to issue subpoenas.
Sec. 603. Authorization of appropriations from the Postal Service Fund.
Sec. 604. Redesignation of the Postal Rate Commission.
Sec. 605. Financial transparency.

TITLE VII—EVALUATIONS

Sec. 701. Assessments of ratemaking, classification, and other provisions.
Sec. 702. Report on universal postal service and the postal monopoly.
Sec. 703. Study on equal application of laws to competitive products.
Sec. 704. Report on postal workplace safety and workplace-related injuries.
Sec. 705. Study on recycled paper.

TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING

Sec. 801. Short title.
Sec. 802. Civil Service Retirement System.
Sec. 803. Health insurance.
Sec. 804. Repeal of disposition of savings provision.
Sec. 805. Effective dates.

TITLE IX—COMPENSATION FOR WORK INJURIES

Sec. 901. Temporary disability; continuation of pay.
Sec. 902. Disability retirement for postal employees.

TITLE X—MISCELLANEOUS

Sec. 1001. Employment of postal police officers.
Sec. 1002. Obsolete provisions.
Sec. 1003. Reduced rates.
Sec. 1004. Sense of Congress regarding Postal Service purchasing reform.

TITLE I—DEFINITIONS; POSTAL SERVICES

SEC. 101. DEFINITIONS.

Section 102 of title 39, United States Code, is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a semicolon, and by adding at the end the following:

"(5) 'postal service' refers to the physical delivery of letters, printed matter, or packages weighing up to 70 pounds, including physical acceptance, collection, sorting, transportation, or other functions ancillary thereto;

"(6) 'product' means a postal service with a distinct cost or market characteristic for which a rate or rates are applied;

"(7) 'rates', as used with respect to products, includes fees for postal services;

"(8) 'market-dominant product' or 'product in the market-dominant category of mail' means a product subject to subchapter I of chapter 36; and

"(9) 'competitive product' or 'product in the competitive category of mail' means a product subject to subchapter II of chapter 36; and

"(10) 'year', as used in chapter 36 (other than subchapters I and VI thereof), means a fiscal year.".

SEC. 102. POSTAL SERVICES.

(a) IN GENERAL.—Section 404 of title 39, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and by redesignating paragraphs (7) through (9) as paragraphs (6) through (8), respectively; and

(2) by adding at the end the following:

"(c) Except as provided in section 411, nothing in this title shall be considered to permit or require that the Postal Service provide any special nonpostal or similar services.".

(b) CONFORMING AMENDMENTS.—(1) Section 1402(b)(1)(B)(ii) of the Victims of Crime Act of 1984 (98 Stat. 2170; 42 U.S.C. 10601(b)(1)(B)(ii)) is amended by striking "404(a)(8)" and inserting "404(a)(7)".

(2) Section 2003(b)(1) of title 39, United States Code, is amended by striking "and nonpostal".

TITLE II—MODERN RATE REGULATION

SEC. 201. PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS.

(a) IN GENERAL.—Chapter 36 of title 39, United States Code, is amended by striking sections 3621 and 3622 and inserting the following:

"§ 3621. Applicability; definitions

"(a) APPLICABILITY.—This subchapter shall apply with respect to—

"(1) first-class mail letters and sealed parcels;
"(2) first-class mail cards;
"(3) periodicals;
"(4) standard mail;
"(5) single-piece parcel post;
"(6) media mail;
"(7) bound printed matter;
"(8) library mail;
"(9) special services; and
"(10) single-piece international mail,

subject to any changes the Postal Regulatory Commission may make under section 3642.

"(b) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

"§ 3622. Modern rate regulation

"(a) AUTHORITY GENERALLY.—The Postal Regulatory Commission shall, within 12 months after the date of enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a modern system for regulating rates and classes for market-dominant products.

"(b) OBJECTIVES.—Such system shall be designed to achieve the following objectives:

"(1) To reduce the administrative burden and increase the transparency of the ratemaking process while affording reasonable opportunities for interested parties to participate in that process.

"(2) To create predictability and stability in rates.

"(3) To maximize incentives to reduce costs and increase efficiency.

"(4) To enhance mail security and deter terrorism by promoting secure, sender-identified mail.

"(5) To allow the Postal Service pricing flexibility, including the ability to use pricing to promote intelligent mail and encourage increased mail volume during nonpeak periods.

"(6) To assure adequate revenues, including retained earnings, to maintain financial stability and meet the service standards established under section 3691.

"(7) To allocate the total institutional costs of the Postal Service equitably between market-dominant and competitive products.

"(c) FACTORS.—In establishing or revising such system, the Postal Regulatory Commission shall take into account—

"(1) the establishment and maintenance of a fair and equitable schedule for rates and classification system;

"(2) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not

limited to the collection, mode of transportation, and priority of delivery;

"(3) the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to each class or type of mail service through reliably identified causal relationships plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;

"(4) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;

"(5) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;

"(6) the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;

"(7) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;

"(8) the importance of pricing flexibility to encourage increased mail volume and operational efficiency;

"(9) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;

"(10) the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;

"(11) the desirability of special classifications from the point of view of both the user and of the Postal Service;

"(12) the educational, cultural, scientific, and informational value to the recipient of mail matter;

"(13) the need for the Postal Service to increase its efficiency and reduce its costs, including infrastructure costs, to help maintain high quality, affordable, universal postal service; and

"(14) the policies of this title as well as such other factors as the Commission determines appropriate.

"(d) REQUIREMENTS.—

"(1) IN GENERAL.—The system for regulating rates and classes for market-dominant products shall—

"(A) include an annual limitation on the percentage changes in rates to be set by the Postal Regulatory Commission that will be equal to the change in the Consumer Price Index for All Urban Consumers unadjusted for seasonal variation over the most recent available 12-month period preceding the date the Postal Service files notice of its intention to increase rates;

"(B) establish a schedule whereby rates, when necessary and appropriate, would change at regular intervals by predictable amounts;

"(C) not later than 45 days before the implementation of any adjustment in rates under this section—

"(i) require the Postal Service to provide public notice of the adjustment;

"(ii) provide an opportunity for review by the Postal Regulatory Commission;

"(iii) provide for the Postal Regulatory Commission to notify the Postal Service of any noncompliance of the adjustment with the limitation under subparagraph (A); and

"(iv) require the Postal Service to respond to the notice provided under clause (iii) and describe the actions to be taken to comply with the limitation under subparagraph (A);

"(D) establish procedures whereby the Postal Service may adjust rates not in excess of the annual limitations under subparagraph (A); and

"(E) notwithstanding any limitation set under subparagraphs (A) and (C), establish procedures whereby rates may be adjusted on an expedited basis due to unexpected and extraordinary circumstances.

"(2) LIMITATIONS.—

"(A) CLASSES OF MAIL.—The annual limitations under paragraph (1)(A) shall apply to a class of mail, as defined in the Domestic Mail Classification Schedule as in effect on the date of enactment of the Postal Accountability and Enhancement Act.

"(B) ROUNDING OF RATES AND FEES.—Nothing in this subsection shall preclude the Postal Service from rounding rates and fees to the nearest whole integer, if the effect of such rounding does not cause the overall rate increase for any class to exceed the Consumer Price Index for All Urban Consumers.

"(C) BANKING UNUSED PRICING AUTHORITY.—Notwithstanding paragraph (1), for any class or service that failed to recover its attributable costs in the previous fiscal year, or for all classes and services when the Postal Service has operated at a loss for the last 2 years, rate increases may exceed Consumer Price Index for All Urban Consumers by the amount rate increases in the previous year were less than Consumer Price Index for All Urban Consumers.

"(e) WORKSHARE DISCOUNTS.—

"(1) DEFINITION.—In this subsection, the term 'workshare discount' refers to rate discounts provided to mailers for the presorting, prebarcoding, handling, or transportation of mail, as further defined by the Postal Regulatory Commission under subsection (a).

"(2) REGULATIONS.—As part of the regulations established under subsection (a), the Postal Regulatory Commission shall establish rules for workshare discounts that ensure that such discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity, unless—

"(A) the discount is—

"(i) associated with a new postal service, a change to an existing postal service, or with a new workshare initiative related to an existing postal service; and

"(ii) necessary to induce mailer behavior that furthers the economically efficient operation of the Postal Service and the portion of the discount in excess of the cost that the Postal Service avoids as a result of the workshare activity will be phased out over a limited period of time;

"(B) a reduction in the discount would—

"(i) lead to a loss of volume in the affected category or subclass of mail and reduce the aggregate contribution to the institutional costs of the Postal Service from the category or subclass subject to the discount below what it otherwise would have been if the discount had not been reduced to costs avoided;

"(ii) result in a further increase in the rates paid by mailers not able to take advantage of the discount; or

"(iii) impede the efficient operation of the Postal Service;

"(C) the amount of the discount above costs avoided—

"(i) is necessary to mitigate rate shock; and

"(ii) will be phased out over time; or

"(D) the discount is provided in connection with subclasses of mail consisting exclusively of mail matter of educational, cultural, scientific, or informational value.

"(3) REPORT.—Whenever the Postal Service establishes or maintains a workshare discount, the Postal Service shall, at the time it publishes the workshare discount rate, submit to the Postal Regulatory Commission a detailed report that—

"(A) explains the Postal Service's reasons for establishing or maintaining the rate;

"(B) sets forth the data, economic analyses, and other information relied on by the Postal Service to justify the rate; and

"(C) certifies that the discount will not adversely affect rates or services provided to users of postal services who do not take advantage of the discount rate.

"(f) TRANSITION RULE.—Until regulations under this section first take effect, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of enactment of this section.".

(b) REPEALED SECTIONS.—Sections 3623, 3624, 3625, and 3628 of title 39, United States Code, are repealed.

(c) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect after the amendment made by section 601, but before the amendment made by section 202) is amended by striking the heading for subchapter II and inserting the following:

"SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS".

SEC. 202. PROVISIONS RELATING TO COMPETITIVE PRODUCTS.

Chapter 36 of title 39, United States Code, is amended by inserting after section 3629 the following:

"SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

"§ 3631. Applicability; definitions and updates

"(a) APPLICABILITY.—This subchapter shall apply with respect to—

"(1) priority mail;

"(2) expedited mail;

"(3) bulk parcel post;

"(4) bulk international mail; and

"(5) mailgrams;

subject to subsection (d) and any changes the Postal Regulatory Commission may make under section 3642.

"(b) DEFINITION.—For purposes of this subchapter, the term 'costs attributable', as used with respect to a product, means the direct and indirect postal costs attributable to such product through reliably identified causal relationships.

"(c) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

"(d) LIMITATION.—Notwithstanding any other provision of this section, nothing in this subchapter shall be considered to apply with respect to any product then currently in the market-dominant category of mail.

"§ 3632. Action of the Governors

"(a) AUTHORITY TO ESTABLISH RATES AND CLASSES.—The Governors, with the written concurrence of a majority of all of the Governors then holding office, shall establish rates and classes for products in the competitive category of mail in accordance with the requirements of this subchapter and regulations promulgated under section 3633.

"(b) PROCEDURES.—

"(1) IN GENERAL.—Rates and classes shall be established in writing, complete with a statement of explanation and justification, and the date as of which each such rate or class takes effect.

"(2) PUBLIC NOTICE; REVIEW; AND COMPLIANCE.—Not later than 30 days before the date of implementation of any adjustment in rates under this section—

"(A) the Governors shall provide public notice of the adjustment and an opportunity for review by the Postal Regulatory Commission;

"(B) the Postal Regulatory Commission shall notify the Governors of any noncompliance of the adjustment with section 3633; and

"(C) the Governors shall respond to the notice provided under subparagraph (B) and describe the actions to be taken to comply with section 3633.

"(c) TRANSITION RULE.—Until regulations under section 3633 first take effect, rates and classes for competitive products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were as last in effect before the date of enactment of this section.

"§3633. Provisions applicable to rates for competitive products

"(a) IN GENERAL.—The Postal Regulatory Commission shall, within 180 days after the date of enactment of this section, promulgate (and may from time to time thereafter revise) regulations to—

"(1) prohibit the subsidization of competitive products by market-dominant products;

"(2) ensure that each competitive product covers its costs attributable; and

"(3) ensure that all competitive products collectively cover their share of the institutional costs of the Postal Service.

"(b) REVIEW OF MINIMUM CONTRIBUTION.—Five years after the date of enactment of this section, and every 5 years thereafter, the Postal Regulatory Commission shall conduct a review to determine whether the institutional costs contribution requirement under subsection (a)(3) should be retained in its current form, modified, or eliminated. In making its determination, the Commission shall consider all relevant circumstances, including the prevailing competitive conditions in the market, and the degree to which any costs are uniquely or disproportionately associated with any competitive products.".

SEC. 203. PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS.

Subchapter III of chapter 36 of title 39, United States Code, is amended to read as follows:

"SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

"§3641. Market tests of experimental products

"(a) AUTHORITY.—

"(1) IN GENERAL.—The Postal Service may conduct market tests of experimental products in accordance with this section.

"(2) PROVISIONS WAIVED.—A product shall not, while it is being tested under this section, be subject to the requirements of sections 3622, 3633, or 3642, or regulations promulgated under those sections.

"(b) CONDITIONS.—A product may not be tested under this section unless it satisfies each of the following:

"(1) SIGNIFICANTLY DIFFERENT PRODUCT.—The product is, from the viewpoint of the mail users, significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test.

"(2) MARKET DISRUPTION.—The introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns (as defined under subsection (h)).

"(3) CORRECT CATEGORIZATION.—The Postal Service identifies the product, for the purpose of a test under this section, as either market-dominant or competitive, consistent with the criteria under section 3642(b)(1). Costs and revenues attributable to a product identified as competitive shall be included in any determination under section 3633(3)(relating to provisions applicable to competitive products collectively). Any test that solely affects products currently classified as competitive, or which provides services ancillary to only competitive products, shall be presumed to be in the competitive product category without regard to whether a similar ancillary product exists for market-dominant products.

"(c) NOTICE.—

"(1) IN GENERAL.—At least 30 days before initiating a market test under this section, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register a notice—

"(A) setting out the basis for the Postal Service's determination that the market test is covered by this section; and

"(B) describing the nature and scope of the market test.

"(2) SAFEGUARDS.—For a competitive experimental product, the provisions of section 504(g) shall be available with respect to any information required to be filed under paragraph (1) to the same extent and in the same manner as in the case of any matter described in section 504(g)(1). Nothing in paragraph (1) shall be considered to permit or require the publication of any information as to which confidential treatment is accorded under the preceding sentence (subject to the same exception as set forth in section 504(g)(3)).

"(d) DURATION.—

"(1) IN GENERAL.—A market test of a product under this section may be conducted over a period of not to exceed 24 months.

"(2) EXTENSION AUTHORITY.—If necessary in order to determine the feasibility or desirability of a product being tested under this section, the Postal Regulatory Commission may, upon written application of the Postal Service (filed not later than 60 days before the date as of which the testing of such product would otherwise be scheduled to terminate under paragraph (1)), extend the testing of such product for not to exceed an additional 12 months.

"(e) DOLLAR-AMOUNT LIMITATION.—

"(1) IN GENERAL.—A product may only be tested under this section if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $10,000,000 in any year, subject to paragraph (2) and subsection (g).

"(2) EXEMPTION AUTHORITY.—The Postal Regulatory Commission may, upon written application of the Postal Service, exempt the market test from the limit in paragraph (1) if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $50,000,000 in any year, subject to subsection (g). In reviewing an application under this paragraph, the Postal Regulatory Commission shall approve such application if it determines that—

"(A) the product is likely to benefit the public and meet an expected demand;

"(B) the product is likely to contribute to the financial stability of the Postal Service; and

"(C) the product is not likely to result in unfair or otherwise inappropriate competition.

"(f) CANCELLATION.—If the Postal Regulatory Commission at any time determines that a market test under this section fails to meet 1 or more of the requirements of this section, it may order the cancellation of the test involved or take such other action as it considers appropriate. A determination under this subsection shall be made in accordance with such procedures as the Commission shall by regulation prescribe.

"(g) ADJUSTMENT FOR INFLATION.—For purposes of each year following the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a), each dollar amount contained in this section shall be adjusted by the change in the Consumer Price Index for such year (as determined under regulations of the Commission).

"(h) DEFINITION OF A SMALL BUSINESS CONCERN.—The criteria used in defining small business concerns or otherwise categorizing business concerns as small business concerns shall, for purposes of this section, be established by the Postal Regulatory Commission in conformance with the requirements of section 3 of the Small Business Act.

"(i) EFFECTIVE DATE.—Market tests under this subchapter may be conducted in any year beginning with the first year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a).

"§3642. New products and transfers of products between the market-dominant and competitive categories of mail

"(a) IN GENERAL.—Upon request of the Postal Service or users of the mails, or upon its own initiative, the Postal Regulatory Commission may change the list of market-dominant products under section 3621 and the list of competitive products under section 3631 by adding new products to the lists, removing products from the lists, or transferring products between the lists.

"(b) CRITERIA.—All determinations by the Postal Regulatory Commission under subsection (a) shall be made in accordance with the following criteria:

"(1) The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing substantial business to other firms offering similar products. The competitive category of products shall consist of all other products.

"(2) EXCLUSION OF PRODUCTS COVERED BY POSTAL MONOPOLY.—A product covered by the postal monopoly shall not be subject to transfer under this section from the market-dominant category of mail. For purposes of the preceding sentence, the term 'product covered by the postal monopoly' means any product the conveyance or transmission of which is reserved to the United States under section 1696 of title 18, subject to the same exception as set forth in the last sentence of section 409(e)(1).

"(3) ADDITIONAL CONSIDERATIONS.—In making any decision under this section, due regard shall be given to—

"(A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved;

"(B) the views of those who use the product involved on the appropriateness of the proposed action; and

"(C) the likely impact of the proposed action on small business concerns (within the meaning of section 3641(h)).

"(c) TRANSFERS OF SUBCLASSES AND OTHER SUBORDINATE UNITS ALLOWABLE.—Nothing in this title shall be considered to prevent transfers under this section from being made by reason of the fact that they would involve only some (but not all) of the subclasses or other subordinate units of the class of mail or type of postal service involved (without regard to satisfaction of minimum quantity requirements standing alone).

"(d) NOTIFICATION AND PUBLICATION REQUIREMENTS.—

"(1) NOTIFICATION REQUIREMENT.—The Postal Service shall, whenever it requests to add a product or transfer a product to a different category, file with the Postal Regulatory Commission and publish in the Federal Register a notice setting out the basis for its determination that the product satisfies the criteria under subsection (b) and, in the case of a request to add a product or transfer a product to the competitive category of mail, that the product meets the regulations promulgated by the Postal Regulatory Commission under section 3633. The provisions of section 504(g) shall be available with respect to any information required to be filed.

"(2) PUBLICATION REQUIREMENT.—The Postal Regulatory Commission shall, whenever it changes the list of products in the market-dominant or competitive category of mail, prescribe

new lists of products. The revised lists shall indicate how and when any previous lists (including the lists under sections 3621 and 3631) are superseded, and shall be published in the Federal Register.

"(e) PROHIBITION.—Except as provided in section 3641, no product that involves the physical delivery of letters, printed matter, or packages may be offered by the Postal Service unless it has been assigned to the market-dominant or competitive category of mail (as appropriate) either—

"(1) under this subchapter; or

"(2) by or under any other provision of law.".

SEC. 204. REPORTING REQUIREMENTS AND RELATED PROVISIONS.

(a) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect before the amendment made by subsection (b)) is amended—

(1) by striking the heading for subchapter IV and inserting the following:

"SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW"; and

(2) by striking the heading for subchapter V and inserting the following:

"SUBCHAPTER VI—GENERAL".

(b) REPORTS AND COMPLIANCE.—Chapter 36 of title 39, United States Code, is amended by inserting after subchapter III the following:

"SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

"§ 3651. Annual reports by the Commission

"(a) IN GENERAL.—The Postal Regulatory Commission shall submit an annual report to the President and the Congress concerning the operations of the Commission under this title, including the extent to which regulations are achieving the objectives under sections 3622, 3633, and 3691.

"(b) INFORMATION FROM POSTAL SERVICE.—The Postal Service shall provide the Postal Regulatory Commission with such information as may, in the judgment of the Commission, be necessary in order for the Commission to prepare its reports under this section.

"§ 3652. Annual reports to the Commission

"(a) COSTS, REVENUES, RATES, AND SERVICE.—Except as provided in subsection (c), the Postal Service shall, no later than 90 days after the end of each year, prepare and submit to the Postal Regulatory Commission a report (together with such nonpublic annex to the report as the Commission may require under subsection (e))—

"(1) which shall analyze costs, revenues, rates, and quality of service in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of this title; and

"(2) which shall, for each market-dominant product provided in such year, provide—

"(A) product information, including mail volumes; and

"(B) measures of the service afforded by the Postal Service in connection with such product, including—

"(i) the level of service (described in terms of speed of delivery and reliability) provided; and

"(ii) the degree of customer satisfaction with the service provided.

Before submitting a report under this subsection (including any annex to the report and the information required under subsection (b)), the Postal Service shall have the information contained in such report (and annex) audited by the Inspector General. The results of any such audit shall be submitted along with the report to which it pertains.

"(b) INFORMATION RELATING TO WORKSHARE DISCOUNTS.—The Postal Service shall include, in each report under subsection (a), the following information with respect to each market-dominant product for which a workshare discount was in effect during the period covered by such report:

"(1) The per-item cost avoided by the Postal Service by virtue of such discount.

"(2) The percentage of such per-item cost avoided that the per-item workshare discount represents.

"(3) The per-item contribution made to institutional costs.

"(c) SERVICE AGREEMENTS AND MARKET TESTS.—In carrying out subsections (a) and (b) with respect to service agreements and experimental products offered through market tests under section 3641 in a year, the Postal Service—

"(1) may report summary data on the costs, revenues, and quality of service by service agreement and market test; and

"(2) shall report such data as the Postal Regulatory Commission requires.

"(d) SUPPORTING MATTER.—The Postal Regulatory Commission shall have access, in accordance with such regulations as the Commission shall prescribe, to the working papers and any other supporting matter of the Postal Service and the Inspector General in connection with any information submitted under this section.

"(e) CONTENT AND FORM OF REPORTS.—

"(1) IN GENERAL.—The Postal Regulatory Commission shall, by regulation, prescribe the content and form of the public reports (and any nonpublic annex and supporting matter relating to the report) to be provided by the Postal Service under this section. In carrying out this subsection, the Commission shall give due consideration to—

"(A) providing the public with timely, adequate information to assess the lawfulness of rates charged;

"(B) avoiding unnecessary or unwarranted administrative effort and expense on the part of the Postal Service; and

"(C) protecting the confidentiality of commercially sensitive information.

"(2) REVISED REQUIREMENTS.—The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this subsection whenever it shall appear that—

"(A) the attribution of costs or revenues to products has become significantly inaccurate or can be significantly improved;

"(B) the quality of service data has become significantly inaccurate or can be significantly improved; or

"(C) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

"(f) CONFIDENTIAL INFORMATION.—

"(1) IN GENERAL.—If the Postal Service determines that any document or portion of a document, or other matter, which it provides to the Postal Regulatory Commission in a nonpublic annex under this section or under subsection (d) contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission of its determination, in writing, and describe with particularity the documents (or portions of documents) or other matter for which confidentiality is sought and the reasons therefor.

"(2) TREATMENT.—Any information or other matter described in paragraph (1) to which the Commission gains access under this section shall be subject to paragraphs (2) and (3) of section 504(g) in the same way as if the Commission had received notification with respect to such matter under section 504(g)(1).

"(g) OTHER REPORTS.—The Postal Service shall submit to the Postal Regulatory Commission, together with any other submission that the Postal Service is required to make under this section in a year, copies of its then most recent—

"(1) comprehensive statement under section 2401(e);

"(2) strategic plan under section 2802;

"(3) performance plan under section 2803; and

"(4) program performance reports under section 2804.

"§ 3653. Annual determination of compliance

"(a) OPPORTUNITY FOR PUBLIC COMMENT.—After receiving the reports required under section 3652 for any year, the Postal Regulatory Commission shall promptly provide an opportunity for comment on such reports by users of the mails, affected parties, and an officer of the Commission who shall be required to represent the interests of the general public.

"(b) DETERMINATION OF COMPLIANCE OR NONCOMPLIANCE.—Not later than 90 days after receiving the submissions required under section 3652 with respect to a year, the Postal Regulatory Commission shall make a written determination as to—

"(1) whether any rates or fees in effect during such year (for products individually or collectively) were not in compliance with applicable provisions of this chapter (or regulations promulgated thereunder); or

"(2) whether any service standards in effect during such year were not met.

If, with respect to a year, no instance of noncompliance is found under this subsection to have occurred in such year, the written determination shall be to that effect.

"(c) IF ANY NONCOMPLIANCE IS FOUND.—If, for a year, a timely written determination of noncompliance is made under subsection (b), the Postal Regulatory Commission shall take any appropriate remedial action authorized by section 3662(c).

"(d) REBUTTABLE PRESUMPTION.—A timely written determination described in the last sentence of subsection (b) shall, for purposes of any proceeding under section 3662, create a rebuttable presumption of compliance by the Postal Service (with regard to the matters described under paragraphs (1) and (2) of subsection (b)) during the year to which such determination relates.".

SEC. 205. COMPLAINTS; APPELLATE REVIEW AND ENFORCEMENT.

Chapter 36 of title 39, United States Code, is amended by striking sections 3662 and 3663 and inserting the following:

"§ 3662. Rate and service complaints

"(a) IN GENERAL.—Any person (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of chapter 1, 4, or 6, or this chapter (or regulations promulgated under any of those chapters) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

"(b) PROMPT RESPONSE REQUIRED.—

"(1) IN GENERAL.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a), either—

"(A) begin proceedings on such complaint; or

"(B) issue an order dismissing the complaint (together with a statement of the reasons therefor).

"(2) TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.—For purposes of section 3663, any complaint under subsection (a) on which the Commission fails to act in the time and manner

required by paragraph (1) shall be treated in the same way as if it had been dismissed under an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

“(c) ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.—If the Postal Regulatory Commission finds the complaint to be justified, it shall order that the Postal Service take such action as the Commission considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance including ordering unlawful rates to be adjusted to lawful levels, ordering the cancellation of market tests, ordering the Postal Service to discontinue providing loss-making products, and requiring the Postal Service to make up for revenue shortfalls in competitive products.

“(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incidence of noncompliance. Fines resulting from the provision of competitive products shall be paid out of the Competitive Products Fund established in section 2011. All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.

“§ 3663. Appellate review

“A person, including the Postal Service, adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for the District of Columbia. The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.

“§ 3664. Enforcement of orders

“The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain the Postal Service from violating, any order issued by the Postal Regulatory Commission.”.

SEC. 206. CLERICAL AMENDMENT.

Chapter 36 of title 39, United States Code, is amended by striking the heading and analysis for such chapter and inserting the following:

“CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

“SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS

“Sec.
“3621. Applicability; definitions.
“3622. Modern rate regulation.
“[3623. Repealed.]
“[3624. Repealed.]
“[3625. Repealed.]
“3626. Reduced Rates.
“3627. Adjusting free rates.
“[3628. Repealed.]
“3629. Reduced rates for voter registration purposes.

“SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

“3631. Applicability; definitions and updates.
“3632. Action of the Governors.
“3633. Provisions applicable to rates for competitive products.
“3634. Assumed Federal income tax on competitive products.

“SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

“3641. Market tests of experimental products.
“3642. New products and transfers of products between the market-dominant and competitive categories of mail.

“SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

“3651. Annual reports by the Commission.
“3652. Annual reports to the Commission.
“3653. Annual determination of compliance.

“SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW

“3661. Postal Services.
“3662. Rate and service complaints.
“3663. Appellate review.
“3664. Enforcement of orders.

“SUBCHAPTER VI—GENERAL

“3681. Reimbursement.
“3682. Size and weight limits.
“3683. Uniform rates for books; films, other materials.
“3684. Limitations.
“3685. Filing of information relating to periodical publications.
“3686. Bonus authority.

“SUBCHAPTER VII—MODERN SERVICE STANDARDS

“3691. Establishment of modern service standards.”.

TITLE III—MODERN SERVICE STANDARDS

SEC. 301. ESTABLISHMENT OF MODERN SERVICE STANDARDS.

Chapter 36 of title 39, United States Code, as amended by this Act, is further amended by adding at the end the following:

“SUBCHAPTER VII—MODERN SERVICE STANDARDS

“§ 3691. Establishment of modern service standards

“(a) AUTHORITY GENERALLY.—Not later than 12 months after the date of enactment of this section, the Postal Service shall, in consultation with the Postal Regulatory Commission, by regulation establish (and may from time to time thereafter by regulation revise) a set of service standards for market-dominant products consistent with the Postal Service's universal service obligation as defined in sections 101 (a) and (b) and 403.

“(b) OBJECTIVES.—Such standards shall be designed to achieve the following objectives:

“(1) To enhance the value of postal services to both senders and recipients.

“(2) To preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining.

“(3) To reasonably assure Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices.

“(4) To provide a system of objective external performance measurements for each market-dominant product as a basis for measurement of Postal Service performance.

“(c) FACTORS.—In establishing or revising such standards, the Postal Service shall take into account—

“(1) the actual level of service that Postal Service customers receive under any service guidelines previously established by the Postal Service or service standards established under this section;

“(2) the degree of customer satisfaction with Postal Service performance in the acceptance, processing and delivery of mail;

“(3) the needs of Postal Service customers, including those with physical impairments;

“(4) mail volume and revenues projected for future years;

“(5) the projected growth in the number of addresses the Postal Service will be required to serve in future years;

“(6) the current and projected future cost of serving Postal Service customers;

“(7) the effect of changes in technology, demographics, and population distribution on the efficient and reliable operation of the postal delivery system; and

“(8) the policies of this title and such other factors as the Commission determines appropriate.

“(d) REVIEW.—The regulations promulgated pursuant to this section (and any revisions thereto) shall be subject to review upon complaint under sections 3662 and 3663.

SEC. 302. POSTAL SERVICE PLAN.

(a) IN GENERAL.—Within 6 months after the establishment of the service standards under section 3691 of title 39, United States Code, as added by this Act, the Postal Service shall, in consultation with the Postal Regulatory Commission, develop and submit to Congress a plan for meeting those standards.

(b) CONTENTS.—The plan under this section shall—

(1) establish performance goals;

(2) describe any changes to the Postal Service's processing, transportation, delivery, and retail networks necessary to allow the Postal Service to meet the performance goals;

(3) describe any changes to planning and performance management documents previously submitted to Congress to reflect new performance goals; and

(4) contain the matters relating to postal facilities provided under subsection (c).

(c) POSTAL FACILITIES.—

(1) FINDINGS.—Congress finds that—

(A) the Postal Service has more than 400 logistics facilities, separate from its post office network;

(B) as noted by the President's Commission on the United States Postal Service, the Postal Service has more facilities than it needs and the streamlining of this distribution network can pave the way for the potential consolidation of sorting facilities and the elimination of excess costs;

(C) the Postal Service has always revised its distribution network to meet changing conditions and is best suited to address its operational needs; and

(D) Congress strongly encourages the Postal Service to—

(i) expeditiously move forward in its streamlining efforts; and

(ii) keep unions, management associations, and local elected officials informed as an essential part of this effort and abide by any procedural requirements contained in the national bargaining agreements.

(2) IN GENERAL.—The Postal Service plan shall include a description of—

(A) the long-term vision of the Postal Service for rationalizing its infrastructure and workforce; and

(B) how the Postal Service intends to implement that vision.

(3) CONTENT OF FACILITIES PLAN.—The plan under this subsection shall include—

(A) a strategy for how the Postal Service intends to rationalize the postal facilities network and remove excess processing capacity and space from the network, including estimated timeframes, criteria, and processes to be used for making changes to the facilities network, and the process for engaging policy makers and the public in related decisions;

(B) a discussion of what impact any facility changes may have on the postal workforce and whether the Postal Service has sufficient flexibility to make needed workforce changes; and

(C) an identification of anticipated costs, cost savings, and other benefits associated with the infrastructure rationalization alternatives discussed in the plan.

(4) ANNUAL REPORTS.—

(A) IN GENERAL.—Not later than 90 days after the end of each fiscal year, the Postal Service shall prepare and submit a report to Congress on how postal decisions have impacted or will impact rationalization plans.

(B) CONTENTS.—Each report under this paragraph shall include—

(i) an account of actions taken during the preceding fiscal year to improve the efficiency and effectiveness of its processing, transportation, and distribution networks while preserving the timely delivery of postal services, including overall estimated costs and cost savings;

(ii) an account of actions taken to identify any excess capacity within its processing, transportation, and distribution networks and implement savings through realignment or consolidation of facilities including overall estimated costs and cost savings;

(iii) an estimate of how postal decisions related to mail changes, security, automation initiatives, worksharing, information technology systems, excess capacity, consolidating and closing facilities, and other areas will impact rationalization plans;

(iv) identification of any statutory or regulatory obstacles that prevented or will prevent or hinder the Postal Service from taking action to realign or consolidate facilities; and

(v) such additional topics and recommendations as the Postal Service considers appropriate.

(d) ALTERNATE RETAIL OPTIONS.—The Postal Service plan shall include plans to expand and market retail access to postal services, in addition to post offices, including—

(1) vending machines;

(2) the Internet;

(3) postage meter;

(4) stamps by mail;

(5) Postal Service employees on delivery routes;

(6) retail facilities in which overhead costs are shared with private businesses and other government agencies; or

(7) any other nonpost office access channel providing market retail access to postal services.

(e) REEMPLOYMENT ASSISTANCE AND RETIREMENT BENEFITS.—The Postal Service plan shall include—

(1) a plan under which reemployment assistance shall be afforded to employees displaced as a result of the automation of any of its functions or the closing and consolidation of any of its facilities; and

(2) a plan, developed in consultation with the Office of Personnel Management, to offer early retirement benefits.

(f) INSPECTOR GENERAL REPORT.—

(1) IN GENERAL.—Before submitting the plan under subsection (a) and each annual report under subsection (c) to Congress, the Postal Service shall submit the plan and each annual report to the Inspector General of the United States Postal Service in a timely manner to carry out this subsection.

(2) REPORT.—The Inspector General shall prepare a report describing the extent to which the Postal Service plan and each annual report under subsection (c)—

(A) are consistent with the continuing obligations of the Postal Service under title 39, United States Code;

(B) provide for the Postal Service to meet the service standards established under section 3691 of title 39, United States Code; and

(C) allow progress toward improving overall efficiency and effectiveness consistent with the need to maintain universal postal service at affordable rates.

(g) CONTINUED AUTHORITY.—Nothing in this section shall be construed to prohibit the Postal Service from implementing any change to its processing, transportation, delivery, and retail networks under any authority granted to the Postal Service for those purposes.

TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

SEC. 401. POSTAL SERVICE COMPETITIVE PRODUCTS FUND.

(a) PROVISIONS RELATING TO POSTAL SERVICE COMPETITIVE PRODUCTS FUND AND RELATED MATTERS.—

(1) IN GENERAL.—Chapter 20 of title 39, United States Code, is amended by adding at the end the following:

"§2011. Provisions relating to competitive products

"(a)(1) In this subsection, the term 'costs attributable' has the meaning given such term by section 3631.

"(2) There is established in the Treasury of the United States a revolving fund, to be called the Postal Service Competitive Products Fund, which shall be available to the Postal Service without fiscal year limitation for the payment of—

"(A) costs attributable to competitive products; and

"(B) all other costs incurred by the Postal Service, to the extent allocable to competitive products.

"(b) There shall be deposited in the Competitive Products Fund, subject to withdrawal by the Postal Service—

"(1) revenues from competitive products;

"(2) amounts received from obligations issued by Postal Service under subsection (e);

"(3) interest and dividends earned on investments of the Competitive Products Fund; and

"(4) any other receipts of the Postal Service (including from the sale of assets), to the extent allocable to competitive products.

"(c) If the Postal Service determines that the moneys of the Competitive Products Fund are in excess of current needs, the Postal Service may request the investment of such amounts as the Postal Service determines advisable by the Secretary of the Treasury in obligations of, or obligations guaranteed by, the Government of the United States, and, with the approval of the Secretary, in such other obligations or securities as the Postal Service determines appropriate.

"(d) With the approval of the Secretary of the Treasury, the Postal Service may deposit moneys of the Competitive Products Fund in any Federal Reserve bank, any depository for public funds, or in such other places and in such manner as the Postal Service and the Secretary may mutually agree.

"(e)(1)(A) Subject to the limitations specified in section 2005(a), the Postal Service is authorized to borrow money and to issue and sell such obligations as the Postal Service determines necessary to provide for competitive products and deposit such amounts in the Competitive Products Fund.

"(B) Subject to paragraph (5), any borrowings by the Postal Service under subparagraph (A) shall be supported and serviced by—

"(i) the revenues and receipts from competitive products and the assets related to the provision of competitive products (as determined under subsection (h)); or

"(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e).

"(2) The Postal Service may enter into binding covenants with the holders of such obligations, and with any trustee under any agreement entered into in connection with the issuance of such obligations with respect to—

"(A) the establishment of reserve, sinking, and other funds;

"(B) application and use of revenues and receipts of the Competitive Products Fund;

"(C) stipulations concerning the subsequent issuance of obligations or the execution of leases or lease purchases relating to properties of the Postal Service; and

"(D) such other matters as the Postal Service, considers necessary or desirable to enhance the marketability of such obligations.

"(3) Obligations issued by the Postal Service under this subsection—

"(A) shall be in such forms and denominations;

"(B) shall be sold at such times and in such amounts;

"(C) shall mature at such time or times;

"(D) shall be sold at such prices;

"(E) shall bear such rates of interest;

"(F) may be redeemable before maturity in such manner, at such times, and at such redemption premiums;

"(G) may be entitled to such relative priorities of claim on the assets of the Postal Service with respect to principal and interest payments; and

"(H) shall be subject to such other terms and conditions.

as the Postal Service determines.

"(4) Obligations issued by the Postal Service under this subsection—

"(A) shall be negotiable or nonnegotiable and bearer or registered instruments, as specified therein and in any indenture or covenant relating thereto;

"(B) shall contain a recital that such obligations are issued under this subsection, and such recital shall be conclusive evidence of the regularity of the issuance and sale of such obligations and of their validity;

"(C) shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of any officer or agency of the Government of the United States, and the Secretary of the Treasury or any other officer or agency having authority over or control of any such fiduciary, trust, or public funds, may at any time sell any of the obligations of the Postal Service acquired under this section;

"(D) shall not be exempt either as to principal or interest from any taxation now or hereafter imposed by any State or local taxing authority; and

"(E) except as provided in section 2006(c), shall not be obligations of, nor shall payment of the principal thereof or interest thereon be guaranteed by, the Government of the United States, and the obligations shall so plainly state.

"(5)(A) Subject to subparagraph (B), the Postal Service shall make payments of principal, or interest, or both on obligations issued under this subsection from—

"(i) revenues and receipts from competitive products and assets related to the provision of competitive products (as determined under subsection (h)); or

"(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available, including the audited statements required by section 2008(e).

"(B) Based on the audited financial statements for the most recently completed fiscal year, the total assets of the Competitive Products Fund may not be less than the amount determined by multiplying—

"(i) the quotient resulting from the total revenue of the Competitive Products Fund divided by the total revenue of the Postal Service; and

"(ii) the total assets of the Postal Service.

"(f) The receipts and disbursements of the Competitive Products Fund shall be accorded the same budgetary treatment as is accorded to receipts and disbursements of the Postal Service Fund under section 2009a.

"(g) A judgment (or settlement of a claim) against the Postal Service or the Government of the United States shall be paid out of the Competitive Products Fund to the extent that the judgment or claim arises out of activities of the Postal Service in the provision of competitive products.

"(h)(1)(A) The Secretary of the Treasury, in consultation with the Postal Service and an independent, certified public accounting firm and other advisors as the Secretary considers appropriate, shall develop recommendations regarding—

"(i) the accounting practices and principles that should be followed by the Postal Service with the objectives of—

"(I) identifying and valuing the assets and liabilities of the Postal Service associated with providing competitive products, including the capital and operating costs incurred by the Postal Service in providing such competitive products; and

"(II) subject to subsection (e)(5), preventing the subsidization of such products by market-dominant products; and

"(ii) the substantive and procedural rules that should be followed in determining the assumed Federal income tax on competitive products income of the Postal Service for any year (within the meaning of section 3634).

"(B) Not earlier than 6 months after the date of enactment of this section, and not later than 12 months after such date, the Secretary of the Treasury shall submit the recommendations under subparagraph (A) to the Postal Regulatory Commission.

"(2)(A) Upon receiving the recommendations of the Secretary of the Treasury under paragraph (1), the Commission shall give interested parties, including the Postal Service, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public, an opportunity to present their views on those recommendations through submission of written data, views, or arguments with or without opportunity for oral presentation, or in such other manner as the Commission considers appropriate.

"(B)(i) After due consideration of the views and other information received under subparagraph (A), the Commission shall by rule—

"(I) provide for the establishment and application of the accounting practices and principles which shall be followed by the Postal Service;

"(II) provide for the establishment and application of the substantive and procedural rules described under paragraph (1)(A)(ii); and

"(III) provide for the submission by the Postal Service to the Postal Regulatory Commission of annual and other periodic reports setting forth such information as the Commission may require.

"(ii) Final rules under this subparagraph shall be issued not later than 12 months after the date on which recommendations are submitted under paragraph (1) (or by such later date on which the Commission and the Postal Service may agree). The Commission may revise such rules.

"(C)(i) Reports described under subparagraph (B)(i)(III) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires.

"(ii) The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with such rules as the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service information under subparagraph (B)(i)(III) whenever it shall appear that—

"(I) the quality of the information furnished in those reports has become significantly inaccurate or can be significantly improved; or

"(II) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

"(D) A copy of each report described under subparagraph (B)(i)(III) shall be submitted by the Postal Service to the Secretary of the Treasury and the Inspector General of the United States Postal Service.

"(i)(1) The Postal Service shall submit an annual report to the Secretary of the Treasury concerning the operation of the Competitive Products Fund. The report shall address such matters as risk limitations, reserve balances, allocation or distribution of moneys, liquidity requirements, and measures to safeguard against losses.

"(2) A copy of the most recent report submitted under paragraph (1) shall be included in the annual report submitted by the Postal Regulatory Commission under section 3652(g).".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 20 of title 39, United States Code, is amended by adding after the item relating to section 2010 the following:

"2011. Provisions relating to competitive products.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 2001 of title 39, United States Code, is amended by striking "and" at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

"(2) COMPETITIVE PRODUCTS FUND.—The term 'Competitive Products Fund' means the Postal Service Competitive Products Fund established by section 2011; and".

(2) CAPITAL OF THE POSTAL SERVICE.—Section 2002(b) of title 39, United States Code, is amended by striking "Fund," and inserting "Fund and the balance in the Competitive Products Fund,".

(3) POSTAL SERVICE FUND.—

(A) PURPOSES FOR WHICH AVAILABLE.—Section 2003(a) of title 39, United States Code, is amended by striking "title." and inserting "title (other than any of the purposes, functions, or powers for which the Competitive Products Fund is available).".

(B) DEPOSITS.—Section 2003(b) of title 39, United States Code, is amended by striking "There" and inserting "Except as otherwise provided in section 2011, there".

(4) RELATIONSHIP BETWEEN THE TREASURY AND THE POSTAL SERVICE.—Section 2006 of title 39, United States Code, is amended—

(A) in subsection (a), in the first sentence, by inserting "or 2011" after "section 2005";

(B) in subsection (b)—

(i) in the first sentence, by inserting "under section 2005" before "in such amounts"; and

(ii) in the second sentence, by inserting "under section 2005" before "in excess of such amount."; and

(C) in subsection (c), by inserting "or 2011(e)(4)(E)" after "section 2005(d)(5)".

SEC. 402. ASSUMED FEDERAL INCOME TAX ON COMPETITIVE PRODUCTS INCOME.

Subchapter II of chapter 36 of title 39, United States Code, as amended by section 202, is amended by adding at the end the following:

"§3634. Assumed Federal income tax on competitive products income

"(a) DEFINITIONS.—For purposes of this section—

"(1) the term 'assumed Federal income tax on competitive products income' means the net income tax that would be imposed by chapter 1 of the Internal Revenue Code of 1986 on the Postal Service's assumed taxable income from competitive products for the year; and

"(2) the term 'assumed taxable income from competitive products', with respect to a year, refers to the amount representing what would be the taxable income of a corporation under the Internal Revenue Code of 1986 for the year, if—

"(A) the only activities of such corporation were the activities of the Postal Service allocable under section 2011(h) to competitive products; and

"(B) the only assets held by such corporation were the assets of the Postal Service allocable under section 2011(h) to such activities.

"(b) COMPUTATION AND TRANSFER REQUIREMENTS.—The Postal Service shall, for each year beginning with the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a)—

"(1) compute its assumed Federal income tax on competitive products income for such year; and

"(2) transfer from the Competitive Products Fund to the Postal Service Fund the amount of that assumed tax.

"(c) DEADLINE FOR TRANSFERS.—Any transfer required to be made under this section for a year shall be due on or before the January 15th next occurring after the close of such year.".

SEC. 403. UNFAIR COMPETITION PROHIBITED.

(a) SPECIFIC LIMITATIONS.—Chapter 4 of title 39, United States Code, is amended by adding after section 404 the following:

"§404a. Specific limitations

"(a) Except as specifically authorized by law, the Postal Service may not—

"(1) establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service;

"(2) compel the disclosure, transfer, or licensing of intellectual property to any third party (such as patents, copyrights, trademarks, trade secrets, and proprietary information); or

"(3) obtain information from a person that provides (or seeks to provide) any product, and then offer any postal service that uses or is based in whole or in part on such information, without the consent of the person providing that information, unless substantially the same information is obtained (or obtainable) from an independent source or is otherwise obtained (or obtainable).

"(b) The Postal Regulatory Commission shall prescribe regulations to carry out this section.

"(c) Any party (including an officer of the Commission representing the interests of the general public) who believes that the Postal Service has violated this section may bring a complaint in accordance with section 3662.".

(b) CONFORMING AMENDMENTS.—

(1) GENERAL POWERS.—Section 401 of title 39, United States Code, is amended by striking "The" and inserting "Subject to the provisions of section 404a, the".

(2) SPECIFIC POWERS.—Section 404(a) of title 39, United States Code, is amended by striking "Without" and inserting "Subject to the provisions of section 404a, but otherwise without".

(c) CLERICAL AMENDMENT.—The analysis for chapter 4 of title 39, United States Code, is amended by inserting after the item relating to section 404 the following:

"404a. Specific limitations.".

SEC. 404. SUITS BY AND AGAINST THE POSTAL SERVICE.

(a) IN GENERAL.—Section 409 of title 39, United States Code, is amended by striking subsections (d) and (e) and inserting the following:

"(d)(1) For purposes of the provisions of law cited in paragraphs (2)(A) and (2)(B), respectively, the Postal Service—

"(A) shall be considered to be a 'person', as used in the provisions of law involved; and

"(B) shall not be immune under any other doctrine of sovereign immunity from suit in Federal court by any person for any violation of any of those provisions of law by any officer or employee of the Postal Service.

"(2) This subsection applies with respect to—

"(A) the Act of July 5, 1946 (commonly referred to as the 'Trademark Act of 1946' (15 U.S.C. 1051 and following)); and

"(B) the provisions of section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair or deceptive acts or practices.

"(e)(1) To the extent that the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, engages in conduct with respect to any product which is not reserved to the United States under section 1696 of title 18, the Postal Service or other Federal agency (as the case may be)—

"(A) shall not be immune under any doctrine of sovereign immunity from suit in Federal court by any person for any violation of Federal law by such agency or any officer or employee thereof; and

"(B) shall be considered to be a person (as defined in subsection (a) of the first section of the Clayton Act) for purposes of—

"(i) the antitrust laws (as defined in such subsection); and

"(ii) section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

For purposes of the preceding sentence, any private carriage of mail allowable by virtue of section 601 shall not be considered a service reserved to the United States under section 1696 of title 18.

"(2) No damages, interest on damages, costs or attorney's fees may be recovered, and no criminal liability may be imposed, under the antitrust laws (as so defined) from any officer or employee of the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, acting in an official capacity.

"(3) This subsection shall not apply with respect to conduct occurring before the date of enactment of this subsection.

"(f) To the extent that the Postal Service engages in conduct with respect to the provision of competitive products, it shall be considered a person for the purposes of the Federal bankruptcy laws.

"(g)(1) Each building constructed or altered by the Postal Service shall be constructed or altered, to the maximum extent feasible as determined by the Postal Service, in compliance with 1 of the nationally recognized model building codes and with other applicable nationally recognized codes. To the extent practicable, model building codes should meet the voluntary consensus criteria established for codes and standards as required in the National Technology Transfer and Advancement Act of 1995 as defined in Office of Management and Budget Circular A1190. For purposes of life safety, the Postal Service shall continue to comply with the most current edition of the Life Safety Code of the National Fire Protection Association (NFPA 101).

"(2) Each building constructed or altered by the Postal Service shall be constructed or altered only after consideration of all requirements (other than procedural requirements) of zoning laws, land use laws, and applicable environmental laws of a State or subdivision of a State which would apply to the building if it were not a building constructed or altered by an establishment of the Government of the United States.

"(3) For purposes of meeting the requirements of paragraphs (1) and (2) with respect to a building, the Postal Service shall—

"(A) in preparing plans for the building, consult with appropriate officials of the State or political subdivision, or both, in which the building will be located;

"(B) upon request, submit such plans in a timely manner to such officials for review by such officials for a reasonable period of time not exceeding 30 days; and

"(C) permit inspection by such officials during construction or alteration of the building, in accordance with the customary schedule of inspections for construction or alteration of buildings in the locality, if such officials provide to the Postal Service—

"(i) a copy of such schedule before construction of the building is begun; and

"(ii) reasonable notice of their intention to conduct any inspection before conducting such inspection.

Nothing in this subsection shall impose an obligation on any State or political subdivision to take any action under the preceding sentence, nor shall anything in this subsection require the Postal Service or any of its contractors to pay for any action taken by a State or political subdivision to carry out this subsection (including reviewing plans, carrying out on-site inspections, issuing building permits, and making recommendations).

"(4) Appropriate officials of a State or a political subdivision of a State may make recommendations to the Postal Service concerning measures necessary to meet the requirements of paragraphs (1) and (2). Such officials may also make recommendations to the Postal Service concerning measures which should be taken in the construction or alteration of the building to take into account local conditions. The Postal Service shall give due consideration to any such recommendations.

"(5) In addition to consulting with local and State officials under paragraph (3), the Postal Service shall establish procedures for soliciting, assessing, and incorporating local community input on real property and land use decisions.

"(6) For purposes of this subsection, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

"(h)(1) Notwithstanding any other provision of law, legal representation may not be furnished by the Department of Justice to the Postal Service in any action, suit, or proceeding arising, in whole or in part, under any of the following:

"(A) Subsection (d) or (e) of this section.

"(B) Subsection (f) or (g) of section 504 (relating to administrative subpoenas by the Postal Regulatory Commission).

"(C) Section 3663 (relating to appellate review).

The Postal Service may, by contract or otherwise, employ attorneys to obtain any legal representation that it is precluded from obtaining from the Department of Justice under this paragraph.

"(2) In any circumstance not covered by paragraph (1), the Department of Justice shall, under section 411, furnish the Postal Service such legal representation as it may require, except that, with the prior consent of the Attorney General, the Postal Service may, in any such circumstance, employ attorneys by contract or otherwise to conduct litigation brought by or against the Postal Service or its officers or employees in matters affecting the Postal Service.

"(3)(A) In any action, suit, or proceeding in a court of the United States arising in whole or in part under any of the provisions of law referred to in subparagraph (B) or (C) of paragraph (1), and to which the Commission is not otherwise a party, the Commission shall be permitted to appear as a party on its own motion and as of right.

"(B) The Department of Justice shall, under such terms and conditions as the Commission and the Attorney General shall consider appropriate, furnish the Commission such legal representation as it may require in connection with any such action, suit, or proceeding, except that, with the prior consent of the Attorney General, the Commission may employ attorneys by contract or otherwise for that purpose.

"(i) A judgment against the Government of the United States arising out of activities of the Postal Service shall be paid by the Postal Service out of any funds available to the Postal Service, subject to the restriction specified in section 2011(g).".

(b) TECHNICAL AMENDMENT.—Section 409(a) of title 39, United States Code, is amended by striking "Except as provided in section 3628 of this title," and inserting "Except as otherwise provided in this title,".

SEC. 405. INTERNATIONAL POSTAL ARRANGEMENTS.

(a) IN GENERAL.—Section 407 of title 39, United States Code, is amended to read as follows:

"§ 407. International postal arrangements

"(a) It is the policy of the United States—

"(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

"(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

"(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services; and

"(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

"(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and shall have the power to conclude postal treaties and conventions, except that the Secretary may not conclude any postal treaty or convention if such treaty or convention would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal services, or any other person.

"(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary—

"(A) shall coordinate with other agencies as appropriate, and in particular, should consider the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

"(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

"(C) shall maintain continuing liaison with the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives;

"(D) shall maintain appropriate liaison with both representatives of the Postal Service and representatives of users and private providers of

international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

"(E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

"(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (D) of paragraph (2).

"(c) Before concluding any postal treaty or convention that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

"(d) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services as it deems appropriate, except that—

"(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be binding under international law; and

"(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

"(e)(1) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

"(2) In exercising the authority under subsection (b) to conclude new postal treaties and conventions related to international postal services and to renegotiate such treaties and conventions, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this paragraph.

"(3) The provisions of this subsection shall take effect 6 months after the date of enactment of this subsection or such earlier date as the Customs Service may determine in writing.".

(b) Effective Date.—Notwithstanding any provision of the amendment made by subsection (a), the authority of the United States Postal Service to establish the rates of postage or other charges on mail matter conveyed between the United States and other countries shall remain available to the Postal Service until—

(1) with respect to market-dominant products, the date as of which the regulations promulgated under section 3622 of title 39, United States Code (as amended by section 201(a)) take effect; and

(2) with respect to competitive products, the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

TITLE V—GENERAL PROVISIONS

SEC. 501. QUALIFICATION AND TERM REQUIREMENTS FOR GOVERNORS.

(a) Qualifications.—

(1) In general.—Section 202(a) of title 39, United States Code, is amended by striking "(a)" and inserting "(a)(1)" and by striking the fourth sentence and inserting the following: "The Governors shall represent the public interest generally, and shall be chosen solely on the basis of their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size. Experience in the fields of law and accounting shall be considered in making appointments of Governors. The Governors shall not be representatives of specific interests using the Postal Service, and may be removed only for cause.".

(2) Applicability.—The amendment made by paragraph (1) shall not affect the appointment or tenure of any person serving as a Governor of the United States Postal Service under an appointment made before the date of enactment of this Act however, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment. The requirement set forth in the fourth sentence of section 202(a)(1) of title 39, United States Code (as amended by subsection (a)) shall be met beginning not later than 9 years after the date of enactment of this Act.

(b) Consultation Requirement.—Section 202(a) of title 39, United States Code, is amended by adding at the end the following:

"(2) In selecting the individuals described in paragraph (1) for nomination for appointment to the position of Governor, the President should consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate.".

(c) 5-Year Terms.—

(1) In general.—Section 202(b) of title 39, United States code, is amended in the first sentence by striking "9 years" and inserting "5 years".

(2) Applicability.—

(A) Continuation by incumbents.—The amendment made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act and such person may continue to serve the remainder of the applicable term.

(B) Vacancy by incumbent before 5 years of service.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served less than 5 years of that term, the resulting vacancy in office shall be treated as a vacancy in a 5-year term.

(C) Vacancy by incumbent after 5 years of service.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served 5 years or more of that term, that term shall be deemed to have been a 5-year term beginning on its commencement date for purposes of determining vacancies in office. Any appointment to the vacant office shall be for a 5-year term beginning at the end of the original 9-year term determined without regard to the deeming under the preceding sentence. Nothing in this subparagraph shall be construed to affect any action or authority of any Governor or the Board of Governors during any portion of a 9-year term deemed to be 5-year term under this subparagraph.

(d) Term Limitation.—

(1) In general.—Section 202(b) of title 39, United States Code, is amended—

(A) by inserting "(1)" after "(b)"; and

(B) by adding at the end the following:

"(2) No person may serve more than 3 terms as a Governor.".

(2) Applicability.—The amendments made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act with respect to the term which that person is serving on that date. Such person may continue to serve the remainder of the applicable term, after which the amendments made by paragraph (1) shall apply.

SEC. 502. OBLIGATIONS.

(a) Purposes for Which Obligations May Be Issued.—The first sentence of section 2005(a)(1) of title 39, United States Code, is amended by striking "title." and inserting "title, other than any of the purposes for which the corresponding authority is available to the Postal Service under section 2011.".

(b) Increase Relating to Obligations Issued for Capital Improvements.—Section 2005(a)(1) of title 39, United States Code, is amended by striking the third sentence.

(c) Amounts Which May Be Pledged.—

(1) Obligations to which provisions apply.—The first sentence of section 2005(b) of title 39, United States Code, is amended by striking "such obligations," and inserting "obligations issued by the Postal Service under this section,".

(2) Assets, revenues, and receipts to which provisions apply.—Subsection (b) of section 2005 of title 39, United States Code, is amended by striking "(b)" and inserting "(b)(1)", and by adding at the end the following:

"(2) Notwithstanding any other provision of this section—

"(A) the authority to pledge assets of the Postal Service under this subsection shall be available only to the extent that such assets are not related to the provision of competitive products (as determined under section 2011(h) or, for purposes of any period before accounting practices and principles under section 2011(h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)); and

"(B) any authority under this subsection relating to the pledging or other use of revenues or receipts of the Postal Service shall be available only to the extent that they are not revenues or receipts of the Competitive Products Fund.".

SEC. 503. PRIVATE CARRIAGE OF LETTERS.

(a) In General.—Section 601 of title 39, United States Code, is amended by striking subsection (b) and inserting the following:

"(b) A letter may also be carried out of the mails when—

"(1) the amount paid for the private carriage of the letter is at least the amount equal to 6 times the rate then currently charged for the 1st ounce of a single-piece first class letter;

"(2) the letter weighs at least 12½ ounces; or

"(3) such carriage is within the scope of services described by regulations of the United States Postal Service (as in effect on July 1, 2001) that permit private carriage by suspension of the operation of this section (as then in effect).

"(c) Any regulations necessary to carry out this section shall be promulgated by the Postal Regulatory Commission.".

(b) Effective Date.—This section shall take effect on the date as of which the regulations

promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

SEC. 504. RULEMAKING AUTHORITY.

Paragraph (2) of section 401 of title 39, United States Code, is amended to read as follows:

"(2) to adopt, amend, and repeal such rules and regulations, not inconsistent with this title, as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this title;".

SEC. 505. NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.

(a) LABOR DISPUTES.—Section 1207 of title 39, United States Code, is amended to read as follows:

"§ 1207. Labor disputes

"(a) If there is a collective-bargaining agreement in effect, no party to such agreement shall terminate or modify such agreement unless the party desiring such termination or modification serves written notice upon the other party to the agreement of the proposed termination or modification not less than 90 days prior to the expiration date thereof, or not less than 90 days prior to the time it is proposed to make such termination or modification. The party serving such notice shall notify the Federal Mediation and Conciliation Service of the existence of a dispute within 45 days after such notice, if no agreement has been reached by that time.

"(b) If the parties fail to reach agreement or to adopt a procedure providing for a binding resolution of a dispute by the expiration date of the agreement in effect, or the date of the proposed termination or modification, the Director of the Federal Mediation and Conciliation Service shall within 10 days appoint a mediator of nationwide reputation and professional stature, and who is also a member of the National Academy of Arbitrators. The parties shall cooperate with the mediator in an effort to reach an agreement and shall meet and negotiate in good faith at such times and places that the mediator, in consultation with the parties, shall direct.

"(c)(1) If no agreement is reached within 60 days after the expiration or termination of the agreement or the date on which the agreement became subject to modification under subsection (a) of this section, or if the parties decide upon arbitration but do not agree upon the procedures therefore, an arbitration board shall be established consisting of 3 members, 1 of whom shall be selected by the Postal Service, 1 by the bargaining representative of the employees, and the third by the 2 thus selected. If either of the parties fails to select a member, or if the members chosen by the parties fail to agree on the third person within 5 days after their first meeting, the selection shall be made from a list of names provided by the Director. This list shall consist of not less then 9 names of arbitrators of nationwide reputation and professional nature, who are also members of the National Academy of Arbitrators, and whom the Director has determined are available and willing to serve.

"(2) The arbitration board shall give the parties a full and fair hearing, including an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel or by other representative as they may elect. Decisions of the arbitration board shall be conclusive and binding upon the parties. The arbitration board shall render its decision within 45 days after its appointment.

"(3) Costs of the arbitration board and mediation shall be shared equally by the Postal Service and the bargaining representative.

"(d) In the case of a bargaining unit whose recognized collective-bargaining representative does not have an agreement with the Postal Service, if the parties fail to reach the agreement within 90 days after the commencement of collective bargaining, a mediator shall be appointed in accordance with the terms in subsection (b) of this section, unless the parties have previously agreed to another procedure for a binding resolution of their differences. If the parties fail to reach agreement within 180 days after the commencement of collective bargaining, and if they have not agreed to another procedure for binding resolution, an arbitration board shall be established to provide conclusive and binding arbitration in accordance with the terms of subsection (c) of this section.".

(b) NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.—Except as otherwise provided by the amendment made by subsection (a), nothing in this Act shall restrict, expand, or otherwise affect any of the rights, privileges, or benefits of either employees of or labor organizations representing employees of the United States Postal Service under chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations within the United States Postal Service, or any collective bargaining agreement.

(c) FREE MAILING PRIVILEGES CONTINUE UNCHANGED.—Nothing in this Act or any amendment made by this Act shall affect any free mailing privileges accorded under section 3217 or sections 3403 through 3406 of title 39, United States Code.

SEC. 506. BONUS AUTHORITY.

Chapter 36 of title 39, United States Code, is amended by inserting after section 3685 the following:

"§ 3686. Bonus authority

"(a) IN GENERAL.—The Postal Service may establish 1 or more programs to provide bonuses or other rewards to officers and employees of the Postal Service in senior executive or equivalent positions to achieve the objectives of this chapter.

"(b) LIMITATION ON TOTAL COMPENSATION.—

"(1) IN GENERAL.—Under any such program, the Postal Service may award a bonus or other reward in excess of the limitation set forth in the last sentence of section 1003(a), if such program has been approved under paragraph (2). Any such award or bonus may not cause the total compensation of such officer or employee to exceed the total annual compensation payable to the Vice President under section 104 of title 3 as of the end of the calendar year in which the bonus or award is paid.

"(2) APPROVAL PROCESS.—If the Postal Service wishes to have the authority, under any program described in subsection (a), to award bonuses or other rewards in excess of the limitation set forth in the last sentence of section 1003(a)—

"(A) the Postal Service shall make an appropriate request to the Board of Governors of the Postal Service in such form and manner as the Board requires; and

"(B) the Board of Governors shall approve any such request if the Board certifies, for the annual appraisal period involved, that the performance appraisal system for affected officers and employees of the Postal Service (as designed and applied) makes meaningful distinctions based on relative performance.

"(3) REVOCATION AUTHORITY.—If the Board of Governors of the Postal Service finds that a performance appraisal system previously approved under paragraph (2)(B) does not (as designed and applied) make meaningful distinctions based on relative performance, the Board may revoke or suspend the authority of the Postal Service to continue a program approved under paragraph (2) until such time as appropriate corrective measures have, in the judgment of the Board, been taken.

"(c) REPORTING REQUIREMENT RELATING TO BONUSES OR OTHER REWARDS.—Included in its comprehensive statement under section 2401(e) for any period shall be—

"(1) the name of each person receiving a bonus or other reward during such period which would not have been allowable but for the provisions of subsection (b);

"(2) the amount of the bonus or other reward; and

"(3) the amount by which the limitation referred to in subsection (b)(1) was exceeded as a result of such bonus or other reward.".

TITLE VI—ENHANCED REGULATORY COMMISSION

SEC. 601. REORGANIZATION AND MODIFICATION OF CERTAIN PROVISIONS RELATING TO THE POSTAL REGULATORY COMMISSION.

(a) TRANSFER AND REDESIGNATION.—Title 39, United States Code, is amended—

(1) by inserting after chapter 4 the following:

"CHAPTER 5—POSTAL REGULATORY COMMISSION

"Sec.
"501. Establishment.
"502. Commissioners.
"503. Rules; regulations; procedures.
"504. Administration.
"505. Officer of the Postal Regulatory Commission representing the general public.

"§ 501. Establishment

"The Postal Regulatory Commission is an independent establishment of the executive branch of the Government of the United States.

"§ 502. Commissioners

"(a) The Postal Regulatory Commission is composed of 5 Commissioners, appointed by the President, by and with the advice and consent of the Senate. The Commissioners shall be chosen solely on the basis of their technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration, and may be removed by the President only for cause. Each individual appointed to the Commission shall have the qualifications and expertise necessary to carry out the enhanced responsibilities accorded Commissioners under the Postal Accountability and Enhancement Act. Not more than 3 of the Commissioners may be adherents of the same political party.

"(b) No Commissioner shall be financially interested in any enterprise in the private sector of the economy engaged in the delivery of mail matter.

"(c) A Commissioner may continue to serve after the expiration of his term until his successor has qualified, except that a Commissioner may not so continue to serve for more than 1 year after the date upon which his term otherwise would expire under subsection (f).

"(d) One of the Commissioners shall be designated as Chairman by, and shall serve in the position of Chairman at the pleasure of, the President.

"(e) The Commissioners shall by majority vote designate a Vice Chairman of the Commission. The Vice Chairman shall act as Chairman of the Commission in the absence of the Chairman.

"(f) The Commissioners shall serve for terms of 6 years.";

(2) by striking, in subchapter I of chapter 36 (as in effect before the amendment made by section 201(c)), the heading for such subchapter I and all that follows through section 3602;

(3) by redesignating sections 3603 and 3604 as sections 503 and 504, respectively, and transferring such sections to the end of chapter 5 (as inserted by paragraph (1)); and

(4) by adding after such section 504 the following:

"§505. Officer of the Postal Regulatory Commission representing the general public

"The Postal Regulatory Commission shall designate an officer of the Postal Regulatory Commission in all public proceedings who shall represent the interests of the general public.".

(b) APPLICABILITY.—The amendment made by subsection (a)(1) shall not affect the appointment or tenure of any person serving as a Commissioner on the Postal Regulatory Commission (as so redesignated by section 604) under an appointment made before the date of enactment of this Act or any nomination made before that date, but, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment.

(c) CLERICAL AMENDMENT.—The analysis for part I of title 39, United States Code, is amended by inserting after the item relating to chapter 4 the following:

"5. Postal Regulatory Commission ... 501"

SEC. 602. AUTHORITY FOR POSTAL REGULATORY COMMISSION TO ISSUE SUBPOENAS.

Section 504 of title 39, United States Code (as so redesignated by section 601) is amended by adding at the end the following:

"(f)(1) Any Commissioner of the Postal Regulatory Commission, any administrative law judge appointed by the Commission under section 3105 of title 5, and any employee of the Commission designated by the Commission may administer oaths, examine witnesses, take depositions, and receive evidence.

"(2) The Chairman of the Commission, any Commissioner designated by the Chairman, and any administrative law judge appointed by the Commission under section 3105 of title 5 may, with respect to any proceeding conducted by the Commission under this title or to obtain information to be used to prepare a report under this title—

"(A) issue subpoenas requiring the attendance and presentation of testimony by, or the production of documentary or other evidence in the possession of, any covered person; and

"(B) order the taking of depositions and responses to written interrogatories by a covered person.

The written concurrence of a majority of the Commissioners then holding office shall, with respect to each subpoena under subparagraph (A), be required in advance of its issuance.

"(3) In the case of contumacy or failure to obey a subpoena issued under this subsection, upon application by the Commission, the district court of the United States for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(4) For purposes of this subsection, the term 'covered person' means an officer, employee, agent, or contractor of the Postal Service.

"(g)(1) If the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission under a subpoena issued under subsection (f), or otherwise at the request of the Commission in connection with any proceeding or other purpose under this title, contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission, in writing, of its determination (and the reasons therefor).

"(2) Except as provided in paragraph (3), no officer or employee of the Commission may, with respect to any information as to which the Commission has been notified under paragraph (1)—

"(A) use such information for purposes other than the purposes for which it is supplied; or

"(B) permit anyone who is not an officer or employee of the Commission to have access to any such information.

"(3)(A) Paragraph (2) shall not prohibit the Commission from publicly disclosing relevant information in furtherance of its duties under this title, provided that the Commission has adopted regulations under section 553 of title 5, that establish a procedure for according appropriate confidentiality to information identified by the Postal Service under paragraph (1). In determining the appropriate degree of confidentiality to be accorded information identified by the Postal Service under paragraph (1), the Commission shall balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.

"(B) Paragraph (2) shall not prevent the Commission from requiring production of information in the course of any discovery procedure established in connection with a proceeding under this title. The Commission shall, by regulations based on rule 26(c) of the Federal Rules of Civil Procedure, establish procedures for ensuring appropriate confidentiality for information furnished to any party.".

SEC. 603. APPROPRIATIONS FOR THE POSTAL REGULATORY COMMISSION.

(a) AUTHORIZATION OF APPROPRIATIONS.—Subsection (d) of section 504 of title 39, United States Code (as so redesignated by section 601) is amended to read as follows:

"(d) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Postal Regulatory Commission. In requesting an appropriation under this subsection for a fiscal year, the Commission shall prepare and submit to the Congress under section 2009 a budget of the Commission's expenses, including expenses for facilities, supplies, compensation, and employee benefits.".

(b) BUDGET PROGRAM.—

(1) IN GENERAL.—The next to last sentence of section 2009 of title 39, United States Code, is amended to read as follows: "The budget program shall also include separate statements of the amounts which (1) the Postal Service requests to be appropriated under subsections (b) and (c) of section 2401, (2) the Office of Inspector General of the United States Postal Service requests to be appropriated, out of the Postal Service Fund, under section 8G(f) of the Inspector General Act of 1978, and (3) the Postal Regulatory Commission requests to be appropriated, out of the Postal Service Fund, under section 504(d) of this title.".

(2) CONFORMING AMENDMENT.—Section 2003(e)(1) of title 39, United States Code, is amended by striking the first sentence and inserting the following: "The Fund shall be available for the payment of (A) all expenses incurred by the Postal Service in carrying out its functions as provided by law, subject to the same limitation as set forth in the parenthetical matter under subsection (a); (B) all expenses of the Postal Regulatory Commission, subject to the availability of amounts appropriated under section 504(d); and (C) all expenses of the Office of Inspector General, subject to the availability of amounts appropriated under section 8G(f) of the Inspector General Act of 1978.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 2002.

(2) SAVINGS PROVISION.—The provisions of title 39, United States Code, that are amended by this section shall, for purposes of any fiscal year before the first fiscal year to which the amendments made by this section apply, continue to apply in the same way as if this section had never been enacted.

SEC. 604. REDESIGNATION OF THE POSTAL RATE COMMISSION.

(a) AMENDMENTS TO TITLE 39, UNITED STATES CODE.—Title 39, United States Code, is amended in sections 404, 503 and 504 (as so redesignated by section 601), 1001 and 1002, by striking "Postal Rate Commission" each place it appears and inserting "Postal Regulatory Commission";

(b) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended in sections 104(1), 306(f), 2104(b), 3371(3), 5314 (in the item relating to Chairman, Postal Rate Commission), 5315 (in the item relating to Members, Postal Rate Commission), 5514(a)(5)(B), 7342(a)(1)(A), 7511(a)(1)(B)(ii), 8402(c)(1), 8423(b)(1)(B), and 8474(c)(4) by striking "Postal Rate Commission" and inserting "Postal Regulatory Commission".

(c) AMENDMENT TO THE ETHICS IN GOVERNMENT ACT OF 1978.—Section 101(f)(6) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking "Postal Rate Commission" and inserting "Postal Regulatory Commission".

(d) AMENDMENT TO THE REHABILITATION ACT OF 1973.—Section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791(b)) is amended by striking "Postal Rate Office" and inserting "Postal Regulatory Commission".

(e) AMENDMENT TO TITLE 44, UNITED STATES CODE.—Section 3502(5) of title 44, United States Code, is amended by striking "Postal Rate Commission" and inserting "Postal Regulatory Commission".

(f) OTHER REFERENCES.—Whenever a reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, document, or other record of the United States to the Postal Rate Commission, such reference shall be considered a reference to the Postal Regulatory Commission.

SEC. 605. FINANCIAL TRANSPARENCY.

(a) IN GENERAL.—Section 101 of title 39, United States Code, is amended—

(1) by redesignating subsections (d) through (g) as subsections (e) through (h), respectively; and

(2) by inserting after subsection (c) the following:

"(d) As an independent establishment of the executive branch of the Government of the United States, the Postal Service shall be subject to a high degree of transparency to ensure fair treatment of customers of the Postal Service's market-dominant products and companies competing with the Postal Service's competitive products.".

(b) FINANCIAL REPORTING REQUIREMENTS AND ENFORCEMENT POWERS APPLICABLE TO POSTAL SERVICE.—Section 503 of title 39, United States Code (as so redesignated by section 601 and 604) is amended by—

(1) inserting "(a)" before "The Postal Regulatory Commission shall promulgate"; and

(2) adding at the end the following:

"(b)(1) Beginning with the first full fiscal year following the date of enactment of the Postal Accountability and Enhancement Act, the Postal Service shall file with the Postal Regulatory Commission —

"(A) within 35 days after the end of each fiscal quarter, a quarterly report containing the information prescribed in Form 10-Q of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form;

"(B) within 60 days after the end of each fiscal year, an annual report containing the information prescribed in Form 10-K of the Securities and Exchange Commission under section 13 of *the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form; and*

"(C) periodic reports within the time frame and containing the information prescribed in Form 8-K of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form.

"(2) For purposes of preparing the reports required under paragraph (1), the Postal Service shall be deemed to be the registrant described in the Securities and Exchange Commission forms, and references contained in such forms to Securities and Exchange Commission regulations are applicable.

"(3) For purposes of preparing the reports required under paragraph (1), the Postal Service shall comply with the rules prescribed by the Securities and Exchange Commission implementing section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262; Public Law 107-204) beginning with fiscal year 2007 and in each fiscal year thereafter.

"(c)(1) The reports required under subsection (b)(1)(B) shall include, with respect to the financial obligations of the Postal Service under chapters 83, 84, and 89 of title 5 for retirees of the Postal Service—

"(A) the funded status of such obligations of the Postal Service;

"(B) components of the net change in the fund balances and obligations and the nature and cause of any significant changes;

"(C) components of net periodic costs;

"(D) cost methods and assumptions underlying the relevant actuarial valuations;

"(E) the effect of a one-percentage point increase in the assumed health care cost trend rate for each future year on the service and interest costs components of net periodic cost and the accumulated obligation of the Postal Service under chapter 89 of title 5 for retirees of the Postal Service;

"(F) actual contributions to and payments from the funds for the years presented and the estimated future contributions and payments for each of the following 5 years;

"(G) the composition of plan assets reflected in the fund balances; and

"(H) the assumed rate of return on fund balances and the actual rates of return for the years presented.

"(2)(A) Beginning with the fiscal year 2007 and in each fiscal year thereafter, for purposes of the reports required under subsection (b)(1) (A) and (B), the Postal Service shall include segment reporting.

"(B) The Postal Service shall determine the appropriate segment reporting under subparagraph (A), after consultation with the Postal Regulatory Commission.

"(d) For purposes of the annual reports required under subsection (b)(1)(B), the Postal Service shall obtain an opinion from an independent auditor on whether the information listed under subsection (c) is fairly stated in all material respects, either in relation to the basic financial statements as a whole or on a standalone basis.

"(e) The Postal Regulatory Commission shall have access to the audit documentation and any other supporting matter of the Postal Service and its independent auditor in connection with any information submitted under subsection (b)(1)(B).

"(f) The Postal Regulatory Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this section whenever it shall appear that the data—

"(1) have become significantly inaccurate;

"(2) can be significantly improved; or

"(3) are not cost beneficial.".

TITLE VII—EVALUATIONS

SEC. 701. ASSESSMENTS OF RATEMAKING, CLASSIFICATION, AND OTHER PROVISIONS.

(a) IN GENERAL.—The Postal Regulatory Commission shall, at least every 3 years, submit a report to the President and Congress concerning—

(1) the operation of the amendments made by this Act; and

(2) recommendations for any legislation or other measures necessary to improve the effectiveness or efficiency of the postal laws of the United States.

(b) POSTAL SERVICE VIEWS.—A report under this section shall be submitted only after reasonable opportunity has been afforded to the Postal Service to review the report and to submit written comments on the report. Any comments timely received from the Postal Service under the preceding sentence shall be attached to the report submitted under subsection (a).

SEC. 702. REPORT ON UNIVERSAL POSTAL SERVICE AND THE POSTAL MONOPOLY.

(a) REPORT BY THE POSTAL REGULATORY COMMISSION.—

(1) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Postal Regulatory Commission shall submit a report to the President and Congress on universal postal service and the postal monopoly in the United States (in this section referred to as "universal service and the postal monopoly"), including the monopoly on the delivery of mail and on access to mailboxes.

(2) CONTENTS.—The report under this subsection shall include—

(A) a comprehensive review of the history and development of universal service and the postal monopoly, including how the scope and standards of universal service and the postal monopoly have evolved over time for the Nation and its urban and rural areas;

(B) the scope and standards of universal service and the postal monopoly provided under current law (including sections 101 and 403 of title 39, United States Code), and current rules, regulations, policy statements, and practices of the Postal Service;

(C) a description of any geographic areas, populations, communities (including both urban and rural communities), organizations, or other groups or entities not currently covered by universal service or that are covered but that are receiving services deficient in scope or quality or both; and

(D) the scope and standards of universal service and the postal monopoly likely to be required in the future in order to meet the needs and expectations of the United States public, including all types of mail users, based on discussion of such assumptions, alternative sets of assumptions, and analyses as the Postal Service considers plausible.

(b) RECOMMENDED CHANGES TO UNIVERSAL SERVICE AND THE MONOPOLY.—The Postal Regulatory Commission shall include in the report under subsection (a), and in all reports submitted under section 701 of this Act—

(1) any recommended changes to universal service and the postal monopoly as the Commission considers appropriate, including changes that the Commission may implement under current law and changes that would require changes to current law, with estimated effects of the recommendations on the service, financial condition, rates, and security of mail provided by the Postal Service;

(2) with respect to each recommended change described under paragraph (1)—

(A) an estimate of the costs of the Postal Service attributable to the obligation to provide universal service under current law; and

(B) an analysis of the likely benefit of the current postal monopoly to the ability of the Postal Service to sustain the current scope and standards of universal service, including estimates of the financial benefit of the postal monopoly to the extent practicable, under current law; and

(3) such additional topics and recommendations as the Commission considers appropriate, with estimated effects of the recommendations on the service, financial condition, rates, and the security of mail provided by the Postal Service.

SEC. 703. STUDY ON EQUAL APPLICATION OF LAWS TO COMPETITIVE PRODUCTS.

(a) IN GENERAL.—The Federal Trade Commission shall prepare and submit to the President and Congress, and to the Postal Regulatory Commission, within 1 year after the date of enactment of this Act, a comprehensive report identifying Federal and State laws that apply differently to the United States Postal Service with respect to the competitive category of mail (within the meaning of section 102 of title 39, United States Code, as amended by section 101) and similar products provided by private companies.

(b) RECOMMENDATIONS.—The Federal Trade Commission shall include such recommendations as it considers appropriate for bringing such legal discrimination to an end, and in the interim, to account under section 3633 of title 39, United States Code (as added by this Act), for the net economic advantages provided by those laws.

(c) CONSULTATION.—In preparing its report, the Federal Trade Commission shall consult with the United States Postal Service, the Postal Regulatory Commission, other Federal agencies, mailers, private companies that provide delivery services, and the general public, and shall append to such report any written comments received under this subsection.

(d) COMPETITIVE PRODUCT REGULATION.—The Postal Regulatory Commission shall take into account the recommendations of the Federal Trade Commission in promulgating or revising the regulations required under section 3633 of title 39, United States Code.

SEC. 704. REPORT ON POSTAL WORKPLACE SAFETY AND WORKPLACE-RELATED INJURIES.

(a) REPORT BY THE INSPECTOR GENERAL.—

(1) IN GENERAL.—Not later than 6 months after the enactment of this Act, the Inspector General of the United States Postal Service shall submit a report to Congress and the Postal Service that—

(A) details and assesses any progress the Postal Service has made in improving workplace safety and reducing workplace-related injuries nationwide; and

(B) identifies opportunities for improvement that remain with respect to such improvements and reductions.

(2) CONTENTS.—The report under this subsection shall also—

(A) discuss any injury reduction goals established by the Postal Service;

(B) describe the actions that the Postal Service has taken to improve workplace safety and reduce workplace-related injuries, and assess how successful the Postal Service has been in meeting its injury reduction goal; and

(C) identify areas where the Postal Service has failed to meet its injury reduction goals, explain the reasons why these goals were not met, and identify opportunities for making further progress in meeting these goals.

(b) REPORT BY THE POSTAL SERVICE.—

(1) REPORT TO CONGRESS.—Not later than 6 months after receiving the report under subsection (a), the Postal Service shall submit a report to Congress detailing how it plans to improve workplace safety and reduce workplace-

related injuries nationwide, including goals and metrics.

(2) Problem areas.—The report under this subsection shall also include plans, developed in consultation with the Inspector General and employee representatives, including representatives of each postal labor union and management association, for addressing the problem areas identified by the Inspector General in the report under subsection (a)(2)(C).

SEC. 705. STUDY ON RECYCLED PAPER.

(a) In General.—Within 12 months after the date of enactment of this Act, the Government Accountability Office shall study and submit to the Congress, the Board of Governors of the Postal Service, and to the Postal Regulatory Commission a report concerning—

(1) the economic and environmental efficacy of establishing rate incentives for mailers linked to the use of recycled paper;

(2) a description of the accomplishments of the Postal Service in each of the preceding 5 years involving recycling activities, including the amount of annual revenue generated and savings achieved by the Postal Service as a result of its use of recycled paper and other recycled products and its efforts to recycle undeliverable and discarded mail and other materials; and

(3) additional opportunities that may be available for the United States Postal Service to engage in recycling initiatives and the projected costs and revenues of undertaking such opportunities.

(b) Recommendations.—The report shall include recommendations for any administrative or legislative actions that may be appropriate.

TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING

SEC. 801. SHORT TITLE.

This title may be cited as the "Postal Civil Service Retirement and Health Benefits Funding Amendments of 2004".

SEC. 802. CIVIL SERVICE RETIREMENT SYSTEM.

(a) In General.—Chapter 83 of title 5, United States Code, is amended—

(1) in section 8334(a)(1)(B), by striking clause (ii) and inserting the following:

"(ii) In the case of an employee of the United States Postal Service, no amount shall be contributed under this subparagraph."; and

(2) by amending section 8348(h) to read as follows:

"(h)(1) In this subsection, the term 'Postal surplus or supplemental liability' means the estimated difference, as determined by the Office, between—

"(A) the actuarial present value of all future benefits payable from the Fund under this subchapter to current or former employees of the United States Postal Service and attributable to civilian employment with the United States Postal Service; and

"(B) the sum of—

"(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;

"(ii) that portion of the Fund balance, as of the date the Postal surplus or supplemental liability is determined, attributable to payments to the Fund by the United States Postal Service and its employees, minus benefit payments attributable to civilian employment with the United States Postal Service, plus the earnings on such amounts while in the Fund; and

"(iii) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

"(2)(A) Not later than June 15, 2006, the Office shall determine the Postal surplus or supplemental liability, as of September 30, 2005. If that result is a surplus, the amount of the surplus shall be transferred to the Postal Service Retiree Health Benefits Fund established under section 8909a by June 30, 2006. If the result is a supplemental liability, the Office shall establish an amortization schedule, including a series of annual installments commencing September 30, 2006, which provides for the liquidation of such liability by September 30, 2043.

"(B) The Office shall redetermine the Postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2006, through the fiscal year ending September 30, 2038. If the result is a surplus, that amount shall remain in the Fund until distribution is authorized under subparagraph (C), and any prior amortization schedule for payments shall be terminated. If the result is a supplemental liability, the Office shall establish a new amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.

"(C) As of the close of the fiscal years ending September 30, 2015, 2025, 2035, and 2039, if the result is a surplus, that amount shall be transferred to the Postal Service Retiree Health Benefits Fund, and any prior amortization schedule for payments shall be terminated.

"(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

"(E) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.

"(3) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.".

(b) Credit Allowed for Military Service.—In the application of section 8348(g)(2) of title 5, United States Code, for the fiscal year 2006, the Office of Personnel Management shall include, in addition to the amount otherwise computed under that paragraph, the amounts that would have been included for the fiscal years 2003 through 2005 with respect to credit for military service of former employees of the United States Postal Service as though the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) had not been enacted, and the Secretary of the Treasury shall make the required transfer to the Civil Service Retirement and Disability Fund based on that amount.

(c) Review.—

(1) In general.—

(A) Request for review.—Notwithstanding any other provision of this section (including any amendment made by this section), any determination or redetermination made by the Office of Personnel Management under this section (including any amendment made by this section) shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this subsection.

(B) Report.—Upon receiving a request under subparagraph (A), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of pension obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this paragraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

(2) Reconsideration.—Upon receiving the report from the Commission under paragraph (1), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

SEC. 803. HEALTH INSURANCE.

(a) In General.—

(1) Funding.—Chapter 89 of title 5, United States Code, is amended—

(A) in section 8906(g)(2)(A), by striking "shall be paid by the United States Postal Service." and inserting "shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service."; and

(B) by inserting after section 8909 the following:

"§ 8909a. Postal Service Retiree Health Benefit Fund

"(a) There is in the Treasury of the United States a Postal Service Retiree Health Benefits Fund which is administered by the Office of Personnel Management.

"(b) The Fund is available without fiscal year limitation for payments required under section 8906(g)(2)(A).

"(c) The Secretary of the Treasury shall immediately invest, in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. Such investments shall be made in the same manner as investments for the Civil Service Retirement and Disability Fund under section 8348.

"(d)(1) Not later than June 30, 2006, and by June 30 of each succeeding year, the Office shall compute the net present value of the future payments required under section 8906(g)(2)(A) and attributable to the service of Postal Service employees during the most recently ended fiscal year.

"(2)(A) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year, the Office shall recompute the difference between—

"(i) the net present value of the excess of future payments required under section 8906(g)(2)(A) for current and future United States Postal Service annuitants as of the end of the fiscal year ending on September 30 of that year; and

"(ii)(I) the value of the assets of the Postal Retiree Health Benefits Fund as of the end of the fiscal year ending on September 30 of that year; and

"(II) the net present value computed under paragraph (1).

"(B) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year shall recompute, an amortization schedule including a series of annual installments which provide for the liquidation by September 30, 2045, or within 15 years, whichever is later, of the net present value determined under subparagraph (A), including interest at the rate used in that computation.

"(3) Not later than September 30, 2006, and by September 30 of each succeeding year, the United States Postal Service shall pay into such Fund—

"(A) the net present value computed under paragraph (1); and

"(B) the annual installment computed under paragraph (2)(B).

"(4) Computations under this subsection shall be made consistent with the assumptions and methodology used by the Office for financial reporting under subchapter II of chapter 35 of title 31.

"(5)(A)(i) Any computation or other determination of the Office under this subsection shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this paragraph.

"(ii) Upon receiving a request under clause (i), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of healthcare insurance obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this subparagraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

"(B) Upon receiving the report under subparagraph (A), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

"(6) After consultation with the United States Postal Service, the Office shall promulgate any regulations the Office determines necessary under this subsection.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 89 of title 5, United States Code, is amended by inserting after the item relating to section 8909 the following:

"8909a. Postal Service Retiree Health Benefits Fund.".

(b) REVIEW.—

(1) IN GENERAL.—

(A) REQUEST FOR REVIEW.—Any regulation established under section 8909a(d)(5) of title 5, United States Code (as added by subsection (a)), shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this paragraph.

(B) REPORT.—Upon receiving a request under subparagraph (A), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of healthcare insurance obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this paragraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

(2) RECONSIDERATION.—Upon receiving the report under paragraph (1), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

(c) TRANSITIONAL ADJUSTMENT FOR FISCAL YEAR 2006.—For fiscal year 2006, the amounts paid by the Postal Service in Government contributions under section 8906(g)(2)(A) of title 5, United States Code, for fiscal year 2006 contributions shall be deducted from the initial payment otherwise due from the Postal Service to the Postal Service Retiree Health Benefits Fund under section 8909a(d)(3) of such title as added by this section.

SEC. 804. REPEAL OF DISPOSITION OF SAVINGS PROVISION.

Section 3 of the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) is repealed.

SEC. 805. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided under subsection (b), this title shall take effect on October 1, 2005.

(b) TERMINATION OF EMPLOYER CONTRIBUTION.—The amendment made by paragraph (1) of section 802(a) shall take effect on the first day of the first pay period beginning on or after October 1, 2005.

TITLE IX—COMPENSATION FOR WORK INJURIES

SEC. 901. TEMPORARY DISABILITY; CONTINUATION OF PAY.

(a) TIME OF ACCRUAL OF RIGHT.—Section 8117 of title 5, United States Code, is amended—

(1) by striking "An employee" and inserting "(a) An employee other than a Postal Service employee"; and

(2) by adding at the end the following:

"(b) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability, except as provided under paragraph (3) of subsection (a). A Postal Service employee may use annual leave, sick leave, or leave without pay during that 3-day period, except that if the disability exceeds 14 days or is followed by permanent disability, the employee may have their sick leave or annual leave reinstated or receive pay for the time spent on leave without pay under this section.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 8118(b)(1) of title 5, United States Code, is amended to read as follows:

"(1) without a break in time, except as provided under section 8117(b), unless controverted under regulations of the Secretary".

SEC. 902. DISABILITY RETIREMENT FOR POSTAL EMPLOYEES.

(a) TOTAL DISABILITY.—Section 8105 of title 5, United States Code, is amended—

(1) in subsection (a), by adding at the end the following: "This section applies to a Postal Service employee, except as provided under subsection (c)."; and

(2) by adding at the end the following:

"(c)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(l)(1) of the Social Security Act (42 U.S.C. 416(l)(1)).

"(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of the Postal Accountability and Enhancement Act, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for total disability is converted to 50 percent of the monthly pay of the employee on the later of—

"(A) the date on which the injured employee reaches retirement age; or

"(B) 1 year after the employee begins receiving compensation.".

(b) PARTIAL DISABILITY.—Section 8106 of title 5, United States Code, is amended—

(1) in subsection (a), by adding at the end the following: "This section applies to a Postal Service employee, except as provided under subsection (d)."; and

(2) by adding at the end the following:

"(d)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(l)(1) of the Social Security Act (42 U.S.C. 416(l)(1)).

"(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of this subsection, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for partial disability is converted to 50 percent of the difference between the monthly pay of an employee and the monthly wage earning capacity of the employee after the beginning of partial disability on the later of—

"(A) the date on which the injured employee reaches retirement age; or

"(B) 1 year after the employee begins receiving compensation.".

TITLE X—MISCELLANEOUS

SEC. 1001. EMPLOYMENT OF POSTAL POLICE OFFICERS.

Section 404 of title 39, United States Code (as amended by this Act), is further amended by adding at the end the following:

"(d) The Postal Service may employ guards for all buildings and areas owned or occupied by the Postal Service or under the charge and control of the Postal Service, and may give such guards, with respect to such property, any of the powers of special policemen provided under section 1315 of title 40. The Postmaster General, or the designee of the Postmaster General, may take any action that the Secretary of Homeland Security may take under section 1315 of title 40, with respect to that property.

SEC. 1002. OBSOLETE PROVISIONS.

(a) REPEAL.—

(1) IN GENERAL.—Chapter 52 of title 39, United States Code, is repealed.

(2) CONFORMING AMENDMENTS.—(A) Section 5005(a) of title 39, United States Code, is amended—

(i) by striking paragraph (1), and by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively; and

(ii) in paragraph (3) (as so designated by clause (i)), by striking "(as defined in section 5201(6) of this title)".

(B) Section 5005(b) of such title 39 is amended by striking "(a)(4)" each place it appears and inserting "(a)(3)".

(C) Section 5005(c) of such title 39 is amended by striking "by carrier or person under subsection (a)(1) of this section, by contract under subsection (a)(4) of this section, or" and inserting "by contract under subsection (a)(3) of this section or".

(b) ELIMINATING RESTRICTION ON LENGTH OF CONTRACTS.—(1) Section 5005(b)(1) of title 39, United States Code, is amended by striking "(or where the Postal Service determines that special conditions or the use of special equipment warrants, not in excess of 6 years)" and inserting "(or such longer period of time as may be determined by the Postal Service to be advisable or appropriate)".

(2) Section 5402(d) of such title 39 is amended by striking "for a period of not more than 4 years".

(3) Section 5605 of such title 39 is amended by striking "for periods of not in excess of 4 years".

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part V of title 39, United States Code, is amended by repealing the item relating to chapter 52.

SEC. 1003. REDUCED RATES.

Section 3626 of title 39, United States Code, is amended—

(1) in subsection (a), by striking all before paragraph (4) and inserting the following:

"(a)(1) Except as otherwise provided in this section, rates of postage for a class of mail or kind of mailer under former section 4358, 4452(b), 4452(c), 4554(b), or 4554(c) of this title shall be established in accordance with section 3622.

"(2) For the purpose of this subsection, the term 'regular-rate category' means any class of

mail or kind of mailer, other than a class or kind referred to in section 2401(c).

"(3) Rates of postage for a class of mail or kind of mailer under former section 4358(a) through (c) of this title shall be established so that postage on each mailing of such mail reflects its preferred status as compared to the postage for the most closely corresponding regular-rate category mailing.";

(2) in subsection (g), by adding at the end the following:

"(3) For purposes of this section and former section 4358(a) through (c) of this title, those copies of an issue of a publication entered within the county in which it is published, but distributed outside such county on postal carrier routes originating in the county of publication, shall be treated as if they were distributed within the county of publication.

"(4)(A) In the case of an issue of a publication, any number of copies of which are mailed at the rates of postage for a class of mail or kind of mailer under former section 4358(a) through (c) of this title, any copies of such issue which are distributed outside the county of publication (excluding any copies subject to paragraph (3)) shall be subject to rates of postage provided for under this paragraph.

"(B) The rates of postage applicable to mail under this paragraph shall be established in accordance with section 3622.

"(C) This paragraph shall not apply with respect to an issue of a publication unless the total paid circulation of such issue outside the county of publication (not counting recipients of copies subject to paragraph (3)) is less than 5,000."; and

(3) by adding at the end the following:

"(n) In the administration of this section, matter that satisfies the circulation standards for requester publications shall not be excluded from being mailed at the rates for mail under former section 4358 solely because such matter is designed primarily for free circulation or for circulation at nominal rates, or fails to meet the requirements of former section 4354(a)(5).".

SEC. 1004. SENSE OF CONGRESS REGARDING POSTAL SERVICE PURCHASING REFORM.

It is the sense of Congress that the Postal Service should—

(1) ensure the fair and consistent treatment of suppliers and contractors in its current purchasing policies and any revision or replacement of such policies, such as through the use of competitive contract award procedures, effective dispute resolution mechanisms, and socioeconomic programs; and

(2) implement commercial best practices in Postal Service purchasing policies to achieve greater efficiency and cost savings as recommended in July 2003 by the President's Commission on the United States Postal Service, in a manner that is compatible with the fair and consistent treatment of suppliers and contractors, as befitting an establishment in the United States Government.

Mr. FRIST. Mr. President, I ask unanimous consent that the amendments at the desk be agreed to, the committee-reported amendment, as amended, be agreed to, and the bill, as amended, be read a third time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments (Nos. 2750, 2751, 2752, and 2753) were agreed to, as follows:

AMENDMENT NO. 2750

(Purpose: To modify provisions relating to objectives, unused rate adjustment authority, transition rules, rate and service complaints, and for other purposes)

On page 133, line 25, insert before the colon ", each of which shall be applied in conjunction with the others".

On page 134, between lines 21 and 22, insert the following:

"(8) To establish and maintain a just and reasonable schedule for rates and classifications, however the objective under this paragraph shall not be construed to prohibit the Postal Service from making changes of unequal magnitude within, between, or among classes of mail.

On page 135, strike lines 1 through 3.

On page 135, line 4, strike "(2)" and insert "(1)".

On page 135, line 9, strike "(3)" and insert "(2)".

On page 135, line 15, strike "(4)" and insert "(3)".

On page 135, line 19, strike "(5)" and insert "(4)".

On page 135, line 22, strike "(6)" and insert "(5)".

On page 136, line 1, strike "(7)" and insert "(6)".

On page 136, line 5, strike "(8)" and insert "(7)".

On page 136, line 8, strike "(9)" and insert "(8)".

On page 136, line 12, strike "(10)" and insert "(9)".

On page 136, line 16, strike "(11)" and insert "(10)".

On page 136, line 19, strike "(12)" and insert "(11)".

On page 136, line 21, strike "(13)" and insert "(12)".

On page 137, line 1, strike "(14)" and insert "(13)".

On page 138, line 19, strike "The" and insert "Except as provided under subparagraph (C), the".

On page 139, strike lines 8 through 17, and insert the following:

"(C) USE OF UNUSED RATE AUTHORITY.—

"(i) DEFINITION.—In this subparagraph, the term 'unused rate adjustment authority' means the difference between—

"(I) the maximum amount of a rate adjustment that the Postal Service is authorized to make in any year subject to the annual limitation under paragraph (1); and

"(II) the amount of the rate adjustment the Postal Service actually makes in that year.

"(ii) AUTHORITY.—Subject to clause (iii), the Postal Service may use any unused rate adjustment authority for any of the 5 years following the year such authority occurred.

"(iii) LIMITATIONS.—In exercising the authority under clause (ii) in any year, the Postal Service—

"(I) may use unused rate adjustment authority from more than 1 year;

"(II) may use any part of the unused rate adjustment authority from any year;

"(III) shall use the unused rate adjustment authority from the earliest year such authority first occurred and then each following year; and

"(IV) for any class or service, may not exceed the annual limitation under paragraph (1) by more than 2 percentage points.

On page 142, strike lines 5 through 10, and insert the following:

"(f) TRANSITION RULE.—For the 1-year period beginning on the date of enactment of this section, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of enactment of this section. Proceedings initiated to consider a request for a recommended decision filed by the Postal Service during that 1-year period shall be completed in accordance with subchapter II of chapter 36 of this title and implementing regulations, as in effect before the date of enactment of this section.".

On page 162, line 10, strike all through page 164, line 9, and insert the following:

"§ 3662. Rate and service complaints

"(a) IN GENERAL.—Any interested party (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of the provisions of chapter 1 (except section 101(c)), sections 401, 403, 404, 404a, 601, or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

"(b) PROMPT RESPONSE REQUIRED.—

"(1) IN GENERAL.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a)—

"(A) either—

"(i) upon a finding that such complaint raises substantial and material issues of fact or law, begin proceedings on such complaint; or

"(ii) issue an order dismissing the complaint; and

"(B) with respect to any action taken under subparagraph (A) (i) or (ii), issue a written statement setting forth the bases of its determination.

"(2) TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.—For purposes of section 3663, any complaint under subsection (a) on which the Commission fails to act in the time and manner required by paragraph (1) shall be treated in the same way as if it had been dismissed under an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

"(c) ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.—If the Postal Regulatory Commission finds upon clear and convincing evidence the complaint to be justified, it shall order that the Postal Service take such action as is necessary to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance.

"(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incidence of noncompliance. Fines resulting from the provision of competitive products shall be paid from the Competitive Products Fund established in section 2011. All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.

On page 168, line 11, strike "Commission" and insert "Postal Service".

AMENDMENT NO. 2751

(Purpose: To provide for procedures by the Postal Service to give notice on certain actions affecting communities)

On page 171, line 6, strike "and".

On page 171, line 10, strike the period and insert "; and".

On page 171, between lines 10 and 11, insert the following:

(D) procedures that the Postal Service will use to—

(i) provide adequate public notice to communities potentially affected by a proposed rationalization decision;

(ii) make available, upon request, any data, analyses, or other information considered by the Postal Service in making the proposed decision;

(iii) afford affected persons ample opportunity to provide input on the proposed decision; and

(iv) take such comments into account in making a final decision.

On page 172, between lines 22 and 23, insert the following:

(5) EXISTING EFFORTS.—Effective on the date of enactment of this Act, the Postal Service may not close or consolidate any processing or logistics facilities without using procedures for public notice and input consistent with those described under paragraph (3)(D).

AMENDMENT NO. 2752

(Purpose: To modify qualifications and terms of Governors of the United States Postal Service)

On page 202, lines 10 through 14, strike "demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size. Experience in the fields of law and accounting shall be considered in making appointments of Governors." and insert "experience in the fields of public service, law or accounting or on their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size."

On page 203, line 14, strike "5" and insert "7".

On page 203, line 17, strike "5" and insert "7".

On page 205, line 9, strike "3" and insert "2".

AMENDMENT NO. 2753

(Purpose: To modify contracts for the transportation of mail by air, and for other purposes)

On page 256, add after line 3, the following:

SEC. 1005. CONTRACTS FOR TRANSPORTATION OF MAIL BY AIR.

(a) DEFINITIONS.—Section 5402(a) of title 39, United States Code, is amended—

(1) in paragraph (4), by striking "(g)(1)(D)(i)" and inserting "(g)(1)(A)(iv)(I)";

(2) in paragraph (5), by striking "(g)(1)(D)(i)" and inserting "(g)(1)(A)(iv)(I)";

(3) in paragraph (6), by striking "only";

(4) in paragraph (8), by striking "rates paid to a bush carrier" and inserting "linehaul rates and a single terminal handling payment at a bush terminal handling rate paid to a bush carrier";

(5) in paragraph (11), by striking "(g)(1)(D)(ii)" and inserting "(g)(1)(A)(iv)(II)";

(6) in paragraph (13)—

(A) in subparagraph (A)—

(i) by striking "clause (i) or (ii) of subsection (g)(1)(D)" and inserting "subclause (I) or (II) of subsection (g)(1)(A)(iv)"; and

(ii) by striking "and" after the semicolon;

(B) in subparagraph (B), by adding "and" after the semicolon; and

(C) by adding at the end the following:

"(C) is not comprised of previously qualified existing mainline carriers as a result of merger or sale;";

(7) in paragraph (18), by striking "bush routes" and inserting "routes"; and

(8) in paragraph (22), by striking "bush routes" and inserting "routes".

(b) NONPRIORITY BYPASS MAIL.—Section 5402(g) of title 39, United States Code, is amended—

(1) in paragraph (2)(C), by inserting "or a destination city" after "acceptance point and a hub";

(2) in paragraph (3), by adding at the end the following:

"(C) When a new hub results from a change in a determination under subparagraph (B), mail tender from that hub during the 12-month period beginning on the effective date of that change shall be based on the passenger and freight shares to the destinations of the affected hub or hubs resulting in the new hub."; and

(3) in paragraph (5)(A)(i), by striking "(g)(1)(D)(ii)" and inserting "(g)(1)(A)(iv)(II)".

(c) EQUITABLE TENDER.—Section 5402(h) of title 39, United States Code, is amended—

(1) in paragraph (1), by inserting "bush" after "providing scheduled";

(2) by striking paragraph (3) and inserting the following:

"(3)(A) Except as provided under subparagraph (C), a new or existing 121 bush passenger carrier qualified under subsection (g)(1) shall be exempt from the requirements under paragraphs (1)(B) and (2)(A) on a city pair route for a period which shall extend for—

"(i) 1 year;

"(ii) 1 year in addition to the extension under clause (i) if, as of the conclusion of the first year, such carrier has been providing not less than 5 percent of the passenger service on that route (as calculated under paragraph (5)); and

"(iii) 1 year in addition to the extension under clause (ii) if, as of the conclusion of the second year, such carrier has been providing not less than 10 percent of the passenger service on that route (as calculated under paragraph (5)).

"(B)(i) The first 3 121 bush passenger carriers entitled to the exemptions under subparagraph (A) on any city pair route shall divide no more than an additional 10 percent of the mail, apportioned equally, comprised of no more than—

"(I) 5 percent of the share of each qualified passenger carrier servicing that route that is not a 121 bush passenger carrier; and

"(II) 5 percent of the share of each nonpassenger carrier servicing that route that transports 25 percent or more of the total nonmail freight under subsection (i)(1).

"(ii) Additional 121 bush passenger carriers entering service on that city pair route after the first 3 shall not receive any additional mail share.

"(iii) If any 121 bush passenger carrier on a city pair route receiving an additional share of the mail under clause (ii) discontinues service on that route, the 121 bush passenger carrier that has been providing the longest period of service on that route and is otherwise eligible but is not receiving a share by reason of clause (ii), shall receive the share of the carrier discontinuing service.

"(C) Notwithstanding the requirements of this subsection, if only 1 passenger carrier or aircraft is qualified to be tendered nonpriority bypass mail as a passenger carrier or aircraft on a city pair route in the State of Alaska, the Postal Service shall tender 20 percent of the nonpriority bypass mail described under paragraph (1) to the passenger carrier or aircraft providing at least 10 percent of the passenger service on such route.";

(3) in paragraph (5)(A)—

(A) by striking "(i)" after "(A)"; and

(B) by striking clause (ii).

(d) PERCENT OF NONMAIL FREIGHT.—Section 5402(i)(6) of title 39, United States Code, is amended—

(1) by striking "(A)" after "(6)"; and

(2) by striking subparagraph (B).

(e) PERCENT OF TENDER RATE.—Section 5402(j)(3)(B) of title 39, United States Code, is amended by striking "bush routes in the State of Alaska" and inserting "routes served exclusively by bush carriers in the State of Alaska".

(f) DETERMINATION OF RATES.—Section 5402(k) of title 39, United States Code, is amended by striking paragraph (5).

(g) TECHNICAL AND CONFORMING AMENDMENT.—Section 5402(p)(3) of title 39, United States Code, is amended by striking "(g)(1)(D)" and inserting "(g)(1)(A)(iv)".

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided under paragraph (2), this section shall take effect on the date of enactment of this Act.

(2) EQUITABLE TENDER.—Subsection (c) shall take effect on July 1, 2006.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. FRIST. Mr. President, I further ask unanimous consent that the Senate now proceed to Calendar No. 176, H.R. 22.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 22) to reform the postal laws of the United States.

Mr. FRIST. Mr. President, I now ask consent that all after the enacting clause be stricken, the text of S. 662, as amended, be inserted in lieu thereof, and the bill, as amended, be read a third time and passed, and the Senate insist on its amendment, request a conference with the House, and the Chair be authorized to appoint conferees with a ratio of 5 to 3.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 22), as amended, was read the third time and passed, as follows:

H.R. 22

Resolved, That the bill from the House of Representatives (H.R. 22) entitled "An Act to reform the postal laws of the United States.", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Postal Accountability and Enhancement Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—DEFINITIONS; POSTAL SERVICES

Sec. 101. Definitions.
Sec. 102. Postal Services.

TITLE II—MODERN RATE REGULATION

Sec. 201. Provisions relating to market-dominant products.
Sec. 202. Provisions relating to competitive products.

Sec. 203. Provisions relating to experimental and new products.
Sec. 204. Reporting requirements and related provisions.
Sec. 205. Complaints; appellate review and enforcement.
Sec. 206. Clerical amendment.
TITLE III—MODERN SERVICE STANDARDS
Sec. 301. Establishment of modern service standards.
Sec. 302. Postal service plan.
TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION
Sec. 401. Postal Service Competitive Products Fund.
Sec. 402. Assumed Federal income tax on competitive products income.
Sec. 403. Unfair competition prohibited.
Sec. 404. Suits by and against the Postal Service.
Sec. 405. International postal arrangements.
TITLE V—GENERAL PROVISIONS
Sec. 501. Qualification and term requirements for Governors.
Sec. 502. Obligations.
Sec. 503. Private carriage of letters.
Sec. 504. Rulemaking authority.
Sec. 505. Noninterference with collective bargaining agreements.
Sec. 506. Bonus authority.
TITLE VI—ENHANCED REGULATORY COMMISSION
Sec. 601. Reorganization and modification of certain provisions relating to the Postal Regulatory Commission.
Sec. 602. Authority for Postal Regulatory Commission to issue subpoenas.
Sec. 603. Authorization of appropriations from the Postal Service Fund.
Sec. 604. Redesignation of the Postal Rate Commission.
Sec. 605. Financial transparency.
TITLE VII—EVALUATIONS
Sec. 701. Assessments of ratemaking, classification, and other provisions.
Sec. 702. Report on universal postal service and the postal monopoly.
Sec. 703. Study on equal application of laws to competitive products.
Sec. 704. Report on postal workplace safety and workplace-related injuries.
Sec. 705. Study on recycled paper.
TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING
Sec. 801. Short title.
Sec. 802. Civil Service Retirement System.
Sec. 803. Health insurance.
Sec. 804. Repeal of disposition of savings provision.
Sec. 805. Effective dates.
TITLE IX—COMPENSATION FOR WORK INJURIES
Sec. 901. Temporary disability; continuation of pay.
Sec. 902. Disability retirement for postal employees.
TITLE X—MISCELLANEOUS
Sec. 1001. Employment of postal police officers.
Sec. 1002. Obsolete provisions.
Sec. 1003. Reduced rates.
Sec. 1004. Sense of Congress regarding Postal Service purchasing reform.
Sec. 1005. Contracts for transportation of mail by air.

TITLE I—DEFINITIONS; POSTAL SERVICES

SEC. 101. DEFINITIONS.

Section 102 of title 39, United States Code, is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a semicolon, and by adding at the end the following:

"(5) 'postal service' refers to the physical delivery of letters, printed matter, or packages weighing up to 70 pounds, including physical acceptance, collection, sorting, transportation, or other functions ancillary thereto;

"(6) 'product' means a postal service with a distinct cost or market characteristic for which a rate or rates are applied;

"(7) 'rates', as used with respect to products, includes fees for postal services;

"(8) 'market-dominant product' or 'product in the market-dominant category of mail' means a product subject to subchapter I of chapter 36; and

"(9) 'competitive product' or 'product in the competitive category of mail' means a product subject to subchapter II of chapter 36; and

"(10) 'year', as used in chapter 36 (other than subchapters I and VI thereof), means a fiscal year.".

SEC. 102. POSTAL SERVICES.

(a) IN GENERAL.—Section 404 of title 39, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and by redesignating paragraphs (7) through (9) as paragraphs (6) through (8), respectively; and

(2) by adding at the end the following:

"(c) Except as provided in section 411, nothing in this title shall be considered to permit or require that the Postal Service provide any special nonpostal or similar services.".

(b) CONFORMING AMENDMENTS.—(1) Section 1402(b)(1)(B)(ii) of the Victims of Crime Act of 1984 (98 Stat. 2170; 42 U.S.C. 10601(b)(1)(B)(ii)) is amended by striking "404(a)(8)" and inserting "404(a)(7)".

(2) Section 2003(b)(1) of title 39, United States Code, is amended by striking "and nonpostal".

TITLE II—MODERN RATE REGULATION

SEC. 201. PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS.

(a) IN GENERAL.—Chapter 36 of title 39, United States Code, is amended by striking sections 3621 and 3622 and inserting the following:

"§ 3621. Applicability; definitions

"(a) APPLICABILITY.—This subchapter shall apply with respect to—

"(1) first-class mail letters and sealed parcels;

"(2) first-class mail cards;

"(3) periodicals;

"(4) standard mail;

"(5) single-piece parcel post;

"(6) media mail;

"(7) bound printed matter;

"(8) library mail;

"(9) special services; and

"(10) single-piece international mail,

subject to any changes the Postal Regulatory Commission may make under section 3642.

"(b) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

"§ 3622. Modern rate regulation

"(a) AUTHORITY GENERALLY.—The Postal Regulatory Commission shall, within 12 months after the date of enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a modern system for regulating rates and classes for market-dominant products.

"(b) OBJECTIVES.—Such system shall be designed to achieve the following objectives, each of which shall be applied in conjunction with the others:

"(1) To reduce the administrative burden and increase the transparency of the ratemaking process while affording reasonable opportunities for interested parties to participate in that process.

"(2) To create predictability and stability in rates.

"(3) To maximize incentives to reduce costs and increase efficiency.

"(4) To enhance mail security and deter terrorism by promoting secure, sender-identified mail.

"(5) To allow the Postal Service pricing flexibility, including the ability to use pricing to promote intelligent mail and encourage increased mail volume during nonpeak periods.

"(6) To assure adequate revenues, including retained earnings, to maintain financial stability and meet the service standards established under section 3691.

"(7) To allocate the total institutional costs of the Postal Service equitably between market-dominant and competitive products.

"(8) To establish and maintain a just and reasonable schedule for rates and classifications, however the objective under this paragraph shall not be construed to prohibit the Postal Service from making changes of unequal magnitude within, between, or among classes of mail.

"(c) FACTORS.—In establishing or revising such system, the Postal Regulatory Commission shall take into account—

"(1) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery;

"(2) the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to each class or type of mail service through reliably identified causal relationships plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;

"(3) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;

"(4) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;

"(5) the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;

"(6) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;

"(7) the importance of pricing flexibility to encourage increased mail volume and operational efficiency;

"(8) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;

"(9) the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;

"(10) the desirability of special classifications from the point of view of both the user and of the Postal Service;

"(11) the educational, cultural, scientific, and informational value to the recipient of mail matter;

"(12) the need for the Postal Service to increase its efficiency and reduce its costs, including infrastructure costs, to help maintain high quality, affordable, universal postal service; and

"(13) the policies of this title as well as such other factors as the Commission determines appropriate.

"(d) REQUIREMENTS.—

"(1) IN GENERAL.—The system for regulating rates and classes for market-dominant products shall—

"(A) include an annual limitation on the percentage changes in rates to be set by the Postal

Regulatory Commission that will be equal to the change in the Consumer Price Index for All Urban Consumers unadjusted for seasonal variation over the most recent available 12-month period preceding the date the Postal Service files notice of its intention to increase rates;

"(B) establish a schedule whereby rates, when necessary and appropriate, would change at regular intervals by predictable amounts;

"(C) not later than 45 days before the implementation of any adjustment in rates under this section—

"(i) require the Postal Service to provide public notice of the adjustment;

"(ii) provide an opportunity for review by the Postal Regulatory Commission;

"(iii) provide for the Postal Regulatory Commission to notify the Postal Service of any noncompliance of the adjustment with the limitation under subparagraph (A); and

"(iv) require the Postal Service to respond to the notice provided under clause (iii) and describe the actions to be taken to comply with the limitation under subparagraph (A);

"(D) establish procedures whereby the Postal Service may adjust rates not in excess of the annual limitations under subparagraph (A); and

"(E) notwithstanding any limitation set under subparagraphs (A) and (C), establish procedures whereby rates may be adjusted on an expedited basis due to unexpected and extraordinary circumstances.

"(2) Limitations.—

"(A) Classes of mail.—Except as provided under subparagraph (C), the annual limitations under paragraph (1)(A) shall apply to a class of mail, as defined in the Domestic Mail Classification Schedule as in effect on the date of enactment of the Postal Accountability and Enhancement Act.

"(B) Rounding of rates and fees.—Nothing in this subsection shall preclude the Postal Service from rounding rates and fees to the nearest whole integer, if the effect of such rounding does not cause the overall rate increase for any class to exceed the Consumer Price Index for All Urban Consumers.

"(C) Use of unused rate authority.—

"(i) Definition.—In this subparagraph, the term 'unused rate adjustment authority' means the difference between—

"(I) the maximum amount of a rate adjustment that the Postal Service is authorized to make in any year subject to the annual limitation under paragraph (1); and

"(II) the amount of the rate adjustment the Postal Service actually makes in that year.

"(ii) Authority.—Subject to clause (iii), the Postal Service may use any unused rate adjustment authority for any of the 5 years following the year such authority occurred.

"(iii) Limitations.—In exercising the authority under clause (ii) in any year, the Postal Service—

"(I) may use unused rate adjustment authority from more than 1 year;

"(II) may use any part of the unused rate adjustment authority from any year;

"(III) shall use the unused rate adjustment authority from the earliest year such authority first occurred and then each following year; and

"(IV) for any class or service, may not exceed the annual limitation under paragraph (1) by more than 2 percentage points.

"(e) Workshare Discounts.—

"(1) Definition.—In this subsection, the term 'workshare discount' refers to rate discounts provided to mailers for the presorting, prebarcoding, handling, or transportation of mail, as further defined by the Postal Regulatory Commission under subsection (a).

"(2) Regulations.—As part of the regulations established under subsection (a), the Postal Regulatory Commission shall establish rules for workshare discounts that ensure that such discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity, unless—

"(A) the discount is—

"(i) associated with a new postal service, a change to an existing postal service, or with a new workshare initiative related to an existing postal service; and

"(ii) necessary to induce mailer behavior that furthers the economically efficient operation of the Postal Service and the portion of the discount in excess of the cost that the Postal Service avoids as a result of the workshare activity will be phased out over a limited period of time;

"(B) a reduction in the discount would—

"(i) lead to a loss of volume in the affected category or subclass of mail and reduce the aggregate contribution to the institutional costs of the Postal Service from the category or subclass subject to the discount below what it otherwise would have been if the discount had not been reduced to costs avoided;

"(ii) result in a further increase in the rates paid by mailers not able to take advantage of the discount; or

"(iii) impede the efficient operation of the Postal Service;

"(C) the amount of the discount above costs avoided—

"(i) is necessary to mitigate rate shock; and

"(ii) will be phased out over time; or

"(D) the discount is provided in connection with subclasses of mail consisting exclusively of mail matter of educational, cultural, scientific, or informational value.

"(3) Report.—Whenever the Postal Service establishes or maintains a workshare discount, the Postal Service shall, at the time it publishes the workshare discount rate, submit to the Postal Regulatory Commission a detailed report that—

"(A) explains the Postal Service's reasons for establishing or maintaining the rate;

"(B) sets forth the data, economic analyses, and other information relied on by the Postal Service to justify the rate; and

"(C) certifies that the discount will not adversely affect rates or services provided to users of postal services who do not take advantage of the discount rate.

"(f) Transition Rule.—For the 1-year period beginning on the date of enactment of this section, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of enactment of this section. Proceedings initiated to consider a request for a recommended decision filed by the Postal Service during that 1-year period shall be completed in accordance with subchapter II of chapter 36 of this title and implementing regulations, as in effect before the date of enactment of this section.".

(b) Repealed Sections.—Sections 3623, 3624, 3625, and 3628 of title 39, United States Code, are repealed.

(c) Redesignation.—Chapter 36 of title 39, United States Code (as in effect after the amendment made by section 601, but before the amendment made by section 202) is amended by striking the heading for subchapter II and inserting the following:

"SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS".

SEC. 202. PROVISIONS RELATING TO COMPETITIVE PRODUCTS.

Chapter 36 of title 39, United States Code, is amended by inserting after section 3629 the following:

"SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

"§3631. Applicability; definitions and updates

"(a) Applicability.—This subchapter shall apply with respect to—

"(1) priority mail;

"(2) expedited mail;

"(3) bulk parcel post;

"(4) bulk international mail; and

"(5) mailgrams;

subject to subsection (d) and any changes the Postal Regulatory Commission may make under section 3642.

"(b) Definition.—For purposes of this subchapter, the term 'costs attributable', as used with respect to a product, means the direct and indirect postal costs attributable to such product through reliably identified causal relationships.

"(c) Rule of Construction.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

"(d) Limitation.—Notwithstanding any other provision of this section, nothing in this subchapter shall be considered to apply with respect to any product then currently in the market-dominant category of mail.

"§3632. Action of the Governors

"(a) Authority To Establish Rates and Classes.—The Governors, with the written concurrence of a majority of all of the Governors then holding office, shall establish rates and classes for products in the competitive category of mail in accordance with the requirements of this subchapter and regulations promulgated under section 3633.

"(b) Procedures.—

"(1) In general.—Rates and classes shall be established in writing, complete with a statement of explanation and justification, and the date as of which each such rate or class takes effect.

"(2) Public notice; review; and compliance.—Not later than 30 days before the date of implementation of any adjustment in rates under this section—

"(A) the Governors shall provide public notice of the adjustment and an opportunity for review by the Postal Regulatory Commission;

"(B) the Postal Regulatory Commission shall notify the Governors of any noncompliance of the adjustment with section 3633; and

"(C) the Governors shall respond to the notice provided under subparagraph (B) and describe the actions to be taken to comply with section 3633.

"(c) Transition Rule.—Until regulations under section 3633 first take effect, rates and classes for competitive products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were as last in effect before the date of enactment of this section.

"§3633. Provisions applicable to rates for competitive products

"(a) In General.—The Postal Regulatory Commission shall, within 180 days after the date of enactment of this section, promulgate (and may from time to time thereafter revise) regulations to—

"(1) prohibit the subsidization of competitive products by market-dominant products;

"(2) ensure that each competitive product covers its costs attributable; and

"(3) ensure that all competitive products collectively cover their share of the institutional costs of the Postal Service.

"(b) Review of Minimum Contribution.—Five years after the date of enactment of this section, and every 5 years thereafter, the Postal Regulatory Commission shall conduct a review to determine whether the institutional costs contribution requirement under subsection (a)(3)

should be retained in its current form, modified, or eliminated. In making its determination, the Commission shall consider all relevant circumstances, including the prevailing competitive conditions in the market, and the degree to which any costs are uniquely or disproportionately associated with any competitive products.''.

SEC. 203. PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS.

Subchapter III of chapter 36 of title 39, United States Code, is amended to read as follows:

''SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

''§ 3641. Market tests of experimental products

''(a) AUTHORITY.—

''(1) IN GENERAL.—The Postal Service may conduct market tests of experimental products in accordance with this section.

''(2) PROVISIONS WAIVED.—A product shall not, while it is being tested under this section, be subject to the requirements of sections 3622, 3633, or 3642, or regulations promulgated under those sections.

''(b) CONDITIONS.—A product may not be tested under this section unless it satisfies each of the following:

''(1) SIGNIFICANTLY DIFFERENT PRODUCT.—The product is, from the viewpoint of the mail users, significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test.

''(2) MARKET DISRUPTION.—The introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns (as defined under subsection (h)).

''(3) CORRECT CATEGORIZATION.—The Postal Service identifies the product, for the purpose of a test under this section, as either market-dominant or competitive, consistent with the criteria under section 3642(b)(1). Costs and revenues attributable to a product identified as competitive shall be included in any determination under section 3633(3)(relating to provisions applicable to competitive products collectively). Any test that solely affects products currently classified as competitive, or which provides services ancillary to only competitive products, shall be presumed to be in the competitive product category without regard to whether a similar ancillary product exists for market-dominant products.

''(c) NOTICE.—

''(1) IN GENERAL.—At least 30 days before initiating a market test under this section, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register a notice—

''(A) setting out the basis for the Postal Service's determination that the market test is covered by this section; and

''(B) describing the nature and scope of the market test.

''(2) SAFEGUARDS.—For a competitive experimental product, the provisions of section 504(g) shall be available with respect to any information required to be filed under paragraph (1) to the same extent and in the same manner as in the case of any matter described in section 504(g)(1). Nothing in paragraph (1) shall be considered to permit or require the publication of any information as to which confidential treatment is accorded under the preceding sentence (subject to the same exception as set forth in section 504(g)(3)).

''(d) DURATION.—

''(1) IN GENERAL.—A market test of a product under this section may be conducted over a period of not to exceed 24 months.

''(2) EXTENSION AUTHORITY.—If necessary in order to determine the feasibility or desirability of a product being tested under this section, the Postal Regulatory Commission may, upon written application of the Postal Service (filed not later than 60 days before the date as of which the testing of such product would otherwise be scheduled to terminate under paragraph (1)), extend the testing of such product for not to exceed an additional 12 months.

''(e) DOLLAR-AMOUNT LIMITATION.—

''(1) IN GENERAL.—A product may only be tested under this section if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $10,000,000 in any year, subject to paragraph (2) and subsection (g).

''(2) EXEMPTION AUTHORITY.—The Postal Regulatory Commission may, upon written application of the Postal Service, exempt the market test from the limit in paragraph (1) if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $50,000,000 in any year, subject to subsection (g). In reviewing an application under this paragraph, the Postal Regulatory Commission shall approve such application if it determines that—

''(A) the product is likely to benefit the public and meet an expected demand;

''(B) the product is likely to contribute to the financial stability of the Postal Service; and

''(C) the product is not likely to result in unfair or otherwise inappropriate competition.

''(f) CANCELLATION.—If the Postal Regulatory Commission at any time determines that a market test under this section fails to meet 1 or more of the requirements of this section, it may order the cancellation of the test involved or take such other action as it considers appropriate. A determination under this subsection shall be made in accordance with such procedures as the Commission shall by regulation prescribe.

''(g) ADJUSTMENT FOR INFLATION.—For purposes of each year following the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a), each dollar amount contained in this section shall be adjusted by the change in the Consumer Price Index for such year (as determined under regulations of the Commission).

''(h) DEFINITION OF A SMALL BUSINESS CONCERN.—The criteria used in defining small business concerns or otherwise categorizing business concerns as small business concerns shall, for purposes of this section, be established by the Postal Regulatory Commission in conformance with the requirements of section 3 of the Small Business Act.

''(i) EFFECTIVE DATE.—Market tests under this subchapter may be conducted in any year beginning with the first year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a).

''§ 3642. New products and transfers of products between the market-dominant and competitive categories of mail

''(a) IN GENERAL.—Upon request of the Postal Service or users of the mails, or upon its own initiative, the Postal Regulatory Commission may change the list of market-dominant products under section 3621 and the list of competitive products under section 3631 by adding new products to the lists, removing products from the lists, or transferring products between the lists.

''(b) CRITERIA.—All determinations by the Postal Regulatory Commission under subsection (a) shall be made in accordance with the following criteria:

''(1) The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing substantial business to other firms offering similar products. The competitive category of products shall consist of all other products.

''(2) EXCLUSION OF PRODUCTS COVERED BY POSTAL MONOPOLY.—A product covered by the postal monopoly shall not be subject to transfer under this section from the market-dominant category of mail. For purposes of the preceding sentence, the term 'product covered by the postal monopoly' means any product the conveyance or transmission of which is reserved to the United States under section 1696 of title 18, subject to the same exception as set forth in the last sentence of section 409(e)(1).

''(3) ADDITIONAL CONSIDERATIONS.—In making any decision under this section, due regard shall be given to—

''(A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved;

''(B) the views of those who use the product involved on the appropriateness of the proposed action; and

''(C) the likely impact of the proposed action on small business concerns (within the meaning of section 3641(h)).

''(c) TRANSFERS OF SUBCLASSES AND OTHER SUBORDINATE UNITS ALLOWABLE.—Nothing in this title shall be considered to prevent transfers under this section from being made by reason of the fact that they would involve only some (but not all) of the subclasses or other subordinate units of the class of mail or type of postal service involved (without regard to satisfaction of minimum quantity requirements standing alone).

''(d) NOTIFICATION AND PUBLICATION REQUIREMENTS.—

''(1) NOTIFICATION REQUIREMENT.—The Postal Service shall, whenever it requests to add a product or transfer a product to a different category, file with the Postal Regulatory Commission and publish in the Federal Register a notice setting out the basis for its determination that the product satisfies the criteria under subsection (b) and, in the case of a request to add a product or transfer a product to the competitive category of mail, that the product meets the regulations promulgated by the Postal Regulatory Commission under section 3633. The provisions of section 504(g) shall be available with respect to any information required to be filed.

''(2) PUBLICATION REQUIREMENT.—The Postal Regulatory Commission shall, whenever it changes the list of products in the market-dominant or competitive category of mail, prescribe new lists of products. The revised lists shall indicate how and when any previous lists (including the lists under sections 3621 and 3631) are superseded, and shall be published in the Federal Register.

''(e) PROHIBITION.—Except as provided in section 3641, no product that involves the physical delivery of letters, printed matter, or packages may be offered by the Postal Service unless it has been assigned to the market-dominant or competitive category of mail (as appropriate) either—

''(1) under this subchapter; or

''(2) by or under any other provision of law.''.

SEC. 204. REPORTING REQUIREMENTS AND RELATED PROVISIONS.

(a) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect before the amendment made by subsection (b)) is amended—

(1) by striking the heading for subchapter IV and inserting the following:

''SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW''; and

(2) by striking the heading for subchapter V and inserting the following:

"SUBCHAPTER VI—GENERAL".

(b) REPORTS AND COMPLIANCE.—Chapter 36 of title 39, United States Code, is amended by inserting after subchapter III the following:

"SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

"§3651. Annual reports by the Commission

"(a) IN GENERAL.—The Postal Regulatory Commission shall submit an annual report to the President and the Congress concerning the operations of the Commission under this title, including the extent to which regulations are achieving the objectives under sections 3622, 3633, and 3691.

"(b) INFORMATION FROM POSTAL SERVICE.—The Postal Service shall provide the Postal Regulatory Commission with such information as may, in the judgment of the Commission, be necessary in order for the Commission to prepare its reports under this section.

"§3652. Annual reports to the Commission

"(a) COSTS, REVENUES, RATES, AND SERVICE.—Except as provided in subsection (c), the Postal Service shall, no later than 90 days after the end of each year, prepare and submit to the Postal Regulatory Commission a report (together with such nonpublic annex to the report as the Commission may require under subsection (e))—

"(1) which shall analyze costs, revenues, rates, and quality of service in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of this title; and

"(2) which shall, for each market-dominant product provided in such year, provide—

"(A) product information, including mail volumes; and

"(B) measures of the service afforded by the Postal Service in connection with such product, including—

"(i) the level of service (described in terms of speed of delivery and reliability) provided; and

"(ii) the degree of customer satisfaction with the service provided.

Before submitting a report under this subsection (including any annex to the report and the information required under subsection (b)), the Postal Service shall have the information contained in such report (and annex) audited by the Inspector General. The results of any such audit shall be submitted along with the report to which it pertains.

"(b) INFORMATION RELATING TO WORKSHARE DISCOUNTS.—The Postal Service shall include, in each report under subsection (a), the following information with respect to each market-dominant product for which a workshare discount was in effect during the period covered by such report:

"(1) The per-item cost avoided by the Postal Service by virtue of such discount.

"(2) The percentage of such per-item cost avoided that the per-item workshare discount represents.

"(3) The per-item contribution made to institutional costs.

"(c) SERVICE AGREEMENTS AND MARKET TESTS.—In carrying out subsections (a) and (b) with respect to service agreements and experimental products offered through market tests under section 3641 in a year, the Postal Service—

"(1) may report summary data on the costs, revenues, and quality of service by service agreement and market test; and

"(2) shall report such data as the Postal Regulatory Commission requires.

"(d) SUPPORTING MATTER.—The Postal Regulatory Commission shall have access, in accordance with such regulations as the Commission shall prescribe, to the working papers and any other supporting matter of the Postal Service and the Inspector General in connection with any information submitted under this section.

"(e) CONTENT AND FORM OF REPORTS.—

"(1) IN GENERAL.—The Postal Regulatory Commission shall, by regulation, prescribe the content and form of the public reports (and any nonpublic annex and supporting matter relating to the report) to be provided by the Postal Service under this section. In carrying out this subsection, the Commission shall give due consideration to—

"(A) providing the public with timely, adequate information to assess the lawfulness of rates charged;

"(B) avoiding unnecessary or unwarranted administrative effort and expense on the part of the Postal Service; and

"(C) protecting the confidentiality of commercially sensitive information.

"(2) REVISED REQUIREMENTS.—The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this subsection whenever it shall appear that—

"(A) the attribution of costs or revenues to products has become significantly inaccurate or can be significantly improved;

"(B) the quality of service data has become significantly inaccurate or can be significantly improved; or

"(C) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

"(f) CONFIDENTIAL INFORMATION.—

"(1) IN GENERAL.—If the Postal Service determines that any document or portion of a document, or other matter, which it provides to the Postal Regulatory Commission in a nonpublic annex under this section or under subsection (d) contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission of its determination, in writing, and describe with particularity the documents (or portions of documents) or other matter for which confidentiality is sought and the reasons therefor.

"(2) TREATMENT.—Any information or other matter described in paragraph (1) to which the Commission gains access under this section shall be subject to paragraphs (2) and (3) of section 504(g) in the same way as if the Commission had received notification with respect to such matter under section 504(g)(1).

"(g) OTHER REPORTS.—The Postal Service shall submit to the Postal Regulatory Commission, together with any other submission that the Postal Service is required to make under this section in a year, copies of its then most recent—

"(1) comprehensive statement under section 2401(e);

"(2) strategic plan under section 2802;

"(3) performance plan under section 2803; and

"(4) program performance reports under section 2804.

"§3653. Annual determination of compliance

"(a) OPPORTUNITY FOR PUBLIC COMMENT.—After receiving the reports required under section 3652 for any year, the Postal Regulatory Commission shall promptly provide an opportunity for comment on such reports by users of the mails, affected parties, and an officer of the Commission who shall be required to represent the interests of the general public.

"(b) DETERMINATION OF COMPLIANCE OR NONCOMPLIANCE.—Not later than 90 days after receiving the submissions required under section 3652 with respect to a year, the Postal Regulatory Commission shall make a written determination as to—

"(1) whether any rates or fees in effect during such year (for products individually or collectively) were not in compliance with applicable provisions of this chapter (or regulations promulgated thereunder); or

"(2) whether any service standards in effect during such year were not met.

If, with respect to a year, no instance of noncompliance is found under this subsection to have occurred in such year, the written determination shall be to that effect.

"(c) IF ANY NONCOMPLIANCE IS FOUND.—If, for a year, a timely written determination of noncompliance is made under subsection (b), the Postal Regulatory Commission shall take any appropriate remedial action authorized by section 3662(c).

"(d) REBUTTABLE PRESUMPTION.—A timely written determination described in the last sentence of subsection (b) shall, for purposes of any proceeding under section 3662, create a rebuttable presumption of compliance by the Postal Service (with regard to the matters described under paragraphs (1) and (2) of subsection (b)) during the year to which such determination relates.".

SEC. 205. COMPLAINTS; APPELLATE REVIEW AND ENFORCEMENT.

Chapter 36 of title 39, United States Code, is amended by striking sections 3662 and 3663 and inserting the following:

"§3662. Rate and service complaints

"(a) IN GENERAL.—Any interested party (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of the provisions of chapter 1 (except section 101(c)), sections 401, 403, 404, 404a, 601, or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

"(b) PROMPT RESPONSE REQUIRED.—

"(1) IN GENERAL.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a)—

"(A) either—

"(i) upon a finding that such complaint raises substantial and material issues of fact or law, begin proceedings on such complaint; or

"(ii) issue an order dismissing the complaint; and

"(B) with respect to any action taken under subparagraph (A) (i) or (ii), issue a written statement setting forth the bases of its determination.

"(2) TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.—For purposes of section 3663, any complaint under subsection (a) on which the Commission fails to act in the time and manner required by paragraph (1) shall be treated in the same way as if it had been dismissed under an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

"(c) ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.—If the Postal Regulatory Commission finds upon clear and convincing evidence the complaint to be justified, it shall order that the Postal Service take such action as is necessary to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance.

"(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incidence of noncompliance. Fines resulting from the provision of competitive products shall be paid from the Competitive Products

Fund established in section 2011. All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.

"§3663. Appellate review

"A person, including the Postal Service, adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for .the District of Columbia. The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.

"§3664. Enforcement of orders

"The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain the Postal Service from violating, any order issued by the Postal Regulatory Commission.".

SEC. 206. CLERICAL AMENDMENT.

Chapter 36 of title 39, United States Code, is amended by striking the heading and analysis for such chapter and inserting the following:

"CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

"SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS

"Sec.
"3621. Applicability; definitions.
"3622. Modern rate regulation.
"[3623. Repealed.]
"[3624. Repealed.]
"[3625. Repealed.]
"3626. Reduced Rates.
"3627. Adjusting free rates.
"[3628. Repealed.]
"3629. Reduced rates for voter registration purposes.

"SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

"3631. Applicability; definitions and updates.
"3632. Action of the Governors.
"3633. Provisions applicable to rates for competitive products.
"3634. Assumed Federal income tax on competitive products.

"SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

"3641. Market tests of experimental products.
"3642. New products and transfers of products between the market-dominant and competitive categories of mail.

"SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

"3651. Annual reports by the Commission.
"3652. Annual reports to the Commission.
"3653. Annual determination of compliance.

"SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW

"3661. Postal Services.
"3662. Rate and service complaints.
"3663. Appellate review.
"3664. Enforcement of orders.

"SUBCHAPTER VI—GENERAL

"3681. Reimbursement.
"3682. Size and weight limits.
"3683. Uniform rates for books; films, other materials.
"3684. Limitations.
"3685. Filing of information relating to periodical publications.
"3686. Bonus authority.

"SUBCHAPTER VII—MODERN SERVICE STANDARDS

"3691. Establishment of modern service standards.".

TITLE III—MODERN SERVICE STANDARDS

SEC. 301. ESTABLISHMENT OF MODERN SERVICE STANDARDS.

Chapter 36 of title 39, United States Code, as amended by this Act, is further amended by adding at the end the following:

"SUBCHAPTER VII—MODERN SERVICE STANDARDS

"§3691. Establishment of modern service standards

"(a) AUTHORITY GENERALLY.—Not later than 12 months after the date of enactment of this section, the Postal Service shall, in consultation with the Postal Regulatory Commission, by regulation establish (and may from time to time thereafter by regulation revise) a set of service standards for market-dominant products consistent with the Postal Service's universal service obligation as defined in sections 101 (a) and (b) and 403.

"(b) OBJECTIVES.—Such standards shall be designed to achieve the following objectives:

"(1) To enhance the value of postal services to both senders and recipients.

"(2) To preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining.

"(3) To reasonably assure Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices.

"(4) To provide a system of objective external performance measurements for each market-dominant product as a basis for measurement of Postal Service performance.

"(c) FACTORS.—In establishing or revising such standards, the Postal Service shall take into account—

"(1) the actual level of service that Postal Service customers receive under any service guidelines previously established by the Postal Service or service standards established under this section;

"(2) the degree of customer satisfaction with Postal Service performance in the acceptance, processing and delivery of mail;

"(3) the needs of Postal Service customers, including those with physical impairments;

"(4) mail volume and revenues projected for future years;

"(5) the projected growth in the number of addresses the Postal Service will be required to serve in future years;

"(6) the current and projected future cost of serving Postal Service customers;

"(7) the effect of changes in technology, demographics, and population distribution on the efficient and reliable operation of the postal delivery system; and

"(8) the policies of this title and such other factors as the Postal Service determines appropriate.

"(d) REVIEW.—The regulations promulgated pursuant to this section (and any revisions thereto) shall be subject to review upon complaint under sections 3662 and 3663.".

SEC. 302. POSTAL SERVICE PLAN.

(a) IN GENERAL.—Within 6 months after the establishment of the service standards under section 3691 of title 39, United States Code, as added by this Act, the Postal Service shall, in consultation with the Postal Regulatory Commission, develop and submit to Congress a plan for meeting those standards.

(b) CONTENTS.—The plan under this section shall—

(1) establish performance goals;

(2) describe any changes to the Postal Service's processing, transportation, delivery, and retail networks necessary to allow the Postal Service to meet the performance goals;

(3) describe any changes to planning and performance management documents previously submitted to Congress to reflect new performance goals; and

(4) contain the matters relating to postal facilities provided under subsection (c).

(c) POSTAL FACILITIES.—

(1) FINDINGS.—Congress finds that—

(A) the Postal Service has more than 400 logistics facilities, separate from its post office network;

(B) as noted by the President's Commission on the United States Postal Service, the Postal Service has more facilities than it needs and the streamlining of this distribution network can pave the way for the potential consolidation of sorting facilities and the elimination of excess costs;

(C) the Postal Service has always revised its distribution network to meet changing conditions and is best suited to address its operational needs; and

(D) Congress strongly encourages the Postal Service to—

(i) expeditiously move forward in its streamlining efforts; and

(ii) keep unions, management associations, and local elected officials informed as an essential part of this effort and abide by any procedural requirements contained in the national bargaining agreements.

(2) IN GENERAL.—The Postal Service plan shall include a description of—

(A) the long-term vision of the Postal Service for rationalizing its infrastructure and workforce; and

(B) how the Postal Service intends to implement that vision.

(3) CONTENT OF FACILITIES PLAN.—The plan under this subsection shall include—

(A) a strategy for how the Postal Service intends to rationalize the postal facilities network and remove excess processing capacity and space from the network, including estimated timeframes, criteria, and processes to be used for making changes to the facilities network, and the process for engaging policy makers and the public in related decisions;

(B) a discussion of what impact any facility changes may have on the postal workforce and whether the Postal Service has sufficient flexibility to make needed workforce changes;

(C) an identification of anticipated costs, cost savings, and other benefits associated with the infrastructure rationalization alternatives discussed in the plan; and

(D) procedures that the Postal Service will use to—

(i) provide adequate public notice to communities potentially affected by a proposed rationalization decision;

(ii) make available, upon request, any data, analyses, or other information considered by the Postal Service in making the proposed decision;

(iii) afford affected persons ample opportunity to provide input on the proposed decision; and

(iv) take such comments into account in making a final decision.

(4) ANNUAL REPORTS.—

(A) IN GENERAL.—Not later than 90 days after the end of each fiscal year, the Postal Service shall prepare and submit a report to Congress on how postal decisions have impacted or will impact rationalization plans.

(B) CONTENTS.—Each report under this paragraph shall include—

(i) an account of actions taken during the preceding fiscal year to improve the efficiency and effectiveness of its processing, transportation, and distribution networks while preserving the timely delivery of postal services, including overall estimated costs and cost savings;

(ii) an account of actions taken to identify any excess capacity within its processing, transportation, and distribution networks and implement savings through realignment or consolidation of facilities including overall estimated costs and cost savings;

(iii) an estimate of how postal decisions related to mail changes, security, automation initiatives, worksharing, information technology systems, excess capacity, consolidating and closing facilities, and other areas will impact rationalization plans;

(iv) identification of any statutory or regulatory obstacles that prevented or will prevent or hinder the Postal Service from taking action to realign or consolidate facilities; and

(v) such additional topics and recommendations as the Postal Service considers appropriate.

(5) EXISTING EFFORTS.—Effective on the date of enactment of this Act, the Postal Service may not close or consolidate any processing or logistics facilities without using procedures for public notice and input consistent with those described under paragraph (3)(D).

(d) ALTERNATE RETAIL OPTIONS.—The Postal Service plan shall include plans to expand and market retail access to postal services, in addition to post offices, including—

(1) vending machines;

(2) the Internet;

(3) postage meters;

(4) Stamps by Mail;

(5) Postal Service employees on delivery routes;

(6) retail facilities in which overhead costs are shared with private businesses and other government agencies; or

(7) any other nonpost office access channel providing market retail access to postal services.

(e) REEMPLOYMENT ASSISTANCE AND RETIREMENT BENEFITS.—The Postal Service plan shall include—

(1) a plan under which reemployment assistance shall be afforded to employees displaced as a result of the automation of any of its functions or the closing and consolidation of any of its facilities; and

(2) a plan, developed in consultation with the Office of Personnel Management, to offer early retirement benefits.

(f) INSPECTOR GENERAL REPORT.—

(1) IN GENERALBefore submitting the plan under subsection (a) and each annual report under subsection (c) to Congress, the Postal Service shall submit the plan and each annual report to the Inspector General of the United States Postal Service in a timely manner to carry out this subsection.

(2) REPORT.—The Inspector General shall prepare a report describing the extent to which the Postal Service plan and each annual report under subsection (c)—

(A) are consistent with the continuing obligations of the Postal Service under title 39, United States Code;

(B) provide for the Postal Service to meet the service standards established under section 3691 of title 39, United States Code; and

(C) allow progress toward improving overall efficiency and effectiveness consistent with the need to maintain universal postal service at affordable rates.

(g) CONTINUED AUTHORITY.—Nothing in this section shall be construed to prohibit the Postal Service from implementing any change to its processing, transportation, delivery, and retail networks under any authority granted to the Postal Service for those purposes.

TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

SEC. 401. POSTAL SERVICE COMPETITIVE PRODUCTS FUND.

(a) PROVISIONS RELATING TO POSTAL SERVICE COMPETITIVE PRODUCTS FUND AND RELATED MATTERS.—

(1) IN GENERAL.—Chapter 20 of title 39, United States Code, is amended by adding at the end the following:

"§2011. Provisions relating to competitive products

"(a)(1) In this subsection, the term 'costs attributable' has the meaning given such term by section 3631.

"(2) There is established in the Treasury of the United States a revolving fund, to be called the Postal Service Competitive Products Fund, which shall be available to the Postal Service without fiscal year limitation for the payment of—

"(A) costs attributable to competitive products; and

"(B) all other costs incurred by the Postal Service, to the extent allocable to competitive products.

"(b) There shall be deposited in the Competitive Products Fund, subject to withdrawal by the Postal Service—

"(1) revenues from competitive products;

"(2) amounts received from obligations issued by Postal Service under subsection (e);

"(3) interest and dividends earned on investments of the Competitive Products Fund; and

"(4) any other receipts of the Postal Service (including from the sale of assets), to the extent allocable to competitive products.

"(c) If the Postal Service determines that the moneys of the Competitive Products Fund are in excess of current needs, the Postal Service may request the investment of such amounts as the Postal Service determines advisable by the Secretary of the Treasury in obligations of, or obligations guaranteed by, the Government of the United States, and, with the approval of the Secretary, in such other obligations or securities as the Postal Service determines appropriate.

"(d) With the approval of the Secretary of the Treasury, the Postal Service may deposit moneys of the Competitive Products Fund in any Federal Reserve bank, any depository for public funds, or in such other places and in such manner as the Postal Service and the Secretary may mutually agree.

"(e)(1)(A) Subject to the limitations specified in section 2005(a), the Postal Service is authorized to borrow money and to issue and sell such obligations as the Postal Service determines necessary to provide for competitive products and deposit such amounts in the Competitive Products Fund.

"(B) Subject to paragraph (5), any borrowings by the Postal Service under subparagraph (A) shall be supported and serviced by—

"(i) the revenues and receipts from competitive products and the assets related to the provision of competitive products (as determined under subsection (h)); or

"(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e).

"(2) The Postal Service may enter into binding covenants with the holders of such obligations, and with any trustee under any agreement entered into in connection with the issuance of such obligations with respect to—

"(A) the establishment of reserve, sinking, and other funds;

"(B) application and use of revenues and receipts of the Competitive Products Fund;

"(C) stipulations concerning the subsequent issuance of obligations or the execution of leases or lease purchases relating to properties of the Postal Service; and

"(D) such other matters as the Postal Service, considers necessary or desirable to enhance the marketability of such obligations.

"(3) Obligations issued by the Postal Service under this subsection—

"(A) shall be in such forms and denominations;

"(B) shall be sold at such times and in such amounts;

"(C) shall mature at such time or times;

"(D) shall be sold at such prices;

"(E) shall bear such rates of interest;

"(F) may be redeemable before maturity in such manner, at such times, and at such redemption premiums;

"(G) may be entitled to such relative priorities of claim on the assets of the Postal Service with respect to principal and interest payments; and

"(H) shall be subject to such other terms and conditions,

as the Postal Service determines.

"(4) Obligations issued by the Postal Service under this subsection—

"(A) shall be negotiable or nonnegotiable and bearer or registered instruments, as specified therein and in any indenture or covenant relating thereto;

"(B) shall contain a recital that such obligations are issued under this subsection, and such recital shall be conclusive evidence of the regularity of the issuance and sale of such obligations and of their validity;

"(C) shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of any officer or agency of the Government of the United States, and the Secretary of the Treasury or any other officer or agency having authority over or control of any such fiduciary, trust, or public funds, may at any time sell any of the obligations of the Postal Service acquired under this section;

"(D) shall not be exempt either as to principal or interest from any taxation now or hereafter imposed by any State or local taxing authority; and

"(E) except as provided in section 2006(c), shall not be obligations of, nor shall payment of the principal thereof or interest thereon be guaranteed by, the Government of the United States, and the obligations shall so plainly state.

"(5)(A) Subject to subparagraph (B), the Postal Service shall make payments of principal, or interest, or both on obligations issued under this subsection from—

"(i) revenues and receipts from competitive products and assets related to the provision of competitive products (as determined under subsection (h)); or

"(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available, including the audited statements required by section 2008(e).

"(B) Based on the audited financial statements for the most recently completed fiscal year, the total assets of the Competitive Products Fund may not be less than the amount determined by multiplying—

"(i) the quotient resulting from the total revenue of the Competitive Products Fund divided by the total revenue of the Postal Service; and

"(ii) the total assets of the Postal Service.

"(f) The receipts and disbursements of the Competitive Products Fund shall be accorded the same budgetary treatment as is accorded to receipts and disbursements of the Postal Service Fund under section 2009a.

"(g) A judgment (or settlement of a claim) against the Postal Service or the Government of the United States shall be paid out of the Competitive Products Fund to the extent that the judgment or claim arises out of activities of the Postal Service in the provision of competitive products.

"(h)(1)(A) The Secretary of the Treasury, in consultation with the Postal Service and an independent, certified public accounting firm and other advisors as the Secretary considers appropriate, shall develop recommendations regarding—

"(i) the accounting practices and principles that should be followed by the Postal Service with the objectives of—

"(I) identifying and valuing the assets and liabilities of the Postal Service associated with providing competitive products, including the capital and operating costs incurred by the Postal Service in providing such competitive products; and

"(II) subject to subsection (e)(5), preventing the subsidization of such products by market-dominant products; and

"(ii) the substantive and procedural rules that should be followed in determining the assumed Federal income tax on competitive products income of the Postal Service for any year (within the meaning of section 3634).

"(B) Not earlier than 6 months after the date of enactment of this section, and not later than 12 months after such date, the Secretary of the Treasury shall submit the recommendations under subparagraph (A) to the Postal Regulatory Commission.

"(2)(A) Upon receiving the recommendations of the Secretary of the Treasury under paragraph (1), the Commission shall give interested parties, including the Postal Service, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public, an opportunity to present their views on those recommendations through submission of written data, views, or arguments with or without opportunity for oral presentation, or in such other manner as the Commission considers appropriate.

"(B)(i) After due consideration of the views and other information received under subparagraph (A), the Commission shall by rule—

"(I) provide for the establishment and application of the accounting practices and principles which shall be followed by the Postal Service;

"(II) provide for the establishment and application of the substantive and procedural rules described under paragraph (1)(A)(ii); and

"(III) provide for the submission by the Postal Service to the Postal Regulatory Commission of annual and other periodic reports setting forth such information as the Commission may require.

"(ii) Final rules under this subparagraph shall be issued not later than 12 months after the date on which recommendations are submitted under paragraph (1) (or by such later date on which the Commission and the Postal Service may agree). The Commission may revise such rules.

"(C)(i) Reports described under subparagraph (B)(i)(III) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires.

"(ii) The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with such rules as the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service information under subparagraph (B)(i)(III) whenever it shall appear that—

"(I) the quality of the information furnished in those reports has become significantly inaccurate or can be significantly improved; or

"(II) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

"(D) A copy of each report described under subparagraph (B)(i)(III) shall be submitted by the Postal Service to the Secretary of the Treasury and the Inspector General of the United States Postal Service.

"(i)(1) The Postal Service shall submit an annual report to the Secretary of the Treasury concerning the operation of the Competitive Products Fund. The report shall address such matters as risk limitations, reserve balances, allocation or distribution of moneys, liquidity requirements, and measures to safeguard against losses.

"(2) A copy of the most recent report submitted under paragraph (1) shall be included in the annual report submitted by the Postal Regulatory Commission under section 3652(g).".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 20 of title 39, United States Code, is amended by adding after the item relating to section 2010 the following:

"2011. Provisions relating to competitive products.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 2001 of title 39, United States Code, is amended by striking "and" at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

"(2) COMPETITIVE PRODUCTS FUND.—The term 'Competitive Products Fund' means the Postal Service Competitive Products Fund established by section 2011; and".

(2) CAPITAL OF THE POSTAL SERVICE.—Section 2002(b) of title 39, United States Code, is amended by striking "Fund," and inserting "Fund and the balance in the Competitive Products Fund,".

(3) POSTAL SERVICE FUND.—

(A) PURPOSES FOR WHICH AVAILABLE.—Section 2003(a) of title 39, United States Code, is amended by striking "title." and inserting "title (other than any of the purposes, functions, or powers for which the Competitive Products Fund is available).".

(B) DEPOSITS.—Section 2003(b) of title 39, United States Code, is amended by striking "There" and inserting "Except as otherwise provided in section 2011, there".

(4) RELATIONSHIP BETWEEN THE TREASURY AND THE POSTAL SERVICE.—Section 2006 of title 39, United States Code, is amended—

(A) in subsection (a), in the first sentence, by inserting "or 2011" after "section 2005";

(B) in subsection (b)—

(i) in the first sentence, by inserting "under section 2005" before "in such amounts"; and

(ii) in the second sentence, by inserting "under section 2005" before "in excess of such amount."; and

(C) in subsection (c), by inserting "or 2011(e)(4)(E)" after "section 2005(d)(5)".

SEC. 402. ASSUMED FEDERAL INCOME TAX ON COMPETITIVE PRODUCTS INCOME.

Subchapter II of chapter 36 of title 39, United States Code, as amended by section 202, is amended by adding at the end the following:

"§ 3634. Assumed Federal income tax on competitive products income

"(a) DEFINITIONS.—For purposes of this section—

"(1) the term 'assumed Federal income tax on competitive products income' means the net income tax that would be imposed by chapter 1 of the Internal Revenue Code of 1986 on the Postal Service's assumed taxable income from competitive products for the year; and

"(2) the term 'assumed taxable income from competitive products', with respect to a year, refers to the amount representing what would be the taxable income of a corporation under the Internal Revenue Code of 1986 for the year, if—

"(A) the only activities of such corporation were the activities of the Postal Service allocable under section 2011(h) to competitive products; and

"(B) the only assets held by such corporation were the assets of the Postal Service allocable under section 2011(h) to such activities.

"(b) COMPUTATION AND TRANSFER REQUIREMENTS.—The Postal Service shall, for each year beginning with the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a)—

"(1) compute its assumed Federal income tax on competitive products income for such year; and

"(2) transfer from the Competitive Products Fund to the Postal Service Fund the amount of that assumed tax.

"(c) DEADLINE FOR TRANSFERS.—Any transfer required to be made under this section for a year shall be due on or before the January 15th next occurring after the close of such year.".

SEC. 403. UNFAIR COMPETITION PROHIBITED.

(a) SPECIFIC LIMITATIONS.—Chapter 4 of title 39, United States Code, is amended by adding after section 404 the following:

"§ 404a. Specific limitations

"(a) Except as specifically authorized by law, the Postal Service'may not—

"(1) establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service;

"(2) compel the disclosure, transfer, or licensing of intellectual property to any third party (such as patents, copyrights, trademarks, trade secrets, and proprietary information); or

"(3) obtain information from a person that provides (or seeks to provide) any product, and then offer any postal service that uses or is based in whole or in part on such information, without the consent of the person providing that information, unless substantially the same information is obtained (or obtainable) from an independent source or is otherwise obtained (or obtainable).

"(b) The Postal Regulatory Commission shall prescribe regulations to carry out this section.

"(c) Any party (including an officer of the Commission representing the interests of the general public) who believes that the Postal Service has violated this section may bring a complaint in accordance with section 3662.".

(b) CONFORMING AMENDMENTS.—

(1) GENERAL POWERS.—Section 401 of title 39, United States Code, is amended by striking "The" and inserting "Subject to the provisions of section 404a, the".

(2) SPECIFIC POWERS.—Section 404(a) of title 39, United States Code, is amended by striking "Without" and inserting "Subject to the provisions of section 404a, but otherwise without".

(c) CLERICAL AMENDMENT.—The analysis for chapter 4 of title 39, United States Code, is amended by inserting after the item relating to section 404 the following:

"404a. Specific limitations.".

SEC. 404. SUITS BY AND AGAINST THE POSTAL SERVICE.

(a) IN GENERAL.—Section 409 of title 39, United States Code, is amended by striking subsections (d) and (e) and inserting the following:

"(d)(1) For purposes of the provisions of law cited in paragraphs (2)(A) and (2)(B), respectively, the Postal Service—

"(A) shall be considered to be a 'person', as used in the provisions of law involved; and

"(B) shall not be immune under any other doctrine of sovereign immunity from suit in Federal court by any person for any violation of any of those provisions of law by any officer or employee of the Postal Service.

"(2) This subsection applies with respect to—

"(A) the Act of July 5, 1946 (commonly referred to as the 'Trademark Act of 1946' (15 U.S.C. 1051 and following)); and

"(B) the provisions of section 5 of the Federal Trade Commission Act to the extent that such

section 5 applies to unfair or deceptive acts or practices.

"(e)(1) To the extent that the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, engages in conduct with respect to any product which is not reserved to the United States under section 1696 of title 18, the Postal Service or other Federal agency (as the case may be)—

"(A) shall not be immune under any doctrine of sovereign immunity from suit in Federal court by any person for any violation of Federal law by such agency or any officer or employee thereof; and

"(B) shall be considered to be a person (as defined in subsection (a) of the first section of the Clayton Act) for purposes of—

"(i) the antitrust laws (as defined in such subsection); and

"(ii) section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

For purposes of the preceding sentence, any private carriage of mail allowable by virtue of section 601 shall not be considered a service reserved to the United States under section 1696 of title 18.

"(2) No damages, interest on damages, costs or attorney's fees may be recovered, and no criminal liability may be imposed, under the antitrust laws (as so defined) from any officer or employee of the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, acting in an official capacity.

"(3) This subsection shall not apply with respect to conduct occurring before the date of enactment of this subsection.

"(f) To the extent that the Postal Service engages in conduct with respect to the provision of competitive products, it shall be considered a person for the purposes of the Federal bankruptcy laws.

"(g)(1) Each building constructed or altered by the Postal Service shall be constructed or altered, to the maximum extent feasible as determined by the Postal Service, in compliance with 1 of the nationally recognized model building codes and with other applicable nationally recognized codes. To the extent practicable, model building codes should meet the voluntary consensus criteria established for codes and standards as required in the National Technology Transfer and Advancement Act of 1995 as defined in Office of Management and Budget Circular A1190. For purposes of life safety, the Postal Service shall continue to comply with the most current edition of the Life Safety Code of the National Fire Protection Association (NFPA 101).

"(2) Each building constructed or altered by the Postal Service shall be constructed or altered only after consideration of all requirements (other than procedural requirements) of zoning laws, land use laws, and applicable environmental laws of a State or subdivision of a State which would apply to the building if it were not a building constructed or altered by an establishment of the Government of the United States.

"(3) For purposes of meeting the requirements of paragraphs (1) and (2) with respect to a building, the Postal Service shall—

"(A) in preparing plans for the building, consult with appropriate officials of the State or political subdivision, or both, in which the building will be located;

"(B) upon request, submit such plans in a timely manner to such officials for review by such officials for a reasonable period of time not exceeding 30 days; and

"(C) permit inspection by such officials during construction or alteration of the building, in accordance with the customary schedule of inspections for construction or alteration of buildings in the locality, if such officials provide to the Postal Service—

"(i) a copy of such schedule before construction of the building is begun; and

"(ii) reasonable notice of their intention to conduct any inspection before conducting such inspection.

Nothing in this subsection shall impose an obligation on any State or political subdivision to take any action under the preceding sentence, nor shall anything in this subsection require the Postal Service or any of its contractors to pay for any action taken by a State or political subdivision to carry out this subsection (including reviewing plans, carrying out on-site inspections, issuing building permits, and making recommendations).

"(4) Appropriate officials of a State or a political subdivision of a State may make recommendations to the Postal Service concerning measures necessary to meet the requirements of paragraphs (1) and (2). Such officials may also make recommendations to the Postal Service concerning measures which should be taken in the construction or alteration of the building to take into account local conditions. The Postal Service shall give due consideration to any such recommendations.

"(5) In addition to consulting with local and State officials under paragraph (3), the Postal Service shall establish procedures for soliciting, assessing, and incorporating local community input on real property and land use decisions.

"(6) For purposes of this subsection, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

"(h)(1) Notwithstanding any other provision of law, legal representation may not be furnished by the Department of Justice to the Postal Service in any action, suit, or proceeding arising, in whole or in part, under any of the following:

"(A) Subsection (d) or (e) of this section.

"(B) Subsection (f) or (g) of section 504 (relating to administrative subpoenas by the Postal Regulatory Commission).

"(C) Section 3663 (relating to appellate review).

The Postal Service may, by contract or otherwise, employ attorneys to obtain any legal representation that it is precluded from obtaining from the Department of Justice under this paragraph.

"(2) In any circumstance not covered by paragraph (1), the Department of Justice shall, under section 411, furnish the Postal Service such legal representation as it may require, except that, with the prior consent of the Attorney General, the Postal Service may, in any such circumstance, employ attorneys by contract or otherwise to conduct litigation brought by or against the Postal Service or its officers or employees in matters affecting the Postal Service.

"(3)(A) In any action, suit, or proceeding in a court of the United States arising in whole or in part under any of the provisions of law referred to in subparagraph (B) or (C) of paragraph (1), and to which the Commission is not otherwise a party, the Commission shall be permitted to appear as a party on its own motion and as of right.

"(B) The Department of Justice shall, under such terms and conditions as the Commission and the Attorney General shall consider appropriate, furnish the Commission such legal representation as it may require in connection with any such action, suit, or proceeding, except that, with the prior consent of the Attorney General, the Commission may employ attorneys by contract or otherwise for that purpose.

"(i) A judgment against the Government of the United States arising out of activities of the Postal Service shall be paid by the Postal Service out of any funds available to the Postal Service, subject to the restriction specified in section 2011(g).".

(b) TECHNICAL AMENDMENT.—Section 409(a) of title 39, United States Code, is amended by striking "Except as provided in section 3628 of this title," and inserting "Except as otherwise provided in this title,".

SEC. 405. INTERNATIONAL POSTAL ARRANGEMENTS.

(a) IN GENERAL.—Section 407 of title 39, United States Code, is amended to read as follows:

"§407. International postal arrangements

"(a) It is the policy of the United States—

"(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

"(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

"(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services; and

"(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

"(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and shall have the power to conclude postal treaties and conventions, except that the Secretary may not conclude any postal treaty or convention if such treaty or convention would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal services, or any other person.

"(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary—

"(A) shall coordinate with other agencies as appropriate, and in particular, should consider the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

"(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

"(C) shall maintain continuing liaison with the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives;

"(D) shall maintain appropriate liaison with both representatives of the Postal Service and representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

"(E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and

other executive branch agencies in connection with international postal services and international delivery services.

"(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (D) of paragraph (2).

"(c) Before concluding any postal treaty or convention that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

"(d) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services as it deems appropriate, except that—

"(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be binding under international law; and

"(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

"(e)(1) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

"(2) In exercising the authority under subsection (b) to conclude new postal treaties and conventions related to international postal services and to renegotiate such treaties and conventions, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this paragraph.

"(3) The provisions of this subsection shall take effect 6 months after the date of enactment of this subsection or such earlier date as the Customs Service may determine in writing.".

(b) EFFECTIVE DATE.—Notwithstanding any provision of the amendment made by subsection (a), the authority of the United States Postal Service to establish the rates of postage or other charges on mail matter conveyed between the United States and other countries shall remain available to the Postal Service until—

(1) with respect to market-dominant products, the date as of which the regulations promulgated under section 3622 of title 39, United States Code (as amended by section 201(a)) take effect; and

(2) with respect to competitive products, the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

TITLE V—GENERAL PROVISIONS

SEC. 501. QUALIFICATION AND TERM REQUIREMENTS FOR GOVERNORS.

(a) QUALIFICATIONS.—

(1) IN GENERAL.—Section 202(a) of title 39, United States Code, is amended by striking "(a)" and inserting "(a)(1)" and by striking the fourth sentence and inserting the following: "The Governors shall represent the public interest generally, and shall be chosen solely on the basis of their experience in the fields of public service, law or accounting or on their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size. The Governors shall not be representatives of specific interests using the Postal Service, and may be removed only for cause.".

(2) APPLICABILITY.—The amendment made by paragraph (1) shall not affect the appointment or tenure of any person serving as a Governor of the United States Postal Service under an appointment made before the date of enactment of this Act however, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment. The requirement set forth in the fourth sentence of section 202(a)(1) of title 39, United States Code (as amended by subsection (a)) shall be met beginning not later than 9 years after the date of enactment of this Act.

(b) CONSULTATION REQUIREMENT.—Section 202(a) of title 39, United States Code, is amended by adding at the end the following:

"(2) In selecting the individuals described in paragraph (1) for nomination for appointment to the position of Governor, the President should consult with the Speaker of the House of Representatives the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate.".

(c) 7-YEAR TERMS.—

(1) IN GENERAL.—Section 202(b) of title 39, United States code, is amended in the first sentence by striking "9 years" and inserting "7 years".

(2) APPLICABILITY.—

(A) CONTINUATION BY INCUMBENTS.—The amendment made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act and such person may continue to serve the remainder of the applicable term.

(B) VACANCY BY INCUMBENT BEFORE 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served less than 5 years of that term, the resulting vacancy in office shall be treated as a vacancy in a 5-year term.

(C) VACANCY BY INCUMBENT AFTER 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served 5 years or more of that term, that term shall be deemed to have been a 5-year term beginning on its commencement date for purposes of determining vacancies in office. Any appointment to the vacant office shall be for a 5-year term beginning at the end of the original 9-year term determined without regard to the deeming under the preceding sentence. Nothing in this subparagraph shall be construed to affect any action or authority of any Governor or the Board of Governors during any portion of a 9-year term deemed to be 5-year term under this subparagraph.

(d) TERM LIMITATION.—

(1) IN GENERAL.—Section 202(b) of title 39, United States Code, is amended—

(A) by inserting "(1)" after "(b)"; and

(B) by adding at the end the following:

"(2) No person may serve more than 2 terms as a Governor.".

(2) APPLICABILITY.—The amendments made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act with respect to the term which that person is serving on that date. Such person may continue to serve the remainder of the applicable term, after which the amendments made by paragraph (1) shall apply.

SEC. 502. OBLIGATIONS.

(a) PURPOSES FOR WHICH OBLIGATIONS MAY BE ISSUED.—The first sentence of section 2005(a)(1) of title 39, United States Code, is amended by striking "title." and inserting "title, other than any of the purposes for which the corresponding authority is available to the Postal Service under section 2011.".

(b) INCREASE RELATING TO OBLIGATIONS ISSUED FOR CAPITAL IMPROVEMENTS.—Section 2005(a)(1) of title 39, United States Code, is amended by striking the third sentence.

(c) AMOUNTS WHICH MAY BE PLEDGED.—

(1) OBLIGATIONS TO WHICH PROVISIONS APPLY.—The first sentence of section 2005(b) of title 39, United States Code, is amended by striking "such obligations," and inserting "obligations issued by the Postal Service under this section,".

(2) ASSETS, REVENUES, AND RECEIPTS TO WHICH PROVISIONS APPLY.—Subsection (b) of section 2005 of title 39, United States Code, is amended by striking "(b)" and inserting "(b)(1)", and by adding at the end the following:

"(2) Notwithstanding any other provision of this section—

"(A) the authority to pledge assets of the Postal Service under this subsection shall be available only to the extent that such assets are not related to the provision of competitive products (as determined under section 2011(h) or, for purposes of any period before accounting practices and principles under section 2011(h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)); and

"(B) any authority under this subsection relating to the pledging or other use of revenues or receipts of the Postal Service shall be available only to the extent that they are not revenues or receipts of the Competitive Products Fund.".

SEC. 503. PRIVATE CARRIAGE OF LETTERS.

(a) IN GENERAL.—Section 601 of title 39, United States Code, is amended by striking subsection (b) and inserting the following:

"(b) A letter may also be carried out of the mails when—

"(1) the amount paid for the private carriage of the letter is at least the amount equal to 6 times the rate then currently charged for the 1st ounce of a single-piece first class letter;

"(2) the letter weighs at least 12½ ounces; or

"(3) such carriage is within the scope of services described by regulations of the United States Postal Service (as in effect on July 1, 2001) that permit private carriage by suspension of the operation of this section (as then in effect).

"(c) Any regulations necessary to carry out this section shall be promulgated by the Postal Regulatory Commission.".

(b) EFFECTIVE DATE.—This section shall take effect on the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

SEC. 504. RULEMAKING AUTHORITY.

Paragraph (2) of section 401 of title 39, United States Code, is amended to read as follows:

"(2) to adopt, amend, and repeal such rules and regulations, not inconsistent with this title, as may be necessary in the execution of its functions under this title and such other functions

as may be assigned to the Postal Service under any provisions of law outside of this title;".

SEC. 505. NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.

(a) LABOR DISPUTES.—Section 1207 of title 39, United States Code, is amended to read as follows:

"§ 1207. Labor disputes

"(a) If there is a collective-bargaining agreement in effect, no party to such agreement shall terminate or modify such agreement unless the party desiring such termination or modification serves written notice upon the other party to the agreement of the proposed termination or modification not less than 90 days prior to the expiration date thereof, or not less than 90 days prior to the time it is proposed to make such termination or modification. The party serving such notice shall notify the Federal Mediation and Conciliation Service of the existence of a dispute within 45 days after such notice, if no agreement has been reached by that time.

"(b) If the parties fail to reach agreement or to adopt a procedure providing for a binding resolution of a dispute by the expiration date of the agreement in effect, or the date of the proposed termination or modification, the Director of the Federal Mediation and Conciliation Service shall within 10 days appoint a mediator of nationwide reputation and professional stature, and who is also a member of the National Academy of Arbitrators. The parties shall cooperate with the mediator in an effort to reach an agreement and shall meet and negotiate in good faith at such times and places that the mediator, in consultation with the parties, shall direct.

"(c)(1) If no agreement is reached within 60 days after the expiration or termination of the agreement or the date on which the agreement became subject to modification under subsection (a) of this section, or if the parties decide upon arbitration but do not agree upon the procedures therefore, an arbitration board shall be established consisting of 3 members, 1 of whom shall be selected by the Postal Service, 1 by the bargaining representative of the employees, and the third by the 2 thus selected. If either of the parties fails to select a member, or if the members chosen by the parties fail to agree on the third person within 5 days after their first meeting, the selection shall be made from a list of names provided by the Director. This list shall consist of not less then 9 names of arbitrators of nationwide reputation and professional nature, who are also members of the National Academy of Arbitrators, and whom the Director has determined are available and willing to serve.

"(2) The arbitration board shall give the parties a full and fair hearing, including an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel or by other representative as they may elect. Decisions of the arbitration board shall be conclusive and binding upon the parties. The arbitration board shall render its decision within 45 days after its appointment.

"(3) Costs of the arbitration board and mediation shall be shared equally by the Postal Service and the bargaining representative.

"(d) In the case of a bargaining unit whose recognized collective-bargaining representative does not have an agreement with the Postal Service, if the parties fail to reach the agreement within 90 days after the commencement of collective bargaining, a mediator shall be appointed in accordance with the terms in subsection (b) of this section, unless the parties have previously agreed to another procedure for a binding resolution of their differences. If the parties fail to reach agreement within 180 days after the commencement of collective bargaining, and if they have not agreed to another procedure for binding resolution, an arbitration board shall be established to provide conclusive and binding arbitration in accordance with the terms of subsection (c) of this section.".

(b) NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.—Except as otherwise provided by the amendment made by subsection (a), nothing in this Act shall restrict, expand, or otherwise affect any of the rights, privileges, or benefits of either employees of or labor organizations representing employees of the United States Postal Service under chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations within the United States Postal Service, or any collective bargaining agreement.

(c) FREE MAILING PRIVILEGES CONTINUE UNCHANGED.—Nothing in this Act or any amendment made by this Act shall affect any free mailing privileges accorded under section 3217 or sections 3403 through 3406 of title 39, United States Code.

SEC. 506. BONUS AUTHORITY.

Chapter 36 of title 39, United States Code, is amended by inserting after section 3685 the following:

"§ 3686. Bonus authority

"(a) IN GENERAL.—The Postal Service may establish 1 or more programs to provide bonuses or other rewards to officers and employees of the Postal Service in senior executive or equivalent positions to achieve the objectives of this chapter.

"(b) LIMITATION ON TOTAL COMPENSATION.—

"(1) IN GENERAL.—Under any such program, the Postal Service may award a bonus or other reward in excess of the limitation set forth in the last sentence of section 1003(a), if such program has been approved under paragraph (2). Any such award or bonus may not cause the total compensation of such officer or employee to exceed the total annual compensation payable to the Vice President under section 104 of title 3 as of the end of the calendar year in which the bonus or award is paid.

"(2) APPROVAL PROCESS.—If the Postal Service wishes to have the authority, under any program described in subsection (a), to award bonuses or other rewards in excess of the limitation set forth in the last sentence of section 1003(a)—

"(A) the Postal Service shall make an appropriate request to the Board of Governors of the Postal Service in such form and manner as the Board requires; and

"(B) the Board of Governors shall approve any such request if the Board certifies, for the annual appraisal period involved, that the performance appraisal system for affected officers and employees of the Postal Service (as designed and applied) makes meaningful distinctions based on relative performance.

"(3) REVOCATION AUTHORITY.—If the Board of Governors of the Postal Service finds that a performance appraisal system previously approved under paragraph (2)(B) does not (as designed and applied) make meaningful distinctions based on relative performance, the Board may revoke or suspend the authority of the Postal Service to continue a program approved under paragraph (2) until such time as appropriate corrective measures have, in the judgment of the Board, been taken.

"(c) REPORTING REQUIREMENT RELATING TO BONUSES OR OTHER REWARDS.—Included in its comprehensive statement under section 2401(e) for any period shall be—

"(1) the name of each person receiving a bonus or other reward during such period which would not have been allowable but for the provisions of subsection (b);

"(2) the amount of the bonus or other reward; and

"(3) the amount by which the limitation referred to in subsection (b)(1) was exceeded as a result of such bonus or other reward.".

TITLE VI—ENHANCED REGULATORY COMMISSION

SEC. 601. REORGANIZATION AND MODIFICATION OF CERTAIN PROVISIONS RELATING TO THE POSTAL REGULATORY COMMISSION.

(a) TRANSFER AND REDESIGNATION.—Title 39, United States Code, is amended—

(1) by inserting after chapter 4 the following:

"CHAPTER 5—POSTAL REGULATORY COMMISSION

"Sec.
"501. Establishment.
"502. Commissioners.
"503. Rules; regulations; procedures.
"504. Administration.
"505. Officer of the Postal Regulatory Commission representing the general public.

"§ 501. Establishment

"The Postal Regulatory Commission is an independent establishment of the executive branch of the Government of the United States.

"§ 502. Commissioners

"(a) The Postal Regulatory Commission is composed of 5 Commissioners, appointed by the President, by and with the advice and consent of the Senate. The Commissioners shall be chosen solely on the basis of their technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration, and may be removed by the President only for cause. Each individual appointed to the Commission shall have the qualifications and expertise necessary to carry out the enhanced responsibilities accorded Commissioners under the Postal Accountability and Enhancement Act. Not more than 3 of the Commissioners may be adherents of the same political party.

"(b) No Commissioner shall be financially interested in any enterprise in the private sector of the economy engaged in the delivery of mail matter.

"(c) A Commissioner may continue to serve after the expiration of his term until his successor has qualified, except that a Commissioner may not so continue to serve for more than 1 year after the date upon which his term otherwise would expire under subsection (f).

"(d) One of the Commissioners shall be designated as Chairman by, and shall serve in the position of Chairman at the pleasure of, the President.

"(e) The Commissioners shall by majority vote designate a Vice Chairman of the Commission. The Vice Chairman shall act as Chairman of the Commission in the absence of the Chairman.

"(f) The Commissioners shall serve for terms of 6 years.";

(2) by striking, in subchapter I of chapter 36 (as in effect before the amendment made by section 201(c)), the heading for such subchapter I and all that follows through section 3602;

(3) by redesignating sections 3603 and 3604 as sections 503 and 504, respectively, and transferring such sections to the end of chapter 5 (as inserted by paragraph (1)); and

(4) by adding after such section 504 the following:

"§ 505. Officer of the Postal Regulatory Commission representing the general public

"The Postal Regulatory Commission shall designate an officer of the Postal Regulatory Commission in all public proceedings who shall represent the interests of the general public.".

(b) APPLICABILITY.—The amendment made by subsection (a)(1) shall not affect the appointment or tenure of any person serving as a Commissioner on the Postal Regulatory Commission *(as so redesignated by section 604) under an appointment made before the date of enactment of this Act or any nomination made before that date, but, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment.*

(c) CLERICAL AMENDMENT.—The analysis for part I of title 39, United States Code, is amended by inserting after the item relating to chapter 4 the following:

"5. Postal Regulatory Commission ... 501"

SEC. 602. AUTHORITY FOR POSTAL REGULATORY COMMISSION TO ISSUE SUBPOENAS.

Section 504 of title 39, United States Code (as so redesignated by section 601) is amended by adding at the end the following:

"(f)(1) Any Commissioner of the Postal Regulatory Commission, any administrative law judge appointed by the Commission under section 3105 of title 5, and any employee of the Commission designated by the Commission may administer oaths, examine witnesses, take depositions, and receive evidence.

"(2) The Chairman of the Commission, any Commissioner designated by the Chairman, and any administrative law judge appointed by the Commission under section 3105 of title 5 may, with respect to any proceeding conducted by the Commission under this title or to obtain information to be used to prepare a report under this title—

"(A) issue subpoenas requiring the attendance and presentation of testimony by, or the production of documentary or other evidence in the possession of, any covered person; and

"(B) order the taking of depositions and responses to written interrogatories by a covered person.

The written concurrence of a majority of the Commissioners then holding office shall, with respect to each subpoena under subparagraph (A), be required in advance of its issuance.

"(3) In the case of contumacy or failure to obey a subpoena issued under this subsection, upon application by the Commission, the district court of the United States for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(4) For purposes of this subsection, the term 'covered person' means an officer, employee, agent, or contractor of the Postal Service.

"(g)(1) If the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission under a subpoena issued under subsection (f), or otherwise at the request of the Commission in connection with any proceeding or other purpose under this title, contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission, in writing, of its determination (and the reasons therefor).

"(2) Except as provided in paragraph (3), no officer or employee of the Commission may, with respect to any information as to which the Commission has been notified under paragraph (1)—

"(A) use such information for purposes other than the purposes for which it is supplied; or

"(B) permit anyone who is not an officer or employee of the Commission to have access to any such information.

"(3)(A) Paragraph (2) shall not prohibit the Commission from publicly disclosing relevant information in furtherance of its duties under this title, provided that the Commission has adopted regulations under section 553 of title 5, that establish a procedure for according appropriate confidentiality to information identified by the Postal Service under paragraph (1). In determining the appropriate degree of confidentiality to be accorded information identified by the Postal Service under paragraph (1), the Commission shall balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.

"(B) Paragraph (2) shall not prevent the Commission from requiring production of information in the course of any discovery procedure established in connection with a proceeding under this title. The Commission shall, by regulations based on rule 26(c) of the Federal Rules of Civil Procedure, establish procedures for ensuring appropriate confidentiality for information furnished to any party.".

SEC. 603. AUTHORIZATION OF APPROPRIATIONS FROM THE POSTAL SERVICE FUND.

(a) POSTAL REGULATORY COMMISSION.—Subsection (d) of section 504 of title 39, United States Code (as so redesignated by section 601) is amended to read as follows:

"(d) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Postal Regulatory Commission. In requesting an appropriation under this subsection for a fiscal year, the Commission shall prepare and submit to the Congress under section 2009 a budget of the Commission's expenses, including expenses for facilities, supplies, compensation, and employee benefits.".

(b) OFFICE OF INSPECTOR GENERAL OF THE UNITED STATES POSTAL SERVICE.—Section 8G(f) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating paragraph (4) as paragraph (5);

(2) by redesignating the second paragraph (3) (relating to employees and labor organizations) as paragraph (4); and

(3) by adding at the end the following:

"(6) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Office of Inspector General of the United States Postal Service.".

(c) BUDGET PROGRAM.—

(1) IN GENERAL.—The next to last sentence of section 2009 of title 39, United States Code, is amended to read as follows: "The budget program shall also include separate statements of the amounts which (1) the Postal Service requests to be appropriated under subsections (b) and (c) of section 2401, (2) the Office of Inspector General of the United States Postal Service requests to be appropriated, out of the Postal Service Fund, under section 8G(f) of the Inspector General Act of 1978, and (3) the Postal Regulatory Commission requests to be appropriated, out of the Postal Service Fund, under section 504(d) of this title.".

(2) CONFORMING AMENDMENT.—Section 2003(e)(1) of title 39, United States Code, is amended by striking the first sentence and inserting the following: "The Fund shall be available for the payment of (A) all expenses incurred by the Postal Service in carrying out its functions as provided by law, subject to the same limitation as set forth in the parenthetical matter under subsection (a); (B) all expenses of the Postal Regulatory Commission, subject to the availability of amounts appropriated under section 504(d); and (C) all expenses of the Office of Inspector General, subject to the availability of amounts appropriated under section 8G(f) of the Inspector General Act of 1978.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 2005.

(2) SAVINGS PROVISION.—The provisions of title 39, United States Code, and the Inspector General Act of 1978 (5 U.S.C. App.) that are amended by this section shall, for purposes of any fiscal year before the first fiscal year to which the amendments made by this section apply, continue to apply in the same way as if this section had never been enacted.

SEC. 604. REDESIGNATION OF THE POSTAL RATE COMMISSION.

(a) AMENDMENTS TO TITLE 39, UNITED STATES CODE.—Title 39, United States Code, is amended in sections 404, 503 and 504 (as so redesignated by section 601), 1001 and 1002, by striking "Postal Rate Commission" each place it appears and inserting "Postal Regulatory Commission";

(b) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended in sections 104(1), 306(f), 2104(b), 3371(3), 5314 (in the item relating to Chairman, Postal Rate Commission), 5315 (in the item relating to Members, Postal Rate Commission), 5514(a)(5)(B), 7342(a)(1)(A), 7511(a)(1)(B)(ii), 8402(c)(1), 8423(b)(1)(B), and 8474(c)(4) by striking "Postal Rate Commission" and inserting "Postal Regulatory Commission".

(c) AMENDMENT TO THE ETHICS IN GOVERNMENT ACT OF 1978.—Section 101(f)(6) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking "Postal Rate Commission" and inserting "Postal Regulatory Commission".

(d) AMENDMENT TO THE REHABILITATION ACT OF 1973.—Section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791(b)) is amended by striking "Postal Rate Office" and inserting "Postal Regulatory Commission".

(e) AMENDMENT TO TITLE 44, UNITED STATES CODE.—Section 3502(5) of title 44, United States Code, is amended by striking "Postal Rate Commission" and inserting "Postal Regulatory Commission".

(f) OTHER REFERENCES.—Whenever a reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, document, or other record of the United States to the Postal Rate Commission, such reference shall be considered a reference to the Postal Regulatory Commission.

SEC. 605. FINANCIAL TRANSPARENCY.

(a) IN GENERAL.—Section 101 of title 39, United States Code, is amended—

(1) by redesignating subsections (d) through (g) as subsections (e) through (h), respectively; and

(2) by inserting after subsection (c) the following:

"(d) As an independent establishment of the executive branch of the Government of the United States, the Postal Service shall be subject to a high degree of transparency to ensure fair treatment of customers of the Postal Service's market-dominant products and companies competing with the Postal Service's competitive products.".

(b) FINANCIAL REPORTING REQUIREMENTS AND ENFORCEMENT POWERS APPLICABLE TO POSTAL SERVICE.—Section 503 of title 39, United States Code (as so redesignated by section 601 and 604) is amended by—

(1) inserting "(a)" before "The Postal Regulatory Commission shall promulgate"; and

(2) adding at the end the following:

"(b)(1) Beginning with the first full fiscal year following the date of enactment of the Postal Accountability and Enhancement Act, the Postal Service shall file with the Postal Regulatory Commission —

"(A) within 35 days after the end of each fiscal quarter, a quarterly report containing the information prescribed in Form 10–Q of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form;

"(B) within 60 days after the end of each fiscal year, an annual report containing the information prescribed in Form 10–K of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form; and

"(C) periodic reports within the time frame and containing the information prescribed in Form 8–K of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form.

"(2) For purposes of preparing the reports required under paragraph (1), the Postal Service shall be deemed to be the registrant described in the Securities and Exchange Commission forms, and references contained in such forms to Securities and Exchange Commission regulations are applicable.

"(3) For purposes of preparing the reports required under paragraph (1), the Postal Service shall comply with the rules prescribed by the Securities and Exchange Commission implementing section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262; Public Law 107–204) beginning with fiscal year 2007 and in each fiscal year thereafter.

"(c)(1) The reports required under subsection (b)(1)(B) shall include, with respect to the financial obligations of the Postal Service under chapters 83, 84, and 89 of title 5 for retirees of the Postal Service—

"(A) the funded status of such obligations of the Postal Service;

"(B) components of the net change in the fund balances and obligations and the nature and cause of any significant changes;

"(C) components of net periodic costs;

"(D) cost methods and assumptions underlying the relevant actuarial valuations;

"(E) the effect of a one-percentage point increase in the assumed health care cost trend rate for each future year on the service and interest costs components of net periodic cost and the accumulated obligation of the Postal Service under chapter 89 of title 5 for retirees of the Postal Service;

"(F) actual contributions to and payments from the funds for the years presented and the estimated future contributions and payments for each of the following 5 years;

"(G) the composition of plan assets reflected in the fund balances; and

"(H) the assumed rate of return on fund balances and the actual rates of return for the years presented.

"(2)(A) Beginning with the fiscal year 2007 and in each fiscal year thereafter, for purposes of the reports required under subsection (b)(1)(A) and (B), the Postal Service shall include segment reporting.

"(B) The Postal Service shall determine the appropriate segment reporting under subparagraph (A), after consultation with the Postal Regulatory Commission.

"(d) For purposes of the annual reports required under subsection (b)(1)(B), the Postal Service shall obtain an opinion from an independent auditor on whether the information listed under subsection (c) is fairly stated in all material respects, either in relation to the basic financial statements as a whole or on a standalone basis.

"(e) The Postal Regulatory Commission shall have access to the audit documentation and any other supporting matter of the Postal Service and its independent auditor in connection with any information submitted under subsection (b)(1)(B).

"(f) The Postal Regulatory Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this section whenever it shall appear that the data—

"(1) have become significantly inaccurate;

"(2) can be significantly improved; or

"(3) are not cost beneficial.".

TITLE VII—EVALUATIONS

SEC. 701. ASSESSMENTS OF RATEMAKING, CLASSIFICATION, AND OTHER PROVISIONS.

(a) IN GENERAL.—The Postal Regulatory Commission shall, at least every 3 years, submit a report to the President and Congress concerning—

(1) the operation of the amendments made by this Act; and

(2) recommendations for any legislation or other measures necessary to improve the effectiveness or efficiency of the postal laws of the United States.

(b) POSTAL SERVICE VIEWS.—A report under this section shall be submitted only after reasonable opportunity has been afforded to the Postal Service to review the report and to submit written comments on the report. Any comments timely received from the Postal Service under the preceding sentence shall be attached to the report submitted under subsection (a).

SEC. 702. REPORT ON UNIVERSAL POSTAL SERVICE AND THE POSTAL MONOPOLY.

(a) REPORT BY THE POSTAL REGULATORY COMMISSION.—

(1) IN GENERAL.—Not later than 24 months after the date of enactment of this Act, the Postal Regulatory Commission shall submit a report to the President and Congress on universal postal service and the postal monopoly in the United States (in this section referred to as "universal service and the postal monopoly"), including the monopoly on the delivery of mail and on access to mailboxes.

(2) CONTENTS.—The report under this subsection shall include—

(A) a comprehensive review of the history and development of universal service and the postal monopoly, including how the scope and standards of universal service and the postal monopoly have evolved over time for the Nation and its urban and rural areas;

(B) the scope and standards of universal service and the postal monopoly provided under current law (including sections 101 and 403 of title 39, United States Code), and current rules, regulations, policy statements, and practices of the Postal Service;

(C) a description of any geographic areas, populations, communities (including both urban and rural communities), organizations, or other groups or entities not currently covered by universal service or that are covered but that are receiving services deficient in scope or quality or both; and

(D) the scope and standards of universal service and the postal monopoly likely to be required in the future in order to meet the needs and expectations of the United States public, including all types of mail users, based on discussion of such assumptions, alternative sets of assumptions, and analyses as the Postal Service considers plausible.

(b) RECOMMENDED CHANGES TO UNIVERSAL SERVICE AND THE MONOPOLY.—The Postal Regulatory Commission shall include in the report under subsection (a), and in all reports submitted under section 701 of this Act—

(1) any recommended changes to universal service and the postal monopoly as the Commission considers appropriate, including changes that the Commission may implement under current law and changes that would require changes to current law, with estimated effects of the recommendations on the service, financial condition, rates, and security of mail provided by the Postal Service;

(2) with respect to each recommended change described under paragraph (1)—

(A) an estimate of the costs of the Postal Service attributable to the obligation to provide universal service under current law; and

(B) an analysis of the likely benefit of the current postal monopoly to the ability of the Postal Service to sustain the current scope and standards of universal service, including estimates of the financial benefit of the postal monopoly to the extent practicable, under current law; and

(3) such additional topics and recommendations as the Commission considers appropriate, with estimated effects of the recommendations on the service, financial condition, rates, and the security of mail provided by the Postal Service.

SEC. 703. STUDY ON EQUAL APPLICATION OF LAWS TO COMPETITIVE PRODUCTS.

(a) IN GENERAL.—The Federal Trade Commission shall prepare and submit to the President and Congress, and to the Postal Regulatory Commission, within 1 year after the date of enactment of this Act, a comprehensive report identifying Federal and State laws that apply differently to the United States Postal Service with respect to the competitive category of mail (within the meaning of section 102 of title 39, United States Code, as amended by section 101) and similar products provided by private companies.

(b) RECOMMENDATIONS.—The Federal Trade Commission shall include such recommendations as it considers appropriate for bringing such legal discrimination to an end, and in the interim, to account under section 3633 of title 39, United States Code (as added by this Act), for the net economic advantages provided by those laws.

(c) CONSULTATION.—In preparing its report, the Federal Trade Commission shall consult with the United States Postal Service, the Postal Regulatory Commission, other Federal agencies, mailers, private companies that provide delivery services, and the general public, and shall append to such report any written comments received under this subsection.

(d) COMPETITIVE PRODUCT REGULATION.—The Postal Regulatory Commission shall take into account the recommendations of the Federal Trade Commission in promulgating or revising the regulations required under section 3633 of title 39, United States Code.

SEC. 704. REPORT ON POSTAL WORKPLACE SAFETY AND WORKPLACE-RELATED INJURIES.

(a) REPORT BY THE INSPECTOR GENERAL.—

(1) IN GENERAL.—Not later than 6 months after the enactment of this Act, the Inspector General of the United States Postal Service shall submit a report to Congress and the Postal Service that—

(A) details and assesses any progress the Postal Service has made in improving workplace safety and reducing workplace-related injuries nationwide; and

(B) identifies opportunities for improvement that remain with respect to such improvements and reductions.

(2) CONTENTS.—The report under this subsection shall also—

(A) discuss any injury reduction goals established by the Postal Service;

(B) describe the actions that the Postal Service has taken to improve workplace safety and reduce workplace-related injuries, and assess how successful the Postal Service has been in meeting its injury reduction goal; and

(C) identify areas where the Postal Service has failed to meet its injury reduction goals, explain the reasons why these goals were not met, and identify opportunities for making further progress in meeting these goals.

(b) REPORT BY THE POSTAL SERVICE.—

(1) REPORT TO CONGRESS.—Not later than 6 months after receiving the report under subsection (a), the Postal Service shall submit a report to Congress detailing how it plans to improve workplace safety and reduce workplace-related injuries nationwide, including goals and metrics.

(2) PROBLEM AREAS.—The report under this subsection shall also include plans, developed in consultation with the Inspector General and employee representatives, including representatives of each postal labor union and management association, for addressing the problem areas identified by the Inspector General in the report under subsection (a)(2)(C).

SEC. 705. STUDY ON RECYCLED PAPER.

(a) IN GENERAL.—Within 12 months after the date of enactment of this Act, the Government Accountability Office shall study and submit to the Congress, the Board of Governors of the Postal Service, and to the Postal Regulatory Commission a report concerning—

(1) the economic and environmental efficacy of establishing rate incentives for mailers linked to the use of recycled paper;

(2) a description of the accomplishments of the Postal Service in each of the preceding 5 years involving recycling activities, including the amount of annual revenue generated and savings achieved by the Postal Service as a result of its use of recycled paper and other recycled products and its efforts to recycle undeliverable and discarded mail and other materials; and

(3) additional opportunities that may be available for the United States Postal Service to engage in recycling initiatives and the projected costs and revenues of undertaking such opportunities.

(b) RECOMMENDATIONS.—The report shall include recommendations for any administrative or legislative actions that may be appropriate.

TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING

SEC. 801. SHORT TITLE.

This title may be cited as the "Postal Civil Service Retirement and Health Benefits Funding Amendments of 2004".

SEC. 802. CIVIL SERVICE RETIREMENT SYSTEM.

(a) IN GENERAL.—Chapter 83 of title 5, United States Code, is amended—

(1) in section 8334(a)(1)(B), by striking clause (ii) and inserting the following:

"(ii) In the case of an employee of the United States Postal Service, no amount shall be contributed under this subparagraph."; and

(2) by amending section 8348(h) to read as follows:

"(h)(1) In this subsection, the term 'Postal surplus or supplemental liability' means the estimated difference, as determined by the Office, between—

"(A) the actuarial present value of all future benefits payable from the Fund under this subchapter to current or former employees of the United States Postal Service and attributable to civilian employment with the United States Postal Service; and

"(B) the sum of—

"(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;

"(ii) that portion of the Fund balance, as of the date the Postal surplus or supplemental liability is determined, attributable to payments to the Fund by the United States Postal Service and its employees, minus benefit payments attributable to civilian employment with the United States Postal Service, plus the earnings on such amounts while in the Fund; and

"(iii) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

"(2)(A) Not later than June 15, 2006, the Office shall determine the Postal surplus or supplemental liability, as of September 30, 2005. If that result is a surplus, the amount of the surplus shall be transferred to the Postal Service Retiree Health Benefits Fund established under section 8909a by June 30, 2006. If the result is a supplemental liability, the Office shall establish an amortization schedule, including a series of annual installments commencing September 30, 2006, which provides for the liquidation of such liability by September 30, 2043.

"(B) The Office shall redetermine the Postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2006, through the fiscal year ending September 30, 2038. If the result is a surplus, that amount shall remain in the Fund until distribution is authorized under subparagraph (C), and any prior amortization schedule for payments shall be terminated. If the result is a supplemental liability, the Office shall establish a new amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.

"(C) As of the close of the fiscal years ending September 30, 2015, 2025, 2035, and 2039, if the result is a surplus, that amount shall be transferred to the Postal Service Retiree Health Benefits Fund, and any prior amortization schedule for payments shall be terminated.

"(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

"(E) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.

"(3) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.".

(b) CREDIT ALLOWED FOR MILITARY SERVICE.—In the application of section 8348(g)(2) of title 5, United States Code, for the fiscal year 2006, the Office of Personnel Management shall include, in addition to the amount otherwise computed under that paragraph, the amounts that would have been included for the fiscal years 2003 through 2005 with respect to credit for military service of former employees of the United States Postal Service as though the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) had not been enacted, and the Secretary of the Treasury shall make the required transfer to the Civil Service Retirement and Disability Fund based on that amount.

(c) REVIEW.—

(1) IN GENERAL.—

(A) REQUEST FOR REVIEW.—Notwithstanding any other provision of this section (including any amendment made by this section), any determination or redetermination made by the Office of Personnel Management under this section (including any amendment made by this section) shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this subsection.

(B) REPORT.—Upon receiving a request under subparagraph (A), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of pension obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this paragraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

(2) RECONSIDERATION.—Upon receiving the report from the Commission under paragraph (1), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

SEC. 803. HEALTH INSURANCE.

(a) IN GENERAL.—

(1) FUNDING.—Chapter 89 of title 5, United States Code, is amended—

(A) in section 8906(g)(2)(A), by striking "shall be paid by the United States Postal Service." and inserting "shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service."; and

(B) by inserting after section 8909 the following:

"§ 8909a. Postal Service Retiree Health Benefit Fund

"(a) There is in the Treasury of the United States a Postal Service Retiree Health Benefits Fund which is administered by the Office of Personnel Management.

"(b) The Fund is available without fiscal year limitation for payments required under section 8906(g)(2)(A).

"(c) The Secretary of the Treasury shall immediately invest, in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. Such investments shall be made in the same manner as investments for the Civil Service Retirement and Disability Fund under section 8348.

"(d)(1) Not later than June 30, 2006, and by June 30 of each succeeding year, the Office shall compute the net present value of the future payments required under section 8906(g)(2)(A) and attributable to the service of Postal Service employees during the most recently ended fiscal year.

"(2)(A) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year, the Office shall recompute the difference between—

"(i) the net present value of the excess of future payments required under section 8906(g)(2)(A) for current and future United States Postal Service annuitants as of the end of the fiscal year ending on September 30 of that year; and

"(ii)(I) the value of the assets of the Postal Retiree Health Benefits Fund as of the end of the fiscal year ending on September 30 of that year; and

"(II) the net present value computed under paragraph (1).

"(B) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year shall recompute, an amortization schedule including a series of annual installments which provide for the liquidation by September 30, 2045, or within 15 years, whichever is later, of the net present value determined under subparagraph (A), including interest at the rate used in that computation.

"(3) Not later than September 30, 2006, and by September 30 of each succeeding year, the United States Postal Service shall pay into such Fund—

"(A) the net present value computed under paragraph (1); and

"(B) the annual installment computed under paragraph (2)(B).

"(4) Computations under this subsection shall be made consistent with the assumptions and methodology used by the Office for financial reporting under subchapter II of chapter 35 of title 31.

"(5)(A)(i) Any computation or other determination of the Office under this subsection shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this paragraph.

"(ii) Upon receiving a request under clause (i), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of healthcare insurance obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this subparagraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

"(B) Upon receiving the report under subparagraph (A), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

"(6) After consultation with the United States Postal Service, the Office shall promulgate any regulations the Office determines necessary under this subsection.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 89 of title 5, United States Code, is amended by inserting after the item relating to section 8909 the following:

"8909a. Postal Service Retiree Health Benefits Fund.".

(b) REVIEW.—

(1) IN GENERAL.—

(A) REQUEST FOR REVIEW.—Any regulation established under section 8909a(d)(5) of title 5, United States Code (as added by subsection (a)), shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this paragraph.

(B) REPORT.—Upon receiving a request under subparagraph (A), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of healthcare insurance obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this paragraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

(2) RECONSIDERATION.—Upon receiving the report under paragraph (1), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

(c) TRANSITIONAL ADJUSTMENT FOR FISCAL YEAR 2006.—For fiscal year 2006, the amounts paid by the Postal Service in Government contributions under section 8906(g)(2)(A) of title 5, United States Code, for fiscal year 2006 contributions shall be deducted from the initial payment otherwise due from the Postal Service to the Postal Service Retiree Health Benefits Fund under section 8909a(d)(3) of such title as added by this section.

SEC. 804. REPEAL OF DISPOSITION OF SAVINGS PROVISION.

Section 3 of the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) is repealed.

SEC. 805. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided under subsection (b), this title shall take effect on October 1, 2005.

(b) TERMINATION OF EMPLOYER CONTRIBUTION.—The amendment made by paragraph (1) of section 802(a) shall take effect on the first day of the first pay period beginning on or after October 1, 2005.

TITLE IX—COMPENSATION FOR WORK INJURIES

SEC. 901. TEMPORARY DISABILITY; CONTINUATION OF PAY.

(a) TIME OF ACCRUAL OF RIGHT.—Section 8117 of title 5, United States Code, is amended—

(1) by striking "An employee" and inserting "(a) An employee other than a Postal Service employee"; and

(2) by adding at the end the following:

"(b) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability, except as provided under paragraph (3) of subsection (a). A Postal Service employee may use annual leave, sick leave, or leave without pay during that 3-day period, except that if the disability exceeds 14 days or is followed by permanent disability, the employee may have their sick leave or annual leave reinstated or receive pay for the time spent on leave without pay under this section.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 8118(b)(1) of title 5, United States Code, is amended to read as follows:

"(1) without a break in time, except as provided under section 8117(b), unless controverted under regulations of the Secretary".

SEC. 902. DISABILITY RETIREMENT FOR POSTAL EMPLOYEES.

(a) TOTAL DISABILITY.—Section 8105 of title 5, United States Code, is amended—

(1) in subsection (a), by adding at the end the following: "This section applies to a Postal Service employee, except as provided under subsection (c)."; and

(2) by adding at the end the following:

"(c)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(l)(1) of the Social Security Act (42 U.S.C. 416(l)(1)).

"(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of the Postal Accountability and Enhancement Act, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for total disability is converted to 50 percent of the monthly pay of the employee on the later of—

"(A) the date on which the injured employee reaches retirement age; or

"(B) 1 year after the employee begins receiving compensation.".

(b) PARTIAL DISABILITY.—Section 8106 of title 5, United States Code, is amended—

(1) in subsection (a), by adding at the end the following: "This section applies to a Postal Service employee, except as provided under subsection (d)."; and

(2) by adding at the end the following:

"(d)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(l)(1) of the Social Security Act (42 U.S.C. 416(l)(1)).

"(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of this subsection, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for partial disability is converted to 50 percent of the difference between the monthly pay of an employee and the monthly wage earning capacity of the employee after the beginning of partial disability on the later of—

"(A) the date on which the injured employee reaches retirement age; or

"(B) 1 year after the employee begins receiving compensation.".

TITLE X—MISCELLANEOUS

SEC. 1001. EMPLOYMENT OF POSTAL POLICE OFFICERS.

Section 404 of title 39, United States Code (as amended by this Act), is further amended by adding at the end the following:

"(d) The Postal Service may employ guards for all buildings and areas owned or occupied by the Postal Service or under the charge and control of the Postal Service, and may give such guards, with respect to such property, any of the powers of special policemen provided under section 1315 of title 40. The Postmaster General, or the designee of the Postmaster General, may take any action that the Secretary of Homeland Security may take under section 1315 of title 40, with respect to that property.

SEC. 1002. OBSOLETE PROVISIONS.

(a) REPEAL.—

(1) IN GENERAL.—Chapter 52 of title 39, United States Code, is repealed.

(2) CONFORMING AMENDMENTS.—(A) Section 5005(a) of title 39, United States Code, is amended—

(i) by striking paragraph (1), and by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively; and

(ii) in paragraph (3) (as so designated by clause (i)), by striking "(as defined in section 5201(6) of this title)".

(B) Section 5005(b) of such title 39 is amended by striking "(a)(4)" each place it appears and inserting "(a)(3)".

(C) Section 5005(c) of such title 39 is amended by striking "by carrier or person under subsection (a)(1) of this section, by contract under subsection (a)(4) of this section, or" and inserting "by contract under subsection (a)(3) of this section or".

(b) ELIMINATING RESTRICTION ON LENGTH OF CONTRACTS.—(1) Section 5005(b)(1) of title 39, United States Code, is amended by striking "(or where the Postal Service determines that special conditions or the use of special equipment warrants, not in excess of 6 years)" and inserting "(or such longer period of time as may be determined by the Postal Service to be advisable or appropriate)".

(2) Section 5402(d) of such title 39 is amended by striking "for a period of not more than 4 years".

(3) Section 5605 of such title 39 is amended by striking "for periods of not in excess of 4 years".

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part V of title 39, United States Code, is amended by repealing the item relating to chapter 52.

SEC. 1003. REDUCED RATES.

Section 3626 of title 39, United States Code, is amended—

(1) in subsection (a), by striking all before paragraph (4) and inserting the following:

"(a)(1) Except as otherwise provided in this section, rates of postage for a class of mail or

kind of mailer under former section 4358, 4452(b), 4452(c), 4554(b), or 4554(c) of this title shall be established in accordance with section 3622.

"(2) For the purpose of this subsection, the term 'regular-rate category' means any class of mail or kind of mailer, other than a class or kind referred to in section 2401(c).

"(3) Rates of postage for a class of mail or kind of mailer under former section 4358(a) through (c) of this title shall be established so that postage on each mailing of such mail reflects its preferred status as compared to the postage for the most closely corresponding regular-rate category mailing.";

(2) in subsection (g), by adding at the end the following:

"(3) For purposes of this section and former section 4358(a) through (c) of this title, those copies of an issue of a publication entered within the county in which it is published, but distributed outside such county on postal carrier routes originating in the county of publication, shall be treated as if they were distributed within the county of publication.

"(4)(A) In the case of an issue of a publication, any number of copies of which are mailed at the rates of postage for a class of mail or kind of mailer under former section 4358(a) through (c) of this title, any copies of such issue which are distributed outside the county of publication (excluding any copies subject to paragraph (3)) shall be subject to rates of postage provided for under this paragraph.

"(B) The rates of postage applicable to mail under this paragraph shall be established in accordance with section 3622.

"(C) This paragraph shall not apply with respect to an issue of a publication unless the total paid circulation of such issue outside the county of publication (not counting recipients of copies subject to paragraph (3)) is less than 5,000."; and

(3) by adding at the end the following:

"(n) In the administration of this section, matter that satisfies the circulation standards for requester publications shall not be excluded from being mailed at the rates for mail under former section 4358 solely because such matter is designed primarily for free circulation or for circulation at nominal rates, or fails to meet the requirements of former section 4354(a)(5).".

SEC. 1004. SENSE OF CONGRESS REGARDING POSTAL SERVICE PURCHASING REFORM.

It is the sense of Congress that the Postal Service should—

(1) ensure the fair and consistent treatment of suppliers and contractors in its current purchasing policies and any revision or replacement of such policies, such as through the use of competitive contract award procedures, effective dispute resolution mechanisms, and socioeconomic programs; and

(2) implement commercial best practices in Postal Service purchasing policies to achieve greater efficiency and cost savings as recommended in July 2003 by the President's Commission on the United States Postal Service, in a manner that is compatible with the fair and consistent treatment of suppliers and contractors, as befitting an establishment in the United States Government.

SEC. 1005. CONTRACTS FOR TRANSPORTATION OF MAIL BY AIR.

(a) Definitions.—Section 5402(a) of title 39, United States Code, is amended—

(1) in paragraph (4), by striking "(g)(1)(D)(i)" and inserting "(g)(1)(A)(iv)(I)";

(2) in paragraph (5), by striking "(g)(1)(D)(i)" and inserting "(g)(1)(A)(iv)(I)";

(3) in paragraph (6), by striking "only";

(4) in paragraph (8), by striking "rates paid to a bush carrier" and inserting "linehaul rates and a single terminal handling payment at a bush terminal handling rate paid to a bush carrier";

(5) in paragraph (11), by striking "(g)(1)(D)(ii)" and inserting "(g)(1)(A)(iv)(II)";

(6) in paragraph (13)—

(A) in subparagraph (A)—

(i) by striking "clause (i) or (ii) of subsection (g)(1)(D)" and inserting "subclause (I) or (II) of subsection (g)(1)(A)(iv)"; and

(ii) by striking "and" after the semicolon;

(B) in subparagraph (B), by adding "and" after the semicolon; and

(C) by adding at the end the following:

"(C) is not comprised of previously qualified existing mainline carriers as a result of merger or sale;";

(7) in paragraph (18), by striking "bush routes" and inserting "routes"; and

(8) in paragraph (22), by striking "bush routes" and inserting "routes".

(b) Nonpriority Bypass Mail.—Section 5402(g) of title 39, United States Code, is amended—

(1) in paragraph (2)(C), by inserting "or a destination city" after "acceptance point and a hub";

(2) in paragraph (3), by adding at the end the following:

"(C) When a new hub results from a change in a determination under subparagraph (B), mail tender from that hub during the 12-month period beginning on the effective date of that change shall be based on the passenger and freight shares to the destinations of the affected hub or hubs resulting in the new hub."; and

(3) in paragraph (5)(A)(i), by striking "(g)(1)(D)(ii)" and inserting "(g)(1)(A)(iv)(II)".

(c) Equitable Tender.—Section 5402(h) of title 39, United States Code, is amended—

(1) in paragraph (1), by inserting "bush" after "providing scheduled";

(2) by striking paragraph (3) and inserting the following:

"(3)(A) Except as provided under subparagraph (C), a new or existing 121 bush passenger carrier qualified under subsection (g)(1) shall be exempt from the requirements under paragraphs (1)(B) and (2)(A) on a city pair route for a period which shall extend for—

"(i) 1 year;

"(ii) 1 year in addition to the extension under clause (i) if, as of the conclusion of the first year, such carrier has been providing not less than 5 percent of the passenger service on that route (as calculated under paragraph (5)); and

"(iii) 1 year in addition to the extension under clause (ii) if, as of the conclusion of the second year, such carrier has been providing not less than 10 percent of the passenger service on that route (as calculated under paragraph (5)).

"(B)(i) The first 3 121 bush passenger carriers entitled to the exemptions under subparagraph (A) on any city pair route shall divide no more than an additional 10 percent of the mail, apportioned equally, comprised of no more than—

"(I) 5 percent of the share of each qualified passenger carrier servicing that route that is not a 121 bush passenger carrier; and

"(II) 5 percent of the share of each nonpassenger carrier servicing that route that transports 25 percent or more of the total nonmail freight under subsection (i)(1).

"(ii) Additional 121 bush passenger carriers entering service on that city pair route after the first 3 shall not receive any additional mail share.

"(iii) If any 121 bush passenger carrier on a city pair route receiving an additional share of the mail under clause (ii) discontinues service on that route, the 121 bush passenger carrier that has been providing the longest period of service on that route and is otherwise eligible but is not receiving a share by reason of clause (ii), shall receive the share of the carrier discontinuing service.

"(C) Notwithstanding the requirements of this subsection, if only 1 passenger carrier or aircraft is qualified to be tendered nonpriority bypass mail as a passenger carrier or aircraft on a city pair route in the State of Alaska, the Postal Service shall tender 20 percent of the nonpriority bypass mail described under paragraph (1) to the passenger carrier or aircraft providing at least 10 percent of the passenger service on such route.";

(3) in paragraph (5)(A)—

(A) by striking "(i)" after "(A)"; and

(B) by striking clause (ii).

(d) Percent of Nonmail Freight.—Section 5402(i)(6) of title 39, United States Code, is amended—

(1) by striking "(A)" after "(6)"; and

(2) by striking subparagraph (B).

(e) Percent 'of Tender Rate.—Section 5402(j)(3)(B) of title 39, United States Code, is amended by striking "bush routes in the State of Alaska" and inserting "routes served exclusively by bush carriers in the State of Alaska".

(f) Determination of Rates.—Section 5402(k) of title 39, United States Code, is amended by striking paragraph (5).

(g) Technical and Conforming Amendment.—Section 5402(p)(3) of title 39, United States Code, is amended by striking "(g)(1)(D)" and inserting "(g)(1)(A)(iv)".

(h) Effective Date.—

(1) In general.—Except as provided under paragraph (2), this section shall take effect on the date of enactment of this Act.

(2) Equitable tender.—Subsection (c) shall take effect on July 1, 2006.

Mr. FRIST. Mr. President, I further ask unanimous consent that S. 662, as amended, be returned to the calendar and that it not be in order for the Senate to consider any conference report or House amendments to H.R. 22 if it would cause a net increase in on- or off-budget direct spending in excess of $5 billion in any of the four 10-year periods beginning in 2016 to 2055, as estimated by the Congressional Budget Office.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER appointed Ms. Collins, Mr. Stevens, Mr. Voinovich, Mr. Coleman, Mr. Bennett, Mr. Lieberman, Mr. Akaka, and Mr. Carper conferees on the part of the Senate.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. President, I would like to take a moment to comment on the passage of the Postal Accountability and Enhancement Act.

Today's passage of S. 662 is a first step towards meaningful postal reform. The Postal Service forms a crucial part of the backbone of our economy, and I am encouraged by today's action toward bringing meaningful reform to the Postal Service.

I am optimistic that the process of resolving the differences between the Senate and House bills will result in a product that goes even further to ensure that America's Postal Service has the resources and flexibility necessary to remain relevant and competitive in the global marketplace.

I want to thank the chairman of the Homeland Security and Governmental Affairs Committee, Senator SUSAN COLLINS of Maine, and Senator TOM CARPER of Delaware, for their leadership. They worked diligently with their colleagues in the Senate, the U.S. Postal Service, the administration, and kept their focus on the thousands of postal workers in communities across America, and the businesses which rely on the mail system to craft the current compromise.

In the past three and a half decades, the needs of the Postal Service have changed dramatically. Indeed, the way we communicate has been transformed by technology through e-mail, faxes, and my personal favorite, Blackberries.

We can now pay our bills on the Internet. And online shopping is more common than catalog sales.

Nevertheless, the Postal Service remains a critical part of America's economy. Between paper manufacturing, printing, catalog production, direct mailing and financial services, the $900 billion mailing industry employs 11 million workers in America.

And it is fair to say that we rely on the U.S. Postal Service more than any other governmental service. In Nashville and Knoxville, and towns all across the country, the local post office still represents the heart of the community.

In recent years, the Postal Service has undergone some of its most challenging and difficult times. In 2001 and 2003, it was hit with deadly anthrax and ricin bioterrorism attacks. It was a frightening time for our country's postal workers, and shook us all to the core.

The Postal Service has also undergone significant modernization on the business side. These reforms have made the postal service more efficient and productive, and I applaud the leadership of Postal Master Jack Potter who has been a steady, forward-thinking, responsible leader of the U.S. Postal Service.

I have worked with the Postmaster General on a number of occasions. The attacks in 2001 and 2003 brought us together to address the public health risks of mail-born bioterrorism, and to develop better ways of protecting the Postal Service's employees and America's mail.

And most recently, Jack and I announced the transfer of the historic post office on the Mississippi River in Memphis, to the University of Memphis for their new law school. He personally worked with me, the city and the university to get this done for the Memphis community.

The Postal Service is in good hands, and under Jack Potter's leadership has significantly improved its financial performance. But in order for America to have a healthy and stable mail system into the future, the Postal Service needs a less cumbersome rate-setting process and better flexibility to respond to an increasingly competitive and demanding marketplace. S. 662 takes important steps toward that goal.

It grants the Postal Service Board of Governors new authority to set rates for competitive products like express mail and priority mail, and replaces the current rate-setting process for products such as first-class mail, periodicals, and library mail with a more efficient, less litigious rate cap-based structure.

The Postal Accountability and Enhancement Act also transforms the existing Postal Rate Commission into the Postal Regulatory Commission with authority to regulate rates for noncompetitive rates and services, ensure financial transparency, and establish limits on the accumulation of retained earnings, among other things.

I look forward to seeing more work done on this issue, but today's action represents the beginning of real reform to the Postal Service which will benefit the taxpayers, ratepayers, and the thousands of dedicated U.S. Postal Service employees.

Every day, we are working to keep America moving forward.

U.S. POSTAL SERVICE

Mr. HARKIN. Mr. President, I appreciate the work done by Senator COLLINS, Chair of the Homeland Security and Governmental Affairs Committee, by the ranking member Senator LIEBERMAN, and also by Senator CARPER. It has literally taken years to move this important postal reform legislation.

As my colleagues are aware, the Postal Service faces multiple challenges in our changing economy. One of these challenges is how it should manage its network of processing and logistics facilities. In order to remain competitive and maintain universal service, the Postal Service is currently studying how best to streamline its processing and logistics network and remove excess capacity. The decisions it will make as part of this process will have a long term impact on many of the communities and businesses that it serves.

Sadly, the process that the Postal Service has developed to date to study facility closures and consolidations fails to adequately allow stakeholders, key customers, postal employees or community leaders necessary input. The current process also fails to provide an open and transparent explanation to affected communities for what may be quite compelling reasons underlying the decisions to close or consolidate a facility.

I learned how completely lacking in public participation and transparency this process is from my constituents in Sioux City, IA. Until I convened a meeting with postal officials in my office last week, the Sioux City community had been unable to get any information from the Postal Service about the timing or reasons for the proposed consolidation of a mail processing and distribution center there with a similar facility in another state.

Senators COLLINS, LIEBERMAN, and CARPER have agreed to include language in S. 662 that would ensure that this does not happen. This language does not stop the Postal Service from studying consolidation options for its processing operations. What it does do is require that the Postal Service revise the area mail processing study process by which it analyzes which of its processing facilities should be closed or consolidated.

While the language does not prevent the Postal Service from proceeding with ongoing area mail processing studies on consolidation of specific facilities, it does provide that no facility closing or consolidation may actually be implemented until the Postal Service has met the requirements of public notice, transparency and public input specified in new section 302(c)(3)(D)(i-iv) .

The new language requires that the Postal Service's decisionmaking process be transparent, with any analyses made available to the community upon request. It will also require that the businesses and communities affected by proposed consolidations of Postal Service facilities have the opportunity to provide input and guarantees that their concerns and advice are taken fully into account by the Postal Service before the Postal Service issues a decision on a closure or consolidation.

The first section of the amendment provides that the Postal Service notify an affected community about the potential of a facility being closed or consolidated in their district; such notification will be provided at the beginning stage of the matter or as soon as the Postal Service makes a decision to begin reviewing the matter. The Postal Service should do their best to ensure that this notification reaches all of businesses, residents, employees, government entities, and other organizations that depend on the facility.

The second section will require the Postal Service to make available to the community, upon request, any data, analyses, or other information that is being considered by the Postal Service as part of its decisionmaking process. This will ensure that the Postal Service's decisionmaking analysis on this matter is transparent.

The third section will allow the affected members of the community ample opportunity to provide input on the proposed decision. This will ensure that the community has the chance to provide valuable input into the decisionmaking process.

The fourth section requires the Postal Service to take community input into account prior to making a final decision at the district level. Once the district level decision on consolidation is made, which includes taking the community input into account, the district level recommendation can then be forwarded to the next decisionmaking step at the regional level. It is worth noting that the community served by a postal facility can be a valuable information resource and that it should benefit the Postal Service to listen to the community's suggestions as they seek to arrive at a result that works for them, their customers and those they serve.

Mr. CARPER. While I fully support efforts by the Postal Service to rationalize its processing operations, I also believe that the Postal Service can engage in consolidation decisions that are rational and justified and can withstand public scrutiny. I believe that this language will improve the consolidation process, and I was pleased to work with my colleague from Iowa in drafting it. I believe that the language strikes the appropriate balance by not stopping the Postal Service from studying proposed consolidations of particular facilities, while at the same time requiring the Postal Service to meet some basic obligations to its customer and affected communities before a consolidation can be implemented.

Mr. LIEBERMAN. I am pleased to lend my strong support to adding this provision to S. 622 in order to improve the procedures by which the Postal Service consolidates its mail processing operations. The problems local communities are encountering from the Postal Service's consolidations hit home for me in Waterbury, CT. Connecticut residents affected by the Postal Service's decision to close its Waterbury mail processing center have a right to participate in a process that is transparent and open. This new provision in S. 622 will help ensure that, when the Postal Service streamlines its mail processing or logistics network, it gives adequate public notice and takes other steps to be sure that those who are potentially affected—including postal customers, postal employees, and other businesses and individuals in the community—have an opportunity to understand and provide input into the Postal Service's decision before facilities are consolidated or closed.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER (Mr. VITTER). Without objection, it is so ordered.

OIL DRILLING

Mr. NELSON of Florida. Mr. President, I wanted to call to the attention of the Senate that over the past couple of days the question of drilling for oil off the coast of Florida has been joined. Indeed, the question and the debate has accelerated.

Yesterday, the Department of the Interior offered their proposed new alignment of the Gulf of Mexico and the central planning area where drilling for oil will occur and the eastern planning area where oil drilling will not occur.

As we have speculated for some period of time, when the Department of the Interior published in the Federal Register that State boundaries were going to be redrawn so that the boundaries of the State of Louisiana, indeed, went into the waters off of the State of Florida, we could well speculate, with some justification, that indeed that was going to be the plan. That, in fact, was the plan offered yesterday by the Secretary of the Interior, Gale Norton, for the next 5 years in the Outer Continental Shelf.

The Secretary's plan increases the drilling in the eastern Gulf of Mexico off the State of Florida by 2 million acres. That was simultaneously followed by the filing of a bill by the chairman of the Energy Committee, the Senator from New Mexico, which would encompass almost the entirety of an area not included in the moratorium on the Outer Continental Shelf, known as lease sale 181.

The essence of the proposal by the Senator from New Mexico is to drill for oil and gas in an area of 4 million acres, in a bulge which bulges out from the imaginary Florida-Alabama line into the waters off the State of Florida.

This senior Senator from Florida, joined by my colleague, Senator MARTINEZ, recognizing this was coming, laid out a plan last week—a plan that would allow some drilling in a part of lease sale 181 but far from the Florida coast—indeed, 260 miles west of Tampa Bay and Clearwater Beach, that from Pensacola, FL, in the panhandle, would be 150 miles to the south but then would honor the so-called "military mission line," about which Secretary of Defense Don Rumsfeld stated in a letter before Christmas that oil and gas drilling in that area, which has been restricted space because we train and test our military weapons, would not be compatible; to use his words: It would be incompatible with military objectives, with military preparedness through our training and testing in the waters, off the waters, and around the waters of the Gulf of Mexico off Florida.

Therefore, Senator MARTINEZ and I proposed a line that would honor the request of the Department of Defense. That request was corroborated the day before yesterday in front of the Senate Armed Services Committee, when this Senator put the question to Secretary Rumsfeld, again in the form of thanking him for his clear statement, and he acknowledged that statement again.

Where does this leave us? We must continue to have this fight.

We have the prodrilling forces, as evidenced by Senator DOMENICI and his proposal wanting additional drilling off the coast of Florida. We have a more modest proposal by the Secretary of the Interior, who consulted with a couple of dozen oil companies and their proposal, and we have the proposal of the two Senators from Florida, recognizing there is much at stake beyond drilling.

The stakes are very high, not even to speak of Florida's economy, which is certainly evidenced by a $50 billion a year tourism industry which depends on pristine beaches, without oilspills the likes of which occurred last week in Alaska.

When people say: Oh, it is gas that we want to drill, not oil, ignoring the fact that one of the largest and most costly oil spills occurred when a gas rig blew off the coast of California in 1968, causing this massive oilspill, which led to the enactment of a moratorium of all drilling off the Continental Shelf of the United States.

Certainly, economic interests of our State are clearly one component. But there is another component; that is, we have bays and estuaries where so much of our marine life is spawned where the delicate environment would be savaged with an oilspill.

People said it would be far from Florida shores, but winds and currents do not understand mileage. Indeed, there is that current that comes up into the Gulf of Mexico in a northward arc off of the Yucatan Peninsula of Mexico and then turns southward and comes around the Florida Keys, then northward it is the current known as the Gulf Stream.

The idea that long distances are going to protect the delicate environment, I hope that can be recognized as a false argument.

Another component of the argument is simply that there is very little oil out there. They have had several dry holes. The geology shows there is not very much oil. The oil, in fact, in the Gulf of Mexico, is where the 4,000-plus oil rigs are, which is the central gulf and the western gulf off of, primarily, Louisiana and Texas.

But then, of course, there is the fourth component of why we should not drill in the eastern gulf. That is our military preparedness. If you fly commercially from Tampa to New Orleans, you do not fly across the gulf. You hug the coast of Florida. Why? It is restricted space. It is the largest testing and training area for our U.S. military. It is what Secretary Rumsfeld memorialized in the letter to the Senate Committee on Armed Services in December saying: Do not drill east of that military mission line.

We are testing weapons systems such as the F/A–22. All pilot training is being done at Tyndall Air Force Base in Panama City. Why? Because the Gulf of Mexico is restricted space. In a dog fight with the F/A–22, compared to the F–15, the F/A–22 is engaging in air-to-air combat at a speed of 1.5 mach, not like the F–15 and the F–16 at .75 mach, three-quarters of the speed of sound. In other words, the new stealth fighter is engaging in air-to-air combat at twice the speed of our present fleet of aircraft. Therefore, the training area has to be so much larger.

We are testing right now a laser weapon shot from a ship, which goes several hundred miles. We have to have restricted space. Secretary of Defense Rumsfeld said oil and gas rigs are incompatible with the military uses of that space.

That is four components. Senator MARTINEZ and I took all those components into consideration in suggesting our plan. And we added a 20-mile cushion since that military mission line that Secretary Rumsfeld referred to was established in 1981, and the weapons have gotten more sophisticated and, as I stated, require much more space in which to test and to train our military.

That is the line we have drawn which is in effect from Clearwater Beach, right there at Tampa Bay, St. Petersburg Beach, 260 miles to the west from a position further south of Florida, like Fort Myers or Naples. It is in excess of 300 miles from the coast of Florida.

To my knowledge, as of today every newspaper editorial page in the State of Florida, save for one newspaper, has editorialized in favor of Senator MARTINEZ and my proposal from last week. I don't have the exact count, but that is something upwards of 20 editorial pages.

As we come here for the fights that are going to occur, Senator MARTINEZ and I are looking for a practical line that will accommodate the interests of everyone, including our military preparedness. That is why we cannot have a bill that was offered in the House of Representatives last fall that says leave it up to the States. We can't leave it up to a State to set military policy. We cannot leave it up to an individual State legislature to determine whether the U.S. military is going to be prepared in this long war on terror. That is why Senator MARTINEZ and I have said these boundaries ought to be permanent, not in some 5-year plan that is now being offered but permanent.

We are going to continue the fight. I can tell the Senate there is no daylight between Senator MARTINEZ, who sits on that side of the aisle, and this senior Senator of Florida, who sits on this side of the aisle. We will employ every opportunity we have under the rules of the Senate to try to get others who disagree to understand the practicality and the wisdom of the proposal we have laid out to accommodate all of the interests, including the military interests of this country.

I share that with the Senate. This is not going to be the last time we will discuss that, but I make this Senator's position unalterably clear. I thank the Senate for this opportunity to share these thoughts.

I yield the floor.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005—Continued

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Montana.

Mr. BAUCUS. What is the pending business before the Senate?

The PRESIDING OFFICER. The Senate is on S. 852, the asbestos legislation.

Mr. BAUCUS. I ask the Presiding Officer, is there an amendment pending?

The PRESIDING OFFICER. There are several amendments pending.

Mr. BAUCUS. Is one of the amendments the Cornyn substitute?

The PRESIDING OFFICER. There are two Cornyn amendments pending. There is a perfecting amendment pending and a second degree to that perfecting amendment.

Mr. BAUCUS. I thank the Chair.

Mr. President, I strongly oppose the Cornyn amendment to the underlying bill. I want the record to reflect my deep disappointment in those two amendments. I am deeply concerned we are losing sight of what is at stake.

What is that? Making sure that people who are sick, who are likely to become sick from exposure to tremolite asbestos are not denied the ability to fight for their rights against the persons or companies that injured them. That is absolutely the bottom line. If these amendments are agreed to, people in the small county of northwest Montana will not get justice. These people will not get relief. They will not get support. They will not be able to pay for needed health care as they die.

We are talking about hundreds of sick and dying people. This amendment turns our back on them. It will hurt them while they are already down. It will hurt the people of Libby. The people in Libby are proud. They have had more than their share of hard knocks. They just keep going, getting up and keep trying. They are good, proud people. But they have been injured. They have been deceived. They have been wronged. They have been lied to.

They have tried to put their faith in our Congress and in our legislative process to make things right. They are survivors. I am privileged to know them so well and to represent them.

Let me tell you about the first time I went to Libby. It was January of the year 2000. I traveled to Libby to meet with 25 extremely ill people for the first time. I had been briefed a number of times on what I might expect to hear that night. These kind men and women, some of whom are no longer with us, gathered to share huckleberry pie and coffee in the home of Gayla Benefield.

They opened their hearts. They poured out unimaginable stories of suffering and tragedy on a scale that absolutely stunned me. Entire families—fathers, mothers, uncles, aunts, sons, and daughters—all sick, hundreds are dead—they are all bound together by their exposure to the company mine, exposure to tremolite asbestos mined by W.R. Grace.

This is an isolated community of a few thousand people located as far away from Washington, DC, as you could possibly get, way up in northwest Montana.

I will never forget a man I met that night. He has become my dear friend. His name is Les Skramstad. I mentioned Les yesterday. Let me tell you about our first introduction.

At that meeting in the home of Gayla Benefield, Les watched me closely all evening. He was weary and came up to me after his friends and neighbors finished speaking and said to me:

> Senator, a lot of people have come to Libby and told us they would help, then they leave and we never hear from them again.
>
> Max, please, as a man like me, as someone's father, too, as someone's husband, as someone's son, help me. Help us. Help us make this town safer for Libby's sons and daughters not even born yet. They should not suffer my fate, too. I was a miner and I breathed that dust in.
>
> And what happened to me and all the other men and women who mined wasn't right—but what has happened to the others is a sin. Every day I carried that deadly dust home on my clothes. I took it into our house. I contaminated my own wife and each of our babies with it too. Just like me, they are sick and we will each die the same way.
>
> I just don't know how to live with the pain of what I have done to them. If we can make something good come of this maybe I will stick around to see that, maybe that could help make this worthwhile.

That is what Les said to me that evening. It riveted me. I told him I would do all that I could, that I would not back down, and I would not give up. I said to myself that evening, if I do anything, I am going to help get justice for the people of Libby, MT.

Les accepted my offer and then pointed his finger at me and said: I'll be watching, Senator.

Les is my inspiration. He is the face of thousands of sick and exposed folks in this tiny Montana community. When I get tired, and I see the difficulties we face to try to get justice for the people of Libby, I think of Les, and I cannot shake what he asked me to do. In all my years as an elected official, this issue of doing what is right for Libby is among the most personally compelling things I have ever been called on to do.

Doing what is right for the community and making something good come of it is my mission in Libby. I thank Les Skramstad every day for handing me my marching orders. My staff and I have worked tirelessly for Libby—not for thanks, not for recognition but because the tragedy is that gripping. There is no other choice. It is a no-brainer. We do all we can. It is such a tragedy for the people of Libby.

The extent of asbestos contamination in Libby, the number of people who are sick and who have died from asbestos exposure is staggering. The people of Libby suffer from a deadly asbestos-caused cancer, mesothelioma, at a rate 100 times greater than the rest of the Nation. Mr. President, 1 in 1,000 residents of Libby suffers from this disease. The national average is 1 out of 1 million. Libby residents suffer from all asbestos-related diseases at a rate of 40 to 60 times the national average.

So how could this happen? Well, a company named W.R. Grace owned and operated a vermiculite mining and milling operation in Libby. It just so happened the vermiculite was contaminated by a deadly form of asbestos called tremolite asbestos. It is much more pernicious than the ordinary chrysotile asbestos. Tremolite asbestos is so bad, it gets into your lungs. It has hooks in it. It stays there and does not ever get out.

Mr. President, 5,000 pounds of tremolite asbestos was blown over the town every day. Every day this dust contaminated the air. Dust settled in the town of Libby, on cars, on homes, in gardens. Think of it. You get up in the morning to go outside, and there is this tremolite asbestos dust on your car. It is on your home. It is everywhere, your garden. It settled on children as they played in the parks. Workers brought the dust home on their clothes and exposed their families. Hundreds have died, hundreds more are sick.

The very worst part about this story is that W.R. Grace knew exactly what it was doing and did not tell anyone. It was making a buck while it was hurting people. It knew that the vermiculite dust was contaminated with deadly tremolite asbestos. Yet it had told workers in the town it was harmless. It was just dust, they said. W.R. Grace not only said it was harmless, then what did it do? To add insult to injury, it bagged this stuff. It put all this tremolite asbestos in bags and then gave bags to residents for their gardens and to the high school for covering for the high school track and for parks and playgrounds.

Well, W.R. Grace filed for bankruptcy. Before they did that, what did they do? They transferred almost all their assets away to other companies so they could not be sued. So people in Libby could not get justice. Through all of this, W.R. Grace has yet to step up and do the right thing for Libby.

So I stepped up. I stood up for the people of Libby. And I am standing up now for Les and his family to do all I can to help him and those other people in Libby.

I worked hard with the Judiciary Committee, especially my colleagues, Senator SPECTER and Senator LEAHY, to tailor a solution that addresses the unique problems in Libby. I am extremely grateful to Senator SPECTER, the chairman of the committee, and Senator LEAHY, the ranking member, for all their work to help protect Libby. I spent a lot of time explaining to them the problems of Libby, and to their credit, they listened and put provisions in the bill, the underlying bill, that address the very unique, special problems of the tragedy in Libby.

The original medical criteria in the bill did not address the specific needs of Libby because disease resulting from exposure to tremolite asbestos progresses differently than disease from exposure to the traditional form of asbestos. Tremolite asbestos, the latency period is a lot longer. You cannot detect it until much later. It is also a pernicious kind of asbestos that causes much more injury and makes it much more difficult to breathe. It is wicked stuff.

So we worked hard, and we included medical criteria that specifically address the unique needs of Libby. My colleagues, I hope, understand—they must understand: the right thing to do is to understand—this whole community was exposed, not just the mine workers but everyone.

W.R. Grace mined the raw vermiculite in the mines of Libby and then milled that vermiculite to remove up to 96 percent of the tremolite asbestos contained in the vermiculite. That milling process then shot 5,000 pounds of tremolite asbestos into the air each and every day. That asbestos blanketed the town. The asbestos did not discriminate where it fell. It covered the school playground and little league baseball field. And it is now growing in the bark of trees, if you can imagine. It is everywhere.

I am offended some of my colleagues think they know best. I am offended some of my colleagues, who think they know better, have not taken the time to know the issue, to travel to Libby, to understand what is going on there, to open up their minds and their hearts, to try to understand. They have not taken the time to meet the people, to understand there are different types of asbestos or that the disease from exposure to tremolite asbestos progresses very differently and is much more pernicious.

So if you do not support the bill, I ask my colleagues to say so. But do not hold the people and the community of Libby hostage. Whatever we do, however we deal with the underlying asbestos bill, we cannot hold the people of Libby hostage. Do not ask the innocent people of Libby to do your bidding for you.

And if this amendment passes—the Cornyn amendments—I will have to go back to Libby. I will look into the eyes of that community, and I will tell them that their Nation turned its back on them.

Let me be very clear. I will keep fighting for Libby until they get the help that is desperately needed and long overdue. Until they get the compensation they deserve, I am going to keep fighting. We are going to find a way, eventually, to give these people the justice they deserve.

Thank you, Mr. President.

I see the chairman of the committee on the floor. I thank him for his help and his recognition of the unique differences in Libby, MT. I tell him, I appreciate that.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the Senator from Montana for those comments and for his leadership in structuring the bill now on the floor, S. 852. He has accurately described the very serious situation in Libby, MT, where many people have been exposed to asbestos in a dreadful situation, a situation where the W.R. Grace Company sent this deadly substance into the atmosphere knowing its dangers.

The bill which has been structured would compensate the people there. The Senator from Montana accurately and forcefully articulates the reasons why the pending amendment for medical criteria is totally insufficient. It simply does not cover people such as those in Libby, MT. It does not cover the thousands of people who worked for companies which were bankrupted—77 of them. It does not cover the veterans of America who are suffering from exposure to asbestos. It does not cover the real core of the issue and the problem at hand.

I have talked to Senator CORNYN about scheduling a vote. We would like to have a vote reasonably soon. A vote is always a salutary method of getting Senators to the floor to move the bill along in other respects. Senator CORNYN wanted to have some time for discussion and argument. And a few minutes after 2, I said I would try to accommodate him on what he wanted to do in that respect. But I hoped we could have a vote no later than 3 o'clock. That is still my hope, and to get there, I am going to be brief.

I see Senator LEAHY on the floor, and I yield to him.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, did the Senator from Montana wish to say something?

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I do not care who has the floor, but I wish to say I appreciate the comments of the chairman of the committee and, also, how much I appreciate the efforts of the ranking member of the committee, Senator LEAHY from Vermont. He has also, as has the chairman of the committee, been very receptive in his understanding of the issue.

I might say, I thank again the Senators. They sent staff to Montana to get a firsthand understanding of what is going on. I thank the chairman. I also again thank the Senator from Vermont for his deep understanding. He has taken the time and effort to learn the problems that face Libby, MT. I again thank both Senators.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I thank the distinguished senior Senator from Montana for his comments. I should note that from the first day Senator SPECTER and I started talking about this legislation, the distinguished Senator from Montana was there visiting with us. He made it very clear he wanted to make sure that whatever we passed took care of what is an extraordinary and unique situation in Libby, MT. His help and his counsel have been extraordinarily important throughout.

We had so much testimony that said the same thing, that said the current system for compensating asbestos victims is broken. Victims are dying. Ironically, they are dying while they are waiting for their day in court—a day that will not come. Even for those who finally receive their day in court, they often receive only a small percentage of the costs involved in our tort system. Of course, if the defendant has been forced to file for bankruptcy, or decided to file for bankruptcy, these victims receive little or no compensation.

I think, as both Chief Justice Rehnquist and Justice Ruth Bader Ginsburg have said, this cries out for a solution outside of the court system that streamlines the claims process for victims, to make sure they receive timely and fair compensation relative to the severity of their injuries. That will protect compensation they receive from subrogation by insurance companies.

Actually, we find from the most recent RAND study asbestos victims receive an average of only 42 cents for every dollar spent on asbestos litigation. What may surprise some, 31 cents of every dollar goes to defense costs. A somewhat smaller amount, 27 cents, goes to plaintiffs' attorneys and other related costs. All that is eaten up before the victim, the one suffering, sees anything.

I think the enactment of a medical criteria bill, such as the amendment the distinguished Senator from Texas, Mr. CORNYN, has proposed, for asbestos would fail to reduce the high transaction costs of the asbestos tort system.

Medical criteria bills do nothing to protect businesses from going bankrupt or victims who were injured by bankrupt companies to receive fair compensation.

The plain fact—the plain and easy fact—is many of these asbestos manufacturers are in bankruptcy proceedings and, therefore, are immune from suit. Victims, such as our Nation's veterans, are unable to recover for asbestos exposure while serving their country in the current tort system. Think of that, our veterans.

We received the following testimony from Hershel Gober, the national legislative director of the Military Order of the Purple Heart. He said:

> We believe the compensation fund approach is the only solution that will provide veterans suffering from asbestos-related illnesses with fair [with fair] and certain compensation.

But he also pointed out:

> The avenues open to veterans to seek compensation through the tort system, however, are very limited. The Federal government, as the members of this Committee know, has sovereign immunity, thereby restricting veterans' ability to recover from the government; and most of the companies that supplied asbestos to the Federal government have either disappeared or are bankrupt and, therefore, are only able to provide a fraction of the compensation that should be paid to asbestos victims, if anything at all.

This distinguished veteran went on to say:

> Even if there is a solvent defendant company for a veteran or his/her family to pursue, there remains the lengthy, costly, and uncertain ordeal of filing a civil lawsuit and going through discovery and trial, where the plaintiff bears a heavy burden of proof and often has the very difficult to impossible task of establishing which defendant's product caused their injuries.

Criteria bills, such as that of the distinguished Senator from Texas, will do nothing to compensate victims such as our Nation's veterans who are injured by bankrupt companies during their service to our great country. Legislation imposing medical criteria on the tort system is inherently unfair to victims. These measures don't alleviate the delays victims face when they are confronted with overwhelmed court dockets. Criteria bills, such as the Cornyn amendment, allow defendants and insurers to enjoy the delays of litigation and maintain all of their defenses in the tort system. They are far away from streamlining a procedure to help people who are sick and dying, and they impose new hurdles for plaintiffs and continue to require the identification and proof of the manufacturer or entity responsible for exposing them to asbestos decades ago.

In contrast, the bill Senator SPECTER and I have brought to the floor will not require victims to identify and prove the manufacturer or entity that exposed them to asbestos. They only have to show the suffering they have had from asbestos. They will not have to hope that the entity responsible for their exposure is still in existence or financially solvent. They will recover compensation under the fund in proportion to their impairment or disease. The current system for compensating victims of asbestos exposure is inefficient and inequitable.

This medical criteria amendment is not a solution. It actually operates within that same broken tort system.

I could go further, but I know the distinguished chairman hopes we will come to a point where we can vote. I would note that this amendment will preempt the silica claims of thousands of victims. I understand that the AFL-CIO and other labor unions representing thousands of workers, like this distinguished veterans association, oppose the Cornyn amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. COLEMAN). Without objection, it is so ordered.

Mr. HATCH. Mr. President, I rise in support of S. 852, the bipartisan Fairness in Asbestos Injury Resolution Act of 2005. Over the last several days, several of the opponents of this legislation have made serious, misleading claims, and I would like to take a moment to respond.

Opponents of this bill have claimed that it amounts to a bailout of big business generally, and asbestos manufacturers specifically. Guess what. They are, as usual, almost right. Webster's Dictionary defines "bailout" as a rescue from financial distress. It is true that we are trying to save 90 percent of this country's industry from financial distress. It is also true that we are trying to rescue literally hundreds of thousands of asbestos victims from the plague of uncertainty that advances from the efforts of asbestos attorneys and the cruelty of asbestos bankruptcies. So using the word "bailout" is not a complete mischaracterization of what this bill does.

This bill saves an overburdened legal system. We have been asked by no less than the Supreme Court of the United States of America three times to do something about this mess. If we don't do something about this mess, we are going to have a severe economic crises in this country, driven by this approach that is literally bankrupting some very innocent companies.

This bill saves asbestos victims from unfair and untimely compensation.

This bill saves ordinary Americans from the tremendous strain on our national economy. And this bill saves veterans who have nowhere else to turn. I ask my colleagues if they know that once vibrant companies, now bankrupt due to asbestos liability, employed over 200,000 workers—200,000. The asbestos crisis affects over 85 percent of the U.S. economy. Over $200 million in lost wages—$200 million—gone. Almost no one has been spared. Mr. President, 75 out of 83 industrial sectors in this country are affected.

Has not this body been working for several years now to save domestic jobs and help our industries? Not a single Senator questions the fact that this Nation faces an immediate crisis. Not a single Senator disputes the fact that our legal system cannot handle the thousands upon thousands of asbestos claims. And, hopefully, not a single Senator questions that we must do something, and do it now, and this is the only vehicle we have.

Too much time has passed, too many people have died, too many people have lost their jobs, too many people have gone uncompensated, and too many asbestos lawyers have private jets and luxurious yachts as a result.

Some colleagues claim this bill lets defendant companies off the hook. I believe the distinguished senior Senator from Massachusetts said yesterday that S. 852 would shift more of the financial burden onto the backs of injured workers. I share my colleague's concern for injured workers. I disagree with his assessment of how this bill works.

The FAIR Act does not add to the burden on injured workers; it lessens it. This bill will ensure that asbestos victims are compensated over a 3- to 4-year period. Individuals with exigent claims will receive their compensation within 1 year.

Moreover, asbestos victims under this bill will receive the entire award themselves instead of giving enormous percentages to attorneys in transaction costs. Of course, claimants may elect to utilize an attorney, in which case attorney's fees are capped at 5 percent, rather than 40 percent. That is a far cry from some of the exorbitant attorney's fees that are being charged today.

I wholeheartedly believe attorneys should be compensated for their efforts, but I also believe that such compensation should be reasonable. Under the FAIR Act, defendant companies are not let off the hook. Defendant companies, along with insurers and reinsurers, do not get a free ride under S. 852—unless one thinks a combined $136 billion obligation constitutes a free ride. Defendant companies are responsible for payments up to $90 billion over the life of the fund. Insurer participants are responsible for payments up to $46 billion. That is not pocket change. Indeed, as some of my colleagues have pointed out, there are companies and insurers who oppose this bill because of this obligation.

I ask my colleagues: Why would some of these companies oppose this legislation if it amounted to a free ride? This brings me to my next subject.

Some of my colleagues have alleged that taxpayers will be footing the bill for the FAIR Act—$140 billion, they claim. That would be a truly frightening allegation if it were true. Fortunately for us, if you read this bill, it is not true. The FAIR Act is entirely funded by private means. American taxpayers do not pay one dime. Although an argument could be made that during the war our Government used asbestos in shipbuilding and so many other ways. And I am just talking about the war. You can extrapolate way beyond that. But we haven't asked the Federal Government to pay anything. This bill does not require any payments by the Federal Government—not one nickel, not one penny.

The truth is, as I mentioned before, private entities provide the funds for this bill—$140 billion—and none of it comes from the coffers of the United States of America. Defendant companies pay $90 billion, participant insurers pay $46 billion, and the remaining $4 billion? Bankruptcy trusts: At present, there is somewhere in the range of $4 billion to $7 billion that sits in bankruptcy trust. This bill would consolidate those moneys and fold them into the trust it creates.

It is true that some of those trusts do not relish this idea. I don't blame them. I do not like living in the shadow of this problem either. But the fact is, Congress can and should consolidate the existing bankruptcy trusts as part of the comprehensive solution to a critical national problem.

Let me also say this: If we don't do something about this—and this is just step 1. We have to get the House to do something. I doubt seriously they are going to do this bill. If they don't do this bill, they have to come up with one of their own. When they do, that means we have to go to conference and hopefully work out any of the problems we uncover between now and then.

If we don't do this bill, then I personally believe the economy is going to be very badly damaged and ultimately hurt. I hate to be a doomsayer, but I really believe that is what is going to happen. I think virtually everybody in this body knows we need to do something. This is the vehicle that we have to get through the Senate, and then we are going to have to, hopefully, get the House to come up with a similar vehicle, or at least whatever they think is the best way of doing this. Then we have to go to conference, and people working with goodwill have to try to solve these problems, hopefully using the best things in this bill and the best things in a House bill so we can solve this problem for our country, for our economy, for our workers, and for companies so that in the future they aren't going to go bankrupt.

When I first started working on this, there were only 30 companies in bankruptcy. Today there are almost 80. That is just a few years. It is going to get worse.

As I understand it, the problem is going to get worse because of superficialities and a tort system run amok, and because we are unwilling to stand together and do something about it, and because of special interests. No, not special interests down at K Street, special interests that are the largest hard-money supporters of our friends on the other side today.

As I understand the situation, there are two primary claims against including the existing bankruptcy trusts in this legislation. The first argument amounts to a finality claim. Some argue that Congress should let sleeping dogs lie. Critics in this camp believe we should not undo what has been done in the bankruptcy court since victims in those circumstances have been compensated to a degree and the channeling injunction that accompanies a 524(g) trust effectively terminates residual liability.

There are problems here. In many instances the sleeping dog here is, in fact, a very sick puppy. It cannot take care of itself. The Manville Trust, for example, pays only pennies on the dollar and it does not address the global problem. In fact, the Supreme Court has, on more than one occasion as I have said, struck down attempted global settlements while simultaneously calling upon Congress to act.

The fact is, the Supreme Court is right. The asbestos problem is a horrific mess and it is time for Congress to intervene. I understand why companies on the receiving end of a channeling injunction would not want to upset the balance they have struck. But they will have the protections of this bill while simultaneously providing much needed funding that will be used to compensate the true victims of the asbestos crisis.

One further point on existing asbestos bankruptcy trusts. For reasons I will explain in a moment, most bankruptcy trusts in this context were established by the plaintiffs' trial bar. The provisions of 11 United States Code 524(g) do not permit a channeling injunction unless 75 percent of the claimants approve of the measure. That means that plaintiffs' attorneys in these cases—and there are about 12 major law firms, that is what it comes down to—have a very big say in how the trust is set up and, more troubling, how they, the asbestos lawyers in these 12 firms, basically are compensated. I can see why the asbestos plaintiffs' bar would not like to see this change. Can you blame them? This is a cow they want to milk. It is high quality milk at that.

The second problem is a little more complicated. Certain asbestos bankruptcy trustees have argued that the inclusion of their assets in the larger trust established under the FAIR Act constitutes an unlawful taking in violation of the fifth amendment to the Constitution. I admit I was surprised when I discovered that my friend Professor Laurence Tribe and I actually agree on a point of constitutional law. But it is true. He was correct to say:

> It is a well-settled rule that legislatures may act rationally to modify or abolish causes of action, impose assessments, and create new compensation programs without violating due process or triggering the right to just compensation under the Takings Clause.

I also agree with Professor Tribe's assessment:

> The bankruptcy process, and in particular the confirmation of a plan of organization, does not provide a debtor or a resulting trust with ongoing immunity from the operation of federal law as it might evolve over time.

In a nutshell, there is not a final property interest at issue in this context. I agree with Mr. Carter G. Phillips:

> Any property rights arising from the trusts are contractual in nature and the law is well established that contracts, however expressed, cannot fetter the constitutional authority of the Congress.

I do not believe a valid takings claim can exist in a vacuum of property rights.

In the interest of time, I will not bore my colleagues with a more detailed legal explanation on the takings issue, but I wish to submit two letters for the RECORD, the first dated February 6, 2006, from Professor Laurence H. Tribe, and the second dated February 7, 2006, from Mr. Carter G. Phillips. I ask unanimous consent they be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CAMBRIDGE, MA,
February 6, 2006.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER, I am writing in response to your request for my current views of the constitutional questions posed by S. 852, the Fairness in Abestos Injury Resolution Act ("FAIR."). The bill was voted out of committee on May 26, 2005, with a bipartisan majority of 13–5, and is scheduled for floor debate in the near future.

As I testified before the Committee on June 4, 2003 (and as I reiterated in subsequent responses to questions from members of the Committee), Congress has ample constitutional authority to replace the current avalanche of asbestos litigation with an administrative compensation scheme to minimize transaction costs and to allocate responsibility more rationally than the badly broken status quo. Carte G. Phillips of Sidley Austin Brown & Wood, LLP, and former Solicitor General Seth P. Waxman, now of Wilmer Cutler & Pickering, joined in my conclusions at the hearing in 2003.

Nothing since that time has led me to alter my legal views. I continue to believe that Congress possesses clear constitutional power to use past histories of payments for asbestos-related judgments, combined with current revenues, to substitute predictable fiscal obligations for unpredictable future liabilities. The aim of S. 852 is to apportion liability according to likely responsibility, tempered by some attention to ability to absorb the burden—not (as in cases like Eastern Enterprises v. Apfel, 524 U.S. 498 (1998)) to saddle one company with liability because it is the last remaining solvent defendant. Indeed, a principal aim of S. 852 is precisely to avoid such a scenario, which is currently being played out in the tort system.

Urging Congress to let the litigation avalanche continue lest the Supreme Court invalidate the proposed alternative makes little sense. After all, it was that Court that wrote in 1997, in a landmark asbestos case I successfully argued, "a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure." In 1999 and 2003, the Supreme Court repeated this invitation to congressional action.

In your latest request of me, you have called special attention to the transfer of assets held by certain bankruptcy trusts to the FAIR Fund. In particular, former Senator Don Nickles argued in a February 1, 2006 op-ed on behalf of a group of existing trusts that "[m]ore than $7 billion currently set aside to compensate 524(g) beneficiaries would be taken from the trusts and paid to the national fund created by S. 852. This represents a 'taking' of property by our government without just compensation, which is expressly prohibited by the Fifth Amendment." With all respect to Senator Nickles, I believe his objection has no merit as a constitutional matter.

First, it is not enough to assert that S. 852 changes the rules applicable to bankruptcy trusts. After all, the bill changes the rules applicable to other participants as well. It abrogates insurance contracts, eliminates causes of action, and overrides numerous existing legal entitlements. All of these changes could be said to upset expectations regarding future liabilities and tort recoveries. But none of the changes states a takings claim, in light of the well settled rule that legislatures may act rationally to modify or abolish causes of action, impose assessments, and create new compensation programs without violating due process or triggering the right to just compensation under the Takings Clause. See Logan v. Zimmerman Brush Co., 455 U.S. 422, 432-33 (1982); Martinez v. California, 444 U.S. 277, 281–83 (1980). State workers' compensation laws, federal pension regulation, and the Black Lung Disability Trust Fund, 30 U.S.C. §901, et seq., all rely on this principle. "[L]egislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations . . . even though the effect of the legislation is to impose a new duty or liability based on past acts." Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 16 (1976).

Second, it is well settled that the bankruptcy process, and in particular the confirmation of a plan of reorganization, does not provide a debtor or a resulting trust with ongoing immunity from the operation of federal law as it might evolve over time. Midlantic Nat'l Bank v. New Jersey Dep't of Envtl. Protection, 474 U.S. 494, 502 (1986). See NLRB v. Bildisco & Bildisco, 465 U.S. 513, 534 (1984) (bankrupt debtor not relieved of labor law obligations); In re Baker & Drake, Inc., 35 F.3d 1348, 1353-55 (9th Cir. 1994) (reorganization plan does not immunize debtor from state law on ongoing basis); see also City & County of San Francisco v. PG & E Corp., 2006 WL 44315, *9 (9th Cir. Jan. 10, 2006) (governmental regulatory actions are exempt from bankruptcy court jurisdiction).

This principle is particularly salient with respect to bankruptcy trusts, which are themselves the specialized creatures of the federal Bankruptcy Code. Having responded to the asbestos litigation crisis by creating such trusts in 1994, Congress is not in any way disabled from taking further legislative steps toward reform a decade later. Cf. Dames & Moore v. Regan, 453 U.S. 654, 674 n.6 (1981) (President's action in nullifying government-created attachments of Iranian assets pursuant to hostage release agreement did not effect a taking of property in violation of Fifth Amendment).

Bankruptcy trusts are subject to the longstanding rule that "[p]rospective relief under a continuing decree remains subject to alteration due to changes in the underlying law." Miller v. French, 530 U.S. 327, 344 (2000). "The provision of prospective relief is subject to the continuing supervisory jurisdiction of the court, and therefore may be altered according to subsequent changes in the law." Id. at 347.

Otherise, the bankruptcy system would create a whole constellation of black holes in the fabric of the U.S. Code. To avoid such profound disruption of innumerable federal statutory regimes—from product liability reforms to telecommunications auctions, from energy conservation legislation to coal safety laws—courts have routinely applied statutory changes to debtors in ongoing reorganization plans, even post-confirmation, and even when the effect has been to leave the estate without property that private parties expect to receive. For example, the 1996 amendment to 28 U.S.C. §1930(a)(6), governing the imposition of quarterly fees for the United States Trustee in certain Chapter 11 bankruptcy reorganizations, has been repeatedly applied even to debtors in confirmed reorganization plans that had made no provision for the payment of such fees.

In exactly the same way, S. 82 represents an intervening change in federal law that is neutral in design and general in application and accordingly must be accommodated prospectively by bankruptcy trusts. If bankruptcy trusts won some special exemption or immunity on a prospective basis from intervening changes in federal law in relation to asbestos liability, there would be no field within the broad reach of Congress' legislative power that would not be compromised by the unpredictable appearance of a potentially limitless number of financially crippling gaps.

An order establishing a bankruptcy trust hardly resembles a final judgment for money damages, of the kind that creates "vested" rights. Bankruptcy trusts are ongoing administrative entities created for the processing and payment of claims. They typically pay claims at a small fraction of their face value, and those rates may change overtime. For example, the Manville Trust is paying out claims at approximately 5% of their face value. In fact, the Supreme Court has squarely rejected any analogy between bankruptcy orders and final judgments for money damages. In Tennessee Student Assistance Corp. v. Hood, 541 U.S. 440 (2004), the

Court held that, precisely because bankruptcy orders are completely unlike judgments for money damages, a confirmation order can bind a nonconsenting state under the Eleventh Amendment, even if the state does not participate in the bankruptcy process. The Court used much the same reasoning in Central Virginia Community College v. Katz, 2006 WL 151985 (U.S. Jan. 23, 2006), to hold that states are subject to in rem bankruptcy proceedings to recover preferential transfers.

Finally, any "takings" claim by bankruptcy trusts would be ill-founded because any assets they hold are uniquely dedicated to the payment of asbestos-related claims. Yet S. 852 would eliminate the trusts' liability in that regard. It is difficult to understand why the trusts would have a reasonable expectation of retaining property in the situation where their pertinent liabilities have been eliminated. See Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470, 488 (1987) (noting that "reciprocity of advantage" "has been recognized as a justification of various laws" to defeat takings claims) (quoting Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415 (1922) (Holmes, J.); Penn Central Transportation Co. v. New York City, 438 U.S. 104, 140 (1978) (no compensation due where there is a "reciprocity of advantage").

For all these reasons, I adhere to my conclusion that S. 852 falls well within Congress' constitutional authority to enact.

Sincerely,

LAURENCE H. TRIBE.

SIDLEY AUSTIN LLP,
Washington, DC, February 7, 2006.

Re S. 852 Fairness in Asbestos Injury Resolution Act.

Hon. ARLEN SPECTER,
Chairman, U.S. Senate, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR SPECTER: On April 28, 2005, I submitted a letter explaining my views that S. 852's requirement that the assets of asbestos bankruptcy trusts be transferred to the national compensation fund was fully constitutional. You have asked whether my views have changed in the interim, and also how I would respond to the points raised by former Senator Nickles in his recent editorial, Let Existing Trusts Opt Out Of Asbestos Plan (Feb. 1, 2006), available at http://thehill.com/thehill/export/TheHill/Comment/OpEd/201006 oped.htl (attached as an addendum to this letter ("Add.")).

My views have not changed in the interim. As more fully set forth in my letter of April 28, 2005, which responded to arguments raised by Theodore B. Olson, there are multiple reasons why S. 852 presents no constitutional difficulties. Asbestos trusts created under section 524(g) of the Bankruptcy Code, 11 U.S.C. §524(g), even when they assume the form of state law trusts, are prospective federal judicial remedies authorized and defined by Congress to administer the ongoing payment of asbestos-related injury claims, present and future. They are claims-paying mechanisms subject to the ongoing superintendence of the federal court during the pendency of the bankruptcy case, as the terms of confirmation orders and reorganization plans creating asbestos trusts generally reflect. See Findley v. Blinken (In re Joint E. & S. Dists. Asbestos Litig.), 982 F.2d 721, 750 (2d Cir. 1992) (noting that the Johns-MansviUe Trust, after which section 524(g) trusts were modeled, "is not an ordinary private undertaking of a settlor to carry out private preferences. It is the mechanism established under the auspices of the Bankruptcy Court to implement a plan of reorganization. The Bankruptcy Court has continuing responsibilities to satisfy itself that the Plan is being properly implemented"). There are no separation of powers concerns when Congress modifies the law applicable to such trusts. As the Supreme Court has repeatedly declared, "[p]rospective relief under a continuing, executory decree remains subject to alteration due to changes in the underlying law." Miller v. French, 530 U.S. 327, 344 (2000). A bankruptcy confirmation order itself is not kindred to a final and unappealable judgment for damages in federal court; moreover, to the extent other aspects of a confirmation order may be deemed to create some vested rights, there is certainly no finality in a prospective claims-paying mechanism. See United States Tr. v. CF & I Fabricators of Utah, Inc. (In re CF & I Fabricators of Utah, Inc.), 150F.3d 1233, 1239 (10th Cir. 1998); Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n, 997 F.2d. 581, 587 n.11 (9th Cir. 1993); Findley v. Trustees of the Manville Personal Injury Settlement Trust (In re Joint E. & S. Dists. Asbestos Litig.), 237 F. Supp. 2d 297, 316-17 (B.D.N.Y. 2002). Just like any other prospective remedial decree, the trust is subject to the continuing jurisdiction of the federal district court, and thus subject to the power of Congress to change the governing law that the court will apply in exercising that jurisdiction.

Furthermore, any property rights arising from the trusts are contractual in nature, United States Tr. v. Craige (In re Salina Speedway, Inc.), 210 B.R. 851, 855 (10th Cir. B.A.P. 1997), and the law is well established that "[c]ontracts, however expressed, cannot fetter the constitutional authority of the Congress." Norman v. Baltimore & Ohio R.R., 294, U.S. 240, 307–08 (1935). For all the foregoing reasons, nothing in the decrees creating asbestos trusts under section 524(g) create property rights that would be subject to a federal takings analysis.

Finally, the only "property right" that an asbestos plaintiff can colorably claim is the right to file a claim with the trust and to prove that his injury meets the criteria for compensation; no individual beneficiary of the trust with an unliquidated claim has a property right in the trust assets themselves. In essence, a bankruptcy court creating a section 524(g) trust converts the plaintiff's claim against the debtor under state tort law into a claim against the trust. While a claim for relief is a species of property right, it is not a vested right that entitles the plaintiff to compensation under the Takings Clause if abrogated. Indeed, if the law were otherwise, Congress could not pass legislation preempting accrued state or federal law claims without federal takings liability. That is not the rule; rather "'a legal claim affords no definite or enforceable property right until reduced to final judgment.'" Arbour v. Jenkins, 903 F.2d 416, 420 (6th Cir. 1990) (quoting Sowell v. Am. Cyanamid Co., 888 F.2d 802, 805 (11th Cir. 1989)); see also, e.g, Hammond v. United States, 786 F.2d 812 (1st Cir. 1986) (no vested right "until a final, unreviewable judgment is obtained"). Finally, as more fully reviewed in my April 28, 2005 letter, even if all these hurdles could be overcome, asbestos claimants would have no right of recovery under regulatory takings analysis.

Former Senator Nickles' editorial lacks force because it does not recognize these legal principles. Senator Nickles characterizes the bankruptcy court orders as "final court judgments approving reorganization plans that resolved asbestos claims against debtor companies]." Add. 1. However, as noted above, bankruptcy reorganization plans (and especially settlement trusts) are subject to the continuing jurisdiction of the bankruptcy court and are not final in the constitutional sense; they do not limit the power of Congress to change governing law. Nor do the confirmation orders themselves "resolve claims" against the debtor; instead, they crate a new prospective remedial mechanism and new form of claim that must be proven in order to secure payment. Beneficiaries with the right to file a claim against federal asbestos trusts are not "entitled to timely compensation from those trusts," and they have no greater property right (and no more "certainty and security" against abrogation by Congress in the public interest) than any other asbestos plaintiff. Add. 1, 2. Senator Nickles asserts that the transfer of trust assets is an unconstitutional "taking of trust beneficiaries' property" without just compensation, Add. 2, but that claim cannot withstand legal analysis.

Senator Nickles is absolutely right that Congress must be vigilant against legislation that results in the unconstitutional taking of vested property rights; however, those doctrines are not implicated here. In essence, S. 852 requires all asbestos defendants to contribute substantial assets to a national fund to create a uniform federal administrative remedy; the requirement that the assets of asbestos trusts (which were originally the assets of the debtor) be transferred to the national fund serves the same end of marshaling defendant assets for the benefit of injured parties. Not only are no vested property rights of trust claimants "taken" under the Fifth Amendment, but there is no inequity in having plaintiffs all treated the same, regardless of whether the defendant who allegedly injured them happened to have sought bankruptcy protection. S. 852's requirement that the assets of asbestos trusts be transferred to the national fund is not only perfectly legal, but it is also highly just and equitable.

Sincerely,

CARTER G. PHILLIPS.

Mr. HATCH. I wish to close by taking a brief moment to address the budgetary issues. Earlier I spoke to the private versus public funding issue. Some of my colleagues believe the taxpayer is on the hook for this bill and I wish to help explain how that is not the case. These are serious concerns, but the FAIR Act does not use Federal funds. It is privately funded—lock, stock, and barrel.

Those of you who might be watching at home might be wondering why some people are worrying about the FAIR Act, if it is privately funded, and in the spirit that underlies this bill I will try to explain it. To my knowledge, there is only one way by which the FAIR Act may touch Federal funds and that is through the borrowing mechanism. The administrator created by this act may borrow such funds as are necessary to maintain the liquidity of the fund, but—and this is a big "but"—the administrator may not borrow amounts which exceed the fund's ability to repay. So the bottom line is that American taxpayers do not pay for this fund. The defendant companies and insurer participants do.

At the end of the day, asbestos victims cannot wait any longer. Veterans cannot wait any longer. The overburdened legal system cannot wait any longer. The only group that does not mind waiting consists mainly of 12 law firms filled with asbestos lawyers who do not mind exploiting a broken system because of the billions of dollars that are in it for them. You can hardly blame them. It is a plum tree waiting to be picked. They are slow walking this bill. I have to implore my colleagues to resist these efforts.

Before I conclude my remarks, I wish to speak briefly to Senator CORNYN's medical criteria amendment. I agree with my colleague from Texas that the FAIR Act is not a perfect bill. I think Senator SPECTER has made that clear. Others have made it clear. We have done the best we can through the Judiciary Committee. This is the first step in a number of steps that simply have to be taken. I have several concerns of my own about this bill, and I suppose most everybody does. But I have to say, as much as I agree in principle with Senator CORNYN, I am not sure his approach does the trick.

I might add, my colleague from Utah raises the point that there are some companies that will go bankrupt if we pass this bill. That may be the case. I will do everything in my power through the whole process here to make sure that doesn't happen, and I believe Senator SPECTER is dedicated to doing everything in his power to make sure that doesn't happen. I personally believe Senator LEAHY will do everything in his power to make sure that doesn't happen. I believe there are 435 Members of the House who will do everything in their power to make sure that doesn't happen. I believe any conference committee that comes up is going to make sure that doesn't happen. I wouldn't tolerate that, in the end.

But we have to have a vehicle. We have to have a bill. If we do not have a bill, we have nothing. And, we have a future prospect of a number of very fine companies—with the loss of hundreds of thousands of more jobs—going into bankruptcy at a cost to our economy that may be overwhelming after a while—all because of a runaway tort system that basically is out of whack.

In my opinion, the medical criteria approach fails to help too many sick and injured people. It does nothing for the mesothelioma victims. These are the ones who deserve compensation. First and foremost, the reason we basically started this bill, was to help those who are going to die because they have mesothelioma. They are going to die. Once they are diagnosed, it is just a matter of months, and their families are left with nothing. They didn't cause this problem and they are the ones who deserve compensation. Yet they are the ones who, if we do nothing, are left out while others—hundreds of thousands—who are not sick at all are going to get rewards. This is wrong.

In my opinion, as I say, the medical criteria approach fails to help too many sick and injured people. Let me give another illustration. The veterans, for example, have very few places to turn under a medical criteria bill. We just had 10 veterans organizations on Capitol Hill holding a press conference this week—I was there with them—making it clear that of all people who deserve to be compensated, they do. This medical criteria approach does nothing for them. This is the main reason why we switched to the trust fund approach: so we can take care of the truly sick—those who really have difficulties.

But, as I do with every amendment, I am going to give the medical criteria approach a very hard look as we go through this process. In an ideal world we could run with my colleague's idea. But, unfortunately, the realities of the asbestos crisis prevent a medical-criteria-only solution. There may be, down the line, a way of doing a medical criteria bill that will take care of people who truly deserve to be taken care of. This amendment is not that. But I am willing to work with my colleague from Texas and see what we can do to come up with something that will work as well, if not better, than what we have here. But right now this is it.

This is a bill that is well thought out in spite of the difficulties with it. But I submit that any bill this size is going to have some difficulties.

As I say, this is step No. 1 in what always has been a legislative process that does not end here. It starts here. If we do not start it, we don't have a chance of correcting these tremendous ills to our society that could swamp us. So it is very important that we support Senator SPECTER and Senator LEAHY and get this bill out of the Senate. If we don't, I have to say I believe this is probably the last chance to resolve issues that deserve to be resolved, and to do justice instead of continue the injustices that are currently resulting from the current out-of-control asbestos tort system.

I commend my colleagues for their steadfastness in working on this very difficult, complex set of issues. It is a difficult problem for us. There are very sincere and good people on both sides of this issue. There are very sincere and good people on both sides of this aisle. I have tremendous respect for my colleagues.

On the other hand, for those who are voting against the bill because the trial lawyers are their largest hard-money supporters, I don't think that is a good enough reason. I admit it is a powerful reason, but not if you are interested in the country, not if you are interested in our economy, not if you are interested in the people who have suffered from asbestosis and from all of the derivatives of asbestosis, not if you are interested in helping these mesothelioma victims who deserve help, helping the veterans who did nothing to cause these problems but are left high and dry.

This is an effort by the leadership of the Judiciary Committee, led by Senator SPECTER and Senator LEAHY, to do justice. It is an effort to comply with at least three requests by the U.S. Supreme Court: Congress, please do something about this awful issue because we can't.

They can't legislate from the bench to resolve this issue. Some people think individual States can resolve this issue. That might be so, if you had absolutely honest judges and absolutely nonpartisan judges down the line, and if they were willing to work hard, and if every State would do it. But only a few are going to. Only a few are going to pass laws that possibly will help in this area. It is up to us to get this done.

I hope our colleagues who want to do something right here will realize this is step one. You have to go ahead with it. Good people of good values, well-intentioned people are going to be able, hopefully, in the end to get this so it works; so no company is going to be hurt by it, but the economy as a whole will be helped by it. But above all, people who deserve compensation will receive compensation with a minimum of charges that reduce that compensation, compared to the almost 60 percent attorneys' fees and transaction costs it is costing us today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, we have been trying to set a vote here on the amendment offered by Senator CORNYN since about 2, 2:15. I had hoped to vote at 3, and then I had hoped to vote at 3:30. The Senator from Illinois advised me a few moments ago that his preference would be to vote at 4:15. We are willing to accommodate that preference unless there is some inclination to vote sooner than 4:15.

Therefore, I ask unanimous consent that we set the vote on the Cornyn amendment for 4:15, with the time equally divided between now and then.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Reserving the right to object, is this a vote on the Cornyn amendment? My understanding was there was going to be a tabling motion. If it is on the Cornyn amendment, I don't agree, but if it is on the tabling motion, I am willing to agree to 4:15. But if it is on or in relation, I am not willing to do that at this time.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. I withdraw my request. I suggest the absence of a quorum.

The PRESIDING OFFICER. The request is withdrawn. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, after lots of discussion, as usual around here, I ask unanimous consent that at 4:45 I be recognized for a motion to table Cornyn amendment No. 2748, and that the time between now and then be equally divided between the two managers or their designees.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object, the manager on this side of the aisle is Senator DURBIN. I wonder if the distinguished Senator from Pennsylvania would change the unanimous consent request so the time would be divided between Senator DURBIN and Senator SPECTER.

Mr. SPECTER. I agree.

Mr. REID. Mr. President, I have a very brief statement on an unrelated matter. Could I be recognized?

The PRESIDING OFFICER. Is there objection to the request as modified?

Mr. CORNYN. Mr. President, reserving the right to object, I want to make sure I have an opportunity to address the debate, and under the unanimous consent request there is ample opportunity given to me.

Mr. SPECTER. Mr. President, the way the sides are aligned here, we need a scorecard to figure out who will give Senator CORNYN time. I think the manager in favor of Senator CORNYN's amendment would give him time, and that turns out to be Senator DURBIN.

The PRESIDING OFFICER. Is there objection to the request as modified? Without objection, it is so ordered.

Who yields time?

Mr. DURBIN. Mr. President, I hope to restate the unanimous consent request which was agreed to accurately. It is my understanding that at 4:45 we will have a vote on the motion to table the pending amendment by Senator CORNYN of Texas, and that the time be equally divided between now and then, which would be 60 minutes, 30 minutes to each side; that I am controlling the 30 minutes in opposition to the motion to table. I will yield from that amount 15 minutes to Senator CORNYN to speak during the same period. He can use that time, even if I don't have to give him the floor at the moment.

We have to understand what we are considering. I am sure people who are watching this debate wonder why we take so much time going into quorum calls and talking among ourselves trying to come to some agreement about what we are going to do. That is the way the Senate operates. We operate by unanimous consent. Everyone has to agree. Think about that—100 different Senators coming to an agreement. However, we have managed, at least to the point of bringing this to a vote.

The vote is important because the bill before the Senate right now is a bill about asbestos. Everyone knows asbestos is a lethal substance which, if inhaled, can kill you. It can cause your lungs to stop functioning, you can start to suffocate, and you can develop something like lung cancer called mesothelioma and die. People all across America, since we started using asbestos in products, have been exposed to it. Some are fortunate and they do not get sick. Others, with very minor exposure inhaling these asbestos fibers, have set off little timebombs in their lungs, and they never know when they will detonate. Victims can go for 10, 20, 30, 40 years after exposure and nothing happens; then something terrible happens. How do they know it is asbestos that causes it? Some of these conditions are only related to asbestos. Mesothelioma is one of them.

People who have been exposed to asbestos over the years have gone to court and said: The companies that exposed me to products that harmed me should be held accountable. Some courts and some juries have said, yes, they should pay; others have said, no, they should not pay. But what is the nature of our system of justice? You go to a court for your day in court, you tell them how you were injured, and you let a judge or jury of your neighbors and peers decide your fate. It happens every day across America in thousands and thousands of courtrooms.

Now comes this bill, Senate bill 852, which wants to change the way people across America will be able to recover for their injuries from asbestos. The first thing it does is to eliminate your option to go to court. As an American, you could be injured from exposure to some toxic chemical and go to court, have your day in court, and let the court decide. But if you have been exposed to this substance, to asbestos, if this law is passed, you will no longer be able to go to court.

What happens to you? This bill creates a brand new approach—replacing the courtrooms of America with a trust fund created by this bill, administered by an agency which does not exist at this moment, which will handle hundreds of thousands of people who have been exposed to asbestos.

Some Members come to the floor skeptical that we can change a judicial system in America and eliminate access to court to hundreds of thousands of people and get it right. If we do not get it right, the losers are not going to be embarrassed Senators; the losers are going to be victims across America, people whose lives have been changed and in some cases ended because of asbestos.

I don't know of a single person in America who said: Listen, I know asbestos will kill me; let me take a whiff of it. Not one. Virtually all the victims and families I have run into were unsuspecting people—workers on the job; a mechanic putting in an asbestos brake lining; somebody trying to put in a heating duct in a home and using an asbestos substance; asbestos shingles on your roof; asbestos tile on the floor—grinding it, cutting it, powder flying in every direction. Who knew? Who had any idea what was going on? So these victims, innocent victims, are the ones who will be affected by this bill.

It is a large bill, a bill of 393 pages. It should be because it is changing the basic system of justice in America. But this morning, this bill has become a dead letter. We are no longer considering that bill. We have a new bill. We were handed this bill this morning. It is 392 pages. It includes some 40 significant changes to the bill we had on our desks when we came to work this morning. We knew it was coming, we knew there would be a change, but these changes are significant.

Many Members believe that before we start enacting laws that are going to impact millions of victims across America, before we close down the courtrooms of America and say to people, what you used to assume was your right as an American citizen is no longer your right, we ought to be careful and we ought to take the time to get it right.

Some of the things that have been filed with this bill reflect the fact that even those preparing it really do not have it quite clear in their minds how it is going to work.

One of the amendments filed this morning, amendment 2747 by the chairman of the Judiciary Committee—I am certain this was inadvertent—inadvertently included the following on lines 7 through 9:

> (Note: I recognize that this may not be the most adequate indicator of insurance matching liabilities—however, it is a political reality that must be addressed.)

Does that sound like a sentence out of a law? I am sure it is not. It is a sentence from a staffer who, in preparing this language, notified someone that they were not sure what they were writing would achieve the goal they want to achieve. That happens all the time. I expect my staff to be candid with me when they are preparing a law. But it tells something. By inadvertently including this staff note with this amendment, it is clear that the people writing this bill are not sure what is in it. They are not sure what the impact will be.

What is driving this debate? Why are we so hellbent on passing this legislation at this moment? There are many good reasons, and there are many real reasons. One of the real reasons is that for many of the major corporations in America, this bill is a windfall.

This morning, Senator BENNETT, a Republican from Utah, brought a chart to the Chamber and showed 10 of the major corporations in America, corporations that could be taken to court today because people were exposed to their products and have asbestos disease. He calculated how much they would pay into this trust fund under this bill against what they have said they would have to pay if they went to court. Those 10 corporations will save, with this bill, $20 billion. Do you think they want to see this bill passed? Why, of course they do. They have an economic interest in it. But the obvious question is: If they do not pay the $20 billion to victims, who will? Other companies?

Senator BENNETT brought to the Senate another chart of companies that have never been sued for asbestos, never been held liable. Those companies will end up paying into this fund even though they never, ever have been sued successfully.

There is a basic unfairness here. There is a transfer of wealth in this bill from some of the largest corporations in America and a burden to smaller companies, not to mention that at the heart of this issue are hundreds of thousands, perhaps millions, of asbestos victims.

Now comes Senator CORNYN of Texas. He says: Consider another approach. Consider an approach that will look to what the States are currently doing to deal with this. Are there ways to change asbestos lawsuits so that victims get more, so that people are treated fairly, so that those who are trying to rip off the system on either side are not advantaged? And he turns to State laws. There have been several State laws, including Texas, Florida, and Ohio.

He says in his amendment: Let's establish medical criteria so that if you want to go to court, we know you are truly sick. Perhaps you cannot go shopping around for the friendliest court in your State or the Nation. He goes through a variety of different scenarios. All of them are worthy of debate.

The good thing about Senator CORNYN's amendment is it is based on the fundamental American right to have your day in court. Senator CORNYN is trying to achieve a procedural change in the courts of America which will not extinguish a basic American right to have your day in court.

I believe he filed the amendment early this afternoon, maybe late this morning. I am not certain. And now the other side is saying: That is it, we do not want to talk about that amendment anymore, let's get rid of it. They want to table that amendment.

As it is currently written, I could not support the amendment by the Senator from Texas, but I will stand with him to keep this amendment on the floor so we can try to find a bipartisan solution which does not have such great damage to our judicial system and to the people who rely on it. There will have to be significant changes in the Cornyn amendment before I would support it. But he has said to me that he is willing to sit down on a bipartisan basis in good faith to work out those differences, and he tells me there is significant support on the Republican side of the aisle for that effort.

Wouldn't that be the best outcome—an outcome that is bipartisan, one which tries to work out differences between both sides, keeping in mind the innocent victims, tries to make this system a little fairer, not basically abandoning our judicial system, which this new bill, new version of the bill we have been handed, would do? That is a sensible approach.

I am going to support the efforts of Senator CORNYN at this moment to resist a motion to table, with the understanding that before I will make any commitment to vote on his final amendment, we will have to sit down and try to work out our differences. It is not too much to ask.

Do you know how long this program is supposed to affect America? For 50 years. Is it worth a few hours, maybe even a day, to get it right? I believe it is.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I believe this is one of those situations where there is broad bipartisan consensus that we need to find a solution to this national crisis which not only affects people who are sick with asbestos-related diseases, including cancers, but also the companies that are in bankruptcy because they have been put underwater by the huge volume of claims from people who are not yet sick but who are worried the statute of limitations will run and bar them from bringing their claims in the future.

I am proud of the work the Judiciary Committee has done under Senator SPECTER's leadership to try to bring us this far. On many of the differences we have had, he has ably negotiated a resolution. Where we are today is much better than where we were a year ago.

There was a strategic decision made, as there had to be, whether to go with the trust fund approach or with a medical criteria approach. Frankly, the trust fund approach left the station, and everyone put their hopes and their work and effort into that approach. I am sorry to say that notwithstanding the hard work and effort which has gone into the bill, I still believe the trust fund is fundamentally flawed for reasons I have already talked about.

There are problems with regard to the allocation; that is, the long arm of Uncle Sam will reach out and send you a bill for a lot of money to pay into this fund. We have been told by a number of companies that in order to pay that bill, they will simply have to shut their doors and go out of business, put their employees on the streets, possibly causing pension funds to be jeopardized. People who have come to rely on the solvency of those companies and their ability to pay their retirees the benefits they have agreed to, we are told they would be seriously jeopardized by this trust fund as currently written.

Then there is the issue of, how do we know how much money should go into the trust fund? That has been a subject of a lot of negotiations, and $140 billion is where we are today. As we have heard before, there is a wild variation on estimates by very smart people as to how much the claims for this fund will total, ranging from $120 billion to $695 billion, which is the high number. Just having a predictable bill we can vote for with some confidence that we believe will actually work as intended is lacking.

Of course, there is the huge bureaucracy that will be created within the Department of Labor to administer this fund. We have no idea what that will look like, but it will be a new addition to the bureaucracy in Washington, DC. I can tell you, the last thing I want to do, coming from my State to the Senate, is to grow the size of the bureaucracy in Washington, DC, unless there is no other option. I do not want to do that.

Then there is the issue of the medical criteria, where here again the chairman had to negotiate carefully in order to keep his votes on the committee. But it is my contention that the medical criteria in the trust fund are way too loose—authorizing the payment of substantial funds under the claim to people who are not demonstrably sick from asbestos-related disease, thus further jeopardizing the solvency of the fund.

In response to my colleague, Senator HATCH of Utah, who expressed concern for the veterans who could benefit under the fund but who would not directly, anyway, benefit under a medical criteria approach, I think it would be a cruel joke—a cruel joke—for our veterans, if we built their expectations up, that they were going to receive benefits under the trust fund, only to have it explode or go bankrupt in a year or two and dash those hopes to the ground.

So I am as concerned as anyone is about our veterans. But I certainly do not want to give anyone unrealistic hope or expectation that this is going to be a panacea, because of the concerns I have raised.

I would agree with the Democratic whip that we have only today seen a substitute for the underlying bill filed which totals almost 400 pages. While a number of us have been working on asbestos legislation for a long time, neither I nor my staff, I am confident, had a chance to read each and every one of those 393 pages, I believe it was, to determine what is in it and to determine whether there are amendments we need to file in response. Likewise, I would say, as to the 50-page bill we filed this morning, the amendment that contains the medical criteria approach, people are only now beginning to understand what their choices are.

Basically, what this amendment presents is a choice, either for a trust fund or an alternative medical criteria bill or, third, no bill at all, a continuation of the current crisis, about which I think we have a bipartisan consensus that it is a scandal and needs to be addressed.

So I believe the amendment does present a good alternative. But I would like to have a chance for my colleagues to look at it further. We have had a number of good discussions across the aisle. I have talked to a number of colleagues on the other side of the aisle, and they said, well, they would like to keep the amendment alive. They want to vote against the motion to table, but they are not yet ready to vote for the amendment because they may want to try to negotiate and work out some minor differences so they can support it. I would like to have the opportunity to do that with them.

I would, by the way, point out, I guess as further evidence of what I am talking about—Senators reading the bill, coming to understand now they are not left with either the trust fund or nothing at all that they have a third choice with the medical criteria bill—we have had two additional Senators come forward and ask to cosponsor it.

Mr. President, I ask unanimous consent that Senator SAXBY CHAMBLISS and Senator MIKE ENZI be added as cosponsors to the Cornyn amendment.

The PRESIDING OFFICER (Mr. CHAFEE). Without objection, it is so ordered.

Mr. CORNYN. Mr. President, I believe, given adequate time, there will be other Senators who will be interested in this alternative approach. Here again, I believe we are all committed to trying to find a solution. I hope we are because we know the status quo is a scandal. Here again, it is with great respect and admiration for the long and arduous effort put into this by the chairman that I hesitated even to offer this alternative. But I do believe that based on the merits, based on the choice it provides to the Members of the Senate, and based upon the need to have a little bit more time for Members of the Senate to understand what is in the amendment and to negotiate perhaps agreement so we can come back with some modification and an up-or-down vote on that, that I urge my colleagues to vote against the motion to table, both on the merits and based on the need for more time for deliberation and adequate consideration.

I yield the floor and retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, when the Senator from Texas says the status quo is a scandal, he is right. But the medical criteria bill is a "scandal lite." It is a light scandal. You hear about Coke and Coke Lite. Well, this bill is a scandal in its own right, not quite as big a scandal but a scandal nonetheless.

The only change which this medical criteria bill makes that is an improvement over the present system is that it does not allow collection by people who have been exposed but who are not yet sick. But this medical criteria bill does not go to the heart of the problem; that is, the thousands of people suffering deadly and serious injuries who have no one to sue.

This bill is directed to protect the veterans of America who have been exposed to asbestos in a variety of contexts, sometimes during work at shipyards, sometimes during work at other governmental facilities, but they have no one to sue. This bill is directed to provide compensation to employees of some 77 companies which have gone bankrupt, where they have no one to sue because the company is in default and the company is bankrupt.

This bill, similarly, does not answer the grave problem of the economy of the United States, with companies continuing to go bankrupt because litigation continues. You still have the costs of going to court—the costs of filing papers, the costs of depositions, discovery, interrogatories, taking the case to trial.

And then you continue to have the lawyers taking the lion's share of the compensation. The fact is that only 42 cents of every dollar spent on asbestos litigation goes to the victims. The fact is, surprisingly, more money goes to defense costs—31 cents of every dollar—and 27 cents of every dollar goes to plaintiffs' attorneys. That is a statistic compiled by the reliable RAND Corporation.

So the medical criteria bill does nothing at all to deal with the real problems with regard to asbestos litigation but is designed, pure and simple, to defeat the trust fund concept which is on the floor.

When the Senator from Illinois and the Senator from Nevada argue strenuously against the trust fund proposal, they do not want this bill. It is window dressing and a red herring to cite the companies which are going to save money because the thrust of the bill is to make an equitable allocation, which we think we do here. There has never been any real attack on that, except this wild talk about secrecy, which is unfounded. And you continue to have the problem of companies going bankrupt and people not being able to collect because there is no one from whom to collect.

When the Senator from Illinois and the Senator from Texas complain about the new bill, there again, it is something they know better. They have the original bill. We had managers' amendments totaling some 47. And as a tactical matter, the Senator from Illinois and the Senator from Nevada said they would put us through every one of these amendments individually. The procedural way to deal with it was to put them all in another bill called the substitute bill. But they know what is involved. They know what bill is involved. And the substance is before them. So you have one charade after another.

And you have a system which is scandalous. Nobody who has addressed this problem disagrees with the nature of the problem. Scandal is a good characterization for it. Scandal is an equally good characterization for the medical criteria bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I respect my colleague from Texas and those others who believe this amendment will be a preferable way to deal with the asbestos morass we now have. I, however, based on my best judgment, cannot agree. It perhaps will make some businesses happy and some plaintiffs' lawyers happy, but the one group I clearly think will not be as well treated and will not have the same guarantees and protections will be the victims.

We are not here to represent any one group. We are here to look at a litigation problem that has gone wild. It has lost control. It is not operating properly. I think the trust fund concept is the only way to make this thing have any sanity about it.

As I understand it, the medical criteria will help a great deal in making sure that claims by people who are not sick are not maintained in court, that they can be dismissed short of trial. That would be a tremendous benefit. I will not dispute that. It would certainly reduce those kinds of lawsuits.

However, it would have no coherence. It seems to me that two people could file a lawsuit, and one could draw a favorable judge or favorable jury and win $50 million and the other one, I suppose, could win nothing or $1 million. I do not know that it would represent any predictability for the defendant companies so they could show on their balance sheets precisely what they are going to be looking at in the future as they go forward.

It also would maintain the current litigation method of handling the lawsuits. That, to me, is where we have had the most difficulties because 60 percent of the money that is being paid out is being eaten up by lawyers. So if you have lesser numbers of lawsuits but they are bigger and will be more intensely litigated, the defendant companies have to hire expensive attorneys to defend themselves, and the plaintiffs' attorneys, facing top defense attorneys, will charge their normal high fees, as the case may be, and you end up back where we are, as the RAND Corporation said, with 60 percent—58 percent—of the money being paid out in expenses, which is what I would like to see avoided.

The attractiveness of the legislation that is before us is we take the 60 percent that has been eaten up and we take probably 50 percent of that and allow it to go to the victims. They get it, with certainty, in an equal amount. So if you have mesothelioma, a deadly disease, under this system, you could file your claim, with a doctor's certificate stating you have mesothelioma—a fairly indisputable diagnosis—and you get $1.1 million; half of it within 30 days and I believe the other half within 6 months before you die.

As I noted before, why have we had so many mesothelioma widows here? It is because these lawsuits take years. I am not just saying that. This is a fact. These cases take years, and people die of diseases or become disabled without receiving money.

Under this bill, you will be able to get your money promptly. The proposal, as I understand it, will not necessarily fix that. Maybe the cases could be settled.

Again, I say to my distinguished colleague from Texas, we agree on so much of this. I certainly will say this. His proposal would be far better than the current system.

There is no doubt about that. The current system is absolutely indefensible. It is to the point that it is immoral, and the Congress has no higher responsibility than to make sure our legal system is working effectively. It is not happening that way.

I believe the medical criteria in the base bill before us is not tight enough, that it will still allow a large number of people to maintain lawsuits for diseases they were going to get anyway from other natural causes or misbehavior such as smoking. They were going to get those diseases anyway, and they want the asbestos fund to pay for it. When it is connected to asbestos exposure, and it can be shown scientifically, this bill allows for that. It actually allows for people to draw on the fund who probably shouldn't qualify for it.

I am for tightening up those criteria. I am for eliminating the frivolous, baseless lawsuits where people are not sick, which this Cornyn bill would do. But I do believe it would undermine one of my highest goals in this legislation, and that is that we would be in a position where you make a claim like you would in workers' compensation. You have so much injury, you get so much money, and you get it promptly. And the maximum attorney's fee would be 5 percent.

I don't see how you can limit attorney's fees if you are going to have a long, competitive trial. The victims are going to need top-flight attorneys, and the defendants are going to need top-flight attorneys. The juries are going to be calling these cases. Some of them are going to say big verdicts, and some of them are going to say little verdicts. We will have more inconsistencies, more jackpot justice than I would like to see.

I am reluctantly of the opinion that this would not be the best approach. If this bill gets any worse, I would certainly see that the suggestions of the Senator from Texas would be preferable. If this bill were to flounder and isn't successful, I certainly would agree that his proposal is better than the current law and would support it. Right now, the Specter legislation is preferable.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I find myself in an unusual position of both agreeing and disagreeing with my colleague from Alabama. That probably typifies how most of us feel about the proposed solution in the trust fund. If my colleague from Alabama and I could sit down and hammer out some meaningful tort reform, we would not have any trouble doing it, if it were just he and I. I know he is concerned about the scandal that 58 cents on the dollar for every asbestos recovery there is goes to transaction costs, attorney's fees for the plaintiff, attorney's fees for the defendant, court costs, and the like. And that is not just in asbestos litigation. That is common, unfortunately, in personal injury litigation generally. If we could get 60 votes to get cloture on some meaningful tort reform and have an up-or-down vote, we could be in business and address his concerns, with not only asbestos but with our civil justice system generally. It is out of sync and benefits too few people at the expense of the many.

My colleague from Alabama mentioned our effort to try to reduce attorney's fees because this is, under the trust fund, a system where an individual does not even need a lawyer to make a claim against the fund. So we decided in committee to keep it down to 5 percent. But it is my understanding, and my colleague can check me on this, that in the managers' amendment, that negotiated provision on attorney's fees was changed to further expand the recovery of attorney's fees under the trust fund bill.

My point is that for every time the chairman, Senator SPECTER, tries to address one concern, he has to address another concern that loses or undermines support by someone else. After spending a long time trying to come to terms with this and understand it and be constructive about a solution, I came to the reluctant conclusion that it was futile, that the trust fund was fatally flawed. That is why I have offered my colleagues a choice. In addition to a choice between the trust fund and nothing at all, I have offered them another choice, and I would like to have a chance for more colleagues to think about it, to consider it, and to work with us to try to make it even better. That is why I urge my colleagues to vote no on the motion to table.

Finally, one of the other things we have not spent much time on, there is actually a huge amount of money, hundreds of thousands of dollars, put in the trust fund to look for new claimants. It pays for screening of people who have not voluntarily come forward but basically goes out and looks for more claimants, which further stresses the fund and increases the likelihood that it will go under because of an overwhelming number of claims that have not been taken into account in arriving at the amount of the fund or the medical criteria for which claims would be paid and which would be excluded.

I hope my colleagues, both on the merits and on the basis of process, the need for more time to carefully consider our alternatives and come up with the best possible solution, will vote no on the motion to table.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, I rise in support of the Cornyn substitute amendment to S. 852. I thank the Senator from Texas for his work on this issue. He is someone who comes to this debate with great knowledge of the subject matter and has modeled his legislation after what has been a very successful model in the State of Texas.

As the Senator from Texas has noted, this is a problem that needs to be addressed. Out-of-control asbestos litigation has become a disease in our economy. It threatens to drive scores of companies into bankruptcy. It diverts compensation away from legitimate victims of asbestos. It discourages investment in companies under suit and drives stock values down and diverts funds away from expansion and growth and results in job loss. In short, it has become an obstacle to economic recovery.

Few of us in this Chamber can disagree with those very basic facts. However, I am not persuaded that creating a new Federal program, yet another entitlement program, one more compensation program, is the right solution. We need to seriously assess the wisdom of Congress's growing inclination to create more of what are virtually uncapped entitlement funds. The problem is in the courts. That is where the solution should be. We cannot continue to have the Government take every litigation quagmire out of the court system and put the problem on the back of the Federal Government and ultimately on the backs of the taxpayers. We cannot continue to do so.

I voted to proceed to debate on this bill because this is a problem. It needs to be solved. Indeed, Congress must act. But what is the best solution? Should we create yet another entitlement trust fund or should we reform the tort system by imposing reasonable medical criteria standards in the courts?

We need to find a solution that protects both the economy and the legal rights of those truly injured by asbestos or who will develop asbestos-related injuries in the future. It is my belief that it would be a mistake to establish an asbestos trust fund. I know this fund relies on private financing. Unfortunately, this may turn out to be only the seed money and unable, over time, to sustain the fund for very long, creating a high risk that Congress, at some point in the future may have to step in to keep it operating. The last thing we need is another uncapped Government entitlement, especially with our existing deficits.

The major problem with the trust fund is that the private funding is capped but the potential liability is not. We have to face reality. This fund will go insolvent. I don't believe it is a question of if; it is a question of when. The underlying bill supposedly answered that by putting in a sunset provision that, when the fund goes insolvent, sends all unpaid claimants back to the tort system, the same broken tort system that we have today. Does anybody really believe that will happen? This Senator certainly does not.

With hundreds of thousands, perhaps millions of unpaid claimants, would those claimants be happy about going back into a court system to spend 3 or more years litigating a case for an award that probably would be less than they could have received under this trust fund bill? I don't think they will do that.

Political pressure on Congress from union and victims groups to bail out the trust fund and sustain it would be immense. These liability trust funds typically do not go back to the tort system. Trust funds in general rarely ever go away, not after creating an entirely new class of entitled people. So let's not delude ourselves.

President Reagan once said that the closest thing to immortality on this planet is a government program. Once we create a whole new class of entitled people, it will be very difficult to go back or in any way sunset this program. The result would be the taxpayers being left on the hook. That is why I support the Cornyn substitute amendment.

I ask my colleagues to seriously consider where Congress is going if it creates such a fund. What kind of precedent is this creating and where will this end?

There has been a dangerous inclination by Congress to rescue segments of our economy from out-of-control litigation by simply taking claims out of the courts and creating a Government-administered liability trust fund. The solution should be commonsense tort reform, not to have the Government become some gigantic claims processing and payment agency.

The best solution, one that has no cost to the Treasury, that does not require the creation of new Government agencies or battalions of Government administrators and one that will have immediate positive effect for both business and victims is a simple solution that, one, establishes reliable and verifiable medical criteria standards in the courts; two, tolls the statute of limitations to protect future victims; and, three, prohibits abusive venue shopping. That is it. It is simple. It is not loaded up with tort reform that our friends on the other side of the aisle often object to. And importantly, many trial lawyers who represent malignant claims of asbestos exposure have in the past endorsed this approach.

It is time to consider a more modest solution. It may not provide the grand, comprehensive solution that many have wished for, but it takes a substantial bite out of the problem and is certainly better than nothing, which is what all parties will have if we continue to pursue the impossible.

I ask my colleagues to vote against the motion to table and to support the Cornyn substitute amendment.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I ask unanimous consent that Senator HAGEL be added as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CORNYN. I yield the floor and retain the remainder of my time, if any exists.

The PRESIDING OFFICER. The Senator has no time remaining.

Mr. CORNYN. I thank the Chair.

Mr. SESSIONS. Mr. President, how much time is left?

The PRESIDING OFFICER. There is 15 minutes.

Mr. SESSIONS. Mr. President, I will yield the floor when Senator SPECTER returns. I will say a couple of things. First, under this criteria bill—which has good criteria and some very good provisions in it—veterans are not going to be able to recover. Veterans don't have anybody to sue, and they would be very much disadvantaged. That is why they oppose it.

No. 2, we would still have litigation, and the reason litigation now ceases to be wise is because the defendants are prepared to pay. It is basically not a question so much of how they are responsible—whether anybody is responsible for damages; they are prepared to pay, but they want to know a predictable amount that they are paying, No. 1, and they want to have it paid fairly.

Under this system, if you meet the illness criteria and you are able to proceed with your litigation, one person with asbestosis, who seriously has a disability, maybe is on oxygen—as I have known people to be as a result of breathing asbestos—they might get $100 million, literally. Another person may get zero. So I think we have this aberrational way that a certain limited amount of resources would be utilized to help people who are sick.

We are at a point now where we have created a circumstance that would allow a fairly even workmen's compensation type distribution of it. Secondly, it allows the litigation spasm to continue. Yes, it will take out the bogus claims from people who are not sick and who don't need to be in court. Those claims will be able to be removed. But they will have large numbers of trials of those who actually are injured by asbestos, and the lawyers on both sides have to be compensated. We know today that those compensation arrangements turn out to eat up 58 percent of the cost of what the defendant companies pay out. In other words, many of these companies that are in bankruptcy, and many more on the verge of bankruptcy and could be pushed into bankruptcy, are paying out to victims, but only 42 percent of what they are paying out gets to the victims.

So I was hoping in this legislation—my vision has always been, how can we not fix this system? How hard is it to take this 60 percent, allow the business community some predictability and certainty over 30 years, and get more money to the victims quicker and faster? If, instead of 300,000 pending lawsuits, let's say you have now 150,000 pending lawsuits, that is a lot of lawsuits. That is a lot of lawsuits. And they are pending by the thousands in certain districts in America. People are not going to get trials right away. They are not going to be able to say I want to have my trial today: I have a serious asbestosis; I am on oxygen: I may die soon, or I have mesothelioma, and this is a deadly disease, and the doctors say I only have 9 months to live, and I want to have my case tried. It is not going to happen that way. It is not happening that way now, and it will not under this bill.

Therefore, people are going to die and suffer in poverty for years before they get any payment; whereas, in this bill, we can get the money to the victims promptly and fairly, in an objective way, with plaintiffs similarly injured, similarly situated, getting similar amounts of money—generous amounts of money. As I noted, a mesothelioma case gets $1.1 million. Half would be paid within 30 days, without any need for an attorney whatsoever. You go in with a medical claim, and if an attorney is involved, the maximum he could get is 5 percent.

My colleague from Texas said we modified the attorney fee rule, and I was at fault for that. Senators SPECTER and LEAHY and others asked we consider the fact that when cases are appealed, they tend to become complex and require quite a bit of lawyer time, and we ought to allow lawyers to have more than that, if the judge approves it. So I thought that was a reasonable request. We have amended it only to that small degree. It is not an opening up of attorneys' fees under this bill.

I am concerned that some of the primary advantages of asbestos reform would not be availed under this amendment. That is why I am reluctantly not able to support it. I hope we can continue with the bill and that other people will bring forth thoughtful amendments, as Senator CORNYN has, and those who joined with him and presented it in a thoughtful way. But as I have stated, I don't believe it is the proper vote.

I yield the floor.

Mr. SPECTER. Mr. President, how much time remains?

The PRESIDING OFFICER. There is 8½ minutes.

Mr. SPECTER. For the opponents of the amendment?

The PRESIDING OFFICER. That is correct.

Mr. SPECTER. Mr. President, as we wind down on this debate, I want to emphasize to my colleagues the importance of this vote because this amendment, essentially, after looking at it in some detail, is a poison pill. If this amendment is not defeated, the whole thrust of the compensation program for victims of asbestos who cannot now collect one penny will be defeated. The whole thrust of this trust fund was to compensate victims whose employers had gone bankrupt, compensate veterans who have served the country, who have no one to sue, and to stop the rush of bankruptcies, now totaling some 77, resulting in a loss to the economy estimated at some $300 billion.

This proposal for a medical criteria bill doesn't even rise to the level of being palliative. It doesn't do anything except defer the claims of people who have been exposed until they become ill. It doesn't do anything about the rash of bankruptcies. It doesn't do anything about the people who suffer from mesothelioma, which is a deadly ailment, where they have no one to sue. So when the sponsor of the bill characterizes the current system as scandalous, that approbation could apply equally well.

This is one of the many votes on the floor of the Senate where the outcome is uncertain. There is a curious alliance here, with some on one side of the aisle and some on the other side of the aisle. Trial lawyers may be for this amendment if it can be modified because they see the medical criteria bill as a way of continuing to bring cases to court, and to continue with the current structure. I don't criticize the trial lawyers. I don't criticize anybody. I don't criticize the trial lawyers for exercising whatever rights the current system allows. But it is up to the Congress of the United States to make the determination as to what is the appropriate public policy. That is a congressional decision to make.

Mr. LEAHY. Will the Senator yield for a moment?

Mr. SPECTER. I am delighted to.

Mr. LEAHY. Mr. President, the Senator from Pennsylvania is absolutely right; it will not be a party-line vote. I hope the Senator from Pennsylvania succeeds. It is interesting, the people who represent victims and people who don't have legal representation support the Senator from Pennsylvania. Just about every labor union supports the Senator from Pennsylvania, as veterans groups do. I will not go through the list again. Just about every veterans group that has spoken on this issue supports the Senator from Pennsylvania. There are a lot of others who support the Senator from Pennsylvania, but I mention veterans and labor as an interesting coalition. They are speaking for people who would not have a voice otherwise. They support what the Senator from Pennsylvania is doing, as do an awful lot of businesses, I might add. I hope he is successful.

Mr. SPECTER. If the Senator will yield for a question, to pinpoint what the Senator said about labor's support. The AFL-CIO, which represents labor, the working men and women of America, has been a party to the discussion for 2½ years, at some 36 meetings, which Judge Becker and I have presided over. When they heard about this medical criteria bill, they were alarmed at the impact it would have on the working men and women and the veterans, their constituency, and they put out an all-points to those people as to what was going on.

I wonder if the Senator from Vermont would care to amplify, as the senior Democrat and principal cosponsor of the Leahy-Specter bill, as to what labor is doing in this area.

Mr. LEAHY. It is interesting. We have a lot of labor unions coming out foursquare for the bill. Some held back and they want a couple of changes they are looking for. It is interesting that all of them are against this amendment—those who haven't yet endorsed the bill and those who have endorsed the bill. It is the same with the veterans groups. I think they know that this amendment, no matter how well intentioned it would be, if it went through, basically kills the chances of people to recover anything. It puts us back into the decades of litigation where, as people across the spectrum were saying, from the late Chief Justice William Rehnquist to Ruth Bader Ginsburg, we need a solution on the floor.

Mr. SPECTER. If the Senator will yield further, as to what happened in today's maneuvering and negotiations on the floor, where we have had initially the trial lawyers being against this amendment. If people were wondering what all the maneuvering and negotiation was about, why we could not have an up-or-down vote, but a tabling motion, that is because the trial lawyers think that the amendment offered by Senator CORNYN may be better for them, but they want to change it around so that if this motion to table is not defeated, they will have time to rework it to their satisfaction.

That is the way the system works, and if that happens—this is now Thursday afternoon at 16 minutes to 5—there will be frantic negotiations between now and Tuesday, when we come back to work on this bill—or perhaps Monday afternoon—to come to an alliance. I won't call it an unholy alliance, but it will be an alliance in very curious ways, where people who oppose the bill do so out of the mistaken notion that it is going to cost the Government money. This bill is ironclad not to cost the Government money. People on my side of the aisle who are opposed to it don't want to have the Government undertake an obligation, and I agree with that. This bill accomplishes that, with no governmental obligations. Now the issue is whether sufficient trial lawyers on your side of the aisle may come to a majority.

Mr. LEAHY. Well, if the Senator will yield, like him, I was a trial lawyer. But I know with all trial lawyers, there are times when you have a superb settlement before you, you take it. The bill the Senator from Pennsylvania and I put together, after countless hours, months, and years of work, is a lot better settlement than going to a jury. I will support the Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I move to table the Cornyn amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. ENSIGN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. ENSIGN. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue with the call of the roll.

The assistant legislative clerk continued with the call of the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the motion. The yeas and nays have previously been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from Kansas (Mr. BROWNBACK) and the Senator from Arizona (Mr. McCAIN).

Mr. DURBIN. I announce that the Senator from Colorado (Mr. SALAZAR) is absent due to family illness.

The PRESIDING OFFICER (Mr. CORNYN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 70, nays 27, as follows:

[Rollcall Vote No. 13 Leg.]

YEAS—70

Akaka
Alexander
Allen
Baucus
Bayh
Biden
Bingaman
Bond
Boxer
Burns
Burr
Byrd
Cantwell
Carper
Chafee
Clinton
Cochran
Coleman
Collins
Dayton
DeWine
Dodd
Domenici
Dorgan
Durbin
Feingold
Feinstein
Frist
Harkin
Hatch
Inouye
Isakson
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Lugar
Menendez
Mikulski
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Obama
Pryor
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Schumer
Sessions
Shelby
Snowe
Specter
Stabenow
Stevens
Talent
Vitter
Voinovich
Warner
Wyden

NAYS—27

Allard
Bennett
Bunning
Chambliss
Coburn
Conrad
Cornyn
Craig
Crapo
DeMint
Dole
Ensign
Enzi
Graham
Grassley
Gregg
Hagel
Hutchison
Inhofe
Kyl
Lott
Martinez
McConnell
Smith
Sununu
Thomas
Thune

NOT VOTING—3

Brownback
McCain
Salazar

The motion was agreed to.

Mr. REID. Mr. President, I know the distinguished majority leader filed cloture on Eric S. Edelman to be Under Secretary of Defense for Policy. Senator LEVIN has indicated he is agreeable to letting that go forward on a voice vote. We are ready to do that as soon as necessary when the majority leader believes it is appropriate.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent that the pending amendments be set aside so the Senator from Arizona, Mr. KYL, may be recognized to lay down an amendment.

Mr. REID. Reserving the right to object.

Mr. DURBIN. Reserving the right to object.

Mr. REID. Mr. President, I know there is no consent order in effect. We were of the understanding that we were going to go back and forth with amendments—there would be a Republican amendment, a Democratic amendment. If that is not the case, I am certainly willing to live by that, but I thought that was the agreement. I certainly have not spoken to the managers of the bill, Senator SPECTER and Senator LEAHY, nor did I, in fact, speak to Senator DURBIN, but that was my understanding.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, as the Senator from Nevada has said, there has been no understanding. It is agreeable with me to have an understanding as to that effect in the future. I have already talked to Senator KYL, who is poised to offer this amendment. I am glad to enter into such an understanding. There is not one at the present time. I would like to proceed with Senator KYL and alternate.

Mr. REID. Mr. President, if I could, we have no problem with Senator KYL offering the next amendment. The only problem is we have not seen it. Could we have some idea of what it is all about?

I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. SPECTER. I yield the floor for the purposes of letting the Senator from Nevada be recognized.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Arizona is recognized.

AMENDMENT NO. 2754 TO AMENDMENT NO. 2746

Mr. KYL. I send an amendment to the desk.

The PRESIDING OFFICER. Is there objection to setting aside the pending first-degree amendment?

Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 2754 to amendment No. 2746.

Mr. KYL. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To reduce the impact of the trust fund on smaller companies and to expand hardship adjustments)

SEC. I. PROPORTIONAL PAYMENTS.

(a) At page 171, after line 5, insert new (c) as follows (the subsection references assume that the required renumbering has occurred):

"(c) LIMITATION.—For any affiliated group, the total payment in any year, including any guaranteed payment surcharge under subsection (m) and any bankruptcy trust guarantee surcharge under section 222(c), shall not exceed the lesser of $16,702,400 or 1.67024 percent of the revenues of the affiliated group for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation is applied, whichever is greater. For purposes of this subsection, the term "affiliated group" shall include any defendant participant that is an ultimate parent. The limitation in this subsection shall not apply to defendant participants in Tier I or to any affiliated group whose revenues for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation applied, whichever is greater, exceeds $1,000,000,000. The revenues of the affiliated group shall be determined in accordance with section 203(a)(2), except for the applicable date. An affiliated group that claims a reduction in its payment in any year shall file with the Administrator, in accordance with procedures prescribed by the Administrator, sufficient information to allow the Administrator to determine the amount of any such reduction in that year. If as a result of the application of the limitation provided in this subsection an affiliated group is exempt from paying all or part of a guaranteed payment surcharge or bankruptcy trust surcharge, then the reduction in the affiliated group's payment obligation due to the limitation in this subsection shall be redistributed in accordance with subsection (m). Nothing in this subsection shall be construed as reducing the minimum aggregate annual payment obligation of defendant participants as provided in section 204(i)(1)."

(b) Renumber subsections following new subsection (c).

(c) Subsequent to renumbering the subsections following new subsection 204(c), make the following cross-reference changes:

At page 142, line 7, replace "204(g)" with "204(h)"

At page 151, line 20, replace "204(i)(6)" with "204(j)(6)"

At page 160, line 21, replace "204(l)" with "204(m)"

At page 167, line 24, replace "204(d)" with "204(e)"

At page 170, lines 21 and 22, replace "(d) and (m)" with "(e) and (n)"

At page 171, line 22, replace "(i)(10)" with "(j)(10)"

At page 172, line 3, replace "(j)" with "(k)"

At page 177, line 12, replace "(j) with "(k)"

At page 178, line 25, replace "(j)(3)" with "(k)(3)"

At page 179, line 2, replace "(k)(1)(A)" with "(l)(1)(A)"

At page 182, line 16, replace "(i) with "(j)"

At page 183, line 6, replace "(i)" with "(j)"

At page 186, lines 7 and 8, replace "(d), (f), (g), and (m)" with "(e), (g), (h) and (n)"

At page 186, line 11, replace "(d) and (m)" with "(e) and "(n)"

At page 186, line 20, replace "(d) and (m)" with "(e) and "(n)"

At page 186, line 23, replace "(l)" with "(m)"

At page 187, line 8, replace "(f)" with "(g)"

At page 196, line 20, replace "(d)" with "(e)"

At page 196, line 22, replace "(m)" with "(n)"

At page 197, line 13, replace "(h)" with "(i)"

At page 198, line 11, replace "(d)" with "(e)"

At page 198, line 16, replace "(h)" with "(i)"

At page 198, line 17, replace "(j)" with "(k)"

At page 198, line 23, replace "(d)" with "(e)"

At page 199, line 10, replace "(h)" with "(i)"

At page 199, line 12, replace "(d) and (m)" with "(e) and (n)"

At page 199, line 20, replace "(k)" with "(l)"

At page 199, line 22, replace "(h)" with "(i)"

At page 200, line 3, replace "(h)" with "(i)"

At page 200, line 7, replace "(d), (f), (g), and (m)" with "(e), (g), (h) and (n)"

At page 200, line 22, replace "(d), (f), and (g)" with "(e), (g), and (h)"

At page 201, line 5, replace "(i)(9)" with "(j)(9)"

At page 203, line 6, replace "204(i)" with "204(j)"

At page 204, line 23, replace "204(d)" with "204(e)"

At page 205, line 11, replace "(i)(10)" with "(j)(10)"

At page 205, line 16, replace "204(h)" with "204(i)"

At page 248, line 21, replace "204(f)(3)" with "204(g)(3)"

At page 261, line 14, replace "204(i)(10)" with "204(j)(10)"

At page 266, line 14, replace "204(f)" with "204(g)"

At page 289, line 9, replace "204(i)" with "204(j)"

At page 289, line 11, replace "204(d)" with "204(e)"

At page 289, line 12, replace "204(m)" with "204(n)"

At page 289, line 19, replace "204(i)" with "204(j)"

At page 289, line 20, replace "204(d)" with "204(e)"

At page 289, line 21, replace "204(m)" with "204(n)"

At page 289, line 23, replace "204(i)(10)" with "204(j)(10)"

At page 334, line 8, replace "204(f)" with "204(g)"

SEC. 2. HARDSHIP ADJUSTMENTS.

(a) Strike page 172, line 6, through page 173, line 17, and insert the following:

"(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

(A) IN GENERAL.—Any defendant participant in any tier may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such an adjustment by demonstrating to the satisfaction of the Administrator that the amount of its payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due. Such an adjustment shall be in an amount that in the judgment of the Administrator is reasonably necessary to prevent such material and adverse effect on the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due.

(B) FACTORS TO CONSIDER.—In determining whether to make an adjustment under subparagraph (A) and the amount thereof, the Administrator shall consider—

(1) the financial situation of the defendant participant and its affiliated group as shown in historical audited financial statements, including income statement, balance sheet, and statement of cash flow, for the three fiscal years ending immediately prior to the application and projected fmancial statements for the three fiscal years following the application;

(2) an analysis of capital spending and fixed charge coverage on a historical basis for the three fiscal years immediately preceding a defendant participant's application and for the three fiscal years following the application;

(3) any payments or transfers of property made, or obligations incurred, within the preceding 6 years by the defendant participant to or for the benefit of any insider as defined under section 101(31) of title 11 of the United States Code or any affiliate as defined under section 101(2) of title 11 of the United States Code;

(4) any prior extraordinary transactions within the preceding 6 years involving the defendant participant, including without limitation payments of extraordinary salaries, bonuses, or dividends;

(5) the defendant participant's ability to satisfy its payment obligations to the Fund by borrowing or financing with equity capital, or through issuance of securities of the defendant participant or its affiliated group to the Fund;

(6) the defendant participant's ability to delay discretionary capital spending; and

(7) any other factor that the Administrator considers relevant.

(B) TERM.—A financial hardship adjustment under this paragraph shall have a term of 5 years unless the Administrator determines at the time the adjustment is made that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(C) RENEWAL.—A defendant participant may renew a hardship adjustment upon expiration by demonstrating that it remains justified. Such renewed hardship adjustments shall have a term of 5 years unless the Administrator determines at the time of the renewed adjustment that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a renewed financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(D) PROCEDURE.—

(1) The Administrator shall prescribe the information to be submitted in applications for adjustments under this paragraph.

(2) All audited financial information required under this paragraph shall be as reported by the defendant participant in its annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.). Any defendant participant that does not file reports with the Securities and Exchange Commission or which does not have audited financial statements shall submit financial statements prepared pursuant to generally accepted accounting principles. The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify under penalty of law the completeness and accuracy of the financial statements provided under this sub-paragraph.

(3) The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify that any projected information and analyses submitted to the Administrator were made in good faith and are reasonable and attainable."

(b) Conforming changes.

At page 177, line 10, strike "hardship and"

At page 178, lines 19–20, strike "financial hardship adjustments under paragraph (2) and"

At page 178, lines 22–23, strike "—(A)."

At page 179, line 2, insert a period after "(k)(1)(A)" and delete; "or"

At pages 179—181, strike line 10 on page 179 through line 2 on page 181.

At page 181, at line 3: Insert "RULEMAKING AND" before "ADVISORY"

At page 181, line 5: Strike "shall" and insert "may"

At page 181, following line 14, insert: "The Administrator may adopt rules consistent with this Act to make the determination of hardship and inequity adjustments more efficient and predictable."

At page 197, line 8, strike "HARDSHIP AND"

At page 197, line 15, strike "hardship and"

At page 197, line 19, strike "hardship and"

At page 197, lines 24 and 25, strike "severe financial hardship or"

SEC. 3. STEPDOWNS AND FUNDING HOLIDAYS.

(a) At page 205, line 20, strike "The" and insert: "Except as otherwise provided in this paragraph, the"

(b) At page 205, lines 22 through 24 strike: ", except with respect to defendant participants in Tier I, Subtiers 2 and 3, and class action trusts" and insert the following:

". The reductions under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reduction under this subsection exceeds the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reduction provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reduction provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph."

(c) At page 207, line 10 through 12, strike the text following "except" in line 10 and insert "as otherwise provided under this paragraph. The reductions or waivers provided under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions or waivers under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reductions or waivers under this subsection exceed the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reductions or waivers provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reductions or waivers provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph."

Mr. KYL. Mr. President, I will be brief.

For those who have been involved in this issue, it has been discussed actually since last August and deals with the small companies or businesses that would be paying into the fund that is the subject of this bill. The amendment is designed to reduce the impact of the trust fund on the small- and medium-sized companies and to ensure that the fund does not drive them into bankruptcy.

It does principally two things.

First, it provides across-the-board relief to small- or midsized companies, those with annual gross revenues of less than $1 billion, by limiting their trust fund contributions to 1.67 percent of their gross revenues. This per se relief should resolve most ability-to-pay problems that are created by the fund with certainty and without administrative burdens.

For those who do not qualify for this across-the-board relief or for whom it is not enough, the amendment provides a second form of hardship relief. It authorizes the administrator to reduce the company's fund assessments if the company otherwise would go out of business and would be unable to pay its bills. To be exact, under the amendment, a company can qualify for an adjustment if it can show that its fund payments "would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due." Under this amendment, access to this form of relief would be unlimited.

This amendment does not solve all of the problems with the trust fund allocation of payments. I anticipate there will be other amendments to address some of those issues, and I support some of those amendments, as well. I believe this amendment does go a long way toward solving the problem I identified.

What this amendment does do is shave off some of the roughest edges of this bill. This amendment makes the hardship adjustment a real and predictable guarantee. The way that the bill currently is written, some small- and medium-sized companies will be hit with trust fund payments that will constitute a major portion of their gross revenues. These companies obviously will not be able to make these payments. While the bill currently authorizes an insolvency hardship adjustment, that hardship adjustment is vaguely stated and includes limitations that undercut its usefulness for many companies on the margins. Literally, companies faced with crushing payments under the bill would be forced to tell potential creditors or capital markets, "yes, we will be required to pay 25 percent of our gross revenues into the trust fund under the FAIR Act, but we might be able to get a hardship adjustment." You can see why these companies might have trouble getting a loan. Under my amendment, these same small- and medium-sized companies will be able to tell the banks and potential investors that they will not be forced to pay more than one and two-thirds of a percent of their gross revenues into the fund. By providing guaranteed reasonable limits on assessments, this amendment will make it possible for these companies to continue to engage in normal business transactions.

This amendment does not directly affect the availability of inequity adjustments under the trust fund. The amendment does, however, indirectly expand the availability of inequity adjustments by making hardship adjustments into a separate category that is not drawn from the $300 million that is currently set aside for both kinds of adjustments. That $300 million will now be set aside solely for equity adjustments.

Also, the amendment does not in any way affect the fund's guarantee of producing $3 billion a year for compensating victims. Under the bill as it is currently written, in the event of any shortfall in reaching that $3 billion, a guaranteed payment surcharge is imposed on all defendant participants in order to make up the difference. Thus, to the extent that relief received by any defendant pursuant to this amendment prevents the fund from reaching the $3 billion target, that gap will be filled by the payment surcharge. This amendment, therefore, in no way adversely affects the FAIR Act's funding guarantee.

Allow me to describe in greater detail exactly how this amendment works. Under the amendment, no defendant participant, other than a Tier I participant, with 2002 revenues of less than $1 billion is required to contribute more than the greater of 1.67 percent of its revenues as of December 31, 2002, or 1.67 percent of its revenues for the most recent 12-month fiscal year. The revenue cap employed by this amendment matches the 1.67 percent of gross revenues that is the measure of Tier I contributions. Also, only companies that elect to report on a consolidated basis may take advantage of this revenue cap.

This amendment's revenue cap is only a rough measure of ability to pay. It is, however, easy to administer, and it is less subject to manipulation than other measures, such as net income.

As for the amendment's changes to the hardship adjustment, first, there currently are two hardship provisions in the bill—section 204(d)(2), which provides relief generally for severe financial hardship and which is subject to the $300 million hardship and inequity cap, and section 204(d)(5), which allows the cap to be exceeded if otherwise a company would be forced into insolvency. My amendment would rewrite (d)(2) to provide clearer standards, eliminate (d)(5), and make clear that there is no cap on hardship relief. The result is a simpler proposal more attuned to the needs of potential hardship-adjustment applicants.

Under the amendment, any defendant participant can apply for hardship relief, whether it is in Tier I or not, and whether or not it reports on a consolidated basis. However, in the case of defendant participants that do not file on a consolidated basis, the administrator must examine the real financial situation of the defendant participant by taking into consideration the financial position of the affiliated group.

Again, under the revised hardship adjustment in this amendment, the Administrator may grant an adjustment if he concludes that the amount of a defendant participant's payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due. The amount of relief would be limited to the amount necessary to avoid the problem.

In determining whether to grant an adjustment under this revised provision, the administrator will required to consider, among other things: the historical audited financial statements for the defendant participant or affiliated group for the three years immediately prior to the application for relief; projected financial statements for the 3 fiscal years following that application; an analysis of capital spending and fixed charge coverage on a historical basis for the 3 fiscal years preceding and the 3 fiscal years immediately following the application; any payments or transfers of property made, or obligations incurred, by the defendant participant during the 6 fiscal years prior to the application to or for the benefit of any insider; any extraordinary transactions of the defendant participant, including payments of extraordinary salaries, bonuses, or dividends, within the 6 fiscal years prior to the application; the defendant participant's ability to satisfy its payment obligations to the fund by borrowing or financing with equity capital, or through issuance of securities to the fund; and the defendant participant's ability to postpone discretionary capital spending for a reasonable period.

The term of any adjustment under the amendment shall be 5 years, unless the administrator determines that a shorter or longer period is appropriate in light of the financial condition of the defendant participant. Any adjustment under the amendment may be renewed upon a showing that it continues to be justified—and it is automatically terminated if the defendant participant files for bankruptcy protection.

The amendment also eliminates provisions for recapture of hardship adjustments, except in cases of fraud. The current bill's provisions for frequent review of hardship adjustments and potential for giving adjustments back have significantly reduced the usefulness of these adjustments in addressing the concerns of companies on the margins. If these adjustments aren't reasonably predictable, they are not useful either.

Finally, under the amendment, companies that have received discounts off their tier/subtier allocation because of the cap or hardship adjustments would only get the benefit of cumulative step downs to the extent that the step downs exceeded the amount of the discounts the company already had. The same rule applies for hardship adjustments.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the Senator from Arizona for offering this amendment.

This is a good amendment. There has been a great deal of concern that smaller businesses—although we are talking about businesses which are substantial, but they are smaller than many in the field—should not pay more than they can afford to pay. This amendment achieves that result.

I add that Senator KYL has been an outstanding member of the committee for many years, and in the past year and a half since I have become chairman, he has been a stalwart and has worked tirelessly on this bill. I don't know how many meetings he and I and others, including the presiding Senator, Mr. CORNYN, have had. This has been a matter very much on the Senator's mind and many others who have suggested many other provisions. It is a very good amendment. I thank and compliment the Senator.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I make a point of order that the pending bill violates section 407 of H. Con. Res. 95, the concurrent resolution on the budget for fiscal year 2006.

Mr. SPECTER. I move to waive the point of order under the applicable provisions of the rules and statutes.

The PRESIDING OFFICER. The motion to waive is debatable.

Mr. SPECTER. Mr. President, the essence of this issue is that the point of order should not be sustained because there is no Federal money involved. All of the money involved comes from private sources. This is a make-or-break issue for this bill.

The Federal budget is not involved in this bill. To repeat, which I don't like to do, but for emphasis, the Federal budget is not involved in this bill. The money comes from private sources. It goes through the Department of Labor as a conduit. Technically, there is a Federal expenditure, but it is not the Federal Government's money. Now, the only issue which has been raised is that at some point in the future, the Federal Government might seek to bail out this trust fund. The bill is emphatic in a number of places that the Federal Government has no obligation to pay out any money. If the trust fund runs short, there are provisions to meet that situation. It is a complicated provision, but the administrator makes an analysis, and if he sees the necessity to make some modifications in the trust fund, he can take it to a committee and the committee can then make a recommendation to Congress. The Congress has to act.

The real safety valve is the one provided by the Biden amendment in July of 2003 that if the fund runs out of money, claimants can go back to court. So the claimants are no worse off going back to court if the trust fund runs out of money than they are now. But in the interim, thousands of people who suffer from deadly diseases—mesothelioma and exposure to asbestos—will be paid where they cannot be paid now because their companies are bankrupt or they are veterans and there is no one to sue.

The consideration that some future Congress, decades down the road, in the year 2030, might have a different view is up to the Congress in that year. We cannot bind them as to what they are going to do, nor should we try to bind them. But what we do here does not implicate or involve the Federal Treasury. To say that there may be a temptation in the future for some Congress to spend Federal funds is not something we should do. It is not within our purview. It is not within our responsibility. In fact, we ought to keep our hands off the future Congresses. We should not presume that we know enough in the year 2006 to tell the Congress in the year 2026 what to do. They will be elected. They may well be a lot smarter than this Congress. Perhaps it is hard not to be. But it is up to them at that time.

This is a convenient maneuver to defeat the bill by requiring 60 votes. That is like the motion to proceed, the filibuster, to try to structure a vote for 60 votes, to try to find enough people who do not like the bill; only takes 41 who do not like the bill to defeat the bill on this kind of a maneuver, whereas it takes 51 to defeat this bill otherwise.

The administration is for it. If this bill goes 50-50, the Vice President votes for it. The President issued a statement of support on S. 852. There are caveats in it. He said there are concerns. I don't know of any Member of this Senate who does not have some concerns about this bill. But that is what the debate is for. That is what we are here to consider. We will not be able to consider this if this point of order is sustained.

I yield to the real expert on budgets, a man who was chairman of the Committee on the Budget for 73 years.

Mr. DOMENICI. I am 73 years old, but I didn't chair it all the time.

Mr. SPECTER. I thought he chaired it his entire life. Senator DOMENICI was the chairman of the Committee on the Budget the day I was sworn in. I have great respect for Senator GREGG, chairman of the Committee on the Budget today, but I yield to the chairman of the Committee on the Budget emeritus.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. So that I understand, I am speaking on my own time now; is that correct?

The PRESIDING OFFICER. The Senator is recognized in his own right.

Mr. DOMENICI. Right. First, let me say the Senator who is raising the point of order has every right to raise the point of order. The question is, is this a real point of order? I want to tell the Senate, I am not the Parliamentarian. I am not the Congressional Budget Office. But if I were either, I would say this point of order does not even lie, not that we should defeat it. It just does not lie. It is not a proper interpretation of the existing budget law to say this point of order can be raised and can invalidate this bill because the bill violates the budget.

I want the Senators who are worried about voting to waive this point of order to understand this is not a budgetary issue. This is a technical point of order that got to the Senate because the Congressional Budget Office, I assume, or the Parliamentarian in consultation with the Congressional Budget Office, ruled that any expenditure of money exceeding $5 billion over a baseline in the year 2016 cannot be sustained.

You see, Senator BYRD, this was done by our distinguished new chairman of the Budget Committee because he found that budgets were being broken in future years by putting in a program that ran at $2 or $3 billion a year and increased, way out there in future years, up to $10 or $15 billion.

Now, fellow Senators, what I have described was perfectly valid until the distinguished chairman, within his rights, decided that this was a problem he wanted to solve. Now, you see, the goal is to prevent the bump-up of expenditures in future years that are unexpected by everybody voting today—unexpected because the increase comes along 10 years later and costs much more than what you thought you were voting for.

Now, I cannot explain it any better than that. That is about the best I can do. Somebody must have determined that this budget rule applies because there is no way to disburse this trust fund money without going through the Department of Labor. That must be it. Because some Government agency must take this money—not tax money, not Federal money—and run it through their books and write the checks, somebody has decided that this fear of a bump-up in some future year applies.

My good friend from Nevada is absolutely right to bring up this point of order if what he wants to have happen to this bill is for it to be proven by 60 votes. That is fine. But I want everybody to know, if the point of order is not sustained and this bill goes forward, I don't think the deficit of the United States is going to be affected in 2016 by one dollar if this $5 billion estimate is true because the money is not really on the Federal books. The trust fund has no real relationship to the expenditure of Federal money.

So in considering this budget rule—I have explained it to you—I ask: how are we going to break the budget when this money is not even part of the budget? It is not on the budget. The money is going to be collected and then go through the Department of Labor, but it is not Federal money.

I say to Senator BYRD, when they send the budget up in 2016, there is not going to be any of this trust fund money. This money might get a footnote. The Department of Labor is going to have to run the trust fund, but it cannot add to or subtract from the deficit because the Government is not spending its money. And it is not tax money.

So let me say, if you want to kill this bill based upon a point of order that is—it is almost not a point of order, it is just a little, tiny technicality—it gets in by the skin of its teeth on an interpretation—then vote for it. If you are worried about saving money, and being a tightfisted budgeteer, then understand that this has nothing to do with being a tightfisted budgeteer because there is no budgeting involved.

So I thank the good chairman who has worked so hard on this bill. I have never sat on the committee that produced this bill in my 34 years here. I never chose to go on the Judiciary Committee, so I am not intimately knowledgeable about this. But I know we better do something about asbestos. We run around talking about fiscal responsibility and helping business and cutting taxes so we will have more business. If we do not do anything about asbestos, and leave it in the courts, it will be the biggest abuse of the court system that we have ever known.

If you want to tell these new countries becoming democracies, "boy, are we a gifted country, we have this great rule of law, this fantastic court system," please, don't let them ask about asbestos because they will laugh: Why should they be like America? Why should they have a legal system that is so messed up that there are hundreds of thousands of claimants running around this country with scores of lawyers who, when we were practicing law, would not even have been lawyers? You could not run around soliciting these cases when I was sworn into the bar. You could not run around hiring these doctors when I was a member of the bar. You could not run around saying: Go get your neighbors and sign them up.

That is American law today. It is business. It is entrepreneurial law. That is what we have. But it is not very orderly and it is not very "due" in terms of due process. Nor is it very fair because the claimants do not get very much money. The lawyers get a lot.

I do not know why we would want to kill this bill. Lawyers get less. There is an orderliness involved. There is a way to adjudicate claims instead of waiting around for years. So with this point of order, while I think it is not even a point of order in the sense of what we intended with the 10-year-out rule—let's call it that; the 10-year-out rule—I do not know what we are even trying to protect against. It is not going to affect anything except to possibly kill the bill.

So with that I thank the Senate for yielding me a few minutes. I regret having to intervene before the proponent got to speak. But I thank the Senate nonetheless.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I have listened with great interest to the interpretation of my colleague on the Budget Committee. I must say, I come to a totally different conclusion based on the law and based on the Congressional Budget Office's own reports.

Here is the report from the Congressional Budget Office itself with respect to the issue of whether the point of order raised by the Senator from Nevada has merit or not. The Congressional Budget Office, which is nonpartisan, has said very clearly that this does involve Federal direct spending, does involve deficit spending. A point of order clearly lies.

Mr. ENSIGN. Mr. President, will the Senator yield for a question?

Mr. CONRAD. Yes, I will be happy to yield to the Senator.

Mr. ENSIGN. Is the Senator aware, the ranking member on the Budget Committee, that the current Republican chairman of the Budget Committee has indeed ruled that the point of order I raised today is actually valid?

Mr. CONRAD. Yes. I have talked directly to the chairman of the Budget Committee, and he has said to me he believes that clearly this budget point of order does lie. And he is buttressed, I might say to my colleague, by the Congressional Budget Office itself, which says on page 2 of their report on this legislation called S. 852, the Fairness in Asbestos Injury Resolution Act, in the last paragraph:

> Pursuant to section 407 of H. Con. Res. 95 (the Concurrent Resolution on the Budget, Fiscal Year 2006), CBO estimates that enacting S. 852 would cause an increase in direct spending greater than $5 billion in at least one 10-year period from 2016 to 2055.

That is the point of order raised by the Senator from Nevada. It is absolutely appropriate, and it clearly lies.

People can come out and be unhappy about the result, but the reality is we have a problem. And we have a big problem here. Why? Well, we have done an analysis, my professional staff. Here is what they found. The claims and administrative expenses will likely exceed the contributions to the trust fund. No. 2, that upfront claims will far exceed contributions, so the trust fund will have to borrow substantial amounts. I have heard over and over it stated on the floor that there is no Federal money, there is no Federal money. Really? Why is it, then, that in the legislation they provide for borrowing Federal money? Why is that? Because everybody knows that point No. 2 is true, that the upfront claims are going to greatly exceed the revenue, and the result will be borrowing. And guess who they are going to borrow from. They are going to borrow from the Federal Treasury.

It is also our conclusion that small adjustments in the amount and timing of the assumptions quickly bankrupt the trust fund; and, finally, that it is unrealistic to assume the trust fund will ever terminate. Because the other thing they are saying is: Well, the legislation provides, if they run out of money, we will terminate the trust fund. Let's think about that for a moment. Companies will be on the hook for tens of billions of dollars that they will have to pay back that have been borrowed, and then they are thrown back in the court system too. Can you imagine the outcry that will come from them?

Let me go to the next chart. I had hoped to not be engaged in this debate, frankly, but we were asked to do a report. And we have done that report. Professional staff did it. These are the conclusions. They looked at the CBO estimates, and here is what we found. CBO did not score many items that are likely to increase the costs, including dormant claims. Those are claims that are not currently being pursued but would have a possibility of getting recovery if they went after this pot of money.

No. 2, exceptional medical claims. There are nine categories that people can fit into. But if you do not neatly fit into those, there is an opportunity for the costs to rise.

And third, CBO did not score any claims of family members of workers who were exposed to asbestos.

We also—the professional staff found that CBO's estimate of the number of future cancer claims is likely to be too low. The CBO analysis concluded there would be 78,000 new cancer claims. The Tillinghast study—which we believe is the most objective study out there, which was done by the Johns Manville trust—ran 14 different scenarios. They found, on average, 133,000 new cancer claims is the likely result, not 78,000. By the way, if they are right, if the midpoint of their range is correct, the increase in cost will be very dramatic. Finally, CBO's estimate of the percent of nonmalignant claims that will receive a cash award is likely too conservative.

In this legislation, there are five tiers for non-malignant claims. Tier 1 gets medical monitoring. They do not get money. Tier 2 gets cash awards of $25,000; tier 3, $100,000. CBO has estimated only 15 percent of claimants will get cash awards.

When our people went out and talked to experts, they said the range is 10 to 40 percent. Our people took the midpoint of that range, 25 percent. The Tillinghast study suggests it will be in the range of 23 or 24 percent. That increases the cost over CBO's analysis.

The conclusion of the Budget Committee staff on the minority side is that the shortfall over the period of the fund will be $150 billion, the net present value difference being $50 billion. In other words, the $150 billion shortfall is over the life of the fund. That turns into a net present value of $50 billion. But to show you how sensitive this is, we were very conservative in terms of new cancer claims. CBO said 78,000. Our study said 90,000. Tillinghast, in 14 different scenarios, on average found 133,000 new cancer claims. If they are right, this number is not $150 billion, it is $295 billion, with a net present value of $85 billion.

Let's reality test for one moment. We went out and looked at what has happened in other cases where funds were set up, what the initial estimates were and then what actually happened. In the case of the Manville trust, the original range was that there would be on the low end 50,000 claims and on the high end, they said 200,000 claims. Here is how many there have actually been to date—not 50,000, not 200,000—there have already been 690,000 claims. That is not the end of it. They now estimate there will be another 1.4 million claims on top of that, for a total of over 2 million claims. So what is the result? The result is, people who were promised certain recovery are getting 5 cents on the dollar. That is what they are getting now, 5 cents on the dollar.

We also looked at the black lung fund. In the black lung fund they projected at the beginning, the original estimate, it would cost $3 billion. Here is what it has cost so far—$41 billion. That is through 2004.

The assertion has been made that CBO has said this is paid for. That isn't their conclusion. CBO said this in the letter:

> The proposed trust fund might or might not have adequate resources to pay all valid claims. There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs.

If you look at the numbers behind the numbers, I think it is very hard to conclude anything other than what my professional staff concluded. The strong likelihood is that this fund is way under water. Our conclusion is $150 billion under water. It is entirely possible——

Mr. SPECTER. Will the Senator from North Dakota yield for a question.

Mr. CONRAD. I would be happy to, when I have finished my sentence. It is entirely possible that it is $295 billion under water. I regret to conclude it may be more serious than that.

With that, I am happy to yield.

Mr. SPECTER. Mr. President, I have noted the chart. If you could put the chart back up, please.

Mr. CONRAD. Which one?

Mr. SPECTER. The last one. The one the Senator from North Dakota is talking about, the one that has the letter going to Senator ARLEN SPECTER. I received that letter. You may be surprised to know that I read that letter.

Mr. CONRAD. I am not surprised at all.

Mr. SPECTER. Senators receive lots of letters; relatively few are read.

My question to the Senator from North Dakota is, isn't it true that the two sentences which you left off following the chart you have read:

> There is some likelihood that the fund's revenue would be sufficient to meet those needs.

Isn't it true that that is the next sentence in the letter?

Mr. CONRAD. That is the next sentence in the letter. It is also true that the CBO analysis is very clear. They have not even attempted to put a cost behind a whole series of things that they have told us are very likely to cost money and increase the cost in a way that puts this fund over into insolvency.

I regret being in this situation. I have no desire to be involved in this debate, but we are here.

Mr. SPECTER. If the Senator will yield for another question.

Mr. CONRAD. I am happy to yield.

Mr. SPECTER. Isn't it true that following the sentence I just read, which was "there is some likelihood that the fund's revenues would be sufficient to meet those needs," the next sentence reads:

> The final outcome cannot be predicted with great certainty.

Isn't that pretty much standard CBO, where they are making projections, and the thrust of what CBO has said and the Senator from North Dakota has cited is that you don't know "with great certainty"? And isn't it true that in any projection of this sort you cannot have "great certainty," that you don't even have that on proof for the death penalty in a first-degree murder case where it is only proof beyond a reasonable doubt? Isn't it true that CBO in the letter which they sent to me, dated August 25, made a projection that the cost would be between $120 and $150 billion, and the final line on page 8 was $132 billion which is well within the $140 billion figure?

Mr. CONRAD. Let me say to my colleague, the problem with that is, it doesn't include debt service. It doesn't include any additional amount for dormant claims. It doesn't include any additional amount for exceptional medical claims. It doesn't include any additional amount for claims of family members. CBO's estimate of the number of future cancer cases, we believe, is likely to be far too low. And CBO's estimate of the percent of nonmalignant claims that will receive a cash award is likely far too low.

I will go further in answering my colleague and say, when you reality test all of these things against what has happened in other funds like this, what we see is a consistent pattern, a very consistent pattern, that the initial estimates of how many claims there will be have been vastly understated.

Mr. SPECTER. Will the Senator yield for another question?

Mr. CONRAD. I am happy to.

Mr. SPECTER. As the Senator from North Dakota outlines the situation, CBO is incompetent, grossly incompetent. When the Senator from North Dakota shows different conclusions which his staff has reached, why wouldn't it be sensible to disband the Congressional Budget Office and just rely on his staff?

Mr. CONRAD. Because first, I say to my colleagues, those are his words and his conclusions. I have great respect for the Congressional Budget Office. I think the Senator knows that is the case.

I say this in seriousness. They have been very clear with us. They have said there are areas that are extremely difficult to predict. I accept that. It is very difficult to know how many dormant claims will come out of the woodwork. But to suggest there are not going to be any is unrealistic. To say that the number of future cancer claims is going to be 78,000, when the Tillinghast study that was paid for—not by the trial bar, not by the labor unions, not by any of the companies who are against this legislation—it was paid for by the Manville trust, they said they ran 14 different scenarios, and on average there were 133,000 new cancer claims. That one change, if they are right, increases this fund from being under water by $150 billion to being under water by almost $300 billion.

Finally, CBO's estimate of the percentage of nonmalignant claims—again, this is a hard thing to know—the Tillinghast study suggests that the range will be 10 to 40 percent. The midpoint of that range is 25 percent. If you think about it, people come in and they go to their doctor and you have a situation in which they might qualify for $25,000 or even $100,000. There is going to be a tremendous tendency to push them into those categories. It is human nature.

Again, if we reality test and go back to what has happened with these other funds, there is a very consistent pattern. Black lung, they said it was going to cost $3 billion. It cost $41 billion, 14 times as much.

I reluctantly come to the conclusion that this is not only under water by the amount my professional staff came to—they came to the conclusion it was $150 billion—I think it is entirely possible, even likely, that it is at least $295 billion under water, and it may be a multiple of that because the history of these things is so clear. When you stack up a bunch of money and you say, come and get it, guess what. People come and get it. All of a sudden there are all kinds of people coming forward and making a case that they are owed money.

I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I am somewhat querulous at the representation of the reluctance of the Senator from North Dakota to take the position which he has articulated. It is certainly obvious that he wasn't prepared to take the position, certainly obvious that this point of order, which was articulated this afternoon, has taken him by surprise. As I look at his elaborate charts, I think he has been anticipating this moment for some time, which doesn't necessarily impugn his comment that this is with reluctance, but it looks to me as if it is with calculation.

I am not unaware of the obvious facts of life—that colleagues of the Senator from North Dakota on the Democratic side of the aisle are not too fond of this bill. I am not unaware of that. I won't go into the reasons behind it, but it happens to be a fact.

Senator CONRAD is experienced and articulate. He has been chairman of the Budget Committee and ranking member for a long time and a distinguished Senator, after having been elected in 1986. I have served with him in this body for 20 years now. But when he talks about the Tillinghast study and when he projects what his own staff has done, he is undercutting the Congressional Budget Office which puts this $140 billion well within the ballpark. I put these letters in the RECORD—I have already done that today—where there is the comprehensive analysis of the Congressional Budget Office, in a letter to me, dated August 25, 2005, and a letter dated December 19, 2005. The long and short of the Congressional Budget Office analysis is that you are dealing in a range of $120 to $150 billion, and the point they struck on is 132, which is $8 billion under the 140.

When the Senator from North Dakota talks about dormant claims, he doesn't know how many dormant claims there are. Nobody does. You can't sit here in the year 2006 and speculate about how many other claims there are that he has articulated. We are not going to vote on this issue tonight. There aren't enough Senators in the Chamber to vote tonight. We are going to have a battle royal of charts by the time we revisit this issue a few days from now. We are going to have fancier charts than the Senator from North Dakota has. This whole bill may turn on who has the fanciest charts. We have some pretty good chart makers ourselves.

When the Senator from North Dakota says it will be terrible if, after companies have paid money into this trust fund, the trust fund becomes exhausted and they are asked to pay more money going back to court—well, the companies who committed to pay $140 billion understand that. Don't feel sorry for them. They know what they are getting into.

The reality is this: As Mr. Thomas Donahue, head of the U.S. Chamber of Commerce, has estimated, they are dealing with a $500 billion issue here, which can be accommodated with $140 billion because you cut out transaction costs, because when claimants only get 42 cents on the dollar, $140 billion may be enough, when it may cost as much as $500 billion otherwise. The economy has already suffered to the extent of $300 billion. So don't feel sorry for the companies. If the trust is terminated because we believe Senator BIDEN was right when he offered his amendment, which I supported in committee, that the claimant should not bear the risk if the fund was insufficient, that claimants ought to have the right to go back to court, that is the real safety valve if we are wrong.

But I don't think we are wrong, because we are going to have some fancy charts in a few days that will show the decline of asbestos claims. Senator SESSIONS is usually erudite, but he is especially erudite on that subject, as to how the claims have gone down and how the projections show that we will realistically being paying out less, certainly well within $140 billion.

I know Senator ENSIGN and Senator SESSIONS want to speak, so I will reserve some of my time.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. ENSIGN. It was with great reluctance that I raised this budget point of order. I have a great deal of respect for Senator SPECTER and believe there is a great need to enact asbestos legal reform. There are companies that are shutting down. Many of the current tort claims are fraudulent. There are victims who are not getting the compensation they need and deserve.

The asbestos crisis is a serious problem that is threatening the economy of the United States. I recognize that. I voted for the Cornyn substitute because I believed it was a better answer to help the United States, our economy, and the victims. The Hippocratic oath, to first do no harm, has been mentioned on this floor before. Unfortunately, this Chamber has, on many occasions, done more harm than good. There is so much unpredictability in this bill that my fear is we are considering doing far more harm than the current system.

In the December 19 letter written to Senator SPECTER from the Congressional Budget Office, that Senator SPECTER and Senator CONRAD were just talking about, it says:

> There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs. There is also some likelihood that the fund's revenues would be sufficient.

So there is a significant likelihood that they won't be enough and some likelihood that they will. CBO's final conclusion is that they cannot predict the Budget impact of this bill with any degree of certainty. We have all seen the Congressional Budget Office or the Joint Tax Committee's work product. It is put together by hard-working folks who do their best to estimate. But I have not seen their estimates turn out to be accurate very often. This is because what they do is an incredibly inexact science. What they are trying to estimate in this bill is even less precise, less exact of a science than what they normally do. Just a given example with respect to JCT, I had a tax provision about a year and a half ago that had to do with bringing money from overseas back into this country. The CBO estimated it would result in $125 billion to $140 billion coming back into this country for investment. We thought that estimate was very low. It turns out we were right. To date over $350 billion has been reinvested in the United States, far in excess of the estimate.

Now if CBO's estimate is off on this particular legislation to the degree that the estimate was on my legislation, we are in serious trouble. That is why the CBO says, and the Democratic ranking member and the Republican Budget Committee chairman say, the point of order is valid and lies on this bill.

I think there are problems with this bill. One problem has to do with the medical criteria. It allows all kinds of people to recover without any degree of certainty as to how many future claimants there will be. The potential is huge. So despite my strong desire to fix this legislation, I believe that it cannot be fixed. I wish Senator CORNYN's substitute would have passed. I thought that was the right place to start working on solving the asbestos crisis. This body could have worked with that legislation. We could have made sensible changes to move that version forward. I don't think that the underlying piece of legislation can be fixed to provide any certainty. I don't see how we can ensure that the taxpayers do not end up with a huge mess that includes a great deal of debt for future generations.

When will the uncertainty occur? Will it be 8, 10, 12, or 15 years from now? I don't know. When the uncertainty comes, the debt that the taxpayers will be asked to shoulder could be enormous. And this bill could come due at exactly the wrong time. When we can least afford it. It will come due when the baby boomers start affecting Medicare, Medicaid, and Social Security. I respect the chairman of the Judiciary Committee a great deal for the work he has done, and I know he has tried to work in a bipartisan fashion and with many industries. They say politics makes strange bedfellows. This legislation proves that to be true. When the positions that we take on this bill or on the point of order do not break down by party lines and when liberals and conservatives are likewise divided, you know that this bill has strange dynamics. Industries that are normally allies are also split on this bill. Trial lawyers are split on this bill. The reasons for such a split are a result of the uncertainty about this piece of legislation.

I appreciate the indulgence of my colleagues to allow me to speak for a few minutes. I look forward to the debate on this point of order. I am not sure exactly when we will vote on it, but I hope the point of order is sustained.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I serve as a member of the Budget Committee, and I am very pleased that Chairman GREGG put in language that allows for this budget point of order. I think it has a potential in many of our entitlement programs to help rein in abusive spending. But this is quite a different matter, I say to my distinguished colleague, Senator ENSIGN. He is such a terrific asset to this Senate, a great member of the Budget Committee, and is rightly engaged in trying to make sure we don't throw away money. I hope I have been an ally with him in that process.

But this is not Government money. This is money put up by the defendants who are paying out every day in judgments and lawsuits all over America. They have said: We are tired of having 58 percent of the money we pay out not get to the victims. Only 42 percent gets to the victims. We ought to create a system to allow victims to get more money, and we can have a little certainty as to what we pay out. So they agreed to pay into this fund. It is not the Government's money. It simply would be administered by the Department of Labor and, therefore, apparently the experts say it qualifies for this objection.

Let me say what happens if there is a shortage. What happens is the fund fails, the FAIR Act ends, and the plaintiffs get to go back to court, as they are today, and file their lawsuits. And the Government is not on the hook for that money, if there is a shortfall. No. 1.

Senator ENSIGN correctly guesstimated that more money would come back from foreign company profits into the United States with his tax relief bill than CBO did. Well, I would say this. I can guesstimate this. At one point, I represented plaintiffs. I see that the lead plaintiff lawyer in the history of this litigation has made an estimate on it and he has concluded there is plenty of money in this trust fund. Why is it likely, in my opinion, that there is enough money? People say there is not enough money here and it is going to fail. Why would I conclude that may not be so, that probably the fund may survive?

First, those who are putting money into it think it is enough. They would not subject themselves to this if they didn't think it would work. Second, CBO estimates it, and why would they estimate something in this nature? The reason is, somewhere in the 1970s—probably early 1970s—people became sensitized to the dangers of asbestos. They learned about it and crackdowns were undertaken to limit exposure. By the time 1980 got here, very strict rules were imposed—and that was 26 years ago—on how to handle asbestos, and exposure today is nil compared to what it was in the 1940s and 1950s, when people were unknowingly placed in positions where their health was destroyed as a result of massive exposure to asbestos fibers.

So it is obvious we have very little asbestos in our society today. If you even see somebody take asbestos out of a building today, they have masks on. All of this stuff is required by OSHA so that not one fiber will touch them. I think the likelihood is that we are going to see a continued decline in the asbestos claims and, as a result, I think it is possible—although I am certainly not an expert—that CBO, plaintiff lawyer Dicky Scruggs, and others are correct to conclude there is enough money in the fund to make it go.

There are a few things we need to do, however. We need to tighten up several of the medical criteria issues in this legislation so it will be sure to be successful. If we allow people to come into the fund because at one time or another they were exposed to some asbestos and they may contract some cancer or some other disease, and they can then claim they are, therefore, owed payment from the asbestos fund, we will never have enough money. The criteria we have today are far better than exist in the courts of America, but I think there needs to be some further tightening up, so that people who are sick from asbestos get paid and paid generously, but people who contract other diseases are not unjustly enriched by being paid out of a fund that is designated for people who have contracted disabilities and diseases as a result of asbestos. That is what is fair and just. That is what the fund should do. I hope we will be successful in reaching that.

I say again that I respect this point of order and I respect Senator ENSIGN for raising it. I point out this is indeed technical in the sense that the monies in this fund are not Federal Government money, and that if the fund runs out of money, the Government doesn't put in extra funds. It goes back into the litigation system and the plaintiffs continue their lawsuits in that fashion. Therefore, I think it would be wise under these circumstances to waive the Budget Act.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from Alabama for his comments, and I thank him for his extensive work on the committee, especially on this bill and especially for being on the floor so much this week and making such very strong arguments.

Our general counsel said to me in the corridor a few hours ago: JEFF SESSIONS has been around all the time. He is doing the work, and he used a four-letter word, a blank of a good job. I thank Senator SESSIONS for his work.

I wish to make a few comments in closing. We probably lost a few people who watch C–SPAN2, in any event. We certainly lost the Senators.

When the Senator from Nevada, Mr. ENSIGN, made a comment about unpredictability, there is one thing which is not unpredictable, and that is the suffering of the mesothelioma victims and the other victims from asbestos exposure. We talk a lot about mesothelioma—abbreviated to meso but that is a fatal disease which is caused by exposure to asbestos, and there are many gradations.

When we talk about unpredictability, we also ought to talk about predictability, about the tens of thousands of asbestos victims who are not being compensated today because their companies are bankrupt. There are tens of thousands of veterans who are not being compensated because they have no one to sue, even though they contracted illnesses from asbestos in the service of their country. We know of the 77 companies that have gone bankrupt, and more are on the way. We do know that predictability.

When the Senator from Nevada, Mr. ENSIGN, talks about estimates which are inexact, that is true. You can fault the Congressional Budget Office, but they do the best they can. We do know of the exact estimates, exact reality of the people who are suffering.

I believe the conclusion is that we have a duty to do something about that. When private companies are willing to put up $140 billion to compensate those victims of asbestos to save future bankruptcies, to save and eliminate and cure pain and suffering, we ought to take that.

We are not infallible. If we are wrong and we do not have enough money, they understand the consequence of going back to court. But I think it all points to the conclusion that we ought to pass this bill. We ought to consider a number of problems that we have in the floor debate and improve this bill. Then when we have come to the end of the rainbow on improving this bill as much as we can, we have to make a judgment: Is this bill, albeit not perfect, albeit not satisfying everybody's interests, better than the current chaotic system?

It has to be an enormously terrible bill to be worse than what we have today. That we know with certainty.

When you don't meet the Congressional Budget Office test of "great certainty," that is all of life. Again, I analogize the standard for a death penalty in a criminal first-degree murder case is proof beyond a reasonable doubt, and in a civil case is more probable than not. And in our legislative judgment, we have done the most we can do in good faith to craft legislation to meet a pressing problem, on which everyone agrees—the Senator who is advancing this point of order starts off conceding the terrible problems of asbestos and the pain and suffering to the victims and the terrible blight on the economy.

We will be debating this some more in the days ahead. I urge my colleagues to consider this issue very carefully because this is an issue which will kill the bill if this point of order is not defeated.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I am glad we have finally come to this portion of the argument because it reinforces a lot of things that have been said on this Senate floor over the last several days. It really comes down to a very basic question, the question as to whether this bill has been carefully crafted, whether it contains enough money in the trust fund to compensate the hundreds of thousands of asbestos victims who will have to count on it.

I have raised this issue repeatedly as to the $140 billion figure. There are reliable estimates of the actual cost over a 50-year period of time that almost double the amount of this trust fund, some even higher.

Senator KENT CONRAD on our side of the aisle is well respected as the ranking member of the Senate Budget Committee. His background as the head of taxes in his State of North Dakota, his own personal education and experience give him extraordinary credibility when it comes to issues of cost and issues involving accounting. He has made a convincing case to our caucus and to those who are listening on both sides of the aisle that the $140 billion that is part of this trust fund is not nearly adequate to the task.

Of course, if it isn't, what choices do we have? Senator SPECTER suggested on the floor the other day that if $140 billion wasn't enough to pay the victims, then we will pay the victims less. Today when I asked him a similar question, he said there are other options. You can say to these victims, if you have taken away their lawsuit that they worked on for a year or two, they have to stop their case in court. Then put them into this new trust fund system, and then the trust fund system fails them at some later date and doesn't pay them all they are entitled to, you can say to these victims: You can go back and start over in court now.

That is cold comfort to a family that is doing its best to take care of medical bills and lost wages and burial expenses for someone they love.

They have made a point over and over that under no circumstances will the Federal Government step in and make up the difference. I guess that verbal assurance is good, but we know there is always that possibility at some later date if this program doesn't work, if it fails, that someone will say we can't go back to the companies and ask them to put more money in the trust fund; we can't turn the victims loose; the right, compassionate thing to do is for the Federal taxpayers to step in.

It is not a farfetched argument, and it is one we have to consider as a possibility.

Now a Republican Senator steps forward, Senator ENSIGN of Nevada, raising a valid point of order, a point which goes to the heart of the funding of this bill and how it will pay out any benefits that might accrue in the future.

I would like to note some of the points that have been made during the course of this debate that I think are worthy of repetition and, for those following the debate for the first time, worthy of note.

The Congressional Budget Office has warned us of the significant likelihood that this asbestos trust fund will fail.

In a letter to the chairman, who spoke just before me, they wrote:

> The proposed trust fund might or might not have adequate resources to pay all valid claims. There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs.

So we are saying to hundreds of thousands of victims and their families: Trust us, we have created a trust fund, and with that trust fund, we will take care of your needs in the future. There is enough money, the proponents of this legislation say, but the Congressional Budget Office, looking at the victims, their injuries, and the compensation promised in this bill, came to a different conclusion. They concluded:

> There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims. . . .

As Senator SPECTER said on the floor the other day, one of the options, then, is to pay the victims less.

One of the reasons we need to take a look at this trust fund shortfall is when we look at the elements that are behind it, the claims and administrative expenses are likely to exceed contributions to the asbestos trust fund. The upfront claims will far exceed contributions.

Understand, people who are told they have to leave the courthouse and can no longer pursue a claim in court will have to turn to this trust fund. There is no place else to go. They will come in large numbers, but the amount that is being contributed to the fund by businesses is not going to match the demand. At the outset, claims will far exceed contributions, so the trust fund will have to borrow substantial amounts of money.

How much? The trust fund is supposed to be $140 billion. There are estimates that the interest and administrative costs may reach $52 billion, more than a third.

Small adjustments in amount and timing of assumptions quickly bankrupt the trust fund. If you guess wrong how many people are sick and how often they will file their claims and in what numbers, the estimates of the solvency of the trust fund could fail. It is unrealistic to assume that the trust fund will ever terminate.

The reasons for likely trust fund shortfalls: The Congressional Budget Office didn't count dormant claims that may surface once this trust fund is created, exceptional medical claims, or claims of family members of workers exposed to asbestos.

CBO's estimate of the number of future cancer claims is likely to be too low, according to consulting firms that have taken a look at their formulation.

The CBO's estimate of the percent of nonmalignant claims that will receive a cash award is likely to be very conservative.

Take a look at this chart. This chart tells the story. The red part of the graph is trouble. The red part of the graph reflects the liability, the amount that should be paid out that cannot be covered by the revenues coming into the trust fund.

So we make a promise to people. We say to them: Give up your claim in court, come to this trust fund and trust us. Yet when we project the needs of these victims against the revenues coming into the trust fund, we see a dramatic shortfall.

The fund stops paying claims in 2009. Claims filed in 2009 and all later years will not be paid. Too many claims, not enough revenue into the fund.

Let me indicate what this shortfall can mean. Mr. President, $150 billion—remember, this trust fund is funded at $140 billion—to fall short $150 billion is a substantial miscalculation. In present value terms, it means we would have to put $50 billion into the fund today to cover the $150 billion shortfall over the 30-year life of collections and 50-year life of disbursements under this trust fund. So this is a significant shortfall.

Keep in mind that we are saying to people: You cannot continue to go to court to be compensated; you have to turn to a trust fund with a hole in the pocket.

Let me tell you how badly others have miscalculated the number of asbestos cases that can be filed.

I remember Johns Manville, a big company, based in Colorado. They were one of the first firms hit because they sold a lot of asbestos products. When they went bankrupt, they tried to create a separate fund to pay off all the victims of Johns Manville products, their workers, and others. They set aside money, and in order to set aside a proper amount they had to speculate and give some calculation about how many people would be making claims for asbestos injuries.

The original range of claims went from 50,000 to 200,000. That is what they said they would ultimately have to cover. The claims received through the summer of last year were almost 700,000. They had estimated a high of 200,000. Almost 700,000.

The recent estimate of the total number that could be paid is 2.1 million. So how can those who have written this bill say with any degree of reasonable certainty that we know how many people were exposed to asbestos at some point in their lives and will later come and make a claim? Because for many people, they will live a long time with asbestos fibers in their lungs, ticking timebombs that could go off 10, 20, 30, 40 or 50 years after exposure. There could be anyone on the Senate floor today harboring in their lungs asbestos fibers. Those fibers may or may not cause a problem. We just don't know because for years no one paid close attention.

Many people were told it is safe. Expose yourself to asbestos, it can't be a problem. Some were misled. Some operated out of ignorance. But the fact remains. Johns Manville, in calculating its liability for its own trust fund, blew it. Instead of 200,000, it was 2.1 million.

(Mr. COBURN assumed the Chair.)

Mr. DURBIN. This is not the only case of miscalculation. For coal miners, we created a program called black lung. I know it pretty well because I have met a lot of coal miners suffering from it in my home State of Illinois. Exposure to coal dust, inhalation of coal dust causes lung problems, so we tried to set up a separate fund for these miners to take care of it. We estimated it was going to cost us about $3 billion to compensate all these coal miners. Our actual black lung payments through 2004 are $41 billion.

So if some of us come to this floor skeptical of this trust fund, skeptical of this $140 billion, and wonder if we can say to victims in good conscience, we are going to stop your going into court and force you into a trust fund which will pay you, when we know full well how many times we failed in estimating how much these trust funds need to have banked away, I think that really goes to the heart of this whole issue.

Also, a critical element here is why we are on this bill today. People who are following this Senate debate maybe tune in to watch C–SPAN, follow the debate in other places, and some will say to them: What is the Senate talking about today? They may report: Well, it is about asbestos.

Sure, it is an important issue. But my guess is most families across America would probably step back and say: I sure wish they would talk about the cost of health insurance for families, businesses, and individuals or maybe the cost of this heating bill I have in my hand, where the cost of heating this home has doubled since last year or maybe they ought to talk once in a while about this Medicare prescription Part D Program which has become a mess for seniors across America. Why aren't they talking about pension security when our neighbors next door worked a lifetime at that plant, and then the plant went into bankruptcy and dumped the pension, and now this man and his wife, who thought they had done everything right in life, don't have retiree benefits and don't have health benefits? Why aren't they talking about those things?

No, the Senate is engaged in a debate on the asbestos bill which I have characterized as a clash of the special interest titans—huge companies on both sides, for and against asbestos; insurance companies for and against this bill; trial lawyers opposing the bill; others supporting the bill; labor unions by and large opposing the bill with two or three exceptions. Why are we on this bill today? Because what drives this debate is what is at stake. What is at stake is not just recovery for hundreds of thousands of asbestos victims but a lot of money.

Earlier today, a Republican Senator, Mr. BENNETT of Utah, came to the Chamber with two charts which I thought really told the story. I don't have those charts, but I have summaries here. What Senator BENNETT pointed out is that for about 10 of the largest companies affected by this bill, this bill is a windfall. It is a windfall in this respect: They estimated how much each of these companies would have been required to pay out to asbestos victims if they went through the regular court process, and then they estimated how much the same companies would pay into the trust fund we are talking about today. And the difference is startling. For these 10 companies, the difference is $20 billion. In other words, if they paid the claims of victims in court, they would have paid $20 billion more than the amount they paid into the trust fund.

One of the companies which has been publicized recently is U.S. Gypsum. The reason people talk about it is they recently did a public filing, and here is what they said. They said: If we are held liable in court for all the asbestos claims we think could be filed against us, we believe we would pay out something in the range of $4 billion. But if this bill passes, we will be required to pay into the trust fund $797 million.

What a dramatic difference. So for this company, the passage of this bill is worth more than $3 billion. That is the reason we are here.

We are here because so many of these corporations know that if this bill passes, their exposure to liability is reduced dramatically. The obvious question is, If they don't pay the $20 billion to victims, who will make up the difference? And that is the point made by Senator BENNETT earlier in the day. He gave the names of eight or nine other companies, much smaller, some of which have paid small amounts to asbestos victims in court cases in settlements, some which have paid none. In each case, these companies had to step up and pay substantial amounts of money, ranging from $75 million to $578 million.

So here is one of the largest companies, U.S. Gypsum, with the largest exposure—$4 billion—paying about $800 million into the fund.

And then you take a look at a company named Foster Wheeler, a pretty well-known company. They will pay out $80 million in their experience in asbestos over the next 10 years. That is their estimate, I should say, $80 million. And they are asked to pay $578 million into the fund? Where is the fairness in that, that these companies with little or no exposure have to pay so much money while companies with so much exposure pay dramatically less? That is the fundamental unfairness in what we are discussing in the Senate here this evening.

I might also add, many of us are struggling to try to absorb this bill because this morning, as we had expected, the chairman filed a new version of the bill. We had been debating this for months, maybe years, and this morning comes a new version which, according to the chairman, makes 47 significant changes in the first bill we were handed.

Think about that for a moment. When you consider how many lives and how many families are dependent on our doing the right thing in the passage of this legislation, we are rushing to pass a trust fund that will take these families and individuals out of the courthouse into a trust fund.

The Presiding Officer is a medical doctor from the State of Oklahoma. We may not see eye to eye on a lot of things, but I listened as he speculated on what the exposure might be on this trust fund. He has made some statements as to whether something should be covered or should not be covered. But what he said, at least in the course of the Judiciary Committee hearing, is that there is some real uncertainty about how many people will be filing claims and what those claims will be worth.

That is what troubles me. I think there is more we can do to make this system more fair. First don't abandon America's court system. Don't abandon our system of justice. Don't conclude that 200 years of a court system in America is not proof positive that it is a valuable part of our American heritage and a valuable part of America's life. Start with our court system.

If there are abuses, and I will concede there are abuses, let's deal with them. I will tell you point blank, based on my legal education of long ago, if you want to recover for injury in court, you must have injuries or damages. Simple exposure to asbestos, which could include all of us, is not enough. You have to show some injuries or damages before you recover. That is why, in our State of Illinois, we set up what we call the pleural registry, and that says if you have been exposed but you are not sick, no symptoms, come in and sign up. If you don't contract an illness or something that is fatal, then you will have escaped any problem related to asbestos. If you do, you can come through the court system and you will not be held back by any statute of limitations.

Some have argued about where lawsuits should be brought. That is a valid issue. We should debate it. Some have argued about what attorney's fees should be. That is a valid issue. But there have been some misstatements on the floor about attorney's fees, and I wish to clarify them. Some have said on the floor that 58 percent of all the money generated in these asbestos verdicts and settlements goes to lawyers. Technically, that is true, but look more closely: 31 percent is legal fees claimed by the victims' attorneys; 28 percent or 27 percent is from defense attorneys.

I practiced law for a number of years, and it was not uncommon for a person of modest means to come in my office and say: I have been injured. I need to file a lawsuit. And you would say to them: I know you can't put up thousands of dollars to pay for all the time I have to put in as a lawyer to get ready to go to court, argue the case, do everything lawyers do, so I will take it on a contingent fee basis. If you win, I win. If you lose, I lose.

For many people, that is the only way they can come to a courtroom. They can't put up $10,000, $20,000, $30,000 to pay for a team of lawyers to prepare a case. They just don't have it. So contingent fee cases are all across America.

If you file a case in Workers' Compensation in Illinois, you may pay, I guess—it has been a few years since I have done it—around 20 percent in attorney's fees. An ordinary case for personal injury might be a third. That is usually what the lawyer's fees are when it is a contingent fee basis. To say that asbestos victims are paying 31 percent in attorney's fees doesn't suggest to me that there is a built-in scandal here; it suggests that is fairly ordinary and routine in the legal practice.

It is interesting to note that for every dollar paid out, the defense—companies that are hiring defense attorneys—is receiving 28 cents on the dollar. That is an indication to me, with 30 cents and 28 cents, the victims' attorneys and the defense attorneys are comparable amounts. But having said that, if there is a discussion about how to make those attorney's fees more fair, I am willing to sit down and work on it.

I also believe we ought to look at the States that have already stepped forward and said: We are not going to abandon our courts, we are not going to abandon our system of justice, we will make changes so it works better—States such as Florida, Texas, Ohio. They give us good guidance. Senator CORNYN of Texas gave us an amendment—and may come back with another version of it soon—which addresses that particular approach. I would feel a lot more confident in making certain that our court system worked a little better than abandoning our court system to set up a trust fund that is not paid for.

I hope my colleagues in the Senate on both sides of the aisle will seriously consider the point of order raised today by my Republican colleague, Senator ENSIGN of Nevada. It is a valid point of order. It goes to the issue as to whether $140 billion is adequate, whether the payout of this money is consistent with the budget rules of the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I think the first time I heard the figure 31 to 27 was by Senator DURBIN. It didn't surprise me, really. The asbestos defendant companies are hiring some of the best lawyers in America, and they charge them big fees. It is part of what they cost. If it is 31 percent for the defendants' attorneys and 27 percent for the plaintiffs' attorneys, I am not really surprised. I had no idea precisely how it would come out, but I am not surprised at that.

What I would say to my colleagues here in the Senate, however, is that it is not disputed that 58 percent of the money paid out by the defendants is going to lawyers and not to the victims. It goes to the plaintiff, and the plaintiff has to pay almost half of the judgment to his lawyer, so he or she doesn't get to keep all the money. He has to pay this big lawyer fee. Plus the corporation is being sued and has 31 percent of what he is paying out going to his own lawyers. So who is winning here? This is really indisputable. Who is winning here? The legal system is grinding up people and companies in an extraordinary way which just has to be ended. We have to work our way through this.

It is so great to have a Presiding Officer, a medical doctor, try to help us deal with some of the medical criteria.

There still remains a great weakness in this bill in a number of things.

My colleagues present the most contradictory arguments. One time they are in here saying we have to have it in the Department of Labor, or we have to pay more and more and more, and then they come in and make the argument that these funds traditionally get out of control.

When Senator COBURN and Senator CORNYN propose an amendment that tightens the medical criteria a little bit, they object and vote against them.

This would be sort of amusing if it wasn't such a serious thing.

Some of my colleagues have been saying that the fund is clearly going to fail because we underestimate the number of claims. Claims are not the real problem. This bill is going to help with the claims. I don't know how many claims this bill will reduce—not quite as much as the Cornyn bill did because it was better criteria, in my view; more realistic, according to medical data and science.

But under this bill, I would guess that 40 percent to 50 percent of the current claims are not legitimate.

It prohibits and bars claims when a person is not sick. The latest estimates are that half the claims being filed today are by people who are not sick.

If you have asbestos exposure and you can see some scarring in a person's lungs, the chance of that person getting sick are enhanced. And under this legislation they don't get paid right then. But if they are monitored medically, and if they become sick, they will get compensation.

That is the best way to handle that, for sure.

If you get sick, you simply walk in with your doctor and with a report that says what the degree of illness is, another doctor will probably check that, and if it is verified, they will write you a check. You do not have to give a third, a fourth, or 40 percent to a plaintiffs' lawyer, and a defendant corporation isn't having to hire lawyers to defend against the lawsuit.

My colleague, Senator DURBIN, is so eloquent and is a skilled lawyer. He made an argument that I suppose people listening probably took a bit of an interest in and wondered about. He declared that the 10 companies with the most exposure would pay substantially less under this trust fund than under a court process—$20 billion less.

Let me say two things about that.

It is not a question of how much they pay out, it is how much gets to the victims, people who are sick. That is the most important question. How do we get more money to people who are sick without having to have the whole business collapse?

Second, he did not point out the fact about these tier I companies. These are the companies that are in bankruptcy. They are in bankruptcy already as a result of this litigation. There is only so much a company can carry. If you kill off the company, what do you do then? How can anybody be paid?

You can't destroy the companies totally and take them out of business if you expect them to continue to pay, for 25 years, people who become sick.

That is why they already have protections in bankruptcy, and they are paying through the bankruptcy court less than they would be otherwise. To keep these companies in the game, keep them alive, we give them a certain amount they have to pay depending on how big the companies are. And some are big and can pay a sizable amount—and they will pay a substantial amount of money, but they won't be going bankrupt.

A lot of people do not understand this. If the company that is responsible for exposing you to asbestos no longer exists, whom do you sue? If there are two people who have been exposed to asbestos, both of them have serious lung damage and it reduces their capacity to function, let us say both of them are entitled to a $200,000 judgment. One of them wants to sue a company that is gone, no longer exists, the company that is responsible, you would say: Well, they will be able to recover somewhere. No. If the company no longer exists that exposed him, that person won't collect $200,000; he won't collect a dime. But the other one happens to have been exposed by a company that is still in existence and has money, or insurance, they can collect the full $200,000.

That is happening today.

To make it crystal clear, I will ask you about an automobile accident. Have you ever heard of people who have been run into, have an automobile accident as a result of a drunk driver who is uninsured and somebody is injured, they say, I am going to sue them and I am going to get a $1 million verdict. You know what the lawyer says? Does the defendant have any money? Well, no. Does he have any insurance? No. What does he have? He has a rental, that is the only car he had, it is a piece of junk, and it is not worth anything. The lawyer says: If you get a $50 million verdict, you will not collect one dime. It is not worth the trouble to go to court over.

This happens in America. It is the way the law is.

But this trust fund says whether the company that exposed them and injured them is in existence or is not, they will be able to recover too out of a uniform trust fund. And companies that are bankrupt will be able to pay at a level that allows them to stay in business and continue to pay into the trust fund.

Seventy-seven companies are already bankrupt. They say: Well, we are going to make more companies pay. We are going to make more companies pay than are supposed to pay—somehow make them pay more than they are supposed to pay. But let me say this to my colleagues or anyone who may be listening. Now there are 8,400 companies being sued, being dragged in, and many of them have the most tenuous exposure.

I remember very vividly a man coming into my office. He bought a company that at one time sold asbestos and had not sold asbestos for many years before he bought it. He buys it and makes it a part of his company. The next thing he knows, all of them are beginning to go at that little company as a defendant which he bought, and he is liable for it. Money is being sucked out of his whole, big company and going into this fund.

These companies realize that. They may not be the main target today, but the clever and sophisticated and determined plaintiff lawyers have demonstrated a capacity to add on companies and make them liable more than they were before. Many companies are willingly prepared to pay into this fund so they won't be sued for the rest of their existence; so when they go to a stockholders' meeting and write a prospectus which shows what their liabilities are, they can say exactly what their asbestos liability is rather than being required to list 5,000 asbestos cases filed against them.

Somebody may say: How much is that going to cost? Well, we don't know. Well, could it be $1 million each? Well, we do not know. We don't think so. I may not want to invest in your company. I may not want to buy stock in your company. I have to have some more certainty about how much you are going to pay.

That is one of reasons we are trying to pass this trust fund, so the defendant companies can say to their stockholders and would-be investors and those who would contract with them what their future financial prospects are.

Isn't that a good public policy thing to try to do?

Veterans, if we don't pass this bill, you are not going to be able to recover. Most of them have nobody to sue. You can't sue the Federal Government for this. A lot of other people already have found that the people they are entitled to sue by law either have no money or no longer exist.

I will say this: I think the legislation is headed in the right direction. I believe that Senator COBURN is correct. We need to watch this criteria. If we get that wrong, it can take this bill down. A doctor knows that thousands of Americans every day who are not exposed to asbestos get colorectal cancer or get throat cancer or get prostate cancer.

If somehow anybody who had any exposure to asbestos is not going to be able to come into the fund and demand that the fund pay them for cancer which they may have been genetically predisposed to, whether or not they have been exposed to asbestos, we have done something that is dangerous and the fund may not be able to survive.

The Congressional Budget Office says this fund, as rewritten, will survive. But I believe it could be tightened up to make it better. I believe that the fund has a chance to be viable throughout its entire life and fulfill its promise because we have done a better job in recent years in dealing with exposure to asbestos.

There has been a sea of change in what has happened. In earlier days, the companies did not warn the people who would be using their product about how dangerous it was. Even after they knew it was dangerous, they didn't warn them. Now everybody is warned. For 30 years, maybe 35 years, there has been exceedingly great care utilized when asbestos is about. You see people with masks on and all of that.

I think it is logical to assume that we will continue to see a decline in the claims and also this bill will take out the unjustified claims. Claims of people who have not been given any disability or sickness, even though they have been exposed and they get sick, they will be paid. If they don't get sick, they won't be paid.

That will reduce a lot of the claims. It will come down to people with legitimate illness. If a person comes in with that most grievous disease, mesothelioma, which is generally a fatal disease, this would entitle them to claim $1.1 million dollars, be able to have half of it paid in 30 days and the other half in 6 months.

Today, they do not know what they will get, and most of the claimants are deceased before money is recovered.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2747, AS MODIFIED

Mr. FRIST. Mr. President, I ask unanimous consent that amendment No. 2747 be modified with the change at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2747), as modified, is as follows:

On the appropriate page, insert the following and number accordingly:

GUIDELINES.—In determining which defendant participants may receive inequity adjustments the Administrator shall give preference in the following order:

(A) Defendant participants that have significant insurance coverage applicable to asbestos claims, such that on the date of enactment, 80 percent or more of their available primary insurance limits for asbestos claims remains available.

(B) Defendant participants where, pursuant to the guidance set forth in section 404(a)(2)(E), 75% of its prior asbestos expenditures were caused by or arose from premise liability claims.

(C) Defendant participants who can demonstrate that their prior asbestos expenditures is inflated due to an unusually large, anomalous verdict and that such verdict has caused the defendant to be in a higher tier.

(D) Any other factor deemed reasonable by the Administrator to have caused a serious inequity.

In determining whether a company has significant insurance coverage applicable to asbestos claims, such that on the date of enactment, 80% or more of their available primary insurance limits for asbestos claims remains available, the Administrator shall inquire and duly consider:

(1) The defendant participant's expected future liability in the tort system and accordingly the adequacy of insurance available measured against future liability.

(2) Whether the insurance coverage is uncontested, or based on a final judgment or settlement.

MORNING BUSINESS

Mr. FRIST. I ask unanimous consent there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATOR SALAZAR'S MOTHER

Mr. REID. Mr. President, this afternoon, I rise to extend the thoughts and prayers of the entire Senate to Senator KEN SALAZAR who left the Capitol last night to be with his mother, Emma. Mrs. Salazar is suffering from very delicate health. She was taken early this morning from her home in Alamosa, CO, to Denver for hospitalization.

The entire Salazar family is together in Denver as we speak comforting her and each other during this very difficult time.

I want them to know that the thoughts of everyone in this Chamber are with them.

Those of us who have come to know KEN SALAZAR know what a gentleman he is and how family oriented he is.

I spoke to him last night as he was getting ready to leave, and he is very concerned about his mom.

We wish KEN and his family the very best. I hope all Members of the Senate family would keep this good man and his family in their prayers.

TRIBUTE TO ELLEN KNOWLTON

Mr. REID. Mr. President, I rise today to honor a woman who has worked hard to ensure the safety of southern Nevadans, and indeed all Americans, for more than 24 years. Mrs. Ellen Knowlton recently retired from her position as Special Agent in Charge of the FBI's Las Vegas field office. As Special Agent Knowlton brings an end to her long and distinguished career, I join her family and friends in offering our gratitude for her honorable and dedicated service in our community.

Ellen joined the FBI in 1982, and went on to serve in Bureau offices in California, Oklahoma, Louisiana, and Washington, DC. In Washington, she was deputy assistant director of the Bureau's National Security Division Counterintelligence Operations. While in this capacity, Ellen supervised the September 11 terrorist hijacking investigation, for which our Nation is indebted.

In March 2002, Ellen became Special Agent in Charge of the FBI's Las Vegas operations, bringing with her a wealth of knowledge and experience from which Nevada continues to benefit. She refers to this appointment as the "pinnacle" of her career. However, I feel it is Nevadans who are truly fortunate for that appointment. Her work in Las Vegas has left a lasting impact on the State and our communities, particularly the relationships Ellen forged with local law enforcement. Her work has set a gold standard of cooperation and goodwill.

Special Agent Knowlton's colleagues within the law enforcement community often express their admiration for her. This speaks not only to her merits as a professional but to her character as an individual as well. Ellen has chosen a life of service and deserves all the praise and accolades she receives.

I am grateful for Ellen's untiring efforts on behalf of our country and leadership in our community. I wish her and her family the best as they embark on this new phase of their lives.

PANDEMIC INFLUENZA PREPAREDNESS

Mr. COCHRAN. Mr. President, I appreciate the efforts of the Labor, Health and Human Services subcommittee to ensure that the Senate and the public are educated on the important issues surrounding pandemic flu preparedness. The input of this panel in November was important to this committee as we worked to provide pandemic flu funding in the December Defense Appropriations bill.

The Senate Appropriations Committee has taken a significant first step in addressing this issue. We will continue to work with the Secretary of HHS and the White House to provide the funding necessary to prepare our country for an influenza pandemic. We realize these efforts require Federal and local governments, as well as private industry, working together. I am pleased that these interests are all represented here today.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

On June 8, 2005, in Brooklyn, NY, Dwan Prince a gay man, was savagely beaten by three men who screamed anti-gay slurs during the assault. The attack took place outside Prince's apartment building in the Brownsville section of Brooklyn. Prince was immediately rushed to the hospital after the attack where he remained for close to a week.

I believe that the government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

EDUCATION FOR GLOBAL LEADERSHIP

Mr. LUGAR. Mr. President, in this era defined by rapid globalization and the fight against terrorism, an increased focus on international studies and foreign language instruction in our schools is critical to maintaining our country's global leadership position. In order to foster the continued expansion of economic development and democratic institutions across the globe, we need citizens and workers who are knowledgeable of other cultures and languages.

This need has become painfully evident in recent years as our Armed Forces, intelligence agencies, and diplomatic services have struggled to find personnel fluent in languages such as Arabic and Farsi and knowledgeable of the traditions and customs of the Middle East. At the same time, growing economic opportunities in Asia have put a premium on knowledge of languages such as Chinese, Hindi, Japanese, and Korean.

Fortunately, we are seeing welcomed movement in confronting this challenge. Recently, President Bush launched the National Security Language Initiative to increase the number of Americans learning critical foreign languages. And today, the Committee for Economic Development, CED, a nonpartisan organization of business leaders and university presidents, has released a new policy statement, Education for Global Leadership: The Importance of International Studies and Foreign Language Education for U.S. Economic and National Security. This report provides recommendations for the public and private sectors for strengthening and expanding international studies and foreign language instruction across all levels of learning.

I welcome these developments and encourage my colleagues to review the CED's recommendations and join in this critical effort to enhance our economic and national security.

PATRIOT ACT DEAL

Mr. FEINGOLD. Mr. President, I understand that some of my friends and colleagues in this body have come to an agreement with the White House on reauthorizing the PATRIOT Act.

While I respect these Senators greatly, I am gravely disappointed in this so-called deal. The White House agreed to only a few minor changes to the PATRIOT Act conference report that could not get through the Senate back in December. These changes do not address the major problems with the PATRIOT Act that a bipartisan coalition has been trying to fix for the past several years. We have come too far and fought too hard to agree to reauthorize the PATRIOT Act without fixing those problems. A few insignificant changes just doesn't cut it. I cannot support this deal, and I will do everything I can to stop it.

I understand the pressure that my colleagues have been under on this issue, and I appreciate all the hard work that they have done on the PATRIOT Act. It has been very gratifying to work on a bipartisan basis on this issue. It is unfortunate that the White House is so obviously trying to make this into a partisan issue, because it sees some political advantage to doing so. Whether the White House likes it or not, this will continue to be an issue where both Democrats and Republicans have concerns, and we will continue to work together for changes to the law. I am sure of that.

But I will also continue to strongly oppose any reauthorization of the PATRIOT Act that does not protect the rights and freedoms of law-abiding Americans with no connection to terrorism. This deal does not meet that standard; it doesn't even come close.

The PATRIOT Act conference report, combined with the few changes announced today, does not address the core issues that our bipartisan group of Senators have been concerned about for the last several years. The modest but critical changes we have been pushing are not included. I am not talking about new issues. We are talking about the same issues that concerned us when we first introduced the SAFE Act more than 2 years ago to fix the PATRIOT Act. And we have laid them out in detail in several different letters over the past few months.

First, and most importantly, the deal does not ensure that the government can only obtain the library, medical and other sensitive business records of people who have some link to suspected terrorists. This is the section 215 issue, which has been at the center of this debate over the PATRIOT Act. Section 215 of the PATRIOT Act allows the government to obtain secret court orders in domestic intelligence investigations to get all kinds of business records about people, including not just library records but also medical records and various other types of business records. The Senate bill that this body passed by unanimous consent back in July would have ensured that the government cannot use this power to go after someone who has no connection whatsoever to a terrorist or spy or their activities. The conference report replaces the Senate test with a simple relevance standard, which is not adequate protection against a fishing expedition. And the deal struck today leaves that provision of the conference report unchanged.

Second, the deal does not provide meaningful judicial review of the gag orders placed on recipients of section 215 business records orders and National Security Letters. Under the deal, such review can only take place after a year has passed and can only be successful if the recipient proves that that government has acted in bad faith. The deal ignores the serious first amendment problem with the gag rule under current law. In fact, it arguably makes the law worse in this area.

And third, the deal does not ensure that when government agents secretly break into the homes of Americans to do a so-called sneak and peek search, they tell the owners of those homes in most circumstances within 7 days, as courts have said they should, and as the Senate bill did.

As I understand it, this deal only makes a few small changes. It would permit judicial review of a section 215 gag order, but under conditions that would make it very difficult for anyone to obtain meaningful judicial review. It would state specifically that the government can serve National Security Letters on libraries if the library comes within the current requirements of the NSL statute, a provision that as I read it, just restates current law. And it would clarify that people who receive a National Security Letter would not have to tell the FBI if they consult with an attorney. This last change is a positive step, but it is only one relatively minor change.

So this deal comes nowhere near the significant, but very reasonable, changes in the law that I believe are a necessary part of any reauthorization package. We weren't asking for much. We weren't even asking for changes that would get us close to the bill that this body passed without objection last

July. But the White House would not be reasonable and has forced a deal that is not satisfactory in an effort to serve their partisan purposes. I will oppose it, and I will fight it.

ENEMY COMBATANTS

Mr. KYL. Mr. President, I rise today to put into the RECORD a letter that Senator GRAHAM and I recently sent to the Attorney General, and to respond to misrepresentations that have been made in the press and by others regarding the circumstances of the enactment of the Graham amendment to last year's Defense Authorization bill. The letter responds to similar misleading attacks that were made against the Justice Department at the beginning of this year. My office has received several inquiries about this letter, which was sent to the Attorney General on January 18. So that anyone interested in this matter might review the letter, I will ask to have it printed in the RECORD.

I ordinarily would not comment on the meaning of legislation that already has been enacted into law. In this case, however, there has been a considerable amount of post-enactment commentary by others on the meaning of the Graham amendment. Much of this commentary insinuates that the Administration and the backers of the amendment are violating an agreement with members of the minority by characterizing the amendment as governing pending litigation. Since the enactment of the Graham amendment last December, some critics have begun to paint a revisionist history of this legislation. In this new account, the Graham amendment supposedly was intentionally modified by the Senate so as not to affect pending litigation. Also in this version of events, Senators relied on representations that the amendment was modified to carve out pending litigation when they voted in favor of its final passage. This conspiracy theory is without foundation.

For those unfamiliar with the Graham amendment, the disputed provision in the legislation changes the Federal habeas code by adding a subsection providing as follows: "Except as provided in section 1005 of the Detainee Treatment Act of 2005, no court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the Department of Defense at Guantanamo Bay, Cuba." The amendment also provides that "[t]his section shall take effect on the date of the enactment of this Act." In addition, the amendment establishes substantive standards for limited judicial review of CSRT determinations and military-commission decisions, and provides that the paragraphs creating those review standards "shall apply with respect to any claim whose review is governed by one of such paragraphs and that is pending on or after the date of the enactment of this Act."

Some critics now assert that nothing in the amendment prevents pre-enactment habeas actions from going forward in their previous form. For reasons explained in the letter to the Attorney General, I believe that such an interpretation is untenable. In addition to the points made in the letter, I would also add the following: the amendment states that the changes that it makes to the habeas code "shall take effect on the date of the enactment of this Act." If the current pack habeas cases are allowed to go forward in their current form, the law's provision that "no court, justice, or judge shall have jurisdiction" to hear those cases in that form will not be effective on the date of the law's enactment. Rather, the courts still would have jurisdiction over these cases after the date of enactment, and the law's all-encompassing jurisdictional bar would become effective only when the current litigation would exhaust itself—a date that likely would come only years in the future. Such a result would not be consistent with the requirement that the law's total jurisdictional prohibition "take effect of the date of the enactment of this Act."

Of those critics who argue that the amendment carves out pre-enactment habeas cases, I would simply ask, what part of "no court, justice or judge" do you not understand? How could this language possibly be more comprehensive? And how could any Senator possibly have been misled as to its effect?

Some of the recent criticism of the amendment in the press has taken a new tack. A few critics have begun to suggest that even if the legislative text of the Graham amendment does wipe out the pending habeas cases, Senators were affirmatively misled about this aspect of the final amendment. The allegation is that Senators were led to understand that the amendment that they were voting on would not affect pending cases. I have reviewed the legislative record from the days leading up to the vote on final passage of the Graham amendment, and find this suggestion wanting. Allow me to describe what was actually said about the original version of the amendment—the Graham/Kyl amendment—as well as the final version, the Graham/Levin/Kyl amendment, prior to their passage.

On November 10, Senator LEVIN stated with regard to the original Graham/Kyl amendment, "I read the language as to how broad it is. It eliminates explicitly any appeal: No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus, and that is the way an appeal goes to a court from one of these people. It is eliminated." (151 Cong. Rec. S12665.) Similarly, later that day, Senator BINGAMAN characterized the original Graham amendment as follows: "It essentially denies all courts anywhere the right to consider any petition from any prisoner being held at Guantanamo Bay." (151 Cong. Rec. S12667.) And later, on November 15, Senator DURBIN said the following about the original Graham/Kyl amendment: "the amendment would eliminate habeas for detainees at Guantanamo Bay. . . . It would strip Federal courts, including the U.S. Supreme Court, of the right to hear any challenge to any practice at Guantanamo Bay, other than a one-time appeal to the D.C. Circuit . . . . It applies retroactively, and therefore also likely would prevent the Supreme Court from ruling on the merits of the Hamdan case, a pending challenge to the legality of the administration's military commissions." (151 Cong. Rec. S12799.)

Thus from the beginning, Senators recognized and emphasized to their colleagues that the original Graham amendment language was comprehensive. They also recognized and emphasized that the amendment barred pending cases from going forward, including the Hamdan case in the Supreme Court. These aspects of the original amendment not only were generally acknowledged, but were a point of controversy during the Senate debate.

Had the subsequent Graham/Levin/Kyl amendment departed from the original amendment by carving out pending cases, this would have been a momentous change. Aside from the fact that such a change would have gutted the amendment, it also would addressed one of the issues about which opposing Senators had expressed sharp concern. Surely, had such a change been made or even intended to be made, the fact would have been noted. Instead, it is the dog that did not bark.

First, neither Senator GRAHAM nor I ever said anything in the days leading up to the final vote on the amendment that could possibly suggest to anyone that the modified amendment exempted pending cases. Senator GRAHAM is the lead sponsor and I am an original cosponsor of the amendment that passed the Senate on November 10. We controlled the amendment. No one was in a better position than we were to describe what the amendment does and does not do. Had such a major change to the amendment been made, it is inconceivable that one of us would not at least have commented on it. No such comment or even the suggestion of such a change was made by either one of us.

Indeed, the few statements that Senator GRAHAM did make prior to passage of Graham/Levin/Kyl that describe the amendment's reach tend to confirm that the amendment does not treat detainees differently based on when they filed their claims. For example, on the evening of November 14, when the final amendment was introduced, Senator

GRAHAM noted that "[i]nstead of having unlimited habeas corpus opportunities under the Constitution, we give every enemy combatant, all 500, a chance to go to Federal court, the Circuit Court of Appeals for the District of Columbia." (151 Cong. Rec. S12754.) "What we have done, working with Senators LEVIN, KYL, and others, we have created that same type of appeals process for all military commission decisions." Ibid.

During that same evening, Senator LEVIN also commented on the new amendment. Although he said that the amendment did not "strip jurisdiction" from the courts, he made clear that he meant that jurisdiction remained in place because the pending cases—including challenges to military-commission decisions—could go forward as claims invoking the substantive review standards of the new amendment. Senator LEVIN stated: "What we have done in this amendment, we have said that the standards in the amendment will be applied in pending cases, but the amendment will not trip the courts of jurisdiction over those cases. For instance, the Supreme Court jurisdiction in Hamdan is not affected." (151 Cong. Rec. S12755.) Again, later: "what our amendment does, as soon as it is enacted and the enactment is effective, it provides that the standards we set forth in our amendment will be the substantive standards which we would expect would be applied in all cases, including cases which are pending as of the effective date of this amendment." Ibid. And again: "because it would not strip courts of jurisdiction over these matters where they have taken jurisdiction, it does, again, apply the substantive law and assume that the courts would apply the substantive law if this amendment is agreed to." Ibid.

Whether the amendment, by barring one type of claim and authorizing another type to take its place, strips the courts of jurisdiction, is, to some extent, a matter of perspective. It is a question of whether the glass is half empty or half full. On the operative issue, however, Senator LEVIN's remarks on November 14 are consistent not only with my own and Senator GRAHAM's characterization of the amendment (see, e.g. 151 Cong. Rec. S14263), but also with the interpretation now advanced by the Justice Department: that the current claims can go forward, but only as claims for review under the substantive standards created by the new act.

It bears mention that the revised amendment's authorization of judicial review of military-commission decisions, though narrow and venue-restricted, was a substantial departure from the original amendment. As Senator LEVIN had emphasized on November 10, the original amendment "eliminates court review of the sentences of enemy combatants before these commissions." (151 Cong. Rec. S12664.) He stated that the amendment even "eliminates the appeal of a conviction that led to a capital offense." (151 Cong. Rec. S12665.) Under the original Graham amendment, no appeal of any kind would have been permitted from the military-commission verdict in the Hamdan case.

The revised amendment does allow limited appeals of final military-commission decisions. In fact, this change was described to Senators as the principal difference between the original and revised Graham amendments. Senator LEVIN noted on the morning of November 15, before the vote on Graham/Levin/Kyl:

> The amendment which was approved last Thursday, which is the one now awaiting this amendment, would have provided for review only for status determinations and not of convictions by military commissions. . . . One of the reasons I voted against the amendment last Thursday is that it did not provide for that direct judicial review of convictions by military commissions. That is the major change in the amendment before the Senate, the so-called Graham-Levin-Kyl amendment which is before the Senate. There are a number of other changes as well, but of all the changes, what this amendment does is add . . . a direct appeal for convictions by military commissions. (151 Cong. Rec. S12754.)

Other Senators speaking about the amendment prior to the final vote did not even view the detainee's glass as half full. On the morning of November 15, Senator SPECTER exhorted his colleagues to oppose the amendment, stating: "On the face of the Graham amendment, it . . . even takes away jurisdiction from the Supreme Court of the United States." (151 Cong. Rec. S12799.) He later stated that the amendment would "strip Federal courts of the authority to consider a habeas petition from detainees being held in U.S. custody as enemy combatants," (151 Cong. Rec. 12801), and reiterated that the Graham/Levin/Kyl amendment was an amendment "which on the face takes away jurisdiction of the Supreme Court of the United States." Ibid. Senator SPECTER's remarks should at least have placed any Senator on inquiry notice that the final amendment might affect pending cases.

Finally, Senator DURBIN also spoke about the final Graham amendment prior to the vote. As I mentioned earlier, on the morning of November 15, Senator DURBIN expressed concern that the original Graham/Kyl amendment's jurisdictional bar would apply "retroactively," and that it "likely would prevent the Supreme Court from ruling on the merits of the Hamdan case." (151 Cong. Rec. S12799.) Almost immediately after these words, Senator DURBIN also commented on the revised Graham amendment. He stated:

> The Graham-Levin substitute amendment would somewhat improve the underlying amendment by expanding the scope of review in the D.C. Circuit Court to include whether CSRT's are legal, but not whether a particular detainee's detention is legal. It would also allow for post-conviction review of military commission convictions. However, the amendment would still eliminate habeas review and overrule Rasul.

(151 Cong. Rec. S12799.) Again, no suggestion was made that the new amendment might carve out pending cases, despite the Senator's expressed concern about retroactivity. The Senator gave no hint that he expected the new amendment to treat pending cases any differently than did the old amendment. Senator DURBIN does not appear to have been misled about the effect of the final Graham amendment, nor did he mislead anyone else.

To be sure, two statements that do appear in the RECORD prior to the final vote on the Graham amendment both assert that the amendment would not "strip jurisdiction"—and both of these statements are unleavened by Senator LEVIN's accompanying clarification that pending cases would proceed under the substantive review standards of the new law. Both of these statements, however, appear to have been introduced into the record following the final vote—both refer to that vote in the past tense. Neither Senator thus could have misled other Members about the effect of the amendment prior to the vote. Senator KERRY made clear in his statement that his remarks were made only after the November 15 vote: "Today, I voted in favor of Senator BINGAMAN's amendment No. 2523, because it would have preserved judicial review. . . . When the Bingaman amendment failed, I voted for a second-degree amendment." (151 Cong. Rec. S12799.) Similarly, Senator REID also emphasized that his statement did not precede the actual vote: "the Senate has voted to deny the availability of habeas corpus to individuals held by the United States at Guantanamo Bay, Cuba. I rise to explain . . . my votes in favor of the Bingaman amendment and the Graham-Levin amendment earlier today." (151 Cong. Rec. S12802.) Neither of these statements was part of the information that was presented to Senators prior to the final vote on the Graham amendment.

To summarize, the legislative record is utterly devoid of any evidence that Senators were led to believe that the Graham/Levin/Kyl amendment would carve out pending cases. Prior to the vote, several Senators spoke of the original amendment's breadth and the fact that it would terminate pending cases. Senator GRAHAM, drawing no distinction between pre- and post-enactment filers, stated that the revised amendment would apply a uniform standard to all 500 Guantanamo detainees. Senator LEVIN made clear that "the standards we set forth in our amendment will be the substantive standards which we would expect would be applied in all cases, including cases which are pending as of the effective date of this amendment." Senator SPECTER pointedly warned that the final amendment would "strip Federal courts of the authority to consider a habeas petition from detainees" and "even take[] away jurisdiction from the Supreme Court of the United States." Other Members who condemned the original amendment for terminating pending cases gave no hint that they viewed the new amendment any differently. Quite simply, there is no evidence that anyone misled anyone else about the fact that the Graham amendment would only allow pending cases to go forward under the limited review standards of the new law.

On November 15, the Graham/Levin/Kyl amendment passed the Senate by a vote of 84–14. That same day, the entire Defense Authorization bill passed the Senate by unanimous consent and the Senate appointed conferees. One month later, on December 16, the House and Senate conferees agreed to file a conference report. In the days that followed, a new slew of statements were made in the Senate and even in the House commenting on the meaning of the Graham amendment. Many of these statements are simply the usual effort by the losers of legislative battles to rewrite legislative history. The majority of the Senators, for example, who announced in these statements that the Graham amendment was not intended to affect pending cases also were among the 14 Senators who voted against the final Graham/Levin/Kyl compromise. No one can seriously suggest that these members relied on any representations made by the backers of the amendment. And more importantly, given the marked disagreement between the statements that were made at this late stage about the effect of the amendment on pending cases, no one could justifiably have relied upon one view rather than another to learn what the amendment does. Rather, it is up to members to examine the actual language of the amendment.

I hope that this review of the circumstances of the enactment of the Graham amendment will put to rest any accusation that members of Congress were misled about the amendment's impact on pending cases. Whether the amendment does in fact govern pending cases is another matter. For the reasons expressed here and in the January 18 letter to the Attorney General, I believe that it does so, but that, of course, is a matter for the courts to decide. In the event that the courts concur with my and Senator GRAHAM's interpretation of the amendment, however, no Member should be heard to complain that they were led to believe that the amendment would operate differently.

I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, January 18, 2006.

Hon. ALBERTO GONZALES,
Attorney General, U.S. Department of Justice,
Washington, DC.

DEAR MR. ATTORNEY GENERAL: We understand that the Justice Department has been criticized recently in the press and by members of Congress for asserting in court proceedings that a provision in the Fiscal Year 2006 Defense appropriations bill that regulates legal actions brought by Guantanamo detainees—the so-called "Graham Amendment"—affects pending litigation. Critics contend that the Administration's actions violate an agreement with Members of Congress by arguing that the Graham Amendment makes no exception for pending cases.

We are the lead sponsor and an original cosponsor of the Graham Amendment. We write to assure you that the attorneys under your supervision have correctly interpreted the disputed provision.

The Graham Amendment states in relevant part that "effect[ive] on the date of enactment of this Act," except pursuant to special review procedures specified in the Act, "no court, justice, or judge shall have jurisdiction to hear or consider" a habeas application or any other action relating to the detention of a Guantanamo detainee. All Members of the Senate had access to this language before the Senate voted on the final Graham Amendment and the final Defense appropriations bill. The language cannot reasonably be construed to leave intact any power in the courts to entertain the current barrage of habeas petitions and other actions brought by Guantanamo detainees. The Defense appropriations bill was signed into law on December 30, 2005. As of that date, literally "no court, justice, or judge" has jurisdiction to entertain these lawsuits. That is what we intended.

Had we intended to preserve some power in the courts to continue to hear the current flurry of legal actions, we would have done so. We did not. Moreover, as we made clear when the final defense bill passed the Senate, we are well aware that for over a century, American courts consistently have interpreted legislation removing a court's jurisdiction over a type of case to also remove its ability to hear pending cases. Surely, this long line of precedent negates any ambiguity as to the effect of the Graham Amendment on pending cases.

We also note that a contrary interpretation of the Amendment's effect would be inconsistent with the structure of the Amendment. As mentioned above, other sections of the Graham Amendment create special standards and procedures for judicial review of the detention and trial of Guantanamo detainees. The Amendment also states that these special standards and procedures shall apply not only to relevant claims filed after enactment, but also those "*pending on* . . . the date of the enactment of this Act." (Emphasis added.) Obviously, no claim pending at the time of enactment sought to invoke the review standards created by the same Act. This provision calls on the courts and parties to construe pending actions that challenge either the fact of detention or a military trial as requests for review pursuant to the special standards in the new law. And just as obviously, if all pending lawsuits were exempted from the new law, no pending case would be governed by the new review standards. To adopt the construction advocated by the critics—that courts retain jurisdiction to continue to hear all current lawsuits in their current form—would render the statutory language applying the new standards to pending cases a dead letter.

The original Graham-Kyl Amendment stated that its jurisdiction-removing provisions "apply to [actions] pending on or after the date of the enactment of this Act." This language later was replaced with language specifying that the Amendment "shall take effect on the date of the enactment of this Act." There were two reasons for this substitution: first, the jurisdiction-removing provision technically does not apply any new standards to the pending cases. Rather, it eliminates the forum in which those cases can be heard. Second, the original language "applying" jurisdiction removal to pending cases appeared to require that those cases be dismissed outright. Such a result would have conflicted with subparagraph (h)(2), which is designed to allow current cases to continue in the D.C. Circuit as requests for review pursuant to the new standards. Altering the effective-date language eliminated this internal inconsistency and clarified that, rather than requiring that pending cases be dismissed, the new law allows the courts to construe those cases as requests for review under the new standards and, where necessary, transfer them to the appropriate forum.

This is all that we intended by this modification of the Graham Amendment's effective-date language and, more importantly, this is all that the language does. Nothing in this modification preserves any jurisdiction in the courts to continue the current actions in their present form after the date of the enactment of the Act.

To the extent that anyone construing the Graham Amendment might be tempted to subordinate actual statutory text to expressions of Senators' private intent, two points are in order: first, we are two of the three cosponsors on the "Graham-Levin-Kyl Amendment" that was introduced in the Senate on November 14, and one of us is the lead sponsor. Both of us made clear in the Congressional Record at the time that the final law passed the Senate that we understood, in light of standard rules of statutory construction, that removal of jurisdiction would eliminate pending cases—the same interpretation now espoused by the Justice Department.

In addition, on November 14, the other cosponsor of the amendment, Senator Levin, stated that "[w]hat our Amendment does, as soon as it is enacted and the enactment is effective, it provides that the substantive standards we set forth in our Amendment will be the substantive standards which we would expect would be applied in all cases, including cases which are pending as of the effective date of this Amendment." 151 Cong. Rec. 12755. He also stated that day: "the standards in the Amendment will be applied in pending cases." Ibid. The effective-date and pending-claims language in the Amendment introduced on November 14 is identical to that in the enacted statute. Thus, on the day of introduction, all three original cosponsors of the Graham Amendment understood it to operate in the same way: the pending Guantanamo cases can go forward, but only under the special review standards and procedures established by the Amendment.

Finally, we should comment on the various other legislative statements purporting to explain the intent behind the Graham Amendment. By our count, at least nine

Members of the minority have introduced statements in the Congressional Record announcing that the Graham Amendment was meant to have no effect on pending litigation. For the record, the only one of these Members who played any role in crafting the Amendment is Senator Levin. Negotiations with Senator Levin resulted in a substantial expansion of the scope of the judicial review permitted under the special review procedures established by the Amendment. None of the other Members commenting on the intent behind the Amendment's effective-date subsection played any significant drafting role of which we are aware. Indeed, some of these minority Members who purport to define the authorial intent also complain that the Amendment was "negotiated largely behind closed doors by the White House and a select few majority Members of Congress" (151 Cong. Rec. 12201), or that "all negotiations on this provision have occurred in back rooms, without the involvement of the vast majority of Congress, and without even consulting most of the conferees." 151 Cong. Rec. 14170. Such complaints are not consistent with the "insider" perspective that these Members purport to share with the reader. Several of these Members also are among the 14 Senators who even voted against the final Graham-Levin-Kyl Amendment when it was offered in the Senate on November 15. Clearly, it would be inappropriate to allow those who opposed the amendment to define the intent of the authors of the amendment.

Of course, more important than any private intent harbored by any Member of Congress is the actual legislative text that was passed by both houses of Congress and signed into law by the President. As we noted previously, absent repudiation by the federal courts of over a century of precedent construing like statutes, the Graham Amendment unambiguously eliminates the federal courts' power to hear Guantanamo detainees' cases in their current form. Notwithstanding the accusations made by some critics, your litigators have, in our view, properly interpreted the Graham Amendment. And, at the end of the day, we anticipate that the courts will make these jurisdictional determinations in accord with their own rules, procedures, precedent, and the plain language of the statute.

Sincerely,

LINDSEY O. GRAHAM,
U.S. Senator.
JON KYL,
U.S. Senator.

GLOBAL NUCLEAR ENERGY PARTNERSHIP

Mr. CRAIG. Mr. President, I rise today to express my agreement with President Bush's belief that our country's security depends in large part on a diverse energy portfolio, one that is not overly reliant on any one energy source, especially sources of foreign origin. I agree with the President that this country is overly dependent on foreign oil. Consistent with that belief, the Bush administration has just announced a potentially far-reaching energy program known as the Global Nuclear Energy Partnership or GNEP. This program provides a wide-reaching, long-term plan for establishing a robust and sustainable future for nuclear energy in this country and abroad.

The Global Nuclear Energy Partnership promises to provide abundant energy, without emitting greenhouse gases; to recycle used nuclear fuel in order to minimize waste; to safely and securely allow developing nations to deploy nuclear power to meet their energy needs, while reducing proliferation risks; to assure maximum energy recovery from still-valuable used nuclear fuel; and to allow the U.S. to rely on a single geologic waste repository for the rest of this century.

Nuclear energy currently provides about 20 percent of this Nation's electricity, and does so without emitting any carbon, greenhouse gases, or other air pollutants. All the waste generated by commercial nuclear powerplants is securely managed and destined for safe, permanent disposal in a geologic repository.

However, according to current law, that repository can contain only slightly more than the amount of waste already stored at existing reactor sites. Even if the law is changed, the repository at Yucca Mountain can only accommodate about the amount of spent nuclear fuel that will be generated by the existing reactors in this country over their lifetimes. If nuclear power is to have a future in this country, even to maintain its current 20 percent share of electricity generation, either a second repository will need to be developed soon—with many more to follow—or an alternative means of managing this waste is needed.

After a single use, spent nuclear fuel retains more than 95 percent of its energy potential. That energy potential could be tapped by reprocessing the spent fuel, recycling the useable part and disposing of the rest as waste, which makes up only about 3-4 percent of the spent fuel. This could substantially reduce the amount of long-lived nuclear waste requiring burial in a geologic repository, and could extend the lifetime of the Yucca Mountain repository many fold.

But efforts to recycle spent fuel were abandoned in this country back in the 1970s, largely because of concerns about nuclear proliferation. Those concerns stemmed from the fact that, at that time, the method used to recycle spent fuel, the "PUREX" process, separated out pure plutonium, which might be used to construct a nuclear bomb.

During the 30-plus years since then, the U.S. has—through research at its National Laboratories—made considerable progress in developing new methods for reprocessing spent fuel that are much less prone to proliferation risks, because they do not separate out pure plutonium, but keep it mixed with other actinides. This mixture is not readily used for nuclear weapons.

Reintroducing recycling into this country's strategy for managing spent fuel is a major change in policy, and one that deserves serious discussion. That discussion should be based on fact and not emotion; should address current technologies, not those from more than a generation ago; and should consider reasonable alternatives to maintaining nuclear energy as a viable part of our Nation's energy supply.

And what reasonable alternatives are there? Total electricity consumption in the U.S. is projected to increase by about 40 percent by 2025. Wind and solar energy cannot provide large-scale, base-load electricity, because they are intermittent energy sources. Hydro provides about 10 percent of our electricity right now, but building new dams to fully accommodate the increased demand is not possible. Relying solely on fossil fuels to make up the difference is environmentally irresponsible, and with the price of natural gas increasing dramatically, less economically appealing. Nuclear energy is the most environmentally sound technology capable of adequately meeting such increased demand. But even simply maintaining the current share of electricity generation provided by nuclear energy will require constructing many new nuclear powerplants in this country.

So should we continue to push for opening Yucca Mountain to begin accepting waste as soon as possible? The answer is clearly yes. Electric utilities demand confidence that spent fuel will be managed responsibly if they are going to continue to build new nuclearpower plants in the U.S.

But can we build many more Yucca Mountains to accommodate the additional waste? I think the answer is clearly no.

Still, new nuclear powerplants are being planned—and not only in this country, which has not ordered a new nuclear plant in 30 years, but around the world. China, Russia, several European countries, and others are planning—or building—new nuclear powerplants. Somewhere between 100 and 150 new nuclear plants are likely to be built in the next 20 years or so. In fact, the U.S., despite having pioneered nuclear power, risks falling far behind in this home-grown technology.

Furthermore, the growth in nuclear power worldwide, while avoiding the potential environmental impact of a similar number of fossil-fuel powerplants, raises serious concerns about nuclear proliferation. An increasing number of countries are interested in developing nuclear power, and in some cases, developing or acquiring technologies that could lead to their ability to produce nuclear weapons. North Korea and Iran constantly remind us of the potential danger.

Therefore, the U.S. and other responsible nuclear-capable countries need to work together to help developing countries acquire clean, affordable energy, but not the means to develop nuclear weapons.

And this is another farsighted goal of the Global Nuclear Energy Partnership. Through GNEP, this administration proposes to work with international partners to help developing nations deploy proliferation-resistant and emission-free nuclear energy by developing international fuel services and small-scale modular reactors.

Finally, if this country is to eventually wean itself off its dependence on foreign oil and gas, we need to develop a clean-burning fuel for transportation. In fact, even if nuclear power replaced all the fossil-fueled powerplants in this country, it would make little impact on our oil use. We would still need to import about 70 percent of our oil for transportation.

This need to reduce our dependence on foreign oil, in addition to reducing carbon emissions, was the impetus for President Bush to propose his Hydrogen Initiative in the 2001 State of the Union, and he has restated his convictions in all subsequent State of the Union addresses.

Consistent with President Bush's vision, we must continue our efforts to make the transition to a hydrogen-based economy, and we need to generate that hydrogen by using environmentally responsible technologies. Nuclear energy provides one such technology with high-temperature reactors such as the Next Generation Nuclear Plant that will be able to produce market-competitive hydrogen.

Nuclear power has the potential to provide clean, affordable, and emission-free electricity to an increasingly energy-hungry world, and the next generation of nuclear plants will produce fuel for transportation in an increasingly oil-starved world.

Access to affordable energy is crucial for improved quality of life and overall economic prosperity. The Global Nuclear Energy Partnership promises to increase energy security, both here in the United States and abroad. It will encourage environmentally responsible energy development around the world, and will provide that energy with minimal impact on the environment. I congratulate our President for his vision and commitment to helping make all this possible.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

CORETTA SCOTT KING

• Mr. SALAZAR. Mr. President, earlier this week, our Nation mourned the passing and celebrated the life of one of the civil rights era's greatest leaders. Coretta Scott King was the wife of civil rights activist Martin Luther King, Jr., and an incredible leader in her own right.

Mrs. King's death came just days after the Nation commemorated the contributions her late husband made to our country and only a few months after the passing of Rosa Parks and Constance Baker Motley, two pillars of our country's civil rights movement.

I spent Martin Luther King Day with my family. As we discussed the progress our great country has made in its quest to be a more inclusive America, I was reminded of the personal sacrifices of so many in the struggle for equality and dignity.

Coretta Scott King was not troubled by these sacrifices. Years later, she reflected "I understood when I married Martin that I did not just marry a man. I married a vision. I married a destiny." Upon his untimely passing, Mrs. King carried on this vision, sharing his message with other generations and even other continents.

Coretta Scott King was exposed to the injustice of segregation at an early age. She grew up poor, in segregated Alabama, where she helped support her family by working in the cotton fields. She graduated first in her high school class, and she and her sister became the first two African-American graduates of Antioch college in Ohio. She studied education and music. After graduation she enrolled at the New England Conservatory of Music. Through the course of her life, she received over 60 honorary doctorates from colleges and universities.

After her husband's assassination, Mrs. King continued raising her 4 children while her presence as a civil rights leader was growing. Only four days after his death, she led a march of 50,000 people through the streets of Memphis. The following year, she took her late husband's place in the Poor People's Campaign at the Lincoln Memorial in June of 1968.

But she did not simply represent her late husband. A unique role evolved over time for Mrs. King.

She made her own contributions through many venues, including more than 30 Freedom Concerts during the 1960s. At these Freedom Concerts, Mrs. King lectured, read poetry and sang to raise awareness and money for the civil rights movement. In her lifetime she authored three books, and helped found dozens of organizations including the National Black Coalition for Voter Participation and the Black Leadership Roundtable.

After the death of her husband, Mrs. King began gathering support for the Martin Luther King, Jr., Center for Nonviolent Social Change in 1969. She devoted herself tirelessly to the establishment of a national holiday to honor her late husband.

In 1983, she brought together more that 800 human rights organizations to form the Coalition of Conscience.

In 1985, Mrs. King and three of her children were arrested at the South African Embassy in Washington, DC for protesting apartheid. She stood with Nelson Mandela in Johannesburg when he became South Africa's first democratically elected president.

In 1987, she helped lead a national Mobilization Against Fear and Intimidation in the Forsyth March on Washington.

In preparation for the Reagan-Gorbachev talks, in 1988, she served as head of the U.S. delegation of Women for a Meaningful Summit in Athens, Greece.

In 1993, Mrs. King was invited by President Clinton to witness the historic handshake between Israeli Prime Minister Yitzhak Rabin and Palestinian Chairman Yassir Arafat at the signing of the Middle East Peace Accords.

She further lent her support to democracy movements worldwide and served as a consultant to many world leaders.

In the later years of her life she struggled tirelessly fighting for women's rights and working to prevent the spread of HIV/AIDS. Mrs. King fulfilled one of her life's major goals and Dr. King's birthday is now celebrated annually in over 100 nations.

I wish to commemorate the incredible message of this woman. Recent celebrations commemorating the 50th anniversary of the Supreme Court's landmark ruling in Brown v. Board of Education and the 40th anniversary of the enactment of the Voting Rights Act, remind us of just how far our country has come.

Mrs. King once remarked, "Struggle is a never ending process. Freedom is never really won—you earn it and win it in every generation." Our country has lost a giant who took on the struggle for freedom. If we truly wish to honor her, we must all assume the responsibility to fight injustice and inequality.

I thank Mrs. King for her incredible contributions to this country and to the world. Her family will continue to be in my thoughts and prayers. While she will be deeply missed, her message will never be forgotten.•

ADDITIONAL STATEMENTS

HONORING PHILIP A. FRANCIS, JR.

• Mr. ALEXANDER. Mr. President, today I want to honor Philip A. Francis, Jr., on his promotion as superintendent of the Blue Ridge Parkway, and his departure from the Great Smoky Mountains National Park. Since 1994, Philip A. Francis, Jr., has served as assistant superintendent of America's busiest national park. For more than 11 years, Phil did an exemplary job of keeping the Smokies on track and moving forward during a very dynamic period of the park's history. Phil served under a succession of three different Smokies superintendents and acted as superintendent himself for well over 2 years of his tenure.

His leadership provided an essential element of stability to the park's operations and to improving its relationships with its many partners and surrounding gateway communities.

In recognition of his organizational management talents and his ability to work with numerous and diverse stakeholders, Phil has recently been chosen to become superintendent of the Blue Ridge Parkway. With over 9 million annual visitors, the Smokies is the most visited national park in the country. But the 470 mile-long Blue Ridge Parkway, with nearly 19 million travelers a year, is the National Park Service's busiest management unit.

While at the Smokies, Phil provided oversight and continuity to National Park Service managers at all levels as they negotiated through the complexities of making far-reaching decisions regarding the future of the immensely controversial Cades Cove and Elkmont Historic Districts in the Tennessee portions of the park. And he has played a key role in striving for a resolution to a 60 year-long debate over a proposed new road though the Smokies in North Carolina. Despite the often heated debate among the parties to these contentious discussions, Phil has gained a reputation for his willingness to listen to the concerns of all sides and to look for solutions that recognize their needs while still protecting the park's natural and cultural resources.

Phil has also been an influential proponent for the Smokies in communities outside the park's boundaries and in working with its ever-expanding circle of support groups. Since their founding in 1993, the Friends of the Smokies has raised in excess of $15.5 million in support for improvements at the Smokies. By combining Friends support with assistance from the Great Smoky Mountains Association, the park has been able to broaden its educational programs, undertake the world's first all species biodiversity inventory, and expand environmental education opportunities. Phil has been a key participant in helping develop those new programs, and in creating new nonprofit organizations to manage them.

In 2002, the National Park Service faced a challenge in finding a new superintendent for the Great Smoky Mountains National Park. For those who care about the Smokies, as I do, there was lots of interest in who would be selected. Director Fran Mainella made a great choice when she appointed Dale Ditmanson, and we have grown to appreciate Dale's abilities and passion over the last few years. One of the reasons for Dale's strong start is the help he has gotten from Phil, and I look forward to working with Dale to preserve and carry on Phil's legacy in the Smokies.

I join the park's many neighbors and friends in thanking Phil for his hard work and professionalism while at the Smokies. I extend my congratulations and best wishes to Phil on his new assignment at the Blue Ridge Parkway.•

RETIREMENT OF DALLAS L. HAYDEN

• Mr. BROWNBACK. Mr. President, on December 24, 2005, Dallas L. Hayden, a native son of Kansas retired from Federal service with 26 years with the Department of Agriculture, Office of Inspector General. Mr. Hayden retired as the Special Agent-in-Charge of the Great Plains Region of which Kansas is included.

Mr. Hayden exemplified all that a Federal law enforcement agent should: integrity, loyalty, and above all, the belief that the laws of the land are paramount. Politics never played a part in any investigation under his control. Only the facts mattered.

I want to publicly commend Mr. Hayden for his service and wish only the best for him and his family in the years to come.•

SCHOOL OF DENTISTRY—GIVE KIDS A SMILE DAY

• Mr. COCHRAN. Mr. President, on February 3, 2006, the University Of Mississippi Medical Center School of Dentistry hosted "Give Kids A Smile Day/National Children's Dental Access Day." This event is part of a national initiative by the American Dental Association to focus attention on the epidemic of untreated oral disease among disadvantaged children. As part of this program, 40,000 dental professionals and volunteers provided free educational, preventive, and restorative dental services to children from low-income families at 2,000 locations across the country. In Mississippi, more than 1,200 children from elementary schools in Jackson, MS, and the Mississippi Delta visited the dental school and the School of Nursing Mobile Dental Van for dental services. The event was cosponsored by the Mississippi Dental Association, the Medical Center School of Health Related Professions, the Medical Center School of Nursing, the School of Dentistry's ACT Center, and the Jackson Medical Mall Foundation. Events such as this raise public awareness of dental disease and highlight the ongoing challenges faced by disadvantaged children in accessing dental care.

I applaud the efforts of the University of Mississippi Medical Center School of Dentistry, the Mississippi Dental Association, and other supporting organizations for their efforts to combat childhood dental disease in Mississippi.•

ALPHA KAPPA ALPHA

• Mr. COCHRAN. Mr. President, on January 12–15, 2006, the State of Mississippi hosted the Alpha Kappa Alpha, AKA, Sorority's 98th National Founders Day Weekend which celebrates the founding of the first Greek-letter organization of African-American college women in 1908. AKA was created to encourage high scholastic and ethical standards and to enrich the social and intellectual aspects of college life for African American women. AKA is now a 17,000 member organization with a broad mission to improve conditions in communities through volunteer service. AKA has made great strides in helping individuals and communities develop and maintain constructive relationships with others. National Founders Day Weekend also serves to recognize and commemorate the Mississippi Health Project.

The Mississippi Health Project, sponsored by AKA, brought primary medical care to the rural Black population across the state of Mississippi for 2 to 6 weeks every summer from 1935 to 1942. During the 98th National Founders Day Weekend, a historic landmark was dedicated in Mound Bayou in the Mississippi Delta to commemorate the success of the Mississippi Health Project and to serve as a reminder of AKA's continuing commitment to provide health services to families across the world.

Through collaboration with the National Institutes of Health's National Institute of Child Health and Human Development and the University of Mississippi Medical Center, AKA hosted a health forum in Jackson, MS, as part of the 98th National Founders Day Weekend. Additional activities included health fairs in Jackson and the Mississippi Delta, a special salute to AKA members affected by Hurricane Katrina, and an African-American Heritage tour.

I applaud the accomplishments of Alpha Kappa Alpha sorority and recognize the 98th National Founders Day Weekend as the first national AKA meeting in Mississippi.•

TRIBUTE TO SISTER DOROTHY STANG

• Mr. DEWINE. Mr. President, I rise today to pay tribute to Sister Dorothy Stang, who was brutally murdered nearly a year ago on February 12, 2005. Two hired assassins shot and killed her while she was traveling to visit a remote rural settlement near the Trans-Amazon Highway. She was 73 years old.

In May 2005, I introduced a resolution here in the Senate to honor Sister Dorothy—known as Dot to family and friends—for devoting her life to the cause of justice for the dispossessed in Brazil. Refusing to back down in the face of death threats from those who opposed her efforts, she doggedly continued assisting impoverished families and worked to protect the rain forest. Her life exemplifies the highest ideals of reverence for human dignity, compassion for those who lack a voice in their own society, and respect for nature.

Born in Dayton, OH, Dot was one of nine children. While she was growing up, she expressed a wish to one day become a missionary. Her siblings say their sister was always a strong, adventurous woman who truly loved life.

After joining the Sisters of Notre Dame de Namur in 1948 and taking her final vows in 1956, Sister Dorothy taught elementary classes at St. Victor School in Calumet City and St. Alexander School in Villa Park in Illinois and Most Holy Trinity School in Arizona. She began working in Brazil in 1966, and in the early 1980s, she moved to a rural area 1,300 miles north of Rio de Janeiro. There, she worked with the Catholic Church's Pastoral Land Commission, an organization that seeks to eradicate poverty and protect the environment by helping impoverished Brazilians to secure land.

Sister Dorothy's passionate commitment to this mission was an inspiration to many. She was known for riding a motorcycle and camping outside the offices of local officials when they refused to meet with her. She lived her lifelong passion for teaching by organizing peasant groups and educating hundreds of families about sustainable farming techniques, land tenure issues, and the importance of conservation. Her extensive knowledge of Brazilian law, which was entirely self-taught, won her great respect from locals and other activists.

While she worked hard, she did not see her endeavors as a sacrifice. Rather, she professed a love for the region and its people, becoming a Brazilian citizen and instructing her family that she would someday like to be buried in the place about which she cared so deeply.

Last year, Sister Dorothy testified before a Brazilian congressional committee on deforestation and did not hesitate to name companies that were engaged in illegal logging. Furthermore, only days before her death, she met with Brazilian human rights officials to voice her concern about the dangers that she believed some loggers and landowners posed to the peasant farmers with whom she lived.

Although she received death threats for years, she told those around her that the Bible was the only weapon she needed. Sister Dorothy lived her commitment to her faith in the bravest of ways, demonstrating courage and determination to the end. Witnesses recall that, when the gunmen confronted her, she read to her killers from the Bible before she was murdered.

Sister Dorothy was a much beloved figure in the communities where she worked. Last year, the Brazilian state where she spent more than two decades of her life named her "Woman of the Year," and the Brazilian Bar Association honored her with its Humanitarian of the Year award. At her funeral, thousands of peasants mourned the loss of a woman whom they knew as both a determined leader and a fun-loving friend.

The Brazilian Government sent troops to stabilize the area following the tragedy, and it also has honored Sister Dorothy's legacy by setting aside disputed lands for a sustainable development program that she supported. In addition, President Lula da Silva denounced the killing and restated his government's commitment to defending Brazil's rain forests from destruction and environmentally unsound development.

Despite these positive signs, many peasants in the areas where Sister Dorothy worked remain landless; Brazil has one of the world's largest wealth gaps. Violence also continues in the region, which is widely recognized as a place where federal Government control is often tenuous. During the past two decades, hundreds in the area have died in violent clashes between poor settlers and landowners who resent government attempts to resettle landless families and prohibit illegal logging.

Sister Dorothy recognized the many daunting obstacles that face Brazil's poorest people and, rather than simply hoping for conditions to someday improve, happily devoted her life to fighting for what she believed was right. There is much to be done, but she has set an outstanding example of how one person can make a difference in the face of hopelessness. It is up to us to keep her memory alive and never forget her determination and her commitment to helping those most in need.•

THE CLIMATE OF TRUST PROGRAM

• Mrs. FEINSTEIN. Mr. President, I rise today to pay tribute to the Bay Area Council for Jewish Rescue and Renewal's Climate of Trust Program. The council's work in combating ethnic and religious hatred while strengthening tolerance and moderation in Russian society has made a great difference in the lives of all the program's participants.

In 1998, a wave of anti-Semitic activity terrorized the Jewish population in a provincial town in northwest Russia. In response, the Bay Area Council established the Climate of Trust Program, a collaborative partnership between American and Russian police officers, local officials, human rights activists, and ethnic and religious community representatives dedicated to resolving conflicts peacefully and establishing an atmosphere of tolerance and mutual respect in Russia.

It is fitting that the pilot program for the Climate of Trust began in one of the most diverse cities in the world, my hometown of San Francisco.

In 2000, representatives of the San Francisco Police Department, the District Attorney's Office, the California Superior Court, and the Anti-Defamation League went to Russia to join their counterparts in a seminar on religious tolerance. The participants continued the dialogue when the Russian delegates traveled to San Francisco later that year.

In total, seven of these exchanges have now taken place. During these meetings, attendees discuss a wide variety of issues including hate crime laws in the United States, how hate incidents are investigated, elements of a hate crime and its impact on the community, diversity in the police department, and community policing.

These interactions culminated in the establishment of four permanent regional tolerance centers in Russia. These centers design and implement activities that promote tolerance and effective communication between law enforcement and the community.

Organized and run by Russian police officers and community members alike, the centers sponsor hate crimes courses for police cadets to identify and handle ethnic or religious violence and produce a tolerance textbook for high school students.

From its modest beginning in 1998, the Climate of Trust has grown into a far-reaching and effective program. Thousands of Russians, from small town police officers to federal government officials, have attended Climate of Trust seminars and workshops.

The success of this program is due in no small part to the hard work of the Bay Area Council, USAID, and, most importantly, the team of American volunteers and their Russian counterparts who have worked together to develop new models for promoting tolerance and diversity.

We have all witnessed the tragic consequences of ethnic hatred and religious intolerance. It is our solemn obligation to work together to ensure that tolerance and understanding prevails. I commend and congratulate the Climate of Trust Program of the Bay Area Council for Jewish Rescue and Renewal for their tireless efforts in these areas, and I look forward to working with them again in the future.•

HONORING BETTY FRIEDAN

• Ms. MIKULSKI. Mr. President, I rise today to honor the life and legacy of my friend, Betty Friedan. She opened the minds of Americans to the possibility of a new role for women in our country. She provided the spark that has helped make the ambitions of so many women come true.

This spark helped me realize my own dreams. It allowed me to become a social worker, a Baltimore City councilwoman, a U.S. Congresswoman, and now a U.S. Senator. Betty Friedan's spark inspired women to realize our full potential.

Betty Friedan was born Bettye Goldstein in Peoria, IL, in 1921. She graduated summa cum laude from Smith College in 1942 before accepting a fellowship for graduate study in psychology at the University of California, Berkeley. She did not finish her fellowship at Berkeley, however, because a male friend at the time discouraged her from doing so. This may have been the beginning of Betty Friedan's awareness of the troubled station women were expected to fill.

In 1947, Betty Goldstein married Carl Friedan. The newlyweds moved to a home in suburban New York and started a family. It was during this time that Ms. Friedan began to consider why she and so many of the women she knew yearned for more choices on how to live their lives. Her book, the "Feminine Mystique", is considered one of the most influential works of the 20th century. In it, she examined the issues of limited choices and limited career prospects for American women. "The Feminine Mystique" changed the face of America.

"The Feminine Mystique" challenged American society to reevaluate the role of women in our country. The feminism that Betty Friedan embraced provided a spark for people like me to speak up and speak out.

Ms. Friedan founded the National Organization for Women in 1966, where she served as the first president, before going on to found NARAL in 1969.

Two years later, I entered my first race for public office and won a seat on the Baltimore City Council. I then joined Betty Friedan, Gloria Steinem and many other women in founding the National Women's Political Caucus.

Betty Friedan paved the way for women when she wrote "The Feminine Mystique" and she devoted the rest of her life to the cause of equality, vaulting it to the forefront of the American conscience. Ms. Friedan was an unwavering advocate for equality, justice, women, and positive change.

I honor Betty Friedan for her courage and her creativity—and thank her for all that she did for me and for women everywhere.●

KETCHIKAN CITIZEN OF THE YEAR

● Ms. MURKOWSKI. Mr. President. I rise today to honor a very special person: Sherrie Slick of Ketchikan, AK, who was recently named Citizen of the Year by the Greater Ketchikan Chamber of Commerce during its annual banquet on January 14, 2006.

This year's award was given based on community service and volunteerism. Before her name was announced, Alaska's Governor described volunteers as "quiet heroes who often are taken for granted because they're always there and doing their jobs, and doing something for someone else is reward enough for them." For those who know Sherrie, the "quiet" part of that description doesn't quite fit—but in every other respect, that was an almost perfect description of one of the most energetic and active people I know—a woman who could have been the model for the "Energizer Bunny."

I have known Sherrie for many years. I have been the recipient of her hospitality and now have the pleasure of working with her in her capacity as the community representative for the Alaska congressional delegation. When you need to know what is new, what is hot, and what is happening in town, she is the woman to know.

Sherrie is a 32 year resident of Ketchikan with two children who attended the local schools. She is now immersed in her role as a grandmother and loving it. Her dedication to family, community, and career is universally recognized by friends and associates.

Sherrie served on the local chamber of commerce's board of directors for 9 years, including a stint as president, and continues to be active on the chamber's transportation committee. She has spent 8 years on the Ketchikan Visitors Bureau's board of directors, including a year as its chairman, and is a member of the group's marketing committee. She served on the Ketchikan Overall Economic Development Committee for 4 years. She participates each year in the development of Ketchikan's legislative priorities and travels to Juneau as a representative of the community to lobby the Alaska legislature for support on local projects.

Sherrie put in many hours as the community organized public workshops and meetings for the Gravina Access Project. She helped provide information that was key to advancing the growth and economic development of the Ketchikan Shipyard and remains an active supporter of the Ketchikan elements of the southeast Alaska power intertie. She helped facilitate the planning and preparation that helped bring the NOAA research vessel *Fairweather* to Ketchikan. For years, she has gone far beyond the requirements of her job in counseling and providing information to local fishermen on high seas drift net legislation, the Pacific Salmon Treaty, and innumerable other issues of concern.

Sherrie has played active roles with Ketchikan Theatre Ballet, Ketchikan Soccer League, Ketchikan Killer Whales Swimming Club, Campfire Girls, Boy Scouts, Little League Baseball, and Junior High and the KayHi Drill Teams.

Finally, as the Alaska congressional delegation's "woman on the spot," she has been instrumental in assisting local governments, businesses, and individuals to prepare and advocate for Federal government actions. She is an outstanding liaison between the congressional delegation and its constituents, with an unparalleled understanding and knowledge not only of Ketchikan, but also of surrounding communities; and there is no one better at planning the details so that every visit from a delegation member goes smoothly and productively.

Sherrie is wise, energetic, and delightfully entertaining. Ketchikan could have picked no finer person for this honor, and I am very proud to know this fine Alaskan. Congratulations, Sherrie Slick, "Ketchikan Citizen of the Year."●

TRIBUTE TO MITCH MUSTAIN

● Mr. PRYOR. Mr. President, it is with the greatest pleasure that I rise today to honor an outstanding student athlete from Springdale, AR, Mitch Mustain. As I am sure many of you know, Mitch was named the 2005 Gatorade National High School Football Player of the Year and the Player of the Year on Parade Magazine's 43rd annual All-America High School Football Team. He received these awards not only for his outstanding leadership and athletic skill but also for his academic achievements and overall character.

During the 2005 season, senior quarterback Mitch Mustain led Springdale High School to a No. 2 national ranking and the State Class 5A title. He completed 190 passes for 3,817 yards and 47 touchdowns. He also rushed for seven scores and was sacked only twice. In the school's 54 to 20 state final win, Mitch connected on 17 passes for 5 touchdowns.

I also take this opportunity to say how proud and excited I am that Mitch Mustain has signed with my alma mater, the University of Arkansas. I foresee great things ahead for the Razorbacks.

Mr. President, I ask my colleagues to join me today in "Calling the Hogs" in recognition of this future Razorback's outstanding accomplishments. We all look forward to following Mitch's career and anticipate that he will make lasting contributions to his team and to the University of Arkansas.●

COLLECTION OF HEARTS CAMPAIGN

● Mr. SANTORUM. Mr. President, I rise today to recognize the efforts of the Keystone Soldiers organization based in Fleetwood, PA. This all-volunteer organization provides continued support for our service members currently deployed overseas through letters, emails, phone calls, and care packages. Keystone Soldiers has most recently partnered with Boscov's department stores in an effort to collect valentines for deployed service members. The Collection of Hearts campaign is just a small part of their effort to remind our deployed troops that they have our continued support. I appreciate the patriotism of this organization in supporting our troops as they continue to serve our Nation.

Our brave service men and women are sacrificing so much for us; they are in harm's way each day, missing valuable time with their loved ones. Showing support by sending care packages, letters, and emails is a very small way to show our appreciation for their sacrifice.

I appreciate the selfless efforts of charitable organizations, such as Keystone Soldiers, for reminding our troops that they are appreciated. I encourage all Americans to show their support for our troops by lending your support to organizations such as these.•

MESSAGE FROM THE HOUSE

At 12:11 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 4297) to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006, and asks a conference with the Senate on the disagreeing votes of the two Houses thereon; and appoints the following members as the managers of the conference on the part of the House: Mr. THOMAS, Mr. McCRERY, Mr. CAMP, Mr. RANGEL, and Mr. STARK.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4456. An act to designate the facility of the United States Postal Service located at 2404 Race Street in Jonesboro, Arkansas, as the "Hattie W. Caraway Station".

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 331. Concurrent resolution honoring the sacrifice and courage of the 16 coal miners killed in various mine disasters in West Virginia, and recognizing the rescue crews for their outstanding efforts in the aftermath of the tragedies.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 4456. To designate the facility of the United States Postal Service located at 2404 Race Street in Jonesboro, Arkansas, as the "Hattie W. Caraway Station"; to the Committee on Homeland Security and Governmental Affairs.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5681. A communication from the Assistant Administrator, Office of Administration and Resource Management, Environmental Protection Agency, transmitting, pursuant to law, (7) reports relative to vacancy announcements within the Agency; to the Committee on Environment and Public Works.

EC–5682. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing" ((RIN2060–AM90)(FRL No. 8008–2)) received on February 8, 2006; to the Committee on Environment and Public Works.

EC–5683. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of Arizona; Finding of Attainment for Ajo Particulate Matter of 10 Microns or Less (PM10) Nonattainment Area; Determination Regarding Applicability of Certain Clean Air Act Requirements" (FRL No. 8029–2) received on February 8, 2006; to the Committee on Environment and Public Works.

EC–5684. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Revision to Toxic Substances Compliance Monitoring Grants (TSCA section 28) Regulation" ((RIN2070–AJ24)(FRL No. 8031–4)) received on February 8, 2006; to the Committee on Environment and Public Works.

EC–5685. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Revisions to the California State Implementation Plan, South Coast Air Quality Management District" (FRL No. 8027–9) received on February 8, 2006; to the Committee on Environment and Public Works.

EC–5686. A communication from the Architect of the Capitol, transmitting, pursuant to law, a report entitled "Report on the Requirements of the Energy Act of 2005 Related to Congressional Facilities"; to the Committee on Energy and Natural Resources.

EC–5687. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled "Impact of Energy Policy Act of 2005 Section 206 Rebates on Consumers and Renewable Energy Consumption, With Projections to 2010; to the Committee on Energy and Natural Resources.

EC–5688. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled "Data Collection in Response to Section 1404 of the Energy Policy Act of 2005"; to the Committee on Energy and Natural Resources.

EC–5689. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled "Plan to Ensure Continued Recovery and Storage of Greater-Than-Class C Low-Level Radioactive Sealed Sources that Pose a Security Threat Until a Permanent Disposal Facility is Available"; to the Committee on Energy and Natural Resources.

EC–5690. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled "Energy Conservation Standards Activities"; to the Committee on Energy and Natural Resources.

EC–5691. A communication from the Secretary of Energy and the Chairman, Federal Energy Regulatory Commission, transmitting jointly, pursuant to law, a report entitled "Steps to Establish a Transmission Monitoring System for Transmission Owners and Operators Within the Eastern and Western Interconnections"; to the Committee on Energy and Natural Resources.

EC–5692. A communication from the Executive Director, Federal Energy Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled "Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands" (Docket No. RM06–9–000) received on February 8, 2006; to the Committee on Energy and Natural Resources.

EC–5693. A communication from the General Counsel, Federal Energy Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled "Prohibition of Energy Market Manipulation" (Docket No. RM06–3–000) received on February 8, 2006; to the Committee on Energy and Natural Resources.

EC–5694. A communication from the Director, Office of Hearings and Appeals, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Implementation of the Equal Access to Justice Act in Agency Proceedings" (RIN1094–AA49) received on February 08, 2006; to the Committee on Energy and Natural Resources.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. ALLEN:

S. 2262. A bill to provide that pay may not be disbursed to Members of Congress after October 1 of any fiscal year in which all appropriations acts are not passed by Congress, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. DAYTON:

S. 2263. A bill to amend title 49, United States Code, to require that automobiles and light trucks manufactured after model year 2007 be able to operate on a fuel mixture that is at least 85 percent ethanol, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. PRYOR (for himself and Mr. NELSON of Florida):

S. 2264. A bill to provide enhanced consumer protection from unauthorized sales and use of confidential telephone information by amending the Communications Act of 1934, prohibiting certain practices, and providing for enforcement by the Federal Trade Commission and States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. McCAIN (for himself, Mr. FEINGOLD, Mr. KYL, Mr. BAYH, Mr. ENSIGN, Mr. GRAHAM, Mr. SUNUNU, Mr. COBURN, Mr. DEMINT, and Mr. CORNYN):

S. 2265. A bill to provide greater accountability of taxpayers' dollars by curtailing congressional earmarking, and for other purposes; to the Committee on Rules and Administration.

By Mr. SANTORUM:

S. 2266. A bill to establish a fellowship program for the congressional hiring of disabled veterans; to the Committee on Homeland Security and Governmental Affairs.

By Mr. DORGAN (for himself and Mr. GRAHAM):

S. 2267. A bill to withdraw normal trade relations treatment from, and apply certain provisions of title IV of the Trade Act of 1974 to, the products of the People's Republic of China; to the Committee on Finance.

By Mr. KERRY (for himself and Mr. SALAZAR):

S. 2268. A bill to amend title 5, United States Code, to deny Federal retirement benefits to individuals convicted of certain offenses, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. DEWINE (for himself, Mr. VOINOVICH, and Mr. NELSON of Florida):

S. 2269. A bill to designate the Federal building and United States courthouse located at 200 West 2nd Street in Dayton, Ohio, as the "Tony Hall Federal Building and United States Courthouse"; to the Committee on Environment and Public Works.

By Mr. MENENDEZ:

S. 2270. A bill to amend the Internal Revenue Code of 1986 to allow a refundable credit against income tax to subsidize the cost of COBRA continuation coverage for certain individuals; to the Committee on Finance.

ADDITIONAL COSPONSORS

S. 431

At the request of Mr. DEWINE, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 431, a bill to establish a program to award grants to improve and maintain sites honoring Presidents of the United States.

S. 438

At the request of Mr. ENSIGN, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 438, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 908

At the request of Mr. MCCONNELL, the name of the Senator from South Carolina (Mr. DEMINT) was added as a cosponsor of S. 908, a bill to allow Congress, State legislatures, and regulatory agencies to determine appropriate laws, rules, and regulations to address the problems of weight gain, obesity, and health conditions associated with weight gain or obesity.

S. 985

At the request of Mrs. CLINTON, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 985, a bill to establish kinship navigator programs, to establish kinship guardianship assistance payments for children, and for other purposes.

S. 1172

At the request of Mr. SPECTER, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 1172, a bill to provide for programs to increase the awareness and knowledge of women and health care providers with respect to gynecologic cancers.

S. 1915

At the request of Mr. ENSIGN, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 1915, a bill to amend the Horse Protection Act to prohibit the shipping, transporting, moving, delivering, receiving, possessing, purchasing, selling, or donation of horses and other equines to be slaughtered for human consumption, and for other purposes.

S. 1930

At the request of Mr. COCHRAN, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 1930, a bill to expand the research, prevention, and awareness activities of the National Institute of Diabetes and Digestive and Kidney Diseases and the Centers for Disease Control and Prevention with respect to inflammatory bowel disease.

S. 2134

At the request of Mr. SMITH, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 2134, a bill to strengthen existing programs to assist manufacturing innovation and education, to expand outreach programs for small and medium-sized manufacturers, and for other purposes.

S. 2179

At the request of Mr. OBAMA, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 2179, a bill to require openness in conference committee deliberations and full disclosure of the contents of conference reports and all other legislation.

S. 2235

At the request of Mr. SCHUMER, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 2235, a bill to posthumously award a congressional gold medal to Constance Baker Motley.

S. 2250

At the request of Mr. GRASSLEY, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 2250, a bill to award a congressional gold medal to Dr. Norman E. Borlaug.

S. 2253

At the request of Mr. DOMENICI, the names of the Senator from Idaho (Mr. CRAIG), the Senator from Ohio (Mr. VOINOVICH), the Senator from Alabama (Mr. SESSIONS), the Senator from South Dakota (Mr. JOHNSON), the Senator from North Dakota (Mr. CONRAD) and the Senator from Tennessee (Mr. ALEXANDER) were added as cosponsors of S. 2253, a bill to require the Secretary of the Interior to offer the 181 Area of the Gulf of Mexico for oil and gas leasing.

S. 2261

At the request of Mr. OBAMA, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 2261, a bill to provide transparency and integrity in the earmark process.

S. RES. 313

At the request of Ms. CANTWELL, the names of the Senator from Ohio (Mr. DEWINE) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. Res. 313, a resolution expressing the sense of the Senate that a National Methamphetamine Prevention Week should be established to increase awareness of methamphetamine and to educate the public on ways to help prevent the use of that damaging narcotic.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ALLEN:

S. 2262. A bill to provide that pay may not be disbursed to Members of Congress after October 1 of any fiscal year in which all appropriations acts are not passed by Congress, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. ALLEN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2262

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NO DISBURSEMENT OF PAY TO MEMBERS OF CONGRESS IF APPROPRIATIONS ACTS NOT TIMELY PASSED.

(a) RESTRICTION ON DISBURSEMENT OF PAY.—

(1) IN GENERAL.—If, as of the first day of any fiscal year, Congress has not passed all final appropriations acts necessary to provide appropriations for the entirety of that fiscal year, the Secretary of the Senate and the Chief Administrative Officer of the House of Representatives may not disburse net pay to any Member of Congress for any pay period beginning in that fiscal year before the date on which notice is provided under subsection (b)(2) that all such final appropriation acts have been passed.

(2) DISBURSEMENT AFTER PASSAGE.—The Secretary of the Senate and the Chief Administrative Officer of the House of Representatives shall disburse all amounts of net pay to Members of Congress not disbursed under paragraph (1) at the same time pay is disbursed for the first pay period beginning after the period to which paragraph (1) applies.

(b) NOTICE.—The President pro tempore of the Senate shall provide notice to the Secretary of the Senate, and the Speaker of the House of Representatives shall provide notice to the Chief Administrative Officer of the House of Representatives—

(1) of any restriction on disbursement of pay under subsection (a)(1), on the first day

of the fiscal year to which the restriction applies; and

(2) of the passage by Congress of all final appropriations acts described in subsection (a)(1) with respect to that fiscal year, on the date that passage occurs.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the authority of the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives relating to withholdings, deductions, or any other administrative function relating to pay as otherwise authorized by law.

(d) EFFECTIVE DATE.—This Act shall take effect on January 3, 2007.

By Mr. McCAIN (for himself, Mr. FEINGOLD, Mr. KYL, Mr. BAYH, Mr. ENSIGN, Mr. GRAHAM, Mr. SUNUNU, Mr. COBURN, Mr. DEMINT, and Mr. CORNYN):

S. 2265. A bill to provide greater accountability of taxpayers' dollars by curtailing congressional earmarking, and for other purposes; to the Committee on Rules and Administration.

Mr. McCAIN. Mr. President, last Congress I introduced a rules change proposal to allow points of order to be raised against unauthorized appropriations and policy riders in appropriations bills and conference reports in an effort to reign in wasteful pork barrel spending. Today I am introducing a modified version of that proposal. I am pleased to be joined in this bipartisan effort today by Senators FEINGOLD, COBURN, BAYH, SUNUNU, GRAHAM, ENSIGN, DEMINT, and KYL.

According to data compiled by the Congressional Research Service, in 1994, there were 4,126 Congressional earmarks added to the annual appropriations bills. In 2005, there were 15,877 earmarks, the largest number yet, that's an increase of nearly 300 percent! The level of funding associated with those earmarks has more than doubled from $23.2 billion in fiscal year 1994 to $47.4 billion in fiscal year 2005.

Our bill, entitled the Pork-Barrel Reduction Act, would establish a new procedure under Rule XVI, modeled in part after the Byrd Rule, which would allow a 60-vote point of order to be raised against specific provisions that contain unauthorized appropriations, including earmarks, as well as unauthorized policy changes in appropriations bills and conference reports. Of importance is that successful points of order would not kill a conference report, but the targeted provisions would be deemed removed from the conference report, and the measure would be sent back for concurrence by the House.

To ensure that Members are given enough time to review appropriations bills, our proposal would also require that conference reports be available at least 48 hours prior to floor consideration. It also prohibits the consideration of a conference report if it includes matter outside the scope of conference.

Additionally, our bill includes the provisions of S. 1495, the Obligation of Funds Transparency Act, which Senator CORBURN and I introduced last July, to prohibit Federal agencies from obligating funds for appropriations earmarks included only in congressional reports, which are unamendable.

To promote transparency, our bill requires that any earmarks included in a bill be disclosed fully in the bill's accompanying report, along with the name of the Member who requested the earmark and its essential governmental purpose. Additionally, our bill would require recipients of Federal dollars to disclose any amounts that the recipient expends on registered lobbyists.

In summary, this proposed rules change, if adopted, would allow any member to raise a point of order in an effort to extract objectionable unauthorized provisions from the appropriations process. Our goal is to reform the current system by empowering all members with a tool to rid appropriations bills of unauthorized funds, pork barrel projects, and legislative policy riders and to provide greater public disclosure of the legislative process.

I would like to highlight just a few examples of recent earmarks, many of which clearly do not belong in the measures that they were included:

From the Defense Conference Report for FY 2006: $500,000 to teach science to grade-school students in Pennsylvania. $900,000 for "Memorial Day" out of the Army Operations and Maintenance account. $4.4 million for a Technology Center in Missouri. $1 million to a Civil War Center in Richmond, Virginia. $850,000 for an education center and public park in Des Moines, Iowa. $2 million for a public park in San Francisco. $500,000 for the Arctic Winter Games, an international athletic competition held this year in Alaska. $1.5 million for an aviation museum in Seattle, $1.35 million for an aviation museum in Hawaii, $1 million for a museum in Pennsylvania, and $3 million for the museum at Fort Belvoir. There's also $1.5 million for restoring the Battleship Texas. Funding for farm conservation. A provision protecting jobs in Hawaii and Alaska. A provision transferring as a direct lump sum payment to the University of Alaska the unobligated and unexpended balances appropriated to the United States-Canada Railroad Commission. And, of course, the ANWR provisions.

From the FY06 Energy and Water Appropriations Bill Conference Report Statement of Managers: $500,000 for the Burpee Museum of Natural History in Illinois. $500,000 for Chesapeake Bay submerged aquatic vegetation research. $600,000 to study fish passage in Mud Mountain, Washington. $3 million to study the beneficial uses of dredged material for Morehead City, North Carolina. $1.25 million for the Sacred Falls demonstration project in Hawaii. $2 million for the Desert Research Institute, Nevada. $3.5 million for the Iroquois Bio-Energy Consortium Ethanol Project, Indiana. $500,000 for the Washington State Ferries Biodiesel Demonstration Project, WA. $1 million for the Canola-based Automotive Oil R&D, PA. $1 million for the Mt. Wachusett Community College Wind Project, MA. $7 million for the Arctic Energy Office, Alaska.

These Energy and Water projects that I just mentioned are just a few examples of report language earmarks, none of which are subject to an amendment to strike.

From the FY 2002 and 2003 Defense Appropriations Conference Reports: During conference negotiations on the Department of Defense Appropriations Act for fiscal year 2002, unprecedented language was inserted into the final bill to allow the U.S. Air Force to lease 100 Boeing 767 commercial aircraft and convert them to tankers. The total cost to taxpayers, about $30 billion.

However, Congress did not authorize these provisions in the Act, or in any other bill for that matter. In fact, the Senate Armed Services Committee was not even advised of this effort by the Air Force Secretary during consideration of the authorization measure. Moreover, these aircraft were not in the President's budget, the joint chiefs' unfunded priority list, or the pentagon's long range defense budget. Additionally, the purportedly compelling need for these aircraft (which the air force repeatedly cited for having taxpayers pay $6 billion more for leasing these tankers than they would if the air force simply bought them outright) was, and continues to be, wholly unsupported by any serious study or analysis of alternatives.

Nonetheless, legislative language was again included in the Department of Defense Appropriations Act for Fiscal Year 2003 to modify the previous year's bill language on the Boeing 767 tankers. And, once again, the sweeping changes in procurement policy was made by the Appropriators without the input of the authorizing committee.

Ultimately, it was discovered that the Air Force broke a number of Federal budgetary and leasing rules; that the lease terms were fiscally irresponsible; that this deal would have set a horrible precedent for the procurement of major defense systems; and that folks at the Air Force conspired with Boeing to break the law to make this deal happen in the first instance. Mr. President, with some people, as a result, not only losing their jobs, but also serving time in jail, I think all of my colleagues know what an egregious mistake this turned out to be.

From Supplemental for War on Terror Conference Report (April 2005): A provision directing the Secretary of the Interior to analyze the viability of a sanctuary for the Rio Grande Silvery Minnow in Rio Grande Valley, TX.

A provision stating that the $40 million set forth in the Consolidated Appropriations Act of 2004 for construction of a Port of Philadelphia marine cargo terminal "be used solely for the construction by and for a Philadelphia-based company."

From the FY 2003 Omnibus Appropriations Conference Report: The conference report contained provisions which allow a subsidiary of the Malaysian-owned "Norwegian Cruise Lines" the exclusive right to operate several large foreign-built cruise vessels in the domestic cruise trade. This provides an unfair competitive advantage to a foreign company at the expense of all other cruise ship operators, and creates a de facto monopoly for Norwegian Cruise Lines in the Hawaii cruise trade. Interestingly, this provision stems from another earmark in 1998 that went awry.

The fiscal year 1998 Department of Defense Appropriation Bill granted a legal monopoly for American Classic Voyages to operate as the only U.S. flagged operator among the Hawaiian islands. After receiving the monopoly, American Classic Voyages secured a $1.1 billion loan guarantee from the U.S. Maritime Administration's, MARAD, Title XI loan guarantee program for the construction of two passenger vessels known as Project America. Project America's subsequent failure 4 years later resulted in the U.S. Maritime Administration paying out over $187.3 million of the American taxpayers' money to cover the project's loan default, and recovering only $2 million from the sale of some of the construction materials and parts. It is one hull and miscellaneous parts from these never-completed ships which cost the taxpayers nearly $200 million which are now going to be used in a foreign shipyard for building the Norwegian Cruise ships that will operate in Hawaii under this latest special interest provision.

The conference report included an agriculture policy change to make catfish producers eligible for payments under the livestock compensation program, even though hog, poultry, and horse producers are not eligible.

Despite the fact that the U.S. Department of Agriculture had implemented new organic food standards after lengthy negotiations, language was added to the conference report to permit livestock producers to certify and label meat products as "organic" even if the animals had not been fed organic grain. Without any consideration or debate, this last-minute rider was added to override these standards. Interestingly, a few months later, the Congress approved legislation as part of the War supplemental to repeal this provision and restore the prior organic food labeling standards.

Obviously, I could go on and on and on citing examples of unauthorized earmarks and policy riders in appropriations bills. But I think you've got the picture. And I hope that we have finally reached the point that we are going to do something to reform this very broken system of legislating.

Our current economic situation and our vital national security concerns require that now, more than ever, we prioritize our Federal spending. But our appropriations bills do not always put our national priorities first. The process is broken and it needs to be fixed.

In his farewell address, President Dwight D. Eisenhower reflected on the spending he believed to be excessive. His words then are all the more powerful in today's out of control environment: "As we peer into society's future," he said, "we—you and I, and our government—must avoid the impulse to live only for today, plundering, for our own ease and convenience, the precious resources of tomorrow. We cannot mortgage the material assets of our grandchildren without risking the loss also of their political and spiritual heritage. We want democracy to survive for all generations to come, not to become the insolvent phantom of tomorrow."

And yet, if we cannot change, if we will not change, we risk precisely that—becoming the insolvent phantom of tomorrow. I wonder what President Eisenhower would think of this mess. But, then, perhaps others have contemplated the same question. After all, the Defense Appropriations bill we passed in December included a $1.7 million earmark for a memorial on the National Mall that would honor none other than * * * Dwight D. Eisenhower.

I urge my colleagues to support this bill.

By Mr. KERRY (for himself and Mr. SALAZAR):

S. 2268. A bill to amend title 5, United States Code, to deny Federal retirement benefits to individuals convicted of certain offenses, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. KERRY. Mr. President, along with Senator SALAZAR, I am introducing the Congressional Pension Accountability Act, to deny Federal pensions to members of Congress who are convicted of white collar crimes such as bribery.

I strongly believe that Members of Congress must be held to the highest ethical standards. This year, the Senate is expected to consider legislation to reform our ethics laws. This is in response to a series of scandals that have exposed Washington lobbyists and unfortunately even a Member of Congress who used undue and improper influence to represent special interests in their dealings with the Federal Government.

Last year, the now infamous Washington lobbyist Jack Abramoff pleaded guilty to conspiracy, mail fraud and tax evasion charges in a plea agreement. The Justice Department is currently investigating his attempts to influence Federal Government policy in both Congress and the Executive Branch.

In the largest bribery case in the Congress since the 1980s, Representative Randy "Duke" Cunningham recently resigned from the House of Representatives after pleading guilty in Federal court to receiving $2.4 million in bribes from military contractors and evading more than $1 million in taxes. In a plea agreement, former Representative Cunningham admitted to a pattern of bribery lasting close to five years, with Federal contractors giving him Persian rugs, a Rolls-Royce, antique furniture, paying travel and hotel expenses, use of a yacht and a lavish graduation party for his daughter.

As elected representatives, we must hold ourselves and all those who represent the Federal Government to the highest ethical standards. The principle is a simple one: public servants who abuse the public trust and are convicted of ethics crimes should not collect taxpayer financed pensions.

Under current law, former Representative Cunningham and others convicted of serious ethics abuses will receive a Congressional pension of approximately $40,000 per year—paid for by American taxpayers. Only a conviction for a crime against the United States, such as treason or espionage, will cost a Member of Congress their pension. This law must be changed to ensure that Congress does not reward unethical behavior.

The Congressional Pension Accountability Act will bar Members of Congress from receiving taxpayer-funded retirement benefits after they have been convicted of bribery or other serious ethics offenses.

Together we can significantly improve our government by changing the way business is done in Washington. I believe this legislation will help ensure that our government once again responds to the needs of our people, not special interests.

By Mr. DEWINE (for himself, Mr. VOINOVICH, and Mr. NELSON of Florida):

S. 2269. A bill to designate the Federal building and United States courthouse located at 200 West 2nd Street in Dayton, Ohio, as the "Tony Hall Federal Building and United States Courthouse"; to the Committee on Environment and Public Works.

Mr. DEWINE. Mr. President, I ask unanimous consent that the text of this bill which designates the Federal building and United States courthouse located at 200 West 2nd Street in Dayton, Ohio, as the "Tony Hall Federal

Building and United States Courthouse," be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2269

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF TONY HALL FEDERAL BUILDING AND UNITED STATES COURTHOUSE.

The Federal building and United States courthouse located at 200 West 2nd Street in Dayton, Ohio, shall be known and designated as the "Tony Hall Federal Building and United States Courthouse".

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building and United States courthouse referred to in section 1 shall be deemed to be a reference to the Tony Hall Federal Building and United States Courthouse.

By Mr. MENENDEZ:

S. 2270. A bill to amend the Internal Revenue Code of 1986 to allow a refundable credit against income tax to subsidize the cost of COBRA continuation coverage for certain individuals; to the Committee on Finance.

Mr. MENENDEZ. Mr. President, today I am pleased to introduce the Health Care COBRA OffSet Tax Savings (COSTS) Act of 2006. This important legislation is a step forward in helping working families afford quality health care in this country.

Rewarding work is one of the most fundamental core values of our Nation. Our founding fathers built a society on the notion that if you work hard, you will have an opportunity to provide a better future for your children and thus build a stronger, more competitive nation. And, as we've seen throughout our Nation's history, America's workers have not disappointed.

Unfortunately, too many Americans are working hard every day, but are still unable to make ends meet and provide even the most basic needs for their family, such as food, shelter, or health care. The legislation I'm introducing will help address one of these important challenges: affordable, quality health care for working families.

The statistics are undeniable—almost 46 million Americans have no health insurance and more than 1 million of the uninsured are in my home state of New Jersey. But that's just the beginning of the problem. Even families who are fortunate enough to have health insurance, are struggling to pay the premiums, which in New Jersey, have increased at four times the rate of earnings. Since 2000, the employee share of health care premiums in New Jersey increased almost 43 percent or almost $400 a year. When family earnings increase by only 10 percent over the same period, it becomes clear just how challenging it is for our hard working families to get by.

The Health Care COSTS Act does not address the entire problem, but it will help some workers afford to keep their health insurance when they're between jobs. Currently, many workers who receive health coverage through their employer are entitled to keep that coverage for up to 18 months after they leave their jobs. This coverage is known as COBRA coverage. However, many don't take advantage of COBRA coverage because it's simply too expensive. The employee, who has just lost their job, has to pay the full cost of the coverage, making it prohibitively expensive for most families.

The Health Care COSTS Act helps moderate-income families with the cost of COBRA by providing an "advanceable" tax credit for half the cost of these health care premiums. The tax credit would go directly to the health plan administrator, thus reducing the workers' monthly premiums by half. This is not a handout, but a helping hand for workers who have contributed to the economic well-being of their community and have earned the opportunity to care for their family while they get back on their feet and find another job.

Clearly, there is much more to do in addressing the health care crisis in this country, but this is an important first step in helping working families afford health care coverage during one of the most difficult and vulnerable times a family might face. I hope this legislation will be a starting point for discussion of the significant challenges families face in affording quality health care in this country.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2745. Mrs. CLINTON (for herself, Mr. KERRY, Mr. LAUTENBERG, and Mr. MENENDEZ) submitted an amendment intended to be proposed by her to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table.

SA 2746. Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) proposed an amendment to the bill S. 852, supra.

SA 2747. Mr. SPECTER proposed an amendment to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra.

SA 2748. Mr. CORNYN (for himself, Mr. COBURN, Mr. GRAHAM, Mr. ENSIGN, Mr. CRAPO, Mr. INHOFE, Mr. MARTINEZ, Mr. DEMINT, Mr. THUNE, Mr. BENNETT, Mr. SMITH, Mr. CRAIG, Mr. BUNNING, Mr. THOMAS, Mr. SUNUNU, Mr. CHAMBLISS, Mr. ENZI, and Mr. HAGEL) proposed an amendment to the bill S. 852, supra.

SA 2749. Mr. CORNYN proposed an amendment to amendment SA 2748 proposed by Mr. CORNYN (for himself, Mr. COBURN, Mr. GRAHAM, Mr. ENSIGN, Mr. CRAPO, Mr. INHOFE, Mr. MARTINEZ, Mr. DEMINT, Mr. THUNE, Mr. BENNETT, Mr. SMITH, Mr. CRAIG, Mr. BUNNING, Mr. THOMAS, Mr. SUNUNU, Mr. CHAMBLISS, Mr. ENZI, and Mr. HAGEL) to the bill S. 852, supra.

SA 2750. Mr. FRIST (for Ms. COLLINS (for herself and Mr. BOND)) proposed an amendment to the bill S. 662, to reform the postal laws of the United States.

SA 2751. Mr. FRIST (for Mr. HARKIN) proposed an amendment to the bill S. 662, supra.

SA 2752. Mr. FRIST (for Mr. REID) proposed an amendment to the bill S. 662, supra.

SA 2753. Mr. FRIST (for Mr. STEVENS) proposed an amendment to the bill S. 662, supra.

SA 2754. Mr. KYL (for himself and Mr. CHAMBLISS) proposed an amendment to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

SA 2755. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2756. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2757. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2758. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2745. Mrs. CLINTON (for herself, Mr. KERRY, Mr. LAUTENBERG, and Mr. MENENDEZ) submitted an amendment intended to be proposed by her to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 15, line 23, insert ", or the captive insurance company established and funded under title III of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; 117 Stat. 517)" before the period.

On page 125, between lines 22 and 23, insert the following:

(11) ASBESTOS EXPOSURE AS THE RESULT OF A NATURAL OR OTHER DISASTER.—A claimant may file an exceptional medical claim with the Fund if —

(A) such claimant has been exposed to asbestos from any area that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), as the result of—

(i) a natural or other disaster, occurring before, on, or after the date of enactment of this Act, including—

(I) the attack on the World Trade Center in New York, New York on September 11, 2001; and

(II) Hurricane Katrina of 2005 in the Gulf Region of the United States; or

(ii) the clean up and remediation following such a disaster; or

(B) such claimant has been exposed to asbestos as a result of living with a person who has met the exposure requirements described in subparagraph (A).

On page 365, line 12, insert "(1) IN GENERAL.—" before "Except".

On page 365, between lines 17 and 18, insert the following:

(2) ACTIONS PRESERVED.—Nothing in this Act shall be construed to limit or abrogate any pending or future civil action against the United States Government or any State or local government, or any agency or subdivision thereof, or any former or present officer or employee thereof, in either their official or individual capacities, seeking redress for exposure to asbestos—

(A) from any area that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), as the result of—

(i) a natural or other disaster, occurring before, on, or after the date of enactment of this Act, including—

(I) the attack on the World Trade Center in New York, New York on September 11, 2001; and

(II) Hurricane Katrina of 2005 in the Gulf Region of the United States; or

(ii) the clean up and remediation following such a disaster; or

(B) as a result of living with a person who has met the exposure requirements described in subparagraph (A).

On page 366, between lines 11 and 12, insert the following:

(b) NATURAL DISASTER CLAIMANTS.—

(1) IN GENERAL.—Nothing in this Act shall be construed to limit or abrogate any existing fund, or preclude the formation of any future fund, for the payment of eligible medical expenses relating to treating asbestos-related disease for individuals exposed to asbestos—

(A) from any area that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), as the result of—

(i) a natural or other disaster, occurring before, on, or after the date of enactment of this Act, including—

(I) the attack on the World Trade Center in New York, New York on September 11, 2001; and

(II) Hurricane Katrina of 2005 in the Gulf Region of the United States; or

(ii) the clean up and remediation following such a disaster; or

(B) as a result of living with a person who has met the exposure requirements described in subparagraph (A).

(2) COLLATERAL SOURCE COMPENSATION EXCEPTION.—The payment of any medical expense under paragraph (1) shall not be collateral source compensation as defined under section 134(a).

On page 366, line 12, strike "(b)" and insert "(c)".

SA 2746. Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) proposed an amendment to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Fairness in Asbestos Injury Resolution Act of 2006" or the "FAIR Act of 2006".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purpose.
Sec. 3. Definitions.

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Office of Asbestos Disease Compensation

Sec. 101. Establishment of Office of Asbestos Disease Compensation.
Sec. 102. Advisory Committee on Asbestos Disease Compensation.
Sec. 103. Medical Advisory Committee.
Sec. 104. Claimant assistance.
Sec. 105. Physicians Panels.
Sec. 106. Program startup.
Sec. 107. Authority of the Administrator.

Subtitle B—Asbestos Disease Compensation Procedures

Sec. 111. Essential elements of eligible claim.
Sec. 112. General rule concerning no-fault compensation.
Sec. 113. Filing of claims.
Sec. 114. Eligibility determinations and claim awards.
Sec. 115. Medical evidence auditing procedures.

Subtitle C—Medical Criteria

Sec. 121. Medical criteria requirements.

Subtitle D—Awards

Sec. 131. Amount.
Sec. 132. Medical monitoring.
Sec. 133. Payment.
Sec. 134. Setoffs for collateral source compensation and prior awards.
Sec. 135. Certain claims not affected by payment of awards.

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

Sec. 201. Definitions.
Sec. 202. Authority and tiers.
Sec. 203. Subtiers.
Sec. 204. Assessment administration.
Sec. 205. Stepdowns and funding holidays.
Sec. 206. Accounting treatment.

Subtitle B—Asbestos Insurers Commission

Sec. 210. Definition.
Sec. 211. Establishment of Asbestos Insurers Commission.
Sec. 212. Duties of Asbestos Insurers Commission.
Sec. 213. Powers of Asbestos Insurers Commission.
Sec. 214. Personnel matters.
Sec. 215. Termination of Asbestos Insurers Commission.
Sec. 216. Expenses and costs of Commission.

Subtitle C—Asbestos Injury Claims Resolution Fund

Sec. 221. Establishment of Asbestos Injury Claims Resolution Fund.
Sec. 222. Management of the Fund.
Sec. 223. Enforcement of payment obligations.
Sec. 224. Interest on underpayment or nonpayment.
Sec. 225. Education, consultation, screening, and monitoring.
Sec. 226. National Mesothelioma Research and Treatment Program.

TITLE III—JUDICIAL REVIEW

Sec. 301. Judicial review of rules and regulations.
Sec. 302. Judicial review of award decisions.
Sec. 303. Judicial review of participants' assessments.
Sec. 304. Other judicial challenges.
Sec. 305. Stays, exclusivity, and constitutional review.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. False information.
Sec. 402. Effect on bankruptcy laws.
Sec. 403. Effect on other laws and existing claims.
Sec. 404. Effect on insurance and reinsurance contracts.
Sec. 405. Annual report of the Administrator and sunset of the Act.
Sec. 406. Rules of construction relating to liability of the United States Government.
Sec. 407. Rules of construction.
Sec. 408. Violation of environmental health and safety requirements.
Sec. 409. Nondiscrimination of health insurance.

TITLE V—ASBESTOS BAN

Sec. 501. Prohibition on asbestos containing products.
Sec. 502. Naturally occurring asbestos.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Millions of Americans have been exposed to forms of asbestos that can have devastating health effects.

(2) Various injuries can be caused by exposure to some forms of asbestos, including pleural disease and some forms of cancer.

(3) The injuries caused by asbestos can have latency periods of up to 40 years, and even limited exposure to some forms of asbestos may result in injury in some cases.

(4) Asbestos litigation has had a significant detrimental effect on the country's economy, driving companies into bankruptcy, diverting resources from those who are truly sick, and endangering jobs and pensions.

(5) The scope of the asbestos litigation crisis cuts across every State and virtually every industry.

(6) The United States Supreme Court has recognized that Congress must act to create a more rational asbestos claims system. In 1991, a Judicial Conference Ad Hoc Committee on Asbestos Litigation, appointed by Chief Justice William Rehnquist, found that the "ultimate solution should be legislation recognizing the national proportions of the problem . . . and creating a national asbestos dispute resolution scheme . . .". The Court found in 1997 in Amchem Products Inc. v. Windsor, 521 U.S. 591, 595 (1997), that "[t]he argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure." In 1999, the Court in Ortiz v. Fibreboard Corp., 527 U.S. 819, 821 (1999), found that the "elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation. "That finding was again recognized in 2003 by the Court in Norfolk & Western Railway Co. v. Ayers, 123 S. Ct. 1210 (2003).

(7) This crisis, and its significant effect on the health and welfare of the people of the United States, on interstate and foreign commerce, and on the bankruptcy system, compels Congress to exercise its power to regulate interstate commerce and create this legislative solution in the form of a national asbestos injury claims resolution program to supersede all existing methods to compensate those injured by asbestos, except as specified in this Act.

(8) This crisis has also imposed a deleterious burden upon the United States bankruptcy courts, which have assumed a heavy burden of administering complicated and protracted bankruptcies with limited personnel.

(9) This crisis has devastated many communities across the country, but hardest hit has been Libby, Montana, where tremolite asbestos, 1 of the most deadly forms of asbestos, was contained in the vermiculite ore mined from the area and despite ongoing cleanup by the Environmental Protection Agency, many still suffer from the deadly dust.

(10) The asbestos found in Libby, Montana, tremolite asbestos, has demonstrated an unusually high level of toxicity, as compared to chrysotile asbestos. Diseases contracted from this tremolite asbestos are unique and highly progressive. These diseases typically manifest in a characteristic pleural disease pattern, and often result in severe impairment or death without radiographic interstitial disease or typical chrysotile markers of radiographic severity. According to the Agency for Toxic Substances and Disease Registry previous studies by the National Institutes of Occupational Safety and Health document significantly increased rates of pulmonary abnormalities and disease (asbestosis and lung cancer) among former workers.

(11) Environmental Protection Agency supported studies have determined that the raw vermiculite ore mined and milled in Libby, Montana contained 21 to 26 percent asbestos, by weight. The milled ore, resulting from the processing in Libby, which was shipped out of Libby contained markedly reduced percentages of asbestos. A 1982 Environmental Protection Agency-supported sutdy concluded that oreshipped out of Libby contained 0.3 to 7 percent asbestos, by weight.

(12) In Libby, Montana, exposure pathways are and were not limited to the workplace, rather, for decades there has been an unprecedented 24 hour per day contamination of the community's homes, playgrounds, gardens, and community air, such that the entire community of Libby, Montana, has been designated a Superfund site and is listed on the Environmental Protection Agency's National Priorities List.

(13) These multiple exposure pathways have caused severe asbestos disease and death not only in former workers at the mine and milling facilities, but also in the workers' spouses and children, and in community members who had no direct contact with the mine. According to the Environmental Protection Agency, some potentially important alternative pathways for past asbestos exposure include elevated concentrations of asbestos in ambient air and recreational exposures from children playing in piles of vermiculite. Furthermore, the Environmental Protection Agency has determined that current potential pathways of exposure include vermiculite placed in walls and attics as thermal insulation, vermiculite or ore used as road bed material, ore used as ornamental landscaping, and vermiculite or concentrated ore used as a soil and garden amendment or aggregate in driveways.

(14) The Environmental Protection Agency also concluded, "Asbestos contamination exists in a number of potential source materials at multiple locations in and around the residential and commercial area of Libby. . . While data are not yet sufficient to perform reliable human-health risk evaluations for all sources and all types of disturbance, it is apparent that releases of fiber concentrations higher than Occupational Safety and Health Administration standards may occur in some cases . . . and that screening-level estimates of lifetime excess cancer risk can exceed the upper-bound risk range of 1E–04 usually used by the Environmental Protection Agency for residents under a variety of exposure scenarios. The occurrence of non-occupational asbestos-related disease that has been observed among Libby residents is extremely unusual, and has not been associated with asbestos mines elsewhere, suggesting either very high and prolonged environmental exposures and/or increased toxicity of this form of amphibole asbestos.".

(15) According to a November 2003 article from the Journal Environmental Health Perspectives titled, Radiographic Abnormalities and Exposure to Asbestos-Contaminated Vermiculite in the Community of Libby, Montana, USA, Libby residents who have evidence of "no apparent exposure", i.e., did not work with asbestos, were not a family member of a former worker, etc., had a greater rate of pleural abnormalities (6.7 percent) than did those in control groups or general populations found in other studies from other states (which ranged from 0.2 percent to 4.6 percent). "Given the ubiquitous nature of vermiculite contamination in Libby, along with historical evidence of elevated asbestos concentrations in the air, it would be difficult to find participants who could be characterized as unexposed.".

(16) Nothing in this Act is intended to increase the Federal deficit or impose any burden on the taxpayer. The Office of Asbestos Disease Compensation established under this Act shall be privately funded by annual payments from defendant participants that have been subject to asbestos liability and their insurers. Section 406(b) of this Act expressly provides that nothing in this Act shall be construed to create any obligation of funding from the United States or to require the United States to satisfy any claims if the amounts in the Fund are inadequate. Any borrowing by the Fund is limited to monies expected to be paid into the Fund, and the Administrator shall have no fiscal authroity beyond the amount of private money coming into the Fund. This Act provides the Administrator with broad enforcement authority to pursue debts to the Fund owed by defendant participants or insurer participants and their successors in interest.

(b) PURPOSE.—The purpose of this Act is to—

(1) create a privately funded, publicly administered fund to provide the necessary resources for a fair and efficient system to resolve asbestos injury claims that will provide compensation for legitimate present and future claimants of asbestos exposure as provided in this Act;

(2) provide compensation to those present and future victims based on the severity of their injuries, while establishing a system flexible enough to accommodate individuals whose conditions worsens;

(3) relieve the Federal and State courts of the burden of the asbestos litigation; and

(4) increase economic stability by resolving the asbestos litigation crisis that has bankrupted companies with asbestos liability, diverted resources from the truly sick, and endangered jobs and pensions.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Office of Asbestos Disease Compensation appointed under section 101(b).

(2) ASBESTOS.—The term "asbestos" includes—

(A) chrysotile;

(B) amosite;

(C) crocidolite;

(D) tremolite asbestos;

(E) winchite asbestos;

(F) richterite asbestos;

(G) anthophyllite asbestos;

(H) actinolite asbestos;

(I) asbestiform amphibole minerals;

(J) any of the minerals listed under subparagraphs (A) through (I) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof; and

(K) asbestos-containing material, such as asbestos-containing products, automotive or industrial parts or components, equipment, improvements to real property, and any other material that contains asbestos in any physical or chemical form.

(3) ASBESTOS CLAIM.—

(A) IN GENERAL.—The term "asbestos claim" means any claim, premised on any theory, allegation, or cause of action for damages or other relief presented in a civil action or bankruptcy proceeding, directly, indirectly, or derivatively arising out of, based on, or related to, in whole or part, the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any derivative claim made by, or on behalf of, any exposed person or any representative, spouse, parent, child, or other relative of any exposed person.

(B) EXCLUSION.—The term does not include—

(i) claims alleging damage or injury to tangible property;

(ii) claims for benefits under a workers' compensation law or veterans' benefits program;

(iii) claims arising under any governmental or private health, welfare, disability, death or compensation policy, program or plan;

(iv) claims arising under any employment contract or collective bargaining agreement;

(v) claims arising out of medical malpractice; or

(vi) any claim arising under—

(I) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

(II) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(III) the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.);

(IV) the Equal Pay Act of 1963 (29 U.S.C. 206);

(V) the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.);

(VI) section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983); or

(VII) the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

(4) ASBESTOS CLAIMANT.—The term "asbestos claimant" means an individual who files a claim under section 113.

(5) CIVIL ACTION.—The term "civil action" means all suits of a civil nature in State or Federal court, whether cognizable as cases at law or in equity or in admiralty, but does not include an action relating to any workers' compensation law, or a proceeding for benefits under any veterans' benefits program.

(6) COLLATERAL SOURCE COMPENSATION.—The term "collateral source compensation" means the compensation that the claimant received, or is entitled to receive, from a defendant or an insurer of that defendant, or compensation trust as a result of a final

judgment or settlement for an asbestos-related injury that is the subject of a claim filed under section 113.

(7) ELIGIBLE DISEASE OR CONDITION.—The term "eligible disease or condition" means the extent that an illness meets the medical criteria requirements established under subtitle C of title I.

(8) EMPLOYERS' LIABILITY ACT.—The term "Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employer's Liability Act" shall, for all purposes of this Act, include the Act of June 5, 1920 (46 U.S.C. App. 688), commonly known as the Jones Act, and the related phrase "operations as a common carrier by railroad" shall include operations as an employer of seamen.

(9) FUND.—The term "Fund" means the Asbestos Injury Claims Resolution Fund established under section 221.

(10) INSURANCE RECEIVERSHIP PROCEEDING.—The term "insurance receivership proceeding" means any State proceeding with respect to a financially impaired or insolvent insurer or reinsurer including the liquidation, rehabilitation, conservation, supervision, or ancillary receivership of an insurer under State law.

(11) LAW.—The term "law" includes all law, judicial or administrative decisions, rules, regulations, or any other principle or action having the effect of law.

(12) PARTICIPANT.—

(A) IN GENERAL.—The term "participant" means any person subject to the funding requirements of title II, including—

(i) any defendant participant subject to liability for payments under subtitle A of that title;

(ii) any insurer participant subject to a payment under subtitle B of that title; and

(iii) any successor in interest of a participant.

(B) EXCEPTION.—

(i) IN GENERAL.—A defendant participant shall not include any person protected from any asbestos claim by reason of an injunction entered in connection with a plan of reorganization under chapter 11 of title 11, United States Code, that has been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(ii) APPLICABILITY.—Clause (i) shall not apply to a person who may be liable under subtitle A of title II based on prior asbestos expenditures related to asbestos claims that are not covered by an injunction described under clause (i).

(13) PERSON.—The term "person"—

(A) means an individual, trust, firm, joint stock company, partnership, association, insurance company, reinsurance company, or corporation; and

(B) does not include the United States, any State or local government, or subdivision thereof, including school districts and any general or special function governmental unit established under State law.

(14) STATE.—The term "State" means any State of the United States and also includes the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the entities under this paragraph.

(15) SUBSTANTIALLY CONTINUES.—The term "substantially continues" means that the business operations have not been significantly modified by the change in ownership.

(16) SUCCESSOR IN INTEREST.—The term "successor in interest" means any person that, in 1 or a series of transactions, acquires all or substantially all of the assets and properties (including, without limitation, under section 363(b) or 1123(b)(4) of title 11, United States Code), and substantially continues the business operations, of a participant. The factors to be considered in determining whether a person is a successor in interest include—

(A) retention of the same facilities or location;

(B) retention of the same employees;

(C) maintaining the same job under the same working conditions;

(D) retention of the same supervisory personnel;

(E) continuity of assets;

(F) production of the same product or offer of the same service;

(G) retention of the same name;

(H) maintenance of the same customer base;

(I) identity of stocks, stockholders, and directors between the asset seller and the purchaser; or

(J) whether the successor holds itself out as continuation of previous enterprise, but expressly does not include whether the person actually knew of the liability of the participant under this Act.

(17) VETERANS' BENEFITS PROGRAM.—The term "veterans' benefits program" means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.

(18) WORKERS' COMPENSATION LAW.—The term "workers' compensation law"—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

(B) includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) and chapter 81 of title 5, United States Code; and

(C) does not include the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or damages recovered by any employee in a liability action against an employer.

(19) CLASS ACTION TRUST.—The term "class action trust" means a trust or similar entity established to hold assets for the payment of asbestos claims asserted against a debtor or participating defendant, under a settlement that—

(A) is a settlement of class action claims under rule 23 of the Federal Rules of Civil Procedure; and

(B) has been approved by a final judgment of a United States district court before the date of enactment of this Act.

(20) DEBTOR.—The term "debtor"—

(A) means—

(i) a person that is subject to a case pending under a chapter of title 11, United States Code, on the date of enactment of this Act or at any time during the 1-year period immediately preceding that date, irrespective of whether the debtor's case under that title has been dismissed; and

(ii) all of the direct or indirect majority-owned subsidiaries of a person described under clause (i), regardless of whether any such majority-owned subsidiary has a case pending under title 11, United States Code; and

(B) shall not include an entity—

(i) subject to chapter 7 of title 11, United States Code, if a final decree closing the estate shall have been entered before the date of enactment of this Act; or

(ii) subject to chapter 11 of title 11, United States Code, if a plan of reorganization for such entity shall have been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(21) TRUST.—The term "trust" means any trust, as described in sections 524(g)(2)(B)(i) or 524(h) of title 11, United States Code, or established in conjunction with an order issued under section 105 of title 11, United States Code, established or formed under the terms of a chapter 11 plan of reorganization, which in whole or in part provides compensation for asbestos claims.

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Office of Asbestos Disease Compensation

SEC. 101. ESTABLISHMENT OF OFFICE OF ASBESTOS DISEASE COMPENSATION.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—There is established within the Department of Labor the Office of Asbestos Disease Compensation (hereinafter referred to in this Act as the "Office"), which shall be headed by an Administrator.

(2) PURPOSE.—The purpose of the Office is to provide timely, fair compensation, in the amounts and under the terms specified in this Act, on a no-fault basis and in a non-adversarial manner, to individuals whose health has been adversely affected by exposure to asbestos.

(3) TERMINATION OF THE OFFICE.—The Office of Asbestos Disease Compensation shall terminate effective not later than 12 months following certification by the Administrator that the Fund has neither paid a claim in the previous 12 months nor has debt obligations remaining to pay.

(4) EXPENSES.—There shall be available from the Fund to the Administrator such sums as are necessary for any and all expenses associated with the Office of Asbestos Disease Compensation and necessary to carry out the purposes of this Act. Expenses covered should include—

(A) management of the Fund;

(B) personnel salaries and expenses, including retirement and similar benefits;

(C) the sums necessary for conducting the studies required under this Act;

(D) all administrative and legal expenses; and

(E) any other sum that could be attributable to the Fund.

(b) APPOINTMENT OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator of the Office of Asbestos Disease Compensation shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall serve for a term of 5 years.

(2) REPORTING.—The Administrator shall report directly to the Assistant Secretary of Labor for the Employment Standards Administration.

(c) DUTIES OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator shall be responsible for—

(A) processing claims for compensation for asbestos-related injuries and paying compensation to eligible claimants under the criteria and procedures established under title I;

(B) determining, levying, and collecting assessments on participants under title II;

(C) appointing or contracting for the services of such personnel, making such expenditures, and taking any other actions as may be necessary and appropriate to carry out the responsibilities of the Office, including entering into cooperative agreements with other Federal agencies or State agencies and entering into contracts with nongovernmental entities;

(D) conducting such audits and additional oversight as necessary to assure the integrity of the program;

(E) managing the Asbestos Injury Claims Resolution Fund established under section 221, including—

(i) administering, in a fiduciary capacity, the assets of the Fund for the primary purpose of providing benefits to asbestos claimants and their beneficiaries;

(ii) defraying the reasonable expenses of administering the Fund;

(iii) investing the assets of the Fund in accordance with section 222(b);

(iv) retaining advisers, managers, and custodians who possess the necessary facilities and expertise to provide for the skilled and prudent management of the Fund, to assist in the development, implementation and maintenance of the Fund's investment policies and investment activities, and to provide for the safekeeping and delivery of the Fund's assets; and

(v) borrowing amounts authorized by section 221(b) on appropriate terms and conditions, including pledging the assets of or payments to the Fund as collateral;

(F) promulgating such rules, regulations, and procedures as may be necessary and appropriate to implement the provisions of this Act;

(G) making such expenditures as may be necessary and appropriate in the administration of this Act;

(H) excluding evidence and disqualifying or debarring any attorney, physician, provider of medical or diagnostic services, including laboratories and others who provide evidence in support of a claimant's application for compensation where the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by such individuals or entities; and

(I) having all other powers incidental, necessary, or appropriate to carrying out the functions of the Office.

(2) CERTAIN ENFORCEMENTS.—For each infraction relating to paragraph (1)(H), the Administrator also may impose a civil penalty not to exceed $10,000 on any person or entity found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall prescribe appropriate regulations to implement paragraph (1)(H).

(3) SELECTION OF DEPUTY ADMINISTRATORS.—The Administrator shall select a Deputy Administrator for Claims Administration to carry out the Administrator's responsibilities under this title and a Deputy Administrator for Fund Management to carry out the Administrator's responsibilities under title II of this Act. The Deputy Administrators shall report directly to the Administrator and shall be in the Senior Executive Service.

(d) EXPEDITIOUS DETERMINATIONS.—The Administrator shall prescribe rules to expedite claims for asbestos claimants with terminal circumstances in order to expedite the payment of such claims as soon as possible after startup of the Fund. The Administrator shall contract out the processing of such claims.

(e) AUDIT AND PERSONNEL REVIEW PROCEDURES.—The Administrator shall establish audit and personnel review procedures for evaluating the accuracy of eligibility recommendations of agency and contract personnel.

(f) APPLICATION OF FOIA.—

(1) IN GENERAL.—Section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) shall apply to the Office of Asbestos Disease Compensation and the Asbestos Insurers Commission.

(2) CONFIDENTIALITY OF FINANCIAL RECORDS.—

(A) IN GENERAL.—Any person may label any record submitted under this section as a confidential commercial or financial record for the purpose of requesting exemption from disclosure under section 552(b)(4) of title 5, United States Code.

(B) DUTIES OF ADMINISTRATOR AND CHAIRMAN OF THE ASBESTOS INSURERS COMMISSION.—The Administrator and Chairman of the Asbestos Insurers Commission—

(i) shall adopt procedures for—

(I) handling submitted records marked confidential; and

(II) protecting from disclosure records they determine to be confidential commercial or financial information exempt under section 552(b)(4) of title 5, United States Code; and

(ii) may establish a pre-submission determination process to protect from disclosure records on reserves and asbestos-related liabilities submitted by any defendant participant that is exempt under section 552(b)(4) of title 5, United States Code.

(C) REVIEW OF COMPLAINTS.—Nothing in this section shall supersede or preempt the de novo review of complaints filed under section 552(b)(4) of title 5, United States Code.

(3) CONFIDENTIALITY OF MEDICAL RECORDS.—Any claimant may designate any record submitted under this section as a confidential personnel or medical file for purposes of section 552 of title 5, United States Code. The Administrator and the Chairman of the Asbestos Insurers Commission shall adopt procedures for designating such records as confidential.

SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE COMPENSATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Administrator shall establish an Advisory Committee on Asbestos Disease Compensation (hereinafter the "Advisory Committee").

(2) COMPOSITION AND APPOINTMENT.—The Advisory Committee shall be composed of 20 members, appointed as follows—

(A) The Majority and Minority Leaders of the Senate, the Speaker of the House, and the Minority Leader of the House shall each appoint 4 members. Of the 4—

(i) 2 shall be selected to represent the interests of claimants, at least 1 of whom shall be selected from among individuals recommended by recognized national labor federations; and

(ii) 2 shall be selected to represent the interests of participants, 1 of whom shall be selected to represent the interests of the insurer participants and 1 of whom shall be selected to represent the interests of the defendant participants.

(B) The Administrator shall appoint 4 members, who shall be individuals with qualifications and expertise in occupational or pulmonary medicine, occupational health, workers' compensation programs, financial administration, investment of funds, program auditing, or other relevant fields.

(3) QUALIFICATIONS.—All of the members described in paragraph (2) shall have expertise or experience relevant to the asbestos compensation program, including experience or expertise in diagnosing asbestos-related diseases and conditions, assessing asbestos exposure and health risks, filing asbestos claims, administering a compensation or insurance program, or as actuaries, auditors, or investment managers. None of the members described in paragraph (2)(B) shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

(b) DUTIES.—The Advisory Committee shall advise the Administrator on—

(1) claims filing and claims processing procedures;

(2) claimant assistance programs;

(3) audit procedures and programs to ensure the quality and integrity of the compensation program;

(4) the development of a list of industries, occupations and time periods for which there is a presumption of substantial occupational exposure to asbestos;

(5) recommended analyses or research that should be conducted to evaluate past claims and to project future claims under the program;

(6) the annual report required to be submitted to Congress under section 405; and

(7) such other matters related to the implementation of this Act as the Administrator considers appropriate.

(c) OPERATION OF THE COMMITTEE.—

(1) Each member of the Advisory Committee shall be appointed for a term of 3 years, except that, of the members first appointed—

(A) 8 shall be appointed for a term of 1 year;

(B) 8 shall be appointed for a term of 2 years; and

(C) 8 shall be appointed for a term of 3 years, as determined by the Administrator at the time of appointment.

(2) Any member appointed to fill a vacancy occurring before the expiration of the term shall be appointed only for the remainder of such term.

(3) The Administrator shall designate a Chairperson and Vice Chairperson from among members of the Advisory Committee appointed under subsection (a)(2)(B).

(4) The Advisory Committee shall meet at the call of the Chairperson or the majority of its members, and at a minimum shall meet at least 4 times per year during the first 5 years of the asbestos compensation program, and at least 2 times per year thereafter.

(5) The Administrator shall provide to the Committee such information as is necessary and appropriate for the Committee to carry out its responsibilities under this section. The Administrator may, upon request of the Advisory Committee, secure directly from any Federal, State, or local department or agency such information as may be necessary and appropriate to enable the Advisory Committee to carry out its duties under this section. Upon request of the Administrator, the head of such department or agency shall furnish such information to the Advisory Committee.

(6) The Administrator shall provide the Advisory Committee with such administrative support as is reasonably necessary to enable it to perform its functions.

(d) EXPENSES.—Members of the Advisory Committee, other than full-time employees of the United States, while attending meetings of the Advisory Committee or while otherwise serving at the request of the Administrator, and while serving away from their homes or regular places of business, shall be allowed travel and meal expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government serving without pay.

SEC. 103. MEDICAL ADVISORY COMMITTEE.

(a) IN GENERAL.—The Administrator shall establish a Medical Advisory Committee to provide expert advice regarding medical issues arising under the statute.

(b) QUALIFICATIONS.—None of the members of the Medical Advisory Committee shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

SEC. 104. CLAIMANT ASSISTANCE.

(a) ESTABLISHMENT.—Not later than 120 days after the enactment of this Act, the Administrator shall establish a comprehensive asbestos claimant assistance program to—

(1) publicize and provide information to potential claimants about the availability of benefits for eligible claimants under this Act, and the procedures for filing claims and for obtaining assistance in filing claims;

(2) provide assistance to potential claimants in preparing and submitting claims, including assistance in obtaining the documentation necessary to support a claim and any other appropriate paralegal assistance;

(3) respond to inquiries from claimants and potential claimants;

(4) provide training with respect to the applicable procedures for the preparation and filing of claims to persons who provide assistance or representation to claimants; and

(5) provide for the establishment of a website where claimants may access all relevant forms and information.

(b) RESOURCE CENTERS.—The claimant assistance program shall provide for the establishment of resource centers in areas where there are determined to be large concentrations of potential claimants. These centers shall be located, to the extent feasible, in facilities of the Department of Labor or other Federal agencies.

(c) CONTRACTS.—The claimant assistance program may be carried out in part through contracts with labor organizations, community-based organizations, and other entities which represent or provide services to potential claimants, except that such organizations may not have a financial interest in the outcome of claims filed with the Office.

(d) LEGAL ASSISTANCE.—

(1) IN GENERAL.—As part of the program established under subsection (a), the Administrator shall establish a legal assistance program to provide assistance to asbestos claimants concerning legal representation issues.

(2) LIST OF QUALIFIED ATTORNEYS.—As part of the program, the Administrator shall maintain a roster of qualified attorneys who have agreed to provide pro bono services to asbestos claimants under rules established by the Administrator. The claimants shall not be required to use the attorneys listed on such roster.

(3) NOTICE.—

(A) NOTICE BY ADMINISTRATOR.—The Administrator shall provide asbestos claimants with notice of, and information relating to—

(i) pro bono services for legal assistance available to those claimants; and

(ii) any limitations on attorneys fees for claims filed under this title.

(B) NOTICE BY ATTORNEYS.—Before a person becomes a client of an attorney with respect to an asbestos claim, that attorney shall provide notice to that person of pro bono services for legal assistance available for that claim.

(e) ATTORNEY'S FEES.—

(1) LIMITATION.—

(A) IN GENERAL.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual under the Fund, more than 5 percent of a final monetary award made (whether by the Administrator initially or as a result of administrative review) under the Fund on such claim.

(B) REVIEW OF PROPOSED DECISION.—

(i) REASONABLE FEE.—If an individual seeks a review of a proposed decision in accordance with section 114(d), the representative of such individual may, in lieu of seeking payment for services rendered subject to the limitation described in paragraph (1), obtain a reasonable attorney's fee.

(ii) CALCULATION OF REASONABLE FEE.—Any fee obtained under clause (i) shall be calculated by multiplying a reasonable hourly rate by the number of hours reasonably expended on the claim of the individual.

(iii) REQUIREMENTS FOR COMPENSATION.—A representative of an individual shall not be eligible to receive a fee under clause (i), unless—

(I) such representative submits to the Administrator detailed contemporaneous billing records for any work actually performed in the course of representation of an individual; and

(II) the Administrator finds, based on billing records submitted by the representative under subclause (I), that the work for which compensation is sought was reasonably performed, and that the requested hourly fee is reasonable.

(2) PENALTY.—Any representative of an asbestos claimant who violates this subsection shall be fined not more than the greater of—

(A) $5,000; or

(B) twice the amount received by the representative for services rendered in connection with each such violation.

SEC. 105. PHYSICIANS PANELS.

(a) APPOINTMENT.—The Administrator shall, in accordance with section 3109 of title 5, United States Code, appoint physicians with experience and competency in diagnosing asbestos-related diseases to be available to serve on Physicians Panels, as necessary to carry out this Act.

(b) FORMATION OF PANELS.—

(1) IN GENERAL.—The Administrator shall periodically determine—

(A) the number of Physicians Panels necessary for the efficient conduct of the medical review process under section 121;

(B) the number of Physicians Panels necessary for the efficient conduct of the exceptional medical claims process under section 121; and

(C) the particular expertise necessary for each panel.

(2) EXPERTISE.—Each Physicians Panel shall be composed of members having the particular expertise determined necessary by the Administrator, randomly selected from among the physicians appointed under subsection (a) having such expertise.

(3) PANEL MEMBERS.—Except as provided under subparagraph (B), each Physicians Panel shall consist of 3 physicians, 2 of whom shall be designated to participate in each case submitted to the Physicians Panel, and the third of whom shall be consulted in the event of disagreement.

(c) QUALIFICATIONS.—To be eligible to serve on a Physicians Panel under subsection (a), a person shall be—

(1) a physician licensed in any State;

(2) board-certified in pulmonary medicine, occupational medicine, internal medicine, oncology, or pathology; and

(3) an individual who, for each of the 5 years before and during his or her appointment to a Physicians Panel, has earned not more than 15 percent of his or her income as an employee of a participating defendant or insurer or a law firm representing any party in asbestos litigation or as a consultant or expert witness in matters related to asbestos litigation.

(d) DUTIES.—Members of a Physicians Panel shall—

(1) make such medical determinations as are required to be made by Physicians Panels under section 121; and

(2) perform such other functions as required under this Act.

(e) COMPENSATION.—Notwithstanding any limitation otherwise established under section 3109 of title 5, United States Code, the Administrator shall be authorized to pay members of a Physician Panel such compensation as is reasonably necessary to obtain their services.

(f) FEDERAL ADVISORY COMMITTEE ACT.—A Physicians Panel established under this section shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App. 2).

SEC. 106. PROGRAM STARTUP.

(a) IMMEDIATE STARTUP.—

(1) IN GENERAL.—Subject to section 101(d), the Administrator may—

(A) start receiving, reviewing, and deciding claims immediately upon the date of enactment of this Act; and

(B) reimburse the Department of Labor from the Fund for any expense incurred—

(i) before that date of enactment in preparation for carrying out any of the responsibilities of the Administrator under this Act; and

(ii) during the 60-day period following that date of enactment to carry out such responsibilities.

(2) INTERIM REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Administrator shall promulgate interim regulations and procedures for the processing of claims under this title and the operation of the Fund under title II, including procedures for the expediting of terminal health claims, and processing of claims through the claims facility.

(b) INTERIM PERSONNEL AND CONTRACTING.—The Secretary of Labor and the Assistant Secretary of Labor for the Employment Standards Administration shall make available to the Administrator on a temporary basis such personnel and other resources as may be necessary to facilitate the expeditious startup of the program. The Administrator may in addition contract with individuals or entities having relevant experience to assist in the expeditious startup of the program including entering into contracts on an expedited or sole source basis during the startup period for the purpose of processing claims or providing financial analysis or assistance. Such relevant experience shall include, but not be limited to, experience with the review of workers' compensation, occupational disease, or similar claims and with financial matters relevant to the operation of the program.

(c) TERMINAL HEALTH CLAIMS.—

(1) IN GENERAL.—The Administrator shall develop procedures, as provided in section 106(f), to provide for an expedited process to categorize, evaluate, and pay terminal health claims. Such procedures, as provided in section 106(f), shall include, pending promulgation of final regulations, adoption of

interim regulations as needed for processing of terminal health claims.

(2) ELIGIBLE TERMINAL HEALTH CLAIMS.—A claim shall qualify for treatment as a terminal health claim if—

(A) the claimant is living and provides a diagnosis of mesothelioma meeting the requirements of section 121(d)(9);

(B) the claimant is living and provides a credible declaration or affidavit, from a diagnosing physician who has examined the claimant within 120 days before the date of such declaration or affidavit, that the physician has diagnosed the claimant as being terminally ill from an asbestos-related illness and having a life expectancy of less than 1 year due to such asbestos-related illness; or

(C) the claimant is the spouse or child of an eligible terminal health claimant who—

(i) was living when the claim was filed with the Fund, or if before the implementation of interim regulations for the filing of claims with the Fund, on the date of enactment of this Act;

(ii) has since died from a malignant disease or condition; and

(iii) has not received compensation from the Fund for the disease or condition for which the claim was filed.

(3) ADDITIONAL TERMINAL HEALTH CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as terminal health claims under this subsection except that exceptional medical claims may not proceed.

(4) CLAIMS FACILITY.—To facilitate the prompt payment of terminal health claims prior to the Fund being certified as operational, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, shall process and pay claims in accordnace with section 106(f)(2). The processing and payment of claims shall be subject to regulations promulgated under this Act.

(5) AUTHORIZATION FOR CONTRACTS WITH CLAIMS FACILITIES.—The Administrator may enter into contracts with a claims facility for the processing of claims (except for exceptional medical claims) in accordance with this title.

(d) PRIORITIZATION OF CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis. The Administrator shall prioritize the processing and payment of health claims involving claimants with the most serious health claims. The Administrator shall also prioritize claims from claimants who face extreme financial hardship.

(e) INTERIM ADMINISTRATOR.—Until an Administrator is appointed and confirmed under section 101(b), the responsibilities of the Administrator under this Act shall be performed by the Assistant Secretary of Labor for the Employment Standards Administration, who shall have all the authority conferred by this Act on the Administrator and who shall be deemed to be the Administrator for purposes of this Act. Before final regulations being promulgated relating to claims processing, the Interim Administrator may prioritize claims processing, without regard to the time requirements prescribed in subtitle B of this title, based on severity of illness and likelihood that exposure to asbestos was a substantial contributing factor for the illness in question.

(f) STAY OF CLAIMS; RETURN TO TORT SYSTEM.—

(1) STAY OF CLAIMS.—Notwithstanding any other provision of this Act, any asbestos claim pending on the date of enactment of this Act, other than a claim to which section 403(d)(2) applies or as otherwise provided in section 402(f), stayed.

(2) TERMINAL HEALTH CLAIMS.—

(A) PROCEDURES FOR SETTLEMENT OF TERMINAL HEALTH CLAIMS.—

(i) IN GENERAL.—Any person that has filed a terminal health claim, as provided under subsection (c)(2), seeking a judgment or order for monetary damages in any Federal or State court before the date of the enactment of this Act, shall seek a settlement in accordance with this paragraph. Any person with a terminal health claim, as provided under subsection (c)(2), that arises after such date of enactment shall seek a settlement in accordance with this paragraph.

(ii) FILING.—

(I) IN GENERAL.—At any time before the Fund or claims facility is certified as operational and paying terminal health claims at a reasonable rate, any person with a terminal health claim as described under clause (i) shall file a notice of their intent to seek a settlement or shall file their exigent health claim with the Administrator or claims facility. Filing of an exigent health claim with the Administrator or claims facility may serve as notice of intent to seek a settlement.

(II) EXCEPTION.—Any person who seeks compensation for an exigent health claim from a trust in accordance with section 402(f) shall not be eligible to seek a settlement or settlement offer under this paragraph.

(iii) TERMINAL HEALTH CLAIM INFORMATION.—To file a terminal health claim, each individual shall provide all of the following information:

(I) The amount received or entitled to be received as a result of all collateral source compensation under section 134, and copies of all settlement agreements and related documents sufficient to show the accuracy of that amount.

(II) A description of any claims for compensation for an asbestos related injury or disease filed by the claimant with any trust or class action trust, and the status or disposition or any such claims.

(III) All information that the claimant would be required to provide to the Administrator in support of a claim under sections 113(c) and 121.

(IV) A certification by the claimant that the information provided is true and complete. The certification provided under this subclause shall be subject to the same penalties for false or misleading statements that would be applicable with regard to information provided to the Administrator or claims facility in support of a claim.

(V) For terminal health claims arising after the date of enactment of this Act, the claimant shall identify each defendant that would be an appropriate defendant in a civil action seeking damages for the asbestos claim of the claimant. Identification of all potential participants shall be made in good faith by the claimant.

(iv) TIMING.—A claimant who has filed a notice of their intent to seek a settlement under clause (ii) shall within 60 days after filing notice provide to the Administrator or claims facility the information required under clause (iii). If a claimant has filed an exigent health claim under clause (ii) the Administrator shall provide all affected defendants the information required under clause (iii).

(v) WEBSITE.—

(I) POSTING.—The Administrator or claims facility shall post the information described in subclause (II) to a secure website, accessible on a passcode-protected basis to participants.

(II) REQUIRED INFORMATION.—The website established under subclause (I) shall contain a listing of—

(aa) each claimant that has filed a notice of intent to seek a settlement or claim under this clause;

(bb) the name of such claimant; and

(cc) if applicable—

(AA) the name of the court where such claim was filed;

(BB) the case or docket number of such claim; and

(CC) the date such claim was filed.

(III) PROHIBITIONS.—The website established under subclause (I) shall not contain specific health or medical information or social security numbers.

(IV) PARTICIPANT ACCESS.—A participant's access to the website established under subclause (I) shall be limited on a need to know basis, and participants shall not disclose or sell data, or retain data for purposes other than paying an asbestos claim.

(V) VIOLATIONS.—Any person or other entity that violates any provision of this clause, including by breaching any data posted on the website, shall be subject to an injunction, or civil penalties, or both.

(vi) ADMINISTRATOR OR CLAIMS FACILITY CERTIFICATION OF SETTLEMENT.—

(I) DETERMINATION.—Within 60 days after the information under clause (iii) is provided, the Administrator or claims facility shall determine whether or not the claim meets the requirements of a terminal health claim.

(II) REQUIREMENTS MET.—If the Administrator or claims facility determines that the claim meets the requirements of a terminal health claim, the Administrator or claims facility shall immediately—

(aa) issue and serve on all parties a certification of eligibility of such claim;

(bb) determine the value of such claim under the Fund by subtracting from the amount in section 131 the total amount of collateral source compensation received by the claimant; and

(cc) pay the award of compensation to the claimant under clause (xiii).

(III) REQUIREMENTS NOT MET.—If the requirements under clause (iii) are not met, the claimant shall have 30 days to perfect the claim. If the claimant fails to perfect the claim within that 30-day period or the Administrator or claims facility determines that the claim does not meet the requirements of a terminal health claim, the claim shall not be eligible to proceed under this paragraph. A claimant may appeal any decision issued by a claims facility with the Administrator in accordance with section 114.

(vii) FAILURE TO CERTIFY.—If the Administrator or claims facility is unable to process the claim and does not make a determination regarding the certification of the claim as required under clause (vi), the Administrator or claims facility shall within 10 days after the end of the 60-day period referred to under clause (vi)(I) provide notice of the failure to act to the claimant and the defendants in the pending Federal or State court action or the defendants identified under clause (iii)(IV). If the Administrator or claims facility fails to provide such notice within 10 days, the claimant may elect to provide the notice to the affected defendants to prompt a settlement offer. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(viii) FAILURE TO PAY.—If the Administrator or claims facility does not pay the award as required under clause (xiii), the Administrator shall refer the certified claim within 10 days as a certified terminal health claim to the defendants in the pending Federal and State court action or to the potential defendants identified under clause (iii)(IV) for terminal claims arising after the date of enactment of this Act. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(ix) SETTLEMENT OFFER.—Any participant or participants may, within 30 days after receipt of such notice as provided under clause (vii) or (viii), file and serve on all parties and the Administrator a good faith settlement offer in an aggregate amount not to exceed the total amount to which the claimant would receive under section 131. If the aggregate amount offered by all participants exceeds the award determined by the Administrator, all offers shall be deemed reduced pro-rata until the aggregate amount equals the award amount. An acceptance of such settlement offer for claims pending before the date of enactment of this Act shall be subject to approval by the trial judge or authorized magistrate in the court where the claim is pending. The court shall approve any such accepted offer within 20 days after a request, unless there is evidence of bad faith or fraud. No court approval is necessary if the terminal health claim was certified by the Administrator or claims facility under clause (vi).

(x) ACCEPTANCE OR REJECTION.—Within 20 days after receipt of the settlement offer, or the amended settlement offer, the claimant shall either accept or reject such offer in writing. If the amount of the settlement offer made by the Administrator, claims facility, or participants equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xi) OPPORTUNITY TO CURE.—If the settlement offer is rejected for being less than what the claimant would receive under the Fund, the participants shall have 10 business days to make an amended offer. If the amended offer equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement offer in writing. If the settlement offer is again rejected as less than what the claimant would receive under the Fund or if participants fail to make an amended offer, the claimant shall recover 150 percent of what the claimant would receive under the Fund. If the amount of the amended settlement offer made by the Administrator, claims facility, or participants equals 150 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xii) PAYMENT SCHEDULE.—

(I) MESOTHELIOMA CLAIMANTS.—For mesothelioma claimants—

(aa) an initial payment of 50 percent shall be made within 30 days after the date the settlement is accepted and the second and final payment shall be made 6 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participant, the payments may be extended 50 percent in 6 months and 50 percent 11 months after the date the settlement offer is accepted.

(II) OTHER TERMINAL CLAIMANTS.—For other terminal claimants, as defined under section 106(c)(2)(B) and (C)—

(aa) the initial payment of 50 percent shall be made within 6 months after the date the settlement is accepted and the second and final payment shall be made 12 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participants, the payments may be extended 50 percent within 1 year after the date the settlement offer is accepted and 50 percent in 2 years after date the settlement offer is accepted.

(III) RELEASE.—Once a claimant has received final payment of the accepted settlement offer, and penalty payment if applicable, the claimant shall release any outstanding asbestos claims.

(xiii) RECOVERY OF COSTS.—

(I) IN GENERAL.—Any participant whose settlement offer is accepted may recover the cost of such settlement by deducting from the participant's next and subsequent contributions to the Fund the full amount of the payment made by such participant to the terminal health claimant, unless the Administrator finds, on the basis of clear and convincing evidence, that the participant's offer is not in good faith. Any such payment shall be considered a payment to the Fund for purposes of section 404(e)(1) and in response to the payment obligations imposed on participants in title II.

(II) REIMBURSEMENT.—Notwithstanding subclause (I), if the deductions from the participant's next and subsequent contributions to the Fund do not fully recover the cost of such payments on or before its third annual contribution to the Fund, the Fund shall reimburse such participant for such remaining cost not later than 6 months after the date of the third scheduled Fund contribution.

(xiv) FAILURE TO MAKE OFFER.—If participants fail to make a settlement offer within the 30-day period described under clause (ix) or make amended offers within the 10 business day cure period described under clause (xi), the claimant shall be entitled to recover 150 percent of what the claimant would receive under the Fund before the stay being lifted under subparagraph (B).

(xv) FAILURE TO PAY.—If a participant fails to pay an accepted settlement offer within the payment schedule under clause (xii), the claimant shall be entitled to recover 150 percent of what the claimant would receive under the Fund before the stay being lifted under subparagraph (B). If the stay is lifted under subparagraph (B) the claimant may seek a judgment or order for monetary damages from the court where the case is currently pending or the appropriate Federal or State court for claims arising after the date of enactment of this Act.

(B) STAY TERMINATED AND REVERSION TO COURT.—If 9 months after a terminal health claim has been filed under subparagraph (A), a claimant has not received a settlement under subparagraph (A)(xii) and the Administrator has not certified to Congress that the Fund or claims facility is operational and paying terminal health claims at a reasonable rate, the stay of claim provided under paragraph (1) shall be lifted and such terminal health claimant, may immediately seek a judgment or order for monetary damages from the court where the case is currently pending or the appropriate Federal or State court for claims arising after the date of enactment of this Act. If a claimant has failed to file a claim or notice of intent to seek a settlement, as required under subparagraph (A)(ii), the provisions of this subparagraph shall not apply.

(C) CREDIT OF CLAIM AND EFFECT OF OPERATIONAL FUND.—

(i) COLLATERAL SOURCE.—If an asbestos claim is pursued in Federal or State court in accordance with this paragraph, any recovery by the claimant shall be a collateral source compensation for purposes of section 134.

(ii) RECOVERY OF COSTS.—Any participant may recover the cost of any claim continued in court for up to the amount the claimant would receive under the Fund by deducting from the participant's next and subsequent contributions to the Fund for that amount of the payment made by such participant to the terminal health claimant.

(3) PURSUAL OF NON-TERMINAL ASBESTOS CLAIMS IN FEDERAL OR STATE COURT.—

(A) IN GENERAL.—

(i) PURSUAL OF CLAIMS.—Notwithstanding any other provision of this Act, if not later than 24 months after the date of enactment of this Act, the Administrator cannot certify to Congress that the Fund is operational and paying all valid claims at a reasonable rate, any person with a non-terminal asbestos claim stayed, except for any person whose claim does not exceed a Level I claim, may pursue that claim in the Federal district court (if the claim is otherwise within the jurisdiction of the court) or State court located within—

(I) the State of residence of the claimant; or

(II) the State in which the asbestos exposure occurred.

(ii) RULE OF CONSTRUCTION.—This subparagraph shall not be construed as creating a new Federal cause of action.

(B) DEFENDANTS NOT FOUND.—If any defendant cannot be found in the State described under subparagraph (A) (i) or (ii), the claim may be pursued in the Federal district court or State court located within any State in which the defendant may be found.

(C) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the asbestos exposure occurred in more than 1 county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subparagraph.

(D) STATE VENUE REQUIREMENTS.—Nothing in this paragraph shall preempt or supersede any State law relating to venue requirements within that State which are more restrictive.

(E) CREDIT OF CLAIM AND EFFECT OF OPERATIONAL OR NONOPERATIONAL FUND.—

(i) CREDIT OF CLAIM.—If an asbestos claim is pursued in Federal or State court in accordance with this paragraph, any recovery by the claimant shall be a collateral source compensation for purposes of section 134.

(ii) OPERATIONAL CERTIFICATION.—Operational certification shall be a filing in the Federal Register confirming that the Fund is capable of operating and paying all valid asbestos claims at a reasonable rate.

(iii) OPERATIONAL PRECONDITIONS.—

(I) The Administrator may not issue a operational certification until—

(aa) 60 days after the funding allocation information required under section 221(e) has been published in the Federal Register; and

(bb) insurers subject to section 212(a)(3) submit their names and information to the Administrator within 30 days after the date of enactment of this Act and 60 days after the Administrator publishes such information in the Federal Register.

(iv) OPERATIONAL FUND.—If the Administrator issues an operational certification and notifies Congress that the Fund has become operational and paying all valid asbestos claims at a reasonable rate, any non-terminal asbestos claim in a civil action in Federal or State court that is not on trial before a jury which has been impaneled and presentation of evidence has commenced, but before its deliberation, or before a judge and is at the presentation of evidence shall be deemed a reinstated claim against the Fund and the civil action before the Federal or State court shall be null and void.

(v) NONOPERATIONAL FUND.—Notwithstanding any other provision of this Act, if the Administrator subsequently issues a nonoperational certification and notifies Congress that the Fund is unable to become operational and pay all valid asbestos claims at a reasonable rate, all asbestos claims have been stayed or not filed may be filed or reinstated in the appropriate Federal or State court.

(4) RESERVATION OF RIGHTS.—Except as otherwise provided in this Act, participation in the offer and settlement process under this subsection shall not affect or prejudice any rights or defenses a party might have in any litigation.

SEC. 107. AUTHORITY OF THE ADMINISTRATOR.

The Administrator, on any matter within the jurisdiction of the Administrator under this Act, may—

(1) issue subpoenas for and compel the attendance of witnesses within a radius of 200 miles;

(2) administer oaths;

(3) examine witnesses;

(4) require the production of books, papers, documents, and other evidence; and

(5) request assistance from other Federal agencies with the performance of the duties of the Administrator under this Act.

Subtitle B—Asbestos Disease Compensation Procedures

SEC. 111. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.

To be eligible for an award under this Act for an asbestos-related disease or injury, an individual shall—

(1) file a claim in a timely manner in accordance with sections 106(f)(2) and 113; and

(2) prove, by a preponderance of the evidence, that the claimant suffers from an eligible disease or condition, as demonstrated by evidence that meets the requirements established under subtitle C.

SEC. 112. GENERAL RULE CONCERNING NO-FAULT COMPENSATION.

An asbestos claimant shall not be required to demonstrate that the asbestos-related injury for which the claim is being made resulted from the negligence or other fault of any other person.

SEC. 113. FILING OF CLAIMS.

(a) WHO MAY SUBMIT.—

(1) IN GENERAL.—Any individual who has suffered from a disease or condition that is believed to meet the requirements established under subtitle C (or the personal representative of the individual, if the individual is deceased or incompetent) may file a claim with the Office for an award with respect to such injury.

(2) DEFINITION.—In this Act, the term "personal representative" shall have the same meaning as that term is defined in section 104.4 of title 28 of the Code of Federal Regulations, as in effect on December 31, 2004.

(3) LIMITATION.—A claim may not be filed by any person seeking contribution or indemnity.

(4) EFFECT OF MULTIPLE INJURIES.—

(A) IN GENERAL.—A claimant who receives an award for an eligible disease or condition shall not be precluded from submitting claims for and receiving additional awards under this title for any higher disease level for which the claimant becomes eligible, subject to appropriate setoffs as provided under section 134.

(B) LIBBY, MONTANA CLAIMS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), if a Libby, Montana claimant worsens in condition, as measured by pulmonary function tests, such that a claimant qualifies for a higher nonmalignant level, the claimant shall be eligible for an additional award, at the appropriate level, offset by any award previously paid under this Act, such that a claimant would qualify for Level IV if the claimant satisfies section 121(f)(8), and would qualify for Level V if the claimant provides—

(I) a diagnosis of bilateral asbestos related nonmalignant disease;

(II) evidence of TLC or FVC less than 60 percent; and

(III) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(ii) SUBSEQUENT MALIGNANT DISEASE.—If a Libby, Montana, claimant develops malignant disease, such that the claimant qualifies for Level VI, VII, VIII, or IX, subparagraph (A) shall apply.

(b) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—If a claim is not filed with the Office within the limitations period specified in this subsection for that category of claim, such claim shall be extinguished, and any recovery thereon shall be prohibited.

(2) INITIAL CLAIMS.—An initial claim for an award under this Act shall be filed within 5 years after the date on which the claimant first received a medical diagnosis and medical test results sufficient to satisfy the criteria for the disease level for which the claimant is seeking compensation.

(3) CLAIMS FOR ADDITIONAL AWARDS.—

(A) NON-MALIGNANT DISEASES.—If a claimant has previously filed a timely initial claim for compensation for any non-malignant disease level, there shall be no limitations period applicable to the filing of claims by the claimant for additional awards for higher disease levels based on the progression of the non-malignant disease.

(B) MALIGNANT DISEASES.—Regardless of whether the claimant has previously filed a claim for compensation for any other disease level, a claim for compensation for a malignant disease level shall be filed within 5 years after the claimant first obtained a medical diagnosis and medical test results sufficient to satisfy the criteria for the malignant disease level for which the claimant is seeking compensation.

(4) EFFECT ON PENDING CLAIMS.—

(A) IN GENERAL.—If, on the date of enactment of this Act, an asbestos claimant has any timely filed asbestos claim that is preempted under section 403(e), such claimant shall file a claim under this section within 5 years after such date of enactment, or any claim relating to that injury, and any other asbestos claim related to that injury shall be extinguished, and recovery on any such claim shall be prohibited.

(B) SPECIAL RULE.—For purposes of this paragraph, a claim shall not be treated as pending with a trust established under title 11, United States Code, solely because a claimant whose claim was previously compensated by the trust has or alleges—

(i) a non-contingent right to the payment of future installments of a fixed award; or

(ii) a contingent right to recover some additional amount from the trust on the occurrence of a future event, such as the reevaluation of the trust's funding adequacy or projected claims experience.

(c) REQUIRED INFORMATION.—A claim filed under subsection (a) shall be in such form, and contain such information in such detail, as the Administrator shall by regulation prescribe. At a minimum, a claim shall include—

(1) the name, social security number, gender, date of birth, and, if applicable, date of death of the claimant;

(2) information relating to the identity of dependents and beneficiaries of the claimant;

(3) an employment history sufficient to establish required asbestos exposure, accompanied by social security or other payment records or a signed release permitting access to such records;

(4) a description of the asbestos exposure of the claimant, including, to the extent known, information on the site, or location of exposure, and duration and intensity of exposure;

(5) a description of the tobacco product use history of the claimant, including frequency and duration;

(6) an identification and description of the asbestos-related diseases or conditions of the claimant, accompanied by a written report by the claimant's physician with medical diagnoses and x-ray films, and other test results necessary to establish eligibility for an award under this Act;

(7) a description of any prior or pending civil action or other claim brought by the claimant for asbestos-related injury or any other pulmonary, parenchymal, or pleural injury, including an identification of any recovery of compensation or damages through settlement, judgment, or otherwise; and

(8) for any claimant who asserts that he or she is a nonsmoker or an ex-smoker, as defined in section 131, for purposes of an award under Malignant Level VI, Malignant Level VII, or Malignant Level VIII, evidence to support the assertion of nonsmoking or ex-smoking, including relevant medical records.

(d) DATE OF FILING.—A claim shall be considered to be filed on the date that the claimant mails the claim to the Office, as determined by postmark, or on the date that the claim is received by the Office, whichever is the earliest determinable date.

(e) INCOMPLETE CLAIMS.—If a claim filed under subsection (a) is incomplete, the Administrator shall notify the claimant of the information necessary to complete the claim and inform the claimant of such services as may be available through the Claimant Assistance Program established under section 104 to assist the claimant in completing the claim. Any time periods for the processing of the claim shall be suspended until such time as the claimant submits the information necessary to complete the claim. If such information is not received within 1 year after the date of such notification, the claim shall be dismissed.

SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM AWARDS.

(a) In General.—

(1) Review of claims.—The Administrator shall, in accordance with this section, determine whether each claim filed under the Fund or claims facility satisfies the requirements for eligibility for an award under this Act and, if so, the value of the award. In making such determinations, the Administrator shall consider the claim presented by the claimant, the factual and medical evidence submitted by the claimant in support of the claim, the medical determinations of any Physicians Panel to which a claim is referred under section 121, and the results of such investigation as the Administrator may deem necessary to determine whether the claim satisfies the criteria for eligibility established by this Act.

(2) Additional evidence.—The Administrator may request the submission of medical evidence in addition to the minimum requirements of section 113(c) if necessary or appropriate to make a determination of eligibility for an award, in which case the cost of obtaining such additional information or testing shall be borne by the Office.

(b) Proposed Decisions.—Not later than 90 days after the filing of a claim, the Administrator shall provide to the claimant (and the claimant's representative) a proposed decision accepting or rejecting the claim in whole or in part and specifying the amount of the proposed award, if any. The proposed decision shall be in writing, shall contain findings of fact and conclusions of law, and shall contain an explanation of the procedure for obtaining review of the proposed decision.

(c) Payments if No Timely Proposed Decision.—If the Administrator has received a complete claim and, after the Fund has been certified subject to section 106(f)(3)(E) has not provided a proposed decision to the claimant under subsection (b) within 180 days after the filing of the claim, the claim shall be deemed accepted and the claimant shall be entitled to payment under section 133(a)(2). If the Administrator subsequently rejects the claim the claimant shall receive no further payments under section 133. If the Administrator subsequently rejects the claim in part, the Administrator shall adjust future payments due the claimant under section 133 accordingly. In no event may the Administrator recover amounts properly paid under this section from a claimant.

(d) Review of Proposed Decisions.—

(1) Right to hearing.—

(A) In general.—Any claimant not satisfied with a proposed decision of the Administrator under subsection (b) shall be entitled, on written request made within 90 days after the date of the issuance of the decision, to a hearing on the claim of that claimant before a representative of the Administrator. At the hearing, the claimant shall be entitled to present oral evidence and written testimony in further support of that claim.

(B) Conduct of hearing.—When practicable, the hearing will be set at a time and place convenient for the claimant. In conducting the hearing, the representative of the Administrator shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 554 of title 5, United States Code, except as provided by this Act, but shall conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the representative shall receive such relevant evidence as the claimant adduces and such other evidence as the representative determines necessary or useful in evaluating the claim.

(C) Request for subpoenas.—

(i) In general.—A claimant may request a subpoena but the decision to grant or deny such a request is within the discretion of the representative of the Administrator. The representative may issue subpoenas for the attendance and testimony of witnesses, and for the production of books, records, correspondence, papers, or other relevant documents. Subpoenas are issued for documents only if such documents are relevant and cannot be obtained by other means, and for witnesses only where oral testimony is the best way to ascertain the facts.

(ii) Request.—A claimant may request a subpoena only as part of the hearing process. To request a subpoena, the requester shall—

(I) submit the request in writing and send it to the representative as early as possible, but no later than 30 days after the date of the original hearing request; and

(II) explain why the testimony or evidence is directly relevant to the issues at hand, and a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the documents or testimony could have been obtained.

(iii) Fees and mileage.—Any person required by such subpoena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. Such fees and mileage shall be paid from the Fund.

(2) Review of written record.—In lieu of a hearing under paragraph (1), any claimant not satisfied with a proposed decision of the Administrator shall have the option, on written request made within 90 days after the date of the issuance of the decision, of obtaining a review of the written record by a representative of the Administrator. If such review is requested, the claimant shall be afforded an opportunity to submit any written evidence or argument which the claimant believes relevant.

(e) Final Decisions.—

(1) In general.—If the period of time for requesting review of the proposed decision expires and no request has been filed, or if the claimant waives any objections to the proposed decision, the Administrator shall issue a final decision. If such decision materially differs from the proposed decision, the claimant shall be entitled to review of the decision under subsection (d).

(2) Time and content.—If the claimant requests review of all or part of the proposed decision the Administrator shall issue a final decision on the claim not later than 180 days after the request for review is received, if the claimant requests a hearing, or not later than 90 days after the request for review is received, if the claimant requests review of the written record. Such decision shall be in writing and contain findings of fact and conclusions of law.

(f) Representation.—A claimant may authorize an attorney or other individual to represent him or her in any proceeding under this Act.

SEC. 115. AUDITING PROCEDURES.

(a) In General.—

(1) Development.—The Administrator shall develop methods for auditing and evaluating the medical and exposure evidence submitted as part of the claims process. The Administrator may develop additional methods for auditing and evaluating other types of evidence or information received by the Administrator.

(2) Refusal to consider certain evidence.—

(A) In general.—If the Administrator determines that an audit conducted in accordance with the methods developed under paragraph (1) demonstrates that the medical evidence submitted by a specific physician or medical facility is not consistent with prevailing medical practices or the applicable requirements of this Act, any medical evidence from such physician or facility shall be unacceptable for purposes of establishing eligibility for an award under this Act.

(B) Notification.—Upon a determination by the Administrator under subparagraph (A), the Administrator shall notify the physician or medical facility involved of the results of the audit. Such physician or facility shall have a right to appeal such determination under procedures issued by the Administrator.

(C) Submission of valid evidence.—Claimants shall be allowed to submit valid evidence if prior evidence is found unacceptable for purposes of establishing eligibility for an award under this Act.

(b) Review of Certified B-readers.—

(1) In general.—The Administrator shall prescribe procedures to randomly evaluate the x-rays submitted in support of a statistically significant number of claims by independent certified B-readers, the cost of which shall be paid by the Fund.

(2) Disagreement.—If an independent certified B-reader assigned under paragraph (1) disagrees with the quality grading or ILO level assigned to an x-ray submitted in support of a claim, the Administrator shall require a review of such x-rays by a second independent certified B-reader.

(3) Effect on claim.—If neither certified B-reader under paragraph (2) agrees with the quality grading and the ILO grade level assigned to an x-ray as part of the claim, the Administrator shall take into account the findings of the 2 independent B readers in making the determination on such claim.

(4) Certified B-readers.—The Administrator shall maintain a list of a minimum of 50 certified B-readers eligible to participate in the independent reviews, chosen from all certified B-readers. When an x-ray is sent for independent review, the Administrator shall choose the certified B-reader at random from that list.

(c) Smoking Assessment.—

(1) In general.—

(A) Records and documents.—To aid in the assessment of the accuracy of claimant representations as to their smoking status for purposes of determining eligibility and amount of award under Malignant Level VI, Malignant Level VII, or Malignant Level VIII, and exceptional medical claims, the Administrator shall have the authority to obtain relevant records and documents, including—

(i) records of past medical treatment and evaluation;

(ii) affidavits of appropriate individuals;

(iii) applications for insurance and supporting materials; and

(iv) employer records of medical examinations.

(B) Consent.—The claimant shall provide consent for the Administrator to obtain such records and documents where required.

(2) Review.—The frequency of review of records and documents submitted under paragraph (1)(A) shall be at the discretion of the Administrator, but shall address at least 5 percent of the claimants asserting status as nonsmokers or ex-smokers.

(3) Consent.—

(A) In general.—The Administrator may require the performance of blood tests or any other appropriate medical test, where claimants assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, VII, or VIII, or as an exceptional medical claim, the cost of which shall be paid by the Fund.

(B) SERUM COTININE SCREENING.—The Administrator shall require the performance of serum cotinine screening on all claimants who assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, VII, or VIII, or as an exceptional medical claim, the cost of which shall be paid by the Fund.

(4) PENALTY FOR FALSE STATEMENTS.—Any false information submitted under this subsection shall be subject to criminal prosecution or civil penalties as provided under section 1348 of title 18, United States Code (as added by this Act) and section 101(c)(2).

(d) PULMONARY FUNCTION TESTING.—The Administrator shall develop auditing procedures for pulmonary function test results submitted as part of a claim, to ensure that such tests are conducted in accordance with American Thoracic Society Criteria, as defined under section 121(a)(13).

Subtitle C—Medical Criteria

SEC. 121. MEDICAL CRITERIA REQUIREMENTS.

(a) DEFINITIONS.—In this section, the following definitions shall apply:

(1) ASBESTOSIS DETERMINED BY PATHOLOGY.—The term "asbestosis determined by pathology" means indications of asbestosis based on the pathological grading system for asbestosis described in the Special Issues of the Archives of Pathology and Laboratory Medicine, "Asbestos-associated Diseases", Vol. 106, No. 11, App. 3 (October 8, 1982).

(2) BILATERAL ASBESTOS-RELATED NONMALIGNANT DISEASE.—The term "bilateral asbestos-related nonmalignant disease" means a diagnosis of bilateral asbestos-related nonmalignant disease based on—

(A) an x-ray reading of 1/0 or higher based on the ILO grade scale;

(B) bilateral pleural plaques;

(C) bilateral pleural thickening; or

(D) bilateral pleural calcification.

(3) BILATERAL PLEURAL DISEASE OF B2.—The term "bilateral pleural disease of B2" means a chest wall pleural thickening or plaque with a maximum width of at least 5 millimeters and a total length of at least ¼ of the projection of the lateral chest wall.

(4) CERTIFIED B-READER.—The term "certified B-reader" means an individual who is certified by the National Institute of Occupational Safety and Health and whose certification by the National Institute of Occupational Safety and Health is up to date.

(5) DIFFUSE PLEURAL THICKENING.—The term "diffuse pleural thickening" means blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening.

(6) DLCO.—The term "DLCO" means the single-breath diffusing capacity of the lung (carbon monoxide) technique used to measure the volume of carbon monoxide transferred from the alveoli to blood in the pulmonary capillaries for each unit of driving pressure of the carbon monoxide.

(7) FEV_1.—The term "FEV1" means forced expiratory volume (1 second), which is the maximal volume of air expelled in 1 second during performance of the spirometric test for forced vital capacity.

(8) FVC.—The term "FVC" means forced vital capacity, which is the maximal volume of air expired with a maximally forced effort from a position of maximal inspiration.

(9) ILO GRADE.—The term "ILO grade" means the radiological ratings for the presence of lung changes as determined from a chest x-ray, all as established from time to time by the International Labor Organization.

(10) LOWER LIMITS OF NORMAL.—The term "lower limits of normal" means the fifth percentile of healthy populations as defined in the American Thoracic Society statement on lung function testing (Amer. Rev. Resp. Disease 1991, 144:1202–1218) and any future revision of the same statement.

(11) NONSMOKER.—The term "nonsmoker" means a claimant who—

(A) never smoked; or

(B) has smoked fewer than 100 cigarettes or the equivalent amount of other tobacco products during the claimant's lifetime.

(12) PO_2.—The term "PO_2" means the partial pressure (tension) of oxygen, which measures the amount of dissolved oxygen in the blood.

(13) PULMONARY FUNCTION TESTING.—The term "pulmonary function testing" means spirometry testing that is in material compliance with the quality criteria established by the American Thoracic Society and is performed on equipment which is in material compliance with the standards of the American Thoracic Society for technical quality and calibration.

(14) SUBSTANTIAL OCCUPATIONAL EXPOSURE TO ASBESTOS.—

(A) IN GENERAL.—The term "substantial occupational exposure" means employment in an industry and an occupation where for a substantial portion of a normal work year for that occupation, the claimant—

(i) handled raw asbestos fibers;

(ii) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed to raw asbestos fibers;

(iii) altered, repaired, or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or

(iv) worked in close proximity to other workers engaged in the activities described under clause (i), (ii), or (iii), such that the claimant was exposed on a regular basis to asbestos fibers.

(B) REGULAR BASIS.—In this paragraph, the term "on a regular basis" means on a frequent or recurring basis.

(15) TLC.—The term "TLC" means total lung capacity, which is the total volume of air in the lung after maximal inspiration.

(16) WEIGHTED OCCUPATIONAL EXPOSURE.—

(A) IN GENERAL.—The term "weighted occupational exposure" means exposure for a period of years calculated according to the exposure weighting formula under subparagraphs (B) through (E).

(B) MODERATE EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved working in areas immediate to where asbestos-containing products were being installed, repaired, or removed under circumstances that involved regular airborne emissions of asbestos fibers, shall count as 1 year of substantial occupational exposure.

(C) HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved the direct installation, repair, or removal of asbestos-containing products such that the person was exposed on a regular basis to asbestos fibers, shall count as 2 years of substantial occupational exposure.

(D) VERY HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, was in primary asbestos manufacturing, a World War II shipyard, or the asbestos insulation trades, such that the person was exposed on a regular basis to asbestos fibers, shall count as 4 years of substantial occupational exposure.

(E) DATES OF EXPOSURE.—Each year of exposure calculated under subparagraphs (B), (C), and (D) that occurred before 1976 shall be counted at its full value. Each year from 1976 to 1986 shall be counted as ½ of its value. Each year after 1986 shall be counted as ⅒ of its value.

(F) OTHER CLAIMS.—Individuals who do not meet the provisions of subparagraphs (A) through (E) and believe their post-1976 or post-1986 exposures exceeded the Occupational Safety and Health Administration standard may submit evidence, documentation, work history, or other information to substantiate noncompliance with the Occupational Safety and Health Administration standard (such as lack of engineering or work practice controls, or protective equipment) such that exposures would be equivalent to exposures before 1976 or 1986, or to documented exposures in similar jobs or occupations where control measures had not been implemented. Claims under this subparagraph shall be evaluated on an individual basis by a Physicians Panel.

(b) MEDICAL EVIDENCE.—

(1) LATENCY.—Unless otherwise specified, all diagnoses of an asbestos-related disease for a level under this section shall be accompanied by—

(A) a statement by the physician providing the diagnosis that at least 10 years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis; or

(B) a history of the claimant's exposure that is sufficient to establish a 10-year latency period between the date of first exposure to asbestos or asbestos-containing products and the diagnosis.

(2) DIAGNOSTIC GUIDELINES.—All diagnoses of asbestos-related diseases shall be based upon—

(A) for disease Levels I through V, in the case of a claimant who was living at the time the claim was filed—

(i) a physical examination of the claimant by the physician providing the diagnosis;

(ii) an evaluation of smoking history and exposure history before making a diagnosis;

(iii) an x-ray reading by a certified B-reader; and

(iv) pulmonary function testing in the case of disease Levels III, IV, and V;

(B) for disease Levels I through V, in the case of a claimant who was deceased at the time the claim was filed, a report from a physician based upon a review of the claimant's medical records which shall include—

(i) pathological evidence of the nonmalignant asbestos-related disease; or

(ii) an x-ray reading by a certified B-reader;

(C) for disease Levels VI through IX, in the case of a claimant who was living at the time the claim was filed—

(i) a physical examination by the claimant's physician providing the diagnosis; or

(ii) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

(D) for disease Levels VI through IX, in the case of a claimant who was deceased at the time the claim was filed—

(i) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

(ii) a report from a physician based upon a review of the claimant's medical records.

(3) CREDIBILITY OF MEDICAL EVIDENCE.—To ensure the medical evidence provided in support of a claim is credible and consistent with recognized medical standards, a claimant under this title may be required to submit—

(A) x-rays or computerized tomography;

(B) detailed results of pulmonary function tests;

(C) laboratory tests;

(D) tissue samples;

(E) results of medical examinations;

(F) reviews of other medical evidence; and

(G) medical evidence that complies with recognized medical standards regarding equipment, testing methods, and procedure to ensure the reliability of such evidence as may be submitted.

(c) EXPOSURE EVIDENCE.—

(1) IN GENERAL.—To qualify for any disease level, the claimant shall demonstrate—

(A) a minimum exposure to asbestos or asbestos-containing products;

(B) the exposure occurred in the United States, its territories or possessions, or while a United States citizen, while an employee of an entity organized under any Federal or State law regardless of location, or while a United States citizen while serving on any United States flagged or owned ship, provided the exposure results from such employment or service; and

(C) any additional asbestos exposure requirement under this section.

(2) PROOF OF EXPOSURE.—

(A) AFFIDAVITS.—Exposure to asbestos sufficient to satisfy the exposure requirements for any disease level may be established by a detailed and specific affidavit that—

(i) is filed by—

(I) the claimant; or

(II) if the claimant is deceased, a coworker or a family member of the claimant; and

(ii) is found in proceedings under this title to be—

(I) reasonably reliable, attesting to the claimant's exposure; and

(II) credible and not contradicted by other evidence.

(B) OTHER PROOF.—Exposure to asbestos may alternatively be established by invoices, construction or other similar records, or any other reasonably reliable and credible evidence.

(C) ADDITIONAL EVIDENCE.—The Administrator may require submission of other or additional evidence of exposure, if available, for a particular claim when determined necessary, as part of the minimum information required under section 113(c).

(3) TAKE-HOME EXPOSURE.—

(A) IN GENERAL.—A claimant may alternatively satisfy the medical criteria requirements of this section where a claim is filed by a person who alleges their exposure to asbestos was the result of living with a person who, if the claim had been filed by that person, would have met the exposure criteria for the given disease level, and the claimant lived with such person for the time period necessary to satisfy the exposure requirement, for the claimed disease level.

(B) REVIEW.—Except for claims for disease Level IX (mesothelioma), all claims alleging take-home exposure shall be submitted as an exceptional medical claim under section 121(g) for review by a Physicians Panel.

(4) WAIVER FOR WORKERS AND RESIDENTS OF LIBBY, MONTANA.—Because of the unique nature of the asbestos exposure related to the vermiculite mining and milling operations in Libby, Montana, the Administrator shall waive the exposure requirements under this subtitle for individuals who worked at the vermiculite mining and milling facility in Libby, Montana, or lived or worked within a 20-mile radius of Libby, Montana, for at least 12 consecutive months before December 31, 2004. Claimants under this section shall provide such supporting documentation as the Administrator shall require.

(5) EXPOSURE PRESUMPTIONS.—

(A) IN GENERAL.—The Administrator shall prescribe rules identifying specific industries, occupations within such industries, and time periods in which workers employed in those industries and occupations typically had substantial occupational exposure to asbestos as defined under section 121(a). Until 5 years after the Administrator certifies that the Fund is paying claims at a reasonable rate, the industries, occupations and time periods identified by the Administrator shall at a minimum include those identified in the 2002 Trust Distribution Process of the Manville Personal Injury Settlement Trust as of January 1, 2005, as industries, occupations, including proximity, and time periods in which workers were presumed to have had significant occupational exposure to asbestos. Thereafter, the Administrator may by rule modify or eliminate those exposure presumptions required to be adopted from the Manville Personal Injury Settlement Trust, if there is evidence that demonstrates that the typical exposure for workers in such industries and occupations during such time periods did not constitute substantial occupational exposure in asbestos.

(B) CLAIMANTS ENTITLED TO PRESUMPTIONS.—Any claimant who demonstrates through meaningful and credible evidence that such claimant was employed during relevant time periods in industries and occupations identified under subparagraph (A) shall be entitled to a presumption that the claimant had substantial occupational exposure to asbestos during those time periods. That presumption shall not be conclusive, and the Administrator may find that the claimant does not have substantial occupational exposure if other information demonstrates that the claimant did not in fact have substantial occupational exposure during any part of the relevant time periods.

(C) CRITERIA REQUIREMENTS.—Nothing in subparagraphs (A) or (B) shall negate the exposure or medical criteria requirements in section 121, for the purpose of receiving compensation from the Fund.

(6) PENALTY FOR FALSE STATEMENT.—Any false information submitted under this subsection shall be subject to section 1348 of title 18, United States Code (as added by this Act).

(d) ASBESTOS DISEASE LEVELS.—

(1) NONMALIGNANT LEVEL I.—To receive Level I compensation, a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease; and

(B) evidence of 5 years cumulative occupational exposure to asbestos.

(2) NONMALIGNANT LEVEL II.—To receive Level II compensation, a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater, and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening of at least grade B2 or greater, or bilateral pleural disease of grade B2 or greater;

(B) evidence of TLC less than 80 percent or FVC less than the lower limits of normal, and FEV1/FVC ratio less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question.

(3) NONMALIGNANT LEVEL III.—To receive Level III compensation a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/0 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

(B) evidence of TLC less than 80 percent; FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent; or evidence of a decline in FVC of 20 percent or greater, after allowing for the expected decrease due to aging, and an FEV1/FVC ratio greater than or equal to 65 percent documented with a second spirometry;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes, other than silica, of that pulmonary condition.

(4) NONMALIGNANT LEVEL IV.—To receive Level IV compensation a claimant shall provide—

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

(B) evidence of TLC less than 60 percent or FVC less than 60 percent, and FEV1/FVC ratio greater than or equal to 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos before diagnosis; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes, other than silica, of that pulmonary condition.

(5) NONMALIGNANT LEVEL V.—To receive Level V compensation a claimant shall provide—

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

(B)(i) evidence of TLC less than 50 percent or FVC less than 50 percent, and FEV1/FVC ratio greater than or equal to 65 percent;

(ii) DLCO less than 40 percent of predicted, plus a FEV1/FVC ratio not less than 65 percent; or

(iii) PO_2 less than 55 mm/Hg, plus a FEV1/FVC ratio not less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes, other than silica, of that pulmonary condition.

(6) Malignant level VI.—

(A) In general.—To receive Level VI compensation a claimant shall provide—

(i) a diagnosis of a primary colorectal, laryngeal, esophageal, pharyngeal, or stomach cancer on the basis of findings by a board certified pathologist;

(ii) evidence of a bilateral asbestos-related nonmalignant disease;

(iii) evidence of 15 or more weighted years of substantial occupational exposure to asbestos; and

(iv) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as a substantial contributing factor in causing the cancer in question.

(B) Referral to physicians panel.—All claims filed with respect to Level VI under this paragraph shall be referred to a Physicians Panel for a determination that it is more probable than not that asbestos exposure was a substantial contributing factor in causing the other cancer in question. If the claimant meets the requirements of subparagraph (A), there shall be a presumption of eligibility for the scheduled value of compensation unless there is evidence determined by the Physicians Panel that rebuts that presumption. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(7) Malignant level VII.—

(A) In general.—To receive Level VII compensation, a claimant shall provide—

(i) a diagnosis of a primary lung cancer disease on the basis of findings by a board certified pathologist;

(ii) evidence of bilateral pleural plaques or bilateral pleural thickening or bilateral pleural calcification *by* chest x-ray or such diagnostic methodology supported by the findings of the Institute of Medicine under subsection (f);

(iii) evidence of 12 or more weighted years of substantial occupational exposure to asbestos; and

(iv) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as a substantial contributing factor in causing the lung cancer in question.

(B) Physicians panel.—A claimant filing a claim relating to Level VII under this paragraph may request that the claim be referred to a Physicians Panel for a determination of whether the claimant qualifies for the disease category and relevant smoking status. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(8) Malignant level VIII.—

(A) In general.—To receive Level VIII compensation, a claimant shall provide a diagnosis—

(i) of a primary lung cancer disease on the basis of findings by a board certified pathologist;

(ii)(I) of—

(aa) asbestosis based on a chest x-ray of at least 1/0 on the ILO scale and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones; and

(bb) 10 or more weighted years of substantial occupational exposure to asbestos;

(II) of—

(aa) asbestosis based on a chest x-ray of at least 1/1 on the ILO scale and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones; and

(bb) 8 or more weighted years of substantial occupational exposure to asbestos;

(III) asbestosis determined by pathology and 10 or more weighted years of substantial occupational exposure to asbestos; or

(IV) asbestosis as determined by CT Scan, the cost of which shall not be borne by the Fund. The CT Scan must be interpreted by a board certified radiologist and confirmed by a board certified radiologist; and

(iii) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as a substantial contributing factor in causing the lung cancer in question; and 10 or more weighted years of substantial occupational exposure to asbestos.

(B) Physicians panel.—A claimant filing a claim with respect to Level VIII under this paragraph may request that the claim be referred to a Physicians Panel for a determination of whether the claimant qualifies for the disease category and relevant smoking status. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(9) Malignant level IX.—To receive Level IX compensation, a claimant shall provide—

(A) a diagnosis of malignant mesothelioma disease on the basis of findings by a board certified pathologist; and

(B) credible evidence of identifiable exposure to asbestos resulting from—

(i) occupational exposure to asbestos;

(ii) exposure to asbestos fibers brought into the home of the claimant by a worker occupationally exposed to asbestos;

(iii) exposure to asbestos fibers resulting from living or working in the proximate vicinity of a factory, shipyard, building demolition site, or other operation that regularly released asbestos fibers into the air due to operations involving asbestos at that site; or

(iv) other identifiable exposure to asbestos fibers, in which case the claim shall be reviewed by a Physicians Panel under subsection (g) for a determination of eligibility.

(e) Institute of Medicine Study.—Not later than April 1, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health to determine whether there is a causal link between asbestos exposure and other cancers, including colorectal, laryngeal, esophageal, pharyngeal, and stomach cancers, except for mesothelioma and lung cancers. The Institute of Medicine shall issue a report on its findings on causation, which shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels. The Institute of Medicine report shall be binding on the Administrator and the Physicians Panels for purposes of determining whether asbestos exposure is a substantial contributing factor in causing the other cancerous disease in question under subsection (d)(6). If asbestos is not a substantial contributing factor to the particular cancerous disease under subsection (d)(6), subsection (d)(6) shall not apply with respect to that disease and no claim may be filed with, or award paid from, the Fund with respect to that disease under malignant Level VI.

(f) Institute of Medicine Study on CT Scans.—

(1) In general.—Not later than April 1, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health of the use of CT scans as a diagnostic tool for bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification.

(2) Findings.—The Institute of Medicine shall make and issue findings based on the study required under paragraph (1) on whether—

(A) CT scans are generally accepted in the medical profession to detect bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification; and

(B) professional standards of practice exist to allow for the Administrator's reasonable reliance on such as evidence of bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification under the Fund.

(3) Report.—The Institute of Medicine shall issue a report on the findings required under paragraph (2), which shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels.

(4) Report binding on the administrator.—The Institute of Medicine report required under paragraph (3) shall be binding on the Administrator and the Physicians Panels for purposes of determining reliable and acceptable evidence that may be submitted for a Level VII claim under subsection (d)(7).

(g) Exceptional Medical Claims.—

(1) In general.—A claimant who does not meet the medical criteria requirements under this section may apply for designation of the claim as an exceptional medical claim.

(2) Application.—When submitting an application for review of an exceptional medical claim, the claimant shall—

(A) state that the claim does not meet the medical criteria requirements under this section; or

(B) seek designation as an exceptional medical claim within 60 days after a determination that the claim is ineligible solely for failure to meet the medical criteria requirements under subsection (d).

(3) REPORT OF PHYSICIAN.—

(A) IN GENERAL.—Any claimant applying for designation of a claim as an exceptional medical claim shall support an application filed under paragraph (1) with a report from a physician meeting the requirements of this section.

(B) CONTENTS.—A report filed under subparagraph (A) shall include—

(i) a complete review of the claimant's medical history and current condition;

(ii) such additional material by way of analysis and documentation as shall be prescribed by rule of the Administrator; and

(iii) a detailed explanation as to why the claim meets the requirements of paragraph (4)(B).

(4) REVIEW.—

(A) IN GENERAL.—The Administrator shall refer all applications and supporting documentation submitted under paragraph (2) to a Physicians Panel for review for eligibility as an exceptional medical claim.

(B) STANDARD.—A claim shall be designated as an exceptional medical claim if the claimant, for reasons beyond the control of the claimant, cannot satisfy the requirements under this section, but is able, through comparably reliable evidence that meets the standards under this section, to show that the claimant has an asbestos-related condition that is substantially comparable to that of a medical condition that would satisfy the requirements of a category under this section.

(C) ADDITIONAL INFORMATION.—A Physicians Panel may request additional reasonable testing to support the claimant's application.

(D) CT SCAN.—A claimant may submit a CT Scan in addition to an x-ray.

(E) MESOTHELIOMA CASES.—

(i) IN GENERAL.—The Physicans Panel shall grant priority status to—

(I) all Level IX claims with other identifiable asbestos exposure as provided under paragraph (9)(B)(iv); and

(II) all Level IX claims that are filed as exceptional medical claims.

(ii) PHYSICIAN PANEL.—If the Physicians Panel issues a certificate of medical eligibility, the claimant shall be deemed to qualify for Level IX compensation. If the Physicians Panel rejects the claim, and the Administrator deems it rejected, the claimant may immediately seek judicial review under section 302.

(5) APPROVAL.—

(A) IN GENERAL.—If the Physicians Panel determines that the medical evidence is sufficient to show a comparable asbestos-related condition, it shall issue a certificate of medical eligibility designating the category of asbestos-related injury under this section for which the claimant shall be eligible to seek compensation.

(B) REFERRAL.—Upon the issuance of a certificate under subparagraph (A), the Physicians Panel shall submit the claim to the Administrator, who shall give due consideration to the recommendation of the Physicians Panel in determining whether the claimant meets the requirements for compensation under this Act.

(6) RESUBMISSION.—Any claimant whose application for designation as an exceptional medical claim is rejected may resubmit an application if new evidence becomes available. The application shall identify any prior applications and state the new evidence that forms the basis of the resubmission.

(7) RULES.—The Administrator shall promulgate rules governing the procedures for seeking designation of a claim as an exceptional medical claim.

(8) LIBBY, MONTANA.—

(A) IN GENERAL.—A Libby, Montana, claimant may elect to have the claimant's claims designated as exceptional medical claims and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by a Libby, Montana claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in Libby, Montana, including the nature of the pleural disease related to asbestos exposure in Libby, Montana.

(B) CLAIMS.—For all claims for Levels II through IV filed by Libby, Montana claimants, as described under subsection (c)(4), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to a Libby, Montana claimant, and notwithstanding the disease category designated in the certificate or the eligible disease or condition established in accordance with this section, or the value of the award determined in accordance with section 114, the Libby, Montana claimant shall be entitled to an award that is not less than that awarded to claimants who suffer from asbestosis, Level IV. For all malignant claims filed by Libby, Montana claimants, the Libby, Montana claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

(C) EVALUATION OF CLAIMS.—For purposes of evaluating exceptional medical claims from Libby, Montana, a claimant shall be deemed to have a comparable asbestos-related condition to an asbestos disease category Level IV, and shall be deemed to qualify for compensation at Level IV, if the claimant provides—

(i) a diagnosis of bilateral asbestos related nonmalignant disease;

(ii) evidence of TLC or FVC less than 80 percent; and

(iii) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(9) STUDY OF VERMICULITE PROCESSING FACILITIES.—

(A) IN GENERAL.—As part of the ongoing National Asbestos Exposure Review (in this section referred to as "NAER") being conducted by the Agency for Toxic Substances and Disease Registry (in this section referred to as "ATSDR") of facilities that received vermiculite ore from Libby, Montana, the ATSDR shall conduct a study of all Phase 1 sites where—

(i) the Environmental Protection Agency has mandated further action at the site on the basis of current contamination; or

(ii) the site was an exfoliation facility that processed roughly 100,000 tons or more of vermiculite from the Libby mine.

(B) STUDY BY ATSDR.—The study by the ATSDR shall evaluate the facilities identified under subparagraph (A) and compare—

(i) the levels of asbestos emissions from such facilities;

(ii) the resulting asbestos contamination in areas surrounding such facilities;

(iii) the levels of exposure to residents living in the vicinity of such facilities;

(iv) the risks of asbestos-related disease to the residents living in the vicinity of such facilities; and

(v) the risk of asbestos-related mortality to residents living in the vicinity of such facilities,

to the emissions, contamination, exposures, and risks resulting from the mining of vermiculite ore in Libby, Montana.

(C) RESULTS OF STUDY.—The results of the study required under this paragraph shall be transmitted to the Administrator. If the ATSDR finds as a result of such study that, for any particular facility, the levels of emissions from, the resulting contamination caused by, the levels of exposure to nearby residents from, and the risks of asbestos-related disease and asbestos-related mortality to nearby residents from such facility are substantially equivalent to those of Libby, Montana, then the Administrator shall treat claims from residents surrounding such facilities the same as claims of residents of Libby, Montana, and such residents shall have all the rights of residents of Libby, Montana, under this Act. As part of the results of its study, the ATSDR shall prescribe for any such facility the relevant geographic and temporal criteria under which the exposures and risks to the surrounding residents are substantially equivalent to those of residents of Libby, Montana, and therefore qualify for treatment under this paragraph.

(10) NATURALLY OCCURRING ASBESTOS.—A claimant who has been exposed to naturally occurring asbestos may file an exceptional medical claim with the Fund.

(h) GUIDELINES FOR CT SCANS.—The Administrator shall commission the American College of Radiology to develop, in consultation with the American Thoracic Society, American College of Chest Physicians, and Institute of Medicine, guidelines and a methodology for the use of CT scans as a diagnostic tool for bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification under the Fund. After development, such guidelines and methodology shall be used for diagnostic purposes under the Fund.

Subtitle D—Awards

SEC. 131. AMOUNT.

(a) IN GENERAL.—An asbestos claimant who meets the requirements of section 111 shall be entitled to an award in an amount determined by reference to the benefit table and the matrices developed under subsection (b).

(b) BENEFIT TABLE.—

(1) IN GENERAL.—An asbestos claimant with an eligible disease or condition established in accordance with section 121 shall be eligible for an award as determined under this subsection. The award for all asbestos claimants with an eligible disease or condition established in accordance with section 121 shall be according to the following schedule:

I	Asbestosis/Pleural Disease A	Medical Monitoring
II	Mixed Disease With Impairment	$25,000
III	Asbestosis/Pleural Disease B	$100,000
IV	Severe Asbestosis	$400,000
V	Disabling Asbestosis	$850,000
VI	Other Cancer	$200,000
VII	Lung Cancer With Pleural Disease	smokers, $300,000; ex-smokers, $725,000; non-smokers, $800,000

VIII	Lung Cancer With Asbestosis	smokers, $600,000; ex-smokers, $975,000; non-smokers, $1,100,000
IX	Mesothelioma	$1,100,000

(2) Definitions.—In this section—

(A) the term "nonsmoker" means a claimant who—

(i) never smoked; or

(ii) has smoked fewer than 100 cigarettes or the equivalent of other tobacco products during the claimant's lifetime; and

(B) the term "ex-smoker" means a claimant who has not smoked during any portion of the 12-year period preceding the diagnosis of lung cancer.

(3) Level IX adjustments.—

(A) In general.—The Administrator may increase awards for Level IX claimants who have dependent children so long as the increase under this paragraph is cost neutral. Such increased awards shall be paid for by decreasing awards for claimants other than Level IX, so long as no award levels are decreased more than 10 percent.

(B) Implementation.—Before making adjustments under this paragraph, the Administrator shall publish in the Federal Register notice of, and a plan for, making such adjustments.

(4) Special adjustment for FELA cases.—

(A) In general.—A claimant who would be eligible to bring a claim under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, but for section 403 of this Act, shall be eligible for a special adjustment under this paragraph.

(B) Regulations.—

(i) In general.—Not later than 90 days after the date of enactment of this Act, the Administrator shall promulgate regulations relating to special adjustments under this paragraph.

(ii) Joint proposal.—Not later than 45 days after the date of enactment of this Act, representatives of railroad management and representatives of railroad labor shall submit to the Administrator a joint proposal for regulations describing the eligibility for and amount of special adjustments under this paragraph. If a joint proposal is submitted, the Administrator shall promulgate regulations that reflect the joint proposal.

(iii) Absence of joint proposal.—If railroad management and railroad labor are unable to agree on a joint proposal within 45 days after the date of enactment of this Act, the benefits prescribed in subparagraph (E) shall be the benefits available to claimants, and the Administrator shall promulgate regulations containing such benefits.

(iv) Review.—The parties participating in the arbitration may file in the United States District Court for the District of Columbia a petition for review of the Administrator's order. The court shall have jurisdiction to affirm the order of the Administrator, or to set it aside, in whole or in part, or it may remand the proceedings to the Administrator for such further action as it may direct. On such review, the findings and order of the Administrator shall be conclusive on the parties, except that the order of the Administrator may be set aside, in whole or in parts or remanded to the Administrator, for failure of the Administrator to comply with the requirements of this section, for failure of the order to conform, or confine itself, to matters within the scope of the Administrator's jurisdiction, or for fraud or corruption.

(C) Eligibility.—An individual eligible to file a claim under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be eligible for a special adjustment under this paragraph if such individual meets the criteria set forth in subparagraph (F).

(D) Amount.—

(i) In general.—The amount of the special adjustment shall be based on the type and severity of asbestos disease, and shall be 110 percent of the average amount an injured individual with a disease caused by asbestos, as described in section 121(d) of this Act, would have received, during the 5-year period before the enactment of this Act, adjusted for inflation. This adjustment shall be in addition to any other award for which the claimant is eligible under this Act. The amount of the special adjustment shall be reduced by an amount reasonably calculated to take into account all expenses of litigation normally borne by plaintiffs, including attorney's fees.

(ii) Limitation.—The amount under clause (i) may not exceed the amount the claimant is eligible to receive before applying the special adjustment under that clause.

(E) Arbitrated benefits.—If railroad management and railroad labor are unable to agree on a joint proposal within 45 days after the date of enactment of this Act, the Administrator shall appoint an arbitrator to determine the benefits under subparagraph (D). The Administrator shall appoint an arbitrator who shall be acceptable to both railroad management and railroad labor. Railroad management and railroad labor shall each designate their representatives to participate in the arbitration. The arbitrator shall submit the benefits levels to the Administrator not later than 30 days after appointment and such benefits levels shall be based on information provided by rail labor and rail management. The information submitted to the arbitrator by railroad management and railroad labor shall be considered confidential and shall be disclosed to the other party upon execution of an appropriate confidentiality agreement. Unless the submitting party provides written consent, neither the arbitrator nor either party to the arbitration shall divulge to any third party any information or data, in any form, submitted to the arbitrator under this section. Nor shall either party use such information or data for any purpose other than participation in the arbitration proceeding, and each party shall return to the other any information it has received from the other party as soon the arbitration is concluded. Information submitted to the arbitrator may not be admitted into evidence, nor discovered, in any civil litigation in Federal or State court. The nature of the information submitted to the arbitrator shall be within the sole discretion of the submitting party, and the arbitrator may not require a party to submit any particular information, including information subject to a prior confidentiality agreement.

(F) Demonstration of eligibility.—

(i) In general.—A claimant under this paragraph shall be required to demonstrate—

(I) employment of the claimant in the railroad industry;

(II) exposure of the claimant to asbestos as part of that employment; and

(III) the nature and severity of the asbestos-related injury.

(ii) Medical criteria.—In order to be eligible for a special adjustment a claimant shall meet the criteria set forth in section 121 that would qualify a claimant for a payment under Level II or greater.

(5) Medical monitoring.—An asbestos claimant with asymptomatic exposure, based on the criteria under section 121(d)(1), shall only be eligible for medical monitoring reimbursement as provided under section 132.

(6) Cost-of-living adjustment.—

(A) In general.—Beginning January 1, 2007, award amounts under paragraph (1) shall be annually increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment, rounded to the nearest $1,000 increment.

(B) Calculation of cost-of-living adjustment.—For the purposes of subparagraph (A), the cost-of-living adjustment for any calendar year shall be the percentage, if any, by which the consumer price index for the succeeding calendar year exceeds the consumer price index for calendar year 2005.

(C) Consumer price index.—

(i) In general.—For the purposes of subparagraph (B), the consumer price index for any calendar year is the average of the consumer price index as of the close of the 12-month period ending on August 31 of such calendar year.

(ii) Definition.—For purposes of clause (i), the term "consumer price index" means the consumer price index published by the Department of Labor. The consumer price index series to be used for award escalations shall include the consumer price index used for all-urban consumers, with an area coverage of the United States city average, for all items, based on the 1982–1984 index based period, as published by the Department of Labor.

SEC. 132. MEDICAL MONITORING.

(a) Relation to Statute of Limitations.—The filing of a claim under this Act that seeks reimbursement for medical monitoring shall not be considered as evidence that the claimant has discovered facts that would otherwise commence the period applicable for purposes of the statute of limitations under section 113(b).

(b) Costs.—Reimbursable medical monitoring costs shall include the costs of a claimant not covered by health insurance for an examination by the claimant's physician, x-ray tests, and pulmonary function tests every 3 years.

(c) Regulations.—The Administrator shall promulgate regulations that establish—

(1) the reasonable costs for medical monitoring that is reimbursable; and

(2) the procedures applicable to asbestos claimants.

SEC. 133. PAYMENT.

(a) Structured Payments.—

(1) In general.—An asbestos claimant who is entitled to an award should receive the amount of the award through structured payments from the Fund, made over a period of 3 years, and in no event more than 4 years after the date of final adjudication of the claim.

(2) Payment period and amount.—There shall be a presumption that any award paid under this subsection shall provide for payment of—

(A) 40 percent of the total amount in year 1;

(B) 30 percent of the total amount in year 2; and

(C) 30 percent of the total amount in year 3.

(3) Extension of payment period.—

(A) In general.—The Administrator shall develop guidelines to provide for the payment period of an award under subsection (a) to be extended to a 4-year period if such action is warranted in order to preserve the overall solvency of the Fund. Such guidelines shall include reference to the number of claims made to the Fund and the awards made and scheduled to be paid from the Fund as provided under section 405.

(B) LIMITATIONS.—In no event shall less than 50 percent of an award be paid in the first 2 years of the payment period under this subsection.

(4) LUMP-SUM PAYMENTS.—

(A) In general.—The Administrator shall develop guidelines to provide for 1 lump-sum payment to asbestos claimants who are mesothelioma victims and who are alive on the date on which the Administrator receives notice of the eligibility of the claimant.

(B) TIMING OF PAYMENTS.—Lump-sum payments shall be made within the shorter of—

(i) not later than 30 days after the date the claim is approved by the Administrator; or

(ii) not later than 6 months after the date the claim is filed.

(C) TIMING OF PAYMENTS TO BE ADJUSTED WITH RESPECT TO SOLVENCY OF THE FUND.—If the Administrator determines that solvency of the Fund would be severely harmed by the timing of the payments required under subparagraph (B), the time for such payments may be extended to the shorter of—

(i) not later than 6 months after the date the claim is approved by the Administrator; or

(ii) not later than 11 months after the date the claim is filed.

(5) EXPEDITED PAYMENTS.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for expedited payments to asbestos claimants in cases of terminal health claims as described under section 106(c)(2)(B) and (C).

(B) TIMING OF PAYMENTS.—Total payments shall be made within the shorter of—

(i) not later than 6 months after the date the claim is approved by the Administrator; or

(ii) not later than 1 year after the date the claim is filed.

(C) TIMING OF PAYMENTS TO BE ADJUSTED WITH RESPECT TO SOLVENCY OF THE FUND.—If the Administrator determines that solvency of the Fund would be severely harmed by the timing of the payments required under subparagraph (B), the time for such payments may be extended to the shorter of—

(i) not later than 1 year after the date the claim is approved by the Administrator; or

(ii) not later than 2 years after the date the claim is filed.

(D) PRIORITIZATION OF CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis. The Administrator shall prioritize the processing and payment of health claims involving claimants with the most serious health risks. The Administrator shall also prioritize claims from claimants who face extreme financial hardship.

(6) ANNUITY.—An asbestos claimant may elect to receive any payments to which that claimant is entitled under this title in the form of an annuity.

(b) LIMITATION ON TRANSFERABILITY.—A claim filed under this Act shall not be assignable or otherwise transferable under this Act.

(c) CREDITORS.—An award under this title shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, and such exemption may not be waived.

(d) MEDICARE AS SECONDARY PAYER.—No award under this title shall be deemed a payment for purposes of section 1862 of the Social Security Act (42 U.S.C. 1395y).

(e) EXEMPT PROPERTY IN ASBESTOS CLAIMANT'S BANKRUPTCY CASE.—If an asbestos claimant files a petition for relief under section 301 of title 11, United States Code, no award granted under this Act shall be treated as property of the bankruptcy estate of the asbestos claimant in accordance with section 541(b)(6) of title 11, United States Code.

(f) EFFECT OF PAYMENT.—The full payment of an asbestos claim under this section shall be in full satisfaction of such claim and shall be deemed to operate as a release to such claim. No claimant with an asbestos claim that has been fully paid under this section may proceed in the tort system with respect to such claim.

SEC. 134. SETOFFS FOR COLLATERAL SOURCE COMPENSATION AND PRIOR AWARDS.

(a) IN GENERAL.—The amount of an award otherwise available to an asbestos claimant under this title shall be reduced by the amount of any collateral source compensation and by any amounts paid or to be paid to the claimant for a prior award under this Act.

(b) EXCLUSIONS.—

(1) COLLATERAL SOURCE COMPENSATION.—In no case shall statutory benefits under workers' compensation laws, special adjustments made under section 131(b)(3), occupational or total disability benefits under the Railroad Retirement Act (45 U.S.C. 201 et seq.), sickness benefits under the Railroad Unemployment Insurance Act (45 U.S.C 351 et seq.), and veterans' benefits programs be deemed as collateral source compensation for purposes of this section.

(2) PRIOR AWARD PAYMENTS.—Any amounts paid or to be paid for a prior claim for a nonmalignant disease (Levels I through V) filed against the Fund shall not be deducted as a setoff against amounts payable for the second injury claims for a malignant disease (Levels VI through IX), unless the malignancy was diagnosed before the date on which the nonmalignancy claim was compensated.

SEC. 135. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT OF AWARDS.

(a) IN GENERAL.—The payment of an award under section 106 or 133 shall not be considered a form of compensation or reimbursement for a loss for purposes of imposing liability on any asbestos claimant receiving such payment to repay any—

(1) insurance carrier for insurance payments; or

(2) person or governmental entity on account of worker's compensation, health care, or disability payments.

(b) NO EFFECT ON CLAIMS.—

(1) IN GENERAL.—The payment of an award to an asbestos claimant under section 106 or 133 shall not affect any claim of an asbestos claimant against—

(A) an insurance carrier with respect to insurance; or

(B) against any person or governmental entity with respect to worker's compensation, healthcare, or disability.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the pursuit of a claim that is preempted under section 403.

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

SEC. 201. DEFINITIONS.

In this subtitle, the following definitions shall apply:

(1) AFFILIATED GROUP.—The term "affiliated group"—

(A) means a defendant participant that is an ultimate parent and any person whose entire beneficial interest is directly or indirectly owned by that ultimate parent on the date of enactment of this Act; and

(B) shall not include any person that is a debtor or any direct or indirect majority-owned subsidiary of a debtor.

(2) INDEMNIFIABLE COST.—The term "indemnifiable cost" means a cost, expense, debt, judgment, or settlement incurred with respect to an asbestos claim that, at any time before December 31, 2002, was or could have been subject to indemnification, contribution, surety, or guaranty.

(3) INDEMNITEE.—The term "indemnitee" means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance or reinsurance.

(4) INDEMNITOR.—The term "indemnitor" means a person who has paid under a written agreement at any time before December 31, 2002, a sum in settlement, judgment, defense, or indemnity to or on behalf of any person defending against an asbestos claim, in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, except that payments by an insurer or reinsurer under a contract of insurance or reinsurance shall not make the insurer or reinsurer an indemnitor for purposes of this subtitle.

(5) PRIOR ASBESTOS EXPENDITURES.—The term "prior asbestos expenditures"—

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims against that person;

(B) includes payments made by insurance carriers to or for the benefit of such person or on such person's behalf with respect to such asbestos claims, except as provided in section 204(g);

(C) shall not include any payment made by a person in connection with or as a result of changes in insurance reserves required by contract or any activity or dispute related to insurance coverage matters for asbestos-related liabilities; and

(D) shall not include any payment made by or on behalf of persons who are or were common carriers by railroad for asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad, including settlement, judgment, defense, or indemnity costs associated with these claims.

(6) ULTIMATE PARENT.—The term "ultimate parent" means a person—

(A) that owned, as of December 31, 2002, the entire beneficial interest, directly or indirectly, of at least 1 other person; and

(B) whose entire beneficial interest was not owned, on December 31, 2002, directly or indirectly, by any other single person (other than a natural person).

(7) ASBESTOS PREMISES CLAIM.—The term "asbestos premises claim"—

(A) means an asbestos claim against a current or former premises owner or landowner, or person controlling or possessing premises or land, alleging injury or death caused by exposure to asbestos on such premises or land or by exposure to asbestos carried off such premises or land on the clothing or belongings of another person; and

(B) includes any such asbestos claim against a current or former employer alleging injury or death caused by exposure to asbestos on premises or land owned, controlled or possessed by the employer, if such claim is not a claim for benefits under a workers' compensation law or veterans' benefits program.

(8) ASBESTOS PREMISES DEFENDANT PARTICIPANT.—The term "asbestos premises defendant participant" means any defendant participant for which 95 percent or more of its prior asbestos expenditures relate to asbestos premises claims against that defendant participant.

SEC. 202. AUTHORITY AND TIERS.

(a) LIABILITY FOR PAYMENTS TO THE FUND.—

(1) IN GENERAL.—Defendant participants shall be liable for payments to the Fund in accordance with this section based on tiers and subtiers assigned to defendant participants.

(2) AGGREGATE PAYMENT OBLIGATIONS LEVEL.—The total payments required of all defendant participants over the life of the Fund shall not exceed a sum equal to $90,000,000,000 less any bankruptcy trust credits under section 222(d). The Administrator shall have the authority to allocate the payments required of the defendant participants among the tiers as provided in this title.

(3) ABILITY TO ENTER REORGANIZATION.—Notwithstanding any other provision of this Act, all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures less than $1,000,000 may proceed with the filing, solicitation, and confirmation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction under section 524(g) of title 11, United States Code. Any asbestos claim made in conjunction with a plan of reorganization allowable under the preceding sentence shall be subject to section 403(d) of this Act.

(b) TIER I.—Tier I shall include all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures greater than $1,000,000.

(c) TREATMENT OF TIER I BUSINESS ENTITIES IN BANKRUPTCY.—

(1) DEFINITION.—

(A) IN GENERAL.—In this subsection, the term "bankrupt business entity" means a person that is not a natural person that—

(i) filed a petition for relief under chapter 11, of title 11, United States Code, before January 1, 2003;

(ii) has not substantially consummated, as such term is defined under section 1101(2) of title 11, United States Code, a plan of reorganization as of the date of enactment of this Act; and

(iii) the bankruptcy court presiding over the business entity's case determines, after notice and a hearing upon motion filed by the entity within 30 days after the date of enactment of this Act, that asbestos liability was not the sole or precipitating cause of the entity's chapter 11 filing.

(B) MOTION AND RELATED MATTERS.—A motion under subparagraph (A)(iii) shall be supported by—

(i) an affidavit or declaration of the chief executive officer, chief financial officer, or chief legal officer of the business entity; and

(ii) copies of the entity's public statements and securities filings made in connection with the entity's filing for chapter 11 protection.

Notice of such motion shall be as directed by the bankruptcy court, and the hearing shall be limited to consideration of the question of whether or not asbestos liability was the sole or precipitating cause of the entity's chapter 11 filing. The bankruptcy court shall hold a hearing and make its determination with respect to the motion within 30 days after the date the motion is filed. In making its determination, the bankruptcy court shall take into account the affidavits, public statements, and securities filings, and other information, if any, submitted by the entity and all other facts and circumstances presented by an objecting party. Any review of this determination shall be an expedited appeal and limited to whether the decision was against the weight of the evidence. Any appeal of a determination shall be an expedited review to the United States Circuit Court of Appeals for the circuit in which the bankruptcy is filed.

(2) PROCEEDING WITH REORGANIZATION PLAN.—A bankrupt business entity may proceed with the filing, solicitation, confirmation, and consummation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction described in section 524(g) of title 11, United States Code, notwithstanding any other provisions of this Act, if the bankruptcy court makes a favorable determination under paragraph (1)(B), unless the bankruptcy court's determination is overruled on appeal and all appeals are final. Such a bankrupt business entity may continue to so proceed, if—

(A) on request of a party in interest or on a motion of the court, and after a notice and a hearing, the bankruptcy court presiding over the chapter 11 case of the bankrupt business entity determines that such confirmation is required to avoid the liquidation or the need for further financial reorganization of that entity; and

(B) an order confirming the plan of reorganization is entered by the bankruptcy court within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown.

(3) APPLICABILITY.—If the bankruptcy court does not make the determination required under paragraph (2), or if an order confirming the plan is not entered within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown, the provisions of this Act shall apply to the bankrupt business entity notwithstanding the certification. Any timely appeal under title 11, United States Code, from a confirmation order entered during the applicable time period shall automatically extend the time during which this Act is inapplicable to the bankrupt business entity, until the appeal is fully and finally resolved.

(4) OFFSETS.—

(A) PAYMENTS BY INSURERS.—To the extent that a bankrupt business entity or debtor successfully confirms a plan of reorganization, including a trust, and channeling injunction that involves payments by insurers who are otherwise subject to this Act as described under section 524(g) of title 11, United States Code, an insurer who makes payments to the trust shall obtain a dollar-for-dollar reduction in the amount otherwise payable by that insurer under this Act to the Fund.

(B) CONTRIBUTIONS TO FUND.—Any cash payments by a bankrupt business entity, if any, to a trust described under section 524(g) of title 11, United States Code, may be counted as a contribution to the Fund.

(d) TIERS II THROUGH VI.—Except as provided in section 204 and subsection (b) of this section, persons or affiliated groups are included in Tier II, III, IV, V, or VI, according to the prior asbestos expenditures paid by such persons or affiliated groups as follows:

(1) Tier II: $75,000,000 or greater.

(2) Tier III: $50,000,000 or greater, but less than $75,000,000.

(3) Tier IV: $10,000,000 or greater, but less than $50,000,000.

(4) Tier V: $5,000,000 or greater, but less than $10,000,000.

(5) Tier VI: $1,000,000 or greater, but less than $5,000,000.

(6) ASBESTOS PREMISES DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—Asbestos premises defendant participants that would be included in Tier II, III, IV or V according to their prior asbestos expenditures shall, after 5 years of the Fund being operational, instead be assigned to the immediately lower tier, such that—

(i) an asbestos premises defendant participant that would be assigned to Tier II shall instead be assigned to Tier III;

(ii) an asbestos premises defendant participant that would be assigned to Tier III shall instead be assigned to Tier IV;

(iii) an asbestos premises defendant participant that would be assigned to Tier IV shall instead be assigned to Tier V; and

(iv) an asbestos premises defendant participant that would be assigned to Tier V shall instead be assigned to Tier VI.

(B) RETURN TO ORIGINAL TIER.—The Administrator may return asbestos premises defendant participants to their original tier, on a yearly basis, if the Administrator determines that the additional revenues that would be collected are needed to preserve the solvency of the Fund.

(e) TIER PLACEMENT AND COSTS.—

(1) PERMANENT TIER PLACEMENT.—After a defendant participant or affiliated group is assigned to a tier and subtier under section 204(i)(6), the participant or affiliated group shall remain in that tier and subtier throughout the life of the Fund, regardless of subsequent events, including—

(A) the filing of a petition under a chapter of title 11, United States Code;

(B) a discharge of debt in bankruptcy;

(C) the confirmation of a plan of reorganization; or

(D) the sale or transfer of assets to any other person or affiliated group, unless the Administrator finds that the information submitted by the participant or affiliated group to support its inclusion in that tier was inaccurate.

(2) COSTS.—Payments to the Fund by all persons that are the subject of a case under a chapter of title 11, United States Code, after the date of enactment of this Act—

(A) shall constitute costs and expenses of administration of the case under section 503 of title 11, United States Code, and shall be payable in accordance with the payment provisions under this subtitle notwithstanding the pendency of the case under that title 11;

(B) shall not be stayed or affected as to enforcement or collection by any stay or injunction power of any court; and

(C) shall not be impaired or discharged in any current or future case under title 11, United States Code.

(f) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—All of the following shall be superseded in their entireties by this Act:

(A) The treatment of any asbestos claim in any plan of reorganization with respect to any debtor included in Tier I.

(B) Any asbestos claim against any debtor included in Tier I.

(C) Any agreement, understanding, or undertaking by any such debtor or any third party with respect to the treatment of any asbestos claim filed in a debtor's bankruptcy case or with respect to a debtor before the date of enactment of this Act, whenever such debtor's case is either still pending, if such case is pending under a chapter other than chapter 11 of title 11, United States Code, or subject to confirmation or substantial consummation of a plan of reorganization under chapter 11 of title 11, United States Code.

(2) PRIOR AGREEMENTS OF NO EFFECT.—Notwithstanding section 403(c)(3), any plan of reorganization, agreement, understanding, or undertaking by any debtor (including any pre-petition agreement, understanding, or undertaking that requires future performance) or any third party under paragraph (1), and any agreement, understanding, or undertaking entered into in anticipation, contemplation, or furtherance of a plan of reorganization, to the extent it relates to any asbestos claim, shall be of no force or effect, and no person shall have any right or claim with respect to any such agreement, understanding, or undertaking.

SEC. 203. SUBTIERS.

(a) IN GENERAL.—

(1) SUBTIER LIABILITY.—Except as otherwise provided under subsections (b), (d), and (l) of section 204, persons or affiliated groups shall be included within Tiers I through VII and shall pay amounts to the Fund in accordance with this section.

(2) REVENUES.—

(A) IN GENERAL.—For purposes of this section, revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as revenues in the annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) for the most recent fiscal year ending on or before December 31, 2002. If the defendant participant or affiliated group does not file reports with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant or affiliated group would have reported as revenues under the rules of the Securities and Exchange Commission in the event that it had been required to file.

(B) INSURANCE PREMIUMS.—Any portion of revenues of a defendant participant that is derived from insurance premiums shall not be used to calculate the payment obligation of that defendant participant under this subtitle.

(C) DEBTORS.—Each debtor's revenues shall include the revenues of the debtor and all of the direct or indirect majority-owned subsidiaries of that debtor, except that the pro forma revenues of a person that is included in Subtier 2 of Tier I shall not be included in calculating the revenues of any debtor that is a direct or indirect majority owner of such Subtier 2 person. If a debtor or affiliated group includes a person in respect of whose liabilities for asbestos claims a class action trust has been established, there shall be excluded from the 2002 revenues of such debtor or affiliated group—

(i) all revenues of the person in respect of whose liabilities for asbestos claims the class action trust was established; and

(ii) all revenues of the debtor and affiliated group attributable to the historical business operations or assets of such person, regardless of whether such business operations or assets were owned or conducted during the year 2002 by such person or by any other person included within such debtor and affiliated group.

(b) TIER I SUBTIERS.—

(1) IN GENERAL.—Each debtor in Tier I shall be included in subtiers and shall pay amounts to the Fund as provided under this section.

(2) SUBTIER 1.—

(A) IN GENERAL.—All persons that are debtors with prior asbestos expenditures of $1,000,000 or greater, shall be included in Subtier 1.

(B) PAYMENT.—

(i) IN GENERAL.—Each debtor included in Subtier 1 shall pay on an annual basis 1.67024 percent of the debtor's 2002 revenues.

(ii) EXCEPTION TO PAYMENT PERCENTAGE.—Notwithstanding clause (i), a debtor in Subtier 1 shall pay, on an annual basis, $500,000 if—

(I) such debtor, including its direct or indirect majority-owned subsidiaries, has less than $10,000,000 in prior asbestos expenditures;

(II) at least 95 percent of such debtors revenues derive from the provision of engineering and construction services; and

(III) such debtor, including its direct or indirect majority-owned subsidiaries, never manufactured, sold, or distributed asbestos-containing products in the stream of commerce.

(C) OTHER ASSETS.—The Administrator, at the sole discretion of the Administrator, may allow a Subtier 1 debtor to satisfy its funding obligation under this paragraph with assets other than cash if the Administrator determines that requiring an all-cash payment of the debtor's funding obligation would render the debtor's reorganization infeasible.

(D) LIABILITY.—

(i) IN GENERAL.—If a person who is subject to a case pending under a chapter of title 11, United States Code, as defined in section 201(3)(A)(i), does not pay when due any payment obligation for the debtor, the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the debtor may be liable under sections 223 and 224) from any of the direct or indirect majority-owned subsidiaries under section 201(3)(A)(ii).

(ii) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within a debtor under section 201(3)(A) (i) and (ii) with respect to the payment obligations under this Act.

(iii) RIGHT OF CONTRIBUTION.—

(I) IN GENERAL.—Notwithstanding any other provision of this Act, if a direct or indirect majority-owned foreign subsidiary of a debtor participant (with such relationship to the debtor participant as determined on the date of enactment of this Act) is or becomes subject to any foreign insolvency proceedings, and such foreign direct or indirect-majority owned subsidiary is liquidated in connection with such foreign insolvency proceedings (or if the debtor participant's interest in such foreign subsidiary is otherwise canceled or terminated in connection with such foreign insolvency proceedings), the debtor participant shall have a claim against such foreign subsidiary or the estate of such foreign subsidiary in an amount equal to the greater of—

(aa) the estimated amount of all current and future asbestos liabilities against such foreign subsidiary; or

(bb) the foreign subsidiary's allocable share of the debtor participant's funding obligations to the Fund as determined by such foreign subsidiary's allocable share of the debtor participant's 2002 gross revenue.

(II) DETERMINATION OF CLAIM AMOUNT.—The claim amount under subclause (I) (aa) or (bb) shall be determined by a court of competent jurisdiction in the United States.

(III) EFFECT ON PAYMENT OBLIGATION.—The right to, or recovery under, any such claim shall not reduce, limit, delay, or otherwise affect the debtor participant's payment obligations under this Act.

(iv) MAXIMUM ANNUAL PAYMENT OBLIGATION.—Subject to any payments under sections 204(l) and 222(c), and paragraphs (3), (4), and (5) of this subsection, the annual payment obligation by a debtor under subparagraph (B) of this paragraph shall not exceed $80,000,000.

(3) SUBTIER 2.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors that have no material continuing business operations, other than class action trusts under paragraph (6), but hold cash or other assets that have been allocated or earmarked for the settlement of asbestos claims shall be included in Subtier 2.

(B) ASSIGNMENT OF ASSETS.—Not later than 90 days after the date of enactment of this Act, each person included in Subtier 2 shall assign all of its unencumbered assets to the Fund.

(4) SUBTIER 3.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors other than those included in Subtier 2, which have no material continuing business operations and no cash or other assets allocated or earmarked for the settlement of any asbestos claim, shall be included in Subtier 3.

(B) ASSIGNMENT OF UNENCUMBERED ASSETS.—Not later than 90 days after the date of enactment of this Act, each person included in Subtier 3 shall contribute an amount equal to 50 percent of its total unencumbered assets.

(5) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance-related assets, jointly held, in trust or otherwise, with a defendant participant, less—

(A) all allowable administrative expenses;

(B) allowable priority claims under section 507 of title 11, United States Code; and

(C) allowable secured claims.

(6) CLASS ACTION TRUST.—The assets of any class action trust that has been established in respect of the liabilities for asbestos claims of any person included within a debtor and affiliated group that has been included in Tier I (exclusive of any assets needed to pay previously incurred expenses and asbestos claims within the meaning of section 403(d)(1), before the date of enactment of this Act) shall be transferred to the Fund not later than 60 days after the date of enactment of this Act.

(c) TIER II SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier II shall be included in 1 of the 5 subtiers of Tier II, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) Payments.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $27,500,000.

(B) Subtier 2: $24,750,000.

(C) Subtier 3: $22,000,000.

(D) Subtier 4: $19,250,000.

(E) Subtier 5: $16,500,000.

(d) Tier III Subtiers.—

(1) In general.—Each person or affiliated group in Tier III shall be included in 1 of the 5 subtiers of Tier III, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) Payments.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $16,500,000.

(B) Subtier 2: $13,750,000.

(C) Subtier 3: $11,000,000.

(D) Subtier 4: $8,250,000.

(E) Subtier 5: $5,500,000.

(e) Tier IV Subtiers.—

(1) In general.—Each person or affiliated group in Tier IV shall be included in 1 of the 4 subtiers of Tier IV, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be included in Subtier 2 and the rest in Subtier 3.

(2) Payment.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $3,850,000.

(B) Subtier 2: $2,475,000.

(C) Subtier 3: $1,650,000.

(D) Subtier 4: $550,000.

(f) Tier V Subtiers.—

(1) In general.—Each person or affiliated group in Tier V shall be included in 1 of the 3 subtiers of Tier V, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) Payment.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $1,000,000.

(B) Subtier 2: $500,000.

(C) Subtier 3: $200,000.

(g) Tier VI Subtiers.—

(1) In general.—Each person or affiliated group in Tier VI shall be included in 1 of the 3 subtiers of Tier VI, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) Payment.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $500,000.

(B) Subtier 2: $250,000.

(C) Subtier 3: $100,000.

(3) Other payment for certain persons and affiliated groups.—

(A) In general.—Notwithstanding any other provision of this subsection, and if an adjustment authorized by this subsection does not impair the overall solvency of the Fund, any person or affiliated group within Tier VI whose required subtier payment in any given year would exceed such person's or group's average annual expenditure on settlements, and judgments of asbestos disease-related claims over the 8 years before the date of enactment of this Act shall make the payment required of the immediately lower subtier or, if the person's or group's average annual expenditures on settlements and judgments over the 8 years before the date of enactment of this Act is less than $100,000, shall not be required to make a payment under this Act.

(B) No further adjustment.—Any person or affiliated group that receives an adjustment under this paragraph shall not be eligible to receive any further adjustment under section 204(d).

(h) Tier VII.—

(1) In general.—Notwithstanding prior asbestos expenditures that might qualify a person or affiliated group to be included in Tiers II, III, IV, V, or VI, a person or affiliated group shall also be included in Tier VII, if the person or affiliated group—

(A) is or has at any time been subject to asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad; and

(B) has paid (including any payments made by others on behalf of such person or affiliated group) not less than $5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims, and such settlement, judgment, defense, or indemnity costs constitute 75 percent or more of the total prior asbestos expenditures by the person or affiliated group.

(2) Additional amount.—The payment requirement for persons or affiliated groups included in Tier VII shall be in addition to any payment requirement applicable to such person or affiliated group under Tiers II through VI.

(3) Subtier 1.—Each person or affiliated group in Tier VII with revenues of $6,000,000,000 or more is included in Subtier 1 and shall make annual payments of $11,000,000 to the Fund.

(4) Subtier 2.—Each person or affiliated group in Tier VII with revenues of less than $6,000,000,000, but not less than $4,000,000,000 is included in Subtier 2 and shall make annual payments of $5,500,000 to the Fund.

(5) Subtier 3.—Each person or affiliated group in Tier VII with revenues of less than $4,000,000,000, but not less than $500,000,000 is included in Subtier 3 and shall make annual payments of $550,000 to the Fund.

(6) Joint venture revenues and liability.—

(A) Revenues.—For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The joint venture shall not be responsible for a contribution amount under this subsection.

(B) Liability.—For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a payment amount under this provision.

SEC. 204. ASSESSMENT ADMINISTRATION.

(a) In General.—Each defendant participant or affiliated group shall pay to the Fund in the amounts provided under this subtitle as appropriate for its tier and subtier each year until the earlier to occur of the following:

(1) The participant or affiliated group has satisfied its obligations under this subtitle during the 30 annual payment cycles of the operation of the Fund.

(2) The amount received by the Fund from defendant participants, excluding any amounts rebated to defendant participants under subsections (d) and (m), equals the maximum aggregate payment obligation of section 202(a)(2).

(b) Small Business Exemption.—Notwithstanding any other provision of this subtitle, a person or affiliated group that is a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), on December 31, 2002, is exempt from any payment requirement under this subtitle and shall not be included in the subtier allocations under section 203.

(c) Procedures.—The Administrator shall prescribe procedures on how amounts payable under this subtitle are to be paid, including, to the extent the Administrator determines appropriate, procedures relating to payment in installments.

(d) Adjustments.—

(1) In general.—Under expedited procedures established by the Administrator, a defendant participant may seek adjustment of the amount of its payment obligation based on severe financial hardship or demonstrated inequity. The Administrator may determine whether to grant an adjustment and the size of any such adjustment, in accordance with this subsection. A defendant participant has a right to obtain a rehearing of the Administrator's determination under this subsection under the procedures prescribed in subsection (i)(10). The Administrator may adjust a defendant participant's payment obligations under this subsection, either by forgiving the relevant portion of the otherwise applicable payment obligation or by providing relevant rebates from the defendant hardship and inequity adjustment account created under subsection (j) after payment of the otherwise applicable payment obligation, at the discretion of the Administrator.

(2) Financial hardship adjustments.—

(A) In general.—A defendant participant may apply for an adjustment based on financial hardship at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such adjustment by demonstrating that the amount of its payment obligation under the statutory allocation would constitute a severe financial hardship.

(B) Term.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), a financial hardship adjustment under this subsection shall have a term of 3 years.

(C) RENEWAL.—After an initial hardship adjustment is granted under this paragraph, a defendant participant may renew its hardship adjustment by demonstrating that it remains justified.

(D) REINSTATEMENT.—Following the expiration of the hardship adjustment period provided for under this section and during the funding period prescribed under subsection (a), the Administrator shall annually determine whether there has been a material change in the financial condition of the defendant participant such that the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate under terms and conditions established by the Administrator any part or all of the defendant participant's payment obligation under the statutory allocation that was not paid during the hardship adjustment term.

(3) INEQUITY ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant—

(i) may qualify for an adjustment based on inequity by demonstrating that the amount of its payment obligation under the statutory allocation is exceptionally inequitable—

(I) when measured against the amount of the likely cost to the defendant participant net of insurance of its future liability in the tort system in the absence of the Fund;

(II) when measured against the likely cost of past and potential future claims in the absence of this Act;

(III) when compared to the median payment rate for all defendant participants in the same tier; or

(IV) when measured against the percentage of the prior asbestos expenditures of the defendant that were incurred with respect to claims that neither resulted in an adverse judgment against the defendant, nor were the subject of a settlement that required a payment to a plaintiff by or on behalf of that defendant;

(ii) shall qualify for a two-tier main tier and a two-tier subtier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such person's prior asbestos expenditures arose from claims related to the manufacture and sale of railroad locomotives and related products, so long as such person's manufacture and sale of railroad locomotives and related products is temporally and causally remote, and for purposes of this clause, a person's manufacture and sale of railroad locomotives and related products shall be deemed to be temporally and causally remote if the asbestos claims historically and generally filed against such person relate to the manufacture and sale of railroad locomotives and related products by an entity dissolved more than 25 years before the date of enactment of this Act;

(iii) shall be granted a two-tier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such participant's prior asbestos expenditures arose from asbestos claims based on successor liability arising from a merger to which the participant or its predecessor was a party that occurred at least 30 years before the date of enactment of this Act, and that such prior asbestos expenditures exceed the inflation-adjusted value of the assets of the company from which such liability was derived in such merger, and upon such demonstration the Administrator shall grant such adjustment for the life of the Fund and amounts paid by such defendant participant prior to such adjustment in excess of its adjusted payment obligation under this clause shall be credited against next succeeding required payment obligations; and

(iv) may, subject to the discretion of the Administrator, be exempt from any payment obligation if such defendant participant establishes with the Administrator that—

(I) such participant has satisfied all past claims; and

(II) there is no reasonable likelihood in the absence of this Act of any future claims with costs for which the defendant participant might be responsible.

(B) PAYMENT RATE.—For purposes of subparagraph (A), the payment rate of a defendant participant is the payment amount of the defendant participant as a percentage of such defendant participant's gross revenues for the year ending December 31, 2002.

(C) TERM.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), an inequity adjustment under this subsection shall have a term of 3 years.

(D) RENEWAL.—A defendant participant may renew an inequity adjustment every 3 years by demonstrating that the adjustment remains justified.

(E) REINSTATEMENT.—

(i) IN GENERAL.—Following the termination of an inequity adjustment under subparagraph (A), and during the funding period prescribed under subsection (a), the Administrator shall annually determine whether there has been a material change in conditions which would support a finding that the amount of the defendant participant's payment under the statutory allocation was not inequitable. Based on this determination, the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate any or all of the payment obligations of the defendant participant as if the inequity adjustment had not been granted for that 3-year period.

(ii) TERMS AND CONDITIONS.—In the event of a reinstatement under clause (i), the Administrator may require the defendant participant to pay any part or all of amounts not paid due to the inequity adjustment on such terms and conditions as established by the Administrator.

(4) LIMITATION ON ADJUSTMENTS.—The aggregate total of financial hardship adjustments under paragraph (2) and inequity adjustments under paragraph (3) in effect in any given year shall not exceed $300,000,000, except to the extent that—

(A) additional monies are available for such adjustments as a result of carryover of prior years' funds under subsection (j)(3) or as a result of monies being made available in that year under subsection (k)(1)(A); or

(B) the Administrator determines that the $300,000,000 is insufficient and additional adjustments as provided under paragraph (5) are needed to address situations in which a defendant participant would otherwise be rendered insolvent by its payment obligations without such adjustment.

(5) BANKRUPTCY RELIEF.—

(A) IN GENERAL.—Any defendant participant may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such adjustment by demonstrating, to a reasonable degree of certainty, evidence that the amount of its payment obligation would render the defendant participant insolvent, as defined under section 101 of title 11, United States Code, and unable to pay its debts as they become due.

(B) INFORMATION REQUIRED.—Any defendant participant seeking an adjustment or renewal of an adjustment under this paragraph shall provide the Administrator with the information required under section 521(1) of title 11 of the United States Code.

(C) LIMITATION.—Any adjustment granted by the Administrator under subparagraph (A) shall be limited to the extent reasonably necessary to prevent insolvency of a defendant participant.

(D) TERM.—To the extent the Administrator grants any relief under this paragraph, such adjustments shall have a term of 1 year. An adjustment may be renewed or modified on an annual basis upon the defendant participant demonstrating that the adjustment or modification remains justified under this paragraph.

(E) REINSTATEMENT.—During the funding period prescribed under subparagraph (A), the Administrator shall annually determine whether there has been a material change in the financial condition of any defendant participant granted an adjustment under this paragraph such that the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate under terms and conditions established by the Administrator any part or all of the defendant participant's payment obligation under the statutory allocation that was not paid during the adjustment term.

(6) ADVISORY PANELS.—

(A) APPOINTMENT.—The Administrator shall appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise the Administrator in carrying out this subsection.

(B) MEMBERSHIP.—The membership of the panels appointed under subparagraph (A) may overlap.

(C) COORDINATION.—The panels appointed under subparagraph (A) shall coordinate their deliberations and advice.

(e) LIMITATION ON LIABILITY.—The liability of each defendant participant to pay to the Fund shall be limited to the payment obligations under this Act, and, except as provided in subsection (f) and section 203(b)(2)(D), no defendant participant shall have any liability for the payment obligations of any other defendant participant.

(f) CONSOLIDATION OF PAYMENTS.—

(1) IN GENERAL.—For purposes of determining the payment levels of defendant participants, any affiliated group including 1 or more defendant participants may irrevocably elect, as part of the submissions to be made under paragraphs (1) and (3) of subsection (i), to report on a consolidated basis all of the information necessary to determine the payment level under this subtitle and pay to the Fund on a consolidated basis.

(2) ELECTION.—If an affiliated group elects consolidation as provided in this subsection—

(A) for purposes of this Act other than this subsection, the affiliated group shall be treated as if it were a single participant, including with respect to the assessment of a single annual payment under this subtitle for the entire affiliated group;

(B) the ultimate parent of the affiliated group shall prepare and submit each submission to be made under subsection (i) on behalf of the entire affiliated group and shall be solely liable, as between the Administrator and the affiliated group only, for the payment of the annual amount due from the affiliated group under this subtitle, except that, if the ultimate parent does not pay when due any payment obligation for the affiliated group, the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the affiliated group may be liable under sections 223 and 224) from any member of the affiliated group;

(C) all members of the affiliated group shall be identified in the submission under subsection (i) and shall certify compliance with this subsection and the Administrator's regulations implementing this subsection; and

(D) the obligations under this subtitle shall not change even if, after the date of enactment of this Act, the beneficial ownership interest between any members of the affiliated group shall change.

(3) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within an affiliated group with respect to the payment obligations under this Act.

(g) DETERMINATION OF PRIOR ASBESTOS EXPENDITURES.—

(1) IN GENERAL.—For purposes of determining a defendant participant's prior asbestos expenditures, the Administrator shall prescribe such rules as may be necessary or appropriate to assure that payments by indemnitors before December 31, 2002, shall be counted as part of the indemnitor's prior asbestos expenditures, rather than the indemnitee's prior asbestos expenditures, in accordance with this subsection.

(2) INDEMNIFIABLE COSTS.—If an indemnitor has paid or reimbursed to an indemnitee any indemnifiable cost or otherwise made a payment on behalf of or for the benefit of an indemnitee to a third party for an indemnifiable cost before December 31, 2002, the amount of such indemnifiable cost shall be solely for the account of the indemnitor for purposes under this Act.

(3) INSURANCE PAYMENTS.—When computing the prior asbestos expenditures with respect to an asbestos claim, any amount paid or reimbursed by insurance shall be solely for the account of the indemnitor, even if the indemnitor would have no direct right to the benefit of the insurance, if—

(A) such insurance has been paid or reimbursed to the indemnitor or the indemnitee, or paid on behalf of or for the benefit of the indemnitee; and

(B) the indemnitor has either, with respect to such asbestos claim or any similar asbestos claim, paid or reimbursed to its indemnitee any indemnifiable cost or paid to any third party on behalf of or for the benefit of the indemnitee any indemnifiable cost.

(4) TREATMENT OF CERTAIN EXPENDITURES.—Notwithstanding any other provision of this Act, where—

(A) an indemnitor entered into a stock purchase agreement in 1988 that involved the sale of the stock of businesses that produced friction and other products; and

(B) the stock purchase agreement provided that the indemnitor indemnified the indemnitee and its affiliates for losses arising from various matters, including asbestos claims—

(i) asserted before the date of the agreement; and

(ii) filed after the date of the agreement and prior to the 10-year anniversary of the stock sale,

then the prior asbestos expenditures arising from the asbestos claims described in clauses (i) and (ii) shall not be for the account of either the indemnitor or indemnitee.

(h) MINIMUM ANNUAL PAYMENTS.—

(1) IN GENERAL.—The aggregate annual payments of defendant participants to the Fund shall be at least $3,000,000,000 for each calendar year in the first 30 years of the Fund, or until such shorter time as the condition set forth in subsection (a)(2) is attained.

(2) GUARANTEED PAYMENT ACCOUNT.—To the extent payments in accordance with sections 202 and 203 (as modified by subsections (b), (d), (f), (g), and (m) of this section) fail in any year to raise at least $3,000,000,000, after applicable reductions or adjustments have been taken according to subsections (d) and (m), the balance needed to meet this required minimum aggregate annual payment shall be obtained from the defendant guaranteed payment account established under subsection (k).

(3) GUARANTEED PAYMENT SURCHARGE.—To the extent the procedure set forth in paragraph (2) is insufficient to satisfy the required minimum aggregate annual payment, after applicable reductions or adjustments have been taken according to subsections (d) and (m), the Administrator shall unless the Administrator implements a funding holiday under section 205(b), assess a guaranteed payment surcharge under subsection (l).

(i) PROCEDURES FOR MAKING PAYMENTS.—

(1) INITIAL YEAR: TIERS II–VI.—

(A) IN GENERAL.—Not later than 90 days after enactment of this Act, each defendant participant that is included in Tiers II, III, IV, V, or VI shall file with the Administrator—

(i) a statement of whether the defendant participant irrevocably elects to report on a consolidated basis under subsection (f);

(ii) a good-faith estimate of its prior asbestos expenditures;

(iii) a statement of its 2002 revenues, determined in accordance with section 203(a)(2);

(iv) payment in the amount specified in section 203 for the lowest subtier of the tier within which the defendant participant falls, except that if the defendant participant, or the affiliated group including the defendant participant, had 2002 revenues exceeding $3,000,000,000, it or its affiliated group shall pay the amount specified for Subtier 3 of Tiers II, III, or IV or Subtier 2 of Tiers V or VI, depending on the applicable Tier; and

(v) a signature page personally verifying the truth of the statements and estimates described under this subparagraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(B) RELIEF.—

(i) IN GENERAL.—The Administrator shall establish procedures to grant a defendant participant relief from its initial payment obligation if the participant shows that—

(I) the participant is likely to qualify for a financial hardship adjustment; and

(II) failure to provide interim relief would cause severe irreparable harm.

(ii) JUDICIAL RELIEF.—The Administrator's refusal to grant relief under clause (i) is subject to immediate judicial review under section 303.

(2) INITIAL YEAR: TIER I.—Not later than 60 days after enactment of this Act, each debtor shall file with the Administrator—

(A) a statement identifying the bankruptcy case(s) associated with the debtor;

(B) a statement whether its prior asbestos expenditures exceed $1,000,000;

(C) a statement whether it has material continuing business operations and, if not, whether it holds cash or other assets that have been allocated or earmarked for asbestos settlements;

(D) in the case of debtors falling within Subtier 1 of Tier I—

(i) a statement of the debtor's 2002 revenues, determined in accordance with section 203(a)(2);

(ii) for those debtors subject to the payment requirement of section 203(b)(2)(B)(ii), a statement whether its prior asbestos expenditures do not exceed $10,000,000, and a description of its business operations sufficient to show the requirements of that section are met; and

(iii) a payment under section 203(b)(2)(B);

(E) in the case of debtors falling within Subtier 2 of Tier I, an assignment of its assets under section 203(b)(3)(B);

(F) in the case of debtors falling within Subtier 3 of Tier I, a payment under section 203(b)(4)(B), and a statement of how such payment was calculated; and

(G) a signature page personally verifying the truth of the statements and estimates described under this paragraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(3) INITIAL YEAR: TIER VII.—Not later than 90 days after enactment of this Act, each defendant participant in Tier VII shall file with the Administrator—

(A) a good-faith estimate of all payments of the type described in section 203(h)(1) (as modified by section 203(h)(6));

(B) a statement of revenues calculated in accordance with sections 203(a)(2) and 203(h); and

(C) payment in the amount specified in section 203(h).

(4) NOTICE TO PARTICIPANTS.—Not later than 240 days after enactment of this Act, the Administrator shall—

(A) directly notify all reasonably identifiable defendant participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund; and

(B) publish in the Federal Register a notice—

(i) setting forth the criteria in this Act, and as prescribed by the Administrator in accordance with this Act, for paying under this subtitle as a defendant participant and requiring any person who may be a defendant participant to submit such information; and

(ii) that includes a list of all defendant participants notified by the Administrator under subparagraph (A), and provides for 30 days for the submission by the public of comments or information regarding the completeness and accuracy of the list of identified defendant participants.

(5) RESPONSE REQUIRED.—

(A) IN GENERAL.—Any person who receives notice under paragraph (4)(A), and any other person meeting the criteria specified in the notice published under paragraph (4)(B), shall provide the Administrator with an address to send any notice from the Administrator in accordance with this Act and all the information required by the Administrator in accordance with this subsection no later than the earlier of—

(i) 30 days after the receipt of direct notice; or

(ii) 30 days after the publication of notice in the Federal Register.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(C) CONSENT TO AUDIT AUTHORITY.—The response submitted under subparagraph (A) shall include, on behalf of the defendant participant or affiliated group, a consent to the Administrator's audit authority under section 221(d).

(6) NOTICE OF INITIAL DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INDIVIDUAL.—Not later than 60 days after receiving a response under paragraph (5), the Administrator shall send the person a notice of initial determination identifying the tier and subtier, if any, into which the person falls and the annual payment obligation, if any, to the Fund, which determination shall be based on the information received from the person under this subsection and any other pertinent information available to the Administrator and identified to the defendant participant.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to defendant participants, the Administrator shall publish in the Federal Register a notice listing the defendant participants that have been sent such notification, and the initial determination identifying the tier and subtier assignment and annual payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response in accordance with paragraph (5) is received from a defendant participant, or if the response is incomplete, the initial determination shall be based on the best information available to the Administrator.

(C) PAYMENTS.—Within 30 days of receiving a notice of initial determination requiring payment, the defendant participant shall pay the Administrator the amount required by the notice, after deducting any previous payment made by the participant under this subsection. If the amount that the defendant participant is required to pay is less than any previous payment made by the participant under this subsection, the Administrator shall credit any excess payment against the future payment obligations of that defendant participant. The pendency of a petition for rehearing under paragraph (10) shall not stay the obligation of the participant to make the payment specified in the Administrator's notice.

(7) EXEMPTIONS FOR INFORMATION REQUIRED.—

(A) PRIOR ASBESTOS EXPENDITURES.—In lieu of submitting information related to prior asbestos expenditures as may be required for purposes of this subtitle, a non-debtor defendant participant may consent to be assigned to Tier II.

(B) REVENUES.—In lieu of submitting information related to revenues as may be required for purposes of this subtitle, a non-debtor defendant participant may consent to be assigned to Subtier 1 of the defendant participant's applicable tier.

(8) NEW INFORMATION.—

(A) EXISTING PARTICIPANT.—The Administrator shall adopt procedures for requiring additional payment, or refunding amounts already paid, based on new information received.

(B) ADDITIONAL PARTICIPANT.—If the Administrator, at any time, receives information that an additional person may qualify as a defendant participant, the Administrator shall require such person to submit information necessary to determine whether that person is required to make payments, and in what amount, under this subtitle and shall make any determination or take any other act consistent with this Act based on such information or any other information available to the Administrator with respect to such person.

(9) SUBPOENAS.—The Administrator may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(10) REHEARING.—A defendant participant has a right to obtain rehearing of the Administrator's determination under this subsection of the applicable tier or subtier of the Administrator's determination under subsection (d) of a financial hardship or inequity adjustment, and of the Administrator's determination under subsection (m) of a distributor's adjustment, if the request for rehearing is filed within 30 days after the defendant participant's receipt of notice from the Administrator of the determination. A defendant participant may not file an action under section 303 unless the defendant participant requests a rehearing under this paragraph. The Administrator shall publish a notice in the Federal Register of any change in a defendant participant's tier or subtier assignment or payment obligation as a result of a rehearing.

(j) DEFENDANT HARDSHIP AND INEQUITY ADJUSTMENT ACCOUNT.—

(1) IN GENERAL.—To the extent the total payments by defendant participants in any given year exceed the minimum aggregate annual payments required under subsection (h), excess monies up to a maximum of $300,000,000 in any such year shall be placed in a defendant hardship and inequity adjustment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant hardship and inequity adjustment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to make up for any relief granted to a defendant participant for severe financial hardship or demonstrated inequity under subsection (d) or to reimburse any defendant participant granted such relief after its payment of the amount otherwise due; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(3) CARRYOVER OF UNUSED FUNDS.—To the extent the Administrator does not, in any given year, use all of the funds allocated to the account under paragraph (1) for adjustments granted under subsection (d), remaining funds in the account shall be carried forward for use by the Administrator for adjustments in subsequent years.

(k) DEFENDANT GUARANTEED PAYMENT ACCOUNT.—

(1) IN GENERAL.—Subject to subsections (h) and (j), if there are excess monies paid by defendant participants in any given year, including any bankruptcy trust credits that may be due under section 222(d), such monies—

(A) at the discretion of the Administrator, may be used to provide additional adjustments under subsection (d), up to a maximum aggregate of $50,000,000 in such year; and

(B) to the extent not used under subparagraph (A), shall be placed in a defendant guaranteed payment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant guaranteed payment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to ensure the minimum aggregate annual payment required under subsection (h), after applicable reductions or adjustments have been taken according to subsections (d) and (m) is reached each year; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(l) GUARANTEED PAYMENT SURCHARGE.—

(1) IN GENERAL.—To the extent there are insufficient monies in the defendant guaranteed payment account established in subsection (k) to attain the minimum aggregate annual payment required under subsection (h) in any given year, the Administrator shall, unless the Administrator implements a funding holiday under section 205(b), impose on each defendant participant a surcharge as necessary to raise the balance required to attain the minimum aggregate annual payment required under subsection (h) as provided in this subsection. Any such surcharge shall be imposed on a pro rata basis, in accordance with each defendant participant's relative annual liability under sections 202 and 203 (as modified by subsections (b), (d), (f), (g), and (m) of this section).

(2) LIMITATION.—

(A) IN GENERAL.—In no case shall the Administrator impose a surcharge under this subsection on any defendant participant included in Subtier 3 of Tiers V or VI as described under section 203.

(B) REALLOCATION.—Any amount not imposed under subparagraph (A) shall be reallocated on a pro-rata basis, in accordance with each defendant participant's (other than a defendant participant described under subparagraph (A)) relative annual liability under sections 202 and 203 (as modified by subsections (b), (d), (f), and (g) of this section).

(3) CERTIFICATION.—

(A) IN GENERAL.—Before imposing a guaranteed payment surcharge under this subsection, the Administrator shall certify that he or she has used all reasonable efforts to collect mandatory payments for all defendant participants, including by using the authority in subsection (i)(9) of this section and section 223.

(B) NOTICE AND COMMENT.—Before making a final certification under subparagraph (C), the Administrator shall publish a notice in the Federal Register of a proposed certification and provide in such notice for a public comment period of 30 days.

(C) FINAL CERTIFICATION.—

(i) IN GENERAL.—The Administrator shall publish a notice of the final certification in the Federal Register after consideration of all comments submitted under subparagraph (B).

(ii) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under clause (i), the Administrator shall provide each defendant participant with written notice of that defendant participant's payment, including the amount of any surcharge.

(m) ADJUSTMENTS FOR DISTRIBUTORS.—

(1) DEFINITION.—In this subsection, the term "distributor" means a person—

(A) whose prior asbestos expenditures arise exclusively from the sale of products manufactured by others;

(B) who did not prior to December 31, 2002, sell raw asbestos or a product containing more than 95 percent asbestos by weight;

(C) whose prior asbestos expenditures did not arise out of—

(i) the manufacture, installation, repair, reconditioning, maintaining, servicing, constructing, or remanufacturing of any product;

(ii) the control of the design, specification, or manufacture of any product; or

(iii) the sale or resale of any product under, as part of, or under the auspices of, its own brand, trademark, or service mark; and

(D) who is not subject to assignment under section 202 to Tier I, II, III or VII.

(2) TIER REASSIGNMENT FOR DISTRIBUTORS.—

(A) IN GENERAL.—Notwithstanding section 202, the Administrator shall assign a distributor to a Tier for purposes of this title under the procedures set forth in this paragraph.

(B) DESIGNATION.—After a final determination by the Administrator under section 204(i), any person who is, or any affiliated group in which every member is, a distributor may apply to the Administrator for adjustment of its Tier assignment under this subsection. Such application shall be prepared in accordance with such procedures as the Administrator shall promulgate by rule. Once the Administrator designates a person or affiliated group as a distributor under this subsection, such designation and the adjustment of tier assignment under this subsection are final.

(C) PAYMENTS.—Any person or affiliated group that seeks adjustment of its Tier assignment under this subsection shall pay all amounts required of it under this title until a final determination by the Administrator is made under this subsection. Such payments may not be stayed pending any appeal. The Administrator shall grant any person or affiliated group a refund or credit of any payments made if such adjustment results in a lower payment obligation.

(D) ADJUSTMENT.—Subject to paragraph (3), any person or affiliated group that the Administrator has designated as a distributor under this subsection shall be given an adjustment of Tier assignment as follows:

(i) A distributor that but for this subsection would be assigned to Tier IV shall be deemed assigned to Tier V.

(ii) A distributor that but for this subsection would be assigned to Tier V shall be deemed assigned to Tier VI.

(iii) A distributor that but for this subsection would be assigned to Tier VI shall be deemed assigned to no Tier and shall have no obligation to make any payment to the Fund under this Act.

(E) EXCLUSIVE TO INEQUITY ADJUSTMENT.—Any person or affiliated group designated by the Administrator as a distributor under this subsection shall not be eligible for an inequity adjustment under subsection 204(d).

(3) LIMITATION ON ADJUSTMENTS.—The aggregate total of distributor adjustments under this subsection in effect in any given year shall not exceed $50,000,000. If the aggregate total of distributors adjustments under this subsection would otherwise exceed $50,000,000, then each distributor's adjustment shall be reduced pro rata until the aggregate of all adjustments equals $50,000,000.

(4) REHEARING.—A defendant participant has a right to obtain a rehearing of the Administrator's determination on an adjustment under this subsection under the procedures prescribed in subsection (i)(10).

SEC. 205. STEPDOWNS AND FUNDING HOLIDAYS.

(a) STEPDOWNS.—

(1) IN GENERAL.—Subject to paragraph (2), the minimum aggregate annual funding obligation under section 204(h) shall be reduced by 10 percent of the initial minimum aggregate funding obligation at the end of the tenth, fifteenth, twentieth, and twenty-fifth years after the date of enactment of this Act. The reductions under this paragraph shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except with respect to defendant participants in Tier 1, Subtiers 2 and 3, and class action trusts.

(2) LIMITATION.—The Administrator shall suspend, cancel, reduce, or delay any reduction under paragraph (1) if at any time the Administrator finds, in accordance with subsection (c), that such action is necessary and appropriate to ensure that the assets of the Fund and expected future payments remain sufficient to satisfy the Fund's anticipated obligations.

(b) FUNDING HOLIDAYS.—

(1) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments, taking into consideration any reductions under subsection (a), are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from defendant participants for that year.

(2) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under paragraph (1) every year.

(3) LIMITATIONS ON FUNDING HOLIDAYS.—Any reduction or waiver of the defendant participants' funding obligations shall—

(A) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(B) be applied on an equal pro rata basis to the funding obligations of all defendant participants, except with respect to defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(4) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(c) CERTIFICATION.—

(1) IN GENERAL.—Before suspending, canceling, reducing, or delaying any reduction under subsection (a) or granting or revoking a reduction or waiver under subsection (b), the Administrator shall certify that the requirements of this section are satisfied.

(2) NOTICE AND COMMENT.—Before making a final certification under this subsection, the Administrator shall publish a notice in the Federal Register of a proposed certification and a statement of the basis therefor and provide in such notice for a public comment period of 30 days.

(3) FINAL CERTIFICATION.—

(A) IN GENERAL.—The Administrator shall publish a notice of the final certification in the Federal Register after consideration of all comments submitted under paragraph (2).

(B) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under subparagraph (A), the Administrator shall provide each defendant participant with written notice of that defendant's funding obligation for that year.

SEC. 206. ACCOUNTING TREATMENT.

Defendant participants payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each defendant participant. This section shall in no way reduce the amount of monetary payments to the Fund by defendant participants as required under section 202(a)(2).

Subtitle B—Asbestos Insurers Commission

SEC. 210. DEFINITION.

In this subtitle, the term "captive insurance company" means a company—

(1) whose entire beneficial interest is owned on the date of enactment of this Act, directly or indirectly, by a defendant participant or by the ultimate parent or the affiliated group of a defendant participant;

(2) whose primary commercial business during the period from calendar years 1940 through 1986 was to provide insurance to its ultimate parent or affiliated group, or any portion of the affiliated group or a combination thereof; and

(3) that was incorporated or operating no later than December 31, 2003.

SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COMMISSION.

(a) ESTABLISHMENT.—There is established the Asbestos Insurers Commission (referred to in this subtitle as the "Commission") to carry out the duties described in section 212.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) QUALIFICATIONS.—

(A) EXPERTISE.—Members of the Commission shall have sufficient expertise to fulfill their responsibilities under this subtitle.

(B) CONFLICT OF INTEREST.—

(i) IN GENERAL.—No member of the Commission appointed under paragraph (1) may be an employee or immediate family member of an employee of an insurer participant. No member of the Commission shall be a shareholder of any insurer participant. No member of the Commission shall be a former officer or director, or a former employee or former shareholder of any insurer participant who was such an employee, shareholder, officer, or director at any time during the 2-year period ending on the date of the appointment, unless that is fully disclosed before consideration in the Senate of the nomination for appointment to the Commission.

(ii) DEFINITION.—In clause (i), the term "shareholder" shall not include a broadly based mutual fund that includes the stocks of insurer participants as a portion of its overall holdings.

(C) FEDERAL EMPLOYMENT.—A member of the Commission may not be an officer or employee of the Federal Government, except by reason of membership on the Commission.

(3) PERIOD OF APPOINTMENT.—Members shall be appointed for the life of the Commission.

(4) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(5) CHAIRMAN.—The President shall select a Chairman from among the members of the Commission.

(c) MEETINGS.—

(1) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(2) SUBSEQUENT MEETINGS.—The Commission shall meet at the call of the Chairman, as necessary to accomplish the duties under section 212.

(3) QUORUM.—No business may be conducted or hearings held without the participation of a majority of the members of the Commission.

SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.

(a) DETERMINATION OF INSURER PAYMENT OBLIGATIONS.—

(1) IN GENERAL.—

(A) DEFINITIONS.—For the purposes of this Act, the terms "insurer" and "insurer participant" shall, unless stated otherwise, include direct insurers and reinsurers, as well as any run-off entity established, in whole or in part, to review and pay asbestos claims.

(B) PROCEDURES FOR DETERMINING INSURER PAYMENTS.—The Commission shall determine the amount that each insurer participant shall be required to pay into the Fund under the procedures described in this section. The Commission shall make this determination by first promulgating a rule establishing a methodology for allocation of payments among insurer participants and then applying such methodology to determine the individual payment for each insurer participant. The methodology may include 1 or more allocation formulas to be applied to all insurer participants or groups of similarly situated participants. The Commission's rule shall include a methodology for adjusting payments by insurer participants to make up, during the first 5 years of the life of the Fund and any subsequent years as provided in section 405(f) for any reduction in an insurer participant's annual allocated amount caused by the granting of a financial hardship or exceptional circumstance adjustment under this section, and any amount by which aggregate insurer payments fall below the level required under paragraph (3)(C) by reason of the failure or refusal of any insurer participant to make a required payment, or for any other reason that causes such payments to fall below the level required under paragraph (3)(C). The Commission shall conduct a thorough study (within the time limitations under this subparagraph) of the accuracy of the reserve allocation of each insurer participant, and may request information from the Securities and Exchange Commission or any State regulatory agency. Under this procedure, not later than 120 days after the initial meeting of the Commission, the Commission shall commence a rulemaking proceeding under section 213(a) to propose and adopt a methodology for allocating payments among insurer participants. In proposing an allocation methodology, the Commission may consult with such actuaries and other experts as it deems appropriate. After hearings and public comment on the proposed allocation methodology, the Commission shall as promptly as possible promulgate a final rule establishing such methodology. After promulgation of the final rule, the Commission shall determine the individual payment of each insurer participant under the procedures set forth in subsection (b).

(C) SCOPE.—Every insurer, reinsurer, and runoff entity with asbestos-related obligations in the United States shall be subject to the Commission's and Administrator's authority under this Act, including allocation determinations, and shall be required to fulfill its payment obligation without regard as to whether it is licensed in the United States. Every insurer participant not licensed or domiciled in the United States shall, upon the first payment to the Fund, submit a written consent to the Commission's and Administrator's authority under this Act, and to the jurisdiction of the courts of the United States for purposes of enforcing this Act, in a form determined by the Administrator. Any insurer participant refusing to provide a written consent shall be subject to fines and penalties as provided in section 223.

(D) ISSUERS OF FINITE RISK POLICIES.—

(i) IN GENERAL.—The issuer of any policy of retrospective reinsurance purchased by an insurer participant or its affiliate after 1990 that provides for a risk or loss transfer to insure for asbestos losses and other losses (both known and unknown), including those policies commonly referred to as "finite risk", "aggregate stop loss", "aggregate excess of loss", or "loss portfolio transfer" policies, shall be obligated to make payments required under this Act directly to the Fund on behalf of the insurer participant who is the beneficiary of such policy, subject to the underlying retention and the limits of liability applicable to such policy.

(ii) PAYMENTS.—Payments to the Fund required under this Act shall be treated as loss payments for asbestos bodily injury (as if such payments were incurred as liabilities imposed in the tort system) and shall not be subject to exclusion under policies described under clause (i) as a liability with respect to tax or assessment. Within 90 days after the scheduled date to make an annual payment to the Fund, the insurer participant shall, at its discretion, direct the reinsurer issuing such policy to pay all or a portion of the annual payment directly to the Fund up to the full applicable limits of liability under the policy. The reinsurer issuing such policy shall be obligated to make such payments directly to the Fund and shall be subject to the enforcement provisions under section 223. The insurer participant shall remain obligated to make payment to the Fund of that portion of the annual payment not directed to the issuer of such reinsurance policy.

(2) AMOUNT OF PAYMENTS.—

(A) AGGREGATE PAYMENT OBLIGATION.—The total payment required of all insurer participants over the life of the Fund shall be equal to $46,025,000,000, less any bankruptcy trust credits under section 222(d).

(B) ACCOUNTING STANDARDS.—In determining the payment obligations of participants that are not licensed or domiciled in the United States or that are runoff entities, the Commission shall use accounting standards required for United States licensed direct insurers.

(C) CAPTIVE INSURANCE COMPANIES.—No payment to the Fund shall be required from a captive insurance company, unless and only to the extent a captive insurance company, on the date of enactment of this Act, insures the asbestos liability, directly or indirectly, of (and that arises out of the manufacture, sale, distribution or installation of materials or products by, or other conduct of) a person or persons other than and unaffiliated with its ultimate parent or affiliated group or pool in which the ultimate parent participates or participated, or unaffiliated with a person that was its ultimate parent or a member of its affiliated group or pool at the time the relevant insurance or reinsurance was issued by the captive insurance company.

(D) SEVERAL LIABILITY.—Unless otherwise provided under this Act, each insurer participant's obligation to make payments to the Fund is several. Unless otherwise provided under this Act, there is no joint liability, and the future insolvency by any insurer participant shall not affect the payment required of any other insurer participant.

(3) PAYMENT OF CRITERIA.—

(A) INCLUSION IN INSURER PARTICIPANT CATEGORY.—

(i) IN GENERAL.—Insurers that have paid, or been assessed by a legal judgment or settlement, at least $1,000,000 in defense and indemnity costs before the date of enactment of this Act in response to claims for compensation for asbestos injuries arising from a policy of liability insurance or contract of liability reinsurance or retrocessional reinsurance shall be insurer participants in the Fund. Other insurers shall be exempt from mandatory payments.

(ii) INAPPLICABILITY OF SECTION 202.—Since insurers may be subject in certain jurisdictions to direct action suits, and it is not the intent of this Act to impose upon an insurer, due to its operation as an insurer, payment obligations to the Fund in situations where the insurer is the subject of a direct action, no insurer subject to mandatory payments under this section shall also be liable for payments to the Fund as a defendant participant under section 202.

(B) INSURER PARTICIPANT ALLOCATION METHODOLOGY.—

(i) IN GENERAL.—The Commission shall establish the payment obligations of individual insurer participants to reflect, on an equitable basis, the relative tort system liability of the participating insurers in the absence of this Act, considering and weighting, as appropriate (but exclusive of workers' compensation), such factors as—

(I) historic premium for lines of insurance associated with asbestos exposure over relevant periods of time;

(II) recent loss experience for asbestos liability;

(III) amounts reserved for asbestos liability;

(IV) the likely cost to each insurer participant of its future liabilities under applicable insurance policies; and

(V) any other factor the Commission may determine is relevant and appropriate.

(ii) DETERMINATION OF RESERVES.—The Commission may establish procedures and standards for determination of the asbestos reserves of insurer participants. The reserves of a United States licensed reinsurer that is wholly owned by, or under common control of, a United States licensed direct insurer shall be included as part of the direct insurer's reserves when the reinsurer's financial results are included as part of the direct insurer's United States operations, as reflected in footnote 33 of its filings with the National Association of Insurance Commissioners or in published financial statements prepared in accordance with generally accepted accounting principles.

(C) PAYMENT SCHEDULE.—The aggregate annual amount of payments by insurer participants over the life of the Fund shall be as follows:

(i) For years 1 and 2, $2,700,000,000 annually.

(ii) For years 3 through 5, $5,075,000,000 annually.

(iii) For years 6 through 27, $1,147,000,000 annually.

(iv) For year 28, $166,000,000.

(D) CERTAIN RUNOFF ENTITIES.—A runoff entity shall include any direct insurer or reinsurer whose asbestos liability reserves have been transferred, directly or indirectly, to the runoff entity and on whose behalf the runoff entity handles or adjusts and, where appropriate, pays asbestos claims.

(E) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—

(i) IN GENERAL.—Under the procedures established in subsection (b), an insurer participant may seek adjustment of the amount of its payments based on exceptional circumstances or severe financial hardship.

(ii) FINANCIAL ADJUSTMENTS.—An insurer participant may qualify for an adjustment based on severe financial hardship by demonstrating that payment of the amounts required by the Commission's methodology would jeopardize the solvency of such participant.

(iii) EXCEPTIONAL CIRCUMSTANCE ADJUSTMENT.—An insurer participant may qualify for an adjustment based on exceptional circumstances by demonstrating—

(I) that the amount of its payments under the Commission's allocation methodology is exceptionally inequitable when measured against the amount of the likely cost to the participant of its future liability in the tort system in the absence of the Fund;

(II) an offset credit as described in subparagraphs (A) and (C) of subsection (b)(4); or

(III) other exceptional circumstances.

The Commission may determine whether to grant an adjustment and the size of any such adjustment, but except as provided under paragraph (1)(B), subsection (f)(3), and section 405(f), any such adjustment shall not affect the aggregate payment obligations of insurer participants specified in paragraph (2)(A) and subparagraph (C) of this paragraph.

(iv) TIME PERIOD OF ADJUSTMENT.—Except for adjustments for offset credits, adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating to the Administrator that it remains justified.

(F) FUNDING HOLIDAYS.—

(i) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from insurer participants for that year.

(ii) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under clause (i) every year.

(iii) LIMITATIONS OF FUNDING HOLIDAYS.—Any reduction or waiver of the insurer participants' funding obligations shall—

(I) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(II) be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(iv) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(b) PROCEDURE FOR NOTIFYING INSURER PARTICIPANTS OF INDIVIDUAL PAYMENT OBLIGATIONS.—

(1) NOTICE TO PARTICIPANTS.—Not later than 30 days after promulgation of the final rule establishing an allocation methodology under subsection (a)(1), the Commission shall—

(A) directly notify all reasonably identifiable insurer participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund under the allocation methodology; and

(B) publish in the Federal Register a notice—

(i) requiring any person who may be an insurer participant (as determined by criteria outlined in the notice) to submit such information; and

(ii) that includes a list of all insurer participants notified by the Commission under subparagraph (A), and provides for 30 days for the submission of comments or information regarding the completeness and accuracy of the list of identified insurer participants.

(2) RESPONSE REQUIRED BY INDIVIDUAL INSURER PARTICIPANTS.—

(A) IN GENERAL.—Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Commission with all the information requested in the notice under a schedule or by a date established by the Commission.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE TO INSURER PARTICIPANTS OF INITIAL PAYMENT DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INSURERS.—Not later than 120 days after receipt of the information required by paragraph (2), the Commission shall send each insurer participant a notice of initial determination requiring payments to the Fund, which shall be based on the information received from the participant in response to the Commission's request for information. An insurer participant's payments shall be payable over the schedule established in subsection (a)(3)(C), in annual amounts proportionate to the aggregate annual amount of payments for all insurer participants for the applicable year.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to insurer participants, the Commission shall publish in the Federal Register a notice listing the insurer participants that have been sent such notification, and the initial determination on the payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response is received from an insurer participant, or if the response is incomplete, the initial determination requiring a payment from the insurer participant shall be based on the best information available to the Commission.

(4) COMMISSION REVIEW, REVISION, AND FINALIZATION OF INITIAL PAYMENT DETERMINATIONS.—

(A) COMMENTS FROM INSURER PARTICIPANTS.—Not later than 30 days after receiving a notice of initial determination from the Commission, an insurer participant may provide the Commission with additional information to support adjustments to the required payments to reflect severe financial hardship or exceptional circumstances, including the provision of an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy judicially confirmed after May 22, 2003, but before the date of enactment of this Act.

(B) ADDITIONAL PARTICIPANTS.—If, before the final determination of the Commission, the Commission receives information that an additional person may qualify as an insurer participant, the Commission shall require such person to submit information necessary to determine whether payments from that person should be required, in accordance with the requirements of this subsection.

(C) REVISION PROCEDURES.—The Commission shall adopt procedures for revising initial payments based on information received under subparagraphs (A) and (B), including a provision requiring an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy confirmed after May 22, 2003, but before the date of enactment of this Act.

(5) EXAMINATIONS AND SUBPOENAS.—

(A) EXAMINATIONS.—The Commission may conduct examinations of the books and records of insurer participants to determine the completeness and accuracy of information submitted, or required to be submitted, to the Commission for purposes of determining participant payments.

(B) SUBPOENAS.—The Commission may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(6) ESCROW PAYMENTS.—Without regard to an insurer participant's payment obligation under this section, any escrow or similar account established before the date of enactment of this Act by an insurer participant in connection with an asbestos trust fund that has not been judicially confirmed by final order by the date of enactment of this Act shall be the property of the insurer participant and returned to that insurer participant.

(7) NOTICE TO INSURER PARTICIPANTS OF FINAL PAYMENT DETERMINATIONS.—Not later than 60 days after the notice of initial determination is sent to the insurer participants, the Commission shall send each insurer participant a notice of final determination.

(c) INSURER PARTICIPANTS VOLUNTARY ALLOCATION AGREEMENT.—

(1) IN GENERAL.—Not later than 30 days after the Commission proposes its rule establishing an allocation methodology under subsection (a)(1), direct insurer participants licensed or domiciled in the United States, other direct insurer participants, reinsurer participants licensed or domiciled in the United States, or other reinsurer participants, may submit an allocation agreement, approved by all of the participants in the applicable group, to the Commission.

(2) ALLOCATION AGREEMENT.—To the extent the participants in any such applicable group voluntarily agree upon an allocation arrangement, any such allocation agreement shall only govern the allocation of payments within that group and shall not determine the aggregate amount due from that group.

(3) CERTIFICATION.—The Commission shall determine whether an allocation agreement submitted under subparagraph (A) meets the requirements of this subtitle and, if so, shall

certify the agreement as establishing the allocation methodology governing the individual payment obligations of the participants who are parties to the agreement. The authority of the Commission under this subtitle shall, with respect to participants who are parties to a certified allocation agreement, terminate on the day after the Commission certifies such agreement. Under subsection (f), the Administrator shall assume responsibility, if necessary, for calculating the individual payment obligations of participants who are parties to the certified agreement.

(d) Commission Report.—

(1) Recipients.—Until the work of the Commission has been completed and the Commission terminated, the Commission shall submit an annual report, containing the information described under paragraph (2), to—

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on the Judiciary of the House of Representatives; and

(C) the Administrator.

(2) Contents.—The report under paragraph (1) shall state the amount that each insurer participant is required to pay to the Fund, including the payment schedule for such payments.

(e) Interim Payments.—

(1) Amount of interim payment.—Within 90 days after the date of enactment of this Act, insurer participants shall make an aggregate payment to the Fund not to exceed 50 percent of the aggregate funding obligation specified under subsection (a)(3)(C) for year 1.

(2) Reserve information.—Within 30 days after the date of enactment of this Act, each insurer participant shall submit to the Administrator a certified statement of its net held reserves for asbestos liabilities as of December 31, 2004.

(3) Allocation of interim payment.—The Administrator shall allocate the interim payment among the individual insurer participants on an equitable basis using the net held asbestos reserve information provided by insurer participants under subsection (a)(3)(B). Within 60 days after the date of enactment of this Act, the Administrator shall publish in the Federal Register the name of each insurer participant, and the amount of the insurer participant's allocated share of the interim payment. The use of net held asbestos reserves as the basis to determine an interim allocation shall not be binding on the Administrator in the determination of an appropriate final allocation methodology under this section. All payments required under this paragraph shall be credited against the participant's ultimate payment obligation to the Fund established by the Commission. If an interim payment exceeds the ultimate payment, the Fund shall pay interest on the amount of the overpayment at a rate determined by the Administrator. If the ultimate payment exceeds the interim payment, the participant shall pay interest on the amount of the underpayment at the same rate. Any participant may seek an exemption from or reduction in any payment required under this subsection under the financial hardship and exceptional circumstance standards established under subsection (a)(3)(E).

(4) Appeal of interim payment decisions.—A decision by the Administrator to establish an interim payment obligation shall be considered final agency action and reviewable under section 303, except that the reviewing court may not stay an interim payment during the pendency of the appeal.

(f) Transfer of Authority From the Commission to the Administrator.—

(1) In general.—Upon termination of the Commission under section 215, the Administrator shall assume all the responsibilities and authority of the Commission, except that the Administrator shall not have the power to modify the allocation methodology established by the Commission or by certified agreement or to promulgate a rule establishing any such methodology.

(2) Financial hardship and exceptional circumstance adjustments.—Upon termination of the Commission under section 215, the Administrator shall have the authority, upon application by any insurer participant, to make adjustments to annual payments upon the same grounds as provided in subsection (a)(3)(D). Adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating that it remains justified. Upon the grant of any adjustment, the Administrator shall increase the payments, consistent with subsection (a)(1)(B), required of all other insurer participants so that there is no reduction in the aggregate payment required of all insurer participants for the applicable years. The increase in an insurer participant's required payment shall be in proportion to such participant's share of the aggregate payment obligation of all insurer participants.

(3) Credits for shortfall assessments.—If insurer participants are required during the first 5 years of the life of the Fund to make up any shortfall in required insurer payments under subsection (a)(1)(B), then, beginning in year 6, the Administrator shall grant each insurer participant a credit against its annual required payments during the applicable years that in the aggregate equal the amount of shortfall assessments paid by such insurer participant during the first 5 years of the life of the Fund. The credit shall be prorated over the same number of years as the number of years during which the insurer participant paid a shortfall assessment. Insurer participants which did not pay all required payments to the Fund during the first 5 years of the life of the Fund shall not be eligible for a credit. The Administrator shall not grant a credit for shortfall assessments imposed under section 405(f).

(4) Financial security requirements.—Whenever an insurer participant's A.M. Best's claims payment rating or Standard and Poor's financial strength rating falls below A−, and until such time as either the insurer participant's A.M. Best's Rating or Standard and Poor's rating is equal to or greater than A−, the Administrator shall have the authority to require that the participating insurer either—

(A) pay the present value of its remaining Fund payments at a discount rate determined by the Administrator; or

(B) provide an evergreen letter of credit or financial guarantee for future payments issued by an institution with an A.M. Best's claims payment rating or Standard & Poor's financial strength rating of at least A+.

(g) Accounting Treatment.—Insurer participants' payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each insurer participant. This subsection shall in no way reduce the amount of monetary payments to the Fund by insurer participants as required under subsection (a).

(h) Judicial Review.—The Commission's rule establishing an allocation methodology, its final determinations of payment obligations and other final action shall be judicially reviewable as provided in title III.

SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.

(a) Rulemaking.—The Commission shall promulgate such rules and regulations as necessary to implement its authority under this Act, including regulations governing an allocation methodology. Such rules and regulations shall be promulgated after providing interested parties with the opportunity for notice and comment.

(b) Hearings.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act. The Commission shall also hold a hearing on any proposed regulation establishing an allocation methodology, before the Commission's adoption of a final regulation.

(c) Information From Federal and State Agencies.—The Commission may secure directly from any Federal or State department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(d) Postal Services.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(e) Gifts.—The Commission may not accept, use, or dispose of gifts or donations of services or property.

(f) Expert Advice.—In carrying out its responsibilities, the Commission may enter into such contracts and agreements as the Commission determines necessary to obtain expert advice and analysis.

SEC. 214. PERSONNEL MATTERS.

(a) Compensation of Members.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(b) Travel Expenses.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) Staff.—

(1) In general.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) Compensation.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMISSION.

The Commission shall terminate 90 days after the last date on which the Commission makes a final determination of contribution under section 212(b) or 90 days after the last appeal of any final action by the Commission is exhausted, whichever occurs later.

SEC. 216. EXPENSES AND COSTS OF COMMISSION.

All expenses of the Commission shall be paid from the Fund.

Subtitle C—Asbestos Injury Claims Resolution Fund

SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS RESOLUTION FUND.

(a) ESTABLISHMENT.—There is established in the Office of Asbestos Disease Compensation the Asbestos Injury Claims Resolution Fund, which shall be available to pay—

(1) claims for awards for an eligible disease or condition determined under title I;

(2) claims for reimbursement for medical monitoring determined under title I;

(3) principal and interest on borrowings under subsection (b);

(4) the remaining obligations to the asbestos trust of a debtor and the class action trust under section 405(g)(8); and

(5) administrative expenses to carry out the provisions of this Act.

(b) BORROWING AUTHORITY.—

(1) IN GENERAL.—The Administrator is authorized to borrow from time to time amounts as set forth in this subsection, for purposes of enhancing liquidity available to the Fund for carrying out the obligations of the Fund under this Act. The Administrator may authorize borrowing in such form, over such term, with such necessary disclosure to its lenders as will most efficiently enhance the Fund's liquidity.

(2) FEDERAL FINANCING BANK.—In addition to the general authority in paragraph (1), the Administrator may borrow from the Federal Financing Bank in accordance with section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. 2285), as needed for performance of the Administrator's duties under this Act for the first 5 years.

(3) BORROWING CAPACITY.—The maximum amount that may be borrowed under this subsection at any given time is the amount that, taking into account all payment obligations related to all previous amounts borrowed in accordance with this subsection and all committed obligations of the Fund at the time of borrowing, can be repaid in full (with interest) in a timely fashion from—

(A) the available assets of the Fund as of the time of borrowing; and

(B) all amounts expected to be paid by participants during the subsequent 10 years.

(4) REPAYMENT OBLIGATIONS.—Repayment of monies borrowed by the Administrator under this subsection shall be repaid in full by the Fund contributors and is limited solely to amounts available, present or future, in the Fund.

(c) LOCKBOX FOR SEVERE ASBESTOS-RELATED INJURY CLAIMANTS.—

(1) IN GENERAL.—Within the Fund, the Administrator shall establish the following accounts:

(A) A Mesothelioma Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IX.

(B) A Lung Cancer Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level VIII.

(C) A Severe Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level V.

(D) A Moderate Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IV.

(2) ALLOCATION.—The Administrator shall allocate to each of the 4 accounts established under paragraph (1) a portion of payments made to the Fund adequate to compensate all anticipated claimants for each account. Within 60 days after the date of enactment of this Act, and periodically during the life of the Fund, the Administrator shall determine an appropriate amount to allocate to each account after consulting appropriate epidemiological and statistical studies.

(d) AUDIT AUTHORITY.—

(1) IN GENERAL.—For the purpose of ascertaining the correctness of any information provided or payments made to the Fund, or determining whether a person who has not made a payment to the Fund was required to do so, or determining the liability of any person for a payment to the Fund, or collecting any such liability, or inquiring into any offense connected with the administration or enforcement of this title, the Administrator is authorized—

(A) to examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(B) to summon the person liable for a payment under this title, or officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable or any other person the Administrator may deem proper, to appear before the Administrator at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(C) to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(2) FALSE, FRAUDULENT, OR FICTITIOUS STATEMENTS OR PRACTICES.—If the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by persons submitting information to the Administrator or to the Asbestos Insurers Commission or any other person who provides evidence in support of such submissions for purposes of determining payment obligations under this Act, the Administrator may impose a civil penalty not to exceed $10,000 on any person found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall promulgate appropriate regulations to implement this paragraph.

(e) IDENTITY OF CERTAIN DEFENDANT PARTICIPANTS; TRANSPARENCY.—

(1) SUBMISSION OF INFORMATION.—Not later than 60 days after the date of enactment of this Act, any person who, acting in good faith, has knowledge that such person or such person's affiliated group has prior asbestos expenditures of $1,000,000 or greater, shall submit to the Administrator—

(A) either the name of such person, or such person's ultimate parent; and

(B) the likely tier to which such person or affiliated group may be assigned under this Act.

(2) PUBLICATION.—Not later than 20 days after the end of the 60-day period referred to in paragraph (1), the Administrator or Interim Administrator, if the Administrator is not yet appointed, shall publish in the Federal Register a list of submissions required by this subsection, including the name of such persons or ultimate parents and the likely tier to which such persons or affiliated groups may be assigned. After publication of such list, any person who, acting in good faith, has knowledge that any other person has prior asbestos expenditures of $1,000,000 or greater may submit to the Administrator or Interim Administrator information on the identity of that person and the person's prior asbestos expenditures.

(f) NO PRIVATE RIGHT OF ACTION.—Except as provided in sections 203(b)(2)(D)(ii) and 204(f)(3), there shall be no private right of action under any Federal or State law against any participant based on a claim of compliance or noncompliance with this Act or the involvement of any participant in the enactment of this Act.

SEC. 222. MANAGEMENT OF THE FUND.

(a) IN GENERAL.—Amounts in the Fund shall be held for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries and to otherwise defray the reasonable expenses of administering the Fund.

(b) INVESTMENTS.—

(1) IN GENERAL.—Amounts in the Fund shall be administered and invested with the care, skill, prudence, and diligence, under the circumstances prevailing at the time of such investment, that a prudent person acting in a like capacity and manner would use.

(2) STRATEGY.—The Administrator shall invest amounts in the Fund in a manner that enables the Fund to make current and future distributions to or for the benefit of asbestos claimants. In pursuing an investment strategy under this subparagraph, the Administrator shall consider, to the extent relevant to an investment decision or action—

(A) the size of the Fund;

(B) the nature and estimated duration of the Fund;

(C) the liquidity and distribution requirements of the Fund;

(D) general economic conditions at the time of the investment;

(E) the possible effect of inflation or deflation on Fund assets;

(F) the role that each investment or course of action plays with respect to the overall assets of the Fund;

(G) the expected amount to be earned (including both income and appreciation of capital) through investment of amounts in the Fund; and

(H) the needs of asbestos claimants for current and future distributions authorized under this Act.

(c) BANKRUPTCY TRUST GUARANTEE.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, the Administrator shall have the authority to impose a pro rata surcharge on all participants under this subsection to ensure the liquidity of the Fund, if—

(A) the declared assets from 1 or more bankruptcy trusts established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, are not available to the Fund because a final judgment that has been entered by a court and is no longer subject to any appeal or review has enjoined the transfer of assets required under section 524(j)(2) of title 11, United States Code (as amended by section 402(f) of this Act); and

(B) borrowing is insufficient to assure the Fund's ability to meet its obligations under this Act such that the required borrowed amount is likely to increase the risk of termination of this Act under section 405 based on reasonable claims projections.

(2) ALLOCATION.—Any surcharge imposed under this subsection shall be imposed over a period of 5 years on a pro rata basis upon all participants, in accordance with the relative aggregate funding obligations under sections 202(a)(2) and 212(a)(2)(A).

(3) CERTIFICATION.—

(A) IN GENERAL.—Before imposing a surcharge under this subsection, the Administrator shall publish a notice in the Federal Register and provide in such notice for a public comment period of 30 days.

(B) CONTENTS OF NOTICE.—The notice required under subparagraph (A) shall include—

(i) information explaining the circumstances that make a surcharge necessary and a certification that the requirements under paragraph (1) are met;

(ii) the amount of the declared assets from any trust established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, that was not made, or is no longer, available to the Fund;

(iii) the total aggregate amount of the necessary surcharge; and

(iv) the surcharge amount for each tier and subtier of defendant participants and for each insurer participant.

(C) FINAL NOTICE.—The Administrator shall publish a final notice in the Federal Register and provide each participant with written notice of that participant's schedule of payments under this subsection. In no event shall any required surcharge under this subsection be due before 60 days after the Administrator publishes the final notice in the Federal Register and provides each participant with written notice of its schedule of payments.

(4) MAXIMUM AMOUNT.—In no event shall the total aggregate surcharge imposed by the Administrator exceed the lesser of—

(A) the total aggregate amount of the declared assets of the trusts established under a plan of reorganization confirmed and substantially consummated prior to July 31, 2004, that are no longer available to the Fund; or

(B) $4,000,000,000.

(5) DECLARED ASSETS.—

(A) IN GENERAL.—In this subsection, the term "declared assets" means—

(i) the amount of assets transferred by any trust established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, to the Fund that is required to be returned to that trust under the final judgment described in paragraph (1)(A); or

(ii) if no assets were transferred by the trust to the Fund, the amount of assets the Administrator determines would have been available for transfer to the Fund from that trust under section 402(f).

(B) DETERMINATION.—In making a determination under subparagraph (A)(ii), the Administrator may rely on any information reasonably available, and may request, and use subpoena authority of the Administrator if necessary to obtain, relevant information from any such trust or its trustees.

(d) BANKRUPTCY TRUST CREDITS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, but subject to paragraph (2) of this subsection, the Administrator shall provide a credit toward the aggregate payment obligations under sections 202(a)(2) and 212(a)(2)(A) for assets received by the Fund from any bankruptcy trust established under a plan of reorganization confirmed and substantially consummated after July 31, 2004.

(2) ALLOCATION OF CREDITS.—The Administrator shall allocate, for each such bankruptcy trust, the credits for such assets between the defendant and insurer aggregate payment obligations as follows:

(A) DEFENDANT PARTICIPANTS.—The aggregate amount that all persons other than insurers contributing to the bankruptcy trust would have been required to pay as Tier I defendants under section 203(b) if the plan of reorganization under which the bankruptcy trust was established had not been confirmed and substantially consummated and the proceeding under chapter 11 of title 11, United States Code, that resulted in the establishment of the bankruptcy trust had remained pending as of the date of enactment of this Act.

(B) INSURER PARTICIPANTS.—The aggregate amount of all credits to which insurers are entitled to under section 202(c)(4)(A) of the Act.

SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.

(a) DEFAULT.—If any participant fails to make any payment in the amount of and according to the schedule under this Act or as prescribed by the Administrator, after demand and a 30-day opportunity to cure the default, there shall be a lien in favor of the United States for the amount of the delinquent payment (including interest) upon all property and rights to property, whether real or personal, belonging to such participant.

(b) BANKRUPTCY.—In the case of a bankruptcy or insolvency proceeding, the lien imposed under subsection (a) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the provisions of title 11, United States Code, or section 3713(a) of title 31, United States Code. The United States Bankruptcy Court shall have jurisdiction over any issue or controversy regarding lien priority and lien perfection arising in a bankruptcy case due to a lien imposed under subsection (a).

(c) CIVIL ACTION.—

(1) IN GENERAL.—In any case in which there has been a refusal or failure to pay any liability imposed under this Act, including a refusal or failure to provide the information required under section 204 needed to determine liability, the Administrator may bring a civil action in any appropriate United States District Court, or any other appropriate lawsuit or proceeding outside of the United States—

(A) to enforce the liability and any lien of the United States imposed under this section;

(B) to subject any property of the participant, including any property in which the participant has any right, title, or interest to the payment of such liability;

(C) for temporary, preliminary, or permanent relief; or

(D) to enforce a subpoena issued under section 204(i)(9) to compel the production of documents necessary to determine liability.

(2) ADDITIONAL PENALTIES.—In any action under paragraph (1) in which the refusal or failure to pay was willful, the Administrator may seek recovery—

(A) of punitive damages;

(B) of the costs of any civil action under this subsection, including reasonable fees incurred for collection, expert witnesses, and attorney's fees; and

(C) in addition to any other penalty, of a fine equal to the total amount of the liability that has not been collected.

(d) ENFORCEMENT AUTHORITY AS TO INSURER PARTICIPANTS.—

(1) IN GENERAL.—In addition to or in lieu of the enforcement remedies described in subsection (c), the Administrator may seek to recover amounts in satisfaction of a payment not timely paid by an insurer participant under the procedures under this subsection.

(2) SUBROGATION.—To the extent required to establish personal jurisdiction over nonpaying insurer participants, the Administrator shall be deemed to be subrogated to the contractual rights of participants to seek recovery from nonpaying insuring participants that are domiciled outside the United States under the policies of liability insurance or contracts of liability reinsurance or retrocessional reinsurance applicable to asbestos claims, and the Administrator may bring an action or an arbitration against the nonpaying insurer participants under the provisions of such policies and contracts, provided that—

(A) any amounts collected under this subsection shall not increase the amount of deemed erosion allocated to any policy or contract under section 404, or otherwise reduce coverage available to a participant; and

(B) subrogation under this subsection shall have no effect on the validity of the insurance policies or reinsurance, and any contrary State law is expressly preempted.

(3) RECOVERABILITY OF CONTRIBUTION.—For purposes of this subsection—

(A) all contributions to the Fund required of a participant shall be deemed to be sums legally required to be paid for bodily injury resulting from exposure to asbestos;

(B) all contributions to the Fund required of any participant shall be deemed to be a single loss arising from a single occurrence under each contract to which the Administrator is subrogated; and

(C) with respect to reinsurance contracts, all contributions to the Fund required of a participant shall be deemed to be payments to a single claimant for a single loss.

(4) NO CREDIT OR OFFSET.—In any action brought under this subsection, the nonpaying insurer or reinsurer shall be entitled to no credit or offset for amounts collectible or potentially collectible from any participant nor shall such defaulting participant have any right to collect any sums payable under this section from any participant.

(5) COOPERATION.—Insureds and cedents shall cooperate with the Administrator's reasonable requests for assistance in any such proceeding. The positions taken or statements made by the Administrator in any such proceeding shall not be binding on or attributed to the insureds or cedents in any other proceeding. The outcome of such a proceeding shall not have a preclusive effect on the insureds or cedents in any other proceeding and shall not be admissible against any subrogee under this section. The Administrator shall have the authority to settle or compromise any claims against a nonpaying insurer participant under this subsection.

(e) BAR ON UNITED STATES BUSINESS.—If any direct insurer or reinsurer refuses to pay any contribution required by this Act, then, in addition to any other penalties imposed by this Act, the Administrator shall issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies. If any direct insurer or reinsurer refuses to furnish any information requested by the Administrator, the Administrator may issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies. Insurer participants or their affiliates seeking to obtain a license from any State to write any type of insurance shall be barred from obtaining any such license until payment of all contributions required as of the date of license application.

(f) CREDIT FOR REINSURANCE.—If the Administrator determines that an insurer participant that is a reinsurer is in default in paying any required contribution or otherwise not in compliance with this Act, the Administrator may issue an order barring any direct insurer participant from receiving credit for reinsurance purchased from the defaulting reinsurer after the date of the Administrator's determination of default. Any State law governing credit for reinsurance to the contrary is preempted.

(g) DEFENSE LIMITATION.—In any proceeding under this section, the participant shall be barred from bringing any challenge to any determination of the Administrator or the Asbestos Insurers Commission regarding its liability under this Act, or to the constitutionality of this Act or any provision thereof, if such challenge could have been made during the review provided under section 204(i)(10), or in a judicial review proceeding under section 303.

(h) DEPOSIT OF FUNDS.—

(1) IN GENERAL.—Any funds collected under subsection (c)(2) (A) or (C) shall be—

(A) deposited in the Fund; and

(B) used only to pay—

(i) claims for awards for an eligible disease or condition determined under title I; or

(ii) claims for reimbursement for medical monitoring determined under title I.

(2) NO EFFECT ON OTHER LIABILITIES.—The imposition of a fine under subsection (c)(2)(C) shall have no effect on—

(A) the assessment of contributions under subtitles A and B; or

(B) any other provision of this Act.

(i) PROPERTY OF THE ESTATE.—Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (4)(B)(ii), by striking "or" at the end;

(2) in paragraph (5), by striking "prohibition." and inserting "prohibition; or"; and

(3) by inserting after paragraph (5) and before the last undesignated sentence the following:

"(6) the value of any pending claim against or the amount of an award granted from the Asbestos Injury Claims Resolution Fund established under the Fairness in Asbestos Injury Resolution Act of 2006.".

(j) PROPOSED TRANSACTIONS.—

(1) NOTICE OF PROPOSED TRANSACTION.—Any participant that has taken any action to effectuate a proposed transaction or a proposed series of transactions under which a significant portion of such participant's assets, properties or business will, if consummated as proposed, be, directly or indirectly, transferred by any means (including, without limitation, by sale, dividend, contribution to a subsidiary or split-off) to 1 or more persons other than the participant shall provide written notice to the Administrator of such proposed transaction (or proposed series of transactions). Upon the request of such participant, and for so long as the participant shall not publicly disclose the transaction or series of transactions and the Administrator shall not commence any action under paragraph (6), the Administrator shall treat any such notice as confidential commercial information under section 552 of title 5, United States Code.

(2) TIMING OF NOTICE AND RELATED ACTIONS.—

(A) IN GENERAL.—Any notice that a participant is required to give under paragraph (1) shall be given not later than 30 days before the date of consummation of the proposed transaction or the first transaction to occur in a proposed series of transactions.

(B) OTHER NOTIFICATIONS.—

(i) IN GENERAL.—Not later than the date in any year by which a participant is required to make its contribution to the Fund, the participant shall deliver to the Administrator a written certification stating that—

(I) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this subsection; or

(II) the participant was not required to provide any notice under this subsection during such period.

(ii) SUMMARY.—The Administrator shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(C) NOTICE COMPLETION.—The Administrator shall not consider any notice given under paragraph (1) as given until such time as the Administrator receives substantially all the information required by this subsection.

(3) CONTENTS OF NOTICE.—

(A) IN GENERAL.—The Administrator shall determine by rule or regulation the information to be included in the notice required under this subsection, which shall include such information as may be necessary to enable the Administrator to determine whether—

(i) the person or persons to whom the assets, properties or business are being transferred in the proposed transaction (or proposed series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act, or

(ii) the proposed transaction (or proposed series of transactions) would, if consummated, be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(B) STATEMENTS.—The notice shall also include—

(i) a statement by the participant as to whether it believes any person will or has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(ii) a statement by the participant as to whether that person has acknowledged that it will or has become a successor in interest for purposes of this Act.

(4) DEFINITION.—In this subsection, the term "significant portion of the assets, properties or business of a participant" means assets (including, without limitation, tangible or intangible assets, securities and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(f)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States generally accepted accounting principles as in effect from time to time—

(A) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(B) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(C) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(D) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(5) CONSUMMATION OF TRANSACTION.—Any proposed transaction (or proposed series of transactions) with respect to which a participant is required to provide notice under paragraph (1) may not be consummated until at least 30 days after delivery to the Administrator of such notice, unless the Administrator shall earlier terminate the notice period. The Administrator shall endeavor whenever possible to terminate a notice period at the earliest practicable time.

(6) RIGHT OF ACTION.—

(A) IN GENERAL.—Notwithstanding section 221(f), if the Administrator or any participant believes that a participant proposes to engage or has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions)—

(i) involving a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant, where the status or potential status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(ii) that may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Administrator or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property or business of the participant.

(B) RELIEF ALLOWED.—In any action commenced under this subsection, the Administrator or a participant, as applicable, may seek—

(i) with respect to a transaction (or series of transactions) referenced in clause (i) of subparagraph (A), a declaratory judgment regarding whether such person will or has become the successor in interest of such participant; or

(ii) with respect to a transaction (or series of transactions) referenced in clause (ii) of subparagraph (A)—

(I) a temporary restraining order or a preliminary or permanent injunction against such transaction (or series of transactions); or

(II) such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(C) APPLICABILITY.—If the Administrator or a participant wishes to challenge a statement made by a participant that a person will not or has not become a successor in interest for purposes of this Act, then this paragraph shall be the exclusive means by which the determination of whether such person will or has become a successor in interest of the participant shall be made. This paragraph shall not preempt any other rights of any person under applicable Federal or State law.

(D) VENUE.—Any action under this paragraph shall be brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(7) RULES AND REGULATIONS.—The Administrator may promulgate regulations to effectuate the intent of this subsection, including regulations relating to the form, timing and content of notices.

SEC. 224. INTEREST ON UNDERPAYMENT OR NONPAYMENT.

If any amount of payment obligation under this title is not paid on or before the last date prescribed for payment, the liable party shall pay interest on such amount at the Federal short-term rate determined under section 6621(b) of the Internal Revenue Code of 1986, plus 5 percentage points, for the period from such last date to the date paid.

SEC. 225. EDUCATION, CONSULTATION, SCREENING, AND MONITORING.

(a) IN GENERAL.—The Administrator shall establish a program for the education, consultation, medical screening, and medical monitoring of persons with exposure to asbestos. The program shall be funded by the Fund.

(b) OUTREACH AND EDUCATION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall establish an outreach and education program, including a website designed to provide information about asbestos-related medical conditions to members of populations at risk of developing such conditions.

(2) INFORMATION.—The information provided under paragraph (1) shall include information about—

(A) the signs and symptoms of asbestos-related medical conditions;

(B) the value of appropriate medical screening programs; and

(C) actions that the individuals can take to reduce their future health risks related to asbestos exposure.

(3) CONTRACTS.—Preference in any contract under this subsection shall be given to providers that are existing nonprofit organizations with a history and experience of providing occupational health outreach and educational programs for individuals exposed to asbestos.

(c) MEDICAL SCREENING PROGRAM.—

(1) ESTABLISHMENT OF PROGRAM.—Not sooner than 18 months or later than 24 months after the Administrator certifies that the Fund is fully operational and processing claims at a reasonable rate, the Administrator shall adopt guidelines establishing a medical screening program for individuals at high risk of asbestos-related disease resulting from an asbestos-related disease. In promulgating such guidelines, the Administrator shall consider the views of the Advisory Committee on Asbestos Disease Compensation, the Medical Advisory Committee, and the public.

(2) ELIGIBILITY CRITERIA.—

(A) IN GENERAL.—The guidelines promulgated under this subsection shall establish criteria for participation in the medical screening program.

(B) CONSIDERATIONS.—In promulgating eligibility criteria the Administrator shall take into consideration all factors relevant to the individual's effective cumulative exposure to asbestos, including—

(i) any industry in which the individual worked;

(ii) the individual's occupation and work setting;

(iii) the historical period in which exposure took place;

(iv) the duration of the exposure;

(v) the intensity and duration of non-occupational exposures;

(vi) the intensity and duration of exposure to risk levels of naturally occurring asbestos as defined by the Environmental Protection Agency; and

(vii) any other factors that the Administrator determines relevant.

(3) PROTOCOLS.—The guidelines developed under this subsection shall establish protocols for medical screening, which shall include—

(A) administration of a health evaluation and work history questionnaire;

(B) an evaluation of smoking history;

(C) a physical examination by a qualified physician with a doctor-patient relationship with the individual;

(D) a chest x-ray read by a certified B-reader as defined under section 121(a)(4); and

(E) pulmonary function testing as defined under section 121(a)(13).

(4) FREQUENCY.—The Administrator shall establish the frequency with which medical screening shall be provided or be made available to eligible individuals, which shall be not less than every 5 years.

(5) PROVISION OF SERVICES.—The Administrator shall provide medical screening to eligible individuals directly or by contract with another agency of the Federal Government, with State or local governments, or with private providers of medical services. The Administrator shall establish strict qualifications for the providers of such services, and shall periodically audit the providers of services under this subsection, to ensure their integrity, high degree of competence, and compliance with all applicable technical and professional standards. No provider of medical screening services may have earned more than 15 percent of their income from the provision of services of any kind in connection with asbestos litigation in any of the 3 years preceding the date of enactment of this Act. All contracts with providers of medical screening services under this subsection shall contain provisions for reimbursement of screening services at a reasonable rate and termination of such contracts for cause if the Administrator determines that the service provider fails to meet the qualifications established under this subsection.

(6) LIMITATION OF COMPENSATION FOR SERVICES.—The compensation required to be paid to a provider of medical screening services for such services furnished to an eligible individual shall be limited to the amount that would be reimbursed at the time of the furnishing of such services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for similar services if such services are covered under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(7) FUNDING; PERIODIC REVIEW.—

(A) FUNDING.—The Administrator shall make such funds available from the Fund to implement this section, with a minimum of $20,000,000 but not more than $30,000,000 each year in each of the 5 years following the effective date of the medical screening program. Notwithstanding the preceding sentence, the Administrator shall suspend the operation of the program or reduce its funding level if necessary to preserve the solvency of the Fund and to prevent the sunset of the overall program under section 405(g).

(B) REVIEW.—The Administrator may reduce the amount of funding below $20,000,000 each year if the program is fully implemented. The Administrator's first annual report under section 405 following the close of the 4th year of operation of the medical screening program shall include an analysis of the usage of the program, its cost and effectiveness, its medical value, and the need to continue that program for an additional 5-year period. The Administrator shall also recommend to Congress any improvements that may be required to make the program more effective, efficient, and economical, and shall recommend a funding level for the program for the 5 years following the period of initial funding referred to under subparagraph (A).

(d) LIMITATION.—In no event shall the total amount allocated to the medical screening program established under this subsection over the lifetime of the Fund exceed $600,000,000.

(e) MEDICAL MONITORING PROGRAM AND PROTOCOLS.—

(1) IN GENERAL.—The Administrator shall establish procedures for a medical monitoring program for persons exposed to asbestos who have been approved for level I compensation under section 131.

(2) PROCEDURES.—The procedures for medical monitoring shall include—

(A) specific medical tests to be provided to eligible individuals and the periodicity of those tests, which shall initially be provided every 3 years and include—

(i) administration of a health evaluation and work history questionnaire;

(ii) physical examinations, including blood pressure measurement, chest examination, and examination for clubbing;

(iii) AP and lateral chest x-ray; and

(iv) spirometry performed according to ATS standards;

(B) qualifications of medical providers who are to provide the tests required under subparagraph (A); and

(C) administrative provisions for reimbursement from the Fund of the costs of monitoring eligible claimants, including the costs associated with the visits of the claimants to physicians in connection with medical monitoring, and with the costs of performing and analyzing the tests.

(3) PREFERENCES.—

(A) IN GENERAL.—In administering the monitoring program under this subsection, preference shall be given to medical and program providers with—

(i) a demonstrated capacity for identifying, contacting, and evaluating populations of workers or others previously exposed to asbestos; and

(ii) experience in establishing networks of medical providers to conduct medical screening and medical monitoring examinations.

(B) PROVISION OF LISTS.—Claimants that are eligible to participate in the medical monitoring program shall be provided with a list of approved providers in their geographic area at the time such claimants become eligible to receive medical monitoring.

(f) CONTRACTS.—The Administrator may enter into contracts with qualified program providers that would permit the program providers to undertake large-scale medical screening and medical monitoring programs by means of subcontracts with a network of medical providers, or other health providers.

(g) REVIEW.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Administrator shall review, and if necessary update, the protocols and procedures established under this section.

SEC. 226. NATIONAL MESOTHELIOMA RESEARCH AND TREATMENT PROGRAM.

(a) IN GENERAL.—There is established the National Mesothelioma Research and Treatment Program (referred to in this section as the "Program") to investigate and advance the detection, prevention, treatment, and cure of malignant mesothelioma.

(b) MESOTHELIOMA CENTERS.—

(1) IN GENERAL.—The Administrator shall make available $1,500,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015, for the establishment of each of 10 mesothelioma disease research and treatment centers.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, in consultation with the Medical Advisory Committee, shall conduct a competitive peer review process to select sites for the centers described in paragraph (1). The Director shall ensure that sites selected under this paragraph are—

(A) geographically distributed throughout the United States with special consideration given to areas of high incidence of mesothelioma disease;

(B) closely associated with Department of Veterans Affairs medical centers, in order to provide research benefits and care to veterans who have suffered excessively from mesothelioma;

(C) engaged in exemplary laboratory and clinical mesothelioma research, including clinical trials, to provide mechanisms for effective therapeutic treatments, as well as detection and prevention, particularly in areas of palliation of disease symptoms and pain management;

(D) participants in the National Mesothelioma Registry and Tissue Bank under subsection (c) and the annual International Mesothelioma Symposium under subsection (d)(2)(E);

(E) with respect to research and treatment efforts, coordinated with other centers and institutions involved in exemplary mesothelioma research and treatment;

(F) able to facilitate transportation and lodging for mesothelioma patients, so as to enable patients to participate in the newest developing treatment protocols, and to enable the centers to recruit patients in numbers sufficient to conduct necessary clinical trials; and

(G) nonprofit hospitals, universities, or medical or research institutions incorporated or organized in the United States.

(c) MESOTHELIOMA REGISTRY AND TISSUE BANK.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, maintenance, and operation of a National Mesothelioma Registry to collect data regarding symptoms, pathology, evaluation, treatment, outcomes, and quality of life and a Tissue Bank to include the pre- and post-treatment blood (serum and blood cells) specimens as well as tissue specimens from biopsies and surgery. Not less than $500,000 of the amount made available under the preceding sentence in each fiscal year shall be allocated for the collection and maintenance of tissue specimens.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, with the advice and consent of the Medical Advisory Committee, shall conduct a competitive peer review process to select a site to administer the Registry and Tissue Bank described in paragraph (1). The Director shall ensure that the site selected under this paragraph—

(A) is available to all mesothelioma patients and qualifying physicians throughout the United States;

(B) is subject to all applicable medical and patient privacy laws and regulations;

(C) is carrying out activities to ensure that data is accessible via the Internet; and

(D) provides data and tissue samples to qualifying researchers and physicians who apply for such data in order to further the understanding, prevention, screening, diagnosis, or treatment of malignant mesothelioma.

(d) CENTER FOR MESOTHELIOMA EDUCATION.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, with the advice and consent of the Medical Advisory Committee, of a Center for Mesothelioma Education (referred to in this section as the "Center") to—

(A) promote mesothelioma awareness and education;

(B) assist mesothelioma patients and their family members in obtaining necessary information; and

(C) work with the centers established under subsection (b) in advancing mesothelioma research.

(2) ACTIVITIES.—The Center shall—

(A) educate the public about the new initiatives contained in this section through a National Mesothelioma Awareness Campaign;

(B) develop and maintain a Mesothelioma Educational Resource Center (referred to in this section as the "MERCI"), that is accessible via the Internet, to provide mesothelioma patients, family members, and front-line physicians with comprehensive, current information on mesothelioma and its treatment, as well as on the existence of, and general claim procedures for the Asbestos Injury Claims Resolution Fund;

(C) through the MERCI and otherwise, educate mesothelioma patients, family members, and front-line physicians about, and encourage such individuals to participate in, the centers established under subsection (b), the Registry and the Tissue Bank;

(D) complement the research efforts of the centers established under subsection (b) by awarding competitive, peer-reviewed grants for the training of clinical specialist fellows in mesothelioma, and for highly innovative, experimental or pre-clinical research; and

(E) conduct an annual International Mesothelioma Symposium.

(3) REQUIREMENTS.—The Center shall—

(A) be a nonprofit corporation under section 501(c)(3) of the Internal Revenue Code of 1986;

(B) be a separate entity from and not an affiliate of any hospital, university, or medical or research institution; and

(C) demonstrate a history of program spending that is devoted specifically to the mission of extending the survival of current and future mesothelioma patients, including a history of soliciting, peer reviewing through a competitive process, and funding research grant applications relating to the detection, prevention, treatment, and cure of mesothelioma.

(4) CONTRACTS FOR OVERSIGHT.—The Director of the National Institutes of Health may enter into contracts with the Center for the selection and oversight of the centers established under subsection (b), or selection of the director of the Registry and the Tissue Bank under subsection (c) and oversight of the Registry and the Tissue Bank.

(e) REPORT AND RECOMMENDATIONS.—Not later than September 30, 2015, The Director of the National Institutes of Health shall, after opportunity for public comment and review, publish and provide to Congress a report and recommendations on the results achieved and information gained through the Program, including—

(1) information on the status of mesothelioma as a national health issue, including—

(A) annual United States incidence and death rate information and whether such rates are increasing or decreasing;

(B) the average prognosis; and

(C) the effectiveness of treatments and means of prevention;

(2) promising advances in mesothelioma treatment and research which could be further developed if the Program is reauthorized; and

(3) a summary of advances in mesothelioma treatment made in the 10-year period prior to the report and whether those advances would justify continuation of the Program and whether it should be reauthorized for an additional 10 years.

(f) SEVERABILITY.—If any provision of this Act, or amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act (including this section), the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(g) REGULATIONS.—The Director of the National Institutes of Health shall promulgate regulations to provide for the implementation of this section.

TITLE III—JUDICIAL REVIEW

SEC. 301. JUDICIAL REVIEW OF RULES AND REGULATIONS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review rules or regulations promulgated by the Administrator or the Asbestos Insurers Commission under this Act.

(b) PERIOD FOR FILING PETITION.—A petition for review under this section shall be filed not later than 60 days after the date notice of such promulgation appears in the Federal Register.

(c) EXPEDITED PROCEDURES.—The United States Court of Appeals for the District of Columbia shall provide for expedited procedures for reviews under this section.

SEC. 302. JUDICIAL REVIEW OF AWARD DECISIONS.

(a) IN GENERAL.—Any claimant adversely affected or aggrieved by a final decision of the Administrator awarding or denying compensation under title I may petition for judicial review of such decision. Any petition for review under this section shall be filed within 90 days of the issuance of a final decision of the Administrator.

(b) Exclusive Jurisdiction.—A petition for review may only be filed in the United States Court of Appeals for the circuit in which the claimant resides at the time of the issuance of the final order.

(c) Standard of Review.—The court shall uphold the decision of the Administrator unless the court determines, upon review of the record as a whole, that the decision is not supported by substantial evidence, is contrary to law, or is not in accordance with procedure required by law.

(d) Expedited Procedures.—The United States Court of Appeals shall provide for expedited procedures for reviews under this section.

SEC. 303. JUDICIAL REVIEW OF PARTICIPANTS' ASSESSMENTS.

(a) Exclusive Jurisdiction.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review a final determination by the Administrator or the Asbestos Insurers Commission regarding the liability of any person to make a payment to the Fund, including a notice of applicable subtier assignment under section 204(i), a notice of financial hardship or inequity determination under section 204(d), a notice of a distributor's adjustment under section 204(m), and a notice of insurer participant obligation under section 212(b).

(b) Period for Filing Action.—A petition for review under subsection (a) shall be filed not later than 60 days after a final determination by the Administrator or the Commission giving rise to the action. Any defendant participant who receives a notice of its applicable subtier under section 204(i), a notice of financial hardship or inequity determination under section 204(d), or a notice of a distributor's adjustment under section 204(m), shall commence any action within 30 days after a decision on rehearing under section 204(i)(10), and any insurer participant who receives a notice of a payment obligation under section 212(b) shall commence any action within 30 days after receiving such notice. The court shall give such action expedited consideration.

SEC. 304. OTHER JUDICIAL CHALLENGES.

(a) Exclusive Jurisdiction.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action for declaratory or injunctive relief challenging any provision of this Act. An action under this section shall be filed not later than 60 days after the date of enactment of this Act or 60 days after the final action by the Administrator or the Commission giving rise to the action, whichever is later.

(b) Direct Appeal.—A final decision in the action shall be reviewable on appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 30 days, and the filing of a jurisdictional statement within 60 days, of the entry of the final decision.

(c) Expedited Procedures.—It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

SEC. 305. STAYS, EXCLUSIVITY, AND CONSTITUTIONAL REVIEW.

(a) No Stays.—

(1) Payments.—No court may issue a stay of payment by any party into the Fund pending its final judgment.

(2) Legal challenges.—No court may issue a stay or injunction pending final judicial action, including the exhaustion of all appeals, on a legal challenge to this Act or any portion of this Act.

(b) Exclusivity of Review.—An action of the Administrator or the Asbestos Insurers Commission for which review could have been obtained under section 301, 302, or 303 shall not be subject to judicial review in any other proceeding.

(c) Constitutional Review.—

(1) In general.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action challenging the constitutionality of any provision or application of this Act. The following rules shall apply:

(A) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened under section 2284 of title 28, United States Code.

(B) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, after the entry of the final decision.

(C) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

(2) Repayment to asbestos trust and class action trust.—If the transfer of the assets of any asbestos trust of a debtor or any class action trust (or this Act as a whole) is held to be unconstitutional or otherwise unlawful, the Fund shall transfer the remaining balance of such assets (determined under section 405(f)(1)(A)(iii)) back to the appropriate asbestos trust or class action trust within 90 days after final judicial action on the legal challenge, including the exhaustion of all appeals.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. FALSE INFORMATION.

(a) In General.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1351. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund

"(a) Fraud Relating to Asbestos Injury Claims Resolution Fund.—Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice to defraud the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission under title II of the Fairness in Asbestos Injury Resolution Act of 2006 shall be fined under this title or imprisoned not more than 20 years, or both.

"(b) False Statement Relating to Asbestos Injury Claims Resolution Fund.—

"(1) In general.—It shall be unlawful for any person, in any matter involving the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission, to knowingly and willfully—

"(A) falsify, conceal, or cover up by any trick, scheme, or device a material fact;

"(B) make any materially false, fictitious, or fraudulent statement or representation; or

"(C) make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the award of a claim or the determination of a participant's payment obligation under title I or II of the Fairness in Asbestos Injury Resolution Act of 2006.

"(2) Penalty.—A person who violates this subsection shall be fined under this title or imprisoned not more than 10 years, or both.".

(b) Technical and Conforming Amendment.—The table of sections for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"1351. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund.".

SEC. 402. EFFECT ON BANKRUPTCY LAWS.

(a) No Automatic Stay.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking "or" at the end;

(2) in paragraph (18), by striking the period at the end and inserting "; or"; and

(3) by inserting after paragraph (18) the following:

"(19) under subsection (a) of this section of the enforcement of any payment obligations under section 204 of the Fairness in Asbestos Injury Resolution Act of 2006, against a debtor, or the property of the estate of a debtor, that is a participant (as that term is defined in section 3 of that Act).".

(b) Assumption of Executory Contract.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

"(p) If a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the trustee shall be deemed to have assumed all executory contracts entered into by the participant under section 204 of that Act. The trustee may not reject any such executory contract.".

(c) Allowed Administrative Expenses.—Section 503 of title 11, United States Code, is amended by adding at the end the following:

"(c)(1) Claims or expenses of the United States, the Attorney General, or the Administrator (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) based upon the asbestos payment obligations of a debtor that is a Participant (as that term is defined in section 3 of that Act), shall be paid as an allowed administrative expense. The debtor shall not be entitled to either notice or a hearing with respect to such claims.

"(2) For purposes of paragraph (1), the term 'asbestos payment obligation' means any payment obligation under title II of the Fairness in Asbestos Injury Resolution Act of 2006.".

(d) No Discharge.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

"(f) A discharge under section 727, 1141, 1228, or 1328 of this title does not discharge any debtor that is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) of the debtor's payment obligations assessed against the participant under title II of that Act.".

(e) Payment.—Section 524 of title 11, United States Code, is amended by adding at the end the following:

"(i) Participant Debtors.—

"(1) In general.—Paragraphs (2) and (3) shall apply to a debtor who—

"(A) is a participant that has made prior asbestos expenditures (as such terms are defined in the Fairness in Asbestos Injury Resolution Act of 2006); and

"(B) is subject to a case under this title that is pending—

"(i) on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006; or

"(ii) at any time during the 1-year period preceding the date of enactment of that Act.

"(2) TIER I DEBTORS.—A debtor that has been assigned to Tier I under section 202 of the Fairness in Asbestos Injury Resolution Act of 2006, shall make payments in accordance with sections 202 and 203 of that Act.

"(3) TREATMENT OF PAYMENT OBLIGATIONS.—All payment obligations of a debtor under sections 202 and 203 of the Fairness in Asbestos Injury Resolution Act of 2006 shall—

"(A) constitute costs and expenses of administration of a case under section 503 of this title;

"(B) notwithstanding any case pending under this title, be payable in accordance with section 202 of that Act;

"(C) not be stayed;

"(D) not be affected as to enforcement or collection by any stay or injunction of any court; and

"(E) not be impaired or discharged in any current or future case under this title.".

(f) TREATMENT OF TRUSTS.—Section 524 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"(j) ASBESTOS TRUSTS.—

"(1) IN GENERAL.—A trust shall assign a portion of the corpus of the trust to the Asbestos Injury Claims Resolution Fund (referred to in this subsection as the 'Fund') as established under the Fairness in Asbestos Injury Resolution Act of 2006 if the trust qualifies as a 'trust' under section 201 of that Act.

"(2) TRANSFER OF TRUST ASSETS.—

"(A) IN GENERAL.—

"(i) Except as provided under clause (ii) of this subparagraph and subparagraphs (B), (C), and (E), the assets in any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) shall be transferred to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006 or 30 days following funding of a trust established under a reorganization plan subject to section 202(c) of that Act. Except as provided under subparagraph (B), the Administrator of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 221 of such Act, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

"(ii) Notwithstanding clause (i), and except as provided under subparagraphs (B), (C), and (E), any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), other than a trust established under a reorganization plan subject to section 202(c) of that Act, shall transfer the assets in such trust to the Fund as follows:

"(I) In the case of a trust established on or before December 31, 2005, such trust shall transfer 90 percent of the assets in such trust to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

"(II) In the case of a trust established after December 31, 2005, such trust shall transfer 88 percent of the assets in such trust to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

"(iii) Not later than 90 days after the date on which the Administrator of the Office of Asbestos Disease Compensation (referred to in this section as the 'Administrator') certifies in accordance with section 106(f)(3)(E)(ii) of the Fairness in Asbestos Injury Resolution Act of 2006 that the Fund is fully operational and paying all valid asbestos claims at a reasonable rate, any trust transferring assets under clause (ii) shall transfer all remaining assets in such trust to the Fund. The transfer required by this clause shall not include any trust assets needed to pay—

"(I) previously incurred expenses; or

"(II) claims determined to be eligible for compensation under clause (vi).

"(iv) Except as provided under subparagraph (B), the Administrator of the Fund shall accept any assets transferred under clauses (ii) or (iii) and utilize them for any purposes for the Fund under section 221 of the Fairness in Asbestos Injury Resolution Act of 2006, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

"(v) Notwithstanding any other provision of Federal or State law, no liability of any kind may be imposed on a trustee of a trust for transferring assets to the Fund in accordance with clause (i).

"(vi) Any trust transferring assets under clause (ii) shall be subject to the following requirements:

"(I) The trust may continue to process asbestos claims, make eligibility determinations, and pay claims in a manner consistent with this clause if a claimant—

"(aa) has a pending asbestos claim as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

"(bb) provides to the trust a copy of a binding election submitted to Administrator waiving the right to secure compensation under section 106(f)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, unless the claimant is permitted under section 106(f)(2)(B) of such Act to seek a judgment or order for monetary damages from a Federal or State court;

"(cc) meets the requirements for compensation under the distribution plan for the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

"(dd) for any non-malignant condition satisfies the medical criteria under the distribution plan for the trust that is most nearly equivalent to the medical criteria described in section 121(d)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, except that, notwithstanding any provision of the distribution plan of the trust to the contrary, the trust shall not accept the results of a DLCO test (as such test is defined in section 121(a) of the Fairness in Asbestos Injury Resolution Act of 2006) for the purpose of demonstrating respiratory impairment; and

"(ee) for any of the cancers listed in section 121(d)(6) of the Fairness in Asbestos Injury Resolution Act of 2006 does not seek, and the trust does not pay, any compensation until such time as the Institute of Medicine finds that there is a causal relationship between asbestos exposure and such cancer, in which case such claims may be paid if such claims otherwise qualify for compensation under the distribution plan of the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

"(II) The trust shall not accept medical evidence from any physician, medical facility, or laboratory whose evidence would be not be accepted as evidence—

"(aa) under the Manville Trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006; or

"(bb) by the Administrator under section 115(a)(2) of such Act.

"(III) The trust shall not amend its scheduled payment amount or payment percentage as in effect on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

"(IV) The trust shall not amend its eligibility criteria after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, except to conform any criteria in any category under the distribution plan of the trust with related criteria in a related category under section 121 of the Fairness in Asbestos Injury Resolution Act of 2006.

"(V) The trust shall notify the Administrator of the Fund of any claim determined to be eligible for compensation after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, and the amount of any such compensation awarded to the claimant of such claim. The notification required by this subclause shall be made in such form as the Administrator shall require, and not later than 15 days after the date the determination is made.

"(VI) The trust shall not pay any claim without a certification by a claimant, subject to the penalties described in the Fairness in Asbestos Injury Resolution Act of 2006, stating the amount of collateral source compensation that such claimant has received, or is entitled to receive, under section 134 of the Fairness in Asbestos Injury Resolution Act of 2006. In the event that collateral source compensation exceeds the amount that a claimant would be paid in the category under that Act that is most nearly similar to the claimant's claim under the distribution plan of the trust, the aggregate value of the awards received by the claimant shall be reduced pro rata so that the claimant's total compensation does not exceed what would be paid for such a condition under the Fairness in Asbestos Injury Resolution Act of 2006, excluding any adjustments under section 131(b)(3) and (4) of that Act.

"(VII) Upon finding that the trust has breached any condition or conditions of this clause, the Administrator shall require the immediate payment of remaining trust assets into the Fund in accordance with section 402(f) of the Fairness in Asbestos Injury Resolution Act of 2006. The Administrator shall be entitled to an injunction against further payments of nonliquidated claims from the assets of the trust during the pendency of any dispute regarding the findings of noncompliance by the Administrator. The court in which any action to enforce the obligations of the trust is pending shall afford the action expedited consideration.

"(B) AUTHORITY TO REFUSE ASSETS.—The Administrator of the Fund may refuse to accept any asset that the Administrator determines may create liability for the Fund in excess of the value of the asset.

"(C) ALLOCATION OF TRUST ASSETS.—If a trust under subparagraph (A) has beneficiaries with claims that are not asbestos claims, the assets transferred to the Fund under subparagraph (A) shall not include assets allocable to such beneficiaries. The trustees of any such trust shall determine the amount of such trust assets to be reserved for the continuing operation of the trust in processing and paying claims that are not asbestos claims. The trustees shall demonstrate to the satisfaction of the Administrator, or by clear and convincing evidence in a proceeding brought before the

United States District Court for the District of Columbia in accordance with paragraph (4), that the amount reserved is properly allocable to claims other than asbestos claims.

"(D) SALE OF FUND ASSETS.—The investment requirements under section 222 of the Fairness in Asbestos Injury Resolution Act of 2006 shall not be construed to require the Administrator of the Fund to sell assets transferred to the Fund under subparagraph (A).

"(E) LIQUIDATED CLAIMS.—Except as specifically provided in this subparagraph, all asbestos claims against a trust are superseded and preempted as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, and a trust shall not make any payment relating to asbestos claims after that date. If, in the ordinary course and the normal and usual administration of the trust consistent with past practices, a trust had before the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, made all determinations necessary to entitle an individual claimant to a noncontingent cash payment from the trust, the trust shall (i) make any lump-sum cash payment due to that claimant, and (ii) make or provide for all remaining noncontingent payments on any award being paid or scheduled to be paid on an installment basis, in each case only to the same extent that the trust would have made such cash payments in the ordinary course and consistent with past practices before enactment of that Act. A trust shall not make any payment in respect of any alleged contingent right to recover any greater amount than the trust had already paid, or had completed all determinations necessary to pay, to a claimant in cash in accordance with its ordinary distribution procedures in effect as of June 1, 2003.

"(3) INJUNCTION.—

"(A) IN GENERAL.—Any injunction issued as part of the formation of a trust described in paragraph (1) shall remain in full force and effect. No court, Federal or State, may enjoin the transfer of assets by a trust to the Fund in accordance with this subsection pending resolution of any litigation challenging such transfer or the validity of this subsection or of any provision of the Fairness in Asbestos Injury Resolution Act of 2006, and an interlocutory order denying such relief shall not be subject to immediate appeal under section 1291(a) of title 28.

"(B) AVAILABILITY OF FUND ASSETS.—Notwithstanding any other provision of law, once such a transfer has been made, the assets of the Fund shall be available to satisfy any final judgment entered in such an action and such transfer shall no longer be subject to any appeal or review—

"(i) declaring that the transfer effected a taking of a right or property for which an individual is constitutionally entitled to just compensation; or

"(ii) requiring the transfer back to a trust of any or all assets transferred by that trust to the Fund.

"(4) JURISDICTION.—Solely for purposes of implementing this subsection, personal jurisdiction over every covered trust, the trustees thereof, and any other necessary party, and exclusive subject matter jurisdiction over every question arising out of or related to this subsection, shall be vested in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 1127 of this title, that court may make any order necessary and appropriate to facilitate prompt compliance with this subsection, including assuming jurisdiction over and modifying, to the extent necessary, any applicable confirmation order or other order with continuing and prospective application to a covered trust. The court may also resolve any related challenge to the constitutionality of this subsection or of its application to any trust, trustee, or individual claimant. The Administrator of the Fund may bring an action seeking such an order or modification, under the standards of rule 60(b) of the Federal Rules of Civil Procedure or otherwise, and shall be entitled to intervene as of right in any action brought by any other party seeking interpretation, application, or invalidation of this subsection. Any order denying relief that would facilitate prompt compliance with the transfer provisions of this subsection shall be subject to immediate appeal under section 304 of the Fairness in Asbestos Injury Resolution Act of 2006. Notwithstanding any other provision of this paragraph, for purposes of implementing the sunset provisions of section 402(f) of such Act which apply to asbestos trusts and the class action trust, the bankruptcy court or United States district court having jurisdiction over any such trust as of the date of enactment of such Act shall retain such jurisdiction.".

(g) NO AVOIDANCE OF TRANSFER.—Section 546 of title 11, United States Code, is amended by adding at the end the following:

"(h) Notwithstanding the rights and powers of a trustee under sections 544, 545, 547, 548, 549, and 550 of this title, if a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the trustee may not avoid a transfer made by the debtor under its payment obligations under section 202 or 203 of that Act.".

(h) CONFIRMATION OF PLAN.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

"(14) If the debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the plan provides for the continuation after its effective date of payment of all payment obligations under title II of that Act.".

(i) EFFECT ON INSURANCE RECEIVERSHIP PROCEEDINGS.—

(1) LIEN.—In an insurance receivership proceeding involving a direct insurer, reinsurer or runoff participant, there shall be a lien in favor of the Fund for the amount of any assessment and any such lien shall be given priority over all other claims against the participant in receivership, except for the expenses of administration of the receivership and the perfected claims of the secured creditors. Any State law that provides for priorities inconsistent with this provision is preempted by this Act.

(2) PAYMENT OF ASSESSMENT.—Payment of any assessment required by this Act shall not be subject to any automatic or judicially entered stay in any insurance receivership proceeding. This Act shall preempt any State law requiring that payments by a direct insurer, reinsurer or runoff participant in an insurance receivership proceeding be approved by a court, receiver or other person. Payments of assessments by any direct insurer or reinsurer participant under this Act shall not be subject to the avoidance powers of a receiver or a court in or relating to an insurance receivership proceeding.

(j) STANDING IN BANKRUPTCY PROCEEDINGS.—The Administrator shall have standing in any bankruptcy case involving a debtor participant. No bankruptcy court may require the Administrator to return property seized to satisfy obligations to the Fund.

SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.

(a) EFFECT ON FEDERAL AND STATE LAW.—The provisions of this Act shall supersede any Federal or State law insofar as such law may relate to any asbestos claim, including any claim described under subsection (e)(2).

(b) EFFECT ON SILICA CLAIMS.—

(1) IN GENERAL.—

(A) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preempt, bar, or otherwise preclude any personal injury claim attributable to exposure to silica as to which the plaintiff—

(i) pleads with particularity and establishes by a preponderance of evidence either that—

(I) no claim has been asserted or filed by or with respect to the exposed person in any forum for any asbestos-related condition and the exposed person (or another claiming on behalf of or through the exposed person) is not eligible for any monetary award under this Act; or

(II)(aa) the exposed person suffers or has suffered a functional impairment that was caused by exposure to silica; and

(bb) asbestos exposure was not a substantial contributing factor to such functional impairment; and

(ii) satisfies the requirements of paragraph (2) .

(B) PREEMPTION.—Claims attributable to exposure to silica that fail to meet the requirements of subparagraph (A) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—

(A) IN GENERAL.—In any claim to which paragraph (1) applies, the initial pleading (or, for claims pending on the date of enactment of this Act, an amended pleading to be filed within 60 days after such date, but not later than 60 days before trial, shall plead with particularity the elements of subparagraph (A)(i)(I) or (II) and shall be accompanied by the information described under subparagraph (B)(i) through (iv).

(B) PLEADINGS.—If the claim pleads the elements of paragraph (1)(A)(i)(II) and by the information described under clauses (i) through (iv) of this subparagraph if the claim pleads the elements of paragraph (1)(A)(i)(I)—

(i) admissible evidence, including at a minimum, a B-reader's report, the underlying x-ray film and such other evidence showing that the claim may be maintained and is not preempted under paragraph (1);

(ii) notice of any previous lawsuit or claim for benefits in which the exposed person, or another claiming on behalf of or through the injured person, asserted an injury or disability based wholly or in part on exposure to asbestos;

(iii) if known by the plaintiff after reasonable inquiry by the plaintiff or his representative, the history of the exposed person's exposure, if any, to asbestos; and

(iv) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(3) STATUTE OF LIMITATIONS.—In general, the statute of limitations for a silica claim shall be governed by applicable State law, except that in any case under this subsection, the statute of limitations shall only start to run when the plaintiff becomes impaired.

(c) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—Except as provided under paragraph (3) and section 106(f), any agreement, understanding, or undertaking by any

person or affiliated group with respect to the treatment of any asbestos claim, including a claim described under subsection (e)(2), that requires future performance by any party, insurer of such party, settlement administrator, or escrow agent shall be superseded in its entirety by this Act.

(2) No force or effect.—Except as provided under paragraph (3), any such agreement, understanding, or undertaking by any such person or affiliated group shall be of no force or effect, and no person shall have any rights or claims with respect to any such agreement, understanding, or undertaking.

(3) Exception.—

(A) In general.—Except as provided in section 202(f), nothing in this Act shall abrogate a binding and legally enforceable written settlement agreement between any defendant participant or its insurer and a specific named plaintiff with respect to the settlement of an asbestos claim of the plaintiff if—

(i) before the date of enactment of this Act, the settlement agreement was executed by—

(I) the authorized legal representative acting on behalf of the settling defendant or insurer, the settling defendant or the settling insurer; and

(II)(aa) the specific individual plaintiff, or the individual's immediate relatives; or

(bb) an authorized legal representative acting on behalf of the plaintiff where the plaintiff is incapacitated and the settlement agreement is signed by that authorized legal representative;

(ii) the settlement agreement contains an express obligation by the settling defendant or settling insurer to make a future direct monetary payment or payments in a fixed amount or amounts to the individual plaintiff; and

(iii) within 30 days after the date of enactment of this Act, or such shorter time period specified in the settlement agreement, the plaintiff has fulfilled all conditions to payment under the settlement agreement.

(B) Bankruptcy-related agreements.—The exception set forth in this paragraph shall not apply to any bankruptcy-related agreement.

(C) Collateral source.—Any settlement payment under this section is a collateral source if the plaintiff seeks recovery from the Fund.

(D) Abrogation.—Nothing in subparagraph (A) shall abrogate a settlement agreement otherwise satisfying the requirements of that subparagraph if such settlement agreement expressly anticipates the enactment of this Act and provides for the effects of this Act.

(E) Health care insurance or expenses settlements.—Nothing in this Act shall abrogate or terminate an otherwise fully enforceable settlement agreement which was executed before the date of enactment of this Act directly by the settling defendant or the settling insurer and a specific named plaintiff to pay the health care insurance or health care expenses of the plaintiff.

(d) Exclusive Remedy.—

(1) In general.—Except as provided under paragraph (2) and section 106(f) of this Act and section 524(j)(3) of title 11, United States Code, as amended by this Act, the remedies provided under this Act shall be the exclusive remedy for any asbestos claim, including any claim described in subsection (e)(2), under any Federal or State law.

(2) Civil actions at trial.—

(A) In general.—This Act shall not apply to any asbestos claim that—

(i) is a civil action filed in a Federal or State court (not including a filing in a bankruptcy court);

(ii) is not part of a consolidation of actions or a class action; and

(iii) on the date of enactment of this Act—

(I) in the case of a civil action which includes a jury trial, is before the jury after its impanelling and commencement of presentation of evidence, but before its deliberations;

(II) in the case of a civil action which includes a trial in which a judge is the trier of fact, is at the presentation of evidence at trial; or

(III) a verdict, final order, or final judgment has been entered by a trial court.

(B) Nonapplicability.—This Act shall not apply to a civil action described under subparagraph (A) throughout the final disposition of the action.

(e) Bar on Asbestos Claims.—

(1) In general.—No asbestos claim (including any claim described in paragraph (2)) may be pursued, and no pending asbestos claim may be maintained, in any Federal or State court, except as provided under subsection (d)(2) and section 106(f) of this Act and section 524(j)(3) of title 11, United States Code, as amended by this Act.

(2) Certain specified claims.—

(A) In general.—Subject to section 404 (d) and (e)(3) of this Act, no claim may be brought or pursued in any Federal or State court or insurance receivership proceeding—

(i) relating to any default, confessed or stipulated judgment on an asbestos claim if the judgment debtor expressly agreed, in writing or otherwise, not to contest the entry of judgment against it and the plaintiff expressly agreed, in writing or otherwise, to seek satisfaction of the judgment only against insurers or in bankruptcy;

(ii) relating to the defense, investigation, handling, litigation, settlement, or payment of any asbestos claim by any participant, including claims for bad faith or unfair or deceptive claims handling or breach of any duties of good faith; or

(iii) arising out of or relating to the asbestos-related injury of any individual and—

(I) asserting any conspiracy, concert of action, aiding or abetting, act, conduct, statement, misstatement, undertaking, publication, omission, or failure to detect, speak, disclose, publish, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos; or

(II) asserting any conspiracy, act, conduct, statement, omission, or failure to detect, disclose, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos, asserted as or in a direct action against an insurer or reinsurer based upon any theory, statutory, contract, tort, or otherwise; or

(iv) by any third party, and premised on any theory, allegation, or cause of action, for reimbursement of healthcare costs allegedly associated with the use of or exposure to asbestos, whether such claim is asserted directly, indirectly or derivatively.

(B) Exceptions.—Subparagraph (A) (ii) and (iii) shall not apply to claims against participants by persons—

(i) with whom the participant is in privity of contract;

(ii) who have received an assignment of insurance rights not otherwise voided by this Act; or

(iii) who are beneficiaries covered by the express terms of a contract with that participant.

(3) Preemption.—Any action asserting an asbestos claim (including a claim described in paragraph (2)) in any Federal or State court is preempted by this Act, except as provided under subsection (d)(2) and section 106(f).

(4) Dismissal.—Except as provided under subsection (d)(2), no judgment other than a judgment of dismissal may be entered in any such action, including an action pending on appeal, or on petition or motion for discretionary review, on or after the date of enactment of this Act. A court may dismiss any such action on its motion. If the court denies the motion to dismiss, it shall stay further proceedings until final disposition of any appeal taken under this Act.

(5) Removal.—

(A) In general.—If an action in any State court under paragraph (3) is preempted, barred, or otherwise precluded under this Act, and not dismissed, or if an order entered after the date of enactment of this Act purporting to enter judgment or deny review is not rescinded and replaced with an order of dismissal within 30 days after the filing of a motion by any party to the action advising the court of the provisions of this Act, any party may remove the case to the district court of the United States for the district in which such action is pending.

(B) Time limits.—For actions originally filed after the date of enactment of this Act, the notice of removal shall be filed within the time limits specified in section 1441(b) of title 28, United States Code.

(C) Procedures.—The procedures for removal and proceedings after removal shall be in accordance with sections 1446 through 1450 of title 28, United States Code, except as may be necessary to accommodate removal of any actions pending (including on appeal) on the date of enactment of this Act.

(D) Review of remand orders.—

(i) In general.—Section 1447 of title 28, United States Code, shall apply to any removal of a case under this section, except that notwithstanding subsection (d) of that section, a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand an action to the State court from which it was removed if application is made to the court of appeals not less than 7 days after entry of the order.

(ii) Time period for judgment.—If the court of appeals accepts an appeal under clause (i), the court shall complete all action on such appeal, including rendering judgment, not later than 60 days after the date on which such appeal was filed, unless an extension is granted under clause (iii).

(iii) Extension of time period.—The court of appeals may grant an extension of the 60-day period described in clause (ii) if—

(I) all parties to the proceeding agree to such extension, for any period of time; or

(II) such extension is for good cause shown and in the interests of justice, for a period not to exceed 10 days.

(iv) Denial of appeal.—If a final judgment on the appeal under clause (i) is not issued before the end of the period described in clause (ii), including any extension under clause (iii), the appeal shall be denied.

(E) Jurisdiction.—The jurisdiction of the district court shall be limited to—

(i) determining whether removal was proper; and

(ii) determining, based on the evidentiary record, whether the claim presented is preempted, barred, or otherwise precluded under this Act.

(6) CREDITS.—

(A) IN GENERAL.—If, notwithstanding the express intent of Congress stated in this section, any court finally determines for any reason that an asbestos claim is not barred under this subsection and is not subject to the exclusive remedy or preemption provisions of this section, then any participant required to satisfy a final judgment executed with respect to any such claim may elect to receive a credit against any assessment owed to the Fund equal to the amount of the payment made with respect to such executed judgment.

(B) REQUIREMENTS.—The Administrator shall require participants seeking credit under this paragraph to demonstrate that the participant—

(i) timely pursued all available remedies, including remedies available under this paragraph to obtain dismissal of the claim; and

(ii) notified the Administrator at least 20 days before the expiration of any period within which to appeal the denial of a motion to dismiss based on this section.

(C) INFORMATION.—The Administrator may require a participant seeking credit under this paragraph to furnish such further information as is necessary and appropriate to establish eligibility for, and the amount of, the credit.

(D) INTERVENTION.—The Administrator may intervene in any action in which a credit may be due under this paragraph.

SEC. 404. EFFECT ON INSURANCE AND REINSURANCE CONTRACTS.

(a) EROSION OF INSURANCE COVERAGE LIMITS.—

(1) DEFINITIONS.—In this section, the following definitions shall apply:

(A) DEEMED EROSION AMOUNT.—The term "deemed erosion amount" means the amount of erosion deemed to occur at enactment under paragraph (2).

(B) EARLY SUNSET.—The term "early sunset" means an event causing termination of the program under section 405(g) which relieves the insurer participants of paying some portion of the aggregate payment level of $46,025,000,000 required under section 212(a)(2)(A).

(C) EARNED EROSION AMOUNT.—The term "earned erosion amount" means, in the event of any early sunset under section 405(g), the percentage, as set forth in the following schedule, depending on the year in which the defendant participants' funding obligations end, of those amounts which, at the time of the early sunset, a defendant participant has paid to the fund and remains obligated to pay into the fund.

Year After Enactment In Which Defendant Participant's Funding Obligation Ends:	Applicable Percentage:
2	67.06
3	86.72
4	96.55
5	102.45
6	90.12
7	81.32
8	74.71
9	69.58
10	65.47
11	62.11
12	59.31
13	56.94
14	54.90
15	53.14
16	51.60
17	50.24
18	49.03
19	47.95
20	46.98
21	46.10
22	45.30
23	44.57
24	43.90
25	43.28
26	42.71
27	42.18
28	40.82
29	39.42

(D) REMAINING AGGREGATE PRODUCTS LIMITS.—The term "remaining aggregate products limits" means aggregate limits that apply to insurance coverage granted under the "products hazard", "completed operations hazard", or "Products—Completed Operations Liability" in any comprehensive general liability policy issued between calendar years 1940 and 1986 to cover injury which occurs in any State, as reduced by—

(i) any existing impairment of such aggregate limits as of the date of enactment of this Act; and

(ii) the resolution of claims for reimbursement or coverage of liability or paid or incurred loss for which notice was provided to the insurer before the date of enactment of this Act.

(E) SCHEDULED PAYMENT AMOUNTS.—The term "scheduled payment amounts" means the future payment obligation to the Fund under this Act from a defendant participant in the amount established under sections 203 and 204.

(F) UNEARNED EROSION AMOUNT.—The term "unearned erosion amount" means, in the event of any early sunset under section 405(g), the difference between the deemed erosion amount and the earned erosion amount.

(2) QUANTUM AND TIMING OF EROSION.—

(A) EROSION UPON ENACTMENT.—The collective payment obligations to the Fund of the insurer and reinsurer participants as assessed by the Administrator shall be deemed as of the date of enactment of this Act to erode remaining aggregate products limits available to a defendant participant only in an amount of 38.1 percent of each defendant participant's scheduled payment amount.

(B) NO ASSERTION OF CLAIM.—No insurer or reinsurer may assert any claim against a defendant participant or captive insurer for insurance, reinsurance, payment of a deductible, or retrospective premium adjustment arising out of that insurer's or reinsurer's payments to the Fund or the erosion deemed to occur under this section.

(C) POLICIES WITHOUT CERTAIN LIMITS OR WITH EXCLUSION.—Except as provided under subparagraph (E), nothing in this section shall require or permit the erosion of any insurance policy or limit that does not contain an aggregate products limit, or that contains an asbestos exclusion.

(D) TREATMENT OF CONSOLIDATION ELECTION.—If an affiliated group elects consolidation as provided in section 204(f), the total erosion of limits for the affiliated group under paragraph (2)(A) shall not exceed 38.1 percent of the scheduled payment amount of the single payment obligation for the entire affiliated group. The total erosion of limits for any individual defendant participant in the affiliated group shall not exceed its individual share of 38.1 percent of the affiliated group's scheduled payment amount, as measured by the individual defendant participant's percentage share of the affiliated group's prior asbestos expenditures.

(E) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, nothing in this Act shall be deemed to erode remaining aggregate products limits of a defendant participant that can demonstrate by a preponderance of the evidence that 75 percent of its prior asbestos expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury arising exclusively from the exposure to asbestos at premises owned, rented, or controlled by the defendant participant (a "premises defendant"). In calculating such percentage, where expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury due to exposure to the defendant participant's products and to asbestos at premises owned, rented, or controlled by the defendant participant, half of such expenditures shall be deemed to be for such premises exposures. If a defendant participant establishes itself as a premises defendant, 75 percent of the payments by such defendant participant shall erode coverage limits, if any, applicable to premises liabilities under applicable law.

(3) METHOD OF EROSION.—

(A) ALLOCATION.—The amount of erosion allocated to each defendant participant shall be allocated among periods in which policies with remaining aggregate product limits are available to that defendant participant pro rata by policy period, in ascending order by attachment point.

(B) OTHER EROSION METHODS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), the method of erosion of any remaining aggregate products limits which are subject to—

(I) a coverage-in-place or settlement agreement between a defendant participant and 1 or more insurance participants as of the date of enactment; or

(II) a final and nonappealable judgment as of the date of enactment or resulting from a claim for coverage or reimbursement pending as of such date, shall be as specified in such agreement or judgment with regard to erosion applicable to such insurance participants' policies.

(ii) REMAINING LIMITS.—To the extent that a final nonappealable judgment or settlement agreement to which an insurer participant and a defendant participant are parties in effect as of the date of enactment of this Act extinguished a defendant participant's right to seek coverage for asbestos claims under an insurer participant's policies, any remaining limits in such policies shall not be considered to be remaining aggregate products limits under subsection (a)(1)(A).

(4) RESTORATION OF AGGREGATE PRODUCTS LIMITS UPON EARLY SUNSET.—

(A) RESTORATION.—In the event of an early sunset, any unearned erosion amount will be deemed restored as aggregate products limits available to a defendant participant as of the date of enactment.

(B) METHOD OF RESTORATION.—The unearned erosion amount will be deemed restored to each defendant participant's policies in such a manner that the last limits that were deemed eroded at enactment under this subsection are deemed to be the first limits restored upon early sunset.

(C) TOLLING OF COVERAGE CLAIMS.—In the event of an early sunset, the applicable statute of limitations and contractual provisions for the filing of claims under any insurance policy with restored aggregate products limits shall be deemed tolled after the date of enactment through the date 6 months after the date of early sunset.

(5) PAYMENTS BY DEFENDANT PARTICIPANT.—Payments made by a defendant participant shall be deemed to erode, exhaust, or otherwise satisfy applicable self-insured retentions, deductibles, retrospectively rated premiums, and limits issued by nonparticipating insolvent or captive insurance companies. Reduction of remaining aggregate limits under this subsection shall not limit the right of a defendant participant to collect from any insurer not a participant.

(6) EFFECT ON OTHER INSURANCE CLAIMS.—Other than as specified in this subsection, this Act does not alter, change, modify, or affect insurance for claims other than asbestos claims.

(b) DISPUTE RESOLUTION PROCEDURE.—

(1) ARBITRATION.—The parties to a dispute regarding the erosion of insurance coverage limits under this section may agree in writing to settle such dispute by arbitration. Any such provision or agreement shall be valid, irrevocable, and enforceable, except for any grounds that exist at law or in equity for revocation of a contract.

(2) TITLE 9, UNITED STATES CODE.—Arbitration of such disputes, awards by arbitrators, and confirmation of awards shall be governed by title 9, United States Code, to the extent such title is not inconsistent with this section. In any such arbitration proceeding, the erosion principles provided for under this section shall be binding on the arbitrator, unless the parties agree to the contrary.

(3) FINAL AND BINDING AWARD.—An award by an arbitrator shall be final and binding between the parties to the arbitration, but shall have no force or effect on any other person. The parties to an arbitration may agree that in the event a policy which is the subject matter of an award is subsequently determined to be eroded in a manner different from the manner determined by the arbitration in a judgment rendered by a court of competent jurisdiction from which no appeal can or has been taken, such arbitration award may be modified by any court of competent jurisdiction upon application by any party to the arbitration. Any such modification shall govern the rights and obligations between such parties after the date of such modification.

(c) EFFECT ON NONPARTICIPANTS.—

(1) IN GENERAL.—No insurance company or reinsurance company that is not a participant, other than a captive insurer, shall be entitled to claim that payments to the Fund erode, exhaust, or otherwise limit the nonparticipant's insurance or reinsurance obligations.

(2) OTHER CLAIMS.—Nothing in this Act shall preclude a participant from pursuing any claim for insurance or reinsurance from any person that is not a participant other than a captive insurer.

(d) FINITE RISK POLICIES NOT AFFECTED.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, except subject to section 212(a)(1)(D), this Act shall not alter, affect or impair any rights or obligations of—

(A) any party to an insurance contract that expressly provides coverage for governmental charges or assessments imposed to replace insurance or reinsurance liabilities in effect on the date of enactment of this Act; or

(B) subject to paragraph (2), any person with respect to any insurance purchased by a participant after December 31, 1990, that expressly (but not necessarily exclusively) provides coverage for asbestos liabilities, including those policies commonly referred to as "finite risk" policies.

(2) LIMITATION.—No person may assert that any amounts paid to the Fund in accordance with this Act are covered by any policy described under paragraph (1)(B) purchased by a defendant participant, unless such policy specifically provides coverage for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims.

(e) EFFECT ON CERTAIN INSURANCE AND REINSURANCE CLAIMS.—

(1) NO COVERAGE FOR FUND ASSESSMENTS.—Subject to section 212(a)(1)(D), no participant or captive insurer may pursue an insurance or reinsurance claim against another participant or captive insurer for payments to the Fund required under this Act, except under a written agreement specifically providing insurance, reinsurance, or other reimbursement for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims or, where applicable, under finite risk policies under subsection (d).

(2) CERTAIN INSURANCE ASSIGNMENTS VOIDED.—Any assignment of any rights to insurance coverage for asbestos claims to any person who has asserted an asbestos claim before the date of enactment of this Act, or to any trust, person, or other entity not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims which were asserted before such date of enactment, or by any Tier I defendant participant, before any sunset of this Act, shall be null and void. This subsection shall not void or affect in any way any assignments of rights to insurance coverage other than to asbestos claimants or to trusts, persons, or other entities not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims, or by Tier I defendant participants.

(3) INSURANCE CLAIMS PRESERVED.—Notwithstanding any other provision of this Act, this Act shall not alter, affect, or impair any rights or obligations of any person with respect to any insurance or reinsurance for amounts that any person pays, has paid, or becomes legally obligated to pay in respect of asbestos or other claims, including claims filed, pursued, or revived under section 405(h), except to the extent that—

(A) such claims are preempted, barred, or superseded by section 403;

(B) any such rights or obligations of such person with respect to insurance or reinsurance are prohibited by paragraph (1) or (2) of subsection (e); or

(C) the limits of insurance otherwise available to such participant in respect of asbestos claims are deemed to be eroded under subsection (a).

SEC. 405. ANNUAL REPORT OF THE ADMINISTRATOR AND SUNSET OF THE ACT.

(a) IN GENERAL.—The Administrator shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the operation of the Asbestos Injury Claims Resolution Fund within 6 months after the close of each fiscal year.

(b) CONTENTS OF REPORT.—The annual report submitted under this subsection shall include an analysis of—

(1) the claims experience of the program during the most recent fiscal year, including—

(A) the number of claims made to the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims;

(B) the number of claims denied by the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims, and a general description of the reasons for their denial;

(C) a summary of the eligibility determinations made by the Office under section 114;

(D) a summary of the awards made from the Fund, including the amount of the awards; and

(E) for each disease level, a statement of the percentage of asbestos claimants who filed claims during the prior calendar year and were determined to be eligible to receive compensation under this Act, who have received the compensation to which such claimants are entitled according to section 131;

(2) the administrative performance of the program, including—

(A) the performance of the program in meeting the time limits prescribed by law and an analysis of the reasons for any systemic delays;

(B) any backlogs of claims that may exist and an explanation of the reasons for such backlogs;

(C) the costs to the Fund of administering the program; and

(D) any other significant factors bearing on the efficiency of the program;

(3) the financial condition of the Fund, including—

(A) statements of the Fund's revenues, expenses, assets, and liabilities;

(B) the identity of all participants, the funding allocations of each participant, and the total amounts of all payments to the Fund;

(C) a list of all financial hardship or inequity adjustments applied for during the fiscal year, and the adjustments that were made during the fiscal year;

(D) a statement of the investments of the Fund; and

(E) a statement of the borrowings of the Fund;

(4) the financial prospects of the Fund, including—

(A) an estimate of the number and types of claims, the amount of awards, and the participant payment obligations for the next fiscal year;

(B) an analysis of the financial condition of the Fund, including an estimation of the Fund's ability to pay claims for the subsequent 5 years in full and over the predicted lifetime of the program as and when required, an evaluation of the Fund's ability to retire its existing debt and assume additional debt, and an evaluation of the Fund's ability to satisfy other obligations under the program; and

(C) a report on any changes in projections made in earlier annual reports or sunset analyses regarding the Fund's ability to meet its financial obligations;

(5) a summary of any legal actions brought or penalties imposed under section 223, any referrals made to law enforcement authorities under section 408 (a) and (b), and any contributions to the Fund collected under section 408(e);

(6) any recommendations from the Advisory Committee on Asbestos Disease Compensation and the Medical Advisory Committee of the Fund to improve the diagnostic, exposure, and medical criteria so as to pay those claimants who suffer from diseases or conditions for which exposure to asbestos was a substantial contributing factor;

(7) a summary of the results of audits conducted under section 115; and

(8) a summary of prosecutions under section 1348 of title 18, United States Code (as added by this Act).

(c) CERTIFICATION.—The Administrator shall certify in the annual report required under subsection (a) whether, in the best judgment of the Administrator, the Fund will have sufficient resources for the fiscal year in which the report is issued to make all required payments—

(1) with respect to all claims determined eligible for compensation that have been filed and that the Administrator projects will be filed with the Office for the fiscal year; and

(2) to satisfy the Fund's debt repayment obligation, administrative costs, and other financial obligations.

(d) CLAIMS ANALYSIS AND VERIFICATION OF UNANTICIPATED CLAIMS.—

(1) IN GENERAL.—If the Administrator concludes, on the basis of the annual report submitted under this section, that—

(A) the average number of claims that qualify for compensation under a claim level or designation exceeds 125 percent of the number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims qualifying for compensation under the appropriate claim level or designation; or

(B) the average number of claims that qualify for compensation under a claim level or designation is less than 75 percent of the number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims deemed ineligible for compensation under the appropriate claim level or designation.

(2) DETERMINATIONS.—The Administrator shall examine the best available medical evidence and any recommendation made under subsection (b)(5) in order to determine which 1 or more of the following is true:

(A) Without a significant number of exceptions, all of the claimants who qualified for compensation under the claim level or designation suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(B) A significant number of claimants who qualified for compensation under the claim level or designation do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(C) A significant number of claimants who were denied compensation under the claim level of designation did suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(D) The Congressional Budget Office projections underestimated or overestimated the actual number of persons who suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(3) RECOMMENDATIONS CONCERNING CLAIMS CRITERIA.—If the Administrator determines that a significant number of the claimants who qualified for compensation under the claim level under review do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor, or that a significant number of the claimants who were denied compensation under the claim level under review suffered from an injury or disease for which exposure to asbestos was a substantial contributing factor, the Administrator shall recommend to Congress, under subsection (f), changes to the compensation criteria in order to ensure that the Fund provides compensation for injury or disease for which exposure to asbestos was a substantial contributing factor, but does not provide compensation to claimants who do not suffer from an injury or disease for which asbestos exposure was a substantial contributing factor.

(e) RECOMMENDATIONS OF ADMINISTRATOR AND ADVISORY COMMITTEE.—

(1) REFERRAL.—If the Administrator recommends changes to this Act under subsection (d), the recommendations and accompanying analysis shall be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 (in this subsection referred to as the "Advisory Committee").

(2) ADVISORY COMMITTEE RECOMMENDATIONS.—The Advisory Committee shall hold expedited public hearings on the alternatives and recommendations of the Administrator and make its own recommendations for reform of the program under titles I and II.

(3) TRANSMITTAL TO CONGRESS.—Not later than 90 days after receiving the recommendations of the Administrator, the Advisory Committee shall transmit the recommendations of the Administrator and the recommendations of the Advisory Committee to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(f) SHORTFALL ANALYSIS.—

(1) IN GENERAL.—

(A) ANALYSIS.—If the Administrator concludes, at any time, that the Fund may not be able to pay claims as such claims become due at any time within the next 5 years and to satisfy its other obligations, the Administrator shall prepare an analysis of the reasons for the situation, an estimation of when the Fund will no longer be able to pay claims as such claims become due, a description of the range of reasonable alternatives for responding to the situation, and a recommendation as to which alternative best serves the interest of claimants and the public. The report may include a description of changes in the diagnostic, exposure, or medical criteria of section 121 that the Administrator believes may be necessary to protect the Fund. The Administrator shall submit such analysis to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives. Any recommendations made by the Administrator for changes to the program shall, in addition, be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 for review.

(B) RANGE OF ALTERNATIVES.—The range of alternatives under subparagraph (A) may include—

(i) termination of the program set forth in titles I and II of this Act in its entirety;

(ii) reform of the program set forth in titles I and II of this Act (including changes in the diagnostic, exposure, or medical criteria, changes in the enforcement or application of those criteria, enhancement of enforcement authority, changes in the timing of payments, changes in contributions by defendant participants, insurer participants (or both such participants), or changes in award values); or

(iii) any measure that the Administrator considers appropriate.

(C) INSURER SHORTFALL ASSESSMENTS.—Beginning in year 6 of the life of the Fund, if the Administrator determines that a shortfall in payment of the annual amounts required to be paid by insurer participants under section 212(a)(3)(C) is the substantial factor that would cause the Administrator to recommend the termination of this Act under subsection (g), then the Administrator may impose shortfall assessments on insurer participants in addition to the payments imposed under section 212, except that the Administrator shall not impose such assessments if the additional amounts would not be sufficient to permit the Administrator to avoid recommending termination of this Act. During any given year, the total of such shortfall assessments shall not exceed the amount by which, during the prior year, total payments by insurer participants fell short of the aggregate amounts required to be paid under section 212(a)(3)(C). Shortfall assessments shall be allocated among insurer participants using the methodology adopted by the Asbestos Insurers Commission under section 212(a)(1)(B).

(2) CONSIDERATIONS.—In formulating recommendations, the Administrator shall take into account the reasons for any shortfall, actual or projected, which may include—

(A) financial factors, including return on investments, borrowing capacity, interest rates, ability to collect contributions, and other relevant factors;

(B) the operation of the Fund generally, including administration of the claims processing, the ability of the Administrator to collect contributions from participants, potential problems of fraud, the adequacy of the criteria to rule out idiopathic mesothelioma, and inadequate flexibility to extend the timing of payments;

(C) the appropriateness of the diagnostic, exposure, and medical criteria, including the adequacy of the criteria to rule out idiopathic mesothelioma;

(D) the actual incidence of asbestos-related diseases, including mesothelioma, based on epidemiological studies and other relevant data;

(E) compensation of diseases with alternative causes; and

(F) other factors that the Administrator considers relevant.

(3) RECOMMENDATION OF TERMINATION.—Any recommendation of termination should include a plan for winding up the affairs of the Fund (and the program generally) within a defined period, including paying in full all claims resolved at the time the report is prepared. Any plan under this paragraph shall provide for priority in payment to the claimants with the most serious illnesses.

(4) RESOLVED CLAIMS.—For purposes of this section, a claim shall be deemed resolved when the Administrator has determined the amount of the award due the claimant, and either the claimant has waived judicial review or the time for judicial review has expired.

(g) SUNSET OF ACT.—

(1) IN GENERAL.—

(A) TERMINATION.—Subject to paragraph (4), titles I (except subtitle A) and II and sections 403 and 404(e)(2) shall terminate as provided under paragraph (2), if—

(i) the Administrator has begun the processing of claims; and

(ii) as part of the review conducted to prepare an annual report under this section, the Chief Financial Officer of the Department of Labor, giving due consideration to the audit conducted under subsection (h), determines that if any additional claims are resolved, the Fund will not have sufficient non-taxpayer resources and borrowing authorized under section 221when needed to pay 100 percent of all resolved claims while also meeting all other obligations of the Fund under this Act, including the payment of—

(I) debt repayment obligations; and

(II) remaining obligations to the asbestos trust of a debtor and the class action trust.

(B) REMAINING OBLIGATIONS.—For purposes of subparagraph (A)(ii), the remaining obligations to the asbestos trust of the debtor and the class action trust shall be determined by the Administrator by assuming that, instead of a lump-sum payment, such trust had transferred its assets to the Fund on an annual basis, taking into consideration relevant factors, including the most recent projections made by the trust's actuary before the date of enactment of this Act of the amount and timing of future claim payments and administrative and operating expenses.

(2) EFFECTIVE DATE OF TERMINATION.—A termination under paragraph (1) shall take effect 180 days after the date of a determination of the Administrator under paragraph (1) and shall apply to all asbestos claims that have not been resolved by the Fund as of the date of the determination.

(3) RESOLVED CLAIMS.—If a termination takes effect under this subsection, all resolved claims shall be paid in full by the Fund.

(4) EXTINGUISHED CLAIMS.—A claim that is extinguished under the statute of limitations provisions in section 113(b) is not revived at the time of sunset under this subsection.

(5) CONTINUED FUNDING.—If a termination takes effect under this subsection, participants will still be required to make payments as provided under subtitles A and B of title II. If the full amount of payments required by title II is not necessary for the Fund to pay claims that have been resolved as of the date of termination, pay the Fund's debt and obligations to the asbestos trusts and class action trust, and support the Fund's continued operation as needed to pay such claims, debt, and obligations, the Administrator may reduce such payments. Any such reductions shall be allocated among participants in approximately the same proportion as the liability under subtitles A and B of title II.

(6) SUNSET CLAIMS.—

(A) DEFINITIONS.—In this paragraph—

(i) the term "sunset claims" means claims filed with the Fund, but not yet resolved, when this Act has terminated; and

(ii) the term "sunset claimants" means persons asserting sunset claims.

(B) IN GENERAL.—If a termination takes effect under this subsection, the applicable statute of limitations for the filing of sunset claims under subsection (h) shall be tolled for any past or pending sunset claimants while such claimants were pursuing claims filed under this Act. For those claimants who decide to pursue a sunset claim in accordance with subsection (h), the applicable statute of limitations shall apply, except that claimants who filed a claim against the Fund under this Act before the date of termination shall have 2 years after the date of termination to file a sunset claim in accordance with subsection (h).

(7) ASBESTOS TRUSTS AND CLASS ACTION TRUSTS.—On and after the date of termination under this subsection, the trust distribution program of any asbestos trust and the class action trust shall be replaced with the medical criteria requirements of section 121.

(8) PAYMENT TO ASBESTOS TRUSTS AND CLASS ACTION TRUSTS.—The amounts determined under paragraph (1)(B) for payment to the asbestos trusts and the class action trust shall be transferred to the respective asbestos trusts of the debtor and the class action trust within 90 days.

(h) NATURE OF CLAIM AFTER SUNSET.—

(1) IN GENERAL.—

(A) RELIEF.—

(i) IN GENERAL.—On and after the date of termination under subsection (g), any individual with an asbestos claim who has not previously had a claim resolved by the Fund, may in a civil action obtain relief in damages subject to the terms and conditions under this subsection and paragraph (6) of subsection (g).

(ii) RULE OF CONSTRUCTION.—This subparagraph shall not be construed as creating a new Federal cause of action.

(B) RESOLVED CLAIMS.—An individual who has had a claim resolved by the Fund may not pursue a court action, except that an individual who received an award for a nonmalignant disease (Levels I through V) from the Fund may assert a claim for a subsequent or progressive disease under this subsection, unless the disease was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the previous claim against the Fund was disposed.

(C) MESOTHELIOMA CLAIM.—An individual who received an award for a nonmalignant or malignant disease (except mesothelioma) (Levels I through VIII) from the Fund may assert a claim for mesothelioma under this subsection, unless the mesothelioma was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the nonmalignant or other malignant claim was disposed.

(2) EXCLUSIVE REMEDY.—As of the effective date of a termination of this Act under subsection (g), an action under paragraph (1) shall be the exclusive remedy for any asbestos claim that might otherwise exist under Federal, State, or other law, regardless of whether such claim arose before or after the date of enactment of this Act or of the termination of this Act, except that claims against the Fund that have been resolved before the date of the termination determination under subsection (f) may be paid by the Fund.

(3) VENUE.—

(A) IN GENERAL.—Actions under paragraph (1) may be brought in—

(i) any Federal district court;

(ii) any State court in the State where the claimant resides; or

(iii) any State court in a State where the asbestos exposure occurred.

(B) DEFENDANTS NOT FOUND.—If any defendant cannot be found in the State described in clause (ii) or (iii) of subparagraph (A), the claim may be pursued only against that defendant in the Federal district court or the State court located within any State in which the defendant may be found.

(C) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the asbestos exposure occurred in more than one county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subparagraph.

(D) STATE VENUE REQUIREMENTS.—Nothing in this paragraph shall preempt or supersede any State's law relating to venue requirements within that State which are more restrictive.

(4) CLASS ACTION TRUSTS.—Notwithstanding any other provision of this section—

(A) after the assets of any class action trust have been transferred to the Fund in accordance with section 203(b)(5), no asbestos claim may be maintained with respect to asbestos liabilities arising from the operations of a person with respect to whose liabilities for asbestos claims a class action trust has been established, whether such claim names the person or its successors or affiliates as defendants; and

(B) if a termination takes effect under subsection (g), the exclusive remedy for all asbestos claims (including sunset claims and claims first arising or first presented after termination of the Fund) arising from such operations will be a claim against the class action trust to which the Administrator has transferred funds under subsection (g)(8) to pay asbestos claims, if necessary in proportionally reduced amounts.

(5) EXPERT WITNESSES.—If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue in an action permitted under paragraph (1), a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if—

(A) the testimony is based upon sufficient facts or data;

(B) the testimony is the product of reliable principles and methods; and

(C) the witness has applied the principles and methods reliably to the facts of the case.

(i) AUDIT.—Any annual report to Congress required under this section shall be reviewed and certified as fairly representing the financial condition of the Fund by an independent auditor.

SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABILITY OF THE UNITED STATES GOVERNMENT.

(a) CAUSES OF ACTIONS.—Except as otherwise specifically provided in this Act, nothing in this Act shall be construed as creating a cause of action against the United States Government, any entity established under this Act, or any officer or employee of the United States Government or such entity.

(b) FUNDING LIABILITY.—Nothing in this Act shall be construed to—

(1) create any obligation of funding from the United States Government, including any borrowing authorized under section 221(b)(2); or

(2) obligate the United States Government to pay any award or part of an award, if amounts in the Fund are inadequate.

SEC. 407. RULES OF CONSTRUCTION.

(a) LIBBY, MONTANA CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for current and former residents of Libby, Montana. The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

(b) HEALTHCARE FROM PROVIDER OF CHOICE.—Nothing in this Act shall be construed to preclude any eligible claimant from receiving healthcare from the provider of their choice.

SEC. 408. VIOLATIONS OF ENVIRONMENTAL HEALTH AND SAFETY REQUIREMENTS.

(a) ASBESTOS IN COMMERCE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), relating to the manufacture, importation, processing, disposal, and distribution in commerce of asbestos-containing products, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible civil or criminal penalties, including those under section 17 of the Toxic Substances Control Act (15 U.S.C. 2616), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(b) ASBESTOS AS AIR POLLUTANT.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 et seq.), relating to asbestos as a hazardous air pollutant, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible criminal and civil penalties, including those under section 113 of the Clean Air Act (42 U.S.C. 7413), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(c) OCCUPATIONAL EXPOSURE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), relating to occupational exposure to asbestos, the Administrator shall refer the matter in writing within 30 days after receiving that information and refer the matter to the Secretary of Labor or the appropriate State agency with authority to enforce occupational safety and health standards, for investigation for possible civil or criminal penalties under section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666).

(d) ENHANCED CRIMINAL PENALTIES FOR WILLFUL VIOLATIONS OF OCCUPATIONAL STANDARDS FOR ASBESTOS.—Section 17(e) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656(e)) is amended—

(1) by striking "Any" and inserting "(1) Except as provided in paragraph (2), any"; and

(2) by adding at the end the following:

"(2) Any employer who willfully violates any standard issued under section 6 with respect to the control of occupational exposure to asbestos, shall upon conviction be punished by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 5 years, or both, except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 10 years, or both.".

(e) CONTRIBUTIONS TO THE ASBESTOS TRUST FUND BY EPA AND OSHA ASBESTOS VIOLATORS.—

(1) IN GENERAL.—The Administrator shall assess employers or other individuals determined to have violated asbestos statutes, standards, or regulations administered by the Department of Labor, the Environmental Protection Agency, and their State counterparts, for contributions to the Asbestos Injury Claims Resolution Fund (in this section referred to as the "Fund").

(2) IDENTIFICATION OF VIOLATORS.—Each year, the Administrator shall—

(A) in consultation with the Assistant Secretary of Labor for Occupational Safety and Health, identify all employers that, during the previous year, were subject to final orders finding that they violated standards issued by the Occupational Safety and Health Administration for control of occupational exposure to asbestos (29 C.F.R. 1910.1001, 1915.1001, and 1926.1101) or the equivalent asbestos standards issued by any State under section 18 of the Occupational Safety and Health Act (29 U.S.C. 668); and

(B) in consultation with the Administrator of the Environmental Protection Agency, identify all employers or other individuals who, during the previous year, were subject to final orders finding that they violated asbestos regulations administered by the Environmental Protection Agency (including the National Emissions Standard for Asbestos established under the Clean Air Act (42 U.S.C. 7401 et seq.), the asbestos worker protection standards established under part 763 of title 40, Code of Federal Regulations, and the regulations banning asbestos promulgated under section 501 of this Act), or equivalent State asbestos regulations.

(3) ASSESSMENT FOR CONTRIBUTION.—The Administrator shall assess each such identified employer or other individual for a contribution to the Fund for that year in an amount equal to—

(A) 2 times the amount of total penalties assessed for the first violation of occupational health and environmental statutes, standards, or regulations;

(B) 4 times the amount of total penalties for a second violation of such statutes, standards, or regulations; and

(C) 6 times the amount of total penalties for any violations thereafter.

(4) LIABILITY.—Any assessment under this subsection shall be considered a liability under this Act.

(5) PAYMENTS.—Each such employer or other individual assessed for a contribution to the Fund under this subsection shall make the required contribution to the Fund within 90 days of the date of receipt of notice from the Administrator requiring payment.

(6) ENFORCEMENT.—The Administrator is authorized to bring a civil action under section 223(c) against any employer or other individual who fails to make timely payment of contributions assessed under this section.

(f) REVIEW OF FEDERAL SENTENCING GUIDELINES FOR ENVIRONMENTAL CRIMES RELATED TO ASBESTOS.—Under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, as appropriate, the United States Sentencing Guidelines and related policy statements to ensure that—

(1) appropriate changes are made within the guidelines to reflect any statutory amendments that have occurred since the time that the current guideline was promulgated;

(2) the base offense level, adjustments, and specific offense characteristics contained in section 2Q1.2 of the United States Sentencing Guidelines (relating to mishandling of hazardous or toxic substances or pesticides; recordkeeping, tampering, and falsification; and unlawfully transporting hazardous materials in commerce) are increased as appropriate to ensure that future asbestos-related offenses reflect the seriousness of the offense, the harm to the community, the need for ongoing reform, and the highly regulated nature of asbestos;

(3) the base offense level, adjustments, and specific offense characteristics are sufficient to deter and punish future activity and are adequate in cases in which the relevant offense conduct—

(A) involves asbestos as a hazardous or toxic substance; and

(B) occurs after the date of enactment of this Act;

(4) the adjustments and specific offense characteristics contained in section 2B1.1 of the United States Sentencing Guidelines related to fraud, deceit, and false statements, adequately take into account that asbestos was involved in the offense, and the possibility of death or serious bodily harm as a result;

(5) the guidelines that apply to organizations in chapter 8 of the United States Sentencing Guidelines are sufficient to deter and punish organizational criminal misconduct that involves the use, handling, purchase, sale, disposal, or storage of asbestos; and

(6) the guidelines that apply to organizations in chapter 8 of the United States Sentencing Guidelines are sufficient to deter and punish organizational criminal misconduct that involves fraud, deceit, or false statements against the Office of Asbestos Disease Compensation.

SEC. 409. NONDISCRIMINATION OF HEALTH INSURANCE.

(a) DENIAL, TERMINATION, OR ALTERATION OF HEALTH COVERAGE.—No health insurer offering a health plan may deny or terminate coverage, or in any way alter the terms of coverage, of any claimant or the beneficiary of a claimant, on account of the participation of the claimant or beneficiary in a medical monitoring program under this Act, or as a result of any information discovered as a result of such medical monitoring.

(b) DEFINITIONS.—In this section:

(1) HEALTH INSURER.—The term "health insurer" means—

(A) an insurance company, healthcare service contractor, fraternal benefit organization, insurance agent, third-party administrator, insurance support organization, or other person subject to regulation under the laws related to health insurance of any State;

(B) a managed care organization; or

(C) an employee welfare benefit plan regulated under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(2) HEALTH PLAN.—The term "health plan" means—

(A) a group health plan (as such term is defined in section 607 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167)), and a multiple employer welfare arrangement (as defined in section 3(4) of such Act) that provides health insurance coverage; or

(B) any contractual arrangement for the provision of a payment for healthcare, including any health insurance arrangement or any arrangement consisting of a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organizing subscriber contract.

(c) CONFORMING AMENDMENTS.—

(1) ERISA.—Section 702(a)(1) of the Employee Retirement Income Security Act of

1974 (29 U.S.C. 1182(a)(1)), is amended by adding at the end the following:

“(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.”.

(2) PUBLIC SERVICE HEALTH ACT.—Section 2702(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)) is amended by adding at the end the following:

“(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.”.

(3) INTERNAL REVENUE CODE OF 1986.—Section 9802(a)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.”.

TITLE V—ASBESTOS BAN

SEC. 501. PROHIBITION ON ASBESTOS CONTAINING PRODUCTS.

(a) IN GENERAL.—Title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.) is amended—

(1) by inserting before section 201 (15 U.S.C. 2641) the following:

“Subtitle A—General Provisions”;

and

(2) by adding at the end the following:

“Subtitle B—Ban of Asbestos Containing Products

“SEC. 221. BAN OF ASBESTOS CONTAINING PRODUCTS.

“(a) DEFINITIONS.—In this chapter:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Environmental Protection Agency.

“(2) ASBESTOS.—The term ‘asbestos’ includes—

“(A) chrysotile;

“(B) amosite;

“(C) crocidolite;

“(D) tremolite asbestos;

“(E) winchite asbestos;

“(F) richterite asbestos;

“(G) anthophyllite asbestos;

“(H) actinolite asbestos;

“(I) asbestiform amphibole minerals; and

“(J) any of the minerals listed under subparagraphs (A) through (I) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof.

“(3) ASBESTOS CONTAINING PRODUCT.—The term ‘asbestos containing product’ means any product (including any part) to which asbestos is deliberately or knowingly added or used because the specific properties of asbestos are necessary for product use or function. Under no circumstances shall the term ‘asbestos containing product’ be construed to include products that contain de minimus levels of naturally occurring asbestos as defined by the Administrator not later than 1 year after the date of enactment of this chapter.

“(4) DISTRIBUTE IN COMMERCE.—The term ‘distribute in commerce’—

“(A) has the meaning given the term in section 3 of the Toxic Substances Control Act (15 U.S.C. 2602); and

“(B) shall not include—

“(i) an action taken with respect to an asbestos containing product in connection with the end use of the asbestos containing product by a person that is an end user, or an action taken by a person who purchases or receives a product, directly or indirectly, from an end user; or

“(ii) distribution of an asbestos containing product by a person solely for the purpose of disposal of the asbestos containing product in compliance with applicable Federal, State, and local requirements.

“(b) IN GENERAL.—Subject to subsection (c), the Administrator shall promulgate—

“(1) not later than 1 year after the date of enactment of this chapter, proposed regulations that—

“(A) prohibit persons from manufacturing, processing, or distributing in commerce asbestos containing products; and

“(B) provide for implementation of subsections (c) and (d); and

“(2) not later than 2 years after the date of enactment of this chapter, final regulations that, effective 60 days after the date of promulgation, prohibit persons from manufacturing, processing, or distributing in commerce asbestos containing products.

“(c) EXEMPTIONS.—

“(1) IN GENERAL.—Any person may petition the Administrator for, and the Administrator may grant, an exemption from the requirements of subsection (b), if the Administrator determines that—

“(A) the exemption would not result in an unreasonable risk of injury to public health or the environment; and

“(B) the person has made good faith efforts to develop, but has been unable to develop, a substance, or identify a mineral that does not present an unreasonable risk of injury to public health or the environment and may be substituted for an asbestos containing product.

“(2) TERMS AND CONDITIONS.—Except for an exception authorized under paragraph (3)(A)(i), an exemption granted under this subsection shall be in effect for such period (not to exceed 5 years) and subject to such terms and conditions as the Administrator may prescribe.

“(3) GOVERNMENTAL USE.—

“(A) IN GENERAL.—

“(i) DEPARTMENT OF DEFENSE.—Nothing in this section or in the regulations promulgated by the Administrator under subsection (b) shall prohibit or limit the manufacture, processing, or distribution in commerce of asbestos containing products by or for the Department of Defense or the use of asbestos containing products by or for the Department of Defense if the Secretary of Defense certifies (or recertifies within 10 years of a prior certification), and provides a copy of the certification to Congress, that—

“(I) use of asbestos containing product is necessary to the critical functions of the Department, which includes the use of the asbestos containing product in any weaponry, equipment, aircraft, vehicles, or other classes or categories of property which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature;

“(II) no reasonably available and equivalent alternatives to the asbestos containing product exist for the intended purpose; and

“(III) use of the asbestos containing product will not result in a known unreasonable risk to health or the environment.

“(ii) NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.—The Administrator of the Environmental Protection Agency shall provide an exemption from the requirements of subsection (b), without review or limit on duration, if such exemption for an asbestos containing product is sought by the Administrator of the National Aeronautics and Space Administration and the Administrator of the National Aeronautics and Space Administration certifies, and provides a copy of that certification to Congress, that—

“(I) the asbestos containing product is necessary to the critical functions of the National Aeronautics and Space Administration;

“(II) no reasonable alternatives to the asbestos containing product exist for the intended purpose; and

“(III) the use of the asbestos containing product will not result in an unreasonable risk to health or the environment.

“(B) ADMINISTRATIVE PROCEDURE ACT.—Any certification required under subparagraph (A) shall not be subject to chapter 5 of title 5, United States Code (commonly referred to as the ‘Administrative Procedure Act’).

“(4) SPECIFIC EXEMPTIONS.—The following are exempted:

“(A) Asbestos diaphragms for use in the manufacture of chlor-alkali and the products and derivative therefrom.

“(B) Roofing cements, coatings, and mastics utilizing asbestos that is totally encapsulated with asphalt, subject to a determination by the Administrator of the Environmental Protection Agency under paragraph (5).

“(5) ENVIRONMENTAL PROTECTION AGENCY REVIEW.—

“(A) REVIEW IN 18 MONTHS.—Not later than 18 months after the date of enactment of this chapter, the Administrator of the Environmental Protection Agency shall complete a review of the exemption for roofing cements, coatings, and mastics utilizing asbestos that are totally encapsulated with asphalt to determine whether—

“(i) the exemption would result in an unreasonable risk of injury to public health or the environment; and

“(ii) there are reasonable, commercial alternatives to the roofing cements, coatings, and mastics utilizing asbestos that is totally encapsulated with asphalt.

“(B) REVOCATION OF EXEMPTION.—Upon completion of the review, the Administrator of the Environmental Protection Agency shall have the authority to revoke the exemption for the products exempted under paragraph (4)(B), if warranted.

“(d) DISPOSAL.—

“(1) IN GENERAL.—Except as provided in paragraph (2), not later than 3 years after the date of enactment of this chapter, each person that possesses an asbestos containing product that is subject to the prohibition established under this section shall dispose of the asbestos containing product, by a means that is in compliance with applicable Federal, State, and local requirements.

“(2) EXEMPTION.—Nothing in paragraph (1)—

“(A) applies to an asbestos containing product that—

“(i) is no longer in the stream of commerce; or

“(ii) is in the possession of an end user or a person who purchases or receives an asbestos containing product directly or indirectly from an end user; or

“(B) requires that an asbestos containing product described in subparagraph (A) be removed or replaced.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table of contents in section 1 of the Toxic Substances Control Act (15 U.S.C. prec. 2601) is amended—

(1) by inserting before the item relating to section 201 the following:

“Subtitle A—General Provisions”;

and

(2) by adding at the end of the items relating to title II the following:

“Subtitle B—Ban of Asbestos Containing Products

“Sec. 221. Ban of asbestos containing products.”.

SEC. 502. NATURALLY OCCURRING ASBESTOS.

(a) STUDY.—

(1) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall—

(A) conduct a study to assess the risks of exposure to naturally occurring asbestos, including the appropriateness of the existing risk assessment values for asbestos and methods of assessing exposure; and

(B) submit a report that contains a detailed statement of the findings and conclusions of such study to—

(i) the majority and minority leaders of the Senate;

(ii) the Speaker and the minority leader of the House of Representatives; and

(iii) the relevant committees of jurisdiction of the Senate and House of Representatives, including—

(I) the Environment and Public Works Committee of the Senate;

(II) the Appropriations Committee of the Senate;

(III) the Judiciary Committee of the Senate;

(IV) the Energy and Commerce Committee of the House of Representatives;

(V) the Judiciary Committee of the House of Representatives; and

(VI) the Appropriations Committee of the House of Representatives.

(2) DEVELOPMENT REQUIREMENTS.—

(A) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency, in consultation with appropriate Federal and State agencies and other interested parties after appropriate notice, shall establish dust management guidelines, and model State regulations that States can choose to adopt, for commercial and residential development, and road construction in areas where naturally occurring asbestos is present and considered a risk. Such dust management guidelines may at a minimum incorporate provisions consistent with the relevant California Code of Regulation (17 C.C.R. 93105-06).

(B) DUST MANAGEMENT GUIDELINES.—Guidelines under this paragraph shall include—

(i) site management practices to minimize the disturbance of naturally occurring asbestos and contain asbestos mobilized from the source at the development site;

(ii) air and soil monitoring programs to assess asbestos exposure levels at the development site and to determine whether asbestos is migrating from the site; and

(iii) appropriate disposal options for asbestos-containing materials to be removed from the site during development.

(b) TESTING PROTOCOLS.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency, in consultation with appropriate State agencies, shall establish comprehensive protocols for testing for the presence of naturally occurring asbestos.

(2) PROTOCOLS.—The protocols under this subsection shall address both ambient air monitoring and activity-based personal sampling and include—

(A) suggested sampling devices and guidelines to address the issues of methods comparability, sampler operation, performance specifications, and quality control and quality assurance;

(B) a national laboratory and air sampling accreditation program for all methods of analyses of air and soil for naturally occurring asbestos;

(C) recommended laboratory analytical procedures, including fiber types, fiber lengths, and fiber aspect ratios; and

(D) protocols for collecting and analyzing aggregate and soil samples for asbestos content, including proper and consistent sample preparation practices suited to the activity likely to occur on the soils of the study area.

(c) EXISTING BUILDINGS AND AREAS.—Not later than 1 year after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall issue public education materials, recommended best management practices and recommended remedial measures for areas containing naturally occurring asbestos including existing—

(1) schools and parks; and

(2) commercial and residential development.

(d) MAPPING.—The Secretary of the Interior shall—

(1) acquire infrared mapping data for naturally occurring asbestos, prioritizing California counties experiencing rapid population growth;

(2) process that data into map images; and

(3) collaborate with the California Geological Survey and any other appropriate State agencies in producing final maps of asbestos zones.

(e) RESEARCH GRANTS.—The Director of the National Institutes of Health shall administer 1 or more research grants to qualified entities for studies that focus on better understanding the health risks of exposure to naturally occurring asbestos. Grants under this subsection shall be awarded through a competitive peer-reviewed, merit-based process.

(f) TASK FORCE PARTICIPATION.—Representatives of Region IX of the United States Environmental Protection Agency, and the Agency for Toxic Substances and Disease Registry of the United States Department of Health and Human Services shall participate in any task force convened by the State of California to evaluate policies and adopt guidelines for the mitigation of risks associated with naturally occurring asbestos.

(g) MATCHING GRANTS.—The Administrator of the Environmental Protection Agency is authorized to award 50 percent matching Federal grants to States and municipalities. Not later than 4 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall establish criteria to award such grants—

(1) for monitoring and remediation of naturally occurring asbestos—

(A) at schools, parks, and other public areas; and

(B) in serpentine aggregate roads generating significant public exposure; and

(2) for development, implementation, and enforcement of State and local dust management regulations concerning naturally occurring asbestos, provided that after the Administrator has issued model State regulations under subsection (a)(2), such State and local regulations shall be at least as protective as the model regulations to be eligible for the matching grants.

(h) AVAILABILITY OF FUNDS.—An amount of $40,000,000 from the Fund shall be made available to carry out the requirements of this section, including up to $9,000,000 for the Secretary of the Interior to carry out subsection (d), up to $4,000,000 for the Director of the National Institutes of Health to carry out subsection (e), and the remainder for the Administrator of the Environmental Protection Agency, at least $15,000,000 of which shall be used for the matching grants under subsection (g).

(i) CONSTRUCTION.—

(1) GUIDELINES AND PROTOCOLS.—The guidelines and protocols issued by the Administrator of the Environmental Protection Agency under the specific authorities in subsections (a), (b), and (c) shall be construed as nonbinding best practices unless adopted as a mandatory requirement by a State or local government. Notwithstanding the preceding sentence, accreditation for testing will not be granted except in accordance with the guidelines issued under subsection (b)(2)(B).

(2) FEDERAL CAUSES OF ACTION.—This section shall not be construed as creating any new Federal cause of action for civil, criminal, or punitive damages.

(3) FEDERAL CLAIMS.—This section shall not be construed as creating any new Federal claim for injunctive or declaratory relief against a State, local, or private party.

(4) STATES AND LOCALITIES.—Nothing in this section shall limit the authority of States or localities concerning naturally occurring asbestos.

SA 2747. Mr. SPECTER proposed an amendment to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; as follows:

On the appropriate page, insert the following and number accordingly:

"Guidelines.—In determining which defendant participants may receive inequity adjustments the Administrator shall give preference in the following order:

(A) Defendant participants that have significant insurance coverage applicable to asbestos claims, such that on the date of enactment, 80 percent or more of their available primary insurance limits for asbestos claims remains available. (Note: I recognize that this may not be the most adequate indicator of insurance matching liabilities—however, it's a political reality that must be addressed).

(B) Defendant participants where, pursuant to the guidance set forth in section 404(a)(2)(E), 75% of its prior asbestos expenditures were caused by or arose from premise liability claims.

(C) Defendant participants who can demonstrate that their prior asbestos expenditures is inflated due to an unusually large, anomalous verdict and that such verdict has caused the defendant to be in a higher tier.

(D) Any other factor deemed reasonable by the Administrator to have caused a serious inequity.

In determining whether a company has significant insurance coverage applicable to asbestos claims, such that on the date of enactment, 80% or more of their available primary insurance limits for asbestos claims remains available, the Administrator shall inquire and duly consider:

(1) The defendant participant's expected future liability in the tort system and accordingly the adequacy of insurance available measured against future liability.

(2) Whether the insurance coverage is uncontested, or based on a final judgment or settlement.

SA 2748. Mr. CORNYN (for himself, Mr. COBURN, Mr. GRAHAM, Mr. ENSIGN, Mr. CRAPO, Mr. INHOFE, Mr. MARTINEZ, Mr. DEMINT, Mr. THUNE, Mr. BENNETT, Mr. SMITH, Mr. CRAIG, Mr. BUNNING, Mr. THOMAS, Mr. SUNUNU, Mr.

CHAMBLISS, Mr. ENZI, and Mr. HAGEL) proposed an amendment to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; as follows:

Strike all after "SECTION 1. SHORT TITLE;" in the bill and insert the following: This Act may be cited as the "Asbestos and Silica Claims Priorities Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Asbestos is a mineral that was widely used before the mid-1970s for insulation, fireproofing, and other purposes.

(2) Many American workers were exposed to asbestos, especially during the Second World War.

(3) Long-term exposure to asbestos has been associated with mesothelioma and lung cancer, as well as with such non-malignant conditions as asbestosis, pleural plaques, and diffuse pleural thickening.

(4) Although the use of asbestos has dramatically declined since 1980 and workplace exposures have been regulated since 1971 by the Occupational Safety and Health Administration, the diseases caused by asbestos often have long latency periods and past exposures will continue to result in significant claims well into the future.

(5) Asbestos related claims, driven largely by unimpaired claimants, have flooded our courts such that the United States Supreme Court has characterized the situation as "an elephantine mass" that "calls for national legislation" (Ortiz v. Fibreboard Corporation, 119 S. Ct. 2295, 2302 (1999).

(6) The American Bar Association supports enactment of Federal legislation that would allow persons alleging non-malignant asbestos-related disease claims to file a cause of action in Federal or State court only if those persons meet the medical criteria in the "ABA Standard for Non-Malignant Asbestos-Related Disease Claims" and toll all applicable statutes of limitations until such time as the medical criteria in such standard are met.

(7) Reports indicate that up to 90 percent of asbestos claims are filed by individuals who allege that they have been exposed to asbestos, but who suffer no demonstrable asbestos-related impairment. Lawyer-sponsored x-ray screenings of workers at occupational locations are used to amass large numbers of claimants, the vast majority of whom are unimpaired.

(8) The costs of compensating unimpaired claimants and litigating their claims jeopardizes the ability of defendants to compensate people with cancer and other serious diseases, threatens the savings, retirement benefits, and jobs of current and retired employees, and adversely affects the communities in which the defendants operate.

(9) More than 73 companies have declared bankruptcy due to the burden of asbestos litigation. The rate of asbestos-driven bankruptcies is accelerating. Between 2000 and 2004, there were more asbestos-related bankruptcy filings than in either of the prior 2 decades.

(10) Bankruptcies have led plaintiffs and their lawyers to expand their search for solvent peripheral defendants. The number of asbestos defendants now includes over 8,500 companies, affecting many small and medium size companies and industries that span 85 percent of the United States economy.

(11) Efforts to address asbestos litigation may augment silica-related filings.

(12) Silica is a naturally occurring mineral and is the second most common constituent of the earth's crust. Crystalline silica in the form of quartz is present in sand, gravel, soil, and rocks.

(13) Silica-related illness, including silicosis can develop from the inhalation of respirable silica dust. Silicosis was widely recognized as an occupational disease many years ago.

(14) Silica claims, like asbestos claims, often involve individuals with no demonstrable impairment. Claimants frequently are identified through the use of interstate, for-profit, screening companies.

(15) Silica screening processes have been found subject to substantial abuse and potential fraud in Federal silica litigation (In re Silica Prods. Liab. Litig. (MDL No. 1553), 398 F. Supp. 2d 563 (S.D. Tex. 2005)) and it therefore is necessary to address silica legislation to preempt an asbestos-like litigation crisis.

(16) Concerns about statutes of limitations may prompt unimpaired asbestos and silica claimants to bring lawsuits prematurely to protect against losing their ability to assert a claim in the future should they develop an impairing condition.

(17) Sound public policy requires that the claims of persons with no present physical impairment from asbestos or silica exposure, be deferred to give priority to physically impaired claimants, and to safeguard the jobs, benefits, and savings of workers in affected companies.

(18) Claimant consolidations, joinders, and similar procedures used by some courts to deal with the mass of asbestos and silica cases can—

(A) undermine the appropriate functioning of the court system;

(B) deny due process to plaintiffs and defendants; and

(C) further encourage the filing of thousands of cases by exposed persons who are not sick and likely will never develop an impairing condition caused by exposure to asbestos or silica.

(19) Several states have enacted legislation to prioritize asbestos and silica claims that serve as a model for national reform including Texas, Ohio, Florida, and Georgia.

(20) Asbestos litigation, if left unchecked by reasonable congressional intervention, will—

(A) continue to inhibit the national economy and run counter to plans to stimulate economic growth and the creation of jobs;

(B) threaten the savings, retirement benefits, and employment of defendant's current and retired employees;

(C) affect adversely the communities in which these defendants operate; and

(D) impair interstate commerce and national initiatives.

(21) The public interest and the interest of interstate commerce requires deferring the claims of exposed persons who are not sick in order to—

(A) preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related injuries; and

(B) safeguard the jobs, benefits, and savings of American workers and the well-being of the national economy.

(b) PURPOSES.—The purposes of this Act are to—

(1) give priority to current claimants who can demonstrate an asbestos-related or silica-related impairment based on reasonable, objective medical criteria;

(2) toll the running of statutes of limitations for persons who have been exposed to asbestos or to silica, but who have no present asbestos-related or silica-related impairment; and

(3) enhance the ability of the courts to supervise and control asbestos and silica litigation.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) AMA GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT.—The term "AMA Guides to the Evaluation of Permanent Impairment" means the most current version of the American Medical Association's Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of any examination or test on the exposed person required by this Act.

(2) ASBESTOS.—The term '"asbestos"' means—

(A) chrysotile;

(B) amosite;

(C) crocidolite

(D) tremolite asbestos;

(E) anthophyllite asbestos;

(F) actinolite asbestos;

(G) winchite;

(H) richterite;

(I) asbestiform amphibole minerals; and

(J) any of the minerals described in subparagraphs (A) through (I) that have been chemically treated or altered, including all minerals defined as asbestos under section 1910 of title 29, Code of Federal Regulations in effect at the time an asbestos claim is filed.

(3) ASBESTOS CLAIM.—The term "asbestos claim"—

(A) means any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or related to the alleged health effects associated with the inhalation or ingestion of asbestos, including—

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

(iv) risk or fear of disease or other injury;

(v) the costs of medical monitoring or surveillance, to the extent such claims are recognized under State law; or

(vi) any claim made by, or on behalf of, any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the exposed person; and

(B) does not include a claim for compensatory benefits pursuant to a workers' compensation law or a veterans' benefits program.

(4) ASBESTOSIS.—The term "asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos.

(5) BOARD-CERTIFIED INTERNIST.—The term "Board-certified internist" means a qualified physician—

(A) who is certified by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(6) BOARD-CERTIFIED OCCUPATIONAL MEDICINE SPECIALIST.—The term "Board-certified occupational medicine specialist" means a physician—

(A) who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(7) BOARD-CERTIFIED PATHOLOGIST.—The term "Board-certified pathologist" means a qualified physician—

(A) who holds primary certification in anatomic pathology or combined anatomic or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Internal Medicine;

(B) whose professional practice is principally in the field of pathology and involves regular evaluation of pathology materials obtained from surgical or post mortem specimens; and

(C) whose certification was current at the time of—

(i) any tissue or slide examination; or

(ii) rendition of any report required under this Act.

(8) BOARD-CERTIFIED PULMONOLOGIST.—The term "Board-certified pulmonologist" means a qualified physician—

(A) who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(9) CERTIFIED B-READER.—The term "Certified B-reader" means a person—

(A) who has successfully passed the B-reader certification examination for x-ray interpretation sponsored by the National Institute for Occupational Safety and Health; and

(B) whose certification was current at the time of any readings required under this Act.

(10) CHEST X-RAYS.—The term "chest x-rays" means radiographic films taken in accordance with all applicable Federal and State standards and in the posterior-anterior view.

(11) CLAIMANT.—

(A) IN GENERAL.—The term "claimant" means any party asserting an asbestos or silica claim, including a—

(i) plaintiff;

(ii) counterclaimant;

(iii) cross-claimant; or

(iv) third-party plaintiff.

(B) CLAIMS ON BEHALF OF AN ESTATE.—If any claim described in subparagraph (A) is brought through, or on behalf of, an estate, the term claimant includes the executor, surviving spouse, or any other descendant of the decedent.

(C) CLAIMS ON BEHALF OF A MINOR.—If any claim described in subparagraph (A) is brought through, or on behalf of, a minor or incompetent person, the term claimant includes the parent or guardian of such minor.

(12) DLCO.—The term "DLCO" means diffusing capacity of the lung for carbon monoxide, which is the measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood.

(13) EXPOSED PERSON.—

(A) IN GENERAL.—The term "exposed person" means a person whose claimed exposure to asbestos or silica is the basis for an asbestos or silica claim.

(B) SILICA CLAIMS.—With respect to any claim for exposure to silica, the term "exposed person" means a person whose claimed exposure to silica is by means of the alleged inhalation of respirable silica.

(14) FEV-1.—The term "FEV-1" means forced expiratory volume in the first second, which is the maximal volume of air expelled in 1 second during performance of simple spirometric tests.

(15) FVC.—The term "FVC" means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration.

(16) ILO SCALE.—The term "ILO scale" means the system for the classification of chest x-rays set forth in the most current version of the International Labor Office's Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses in effect at the time of the performance of any examination or test on the exposed person required by this Act.

(17) PREDICTED LOWER LIMIT OF NORMAL.—The term "predicted lower limit of normal" means the calculated standard convention lying at the fifth percentile, below the upper 95 percent of the reference population, based on age, height, and gender, according to the recommendations of the American Thoracic Society as referenced in the AMA's Guides to the Evaluation of Permanent Impairment.

(18) QUALIFIED PHYSICIAN.—The term "qualified physician" means a board-certified internist, occupational medicine specialist, pathologist, or pulmonologist—

(A) who is licensed to practice in the State in which the action is pending, or the State in which the claimant resides, if the claimant resides outside the State where the action is pending;

(B) who has personally conducted a physical examination of the exposed person, or in the case of a board-certified pathologist, has examined tissue samples or pathological slides of the exposed person, or if the exposed person is deceased, based upon a detailed review of the medical records and existing tissue samples and pathological slides of the deceased person;

(C) who is treating or has treated the exposed person, and has or had a doctor-patient relationship with the exposed person at the time of the physical examination or, in the case of a board-certified pathologist, has examined tissue samples or pathological slides of the exposed person at the request of such treating physician;

(D) who receives or received payment for the exposed person's diagnosis, examination, and treatment from the exposed person or claimant or from the exposed person's health maintenance organization or other medical provider, and such payment was not subject to reimbursement by, or on behalf of, anyone providing legal services to the claimant; and

(E) whose diagnosing, examining, testing, screening or treating of the exposed person was not, directly or indirectly, premised upon, and did not require, the exposed person or claimant to retain the legal services of any attorney or law firm.

(19) SILICA.—The term "silica" a respirable crystalline form of the naturally occurring mineral form of silicon dioxide, including quartz, cristobalite, and tridymite.

(20) SILICA CLAIM.—The term "silica claim"—

(A) means any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or in any way related to the alleged health effects associated with the inhalation of silica, including—

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

(iv) risk or fear of disease or other injury;

(v) the costs of medical monitoring or surveillance, to the extent such claims are recognized under State law; or

(vi) any claim made by, or on behalf of, any person exposed to silica dust, or a representative, spouse, parent, child, or other relative of the exposed person; and

(B) does not include a claim for compensatory benefits pursuant to the workers' compensation law or a veterans' benefits program.

(21) SILICOSIS.—The term "silicosis" means fibrosis of the lung produced by inhalation of silica, including—

(A) acute silicosis;

(B) accelerated silicosis; and

(C) chronic silicosis.

(22) STATE.—The term "State"—

(A) means any State of the United States; and

(B) includes—

(i) the District of Columbia;

(ii) Commonwealth of Puerto Rico;

(iii) the Northern Mariana Islands;

(iv) the Virgin Islands;

(v) Guam;

(vi) American Samoa; and

(vii) any other territory or possession of the United States, or any political subdivision of any of the locales described under this paragraph.

(23) SUBSTANTIAL CONTRIBUTING FACTOR.—The term "substantial contributing factor"—

(A) in the context of an asbestos claim, means that—

(i) a claimant shall identify—

(I) the specific asbestos product to which the exposed person was exposed;

(II) the location and duration of such exposure; and

(III) the specific circumstances of such exposure;

(ii) such exposure—

(I) was more than incidental contact with the product and location; and

(II) took place on a regular basis over an extended period of time in physical proximity to the exposed person;

(iii) the exposed person inhaled respirable asbestos fibers in sufficient quantities to be capable of causing harm; and

(iv) a qualified physician has determined with a reasonable degree of medical certainty that the impairment of the exposed person would not have occurred but for the specific asbestos exposure; and

(B) in the context of a silica claim, means that—

(i) a claimant shall identify—

(I) the specific silica product to which the exposed person was exposed;

(II) the location and duration of such exposure; and

(III) the specific circumstances of such exposure;

(ii) such exposure—

(I) was more than incidental contact with the product and location; and

(II) took place on a regular basis over an extended period of time in physical proximity to the exposed person;

(iii) the exposed person inhaled respirable silica particles in sufficient quantities to be capable of causing harm; and

(iv) a qualified physician has determined with a reasonable degree of medical certainty that the impairment of the exposed person would not have occurred but for the specific silica exposure.

(24) TOTAL LUNG CAPACITY.—The term "total lung capacity" means the volume of gas contained in the lungs at the end of a maximal inspiration.

(25) VETERANS' BENEFITS PROGRAM.—The term "veterans' benefits program" means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.

(26) WORKERS' COMPENSATION LAW.—The term "workers' compensation law"—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

(B) includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) and chapter 81 of title 5, United States Code; and

(C) does not include—

(i) the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or damages recovered by any employee in a liability action against an employer; or

(ii) any claim for exemplary or punitive damages by an employee, estate, heir, representative, or any other person or entity against the employer of an exposed person arising out of, or related to, an asbestos-related injury or silica-related injury.

SEC. 4. ELEMENTS OF PROOF FOR ASBESTOS OR SILICA CLAIMS.

(a) IMPAIRMENT ESSENTIAL ELEMENT OF CLAIM.—

(1) IN GENERAL.—It shall be an essential element to bring or maintain an asbestos or silica claim, that an exposed person suffer a physical impairment, of which asbestos or silica was a substantial contributing factor to such impairment.

(2) EVIDENCE AS TO EACH DEFENDANT.—Any requirement of a prima facie showing under this section shall be made as to each defendant against whom a claimant alleges an asbestos or silica claim.

(b) PRELIMINARY PROCEEDINGS; SERVICE OF PRIMA FACIE EVIDENCE OF IMPAIRMENT.—

(1) FILING OF REPORT.—A claimant in any civil action alleging an asbestos or silica claim shall file, together with the complaint or other initial pleading, a written report and supporting test results constituting prima facie evidence of the exposed person's asbestos-related or silica-related impairment meeting the requirements of this section as to each defendant.

(2) TIMING.—For any asbestos or silica claim pending on the date of enactment of this Act, a claimant shall file the written report and supporting test results described in paragraph (1) not later than 180 days after such date or not later than 60 days prior to the commencement of trial, whichever occurs first.

(3) DEFENDANTS RIGHT TO CHALLENGE.—A defendant shall be afforded a reasonable opportunity to challenge the adequacy of any proffered prima facie evidence of impairment.

(4) DISMISSAL.—A claim shall be dismissed without prejudice upon a finding of failure to make the prima facie showing required under this section.

(c) NEW CLAIM REQUIRED INFORMATION.—

(1) IN GENERAL.—Any asbestos claim or silica claim filed in a Federal or State court, on or after on the date of enactment of this Act shall include a sworn information form containing the following information:

(A) The name, address, date of birth, social security number, and marital status of the claimant.

(B) The name, last address, date of birth, social security number, and marital status of the exposed person.

(C) If the claimant alleges exposure to asbestos or silica through the testimony of another person or other than by direct or bystander exposure to a product or products, the name, address, date of birth, social security number, and marital status, for each person by which claimant alleges exposure (hereafter in this subsection referred to as the "index person") and the relationship of the claimant to each such person.

(D) For each alleged exposure of the exposed person and for each index person—

(i) the specific location and manner of each such exposure;

(ii) the beginning and ending dates of each such exposure; and

(iii) the identity of the manufacturer of the specific asbestos or silica to which the exposed person or index person was exposed.

(E) The occupation and name of the employer of the exposed person at the time of each alleged exposure.

(F) If the asbestos claim or silica claim involves more than 1 claimant, the identity of the defendant or defendants against whom each claimant asserts a claim.

(G) The specific disease related to asbestos or silica claimed to exist.

(H) Any—

(i) supporting documentation of the condition claimed to exist; and

(ii) documentation to support the claimant or index person's identification of the asbestos or silica product that such person was exposed to.

(2) INDIVIDUAL REQUIREMENT.—

(A) IN GENERAL.—All asbestos claims and silica claims along with any sworn information required under paragraph (1) shall be individually filed.

(B) CLASS CLAIMS NOT PERMITTED.—No claims on behalf of a group or class of persons shall be permitted.

(d) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR NONMALIGNANT ASBESTOS CLAIMS.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to an alleged nonmalignant asbestos-related condition in the absence of a prima facie showing of physical impairment of the exposed person for which asbestos exposure is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence—

(i) verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history, including a thorough review of—

(I) the exposed person's past and present medical problems; and

(II) the most probable cause of each such medical problem; or

(ii) if the exposed person is deceased, from a person who is knowledgeable regarding such exposed person's medical and smoking history.

(C) Evidence sufficient to demonstrate—

(i) that at least 15 years have elapsed since the exposed person's first exposure to asbestos; and

(ii) the date of any such diagnosis.

(D) A determination by the diagnosing, qualified physician, on the basis of a medical examination and pulmonary function testing of the exposed person, or if the exposed person is deceased, based upon the medical records of the deceased, that the claimant has, or if deceased, that the claimant had a permanent respiratory impairment rating of at least Class 2 as defined by, and evaluated under, the AMA's Guides to the Evaluation of Permanent Impairment.

(E) Evidence verifying that the exposed person has an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale—

(i) bilateral small irregular opacities (s, t, or u) graded 1/1 or higher on the ILO scale;

(ii) bilateral pleural thickening graded b2 or higher on the ILO scale including blunting of the costophrenic angle; or

(iii) pathological asbestosis graded 1(B) or higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of the Archives of Pathological and Laboratory Medicine, Volume 106, Number 11, Appendix 3 (October 8, 1982).

(F) A determination by the diagnosing, qualified physician that asbestosis or diffuse pleural thickening is a substantial contributing factor to the exposed person's physical impairment, based at a minimum on a determination that the claimant has—

(i) forced vital capacity below the predicted lower limit of normal and FEV-1/FVC ratio (using actual values) at or above the predicted lower limit of normal; or

(ii) total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal.

(G) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than asbestos exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with asbestos exposure or silica-related disease does not meet the requirements of this subsection.

(H) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(e) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR ASBESTOS-RELATED CANCER.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to an alleged asbestos-related cancer, other than mesothelioma, in the absence of a prima facie showing of a primary cancer for which

asbestos exposure is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence—

(i) verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history, including a thorough review of—

(I) the exposed person's past and present medical problems; and

(II) the most probable cause of each such medical problem; or

(ii) if the exposed person is deceased, from a person who is knowledgeable regarding such exposed person's medical and smoking history.

(C) Evidence sufficient to demonstrate—

(i) that at least 15 years have elapsed since the exposed person's first exposure to asbestos; and

(ii) the date of any such diagnosis of the cancer.

(D) Evidence verifying that the exposed person has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral small irregular opacities (s, t, or u) graded 1/1 or higher on the ILO scale; or

(ii) pathological asbestosis graded 1(B) or higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of the Archives of Pathological and Laboratory Medicine, Volume 106, Number 11, Appendix 3 (October 8, 1982).

(E) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than asbestos as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with asbestos exposure or asbestos-related disease does not meet the requirements of this subsection.

(F) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(f) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR ASBESTOS-RELATED MESOTHELIOMA.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to alleged mesothelioma in the absence of a prima facie showing of an asbestos-related malignant tumor with a primary site of origin in the pleura, the peritoneum, or pericardium.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a report by a qualified Board-certified pathologist certifying the diagnosis of mesothelioma and a report by a qualified physician certifying that—

(A) exposure to asbestos was a substantial contributing factor to the diagnosed mesothelioma; and

(B) the mesothelioma was not more probably the result of causes other than asbestos exposure as revealed by the employment, medical, and smoking history of the exposed person.

(g) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA CLAIMS.—

(1) IN GENERAL.—No person shall bring or maintain a silica claim related to an alleged silica-related condition, other than a silica-related cancer, in the absence of a prima facie showing of physical impairment as a result of a medical condition to which exposure to silica was a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history from the exposed person (or if the exposed person is deceased, from the person most knowledgeable of such history), including a thorough review of—

(i) the exposed person's past and present medical problems; and

(ii) the most probable cause of each such medical problem.

(C) A determination by the diagnosing, qualified physician that the claimant has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/1 or higher;

(ii) an ILO quality 1 chest X-ray (or a quality 2 chest X-ray if the exposed person is deceased and a quality 1 chest X-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis);

(iii) pathological demonstration of classic silicotic nodules exceeding 1 centimeter in diameter as set forth in 112 Archives of Pathology & Laboratory Medicine 673–720 (1988);

(iv) progressive massive fibrosis radiologically established by large opacities greater than 1 centimeter in diameter; or

(v) acute silicosis.

(D) If the claimant is asserting a claim for silicosis, evidence verifying there has been a sufficient latency period for the applicable type of silicosis.

(E) A determination by the diagnosing, qualified physician, on the basis of a personal medical examination and pulmonary function testing of the exposed person, or if the exposed person is deceased, based upon the medical records of the deceased, that the claimant has, or if deceased, had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment.

(F) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with silica exposure or silica–related disease does not meet the requirements of this subsection.

(G) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(h) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA-RELATED CANCER.—

(1) IN GENERAL.—No person shall bring or maintain a silica claim related to an alleged silica-related cancer in the absence of a prima facie showing of a primary cancer for which exposure to the defendant's silica is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including silica and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history from the exposed person (or if the exposed person is deceased, from the person most knowledgeable of that history), including a thorough review of—

(i) the exposed person's past and present medical problems; and

(ii) the most probable cause of each such medical problem.

(C) A determination by the diagnosing, qualified physician that the claimant has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/1 or higher;

(ii) an ILO quality 1 chest X-ray (or a quality 2 chest X-ray if the exposed person is deceased and a quality 1 chest X-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis); or

(iii) a pathological demonstration of classic silicotic nodules exceeding 1 centimeter in diameter as set forth in 112 Archives of Pathology & Laboratory Medicine 673–720 (1988).

(D) Evidence sufficient to demonstrate—

(i) that at least 15 years have elapsed since the exposed person's first exposure to silica; and

(ii) the date of any such diagnosis of the cancer.

(E) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with silica exposure or silica-related disease does not meet the requirements of this subsection.

(F) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(i) COMPLIANCE WITH TECHNICAL STANDARDS.—Evidence relating to physical impairment under this section, including pulmonary function testing and diffusing studies—

(1) shall comply with the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment in the AMA's Guides to the Evaluation of Permanent Impairment, the most current version of the Official Statements of the American Thoracic Society regarding lung function testing, including general considerations for lung function testing, standardization of spirometry, standardization of the measurement of lung volumes, standardization of the single-breath determination of carbon monoxide uptake in the lung, and interpretative strategies for lung testing in effect at the time of the performance of any examination or test on the exposed person required by this Act;

(2) may not be based on testing or examinations that violate any law, regulation, licensing requirement, or medical code of practice of any State in which the examination, test, or screening was conducted; and

(3) may not be obtained under the condition that a claimant retains the legal services of an attorney or law firm sponsoring the examination, test, or screening.

SEC. 5. PROCEDURES.

(a) NO PRESUMPTION AT TRIAL.—Evidence relating to the prima facie showings required under section 4 shall not—

(1) create any presumption that a claimant has an asbestos or silica-related injury or impairment; and

(2) be conclusive as to the liability of any defendant.

(b) ADMISSIBILITY OF EVIDENCE.—No evidence shall be offered at a trial, and a jury shall not be informed of—

(1) the granting or denial of a motion to dismiss an asbestos or silica claim under the provisions of this Act; or

(2) the provisions of section 4 with respect to what constitutes a prima facie showing of asbestos or silica-related impairment.

(c) DISCOVERY.—Until such time as a trial court enters an order determining that a claimant has established prima facie evidence of impairment, no asbestos or silica claim shall be subject to discovery, except discovery—

(1) related to establishing or challenging such prima facie evidence; or

(2) by order of the trial court upon—

(A) motion of 1 of the parties; and

(B) for good cause shown.

(d) CONSOLIDATION.—

(1) AT TRIAL.—

(A) IN GENERAL.—A court may consolidate for trial any number and type of asbestos or silica claims with the consent of all the parties.

(B) ABSENCE OF CONSENT.—In the absence of any consent under subparagraph (A), a court may consolidate for trial only asbestos claims or silica claims relating to the same exposed person and members of the household of such exposed person.

(2) CLASS ACTIONS.—No class action or any other form of mass aggregation claim filing relating to more than 1 exposed person, except claims relating to the exposed person and members of the household of such exposed person, shall be permitted for asbestos or silica claims.

(3) AT DISCOVERY.—Any decision by a court to consolidate claims under paragraph (1) shall not preclude consolidation of asbestos or silica claim cases by a court order for pretrial or discovery purposes.

(e) FORUM NON CONVENIENS.—

(1) IN GENERAL.—Any asbestos or silica claim filed on or after the date of enactment of this Act, or that is pending on the date of enactment of this Act, but that has not commenced trial or any new trial or retrial following motion, appeal, or otherwise with the presentation of evidence to the trier of fact prior to the date of enactment of this Act, if the court in which the such claim is pending, on written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action to which this Act applies would be more properly heard in a forum outside the State, district, or division in which such claim was filed, the court shall—

(A) decline to exercise jurisdiction under the doctrine of forum non conveniens; and

(B) shall stay or dismiss such claim.

(2) CONSIDERATIONS.—In determining whether to grant a motion to stay or dismiss a claim under paragraph (1), a court shall consider whether—

(A) an alternate forum exists in which such claim or action may be tried;

(B) the alternate forum provides an adequate remedy;

(C) maintenance of such claim in the court of the State in which the claim was filed would work a substantial injustice to the moving party;

(D) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to such claim;

(E) the balance of the private interests of the parties and the public interest of the State in which such claim was filed predominate in favor of such claim being brought in an alternate forum; and

(F) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

(3) WAIVER OF STATUTE OF LIMITATIONS DEFENSE.—A trial court may not abate or dismiss a claim under this subsection until a defendant files with the court, or with the clerk of the court, a written stipulation that, with respect to a new action on such claim commenced by the plaintiff, the defendant waives the right to assert a statute of limitations defense in all other States, districts, or divisions in which such claim was not barred by limitations at the time such claim was filed in the State where such claim was originally filed as necessary to effect a tolling of the limitations periods in those States —

(A) beginning on the date such claim was originally filed; and

(B) ending on the date—

(i) such claim is dismissed; or

(ii) an abatement period of 1 year ends.

(4) COURT DUTIES.—A court may not abate or dismiss a claim under paragraph (3) until a defendant files with the court, or with the clerk of the court, a written stipulation that, with respect to a new action on such claim commenced by the plaintiff in another State, district, or division, that the claimant and the defendant may—

(A) rely on responses to discovery already provided under the rules of civil procedure of the State, district, or division in which such claim was originally filed; and

(B) rely on any additional discovery that may be conducted under the rules of civil procedure in another State, district, or division.

(f) VENUE.—

(1) IN GENERAL.—An asbestos or silica claim filed after the date of enactment of this Act may be filed only in the county of the State or the district or division of the United States where—

(A) the claimant resided for a period of at least 180 consecutive days immediately prior to filing suit; or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or silica related impairment on which such claim is based.

(2) IMPROPER VENUE.—With respect to asbestos or silica claims pending as of the date of enactment of this Act, and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, has not commenced with presentation of evidence to the trier of fact as of the date of enactment of this Act, any claim as to which venue would not have been proper if the claim originally had been brought in accordance with paragraph (1) shall, not later than 90 days after

the date of enactment of this Act, be transferred to the court of general civil jurisdiction in the county, district, or division of the State in which the action is pending in which either—

(A) the claimant was domiciled at the time the asbestos or silica claim originally was filed; or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or silica related impairment on which the claim is based.

(3) REMOVAL.—

(A) IN GENERAL.—If a State court refuses or fails to apply the provisions of this Act, any party in a civil action for an asbestos claim may remove such action to a district court of the United States in accordance with chapter 89 of title 28, United States Code.

(B) JURISDICTION OVER REMOVED ACTIONS.—The district courts of the United States shall have jurisdiction of all civil actions removed under this paragraph, without regard to the amount in controversy and without regard to the citizenship or residence of the parties.

(C) REMOVAL BY ANY DEFENDANT.—A civil action may be removed to the district court of the United States under this paragraph by any defendant without the consent of all defendants.

(D) REMAND.—A district court of the United States shall remand any civil action removed solely under this paragraph, unless the court finds that—

(i) the State court failed to comply with procedures prescribed by law; or

(ii) the failure to dismiss by the State court lacked substantial support in the record before the State court.

(E) LIMITATION.—Civil actions in State court subject to this Act may not be removed to any district court of the United States unless such removal is otherwise proper without regard to the provisions of this Act or is removed under this paragraph.

(g) PREEMPTION.—

(1) IN GENERAL.—This Act shall govern all asbestos and silica claims filed in Federal or State courts on or after the effective date of this Act, or which are pending in Federal or State courts on the effective date of this Act and in which the trial, or any new trial or retrial following motion, appeal or otherwise, has not commenced with presentation of evidence to the trier of fact as of the effective date of this Act, except for enforcement of claims for which a final judgment has been duly entered by a court and that is no longer subject to any appeal or judicial review on the effective date of this Act.

(2) GREATER LIMITATIONS BY STATES.—Nothing in this Act shall limit or preempt any State law or precedent having the effect of imposing additional or greater limits or restrictions on the assertion or prosecution of an asbestos or silica claim.

SEC. 6. STATUTE OF LIMITATIONS; 2-DISEASE RULE.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—An asbestos or silica claim not barred in a State as of the date of enactment of this Act, a claimant's cause of action shall not accrue, nor shall the running of limitations commence, prior to the earlier of the date—

(A) on which an exposed person received a medical diagnosis of an asbestos-related impairment or silica-related impairment;

(B) on which an exposed person discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to the existence of an asbestos-related impairment or silica-related impairment; or

(C) of death of the exposed person having an asbestos-related or silica-related impairment.

(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to revive or extend limitations with respect to any claim for asbestos-related impairment or silica-related impairment that was otherwise time-barred as a matter of applicable State law as of the date of enactment of this Act.

(3) NO EFFECT ON SETTLEMENT AGREEMENTS.—Nothing in this section shall be construed so as to adversely affect, impair, limit, modify, or nullify any settlement agreement with respect to an asbestos or silica claim entered into before the date of enactment of this Act.

(b) 2-DISEASE RULE; DISTINCT CLAIMS.—

(1) IN GENERAL.—An asbestos or silica claim arising out of a non-malignant condition shall be a distinct cause of action, wholly separate from a claim for an asbestos-related or silica-related cancer.

(2) NO DAMAGES FOR FEAR.—No damages shall be awarded for fear or increased risk of future disease in any civil action asserting an asbestos or silica claim.

SEC. 7. EXPERTS.

(a) IN GENERAL.—A person who holds a valid medical license in good standing in a State, but who is not licensed to practice medicine in that State, and who testifies, whether by deposition, affidavit, live, or otherwise, as a medical expert witness on behalf of any party in an asbestos or silica claim is deemed to have a temporary license to practice medicine in the State in which the claim is pending solely for the purpose of providing such testimony and is subject to that extent to the authority of the medical licensing board or agency of that State.

(b) PENALTY FOR FALSE TESTIMONY.—If a physician renders expert medical testimony that is false, intentionally misleading or deceptive, or that intentionally misstates the relevant applicable standard of care, the medical licensing board or agency of the State in which the claim is pending may take such action as is permitted under the laws and regulations of that State governing the conduct of physicians.

(c) RULE OF CONSTRUCTION.—This section shall not be construed to permit an out of State physician to practice medicine in any other State other than as provided in this section.

SEC. 8. PROPORTIONATE RESPONSIBILITY.

(a) DEFINITION.—In this section, the term "fault" shall include any and all claims or causes of action for damages caused by—

(1) negligence;

(2) breach of warranty;

(3) defective or unreasonably dangerous products; or

(4) any other act, omission, conduct, or activity that violates an applicable legal standard.

(b) REPORT REQUIREMENTS.—At the time a complaint is filed in a civil action alleging an asbestos or silica claim, the plaintiff shall file a written report with the court that discloses the total amount of any payments which the plaintiff will receive in the future, as a result of settlements or judgments based upon the same claim. The plaintiff shall be required to update the report under this subsection on a regular basis during the course of the proceeding until a final judgment is entered in the case.

(c) LIABILITY.—

(1) SEVERAL NOT JOINT.—The liability of each defendant for damages—

(A) shall be several only; and

(B) shall not be joint.

(2) DIRECT PROPORTION.—Each defendant shall be liable only for the amount of damages allocated to that defendant in direct proportion to the percentage of fault of that defendant, and a separate judgment shall be rendered against the defendant for that amount.

(3) AMOUNT.—The amount of judgment to be entered against each defendant shall be the lower of the amount determined by—

(A) multiplying the total amount of the judgment by the percentage of fault assessed by the trier of fact against each defendant; or

(B) subtracting from the total judgment the total amount of all settlement monies paid or promised to be paid, and allocating the full amount of the difference to those defendants not part of any such settlements in proportion to their relative percentages of fault.

(d) SETTLEMENT EXCEEDS VERDICT.—If the total of all settlement monies paid or promised to be paid to a claimant is greater than the total amount of a verdict in favor of the claimant, the claimant shall recover nothing from any defendant.

(e) ASSESSING FAULT.—

(1) IN GENERAL.—In assessing percentages of fault at trial, a trier of fact shall consider, and the form of the verdict shall reflect, the fault of all persons and entities who contributed to the alleged asbestos-related injury or silica-related injury, regardless of whether such person or entity was, or could have been, named as a party to the suit, including persons or entities—

(A) subject to any pending or past bankruptcy;

(B) who have settled or agreed to settle the asbestos or silica claim with the claimant; or

(C) subject to immunity or statutory limitation of liability.

(2) FAULT OF NONPARTIES.—Any finding of fault assessed against a nonparty shall not—

(A) subject that nonparty to liability in the pending or any other action; and

(B) be referred to or admitted into evidence in any other action involving that nonparty.

SEC. 9. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 10. MISCELLANEOUS PROVISIONS.

(a) CONSTRUCTION WITH OTHER LAWS.—This Act shall not be construed to—

(1) affect the scope or operation of any workers' compensation law or veterans' benefit program;

(2) affect the exclusive remedy or subrogation provisions of any such law; or

(3) authorize any lawsuit which is barred by any such provision of law.

(b) CONSTITUTIONAL AUTHORITY.—The constitutional authority for this Act is contained in Article I, section 8, clause 3 and Article III, section 1 of the Constitution of the United States.

SEC. 11. EFFECTIVE DATE.

(a) IN GENERAL.—This Act applies to all asbestos or silica claims filed on or after the date of enactment of this Act.

(b) PENDING PROCEEDINGS.—This Act also applies to any pending asbestos or silica claims in which a trial has not commenced as of the date of enactment of this Act.

SA 2749. Mr. CORNYN proposed an amendment to amendment SA 2748 proposed by Mr. CORNYN (for himself, Mr. COBURN, Mr. GRAHAM, Mr. ENSIGN, Mr. CRAPO, Mr. INHOFE, Mr. MARTINEZ, Mr. DEMINT, Mr. THUNE, Mr. BENNETT, Mr. SMITH, Mr. CRAIG, Mr. BUNNING, Mr. THOMAS, Mr. SUNUNU, Mr. CHAMBLISS, Mr. ENZI, and Mr. HAGEL) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; as follows:

In lieu of the matter proposed to be inserted, insert the following:

This Act may be cited as the "Asbestos and Silica Claims Priorities Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Asbestos is a mineral that was widely used before the mid-1970s for insulation, fireproofing, and other purposes.

(2) Many American workers were exposed to asbestos, especially during the Second World War.

(3) Long-term exposure to asbestos has been associated with mesothelioma and lung cancer, as well as with such non-malignant conditions as asbestosis, pleural plaques, and diffuse pleural thickening.

(4) Although the use of asbestos has dramatically declined since 1980 and workplace exposures have been regulated since 1971 by the Occupational Safety and Health Administration, the diseases caused by asbestos often have long latency periods and past exposures will continue to result in significant claims well into the future.

(5) Asbestos related claims, driven largely by unimpaired claimants, have flooded our courts such that the United States Supreme Court has characterized the situation as "an elephantine mass" that "calls for national legislation" (Ortiz v. Fibreboard Corporation, 119 S. Ct. 2295, 2302 (1999).

(6) The American Bar Association supports enactment of Federal legislation that would allow persons alleging non-malignant asbestos-related disease claims to file a cause of action in Federal or State court only if those persons meet the medical criteria in the "ABA Standard for Non-Malignant Asbestos-Related Disease Claims" and toll all applicable statutes of limitations until such time as the medical criteria in such standard are met.

(7) Reports indicate that up to 90 percent of asbestos claims are filed by individuals who allege that they have been exposed to asbestos, but who suffer no demonstrable asbestos-related impairment. Lawyer-sponsored x-ray screenings of workers at occupational locations are used to amass large numbers of claimants, the vast majority of whom are unimpaired.

(8) The costs of compensating unimpaired claimants and litigating their claims jeopardizes the ability of defendants to compensate people with cancer and other serious diseases, threatens the savings, retirement benefits, and jobs of current and retired employees, and adversely affects the communities in which the defendants operate.

(9) More than 73 companies have declared bankruptcy due to the burden of asbestos litigation. The rate of asbestos-driven bankruptcies is accelerating. Between 2000 and 2004, there were more asbestos-related bankruptcy filings than in either of the prior 2 decades.

(10) Bankruptcies have led plaintiffs and their lawyers to expand their search for solvent peripheral defendants. The number of asbestos defendants now includes over 8,500 companies, affecting many small and medium size companies and industries that span 85 percent of the United States economy.

(11) Efforts to address asbestos litigation may augment silica-related filings.

(12) Silica is a naturally occurring mineral and is the second most common constituent of the earth's crust. Crystalline silica in the form of quartz is present in sand, gravel, soil, and rocks.

(13) Silica-related illness, including silicosis can develop from the inhalation of respirable silica dust. Silicosis was widely recognized as an occupational disease many years ago.

(14) Silica claims, like asbestos claims, often involve individuals with no demonstrable impairment. Claimants frequently are identified through the use of interstate, for-profit, screening companies.

(15) Silica screening processes have been found subject to substantial abuse and potential fraud in Federal silica litigation (In re Silica Prods. Liab. Litig. (MDL No. 1553), 398 F. Supp. 2d 563 (S.D. Tex. 2005)) and it therefore is necessary to address silica legislation to preempt an asbestos-like litigation crisis.

(16) Concerns about statutes of limitations may prompt unimpaired asbestos and silica claimants to bring lawsuits prematurely to protect against losing their ability to assert a claim in the future should they develop an impairing condition.

(17) Sound public policy requires that the claims of persons with no present physical impairment from asbestos or silica exposure, be deferred to give priority to physically impaired claimants, and to safeguard the jobs, benefits, and savings of workers in affected companies.

(18) Claimant consolidations, joinders, and similar procedures used by some courts to deal with the mass of asbestos and silica cases can—

(A) undermine the appropriate functioning of the court system;

(B) deny due process to plaintiffs and defendants; and

(C) further encourage the filing of thousands of cases by exposed persons who are not sick and likely will never develop an impairing condition caused by exposure to asbestos or silica.

(19) Several states have enacted legislation to prioritize asbestos and silica claims that serve as a model for national reform including Texas, Ohio, Florida, and Georgia.

(20) Asbestos litigation, if left unchecked by reasonable congressional intervention, will—

(A) continue to inhibit the national economy and run counter to plans to stimulate economic growth and the creation of jobs;

(B) threaten the savings, retirement benefits, and employment of defendant's current and retired employees;

(C) affect adversely the communities in which these defendants operate; and

(D) impair interstate commerce and national initiatives.

(21) The public interest and the interest of interstate commerce requires deferring the claims of exposed persons who are not sick in order to—

(A) preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related injuries; and

(B) safeguard the jobs, benefits, and savings of American workers and the well-being of the national economy.

(b) PURPOSES.—The purposes of this Act are to—

(1) give priority to current claimants who can demonstrate an asbestos-related or silica-related impairment based on reasonable, objective medical criteria;

(2) toll the running of statutes of limitations for persons who have been exposed to asbestos or to silica, but who have no present asbestos-related or silica-related impairment; and

(3) enhance the ability of the courts to supervise and control asbestos and silica litigation.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) AMA GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT.—The term "AMA Guides to the Evaluation of Permanent Impairment" means the most current version of the American Medical Association's Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of any examination or test on the exposed person required by this Act.

(2) ASBESTOS.—The term "'asbestos'" means—

(A) chrysotile;

(B) amosite;

(C) crocidolite

(D) tremolite asbestos;

(E) anthophyllite asbestos;

(F) actinolite asbestos;

(G) winchite;

(H) richterite;

(I) asbestiform amphibole minerals; and

(J) any of the minerals described in subparagraphs (A) through (I) that have been chemically treated or altered, including all minerals defined as asbestos under section 1910 of title 29, Code of Federal Regulations in effect at the time an asbestos claim is filed.

(3) ASBESTOS CLAIM.—The term "asbestos claim"—

(A) means any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or related to the alleged health effects associated with the inhalation or ingestion of asbestos, including—

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

(iv) risk or fear of disease or other injury;

(v) the costs of medical monitoring or surveillance, to the extent such claims are recognized under State law; or

(vi) any claim made by, or on behalf of, any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the exposed person; and

(B) does not include a claim for compensatory benefits pursuant to a workers' compensation law or a veterans' benefits program.

(4) ASBESTOSIS.—The term "asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos.

(5) BOARD-CERTIFIED INTERNIST.—The term "Board-certified internist" means a qualified physician—

(A) who is certified by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(6) BOARD-CERTIFIED OCCUPATIONAL MEDICINE SPECIALIST.—The term "Board-certified

occupational medicine specialist" means a physician—

(A) who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(7) BOARD-CERTIFIED PATHOLOGIST.—The term "Board-certified pathologist" means a qualified physician—

(A) who holds primary certification in anatomic pathology or combined anatomic or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Internal Medicine;

(B) whose professional practice is principally in the field of pathology and involves regular evaluation of pathology materials obtained from surgical or post mortem specimens; and

(C) whose certification was current at the time of—

(i) any tissue or slide examination; or

(ii) rendition of any report required under this Act.

(8) BOARD-CERTIFIED PULMONOLOGIST.—The term "Board-certified pulmonologist" means a qualified physician—

(A) who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(9) CERTIFIED B-READER.—The term "Certified B-reader" means a person—

(A) who has successfully passed the B-reader certification examination for x-ray interpretation sponsored by the National Institute for Occupational Safety and Health; and

(B) whose certification was current at the time of any readings required under this Act.

(10) CHEST X-RAYS.—The term "chest x-rays" means radiographic films taken in accordance with all applicable Federal and State standards and in the posterior-anterior view.

(11) CLAIMANT.—

(A) IN GENERAL.—The term "claimant" means any party asserting an asbestos or silica claim, including a—

(i) plaintiff;

(ii) counterclaimant;

(iii) cross-claimant; or

(iv) third-party plaintiff.

(B) CLAIMS ON BEHALF OF AN ESTATE.—If any claim described in subparagraph (A) is brought through, or on behalf of, an estate, the term claimant includes the executor, surviving spouse, or any other descendant of the decedent.

(C) CLAIMS ON BEHALF OF A MINOR.—If any claim described in subparagraph (A) is brought through, or on behalf of, a minor or incompetent person, the term claimant includes the parent or guardian of such minor.

(12) DLCO.—The term "DLCO" means diffusing capacity of the lung for carbon monoxide, which is the measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood.

(13) EXPOSED PERSON.—

(A) IN GENERAL.—The term "exposed person" means a person whose claimed exposure to asbestos or silica is the basis for an asbestos or silica claim.

(B) SILICA CLAIMS.—With respect to any claim for exposure to silica, the term "exposed person" means a person whose claimed exposure to silica is by means of the alleged inhalation of respirable silica.

(14) FEV-1.—The term "FEV-1" means forced expiratory volume in the first second, which is the maximal volume of air expelled in 1 second during performance of simple spirometric tests.

(15) FVC.—The term "FVC" means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration.

(16) ILO SCALE.—The term "ILO scale" means the system for the classification of chest x-rays set forth in the most current version of the International Labor Office's Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses in effect at the time of the performance of any examination or test on the exposed person required by this Act.

(17) PREDICTED LOWER LIMIT OF NORMAL.—The term "predicted lower limit of normal" means the calculated standard convention lying at the fifth percentile, below the upper 95 percent of the reference population, based on age, height, and gender, according to the recommendations of the American Thoracic Society as referenced in the AMA's Guides to the Evaluation of Permanent Impairment.

(18) QUALIFIED PHYSICIAN.—The term "qualified physician" means a board-certified internist, occupational medicine specialist, pathologist, or pulmonologist—

(A) who is licensed to practice in the State in which the action is pending, or the State in which the claimant resides, if the claimant resides outside the State where the action is pending;

(B) who has personally conducted a physical examination of the exposed person, or in the case of a board-certified pathologist, has examined tissue samples or pathological slides of the exposed person, or if the exposed person is deceased, based upon a detailed review of the medical records and existing tissue samples and pathological slides of the deceased person;

(C) who is treating or has treated the exposed person, and has or had a doctor-patient relationship with the exposed person at the time of the physical examination or, in the case of a board-certified pathologist, has examined tissue samples or pathological slides of the exposed person at the request of such treating physician;

(D) who receives or received payment for the exposed person's diagnosis, examination, and treatment from the exposed person or claimant or from the exposed person's health maintenance organization or other medical provider, and such payment was not subject to reimbursement by, or on behalf of, anyone providing legal services to the claimant; and

(E) whose diagnosing, examining, testing, screening or treating of the exposed person was not, directly or indirectly, premised upon, and did not require, the exposed person or claimant to retain the legal services of any attorney or law firm.

(19) SILICA.—The term "silica" a respirable crystalline form of the naturally occurring mineral form of silicon dioxide, including quartz, cristobalite, and tridymite.

(20) SILICA CLAIM.—The term "silica claim"—

(A) means any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or in any way related to the alleged health effects associated with the inhalation of silica, including—

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

(iv) risk or fear of disease or other injury;

(v) the costs of medical monitoring or surveillance, to the extent such claims are recognized under State law; or

(vi) any claim made by, or on behalf of, any person exposed to silica dust, or a representative, spouse, parent, child, or other relative of the exposed person; and

(B) does not include a claim for compensatory benefits pursuant to the workers' compensation law or a veterans' benefits program.

(21) SILICOSIS.—The term "silicosis" means fibrosis of the lung produced by inhalation of silica, including—

(A) acute silicosis;

(B) accelerated silicosis; and

(C) chronic silicosis.

(22) STATE.—The term "State"—

(A) means any State of the United States; and

(B) includes—

(i) the District of Columbia;

(ii) Commonwealth of Puerto Rico;

(iii) the Northern Mariana Islands;

(iv) the Virgin Islands;

(v) Guam;

(vi) American Samoa; and

(vii) any other territory or possession of the United States, or any political subdivision of any of the locales described under this paragraph.

(23) SUBSTANTIAL CONTRIBUTING FACTOR.—The term "substantial contributing factor"—

(A) in the context of an asbestos claim, means that—

(i) a claimant shall identify—

(I) the specific asbestos product to which the exposed person was exposed;

(II) the location and duration of such exposure; and

(III) the specific circumstances of such exposure;

(ii) such exposure—

(I) was more than incidental contact with the product and location; and

(II) took place on a regular basis over an extended period of time in physical proximity to the exposed person;

(iii) the exposed person inhaled respirable asbestos fibers in sufficient quantities to be capable of causing harm; and

(iv) a qualified physician has determined with a reasonable degree of medical certainty that the impairment of the exposed person would not have occurred but for the specific asbestos exposure; and

(B) in the context of a silica claim, means that—

(i) a claimant shall identify—

(I) the specific silica product to which the exposed person was exposed;

(II) the location and duration of such exposure; and

(III) the specific circumstances of such exposure;

(ii) such exposure—

(I) was more than incidental contact with the product and location; and

(II) took place on a regular basis over an extended period of time in physical proximity to the exposed person;

(iii) the exposed person inhaled respirable silica particles in sufficient quantities to be capable of causing harm; and

(iv) a qualified physician has determined with a reasonable degree of medical certainty that the impairment of the exposed person would not have occurred but for the specific silica exposure.

(24) Total lung capacity.—The term "total lung capacity" means the volume of gas contained in the lungs at the end of a maximal inspiration.

(25) Veterans' benefits program.—The term "veterans' benefits program" means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.

(26) Workers' compensation law.—The term "workers' compensation law"—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

(B) includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) and chapter 81 of title 5, United States Code; and

(C) does not include—

(i) the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or damages recovered by any employee in a liability action against an employer; or

(ii) any claim for exemplary or punitive damages by an employee, estate, heir, representative, or any other person or entity against the employer of an exposed person arising out of, or related to, an asbestos-related injury or silica-related injury.

SEC. 4. ELEMENTS OF PROOF FOR ASBESTOS OR SILICA CLAIMS.

(a) Impairment Essential Element of Claim.—

(1) In general.—It shall be an essential element to bring or maintain an asbestos or silica claim, that an exposed person suffer a physical impairment, of which asbestos or silica was a substantial contributing factor to such impairment.

(2) Evidence as to each defendant.—Any requirement of a prima facie showing under this section shall be made as to each defendant against whom a claimant alleges an asbestos or silica claim.

(b) Preliminary Proceedings; Service of Prima Facie Evidence of Impairment.—

(1) Filing of report.—A claimant in any civil action alleging an asbestos or silica claim shall file, together with the complaint or other initial pleading, a written report and supporting test results constituting prima facie evidence of the exposed person's asbestos-related or silica-related impairment meeting the requirements of this section as to each defendant.

(2) Timing.—For any asbestos or silica claim pending on the date of enactment of this Act, a claimant shall file the written report and supporting test results described in paragraph (1) not later than 150 days after such date or not later than 60 days prior to the commencement of trial, whichever occurs first.

(3) Defendants right to challenge.—A defendant shall be afforded a reasonable opportunity to challenge the adequacy of any proffered prima facie evidence of impairment.

(4) Dismissal.—A claim shall be dismissed without prejudice upon a finding of failure to make the prima facie showing required under this section.

(c) New Claim Required Information.—

(1) In general.—Any asbestos claim or silica claim filed in a Federal or State court, on or after on the date of enactment of this Act shall include a sworn information form containing the following information:

(A) The name, address, date of birth, social security number, and marital status of the claimant.

(B) The name, last address, date of birth, social security number, and marital status of the exposed person.

(C) If the claimant alleges exposure to asbestos or silica through the testimony of another person or other than by direct or bystander exposure to a product or products, the name, address, date of birth, social security number, and marital status, for each person by which claimant alleges exposure (hereafter in this subsection referred to as the "index person") and the relationship of the claimant to each such person.

(D) For each alleged exposure of the exposed person and for each index person—

(i) the specific location and manner of each such exposure;

(ii) the beginning and ending dates of each such exposure; and

(iii) the identity of the manufacturer of the specific asbestos or silica to which the exposed person or index person was exposed.

(E) The occupation and name of the employer of the exposed person at the time of each alleged exposure.

(F) If the asbestos claim or silica claim involves more than 1 claimant, the identity of the defendant or defendants against whom each claimant asserts a claim.

(G) The specific disease related to asbestos or silica claimed to exist.

(H) Any—

(i) supporting documentation of the condition claimed to exist; and

(ii) documentation to support the claimant or index person's identification of the asbestos or silica product that such person was exposed to.

(2) Individual requirement.—

(A) In general.—All asbestos claims and silica claims along with any sworn information required under paragraph (1) shall be individually filed.

(B) Class claims not permitted.—No claims on behalf of a group or class of persons shall be permitted.

(d) Prima Facie Evidence of Physical Impairment for Nonmalignant Asbestos Claims.—

(1) In general.—No person shall bring or maintain an asbestos claim related to an alleged nonmalignant asbestos-related condition in the absence of a prima facie showing of physical impairment of the exposed person for which asbestos exposure is a substantial contributing factor.

(2) Prima facie showing.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence—

(i) verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history, including a thorough review of—

(I) the exposed person's past and present medical problems; and

(II) the most probable cause of each such medical problem; or

(ii) if the exposed person is deceased, from a person who is knowledgeable regarding such exposed person's medical and smoking history.

(C) Evidence sufficient to demonstrate—

(i) that at least 15 years have elapsed since the exposed person's first exposure to asbestos; and

(ii) the date of any such diagnosis.

(D) A determination by the diagnosing, qualified physician, on the basis of a medical examination and pulmonary function testing of the exposed person, or if the exposed person is deceased, based upon the medical records of the deceased, that the claimant has, or if deceased, that the claimant had a permanent respiratory impairment rating of at least Class 2 as defined by, and evaluated under, the AMA's Guides to the Evaluation of Permanent Impairment.

(E) Evidence verifying that the exposed person has an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale—

(i) bilateral small irregular opacities (s, t, or u) graded 1/1 or higher on the ILO scale;

(ii) bilateral pleural thickening graded b2 or higher on the ILO scale including blunting of the costophrenic angle; or

(iii) pathological asbestosis graded 1(B) or higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of the Archives of Pathological and Laboratory Medicine, Volume 106, Number 11, Appendix 3 (October 8, 1982).

(F) A determination by the diagnosing, qualified physician that asbestosis or diffuse pleural thickening is a substantial contributing factor to the exposed person's physical impairment, based at a minimum on a determination that the claimant has—

(i) forced vital capacity below the predicted lower limit of normal and FEV-1/FVC ratio (using actual values) at or above the predicted lower limit of normal; or

(ii) total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal.

(G) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than asbestos exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with asbestos exposure or silica-related disease does not meet the requirements of this subsection.

(H) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(e) Prima Facie Evidence of Physical Impairment for Asbestos-Related Cancer.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to an alleged asbestos-related cancer, other than mesothelioma, in the absence of a prima facie showing of a primary cancer for which asbestos exposure is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence—

(i) verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history, including a thorough review of—

(I) the exposed person's past and present medical problems; and

(II) the most probable cause of each such medical problem; or

(ii) if the exposed person is deceased, from a person who is knowledgeable regarding such exposed person's medical and smoking history.

(C) Evidence sufficient to demonstrate—

(i) that at least 15 years have elapsed since the exposed person's first exposure to asbestos; and

(ii) the date of any such diagnosis of the cancer.

(D) Evidence verifying that the exposed person has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral small irregular opacities (s, t, or u) graded 1/1 or higher on the ILO scale; or

(ii) pathological asbestosis graded 1(B) or higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of the Archives of Pathological and Laboratory Medicine, Volume 106, Number 11, Appendix 3 (October 8, 1982).

(E) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than asbestos as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with asbestos exposure or asbestos-related disease does not meet the requirements of this subsection.

(F) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(f) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR ASBESTOS-RELATED MESOTHELIOMA.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to alleged mesothelioma in the absence of a prima facie showing of an asbestos-related malignant tumor with a primary site of origin in the pleura, the peritoneum, or pericardium.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a report by a qualified Board-certified pathologist certifying the diagnosis of mesothelioma and a report by a qualified physician certifying that—

(A) exposure to asbestos was a substantial contributing factor to the diagnosed mesothelioma; and

(B) the mesothelioma was not more probably the result of causes other than asbestos exposure as revealed by the employment, medical, and smoking history of the exposed person.

(g) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA CLAIMS.—

(1) IN GENERAL.—No person shall bring or maintain a silica claim related to an alleged silica-related condition, other than a silica-related cancer, in the absence of a prima facie showing of physical impairment as a result of a medical condition to which exposure to silica was a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history from the exposed person (or if the exposed person is deceased, from the person most knowledgeable of such history), including a thorough review of—

(i) the exposed person's past and present medical problems; and

(ii) the most probable cause of each such medical problem.

(C) A determination by the diagnosing, qualified physician that the claimant has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/1 or higher;

(ii) an ILO quality 1 chest X-ray (or a quality 2 chest X-ray if the exposed person is deceased and a quality 1 chest X-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis);

(iii) pathological demonstration of classic silicotic nodules exceeding 1 centimeter in diameter as set forth in 112 Archives of Pathology & Laboratory Medicine 673–720 (1988);

(iv) progressive massive fibrosis radiologically established by large opacities greater than 1 centimeter in diameter; or

(v) acute silicosis.

(D) If the claimant is asserting a claim for silicosis, evidence verifying there has been a sufficient latency period for the applicable type of silicosis.

(E) A determination by the diagnosing, qualified physician, on the basis of a personal medical examination and pulmonary function testing of the exposed person, or if the exposed person is deceased, based upon the medical records of the deceased, that the claimant has, or if deceased, had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment.

(F) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with silica exposure or silica–related disease does not meet the requirements of this subsection.

(G) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act):

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(h) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA-RELATED CANCER.—

(1) IN GENERAL.—No person shall bring or maintain a silica claim related to an alleged silica-related cancer in the absence of a prima facie showing of a primary cancer for which exposure to the defendant's silica is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including silica and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history from the exposed person (or if the exposed person is deceased, from the person most knowledgeable of that history), including a thorough review of—

(i) the exposed person's past and present medical problems; and

(ii) the most probable cause of each such medical problem.

(C) A determination by the diagnosing, qualified physician that the claimant has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/1 or higher;

(ii) an ILO quality 1 chest X-ray (or a quality 2 chest X-ray if the exposed person is deceased and a quality 1 chest X-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis); or

(iii) a pathological demonstration of classic silicotic nodules exceeding 1 centimeter in diameter as set forth in 112 Archives of Pathology & Laboratory Medicine 673–720 (1988).

(D) Evidence sufficient to demonstrate—

(i) that at least 15 years have elapsed since the exposed person's first exposure to silica; and

(ii) the date of any such diagnosis of the cancer.

(E) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with silica exposure or silica-related disease does not meet the requirements of this subsection.

(F) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(i) Compliance With Technical Standards.—Evidence relating to physical impairment under this section, including pulmonary function testing and diffusing studies—

(1) shall comply with the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment in the AMA's Guides to the Evaluation of Permanent Impairment, the most current version of the Official Statements of the American Thoracic Society regarding lung function testing, including general considerations for lung function testing, standardization of spirometry, standardization of the measurement of lung volumes, standardization of the single-breath determination of carbon monoxide uptake in the lung, and interpretative strategies for lung testing in effect at the time of the performance of any examination or test on the exposed person required by this Act;

(2) may not be based on testing or examinations that violate any law, regulation, licensing requirement, or medical code of practice of any State in which the examination, test, or screening was conducted; and

(3) may not be obtained under the condition that a claimant retains the legal services of an attorney or law firm sponsoring the examination, test, or screening.

SEC. 5. PROCEDURES.

(a) No Presumption at Trial.—Evidence relating to the prima facie showings required under section 4 shall not—

(1) create any presumption that a claimant has an asbestos or silica-related injury or impairment; and

(2) be conclusive as to the liability of any defendant.

(b) Admissibility of Evidence.—No evidence shall be offered at a trial, and a jury shall not be informed of—

(1) the granting or denial of a motion to dismiss an asbestos or silica claim under the provisions of this Act; or

(2) the provisions of section 4 with respect to what constitutes a prima facie showing of asbestos or silica-related impairment.

(c) Discovery.—Until such time as a trial court enters an order determining that a claimant has established prima facie evidence of impairment, no asbestos or silica claim shall be subject to discovery, except discovery—

(1) related to establishing or challenging such prima facie evidence; or

(2) by order of the trial court upon—

(A) motion of 1 of the parties; and

(B) for good cause shown.

(d) Consolidation.—

(1) At trial.—

(A) In general.—A court may consolidate for trial any number and type of asbestos or silica claims with the consent of all the parties.

(B) Absence of consent.—In the absence of any consent under subparagraph (A), a court may consolidate for trial only asbestos claims or silica claims relating to the same exposed person and members of the household of such exposed person.

(2) Class actions.—No class action or any other form of mass aggregation claim filing relating to more than 1 exposed person, except claims relating to the exposed person and members of the household of such exposed person, shall be permitted for asbestos or silica claims.

(3) At discovery.—Any decision by a court to consolidate claims under paragraph (1) shall not preclude consolidation of asbestos or silica claim cases by a court order for pretrial or discovery purposes.

(e) Forum Non Conveniens.—

(1) In general.—Any asbestos or silica claim filed on or after the date of enactment of this Act, or that is pending on the date of enactment of this Act, but that has not commenced trial or any new trial or retrial following motion, appeal, or otherwise with the presentation of evidence to the trier of fact prior to the date of enactment of this Act, if the court in which the such claim is pending, on written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action to which this Act applies would be more properly heard in a forum outside the State, district, or division in which such claim was filed, the court shall—

(A) decline to exercise jurisdiction under the doctrine of forum non conveniens; and

(B) shall stay or dismiss such claim.

(2) Considerations.—In determining whether to grant a motion to stay or dismiss a claim under paragraph (1), a court shall consider whether—

(A) an alternate forum exists in which such claim or action may be tried;

(B) the alternate forum provides an adequate remedy;

(C) maintenance of such claim in the court of the State in which the claim was filed would work a substantial injustice to the moving party;

(D) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to such claim;

(E) the balance of the private interests of the parties and the public interest of the State in which such claim was filed predominate in favor of such claim being brought in an alternate forum; and

(F) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

(3) Waiver of statute of limitations defense.—A trial court may not abate or dismiss a claim under this subsection until a defendant files with the court, or with the clerk of the court, a written stipulation that, with respect to a new action on such claim commenced by the plaintiff, the defendant waives the right to assert a statute of limitations defense in all other States, districts, or divisions in which such claim was not barred by limitations at the time such claim was filed in the State where such claim was originally filed as necessary to effect a tolling of the limitations periods in those States —

(A) beginning on the date such claim was originally filed; and

(B) ending on the date—

(i) such claim is dismissed; or

(ii) an abatement period of 1 year ends.

(4) Court duties.—A court may not abate or dismiss a claim under paragraph (3) until a defendant files with the court, or with the clerk of the court, a written stipulation that, with respect to a new action on such claim commenced by the plaintiff in another State, district, or division, that the claimant and the defendant may—

(A) rely on responses to discovery already provided under the rules of civil procedure of the State, district, or division in which such claim was originally filed; and

(B) rely on any additional discovery that may be conducted under the rules of civil procedure in another State, district, or division.

(f) Venue.—

(1) In general.—An asbestos or silica claim filed after the date of enactment of this Act may be filed only in the county of the State or the district or division of the United States where—

(A) the claimant resided for a period of at least 180 consecutive days immediately prior to filing suit; or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or silica related impairment on which such claim is based.

(2) Improper venue.—With respect to asbestos or silica claims pending as of the date of enactment of this Act, and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, has not commenced with presentation of evidence to the trier of fact as of the date of enactment of

this Act, any claim as to which venue would not have been proper if the claim originally had been brought in accordance with paragraph (1) shall, not later than 90 days after the date of enactment of this Act, be transferred to the court of general civil jurisdiction in the county, district, or division of the State in which the action is pending in which either—

(A) the claimant was domiciled at the time the asbestos or silica claim originally was filed; or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or silica related impairment on which the claim is based.

(3) Removal.—

(A) In general.—If a State court refuses or fails to apply the provisions of this Act, any party in a civil action for an asbestos claim may remove such action to a district court of the United States in accordance with chapter 89 of title 28, United States Code.

(B) Jurisdiction over removed actions.—The district courts of the United States shall have jurisdiction of all civil actions removed under this paragraph, without regard to the amount in controversy and without regard to the citizenship or residence of the parties.

(C) Removal by any defendant.—A civil action may be removed to the district court of the United States under this paragraph by any defendant without the consent of all defendants.

(D) Remand.—A district court of the United States shall remand any civil action removed solely under this paragraph, unless the court finds that—

(i) the State court failed to comply with procedures prescribed by law; or

(ii) the failure to dismiss by the State court lacked substantial support in the record before the State court.

(E) Limitation.—Civil actions in State court subject to this Act may not be removed to any district court of the United States unless such removal is otherwise proper without regard to the provisions of this Act or is removed under this paragraph.

(g) Preemption.—

(1) In general.—This Act shall govern all asbestos and silica claims filed in Federal or State courts on or after the effective date of this Act, or which are pending in Federal or State courts on the effective date of this Act and in which the trial, or any new trial or retrial following motion, appeal or otherwise, has not commenced with presentation of evidence to the trier of fact as of the effective date of this Act, except for enforcement of claims for which a final judgment has been duly entered by a court and that is no longer subject to any appeal or judicial review on the effective date of this Act.

(2) Greater limitations by states.—Nothing in this Act shall limit or preempt any State law or precedent having the effect of imposing additional or greater limits or restrictions on the assertion or prosecution of an asbestos or silica claim.

SEC. 6. STATUTE OF LIMITATIONS; 2-DISEASE RULE.

(a) Statute of Limitations.—

(1) In general.—An asbestos or silica claim not barred in a State as of the date of enactment of this Act, a claimant's cause of action shall not accrue, nor shall the running of limitations commence, prior to the earlier of the date—

(A) on which an exposed person received a medical diagnosis of an asbestos-related impairment or silica-related impairment;

(B) on which an exposed person discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to the existence of an asbestos-related impairment or silica-related impairment; or

(C) of death of the exposed person having an asbestos-related or silica-related impairment.

(2) Rule of construction.—Nothing in this section shall be construed to revive or extend limitations with respect to any claim for asbestos-related impairment or silica-related impairment that was otherwise time-barred as a matter of applicable State law as of the date of enactment of this Act.

(3) No effect on settlement agreements.—Nothing in this section shall be construed so as to adversely affect, impair, limit, modify, or nullify any settlement agreement with respect to an asbestos or silica claim entered into before the date of enactment of this Act.

(b) 2-Disease Rule; Distinct Claims.—

(1) In general.—An asbestos or silica claim arising out of a non-malignant condition shall be a distinct cause of action, wholly separate from a claim for an asbestos-related or silica-related cancer.

(2) No damages for fear.—No damages shall be awarded for fear or increased risk of future disease in any civil action asserting an asbestos or silica claim.

SEC. 7. EXPERTS.

(a) In General.—A person who holds a valid medical license in good standing in a State, but who is not licensed to practice medicine in that State, and who testifies, whether by deposition, affidavit, live, or otherwise, as a medical expert witness on behalf of any party in an asbestos or silica claim is deemed to have a temporary license to practice medicine in the State in which the claim is pending solely for the purpose of providing such testimony and is subject to that extent to the authority of the medical licensing board or agency of that State.

(b) Penalty for False Testimony.—If a physician renders expert medical testimony that is false, intentionally misleading or deceptive, or that intentionally misstates the relevant applicable standard of care, the medical licensing board or agency of the State in which the claim is pending may take such action as is permitted under the laws and regulations of that State governing the conduct of physicians.

(c) Rule of Construction.—This section shall not be construed to permit an out of State physician to practice medicine in any other State other than as provided in this section.

SEC. 8. PROPORTIONATE RESPONSIBILITY.

(a) Definition.—In this section, the term "fault" shall include any and all claims or causes of action for damages caused by—

(1) negligence;

(2) breach of warranty;

(3) defective or unreasonably dangerous products; or

(4) any other act, omission, conduct, or activity that violates an applicable legal standard.

(b) Report Requirements.—At the time a complaint is filed in a civil action alleging an asbestos or silica claim, the plaintiff shall file a written report with the court that discloses the total amount of any payments which the plaintiff will receive in the future, as a result of settlements or judgments based upon the same claim. The plaintiff shall be required to update the report under this subsection on a regular basis during the course of the proceeding until a final judgment is entered in the case.

(c) Liability.—

(1) Several not joint.—The liability of each defendant for damages—

(A) shall be several only; and

(B) shall not be joint.

(2) Direct proportion.—Each defendant shall be liable only for the amount of damages allocated to that defendant in direct proportion to the percentage of fault of that defendant, and a separate judgment shall be rendered against the defendant for that amount.

(3) Amount.—The amount of judgment to be entered against each defendant shall be the lower of the amount determined by—

(A) multiplying the total amount of the judgment by the percentage of fault assessed by the trier of fact against each defendant; or

(B) subtracting from the total judgment the total amount of all settlement monies paid or promised to be paid, and allocating the full amount of the difference to those defendants not part of any such settlements in proportion to their relative percentages of fault.

(d) Settlement Exceeds Verdict.—If the total of all settlement monies paid or promised to be paid to a claimant is greater than the total amount of a verdict in favor of the claimant, the claimant shall recover nothing from any defendant.

(e) Assessing Fault.—

(1) In general.—In assessing percentages of fault at trial, a trier of fact shall consider, and the form of the verdict shall reflect, the fault of all persons and entities who contributed to the alleged asbestos-related injury or silica-related injury, regardless of whether such person or entity was, or could have been, named as a party to the suit, including persons or entities—

(A) subject to any pending or past bankruptcy;

(B) who have settled or agreed to settle the asbestos or silica claim with the claimant; or

(C) subject to immunity or statutory limitation of liability.

(2) Fault of nonparties.—Any finding of fault assessed against a nonparty shall not—

(A) subject that nonparty to liability in the pending or any other action; and

(B) be referred to or admitted into evidence in any other action involving that nonparty.

SEC. 9. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 10. MISCELLANEOUS PROVISIONS.

(a) Construction With Other Laws.—This Act shall not be construed to—

(1) affect the scope or operation of any workers' compensation law or veterans' benefit program;

(2) affect the exclusive remedy or subrogation provisions of any such law; or

(3) authorize any lawsuit which is barred by any such provision of law.

(b) Constitutional Authority.—The constitutional authority for this Act is contained in Article I, section 8, clause 3 and Article III, section 1 of the Constitution of the United States.

SEC. 11. EFFECTIVE DATE.

(a) In General.—This Act applies to all asbestos or silica claims filed on or after the date of enactment of this Act.

(b) Pending Proceedings.—This Act also applies to any pending asbestos or silica claims in which a trial has not commenced as of the date of enactment of this Act.

SA 2750. Mr. FRIST (for Ms. COLLINS (for herself and Mr. BOND)) proposed an amendment to the bill S. 662, to reform the postal laws of the United States; as follows:

On page 133, line 25, insert before the colon ", each of which shall be applied in conjunction with the others".

On page 134, between lines 21 and 22, insert the following:

"(8) To establish and maintain a just and reasonable schedule for rates and classifications, however the objective under this paragraph shall not be construed to prohibit the Postal Service from making changes of unequal magnitude within, between, or among classes of mail.

On page 135, strike lines 1 through 3.

On page 135, line 4, strike "(2)" and insert "(1)".

On page 135, line 9, strike "(3)" and insert "(2)".

On page 135, line 15, strike "(4)" and insert "(3)".

On page 135, line 19, strike "(5)" and insert "(4)".

On page 135, line 22, strike "(6)" and insert "(5)".

On page 136, line 1, strike "(7)" and insert "(6)".

On page 136, line 5, strike "(8)" and insert "(7)".

On page 136, line 8, strike "(9)" and insert "(8)".

On page 136, line 12, strike "(10)" and insert "(9)".

On page 136, line 16, strike "(11)" and insert "(10)".

On page 136, line 19, strike "(12)" and insert "(11)".

On page 136, line 21, strike "(13)" and insert "(12)".

On page 137, line 1, strike "(14)" and insert "(13)".

On page 138, line 19, strike "The" and insert "Except as provided under subparagraph (C), the".

On page 139, strike lines 8 through 17, and insert the following:

"(C) USE OF UNUSED RATE AUTHORITY.—

"(i) DEFINITION.—In this subparagraph, the term 'unused rate adjustment authority' means the difference between—

"(I) the maximum amount of a rate adjustment that the Postal Service is authorized to make in any year subject to the annual limitation under paragraph (1); and

"(II) the amount of the rate adjustment the Postal Service actually makes in that year.

"(ii) AUTHORITY.—Subject to clause (iii), the Postal Service may use any unused rate adjustment authority for any of the 5 years following the year such authority occurred.

"(iii) LIMITATIONS.—In exercising the authority under clause (ii) in any year, the Postal Service—

"(I) may use unused rate adjustment authority from more than 1 year;

"(II) may use any part of the unused rate adjustment authority from any year;

"(III) shall use the unused rate adjustment authority from the earliest year such authority first occurred and then each following year; and

"(IV) for any class or service, may not exceed the annual limitation under paragraph (1) by more than 2 percentage points.

On page 142, strike lines 5 through 10, and insert the following:

"(f) TRANSITION RULE.—For the 1-year period beginning on the date of enactment of this section, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of enactment of this section. Proceedings initiated to consider a request for a recommended decision filed by the Postal Service during that 1-year period shall be completed in accordance with subchapter II of chapter 36 of this title and implementing regulations, as in effect before the date of enactment of this section.".

On page 162, line 10, strike all through page 164, line 9, and insert the following:

"§ 3662. Rate and service complaints

"(a) IN GENERAL.—Any interested party (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of the provisions of chapter 1 (except section 101(c)), sections 401, 403, 404, 404a, 601, or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

"(b) PROMPT RESPONSE REQUIRED.—

"(1) IN GENERAL.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a)—

"(A) either—

"(i) upon a finding that such complaint raises substantial and material issues of fact or law, begin proceedings on such complaint; or

"(ii) issue an order dismissing the complaint; and

"(B) with respect to any action taken under subparagraph (A) (i) or (ii), issue a written statement setting forth the bases of its determination.

"(2) TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.—For purposes of section 3663, any complaint under subsection (a) on which the Commission fails to act in the time and manner required by paragraph (1) shall be treated in the same way as if it had been dismissed under an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

"(c) ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.—If the Postal Regulatory Commission finds upon clear and convincing evidence the complaint to be justified, it shall order that the Postal Service take such action as is necessary to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance.

"(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incidence of noncompliance. Fines resulting from the provision of competitive products shall be paid from the Competitive Products Fund established in section 2011. All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.

On page 168, line 11, strike "Commission" and insert "Postal Service".

SA 2751. Mr. FRIST (for Mr. HARKIN) proposed an amendment to the bill S. 662, to reform the postal laws of the United States; as follows:

On page 171, line 6, strike "and".

On page 171, line 10, strike the period and insert "; and".

On page 171, between lines 10 and 11, insert the following:

(D) procedures that the Postal Service will use to—

(i) provide adequate public notice to communities potentially affected by a proposed rationalization decision;

(ii) make available, upon request, any data, analyses, or other information considered by the Postal Service in making the proposed decision;

(iii) afford affected persons ample opportunity to provide input on the proposed decision; and

(iv) take such comments into account in making a final decision.

On page 172, between lines 22 and 23, insert the following:

(5) EXISTING EFFORTS.—Effective on the date of enactment of this Act, the Postal Service may not close or consolidate any processing or logistics facilities without using procedures for public notice and input consistent with those described under paragraph (3)(D).

SA 2752. Mr. FRIST. (for Mr. REID) proposed an amendment to the bill S. 662, to reform the postal laws of the United States; as follows:

On page 202, lines 10 through 14, strike "demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size. Experience in the fields of law and accounting shall be considered in making appointments of Governors." and insert "experience in the fields of public service, law or accounting or on their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size."

On page 203, line 14, strike "5" and insert "7".

On page 203, line 17, strike "5" and insert "7".

On page 205, line 9, strike "3" and insert "2".

SA 2753. Mr. FRIST. (for Mr. STEVENS) proposed an amendment to the bill S. 662, to reform the postal laws of the United States; as follows:

On page 256, add after line 3, the following:

SEC. 1005. CONTRACTS FOR TRANSPORTATION OF MAIL BY AIR.

(a) DEFINITIONS.—Section 5402(a) of title 39, United States Code, is amended—

(1) in paragraph (4), by striking "(g)(1)(D)(i)" and inserting "(g)(1)(A)(iv)(I)";

(2) in paragraph (5), by striking "(g)(1)(D)(i)" and inserting "(g)(1)(A)(iv)(I)";

(3) in paragraph (6), by striking "only";

(4) in paragraph (8), by striking "rates paid to a bush carrier" and inserting "linehaul rates and a single terminal handling payment at a bush terminal handling rate paid to a bush carrier";

(5) in paragraph (11), by striking "(g)(1)(D)(ii)" and inserting "(g)(1)(A)(iv)(II)";

(6) in paragraph (13)—

(A) in subparagraph (A)—

(i) by striking "clause (i) or (ii) of subsection (g)(1)(D)" and inserting "subclause (I) or (II) of subsection (g)(1)(A)(iv)"; and

(ii) by striking "and" after the semicolon;

(B) in subparagraph (B), by adding "and" after the semicolon; and

(C) by adding at the end the following:

"(C) is not comprised of previously qualified existing mainline carriers as a result of merger or sale;";

(7) in paragraph (18), by striking “bush routes” and inserting “routes”; and

(8) in paragraph (22), by striking “bush routes” and inserting “routes”.

(b) NONPRIORITY BYPASS MAIL.—Section 5402(g) of title 39, United States Code, is amended—

(1) in paragraph (2)(C), by inserting “or a destination city” after “acceptance point and a hub”;

(2) in paragraph (3), by adding at the end the following:

“(C) When a new hub results from a change in a determination under subparagraph (B), mail tender from that hub during the 12-month period beginning on the effective date of that change shall be based on the passenger and freight shares to the destinations of the affected hub or hubs resulting in the new hub.”; and

(3) in paragraph (5)(A)(i), by striking “(g)(1)(D)(ii)” and inserting “(g)(1)(A)(iv)(II)”.

(c) EQUITABLE TENDER.—Section 5402(h) of title 39, United States Code, is amended—

(1) in paragraph (1), by inserting “bush” after “providing scheduled”;

(2) by striking paragraph (3) and inserting the following:

“(3)(A) Except as provided under subparagraph (C), a new or existing 121 bush passenger carrier qualified under subsection (g)(1) shall be exempt from the requirements under paragraphs (1)(B) and (2)(A) on a city pair route for a period which shall extend for—

“(i) 1 year;

“(ii) 1 year in addition to the extension under clause (i) if, as of the conclusion of the first year, such carrier has been providing not less than 5 percent of the passenger service on that route (as calculated under paragraph (5)); and

“(iii) 1 year in addition to the extension under clause (ii) if, as of the conclusion of the second year, such carrier has been providing not less than 10 percent of the passenger service on that route (as calculated under paragraph (5)).

“(B)(i) The first 3 121 bush passenger carriers entitled to the exemptions under subparagraph (A) on any city pair route shall divide no more than an additional 10 percent of the mail, apportioned equally, comprised of no more than—

“(I) 5 percent of the share of each qualified passenger carrier servicing that route that is not a 121 bush passenger carrier; and

“(II) 5 percent of the share of each nonpassenger carrier servicing that route that transports 25 percent or more of the total nonmail freight under subsection (i)(1).

“(ii) Additional 121 bush passenger carriers entering service on that city pair route after the first 3 shall not receive any additional mail share.

“(iii) If any 121 bush passenger carrier on a city pair route receiving an additional share of the mail under clause (ii) discontinues service on that route, the 121 bush passenger carrier that has been providing the longest period of service on that route and is otherwise eligible but is not receiving a share by reason of clause (ii), shall receive the share of the carrier discontinuing service.

“(C) Notwithstanding the requirements of this subsection, if only 1 passenger carrier or aircraft is qualified to be tendered nonpriority bypass mail as a passenger carrier or aircraft on a city pair route in the State of Alaska, the Postal Service shall tender 20 percent of the nonpriority bypass mail described under paragraph (1) to the passenger carrier or aircraft providing at least 10 percent of the passenger service on such route.”;

(3) in paragraph (5)(A)—

(A) by striking “(i)” after “(A)”; and

(B) by striking clause (ii).

(d) PERCENT OF NONMAIL FREIGHT.—Section 5402(i)(6) of title 39, United States Code, is amended—

(1) by striking “(A)” after “(6)”; and

(2) by striking subparagraph (B).

(e) PERCENT OF TENDER RATE.—Section 5402(j)(3)(B) of title 39, United States Code, is amended by striking “bush routes in the State of Alaska” and inserting “routes served exclusively by bush carriers in the State of Alaska”.

(f) DETERMINATION OF RATES.—Section 5402(k) of title 39, United States Code, is amended by striking paragraph (5).

(g) TECHNICAL AND CONFORMING AMENDMENT.—Section 5402(p)(3) of title 39, United States Code, is amended by striking “(g)(1)(D)” and inserting “(g)(1)(A)(iv)”.

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided under paragraph (2), this section shall take effect on the date of enactment of this Act.

(2) EQUITABLE TENDER.—Subsection (c) shall take effect on July 1, 2006.

SA 2754. Mr. KYL (for himself and Mr. CHAMBLISS) proposed an amendment to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; as follows:

SEC. 1. PROPORTIONAL PAYMENTS.

(a) At page 171, after line 5, insert new (c) as follows (the subsection references assume that the required renumbering has occurred):

“(c) LIMITATION.—For any affiliated group, the total payment in any year, including any guaranteed payment surcharge under subsection (m) and any bankruptcy trust guarantee surcharge under section 222(c), shall not exceed the lesser of $16,702,400 or 1.67024 percent of the revenues of the affiliated group for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation is applied, whichever is greater. For purposes of this subsection, the term “affiliated group” shall include any defendant participant that is an ultimate parent. The limitation in this subsection shall not apply to defendant participants in Tier I or to any affiliated group whose revenues for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation applied, whichever is greater, exceeds $1,000,000,000. The revenues of the affiliated group shall be determined in accordance with section 203(a)(2), except for the applicable date. An affiliated group that claims a reduction in its payment in any year shall file with the Administrator, in accordance with procedures prescribed by the Administrator, sufficient information to allow the Administrator to determine the amount of any such reduction in that year. If as a result of the application of the limitation provided in this subsection an affiliated group is exempt from paying all or part of a guaranteed payment surcharge or bankruptcy trust surcharge, then the reduction in the affiliated group's payment obligation due to the limitation in this subsection shall be redistributed in accordance with subsection (m). Nothing in this subsection shall be construed as reducing the minimum aggregate annual payment obligation of defendant participants as provided in section 204(i)(1).”

(b) Renumber subsections following new subsection (c).

(c) Subsequent to renumbering the subsections following new subsection 204(c), make the following cross-reference changes:

At page 142, line 7, replace “204(g)” with “204(h)”

At page 151, line 20, replace “204(i)(6)” with “204(j)(6)”

At page 160, line 21, replace “204(l)” with “204(m)”

At page 167, line 24, replace “204(d)” with “204(e)”

At page 170, lines 21 and 22, replace “(d) and (m)” with “(e) and (n)”

At page 171, line 22, replace “(i)(10)” with “(j)(10)”

At page 172, line 3, replace “(j)” with “(k)”

At page 177, line 12, replace “(j) with “(k)”

At page 178, line 25, replace “(j)(3)” with “(k)(3)”

At page 179, line 2, replace “(k)(1)(A)” with “(l)(1)(A)”

At page 182, line 16, replace “(i) with “(j)”

At page 183, line 6, replace “(i)” with “(j)”

At page 186, lines 7 and 8, replace “(d), (f), (g), and (m)” with “(e), (g), (h) and (n)”

At page 186, line 11, replace “(d) and (m)” with “(e) and “(n)”

At page 186, line 20, replace “(d) and (m)” with “(e) and “(n)”

At page 186, line 23, replace “(l)” with “(m)”

At page 187, line 8, replace “(f)” with “(g)”

At page 196, line 20, replace “(d)” with “(e)”

At page 196, line 22, replace “(m)” with “(n)”

At page 197, line 13, replace “(h)” with “(i)”

At page 198, line 11, replace “(d)” with “(e)”

At page 198, line 16, replace “(h)” with “(i)”

At page 198, line 17, replace “(j)” with “(k)”

At page 198, line 23, replace “(d)” with “(e)”

At page 199, line 10, replace “(h)” with “(i)”

At page 199, line 12, replace “(d) and (m)” with “(e) and (n)”

At page 199, line 20, replace “(k)” with “(l)”

At page 199, line 22, replace “(h)” with “(i)”

At page 200, line 3, replace “(h)” with “(i)”

At page 200, line 7, replace “(d), (f), (g), and (m)” with “(e), (g), (h) and (n)”

At page 200, line 22, replace “(d), (f), and (g)” with “(e), (g), and (h)”

At page 201, line 5, replace “(i)(9)” with “(j)(9)”

At page 203, line 6, replace “204(i)” with “204(j)”

At page 204, line 23, replace “204(d)” with “204(e)”

At page 205, line 11, replace “(i)(10)” with “(j)(10)”

At page 205, line 16, replace “204(h)” with “204(i)”

At page 248, line 21, replace “204(f)(3)” with “204(g)(3)”

At page 261, line 14, replace “204(i)(10)” with “204(j)(10)”

At page 266, line 14, replace “204(f)” with “204(g)”

At page 289, line 9, replace “204(i)” with “204(j)”

At page 289, line 11, replace “204(d)” with “204(e)”

At page 289, line 12, replace "204(m)" with "204(n)"

At page 289, line 19, replace "204(i)" with "204(j)"

At page 289, line 20, replace "204(d)" with "204(e)"

At page 289, line 21, replace "204(m)" with "204(n)"

At page 289, line 23, replace "204(i)(10)" with "204(j)(10)"

At page 334, line 8, replace "204(f)" with "204(g)"

SEC. 2. HARDSHIP ADJUSTMENTS.

(a) Strike page 172, line 6, through page 173, line 17, and insert the following:

"(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

(A) IN GENERAL.—Any defendant participant in any tier may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such an adjustment by demonstrating to the satisfaction of the Administrator that the amount of its payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to payor satisfy its debts generally as and when they come due. Such an adjustment shall be in an amount that in the judgment of the Administrator is reasonably necessary to prevent such material and adverse effect on the defendant participant's ability to continue its business and to payor satisfy its debts generally as and when they come due.

(B) FACTORS TO CONSIDER.—In determining whether to make an adjustment under subparagraph (A) and the amount thereof, the Administrator shall consider—

(1) the financial situation of the defendant participant and its affiliated group as shown in historical audited financial statements, including income statement, balance sheet, and statement of cash flow, for the three fiscal years ending immediately prior to the application and projected financial statements for the three fiscal years following the application;

(2) an analysis of capital spending and fixed charge coverage on a historical basis for the three fiscal years immediately preceding a defendant participant's application and for the three fiscal years following the application;

(3) any payments or transfers of property made, or obligations incurred, within the preceding 6 years by the defendant participant to or for the benefit of any insider as defined under section 101 (31) of title 11 of the United States Code or any affiliate as defined under section 101(2) of title 11 of the United States Code;

(4) any prior extraordinary transactions within the preceding 6 years involving the defendant participant, including without limitation payments of extraordinary salaries, bonuses, or dividends;

(5) the defendant participant's ability to satisfy its payment obligations to the Fund by borrowing or financing with equity capital, or through issuance of securities of the defendant participant or its affiliated group to the Fund;

(6) the defendant participant's ability to delay discretionary capital spending; and

(7) any other factor that the Administrator considers relevant.

(C) TERM.—A financial hardship adjustment under this paragraph shall have a term of 5 years unless the Administrator determines at the time the adjustment is made that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(D) RENEWAL.—A defendant participant may renew a hardship adjustment upon expiration by demonstrating that it remains justified. Such renewed hardship adjustments shall have a term of 5 years unless the Administrator determines at the time of the renewed adjustment that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a renewed financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(D) PROCEDURE.—

(1) The Administrator shall prescribe the information to be submitted in applications for adjustments under this paragraph.

(2) All audited financial information required under this paragraph shall be as reported by the defendant participant in its annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.). Any defendant participant that does not file reports with the Securities and Exchange Commission or which does not have audited financial statements shall submit financial statements prepared pursuant to generally accepted accounting principles. The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify under penalty of law the completeness and accuracy of the financial statements provided under this sub-paragraph.

(3) The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify that any projected information and analyses submitted to the Administrator were made in good faith and are reasonable and attainable."

(b) CONFORMING CHANGES.

At page 177, line 10, strike "hardship and"

At page 178, lines 19–20, strike "financial hardship adjustments under paragraph (2) and"

At page 178, lines 22–23, strike "—(A)."

At page 179, line 2, insert a period after "(k)(1)(A)" and delete "; or"

At pages 179–181, strike line 10 on page 179 through line 2 on page 181.

At page 181, at line 3: Insert "RULE-MAKING AND" before "ADVISORY"

At page 181, line 5: Strike "shall" and insert "may"

At page 181, following line 14, insert: "The Administrator may adopt rules consistent with this Act to make the determination of hardship and inequity adjustments more efficient and predictable."

At page 197, line 8, strike "HARDSHIP AND"

At page 197, line 15, strike "hardship and"

At page 197, line 19, strike "hardship and"

At page 197, lines 24 and 25, strike "severe financial hardship or"

SEC. 3. STEPDOWNS AND FUNDING HOLIDAYS

(a) At page 205, line 20, strike "The" and insert: "Except as otherwise provided in this paragraph, the"

(b) At page 205, lines 22 through 24 strike: ", except with respect to defendant participants in Tier I, Subtiers 2 and 3, and class action trusts" and insert the following:

". The reductions under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reduction under this subsection exceeds the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reduction provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reduction provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph."

(c) At page 207, line 10 through 12, strike the text following "except" in line 10 and insert "as otherwise provided under this paragraph. The reductions or waivers provided under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions or waivers under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reductions or waivers under this subsection exceed the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reductions or waivers provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reductions or waivers provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph."

SA 2755. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 385, line 1, strike all through page 392, line 5.

SA 2756. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 366, between lines 12 and 13, insert the following:

(c) APPLICATION OF THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT.—Employers and their insurers who pay compensation or medical benefits or who are potentially liable to their employees and other beneficiaries for compensation or medical benefits under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) shall be entitled to—

(1) a lien for compensation and medical benefits paid; or

(2) credit, recovery, or release, as such remedies are available under section 33 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 933), except that such employers and insurers may not bring actions for such remedies against third parties as is prohibited under subsections (b) and (h) of section 33 of that Act.

SA 2757. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 315, line 22, strike "monetary".

SA 2758. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 363, insert between lines 18 and 19, the following:

(4) LIMITATIONS ON ATTORNEY'S FEES.—

(A) LIMITATION.—In any civil action described under paragraph (1)—

(i) the limitations on attorney's fees under section 104(e) shall apply; or

(ii) a court may award reasonable fees and expenses of attorneys.

(B) DEFINITION.—In this paragraph, the term "reasonable fees and expenses of attorneys" means fees and expenses that are based on prevailing market rates for the kind and quality of the services furnished, except that—

(i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States Government; and

(ii) attorney's fees shall not be awarded in excess of a reasonable fee, unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys, for the proceedings involved justifies a higher fee.

On page 363, line 21, strike "(4)" and insert "(5)".

On page 364, line 15, strike "(5)" and insert "(6)".

NOTICES OF HEARINGS/MEETINGS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. COLEMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations Minnesota field hearing, "Volatility in the Natural Gas Market: The Impact of High Natural Gas Prices on American Consumers," originally scheduled for this Friday, February 10th has been rescheduled for Monday, February 13, 2006. The Subcommittee field hearings will examine the natural gas market and allegations that price and supply manipulation have caused increasingly high and volatile natural gas prices. The Subcommittee intends to hold this hearing to examine the impact higher prices have on the economy, business, and families, and the government's role in ensuring that natural gas prices are determined in a competitive and informed marketplace.

The Subcommittee hearing has been scheduled for Monday, February 13, 2006, at 8:30 a.m. at the James J. Hill Reference Library at 80 West 4th Street in St. Paul, Minnesota. For further information, please contact Raymond V. Shepherd, III, Staff Director and Chief Counsel to the Permanent Subcommittee on Investigations.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will be held on Thursday, February 16, 2006 at 10 a.m., in Room SD-366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony regarding S. 2253, to require the Secretary of the Interior to offer certain areas of the 181 Area of the Gulf of Mexico for oil and gas leasing.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510-6150.

For further information, please contact Frank Macchiarola or Shannon Ewan.

SUBCOMMITTEE ON NATIONAL PARKS

Mr. THOMAS. Mr. President, the Subcommittee on National Parks of the Committee on Energy and Natural Resources has previously announced a hearing to be held on Thursday, February 16, 2006, at 2:30 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC. In addition to the bills previously listed, the following joint resolution will be included.

S.J. Res. 28, a joint resolution approving the location of the commemorative work in the District of Columbia honoring former President Dwight D. Eisenhower.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD-364 Dirksen Senate Office Building, Washington, DC 20510-6150.

For further information, please contact Tom Lillie or David Szymanski.

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. CRAIG. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources.

The hearing will be held on Wednesday, March 1st at 2:30 p.m. in room SD-366 of the Dirksen Senate Office Building.

The purpose of the hearing is to review the role of the Forest Service and other Federal agencies in protecting the health and welfare of foreign guest workers carrying out tree planting and other service contracts on National Forest System lands, and to consider related Forest Service guidance and contract modifications issued in recent weeks.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510-6150.

For further information, please contact Frank Gladics or Sara Zecher.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. COBURN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, February 9, 2006, at 10 a.m., on TSA and Passenger Screening.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. COBURN. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Thursday, February 9, 2006, at 10 a.m., in 215 Dirksen Senate Office Building, to hear testimony on "The President's Fiscal Year 2007 Budget Proposal".

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. COBURN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, February 9, 2006, at 9:30 a.m. to hold a hearing on New Initiatives in Cooperative Threat Reduction.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. COBURN. Mr. President, I ask unanimous consent that the committee on energy and natural resources be authorized to meet during the session of the Senate on Thursday, February 9 at 9:30 a.m. The purpose of this hearing is to consider the President's proposed budget for FY 2007 for the Department of Energy.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. COBURN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to hold a hearing during the session of the Senate on Thursday, February 9, 2006, at 10 a.m. in SD–106.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. COBURN. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Thursday, February 9, 2006, at 10 a.m. for a hearing titled. "Hurricane Katrina: The Defense Department's Role in the Response."

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. COBURN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on February 9, 2006, at 10:30 a.m. to hold a closed hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON CLEAN AIR, CLIMATE CHANGE, AND NUCLEAR SAFETY

Mr. COBURN. Mr. President, I ask unanimous consent that the Subcommittee on Clean Air, Climate Change, and Nuclear Safety be authorized to hold a hearing February 9, 2006, at 9:30 a.m. on the impact of clean air regulations on natural gas prices.

The PRESIDING OFFICER. Without objection, it is so ordered.

FOREIGN TRAVEL FINANCIAL REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following reports for standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Elizabeth Croker:									
United States	Dollar				8,431.17				8,431.17
Senegal	Franc		1,155.00						1,155.00
Stephanie Mercier:									
United States	Dollar				7,782.00				7,782.00
Hong Kong	Dollar		3,110.04						3,110.04
Steven Meeks:									
United States	Dollar				7,812.68				7,812.68
Hong Kong	Dollar		3,110.04						3,110.04
Hayden Milberg:									
United States	Dollar				7,812.68				7,812.68
Hong Kong	Dollar		3,110.04						3,110.04
Sara McPherson:									
United States	Dollar				7,812.68				7,812.68
Hong Kong	Dollar		3,109.89						3,109.89
Hannah Lambiotte:									
United States	Dollar				7,812.68				7,812.68
Hong Kong	Dollar		3,109.89						3,109.89
Robert Holifield:									
United States	Dollar				7,859.68				7,859.68
Hong Kong	Dollar		3,109.89						3,109.89
Total			19,814.79		55,323.57				75,138.36

SAXBY CHAMBLISS,
Chairman, Committee on Agriculture, Nutrition and Forestry, Jan. 18, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Sam Brownback:									
Dem Repub Congo	Dollar		368.00						368.00
Rwanda	Dollar		454.00						454.00
Kenya	Shilling		475.00		444.00				919.00
United States	Dollar				6,489.00				6,489.00
Hannah Royal:									
Dem Repub Congo	Dollar		368.00						368.00
Rwanda	Dollar		454.00						454.00
Kenya	Shilling		430.00		444.00				874.00
United States	Dollar				6,021.00				6,021.00
Paul Grove:									
Egypt	Pound		867.00						867.00
Belgium	Euro		764.00						764.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
United States	Dollar				6,535.98				6,535.98
Thomas Hawkins:									
Egypt	Pound		867.00						867.00
Belgium	Euro		764.00						764.00
United States	Dollar				6,535.98				6,535.98
Tim Rieser:									
Colombia	Dollar		350.00				250.00		600.00
United States	Dollar				745.00				745.00
Allen Cutler:									
Italy	Euro		672.00						672.00
United States	Dollar				7,444.91				7,444.91
Total			6,833.00		34,659.87		250.00		41,742.87

THAD COCHRAN,
Chairman, Committee on Appropriations, Jan. 24, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2005—Amended

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Mary L. Landrieu:									
United States	Dollar				3,255.99				3,255.99
Ireland	Euro		463.19				246.30		709.49
Jason Matthews:									
United States	Dollar				2,484.99				2,484.99
Ireland	Euro		600.00				809.50		1409.50
Norma Jane Sabiston:									
United States	Dollar				2,381.99				2,381.99
Ireland	Euro		600.00				809.50		1,409.50
Total			1,663.19		8,122.97		1,865.30		11,651.46

THAD COCHRAN,
Chairman, Committee on Appropriations, Dec. 12, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754, COMMITTEE ON ARMED SERVICES—THIRD QUARTER, AMENDED FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Hillary Rodham Clinton:									
United States	Dollar				6,683.18				6,683.18
Singapore	Dollar		501.35						501.35
Huma Abedin:									
United States	Dollar				6,683.18				6,683.18
Singapore	Dollar		386.01						386.01
Total			887.36		13,366.36				14,253.72

JOHN WARNER,
Chairman, Committee on Armed Services, Jan. 20, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Stephen Higley:									
United States	Dollar				328.40				328.40
Canada	Dollar		992.80						992.80
John Shanahan:									
United States	Dollar				1,428.45				1,428.45
Canada	Dollar		992.80						992.80
William Holbrook:									
United States	Dollar				328.40				328.40
Canada	Dollar		992.80						992.80
Christy Plumer:									
United States	Dollar				348.52				348.52
Canada	Dollar		1,588.48						1,588.48
Brian Mormino:									
United States	Dollar				1,428.45				1,428.45
Canada	Dollar		1,191.36						1,191.36
Thomas Lawler:									
United States	Dollar				1,428.17				1,428.17
Canada	Dollar		1,588.48						1,588.48
James Sandberg:									
United States	Dollar				1,428.45				1,428.45
Canada	Dollar		992.80						992.80
Alison Taylor:									
United States	Dollar				1,428.45				1,428.45

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Canada	Dollar		992.80						992.80
Michael Goo:									
United States	Dollar				1,428.45				1,428.45
Canada	Dollar		992.80						992.80
Kenneth Connolly:									
United States	Dollar				703.20				703.20
Canada	Dollar		198.56						198.56
United States	Dollar				6,548.00				6,548.00
Switzerland	Franc		1,140.00						1,140.00
Malcolm Woolf:									
United States	Dollar				6,548.00				6,548.00
Switzerland	Franc		1,140.00						1,140.00
Total			12,803.68		23,374.94				36,178.62

JAMES M. INHOFE,
Chairman, Committee on Environment and Public Works, Jan. 18, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator George Allen:									
India	Rupee		50.40						50.40
Hong Kong	Dollar		81.89						81.89
China	Yuan		324.15						324.15
United States	Dollar				7,711.45				7,711.45
Senator Lincoln Chafee:									
Liberia	Dollar		180.00						180.00
Senator Norm Coleman:									
Hong Kong	Dollar		1,857.12						1,857.12
United States	Dollar				7,932.68				7,932.68
Senator Christopher Dodd:									
Qatar	Rial		862.00						862.00
Kuwait	Dinar		394.00						394.00
United States	Dollar				9,479.51				9,479.51
Senator Chuck Hagel:									
Israel	Shekel		316.00						316.00
Jordan	Dinar		382.00						382.00
Saudi Arabia	Riyal		146.00						146.00
Kuwait	Dinar		364.00						364.00
Egypt	Pound		239.00						239.00
United States	Dollar				6,493.99				6,493.99
Senator Richard G. Lugar:									
Belgium	Euro		432.00						432.00
United Kingdom	Pound		458.00						458.00
United States	Dollar				6,330.00				6,330.00
Lisa Curtis:									
Pakistan	Rupee		1,164.98						1,164.98
United States	Dollar				8,727.79				8,727.79
Heather Flynn:									
Tanzania	Shilling		2,500.00						2,500.00
United States	Dollar				7,738.00				7,738.00
Patrick Garvey:									
Kuwait	Dinar		840.00						840.00
United States	Dollar				3,618.00				3,618.00
James B. Greene:									
Canada	Dollar		595.68						595.68
United States	Dollar				1,657.97				1,657.97
Frank Jannuzi:									
United Kingdom	Pound		1,470.00						1,470.00
Hong Kong	Dollar		1,383.00						1,383.00
Cambodia	Riel		786.00						786.00
Thailand	Baht		782.00		168.00				950.00
United States	Dollar				10,867.00				10,867.00
Jill Marie Konz:									
Canada	Dollar		397.12						397.12
United States	Dollar				1,690.64				1,690.64
Carl Meacham:									
Colombia	Peso		702.00						702.00
United States	Dollar				2,008.20				2,008.20
Kenneth A. Myers, III:									
Belgium	Euro		432.00						432.00
United Kingdom	Pound		458.00				256.03		714.03
United States	Dollar				6,330.00				6,330.00
Janice O'Connell:									
Qatar	Rial		862.00						862.00
Kuwait	Dinar		394.00						394.00
United States	Dollar				11,131.85				11,131.85
Debra B. Rich:									
Liberia	Dollar		180.00						180.00
Manisha Singh:									
China	Yuan		292.00						292.00
Thailand	Dollar		283.00						283.00
Cambodia	Dollar		282.00						282.00
Vietnam	Dollar		232.00						232.00
Kyrgyzstan	Dollar		119.00						119.00
Caroline Tess:									
Haiti	Dollar		570.00						570.00
United States	Dollar				977.20				977.20
Paul Unger:									
India	Rupee		142.00						142.00
Hong Kong	Dollar		72.59						72.59

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
China	Yuan		334.96						334.96
United States	Dollar				7,711.45				7,711.45
Total			21,360.89		100,573.73		256.03		122,190.65

RICHARD LUGAR,
Chairman, Committee on Foreign Relations, Jan. 17, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator James M. Inhofe:									
United States	Dollar				6,983.20				6,983.20
Angola	Dollar		201.10						201.10
Uganda	Dollar		310.50				25.00		335.50
Germany	Dollar		312.15				20.00		332.15
John Bonsell:									
United States	Dollar				6,497.70				6,497.70
Angola	Dollar		201.10						201.10
Uganda	Dollar		253.40						253.40
Germany	Dollar		352.50				50.00		402.50
Mark Powers:									
United States	Dollar				6,497.70				6,497.70
Angola	Dollar			201.10					201.10
Uganda	Dollar			254.00					254.00
Germany	Dollar		300.50						300.50
Senator Jack Reed:									
United States	Dollar				13,330.85				13,330.85
Qatar	Rial		465.00						465.00
Kuwait	Dinar		310.00						310.00
Elizabeth King:									
United States	Dollar				11,151.85				11,581.85
Qatar	Rial		494.00						494.00
Kuwait	Dinar		315.00						315.00
Senator Joseph I. Lieberman:									
United States	Dollar				9,145.38				9,145.38
Israel	Dollar		1,810.00						1,810.00
Frederick M. Downey:									
United States	Dollar				8,517.00				8,517.00
Israel	Dollar		1,810.00						1,810.00
Senator John Cornyn:									
China	Dollar		292.00						292.00
Thailand	Dollar		283.00						283.00
Cambodia	Dollar		282.00						282.00
Vietnam	Dollar		232.00						232.00
Kyrgyzstan	Dollar		119.00						119.00
Russell J. Thomasson:									
China	Dollar		292.00						292.00
Thailand	Dollar		283.00						283.00
Cambodia	Dollar		282.00						282.00
Vietnam	Dollar		232.00						232.00
Kyrgyzstan	Dollar		119.00						
Senator James M. Inhofe:									
United States	Dollar				7,581.40				7,581.40
John Bonsell:									
United States	Dollar				7,137.90				7,137.90
Ryan Thompson:									
United States	Dollar				7,137.90				7,137.90
Total			10,006.35		83,980.88				93,987.23

JOHN WARNER,
Chairman, Committee on Armed Services, Jan. 20, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Lou Ann Linehan:									
Israel	New Shekel		271.00						271.00
Jordan	Dinar		546.00						546.00
Kuwait	Dinar		384.00						384.00
Egypt	Pound		282.00						282.00
Total			1,483.00						1,483.00

RICHARD SHELBY,
Chairman, Committee on Banking, Housing, and Urban Affairs,
Jan. 11, 2006.

CONSOLIDATED REPORT OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Josh Johnson:									
Micronesia	Dollar		1,253.53						1,253.53
United States	Dollar				7,739.95				7,739.95
Allen Stayman:									
Micronesia	Dollar		982.57						982.57
United States	Dollar				5,962.21				5,962.21
Jonathan Black:									
Canada	Dollar		1,440.46						1,440.46
United States	Dollar				348.40				348.40
Senator Jeff Bingaman:									
Canada	Dollar		549.79						549.79
United States	Dollar				878.42				878.42
Alex Flint:									
Canada	Dollar		182.22						182.22
United States	Dollar				1,431.57				1,431.57
Robert S. Simon:									
Canada	Dollar		566.33						566.33
United States	Dollar				898.42				898.42
Total			4,974.90		17,258.97				22,233.87

PETE DOMENICI,
Chairman, Committee on Energy and Natural Resources, Feb. 1, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Floyd DesChamps:									
Canada	Dollar		675.00						675.00
United States	Dollar				898.42				898.42
Rebecca Jensen:									
Canada	Dollar		530.00						530.00
United States	Dollar				898.42				898.42
Virginia L. Worrest:									
Canada	Dollar		268.00						268.00
United States	Dollar				801.82				801.82
Derrick Freeman:									
Canada	Dollar		477.62						477.62
United States	Dollar				898.42				898.42
Garret Graves:									
Canada	Dollar		378.90						378.90
United States	Dollar				1,299.12				1,299.12
John Easton:									
China	Yuan		292.00						292.00
Thailand	Baht		282.00						282.00
Cambodia	Dollar		282.00						282.00
Vietnam	Dollar		232.00						232.00
Kyrgyzstan	Dollar		119.00						119.00
Total			3,536.52		4,796.20				8,332.72

TED STEVENS,
Chairman, Committee on Commerce, Science and Transportation, Jan. 18, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FINANCE FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Gordon Smith:									
China	Yuan		292.00						292.00
Thailand	Baht		282.00						282.00
Cambodia	Riell		282.00						282.00
Vietnam	Dong		232.00						232.00
Kyrgyzstan	Som		119.00						119.00
Senator Jim Bunning:									
China	Yuan		292.00						292.00
Thailand	Baht		283.00						283.00
Cambodia	Riel		282.00						282.00
Vietnam	Dong		232.00						232.00
Kyrgyzstan	Som		119.00						119.00
Senator Mike Crapo:									
China	Yuan		292.00						292.00
Thailand	Baht		282.00						282.00
Cambodia	Riel		282.00						282.00
Vietnam	Dong		232.00						232.00
Kyrgyzstan	Som		119.00						119.00
Rob Epplin:									
China	Yuan		292.00						292.00
Thailand	Baht		282.00						282.00
Cambodia	Riel		282.00						282.00
Vietnam	Dong		232.00						232.00
Kyrgyzstan	Som		119.00						119.00
David Young:									
China	Yuan		292.00						292.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FINANCE FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Thailand	Baht		282.00						282.00
Cambodia	Riel		282.00						282.00
Vietnam	Dong		232.00						232.00
Kyrgyzstan	Som		119.00						119.00
Erik Heilman:									
Hong Kong	Dollar		1,253.00						1,253.00
United States:	Dollar				7,213.68				7,213.68
David Johanson:									
Hong Kong	Dollar		1,253.00						1,253.00
United States:	Dollar				5,094.68				5,094.68
Jill Gerber:									
Hong Kong	Dollar		1,253.00						1,253.00
United States:	Dollar				6,956.68				6,956.68
Barry LaSala:									
Hong Kong	Dollar		1,253.00						1,253.00
United States:	Dollar				7,214.68				7,214.68
Tiffany McCullen Atwell:									
Hong Kong	Dollar		1,253.00						1,253.00
United States:	Dollar				6,956.68				6,956.68
Demetrios Marantis:									
Hong Kong	Dollar		1,253.00						1,253.00
United States:	Dollar				6,691.68				6,691.68
Total			13,554.00		40,128.08				53,682.08

CHARLES E. GRASSLEY,
Chairman, Committee on Finance, Jan. 19, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Thomas Carper:									
United States	Dollar				7,066.51				7,066.51
Kuwait	Dinar		130.00						130.00
Israel	Shekel		115.00						115.00
Jordan	Dinar		210.00						210.00
Saudi Arabia	Riyal		102.00						102.00
Mischa Thompson:									
United States	Dollar				6,970.07				6,970.07
Jordan	Dinar		563.00						563.00
Israel	Shekel		196.00						196.00
Saudi Arabia	Riyal		135.00						135.00
Kuwait	Dinar		437.20						437.20
Brian White:									
United States	Dollar				2,316.68				2,316.68
China	Yuan		2,931.12						2,931.12
Joseph Goffman:									
United States	Dollar				348.40				348.40
Canada	Dollar		530.00						530.00
David Hunter:									
United States	Dollar				1,448.17				1,448.17
Canada	Dollar		1,360.00						1,360.00
Total			6,709.32		18,149.83				24,859.15

SUSAN M. COLLINS,
Chairman, Committee on Homeland Security and Governmental Affairs Committee, Jan. 23, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON INTELLIGENCE FOR TRAVEL FROM OCT. 1 TO DEC. 30, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Christopher Bond			1,477.00						1,477.00
	Dollar				6,443.20				6,443.20
Louis Tucker			1,477.00						1,477.00
	Dollar				6,443.20				6,443.20
Jack Bartling			1,477.00						1,477.00
	Dollar				6,443.20				6,443.20
Senator Christopher Bond			837.00						837.00
	Dollar				6,653.27				6,653.27
Total			5,268.00		25,982.87				31,250.87

PAT ROBERTS,
Chairman, Committee on Intelligence, Jan. 10, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMISSION ON SECURITY AND COOPERATION IN EUROPE FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Sean Woo:									
United States	Dollar				7,537.44				7,537.44
Poland	Zloty		858.00						858.00
Russia	Rouble		1,134.00						1,134.00
Azerbaijan	Manat		656.00						656.00
Dorothy Taft:									
United States	Dollar				5,049.05				5,059.05
Poland	Zloty		1,284.52		103.00				1,387.52
Ronald McNamara:									
United States	Dollar				6,578.10				6,578.10
Poland	Zloty		1,536.08						1,536.08
Janice Helwig:									
Austria	Euro				988.16				988.16
Poland	Zloty		3,436.00		65.00				3,501.00
Erika Schlager:									
United States	Dollar				5,578.97				5,578.97
Poland	Zloty		3,244.35						3,244.35
H. Knox Thames:									
United States	Dollar				6,364.74				3,364.74
Pland	Zloty		511.72		142.38				654.10
John Finerty:									
United States	Dollar				6,243.97				6,243.97
Poland	Zloty		966.00						966.00
James Geoffrey:									
United States	Dollar				6,243.74				6,243.74
Poland	Zloty		546.22						546.22
Dorothy Taft:									
United States	Dollar				9,421.10				9,421.10
Ukraine	Hryvnia		1,084.00						1,084.00
Georgia	Lari		1,470.00						1,470.00
Austria	Euro		455.75						455.75
Ronald McNamara:									
United States	Dollar				6,907.86				6,907.86
Azerbaijan	Manat		1,640.00		580.00				2,220.00
Sean Woo:									
United States	Dollar				11,146.84				11,146.84
Austria	Euro		456.00						456.00
Azerbaijan	Manat		1,312.00						1,312.00
Kazakhstan	Tenge		1,325.00						1,325.00
H. Knox Thames:									
United States	Dollar				8,175.23				8,175.23
Kazakhstan	Tenge		1,010.41		107.35		151.07		1,268.83
Total			22,926.05		81,232.90		151.07		104,310.02

SAM BROWNBACK,
Chairman, Commission on Security and Cooperation In Europe,
Jan. 18, 2006.

EXECUTIVE NOMINATIONS

Mr. FRIST. Mr. President, over the last several weeks and months, we have run into a situation where executive nominations are brought to the floor, but they are being held up for a final vote for reasons that are totally unrelated to those individuals and the positions they seek.

It has been done historically to some extent, but it is done in a way that one Member—not necessarily a Democrat or Republican but a Member in this body—uses that nomination in some way to focus attention on an issue or focus attention on something they need or want. Therefore, it can be very useful leverage for an individual Senator, but it has now gotten to the point that it is unfair to that individual. We have public servants who are dedicating their lives and have been nominated by the President of the United States for executive positions, and then they are being stopped or held up for this unrelated matter. And, therefore, in a systematic way we were going to address that.

Yesterday, on one such event, I filed a cloture motion on the nomination of Eric Edelman to be Under Secretary of Defense for Policy. Mr. Edelman had been reported out of the Armed Services Committee on July 29 of last year, 2005—came out of that Armed Services Committee and has been held up by someone on the other side of the aisle since that time.

In order to overcome that, I filed a cloture motion to ensure that the Senate was able to act on that nomination. We did that last night. That vote would have occurred tomorrow morning on cloture, and, because it is one person holding up Mr. Edelman, we would have gotten cloture and then it would have required a rollcall vote.

I understand that the other side has agreed to vitiate the cloture vote, and has agreed to a voice vote now—this evening—instead of requiring that cloture vote tomorrow and a rollcall vote. Our side appreciates that, and I think most Senators appreciate that since the vote would have probably been 100 to 0 if we had that vote.

What all this means is we will finally be able to move forward on a nomination, and we are not going to have to have a vote tomorrow. Some of my colleagues have said that we are expecting a vote tomorrow, and you are going to have a vote that we need to have the vote. On the other hand, since cloture can be vitiated with this unanimous consent, we will go ahead and approve it by a voice vote.

The larger issue is we need to systematically address executive nominations which are being held up for unrelated reasons.

Again, Mr. Edelman came out on July 29, and already we are in early February of 2006.

EXECUTIVE SESSION

NOMINATION OF ERIC S. EDELMAN TO BE UNDER SECRETARY OF DEFENSE FOR POLICY

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to executive session; I ask unanimous consent that the cloture vote with respect to Executive Calendar No. 309 be vitiated, the Senate proceed to its consideration, the nomination be confirmed, the motion to reconsider be laid on the table, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

DEPARTMENT OF DEFENSE

Eric S. Edelman, of Virginia, to be Under Secretary of Defense for Policy.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

HONORING THE MEMORY OF WEST VIRGINIA COAL MINERS AND COMMENDING VOLUNTEERS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 331 at the desk and just received from the House.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 331) to honor the memory of the coal miners who recently perished in accidents in West Virginia and to commend all the volunteers who worked tirelessly in providing support to the families during the rescue operations.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, en bloc, and any statements relating thereto be printed in the RECORD, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 331) was agreed to.

HURRICANE ELECTION RELIEF ACT OF 2005

Mr. FRIST. I ask unanimous consent that the Committee on Rules and Administration be discharged from further consideration of S. 2166 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2166) to direct the Election Assistance Commission to make grants to States to restore and replace election administration supplies, materials, records, equipment, and technology which were damaged, destroyed, or dislocated as a result of Hurricane Katrina or Hurricane Rita.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2166) was read the third time and passed, as follows:

S. 2166

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Hurricane Election Relief Act of 2005".

SEC. 2. GRANTS TO STATES FOR RESTORING AND REPLACING ELECTION ADMINISTRATION SUPPLIES, MATERIALS, RECORDS, EQUIPMENT, AND TECHNOLOGY WHICH WERE DAMAGED, DESTROYED, OR DISLOCATED BY HURRICANES KATRINA OR RITA.

(a) AUTHORITY TO MAKE GRANTS.—The Election Assistance Commission shall make a grant to each eligible State, in such amount as the Commission considers appropriate, for purposes of restoring and replacing supplies, materials, records, equipment, and technology used in the administration of Federal elections in the State which were damaged, destroyed, or dislocated as a result of Hurricane Katrina or Hurricane Rita and ensuring the full participation in such elections by individuals who were displaced as a result of Hurricane Katrina or Hurricane Rita.

(b) USE OF GRANT FUNDS.—Funds received under a grant under subsection (a) shall be used in a manner that is consistent with the requirements of title III of the Help America Vote Act of 2002.

(c) ELIGIBILITY.—A State is eligible to receive a grant under this section if it submits to the Commission (at such time and in such form as the Commission may require) a certification that—

(1) supplies, materials, records, equipment, and technology used in the administration of Federal elections in the State were damaged, destroyed, or dislocated as a result of Hurricane Katrina or Hurricane Rita; or

(2) the system of such State for conducting Federal elections has been significantly impacted by the displacement of individuals as a result of Hurricane Katrina or Hurricane Rita.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal year 2006 for grants under this Act $50,000,000, to remain available until expended.

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 106–398, as amended by Public Law 108–7, in accordance with the qualifications specified under section 1238(b)(3)(E) of Public Law 106–398, and upon the recommendation of the majority leader, in consultation with the chairmen of the Senate Committee on Armed Services and the Senate Committee on Finance, appoints the following individual to the United States-China Economic Security Review Commission: Mr. Daniel A. Blumenthal of the District of Columbia for a term expiring December 31, 2007.

ORDERS FOR FRIDAY, FEBRUARY 10, 2006

Mr. FRIST. I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:30 a.m. on Friday, February 10; the time for the two leaders be reserved, and the Senate proceed to a period of morning business until 10 a.m.; further, that at 10 a.m. the Senate resume consideration of S. 852, the asbestos bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, the Senate has been on the asbestos bill since Monday. Tomorrow, we will complete a full week of debate and consideration of this very important bill which, as has been said again and again, is a bill that addresses the fact that 150,000 people have lost their jobs, 77 companies have gone bankrupt, and many more are likely to go bankrupt in the future. Most importantly, we have victims of asbestos exposure—whether it is lung cancer or mesothelioma—who are not being compensated in a timely and appropriate way. It is a system crying out for reform.

Tomorrow, we will not have any rollcall votes, given the earlier action we took on the Edelman nomination. We will be continuing debate and discussion of the asbestos bill over the course of the day tomorrow, Friday.

As we look to next week, we will have a busy week as we finish our work for the Presidents Day recess. There will be votes each day next week beginning with Monday as we wrap up our business.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 8:28 p.m., recessed until Friday, February 10, 2006, at 9:30 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate Thursday, February 9, 2006:

DEPARTMENT OF DEFENSE

ERIC S. EDELMAN, OF VIRGINIA, TO BE UNDER SECRETARY OF DEFENSE FOR POLICY.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

SENATE—*Friday, February 10, 2006*

(Legislative day of Thursday, February 9, 2006)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Lord God, from the rising of the Sun to its setting, Your name is great among the nations.

We thank You for Your goodness and for Your wonderful works in our world. Thank You for satisfying our souls' longing for the transcendence.

We pray for our Senators and their staffs. Help them to stand humbly in Your presence, confident of Your power to guide them through our world's turbulence. Keep them from confusion and sin. Give them insights for solving the riddles of our planet and imbue them with compassion. Before they seek forgiveness, help them to forgive. Before they ask for mercy, help them to be merciful.

Give us all such inclusive spirits that we will be led from all bigotry and prejudice. Help each of us to abide in Your love, for You are our source of strength, comfort, and fortitude.

We pray this in Your powerful Name. Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today, we will have a brief period of morning business before we resume consideration of S. 852, the asbestos bill. Although Members may come down and make statements relative to the bill, there are going to be no rollcall votes today, as I explained last night.

Last night, we vitiated cloture and confirmed a nomination that was scheduled for a vote today; and given that action, it is not necessary to have that vote this morning.

We did hope to consider and vote on amendments during today's session. However, at this time, there is a motion to waive the budget pending, and that will require further debate.

In addition, we are approaching the final week prior to the President's Day recess. We want to use all our time effectively to work through the asbestos bill and other remaining business. I talked with the Democratic leader about a number of issues that we will address over the course of the next 8 or 9 days. There is the tax reconciliation bill that has gone to conference. We have 10 hours on that. There are the issues surrounding the PATRIOT Act that needs to be reauthorized.

Great progress has been made over the last 24 hours in a bipartisan way. At the close of business today, I will outline next week's schedule. Senators should plan on a very busy week prior to the recess, with voting over the course of next week.

ASBESTOS

I briefly want to comment on the asbestos bill and where we are today and the significance of this underlying bill. We have been on this for a week, in terms of debate. I think my colleagues and the American people realize how important this bill is and why it is the first major piece of legislation we are taking in this current session of Congress and have brought it to the floor.

I want to share briefly what my personal experience is with this disease, and it comes from having spent many months in Southampton, England, working as a surgeon a couple of decades ago. To me, those images apply today, of individuals, patients suffering from cancer from asbestos, asbestosis, and the clinical manifestations of the diseases related to it, such as mesothelioma. As we all know, based on the discussions that have taken place, this asbestos fiber is one that causes a reaction that can be a localized reaction in the lungs or a systemic reaction, and it is particularly prevalent in workers in shipyards; and, of course, Southampton was and has been one of the great shipyards in the world. Therefore, you see a lot of this mesothelioma.

The mesothelioma in those patients starts with a shortness of breath that is uncomfortable, but then it gradually builds to this gasping for every single breath. And then it turns into the agony of not getting enough breath into your lungs. It starts with a little bit of a cough associated with that shortness of breath, and that cough eventually turns into a hacking cough with blood coming forth, a loss of the voice, initially becoming coarse and raspy. The symptoms of the most common type of mesothelioma expand to the point that surgery is, in many cases, tried. It is a difficult surgery because of the encasement of the lung with the reaction to this asbestos fiber. It is malignant cancer.

I say that because the reality is there are many patients, victims of exposure to asbestos, who are not being fully compensated by the system we have, the system that is outdated, that is inefficient and unfair. Everybody agrees with that.

If there is one thing we have been able to accomplish over the last week, it is that it is an unfair process that results in a lot of waste and inefficiency—the fact that patients themselves, the victims—out of the dollars that should be directed to them—only get 42 cents of the dollar that is put on the table to compensate them, and that is simply unfair. Our discussions and debate over the last week have pointed to the fact that 58 cents of the dollar that should be going to the victims is being spread through a system that is inefficient and goes, in large part, to the pockets of trial lawyers—not all trial lawyers, but the few who are taking advantage of this system.

That is why it is so important for us to address this FAIR Act, which we call it, to debate it and not use procedural moves to kill it. Because once we kill this bill or it is moved off the table, we are not going to be able to come back to it, from a realistic standpoint. This year is so short that we have to address it now or never. That is why we have to be very careful, in terms of having procedural moves that are made and people hiding behind those procedural moves and not addressing the real substance of the bill. The bill itself has strong bipartisan support. We talk about all of the partisanship that characterizes so much of this body in Washington, DC, and in Congress. This bill is not partisan. It is not a Republican or Democratic bill. It has strong bipartisan support.

I have to applaud the leadership of Chairman SPECTER and Senator LEAHY on this bill, taking it through the Judiciary Committee. I want to also point out that people say we have only had 1 day on amendments. We were ready to bring the bill up on Friday. We have had it Monday, Tuesday, Wednesday, Thursday, and now it is Friday. We have had some slow walking on the bill. We had to file a cloture motion to proceed to the bill. It shows the reluctance by some people to say it is a problem and that it is one that we need to address and fix. But that cloture vote was successful. That postponement was overridden by the will of this body.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

About midweek, the other side reversed course and decided to let us debate this bill, and that debate has begun in earnest. We have had a great debate, with a much better understanding among our colleagues and among the American people as to how big this problem is. The fact that the victims, the patients whom physicians are treating, are not being treated fairly by this system, that must be fixed. We have those trial lawyers who are reaping the benefits of this broken system, taking advantage of the system, taking advantage of the funds that are to be used as compensation for those victims or potential victims.

The FAIR Act is a trust fund approach, which is a comprehensive approach. We had good debate yesterday with Senator CORNYN's amendment, in terms of a medical criteria bill. The one item that came out in that discussion is that the trust fund approach in the FAIR Act is the comprehensive approach. Senator CORNYN proposed that we resolve the real problem with a medical criteria proposal, which many of us support in terms of concept, but you have to look at who is left out. The unimpaired claimants are left out of that system. The trust fund addresses those people who may be unimpaired but who are victims and will be victims, from a medical standpoint, in the future.

The bill we talked about yesterday—there is a sort of incompleteness of that bill, but reflecting on the more comprehensive approach of the underlying bill and the fact that it did not address the fact that 40 percent of the awards are going to the victim and 60 percent is going to the system. Wealthy trial lawyers are the real beneficiaries here, which is not addressed in the smaller bills that may be brought forth or the smaller amendments brought to the floor.

It was mentioned yesterday that the medical criteria bill itself leaves out veterans. Again, that is addressed in the underlying FAIR Act, which is on the floor. Under the medical criteria bill, they could not sue the Government for their injuries—the veterans of service who are fighting wars all over the globe—because of sovereign immunity. I was also worried about those victims who worked at companies that are now bankrupt. Again, the medical criteria bill does nothing to ensure that attorneys are prevented from taking from those victims that share of compensation that should be going to the victims.

I know there are a lot of businesses, today and yesterday, that are lobbying Senators on both sides of the aisle because they are concerned that the underlying bill will hurt them in some way. I know some of them argue that the medical criteria approach is the better solution because it is less complicated than the trust fund. I respect that position. It is a position that we and the leadership and the leaders on this bill, the sponsors, are addressing. We will make sure that we do all we can to ensure that no company is hurt, no company goes bankrupt because of the trust fund approach.

Senator KYL's amendment, which is yet to be debated and fully considered, addresses that very important aspect, to make sure companies are not unduly hurt by the trust fund approach.

I firmly believe we should do what is in the interests of the Nation right now, not just what is in the interests of one company or another, and that is addressed in the FAIR Act—again, open for debate and open for amendment. That is our responsibility, to tackle these big issues.

The underlying bill is not perfect. It needs to remain on the floor. It needs to remain on the floor for discussion and debate. It is a comprehensive approach that I strongly support, that the administration strongly supports, and that much of the leadership in the House, in my conversations with them, strongly supports.

If we do not pass this bill, those victims whom I opened with, the people who are being hurt by the cancer, who are struggling for those last breaths, who do need that operation, are simply not being treated fairly and will not be treated fairly in the future.

Meaningful solutions to these tough and challenging problems are what we are debating. Again, I commend the chairman of the Judiciary Committee for his tremendous work on this important issue.

Mr. SPECTER. Will the majority leader yield for a very brief discussion on this point?

Mr. FRIST. Absolutely.

Mr. SPECTER. Mr. President, I thank the leader very much for the comments he just made. I would like to pick up on just a couple of them.

What is generally misunderstood, notwithstanding how many times we have said it, is that there is no Federal money in this bill. The bill is ironclad that the Federal Government will have no obligation at all, and even though it has been said repeatedly, talking to Senators in the well of the floor yesterday, it has not really sunk in. I can understand why it has not sunk in—because the bill is so complicated—but it is worth repeating. There is no Federal money in the bill.

The objection which is raised is that some future Congress may want to add money to the bill from the Federal Treasury. But that is not a valid consideration for this Congress. We are doing the best job we can here in the year 2006. But if some future Congress 20 years from now or 30 years from now or 15 years from now makes another decision, we have to respect that. We are not so smart to handle the current problems, let alone anticipate what is going to happen a decade or more from now. So when people raise the issue about more expenditures, they are not doing it because of this bill; they are doing it because of what some future bill may provide.

There is another consideration which the leader and I were just discussing which is worth commenting about on the floor so others may hear it, and that is that out of respect for the committee system, this bill ought not to fall on a budget point of order. The Judiciary Committee has spent years—really working on it for decades but intensively for the past 3 years—and we passed it out 13 to 5, all 10 Republicans for it, albeit with some reservations, and 3 Democrats—Senator LEAHY, Senator FEINSTEIN and Senator KOHL. It is bipartisan.

People are surprised to hear that on the point of order, it is the Budget Committee which makes the determination and not the Parliamentarian. When I tell my colleagues that, they are surprised. But as I conferred with the Parliamentarian yesterday, he confirmed the fact that the practice here is not to have the Parliamentarian rule but to have the Budget Committee rule and really to have the chairman make the decision.

After working intensively on this issue for the 25 years I have been here, and intensely for the past 3 years, it seems to me as a matter of basic equity that we ought not to have this bill pulled from the floor by a single vote when we are in the midst of adding amendments which may cure all of the problems people see. Senator CORNYN, for example, who proposed the medical criteria bill yesterday, has told me that he does not favor upholding the point of order, that he thinks the bill ought to go forward. Senator CORNYN has said he may have as many as four more amendments. Senator KYL has an amendment on the floor now which will protect the smaller companies. Senator COBURN may have an amendment on tightening up the medical criteria.

When we have worked for 3 years intently, why not let this bill stand for 3 more days next week to see if we can work out the problems?

I submit to all of my colleagues, and especially my colleagues on the Budget Committee, this is not where it ought to be decided by a supermajority. This body had very intensive debate on when a filibuster ought to be allowed, and we came to the conclusion that it should be extraordinary circumstances. I think the analogy right on all fours, as we say in the law—on all fours. To defeat this bill by a supermajority, there ought to be some extraordinary circumstance, which there is not. This may be too strong a word, but, frankly, this is how I feel about it: I believe it is insulting to the Judiciary Committee to have these years of work at risk by a single vote because of what another committee says, when we have gone through this bill A to Z and we are still open for business to make changes.

It is worth note, the editorial support which I think is a bit removed.

We have already had the New York Times speak very forcefully.

The Washington Post says, in part, "legislation that serves the public interest" in coming out for the bill.

The Washington Times, which is noted for its more conservative view, endorses the bill today, saying, "this bill should pass."

One of the issues which the Washington Times raises is the key one raised by the Budget Committee as to what is going to happen in the future; that is, as they say:

> and how can one minimize the chances of some future Congress putting taxpayers on the hook for likely overruns?

OK, we are still working on it. But the Washington Times faces up squarely to that consideration as to what a future Congress may do.

I have found that, while talking to Senators individually and they begin to understand it, there is a good response. I have visited individually with many Senators on both sides of the aisle, and I intend to continue to do so when we have the time to do so. But it is my hope that my colleagues will look closely at respect for the committee system and what the Judiciary Committee has done here and will at least give this bill a few more days and will not superimpose a supermajority on legislation which ought to be decided, as our customary Democratic procedures are, by a democratic vote.

I thank the distinguished leader of our party for all of his hard work on this, bringing it to the floor, and his steadfast support, and notify all of our Republican colleagues that the leader and Senator McCONNELL and Senator SESSIONS and Senator DEWINE and maybe others and I will be talking individually, and I put my Democratic colleagues on notice, too, that I am about to call them up for a private meeting.

I ask unanimous consent that the editorials I referenced from today's Washington Post and Washington Times be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From washingtonpost.com, Feb. 10, 2006]

FORWARD ON ASBESTOS

In a triumph of good sense and bipartisan cooperation, the Senate voted on Tuesday to go forward with a bill that would fix the broken asbestos litigation system. Hundreds of thousands of asbestos injury claims have already landed in the courts, contributing to the bankruptcy of more than 70 companies. Without reform, this process will drag on, triggering the bankruptcy of yet more firms, many of which have only tenuous asbestos connections, because the main firms responsible have already gone under. Meanwhile, many who are ill from asbestos-related diseases won't be able to get timely compensation or, in some cases, any compensation. Unless the bill passes, Navy veterans, for example, will go uncompensated for diseases caused by asbestos on ships. Veterans are not allowed to sue the government, and many of the shipbuilders are long since bankrupt.

The bill will be debated and amended, and it may face a second attempted filibuster before it gets a vote. Some amendment may be reasonable at the margins, but the bill's central idea—to replace litigation with a $140 billion compensation fund to be financed by defendant companies and their insurers—must be preserved. Democrats complain that the fund won't have enough money to compensate asbestos victims; Republicans complain that the fund will have too much money, the raising of which will constitute a burden on small and medium-size firms. The fact that the bill is being attacked from both directions suggests that its authors, Sens. Arlen Specter (R-Pa.) and Patrick J. Leahy (D-Vt.), have balanced competing interests in a reasonable manner.

Unfortunately, the bill's critics are not always so reasonable. Sen. Harry M. Reid of Nevada, the Democratic minority leader, has complained, "One would have to search long and hard to find a bill in my opinion as bad as this." He has even described the legislation as the work of lobbyists hired by corporations to limit asbestos exposure. But the truth is that the bill's main opponents are trial lawyers, who profit mightily from asbestos lawsuits and who constitute a powerful lobby in their own right. Mr. Specter and Mr. Leahy are in fact model resisters of special interests who have spent more than two years crafting legislation that serves the public interest. For Mr. Reid to demean this effort in order to fire off campaign sound bites is reprehensible.

[From the Washington Times, Feb. 10, 2006]

THE ASBESTOS DEBATE

There are three questions the Senate should focus on as it considers the Fairness in Asbestos Injury Resolution Act: Will the proposed $140 billion asbestos trust fund actually cost $140 billion, or will its fine print eventually require it to pay out much more? Can the medical criteria be tightened to ensure that only people who have genuinely suffered harm from asbestos are compensated? And how can one minimize the chances of some future Congress putting taxpayers on the hook for likely overruns?

This bill should pass: Senators Arlen Specter, Pennsylvania Republican, and Patrick Leahy, Vermont Democrat, are due accolades for getting this far on a longstanding problem that has befuddled everyone for decades. Many asbestos victims have suffered or died of mesothelioma or other illnesses while the courts and Washington struggled with a resolution. The victims and their families deserve to be made whole.

One good sign is the 98–1 Senate vote Tuesday to move forward, indicating broad agreement that the FAIR Act is acceptable as a starting point for the full Senate's debate. The other is trepidation from Senate Minority Leader Harry Reid: After making noises about a filibuster, Mr. Reid said the bill benefited "a few large companies" while supposedly leaving the little guy in the lurch. Really? Why, then, do insurance giants All-State and AIG oppose the bill? Why are many plaintiffs anxious to see it pass? In reality the big guys speak through Mr. Reid—in this case, unscrupulous lawyers who stand to profit greatly from keeping asbestos cases in the courts. Under the FAIR Act, fees for lawyers top out at five percent of the award—far less than they get in court.

Of course, there are good reasons to worry about the "little guy"—just not the ones Mr. Reid suggests. If previous federal "trust fund" schemes are any indication, this fund could bleed billions of dollars only a few years from now and demand either a federal bailout or a return to the courts. The first is bad for the average taxpayer; the other is bad for most claimants. As for the first, the nonpartisan National Taxpayers Union opposes the trust fund on the grounds that a bust is likely. It calls the fund "a fiscal time bomb." The second would land claimants back in limbo in courts (to the great pleasure of asbestos lawyers, of course, who clog up the system with questionable cases).

The precedents show how daunting this month's debate will be. As we've reported previously, only one of the many smaller trust funds created over the years has been able to meet its obligations, according to Francine Rabinovitz, a trust-fund expert at the University of Southern California. Last year she told Sens. Jon Kyl, Arizona Republican, and Tom Coburn, Oklahoma Republican, that "none of the bankruptcy trusts created prior to 2002 have been able to pay over the life anywhere close to 50 percent of the liquidated value of qualifying claims." Claims against the Johns Manville bankruptcy fund—one flawed effort to solve asbestos-injury claims—outstripped resources by a factor of 20.

That begs some questions. Will this $140 billion fund "sunset" in three years like its conservative critics say it will? Even the Congressional Budget Office predicts it will bleed $6.5 billion a year by 2015.

What about the medical criteria? A group of conservative senators on the Judiciary Committee worried about the fund's solvency cited this among concerns when they sent the bill to the Senate floor last year. Sens. Jon Kyl, Arizona Republican, and Tom Coburn, Oklahoma Republican, said that they were "deeply concerned that this fund will run out of money and prove unable to pay all qualifying claimants."

This debate will play out fully in the Senate over the coming days. In the meantime, it's worth pointing out what the FAIR Act offers that nothing previously has: A light at the end of the tunnel for claimants. Under FAIR, compensation ranges from $25,000 for people who suffer breathing difficulties to as much as $1.1 million for victims of the deadly cancer mesothelioma. It has taken long enough to get this far. The Senate is close to leading the way out.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Very briefly in response, this is an important bill that, again, is not a partisan bill at all. If you look at the votes today, you will see the split is between each caucus. I say that because so many bills come to the floor as partisan bills or bills proposed by one party, and they see such discussion and procedural moves. It is incumbent upon each Senator, looking within themselves and their own conscience, to ask the question: Is this a problem that deserves fixing?

I believe, based on the discussions today—that is the good thing about this last week—that it is a tragedy in terms of the victims, in terms of the jobs lost, in terms of the pensions lost—all due to a broken system. It would be a tragedy if we did not address it. We have a bipartisan bill which has come out of committee. It is open for debate on the floor of this body.

Just to clarify, we do have pending a budget point of order that needs to be discussed. Every Senator must understand what our chairman was saying through conversations because we will have a vote early next week on this point of order. If the point of order is upheld, then the bill itself disappears and we have other legislation onto which we will move. That means we will not have fulfilled our obligation, our responsibility through having a bipartisan bill come out of the Judiciary Committee which is brought to the floor for debate and discussion, recognizing a huge problem faces the American people. That responsibility would be shoved aside.

I encourage my colleagues to look at this point of order, what it means in terms of procedure, and then answer the question. Is there a problem out there? And if the answer is yes, now is the time to fix it.

I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. ISAKSON). Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business until 10 a.m.

The Senator from Missouri is recognized.

Mr. TALENT. How long is the morning business going on, Mr. President?

The PRESIDING OFFICER. Until 10 a.m.

Mr. TALENT. I ask unanimous consent to speak as in morning business for up to 30 minutes.

The PRESIDING OFFICER. Is there objection? The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I request recognition after the Senator and that I be allocated 30 minutes as well.

The PRESIDING OFFICER. The Senator from Missouri has asked unanimous consent that he be recognized for up to 30 minutes. Is there objection?

Mr. KENNEDY. Reserving the right to object, I wonder if the Senator would extend the unanimous consent request to include that I be recognized following him and that I be recognized for 30 minutes.

Mr. TALENT. I will so modify my request.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. TALENT. Mr. President, the Lord willing and the creek don't rise, as my mom used to say, I will not use the whole 30 minutes.

The PRESIDING OFFICER. The Senator is recognized.

CLONING

Mr. TALENT. Mr. President, 9 years ago, scientific advances in the technology of nuclear transfer permitted the cloning of a sheep named Dolly. The immediate reaction of most Americans, and most Members of Congress, was to try to make certain that this process was never used to create a human being, never allowing a human Dolly to be cloned. I remember thinking at the time that I personally did not want to live in a world where I was walking down the street and saw myself coming in the opposite direction.

Why this reaction? After all, cloning is an acceptable thing in the agricultural world. The difference, of course, is that human beings have a unique dignity. When parents decide to have a child, they do it for the benefit of the baby, to nurture that new life to live up to the potential and live out the plan which God created for him or her. All of us agree that people should not be cloned because the only reason you clone something is to use it, and human beings should and do exist for reasons of greater dignity than simply to be used by others. I think we all understand that if we were ever to allow a race of clones to be created as workers or body parts warehouses for society, we would cheapen the dignity of humanity to the point where none of the rest of us would be safe in our lives or freedoms.

Yet, despite this shared impulse against cloning, it has been 9 years since Dolly was created, and no safeguards against cloning have passed the Congress. Nor are there prospects of any such bill passing in the near future. The reason is that there is an area of overlap between the issues of cloning and stem cells. Many scientists believe that stem cells from a cloned human embryo may have unique advantages for medical research. This part of the scientific community has resisted the total ban on cloning which has been introduced each of the last 6 years in the belief that such a ban would inhibit one important aspect of stem cell research. Both sides have settled into what has now become a rigid stalemate, like the Western Front in WWI. Even though the idea of cloning human beings is morally repugnant to most of us, there is currently no Federal prohibition or even regulation of any aspect of human cloning, or for that matter of warehousing body parts and creating "fetus farms," and no prospect of getting such prohibitions.

I have spent the better part of a year researching this issue, meeting with people on all sides: groups who oppose cloning embryos to get stem cells, scientists who support it, parents who don't know who or what to believe but who are desperate for a cure for their children. Many to whom I have spoken have strong opinions about the underlying moral issues. In every case, I respected the sincerity and passion of those whom I spoke with. I have strong opinions of my own.

I believe human beings are precious. I am concerned about the tendency of our society to devalue people because they are too old, too young, or too inconvenient to have around. At the same time, I understand the desperation of parents whose children are sick or dying and who are desperate for treatments that will make them well. I often tour neonatal units. It breaks my heart to see children there fighting for life. I also meet with kids who are struggling heroically with chronic disease. I want to find cures for these children—but I also want them to grow up in a society that values them for their inherent dignity, for who they are, regardless of their age, infirmity, or level of achievement in the world's eyes.

Just because we are deadlocked about what to do in the present is no reason we cannot agree on what we want the future to be. We find ourselves at the beginning of a great new era of biology. I believe we can and should determine what our children's future will look like, and what objectives we want for our Nation. And, clearly, for all of us this would include progress in biomedicine built upon a solid foundation of moral principles in defense of human dignity.

I have come to the floor of the Senate today because there are just such hopeful prospects for the future. As is so often the case, the technology that generates the problem may also provide the solution. Just as recent scientific advancements created a moral dilemma, discoveries that are even more recent may provide a way out. Within a short time, it may be possible to get the exact stem cells researchers say they need without cloning an embryo. This means that we need no longer argue about such important but difficult questions as whether an embryo is fully a person or whether and when stem cell research may actually produce medical cures. The good news is that we can effectively prohibit human cloning and do it with a consensus that heretofore has not been possible; we can honorably reconcile our positions without requiring anyone to compromise their principles—provided that we are willing to approach the cloning issue humbly and practically, and provided also that both sides really do want what they say they want.

Mr. President, one of the difficulties with this issue is that much depends on understanding at least the basics of the science involved, and the science is complicated—especially for those of us who limped through high school biology. So I want to review some of the facts about stem cells and in particular about how stem cell research intersects with cloning.

A stem cell is a cell that does not itself perform a physiological or structural function in the body but instead serves as a source for cells that do perform such functions. During early development, stem cells help form the human body; in adult life, stem cells stand in reserve, to be used as needed to create new blood cells, brain cells, liver cells, and many other cells with a specific function in the body.

In current scientific language, there are two basic categories of stem cells: first, adult stem cells and, second, embryonic stem cells, which are also called pluripotent stem cells.

Adult stem cells exist all over the body. Their purpose is to maintain and repair damaged tissue. Science has known about, researched and used adult stem cells for years. To date, adult stem cell research has resulted in the development of a variety of therapeutic treatments for diseases: over 60 peer-reviewed treatments using adult stem cells exist today. These treatments include autoimmune diseases such as lupus and multiple sclerosis and blood diseases such as sickle cell disease.

A few years ago, American scientists announced that they had isolated stem cells from human embryos as well. These stem cells, called, naturally, "embryonic" stem cells, are the cells that, during the first days of life, begin dividing and differentiating, developing into the various parts of the body. Currently the cells can only be obtained from embryos created through in vitro fertilization, IVF. Once isolated, however, embryonic stem cells are self-replicating, which means an individual embryonic stem cell can produce tens of thousands of additional stem cells.

There is an important difference between "adult" and "embryonic" stem cells. Adult stem cells are found in the developed tissue or organs of the body and they can in general differentiate only to yield the cell types of the tissue or organ from which they came. In general, that means that an adult stem cell can become only one kind of tissue. A heart stem cell, for example, becomes heart tissue; a liver adult stem cell becomes liver tissue, and so on. Remember, the primary roles of adult stem cells are to maintain and repair the tissue in which they are found.

An embryonic stem cell, on the other hand, is considered "pluripotent." That means an embryonic stem cell could develop into any of the different cell types of the body. They could in theory, if properly controlled, be commanded to become any one of a number of different tissues. This is logical, because embryonic stem cells are derived from the very cells in the embryo that are awaiting genetic instructions on what organ or other part of the body they will become. It is important to remember that the major reason science wants embryonic stem cells is because of this pluripotent quality. The fact that pluripotent stem cells come from embryos is a problem rather than a good thing, because of the obvious ethical concerns in extracting a cell from a human embryo and thereby destroying the embryo.

Whereas the value of adult stem cell research is accepted by consensus, there is more controversy over the scientific efficacy of embryonic stem cell research. The pluripotency of embryonic stem cells gives them more diverse potential, since they can in theory be "programmed" to become any kind of tissue. In practice, controlling pluripotent stem cells enough to produce actual treatments has been very difficult, and researchers to whom I have spoken, while supporting research with these cells, have emphasized that cures are likely to be many years away, if they come at all.

Because of this, some have argued that pluripotent stem cell research is of negligible value and that we should feel no compunction about preventing such research. But too many scientists of different backgrounds have insisted otherwise for me to be certain of that conclusion. The truth is that it is simply too soon to know whether science can control pluripotent stem cells well enough to use them for medical therapies; to the extent there is a consensus on this issue, it is that such research is speculative but promising.

Even more recently science has determined that a third category of stem cells may be useful. These stem cells are genetically matched to the patients who need the cell therapies. For several years, scientists have believed that it may be possible to derive these genetically matched stem cells through a process called somatic cell nuclear transfer or SCNT.

In SCNT the nucleus of an unfertilized human egg, which contains 23 chromosomes, is removed and replaced by the nucleus of an adult body cell. The new "transferred" nucleus would be genetically complete, containing all 46 chromosomes of the donor cell. This imitates the effect of normal fertilization in which the sperm's 23 chromosomes add to the egg's 23 to make the needed 46. The egg with the transferred nucleus is then stimulated and begins dividing like a naturally fertilized embryo. If all goes well, in 4 to 5 days it gets to a stage of development, called the blastocyst, from which embryonic stem cells would be harvested. These stem cells would be distinct from the embryonic stem cells derived from IVF in that they would genetically match the donor. Proponents of SCNT are hopeful that assuming they can overcome the challenge of controlling the development of any pluripotent stem cell, and assuming that they can successfully complete SCNT at all, these genetically matched stem cells would be superior to other forms of pluripotent stem cells in curing disease.

Again, stem cell research in general has nothing to do with SCNT. It is only with respect to one particular type of embryonic stem cell—a stem cell which no one has ever developed but that might have incremental advantages over other embryonic stem cells—that science wants to do SCNT. The reason SCNT is controversial is that it is a form of cloning. In fact, it is the same technique that was used successfully to create Dolly the sheep.

Both the proponents and opponents of SCNT agree that, if successful, it would result in the cloning of a human embryo.

Some supporters of SCNT, however, argue that a human embryo does not become a human being until it is implanted in a womb, and that unless researchers intend to implant the cloned embryo, SCNT should be permitted. The opponents of SCNT believe just as passionately that a human being does not depend on developmental age, and that a human embryo is therefore a human being from its beginning. From this perspective SCNT is the creation of a human being for purely instrumental use exactly what, in theory, a cloning ban is designed to prevent. But up until now, both sides have assumed that any nuclear transfer procedure which would result in the creation of pluripotent stem cells must first have produced a human embryo.

Yet the most recent scientific developments suggest that this is not true. In May 2005 the President's Council on Bioethics released a white paper entitled "Alternative Sources of Human Pluripotent Stem Cells." In this report, the council outlined four specific proposals for a scientific solution to our current political impasse over stem cell research. In the months since that report was issued, progress in each of these approaches has been reported in the leading peer-reviewed scientific journals. Research on one of these proposals, altered nuclear transfer, is especially encouraging and suggests that all the scientific and medical goals of SCNT could be realized without the cloning or destruction of human embryos.

Remember, with somatic cell nuclear transfer researchers would take the genetic material out of a human egg, replace it with the complete genetic code of the donor, and then shock it so that it starts to divide. In theory, an organism created in such a way—artificially rather than naturally—could divide and grow until it became an adult human being. Altered nuclear transfer is a form of somatic cell nuclear transfer in that it uses nuclear transfer but with a preemptive alteration of the genetic material. To put it simply, the somatic cell is altered prior to being transferred. The resultant entity would be capable of producing pluripotent stem cells but because of the preemptive alterations during the transfer process it would be incapable, from its creation, of the organization and developmental potential that are the defining characteristics of an embryo.

Altered nuclear transfer is a broad umbrella concept with many possible specific approaches. For example, one proposed approach using ANT is called ANT-OAR. This form of ANT involves reprogramming the somatic cell to enter directly into a pluripotent stem cell state, without going through any of the normal developmental stages. All of this means that ANT could create genetically matched stem cells without ever having to produce anything with the capacity to be considered a human embryo.

This distinction between SCNT and ANT is vital from a moral and legal perspective. Until the last few months, everyone has assumed that nuclear transfer which was successful in generating pluripotent stem cells must first have created a human embryo. The entity which ANT could create would produce pluripotent stem cells from a laboratory-constructed cellular source lacking the developmental potential of a human embryo. In layman's terms, the entity which ANT would create could only develop for a few days and would then "close down." ANT thus transcends the moral dilemma which has heretofore prevented any legislation from passing. It renders moot the question of whether human life begins at creation or implantation of an embryo since the entity that ANT could create would not have at its inception the organizational and developmental capability to be considered a human life.

Further exploration of the ANT proposal already has the support of a long list of scientists and ethicists and religious leaders, including the former chairman of the U.S. Conference of Catholic Bishops Committee on Doctrine. The author and most vocal champion of ANT is Dr. William Hurlbut of Stanford. Dr. Hurlbut assured me months ago that ANT was technologically feasible and would soon be validated through animal models. And, indeed, just 4 months ago stem cell biologists, Alexander Meissner and Rudolf Jaenisch, of the Whitehead Institute at MIT, used altered nuclear transfer to produce fully functional pluripotent stem cells from a laboratory-construct that is dramatically different in developmental potential than a natural embryo. In testimony to an October 2005 Senate hearing on stem cells, Dr. Jaenisch explained that this procedure is simple and straightforward and does not involve the creation of an embryo. Dr. Jaenisch said, "Because the ANT product lacks essential properties of the fertilized embryo, it is not justified to call it an "embryo." That was October 19, 2005 testimony at an Appropriations Subcommittee on Labor, Health and Human Services, Education hearing on "An Alternative Method for Obtaining Embryonic Stem Cells." This scientific advance was widely reported precisely because it signals the end of the ethical dilemma in this area of research; it suggests that science may soon be able to get this special kind of stem cell—pluripotent stem cells that genetically match the donor/patient—without cloning, creating, or destroying a human embryo.

Mr. President, I appreciate the patience of the Senate in bearing with me as I wound my way through the scientific thicket. I believe it was necessary to lay this foundation before proceeding, and I suspect that the Senate may already see the practical suggestion which I see as the logical result given the latest technological developments and the current stalemate.

Again, to reaffirm my central point, many scientists have resisted a total ban on human cloning because they believed it was necessary to clone human embryos for a narrow purpose: to get pluripotent stem cells which are a genetic match of the person whom they hope to treat medically. However, it now appears that it will be possible to get such stem cells without cloning an embryo.

Some may argue that these alternative forms of nuclear transfer and other new technologies are unproven and may never produce usable new discoveries. But the same thing can be said of embryonic stem cell research in general and SCNT in particular. Bear in mind that science has yet to succeed in getting pluripotent stem cells from SCNT at all. Nor, for that matter, is there a single new cure from embryonic stem cells derived from any source. If researchers cannot learn how to isolate and control genetic signals, then pluripotent stem cell research will turn out to have little medical application; if such control does prove possible, then there should soon be no reason to have to get the stem cells by a method that clones or destroys a human embryo.

As I mentioned earlier, we appear to be at a legislative stalemate. The key to reaching the proper legislative solution, I believe, is to recognize that the new scientific developments create possibilities for an honorable reconciliation that simply did not exist at the time Senators developed and sponsored the various cloning bills that are currently introduced in the Congress. In effect, the new technology is rendering the approach of those pieces of legislation out of date.

For example, the main anti-cloning bill, S. 658, of which I am a cosponsor, would ban the use of nuclear transfer whenever it resulted in the creation of a human embryo or an organism that was "virtually identical" to a human embryo. This standard satisfies one of the important principles of the pro-life community, because it recognizes that the dignity of pre-born human beings doesn't depend on their gestational age. But it fails to account for the possibility, created by altered nuclear transfer and some of the other alternative methods, that an entity may be "virtually identical" to an embryo in the sense that it has a similar external appearance—and can seem to be developing as it divides—without ever possessing the inherent organizational capability to be rightly considered a human being.

Because of this, there is a danger that the language of S. 658, which was adequate when we all assumed that any entity capable of creating embryonic stem cells must be a human embryo, would outlaw or imperil precisely those alternatives which hold the greatest promise of allowing stem cell research while protecting the integrity of human life. I discussed this problem with Doctor Hurlbut and, in a recent letter, he expressed concern that S. 658 as drafted might be misinterpreted to outlaw ANT. He pointed out that the term 'virtually identical' is vague and unscientific and, therefore, could be open to misinterpretation either more broadly or more narrowly than intended by the proponents of this legislation.

The existence of alternatives like ANT actually strengthens the case of those of us who oppose the cloning of human embryos, since it promises another, ethically untroubling way of getting the same genetically matched stem cells scientists need. But it also shows that there is much about nuclear transfer that we have yet to discover, and it cautions against enacting criminal sanctions, like S. 658, that could have unintended consequences because they presume a scientific equilibrium that simply doesn't exist. Congress should still move effectively to prohibit human cloning but the approach of S. 658 needs to change. At minimum, the "virtually identical" language in S. 658 should be discarded, and the bill should specifically define when a cloned entity has the organizational capability and developmental potential to be considered a human being. But, I would prefer to enact a regulatory ban that could be adjusted over time to reflect changes in the science like ANT, perhaps after consultation with the President's Council on Bioethics, and I would couple that ban with aggressive funding of ANT and other alternatives, perhaps in the form of the competitive incentive program I will discuss in a moment.

The other main cloning legislation, S. 876, should, in light of recent developments, be equally unsatisfactory to many of its supporters, although for different reasons. S. 876 does not regulate the initial nuclear transfer process at all but simply bans implanting a cloned embryo. This is good as far as it goes, but S. 876 would provide no protection whatsoever to human life before implantation. Under generally accepted medical protocols today, science can't even experiment on animals if other methods of doing the same research are available, yet S. 876 would permit the cloning of human embryos for any purpose and under any circumstances, regardless even of whether the researchers need or intend to use the embryos for stem cell research.

The proponents of S. 876 were almost forced into this position to protect the stem cell research they thought necessary, because they believed, as we all did, that the only way to get genetically matched stem cells was through cloning and that any such cloning would necessarily produce a human embryo. But the evidence now suggests that this is not true. I am sure that the supporters of S. 876 are sincere in their belief that a human embryo does not acquire full personhood until some point after it is created. But I respectfully suggest that this view is no longer a reason, given the changing science, to continue supporting a legal standard that affords no dignity whatsoever to human life at its earliest stages.

The answer is for both sides to take advantage of scientific changes to find proposals which they can mutually support and which offer advantages to each compared to the current stalemate.

To that end, I propose a competition, to be managed by the National Institutes of Health, which would create incentives for our great research institutions to get the genetically matched stem cells we need without risking cloning an embryo. Simply put, the NIH would take applications from research institutions with research plans to accomplish the goal. The exact funding and practical details of this would have to be carefully worked out, but let me put forward a preliminary proposal. Five institutions would be selected for the competition and provided $10 million each to conduct their comprehensive plan. The first institution to successfully harvest genetically matched stem cells without cloning a human embryo would receive a prize of $20 million. NIH would develop the boundaries of the competition with the restriction being that the research could not violate the terms of the Dickey Amendment. Once ANT or one of the other alternative methods was successful and we had a proven means to get genetically matched stem cells without cloning a human being, the NIH could issue regulations requiring science to use that technology in its research.

The idea of a competition is not new. They have successfully been used for centuries to educate, inspire, and motivate. For example, Charles Lindberg won a $25,000 prize for the first nonstop flight between Paris and New York in 1927. In 2004, a company called Scaled Composites won a $10 million prize for the first privately funded manned suborbital flight from the St. Louis-based X Prize Foundation. Inspired by the success of the X prize—and with the support of Congress, the President and his Commission on Implementation of U.S. Exploration Policy—NASA has begun a federally funded program called Centennial Challenges that awards prizes to stimulate innovation in technical areas of interest to space exploration. In fact, the program manager at NASA, Brant Sponberg, said they expect to spend $80 million on prizes over the next 5 years.

A proposal of this kind moves us forward in a way both sides should be able to support. After all, the sole argument for SCNT is that we need it to get certain kinds of stem cells; the argument against it is that it involves the cloning of human embryos. If we can get the stem cells without the cloning, we render the current controversy scientifically obsolete. Science would have the stem cells it needs in a morally acceptable way that would allow for full Federal funding of stem cell research. The pro-life community would have an effective ban on human cloning. We would turn a zero sum game into a win-win proposition for everyone.

We are entering a promising new era in biomedical technology, but as our power over human life increases, so does the seriousness of the moral issues. It is important to acknowledge that both sides in this difficult debate are defending something important to all of us. We should all want to advance biomedical science while sustaining fundamental principles for the protection of human life.

Biomedical science should be a matter of unity in our national identity: no one should enter the hospital resentful that positive possibilities for the best therapies were not explored, or with moral qualms about the research on which their therapies have been developed.

The revelation that the South Koreans have not succeeded in obtaining pluripotent stem cells from cloned human embryo returns this research to square one. This presents to our Nation both a challenge and an opportunity: a social challenge to seek a way forward as a unified society, and an opportunity to set a solid scientific and moral foundation for future generations. The differences within our nation can be a source of strength as we seek to open a way forward for biomedical science. Altered nuclear transfer, and the other alternative approaches put forward by the President's Council on Bioethics offer us just such a path to progress.

We are at a difficult impasse, but we have extraordinary possibilities. Our current conflict reflects deep differences in our personal perspectives, but our wider goals are similar. Any purely political victory will leave our Nation bitterly divided and erode the social support that is essential for continuing public funding of biomedical science. It is with this recognition that I have put forward this proposal in a spirit of unity. And beneath this spirit of unity must be a spirit of humility: these are difficult issues and no one of us has the clarity of understanding or depth of knowledge to answer them alone. But with mutual good will we can transcend the current paralysis and find grounds for practical progress in scientific research. In his presentation on stem cell research last July to the Senate Appropriations Committee, Dr. Hurlbut said the goal should be to find "islands of unity in a sea of controversy." We can move from one such island to another and end up in a world of progress and decency. There is no reason to continue glaring at each other across the legislative barricades, when the means are at hand to embrace the future of developmental biology without moral qualms or political division?

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 30 minutes.

Mr. KENNEDY. Mr. President, will the Chair remind me when I have 5 minutes remaining.

The PRESIDING OFFICER. The Chair will so advise the Senator.

ASBESTOS

Mr. KENNEDY. Mr. President, the asbestos legislation which is before the Senate is both unfair and unworkable. It is unfair because many seriously ill victims of asbestos are completely excluded from compensation under the trust fund, and it is unworkable because the bill does not have adequate funding to ensure that all the victims who are eligible for compensation under the trust fund will actually receive what the legislation promises them.

These are fundamental flaws that cannot be corrected by a few last-minute amendments. They go to the heart of the bill. This bill will end up hurting the seriously ill victims of asbestos disease whom we are trying to help.

S. 852 fails the test of fairness for many of those most in need of assistance. Now is the time to take a serious look at how the proposed trust fund would operate—now, before it is too late.

Who would be excluded from receiving compensation even though they are seriously ill from asbestos exposure? Who would be left in legal limbo, ineligible for the trust fund and unable to pursue their claims in court?

I have said many times that the real crisis which confronts us is not an asbestos litigation crisis, it is an asbestos-induced disease crisis. We cannot allow the tragedy of these workers and their families' enduring to become lost in a complex debate about the economic impact of asbestos litigation. The litigation did not create these costs. Exposure to asbestos created them. They are the cost of medical care, the cost of lost wages, incapacitated workers, the cost of providing for the families of workers who died years before their time. Those costs are real.

No legislative proposal can make them disappear. All legislation can do is shift those costs from one party to another. Unfortunately, S. 852 would shift more of the financial burden onto the backs of injured workers. That is unacceptable.

Let's look at what this legislation would really do to victims. It would close the courthouse doors to asbestos victims on the day it passes, long before the trust fund will be able to pay their claims. Their cases will be stayed immediately. Seriously ill workers will be forced into legal limbo for up to 2 years. Their need for compensation to cover medical expenses, basic family necessities, will remain, but they have nowhere to turn for relief.

Under this legislation, even the exigent health claims currently pending in the courts, will be automatically stayed for 9 months as of the date of enactment. These cases all involve people who have less than a year to live due to mesothelioma or some other disease caused by asbestos exposure. Nine months is an eternity for someone with less than a year to live. Many of them will die without receiving either their day in court or compensation from the trust fund.

The stay language is written too broadly. It would stop all forward movement of a case in the court system. A trial about to begin would be halted. An appellate ruling about to be issued would be barred. Even the deposition of dying witnesses cannot be taken to preserve their testimony. The stay would deprive victims of their last chance at justice. I cannot believe the authors of the bill intended such a harsh result, but that is what the legislation does.

I strongly believe, at a minimum, all exigent cases should be exempted from the automatic stay in the legislation. Victims with less than a year to live certainly should be allowed to continue their cases in court uninterrupted until the trust fund becomes operational. Their ability to recover compensation in the court should not be halted until the trust fund is open for business and they are able to receive compensation from the fund. It is grossly unfair to leave these dying victims in legal limbo. For them, the old adage is especially true: Justice delayed is justice denied.

We should not deprive them of their last chance, their only chance to receive some measure of justice before asbestos-induced diseases silence them. They should be allowed to receive compensation in their final months to ease their suffering. They should be allowed to die knowing that their families are financially provided for. S. 852 in its current state takes that last chance away from them. I intend to offer an amendment that allows these severely ill victims to have their day in court.

I am particularly upset by the way lung cancer victims are treated in this bill. Under the medical criteria adopted by the Judiciary Committee overwhelmingly 2 years ago, all lung cancer victims who had at least 15 years of weighted exposure to asbestos were eligible to receive compensation from the fund. However, that was changed in S. 852. Under this bill, lung cancer victims who have had very substantial exposure to asbestos over long periods of time are denied any compensation unless they can show asbestos scarring on their lungs. The committee heard expert medical testimony that prolonged asbestos exposure dramatically increases the probability that a person will get lung cancer even if they do not have scarring on their lungs. Deleting this category will deny compensation to more than 40,000 victims suffering with asbestos-related lung cancers. These victims, many of whom will have their lives cut short because of asbestos-induced disease, will not receive one penny from the fund. They are losing their right to go to court. They are being denied any right to compensation under the fund. They are, in essence, being told to suffer in a legally imposed silence with no recourse whatsoever.

One of the arguments we hear most frequently in favor of creating an asbestos trust fund is that in the current system too much money goes to people who are not really sick and too little goes to those who are seriously ill. Lung cancer victims who have had years of exposure to asbestos are the ones who are seriously ill. They are the ones this legislation is supposed to be helping. Yet they are, under this legislation—not the previous legislation but under this legislation—completely excluded. Any person who was exposed to asbestos for 15 or more years and now has lung cancer should be eligible for compensation from the trust fund. Their cases would be reviewed individually by a panel of physicians to determine whether asbestos was a substantial contributing factor to their lung cancer. These 40,000 victims of asbestos should not be arbitrarily excluded from receiving compensation.

They were included in the original legislation. It was agreed to by medical experts for both business and labor. That provision should be restored to the bill. I will be proposing an amendment to rectify this serious injustice.

Another major shortcoming of this legislation is its failure to compensate the residents of areas that have experienced large-scale asbestos contamination. S. 852 simply pretends this problem does not exist. It fails to compensate the victims of all asbestos-induced diseases, other than mesothelioma, whose exposure was not directly tied to their work. There is very substantial scientific evidence showing that the men, women, and children who lived in the vicinity of asbestos-contaminated sites, such as mining operations and processing plants, can and do contract asbestos-induced diseases.

The reason this legislation needs a special provision to compensate the residents of Libby, MT, is because it does not compensate victims of community contamination generally. The residents of Libby are certainly entitled to compensation, but so are the residents who live near the many processing plants from my State of Massachusetts, in western Massachusetts, to California, that received the lethal ore from the Libby mine. The deadly dust from Libby, MT, was spread across America. W.R. Grace shipped almost 10,000 pounds of ore to processing facilities in the 1960s through the 1990s, including Easthampton, MA, in western Massachusetts, where the operations of an expanding plant spread the asbestos to the surrounding environment, into the air and onto the soil. I intend to discuss this problem in great detail as the debate moves forward.

I raise it now as a dramatic example of the unfairness caused by the arbitrary exclusion of a large number of asbestos victims from compensation under the trust fund. These red spots on this map are in States all across the country with similar problems. Yet every one of them is excluded.

Community asbestos contamination can result from many different sources. Medical experts, for example, say it may result from exposure to asbestos after the collapse of the World Trade Center. Because of the long latency period, we often do not learn about community asbestos contamination until long after it occurs. Certainly these victims of asbestos are entitled to fair treatment, as well. They should not be arbitrarily excluded from compensation, as if somehow their suffering is somehow less worthy of recognition than the suffering of asbestos victims. Yet that is what S. 852 does.

There are many of those victims. I have talked with the extraordinarily brave and courageous workers who came to the sites of the Trade Towers on September 11, working on those areas for days and weeks for an intense period of time, and their exposure to asbestos fibers during that work will pose an enormous health threat to them in the years to come. We all know there can be a significant period of latency. Are we going to exclude those extraordinary men and women who were out there trying to do an incredible job for the people, not just of New York but for our country? This legislation excludes them.

The asbestos trust fund is being presented as an alternative source of compensation for victims suffering from asbestos-induced disease. If that alternative runs out of money and can no longer compensate those victims in a full and timely manner, their right to seek compensation through the judicial system should be immediately restored with no strings attached. There is no principle more basic. Yet this bill violates that principle.

Our friend and colleague from Delaware intends to offer an amendment that if we run out of money, the provisions will be there for them to go back into the tort system. Just accept the Biden amendment. It makes it extremely clear and eliminates the roadblocks for going back into the tort system, as the current legislation does. As I understand it, there is not a willingness to accept the Biden amendment.

Another major flaw in this legislation is it lacks adequate funding. Putting it bluntly, S. 852 does not provide sufficient money to compensate the victims of asbestos diseases that it promises to cover. That is the essence of the budget debate we are having about the bill. The sponsors claim the budget point of order against the bill is technical, but the financial inadequacy of the trust fund to meet its obligation is very real. Should the trust fund fail, both asbestos victims and the taxpayers will pay a heavy price.

A broad range of experts have analyzed S. 852 and concluded that the asbestos trust fund created by this legislation is seriously underfunded. Senator CONRAD has addressed this in great detail. I certainly hope our colleagues will read his remarks carefully.

If S. 852 is enacted, the United States will be paying a commitment that hundreds of thousands of seriously ill asbestos victims will be compensated, but it will not have to ensure that adequate dollars are available to honor its commitment. That will precipitate a genuine asbestos crisis and this Congress will bear the responsibility for it.

Since the trust fund will be borrowing from the U.S. Treasury in the first few years of operation, if it becomes insolvent it will have a direct impact on American taxpayers. Let me point out, we do not do very well in setting up these trust funds to compensate individuals. We certainly have not done it with regard to the downwinders in other trust funds. There is little reason to believe we are going to do it or would do it in this circumstance, either.

The argument that there are serious inadequacies in the way asbestos cases are abjudicated today does not mean that any legislation is better than the current system. Our first obligation is to do no harm. We should not be supporting legislation that excludes many seriously ill victims from receiving compensation that fails to provide a guarantee of adequate funding to make sure these injured workers covered by the trust fund will actually receive what the bill promises them. This bill will do harm to these asbestos victims. I intend to vote no.

There is no reason, if we reject this legislation, we cannot come back with legislation that builds on a trust fund that is adequate and will do the job. That is what many Members believe is the way we ought to go. This is not such a bill.

THE BUDGET

Mr. KENNEDY. Mr. President, I will talk for a few moments about the budget that has been submitted by this administration in the last few days and how it fails to address those needs.

Effectively, in the budget the President has set up, we are going to see a very serious and significant decline in supporting some enormously needed programs that help to provide opportunities for so many of our people in this country, such as educational programs and health programs, all in order that we provide a tax break for individual Americans at the cost of $45 billion or $46 billion this year.

That is what a budget is about: priorities. When I go back to Massachusetts, one of the first orders of business people are talking to me about is: What in the world did the Congress ever do in passing that prescription drug program?

I take pride in the fact we passed in the Senate a very good prescription drug program with Senator BOB GRAHAM from Florida. We received over 70 votes in the Senate. We built that program using the Medicare system, which is tried, tested, and depended upon by millions of Americans.

Medicare was defeated in 1964 and accepted in 1965 in the Senate. Right after that, we accepted the Medicaid Program to look after the neediest people in our society—primarily children, women, and disabled individuals—to take care of the poorest of the poor.

Those programs were implemented in 11 months—11 months. It has been over a year for this program to be implemented. And they did not have a computer in 1965 to implement it, but it worked on the principle of building the Medicare system similar to Social Security. American people had confidence in it, and it worked.

Well, we went to conference with the House of Representatives, and that is when the influence of the insurance industry and the drug industry came to play. They basically hijacked what was going to be a Medicare prescription drug program for our senior citizens, in a way, and drafted that program to serve not the senior citizens—not the senior citizens—but to serve the special interests.

I opposed that on the floor of the Senate. Our Republican friends forced that on through. And now it is chaos in my State of Massachusetts with that prescription drug program. Why, at least, didn't our Republican friends say: All right, let's have some real competition: let's put the private sector and Medicare—let them compete and let our senior citizens make the choice.

Do you think they would do that? No. They would not bring a program back here that was built on the Medicare system. They would not permit the seniors in my State to be able to make a choice. But they will say: We trust Medicare. It provides for our doctors' bills. It provides for our hospitalization.

The PRESIDING OFFICER. The Senator has 5 minutes.

Mr. KENNEDY. In 1964 and 1965, when you passed that, you did not include prescription drugs because 97 percent of the private sector did not include prescription drugs. Why didn't we do the prescription drug program just like we did the Medicare Program? Simple, workable, understandable—finished.

No, no, we can't do that. We have to do it a different way. We are going to have—instead of the Medicare system, which is tried and tested and people understand—we are going to give the seniors in Massachusetts 45 different programs with different copays, different formularies, different deductibles.

There is mass confusion with that program. Not only is there mass confusion, but you have the extraordinary circumstance that when a senior says: OK. I like this formulary. I can afford this deductible. I can afford this copay. I think I will go into this because of the cost of prescription drugs—and they sign on to it. There is an enormously interesting fact; that is, the company they sign up with can change their formulary, can change the deductible and copay. Do you think the senior can get out of that program without paying a penalty? Of course, they cannot. What kind of business is it? They feel, if the private sector can do it so well, why don't we have the competition?

Why did we have to provide a 9-percent inflater cost for all the HMOs, when people who are in the HMOs are 18 percent healthier than they are in Medicare? Add that together, my friends, and it is 25 percent more if you are in the HMO than if you are in the Medicare system. Why? Well, if that is the private sector, why isn't the private sector able to compete? Because this amounts to about a $40 billion subsidy. Do you hear me? A $40 billion subsidy, just like it is about a $170 billion subsidy for the drug industry.

People wonder why the copayments are higher. Would people wonder why the doughnut is there? There it is, my friends. And with all the reforms we hear talked about, do you think we are going to get a chance to support a change in that program by adding a—build it on Medicare. Let's do that. Let's add that. Have a real even competition and see what happens out there.

But many of my colleagues feel that way. We are going to press to try to do it. The point I am making is, I care deeply about these asbestos victims. It is enormously important we get it right. This bill does not do it. But we are in this Congress, on a Friday, at 10 minutes of 11, with an empty Chamber. Why aren't we dealing with the challenges and the problems of the people back home?

I can tell you what they are concerned about. Why aren't we debating this Medicare today, this afternoon? Why are we so busy in what we are doing that we are not dealing with this issue? Why aren't we dealing with their home heating oil and the priorities? We have the President in his budget recommending, for this year, $500 million less for home heating oil than even last year, with record profits for the oil industry—unconscionable profits for the oil industry. Paid for by whom? Average Americans. Unconscionable.

Why doesn't this President today, on this Friday, bring in the heads of the oil companies all over the country and say: You have drunk at that trough long enough. There are people up in New England and the upper Midwest and around this country who cannot afford it—who are on a fixed income—with the explosions in the cost. Because of the war in Iraq, oil costs $60 a barrel. They did not have anything to do with it. The oil companies are reaping profits because we have turmoil in the Middle East. And we are doing virtually nothing about that this afternoon, except facing a budget that is going to make it even more difficult.

In my State, the average home owner uses three tankfuls a year—three tankfuls a year—of oil. And the neediest people in our State who qualify for this program are going to get, this year, about one tankful. And what is the prospect for next year with the home heating oil price that we have today? They are not even going to get a full tank for the next year, unless we are—well, Mr. President, I am going to seek recognition in my own right at the present time. My time has expired?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. Mr. President, I ask for recognition.

The PRESIDING OFFICER. The Senator is recognized in morning business for up to 10 minutes.

Mr. KENNEDY. Mr. President, we are talking about priorities. We are giving examples of what has been happening in terms of the cost of LIHEAP and the fuel assistance programs. Shown on this chart are all the costs going right up through the roof. We have the challenges we have been facing out in the Middle East. Education.

Why are people so concerned about a culture of corruption that has taken over in Washington? Why are they so concerned about lobbyists? Why are they so concerned about special interests? We have that debate. We are going to try to get action on this, which I will certainly support.

What we have not talked about is what those lobbyists have been doing, what the impact has been on various programs that affect working families in the middle class. I will give you one of them. Higher education. The bill that came out of the Senate had $8 billion in student assistance. The bill that came out of the House had $3.8 billion in student assistance and provided $12 billion in tax breaks for the wealthy people of this country. I call that a tax on middle class people, my friends, in order to give a tax break to the wealthiest individuals.

Do you understand what I am saying? The lobbyists were able to make the student loan program work for the banks and the wealthy in this country at the expense of the middle-income families who are paying those debts now for their children to go on to education.

In my State, 67 percent of the children who go to those schools and colleges in my State get student aid and assistance. That does not include what they earn at summer jobs and what their parents contribute. They need these programs. We have seen an explosion in student loans over the period of the last 5 or 7 years. Who has been working and who has been profiting? It has been the banks—the banks.

Do you think this Senate would stand for a competition for who would provide the lowest rates for students so we could take the total student loan program and put it out for bid—for bid—similar to competition, free enterprise? Absolutely not. Absolutely not. There is that cozy relationship that exists now with Sally Mae and the loan industries that pay their executives hundreds of thousands of dollars, contribute millions and millions of dollars. And they are getting it their way.

The American people ought to understand that the lobbying has direct results. President Bush, in his last campaign and his campaign previously, said: We are going to get the Pell grants up to $4,500—$4,500. Do you think it is in that budget? Do you think it is even in his budget requesting $4,500? No. I have read the space. Do you think that is in there? No. That is not even in there.

So if you are talking about what is bothering people, pick up today's newspapers. Here it is: "Mining fines among smallest." Laws limit size and allow reduction. This is the difference between the mines' penalties and the fines that are paid for other consumer product safety violations of the FCC, SEC, EPA, even OSHA. The bottom is on mine safety. That might not have saved all the lives. That might not have even saved half of the lives of those miners who have been lost, but why aren't we debating what is on the minds of the people in West Virginia, Pennsylvania, and other States today? Why aren't we dealing with their business?

Here we have on the front page of another newspaper: "White House knew of Levee's Failure on Night of Storm." This is all about Katrina and what has been going on. Sure, we have had some hearings, but why aren't we talking about some of this that is on the minds of the people? Certainly, it is on the minds of the people of Louisiana, Mississippi, and Alabama. Why aren't we talking about that this afternoon? Why aren't we doing some of that business? And then, if you look in the Washington Post: "Ex-CIA Official Faults Use of Data on Iraq."

> The former CIA official who coordinated U.S. intelligence on the Middle East until last year has accused the Bush administration of "cherry-picking" intelligence. . . .

And this goes all the way through, basically saying:

> "Our official intelligence on Iraqi weapons programs was flawed, but even with its flaws, it was not what led to the war," . . . Instead, he asserted, the administration "went to war without requesting—and evidently without being influenced by—any strategic level intelligence assessments on any aspect of Iraq.

People want to know. American sons and daughters are dying over there. Why aren't we talking about this?

My point is, this budget the President has put forward is not what the American people expect. It is not what they deserve, not what they are entitled to. Many of us are going to work every possible way. It is the allocation of resources. Money does not solve everything, but it is an indication of a nation's priorities—a nation's priorities as to lower heating oil costs, a nation's priorities in terms of lower drug costs, a nation's priorities in terms of education costs, a nation's priorities in having an increase in the minimum wage.

These are the things that are of concern to people. I would hope we would get back to the Nation's business and get back to it soon. Americans are entitled to it, and we have waited too long to be able to do it.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

GRAMMY WINNER BARACK OBAMA

Mr. DURBIN. Mr. President, my colleague in the Senate, Senator BARACK OBAMA of Illinois, is carrying on a grand Illinois tradition. In the history of the United States of America, only two U.S. Senators have ever won a Grammy award. The first was Senator Everett McKinley Dirksen from Pekin, IL for his album "Gallant Men," which many of us can still recall, his deep baritone voice intoning those great patriotic verses that inspired so many.

Now another Senator from Illinois became the second Senator in history to win a Grammy award in the best spoken word category at Wednesday's Grammy Awards ceremony. Senator OBAMA won his Grammy for recording his autobiographical book "Dreams for My Father." The book was first published in 1995. It is an inspirational book, telling the story of not only BARACK's life but also of his quest to understand his heritage, returning to Kenya to the tribe where his father was raised, to meet the people, to learn the stories about his origins and his family's roots. It is a wonderful book. It has become a best seller. I was given a copy by BARACK long before he announced his candidacy to the Senate and value it as a great story about a great American with whom I am honored to serve.

There was stiff competition in that category for the spoken word. BARACK OBAMA prevailed. But others in the finals included Garrison Keillor, Al Franken, Sean Penn, and George Carlin. Who came out on top? The junior Senator from Illinois, BARACK OBAMA.

I understand that Senator HILLARY CLINTON won a Grammy when she was First Lady. Now, of course, she is a distinguished Senator from New York. But she won one for recording "It Takes a Village." Her husband, former President Bill Clinton, won a Grammy for the reading of his autobiography "My Life."

So far it is a clean sweep for Illinois Senators at the Grammies. With this distinguished record, many people will want to continue to follow the career of my junior colleague, Senator BARACK OBAMA.

SOCIAL SECURITY

Mr. DURBIN. Mr. President, I rise to speak to an issue important to every American, certainly important to more than 40 million who are on Social Security. Buried deep in the President's 2,349-page budget are three proposals relating to Social Security. Some of them come as a surprise.

First, President Bush recommends spending more than $700 billion to create Social Security private accounts. If we thought this was an issue that had gone away, obviously the White House does not want to abandon it. They are talking about $700 billion to push for Social Security privatization. Second, the President wants to reduce benefits to future Social Security beneficiaries. And third, he calls for eliminating the $255 death benefit awarded to families of people who passed away.

The American people have made it clear to the President they are not interested in this privatization scheme. The more the President traveled across America, the more he spoke about it, fewer people supported it. It is an indication that people have genuine concerns about it and for good reason. First, they know this privatization scheme is going to make Social Security's long-term funding problems worse, not better. Second, the President's proposal will force deep cuts in guaranteed Social Security benefits for future retirees, even if they don't choose a private account. Third, partially privatizing Social Security adds trillions of dollars to our national debt by taking money out of the Social Security trust fund. And that debt, under President Bush, has reached historic levels. Finally, partially privatizing Social Security would tie America's retirement security to the uncertainty of financial markets. As there are winners and losers in the stock market every day, there would be winners and losers among retirees in America. Those who guess wrong in their investments could easily end up in a predicament where they don't have the resources they need for a safe and comfortable retirement.

The President says he is for the ownership society. We know what that means. It means we are all in this alone. We know better. When we stand together as an American family with our seniors and our most vulnerable Americans, we are stronger, stronger because we are appealing to the values that make this Nation great. Social Security privatization is not consistent with those values.

Allowing people to divert 4 percent of their Social Security taxes into private accounts sounds harmless, but it is a pay-as-you-go system. Money that is diverted is money that isn't there to pay benefits. By the President's estimation, his plan will create a $700 billion hole in the Social Security trust fund. That is what it says in the President's budget. Who is going to make up the difference? Unfortunately, some will suggest the way to make up the difference is to borrow it. Who will lend us the money? We know who our creditors are: Japan, China, Saudi Arabia, the OPEC nations. Many countries around the world will loan us money now, but then, of course, they are our creditors. They are our mortgageholders. We are beholden to them, creating an even greater debt for future generation, and greater vulnerability.

The benefit cuts the President has called for as well are not going to fly. He calls these benefit cuts progressive price indexing. It sounds good, cutting benefits for lower income workers less than for higher income workers, but the practical impact of the President's budget on Social Security benefits would mean that a worker 25 years old today, who retires at age 65 with career earnings equivalent to $59,000 annually, would see a 24-percent benefit cut by the President's proposal. A similar worker, born 5 years from now, retiring at age 65, average career earnings of $36,000, would face a 28-percent benefit cut. As people see their pension plans crumbling because of corporate mergers, bankruptcies, and sleight of hand, the President is calling for cutting basic Social Security benefits to people who are certainly not wealthy, if their average income is $36,000 a year. These workers would be better off if the President didn't touch Social Security.

A worker born 5 years from now who retires at age 65 and has career earnings that average $59,000 would suffer a 42-percent benefit cut.

This goes too far. I hope the Congress will not seriously consider these proposals by the President when it comes to Social Security.

It is interesting that this President is calling for cuts in Social Security at the same time he wants to cut the taxes paid by the wealthiest people in America. The cost of the President's tax cuts in 2001 and 2003, if made permanent, will be $11.1 trillion over the next 75 years. It is the height of irresponsibility to give tax cuts to the most comfortable and wealthiest people in America and to cut the basic social safety net on which we count.

Finally, the President's budget proposes to cut the $255 death benefit awarded to widows, widowers, and children left behind by the death of a member of their family who was covered by Social Security. The President would cut the $255 death payment to widows and surviving children to pay for funeral expenses and then turn around and give a tax cut to people making over $1 million a year. How can he possibly resolve the injustice that is part of that proposal?

If we are supposed to be a caring and compassionate people—and we are—wouldn't we care more for a widow who would get a check for $255 to pay for funeral expenses than someone making $1 million a year who would receive a $35,000 tax cut under the President's proposal? That is why the President's priorities are upside down.

As Members start looking through this budget more closely, as we have, they are going to be startled by the fact that the President still clings tenaciously to the unpopular privatization of Social Security. They will be worried over the idea of cutting Social Security benefits when pension plans are disappearing and cutting back their payout. They will be absolutely dumbfounded when they read that this President wants to cut that $255 check for the widow to cover funeral expenses in order for us to give tax cuts to wealthy people.

The President said it is time for us to put aside partisan politics when it comes to Social Security and work together to get this problem solved. That is what he said in the State of the Union.

He proposed we create a commission. I support it. We have said that for a long time. Those of us who were fortunate enough to be here the last time a meaningful, bipartisan, balanced commission was created know that back in 1983 we got the job done. President Reagan had the right idea. Tip O'Neill, the Democratic leader in the House of Representatives, joined with him on a bipartisan basis and we ended up buying almost 50 years of solvency by following those commission recommendations. The same thing is true now.

The President has to walk away from privatization, walk away from deep cuts in benefits for people who are not wealthy in retirement. He certainly should not walk away from the widows and widowers across America who count on this $255 check to meet some of the expenses of people who have passed away in their families. I urge my colleagues to look carefully at this budget when it comes to Social Security.

I close by saying when we return next week, we will take up another bill on reconciliation. It is an important bill about taxes and spending. It is going to reflect the President's priorities for tax cuts for the wealthiest in America and little or no help for the working families in America. These are the families struggling to pay for their kids' college education, trying to make mortgage payments, pay those property taxes, and trying to make certain they are paying the heating bills that have doubled this year. Why would we not give them a helping hand?

Unfortunately, the President's proposal puts the help in those homes that, frankly, are not worried too much about heating bills. They don't have to count pennies every month. We will face that again, and then we will return to the asbestos bill, which we have talked about all week. The first thing we will consider is a budget point of order that was raised by Senator JOHN ENSIGN from Nevada. It goes to the heart of this asbestos trust fund, and that is whether we are dealing with honest figures and whether we can say with confidence that this trust fund, which will close down the courthouses in America for asbestos victims, can truly be solvent for years to come and pay out to those victims and their families what they truly deserve.

Many of us questioned that. We asked the sponsor of the bill to justify the $140 billion and tell us how he came up with that figure. Unfortunately, he cannot. We have asked him to give us the secret list that has the names of all of the businesses that are supposed to pay into this trust fund. Still no list is produced. Imagine that, a secret list of businesses in the possession of the Committee on the Judiciary that will not be shared with all of the Members of the Senate or, more importantly, with the American public. So we are supposed to have confidence in an approach that is veiled in secrecy and cannot be explained? That is why Senator ENSIGN's point of order is so important.

Even if you believe, as I do, that the asbestos system can be improved and that survivors should receive more compensation, in a more efficient way, we have to understand that this approach will not work. It will fail and its failure will be at the great expense of a lot of vulnerable Americans.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REED. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REED. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

Mr. REED. Mr. President, I would like to begin my remarks today speaking about a topic that I have been involved with, along with many of my colleagues for months now. That is LIHEAP funding.

If you look at a weather map, you will see that temperatures across much of the United States are only expected to be in the thirties and forties today. Winter has finally arrived. In Providence, the high is only projected to be 19 degrees. A nor'easter is on its way up the east coast; they forecast snow that will hit here in the DC area tomorrow, all the way up to New England, and so winter has arrived.

I wanted to mention the weather forecast because we are at the end of the second week of February, and there is no new funding for the Low-Income Home Energy Assistance Program, and as far as I know, there are no plans by the majority to bring to the Senate a vote on a $2 billion LIHEAP funding proposal. This funding proposal was removed from the Department of Defense Appropriations bill conference report. It was one of a few items that was stripped out, there were many other nondefense items that were included in the Defense Appropriations conference report in December, but for some reason this was dropped. I think a reason it is adversely affecting thousands and thousands of Americans across the country, ranging from the Northeast into the mid-Atlantic, across the Midwest, out into the far West. People are struggling with rising energy prices, and today, falling temperatures.

On Monday, a bipartisan letter signed by 34 Governors urged Congress to pass $2 billion in immediate additional LIHEAP assistance. These are Governors from across the country, Governors that are of both party affiliations, Governors who are trying to respond to these conditions of both weather and extraordinary price increases.

The letter states:

> LIHEAP applications are projected to increase by as much as 25 percent in some States . . . If Congress does not increase LIHEAP funding in the next few weeks, state programs across the country could run dry and the number of households unable to meet their basic heating needs could skyrocket.

I ask unanimous consent that both of these letters be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FEBRUARY 6, 2006.

Hon. BILL FRIST,
Majority Leader, U.S. Senate.
Hon. HARRY REID,
Minority Leader, U.S. Senate.
Hon. J. DENNIS HASTERT,
Speaker, House of Representatives.
Hon. NANCY PELOSI,
Minority Leader, House of Representatives.

DEAR SENATOR FRIST, SENATOR REID, SPEAKER HASTERT, AND REPRESENTATIVE PELOSI: For several months this winter, states have taken steps to help assure that our most vulnerable residents are not overwhelmed by the sharp rise in home heating costs. This has often meant significant state contributions to emergency relief funds or supplementing existing state-federal programs. Despite these actions by the states and the record cost of energy nationwide, federal funding for the Low Income Home Energy Assistance Program (LIHEAP) reflects a net decrease from the previous fiscal year's total. We urge Congress to join the, states in meeting the well-documented need for additional home heating assistance by passing $2 billion in immediate additional LIHEAP assistance.

Governors supported the progress that was made when LIHEAP was authorized at $5.1 billion in the Energy Policy Act of 2005, but were disappointed when Congress appropriated only $2.16 billion for FY 2006. While we appreciate the President's recent release of an additional $100 million of emergency LIHEAP funds and Congress' proposal to add $1 billion for FY 2007, urgent action is needed to address the Energy Information Administration (EIA)'s prediction of a 30 to 70 percent rise in consumer energy costs this winter.

Covering dramatic increases in natural gas and heating oil prices presents a potential hardship for our citizens. LIHEAP applications are projected to increase by as much as 25% in some states. As noted above, many states, energy industry leaders, and private citizens have done their part by increasing investments in the program. We are asking you to join us by sending legislation to the President that provides enough funding to meet our low-income citizens' energy needs for 2006. If Congress: does not increase LIHEAP funding in the next few weeks, state programs across the country could run dry, and the number of households unable to meet their basic heating needs could skyrocket.

Our states are in the process of documenting the potential shortfalls in LIHEAP funding and the supplemental funding states have already provided. We look forward to sharing that information with you shortly. Thank you for your consideration of this request and your continued commitment to assisting our neediest families. We hope that you will take this opportunity to actively support the LIHEAP program.

Sincerely,

Governor Frank H. Murkowski, Alaska; Governor Janet Napolitano, Arizona; Governor M. Jodi Rell, Connecticut; Governor Ruth Ann Minner, Delaware; Governor Rod Blagojevich, Illinois; Governor Mitch Daniels, Indiana; Governor Thomas J. Vilsack, Iowa; Governor Kathleen Sebelius, Kansas; Governor Kathleen B. Blanco, Louisiana; Governor John Baldacci, Maine; Governor Robert L. Ehrlich Jr., Maryland; Governor Mitt Romney, Massachusetts, Governor Jennifer M. Granholm, Michigan; Governor Tim Pawlenty, Minnesota; Governor Brian Schweitzer, Montana; Governor Dave Heineman, Nebraska; Governor John Lynch, New Hampshire, Governor Jon S. Corzine, New Jersey; Governor Bill Richardson, New Mexico; Governor George E. Pataki, New York.

Governor Michael F. Easley, North Carolina; Governor John Hoeven, North Dakota; Governor Bob Taft, Ohio; Governor Brad Henry, Oklahoma; Governor Ted Kulongoski, Oregon; Governor Edward G. Rendell, Pennsylvania; Governor Donald L. Carcieri, Rhode Island; Governor Jon Huntsman, Jr., Utah; Governor James Douglas, Vermont; Governor Timothy M. Kaine, Virginia; Governor Christine O. Gregoire, Washington; Governor Joe Manchin III, West Virginia; Governor Jim Doyle, Wisconsin: Governor Dave Freudenthal, Wyoming.

U.S. SENATE,
Washington, DC, January 25, 2006.

Hon. WILLIAM H. FRIST,
Majority Leader, U.S. Senate, Washington, DC.

DEAR MAJORITY LEADER FRIST: High energy prices are threatening the health and economic well-being of low-income households across the United States. No family in our nation should be forced to choose between heating their home and putting food on the table for their children. No senior citizen should have to decide between buying life saving prescriptions or paying utility bills. Unfortunately, these stark choices are a reality for too many Americans across the nation. We strongly urge you to take immediate action to help low-income Americans by bringing a measure to the floor that provides an additional $2.92 billion for the Low-Income Home Energy Assistance Program (LIHEAP), as supported by the majority of the Senate.

Since October 5, 2005, the Senate has voted six times to increase LIHEAP funding to $5.1 billion. Bipartisan amendments offered to the Department of Defense Appropriations bill, the Transportation, Treasury and HUD Appropriations bill, the Labor, Health and Human Services and Education Appropriations bill, and the Tax Reconciliation bill received a majority of the Senate's support. Unfortunately, these amendments were not given the opportunity for a straight up-or-down vote. In December, 63 Senators supported a successful motion to instruct, which directed the Budget Reconciliation Conference Committee to provide $2.92 billion in additional funding for LIHEAP in FY 2006. Yet, the conference report for the Budget Reconciliation bill includes only $1 billion, with this spending designated for FY 2007. Procedural maneuvers are preventing vital assistance from reaching Americans. These families and seniors deserve help from the federal government.

As you know, the Department of Defense (DoD) Appropriations Conference report originally provided an additional $2 billion for LIHEAP. The LIHEAP funding provided by the DoD conferees was designated as emergency funding. The emergency designation funding is warranted given the high cost of energy this winter, and the lack of growth in workers' wages. Unfortunately, other more controversial matters included in the conference report prevented the retention of the LIHEAP money in final action on that bill.

The Energy Information Agency forecasts that households heating with natural gas will experience an average increase of 35 percent over last winter. Households heating with oil will see an increase of 23 percent, and households using propane can expect an increase of 17 percent. In addition, wages are not keeping pace with inflation. The Real Earnings report by the Bureau of Labor Statistics shows that the average hourly earnings of production and non-supervisory workers on private nonfarm payrolls were lower in December 2005 than they were a year ago, after accounting for inflation. Working families are continuing to lose ground, meaning more families also need LIHEAP assistance this year. Paychecks are being stretched thinner as families face higher prices for home heating, health care, and education.

We respectfully request that you bring a measure to the Senate floor at the end of this month, or at the latest, early February, that funds LIHEAP at the $5.1 billion level supported by the Senate. We also urge that these resources be allocated in such a way that they will benefit all states and ensure they receive this necessary assistance promptly. American families and seniors have been waiting too long for relief from high energy costs. Thank you for your consideration for this essential request.

Sincerely,

Jack Reed, Maria Cantwell, Byron L. Dorgan, Paul S. Sarbanes, Charles E. Schumer, Edward Kennedy, Tom Harkin, Jeff Bingaman, Barbara Boxer, Herb Kohl, John F. Kerry, Barack Obama, Hillary Rodham Clinton, Daniel K. Akaka, Max Baucus, Barbara A. Mikulski, Patrick J. Leahy, Debbie Stabenow, Carl Levin, Mark Dayton, Joseph R. Biden, James M. Jeffords, Patty Murray, Dick Durbin, Robert Menendez.

Mr. REED. According to the National Energy Assistance Directors Association, the following States have exhausted their LIHEAP funding or will do so by the end of the month: Alabama, Arkansas, California, Georgia, Iowa, Maine, Oklahoma, Oregon, South Dakota, Rhode Island, Utah, New Hampshire, Washington, and Ohio. This is a broad-based problem, transcending all regions of the country and, again, a direct reflection of high energy prices and falling temperatures.

High energy prices are threatening the health and economic well-being of low-income families and seniors across the United States and we must provide additional LIHEAP funding this winter.

On Tuesday, the Energy Information Administration released its Short-Term Energy Outlook. The data was not encouraging. Despite our relatively mild winter, households heating primarily with natural gas can expect to spend 24 percent more on fuel this winter than last winter. If a household is heating with oil, it can expect to pay 16 percent more. Those households depending on propane can expect to pay 14 percent more this winter than last. And to quote the EIA, the Energy Information Administration:

> Should colder-than-normal weather occur for the remainder of the heating season, expenditures could be significantly higher than currently projected.

These are costs that are piling up on working families and at the same time they are seeing their wages stagnate, not keeping up with inflation and not keeping up, certainly, with energy costs. Working families are continuing to lose ground, meaning more families need LIHEAP assistance as a result. So the paychecks are being stretched thinner and thinner as families face higher prices for home heating, in addition to health care, in addition to education. So we have to do something, and I believe we should do something.

At least five times over the last several months, the Senate has, by majority vote, supported an increase in LIHEAP spending at least to the $2 billion mark. But, because of the procedural rules, budget objections, we could not prevail, even though we had a majority of Senators on both sides of the aisle. I think that sends a strong signal that not only can we act, we should act.

Now I will urge the majority leader to take immediate action to help these low-income Americans by bringing a measure to the floor that provides the full $2 billion in additional LIHEAP funding. And, I also ask the President, and the White House to stand on the side of American families to urge this to be done. They should release a public statement supporting additional LIHEAP funding.

Also, the White House can act immediately by releasing the remaining $100 million in LIHEAP contingency funds provided in the fiscal year 2006 Labor, HHS, and Education Appropriations bill. If you go back to the Governors of our States, who are close to this problem, if you look at the States that are exhausting their LIHEAP funds—and it is still only February—we could have 8 more weeks of rather cold temperatures. Indeed, if the weather evens out, we should have 8 more weeks of cold temperatures because it has been mild to this point. But these States of Alabama, Arkansas, California, Georgia, Iowa, Maine, Oklahoma, Oregon, South Dakota, Rhode Island, Utah, New Hampshire, Washington, and Ohio need this assistance and we should give it to them.

THE BUDGET

I will make more general comments about the budget. Part of it is, of course, the inability to respond to the heating crisis. I think there is a much greater set of issues confronting us with the budget the President sent up. I have deep concerns about the President's fiscal year 2007 budget. It neither meets the pressing needs of the American people nor addresses the long-term challenges that lie ahead. Clearly, we are in for another year of policies that do not help the average family or bring down the deficit. I suspect these are the two major criteria most Americans will judge this budget on: Will it assist families, working families, in the country to move forward? Will it begin to tackle some of the long-term problems we face?

It is tremendously disappointing that the President's budget has cut funding for programs that are important and vital to the well-being of children, education, economic success, and the safety of Americans. While the budget was appropriately invested in national security, it unfortunately leaves our citizens behind here at home in many different capacities. In addition, the President's budget seeks to make costly tax breaks for the wealthiest Americans permanent, at a time when we are facing one of the largest deficits in the history of the country.

The administration strains to show progress reducing the deficit, but in fact it exaggerates the deficit in the short run and understates it in the future by leaving out big-ticket items, such as war costs. We will shortly receive an approximately $100 billion supplemental for operations in Iraq and Afghanistan. It would be unfortunate not to support our troops in the field, but we have responsibilities of not only supporting troops in the field but doing it in a responsible way. And it is not by accumulating each year billions of dollars in supplemental appropriations; it is in trying to deal with these costs. Certainly it is including those costs in any projection of the way ahead with respect to the budget of the President.

The President also has not clearly indicated how we are going to attempt to fix the alternative minimum tax. This is a tax which is gradually encroaching on the middle class of America. It was originally designed to provide default for those wealthier Americans who could, through very shrewd but legal tax planning, avoid any significant tax liability. Now, because of the design of our tax system, it is reaching down into the middle class. It is a multibillion-dollar problem we have to address. Once again, that is not in the budget.

We know these large deficits will increasingly hamper our ability to sustain the economy in the long run. And no matter how rosy a picture the administration tries to paint, neither the President nor future fiscal outlooks look particularly bright given this current deficit situation.

This first chart shows what has happened over the last several years. When President Bush took office, the Congressional Budget Office projected large and growing Federal budget surpluses under existing laws and policies, the so-called baseline. We can see in the year 2000 there was a $236 billion surplus. That was projected to go to $281 billion, $313 billion, $359 billion, all the way to the year 2006 with a $505 billion surplus. That is the projection.

The reality is the surplus has been declining, until 2002 it reached a minus $158 billion, a deficit of $158 billion, and the numbers go down, go down in 2004 to $413 billion. There was a slight improvement, and one can argue about whether that is a one-time phenomenon based on some tax provisions we passed. The forecast of CBO for 2006 is $337 billion. That is a huge swing just at a time when we are approaching significant challenges with respect to the baby boom generation in Medicare, Social Security, and Medicaid.

This has been a huge reversal of fortunes. In 2000, CBO was predicting a $5.6 trillion 10-year surplus from 2002 to 2011. This has turned into a deficit of $2.7 trillion. That is, by my rough calculation, roughly an $8 billion swing from positive to minus. One can just see the difference in 2006: a $505 billion surplus to a $337 billion deficit. That is an $800 billion-plus swing between the projections and the reality, the result of the policies the President has adopted, the result of some costs which could not be avoided—certainly in response to 9/11—but many other costs which were capable of being, if not avoided, then properly funded. Certainly the tax cuts contribute significantly each step of the way as we go forward.

Instead of sound budget policies preparing for the immediate retirement of the baby boom generation, the Bush administration and the majority of Congress have refused to adopt the kind of budget enforcement rules which help achieve fiscal discipline in the 1990s.

Let me remind you that when I arrived in the Congress in 1990, taking office in the House in 1991, we were looking at continuous deficits many years preceding and projected to go forward. We adopted not only budget rules but budget policies. They were not supported by the Republicans. This was a Democratic initiative of President Clinton together with a Democratic Congress that actually reversed the situation. So this number, $236 billion, was the result of quite aggressive and quite responsible actions in the 1990s by Democrats and a Democratic President to move from deficits to surpluses to begin to store up what we thought would be surpluses so that we could deal realistically and fairly with the oncoming and expected issue of demographic change in the United States of an older population increasingly aging and requiring additional services. All of this was reversed through the policies of the Bush administration.

We have pursued a policy, as I mentioned before, of trying to stabilize and reconstruct Iraq by supplementals, not by including even a fraction or a significant fraction of the known cost in our underlying budget. Having taken at least seven trips to Iraq and four to Afghanistan, I can tell you it is a long-term process to do it right, to get it to a point where it is not worse off than it would have been without our intervention. That takes resources.

We have also had these tax cuts which continue to sap our strength.

If we look at the Bush tax cuts, they are nearly 90 times larger for millionaires than for middle-income households, hugely disproportionate, having adverse macroeconomic effects, having adverse fiscal effects in terms of the budget, and not helping the families who all of us will stand up here and pledge are at the top of our list to help: those low- and middle-income families who are struggling with increased costs. This is astronomical. Families are struggling with health care, retirement issues, loss of jobs, stable employment—one does not have to go across this country too far to see communities that have been traumatized by closing factories. Every time we listen to a news report, we are hearing another company, another major company, such as Ford and others, say they are closing factories. That impact is severe and traumatic to families. They are grappling with that and retirement funds which seem to be evaporating. People who worked their whole lives and thought they would have adequate retirement and health care from their employers are finding that is becoming almost a mirage, in some cases, and at the same time, there are usually disproportionate tax advantages through these tax cuts given to the wealthiest Americans.

The average amount of the 2001 to 2004 tax cuts for households of more than $1 million of income was $103,000 in 2005. The comparable figure for those households between $50,000 and $75,000 in household income is $1,200, most of which is probably eaten up before they receive it by increases in health costs, increases in energy costs, increases in the cost of simply trying to get by day to day. Middle and lower income families are paying a price for these tax cuts, and it is a price they are finding very difficult to bear each day going forward.

There are specific areas of concern in this budget which have to be mentioned. With respect to health care, the President, during his State of the Union Address, said that it is the Government's responsibility "to provide health care for the poor and the elderly." But his budget proposal only serves to undermine the commitment of our Nation to care for those less fortunate.

The President spoke about access to care and proposed a modest increase in funding for community health centers. At the same time, however, his budget eliminates funding to those programs which educate and train the medical personnel who are necessary to provide high-quality, culturally competent care to those who will be served in these facilities. We are literally disinvesting in those long-term assets—in this case, the human assets of highly trained physicians and physician assistants and nurses and technicians we will need to man this health care system going forward.

We can look at the projections. The huge increase in seniors requires additional resources and additional redeployment of these resources. That is not taking place in this budget.

I am also disappointed that the budget provides no additional funding for nursing education at a time when my State of Rhode Island and every State in the country is seeing a huge demand for nursing care. The nurses are a vital component of our health care system. In my State of Rhode Island, they are reaching out across the globe, spending three or four times what it costs to hire a local American nurse simply to fill their ward so they can continue to function.

This is an irony, too, because we are all looking for those jobs and those skills which will not be shipped overseas, which will not be digitized and sent away. Nursing is one of these high-quality skills. So it is not only for health care benefits, it is also for economic development. Yet we are struggling to try to help the nursing profession provide the resources to train new nurses in America. The result, of course, is we are taking them from overseas. This might benefit us in the short run but not in the long run. We have to ask ourselves: What is it doing to the health care systems in places such as the Philippines and other countries that are struggling to have adequately trained professionals in their ranks? We are essentially reaching out and taking them away. We have to do better. We can do better.

The budget eliminates funding for primary care and allied health professional training under title VII and decimates the scholarship program designed to encourage more disadvantaged and minority students to enter the health care workforce. Here again, we are trying to match up the talent and skills of Americans with the jobs we need to do, and we know we will need to do them in the future. That does not make sense to me.

His budget also eliminates the Universal Newborn Screening Program and the Emergency Medical Services for Children Program which help States institute effective newborn screening programs and promote research through improved trauma care for children.

There is no one in either body who will come to this floor and not speak about our obligation to the children of America. This is the sanctity of protecting them. But here are programs that operate effectively and efficiently to do that—screening newborns to detect very early if they have medical problems we must deal with rather than waiting later when these problems have, in some cases, overwhelmed the child and the family. This is a sensible, efficient approach to delivering health care services. It is not being supported in the budget.

The National Institutes of Health, the leading source of basic biomedical research, is also facing a reversal in funding. Less than 2 months ago, President Bush signed into law the first cut to NIH funding since 1970. Now he is proposing to cut funding to 18 of the 19 institutes, including the institutes conducting research on cancer, heart disease, and diabetes.

The National Institutes of Health, over the last several years, has been an example of a bipartisan commitment to raising their funding level, recognizing, again, that in order to confront health care issues in the country, we need the infrastructure of research, and not just to deliver effective treatment, but also we hope to get a bit of a handle on the explosion of costs in the health care system. When we stop investing adequately in the National Institutes of Health, we are locking ourselves into a situation where we will not have the new breakthrough drugs, the new breakthrough technologies, and we will not be able to deal with the host of issues confronting us. This is, again, a reversal of a decade of progress on a bipartisan basis to keep funding robustly the National Institutes of Health.

Health care services essential to our elderly population also were not spared. His proposed cuts to Medicare will inflict pain on the Nation's elderly without solving the growing cost of health care.

We all have to recognize, given demographics, given changes in the delivery of medicine, that the cost of health care has to be addressed. Not very much of what the President is doing is designed to address that cost. This is an issue which transcends party, transcends reason, transcends all of our individual interests, and it needs leadership by the President.

This budget is simply tweaking and cutting adversely benefits to seniors and not dealing in a responsible way with the acceleration of costs.

Medicare providers have already borne the brunt of several years of payment freezes and reductions, and once again, they are going to be included in this budget proposal.

I am also dismayed about the proposal to further cut home health care providers. The President talks about the importance of increasing access to home- and community-based services for the elderly and disabled seeking alternatives to traditional institutional-based care, but by cutting reimbursements to home health care providers, this budget sets in motion the exact opposite policy. Instead of encouraging people to move out of institutional-based care, which is typically more expensive, into home-based care, this policy would reverse that trend. Medicare spending on home health care has already fallen dramatically, from 8.7 percent in 1997 to 3.8 percent in 2005. There has been a squeeze on home health care and I think eventually that squeeze will provide a real disincentive for using what is both humane and efficient and effective care for seniors.

The Centers for Medicare and Medicaid Services, CMS, projects a decline of 2.6 percent of total spending by 2015 in the absence of a 2006 payment freeze. So what we are seeing is the rhetoric talks about the logic of moving people from expensive institutional care, hospitals, and other settings, into their homes. And, frankly, most people I know who are sick, the first thing they want to do is get out of that hospital. They recognize the wonderful care they are getting but to be home is just as helpful sometimes as any type of prescription in recovery for an individual. Yet we are contradicting that sensible policy in this budget.

With respect to education, we also see some of these cuts that are impacting adversely our educational programs at a time when everyone stands up and says we are in a global economy and we need to have the best educated students in the world. We have to emphasize programs that will make us competitive because we are in a struggle that is going to define the future of this country, its prosperity—indeed, its security. That struggle rests in large part on providing generation after generation of well-educated Americans.

We have new challenges. New Americans coming from around the globe who are coming into our public school systems require language training and cultural sensitivity and a host of other challenges that, frankly, didn't exist in the 1950s when I was going to grammar school and high school—grammar school at least. These challenges have to be met, and they cannot be ignored.

The President's budget, once again, showed his promise to retain America's competitive edge is not a promise that is backed up by the resources that are necessary. We understand we have to invest in math and science. This is increasingly a more technologically driven world. We are looking at countries around the globe, China and India, that are committed to bringing up their math and science capabilities. They have literally hundreds of millions of talented, bright people. They are beginning to make their presence on the world scene felt, their economic presence particularly. They are devoted to education. We have to be, also. That requires emphasis on math and science. But our students need more than just that; they need literacy and history and, most of all, qualified teachers in every subject matter.

The President's budget proposes a $2.1 billion cut to Federal education funding. This is the largest proposed cut in the 26-year history of the Department of Education, at a time when the President and his Cabinet stand up and say this is probably the most important thing we can do to build the economic strength and vitality of America for the next several decades. Once again, the President has proposed eliminating the LEAP program. This is a Federal-State matching program that allows assistance for higher education support for low- and moderate-income Americans. It gives grants to the States. The States have to match the grants with their own money. It is a very valuable program. In total it proposes to eliminate 48 federally funded educational programs, including GEAR UP, Teacher Quality Enhancement, Even Start, TRIO Upward Bound/Talent Search programs. These TRIO programs are designed to go into minority communities and find students that have the talent but not necessarily the type of support they need to get through high school and commit themselves to go on to higher education. We have to do that.

We understand, again, if you look at the demographics, that this country is becoming significantly less White and more of people who are African Americans and Latinos—all of them. If we are not reaching out today into these communities and finding young people of talent and giving them the support and giving them the idea—which, for affluent families is obvious—that they can go to college, they should go to college, we are going to find ourselves decades from now—perhaps even sooner—with a population where we have not utilized their talent and we are not able to compete on a global scale.

All of these programs help do that. To eliminate them without any ability to respond in a meaningful way to these needs, to me, is shortsighted and wrong.

The Bush budget freezes the maximum Pell grant at $4,050. This is the fourth year in a row they proposed freezing this grant, and we know what is happening to college tuitions, they are going up. In 1975 the Pell grant covered 80 percent of the cost of a 4-year public college education. Today it covers about 40 percent.

Senator Pell was my predecessor in Rhode Island, from whose wisdom we all benefit today. He recognized back in the 1960s that if you allow young people to go on to college, you will reap benefits that are huge over many years. I wouldn't hesitate to say that a lot of the leading members of our community—in business, in politics, in anything you name—one of the reasons they are able to participate at this level is because 30 years ago, in 1967 and 1975, they were able to go to college and pay for it because there was a Pell grant that was providing 80 percent of the cost of their 4-year public college education.

Today, who are we leaving behind because they are saying: I would love to go on to college, but I can't afford it? Who are we leaving behind who will go to a school but not the school they could have gone to with this financial assistance and, as a result, whose career and whose contribution might be limited? I do not think this policy makes sense.

The President's budget also proposes to eliminate the Perkins Loan Program, leaving students with fewer resources to help them meet the cost of attending college. Perkins loans are another complement in our Federal arsenal of support to education that helps students make their way through college.

The majority has just pushed through a budget reconciliation bill which will cut $12.5 billion from higher education. This budget is saying we are going to cut more. We just made $12.5 in reconciliation cuts. How can we continue to do that? How can we cut the funds that we presumably have committed to spend and now send up a budget that will continue this very constrained support for higher education? And it is not just higher education.

If you look at some of the early education initiatives that are so necessary to children who have not yet even reached school, you have scientists each day pointing out how important it is for early childhood education to give children the skills and talents and the very idea that education is something they have to pursue vigorously all their lives. If you look at this budget you see, again, huge shortcomings. The President's budget proposal freezes funding for the Federal child care and development block grants for the fifth year. The administration's own budget figures show that 400,000 children will lose childcare assistance by the year 2011, and this is on top of the 250,000 children who have already lost childcare assistance since fiscal year 2000. These are huge numbers with huge impacts in every community across the country.

At the same time, because of the way the economy has been performing, the number of low-income children has been increasing. Poverty is increasing in the United States today as a result of many factors—globalization, the economic policies of the administration. We saw in the 1990s, again, not only a reversal from a deficit to a surplus, we saw poverty levels starting to decline. Along with those descending poverty levels we saw a lot of other positive social benefits. The numbers and percentages of abortions dropped because the economic situation for families seemed to be improving. This whole approach is increasing the demands of more low-income people, while at the same time decreasing the resources available. It does not make a great deal of sense.

Additionally, the budget would provide no additional funding for the Head Start and Early Head Start Programs, freezing funding at $6.7 billion. This results in the Head Start Programs in our country having to make very tough choices—eliminating almost 19,000 children, squeezing, again, the payments and the benefits they give to their workers, attacking or undermining the quality of the comprehensive services that are the cornerstone of the Head Start Programs. This is not good.

The President's budget also eliminates the community services block grant, which is critical to so many communities across the country. Again, this notion of the community service block grant was to give the local community leaders the resources because they have the sensitivity and clearer vision to what their particular community needs. When you squeeze these community service block grants, you put a huge burden on property tax payers because those individuals, all of us, will support local government. That is not as efficient or fair a mechanism for raising revenues as income tax or anything else, but that is the reality because local communities will have to put more burden on their local property tax payers or eliminate these services. That is an area of great concern, also.

It is not just health care and education, there are many other areas. One is energy. The President said in a frank admission, which we all appreciated, that the United States is addicted to oil. But like many people with addictive problems, I don't think the administration is seeking meaningful treatment. Gasoline consumption in the transportation sector represents about 44 percent of total oil consumption in the United States each year. If you include diesel fuel, that number jumps to 57 percent. To bring about any serious reduction in our dependence on foreign oil we have to increase the fuel efficiency of our cars and light trucks. So we need an increase in our CAFE standards. That is the first place we need to go that yields the biggest bang for the buck that will put us on a path to reduce significantly our energy consumption.

But that is not what the President is talking about. He is talking about renewing the fight for drilling in ANWR, a fight that culminated on this floor just a few weeks ago in a rejection of that proposal.

He is not pressing for the immediate technological fix of moving up CAFE standards. Once again, I believe this approach plays to our strength as a nation. We continually point to our technological innovation, our ability to use technology to solve problems. Here is a huge problem. Why don't we apply technology? I am always disconcerted when you look around the globe and see companies such as Toyota, for example, who have launched very successful hybrid automobiles. Where are the hybrids in significant numbers, and sufficiently sophisticated, by our own manufacturers? Ford has the Escape hybrid vehicle. This technology is not something beyond our capacity and capability, but the nation needs a budget and policy that will support technology development. You need action in Congress that will increase CAFE standards and increase gasoline mileage.

If we are talking about tax policy to help us avoid dependency on foreign oil, it is not cuts to dividends and capital gains and huge benefits to the wealthiest, it is perhaps providing tax support for those people and those companies that will put vehicles that get 45 or 55 miles per gallon on the road. We can build it. That might give us an advantage or another opportunity to reassert ourselves as the premier leaders in automobile technology in the world and the premier manufacturers, a position that we are losing.

In December, Senator SNOWE and I wrote a bipartisan letter, signed by 30 Senators, asking the President to fully fund energy efficiency and renewable energy programs authorized in the Energy Policy Act of 2005. When we passed the Energy Policy Act, we increased funding for energy efficiency provisions and renewable energy programs. Our letter must have been lost somehow because the budget cuts key energy efficiency programs such as building code programs, Energy Star, weatherization programs, and industrial energy efficiency.

I had a visit yesterday from architects from the American Institute of Architects. These are local Rhode Islanders. They pointed out that a huge amount of our energy is wasted because buildings are not properly designed and properly built to contain energy and use it efficiently.

We could have significant savings with improved building technology. It begins with some of these rather everyday programs such as building codes, weatherization, industrial energy efficiency—these programs are being cut.

I agree with the President. We need to end our addiction to oil. But to do that, our budget needs to support programs, initiatives, that reduce our dependency in the short and long term, and funding for energy efficiency and renewable energy programs will reduce our demand for fossil fuels such as natural gas and petroleum. Supporting energy efficiency and renewable energy is the best approach we can take to deal with the issue of energy dependency in the United States.

I have already spoken about the LIHEAP program. We must support LIHEAP funding because we have low-income families struggling and literally suffering today because they are caught in this vise of cold weather and high energy costs, and we have to give them relief.

The President also speaks, as we all do, about the need for good housing in this country. But again, this budget does great harm to the Housing and Urban Development Department. Overall, the Bush HUD budget proposes $33.6 billion in discretionary spending authority, as compared to $34.3 billion last year. That is a 2-percent cut—$622 million off the top.

I don't know anybody in this Chamber or our colleagues in the other body who will come to us and say we have solved the affordable housing problem. In fact, I think they would say this is perhaps one of the most persistent and difficult problems we have to face in every community in this country, the ability to rent affordable, decent housing, or the ability of a young family to buy a starter home. It is excruciatingly difficult.

Yesterday, we had representatives from our disabled community in our office, who are down here talking about the issues confronting them. The No. 1 problem they have is finding affordable, adequate housing for disabled Americans.

We talk about our commitment to people with disabilities, but when we have put resources to the rhetoric, too often the resources aren't there.

At a time when people need better housing, this budget is not responding. The President proposes to cut funding for programs to assist at-risk people with their housing needs, including a $190 million cut in programs to assist the elderly with housing costs, and a $118 million cut in programs to assist persons with disabilities with housing costs—that is the No. 1 concern of many families—and a $35 million cut in programs to support lead hazard reduction in public housing.

The section 8 voucher program is also underfunded, threatening families with the loss of their vouchers, threatening families who are now being helped to afford their housing and seeing that help disappear.

The President's budget will also cut the Community Development Block Grant Program by $736 million. We all know, because we have mayors coming into our offices constantly, that CDBG funds are a key element in allowing local leaders to help develop their communities. That is the kind of money that can be used very adroitly to leverage other funds to help economic development, to help renewable housing—all of these things which are so important. That cut will be devastating to the mayors in every community across this country.

The administration also proposes zero funding for the Brownfields Economic Development Initiative, which is a very smart way to redevelop formerly contaminated lands in our urban areas. These are areas of former industrial production that can be renewed, if we can environmentally restore or remediate the property.

There are also cuts to the Empowerment Zone/Enterprise Communities Program. All of these things go right to the ability of municipalities and counties to provide viable economic development which supports jobs and families in communities across the Nation.

Public housing programs, which serve more than 1 million children and more than one 1 million families with seniors in residence, would experience deep cuts.

The HOPE VI Program, which pays for the rehabilitation or replacement of dilapidated and rundown housing, takes public housing and transforms it into mixed-income housing.

We have seen one example in Rhode Island—a project in Newport, RI—which is transforming the whole neighborhood.

This HOPE VI program is going to be eliminated in the President's budget. It is the only significant source of Federal money for new housing and new opportunities.

The President also proposes to cut the public housing capital fund, which is the capital investment for public housing agencies. He proposes a $260 million cut there. Finally, the public housing operating fund is level funded.

Again, how do you level fund operating for residents and public housing at a time when costs all are going up, particularly energy costs?

I don't think there is any expert sitting around suggesting that the spike to $60 per barrel is a temporary phenomenon. Once OPEC realized they can get away with charging $60 a barrel and not provoke an economic meltdown yet in the world economy, that will be their target for the next several years, if not for the foreseeable far future. We are stuck with huge energy expenses, and those expenses will hit public housing and community-based activities heavily. If we don't respond by at least helping a bit, it is going to be an excruciating burden on municipalities and counties all across our country.

Let me finally also comment about the Defense budget. As I mentioned, this budget is highly invested in defense, and at this moment in history that approach seems to be unavoidable. I believe we should be responsible and pay for it rather than continuing to borrow these funds. But you can't avoid the obvious. We are still threatened by implacable, ruthless enemies. We are still engaged in a very difficult challenge in Iraq and Afghanistan. As a result, we have to continue to spend on our own protection and our national security.

But the administration again refuses to recognize that this is not a passive phenomenon. They talk about a long war, they talk about a generational struggle, but each year they come to us and say this is emergency funding for Afghanistan, for Iraq, for many provisions on the war on terror.

Since September 11, this administration has requested $440 billion in supplemental funding. A significant part of that, I believe, has to be internalized in the regular budget process. It is tough. It will require very tough, difficult choices, but it is the truth; it is reality.

The other thing I think we have to do, and the President has to lead us in, is we have to ask the American public to make sacrifices. There are people sacrificing today. Soldiers, marines, airmen, sailors, and their families are sacrificing dramatically. But that is a rather small spectrum of Americans.

I challenge anyone here to say what the President has asked of the average American in terms of sacrifices necessary to support this war on terror. He certainly hasn't asked them to put their hands in their pockets and pay for it. He hasn't challenged them to stand up and do many other things.

This is reaching a level that takes on a moral proportion. We cannot continue this struggle without at least some commitment as a whole nation, not just those men and women in uniform and their families but the whole Nation to become engaged and involved in this effort.

As I said, many of the provisions in the budget of the Defense Department, the supplemental budget, I believe should be included in the regular budget process.

The President's budget has requested authorization for 482,400 active-duty soldiers and 175,000 active-duty marines since 9/11. Yet the Army has maintained an active-duty force of over 500,000, and the Marines have ranged from 178,000 to 180,000 personnel.

In a sense, the President is sending up a budget which has a significantly less number of personnel that are on active duty.

Again, that is not something that we know is going to go away. We have come a long way in the sense in March of 2003 or May of 2003 that we would have very few people in Iraq and Afghanistan, that it would be resolving itself.

We are in the midst of a very difficult insurgency, and these troops will be needed on duty and in uniform for at least the next years, or several years. I believe that should be included in the budget.

The Army and the Marine Corps have a huge pricetag for rehabilitation of the equipment they have been using—$68 billion. Many of my colleagues who have gone to Iraq and Afghanistan understand that. They are operating in the summertime at 120 degree temperatures in a sandy climate. That eats up the equipment. We have helicopters operating at 15,000 feet in thin air, and that chews up the engines in very difficult conditions. We know that. We know we have a price tag of $68 billion, and, yet a small fraction of that is being, I think, inadequately included in the budget. When it comes to defense and national security, we have to provide the money to do it reasonably and responsibly.

We are looking at a deficit as far as the eye can see. As we look at the huge commitment by our fighting men and women in Iraq and Afghanistan, I would think you would see a shift in the administration approach; I would think you would see the President stand up and say we have to pay for these things. It is a long-term effort, and we can't let this devastate and overwhelm us because we know eventually, as we have seen in the past, there is no free lunch.

We can borrow the money today—billions and billions of dollars—but eventually interest rates will start creeping up, start shutting off economic productivity here in this country, and we will see inflation begin to bump up. We will see all of the dangers and all of the difficulties that we thought in the mid-90s we had turned the corner on, at least because our policies were taking hold in terms of dealing with the deficit, funding reasonably and responsibly, and actually seeing that result in not only economic growth but growth that was lifting up all of our citizens. We are looking at increases in income and wages, not just at the top level but at the middle- and low-income levels of our economy.

The reverse is true today—huge increases in upper income compensation and benefits—spectacular. If you were in such a position, you would be quite wealthy. But if you look at the bottom wages, they are stagnant and falling. That is not going to produce the kind of country that will support families, support individuals, and make us more productive in the future.

I hope we will look carefully and closely at this budget and make appropriate changes.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CORNYN). Without objection, it is so ordered.

TRADE DEFICIT

Mr. DORGAN. Mr. President, this morning about 8:30 the administration released the information with respect to the 2005 trade deficit that our country has experienced. The trade deficit for all of 2005 was described this morning as $728 billion. That means about $2 billion a day every day, 7 days a week. That is $2 billion a day more in imports from other countries into our country's marketplace than we are exporting to them, and it relates to the lost jobs that are such a problem in our country. When you import products from abroad, twice as much as you are able to export to other countries, you are in effect exporting America's jobs.

The chart I show now shows the number with China alone. Almost one-third of the trade deficit is with China. We can see what has happened with China from 1996 to 2005. The trade deficit has gone up, up, way up every single year. It is out of control. This trade deficit is reflective of, once again, a massive number of American jobs being shipped to China. Then they produce products and ship the products back to our country. It weakens our country. It means we lose jobs. We lose economic strength, especially in the middle class. It is a crisis we must address.

There is no social program as important as a good job that pays well in this country. We will debate social programs now for weeks and weeks because the President this past Monday sent us his budget for the next year. We will debate about the need for social programs. But as I said, there is no social program, in my judgment, as important as a good job that pays well. That makes everything else possible for an American family.

Let me talk a minute about these good jobs. The good jobs are leaving. Ford Motor says 30,000 people will be laid off. At General Motors, 30,000 people will be laid off. It goes on and on. Increasingly, companies are moving their jobs from the United States to China, to India, to Bangladesh, to Indonesia. So the jobs that remain are jobs that have a downward pressure on wages, more and more pressure to get rid of retirement programs, more pressure to strip health care benefits. In my judgment, that is going to head this country toward serious trouble.

This economy works because we built a broad middle class and people go into their jobs often with job security for nearly a lifetime. At Ford Motor Company and General Motors, when people went to work there 40 years ago, they often stayed there for a lifetime. Now, of course, that is not the case.

General Motors called its 300 top parts suppliers to a meeting in Detroit recently and said, by the way, we think you need to be moving your jobs to China to cut costs. So General Motors says it. The parts supplier which split off from General Motors, called Delphi, which is now in bankruptcy, says it. They want to pay $8 to $10 an hour.

What is going to happen to this economy if we continue to see downward pressure, fewer jobs, fewer good jobs that pay well, downward pressure on wages, and we see more and more of these jobs being exported to other countries? I think I know the answer. The answer to that is we will have less and less opportunity in our country, less economic growth, and we will have fewer good jobs left.

My colleague LINDSEY GRAHAM from South Carolina and I yesterday announced a piece of legislation we have introduced that would change what is now called PNTR with China. PNTR is permanent normal trade relations. That means China now has normal trade relations with our country. It is permanent. It did not used to be that way. We used to have to vote every year on whether to extend what was then called "most favored nation status," now called "normal trade relations." We used to vote on that every year. But it became permanent in 2000 and we no longer vote on it.

My colleague LINDSEY GRAHAM and I decided we wanted to revoke permanent NTR and restore again an annual debate in this country about China and about trade with China. I don't mean to say China is the only issue because it is not. Obviously, with this chart we can see the single largest trade deficit is with the country of China. It is growing, it is significant, and it is dangerous.

By the way, most of this Congress and the White House will simply sleep through all of this. They are not awake for these issues; no one thinks this is a problem; no one cares much about it. So what if it is $2 billion a day more than we import than export? Who cares? Another 30,000, million or 2 million jobs shipped overseas. Who cares? It is not anybody at the White House who loses their job, so we do not hear about this. But for a lot of the American families, it is a very serious problem.

We believe a significant part of the problem rests with China. Almost a third of that trade deficit is with China. China's markets are still too closed to our products. They say they are open, but they are not. China is awash in counterfeit goods and piracy. Two-thirds of the goods that come into our country that are counterfeit goods come from the country of China. And China does nothing about that.

China, as we know, is an attractive place for American companies to move their workers. I will not do it today, but I have given plenty of examples—Huffy bicycles, Radio Flyer, Little Red Wagons, Etch-a-Sketch—I could go on for a long period of time. Those jobs go to China because you can hire people for 30 cents an hour in China. You can work them for 7 days a week and you do not have to give them a day off for months. And the Chinese Government looks the other way. You can do that in China. You cannot do that here.

So that is why these companies are moving their jobs to China. American companies move their jobs to China. They produce the product, ship it to the United States to sell it in the U.S. marketplace, and then they run their income through the Cayman Islands, in a tax-haven country, so they do not have to pay taxes or at least avoid as much as they can of their tax burden. It is a very serious problem.

In discussing this issue of normal trade relations, we have to remember who we are dealing with. Yesterday, my colleague from South Carolina, LINDSEY GRAHAM—described the case of a man named Shi Tao. Not many Americans, perhaps, know Shi Tao. But Shi Tao was sentenced, in April of last year, to 10 years in prison. He happens to be a journalist. He was "divulging state secrets," which is the reason he was sent to prison in China. He is a former staffer at the Contemporary Business News agency. He was convicted of sending to foreign Web sites the text of a message from authorities in China warning journalists of the dangers of "social destabilization" from the return of certain dissidents on the 15th anniversary of the Tiananmen Square massacre.

So he sent this to some foreign sites, and, as a result, he was charged with "divulging state secrets" and sent to prison. Much of the evidence against him came from a company called Yahoo!, an American company. The Chinese Government traced the e-mails sent by Mr. Shi Tao—a journalist—they traced those e-mails with the cooperation of Yahoo! They asked Yahoo! to provide the information. Yahoo! did. And now this fellow is in jail for 10 years for passing on an e-mail by the Chinese Government that said they worried about the dangers of "social destabilization" from the return of dissidents on the 15th anniversary of the Tiananmen Square massacre.

Reporters Without Borders, an organization that we hear about these days, has complained that Yahoo! has disregarded ethical concerns in an effort to maintain a good business relationship with the Chinese Government.

There are other cases that are similar to this.

Last month, Google, an American company—a great American success story, I might add—agreed to censor its search engine results in China, agreeing to free-speech restrictions in exchange for better access to the fast-growing Internet market in China.

This shows you the power of money and profits over ethics and morality when it comes to doing these kinds of things.

Google, last month, rolled out a new version of its search engine that is easier, specifically for use in China. What has happened is, previously Government barriers that were set up to suppress information had prevented the Chinese users from using Google at all. So in order to obtain a Chinese license, Google has agreed to omit Web content that the country's Government officials find objectionable. That includes information about Taiwan's independence and the Tiananmen Square massacre, and so on.

It is particularly concerning, I think to me and to a lot of others, that we have American companies helping the Chinese authorities track down a journalist who did nothing wrong, was engaged in some free speech, and now sits in prison for 10 years.

But I digress. My main point is that we have a pretty serious trade problem.

It is a trade problem that is significant in a lot of ways, and is by no means limited to China. We run very large trade deficits with everyone with whom we have had a trade agreement. We run big trade deficits with Mexico. We run big trade deficits with Canada, with Europe, with Japan, and yes, with China. A part of it, of course, is the basic incompetence of our trade negotiators. And the other part is a trade strategy that has been embraced by this and previous administrations and this Congress that chants about "free trade"—not caring, of course, whether trade is fair—and has allowed American corporations to decide to structure trade in its own image. And that image is to decide it wants to produce where it is cheap; that is, take Huffy bicycles away from Ohio and fire 900 workers. Move it to China, pay them 33 cents an hour, work them 7 days a week, 12 to 14 hours a day, and then send the Huffy bicycles to America to be sold in Sears, Wal-Mart, and Kmart and believe that is good for our country. It is not.

It might be good in the short run for some consumers in this country, but, after all, America is not going to be measured in the long term by what it consumes. It will be measured by what it produces. Economic health is about what you produce, not what you consume.

I believe this morning's announcement will produce one more large yawn at the White House, one more large yawn in the Congress. I do not know exactly what it is that is going to provide a tipping point that will finally convince policymakers we are headed toward very serious trouble. It is unsustainable to have a fiscal policy that increases the debt in this year from our budget policies of $704 billion and a trade policy that increases the trade debt in this year of $720 billion. That is $1.4 trillion in combined debt. That will choke this country.

We know better than that. We know what to do. We know better than to sit around on our hands and gnash our teeth and wipe our brow. We need to get busy and solve these problems. But first they have to be recognized. There is this blissful ignorance these days about a fiscal policy that is wildly offtrack and a trade policy that has not worked for some years, that is shipping America's jobs overseas and weakening this country.

This Congress and this President have a responsibility to address this head on. My colleague, LINDSEY GRAHAM from South Carolina, and I joined on the legislation I described yesterday, and I hope my colleagues will support it.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE FAIR ACT

Mr. SESSIONS. Mr. President, I want to share some thoughts on the asbestos litigation legislation that is before us. We have a point of order raised. I believe that point of order is a technical point of order. I believe it is not a point of order that has the potential to avoid a large amount of Federal expenditures. In fact, as we all know, the asbestos bill is funded by those companies and defendants who are being sued as an alternative to paying out money from aberrational, disjointed, inconsistent lawsuit verdicts, with 60 percent of that money going to lawyers both for the defendant companies and for the plaintiffs. They propose to pay this money into a fund, allowing it to be distributed, with 5 percent or less attorney's fees cost, directly to those who are determined to be sick from asbestos.

Surely, we can make this happen. Surely, we cannot allow the spasm that now exists, that is an embarrassment to the legal system, embarrassment to the profession of law, and an embarrassment to the Congress for failing to fix it, when the Supreme Court and other judges have, on numerous occasions, called on us to fix it. That is what I would point out.

I was hoping that this afternoon we would be able to discuss votes throughout the day, amendments. Senator CORNYN has offered an amendment, and we have had votes. There are others out there.

I will point out amendments that I have offered and plan to offer which deal with the subrogation issue, particularly involving longshore shipping companies, where they are self-insured, and those companies are entitled to subrogate to some of this money that would come out, under normal circumstances, to money that is paid to the victims. And for a lot of reasons, I think they are in a specific special place that needs some relief. The silica claims, we need to consider that more carefully. I have proposed legislation that if this bill were to fail, the 5-percent cap on attorney's fees would apply, or the court would apply standards of comparable attorney's fees instead of allowing such a large chunk of money to be taken from the victims and their recovery to pay attorneys, as is the case today.

We have some medical criteria in the bill; that is, if you are going to be sick, how do you know it was caused by asbestos; what do you have to show before you can make a claim so that we can pay those who are sick but not pay those who are not sick; or if those who are sick have a sickness unconnected to asbestos, they should not recover from the asbestos fund; otherwise, we would have a fund that can't survive. That needs to be tightened.

Those are some of the amendments I would like to offer. We will get on that presumably next week after we vote on this point of order.

I urge my colleagues not to allow this budget point of order to derail the opportunity we have today—it may be the last, best opportunity—to fix an asbestos system that is out of control. It is just not working right. Under the present system, we are going to have—and we have today—thousands of people who have been injured by asbestos. Many of them are veterans—thousands of people who are injured, some severely, some dying as a result of their exposure, who will not be able to recover any money because the company against which they have a lawsuit, the company which was responsible for exposing them to asbestos, no longer exists. They are bankrupt, and there is no one to sue.

Secondly, we have a large number of companies—77—that have gone into bankruptcy, and many are in bankruptcy now. If we allow this uncontrolled rush to take every dime out of those companies as quickly as possible, as the lawyers for the individuals who are sick are trying to do, those companies, too, will go out of existence.

There are other reasons certain people are not going to be able to recover who are sick from asbestos. This bill would give everybody a chance to have a fair recovery, so I believe it has a big humanitarian benefit.

Also, if we leave these cases in the litigation system, a jury might become inflamed or become sympathetic for a victim and may render a $100 million verdict. Another jury may render a $100,000 verdict. Another jury may render nothing. So we have really aberrational allocations of scarce resources to people who are sick. We need to have a comprehensive system by which those who are sick are compensated fairly, promptly, and without attorney's fees.

There is no doubt, as we know, that the attorney's fees, according to the Rand Corporation, total 58 percent of the amount of money paid out by the defendants. So defendant companies hire their own lawyers, and they are being sued for huge amounts of money, and they hire the best lawyers they can get. They defend those cases. One study shows they get a little more than plaintiffs' attorneys. Then the plaintiffs' attorneys sue, and they take their fee out of the recovery. If you look at it in an economic sense, all of the money paid out by the defendant companies should go to the victims, as much as possible. They should not have to pay a chunk to their own lawyers or a chunk of it to the plaintiffs' lawyers.

We have 60 percent at stake. This bill caps the attorney's fees at 5 percent. So we are talking about 53, 55 percent of the money being paid out by the defendant companies, and it is not getting to the victims. So we have a lot of ability here to do the right thing. We can get more money promptly to victims. We can get victims compensation who otherwise would not get it because the companies they might sue are no longer in existence or there are other legal impediments to it, and we can treat people fairly, and people similarly situated would get similar amounts.

For example, mesothelioma, the deadly cancer that has been connected to asbestos exposure, would result in a prompt payment of $1.1 million to anybody who has contracted that disease due to asbestos exposure. If the doctor diagnoses that and it is not a diagnosis of any real dispute, you simply go in to the claim administration, make your claim, and 50 percent of that $1.1 million is to be paid within 30 days and the additional 50 percent paid in 6 months.

That kind of process is quite different from what is happening today. There are 300,000 lawsuits pending in America. Some dockets have tens of thousands of lawsuits and only a handful of judges. These cases are not going to trial immediately. People are not getting paid promptly. It is an embarrassment to all of us. Some people are getting paid aberrationally and without consistency or fairness. Some are getting a lot, some are getting nothing. Some people are getting paid little checks over a period of 10 years, and there from different companies that settle up. That is not a way to handle a mass tort, where a lot of people are ill, in which the defendant companies are prepared to pay.

All of that is not working right. We ought to take those companies' money—$140 billion of it—and set it aside in a fund and create a fund from which we can pay people whenever they are sick. That can be done, and that can make the system better.

It was interesting to note that we don't often see a lot of agreement between the Washington Post and the Washington Times. But the Washington Post had an editorial today in which they say:

> Some amendments may be reasonable at the margin, but the bill's central idea to replace litigation with a $140 billion compensation fund, to be financed by defendant companies and their insurers, must be preserved.

They go on to say:

> The fact that the bill is being attacked from both directions suggests that its authors, Senator Arlen Specter, Republican of Pennsylvania, and Senator Patrick Leahy, Democrat of Vermont, have balanced competing interests in a reasonable manner.

I am not sure that is totally correct, but there is some truth to that. It says:

> But the truth is that the bill's main opponents are the trial lawyers who profit mightily from asbestos lawsuits and who constitute a powerful lobby in their own right. Mr. Specter and Mr. Leahy are, in fact, model resisters of special interests who have spent more than two years crafting legislation that serves the public interest. For Mr. Reid to demean this effort in order to fire off campaign sound bites is reprehensible.

That is the Washington Post. I certainly agree with that. The special interests here are those who have lost sight of the victims, who have lost sight of trying to create a justice system that works; the special interest of those people engaged in the system who are enriching themselves in it every single day and do not desire to see it end.

But I will note that Dicky Scruggs, one of America's most prominent, perhaps the most accomplished trial plaintiff lawyer in America, who lives in the Mississippi gulf coast area, where asbestos was such a bad problem at the shipyards, commenced this litigation many years ago—maybe 30 years ago. He just appeared with Chairman SPECTER and said that enough is enough. We don't need this in the courts anymore. Not enough money is getting to the victims. The system is not working. We need change. He supports this bill. He believes there is sufficient money in it to take care of those who are sick, and he supports this bill that has my amendment in it that limits lawyer's fees to 5 percent, unless it goes on appeal.

If the lawyer comes in with a client with mesothelioma, gets a doctor's report, spends a few hours on that, talks with the client, files a claim with the board and they give him a date, and they walk down there and have the doctor's report and the physician says this person has mesothelioma, he is entitled to $1.1 million, and a 5-percent fee is $55,000. That ought to be enough. Yet we have people saying that we cannot have these fees. We cannot cut these fees. This is too much.

We are creating a trust fund. If you file a claim for a person under the Social Security Act, the Federal law limits your attorney's fees. If you make claims in workman's compensation cases in most States, attorney's fees are limited. It is perfectly proper to do so. I believe 5 percent is adequate.

The Washington Times said this. It is a conservative newspaper here:

> This bill should pass; Senator Arlen Specter, Pennsylvania Republican, and Patrick Leahy, Vermont Democrat, are due accolades for getting this far on a longstanding problem that has befuddled everyone for decades. Many asbestos victims have suffered or died of mesothelioma or other illnesses while the courts and Washington struggle with a resolution. The victims and their families deserve to be made whole.

I believe those were strong and appropriate words.

Then they comment on Senator REID, the Democratic leader. They say:

> Mr. Reid said the bill benefited "a few large companies" while supposedly leaving the little guy in the lurch. Really? Why, then, do insurance giants AllState and AIG oppose the bill? Why are many plaintiffs anxious to see it pass? In reality, the big guys speak through Mr. Reid—in this case, unscrupulous lawyers who stand to profit greatly from keeping asbestos cases in the courts.

That is who the big guys are who are making the big money. They say:

> . . . the FAIR Act offers what nothing else previously has: A light at the end of the tunnel for claimants.

I think one estimate I have seen has been that $70 billion has been paid out to date to victims of asbestos. Somebody said the figure is more than that. Think about this: think about the fees. Let's say 25 percent of that is a legal fee. Some make more than that. Some of the numbers show 25 percent as an average total when all is said and done. But most fees are normally one-third. What is 25 percent of $70 billion? What, $18 billion? That is going to lawyers. These are not thousands and thousands of lawyers. Really, I would say there are probably no more than a few hundred plaintiff lawyers who are handling well over 50 percent of the cases. So it is an incredible amount of money. We could create a system where you can walk in with a medical report, basically, and have your compensation delivered to you promptly, without all these fees being taken from it.

Why can we not do this? That is why independent groups such as the liberal Washington Post and the conservative Washington Times have both endorsed the bill. I am hopeful that we will, over the weekend, take a good look at the budget point of order that has been raised here. When my colleagues look at it, I hope they will conclude that this is not the kind of budget point of order which was contemplated when this rule was passed. This budget point of order arose from Chairman GREGG's brilliant understanding that many of our entitlement programs are drafted in such a way that when they score that bill, they score it over a maximum of 10 years. People write the bill so it will cost more the next 10 years than it does the first 10 years.

If the Government is starting an entitlement program, you can object if you can show it goes up too much in the outyears, which I think is a good reform. But this bill is not Federal taxpayers' money. This bill represents money that will be paid into the fund by the people who are paying out money now to victims in a willy-nilly, random fashion that is unprincipled and unjustified. They will put the money in voluntarily in exchange for not having to hire a bunch of lawyers to defend themselves in courts in every jurisdiction, virtually, in this country. That is what they are trying to do.

The legislation does not impose any cost on the American taxpayers, and if the fund was to collapse and not have enough money in it, then the taxpayers do not pick up the tab. They do not pick up the tab. The cases go back in the courts, and any companies that still exist would have to pay, just like they would before this reform passed.

I think this budget point of order, for reasons I am not clear about, lies apparently in a technicality. It does not lie in the classical understanding of its purpose to protect the Federal taxpayers because this is not taxpayers' money; it is the defendant companies' money.

When we vote on this budget point of order early next week—I am a member of the Budget Committee. I know Senator CORNYN is and others are who care about the budget. We meet every day and we take heat every day for trying to constrain the growth of spending and entitlements in this country in a rational way to meet the needs of our people. But to stop the abusive growth in these programs, we support a balanced budget. We support containing spending.

Many of the people who are supporting this objection, however, have not demonstrated, in my view, any important interest over the years in containing spending. A lot of them are big spenders.

That objection, while technically is legitimate, does not in any substantive way have an impact on the debt of the United States in the next 30 years as this act would be enforced.

I urge my colleagues to look into this point. Do not allow this supermajority vote. To keep the bill on track, 60 Senators will have to vote to waive this point of order. It would be a tragedy, indeed. When we see Senator LEAHY, Senator SPECTER, and Senator SESSIONS supporting a piece of legislation, when we see the Washington Times and the Washington Post supporting a piece of legislation, when we see the veterans groups incredibly anxious to see this legislation passed, and when we see overwhelmingly the businesses that are involved in this process and are paying out this money that want to see it passed, why can't we get it passed?

Let's not allow it to fall on a supermajority vote of 60 instead of the normal 50 required to pass legislation. I hope everyone will study it, and when they do, I think they will feel comfortable in voting to waive the budget point of order.

NSA WIRETAPPING

Mr. SESSIONS. Mr. President, I wish to share some thoughts about NSA, the National Security Agency, and the wiretaps that have taken place, the brouhaha that has occurred in the press and in Congress, and why I believe this program is necessary, why I believe it is legal.

I know the Presiding Officer has been, perhaps, the most eloquent spokesman in the Senate on this subject. He believes this is legal and proper and has articulated those views very ably.

I shared some thoughts the other day about why it is so important, why there is much political goings-on here instead of substance, and why we need to continue with the program. I would like to share a few more thoughts today about the care the administration took to be respectful of Congress, to not overreach their legal authority, and how they worked to keep Congress briefed on what the program was about.

The administration officials briefed congressional leaders more than a dozen times on the terrorist surveillance program. More than a dozen times they went before the proper senior officials of the U.S. Congress—in the House and Senate, both Republican and Democrat—to advise them about what this program was about and what they were doing. That includes the majority leader of the Senate, who is Republican, the Democratic leader, Mr. REID, and before him, Mr. Daschle. In the House, it includes the Speaker of the House and the Democratic leader. It includes the chairman of the House Intelligence Committee and the ranking Democrat on the House Intelligence Committee; the Senate Intelligence Committee chairman and the ranking Democrat on the Senate Intelligence Committee. Those are what they call the big 8—or The 8. The Intelligence Committees deal with these highly classified programs involving national security.

We have always understood that you cannot tell 100 Senators and 435 Congressmen a bunch of secrets because if you do, they will leak. As a matter of fact, I am sometimes even amazed the eight can keep a secret, but apparently they have done well, at least until the recent leak, and we don't know where it came from. It may well have come from another source.

These eight are briefed on the program. These are the top people in Congress. They are not children. They are not people who can be pushed around. They are grownups holding particularly high offices. If they have a problem with the program, they are not children; they know when it is time for them to speak up, if they have an objection, to raise it, and they did not object. There were no objections made, no call to stop this program by any of those eight people who, over a period of years, were informed.

It actually is more than eight. As I noted, we have had two Democratic leaders, Senator Daschle and Senator REID. We had Senator TRENT LOTT, as well as Senator BILL FRIST. We had Senator RICHARD SHELBY, as well as Senator PAT ROBERTS. So there are 15 members who have been briefed on it and had an opportunity to object and have not objected.

Then all this stuff hits the fan in the newspapers and everybody gets excited about it. We have some Democrats saying it is illegal and that it ought to be stopped. They are saying it is illegal. But if you noticed one word they didn't utilize, it was "stop."

They caused all this fuss revealing to the world many of the capabilities of the system, making the system less effective than it could be. In fact, Porter Goss, the head of the CIA, has said it has rendered severe damage to our intelligence capability. They did not say stop. Nobody is saying stop. Nobody has submitted a resolution in the Senate to say stop. Nobody has introduced legislation, which they have every right to do, and which we in Congress have a right to do, to cut off funds for this program.

We could end this program tomorrow. All we would have to do is come together as a Congress and say there shall be no Federal dollars expended to carry out a program of surveillance such as this. They would end it just like that.

That has not been proposed. Why has it not been proposed? Because it is idiotic to stop a program such as this. How stupid can we be if we eliminate a program such as this?

There is an article in the Washington Post—it is breathtaking really—in which Senator BIDEN said:

> "I don't understand why you would limit your eavesdropping to only foreign conversations," said Senator Biden to Attorney General Gonzales.

The article seems to suggest, after complaining about the program, they should have wiretapped more people when both ends of the conversation were in the United States.

Perhaps we should consider that. I think there is a realistic basis to conclude that the President has that power if it is relevant to the security of the United States of America. You just have to read through the lines. I was not in the meetings. I am on the Armed Services Committee and I am on the Judiciary Committee where we had a lot of these discussions and hearings. The President and his team at one point said: What about legislation, can we pass legislation?

All the people who apparently discussed this matter were in uniform agreement that if we brought a bill up to specifically authorize this kind of wiretapping, it would cause a lot of discussion in the Senate, and it would reveal to the world the program. So the President basically said: I believe under the authorization of force you gave me to act against al-Qaida, who has declared a war on us and we have declared a war on them, I have the power to do that on international calls; I am confident in that.

His lawyers have written opinions and briefs. They researched the history, and he concluded that he did, and that is what he basically told the eight Members of Congress, and they did not object. They could have said: No, you have to introduce legislation. That is a reasonable statement for any Member of Congress to make to the executive branch: Mr. President, if you think we can write legislation that would allow technology like this to be legal, explicitly by statute, we will have to write it in such a way that it will obviously reveal to those we are trying to surveil what we are doing and what our capabilities are, and it will undermine the program.

President Bush told us straight up in more than one speech: It is my responsibility to defend the people of the

United States of America. That is what he said his responsibility was, and I believed it and the American people believed it and we said yes.

He said: I am going to use every tool I have to defend this country. We said yes, and this is one of the tools he has, and he decided to use it. I think he did so in a very appropriate way. Congress has been advised of that.

Some have said it broke the FISA law; it did not comply with FISA. Attorney General Gonzales made a very nice point, a very important point. FISA claims to be the exclusive means of electronic surveillance, and people have cited that principle, but it actually contains numerous exceptions, such as a 15-day exception after a declaration of war in section 111 of FISA, a 72-hour exception for emergency surveillance under section 105, and finally there is an exception for surveillance authorized by statute in section 109.

The idea clearly is that there would be further statutes passed that would expand the FISA law as circumstances develop.

Then Congress, after 9/11, passed the authorization for use of military force against those whom the President finds are responsible for attacking us on 9/11. He has defined that narrowly as al-Qaida. We authorized the President to use all necessary and appropriate powers to surveil or to attack al-Qaida, to go after al-Qaida.

As the U.S. Supreme Court in Hamdi declared, they said the U.S. military can capture, detain, lock up, put in jail as a prisoner of war an American citizen who has associated himself with al-Qaida in the war against the United States without a trial. We have authorized our military under the authorization to use force, to go out and kill the al-Qaida people wherever they are in the world as they are deemed to be at war against us. So it stretches a bit to say you can't intercept their telephone calls. You can lock them up without trial, put them in jail and restrain their freedom—even an American citizen, you can kill them on the battlefield without a trial or a Miranda warning, but you cannot surveil their phone calls.

What the Supreme Court said in Hamdi was that although the authorization to use force did not specifically authorize locking up people and holding them as prisoners of war, it is a natural incident to the power given to the President to conduct war. The power to conduct war is also the power to detain and restrain people who are at war against you.

Attorney General Gonzales has made a very compelling argument. How much less of an invasion of a person's liberty is it to listen to their phone conversation than it is to lock them up in jail? So a natural incident to the conduct of a military operation, since the beginning of warfare—certainly in modern times—has been surveillance and intelligence-gathering operations. We worked tirelessly to break the German code. We worked tirelessly and broke the Japanese code. We were able to listen in on their conversations. That is what you do against an enemy; you try to find out what they are doing and how they are planning it so you can stop them.

I am confident a rational interpretation of the authorization to use force to go after somebody militarily includes the power to detain prisoners, as the Supreme Court has said, and also would include the power to intercept the communications of the enemy.

This is consistent. Maybe "amendment" is not the right word to FISA, but it is a statute passed in harmony with the concept of FISA when it was passed. It is a subsequent statute that would take priority over the past statute.

Another argument is the past statute was more explicit about these intelligence matters and said this was the sole way to do it. But I don't think you can interpret an authorization to go to war in any way that would prohibit intelligence-gathering operations. Indeed, the Hamdi case held that previous statutes that said you could not lock people up under these circumstances were overridden by the authorization to use force because a necessary incident to utilizing military action against the enemy is to lock up people you capture.

There is also, I believe, a good argument to be made that the President has inherent authority as Commander in Chief and a duty consistent with that authority and responsibility to protect the people of the United States. Every Federal court to have decided the issue has held—including the Third Circuit, Fourth Circuit, Fifth Circuit Courts of Appeals—that this is so. These cases involve surveillance that occurred before the FISA was passed, true; but in 2002 a FISA court of review relied on those cases. The FISA Court, created by FISA, relied on those previous cases to make this ruling:

> FISA could not encroach on the President's constitutional power.

That is In Re Sealed Case, in 2002.

Former Attorney General Griffin Bell, himself a long-time Federal judge who was called in to be President Jimmy Carter's Attorney General when FISA was being considered, was asked about this and the President's inherent power. Judge Bell, if you have known him, in that inimitable way he has, said, "We can't change the Constitution by agreement."

I would add, a statute can't amend the Constitution. FISA cannot eliminate the powers of the President, those inherent powers to defend America or to authorize electronic surveillance of an enemy with whom we are in combat, al-Qaida, in a time of war. Authorization for force, the President's inherent power—these are clear, I believe, authorizations of force.

We will have a lot of debate about it. We will have a lot of discussion about it. But as you look at it more and more, I think people are becoming confident that these powers exist. Now we have a recent article saying, Why don't you do even more, if you have this power?

Should we pass legislation? Let's talk about it. I think one thing we need to take out of the FISA law is the pretension that it represents the only authority the President has in these areas; that every act has to be done within the FISA. To that extent I believe it is clearly unconstitutional. Those words are not legitimate. They need to come out. We should not pretend to say we have the exclusive power in the legislative branch to override the President's responsibility to defend this country.

Then if there are other ways we can write the statute, I will discuss it. But I frankly am not sure it is going to be a successful enterprise. It is going to be difficult to write a statute that would draw the line on where the President's authority exists and where it does not. Tell you what, I get nervous, I get a little worried when we at a given point in history start writing a statute to define the ultimate power of the President and propose to contain that power because you never know when we will have a problem with it.

The Church Committee came out with this wall, a wall of separation between the CIA and the FBI, and many believed that wall was responsible for the lack of sharing of information between the FBI and CIA. They thought they were doing it for constitutional reasons. They thought they were doing a good thing. But we realized that was a disaster and we tore that wall down many years later, 20 years later, as a result of the experience we had with 9/11. So I would express my concern about statutes dealing with treatment of prisoners or surveillance, that we need to be careful about how we do that. I think the American people believe there should be some flexibility for the President in matters that could relate to our national security and the lives of our own citizens. We need to be careful as we go forward with that.

But to date, we can say a couple of things with certainty: that the leaders of the House and the Senate were informed fully of what the President was doing. They did not object. And the Attorney General has made a compelling case, I believe, that he was authorized to do these national security intercepts, both by the authorization to use force and by the inherent powers given to the President. I would note, also, that the President's narrow use of a power is something that should be appreciated by the critics. He said it can only involve a phone call that is international and a phone call from al-Qaida. in which one member of the call was al-Qaida.

If we do those two things, the average American can be sure they are not getting caught up in it. To hear the news articles, of course, it was domestic spying. That is far from the reality of this situation.

I ask unanimous consent that the recent editorials of the Washington Times and the Washington Post be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the Washington Times, Feb. 10, 2006]

The Asbestos Debate

There are three questions the Senate should focus on as it considers the Fairness in Asbestos Injury Resolution Act: Will the proposed $140 billion asbestos trust fund actually cost $140 billion, or will its fine print eventually require it to payout much more? Can the medical criteria be tightened to ensure that only people who have genuinely suffered harm from asbestos are compensated? And how can one minimize the chances of some future Congress putting taxpayers on the hook for likely overruns?

This bill should pass; Sen. Arlen Specter, Pennsylvania Republican, and Patrick Leahy, Vermont Democrat, are due accolades for getting this far on a longstanding problem that has befuddled everyone for decades. Many asbestos victims have suffered or died of mesothelioma or other illnesses while the courts and Washington struggled with a resolution. The victims and their families deserve to be made whole.

One good sign is the 98–1 Senate vote Tuesday to move forward, indicating broad agreement that the FAIR Act is acceptable as a starting point for the full Senate's debate. The other is trepidation from Senate Minority Leader Harry Reid: After making noises about a filibuster, Mr. Reid said the bill benefited "a few large companies" while supposedly leaving the little guy in the lurch. Really? Why, then, do insurance giants AllState and AIG oppose the bill? Why are many plaintiffs anxious to see it pass? In reality the big guys speak through Mr. Reid—in this case, unscrupulous lawyers who stand to profit greatly from keeping asbestos cases in the courts. Under the FAIR Act, fees for lawyers top out at five percent of the award—far less than they get in court.

Of course, there are good reasons to worry about the "little guy"—just not the ones Mr. Reid suggests. If previous federal "trust fund" schemes are any indication, this fund could bleed billions of dollars only a few years from now and demand either a federal bailout or a return to the courts. The first is bad for the average taxpayer; the other is bad for most claimants. As for the first, the nonpartisan National Taxpayers Union opposes the trust fund on the grounds that a bust is likely. It calls the fund "a fiscal time bomb." The second would land claimants back in limbo in courts (to the great pleasure of asbestos lawyers, of course, who clog up the system with questionable cases).

The precedents show how daunting this month's debate will be. As we've reported previously, only one of the many smaller trust funds created over the years has been able to meet its obligations, according to Francine Rabinovitz, a trust-fund expert at the University of Southern California. Last year she told Sens. Jon Kyl, Arizona Republican, and Tom Coburn, Oklahoma Republican, that "none of the bankruptcy trusts created prior to 2002 have been able to pay over the life anywhere close to 50 percent of the liquidated value of qualifying claims." Claims against the Johns Manville bankruptcy fund—one flawed effort to solve asbestos-injury claims—outstripped resources by a factor of 20.

That begs some questions. Will this $140 billion fund "sunset" in three years like its conservative critics say it will? Even the Congressional Budget Office predicts it will bleed $6.5 billion a year by 2015.

What about the medical criteria? A group of conservative senators on the Judiciary Committee worried about the fund's solvency cited this among concerns when they sent the bill to the Senate floor last year. Sens. Jon Kyl, Arizona Republican, and Tom Coburn, Oklahoma Republican, said that they were "deeply concerned that this fund will run out of money and prove unable to pay all qualifying claimants."

This debate will play out fully in the Senate over the coming days. In the meantime, it's worth pointing out what the FAIR Act offers what nothing previously has: A light at the end of the tunnel for claimants. Under FAIR, compensation ranges from $25,000 for people who suffer breathing difficulties to as much as $1.1 million for victims of the deadly cancer mesothelioma. It has taken long enough to get this far. The Senate is close to leading the way out.

[From washingtonpost.com, Feb. 10, 2006]

Forward on Asbestos

In a triumph of good sense and bipartisan cooperation, the Senate voted on Tuesday to go forward with a bill that would fix the broken asbestos litigation system. Hundreds of thousands of asbestos injury claims have already landed in the courts, contributing to the bankruptcy of more than 70 companies. Without reform, this process will drag on, triggering the bankruptcy of yet more firms, many of which have only tenuous asbestos connections, because the main firms responsible have already gone under. Meanwhile, many who are ill from asbestos-related diseases won't be able to get timely compensation or, in some cases, any compensation. Unless the bill passes, Navy veterans, for example, will go uncompensated for diseases caused by asbestos on ships. Veterans are not allowed to sue the government, and many of the shipbuilders are long since bankrupt.

The bill will be debated and amended, and it may face a second attempted filibuster before it gets a vote. Some amendment may be reasonable at the margins, but the bill's central idea—to replace litigation with a $140 billion compensation fund to be financed by defendant companies and their insurers—must be preserved. Democrats complain that the fund won't have enough money to compensate asbestos victims; Republicans complain that the fund will have too much money, the raising of which will constitute a burden on small and medium-size firms. The fact that the bill is being attacked from both directions suggests that its authors, Sens. Arlen Specter (R-Pa.) and Patrick J. Leahy (D–Vt), have balanced competing interests in a reasonable manner.

Unfortunately, the bill's critics are not always so reasonable. Sen. Harry M. Reid of Nevada, the Democratic minority leader, has complained, "One would have to search long and hard to find a bill in my opinion as bad as this." He has even described the legislation as the work of lobbyists hired by corporations to limit asbestos exposure. But the truth is that the bill's main opponents are trial lawyers, who profit mightily from asbestos lawsuits and who constitute a powerful lobby in their own right Mr. Specter and Mr. Leahy are in fact model resisters of special interests who have spent more than two years crafting legislation that serves the public interest For Mr. Reid to demean this effort in order to fire off campaign sound bites is reprehensible.

Mr. SESSIONS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. Sununu). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there be a period of morning business with Senators permitted to speak up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

BLACK HISTORY MONTH

Mr. AKAKA. Mr. President, it was 80 years ago when we first recognized February as Black History Month. Today, I am pleased to rise to add my voice to those honoring African Americans.

African Americans have both a tragic and vibrant history in the United States. This month is an opportunity to reflect upon their struggles, perseverance, and triumphs. African Americans have contributed to every segment of our community, ranging from politics and sports to medicine and business—and have greatly impacted the music industry. Our society continues to benefit from their service as national leaders, role models, athletes, scholars, and much more.

As you know, we cannot reflect on the achievements of our friends without remembering the civil rights movement. I vividly remember the movement's powerful call for nonviolent change. In 1963, my brother, Rev. Abraham Akaka, joined Dr. King for the famous March on Washington to help show Hawaii's support for the movement. Since 1926, Americans have dedicated the month to honoring the African American legacy. As a staunch supporter of civil rights, I am proud of the many ways that our country has evolved into a more fair and just nation since the movement.

Earlier this week, we bid a fond farewell to Coretta Scott King, who, along with her husband Dr. Martin Luther King, Jr., carried the torch against discrimination and bigotry everywhere. As a nation, we are indebted to the

Kings and their life's work, and the work of countless other civil rights leaders. However, it is an unfortunate reality that, despite all of this progress, inequities remain. To properly pay tribute to their legacy, I believe that it is important that we use this month not just as a time for reflection, but also as a springboard for action.

In looking back at the progress of African Americans throughout the years and how it has changed the face of our Nation, it is clear that Black history is American history. As a nation, we must work together to close the gap on these important issues. Where possible, we must work in our communities on a local level, to ensure that all members of our society have equal opportunities to thrive and succeed.

This is also a national problem that requires a refocusing of national legislative priorities. Earlier this week, President Bush released his budget for fiscal year 2007, and I was disappointed that he did not devote the proper resources to these fundamental issues. President Bush's budget once again underfunds important health care and education priorities. It saddens me that so many people will be negatively affected by the President's proposals. Unfortunately, the administration has again demonstrated a disregard for domestic programs to improve the lives of working people at the expense of tax cuts for the wealthiest.

The administration needs to refocus its priorities. There are a variety of legislative initiatives that have been introduced this Congress which will address the shortcomings in education and health care for minorities, including African Americans. Earlier this year, I introduced S. 1580—the Healthcare Equality and Accountability Act—which establishes programs designed to improve the quality of and access to health care for minorities, while also improving health workforce accountability. My bill also includes a comprehensive diabetes education program. Diabetes is a disease that disproportionately impacts African Americans and other minorities such as native Hawaiians.

As a former teacher, I have seen the ways that education can open doors for people from all walks of life. For that reason, I also introduced S. 1521, the Teacher Acculturation Act of 2005. This bill recognizes that cultural incongruence along racial, socioeconomic, and ethnic vectors impedes learning in our classrooms. Too often, this makes it difficult for knowledge that needs to be transmitted between students aiming to learn and teachers seeking to teach. My bill helps teachers implement strategies to create a healthy learning environment for all students.

I am hopeful that my colleagues will join me in support of my bills, which address significant gaps in services for minorities and African Americans. I am proud to stand with my Democratic colleagues in working to support and empower African Americans in addressing important issues like education, health care, and the economy. As we move through the month of February, I am hopeful that we can work together to make America a better place for all Americans.

MAKE GUN VIOLENCE PREVENTION A PRIORITY

Mr. LEVIN. Mr. President, last month was declared "Guns Aside Month" by the DC City Council in honor of the grassroots campaign known by the same name. The Guns Aside campaign is run by a DC community organization named Reaching Out to Others Together, or ROOT.

Washington, DC, resident Kenneth Barnes established ROOT after his son was shot to death in 2001. According to its Web site, ROOT is "committed to advocacy, education, and intervention on behalf of individuals and families who have been victimized by homicides. Its mission is to bring visibility and focus community and organizational resources on these homicides on behalf of families, while addressing the root causes of the systemic apathy that fosters a culture of violence in our communities today."

Among other things, Kenneth Barnes and other ROOT members work with the DC police and local and national organizations to help address the needs of families who have been affected by gun violence and homicide. ROOT also works with community organizations to develop violence prevention strategies and better coordinate their efforts.

ROOT's Guns Aside campaign began in September 2004 as a multimedia outreach program targeted at young people. As part of the campaign, ROOT members have visited schools and held workshops and mentoring programs while working to build cooperative relationships with law enforcement personnel, businesses, and local government officials. Kenneth Barnes and ROOT recently announced plans to expand the Guns Aside program to the top 15 cities affected by gun violence around the country.

Ironically, September 29, 2004 marked not only the start of the Guns Aside campaign, but also the passage of the misnamed "District of Columbia Personal Protection Act" by the House of Representatives. Among other things, that legislation would repeal local laws in Washington, D.C. that ban the sale and possession of unregistered firearms, require firearm registration, impose common sense safe storage requirements, and ban semiautomatic weapons.

The Senate did not make the mistake of passing that legislation during the 108th Congress. However, the bill was reintroduced last year and the National Rifle Association has labeled it a "top legislative priority" for this year.

I hope that the House and Senate Republican Congressional leadership will reward the work of organizations like ROOT and reject the efforts of NRA lobbyists. We should respect the will of the people of Washington, DC, with regard to local gun safety laws and work to support the efforts of antigun violence organizations around the country by passing commonsense gun safety legislation.

ADDITIONAL STATEMENTS

TRIBUTE TO DAVE SERFLING

• Mr. DAYTON. Mr. President, I rise today to commemorate Dave Serfling, a Minnesota farmer, father, friend, and activist who died tragically on January 8 while driving home from church. My thoughts and prayers go out to Dave's family, especially his wife Diane, his daughter Hannah, and his son Ethan. Along with Dave's immediate family, the family farming and sustainable agriculture community in Minnesota also experienced a great loss on that Sunday morning.

Dave raised hogs, beef cattle, sheep, and crops on 350 acres in southeast Minnesota's Fillmore County. During his 46 years, he made extraordinary contributions to sustainable agriculture. As a key member of the Land Stewardship Project's Federal Farm Policy Committee, Dave Serfling put his farming experience and analytical skills to work in developing a new farm program that would reward farmers for their environmental improvements to their farmlands. His ideas were championed by the great Senator from Iowa, Mr. HARKIN, who was then chairman of the Senate Committee on Agriculture, Nutrition, and Forestry. They became the genesis of Senator HARKIN's Conservation Security Act, which is now a lasting legacy to Dave as an important nationwide agriculture program.

Dave testified before the Senate for policies helping family farmers in Minnesota and across the Nation. His statement to the Senate Agriculture Committee on July 31, 2001, typified his philosophy on farm policy and farming itself: "I am a big believer in farm ingenuity. . . . Please don't tell the farmers how to farm. Just tell us what results you want to see on working land, give us meaningful financial incentives, and we American farmers will not let you down."

Dave's involvement with the 2002 farm bill was just one example of his contributions to sustainable agriculture and family farming. In 1987, he and his wife Diane were one of the original farm families to be involved in the Land Stewardship Project's Stewardship Farming Program, an on-farm research and information exchange initiative, which became a national model for farmer-to-farmer education. The Serflings continued to be involved in on-farm research and education during the past two decades.

Throughout the years, Dave wrote extensively for various publications, including the Minneapolis-based Star Tribune and AgriNews. His writings and speeches combined Dave's razor-sharp analytical abilities with his own family's experiences as stewards of their Fillmore County farm. The Serfling farm had also been featured in the Christian Science Monitor, the Des Moines Register, the Chicago Tribune, and on National Public Radio.

In recent years, Dave and Diane's farm has been recognized for protecting the environment and raising animals humanely, while also making a profit. In 2005, Dave and Diane were given an Outstanding Conservationist award by the Minnesota Association of Soil and Water Conservation Districts. That same year, their farm was recognized by the national company, Niman Ranch, as a top producer of high-quality pork.

Dave was also a role model for his children when it came to the idea of lifelong learning. In December 2005, he received a master's degree in professional agriculture from Iowa State University after taking classes, one at a time, for 16 years.

At the time of his death, Dave was working on new ideas for the 2007 farm bill. He was helping develop a new farm initiative for conservation, commodity program reform, and rural development based on local food and farming systems.

Dave had his priorities right. He loved his family, he cared for his farm, and he worked for the betterment of his community and society. He lived his faith. Dave Serfling's absence from farming, farm policy, and Minnesota will be felt for a long time to come. However, he has left a legacy of stewardship of the land and a practical vision for family farming that will benefit today's farmers and future generations. Thank you, Dave. Rest in peace.•

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MEASURES READ THE FIRST TIME

The following bills were read the first time:

S. 2271. A bill to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive national security letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

S. 2273. A bill to make available funds included in the Deficit Reduction Act of 2005 for the Low-Income Home Energy Assistance Act of 1981 program for fiscal year 2006, and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. SUNUNU (for himself, Mr. CRAIG, Ms. MURKOWSKI, and Mr. HAGEL):

S. 2271. A bill to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive national security letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes; read the first time.

By Mr. COLEMAN (for himself and Mr. JOHNSON):

S. 2272. A bill to amend the Internal Revenue Code of 1986 to increase the deduction for host families of foreign exchange and other students from $50 per month to $200 per month; to the Committee on Finance.

By Ms. SNOWE (for herself, Mr. COLEMAN, Ms. COLLINS, Mr. DEWINE, Mr. GRASSLEY, Mr. SMITH, Mr. THUNE, Mr. SANTORUM, and Mr. JEFFORDS):

S. 2273. A bill to make available funds included in the Deficit Reduction Act of 2005 for the Low-Income Home Energy Assistance Act of 1981 program for fiscal year 2006, and for other purposes; read the first time.

By Mr. DOMENICI:

S. 2274. A bill to establish a language arts facility for Homeland Security personnel and law enforcement officers; to the Committee on Homeland Security and Governmental Affairs.

By Mr. SHELBY:

S. 2275. A bill to temporarily increase the borrowing authority of the Federal Emergency Management Agency for carrying out the national flood insurance program; considered and passed.

By Mrs. FEINSTEIN (for herself, Mr. LEAHY, and Mr. KERRY):

S. 2276. A bill to provide for fairness for the Federal judiciary; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 658

At the request of Mr. TALENT, the name of the Senator from Missouri (Mr. TALENT) was withdrawn as a cosponsor of S. 658, a bill to amend the Public Health Service Act to prohibit human cloning.

S. 722

At the request of Mr. SANTORUM, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 722, a bill to amend the Internal Revenue Code of 1986 to reduce the tax on beer to its pre-1991 level.

S. 877

At the request of Mr. DOMENICI, the names of the Senator from Texas (Mrs. HUTCHISON) and the Senator from Idaho (Mr. CRAIG) were added as cosponsors of S. 877, a bill to provide for a biennial budget process and a biennial appropriations process and to enhance oversight and the performance of the Federal Government.

S. 1035

At the request of Mr. INHOFE, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1035, a bill to authorize the presentation of commemorative medals on behalf of Congress to Native Americans who served as Code Talkers during foreign conflicts in which the United States was involved during the 20th century in recognition of the service of those Native Americans to the United States.

S. 2253

At the request of Mr. DOMENICI, the names of the Senator from Wyoming (Mr. THOMAS) and the Senator from Missouri (Mr. BOND) were added as cosponsors of S. 2253, a bill to require the Secretary of the Interior to offer the 181 Area of the Gulf of Mexico for oil and gas leasing.

S. 2259

At the request of Mr. OBAMA, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 2259, a bill to establish an Office of Public Integrity in the Congress and a Congressional Ethics Enforcement Commission.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COLEMAN (for himself and Mr. JOHNSON):

S. 2272. A bill to amend the Internal Revenue Code of 1986 to increase the deduction for host families of foreign exchange and other students from $50 per month to $200 per month; to the Committee on Finance.

Mr. COLEMAN. Mr. President, I come to the floor today to introduce legislation with my colleague from South Dakota, Senator JOHNSON, that will help ease the financial burden for American families who open their homes to foreign exchange students from around the world, and offer an incentive to additional families to get involved in international exchanges.

Every year, approximately 30,000 American families host exchange students from all over the world. This exchange experience provides the families, their communities, the students and their schools with a unique educational opportunity to increase cultural awareness and understanding. And it often produces lifelong friendship as well.

Exchange programs are vital in today's interconnected world to build bridges of understanding. Youth exchange is particularly critical as it allows young people the opportunity to gain exposure to American families, culture and values early in their lives. Participants take home an understanding and often an appreciation for America's people, society and values.

At her confirmation hearing before the Senate Foreign Relations Committee early last year, Secretary of State Condoleezza Rice declared, "I am a big proponent of student exchanges. It is the best policy we can have." She explained that, "the presence of foreign students" is "one of the best things" for American students; the experience "changes the way we think about people, and the way they think about us", and she called student exchange "invaluable."

We could not agree with her more. The legislation we introduce today will encourage more American families to participate in exchanges by increasing the monthly tax deduction for host families from $50 to $200 per month. The current $50 tax deduction has been in place since it was first introduced in the 1960s. It has never been increased to allow for inflation or to reflect the increasing costs associated with hosting a student. Our legislation will increase the monthly deduction with an annual adjustment for inflation.

While the increase is certainly not enough cover the expenses involved in feeding and housing a teenager, it will offer needed cost relief to American families, and most importantly, it will send a strong message to these families that our Nation values their contribution to increasing international understanding.

I hope that my Senate colleagues will join Senator JOHNSON and me in supporting this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2272

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Youth Exchange Support Act of 2006".

SEC. 2. INCREASE IN CHARITABLE DEDUCTION FOR AMOUNTS PAID TO MAINTAIN CERTAIN STUDENTS AS MEMBERS OF TAXPAYER'S HOUSEHOLD.

(a) IN GENERAL.—Subparagraph (A) of section 170(g)(2) of the Internal Revenue Code of 1986 (relating to amounts paid to maintain certain students as members of taxpayer's household) is amended by striking "$50" and inserting "$200".

(b) ADJUSTMENT FOR INFLATION.—Section 170(g) of such Code is amended by adding at the end the following new paragraph:

"(5) ADJUSTMENT FOR INFLATION.—

"(A) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2006, the $200 amount contained in paragraph (2)(A) shall be increased by an amount equal to—

"(i) $200, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins by substituting 'calendar year 2005' for 'calendar year 1992' in subparagraph (B) thereof.

"(B) ROUNDING.—If any increase determined under paragraph (1) is not a multiple of $10, such increase shall be rounded to the next highest multiple of $10.".

(c) EFFECTIVE DATE.—The amendments made by this Act shall apply to taxable years beginning after December 31, 2005.

By Mr. DOMENICI:

S. 2274. A bill to establish a language arts facility for Homeland Security personnel and law enforcement officers; to the Committee on Homeland Security and Governmental Affairs.

Mr. DOMENICI. Mr. President, I rise today to introduce the Foreign Language Training Act of 2006, a bill that I believe is necessary for the success of our Department of Homeland Security personnel and other Federal agents.

As you may know, our Department of Defense employees receive foreign language education and training at the Defense Language Institute Foreign Language Center. This school has provided training for American forces involved in arms control treaty verification, the war on drugs, and Operation Desert Storm.

I believe the Department of Defense's success can provide guidance for Department of Homeland Security personnel and Federal law enforcement agents who need foreign language skills. The Foreign Language Training Act of 2006 provides for such guidance by creating a facility similar to the Defense Language Institute Foreign Language Center for these Federal employees.

My bill requires the Secretary of Homeland Security and other Federal agency leaders to identify employees who need foreign language education and plan for the provision of such education. To fully utilize existing Federal assets, the Foreign Language Training Act requires this training to take place at the Federal Law Enforcement Training Center in Artesia, New Mexico. FLETC is already planning to increase its language training capabilities and construct new language arts facilities in Artesia to accommodate the increased number of border patrol trainees being sent there, so it makes sense for other DHS employees and Federal agents to utilize this facility as well.

Mr. President, the Defense Language Institute Foreign Language Center has prepared our soldiers for World War II, the Cold War, the Korean War, and the Vietman conflict. It continues to provide such training today. I believe that similar training is necessary for the men and women securing our homeland, and the Foreign Language Training Act of 2006 provides for such education.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2274

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Foreign Language Training Act of 2006".

SEC. 2. DEFINITIONS.

In this Act—

(1) the term "executive agency" has the same meaning as in section 105 of title 5, United States Code, except that the term does not include the Department of Defense;

(2) the term "law enforcement officer" has the same meaning as in section 8331 of title 5, United States Code; and

(3) the term "Secretary" means the Secretary of Homeland Security.

SEC. 3. LANGUAGE ARTS PROGRAM AND FACILITY.

(a) PROGRAM EXPANSION.—The Secretary shall expand the language arts program at the Federal Law Enforcement Training Center in Artesia, New Mexico, to provide training for the Department of Homeland Security personnel and law enforcement officers identified under section 4.

(b) FACILITY.—The Secretary is authorized to construct a language arts facility at the Federal Law Enforcement Training Center in Artesia, New Mexico.

SEC. 4. TRAINING REQUIREMENT.

(a) HOMELAND SECURITY.—The Secretary shall—

(1) identify any employee of the Department of Homeland Security for whom foreign language education is necessary; and

(2) require foreign language education for any employee identified under paragraph (1).

(b) LAW ENFORCEMENT.—The head of each executive agency shall—

(1) identify any law enforcement officer employed by such executive agency for whom foreign language education is necessary; and

(2) require foreign language education for any law enforcement officer identified under paragraph (1).

(c) TRAINING.—Foreign language education for any individual identified under subsection (a)(1) or (b)(1) shall be provided at the language arts facility authorized under section 3(b).

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

By Mrs. FEINSTEIN (for herself, Mr. LEAHY, and Mr. KERRY):

S. 2276. A bill to provide for fairness for the Federal judiciary; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I rise to introduce the Fairness in Judicial Salaries Act.

This legislation is needed to prevent a continuing decline in the pay of our

Federal judges and prevent damage to the quality of our judiciary.

Impartial, dedicated, and wise judges are critical to our justice system. Nevertheless, in the past three decades, our Federal judges have been neglected.

Since 1969, the salaries of Federal judges have declined by nearly 24 percent in inflation adjusted dollars. By comparison, in the same time period the salary of the average American worker has increased over 15 percent.

Since 1993, when Congress last passed a comprehensive revision of Federal salaries, real judicial pay has declined about 10 percent.

The drop in judicial pay is even more stark when compared to judges' peers in the legal community.

In 1969, the salary of a Federal district court judge was about 20 percent higher than the salary of a top law school dean and about 30 percent higher than that of a senior law professor at a top law school. In contrast, today, top law school deans make twice as much as district court judges, and senior law professors at those schools make nearly 50 percent more.

Today, partners at major law firms routinely make three, four or five times what Federal judges make. Furthermore, first year law school graduates at these law firms make more than experienced Federal judges.

While judges are making less, they are also working more. In the same time period that judges pay has declined by nearly 24 percent, the caseload for district court judges has climbed by 58.4 percent and the caseload of Circuit Court judges has jumped 211.4 percent.

While fairness alone would require a reasonable salary for judges, the growing pay disparity between judges and other members of the legal profession poses a real threat to the quality of our judiciary.

In order to ensure that our judiciary can continue to attract—and—keep top attorneys, it is imperative that judges' salaries be increased to at least make up for some of the loss in real pay that has taken place in the last 30 years.

In 2003, the National Commission on the Public Service, also known as the Volcker Commission, concluded that "the lag in judicial salaries has gone on too long, and the potential for the diminished quality in American jurisprudence is now too large."

In a July 15, 2002 statement to the National Commission on the Public Service, the late Chief Justice Rehnquist said inadequate compensation seriously compromises the judicial independence fostered by life tenure. The prospect that low salaries might force judges to return to the private sector rather than stay on the bench risks affecting judicial performance.

Chief Justice Rehnquist's views were echoed by new Chief Justice Roberts in his State of the Judiciary Address from earlier this year. Chief Justice Roberts said the following:

> If judges' salaries are too low, judges effectively serve for a term dictated by their financial position rather than for life. Figures gathered by the Administrative Office show that judges are leaving the bench in greater numbers now than ever before. In the 1960s, only a handful of district and appellate court judges retired or resigned; since 1990, 92 judges have left the bench. Of those, 21 left before reaching retirement age. Fifty-nine of them stepped down to enter the private practice of law. In the past five years alone, 37 judges have left the federal bench—nine of them in the last year.
>
> There will always be a substantial difference in pay between successful government and private sector lawyers. But if that difference remains too large, as it is today, the judiciary will over time cease to be made up of a diverse group of the Nation's very best lawyers. Instead, it will come to be staffed by a combination of the independently wealthy and those following a career path before becoming a judge different from the practicing bar at large. Such a development would dramatically alter the nature of the federal judiciary.

Many of the judges that have left the bench in recent years cited financial considerations as a major factor in their decisions to leave the bench.

In my home State of California, several Federal judges have gone on the record to say that they left the Federal bench because of financial pressures. Some of these judges have even taken jobs in the California State judiciary, since the State courts offer better salaries than the Federal bench.

As a result of the linkage of judicial salaries with the salaries of Members of Congress, when Congress has voted to deny itself a cost-of-living adjustment, as it has in 5 of the last 12 years, it has simultaneously denied all Federal judges cost-of-living adjustments, as well. Consequently, the real pay of judges has declined.

I am not suggesting that judges be paid as much as partners at law firms; however, they should receive a fair salary. The legislation that I introduce today, the Federal Judicial Fairness Act, provides a straightforward solution.

First, the act terminates the linkage of congressional pay increase to judicial pay increases, so that Congress's decision to deny itself pay raises will not also place that burden on Federal judges.

Second, the act increases the salaries of all Federal judges by 16.5 percent, in order to at least partially make up for the decline in real pay for judges over the last three decades. In 2003, both President Bush and Chief Justice Rehnquist agreed that a pay adjustment of at least 16.5 percent was needed.

Finally, the act would provide Federal judges with annual cost-of-living adjustments based on the employee cost Index, an index already used by the Federal Government to help Federal salaries keep up with inflation.

The cost of this salary increase would be only $41.3 million, a relatively small sum to safeguard the quality and independence of our judiciary.

Our Federal judges make many sacrifices in serving our Nation and a cut in pay is one of these sacrifices. However, the disparity between judicial salaries and salaries in the rest of the legal profession has grown so wide that the quality of our judicial system may be endangered. It is time to provide these critical public servants with a fair salary that will guarantee the future health of the judiciary.

I urge my colleagues to support this important legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2276

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Judicial Fairness Act of 2006".

SEC. 2. JUDICIAL COST-OF-LIVING INCREASES.

(a) REPEAL OF STATUTORY REQUIREMENT RELATING TO JUDICIAL SALARIES.—Section 140 of the resolution entitled "A Joint Resolution making further continuing appropriations for the fiscal year 1982, and for other purposes.", approved December 15, 1981 (Public Law 97–92; 95 Stat. 1200; 28 U.S.C. 461 note), is repealed.

(b) AUTOMATIC ANNUAL INCREASES.—Section 461(a) of title 28, United States Code, is amended to read as follows:

"(a)(1) Subject to paragraph (2), effective on the first day of the first applicable pay period beginning on or after January 1 of each calendar year, each salary rate which is subject to adjustment under this section shall be adjusted by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100) equal to the percentage of such salary rate which corresponds to the most recent percentage change in the ECI (relative to the date described in the next sentence), as determined under section 704(a)(1) of the Ethics Reform Act of 1989. The appropriate date under this sentence is the first day of the fiscal year that begins in the preceding calendar year.

"(2) In no event shall the percentage adjustment taking effect under paragraph (1) in any calendar year (before rounding), in any salary rate, exceed the percentage adjustment taking effect in such calendar year under section 5303 of title 5 in the rates of pay under the General Schedule.".

(c) JUDICIAL SALARY INCREASES.—Effective on the first day of the first applicable pay period that begins on or after the date of the enactment of this Act, the rate of basic pay for the Chief Justice of the United States, an Associate Justice of the Supreme Court of the United States, a judge of a United States circuit court, a judge of a district court of the United States, a judge of the United States Court of International Trade, a bankruptcy judge, and a full-time magistrate judge shall be increased in the amount of 16.5 percent of their respective rates (as last in effect before the increase), rounded to the nearest multiple of $100 (or, if midway between multiples of $100, to the next higher multiple of $100).

SEC. 3. COORDINATION RULE.

If a pay adjustment under section 2 is to be made for an office or position as of the same date as any other pay adjustment affecting such office or position, the adjustment under section 2 shall be made first.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2759. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table.

SA 2760. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2761. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2762. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2763. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2764. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2765. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2766. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2759. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 376, line 2, strike all through the matter before line 1 on page 385.

On page 370, lines 9 through 11, strike "and the regulations banning asbestos promulgated under section 501 of this Act),".

SA 2760. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 385, line 1, strike all through page 392, line 5.

SA 2761. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 376, line 2, strike all through the matter before line 1 on page 385.

On page 370, lines 9 through 11, strike "and the regulations banning asbestos promulgated under section 501 of this Act),".

SA 2762. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 376, line 1, strike all through page 392, line 5.

On page 370, lines 9 through 11, strike "and the regulations banning asbestos promulgated under section 501 of this Act),".

SA 2763. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 368, line 23, strike all through page 370, line 24 and insert the following:

(e) CONTRIBUTIONS TO THE ASBESTOS TRUST FUND BY OSHA ASBESTOS VIOLATORS.—

(1) IN GENERAL.—The Administrator shall assess employers or other individuals determined to have violated asbestos statutes, standards, or regulations administered by the Department of Labor and State agencies that are counterparts, for contributions to the Asbestos Injury Claims Resolution Fund.

(2) IDENTIFICATION OF VIOLATORS.—Each year, the Administrator shall in consultation with the Assistant Secretary of Labor for Occupational Safety and Health, identify all employers that, during the previous year, were subject to final orders finding that they violated standards issued by the Occupational Safety and Health Administration for control of occupational exposure to asbestos (29 C.F.R. 1910.1001, 1915.1001, and 1926.1101) or the equivalent asbestos standards issued by any State under section 18 of the Occupational Safety and Health Act (29 U.S.C. 668).

(3) ASSESSMENT FOR CONTRIBUTION.—The Administrator shall assess each such identified employer or other individual under paragraph (2) for a contribution to the Fund for that year in an amount equal to—

(A) 2 times the amount of total penalties assessed for the first violation of occupational health statutes, standards, or regulations;

(B) 4 times the amount of total penalties for a second violation of such statutes, standards, or regulations; and

(C) 6 times the amount of total penalties for any violations thereafter.

SA 2764. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 370, lines 9 through 11, strike "and the regulations banning asbestos promulgated under section 501 of this Act),".

On page 368, line 23, strike all through page 370, line 24 and insert the following:

(e) CONTRIBUTIONS TO THE ASBESTOS TRUST FUND BY OSHA ASBESTOS VIOLATORS.—

(1) IN GENERAL.—The Administrator shall assess employers or other individuals determined to have violated asbestos statutes, standards, or regulations administered by the Department of Labor and State agencies that are counterparts, for contributions to the Asbestos Injury Claims Resolution Fund.

(2) IDENTIFICATION OF VIOLATORS.—Each year, the Administrator shall in consultation with the Assistant Secretary of Labor for Occupational Safety and Health, identify all employers that, during the previous year, were subject to final orders finding that they violated standards issued by the Occupational Safety and Health Administration for control of occupational exposure to asbestos (29 C.F.R. 1910.1001, 1915.1001, and 1926.1101) or the equivalent asbestos standards issued by any State under section 18 of the Occupational Safety and Health Act (29 U.S.C. 668).

(3) ASSESSMENT FOR CONTRIBUTION.—The Administrator shall assess each such identified employer or other individual under paragraph (2) for a contribution to the Fund for that year in an amount equal to—

(A) 2 times the amount of total penalties assessed for the first violation of occupational health statutes, standards, or regulations;

(B) 4 times the amount of total penalties for a second violation of such statutes, standards, or regulations; and

(C) 6 times the amount of total penalties for any violations thereafter.

On page 376, line 2, strike all through the matter before line 1 on page 385.

On page 385, line 1, strike all through page 392, line 5.

SA 2765. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 363, between lines 18 and 19, insert the following:

(4) MEDICAL CRITERIA FOR CLAIMS.—

(A) IN GENERAL.—Except as provided under subparagraph (B), the medical criteria under section 121(d) shall apply to any civil action described under paragraph (1).

(B) NONPREEMPTION OF CERTAIN STATE CRITERIA.—If any medical criterion under State law of the State in which a civil action described under paragragh (1) is filed has a greater requirement than any medical criterion of the medical criteria under section 121(d), the medical criterion of that State shall apply.

On page 363, line 19, strike "(4)" and insert "(5)".

On page 364, line 15, strike "(5)" and insert "(6)".

SA 2766. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 365, insert between lines 118 and 19, the following:

(4) LIMITATIONS ON ATTORNEY'S FEES AND APPLICATION OF MEDICAL CRITERIA.—

(A) ATTORNEY'S FEES.—

(i) DEFINITION.—In this subparagraph, the term "reasonable fees and expenses of attorneys" means fees and expenses that are based on prevailing market rates for the kind and quality of the services furnished, except that—

(I) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States Government; and

(II) attorney's fees shall not be awarded in excess of a reasonable fee, unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys, for the proceedings involved justifies a higher fee.

(ii) LIMITATION.—In any civil action described under paragraph (1)—

(I) the limitations on attorney's fees under section 104(e) shall apply; or

(II) a court may award reasonable fees and expenses of attorneys.

(B) MEDICAL CRITERIA FOR CLAIMS.—

(i) IN GENERAL.—Except as provided under clause (ii), the medical criteria under section 121(d) shall apply to any civil action described under paragraph (1).

(ii) NONPREEMPTION OF CERTAIN STATE CRITERIA.—If any medical criterion under State law of the State in which a civil action described under paragragh (1) is filed has a greater requirement than any medical criterion of the medical criteria under section 121(d), the medical criterion of that State shall apply.

On page 363, line 19, strike "(4)" and insert "(5)".

On page 364, line 15, strike "(5)" and insert "(6)".

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Friday, February 10, 2006, at 9:30 a.m. for a hearing titled, "Hurricane Katrina: The Roles of DHS and FEMA Leadership."

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL FLOOD INSURANCE PROGRAM ENHANCED BORROWING AUTHORITY ACT OF 2006

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 2275, introduced earlier today.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2275) to temporarily increase the borrowing authority of the Federal Emergency Management Agency for carrying out the national flood insurance program.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2275) was read the third time and passed, as follows:

S. 2275

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Flood Insurance Program Enhanced Borrowing Authority Act of 2006".

SEC. 2. INCREASE IN BORROWING AUTHORITY.

The first sentence of subsection (a) of section 1309 of the National Flood Insurance Act of 1968 (42 U.S.C. 4016(a)), as amended by the National Flood Insurance Program Further Enhanced Borrowing Authority Act of 2005 (Public Law 109–106; 119 Stat. 2288), is amended by striking "$18,500,000,000" and inserting "$21,200,000,000".

SEC. 3. EMERGENCY SPENDING.

Amendments made pursuant to this Act are designated as emergency spending, as provided under section 402 of H. Con. Res. 95 (109th Congress).

MEASURES READ THE FIRST TIME—S. 2271 AND S. 2273

Mr. FRIST. I understand there are two bills at the desk. I ask for their first reading, en bloc.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 2271) to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive national security letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

A bill (S. 2273) to make available funds included in the Deficit Reduction Act of 2005 for Low-income Home Energy Assistance Act of 1981 program for fiscal year 2006, and for other purposes.

Mr. FRIST. I now ask for a second reading, and in order to place the bills on the calendar under the provisions of rule XIV, I object to my own request, en bloc.

The PRESIDING OFFICER. The objection is heard. The bills will be read for the second time on the next legislative day.

EXECUTIVE SESSION

NOMINATION OF THOMAS O. BARNETT TO BE AN ASSISTANT ATTORNEY GENERAL

Mr. FRIST. I ask unanimous consent the Senate immediately proceed to executive session to consider the following nomination on today's Executive Calendar: No. 437, Thomas O. Barnett. I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

DEPARTMENT OF JUSTICE

Thomas O. Barnett, of Virginia, to be an Assistant Attorney General.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

ORDERS FOR MONDAY, FEBRUARY 13, 2006

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 12 noon on Monday, February 13; I further ask following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Chair then lay before the Senate the House message to accompany H.R. 4297, the tax relief bill. I further ask that the Senate then insist upon its amendment and agree to the request of the House for a conference.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, on Monday, the Senate will consider H.R. 4297, the Tax Relief Act of 2005 for the third time. Unfortunately, there will be multiple motions to instruct the conferees from the other side of the aisle before we send this bill to conference. Those motions will be offered on Monday. Senators can therefore expect multiple votes on Monday. There are 10 hours available by statute for consideration of these motions. Therefore, these votes will occur later on Monday. I anticipate those votes to begin sometime after 8 p.m.

We will then resume consideration of the asbestos bill next week. Pending is the motion to waive the point of order. We have Senators who would like additional debate. We will be talking to Senators on both sides of the aisle to determine the best time to schedule that vote following their statements. Needless to say, there is much work to be done before our next recess, the Presidents Day recess, at the end of next week. Therefore, I expect we will be voting Monday, Tuesday, Wednesday, Thursday, and Friday in order to complete our work.

In addition to the asbestos bill and the Tax Relief Act, we need to address the PATRIOT Act before adjourning. It is going to be a long, arduous week. I thank Members for their patience in advance as we move these vital priorities along.

ADJOURNMENT UNTIL MONDAY, FEBRUARY 13, 2006

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 2:09 p.m., adjourned until Monday, February 13, 2006, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate February 10, 2006:

DEPARTMENT OF DEFENSE

DORRANCE SMITH, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF DEFENSE, VICE VICTORIA CLARKE, RESIGNED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

GORDON ENGLAND, OF TEXAS, TO BE DEPUTY SECRETARY OF DEFENSE, VICE PAUL D. WOLFOWITZ, RESIGNED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

AMTRAK

ENRIQUE J. SOSA, OF FLORIDA, TO BE A MEMBER OF THE REFORM BOARD (AMTRAK) FOR A TERM OF FIVE YEARS (REAPPOINTMENT), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

FLOYD HALL, OF NEW JERSEY, TO BE A MEMBER OF THE REFORM BOARD (AMTRAK) FOR A TERM OF FIVE YEARS (REAPPOINTMENT), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

DEPARTMENT OF TRANSPORTATION

ANDREW B. STEINBERG, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF TRANSPORTATION, VICE KARAN K. BHATIA.

INTER-AMERICAN FOUNDATION

ROGER W. WALLACE, OF TEXAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION FOR A TERM EXPIRING OCTOBER 6, 2008 (REAPPOINTMENT), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

NADINE HOGAN, OF FLORIDA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION FOR A TERM EXPIRING JUNE 26, 2008 (REAPPOINTMENT), TO WHICH POSITION SHE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

DEPARTMENT OF STATE

ELLEN R. SAUERBREY, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF STATE (POPULATION, REFUGEES, AND MIGRATION), VICE ARTHUR E. DEWEY, RESIGNED, TO WHICH POSITION SHE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

C. BOYDEN GRAY, OF THE DISTRICT OF COLUMBIA, TO BE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE EUROPEAN UNION, WITH THE RANK AND STATUS OF AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY, VICE ROCKWELL A. SCHNABEL, RESIGNED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

NATIONAL LABOR RELATIONS BOARD

DENNIS P. WALSH, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF FIVE YEARS EXPIRING DECEMBER 16, 2009 (REAPPOINTMENT), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

RONALD E. MEISBURG, OF VIRGINIA, TO BE GENERAL COUNSEL OF THE NATIONAL LABOR RELATIONS BOARD FOR A TERM OF FOUR YEARS, VICE ARTHUR F. ROSENFELD, TERM EXPIRED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

PETER N. KIRSANOW, OF OHIO, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF FIVE YEARS EXPIRING AUGUST 27, 2008, VICE RONALD E. MEISBURG, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

FEDERAL MEDIATION AND CONCILIATION SERVICE

ARTHUR F. ROSENFELD, OF VIRGINIA, TO BE FEDERAL MEDIATION AND CONCILIATION DIRECTOR, VICE PETER J. HURTGEN, RESIGNED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

STEPHEN GOLDSMITH, OF INDIANA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM EXPIRING OCTOBER 6, 2010 (REAPPOINTMENT), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

DEPARTMENT OF HOMELAND SECURITY

JULIE L. MYERS, OF KANSAS, TO BE AN ASSISTANT SECRETARY OF HOMELAND SECURITY, VICE MICHAEL J. GARCIA, RESIGNED, TO WHICH POSITION SHE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

TRACY A. HENKE, OF MISSOURI, TO BE EXECUTIVE DIRECTOR OF THE OFFICE OF STATE AND LOCAL GOVERNMENT COORDINATION AND PREPAREDNESS, DEPARTMENT OF HOMELAND SECURITY, VICE C. SUZANNE MENCER, RESIGNED, TO WHICH POSITION SHE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

EXECUTIVE OFFICE OF THE PRESIDENT

BENJAMIN A. POWELL, OF FLORIDA, TO BE GENERAL COUNSEL OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE (NEW POSITION), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

FEDERAL ELECTION COMMISSION

STEVEN T. WALTHER, OF NEVADA, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION FOR A TERM EXPIRING APRIL 30, 2009, VICE SCOTT E. THOMAS, TERM EXPIRED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

HANS VON SPAKOVSKY, OF GEORGIA, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION FOR A TERM EXPIRING APRIL 30, 2011, VICE BRADLEY A. SMITH, RESIGNED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

ROBERT D. LENHARD, OF MARYLAND, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION FOR A TERM EXPIRING APRIL 30, 2011, VICE DANNY LEE MCDONALD, TERM EXPIRED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SUBJECT TO QUALIFICATIONS PROVIDED BY LAW, THE FOLLOWING FOR PERMANENT APPOINTMENT TO THE GRADES INDICATED IN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

To be lieutenant

STEPHEN S. MEADOR

CONFIRMATION

Executive Nomination Confirmed by the Senate Friday, February 10, 2006:

DEPARTMENT OF JUSTICE

THOMAS O. BARNETT, OF VIRGINIA, TO BE AN ASSISTANT ATTORNEY GENERAL.

SENATE—*Monday, February 13, 2006*

The Senate met at 12 noon and was called to order by the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O God, we take refuge in You. Thank You for guiding us through life's trials and for giving us songs in the night. Strengthen the Members of this body for their important work. Guide them to make decisions that will accomplish Your purposes in our world. Give them an abiding sense of Your presence and an awareness that they are never alone. By Your grace, lead them through the seasons of their labors, through tough times as well as tranquil periods.

Give all of us the discernment to see what You are doing in our day and the willingness to be part of what You are making happen for humanity's good. Deliver us from missing opportunities to serve You because we are preoccupied with life's trivia. Lead us from darkness to light and from chaos to calm.

We pray in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JOHN E. SUNUNU led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 13, 2006.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. SUNUNU thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this week, we are beginning with the House message on the Taxpayer Relief Act. This bill passed the Senate on February 2 by a vote of 66 to 31. The House has appointed conferees, and we are now taking up that message to appoint Senate conferees. There will be motions to instruct the conferees that will be offered by the other side. They have provided us with a list, and we hope they will not all be offered. We will be discussing that shortly after the opening this morning.

In any event, we will begin the process of appointing conferees with votes on the motions to instruct. As I announced on Friday, we will debate the motions today and stack the votes to begin around 8 o'clock this evening. Therefore, we do expect votes to begin at that time. We may decide to have some of the votes on Tuesday morning, depending on how many of these motions to instruct the other side offers, but we will make that determination after we discuss what will be offered, and hopefully, during the course of the afternoon, I am sure that will settle out. I will reiterate that we will be in session into the evening with those votes.

This is the last week of legislative business before the Presidents' Day recess. We will first appoint conferees on the tax bill, and we will return to the asbestos bill after we address the tax bill over the course of today and likely into the early morning tomorrow.

We have a point of order pending to the asbestos bill, and Senators will desire some further debate before we vote on that waiver motion. We will be conferring with Senators on both sides to determine the best time for that vote.

Finally, I also mention that we need to address the PATRIOT Act before we leave. We will complete the PATRIOT Act before we leave. It is a bill that addresses concerns on both sides of the aisle, and we will proceed to that bill before finishing the week. Senators should not plan to depart early this week. As my colleagues can tell, we have a very busy week planned with the three matters I have mentioned.

In addition, I hope we will be able to proceed with appointing conferees to the pensions bill as well. It will be a full week, and I will be updating Members as the week progresses, but it will be a week that will require votes today, Tuesday, Wednesday, Thursday, and Friday to complete our business.

Mr. REID. Mr. President, through the Chair to the distinguished majority leader, how many votes does the majority leader intend to have tonight?

Mr. FRIST. Mr. President, through the Chair in response, it really depends on how many of these motions we have. They are coming from the Democratic side of the aisle, and although a list has been provided, how many actually will require a vote—I would think we would have at least two tonight, and then if there are a lot of motions, we would have to have more tonight because we do need to complete whatever votes there are tomorrow and then get back to the asbestos bill in the morning to continue to address the waiver of the point of order.

Mr. REID. Mr. President, the distinguished majority leader mentioned the PATRIOT Act. While the Presiding Officer is in the chair, I express my personal appreciation for the many hours of work he put forth in resolving the PATRIOT Act dispute. It was a bipartisan problem. The distinguished junior Senator from New Hampshire worked long and hard to come up with a conclusion. I appreciate being advised during the process as he was visiting with the White House. Of course, as has been said, the Presiding Officer didn't get everything he wanted, certainly I didn't, but it is a much better piece of legislation than when it came back from the House. So I compliment and applaud the Senator from New Hampshire for his hard work.

I say through the Chair to the distinguished majority leader, we are ready to move forward on this legislation. As has been explained by the Senator from Tennessee, we have at least one Senator who is going to make us go through all the procedural hoops, so that will take some time. But the vast majority of the Senators over here want this matter to move forward, and we will offer help in any way we can to move this along, with the understanding that there are some who want to make sure that all of the procedural hoops are jumped.

Mr. FRIST. Mr. President, in brief response, as I outlined, we are ready pretty soon to go to the PATRIOT Act. I agree, the negotiations which have taken place under the leadership of the Presiding Officer have gone smoothly, and I think we are going to have an overwhelming vote in the Senate. The House, through their leadership, has expressed support, as I believe the administration has. So I do wish to make a request of our colleagues that although there are procedural hoops which we can be made to jump through, I don't think it is in the best interests of the American people to unduly delay this important bill that essentially, at least by statements today, is going to have overwhelmingly, strong support.

We do have a lot to do this week, and we will use the time as effectively and efficiently as possible. But if we keep having delays such as people coming back tonight to vote on motions to instruct, on which we could argue as to how useful that actually is, or we have too many procedural roadblocks based on this bill, it is going to be impossible for us to move ahead and move the country forward when we have so much important legislation. So I think we can complete all of our business this week, but it is going to take a lot of cooperation on both sides of the aisle not to throw too many procedural roadblocks in front of us.

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

SENATE AGENDA

Mr. REID. Mr. President, we do have eight motions to instruct. I doubt very seriously there will be any others. I will say this: This is the procedure, and if the minority wanted to stall this budget reconciliation conference, we could do that. Under the rules of the Senate, we could have, instead of the 8 motions to instruct, 80 or 800. We are not in any way trying to prevent this legislation from going through. As bad as it is, we recognize that we have had a fair shot at it on the floor on a number of occasions. But the eight instructions are instructions that are well taken, and we hope the conferees will follow these instructions. We don't know if any of them will be agreed to. We certainly hope so, but it is certainly something that is worth debating.

I was surprised to hear that the distinguished majority leader, when he announced we were going to this piece of legislation, this budget matter, did not call it what it has been called for more than a year; that is, the Budget Deficit Reduction Act of 2005. I guess everyone has come to the realization that the Budget Deficit Reduction Act does not reduce the deficit; it increases it by $50 billion. And I guess there has been a change of name, calling it the Taxpayer Relief Act. I guess if you are rich, it is a Taxpayer Relief Act, but for the poor and middle class, it increases the deficit and it is not a fair piece of legislation.

On asbestos, I believe there are two groups of people who really need to make sure Congress takes care of them: those people who, through no fault of their own, get the dreaded mesothelioma and they die, and asbestosis, which is aggravating and serious, and they die; one just takes longer than the other. The goal of the Senate should be to make sure these two groups of victims are compensated for their pain and suffering, which came about through no fault of their own. What we want to try to avoid are the bad cases, the ones that are taking too much of the court's time and taking valuable resources from these people who are really sick.

I made a commitment to the junior Senator from Texas, Mr. CORNYN, that I believe we need asbestos legislation. I really do believe that. I have told him I would be happy to work with him and Senator DURBIN, as my designee, to try to come up with legislation that is patterned after successful programs in Illinois and Texas, where there is medical criteria set up.

For example, in Illinois, they have a pleural registry where people are able to list their names if they work around asbestos, the statute of limitations is tolled, and then if something happens to them down the road, they are not prevented from going to court as a result of the statute of limitations. It would do away with the bad cases.

As I said, we are committed to coming up with legislation such as that. Senator CORNYN offered some, but there wasn't an ample amount of time to debate his suggestion, and that is too bad. But we are willing to work with him on something similar to what he came up with. I believe it is important that we do that, and I am certainly making a commitment that we will work to see what we can come up with on medical criteria legislation to, in effect, get rid of the bad cases and allow these two sets of victims to move forward.

This FAIR Act we have before the Senate is anything but fair. I have explained how this bill will harm victims by trapping them in administrative claims systems which are irreparably defective and doomed to failure.

One of the primary reasons the trust fund is doomed to fail is because of unrealistic and sloppy calculations that led to the $140 billion trust fund in the first place. In designing this bill, the bill sponsors have not adequately assessed the number of future claims by asbestos victims, the borrowing costs necessary for the trust fund to function, and the administrative costs associated with operating the trust fund and claims system.

Last August, the Congressional Budget Office estimated the program could generate as much as $150 billion in claims, leaving the trust fund way short, billions of dollars short. As I have explained, even that figure understates the problem because the bill does not adequately take into account the trust fund's borrowing costs, further depleting the compensation available to victims. The CBO estimates approximately $8 billion will be borrowed before the first decade, an amount that will saddle the fund with huge debt-service costs over the life of the program. The Senate Budget Committee, through its own analysis, also concludes that taxpayers will have to finance a significant amount of the fund's debt service. Contributions to the fund will occur over a 30-year period, but most of the claims are expected in the early years of the program. That is what the borrowing is all about.

I have spoken to Karl Rove, one of the President's top men. He is talking about setting up some kind of a task force made up of Members of Congress and others to look at the huge costs that are out there. They are getting higher every day.

We will have a vote in the next few weeks on increasing the debt ceiling from $8.2 trillion to—I don't know how high the administration wants it raised. If people are concerned about the deficit, they have to look at this bill before the Senate, this asbestos bill. Other experts believe it is on even less solid fiscal footing than CBO. For instance, the Bates White economic consulting firm has concluded the program will cost as much as $600 billion or more. This is not some front by the asbestos lawyers. It amended its analysis and found another $90 billion error in CBO's analysis because the CBO underestimated the number of cancer victims who will likely file claims.

The pending question on this bill is a long-term spending budget point of order by Senator ENSIGN, my colleague from Nevada. The 2006 budget resolution prohibits any net increase in direct spending in excess of $5 billion in any of the four 10-year periods from 2016 through 2055. Based on its own estimates, which are inadequate, the CBO concluded that enacting the asbestos bill would violate that spending prohibition.

In the substitute bill, the bill's sponsors attempted to cure these budgetary concerns and assured this body that there will be no Federal borrowing. Their efforts failed. First, the substitute contained new language that the bill: is not intended to increase the deficit or impose any burden on the taxpayer.

Stating the intention, however, cannot erase the effects of this bill. The bill will increase an entitlement for asbestos victims and has obligated the Federal Government to provide compensation to those victims. Throughout the fund's existence, the Federal Government is obligated to pay regardless of the actual amounts raised for the fund through company contributions, and this contributions remains so long as the fund is operational.

Last week I gave the example of 4 companies, each an American company over 100 years old. They will all go bankrupt if this bill passes. One is an engineering/consulting firm. One makes wire. They will go out of business. Right now, they have taken care of their asbestos claims. They, like a lot of businesses, purchased insurance. One of the companies pays nothing, zero, for asbestos claims. If this bill passes, they will pay $19.5 million a year. They cannot do it. They will go broke. It is unfair. Based on the timing issues and expected shortfalls discussed above, taxpayers most certainly will shoulder some of the costs related to this fund.

The managers' substitute bill provides that in assessing whether there are sufficient moneys in the trust fund to continue paying out the claims, the administrator of the fund can only consider nontaxpayer resources, but these funds include funds borrowed from the taxpayer. If anything, this language increases the likelihood that the trust fund administrator will be forced to use taxpayer dollars to finance the fund.

Let's be realistic about this. Black lung was supposed to cost $3 billion; it is now up to $41 billion. Once these programs start, these entitlement programs, Congress does not cut them off. Despite the bill's sponsors' best efforts, the bill continues to have enormous financial implications for the Federal Government and the American taxpayers. Federal spending on asbestos claims facilitated by this bill will violate the 2006 budget resolution and require borrowing of taxpayer dollars in order to function.

Again, the budget point of order is valid and should be sustained. But if the point of order is sustained, that will not be the end of the asbestos debate. We need to do something. I have stated now, today, for the third time, I am committed to work with Senator CORNYN, and Senator DURBIN is my designee to work with him to come up with an approach that will allow these asbestos cases that are bad to get out of the system. We can move forward on this issue. But the pending bill is not the way to do it. It is a bad bill, and in light of the serious budget problems we are having in the country, with an $8.2 trillion debt ceiling about to be violated, it is important that we get this bill off the floor and do other things. One of the things we will continue to do is, this year, work on the asbestos litigation problem.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

TAX RELIEF EXTENSION RECONCILIATION ACT OF 2005

The ACTING PRESIDENT pro tempore. Under the previous order, the Chair lays before the Senate the House message to accompany H.R. 4297.

The Acting President pro tempore laid before the Senate a message from the House of Representatives disagreeing to the amendment of the Senate to the bill (H.R. 4297) entitled "An Act to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006," and asks a conference with the Senate on the disagreeing votes of the two Houses thereon.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate insists on its amendment and agrees to the request of the House for a conference.

Who yields time?

Mr. LOTT. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LOTT. Mr. President, I yield myself such time as I may consume off of the time that has been designated on the pending issue.

The ACTING PRESIDENT pro tempore. The Senator is recognized.

Mr. LOTT. Mr. President, it is Monday at noon and I think the people's business needs to be attended to sooner rather than later, in the daylight rather than at night, so I rise to point out my concern that the Senate continues to fiddle while Rome burns. I have no idea why there is a justification for up to 10 hours of debate and multiple motions to instruct on this tax reconciliation. We have been through this already multiple times. This convoluted procedure is, in my opinion, very unhelpful for the legislative process and for the relationship between the two sides of the aisle. There is no need for this. The Senate has voted twice already on this and 66 Senators are for this bill—or 68. 66 and 68. Go back and look at the RECORD. So we are going to go to conference.

We can't let these motions to instruct prevail. By the way, they are outrageously ridiculous, anyway. Nobody pays any attention to that. I hope to be a conferee. Do you think I am going to pay any attention to any motions to instruct me? Baloney.

The Senate leadership that is responsible for the way we do our business and the way we appear to the American people needs to get a grip on this situation. The very idea that there would be even 3 motions to instruct, let alone 8, 9, 10—we have to stop this. We have had our chance to make our speeches. We don't need to eat up 3, 5, 10 hours of debate on this bill. What in the heck are we going to say? Are we going to talk about the snow event this weekend? Nobody is going to be snowed by what is going on here. This is delay and obstruction. We need to find a way to get over this. I realize Senators have their rights to have motions to instruct. But how can we move this process forward?

That leads me to my next point, in terms of fiddling while there is a problem that is getting worse. If you talk to the American people, an awful lot of people are concerned about the future and their retirements. Will the retirement benefits be available to them and to their children? Will they be there when they need them? Will they be portable? We need pension reform. We need certainty in pensions. People need to know what the law is going to be. We need to know it is going to be actuarially sound. How are we going to pay for all these benefits people are expecting in their pensions when they retire?

Of course, an important part of this pension bill is what are we going to do about aviation pensions? Airlines are having a difficult time. They are teetering in the balance. At least a couple of them are prepared, if they have to, to enter into bankruptcy and walk away from their pensions. But they don't want to. They want to do the right thing. They don't want the taxpayers to be saddled with these pensions that airlines unfortunately quite often agreed to in the past. They want some way to make sure those pensions are protected.

I urge my colleagues on both sides of the aisle, and the leadership, to find a way to move forward, to appoint conferees on the pension bill, so we can step up to this issue that worries people. Why should it take days or weeks to appoint conferees on a bill that is broadly supported, is going to be bipartisan, and is important to the working men and women of America?

I know there is a lot that goes on in making these appointments. You have to decide on the numbers and you have a lot of Senators who would like to be conferees. But I plead with our leadership to find a way to get the conferees appointed—not tomorrow, not Wednesday—today, because we are fiddling while people's pensions are burning. It concerns me.

I am glad to be here. I am here. I am perfectly willing to be a pain in everybody's neck as the day and the week progresses so we can find a way to get to a conclusion on two conference issues. These are issues we can get into in conference. These are issues on which we can get a result.

I urge our leadership to find a way to appoint these conferees as soon as possible on the pension bill and to get into conference on the tax bill.

I yield the floor.

Mr. REID. Mr. President, first, I agree we should be moving forward on the pension conference. It is very important. We are ready to do that.

I would also suggest that this budget reconciliation could already have been finished. We over here didn't choose what the majority leader brought to the floor. Instead of bringing to the floor the conference report dealing with taxes, he decided to bring asbestos, a bill that wasn't ready to come to the floor. We were ready to move on this any time last week.

I say to my friend, the distinguished Senator from Mississippi, whom I have so enjoyed working with over the years, if we were truly trying to delay this legislation, we could do that. Under the rules, which I think should be changed, instead of having the 8 motions to instruct which we have, we could have 80 or 800. The rule is not good. We need to change this whole budget setup.

Again, if this legislation had been brought to the floor last week rather than the asbestos legislation, we could have finished it.

Also, I think we have been fairly direct in our amendments which we have on the conference report. They are not on subjects that are outside of the scope of this bill. We have one, which will be a motion to instruct, to not raise the debt ceiling. There will be another one regarding the need to replenish the military—which all experts say is $50 billion—and replace vehicles and other such things because of the war in Iraq; both Guard and Reserve, $50 billion; to take some of the tax cuts and give it to our military; and the same with veterans health benefits. There is a very important amendment dealing with energy to help make us a little more energy independent.

I am not going to go through all of the motions to instruct other than to say they are important, and also, frankly, we haven't been much of a participant in the conference, anyway. We might as well give the conferees some idea of what we are thinking since they do not invite us to the meetings.

I agree with the Senator from Mississippi; it is important that the budget process be changed. I think it is right—if we had wanted to, we could stop this thing from ever moving forward. Rather than spending a few hours on it, we could spend weeks on it. That would be wrong.

I hope we can have a bipartisan group of Senators take a look at how we can change this whole budget process in the Senate. It is subject to a lot of abuse, no matter who is in power.

I suggest that on our motions to instruct we are willing to move forward on those quickly. We complained about the 8 o'clock votes. We are willing to finish the votes tomorrow, but it will take a little bit of time.

Further, it is my understanding that maybe the Republicans have some amendments they want to offer. We have eight. I don't see our side having more. Under the rule we could have more, but I think that would be all.

I look forward to working with my friend from Mississippi to make sure we can move forward on this legislation, particularly the pension reform, which is so important to the country.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that all quorum calls which we might have on the pending issue be equally charged to both sides.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, earlier this month we began and finished the second floor debate on the tax relief reconciliation bill. At that time, I spoke in recognition of Groundhog Day because it was just around the corner. I have next to me that portrait of Punxsutawney Phil. Phil is the groundhog.

In thinking of Phil and his unique form of weather reporting, I thought about that popular film entitled "Groundhog Day" starring Bill Murray in which a man relives the same day, Groundhog Day, over and over again. This film has taken on even greater significance for me as I seem to be in a similar situation for the third time. More than just the sense of deja vu, I feel as though I am reliving a couple of past experiences, and before these several votes tonight or tomorrow, I think everybody will agree with me.

I have before you another chart. The chart shows a scene from the Bill Murray movie "Groundhog Day." From this movie is a picture of Phil, the groundhog, driving the car and Bill Murray is there with him. Bill Murray is in this case the copilot. Phil is driving the car. You see Phil with his paws on the steering wheel, and you see the copilot seated behind him.

As I said just now, I feel like the Bill Murray character in the movie. It seems we are reliving the same events over and over again. We are going through the same debates over and over again.

For those who watch C-SPAN regularly—probably not too many Americans—they know what I am talking about because it was 2 weeks ago we were debating the tax reconciliation bill, the same tax reconciliation bill we were debating back in November, and the same debate we had a couple of weeks ago.

I will summarize the floor process we have been going through on this bill.

At 11:08 a.m. on Wednesday, February 1, 2006, I opened the second Senate floor debate on this bill. The rollcall vote on final passage occurred at 9:42 p.m. on Thursday, Groundhog Day, 2006. All the time permitted for debate under reconciliation—20 hours—was used in the second floor debate—again, Groundhog Day.

Three Senators were not here for the final vote. There was a total of eight rollcall votes that day, including the vote on final passage.

You will recall that, as I said, this was the second time. I hope you will recall I said then that we actually had debate earlier in November on the very same bill. The very same bill is this bill right here, S. 2020, the Tax Reconciliation Act.

We started that debate at 3:35 p.m. on Wednesday, November 16, 2005. For 20 hours on Wednesday, Thursday, and into Friday we debated this bill, S. 2020. A total of 80 amendments was filed, and 7 of those amendments were agreed to. The liveliness of the legislation culminated in 18 rollcall votes. The final vote on passage came at 12:05 in the morning of Friday, the 18th of November, 2005. According to the Secretary of the Senate, 97 of us were there for that vote. I must not be the only one who is reliving this experience of Groundhog Day over and over again.

There is one Senator whom I can't speak for, so I have to clarify that the new Senator, Senator MENENDEZ, was not a Senator during the first debate back in November. He has been appointed to the Senate since then. He was here for the second debate because he joined the Senate after the first bill passed. Maybe the second debate would not be old hat to him, but for the other 99 Senators it would be more or less old hat.

Here are the two bills. Technically, right now we are on the House bill, H.R. 4297, but between these two publications, I guess it would be fair to say they are 95 percent the same.

This bill, S. 2020, was first debated in November last year and passed then as the Tax Relief Act of 2005. The Senate passed the second bill, after we amended the provisions of this to it, as H.R. 4297. The first bill, S. 2020, is 417 pages long, and the second bill, H.R. 4297, as amended, is 363 pages long. The bills are very close to the same length. What happened in between was between November and February, the Senate removed the Hurricane Katrina provisions and interest suspension provision because those proposals became law in a separate piece of legislation in November 2005. Removing the Katrina provisions and the interest suspension provision accounted for a reduction of 63 pages from this bill. The five amendments agreed to during the second floor debate added 14 pages to H.R 4297.

Again, except for those five amendments that were put in, plus the Katrina provisions taken out, most all of this bill is pretty much the same.

So why are we debating this for a third time, November of last year, 3 days, 2 days this year, on February 1 and February 2, and now back here again this very day, February 13?

My point is these two bills are virtually the same. The Senate basically debated the same popular, bipartisan bill twice, and we are going through another one of these purposeless delays at the insistence of the Democratic leadership again today, and it may take much more than 1 day.

As we consider what they are going to offer—we refer to them as motions to instruct the conferees—to the bill, we are going to go to conference on H.R. 4297 to work out the differences between the House and Senate. I have to ask my colleagues: Why are we still doing this? Didn't we already go through this exercise? Shouldn't we be finished with the Senate debate? For me, the answer to those questions is there is no reason to be here. All you have to do is in 5 seconds appoint conferees and get to work ironing out the differences between the House and the Senate.

Without a doubt, we have gone through this exercise twice. When is debate on the same subject enough for the Senate? In the face of the multitude of other important issues this body needs to deal with, does the Democratic leadership want to reenact recent debates and resuscitate old talking points? The tax reconciliation bill already passed with the support of 64 of us the first time. The second time we passed this bill, the bill garnered the support of 68 Members. Included in the first count were 15 Democrats. I am pleased we picked up two more Democrats the second time we debated the bill. Maybe if we keep up this exercise enough times, we will have a bill that will get 100 Senators for it.

What is the purpose of that? If we do that, we will not be passing this bill in the year 2006; we will be passing this bill in the year 2007. Do not think that the millions of taxpayers expecting us to act would be very happy about running the Senate through that many Groundhog Days. Even Phil, the groundhog, might even be a bit irritated. Phil, wouldn't you be irritated if you had to go through all of this?

This legislation is extremely important. We will debate it as long as necessary. I question the necessity of going through a process that resulted in bipartisan passage of the same bill almost 3 months ago. We often think bipartisanship is when we get to 60. You are lucky to get to 60. That is what you have to do in the Senate to get anything done. To get to 64 or 68 is almost a landslide in the Senate. Why the continued debate? I doubt if the people who are stalling this want to continue the debate long enough to convince even more Democrats to vote for this bill. I don't think that is their motive.

That is my first point. This is a very curious exercise. It is an exercise with no apparent purpose other than delay. Is the delay on the part of the Democratic leadership important? The answer is, yes. Ask American tax-paying families and you will get an answer, but you get a different answer. The answer is, yes, if you are 1 of 20 million families waiting for certainty that you are not caught in the clutches of the alternative minimum tax with which this bill deals.

We hear a lot of talk about the alternative minimum tax. We will hear about it in the debate over the next few hours. This bill does something about the AMT. It holds harmless 20 million Americans so they will not be hit by a tax that they were never supposed to pay in the first place.

I will use some charts that describe different provisions of this legislation and how it affects the constituents of each of the Senators, on a State-by-State basis. The data is from the Internal Revenue Service. It is the latest available in terms of State-by-State impact. The data comes from the year 2003, so it understates the tax problems of citizens in the various States for taxes in the year 2006. I apologize for not having more up-to-date information. I suggest to people who are considering the figures on the charts to more than double the figures; that will be a rough State-by-State idea.

We will look at a chart dealing with the alternative minimum tax. This tax will hit 20 million Americans if we do not pass this legislation. It is not on the taxes they will file for 2005 because we are talking about income earned during the year 2006. They will be hit by the alternative minimum tax 12 months from now, when people file their taxes, if we do not pass this legislation.

When you start a tax year, you ought to have some idea what the tax laws are going to be for the next 12 months and into the future. That is why this legislation should have been passed in conference last fall to get a permanent law so people earning money on January 2, 2006, would know they would not be hit by the alternative minimum tax.

The basis of the bill the Senate passed and the bill that is once again before the Senate is an extension of the AMT hold harmless, so that no additional number of people will be hit by the alternative minimum tax. Every Member who is participating in this deliberate strategy of delaying our entry to conference to work out the difference between the House and the Senate is delaying the certainty these millions of American families deserve. Again, it affected 8 million in 2003. That figure now is 20 million in 2006. For my State of Iowa, it is 65,000 taxpayers. It is probably tens of thousands more now. In Nevada, there are 68,000, with a lot more than 68,000 being hit in 2006.

Those are the facts on the alternative minimum tax. Look it up in the Internal Revenue Code. The AMT relief provisions expired December 31, 2005. I ask my friends and the Democratic leadership to look at the calendar: 1½ months have passed, and the alternative minimum tax hold harmless has not been extended to prevent 20 million Americans from being hit by a tax on income earned in 2006; earning the same income in 2005, they would not have had to pay that tax. The AMT hold-harmless provisions are the cornerstone of this legislation. It is the cornerstone of a bill that the Democratic leadership is delaying. I don't want to hear people talk about the alternative minimum tax problem and at the same time delay real action to help those millions of tax-paying families. I suggest we may hear that.

This bill also includes another provision, broadly popular and broadly applicable in its tax benefits. I will talk about them beyond the alternative minimum tax.

This chart shows deductibility of college tuition, first inaugurated in the tax bill of 2001. This is a benefit for families who send their kids to college. By definition, this benefit goes to middle-income families. A lot of these families are not low income so their kids possibly do not qualify for Pell grants. They are not high income either. All they have to do is have mom and dad write out a check, and they go to college. These are families that get the full benefit of the deduction if they make up to $65,000 as a single person or up to $130,000 as a couple.

The reason I say it is conservated on the middle income is because above those figures the benefit phases out. A lot of these families are paying significant Federal, State, and local taxes, and they get no help in defraying the high costs of their kids' college tuition. This tax deduction provides help for these hard-pressed, middle-income families with a benefit and furthers a very important national goal that we try to give attention to, the support for higher education. This deduction runs out at the end of this year, 2006. These families next year will face tax increases if we do not act on this bill. We ought to act on it now, although it does not phase out until the end of this year. During the spring, people anticipate their capability of sending their kids to college. If they cannot count on this, they have to dig up money someplace else for their kids to start college in September, which carries over into 2007.

The chart before the Senate shows the number of families, on a State-by-State basis, that benefit from this deduction. I emphasize that these are 2003 figures. I don't know exactly how much more we increase them because we are now in 2006, but it would be significant. In Iowa, more than 37,000 families are affected by this legislation, 37,000 in Iowa who do not know for sure if the tax deduction will be available when their kids go to college next year.

Now I will pick out another State. Nevada has 25,000 families. If we do not pass this legislation, 25,000 families will not know whether their kids are going to get the advantage of this tax for the next school year.

It seems to me the perpetuation of support for higher education, particularly for middle-income families, that their families cannot qualify for Pell grants, we ought to be reenacting this legislation now so these families can plan on sending their kids to college next September.

Another benefit addressed in this bill is the small savers credit. This gets back to the problem we are always talking about, that Americans are not saving enough. Lower income people, spending most of their disposable income on the necessities of life, do not have money left over to save. They may not have an ethic to save. Through the Tax Code, we try to give incentive to save and some help to save. This happens to be the tax credit for low-income people to save through an individual retirement account or a pension plan. Saving money is important. We all want all Americans to be part of the effort to save for the future.

This chart shows the number of low-income savers who benefit from this bill, on a State-by-State basis, from the small savers tax credit. Again, more than 5.5 million people take advantage of this. How many more for the 2006 figures, I don't know, but in Iowa 95,000 people take advantage of saving money through the small savers tax credit. And I will also take Nevada: 36,000, almost 37,000 people 3 years ago were saving through this program. That needs to be reenacted or there will not be incentive to save.

The bill before the Senate also extends another needed tax deduction. This is for teachers who buy their own supplies for their students. This provision was developed by Senators WARNER and COLLINS. It makes whole teachers who go that extra mile to pay out of their own pocket classroom expenses. Who is going to argue with a devoted teacher whose school district does not provide enough supply if she wants to spend out of her own salary, his or her own salary, to buy supplies? That proves the dedication of our teachers.

I will point to the number of teachers included on the chart, on a State-by-State basis, who take advantage of this deduction. This deduction needs to be reenacted for these teachers to have the certainty that money they will spend today will be deductible from the taxes they file 12 months from now. Again, in my State of Iowa, almost 34,000 Iowa teachers benefit from this. Another State we could look at would be Nevada, where 22,000 families benefit.

Is there any reason this help to teachers—who are good teachers but want to make better use of their talent, to make sure their students have adequate supplies—why that should not be reenacted, and why, this very day, in classrooms across America, teachers have to be worrying about whether they are going to have this benefit to reimburse them for going that extra mile?

Now, there is another item in this bill which is very popular which I do not have shown on a chart. But this bill extends what we call small business expensing, so that anything which is depreciable, on an increased amount of money of up to $100,000, can be expensed in 1 year rather than spreading it out over a period of 5 to 10 years. Many small businesses use this benefit to buy equipment on an efficient, after-tax basis.

This is very good for small business. Small business creates 70 to 80 percent of the new jobs in America. So it is a job-creation tax incentive. It is good, then, for workers in these small businesses. Obviously, if you employ more people, you end up with greater economic growth for our entire country.

The final chart I have deals with the tax deductibility of the State and local sales tax deduction. This applies to the States of Alaska, Florida, Nevada, South Dakota, Tennessee, Texas, Washington, and Wyoming.

This bill helps 12.3 million taxpayers in your States. Tennessee is one of these States. It is the home State of our majority leader. He has worked hard to get this bill to the floor. For the third time now, our majority leader, Senator BILL FRIST, has worked hard to move this bill into conference. I want the good people of Tennessee to know that.

Now, another State that could benefit when we get this passed is Nevada, the home State of our Democratic leader. Unfortunately, this bill is going through another process of holding it up for another day of debate, meaning the people in these States who have deductibility of their State taxes do not know whether, come 12 months from now when they are filing their income tax on income earned in 2006, it will be deductible.

So I would ask them to focus on the taxpayers of these respective States. I still hold out hope that the Democrat leadership will see the light. I hope they will work with me to guarantee that the folks in their States will be able to deduct their sales taxes this year. This is the third time, then, this bill has been delayed.

This is a bipartisan bill with a bipartisan consensus. This needs to pass. Maybe the third time will be a charm. Maybe we will finally get this bipartisan bill to conference because you do not get bills to conference around here that are not bipartisan because when you only have 55 Republicans in the Senate, there is no way, even when all of us vote alike—and we do not vote alike—we can move a bill to conference. So it has to be bipartisan. You have to have Democratic support. So in this particular instance, we have 15, 16, 17, roughly, of the Democrats voting for it.

Every Senator ought to help us pass this bill because of the provisions I just went through on these charts which are included in the bill. But there are also other reasons for supporting this bill.

Our bill addresses expiring business and individual provisions that are known as extenders. These provisions include items such as the research and development tax credit and the work opportunity tax credit. This bill also includes many of the charitable incentives introduced in what we call by the acronym the CARE Act and which provisions have previously passed the Finance Committee and passed the entire Senate.

In this regard, in regard to the CARE Act, in regard to the R&D credit, I have to give particular applause to Senators SANTORUM and BAUCUS in working with me to balance these incentives with several of the much-needed reforms that are supported by the charitable sector, the Treasury Department, the IRS, and donors and taxpayers to make sure charitable giving is not abused.

Last, but not least, this bill contains loophole closers and tax shelter-fighting provisions that raise revenue.

This bill is bipartisan.

I thank my friend and working partner and ranking member, Senator BAUCUS, for his cooperation. He and I were not always partners on this bill, at least in the beginning, but we teamed up in the Finance Committee. We teamed up in the first Groundhog Day floor debate. We teamed up in the second Groundhog Day debate. I look forward to working with him today and hope we can team up in the conference working out the differences between the House and the Senate. As always, his cooperation and, in tense times, his good humor make a big difference in this body.

Let me also thank those Democratic Senators who joined us in this bipartisan effort on our first floor journey. Most of them repeated through the second time on February 1 and 2 of this year. I ask them to help me persuade their leaders to let this bill proceed. I ask them to ask their leaders to focus on taking care of tax legislative business, bringing certainty to the tax policy of this country for the benefit of our taxpayers and the benefit of investment because investment creates jobs. I ask that the political games be cut out. I ask that we roll up our sleeves and get down to the people's business.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MOTION TO INSTRUCT CONFEREES

Mr. KENNEDY. Mr. President, I send to the desk a motion to instruct conferees and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the motion.

The bill clerk read as follows:

Mr. KENNEDY moves that the managers on the part of the Senate at the conference on the disagreeing votes of the 2 Houses on the Senate amendments to the bill H.R. 4297 (to provide for reconciliation pursuant to the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95)) be instructed to reject the extension of the capital gains and dividends rate reduction contained in section 203 of the bill as passed by the House of Representatives.

Mr. KENNEDY. Mr. President, Americans are wondering what has happened to their Government. They are working hard to raise strong families and to live the American dream. But with each passing day, they find the American dream farther and farther out of reach as they juggle just to make ends meet. Over the past 5 years, the cost of health insurance has jumped 73 percent. Gasoline is up 74 percent; college tuition, 45 percent; housing, 44 percent. The list goes on and on and up and up.

Working families do not ask for much. Low- and middle-income families are doing their part. But they could use a little fair play from their Government as they are facing such hard times.

But that is not what is going on in Washington today. Again and again and again, under this Republican President and this Republican Congress, they have seen trillions of their tax dollars given away in tax breaks to the wealthy and to corporations while the rest of America is asked to sacrifice. And this bill and the budget President Bush sent to Congress last week are yet another example.

The House version of the bill before us provides tax breaks on capital gains and dividend income that will take $50 billion over the next 10 years and give it to people who are already wealthy. At the same time, the President's budget cuts almost $50 billion from Medicare and Medicaid for the next 5 years, harming health care for our seniors, for the disabled, and for the poor. And it robs key funds from other health priorities as well.

Those are the wrong priorities for America, and the motion I offer today gives the Senate a chance to set things right. My motion says it is wrong to give away $50 billion in tax breaks for the wealthy while cutting $50 billion from Medicare, Medicaid, and other health care needs.

If we are honest about reducing the deficit and strengthening the economy, we need to stop lavishing tax breaks on the rich and start investing in the health and well-being of all families. Nowhere is the crisis facing working families more apparent than in health care.

Overall costs are soaring. Families have been losing their health insurance at the rate of 4,000 people per day—per day—since President Bush was elected. Close to 2 million Americans in 2001 were involved in medical bankruptcy—an increase of 2,200 percent from 1981. Around 50 percent of all bankruptcies in America today are caused, at least in part, by illness or medical debts, and of those, 60 percent were caused by high medical bills. High drug costs were responsible for half. Most involved had some health insurance but suffered from coverage gaps. Out-of-pocket medical costs averaged $11,854. For cancer patients, out-of-pocket costs averaged $35,878.

These are not people trying to game the system. In the 2 years before filing for medical bankruptcy, 22 percent of filing families went without food, 30 percent had a utility shut off, 50 percent failed to fill a doctor's prescription, and 61 percent went without needed medical care.

Let's look especially at what Republicans are doing to Medicaid and Medicare. The Medicaid Program is key to promoting a real culture of life in America. A third of all mothers giving birth receive their care through Medicaid. The Medicaid Program provides the prenatal and pediatric care their children need to be healthy. The Medicaid Program is our statement that we will do everything we can to help women bring their babies to term and give them the health care they need as they grow up. That is the way it should be in a true culture of life.

But rather than stand by women in their time of need, Republicans are abandoning this culture-of-life program. Mere hours after the President had declared in the State of the Union Address that the Government would meet its responsibility to provide health care for the poor and the elderly, the House of Representatives sent to the White House a bill to impose draconian cuts on the Medicaid Program.

Did the President stand up for this culture of life program and veto the House bill? No. He signed it. According to the Congressional Budget Office, under the Republican Medicaid bill, the poor and the disabled, those with mental illness, will lose: 45,000 enrollees will lose coverage over 5 years; 65,000 enrollees will lose coverage over 10 years; 60 percent of those losing coverage will be children; 13 million of the poorest Americans will have to pay more for prescriptions by 2010; and 20 million will have to pay more by 2015.

You may ask where we get these numbers; do they represent what is going to happen? All you have to do is look at the examples. It is already happening in States across the country. In Maryland, a quarter of the families subject to increased premiums disenrolled, and those premium increases were extremely modest. In Oregon, higher costs caused disenrollment, and 67 percent of those who disenrolled became uninsured. The list goes on. In Rhode Island, nearly one in five families subject to the new premiums lost coverage. In Vermont, 11 percent disenrolled for nonpayment 1 month after the premiums increased. This is what is happening. This is an attempt to destroy the Medicare and Medicaid systems, make no mistake about it.

Not satisfied with the cuts in Medicaid already enacted, the President's budget proposes another $14 billion in reductions in the program that meets the health needs of the poorest Americans. Some will try to say this does not have any effect on a family's health, but the facts say otherwise. When copayments rise for the poorest, health declines. This chart reflects a study of the Journal of the American Medical Association. It shows that increased copayments for medication for poor families caused an 88-percent increase in adverse events. This is from a study by the American Medical Association. The reference is printed in JAMA, the Journal of the American Medical Association. This is what happens with copays: a dramatic increase in serious adverse events. You almost have a doubling of adverse events when individuals have a nominal copay of $2 to $3.

Look at what happens in this chart: A 78-percent increase in emergency room visits when a copay is required. This represents emergency visits with no copay, and this is with a nominal copay. With $3 to $4 for the copay, we see a significant increase in emergency visits.

What is the result? It is going to cost the system a great deal more money. This is dollar foolish and, from a health point, a disaster for individuals adversely impacted. It will fall on the States and local communities to pay for this. It is a transfer of obligation. The people who will get hurt are going to be those who have the potential for an adverse event or who need prescription drugs in order to prevent a disease from continuing to disable them.

This debate isn't about statistics. It is about the real harm these severe cutbacks will do to the most vulnerable Americans. A single mother with two children who makes $8 an hour currently pays $3 when she visits the doctor, and she does not have any cost sharing when her children go to the pediatrician. Under the new law, when her child goes to the pediatrician with an ear infection, she may be charged $20. When she goes to a doctor for treatment and tests for diabetes, she will be charged $50, and she will have to pay as much as $832 a year. That is what you are going to get as a result of

Medicaid cuts, as the chart before showed us. A single mother with two children earning $25,000 a year now pays no premiums or cost sharing for her children's medical care and pays $3 copayments for herself under the existing system. Under the new law, she will now be charged monthly premiums for Medicaid coverage for herself and her children. Even if she manages to pay the premiums, she may now have to pay $40 for a pediatric visit. And she will have to pay as much as $1,250 for Medicaid.

This is the wonderful Republican scenario. We've had no increase in the minimum wage; it has been 9 years and no increase in the minimum wage. And we are going to put more pressure on that mother, who is making $25,000 and has two children, for her family's health care. Why? Because we want some $50 billion more in tax breaks for the wealthiest individuals. That is what this is all about. Being in the Senate is a question of voting on priorities. The Senate will have a chance to say whether they want to give $50 billion more to the wealthiest individuals, or take that $50 billion and put it right back in the Medicare and Medicaid Programs which this President has cut, now and into the next several years.

The President's policies, if enacted, will cause serious hardship for the most vulnerable Americans. But the administration's cuts to Medicaid are not the only assault on our health plans. The botched Medicare drug plan and the President's Medicare cuts further harm working families. When it comes to the new prescription drug benefit in Medicare, we had a good Medicare bill in the Senate, supported by a broad, bipartisan majority. Over 70 votes supported it. But that bill was hijacked once the White House entered the negotiations. Ideology trumped common sense. Instead of building on the Medicare Program that seniors know and trust, the drug bill was turned over to HMOs and private insurance plans enticed to participate by massive subsidies, funds that should have gone to strengthen benefits. The result has been a disaster.

But that is not how the administration's spin machine sees it. According to the budget the President submitted to Congress, the Medicare drug program is off to a good start:

> The Medicare prescription drug benefit program is off to a good start.

I wish those in the administration who thought so had the opportunity to visit with seniors in Massachusetts trying to figure their way through this. My office is filled with letters of the sadness and grief from individuals who are confused and can't find their way through the 45 different alternative programs. And as they search, they ask: "Why couldn't they just give us the prescription drug benefit under the Medicare Program? I know the Medicare Program. It takes care of hospitalization. It takes care of doctor's fees. I know it. I trust it. I support it. I wonder, in these 45 programs, where the Medicare Program is?" They can search and search and search, and they won't find it because this administration is opposed to it. So the seniors in my State are going to have to fight their way through those 45 different programs to find out which one suits them and then, after they sign it, they find out that the program can change the formulary and raise the premium. That is quite a deal, isn't it? Once you are enlisted, the program can change like that. And if the senior doesn't get involved in one program or another, they will pay an extraordinary penalty for not becoming involved. Some deal.

This is off to a good start? This is how it has been described: "Prescription for Disaster; Medicare Mess Cuts Cash Flow to Pharmacists." The Washington Times, February 6; "Medicare Drug Mess," New York Times, January 22; "Pharmacists Decry Medicare Chaos," the Tennessean, January 17; "New Medicare [Prescription Drugs] Causes Numerous Headaches." Chicago Sun Times. This is what is happening: cuts in Medicare, refusing to build on the solid Medicare system which is tried and tested and proven and would give the greatest advantage to our seniors. That is what the administration is doing.

Across the country, seniors and disabled individuals facing the challenge of mental illness have been denied the medications they need to maintain their health. They have been forced to pay massive fees for the drugs they counted on. States, cities, and many pharmacies have stepped into the breach and incurred millions of dollars in expenses to fill the gaps left by the administration.

The reality is that 15 million seniors lose under the Republican Medicare law. This chart shows what is happening across America today. Retirees are being dropped. Low-income seniors are paying more in premiums. The dual eligible is also losing. Premiums are costing more than the benefits. This represents another 6 million who will lose under the Republican Medicare law. You add those together, and you have 15 million beneficiaries who are somehow going to lose. That is the reality.

Who is going to gain? If all of these seniors and disabled Americans are losing, we have to ask: Who wins from the Republican drug plan? Someone must win. The answer is clear. The drug companies and the insurance industry win. The Republicans turned Medicare into the "sugar daddy" for the insurance industry by dolling out $67 billion in subsidies. Here is the latest chart: $67 billion, with a $10 billion slush fund built in. You also have the overpayment and the risk inflator. We know that any individual that is in an HMO program is 15 percent healthier than the average Medicare recipient. That is a given. CMS knows that. And what did we do? We gave the HMOs the inflator, close to 7 percent, representing an advantage of more than more than 15 percent. I thought the private sector was supposed to be more competitive and was supposed to save money. But instead, we have given $67 billion to the insurance industry. Those are the sweeteners in the Medicare prescription drug benefit.

People back home in Massachusetts ought to understand why they are paying more in their copays—because a sweetener was needed for the insurance industry, for the HMOs. Those are the figures.

Now what about windfall profits for the drug companies? This chart represents the difference between the money that is being paid now in this particular Medicare program and what would have been paid to drug companies if they had negotiated with the administration, similar to the VA system. So now we have to pay $67 billion to the HMOs and $139 billion to the drug companies. That makes over $200 billion, adding the $67 billion and the $140 billion. $200 billion, Mr. Senior Citizen. We could have lowered your premiums, lowered your copayments, and gone a long way toward closing what they call the donut provisions in here.

Even with all of these sweeteners, we have a disaster. Why? Because the bill blocked Medicare from negotiating the same kind of discounts for seniors that the VA is able to get for veterans. In order to promote competition under this part, and in carrying out this part, the Secretary may not interfere with the negotiations between the drug manufacturers and the pharmacies and the Prescription Drug Providers. There it is. That effectively prohibited the administration from being involved. They pay effectively almost what the companies want.

Does the administration propose to make things right? Does President Bush propose to kick the insurance industry and companies out of Medicare and provide a real benefit? The answer is "no." Instead of strengthening Medicare, the new budget proposes $36 billion in Medicare cuts over the next 5 years and $105 billion over the next 10.

The Medicare cuts will mean higher premiums for seniors and the disabled. This will result in reductions in the quality of care at hospitals and at home health agencies. In my State of Massachusetts, President Bush's Medicare cuts will mean that our hospitals will have to cut their budget by $213 million, home health agencies by $50 million, nursing homes by $150 million.

Cuts in public health programs mean that our State program to screen newborns as early as possible for hearing loss will be eliminated. Seventeen rape crisis centers across the State would face significant financial hardship. Our programs on violence prevention and suicide would effectively be eliminated. Over 35 programs that train health care providers who deliver care in underserved areas and that support diversity in the health professions will be eliminated. Why should patients pay the price while this bill gives away billions in tax breaks to people who don't need them?

But, of course, Republicans have never liked Medicare and Medicaid. Even though retirees and the poor were hurting, Republicans fought against Medicare and Medicaid tooth and nail when Democrats fought to create those two important programs in the 1960s. I was here on the Senate floor in 1964 when Medicare was defeated. I was here in 1965 when the Medicare Program was enacted. Republicans defeated Medicare when it was debated in Congress in 1964. When Republicans came under fire for their opposition in the 1964 election, enough crossed over to join Democrats in passing the Medicare and Medicaid Programs in 1965.

Republicans never gave up their opposition. When they gained control of the White House and Senate in the 1980s, they tried to break Medicaid's promise of health care to poor families. They proposed converting the program into a block grant, and Democrats in Congress stopped them only after a pitched battle.

Once again, in the 1990s, House Speaker Newt Gingrich and his Contract With America wanted to eliminate Medicare. Even though seniors and Americans with disabilities relied on the program and Americans respected it, Gingrich said Medicare should just "wither on the vine." Democrats stopped them again.

More recently, Glenn Hubbard, who was President Bush's chairman of the Council of Economic Advisers in his first term, said Medicare and Medicaid should be replaced by so-called health savings accounts, which would primarily benefit the healthy and the wealthy. He said:

> There is no reason to have a separate Medicare and Medicaid arrangement if you had these souped-up HSAs.

That is the architect of President Bush's health savings account, Glenn Hubbard, proposing to abolish Medicare and Medicaid. That is what this is really focused on, Mr. President. We ought to understand that.

Meanwhile, the Bush administration and Republicans in Congress continue to chip away at Medicare and Medicaid. Now they are at it again.

In the budget the President just submitted to Congress, no health priority is safe. Medicare, Medicaid, cancer research, newborn screening, trauma services for children, and many other essential programs will be severely reduced or even eliminated.

Look at this, Mr. President. Here is how these cuts affect the budget and undermine medical progress. This is how much they would need to have current services, to keep the inflator in the Medicare prescription drug benefit. Take the National Cancer Institute. Right now, we are in the age of the life sciences—with the human genome project, the sequencing of the genome, potential stem cell research, and a whole range of different opportunities. Right now, under the human genome project, researchers are sequencing genes from cancers, which are the greatest danger to families, using computers and other kinds of advanced technology. Those who are involved in this research believe that it is going to open up such hope and opportunity for the families affected and impacted by cancer. Yet we are cutting those programs $208 million.

The National Heart, Lung and Blood Institute: we are cutting that $123 million.

What are the reasons for this? To provide additional tax breaks for the wealthiest individuals. This is your choice. Do you think we ought to have the investment in cancer research and the Heart, Lung, and Blood Institute? At the National Institute of Diabetes and Digestive and Kidney Diseases, which funds diabetes research, we are cutting back. Yet $1 out of $4 from Medicare is now spent to try to deal with diabetes, along with $1 out of $10 Medicaid dollars. That makes a lot of sense, doesn't it? Of course it does not make sense.

Then there are neurological disorders and stroke and mental health, and we are cutting back on understanding these challenges, even as so many young people in this country are suffering with increased rates of youth suicide. We're also cutting back on Child Health and Human Development, which is so important.

All of this money should go into programs at the National Institutes of Health, but instead it is coming out and going right into additional tax breaks for the wealthiest individuals in this country.

Under the President's budget, NIH will receive $1 billion less than is needed to keep up with inflation. Its budget will be flat for 2 years running. That has not been allowed to happen in more than half a century. Mr. President, 18 of the 19 NIH institutes will lose funding, which means that NIH will fall behind in the race for new cures. At the time when we are in the life science century, we are cutting back on those opportunities for individuals and families who are affected by cancer and Parkinson's and Alzheimer's. Is that what we want to do in the Senate? Is that the vote we want to cast? Senators will have that opportunity later on, but I believe it is the wrong priority for our Nation. The amount saved by these dangerous reductions is dwarfed by the payouts that the tax bill now under consideration in the Senate gives to the wealthy.

The tax break is particularly unfair because more than 75 percent of the tax benefits will go to people with incomes above $200,000 a year. Over half of the benefits—53 percent—will go to people with incomes over $1 million a year.

This amounts to a $35,000 gift each year from Uncle Sam to the average millionaire, but it is highway robbery for the millions of seniors, disabled Americans, and poor families who will see a cut in Medicaid and Medicare services.

The Republicans cynically claim that capital gains and dividend income deserve special treatment because they will stimulate investment. The facts do not substantiate that claim. The stock market grew more rapidly in the early and mid-1990s when investors' income was taxed at the same rate as wages. President Bush cut taxes on capital gains and dividend income in 2003. More tax cuts that America cannot afford will hurt the economy, not help it.

There are some provisions in the Senate bill that we need to address. The alternative minimum tax was never intended to apply to middle-class families, and they deserve tax relief. In a truly outrageous move, House Republicans took AMT relief for the middle class out of their reconciliation bill so they could fit in more tax breaks for the rich. The research and development tax credit is important to our international competitiveness and should be retained. However, those worthwhile tax cuts should be paid for by rolling back some of the extravagant tax breaks that this Republican Congress has already given to the Nation's wealthiest taxpayers. We simply cannot afford more tax breaks at a time when we are facing record deficits.

If we are honest about reducing the deficit and strengthening the economy, we need to stop lavishing tax breaks on the rich and start investing in the health and well-being of all families.

The economic trends are very disturbing for any who are willing to look at them objectively. The gap between the rich and the poor in this country has been widening in recent years. Thirty seven million Americans now live in poverty, up 19 percent during this Bush administration. One in five American children lives in poverty; 14 million children go to bed hungry every night. Wages are stagnant while inflation drags more and more families below the poverty line. Mr. President, 2.8 million manufacturing jobs have been lost, and long-term unemployment is at historic highs.

The bill before us has the wrong priorities for the Nation. The Senate should instruct our conferees to reject any House proposal to extend the capital gains and dividend tax cuts. The funds those cuts would consume would be much better spent on Medicare and

Medicaid and the Nation's other health needs. The Senate should instruct our conferees to follow the right priority and the right course.

I know the point will be made at some time during the discussion that, while this is a nice instruction, under the Senate rules we cannot really instruct, even if we were able to carry the vote. Even though it involves $50 billion, we can not reallocate funds in this particular way. It is interesting that the $50 billion giveaway for capital gains and dividends is exactly the amount of the cuts for Medicaid and Medicare—$36 billion cut from Medicare and $14 billion cut from Medicaid.

Effectively, what you are doing is continuing the extension of the 2-year dividends and capital gains tax cuts over the period of the following 5 years, reaching up to 10 years. This is the $50 billion that we are talking about here.

So we know what is really going on, Mr. President. This is an opportunity for choice and for making a decision about what priorities you want. We know the continued assault on the Medicare Program, which is happening by undercutting that program, is going to mean that our seniors are at greater risk. Our children and expectant mothers are going to be at greater risk with cuts in Medicaid. And by failing to deal effectively with the Medicare prescription drug program, our seniors are going to be more poorly served.

In 1965, the Medicare prescription drug program was not included for a very simple reason; that is, 97 percent of private plans at that time didn't have a prescription drug program. Now they do. I was there when President Johnson signed the Medicare Program. He said: Pay your dues in Medicare and your health care needs will be attended to. That is what the Medicare prescription drug legislation did, right? Wrong. Our seniors are not attended to unless they have an effective prescription drug program. They are not getting it with this legislation, Mr. President.

To at least give our seniors the same alternatives for prescription drugs that they have for medical services in the hospital and for doctor's fees under Medicare—to say that we are going to give you these same alternatives under the Medicare prescription drug program—is effectively what over 70 Senators voted for in the Senate in a bipartisan way. Then that program was effectively hijacked by the industry, as well as by AARP, I might add, which poorly served our seniors and now regrets it. We have an opportunity to do something about it. But, Mr. President, without an expression by our colleagues here in the Senate, we are going to see that the rush will be on to continue the kind of expenditures that will increasingly threaten the most vulnerable in our society: the elderly, the disabled, those who are facing challenges with mental health, and the children of the Nation. Those are not the priorities, I know, for my State. I hope that at the time we vote later this evening, they won't be the priorities for the Senate as a whole.

I yield the floor.

Mr. GRASSLEY. Mr. President, on Medicare—and I know the debate here is not about Medicare, but Senator KENNEDY spoke to one part of the new prescription drug program to which I wish to make reference. He referred in his remarks to the dual eligibles. He spoke about a problem that is real—the problem of signing up people who were dual eligibles into the new Medicare Part D prescription drug program.

I do not find fault with his explanation. I will say, however, that our committee which has jurisdiction over this, the Senate Finance Committee, has been working with Secretary Leavitt and Administrator McClellan of CMS to work through these problems. They pointed out seven problems they have identified. They have assumed responsibility for those problems, and they are giving us a program to work through those problems so they will not be repeated and enrollment will by easier and work more smoothly.

But the Secretary has told us about dual eligibles, that with 50 different States having 50 different ways of handling dual eligibles, frankly, merging the information technology system at the Federal level with the information which came out of 50 different States has been difficult to do.

Several of us in the Senate knew this was going to be a problem in 2003. That is why, in the Senate bill, along with the White House, we wanted to leave the dual eligibles just as they were—covered by Medicare and Medicaid. It happens that most of the Democrats in the Senate, along with Republicans in the House, felt we should end up with just 1 national Medicare Program so all of the 50 different States' dual eligibles ought to be merged into the national program.

We had a debate on the Senate floor on that issue, and my point of view won on a very narrow margin. Let me see if I can find it exactly—a very narrow margin of 47 to 51. We defeated an amendment on the Senate floor to bring them together.

What bothers me is Senator KENNEDY is bringing up all these problems. If he had listened to us 2 years ago, we would not have ended up where we have because we would not be integrating dual eligibles into the national Medicare Program. But people on his side of the aisle were just totally insistent that was the wrong way to go, that we ought to have them integrated into the prescription drug Part D Program.

So, without embarrassing any Senator, I wish to quote a Democratic Senator who was in the middle of this debate. I am not going to give the name. Comments like this came out about how gung-ho they were to have dual eligibles in the Medicare Program. It says:

> It's not a frequent day that Chairman THOMAS—

I assume that refers to Chairman THOMAS of the House Ways and Means Committee.

> and I are in full agreement. But he does say such a shift "ensures that all seniors across the country will have access to affordable prescription drugs, while alleviating much of the burden that states now confront." I say to my colleagues, as I indicate, I am not always in agreement, but we are going forward directly on this policy, I hope.

Continuing to quote:

> Fully integrating a key benefit for prescription drugs into Medicare is a critical first step toward improving the current system's flaws. Not only is it unfair to exclude the poorest seniors from part of the Medicare program, it is a raw deal for some of our neediest seniors. For seniors who have worked all their lives, paid into the Medicare system, it is not fair for them to be at the mercy of State coverage decisions. All Medicare beneficiaries deserve to receive Medicare benefits. There should be no exception for drugs. It would be a very bad precedent to make Medicaid pay for items that are clearly the responsibility of Medicare except at the present and in this bill for one particular discrete population.
>
> I think that—i.e., coverage under Medicaid—puts the dual eligibles, 74 percent or less of poverty, at terrible risk, and that is not something I associate with my understanding of the values of the Senator from Iowa—

Meaning me, I believe—

> whom I so much respect.

That was on January 23, 2003.

On June 26, 2003, this quote was given by the same Senator:

> Never in the history of Medicare have we precluded Medicare beneficiaries from being Medicare beneficiaries. In the underlying bill, for the very first time, we do.

In that rollcall of 47 to 51, to leave the dual eligibles as they were, which presumably we would not have the problem Senator KENNEDY is complaining about now—that we have a hard time integrating them into the program—he was one of those 47 Senators who thought they ought to be put into the prescription drug program.

The reason we left them out is because we wanted to solve a problem for people who did not have prescription drugs, people who were dual eligibles, already had their prescription drugs through a State/Federal program, probably to a better point than maybe their having it through our bill where they pay some copay. At least in some States, they probably didn't have to pay a copay. We wanted to take care of the seniors who didn't have any prescription drug program, and by leaving the dual eligibles as they were, it would free up money to take care of more seniors.

As I said, we lost out in the final analysis. In conference, we agreed to include the dual eligibles in this program. Now I hear all this complaint about how it is working to the detriment of seniors because of the integration of 50 different State programs into 1 national program. It will be worked out. It will be worked out. The Secretary of HHS, Mr. Leavitt, says it will work out. He is working on it. He has identified a solution to it, and every day the signup is getting better as we sign up 94,000 people each day into the Part D prescription drug program.

The ACTING PRESIDENT pro tempore. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, today, we debate this tax reconciliation bill for a third time.

We last debated this bill on February 2, Groundhog Day. My friend from Iowa, the chairman of the committee, Senator GRASSLEY, last week compared this repeated debate to Groundhog Day. That is true. This debate does remind us of the wonderful film "Groundhog Day," where Bill Murray is forced to live the same day over and over again. But at the risk of giving away some of the plot of the film, let me remind my colleagues of the lesson of the film. In the film, providence dooms Bill Murray to repeat the same day—Groundhog Day, that is—until he learns to live it right. One might say that is where we are. We are doomed to debate tax policy over and over again until we get it right.

In November, when we first debated this bill, the Senate voted 64 to 33 to pass the bill to support AMT relief to middle-income families. Again, last week, the Senate voted 66 to 31 to again pass the bill and support the alternative minimum tax, otherwise known as AMT, relief for middle-income families. In particular, the Senate last week voted 73 to 24 to support the Menendez amendment to express the sense of the Senate that protecting middle-income families from the alternative minimum tax should be a higher priority in 2006 than extending capital gains and dividends tax cuts that do not expire until the end of 2008 or the beginning of 2009.

So the same question keeps popping up over and over again and the same answer keeps coming back: Let's make sure the relief from the onerous and family unfriendly AMT happens now. We must defer on extending expensive tax breaks for investors until a later date.

Yet I keep reading in the papers that Senate leaders have promised that capital gains and dividends tax cuts will still be in this reconciliation bill. The Senate position, by an overwhelming vote of 73 Senators, is providing immediate relief to more than 17 million middle-income families that otherwise would see a tax increase this year. Since that is so, it seems to me we should accept that position, accept that view, and work toward its enactment.

Statements that we will provide AMT relief to working families separately and later in the year undermine this Senate position. It is statements such as those that have led us to this Groundhog Day. It is statements such as that that call into question the Senate's votes and cause the Senate to have to vote once again to deliver that same message. Today, we will debate several motions to instruct, and the first one will be Groundhog Day for AMT.

For 17 million American families, 2006 came with an unwelcome surprise—a stealth tax. The temporary protection from alternative minimum tax, or AMT, expired December 31. That means that 17 million more American families will be subject to it this year. That is an increase from 3 million to 20 million taxpayers in one year alone.

Once again, the Senate will debate whether to support our position, where AMT relief is a priority. In contrast, the House position was to prefer extending capital gains and dividends cuts, which expire in 2009; that is, over AMT protection, which expired 6 weeks ago. I think the answer to that is clear.

If the House position prevails in conference, working families will lose. If we do not extend the AMT protection, a family with three kids earning $63,000 will be hit by the AMT this year. The AMT is family unfriendly. The AMT creeps deeper and deeper into working families each year. Protection from the AMT should be a priority for both sides of the aisle and both sides of the Capitol.

Instead, the House has passed a separate alternative minimum tax bill without the procedural protections of this bill. And while this other House bill purports to protect families from the alternative minimum tax, there will still be 600,000 additional taxpayers paying higher taxes for this year 2006 due to this stealth tax. The House AMT patch, or otherwise known as the hold-harmless provision, as some have called it, does not really hold anyone harmless. Last year, 2005, there were 3.6 million American taxpayers paying this AMT stealth tax. Under the House bill, there would be 4.2 million taxpayers paying the AMT stealth tax in 2006; that is, this year.

So as we debate this issue once again, let us remember our priority: that millions of working families now subject to a tax increase courtesy of the AMT are a priority we should address. Once we accept that priority, the decision whether to allocate $50 billion to extending capital gains tax cuts becomes much more clear. So let us do what is urgent first. Let us do what working families expect and need. Doing so will be the only way to move on to better days for these families.

I want to expand on that last point. The capital gains and dividends tax cuts contained in the House bill, as I mentioned, are among matters most in dispute in this legislation, so let me take a couple of moments to discuss why Congress does not need to extend them in this bill.

Under current law, taxpayers who earn money in capital gains and dividend income pay taxes on that income at a lower rate than they do on their ordinary income; for example, wages. In 2003, we passed legislation that set the current law for the taxation of capital gains and dividend income. For taxpayers in most income brackets, capital gains and dividend income are taxed at 15 percent. Taxpayers in the lower two tax brackets do not receive a great deal of capital gains and dividend income. But for taxpayers in those two brackets, what capital gains and dividend income they receive is taxed at 5 percent now and will be tax free in 2008. Prior law, before 2003, taxed long-term capital gains at 20 percent or 10 percent. Prior law taxed dividend income similar to any other ordinary income, so there is a split in capital gains. The House bill would extend the lower tax rates Congress enacted in 2003 to the end of 2010.

The first question before us, therefore, is when does Congress need to act on capital gains and dividend income tax rates? Those rates do not expire this year. Those rates do not expire next year. Those rates do not expire the year after that. Rather, those rates expire on January 1, 2009, about 3 years from now, after the next Presidential election.

So the first thing we need to note is that extension of capital gains and dividends tax rates is far from an urgent matter.

The second question we need to ask is: Is it fiscally responsible to extend those tax cuts right now?

According to the Joint Committee on Taxation, the cost of a 2-year extension of those tax rates amounts to $50 billion over a 10-year budgetary horizon. Some who like lower capital gains and dividends tax rates will cite a lower 5-year cost of $20 billion, but that masks the full cost over the decade to come.

Perhaps we should be a little more frank with the American people because it is no secret that many who like lower capital gains and dividends tax rates would like to make those lower rates permanent. This is the position the administration takes. So we ought to look at the cost of making those rates permanent. According to the President's new budget request, making these tax cuts permanent would cost more than $200 billion over 10 years.

Mr. President, $200 billion is a lot of money. Two hundred billion dollars is about what we spend on fighting crime, combating drugs, and the entire administration of Justice for 5 years. Two hundred billion dollars is about what the Federal Government spends on highways, airports, and the entire Transportation budget for 3 years. And $200 billion is about what we spend on veterans' retirement and disability benefits for 6 years. So extending capital gains and dividend tax cuts costs real money.

The third question we need to ask is: Are capital gains and dividends tax cuts the best use of the money set aside for tax cuts in the budget? For there is a far more pressing need for tax relief before us in this bill and that is relief from the onerous alternative minimum tax.

Millions of working families are beginning their annual ritual of filling out their tax returns. It takes more time than most of us would like, and millions of taxpayers are being forced to fill out their returns twice. They have to do so if they owe money under the alternative minimum tax. The need for relief from the alternative minimum tax is not some faraway possibility, several years down the road. Relief from the alternative minimum tax expired for the tax year 2006. That is the more pressing tax relief need before us.

Treasury Secretary Snow testified before the Senate Finance Committee last Tuesday. He told the committee:

> Tax increases carry an enormous risk of economic damage. And I can tell you today that the President will not accept that risk. He will not accept a tax increase on the American people.

That is exactly why we need to prevent a tax increase on those working American families who would be subject to the alternative minimum tax, unless we act. In the same vein, the popular research and development tax credit expired at the end of last year. Businesses have argued for years that the annual 1-year extension provides no certainty for business planning and investment. We need to extend the R&D tax credit.

Some will make breathless arguments that capital gains and dividends tax cuts are necessary. Why are they necessary, they say? They say they are necessary to prevent dire consequences in the stock market. They say that the stock market will plunge if we don't enact this in 2 years. It doesn't need to be enacted. They want to enact it because the current law is in existence until January 1, 2009. But they say the stock market is going to fall.

Let us look at the time period starting in May 2003, when Congress reduced the dividend and capital gains tax rates. Since then, the stock market has seen a 14-percent growth. Furthermore, let us look at the time when Congress first cut the capital gains tax rate in August of 1997. Between then and the time the further cuts were made in May of 2003, the market grew by 13 percent. Now let us look at the time before either the capital gains or dividends tax cuts. Before the 1997 tax cuts, capital gains were taxed at 28 percent, much higher than the current law, and dividends were taxed as ordinary income, higher than under current law. In those times of higher capital gains and dividend tax rates, between the time the Clinton administration took office and August 1997, did the market grow by 13 percent or 14 percent? No. The market grew by a whopping 236 percent, far more than the 13 percent and 14 percent when the lower rates were in existence.

So the evidence is not there that lower capital gains and dividends tax cuts will lead to increased stock prices. Indeed, one would make the case that other economic factors are much more important to stock market returns than are capital gains and dividends tax rates.

One of those factors is the fiscal responsibility of the mid-1990s. After President Clinton took office in 1993, Congress and the President enacted meaningful, I mean meaningful deficit reduction. We reduced the Government's demand for scarce capital. We freed up savings to finance productive business investments. And we put the Nation on a path to economic growth. In contrast, financing tax cuts by running greater deficits increases the Government's demand for scarce capital. Deficit-financed tax cuts take away savings that could be available to finance productive business investments. Increasing the deficit detracts from economic growth.

To encourage economic growth, we need to get deficits under control, and the first step we can take down that road is to stop making the deficit worse by enacting more tax cuts than we can afford.

Capital gains and dividends tax cuts do not expire for 3 years. Capital gains and dividends tax cuts cost a lot of money. Capital gains and dividends tax cuts are a less-pressing priority than relief from the alternative minimum tax. And the evidence is simply not there that capital gains and dividends tax cuts contribute to market strength. That is not the evidence. It may be somebody's theory, but that is not the evidence.

So that is why we do not need to extend capital gains and dividends tax cuts today. We can face this issue later. Rather, let us address the more pressing need to extend relief from the alternative minimum tax. Let us act responsibly. Let us save capital gains and dividends tax cuts for another day.

I yield the floor.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Iowa.

Mr. GRASSLEY. Mr. President, Senator KENNEDY repeats the old demagogic saw about capital gains and dividends being only tax benefits for the wealthy. The facts are very different. I have two charts here which will show how wrong he is. One of these charts deals with capital gains. The other one deals with dividends.

Dividends is the first one to which I make reference because, in the State of Massachusetts, you can't have all these wealthy people benefiting from the 15-percent dividend tax instead of what he would prefer, the 20-percent dividend tax. Don't forget, again, as I referred in my opening remarks, these are year 2003 figures, so it could be a lot more than that right now, but these are the most up-to-date Internal Revenue Service figures we have.

In Massachusetts, we have 589,897 taxpayers who benefit from the 15-percent capital gains dividend. Don't tell me that all 589,000 of those are millionaires. Massachusetts may be a very wealthy State, but it doesn't have that many millionaires in it. So somewhere along the line, Senator KENNEDY ought to wake up to the fact that there are a lot of middle-income and common folks in his State who are benefiting from the 15-percent tax on dividends instead of having a 33-percent increase in that tax and having it go back to 20 percent.

My friend from Montana did make a correct judgment that this is not running out right now. But the point is that when you are asking people to invest to create jobs in America, they have to have the long-term view of that investment. If you want to encourage investment to create jobs, people have to know what the tax law is for the long term, not for the short term.

The point is, in order to persecute a few millionaires, Senator KENNEDY wants to punish the many. And the many are the 589,000 people in his State who benefit from the 15-percent tax on dividends.

Let's go to the number of people in that State who benefit from the 15-percent capital gains tax. There are 212,000 people in Massachusetts—again, I remind you these are 2003 tax year figures because that is the most up-to-date we have from the IRS. There are more today, probably. But there are 212,000 people in Massachusetts, taxpaying families and individuals, benefiting from the 15-percent capital gains tax. Those are not wealthy people.

Again, you get back to the point of whether we ought to persecute the few, the few millionaires he is talking about, persecute them and at the same time punish 212,000 people in the State of Massachusetts. I don't think so. I don't think it is good policy.

I hope this Congress is able to have a sensible tax policy that not only includes sensible levels of taxation, but if you look at all the dividends that are being paid out today that wouldn't have otherwise been paid out, you think you would come to a conclusion that is a sensible policy because we have tens of millions of taxpayers deciding how the profits of a corporation are going to be spent instead of a few thousand chief executive officers of those same corporations deciding how it is going to be spent. When millions of taxpayers are making those decisions, it is going to respond to the dynamics of our economic system and create more jobs and important prosperity than when a few corporation executives keep all those profits internal in a corporation making those decisions.

I don't think we ought to be persecuting a few to punish the many.

When it comes to these motions to instruct, we may have some motions to instruct on this side of the aisle that will set the record straight on what we are trying to accomplish and give people opportunities to vote on good economic policy and good tax policy as well as bad economic policy and bad tax policy that we are getting from some on the other side of the aisle.

In 2003, a bipartisan Congress lowered the top tax rate on dividends and capital gains to 15 percent through December 31, 2008, and for low- and middle-income taxpayers to 5 percent through 2007 and zero percent through 2008.

I filed six motions to instruct conferees to report back a conference report that includes the extension of these tax rates through 2009 and through 2010, the same as the House of Representatives has.

Critics of this policy claim these are tax cuts for the rich that make a budget deficit worse because they want to persecute the few and in the process punish the many. But I filed these motions that are going to tell the other side of the story: that when you have sound tax policy which encourages the economy to grow, we are also going to reduce the deficit.

Besides, let me suggest to you that I don't know how it is in other States, but I don't run into very many in my State who are saying I am undertaxed, tax me more. But I run into people day after day in almost every one of my town meetings where they are complaining about the overspending of the Congress of the United States.

In regard to the other side of the story and the motions to instruct that I filed, the lower rates of capital gains and dividends have produced several positive effects. They benefited low- and middle-income families in a meaningful way.

Can't you see that when you have a very low tax rate for certain low-income people, as one example? For low- and middle-income taxpayers, it will be 5 percent through 2007 and zero percent through 2008. This is going to encourage people to save to a greater extent, particularly people who have a lower income and don't have the ability to save.

These lower tax rates have reduced the tax burden on senior citizens who rely on their investment incomes during retirement. They have contributed to our economic recovery and continue to help the economy grow. They have made capital investments in America more competitive with the capital investment in other countries. With the globalization of the economy, that is something we always have to be cognizant of in this Congress, that you can't have a tax policy that makes our corporations, particularly in manufacturing, uncompetitive with manufacturing overseas.

Finally, these tax rates have helped impose transparency and discipline on corporate managers which is critical to protecting investments and workers.

I may or may not seek a vote on these motions to instruct, but I want to go through each one of these points which I made so that when Members come over to vote tonight, they will know some of the rationale behind Republican motions.

The lower rates on dividends and capital gains have benefited low- and middle-income families in a meaningful way. That is the third time I have said that in the last 5 minutes. But we have to get away from this attitude of persecuting a few and in the process punishing the many.

I don't know whether they on the other side of the aisle realize it, but when they want to persecute a few millionaires, they are punishing hundreds of thousands of people—I guess it is millions of people, if you take all 50 States, but I was making reference to the State of Massachusetts.

According to the Internal Revenue Service estimates for 2003 tax return data, about 10 million low- and middle-income taxpayers have $34 billion of income taxed at the 5-percent rate and saved at least $1.7 billion, or about $170 per taxpayer on average.

I know what I am going to hear from the other side. Well, $170 is nothing. Why don't we let the taxpayers of this country decide whether they would rather spend that $170 or that we ought to spend it for them?

I can guarantee if they invest it, or if they spend it, it is going to do more economic good than if I spend it for them as a Member of Congress. That is the way the dynamics are and the way society works. Money spent by the Government doesn't turn over as many times in the economy as it does if it is spent in the private sector.

At these 2003 levels, these taxpayers I have referred to save a heck of a lot of money. Don't forget, in 2008 that rate drops to zero percent.

My motion would instruct the conferees to ensure that Congress won't raise the annual tax bill on low- and middle-income taxpayers at the 2003 levels. That tax increase would be at least $3.4 billion. That is an average of $340 per taxpayer.

Senior citizens benefit from lower tax rates on dividends and capital gains. They have reduced the tax burden for senior citizens who rely more than working people do on investment income, and they need this particularly during retirement.

According to IRS estimates for 2003 tax return data, about 57 percent of the tax returns for taxpayers age 65 and older had taxable dividends income. That is over 6.5 million tax returns. These taxpayers rely on investment income, and particularly dividend income in their retirement. Low- and middle-income seniors pay tax on this dividend income at the 5-percent rate instead of 20 percent or 15 percent. That rate for these low-income seniors is going to drop to zero in 2008. Other taxpaying citizens, those with higher incomes, paid at the 15-percent rate, but that was instead of paying at the 35-percent rate.

We need to instruct the conferees that Congress won't impose a new tax on low- and middle-income seniors and more than double the tax on other taxpaying seniors in 2009 and 2010. In other words, we need to tell the other side to quit persecuting a few because in the process you punish the many.

In this particular case, why would they be crying about what we might be doing to senior citizens in one of the recent speeches and then stand there and want to increase the tax rates from zero percent to 35 percent for some of these people who are senior citizens?

Also these reduced tax rates on dividends and capital gains have contributed tremendously to our economic recovery and continue to help our economy grow. They reduce the cost of capital for American businesses and increase return on investment, enhancing economic growth, creating more jobs, and expanding the tax base.

Companies are responding to shareholder demand created by the lower 15-percent rate on dividends by paying record levels of dividends.

According to the Congressional Budget Office, capital gains realizations increased significantly in 2003, 2004, and 2005, causing capital gains tax revenues to be $62 billion higher over those years than were projected before we changed this law.

Don't tell me that $62 billion more coming in, according to the CBO—not a partisan like me; they are nonpartisan—$62 billion more didn't benefit the Treasury and reduce the deficit by reducing taxes. You know what you get out of this—a growing economy. That means more jobs, and 44.7 million jobs have been created since this tax policy has been in effect. The unemployment rate has dropped during the same period of time from 6.1 percent to 4.7 percent.

I feel very strongly, just as the other side wants to persecute the few to punish the many by going after what they call millionaires, that we ought to state the reality: that is, my motion to instruct the reality of keeping these tax rates so the economy continues to grow.

The progrowth policy will not expire at the end of 2008 or at the end of 2009 because investors who need the long-term view of investing know what the law is going to be and are going to make decisions.

The lower rates have done another thing—they have made our businesses more competitive with the global economy. And other countries around the world, having lower tax rates than we have, have jumped ahead of our businesses. Even with the United States at 50.8 percent, we still have the eighth highest tax rate on corporate income among the 30 nations in the OECD. For every dollar an American corporation makes on its U.S. investments, more than half of it ends up in Federal and State governments. Without the lower dividend tax rate, it would have been nearly 63 cents of every dollar, ranking second only behind Japan.

High taxes on capital investment make the United States less attractive compared within investment opportunities in other countries. That costs us jobs. In today's global economy, we should do everything we can to ensure the competitiveness of our businesses.

In this process of persecuting a few, the few millionaires, punishing everybody, you are punishing the people who need jobs, and who lose jobs because our businesses can't be competitive because our cost of capital is higher than global competition. Also, there is a benefit to a motion to instruct for transparency of how a corporation works. The lower rates have helped impose transparency and discipline on corporate managers. That is very important to protecting investors and, particularly, jobs for our workers.

The high tax on dividends causes corporations to favor debt financing over equity financing, leaving more highly leveraged businesses vulnerable to economic downturns. High dividend taxes reduce the demand to receive and thus the incentive to pay dividends, leading corporate managers to invest in wasteful and unprofitable projects and to hide the results from their investors and their workers.

On the other hand, the reduced tax rate on dividends lessens the disparity between debt and equity financing, thus heightening demand for dividends, thus contributing to more transparency and more accountability of corporate managers for their decisions.

It seems to me in this post-Enron era, we need to instruct the conferees to ensure that the transparency and the discipline imposed on corporate managers by lower dividend taxes and critical to protecting investors and workers is not threatened by this expiration date in 2009 and 2010.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, we next expect to hear from the Senator from Connecticut, Mr. DODD, to have a motion to instruct on veterans and military personnel. We anticipate thereafter we will hear from the Senator from Rhode Island. He will have a motion to instruct on defense needs.

I yield the floor so the Senator from Connecticut may send his motion to the desk.

The PRESIDING OFFICER. The Senator from Connecticut.

MOTION TO INSTRUCT CONFEREES

Mr. DODD. Mr. President, I send a motion to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending motion is laid aside.

The clerk will report the motion.

The assistant legislative clerk read as follows:

> Mr. DODD moves that the managers on the part of the Senate at the conference on the disagreeing votes of the 2 Houses on the Senate amendment to the bill H.R. 4297 (to provide for reconciliation pursuant to the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95)) be instructed to insist on the inclusion in the final conference report of the funding to support the health needs of America's veterans and military personnel contained in section 315 of the Senate amendment instead of any extension of the tax breaks for capital gains and dividends for individuals with annual incomes greater than $1,000,000.

Mr. DODD. I thank the clerk for reading the full motion. Normally, I would interrupt the reading by the clerk, but I thought it important that those interested in the debate would understand what the motion is. This is a motion to instruct the conferees to support an amendment this body passed 2 weeks ago.

That evening, my good friend from Iowa, the chairman of the committee, in an awkward moment—it was a rather complicated moment involving an amendment—offered a substitute that took the heart of my amendment without the offsets that were included in my amendment, which this body adopted unanimously on a voice vote.

I am offering a motion to instruct the conferees to support that amendment. I also hope they will reconsider some of the offsets we suggested in the amendment I offered when this matter was debated by the full Senate. I would like to remind my colleagues that the proposal I offered the other evening was strongly endorsed and supported by the American Legion, a group that certainly understands the importance of providing the support and backing our veterans deserve, particularly those who are returning from theaters of conflict today in Afghanistan and Iraq.

I ask unanimous consent this letter from the American Legion be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE AMERICAN LEGION,
Washington, DC, February 2, 2006.

Hon. CHRISTOPHER J. DODD,
Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, DC.

DEAR GENTLEMEN: On behalf of the 2.8 million members of The American Legion, I would like to offer our support of the proposed amendment to the Tax Relief Extension Reconciliation Act of 2005 that would provide for the unbudgeted costs of health care for veterans returning from Iraq and Afghanistan.

The amounts offered by this amendment would be in addition to any other amounts provided for medical care under other statutory provisions and would help to avoid funding shortfalls, such as what took place last year or other problems that arise due to the discretionary funding model currently in place for VA health care. This amendment would also establish a "Veterans Hospital Improvement Fund" to provide for improvements in health care facilities treating veterans, including military medical treatment facilities, VA facilities and other facilities (state, local and private) that provide medical care and services to veterans.

Again, we appreciate your efforts on behalf of our nation's veterans. Your amendment acknowledges the need for adequate funding to ensure our nation's veterans receive the healthcare and other benefits to which they are entitled.

Sincerely,

STEVE ROBERTSON,
Director,
National Legislative Commission.

Mr. DODD. I will have additional inclusions for the RECORD further in the debate as I lay out the arguments for this motion.

This is about priorities and choices. Those involved in public life are constantly asked to make choices and establish sets of priorities. It is not easy in many cases. Sometimes the choices are very difficult to make. In this case, the choice is a rather easy choice, it seems to me, given the facts presented by this motion. The amendment we offered 2 weeks ago and the substitute offered by the chairman of the Committee on Finance that this body adopted, provides for $12.9 billion for disability payments to veterans, $6.9 billion for veterans medical care, and $1 billion for veterans health facilities. I will explain those particular items in more detail in a few minutes. Basically, that was the amendment to which this body agreed.

The offset proposed in my amendment would have sunset the capital gains and dividends tax breaks for only those people making more than $1 million a year—which amounts to two-tenths of 1 percent of all taxpayers—99.8 percent of all other taxpayers under our proposal would not have been touched, only those making more than $1 million a year.

We suggested that the money saved by not providing the tax break for people in that small group be used to pay for the veterans benefits I have described. The House bill proposes to raise to $64.8 billion the amount we spend on tax benefits for the income group I have just described. We asked instead to reduce that amount in order to adequately provide for these veterans benefits.

I noticed earlier our friend and colleague, the chairman of the Committee on Finance, referred to today's proceedings as being akin to the movie "Groundhog Day." He stated that this is the third time the Senate has debated this bill in one form or another. I appreciated his discussion. Certainly, I can understand his frustration as the chairman of the committee that deals with such an important matter in this tax legislation. He and my colleague from Montana, Senator BAUCUS, have worked very hard on this legislation and would like to see it moved to conference. I agree. In fact, his reference to that movie is apt, and I endorse it.

The movie "Groundhog Day" reminds us sometimes in life we get another chance to get it right. That is what we are going to try to do this evening. That is why we are here today, to hopefully get it right when it comes to paying for urgent priorities such as the health and safety of our troops and our veterans.

I don't know of another constituency group in America—maybe some of my colleagues might argue with what I am about to say, but I don't think there is another group of Americans who deserves as much of our attention as people who put their lives on the line for the United States of America every day. Those young men and women who are returning from theaters of conflict, broken individuals, at least in body—amputees, scarred, burned, and suffering tragic injuries of war—deserve every bit of thanks, verbally, we can provide for them. But beyond that, they deserve our support and backing when it comes to the priorities of this Nation. I don't think it is asking too much, at a moment like this, to say to two-tenths of 1 percent of taxpayers: How about a break; how about not taking that extra tax break and providing for the veterans benefits that are needed for these young men and women who are coming back from the theaters of conflict.

When this bill last came to the Senate 2 weeks ago, I offered an amendment that would have provided crucial health funds in a fiscally responsible manner to our wounded troops coming home.

Tax legislation passed in 2003 calls for spending $43 billion over the next 5 years on capital gains and dividend tax breaks for individuals making more than $1 million a year. The bill proposed by the House of Representatives would raise this number much higher—by this chart I am showing—to $64.8 billion. Instead of spending this money on the wealthiest two-tenths of 1 percent of the population of the United States of America, my amendment would have used the resources to meet our veterans health needs—estimated by Nobel Prize-winning economist Joseph Stiglitz to be $18.9 billion over the next 5 years—establish a $1 billion trust fund for health facilities treating wounded and disabled veterans returning home, and reduce the deficit by approximately $23 billion. That was the amendment I offered 2 weeks ago.

Regrettably, this Senate did not approve my amendment. We did, however, unanimously adopt, as I mentioned earlier, a substitute offered by my colleague from Iowa, the chairman of the Committee on Finance, that still provides these needed funds—just without paying for them, as I and many other colleagues would have preferred. We believe you ought to pay for it.

Once again we are coming back. I regret the need for a "Groundhog Day," but because of the procedures we operate under, I am getting a second chance. In effect, I am giving my colleagues a second chance to get this right. Do you believe it is that difficult a choice to make to reduce that $64.8 billion that we are about to provide to two-tenths of 1 percent of the wealthiest Americans, to provide for the basic needs of our veterans returning from the theaters of conflict? That is the choice we will make when this vote occurs later today or this evening.

The House of Representatives has proposed not only keeping in place the scheduled dividends and capital gains tax breaks enacted in 2003 but adding 2 more years of them. My motion makes no statement about these tax breaks for the 99.8 percent of Americans who will get them. But for the two-tenths of 1 percent of the population that I am talking about, I think, frankly, they could do without this. I will tell you why.

Over the last number of years, we have provided $125 billion in benefits for this very narrow group of individuals. Between the 2001 and 2003 tax breaks alone, individuals in this narrow group—the top two-tenths of 1 percent of the population of our great country—have received more than $125 billion in benefits under the Tax Code. Meanwhile, our soldiers and veterans are being told to go without essential items such as body armor and the health care they need and deserve.

Again, politics is often about choices. In fact, in most cases it is about choices. What I am offering my colleagues tonight is a choice on whether we continue to underscore what the House has done or what we are doing by not paying for the benefits, or do we do what all of us would like to see done; that is, do we properly take care of these men and women coming back from the theaters of war.

The motion does not ask for the return of any of the $125 billion we have given between the 2001 and 2003 legislation. It simply acknowledges the reality that in a time of record budget deficits we need to make some different choices. Do we provide more tax breaks for a small group that has already received so much since this administration took office, as the House of Representatives proposes to do, or do we meet the needs of a nation at war in properly taking care of our wounded and disabled veterans as the funding approved by this Senate would do?

Over 2,200 men and women in uniform have died in combat in Iraq. Over 16,000 have been severely wounded in that conflict. But instead of addressing their needs fully and adequately, this administration has underfunded veterans medical health care.

Let me go back and make a point on tax, so everyone knows what I am talking about. Under the House bill, this is the choice: If we adopt in the conference the House bill and drop this amendment—some suggest it would not make it 10 feet down the hall between this Chamber and the House—we will be left with the wealthiest benefiting the most by extending the capital gains and dividends tax breaks.

The average tax cut in 2009, if this bill is agreed to, if you make $50,000 or less, will be $11. If you make between $50,000 and $100,000, your tax break is $77. If you make between $100,000 and $200,000, you get a $228 tax break. If you make between $200,000 and $1 million, you get a little more than $1,300 in a tax break. If you make $1 million or more, you get $32,111 in tax breaks. That is from the Urban-Brookings Tax Policy Center, their analysis of what would happen under this bill.

All we are suggesting is to take care of this by reducing that tax break for the people making over $1 million a year. I also want to see us beef up what could happen for the other individuals in the tax categories. The people making $100,000 and less, to receive $75 or $85 in a tax break is hardly what I call a windfall for people in this category.

I come back again to the beneficiaries under the motion I am making today and how they benefit. In fact, last year the administration devised its fiscal year 2006 VA budget that could only handle 23,000 veterans returning from Iraq. This number was drastically too low and the Veterans' Administration had to scramble to meet the needs of over 103,000 Iraq veterans on top of its already existing patient load. Imagine that. They submitted a budget that only provided for 23,000, and yet over 103,000 actually came back from that theater alone, to be added to the already overburdened patient flow.

Congress was forced, of course, as my colleague may recall, to intervene in the middle of the year, and in June of last year we approved an emergency spending bill that provided an additional $1.3 billion to address shortfalls in the VA health budget.

Now, I must stress that I have the greatest respect and admiration for former VA Secretary Tony Principi and the current occupant of that post, Jim Nicholson. I do not envy their jobs, particularly when they have an administration that does not seem to want to step up to the plate and provide the kind of backing at the budget office they deserve. They have led their Department with great distinction and have continued to do the best they can under the circumstances. But they have had a difficult task since the current occupants of the White House have repeatedly provided them with very, very limited resources.

I would like to show as well this article which appeared in the Washington Post. I will not read all of it, but I wish to point out a particular commendation for a Republican Member of the House, STEVE BUYER, a Republican from Indiana, because it was from his insistent questioning at the time of the VA Under Secretary for Health that they were able to determine the $1 billion shortfall existed. Had it not been for the efforts of STEVE BUYER, we may not have been able to correct the shortfall which existed at the time. From the beginning, our colleague, Senator PATTY MURRAY, as a member of the Senate Appropriations Subcommittee covering veterans and a lead sponsor of Democratic efforts to restore this amount, also led the charge, later joined by LARRY CRAIG of Idaho and others in her efforts. That is how the money got back in. But if it had not been for these Members, we might still be arguing about the shortfalls that were needed to provide for those people.

Mr. President, I ask unanimous consent that the Washington Post article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, June 24, 2005]

FUNDS FOR HEALTH CARE OF VETERANS $1 BILLION SHORT

(By Thomas B. Edsall)

The Bush administration, already accused by veterans groups of seeking inadequate funds for health care next year, acknowledged yesterday that it is short $1 billion for covering current needs at the Department of Veterans Affairs this year.

The disclosure of the shortfall angered Senate Republicans who have been voting down Democratic proposals to boost VA programs at significant political cost. Their votes have brought the wrath of the American Legion, the Paralyzed Veterans of America and other organizations down on the GOP.

"I was on the phone this morning with Secretary of Veterans Affairs Jim Nicholson, letting him know that I am not pleased that this has happened," said Sen. Larry E. Craig (R-Idaho), chairman of the Senate Veterans Affairs Committee. "I am certain that he is going to take serious steps to ensure that this type of episode is not repeated."

The $1 billion shortfall emerged during an administration midyear budget review and was acknowledged only during lengthy questioning of Jonathan B. Perlin, VA undersecretary for health, by House Veterans Affairs Committee Chairman Steve Buyer (R-Ind.) at a hearing yesterday.

"We weren't on the mark from the actuarial model," Perlin testified. He said that the department has already had to use more than $300 million from a fund that had been expected to be carried over to the fiscal 2006 budget, and that as much as $600 million for planned capital spending will have to be shifted to pay for health care.

At a noon news conference yesterday, Sen. Patty Murray (D-Wash.), a member of the Senate Appropriations subcommittee covering veterans affairs and the lead sponsor of Senate Democratic efforts to add $1.9 billion to the VA budget, accused the Bush administration of unwillingness "to make the sacrifices necessary to fulfill the promises we have made to our veterans."

In a rare display of bipartisanship on the polarized issue of veterans spending, Craig appeared with Murray at the news conference and said he agreed with many of her comments.

Murray cited an April 5 letter written by Nicholson to the Senate in a bid to defeat her amendment: "I can assure you that VA does not need emergency supplemental funds in FY2005 to continue to provide timely, quality service that is always our goal," he had said.

Mr. DODD. We cannot and should not address veterans' needs on the cheap again. According to some experts, this year, the VA health system is likely to face another shortfall of $2.6 billion due to the administration's drastically low veterans budget. And for all of the President's rhetoric about supporting our troops—and I do not in any way doubt he means it when he says it, but I remain concerned that the administration fails to back up the rhetoric with the kind of actions needed to see to it that these troops are going to get the support they deserve.

On the whole, I commend the President for finally proposing an increase of $1.9 billion in the VA budget for 2007. But as in previous years, the administration's priorities are wholly misplaced. In spite of the proposed increase, the President's 2007 request cuts the VA hospital construction budget by $576 million. To make matters worse, the administration's proposed budget would impose a doubling of veterans' prescription drug copays and assess a new $250 enrollment fee for thousands of veterans across our country.

As I mentioned on the floor before, the situation has gotten so dire that now our military personnel and veterans are having to rely on the charity of private citizens to build critical health facilities to meet their needs. According to the Departments of Defense and Veterans Affairs, our military personnel are suffering inordinate numbers of injuries resulting in brain damage, spinal injuries, and amputations. About 20 percent of those injured have suffered major head or spinal injuries and an additional 6 percent are amputees. Without financial support, our veterans are actually having to depend on the charity of private citizens to finance the construction of major rehabilitation centers for the most seriously wounded.

The Bush administration is simply not meeting its obligations to those wounded in Iraq—a war that has returned home amputees at twice the rate of Vietnam. And so, instead, the Intrepid Fallen Heroes Fund is raising $37 million to build the Intrepid Center at Fort Sam Houston next year. It will be manned and operated by VA and Army personnel, but it is currently not expected to receive a dime from the U.S. Treasury for its construction because the White House would rather dole out scarce resources to the wealthiest of our fellow citizens who have already received so much. What kind of a choice are we making when we do that?

I remind my colleagues that the funding approved by this body—which without the support of this motion I fear will be wiped out in conference—will allow critical facilities such as this one to receive the investments they deserve from our Nation's Government.

Moreover, it will create a trust fund to allow private and State facilities that provide medical treatment to veterans to receive Federal funds as they meet our veterans critical health care needs. In addition to facilities such as the Intrepid Center, it will allow vital hospitals and veterans residences, such as the Connecticut State veterans home at Rocky Hill, the opportunity to tap into vital Federal resources as they strain to meet the increasing demands of caring for our veterans—young as well as old.

I cannot stress the importance of these programs enough. Our veterans need the critical care provided at our State veterans nursing homes and, regrettably, this administration is choosing to put scarce resources into more high-income tax breaks rather than address our veterans' essential living needs.

As a matter of fact, last year, the President actually proposed cutting off States' access to Federal funds to build and maintain State veterans homes. I did not make that up. That is what they proposed. It took an act of the Congress to reverse the President's budget proposal.

This year, although the Department has a list of 129—I am going to put these in the RECORD, Mr. President; I want my colleagues to see them—although the Department has a list of 129 State veterans projects approved for receiving Federal grants for new construction and improvements, 2006 allocations only provided enough for 13 of these 129 State projects around our country.

I will guarantee my colleagues, every one of your States is included in projects that will not be funded. These are your State veterans facilities, and these are good people out there doing a Herculean job of trying to provide for veterans from your States. Here they are, with 129 requests for projects they need, and only 13 of them will be funded because we are going to provide a huge tax break for people who have received $125 billion in tax breaks and are now about to get almost $70 billion more.

I would hope my colleagues would just, on this alone, be willing to support this motion. The proposed 2007 budget would flat-line this program of State construction at $85 million, providing funding, as I said, for 10 to 13 projects—it may not even be 13—and still leaving over 100 State veterans facilities looking for additional resources.

The funding approved by this body and supported by this motion I am offering this afternoon would address these shortfalls.

Mr. President, I ask unanimous consent that this Priority List of Pending State Home Construction Grant Applications—it lists the State, the facility in your State; and only the top 13 will be approved; maybe 13, maybe 10 next year—I ask unanimous consent that this list be printed in the RECORD so my colleagues can determine whether their State facility is on the list.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PRIORITY LIST OF PENDING STATE HOME CONSTRUCTION GRANT APPLICATIONS FOR FY 2006

FY 2006 list rank	FAI No.	State (locality)	Description	Priority group (PG) ranking	Est. VA grant cost (000)
		Applications Suject to 38 CFR 59 Priority Group 1			
1	31–014	NE (Bellevue)*	L/S 120-Bed NHC/DOM (Repl.)	1, 1, 2	13,658
2	13–008	GA (Milledgeville)	Life Safety/HVAC and Upgrades at the Russell Bldg.	1, 1, 2	991
3	50–008	VT (Bennington)	L/S Geothermal HVAC, Phase 1	1, 1, 4	1,716
4	13–010	GA (Milledgeville)	Life Safety/HVAC at the Vinson Bldg.	1, 1, 4	955
5	44–010	RI (Bristol)	L/S Fire Safety Improvements	1, 1, 4	625
6	36–009	NY (Oxford)**	L/S 242-Bed NHC (Replacement)	1, 1, 5	39,215
7	26–014	MI (Marquette)**	L/S Replace Emergency Gen. And Fire Safety	1, 1, 5	801
8	09–012	CT (Rocky Hill)**	L/S General Renovations—DOM	1, 1, 7	2,990
9	26–013	MI (Grand Rapids)	L/S Code Renovations, etc	1, 1, 7	913
10	47–008	TN (Murfreesboro)	L/S Renovations	1, 1, 7	748
11	33–006	NH (Tilton)	L/S Facility Upgrades—Backup Generator, Fire Alarm	1, 1, 7	1,822
12	09–011	CT (Rocky Hill)**	125-Bed NHC (New)	1, 2	20,300
13	06–044	CA (Greater LA Complex)	520-Bed NHC/DOM (New)	1, 3	125,883
14	06–052	CA (Redding)	150-Bed NHC/DOM (New)	1, 3	17,572
15	06–053	CA (Fresno)	300-Bed NHC/DOM (New)	1, 3	25,864
16	55–025	WI (Union Grove)	Adult Day Healthcare (Renov)	1, 4, 1	586
17	27–018	MN (Minneapolis)	Adult Day Healthcare Renovation—35 Participants	1, 4, 1	1,914
18	27–019	MN (Luverne)	Dementia Unit	1, 4, 2	568
19	08–014	CO (Homelake)	Upgrade Resident Support and Activity Areas	1, 4, 2	3,394
20	44–009	RI (Bristol)**	Nursing Unit Renovation	1, 4, 2	2,287
21	12–013	FL (Daytona Beach)**	Renovation, Phase 1	1, 4, 2	650
22	13–009	GA (Milledgeville)	Renov. & Upgrade Wheeler Bdg	1, 4, 2	269
23	04–004	AZ (Phoenix)	Renovation, Phase 2	1, 4, 2	1,040
24	21–008	KY (Wilmore)	Renov. 3 Nursing Units	1, 4, 2	794
25	23–011	ME (Scarborough)	Renov. Alzheimer's Unit	1, 4, 2	404
26	01–006	AL (Alexander City)	Moisture Remediation, Phase 2	1, 4, 2	1,363
27	37–007	NC (Salisbury)**	Building Code Renov. And Parking Lot	1, 4, 3	784
28	08–013	CO (Rifle)	Upgrade Fire/Safety Renovations	1, 4, 4	1,652
29	06–051	CA (Yountville)	Steam Dist. System Renovations	1, 4, 4	1,729
30	13–006	GA (Milledgeville/Augusta)*	Elevator Renovations (5 Buildings)	1, 4, 4	805
31	13–007	GA (Milledgeville)	HVAC Renov.—Wheeler Bldg.	1, 4, 4	521
32	55–033	WI (King)**	Replace Steam Lines	1, 4, 4	473
33	06–054	CA (Yountville)	Telecommunications & Network	1, 4, 4	1,950
34	36–011	NY (Stony Brook)	Building Sys./Utilities Renov.	1, 4, 4	737
35	27–023	MN (Minneapolis)*	Sewer Pipe Replacement—Building 17	1, 4, 4	463
36	27–026	[redacted] (Silver Bay)**	Roof Replacement	1, 4, 4	1,835
37	27–027	MN (Hastings)**	Renovation, Phase 2	1, 4, 4	4,922
38	27–028	MN (Hastings)**	Renovation, Phase 3	1, 4, 4	5,266
39	25–060	MA (Holyoke)	Masonry Restoration	1, 4, 4	478
40	39–020	OH (Sandusky)	Roof Replacement—Secrest Hall	1, 4, 4	552
41	39–021	OH (Sandusky)	Corridor Renovation	1, 4, 4	325
42	39–022	OH (Sandusky)	Mechanical Sys. Upgrade	1, 4, 4	1,560
43	01–004	AL (Alexander City)*	General Renovations	1, 4, 4	355
44	21–007	KY (Wilmore)*	General Renovation, Phase 2	1, 4, 4	839
45	06–055	CA (Yountville)**	General Renovations	1, 4, 4	807
46	55–038	WI (King)*	Domestic Water Pipe Replacement	1, 4, 4	724
47	29–015	MO (St. Louis)	Sprinkler Pipe Replacement	1, 4, 4	775
48	55–039	WI (King)	Replace Windows—Olson Hall	1, 4, 4	267
49	55–041	WI (King)	2nd Water Supply Well	1, 4, 4	860
50	04–005	AZ (Phoenix)	Renovation, Phase 3	1, 4, 4	780
51	29–016	MO (Cape Girardeau)	Replace Roof	1, 4, 4	635
52	36–012	NY (Stony Brook)	Renovate Building Systems & Utilities	1, 4, 4	725
53	06–047	CA (Yountville)	Chapel Renovation	1, 4, 5	1,013
54	06–049	CA (Yountville)	Recreation Building Renovation	1, 4, 5	4,485
55	13–005	GA (Milledgeville)	Dietary Facility	1, 4, 5	715
56	39–023	OH (Sandusky)	Kitchen Upgrade—Secrest Hall	1, 4, 5	260
57	32–002	NV (Boulder City)	Dietary Facility Addition	1, 4, 5	1,429
58	23–013	ME (Caribou)	Multipurpose Room Addition	1, 4, 5	354
59	46–011	SD (Hot Springs)	General Renovations	1, 4, 6	802
60	17–027	IL (LaSalle)	Bus and Ambulance Garage	1, 4, 6	566
61	34–025	NJ (Paramus)	Multipurpose Room	1, 4, 6	1,415
62	36–010	NY (St. Albans)	General Renovations	1, 4, 6	4,470
63	55–035	WI (Union Grove)	Aboveground Building Connectors	1, 4, 6	2,217
64	17–030	IL (Manteno)	Construct Storage Building	1, 4, 6	1,610
65	17–033	IL (Manteno)	Convert/Upgrade Courtyards	1, 4, 6	2,320
66	04–003	AZ (Phoenix)	Renovation, Phase 1	1, 4, 6	364
67	46–012	SD (Hot Springs)	Construct Chapel	1, 4, 6	520
68	19–030	IA (Marshalltown)	Renovate Medical Clinic Space	1, 4, 6	520
69	08–015	CO (Walsenburg)	General Renovations	1, 4, 6	1,763
70	23–012	ME (South Paris)	Replace Flooring	1, 4, 6	353
71	48–008	TX (Pending)	160-Bed NHC (New)	1, 5	11,144
72	48–009	TX (Pending)	160-Bed NHC (New)	1, 5	11,144
73	55–032	WI (Union Grove)	24-Bed DOM Addition (New)	1, 6	1,625
74	02–001	AK (Palmer)*	General Renovations to Establish SVH (79-Beds)	1, 6	2,275
75	49–002	UT (Ogden)	120-Bed NHC (New)	1, 6	8,008
76	04–002	AZ (Tucson)	180-Bed NHC (New) and 35 Participant ADHC	1, 6	18,671
77	55–036	WI (Chippewa Falls)	120-Bed NHC/40-Bed DOM (New)	1, 6	15,925
78	51–005	VA (Richmond)	80-Bed DOM (New)	1, 6	5,200
79	48–010	TX (Pending)**[1]	169-Bed NHC (New)	1, 5	11,144
80	48–011	TX (Pending)**[1]	160-Bed NHC (New)	1, 5	11,144
Subtotal All Priority Group 1 Applications (Has State Matching Funds):					419,597

PRIORITY LIST OF PENDING STATE HOME CONSTRUCTION GRANT APPLICATIONS FOR FY 2006—Continued

FY 2006 list rank	FAI No.	State (locality)	Description	Priority group (PG) ranking	Est. VA grant cost (000)
Applications Subject to 38 CFR 59 Priority Groups 2–7					
81	20–004	KS (Ft. Dodge)	L/S Back-Up Generators	2, 2	401
82	20–005	KS (Winfield)	L/S Back-Up Generator, Sprikle DOM, etc.	2, 2	940
83	50–009	VT (Bennington)	L/S Geothermal HVAC, Phase 2	2, 4	2,306
84	50–010	VT (Bennington)	L/S Geothermal HVAC, Phase 3	2, 4	2,200
85	34–028	NJ (Paramus)	L/S Replace Fire Alarm System	2, 5	307
86	34–027	NJ (Vineland)	L/S Install Emergency Generator	2, 7	341
87	39–024	OH (Georgetown)	L/S Security Upgrades, Phase 1	2, 7	330
88	39–025	OH (Georgetown)	L/S Security Upgrades, Phase 2	2, 7	331
89	12–007	FL (Pending)	120-Bed NHC (New)	4	9.286
90	12–008	FL (Pending)	120-Bed NHC (New)	4	9,418
91	12–009	FL (Pending)	240-Bed NHC (New)	4	16,980
92	12–010	FL (Pending)	120-Bed NHC (New)	4	9,857
93	12–011	FL (Pending)	240-Bed NHC (New)	4	17,780
94	19–028	IA (Marshalltown)	General Renovations NHC	5, 2	2.731
95	40–024	OK (Sulphur)	General Renovations	5, 2	7,800
96	12–014	FL (Lake City)	Renovation, Phase 2	5, 2	1,950
97	26–015	MI (Marquette)	Renov. Nursing Unit/Roof Repl	5, 2	557
98	39–027	OH (Sandusky)	Renov. Griffin Hall—First Floor	5, 2	418
99	25–062	MA (Holyoke)	Renov. Resident Toilet/Baths	5, 3	439
100	27–029	MN (Minneapolis)	Renovation, Phase 2	5, 4	8,366
101	17–032	IL (LaSalle)	Replace Roof and Water System	5, 4	273
102	25–061	MA (Holyoke)	Window replacement, Phase 1	5, 4	398
103	06–056	CA (Yountville)	Central Power Plant Renovation	5, 4	740
104	34–026	NJ (Paramus)	HVAC Replacement	5, 4	356
105	55–040	WI (King)	Replace Lock and Key System	5, 4	2,098
106	55–042	WI (King)	Renovate Burns Clemons Hall	5, 4	5.574
107	39–026	OH (Sandusky)	Vets Hall HVAC Upgrades	5, 4	997
108	39–028	OH (Sandusky)	Mech. Sys Upgrades, Phase 2	5, 4	275
109	39–029	OH (Sandusky)	Replace Exterior Lighting, Phase 2	5, 4	368
110	27–020	MN (Minneapolis)	Kitchen/Dining Room Renov.	5, 5	2.844
111	27–021	MN (Silver Bay)	Nursing Care Space	5, 5	499
112	06–058	CA (Chula Vista)	Expand Dining Room	5, 5	585
113	27–030	MN (Hastings)	Water Supply Replacement	5, 6	325
114	72–003	PR (Juana Diaz)	General Renovations	5, 6	970
115	06–057	CA (Yountville)	Administration Building Renov.	5, 6	2.946
116	39–017	OH (Pending)	168-Bed NHC (New)	6	7,800
117	39–018	OH (Pending)	168-Bed NHC (New)	6	7,800
118	37–004	NC (Pending—Eastern)	120-Bed NHC (New)	6	5.358
119	55–021	WI (King)	45-Bed Dom (New)	7	2,294
120	24–005	MD (Pending—Western)	120-Bed NHC (New)	7	7,684
121	53–030	WA (Orting)	120-Bed NHC (97 Repl. 23 new)	7	8,316
122	27–022	MN (Fergus Falls)	Dementia—Special Care Unit	7	4,799
123	37–005	NC (Pending—Western)	120-Bed NHC (New)	7	5,358
124	17–028	IL (Pending)	200-Bed NHC (New)	7	18,200
125	17–031	IL (LaSalle)	80-Bed NHC Addition	7	4.881
126	47–009	TN (Montgomery County)	120-Bed NHC +20-Bed Alzheimer's Unit (New)	7	11,105
127	47–010	TN (Memphis)	120-Bed NHC +20-Bed Alzheimer's Unit (New)	7	11.533
128	51–006	VA (Hampton)	260-Bed NHC/DOM (New)	7	23,400
129	21–009	KY (Hanson)	90-Bed NHC (Addition)	7	6,000
Subtotal All Priority Groups 2–7 Applications (No State Matching Funds):					236,514
Total All Pending Applications:					656,111

* These projects were awarded after August 15, 2005.

** These projects were conditionally approved after August 15, 2005. This provides a 180 day time extension authorized in 38 UCS 8135.

**1 The State of Texas requested FY 2006 funding consideration for two bed-producing projects (FAI 48–008 and FAI 48–009). Projects FAI 48–010 and FAI 48–011 have PG–1 certification of 35% State matching funds.

These applications will be funded in FY 2006 in the order which they appear on this list, subject to the availability of Federal funds and compliance with all Federal requirements. Conditionally approved projects have been ranked and will be awarded grants subject to meeting the remaining Federal requirements.

Mr. DODD. The funding approved by this body and supported by this motion would address these shortfalls and allow State homes to tap into a trust fund to provide more funding for construction that has already been approved by the VA.

In light of these facts, I urge my colleagues to consider the consequences of not acting today. Call it Groundhog Day. Call it what you want. But the fact is, we have another chance now to get right what we didn't the other night.

Again, I support and appreciate what my colleague from Iowa did by offering an amendment to provide for these priorities. But we did not provide any funding for them. And there is not a Member of this Chamber who does not know what is going to happen. They did it as basically a political cover, to have an amendment which said: Yes, we agree with you, we should be paying for these priorities. But then, when I offered the amendment to pay for them, of course, I lost.

Today, you will get a second chance, like in the movie "Groundhog Day," to try to get right what we got wrong the other night. You make the choice. If you think $64.8 billion in tax breaks for the two-tenths of 1 percent of the American population making more than $1 million a year is a more important priority than providing for State facilities that serve veterans, providing for disability payments and veterans medical care, then you explain that to your constituents. But that is the choice I am going to offer you this evening. Supporting the Senate position on this issue is the very least we can do to show our full backing of America's men and women in uniform. We owe these individuals at least that much.

I will end where I began. I do not think there is another constituency group in America that deserves as much support from the Congress as veterans do. Particularly in this day and age, if you go to Baghdad, if you go to Iraq, as many of my colleagues have, as I have—and I see my colleague, JACK REED, in the Chamber as well, a graduate of West Point and a veteran of the 82nd Airborne. You go there—and I have gone with him—and you meet these young men and women. It is a tough place to be. It is a tough place to be. It is a tough place to come back from, even under the best of circumstances. But if you come back physically broken, with arms and legs lost and scarred and burned, as 16,000 of them have, you deserve better. If you think millionaires deserve better than they do, I could not disagree with you more. And I am going to give you a chance tonight to join me in this effort.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, we are next expected to hear from the Senator from Rhode Island, who will have a motion to instruct on defense needs. Thereafter, we expect to hear from the Senator from New York, Mr. SCHUMER, who will have a motion to instruct on the tuition deduction.

To facilitate the consideration of Senator REED's motion, I ask unanimous consent that the pending motions be temporarily set aside so that the Senator from Rhode Island may offer his motion.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Rhode Island.

MOTION TO INSTRUCT CONFEREES

Mr. REED. Mr. President, I send a motion to instruct conferees to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the motion.

The bill clerk read as follows:

> Mr. REED moves that the managers on the part of the Senate at the conference on the disagreeing votes of the 2 Houses on the Senate amendment to the bill H.R. 4297 (to provide for reconciliation pursuant to the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95)) be instructed to insist on the inclusion in the final conference report of the funding to strengthen America's military contained in title VI of the Senate amendment instead of any extension of the tax cuts for capital gains and dividends, which does not expire until 2009, contained in section 203 of the bill as passed by the House of Representatives.

Mr. REED. Mr. President, I find myself, as I so often do, agreeing with my colleague, the Senator from Connecticut, Mr. DODD. It is exactly about priorities. It is about whether the wealthiest, most affluent people in this country will enjoy a tax break or whether more fundamental needs of our Nation will be served.

Senator DODD pointed to the issue of returning veterans. Again, I was pleased to travel with Senator DODD last October to Iraq to visit with our soldiers: marines, airmen, sailors—all of our outstanding men and women in uniform. When they come home, they need the kind of support that the fund Senator DODD identified would give them. But there is even a more immediate concern to our Armed Forces today: $50 billion in equipment that has to be rehabilitated, refurbished, brought up to operating conditions, so these men and women can continue their operations on behalf of America.

I can tell you, as someone who had the privilege of commanding a company of paratroopers, the most disconcerting concept, the most disconcerting and troubling aspect, is when your equipment is poorly maintained, will not operate, is inefficient, out of date. That drives morale down as rapidly as anything. We have—not unexpectedly because of the conflict in which we are engaged—seen our equipment stocks become overused, both aviation equipment and ground equipment: trucks, vehicles, humvees—all of them have taken a terrible beating in combat operations in Afghanistan and Iraq.

Just 2 weeks ago, this body agreed with my proposal to spend $50 billion to refurbish this equipment. But as Senator DODD pointed out, they did not agree with the way we would pay for it. In fact, the proposal was really just oratory. It says: Let's spend $50 billion which we do not have to help the military refurbish their equipment. We have to do better than that because, as the Senator pointed out, without funding, that is all well-wishes without real results. And we need real results for the men and women of our military forces.

The administration is quick to point out that we are a nation at war. That is true, although in some respects we are simply an Army and a Marine Corps, the Department of Defense, at war because the American people have not been called upon to sacrifice very much, if anything. Here we are making the point—I think it is so obvious—that the wealthiest Americans, those who enjoy the benefits of this great country, I believe would be quite willing to give up their tax break on dividends and capital gains if they knew these funds would be directed to precisely the programs I am talking about: refurbishing military equipment or caring for veterans.

There are many reasons to oppose the extension of the lower tax rates and dividends and capital gains, many macroeconomic reasons, many reasons in terms of our fiscal problems and in terms of our growing deficit. But one of the reasons is just the way it is distributed. Forty-five percent of the tax cut goes to .3 percent of families with incomes of $1 million or more. Seventy-two percent of the tax cut goes to families with incomes of $200,000 or more.

Now, in a time when our troops are being sent into the field—at times they are complaining or have complained about inadequate equipment, insufficient equipment—at a time when they are looking around and seeing their equipment stocks being drawn down and being overused, I believe it is time to ask: What is our priority, the protection of our military forces in the field or providing additional benefits to those who have so much in society today?

I think it is more important to direct these funds to our military forces. We have to do it, particularly with respect to the equipment of the Army and the Marine Corps. As Senator DODD indicated, I had the privilege of traveling with him last October, but I just came back from my seventh trip to Iraq and fourth trip to Afghanistan. Once you are there, you understand the professionalism, skill, valor, fidelity to duty and country of these marvelous men and women. You also understand that the equipment is wearing down. The equipment has to be fixed. Because they depend upon this equipment for their lives, we can't tolerate equipment that won't operate properly.

A recent article in USA Today noted that the war in Iraq has taken the biggest toll on military equipment since the Vietnam war. Two weeks ago, the National Security Advisory Group, chaired by former Secretary of Defense William Perry, released a report about the strain and risk to our military.

In their words:

> Given the harsh environment of Iraq and Afghanistan, [resetting the force]—

that is, rehabilitating this equipment and repairing it—

> is proving more extensive and expensive than in previous operations. Estimates of the costs of rehabilitating Army equipment coming back from operations overseas continues to grow . . . in addition, both the Army and the Marine Corps expect to see increasing costs associated with recapitalizing aging forces and transforming their capabilities for a broader range of 21st century missions.

Gary Motsek, the Army's deputy director for support operations at the U.S. Army Materiel Command, has stated that the Army has to repair virtually everything that goes to Iraq.

Last week, General Schoomacher, the Chief of Staff of the Army, appeared before the Armed Services Committee. When I asked him what the reset and recap cost for the Army was, he replied: $4 billion per year over the next 6 years. What I have since discovered—and this might be of some confusion in terms of trying to interpret a difficult and complicated budget—is that his reply doesn't cover the whole situation and doesn't provide an entire explanation of what is going on.

First, I believe the Chief of Staff was discussing the repair and replacement cost, which is projected to be $24 billion over the next 6 years. He did not include recapitalization which is an additional $12 billion over the next 6 years. So the actual projected cost over 6 years is $36 billion. Second, this projection assumes a significant drawdown of troops beginning at the start of fiscal 2007 and ending in December 2008, when there are, according to the projections, no troops in Iraq. I believe this assumption is rather unrealistic and, therefore, we must assume that the reset and recapitalization costs will be significantly higher. Again, it is very difficult to parse out all of the different assumptions and other notions that are included in the budget, but the sense is that they are assuming, at least when it comes to maneuver units, that these units will essentially be drawn down within 2 years. That is a highly problematic assumption, but one that is within the President's budget.

In addition, General Schoomacher's number assumes that we do not leave a single piece of equipment behind for the Iraqis. Yet I have been privy to discussions here in Congress and elsewhere in which there is a notion that we will leave significant equipment behind in Iraq to provide their security forces with the kind of equipment they need to operate. If we do leave equipment for them, the replacement costs, which are an element of reset and recap costs, will increase.

A much more accurate picture of this notion of what we must do to repair and rehabilitate our equipment, or reset and recap, is the actual bill we have for fiscal year 2006, what we are paying for in this fiscal year. The Army has determined that the cost of resetting, recapping, and replacing equipment lost in battle for fiscal year 2006 is $13.6 billion. As long as we have approximately the same number of troops in Afghanistan and Iraq as we do today, and we have the same tempo of operation, then that $13.6 billion cost will be an annual occurrence. As troops draw down, that funding level could go down from $13.6 billion, but significant costs will continue to accrue until 2 years after the end of the conflict. So the annual $13.6 billion price tag supports the opinion of GEN Paul Kern, who just retired as head of the Army Materiel Command. He stated that fixing and replacing Army equipment alone could run from $60 to $100 billion.

If you step back and look at what we are encountering today in terms of costs, it is about $13 billion. Every year we are in Iraq at this level of operational strength, it will be roughly that. That is a lot more money than this budget anticipates. And so we have a huge unmet need to fund simple recapitalization and reequipment, rehabilitation, whatever term you want to use. But essentially, so that we understand it, it is simply going back and fixing all the equipment we have been using so aggressively in these different theaters. That doesn't buy you a new Army. It doesn't buy you a transformed Army with new, modern equipment. It simply gives you back the equipment you brought into battle in a condition that you can use it in other hostile environments.

This $13 billion seems to be the kind of level of spending we are going to have to face year in and year out, as long as we are deployed, as we are, in Iraq and Afghanistan. That is the figure we have to react to. As a result, it is only prudent and sensible that for this $50 billion total we talked about for a 5-year period, that people support the concept of spending that kind of money. But, of course, what they refuse to do is put real assets, real resources to pay the bills. And that is the thrust of my proposal.

I tried previously, in our debate a few days ago, to say that not only must we spend this money, we have to set priorities. We have to take those funds from the capital gains and dividends taxes and apply them to this fundamental need of our men and women in uniform.

That is the Army I was just talking about. Let's turn to the Marine Corps. Last November, the Marine Corps estimated it would cost $11.7 billion to repair and replace their equipment over the next 5 years. These are, again, costs that have already been incurred. These costs are not included, as far as we can determine, in the President's budget request. We have also discovered that the Air Force is concerned about the cost of additional flying hours and the wear and tear on their equipment. Again, we could not find explicit recognition of these costs in the President's budget.

Last October, the GAO released a report on military readiness. It assessed the state of 30 pieces of equipment, predominantly tanks, vehicles, helicopters, and aircraft. It made several disturbing observations, stating:

> GAO's analysis showed that the reported readiness rates declined between fiscal years 1999 and 2004 for most of these items. The decline in readiness, which occurred more markedly in fiscal years 2003 and 2004, generally resulted from 1. the continued high use of equipment to support current operations and 2. maintenance issues caused by the advancing ages and complexity of the systems. Key equipment items—such as Army and Marine Corps trucks, combat vehicles, and rotary wing aircraft—have been used well beyond normal peacetime use during deployments in support of operations in Iraq and Afghanistan.

The report then goes on to say:

> Until the DOD ensures that condition issues for key equipment are addressed, DOD risks a continued decline in readiness trends, which could threaten its ability to continue meeting mission requirements. The military services have not fully identified near and long term program strategies and funding plans to ensure that all of the 30 selected equipment items can meet defense requirements.

I don't think there is anything startling in the sense of their conclusion. They are stating what should be obvious. We have committed our Army and Marine Corps to battle in a very harsh environment, Iraq and Afghanistan. We are operating at robust tempos of operation. This equipment is seeing the results. We have to provide for that. What is disturbing to me is that this readiness trend portends danger in the future. If readiness is declining, if it is not reversed, if we are asking the soldiers and marines to operate equipment that is not 100 percent, that is not fully supported by ample spare parts, that has not been rehauled, overhauled, rehabilitated, then we are putting our troops in a precarious position which we should not.

The response, the answer? This one is relatively straightforward. Give them the money to do the job and give them sufficient resources to do so.

Another GAO report states that more than 101,000 pieces of National Guard equipment, including trucks, radios, and night vision devices, have been sent to soldiers in operations overseas. This means the Guard does not have the equipment it needs to respond to crises here. This problem was exemplified during Katrina when the Guard stated that its communications equipment had been abroad and, therefore, it was unable to operate effectively in the aftermath of that disaster.

Another impact that we all hear about is the condition of National Guard equipment. Their equipment has been sent overseas and left overseas. Their equipment is also being used intensively in these operations. We have to restore and rehabilitate the National Guard equipment also. They have several missions. One critical mission is not only homeland security but preparedness for natural disasters and consequent management.

This week, Wednesday, the other body will release a report on Katrina. I am interested to see what it will say in terms of the National Guard's ability to respond, their equipment, the fact that they have been tasked to go overseas, personnel and equipment. But we have to remind ourselves that we can't neglect the Guard also. These reports, the GAO reports particularly, should have us thinking seriously about what we must do today. Again, it comes down to priorities. Secretary Rumsfeld is right about the fact that our troops are performing magnificently well. They are superb professionals doing a remarkable job. But in order to keep that edge, they have to have the equipment and the support to be the best they are.

Secretary Rumsfeld says that Perry report and another report by Andy Krepenevich, which the Pentagon paid for, were looking at all material when they found that the military was strained. We are not looking at all material. We are looking today at what we believe, based upon review of the budget, based upon discussions with military personnel, is the condition of this equipment, and the need exists to fix it. We do have the finest fighting force in the world, but we have to make sure it has the finest equipment in the world.

Secretary Perry made the following recommendation at the conclusion of his report:

> In order to restore the health of U.S. ground forces in the wake of Iraq, the nation must step up and invest substantial resources to reset, recapitalize, and modernize the force . . . Restoring the health of both services is not a matter of simply returning them to the status quo; it is a matter of that they are organized, trained, equipped, and restored to meet the full range of traditional and nontraditional challenges in the future.

Next year alone the Army needs about $13.6 billion and the Marine Corps needs about $7.5 billion for reset and recap, as they call it, of their equipment. This was not included in the President's budget request. If it is not paid for with supplemental funding, the troops will have to go without, which we can all agree is not acceptable. Nothing makes our troops more vulnerable or lowers morale more rapidly than working with inadequate equipment. If the $20 billion reset and recap bill for this year alone is paid for with supplemental funding, this will add directly to our deficit. I believe with the growing size of this deficit, we should not add to it, that we should do what we can to try to prevent increased deficits.

This is a time for Americans to come forward to share in the sacrifice of our men and women overseas. Particularly when it comes to a tax proposal that benefits the wealthiest Americans, I think we would be more than willing to do so, knowing that these funds could be used directly for the welfare of our soldiers in the field and for the security of the United States.

Our men and women have volunteered to risk their lives. I believe we have to risk perhaps a little political capital and instead of providing these tax cuts to the very wealthiest Americans, provide a dividend to our soldiers and marines in the form of better equipment. Fifty billion in funding retained from not extending capital gains cuts and dividends cuts could pay for this. That is the essence of my instruction.

It is one thing to stand on this floor as a huge majority and say: We understand our troops need $50 billion to rehabilitate their equipment. It is something else to stand up and make a tough choice, set a priority, pay for it. My instruction will do that.

I yield the floor.

Mr. BAUCUS. Mr. President, people call Montana the "big sky" State. Standing on the top of Mount Sentinel—the backdrop of the University of Montana—on a clear day, a person can see nearly 50 miles in almost every direction. I might say that at the top of Lone Mountain in Big Sky, MT, you can see the Tetons in Wyoming. Back at Mount Sentinel, which many of us climb from time to time, at the foot of it a professor is studying a horizon that stretches much farther than 50 miles. Professor Dan Reisenfeld is one of the key astrophysicists working on a mission to map and study the edge of the solar system.

Professor Reisenfeld is busy playing a part in the design of the interstellar boundary explorer, or I-BEX, an instrument that uses a large-aperture camera to detect high-energy particles coming from the edge of the solar system.

What does this mean? If I-BEX is successful at gathering information about the boundaries of the solar system, this will help companies that build satellites orbiting the Earth to predict solar storms. Solar storms can disrupt a satellite's operation and even cause irreparable damage.

Here on Earth, that means that emergency communications equipment would be able to function without the fear of interruption. And global communications can be more seamless.

Some of the most important scientific research is being done at universities across Montana and across the country. This research covers the gamut from biotechnology to stem cell research, to cutting-edge computer science. But institutions across the world are catching up.

In January, I visited India's Institute of Technology in Delhi. Eager, young engineering students are plotting for a better tomorrow in their country and the world. India, similar to many other developing countries, has made significant investments in education over the past several years. India produces 12 percent of the total global supply of university graduates. This percentage is increasing. China is now second only to the United States in the number of researchers in its workforce. According to the World Bank's most recent statistics, since 1985, China has seen an almost 400-percent increase in its per capita education spending.

While China, India, and other developing nations may still have a long way to go, they are training workers for a new world.

That takes me back to Professor Reisenfeld at the University of Montana. The University of Montana, similar to most colleges and universities across the country, is a tax-exempt organization. Tax-exempt universities rely in large part on tax deductible charitable contributions from alumni, private foundations, and businesses.

Legislative proposals that encourage more giving to charity help provide scholarships, build science centers, and hire new faculty to do cutting-edge research. In large part, charitable donations from the private sector—business and individuals—help America keep its competitive edge. There is no doubt about that, Mr. President. Our universities are a very key, integral part in America's R&D and in enhancing our country's competitiveness.

The Senate-passed tax reconciliation before us includes several incentives to encourage charitable giving. One of the most important incentives for charitable giving included in the Senate-passed bill is the IRA rollover provision. According to the American Council on Education, the IRA rollover provision is supported by close to 2,000 colleges and universities across the country. The provision promises to be an important tool for planned giving—a staple of university fundraising.

In addition, the IRA rollover represents a significant simplification over current law. Let me explain.

The IRA rollover provision allows older, financially secure donors to seamlessly transfer amounts in their IRA to their favorite charity, without first recognizing the IRA into income.

Under current law, taxpayers who want to donate their IRAs to charity must first take the amount into income. This can cause a huge disincentive to give if the amount of the IRA exceeds the donors' adjusted gross income limitation, for example.

In some cases, donors are forced to incur income for tax purposes for amounts the donor has given to charity. This makes no sense. The law should encourage taxpayers to give to charity.

For example, a taxpayer with an adjusted gross income of $40,000 and an IRA worth about $100,000, is forced to take that full $100,000 into income prior to making a gift to charity.

As a result, this taxpayer is considered to have $140,000 in income, for tax purposes—even though the taxpayer is giving $100,000 away.

Because taxpayers are subject to adjusted gross income limitations, even if the donor gives the entire $100,000 in the IRA away to charity, the taxpayer can only deduct up to half of adjusted gross income—in this example, $70,000.

In short, under current law, this taxpayer is forced to recognize $30,000 more in taxable income, even though the IRA is going entirely to charity. We should not penalize charitable giving.

The IRA rollover provision corrects this problem by simply disregarding from income amounts in a donor's IRA given to charity.

This proposal will have a fundamental effect on the amount of money contributed to charity. Currently, there are more than $2.5 trillion held in IRAs. If 1 percent of the assets currently held in IRAs were donated to charity, that would mean an additional $25 billion would go to benefit the type of research conducted by Professor Reisenfeld at the University of Montana. And money would also go to scholarships for the students working side by side with Professor Reisenfeld in his classroom.

The House bill does not include these new charitable giving incentives. Mr. President, the upcoming conference will highlight the priorities of each body. We include this provision; the House does not.

It is unclear at this point whether there will be enough revenue to extend capital gains and dividend tax treatment beyond the current law, which we all know doesn't expire until January 1, 2009, and also include the important charitable incentives included in the Senate-passed bill.

I hope that the conference committee makes charities and our future scientists its priority.

Mr. President, I want to discuss the importance of extending the R&D development tax credit for 2 years.

This is one of the key issues for conference. The Senate passed a 2-year extension of the revised and improved R&D credit, but the House only passed 1 year.

I am hopeful that 2 years will be retained in conference, as this tax incentive is essential for U.S. businesses in our global economy. Businesses depend on it. They need to know it is there. Predictability is important.

I have consistently discussed the need for America to maintain its competitive edge. To do that, we must cater to our strength: innovation.

Let me state that during the almost 2 weeks I was in Asia, China, and India in January meeting with business leaders and public officials, one thing became clear; that is, sure, there is a rising Chinese and Indian challenge, just as other countries challenge the United States, but they constantly told us that in the private sector the one advantage America still has is innovation, creativity. Over and over again I heard that. I hope that lasts. I hope it lasts a long time. We know people in other countries are working very hard; they are aggressive and hungry and they are going to do all they can to be as creative—if not more so—as we are in the United States. But that is the one edge we have currently, and we must do our utmost to make sure that lasts.

Foreign direct investment, including research and development, is shifting heavily toward China and India. The competition for qualified researchers has increased markedly.

On my recent trips to China and India, people constantly told me, as I have said, that the one thing they admire most about America is our innovation. We must foster R&D, and extending this vital credit for 2 years would help maintain that focus.

Every morning we hear news of some new product or discovery that promises to make our jobs easier and our lives better. For example, between 2002 and 2003, the annual number of cancer deaths decreased for the first time in 70 years. Unfortunately, for women, it rose slightly, but the annual number of cancer deaths has decreased. One reason for that was better detection and treatment. That is a direct result of American technological innovations, and those result from R&D.

Since 1981, when the research and development credit was first enacted, the Federal Government has been a partner in R&D. And we contribute to this effort as a society because of the benefits to society from additional research spending. It is a societal effort to get a societal benefit.

Congress clearly believes that the R&D credit is an effective policy instrument. One of the major limitations of the credit, however, is its temporary nature.

As the Electronic Industries Association wrote:

> An extension of the credit that goes beyond the end of this year will also help diminish the uncertainty for companies regarding the availability of the credit.

The organization goes on to say:

> The yearly fight to ensure that the credit is available for costly and high-risk research done in the United States can cause companies to discount the credit's long-term value and reduce its benefit to the economy.

An analysis by the Joint Committee on Taxation found:

> A credit of longer duration may more successfully induce additional research that would a temporary credit, even if the temporary credit is periodically renewed.

U.S. workers who engage in R&D activities benefit from some of the most intellectually stimulating, high-paying, high-skilled jobs in the economy. My own State of Montana is an excellent example of this economic activity.

During the 1990s, about 400 establishments provided high technology services, at an average private wage of about $35,000 a year. These jobs paid nearly 80 percent more than the average private-sector wage of less than $20,000 per year during the same time. Many of these jobs would never have been created without the assistance of the R&D credit.

The R&D tax credit is vital to the economic development of our country. It is very important to American businesses. It is very important to American workers. It is important to help America maintain our competitive edge.

I urge my colleagues to support a 2-year extension of the R&D credit. I hope you will join me in pressing our House colleagues to accept this Senate provision.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, what a difference 5 years makes. On March 21, 2001, the Finance Committee conducted a hearing entitled "Budget Surpluses and Debt Reduction." When we held that hearing, the Office of Management and Budget projected a surplus of about $5.6 trillion over the next 10 years. A lot has changed since then.

At the end of this past December, Treasury Secretary Snow sent us letters asking us to raise the debt ceiling for the fourth time in the last 4 years. The Government is now seeking to raise the debt ceiling by $781 billion. This is on top of a $450 billion increase in 2002, a record $984 billion increase in 2003, and an $800 billion increase in 2004. With the latest debt limit increase, the Government will have raised the debt ceiling by $3 trillion in just 4 years. Remember, 5 years ago, OMB projected a surplus of about $5.6 trillion for the following 10 years.

Something needs to change. We have a serious problem with our Federal budget. For the current year, the administration's budget projects a deficit of $423 billion. That would be the highest deficit in the history of the country. That deficit would equal 3.2 percent of the entire economy. While that percentage is not a record, it is far too high, with the baby boom generation about to retire just around the corner. The retirement of this large generation will dramatically raise the costs of Social Security, Medicare, and Medicaid. Their retirement will put enormous pressures on the budget.

We should rather be entering this stressful period with a balanced budget. We should be paying down the debt. We should be getting ready. We should not be running record budget deficits. We need to change course. We need to return to the policies and procedures that helped reduce that $5.6 trillion surplus.

One of those procedures was the pay-as-you-go rule. That rule made it difficult for Congress to enact new spending or tax cuts without paying for them. That simple rule had a powerful effect, but that rule ended a few years ago. Congress replaced it with a newer, toothless version, and we have paid the price in higher deficits and debt. Congress must reinstate the original pay-go rule.

Beginning in 1990, we also enacted policies to reduce deficits and debt. First, following a budget summit, Congress enacted the deficit reduction package of 1990. Then, in 1993, in the first year of the Clinton administration, we narrowly enacted a $500 billion deficit reduction package. What happened? Long-term interest rates dropped. Economic growth ensued. The deficit came down.

Finally, both parties worked together again in 1997 and enacted another deficit reduction package. That package was intended to balance the budget by 2002.

But economic growth was strong. These years were a part of the longest peacetime economic expansion in American history. The Government balanced its budget in 1998, earlier than expected, and then the Government balanced the budget even without using Social Security surpluses. It is incredible, if you stop and think about it.

That set the stage for the projections of 2001, with a $5.6 trillion surplus for 10 years. But now we are projecting huge deficits and debt for both the long term and the near term. The time has come for leaders of both parties to work together to achieve another agreement to reduce our deficits. But in order to be successful, we need to put everything on the table, and I mean everything. We need to put all spending, not just entitlement spending, on the table. We need to put all corporate tax loopholes and tax breaks for special interests on the table, and we need to put the $350 billion yearly tax gap between revenues owed and revenues collected on the table.

I don't know the answers, but I do know we cannot keep on going as we are. Something has to change. We need to come together to reduce Federal deficits. The task is clear, and I can only hope and pray all our leaders will take up the task.

Mr. President, in Proverbs, King Solomon begins by offering words of encouragement to the Israelites to embrace learning:

> Let the wise hear and gain in learning, and the discerning acquire skill.

A little later in the passage Solomon admonishes:

> Fools despise learning and wisdom.

I hope the upcoming conference committee will take this proverb to heart. It is past time for this country to start taking education seriously again, and be ready to make investments in our children's future now. Delay would be foolish.

The Senate-passed bill takes a step in the right direction by including a provision to eliminate the barriers in the Tax Code to the charitable giving of books to schools, libraries, universities, and literacy programs. Educational institutions and literacy programs are beset by budget cuts and continued challenges to our Nation's commitment to literacy. Two-thirds of American classrooms have fewer than 50 children's books, and almost 60 percent of childcare centers buy less than 1 book per child a year.

This is not just an issue in the classroom. Almost 12 million children living below the poverty level in the United States today are growing up with minimal access to books. According to First Book, a nonprofit that focuses on child literacy, more than 60 percent of low-income families have no children's books in their home, and more than 80 percent of programs serving children in need have no age-appropriate books or other printed materials.

In my home State, as in many other States, there is a real need. In 2003, according to the Montana State Library Association, the Montana State library system was a victim of a 26-percent budget cut. These reductions mean less money for local libraries, and these reductions mean cuts in State subsidies that funded book purchases.

Large-scale book donations are crucial to these libraries, and these donations also greatly assist adult literacy efforts. Programs such as the Montana Adult Basic and Literacy Education, or ABLE, serve adults who lack sufficient mastery of basic skills to function in society, a high school diploma, or basic English skills. ABLE is meeting real needs. According to the State agency in charge of adult literacy in Montana, nearly 75,000 adults in Montana do not have a high school diploma or GED.

Because of the tremendous need for books in Montana and across the country, I filed an amendment in the Finance Committee with Senator HATCH to include incentives for book donations in the Senate-passed bill. Here is how it works.

Current law provides special tax incentives for gifts of property including books to certain organizations. Current law, however, requires the donor to make the gift targeted solely to the ill, the needy, or infants, categorized as children under the age of 18.

Unfortunately, books donated directly to educational programs at public libraries and universities are not eligible for that tax deduction. Why? Because they don't exclusively serve the ill, the needy, or infants.

In addition to the exclusion of those institutions, donations are sometimes discouraged when the differences in educational and commercial market elude the IRS when valuing the donation. If book donations do not qualify for the enhanced deduction, the value of the deduction for charitable giving is no more than what they would give if they merely threw them away. As a result, it is often more economical for publishers to truck these books to a dump than it is to distribute them to needy schools and libraries, especially given the manpower and postage costs of determining worthy donees and shipping books.

In the Senate-passed bill, we have provided legislative language to ensure that public libraries, universities, and literacy programs are eligible with enhanced deductions that already exist in the Tax Code for other kinds of charitable donations.

To protect against publishers making unwanted donations of dated materials, the provision includes a requirement that organizations certify the materials are suitable and appropriate for their educational programs.

In addition to organizations in Montana such as ABLE, many gulf area government agencies that are in desperate need after Hurricanes Katrina and Rita have written us petitioning for this change. We have heard from the Mississippi Department of Education, Louisiana-Mississippi school and library systems and library associations, as well as the Texas Library Association and Mississippi's Barksdale Reading Institute. Numerous national educational organizations have written us, including the American Library Association, the Education Industry Association, and the Association of Educational Publishers.

The lack of access to books poses the greatest barrier to literacy. We shouldn't allow books to be taken to the landfill because of an unintended obstacle in the Tax Code, particularly when one considers the massive loss of books along the gulf coast.

I might add, I was down at the gulf coast. I was standing next to a library that was obliterated on the gulf. There were books strewn open, and you could see where a cake of mud was left after the water receded and we were standing on ruined books. You won't believe this, but I reached down to pick up a book and look at it to see what it was, and out of all of the books, guess what its title was. "A Perfect Storm." I couldn't believe it. It was pure happenstance, pure coincidence, but I can tell you that having visited the gulf, they need books.

As students and families make the slow return to the gulf and an incredible effort to rebuild their communities, it is necessary to remember that equally important to the rebuilding of these important institutions is the need to restock them with sufficient numbers of books and quality education materials.

As First Lady Laura Bush said on September 24 last year, it is our duty to "rebuild these schools on the Mississippi coast and in New Orleans and make sure the libraries are built better and stocked even better than they were before."

The book provision in the Senate-passed bill would help restock schools from the gulf to Montana and across the country. As the First Lady admonished, this is our duty. I hope the conference committee agrees.

Mr. President, continuing in a series of statements prefacing the conference and other measures that might be coming up later this year, I wish to spend a moment on health savings accounts.

High-deductible health plans and health savings accounts, otherwise known as HSAs, have become the centerpiece of the administration's effort to reform the health care system. In fact, the proposed budget would spend an additional $156 billion over 10 years to encourage more Americans to choose these plans and accounts.

I am concerned that high-deductible plans will do more harm than good, and the billions of dollars the President wants to spend on beefing up the limits on HSAs, health savings accounts, will not benefit those who need coverage the most and can least afford it. That is because HSAs favor the healthy and they favor the wealthy. As healthy insureds join these arrangements, the average cost for those remaining in comprehensive plans will increase, and that will make comprehensive plans less affordable for those who need coverage.

Do HSAs favor those who are healthy and can afford something? Let me quote from the High-Deductible Health Plans and Health Savings Accounts Worksheet, found on the Federal Government's Office of Personnel Management Web site. This worksheet is designed to help Federal employees decide whether to use plans such as these which are now part of the Federal employees health benefit plan. Step three of this worksheet reminds us that preventive care is not subject to the high deductible. Then it goes on to say:

> Absent other health care needs, if you contribute a higher amount to your HSA, you will get a higher tax deduction plus a higher balance in your HSA to use for future expenses. Since your out-of-pocket costs before

> plan benefits begin also defines the maximum amount of personal, tax-deductible contributions you can make, contributing a larger amount isn't necessarily bad. If you use a relatively low amount of health care and you can afford to make the maximum contribution, you may be attracted to these aspects of HDHPs with HSAs.

That is high-deductible health plans and the health savings account. This is what it says in the Federal brochure for Federal employees: If you use a relatively low amount of health care and you can afford to make the maximum contribution, you may be attracted to it.

If we enacted the higher HSA contribution limit proposed by the President's budget, the attraction of HSAs for those who are healthy and can afford to contribute the maximum would only grow stronger. Why? Because that statement was written before the proposal that the administration has before us, to dramatically increase the deductibles and eligibilities of those plans which I think are basically investment vehicles, not health vehicles.

Billie Holiday sang, "Them that's got shall get, them that's not shall lose". That's a pretty good description of the effect of expanding HSAs on our health care system.

Some may argue that this preference of healthy, well-to-do taxpayers for HSAs would not be a problem if we just put everyone into a high-deductible plan and eliminated more comprehensive arrangements. Eliminating choice takes care of adverse selection. If there were no choice, and therefore no adverse selection, would expanding HSAs be a cost-effective solution? Would tax dollars spent on expanding HSAs go to increase coverage and control costs?

Let us say, for the sake of discussion, that we force everyone, healthy or not, into a high-deductible health plan with a $1,500 deductible. And let's go further, and put $1,500 into an HSA for everyone, so ability to contribute is not a factor. Wouldn't that address my concern that the President wants to spend money on the healthy and wealthy instead of focusing on those who need help most?

The answer is, no, not as HSAs currently operate. And certainly not with the President's proposed increase in the contribution limit.

To illustrate my concerns, let's consider two taxpayers—Jane and John, both 30 years old. Jane is healthy. John has a chronic condition that requires him to take medications every day and occasionally pay a midnight visit to the emergency room.

Every year, $1,500 is deposited to Jane and to John's HSA accounts. Each year, John must withdraw his $1,500 contribution to pay out-of-pocket medical expenses. Jane only has to withdraw about $500 a year, leaving the other $1,000 to accumulate for retirement.

Over the next 35 years, if Jane can earn 5 percent investment return, she will accumulate an HSA account balance of more than $90,000. If the President's higher contribution limits were in place and Jane could afford to contribute the maximum to her HSA, she could have more than $400,000 in her HSA at retirement. Because he had to use his HSA contributions to pay medical expenses, John will retire with a zero balance in his HSA.

In other words, the President's health tax proposals may or may not expand health coverage and will do little to control costs. But they will definitely create retirement savings for the healthy.

I am all for retirement savings, but using tax dollars to increase retirement savings for individuals with low medical expenses is a strange and ineffective approach to covering the uninsured, and controlling health care costs. Surely we can do better.

Mr. President, I am going to stop speaking pretty soon here. I very much hope Senators come to the floor with motions to instruct because time is passing. Just because I am speaking, it doesn't mean someone can't come to the floor. If anybody comes to the floor, I will stop speaking.

Mr. President, Yale Law School professor Michael Graetz once said:

> A tax shelter is a deal done by very smart people, that, absent tax considerations, would be very stupid.

A GAO study estimated that tax shelters cost the American taxpayer up to $18 billion a year in lost revenue.

There must be a lot of very smart people out there putting together some very stupid deals.

We have all heard about some of these deals.

We know them as the Enron scandal, the KPMG scandal, the German SILO sewer system scandal. The list goes on.

These deals are like the legendary retail scam used by con artists to cheat cashiers out of extra change. It's called the "short count." Like a tax shelter, it involves smart cons and stupid deals.

There are several steps to the cash register scam. First, the con artist buys something that costs less than $1, and he gives the cashier a $10 bill to pay for it. When the cashier hands back the change, the con artist offers to give back ten $1 bills in exchange for the $10 bill he used to make his original purchase.

Now, the trick is that the con artist must get the cashier to give back the original $10 bill before he gives up his $1s. Quickly, before the cashier notices, the con then substitutes the $10 bill the cashier just handed him for one of the $1 bills. He hands the cashier nine $1 bills and one $10 bill, for a total of $19.

When the cashier notices the con artist gave her too much money, the con acts surprised.

Because he's such a "nice guy," he offers to give the cashier another $1 to add to the $19 so the cashier can just give him back a $20 bill.

The con then leaves the store with a tidy $10 profit, while the poor cashier is left holding the bag.

When she tries to reconcile her register at the end of the day, she'll have a gap of $10. She will probably end up paying the $10 out of her own pocket.

I don't know if you follow that. It's a little complicated, isn't it? The con artist is a pretty smart guy who took advantage of an unsuspecting cashier. He took a routine transaction and turned it into something complicated and stupid. Yet, all those steps, all that shifting of money back and forth, didn't add one iota of substance to the transaction.

We call the guy who duped the cashier a con artist. But, we call lawyers, accountants and financial advisors who get involved in tax shelters "tax professionals."

We call the victim of the "short count" scam the cashier. But, we call the victims of tax shelters "innocent American taxpayers."

Individuals who invest in tax shelters to avoid paying their fair share of taxes shift their tax burden onto the backs of hard-working Americans who do comply with our tax laws.

The IRS estimates that 85 percent of taxpayers pay the taxes that they owe. Investors in tax shelters are part of the other 15 percent.

Eighty-five percent of American taxpayers are carrying the tax load for the noncompliant 15 percent.

This is not right. This is not fair. We cannot allow this to continue.

We need to finish up the work that we started in the American Jobs Creation Act. That bill beefed up laws against tax shelters. It increased penalties for wrongdoers.

We need to pass legislation that will clarify the economic substance doctrine. Clarifying the economic substance doctrine will put an end to the erratic and inconsistent court decisions that have determined the legitimacy of tax shelters.

The economic substance doctrine is a common-law doctrine that courts use to deny tax benefits on transactions that don't provide a meaningful change to the taxpayer's economic position other than the tax benefit itself.

In other words, the doctrine requires that a transaction must have economic reality and a business purpose apart from the tax consequences.

The proposed change clarifies how the courts should apply this doctrine. It doesn't require them to use the doctrine. But if they do decide to use the economic substance doctrine, the change would give them standardized criteria to use as litmus tests to decide if a transaction has any real economic purpose.

The Senate has passed this proposal several times, most recently in the tax reconciliation bill before us today. But it has never passed in the House.

We need to stop batting this proposal around. We need to make it into law.

The economic substance doctrine exposes transactions that use the Tax Code in an unintended way to avoid paying taxes.

Clever accountants, attorneys, and financial advisers deliberately manipulate the Tax Code to design and sell abusive transactions. At first glance, the deals stand up to scrutiny. At first glance, they appear to comply with the literal language of the Tax Code. They are very complicated. But when you give the deals the smell test, they give off a very bad odor. It is clear this is not what the law basically intended.

You realize that they have no purpose other than to avoid or evade taxes. They have no real business purpose and no economic reality. They shift money and paper around using complex arrangements that have no reason to exist, except to create nonexistent losses or false deductions.

They are smoke and mirrors, a cleverly designed illusion, to fool the IRS and to cheat the rest of our Nation's taxpayers, who properly report their income and pay what they owe.

That's where the economic substance doctrine comes in. Its standards of economic benefit and business purpose allow the courts to pierce the facade of legitimacy to determine if a deal has any real economic substance.

The courts have employed the economic substance doctrine countless times. But their decisions have been inconsistent.

This is due, in large part, because they lack a specific framework of guidelines and principles within which to apply the doctrine.

The courts are divided on what to do.

Some look only to the form of the transaction. They limit their analysis to the four corners of the Tax Code, no matter how crazy the result.

Others look beyond the form to the substance of the transaction and consider whether the tax result is consistent with congressional intent.

It is the role of Congress to pass legislation clarifying the economic substance doctrine to resolve these inconsistencies and uncertainties. The legitimacy of a tax transaction in California should be evaluated in the same way as a transaction in Florida.

Reliance on isolated and diverse judicial decisions does not lead to effective tax administration. Litigation is expensive both for taxpayers and the IRS. Tax professionals will shop around for the most advantageous court case to justify an egregious position. We all know that there is forum shopping. They are going to go to the judge who is most lenient.

We need to provide clarity and certainty.

Congress's failure to enact this legislation sends an implied message that we don't take abusive transactions seriously. Tax professionals know that we cannot keep all the holes in the dike plugged up by dealing with each abusive scheme on a piecemeal basis.

With our proposed change, we are not reinventing the wheel. We are only improving it. The economic substance doctrine has been part of the fabric of our tax system since the case of Gregory v. Helvering in 1935. It has been around. It has to be consistently applied to minimize taking advantage of the Tax Code.

Our proposal merely articulates the way many of the circuits have already applied this longstanding judicial doctrine.

Codification will strengthen this important standard that has been eroded by conflicting and confusing case law and by the greed of many practitioners who are willing to overlook it in exchange for profit.

We must give the courts a reliable and consistent standard to use when considering the economic substance doctrine. Failure to do so protracts the cat-and-mouse game that taxpayers, the IRS and the courts have played for years.

You might ask: If passing a law to clarify the economic substance doctrine will stop this kind of abuse to our tax system, why hasn't it happened? That's a very good question.

Unfortunately, there are powerful critics against the proposal, including the American Bar Association and the Bush administration.

Our legislation provides a framework of consistent and standardized criteria to apply to the economic substance tests. The courts retain complete autonomy and flexibility to decide whether or not to use the doctrine in the first place.

The critics, however, argue that the courts will "lose flexibility" to evaluate transactions.

They say that "an explicit and comprehensive statutory test" is a bad thing.

In truth, their position would maintain the status quo. Their position would keep the law broad and vague. And their position would perpetuate the same environment that has fostered tax shelters, tax schemes, and other abusive transactions.

Taxpayers have a right to plan their taxes so that they don't pay more than they legitimately owe. This legislation is aimed at those deals that cross the line into manipulation and abuse—not smart tax planning.

The critics say, unfairly, that the Senate proposal is "overbroad" and could cast doubt on "legitimate tax planning." They say that this provision will be "ineffective" because taxpayers will just find a way to work around it by crafting their deals with apparent business purpose and economic substance.

But if the legislation is as "inflexible" and "overbroad" as they say, how can it possibly leave room for taxpayers to work around it?

The proposal that Chairman GRASSLEY and I included in this tax reconciliation package provides standardized principles to use as guidelines to clarify when a transaction is abusive.

It will reduce rogue interpretations of the Tax Code and promote consistency and certainty instead of the existing confusion.

Critics argue that it promotes uncertainty because there is no clear line of demarcation between what passes muster and what doesn't. Ignoring the provision's standardized guidelines, they suggest that the proposal gives the IRS and the courts too much power—that it provides opportunities and incentives to find transactions "abusive at will."

In reality, it does just the opposite.

And that's exactly why some of the opponents of this measure don't like it. They want to keep the power and flexibility to design and sell tax shelters and other transactions that pillage our tax system.

There's an old saying that the best defense is a good offense. That pretty much sums up the opposition to this proposal. Like the tax shelters they peddle, their arguments lack substance.

We should not stand idly by as a few con artists peddle their scheme and take advantage of honest taxpayers. We should plug this loophole in the law.

We should urge the House to agree to the Senate-passed provision.

I urge my colleagues to work together to get this passed for the benefit of the American taxpayers, most of whom are honest and decent, and they are paying their fair share and do not like at all these con artists making millions and forcing the good, honest, paying taxpayers to subsidize those con artists and those companies taking advantage of it.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KYL. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER (Mr. BURR). Without objection, it is so ordered.

Mr. KYL. Mr. President, let me respond to the kind invitation of the ranking member of the Finance Committee, on which I sit, to speak to the matter that is before us. I appreciate listening to his remarks about various aspects of the reconciliation tax bill and features thereof. Let me speak to some of those items as well.

There will be a lot of debate, I suspect, over the next several hours—much of which has very little to do with the Senate bill—but I think in anticipation of what is likely to occur in the conference committee when the Senate bill joins up with the House bill and we decide what provisions to take from each of those bills and bring back to our respective bodies.

Clearly, discussion about the capital gains and dividends extension will be part of that discussion. Let me start with that.

I want to begin by noting that the budget resolution which the conference reached in April provides reconciliation protection for $70 billion in tax reductions over 5 years with the direction that the allocations be used to prevent tax-rate increases during the budget window, which is 2006 to 2010.

Let me repeat that. The instruction that we gave for this budget was to prevent tax-rate increases during this budget window. If we do not take action, there will be tax-rate increases during this budget period.

This, as the President said in his State of the Union speech, would be both unanticipated and very unwelcomed by the American people.

What exactly do we mean by that?

Talking about capital gains and dividends, what we did back in April was send a signal to investors that capital gains and dividend tax rates would be extended through 2010. Investment advisers have been alerting their clients that in their planning they must consider that the tax rates have not yet been extended and may, in fact, expire in 2008.

The conference agreement that comes back to our respective bodies needs to extend these investment tax rates to give these investors certainty and to give businesses certainty about how they raise funds to expand their operations.

When Secretary Snow testified before the Finance Committee a week ago, he said it was his opinion that the investors in the country, those people who helped create jobs by investing in our businesses, had already determined that it was likely these tax rates would be extended.

He said, if we do extend them, which we anticipate doing, that is built into the market right now. But he said if we should fail to do so, we could anticipate that the market would react very negatively to our failure to do so. The reason, of course, is obvious. Investors want to know what the return on their investment will be 3 or 4 years out. That is when they will likely turn the asset that will provide the profit or a deficit for them. They want to know what that return is likely to be, which means they want to know what the tax rate is.

The tax rates that will expire in 2008 do not tell them what they need to know.

We have the opportunity to extend those tax rates through 2010 and prevent an increase from occurring, and that is precisely what we ought to do.

It is interesting that these particular taxes are very important to the majority of taxpayers in the country. These are not the so-called tax cuts for the rich. These are a continuation of existing tax rates for a majority of tax filers.

More than half of all Americans own stocks, either directly or through mutual funds. The 2003 marginal rate cut on investment income worked by giving investors an incentive to put more of their money to work in the markets. At the lower rates, the tax penalty imposed on the additional investment earnings, the reward for taking on additional risk, is smaller than before, and it makes the risk more attractive.

When investors get to keep more of their reward, they are encouraged to invest more. With more investment, businesses have an easier time attracting the capital they need to expand, create new goods and services, and also create new jobs.

It is all part of this additional economic activity that creates this economic growth.

Americans support the extension of these tax rates.

A recent poll by the Pew Research Center, released on January 24, found that "half of Americans support extending reductions in taxes on investment income such as capital gains and profits from stock dividends, while 35 percent believe these tax cuts should not be extended."

I intend, by the way, to support extending the tax cuts by 34 percent, 35 percent. The reason is very apparent—because it benefits millions of taxpayers.

These lower rates have helped millions more taxpayers than other popular tax provisions; for example, the alternative minimum tax relief that we want to enact as well.

Let me do a comparison between the AMT, which both Senator BAUCUS and I would like to see repealed, how many people would benefit from our relief from the alternative minimum tax versus how many would gain relief from an extension of current rates on capital gains and dividends.

It turns out, of all taxpayers that pay the AMT—these are figures from the 2003 tax year, which is the last year—9.7 percent had adjusted gross incomes under $100,000. Meanwhile, of all taxpayers reporting capital gains in 2003, 67.5 percent had adjusted gross incomes under $100,000. Of those reporting dividend income in that year, more than 70 percent had adjusted gross incomes under $100,000.

Nationwide, fewer than 8 million filers would be helped by the AMT hold-harmless provisions, while nearly 20 million filers would be helped by the dividend relief that we would extend, and just over 7 million filers would be helped by the relief from capital gains.

Here is the bottom line: A lot of Americans—over half—are now invested in the stock market. A lot of people will receive benefits if we continue the current tax rates for dividends and capital gains. Over 20 million of these filers under $100,000 will have dividend income and over 7 million will have capital gains income. That is compared to those taxpayers whom we will help under the AMT relief that we provide of about 8 million filers.

The bottom line is, other than the wealthy in our country, we are talking about helping people with both kinds of relief, but far more will benefit from the capital gains relief, and especially the dividend relief, than will benefit from the AMT relief. Some of our colleagues understand that and say: We understand in terms of pure numbers there are a lot more taxpayers, especially in the lower income categories, who will benefit from dividends and capital gains relief than AMT relief.

What about the fact that maybe they do not get as much relief, that the dollar amount is not as much? There is a myth floating around that it is actually very low. In fact, there is something being quoted as IRS statistics—and they are not IRS statistics. They are from a report of a group called the Center on Budget and Policy Priorities and also the Brookings Institute Tax Policy Center, which claims IRS data shows the taxpayers with income of $50,000 or less only receive a benefit of $11 per return from the lower rates on dividends and capital gains, and the benefit for taxpayers with income under $75,000 would only be $77 per return.

That is just plain wrong. First of all, the data is not from IRS. What is the data from IRS showing? Mr. President, I ask unanimous consent a couple of charts be printed in the RECORD after these remarks to show what I am talking about.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. KYL. The IRS statistics—and this comes specifically from table 3.6, 2003, of a report called "Individual Income Tax Returns, Returns with Modified Taxable Income: Taxable Income and Tax Classified by Each Rate at which Tax Was Computed and by Marital Status." If you look under that table, what you will find is that based upon actual IRS data estimated from 2003, the people who had taxable income of less than $50,000 on a per return basis, saved about $171 each. In 2008, the tax rate is reduced from 5 percent to zero for these taxpayers. Based upon the same data, that allows the rate to expire, which would result in a $341 tax increase on each of the almost 10 million taxpayers in these two lowest income tax brackets if we do not extend this tax rate at its current level.

What are we saying? If we do not take action and extend this current rate, what we are going to have for these lower income tax payers, those who make $50,000 or less, is they will see a $341 tax increase on each of those almost 10 million taxpayers. That is a far cry from this figure of $11, which is simply wrong.

The bottom line is, not only will more taxpayers receive relief under the extension of the capital gains and dividends part of what we hope will be the conference report than those who receive AMT relief, it will be substantial relief. If we allow these rates to expire, there is going to be a substantial tax increase on these people in the lowest brackets, those making $50,000 and below. They will see a $341 tax increase. I would call that real money. I call that amount of people real people.

I mentioned before the people making $100,000 or less. What about those making less than that? If you look at those with adjusted gross incomes of $30,000, for example, with regard to dividends, 19.2 percent of the people reporting dividends were in that income category. With respect to capital gains, likewise, at that lower adjusted gross income of $30,000, 18.5 percent of those reporting long-term capital gains were in that category.

The bottom line is, whether you are talking about less than $100,000, less than $30,000—I mentioned the amount of money received from those making less than $50,000—whatever category you are looking at, you better extend the current rates or there will be millions and millions of these low-income taxpayers receiving a big hit on their taxes.

Let me be very plain. We are not talking about additional cuts in taxes. What we are talking about is just keeping the existing tax rates. If we do not extend them, millions of low-income Americans are going to see a huge increase in their tax bill; one that is unanticipated, unappreciated. We cannot afford to allow that to happen.

I hope we could agree, those who agree there should be relief from the alternative minimum tax, that we also need to continue to provide the relief from the dividends in capital gains taxes as well.

In addition to talking about this in terms of American families, it is important to understand what this has done for our economy. The fact is, all taxpayers, all workers in this country, all people who have jobs, all benefit from the economic expansion that has occurred largely as a result of the tax policies the President has proposed and to which Congress has agreed. It would be folly to allow those tax policies to expire.

What kind of impact have these tax policies had on the gross domestic product? Whether you embrace these lower rates or not, you have to acknowledge they have helped our economy, which grew at a 4.1-percent annual rate in the third quarter of last year, the 10th straight quarter in which gross domestic production grew at a rate above 3 percent. It is interesting to compare this with the European economies. For 2005, the Euro area gross domestic production grew at only 1.4 percent. Economists predict for 2006 it will be about 1.9 percent. The United States, by contrast, is expected to grow at 3.6 percent for 2006, according to the CBO.

What does this mean, or how does the gross domestic production actually increase? You have to have business investment, primarily small businesses. Interestingly, business investment fell in the nine consecutive quarters before the 2003 tax rate bill was passed. For nine consecutive quarters, businesses were not investing. Investment was declining. So in 2003 we passed these additional tax rates. What happened was cutting taxes on capital helped reverse the decline. In the 11 consecutive quarters since these tax cuts, business investment measured by nonresidential fixed investment has increased each and every quarter. In fact, business investment has continued to increase even after the expiration of the temporary bonus depreciation for business investments expire.

Interestingly, it has not just been businesses that have seen additional revenue as a result of the investment, but there has been job creation from these tax cuts. But, ironically, these tax cuts—or paradoxically, I could say—have also provided increased revenues to the Federal Treasury. According to a recent report by the CBO, capital gains revenue is 16 times greater than it was forecast to be. Government estimators predicted that the reduction in capital gains rates enacted in 2003 would cost the Federal Government $27 billion in lost revenues for 2004. CBO's most recent report shows that the lower rates actually brought in an additional $26 billion in revenue. Instead of costing $27 billion, the lower rates actually made $26 billion for the Treasury.

Why does that happen? It is fairly obvious. You are holding assets, and if you sell them, it will cost you 20 percent in taxes, 20 percent of the gain. That is a pretty stiff tax. You do not want to do that. Congress comes along and says: We will reduce that down to 15 percent. Small businesses, in particular, say: Great; in that event, we will pay less in taxes, 25 percent less. We will go ahead and sell the asset and only pay 15 percent.

So more people do that than were expected to sell assets so even at a lower rate, because of the increase in volume, the Government ends up making a lot more money.

Think of it this way. You are a department store. When you go to the department store and there is a big sale over the week, how can the department store make any money? It is simple. They reduce the price they sell their product for, but there is so much more of the product sold that they more than make up for the reduced cost by the volume of sales.

It is the same thing that occurs here. Lower the rate a little bit, but that attracts people to sell their assets, to take advantage of that lower rate. And that increased volume in sales more than makes up for the reduction in the rate. That is why you have to be a little careful with the CBO projections about the "cost" to the Federal Government of lower taxes. Frequently, the cost ends up not to be a cost at all but an increase in actual revenues. That is precisely what has been occurring here.

It is interesting that according to the same CBO report, the Government took in $60 billion in capital gains taxes in fiscal year 2004, which is a 20-percent increase from 2003. And it is projected that capital gains taxes coming into the Treasury increased another 25 percent in 2005—up $75 billion. That is real money no matter how you calculate it.

We cannot say for certain that the lower tax rates will always continue to make revenue for the Treasury in the future, but looking back we can sure conclude that these investment tax rates have thus far been nothing but good news for the Treasury. That means good news for all of us because instead of the Government going further into a deficit situation, this increased revenue is helping us to keep the deficit more under control.

It is interesting that overall revenues are up in 2005. The Treasury collected $2.15 trillion in revenues, which is the highest level of Federal receipts in history, and it is $274 billion more than collected in the previous year. Remember, this is with lower tax rates. Yet we still took in $274 billion more than collected the year before. That is a 14.6-percent increase overall. CBO has projected individual revenues for 2006 will be up 8.2 percent, greater than they were from 2005, and that corporate receipts will be 8.6 percent higher. Revenues for December 2005, just to take that month, were 12 percent higher than they were for December 2004. Corporate receipts were up about 33 percent, and receipts from individual income tax payments were up about 5 percent.

This is the biggest reason we should not in any sense be accepting arguments that somehow we need to have what some people around here call pay-go, where you take the CBO estimates of how much a tax reduction is going to cost the Treasury, and somehow you make that up in additional revenue. So that net, you are not reducing taxes on the taxpayers at all.

What is the point of a tax reduction if it is not a real tax reduction; if you are just taking money out of one pocket but then you have to add it from the other pocket? It makes no sense. In fact, it is just reversed. We should not be talking about the cost to the Treasury; we should be talking about the cost to the taxpayers. They are the ones who have to pay. It is their hard-earned money. We cannot spend a dime in Congress that somebody did not work very hard to earn to send back to Washington in the form of taxes.

When we talk about increasing taxes or decreasing taxes or keeping the level of the taxes where they are right now, and we calculate the cost to the Federal Treasury, I say forget that. I am worried about the cost on my constituents. They are the ones who will invest. They are the ones who will hire more people if we let them keep more money. And that means more people will have jobs. If people have jobs, they will pay more in taxes and the Government will continue to collect more revenue.

The statistics I have quoted demonstrate that a sensible tax policy, one which doesn't set the rates too high, will actually end up bringing more revenue into the Federal Treasury than one which tries to set the rates too high. That is why since pay-go does nothing about the spending side of the equation, which is what is driving up the deficit—because our big entitlement programs: Medicare, Medicaid, and Social Security are not affected by that. It does nothing to affect them whatsoever. The only thing it does is require if we have a tax reduction we have to have a tax increase somewhere else so it comes out even. That does not do the economy any good at all.

The bottom line is the provisions of the bill before the Senate, as well as those that are likely to come back to the Senate from conference, will be helpful to individual taxpayers in the lower income brackets and helpful to families who create small businesses, who have small businesses that create jobs. They will be helpful to the economy as a whole and even helpful to the Federal Treasury.

I will refer a little bit to this argument made by some, including my good friend from Montana, that we cannot afford to do both the 1-year fix for AMT; that is to say, have most people not pay the unanticipated taxes under the alternative minimum tax, and also the relief we would provide by continuing the existing tax rates for capital gains and dividends. The fact of the matter is, we can, and we will, do both. Within the next 3 or 4 weeks, we will have done both, and the country will be better off for it.

There is about $30 billion that is required to provide the so-called fix for the alternative minimum tax to make sure that at least most taxpayers are not going to be stunned by that tax this year. I support that. The AMT is a feature of our Tax Code that has gone awry. As I said, both Senator BAUCUS and I have sponsored legislation to do away with it. Its intended purpose was to make sure very wealthy people could not zero out their tax liability by claiming what are, in fact, legitimate deductions and exemptions and credits. But they were being used to the point that some people paid virtually no taxes or no taxes. Congress decided: Well, everybody has to pay something, everybody except people at the low income.

But because it was not indexed for inflation, and, as it turns out, it is almost impossible to target just the "rich," the AMT has gone awry. It has crept into the middle class. If we do not stop it, before long it is going to affect virtually all taxpayers.

So what the bill provides is an increased exemption for 2006 so that the exemptions do not drop back to pre-2001 levels. It also prevents certain credits from being eroded by the AMT. The net result is that most people should not have to worry about the AMT tax bill for this year.

But the bottom line is, we can do that and also provide the relief for capital gains and dividends, according to the calculation of the "costs" for that relief. In other words, extending for 2 more years the existing rates for capital gains and dividends, that is a little more than $20 billion.

So when Congress passed the $70 billion in relief in the budget last April, and asked the committees to come back with their reconciliation in taxes for that amount, we wanted to make sure no one would pay higher taxes during this 5-year budget window. We can do that by extending the same rate for capital gains and dividends—that is about $20 billion—providing this year of relief from the alternative minimum tax—that is about $30 billion—and there is still something like $16 billion or $20 billion, about $20 billion left over for other provisions which we also want to take care of.

I am also going to discuss some of these other provisions because I think it is very important for anybody who might think about voting against this bill to appreciate what they would be voting against.

First, they would be voting against the savers' credit. The savers' credit is a nonrefundable tax credit that encourages low-income taxpayers to make contributions to an employer-provided retirement savings plan or an IRA. This tax reconciliation bill extends that credit through 2009. It is currently scheduled to expire at the end of this year. Nationwide, almost 5.5 million filers take advantage of this tax credit. By the way, almost 100,000 of those filers are in my State of Arizona.

How about small business expensing? Under current law, small businesses can deduct the cost of qualified investments in the first year they are made, up to $100,000, indexed for inflation. After 2007, this amount will drop back to $25,000. What our bill does is to extend the increased amount through 2009. Keeping the increased amount enables small businesses to continue to invest and grow.

Now, if you vote against this bill, here is something else you will be voting against: the above-the-line deduction for college tuition expenses. Under current law, the provision that allows a taxpayer to take an above-the-line deduction for college tuition costs expired at the end of 2005. It is done. The full deduction is available for joint filers with income under $130,000 and is phased down for higher income filers.

The tax reconciliation bill, the bill that is before us, would extend it through 2009. We have to do that this year because it has expired. Above-the-line deductions are important in this case because they are available to nonitemizers, while most deductions, below the line, are only available to those filers who itemize. Nationwide, over 3.6 million filers claimed this deduction in 2004. About 74,000 of those filers, by the way, were in my State of Arizona.

There are some other extenders. The President talked about some of these in his State of the Union speech. For example, the R&D tax credit that is so important to continued research and development in our country. And there is the 15-year depreciation recovery period for restaurant improvements, the 15-year depreciation recovery period for leasehold improvements. This bill also extends the deduction for teachers who pay for some expenses out of their own pocket. This is something I introduced some years ago. In fact, if my recollection serves, the average teacher spends about $500 a year out of her or his own pocket to bring supplies to school that are not paid for by the schools in order help teach the kids. We provide a deduction for that. Nationwide, there are 3.3 million filers who take advantage of that. And 62,000 of those are in my State of Arizona.

Finally, to mention the sales tax deduction. This is very important. It is not important in my State in particular, but it sure is important in some other States. For 2004 and 2005, taxpayers living in States without income taxes could take an itemized deduction for State and local sales taxes in lieu of the existing deduction for State and local income taxes, from which they get no benefit. The reconciliation bill would extend this option for 2006. Nationwide, 12.3 million families and individuals will benefit from the sales tax deduction this year, 2006.

So the bottom line of all of this is that this bill is not just about the AMT and capital gains and dividends: it is about a lot more. My colleagues who want to help average taxpayers, people who do not even itemize their deductions, teachers, small businesses—all of these taxpayers are benefited by the bill we have before us. It is important for us to support these taxpayers, by the millions, as I said.

There is a final point; that is, a point that Senator BAUCUS has raised concerning the so-called Byrd rule. This is a very technical, rather arcane point about revenue loss beyond the budget window. The two tax-writing committee chairmen in the House and the Senate are well aware of this requirement and will make certain the conference agreement complies with all rules of the Senate by including any necessary offsets, as the Senate-passed reconciliation bill complies with all rules of the Senate. So I want to assure my colleagues that the problem that has been raised is not going to be a problem by the time we conclude voting on this legislation. They can rest assured of that.

So, Mr. President, I urge my colleagues, as they consider any motions to instruct conferees this evening, that it is all well and good to tell our conferees what we think, but the bottom line is, we need to get this bill into conference so the conference committee can issue a conference report that we will then deal with and our House colleagues will then deal with, that will continue the tax rates that currently exist, that will continue the deductions and exemptions we currently have for all these taxpayers we talk about, that will not allow taxes to increase on our constituents. That is what this bill is all about—nothing more, nothing less—no tax increases.

Thank you, Mr. President.

EXHIBIT 1

TABLE 3.6.—2003, INDIVIDUAL INCOME TAX RETURNS WITH MODIFIED TAXABLE INCOME: TAXABLE INCOME AND TAX CLASSIFIED BY EACH RATE AT WHICH TAX WAS COMPUTED AND BY MARITAL STATUS

[All figures are estimates based on samples—money amounts are in thousands of dollars]

Marginal tax rate classes	All returns			Joint returns and returns of surviving spouses			Returns of married persons filing separately		
	Number of returns (1)	Income taxed at rate (2)	Income tax generated at rate (3)	Number of returns (4)	Income taxed at rate (5)	Income tax generated at rate (6)	Number of returns (7)	Income taxed at rate (8)	Income tax generated at rate (9)
All tax rates	101,386,201	4,206,592,861	780,305,566	44,033,987	2,867,802,099	551,093,751	2,027,382	74,697,606	14,992,353
5 percent	9,833,227	33,552,373	1,677,619	5,735,137	21,989,140	1,099,457	109,279	358,270	17,913
8 percent	1,058,265	3,780,577	302,446	638,945	2,744,256	219,540	12,762	24,298	1,944
10 percent	100,367,644	914,053,162	91,405,316	43,667,544	555,949,302	55,594,930	2,017,756	13,037,057	1,303,706
10 percent (capital gains)	1,445,014	3,942,692	394,269	837,753	2,774,756	277,476	12,290	22,530	2,253
10 percent (Form 8814)	92,871	62,588	6,267	70,255	48,325	4,837	56	67	7
15 percent	74,461,039	1,583,782,894	237,567,434	35,870,035	1,052,826,848	157,924,027	1,721,892	24,754,136	3,713,120
15 percent (capital gains)	9,461,124	205,205,659	30,780,849	6,285,159	152,654,959	22,898,244	144,743	5,995,346	899,302
20 percent	2,188,286	75,411,601	15,082,320	1,441,471	57,677,194	11,535,439	25,602	2,464,341	492,868
25 percent	26,738,916	640,244,673	160,061,168	14,119,838	423,664,278	105,916,069	652,367	9,830,617	2,457,654
25 percent (capital gains)	349,114	7,250,430	1,812,607	236,994	5,705,659	1,426,415	4,929	185,917	46,479
28 percent	5,459,365	199,378,501	55,825,980	3,635,902	143,892,642	40,289,940	160,274	2,894,980	810,594
28 percent (capital gains)	9,600	805,760	225,613	5,868	609,221	170,582	*12	*14,530	*4,068
33 percent	2,029,605	170,336,243	56,210,960	1,634,272	140,306,823	46,301,252	59,230	2,399,367	791,791
35 percent	752,028	367,903,515	128,766,230	641,635	306,958,696	107,435,544	22,824	12,716,151	4,450,653
Form 8615	100,337	882,194	186,486						

* Estimate should be used with caution because of the small number of sample returns on which it is based.
Note: Detail may not add to totals because of rounding.
Source: IRS, Statistics of Income, Individual Complete Report 2003, Publication 1304, October 2005.

TABLE 3.6.—2003, INDIVIDUAL INCOME TAX RETURNS WITH MODIFIED TAXABLE INCOME: TAXABLE INCOME AND TAX CLASSIFIED BY EACH RATE AT WHICH TAX WAS COMPUTED AND BY MARITAL STATUS—continued

[All figures are estimates based on samples—money amounts are in thousands of dollars]

Marginal tax rate classes	Returns of heads of households			Returns of single persons		
	Number of returns (10)	Income taxed at rate (11)	Income tax generated at rate (12)	Number of returns (13)	Income taxed at rate (14)	Income tax generated at rate (15)
All tax rates	13,218,829	258,524,437	39,251,842	42,106,004	1,005,568,719	174,967,619
5 percent	403,159	934,890	46,745	3,585,652	10,270,073	513,504
8 percent	34,235	80,776	6,462	372,323	931,248	74,500
10 percent	13,184,715	102,452,847	10,245,285	41,497,629	242,613,955	24,261,396
10 percent (capital gains)	52,205	149,977	14,998	542,765	995,430	99,543
10 percent (Form 8814)	19,653	12,773	1,281	*2,907	*1,421	*143
15 percent	7,628,714	105,116,730	15,767,510	29,240,398	401,085,180	60,162,777
15 percent (capital gains)	254,126	4,043,136	606,470	2,777,097	42,512,217	6,376,833
20 percent	48,027	1,325,228	265,046	673,186	13,944,838	2,788,968
25 percent	1,450,057	28,069,853	7,017,463	10,516,654	178,679,925	44,669,981
25 percent (capital gains)	11,082	188,343	47,086	96,109	1,170,512	292,628
28 percent	141,741	4,805,859	1,345,641	1,521,448	47,785,019	13,379,805
28 percent (capital gains)	*8	*5,732	*1,605	3,712	176,275	49,357
33 percent	50,672	4,107,496	1,355,474	285,431	23,522,557	7,762,444
35 percent	15,740	7,230,795	2,530,778	71,829	40,997,872	14,349,255
Form 8615				100,337	882,194	186,486

*Estimate should be used with caution because of the small number of sample returns on which it is based.
Note: Detail may not add to totals because of rounding.
Source: IRS, Statistics of Income, Individual Complete Report 2003, Publication 1304, October 2005.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, the next motion will be a motion by the Senator from Oregon, Mr. WYDEN, on energy. I ask unanimous consent that the pending motions be temporarily laid aside so the Senator from Oregon may offer his motion.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Oregon.

MOTION TO INSTRUCT CONFEREES

Mr. WYDEN. Mr. President, I send a motion to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the motion.

The assistant legislative clerk read as follows:

Mr. WYDEN moves that the managers on the part of the Senate at the conference on the disagreeing votes of the 2 Houses on the Senate amendment to the bill H.R. 4297 (to provide for reconciliation pursuant to the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95)) be instructed to insist on a provision that repeals accelerated depreciation for geologic and geophysical costs for oil and gas exploration by the 5 major oil companies for the following reasons:

(1) In April 2005, President Bush stated that "With $55 oil, we don't need incentives for oil and gas companies to explore.". On February 10, 2006, oil futures trading on the New York Mercantile Exchange closed at $61.84 per barrel.

(2) At a November 9, 2005, joint hearing of the Committee on Energy and Natural Resources and the Committee on Commerce, Science, and Transportation, the Chief Executives of ExxonMobil, ChevronTexaco,

ConocoPhillips, BP, and Shell all testified that the new tax breaks in the Energy Policy Act of 2005 were unnecessary for their companies to explore for oil. Accelerated depreciation for geologic and geophysical costs for oil and gas exploration is one of the new tax breaks provided by the Energy Policy Act of 2005.

(3) The Joint Committee on Taxation estimates that this special interest tax break for major oil companies costs the taxpayers and the United States Treasury more than $100,000,000 over the next 5 years and almost $300,000,000 over 10 years. The United States taxpayers will have to pay higher taxes to provide this tax break for big oil companies.

(4) In 2005, the 5 major oil companies whose Chief Executives testified before the joint hearing of the Committee on Energy and Natural Resources and the Committee on Commerce, Science, and Transportation reported net profits of more than $111,000,000,000.

(5) At a time of record high oil company profits and high Federal budget deficits, hardworking American taxpayers should not have to provide record subsidies to major oil companies. Congress should eliminate this special interest tax break for the largest oil companies that even these oil companies say is not needed.

Mr. WYDEN. Mr. President, I thank, particularly, the distinguished Senator from Montana, who is on the floor, Mr. BAUCUS, and Senator GRASSLEY, for working very closely with me on this issue because I think this illustrates something the Senate is going to have to tackle aggressively in the days ahead. This, at least, makes a modest step in the right direction.

At a time when the oil companies have been making record profits and often charging record prices at the pump, it does not seem, to me, they ought to be receiving record subsidies from the taxpayers.

What this amendment does—and this would mean for the first time in, as far as I can tell, 20 years—the Congress would actually be rolling back a subsidy to the oil industry. This would limit one of the new tax breaks that the major oil companies received in last year's Energy bill.

The reason I feel so strongly about this, colleagues, is we had the major oil companies before the Energy Committee recently, and I asked the CEOs of the five largest oil companies if they agreed with the President's statement—and I quote here—"With $55 oil, we don't need incentives for oil and gas companies to explore."

The CEOs of ExxonMobil, ChevronTexaco, ConocoPhillips, BP, and Shell all agreed that the new tax breaks for exploration in the Energy bill were unnecessary. In fact, ExxonMobil CEO Lee Raymond said:

> When you add it all up that energy legislation is zero in terms of how it affects ExxonMobil.

So what we have is the bizarre situation where the Congress sends billions of dollars of new subsidies to the oil companies when the oil companies actually show up at congressional hearings and say they do not even need these subsidies that the Congress is sending them.

Now, ExxonMobil recently announced it had posted an all-time record profit of $36 billion in 2005. That huge amount is not just the highest profit ever for an oil company, it is the highest profit ever for any company. And ExxonMobil is not the only oil company to post a record-high profit in 2005. ConocoPhillips reported its profits shot up 66 percent to $13.5 billion, while ChevronTexaco's profits jumped to more than $14 billion. The five largest oil companies in the country had combined profits of more than $110 billion.

So I would only say to the Senate today, it is one thing to talk about new tax breaks to the oil companies and to look at them, as we are doing today, and to particularly say: Do the oil companies need these tax breaks in order to promote exploration and secure the energy our country needs? What we now have is the situation where the oil companies themselves have come to the Congress and have said, publicly, before the Congress, they do not need these kinds of tax breaks.

At a time when they make record profits and consumers have recently paid record-high prices, the Federal Government simply should not record record-high subsidies to these companies.

The Senate tax reconciliation bill includes an amendment I had the opportunity to work with Chairman GRASSLEY and Senator BAUCUS on to eliminate one of the new tax breaks for the oil companies to explore. This is exactly the type of incentive the major oil company CEOs and President Bush have said they do not need.

The special-interest tax break I was able to see eliminated from the Finance Committee bill would cost taxpayers about $300 million over 10 years. The taxpayers, in effect, would have to pay higher taxes to provide this big break for major oil companies, when the price of oil is over $60 per barrel. That is $7 per barrel higher than the price at which the President said they do not need incentives. At these high prices, it is my view we ought to take back this unnecessary tax break and save our citizens hard-earned tax dollars.

Now, there are some in the industry who may argue the five major oil companies' CEOs do not speak for the entire industry. They may argue the small producers still need more incentives to explore.

I want to emphasize this amendment does not affect the small producers. This amendment is about the large oil companies, the people who came to the Senate and said they do not need new subsidies.

This amendment is about making sure these major firms don't get a tax break they now have testified they don't need. The fact is, over the past 2 years, oil companies have already increased their drilling operations as the price of oil has skyrocketed from $45 per barrel to over $70 per barrel. The number of rigs in operation and the amount of drilling have also been increased by a third since 2003. Most of this increased drilling occurred before the new tax break went into effect.

What it comes down to is Congress should not provide more subsidies to major oil companies that make record profits to do what they are already doing, especially at a time when our consumers are getting hammered at the pump. Unless the Congress accepts this measure that the Finance Committee accepted when I offered it through the support of the chairman and Senator BAUCUS, the major oil companies would be getting a significant new tax break that other major industries don't get.

Instead of having to write off some of their capital costs over a number of years, major companies would get accelerated writeoffs for what is called geological and geophysical exploration costs. According to the Joint Committee on Taxation, the IRS and the Federal courts have ruled that these costs are capital costs which should properly be depreciated over the entire period the oil well is producing, which can be a decade or longer.

The President's budget calls for scaling back this special treatment of oil and gas exploration costs by extending the depreciation period for what are called G&G costs from 2 to 5 years. The Senate bill takes a little different approach by repealing accelerated depreciation of these costs for the biggest oil companies.

I wish to emphasize this, particularly since I see my friend from Mississippi who has discussed the energy issue in a very thoughtful way in committee. The Senator from Mississippi and others have stressed how important these incentives are to the independents and small producers. This is something with which I am sympathetic.

I have indicated to Chairman GRASSLEY and others that I believe we ought to be taking a comprehensive look at the Tax Code as it relates to the energy field to make sure we can reconfigure these tax breaks so that when they are needed by the small companies and the independents, they can get them, but we don't keep sending them out the door to the big oil companies and then have these big oil companies in effect embarrass the Congress by coming to a hearing and saying: Look, we don't need these breaks.

Tax breaks such as the accelerated writeoffs for these costs also clutter up the Tax Code and distort capital markets. It is not the place to discuss it today, but my Fair Flat Tax Act would give us a bipartisan opportunity to remove some of that clutter from the

Tax Code. At least we can make a start at reform today by eliminating the special interest tax break for the oil industry which the companies say they don't need.

Our consumers already pay more at work, they pay more at home, and they pay more as they drive everywhere in between. Let's give them a break in their personal energy bills. We can give them a break by ensuring that those folks who are getting hammered with high energy bills at home won't have to subsidize profitable oil companies when they pay their taxes.

I urge my colleagues to support fiscal responsibility by supporting my motion to urge the conferees to support the Senate position, eliminate this special tax break for the major companies. This does not apply to the small companies. It doesn't apply to the independents. I have worked closely with Chairman GRASSLEY and Senator BAUCUS to ensure that will be the case.

I hope we will be back in this Chamber for a more comprehensive discussion of the Tax Code and energy policy in the days ahead. My own sense is, in the last energy bill, we subsidized an awful lot of people to do the wrong thing. Getting a new energy policy is arguably the most red, white, and blue issue the Congress could possibly take up. I think about our soldiers in Iraq and Afghanistan, these individuals who honor us every day with their courage and valor. I want to make sure their kids and grandkids are not off in the Middle East fighting a war and Congress is still dallying on oil.

This is a step in the right direction. I suspect other colleagues want to discuss this issue. I reserve the remainder of my time.

In fact, how much additional time do I have on this motion?

The PRESIDING OFFICER. The Senator has 18½ minutes.

Mr. LOTT. Mr. President, will the Senator from Oregon yield for a couple questions?

Mr. WYDEN. Absolutely.

Mr. LOTT. I wanted to make sure I understood what the Senator was advocating.

Is the Senator proposing a motion to instruct that would basically say that the Senate should insist on the position it had in our version of this reconciliation tax package in conference?

Mr. WYDEN. The Senator is correct. I am asking that we insist on what we did in the Finance Committee and what Chairman GRASSLEY and Senator BAUCUS have worked closely with me on. It is our feeling that we do need to have a broader and more comprehensive discussion about this down the road, but we took a modest step in the right direction in the Finance Committee. That is what I wish to preserve with this motion.

Mr. LOTT. And that language was retained in the full Senate?

Mr. WYDEN. Right.

Mr. LOTT. Let me just say to the Senator from Oregon that regardless of whether Senators agree or disagree, this is an appropriate motion to instruct. This relates to the bill at hand. Obviously, it is not going to buy any conferees. I hope I will be a conferee. Certainly, it won't buy me. But at least it speaks to the substance of the bill before us. The Senator has his right to do this, and it certainly is appropriate.

Most of these other motions to instruct we are going to be dealing with don't really deal with the bill; they are purely partisan hit amendments or motions to instruct. And what we are going to do on this side is respond in kind. It is the kind of partisan political "gotcha" which has caused this institution to deteriorate to the nadir where we are. It is unfortunate, and I am sad about it. But if that is the way we are going to proceed. I am going to join in the fun and games before the day is done.

At least in the case of the Senator from Oregon, he is dealing with a subject in the bill. I commend him for that. He is very thoughtful in this, as in most subjects. His motion to instruct is an appropriate one.

Mr. WYDEN. Mr. President, to respond briefly, I thank the Senator from Mississippi. I am interested in working with him on the Finance Committee. This discussion does need to be part of a longer debate.

The Senator from Mississippi has drawn an important distinction that a number of us have talked about as to the difference between the small firms and the independents and the big firms. What we tried to do in this bipartisan amendment is to preserve it. Frankly, in a sense, we ought to do this just to prevent the embarrassment of the Senate. When you have these big oil companies show up in broad daylight and say they don't need these tax breaks, and the Congress has just been sending out billions of dollars, that ought to be a wake-up call for both sides of the aisle, Democrats and Republicans, to work together to rethink this. I hope this will be the beginning of such an effort. It is a modest step. It will save $300 million over 10 years—clearly, not what we need to do to deal with the hemorrhaging of the Federal budget, but at least it is a step in the right direction.

I thank the distinguished Senator from Mississippi and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, parliamentary inquiry: Are we now on the conference report itself so that I could yield myself time off the overall report?

The PRESIDING OFFICER. The time can be yielded from the general debate.

Mr. LOTT. I ask unanimous consent that I be yielded time off of the debate which is scheduled on our side of the aisle.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Mr. President, I will be brief. In line with what I was just saying, I have been informed by the staff that the Parliamentarian probably would consider motions to instruct conferees regarding making permanent the changes we have provided in the alternative minimum tax area. If that would be in order, if we start down this trail of motions to instruct, I would be prepared to offer one in this AMT area or defer to the chairman, if he would prefer to do so.

This is an area in which we should act. I remember a few years ago when we got into the discussion of the alternative minimum tax, the desired goal was to make sure that everybody paid some minimum amount of taxes. It was aimed at the wealthy. But as we all have learned, because of the way the Tax Code works, more and more middle-income Americans have been pulled into this AMT web. It has gotten to be a serious problem, so we have proposed to do something in the Senate-passed bill on a temporary basis on the AMT.

My proposal would be, if it is the right thing to do, make it permanent. This is the kind of thing we are playing around with that is inappropriate. Why would we do it for a year or two? If it is the right thing to do, let's make it permanent.

I suspect there are some people in the Senate who will not want to do that for whatever reason. My question is: Why not, if it is the right thing to do? The same thing is true with some of the other proposals which have been considered. If we are going to extend the tax break for some of these families with children so they won't get hit with a tax increase, shouldn't we do it here? Who now wants to stand up and defend the fairness of what is happening with this alternative minimum tax, what it is doing to middle-income workers?

With all the complaints we hear about the AMT on both sides of the aisle, why in the world wouldn't we support a motion to instruct to make it permanent? I would hope that we would. I think that substantively, this is a no-brainer. Yet I understand there is resistance to doing that. Maybe there are some people who don't want to vote on that motion to instruct.

There are 20 million American families affected by this pernicious provision in the Tax Code which has taken on aspects we never intended. If it is the right thing to do, then the budget should reflect that. This tax reconciliation should reflect that. We ought to make the change in the AMT permanent.

I would hope that we wouldn't get into a long list of motions to instruct.

They are irrelevant anyway. But both sides need to know that if we are going to start down that trail, there are going to be some uncomfortable motions to instruct on both sides, and we are going to get a chance to vote on making the changes in the unfairness of the alternative minimum tax that affects all these millions of families permanent.

I yield the floor.

Observing no other Senator wishing to speak, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I think around 8 we will probably have two votes. It is also my understanding that the other side of the aisle will be offering various motions to instruct which presumably will be voted on, as will motions to instruct on this side of the aisle.

I must say, though, I have glanced at the proposed motions to instruct on the other side, and I find it very curious. Why do I say that? I say that because we in the Senate passed a bill. The House has passed a bill.

We are going to go to conference on the two bills now. Presumably, it is the Senate conferees who are charged to defend the Senate bill. Presumably, the House conferees are charged to defend the House bill. After all, that is what a conference is all about. The Senate passes a bill and goes to conference; the House passes a bill and goes to conference.

These motions that are going to be offered, however, do not defend the Senate bill. Quite to the contrary, they are opposed to the Senate bill. They defend the House-passed bill, the capital gains treatment. I find that very curious. I, frankly, find it very disconcerting, because if this is the case, it will set the precedent basically for a motion to instruct, not to defend the body's views. Most of the motions to instruct from the other side will be motions not to defend the Senate bill, but urge provisions in the House bill. That is nuts.

Most of the motions to instruct by Members on this side are asking the conferees to defend the Senate-passed provisions. I point that out because, as I said, it is curious and disconcerting, and I hope all Members recognize what is going on here; namely, what I just outlined. I hope this is an aberration and that it doesn't continue. Otherwise, this is another example of the chaos, the virtual free-for-all around here, and disrespect for procedure, for rules, for civility, and for both sides working together. I hope maybe that is an oversight by the other side of the aisle with all the motions that are going to be coming up.

Nevertheless, I have them before me. That is what they seem to say. I point that out for Members; it is an observation before we vote to take into consideration. Most of the instructions I see are with respect to capital gains treatment. There is no provision for extending current law which doesn't expire until January 1, 2009; whereas, there are provisions in the House-passed bill to extend it for 2 more years, even though current law doesn't expire until January 1, 2009.

The motions to be offered are to basically take up and encourage the conferees to pass the House provisions. That is very curious.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I see the Senator from Illinois, and I ask unanimous consent that the pending motions be temporarily set aside so that the Senator from Illinois may offer a motion.

The PRESIDING OFFICER. Without objection, it is so ordered.

MOTION TO INSTRUCT CONFEREES

Mr. OBAMA. Mr. President, I thank the Senator from Montana for the excellent work he has been doing.

I send a motion to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the motion.

The bill clerk read as follows:

> Mr. OBAMA moves that the managers on the part of the Senate at the conference on the disagreeing votes of the 2 Houses on the Senate amendment to the bill H.R. 4297 (to provide for reconciliation pursuant to the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95)) be instructed to insist that any final conference report shall provide tax relief for the most vulnerable members of our society, including the low-income victims of Hurricane Katrina and children in families that are too poor to benefit fully from the refundable child tax credit.

Mr. OBAMA. Mr. President, 2 weeks ago, in a debate on the Senate version of the tax reconciliation bill, I proposed an amendment to provide tax relief for victims of Katrina, paid for by restricting the extension of capital gains and dividend tax cuts only to people with incomes under $100 million. My amendment would have made all children of working parents in the disaster area eligible for at least a partial credit.

For the convenience of my colleagues, I agreed not to demand a vote on that amendment. But I rise again to urge my colleagues not to forget Katrina and her victims who continue to struggle. In a bill with $70 billion of tax cuts, surely we can find $274 million to do something for the most vulnerable members of our society.

In the weeks after Katrina made landfall, President Bush vowed to do what it takes to help the region recover. We wanted to believe him. We had witnessed the devastation caused by the hurricane, and we saw the terror of poor families with their lives turned upside down, homes destroyed, jobs and businesses lost, families separated, and lives permanently changed.

At the time, the President said:

> We have a duty to confront this poverty with bold action.

Almost 6 months later, the Government's actions have not matched the President's rhetoric. Evacuees are getting kicked out of their hotel rooms this week because FEMA stopped paying the bill. Thousands of temporary mobile homes ordered by FEMA are sitting empty in nearby Southern States. The Federal response continues to be inadequate to get the families back on their feet.

We can do better for these families. At a time when we are debating $70 billion of tax cuts, most of which will benefit corporations and people who need help the least, why not set aside a small fraction to help those who need it most?

One way to help those who need help the most is to enhance the refundable portion of the child tax credit. Under current law, families who earn less than $11,000 get no benefit from the refundable child credit. That means that a child does not get any benefit from the credit even if her parents work full time at the minimum wage. And the child doesn't get the full benefit of the $1,000 credit until her parents earn close to $18,000, or even more if the child has siblings. As a result, almost 17 million children get less than the full credit. Wouldn't it make sense to recognize the damage wrought by the hurricane and to eliminate the income threshold that excludes the poorest of children from getting the credit? Wouldn't it make sense to say to the children affected by Katrina that they will no longer be denied at least a partial credit so long as their parents are working?

The cost of this fix is estimated at $274 million over 2 years. To get a sense of perspective, that is less than one-half of 1 percent of the cost of this entire bill. It is a matter of common sense and fairness—the least we can do when we are cutting taxes for wealthy Americans. If we do this, hundreds of thousands of this country's most disadvantaged children will see an increase in their credit—not as a handout but because their parents work.

I hope we don't forget the images we witnessed in the aftermath of the hurricane—the people, their suffering, and the devastation. We shouldn't forget the daily struggles families right now are going through trying to rebuild their lives. Let us not forget our Government's promise to do what it takes for families along the gulf coast. Let us not forget our duty, as the President put it, to confront poverty with bold action.

I urge my colleagues to join me in instructing the Senate managers to provide tax relief for the most vulnerable members of our society. Together, let us urge them to remember the low-income victims of Katrina and the children and families too poor to benefit fully from the refundable child credit. Obviously, this is a modest piece of legislation. It is a motion to instruct. My suspicion is that even if it passed, other priorities would move to the fore.

Let me say in closing that it is shameful, what is happening in the gulf coast right now. I think all of us recognize the scope of the devastation. All of us were embarrassed at the slow response immediately after the hurricane. It has now been 6 months. We have not shown the sense of urgency that the American people did privately after the hurricane. I would hope that at least we can send some small signal that we are concerned about the kids who are languishing, who have been uprooted, who aren't in the schools they were attending and in the neighborhoods in which they grew up.

This is one way to send that signal, and I urge my colleagues to support my motion.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Montana.

Mr. BAUCUS. Mr. President, I strongly support extending the deduction for tuition costs through December 31, 2009, as provided for in the Senate bill.

To compete successfully in the world today, America must make education a priority—not only a priority but a very top priority. Why? I think it is pretty obvious. For one thing, our competitors certainly are.

Let's talk about, for example, training engineers. Engineers develop new jobs and new industries. Yet Japan and Europe train twice as many engineers as we do. China trains three times as many. In fact, I think the statistics are even more alarming than that. We are missing the boat. We are missing the boat.

Let's just stop for a minute. If China, Europe, and Japan train many more times than we, especially China, and add Indians to the mix—Indians are training lots of engineers—just think of what that means for the next 5 or 10 years based only on the size of those countries. If they are training many times more than we—and I think the population of India is close to 1 billion, and China is 1.3 billion. In about 10 years, it is going to be somewhat more than 1 billion. And our population is about 280 million, 290 million, something like that. I would say we are way behind the eight ball. We need to spend much more time than we are on education.

Congress has responded with a number of income tax benefits for higher education financing. Tax incentives such as the HOPE scholarship and lifetime learning credits, the Coverdell education savings account and prepaid tuition and college savings plans help American families pay for college. The deduction for qualified higher education tuition and related expenses, section 222 of the Tax Code, was first added as part of the 2001 Economic Growth and Tax Relief Reconciliation Act.

Let me explain more. We cannot allow America's workforce to be left behind. To remain the most competitive and innovative country in the world, we need to make education affordable.

Let me state a small anecdote. I was in Bangalore, India, not too long ago, about 3 or 4 weeks ago, and I asked the head of the research center there, the Jack Welch Research Center, which, frankly, is one of the two or three state-of-the-art research centers General Electric has, I asked the manager of it: Why are you here? Why are you here in Bangalore? Guess what he said.

He said: Because this is where the greatest talent pool is.

I asked: Where is the next greatest talent pool for your top-flight scientists and engineers here?

He said: China.

I asked: Well, where is the United States in terms of ranking for the best talent pool?

Frankly, he said it was way down on the bottom. Not the very bottom. He said: You are down there.

So I asked him: What can we do in America to be more competitive than we are today, to make sure we have the best jobs for our kids, and, more importantly, for our kids and grandkids so that we in America can pass on to our kids and grandkids the same standard of living we have today, which our parents gave to us?

His answer: You guys have to spend more on education, and you have to make it less expensive so more students can get the quality education they want and need. Also, you have to lower your education costs. It is too costly in America to get a good education. He said: You also have to lower your health care costs. Your health care costs are way, way too high compared to every other country in the world.

Sure, we have high-quality health care, he said, but we spend twice as much per capita on health care in America as does the next most expensive country.

Are we twice as healthy as the next most expensive country? I doubt it.

But right off the top, the manager of that technology center in Bangalore, India, made it very clear to me that we Americans have to spend a lot more time boosting our talent pool so we have more scientists and engineers than we currently have in the United States. We have a lot of them, and they are good, but it is also very clear that we are slipping or, to put it differently, other countries are catching up and are going to pass us soon if we don't get our act together.

It costs today almost $43,000 a year for tuition, fees, and room and board in a 4-year public college. Just think of it: $43,000 a year; that is a public college. At a 4-year private college, it costs more than $100,000. That is just ridiculous, that it costs that much for a college education in America today. It is outrageous, and it puts education far out of reach for so many students.

From 1981 to 1995, tuition at a 4-year public college/university increased by 234 percent. That is right. From 1981 to 1995, tuition increased by 234 percent. That is three times the growth in median household income and more than three times the increase in the cost of living over this same period. That is unsustainable, clearly unsustainable. That is wrong. I don't know why this country doesn't start to address that more directly, more frontally, because the earlier we do, the more jobs and the more high-paid jobs we are going to have for Americans.

For tax years 2002 and 2003, taxpayers with adjusted gross incomes of less than $65,000—or say $130,000 for married couples filing jointly—are allowed to deduct $3,000 for qualified higher education tuition and related expenses. Three thousand dollars. Remember how costly education is, the figures I just gave you a moment earlier.

For tax years 2004 and 2005, the maximum deduction is $4,000 for those same families and $2,000 for Americans with adjusted gross incomes of $65,000 to $80,000 for a single person or from $130,000 to $160,000 for married couples filing jointly. Unfortunately, this important deduction expired at the end of 2005.

Critics of extending the deduction for tuition costs ask why we have both this deduction and the HOPE and lifetime learning tax credits. It is true that the current system can be complicated, and it is complicated. Families that qualify for tax credits are sometimes better off with a deduction. Unfortunately, families don't always know which tax choice is best for them. So we are looking at whether the tax incentives for education should be combined or should they be simplified. But until we do, I wish to put the deduction on the same timetable as the tax credits which are in effect until 2010.

Let us look at the House. The House only extends this deduction for 1 year—clearly not enough. Senators on both sides of the aisle have agreed that this deduction is important to working families trying to get their children a good education. We must, therefore, preserve this deduction and, as proposed in the Senate bill, extend this important deduction for 4 years.

If America is going to be competitive in the global economy, it must make education a top priority. Extending the deduction for tuition costs through December 31, 2009, does exactly that by helping provide our children with affordable education. Therefore, I will work hard to ensure the deduction for tuition costs is extended through December 31, 2009, as provided for in the Senate bill, and I urge my colleagues to support this extension.

I may sound like a broken record, but every fiber in me, my bones and my muscles, my blood and whatever is in me, I just know that we have to work a lot harder, a lot more effectively to address American competitiveness, and most of that comes down to education. It is making sure that our kids and we ourselves are educated as best as we possibly can. Education is a lifetime effort; it is not just K through 12. It is lifetime. It also begins at very early ages—Prestart, Head Start, K through 12, college. It also includes votech training for job skills. It is continuing education. It is bringing us more up to date. For those of us who graduated a long time ago, it is making sure we are continuing to be up to date with what is going on and are able to translate new ideas into jobs.

I have traveled a lot overseas and I have seen a lot of countries, especially in Asia. I can tell you, they are on the march. Speaking primarily of the Chinese and the Indians—clearly Japan is a very large country, with the second largest economy in the world, but it will not be long before China is the largest economy in the world. I am guessing by the year 2030 China will be the largest economy in the world. That is not far away. It is only 24 years from now. I may be off by 10 years; it may be 10 later or 10 earlier. But 24 years is now, in terms of the time it takes to get us up to speed, the time it takes to get education programs in place, the time it takes to make sure we are graduating more scientists and engineers and have a tax and health care policy that makes more sense, and an energy policy that makes more sense.

We are a wonderful, big country. We are extremely lucky. We are the luckiest people in the world to be Americans. We don't see people heading for the door to live in other countries. Rather, people want to live in America. They want to come to America because of our values, et cetera.

It is true in the last couple of years our image overseas has been greatly tarnished. The image of America today is not what it was several years ago. That is due, I think, primarily to the foreign policy of this country. But nevertheless, overall most people would rather live in America than some other country. We Americans certainly would. We want that to continue as long as it possibly can, not just for ourselves but, more importantly, for our children and for our grandchildren. That is the legacy we want to pass on to them.

To do that, you have to have some kind of plan. You can't let these go helter-skelter. Other countries have plans. They definitely have plans. It is clear. China has a plan. I don't know if they are going to be successful, but they have a plan. They know what they want to do. They know that they have to boost and are boosting their science and engineering education. They know they have to develop the interior provinces, not just the eastern coastal provinces. What are they doing about it? They are doing something about it. They have a plan. They are spending a lot of money and building big superhighways out in western China. There is a big, fancy airport in western China. I was in Chunking 4 or 5 weeks ago, at a huge, massive, fancy, wonderful airport in western China. That is government policy.

They have plans to deal with unemployment. They have plans, frankly, to put on what they think will be the world's best Summer Olympics in 2008. I bet they have a plan to win more gold medals than any other country, too. They have plans. You have to take your hat off to them because they are doing what they think they have to do to progress and bring themselves out from the lower living standards they have had for so many years.

It is true many Chinese live in poverty. It is true many Indians live in poverty. That is also true. But they have plans to address that. I remember not too many years ago I was in Shanghai. I was talking to the mayor of Shanghai about all these wonderful, fancy buildings in Shanghai. I said: You must be proud of all you are doing in Shanghai.

The mayor turned to me and said: We have problems.

I said: What do you mean?

We have high unemployment by China's standards. This is what we are doing to retrain people. Some of these jobs are old jobs. As the Chinese Government works to downsize these state-owned enterprises, Government-owned enterprises that are all subsidized, they know as they enter the World Trade Organization they have to get rid of a lot of these state trading enterprises. Man, oh, man, they know as that happens they are going to have huge unemployment problems. So they have details, all they are trying to do, in their plan to address that job loss in China.

Then he pointed to the river there in Shanghai and he said: Pollution; this river is polluted. We have a 10-year plan to clean up this river so it is no longer polluted.

I don't know whether it has been successful or not. That was 5 years ago. I assume the river is probably polluted. But you could tell, talking to him, he had plans to address the problems that we have.

India certainly is the same. When I was in India a couple or 3 weeks ago, they have plans how they are going to build up India. I went to the subway in Delhi. That is a fancy subway. That makes our subway in Washington, DC—it is comparable. But guess what. In the Indian subways you can use your cell phone because they make sure when they tunnel under they have the radio stations there, the towers, so you can use your cell phones. They are building 18 more subways in India, fancy ones.

Other countries are building them. It is not us. When I was there, I heard constantly from all over India: Where are the Americans? Where are you? Australians are here and Malaysians, other countries are here, Germans and French. The subway was 60 percent Japanese financed. Where are the Americans? They want us there, but we are not there.

What I am saying is things are happening in this world. We have to get with it. Much of that is education. Much of that is learning what is going on. Much of that is forming partnerships where both countries do well. We can't stick our heads in the sand. Things are happening and I think a large part of this is education.

Let me say this again, about that same point. When Tom Friedman's book came out, "The World Is Flat," I took it on myself to travel around the United States by myself and ask CEOs, What do you think of this book? Have you read this book? They all read it, of course.

I said: What do you think? Do you agree? They all agreed. Some said: This is scary. Some said: Yes, this is a challenge.

Then I asked the next set of questions: What do we do about all this? Sure, it is true, largely true. Sure, it is a little scary. Sure, it is a challenge. What do we do about it?

That kind of set them back a little bit. They hadn't thought a lot about solutions; a little bit. But the solution they all tended to gravitate to was education. We Americans have to focus much more on quality education, quality teachers. We are doing a good job. I got a great education when I grew up in Helena, MT, in Missoula, MT. The teachers, I thought, were excellent. They were tough and they were good.

Current teachers are good. But all I am saying is whoever we are, we know we have to keep moving and progressing. You know when you tread water you are likely to sink. You can't keep treading water. You have to go ahead.

I am often reminded of the former head of Intel, Andy Grove, who wrote a book, "Only The Paranoid Survive." That is probably true in the semiconductor industry, but I think it is partly true in life. That is not to say we all have to be paranoid. Clearly not. But it is to say you have to be vigilant, and really vigilant.

Frankly, if I were President, what I would do is change this budget around massively. I would put a lot more in this budget for education. I would put a lot more into making sure we can solve our health care cost problems in this country; more coverage. I would make sure we tackled and made America energy independent. This thing about independent 25 years from now is way too tepid, way too weak. We have to get started now. I suggest developing DARPA for energy. DARPA, in the Defense Department, developed lots of great technologies, military technologies, applicable in the private, civilian sector. We can do the same on energy. That will attract bright minds. It will help us be more energy independent, make us less hostage to events overseas.

It is so clear to me. I may be wrong, but I tell you it is clear to me, anyway, what we need to do. I think in my gut most Americans sense that, this sort of sense we have to get moving here. I think a lot of Members of this body would be surprised, if we were to be much more bold, as to the gratitude Americans would show to Congress for finally taking the lead and doing something.

We have to get organized somewhat, not seen to be prescriptive, not seen to pick winners and losers, but I am saying harness the energy that is in America and help focus it a little more on where we should be going. After all, that is why many of us sought these jobs. We sought these jobs to represent our people in the best way we could. We sought these jobs because we thought, many of us—most of us think we have pretty good judgment and priorities and common sense. If that is the case, I urge us to get out of our little boxes, get out of our little cubbyholes, get out of our daily routines, get out of the stuff that pulls us apart from our real job here, just a little bit—maybe for 30 percent of our time—and work more on long-term strategic measures and do what is right and address the core of some major issues that face us, rather than getting caught up in the routines around here, our series of meetings.

Meetings are good. Seeing constituents is great. We serve our employers back home. But we are also here as a body, 100 of us, and I think it is time for us, working with the other body and the executive branch, to truly put partisan politics aside and get something done that makes some sense.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

MOTION TO INSTRUCT CONFEREES

Mr. HATCH. Mr. President, I share some of my dear colleague's frustrations about how this body runs and I wish we would work better together. I think it would do a lot of good for our country. I would like to see that happen.

I rise today to offer a motion to instruct the conferees to extend the research credit permanently. I understand one of the motions to instruct filed by one of my colleagues on the other side of the aisle says we should extend the research credit.

Mr. BAUCUS. Mr. President, I don't want to be too picky here, but don't we have to ask consent to put these motions aside? If that is proper, whatever is the routine here, so we have some consistency.

The PRESIDING OFFICER. The Senator is correct. The Chair was not understanding that the Senator was offering a motion.

Mr. HATCH. I wasn't offering it, but I will be happy to move to put it aside when the time comes.

I understand one of the motions to instruct, as I was saying, filed by one of my colleagues on the other side of the aisle, says we should extend the research credit for an additional 2 years. In concept, I certainly agree with this idea. The research credit is vital to America keeping its lead in world innovation. But if we are instructing the conferees as to better tax policy, why should we stop at a 2-year extension? If the research credit is worthy of an extension of an additional 2 years, why is it not worthy of a permanent extension?

Along with the distinguished Senator from Montana, Senator BAUCUS, I have been for many years an advocate of making the research credit permanent. As the lead Republican sponsor of legislation to provide for a permanent research credit, it seems I have come to the floor nearly every year for the past dozen years to either introduce a bill to make the research credit permanent or to offer an amendment to do the same.

I might add that Senator BAUCUS, the distinguished Senator from Montana, has been my partner in this matter—or should I say I have been his partner in this body. We have worked together to try and do this, along with a whole raft of other Senators, usually almost 100 percent.

In 2001, the Senate overwhelmingly passed an amendment to the Economic Growth and Tax Relief Reconciliation Act to make the research credit permanent. Unfortunately, the permanent credit was dropped in conference in favor of yet another temporary extension. That amendment in 2001, however, was not the only time the Senate voted for a permanent extension of the credit. It has happened several times. A very large majority of Senators has voted in favor of a permanent tax credit.

My point is that practically every Senator supports the research credit being made permanent. Despite this wide support, permanence has not yet happened. Instead, we keep extending the credit for a year or two at a time.

Why do we do this? The answer is simple. The artificial budget rules under which we operate prevent us from making the credit permanent because the cost of the permanent extension is determined to be far in excess of the cost of an extension for a year or two.

Another reason that we extend the research credit for a year or two, rather than permanently, is that we all seem to be stuck in the mind-set that perpetual temporary extensions represent de facto permanence. Why worry about making the credit permanent when there is little or no doubt about it getting extended again? Doing so represents poor tax policy, but it seems to be the way Congress likes to handle this problem.

I will never forget the gap that once occurred between the expiration of the tax credit and our ability in the Congress to get it restarted.

Let's be realistic. We all know that the cost of these temporary extensions is no less than the cost of a permanent extension. If we think we are saving revenue to the Treasury by our current practice of extending the credit a year or two at a time, we are only fooling ourselves.

However, by not making the credit permanent, we are driving down the amount companies are willing to spend on innovative research. Even though we all know that the next extension for a year or two is practically a sure thing, the private sector does not see it that way. They do not, and can not, plan for the credit on a long-term basis if we only extend it for a temporary period.

Thus, we continually engage in a kind of self-defeating behavior—trying to fool ourselves into thinking we are saving taxpayer money by passing these temporary extensions while we tell ourselves it does not matter anyway because we are always going to extend the credit again for a year or two when it comes due. All the while, though, companies are keeping down their R&D spending because of the uncertainty provided by this practice.

Now, we see a Democratic motion to instruct the conferees to insist on another two years of the research credit, but to be paid for by not extending the lower rate on capital gains and dividends, which is in the House bill.

That seems not only extreme, it knocks out a very important set of tax principles that have kept the economy going. I think we ought to have all of these.

Let's face the facts. This motion is nothing more than a weak attempt to embarrass Republicans by forcing us to choose between the research credit and the capital gains and dividends provisions.

However, it does not work for all the reasons I have indicated. The motion presents us with a false choice. Another temporary extension of the research credit in this body, whether for 1 year or for 2 years, is practically a foregone conclusion. Virtually all of us are in favor of it. It is going to happen regardless of this motion to instruct.

My point, and the point of my own motion to instruct, is to ask, if we really believe the research credit is good policy, why not instruct the conferees to push for a permanent credit? It does not cost any more than a series of temporary extensions.

The motion from the other side is not really about the research credit, and everyone knows it. It is about the lower rates for dividends and capital gains.

I continue to hear claims that Republicans are interested only in giving tax breaks to the rich. This mantra is false and insulting. We do not advocate continuing the lower rates on dividends and capital gains because we want to do a favor for the rich.

We believe that people respond to incentives, and that higher net benefits of investment leads to more saving. There is ample evidence for this, and this concept is not controversial among economists—they might argue how sensitive saving is to the returns on saving, but no one disputes that higher returns affects saving.

Higher saving leads to more investment by firms, which increases productivity and with it, wages and economic growth. Every worker benefits from an increase in saving. Nobel Laureates Robert Lucas and Ed Prescott have stated that reducing the tax on investment income is the closest we can come to a free lunch.

Some of my colleagues would have the American people believe that by supporting an extension of the lower tax rate on capital gains and dividends, Republicans are hurting those with lower incomes. I submit that by increasing saving and investment, we are helping lower income people more than we could in any other way.

Besides, if you look at how many people are now invested in the market, either through pensions or otherwise, or through mutual funds or otherwise, a good 50 percent of all taxpayers in America are now in the stock market.

Frankly, they all benefit from having these lower rates that we have been talking about.

Incentives lead to more saving. More saving leads to more investment. More investment leads to higher productivity and higher economic growth. Productivity and economic growth lead to more and better jobs for everyone. It is time for us to stop playing political games and get to work helping Americans realize their highest potential. We can start by appointing the conferees to the tax bill.

That is something that in the past we never had difficulties with, but in the last few years we have.

I send this motion to instruct conferees to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending motion is set aside.

The clerk will report the motion.

The legislative clerk read as follows:

Mr. HATCH moves that the managers on the part of the Senate at the conference on the disagreeing votes of the 2 Houses on the Senate amendment to the bill H.R. 4297 (to provide for reconciliation pursuant to the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95)) be instructed to insist on the inclusion in the final conference report of a permanent extension of the credit for increasing research activities (based on section 108 of the amendment passed by the Senate), in order to improve American competitiveness.

Mr. HATCH. Mr. President, I understand that will be placed in the proper order and to be considered in the next few days.

The PRESIDING OFFICER. The Senator should know that it is now pending.

Mr. HATCH. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BAUCUS. Mr. President, I first commend my friend and colleague from Utah. I agree with him. I think it should be permanent. I urge my colleagues to support the motion to instruct making it permanent. We will have a little more certainty and help in research and development in our country. It helps us be more competitive. I compliment him for offering that motion to instruct.

I also speak in favor of the Stabenow motion to instruct with respect to the R&D tax credit which will be coming up shortly, essentially because we have to move ever more aggressively to invest more in research and development in our country. And the current temporary nature of the credit just makes no sense.

The Senate-passed bill is a credit extension for 2 years. I remind my colleagues that the current credit is expired. It expired at the end of last year. We are now in February. The Senate bill extends it for calendar years 2006 and 2007, and the House bill just has 1 year, 2006.

I am for more predictability, more certainty, especially with expect to the R&D tax credit.

I also received a letter from the R&D Credit Coalition, a group representing 85 trade associations and more than 1,000 small, medium, and large companies. In the manufacturing sector alone, which performs nearly 60 percent of all private and industrialized R&D in the United States, there are 14 million manufacturing employees who get the benefit of this credit.

The coalition in their letter said:

> The Coalition believes the Senate-passed provision will help make the credit a more powerful incentive to undertake long-term, high-risk R&D projects in the United States. Consistent with the provision you and 45 of your Senate colleagues have taken as sponsors of a permanent and strengthened R&D credit, extending this credit for an additional year will better enable the intended incentive effect of the tax credit to be realized.

I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

R&D CREDIT COALITION,
Washington, DC, February 13, 2006.

Hon. CHARLES GRASSLEY,
Chairman, Committee on Finance, U.S. Senate, Washington, DC.

Hon. MAX BAUCUS,
Ranking Democrat, Committee on Finance, U.S. Senate, Washington, DC.

DEAR CHAIRMAN GRASSLEY AND RANKING MEMBER BAUCUS: On behalf of the members of the R&D Credit Coalition, we thank you for your leadership in amending the Tax Relief Act of 2005 to include a two-year extension of a strengthened research tax credit (the "R&D" tax credit). It is critical that the credit be extended and strengthened and the additional length of the proposed extension will provide needed certainty to businesses that are making investment and hiring decisions.

The Coalition believes the Senate-passed provision will help make the credit a more powerful incentive to undertake long-term, high-risk R&D projects in the United States. Consistent with the position you and 45 of your Senate colleagues have taken as sponsors of a permanent and strengthened R&D credit, extending this credit for an additional year will better enable the intended incentive effect of the tax credit to be realized. The best incentive is one on which businesses can rely and one that applies broadly to all research-intensive companies. The members of the R&D Credit Coalition applaud your efforts to strengthen this credit and to lengthen its extension period. We look forward to working with you on this issue.

Sincerely,

BILL SAMPLE,
Microsoft Corporation, Chair, R&D Credit Coalition.
DONNA SISS GLEASON,
The Boeing Company, Vice Chair, R&D Credit Coalition.
KEITH H. SMITH,
United Technologies Corporation, Cochair, R&D Credit Coalition, Government Affairs Committee.
KAREN MYERS,
CA, Cochair, R&D Credit Coalition,

Government Affairs Committee.
MONICA M. MCGUIRE,
National Association of Manufacturers, Executive Secretary, R&D Credit Coalition.

Mr. BAUCUS. Mr. President, spending for R&D will increase in 2006, but America has challenges to face, such as major increases in the funding of offshore operations. The total amount of foreign direct investment, including R&D, is shifting heavily towards India and China, and competition for qualified researchers will increase markedly over a short period of time.

Most important is to keep American jobs. Keep them here, keep them at home. R&D has some of the most highly paid and intellectually stimulating jobs. With offshore operations and foreign R&D investment shifting to India and China, jobs for U.S. workers will decrease in this area.

I strongly urge support of both the motion to instruct by Senator HATCH and also the motion to instruct that will be presented later, I assume, by the Senator from Michigan, Ms. STABENOW.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. I yield such time as the Senator from Arkansas may use.

The PRESIDING OFFICER. The Senator from Arkansas.

Mrs. LINCOLN. I thank my colleague from Montana, Senator BAUCUS, who, as always, does a tremendous job in helping the entire Senate stay focused on what is important, helping us to reflect on where our values lie as Americans, and certainly for us as leaders of this great Nation.

I come to the Senate today to once again discuss an issue that is near and dear to my heart, an issue that is of great importance to all working families across this country. As we look now at what working families are going through—astronomically high fuel prices, what it is costing them to heat their homes; the cost of health care; the cost of educating their children and saving for higher education, which is going to increase again this year and years to come; trying to be competitive in their jobs and the global economy—in looking at these issues, I and many other Senators have recognized how tough it is for working families across this country.

In 2001, and again in 2003, Senator SNOWE of Maine and I worked together, with the help of our chairman on the Committee on Finance, Senator GRASSLEY, and our ranking member, Senator BAUCUS, to ensure that low-income working families with children receive the benefit of the child tax credit. It is so important to remind ourselves: we know how near and dear our children are to us; other people's children are just as near and dear to them, regardless of their income level.

As the chairman said earlier today, I, too, feel a bit as though I am trapped in that movie "Groundhog Day," although for a different reason. I feel that I am trapped in "Groundhog Day" life. I have been in this instance time and time again, and I come to the Senate today to again ask my colleagues to help me ensure that low-income working families are not forgotten as we discuss tax relief. It is absolutely essential we put ourselves in the shoes of other working Americans, the working families who are the fabric of this great Nation, and say: We believe your children are just as important as our children to the future of this country.

I applaud the action taken in the Senate the week before last. I was pleased we affirmed that the permanency of the child tax credit is a priority of the Senate and should be addressed during conference on this tax reconciliation bill. Even though I applaud that effort, I still say it is not enough. It is not enough to not look further and see those working Americans who are still not going to be helped. It is not enough because the credit in its current form does not work for all low-income working families.

We can and should take one additional step. As some may be aware, to be eligible for the refundable child tax credit, working families must meet an income threshold. If they do not earn enough, they do not qualify for the child credit. The problem is, some of our parents are working full time every week of the year. Yet they still do not earn enough to meet the income threshold to qualify for the credit, much less to receive a meaningful refund.

Heaven forbid we look at what they are making. Is it enough to safely and adequately raise their children? We have an obligation to make sure those people, those hard-working Americans who were willing to play by the rules to get a job, to work hard, to perform things that are important to our quality of life, too, that they have the same opportunity to love and nurture their children and work hard to provide their children a better opportunity than they may have had.

I will say this again because it is right and it is important people know. I will say it again to make sure the point is not missed. We have full-time working parents who do not qualify for the child tax credit because their incomes are simply too low. Again, people playing by the rules, working hard so our lives might be a little bit better, yet under minimum wage, they do not make enough.

If we are talking about American values, if we are talking about family values, if we want to reinforce the aspect of work instead of handouts, if we want to reinforce caring for all of America's children because we know all of America's children are part of our future, our future leaders, if what we want to do is reinforce working, caring for our children, taking the responsibility of our families—that does not mean just my children or just a few children; it means all children—are we not then going to step up to the plate and say to those hard-working Americans that your children are just as important as my children?

In 2003, the income threshold was set at $10,500. The threshold is indexed for inflation and thus has increased the last 2 years. It was $10,750 in 2004 and $11,000 in 2005. And, yes, it will go up again in 2006.

Unfortunately, the low-income worker's wage is not increasing at the same pace, or even at all, for that matter, as we look at the low-income working wages that exist in this country. A single working mother or father in the State of Arkansas or across this Nation perhaps, who makes minimum wage, is going to get $5.15, working a 40-hour week, every week of the year. That is not taking a vacation, taking their family to the beach, going to Disney World or anything else. It is working a 40-hour week, every week of the year, 52 weeks out of the year, with an income of only $10,712 a year. That came in under the threshold, both in 2004 and 2005; it will, most definitely, come in below the threshold this year, in 2006.

It is wrong—it is absolutely wrong—to provide this credit to some hard-working Americans while leaving others behind. The single, working parent who is stocking the shelves in your local grocery store is every bit as deserving as the teacher or accountant or insurance salesman who qualifies for the credit in its current form. And, yes, they love their children just as much as you and I love our children and want for them all of the great things that are available to young American children when they can be nurtured and cared for and encouraged and taken care of in their families.

We must address this inequity, and we must ensure our Tax Code works for all Americans, especially those working parents forced to get by on minimum wage.

Senator SNOWE and I have proposed a solution to this horrible inequity. If we were to simply de-index the income threshold and set it at a reasonable level, such as $10,000, all full-time working parents, including those making minimum wage, would qualify.

We talk day in and day out about how important our children are. We talk about making them a priority in this country and recognizing how they weave the fabric of this great Nation and the future. We understand, as parents, it is not easy. It is not easy to raise children in this environment, with everything from Internet security to making sure education is available, and health care, including simple nutritional needs. We have 600,000 Arkansans living with food insecurity, the majority of which are children.

Why is it we cannot take the extra step to make sure that, again, those who are playing by the rules, those who are willing to work, to work to care for their children and their families—we are not going to give them the same benefit of that Tax Code?

This is a simple, easy solution Senator SNOWE and I have offered to a very serious problem. I will not rest until we get it done. As we prepare to enter conference with the House on this tax reconciliation bill, I encourage my colleagues to support Senator SNOWE and me in our efforts to fix this inequity.

As many of you may recall, the last time Senator SNOWE and I went to work to improve the child tax credit, back during the debate of the President's tax package in 2003, tax relief for low-income families was left behind in the conference. I hope we have changed. I hope we have refocused ourselves and our priorities. I hope we do recognize all working American families are struggling today with high gas prices, the cost of health care, and higher education—education at all—that all working families are struggling to heat and cool their homes with high energy costs and are struggling to keep the jobs they have in their globally competitive companies.

Please, let's not repeat this mistake again. If the opportunity arises to take action on the child tax credit in this conference, we must not only extend it, we must ensure that it works for all of America's working families.

We should always remember that budgets reflect priorities, the priorities of those who put those budgets together. We know priorities create choices. The choices we make in budgets and in decisions on the floor of the Senate and in conferences over such critical issues—our choices—have real and substantive consequences, not just to those working families out there who so desperately want success for their child, but it has consequences for our Nation. If we set our priorities so low that we leave behind the children of hard-working American families, the consequences for our Nation will be great.

I thank you, Mr. President, and again encourage my colleagues to support the efforts not only of a child tax credit but also making sure it is fair to all working families of our Nation.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DEWINE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DEWINE. Mr. President, I ask unanimous consent that the pending motion be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

MOTION TO INSTRUCT CONFEREES

Mr. DEWINE. Mr. President, I have a motion at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> Mr. DEWINE moves that the managers on the part of the Senate at the conference on the disagreeing votes of the 2 Houses on the Senate amendment to the bill H.R. 4297 (to provide for reconciliation pursuant to the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95)) be instructed to accept the veterans' mortgage bonds expansion provisions contained in section 303 of the bill as passed by the House of Representatives with such revisions as are necessary to provide veterans in all 50 States with access to lower-rate mortgages.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, this proposal would instruct the conferees to accept the House provision that expands the qualified veterans mortgage bond program. The qualified veterans mortgage bond program allows States to issue tax-exempt bonds that are used to fund mortgages for our veterans. Because the States borrow this money at low, tax-exempt interest rates, they are able to pass that lower rate on to veterans for home mortgages. This means veterans are able to finance a home at a lower interest rate than they otherwise would have been able to.

The program in place today is limited to veterans who served before 1977. Mr. President, this motion will instruct the conferees to accept the House provision eliminating that limit. By doing so, we can offer to all the brave men and women who have served and are serving our Nation the important benefits of this program.

The current program is also limited to veterans who settle in Alaska, California, Oregon, Texas, and Wisconsin. This motion instructs the conferees to bring back a provision that would permit veterans of all States to have access to these lower rate mortgages.

This is the right thing to do for our veterans. We owe a great debt of gratitude to the men and women who have served our country in the armed services. These brave men and women, with their honor and courage, have kept our Nation secure and our future bright. They deserve the assistance that we can provide with this mortgage bond program. It is simple to do and it will have a profound impact on many military families. I strongly encourage my colleagues in the Senate to support it.

Mr. President, while Senators cannot cosponsor motions to instruct, Senators SANTORUM, GRASSLEY, BURNS, and CHAFEE have expressed their support of this motion.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DEMINT). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that the pending matter before the Senate be set aside so I can offer a motion on behalf of Senator MENENDEZ.

The PRESIDING OFFICER. Without objection, it is so ordered.

MOTION TO INSTRUCT CONFEREES

Mr. REID. Mr. President, on behalf of the junior Senator from New Jersey, Mr. MENENDEZ, I offer the following motion to instruct the conferees on tax reconciliation.

The PRESIDING OFFICER. The clerk will report the motion.

The bill clerk read as follows:

> Mr. MENENDEZ moves that the managers on the part of the Senate at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 4297 (to provide for reconciliation pursuant to the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95)) be instructed to report a conference report that includes the Senate-passed "hold-harmless" relief from the individual alternative minimum tax (AMT) in 2006, and does not include the extension of lower tax rates on capital gains and dividends.

Mr. REID. Mr. President, this motion is to instruct the conferees to insist on relief from the alternative minimum tax—known as AMT—in the final bill they report back from the conference committee.

It reaffirms the Senate's position that AMT relief should take priority over extending tax cuts for capital gains and dividends.

If the conference agreement fails to include relief from the AMT, 15 million taxpayers will face higher tax bills this year.

The Senate has expressed its support for AMT relief two times as this legislation has made its way through the legislative process.

First, the Finance Committee included AMT relief in the bill that it reported to the Senate floor.

Then, during floor consideration the Senate overwhelmingly approved the amendment offered by Senators MENENDEZ, SCHUMER, KERRY, FEINSTEIN and others that expressed the Senate's desire that AMT relief take priority over tax cuts for capital gains and dividends.

That amendment was approved by the Senate by a vote of 73 to 24.

The conferees for the Senate should respect the Senate's instructions and include AMT relief in the final bill.

There are two reasons that the Senate conferees should insist on including AMT relief in the final bill and reject tax cuts for capital gains and dividends. First. AMT relief is needed to protect taxpayers this year. Married couples with children are most affected by the AMT.

Absent any relief for next year, nearly three-quarters of married couples with two or more kids and income between $75,000 and $100,000 will be subject to the AMT.

In contrast, almost 50 percent of the benefits of a reduction in the tax rates on capital gain and dividend income goes to taxpayers with $1 million or more, which is .3 percent of all taxpayers. The average tax cut for these taxpayers will be about $32,000.

The higher AMT exemption levels that were enacted in 2003 expired at the end of last year. Without this provision, middle-class taxpayers will be hit with higher AMT liabilities when they file their 2006 returns. The lower tax rates for capital gains and dividends do not expire until 2009.

Second, extending lower tax rates on capital gains and dividends reflects misplaced priorities. The benefits of lower taxes on capital gains and dividends go disproportionately to wealthy taxpayers.

According to an analysis by the nonpartisan Tax Policy Center, jointly run by the Urban Institute and the Brookings Institution, about 50 percent of the benefits of lowering taxes on capital gains and dividend income goes to taxpayers with $1 million or more of income.

In 2005, the average tax cut for millionaires was nearly $38,000. In contrast, 92 percent of taxpayers received a tax cut of less than $100 as a result of the reduced tax rates on capital gains and dividends.

At a time when we face record budget deficits, Congress should not consider tax cuts whose benefits so clearly go to the most well off in our country.

Mr. KERRY. Mr. President, less than 2 weeks ago we debated the importance of addressing the individual alternative minimum tax, AMT. Without congressional action, this year 17 million families will be impacted by the AMT. And this problem is growing. Without a permanent solution to the AMT, as many as 30 million families will be impacted by it in 2010.

We all seem to agree that the alternative minimum tax needs to be addressed, but we differ on how big a priority it should be. Very recently, 73 Members of this body voted to address the AMT before addressing tax cuts that do not expire until the end of 2008. This sense of the Senate specifically stated that "protecting middle class families from the alternative minimum tax should be a higher priority for Congress in 2006 than extending a tax cut that does not expire until the end of 2008."

Some of my colleagues believe we can address both the AMT and extend the capital gains and dividends tax cut, but I am concerned this will be difficult to do within the confines of a $70 billion tax bill. The House has made their position clear that they would rather address AMT outside the reconciliation tax bill. This is troubling because it would likely result in a total of over $100 billion in tax relief that is not paid for. We cannot afford another costly debt-financed tax cut. The Senate-passed bill does include some revenue offsets, but I do not expect the conference report to include any revenue offsets.

Not less than a week after we debated the alternative minimum tax, the administration's budget submitted to Congress for fiscal year 2007 failed to adequately address the AMT. Once again, the budget makes the 2001 and 2003 tax cuts permanent but ignores the looming problem of the AMT.

The President only chose to address the AMT for 1 year—2006. He chose not to address it for fiscal year 2007. In addition, the relief provided in the budget for 2006 is not as generous as the AMT relief in the Senate-passed bill. Under the budget proposal, an additional 1.2 million families would be impacted by the AMT. The Senate-passed bill prevents additional taxpayers from being impacted by the AMT. The budget deliberately leaves out a more permanent solution for the AMT for two reasons. First, the AMT would add additional costs to the budget. Second, the AMT masks the true costs of the 2001 and 2003 tax cuts.

Back during the debate on the Economic Growth and Tax Relief Reconciliation Act of 2001, I offered an amendment that would have exempted taxpayers with incomes of $100,000 or less from the AMT. The reason I offered this amendment was that I was concerned about the impact of the AMT on families who were never meant to be affected by it.

In 1998, we began to notice that something was happening that was unintended—the AMT was beginning to encroach on middle class taxpayers. At that time, the AMT was expected to impact over 17 million taxpayers in 2010. The AMT problem resulted because the regular tax system is indexed for inflation, while the personal exemptions, standard, deduction, and AMT are not. Under the AMT, exemption amounts and the tax brackets remain constant. This has the perverse consequence of punishing taxpayers for the mere fact that their incomes rose due to inflation.

The AMT has another perverse consequence. It punishes families for having children. The more children a family has, the lower the income necessary to trigger the AMT. For example, if no action is taken in 2006, a family with four children with an income of $58,500 would be subject to the AMT while a family with one child would have to make $72,000 to be affected.

As we debated the Economic Growth and Tax Relief Reconciliation Act of 2001, I stressed the fact that the legislation would result in more individuals being impacted by the AMT and that not addressing the AMT hid the real cost of the tax cuts. This holds true today. Revenue estimates show us that it would be cheaper to address the AMT if the tax cuts were repealed than if the tax cuts were made permanent.

A choice was made in 2001 to provide more tax cuts to those with incomes of over a million dollars rather than addressing a looming tax problem for the middle class. The Economic Growth and Tax Relief Reconciliation Act of 2001 did include a small adjustment to the AMT, but it was not enough. We knew at the time that the number of taxpayers subject to the AMT would continue to rise steadily. The combination of lower tax cuts and a minor adjustment to the AMT would cause the AMT to explode.

The amendment that I offered would have simply exempted those with incomes of less than $100,000 from the AMT and it was offset by decreasing the amount that the top rate would be reduced. It would have reduced the top rate to 37 percent instead of 35 percent. This amendment was not a panacea to the AMT, but we would not be in the situation that we are today because the amendment would have countered the interaction between the tax cuts and the AMT by exempting middle class taxpayers. The Joint Committee on Taxation estimated that the amendment would have prevented 18 million taxpayers from being impacted by the AMT.

Each year that we wait to address the AMT, more taxpayers are impacted and the cost of addressing it increases. We missed an opportunity in 2001 to address the AMT. Repeatedly, the AMT has been pushed aside to give priority to making the tax cuts for the wealthiest Americans permanent. So often we hear that the bulk of the tax cuts assist the average American family. This is ironic because by 2010, the AMT will take back 21.5 percent of the promised tax breaks for individuals making between $75,000 and $100,000 per year and 47 percent from individuals making between $100,000 and $200,000. However, households with annual income over $1,000,000 will only lose 9.2 percent of the tax cuts.

Once again today, we have the opportunity to choose to help hard-working families or very wealthy investors. We can choose to protect 17 million middle class families by voting for the motion offered by my colleague, Senator MENENDEZ. Not addressing the AMT this year would result in tax increases as large as $3,640. The other choice is to extend the capital gains and dividends rate cuts that go to households with income over $1 million. Over 50 percent of the benefit goes to these households that make up only 0.2 percent of all households. These tax cuts do not expire until the end of 2008.

Last week, the Senate Finance Committee heard from Treasury Secretary Snow that the capital gains and dividends tax cut helps individuals with income of less than $50,000. I believe that he was trying to make the argument that more middle class taxpayers would benefit from the capital gains tax relief than from AMT relief. I disagree. The important statistics to look at are the percentage of income that is capital gains and dividends and the amount of the tax cut. In 2009, those making over $1 million would receive an average tax cut of $32,000 and those with incomes below $50,000 would receive an average tax cut of $11. IRS income tax data for 2003, which is the most recent data, shows that capital gains and dividends income accounts for nearly one-third of all income for millionaires. For those making less than $100,000, capital gains and dividends income accounts for 1.4 percent of total income and it is even less for those with incomes of $50,000.

I urge my colleagues to choose hard-working families. We can reexamine the issue of capital gains and dividends tax cuts once we have our fiscal house in order. The budget that was sent to Congress last week projects the largest deficit in history for fiscal year 2006. In times of deficits, we have to carefully choose our priorities. It is time for Congress to address the AMT which has turned into the family tax.

Mr. BAUCUS. Mr. President, I ask any motions be set aside so the Senator from Michigan can offer a motion to instruct.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Michigan.

MOTION TO INSTRUCT CONFEREES

Ms. STABENOW. Mr. President, I thank our leader on the Committee on Finance, Mr. BAUCUS, for his leadership on so many different issues.

I send a motion to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

Ms. STABENOW moves that the managers on the part of the Senate at the conference on the disagreeing votes of the 2 Houses on the Senate amendment to the bill H.R. 4297 (to provide for reconciliation pursuant to the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95)) be instructed to insist on the inclusion in the final conference report of a permanent extension of the credit for increasing research activities and to reject any extension of the tax rate for capital gains and dividends which does not expire until 2009.

Ms. STABENOW. Mr. President, I rise this evening to introduce a motion to instruct conferees to extend the R&D tax credit permanently and offset costs related to that by striking capital gains and dividends provisions of the House bill in the conference committee. I realize my colleague from Utah has introduced something similar to extend the R&D tax credit permanently, which I support, but I believe the most responsible approach is to provide as much of an offset as possible so we are not extending the national debt which is already the largest in our Nation's history.

This is a very difficult time for Michigan families. Michigan lost 11,000 manufacturing jobs since 2000. Last week, GM announced more bad news. Plant closings and job losses are becoming a common headline in our newspaper. There needs to be a sense of urgency in Washington about helping to protect and maintain these good-paying jobs and the way of life these jobs have offered for Americans. Our middle-class way of life is truly at risk. We are still not seeing any action from this administration. I was so disappointed to see the President did not mention the word "manufacturing," in his State of the Union Address, despite all that is happening and all that needs to be done on behalf of Michigan families, Michigan businesses, and those across the country that are affected.

People in my State are worried about their jobs, they are worried about the fact that they might lose their pension that they worked for, for 30 years. Who would have thought, in the United States of America, people would have to worry about paying into a pension system and possibly not having that when they retire? That is immoral.

They see their health care premiums continuing to skyrocket every year, they are struggling to fill their gas tank and pay their home heating bill and are feeling squeezed on all sides. We need to take that seriously because there are things we can do to help turn that around.

What does the House bill dealing with taxes propose to do to help middle-class families? Absolutely nothing. Instead, it gives more tax cuts to the wealthiest few.

We can do better. We must do better for the people we represent. Hard-working families should be able to have a good-paying job, send their kids to college, retire with dignity, including health care and a pension and Social Security. We need to lower health care costs which are hurting American manufacturers and promote new health IT technologies that can save billions in health care costs. I was pleased to see the President mention that in the State of the Union.

Senator SNOWE and I have legislation, working with colleagues on both sides of the aisle. We can get this done and save hundreds of billions of dollars that can go back into lowering health care costs and paying for access to health care for our families.

We need to protect people's pensions and uphold the fundamental principle that if you work hard and pay into a retirement fund, you get every cent you have earned and you deserve.

We must also investigate and enforce our trade laws. Countries such as China and Japan should be required to play by the rules, stop manipulating their currency. This is what we should be voting on now. How to save and strengthen our middle class, our way of life.

One answer that would be extremely positive would be to make the R&D tax credit permanent, to help continue to spur innovation into the future. As we all know, the way to profitability for struggling manufacturers is through innovation and education.

The House bill only budgets a 1-year extension of the R&D tax credit, leaving businesses to worry about whether longer term projects will be terminated. A 1-year extension undermines our commitment to innovation and economic prosperity. Instead, the House bill provides $50 billion in tax breaks for the wealthy few who do not have to worry about losing their jobs or pensions tomorrow or struggling to pay their bills.

We need to be investing in our manufacturers and our workers to prepare for the future by planting seeds for the next innovative idea. I am very proud that in Michigan we have been the heart of so much innovation. We create ideas. We build great products, not just automobiles but furniture and all kinds of products. And we are on the cutting edge today of new innovations.

But it is time to reinvest in what has led our country to economic prosperity and to support these on-going efforts. We have the best colleges and the brightest minds in the world. We know American workers can compete with any workers from any country if we make it a priority to invest in education and innovation—and, by the way, if we enforce our trade laws so other countries are not cheating—and change the way we fund health care. That is the prescription for success, for maintaining our way of life as Americans.

Countries such as Japan and China have been doubling and tripling their investments in R&D over the last decade. Japan, which has always invested in R&D, increased their funding by 25 percent. Korea has doubled their R&D. China has tripled their R&D. In China, engineering professors and graduate students even receive bonuses every time they are published in an international journal.

Our Federal Government must be a strong partner with American manufacturers, American businesses, and

American workers, and support innovation in this country for the next generation of workers.

My home State of Michigan invests over $20 billion in R&D expenditures—the second highest of any State, according to the National Science Foundation. Although Federal investments in R&D only contribute 17 percent of total investments, these Federal funds are used to attract even more research dollars from businesses. It is a great investment for us.

It makes perfect sense for us in the Federal Government to help spur this innovation by being partners with the private sector. In total, about $25 billion is provided by the Federal Government and over $200 billion by businesses. This partnership in innovation is at the center of American companies competing in the global marketplace. Everyone knows that to stay ahead, we need to invest in the future. That means education. That means innovation.

I might say, it does not mean accepting the cuts the President has proposed—the largest cuts in the 26-year history of the Department of Education—over $2 billion in cuts proposed in this budget. That certainly is going in the wrong direction. But permanently extending the R&D tax credit goes in the right direction, and helping to pay for that also goes in the right direction of fiscal responsibility.

As I indicated before, the distinguished Senator from Utah, Mr. HATCH, has offered a motion to instruct on a permanent extension of the R&D tax credit without an offset—in other words, without paying for that. I would suggest there is a more fiscally responsible approach and that we are not providing a long-term incentive for investment by just extending the credit for a year at a time or by not paying for it. I believe we need to have a permanent extension of the R&D tax credit, but we need to do that in a way which is fiscally responsible.

This debate this evening is really about our values and about our priorities and who will benefit from the tax bill. Are we going to give another $50 billion in tax cuts to those who are most blessed and extend the capital gains tax cut which is not even going to expire for 2 years or are we going to help people who are trying to create jobs and working men and women right now, manufacturers who right now need some support as they move into the future to compete internationally and businesses that right now need our support, by extending the R&D tax credit so they have the partnership they need, the support they need for those new ideas which will allow them to compete on into the future?

This is about what is happening to families right now. In Michigan, people are asking the President and asking us to look at what is happening to families at this moment and to take action now.

Let's stop China and Japan from cheating by stealing our patents or by counterfeiting—counterfeit autoparts, for example, is a $12 billion industry which has cost over 200,000 jobs in this country—or by manipulating their currency. Let's force them to play by the rules and have a level playing field, but turn around and look at what they are doing on R&D and education. While they are cheating and stealing our ideas, they are educating more engineers and more scientists and those who will be competing with our workers. We need to turn that around, make them play by the rules, change the way we fund health care in our country, protect our pensions, and then aggressively invest in education and innovation.

To see the kind of bold, aggressive investment we need means we need to extend the R&D tax credit. We need to send a strong message to businesses around this country that this is a permanent tax credit, the R&D tax credit. We also need to send a message that we are going to choose, when choices have to be made, between those who need the support right now to keep jobs here in America and those who down the road may be interested in having an additional tax cut on top of those they have already received. I believe it is about the future of our country, which approach will create opportunity, which approach will create jobs for the future.

My vote is with our manufacturers who are deciding, maybe at this very moment, whether to lay off more people in Michigan or around the country, who need this tax credit to invest in the future of their companies. That is my priority, not a few, most blessed in this country who have a capital gains tax cut in place until 2008—it does not even expire until 2008—those who are not worried today about whether that pension is going to be there or whether they can pay their heating bill or whether they can send their kids to college or whether they are going to have a job tomorrow. They have a tax cut in place which does not even stop until 2008.

We can do better than the bill that was certainly passed by the House of Representatives. I hope the conference committee will do better. I urge support for my motion to instruct, with a clear message. This is about bold innovation for the future, permanently extending the R&D tax credit. It is about fiscal responsibility. And it is about making the right choices and values that say we are going to focus on those today, we are going to pay for this by focusing on those right now, those businesses right now which need our help, and make those families a priority for us.

It is about our way of life in this country. It is a fight we can win if we are serious about it. And I believe innovation is an important part of our future. I urge the support of my colleagues for this motion to instruct.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I rise for the purpose of offering some motions to instruct for myself and my colleagues.

MOTION TO INSTRUCT CONFEREES

Mr. GRASSLEY. I send the first motion to the desk and ask for its consideration.

The PRESIDING OFFICER. Without objection, the pending motion is set aside.

The clerk will report.

The legislative clerk read as follows:

> Mr. GRASSLEY moves that the managers on the part of the Senate at the conference on the disagreeing votes of the 2 Houses on the Senate amendment to the bill H.R. 4297 (to provide for reconciliation pursuant to the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95)) be instructed to insist on the inclusion in the final conference report of the funding to support the health needs of America's veterans and military personnel contained in section 315 of the Senate amendment and the funding to strengthen America's military contained in title VI of the Senate amendment.

Mr. GRASSLEY. Mr. President, in explaining the rationale for my motion to instruct, I will be referring to other motions to instruct that two Senators on the other side have put in place, Senator DODD of Connecticut and Senator REED of Rhode Island.

The Dodd motion to instruct is yet another episode in the tale of the "groundhogization" of this tax relief reconciliation bill, a long journey. The Senate adopted the alternative to the Dodd amendment, a Grassley amendment, that passed, including the following Budget Act waiver language:

> Waive all provisions of the Budget Act and budget resolutions necessary for the consideration of the pending amendment to this bill, and for the inclusion of the language of the pending amendment in consideration of an amendment between Houses.

That is what we added back on February 2 to S. 2020. The Dodd motion instructs conferees to proceed by ignoring this waiver language. You see, the waiver language only applies for the purposes of our action in the Senate. If Senator DODD were to prevail, the conferees could not follow his directive without violating the Budget Act. It is because the Dodd motion deals with outlays. We can't do outlays in a budget reconciliation package. I might add that the Reed motion that we expect to vote on tomorrow suffers from the same defect. The conferees, even if they were inclined, can't return from conference with a provision that contains outlays.

We all know this is a political season. If you look at this motion, and if you look at the Reed motion, both cannot be adopted and followed. You can draw your own conclusion, then, why they are adopted, unless the Members don't know that this is a parliamentary situation. I can't believe they don't know what that parliamentary situation is.

While we are at it, I am going to offer a motion to clarify what the Dodd and Reed motions are all about. Basically, if you support the principles of providing more health care for veterans, the supposed purpose of the Dodd amendment, and, secondly, assisting our troops with body armor, the supposed purpose of the Reed amendment, then vote for the Grassley motion. If you support these two principles but don't support a tax increase on America's seniors, at a higher cost of capital for American business, support the Grassley motion. If you just want an increase, then vote for the Dodd motion.

I will summarize it this way: I appreciate Senator DODD's attention to the issue of our veterans health care needs. This issue is of utmost importance to the Members of the Senate, as evidenced by the fact that we appropriated a massive amount of extra money last fall for the fiscal year we are in now to meet the needs of veterans, particularly those who were not recognized, people returning wounded from Iraq. But my colleagues suggest that in order to provide this support, we should give up the important economic tax policy of reduced capital gains and dividends tax, the present tax policy, just continue it for 2 more years so that people have a long-term view of what the tax policy is so that they know what they are going to invest.

The Dodd motion claims to be paid for by capital gains, but capital gains offsets don't even come into play until the year 2009. I have offered a motion that supports military health care facilities, but we don't tie it up with an offset that is 3 long years down the road.

You will remember that the Senate debated this issue on Groundhog Day and voted to accept my amendment that provides the same benefits but does not raise taxes to pay for it. I urge my colleagues to vote against Senator DODD's motion and to support my motion to instruct the conferees on the amendment we have already passed.

In regard to what Senator REED is trying to do with his motion to instruct, this is the issue of funding for our military. Proper funding for those serving our country is not a controversial issue. The method of providing this funding for our military is, on the other hand, being made into an unnecessarily controversial issue. My colleague suggests that in order to provide for this funding, we eliminate a tax benefit that doesn't even arise until the year 2009, similar to the same issue in the Dodd amendment. I ask how this would provide the funds so badly needed this very day to ensure that we meet the operational needs of our courageous military service personnel.

I offered an amendment that supports the operational needs of our military without tying it to an offset that is 3 long years down the road.

Again, in an effort not to sound repetitive, you will remember that the Senate debated this issue also on Groundhog Day and voted to accept my amendment that provides the same benefits but does not raise taxes to pay for them. So I urge my colleagues to vote against Senator REED's motion and to support my motion to instruct conferees on the amendment we have already passed.

To sum up, if you are against a tax increase but for veterans health care and properly equipping our military, vote for the Grassley motion. If you are for a tax increase, then look elsewhere to our colleagues who are offering their version of it.

MOTION TO INSTRUCT CONFEREES

Mr. GRASSLEY. Mr. President, I am sending several motions to the desk now. I ask that these be taken up together. I ask that the clerk would read each one at a time because I want to speak to each one. I would ask the clerk to read the first one.

The PRESIDING OFFICER. Without objection, the pending motion is set aside.

The clerk will report.

The legislative clerk read as follows:

Mr. GRASSLEY moves that the managers on the part of the Senate at the conference on the disagreeing votes of the 2 Houses on the Senate amendment to the bill H.R. 4297 (to provide for reconciliation pursuant to the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95)) be instructed to report a final conference report that includes the "hold-harmless" relief from the individual alternative minimum tax in 2006 (sections 106 and 107 of the amendment passed by the Senate) to protect middle class families and includes an extension of lower tax rates on capital gains and dividends (based on section 203 of the bill passed by the House of Representatives) to protect tax cuts for middle class families.

Mr. GRASSLEY. Mr. President, the motion to instruct that was just read is mine. Simply stated, this is a motion that says there are sufficient funds to do both alternative minimum tax and capital gains and dividends and that we should do both—in other words, as an instruction to conferees.

MOTION TO INSTRUCT CONFEREES

Mr. GRASSLEY. Mr. President, I ask the clerk to read the motion that I am introducing for Senator LOTT, listed as No. 3.

The PRESIDING OFFICER. Without objection, the pending motion is laid aside and the clerk will report the motion.

The legislative clerk read as follows:

Mr. LOTT moves that the managers on the part of the Senate at the conference on the disagreeing votes of the 2 Houses on the Senate amendment to the bill H.R. 4297 (to provide for reconciliation pursuant to the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95)) be instructed to report a final conference report that includes the repeal of the individual alternative minimum tax (based on sections 106 and 107 of the amendment passed by the Senate.)

Mr. GRASSLEY. Mr. President, as I said, I am doing that for Senator LOTT of Mississippi. I think it is self explanatory. Just to reiterate, this motion, on behalf of Senator LOTT, calls for full and permanent repeal of the alternative minimum tax.

MOTION TO INSTRUCT CONFEREES

Mr. GRASSLEY. Mr. President, I now go to motion No. 4, which is for Senator HUTCHISON.

The PRESIDING OFFICER. Without objection, the pending motion will be set aside, and the clerk will report the motion.

The legislative clerk read as follows:

Mrs. HUTCHISON moves that the managers on the part of the Senate at the conference on the disagreeing votes of the 2 Houses on the Senate amendments to the bill H.R. 4297 (to provide for reconciliation pursuant to the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95)) be instructed to insist on the inclusion in the final conference report of a permanent extension of the election to deduct State and local general sales taxes (based on section 105 of the amendment passed by the Senate).

Mr. GRASSLEY. Mr. President, this is repetitive, but I will state this for Senator HUTCHISON. This resolution of instruction calls for a permanent deduction of State and local general sales tax.

MOTION TO INSTRUCT CONFEREES

Mr. GRASSLEY. Mr. President, I offer motion No. 5 for Senator SANTORUM.

The PRESIDING OFFICER. Without objection, the pending motion is set aside.

The clerk will report.

The legislative clerk read as follows:

Mr. SANTORUM moves that the managers on the part of the Senate at the conference on the disagreeing votes of the 2 Houses on the Senate amendment to the bill H.R. 4297 (to provide for reconciliation pursuant to the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95)) be instructed to report a final conference report that includes a permanent extension of the above-the-line deduction for tuition and fees (based on section 103 of the amendment passed by the Senate).

Mr. GRASSLEY. Mr. President, this motion I offer on behalf of Senator SANTORUM of Pennsylvania would make permanent the above-the-line deduction for tuition and fees for college.

Mr. SANTORUM. Mr. President, I offer this motion to instruct with regard to the college tuition deduction. As I have noted on other occasions, this bill is really a "tax increase prevention" bill. One of the many important elements is the college tuition deduction. This provision was established in the 2001 tax relief bill and provides an above-the-line deduction for higher education expenses, commonly called the "college tuition deduction." The eligibility for the deduction is limited based on income and is aimed at helping middle-class American families that are struggling to meet the rising cost of college tuition. It benefits students and their families at all types of institutions—from community colleges to 4-year schools, and both public and private institutions.

However, because we have had to slow-walk this bill with some foot-dragging across the aisle, this deduction expired on December 31, 2005. Nonetheless, it is important that we not only extend this provision, but make it permanent. The college tuition deduction is an important and popular education tax benefit, particularly for the middle class. It is not available to taxpayers with income above $80,000—$160,000 in the case of joint returns.

In 2003—the last year for which official data are available—more than 3 ½ million Americans benefited from the tuition deduction, with nearly $7 billion in college tuition costs covered by the deduction—an increase of nearly 9 percent from the previous year. Tax incentives for college tuition helped nearly 11 million Americans realize the dream of a college degree. This represents more than two-thirds of all college students. In the Commonwealth of Pennsylvania, over 150,000 families and students took advantage of this deduction. The tuition deduction is a crucial part of our education tax incentives and must be made permanent. We should send the message to parents of high school students that this deduction will be there when their students begin college.

I urge my colleagues to support this motion and support these families and students striving for a college education.

MOTION TO INSTRUCT CONFEREES

Mr. GRASSLEY. Mr. President, I turn to motion No. 6, which is my own. I ask for the reading of it.

The PRESIDING OFFICER. Without objection, the pending motion will be laid aside, and the clerk will report.

The legislative clerk read as follows:

Mr. GRASSLEY moves that the managers on the part of the Senate at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 4297 be instructed to report a reconciliation conference report ensuring that in 2009 and 2010, the international competitiveness of the United States in attracting capital investment, and therefore job creation, is not weakened further by a higher combined corporate and individual income tax rate on corporate and capital income as a result of a higher dividend tax rate, based on the following:

(1) In 2005, the combined maximum corporate tax rate and individual dividend tax rate in the United States was 50.8 percent. This rate was the eighth highest rate in the thirty-nation Organization for Economic Cooperation and Development, taking into account both national and subnational taxes.

(2) If the top federal tax rate on dividend income would have been thirty-five percent, instead of fifteen percent, the combined tax rate would have been 62.9 percent, and would have been the second highest combined corporate and individual tax rate on corporate income in the OECD, behind only Japan.

Mr. GRASSLEY. Mr. President, I offer this motion instructing conferees that in the years 2009 and 2010, the international competitiveness of the United States in attracting capital investment, and therefore job creation, is not weakened further by higher combined corporate and individual increased tax rates on corporate and capital income as a result of the higher dividend rate.

MOTION TO INSTRUCT CONFEREES

Mr. GRASSLEY. Mr. President, I send a motion to the desk that I am going to file and not discuss at this point.

The PRESIDING OFFICER. Without objection, the pending motion is laid aside, and the clerk will report.

The legislative clerk read as follows:

Mr. GRASSLEY moves that the managers on the part of the Senate at the conference on the disagreeing votes of the 2 Houses on the Senate amendments to the bill H.R. 4297 (to provide for reconciliation pursuant to the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95)) be instructed to insist on the inclusion in the final conference report of a permanent extension of the modifications to the child tax credit made by the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Jobs and Growth Tax Relief Reconciliation Act of 2003.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that at 8 p.m. tonight, the Senate proceed to a vote in relation to the Grassley motion on veterans, to be followed by a vote in relation to the Dodd motion on veterans, with no amendments in order on either motion.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I ask that the pending motions be set aside so the Senator from New Jersey can offer his motion. Obviously, under the rules, he has at least a half hour, maybe even longer. Senator SCHUMER from New York is coming over. Under the rules, he would have the same length of time. We are going to vote about 8 o'clock, but, of course, that can slip a little to accommodate the Senators from New Jersey and New York. I counsel my friends from New Jersey and New York to not use all of their time unless they really want to. I admire the Senator from New Jersey. He is concise and to the point in his presentation.

MOTION TO INSTRUCT CONFEREES

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the pending motion be set aside, and I send a motion to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending motion will be set aside. The clerk will report.

The legislative clerk read as follows:

Mr. LAUTENBERG moves that the managers on the part of the Senate at the conference on the disagreeing votes of the 2 Houses on the Senate amendment to the bill H.R. 4297 (to provide for reconciliation pursuant to the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95)) be instructed to report a final conference report that does not increase the national debt of the United States.

Mr. LAUTENBERG. Mr. President, I want to discuss this motion to instruct conferees that I bring to this bill. You see here a display of a credit card. It is drawn on the "Bank of our Children's Future." My amendment is simple. It asks the conferees, please, do not increase our national debt.

A lot of what we do around here is hidden and complicated Federal budget rhetoric. But to put matters simply, this bill allows President Bush to charge another $50 billion on the credit card of the United States of America. But when he leaves office, who is going to pay the debt that is left behind? Certainly, it will not be their rich or infamous friends. They are guaranteed to be safe from the bill collector. The reality is that the President is going to leave repayment of this credit card debt to our kids and our grandchildren. I don't want to have that burden on my grandchildren or my children. They work hard and they pay their debts and they pay their taxes—my children, I am talking about; my grandchildren are too young. They are willing to pay their taxes and they are proud of this country of ours.

The Democrats want to pay for these tax cuts by ending giveaways to rich special interests. But the Republican side said: No, no, don't persecute millionaires.

I had a very successful business career. It happened because I live in America and America responds to ingenuity and hard work. I don't mind paying my taxes. I want to pay my taxes to be sure that America is strong internally, not just on the weapons front but strong in character, strong in mission.

My colleagues on the other side, all good folks, will not admit they are passing this burden on to future generations. They claim they are going to cut spending to make up the difference.

Are they? As President Bush insists, are they willing to cut Medicare and make health care more expensive for seniors? Are they, as President Bush insists, willing to cut student loans? Isn't tuition expensive enough for the average family in America? Are they, our colleagues on the other side, as President Bush insists, going to eliminate the Safe and Drug-Free Schools Program? Are they willing to cut the Head Start Program for children who don't have the benefit of being in a home where they can learn, who don't have the benefit of guidance from parents often? Those children often get their only nutritional meal in a facility that is supported by the Federal Government. We are now only serving 800,000 out of 1.6 million children who would qualify.

Even if we do all these things, we are still going to be in the hole with massive deficits because of the President's insistence on irresponsible tax cuts, and I use the word advisedly.

I know something about balancing budgets. I was a senior Democrat on the Senate Budget Committee that produced the first balanced budget in 30 years. We did such a good job that when President Bush took the oath of office, he was presented with a rosy financial picture like no President in the history of our country has ever seen.

We had budget surpluses as far as the eye could see. In 2000, we had a budget surplus of $236 billion. In 2001, President Bush enjoyed a surplus of $128 billion. We were ready to pay off our national debt by the end of President Bush's last term. We were in the middle of the longest economic expansion in the history of our country. But the Republicans plunged into massive tax breaks for the wealthy and the special interests, tax breaks that will cost $3.4 trillion to make them permanent over the next decade. One-third of that, more than $1 trillion, will go to the richest 1 percent of our population.

So here is how the Republican tax cuts translate. If you make $1 million a year, you get an average tax cut of $136,000, but if you make less than $20,000 a year, you get a whopping $19. To what end? Instead of paying off our national credit card bill, President Bush and the Republican majority are set to double our national debt. If we continue on this path, our national debt will be more than $12 trillion by 2011.

With this bill, we are being asked to approve another $50 billion charge on our credit card. The most tragic thing is that there is no reason to charge these tax cuts to the national credit card.

When we were considering this bill a few weeks ago, our senior colleague on the Budget Committee, Senator CONRAD, offered a way to pay for these tax cuts by closing corporate loopholes. Closing these loopholes would have shut down abusive foreign tax shelters. I don't understand why we should give cover to abusive foreign tax shelters. It would have made polluters pay to clean up the damage they cause to our environment, it would have required tax withholding on payments to Federal contractors, such as Halliburton, just like every American has on their paycheck. Every Member on this side of the aisle voted for budget discipline, and every Member of the other party voted for budget recklessness.

We still have a chance to put a stop to this. We can adopt my motion. It is simple. It says to the conferees: Don't increase our national debt. Is that too much to ask, don't increase our national debt?

Of course, we could go ahead and get a second mortgage on the White House or this Capitol Building or the Pentagon. Every day people across America will take a second mortgage in a similar situation. "Similar situation" means when your debt exceeds your ability to pay it down. The administration is willing to do that.

So if my colleagues think we should saddle our children and grandchildren with more debt, then I suggest they oppose my motion, but if they think it is wrong to run up our Nation's debt so special interests, such as Halliburton and polluters, can get off scot-free, then vote for my motion.

Every American's share of the national debt now is $27,529. This bill raises that debt another $170 per adult and child in this country. By voting for my motion, we say no to debt for our kids.

I urge my colleagues to support this motion and show that they want some fiscal responsibility put into place.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I see several Senators on the floor. I believe—and perhaps someone can correct me—the Senator from New York was here earlier.

MOTION TO INSTRUCT CONFEREES

Mr. SCHUMER. Mr. President, I wish to offer a motion.

Mr. BAUCUS. Mr. President, I ask that the pending motions be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the motion.

The legislative clerk read as follows:

Mr. SCHUMER moves that the managers on the part of the Senate at the conference on the disagreeing votes of the 2 Houses on the Senate amendment to the bill H.R. 4297 (to provide for reconciliation pursuant to the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95)) be instructed to report a conference report that includes the Senate-passed provision to extend the above-the-line deduction for tuition and fees through December 31, 2009 (section 103), before it includes the House-passed extension of lower tax rates on capital gains and dividends (section 203) given budget constraints, noting that a conference report which maintains the tuition deduction will provide needed tax relief to more than 4,000,000 American families each year that are struggling to keep pace with rising tuition costs.

Mr. SCHUMER. Mr. President, in the Senate-passed tax reconciliation bill, we have recognized the importance of the tax deduction for college tuition, and the bill we are sending to conference extends it for 4 additional years, through 2009. Unless extended by the 109th Congress, the deduction will not be available to taxpayers filing 2006 returns. It is urgent that the provision be extended in this bill, so families can plan for their kids' education.

The House bill, in sharp contrast with the bill that the Senate passed with 66 votes, extends this commonsense, middle-class tax relief for only 1 year. Given that we face choices and budget limitations, and we can't do it all, this motion instructs the Senate conferees to insist that the conference report should include the Senate-passed 4-year extension of the tuition deduction, rather than extending the tax cuts for dividends and capital gains that will not expire for nearly 3 years.

That is the gist of my motion. We simply do not need to take action on dividends and capital gains today, but on issues such as the college tuition deduction and the alternative minimum tax, Congress must act now. If we can not do it all under the reconciliation limits, then the tax cuts for the middle class that have already expired should take priority.

The supply-siders who insist that cutting taxes for millionaires in 2009 is more important than cutting taxes for middle-class families this year argue that low tax rates on investments are central to our economic well-being.

Like many of my colleagues, I agree that lower taxes are generally preferable to higher taxes. That is not a controversial position. The question is, when we have large budget deficits, what are our highest priorities?

We have to make choices. And in today's information-driven economy, a college degree is no longer a luxury, it is a necessity.

In terms of long-term economic growth and developing this country's human capital—which is ultimately the true source of innovation and competitive advantage—we could make few better investments than ensuring that future generations have access to an affordable college education.

And talk about a tax cut that pays for itself over time. According to the Census Bureau, workers 18 and over with a bachelor's degree earn an average of $51,206 a year, while those with a high school diploma earn $27,915, and the disparity has been growing over time. College graduates make more money, and they will pay more in taxes as a result. Making college easier to afford is a real investment, and you don't need so-called dynamic scoring to make the case.

The challenge for American families is that the cost of college tuition has increased faster than any other major consumer item, including health care, over the last 20 years. It has skyrocketed from $5,156 in 1981 to $29,026 in 2005, an increase of 462 percent.

Even in real, inflation-adjusted dollars, the price of a 4-year public or private college education has almost doubled over the past two decades.

While many of my colleagues talk about lower taxes on investment, when a family spends money on college tuition, they are investing too. These families may not have a lot of money in taxable financial investments—more than three-quarters of U.S. households earn less than $1,000 in taxable income from investments, such as capital gains and dividends—but they are investing a lot in their kids' education.

In today's global, interconnected world, who is to say that these investments in human capital are not just as important, if not more so, than the buying and selling of stocks?

I urge each of my colleagues to think about how quickly tuition costs are rising in their States and consider whether the majority of taxpaying families in their States really need an extension of capital gains relief or whether they really need relief from the AMT and college tuition costs.

Here are just a few examples from my State:

At Adelphi University on Long Island, tuition cost $5,114 in 1983 and $17,800 in 2003–2004, a more than threefold increase.

At SUNY Purchase in Westchester County, tuition increased from $1,005 in 1980 to $4,079 in 2003–2004, or 4 times as much.

At Niagara University outside Buffalo, tuition has nearly quadrupled, from $3,300 in 1983 to $17,380 in 2003–2004.

I am sure each of us has similar stories to tell. I urge my colleagues to support my motion, and keep the college tuition deduction in place for at least 4 more years.

The skyrocketing rise of college tuition is not the only trap ensnaring an unsuspecting, and undeserving, American middle class. The individual Alternative Minimum tax is another, and I would like to speak for a moment on the motion to be offered by the minority leader.

Unless we act, the alternative minimum tax's crushing burden will be felt by 17 million more middle- and upper-middle income taxpayers this year than in 2005, and millions more in the years to come. AMT relief is a critical part of the Senate's version of this bill and we all must do everything we can to ensure that this tax—which affects middle- and upper-middle class taxpayers—is addressed this year.

It would be nearly impossible to overstate the AMT issue in its importance and urgency. By the end of the decade, the AMT will ensnare more than 30 million taxpayers, the majority of which will have incomes below $100,000, and the National Taxpayer Advocate at the IRS has identified the alternative minimum tax as the most serious problem facing individual taxpayers.

Here are a few statistics I want to reinforce for my colleagues, which I mentioned on the floor earlier this month:

The year 2006 is the tipping point for the AMT, as the number of taxpayers affected nationally will explode from 3.6 million to more than 20 million, if the Congress fails to act;

A family with two children will become subject to the AMT at about $67,500 of income in 2006; and a family with five children will start owing AMT at about $54,000 of income this year, if the Congress fails to act;

In 2004, only 6.2 percent of families earning $100,000 to $200,000 a year were subject to the AMT, and that number will explode to nearly 50 percent this year, if the Congress fails to act; and

Starting in 2008, the average married couple with two children earning $75,000 or more will find that more than half of the tax cuts they have been expecting from the various laws passed since 2001 will be taken back via the AMT, if the Congress fails to act.

If AMT relief is extended through 2006, about two-thirds of the benefits will be realized by families earning under $200,000, with more than half of the total benefits going to families with incomes between $100,000 and $200,000. In New York and many other States, particularly in or near major cities, a combined income of $100,000 or $150,000 does not make you rich.

Contrast this with the tax relief for dividends and capital gains, where more than half of the total benefit goes to families with income over $1 million. This is more than 50 percent of the benefit going to less than one-half of one percent of all taxpayers in the country.

It was for these reasons that 73 Senators voted earlier this month to support a sense-of-the-Senate resolution that AMT relief should be a higher priority for this Congress than a dividend and capital gains tax cut. The American people now expect us, and our conferees, to follow through on that pledge.

When you consider the statistics I mentioned, about who will become subject to the AMT this year if we fail to act, it becomes pretty obvious that addressing the AMT problem—or extending the college tuition tax cut—should be far more important than extending a tax cut on investment income that doesn't expire for nearly 3 more years. That is common sense, and it is an entirely separate question from who benefits from which tax cut, or what your ideology may be.

In conclusion, we need a bill back from conference that mirrors the previous Senate versions of reconciliation. We passed a bipartisan bill that excluded the dividends and capital gains cuts and provided generous AMT relief for 2006. That bill passed the Senate with 64 votes. Two weeks ago, a modified version of the bill received 66 votes. I strongly encourage our conferees to bring a similarly bipartisan bill back from conference.

Mr. BAUCUS. Mr. President, even though the hour of 8 is about to arrive, I yield whatever time the Senator from Texas requires.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, when the hour of 8 o'clock arrives, I ask to be notified. I wish to speak on the motion made on my behalf by Senator GRASSLEY earlier to instruct conferees to make the sales tax deduction permanent.

This is very important to the States that have a sales tax but no income tax. There are seven States that have no income tax. Yet the citizens of all the other States of our country are able to deduct the income taxes they pay at the State level from their Federal income taxes. Two years ago, we enacted the law that would bring sales-tax States into equity so that every State would be treated the same. We are now faced with another 2-year extension, or we will have this inequity continue because the sales tax deduction that was enacted by Congress lapsed at the end of last year. We have to make this deduction permanent.

I ask that our conferees be instructed to make it permanent so that every person in America can deduct their State taxes, whatever kind of tax that may be, from their Federal income taxes. This is a matter of equity. It is only fair that sales-tax States be treated the same as income-tax States.

I urge my colleagues to vote to make sales tax deductions permanent. Give people a choice. That is the right thing to do.

I yield the floor.

MOTION TO INSTRUCT CONFEREES

The PRESIDING OFFICER. Under the previous order, the vote now occurs on the motion to instruct conferees offered by the Senator from Iowa, Mr. GRASSLEY, relating to veterans.

Mr. BAUCUS. Mr. President, I ask unanimous consent that 2 minutes be allocated to explaining these motions and that 2 minutes be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. BAUCUS. Mr. President, I will yield my time.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I rise for the purpose of asking unanimous consent to change the names of the sponsors of a motion that I filed.

I ask unanimous consent that the Grassley motion regarding the permanence of the child tax credit be identified as GRASSLEY for TALENT and SNOWE.

The PRESIDING OFFICER. Without objection, it is so ordered. Is there further debate?

Mr. STEVENS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from North Carolina (Mrs. DOLE), the Senator from Montana (Mr. BURNS), and the Senator from Arizona (Mr. MCCAIN).

Further, if present and voting, the Senator from North Carolina (Mrs. DOLE) would have voted "yea."

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Delaware (Mr. BIDEN), the Senator from Vermont (Mr. JEFFORDS), the Senator from New Jersey (Mr. MENENDEZ), and the Senator from Maryland (Ms. MIKULSKI) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 92, nays 0, as follows:

[Rollcall Vote No. 14 Leg.]

YEAS—92

Akaka
Alexander
Allard
Allen
Baucus
Bennett
Bingaman
Bond
Boxer
Brownback
Bunning
Burr
Byrd
Cantwell
Carper
Chafee
Chambliss
Clinton
Coburn
Cochran
Coleman
Collins
Conrad
Cornyn
Craig
Crapo
Dayton
DeMint
DeWine
Dodd
Domenici
Dorgan
Durbin
Ensign
Enzi
Feingold
Feinstein
Frist
Graham
Grassley
Gregg
Hagel
Harkin
Hatch
Hutchison
Inhofe
Inouye
Isakson
Johnson
Kennedy
Kerry
Kohl
Kyl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Lott
Lugar
Martinez
McConnell
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Obama
Pryor
Reed
Reid
Roberts
Rockefeller
Salazar
Santorum
Sarbanes
Schumer
Sessions
Shelby
Smith
Snowe
Specter
Stabenow
Stevens
Sununu
Talent
Thomas
Thune
Vitter
Voinovich
Warner
Wyden

NOT VOTING—8

Bayh
Biden
Burns
Dole
Jeffords
McCain
Menendez
Mikulski

The motion was agreed to.

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes equally divided on the Dodd motion to instruct.

The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Grassley motion for Senators TALENT and SNOWE be the Grassley amendment for TALENT, SNOWE, and LINCOLN.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Connecticut.

Mr. DODD. Mr. President, parliamentary inquiry: How long did that last vote require?

The PRESIDING OFFICER. Approximately 37 minutes.

Mr. DODD. I thank the Chair.

Let me briefly explain to my colleagues the distinction between the vote you just took and the motion I offer. Very simply put, it is whether we are going to pay for the language we just adopted with the motion of the chairman of the Finance Committee to have $19.9 billion for veterans and then not provide the resources to achieve that goal. Everyone in this Chamber knows what will happen. That amendment will be dropped before this bill even gets out the door. If you adopt the motion I offer, you will support taking the $19.9 billion out of the $64.8 billion that the House of Representatives proposes to spend on the two-tenths of 1 percent of American taxpayers who make incomes of more than $1 million a year. For that small amount, we can pay the veterans who desperately need the kind of services all of us know they need. If you want to do something for the Grassley amendment, then adopt this motion which will provide the resources we have not adopted with the Grassley provision.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, the words "paid for" also mean tax increase. The difference between these motions is, the Grassley motion does not contain the tax increase. The Dodd motion asks the conferees to raise taxes.

Mr. DODD. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from Montana (Mr. BURNS) and the Senator from Arizona (Mr. MCCAIN).

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Delaware (Mr. BIDEN), the Senator from Vermont (Mr. JEFFORDS), the Senator from New Jersey (Mr. MENENDEZ), and the Senator from Maryland (Ms. MIKULSKI) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 40, nays 53, as follows:

[Rollcall Vote No. 15 Leg.]

YEAS—40

Akaka
Baucus
Bingaman
Boxer
Byrd
Cantwell
Carper
Chafee
Clinton
Conrad
Dayton
Dodd
Dorgan
Durbin
Feingold
Feinstein
Harkin
Inouye
Johnson
Kennedy
Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Murray
Nelson (FL)
Obama
Pryor
Reed
Reid
Rockefeller
Salazar
Sarbanes
Schumer
Stabenow
Wyden

NAYS—53

Alexander
Allard
Allen
Bennett
Bond
Brownback
Bunning
Burr
Chambliss
Coburn
Cochran
Coleman
Collins
Cornyn
Craig
Crapo
DeMint
DeWine
Dole
Domenici
Ensign
Enzi
Frist
Graham
Grassley
Gregg
Hagel
Hatch
Hutchison
Inhofe
Isakson
Kyl
Lott
Lugar
Martinez
McConnell
Murkowski
Nelson (NE)
Roberts
Santorum
Sessions
Shelby
Smith
Snowe
Specter
Stevens
Sununu
Talent
Thomas
Thune
Vitter
Voinovich
Warner

NOT VOTING—7

Bayh
Biden
Burns
Jeffords
McCain
Menendez
Mikulski

The motion was rejected.

Mr. FRIST. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT—MOTIONS TO INSTRUCT

Mr. FRIST. Mr. President, I ask unanimous consent that the only motions to instruct be those currently pending and that no other motions be in order; I further ask consent that no amendments be in order to the motions; provided further that when the Senate adjourns this evening, all remaining debate time under the statute be considered as having expired; further that when the Senate convenes tomorrow, the Senate begin to vote in relation to the motions, with the Republican alternatives occurring prior to the votes in relation to the Democratic amendments; and I send a list to the desk with the order of votes; further that prior to the Kennedy motion and the Grassley motion on capital gains/dividends, there be 2 minutes per side for debate prior to the votes on each, with debate before all other votes limited to 2 minutes equally divided and all votes after the first vote in the sequence be limited to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005—Resumed

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now return to the consideration of the asbestos bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 852) to create a fair and efficient system to resolve claims for victims of bodily injury caused by asbestos exposure, and for other purposes.

Pending:

Frist (for Specter/Leahy) amendment No. 2746, in the nature of a substitute.

Specter Modified amendment No. 2747 (to amendment No. 2746), to provide guidelines in determining which defendant participants may receive inequity adjustments the Administrator shall give preference.

Kyl amendment No. 2754 (to amendment No. 2746), to reduce the impact of the trust fund on smaller companies and to expand hardship adjustments.

Ensign point of order that the pending bill and the pending amendment in the nature of a substitute (Frist (for Specter/Leahy)) amendment No. 2746 (listed above) violate section 407 of H. Con. Res. 95, the concurrent resolution on the budget for fiscal year 2006.

Specter motion to waive the point of order (listed above).

CLOTURE MOTION

Mr. FRIST. I now send a cloture motion to the substitute to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the pending substitute amendment to Calendar No. 131, S. 852: a bill to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Bill Frist, Arlen Specter, Lisa Murkowski, John Thune, Mel Martinez, Johnny Isakson, David Vitter, George Allen, Pat Roberts, Richard Shelby, Richard Burr, James Talent, Jeff Sessions, Mitch McConnell, Ted Stevens, Rick Santorum, Kay Bailey Hutchison.

CLOTURE MOTION

Mr. FRIST. I now send a cloture motion to the bill to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Calendar No. 131, S. 852: A bill to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Bill Frist, Arlen Specter, Lisa Murkowski, John Thune, Mel Martinez, Johnny Isakson, David Vitter, George Allen, Pat Roberts, Richard Shelby, Richard Burr, James Talent, Jeff Sessions, Mitch McConnell, Ted Stevens, Rick Santorum, Kay Bailey Hutchison.

MORNING BUSINESS

Mr. FRIST. Mr. President, these votes would occur on Wednesday. We are still working on the time during Tuesday's session for the vote on the motion to waive. We will announce that when it is locked in.

I ask that there be a period for morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEAVE NO ONE BEHIND

Mr. FRIST. Mr. President, today, I would briefly like to recount the details of a troubling series of events that resulted in the capture of four Americans, one of whom was executed, in the jungles of Colombia. I recently received word of this story from a special operations officer with intimate knowledge of these and subsequent events.

Three years ago today, a contract surveillance plane operated by four American Defense Department contractors and one Colombian military sergeant, was flying in support of our joint counternarcotics efforts in Colombia. Engine troubles forced the crew to crash land the aircraft in the Colombian jungle south of the capital Bogata.

While there was a small window of opportunity to mount a search and rescue effort, the launch of the rescue team was never authorized. All five crew members were captured by the Revolutionary Armed Forces of Colombia.

FARC is a known terrorist organization that has terrorized Colombian civilians and political figures for decades. It has kidnapped and killed numerous American citizens and poses a serious threat to U.S. interests in Colombia. FARC is also very actively involved in drug trafficking and extortion.

FARC immediately executed the lone Colombian serviceman and one of the Americans and moved the other hostages farther south, deeper into the Colombian jungle. In the 3 years since their abduction, there has been only one serious attempt to rescue the three remaining American contractors. This took place in late August and early September of last year.

Their names are Keith Stansell, Thomas Howes, and Marc Gonsalves. These three Americans and their families here at home deserve more.

Our military, in coordination with its Colombian counterparts, needs to take more assertive action to rescue the captive Americans. In order to carry out this mission, American personnel on the ground need access to better, more reliable, and more actionable intelligence.

They have a better chance of uncovering the location and well-being of the hostages by increasing contacts with Colombian troops patrolling the jungles and interrogating captured FARC members.

It is also important to seek tips from the local population that might have information as to the whereabouts of these soldiers. But there must be incentives for these civilians, who must also endure FARC violence and intimidation, to come forward. For example, radio broadcasts in the surrounding areas could inform local civilians of the situation and offer rewards that the locals will truly value. Access to land and livestock could prove to be a great incentive for those with any information on the hostages to come forward.

We also need to increase our coordination with Colombian intelligence personnel. They have the most intimate knowledge of their country and are likely to have more access to contacts with information. Greater coordination and stronger links with these Colombian intelligence units will give our military a better opportunity to act when relevant information becomes available.

For 3 years, three brave American civilian contractors have been held hostage by a ruthless terrorist organization deep in the Colombian jungle. Though rescue attempts can be dangerous and entail numerous risks to both the hostages and the rescuers, the failure to launch more than one serious rescue attempt is a disservice to those men and to their families here at home. We can only imagine the anguish, uncertainty, and doubt they have endured for those 3 long years.

I urge the administration to redouble its efforts to rescue these three Americans. A more assertive response is required. We owe it to these men and to their families to make a more serious effort to rescue them.

HONORING OUR ARMED FORCES

LANCE CORPORAL WESLEY DAVIDS

Mr. DEWINE. Mr. President, I rise today to honor the life of a brave young man, who was known for his incredible spirit and selflessness. Marine LCpl Wesley Davids, from Dublin, OH, was killed by an explosion in Iraq on May 11, 2005—exactly one day after his 20th birthday.

Ronald Reagan once said that "some people spend an entire lifetime wondering if they've made a difference.

The Marines don't have that problem!" Indeed, all of our U.S. Marines are making a difference each and every day, and Marine LCpl Wesley Davids was no exception.

Wesley was born to loving parents Michael and Jody Davids. Even from the time he was a little boy, he loved anything that moved fast. When he got older, he loved driving fast cars and fast boats. He owned a Mustang GTS and two other cars. He also worked at a National Tire & Battery store on the North side of Columbus.

Wesley's friends at Dublin Scioto High School, from which he graduated in 2003, describe him as having boundless energy and that between working on his cars and going off-roading, Wesley lived a very active, very full life.

He loved a challenge and testing his own limits. Wesley was a stand-out member of his high school's crew team. According to his coach, Russ Merritt, "Wesley was just a very impressive, strong young man. You just had no doubt that he would give 100 percent."

Amy Speck, who rowed with Wesley, wrote the following about her teammate in a posting on an Internet tribute site dedicated to Wesley:

> I had the privilege to be Wes's coxswain in his crew boat his sophomore year and my senior year. Wes helped lead us to winning the Midwest Championships. He always led by example and was a fighter with a courageous spirit from the beginning.

It was that courageous spirit and strong sense of leadership that prompted Wesley to join the Marine Corps after the September 11 terrorist attacks. His mother, though concerned about Wesley's safety, came to accept his choice to enlist and respected the passion he brought to his decision. Jody knew that her son's determination in this pursuit was strong, and she was very proud of him.

She said that the same passion that defined Wesley in the boat when he rowed for the crew team, defined him as a Marine. "He wanted the camaraderie—the team spirit—of being part of something bigger than he was."

During their last phone conversation, Jody said that Wesley sounded very happy and enthusiastic. She said, "Wes, you sound really great. Are you having a good time?" Wesley replied to his mother, "I'm having a great time. I love the guys I'm serving with. I love what I'm doing. We're really well-trained. The mission is worth it."

One of Wesley's very good friends and high school classmates, Brian Fry, addressed the crowd at Wesley's funeral. He greeted Wesley in a way that I am sure he would have loved. Brian said this:

> Wes, we know you're in Heaven. And your Heaven is probably one big mud pit! We'd just like to say, take a ride for us, and we'll see you soon.

During the funeral, Wesley's Uncle Brian read a prayer he wrote titled Twenty Years and a Day. He asked God to tell his nephew that he missed and loved him and to thank him for the memories he left behind. Brian concluded the poem by saying:

> Thank you for sending this wonderful gift to us—even if it was for just 20 years and a day.

An Air Force chaplain who had known Wesley well read from a poem titled Dash, which refers to the mark between the birth and death dates on a tombstone:

> He never made it to mid-dash. But he lived, and paid the ultimate sacrifice for people he didn't even know. And, that—that is love.

This past Veterans Day held special meaning for Wesley's family and friends. As his mom Jody said:

> Previously, Veterans Day was a day; it could just slip by even though my dad is a veteran and my husband's father is a veteran. This year, it has new and intense meaning for us.

She went on to say:

> To stand up for what they believed in, to stand up for their country, to show their love for their families and their country and show pride to be an American citizen and do something about it, we have to appreciate all of them for that. While Wesley's death is a tragic loss, he died doing something he felt passionately about. He was the best that this country had to offer.

Wesley once said, "I don't want to die, but I understand it is a responsibility, and I'm willing to accept that risk." Wesley Davids was a brave, model Marine. Did he make a difference in his all-too-brief lifetime? Absolutely. He made a difference, and this statement demonstrates a maturity level and selfless spirit well beyond his 20 years and a day. As Reverend Charles Kuck said so well, "Wesley Davids saw more life than most of us see in an entire lifetime."

Indeed, he did, Mr. President, indeed he did.

My wife Fran and I continue to keep Wesley's parents and his brother Steven in our thoughts and prayers.

PRIVATE FIRST CLASS CHRISTOPHER DIXON

Mr. President, I rise today to honor the life of a fellow Ohioan—Marine PFC Christopher Dixon—who was killed on May 11, 2005, when his amphibious assault vehicle struck an explosive device while conducting combat operations against enemy forces in Iraq. Christopher was only 18 years old at the time of his death, making him the youngest service member from Ohio to be killed in Iraq.

Franklin Delano Roosevelt, in paying tribute to the sacrifices young men like Christopher Dixon make during times of war, said the following:

> In all of the operations of our Armed Forces, the toughest job has been performed by the average easy-going, hard-fighting young American who carries the weight of battle on his own young shoulders. It is to him that we and all future generations must pay grateful tribute.

And so today, I pay tribute to Christopher, a hard-fighting young American, who carried the weight of battle on his own young shoulders.

Christopher—Chris to his family and friends—was a fun-loving young man, who took great joy in making others laugh. Friends remember Chris as both a daredevil and as a handsome ladies' man. Chris didn't have a girlfriend, but his friends describe him as a charmer, with blue eyes and light brown hair that bleached to blonde in the summertime. His mother said that when it came to girls, "He liked them all."

Not afraid of anything, Chris was a true adventurer. He loved to fish, hunt, and ride his dirt bike, while standing on the seat, going full speed into Wayne National Forest. An avid bowler, Chris would show off bowling tricks at Rainbow Lanes on South High Street in his hometown of Obetz, OH.

He worked in the bowling alley before joining the marines and liked to impress his friends by knocking down pins after facing backwards and rolling a ball through his legs. As friend Michele Hatfield remembers:

> He'd do it just to show off. Anything to get a laugh out of people.

Chris graduated from Hamilton Township High School in 2004, and joined the marines a week later. According to his mom, Chris dreamed of becoming a marine since the start of high school. He was assigned to Lima Company, which is part of the 3rd Battalion, 25th Marine Regiment out of Columbus. When he was sent to serve in Operation Iraqi Freedom, his unit was attached to Regimental Combat Team 2, 2nd Marine Division, 2nd Marine Expeditionary Force.

On May 22 of this year, I had the honor of meeting Chris Dixon's family and friends at the calling hours following his death. I saw pictures of Chris and talked with his mom and his dad, Beckie and David Dixon, and his older brother Chad. Beckie said that after she learned of Chris's death, she put up 18 flags, one for each year of his all too brief life.

Chris's closely knit town of Obetz was devastated by the young marine's death and the community grieved together. Allen Lantrip, 17 at the time, said Chris was among the best the town had to offer. Chris was one of the first people who welcomed Allen to Hamilton Township High School last year. The two talked before Chris departed for Iraq. Allen said Chris was very optimistic about going on the mission and coming home safe.

Another friend, Jordan Wall, also said Chris never worried about the possibility of not coming home. She had known him for 7 years, as he had lived one street over from her. Jordan said Chris wasn't scared at all and that he was happy to be in the marines. She said Chris was always trying to help somebody. He knew he would be helping people in the marines by serving his country.

At Chris's memorial service, Reverend William L. Snider said:

> While Chris's death at such a young age is devastating, he did not waste his youth and he died living his dream of protecting his country as a marine. He gave his best for what he believed in. He gave his best for the best.

Several of Chris's friends paid their respects to his life through postings on an Internet tribute site. Chris's friend Danielle from Columbus wrote the following:

> Chris, my good friend, I miss you so, but I could not be any more proud with how you lived your life. You are a true hero, and now, my guardian angel. I will never forget all our phone conversations and how beautiful that smile of yours was. You lived out your dream and I know you are so happy right now in heaven. I know I will see you again. Your mark and your heart will be forever with me.

Chris Dixon epitomizes everything a good friend should be. People adored this young man and deeply respected his commitment to serving our country. He was a good person, a good person who loved what he was doing and was proud to be helping to protect America and help rebuild the lives of the people in Iraq.

I wish to conclude my remarks with something that Chris's friends Danielle and Nick from Obetz wrote in tribute to him:

> Chris, you are someone who will be in our hearts forever. We think of you daily and talk about our precious memories, laughing about the crazy things you did. I'll always remember going on double dates with you and your girlfriends, going to the zoo, or trying to find a haunted house on my first date with Nick. I am blessed that I got the pleasure of knowing you. Spending the precious time you spent with Nick before you left are some of the fondest memories he has of you, and believe he, he couldn't be happier having all of those memories—hanging out in the hot tub, playing pool and Ping-Pong and, most of all, all the long talks. You were always someone Nick could talk to no matter what it concerned and he will never forget that.
>
> We are proud of you. We knew you would do something great with your life. You died for us at home so we could live free and be safe. You made a sacrifice that no one will ever forget. You are truly our hometown hero. We love you, Chris.

My wife Fran and I continue to keep Christopher Dixon's family in our thoughts and in our prayers.

LIEUTENANT COMMANDER WITTWER

Mrs. BOXER. Mr. President, I rise to honor the memory of the late LCDR Frank Carl Wittwer. Lieutenant Commander Wittwer, a longtime Hanford resident, perished when his F/A–18C Hornet went down during a training mission near Naval Air Facility El Centro on January 18, 2006. He was 35 years old.

A 1994 graduate of the U.S. Naval Academy, Lieutenant Commander Wittwer was fondly remembered as a friendly and active student who participated in a number of activities such as music and youth ministries at his church. Upon receiving his bachelor of science degree in systems engineering, he began his successful active-duty career as a surface warfare officer aboard the USS *California* and the USS *McFaul*.

In recognition of his considerable talents, Lieutenant Commander Wittwer was assigned to the Hornet Program with VFA–137 in 2001. Subsequently, he received postings at Strike Fighter Wing Pacific Fleet as safety officer and a follow-on assignment with the VFA–97 Warhawks. Throughout his years of service, Lieutenant Commander Wittwer was known as a dedicated and honorable serviceman who embodied the best qualities and ideals of the U.S. Navy.

In his personal life, Lieutenant Commander Wittwer demonstrated a genuine commitment to improving the lives of others. A popular figure in the community and an elder in the First Presbyterian Church in Hanford, he had a passion in working with kindergartners and grade school students. A man of many talents, Lieutenant Commander Wittwer recently completed the executive MBA program at the California State University, Fresno's Craig School of Business.

Lieutenant Commander Wittwer will be remembered by those whose lives he touched as a devoted family man, a loyal friend and an outstanding member of the U.S. Navy. He is survived by his wife Mendi; daughters Erin and Abbie; son Jack; sister Patti; nephew Josh; and his grandfather Hurdis Harris.

STOP COUNTERFEITING IN MANUFACTURED GOODS ACT

Mr. SPECTER. Mr. President, I will to take a moment to speak about H.R. 32, the Stop Counterfeiting in Manufactured Goods Act of 2005, sponsored by Representative KNOLLENBERG and 59 House cosponsors. The counterfeiting of goods bearing American held trademarks is an important problem that I am committed to fighting, as reflected by my sponsoring S. 1699, the Senate companion bill to H.R. 32, earlier this year with Senator LEAHY and Senators ALEXANDER, BAYH, BROWNBACK, COBURN, CORNYN, DEWINE, DURBIN, FEINGOLD, FEINSTEIN, HATCH, KYL, LEVIN, REED, STABENOW, and VOINOVICH.

H.R. 32, the Stop Counterfeiting in Manufactured Goods Act of 2005, addresses a problem that has reached epidemic proportions as a result of a loophole in our Criminal Code: the trafficking in counterfeit labels. Criminal law currently prohibits the trafficking in counterfeit trademarks "on or in connection with goods or services." However, it does not prohibit the trafficking in the counterfeit marks themselves. As such, there is nothing in current law to prohibit an individual from selling counterfeit labels bearing otherwise protected trademarks within the United States.

This loophole was exposed by the Tenth Circuit Court of Appeals in United States v. Giles, 213 F.3d 1247, 10th Cir. 2000. In this case, the United States prosecuted the defendant for manufacturing and selling counterfeit Dooney & Bourke labels that third parties could later affix to generic purses. Examining title 18, section 2320, of the United States Code, the Tenth Circuit held that persons who sell counterfeit trademarks that are not actually attached to any "goods or services" do not violate the Federal criminal trademark infringement statute. Since the defendant did not attach counterfeit the marks to "goods or services," the court found that the defendant did not run afoul of the criminal statute as a matter of law. Thus, someone caught redhanded with counterfeit trademarks walked free.

H.R. 32 closes this loophole by amending title 18, section 2320 of the United States Code to criminally prohibit the trafficking, or attempt to traffic, in "labels, patches, stickers" and generally any item to which a counterfeit mark has been applied. In so doing, H.R. 32 provides U.S. Department of Justice prosecutors with the means not only to prosecute individuals trafficking in counterfeit goods or services but also individuals trafficking in labels, patches, and the like that are later applied to goods.

Congress must act expeditiously to protect U.S. held trademarks to the fullest extent of the law. The recent 10-count indictment of 4 Massachusetts residents of conspiracy to traffic in approximately $1.4 million of counterfeit luxury goods in the case of U.S. v. Luong et al., 2005 D. Mass., underscores the need for this legislation. According to the indictment, law enforcement officers raided self-storage units earlier this year and found the units to hold approximately 12,231 counterfeit handbags; 7,651 counterfeit wallets; more than 17,000 generic handbags and wallets; and enough counterfeit labels and medallions to turn more than 50,000 generic handbags and wallets into counterfeits. Although the U.S. Attorney's Office was able to pursue charges of trafficking and attempting to traffic in counterfeit handbags and wallets, they could not able to bring charges for trafficking and attempting to traffic in the more than 50,000 counterfeit labels and medallions. As such, these defendants will escape prosecution that would have otherwise been illegal if they had only been attached to an otherwise generic bag. This simply does not make sense and had the Stop Counterfeiting in Manufactured Goods Act of 2005 been in effect at the time of indictment, U.S. prosecutors would have been able to bring charges against the defendants for trafficking and attempting to traffic in not only counterfeit goods but also counterfeit labels.

As Assistant Attorney General Alice Fisher said, "Those who manufacture and sell counterfeit goods steal business from honest merchants, confuse or defraud honest consumers, and illegally profit on the backs of honest American workers and entrepreneurs." This point is underscored by the Bureau of Customs and Border Protection estimate that trafficking in counterfeit goods costs the United States approximately $200-$250 million annually. With each passing year, the United States loses millions of dollars in tax revenues to the sale of counterfeit goods. Further, each counterfeit item that is manufactured overseas and distributed in the United States costs American workers tens of thousands of jobs. With counterfeit goods making up a growing 5 to 7 percent of world trade, this is a problem that we can no longer ignore.

To be sure, counterfeiting is not limited to the popular designer goods that we have all seen sold on corners of just about every major metropolitan city in the United States. Counterfeiting has a devastating impact on a broad range of industries. In fact, for almost every legitimate product manufactured and sold within the United States, there is a parallel counterfeit product being sold for no more than half the price. These counterfeit products range from children's toys to clothing to Christmas tree lights. More frightening are the thousands of counterfeit automobile parts, batteries, and electrical equipment that are being manufactured and placed into the stream of commerce with each passing day. I am told that the level of sophistication in counterfeiting has reached the point that you can no longer distinguish between the real and the counterfeit good or label with the naked eye. However, just because these products look the same does not mean that they have the same quality characteristics. The counterfeit products are not subject to the same quality controls of legitimate products, resulting in items that are lower in quality and likely to fall apart. In fact, counterfeit products could potentially kill unsuspecting American consumers.

In addition to closing the "counterfeit label loophole," the Stop Counterfeiting in Manufactured Goods Act strengthens the Criminal Code and provides heightened penalties for those trafficking in counterfeit marks. Current law does not provide for the seizure and forfeiture of counterfeit trademarks, whether they are attached to goods or not. Therefore, many times such counterfeit goods are seized one day, only to be returned and sold to an unsuspecting public. To ensure that individuals engaging in the practice of trafficking in counterfeit marks cannot reopen their doors, H.R. 32 establishes procedures for the mandatory seizure, forfeiture, and destruction of counterfeit marks prior to a conviction. Further, it provides for procedures for the mandatory forfeiture and destruction of property derived from or used to engage in the trafficking of counterfeit marks.

When this legislation was sent over to the Senate from the House, concerns were raised to Senator LEAHY and myself about the language in Section 2(b)(1)(B) of this bill pertaining to the forfeiture authority of the U.S. Department of Justice. In focusing our attention to this section, we discussed the scope of the facilitation language, which parallels the drug and money laundering forfeiture language in 21 U.S.C. 853 and 18 U.S.C. 982, respectively, and how it might relate to Internet marketplace companies, search engines, and ISPs. Specifically, we were aware of concerns regarding the potential misapplication of the facilitation language in section 2(b)(1)(B) to pursue forfeiture and seizure proceedings against responsible Internet marketplace companies that serve as third party intermediaries to online transactions.

Mr. LEAHY. Section 2(b)(1)(B) authorizes U.S. attorneys to pursue civil in rem forfeiture proceedings against "any property used, in any manner or part, to commit or to facilitate the commission of a violation of subsection (a)." The intent of this language is to provide attorneys and prosecutors with the authority to bring a civil forfeiture action against the property of bad actors who are facilitating trafficking or attempts to traffic in counterfeit marks. The forfeiture authority in section 2(b)(1)(B) cannot be used to pursue forfeiture and seizure proceedings against the computer equipment, Web site, or network of responsible Internet marketplace companies, which serve solely as a third-party to transactions and do not tailor their services or their facilities to the furtherance of trafficking or attempts to traffic in counterfeit marks. However, these Internet marketplace companies must make demonstrable good faith efforts to combat the use of their systems and services to traffic in counterfeit marks. Companies must establish and implement procedures to take down postings that contain or offer to sell goods, services, labels, and the like in violation of this act upon being made aware of the illegal nature of these items or services.

It is the irresponsible culprits that must be held accountable. Those who profit from another's innovation have proved their creativity only at escaping responsibility for their actions. As legislators, it is important that we provide law enforcement with the tools needed to capture these thieves.

Senator SPECTER, it is also my understanding that the U.S. Sentencing Commission recently promulgated new Federal sentencing guidelines to account for the changes in how intellectual property crimes are committed. Could you clarify for the record why we have authorized the U.S. Sentencing Commission to further amend the Federal sentencing guidelines and policy statements for crimes committed in violation of title 18, section 2318 or 2320, of the United States Code?

Mr. SPECTER. As Senator LEAHY is aware, periodically the Sentencing Commission has sought to update the Federal sentencing guidelines upon the periodic directive of Congress to reflect and account for changes in the manner in which intellectual property offenses are committed. The recent amendments to which you refer were promulgated by the Sentencing Commission pursuant to the authorization in the Family Entertainment and Copyright Act of 2005, also known as FECA. These amendments to the Federal sentencing guidelines, which took effect on October 24, 2005, address changes in penalties and definitions for intellectual property rights crimes, particularly those involving copyrighted prerelease works and issues surrounding "uploading." For example, these guidelines provide for a 25 percent increase in sentences for offenses involving prerelease works. In addition, the Commission revised its definition of "uploading" to ensure that the guidelines are keeping up with technological advances in this area.

I would like to make it clear for the record that the directive to the Sentencing Commission in section 3 of H.R. 32 is not meant as disapproval of the Commission's recent actions in response to FECA. Rather, section 3 covers other intellectual property rights crimes that Congress believes it is time for the Commission to revisit. Specifically, section 3 directs the Commission to review the guidelines, and particularly the definition of "infringement amount," to ensure that offenses involving low-cost items like labels, patches, medallions, or packaging that are used to make counterfeit goods that are much more expensive are properly punished. It also directs the Commission to ensure that the penalty provisions for offenses involving all counterfeit goods or services or devices used to facilitate counterfeiting are properly addressed by the guidelines. As it did in response to the No Electronic Theft Act of 1997 and FECA, I am confident that the Commission will ensure that the Federal sentencing guidelines provide adequate punishment and deterrence for these very serious offenses, and I look forward to the Commission's response to this directive.

Mr. LEAHY. Senator SPECTER, thank you for that clarification. As you are aware, there has been overwhelming support for this legislation. It has been very heartening to see such overwhelming support for this important bill. Counterfeiting is a threat to America. It wreaks real harm on our economy, our workers, and our consumers. This bill is a tough bill that will give law enforcement improved tools to fight this form of theft. The bill is short and straightforward, but its impact should be profound and far-reaching.

Mr. SPECTER. At this point, I would like to take this opportunity to thank like to thank Representative JIM SENSENBRENNER, Chairman of the House Judiciary Committee, and Representative JOE KNOLLENBERG for their leadership in the House with regard to H.R. 32. In January of 2005, Representative KNOLLENBERG introduced H.R. 32 in the House. When the bill was in Committee, he fostered negotiations between the Department of Justice, the U.S. Chamber of Commerce, and the International Trademark Association to ensure that it passed the House. I would also like to thank my colleague Senator LEAHY, ranking member of the Senate Judiciary Committee, and Senators ALEXANDER, BAYH, BROWNBACK, COBURN, CORNYN, DEWINE, DURBIN, FEINGOLD, FEINSTEIN, HATCH, KYL, LEVIN, REED, STABENOW, and VOINOVICH for their cosponsorship of S. 1699, the companion legislation to H.R. 32. It is through the hard work of all of these Members that we were able to achieve truly bipartisan support for language that will ensure the protection of American-held trademarks.

Mr. LEAHY. Some of our most important legislation is produced not only when we reach across the aisle in the name of bipartisanship but when we work across chambers and reach true consensus. I would also like to thank Senators ALEXANDER, BAYH, BROWNBACK, COBURN, CORNYN, DEWINE, DURBIN, FEINGOLD, FEINSTEIN, HATCH, KYL, LEVIN, REED, STABENOW and VOINOVICH for their cosponsorship of the Senate companion legislation. Counterfeiting is a serious problem that does not lend itself to a quick and easy solution. This legislation is an important step toward fighting counterfeiting. I hope we can build on the success of this law.

PRINCIPLES OF TELECOM REFORM

Mr. NELSON of Nebraska. Mr. President, when the last major telecommunications bill was passed in 1996, fewer than half of American households owned a computer, only one out of four owned a cell phone or had Internet access, almost no one had residential broadband Internet access, and Internet commerce was in its infancy. Regulations were based on the assumption that telephone networks only offered voice service, cable television networks only offered video service, and the Internet only offered data service. Today, however, many cable systems offer Internet access and phone service, telephone networks support Internet access and will soon offer video, and the Internet supports an amazing variety of applications.

I believe reform to our telecommunications laws is needed, and we should make reform a priority. It is time to tear down regulatory barriers between telephone, wireless, video, and the Internet to unleash innovation and encourage private investment.

I applaud the leadership of Senators STEVENS and INOUYE on the Senate Commerce Committee in scheduling an ambitious slate of hearings to address telecom reform. As the hearings begin, I want to outline some basic principles I would like to see embodied in any reform legislation that moves forward out of committee.

In order to tap the infinite potential technology has to improve the way we communicate, I believe we should do the following:

No. 1, eliminate regulatory barriers that hinder innovation and encourage private investment in new telecommunications facilities and services; No. 2, streamline video franchising requirements to facilitate greater consumer choice of video providers, while allowing municipalities to protect community interests; No. 3, encourage a favorable regulatory environment for robust competition among communications providers, while protecting consumers' access to content and services; No. 4, allow for the development of uniform consumer protection standards, while recognizing the importance of State and local regulators in addressing consumer concerns; and No. 5, use the public spectrum to promote development of new wireless communications services such as broadband Internet.

Any telecom reform must address the needs of every American consumer regardless of where they live. Rural areas like Nebraska cannot be left behind. I believe that technology holds enormous economic promise to rural America, and innovation and competition must be encouraged in even the most remote areas of our country. Therefore I advocate that reform legislation do the following:

No. 1, ensure the stability of the Universal Service Fund in order to preserve affordable telephone service in rural areas, and for all Americans, as well as to continue support for schools, libraries and rural health care providers; No. 2, promote private investment in and deployment of broadband Internet and other advanced telecommunications services, in rural America; and No. 3, encourage increased wireless coverage and introduction of new wireless services to rural America.

In order for the United States to be a leader in the global economy, we must modernize our telecommunications laws to ensure we are fostering investment, innovation, and competition and not impeding progress. We also must ensure that everyone—regardless of where they live—benefits from modernization of our telecom laws.

I believe we must act now to protect our place in the world as a leader in communications, and I look forward to the debate on this very important issue.

CELEBRATING BLACK HISTORY MONTH

Mr. FEINGOLD. Mr. President, this year, as we celebrate Black History Month, we also mourn the loss of two great civil rights leaders: Rosa Parks and Coretta Scott King.

These women were both pivotal figures in the civil rights movement, leaders who inspired all of us with their commitment, their dignity, and their incredible courage.

Both dedicated their lives to the cause of freedom—to ridding the South of the cruelty of segregation and ridding our society of the scourge of racism.

Both lived to see tremendous progress in America and both lived to see how much is still left undone.

As we mourn the passing of these heroic figures of the civil rights movement, we must ensure that the cause of justice for which they worked so hard, and sacrificed so much—marches on.

As we mourn these great leaders, and celebrate their lives, we must also ask ourselves what we can do to honor the contributions they made, and the way they worked to transform our Nation. I am reminded of something Rosa Parks once said about Dr. King. She was concerned that, while the birthday of Dr. King had become a national holiday, he was being depicted as merely, "a dreamer." As I remember him," she said, "he was more than a dreamer. He was an activist who believed in acting as well as speaking out against oppression."

Once again, Rosa Parks was right: It is not only Dr. King's dream that endures, although it does endure, and has given strength to so many. It is the actions of Dr. King, and Coretta Scott King, and Rosa Parks, and the actions of so many millions of others, that have brought us forward in an inexorable march to freedom.

Dr. King said it himself, in a different way, when he spoke about the Montgomery Bus Boycott: "We came to see that, in the long run, it is more honorable to walk in dignity than ride in humiliation. So, in a quite dignified manner, we decided to substitute tired feet for tired souls, and walk the streets of Montgomery."

They met injustice with action. They walked in dignity, for 381 days, until they met with victory. And today we, too, must move forward on the civil rights issues that press us to action—

on racial profiling, on voting rights, on the death penalty; and also on access to good education and good health care, on addressing the HIV/AIDS crisis, and all the issues where inequality still plagues our Nation.

Dr. King, Coretta Scott King, Rosa Parks—they, and so many others, would rather have tired feet than tired souls, and so must we.

During Black History Month, as we pay tribute to their accomplishments, and as we rededicate ourselves to the goals we have yet to achieve, we know that those great Americans would never be complacent, would never tire, would never be satisfied with anything less than justice. And neither must anyone in this body, or in this country.

We must commit to walk on together in that march for equality in this country, and justice in this world, resolving that we, too, may have tired feet but never a tired soul.

ADDITIONAL STATEMENTS

TRIBUTE TO PACCAR, INC.

• Ms. CANTWELL. Mr. President, I rise today to celebrate a great American innovator.

It is a special pleasure to recognize an exceptional company which today has earned the prestigious National Medal of Technology, the highest honor given in our Nation for technological innovation. PACCAR Incorporated is a model of success and a Washington State institution. In 2005, the company celebrated its 100th year in business. You might not recognize the PACCAR name, but perhaps you have heard of some of PACCAR's finest brands: Kenworth and Peterbilt trucks.

PACCAR is one of our Nation's top truck manufacturers and today they are cited for: "pioneering efforts and industry leadership in the development and commercialization of aerodynamic, lightweight trucks that have dramatically reduced fuel consumption and increased the productivity of U.S. freight transportation."

This National Medal is a distinct honor bestowed by the President since 1985. It was first mandated by Congress in 1980, established to recognize the significant contributions that America's leading innovators have made to the Nation's economic strength and standard of living. The award is given annually to individuals, teams, and/or companies or divisions whose work has made a lasting impact on our lives through the development and commercialization of groundbreaking technology in our Nation.

Past recipients include leaders in our Nation's cutting-edge science and high-tech communities—companies such as Dow, Dupont, and Corning or individuals such as those who have performed the first human heart transplant and invented the first whole-body CT scanner. The National Medal serves to honor the legacy of innovation that has made our Nation a technological leader for more than two centuries. And it seeks also to inspire the future generations of innovators who will keep our Nation strong for years to come.

This year, PACCAR, a Bellevue, WA company has earned this special recognition. But what, you may ask, do a lot of big rigs have to do with science and innovation?

Well, PACCAR has time and again led the industry in the design and manufacture of fuel efficient and lightweight trucks. They were the first to use a diesel engine in a heavy-duty truck. They were the first to introduce a truly aerodynamic truck design. And they were the first to use lightweight composites and aluminum in truck suspensions on a large scale. It would be difficult to name a single innovation in the recent history of truck design without finding a PACCAR product at its foundation.

These advances have required both significant investment and no small amount of risk. But PACCAR's faith has paid serious dividends to the truck buyer, the consumer, the economy, and the environment. For too long, heavy-duty trucks couldn't improve beyond a weak 10-mile-per-gallon fuel efficiency ceiling. But today, thanks to Peterbilt's and Kenworth's transformation, they have soared above and beyond that mark, significantly altering the economic and environmental forces at play in the market.

PACCAR's example has shown that it makes sense to support and advance fuel efficient technology, not only to protect our precious natural resources and reduce our dangerous reliance on foreign oil but also to help our economy thrive and grow. We would be wise to note PACCAR's model as we develop a comprehensive strategy for thoughtful investment in our energy future.

Day and night in all 50 States, PACCAR's trucks travel our Nation's highways—roads that have no end, constantly curving, folding and merging into one another. In our complex world of commerce and the vast transportation system on which that world relies, change is great and inevitable. PACCAR recognizes this beautiful evolution, embraces it, and seizes the opportunities it creates.

I rise to congratulate PACCAR Incorporated. It has made Washington State proud, it has made our Nation strong. The National Medal of Technology they receive today is well deserved.•

THE 100TH ANNIVERSARY OF THE SAN FRANCISCO EARTHQUAKE AND FIRE: IN COMMEMORATION

• Mrs. BOXER. Mr. President, I rise to recognize the 100th anniversary of one of the most significant disasters in California history, San Francisco's Great Earthquake and Fire of 1906.

One hundred years ago, the city of San Francisco experienced this horrific tragedy when the city shook for almost 60 seconds and communities from as far away as Oregon, Los Angeles, and Nevada felt the tremors. The Richter scale was not yet in existence in 1906, but seismologists today estimate this earthquake had a magnitude of 7.7 to 8.0.

Following the earthquake, fires broke out across the city and raged for 3 days. In fact, the fires did more damage than the earthquake. As a result of this disaster, over 3,000 people were killed, 300,000 people became homeless, and the city suffered about $500 million worth of damage. Telegraph and telephone services were destroyed as well as the municipal railway and all government buildings.

The 100th anniversary of this historic tragedy provides an opportunity to reflect on what we have learned and how to better prepare for a similar event. We now know that residents must be prepared to be self-sufficient for 72 hours following a disaster. And the city of San Francisco has done a great deal to make the community safer.

San Francisco Mayor Gavin Newsom has spearheaded an updated citywide emergency plan—the first time it has been done in 10 years. The San Francisco Fire Department offers training in disaster and emergency response for residents. Over 11,000 San Francisco residents have completed the course in the past 15 years. San Francisco has also invested $2.5 million in leading the development of a regional response plan with seven other bay area counties. This is one of the first regional response plans in the country. I commend the city and county of San Francisco on its efforts to ensure the city is ready to respond to a disaster.

Having witnessed the slow response to Hurricane Katrina in the Gulf States, I wrote to the Federal Emergency Management Agency, FEMA, in September asking for a copy of their disaster response plan for a serious earthquake in California. I am still waiting to receive their plan. Without the plan in hand, I remain very concerned that FEMA is not prepared should a major earthquake or natural disaster occur in California.

It is very important that the State of California and its residents are working to prepare themselves for a major disaster. I have created a "Getting Ready" guide on my Senate Web site to help my constituents prepare their homes and families for a disaster. This guide is organized in easy-to-follow steps and provides links to other preparedness sites—www.boxer.senate.gov/equake.cfm.

On the 100th anniversary of the Great San Francisco Earthquake and Fire, I rise to honor the memory of those who lost their lives during this disaster. I also pause to reflect on the tragedy that befell this great city and its citizens. The community came together to repair and restore the city, and today, San Francisco is one of the United States' top tourist destinations and a dynamic urban center.

I also commemorate this anniversary by encouraging all of us to look forward and ensure our families are prepared for a major earthquake or similar disaster. I will continue fighting to ensure the Federal Government is taking the steps necessary to help our local communities in disaster response.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

ECONOMIC REPORT OF THE PRESIDENT DATED FEBRUARY 2006 WITH THE ANNUAL REPORT OF THE COUNCIL OF ECONOMIC ADVISERS FOR 2006—PM 39

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Joint Economic Committee:

To the Congress of the United States:

The United States economy continues to demonstrate remarkable resilience, flexibility, and growth. Having previously endured a stock market collapse, recession, terrorist attacks, and corporate scandals, this year the economy showed strong growth and robust job creation in the face of higher energy prices and devastating natural disasters. This is the result of the hard work of America's workers, supported by pro-growth tax policies.

In 2005, the Nation's real gross domestic product (GDP) grew 3.5 percent for the year, above the historical average. About 2 million payroll jobs were added in 2005, and the unemployment rate dropped to 4.7 percent last month, well below the averages of the 1970s, 1980s, and 1990s. Real disposable personal income increased, and real household net worth reached an all-time high. This growth comes on top of an already strong expansion. More than 4.7 million payroll jobs have been added since August 2003.

Compared with the performance of other nations' economies, our economic growth is especially impressive. The United States has added more jobs in the past two-and-a-half years than Japan and the European Union combined. Real GDP growth in the United States has been faster than in any other major industrialized country since 2001, and America is forecasted to continue as the fastest-growing country over the next two years.

Our economy's fundamental strength comes from the ingenuity and hard work of our workers. Productivity—how much workers produce per hour—has accelerated since 2000. In the past five years, productivity has grown faster than in any other five-year period since the mid-1960s. The productivity of the United States is increasing faster than any other major industrialized country.

Productivity growth raises our standard of living and plays a central role in our competitiveness in the worldwide economy. Productivity growth will be even more important as new technologies accelerate global economic integration and as the American population ages.

We must now build on this fundamental strength by making robust investments in physical sciences, improving private incentives for research and development, and boosting math and science education and worker training. The American Competitiveness Initiative will help us remain a world leader in science and technology, which means good high-paying jobs for the American people.

We must also continue to pursue pro-growth economic policies and foster a culture of entrepreneurship. To adopt innovations effectively, our companies and workers need the incentives and flexibility that support a thriving free-market economy.

Maintaining a low tax burden is essential for our economic growth and competitiveness. Tax relief has helped our economy, and raising taxes will increase the burden on our families and small businesses. To keep our economy growing, Congress needs to make the tax relief permanent.

Two years ago, I called for cutting the budget deficit in half by 2009 by restraining spending and spurring economic growth. Every year of my presidency, we have reduced the growth of non-security discretionary spending, and last year Congress passed bills that cut this spending. This year, my budget will cut it again, and it will reduce or eliminate more than 140 programs that are performing poorly or not fulfilling essential priorities. By passing these reforms, we will save the American taxpayer another $14 billion next year, and we will stay on track to cut the deficit in half by 2009.

Controlling discretionary spending alone is not enough, however. We have recently passed significant savings in mandatory spending programs. We need to do more because the only way to solve our Nation's fiscal challenges is to address the explosions in growth of entitlement programs like Social Security, Medicare, and Medicaid. I have called for a bipartisan commission to examine the full impact of the Baby Boom retirement and help us come up with bipartisan answers. The longer Congress waits to act, the more difficult the choices will become.

Working together, we accomplished other significant pro-growth reforms that will help our Nation's economy grow stronger and create more jobs. More remains to be done.

Growth in spending on health care has been more rapid than general inflation, straining consumers, employers, and government budgets. Two years ago, we created Health Savings Accounts (HSAs) to help give patients more control over their health care decisions and to make health care more available and affordable. This year, I am proposing to enhance HSAs to make them more widely available, valuable to consumers, and attractive to small businesses—and to make it easier for people to keep their insurance policies when they change jobs. Last year, we worked with Congress to pass a patient safety bill that will help reduce medical errors. Getting doctors and patients the information they need on the quality, cost, and effectiveness of different treatments will help Americans get the highest quality and highest value care. This year, my Administration will push to make more information about price and quality available to consumers, and move forward on these and other policies to lower the cost of health care.

Our Nation's liability laws allow too many frivolous lawsuits and raise costs for consumers and businesses. A year ago, we worked with Congress to pass bipartisan class action reform to help curb lawsuit abuse. I urge Congress in the coming year to pass other essential legal reforms, including asbestos and medical liability reforms.

Energy prices have risen in the last year, but the underlying causes of high prices are long-standing. Last year, we passed the first major energy bill in over a decade. It encourages new technologies and updates government regulations. Over time, the new law will help increase the reliability of our energy supply and the efficient use of the energy we have. We must continue to find new ways to diversify our sources of energy. I have proposed the Advanced Energy Initiative to help increase research in alternative energy sources and technology and to make America less dependent on foreign sources of energy.

Because 95 percent of the world's customers live outside of our borders, opening international markets to our goods and services is critical for our economy. My Administration will continue to work tirelessly to open markets and knock down barriers to free and fair trade so that American farmers and workers can compete on a level playing field worldwide.

These and other issues are discussed in the 2006 Annual Report of the Council of Economic Advisers. This report is prepared by CEA to help policymakers understand the economic context of a variety of issues and trends as our Government makes decisions regarding our economic future. By adopting sound economic policies that build on our strengths, we will keep our economy moving forward and extend prosperity for all Americans.

GEORGE W. BUSH.
THE WHITE HOUSE, *February 2006*.

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

S. 2271. A bill to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive national security letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

S. 2273. A bill to make available funds included in the Deficit Reduction Act of 2005 for the Low-Income Home Energy Assistance Act of 1981 program for fiscal year 2006, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-5695. A communication from the Assistant Administrator, Office of Administration and Resource Management, Environmental Protection Agency, transmitting, pursuant to law, reports (3) relative to vacancy announcements within the Agency; to the Committee on Environment and Public Works.

EC-5696. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, the URL address of a report entitled "Initial Distribution System Evaluation Guide for Systems Serving <10,000 for Final Stage 2 Disinfectants and Disinfection Byproducts Rule and the Initial Distribution System Evaluation Guidance Manual for Final Stage 2 Disinfectants and Disinfection Byproducts" received on February 8, 2006; to the Committee on Environment and Public Works.

EC–5697. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Air Quality Implementation Plans; Utah; Rule Recodification" (FRL No. 8027-4) received on February 8, 2006; to the Committee on Environment and Public Works.

EC-5698. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Revised Compliance Dates for National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines for Concentrated Animal Feeding Operations" (FRL No. 8031–3) received on February 8, 2006; to the Committee on Environment and Public Works.

EC–5699. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Revisions to the California State Implementation Plan; San Joaquin Valley Unified Air Pollution Control District" (FRL No. 8029–4) received on February 8, 2006; to the Committee on Environment and Public Works.

EC–5700. A communication from the Assistant General Counsel, Federal Election Commission, transmitting, pursuant to law, the report of a rule entitled "Federal Election Activity" (11 CFR Part 100) received on February 8, 2006; to the Committee on Rules and Administration.

EC-5701. A communication from the Chairman, Federal Election Commission, transmitting, pursuant to law, the report of a rule entitled "Definition of Federal Election Activity" (11 CFR Part 100) received on February 8, 2005; to the Committee on Rules and Administration.

EC-5702. A communication from the Counsel for Legislation and Regulations, Office of Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled "Revisions to FHA Credit Watch Termination Initiative" ((RIN2502–AH60)(FR–4625–F–03)) received on February 8, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5703. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, the report of a rule entitled "Governance, Conflict of Interest, Compensation Disclosure, and Audit Committee Standards" (RIN3052–AC19) received on February 8, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5704. A communication from the Secretary, Office of Regulation Policy and Management, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled "Eligibility for Health Care Benefits for Certain Filipino Veterans in the United States" (RIN2900–AM03) received on February 8, 2006; to the Committee on Veterans' Affairs.

EC–5705. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Section 45 Credit Offset" (Revenue Ruling 2006–9) received on February 8, 2006; to the Committee on Finance.

EC-5706. A communication from the Secretary of Transportation, transmitting, pursuant to law, the Semiannual Report of the Office of Inspector General for the period ending September 30, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC-5707. A communication from the Acting Assistant Secretary, Land and Minerals Management, Department of the Interior, transmitting, pursuant to law, a report entitled "Comprehensive Inventory of U.S. OCS Oil and Natural Gas Resources"; to the Committee on Energy and Natural Resources.

EC-5708. A communication from the Assistant Secretary of Defense (Homeland Defense), transmitting, pursuant to law, a report on Department of Defense assistance provided for essential security and safety for civilian sporting events during calendar year 2005; to the Committee on Armed Services.

EC–5709. A communication from the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, transmitting, pursuant to law, the report of a rule entitled "Quarterly Excise Tax Filing for Small Alcohol Excise Taxpayers" ((RIN1513-AB17)(T.D. TTB-41)) received on February 8, 2006; to the Committee on the Judiciary.

EC-5710. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to Executive Order 13346 of July 8, 2004, the annual certification of the effectiveness of the Australia Group; to the Committee on Foreign Relations.

EC-5711. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to the Case-Zablocki Act, 1 U.S.C. 112b, as amended, the report of the texts and background statements of international agreements, other than treaties (List 06-21-06-34); to the Committee on Foreign Relations.

EC-5712. A communication from the White House Liaison, Department of Education, transmitting, pursuant to law, (6) reports relative to vacancy announcements within the Department; to the Committee on Health, Education, Labor, and Pensions.

EC-5713. A communication from the Board Members, Railroad Retirement Board, transmitting, pursuant to law, a report entitled "Justification of Budget Estimates for Fiscal Year 2007"; to the Committee on Health, Education, Labor, and Pensions.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DURBIN (for himself, Mr. DORGAN, Mr. JOHNSON, and Mr. LAUTENBERG):

S. 2277. A bill to promote accountability and prevent fraud in Federal contracting; to the Committee on Homeland Security and Governmental Affairs.

By Mr. COCHRAN (for himself, Mr. FRIST, and Mr. LEAHY):

S.J. Res. 29. A joint resolution providing for the reappointment of Alan G. Spoon as a citizen regent of the Board of Regents of the Smithsonian Institution; to the Committee on Rules and Administration.

By Mr. COCHRAN (for himself, Mr. FRIST, and Mr. LEAHY):

S.J. Res. 30. A joint resolution providing for the appointment of Phillip Frost as a citizen regent of the Board of Regents of the Smithsonian Institution; to the Committee on Rules and Administration.

ADDITIONAL COSPONSORS

S. 345

At the request of Mr. DURBIN, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 345, a bill to amend title

XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the Medicare program.

S. 914

At the request of Mr. ALLARD, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 914, a bill to amend the Public Health Service Act to establish a competitive grant program to build capacity in veterinary medical education and expand the workforce of veterinarians engaged in public health practice and biomedical research.

S. 1082

At the request of Mrs. HUTCHISON, the name of the Senator from Florida (Mr. MARTINEZ) was added as a cosponsor of S. 1082, a bill to restore Second Amendment rights in the District of Columbia.

S. 1272

At the request of Mr. NELSON of Nebraska, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 1272, a bill to amend title 46, United States Code, and title II of the Social Security Act to provide benefits to certain individuals who served in the United States merchant marine (including the Army Transport Service and the Naval Transport Service) during World War II.

S. 1799

At the request of Ms. MIKULSKI, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 1799, a bill to amend title II of the Social Security Act to provide that the reductions in social security benefits which are required in the case of spouses and surviving spouses who are also receiving certain government pensions shall be equal to the amount by which two-thirds of the total amount of the combined monthly benefit (before reduction) and monthly pension exceeds $1,200, adjusted for inflation.

S. 1800

At the request of Ms. SNOWE, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 1800, a bill to amend the Internal Revenue Code of 1986 to extend the new markets tax credit.

S. 1881

At the request of Mrs. FEINSTEIN, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 1881, a bill to require the Secretary of the Treasury to mint coins in commemoration of the Old Mint at San Francisco otherwise known as the "Granite Lady", and for other purposes.

S. 1934

At the request of Mr. SPECTER, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 1934, a bill to reauthorize the grant program of the Department of Justice for reentry of offenders into the community, to establish a task force on Federal programs and activities relating to the reentry of offenders into the community, and for other purposes.

S. 1956

At the request of Mr. BROWNBACK, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 1956, a bill to amend the Federal Food, Drug, and Cosmetic Act to create a new three-tiered approval system for drugs, biological products, and devices that is responsive to the needs of seriously ill patients, and for other purposes.

S. 2253

At the request of Mr. DOMENICI, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 2253, a bill to require the Secretary of the Interior to offer the 181 Area of the Gulf of Mexico for oil and gas leasing.

S. 2255

At the request of Mrs. FEINSTEIN, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 2255, a bill to amend title XVIII of the Social Security Act to prohibit removal of covered part D drugs from a prescription drug plan formulary during the plan year once an individual has enrolled in the plan.

S. 2258

At the request of Mr. ISAKSON, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 2258, a bill to amend the Tennessee Valley Authority Act of 1933 to increase the membership of the Board of Directors and require that each State in the service area of the Tennessee Valley Authority be represented by at least 1 member.

S. 2273

At the request of Ms. SNOWE, the names of the Senator from New Hampshire (Mr. SUNUNU), the Senator from Pennsylvania (Mr. SPECTER), the Senator from Vermont (Mr. LEAHY), the Senator from New York (Mr. SCHUMER), the Senator from Massachusetts (Mr. KERRY), the Senator from New Jersey (Mr. MENENDEZ) and the Senator from New York (Mrs. CLINTON) were added as cosponsors of S. 2273, a bill to make available funds included in the Deficit Reduction Act of 2005 for the Low-Income Home Energy Assistance Act of 1981 program for fiscal year 2006, and for other purposes.

S.J. RES. 28

At the request of Mr. STEVENS, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S.J. Res. 28, a joint resolution approving the location of the commemorative work in the District of Columbia honoring former President Dwight D. Eisenhower.

S. CON. RES. 71

At the request of Mr. DEWINE, his name was added as a cosponsor of S. Con. Res. 71, a concurrent resolution expressing the sense of Congress that States should require candidates for driver's licenses to demonstrate an ability to exercise greatly increased caution when driving in the proximity of a potentially visually impaired individual.

S. RES. 313

At the request of Ms. CANTWELL, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. Res. 313, a resolution expressing the sense of the Senate that a National Methamphetamine Prevention Week should be established to increase awareness of methamphetamine and to educate the public on ways to help prevent the use of that damaging narcotic.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURBIN (for himself, Mr. DORGAN, Mr. JOHNSON, and Mr. LAUTENBERG):

S. 2277. A bill to promote accountability and prevent fraud in Federal contracting; to the Committee on Homeland Security and Governmental Affairs.

Mr. DURBIN. Mr. President, this week marks five months since President Bush stood in Jackson Square in New Orleans and promised, "Throughout the area hit by the hurricane, we will do what it takes, we will stay as long as it takes, to help citizens rebuild their communities and their lives."

America must keep that promise, and we must do so responsibly. So today, I am introducing a proposal to ensure that from here on out, federal reconstruction dollars needed to rebuild the Katrina-ravaged Gulf Coast—and Iraq—are not awarded to companies with histories of cheating American taxpayers.

My bill, the Reconstruction Accountability and Anti-Fraud Act, will promote accountability and prevent fraud in two of the largest reconstruction projects ever undertaken by the United States.

Under my proposal, firms that have cheated American taxpayers by overcharging, improperly billing or defrauding the government of more than $10 million over the last five years will be ineligible to compete for reconstruction work in either the Gulf Coast or Iraq.

Katrina is a national tragedy and rebuilding Iraq is a national responsibility, and neither should be an opportunity for profiteering.

Firms that have misused Iraq construction funds should be held accountable—not rewarded with no-bid contracts to rebuild the Gulf Coast.

Sadly, we've already seen examples of just that sort of misuse of taxpayer dollars.

New Orleans were still waist-deep in flood waters when Halliburton and its subsidiary, Kellogg, Brown & Root, were awarded some of the first multibillion dollar no-bid contracts for Katrina reconstruction work. The companies received those contracts despite repeatedly overcharging the government for work in Iraq.

Listen to these abuses: In 2004, Halliburton was found to have overcharged the Defense Department by $167 million to import gasoline into Iraq from Kuwait.

A year later, a Pentagon audit revealed another $108 million in overcharges by KBR, a Halliburton subsidiary, for delivering gasoline to Iraq.

In 2003, KBR overcharged the government $27.4 million over 9 months for meals at five military bases in Iraq and Kuwait, where they billed the government for an average of 42,000 meals a day but served only 14,000 meals a day.

Last month, former KBR employees testified at a Senate Democratic Policy Committee hearing that water provided by KBR to thousands of U.S. troops in Iraq contained twice as much fecal coliform and other harmful bacteria as untreated water from the Euphrates River.

Yet incredibly, instead of banning Halliburton and KBR from competing from Katrina reconstruction work, the Bush administration awarded these same companies multibillion dollar no-bid contracts for Katrina work.

Not only that, many of the contracting practices blamed for wasteful spending in Iraq—including the "cost-plus" provisions that guarantee profits to contractors no matter how much they charge, or how well or poorly they perform—are being used in the gulf coast.

American taxpayers and the people of the gulf coast can't afford reconstruction based on the Halliburton business model of waste, fraud, and abuse. We must increase oversight and accountability in Iraq, and we must demand the same accountability here at home.

A growing number of reports demonstrate why this bill is needed.

Since November 2003, Congress has appropriated $21 billion for Iraq reconstruction and relief. On a bipartisan basis, this Congress has given the President everything he has asked for to support his ambitious plans to rebuild Iraq.

Earlier this week, Stuart Bowen, the Special Inspector General for Iraq Reconstruction, told the Senate Armed Services Readiness Subcommittee that nearly all of that money is either spent or obligated, and what remains, "will not permit completion of all projects that were envisioned."

We know how dangerous Iraq has become, not only for our troops but also for everyone involved in reconstruction. Dangerous conditions there have caused many setbacks and delays, and they have forced USAID, the Department of State, and others to devote increasing amounts of money to security, rather than reconstruction. Security is and will remain a serious problem, but it is by no means the only reason that the United States Government has spent billions of dollars for Iraqi reconstruction—and Iraq still struggles to rebuild.

The reports of the Special Inspector General for Iraqi Reconstruction fully address the serious security challenges our men and women in Iraq face today, and every day, but they also paint a grim picture of conditions in Iraq, and of poor planning, execution, and oversight of reconstruction efforts by the administration.

Let me be very clear: These failings are not the fault of our troops or of the men and women of USAID, of the Department of State, and other agencies that are risking their lives and working heroically to help the Iraqi people rebuild their shattered nation and create a better future, and they deserve our thanks and respect.

The Special Inspector General found that the CPA—the Coalition Provisional Authority—burned through nearly $100 million in Development Fund for Iraq money with few records to show for how that money was spent. In many instances, the money simply vanished. That is simply inexcusable.

In the town of Hillah, for example, the Special Inspector General found that the CPA left $7 million worth of projects uncompleted. The money allocated for these projects is missing.

Thanks to the good work of Special Inspector General Bowen, the American criminal justice system is going to hold at least a few people accountable.

Unfortunately, because of poor recordkeeping, there may be no way now to trace and recover all of the billions of dollars that have disappeared in Iraq.

But where we can track fraud and overbilling to specific companies, why would we give more money to these same offenders?

This week, the President sent Congress a budget proposal for next year that cuts Medicare, Medicaid, student loans, veterans' health, and many other vital programs America depends on.

I am deeply concerned about the deficits that have built up under this President. In 5 years, we've gone from a $5 trillion projected surplus to multitrillion dollar projected deficits as far as the eye can see. We must restore fiscal sanity to the Federal budget. But before we cut health care for seniors and veterans or student loans, we should cut out the waste, fraud, and abuse in Federal reconstruction contracts.

We must ensure that reconstruction dollars meant to help Katrina victims rebuild their lives are not diverted to irresponsible contractors seeking to pad their bottom lines. Whether the work is done in Iraq or in Louisiana, Alabama, or Mississippi, there must be honesty, transparency, and accountability.

General John Abizaid, the commander of the U.S. Central Command, has said that the key to military success in Iraq "is whether we can learn from our mistakes."

Five months ago, when the President addressed the Nation from Jackson Square in New Orleans, he said, "Americans have every right to expect a more effective response in a time of emergency. When the federal government fails to meet such an obligation, I, as President, am responsible for the problem, and for the solution. This government will learn the lessons of Hurricane Katrina."

This is the test. If we are serious about correcting mistakes, there must be accountability. We cannot reward companies that have cheated the American people with even more taxpayer dollars, with little or no oversight. Our troops who are risking their lives deserve better. Our fellow American citizens who are struggling to rebuild their lives and communities in the gulf coast deserve better. And the American taxpayers who are paying the bills deserve better.

We have the biggest economy in the world. We don't need to rely on just a few privileged firms to do America's work. We don't need over-billers, underperformers, chiselers, and cheats to do America's work.

America's work and American taxpayer dollars should go to companies that believe in accountability, responsibility, and honest work for an honest dollar.

There are countless firms that fit that bill—in the gulf coast region, in Illinois, and across America. By weeding out companies that have cheated taxpayers, my bill will assure that those hard-working firms have a fair shot to compete for Federal reconstruction dollars in Iraq and at home.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2277

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Reconstruction Accountability and Fraud Prevention Act of 2005".

SEC. 2. ACCOUNTABILITY IN FEDERAL CONTRACTING.

(a) IN GENERAL.—Except as provided in subsection (b), none of the funds appropriated or otherwise made available by the Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising From the Consequences of Hurricane Katrina, 2005 (Public Law 109-61), by the Second Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising From the

Consequences of Hurricane Katrina, 2005 (Public Law 109-62), or through the Iraq Relief and Reconstruction Fund may be obligated or expended in connection with a contract or covered task order entered into after the date of the enactment of this Act with a contractor that, during the previous 5 years—

(1) has been found by an executive agency or any Inspector General to have overcharged or improperly billed the Federal Government by a total of at least $10,000,000 through one or more overcharges;

(2) has been found by an executive agency or any Inspector General to have committed one or more fraudulent acts resulting in total costs or losses to the Federal Government of at least $10,000,000; or

(3) has been suspended or debarred for a period of at least one year under the Federal suspension and debarment regulations.

(b) NATIONAL SECURITY WAIVER.—The President may waive the restrictions under subsection (a) on a case-by-case basis if the President determines that such waiver is in the national security interest of the United States and submits to the appropriate congressional authorities a report describing the reasons for such determination.

(c) DEFINITIONS.—In this Act:

(1) APPROPRIATE CONGRESSIONAL AUTHORITIES.—The term "appropriate congressional authorities" means—

(A) the Majority Leader and the Minority Leader of the Senate;

(B) the Speaker of the House of Representatives and the Minority Leader of the House of Representatives; and

(C) the Committees on Appropriations of the Senate and the House of Representatives.

(2) COVERED TASK ORDER.—The term "covered task order" means a task order valued at more than $10,000,000 entered into pursuant to a contract entered into before the date of the enactment of this Act.

(3) EXECUTIVE AGENCY.—The term "executive agency" has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

By Mr. COCHRAN (for himself, Mr. FRIST, and Mr. LEAHY):

S.J. Res. 29. A joint resolution providing for the reappointment of Alan G. Spoon as a citizen regent of the Board of Regents of the Smithsonian Institution; to the Committee on Rules and Administration.

By Mr. COCHRAN (for himself, Mr. FRIST, and Mr. LEAHY):

S.J. Res. 30. A joint resolution providing for the appointment of Phillip Frost as a citizen regent of the Board of Regents of the Smithsonian Institution; to the Committee on Rules and Administration.

Mr. COCHRAN. Mr. President, I am pleased to introduce two joint resolutions appointing two individuals to the Smithsonian Board of Regents. The joint resolutions are cosponsored by Senators FRIST and LEAHY. Alan Spoon and Phillip Frost have been approved and recommended for appointment by the Smithsonian Board of Regents. I ask unanimous consent that the text of the resolutions and the biographies of both gentlemen be printed in the RECORD. I ask the Senate to approve the resolutions.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Alan G. Spoon, Appointed 2000, Executive Committee, Chair, Finance and Investment Committee.

Alan G. Spoon, of Massachusetts, is Managing Partner of Polaris Venture Partners, which invests in Internet-related businesses, networking, biotechnology, and medical technology. He was previously President of the Washington Post Company, having served 18 years in various leadership roles. He maintains leadership and advisory roles with numerous companies and organizations in the technology, communications, and financial industries.

S.J. RES. 29

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, in accordance with section 5581 of the Revised Statutes (20 U.S.C. 43), the vacancy on the Board of Regents of the Smithsonian Institution, in the class other than Members of Congress, occurring by reason of the expiration of the term of Alan G. Spoon of Massachusetts, is filled by reappointment of the incumbent for a term of 6 years. The reappointment shall take effect on the date of enactment of this joint resolution.

Phillip Frost

Chairman of the Board and CEO, Ivax Corporation, Miami Beach, FL

Nationally recognized for his creative enterprise, business and marketing acumen, and generous support of education and the arts, Phillip Frost has held leadership positions with numerous corporations and organizations. Born in Philadelphia, where his family lived above his father's shoe store, Dr. Frost worked at a brother's hardware store before heading to the University of Pennsylvania. There Dr. Frost majored in French literature and spent one year studying at the University of Paris, a seminal period that led to Dr. Frost's life-long commitment to the arts. He and his wife, Patricia, who is chair of the Smithsonian National Board, are renowned collectors who gave their 113-piece collection of American abstract art to the Smithsonian in 1986; they also have stated their interest in exploring the possibility of providing significant support for a major exhibition on medical history at the National Museum of American History.

After receiving his B.A. from the University of Pennsylvania in 1957 and his M.D. from the Albert Einstein College of Medicine in New York in 1961, Dr. Frost completed his internship at New York's Montefiore Hospital and his residency in dermatology at the Hospital of the University of Pennsylvania. He then served as a lieutenant commander in the U.S. Public Health Service at the National Cancer Institute and completed a one-year senior residency at Jackson Memorial Hospital in Miami. He joined the faculty of the University of Miami School of Medicine in 1966 and then moved to Mount Sinai Medical Center of Greater Miami, chairing its Department of Dermatology from 1972 to 1990.

While at Mt. Sinai, Dr. Frost sold a disposable instrument for skin biopsies to Miles Laboratory. He and his partner in that venture then purchased Key Pharmaceuticals, which was later sold to Schering-Plough for $600 million. Eager to explore the then-unglamorous world of generic drugs, Dr. Frost next founded IVAX Corporation, which became recognized for its consumer-directed research, development, manufacture, and marketing of pharmaceutical products worldwide. Since 1987, Dr. Frost has served as chairman of the board of directors and chief executive officer of IVAX; he also was president from 1991 to 1995. IVAX was recently acquired by TEVA Pharmaceutical Industries Ltd. and, according to published reports, Dr. Frost will receive more than $1 billion of TEVA stock as a result of its sale.

Dr. Frost is a director of Northrop Grumman Corporation, Continucare Corporation, Cellular Technical Services Co., Inc., and Ladenburg Thalmann Financial Services Inc. He also is co-vice chairman of the American Stock Exchange's board of governors and a trustee of Scripps Research Institute and previously served as chairman of the board of directors of Key Pharmaceuticals, Inc., chairman of Whitman Education Group, Inc., and vice chairman of the board of directors of American Vaccine, Inc. In addition, Dr. Frost possesses significant fiscal experience with matters of government oversight.

Residents of Florida for over 40 years, Dr. and Mrs. Frost also have been ardent supporters of local community efforts. In addition to their commitment to the visual arts, the Frosts made a $33 million gift to the University of Miami for its school of music (now called the Phillip and Patricia Frost School of Music), one of the largest individual gifts the university ever has received. Dr. Frost serves as campaign co-chair of the fund-raising initiative "Momentum: The Campaign for the University of Miami," having previously served as chairman of its board of trustees, and co-chaired the successful launch of the Miami Art Museum's fund-raising campaign "Art for All People." He is a former member of the Florida International University (FIU) Foundation board and the FIU board of trustees. The Patricia & Phillip Frost Art Museum at FIU is so-named as a tribute to their longstanding support; likewise, the university presented Dr. Frost with an honorary degree in 1993 for his many contributions in medicine, business, and community service. He also was named the 2001 National Ernst & Young Entrepreneur of the Year.

Since 1987, Phillip Frost has served as chairman of the board of directors and chief executive officer of Ivax Corporation, which was recently acquired by TEVA Pharmaceutical Industries Ltd.; he also was president of IVAX from 1991 to 1995. In addition, he was chairman of the Department of Dermatology at Mt. Sinai Medical Center of Greater Miami from 1972 to 1990.

Nationally recognized for his business acumen and creative enterprise, Dr. Frost has held leadership positions with numerous corporations and organizations. In addition to his management of the IVAX board of directors, he is chairman of the board of its subsidiary, IVAX Diagnostics, and director of Northrop Grumman Corporation, Continucare Corporation, Cellular Technical Services Co., Inc., and Ladenburg Thalmann Financial Services Inc. Dr. Frost also is co-vice chairman of the American Stock Exchange's board of governors, chairman of the board of trustees of the University of Miami, and a trustee of Scripps Research Institute. He previously served as chairman of the board of directors of Key Pharmaceuticals, Inc., chairman of Whitman Education Group, Inc., and vice chairman of the board of directors of American Vaccine, Inc.

Dr. Frost and his wife, Patricia, are ardent supporters of the arts. Sophisticated collectors of American abstract art, they gave their 113-piece collection to the Smithsonian American Art Museum in 1986. The Frost's $33 million gift to the University of Miami for its school of music (now called the Phillip and Patricia Frost School of Music) was one of the largest individual gifts the university has ever received, and the largest ever made to a university school of music in the United States. Dr. Frost also serves as chair of the fundraising initiative "Momentum: The Campaign for the University of Miami" and has served as chair of the Miami Art Museum's fundraising campaign "Art for All People." Additionally, he is a former member of the Florida International University (FIU) Foundation board and the FIU board of trustees. FIU's Patricia & Phillip Frost Art Museum is so-named as a tribute to their longstanding support; likewise, the university presented Dr. Frost with an honorary degree in 1993 for his many contributions in medicine, business, and community service. He also was named the 2001 National Ernst & Young Entrepreneur of the Year.

A native of Philadelphia, Dr. Frost attended the University of Paris from 1955 to 1956. He received his B.A. from the University of Pennsylvania in 1957 and his M.D. from the Albert Einstein College of Medicine in New York in 1961, after which he completed his internship at New York's Montefiore Hospital and his residency in dermatology at the Hospital of the University of Pennsylvania. Following service as a lieutenant commander in the U.S. Public Health Service at the National Cancer Institute, Dr. Frost completed a one-year senior residency at Jackson Memorial Hospital in Miami. He joined the faculty of the University of Miami School of Medicine in 1966 prior his tenure at Mount Sinai Medical Center.

S.J. RES. 30

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, in accordance with section 5581 of the Revised Statutes (20 U.S.C. 43), the vacancy on the Board of Regents of the Smithsonian Institution, in the class other than Members of Congress, resulting from the retirement of Manuel L. Ibáñez, is filled by the appointment of Phillip Frost of Miami Beach, Florida. The appointment is for a term of 6 years, beginning upon the date of enactment of this joint resolution.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been rescheduled before the Committee on Energy and Natural Resources.

The hearing originally scheduled for Tuesday, February 14, 2006 at 2:30 p.m. in Room SD-366 of the Dirksen Senate Office Building will now be held on Wednesday, February 15, 2006 at 10:30 a.m. in the same room.

The purpose of the hearing is to receive testimony regarding S. 2197, to improve the global competitiveness of the United States in science and energy technology, to strengthen basic research programs at the Department of Energy, and to provide support for mathematics and science education at all levels through the resources available through the Department of Energy, including at the National Laboratories.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510-6150.

For further information, please contact Kathryn Clay or Steve Waskiewicz.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that an oversight hearing has been scheduled before the Committee on Energy and Natural Resources on Wednesday, March 1, at 10 a.m. in Room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the oversight hearing is to receive testimony regarding the state of the economies and fiscal affairs in the Territories of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510-6150.

For further information, please contact Josh Johnson or Steve Waskiewicz.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Monday, February 13, 2006, at 10 a.m. for a hearing titled, "Hurricane Katrina: Waste, Fraud, and Abuse Worsen the Disaster."

The PRESIDING OFFICER. Without objection, it is so ordered.

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. KYL. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations be authorized to meet on Monday, February 13, 2006, at 8:30 a.m., for a field hearing at James J. Hill Reference Library in St. Paul, MN, entitled "Volatility in the Natural Gas Market: The Impact of High Natural Gas Prices on American Consumers."

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. BAUCUS. Mr. President, I ask unanimous consent that the following list of fellows and interns with the Finance Committee staff be allowed on the Senate floor for the duration of the debate on the tax reconciliation bill:

Mary Baker, Robin Burgess, Tiffany Smith, Tom Louthan, Richard Litsey, David Schwartz, Stuart Sirkin, Zachary Henderson, Lesley Meeker, Britt Sandler, Lauren Shields, Janis Lazda, Jordan Murray, Leona Cuttler, Laura Kellams, Deidra Henry-Spires, Caroline Ulbrich, Peggy Hathaway, and Robin Burgess.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I ask unanimous consent that Anne Freeman and Theresa Pattara of the Finance Committee staff be given privileges of the floor for the duration of consideration of the House message to accompany H.R. 4297.

The PRESIDING OFFICER. Without objection, it is so ordered.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Majority Leader, pursuant to Public Law 109-59, appoints the following individuals to serve as members of the National Surface Transportation Policy and Revenue Study Commission: Paul Weyrich of Virginia and Patrick E. Quinn of Tennessee.

MEASURES PLACED ON THE CALENDAR—S. 2271 AND S. 2273

Mr. FRIST. Mr. President, I understand there are two bills at the desk due for a second reading.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 2271) to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive national security letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

A bill (S. 2273) to make available funds included in the Deficit Reduction Act of 2005 for the Low-Income Home Energy Assistance Act of 1981 program for fiscal year 2006, and for other purposes.

Mr. FRIST. In order to place the bills on the calendar under the provisions of rule XIV, I object to further proceeding en bloc.

The PRESIDING OFFICER. Objection is heard. The bills will be placed on the calendar.

ORDERS FOR TUESDAY, FEBRUARY 14, 2006

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:45 on Tuesday, February 14. I further ask that following the prayer and the pledge, the morning hour be deemed to have expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then resume consideration of the House message to accompany H.R. 4297, as under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, tomorrow the Senate will complete consideration of the pending motions to instruct the conferees on H.R. 4297, the tax relief bill, and send that bill to conference. We will have multiple votes starting close to 10 a.m. Senators should plan to stay around the floor for a series of up to 16 stacked votes in the morning. I truly hope that some of those will not be pushed to a rollcall vote and we would finish at a reasonable time.

Tomorrow afternoon, we will resume consideration of S. 852, the asbestos bill. There is a pending motion to waive the Budget Act that must be disposed of before we can move forward with the amendment process.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

Mr. FRIST. Mr. President, if this is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 9:58 p.m., adjourned until Tuesday, February 14, 2006, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate February 13, 2006:

EXPORT-IMPORT BANK OF THE UNITED STATES

JAMES LAMBRIGHT, OF MISSOURI, TO BE PRESIDENT OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR A TERM EXPIRING JANUARY 20, 2009, VICE PHILIP MERRILL, RESIGNED.

DEPARTMENT OF ENERGY

DENNIS R. SPURGEON, OF FLORIDA, TO BE AN ASSISTANT SECRETARY OF ENERGY (NUCLEAR ENERGY), (NEW POSITION)

OFFICE OF PERSONNEL MANAGEMENT

ROBERT IRWIN CUSICK, JR., OF KENTUCKY, TO BE DIRECTOR OF THE OFFICE OF GOVERNMENT ETHICS FOR A TERM OF FIVE YEARS, VICE AMY L. COMSTOCK, RESIGNED.

DEPARTMENT OF JUSTICE

DONALD J. DEGABRIELLE, JR., OF TEXAS, TO BE UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF TEXAS FOR THE TERM OF FOUR YEARS, VICE MICHAEL TAYLOR SHELBY.

EXTENSIONS OF REMARKS

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, February 14, 2006 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

FEBRUARY 15

9 a.m.
Foreign Relations
To hold a closed briefing on the challenges and responses with respect to a nuclear Iran
S–407, Capitol

9:30 a.m.
Armed Services
To hold hearings to examine the nominations of Preston M. Geren, of Texas, to be Under Secretary of the Army, Michael L. Dominguez, of Virginia, to be Deputy Under Secretary of Defense for Personnel and Readiness, James I. Finley, of Minnesota, to be Deputy Under Secretary of Defense for Acquisition and Technology, and Thomas P. D'Agostino, of Maryland, to be Deputy Administrator for Defense Programs, National Nuclear Security Administration.
SD–106

Environment and Public Works
Business meeting to consider the nominations of Terrence L. Bracy, of Virginia, to be a Member of the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and Dennis Bottorff, Susan Richardson Williams, and William B. Sansom, all of Tennessee, Robert M. Duncan, of Kentucky, Howard A. Thrailkill, of Alabama, and Donald R. DePriest, of Mississippi, each to be a Member of the Board of Directors of the Tennessee Valley Authority.
SD–628

Appropriations
Labor, Health and Human Services, Education, and Related Agencies Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2007 for the Department of Health and Human Services.
SD–192

9:35 a.m.
Environment and Public Works
To hold hearings to examine the President's proposed budget request for fiscal year 2007 for EPA.
SD–628

10 a.m.
Banking, Housing, and Urban Affairs
To hold hearings to examine rebuilding needs in Hurricane Katrina-impacted areas.
SD–538

Budget
To hold hearings to examine understanding the causes and solutions to addressing the Federal tax gap.
SD–608

Commerce, Science, and Transportation
To hold hearings to examine video franchising.
SD–562

Health, Education, Labor, and Pensions
Employment and Workplace Safety Subcommittee
To hold hearings to examine communication and mine safety technology issues.
SD–430

Judiciary
To hold hearings to examine the nominations of Stephen G. Larson, to be United States District Judge for the Central District of California, Jack Zouhary, to be United States District Judge for the Northern District of Ohio, and John F. Clark, of Virginia, to be Director of the United States Marshals Service, Department of Justice.
SD–226

10:15 a.m.
Foreign Relations
To hold hearings to examine the challenges and responses with respect to a nuclear Iran.
SH–216

10:30 a.m.
Energy and Natural Resources
To hold hearings to examine S. 2197, to improve the global competitiveness of the United States in science and energy technology, to strengthen basic research programs at the Department of Energy, and to provide support for mathematics and science education at all levels through the resources available through the Department of Energy, including at the National Laboratories.
SD–366

Appropriations
Legislative Branch Subcommittee
To resume hearings to examine the progress of construction on the Capitol Visitor Center.
SD–138

2:30 p.m.
Commerce, Science, and Transportation
To hold hearings to examine developments in nanotechnology.
SD–562

Energy and Natural Resources
Public Lands and Forests Subcommittee
To hold hearings to review the progress made on the development of interim and long-term plans for use of fire retardant aircraft in Federal wildfire suppression operations.
SD–366

Intelligence
To receive a closed briefing regarding certain intelligence matters.
SH–219

FEBRUARY 16

9:30 a.m.
Armed Services
To hold hearings to examine priorities and plans for the atomic energy defense activities of the Department of Energy and to review the President's proposed budget request for fiscal year 2007 for atomic energy defense activities of the Department of Energy and the National Nuclear Security Administration.
SD–106

Judiciary
Business meeting to consider pending calendar business.
SD–226

10 a.m.
Banking, Housing, and Urban Affairs
To hold hearings to examine the semiannual monetary policy report to the Congress.
SD–538

Budget
To resume hearings to examine the President's fiscal year 2007 budget proposal.
SR–325

Energy and Natural Resources
To hold hearings to examine S. 2253, to require the Secretary of the Interior to offer the 181 Area of the Gulf of Mexico for oil and gas leasing.
SD–366

Health, Education, Labor, and Pensions
To resume hearings to examine the role of education in global competitiveness.
SD–G50

10:30 a.m.
Finance
To hold hearings to examine the Administration's trade agenda for 2006.
SD–215

Joint Economic Committee
To hold hearings to examine the economic report of the President.
2322 RHOB

2:30 p.m.
Commerce, Science, and Transportation
To hold hearings to examine NOAA budget.
SD–562

Energy and Natural Resources
National Parks Subcommittee
To hold hearings to examine S. 1870, to clarify the authorities for the use of

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

certain National Park Service properties within Golden Gate National Recreation Area and San Francisco Maritime National Historical Park, S. 1913, to authorize the Secretary of the Interior to lease a portion of the Dorothy Buell Memorial Visitor Center for use as a visitor center for the Indiana Dunes National Lakeshore, S. 1970, to amend the National Trails System Act to update the feasibility and suitability study originally prepared for the Trail of Tears National Historic Trail and provide for the inclusion of new trail segments, land components, and campgrounds associated with that trail, H.R. 562, to authorize the Government of Ukraine to establish a memorial on Federal land in the District of Columbia to honor the victims of the manmade famine that occurred in Ukraine in 1932–1933, and H.R. 318, to authorize the Secretary of the Interior to study the suitability and feasibility of designating Castle Nugent Farms located on St. Croix, Virgin Islands, as a unit of the National Park System.

SD–366

Intelligence

Closed business meeting to consider intelligence matters.

SH–219

FEBRUARY 28

9:30 a.m.

Armed Services

To hold hearings to examine current and future worldwide threats to the national security of the United States; to be followed by a closed session in SH–219.

SH–216

Indian Affairs

To hold oversight hearings to examine Indian gaming activities.

SR–485

2 p.m.

Veterans' Affairs

To hold hearings to examine legislative presentation of the Disabled American Veterans.

SD–106

2:30 p.m.

Energy and Natural Resources

Water and Power Subcommittee

To hold hearings to examine the Bureau of Reclamation Reuse and Recycling Program (Title XVI of Public Law 102–575).

SD–366

MARCH 1

9:30 a.m.

Indian Affairs

To hold joint hearings with the House Committee on Resources to examine the settlement of Cobell v. Norton.

SH–216

10:30 a.m.

Appropriations

Legislative Branch Subcommittee

To hold hearings to examine proposed budget estimates for fiscal year 2007 for the Library of Congress, Open World Leadership Council, and Government Accountability Office.

SD–138

2:30 p.m.

Commerce, Science, and Transportation

Disaster Prevention and Prediction Subcommittee

To hold hearings to examine winter storms.

SD–562

Energy and Natural Resources

Public Lands and Forests Subcommittee

To hold hearings to examine the role of the Forest Service and other Federal agencies in protecting the health and welfare of foreign guest workers carrying out tree planting and other service contracts on National Health System lands, and to consider related Forest Service guidance and contract modifications issued in recent weeks.

SD–366

3 p.m.

Health, Education, Labor, and Pensions

To hold hearings to examine reauthorization of the Ryan White CARE Act relating to fighting the AIDS epidemic of today.

SD–430

MARCH 7

9:30 a.m.

Armed Services

To hold hearings to examine military strategy and operational requirements in review of the Defense Authorization Request for fiscal year 2007 and the future years defense program.

SD–106

2:45 p.m.

Armed Services

Strategic Forces Subcommittee

To hold hearings to examine the nuclear weapons and defense environmental cleanup activities of the Department of Energy in review of the defense authorization request for fiscal year 2007 and the future years nuclear security program.

SR–232A

MARCH 8

2:30 p.m.

Armed Services

To hold hearings to examine the Department of Defense quadrennial defense review; to be followed by a closed session in SR–222.

SH–216

MARCH 9

10 a.m.

Commerce, Science, and Transportation

To hold hearings to examine aviation security and the Transportation Security Administration.

SD–562

MARCH 13

3 p.m.

Armed Services

To hold a closed briefing on an update from the Joint Improvised Explosive Device Defeat Organization.

SR–222

MARCH 14

9:30 a.m.

Armed Services

To hold hearings to examine military strategy and operational requirements in review of the Defense Authorization Request for fiscal year 2007 and the future years defense program.

SH–216

MARCH 15

10:30 a.m.

Appropriations

Legislative Branch Subcommittee

To hold hearings to examine proposed budget estimates for fiscal year 2007 for the Secretary of the Senate, Architect of the Capitol, and the Capitol Visitor Center.

SD–138

MARCH 16

9:30 a.m.

Armed Services

To hold hearings to examine military strategy and operational requirements in review of the defense authorization request for fiscal year 2007 and the future years defense program; to be followed by a closed session in SH–219.

SH–216

10 a.m.

Commerce, Science, and Transportation

Disaster Prevention and Prediction Subcommittee

To hold hearings to examine impacts on aviation regarding volcanic hazards.

SD–562

MARCH 28

10 a.m.

Commerce, Science, and Transportation

Aviation Subcommittee

To hold hearings to examine Federal Aviation Administration budget and the long term viability of the Aviation Trust Fund.

SD–562

MARCH 30

10 a.m.

Commerce, Science, and Transportation

Disaster Prevention and Prediction Subcommittee

To hold an oversight hearing to examine National Polar-Orbiting Operational Environmental Satellite System.

SD–562

APRIL 4

10 a.m.

Commerce, Science, and Transportation

Aviation Subcommittee

To hold hearings to examine Federal Aviation Administration funding options.

SD–562

APRIL 5

10:30 a.m.

Appropriations

Legislative Branch Subcommittee

To hold hearings to examine proposed budget estimates for fiscal year 2007 for the Sergeant at Arms and U.S. Capitol Police Board.

SD–138

APRIL 26

10:30 a.m.

Appropriations

Legislative Branch Subcommittee

To resume hearings to examine the progress of construction on the Capitol Visitor Center.

SD–138

MAY 3

10:30 a.m.

Appropriations

Legislative Branch Subcommittee

To hold hearings to examine proposed budget estimates for fiscal year 2007 for the Government Printing Office, Congressional Budget Office, and Office of Compliance.

SD–138

MAY 24

10:30 a.m.
Appropriations
Legislative Branch Subcommittee
To resume hearings to examine the progress of construction on the Capitol Visitor Center.
SD–138

CANCELLATIONS

FEBRUARY 15

11 a.m.
Energy and Natural Resources
Business meeting to consider the President's views and estimates to be submitted to the Committee on the Budget.
SD–366